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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–088–3]

Asian Longhorned Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by adding three areas in and around Chicago, IL, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined areas. The interim rule was necessary on an emergency basis to prevent the spread of the Asian longhorned beetle to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule was effective on November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255; or e-mail: ron.p.milberg@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective November 6, 1998, and published in the **Federal Register** on November 13, 1998 (63 FR 63385–63388, Docket No. 98–088–1), we amended the Asian longhorned beetle (ALB) regulations in 7 CFR part 301 by adding three areas in and around Chicago, IL, to the list of quarantined areas in § 301.51–3(c) and restricting the interstate movement of regulated articles from the quarantined areas.

We solicited comments concerning the interim rule for 60 days ending January 12, 1999. We received three comments by that date. They were from a State government and environmental associations.

All of the commenters were in favor of the interim rule. However, two of the commenters suggested that the Animal and Plant Health Inspection Service (APHIS) add woodchips to the list of regulated articles for ALB because woodchips may be associated with plant pests. The commenters noted that the regulations in 7 CFR 319.40–5 regarding solid wood packing material (SWPM) from China provide for the destruction of SWPM under certain circumstances, and that the means used to destroy the SWPM must be incineration or chipping followed by incineration. The commenters said that the requirement of incineration after chipping indicates that wood chips are potential vectors of some life stages of ALB.

A science panel formed by APHIS following the discovery of ALB in the United States concluded that wood chips are not a vector of ALB, and that no life stage of ALB will survive chipping. The regulations in 7 CFR 319.40–5 were put in place not just because SWPM from China poses a risk of transporting ALB, but also because it poses a risk of transporting extremely destructive wood-boring insects of the genera *Anoplophora*, *Ceresium*, *Hesperophanes*, and *Monochamus*. It is because of these other wood-boring insects that we require incineration after chipping for SWPM from China. Based on those considerations, we do not believe it is necessary to add woodchips to the list of regulated articles for ALB. However, we will continue to inspect woodchips, and if we find that they do pose a threat of spreading ALB, we will add woodchips to the list of regulated articles for ALB.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12372, 12866, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic impact of the interim rule on small entities.

This document adopts as a final rule, without change, an interim rule that amended the ALB regulations by quarantining three areas in and around Chicago, IL, and restricting the interstate movement of regulated articles from the quarantined areas. In the interim rule, we stated that we were taking those actions on an emergency basis to prevent the spread of ALB to noninfested areas of the United States.

In the interim rule, we asked for comments on the potential economic effects of the interim rule. We were interested in determining the number and kind of small entities that would incur benefits or costs from the implementation of the interim rule. We did not receive any comments that addressed the effect the rule will have on small entities.

Within the newly quarantined areas for ALB, nurseries, arborists, tree removal services, and firewood dealers could be affected by the interim rule. They could be affected in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification or limited permitting of regulated articles for interstate movement from the quarantined area; or (2) present its regulated articles to an APHIS inspector for inspection and obtain a certificate or a limited permit, issued by the APHIS inspector, for the interstate movement of the regulated articles. In either case, the inspections of regulated articles may be inconvenient, but these inspections do not result in any additional direct costs for businesses because APHIS provides the services of the inspector without cost, as long as those services are administered during normal working hours. There is also no cost for the compliance agreement, certificate, or limited permit for interstate movement of regulated articles.

Second, because of ALB infestation, some regulated articles may not qualify for interstate movement under a certificate or limited permit. In this case, a business wishing to move such

regulated articles interstate from a quarantined area would be deprived of the opportunity to benefit from the sale of the affected regulated articles in another State. However, we do not have data to estimate either the potential loss of income or the economic effect of any potential loss of income on small businesses.

ALB has the potential to cause extensive tree damage and serious economic losses to many businesses, both large and small, in the United States. In the eastern region of the United States alone, which includes the north-central States, there are 279 million acres of hardwood forests, representing about 75 percent of the land of all eastern forests. That forest acreage is in addition to land in urban and suburban areas where hardwood trees are common in streets, backyards, and parks. It is estimated that maple trees account for at least 30 percent of the street and park plantings in urban areas. Nursery stock and certain fruit trees are also at risk.

Industries that would be negatively affected by the spread of ALB are important economically. The forest products industry provided employment to 1.6 million U.S. workers in 1986, the last year for which complete data is available. That number represents 9 percent of the employment in all industries that year. For the United States as a whole, timber was the most important agricultural crop in 1986 in terms of the dollar value of production. In 1986, roundwood timber products, at local points of delivery, were valued at $12.6 billion, ahead of corn, which was valued at $12.4 billion. In the north-central United States, timber was the fourth most important agricultural crop in 1986, behind only corn, soybeans, and hay. The value of roundwood timber products harvested in the north-central United States accounted for 8 percent of the employment, 6 percent of the wages and salaries, and 7 percent of the value of shipments of all industries in that area in 1986. This translates to a workforce of 382,000 employees earning $8.6 billion. Industry shipments were valued at $44.8 billion in 1986. In all, forest industry manufacturing in the north-central United States contributed $53.4 billion to the gross national product in 1986. (These statistics on the forest products industry reflect products made from softwood timber as well as hardwood timber. However, the effect of hardwood timber on the totals is significant. As an example, hardwood accounted for 80 percent of the net volume of growing stock on timberland in eight north-central States in 1992.)

Nonmanufacturing industries that rely on healthy hardwood trees are also important economically. In 1994, the annual average employment and wages at firms in the north-central States engaged primarily in the production of ornamental nursery products, including nursery stock, totaled 18,429 and $303 million, respectively. In 1993, sales of plants (trees and shrubs) by nurseries and greenhouses in the United States totaled an estimated $3.1 billion, of which $525 million was derived from sales in eight north-central States. During the year ending September 30, 1993, 103.9 million landscape trees were sold in the United States, including 26 million in 8 north-central States. Approximately half of all landscape trees sold in the United States are hardwood trees.

The maple syrup industry relies on healthy maple trees, especially the sugar maple, for its production. In 1995, three north-central States (Michigan, Ohio, and Wisconsin) accounted for about 20 percent of the value of the U.S. maple syrup production ($25.5 million).

The tourism industry is tied heavily to leaf color changes in the fall, and the maple tree is noted for producing some of the most vivid colors. Between mid-September and late October, for example, the hardwood forests of New England draw 1 million tourists and generate $1 billion in revenue. It is estimated that up to one-fourth of the tourism revenue generated annually in New England is due to the fall foliage displays. Although to a lesser extent than in New England, the forests of the north-central States also generate tourism revenue as a result of leaf color changes in the fall.

The commercial fruit industry is also at risk of pest infestation, as pear, apple, plum, and citrus trees are susceptible to ALB infestation. It is estimated that, for the United States as a whole, the cost of replacing host fruit trees would amount to $5.2 billion alone for pear, apple, and plum orchards and $10.4 billion for citrus. The fruits of host trees would also be affected by a widespread infestation. The average 1995–1997 value of utilized production in the United States of the four fruits noted above was estimated at $4.7 billion.

The alternative to the interim rule was to take no action. We rejected this alternative because the quarantine of the three areas in Illinois listed in the interim rule is necessary to prevent the spread of ALB.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 63 FR 63385–63388 on November 13, 1998.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 25th day of May 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–13792 Filed 5–28–99; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 245

[INS No. 1881–97]

RIN 1115–AE96

Adjustment of Status; Continued Validity of Nonimmigrant Status, Unexpired Employment Authorization, and Travel Authorization for Certain Applicants Maintaining Nonimmigrant H or L Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rulemaking amends and clarifies Immigration and Naturalization Service regulations governing an H–1 and L–1 nonimmigrant's continued nonimmigrant status during the pendency of an application for adjustment of status. This action incorporates into the regulations existing Service policy statements regarding this issue. In addition, this rule eliminates the requirement for those adjustment applicants who maintain valid H–1 and L–1 nonimmigrant status, and their dependent family members, to obtain advance parole prior to traveling outside the United States. Finally, the Service is considering expanding the "dual intent" concept to cover long term nonimmigrants, in E, F, J, and M visa classifications, who are visiting this country as traders, investors, students, scholars, etc.

DATES: *Effective date:* This interim regulation is effective July 1, 1999.

Comment date: Written comments must be submitted on or before August 2, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalizations Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1881–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Frances A. Murphy, Adjudications Officer, Residence and Status Services Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3978.

SUPPLEMENTARY INFORMATION:

Why Is the Service Issuing This Regulation?

This rule is being issued to codify previous Service policy statements regarding the eligibility of H–1 and L–1 nonimmigrants, and their dependent family members, to maintain and to extend their nonimmigrant status while their applications for permanent residence remain pending. This rule also addresses the issue of the eligibility of these aliens to travel outside the Untied States without abandoning their applications for status.

What Categories of Aliens May Maintain Nonimmigrant Status After Having Filed for Adjustment of Status?

Under Section 214(b) of the Immigration and Nationality Act, (Act), most nonimmigrants who apply for adjustment of status to that of permanent residents of the United States are presumed to be intending immigrants and, therefore, are no longer eligible to maintain nonimmigrant status. Section 214(h) of the Act, however, permits aliens described in section 101(a)(15)(H)(i) and (L) of the Act, i.e., temporary workers in specialty occupations, intracompany managerial or executive transferees, and their dependent spouses and children, to maintain their nonimmigrant status during the pendency of their applications for adjustment of status.

In addition, the Service is considering expanding the dual intent concept to cover other long term nonimmigrants who are visiting this country as traders (E–1), investors (E–2), students (F–1, J–1 or M–1), or scholars (J–1), etc. These nonimmigrants, who are typically authorized to stay in this country for considerable lengths of time, often need to make short overseas travels during their authorized stay. Under the "dual intent" doctrine, these nonimmigrants would be able to maintain valid nonimmigrant status and travel overseas without advance parole while applying for adjustment of status.

The Service has, traditionally, considered applying for adjustment of status as relevant evidence in determining whether an alien has abandoned the requisite nonimmigrant intent. Section 214(b) of the Act does not, however, require the Service to hold this position as an absolute rule. So long as the alien clearly intends to comply with the requirements of his or her nonimmigrant status, the fact that the alien would like to become a permanent resident, if the law permits this, does not bar the alien's continued holding of a nonimmigrant status.

The Service is interested in the public view on this matter and would appreciate written comments.

How Does This Rule Affect Maintenance of H–1 and L–1 Nonimmigrant Status?

Section 214(h) of the Act specifically provides that the fact that an H–1 or L–1 nonimmigrant is the beneficiary of an application for a preference status filed under section 204 or has "otherwise sought permanent residence" in the United States shall not constitute evidence of an intent to abandon the foreign residence. The Service interprets section 214(h) to mean that, in addition to the approval of a labor certification or a preference visa petition, the mere filing of an application for status shall not be the basis for denying an H–1 or L–1 nonimmigrant's properly completed application (or that of their dependent family members in H–4 or L–2 status) for extension of stay or change of status within the H–1 or L–1 (or, as applicable, a H–4 or L–2) classifications. A pending adjustment application, however, does not relieve nonimmigrant H–1 and L–1 aliens of the requirement to comply with the terms of their nonimmigrant classification, including restrictions on periods of stay, change of employer, and engaging in employment. For example, changing employers without first obtaining approval from the Service will cause the alien to lose his or her valid H–1 or L–1 nonimmigrant status.

What Are the Documentary Requirements for Travel Outside the United States for H–1 and L–1 With Pending Applications for Adjustment of Status?

Current Service regulations at § 245.2(a)(4)(ii) require that all adjustment applicants obtain advance parole authorization prior to traveling outside the United States. Prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [IIRIRA], such persons were deemed to be applicants seeking admission and were subject to the grounds of excludability. The Service imposed the advance parole requirement and the concomitant exclusion process in order to maintain control over the re-entry of such aliens. With the phasing out of exclusion proceedings under IIRIRA, however, the Service believes it is now appropriate to amend its regulations to provide fuller effect to section 214(h) of the Act by exempting H–1 and L–1 nonimmigrants with pending applications for adjustment of status (as well as their dependent family members) from obtaining advance parole authorization prior to traveling outside the United States. Generally, such H–1 and L–1 nonimmigrants may be readmitted into the United States in the same status provided they are in possession of a valid H–1 or L–1 nonimmigrant visa (for those aliens not visa exempt), and the original I–797 receipt notice for the application for adjustment of status, and continue to remain eligible for H–1 or L–1 classification. All other nonimmigrants with pending applications for status must obtain advance parole authorization in accordance with § 245.2(a)(4)(ii) prior to traveling outside the United States.

Under What Section of the Regulations Would H–1 or L–1 Nonimmigrants be Granted Authorization for Continued Employment?

H–1 and L–1 nonimmigrants filing applications for permanent residence have two options with respect to work authorization, but the choices have different consequences. Such aliens, of course, may continue to work in accordance with the terms of their nonimmigrant employment authorization, as provided in § 274a.12(b)(9) or (12). This means that, while their application for adjustment of status is still pending, their employment is limited to the employer for whom the current nonimmigrant visa petition was approved.

In the alternative, when filing an application for permanent residence, an

H–1 or L–1 nonimmigrant may also file a form I–765 application for unrestricted employment authorization as provided in § 274a.12(c)(9). After receiving an Employment Authorization Document, the alien would be eligible to work for any employer, and this work authorization would continue as long as the alien's application for adjustment of status remains pending. However, such an alien should bear in mind that, by accepting employment with an employer other than the one which filed the approved H–1 or L–1 nonimmigrant petition under § 274a.12(c)(9), the alien would no longer be in compliance with the requirements of the H–1 or L–1 nonimmigrant status.

If the alien's application for adjustment of status is ultimately approved, then it would not matter which option the alien had followed. However, if the application for adjustment is denied, then the alien's status would depend on which option was followed. If the alien had continued to work for an approved employer under the terms of his or her H–1 or L–1 status, and otherwise properly maintained such status, the alien would still retain his or her nonimmigrant status, if that status had not yet expired according to the established terms. However, an alien who had chosen to work for a different employer during the period that his or her application for adjustment of status was pending would have thereby lost his or her H–1 or L–1 nonimmigrant status. Thus, if the alien's application for adjustment of status is denied, the alien would no longer be in a lawful status and would be subject to removal proceedings. In addition, a dependent family member who had chosen to engage in unrestricted employment while the application for adjustment of status was pending would lose his or her H–4 or L–2 nonimmigrant dependent status. Therefore, if the principal's application for adjustment of status is denied, such dependent family members would also not be in a lawful status and could not revert back to H–4 or L–2 dependent status.

Filing of I–765 for H's and L's Seeking Employment Authorization Under § 274a.12(c)(9)

H–1 and L–1 nonimmigrants filing adjustment applications who intend to seek open-market employment authorization under § 274a.12(c)(9) should file Form I–765 concurrently with the I–485 to avoid a lapse of employment authorization. After filing the Form I–765, the H–1 or L–1 nonimmigrant must wait until he or she receives the employment authorization document before the alien may enter into open-market employment. The INS Service Centers will continue to entertain requests for expeditious handling of Form I–765 employment authorization requests in accordance with prevailing criteria. Expeditious handling of a request for employment authorization under § 274a.12(c)(9), however, may be insufficient to ensure that a lapse in employment authorization does not occur when the application for status is filed near the expiration of H–1 or L–1 nonimmigrant status.

What Are the Effects of Denial of I–485 on Employment Authorization and Nonimmigrant Status?

An alien whose adjustment of status application is denied but who has continuously maintained his or her H–1 or L–1 nonimmigrant status while the adjustment application was pending, may continue to work in accordance with the terms of the nonimmigrant visa. If the adjustment of status application is denied, any employment authorization granted to the alien under § 274a.12(c)(9) will be subject to termination pursuant to § 274a.14(b). Further, if the alien is not maintaining his or her H–1 or L–1 nonimmigrant status, he or she will be subject to removal proceedings.

How Does the Approval of an Application for Adjustment of Status During the Alien's Absence From the United States Affect His or Her Readmission?

In accordance with 8 CFR 211.1, a Form I–797 approval notice for an adjustment of status application is insufficient to establish an arriving alien's entitlement to lawful permanent residence. An H–1 or L–1 nonimmigrant (or a dependent family member) whose application for adjustment of status was approved during the alien's absence from the United States will be granted deferred inspection in accordance with § 235.2(b) upon presentation of a valid I–797 notice of approval of the application for status. Such deferred action shall be for the purpose of providing conclusive evidence that the alien's status has in fact been adjusted to that of a lawful permanent resident.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 533(b)(3)(B), and (d)(3). The immediate implementation of this interim rule without prior notice and comment is necessary to: (1) Clarify existing Service policy with respect to adjustment applicants who need to travel abroad while their application is pending, (2) provide a benefit to U.S. employers by facilitating the continued employment of nonimmigrant H–1 and L–1 workers who have filed for adjustment of status, and (3) allow such workers more flexibility to travel. The Service will consider fully all comments submitted during the comment period.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects individuals by allowing them to continue to be employed and to travel while seeking adjustment of status. Any effect on small entities that employ such nonimmigrants will be beneficial.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the realtionship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2

2. Section 214.2 is amended by revising paragraphs (h)(16)(i) and (l)(16) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(16) * * * (i) *H–1 classification.* An alien may legitimately come to the United States for a temporary period as an H–1 nonimmigrant and, at the same time, lawfully seek to become a permanent resident of the United States provided he or she intends to depart voluntarily at the end of his or her authorized stay. The filing of an application for or approval of a permanent labor certification, an immigrant visa preference petition, or the filing of an application for adjustment of status for an H–1 nonimmigrant shall not be a basis for denying:

(A) An H–1 petition,

(B) A request to extend an H–1 petition,

(C) The H–1 alien's application (and that of their dependent family members) for change of status to a different H–1 or L classification, or a dependent of an H–1 of L nonimmigrant, or

(E) The H–1 alien's application for extension of stay, (and that of their dependent family members).

* * * * *

(l) * * *

(16) *Effect of filing an application for or approval of a permanent labor certification, preference petition, or filing of an application for adjustment of status on L–1 classification.* An alien may legitimately come to the United States for a temporary period as an L–1 nonimmigrant and, at the same time, lawfully seek to become a permanent resident of the United States provided he or she intends to depart voluntarily at the end of his or her authorized stay. The filing of an application for or approval of a permanent labor certification, an immigrant visa preference petition, or the filing of an application of readjustment of status for an L–1 nonimmigrant shall not be the basis for denying:

(i) An L–1 petition filed on behalf of the alien,

(ii) A request to extend an L–1 petition which had previously been filed on behalf of the alien;

(iii) An application for admission as an L–1 nonimmigrant by the alien, or as an L–2 nonimmigrant by the spouse or child of such alien;

(iv) An application for change of status to H–1 or L–2 nonimmigrant filed by the alien, or to H–1, H–4, or L–1 status filed by the L–2 spouse or child of such alien;

(v) An application for change of status to H–4 nonimmigrant filed by the L–1 nonimmigrant, if his or her spouse has been approved for classification as an H–1; or

(vi) An application for extension of stay filed by the alien, or by the L–2 spouse or child of such alien.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255, sec. 202, Pub. L. 105–100 (111 Stat. 2160, 2193); and 8 CFR part 2.

4. In § 245.2, paragraph (a)(4)(ii) is revised to read as follows:

§ 245.2 Application.

(a) * * *

(4) * * *

(ii) *Under section 245 of the Act.* (A) The departure from the United States of an applicant who is under exclusion, deportation, or removal proceedings shall be deemed an abandonment of the application constituting grounds for termination of the proceeding by reason of the departure. Except as provided in paragraph (a)(4)(ii)(B) and (C) of this section, the departure of an applicant who is not under exclusion, deportation, or removal proceedings shall be deemed an abandonment of the application constituting grounds for termination of any pending application for adjustment of status, unless the applicant was previously granted advance parole by the Service for such absences, and was inspected upon returning to the United States. If the adjustment application of an individual granted advance parole is subsequently denied the individual will be treated as an applicant for admission, and subject to the provisions of section 212 and 235 of the Act.

(B) The travel outside of the United States by an applicant for adjustment who is not under exclusion, deportation, or removal proceedings shall not be deemed an abandonment of the application if he or she was previously granted advance parole by the Service for such absences, and was inspected and paroled upon returning to the United States. If the adjustment of status application of such individual is subsequently denied, he or she will be treated as an applicant for admission, and subject to the provisions of section 212 and 235 of the Act.

(C) The travel outside of the United States by an applicant for adjustment of status who is not under exclusion, deportation, or removal proceeding and who is in lawful H–1 or L–1 status shall not be deemed an abandonment of the application if, upon returning to this country, the alien remains eligible for H or L status, is coming to resume employment with the same employer for whom he or she had previously been authorized to work as an H–1 or L–1 nonimmigrant, and, is in possession of a valid H or L visa (if required) and the original I–797 receipt notice for the application for adjustment of status. The travel outside of the United States by an applicant for adjustment of status who is not under exclusion, deportation, or removal proceeding and who is in lawful H–4 or L–2 status shall not be deemed an abandonment of the application if the spouse or parent of such alien through whom the H–4 or L–2 status was obtained is maintaining H–1 or L–1 status and the alien remains otherwise eligible for H–4 or L–2 status, and, the alien is in possession of a valid

H–4 or L–2 visa (if required) and the original copy of the I–797 receipt notice for the application for adjustment of status.

* * * * *

Dated: May 12, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–13759 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AG27

Formal and Informal Adjudicatory Hearing Procedures; Clarification of Eligibility To Participate

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing participation in adjudicatory proceedings conducted under its Rules of Practice to clarify that Federally-recognized Indian tribal governments are entitled to participate in these proceedings on the same basis as other governmental units.

DATES: The final rule is effective August 2, 1999, unless significant adverse comments are received by July 1, 1999. If significant adverse comments are received, a timely withdrawal will be published in the **Federal Register**.

ADDRESSES: Mail any comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 am and 4:15 Eastern time on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://www.nrc.gov*). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the NRC's interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; email *CAG@nrc.gov*.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles E. Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415-1606; e-mail: *CEM@nrc.gov*.

SUPPLEMENTARY INFORMATION: Because the NRC considers this action noncontroversial and routine, the NRC is publishing the rule in final form without first seeking public comments on the amendments in a proposed rule. This action will become effective on August 2, 1999. However, if the NRC receives significant adverse comments by July 1, 1999, the NRC will publish a document that withdraws this action pending review of the comments, and will address those comments in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Background

These amendments are intended to ensure that Federally-recognized Indian Tribal governments and their official subdivisions have the same participation rights in NRC adjudicatory proceedings as State governments, units of local governments, and their official subdivisions. In many respects, Federally-recognized Indian tribes exercise inherent sovereign powers over their members and territory, similar to the powers exercised by States and other units of local government. In many areas of the law, these sovereign rights are recognized either by court decision, statute, or treaty. Therefore, because these tribes exercise many of the attributes of States or other governmental units, the Commission has determined that they should be recognized in adjudicatory proceedings in the same fashion as State and local governmental bodies. Accordingly, the Commission is issuing this amendment to ensure that Federally-recognized Indian tribes will have the same opportunity to participate in any proceeding that affects their interests. These amendments are intended to meet the goals of Executive Order No. 13084 of May 14, 1998.

In addition, the Commission is also making two minor editorial changes in § 2.1211(b) to conform its wording to the wording in § 2.715(c).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, non-substantive amendment; it has no economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rulemaking is an administrative action that clarifies the rights of Federally-recognized Indian tribes to participate in NRC adjudicatory proceedings. It has no financial impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not impose any provisions that would impose backfits as defined in 10 CFR 50.109.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114 (f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143 (f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205 (j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100 (s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Section 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.715, paragraph (c) is revised to read as follows:

§ 2.715 Participation by a person not a party.

* * * * *

(c) The presiding officer will afford representatives of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to §§ 2.754 and 2.762 and petitions for review by the Commission pursuant to § 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

* * * * *

3. In § 2.1211, paragraph (b) is revised to read as follows:

§ 2.1211 Participation by a person not a party.

* * * * *

(b) Within 30 days of an order granting a request for a hearing under § 2.1205 (b) through (d) or, in instances when it is published, within 30 days of notice of hearing issued under § 2.1205(j), the representative of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, may request an opportunity to participate in a proceeding under this subpart. The request for an opportunity to participate must state with reasonable specificity the requester's area of concern about the licensing activity that is the subject matter of the proceeding. Upon receipt of a request that is filed in accordance with these time limits and that specifies the requester's areas of concern, the presiding officer shall afford the requester a reasonable opportunity to make written and oral presentations in accordance with §§ 2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this paragraph may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

Dated at Rockville, Maryland, this 24th day of May, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–13653 Filed 5–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AG28

Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings: Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the filing and service of Requests for Hearings and Petitions for Leave to Intervene in "informal" materials and operator licensing proceedings conducted under its Rules of Practice. This action is necessary to correct a cross-referencing error in the provisions concerning the method of filing documents and to change the method of service of pleadings on the NRC Staff.

EFFECTIVE DATE: This final rule is effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Charles E. Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1606; e-mail: *CEM@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

These amendments are designed to correct two minor errors in an earlier rulemaking and to make two minor changes regarding service of pleadings on the NRC Staff as a party in these proceedings. First, this rulemaking corrects a typographical error in the printing of a final rule published July 29, 1996 (61 FR 32978), amending Subpart L. That final rule included a reference in 10 CFR 2.1203(e) to 10 CFR 2.1205(R). The cross-reference to paragraph (R) should have appeared as a cross-reference to paragraph (k), as set out in the original proposed rule. The Commission is correcting that cross-reference.

Second, the 1996 rulemaking inserted a new paragraph (c) in 10 CFR 2.1205 and renumbered the existing paragraph (c) as paragraph (d) and all subsequent paragraphs accordingly. However, the rulemaking failed to correct a cross-reference to the original paragraph (c), now paragraph (d), in the original paragraph (f), now paragraph (g). The Commission is correcting that cross-reference.

Third, this rulemaking makes two minor changes in the service of specific pleadings in these proceedings by designating that service of Requests for Hearings and Petitions for Leave to Intervene on the NRC Staff shall be made by serving those documents on the General Counsel, rather than on the Executive Director for Operations as currently required. Eventually, the Executive Director for Operations must refer any pleading to the General Counsel for a response to the Presiding Officer. The Commission has found that pleadings are sometimes lost or delayed by not having them filed directly with

the General Counsel. Accordingly, the Commission has concluded that direct service on the General Counsel will eliminate any delay and increase the efficiency of its adjudicatory processes.

Because these amendments are administrative in nature and deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). In addition, good cause exists to dispense with the usual 30-day delay because the amendments are of a corrective and administrative nature dealing with a matter of agency conduct, a change in the manner in which proceedings shall be served on the NRC Staff. Accordingly, these amendments are effective upon publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because this rule is considered a minor non-substantive amendment; it has no economic impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter I.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114 (f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143 (f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205 (j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100 (s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Section 2.600-2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.1203, paragraph (e) is revised to read as follows:

§ 2.1203 Docket; filing; service.

* * * * *

(e) A request for a hearing or a petition for leave to intervene must be served in accordance with § 2.712 and § 2.1205 (f) and (k). All other documents issued by the presiding officer or the Commission or offered for filing are served in accordance with § 2.712.

3. In § 2.1205, paragraphs (f)(2), (g), (k)(1)(i), and (k)(1)(ii) are revised to read as follows:

§ 2.1205 Request for a hearing; petition for leave to intervene.

* * * * *

(f) * * *

(2) The NRC Staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(g) Within ten (10) days of service of a request for a hearing filed under paragraph (d) of this section, the applicant may file an answer. The NRC staff, if it chooses or if it is ordered to participate as a party under § 2.1213, may file an answer to a request for a hearing within ten (10) days of the designation of the presiding officer.

* * * * *

(k) * * *

(1) * * *

(i) By delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

Dated at Rockville, Maryland, this 24th day of May, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission..

[FR Doc. 99–13652 Filed 5–28–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 99–07]

RIN 1557–AB65

Organization and Functions, Availability and Release of Information, Contracting Outreach Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its disclosure regulation. Among other things, the amendment clarifies that the OCC may make non-public OCC information available to a supervised entity and to other persons, as the Comptroller, in his sole discretion, may

deem necessary or appropriate, without a request for records or testimony.

DATES: The final rule is effective on June 1, 1999

FOR FURTHER INFORMATION CONTACT: Ursula Pfeil, Attorney, Legislative and Regulatory Activities (202) 874–5090; or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC is amending subpart C of 12 CFR Part 4 which governs the release of non-public OCC information. Part 4 currently requires a person seeking non-public OCC information to submit a request in writing to the OCC. The current rule does not include a procedure for the release of non-public OCC information to supervised entities and other persons without a specific request for the information.

The OCC has authority to prescribe rules governing the release of agency records and information under its grant of statutory authority to promulgate substantive regulations to carry out the responsibilities of the office, 12 U.S.C. 93a, as well as under statutes that contemplate the sharing of information with other agencies and persons. *See, e.g.*, 12 U.S.C. 481; 12 U.S.C. 1867; 12 U.S.C. 1820(d)(6).

On November 10, 1998, the OCC requested comment on an interim rule amending part 4. 63 FR 62927. The OCC made three independent changes to part 4 in the interim rule. First, the interim rule added a new section that clarifies the OCC's existing authority to make non-public OCC information available to a supervised entity and to other persons, that in the sole discretion of the Comptroller may be necessary or appropriate, without a specific request by a third party. The term "supervised entity" is defined in the interim rule to include a national bank, a subsidiary of a national bank, or a federal branch or agency of a foreign bank licensed by the OCC.

Second, the OCC amended the definition of non-public OCC information. Section 4.32 defines non-public OCC information as information, confidential or otherwise, that the OCC is not required to release under the Freedom of Information Act (FOIA) (5 U.S.C. 552) or that the OCC has not yet published or made available under 12 U.S.C. 1818(u), the statute requiring publication of certain enforcement orders. Section 4.32 provides an illustrative list of the types of information that qualify as non-public OCC information, including OCC records contained in, or related to, examination and operating or condition reports concerning national banks and their subsidiaries and affiliates. The interim rule amended the definition of non-public OCC information to include a Suspicious Activity Report (SAR) filed by the OCC or a supervised entity under 12 CFR 21.11. While the OCC has always taken the position that SARs are non-public information, the OCC proposed this change to enhance the ability of banks and the OCC to protect SARs from being disclosed when SARs are sought by private litigants.

Third, the OCC emphasized in the interim rule that non-public OCC information remains the property of the OCC even after it is disclosed and may not be disclosed to others except as authorized by the OCC. The interim rule clarified that current and former OCC employees and agents are prohibited from disclosing or permitting the disclosure of any non-public OCC information to anyone other than an employee or agent of the OCC who needs the information for the performance of OCC duties. Current and former OCC employees and agents who are subpoenaed or otherwise requested to provide OCC information must notify the OCC immediately under procedures set forth in § 4.37(a)(2).

Finally, the OCC made conforming changes to the purpose and scope provisions at § 4.31 of Subpart C to reflect the substantive changes to the other sections amended.

Description of Comments Received

The OCC received two comments on the interim rule: one from a national bank and another from a bank trade association. The bank trade association supported the interim rule as published. The bank objected to the rule on several grounds. After careful consideration of the comments received, the OCC is adopting the interim rule with some clarifying changes.

The Disclosure of Non-Public OCC Information Without a Request

One commenter raised concerns that the new section authorizing disclosure of confidential information (§ 4.36) violates provisions of the Right to Financial Privacy Act (RFPA) (12 U.S.C. 3401–22) and the Community Reinvestment Act (CRA) (12 U.S.C. 2906).

Section 4.36 does not authorize the OCC to disclose information in a manner that would violate the requirements of other federal laws, including the RFPA or CRA. Rather, this section is intended solely to clarify that the OCC has the discretionary authority to make disclosures, in the exercise of its supervisory responsibilities, that are not prohibited by other applicable statutes without waiting for a specific request. This amendment does not reflect a change in the OCC's long-standing policy and practice to respect the confidentiality of supervisory information. Thus, the OCC will continue to release non-public OCC information without a request only in rare cases after consideration of all circumstances. The exercise of discretion to disclose information under this new section will be limited to a few senior OCC officials, in line with an appropriate delegation of authority.

To address the commenter's concern, however, the OCC is adding a new paragraph to § 4.36 on the OCC's policy regarding the release of non-public OCC information. This paragraph restates the OCC policy that non-public OCC information is confidential and privileged and that the OCC, accordingly, will not normally disclose this information to third parties.

This approach also ensures greater consistency with the Federal Reserve Board's (FRB) regulation regarding discretionary disclosures. The FRB disclosure regulation authorizes the FRB to share confidential supervisory information with supervised financial institutions and, from time to time, to authorize other disclosures of confidential information as necessary. 12 CFR 261.20. The FRB regulation also states that it is the FRB's policy that confidential supervisory information is confidential and privileged and that the FRB, accordingly, will not normally disclose this information to the public. 12 CFR 261.22(a). In addition, the OCC may continue to impose conditions and limitations on the disclosure of information through the entry of a protective order or a written agreement of confidentiality, as provided for under the old rule.

As noted in the interim rule, in some circumstances, the safety and soundness or financial stability of national banks may be affected unless the OCC discloses non-public information to supervised entities or certain other persons without a request. For example, the OCC's ability to help national banks attain Year 2000 readiness depends, in part, on the OCC's ability to share information concerning third parties with supervised entities and other persons. In this case, "other persons" may include self-regulatory organizations or state banks with whom the OCC seeks to share information.

Definition of Non-Public OCC Information (SARs)

The interim rule also amended the definition of non-public OCC information in § 4.32 to to include a SAR filed by the OCC, a national bank, or a Federal branch or agency of a foreign bank licensed or chartered by the OCC under 12 CFR 21.11. One commenter, viewing this change in the context of the amendment previously described, raised concerns that this change could chill the cooperation between banks and the OCC and may subject banks to greater liability should the OCC begin to publicly disclose SARs. This is not the case. The OCC added SARs to the list of non-public OCC information to protect the confidentiality of SARs further, particularly in litigation, not to make them more easily disclosable. The amendment clarifies that SARs, which are sensitive and confidential documents, are not subject to disclosure requests under FOIA and are subject to the procedures for the release of non-public OCC information under part 4. The OCC is committed to protecting the confidentiality of SARs, and the amendment does not alter this long-standing policy. Accordingly, the OCC adopts this provision without modification.

Effective Date

Section 553 of the Administrative Procedure Act permits an agency, for good cause, to issue a rule to be effective in less than 30 days from its publication date. 5 U.S.C. 553(d). Likewise, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103–325, authorizes a banking agency to issue a rule to be effective before the first day of the calender quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

The OCC finds good cause for making this final rule effective upon publication in the **Federal Register**. Like the interim rule, this final rule allows the OCC to disclose non-public OCC information to supervised entities and other persons in certain enforcement contexts requiring immediate action where a request for the information may not be forthcoming or may be delayed. The OCC's ability to help national banks attain Year 2000 readiness in the short time remaining also depends, in part, on the OCC's ability to provide information rapidly concerning third parties to supervised entities and other persons without a request. The OCC's ability to carry out its mission to ensure national banks' safety and soundness, in certain circumstances, may be impaired unless it can make disclosures, as authorized by this final rule, promptly after acquiring the information in question. For these reasons, the OCC concludes that a delayed effective date is impracticable and would be contrary to the public interest. 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim rule, the OCC concluded, for good cause, that it is not required to publish a notice of proposed rulemaking. Accordingly, it issued the interim rule without prior notice and comment to be effective immediately. Since the RFA does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking, the OCC also concludes that the RFA does not require an initial regulatory flexibility analysis of this final rule. Nonetheless, since this final rule imposes no new requirements on any national bank, the OCC finds that this final rule does not have a significant economic impact on a substantial number of small entities or create any additional burden on small entities.

OCC Executive Order 12866 Statement

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (UMA) of 1995, Public Law 104–4, applies only when an agency is required to promulgate a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. The OCC did not publish a general notice of proposed rulemaking when it, for good cause, issued the interim rule with an immediate effective date. Accordingly, the UMA does not require an unfunded mandates act analysis of this final rule.

Nonetheless, since this final rule prescribes no mandate of any kind, the OCC finds that the final rule will not result in expenditure by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 4

Freedom of information, National banks, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 4—ORGANIZATIONS AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM

Accordingly, the interim rule amending 12 CFR part 4 which was published at 63 FR 62927 on November 10, 1998, is adopted as a final rule with the following changes:

§ 4.31 [Amended]

1. In § 4.31(b)(3) the term "§ 4.36(c)" is removed and the term "§ 4.37(c)" is added in its place.

2. Section 4.32 is amended by revising paragraph (b)(1)(vii) to read as follows:

§ 4.32 Definitions.

* * * * *

(b) * * *

(1) * * *

(vii) A Suspicious Activity Report filed by the OCC, a national bank, or a Federal branch or agency of a foreign bank licensed or chartered by the OCC under 12 CFR 21.11; and

* * * * *

§ 4.34 [Amended]

3. In § 4.34, in paragraph (a), the term "§ 4.38(d)" is removed and the term "§ 4.39(d)" is added in its place and the term "§ 4.36" is removed and the term "§ 4.37" is added in its place, in paragraph (c) introductory text the term "§ 4.36(c)" is removed and the term "§ 4.37(c)" is added in its place, and in paragraphs (c)(1) and (c)(2) the term "Washington, DC office" is removed and the term "Washington office" is added in its place.

4. In § 4.36, paragraph (a) is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, a new paragraph (b) is added, and the heading of paragraph (c) is revised to read as follows:

§ 4.36 Disclosure of non-public OCC information.

(a) *Discretionary disclosure of non-public OCC information.* The OCC may make non-public OCC information available to a supervised entity and to other persons, that in the sole discretion of the Comptroller may be necessary or

appropriate, without a request for records or testimony.

(b) *OCC policy.* It is the OCC's policy regarding non-public OCC information that such information is confidential and privileged. Accordingly, the OCC will not normally disclose this information to third parties.

(c) *Conditions and limitations.* * * * * * * * * * *

5. In § 4.37, paragraph (a)(1) is revised and in paragraphs (a)(2)(i) and (ii) the term "Washington, DC office" is removed and the term "Washington office" is added in its place, to read as follows:

§ 4.37 Persons and entities with access to OCC information; prohibition on dissemination.

(a) * * *

(1) Generally. Except as authorized by this subpart or otherwise by the OCC, no current or former OCC employee or agent may, in any manner, disclose or permit the disclosure of any non-public OCC information to anyone other than an employee or agent of the Comptroller for use in the performance of OCC duties.

* * * * * * *

Appendix A to Subpart C—[Amended]

6. In Appendix A to Subpart C, section II, paragraph 7, the term "12 CFR 4.38(b)" is removed and the term "12 CFR 4.39(c)" is added in its place.

Dated: May 20, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–13725 Filed 5–28–99; 8:45 am]

BILLING CODE 4810–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Economic and Public Interest Requirements for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is revising its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR Part 5, Appendix A (Guideline No. 1). Guideline No. 1 details the information that an application for contract market designation should include in order to demonstrate that the contract market meets the economic requirements for designation. Previously, the Commission promulgated fast-track review procedures to reduce its review time to review designation applications. To streamline the application process further, the Commission is revising Guidelines No. 1, reducing any unnecessary burdens associated with the designation application itself.

Specifically, the Commission is organizing Guideline No. 1 into several specific application forms, making use of a chart format for applications for designation of futures and options contracts to the extent possible. Moreover, the Commission is clarifying that a portion of the application may make use of third-party generated materials. In addition, the Commission is clarifying the review standards for several of the designation requirements. The Commission also is adding a new appendix Part 5 specifying the information that a foreign board of trade should submit to the Commission when seeking no-action relief to offer and to sell, to persons located in the United States, a futures contract on a foreign securities index traded on that foreign board of trade.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Richard H. Shilts, Director, Market Analysis Section, or Kimberly A. Browning, Attorney/Advisor, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5260. E-mail: [PArchitzel@cftc.gov], [RShilts@cftc.gov] or [KBrowning@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

The requirement that contract markets meet specified conditions has been a fundamental tool of federal regulation of commodity futures exchanges since the Futures Trading Act of 1921, Pub. L. No. 67–66, 42 Stat. 187 (1921 Act).[1] Currently, the statutory requirements for contract market designation are found in Sections 5 and 5a of the Commodity Exchange Act (Act) and, additionally, for indexes of securities, in Section 2(a)(1)(B) of the Act. Designated contract markets must provide for the prevention of dissemination of false information (Section 5(3) of the Act); must provide for the prevention of price manipulation (Section 5(4) of the Act); must provide for delivery periods which will prevent market congestion (Section 5a(a)(4) of the Act); and must permit delivery on the contract of such grades, at such points and at such quality and locational differentials as will tend to prevent or to diminish market manipulation (Section 5a(a)(10) of the Act).[2] Included among these provisions is the general requirement of Section 5(7) of the Act that trading in a proposed contract not be contrary to the public interest. The contract market must meet these requirements both initially and on a continuing basis.[3]

The Commission, as an aid to the exchanges, has provided guidance in meeting these statutory requirements. In 1975, the newly formed Commission, in one of its earliest actions, issued its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (1975) ("Guideline No. 1").

Subsequently, the Commission revised this Guideline, publishing it as Appendix A to Part 5 of the Code of Federal Regulations. 47 FR 49832 (November 3, 1982). Guideline No. 1 was again revised in 1992. 57 FR 3518 (January 30, 1992). The 1992 revisions streamlined the designation application for both futures and option contract markets. In addition, the 1992 revisions introduced the use of a new checklist-style format for applications for designation of option contracts.[4]

In 1997, the Commission began a far-reaching program of regulatory reform. Its first initiative was to establish fast-track procedures for Commission review and approval of applications for contract market designation. See, Commission Rule 5.1, 62 FR 10434 (March 7, 1997). The fast-track procedure creates a streamlined and speedy alternative review process for Commission consideration of designation applications, reducing unnecessary regulatory burdens on exchanges while also preserving the opportunity for public participation and

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[1] A more complete description of the contract market approval process under the 1921 Act is provided in the proposed rulemaking, 63 FR 38537, n. 1 (July 17, 1998).

[2] A further listing of contract market approval requirements under the Act is provided in the proposed rulemaking, 63 FR 38537, n. 2.

[3] Generally, the burden of demonstrating compliance rests with the contract market. Section 6 of the Act provides, in part, that:

Any board of trade desiring to be designated a "contract market" shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

[4] For a more complete discussion of the revisions made to Guideline No. 1 in 1982 and 1992, see 63 FR 38537–38538.

fulfillment of the Commission's oversight responsibilities.[5]

The Commission, in addition to promulgating the fast-track review rules, indicated its intent broadly to reexamine the form and content requirements of Guideline No. 1, including consideration of the possible applicability of an option-style checklist to applications for designation of proposed futures contracts.[6] The Commission has noted that "[i]mplementation of fast-track review and approval procedures, separately and together with the planned revision of the format and content requirements for designation applications, should result in significantly streamlining the procedures and regulatory requirements associated with the current contract designation process," 62 FR 10435, and that these initiatives should permit the exchanges greater flexibility to compete with foreign exchange-traded products and with both foreign and domestic over-the-counter transactions while maintaining the basic protections embedded in the Act. 61 FR 59390 (November 22, 1996). In this regard, the Commission's approval process for new contracts, as well as its designation application process, also is in keeping with a 1998 International Organization of Securities Commissions' (IOSCO) publication entitled "Applicability of the Surveillance Guidance to Other Exchange-Traded Derivatives Products." That IOSCO report makes general recommendations to market authorities concerning what a market surveillance program should contain to monitor effectively exchange derivatives markets without unnecessarily affecting market innovation.

A. Proposed Amendments

Based upon its experience in administering the current Guideline and the fast track procedures, the Commission proposed to revise Guideline No. 1 in several important respects. 63 FR 38537 (July 17, 1998). First, the Commission proposed to streamline the Guideline by reorganizing its contents to present applications for designation of futures contracts in a clearer, more focused format including the use of charts. Specifically, the Commission proposed to reorganize the contents of the Guideline to address applications for four different types of contracts: (1) Physical delivery futures; (2) cash-settled futures; (3) options on futures; and (4) options on physicals. Except for options on physicals, each separate application was proposed to be self-contained. Under the proposed amendments, information for option contracts would continue to be provided by checklist. In addition, the Commission proposed to clarify certain standards for review which have evolved based upon administrative experience and to clarify that exchanges may use information developed by third parties in the application.

Finally, the Commission proposed that a new appendix be added to Part 5 specifying the information that a foreign board of trade should file with the Commission when seeking no-action relief to offer and to sell in the United States a futures contract on a foreign securities index traded on that foreign board of trade.

B. Comments

Two commenters, the Chicago Board of Trade (CBT) and the Minneapolis Grain Exchange (MGE), responded to the notice of proposed rulemaking. Both CBT and MGE favored strongly the Commission's proposed revisions to streamline Guideline No. 1. However, although MGE supported the proposed revisions clarifying the review standards for several of the designation requirements, CBT opposed the proposed clarification of the review standards. The MGE's and the CBT's comments are discussed more fully below.

II. Final Revisions to the Guideline

Based upon thorough and careful consideration of the comments to the proposed rulemaking and its experience in administering the current Guideline as well as the fast-track procedures, the Commission has determined to revise Guideline No. 1.

A. Final Changes to the Guideline's Format

1. Cash Market Overview

Currently, exchanges are required to include a cash market description in their designation application. 17 CFR Part 5, Appendix A (a)(1). To reduce the burden on the exchanges in satisfying the Guideline's cash-market overview standards, the Commission is amending Guideline No. 1, as proposed, to recognize explicitly the acceptability of a variety of materials in fulfillment of this requirement. This final revision permits exchanges to submit cash-market descriptions based not only on material their staffs generate, but also on materials obtained from other sources.[7] An exchange may develop such material through outside sources during a feasibility study of a proposed contract, as part of the exchange's development and consideration of a proposal or as part of its new product marketing effort. The two commenters, CBT and MGE, both supported this proposed revision. In particular, CBT was of the view that contracts markets using third party materials in support of their designation applications will experience financial and staff resource savings. Specifically, CBT stated that:

> [T]hird-party material is often times readily available to contract markets from sources such as trade groups and consultants [and] can prove less expensive to obtain than having a contract market's own staff, which may have limited resources, do the research and compile the data [in support of the application]. Moreover, this data from third parties can prove beneficial in that certain trade groups and consultants may possess a high level of expertise and knowledge of the subject matter in question.[8]

2. Charts Relating to Individual Contract Terms and Conditions

Guideline No. 1 requires exchanges to explain how each major term of a proposed contract, except for those identical to terms the Commission already has approved, is consistent with cash market practices or to justify the reason why the contract terms appropriately are inconsistent with such practices. Under the former Guideline, exchanges submitted this explanation or justification in narrative form. Further to streamline the application process, the Commission is clarifying, as proposed, that an exchange, in lieu of a

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[5] Under the fast-track review procedures, applications for designation of certain cash-settled futures and option contracts are deemed to be approved in as few as ten days after receipt. Other applications are deemed approved 45 days after receipt, absent contrary notification. Since implementing the fast-track review rule in April 1997, 59 contracts have been approved by the Commission under this rule, 26 under the 10-day procedure and 33 under the 45-day procedure. An additional 55 contracts were approved under non-fast-track review procedures.

[6] Guideline No. 1 applies only to the economic requirements that must be met in order to be designated as a contract market. Additional requirements are found in the Commission's Guideline No. 2, 1 Comm. Fut. L. Rep (CCH) ¶ 6430. These relate to the contract market's program for compliance with its self-regulatory responsibilities. Generally, the review of these issues is most significant in connection with the first application for contract designation from a particular board of trade.

[7] In allowing the submission of such third party materials, the Commission is not amending the requirement that each application (except for options on futures) must include a cash-market overview.

[8] See, CBT's comment letter submitted to the Commission in response to the proposed rulemaking dated September 15, 1998 at p. 2.

narrative description, may complete a chart to provide the required information.[9] The revised chart format reduces the amount of verbiage and the overall length of designation applications. Both of the commenters agreed that the proposed chart format would benefit contract markets by reducing the amount of paperwork, costs and time necessary to satisfy designation application requirements.

As the Commission noted in the notice of proposed rulemaking, the chart is a template enumerating the significant contract terms and conditions typically contained in most contracts. That template may be modified as necessary to reflect the nature of the particular commodity, the economic characteristics of the commodity or the contract's specific terms and conditions.[10]

The designation application includes a brief description of the contract's major terms and conditions. Where the term is consistent with prevailing cash market practices, column 4 may be completed by providing a very brief statement as to how the term or condition comports with cash practices. However, where the term or condition does not comport with cash market practices, a more extensive discussion is required showing why the provision is necessary or appropriate for the hedging or pricing utility of the contract and the overall effect of the provision on deliverable supplies. Consistent with current requirements, no such justification of an individual term or condition is required when that term or condition is the same as one the Commission already approved. For such contract terms, the board of trade should refer in column 2 of the chart to the rule number or other description of the original approved provision.

In keeping with current requirements, the application also requires an exchange to specify exchange speculative position limits. The Commission on April 27, 1999, amended its speculative position limit rules and recodified the provisions of rule 1.61 as rule 150.5. 64 FR 24038 (May 5, 1999). Guideline No. 1 has been amended to conform to the requirements of new rule 150.5. The Guideline No. 1 application forms set out the operative requirements for exchange speculative position limits at the time of initial designation. Specifically, the spot-month position limits for physical delivery contracts should be set in relation to the contract's deliverable supply estimate[11] and for cash-settled contracts should be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price.

Guideline No. 1 incorporates the operative provisions of rule 150.5(a) and (b) that establish the requirements for speculative position limits at the time of initial contract designation. Subsequent amendments to exchange-set speculative position limits which are permitted under other provisions of Commission rule 150.5 are not included on the application form. For example, adjustments to the initial speculative position limits are permitted under Commission rule 1505(c) as open interest in a contract grows, and various forms of position accountability rules may be substituted for speculative position limits under Commission rule 150.5(e). In addition, exchange speculative position limits are not required for contracts on a "major foreign currency" under Commission rule 1505(a), and applications for designation of such a contract may simply leave that box of the application blank.

To facilitate the submission of cash-market description data, the Commission is providing, through its Division of Economic Analysis Web Site (*www.cftc.gov/dea/dea.html*), the charts relating to individual contract terms and conditions, as described above. The exchanges will be able to download these charts onto their own computer systems for completion. The Commission believes that using such electronic charts will reduce the amount of paperwork generated during the designation application process. In addition, the use of these charts will foster more uniform exchange designation application submissions, aiding Commission staff in performing expeditious application reviews.

B. Clarification of Review Standards

As explained in the proposed rulemaking, central to an application for designation is an exchange's demonstration that the proposed contract will not be susceptible to price manipulation or distortion. For physical delivery contracts, this requires a demonstration that the deliverable supplies provided under the contract's terms are adequate, and for cash-settled contracts, this requires that the cash price series to be used for settlement is reliable. In light of the importance of these issues to a designation application, the Commission is clarifying as proposed, these requirements in the Guideline.

The two commenters gave differing views concerning these proposed clarifications. Specifically, MGE favored them and stated that "clarifying the [designation application] information required [is a] welcomed improvement to the application process."[12] CBT, however, opposed the proposed clarifications. In particular, CBT expressed the view that adoption of the proposed revisions would inhibit necessary flexibility during the designation application process.

1. Adequacy of Deliverable Supply

Exchanges are required to demonstrate that proposed contracts provide for deliverable supplies that will not be conducive to price manipulation or distortion. The Commission is clarifying, as proposed, the requirement that an exchange include in its designation application an analysis of the adequacy of deliverable supply, including an estimate of the deliverable supplies for the delivery months specified in the proposed contract. Under the former Guideline, the requirement of an estimate of deliverable supplies was implicit. This final clarification explicitly requires that applications for designation of a physical delivery futures contract include within a separate chart a quantitative estimate of expected deliverable supplies and a description of the methodology used to derive the estimate.

For commodities with seasonal supply or demand characteristics, the deliverable supply analysis should be based on that period when potential supplies typically are at their lowest

[9] Exchanges still have the option of submitting the required explanation or justification in narrative form if they perfer.

[10] For example, if a contract provides for more than one quality specification under commodity characteristics (*e.g.*, a grade standard as well as a weight specification), the board of trade may add a separate line item to address each commodity characteristic separately. For line items in the chart that are not applicable to the proposed contract, the board of trade should simply indicate "N.A."

[11] However, it should be noted that spot-month speculative position limits are not a substitute for inadequate deliverable supplies. In this respect, the fact that an exchange may specify a spot-month speculative position limit that equals or is less than the "rule-of-thumb" standard of one-fourth of a low deliverable supply estimate does not mean that deliverable supplies are at adequate levels. The Commission has approved new futures contracts or amended existing futures contracts with low deliverable supplies only after an exchange has exhausted potential sources of deliverable supplies and, if necessary, adopted low spot-month speculative limits to give it the ability to limit potential delivery demand. The preferred approach under the Act if deliverable supplies are inadequate is for the exchange to modify the delivery specifications to enhance deliverable supplies. See, section 5a(a)(10) of the Act.

[12] See MGE's comment letter to the proposed rulemaking dated September 15, 1998.

levels. The estimate should be based on statistical data when reasonably available covering a period of time that is representative of actual patterns of production and consumption of the commodity. If data are taken from publicly available sources, the board of trade should reference the source material used. If the board of trade independently derives the estimate based on information not readily verifiable or on trade interviews, the Commission may request that the board of trade provide the workpapers or other source materials used in the analysis.

As mentioned above, CBT did not favor the proposed clarifications. In particular, CBT argued that the Commission should provide a more definitive description of deliverable supply for the relevant cash market, as well as explain its "rule-of-thumb" formula for determining spot month speculative limits.[13] However, the Guideline does provide such guidance on deriving an estimate of deliverable supplies. The estimate of deliverable supplies should be made taking into consideration the terms and conditions specified for the deliverable product and the economic realities of the cash market underlying the futures contract.[14] Thus, for example, it should take into account the deliverable supply which is available when quality and price differentials are applied. For a physical-delivery futures contract, this estimate represents product which is in store at the delivery point(s) specified in the futures contract or economically can be moved into or through such points consistent with the delivery procedures set forth in the contract and which is available for sale on a spot basis within the marketing channels that normally are tributary to the delivery point(s). For contracts that utilize a shipping certificate or similar delivery instrument, the estimate of deliverable supply should reflect the fact that the underlying commodity may not have to be moved into or through the delivery point(s) prior to delivery of the shipping certificate in the futures market.

For financial instrument contracts, deliverable supply consists of available supplies of the instrument meeting the contract's delivery standards that are available, at prevailing cash market values, to traders wishing to make future delivery. For example, significant quantities of off-the-run notes and bonds typically may be held by the Federal Reserve and long-term investment portfolios (*e.g.*, pension funds) and would not be readily available for delivery on proposed futures contracts on U.S. government debt instruments except at distorted prices. Recognizing this and based on the opinions of knowledgeable industry participants, Commission staff historically has used a rule-of-thumb that only 50 percent of the on-the-run U.S. Treasury bond and 10 percent of each of the next two off-the-run bonds are economically available for delivery.

2. Justification of Cash Settlement Price

The adequacy of the procedures for determining the cash settlement price is central to the Commission's review of proposed cash-settled contracts. Applications for such proposed futures contracts continue to be required to demonstrate that those procedures will result in a cash settlement price which reflects the underlying cash market and is not subject to manipulation or distortion. In order to provide additional guidance to exchanges in meeting this requirement, the Commission is clarifying, as proposed, two of the criteria, which it has identified through past experience for meeting these requirements. In this regard, any cash settlement price which an exchange determines through a survey method to elicit price quotes should include a number of polled entities which is representative of the underlying cash market. In no event, however, may the polling sample include fewer than four unrelated entities that do not take positions for their own account in the futures, option or underlying cash markets. Where the entities to be polled may trade in such markets for their own accounts, a minimum of eight unrelated entities is required.

After thoroughly considering all the comments received and based upon its own analysis, the Commission believes that the Guideline strikes the appropriate balance of providing greater clarification and specificity of the review standards without impeding the flexibility necessary for an effective designation application review process.

C. Foreign Futures Markets

The offer or sale in the United States of futures contracts traded on or subject to the rules of a foreign board of trade is subject to the Commission's exclusive jurisdiction.[15] Although Section 2(a)(1)(B)(ii) of the Act provides that the Commission shall not designate a board of trade as a contract market in a futures on a securities index unless the Commission finds that the board of trade meets three enumerated criteria,[16] Congress understood that a foreign board of trade would not necessarily have to obtain contract designation in order to offer futures contracts on stock indexes. Thus, the House Committee on Agriculture suggested that a foreign board of trade could apply for "certification" that its stock index contract meets all applicable Commission requirements. H.R. Rep. No. 565, Part 1, 97th Cong., 2d Sess. 85 (1982). That Committee further explained that a foreign board of trade seeking to offer and to sell, to persons located in the United States, a futures contract based upon an index of United States securities must demonstrate that the proposed futures contract meets the requirements set forth in Section 2(a)(1)(B)(ii). Id. With regard to a foreign exchange traded futures contract based on " foreign securities," the House Committee suggested that the Commission use such criteria as it deems appropriate.

The Commission has not promulgated procedures for foreign boards of trade filng requests to offer or to sell such contracts, but instead its staff has issued "no-action" letters[17] regarding foreign

[13] In its comments to the proposed rulemaking, CBT reasserts the arguments it made in a proceeding instituted by the Commission under Section 5a(a)(10) of the Act concerning the delivery specifications for CBT's corn and soybeans futures contracts. See, 62 FR 60831 (November 13, 1997) (Commission Order changing and supplementing under Section 5a(a)(10) of the Act delivery terms of the CBT's corn and soybeans futures contracts). The Commission's determination in that proceeding was based on the application of the standards of Guideline No. 1 and Section 5a(a)(10) of the Act to the particular facts of those markets. The clarification of Guideline No. 1 as proposed is independent of its specific determination in that proceeding.

[14] Only product meeting the specified quality standards (*e.g.*, the grade, age, purity, weight, etc. for tangible commodities or the issue, maturity, rating, etc. for financial instruments) is eligible for delivery on a futures contract and should be considered as part of the deliverable supply.

[15] Section 2(a)(1)(A), 7 U.S.C. 2 (1982); 120 Cong. Rec. 34497 (1974) (statement of Senator Talmadge) (the terms "any other board of trade, exchange, or market" in Section 2(a)(1)(A) make clear the Commission's exclusive jurisdiction includes futures contracts executed on a foreign board of trade, exchange or market).

[16] These three criteria in Section 2(a)(1)(B)(ii) are:
(1) The contract must provide for cash settlement;
(2) The proposed contract will not be readily susceptible to manipulation or to being used to manipulate any underlying security; and
(3) The index is predominately composed of the securities of unaffiliated issuers and reflects the market for all publicly traded securities or a substantial segment thereof.

[17] A no-action letter is a written statement issued by the staff of a specific division of the Commission or the Office of the General Counsel that it will not recommend enforcement action to the Commission if a proposed transaction is completed or a proposed activity is conducted by the beneficiary. A no-action letter represents the position only of the division that issued it, or the Office of the General Counsel if issued thereby. A no-action letter binds only the issuing division or the Office of the General Counsel, as applicable, and not the Commission or other Commission staff. Further, a

stock index contracts based on foreign securities using the criteria set forth in Section 2(a)(1)(B)(ii) of the Act. As of March 16, 1999, such action has been taken for 24 stock index contracts for offer or sale to persons located in the U.S. submitted by 15 foreign boards of trade.[18]

As detailed in the notice of proposed rulemaking at 63 FR 38540, the staff has analyzed such requests for a "no-action" opinion under the requirements of Section 2(a)(1)(B)(ii) of the Act. Accordingly, the staff has requested that the foreign board of trade file information that the staff deems relevant to those criteria. To facilitate the staff's review of such requests by foreign boards of trade, the Commission is adding, as proposed, a separate appendix to Part 5 enumerating the information that foreign boards of trade should file with the Commission to assist in the staff's analysis of such requests. Some of the data which should be included are: the terms and conditions of the contract and all other relevant rules of the exchange; information on information sharing arrangements or any legal obstacles to such sharing of information; and specific information related to the composition and computation of the index. All information should be submitted in English, including any supplemental material such as explanatory notes, appended tables or charts. It should be noted that, in particular instances, the Commission consults with the Securities and Exchange Commission (SEC) regarding these contracts. When such consultation occurs, the SEC may request additional information.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of those rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). These final amendments establish alternative streamlined procedures for Commission review and approval of contract market designation applications and of amendments to contract terms and conditions. Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act ("PRA") of 1995 {Pub. L. 104–13 (May 13, 1995)} imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as the PRA defines. In compliance with the Act, these final rules inform the public of:

(1) The reason the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that any agency may not conduct or sponsor, and a person is not required to response to, a collection of information unless it displays a currently valid OMB control number.

The Commission previously submitted this rule and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on October 24, 1998, and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection (3038–0022) including this final rule, is as follows:

Average burden hours per response: 3,609.

Number of Respondents: 15,693.

Frequency of response: on Occasion.

The burden associated with this specific rule is as follows:

Average burden hours per response: 58.

Number of Respondents: 11.

Frequency of response: on Occasion.

Person wishing to comment on the information this final rule requires should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB Washington, D.C. 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 5

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and particular sections 4c, 5, 5a, 6 and 8a, 7 U.S.C. 6c, 7, 7a, 8, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by amending Part 5 as follows:

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

1. The authority citation for Part 5 continues to read as follows:

Authority: 7 U.S.C. 6c, 7, 7a, 8 and 12a.

2. In Part 5, Appendix A is revised to read as follows:

Appendix A to Part 5—Guideline No. 1; Interpretative Statement Regarding Economic and Public Interest Requirements for Contract Market Designation

(a) Application for Designation of Physical Delivery Futures Contracts

A board of trade shall submit:

(1) The rules setting froth the terms and conditions of the futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by the board of trade, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials which provide a description of the underlying cash market.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which and is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

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no-action letter is only effective with respect to the person or persons to whom it was issued. Commission Rule 140.99. See, 63 FR 68175 (December 10, 1998).

[18] These 15 foreign boards of trade include: (1) Osaka Securities Exchange; (2) Tokyo Stock Exchange; (3) Hong Kong Futures Exchange; (4) Singapore International Monetary Exchange, Ltd.; (5) Toronto Futures Exchange; (6) International Futures Exchange (Bermuda), Ltd.; (7) London International Financial Futures and Options Exchange Limited; (8) Marche a Terme International de France; (9) Sydney Futures Exchange Limited; (10) Meff Sociedad Rectora de Productos Financieros Derivados de Renta Variable, S.A. (Spain); (11) Deutsche Terminborse; (12) Italian Stock Exchange; (13) The Amsterdam Exchanges; (14) OMLX, The London Securities and Derivatives Exchange, Ltd.; and (15) OM Stockholm AB.

(3) A demonstration that the terms and conditions, as a whole, will result in a deliverable supply such that the contract will not be conducive to price manipulation or distortion and that the deliverable supply reasonably can be expected to be available to short traders and salable by long traders at its market value in normal cash marketing channels.

For purposes of this demonstration, provide the following information in chart or narrative form.

CONTRACT TERMS AND CONDITIONS

Term or condition	Exchange proposal	Rule number of identical approved provision, if any [1]	Explanation as to consistency with, or reason for variance from cash market practice
1. Commodity characteristics (*e.g.*, grade, quality, weight, class, growth, issuer, origin, maturity, source, rating, etc.)			
2. Any quality differentials for nonpar deliveries, or lack thereof			
3. Delivery points/region			
4. Any locational differentials for nonpar deliveries, or lack thereof			
5. Delivery facilities (type, number, capacity, ownership)			
6. Contract size and/or trading unit			
7. Delivery pack or composition of delivery units			
8. Delivery instrument (*e.g.*, warehouse receipt, shipping certificate, bill of lading)			
9. Transportation terms (*e.g.*, FOB, CIF, prepay freight to destination)			
10. Delivery procedures			
11. Delivery months			
12. Delivery period and last trading day			
13. Inspection/certification procedures (verification of delivery eligibility, any discounts applied for age)			
14. Minimum price change (tick) equal to or less than cash market minimum price increment			
15. Daily price limit provisions (note relationship to cash market price movements)			
DELIVERABLE SUPPLIES [2]—ESTIMATE OF DELIVERABLE SUPPLIES FOR TRADING MONTH(S) WITH LOWEST SUPPLIES			
ESTIMATION METHODOLOGY			

[1] If an identical provision has been approved for a nondormant contract in the same commodity, there is no need to provide an explanation in the next column.

[2] No estimate of deliverable supply is needed if a previously designated nondormant contract is trading. Also, no justification of the spot month limit is needed if the limit is the same as that approved by the Commission for an identical contract in that commodity (relative to the quantity or value of the identical contract). Where more than one contract is based on the same underlying commodity or instrument, positions should be combined for purposes of applying speculative limits.

TERMS AND CONDITIONS RELATED TO SPECULATIVE LIMITS

Speculative limit	Standard	Level (exchange rule)
1. Spot month	No greater than one-fourth of estimated deliverable supply	
2. Nonspot individual month or all months combined (financial and energy contract).	5,000 contract	
3. Nonspot individual month or all months combined (tangible commodity contracts).	1,000 contracts	
4. Reporting level	Equal to or less than levels specified in CFTC rule 15.03	
5. Aggregation rule	Same as CFTC rule 150.5(g) or previously approved language.	

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, and whether the contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis, or any other requirement for designation under the Act or Commission rules and policies.

(b) Application for Cash Settled Futures Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the proposed futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by the board of trade, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials which provide a description of the underlying cash market.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or conditions(s) which differ from such existing contract.

(3) A demonstration that cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely.

For purposes of this demonstration, provide the following information in chart or narrative form.

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CONTRACT TERMS AND CONDITIONS

Term or condition		Rule number of identical approved provision, if any[1]	Explanation as to consistency with, or reason for variance from, cash market practice
1. Commodity characteristics (*e.g.*, grade, quality, weight, class, growth, issuer, maturity, source, rating, etc.)			
2. Delivery months, noting any cyclical variations in trading activity that may affect the potential for manipulating the cash settlement price			
3. Last trading day			
4. Contract size			
5. Minimum price change (tick)			
6. Daily price limit provisions, relative to cash market price movements.			

[1] If an identical provision has been approved for a nondormant contract in the same commodity, there is not need to provide an explanation in the next column.

TERMS AND CONDITIONS RELATED TO CASH SETTLEMENT PRICE SERIES

Requirement	Rule number of identical approved provision	Explanation or justification
1. Where an independent third party calculate the cash settlement price series, evidence that the third party does not object to its use and provides safeguards against susceptibility to manipulation		
2. Where board of trade generates cash settlement rice series, specifications of calculation procedure and safeguards in cash settlement process to protect against susceptibility to manipulation (*e.g.*, if self-generated survey, polling sample representative of cash market, but with a minimum of 4 non-trading entities or 8 entities that trade for own account)		
3. Procedure for, and timeliness of, dissemination to public		
4. Evidence that price is reliable indicator of cash market values and acceptable for hedging		

TERMS AND CONDITIONS RELATED TO SPECULATIVE LIMITS

Speculative limit	Standard	Level (exchange rule)
1. Spot month	Must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price.	
2. Nonspot individual month or all months combined (financial and energy contracts).	5,000 contracts	
3. Nonspot individual month or all months combined (tangible commodity contracts).	1,000 contracts	
4. Reporting level	Equal to or less than levels specified in CFTC rule 15.03	
5. Aggregation rule	Same as CFTC rule 150.5(g) or previously approved language.	

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, and whether the contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis, or any other requirement for designation under the Act or Commission rules and policies.

(c) Application for Option Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the proposed option contract.

(2)(i) For options on futures contracts, the terms and conditions of the proposed or existing underlying futures contract.

(2)(ii) For options on physical commodities:

(A) A description of the cash market for the commodity on which the contract is based.

(1) The description may include, in addition to or in lieu of material prepared by the board of trade: existing studies by industry trade groups, academics, governmental bodies or other entities; promotional or marketing materials prepared by or for the board of trade; reports of consultants; or other materials which provide a description of the underlying cash market.

(2) Where the same, or a closely related commodity, is already designated and is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

(B) Depending on the method of settling the option, the relevant chart for either a physical delivery or cash settled futures contract.

(3) The following completed chart.

TERMS AND CONDITIONS

Criterion	Applicable CFTC Rule (17 CFR)	Standard	Met by exchange rule number	Justification for not meeting standard, or rule number of identical approved rule
1. Speculative limits	150.5	Combined net position in futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts or consistent with Commission Rule 150.5(e) for underlying future.		
2. Aggregation rule	150.4	Same as Rule 150.5(g) or previously approved language.		
3. Reporting level	15.00(b)(2)	50 contracts or fewer		
4. Strike prices (number listed & increments).	33.4(b)(1)	Procedures for routine listing of strikes are specified and automatic, provisions for listing discretionary strikes are specified.		
5. Option expiration & last trading day.	33.4(b)(2)	Except for options on cash-settled futures contracts, expiration is not less than one business day before the earlier of the last trading day or the first notice day of the underlying future.		
6. Minimum tick	33.4(d)	Equal to, or less than, the underlying futures tick		
7. Daily price limit, if specified.	33.4(d)	Equal to, or greater than, the underlying futures price limit.		

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, or any other requirement for designation under the Act or Commission rules and policies.

3. Part 5 is amended by adding new Appendix E to read as follows:

Appendix E—Information That a Foreign Board of Trade Should Submit When Seeking No-Action Relief to Offer and Sell, to Persons Located in the United States, a Futures Contract on a Foreign Securities Index Traded on That Foreign Board of Trade

A foreign board of trade seeking no-action relief to offer and to sell, to persons located in the U.S., a futures contract on a foreign securities index traded on that foreign board of trade should submit the following in English:

(1) The terms and conditions of the contract and all other relevant rules of the exchange and, if applicable, of the exchange on which the underlying securities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign board of trade and the exchange(s) on which the underlying securities are traded;

(3) Information sharing agreements between the host regulator and the Commission or assurances of ability and willingness to share information with the Commission and assurances from the foreign board of trade of its ability and willingness to share information with the Commission, either directly or indirectly.

(4) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning the trading of such contracts; and

(5) Information and data denoted in U.S. dollars relating to:

(i) The method of computation, availability, and timeliness of the index;

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index;

(iii) Breakdown of the index by industry segment including the capitalization and weight of each industry segment;

(iv) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(v) Method of calculation of the cash-settlement price and the timing of its public release;

(vi) Average daily volume of trading by calendar month, measured by share turnover and dollar value, in each of the underlying securities for a six month period of time and, separately, the daily volume in each underlying security for six expirations (cash-settlement dates) or for the six days of that period on which cash-settlement would have occurred had each month of the period been an expiration month; and

(vii) If applicable, average daily futures trading volume.

Issued in Washington, D.C. this 25th day of May, 1999, by the Commodity Futures Trading Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 99–13780 Filed 5–28–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 97F–0450]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Boiler Water Additives

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sorbitol anhydride esters, an emulsifier blend of sorbitan monostearate, polyoxyethylene (20) sorbitan monostearate (polysorbate 60), and polyoxyethylene (20) sorbitan monolaurate (polysorbate 20) as an anticorrosive agent in boilers where steam may contact food. This action is in response to a petition filed by Nalco Chemical Co.

DATES: This regulation is effective June 1, 1999; written objections and requests for a hearing by July 1, 1999. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in § 173.310 (21 CFR 173.310), effective June 1, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration,

5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of November 13, 1997 (62 FR 60903), FDA announced that a food additive petition (FAP 7A4540) had been filed by Nalco Chemical Co., One Nalco Center, Naperville, IL 60568–1198. The petition proposed to amend the food additive regulations in § 173.310 *Boiler water additives* to provide for the safe use of an emulsifier blend containing sorbitan monostearate, polyoxyethylene (20) sorbitan monostearate, and polyoxyethylene (20) sorbitan monolaurate as an anticorrosive agent in boilers where steam may contact food. The emulsifier blend is a simple mixture of these three substances, each of which is an ester of sorbitol anhydride. For convenience of listing of the mixture, the agency chooses to use the name sorbitol anhydride esters (SAHE) for this additive.

Sorbitan monostearate is currently approved in § 73.1001 (21 CFR 73.1001) as a diluent in color additive mixtures for drug use exempt from certification; in § 172.515 (21 CFR 172.515) as a synthetic flavoring substance and adjuvant; in 21 CFR 172.842 as an emulsifier; and in § 173.340 (21 CFR 173.340) as a defoaming agent. Polyoxyethylene (20) sorbitan monostearate (polysorbate 60) is currently approved in § 73.1001 as a diluent in color additive mixtures for drug use exempt from certification; in § 172.515 as a synthetic flavoring substance and adjuvant; in 21 CFR 172.836 as an emulsifier, foaming agent, dough conditioner, dispersing agent, and surfactant and wetting agent; and in § 173.340 as a defoaming agent. Polyoxyethylene (20) sorbitan monolaurate (polysorbate 20) is currently approved in § 172.515 as a synthetic flavoring substance and adjuvant.

In its evaluation of the safety of SAHE, FDA has reviewed the safety of the three esters and the chemical impurities that may be present in them resulting from their manufacturing process. Because these three esters have similar chemical structures, which do not react with each other, FDA has determined that its safety review for each of the three esters would be the same as that for the SAHE mixture. Therefore, FDA refers to each ester, rather than the additive as a whole, in its evaluation of the safety of SAHE in this final rule.

Although none of the esters have been shown to cause cancer, two of them (polysorbate 20 and polysorbate 60) may contain minute amounts of unreacted 1,4-dioxane (DX) and ethylene oxide (EO), which are carcinogenic impurities resulting from their manufacture. Residual amounts of impurities are commonly found in chemical products, including food additives.

II. Determination of Safety

Under the general safety standard section of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

III. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of SAHE will result in a maximum daily dietary exposure to each ester of approximately 0.8 part per million. This corresponds to an estimated daily intake (EDI) of 2.5 milligrams per person per day (/p/d) of each ester (Ref. 1).

The agency has reviewed the available toxicological data on the three sorbitol anhydride esters. Based on the available toxicology data for sorbitan monostearate and polysorbate 60 and the fact that their additional dietary exposure from the proposed use would be small compared to that from their currently regulated uses, the agency concludes that the estimated dietary exposure resulting from the petitioned use of these two esters is safe. The agency also finds that polysorbate 60 and polysorbate 20 would hydrolyze to similar breakdown products under the proposed conditions of use, the only difference being the chain length of the fatty acid residue (C_{12} for polysorbate 20 and C_{16} or C_{18} for polysorbate 60). Based on the chemical similarities between polysorbate 60 and polysorbate 20, the agency concludes that the toxicology data for polysorbate 60 can be used to support the safety of polysorbate 20 under their limited exposure anticipated from the petitioned use of SAHE. Moreover, based on the agency's review of the estimated dietary exposure from all three esters in SAHE, the agency concludes that the estimated small dietary exposure resulting from the proposed use of this additive is safe.

Under the proposed conditions of use, any residual EO will quantitatively react with the boiler water to form ethylene glycol (Ref. 1). Thus, no EO will be present in the steam that contacts food. Consequently, the exposure to EO from the petitioned use of SAHE will be zero. Therefore, FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by DX, a carcinogenic chemical that may be present as an impurity in two of the components of the additive (polysorbate 20 and polysorbate 60). This risk evaluation of DX has two aspects: (1) Assessment of the exposure to the impurity from the petitioned use of the additive, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

A. 1,4-Dioxane

FDA has estimated the exposure to DX from the petitioned use of the additive as an anticorrosive agent in boilers where steam may contact food to be no more than 17 parts per trillion in the daily diet (3 kilograms), or 50 nanograms (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on DX, conducted by the National Cancer Institute (Ref. 2), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on DX demonstrated that the material was carcinogenic for female rats under the conditions of the study. The authors reported that the rodent bioassay showed that the test material caused a significantly increased incidence of

squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to DX will not exceed 50 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 1.8×10^{-9} or 1.8 in a billion (Ref. 3). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to DX is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to DX would result from the petitioned use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of DX present as an impurity in SAHE. The agency finds that new specifications are not necessary for the following reasons: (1) Because of the low levels at which DX may be expected to remain as an impurity following production of SAHE, the agency would not expect the impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to DX is very low, 1.8 in a billion.

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as an anticorrosive agent in boilers where steam may contact food is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 173.310 should be amended as set forth below in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed previously. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 1, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum, dated April 20, 1998, from the Division of Product Manufacture and Use (HFS–246) to the Division of Petition Control (HFS–215).

2. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

3. Memorandum, dated June 19, 1998, from the Division of Petition Control (HFS–215) to Executive Secretary, Quantitative Risk Assessment Committee (QRAC) (HFS–308).

List of Subjects in 21 CFR Part 173

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.310 is amended in the table in paragraph (c) by alphabetically adding an entry for "sorbitol anhydride esters" under the headings "Substances" and "Limitations" to read as follows:

§ 173.310 Boiler water additives.

* * * * *

(c) * * *

Substances	Limitations
Sorbitol anhydride esters: a mixture consisting of sorbitan monostearate as defined in § 172.842 of this chapter; polysorbate 60 ((polyoxyethylene (20) sorbitan monostearate)) as defined in § 172.836 of this chapter; and polysorbate 20 ((polyoxyethylene (20) sorbitan monolaurate)), meeting the specifications of the Food Chemicals Codex, 4th ed. (1996), pp. 306–307, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Box 285, Washington, DC 20055 (Internet http://www.nap.edu), or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.	The mixture is used as an anticorrosive agent in steam boiler distribution systems, with each component not to exceed 15 parts per million in the steam.

* * * * *

Dated: May 22, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–13670 Filed 5–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 171

RIN 0790–AG68

Implementation of Wildfire Suppression Aircraft Transfer Act of 1996

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Interim final rule.

SUMMARY: The Wildfire Suppression Aircraft Transfer Act of 1996 states that, notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning on October 1, 1996, and ending on September 30, 2000, sell certain aircraft and aircraft parts to persons or entities that contact with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. The Act states that, as soon as practicable after the date of the enactment of the Act, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. This interim final rule prescribes regulations to implement the Wildfire Suppression Aircraft Transfer Act of 1996.

DATES: Effective June 1, 1999 through September 30, 2000. Comments are requested by August 2, 1999.

ADDRESSES: Forward comments to: Defense Logistics Agency, Defense Logistics Support Command, ATTN: DLSC–LC, Suite 4222, 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Michael Stubblebine, (703) 767–1537.

SUPPLEMENTARY INFORMATION:

I. Background

The Wildfire Suppression Aircraft Transfer Act of 1996 states that, notwithstanding section 202 of the Federal Property and Administration Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning on October 1, 1996, and ending on September 30, 2000, sell certain aircraft and aircraft parts to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. The Act states that, as soon as practicable after the date of the enactment of the Act, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. This interim rule prescribes such regulations.

II. Administrative Requirements

A. Executive Order 12866

It has been determined that 32 CFR part 171 is not a significant regulatory action. The rule does not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

B. Regulatory Flexibility Act

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule applies only to the sale of certain aircraft and aircraft parts to those entities that contract for the delivery of fire retardant by air in order to suppress wildfire. The U.S. Department of Agriculture provides the list of eligible entities that may bid on aircraft and aircraft parts.

C. Paperwork Reduction Act

It has been certified that 32 CFR part 171 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 44).

List of Subjects in 32 CFR Part 171

Aircraft, Fire prevention.

Accordingly, 32 CFR Part 171 is added to read as follows:

PART 171—IMPLEMENTATION OF WILDFIRE SUPPRESSION AIRCRAFT TRANSFER ACT OF 1996

§ 171.1 Background and purpose.
§ 171.2 Applicability.
§ 171.3 Restrictions.
§ 171.4 Qualifications.
§ 171.5 Sale procedures.
§ 171.6 Reutilization and transfer procedures.
§ 171.7 Reporting requirements.
§ 171.8 Expiration.

Authority: 10 U.S.C. 2516 note.

§ 171.1 Background and purpose.

The Wildfire Suppression Aircraft Transfer Act of 1996 (the "Act") allows the Department of Defense (DoD), during the period 1 October 1996 through 30 September 2000, to sell aircraft and aircraft parts to entities that contract with the Federal government for the delivery of fire retardant by air in order to suppress wildfire. This part implements the Act.

§ 171.2 Applicability.

The regulations in this part apply to aircraft and aircraft parts determined to be DoD excess under the definition of the Federal Property Management Regulations (FPMR) and listed in Attachment 1 of Chapter 4 of DoD 4160.21–M as Category A aircraft authorized for commercial use.

§ 171.3 Restrictions.

Aircraft and aircraft parts sold under the Act shall be used only for wildfire suppression purposes and shall not be flown or removed from the U.S. unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression, or for other purposes jointly approved in advance, in writing, by the Secretary of Defense and the Secretary of Agriculture.

§ 171.4 Qualifications.

The Secretary of Agriculture must certify in writing to the Secretary of Defense prior to sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

(a) Prior to sales offerings of aircraft or aircraft parts, the U.S. Department of Agriculture (USDA) must provide to the Defense Reutilization and Marketing Service (DRMS), in writing, a list of persons or entities eligible to bid under this Act, including expiration date of each USDA contract, and locations covered by the USDA contract.

(b) This requirement may not be delegated to the U.S. Forest Service (USFS).

§ 171.5 Sale procedures.

Disposal of aircraft and aircraft parts must be in accordance with the provisions of Chapter 4 of DoD 4160.21–M, paragraph B 2, and with other pertinent parts of this manual, with the following changes and additions:

(a) Sales shall be limited to the aircraft types listed in Attachment 1 of Chapter 4 of DoD 4160.21–M, and parts thereto (i.e., no aircraft or aircraft parts listed as Munitions List Items on the State Department's U.S. Munitions List).

(b) Sales shall be made at fair market value (FMV), as determined by the Secretary of Defense and, to the extent practicable, on a competitive basis.

(1) DRMS must conduct sales utilizing FMVs that are either provided by the Military Services on the Disposal Turn-In Documents (DTIDs) or based on DRMS' professional expertise and knowledge of the market. Advice regarding FMV shall be provided to DRMS by USDA, as appropriate.

(2) If the high bid for a salea item does not equal or exceed the FMV, DRMS is vested with the discretion to reject all bids and reoffer the item:

(i) On another wildfire suppression sale if there is indication that reoffer may be successful, or,

(ii) With DLA concurrence, as normal surplus under the FPMR if there is no such indication.

(3) Disposition of proceeds from sale of aircraft under the Act will be as prescribed in guidance from the Under Secretary of Defense (Comptroller).

(c) Purchases shall certify that aircraft and aircraft parts will be used only in accordance with conditions stated in § 171.3.

(1) Sales solicitations will require bidders to submit end-use certificates with their bids, stating the intended use and proposed areas of operations.

(2) The completed end-use certificates shall be used in the bid evaluation process.

(d) Sales contracts shall include terms and conditions for verifying and enforcing the use of the aircraft and aircraft parts in accordance with provisions of this guidance.

(1) The DRMS Sales Contracting Officer (SCO) is responsible for verifying and enforcing the use of aircraft and aircraft parts in accordance with the terms and conditions of the sales contract.

(i) Sales contracts include provisions for on-site visits to the purchaser's place(s) of business and/or worksite(s).

(ii) Sales contracts require the purchaser to make available to the SCO, upon his or her request, all records concerning the use of aircraft and aircraft parts.

(2) USDA shall nominate in writing, and the SCO shall appoint, qualified Government employees (not contract employees) to serve as Contracting Officer's Representatives (CORs) for the purpose of conducting on-site verification and enforcement of the use of aircraft and aircraft parts for those purposes permitted by the sales contract.

(i) COR appointments must be in writing and must state the COR's duties, the limitations of the appointment, and the reporting requirements.

(ii) USDA bears all COR costs.

(iii) The SCO may reject any COR nominee for cause, or terminate any COR appointment for cause.

(3) Sales contracts require purchasers to comply with the Federal Aviation Agency (FAA) requirements in Chapter 4 of DoD 4160.21–M, paragraphs B 2 b (4)(d)*2* through B 2 b (4)(d)*5*.

(4) Sales contracts require purchasers to comply with the Flight Safety Critical Aircraft Parts regime in Chapter 4 of DoD 4160.21–M, paragraph B 26 c and d, and in Attachment 3 of Chapter 4 of DoD 4160.21–M.

(5) Sales contracts require purchasers to obtain the prior written consent of the SCO for resale of aircraft or aircraft parts purchased from DRMS under this Act. Resales are only permitted to other entities which, at time of resale, meet the qualifications required of initial purchasers. The SCO must seek, and USDA must provide, written assurance as to the acceptability of a prospective repurchaser before approving resale. Resales will normally be approved for airtanker contracts which have completed their contracts, or which have had their contracts terminated, or which can provide other valid reasons for seeking resale which are acceptable to the SCO.

(i) If it is determined by the SCO that there is no interest in the aircraft or aircraft parts being offered for resale among entities deemed qualified repurchasers by USDA, the SCO may permit resale to entities outside the airtanker industry.

(ii) When an aircraft or aircraft parts are determined to be uneconomically repairable and suitable only for cannibalization and/or scrapping, the purchaser shall advise the SCO in writing and provide evidence in the form of a technical inspection document from a qualified FAA airframe and powerplant mechanic, or equivalent.

(iii) The policy outlined in paragraph (d)(5) of this section also applies to resales by repurchasers, and to all other manner of proposed title transfer (including, but not limited to, exchanges and barters).

(iv) Sales of aircraft and aircraft parts under the Act are intended for principals only. Sales offerings will caution prospective purchasers not to buy with the expectation of acting as brokers, dealers, agents, or middlemen for other interested parties.

(6) The failure of a purchaser to comply with the sales contract terms and conditions may be cause for suspension and/or debarment, in addition to other administrative, contractual, civil, and criminal (including, but not limited to, 18 USC 1001) remedies which may be available to DoD.

(7) Aircraft parts will be made available in two ways:

(i) DRMS may, based on availability and demand, offer for sale under the Act whole unflyable aircraft, aircraft carcasses for cannibalization, or aircraft parts, utilizing substantially the same provisions outlined in paragraphs (a) through (d)(6) of this section for flyable aircraft.

(A) If USDA directs that DRMS set aside parts for sale under the Act, USDA must provide listings of parts required, by National Stock Number and Condition Code.

(B) Only qualified airtanker operators which fly the end-term aircraft will be allowed to purchase unflyable aircraft, aircraft carcasses, or aircraft parts applicable to that end-item.

(C) FMVs are not required for aircraft parts. DRMS must utilize historic prices received for similar parts in making sale determinations.

(ii) As an agency of the Federal government, USDA remains eligible to receive no-cost transfers of excess DoD aircraft parts under the FPMR.

§ 171.6 Reutilization and transfer procedures.

Prior to any sales effort, the Secretary of Defense shall, to the maximum extent practicable, consult with the Administrator of GSA, and with the heads of other Federal departments and agencies as appropriate, regarding reutilization and transfer requirements for aircraft and aircraft parts under this Act (see Chapter 4 of DoD 4160.21–M, paragraphs B 2 b (1) through B 2 b (3)).

(a) DoD reutilization:

(1) USDA shall notify Army, Navy, and/or Air Force, in writing, of their aircraft requirements as they arise, by aircraft type listed in Attachment 1 of Chapter 4 of DoD 4160.21–M.

(2) If a DoD requirement exists, the owning Military Service shall advise USDA, in writing, that it will be issuing the aircraft to satisfy the DoD reutilization requirement. If USDA disputes the validity of the DoD requirement, it shall send a written notice of dispute to the owning Military Service and ADUSD(L/MDM) within thirty (30) days of its notice from the Military Service. ADUSD(L/MDM) shall then resolve the dispute, in writing. The aircraft may not be issued until the dispute has been resolved.

(b) Federal agency transfer:

(1) The Military Service must report aircraft which survive reutilization screening to GSA Region 9 on a Standard Form 120. GSA shall screen for Federal agency transfer requirements in accordance with the FPMR.

(2) If a Federal agency requirement exists, GSA shall advise USDA, in writing, that it will be issuing the aircraft to satisfy the Federal agency requirement. If USDA disputes the validity of the Federal requirement, it shall send a written notice of dispute to the owning Military Service and ADUSD(L/MDM) within thirty (30) days of its notice from the Military Service. ADUSD(L/MDM) shall then resolve the dispute, in writing. The aircraft cannot be issued until the dispute has been resolved.

(c) The Military Services shall:

(1) Report aircraft which survive transfer screening and are ready for sale to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan 49017–3092. The Military Services must use a DD Form 1348–1A, DTID, for this purpose.

(2) Transfer excess DoD aircraft to the Aerospace Maintenance and Regeneration Center (AMARC), Davis-Monthan AFB, AZ, and place the aircraft in an "excess" storage category while aircraft are undergoing screening and/or wildfire suppression aircraft sale. Aircraft shall not be available nor offered to airtanker operators from the Military Service's airfield. The Military Service shall be responsible for the AMARC aircraft induction charges. The gaining customer will be liable for all AMARC withdrawal charges, to include any aircraft preparation required from AMARC. Sale of parts required for aircraft preparation is limited to those not required for the operational mission forces, and only if authorized by specific authority of the respective Military Service's weapon system program manager.

§ 171.7 Reporting requirements.

Not later than 31 March 2000, the Secretary of Defense must submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report setting forth the following:

(a) The number and type of aircraft sold under this authority, and the terms and conditions under which the aircraft were sold.

(b) The persons or entities to which the aircraft were sold.

(c) An accounting of the current use of the aircraft sold.

(d) USDA must submit to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan, 49017–3092, not later than 1 February 2000, a report setting forth an accounting of the current disposition of all aircraft sold under the authority of the Act.

(e) DRMS must compile the report, based on sales contract files and (for the third report element) input from the USDA. The report must be provided to HQ DLA not later than 1 March 2000. HQ DLA shall forward the report to DoD not later than 15 March 2000.

§ 171.8 Expiration.

This part expires on 30 September 2000.

Dated: May 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–13703 Filed 5–28–99; 8:45 am]

BILLING CODE 5000–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 169

[USCG–1999–5525]

RIN 2115–AF82

Mandatory Ship Reporting Systems

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is implementing two mandatory ship reporting systems in an effort to reduce the threat of ship strikes to endangered northern right whales (also known as the North Atlantic right whale). Based on a proposal by the United States, the International Maritime Organization adopted a resolution to establish these systems. The mandatory ship reporting systems are designed to inform mariners of the presence of whales in certain areas, so that mariners travelling in those areas can take actions to avoid collisions with the whales.

DATES: This interim rule is effective July 1, 1999. Comments and related material must reach the Docket Management

Facility on or before July 1, 1999. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 1, 1999.

ADDRESSES: Please submit your comments and related material by one of the following methods to assist us in maintaining the integrity of the public docket:

(1) By mail to the Docket Management Facility (USCG–1999–5525), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mr. Edward LaRue, Office of Waterway Services (G–MWV), Coast Guard, telephone 202–267–0416. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5525), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one method so that duplicative filings of an individual comment will not be recorded in the public docket. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. You may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

This rule is being published as an interim rule and is being made effective on July 1, 1999. This rule is not preceded by a notice of proposed rulemaking. The northern right whale is an extremely endangered species, under threat of extinction, and currently less than 300 of the whales exists. The U.S. and the international community are committed to the protection of this valuable resource. As discussed in the background section of this preamble, attention has focused on protecting the critical feeding and calving areas for these whales. The Coast Guard is committed to meet the International Maritime Organization (IMO) July 1, 1999 effective date for establishing mandatory reporting systems to protect critical habitat areas of the northern right whale. The IMO only took action on the issue in December 1998. The reporting system set out in this interim rule requires operators of affected vessels to report certain information on location and route. In return, mariners will receive information on whale location and avoidance. The interim rule does not mandate any specific navigation practices. It has taken a cooperative effort over the last five months (between the Coast Guard and the National Oceanic and Atmospheric Administration) to design the simple and effective notification system provided in this interim rule. For these reasons, the Coast Guard finds good cause, under 5 U.S.C. 553(b)(B), that notice, and public procedure on the notice, before the effective date of this rule is impracticable and contrary to the public interest in protecting these whales. We still encourage public comments on this interim rule, and we may amend the rule as necessary to respond to comments received during the comment period.

Background and Purpose

In response to the endangered status of northern right whales (also known as the North Atlantic right whale), the United States and the IMO have taken steps to identify and implement measures to reduce the likelihood of collisions between ships and whales. These steps have addressed the problem on three fronts: mariner awareness, identification of whale movements, and efforts to promote recovery of the whale species.

In spite of these efforts, ship collisions with endangered right whales continue to occur. Mandatory ship reporting systems have the potential to protect these endangered whales through direct communication with ships and their operators in high risk areas of information to potentially reduce collisions.

Two systems are necessary because right whales frequent two distinct areas of the Atlantic coast of the United States. The northeastern reporting system is located mainly off the coast of Massachusetts and comprises the right whale's main feeding grounds. The southeastern reporting system is located off the coasts of Florida and Georgia and makes up the only known calving grounds for the right whale.

Right whales aggregate to feed and calve in five seasonal habitats along the eastern seaboard from Florida to Nova Scotia: (a) off the southeastern United States; (b) in the Great South Channel, Massachusetts; (c) in Massachusetts and Cape Cod Bays, Massachusetts; (d) in the lower Bay of Fundy, Canada; and (e) over the southern Nova Scotian shelf, Canada (notably those areas referred to as Browns Bank and Roseway Basin). Portions of these areas have been designated "critical habitats" for northern right whales or as a national marine sanctuary under U.S. domestic law and as conservation areas under Canadian law. Right whale sightings also occur outside these areas as the whales migrate between the southeastern and northeastern United States; however, there is not enough information about the migratory

corridor to establish a reporting system for these areas.

This rulemaking will create a new part 169 in Title 33 Code of Federal Regulations (CFR) entitled "Ship Reporting Systems." Subpart A will establish general requirements for all ship reporting systems. Subpart B will establish specific requirements for two mandatory ship reporting systems. The statutory authority for this project is 33 U.S.C. 1230(d), which is an amendment to Section 11 of the Ports and Waterways Safety Act (PWSA)(33 U.S.C. 1230(d)). Violators will be subject to the penalties authorized under the PWSA.

There is no statutory deadline for these mandatory ship reporting systems to be in place. However, when the systems were adopted by the International Maritime Organization (IMO), Maritime Safety Committee (MSC) at its 70th session December 7, 1998 (Resolution MSC.85(70)), it was agreed these systems would come into force no sooner than 6 months after adoption. The effective date agreed by IMO is July 1, 1999, and it was expected that the United States' actions to put a reporting program in place would be completed by that date.

The legal definitions of the boundaries for the two mandatory ship reporting systems are located in §§ 169.105 and 169.115.

Physical Characteristics, Behavior and Habitat

Description of the northern right whale. Northern right whales reach lengths of 45 to 55 feet (13.72 m to 16.76 m) and are black in color. The best field identification marks are a broad back with no dorsal fin, irregular bumpy white patches (callosities) on the head, and a distinctive two-column, V-shaped blow. They have paddle-like flippers nearly as wide as they are long, and a broad, deeply notched tail. Right whales are slow moving, with occasional speeds of up to 5 to 6 knots. They are often difficult to spot in rough water and at night due to their low profile and dark coloration.

Behavior. Right whale behavior undoubtedly plays a role in their vulnerability to ship collisions. For example, whales may appear in surface-active groups, groups of four to five whales engaging in frequent physical contact. Right whales also engage in skim feeding, in which they gather plankton by swimming slowly at the surface with their mouth open. During both feeding and surface active situations, whales are focused on the activity and appear to be unaware of approaching ships. Right whales also spend long periods resting at the surface, a behavior called "logging." Mothers nursing young are frequently observed logging. Additionally, calves have limited diving capacities and spend most of their time at the surface.

Northeastern United States Habitats. Right whales occur seasonally in Massachusetts and Cape Cod Bays (peak season: January through April), the Great South Channel (peak season: April through June), and Jeffreys Ledge (peak season: July through mid-December). The first two areas are federally designated critical habitats for right whales. Stellwagen Bank (in Massachusetts Bay) and Jeffreys Ledge are located in the federally designated Gerry E. Studds Stellwagen Bank National Marine Sanctuary.

In late winter-early spring, right whales arrive in Cape Cod Bay. Springtime hydrographic conditions in Cape Cod Bay concentrate copepods and other zooplankton in dense patches on which the whales feed. The majority of right whales leave Cape Cod Bay by mid-May; however, whales remain throughout the summer in some years.

In late spring and early summer, right whales in the Great South Channel east of Cape Cod are found in the greatest numbers. Hydrographic changes and circulation patterns result in springtime blooms of zooplankton and copepods. Right whales feed both at the surface and at depths depending on where copepods are concentrated. In many years, right whales usually congregate in the highest density concentrations of the copepod on either the eastern or western side of the Great South Channel.

Right whales generally migrate from the Great South Channel region in June when copepod levels decrease and water temperatures increase. Many of the whales move north to the Bay of Fundy arriving in mid-June. The remainder are likely scattered throughout the Gulf of Maine or move onto the eastern side of the Nova Scotian shelf. By mid-summer, most of the whales are in feeding areas in the lower Bay of Fundy and on the Nova Scotian Shelf. These areas are used in early winter when the whales begin to migrate to winter habitats along the eastern coast, including the southern calving grounds.

Southeastern United States Habitats. The coastal waters of the southeastern United States, especially the shallow waters between Savannah, Georgia, and Cape Canaveral, Florida, are right whale calving grounds in the winter. Peak abundance and calving in this region occurs from December through March, but the winter calving season can begin as early as September and end as late as mid-April. Mothers and newborn calves tend to stay in the southeast region until spring when they migrate northward.

Hydrographic and Meteorological Elements

Northeastern United States. The hydrographic and meteorological elements existing in the area create conditions favorable to production of right whale food sources and therefore contribute to their presence in the area. These elements can also adversely affect the ability of mariners to detect whales.

The mandatory ship reporting system covers an area of high ship traffic density and variable weather. The northern part of the northeastern reporting system encompasses the approaches to Boston Harbor (the largest seaport in New England), Massachusetts Bay, and Cape Cod Bay. The area is extensively marked with aids to navigation, and Loran C and differential Global Positioning System provide excellent coverage. The weather in the area is changeable, with frequent thick fog and strong and variable tides.

The southern part of the northeastern ship reporting system is located approximately 30 miles (55.58 km) southeast of Nantucket Island, Massachusetts, just east of the Nantucket Shoals Area to Be Avoided, and encompasses the western half of the Great South Channel, part of the Traffic Separation Scheme (TSS) in the approach to Boston, Massachusetts (Boston TSS), north to Race Point, Cape Cod, Massachusetts. The Great South Channel is bounded to the west by Cape Cod and the Nantucket shoals and to the east by the Georges Bank fishing grounds. Loran C and differential Global Positioning System provide excellent coverage. The Boston TSS is marked by buoys every 15 nautical miles (27.8 km). Fishing is heavy to the east of the TSS. Radar navigation is poor due to the low topography and distances from land. There are few calm days. During certain seasons, and in particular during peak whale season, the weather is usually foggy. Moreover, fog usually accompanies a calm sea state, while clear visibility often brings rough seas. Haze in the area also causes problems with visibility. Heavy storms and rain are common.

Southeastern United States. The hydrological and meteorological elements in the coastal waters off Georgia and northeastern Florida provide favorable conditions for right whales to calve. This area is their only known calving grounds. The Georgia coastline, between the Savannah River on the north and St. Mary's River on the south, is partly submerged at flood tide,

and is broken by tidal rivers and marshes covered with dense grass. Beaches are sandy and flat. The coastline of Florida is a long, low-profile barrier beach. Aids to navigation mark all critical dangers. Loran C and differential Global Positioning System provide excellent coverage. Radar navigation is difficult due to the low topography. The water is generally clear. Severe storms including hurricanes are common. Visibility is generally excellent, with light winds and attendant low sea state. In winter, early morning coastal fog is common, limiting visibility until the fog lifts with the rising sun. Winter storms are common and move quickly through the region.

Characteristics of Ship Traffic

Northeastern United States. There is quite a variety and volume of ship traffic operating in the northeastern mandatory ship reporting area. Fishing vessels, recreational vessels, and commercial traffic all frequent the area. Major shipping lanes exist in this area such as the Boston TSS, the Great South Channel, and the traffic lanes to transit north to the Bay of Fundy, Canada.

Southeastern United States. The ship traffic in the southeastern reporting system includes fishing vessels, military vessels, and commercial traffic. Customary shipping lanes cross the area and include those that enter several area ports.

Discussion of Interim Rule

This interim rule establishes a new part 169 entitled "Ship Reporting Systems." Subpart A establishes general requirements for all ship reporting systems. Subpart B establishes specific requirements for two mandatory ship reporting systems. These two mandatory reporting systems are identified as WHALESNORTH and WHALESSOUTH.

The reporting systems are off the eastern coast of the United States and cover the two main population centers for northern right whales. The coordinates chosen for the systems were derived through feedback from aerial surveys conducted in the areas. It was determined that the southeastern reporting system, WHALESSOUTH, need only operate during calving season as this is the only period when whales are found in the area. The northeastern reporting system, WHALESNORTH, is to operate year-round.

Ships are to report general information that includes ship's identification, time of report, course, speed, destination, estimated time of arrival, and intended track. Sensitive, commercial information contained in these reports will be kept confidential.

Ships that report to the shore-based authority will receive a return message acknowledging their entry into the system. The return message will advise ship operators on watch of appropriate action that they can take to reduce the risk of collision with the right whales. The information conveyed would include warnings of the risk of hitting right whales, where to obtain seasonal right whale advisories, and where to consult for information about precautionary measures that mariners may take to reduce the risk of hitting right whales.

Regulatory Evaluation

This interim rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Benefits

Generally, mandatory ship reporting systems would enhance mariners' awareness of the presence of northern right whales and provide them with pertinent information to avoid collisions. The increase of awareness may reduce the risk of ship strikes on the endangered northern right whale.

Private Industry Costs

The mariner's burden of reporting by radio is minimal. The reporting requirement uses the mariner's existing equipment and won't add to the expenses of the owner/operator. The average communications process (transmission/reception) is 5 minutes. It is only necessary to report when first entering the area. The cost of the issuing advisory information will be borne by the Coast Guard and the National Marine Fisheries Service (NMFS). Minimal ship maneuvers are expected in the avoidance of whales.

Government Costs

The Coast Guard and NMFS estimated the cost of this program to be approximately $208,000 for Fiscal Year 1999 and $176,000 annually for future years. The burden of this regulation will be split equally between the Coast Guard and NMFS. Therefore, it is estimated that the cost to the Coast Guard would be $104,000 for the first year and $88,000 annually thereafter. Coast Guard personnel will not be utilized; a private contractor will be hired to operate and maintain facilities.

The Coast Guard would bear the burden associated with relaying non-INMARSAT–C reports through Coast Guard radio stations. Ships not equipped with INMARSAT–C would be required to report in standard format to the shore-based authority, either through narrow band direct printing (SITOR) or HF, MF, or VHF-voice communication systems.

This will add to the workload of staff currently assigned to the Coast Guard unit, but will not create an additional billet. Therefore, there is no additional expense.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, the Coast Guard has reviewed it for potential economic impact on small entities.

The nature of the reports that are made is not such that a significant burden will be imposed on anyone. Reports will be accepted in many different forms to allow for the flexibility that many small entities require. It is anticipated very few small entities operate ships of 300 gross tons or greater. The Coast Guard has attempted to make compliance with this requirement as simple as possible.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Edward LaRue at the phone number listed under **FOR FURTHER INFORMATION CONTACT.**

Collection of Information

This rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Mandatory Ship Reporting System for the Northeastern and the Southeastern coasts of the United States.

Summary of the Collection of Information: The collection involves ships reporting by radio to a shore-based authority when entering the area covered by the reporting system. The ships will receive, in return, an advisory on protection of whales and sources of additional information.

Need for Information: The northern right whale is an endangered species. Mortality rates attributed to ship strikes account for up to 50 percent of recorded fatalities. The purpose of establishing mandatory ship reporting systems is to reduce the likelihood of collisions between ships and northern right whales in the areas established with critical habitat designation.

Proposed Use of Information: Reports will be used to record ship traffic in the reporting systems and provide information to minimize interaction with northern right whales.

Description of the Respondents: All ships of 300 gross tons or greater that transit the reporting systems are required to participate in the reporting systems, except government vessels exempted from reporting by regulation V/8–1(c) of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS).

Number of Respondents: We estimate that this information collection would affect approximately 367 respondents annually.

Frequency of Response: The frequency of response is on occasion. Owners or operators are required to respond only when entering a mandatory reporting area.

Burden of Response: The burden of response is $8,448 per year.

Number of transmissions: 4,400

Hour burden per transmission: .08 hours

Salary rate for affected personnel:* $24 per hour

4,400 transmissions per year × .08 hours per transmission × $24 per hour = $8,448 per year.

* Salary rate as per COMDTINST 7310.1E Hourly Standard Rates for Personnel.

Estimated Total Annual Burden: The reporting burden is 352 hours to industry. Annual cost to the government for Fiscal year 1999 is $208,000 and $176,000 annually for future years.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES.**

On May 26, 1999, the Coast Guard received an emergency approval number from OMB on the information collection requirements. The OMB approval number is 2115–0640. Emergency OMB approval is effective for six months. The Coast Guard will submit the requirements to OMB for three-year approval.

Federalism

We have analyzed this interim rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This interim rule would not impose an unfunded mandate.

Taking of Private Property

This interim rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This interim rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this interim rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this interim rule and concluded that under figure 2–1, paragraph (34)(d) and (e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 169

Endangered and threatened species, Environmental protection, Mandatory ship reporting, Marine mammals, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Telecommunications, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR chapter I by adding a new part 169 to subchapter P to read as follows:

PART 169—SHIP REPORTING SYSTEMS

Subpart A—General

Sec.
169.1 What is the purpose of this subpart?
169.5 What terms are defined?
169.10 What geographic coordinates are used?

Subpart B—Establishment of two mandatory ship reporting systems for the protection of northern right whales

169.100 What mandatory ship reporting systems are established by this subpart?
169.102 Who is the shore-based authority?
169.105 Where is the northeastern reporting system located?
169.110 When is the northeastern reporting system in effect?
169.115 Where is the southeastern reporting system located?
169.120 When is the southeastern reporting system in effect?
169.125 What classes of ships are required to make reports?
169.130 When are ships required to make reports?
169.135 How must the reports be made?
169.140 What information must be included in the report?

Authority: Section 313, Pub. L. 105–383, 112 Stat. 3411, 3424, 33 U.S.C. 1230(d).

Subpart A—General

§ 169.1 What is the purpose of this subpart?

This subpart prescribes the requirements for mandatory ship reporting systems. Ship reporting systems are used to provide, gather, or exchange information through radio reports. The information is used to provide data for many purposes including, but not limited to: navigation safety, environmental protection, vessel traffic services, search and rescue, weather forecasting and prevention of marine pollution.

§ 169.5 What terms are defined?

(a) *Mandatory ship reporting system* means a ship reporting system that requires the participation of specified vessels or classes of vessels, and that is established by a Government or Governments after adoption of a proposed system by the International Maritime Organization (IMO) as complying with all requirements of regulation V/8–1 of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), except paragraph (e) thereof.

(b) *Shore-based authority* means the government appointed office or offices that will receive the reports made by ships entering each of the mandatory ship reporting systems. The office or offices will be responsible for the management and coordination of the system, interaction with participating ships, and the safe and effective operation of the system. Such an authority may or may not be an authority in charge of a vessel traffic service.

§ 169.10 What geographic coordinates are used?

Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts where the referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

Subpart B—Establishment of Two Mandatory Ship Reporting Systems for the Protection of Northern Right Whales

§ 169.100 What mandatory ship reporting systems are established by this subpart?

This subpart prescribes requirements for the establishment and maintenance of two mandatory ship reporting systems for the protection of the endangered northern right whale (also known as the North Atlantic right whale). These two systems are designated for certain areas of the East Coast of the United States. One system is located in the northeast and is identified as WHALESNORTH. The other system is located in the southeast and is identified as WHALESSOUTH.

Note: 50 CFR 222.32 contains requirements and procedures concerning northern right whale approach limitations and avoidance procedures.

§ 169.102 Who is the shore-based authority?

The U.S. Coast Guard is the shore-based authority for these mandatory ship reporting systems.

§ 169.105 Where is the northeastern reporting system located?

Geographical boundaries of the northeastern area include the waters of Cape Cod Bay, Massachusetts Bay, and the Great South Channel east and southeast of Massachusetts. The coordinates (NAD 83) of the area are as follows: from a point on Cape Ann, Massachusetts at 42°39′N, 70°37′W; then northeast to 42°45′N, 70°13′W; then southeast to 42°10′N, 68°31′W; then south to 41°00′N, 68°31′W; then west to 41°00′N, 69°17′W; then northeast to 42°05′N, 70°02′W, then west to 42°04′N, 70°10′W; and then along the Massachusetts shoreline of Cape Cod Bay and Massachusetts Bay back to the point on Cape Anne at 42°39′N, 70°37′W.

§ 169.110 When is the northeastern reporting system in effect?

The mandatory ship reporting system in the northeastern United States operates year-round.

§ 169.115 Where is the southeastern reporting system located?

Geographical boundaries of the southeastern area include coastal waters within about 25 nautical miles (45 kilometer) along a 90-nautical mile (170-kilometer) stretch of the Atlantic seaboard in Florida and Georgia. The area coordinates (NAD 83) extends from the shoreline east to longitude 80°51.6′W with the southern and northern boundaries at latitude 30°00′N and 31°27′N, respectively.

§ 169.120 When is the southeastern reporting system in effect?

The mandatory ship reporting system in the southeastern United States operates during the period beginning on 15 November and ends on 16 April of each year.

§ 169.125 What classes of ships are required to make reports?

Each ship of 300 gross tons or greater must participate in the reporting systems, except government ships exempted from reporting by regulation V/8–1(c) of SOLAS. However, exempt ships are encouraged to participate in the reporting systems.

§ 169.130 When are ships required to make reports?

Participating ships must report to the shore-based authority upon entering the area covered by a reporting system. Additional reports are not necessary for movements made within a system or for ships exiting a system.

§ 169.135 How must the reports be made?

(a) A ship equipped with INMARSAT C must report in IMO standard format as provided in Table 169.140 in § 169.140.

(b) A ship not equipped with INMARSAT C must report to the Coast Guard using other means, listed below in order of precedence—

(1) Narrow band direct printing (SITOR),

(2) HF voice communication, or

(3) MF or VHF voice communications.

(c) SITOR or HF reports made directly to the Coast Guard's Communications Area Master Station Atlantic (CAMSLANT) in Chesapeake, VA, or MF or VHF reports made to Coast Guard

activities or groups, should only be made by ships not equipped with INMARSAT C. Ships in this category must provide all the required information to the Coast Guard watchstander.

§ 169.140 What information must be included in the report?

Each ship report made to the shore-based authority must follow the standard reporting and format requirements listed in table 169.140.

BILLING CODE 4910-15-P

Table 169.140 Requirements for ship reports

Telegraphy	Function	Information required
Name of system	System identifier	Ship reporting system WHALESNORTH or WHALES SOUTH.
A	Ship	The name, call sign or ship station identity, IMO number, and flag of the vessel.
B	Date and time of event	A 6-digit group giving day of month (first two digits), hours and minutes (last four digits.
E	True course	A 3-digit group.
F	Speed in knots and tenths of knots	A 3-digit group.
H	Date, time and point of entry into system	Entry time expressed as in (B) and entry position expressed as- (1) a 4-digit group giving latitude in degrees and minutes suffixed with N(north) or S (south) and a 5-digit group giving longitude in degrees and minutes suffixed with E (east) or W (west); or (2) True bearing (first 3 digits) and distance (state distance) in nautical miles from a clearly identified landmark (state landmark).
I	Destination and expected time of arrival	Name of port and date time group expressed as in (B).
L	Route information	Intended track.

Dated: May 26, 1999.

T.H. Gilmour,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–13781 Filed 5–27–99; 1:33 pm]

BILLING CODE 4910–15–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–9–1–5214a; FRL–6350–1]

Approval and Promulgation of Implementation Plans; State of New Mexico and County of Bernalillo, New Mexico; State Boards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the State Implementation Plan (SIP) revisions for Board composition and conflict of interest disclosure requirements submitted both by the State of New Mexico and by Albuquerque/Bernalillo County, NM. The SIP revisions were submitted by the County and the State to satisfy the Federal mandate, found in section 128 of the Federal Clean Air Act (the Act), and in response to a SIP call letter to the Governor of New Mexico dated July 19, 1989, requiring a cure to identified SIP deficiencies concerning State Boards.

The revisions were submitted by the Governor to EPA on April 20 and July 16, 1990, for the State portion, and on November 16, 1990, for the Albuquerque/Bernalillo County portion. Supplemental information was submitted for Albuquerque/Bernalillo County on December 18, 1990, October 21, 1991, and November 22, 1991. These revisions correct deficiencies for the New Mexico Environmental Improvement Board (NMEIB) and the Albuquerque/Bernalillo County Air Quality Board in order to comply with section 128 of the Act. The EPA approval of these New Mexico SIP revisions make the revisions federally enforceable. Subsequent correspondence in February and March 1993 addressed eligibility for "public interest" Board member positions.

DATES: This action is effective on August 2, 1999, without further notice, unless EPA receives adverse comment by July 1, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register**

informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Reference Docket Number: File Code SIP 1–3–10; NM–90–05.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Frances Drive, Room So. 2100, Santa Fe, New Mexico 87503.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, P.E., of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–7596.

SUPPLEMENTARY INFORMATION:

I. Background

The Act, section 128(a) titled—State Boards, requires each SIP to contain provisions which ensure that: (1) any board or body which approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act, and (2) any potential conflicts of interest by members of such board or body, or the head of an executive agency with similar powers, be adequately disclosed.

The New Mexico Air Quality Control Act (section 74–2–4) authorizes Albuquerque/Bernalillo County to locally administer and enforce the State Air Quality Control Act by providing for a local air quality control program. Thus, State law views Albuquerque/Bernalillo County and the remainder of the State of New Mexico as distinct air quality control entities. Therefore, each entity is required to submit its own SIP revision in order to completely satisfy the requirements of section 128(a) of the Clean Air Act for the entire State of New Mexico.

A. SIP Call

On July 19, 1989, EPA issued a SIP call to the Governor of New Mexico providing formal notice of finding the SIP to be substantially inadequate. The SIP call required New Mexico (i.e., the NMEIB and the joint Albuquerque/Bernalillo County Air Quality Board) to take curative steps to comply with section 128 of the Act within a one-year time period or a corrective Federal Implemention Plan could be imposed to remedy the deficiencies.

Specifically, the SIP call required New Mexico to submit to EPA a schedule for the development and submittal of the necessary SIP revisions to correct the SIP deficiencies, including any necessary legislation needed to satisfy section 128 requirements (which would be adopted during the 1990 legislative session).

B. State Submittal

1. State Portion

In response to the July 1989 SIP call, on October 6, 1989, the State of New Mexico sent draft statutory changes of the New Mexico Air Quality Control Act (NMAQCA) to EPA for review and comment in anticipation of a 30-day legislative session to be held in early 1990. These proposed changes were intended to meet the section 128(a)(1) requirements of the Act for the NMEIB, by removing permitting and enforcement jurisdiction from the Board and placing it under the purview of the NMEID Director. This concept is acceptable under Federal law. The EPA provided comments on the draft statutory changes on December 4, 1989. In February 1990, the New Mexico State Legislature passed House Bill 404aa which contained language that satisfied the requirements of section 128(a)(1) of the Act. This bill was signed by the Governor and became immediately effective on February 28, 1990.

On April 20, 1990, the Governor submitted a SIP revision to EPA addressing the State portion of the State Board requirements. The submittal was a copy of enacted House Bill (H.B.) 404aa which amended the NMAQCA. This submittal was in response to the July 19, 1989, SIP call. House Bill 404aa adopted changes which removed permits and enforcement orders from the jurisdiction of the board. In addition, it required a majority of the board members to represent the public interest, and not derive any significant portion of their income from persons subject to (or who appear before the board on) issues related to the Act or the NMAQCA.

After a subsequent review of the SIP revision submittal, EPA determined on June 18, 1990, that the April 1990 State submittal was incomplete and requested a formal State submittal of the New Mexico Conflict of Interest Act and the NMEIB Code of Conduct. Similar information was also required for the City of Albuquerque/Bernalillo County portion of the State's submittal (e.g., ordinances, and any conflict of interest applicable provisions). On July 16, 1990, the Governor formally submitted the State's Conflict of Interest Act and the NMEIB Code of Conduct as an addendum to the April 1990 submittal to meet the section 128(a)(2) requirements of the Act. As indicated in EPA's letter dated August 9, 1990, this submittal completed the State's portion of the section 128(a) requirements. Under the State's Conflict of Interest Act, the members of the board and the NMEID Director are required to disclose any potential conflicts of interest. The NMEIB Code of Conduct prescribes standards of conduct for members of the NMEIB for potential conflict of interest situations. The Code is consistent with and intended to supplement the requirements of the State's Conflict of Interest Act, section 10–16–1 to 10–16–16 NMSA 1978. The EPA's earlier review of H.B. 404aa determined that it is acceptable under Federal law to remove permitting and enforcement jurisdiction from the NMEIB and to place it under the purview of the NMEID Director.

2. Albuquerque/Bernalillo County Portion

The initial Governor's SIP revision submittal for the City of Albuquerque/Bernalillo County occurred on November 16, 1990, via a letter to EPA and contains a SIP narrative and supporting attachments. It incorporates amendments to local ordinances correcting the criteria by which board members are appointed and also addresses Conflict of Interest. Supplemental information was submitted to EPA on December 18, 1990. The submittal included the following documents:

a. SIP narrative statement regarding State Boards, including three (3) attachments as follows:

1. City and County Metropolitan Environmental Health Advisory Board Ordinances as amended.

2. City and County Air Quality Control Board Ordinances.

3. The City Attorney's compilation of materials concerning City and County Conflict of Interest, and Code of Conduct.

b. Supporting documents which are necessary for processing and approving this SIP submittal (e.g., proof of September 9, 1990, legal notice of public hearing; and public hearing transcript of October 10, 1990).

This submittal was determined by EPA to be incomplete on June 21, 1991, pending a satisfactory resolution of prior EPA comments on the draft SIP supplement pertaining to State Boards by the City of Albuquerque's, Air Pollution Control Division. Specifically, these comments concerned the belief that critical legal flaws or deficiencies may exist, with respect to State Board requirements, in the Albuquerque/ Bernalillo County addendum SIP revision. Supplemental information was submitted to EPA on October 21, 1991. A legal opinion by the Albuquerque City Attorney dated November 22, 1991, satisfactorily addressed EPA concerns as expressed in the June 21, 1991 letter. After a review of the addendum SIP revision, supplemental information and this legal opinion, EPA determined on December 17, 1991, that both the State portion and the City of Albuquerque/ Bernalillo County portion of the Governor's submittal were complete.

II. Analysis of State Submission

A. General

The EPA has reviewed the Governor's submittals (both portions) and developed a Technical Support Document (TSD). The TSD concludes that the New Mexico Governor's SIP revisions (both portions) meet all of the requirements of section 128 of the Act. This TSD is available for inspection by interested parties during normal business hours at the EPA Region 6 Office.

B. Public Interest Membership

The EPA received written correspondence dated July 4, 1990, from an interested party concerning the eligibility for "public interest" Board member positions. As indicated in a reply letter dated November 27, 1990, EPA interprets the New Mexico Air Quality Control Act as follows: If a person appears before the Board on any matter(s), and that person is not paid for his or her appearance(s), or if he or she is paid, and that payment(s) is not a significant portion of his or her income, then that person can still qualify to be a public interest Board member. The EPA does not read the State statute to preclude persons from being eligible for public interest Board member positions if they have ever appeared before the Board on any matter(s). The disqualifying link is whether that appearance(s) was a paid one and whether the payment, if any, was a significant portion of one's annual income. The State has agreed with this interpretation as well.

In subsequent correspondence with the New Mexico Environment Department (previously the NMEID) dated March 19, 1993, EPA further defined this issue by stating: Persons who are designated to either represent nonprofit environmental protection organizations or represent municipal and county governments, do not represent the public interest. The rationale behind this judgement is that each group could potentially pursue their own agenda and thus, would not represent the public interest. Specifically, professional public interest advocates (e.g., paid representatives) do not qualify for the "public interest" majority requirements. However, mere membership in the organizations would not be disqualifying.

In February and March 1993, the New Mexico Legislature considered H.B. 552 which proposed to increase the size of the Environmental Improvement Board from five to seven members. Specifically, the House Bill proposed that one new member would represent a non-profit environmental protection organization, and the other member would represent municipal (and county) governments. On March 2, 1993, EPA provided comments on this proposed bill and determined that it would throw the NMEIB public interest membership off balance, and if enacted, the language would be unapprovable under the Act, section 128. Likewise, the New Mexico Environment Department analyzed this bill and recommended not adopting the bill on the grounds that it would expose the NMEIB to membership composition problems. Subsequently, the New Mexico Legislature did not pass the flawed H.B. 552.

C. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. See also section 110(l) of the Act. Also, EPA must determine whether a submittal is complete, and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, Appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

Regarding the State portion of the SIP submittal (which includes New Mexico H.B. 404aa, and New Mexico Conflict of Interest Act) for State Boards, it is EPA's position that a public hearing is not required for State legislative statutes. The EPA views the State legislative process as fully satisfying the procedural requirements of 40 CFR 51.102 for adoption and submittal of SIP revisions.

After providing adequate 30 day public notice, Albuquerque/ Bernalillo County held a public hearing on October 10, 1990, to entertain public comment on proposed revisions to its portion of the SIP submittal regarding State Boards. No adverse public comments were received at the public hearing. Following the public hearing and consideration of minor public comments, the SIP revision was adopted by the Albuquerque/Bernalillo County Air Quality Control Board on October 10, 1990. The Albuquerque/Bernalillo County portion of the SIP revision was then submitted by the Governor to EPA by cover letter dated November 16, 1990. Supplemental information was submitted on December 18, 1990, October 21, 1991, and November 22, 1991.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated December 17, 1991, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

III. Final Action

By this action, EPA is approving revisions to the New Mexico SIP regarding State Boards for both the State of New Mexico and for Albuquerque/ Bernalillo County, NM. The SIP revisions were submitted by the State to satisfy the Federal mandate, found in section 128 of the Act concerning State Board composition and conflict of interest provisions. The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a

separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This action will be effective on August 2, 1999, without further notice unless we receive adverse comment by July 1, 1999.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time. If no such comments are received, the public is advised that this action will be effective August 2, 1999, and no further action will be taken on the proposed rule.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements regardless of the fact that the submittal preceded the date of enactment. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines: (1) is "economically significant" as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective August 2, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 26, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation of part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

2. In section 52.1620(e), the table is amended by adding section 74–1–4 at the beginning of the table, by revising section 74–2–4, and by adding new sections to the table after section 74–2–17.

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NEW MEXICO STATUTES IN THE CURRENT NEW MEXICO SIP

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
NMSA 1978—New Mexico Statutes in the New Mexico SIP				
74–1–4	Environmental Improvement Board—Creation—Organization.	04/20/90	June 1, 1999.	
* * *	* * *	*	*	*
74–2–4	Municipal or County Air Quality Control Board.	04/20/90	June 1, 1999.	
* * *	* * *	*	*	*
Article 16, Sections 10–16–1 through 10–16–16.	New Mexico Conflict of Interest Act	07/16/90	June 1, 1999.	
Article 16, Supplemental	New Mexico Environmental Improvement Board Code of Conduct.	07/16/90	June 1, 1999.	
EPA Approved City of Albuquerque and Bernalillo County Ordinances for State Board Composition and Conflict of Interest Provisions				
City of Albuquerque, Chapter 6, Article XVII Sections 6–17–1 to 6–17–3.	Metropolitan Environmental Health Advisory Board.	11/16/90	June 1, 1999.	
Bernalillo County Commission Ordinance 302.	Metropolitan Environmental Health Advisory Board.	08/05/74	June 1, 1999.	
Bernalillo County Commission Ordinance 90–19.	Metropolitan Environmental Health Advisory Board.	08/21/90	June 1, 1999	Amended Ordinance 302.
City of Albuquerque, Chapter 6, Article XVI Sections 6–16–1 to 6–16–15.	Joint Air Quality Control Board Ordinance.	08/01/89	June 1, 1999.	
Bernalillo County Commission Ordinance 88–45.	Joint Air Quality Control Board Ordinance.	12/27/88	June 1, 1999	Amended Ordinance 84–44.
City of Albuquerque Chapter 1, Article XII Sections 1–12–1 to 1–12–3.	Public Boards, Commissions and Committees.	07/01/87	June 1, 1999.	

EPA APPROVED NEW MEXICO STATUTES IN THE CURRENT NEW MEXICO SIP—Continued

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
City of Albuquerque Chapter 2, Article III Sections 2–3–1 to 2–3–13.	Conflict of Interest	07/01/85	June 1, 1999.	
City of Albuquerque Charter, Article XII.	Code of Ethics	04/01/90	June 1, 1999.	
Bernalillo County Commission Ordinance 85–3.	Code of Ethics	02/05/85	June 1, 1999.	
City of Albuquerque Code of Conduct.	City Code of Conduct	02/09/90	June 1, 1999.	

[FR Doc. 99–13379 Filed 5–28–99; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6351–6]

RIN 2060–AI24

Protection of Stratospheric Ozone: Incorporation of Montreal Protocol Adjustment for a 1999 Interim Reduction in Class I, Group VI Controlled Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is revising the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). This amendment reflects changes in U.S. obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) due to recent adjustments by signatory countries to this international agreement. Specifically, this amendment incorporates the Protocol's 25 percent interim reduction in the production and consumption of class I, Group VI controlled substances (methyl bromide) for the 1999 control period and subsequent control periods.

In taking this action, EPA recognizes the recent intent of Congress in changes to the Clean Air Act that direct EPA to conform the U.S. phasedown schedule of methyl bromide to the Montreal Protocol's schedule for industrialized nations, including required interim reductions and specific exemptions. EPA intends to follow this rule with other actions to complete the process of conforming the U.S. methyl bromide phaseout schedule and specific exemptions with obligations under the Montreal Protocol and with the recent changes to the Clean Air Act. Through subsequent actions to this amendment, EPA plans to reflect, through notice and comment rulemaking, the additional steps in the phaseout schedule for the production and consumption of methyl bromide, as follows: beginning January 1, 2001, a 50 percent reduction in baseline levels; beginning January 1, 2003, a 70 percent reduction in baseline levels; beginning January 1, 2005, a complete phaseout of the production and consumption with emergency and critical use exemptions permitted under the Montreal Protocol. Even sooner, EPA plans to publish a proposal that will describe a process for exempting quantities of methyl bromide used in the U.S. for quarantine and preshipment from the reduction steps in the phaseout schedule.

EFFECTIVE DATE: This rule is effective on July 1, 1999.

ADDRESSES: Materials supporting this rulemaking and comments are contained in Public Docket No. A–92–13, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The docket is located in Room M–1500, Waterside Mall (Ground Floor). Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at 1–800–269–1996 between the hours of 10 a.m. and 4 p.m. Eastern Standard Time, or Tom Land, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 401 M Street, S.W., Washington, D.C. 20460, (202) 564–9185.

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I. Legislative and Regulatory Background of Phasing Out Production and Consumption of Controlled Substances That Deplete the Ozone Layer

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625) and October 5, 1998 (63 FR 53290). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1] The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 4, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of

[1] Several revisions to the original 1988 rule were issued on the following dates: February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), and December 10, 1993 (58 FR 65018).

1990 (CAA or the Act) that included Title VI on Stratospheric Ozone Protection.

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program (the Program). The Program and its history are described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of production and consumption of class I ozone-depleting substances as required under the Protocol and CAA are accomplished through the Allowance Program. In this action, EPA is also recognizing the expressed intent of Congress in recent changes to the Clean Air Act, which direct EPA to conform the U.S. methyl bromide phasedown schedule to the Montreal Protocol's schedule for industrialized nations, including required interim reductions.

In developing the Allowance Program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the United States for specific baseline years. This information was used to establish the U.S. production and consumption ceilings for these substances. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called "allowances." Due to the complete phaseout of many of the ozone-depleting chemicals, the quantities of production allowances and consumption allowances granted to companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, but for a few narrow exemptions.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as production plus imports minus exports of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Unless they are subject to use restrictions, class I controlled substances can generally continue to be "used" after their "production and consumption" phaseout dates.

The specific names and chemical formulas for the controlled ozone-depleting substances in the Groups of class I controlled substances are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in appendix B and appendix F in subpart A.

Although the regulations phased out the production and consumption of class I, Group II substances (halons) on January 1, 1994, and all other class I controlled substances (except methyl bromide) on January 1, 1996, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed, or destroyed. (40 CFR 82.4(b)) They also allow limited manufacture if the substances are (1) exported to countries listed under Article 5 of the Protocol, (2) produced for essential uses as authorized by the Protocol and the regulations, or (3) produced with destruction or transformation credits. (40 CFR 82.4(b)).

The regulations allow import of phased-out class I controlled substances provided the substances are either transformed or destroyed. (40 CFR 82.4(d)) Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) Previously used, (2) imported for essential uses as authorized by the Protocol and the regulations, (3) imported with destruction or transformation credits or (4) a transhipment or a heel (a small amount of controlled substance remaining in a container after discharge). (40 CFR 82.4(d), 82.13(g)(2)).

II. Context for Today's Final Rule

Today's action amends existing EPA regulations published under authority of Title VI of the CAA that govern the production and consumption of ozone-depleting substances. EPA is establishing a 25 percent reduction in the 1991 baseline levels of production allowances and consumption allowances for methyl bromide (class I, Group VI controlled substance) for the 1999 and 2000 control periods. Today's amendment is designed to ensure the U.S. meets its obligations under the Protocol and the CAA, specifically the first interim reduction reflecting amendments to Title VI as created by section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277). Section 764(a) of the Omnibus Act requires EPA to promulgate rules to bring the schedule for phaseout of methyl bromide into accordance with the Montreal Protocol as in effect at the time of enactment.

EPA intends to follow this rule with other actions to complete the process of conforming the U.S. phaseout schedule for methyl bromide with obligations under the Montreal Protocol and with the recent changes to the Clean Air Act. Through subsequent actions to today's amendment, EPA plans to reflect, through notice and comment rulemaking, the additional steps in the phaseout schedule for the production and consumption of methyl bromide, as follows: beginning January 1, 2001, a 50 percent reduction in baseline levels; beginning January 1, 2003, a 70 percent reduction in baseline levels; beginning January 1, 2005, a complete phaseout of production and consumption with processes for special exemptions permitted under the Montreal Protocol. In the coming months, EPA plans to publish a proposal that will define the process for exempting quantities of methyl bromide used in the U.S. for quarantine and preshipment from the phaseout schedule. These subsequent actions are described in more detail in part IV of today's rulemaking.

III. Amendments to § 82.7—Grant and Phased Reduction of Baseline Production and Consumption Allowances for Class I Controlled Substances

EPA is establishing a 25 percent reduction in the baseline levels of production allowances and consumption allowances for methyl bromide (class I, Group VI controlled substance) for the 1999 and 2000 control periods. At the 1997 meeting of the Montreal Protocol, the Parties agreed to adjust the phaseout schedule of methyl bromide for industrialized countries. The first Protocol adjustment to the methyl bromide phaseout schedule for industrialized countries is a 25 percent reduction of production and consumption from 1991 baseline levels beginning in the 1999 calendar year.

The Parties to the Protocol established a freeze in the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting in Copenhagen. Each industrialized country's 1991 production and consumption of methyl bromide was used as the baseline for establishing the freeze. EPA published a final rule in the **Federal Register** on December 10, 1993, listing methyl bromide as a class I controlled substance and freezing production and consumption at 1991 levels. (58 FR

65018, 65028–65044, 65074). In the rule published on December 30, 1993, in the **Federal Register**, EPA established for specific companies baseline production allowances and consumption allowances for methyl bromide. The companies receiving baseline production and consumption allowances in accordance with their 1991 level of production, imports and exports for class I, Group VI controlled substances (methyl bromide) are listed at 40 CFR 82.5 and 82.6 (58 FR 69238). Section 82.7 of the rule published in the **Federal Register** on May 10, 1995 (60 FR 24970) sets forth the percentage of baseline allowances for methyl bromide (class I, Group VI controlled substances) granted to companies in each control period (each calendar year). Currently, the percentage of baseline methyl bromide allowances granted for each control period until 2001 is 100 percent. In accordance with the Protocol's adjustment to the methyl bromide phaseout schedule, EPA is granting 75 percent of baseline production allowances and 75 percent of baseline consumption allowances to the companies listed in §§ 82.5 and 82.6 for class I, Group VI substances for 1999 and 2000.

In preparing the final rule published in the **Federal Register** on December 30, 1993, that established a phaseout date for methyl bromide in 2001, EPA conducted a Cost Effectiveness Analysis, dated September 30, 1993, under the title, "Part 2, The Cost and Cost-Effectiveness of the Proposed Phaseout of Methyl Bromide." For today's 25 percent interim reduction in methyl bromide production and consumption, EPA conducted an addendum to the 1993 analysis. The results of the additional analysis indicate that, if the U.S. had to reduce methyl bromide production and consumption from 100 percent to 75 percent of the baseline in 1999, the estimated cost increase would be less than 2 percent of the original cost estimate for the 2001 phaseout. The original (1993) annualized cost estimate for the 2001 phaseout, adjusted to 1998 dollars, is $159 million. The incremental annualized costs for today's reduction beginning in 1999 from 100 percent of the baseline to 75 percent would be approximately $3 million. However, from 1994 through 1997, the actual consumption of methyl bromide in the U.S. has been approximately 10 to 15 percent below the 1991 baseline as reported to EPA's Allowance Tracking System. The United States must therefore reduce methyl bromide consumption in 1999 by only 10 to 15 percent in relation to the 1991 baseline to achieve the Protocol's first interim reduction from 100 percent to 75 percent. According to the additional analysis, the estimated cost increase of implementing a 10 to 15 percent reduction in methyl bromide production and consumption in 1999 would be less than 1 percent of the original cost estimate conducted in 1993, or an annualized incremental cost of less than $2 million. Because this new analysis is an addendum to the 1993 analysis and uses the same algorithms it permits easy comparisons with the earlier cost estimates. In undertaking the steps discussed below, EPA, in consultation with the U.S. Department of Agriculture and other Federal agencies, intends to conduct further analysis.

IV. Next Steps To Conform the U.S. Methyl Bromide Phaseout Schedule and Exemptions to Those of the Montreal Protocol and the Recently Amended Clean Air Act

In addition to today's action, EPA intends to publish two proposals to conform the United States' methyl bromide program to obligations under the Montreal Protocol and recent changes to the Clean Air Act. First, EPA intends to propose a process that would exempt quantities of methyl bromide used for quarantine and preshipment in the U.S. from the phaseout schedule and make adjustments to the existing baseline. Second, EPA intends to propose additional phaseout steps for methyl bromide, and establish additional exemptions in accordance with the Protocol, as follows:

—Beginning January 1, 2001, a 50 percent reduction in baseline levels;
—Beginning January 1, 2003, a 70 percent reduction in baseline levels;
—Beginning January 1, 2005, a complete phaseout of production and consumption;
—Establish a process for emergency use exemptions; and
—Establish a process for critical use exemptions as permitted under the Montreal Protocol.

The discussion below outlines EPA's plans for subsequent rulemaking and provides a vision of the Agency's future actions to conform the U.S. methyl bromide regulatory program with the Montreal Protocol and recent changes to Title VI of the Clean Air Act. The plans described below provide general information. EPA will request formal comments on more detailed proposals in the very near future.

EPA intends to publish quickly a proposal to exempt all quantities of methyl bromide used for quarantine and preshipment in the United States. EPA anticipates proposing a flexible process that is responsive to market demands for methyl bromide for quarantine and preshipment. In preparing the notice of proposed rulemaking on quarantine and preshipment, EPA will address the new section 604(d)(5) of Title VI of the CAA on Sanitation and Food Protection added by section 764(b) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277). In this same regulatory action, EPA intends to correct the existing methyl bromide baseline of production allowances and consumption allowances because it contains a fixed quantity associated with quarantine and preshipment. When EPA included methyl bromide in the list of class I controlled ozone depleting substances in the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018), and established the baseline for production and consumption allowances, the quantities of quarantine and preshipment were included in the baseline.

The second step EPA intends to take in conforming the U.S. methyl bromide program to obligations under the Montreal Protocol and recent changes to the Clean Air Act would be a proposal to set the remaining reduction steps and final phaseout, to establish the process for emergency use exemptions and to create the process for critical use exemptions. Each of these parts of a proposal would be designed to ensure the U.S. meets its obligations under the Montreal Protocol consistent with statutory requirements in the Clean Air Act. The remaining phaseout steps for the production and consumption of methyl bromide are a 50 percent reduction in baseline levels beginning January 1, 2001; a 70 percent reduction in baseline levels beginning January 1, 2003; and a complete phaseout of production and consumption beginning January 1, 2005, with emergency use exemptions and critical use exemptions as permitted under the Montreal Protocol. EPA, in consultation with the U.S. Department of Agriculture, intends to conduct further analysis to support the proposal of these further reduction steps, final phaseout, and exemptions.

V. Response to Comments on the Notice of Proposed Rulemaking Published on February 25, 1999

EPA received four comments on the notice of proposed rulemaking published in the **Federal Register** on February 25, 1999 (64 FR 9290). None of the four comments were related to the proposal to establish a 25 percent

reduction in baseline production allowances and consumption allowances for methyl bromide (class I, Group VI controlled substance) for the 1999 and 2000 control periods. In general, the comments pertain to the discussion of future EPA actions to conform regulations with the Montreal Protocol and the recent changes to the CAA in part IV above. Although the comments are not directly related to today's action, EPA wishes to respond to them.

Two comments state that in discussing a complete phaseout of methyl bromide EPA should clarify all of the limited circumstances under which exemptions exist. In fact, both today's rule and the February 25, 1999 proposed rule list the limited exemptions for manufacturing a class I controlled substance beyond the phaseout (in Part I). Methyl bromide is a class I controlled substance and these limited exemptions apply to methyl bromide. EPA regulations at 40 CFR 82.1—82.13 allow for the manufacture of a class I controlled substance beyond the phase out date if the substance is either transformed or destroyed. In addition, the regulations allow limited manufacture of a class I controlled substance, if the substance is: (1) exported to countries classified under Article 5 of the Protocol, (2) produced for essential uses as authorized by the Protocol and the regulations, or (3) produced with destruction or transformation credits.

Another comment requests EPA to consider the fumigation of a specific commodity for a critical use exemption beyond the phaseout. As explained in Part IV above, EPA will be proposing a process for determining critical use exemptions beyond the phaseout for methyl bromide in a future rulemaking. EPA encourages the participation of interested stakeholders in the future development of the critical use exemption process and the notice and comment rulemaking.

The final comment asks EPA to establish quickly an exemption for quantities of methyl bromide used for quarantine and preshipment in the United States. EPA is currently developing the proposed rule. EPA expects to publish a proposed rule to establish exemptions for quantities of methyl bromide used in the U.S. for quarantine and preshipment later this year.

IV. Summary of Supporting Analysis

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

The provisions in today's rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as the recent amendments to Title VI of the Clean Air Act. Analysis of today's rule estimates an incremental annualized cost of $1 to 3 million for the 25 percent reduction as compared to the 1993 original analysis for establishing the 2001 phaseout. However, further analysis shows that just the 25 percent reduction in today's rule for 1999 and 2000 would have an estimated annualized cost of $71 million without other additional reduction steps and without a complete phaseout of the production and consumption of methyl bromide. Therefore, it is unlikely that today's rule will result in expenditures of $100 million or more in any one year for State, local and tribal governments, or for the private sector in the aggregate. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

The Agency performed an initial screening analysis and determined that this regulation does not have a significant economic impact on a substantial number of small entities. EPA characterized the regulated community by identifying the SIC codes of the companies affected by this rule. The Agency determined that the members of the regulated community affected by today's rule are not small businesses under SBA definitions. Small governments and small not-for-profit organizations are not subject to the provisions of today's rule. The provisions in today's action regulate large, multinational corporations that either produce, import, or export class I, group VI ozone-depleting substances.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Analysis of today's rule estimates an incremental annualized cost of $1 to $3 million for the 25 percent reduction as compared to the 1993 original analysis for establishing the 2001 phaseout. However, further analysis shows that just the 25 percent reduction in today's

rule for 1999 and 2000 would have an estimated annualized cost of $71 million without additional reduction steps and without a complete phaseout of the production and consumption of methyl bromide.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Applicability of E.O. 13045—Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it implements a Congressional directive to phase out production and consumption of methyl bromide in accordance with the schedule under the Montreal Protocol.

E. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.16).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies or matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 1, 1999.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Ozone layer.

Dated: May 25, 1999.

Carol M. Browner,

Administrator.

Subpart 82—Protection of Stratospheric Ozone

1. The authority citation for subpart 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.7 is revised to read as follows:

§ 82.7 Grant and phase reduction of baseline production and consumption allowances for class I controlled substances.

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under §§ 82.5 and 82.6 of this subpart.

Control period	Class I substances in groups I and III (percent)	Class I substances in group II (percent)	Class I substances in group IV (percent)	Class I substances in group V (percent)	Class I substances in group VI (percent)	Class I substances in group VII (percent)
1994	25	0	50	50	100	100
1995	25	0	15	30	100	100
1996	0	0	0	0	100	0
1997	0	0	0	0	100	0
1998	0	0	0	0	100	0
1999	0	0	0	0	75	0
2000	0	0	0	0	75	0

[FR Doc. 99–13803 Filed 5–28–99; 8:45 am]

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Proposed Rules

Federal Register
Vol. 64, No. 104
Tuesday, June 1, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AG27

Formal and Informal Adjudicatory Hearing Procedures; Clarification of Eligibility to Participate

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing participation in adjudicatory proceedings conducted under its Rules of Practice to clarify that Federally-recognized Indian tribal governments are entitled to participate in these proceedings on the same basis as other governmental units.

DATES: Comments on the proposed rule must be received on or before July 1, 1999.

ADDRESSES: Mail any comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 am and 4:15 Eastern time on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://www.nrc.gov*). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the NRC's interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; email *CAG@nrc.gov*.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles E. Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415-1606; e-mail: *CEM@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Rule published in the Rules and Regulations section of this **Federal Register**.

Because the NRC considers this action noncontroversial and routine, the NRC is publishing the rule in final form without seeking public comments on the amendments in a proposed rule. This action will become effective on August 2, 1999. However, if the NRC receives significant adverse comments by July 1, 1999, the NRC will publish a document that withdraws the direct final rule pending review of the comments, and will address those comments in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114 (f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143 (f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205 (j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Section 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.715, paragraph (c) is revised to read as follows:

§ 2.715 Participation by a person not a party.

* * * * *

(c) The presiding officer will afford representatives of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to §§ 2.754 and 2.762 and petitions for review by the Commission pursuant to § 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

* * * * *

3. In § 2.1211, paragraph (b) is revised to read as follows:

§ 2.1211 Participation by a person not a party.

* * * * *

(b) Within 30 days of an order granting a request for a hearing under § 2.1205 (b) through (d) or, in instances when it is published, within 30 days of notice of hearing issued under § 2.1205(j), the representative of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, may request an opportunity to participate in a proceeding under this subpart. The request for an opportunity to participate must state with reasonable specificity the requester's area of concern about the licensing activity that is the subject matter of the proceeding. Upon receipt of a request that is filed in accordance with these time limits and that specifies the requester's areas of concern, the presiding officer shall afford the requester a reasonable opportunity to make written and oral presentations in accordance with §§ 2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this paragraph may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

Dated at Rockville, Maryland; this 24th day of May 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–13654 Filed 5–28–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE149; Notice No. 23–98–05–SC]

Special Conditions: Soloy Corporation Model Pathfinder 21 Airplane; Airframe

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for the proposed special conditions for the Soloy Corporation Model Pathfinder 21 airplane. The reopening responds to a request from Soloy Corporation. The reopening is needed to permit Soloy additional time to comment on the proposed special conditions.

DATES: Comments must be received on or before July 1, 1999.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE149, 601 East 12th Street, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE149. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: David Keenan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 601 East 12th Street, Kansas City, Missouri, 816–426–6934, fax 816–426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made "Comments to Docket No. CE149." The postcard will be date stamped and returned to the commenter.

Availability of Special Conditions

Any person may obtain a copy of these special conditions by submitting a request to the Federal Aviation Administration, at the address specified under the **ADDRESS** section. Communications must identify Docket No. CE149.

Background

On March 9, 1999, the FAA issued Notice No. 23–98–05–SC (64 FR 14401, March 25, 1999). This notice proposed special conditions for the Soloy Corporation Model Pathfinder 21 airplane. The proposal resulted from a request by Soloy Corporation for a supplemental type certificate for the Model Pathfinder 21 airplane.

On April 21, 1999, Soloy Corporation requested that the comment period be extended in order to allow them sufficient time to comment on the proposals. The comment period was scheduled to close April 26, 1999.

Conclusion

Soloy requested the special conditions originally, and the request to extend the comment period came from Soloy. In view of this fact, and since Soloy may provide additional technical information, the FAA agrees that it would be in the public interest to grant Soloy Corporation's request to extend the comment period. Since the request to extend the comment period arrived near the end of the comment period, the FAA has decided to reopen the comment period. Accordingly, the comment period for Notice No. 23–98–05–SC, Docket No. CE149, is reopened until July 1, 1999.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Issued in Kansas City, Missouri on May 13, 1999.

Marvin Nuss,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 99–13819 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–T3–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–221–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kentucky regulations pertaining to general requirements for performance bonds and liability insurance. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: If you submit written comments, they must be received by 4 p.m.,

(E.D.T.), July 1, 1999. If requested, a public hearing on the proposed amendment will be held on June 28, 1999. Requests to speak at the hearing must be received by 4 p.m., (E.D.T.), on June 16, 1999.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to William J. Kovacic, Field Office Director, at the address listed below.

You may review copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2894. E-Mail: bkovacic@osmre.gov.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2894.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated May 4, 1999 (Administrative Record No. KY–1459), Kentucky submitted a proposed amendment to its program at 405 KAR 10:010. Specifically, Kentucky proposes to authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for filing and maintaining performance bonds and liability insurance, and bonding methods. Kentucky also proposes to incorporate by reference a new performance bond form SME–42–F for coal mining operations on Federal lands. This form is necessary to implement the November 2, 1998, Federal/State cooperative agreement for Federal lands. It is a two-page standard form for a performance bond. The proposed regulation also incorporates changes to the existing bond form SME–42 for operations on non-Federal lands. It deletes the requirement to enter the name of the community located near the lands covered by the bond and deletes the requirement that a bond executed by an out-of-state surety be countersigned by a resident Kentucky agent.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., (E.D.T.) on June 16, 1999. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National

Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1999.

H. Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–13808 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–05–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–041–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposes to add revegetation success and normal husbandry practice guidelines to its program. Texas intends to revise its program to ensure that adequate data collection methods are used for determining revegetation success for purposes of releasing reclamation performance bonds and to ensure that the husbandry practices used by the permittee during the period of responsibility for revegetation success and bond liability are normal husbandry practices within the region for unmined lands.

This document gives the times and locations that the Texas program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., c.d.t., July 1, 1999. If requested, we will hold a public hearing on the amendment on June 28, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on July 16, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Texas program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P. O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430.
Internet:mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated May 13, 1999 (Administrative Record No. TX–649), Texas sent us an amendment to its program under SMCRA. Texas sent the amendment at its own initiative. The amendment includes a guidance document on the procedures and standards for determining revegetation success on surface-mined lands in Texas and a guidance document on the normal husbandry practices that permittees are to use during the period of responsibility for revegetation success and bond liability (extended responsibility period). Below is a summary of the two documents. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

1. Revegetation Success Guidelines: Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas

Texas is proposing a guideline document that describes the procedures and standards for determining revegetation success on reclaimed surface mined lands in Texas.

a. Section I contains introductory information. Revegetation success must be demonstrated by using the revegetation standards and statistically valid sampling techniques for measuring success contained in the proposed guideline document. The use of the methods contained in this guidance document by mining companies operating in Texas will provide assurance that adequate data collection methods have been used for determining revegetation success for purposes of releasing reclamation performance bond funds. Mining companies may propose alternative procedures for sampling and analysis of vegetation data. However, the use of alternative methods must be approved by Texas, and the alternative methods must be included in the approved regulatory program.

b. Section II describes the regulatory requirements for meeting revegetation

success under the Texas Surface Coal Mining and Reclamation Act at sections 134.041, .092(a)(19) and (20), and .104 and the implementing performance standards for revegetation success in the Texas Coal Mining Regulations at Title 16, Texas Administrative Code (TAC) 12.390 through 12.395, and 12.399.

c. Section III identifies specific concepts and requirements to be followed in developing revegetation evaluation plans.

d. Section IV provides the approved methods for implementing the various evaluation methods for ground cover, productivity, and woody-plant stocking, including the proper selection of observation points. Measurement methods are presented for all vegetation parameters. Measurement results must be compared to either approved reference areas or technical success standards. Subsection A provides information on the selection of observation points for collecting vegetation data. Subsection B provides guidance on adjusting for field conditions when conducting vegetation surveys. Subsection C provides guidelines for ground cover measurements. Subsection D contains guidance for measurement of productivity. Subsection E provides guidelines for woody plant stocking. Subsection F contains guidance on selecting and management of reference areas.

e. Section V lists the revegetation success standards for each land use type and provides information on determining productivity of the reclaimed areas. Nine general types of land use are included: grazingland, pastureland, cropland, forestry, fish and wildlife habitat, undeveloped land, industrial/commercial, residential, and recreation. Subsection A provides guidelines relating to ground cover and productivity standards for grazingland and pastureland. Subsection B contains guidance on the ground cover and productivity standards for cropland. Subsection C provides guidelines on the ground cover standards and woody-plant stocking rates for the forestry land use category. Subsection D contains guidance on ground cover standards and woody-plant rates for fish and wildlife habitat. Subsection E provides guidelines on ground cover standards and woody-plant stocking rates for undeveloped land. Subsection F includes guidelines relating to ground cover standards and woody-plant stocking rates for industrial/commercial land uses. Subsection G provides guidance on ground cover standards and woody-plant stocking rates for residential land uses. Subsection H contains guidelines on ground cover standards and woody-plant stocking rates for recreation land uses. Subsections A through H include the steps to be followed for measurement and statistical comparison when either reference areas or technical standards are used as a measure for revegetation success. These subsections also contain information on evaluating ground cover measurements in conjunction with the species composition, when applicable.

f. Section VI provides a listing of the literature used in developing the proposed guideline document. Appendix A contains the statistical information, including equations and tables, to be used in the determination of revegetation success for ground cover, productivity, and woody-plant stocking. Appendix B provides a table summarizing the revegetation success standards for all land uses. The table in Appendix B includes the revegetation parameters, performance standards, and conditions for bond release relating to each land use. Appendix C contains examples of revegetation success determinations for ground cover, productivity involving herbaceous biomass, and woody plant stem counts. Attachment 1 is a document entitled "The Development of the Forage Production Standards for Post Mine Soils" by the United States Department of Agriculture—Natural Resources Conservation Service (USDA–NRCS). Attachment 2 is a document entitled "Texas Parks and Wildlife Department Recommendations for the Development of Success Standards for Woody-Plant Stocking Rates." Attachment 3 is a document entitled "Texas Forest Service Recommendations for Reforestation of Pine and Hardwoods in Texas."

2. Guidelines for Normal Husbandry Practices for Surface-Mined Lands in Texas

Texas is proposing a guideline document that describes the husbandry practices to be used by the permittee during the period of responsibility for revegetation success and bond liability. These practices are normal husbandry practices within the region for unmined lands.

a. Section I contains introductory information. The guideline document includes the normal husbandry practices that permittees must use for disease and pest control, application of fertilizers, application and incorporation of other soil amendments, and any other necessary soil vegetation management activities on surface-mined lands in Texas during the extended responsibility period. Husbandry practices not included in this document may be considered augmentative in nature and, if performed on land that is currently in the extended responsibility period, may restart that period. The decision whether a particular activity can be classified as a normal husbandry practice will depend both on the regulatory requirements of the Texas Coal Mining Regulations and the postmining land use. Texas discusses its regulatory requirements in section II of the document.

b. Section III describes the conventions for normal husbandry practices. Texas lists the following three conventions regarding normal husbandry practices for surface-mined lands in Texas:

1. Normal husbandry practices are region-specific and include activities performed by landowners managing lands not disturbed by mining activities.

2. Normal husbandry practices are those activities that can expected to continue as part of the postmining land use.

3. Discontinuance of the husbandry practices will not reduce the probability of revegetation success.

Texas also provides examples of the applicability of the conventions listed in items 1 and 3.

c. In section IV, Texas proposes normal husbandry practices for six vegetative community postmining land uses defined in the Texas program: grazingland, pastureland; cropland; forestry; fish and wildlife habitat; and undeveloped land. The normal husbandry practices listed for grazingland, pastureland, cropland, forestry, and fish and wildlife habitat are divided into three general categories: general management of soil and vegetation; addition of plant nutrients and other soil amendments; and pest management. Reference documents defining the normal husbandry practices for each category are listed. Texas submitted copies of these reference documents to support its proposed practices for disease and pest control, application of fertilizers, application and incorporation of other soil amendments, and other necessary soil vegetation management activities on surface-mined lands. Because the definition of undeveloped land excludes any type of management inputs during the extended responsibility period, Texas is only allowing limited erosion repair for this land use.

d. In section V, Texas provides guidelines for erosion repair, other damage repair, reseeding areas, overseeding, and restocking of woody species. Texas also included a provision for regrading and revegetation of areas

where temporary structures have been removed.

Texas may consider repair of erosion or other types of damage as a normal husbandry practice, provided that the damage is not caused by a lack of planning, design, or implementation of the mining and reclamation plan. The total acreage of repaired areas cannot exceed three contiguous acres or ten percent of the total land of the extended responsibility area. In cases of erosion, repairs may be considered non-augmentative if rill and gully damage was caused by precipitation exceeding a 10-year/24-hour event or damage occurred before the first two years of a 5-year extended responsibility period (areas with annual precipitation >26 inches) or four years of a 10-year extended responsibility period (areas with annual precipitation ≤26 inches). After the first two or four years, whichever is applicable, total acreage for erosion repair cannot exceed one contiguous acre or two percent of the total land of that extended responsibility area.

Texas will determine whether or not regrading and revegetation of areas where temporary structures such as sediment ponds, roads, and small diversions have been removed are non-augmentative on a case-by-case basis. Areas that may pose significant potential for reclamation problems will require a separate extended responsibility period.

Overseeding of winter cover crops and/or summer annuals, into existing vegetation, is considered a normal husbandry practice. Restocking of woody species is allowed, as long as the time and quantity of restocking is in compliance with Texas' regulations at 16 TAC 12.395(b)(3)(B).

Reference documents defining the normal husbandry practices relating to general management, addition of plant nutrients and other soil amendments, and pest management for erosion repair and reseeded areas are listed in this section. Texas submitted copies of these reference documents to support these practices.

e. In section VI, Texas lists those activities that are considered unacceptable husbandry practices. The activities include: reseeding of areas devoid of vegetation due to acid mine soils; irrigation; supplemental watering of herbaceous vegetation and supplemental watering of large woody stock later than two years after planting; all application and incorporation of alkaline amendments, except for non-excessive application; and excessive application of plant nutrients.

If any of the listed practices are performed, the extended responsibility period for the affected areas will restart. Texas does not consider practices required to address problems that arise from mining-related activities as normal husbandry practices. Texas will use information from field inspection reports and mine-soil chemical analysis data to evaluate unacceptable husbandry practices or augmentation.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on July 16, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** We will not hold the hearing if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, we may hold a public meeting, rather than a public hearing. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will also make a written summary of each meeting part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal

which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–13809 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 884

RIN 0701–AA59

Delivery of Personnel to United States Civilian Authorities for Trial

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is revising 32 CFR Part 884, Delivery of Personnel to United States Civilian Authorities for Trial of the Code of Federal Regulations to reflect current policies. Part 884 is the Air Force Instruction establishing procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It updates the process for delivery of personnel to civilian authorities for trial.

DATES: Written comments must be received by August 2, 1999.

ADDRESSES: Send written comments to: Lt. Col. Tom Jaster, AFLSA/JAJM, 112 Luke Avenue, Suite 343, Bolling Air Force Base, DC 20332–8000, 202–767–1539.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Tom Jaster, AFLSA/JAJM, 202–767–1539.

SUPPLEMENTARY INFORMATION: Part 884 implements Department of Defense (DoD) Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, December 27, 1988 and AFPD 51–10, Making Military Personnel, Employees, and Dependents Available to Civilian Authorities.

(Authority: 10 U.S.C. 814, 10 U.S.C. 8013; Sec. 721(a) Pub. L. 100–456, 102 Stat. 2001)

List of Subjects in 32 CFR Part 884

Courts, Government employees, Law enforcement, Military personnel.

For the reasons set forth in the preamble, the Department of the Air Force proposes to revise 32 CFR Part 884 as follows:

PART 884—DELIVERY OF PERSONNEL TO UNITED STATES CIVILIAN AUTHORITIES FOR TRIAL

Sec.

884.0 Purpose.
884.1 Authority.
884.2 Assigned responsibilities.
884.3 Placing member under restraint pending delivery.
884.4 Release on bail or recognizance.
884.5 Requests under the interstate agreement on Detainer's Act.
884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.
884.7 Requests by state and local authorities when the requested member is located in that state.
884.8 Request for delivery by state authorities when the member is located in a different state.
884.9 Requests for custody of members stationed outside the United States.
884.10 Returning members, employees, and family members from overseas.
884.11 Procedures for return of an Air Force member to the United States.
884.12 Delays in returning members to the United States.
884.13 Denials of a request for return of a member to the United States.
884.14 Compliance with court orders by civilian employees and family members.
884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.
884.16 Reporting requests for assistance and action.
884.17 Commander's instruction letter to member.
884.18 Civilian authority's acknowledgment of transfer of custody and agreement to notify member's commander.

Authority: 10 U.S.C. 814; 10 U.S.C. 8013; Sec. 721(a), Pub. L. 100–456, 102 Stat. 2001.

§ 884.01 Purpose.

This part establishes procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It implements 32 CFR part 146. This part does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals.

§ 884.1 Authority.

A general court-martial convening authority (GCMCA) may authorize delivery of a member of that command to Federal or state civil authorities. The GCMCA may delegate this authority to an installation or equivalent commander. See AFPD 51–10, Making Military Personnel, Employees, and Dependents Available to Civilian Authorities,[1] paragraphs 8 and 9, for sources of authority.

§ 884.2 Assigned responsibilities.

(a) The Under Secretary of Defense (USD), Personnel & Readiness (P&R), is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(e).

(b) The Air Force Judge Advocate General (TJAG) may approve requests that fall under § 884.9(e) or recommend denial of such requests. TJAG or a designee may approve or deny:

(1) Requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(f).

(2) Requests for delays of up to 90 days in completing action on requests for return of members to the United States for delivery to civilian authorities.

(c) The Air Force Legal Services Agency's Military Justice Division (HQ AFLSA/JAJM), 172 Luke Avenue, Suite 343, Bolling AFB, DC 20332–5113, processes requests for return of members to the United States for delivery to civilian authorities and notifies requesting authorities of decisions on requests. HQ AFLSA/JAJM completes action on requests within 30 days after receipt of the request, unless a delay is granted; they send all reports and notifications to USD/P&R and to the DoD General Counsel (DoD/GC), as required by this part; and they handle all communications with requesters.

[1] Air Force publications may be obtained through NTIS, 5285 Port Royal Road, Springfield, VA 22161, if not available online at http://afpubs.hq.af.mil.

§ 884.3 Placing member under restraint pending delivery.

Continue restraint only as long as is reasonably necessary to deliver the member to civilian authorities. See AFPD 51–10, paragraph 5. To determine whether probable cause exists and whether a reasonable belief exists that restraint is necessary, the commander should refer to the Manual for Courts-Martial (MCM), 1984, specifically, Rules for Courts-Martial (RCM) 305(h)(2)(B), and the discussion following it. The requirement for the formal review of restraint found in MCM 1984, RCM 305, and AFI 51–201, Military Justice Guide,[2] does not apply.

§ 884.4 Release on bail or recognizance.

(a) Before delivering an Air Force member to a civilian authority, the commander or designee directs the member in writing to report to a designated Air Force unit, activity, or recruiting office for further instructions in the event the civilian authority releases the member (see § 884.17). The commander designates the member's unit, if the civilian authority is in the immediate vicinity of the member's base. The commander advises the designated Air Force unit, activity, or recruiting office of the situation. Once the member has been released and has reported to the designated authority, it immediately sends the member's name, rank, Social Security number (SSN), organization, and other pertinent information to the member's commander, who then provides further instructions.

(b) The member's commander notifies the military personnel flight (MPF) of the situation. In turn, the MPF provides an information copy to the Air Force Personnel Center (AFPC) assignment office responsible for the member's Air Force specialty code (AFSC), as listed in AFMAN 36–2105, Officer Classification,[3] or AFMAN 36–2108, Airman Classification.[3] If contact cannot be made with the member's commander, the Air Force unit, activity, or recruiting office previously designated by the commander obtains instructions from HQ AFPC/DPMARS or DPMRPP2.

§ 884.5 Requests under the interstate agreement on Detainer's Act.

When either the prisoner or state authorities make a request under the Detainer's Act, follow the procedures in Title 18 U.S.C. App. Section 1, *et seq.* The Act applies only to a person who has entered upon a term of imprisonment in a penal or correctional institution and is, therefore, inapplicable to members in pretrial confinement.

§ 884.6 Request by Federal authorities for military personnel stationed within the United States and its possessions.

(a) When Federal authorities request the delivery of service members, the Air Force will normally deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, rule 4, or when a properly identified Federal officer represents that such a warrant has been issued.

(b) A U.S. marshal, deputy marshal, or other officer authorized by law will call for and take into custody persons desired by Federal authorities for trial. The officer taking custody must execute a statement in substantially the form set out in § 884.18.

§ 884.7 Requests by state and local authorities when the requested member is located in that state.

(a) The Air Force normally will turn over to the civilian authorities of the state, upon their request, Air Force members charged with an offense against state or local law. Each request by such civilian authorities for the surrender of a member of the Air Force should normally be accompanied by a copy of an indictment, information, or other document used in the state to prefer charges, or a warrant that reflects the charges and is issued by a court of competent jurisdiction.

(b) Before making delivery to civilian authorities of a state, the commander having authority to deliver will obtain a written agreement, substantially in the form of § 884.18, from a duly authorized officer of the state.

(c) Where the state authority cannot agree to one or more of the conditions set out in the form, the commander may authorize modification. The requirements of the agreement are substantially met when the state authority informs the accused's commander of the accused's prospective release for return to military authorities and when the state furnishes the accused transportation back to his or her station, together with necessary funds to cover incidental expenses en route. The accused's commander provides copies of the statement or agreement of this section and in § 884.6(b) to the civilian authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (see § 884.4). The accused's commander immediately notifies the civilian authority if the member has been discharged from the Air Force.

§ 884.8 Request for delivery by state authorities when the member is located in a different state.

(a) This part applies to members who are located in the United States. With respect to the extradition process, Air Force personnel have the same status as persons not in the Armed Forces. Accordingly, if a state other than the state in which the member is located requests the delivery of a military member, in the absence of a waiver of extradition process by the member concerned, that state must use its normal extradition procedures to make arrangements to take the individual into custody in the state where he or she is located.

(b) The Air Force will not transfer a military member from a base within one state to a base within another state for the purpose of making the member amenable to prosecution by civilian authorities.

§ 884.9 Request for custody of members stationed Outside the United States.

(a) Authority. This section implements Pub. L. 100–456, section 721(a), and DoD Directive 5525.9, December 27, 1988.

(b) The Air Force expects members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force members who persist in noncompliance are subject to adverse administrative action, including separation for cause under AFI 36–3206, Administrative Discharge Procedures, and AFI 36–3208, Administrative Separation of Airmen.

(c) Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

(d) Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JAG, HQ AFLSA/JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

[2] See footnote 1 in § 884.1.

[3] See footnote 1 in § 884.1.

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(e) When Federal, state, or local authorities request delivery of an Air Force member stationed outside the United States who is convicted of or charged with a felony or other serious offense or who is sought by such authorities in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another person, the member's commander will normally expeditiously return the member to the United States for delivery to the requesting authorities.

(1) A serious offense is defined as one punishable by confinement for more than 1 year under the laws of the requesting jurisdiction.

(2) Delivery of the member is not required if the controversy can be resolved without returning the member to the United States or if the request for delivery of the member is denied in accordance with this instruction.

(f) Ordinarily, do not return an Air Force member stationed outside the United States to the United States for delivery to civilian authorities if the offense is not specified in paragraph (e) of this section. TJAG may direct return when deemed appropriate under the facts and circumstances of the particular case.

(g) Before taking action under this section, give the member the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced or otherwise to show legitimate cause for noncompliance.[4]

§ 884.10 Returning members, employees, and family members from overseas.

The Air Force expects persons overseas wanted by Federal or state authorities to make themselves available to those authorities for disposition. If they do not, DoD Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, 10 U.S.C 814, and Pub. L. 100–456 721(a), authorize and require commanders to respond promptly to requests from civilian authorities for assistance in returning members, civilian employees, and family members from overseas.

§ 884.11 Procedures for return of an Air Force member to the United States.

(a) Include the following information in a request for return of an Air Force member to the United States for delivery to civilian authorities:

(1) Fully identify the member sought by providing the member's name, grade, SSN, and unit of assignment, to the extent the information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, specify the maximum punishment under the laws of the requesting jurisdiction. Specify whether the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or the lawful custody of another.

(3) Include copies of all relevant requests for assistance, indictments, information, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or capias (writs authorizing arrests), or other process directing or authorizing the requesting authorities to take the member into custody. Also, include reports of investigation and other materials concerning the background of the case if reasonably available.

(4) Indicate whether the requesting authorities will secure the member's lawful delivery or extradition from the port of entry to the requesting jurisdiction, whether they will do so at their own expense, and whether they will notify HQ AFLSA/JAJM of the member's release from custody and of the ultimate disposition of the matter.

(5) Any U.S. attorney or assistant U.S. attorney, governor or other duly authorized officer of a requesting state or local jurisdiction, or the judge, magistrate, or clerk of a court of competent jurisdiction must sign the request.

(b) Civilian authorities making requests for return of members to the United States for delivery to them should direct their request to HQ AFLSA/JAJM. If another Air Force agency or official receives the request, immediately send it to HQ AFLSA/JAJM.

(c) Upon receipt of a request, HQ AFLSA/JAJM promptly notifies the member's commander, who consults with the servicing staff judge advocate. The commander provides a report of relevant facts and circumstances and recommended disposition of the request through command channels to HQ AFLSA/JAJM. If the commander recommends denial of the request or a delay in processing or approving it, the commander provides the information specified in § 884.12(a)(1) through (a)(4) or § 884.13(a)(1) through (a)(4).

(d) After proper authority has approved a request for return of a member to the United States for delivery to civilian authorities, HQ AFLSA/JAJM notifies AFPC of the decision to return the member to the United States. AFPC issues permanent change of station (PCS) orders, assigning the member to an installation as close to the requesting jurisdiction as possible, considering the needs of the Air Force for personnel in the member's rank and AFSC.

(e) HQ AFLSA/JAJM notifies requesting authorities of the member's new assignment, port of entry into the United States, and estimated time of arrival. Except during unusual circumstances, HQ AFLSA/JAJM notifies requesting authorities at least 10 days before the member's return.

§ 884.12 Delays in returning members to the United States.

(a) On a request to return a member to the United States for delivery to civilian authorities, TJAG may grant a delay of not more than 90 days in completing action when one or more of the following are present:

(1) Efforts are in progress to resolve the controversy to the satisfaction of the requesting authorities without the member's return to the United States.

(2) Additional time is required to permit the member to provide satisfactory evidence of legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) Additional time is required to permit the commander to determine the specific effect of the loss of the member on command mission and readiness or to determine pertinent facts and circumstances relating to any international agreement, foreign judicial proceeding, DoD, Air Force, or other military department investigation or court-martial affecting the member.

(4) Other unusual facts or circumstances warrant delay.

(b) AFLSA/JAJM promptly reports all delays in cases falling under AFPD 51–10,[5] paragraph 3, through SAF/GC and SAF/MI to USD/P&R and to DoD/GC

(c) Delays in excess of 90 days are not authorized in cases falling under AFPD 51–10, paragraph 3, unless approved by USD/P&R.

§ 884.13 Denials of a request for return of a member to the United States.

(a) A request for return of a member to the United States for delivery to civilian authorities may be denied when:

(1) The member's return would have an adverse impact on operational readiness or mission requirements.

(2) An international agreement precludes the member's return.

(3) The member is the subject of foreign judicial proceedings, court-martial, or a DoD, Air Force, or other military department investigation.

[4] See footnote in § 884.1

(4) The member showed satisfactory evidence of legal efforts to resist the request or other legitimate cause for noncompliance or when other unusual facts or circumstances warrant a denial.

(b) Commanders promptly send to HQ AFLSA/JAJM information supporting a determination that denial may be appropriate. In cases warranting denial, TJAG promptly sends a recommendation and supporting documentation, through SAF/GC and SAF/MI, to USD/P&R for decision.

(c) The fact that a recommendation for denial is pending does not by itself authorize noncompliance or a delay in compliance with any provision of this section, but TJAG may consider a pending request for denial in determining whether to grant a delay.

§ 884.14 Compliance with court orders by civilian employees and family members.

(a) The Air Force expects civilian employees and family members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force civilian employees who persist in noncompliance are subject to adverse administrative action, including separation for cause as provided in AFI 36–704, Discipline and Adverse Actions (PA).[6]

(b) Air Force officials ensure that civilian personnel and family members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

§ 884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.

(a) The procedures of this section apply to civilian employees, including nonappropriated fund instrumentality (NAFI) employees, who are assigned outside the United States, and to command-sponsored family members residing outside the United States.

(b) This section applies only when Air Force authorities receive a request for assistance from Federal, state, or local authorities involving noncompliance with a court order and when noncompliance is the subject of any of the following: an arrest warrant; indictment, information, or other document used in the jurisdiction to prefer charges; or a contempt citation involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the lawful custody of a parent or third party.

[6] See footnote 1 in § 884.1.

(c) To the maximum extent possible, consistent with provisions of international agreements and foreign court orders, DoD and military department investigations, and judicial proceedings, commanders comply with requests for assistance. After exhausting all reasonable efforts to resolve the matter without the employee or family member returning to the United States, the commander shall strongly encourage the individual to comply. The commander shall consider imposing disciplinary action (including removal) against the employee or withdrawing command sponsorship of the family member, as appropriate, for failure to comply.

§ 884.16 Reporting requests for assistance and action.

The commander or designee promptly reports each request for assistance and intended action by message. Send reports to HQ AFLSA/JAJM, which submits required reports, through channels, to USD/P&R. HQ AFLSA/JAJM conducts all communications with requesters.

§ 884.17 Commander's instruction letter to member.

Subject: Instructions in Case of Release on Bail or Personal Recognizance

1. You are being delivered to the custody of civilian authorities, pursuant to the provisions of AFI 51–1001. This action does not constitute a discharge from the Air Force. In the event that you are released from civilian custody on bail or on your own recognizance, report immediately in person or by telephone to the (Air Force unit, activity, or recruiting office) for further instructions. Advise the commander of your name, rank, SSN, organization, the circumstances of your release from custody, and the contents of this letter.

2. Certain restrictions may be placed upon you by civilian authorities in connection with your temporary release from custody. Be certain to include in your report what these limitations are.

3. AFI 51–1001, paragraph 4 provides that the authority to whom you report will notify your commander. If that is not possible, request the nearest Air Force base military personnel flight to contact HQ AFPC/DPMARS or DPMRPP2 by the fastest means available. Provide your name, rank, SSN, organization, and the circumstances of your release; further instructions will then be given to you.

(SIGNATURE ELEMENT)

§ 884.18 Civilian Authority's acknowledgment of Transfer of Custody and Agreement to Notify Member's Commander.

1. A warrant for the arrest of (name, rank, and SSN), hereinafter referred to as the "member," and who is charged with (offenses) has been issued by (civilian authority) and in execution, thereof, I accept his or her custody.

2. In consideration of the delivery of member at (location) to me for trial upon the above charge, pursuant to the authority vested in me as (position), I hereby agree to the following:

a. The commander (name, rank, unit, telephone), will be advised of the disposition of the charges.

b. The member will be immediately returned to the custody of the military upon completion of the trial, if acquitted; or upon satisfying the sentence imposed, if convicted; or upon other disposition of the case.

c. The member's return will be to (location) or to such other place as may be designated by the Department of the Air Force.

3. The member's return will not be required if the member's commander has indicated that return is not appropriate. Instead of actual delivery, transportation for the member may be arranged so long as it is without expense to the United States or to the member.

4. Pending disposition of the charges, the member will remain in the custody of (name of agency and location), unless released on bail or the member's own recognizance, in which event (Air Force unit, activity, or recruiting office nearest place of trial) will be notified.

(SIGNATURE ELEMENT)

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–12738 Filed 5–28–99; 8:45 am]

BILLING CODE 5001–05–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–9–1–5214b; FRL–6350–2]

Approval and Promulgation of Implementation Plans; State of New Mexico and County of Bernalillo, New Mexico; State Boards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions for Board composition and conflict of interest disclosure requirements submitted both by the State of New Mexico and by Albuquerque/Bernalillo County, NM. The SIP revisions were submitted by the County and the State to satisfy the Federal mandate, found in section 128 of the Clean Air Act (Act), and in response to a SIP call letter to the Governor of New Mexico dated July 19, 1989, requiring a cure to identified SIP deficiencies concerning State Boards.

The revisions were submitted by the Governor to EPA on April 20 and July

16, 1990, for the State portion, and on November 16, 1990, for the Albuquerque/Bernalillo County portion. Supplemental information was submitted for Albuquerque/Bernalillo County on December 18, 1990, October 21, 1991, and November 22, 1991. These revisions correct deficiencies for the New Mexico Environmental Improvement Board and the Albuquerque/Bernalillo County Air Quality Board in order to comply with section 128 of the Act. The EPA approval of these New Mexico SIP revisions would make the revisions federally enforceable.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 1, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Reference Docket Number: File Code SIP 1–3–10; NM–90–05. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two work.ng days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Frances Drive, Room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, P.E., of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–7596.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 26, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–13380 Filed 5–28–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180

[WO–310–1310–00–2I–IP]

RIN 1004–AC94

Onshore Oil and Gas Leasing and Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period on a Notice of Proposed Rule, published in the **Federal Register** on December 3, 1998 (63 FR 66840). On March 26, 1999, BLM extended the comment period for 60 days (64 FR 14666). The proposed rule would revise BLM's oil and gas leasing and operations regulations. The rule uses performance standards in certain instances in lieu of the current prescriptive requirements. It would also cite industry standards and incorporate them by reference rather than repeat those standards in the rule itself. Also, BLM's onshore orders and national notices to lessees would be incorporated into the regulations to eliminate overlap with existing regulations. The rule would increase certain minimum bond amounts and would revise and replace BLM's current unitization regulations with a more flexible unit agreement process. Finally, the proposed rule would eliminate redundancies, clarify procedures and regulatory requirements, and streamline processes. In response to public requests for additional time, BLM extends the comment period 45 days from the comment period closing date of June 4, 1999, to the extended comment period's closing date of July 19, 1999.

DATES: *Comments.* Send your comments to BLM on or before July 19, 1999. BLM will consider comments received or postmarked on or before this date in preparing the final rule.

ADDRESSES: Please send your comments to the Bureau of Land Management Administrative Record, Room 401 LS, 1849 C Street, NW., Washington, DC 20240, or hand deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington DC. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address."

FOR FURTHER INFORMATION CONTACT: John Duletsky of BLM's Fluid Minerals Group at (202) 452–0337 or Ian J. Senio of BLM's Regulatory Affairs Group at (202) 452–5049. If you require a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing Address

You can view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You can also comment via the Internet at: WOComment@wo.blm.gov. Please include "Attention: AC94" and your name and return address in your Internet message. If you do not receive a confirmation from our system that we have received your Internet message, contact us directly at (202) 452–5030.

Written Comments

Written comments on the proposed rule are most helpful if you:

(A) Are specific;

(B) Confine comments to issues pertinent to the proposed rule;

(C) Explain the reason for any recommended change; and

(D) Reference the specific section or paragraph of the proposal you are addressing.

We welcome suggested regulatory language.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

You can review comments, including names, street addresses, and other contact information of respondents at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. If you are an individual respondent you may request confidentiality. If you request that BLM consider withholding your name, street address, and other

contact information (such as Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: May 26, 1999.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–13850 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 050399A]

RIN 0648–AL27

Fisheries of the Northeastern United States; Amendment 12 to the Northeast Multispecies Fishery Management Plan; Measures to Address the Sustainable Fisheries Act Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 12 to the Northeast Multispecies Fishery Management Plan (Amendment 12) for Secretarial review and is requesting comments from the public. Amendment 12 proposes to address the management of silver hake (whiting), red hake, offshore hake, and ocean pout through management measures, including a moratorium on commercial permits to fish for these species, Cultivator Shoal Whiting Fishery restrictions, differential whiting possession limits based on the mesh size with which a vessel chooses to fish in areas outside of the Cultivator Shoal Whiting Fishery, limitations on transfers at sea, and a year 4 default measure to ensure that overfishing is ended. The intended effect of this action is to reduce fishing mortality rates on whiting and red hake to eliminate overfishing and rebuild the biomass in order to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act of October 1996 (SFA).

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Comments on this amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 12."

Copies of Amendment 12, its regulatory impact review, initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Amendment 12 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Management Specialist, 978–281–9288.

SUPPLEMENTARY INFORMATION: In September 1997, NMFS' report to Congress on the "Status of Fisheries of the United States" concluded that red hake and the southern stock of whiting are overfished and the northern stock of whiting is approaching an overfished condition. In response, the Council began the development of the Whiting Amendment (now Amendment 12) to specifically address overfishing.

Amendment 12 proposes to do the following: (1) Establish new overfishing definitions for two stocks of silver hake, two stocks of red hake, and offshore hake (*Merluccius albidus*); (2) specify optimum yield (OY) for silver hake, offshore hake, and red hake; (3) identify whiting, red hake, and offshore hake as small-mesh multispecies; (4) identify geographic areas for potential use in management of different stocks of whiting; (5) implement a moratorium on commercial permits to fish for small-mesh multispecies; (6) implement an open access permit category to allow an incidental catch for 100 lb (45.36 kg) combined of small-mesh multispecies (whiting, red hake, offshore hake), and unlimited amounts of ocean pout; (7) implement a 30,000 lb (13,608 kg) whiting/offshore hake possession limit for vessels fishing in the Cultivator Shoal Whiting Fishery (the current 3–inch (76 mm) minimum mesh requirement will remain the same); (8) initiate management measures for all areas excluding the Cultivator Shoal Whiting Fishery based on mesh size/possession limit categories (vessels electing to use mesh smaller than 2.5–inches (64 mm) are allowed to possess/land combined whiting and offshore hake up to 3,500 lb (1,588 kg); vessels electing to use a minimum 2.5–inch (64 mm) mesh are allowed to possess/land combined whiting and offshore hake up to 7,500 lb (3402 kg); and vessels electing to use a minimum 3–inch (76 mm) mesh are allowed to possess/land combined whiting and offshore hake up to 35,000 lb (13,608 kg); (9) add measures that may be implemented by a framework adjustment, including essential fish habitat (EFH) designation measures (these new framework measures would include a whiting quota for vessels fishing in the northern management area with mesh smaller than the minimum mesh in combination with a separator trawl/grate; modifications or adjustments to whiting grate/mesh configuration requirements; adjustments to whiting stock boundaries for management purposes; modifications to requirements for fisheries exempt from the minimum mesh requirements for small-mesh multispecies; and seasonal adjustments, declarations, and participating requirements for the Cultivator Shoal Whiting fishery); (10) implement codend specifications and restrictions on net strengtheners (a net strengthener may not be used to fish for small-mesh multispecies with either a minimum 2.5–inch (64 mm) or 3–inch (76 mm) mesh, but a vessel that chooses to fish for small-mesh multispecies with a mesh less than 2.5–inches (64 mm) may use a net strengthener, provided the vessel complies with the net strengthener provisions specified in other small-mesh fisheries); (11) restrict the transfer at sea of small-mesh multispecies; (12) provide a default measure to be applied on a stock specific basis, beginning in year 4 of the amendment if other measures have not been implemented to meet the fishing mortality objectives (this default measure would establish a Regulated Mesh Area with a 3–inch (76 mm) minimum mesh requirement for all fishing activities); (13) designate EFH for offshore hake; and (14) establish a Whiting Monitoring Committee (WMC). Ocean pout will remain an open access multispecies; none of the management measures proposed in this amendment address fishing for ocean pout.

The most recent estimates indicate that fishing mortality in whiting is approximately 1.79 for the northern

stock and 1.50 for the southern stock. The goal of the Amendment 12, with respect to whiting, is to reduce fishing mortality to 0.36 and 0.34 for the northern and southern stocks, respectively, based on existing overfishing definitions, translating into a 63–percent reduction of exploitation on both stocks of whiting. While there would be no proposed possession limits for red hake, it is expected that reductions of fishing mortality on whiting and offshore hake will have a corresponding reduction in fishing mortality on red hake. The establishment of a WMC has been proposed to monitor annually the progress of the management program and to recommend adjustments, as necessary, to ensure that Amendment 12 meets its objectives.

This amendment is intended to bring the whiting fisheries of the Northeast Multispecies FMP into compliance with the Magnuson-Stevens Act, as amended by the SFA. The provisions in section 108(a) of the SFA require that fishery management councils either add to or revise the required provisions of any fishery management plan prepared by a council or the Secretary of Commerce to include the following provisions: (1) Bycatch reports (standardize reporting methods to assess the type and amount of bycatch in a fishery); (2) bycatch measures (develop management measures to minimize bycatch and mortality of bycatch); (3) commercial, recreational, and charter fishing sectors (specify data for each sector); (4) EFH (describe and identify EFH, minimize to the extent practicable adverse impacts from fishing, and identify other actions to encourage the conservation of such habitat); (5) fishing communities (assess in a fishery impact statement the likely effects of measures on fishing communities); and (6) overfishing definitions (specify objective and measurable criteria for identifying whether a fishery is overfished, and include measures to prevent overfishing). Public comment is invited on the adequacy of Amendment 12 in meeting the requirements of section 108(a) of the SFA.

Measure Considered for Disapproval

While Amendment 12 includes a limited access permit program to control effort on small-mesh multispecies, NMFS is concerned that the provision may be inconsistent with national standard 4 and section 304(e) of the Magnuson-Stevens Act. Vessels that participated in either the Gulf of Maine whiting raised footrope or separator trawl experimental fisheries would qualify for the limited access program with 1,000 lb (453.6 kg) of landings over 3 years, whereas other vessels would qualify with 50,000 lb (22,680 kg) of landings over 18 years. Vessels would be subject to the same restrictions regardless of how they qualified for the permit. Further, vessels may have been excluded from participation in experimental fisheries because NMFS imposed participation restrictions, and fishermen may have been reluctant to participate in the experimental fisheries because of the restrictive participation requirements. This portion of the proposed limited access program may be inconsistent with national standard 4 because different sectors of the industry could qualify for access to the fishery with different landings requirements. These issues raise concerns about fairness and equity that are the subject of national standard 4.

The limited access program also proposes that 5 years from the implementation date of this amendment (at the beginning of year 6), unless otherwise extended, vessels would be eligible for limited access small-mesh multispecies permits without having to meet the landings criteria, provided the vessels possessed a valid limited access multispecies permit on the date the final rule for this amendment is published, as well as 5 years from the effective date for this rule. There has been no analysis of the potential effects of increased effort on the rebuilding schedule. Amendment 12 proposes to end overfishing in year 4 and to rebuild the stocks of whiting and red hake within 10 years. It is not certain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing; rebuilding goals may be compromised. This measure may be inconsistent with section 304(e) of the Magnuson-Stevens Act, which specifies that overfished fisheries must be rebuilt as soon as possible and within a period not to exceed 10 years, unless limited exceptions apply.

Overfishing Definition

Fishing mortality and exploitation reduction targets and the management measures proposed in Amendment 12 to achieve them would be based on the existing overfishing definitions, rather than on the overfishing definitions proposed in the amendment. Future evaluations of the status of the fishery would be based on the proposed definitions, should Amendment 12 be approved.

This amendment would introduce an overfishing definition for offshore hake and would revise the overfishing definitions for northern and southern stocks of whiting and red hake to bring them into accord with the new national standard guidelines of the Magnuson-Stevens Act, as amended by the SFA. Under the revised guidelines, overfishing definitions must be composed of two reference points, one for fishing mortality rate and one for stock biomass. "Overfishing" occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce maximum sustainable yield on a continuing basis. "Overfished" describes a stock or stock complex with a sufficiently low biomass to require a change in management practices to achieve the appropriate level and rate of stock rebuilding.

Essential Fish Habitat

The Council's omnibus EFH amendment, which included Amendment 11 to the Multispecies FMP, was approved in its entirety on March 3, 1999, and contained EFH designations for whiting and red hake. Offshore hake would be a newly managed species under Amendment 12; therefore, Amendment 12 includes an EFH designation for offshore hake. Under the SFA, these designations are part of the Council's on-going work to identify and describe EFH, describe non-fishing and fishing threats, and suggest conservation and enhancement measures.

A proposed rule that would implement Amendment 12 may be published in the **Federal Register** for public comment following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 12 to be considered in the approval/disapproval decision on Amendment 12. All comments received by August 2, 1999, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on Amendment 12.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 26, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–13828 Filed 5–28–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 104
Tuesday, June 1, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity To Comment on the Applicants for the Hastings (NE) and Missouri Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the geographic areas assigned to Hastings Grain Inspection, Inc. (Hastings) and the Missouri Department of Agriculture (Missouri).

DATES: Comments must be postmarked, or sent by telecopier (FAX) by June 30, 1999.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1999, **Federal Register** (64 FR 15724), GIPSA asked persons interested in providing official services in the Hastings and Missouri areas to submit an application for designation. There were two applicants for the Hastings area: Hastings and Kansas Grain Inspection Service, Inc. (Kansas). Hastings applied for designation to provide official services in the entire area currently assigned to them. Kansas, a designated official grain inspection agency operating in Kansas, Colorado, and Wyoming, applied for designation to provide official services in the western portion of the Hastings area: Bounded on the North by the Nebraska-South Dakota State line east to the mountain-central time zone line;

Bounded on the East by the mountain-central time zone line south to the Nebraska-Kansas State line;

Bounded on the South by the Nebraska-Kansas State line west to the Nebraska-Colorado State line; and

Bounded on the West by the Nebraska-Colorado and Nebraska-Wyoming State lines north to the Nebraska-South Dakota State line.

There were three applicants for the Missouri area: Missouri, Kansas, and North Dakota Grain Inspection Services, Inc. (North Dakota). Missouri applied for designation to provide official services in the entire area currently assigned to them. Kansas applied for designation to provide official services in the western portion of the Missouri area: Bounded on the North by the Missouri-Iowa State line east to Highway 65;

Bounded on the East by Highway 65 south to the Missouri-Arkansas State line;

Bounded on the South by the Missouri-Arkansas State line west to the Missouri-Kansas State line; and

Bounded on the West by the Missouri-Kansas State line north to the Missouri-Iowa State line.

North Dakota, a designated official grain inspection agency operating in Illinois as Illinois Official Grain Inspection, applied for the eastern portion of the Missouri area: Bounded on the North by the Missouri-Iowa State line from Highway 65 east to the Missouri-Illinois State line;

Bounded on the East by the Missouri-Illinois State line south to the Missouri-Kentucky State line, the Missouri-Kentucky State line south to the Missouri-Tennessee State line, the Missouri-Tennessee State line south to the Missouri-Arkansas State line;

Bounded on the South by the Missouri-Arkansas State line west to Highway 65; and

Bounded on the West by Highway 65 north to the Missouri-Iowa State line.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 17, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–13587 Filed 5–28–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designations for the Georgia, Schneider (IN), Central Iowa (IA), Montana, Mid-Iowa (IA), and Oregon Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Georgia Department of Agriculture (Georgia);
Schneider Inspection Service, Inc. (Schneider);
Central Iowa Grain Inspection Service, Inc. (Central Iowa);
Montana Department of Agriculture (Montana);
Mid-Iowa Grain Inspection, Inc. (Mid-Iowa); and
Oregon Department of Agriculture (Oregon).

EFFECTIVE DATES: August 1, 1999, for Georgia and Schneider, September 1, 1999, for Central Iowa and Montana,

and October 19, 1999, for Mid-Iowa and Oregon.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT:

Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Department Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 4, 1999, **Federal Register** (64 FR 73), GIPSA asked persons interested in providing official services in the geographic areas assigned to Georgia, Schneider, Central Iowa, Montana, Mid-Iowa, and Oregon to submit an application for designation. Applications were due by February 2, 1999. Georgia, Schneider, Central Iowa, Montana, Mid-Iowa, and Oregon, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Georgia, Schneider, Central Iowa, Montana, Mid-Iowa, and Oregon were the only applicants, GIPSA did not ask for comments on them.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act and, according to section 7(f)(1)(B), determined that Georgia, Schneider, Central Iowa, Montana, Mid-Iowa, and Oregon are able to provide official services in the geographic areas for which they applied.

The following organizations are designated to provide official services in the geographic areas specified in January 4, 1999, **Federal Register**.

Official agency	Designation start	Designation end	Telephone
Georgia	08/01/1999	06/30/2002	912–386–3130
Schneider	08/01/1999	06/30/2002	219–992–2306
Central Iowa	09/01/1999	06/30/2002	515–266–1101
Montana	09/01/1999	06/30/2002	406–452–9561
Mid-Iowa	10/01/1999	06/30/2002	319–363–0239
Oregon	10/01/1999	06/30/2002	541–276–0939

Interested persons may obtain official services by calling the telephone numbers listed above.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 17, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–13588 Filed 5–28–99; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Vegetable Survey Program.

DATES: Comments on this notice must be received by August 5, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Vegetable Survey Program.

OMB Number: 0535–0037.

Expiration Date of Approval: December 31, 1999.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production. The Vegetable Survey Program obtains basic agricultural statistics for fresh market and processing vegetables in major producing States. The fresh market estimating program consists of 25 selected crops and the processing program consists of 10 principal crops. Vegetable statistics are used by the U.S. Department of Agriculture to help administer programs and by growers, processors, and marketers in making production and marketing decisions. These data are collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to avoid strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 18,000.

Estimated Total Annual Burden on Respondents: 2,700 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (3) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room

4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC, April 22, 1999.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 99–13714 Filed 5–28–99; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year Review of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC case No.	ITC case No.	Country	Product
A–428–802	A–419	Germany	Industrial Belts Except Synchronous & V Belts.
A–475–802	A–413	Italy	Synchronous and V-Belts.
A–588–807	A–414	Japan	Industrial Belts.
A–559–802	A–415	Singapore	V-Belts.
A–427–009	A–96	France	Industrial Nitrocellulose.
A–351–804	A–439	Brazil	Industrial Nitrocellulose.
A–570–802	A–441	China, PR	Industrial Nitrocellulose.
A–428–803	A–444	Germany	Industrial Nitrocellulose.
A–588–812	A–440	Japan	Industrial Nitrocellulose.
A–580–805	A–442	Korea (South)	Industrial Nitrocellulose.
A–412–803	A–443	United Kingdom	Industrial Nitrocellulose.
A–479–801	A–445	Yugoslavia	Industrial Nitrocellulose.
A–122–804	A–422	Canada	Steel Rail.
C–122–805	C–297	Canada	Steel Rail.
A–588–811	A–432	Japan	Drafting Machines.
A–588–809	A–426	Japan	Small Business Telephone Systems.
A–583–806	A–428	Taiwan	Small Business Telephone Systems.
A–580–803	A–427	Korea (South)	Small Business Telephone Systems.
A–588–810	A–429	Japan	Mechanical Transfer Presses.
A–588–813	A–455	Japan	Multiangle Laser Light Scattering Instruments.
A–588–816	A–462	Japan	Benzyl Paraben.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review.

Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13838 Filed 5–28–99; 8:45 am].

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone, (202) 482–4929 or (202) 482–4136, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Amendment to Final Results

In accordance with section 751(a) of the Act, on May 18, 1999, the Department published the final results of the 1996–1997 eleventh administrative review on porcelain-on-steel cookware from Mexico, in which we determined that sales of porcelain-on-steel cookware from Mexico were made at less than normal value (64 FR 26934). On May 17, 1999, we received allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from the petitioner Columbian Home Products, LLC that the Department made two ministerial errors in its final results. We did not receive ministerial error allegations from Cinsa, S.A. de C.V. (Cinsa) or Esmaltaciones de Norte America, S.A. de C.V. (ENASA). However, on May 20, 1999, Cinsa and ENASA alleged that the petitioner's ministerial error allegations exceeded the limited scope of the corrections authorized by the Department's regulations. Respondents also claim that the Department is barred from making the suggested corrections on the grounds that an appeal for review by a NAFTA panel has now been docketed with respect to this case. We disagree with respondents. The definition of a ministerial error provides not only for correction of errors in arithmetic but also for "any other similar type of unintentional error which the Secretary considers ministerial." 19 CFR 351.224(f). Furthermore, the Department does not lose jurisdiction for the purpose of correcting clerical errors with the filing of a Request for Panel Review.

After analyzing petitioner's submission, we have determined, in accordance with 19 CFR 351.224, that two ministerial errors were made in our final margin calculations for Cinsa and ENASA. Specifically, we failed to state our final determination of duty absorption, including the percentage of U.S. sales on which duty absorption occurred. Because the Department did not intend to avoid finalizing its statutorily-required determination with respect to duty absorption, failure to state our final determination in the **Federal Register** constitutes a

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

ministerial error within the meaning of the Department's regulations. We also inadvertently failed to deduct inventory carrying costs incurred in the United States from the total selling expenses used in the CEP profit calculation. For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* the Memorandum to Louis Apple from the Team, dated May 21, 1999.

Duty Absorption

On February 18, 1998, petitioner requested that the Department determine whether antidumping duties had been absorbed by Cinsa and ENASA during the period of review (POR), pursuant to section 751(a)(4) of the Act. Section 751(a)(4) provides that the Department, if requested, will determine during an administrative review initiated two years or four years after publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 351.213(j)(2) of the Department's regulations provides that, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, the Department will make a duty absorption determination upon request in administrative reviews initiated in 1996 and 1998. *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27394 (May 19, 1997). This approach ensures that interested parties will have the opportunity to request a duty absorption determination prior to sunset reviews for entries for which the second and fourth years following an order have already passed. Because the order on porcelain-on-steel cookware from Mexico has been in effect since 1986, this is a transition order within the meaning of section 751(c)(6)(C) of the Act. Thus, as there has been a request for an absorption determination in this review (initiated in 1998), we are making a duty-absorption determination.

The statute provides for a determination on duty absorption with respect to subject merchandise that is sold in the United States through an affiliated importer. In this case, both Cinsa and ENASA made all of their sales of subject merchandise to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act. With respect to Cinsa, we have determined that there is a dumping margin on 68.03 percent of its U.S. sales during the POR. For ENASA, we have determined that there is a dumping margin on 98.52 percent of its U.S. sales during the POR. In addition, for Cinsa's and ENASA's sales of subject merchandise, we cannot conclude from the record that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. Under these circumstances, therefore, we find that antidumping duties have been absorbed by Cinsa on 68.03 percent of its U.S. sales of subject merchandise and by ENASA on 98.52 percent of its U.S. sales of subject merchandise.

CEP Profit Calculation

We also failed to deduct inventory carrying costs incurred in the United States from the total selling expenses used in the calculation of CEP profit. The Department's policy is to exclude all imputed expenses (*i.e.*, credit expenses and inventory carrying costs) from the calculation of total actual profit for CEP sales of subject merchandise and sales of the foreign like product. *See Policy Bulletin '97.1: Calculation of Profit for Constructed Export Price Transactions.*

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the final results of the 1996–1997 antidumping duty administrative review on porcelain-on-steel cookware from Mexico.

The revised weighted-average dumping margins are as follows:

Manufacturer/ exporter	Original final margin percentage	Revised final margin percentage
Cinsa	25.34	25.42
ENASA	65.23	65.28

This amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.210(c).

Dated: May 25, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–13847 Filed 5–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 1999 through March 31, 1999. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTAL INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period January 1, 1999 through March 31, 1999.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702 (g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional

information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: May 25, 1999.

Robert S. LaRussa

Assistant Secretary for Import Administration.

APPENDIX

Subsidy Programs on Cheese Subject to an In-Quota Rate of Duty

Country	Program(s)	Gross [1] subsidy $/lb. 0.20	Net [2] subsidy $/lb. $0.20
Austria	European Union Restitution Payments.		
Belgium	EU Restitution Payments	0.07	0.07
Canada	Export Assistance on Certain Types of Cheese	0.24	0.24
Denmark	EU Restitution Payments	0.17	0.17
Finland	EU Restitution Payments	0.26	0.26
France	EU Restitution Payments	0.15	0.15
Germany	EU Restitution Payments	0.19	0.19
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.10	0.10
Italy	EU Restitution Payments	0.13	0.13
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.10	0.10
Norway	Indirect (Milk) Subsidy	0.34	0.34
	Consumer Subsidy	0.15	0.15
Total		0.49	0.49
Portugal	EU Restitution Payments	0.10	0.10
Spain	EU Restitution Payments	0.11	0.11
Switzerland	Deficiency Payments	0.26	0.26
U.K.	EU Restitution Payments	0.14	0.14

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 99–13848 Filed 5–28–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 96–00004.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to The Foreign Market Search for U.S. Products and Services, Inc. doing business as FMS Exports-Imports, Inc. ("FMS"). Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to FMS.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on September 10, 1996 to FMS.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, §§ 325.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§§ 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On August 31, 1998, the Department of Commerce sent to FMS a letter containing annual report questions with a reminder that its annual report was due on October 25, 1998. Additional reminders were sent on November 13, 1998 and on February 10, 1999. The Department has received no written response from FMS to any of these letters.

On March 18, 1999, and in accordance with § 325.10 (c) (1) of the Regulations, (15 CFR 325.10 (c) (1)), the Department of Commerce sent a letter by certified mail to notify FMS that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing FMS thirty days to respond was published in the **Federal Register** on March 24, 1999 at 64 FR 14214. Pursuant to § 325.10(c) (2) of the regulations (15 CFR 325.10(c) (2)), the Department considers the failure of FMS to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to FMS for its failure to file an annual report. The Department has sent a letter, dated May

26, 1999, to notify FMS of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c) (4) and 325.11 of the regulations, 15 CFR 324.10(c) (4) and 325.11 of the regulations, 15 CFR 325.10(c) (4) and 325.11).

Dated: May 26, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–13813 Filed 5–28–99; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 84–00015.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to AEON International Corporation. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to AEON International Corporation.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1996). Pursuant to this authority, a certificate of review was issued on July 16, 1984 to AEON International Corporation.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 235.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (b) of the regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On July 6, 1998, the Department of Commerce sent to AEON International Corporation a letter containing annual report questions with a reminder that its annual report was due on August 30, 1999. Additional reminders were sent on September 15, 1998, and on October 13, 1998. The Department has received no written response from AEON International Corporation to any of these letters.

On December 10, 1998, in accordance with § 325.10 (c) (2) of the Regulations, a letter was sent by certified mail to notify AEON International Corporation that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. A summary of that letter was published in the **Federal Register** (63 FR 69266) on December 16, 1999 allowing thirty days for a response.

Pursuant to 325.10(c) (2) of the regulations (15 CFR 325.10(c) (2)), the Department considers the failure of AEON International Corporation to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Trust International Services Company, Inc. for its failure to file an annual report. The Department has sent a letter, dated April 29, to notify AEON International Corporation of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11.

Dated: May 25, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–13814 Filed 5–28–99; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 990517136–9136–01]

RIN 0693–ZA30

Community Alliance for Math, Science and Technology Literacy (CASTL)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Invitation for proposals to establish pilot programs partnering local school boards and businesses for enhanced professional development of K–12 math, science and technology teachers.

SUMMARY: This notice is to invite proposals from local educational agencies (LEAs) or non-profit organizations acting on their behalf to participate in the CASTL program. This pilot program will partner local school boards, non-profit educational organizations, and the local business community to develop and conduct innovative professional development activities for K–12 math, science and technology teachers. A community based effort will create new professional development activities to help increase teacher recruitment and retention, assist teachers in developing hands-on workplace-based math, science and technology curriculum, and increase communication between the educational and business enterprises. It is anticipated that ten awards will be made in fiscal year 1999 affecting teachers employed as of September 1999. Seed funding for the pilot program will focus on urban and rural statistical areas, and other areas identified as requiring special assistance in promoting math, science and technology education. Applications must be prepared by a partnership between the LEA and the business and/or research communities.

DATES: Applications must be received at the address below no later than 5 p.m., Eastern Standard Time on July 1, 1999, in order to be considered for the Fiscal Year 1999 awards. Late applications will be rejected and returned to the sender. Applications which have been provided to a delivery service will be accepted for review if the applicant can document that the application was provided to the delivery service by June 30, 1999, with delivery to the address listed below guaranteed prior to the closing date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the proposal along with the required forms (Refer to "Application Forms" section) to: CASTL Program Coordinator; Division 109; National Institute of Standards and Technology; 100 Bureau Drive, Stop 1090; Gaithersburg, MD 20899–1090.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hsia, Program Coordinator, telephone (301) 975–3067, or e-mail jack.hsia@nist.gov.

SUPPLEMENTARY INFORMATION:

Authority

This program is an implementation of section 7 of the Technology Administration Act of 1998 (Pub. L. 105–309), codified at section 19a of the NIST Act, as amended (15 USC 278g–2a). This statute authorizes the National Institute of Standards and Technology (NIST) to establish a teacher science and technology enhancement program to provide for the professional development of mathematics and science teachers of elementary, middle, and secondary schools, including providing for the improvement of these teachers with respect to the understanding of science and the impact of science on commerce. Under section 278g–2a(e), NIST may use means it deems appropriate to accomplish the goals of the program. The CASTL program accomplishes the statutory goals because it will allow K–12 teachers to experience firsthand how math, science, and technology impact commerce. This will both enhance teachers' professional development and enable teachers to incorporate these experiences into their math, science, and technology curricula. A community based effort will create new professional development activities to help increase teacher recruitment and retention, assist teachers in developing hands-on workplace-based math, science and technology curriculum, and increase communication between the educational and business enterprises, consistent with the statutory goals.

Program Description

The National Institute of Standards and Technology (NIST) wishes to initiate a pilot program partnering local school boards and businesses to foster high quality K–12 education through enhanced professional development of K–12 math, science and technology teachers. Together, the school board and the local businesses are expected to leverage their collected strengths to develop and implement a program to increase teachers' understanding of math, science and technology and to assist them in development of innovative curriculum. Businesses will provide on-site opportunities for teachers to experience hands-on inquiry based learning and workplace based application of math, science and technology skills. This partnership is expected to commit to providing at least 4 years of support for the teachers. The pilot program is expected to complement existing reform and professional development activities.

Enhanced professional development is expected to increase the hiring and retention rates for math, science and technology teachers. Experiences in the workplace will provide opportunities for teachers to develop innovative teaching methods reflecting real-world experience of math, science and technology. As teachers develop a greater understanding and comfort with the foundations and applications of math and science, they are better able to pass along such an understanding to their students. Students are anticipated to graduate with an increased understanding about the application of and excitement for math and science, leading to an increase in the overall scientific literacy of society. Local businesses and the overall community are expected to benefit from students better prepared for jobs in the technology-based industries that contribute more than half the nation's economic growth.

Using a relatively small amount of federal seed money, local school board in ten pilot program sites will implement the pilot program. The pilot program will directly impact only a tiny fraction of the 15,000 independent school districts nationwide. However, these pilot programs are anticipated to provide models that can be adopted by communities and businesses nationwide. Successful demonstration and refinement of the pilot program will be followed by dissemination of the model across the nation, with relatively little additional federal funding required (local communities and businesses will assume the bulk of the expenses after successful demonstration of the pilot program). Thus a small federal investment is leveraged into substantial nationwide results.

Background Information

Advances in technology fuel at least one half of the economic growth of the U.S. and the industrialized nations, and this fraction is expected to continue to increase in the next century. However, industry and government leaders identify the shortage of employees with adequate science and mathematics skills, at all levels, as a major impediment to continued national economic growth. International studies such as the recently reported Third International Mathematics and Science Study show U.S. K–12 students performing near the bottom of industrialized nations in tests of science and math knowledge. To maintain and improve U.S. economic competitiveness and provide opportunities for all citizens, the quality of science and math education in the United States must be significantly increased.

Improving science and math education is a complex problem requiring many different approaches. Many governmental and non-governmental organizations are each contributing towards the solution. The goal of this pilot program is to enhance the professional development of U.S. science and technology teachers through education-business partnership. It is expected that proper professional and financial support of science and math teachers will immediately increase successful recruitment and retention of qualified new science and math teachers, and will eventually lead to increases enrollment of teaching students specializing in science and math as the greater opportunities become known.

Business-Education Partnership

This pilot program will create a partnership between the local school board and the local business community to develop and implement enhanced professional development for K–12 math, science and technology teachers. Goals and outcomes of the pilot program should include the following elements:

- Increase teachers' understanding about the application of any excitement for math and science.
- Provide specialized professional development for K–12 math, science and technology teachers, aiming to reach needs of teachers of all grades.
- Increase teacher recruitment and/or retention rates.
- Integrate insight of the business/research community into new curriculum elements.
- Investigate creating an infrastructure for a sustainable program.
- Maximize atmosphere for teacher learning and creativity.

Local business partners may include industrial firms, corporations employing technology, research institutions and other organizations which can provide teachers experience with real-world based application of math, science and technology.

This pilot program may incorporate a range of activities depending on the

needs of the community. Funds are intended to supplement the work of the LEA, not the business or community partners. The objectives include:

- Collecting data regarding the needs of math, science, and technology teachers in the school district,
- Integrating several existing professional development programs into a single, coordinated effort,
- Providing staff time for teachers to develop and implement new curriculum changes resulting from pilot program and/or participate in cohort groups of pilot program participants,
- Coordinating with local technical and community colleges,
- Providing alternative certification activities for math, science and technology teachers, and
- Coordinating curriculum elements through grades K–12.

NIST expects each pilot program to directly involve at least 10 teachers in the pilot phase. However, with greater commitment from local businesses, more teachers may be involved. Participating local businesses, possibly through a central organization, will commit to working with the LEA for a minimum of four years. The businesses' contribution must provide teachers hands-on experience with workplace applications of math, science and technology. This exposure will assist teachers in gaining a better understanding of the business' science and technology skill needs and goals. From this experience, the teachers and administrators will work together to translate the experiences into more effective classroom lessons. Students will learn from real-world based examples, increasing their scientific inquiry skills and overall understanding of the use of math, science and technology.

NIST will evaluate the implementation of the pilot programs. Award recipients agree to participate in the evaluation of these pilot programs. This may involve a meeting among all recipients. Each pilot program coordinator is expected to track the progress of the teachers and their hiring and retention rates as part of the evaluation process. Applicants are encouraged to indicate additional evaluation activities they will perform.

Creating the Partnership

A unique feature of the pilot programs will be the ability of the partnership to tailor the pilot program to best fit local community and schools needs, and best make use of local resources. The 15,000 independent schools districts across the nation represent an enormous diversity in financial resources, student and community demographics, types of local businesses, and other factors: from inner city urban districts, to affluent suburbs, to geographically extended rural and Indian reservation districts. Attempts at "one size fits all" programs rarely succeed in addressing such a diversity of needs and resources.

The support of locally selected program champions and businesses is vital to pilot program success. A partnership development team led by the local champion will guide and structure a community math and science education and workforce development plan. Team members will represent local school boards, businesses, teachers, students, the public, and other stakeholders who can identify and focus on local needs.

Both the school board and the business community will make commitments to the pilot program. Local school boards must commit to working collaboratively with the businesses. Staff must be allocated time for curriculum development to translate their experiences into classroom lessons and for instructing their colleagues about what they have learned. This time may occur during a summer program and/or as part of regularly scheduled professional development. School boards will integrate this pilot program into existing educational reform efforts. Businesses will commit to participating in the pilot program's development, implementation and support for multiple years. Employees will be allocated time to work with the teachers.

Several Federal departments and agencies have on-going research and programs in the areas of K–12 math, science and technology education. This pilot program will tie into these existing programs when possible, especially if a particular effort is underway in the community. Nationwide programs are being sponsored by the National Science Foundation, the U.S. Department of Education, and the U.S. Department of Labor, among other agencies. Contingent upon success of the pilot program and additional federal and private funding, the program may grow in future years.

Organizational Involvement

Participation by community and professional organizations heightens the level of community commitment to this pilot program. These organizations lend their resources, knowledge, and experience to the process and help facilitate the creation of partnerships. The partnership development team is encouraged to engage any and all community organizations that will add to the success of the pilot programs.

Funding Availability

Approximately $200,000 will be available and it is anticipated that ten awards in the range of up to $20,000 will be selected to pay the administrative cost for starting the program. The pilot program will be integrated into the community as a self-sustaining activity over time. Based on preliminary results and future NIST appropriations, NIST may provide additional support in future years.

Grant funds may be used only for direct costs of administering this pilot program. Such costs may include salary for one person, excluding benefits. by August 1, 1999 a detailed accounting of all funds is due to the NIST program office at the above address. Any additional costs, including indirect costs, are the responsibility of the educational and business partners.

Award Period

Funds will be awarded for a 12 month period.

Matching Requirements

Cost sharing and matching are not required under this pilot program.

Application Forms

Standard Form (SF) 424, Application for Financial Assistance, SF 424A, SF 424B, and CD–511 shall be used for applying for financial assistance. Awards resulting from this competition will be administered in accordance with 15 CFR part 14, "Uniform Administration Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations" or 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable; OMB Circular A–21, "Cost Principles for Educational Institutions," or OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments," as applicable; and other award terms and conditions. An application kit may be requested from the contact person at the address listed above. All required forms may be downloaded from the following website: *http://www.rdc.noaa.gov/*grants/pdf.

Proposals may be structured in any way that the applicants believe will best present their proposed project, but should be limited to a maximum of 40 pages. A format that NIST offers for consideration by applicants is as follows:

Proposal Summary

I. Executive Summary
II. Pilot Program Participants
List all partnership members identified to date, their contact persons, addresses, telephone numbers and fax numbers. Indicate which members serve on the partnership development team.
III. Pilot Program
Personnel List key pilot program staff, including the principal coordinator.
IV. Narrative
Provide a concise summary (maximum of 10 pages) describing the implementation plan for the pilot program, including:
(a) Need assessment
(b) Objectives
(c) Program implementation
(d) Professional development opportunities for participating teachers
(e) Relationship to existing school reform efforts
(f) Evaluation
V. Budget Prepare SF–424–A.
VI. Supporting Materials
(a) Required forms
(b) Letters of support from partners

Type of Funding Instrument

NIST expects to award up to 10 grants. This information is provided in the interest of maximum oppeness of the agency's intent. It is not intended to bind the agency to any specific number of grants.

Eligibility Criteria

Partnerships between an LEA and the local business and/or research communities are eligible to prepare applications for CASTL grants. An LEA may not submit an application without written commitment from these outside representatives. Applications will only be accepted from an LEA or non-profit administrator acting on behalf of the partnership. An LEA is defined in Title XIV, Part A of the Elementary and Secondary Education Act, as amended, 20 U.S.C. section 8801(18)(A). An LEA is "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools." An official from the LEA must certify in writing that a third party administrator will act on its behalf with regard to this project. A principal coordinator must be identified to serve as a point of contact.

Application Evaluation Criteria

Applications will be evaluated by a panel of at least three independent reviewers who are knowledgeable in the subject matter of this solicitation and its objectives. All applications will be evaluated and scored on the basis of the evaluation criteria delineated below.

1. Local needs assessment. The proposal demonstrates an identifiable need for financial assistance to promote science and math education in the local area. (20 points)

2. The proposal provides specialized professional development for K–12 math, science and technology teachers, which complements existing professional development and/or reform efforts within the school district. (20 points)

3. Identification of an adequate number of relevant business and community partners. (15 points)

4. The proposed activities match the goals of this grant program, including adding to a sustainable infrastructure for community involvement and contribution to the educational system. (15 points)

5. Demonstration of meaningful provisions for academic year follow-up, continued dialogue among participants, and development of new curriculum based on the experience. (15 points)

6. Commitment to program evaluation, including participation in meetings, reporting requirements, and other evaluation criteria, (10 points)

7. Appropriateness of budget. (5 points)

Selection Procedures

The selection of LEAs to be recommended for an award will be made by Director of the Office of International and Academic Affairs (OIAA) at NIST. In recommending applications for funding, the OIAA Director will take into consideration the results of the evaluations and scores of the independent review panel, geographic distribution of funds, and the selection official's judgment as to which applications, taken as a whole, are likely to best further the goals of the CASTL program. In addition, school districts that represent urban on rural statistical areas as defined by the U.S. Census Bureau or who document needs requiring special assistance in promoting science and math education will be given priority. The final selection of applications and award of cooperative agreements will be made by the NIST Grants Officer.

Other Requirements

Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and DoC policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Insatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC/NIST to cover preaward costs.

Award Payments

Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned to the Department of Commerce (DoC). Advances will be approved for periods not to exceed 30 days.

Budget Changes

When the terms of an award allow the recipient to transfer funds among approved direct cost categories, the transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants officer has provided prior approval.

Tax Refunds

Refunds of FICA/FUTA taxes received by the Recipient during or after the award period must be refunded or credited to the DoC where the benefits were financed with Federal funds under the award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of the award.

Other Federal Awards with Similar Programmatic Activities

The Recipient must immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DoC award, other financial assistance is received to support or fund

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any portion of the scope of work incorporated into the DoC award. DoC will not pay for costs that are funded by other sources.

No Obligation for Future Funding

If an application is selected for funding, DoC/NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC/NIST.

Payment of Debts Owed the Federal Government

Any debts determined to be owned the Federal Government shall be paid promptly by the Recipient. Unless otherwise provided by law, a debt will be considered delinquent if it is not paid within 15 days of the due date. Failure to pay a debt by the due date shall result in the imposition of late payment charges. In addition, failure to pay the debt or establish a repayment agreement by the due date will also result in the referral of the debt for collection action any may result in DoC taking further action as specified in the terms of the award. Payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made during future program visits and audits.

Competition and Codes of Conduct for Subawards

Any subawards must be made in a manner that will provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected for a subaward. The officers, employees, and agents of the Recipient may not solicit nor accept anything of monetary value from subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

Subaward and/or Contract to a Federal Agency

Recipient, subrecipients, contractors, and/or subcontractors shall not sub-grant or sub-contract any part of the approved project to any agency of the DoC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicants' management honesty or financial integrity.

Primary Applicant Certifications

All primary applicants must subject a completed Form CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying, and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, Nonprocurement Debarment and Suspension and the related section of the certification form prescribed above apply;

2. Drug-Free Workplace

Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, Governmentwide Requirements for Drug-Free Workplace (Grants) and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions, and the lobbying section of the certification form prescribed above applies to applicants/bids for cooperative agreements for more than $100,000; and

4. Anti-Lobbying Disclosures

Any applicant who has paid or will pay for lobbying using any funds must submit an SF–LLL, Disclosure of Lobbying Activities, as required under 15 CFR part 28, appendix B.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

Non-Compliance With Award Provisions

Failure to comply with any or all of the provisions of the award may be considered grounds for any or all of the following actions: Establishment of an account receivable, withholding payments under any DoC awards to the Recipient, changing the method of payment from advance to reimbursement only, termination of any DoC active awards, and may have a negative impact on future funding by the DoC.

Prohibition Against Assignment by the Recipient

Notwithstanding any other provision of the award, the Recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

Internal Revenue Service (IRS) Information

Any Recipient classified for tax purposes as an individual, partnership, proprietorship, corporation, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number, employer identification number as applicable, or registered foreign organization number) on Form W–9, "Payer's Request for Taxpayer Identification Number." Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. Form W–9 shall be submitted to the Grants Officer within 60 days of the award start date. The TIN will be provided to the IRS by DoC on Form 1099–G, "Statement for Recipients of Certain Government Payments." Recipients who either fail to provide their TIN or provide an incorrect TIN may have funding suspended until the requirement is met.

Disclosure of Recipient's TIN is mandatory for Federal income tax reporting purposes under the authority of 26 USC, section 6011 and 6109(d), and 26 CFR 301.6109–1. This is to ensure the accuracy of income computation by the IRS. This information will be used to identify an individual who is compensated with DoC funds or paid interest under the Prompt Payment Act.

Foreign Travel

Recipients must comply with the provisions of the Fly America Act (49 U.S.C. 40118). The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

Freedom of Information Act (FOIA) Disclosure

To the extent permitted under the FOIA, contents of applications and proposals submitted by successful applicants may be released in response to FOIA requests.

Executive Order 12866

This rule has been determined not to be significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This Notice involves collections of information subject to the Paperwork reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046. Notwithstanding, any other provisions of law no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection displays a current valid OMB Control number.

Catalog of Federal Domestic Assistance

These awards fall under Catalog of Federal Domestic Assistance Program No. 11.609.

Dated: May 24, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–13690 Filed 5–28–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Whale Watch Guidelines

[I.D.052499D]

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of Revised Whale Watch Guidelines for Vessel Operations in the Northeastern United States.

SUMMARY: The National Marine Fisheries Service Northeast Region (NMFS/NER) has, in coordination with the Northeast Recovery Plan Implementation Team, revised the operational guidelines for all vessels engaged in whale watching in the northeastern United States. The revised guidelines address concerns about the possibility of whale watch vessels colliding with whales. NMFS/NER, which first developed whale watching guidelines in 1985, has revised the guidelines to provide specific vessel speed recommendations, decrease the number of vessels that should be in close proximity to whales, and recommend the use of lookouts when entering or departing known whale aggregation areas.

ADDRESSES: Copies of the new guidelines are available by writing or calling either Douglas Beach, NMFS, One Blackburn Dr., Gloucester, MA 01930, 978/281–9254; or Anne Smrcina, NOS, Stellwagen National Marine Sanctuary, 175 Edward Foster Rd., Scituate, MA 02066, 781/545–8026.

FOR FURTHER INFORMATION CONTACT: Doug Beach, NMFS, Northeast Region 978/281–9254; or Anne Smrcina, NOS, Stellwagen Bank National Marine Sanctuary 781/545–8026.

SUPPLEMENTARY INFORMATION: Whale watch vessel operators seek out areas where whales concentrate, which has led to numbers of vessels congregating around groups of whales, and thereby increased the potential for harassment, injury or death of these animals. NMFS Northeast Region has attempted to address this situation with a combination of enforcing the Endangered Species Act (ESA) Section 9 prohibitions against taking listed species, promulgating regulations limiting approaches to right whales to 500 yards, and issuing operational guidelines in 1985 to give vessel operators guidance on how to approach large whales without causing harassment. However, since the guidelines were first issued, the increase in numbers and overall speed of vessels operating in whale high use areas has raised the risk of collision with whales, as evidenced by two collisions with whales that occurred during the summer of 1998. The Northeast Recovery Plan Implementation Team, which works to implement the ESA Right Whale and Humpback Whale Recovery Plans, established a Whale Watch Advisory Group (WWAG) under its Ship Strike Sub-Committee to look into appropriate measures to address this increasing threat to whales. The WWAG came up with revisions to the existing guidelines that would address the issue. NMFS has revised the guidelines to incorporate the recommendations of the WWAG.

The revised guidelines include several measures intended to decrease the likelihood of future adverse interactions with whales, such as collisions. The previous guidelines, for instance, included a circular Whale Awareness Zone that extended one-quarter mile from any observed whale. The new awareness zone in the revised guidelines extends two miles from any observed whale. The new guidelines recommend specific speed limits for vessels approaching or departing from whales and further recommend the posting of a dedicated lookout to keep track of all whales in the area and to advise the vessel operator of their location when entering or leaving whale watching areas.

The U.S. Coast Guard (USCG) Auxiliary has established a program to monitor the effectiveness of the revised whale approach guidelines, and will deploy trained observers aboard vessels owned by a number of commercial

whale watch companies who have volunteered to participate in this monitoring program. The USCG Auxiliary will also use other platforms, such as USCG Auxiliary vessels and aircraft to observe the activities of recreational and commercial whale watch vessel operators on Stellwagen Bank and in other waters off New England during the 1999 season.

The results of the USCG Auxiliary monitoring program are expected to help NOAA determine whether the voluntary guidelines are sufficient or whether additional measures, such as regulations, need to be implemented to prevent harassment or injury of whales in coastal waters of the Northeastern United States.

Dated: May 24, 1999.

Andrew Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–13663 Filed 5–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052499G]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Committee (joint with the Atlantic States Marine Fisheries Commission Herring Section); Mid-Atlantic Plans Committee, Groundfish Committee and Advisory Panel, Interspecies Committee, Enforcement Committee and Advisory Panel, and Habitat Committee and Advisory Panel in June, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held between Monday, June 14, 1999 and Monday, June 28, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody, Saugus and Wakefield, MA; and Portsmouth, NH. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, June 14, 1999, at 10 a.m. and Tuesday, June 15, at 9 a.m.—Joint NEFMC Herring Committee and Atlantic States Marine Fisheries Commission Herring Section Meeting

Location: Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535–4600.

The committee and section will review the draft Atlantic Herring Stock Assessment and Fisheries Economics (SAFE) Report and recommend specifications for the 2000 fishing year. They also will develop recommendations for management measures for the 2000 fishing year (such as total allowable catch (TAC) set-asides, changes to the spawning closures in federal waters, or other framework adjustments). After reviewing the Herring Advisory Panel's recommendations on the subject, the committee and section will begin development of a limited entry or controlled access system for Management Area 1A in the Gulf of Maine. They will consider the Advisory Panel recommendation to establish an August 1, 1999 control date for the Atlantic herring fishery. There also will be a discussion of the 1999 large vessel annual specification.

Wednesday, June 16, 1999, 9:30 a.m.—Mid-Atlantic Plans Committee Meeting

Location: New England Fishery Management Council Office, 5 Broadway, Saugus, MA 01906; telephone: (781) 231–0422.

The committee will review a Mid-Atlantic Fishery Management Council proposal for tilefish closures and proposed mackerel management measures. The committee also will discuss coordinating the Atlantic herring and mackerel fishery management plans.

Thursday, June 17, 1999, 9:30 a.m.—Groundfish Committee and Groundfish Advisory Panel Joint Meeting

Location: Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01960; telephone: (781) 245–9300.

The committee and panel will discuss and prepare a draft management policy for closed areas, including a statement of purpose and consideration of exceptions, for commercial and recreational fisheries for possible inclusion in Amendment 13 to the Northeast Multispecies Fishery Management Plan. The committee and panel will discuss the current cod stock boundaries and its effects on management policy, and advise the Council on possible alternative management area boundaries. The committee and panel also will review Amendment 13 scoping comments and industry proposals for management alternatives. It will continue the development of recommendations to the Council on issues and measures to be included in a public hearing document for Amendment 13, including but not limited to: management of the recreational and party/charter fishery, management policy and strategy for the commercial fishery, action to rebuild all stocks in the fishery management unit as needed under the Council's new overfishing definitions; management of fleet fishing capacity, including possible implementation of a two-tiered permit system to address latent fishing permits; proposals for industry support of scientific research and conservation engineering programs; modification of the annual adjustment schedule and possible change to the timing of the fishing year; the use of electronic vessel monitoring systems; and other issues that may be identified during the scoping process.

Monday, June 21 at 9:30 a.m. and Tuesday, June 22 at 9 a.m.—Scientific and Statistical Committee Meeting

Location: New England Fishery Management Council Office, 5 Broadway, Saugus, MA 01906; telephone: (781) 231–0422.

Review of scientific information and analyses for the Herring (SAFE) Report and discussion of meeting procedures and protocols.

Tuesday, June 22, 1999, 10 a.m. and Wednesday, June 23, 1999, at 9 a.m.—Interspecies Committee Meeting

Location: Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781)245–9300.

The committee will receive a presentation on U.S. Global Ocean Ecosystems Dynamics (GLOBEC) Program experiments and discuss managing capacity and latent effort, changing fishing years, small vessel permit upgrading restrictions and other relevant business.

Thursday, June 24, 1999, 9:30 a.m.—Joint Enforcement Committee and Advisory Panel Meeting

Location: New England Fishery Management Council Office, 5

Broadway, Saugus, MA 01906; telephone: (781) 231–0422

The committee and panel will review draft enforcement guidelines for Council consideration.

Monday, June 28, 1999, 9:30 a.m.— Habitat Committee and Advisory Panel Joint Meeting

Location: Sheraton Plymouth Inn, 180 Water Street Plymouth, MA 02360; telephone: (508) 747–4900.

The committee and panel will review the 1999 Habitat Annual Review Report and consider recommending additional Habitat Areas of Particular Concern, in addition to measures to protect essential fish habitat (EFH). The committee also will consider habitat-related issues to be addressed during development of the next Groundfish and Sea Scallop Amendments. They will review NMFS's EFH consultation process and coordination criteria.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 25, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–13827 Filed 5–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052499F]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet June 20–25, 1999. The Council meeting will begin on Tuesday, June 22, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 8:30 a.m. on Thursday, June 24 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, OR; telephone: (503) 281–2500.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call
2. Approve Agenda
3. Approve March and April Meeting Minutes

B. Coastal Pelagic Species Management

1. Status of Approval of Fishery Management Plan
2. Anchovy Biomass Estimate and Quotas for 1999–2000 Season

C. Highly Migratory Species Management - Determine Need for Council Fishery Management Plan

D. Salmon Management

1. Sequence of Events and Status of Fisheries
2. Revisions to the Preseason Process
3. Non-Retention Mortality in Ocean Salmon Fisheries
4. Options to Recover Snake River Chinook Salmon

E. Marine Reserves - Council Direction to Committee

F. Habitat Issues

1. Groundfish Habitat Areas of Particular Concern
2. Other Issues

G. Groundfish Management

1. Status of Federal Regulations and Activities and Applications for Exempted Fishing Permits
2. Status Reports on Review of Groundfish Priorities, Recreational Fishery Data Collection Issues, the Fixed Gear Sablefish Industry Meeting,the Ability to Address Permit Stacking in 1999, Experimental Setnet Landings as Qualification for Sablefish Tier Assignment, Industry Survey of Buyback Program, Process Required to Allow Use of Open Access Hook-and-Line Gear by Fixed Gear Limited Entry Permit Holders, Harvest Policy Review, Rockfish Stock Status, and Bycatch Issues
3. Strategic Planning
4. Stock Assessment Priorities for 2000
5. Consistency of California Rockfish Size Limits with Groundfish Plan
6. Status of Fisheries and Inseason Adjustments
7. Observer Program
8. Control Date for Potential Limited Access in the Open Access Fishery
9. Rebuilding Plans for Lingcod, Bocaccio, and Pacific Ocean Perch, Including Allocation and Bycatch Reduction
10. Rockfish Allocation
11. Groundfish Priorities and Schedules

H. Administrative and Other Matters

1. Report of the Budget Committee
2. Status of Legislation
3. Appointments to Advisory Groups
4. Revisions to Statement of Organization, Practices, and Procedures
5. Draft Agenda for September 1999

Advisory Meetings

The Groundfish Management Team will convene on Sunday, June 20, at 2 p.m. and on Monday, June 21, at 8 a.m. to address groundfish issues on the Council agenda.

The Scientific and Statistical Committee will convene on Monday, June 21, at 8:30 a.m. and on Tuesday, June 22, at 8 a.m. to address scientific issues on the Council agenda.

The Habitat Steering Group meets at 9 a.m. on Monday, June 21, to address issues and actions affecting habitat of fish species managed by the Council.

The Groundfish Advisory Subpanel will convene on Monday, June 21, at 1 p.m. and will continue to meet throughout the week as necessary to address groundfish management items on the Council.

The Ad-Hoc Salmon Mortality Committee will meet on Monday, June 21, at 1 p.m. to discuss estimation of hook-and-release mortality for ocean salmon fisheries.

The Budget Committee meets on Monday, June 21 at 3 p.m. to review the status of the 1999 Council budget.

The Enforcement Consultants meet at 5:30 p.m. on Tuesday, June 22, to address enforcement issues relating to Council agenda items.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues

specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 25, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–13826 Filed 5–28–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association With Respect to Those Domestic and Foreign Firms Acting in the Capacity of a Commodity Pool Operator or a Commodity Trading Advisor

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing the National Futures Association ("NFA") to conduct reviews of disclosure documents required to be filed with the Commission pursuant to Rule 30.6(b)(2) by firms acting in the capacity of commodity pool operators ("CPOs") and commodity trading advisors ("CTAs").[1] Further, the Commission is authorizing NFA to maintain and serve as the official custodian of certain Commission records.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Andrew Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

Order Authorizing the Performance of Certain Functions With Respect to U.S. and Non-U.S. Firms

I. Authority and Background

Section 8a(10) of the Commodity Exchange Act[2] ("Act") provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act[3] and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(o)(1) of the Act[4] provides that the Commission may require NFA to perform Commission registration functions in accordance with the Act and NFA rules. NFA has confirmed its willingness to perform certain functions now performed by the Commission and has provided the Commission with a detailed proposal setting forth standards and procedures to be followed and reports to be generated in administering the functions discussed below.[5]

Upon consideration, the Commission has determined to authorize NFA, effective July 1, 1999, to conduct reviews of disclosure documents required to be filed pursuant to Rule 30.6(b)(2) by firms registered or required to be registered as CPOs or CTAs under Part 30, or exempt from registration pursuant to Rule 30.5, and to maintain and serve as the official custodian of records for these disclosure documents.

Compliance With Rule 30.6(b)(2)

Rule 30.6(b)(2)[6] requires CPOs and CTAs registered or required to be registered under Part 30, or exempt from registration pursuant to Rule 30.5, to provide a disclosure document[7] to prospective U.S. foreign futures and foreign options customers[8] that do not meet the definition of qualified eligible participants and qualified eligible clients, respectively.[9] Rule 30.6(b)(2) also requires CPOs and CTAs to file the disclosure documents with the Commission in accordance with Rule 4.26(d) and 4.36(d), respectively.[10] Pursuant to an October 6, 1997 delegation order, the Commission authorized NFA to review disclosure documents required to be filed with the Commission by CPOs and CTA pursuant to Rules 4.26(d) and 4.36(d), respectively.[11] In light of NFA's experience in receiving and reviewing disclosure documents filed in accordance with Rules 4.26(d) and 4.36(d), the Commission believes that it is appropriate for NFA to undertake the performance of this function as it relates to Rule 30.6(b)(2). Accordingly, by this Order, NFA is authorized to review all disclosure documents filed pursuant to Rule 30.6(b)(2) by firms registered or required to be registered as CPOs or CTAs under Part 30, or exempt from registration pursuant to Rule 30.5.

II. Conclusion and Order

The Commission has determined, in accordance with Sections 8a(10) and 17(o)(1) of the Act, subject to any restriction by a given jurisdiction that information must pass directly between regulatory authorities, to authorize NFA to perform the following functions:

(1) To conduct reviews of disclosure documents required to be filed with the Commission pursuant to Rule 30.6(b)(2) by firms registered or required to be registered as CPOs or CTAs under Part 30, or exempt from registration pursuant to Rule 30.5; and

(2) To maintain and to serve as the official custodian of records for the disclosure documents required to Rule 30.6(b)(2).

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and Commission orders issued thereunder and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for the effective oversight of this program.

These determinations are based on the Congressional intent expressed in

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[1] Commission rules referred to herein are found at 17 CFR Ch. I (1999).

[2] 7 U.S.C. 12a(10) (1998).

[3] 7 U.S.C. 21(j) (1998).

[4] 7 U.S.C. 21(o)(1) (1998).

[5] U.S.C. Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated June 20, 1997.

[6] On January 11, 1999, the Commission proposed to amend Rules 30.5 and 30.6. 64 FR 1566 (January 11, 1999).

[7] The information contained in the disclosure document must comply with Rule 4.21 for CPOs and Rule 4.31 for CTAs.

[8] Pursuant to Rule 30.1(c), "foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options, *Provided,* That an owner or holder of a proprietary account defined in paragraph (y) or § 1.3 of this Chapter shall not be deemed to be a foreign futures or foreign options customer within §§ 30.6 and 30.7 of this part."

[9] Qualified eligible participants and qualified eligible clients are defined in Rules 4.7(a)(1)(ii) and 4.7(b)(1)(ii), respectively.

[10] Rule 4.26(d)(1) requires that a CPO file a disclosure document with the Commission for each pool that it operates or intends to operate not less than 21 calendar days prior to the date the CPO intends to deliver the document to prospective participants in the pool. Similarly, Rule 4.36(d)(1) requires that a CTA file a disclosure document with the Commission for each trading program that it offers or intends to offer not less than 21 calendar days prior to the date the CTA first intends to deliver the document to a prospective client in the trading program. Further, pursuant to Rules 4.26(d) and 4.36(d), CPOs and CTAs, respectively, must file with the Commission all subsequent amendments to their disclosure documents within 21 calendar days of the date upon which the CPO or CTA first knows or has reason to know of the defect requiring amendment. In addition, CPOs and CTAs may not use their disclosure documents for more than nine months from the effective dates of such documents, in accordance with Rules 4.26(a)(2) and 4.36(a)(2), respectively.

[11] 62 FR 52088 (October 6, 1997).

Sections 8a(10) and 17(o) of the Act that the Commission shall have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order or in Sections 8a(10) or 17(o) of the Act shall affect the Commission's authority to review NFA's performance of the Commission functions listed above.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of previous orders issued by the Commission under Parts 4 and 30.

Issued in Washington, DC, on May 21, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–13572 Filed 5–28–99; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–C0006]

Shimano American Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Shimano American Corporation, containing a civil penalty of $150,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 16, 1999.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 99–C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Deborah Lewis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 504–0626, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 25, 1999.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Shimano American Corporation ("Shimano") a corporation, enters into this Settlement Agreement and Order with the United States Consumer Product Safety Commission ("the CPSC") in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA").

I. The Parties

2. The Consumer Product Safety Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Shimano is a corporation organized and existing under the laws of the State of California. Its principal offices are located at One Holland Drive, Irvine, CA, 92618.

II. Staff Allegations

4. Between March, 1994 and November, 1995, Shimano Inc. of Japan manufactured over one million bicycle cranks—models FC–CT90, FC–M290 and FC–MC12—a significant number of which were imported and distributed in the United States by Shimano American Corporation. Shimano is, therefore, a distributor of bicycle cranks in commerce.

5. The bicycle cranks attach to the pedals of bicycles. Shimano Inc. of Japan and Shimano sold the cranks to 49 bicycle manufacturers.

6. The bicycle cranks can break during use. A consumer can be injured in a number of ways if the bicycle cranks break will he or she is riding it: (1) The broken crank or part exposed as a result of the crank breaking can injure the bicyclist; (2) The bicyclist can fall as a result of the broken crank, leading to injuries from contact with the ground; (3) The bicyclist can lose control and collide with another vehicle or object.

7. Between June, 1995 and July, 1997, Shimano received 22 reports of injuries from consumers due to broken cranks. The injuries included fractures, lacerations, puncture wounds, head trauma, and severe bruising and swelling. Shimano conducted numerous tests on the bicycle cranks and held at least one meeting at a high level in the corporation in September, 1996, about its growing concern over the cranks. Yet, Shimano did not report the problem until July, 1997.

8. Shimano obtained information which reasonably supported the conclusion that its bicycle cranks contained defects which could create a substantial product hazard but failed to report that information in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 20643(b).

III. Response of Shimano

9. Shimano denies the allegations of the staff that the bicycle cranks contain a defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a), denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), and further denies the other allegations of the CPSC as stated herein.

10. Shimano voluntarily contacted the CPSC in May 1997, to seek the CPSC's cooperation in conducting a recall of the three models of bicycle cranks. In June, Shimano filed a report under Section 15(b) of the CPSA and proposed a voluntary product recall under the CPSC's Fast Track program. Shimano's report and voluntary recall did not result from any investigation by the CPSC, but rather represented part of Shimano's effort to maintain its reputation for providing bicycle components of the highest quality.

11. Prior to May 1997, Shimano did not have reason to believe that the cranks posed a substantial product hazard. Shimano believes the information available did not reasonably support the conclusion that the products were defective within the meaning of the CPSA, and, therefore, no report was required under Section 15(b) of the Act. During the time period in which the CPSC alleges Shimano wrongfully failed to file a report, Shimano conducted its own internal testing as well as independent testing of the cranks, and these tests suggested

that no defect was present. Likewise, the extremely low failure rate of the cranks and the rigorous conditions in which they were used, suggested that any failures were due to rigorous usage rather than an inherent product defect. For these reasons, Shimano was not required to, and did not, report to the CPSC prior to May 1997.

12. By entering into this Settlement Agreement and Order, Shimano does not admit any liability or wrongdoing. This Settlement Agreement and Order is agreed to by Shimano to avoid incurring additional legal costs and does not constitute, and is not evidence of, an admission of any liability or wrongdoing by Shimano.

IV. Agreement of the Parties

13. The Commission has jurisdiction over this matter under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

14. Shimano knowingly, voluntarily and completely waives any rights it may have to: (1) an administrative or judicial hearing with respect to the staff allegations discussed in paragraphs 4 through 8 above; (2) judicial review or other challenge or contest of the validity of the Commission's Order; (3) a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred; and (4) a statement of findings of fact and conclusion of law with regard to the staff allegations.

15. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with 16 CFR 1118.20.

16. This Settlement Agreement and Order releases Shimano and Shimano Inc. from liability arising from any allegations of violation of section 15(b) of the CPSA regarding the bicycle cranks described in paragraph 4, above. The Settlement Agreement and Order becomes effective upon final acceptance by the Commission and its service upon Shimano.

17. Upon final acceptance of this Settlement Agreement by the Commission, the Commission may issue a press release to advise the public of the civil penalty Settlement Agreement and Order.

18. Shimano shall pay the Consumer Product Safety Commission a civil penalty in the amount of $150,000 within ten days of final acceptance of the Settlement Agreement and Order.

19. Shimano agrees to entry of the attached Order, which is incorporated herein by reference, and to be bound by its terms.

20. This Settlement Agreement and Order are entered into for settlement purposes only and shall not constitute an admission or determination arising from the allegations that the bicycle cranks contain a defect which could create a substantial product hazard.

21. This Settlement Agreement is binding upon Shimano and the assigns or successors of Shimano.

22. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: March 29, 1999.

By: Shimano American Corporation

U.S. Consumer Product Safety Commission

By: Alan Schoem,

Assistant Executive Director, Office of Compliance.

Eric Stone,

Director, Legal Division, Office of Compliance.

Deborah Lewis,

Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Shimano American Corporation, a corporation, and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Shimano American Corporation, and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further ordered, Shimano American Corporation shall pay the Commission a civil penalty in the amount of *one hundred fifty thousand and* 00/100 dollars, ($150,000.00) within ten (10) days after service of this Final Order upon Shimano American Corporation.

Provisionally accepted and Provisional Order issued on the 25th day of May, 1999.

By Order of the Commission.

Sadye E. Dunn,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 99–13669 Filed 5–28–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–16]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–16, with attached transmittal, policy justification, Sensitivity of Technology, and Sec. 620C(d) of the FAA of 1961.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 May 1999

In reply refer to:
I-99/05178

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-16, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $200 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 99-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Greece

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$200 million
TOTAL	$200 million

(iii) **Description of Articles or Services Offered:** PATRIOT Missile System support equipment including spare and repair parts, interrogator sets, fuzes, telemetry kits, communication security equipment, technical assistance, precision lightweight global positioning system receiver, engineering services, support and test equipment, publications and data documentation, personnel training and training equipment, technical support, and other related elements of logistics support.

(iv) **Military Department:** Army (XJN, GDH, LAA, ODV, TCV, XJS, and XJU) Navy (BFM)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 17 May 1999

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

Greece - PATRIOT Missile System Support Equipment

The Government of Greece has requested a possible sale of PATRIOT Missile System support equipment including spare and repair parts, interrogator sets, fuzes, telemetry kits, communication security equipment, technical assistance, precision lightweight global positioning system receiver, engineering services, support and test equipment, publications and data documentation, personnel training and training equipment, technical support, and other related elements of logistics support. The estimated cost is $200 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and furthering NATO rationalization, standardization and interoperability.

Greece needs this surface-to-air equipment to continue the upgrade of its air defense capabilities and will have no difficulty absorbing this additional equipment into its armed forces. The equipment will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Corporation, Andover, Massachusetts. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of two U.S. Government personnel for two years to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The following PATRIOT Air Defense Weapon System PAC-3 items are classified Confidential: missile MIM-104D (including seeker and fuze) and AN/MPS-53 radar set. Parts of the Technical Data Package are classified Confidential/Secret. Most publications for operation and maintenance are unclassified but are marked Restricted Distribution; some are classified Confidential/Secret. Communications equipment remains unclassified because keys are not releasable. The highest level of classified information required to be released under the terms of the Engineering Services contract is Secret. Most, though not all, of the Secret materiel is in the form of Software Investigative Reports which describe proposed changes to the software in the PATRIOT system. Some can be approved for release to the customer. If technology is lost to a technologically advanced or competent adversary, countermeasures could be developed that could degrade the effectiveness of the system.

2. A determination has been made that the Greece can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

17 May 1999

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of March 30, 1999, I hereby certify that the furnishing to Greece of 125 PATRIOT MIM-104A missiles, PATRIOT Missile System support equipment including spare and repair parts, interrogator sets, fuses, telemetry kits, communication security equipment, technical assistance, a precision lightweight global positioning system receiver, engineering services, support and test equipment, publications and data documentation, personnel training and training equipment, technical support and related logistics support and lease of PATRIOT PAC-3 equipment consisting of three radar sets, one engagement control station, 12 launch stations, one guided missile transporter, one launch station test set, and one information control central command station is consistent with the principles contained in § 620(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Senior Advisor for Arms Control and International Security

[FR Doc. 99-13700 Filed 5-28-99; 8:45 am]
BILLING CODE 5001-10-C

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by the Article 146(a), Uniform Code of Military Justice, 10 U.S.C. § 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW, Washington, DC 20442–0001, at 3:00 p.m. on Wednesday, June 2, 1999. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, 1984, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

DATES: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, D.C. 20042–0001, telephone (202) 761–1448.

Dated: May 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 99–13699 Filed 5–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Defense Retirement Board of Actuaries

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C. 1464 *et. seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to: (1) attend the DoD Retirement Board of Actuaries meeting or, (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Wendie Powell at (703) 696–7400 by July 31, 1999.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 19, 1999, 1:00 pm to 5:00 pm.

ADDRESSES: The Pentagon, Room 1E801—Room 1.

FOR FURTHER INFORMATION CONTACT: Christopher Doyle, Chief Actuary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7407.

Dated: May 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 99–13701 Filed 5–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Department of Defense Education Benefits Board of Actuaries

AGENCY: Department of Defense Education Benefits Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to: (1) attend the DoD Education Benefits Board of Actuaries meeting or, (20 make an oral presentation or submit a written statement for consideration at the meeting must notify Wendie Powell at (703) 696–7400 by July 31, 1999.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 20, 1999, 10:00 a.m. to 1:00 p.m.

ADDRESSES: The Pentagon, Room 1E801—Room 1.

FOR FURTHER INFORMATION CONTACT: Christopher Doyle, Chief Actuary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7407.

Dated: May 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 99–13702 Filed 5–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Defense Security Service

Privacy Act of 1974; System of Records

AGENCY: Defense Security Service, DoD.

ACTION: Notice to delete and transfer systems of records.

SUMMARY: The Defense Security Service (DSS) is taking responsibility for three existing Privacy Act systems of records notices formerly under the cognizance of the Office of the Secretary of Defense. The three notices will be added to the DSS inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Administrative changes have been made to the notices.

DSS is also deleting two systems of records from its inventory.

DATES: The actions will be effective on July 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Office of the General Counsel, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake (703) 325-9450.

SUPPLEMENTARY INFORMATION: The Defense Security Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Dated: May 25, 1999.

L.M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS
DUSDP 06

SYSTEM NAME:

Defense Personnel Security Research and Education Center Research Files (February 22, 1993, 58 FR 10227).

Reason: System of records is now under the cognizance of the Defense Security Service. See Defense Security Service system of records notice V5-06, entitled Security Research Center Research Files.

DUSDP 07

SYSTEM NAME:

PERSEREC Espionage Database (February 22, 1993, 58 FR 10227)

Reason: System of records notice is now under the cognizance of the Defense Security Service. See Defense Security Service system of records notice V5-05, entitled Security Research Center Espionage Database.

DUSDP 09

SYSTEM NAME:

PERSEREC Export Violations Database (September 22, 1993, 58 FR 49287)

Reason: System of records notice is now under the cognizance of the Defense Security Service. See Defense Security Service system of records notice V5-07, entitled Security Research Center Export Violations Database.

V4–01

SYSTEM NAME:

Personnel Records *(February 22, 1993, 58 FR 10904).*

Reason: These records are covered under Office of Personnel Management Government-Wide systems of records notices.

V4–12

SYSTEM NAME:

DSS Employee Assistance Program Records *(February 22, 1993, 58 FR 10904).*

Reason: This system was retired several years ago and all records/files were destroyed.

TRANSFERRED NOTICES
V5-05

SYSTEM NAME:

Security Research Center Espionage Database.

SYSTEM LOCATION:

Defense Security Service, Security Research Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been arrested and convicted of espionage or related offense; those who have been prosecuted for espionage who committed suicide before trial or sentencing; and those arrested or under warrant for arrest for espionage who were not prosecuted because of death, suicide, or defection.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background information including individual's name, Social Security Number, date of birth, city/state/country of birth, education, marital status, gender, race, civilian or military member, rank (if military), security clearance (if applicable), years of federal service (if applicable), occupational category, job organization and location, age began espionage, first espionage contact, whether volunteered or recruited, receiving country, payment (if any), foreign relatives (if any), motivation-related, substance abuse (if applicable), date of arrest, arresting agency, date of sentence, sentence, and duration of espionage. Sources for records are newspaper and magazine articles, the biographies of spies, and similar open source works are included in paper files. Some of the missing variables have been filled in using information supplied by the agencies that investigated the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); DoDD 5210.79, Defense Personnel Security Research and Education Center; and ASD(C) October 31, 1991 memo, Subject: Request for Exemption from DoD Directive 5200.27.

PURPOSE(S):

To analyze factors which may contribute to acts of espionage and assemble a body of knowledge useful to improved personnel security procedures. This information will permit examination of espionage trends and will help identify personal and situational variables of interest to policy-makers and others concerned with personnel security issues.

Aggregate statistics will be reported to DoD and other Government agencies in a technical report prepared from open-sources and containing some illustrative material mentioning some of the more famous cases by name.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVABILITY:

Records may be retrieved by name and Social Security Number.

SAFEGUARDS:

Records are stored under lock and key in secure containers, and in a computer system with intrusion safeguards.

RETENTION AND DISPOSAL:

Analyses and research reports are permanent and will be transferred to the National Archives after 25 years; unneeded records will be shredded, erased or degaussed when no longer required for the project.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Research Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director, Security Research Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry should include full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address a written request to Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

The inquiry must include name and Social Security Number.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01-13: 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

Information is obtained from newspaper and magazine articles and similar open source documents. Some of the missing variables were filled in using information supplied by the agencies that investigated the case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V5-05

SYSTEM NAME:

Security Research Center Research Files

SYSTEM LOCATION:

Defense Security Service, Security Research Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481;

Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955-6771; and

Data Center, Naval Postgraduate School, Monterey, CA 93943.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Department of Defense (DoD) civilian employees, military members, and DoD contractor employees who have had or applied for security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of cleared individuals, and data derived from DD Forms 398 and 398-2; Standard Forms 85 and 86; and credit, criminal history and other database and sources checked during the course of background investigations; background investigations; responses from interviews and questionnaires.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 781–887, Internal Security Act of 1950; E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12958, Classified National Security Information; and 5 U.S.C. 301, Departmental Regulations, which authorizes DoD Directive 5210.79, Defense Personnel Security Research and Education Center, and DoD Regulation 5200.2–R, DoD Personnel Security Program Regulation.

PURPOSE(S):

To perform research and analyses for (1) evaluating and improving DoD personnel security procedures, programs, and policies; (2) assisting in providing training, instruction, and advice on personnel security subjects for DoD Components; (3) encouraging cooperative research within and among DoD Components on projects having DoD-wide implications in order to avoid duplication; (4) addressing items of special interest to personnel security officials within DoD Components; and (5) identifying areas in the personnel security field that warrant more intense scrutiny.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local government agencies, if necessary, to obtain information from them, which will assist DoD/DSS in identifying areas in the personnel security field, that may warrant additional training, instruction, research, or more intense scrutiny. This would typically involve obtaining nationwide statistical data or relevant information on a specific security issue (i.e. financial, criminal, alcohol, etc.) that could be used to assist an investigator or adjudicator in evaluating an individual's conduct

To the General Services Administration and National Archives and Records Administration for records management inspections authorized by 44 U.S.C. 2904 and 2906.

The 'Blanket Routine Uses' set forth at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, or military service number.

SAFEGUARDS:

Records are stored under lock and key, in secure containers, or on electronic media with intrusion safeguards. Research results are not identifiable to any specific individual.

RETENTION AND DISPOSAL:

Information is retained for the life of the research project. When no longer needed for the project, paper records are shredded and computer media are erased or degaussed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Research Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The individual should provide sufficient proof of identity such as full name, Sócial Security Number, date and place of birth, military service number (if service was before 1968), military or civilian status while associated with the Department of Defense, place and data of DoD or contractor employment, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of record should address written inquires to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

The individual should provide sufficient proof of identity such as full name, Social Security Number, date and place of birth, military service number (if service was before 1968), military or civilian status while associated with the Department of Defense, place and data of DoD or contractor employment, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01-13; 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

Information is obtained from the Defense Clearance and Investigative Index, military records, DoD civilian employment and military personnel records, Defense Security Service records, a records of the Departments of Justice and Treasury, and interviews with and questionnaires completed by record subjects.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V5-07

SYSTEM NAME:

Security Research Center Export Violations Database.

SYSTEM LOCATION:

Defense Security Service, Security Research Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been convicted of violating U.S. export control laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of reports, court records, newspaper, magazine, and other open source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoDD 5210.79, Defense Personnel Security Research and Education Center; and ASD(C3I) July 20, 1993 memo, Subject: Exemption from DoD Directive 5200.27.

PURPOSE(S):

To analyze factors which may contribute to acts of illegal technology transfer in violation of U.S. export controls and to assemble a body of knowledge useful for improving security procedures. This information will permit examination of trends in illegal technology transfer since 1981 and help identify personal and situational variables of interest to policy makers and others concerned with counteracting export control violations. Aggregate statistics will be reported in a technical report. The report will include some vignettes of the more famous cases, using the individual's name, based on material found in open sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Records are stored under lock and key in secure containers, and in a computer system with intrusion safeguards.

RETENTION AND DISPOSAL:

Analyses and research reports are permanent and will be transferred to the National Archives after 25 years; database information will be retained for five years or until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Research Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director, Security Research Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry should include full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address a written request to Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

The inquiry must include full name.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01-13; 32 CFR part 321; or may be obtained from Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

Justice Department Export Control Cases listing, newspaper and magazine articles and other open source documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–13704 Filed 5–28–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: Army Research Laboratory, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents covers a wide variety of technical arts including: An ice detection sensor and an ultra-wide bandwidth dish antenna.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Ice Detection Sensor.

Inventor: Russel DeAnna.

Patent Number: 5,886,256.

Issued Date: March 23, 1999.

Title: Ultra-Wide Bandwidth Dish Antenna.

Inventor: John W. McCorkle.

Patent Number: 5,880,699.

Issued Date: March 9, 1999.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, 2800 Powder Mill Road, Adelphi, MD 20783–1197, tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–13734 Filed 5–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent covers a wide variety of technical arts including: An electromagnetic target generator used to simulate a radar target.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Electromagnetic Target Generator.

Inventors: Klyte G. Mills, Thomas Maxwell, Elliot C. Bergsagel and Robert K. Richardson.

Patent Number: 5,892,479.

Issued Date: April 6, 1999.

FOR FURTHER INFORMATION CONTACT:

Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055 tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–13735 Filed 5–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 12, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(September 14, 1998, 63 FR 49095).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Paragraph 1a, add to end of entry 'and their family members.'

Paragraph 4d, delete 'of the active duty and veteran population' at the end of the sentence and replace with 'of active duty, reserve, and retired personnel or veterans, to include family members.'

Paragraph 20, first sentence, delete 'of the active duty and veteran population' and replace with 'of active duty, reserve, and retired personnel or veterans, to include family members.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972.

All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs'

insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub.L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to

determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606 – Selected Reserve and Title 38 U.S.C., Chapter 30 – Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub.L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

b. To the Bureau of Supplemental Security Income to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub.L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub.L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub.L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting

research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 3: Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 4: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DLA's 'Blanket Routine Uses' *do not* apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–13705 Filed 5–28–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 12, 1999, to the

House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.20 DMDC

SYSTEM NAME:

Reenlistment Eligible File (RECRUIT) *(June 25, 1996, 61 FR 32779).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Recruitment Eligible File'.

SYSTEM LOCATION:

Delete first paragraph and replace with 'Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

After 'enlisted' insert 'and officer'.

* * * * *

PURPOSE(S):

Delete entry and replace with 'The purpose of the system is to assist in recruiting prior-service personnel.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access to data at all locations is restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.'

* * * * *

S322.20 DMDC

SYSTEM NAME:

Recruitment Eligible File.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up file: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former enlisted and officer personnel of the military services who separated from active duty since 1971.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer records consisting of Social Security Number, name, service, date of birth and date of separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system is to assist in recruiting prior-service personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Any record may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action or regulatory order. Any record may be disclosed to Coast Guard recruiters in the performance of their assigned duties.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on disc with a full backup on magnetic tape.

RETRIEVABILITY:

Retrievable by Social Security Number.

SAFEGUARDS:

Access to data at all locations is restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests for information should contain the full name, current address, telephone number, Social Security Number, and date of separation of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The data contained in the system are obtained from the Army, Navy, Air Force, Marine Corps, and Coast Guard.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–13706 Filed 5–28–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare Integrated Feasibility Report(s)/Environmental Impact Statement(s) (EIS) for Structural and Non-Structural Flood Control and Environmental Restoration, Lower Platte River and Tributaries, Nebraska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Congress authorized the U.S. Army Corps of Engineers (Corps) by resolution of the Committee on Public Works and Transportation on September 28, 1994 to conduct a reconnaissance study along the Lower Platte River and Tributaries, Nebraska in the interest of flood control, environmental restoration, and other purposes. Based on the information and conclusions reached in the reconnaissance report, sufficient water resource problems and needs of national significance in the study area were found to exist to warrant a Federal interest in further study. It was also found that non-Federal sponsors were interested in participating in a cost-shared feasibility study that would address both structural and non-structural flood control measures, and environmental restoration opportunities.

Non-Federal sponsors include the Nebraska Natural Resources Commission, the Lower Platte South Natural Resources District, the Papio-Missouri River Natural Resources District, and the Lower Platte North Natural Resources District. The Lower Platte River Corridor Alliance is participating in study activities.

Five specific locations are being studied in detail for potential structural flood control measures. They include: Clear Creek Levee and Western Sarpy County Levee areas from U.S. Highway 6 upstream to the Douglas/Sarpy County line; the Union Dike area downstream of Fremont, Nebraska; the Sand Creek tributary near Wahoo, Nebraska; and the south Fremont area. Non-structural measures being examined include: flood insurance, flood proofing, flood warning, flood plain zoning, and evacuation and relocation of buildings. In addition, the study is also examining environmental restoration opportunities in the Lower Platte River basin. Each of the five specific locations being studied in detail involve a plan formulation phase in which various flood control alternative plans are given consideration, including non-structural solutions. The "no Corps action" alternative will also be considered.

The Sand Creek tributary element of the study will be accomplished in a separate integrated feasibility report/EIS because of its relationship to a proposed redesign of U.S. Highway 77 scheduled for construction in 2002. An earlier **Federal Register** notice addressing this study element was published on April 8, 1999 and a public scoping meeting was conducted on May 4, 1999 in Wahoo, Nebraska.

The remaining elements of study will either be accomplished in a comprehensive feasibility report/EIS, or also in individual feasibility reports/EISs if the need is warranted. Some environmental restoration study elements may be accomplished in an environmental restoration report/environmental assessment format.

Scoping/public information meetings to discuss the Lower Platte River and Tributaries studies will be held July 6, 1999 at Mahoney State Park, Sapp Riverview Lodge; July 7, 1999 at the Papio-Missouri River Natural Resources District, 8901 S. 154th Street, Omaha; and July 8, 1999 at the North Bend Civic Auditorium, Main Street, North Bend. All three meetings will be from 6:30–8 p.m. Scoping comments will also be accepted by mail, phone, or email during the preparation of any and all draft reports. Draft reports will be circulated for review and comment.

FOR FURTHER INFORMATION CONTACT: Questions about the study elements should be directed to Robert S. Nebel, Environmental Resources Specialist, Environmental and Economics Section, Planning Branch, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978, phone: (402) 221–4621, email: robert.s.nebel@usace.army.mil.

SUPPLEMENTARY INFORMATION: Environmental restoration needs and opportunities will be investigated that specifically fit the Corps' authorities—ones that restore degraded conditions caused by existing Corps projects (section 1135 of the Water Resources Development Act (WRDA) of 1986); or ones that restore aquatic ecosystem structure and function (section 206 of WRDA 1996) (no relationship to an existing Corps project is required); ones that usually include manipulation of the hydrology in and along bodies of water, including wetlands and riparian areas (section 206 of WRDA 1996); or ones that restore degraded streams, rivers, wetlands and other waterbodies to their natural condition as a means to control flooding, excessive erosion, and sedimentation (section 503 of WRDA 1996).

Candace M. Thomas,

Chief, Environmental and Economics Section Planning Branch.

[FR Doc. 99–13733 Filed 5–28–99; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on July 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on May 12, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: May 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01770–1

SYSTEM NAME:

Reserve Disability Appellate Records.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066. Duplicate copies may be maintained by Commander, Naval Reserve Force or Commandant Marine Corps, and medical offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reserve members of the Navy and Marine Corps who claim to have incurred or aggravated an illness or injury during active or reserve duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests originated by individuals concerned; Chief, Bureau of Medicine

and Surgery historical narratives and opinions concerning the origins of disabilities of individuals; copies of Judge Advocate General determinations; Internal Revenue Service and Social Security Administration Records; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1074(a); 37 U.S.C. 204, 206; 50 U.S.C. 403, 2082; and 44 U.S.C. 3101.

PURPOSE(S):

Information is used for appellate review of adverse determinations made by Commander, Naval Reserve Force or Commandant of the Marine Corps concerning the eligibility of reservists to disability benefits. Final determination is provided to the appropriate medical treatment facility, Commandant of the Marine Corps or Commander, Naval Reserve Force. Final determination may be provided to Physical Evaluation Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 551(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records.

RETRIEVABILITY:

Name and year action taken.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours. Automated records are password protected.

RETENTION AND DISPOSAL:

Records are maintained in office for 1 year after closure of case and then forwarded to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 for storage for 75 years.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

The request must be signed by the requesting individual and should contain the full name of the individual concerned and the approximate date on which the appeal was filed. Visits may be made to the Administrative law Division (Code 13), Office of the Judge Advocate General, Suite 7000, Presidential Towers, 2611 South Jefferson Davis Highway, Arlington, VA 22209. Armed Forces' identification card or state driver's license is required for identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

The request must be signed by the requesting individual and should contain the full name of the individual concerned and the approximate date on which the appeal was filed. Visits may be made to the Administrative law Division (Code 13), Office of the Judge Advocate General, Suite 7000, Presidential Towers, 2611 South Jefferson Davis Highway, Arlington, VA 22209. Armed Forces' identification card or state driver's license is required for identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reserve personnel information is provided by Commander, Naval Reserve Force or Commandant of the Marine Corps, and the individual concerned. Medical opinions may be provided by the Chief, Bureau of Medicine and Surgery. Verification of loss of civilian earnings is provided by the internal Revenue Service and the Social Security Administration.

EXEMPTIONS CLAIMED BY THE SYSTEM:

None.

[FR Doc. 99–13707 Filed 5–28–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on July 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record system being amended is set forth below, as amended, published in its entirety.

Dated: May 25, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01301–1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire *(February 22, 1993, 58 FR 10712).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 61), Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.'

* * * * *

N01301–1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers reporting for duty in the Office of the Judge Advocate General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, branch of service, date of rank, date reported, previous duty station, date detached, Social Security Number, designator, division assignment, room number, office phone, spouse's name, number of dependents' spouse's employment, dependents names and ages, home telephone number, home address, name of officer relieving, billet sequence code, unit identification code, place of birth, date of birth, security clearance, basis, completed by and date of completion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806 and E.O. 9397 (SSN).

PURPOSE(S):

To assist the Judge Advocate General in assignment of officers within the Office of the Judge Advocate General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in a folder alphabetically and are stored in a file cabinet.

RETRIEVABILITY:

Retrieved by officer's name.

SAFEGUARDS:

Records are maintained in a file cabinet under the control of authorized personnel during working hours; and the office space in which the cabinet is located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are destroyed when the officer is transferred from the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information submitted by the officer upon his/her reporting for duty in the Office of the Judge Advocate General.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05810–3

SYSTEM NAME:

Appellate Case Tracking System (ACTS) *(February 22, 1993, 58 FR 10774).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05814-6'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who have their appellate case reviewed by the Navy-Marine Corps Court of Criminal Appeals and/or the Court of Appeals for the Armed Forces.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To track the status of courts-martial cases

appealed to the Navy-Marine Corps Court of Criminal Appears for the Armed Forces. The system will also be used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.'

* * * * *

N05814–6

SYSTEM NAME:

Appellate Case Tracking System (ACTS).

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have their appellate case reviewed by the Navy-Marine Corps Court of Criminal Appeals and/or the Court of Appeals for the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy appellate case records; additional Navy appellate case information records; and historical Navy appellate case records from 1986 to present. Files contain personal information such as name, rank, Social Security Number, etc., and specific information with regard to the Navy appellate cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 866, 867; and E.O. 9397 (SSN).

PURPOSE(S):

To track the status of courts-martial cases appealed to the Navy-Marine Corps Court of Criminal Appears for the Armed Forces. The system will also be used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, computers, and on hard copy forms.

RETRIEVABILITY:

ACTS users obtain information by means of a query or a request for a standard report. Data may be indexed by any data item although the primary search keys are the name, Social Security Number, or the Navy-Marine Corps Court of Criminal Appeals docket number.

SAFEGUARDS:

Access to building is protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features: User account number and password sign-on, data base access authority, data set authority for add and delete, and data item authority for list and update.

RETENTION AND DISPOSAL:

An individual's record is retained on disk and will be available for on-line access for twenty-five years after the close of the individual's case. The record will be purged to magnetic tape after twenty-five years and will be utilized in a batch processing mode.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

The request should contain full name, Social Security Number, and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' I.D. card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

The request should contain full name, Social Security Number, and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' I.D. card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual's record of trial and supporting documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05815–1

SYSTEM NAME:

Record of Trial of Special Courts-Martial Resulting in Bad Conduct Discharges or Concerning Officers *(February 22, 1993, 58 FR 10778).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05813-5'.

SYSTEM LOCATION:

Delete entry and replace with 'Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 865; and 10 U.S.C. 866(b).'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.'

* * * * *

N05813–5

SYSTEM NAME:

Record of Trial of Special Courts-Martial Resulting in Bad Conduct Discharges or Concerning Officers.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel tried by special courts-martial and awarded a bad conduct discharge, and all Navy and Marine Corps commissioned officers tried by special courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special courts-martial which resulted in a bad conduct discharge, or involving commissioned officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 865; and 10 U.S.C. 866(b).

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 866(b) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept by Navy courts-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Special courts-martial proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05814–1

SYSTEM NAME:

Summary and Non-BCD Courts-Martial Records *(February 22, 1993, 58 FR 10777).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05813-6'.

SYSTEM NAME:

Delete entry and replace with 'Summary and Non-BCD Special Courts-Martial Records of Trial.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374-5047 or appropriate officer having supervisory authority over the naval activity which convened the court-martial.'

* * * * *

N05813-6

SYSTEM NAME:

Summary and Non-BCD Special Courts-Martial Records of Trial.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps enlisted personnel tried by summary courts-martial or by special courts-martial which did not result in a bad conduct discharge (BCD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary courts-martial and non-BCD special courts-martial records of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 865.

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 864(a) and provide repositories accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Type of courts-martial, date, command which convened the courts-martial, name of individual defendant, and command which completed the supervisory authority's action.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are retained for two years after final action by officers having supervisory authority over shore activities, and for three months by officers having supervisory authority over fleet activities. At the termination of the appropriate retention period, records are forwarded for storage to the National Personnel Records Center (Military Personnel Records), GSA, 9700 Page Avenue, St. Louis, MO 63132-5100. Records are destroyed 15 years after final action has been taken.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374-5047 or appropriate officer having supervisory authority over the naval activity which convened the court-martial.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374-5047.

The request should include the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Division Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374-5047.

The request should include the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Proceedings of summary courts-martial and special courts-martial which did not result in a bad conduct discharge.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05819-2

SYSTEM NAME:

Article 73 Petitions for New Trial *(February 22, 1993, 58 FR 10780).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05814-5'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their courts-martial sentence by the convening authority but after their case had been reviewed by the Navy-Marine Corps Court of Criminal Appeals or the Court

of Appeals for the Armed Forces, if appropriate.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are maintained in the office for four years and then destroyed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street, SE, Suite 1000, Washington, DC 20374-5047.'

* * * * *

N05814-5

SYSTEM NAME:

Article 73 Petitions for New Trial.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their courts-martial sentence by the convening authority but after their case had been reviewed by the Navy-Marine Corps Court of Criminal Appeals or the Court of Appeals for the Armed Forces, if appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

The petition for new trial, the forwarding endorsements if the petition was submitted via the chain of command, and the action of the Judge Advocate General on the petition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 73, Uniform Code of Military Justice, (10 U.S.C. 873).

PURPOSE(S):

To provide a record of individual petitions in order to answer inquiries from the individual concerned and to provide additional advice to commands involved when and if such petitions are granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in the office for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street, SE, Suite 1000, Washington, DC 20374-5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records are comprised of the following source materials: (1) Petitions for new trial; (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of courts-martial (above information is omitted if petitioner is former service member); and (3) action of the Judge Advocate General on petitions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N11101-2

SYSTEM NAME:

Family Housing Requirements Survey Record System *(May 7, 1999, 64 FR 24619).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace first sentence with 'Naval Facilities Engineering Command, 1322 Patterson Avenue SE, Suite 1000, Washington Navy Yard, Washington, DC 20374-5065.'

* * * * *

N11101-2

SYSTEM NAME:

Family Housing Requirements Survey Record System.

SYSTEM LOCATION:

Military installations with family housing offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer and enlisted personnel and only key and essential civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Non-individual oriented input documents that reflect local housing assets; family housing survey questionnaires indicating family size, individual preference for housing, housing cost, and indication as to suitability of housing for need of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To determine the housing requirement for the location to support proposed family housing construction, leasing, mobile home spaces and other

military construction programs submitted for OSD support and Congressional approval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Housing files used solely within housing office; tape files used solely within data processing system; and protected by the military installation's security measures. Automated files are password protected.

RETENTION AND DISPOSAL:

Held three years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Facilities Engineering Command, 1322 Patterson Avenue SE, Suite 1000, Washington Navy Yard, Washington, DC 20374-5065. Subordinate record holders of questionnaires: Family housing office at military installation.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–13708 Filed 5–28–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: June 17 and 18, 1999.

TIME: June 17, 9 a.m. to 5 p.m.; June 18, 9 a.m. to 4:30 p.m.

LOCATION: Room 100, 80 F St., NW, Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, D.C. 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov, or nerppb@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The meeting is open to the public. On June 17, the Board will elect officers for 1999–2000 and hear a presentation on the interim evaluation of the regional educational laboratories. On June 18, the Board will have a briefing on "Improving Student Learning: A Strategic Plan for Education Research and Its Utilization" by a representative of the National Research Council, which published the study, and will conduct outstanding business. A final agenda will be available from the Board office on June 10, 1999, and will be posted on the Board's web site, http://www.ed.gov/offices/OERI/NERPPB/.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, D.C. 20208–7564.

Dated: May 25, 1999.

Eve M. Bither,

Executive Director.

[FR Doc. 99–13771 Filed 5–28–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Acting Chief Information Officer for the Department of Education publishes this Notice of a New System of Records for the Student Account Manager System, as authorized by the Higher Education Act of 1965, Title IV–A through IV–H, as amended (20 U.S.C. 1092b). This system contains a data base of student accounts containing records of activities relative to Federal loan and grant transactions. The Secretary seeks comments on the proposed routine uses of this system of records.

DATES: Comments on proposed routine uses for this system of records must be received on or before July 1, 1999. The Department filed a report of the new, amended, altered and deleted systems of records, which included this system, with the Chairman of the Committee on Governmental Affairs of the Senate, the Chairman of the Committee on Government Reform and Oversight Operations of the House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) on May 14, 1999. This system of records becomes effective after the 30-day period for OMB review of the system expires on June 14, 1999 unless OMB gives specific notice within the 30 days that the system is not approved for

implementation or requests an additional 10 days for its review.

ADDRESSES: All comments on the proposed routine uses should be addressed to Bill Burrow, Office of Chief Information Officer, Acting Information Management Group Leader, U.S. Department of Education, 400 Maryland Avenue SW., Regional Office Building, Room 5624, Washington, DC 20202–4580. Comments may also be sent through the Internet to: Comments@ed.gov

You must include the term "System of Records" in the subject line of your electronic message.

All comments submitted in response to this notice are available for public inspection, during and after the comment period, in Room 5624, Regional Office Building, 7th and D Streets, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday, except Federal holidays.

On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for this notice. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–9265 or (202) 260–0250. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bill Burrow, Office of Chief Information Officer, Acting Information Management Group Leader, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5624, Washington, DC 20202. Telephone number: (202) 401–0250. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Portable Document Format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either or the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll-free, 1–800–222–4922. The documents are located under Option G–Files/Announcements, Bulletins and Press Releases.

Note: The Official version of this document is the document published in the **Federal Register**.

Background

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, applies to information about individuals that contains individually identifiable information and that may be retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record" and the system, whether manual or computer-driven, is called a "system of records." The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the Office of Management and Budget (OMB) whenever the agency publishes a new or "altered" system of records.

The Student Account Manager system of records is a part of the Access America for Students pilot project. The pilot project is intended to improve the administration of the Federal loan and grant programs authorized by the Higher Education Act of 1965, title IV–A through IV–H, as amended (20 U.S.C.1092b).

The Student Account Manager system is being established for three purposes: (1) To give students a single point of contact for information, statements, and customer service concerning their Federal student financial assistance (loans and grants) from various programs and sources; (2) to provide eligible institutions of higher education with a standardized method for the receipt of Title IV student financial assistance; and (3) to create summary reports for Federal loan and grant funding sources and program offices for loans and grants delivered through the Student Account Manager.

Information in the system includes demographic information identifying the student or borrower, Federal loan and grant funding information, and Federal loan and grant transaction information. The Secretary of Education uses the information in this system to simplify the flow of student financial assistance funds and information to students and schools.

Direct access is restricted to authorized agency and contractor staff in the performance of their official duties. The information is kept in computer mainframe databases at contractor sites in secured buildings. All physical access to the sites of the contractor and the Department of Education where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for an employee's or a visitor's badge.

The computer system employed by the Secretary offers a high degree of resistance to tampering and circumvention. This security system limits data access to the Department of Education (ED), agents of ED (including schools and funding sources), and contract staff on a "need to know" basis, and controls individual users' ability to access and alter records within the system. All users of this system are given a unique user ID with a personal identifier.

Dated: May 27, 1999.

Thomas P. Skelly,

Acting Chief Information Officer.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Chief Information Officer of the U.S. Department of Education publishes notice of system 18–11–08, the "Student Account Manager System."

18–11–08

SYSTEM NAME:

Student Account Manager System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Program Systems Service, Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh and D Streets, SW., Room 4640, ROB–3, Washington, DC 20202.

National Computer Systems, 2510 North Dodge Street, Iowa City, Iowa 52240.

Total Systems Services, Inc, 6101 Stone Mill Drive, Columbus, GA; Golden Retriever System, 8 N. Roosevelt Avenue, Chandler, AZ 85221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Student Account Manager System contains student financial assistance records about students and/or borrowers both who have applied for loans under any Title IV Federal loan program and students who have applied for grants under any Title IV Federal grant program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Student Account Manager System contains records relating to a student and/or borrower's originated awards and disbursements of Title IV financial assistance. The system contains three data element types as outlined below: demographic information, such as student and/or borrower name, mailing and permanent address, e-mail address, current and original Social Security number, phone number, date of birth, student account number, loan and grant funding and award information, including the Title IV code for the school(s) for which students and/or borrowers have requested determinations of Federal financial assistance eligibility, the origination date and I.D., the funding source I.D., loan holder, credit limit or award amount, loan and grant transaction information, including the transaction date, posting date, disbursement amount, acceptance/rejection field, batch number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Higher Education Act of 1965, Title IV–A through IV–H, as amended, (20 U.S.C.1092b).

PURPOSE(S):

This system of records is provided for the purposes of:

(1) Giving students a single point of contact for information, statements, and customer service concerning their Federal student financial assistance (loans and grants) from various programs and sources;

(2) Providing eligible institutions of higher education with a standardized method for the receipt of Title IV student financial assistance; and

(3) Creating summary reports for Federal loan and grant funding sources and program offices for loans and grants delivered through the Student Account Manager.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program purposes.* Records may be disclosed for the following program purposes:

(a) To report disbursement activity, disclosures may be made to appropriate guaranty agencies, educational and financial institutions, and Federal agencies.

(b) To deliver Federal student assistance funds to the educational institution at which the student is enrolled, disclosures may be made to that educational institution.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(3) *Enforcement disclosures.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, The Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, or executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation disclosure and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ

(c) *Administrative disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a records to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other

personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(7) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(12) *Congressional member disclosure.* The Department may disclose information to a member of congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(13) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISCLOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records at the National Computer Systems (NCS) are maintained on the mainframe at the NCS data center in Iowa City, IA and archived onto magnetic tape. Total System records are maintained on a mainframe database in Columbus, GA and backed up onto magnetic tapes. Golden Retriever System records are maintained on a sequel server database in Chandler, AZ and backed up onto CD–ROM.

RETRIEVABILITY:

Each student and/or borrower's file is indexed by social security number and the first two characters of their last name.

SAFEGUARDS:

All users of this system are given a unique user ID with a personal identifier. Student and parent users are assigned an Electronic Access Code (EAC) through the Federal Student Aid Application Files Privacy Act system of records number 18–11–01 by which they can access their accounts. All physical access to the Department's site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to the Department, agents of the Department (including schools and funding sources), and contract staff on a "need to know" basis, and controls individual users" ability to access and alter records within the system. All users of this system of records are given a unique user ID with passwords.

RETENTION AND DISPOSAL:

Federal Loan Records: The Department will retain and dispose of loan records in accordance with the Department's Records Disposition Schedules (ED/RDS), Part 10, Item 16. Individual records (applications, certifications, disbursements, correspondence, and related records) for Federal loans may be destroyed three years after cancellation, forgiveness or final repayment of the Loan (ED/RDS, Part 10, Item 16). Electronic Federal loan records will be kept online and easily available for 24 months after reconciliation with the funding source, then retained in accordance with ED/RDS, Part 10, Item 16.

Federal Pell Grant Records: ED will retain and dispose of Pell Grant records in accordance with ED/RDS, Part 10, Item 17. Records of Federal Pell Grant recipients (applications, payment, correspondence, and related records) will be transferred to a Federal Records Center after final payment to grantee. Individual Pell Grant records may be destroyed 15 years after final payment to grantee (ED/RDS, Part 10, Item 17). Individual records for unapproved Federal Pell Grant applications will be transferred to a Federal Records Center 120 days after a rejection or withdrawal, and may be destroyed three years after date of rejection or withdrawal (ED/RDS, Part 10, Item 17(d)). Electronic Federal Pell Grant records will be kept online and easily available for 24 months after reconciliation with the

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funding source, then retained in accordance with ED/RDS, Part 10, Item 17.

SYSTEM MANAGERS AND ADDRESS:

Service Director, Program Systems Service, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4640, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual may gain access to the system via the Internet or by contacting the system administrator through the Student Account Manager's customer service e-mail address or toll-free telephone number. (To obtain access to records by telephone, the student must first authorize telephone access through the Student Account Manager's website using his or her Electronic Access Code.) The student must provide the system manager with his or her name, date of birth, Social Security number, and Electronic Access Code (EAC). Requests for notification about an individual must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity. Individuals may also present their requests in person at any of the locations identified for this system of records or address their requests to the system manager at the following address: Program Systems Service, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4640, Washington, DC 20202.

RECORD ACCESS PROCEDURES:

If an individual wishes to gain access to a record in this system, he or she may do so via the Internet, by calling the toll free customer service phone number using a touch-tone telephone, or by contacting the system manager through the Student Account Manager's customer service e-mail address or toll-free telephone number. (To obtain access to records by telephone, the student must first authorize telephone access through the Student Account Manager's website using his or her Electronic Access Code.)

CONTESTING RECORD PROCEDURES:

If an individual wishes to change the contents of a record in the system of records, he or she may challenge a transaction by contacting the system manager by telephone or sending written notice to the Student Account Manager's customer assistance area and providing the information described in the notification procedure, identifying the specific item(s) to be changed, and providing a written justification for the change, including any supporting documentation.

RECORD SOURCE CATEGORIES:

Information is obtained from schools, lenders, guaranty agencies, students, borrowers, the Title IV Program Files (Privacy Act system of records number 18–11–05), the Federal Student Aid Application Files Privacy Act system of records number 18–11–001), the Direct Loan Origination Center, and the Recipient Funds Management System (RFMS).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–13918 Filed 5–28–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board.

DATES AND TIMES: Tuesday, June 15, 1999, 1:00 pm—4:30 pm.

ADDRESSES: Argonne National Laboratory, Argonne Guest House (Building 460), 9700 South Cass Avenue, Argonne, Illinois.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (The Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act. The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary on the Department's management reforms, research, development, and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

Tuesday, June 15, 1999

1:00 pm—1:20 pm Welcome & Opening Remarks—SEAB Chairman and Secretary Bill Richardson

1:20 pm—2:45 pm Status Reports & Board Discussion

2:45 pm—3:00 pm Break

3:00 pm—4:15 pm Status Reports & Board Discussion

4:15 pm—4:30 pm Public Comment Period

4:30 pm Closing Remarks

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Argonne, Illinois the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on May 24, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–13815 Filed 5–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–168–003]

Alliance Pipeline L.P.; Notice of Amendment

May 25, 1999.

Take notice that on May 21, 1999, Alliance Pipeline L.P. (Alliance), Suite 400, 605—5th Avenue S.W., Calgary, Alberta, Canada T2P 3H5, filed in Docket No. CP97–168–003 an application pursuant to Section 7(c) of the Natural Gas Act for an amendment to its certificate of public convenience and necessity previously issued by the Commission on September 17, 1998 in Docket No. CP97–168–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

The Commission's September 17, 1998 order authorized the construction of a 886.8 mile long, 36-inch diameter pipeline, the U.S. portion of a project to transport natural gas from Canada at the intentional boundary in North Dakota to an interconnection near Chicago, Illinois. Alliance states that it seeks authorization to construct and operate its certificated Albert Lea 25–A Compressor Station at mile post 560.0 of the Alliance Pipeline route in Freeborn County, Minnesota, a site located approximately 8,000 feet southeast of the site certificated by the Commission's September 17, 1998 order. Alliance requests the authorization no later than July 30, 1999.

According to Alliance, the relocation of the compressor will allow the pipeline to avoid using eminent domain authority to acquire the land to construct the compressor station. Alliance states the compressor horsepower and resulting capacity will not be affected by the new location. Alliance further states that the cost of the facilities is unchanged by this amendment.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20526, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require the protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenter will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commissions' final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonments and a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Alliance to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13712 Filed 5–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–149–000, et al.]

Green Country Energy, LLC, et al.; Electric Rate and Corporate Regulation Filings

May 24, 1999.

Take notice that the following filings have been made with the Commission:

1. Green Country Energy, LLC

[Docket No. EG99–149–000]

Take notice that on May 19, 1999, Green Country Energy, LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935.

The applicant is a limited liability company organized under the laws of the State of Delaware that is engaged directly and exclusively in developing, owning, and operating a gas-fired 795 MW (summer rated) combined-cycle power plant in Jenks, Oklahoma, which will be an eligible facility.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will its consideration of comments to those that concern the accuracy or adequacy of the application.

2. Tenaska Gateway Partners, Ltd.

[Docket No. EG99–150–000]

Take notice that on May 20, 1999, Tenaska Gateway Partners, Ltd., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Gateway), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Tenaska Gateway, a Texas limited partnership, will construct, own, and operate a natural gas fired generating facility to be located in Rusk County, Texas. The facility will consist of three "F" Class combustion turbine-

generators, an approximately 400 MW steam turbine-generator and will use gas as the primary fuel and fuel oil as backup fuel for the combustion turbines. The Facility will also include natural gas receipt facilities, fuel oil storage facilities, fuel oil unloading facilities, and a switchyard. The Facility will include related transmission interconnection components necessary to interconnect the Facility with Texas Utilities Electric Company, which is located in the Electric Reliability Council of Texas (ERCOT), and with Southwestern Electric Power Company, which is a member of the Southwest Power Pool. The maximum electric power production capacity of the facility will be 930 MW. The Facility will be used exclusively for the generation of electric energy for sale at wholesale.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will its consideration of comments to those that concern the accuracy or adequacy of the application.

3. Louisville Gas And Electric Co./ Kentucky Utilities Company

[Docket No. ER98–114–002]

Take notice that on May 18, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing a refund compliance report in accordance with the Commission's Order approving the Settlement Agreement for Transmission Rates in Docket No. ER98–114–000.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Millennium Energy Corporation

[Docket No. ER98–174–005]

Take notice that on May 17, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/ online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Carolina Power & Light Company

[Docket No. ER98–3220–003]

Take notice that on May 17, 1999, Carolina Power & Light Company (CP&L), tendered for filing a compliance filing to demonstrate that refunds associated with certain wholesale transactions did not allow CP&L to recover its variable costs for those wholesale transactions.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER99–2075–001]

Take notice that on May 19, 1999, Northern Indiana Public Service Company tendered for filing its Compliance Filing according to the Commission's December 16, 1998 Order in North America Electric Reliability Council, 85 FERC ¶ 61,353 (1998) and its May 12, 1999, Order in this proceeding.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Electric Company, Delmarva Power & Light Company and Conectiv Energy Supply, Inc.

[Docket No. ER99–2525–000]

Take notice that on May 17, 1999, Atlantic City Electric Company (Atlantic), Delmarva Power & Light Company (Delmarva) and Conectiv Energy Supply, Inc. (CES), (collectively, the Companies) tendered for filing an amendment to Docket No. ER99–2525–000, in which the Companies agreed to adopt the recent PJM market study in Atlantic City Electric Company, et al., 86 FERC ¶ 61,248 (March 10, 1999) as their updated three-year market analysis pursuant to their market-based rate authority. The Companies proposed to file their next updated market analysis within three years after March 10, 1999. The Companies request that this amendment supersede the Companies' original filing in Docket No. ER99–2525–000.

The Companies have served the affected customers and state commissions with this filing.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Navitas, Inc.

[Docket No. ER99–2537–000]

Take notice that on May 18, 1999, Navitas, Inc. (Navitas) petitioned the Commission for acceptance of an Amendment to Exhibit A of Navitas' Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The amended Exhibit A of the petition adds descriptions of Navitas affiliates, the names of which were included in the original Exhibit A of Navitas' Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Navitas intends to engage in wholesale electric power and energy purchases and sales as a marketer. Navitas may also engage in other nonjurisdictional activities, such as facilitating the purchase and sale of wholesale energy without taking title to the electricity, selling electricity to retail customers in states in which retail electric power competition has been implemented, and arranging services in related areas such as transmission and fuel supplies. Navitas is not in the business of generating or transmitting electric power. Navitas is a wholly-owned subsidiary of Northern Alternative Energy, Inc., which through its affiliates, develops wind-driven generation facilities, the power from which is dedicated under long-term contracts.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Nautilus Energy Company

[Docket No. ER98–2618–000]

Take notice that on May 17, 1999, Nautilus Energy Company, tendered for filing a notice of change in status in the above-referenced proceeding.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–2640–000]

Take notice that on May 17, 1999, Alliant Energy Corporate Services, Inc., tendered for filing an amendment in Docket No. ER99–2640–000. Alliant Energy Corporate Services, Inc., is amending that filing to provide notice that two executed service agreements for point-to-point transmission service were filed in that Docket. One agreement was for Short-Term Firm Point-to-Point transmission Service. The other agreement was for Non-Firm Point-to-Point Transmission Service. Both agreements were executed by British Columbia Power Exchange Corporation and Alliant Energy Corporate Services, Inc.

Alliant Energy Corporate Services, Inc., renews its request for an effective date of April 8, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Old Mill Power Company

[Docket No. ER99–2883–000]

Take notice that on May 17, 1999, Old Mill Power Company (Old Mill), tendered for filing an amendment of the petition to the Commission for acceptance of Old Mill Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Old Mill intends to engage in wholesale electric power and energy purchases and sales as a marketer. Old Mill also intends to engage in retail sales of electricity, but is not in the business of generating or transmitting electric power. Old Mill is wholly owned by Michel A. King (President) and Elizabeth C. King (Secretary). In addition to serving as Old Mill's President, Mr. King occasionally serves as an Adjunct Professor of Engineering, Engineering Teaching Assistant, or Engineering Research Assistant at the University of Virginia, Charlottesville, Virginia. In addition to serving as Old Mill's Secretary, Mrs. King regularly serves as a Registered Nurse at the University of Virginia Medical Center, Charlottesville, Virginia.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER99–2951–000]

Take notice that on May 17, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which PECO Energy Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 6, 1999.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER99–2952–000]

Take notice that on May 17, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Merrill Lynch will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 5, 1999.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER99–2953–000]

Take notice that on May 17, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which TransAlta Energy Marketing (U.S.) Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 5, 1999.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER99–2954–000]

Take notice that on May 17, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which New Energy Ventures, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 30, 1999.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER99–2955–000]

Take notice that on May 17, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which CLECO Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 30, 1999.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. MidAmerican Energy Company

[Docket No. ER99–2956–000]

Take notice that on May 17, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303, tendered for filing with the Commission a Service Agreement dated February 12, 1999, with ConAgra Energy Services, Inc., entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of May 1, 1999, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on ConAgra Energy Services, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Rochester Gas and Electric Corporation

[Docket No. ER99–2960–000]

Take notice that on May 17, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service Agreement between RG&E and the KeySpan Energy(Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 5, 1999, for the KeySpan Energy Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. California Power Exchange Corporation

[Docket No. ER99–2967–000]

Take notice that on May 17, 1999, the California Power Exchange Corporation (PX), tendered for filing a notice of an experimental Post Close Quantity Match (PCQM) mechanism to begin June 30, 1999 or five days after the PX posts a notice on its website. The period of the experiment would be seven months. The PX proposes to implement a PCQM session at the close of the PX Day-Ahead and Hour-Ahead markets. These sessions would allow traders to even up market positions at the settlement price after the close of the market. The PCQM will operate at the Market Clearing Price (MCP) and will not affect the level of the MCP or the manner in which it is determined.

At the conclusion of the experimental period, the PX will make a decision on

the PCQM based upon its own analysis and input from market participants. Specifically, the PX will then decide whether to make the PCQM a permanent part of its tariff and protocols. The PX is serving copies of this letter on each of its participants and posted a notice of this filing on its website seven days prior to the filing.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. The United Illuminating Company

[Docket No. ER99–2972–000]

Take notice that on May 17, 1999, The United Illuminating Company (UI), tendered for filing four Service Agreements for Firm Point-to-Point Transmission Service and an Interconnection Agreement between UI and Wisvest-Connecticut LLC executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Northeast Utilities Service

[Docket No. ER99–2974–000]

Take notice that on May 18, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with TransCanada Power Marketing, Ltd. (TCPM), under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to TCPM.

NUSCO requests that the Service Agreement become effective June 1, 1999.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Allegheny Power Service Corp., on behalf of Monongahela Power Co. The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2975–000]

Take notice that on May 18, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 55 to add Reliant Energy Services, Inc., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is May 17, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Niagara Mohawk Power Corporation

[Docket No. ER99–2976–000]

Take notice that on May 18, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Rochester Gas and Electric Corporation (RG&E). This Transmission Service Agreement specifies that RG&E has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and RG&E to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for RG&E as the parties may mutually agree.

Niagara Mohawk requests an effective date of May 7, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and RG&E.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. PJM Interconnection, L.L.C.

[Docket No. ER99–2977–000]

Take notice that on May 18, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing a signature page of a party to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing the party to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including the party for which a signature page is being tendered with this filing, and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER99–2978–000]

Take notice that on May 18, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated May 31, 1999 with Sithe Power Marketing, Inc. (Sithe), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Sithe as an eligible customer under the Tariff.

PP&L requests an effective date of May 18, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Sithe and to the Pennsylvania Public Utility Commission.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Texas Utilities Electric Company

[Docket No. ER99–2979–000]

Take notice that on May 19, 1999, Texas Utilities Electric Company (TU Electric), tendered for filing an executed transmission service agreement (TSA) with Williams Energy Marketing & Trading Company, for certain Unplanned Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Williams Energy Marketing & Trading Company as well as the Public Utility Commission of Texas.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–2980–000]

Take notice that on May 18, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 60, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for a decrease in the annual revenues under the Rate Schedule of $106,470.

Con Edison has requested that the decrease take effect on July 1, 1999.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Pacific Gas and Electric Company

[Docket No. ER99–2981–000]

Take notice that on May 17, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing amendments to the South of Tesla Principles for Tesla-Midway Transmission Service (SOTP) between PG&E and the Transmission Agency of Northern California (TANC). The amendment provides for certain contract changes to reflect a negotiated settlement between the parties. The changes include, among other things, a reduced Pre-Specified Mitigation Rate and a one-year extension of the current rate methodology.

PG&E proposes that the Amendment to the rate schedule become effective July 1, 1998.

Copies of this filing have been served upon the California Public Utilities Commission and TANC.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Green Country Energy, LLC

[Docket No. ER99–2984–000]

Take notice that on May 19, 1999, Green Country Energy, LLC, an electric power developer organized under the laws of Delaware, petitioned the Commission for acceptance of its market-based rate schedule, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's Regulations, and preapproval of transactions under Part 34 of the Regulations. Green Country is developing a 795 MW (summer rated) gas-fired generating facility in Jenks, Oklahoma.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. California Independent System Operator Corporation

[Docket No. ER99–2985–000]

Take notice that on May 19, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and PG&E Energy Trading—Power, L.P., for acceptance by the Commission.

The ISO states that this filing has been served on PG&E Energy Trading—Power, L.P. and the California Public Utilities Commission.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. California Independent System Operator Corporation

[Docket No. ER99–2986–000]

Take notice that on May 19, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Woodland Biomass Power, Ltd. (Woodland), for acceptance by the Commission.

The ISO states that this filing has been served on Woodland and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of April 23, 1999.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Dayton Power and Light Company

[Docket No. ER99–2987–000]

Take notice that on May 19, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing DPL Energy Inc., DukeSolutions, Inc., FirstEnergy Corp., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon DPL Energy Inc., DukeSolutions, Inc., FirstEnergy Corp., and the Public Utilities Commission of Ohio.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Orange and Rockland Utilities, Inc.

[Docket No. ER99–3003–000]

Take notice that on May 19, 1999 Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and Aquila Power Corporation (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of May 5, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Orange and Rockland Utilities, Inc.

[Docket No. ER99–3004–000]

Take notice that on May 18, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and Aquila Power Corporation (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of May 5, 1999, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Coast Energy Group, a division of CornerStone Propane, L.P.

[Docket No. ER99–3005–000]

Take notice that on May 19, 1999, Coast Energy Group, a division of CornerStone Propane, L.P. (CEG), tendered for filing on May 19, 1999, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for an order accepting its proposed power sales rate schedule for the sale of energy and capacity at market-based rates and for waivers and blanket approvals under various regulations of the Commission.

CEG seeks an effective date of July 18, 1999, for this filing.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Dayton Power and Light Company

[Docket No. ER99–3006–000]

Take notice that on May 19, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with DPL Energy Inc., DukeSolutions, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with DPL Energy Inc., DukeSolutions,

Inc., and the Public Utilities Commission of Ohio.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. UtiliCorp United Inc.

[Docket No. ER99–3007–000]

Take notice that on May 19, 1999, UtiliCorp United Inc., (UtiliCorp), tendered for filing a service agreement with Duke Energy Trading & Marketing L.L.C., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating division, Missouri Public Service.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Mid-Continent Area Power Pool

Docket Nos. OA97–163–003, ER97–1162–002, OA97–658–003] Take notice that on May 17, 1999, the Mid-Continent Area Power Pool tendered for filing its compliance filing in the above-reference dockets.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13711 Filed 5–28–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF99–5041–000, et al.]

Western Area Power Administration, et al.; Electric Rate and Corporate Regulation Filings

May 25, 1999.

Take notice that the following filings have been made with the Commission:

1. Western Area Power Administration

[Docket No. EF99–5041–000]

Take notice that on May 21, 1999, Western Area Power Administration tendered for filing an amendment to its May 3, 1999, filing in the above-referenced docket.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. North American Electric Reliability Council

[Docket No. ER99–2012–001]

Take notice that on May 14, 1999, North American Electric Reliability Council tendered for filing a description and procedures for a market redispatch pilot program to be in effect for the Eastern Interconnection during the period June 1,1999 through September 30, 1999.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket Nos. ER99–2988–000]

Take notice that on May 20, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Riverside Canal Power Company (Riverside Canal) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Riverside Canal and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of May 7, 1999.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER99–2989–000]

Take notice that on May 20, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Riverside Canal Power Company (Riverside Canal) for acceptance by the Commission.

The ISO states that this filing has been served on Riverside Canal and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of May 7, 1999.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER99–2990–000]

Take notice that on May 20, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Mountainview Power Company (Mountainview Power) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Mountainview Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of May 7, 1999.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER99–2991–000]

Take notice that on May 20, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Mountainview Power Company (Mountainview Power) for acceptance by the Commission.

The ISO states that this filing has been served on Mountainview Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of May 7, 1999.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Tenaska Gateway Partners, Ltd.

[Docket No. ER99–2992–000]

Take notice that on May 20, 1999, Tenaska Gateway Partners, Ltd., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Gateway), which will own and operate a natural gas fired electric generating facility to be

constructed in Rusk County, Texas, submitted for filing with the Federal Energy Regulatory Commission its initial FERC Electric Rate Schedule No. 1, which will enable Tenaska Gateway to engage in the sale of electric energy and capacity at market-based rates.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–2993–000]

Take notice that on May 20, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Horizon Energy Company d/b/a Exelon Energy (Exelon Energy), dated May 19, 1999. This Service Agreement specifies that Exelon Energy has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and Exelon Energy to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 19, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–2994–000]

Take notice that on May 20, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Edison Mission Marketing and Trading, Inc. (Edison Mission Marketing), dated April 21, 1999. This Service Agreement specifies that Edison Mission Marketing has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and Edison Mission Marketing to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of April 21, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–2995–000]

Take notice that on May 20, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and DTE Edison America, Inc. (DTE Edison), dated March 1, 1999. This Service Agreement specifies that DTE Edison has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and DTE Edison to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 1, 1999, for the Service Agreement.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Wisvest-Connecticut, L.L.C.

[Docket No. ER99–2996–000]

Take notice that on May 20, 1999, Wisvest-Connecticut, L.L.C. (Wisvest-Connecticut), tendered for filing to the Commission copies of documents confirming the assignment of five wholesale power sales agreements from The United Illuminating Company to Wisvest-Connecticut pursuant to the Commission's order dated February 24, 1999. The United Illuminating Company, 86 FERC ¶ 62,160 (1999). Parties to the assigned agreements include Unitil Power Corporation, PECO Energy Company—Power Team, Bangor Hydroelectric Company, The Connecticut Light & Power Company, and Citizens Utilities Company.

Wisvest-Connecticut requests waiver of the prior notice filing requirement to permit the assignments to become effective April 16, 1999, the date the assignments occurred.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. North American Electric Reliability Council

[Docket No. ER99–2997–000]

Take notice that on May 20, 1999, the North American Electric Reliability Council (NERC), tendered for filing amendments to the portions of NERC's Operating Policy 9, that set forth NERC's Transmission Loading Relief Procedures and that are on file with the Commission as North American Electric Reliability Council, FERC Electric Tariff, Original Volume No. 1. The purpose of these amendments is to incorporate a Transaction Contribution Factor and the Constrained Path Method into NERC's transmission loading relief procedures.

NERC requests that the amendments be made effective June 1, 1999.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER99–2998–000]

Take notice that on May 20, 1999, Tampa Electric Company tendered for filing certain new and revised tariff sheets for inclusion in its open access transmission tariff. Tampa Electric states that the tariff sheets conform the text of Tampa Electric's tariff under Order No. 888-A, as recently accepted for filing, with established provisions of its former tariff under Order No. 888.

Tampa Electric proposes effective dates of January 15, 1999, for one of the tariff sheets and February 15, 1999, for the others, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Tampa Electric's transmission service customers under the tariff and the Florida Public Service Commission.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Light Company

[Docket No. ER99–2999–000]

Take notice that on May 20, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and two service agreements with one

new customer, Illinois Power Company (IPCO).

CILCO requested an effective date of May 17, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Astoria Gas Turbine Power LLC

[Docket No. ER99–3000–000]

Take notice that on May 20, 1999, Astoria Gas Turbine Power LLC, tendered for filing a letter advising that the name of Astoria Power LLC has been changed to Astoria Gas Turbine Power LLC.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power Corporation

[Docket No. ER99–3001–000]

Take notice that on May 20, 1999, Florida Power Corporation (FPC), tendered for filing a service agreement between Columbia Energy Power Marketing Corporation and FPC for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Volume No. 8, as amended. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000.

The service agreement is proposed to be effective May 17, 1999.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER99–3002–000]

Take notice that on May 20, 1999, pursuant to Section 35.15, 18 CFR 35.15, of the Commission's Regulations, Florida Power Corporation (Florida Power), tendered for filing a notice of termination of the Contract for Interchange Service dated December 26, 1984, between Florida Power and Fort Pierce Utilities Authority (Fort Pierce), Florida Power's Rate Schedule FERC No. 100. Fort Pierce requested that Florida Power file to terminate the agreement.

Florida Power has requested waiver of the Commission's 60-day prior notice requirement to permit the termination to be effective as of the date of filing.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Anna M. Schwarz, Stephen P. Strait, Donald T. Krom, Eric M. Markell

[Docket No. ID–3317–000; Docket No. ID–3318–000; Docket No. ID–3319–000; Docket No. ID–3320–000]

Take notice that on May 21, 1999, applications for authority to hold interlocking positions pursuant to Part 45 of the Commission's Regulations, were filed in the above-mentioned proceedings.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13783 Filed 5–28–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6351–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notification of Arrival of Pesticides and Devices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this document announces that the Information Collection Request (ICR) abstracted below, Notice of Arrival of Pesticides and Devices (EPA Form 3540–1, OMB Control No. 2070–0020: ICR No. 152.06), has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 152.06.

SUPPLEMENTARY INFORMATION:

Title: Notice of Arrival of Pesticides and Devices (EPA Form 3540–1, OMB Control No. 2070–0020: EPA ICR No. 152.06). This is a request for an extension of a currently approved collection.

Abstract: FIFRA section 17(c) directs the Secretary of the Treasury to notify the Administrator of the Environmental Protection Agency (EPA) of the arrival of pesticides and devices being imported into the United States and deliver to the Administrator, upon the Administrator's request, samples of pesticides or devices which are being imported into the United States.

The Notice of Arrival form (EPA Form 3540–1), prescribed by 19 CFR 12.112(a), is the instrument by which Customs and the EPA achieve coordination over shipments of goods classified as pesticides imports. The Notice of Arrival (NOA) form, acknowledging an impending shipment of pesticides or devices, must be presented to EPA prior to the arrival of the pesticide products for each shipment of pesticides.

Pesticide importers, brokers, consignees, must prepare the NOA, identifying the nature of the planned importation, and submit it to the EPA region having jurisdiction over the port through which the pesticide or device is to be imported. EPA regional personnel review the submission to determine whether the planned import appears to comply with FIFRA, and whether there is an apparent need to inspect the import. After review, EPA signs and returns the NOA to the importer.

The importer presents the EPA-signed NOA to the District Director of U.S. Customs at the port of entry. The U.S. Customs notifies the EPA regional office, if instructed, or if it identifies any discrepancies. Customs releases the shipment for entry following receipt of EPA clearance and signs part III of the NOA which is then returned to the regional office with jurisdiction over the port of entry. Each region stores and maintains its own copies of NOA

submissions. A copy of the NOA, instructions for its completion, section 17 of FIFRA, and 19 CFR 12.112 is attached to further explain and document this reporting requirement.

The purpose of this reporting requirement is to help insure that pesticides and devices entering the U.S. comply with U.S. laws governing such products. Uniform reporting of information submitted for pesticides arriving in the customs territory of the U.S. is necessary to monitor compliance with FIFRA, to identify the responsible party in cases of violations, and to determine specific information regarding the source of any pesticide in question. The information permits EPA to stop ineffective, unregistered, suspended, canceled, misbranded, contaminated, or otherwise violative products from being imported into the country, track those that do enter, and minimize adverse environmental impacts that might arise from the importation of violative products. Additionally, by requiring brokers/agents to offer documentation to Customs and EPA of the importation of registered pesticides, the flow of commerce for approved products is facilitated. The information collected is used by EPA regional pesticide enforcement and compliance staff, the Office of Enforcement and Compliance Assurance and Office of Pesticide Programs. U.S. Customs, the U.S. Department of Agriculture, the Food and Drug Administration, and other Federal agencies also make use of this information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 5, 1999. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.30 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Persons importing pesticide products and devices.

Estimated number of respondents: 7,000 annually.

Estimated number of responses: 7,000 annually.

Frequency of response: Once per shipment of pesticide or device imported.

Estimated total annual hour burden: 2,100 hours.

Estimated total annualized cost burden: $0.

Please send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing the respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR 152.06 and OMB Control No. 2070–0020 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: May 24, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–13804 Filed 5–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00604; FRL–6084–9]

State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee will hold a 2–day meeting, June 10 and 11, 1999. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG Working Committee on Water Quality and Pesticide Disposal will meet on Monday, June 10, 1999, from 8:30 a.m. to 4 p.m. and Friday, June 11, 1999, from 8:30 to noon. Please note that on Thursday, June 10, 1999, from 4 p.m. to 5 p.m there will be a closed session. This session is open only to representatives of EPA and all state co-regulators.

ADDRESSES: The meeting will be held at: The Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Crystal Mall #2, Arlington, VA; (703) 305–5306; fax: (703) 305–1850; e-mail: lyon.elaine@epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Water Quality and Pesticide Disposal includes the following:

1. Update on Isomer **Federal Register** Notice.
2. States' concerns with coordination efforts between the Office of Pesticide Programs and the Office of Water regarding conflicts in laws and regulations.
3. Conditional Registration Issues - ground water concerns and impacts on the states.
4. Total Maximum Daily Load (TMDL) Implementation Rule.
5. National Pollutant Discharge Elimination System (NPDES) issues.
6. Efforts by EPA and the Texas Department of Agriculture on aquatic herbicide issues.
7. Surface water issues.
8. Update from the Office of Pesticide Programs.
9. Update from the Office of Enforcement and Compliance Assurance.
10. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: May 25, 1999.

Bruce A. Sidwell,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 99–13796 Filed 5–28–99; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

Summary: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Tuesday, June 15, 1999, at 9:30 a.m. to 3:30 p.m. The meeting will be held at The Colonnade Hotel, Huntington Ballroom, Suite A, 120 Huntington Avenue, Boston, MA 02116.

Agenda: This meeting will include a discussion of options for medium-term delegated authority with regional bankers and brokers. Further discussions will include a panel discussion with several high-tech industries from the north-east region on how and to what extent is their usage of Ex-Im Bank programs.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) of other special accommodations, please contact, prior to June 4, 1999, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

Further Information: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

Elaine Stangland,

Acting General Counsel.

[FR Doc. 99–13715 Filed 5–28–99; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–940; Report No. AUC–99–25–A (Auction No. 25)]

Closed Broadcast Auctions Scheduled for September 28, 1999; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: This Public Notice announces the auction of certain AM, FM, TV, LPTV, and FM and TV translator construction permits, to commence on September 28, 1998, and seeks comment on procedural issues relating to the auction.

DATES: Comments are due on or before June 1, 1999. Reply comments are due on or before June 14, 1999.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room in the Commission's headquarters at 445 Twelfth Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Scanlan, Audio Services Division, Mass Media Bureau at (202) 418–2700 or Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600 or Bob Allen, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Public Notice was released on May 17, 1999, and is available in its entirety, including Attachment A, for inspection and copying during normal business hours in the FCC Public Reference Room in the Commission's headquarters at 445 Twelfth Street, S.W., Washington, D.C. 20554., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Synopsis of the Public Notice

1. By this Public Notice, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, "Bureaus") announce the auction of certain AM, FM, TV, LPTV, and FM and TV translator construction permits to commence September 28, 1999. Specifically, all spectrum to be auctioned is the subject of pending, mutually exclusive applications for construction permits for the referenced broadcast services, for which the Commission has not approved a settlement agreement that obviates the need for an auction. This includes mutually exclusive applications for full service FM, AM and television stations that were subject to the comparative freeze instituted after the decision of the U.S. Court of Appeals for the District of Columbia in *Bechtel* v. *FCC*, 10 F.3d 875, 878 (D.C. Cir. 1993). The auction will also include pending mutually exclusive applications for LPTV, FM translator and television translator, as well as certain mutually exclusive LPTV and television translator DTV displacement relief applications. Pursuant to *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order* in MM Docket No. 97–234, GC Docket No. 92–52 and GEN Docket No. 90–264, 63 FR 48615 ("*Broadcast First Report and Order*") and *Memorandum Opinion and Order*, FCC 99–74, 64 FR 24523 ("*Broadcast Reconsideration Order*"), participation in the auction will be limited to those applicants identified in the Public Notice and applicants will be eligible to bid on only those construction permits for which they filed an appropriate long-form application (FCC Forms 301, 346 or 349).

2. Attachment A to the Public Notice sets forth all mutually exclusive applicant groups ("MX groups") categorized on a service-by-service basis, accompanied by their respective minimum opening bids and upfront payments. All MX groups identified in Attachment A have been subject to competition through the opening and closing of the relevant period for filing competing applications, either through the two-step cut-off list procedures or through an application filing window. Pursuant to the *Broadcast First Report and Order*, those specific situations where both noncommercial and commercial applicants have filed mutually exclusive applications for nonreserved channels are not proceeding to auction at this time, and therefore, these application groups have not been included in Attachment A. In addition, those AM, FM translator, LPTV and television translator applications in "daisy chain" MX groups (where applications are directly mutually exclusive with certain applications in their group but not with others) are not included in this auction. A separate auction for daisy chain MX groups will be announced shortly.

3. Construction permits will be auctioned for each of the MX groups identified in Attachment A. All applications within an MX group are directly mutually exclusive with one another and a single construction permit will be issued for each of those MX groups. The applicants listed in Attachment A are categorized by service as follows: Primary Service Television (full service facilities as set forth in the Commission's television Table of Allotments); Secondary Service Television (secondary service non-Table-based facilities, specifically, television translator and LPTV); FM Radio; FM translator; and AM Radio. The naming conventions employed in Attachment A to identify each MX Group are set forth below:

Primary Service TV: PST
Secondary Service TV: SST
FM Radio: FM
FM Translator: FMT
AM Radio: AM

The total number of long form applications being disposed of in this proceeding is 968. These long form applications are grouped together in a total of 265 MX groups.

4. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because the applications are mutually exclusive), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bids and/or reserve prices prior to the start of each broadcast auction. This is consistent with the policy applied in earlier spectrum auctions and is pursuant to the Commission's rules. The Commission has concluded that either or both of these mechanisms may be employed for auctions and has delegated the requisite authority to the Bureaus to make determinations regarding the appropriateness of employing either or both.

5. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction.

6. In anticipation of these auctions and in light of the Balanced Budget Act, the Bureaus propose to establish minimum opening bids. The Bureaus believe a minimum opening bid, which has been utilized in other auctions, is an effective tool in conducting an auction. A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction. The minimum opening bids will be calculated according to the factors set forth below. A listing of the proposed minimum opening bids for the MX groups can be found in Attachment A of the Public Notice.

7. For full service television construction permits, the Bureaus have based the proposed minimum opening bids upon the type of service that will be offered, market size, industry cash flow data and recent broadcast transactions. For radio construction permits, the Bureaus have based the proposed minimum opening bids upon the service and class of facility that will be offered, the population covered by the proposed facilities for which parties intend to bid and recent broadcast transactions. Comment is sought on this proposal. If commenters believe that the minimum opening bids proposed in Attachment A will result in substantial numbers of unsold construction permits, or, in particular instances, do not constitute reasonable amounts, or that they should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Commenters should detail any alternative method they propose for valuing given spectrum, providing examples and citations for each part of their formula. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bids or reserve prices.

II. Other Auction Procedural Issues

8. The Balanced Budget Act requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureaus, under their existing delegated authority, to seek comment on a variety of auction-specific issues prior to the start of each auction. The Bureaus seek comment on the following issues.

a. Auction Sequence, License Groupings and Auction Design

9. Because the grouping together of construction permit applications by MX groups, as described above, is appropriate for the broadcast services that are the subject of this auction, the Bureaus seek comment on the use of MX groups, as represented in Attachment A, for the awarding of construction permits. Further, because it is most administratively appropriate and allows bidders to take advantage of any synergies that exist among licenses, the Bureaus propose to award the construction permits in a single simultaneous multiple-round auction. The Bureaus seek comment on this proposal.

b. Structure of Bidding Rounds, Activity Requirements, and Criteria for Determining Reductions in Eligibility

10. The Bureaus propose a single stage auction. In order to ensure that auctions close within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver.

11. The Bureaus propose that, in each round of the auction a bidder desiring to maintain its current eligibility is required to be active on construction permits encompassing one hundred (100) percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In each round of the auction a bidder's current eligibility will therefore be equal to their activity level in the previous round. The Bureaus seek comment on these proposals.

c. Minimum Accepted Bids

12. Once there is a standing high bid on a construction permit, a bid increment will be applied to that construction permit to establish a minimum acceptable bid for the following round. The Bureaus propose to initially set the bid increment at 10% per bid per construction permit. The

Bureaus retain the discretion to change the methodology for determining the minimum bid increment if they determine that circumstances so dictate. The Bureaus seek comment on this proposal.

d. Initial Maximum Eligibility for Each Bidder

13. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as efficiency of the auction process and the potential value of the spectrum. With these guidelines in mind, the Bureaus propose the schedule of upfront payments contained in Attachment A to the Public Notice. The Bureaus seek comment on this proposal.

14. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. In this auction, most bidders shall be potentially eligible to bid in relatively few MX groups, or, in some cases, potential eligibility may be limited to one MX group. This is because bidding in any MX group is potentially open only to those applicants that have previously filed a long form application. Nonetheless, in those cases where an applicant has filed qualifying long form applications for more than one MX group, the total of upfront payments tendered will be translated into bidding units to define that bidder's initial maximum eligibility, as explained above.

15. Failure to submit an upfront payment of sufficient size to provide bidding eligibility for every MX group in which an applicant has a pending long form application, will limit the bidding eligibility of that applicant. For example, where a bidder has submitted applications for three construction permits ("A," "B" and "C") and the upfront payment requirements are: "A": $1,000; "B": $500; and "C": $250, once the auction commences, eligibility to bid on construction permit "A" will require 1000 bidding units; with construction permits "B" and "C" requiring 500 units and 250 units, respectively. If the bidder submits an upfront payment of $1,000, it may bid on construction permit "A" or on construction permits "B" and "C" in the same round, but not on all three. In this example, the bidder would, however, be eligible to bid on construction permit "A" in the first round of the auction and on "B" and "C" in a later round, so long as the bidder does not have a standing high bid on "A." In the case of this hypothetical bidder submitting an upfront payment of $500, it could not bid on construction permit "A," (since it would have insufficient bidding units) but would be potentially eligible to pursue construction permits "B" and "C," though not both in the same round (since it would lack sufficient bidding credits). To have unrestricted bidding eligibility in the situation posed by this example, the bidder would have to submit an upfront payment of $1,750, or enough to acquire sufficient bidding units to bid on or hold high bids on all three construction permits concurrently. The Bureaus seek comment on this proposal.

e. Activity Rule Waivers and Reducing Eligibility

16. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

17. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility thereby meeting the minimum requirements.

18. A bidder with insufficient activity that wants to reduce its bidding eligibility, rather than use an activity rule waiver, must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

19. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open, under the simultaneous stopping rule. The Bureaus propose that each bidder be provided with five activity rule waivers that may be used in any round during the course of the auction. The Bureaus seek comment on this proposal.

f. Information Regarding Bid Withdrawal and Bid Removal

20. The Bureaus propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

21. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids submitted in a previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. The Bureaus seek comment on these bid removal and bid withdrawal procedures.

22. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons, including to delay the close of the auction for strategic purposes. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may

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withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

23. Applying this reasoning, the Bureaus propose to limit each bidder in the auction to withdrawals in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureaus seek comment on this proposal.

g. Stopping Rule

24. The Bureaus propose to employ a simultaneous stopping approach. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. A simultaneous stopping rule means that all construction permits remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all construction permits. Thus, unless circumstances dictate otherwise, bidding would remain open on all construction permits until bidding stops on every construction permit.

25. The Bureaus seek comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureaus further seek comment on whether this modified stopping rule should be used.

26. We propose that the Bureaus retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

27. The Bureaus propose to reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The Bureaus propose to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity. The Bureaus seek comment on these proposals.

h. Information Relating to Auction Delay, Suspension or Cancellation

28. The Bureaus propose that, by Public Notice or by announcement during the auction, they may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

i. Information Pertaining to Further Auction Details

29. Future public notices will include further details regarding short form (FCC Form 175) application filing and payment deadlines, a bidder seminar, and other pertinent information.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Bureau Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–13768 Filed 5–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held at the Federal Communications Commission in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the second meeting of the Public Safety National Coordination Committee.

DATES: June 18, 1999, from 10:00 a.m. to 5:00 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, Room TW–C305, 445 Twelfth Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wilhelm, Wireless Telecommunications Bureau, FCC and Designated Federal Officer of the Public Safety National Coordination Committee (202–418–0680).

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: The Federal Communications Commission ("FCC") has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191 (1998), 63 FR 58645, November 2, 1998.

The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the second meeting of the Public Safety National Coordination Committee.

SUPPLEMENTARY INFORMATION: The agenda for the second meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Approval of Agenda.
3. Summary of minutes from last meeting.
4. Other Administrative Matters.
5. Reports on Subcommittee Structure, Leadership and Work.
6. Other Business.
7. Upcoming meeting dates and locations.
8. Public Comment.
9. Closing Remarks.

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the second meeting of the Public Safety National Coordination Committee, please RSVP to Solita Griffis or Bertram Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at bweintra@fcc.gov or sgriffis@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and email address. This RSVP is for the purpose of determining the number of people who will attend this second meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the NCC's Designated Federal Officer, Michael Wilhelm, before the meeting.

Federal Communications Commission.

Kathleen O'Brien-Ham,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–13779 Filed 5–28–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 207–011280–002.
Title: Star West Joint Service Agreement.
Parties:
Albion Reefers Ltd., Overseas Freezer Operators AG.
Synopsis: The proposed modification substitutes Albion Reefers Ltd. in place of The Blue Star Line Ltd. and Overseas Freezer Operators KG in place of Overseas Freezer Operators GmbH.

Dated: May 26, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–13748 Filed 5–28–99; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 99143]

Program To Build Capacity To Conduct Environmental Health Promotion Activities; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to build the capacity of a national organization to conduct health promotion activities for their members. This program addresses "Healthy People 2000" in the priority areas of Educational and Community-Based Programs and Environmental Health.

The purpose of this program is to build capacity for the conduct of health professional education and community health promotion activities for its membership.

B. Eligible Applicants

This program is directed only to non-profit national organizations of health professionals that provide environmental health education and environmental public health promotion activities for their defined membership.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $1,200,000 is available in FY 99 to fund one award. It is expected that the award will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds awarded may be expended for reasonable program purposes, such as personnel, travel, supplies and services, including contractual services. ATSDR funding is generally not to be used for the purchase of furniture or equipment. The direct and primary recipient in a cooperative agreement program must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party.

D. Program Requirements

In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities under 1 below, and ATSDR will be responsible for conducting activities under 2 below:

1. Recipient Activities

a. Conduct an assessment of health promotion needs, including health professional education needs of the membership.

b. Plan, conduct, and evaluate health professional education and training in

collaboration with state health departments, academic institutions, local health departments, tribal nations, and concerned communities, based on the needs assessment process.

c. Plan and implement health promotion activities, as appropriate based on the needs assessment process.

d. Conduct evaluation of program activities and overall project outcomes and impact.

e. Publish, house and disseminate findings and materials to the membership.

f. Attend and participate in ATSDR's annual partners' meetings.

2. ATSDR Activities

a. Provide technical assistance in conducting the health education and promotion needs assessments.

b. Assist in planning, conducting and evaluating health professional education and health promotion activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages, excluding appendices,printed on one side, with one-inch margins, and unreduced font.

F. Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are in the application kit. On or before July 12, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

The application will be reviewed and evaluated by an ATSDR-convened objective review panel based on the following criteria:

1. Proposed Program—40 percent

a. Clearly stated understanding of the types of environmental health problems to be addressed.

b. Clear and reasonable project goals, and realistic and measurable objectives, including specificity and feasibility of proposed time line for implementing activities.

c. Demonstrated experience in conducting the proposed health education and promotion activities described.

2. Proposed Personnel—20 percent

Demonstrated experience of the proposed staff in conducting environmental health and environmental health care provider capacity needs assessments, developing environmental health education and environmental health promotion materials, implementing environmental health education and environmental health promotion activities, and conducting environmental health program evaluation.

3. Capability—20 percent

a. Ability of applicant to provide a description/documentation of multi-disciplinary, patient-centered, environmental public health promotion/disease prevention approach to patient care.

b. Experience of the applicant in providing quality assurance.

c. Ability of applicant to provide access to established occupational and environmental medical clinics and specialists nationwide.

4. Evaluation Plan—20 percent

a. Extent to which the evaluation plan includes strategies and methods to measure program activities and outcomes of program activities, such as changes in knowledge, attitudes, and behaviors.

b. Extent to which the evaluation plan includes specific approaches and methods to measure overall project effectiveness and impacts, such as achievement of stated environmental public health goals and effect of the program on stated environmental public health problems.

5. Budget—(not scored)

The extent to which the budget relates directly to project activities, is clearly justified, and is consistent with intended use of funds.

H. Other Requirements

Technical Reporting Requirements

Provide Grants Management Branch, Procurement and Grants Office the original plus two copies of:

1. Quarterly progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 104(i), (1)(E), (4), (6), (7), (9), (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604(i)(1) (E), (4), (6), (7), (9), (14) and (15)), and Section 3019 (b) and (c) of the Resource Conservation and Recovery Act (RCRA), as amended (Hazardous and Solid Waste Amendments of 1984) (42 U.S.C. 6939a (b) and (c)). The Catalog of Federal Domestic Assistance numbers are 93.200, 93.201, 93.203.

J. Where To Obtain Additional Information

A complete copy of the announcement may be downloaded from CDC's home page on the Internet at: http://www.cdc.gov (click on funding).

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest (Announcement 99143). You will receive a complete program description, information on application procedures and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nelda

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Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99143, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Suite 3000, Atlanta, Georgia 30341–4146, Email address: nag9@cdc.gov, Telephone: (770) 488–2722.

For program technical assistance, contact:

Christine Rosheim, D.D.S., M.P.H., Health Education Specialist, Division of Health Education and Promotion, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Mailstop E–33, Atlanta, GA 30333, Telephone Number: (404) 639–6351.

Dated: May 25, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–13742 Filed 5–28–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement No. 99081]

Program To Build Capacity To Conduct Environmental Health Education Activities; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to Build Capacity To Conduct Environmental Health Education Activities. This program addresses "Healthy People 2000" in the priority areas of Educational and Community-Based Programs, Environmental Health, and Age-Related Objectives for Children. The purpose of this program is to establish, promote, and disseminate environmental health education programs within an organizations membership.

B. Eligible Applicants

This program is directed only to non-profit national organizations of health professionals that provide environmental health education for their defined membership.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $900,000 is available in FY 99 to fund 5–8 awards. The median award is anticipated to be approximately $150,000, but awards may range from $75,000 to $350,000. It is expected that the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services, including contractual services. ATSDR funding is generally not to be used for the purchase of furniture or equipment. Any equipment purchased will be returned to ATSDR at the end of the funding period. The direct and primary recipient in a cooperative agreement program must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party.

D. Program Requirements

This cooperative agreement comprises a core program and additional optional enhancement activities. In conducting activities to achieve the purpose of the program, a recipient shall be responsible for conducting core activities under 1 and optional enhancement activities under 2 below, and ATSDR will be responsible for conducting activities under 3 below:

1. Recipient Core Activities

a. Develop and implement environmental health education needs assessment process for the applicants' membership.

b. Develop, implement, and evaluate specific environmental health education activities based on the results of the needs assessment process. Such activities should include sharing information about the unique vulnerabilities and special needs of children.

c. Evaluate the effectiveness of each of the implemented activities and the impact of the overall project.

d. Develop a strategy to provide members and constituents environmental health education materials and programs for their reference and use.

e. Communicate identified environmental health needs, concerns, programs, and resources to members and constituent groups.

f. Attend and participate in the annual ATSDR Partners Meetings normally held in Atlanta, Georgia, including assisting in planning and presenting program activities and evaluation results.

2. Optional Recipient Enhancement Program Activities

a. Develop, implement and evaluated health risk communication training to the membership.

b. Develop and implements environmental health education for the members health care providers concerning the health impact of hazardous substances. Potential topics might include: medical and public health responses to bioterrorism and pediatric environmental medicine.

c. Develop a plan for environmental telemedicine educational outreach; develop, implement, and evaluate training related to exposure assessment, health concerns, and community involvement at Brownfields properties for their membership.

d. Develop interactive electronic case studies in environmental medicine.

3. ATSDR Activities

a. Provide technical assistance in conducting needs assessments.

b. Provide information, instructional resources, technical assistance and collaboration for National Priorities List (NPL) site-specific activities and materials.

c. Assist in development of the evaluation plans, such as providing technical assistance in establishment of measurable objectives and evaluation of activities.

d. Provide assistance in establishing communication and resource networks between applicants including such partners as other federal agencies, state and local health departments, tribal governments, environmental and health professional non-governmental organizations, and academic, medical, and clinical associations.

e. Provide technical assistance and collaboration in the dissemination of programs and materials including assistance in the delivery of telemedicine outreach activities.

f. Assist in providing training related to exposure assessment, to health concerns, and community involvement at Brownfields properties.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria Section to develop the application content. All applicants must address the core program in their application. Applicants may address

optional enhancement activities as they may apply to their respective members and their constituencies. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no longer than 25 double-spaced pages (excluding appendices), printed on one side, with one-inch margins, and unreduced font.

F. Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are in the application kit. On or before July 12, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U. S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications. Late applications will not be considered and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR.

1. Proposed Program—40 percent

a. Ability to develop environmental health materials and messages for distribution to members and constituents; address specific environmental health concerns; plan, conduct, and evaluate environmental health education or training activities; and collaborate effectively with a variety of public health partners.

b. Clearly stated understanding of environmental public health problem(s) to be addressed, including the proximity of NPL sites and any special risks to children as a susceptible population.

c. Clear and reasonable environmental public health goals and clearly stated project objectives which are realistic, measurable, and related to program requirements.

d. Identification of specific target audiences and their environmental health education and promotion needs.

e. Specificity and feasibility of the proposed timeline for implementing project activities.

2. Proposed Personnel—20 percent

a. Ability of the applicant to provide adequate program staff and support staff, including any proposed consultants or contractors.

b. Experience of proposed staff in conducting needs assessments, developing materials, implementing activities, and conducting program evaluation related to health education and promotion.

3. Capability—20 percent

a. Appropriateness of the health education activities proposed for the proposed target groups.

b. Thoroughness of the health education activities proposed.

c. Plans for collaborative efforts and appropriate letters of support.

4. Evaluation Plan—20 percent

a. Extent to which the evaluation plan includes strategies and methods to measure program processes and outcomes of program activities, such as changes in participants' knowledge, attitudes, and behaviors.

b. Extent to which the evaluation plan includes specific approaches and methods to measure overall program effectiveness and impacts, such as achievement of stated public health goals and effect of the program on stated public health problem.

5. Budget—(not scored)

The extent to which the proposed budget is reasonable, clearly justified with a budget narrative, and consistent with the intended use of funds.

H. Other Requirements

Provide CDC with an original plus two copies of the following:

1. Quarterly progress reports are due 30 days after the end of each quarter.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–18 Cost Recovery—ATSDR

AR–19 Third Party Agreements—ATSDR

AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 101(36), 104(i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601(36), 9604 (i)(14), (15)). The Catalog of Federal Domestic Assistance Number is 93.161.

J. Where To Obtain Additional Information

A complete copy of the announcement may be downloaded from CDC's home page on the Internet at: http://www.cdc.gov (click on funding).

To receive additional written information, and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement Number of interest (Announcement 99081). You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2722, e-mail address: nag9@cdc.gov.

Programmatic technical assistance may be obtained from: Christine Rosheim, D.D.S., M.P.H., Health Education Specialist, Division of Health Education and Promotion, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Mailstop E–33, Atlanta, GA 30333, Telephone Number: (404) 639–6351.

Dated: May 25, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–13743 Filed 5–28–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–13–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Evaluation of NCIPC Recommendations on Bicycle Helmet Use—Reinstatement—The National Center for Injury Prevention and Control's (NCIPC), Division of Unintentional Injury Prevention (DUIP) intends to continue to conduct a survey of 1,100 persons from its mailing lists and lists of recipients of recommendations on the use of bicycle helmets in preventing head injuries. These recommendations were published in the Morbidity and Mortality Weekly Report of February 17, 1995.

The purpose of this survey is to determine:

I. The penetration of the recommendations distribution,

II. The usefulness of the bicycle helmet recommendations,

III. How to improve the recommendations' content and format,

IV. Potential future DUIP bicycle helmet promotional activities,

V. Information needs and access points of DUIP's "customers".

Results from this research will be used to (1) assist DUIP in producing an updated version of the helmet recommendations; (2) identify new helmet promotion programmatic directions; and (3) develop future materials that meet the needs of DUIP "customers." The study will be a telephone survey. The total annual burden hours are 311.

Forms	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Section A	1,100	1	.01666
Sections B, C	550	1	.01333
Sections D, E, F	550	1	.01333
Sections G, H, I	1,100	1	.01333

2. Children's Longitudinal Development Study—New—Since 1991, surveillance of children aged three to ten years who have one or more select developmental disabilities (cerebral palsy, mental retardation, hearing impairment, and vision impairment) has been conducted in the five-county Atlanta metropolitan area through the Metropolitan Atlanta Developmental Disabilities Surveillance Program (MADDSP). Children have been identified primarily through the special education programs of the public schools in those five counties. Recently, surveillance has been expanded to identify children with cerebral palsy at younger ages through a broader array of medical facilities where diagnostic evaluations are performed, and to include autism as one of the developmental disabilities routinely under surveillance. An ongoing case-control study is proposed to yearly (1) contact parents of all children with any of the five developmental disabilities who are newly identified in the surveillance data base and who were born in the metro Atlanta area (approximately 675 children per year) and contact parents of 250 children used as controls in order to request access to both maternal prenatal and labor and delivery hospital records and infant hospital records prior to newborn discharge (all accessed medical records will be reviewed to obtain detailed information on pre- and perinatal risk factors for developmental disabilities; this type of information typically is lacking or incomplete in school records or childhood medical records) and (2) conduct telephone interviews with mothers of approximately 250 children with cerebral palsy or severe mental retardation selected from the larger pool of approximately 675 children, plus interview mothers of the 250 control children. The interviews will supply additional risk factor information relating to the mothers' medical and reproductive histories, prenatal behaviors and exposures, and family histories of developmental problems. Initially, to be cases, children in the interview sample would be under seven years of age at the time they were diagnosed as having cerebral palsy or severe mental retardation. A sample of Atlanta-born children of similar age and birth weight to the interview case children would be randomly identified from vital records and used as controls. Additionally, photographs and head circumference measurements of case and control mothers and children included in the interview sample will be taken either in the home or at a centralized location. The total annual burden hours are 1,141.

Respondents	Number of respondents	Number of responses/ respondents	Avg. burden/ response (in hrs.)
Mothers:			
Contact Calls*—Cases	675	1	.333
Contact Calls*—Controls	250	1	.333
Scheduling Call**	500	1	.166
Telephone Interview	500	1	1.5

*To obtain consent to participate in the study if there is no response to the letter of invitation.
**To schedule telephone interview.

3. Defining Gulf War Illness—New—National Center for Environmental Health (NCEH)—This study will characterize and compare alternative classifications for symptoms and functional disability which remain medically unexplained in Gulf War veterans. This will be accomplished in three phases. Phase I will assess persistence and stability of symptoms over time, as well as compare the performance of data-driven case definitions derived from two samples: (1) The New Jersey Center for Environmental Hazards Research sample of Gulf War veterans participating in the Department of Veterans Affairs Gulf War Registry; and (2) a cohort of Air Force members from a previous CDC study of Gulf War veterans and Gulf War-era controls from Pennsylvania and Florida. In addition to assessing data-driven case definitions for illness among Gulf War veterans, existing definitions for medically unexplained symptoms, such as chronic fatigue syndrome, multiple chemical sensitivity, and fibromyalgia will be evaluated. Phase II will attempt to assess the generalizability of both derived and existing case definitions in a random sample of deployed and non-deployed Gulf War era veterans. Phase III will consist of a standardized telephone interview for the assessment of psychiatric conditions. This will be administered to a sample of Phase I and Phase II participants who are identified through their responses to paper-and-pencil questionnaires as having high levels of psychologic distress. The total annual burden hours are 4,761.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Initial Address Confirmation	50	1	.0333
Introductory Script	7,000	1	.05
Main Questionnaire	5,361	1	.75
Mail Survey	387	1	.05
Refusal Conversion	150	1	.0333
Address Confirmation	200	1	.0333
Third-Party Contact	25	1	.0333
Recontact Script	25	1	.0333
Follow-up Letter	500	1	.083
Follow-up Care	804	1	.10
Request for Medical Records (letter)	1,340	1	.05
Request for Medical Records Follow-up Call	750	1	.0333
Medical Care Providers:			
Request for Medical Records (letter)	140	1	1
Request for Medical Records Follow-up Call	42	1	0.0333

Dated: May 24, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13739 Filed 5–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99115]

Cooperative Agreement for Strategies to Prevent Genital Herpes Infections: Building a National Prevention Program; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year 1999 funds for the Strategies to Prevent Genital Herpes Infections: Building a National Prevention Program was published in the **Federal Register** on May 18, 1999, (Vol. 64 FR No. 95). The notice is amended as follows:

On page 26983, second column, paragraph G., sub-paragraph titled "Application," replace second sentence:

On or before July 26, 1999, submit application to: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99115, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341.

Dated: May 25, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13741 Filed 5–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey III (NHANES) DNA Specimens: Guidelines for Proposals To Use Anonymized Samples and Proposed Cost Schedule

ACTION: Notice and request for comments.

SUMMARY: The National Health and Nutrition Examination Survey (NHANES) is a program of periodic surveys conducted by the National Center for Health Statistics (NCHS) of the Centers for Disease Control and Prevention (CDC). Examination surveys conducted since 1960 by NCHS have provided national estimates of health and nutritional status of the United States civilian non-institutionalized population. To add to the large amount of information collected for the purpose of describing the health of the population in the most recent survey, white cells were collected in NHANES III in anticipation of advances in genetic research.

The cells have been stored and maintained at the Division of Environmental Health Laboratory Sciences (DEHLS) at the National Center for Environmental Health (NCEH), CDC. The collection of white cells was begun because of the significant advances in the rapidly evolving field of molecular biology that were occurring during the planning phase of this survey.

Technical advances now make it possible to use these samples for genetic analysis. NCHS and NCEH, CDC are making anonymized DNA samples from these specimens available to the research community for such analyses. No cell lines will be made available.

The purpose of this notice is to request comments on this program and cost schedule. After consideration of comments submitted, CDC plans to

finalize the cost schedule and solicit letters of intent and proposals for use of the NHANES III anonymized DNA samples. Please contact Ms. Burwell or go to www.cdc.gov/nchswww/about/major/nhanes/nhanes.htm for final proposal guidelines and request for letters of intent.

All interested researchers are encouraged to submit letters of intent. No funding is provided as part of this solicitation. DNA samples will not be provided to those projects requiring funding until the project has received funds. Approved projects that do not obtain funding will be canceled. A more complete description of this program follows.

DATES:

- Comment Receipt Date: June 30, 1999
- Invitation to submit Letters of Intent: July 14, 1999
- Letter of Intent Receipt Date: September 1, 1999
- Invitation to Submit Proposals: September 22, 1999
- Application Receipt Date: November 3, 1999.
- Scientific Review Date: December 1999.
- Institutional Review Date: January 1999.
- Notification of approval: January 1999.
- Anticipated distribution of samples: February–March 2000.

TO SEND COMMENTS AND FOR INFORMATION: Audrey L. Burwell, MS, Health Research Administrator, National Center for Health Statistics, Centers for Disease Control and Prevention, 6525 Belcrest Road, Room 1100, Hyattsville, MD 20782, Phone: 301–436–7062, 127, FAX: 301–436–4233, E-Mail: azb2@cdc.gov, Internet: www.cdc.gov/nchswww/about/major/nhanes/nhanes.htm.

SUPPLEMENTARY INFORMATION: The goals of NHANES are: To estimate the number and percent of persons in the U.S. population and designated subgroups with selected diseases and risk factors; to monitor trends in the prevalence, awareness, treatment and control of selected diseases; to monitor trends in risk behaviors and environmental exposures; to analyze risk factors for selected diseases; to study the relationship between diet, nutrition and health; to explore emerging public health issues and new technologies; and, to establish and maintain a national probability sample of baseline information on health and nutrition status.

The third National Health and Nutrition Examination Survey (NHANES III) began in the Fall of 1988 and ended in the Fall of 1994. The survey data were collected, and can be analyzed, in two phases: Phase I was conducted from October 1988 to October 1991, and Phase II was conducted from October 1991 to October 1994. Both phases are nationally representative samples. For details of the sampling design see the Plan and Operation of NHANES III (1). This information can be obtained by contacting the Data Dissemination Branch, NCHS at 301–436–8500 or from the Internet at www.cdc.gov/nchswww/products/catalogs/subjects/nhanes3/nhanes3.htm.

Blood specimens were collected from participants as a part of NHANES III. Lymphocytes were isolated from the blood collected from participants aged 12 years and older and stored frozen in liquid nitrogen or as cell cultures immortalized with Epstein-Barr virus and frozen at the Molecular Biology Branch of DEHLS, NCEH at the CDC, Atlanta GA. DNA is available primarily from cell lines of Phase II participants.

Health information collected in the NHANES III is kept in strictest confidence. During the informed consent process, survey participants are assured that data collected will be used only for stated purposes and will not be disclosed or released to others without the consent of the individual or the establishment in accordance with section 308(d) of the Public Health Service Act (42 U.S.C. 242m). Although the consent form was signed by participants in the survey and participants consented to storing specimens of their blood for future research, specific mention of genetic research was not included. Given the scientific importance of this resource, the NHANES Institutional Review Board (IRB) approved making anonymized samples of DNA available to the research community for genetic research. For this purpose, an anonymized sample is defined as a sample for which no one, including CDC staff, are able to link the results of the genetic tests back to the survey participant (2). NCHS and NCEH will anonymize the samples for each request.

All proposals for testing of anonymized NHANES III DNA samples will be evaluated by a Genetics Technical Panel (composed of 8–10 scientists; 40 percent from CDC; 30 percent from other Federal agencies and 30 percent non-government scientists) for scientific merit and by the NHANES IRB to assure that anonymity will be maintained, as well as for other human subjects concerns. The NHANES IRB review will be conducted, even though the investigator may have received review by their home institution. The NHANES IRB must review all projects because determination of anonymity required by this proposal review process can only be accomplished by the NHANES staff who have access to confidential records. Projects recommended for approval by the Genetics Technical Panel and the IRB will be submitted to the Director of NCHS for verification that all appropriate reviews have been conducted.

The Genetics Technical Panel will evaluate the public health significance and scientific merit of the proposed research. Scientific merit will be judged as to the scientific, technical or medical significance of the research, the appropriateness and adequacy of the experimental approach, and the methodology proposed to reach the research goals. See Criteria for Technical Evaluation of Proposals below. The proposer should outline how the results from the DNA analysis will be used. Because NHANES is a complex, multistage probability sample of the national population, the appropriateness of the NHANES sample to address the goals of the proposal will be an important aspect of scientific merit. The Genetics Technical Panel will assure that the proposed project does not go beyond either the general purpose for collecting the samples in the survey, i.e., to determine allele frequencies in subgroups of the population, or of the specific stated goals of the proposal. The Panel will also review an evaluation by the NCHS staff as to whether anonymity can be assured for the proposed project.

Investigators are encouraged to obtain the NHANES III Reference Manuals and Reports and NHANES III Public Use Data (on CD–ROM) These can be obtained by contacting the Data Dissemination Branch, NCHS at 301–436–8500 or from the Internet at www.cdc.gov/nchswww/products/catalogs/subject/nhanes3/nhanes3.htm.

Because of the complex nature of this Survey, sampling weights are used to make national estimates of frequencies. The use of weights, sampling frame and methods of assessment of variables included in the data tape are likely to affect the proposed research. The Genetics Technical Panel will review the analysis plan and evaluate whether the proposal is an appropriate use of the NHANES III population.

Due to the design of NHANES III, the DNA samples are not suitable for family studies. On average, NHANES III sampled 2 individuals from each household in Phase II. The relationship

between individuals is not available on the data file. If the investigator requires strict assurance that only one subject per household is included among the samples, the investigator should request only one subject per household, and estimate statistical cell sizes by dividing the results from cross tabulations by 2 (see Special Studies procedures below). In this instance, the NCHS staff can use the confidential household code (not available on public use tapes) to select one subject per household for approved projects.

The provided samples will consist of DNA suitable for use in the polymerase chain reaction or other justifiable genetic assessments. No cell lines will be made available. Unique, randomized IDs will be assigned to each set of DNA samples.

Two types of proposals will be evaluated: (a) Those that aim to describe allele frequencies which require only basic demographic information (age, race, and gender) linked to the samples or (b) those where additional co-variates from the NHANES data base are required (special studies).

Age-Race-Gender Studies

To facilitate proposal preparation of allele frequency research, NCHS will make available the following data with the DNA sample: age in 10-year age groups, race-ethnicity (white, black, Mexican-American), gender, mean sample weights for each demographic group and the average design effect. These proposals, therefore, do not need to provide an analysis of NHANES III data to support the anonymization scheme proposed. These data have sufficient sample sizes in each category (the smallest age, race/ethnicity, gender statistical cell contains 62 persons) to preserve anonymity. To further preserve anonymity, only 80 percent of the subjects in each statistical cell will be used.

Proposals submitted for this review will be limited to those requesting samples from within these domains for the identification of the frequency of the genes in the population. These proposals must address all criteria except for the verification that anonymization can be achieved. Because of the limited data associated with the genetic result, a shortened (2–3 pages) proposal is acceptable as long as each of the criteria below are addressed.

Special Studies (Requests for Additional Variables)

Include a list of demographic and clinical variables and specify recoding schemes, if appropriate, that the principal investigator would like to have linked to the DNA samples to meet the objectives of the study. The combined information on all variables provided to the investigator by CDC must not constitute a unique set of values that could link the DNA samples with participant data on the NHANES III public use data set. Investigators should obtain the NHANES III Public Use Data and should verify prior to submission that anonymity is achievable with the requested set of variables. To obtain the NHANES III Public Use Data contact the Data Dissemination Branch, NCHS at 301–436–8500 or from the Internet at www.cdc.gov/nchswww/products/catalogs/subject/nhanes3/nhanes3.htm.

Recoding is required for continuous variables and may be required for integral variables to assure anonymity. A cross tabulation of all requested variables must be provided, with demonstration that there are at least five individuals in each statistical cell of that cross tabulation. Because the DNA specimens are primarily available on phase II subjects, these analyses should be run using phase II subjects only (SDPPHASE=2). (Household codes are confidential data. Therefore, if only 1 individual per household is to be included in the protocol, the investigator can estimate the sample size per statistical cell by halving the cross tabulation results. For instance, if only 1 individual per household is requested, the minimum statistical cell size of the cross tabulation should be 10 subjects.) From each statistical cell, either 2 subjects or 20 percent of the subjects of the cell, whichever is larger, will be deleted from the pool of samples sent to the investigator. The DNA samples which are sent to the investigator will be selected by the NCHS staff at random from the domain.

All protocols, either for the age-race-gender studies or the special studies, will be reviewed by NCHS staff for anonymity and must be approved by the Genetics Technical Panel and the NHANES IRB. The anonymity of all sample requests, when linked with demographic and clinical data, will be verified prior to release to the investigator.

Applicants may request a project period of up to 3 years. At the end of the project period, any unused samples must be returned to the Bank in accordance with instructions that will be provided. Extensions to the period of performance may be requested.

Procedures for Letter of Intent

After consideration of comments on the program and the cost schedule, NCHS plans to make requests for letters of intent. This request will be announced on the NHANES web site by July 14, 1999: Internet: www.cdc.gov/nchswww/about/major/nhanes/nhanes.htm. The letter of intent is required to enable CDC to plan the review more efficiently, evaluate the number and magnitude of the requests, and to assess the capacity of the DNA Bank to fulfill requests.

Investigators from both the extramural and the CDC intramural research communities must submit letters of intent. The letter should be no more than two pages and include: a descriptive title of the overall proposed research, the name, address and telephone number of the Principal Investigator, a list of key investigators and their institution(s), one paragraph on the background for the proposal, the genetic assessments proposed, a list of proposed variables, and an estimate of the number of samples that would be requested. The background should state concisely the importance of the research in terms of the broad, long-term objectives and public health relevance.

If the total number of proposals and samples requested from all the letters of intent exceed the handling capacity of the DNA Specimen Bank, a determination of priorities will be made by the Genetics Technical Panel using the letters of intent. Priority will be based on the public health importance of the proposed research and the prevalence of the health outcome(s) targeted by the research.

All investigators will be notified as to whether they should submit a full proposal based on review of the letters of intent.

Letters of intent should be submitted by September 1, 1999, to: Audrey L. Burwell, MS, Health Research Administrator, National Center for Health, Statistics, Centers for Disease Control and Prevention 6525 Belcrest Road, Room 1100, Hyattsville, MD 20782, Phone: 301–436–7062, 127, FAX: 301–436–4233, E–Mail: azb2@cdc.gov.

Procedures for Proposals

After notification by NCHS that a proposal for use of samples and data from the NHANES III DNA-Bank can be submitted, the investigator should use the following format: Proposals are limited to a maximum of 5 single-spaced typed pages, excluding figures and tables, using 10 cpi type density. If a proposal is approved, the title, specific aims, name, and phone number of the author will be maintained by NCHS and released if requested. Unapproved proposals will be returned to the investigator and will not be maintained

by NCHS. The cover of the proposal should include the name, address, and phone number and E-mail address, if available, of the principal investigator (PI) and the name of the institution where the DNA analysis will be done. The cover page should be signed by the responsible institution representative.

The Criteria for Technical Evaluation of Proposals section at the end of this announcement and the following information should be used to develop the proposal content.

1. *Specific Aims*—List the broad objectives; describe concisely and realistically what the research is intended to accomplish, and state the specific hypotheses to be tested.

2. *Background and Public Health Significance*—Briefly describe in 1–2 pages the background of the proposal, identifying gaps in knowledge that the project is intended to fill. State concisely the importance of the research in terms of the broad, long-term objectives and public health relevance including a discussion of how the results will affect health policy or further scientific knowledge. The proposal should include a discussion of the potential clinical significance of the results and whether there is definitive evidence that results of the genetic test would provide grounds for medical intervention.

3. *Research Design and Methods*—Describe the research design and the procedures to be used. A detailed description of laboratory methods must be included with references. If non-standard methods will be used, discuss how the method is more appropriate than current methods or that there are no standard methods to accomplish the task. Laboratory quality control should be described. Include a justification for determination of sample size or a power calculation. A detailed description and justification of any sample design whether a random subsample or case control design, must be given. The program will evaluate the endpoints assessed in these projects to determine whether the projects are consistent with the mission of the NHANES program. Further, the program and IRB are concerned with the possible breach of anonymity due to the determination of a large number of genetic analyses in individual research studies. The specific concern is that, when large numbers of genetic findings are available that are potentially correlated with other NHANES III data, the investigator or program staff might be able to inadvertently identify specific subjects. Therefore, if several genetic analyses are proposed, the investigator must discuss the potential for linking the findings with NHANES III data on public use tapes that was not requested as part of the proposal. A list of variables requested should be included. A crosstabulation demonstrating the recoding and resulting statistical cell sizes should be included for special studies.

4. *Qualification of Investigators*—A brief description of the Principal Investigator's expertise in the proposed area should be provided, including publications in this area within the last three years. A representative sample of earlier publications may be listed as long as this section does not exceed two pages.

5. *Funding*—The source and status of the funding to perform the requested laboratory analysis should be included. Investigators will be responsible for the cost of processing and shipping the samples. At this time the cost per DNA specimen is $38.00. The basis for the cost structure is in the last section of this document. Reimbursement for the samples will be collected before the samples are released.

Requirements for the Inclusion of Women and Racial and Ethnic Minorities in Research

In NHANES III, race/ethnicity was defined by self-report as non-Hispanic white, non-Hispanic black, or Mexican American. Individuals who did not self-select into these categories were classified as "other" . If the proposal excludes one or more race/ethnic groups or a gender, this exclusion must be justified.

The CDC is also sensitive to the stigmatization of racial/ethnic specific populations through inappropriate reporting and interpretation of findings. For all proposals that request information on race/ethnicity for the samples selected, the investigator should indicate the reason for analyzing race/ethnicity and how the results will be interpreted.

Submission of Proposals

Investigators who are invited to submit proposals should send the original written proposal and 20 copies to: Audrey L. Burwell, MS, Health Research Administrator, National Center for Health Statistics, 6525 Belcrest Rd., Rm 1100, Hyattsville, MD 20782, Phone: (301) 436–7062, 127, FAX: (301) 436–4233, E-Mail: azb2@cdc.gov, Attention: NHANES III Genetic Testing Program.

Criteria for Technical Evaluation of Proposals

The following criteria will be used for technical evaluation of proposals.

1. *Background and Public Health Significance:* The public health significance, scientific merit and practical utility of the assay. The proposer has conveyed how the results will be used and the relationship of the results to the data already collected in NHANES III. Proposer addresses how they will use results of the DNA analyses. The analyses are consistent with the NHANES mission and the health status variables will be evaluated appropriately given the methods of data collection in NHANES III.

2. *Research Design and Methods:* The sampling scheme must be described and address its relationship to the NHANES III design. Power calculations for a subsample must be included. A list of variables requested with the recoding schemes are included. A cross-tabulation is provided if the investigator requests a special set of variables. A detailed description of the laboratory methods is included. If a non-standard laboratory method is to be used, its advantage over existing methodology is adequately discussed. The characteristics of the laboratory assay, such as reliability, validity, and "state-of-the-art", must be included with appropriate references. The potential difficulties and limitations of the proposed procedures are discussed. The volume of DNA and the number of samples required are specified. Adequate methods for handling and storage of samples must be addressed. The laboratory has demonstrated the capability for handling the workload requested in the proposal.

3. *Discussion regarding the race/ethnicity and gender variables:* If either race/ethnicity or gender are used to restrict the sample, the proposal gives a clear and compelling rationale for this restriction. On the other hand, if the race/ethnicity variable is requested, the proposer indicates the reason for analyzing race/ethnicity and how the results will be interpreted.

4. *Qualifications:* A brief description of the requestor's expertise in the proposed area is provided including publications in this area within the last three years. A representative sample of earlier publications may be listed as long as this section does not exceed two pages.

5. *Anonymity:* NCHS determination of anonymity has been reviewed and found to be adequate.

6. *Period of performance*—The project period should be specified. The period may be up to three years. At the end of the project period, any unused samples must be returned to the NHANES DNA Specimen Bank in accordance with instructions from the DEHLS.

Extensions to the period of performance may be requested.

Approved Proposals

NCHS/NCEH will provide a data file with the requested recoded variables and a randomly assigned unique identification number that is linked to the DNA specimen. No record connecting the new number with the original identification number will be kept after the samples have been sent. These samples can not be traced to any files maintained by NCHS.

Agency Agreement

A formal signed agreement in the form of a Materials Transfer Agreement (MTA) with individuals who have projects approved will be completed before the release of the samples. This agreement will contain the conditions for use of the DNA as stated in this document and as agreed upon by the investigators and CDC. A key component of this agreement is that no attempt will be made to link the results of the proposed research to any other data, including, but not limited to, the NHANES III public use data set. Also, the investigator agrees that the samples can not be used for commercial purposes.

Progress Reports

A progress report will be submitted annually. NHANES IRB continuation reports are also required annually.

Disposition of Results and Samples

No DNA samples provided can be used for any purpose other than those specifically requested in the proposal and approved by the Genetic Technical Panel and the NHANES IRB. No sample can be shared with others, including other investigators, unless specified in the proposal and so approved. Any unused samples must be returned to the Bank upon completion of the approved project. Researchers requesting DNA samples for age-race-gender studies and special studies will be required to provide NCHS with the results of all DNA tests performed for each anonymized sample. These results, once returned to NCHS, will be part of the public domain. Therefore, ample time will be given to the investigator to publish results prior to reporting the results to NCHS.

Proposed Cost Schedule For Providing NHANES III DNA Specimen Bank

A nominal processing fee of $38.00 is proposed for each sample received from the NHANES III DNA Specimen Bank. The costs are determined both for NCEH and NCHS and include the physical materials needed to process the samples at the NCEH laboratory as well as the materials to process the requests for samples at NCHS. These costs are inclusive of the staff needed for these activities at each Center. The fee is estimated to cover the costs of processing, handling and preparing the samples in accordance with the detailed requirements of the investigators. These costs were based on an assumption that NCEH and NCHS will receive and process 15 proposals in a year each requesting 1000 samples as shown in the table below.

The materials listed are for the recurring laboratory costs to dispense and prepare the samples for shipping; the computer software needed for the Web page and advertisements in scientific journals. Labor costs are based on the need for microbiologists, a proposal administrator and computer programmers for NCHS and NCEH to maintain the data bases and verify anonymity. Technical panel travel and expenses are based on the panel meeting twice a year. The space estimate is based on acquiring storage and aliquoting space.

Total Costs Per Sample If 15 Requests for 1,000 Samples

Materials	$1.90
Labor	22.00
Panel Travel/Expenses	2.69
Space	0.97
Subtotal	27.56
NCHS overhead (15%)	4.12
Subtotal	31.68
CDC/FMO overhead (20%)	6.32
Total	*38.00

*Shipping costs are not included in the $38.00 processing fee. These costs must also be paid by the investigator.

Comments are solicited on the proposed cost schedule. Comments are due by June 30, 1999.

Send Comments and for Information

Audrey L. Burwell, MS, Health Research Administrator, National Center for Health Statistics, Centers for Disease Control and Prevention, 6525 Belcrest Road, Room 1100, Hyattsville, MD 20782, Phone: 301–436–7062, 127, FAX: 301–436–4233, E-Mail: azb2@cdc.gov

References

1. Plan and Operation of the Third National Health and Nutrition Examination Survey, 1988–94. National Center for Health Statistics. Vital Health Stat (32) 1994.

2. Clayton EW, Steinberg KK, Khoury MJ, et al. Informed consent for genetic research on stored tissue samples. JAMA 1995;274:1786–1792.

Dated: May 25, 1999.

Joseph R. Carter,

Acting Associate Director for Management And Operation, Centers for Disease Control and Prevention.

[FR Doc. 99–13740 Filed 5–28–99; 8:45 am]

BILLING CODE 4163–18–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Oncologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of May 20, 1999 (64 FR 27581). The meeting will be open to the public. This amendment is being made to change the meeting starting time and the procedures paragraph and to cancel the closed session.

FOR FURTHER INFORMATION CONTACT: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 1999 (64 FR 27581), FDA announced that a meeting of Oncologic Drugs Advisory Committee would be held on June 7 and 8, 1999. On page 27581, in the third column, the "Date and Time" and "Procedure" portions are amended and on page 27582, in the first column, the "Closed Committee Deliberations" portion is removed to read as follows:

Date and Time: The meeting will be held on June 7, 1999, 9:30 a.m. to 5:30 p.m. and June 8, 1999, 8 a.m. to 5:30 p.m.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 28, 1999. Oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:15 a.m. and 1:45 p.m. and 2 p.m. on June 7, 1999, and between approximately 8:15 a.m. and 8:45 a.m.

on June 8, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 28, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 15-minute open public session will be conducted for interested persons who have submitted their request to speak by May 28, 1999, to address issues specific to the submission or topic before the committee.

Dated: May 26, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–13963 Filed 5–27–99; 4:50 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1999.

Name: National Advisory Council (NAC) on the National Health Service Corps (NHSC).

Date and Time: Thursday, June 10; 7:30 a.m.–9 p.m., Friday, June 11; 8:30 a.m.–4:30 p.m., Saturday, June 12; 9 a.m.–5 p.m., Sunday, June 13; 8:30 a.m.–10 a.m.

Place: Oklahoma City Marriott, 3233 North West Expressway, Oklahoma City, OK 73112, (405) 842–6633.

The meeting is open to the public.

Agenda: Items will include updates on the NHSC and Scholarships and Loan Repayments program; HPSA designations; reports from the Dallas field office, State Primary Care Association, and State Department of Health. The NAC will also be discussing their draft position paper, "The National Health Service Corps for the 21st Century" in preparation for the year 2000 reauthorization. Site visits will be on Friday, June 11. Transportation for the public will not be available.

For further information, call Ms. Eve Morrow at (301) 594–4144.

Dated: May 26, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–13791 Filed 5–28–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of National Youth Anti-Drug Media Campaign

SUMMARY: Under the provision of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse of the National Institutes of Health submitted to the Office of Management and Budget (OMB) a request to review and approve the information collected listed below. This proposed information collection was previously published in the **Federal Register** on November 30, 1998 on page 65795 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Evaluation of National Youth Anti-Drug Media Campaign. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The White House Office of National Drug Control Policy has transferred funds to NIDA to conduct an independent, scientifically designed and implemented evaluation of the National Youth Anti-Drug Media Campaign, the first prevention campaign to use paid advertising to discourage youth from drug use. The study will assess the outcomes and impact of the national campaign in reducing illegal drug use among children and adolescents.

For this study, two different surveys will be conducted: (1) The National Survey of Parents and Youth, a cross-sectional household survey; and (2) a Community Longitudinal Study of Parents and Youth in four communities with an ethnographic component. All data will be collected using a combination of computer-assisted personal interviews (CAPI) and audio computer-assisted self-interviews (ACASI). The findings will form the basis of semiannual and annual reports on campaign progress. These reports will provide assistance in improving the national campaign, and will help to establish a rich database of information about the process involved in changing attitudes and behaviors by the mass media.

Frequency of Response: The National Survey of Parents and Youth will be carried out in 6 waves over a three-year period. Each data collection wave will last 6 months. The Community Longitudinal Study will be carried out annually over three years. *Affected Public:* Individuals and households. *Type of Respondent:* Children and parents. The annual reporting burden is as follows:

TABLE 1.—RESPONDENT AND BURDEN ESTIMATE

Type of respondents	Estimated number of respondents	Number of responses per respondent	Average time in hours per response	Estimated total burden hours	Estimated annual hour burden (over 3 years)
National Survey of Youth and Parents (NSPY)					
Screener Respondent	164,754	1	.07	11,533	3,844
Youth 9–11	9,300	1	.58	5,394	1,798
Adolescents 12–18	19,200	1	.75	14,400	4,800
Parents	20,100	1	.92	18,492	6,164
Community Longitudinal Study of Parents and Youth (CLSPY)					
Screener Respondent	28,500	1	.07	1,995	[1] N/A
Youth 9–11	2,150	3	.65	4,193	1,398
Adolescents 12–14	2,150	3	.83	5,354	1,785

TABLE 1.—RESPONDENT AND BURDEN ESTIMATE—Continued

Type of respondents	Estimated number of respondents	Number of responses per respondent	Average time in hours per response	Estimated total burden hours	Estimated annual hour burden (over 3 years)
Parents	3,500	3	1.00	10,500	3,500
Total	[2] 249,654		.29	71,861	[3] 23,289

[1] Respondents are screened in year one only.
[2] Some number of screener respondents are later also selected for a parent interview. The exact proportion cannot be estimated at this time.
[3] This number does not include screening for the CLSPY because screening is done in year one only.

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. Because of the sensitivity of collecting data from families in households involving children as young as 9 years old, and the importance of minimizing costs for repetitive, return visits to obtain respondent cooperation, NIDA is considering the provision of a reasonable cost incentive to reimburse respondents for their time.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503. Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Susan L. David, Project Officer, Division of Epidemiology and Prevention Research, National Institute on Drug Abuse, 6001 Executive Blvd., Room 5153, MSC 9589, Bethesda, MD 20892–9589; or call non-toll-free number (301) 443–6504; or fax to (301) 443–2636; or email your request, including your address, to: sd69t@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 12, 1999.

Laura Rossnithal,

Executive Officer, NIDA.

[FR Doc. 99–13749 Filed 5–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: June 1, 1999.

Time: 2:00 P.M. to 4:00 P.M.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Andrew P. Mariani, Chief, Scientific Review Branch, 6120 Executive Blvd, Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 23, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–13754 Filed 5–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: June 1, 1999.

Time: 12:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350 Rockville, MD 20892 (telephone Conference Call).

Contact Person: Andrew P. Mariani, chief, Scientific Review Branch, 6120 Executive Blvd, Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Progam Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 23, 1999.
LaVerne Y. Stringfield
Committee Management Officer, NIH
[FR Doc. 99–13755 Filed 5–28–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel NIDA Center for Genetic Studies.
Date: June 10, 1999.
Time: 9:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Ramada Hotel Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Develop Prevention Research Dissemination—(Phase II SBIR).
Date: June 17, 1999.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 23, 1999.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy, NIH.
[FR Doc. 99–13750 Filed 5–28–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Genetics of Drug Abuse Vulnerability.
Date: June 1–2, 1999.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Rita Liu, PHD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, National Drug Abuse Treatment Clinical Trials Network.
Date: June 22–23, 1999.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.
Contact Person: Susan L. Coyle, PHD, Chief, Clinical Epidemiological and Applied Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Program Projects Review Committee.
Date: June 29, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: Rita Liu, PHD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Initial Review Group Treatment Research Subcommittee.
Date: June 29–30, 1999.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Centers Review Committee.
Date: June 30, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: Rita Liu, PHD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Initial Review Group Training and Career Development Subcommittee.
Date: July 7–9, 1999.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda One, Bethesda Metro Center Bethesda, MD 20814.
Contact Person: Mark Swieter, PHD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547 (301) 435–1309.

Name of Committee: National Institute on Drug Abuse Initial Review Group Health Services Research Subcommittee.

Date: July 14, 1999.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.
Contact Person: Marina L. Volkov, PHD, Special Assistant, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547 (301) 435–1433.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Research on Drug Courts.
Date: July 19–20, 1999.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Marina L. Volkov, PHD, Special Assistant, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–13751 Filed 5–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Statistical and Clinical Coordinating Center: Collaborative Tolerance Research Network and Autoimmunity Centers of Excellence.
Date: July 13, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Stanley C. Oaks, Jr., Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C06, 9000 Rockville Pike MSC 7610, Bethesda, MD 20892–7610, 301–496–7042, so14s@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–13752 Filed 5–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Special Emphasis Panel (SEP): Small Grants in Sociology and Psychology.
Date: June 11, 1999.
Time: 9:00 AM to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Investigational New Drug Toxicology for Drugs to Treat AD.
Date: June 23, 1999.
Time: 1:00 PM to Adjournment.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul Lenz, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel Cellular Senescence and Control of Cell Proliferation.
Date: July 8, 1999.
Time: 9:30 AM to Adjournment.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William A. Kachadorian, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–13753 Filed 5–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grant (R13).
Date: June 9, 1999.
Time: 2:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PHD, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 24, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–13757 Filed 5–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Service Research Review.

Date: June 8–9, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Gerald E. Calderone, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–13758 Filed 5–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine

Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 10–11, 1999.

Open: June 10, 1999, 9:00 AM to 11:00 AM.

Agenda: Administrative reports and program developments.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: June 10, 1999, 11:00 AM to 5:00 PM.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: June 11, 1999, 8:30 AM to 12:30 PM.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, BA, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 23, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–13756 Filed 5–28–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–26]

Notice of Submission of Proposed Information Collection to OMB; National Partnership for Reinventing Government Customer Satisfaction Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 7, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of available documents

submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to participation in the first-ever government-wide customer satisfaction survey to assess the progress made by federal agencies in improving customer service. This emergency processing is essential for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) Title of the Information Collection Proposal

National Partnership for Reinventing Government Customer Satisfaction Survey. HUD is joining a number of other federal agencies to participate in this government-wide survey.

(2) Summary of the Collection of Information

(a) Potential respondents will be asked to provide information regarding their assessment of HUD's performance in administering programmatic activities, as related to the Real Estate Assessment Center and the Section 8 Financial Management Center.

(b) HUD's participation in this government-wide customer satisfaction survey will result in benchmarking that will allow the Department to compare its work against the "best in the business."

(3) Description of the Need for the Information and Its Proposed Use

The information collection is essential so that HUD can establish benchmarking to improve its service to customers.

(4) Description of the Likely Respondents, Including the Estimated Number of Likely Respondents, and Proposed Frequency of Response to the Collection of Information

The estimated number of respondents for all collections pertaining to this request is 1,000. The proposed frequency of the response to the collection of information is one-time.

(5) Estimate of the Total Reporting and Recordkeeping Burden That Will Result From the Collection of Information

Number of respondents: 1,000.

Total burden hours: 250.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 25, 1999.

David S. Cristy,

Director, Information Technology Capital Planning Staff.

[FR Doc. 99–13738 Filed 5–28–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF INTERIOR

Office of the Secretary

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Department of Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, June 11, 1999; 1:30–4 p.m.

Address: Sand Island Icehouse, 56 River Street, Bethlehem PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Pub. L. 105–355, November 13, 1998. Also within this new legislation, the Delaware & Lehigh Navigation Canal National Heritage Corridor Commission has officially changed its name to the Delaware & Lehigh National Heritage Corridor Commission.

FOR FURTHER INFORMATION CONTACT: Denise G. Holub, Chief Financial Officer/Grants Administrator, Delaware and Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: May 24, 1999.

Denise G. Holub,

Chief Financial Officer/Grants Administrator, Delaware and Lehigh National Heritage Corridor Commission.

[FR Doc. 99–13744 Filed 5–28–99; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit or permit amendment to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 839763

Applicant: John O. Whitaker, Jr., Indiana State University, Terre Haute, Indiana.

The applicant requests an amendment to his endangered species scientific take permit number TE 839763 for Indiana bat (*Myotis sodalis*) and gray bat (*Myotis grisescens*) to add activities in Ohio. Activities are proposed for the purpose of enhancement of survival of the species in the wild.

Permit Number TE 838055

Applicant: Ecological Specialists, Inc., St. Peters, Missouri.

The applicant requests an amendment to existing endangered species scientific take permit number TE 838055 to increase the scope of covered activities to include projects in the States of Kentucky and Tennessee. Covered species are the following endangered and threatened unionids: clubshell (*Pleurobema clava*), fanshell [(*Cyprogenia stegaria* (=*irrorata*)], fat pocketbook [*Potamilus* (=*Proptera*) *capax*], Higgins' eye pearlymussel (*Lampsilis higginsi*), northern riffleshell (*Epioblasma torulosa rangiana*), orangefoot pimpleback pearlymussel (*Plethobasus cooperianus*), pink mucket pearlymussel [*Lampsilis abrupta* (=*orbiculata*)], Alasmidonta atropurpurea, Epioblasma nbrevidens, Epioblasma capsaeformis, Pegias fabula, Villosa trabilis, and winged mapleleaf mussel (*Quadrula fragosa*). Activities are proposed for the purpose of enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 25, 1999.

Stanley L. Smith,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–13794 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Supplemental Findings of No Significant Impact and Supporting Documentation for Incidental Take Permits Previously Issued to Aronov Realty and Management, Incorporated and Fort Morgan Paradise Joint Venture, both in Baldwin County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of supplemental Findings of No Significant Impact (FONSI) and supporting documentation for two previously issued incidental take permits. Fort Morgan Paradise Joint Venture received incidental take permit PRT–819464 on December 9, 1996, and Martinique Developers, LLC received incidental take permit PRT–802986 on January 26, 1996, for residential development of properties commonly known as the Beach Club and Martinique on the Gulf, respectively, along the Fort Morgan Peninsula in Baldwin County, Alabama. These incidental take permits authorized the respective permittees to take endangered Alabama beach mice, *Peromyscus polionotus ammobates*, incidentally to otherwise lawful construction activities in consideration of minimization and mitigation of adverse effects to Alabama beach mice, and were issued pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended.

DATES: Written comments on the Findings of No Significant Impact (FONSI) and supporting documentation, should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before July 1, 1999.

ADDRESSES: Persons wishing to review the supplemental FONSI and supporting documentation may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons who previously commented on the subject projects need not make a request, they will be mailed copies at the time of this notice. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits). Written data or comments concerning the FONSI and supporting documentation should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit numbers **PRT–802986** and **PRT–819464** in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Dohner, Assistant Regional Director, Ecological Services, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679–4156.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse is currently restricted to the dune systems of Fort Morgan peninsula, on the Gulf Coast of Alabama. Following recent hurricanes, the estimated rangewide habitat known to be occupied by the Alabama beach mouse in the project vicinity is 1,108 acres of primary, secondary and scrub dunes and interdunal areas. This acreage includes consideration of past developments and incidental take permits issued. The supplemental FONSI and supporting documents incorporate new information relative to the effects of hurricanes on Alabama beach mouse populations, additional population surveys, and population viability analyses.

Dated: May 25, 1999.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 99–13745 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Colville Confederated Tribes Integrated Resource Management Plan, Colville Indian Reservation, Ferry and Okanogan Counties, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) intends to prepare an Environmental Impact Statement (EIS) for an Integrated Resource Management Plan (IRMP) for the approximately 1,392,265 acre Colville Indian Reservation, as directed in BIA Manual 30, Supplement 10. The planning area is located within both Ferry and Okanogan Counties, Washington. A description of this area and of the proposed action follows as supplementary information. This notice also announces a public scoping meeting for the content of the EIS.

DATES: Comments concerning the scope and implementation of this proposal must be received by June 30, 1999. The public hearing will be held on June 15, 1999, from 7 a.m. to 9 p.m.

ADDRESSES: Send comments to John St. Pierre, IRMP Team Leader, Natural Resources Department, Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155, telephone (509) 634–2324. The public scoping meeting will take place at the Nespelem Catholic Longhouse, Nespelem, Washington.

FOR FURTHER INFORMATION CONTACT: John St. Pierre, (509) 634–2324.

SUPPLEMENTARY INFORMATION: The Colville Indian Reservation is home to the Confederated Tribes of the Colville Reservation, which include the Colville, Lakes, San Poil, Nespelem, Southern Okanagan, Moses/Columbia, Palus, Nez Perce, Methow, Chelan, Entiat and Wenatchi Tribes. The reservation is bounded on the west by the Okanogan River, on the south and east by the Columbia River, and on the north by a line separating townships 34 and 35 of the Willamette Meridian. Land on the reservation is divided between fee (20 percent) and trust (80 percent) status. Major land uses include forest (63 percent), open rangeland (20 percent), forest rangeland (10 percent) and agriculture (6 percent). Timber revenues have historically provided from 80 to 90 percent of the tribal budget.

The proposed action is to adopt standards and guidelines, developed

through an IRMP, over a range of outputs and levels of output for resources located on the Colville Indian Reservation. The decision to be made is what standards and guidelines, if any, to adopt for the management of these resources. The proposed action and alternatives must feature the same emphases as the Guidelines for Integrated Resource Management Planning in Indian Country, namely, that each tribe should decide on the resource management philosophy which best fits its needs and develop an appropriate approach to creating its own IRMP. The proposed action and alternatives must also be consistent with the Confederated Tribes' Holistic Goal, enacted by Colville Business Council Resolution Number 1996–23 on January 18, 1996.

Possible alternatives to the proposed action include (1) no action and (2) an alternate plan that meets the emphases of both the Guidelines for Integrated Resource Management Planning and the Tribes' Holistic Goal. Other alternatives, which must respond to specific conditions on the Colville Reservation, may emerge during the scoping process for the EIS.

Resource management issues so far identified include (1) forms of production, (2) sustaining a future resource base, (3) maintaining and building a quality of life based on a unique set of traditions, culture, environment and economy, and (4) creating an environment where members of the tribes can work together to develop an innovative resources management approach.

The BIA invites federal, state, and local agencies, and individuals and organizations who may be interested in or affected by the proposed action to offer information, comments, and assistance in the scoping process for the EIS. This process will include (1) identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating issues that are not significant or that have been covered by a previous environmental process, (4) exploring additional alternatives, (5) identifying potential environmental effects of the proposed action and alternatives, and (6) determining potential cooperating agencies and task assignments.

This notice is published in accordance with § 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: May 25, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–13691 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–02–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment V to the Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of Siletz Indians of Oregon and the State of Oregon, which was executed on March 29, 1999.

DATES: This action is effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: May 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–13727 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment V to the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon Gaming Compact, which was executed on March 29, 1999.

DATES: This action is effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: May 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–13728 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VII to the Gaming Compact Between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon, which was executed on March 29, 1999.

DATES: This action is effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: May 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–13730 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment V to the Tribal-State Compact for Regulation of Class III Gaming between the Coquille Indian Tribe and the State of Oregon which was executed on March 29, 1999.

DATES: This action is effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: May 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–13726 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VI to the Tribal-State Compact for Regulation of Class III Gaming Between The Klamath Tribes and the State of Oregon, which was executed on March 29, 1999.

DATES: This action is effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: May 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–13729 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–00–1310 24 1A]

Extension of Currently Approved Information Collection; OMB Approval No. 1004–0145

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Paperwork Reduction Act requires federal agencies to announce their intentions to request extension of approval for collecting information from individuals. The Bureau of Land Management (BLM) announces its intention to request extension of approval for collecting certain information from entities interested in leasing, exploring for, and producing oil and gas on federal lands. Entities vary from small business to major corporations. BLM uses the information to determine whether the entities meet statutory and regulatory requirements.

DATES: Comments on the proposed information collection must be received by August 2, 1999.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (WO–630), Bureau of Land Management, 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240. Comments may be sent via the Internet to: *WoComment@wo.blm.gov*. Please include "Attn: 1004–0145 and your name and address in your Internet address.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. 20036.

Comments will be available for public inspection and review at the L Street address during regular business hours, 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Gamble, Fluid Minerals Group, (202) 452–0338.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide a 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules and other collection instrument to solicit comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act (MLA) of 1920 (30 U.S.C. 181 *et seq.*), gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of public lands and national forests, and private lands where minerals rights have been reserved by the Federal Government. The Act of May 21, 1930 (30 U.S.C. 301–306), authorizes the leasing of oil and gas deposits under railroads and other rights-of-way. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands), authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359).

The regulations at 43 CFR Group 3100 outline procedures for members of the public to submit applications, offers, statements, petitions, and various forms. BLM needs the information requested in the applications, statements, and petitions to determine whether an applicant is qualified to hold a lease to obtain a benefit under the terms of the MLA of 1920 and its subsequent amendments and implementing regulations.

BLM uses the information to determine the eligibility of an applicant to lease, explore for, and produce oil and gas on Federal lands. Applicants may submit information in person or by mail to the proper BLM office or the Department of the Interior, Minerals Management Service. Applicants are required to certify that they are citizens of the United States and do not own or control in excess of 246,080 acres each in public domain and acquired lands of Federal oil and gas leases in a particular State as required by law under 30 U.S.C. 184(d)(1) and in accordance with the regulations at 43 CFR 3101.2 and 3102. Legal descriptions of lands are required

to determine where the involved Federal lands are located. The names and addresses are needed to identify the applicant and allow the authorized officer to ensure that the applicant meets the requirements of the law. An attorney-in-fact or agent signature is needed only if an attorney or agent is filing the information required on behalf of an applicant or lessee. The information required on the statements, petitions, offers, and applications is needed for orderly processing of oil and gas leases and is needed to comply with the terms and conditions of the statutes. BLM also needs the information to determine whether an entity is qualified to hold a lease to obtain a benefit. Attestations to compliance with the regulations concerning parties of interest and qualifications are necessary, subject to criminal sanctions in accordance with 18 U.S.C., Section 1001. If the information contained on the applications, statements, petitions, and offers is not collected, the leasing of oil and gas could not occur to allow a benefit, and millions of dollars in revenue to the Federal Government would be lost.

All information collections in the regulations at 43 CFR Subparts 3000–3120 that do not require a form are covered by this notice. BLM intends to submit these information collections collectively for approval by the Office of Management and Budget as they were originally submitted and approved.

The information required and the time for supplying it are listed below:

Information collection	Estimated burden hours
Notice of option holdings for acreage chargeability	1
Option statement	1
Petition requesting additional time to divest excess acreage	1
Statement showing date, acreage, State in which leases are held	1.5
Statement showing unit agreement entered into if lease is for lands within approved unit	1
Application for waiver, suspension, or reduction of rental or royalty	2
Copy of communitization or drilling agreement	2
Interest held in operating, drilling, or development contracts	2
Application to combine operations or transport oil	1
Application for subsurface storage of oil and gas	1
Statement that heirs and devisees are qualified to hold lease	1
Reporting a change of name	1
Notification of corporate merger	2
Application for renewing lease	1
Application to relinquish lease	0.5
Application to reinstate lease	0.5
Application for lease located within a right-of-way	1
Application for oil and gas exploration permit in Alaska	1
Reporting date of exploration activities	1
Reporting completion of operations	1

Based on its experience managing oil and gas leasing activities, BLM estimates an average of 700 respondents annually and a burden hour total of 1400 hours annually. Respondents range from individuals and small businesses to major corporations.

All responses to this notice will be summarized and included in the request for Office of Management and Budget for approval. All comments will also become part of the public record.

Dated: May 26, 1999.

Carole J. Smith,

Information Clearance Officer.

[FR Doc. 99–13773 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–1220–00]

Notice of Temporary Closure to Off-Highway Vehicle Use Near Grand View, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure to off-highway vehicle use near Grand View, Idaho.

SUMMARY: This notice closes approximately 1,450 acres to off-highway vehicle (OHV) use to protect rare plants in and around the Mud Flat Oolite Area of Critical Environmental Concern/Research Natural Area (ACEC/RNA). The unique sandstone cliffs that are prominent within the area also provide habitat for wildlife, including nesting raptors. Sometime prior to April 18, 1999, numerous off-highway vehicles traveled cross-country in this area. This off-road vehicle use caused adverse impacts to vegetation, including rare plant communities. BLM reserves the right to use or authorize use of roads and trails or off-road travel for administrative purposes. The closed area falls within the following-described public lands:

Boise Meridian, Idaho

T. 7 S., R. 2 E., section 1: SE¼SE¼;
Section 12: NE¼, SE¼NW¼, E½SW¼, N½SE¼, N½S½SE¼;
T. 7 S., R. 3 E., section 4: Lots 2–4, S½NW¼;
Section 5: Lots 1–4, S½N½, SW¼, N½SE¼, SW¼SE¼;
Section 6: Lots 1, 2, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Section 7: Lots 1–3, W½NE¼, E½NW¼, NE¼SW¼.

To prevent further damage from off-road vehicle use, the boundaries will be fenced and signed identifying the closed area. The legal authority for this action can be found at 43 CFR 8341.2.

DATES: This closure will begin June 1, 1999 and remain in effect pending completion of an amendment to the Bruneau Resource Area Management Framework Plan that addresses OHV use in the Resource Area. This Plan Amendment is expected to be completed by the fall of 2000.

ADDRESSES: Copies of maps that outline the closed area are available at the Bureau of Land Management, Lower Snake River District, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Jamie Connell, Bruneau Resource Area, at (208) 384–3330.

SUPPLEMENTARY INFORMATION: The 1,450 acre habitat includes the Mud Flat Oolite ACEC/RNA, designated by the 1992 Bruneau Management Framework Plan Amendment. Several BLM sensitive plant species are known to exist within the 1,450 acre area including Packard's buckwheat (*Eriogonum shockleyi var. packardae*), Mulford's milkvetch (*Astragalus mulfordiae*), white eatonella (*Eatonella nivea*), white-margined wax plant (*Glyptopleura marginata*), rigid threadbush (*Nemacladus rigidus*), and Snake River milkvetch (*Astragalus purshii var. ophiogenes*).

The U.S. Fish and Wildlife Service is currently reviewing the status of Mulford's milkvetch for possible listing as a threatened or endangered species. Most of the area is currently not designated and therefore open to OHV use as documented in the Bruneau Management Framework Plan completed in 1983.

Dated: May 21, 1999.

Jamie E. Connell,

Acting Bruneau Area Manager.

[FR Doc. 99–13579 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61701]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management.
ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Midas Joint Venture, a joint venture between Franco-Nevada Mining Corporation, Inc., a Nevada corporation, and Euro-Nevada Mining Corporation, Inc., a Nevada corporation, has applied for conveyance of the Federal mineral estate described as follows:

Mount Diablo Meridian, Nevada

T. 39 N., R. 46 E.,
Sec. 9, NE¼, E½NW¼;
Sec. 10, W½NW¼, SW¼;
Sec. 15, W½E½, E½W½;
Sec. 22, NE¼, S½SE¼;
Sec. 27, NE¼;
Sec. 28, E½SW¼, W½SE¼;
Sec. 33, NE¼;
Sec. 34, lot 1, SW¼NW¼.

Comprising 1,597.67 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregation effect of the application shall terminate upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, whichever occurs first.

Dated: May 18, 1999.

Helen Hankins,
District Manager.

[FR Doc. 99–13713 Filed 5–28–99; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before July 1, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0119), 725 17th Street, N.W., Washington, D.C. 20503, telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS–3021, Denver, Colorado, 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e:Mail address is: RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231-3385, e-Mail Dennis.C.Jones@mms.gov. You may also contact Dennis Jones to obtain a copy of the ICR at no cost.

SUPPLEMENTARY INFORMATION:

Title: Royalty-in-Kind (RIK) Determination of Need.

OMB Control Number: 1010–0119.

Abstract: The Minerals Management Service on behalf of the Secretary, performs Determinations of Need prior to issuing a Notice of Availability of Sale in the **Federal Register** advising industry of a forthcoming RIK sale. The first step in this process is to issue a **Federal Register** Notice requesting specific information from eligible refiners: location of refinery; desirability of offshore versus onshore crude; type of crude desired (e.g., Wyoming Sweet); ability to obtain long-term supply of desired crude (with supporting documentation such as "denial" by major supplier); ability to obtain desired crude at fair market prices (with supporting documentation that desired oil was not available or equitably priced for the area or region in question); percentage of total refining capacity attributable to Federal oil versus other sources; etc. Feedback from refiners (or other interested parties, like lease owners or operators) will be used by MMS to assess current marketplace conditions, i.e., whether small, independent refiners have access to ongoing supplies of crude oil at equitable prices.

Burden Statement: The respondent burden for this collection is estimated to average 4 hours per each respondent to provide a written response to the information collection.

Respondents/Affected Entities: Refiners or other interested parties such as lease owners or operators.

Frequency of Response: As necessary.

Estimated Number of Respondents: 25.

Estimated Total Annual Reporting and Recordkeeping Burden: 100 hours.

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 1, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 21, 1999.

Lucy Querques Denett,
Associate Director for Royalty Management.

[FR Doc. 99–13709 Filed 5–28–99; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Telecommunications Facilities; Construction and Operation; Golden Gate National Recreation Area, Marin County, CA

AGENCY: Golden Gate National Recreation Area, NPS, DOI.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the Golden Gate National Recreation Area proposes to consider the initial application made by Bay Area Cellular Telephone Company, dba, CellularOne to install a wireless communication facility in the Highway 101 right-of-way, above and adjacent to the Alexander Avenue underpass to Highway 101, immediately north of the Golden Gate Bridge in Marin County, CA.

DATES: Comments will be accepted on, or before, July 21, 1999.

ADDRESSES: Interested parties should contact National Park Service, Superintendent's Office, GGNRA, Building 201, Fort Mason, San Francisco, CA 94123. To obtain a copy of the initial application, contact Richard Louthan at (415) 561–4729.

SUPPLEMENTARY INFORMATION: The initial application made by CellularOne requests that a cellular site be constructed in the Highway 101 right-of-way, above and adjacent to the Alexander Avenue underpass to Highway 101, immediately north of the Golden Gate Bridge. The Superintendent will consider and evaluate all comments as a result of this public notice before authorizing CellularOne to proceed beyond the initial application phase of the project review and permitting process.

Dated: May 24, 1999.

Brian O'Neill,

Superintendent, Golden Gate National Recreation Area.

[FR Doc. 99–13849 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on June 16, 1999, to discuss several issues including: Funding recommendations for 1999, an update on the Battle Creek project, a discussion of water acquisition funds, and other issues. A Workshop between the Integration Panel and the Ecosystem Roundtable will be held on June 14, 1999, to discuss 1999 funding recommendations. These meetings are open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Ecosystem Roundtable will be held from 9:30 a.m. to 12 p.m. on June 16, and the Workshop will be held from 1 p.m. to 4 p.m. on June 14, 1999.

ADDRESSES: Both meetings will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of the joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisers representing California's agricultural, environmental, urban business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: May 25, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–13746 Filed 5–28–99; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 751–TA–462 (Review)]

Benzyl Paraben From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on benzyl paraben from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on benzyl paraben from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–017. Public reporting burden for the request is estimated to average 7 hours per response. Please send

Continued

of consideration, the deadline for responses is July 21, 1999. Comments on the adequacy of responses may be filed with the Commission by August 16, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 13, 1991, the Department of Commerce issued an antidumping duty order on imports of benzyl paraben from Japan (56 FR 5795). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: benzyl paraben.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: producers of benzyl paraben.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is February 13, 1991.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification

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comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

(or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be provided in response to this notice of institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13846 Filed 5–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–432 (Review)]

Drafting Machines From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on drafting machines from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 21, 1999. Comments on the adequacy of responses may be filed with the Commission by August 16, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On December 29, 1989, the Department of Commerce issued an antidumping duty order on imports of drafting machines from Japan (54 FR 53671). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. The Commission's original affirmative determination pertained to one Domestic Like Product: drafting machines and parts thereof, excluding portable drafting machines.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. The Commission's original affirmative determination pertained to one Domestic Industry: producers of drafting machines and parts thereof, excluding portable drafting machines.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is December 29,1989.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–013. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1989.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13839 Filed 5–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–413–415 and 419 (Review)]

Certain Industrial Belts from Germany, Italy, Japan, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 21, 1999. Comments on the adequacy of responses may be filed with the Commission by August 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On the date listed below, the Department of Commerce issued antidumping duty orders on the subject imports: [2]

Order date	Product/country	Inv. No.	F.R. cite
6/14/89	Industrial belts except synchronous and V/Germany	731–TA–419	54 F.R. 25316.
6/14/89	Industrial synchronous and V belts/Italy	731–TA–413	54 F.R. 25313.
6/14/89	Industrial belts/Japan	731–TA–414	54 F.R. 25314.
6/14/89	Industrial V belts/Singapore	731–TA–415	54 F.R. 25315.

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Germany, Italy, Japan, and Singapore.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, two Commissioners defined three Domestic Like Products: (1) All V-type power transmission belts, (2) all synchronous type power transmission belts, and (3) all other types of power transmission belts; two Commissioners found one Domestic Like Product: all industrial belts, excluding automotive belts; one Commissioner defined three Domestic Like Products: (1) All V-type and round type power transmission belts, (2) all synchronous type power transmission belts, and (3) all flat type power transmission belts; and one Commissioner found one Domestic Like Product: all power transmission belts. For purposes of this notice, you should report information separately on each of the following Domestic Like Products: (1) All V-type power transmission belts, (2) all synchronous type power transmission belts, (3) all other types of power transmission belts, and (4) all industrial belts, excluding automotive belts.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, two Commissioners defined three Domestic Industries: (1) Producers of all V-type power transmission belts, (2) producers of all synchronous type power transmission belts, and (3) producers of all other types of power transmission belts; two Commissioners found one Domestic Industry: producers of all industrial belts, excluding automotive belts; one Commissioner defined three Domestic Industries: (1) Producers of all V-type and round type power transmission belts, (2) producers

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–010. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

[2] The Department of Commerce subsequently published corrections to the orders, at 54 FR 32104 (Aug. 4, 1989).

of all synchronous type power transmission belts, and (3) producers of all flat type power transmission belts; and one Commissioner found one Domestic Industry: producers of all power transmission belts. For purposes of this notice, you should report information separately on each of the following Domestic Industries: (1) Producers of all V-type power transmission belts, (2) producers of all synchronous type power transmission belts, (3) producers of all other types of power transmission belts, and (4) producers of all industrial belts, excluding automotive belts.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is June 14, 1989.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act in making its determinations in the reviews.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have

exported Subject Merchandise to the United States or other countries since 1988.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in pounds and units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99–13843 Filed 5–28–99; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–96, 439–445 (Review)]

Industrial Nitrocellulose from Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 21, 1999. Comments on the adequacy of responses may be filed with the Commission by August 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 1, 1999.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–011. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3476), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On the dates listed below, the Department of Commerce issued antidumping duty orders on the subject imports:

Order date	Product/country	Inv. No.	F.R. cite
8/10/83	Industrial nitrocellulose/France	731-TA–96	48 F.R. 36303.
7/10/90	Industrial nitrocellulose/Brazil	731–TA–439	55 F.R. 28266.
7/10/90	Industrial nitrocellulose/China	731–TA–441	55 F.R. 28267.
7/10/90	Industrial nitrocellulose/Germany	731–TA–444	55 F.R. 28271.
7/10/90	Industrial nitrocellulose/Japan	731–TA–440	55 F.R. 28268.
7/10/90	Industrial nitrocellulose/Korea	731–TA–442	55 F.R. 28266.
7/10/90	Industrial nitrocellulose/United Kingdom	731–TA–443	55 F.R. 28270.
10/16/90	Industrial nitrocellulose/Yugoslavia	731–TA–445	55 F.R. 41870.

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: industrial nitrocellulose.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined one Domestic Industry: producers of industrial nitrocellulose.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In these reviews, the Order Dates are as presented in the preceding tabulation.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a

certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in France that currently export or have exported Subject Merchandise to the United States or other countries since 1982. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Brazil, China, Germany, Japan, Korea, United Kingdom, and Yugoslavia that currently export or have exported Subject Merchandise to the United States or other countries since 1989.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on the product during calendar year 1998 (report quantity data in wet pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in wet pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in wet pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include

end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13844 Filed 5–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA–429 (Review)]

Mechanical Transfer Presses from Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on mechanical transfer presses from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on mechanical transfer presses from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 21, 1999. Comments on the adequacy of responses may be filed with the Commission by August 16, 1999. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On February 16, 1990, the Department of Commerce issued an antidumping duty order on imports of mechanical transfer presses from Japan (55 FR 5642). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: all mechanical transfer presses. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: producers of mechanical transfer presses. The Commission excluded one domestic producer, Hitachi-Zosen-Clearing, from the Domestic Industry under the related parties provision. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is February 16, 1990.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–015. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1989.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an

estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13842 Filed 5–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–455 (Review)]

Multiangle Laser Light-Scattering Instruments From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on multiangle laser light-scattering instruments from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on multiangle laser light-scattering instruments from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 21, 1999. Comments on the adequacy of responses may be filed with the Commission by August 16, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On November 19, 1990, the Department of Commerce issued an antidumping duty order on imports of multiangle laser light-scattering instruments from Japan (55 FR 48144). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: classical laser light-scattering instruments and components like those within the scope of the investigation.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: producers of classical laser light-scattering instruments and components like those within the scope of investigation.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is November 19, 1990.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–016. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13845 Filed 5–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA–426–428 (Review)]

Small Business Telephone Systems From Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on small business telephone systems from Japan, Korea, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on small business telephone systems from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 21, 1999. Comments on the adequacy of responses may be filed with the Commission by August 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On December 11, 1989, the Department of Commerce issued antidumping duty orders on imports of small business telephone systems from Japan and Taiwan (54 FR 50789). On February 7, 1990, the Department of Commerce issued an antidumping duty order on imports of small business telephone systems from Korea (55 FR 4215). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Japan, Korea, and Taiwan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: all equipment dedicated for use in a small business telephone system.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations,

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–014. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

the Commission found one Domestic Industry: producers of all equipment dedicated for use in a small business telephone system. The Commission excluded Executone and Inter-Tel from the Domestic Industry on the grounds that their domestic production activities were not sufficient to consider them domestic producers.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In the reviews concerning Japan and Taiwan, the Order Date is December 11, 1989. In the review concerning Korea, the Order Date is February 7, 1990.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1988.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on

an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: May 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13841 Filed 5–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review)]

Steel Rails From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on steel rails from Canada.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on steel rails from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 21, 1999. Comments on the adequacy of responses may be filed with the Commission by August 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On September 15, 1989, the Department of Commerce

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–012. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

issued an antidumping duty order on imports of steel rails from Canada (54 FR 38263). On September 22, 1989, the Department of Commerce issued a countervailing duty order on imports of steel rails from Canada (54 FR 39032). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Canada.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: all new rail, excluding light rail. One Commissioner defined the Domestic Like Product differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one Domestic Industry: producers of all new rail, excluding light rail. One Commissioner defined the Domestic Industry differently.

(5) The *Order Dates* are the dates that the countervailing duty and antidumping duty orders under review became effective. In the review of the antidumping duty order, the Order Date is September 15, 1989. In the review of the countervailing duty order, the Order Date is September 22, 1989.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 16, 1999. All written submissions must conform with the provisions of § 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

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(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1988.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13840 Filed 5–28–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree resolving the liability of Edward J. Edelen, III and The Lakes of Myrtle Beach, Inc. ("Defendants") in *United States of America* v. *Edward J. Edelen, III, et al.*, Civil Action No. 4:98–1538–22 (D.S.C.), was lodged with the United States District Court for the District of South Carolina on May 3, 1999.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, resulting from the unauthorized discharge of dredged or fill materials into waters of the United States at "The Lakes," a residential development in Surfside, Horry County, South Carolina ("Site"). The consent decree enjoins Defendants from discharging dredged or fill material into waters of the United States. The consent decree further requires Defendants to: (a) Preserve in perpetuity all 21.43 acres of jurisdictional wetlands located on the undeveloped portion of the Site, in accordance with a Wetlands Preservation Plan approved by the United States Environmental Protection Agency ("EPA"); (b) obtain title to 400 acres of jurisdictional wetlands in the Waccamaw River watershed and preserve such wetlands in perpetuity (or provide an equivalent amount in mitigation credits), in accordance with a Wetlands Mitigation Plan approved by EPA; and (c) make a $1,000.00 monetary payment to the United States Treasury.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: H. Michael Semler, Senior Trial Counsel, Environmental Defense Section, PO Box 23986, Washington, D.C. 20026–3986, and should refer to *United States of America* v. *Edward J. Edelen, III, et al.*, DJ Reference No. 90–5–1–1–4400.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, Florence Division, 401 West Evan Street, Florence, South Carolina 29503.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 99–13716 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Asymmetrical Digital Subscriber Line Forum ("ADSL")

Notice is hereby given that, on March 23, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Asymmetrical Digital Subscriber Line Forum ("ADSL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cadence Design Systems, Livingston, West Lothian, United Kingdom; Chameleon Systems, Sunnyvale, CA; CommTech Corporation, Cranberry, NJ; Duet Technologies, San Jose, CA; Earthlink, Pasadena, CA; Hyundai Electronics, Seoul, Korea; IPM Datacom, Frattamaggiore, Italy; Mitel Semiconductor, Kanata, Ontario, Canada; Northpoint Communications, San Francisco, CA; Radio Shack, Fort Worth, TX; Silicon Automation Systems, Ltd., Bangalor, India; Sumitomo Electric Industries Ltd., Osaka, Japan; Tellabs OY, Espoo, Finland; Conexant, Pacific Palisades, CA; and xDSL Networks, Inc., Towson, MD have been added as parties to this venture. Also, Rockwell Semiconductor, Pacific Palisades, CA; Telos Technologies, Towson, MD; Matthews Communications, Inc., Richardson, TX; ELSA GmbH, Aachen, Germany; and NITECH, Freehold, NJ have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Asymmetrical Digital Subscriber Line Forum ("ADSL") intends to file additional written notification disclosing all changes in membership.

On May 15, 1995, The Asymmetrical Digital Subscriber Line Forum ("ADSL") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 338058).

The last notification was filed with the Department on December 21, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13717 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Asymmetrical Digital Subscriber Line Forum ("ADSL")

Notice is hereby given that, on December 21, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Asymmetrical Digital Subscriber Line Forum ("ADSL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 2Wire, Milpitas, CA; Belgacom, Brussels, Belgium; Cirrus Logic, Fremont, CA; Secant Technologies, Research Triangle Park, NC; MCI Worldcom, Richardson, TX; Milgo Solutions, Inc., Sunrise, FL; Nortel Networks, Morrisville, NC; and Alcatel USA, Raleigh, NC have been added as parties to this venture. Also, MCI Telecommunications, Richardson, TX; Racal Data Group, Sunrise, FL; Bay Networks, Gaithersburg, MD; Nortel, Harlow, Essex, United Kingdom; Yurie Systems, Inc., Landover, MD; Alcatel Telecom, Antwerp, Belgium; DSC Communications, Petaluma, CA; and Netspeed, Austin, TX have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Asymmetrical Digital Subscriber Line Forum ("ADSL") intends to file additional written notification disclosing all changes in membership.

On May 15, 1995, the Asymmetrical Digital Subscriber Line Forum ("ADSL") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 338058).

The last notification was filed with the Department on December 8, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13718 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Frame Relay Forum

Notice is here by given that, on February 8, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Frame Relay Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cyras Systems, Fremont, CA; Larscom, Milpitas, CA; Maker Communications, Framingham, MA; Next Level Communications, Rohnert Park, CA; and Secant Network Technologies, Morrisville, NC have joined as worldwide members. Infinitec Communications, Tulsa, OK and Midwest Information Systems, Maryland Heights, MO have joined as

auditing members. CS Telecom, Cedex, France, has upgraded to worldwide membership. The following member has changed its name: TXPort to Verilink, Madison, AL. Also, CompuServe, Columbus, OH; MICOM Communications, Simi Valley, CA; DSC Communications, Plano, TX; and FastComm Communications, Sterling, VA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Frame Relay Forum intends to file additional written notification disclosing all changes in membership.

On April 10, 1992, Frame Relay Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on October 9, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4706).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13723 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—KLA-Tencor Corp.: Intelligent Mask Inspection System

Notice is hereby given that, on March 5, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), KLA-Tencor Corporation: Intelligent Mask Inspection System has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, EUV LLC, Inc., Livermore, CA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and KLA-Tencor Corporation: Intelligent Mask Inspection System intends to file additional written notification disclosing all changes in membership.

On December 22, 1998, KLA-Tencor Corporation: Intelligent Mask Inspection System filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 18, 1999 (64 FR 8124).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13720 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Lightwave Microsystems Corp.

Notice is hereby given that, on January 19, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Lightwave Microsystems Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Lightwave Microsystems Corporation, Santa Clara, CA; and BFGoodrich, Brecksville, OH. The nature and objectives of the venture are to work together to develop technology involving the development of new classes of polymers and novel fabrication approaches, which will be used in designing and manufacturing low-cost devices for routing, amplifying and switching signals in the telecommunications network.

The resulting devices should lead to significantly improved products at a lower cost for signal routing, switching and amplification in telecommunications networks.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13722 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. ("NCMS"): Advanced Embedded Passives Technology

Notice is hereby given that, on February 3, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. ("NCMS"): Advanced Embedded Passive Technology has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, International Business Machines, Endicott, NY has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. ("NCMS"): Advanced Embedded Passives Technology intends to file additional written notification disclosing all changes in membership.

On October 7, 1993, National Center for Manufacturing Sciences, Inc. ("NCMS"): Advanced Embedded Passives Technology filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 22, 1999 (64 FR 3571).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13719 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association ("PCA")

Notice is hereby given that, on February 25, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"),

Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mitsubishi Cement Corporation, Ontario, CA; Hanson Permanente Cement, Pleasanton, CA; and Arizona Cement Association, Phoenix, AZ have been added as parties to this venture. Also, Kaiser Cement Corporation, Pleasanton, CA; EPRI Center for Materials Production, Pittsburgh, PA; and RMT, Inc., Madison, WI have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association ("PCA") intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association ("PCA") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on October 7, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4709).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13721 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 28, 1998, (63 FR 71156), Eli-Elsohly Laboratories, Inc., Mahmoud A. Elsohly, PhD, 5 Industrial Park Drive, Oxford, Mississippi 38655, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II

The firm plans to bulk manufacture non-deuterated controlled substances for use as analytical standards and deuterated controlled substances for use as internal standards.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Eli-Elsohy Laboratories, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Eli-Elsohly Laboratories, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 19, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–13830 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #179S]

Controlled Substances: 1999 Aggregate Production Quota

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim notice establishing a revised 1999 aggregate production quota and request for comments.

SUMMARY: This interim notice establishes a revised 1999 aggregate production quota for secobarbital, a Schedule II controlled substance in the Controlled Substances Act (CSA).

DATES: This is effective on June 1, 1999. Comments or objections must be received on or before July 1, 1999.

ADDRESSES: Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basis class of controlled substance listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The DEA established initial 1999 aggregate production quotas for controlled substances in Schedules I and II, including secobarbital, in a **Federal Register** notice published on December 23, 1998 (63 FR 71160). A consideration of the information available at that time resulted in the establishment of an aggregate production quota of 25 grams for secobarbital. Since publication of the initial 1999 aggregate production quotas, the DEA has received information which necessitates an immediate increase in the 1999 aggregate production quota for secobarbital. The increase in the quota for secobarbital is necessary in order for the sole U.S. manufacturer to meet unforeseen domestic requirements. For this reason, an interim notice is being published.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby establishes the following revised 1999 aggregate production quota for the listed controlled substance, expressed in grams of anhydrous acid:

Basic class	Revised 1999 quota
Secobarbital	1,011,000

All interested persons are invited to submit their comments in writing regarding this interim notice.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage from manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the Unites States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Furthermore, this action involves only one basic class of controlled substance. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: May 13, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–13829 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Data Relating to Beneficiary of Private Bill.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 1999 at 64 FR 10022, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 1, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Data Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–79A. Investigations Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information is needed to report on Private Bills to Congress when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 1 Hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Policy Directives and Instructions Branch.

[FR Doc. 99–13760 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Certificates for health care benefits.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 1999 at 63 FR 10022, allowing for a 60-day public comment period. No comments

were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 1, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Certificates for Health Care Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The data collected in this process is used by the credentialing organization to determine if the alien is eligible to receive a certificate. The certificate is then submitted to the INS by an alien in order to obtain an immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 14,000 responses at approximately 1 hours and 50 minutes (1.83) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice Immigration and Naturalization Service.

[FR Doc. 99–13761 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Telephone Verification System (TVS) Phase II Pilot Non-Citizen Employees Employment Status.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 1999 at 64 FR 10023, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 1, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Telephone Verification System (TVS) Phase II Pilot Non-Citizen Employees Employment Status Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form (File No. OMB–7). SAVE Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals of Households. This information will be used by the INS to determine the number of non-citizen employees who are authorized for employment in the United States as a result of the Telephone Verification System Phase II Pilot Project. The users of the Telephone

Verification System are various employers throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 276,000 queries at approximately 7 minutes (.116) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 32,016 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13762 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Notice of Information Collection Under Review: Petition by Entrepreneur to Remove Conditions

AGENCY INFORMATION COLLECTION ACTIVITIES: Comment Request.

ACTION: Notice of Information Collection Under Review; Petition by Entrepreneur to Remove Conditions.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 2, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection: Reinstatement without change of previously approved collection.*

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–829. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove the conditions on his or her conditional resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 responses at 65 minutes (1.08) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 216 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruments, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice Immigration and Naturalization Service.

[FR Doc. 99–13763 Filed 5–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the employment and Training Administration is soliciting comments concerning the proposed extension collection of the data contained on the Welfare to Work Formula (ETA 9068) and Competitive (ETA 9068–1) Cumulative Quarterly Status Reports.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressees section of this notice.

DATES: Written comments must be submitted to the office listed in the

addressees section below on or before August 2, 1999.

ADDRESSES: Edward Donahue, Acting Chief, Division of Financial Grants Management Policy and Review, Office of Grants and Contract Management, Unietd States Department of Labor, Employment and Training Administration, 200 Constitution Ave. NW, Rm. N–4720, Washington, D.C. 20210, (202–219–5731 x126—not a toll free number) and, Internet address: EDonahue@DOLETA.GOV and/or FAX: (202–501–4811).

SUPPLEMENTARY INFORMATION:

I. Background

The Welfare to Work program is a new program designed to assist States in providing transitional employment assistance to move hard-to-employ recipients of Temporary Assistance for Needy Families, with significant job placement and job retention barriers, into unsubsidized jobs. The quarterly financial status reports are due to the Employment and Training Administration in order to evaluate the program, for program planning and management, to measure regulatory compliance, and for audit purposes. The required data will be transmitted from the grantees to ETA via the Internet, quarterly throughout the life of the grant. The data will be cumulative from the inception of the grant and a separate format will be required for each fiscal year of funds received by the grantee. Passwords and Personal Identification Numbers have been assigned to all grantees to enable access to the reporting formats and provide a mechanism for data certification.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The existing collection of information must be continued so that DOL can effectively manage and evaluate the WtW program. It is also essential that DOL has available the required data to measure program performance against the OMB approved performance bonus criteria. The Balanced Budget Act of 1997 stipulates that bonuses are to be awarded in FY 2000 based on the performance of each State that is a WtW State in 1998 and 1999.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Welfare to Work Formula (ETA 9068) and Competitive (ETA 9068–1) Cumulative Quarterly Status Reports.

OMB Number: 1205–0385.

Agency Numbers: ETA 9068 and ETA 9068–1.

Frequency: Quarterly.

Affected Public: (1) WtW Formula Grants: States, local governments, and Private Industry Councils; and (2) WtW Competitive Grants: Eligible applicants from business and/or other for profit and non-profit institutions.

Reporting Burden: See the following Reporting Burden Tables for WtW Formula and Bonus Grants (ETA 9068) and WtW Comptetitive Grants (ETA 9068–1).

DOL–ETA REPORTING BURDEN FOR WTW FORMULA AND TRIBAL GRANTS (INCLUDING BONUS) PARTICIPANT DATA COLLECTION

Requirements	FY 1998	FY 1999	FY 2000 (bonus)	FY 2001
Number of Reports Per Entity Per Quarter	1	1	1	1
Total Number of Reports Per Entity Per Year	2	4	4	4
Number of Hours Required for Reporting Hours Per Quarter Per Report	1	1	1	1
Total Number of Hours Required for Reporting Hours Per Entity Per Year	2	4	4	4
Number of Entities Reporting	55	55	55	55
Total Number of Hours Required for Reporting Burden Per Year	110	220	220	220
Total Burden Cost @ $23.45 per hour	$2,580	$5,159	$5,159	$5,159

Note: This reporting Burden Estimate is exclusive of the Reporting Burden estimate contained in 45 CFR Part 276. This Reporting Burden includes estimated time and dollars to report eligibility, targeting, and follow-up disaggregate participant data.

Requirements	FY 1998	FY 1999	FY 2000
Number of Reports Per Entity Per Quarter	1	1	1
Total Number of Reports Per Entity Per Year	2	4	4
Number of Hours Required for Reporting Per Quarter Per Report	1.5	1.5	1.5
Total Number of Hours Required for Reporting Hours Per Entity Per Year	3	6	6
Estimated Number of Entities Reporting	76	76	50
Total Number of Hours Required for Reporting Burden Per Year	228	456	300
Total Burden Cost @ $23.45 per hour	$5,347	$10,693	$7,035

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 25, 1999.

Dennis Lieberman,

Director, Office of Welfare to Work.

[FR Doc. 99–13816 Filed 5–28–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–060]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that New Century Pharmaceuticals, Inc., of Huntsville, Alabama, has applied for an exclusive license to practice the invention disclosed in NASA Case No. MFS–31320–1 entitled "Oxygen-Transportation Albumin-Based Blood Replacement Composition and Blood Volume Expander," for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the proposed grant of a license should be sent to Mr. James J. McGroary, Patent Counsel, Mail Code CC01, Marshall Space Flight Center, Huntsville, AL 35812.

DATES: Responses to this notice must be received by August 2, 1999.

FOR FURTHER INFORMATON CONTACT: Sammy Nabors, Mail Code CO30, Marshall Space Flight Center, Huntsville, AL 35803; telephone 256–544–5226.

Dated: May 24, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–13692 Filed 5–28–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–070]

NASA Advisory Council, Aero-Space Technology Advisory Committee, Goals Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aero-Space Technology Advisory Committee, Goals Subcommittee meeting.

DATES: Tuesday, June 22, 1999, 8:00 a.m. to 5:00 p.m.; Wednesday, June 23, 1999, 8:00 a.m. to 5:00 p.m.; and Thursday, June 24, 1999, 8:00 a.m. to 12:00 noon.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Washington, DC 20546–0001. The meeting will be held in the Program Review Center, Room 9H–40.

FOR FURTHER INFORMATION CONTACT: Ms. Enzie M. Ebron, National Aeronautics and Space Administration, 300 E Street, SW, Washington, DC 20546–0001, 202–358–4642.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

Finalize the process the committee will use to analyze the progress the NASA Aero-Space Technology Enterprise is making towards the 10 Enabling Technology Goals.

Using the above procedure, review the following Enabling Technology Goals:

—# 4—While maintaining safety, triple the throughput, in all weather conditions, within 10 years.

—# 7—Enable doorstep-to-destination travel at 4 times the speed of highways to 25% of the Nation's suburban, rural, and remote communities in 10 years and more than 90% in 25 years.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: May 24, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–13693 Filed 5–28–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Speical Emphasis Panel in Experimental and Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Experimental and Integrative Activities (1373).

Date and Time: June 15, 1999; 8:30 a.m. to 5:00 p.m.

Place: Room 970, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Closed.

Contact Persons(s): Dr. Harry G. Hedges, Program Director, Division of Experimental and Integrative Activities, National Science Foundation, Room 1160, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Educational Innovation proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 24, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–13694 Filed 5–28–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: June 10–11, 1998; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Victor Santiago, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard,

Arlington, VA 22230 Telephone: (703) 306–1640.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Historically Black Colleges and Universities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 24, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–13696 Filed 5–28–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), The National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information and Intelligent Systems (1200).

Date and Time: June 10–11, 1999; 08:00–5:00 PM.

Place: Room 110, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Gary Strong, Deputy Division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals Submitted to NSF for financial support.

Agenda: To review and evaluate Computation and Social Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a Proprietary or confidential nature, including technical information, financial data, such as Salaries; and personal information concerning individuals associated with the proposals. These Matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 24, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–13697 Filed 5–28–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation & Communication; Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub.L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: .Special Emphasis Panel in Research, Evaluation & Communication (#1210).

Date and Time: June 22, 1999 (8:00 a.m.–5:00 p.m); June 23, 1999 (8:00 a.m.–5:00 p.m.).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 880, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bernice Anderson, Program Director; Research, Evaluation and Communication (REC), Room 855, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: 703/306–1650.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Systemic Initiatives and Rural Systemic Initiatives Evaluative Studies Program as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C.552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 24, 1999.

Karen J. York.

Committee Management Officer.

[FR Doc. 99–13698 Filed 5–28–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: U.S. National Assessment Synthesis Team (#5219).

Date: June 7–8, 1999, 8:30 a.m. to 5:00 p.m. both days.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA.

Type of Meeting: Open.

Contact Person: Melissa J. Taylor, Office of the U.S. Global Change Research Program (USGCRP), 400 Virginia Avenue, SW, Suite 750, Washington, DC 20024. Tel: 202–314–2230; Fax: 202–488–8681; Email: mtaylor@usgcrp.gov. Interested persons should contact Ms. Taylor as soon as possible to assure space provisions are made for all participants and observers.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the interagency Subcommittee on Global Change Research on the design and conduct of the national effort to assess the consequences of climate variability and climate change for the United States.

Agenda: Day 1 (June 7) will review overall progress since the April meeting, and will focus on the revisions of the draft section of the Synthesis Report.

Day 2 (June 8) will continue the discussion of the draft sections of the Synthesis Report, and will then review the timetable for next step and will address any outstanding issues.

Dated: May 24, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–13695 Filed 5–28–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Meeting Notice; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, June 8, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first item is open to the public. The Second item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

7162 Highway Special Investigation Report: Pupil Transportation on Nonconforming Buses.

6923 Opinion and Order: Administrator v. Shorter, Docket SE–14697; disposition of respondent's appeal.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: May 27, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–13982 Filed 5–27–99; 3:44 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. In addition, recordkeeping must be performed on an on-going basis, and reports of transfer of byproduct material must be reported every 10 years.

5. *Who will be required or asked to report:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees or persons exempt from licensing.

6. *An estimate of the number of responses:* There are 5,727 NRC licensee responses and 8,372 Agreement State licensee responses annually for a total of 14,099 responses.

7. *The estimated number of annual respondents:* 265 NRC licensees and 333 Agreement State licensees for a total of 598.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 53,333 hours or 201.26 hours per NRC licensee and 95,306.9 hours or 286.21 hours per Agreement State licensee for a total of 148,640 hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* No.

10. *Abstract:* 10 CFR Part 32 establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees or persons exempt from licensing. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are information which must be submitted in an application for a specific license, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. In addition, 10 CFR Part 32 prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR Part 32 requirements. The information is used by NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 1, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 18th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13776 Filed 5–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al. Millstone Nuclear Power Station, Unit No. 3; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its July 26, 1995, application, as supplemented by letter dated July 17, 1996, for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

The proposed amendment would have revised the facility technical specifications pertaining to the protective functions instrumentation surveillance interval, extending the interval from the current 18-month to a 24-month fuel cycle, and would have revised the Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) instrumentation trip setpoints tables from the existing five columns to a single column format that lists only nominal trip setpoints. Revision to the RTS and ESFAS instrumentation trip setpoints tables were subsequently resubmitted under a separate amendment request dated October 15, 1997, as supplemented January 23 and April 8, 1998, and approved in amendment number 159, issued on May 26, 1998.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 27, 1995 (60 FR 58402). However, by letter dated April 22, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 26, 1995, as supplemented by letter dated July 17, 1996, and the licensee's letter dated April 22, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Millstone Unit 3 local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Public Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 24th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Nakoski,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13775 Filed 5–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of a Subgroup of the American Society for Quality To Be Held at NRC To Resolve Intra-Group Comments on a Draft Good Practices Paper

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a meeting.

SUMMARY: The ASQ EED has been preparing a good practices paper covering performance indicators. A draft has been prepared, and the group will meet to resolve comments they have received on it to date in anticipation of preparing a revision. The meeting will consist of a subgroup of the American Society for Quality, Energy and Environmental Division, Nuclear Power Production Committee (ASQ EED) to be held in the Nuclear Regulatory Commission (NRC) offices to resolve intra-group and other comments on a draft good practices paper on performance indicators.

DATES: The meeting will be held on June 7, 1999 from 1:00 pm—5:00 pm, and on June 8, 1999 from 10:00 am—5:00 pm.

ADDRESSES: Nuclear Regulatory Commission, Conference Room O–3 B4, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Owen P. Gormley, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6793.

SUPPLEMENTARY INFORMATION: The ASQ EED is working to prepare a good practices paper covering performance indicators. A task group workshop was held in March of 1999 to prepare the first draft of the paper. This taskgroup workshop will resolve intra-group and other comments, and will prepare the second draft. The task group consists of one NRC member and several utility members.

The format of the meeting will be a workshop, discussing and resolving the comments on the current draft, and preparing the next draft. Seating for the public will be on a first come, first-served basis. Attendance should be coordinated with the chairman of the ASQ EED Nuclear Power Production Committee, Benjamin Marguglio at (914) 734–5637.

Dated at Rockville, Maryland, this 24th day of May 1999.

For the Nuclear Regulatory Commission.

John W. Craig,

Director Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 99–13777 Filed 5–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on June 30 and July 1, 1999, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 30, 1999—8:30 a.m. until the conclusion of business.

Thursday, July 1, 1999—8:30 a.m. until the conclusion of business.

The Subcommittee will review safety evaluation reports related to Babcock and Wilcox generic license renewal program topical reports and the Oconee license renewal application, and issues associated with the license renewal process. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Duke Energy Corporation and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 25, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–13774 Filed 5–28–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Notice; Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 1, 1999.

A closed meeting will be held on Thursday, June 3, 1999, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200,402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, June 3, 1999, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 27, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13985 Filed 5–27–99; 3:55 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41439; File No. 10–127]

International Securities Exchange LLC; Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

May 24, 1999.

The International Securities Exchange LLC ("ISE") has submitted a Form 1 application under the Securities Exchange Act of 1934 ("Exchange Act"), seeking registration as a national securities exchange under Section 6 of the Exchange Act.[1] A copy of the ISE'S Form 1, including all exhibits, is available in the Commission's Public Reference Room, File No. 10–127, and on the Commission's website at http://www.sec.gov/rules/othrindx.htm. The Commission is publishing notice of ISE's filing to afford interested persons an opportunity to submit written comments. The Commission will take these comments into consideration in making its determination about whether to grant ISE's request to be registered as an exchange. The Commission shall grant such registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder are satisfied.[2]

ISE's Form 1 provides detailed information about ISE and how it proposes to satisfy the requirement of the Exchange Act. In general, ISE would become an exchange that operates an automated trading system for standardized equity options. It would be an agency-auction market similar to the exchange markets currently in operation, although the auction would occur electronically, and not on a floor. ISE plans to become a member-owner of, and clear it transactions through, The Options Clearing Corporation ("OCC"). As a member-owner of OCC, the options contracts traded on the ISE would be fully fungible with the options of the same companies traded on the other options exchanges. ISE also plans to join the Options Price Reporting Authority Plan, which governs the dissemination of options quotes and last-sale transaction prices.

Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange and Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comments must be received on or before July 16, 1999. All comment letters should refer to File No. 10–127; this file number should be included on the subject line if comments are submitted using e-mail. All submissions will be available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (http://www.sec.gov).

For questions regarding this release, contact: Michael Walinskas, Deputy Associate Director, at (202) 942–0187, Sheila Slevin, Assistant Director, at (202) 942–0796, Christine Richardson, Attorney, at (202) 942–0748, or Joseph Morra, Attorney, at (202) 942–0781; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13710 Filed 5–28–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41436; File No. SR–Amex–99–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes and Warrants on the 10 Uncommon Values Index of Lehman Brothers Inc.

May 21, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Exchange filed Amendment No. 1[3] to the proposed rule change on May 17, 1999. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for trading stock index warrants, pursuant to Section 106, and indexed term notes, pursuant to Section 107, of the *Amex Company Guide* based upon the 10 Uncommon Values® Index of Lehman Brothers Inc.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item VI below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to trade stock index warrants, pursuant to Section 106, and indexed term notes, pursuant to Section 107, of the *Amex Company Guide* based upon Lehman Brothers' 10 Uncommon Values® Index, an index consisting of ten actively traded equity securities ("Index"). The issuer of the Warrants (as hereinafter defined) and Notes (as hereinafter defined) will be

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[1] See Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from David Krell, President and CEO, ISE, dated February 1, 1999 ("ISE Form 1").

[2] Section 19(a)(1) of the exchange Act, 15 U.S.C. 78s(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Scott Van Hatten, Amex to Richard Strasser, Division of Market Regulation, Commission, dated May 14, 1999 ("Amendment No. 1"). Amendment No. 1 clarifies that the Notes (as hereinafter defined) will be principal protected if held to maturity or if called by the issuer. Amendment No. 1 also provides three sample calculations of payment amounts that investors holding Notes may receive.

Lehman Brothers Holdings Inc. ("LB Holdings").

The securities to be included in the Index will be those selected annually by the Investment Policy Committee ("Committee") of Lehman Brothers' Equity Research group, a division of Lehman Brothers Inc., and announced on or about July 1, as its selection of ten securities that the Committee believes will outperform the stock market during the succeeding twelve months. To determine the ten selections each year, various Lehman brothers' Equity Research analysits appear before the firm's Investment Policy Committee to present their proposed equity selections to be included in the Index for the next twelve months. The Committee analyzes and screens each proposal after which the list of stocks is reviewed to determine which ones offer the potential for market outperformance. The Committee then selects what it believes to be the best ideas for the next year's 10 Uncommon Values. Immediately thereafter, on or about July 1 of each year, the ten securities to be included in that year's Index are announced. Each subsequent year's 10 Uncommon Value stocks ("New Components") will replace the preceding year's 10 Uncommon Value stock ("Old Components") in their entirety in the Index. The New Components will be added to the Index on or about July 1 ("Announcement Date") each year, and the Old Components will be removed from the Index on the last business day immediately preceding the Announcement Date ("Closing Date").

Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. Lastly, as with other structured products, the Exchange will closely monitor activity in the Notes and Warrants to identify and deter any potential improper trading activity in the Notes and Warrants.

Description of Index Term Notes. Under Section 107 of the *Amex Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex now proposes to list for trading under Section 107 of the *Amex Company Guide*, indexed term notes ("Notes") whose value in whole or in part will be based on the Index.

The Notes will be debt securities and will conform to the listing guidelines under Section 107A of the *Amex Company Guide*. Although a specific maturity date will not be established until the time of the offering, the Notes will provide for maturity of not less than one nor more than ten years from the date of issue.

The price of each Note may be par or less than par, in which case the Notes accrue original issue discount. The Notes may or may not provide for periodic coupon payments (at a fixed rate).

Beginning on a specified date ("Conversion Date"), holders have the right to tender the Notes in exchange for the cash equivalent ("Exchange Amount") of the current component securities in the Index in proportions equal to their weighting in the Index, according to the following formula:

Par/Strike × $Index_f$

Where:

$Index_f$: Index Closing Price of the Selected Index on the earlier of Conversion Date or Maturity Date

$Index_i$ Initial Spot

Strike: —to be disclosed % of $Index_i$ (*e.g.* 125%)

Investors in the Notes may receive varying payment amounts depending upon whether the notes are held to maturity, called by the issuer prior to maturity or redeemed by the investor prior to maturity. Below are examples of calculations of payments amounts that investors holding the Notes may receive.[5]

To determine payment amounts given each of the three separate events, a Par value (Issue Price) of $1000, Strike of 125, and Initial Value of the Index 100 are assumed. The maturity of the notes are assumed to be 5 years and the issuer may not call the notes prior to three years after their issuance (*i.e.*, the notes will have a non-call life of 3 years).

1. The investor holds the Notes until maturity. At maturity, the investor will receive the greater of:

Par ($1000), and
(Par/Strike × Final Index Value)

2. The investor converts the Notes prior to maturity. Investors may convert their Notes at any time after the one-month anniversary of the issue date in exchange for cash. The amount the investor would receive in the event of early conversion is determined by the following formula:

(Par/Strike × Current Index Value)

3. The issuer has the right to call the notes at Par at any point beginning three years after the trade date by publishing such call with 30-days notice to investors. Once the issuer calls the Notes, its holders may convert it by giving the issuer at least 20-days notice. If the investors convert, they receive:

(Par/Strike × Current Index Value)

Otherwise, should the holder fail to convert, the Notes will be called by the issuer and the investor will receive the Par Value ($1,000).

Example 1: Assume an Index value equal to 150 (*i.e*, greater than the initial Index value of 100). Payment to investors under the above three events would be as follows:

1. Greater of [$1000 and ($1,000/125×150)] = $1,200
2. ($1,000/125 × 150) = $1,200
3. ($1,000/125 × 150) = $1,200

Example 2: Assuming an Index value of 90 (*i.e.*, less than the initial index value of 100). Payment to investors under the above three events would be as follows:

1. Greater of [$1,000 and ($1,000 / 125 × 90)] = $1,000
2. ($1,000 / 125 × 90) = $720
3. Note may or may not be called by the issuer in this case. If the Note is called, payment would equal Par ($1,000).

Beginning on a specified date the issuer may or may not have the right to call all of the Notes at a call price equal to the issue price of the Notes plus accrued original issue discount, if any, to the call date. If the market value of the basket of component securities on the last trading before the issuer sends its call notice is equal to or greater than the call price, the issuer will deliver to holders the Exchange Amount instead. If the issuer notifies holders it will be calling the Notes for the Exchange Amount, a holder may still exercise its exchange right on any day prior to the call date.

If the Notes have not been exchanged or called prior to maturity, they will be paid in cash at maturity in an amount equal to par plus accrued interest, if any.

Exchange Rules Applicable to Index Notes. Because the Notes are linked to a basket of equity securities, the Amex's existing equity floor trading rules and standard equity trading hours (9:30 a.m. to 4:00 p.m. Eastern Time) will apply to the trading of the Notes. Pursuant to Exchange Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Further, the

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[5] *See* Amendment No. 1, *supra* n.3.

Notes will be subject to the equity margin rules of the Exchange.[6]

Description of Index Warrants. Under Section 106 of the *Amex Company Guide*, the Exchange may approve for listing and trading index warrants. The Amex now proposes to list for trading, under Section 106 of the *Amex Company Guide*, index warrants ("Warrants") whose value in whole or in part will be based upon the Index. The Warrants will conform to the listing guidelines under Section 106 of the *Amex Company Guide*.

Although a specific maturity date will not be established until the time of the offering, the Warrants will have a term of between one and five years from the date of issuance. The Warrants will be cash-settled in U.S. Dollars.

Expiration and Settlement of Index Warrants. The Warrants will be direct obligations of their issuer, LB Holdings, subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercised prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated index level (*i.e.*, the put strike). Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated index level (*i.e.*, the call strike). If "out-of-the-money" at the time of expiration, then the Warrants would expire worthless. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with the Warrants on the Index.

Exchange Rules Applicable to Index Warrants. The listing and trading of Warrants on the Index will comply in all respects with Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants. These rules cover issues such as exercise and position and reporting requirements. Surveillance procedures currently used to monitor trading in each of the Exchange's other index warrants will also be used to monitor trading in the Warrants. The Index will be deemed to be a Stock Index Industry Group under Amex Exchange 900C(b)(1). The Exchange expects that the review required by Exchange Rule 1107(b)(ii) will result in a position limit of 9,000,000 Warrants.

[6] See Exchange Rule 462.

Eligibility Standards for Index Components. Components of the Index approved pursuant to this filing will meet the following criteria: (1) a minimum market value of at least $75 million, except that the lowest weighted component security in the Index may have a market value of $50 million; (2) trading volume in each of the last six months of not less than 1,000,000 shares, except that the lowest weighted component security in the Index may have a trading volume of 500,000 shares or more in each of the last six months; (3) 90% of the Index's numerical Index value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; (4) all component stocks will either be listed on the Amex, the New York Stock Exchange, or traded through the facilities of the Nasdaq Stock Market and reported National Market System securities; and (5) if any foreign securities or American Depositary Receipts represented in the Index cause a particular foreign country's weight in the Index to initially exceed 20% of the Index's numerical Index value, the Exchange will have in place a surveillance sharing agreement with the appropriate regulatory organization in that country.

Index Calculation. The Index will be calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is represented in an approximately "equal" dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by the issuer representing an investment of $10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the current market value of the sum of the assigned number of shares of each of the component securities divided by the current index divisor. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the establishment of the Index.

The Exchange will calculate the Index and, similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The number of shares of each component stock in the Index will remain fixed between Announcement Dates except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. The number of shares of each component stock may also be adjusted, if necessary in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component stock may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, the termination of a depositary receipt program or the spin-off of a subsidiary. If the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. lastly, as with other structured products, the Exchange will closely monitor activity in the Notes and Warrants to identify and deter any potential improper trading activity in the Notes and Warrants.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5)[8] in particular, in that it is designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[7] 15 U.S.C. 78f(b).
[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–15 and should be submitted by June 22, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13810 Filed 5–28–99; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41435; File No. SR–CBOE–99–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Option Exercise Procedures [1]

May 21, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 20, 1999, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or the "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposal was amended on May 11, 1999.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Exchange Rules 4.16 and 11.1 to permit the exercise of American-style, cash-settled index options following a trading halt that occurs at or after 3:00 p.m. Such exercises will be permitted at or after 3:00 p.m. through 3:20 p.m. (CT), the normal deadline for exercising such options. The Exchange is also proposing to amend its Regulatory Circular concerning the Exchange's procedures and requirements regarding the exercise of American-style, cash-settled index options ("Exercise Regulatory Circular")[5] to reflect these changes and to reflect changes to CBOE Rules 4.16 and 11.1 that were recently approved by the Commission. Additionally, the Exchange is proposing to permit CBOE's President or his designee to extend the applicable deadline for the delivery of Exchange-required exercise notifications, for either an American-style, cash-settled index options or a non-cash settled equity options, if unusual circumstances are present.[6] Attached as Exhibit A to this Notice is the text of the proposed rule. Proposed new language is *italicized*; proposed deletions are in [brackets].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

American-style, Cash-Settled Index Options

The CBOE proposes to modify its rules governing the exercise of American-style, cash-settled index during certain trading halts. Currently, the Exchange trades only one type of American-style, cash-settled index option contract, Standard & Poor's 100 index options ("OEX index options").[7] Index options generally are traded on the Exchange from 8:30 a.m. to 3:15 p.m. (CT).[8] CBOE Rule 11.1 governs the exercise of options contracts, including index option contracts. CBOE Rule 11.1 provides that CBOE members shall follow the procedures of the Options Clearing Corporation ("OCC") as well as those of the exchange when exercising option contracts. Options generally may be exercised at any time during the trading day, and proposed CBOE Rule 11.1.03 requires members intending to exercise American-style, cash-settled index option contracts to deliver an "exercise advice" to a place designated by the Exchange no later than five minutes after the close of trading on that

[1] The CBOE amended the title of this filing in Amendment No. 1. *See infra* note 4.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange made typographical corrections to, clarified the purpose of, and expanded the scope of the proposed rule change. ("Amendment No. 1"). *See* Letter from Arthur B. Reinstein, Counsel, CBOE, to Hong-anh Tran, Attorney, Division of Market Regulation ("Division"), Commission, dated May 10, 1999.

[5] *See* Securities Exchange Act Release No. 40334 (August 18, 1998), 63 FR 45275 (August 25, 1998) File No. SR–CBOE–98–34.

[6] *See* Amendment No. 1, *supra* note 4.

[7] Although OEX index options are the only standardized American-style, cash-settled index options currently traded on the Exchange, the revised Rules also would apply to exercises of American-style, cash-settled FLEX Index Option contracts. All other CBOE index options are European-style, with exercise permitted only upon their expiration.

[8] CBOE Rule 24.6, *Days and Hours of Business.*

day.[9] However, under CBOE Rule 11.1.05 (which is now proposed to be moved to CBOE Rule 11.1.03(h)), and CBOE Rule 4.16(b),[10] exercises of cash-settled index options are prohibited during any time when trading in such options is delayed, halted or suspended, unless otherwise determined by the President of the Exchange or his designee.[11] Thus, although exercises of OEX index options may occur until 3:20 p.m. (CT) in the absence of a trading halt, no exercises of OEX index options currently are permitted when a trading halt in such options is in effect.

The current rules governing the exercise of index options were developed with recognition of the distinction between holders of long and holders of short positions in index options. The Exchange has long noted that one of the distinctive characteristics of a cash-settled option is that its exercise is functionally equivalent to trading out of the long position, and, conversely, the assignment of a short index option eliminates the position as if it had been closed through a purchase transaction. Absent any restrictions upon exercise, holders of long positions would be able to exercise their options after the close of trading and during trading halts. Because holders of short positions are unable to trade out of their positions when trading has been closed or halted, they would be at a disadvantage to holders of long positions. To minimize the effect this disparity might have on holders of short positions in the event of a trading halt immediately prior to expiration of an option, the Exchange amended CBOE Rule 4.16(a) in 1983 to permit the Exchange's Board of Directors to restrict exercises of index options other than on the last trading day before expiration Friday.[12] Exercises of expiring index options cannot be restricted in any way on expiration Friday.

Since 1991 the Exchange has permitted the exercise of index options for a "five minute window" subsequent to the close of trading on the Exchange.[13] The rule permitting the exercise of cash-settled index options up to 3:20 p.m. (CT) allows market participants to make investment decisions based on the evaluation of their final positions after having completed trading for the day. In addition, by allowing traders and market makers to concentrate on their trading activities, rather than submitting exercise advice prior to the close of the market, and to determine whether or not their hedging orders on other markets were executed, as well as to their exercise their index option positions on the Exchange if necessary to avoid remaining unhedged overnight, the five-minute window benefits options investors generally by fostering higher quality markets. Moreover, the additional five-minute exercise period provides market participants with additional time to evaluate the closing prices of the securities that comprise an index and to determine whether or not to exercise their positions.[14] Thus, in light of these benefits, the Exchange adopted the five-minute window permitting exercises after the close of trading on the Exchange notwithstanding that investors holding short positions in index options would not have the same opportunity to unwind their positions during this period as would holders of long positions. In doing so, the Exchange deemed the benefits to the overall OEX index market from the five-minute exercise period to exceed any potential harm that might result to short holders as a result of the disparity in trading opportunities.

The Exchange has now reconsidered its policy with respect to the exercise of American-style, cash-settled index options and proposes to eliminate the current ban on exercises with respect to trading halts in such options that occur at or after 3:00 p.m. (CT). As mentioned, the trading markets for the equity securities underlying index options generally are closed for trading by 3:00 p.m. (CT), thereby establishing the closing value of a given index. By this time, OEX market participants are already watching the market for opportunities to exercise their options. Many participants in the OEX index options market use the closing value of the index to make trading and hedging decisions (including transactions in the related futures market) contingent upon exercise of an OEX index option position or the expected assignment of a short position. Given this, the Exchange believes that the occurrence of trading halt at or after 3:00 p.m. (CT) should not fundamentally alter the ability of these market participants to exercise their index options.[15] While permitting the exercise of index options during trading halts that occur at or after 3:00 p.m. (CT) increases the disparity in trading opportunities between holders of short and long positions in OEX index options, the Exchange believes that any increase in disparity is incremental over the situation that exists today by virtue of the five-minute exercise window after the close of the Exchange, and would be exceeded by the additional benefits that would be afforded to the OEX market under the proposed Rule.[16]

The Exchange also believes that a uniform policy of permitting exercises of OEX index options after the close of the Exchange will reduce the potential for confusion among its members and customers, especially during late trading halts. In doing so, such a policy would further the efficient operation of the Exchange during such periods. To the extent that a closing rotation were held after a late trading halt, the Exchange proposes that exercises of American-style, cash-settled index options would continue to be permitted during the rotation and for a five-minute period thereafter, as is currently the case.

The Exchange also proposes to amend CBOE Rules 4.16(b) and CBOE Rule 11.1.03, and proposes to reflect these corresponding changes in the Exercise Regulatory Circular to make clear that in the case of an American-style, cash-settled FLEX Index Option, the references in CBOE Rule 4.16(b), CBOE Rule 11.1.03, and the Exercise Regulatory Circular to a trading delay, halt, suspension, resumption, closing rotation, or modified trading hours will mean the occurrence of the applicable condition in the standardized option on the index underlying the FLEX Index Option (rather than the occurrence of

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[9] *See* Amendment No. 1, *supra* note 4.

[10] *Id.*

[11] Notwithstanding this prohibition, the exercise of a cash-settled index option may be processed and given effect in accordance with and subject to the rules of the OCC while trading in an option is delayed, halted, or suspended if it can be documented that the decision to exercise the option was made during allowable time frames prior to the delay, halt or suspension. CBOE Rule 11.1.05 (which is now proposed to be moved to proposed CBOE Rule 11.1.03(h)(i)), Exercise of Option Contracts.

[12] CBOE Rule 4.16(a), *Other Restrictions on Options Transactions and Exercises; See also,* Securities Exchange Act Release No. 19590 (March 10, 1983), 48 FR 11196 (March 16, 1983) (File No. SR–CBOE–83–6); and *see* Amendment No. 1, *supra* note 4.

[13] *See* Securities Exchange Act Release No. 29660 (October 25, 1991), 56 FR 56264 (November 1, 1991) (File No. SR–CBOE–91–28).

[14] *Id.*

[15] While the implementing the standard five-minute exercise window after a trading halt has been announced would provide floor traders with sufficient opportunity to exercise, such a small window may not provide other market participants with a sufficient opportunity to do so and would add to the increased operational burdens of member firms resulting from the trading halt itself.

[16] The Exchange generally will continue to prohibit American-style, cash-settled index option exercises during any trading halt which occurs before 3:00 p.m. (CT), as the length of time required to provide sufficient notice and opportunity equally to all market participants during an intraday trading halt would unfairly expand the opportunity for holders of long index option positions to exercise when short option holders are prohibited from trading.

the applicable condition in the FLEX Index Option itself).[17] The Exchange states that this is consistent with how the Exchange has historically applied the exercise provisions that are applicable in the above market conditions to American-style, cash-settled FLEX Index Options, and the Exchange proposes herein to codify the Exchange's prior exercise practices as they apply to American-style, cash-settled FLEX Index Options.[18]

Thus, for example, if there is a trading halt that occurs before 3:00 p.m. in the standardized Standard & Poor's 500 Index (SPX) options (which are European-style options), exercises of American-style, cash-settled SPX FLEX options will be prohibited during the trading halt.[19] However, based on the proposal, if there is a trading halt in the standardized SPX options that occurs at or after 3:00 p.m., exercises of American-style, cash-settled SPX FLEX options may occur through 3:20 p.m.[20] Additionally, based on the proposal, if there is a closing rotation in the standardized SPX options, exercises of American-style, cash-settled SPX FLEX options may occur during the closing rotation and for five minutes after the end of the closing rotation.[21] If there were no provision which provided for the foregoing, the holder of an American-style, cash-settled SPX FLEX option would have no ability to exercise the option during a closing rotation because CBOE Rule 24A.3 does not permit closing rotations to be conducted in FLEX options.[22] The purpose of the provisions discussed above is to avoid this differential treatment and to treat all American-style, cash-settled index options in the same manner with regard to exercise restrictions.[23]

Additionally, with the exception of some nonsubstantive wording changes, the Exchange is proposing to move the text of CBOE Rule 11.1.05 to proposed CBOE Rule 11.1.03(h) for ease of reference for Exchange members since CBOE Rule 11.1.05 relates to the exercise of American-style, cash-settled index options and the provisions of Rule 11.1 that specifically relate to the exercise of American-style, cash-settled index options are set forth in Rule 11.1.03.[24] The Exchange is also proposing to amend the Exercise Regulatory Circular to reflect recently adopted changes to CBOE Rule 4.16(b) and CBOE Rule 11.1.05 (which is now proposed to be moved to proposed CBOE Rule 11.1.03(h)),[25] which permit the President of the Exchange (or his designee) to allow the exercise of American-style, cash-settled index options during any trading delay, halt or suspension.[26] As noted in the Exercise Regulatory Circular, the Exchange anticipates that, in general, such a determination would be based on extraordinary circumstances.[27]

The Exchange also proposes to narrow the evidence that may be submitted to the Exchange by a member to document that a decision to exercise an American-style, cash-settled option was made prior to a trading delay, halt or suspension. Exchange members are excepted from the general prohibition on exercising such index options during trading halts, delays, or suspensions provided they can document that the decision to exercise was made prior to the trading halt, delay, or suspension.[28] The Exchange believes that it would be preferable to rely on and encourage the most objective evidence available as to the timing of an exercise determination. Therefore, the Exchange proposes to no longer, ordinarily, accept internal exercise memoranda prepared by CBOE members as evidence of timely exercises. The Exchange will, however, continue to accept "exercise advices" transmitted via C/MAS or a member's copy of an exercise advice previously submitted to the Exchange as evidence that an exercise determination was made prior to a subsequent trading delay, halt, or suspension.[29]

Further, the Exchange proposes to permit CBOE's President or his designee to extend the applicable deadline for the delivery of "exercise advice" and "advice cancel" notifications pursuant to CBOE Rule 11.1.03(c) for American-style, cash-settled index options if unusual circumstances are present.[30] The exercise deadline for standardized American-style, cash-settled index options is normally 3:20 p.m. (CT) and is in effect on every trading day except that the deadline is not in effect on expiration Friday for expiring contracts.[31] On occasion, there may be situations in which the regular 3:20 p.m. (CT) deadline for CBOE members to notify the Exchange of exercise decisions concerning and American-style, cash-settled index option may not allow market participants a sufficient amount of time in which to make and process those exercise decisions due to the presence of unusual circumstances.[32] For example, there have been rare occasions in which the reporting authority for an index has been late in reporting the closing index value for the index.[33] Consequently, market participants have found it difficult on those occasions to make and process exercise decisions before the 3:20 p.m. (CT) deadline.[34] This amendment proposes to permit the President or his designee to extend the applicable deadline for the delivery of "exercise advice" and "advice cancel" notifications pursuant to CBOE Rule 11.1.03(c) for American-style, cash-settled index options in unusual situations like the foregoing.[35]

Noncash-Settled Equity Options

The exercise cutoff time for noncash-settled options is 4:30 p.m. (CT) and is in effect on expiration Friday for expiring contracts. The cutoff time is only applicable with respect to expiring contracts on expiration Friday because at other times an option holder who makes a late decision to either exercise or not to exercise an option will always end up holding either the option or the underlying stock, the value of which will be similarly effected by any material late news.[36]

For reasons comparable to the reasons for proposing to grant the President or his designee the authority to extend the exercise deadline for American-style, cash-settled index options, this amendment also proposes, under CBOE Rule 11.1(b) and CBOE Rule 11.1.06, to grant similar authority to the President or his designee to extend the 4:30 p.m. (CT) exercise cutoff time for a noncash-settled equity option if unusual circumstances are present (in which case, the Exchange proposes that the deadline for the delivery of an exercise instruction, "contrary exercise advice," and "advice cancel" pursuant to CBOE Rule 11.1.06 will be the revised exercise cutoff time designated by the President or his designee).[37] For example, there have been rare occasions in which the closing rotation in an equity option has ended shortly before 4:30 p.m. (CT).[38] A late-ending closing rotation delays a

[17] *See* Amendment No. 1, *supra* note 4.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *See* Securities Exchange Act Release No. 40951 (January 15, 1999), 64 FR 4482 (January 28, 1999) (File No. CBOE–98–33).
[27] *See* Amendment No. 1, *supra* note 4.
[28] *Id.*
[29] *See* Exercise Regulatory Circular, Section 11.
[30] *See* Amendment No. 1, *supra* note 4.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*

market participant's ability to take the actions necessary to make and process an exercise decision. For example, in order to make and process an exercise decision, a market participant may need to obtain confirmations of trades executed that day, review the participant's positions in the applicable option and the underlying stock, review the closing price of the option and underlying stock, and/or prepare exercise instruction, "contrary exercise advice," and "advice cancel" forms. This amendment proposes to permit the President or his designee to extend the exercise cutoff time in unusual situations like the foregoing in order to allow market participants sufficient time in which to make and process exercise decisions.[39]

American-Style, Cash-Settled Index Options and Noncash-Settled Equity Options

Under the Exchange's current rules, there is a time window following the close of trading during which long option holders are permitted to exercise their option positions while at the same time short option holders do not have the ability to trade out of their positions. Accordingly, one of the inherent differences between holding a long or short option position is that there is a disparity between the ability of long and short option holders to take market action following the close of trading.[40] The purpose of the Exchange's exercise deadline for American-style, cash-settled index options and the exercise cutoff time for noncash-settled equity options is to restrict this disparity to a limited time period following the close of trading in those situations in which long option holders have the ability to take action through the exercise or non-exercise of an option that can affect their position in the market.[41] Although permitting the President or his designee to extend the applicable exercise deadline or cutoff time in unusual circumstances would marginally increase this existing disparity, the Exchange believes any potential detriment that may result from the foregoing would be far exceeded by the benefit to the marketplace as a whole that is derived from allowing the President or his designee to permit market participants sufficient time in which to make and process exercise decisions.[42] The Exchange also notes that the President or his designee will only exercise this authority in unusual circumstances and thus extensions in the applicable exercise deadline or cutoff time will not occur often.[43]

Similarly, in exercising the authority to extend the exercise deadline for an American-style, cash-settled index option or the exercise cut-off time for a noncash-settled equity option in unusual circumstances, the Exchange states that the President or his designee would in no event extend the applicable exercise deadline or cut-off time beyond the exercise cut-off time required by the Options Clearing Corporation ("OCC").[44] Chapter VIII of OCC's Rules generally sets forth the applicable OCC exercise cut-off-times.[45]

2. Statutory Basis

The proposed rule change will benefit the market for American-style, cash-settled index options (including OEX options) by permitting market participants to utilize the closing value of such indexes to make trading and hedging decisions (including transactions in the related futures market) contingent upon the ability to exercise a long index option position or the expected assignment of a short index option position. The proposed rule change will also benefit market participants by permitting the President or his designee to extend the applicable deadline for the delivery of Exchange-required exercise notifications, for either American-style, cash-settled index options or noncash-settled equity options, to allow market participants sufficient time to make and process exercise decisions in the event that unusual circumstances are present which make it difficult to make and process exercise decisions during the regular time frame for doing so.[46] Additionally, the proposed rule changes will clarify, refine, and enhance the Exchange's rules relating to the exercise of option contracts.[47]

Accordingly, the exchange believes that the proposed rule change is consistent with Section 6 of the Act, and in particular, with Section 6(b)(5),[48] in that it is designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information regarding the exercise of outstanding option contracts, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.[49]

B. Self-Regulatory Organization's Statement on Burden on Competition

The exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it funds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0069. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–99–03

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[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *See* OCC, Chapter VIII, (Exercise and Assignment).
[46] See Amendment No. 1, *supra* note 4.
[47] *Id.*
[48] 5 U.S.C. 78f(b)(5).
[49] See Amendment No. 1 *supra* note 4.

and should be submitted by June 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[50]

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A

(Proposed new language of the Rules of the Exchange as currently in effect is *italicized*; proposed deletions are in [brackets].)

Chicago Board Options Exchange, Incorporated Rules

* * * * *

CHAPTER IV—Business Conduct

Other Restrictions on Options Transactions and Exercises

RULE 4.16

(a) Unchanged.

(b) [With the exception of the last business day prior to expiration, exercises of cash-settled index options shall be prohibited during any time when trading in such options is delayed, halted, or suspended, unless otherwise determined by the President or his designee. Notwithstanding such a prohibition, the exercise of a cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension.] *Exercises of American-style, cash-settled index options shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:*

*(i) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension.**

*(ii) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration.**

(iii) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 3:00 p.m. (CT). In the event of such a trading halt, exercises may occur through 3:20 p.m. (CT). In addition, if trading resumes following such a trading halt (such as by closing rotation), exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (b)(iii) are subject to the authority of the Board to impose restrictions on transactions and exercises pursuant to paragraph (a) of this Rule.

*(iv) The President or his designee may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.**

In the case of an American-style, cash-settled FLEX Index Option, the references in this paragraph (b) to a trading delay, halt, suspension, resumption, or closing rotation shall mean the occurrence of the applicable condition in the standardized option on the index underlying the FLEX Index Option (rather than the occurrence of the applicable condition in the FLEX Index Option itself).

. . . Interpretations and Policies:

.01 Unchanged.

.02 Unchanged.

* With the exception of some wording changes, these provisions are currently generally set forth in Rule 4.16(b) and are not newly proposed provisions.

* * * * *

CHAPTER XI—Exercises and Deliveries

Exercise of Option Contracts

RULE 11.1

(a) Unchanged.

(b) The exercise cutoff time for all noncash-settled options shall be 4:30 p.m. (CT) on the business day immediately prior to the expiration date. This is the latest time at which an exercise instruction for expiring noncash-settled positions may be (1) Prepared by a Clearing Member for its proprietary positions, (2) submitted to a Clearing Member by a member (including, but not limited to, a Market Maker or Floor Broker), or (3) accepted by a Clearing Member from or on behalf of a customer. *The President or his designee may determine to extend the 4:30 p.m. (CT) exercise cutoff time for a noncash-settled options if unusual circumstances are present.* Notwithstanding the foregoing, members may prepare, submit or accept exercise instructions for noncash-settled options after the *applicable* exercise cutoff time but prior to expiration (i) In order to remedy mistakes or errors made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange transactions, or (iii) where exceptional circumstances relating to a customer's or member's ability to communicate exercise instructions to a Clearing Member (or a Clearing Member's ability to receive exercise instructions) prior to such cutoff time warrant such action.

(c)–(d) Unchanged.

. . . Interpretations and Policies:

.01–.02 Unchanged.

.03 Clearing Members must follow the procedures of the Clearing Corporation when exercising American-style, cash-settled index option contracts issued or to be issued in any account at the Clearing Corporation. Members must also follow the procedures set forth below with respect to American-style, cash-settled index options:

(a) For all contracts exercised by the member or by any customer of the member, an "exercise advice" must be delivered by the member in such form or manner prescribed by the Exchange to a place designated by the Exchange no later than 3:20 p.m. (CT), or if trading hours are extended or modified in the applicable option class, no later than five (5) minutes after the close of trading on that day.

(b) Subsequent to the delivery of an "exercise advice", should the member or a customer of the member determine not to exercise all or part of the advised contracts, the member must also deliver an "advice cancel" in such form or manner prescribed by the Exchange to a place designated by the Exchange no later than 3:20 p.m. (CT), or if trading hours are extended or modified in the applicable option class, no later than five (5) minutes after the close of trading on that day.

(c) *The President or his designee may determine to extend the applicable deadline for the delivery of "exercise advice" and "advice cancel" notifications pursuant to this Interpretation .03 if unusual circumstances are present.*

(d)[(c)] No member may prepare, time stamp or submit an "exercise advice" prior to the purchase of the contracts to be exercised if the member knew or had reason to know that the contracts had not yet been purchased.

(e)[(d)] The failure of any member to follow the procedures in this Interpretation .03 may be referred to the Business Conduct Committee and result in the assessment of a

[50] 17 CFR 200.30–3(a)(12).

fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Committee.

(f)[(e)] Preparing or submitting an "exercise advice" or "advice cancel" after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of this Rule, is activity inconsistent with just and equitable principles of trade.

(g)[(f)] The procedures set forth in subparagraphs (a)–(b) of this Interpretation .03 do not apply (i) on the business day prior to expiration in series expiring on a day other than a business day or (ii) on the expiration day in series expiring on a business day.

(h)[(g)] *Exercises of American-style, cash-settled index options (and the submissions of corresponding "exercise advice" and "advice cancel" forms) shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:**

(i) *The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, suspension. Acceptable documentation shall ordinarily be limited to an "exercise advice" previously transmitted via C/MACS or a member's copy of an "exercise advice" previously submitted to the Exchange.**

(ii) *Exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration.**

(iii) *Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 3:00 p.m. (CT). In the event of such a trading halt, exercises may occur through 3:20 p.m. (CT). In addition, if trading resumes following [such] a trading halt (such as by closing rotation), exercises may occur during the resumption of trading for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (iii) are subject to the authority of the Board to impose restrictions on transactions and exercises pursuant to Rule 4.16(a).*

(iv) *The President or his designee may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.**

In the case of an American-style, cash-settled FLEX Index Option, the references in this paragraph (h) to a trading delay, halt, suspension, resumption, or closing rotation shall mean the occurrence of the applicable condition in the standardized option on the index underlying the FLEX Index Option (rather than the occurrence of the applicable condition in the FLEX Index Option itself).

.04 Unchanged.

.05 [With the exception of the last business day prior to expiration, exercises of cash-settled index options (and the submission of corresponding "exercise advice" and "advice cancel" forms) shall be prohibited in accordance with Rule 4.16(b) during any time when trading in such options is delayed, halted or suspended, unless otherwise determined by the President or his designee. Notwithstanding such a prohibition, the exercise of a cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension.] *Deleted effective, 1999(99–).*

.06 Clearing Members must follow the procedures of the Clearing Corporation when exercising expiring noncash-settled equity option contracts. Members must also follow the procedures set forth below with respect to the exercise of noncash-settled equity option contracts which would otherwise not be exercised, or the nonexercise of such contracts which otherwise would be exercised, by operation of the exercise by exception provisions of Clearing Corporation Rule 805:

(a) For all contracts so exercised or not exercised by the member or by any customer of the member, as "contrary exercise advice" must be delivered by the member in such form or manner prescribed by the Exchange to a place designated by the Exchange no later than 4:30 p.m. (CT).

(b) Subsequent to the delivery of a "contrary exercise advice", should the member or a customer of the member determine to act other than as reflected on the original advice form, the member must also deliver an "advice cancel" in such form or manner prescribed by the Exchange to a place designated by the Exchange no later than 4:30 p.m. (CT).

(c) The procedures set forth in subparagraphs (A)–(B) of this Interpretation .06 shall not apply with respect to any option class that is not subject to the exercise by exception provisions of Clearing Corporation Rule 805 ("Non Ex-by-Ex Option Class"). Instead, for all option contracts in a Non Ex-by-Ex Option Class that are exercised by the member or by a customer of the member, each exercise instruction that is prepared, submitted or accepted by the member with respect to such contracts must also be delivered by the member in such form or manner prescribed by the Exchange to a place designated by the Exchange no later than 4:30 p.m. (CT).

(d) The President or his designee may determine pursuant to Rule 11.1(b) to extend the 4:30 p.m. (CT) exercise cutoff time for a noncash-settled equity option if unusual circumstances are present. In the event of such an extension, the deadline for the delivery of an exercise instruction, "contrary exercise advice" and "advice cancel" pursuant to this Interpretation .06 shall be the revised exercise cutoff time designated by the President or his designee pursuant to Rule 11.1(b).

(e) [d] The member shall be excused from compliance with the procedures set forth in subparagraphs (a)–(c) of this Interpretation .06 in the event that one of the exceptions set forth in clause (i), (ii) or (iii) of Rule 11.1(b) is applicable and the member complies with the requirements of Interpretation .01 of this Rule.

(f) [(e)] The failure of any member to follow the procedures in this Interpretation .06 may be referred to the Business Conduct Committee and result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as

determined by the Committee.

(g)[(f)] Preparing or submitting an exercise instruction, "contrary exercise advice" or "advice cancel" after *the applicable deadline* [4:30 p.m. (CT)] on the basis of material information released after such *deadline* [time], in addition to constituting a violation of this Rule, is activity inconsistent with just and equitable principles of trade.

.07 Unchanged.

* With the exception of some wording changes, these provisions are proposed to be moved from Rule 11.1.05 and are not newly proposed provisions.

* * * * *

Regulatory Circular RG [98–90] *99–*

DATE: [August 24] ____, [1998] *1999*

TO: Members and Member Organizations

FROM: Regulatory Services Division

RE: S&P 100 Index and American-Style FLEX Index Option Exercise Procedures

This memorandum *describes* [is being issued to remind members and member organizations of the] exercise procedures and requirements of Exchange Rules 11.1 and 24.16 as they pertain to the exercise of Standard & Poor's 100 Stock Index option contracts, American-Style FLEX Index *O*ption contracts, and any other American-style cash-settled index option contracts.

1. Members who prepare their own exercise instruction memoranda must prepare and time stamp such memoranda upon making the decision to exercise.

2. Clearing firms must prepare and time stamp an exercise instruction memorandum upon receipt of instructions to exercise from a customer or market-maker or upon making the decision to exercise on behalf of a proprietary account.

3. An "exercise advice" must be submitted to the Exchange no later than 3:20 p.m. (CT) for all American-style, cash-settled index option contracts exercised. However, "exercise advices" are not required to be submitted to the Exchange (i) on the business day prior to expiration with respect to expiring non-FLEX American-style, cash-settled index option contracts, (ii) on the day of expiration with respect to expiring FLEX American-style cash-settled index option contracts that expire on a business day, or (iii) on the business days prior to expiration with respect to expiring FLEX American-style, cash-settled index option contracts that expire on a day other than a business day.

4. An "exercise advice" must be clearly and accurately completed prior to submission. Staff will not remove an "exercise advice" for any alteration once it has been deposited in a drop-off box.

5. Clearing firms may enter exercises for any market-maker, customer, or proprietary account on OCC's Clearing Management and Control System (C/MACS) in lieu of physically delivering an "exercise advice" to the Exchange trading floor. Such entries must be made no later than 3:20 p.m. (CT) and serve as both an exercise instruction to OCC and an "exercise advice" to the Exchange.

6. Members acting on their own behalf or on behalf of a customer may only submit an "exercise advice" and exercise instruction for the "net long position" open in any series of American-style index options for the account at the time the advice or instruction is submitted. For a complete explanation of this requirement, members should refer to Exchange Rule 24.16 and to Exchange Regulatory Circular RG96–94.

7. If a member decides not to exercise all or part of the amount indicated on an "exercise advice" previously submitted to the Exchange, he or she must submit another "exercise advice" to the Exchange, with the cancel box checked, no later than 3:20 p.m. (CT). ("Exercise advice cancellations" do not cancel exercise instruction memoranda already submitted to the clearing firm).

8. The "exercise advice" drop-off boxes are located on the Exchange's trading floor adjacent to the OEX trading crowd. The drop-off boxes are removed at 3:20:59 p.m. (CT). Submitting an "exercise advice" or "exercise advice cancellation" after this time is a violation of Exchange Rule 11.1, and doing so on the basis of material information released after this time, in addition to violating Rule 11.1, may constitute activity inconsistent with just and equitable principles of trade. If a member inadvertently fails to submit an "exercise advice" or "exercise advice cancellation" before the applicable deadline, the member should still consider submitting the advice or cancellation to the Exchange's Department of Market Regulation as soon as possible after the deadline (even though a violation of Rule 11.1 will still exist) in order to help to establish the time at which the exercise decision was made.

9. The joint account participant who makes the decision to exercise on behalf of the joint account must indicate both the joint account acronym and his or her individual acronym on both the exercise instruction memorandum and the "exercise advice".

10. The submission an of "exercise advice" to the Exchange does not initiate an exercise at OCC; members must also submit an exercise instruction memorandum to their clearing firm.

11. In the event that any of the following market conditions are declared, the below provisions will apply (including C/MACS entries):

[Delayed Opening other than on the Last Business Day Prior to Expiration: The "exercise advice" drop-off boxes will not be placed in the designated areas until trading commences. Exercises may not be effected, nor will "exercise advices" be accepted until trading commences.]

Delayed Opening or Trading Halt [other than on the Last Business Day Prior to Expiration]: *Exercises of American-style, cash-settled index options (and the submission of corresponding "exercise advice" and "advice cancel" forms) shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:*

*(i) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension. Acceptable documentation shall ordinarily be limited to an "exercise advice" previously transmitted to via C/MACS or a member's copy of an "exercise advice" previously submitted to the Exchange.**

*(ii) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration.**

(iii) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 3:00 p.m. (CT). In the event of such a trading halt, exercises may occur through 3:20 p.m. (CT). In addition, if trading resumes following such a trading halt (such as by closing rotation), exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (iii) are subject to the authority of the Board to impose restrictions on transactions and exercises pursuant to Rule 4.16(a).

(iv) The President or his designee may determine to permit the exercise of American-style, cash-settled index

*options while trading in such options is delayed, halted, or suspended.**

In general, such a determination would be based on extraordinary circumstances.

To the extent that exercises of American-style, cash-settled index options are not permitted due to a delayed opening, the "exercise advice" drop-off boxes will not be placed in the designated areas until trading commences. Exercises may not be effected, nor will "exercise advices" be accepted until trading commences. Exercises may not be effected, nor will "exercise advices" be accepted until trading commences.

To the extent that exercises of Amercian-style, cash-settled index options are not permitted due to a trading halt, the "exercise advice" drop-off boxes will be immediately removed from the designated areas upon the declaration of the trading halt and will be returned to the designated areas upon the resumption of trading. [Exercises may not be effected, nor will "exercises advices" be accepted during a trading halt.] These restrictions shall remain in place until trading resumes.

[Notwithstanding both of the above, an exercise may be processed and given effect in accordance with and subject to OCC rules if it can be documented that the decision to exercise was made during allowable time frames prior to the delayed opening or trading halt. Acceptable documentation shall ordinarily be limited to an "exercise advice" previously transmitted via C/MACS, an internal exercise memorandum previously prepared and time-stamped by a member, or a member's copy of an "exercise advice" previously submitted to the Exchange.]

[Modified Trading Hours: The "exercise advice" drop-off boxes will be removed five minutes after the designated closing time in the event that trading hours are modified. Exercises may not be effected, nor will "exercise advises" be accepted after such time.]**

Closing Rotation: The "exercise advice" drop-off boxes will remain at the designated areas and "exercise advices" will be accepted until five minutes after the completion of the closing rotation.

Modified Trading Hours: If trading hours are extended or modified, the exercise deadline will be five minutes after the close of trading on that day instead of 3:20 p.m. (CT). The "exercise advice" drop-off boxes will be removed after the modified exercise deadline, and exercises may not be effected, nor will "exercise advices" be accepted, after such time.

FLEX Index Options: In the case of an American-style, cash-settled FLEX Index Option, the references in this Paragraph 11 to a trading delay, halt, suspension, resumption, closing rotation, or modified trading hours shall mean the occurrence of the applicable condition in the standardized option on the index underlying the FLEX Index Option (rather than the occurrence of the applicable condition in the FLEX Index Option itself).

12. The President or his designee may determine to extend the applicable deadline for the delivery of "exercise advice" and "advice cancel" notifications if unusual circumstances are present.

Any questions pertaining to index option exercises can be addressed to Karen Charleston at (312) 786–7724 or Pat Cerny at (312) 786–7722.

(Regulatory Circulars RG89–13, RG92–02, RG94–61, [and] RG96–95, *and RG 98–90* Revised)

* With the exception of some wording changes, these provisions are currently generally set forth in Rule 4.16(b) and Rule 11.1.05 (which is now proposed to be moved to proposed Rule 11.1.03(h)) and are not newly proposed provisions, except that acceptable documentation under Section 11(i) of the Exercise Regulatory Circular is proposed to no longer include internal exercise memoranda.

** The provision regarding modified trading hours is proposed to be moved to after the provision regarding closing rotations and to be reworded without changing its substance.

[FR Doc. 99–13811 Filed 5–28–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41437; File No. SR–DTC–99–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Implementing the Pending Transfer Account

May 21, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 3, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to implement a pending transfer account to facilitate the use of collateral in financing transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC subjects deliveries and pledges to DTC's risk management controls.[3] A delivery or pledge of securities is pended and not completed if the securities are then serving as collateral to secure the obligations of the delivering or pledging participant to DTC. Also, a free delivery or pledge is pended if the securities are money market instruments and were received by the delivering or pledging participant on that day in a valued delivery. The risk management controls remain in effect, and the pending delivery or pledge is recycled until daily money settlement is completed at DTC, which usually occurs at approximately 5:00 p.m. (eastern time). Prior to daily money settlement, a pending delivery or pledge (other than a free delivery or pledge of money market instruments received on that day in a valued delivery) will be completed if the participant subsequently has other collateral available to support the participant's obligations to DTC.

In financing transactions, a lender or tri-party agent often performs an evaluation of the collateral to insure that the collateral meets certain criteria. A tri-party agent acting on behalf of

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] DTC's risk management controls are a set of procedures designed to protect DTC against the loss that may result from a participant failure.

several lenders must also allocate the collateral among the individual lenders. The process of evaluation and allocation of collateral is labor intensive and time-consuming. Lenders and tri-party agents have informed DTC that they often do not begin the process of evaluating and allocating collateral until late in the day because they are reluctant to begin that process before DTC's risk management controls are released. Lenders and tri-party agents have also informed DTC that they could begin that process earlier in the day and could thus gain valuable processing time, if they could be assured that a pending delivery or pledge will be completed after DTC's risk management controls are released as long as DTC does not need the securities for collateral purposes.

At the request of participants, including participants which act as lenders and tri-party agents, DTC developed the pending transfer account. Under the proposed rule change, a participant delivering or pledging securities can indicate to DTC that if the participant has sufficient securities in its account to complete the delivery or pledge but the delivery or pledge is blocked by DTC's risk management controls, the securities are to be reserved in the participant's pending transfer account. Securities reserved in the participant's pending transfer account are reported throughout the day to the receiver or pledgee designated by the participant. Those securities are not available to the participant for any other activities at DTC and can only be released from the participant's pending transfer account during the day by the designated receiver or pledgee. The delivery or pledge will be completed when DTC releases its risk management controls only if DTC does not need the securities in the participant's pending transfer account for collateral purposes. DTC anticipates that the pending transfer account will be available for use by participants in the second quarter of 1999.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder since the pending transfer account will facilitate the use of collateral in certain financing transactions processed through DTC's facilities. According to DTC, the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since securities reserved in the pending transfer account will be subject to DTC's existing risk management controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was discussed with several participants. All participants were informed of the proposed rule change by a DTC Important Notice dated December 19, 1998. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.[4] The Commission finds that the rule change is consistent with this obligation because reserving the position associated with financing transactions that recycle for risk management control and reporting to the lenders and tri-party agents that the position has been reserved, will provide lenders and tri-party agents with an assurance that the recycling transactions will have sufficient position to complete when DTC release its risk management controls. These additional assurances should allow lenders and tri-party agents to begin their collateral evaluation/allocation process earlier in the processing day and should result in an earlier movement of the funds associated with the financial transactions.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because use of the pending transfer service by a participant is voluntary and accelerated approval will permit DTC participants to immediately benefit from this service.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–99–03 and should be submitted by June 22, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–03) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13812 Filed 5–28–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S1 covers the Office of the Deputy Commissioner, Finance, Assessment and Management. Notice is given that Subchapter S1N, the Office of Financial Policy and Operations, is being amended. The Division of Systems Security (S1NA6) within the Office of Financial Policy and Standards (S1NA) is being elevated to an office-level component. The changes are as follows:

Section S1N.10 The Office of Financial Policy and Operations—(Organization):

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

D. The Office of Financial Policy and Systems Design (S1NA).

Delete:

3. The Division of Systems Security (S1NA6). Renumber "4" to "3."

Section S1N.20 The Office of Financial Policy and Operations—(Functions):

D. The Office of Financial Policy and Systems Design (S1NA).

Delete in its entirety:

3. The Division of Systems Security (S1NA6). Renumber "4" to "3."

Section S1N.10 The Office of Financial Policy and Operations—(Organization):

Establish:

G. The Office of Systems Security (S1NG).

Section S1N.20 The Office of Financial Policy and Operations—(Functions):

Establish:

G. The Office of Systems Security (S1NG) directs, coordinates and manages SSA's overall information systems security program. This includes the development of SSA's security policy requirements and procedures, the effective implementation of other governing directives in the area of security, the administration of an effective access control program and an onsite review program. It provides educational training and awareness programs to management and employees on security policy/requirements; serves as the Agency focal point for day-to-day contact with the Office of Inspector General on matters of fraud, waste and abuse; and provides direction and guidance to the Agency's component and regional security officers.

The Office is also responsible for developing and implementing security requirements/safeguards for SSA's State information exchange program.

Dated: May 21, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99–13778 Filed 5–28–99; 8:45 am]

BILLING CODE 4190–29–U

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974: Republication of Notice of Systems of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of republication of systems of records; notice of proposed new system of records; notice of new routine uses.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), the Tennessee Valley Authority (TVA) is republishing in full a notice of the existence and character of each TVA system of records.

TVA is also proposing to add a new system of records entitled TVA–38 "Wholesale and Retail Data Files." Further details of this system of records are in the **SUPPLEMENTARY INFORMATION** section of this notice.

TVA is deleting system TVA–3 "Upgrade Craft Training Program." This program has ended and the retention period for these records has expired.

TVA is deleting TVA–4 "Demonstration Farm Records" and *TVA–27 "Test Demonstration Farm Records."* These programs have ended and the records have been transferred to the National Archives in East Point, Georgia.

TVA is deleting TVA–16 "Land Between The Lakes, Register of Law Violations," and TVA–35 "Building Access Security Records." These systems are no longer in use and the records are now filed as part of system TVA–37 "U.S. TVA Police Records."

TVA is deleting TVA–33 "Office of Nuclear Power Call Detail Records." The nuclear records are no longer filed separately and are now part of system TVA–32 "Call Detail Records."

TVA is renaming TVA–9 "Medical Records Systems" to "Health Records;" TVA–21 "Nuclear Assurance and Licensing Personnel Records" to "Nuclear Assurance Personnel Records;" and TVA–22 "Questionnaire—Farms in Vicinity of Proposed or Licensed Nuclear Power Plant" to "Questionnaire—Land Use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant." These name changes are made to better reflect the content of the systems of records.

TVA is adding a new routine use to three systems: TVA–2 "Personnel Records," TVA–23 "Radiation Dosimetry Personnel Monitoring Records," and TVA–26 "Retirement System Records."

TVA is also correcting minor typographical and stylistic errors in previously existing notices and has updated those notices to reflect current organizational structure. Also, updates are being made to show any changes to system locations; managers and addresses; categories of individuals and records; procedures and practices for storing, retrieving, accessing, retaining, and disposing of records.

DATES: Submit comments on or before July 1, 1999.

ADDRESSES: Address all comments concerning this notice to Wilma H. McCauley, Privacy Act Officer, TVA, 1101 Market Street (WR 4Q), Chattanooga, TN 37402–2801.

FOR FURTHER INFORMATION CONTACT: Wilma H. McCauley at (423) 751–2523.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), TVA is today republishing a notice of the existence and character of each of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information regarding these systems. This has become necessary to reflect the organizational changes in the agency over the years.

TVA is proposing to establish a new system of records entitled TVA–38 "Wholesale and Retail Data Files." This system is maintained by TVA's Customer Service and Marketing (CS&M) organization to provide important information, both business and private, about TVA's customers to enable TVA to provide better customer service, and to establish emergency contact lists for its power distributors. Reports are being submitted to the Committee on Government Operation of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget pursuant to the Privacy Act and OMB Circular No. A–130. If no comments are received, this system will become effective as of July 1, 1999.

TVA is deleting six systems of records as follows: The program for *TVA–3 "Upgrade Craft Training Program,"* has ended and the retention period for these records has expired in accordance with established TVA Comprehensive Records Schedules. The programs responsible for *TVA–4 "Demonstration Farm Records"* and *TVA–27 "Test Demonstration Farms Records"* have ended and the records have been transferred to the National Archives in East Point, Georgia, in accordance with established TVA Comprehensive Records Schedules. The duties and the records for *TVA–16 "Land Between The Lakes, Register of Law Violations,"* and *TVA–35 "Building Access Security Records"* are now the responsibility of the U.S. TVA Police, and, therefore, have been incorporated into system U.S. "TVA–37 "U.S. TVA Police Records." *TVA–33 "Office of Nuclear Power Call Detail Records"* are now part of system TVA–32 "Call Detail Records." This resulted because it is no longer necessary to file the nuclear call detail records separately.

TVA is renaming the following three systems of records to better reflect the contents of these systems. TVA–9 *"Medical Records Systems"* is being renamed to *"Health Records."* This system of records is now the

responsibility of the Health Services organization. TVA–21 *"Nuclear Assurance and Licensing Personnel Records"* is being renamed to *"Nuclear Assurance Personnel Records"* to reflect the name change of the responsible organization. TVA–22 *"Questionnaire-Farms in Vicinity of Proposed or Licensed Nuclear Power Plant"* is being changed to *"Questionnaire-Land Use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant."* The program was developed to evaluate farms within a two mile radius, and was the responsibility of the TVA Agricultural Institute. The program is currently the responsibility of the Radiological Control group and involves all individuals living within a five mile radius in accordance with Nuclear Regulatory Commission (NRC) regulations.

TVA is adding a new routine use to three systems: TVA–2 "Personnel Records," TVA–23 "Radiation Dosimetry Personnel Monitoring Records," and TVA–26 "Retirement System Records" to include health related agencies, organizations, or professionals for the purpose of compiling health statistics or biomedical investigations for employee population health monitoring.

TVA is also correcting minor typographical and stylistic errors in the previous existing systems. In addition, TVA is updating the system locations; managers and addresses; notification; categories of individuals covered; categories of records; storage policies and practices; retention and disposal; record access; and contesting record procedures. These changes are necessary to reflect TVA's current organizational structure, advanced technology, and procedural changes.

This document gives notice that the following TVA systems of records below are in effect:

Table of Contents

TVA–1 Apprentice Training Records.
TVA–2 Personnel Files.
TVA–5 Discrimination Complaint Files.
TVA–6 Employee Accident Information.
TVA–7 Employee Accounts Receivable.
TVA–8 Employee Alleged Misconduct Investigatory Files.
TVA–9 Health Records.
TVA–10 Employee Statement of Employment and Financial Interests.
TVA–11 Payroll Records.
TVA–12 Travel History Records.
TVA–13 Employment Applicant Files.
TVA–14 Grievance Records.
TVA–15 Land Between The Lakes, Hunter Records.
TVA–18 Employee Supplementary Vacancy Announcement Records.
TVA–19 Consultant and Personal Service Contractor Records.
TVA–21 Nuclear Assurance Personnel Records.
TVA–22 Questionnaire-Land use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant.
TVA–23 Radiation Dosimetry Personnel Monitoring Records.
TVA–26 Retirement System Records.
TVA–28 Woodland Resource Analysis Program Input Data.
TVA–29 Electricity Use, Rate, and Service Study Records.
TVA–30 Land Between The Lakes, Mailing Lists.
TVA–31 OIG Investigative Records.
TVA–32 Call Detail Records.
TVA–34 Project/Tract Files.
TVA–36 Section 26a Permit Application Records.
TVA–37 U.S. TVA Police Records.

TVA also gives notice of the proposal to add:

TVA–38 Wholesale and Retail Data Files.

TVA–1

SYSTEM NAME:

Apprentice Training Records—TVA.

SYSTEM LOCATION:

Labor Relations Staff, TVA, Knoxville, TN 37902–1499; Human Resource Information Systems, TVA, Knoxville, TN 37902–1499; Computer Operations, TVA, Chattanooga, TN 37402–2801; all TVA locations where apprentices are employed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA apprentices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment, qualifications, and evaluation information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; National Apprenticeship Act of 1937, 50 Stat. 664.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

To the Bureau of Apprenticeship and Training, the Veterans' Administration, Tennessee Valley Trades and Labor Council, and the State and local Government agencies for reporting and evaluation purposes.

To respond to a request from a Member of Congress regarding the status of an apprentice.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA employee: Job description, dates of employment, reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by name, craft, job code, union code, and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Labor Relations, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address

inquiries to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. Federal contracts, or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; General Aptitude Test Battery scores from State employment security office; references from employers, military and educational institutions; and evaluations from joint committee on apprenticeship.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing and examination material would compromise the objectivity of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–2

SYSTEM NAME:

Personnel Files—TVA.

SYSTEM LOCATION:

Human Resources, TVA, Knoxville, TN 37902–1499; Human Resource Information Systems, TVA, Knoxville, TN 37902–1499; area human resources offices throughout TVA; Information Services, TVA, Chattanooga, TN 37402–2801; National Personnel Records Center, St. Louis, MO 63118. Security/suitability investigatory files are located separately from other records in this system. Information on education, career counseling, or job performance may be maintained by the TVA organization that provides the training or career counseling or that employs the individual and by Equal Opportunity Staff. Duplicate or certain specifically temporary information may be maintained by human resources officers, supervisors, and administrative officers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees, some contractors, applicants for employment, and applicants for employment by TVA contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; call detail records for the Employee Service Center; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 86 Stat. 103; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose test results to State employment services.

To a State employment security office in response to a request relating to a former employee's claim for unemployment compensation.

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring, retention, or promotion of a employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information, as requested, to a prospective employer of a TVA or former TVA employee: job descriptions, dates of employment, and reasons for separation.

To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

To provide information to TVA contractors engaged in making suitability determinations for their prospective employees under TVA contracts.

To contractors and subcontractors engaged at TVA's direction in providing support services to TVA in connection with mailing materials to TVA employees or other related services.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA

attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employees' Group Life Insurance to Office of Federal Employees' Group Life Insurance.

To transfer information regarding claims for health insurance benefits to health insurance carrier.

To union representatives in exercising their responsibilities under TVA collective-bargaining agreements.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA contractors and subcontractors engaged at TVA's direction in studies and evaluation of TVA personnel management and benefits; or the investigation of nuclear safety, reprisal, or other matters involving TVA personnel practices or policies; or the implementation of TVA personnel policies.

To provide pertinent information to local school districts and other Government agencies in order to study TVA project impacts and to aid school districts in qualifying for assistance under Pub. L. 81–874 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To commemorate the month and day of employee birthday anniversaries.

To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

Personnel records may be used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items of radiation dosimetry data to health-related agencies, organizations, or professionals for the purpose of compiling vital health statistics, or conducting biomedical investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices (including optical disk) and microfiche.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Personal History Records:

Nonmicrofilmed records stored at National Personnel Records Center and microfilmed and optical disk records stored at TVA are destroyed 75 years after birth date of employee or 60 years after date of earliest document in the record if the date of birth cannot be ascertained. Reference copies are destroyed when no longer needed.

Congressional inquiries are retained indefinitely; test records are retained 10 years; occupational register cards are retained 1 year, with the exception of apprentices which are retained for 5 years; some information maintained on magnetic tape is erased after 1 year; records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Human Resources, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the Manager, Employee Service Center, TVA, Knoxville, TN 37902–1499. Requests should include the individual's full name, employing division, job title, and date of birth. A social security number is not required but may expedite TVA's response.

In addition, current employees should address inquiries also to their supervisors or personnel officers.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Manager, Employee Service Center, TVA, Knoxville, TN 37901–1499. In addition, current employees may present requests for access to their supervisors or the human resource officer of the employing division. Requests should include the individual's full name, employing division, job title, and date of birth. A social security number is not required but may expedite TVA's response. Access will not be granted to investigatory material complied solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Manager, Employee Service Center, TVA, Knoxville, TN 37902–1499.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions; former employers; and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3) and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–5

SYSTEM NAME:

Discrimination Complaint Files—TVA.

SYSTEM LOCATION:

Equal Opportunity Compliance Staff, TVA, Knoxville, TN 37902–1499. Duplicate copies may be maintained in the files of the TVA organization where the complaint originated.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, or applicants who have received counseling or filed complaints of discrimination based on race, color, religion, sex, national origin, age, reprisal, or handicap.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to a decision or determination made by TVA or the Equal Employment Opportunity Commission affecting an individual. The records consist of the precomplaint counseling report, initial appeal or complaint, letters or notices to the individual, record of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimonies of witnesses, investigative reports, and related correspondence, opinions, and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 11478; 42 U.S.C. 2000e–16; 29 U.S.C. 633a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A report of each complaint is made to the Equal Employment Opportunity Commission. If an administrative appeal is filed, the entire file is disclosed to the Equal Employment Opportunity Commission.

To the employee's representative.

To respond to a request from a Member of Congress regarding the status of a complaint.

To the parties of complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its Equal Employment Opportunity program or who are providing support services to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are kept in file folders.

RETRIEVABILITY:

Records in this system are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those personnel whose official duties require such access.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Equal Opportunity Compliance, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals who have filed discrimination complaints are aware of that fact. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, the approximate date of their complaint, and their employing organization, if employed.

RECORD ACCESS PROCEDURES:

Individuals who have filed a discrimination complaint have been provided a copy of the record. However, an individual may gain access to the official copy of the complaint record by writing the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals who have filed a discrimination complaint have had an opportunity during the complaint procedure to amend their record. However, request for amendment or correction of items not involving the complaint procedure may be addressed to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA personnel and other records; witnesses.

TVA–6

SYSTEM NAME:

Employee Accident Information-TVA.

SYSTEM LOCATION:

TVA Corporate Health and Safety, Knoxville, TN 37902–1499. Accident reports may also be maintained in the file of the employing organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have sustained a work-related injury or illness or have been involved, as the operator of a TVA vehicle, in a vehicular accident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to the accident, injury, or illness.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 12196; Occupational Safety and Health Act of 1970, Pub. L., 93–237, 87 Stat. 1024.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Labor as required by the Occupational Safety and Health Act.

To the Office of Workers' Compensation Programs in relation to an individual's claim for compensation.

To respond to a request from a Member of Congress regarding the status of an employee.

To provide information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purpose of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on automated data storage devices and in file folders.

RETRIEVABILITY:

Records are indexed by name, date of birth, and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are retained for five years, and after that period are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Safety Program Manager, TVA Corporate Health and Safety, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, date of birth, and approximate date of injury.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical records; witnesses of accidents and inquires, including appraisers of property damage.

TVA–7

SYSTEM NAME:

Employee Accounts Receivable—TVA.

SYSTEM LOCATION:

Controller, TVA, Knoxville, TN 37902–1499; Office of the General Counsel, TVA, Knoxville, TN 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who: Authorize a payment for specified purposes in their behalf; receive overpayment of earnings; receive duplicate payments; are otherwise indebted to TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information concerning indebtedness and repayment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 5 U.S.C. Chapter 55.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on printouts, invoices, microfiche, and posting documents.

RETRIEVABILITY:

Records are indexed by payroll number, social security number, badge number, name, or invoice number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Printouts are disposed of in 3 years, invoices in 7 years, microfiche of registers in 50 years, and posting documents in 50 years.

SYSTEM MANAGER(S) AND ADDRESS:

Controller, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employing organization. Provisions of the social security number is not required, but may expedite TVA's response and may prevent the erroneous retrieval of records for another individual with the same name.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in the system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; TVA payroll records; TVA disbursement voucher records.

TVA–8

SYSTEM NAME:

Employee Alleged Misconduct Investigatory Files—TVA.

SYSTEM LOCATION:

Office of the General Counsel, TVA, Knoxville, TN 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees about whom a complaint of misconduct during employment has been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information regarding conduct during employment with TVA which may be in violation of law or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10450; Executive Order 11222; Hatch Political Activity Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decisions on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA, grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or investigation number.

SAFEGUARDS:

These records, are stored in a locked GSA-approved security container. Access to the records is limited to TVA attorneys and their administrative assistants who have a need for them in the course of TVA business and to other TVA employees whose need is approved by Office of the General Counsel management.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Office of General Counsel, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted from subsections (c)(3); (d); (e)(1); (4)(G), (4)(H), (4)(I); and (f) of 5 U.S.C. 552a (Section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

TVA–9

SYSTEM NAME:

Health Records—TVA.

SYSTEM LOCATION:

TVA Corporate Health & Safety, Chattanooga, TN 37402–2801; all TVA

medical facilities; Computer Operations, TVA, Chattanooga, TN 37402–2801; National Personnel Records Center, St. Louis, MO 63118; District Offices, Office of Workers' Compensation Programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for TVA employment, employees, former employees, official visitors, contractual assignees to TVA, interns, externs, employees of TVA contractors, and other Federal agencies who are examined under contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health information pertinent to an individual's employment, official visit, or contractual work with TVA or other Federal agencies, including the basic Clinical Medical Record, the Employee Assistance Program case files, Worker's Compensation and Rehabilitation claims and case files, Psychological and Fitness for Duty files including alcohol and drug testing information, clinical information received from outside sources, and information relative to an employee's claim for medical disability retirement. Health information includes paper documents, x-rays, microfiche, microfilm, and/or any automatic data processing media, regardless of the form or process by which it is maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 5 U.S.C. 7902; Federal Employees' Compensation Act, 5 U.S.C. chapter 81, 5 U.S.C. chapter 87 (Medical information relating to life insurance program); 5 U.S.C. 3301; Occupational Safety and Health Act of 1970, Pub. L. 93–237, 87 Stat. 1024, Pub. L. 91–616, Federal Civilian Employee Alcoholism Program and Pub. L. 92–255, Drug Abuse Among Federal Civilian Employees, which are amended in regard to confidentiality of records by Pub. L. 93–282; Public health laws (State and Federal) related to the reporting of health hazards, communicable diseases or other epidemiological information; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Compensation claim records are used for adjudicating claims and providing therapy. Appropriate information is exchanged with physicians, hospitals, and rehabilitation agencies approved by the Office of Workers' Compensation Programs for service to injured employees.

Clinical Medical Records are used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items of medical data to health-related agencies, organizations, or professionals for the purpose of obtaining specialized clinical consultation, compiling vital health statistics, or conducting biomedical investigations.

Alcohol and drug testing and employee assistance program records may be exchanged with a physician or treatment center working with an employee, or in accordance with the provisions of Pub. L. 93–282.

Information in the Health Records System provided to officials of other Federal agencies responsible for other Federal benefit programs administered by Office of Workers' Compensation Programs. Retired Military Pay Centers, Veterans' Administration, Social Security Administration, and private contractors engaged in providing benefits under Federal contracts.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, the issuance of a security clearance, the reporting of an investigation of an employee, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To respond to a request from a Member of Congress regarding an employee.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority or a court of competent jurisdiction.

To transfer information regarding claims for health insurance or disability benefits to the health insurance carrier or plan participant.

To request information from a Government agency or private individual, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its medical and employee benefits program or who are providing support sources to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To provide information to private physicians and other health care professionals or facilities designated by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Health information includes paper documents, x-rays, microfiche, microfilm, and/or any automatic data processing media, regardless of the form or process by which it is maintained.

RETRIEVABILITY:

Records are indexed by name, social security number, date of birth, and/or case number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

Remote access facilities are secured through physical and system-based safeguards. Special instructions issued to medical staff employees assure the confidentiality of health records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with TVA rules and regulations approved by the Archivist of the United States. Retention schedules specify the length of time various records are kept. Active clinical medical records are kept indefinitely. Specific retention schedules for various components of the records systems are contained in the Comprehensive Records Schedule (CRS) which has been approved by the National Archives and Records Administration (NARA) for use by Health Services. These dispositions are

mandatory unless TVA requests a revision from NARA. Items in this CRS should be cited as the disposition authority for transferring or destroying any records.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, TVA Corporate Health & Safety, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals should address inquiries to the system manager named above. Individuals should provide their full name, social security number, date of birth, employing organization, and date of last employment, and employee compensation case number, if any.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact or address their inquiries to the system manager named above. Inquiries should be specific as to which component of the health records system is to be accessed. If inquiries are not specific to a particular component of the health records, it will be assumed the access is directed toward the individual's clinical medical record.

CONTESTING RECORDS PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical staff; private physicians and medical institutions; Office of Workers' Compensation Programs; TVA personnel records; other health agencies and departments.

TVA–10

SYSTEM NAME:

Employee Statement of Employment and Financial Interests-TVA.

SYSTEM LOCATION:

Office of the General Counsel, TVA, Knoxville, TN 37902–1499. Original copies may be kept in line organization offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees in positions designated as requiring submission of a statement; every TVA consultant who was a "special Government employee"; every TVA personal service contractor who was a "special Government employee" and who was determined to be an "expert" or who was otherwise required to submit a statement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements of employment and financial interests filed prior to 1993. Statements filed in 1993 or after are maintained under Office of Government Ethics system OGE/GOVT–2, "Confidential Statements of Employment and Financial Interests." TVA–10 will be phased out when the records are destroyed in accordance with established retention schedules.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 11222 and 12674; Ethics in Government Act of 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To report as requested to the Office of Personnel Management pursuant to Executive Order 10577 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons designated to review statements of financial interest.

RETENTION AND DISPOSAL:

Records are retained in accordance with established records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel and Designated Agency Ethics Official, Office of the General Counsel, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals upon whom records are maintained in this system of records are aware of that fact by having filed a statement. However, inquiries may be addressed to the Office of the General Counsel, TVA, Knoxville, TN 37902–1499. Requests should include the individual's full name and employing division.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information about them in this system of records should contact the Office of the General Counsel, TVA, Knoxville, TN 37902–1499.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Office of the General Counsel, TVA, Knoxville, TN 37902–1499.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

TVA–11

SYSTEM NAME:

Payroll Records—TVA.

SYSTEM LOCATION:

Controller, TVA, Knoxville, TN 37902–1499; garnishment files are located at the Office of the General Counsel, TVA, Knoxville, TN 37902–1499; duplicate copies of some records may also be maintained in the files of the employing organization; National Personnel Records Center, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees and personal service contractors selected for certain training programs and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings and other required information to Federal, State, and local taxing authorities as required by law.

To report earnings to the Civil Service Retirement System for members of that system.

To transmit payroll deduction information to financial institutions and employee organizations.

To report earnings to courts when garnishments are served or in bankruptcy or wage earner proceedings.

To report earnings to unions for those crafts on which TVA contributions to union welfare or pension funds are based on earnings. Reports of hours worked are made to unions for those crafts on which such TVA contributions are based on hours worked.

To report earnings to the Department of Housing and Urban Development, State welfare agencies, and State employment security offices where an individual has made a claim for benefit with such agency.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statue, rule, regulation, or order issued pursuant thereto.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

To disclose to any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employee's Group Life Insurance to Office of Federal Employee's Group Life Insurance.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transfer information regarding claims for health insurance benefits to health insurance carriers.

To TVA contractors and subcontractors engaged in studies and evaluations of TVA payroll and personnel management.

To union representatives exercising their responsibilities under TVA collective bargaining agreements.

To report earnings to the Department of Housing and Urban Development, and State welfare agencies where an individual makes a claim for benefits, and to report earnings to State employment security offices in both manual and automated form for use by these offices in determining unemployment benefits.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in an optical scanned electronic file.

RETRIEVABILITY:

Records are primarily indexed by name. They may also be retrieved by reference to employing organization, date of end of pay period, social security or badge number, year of birth, or job title.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Scanned information is stored on CD ROM and retained indefinitely. File folders are retained for 3 years after termination. Timesheets are retained for 7 years, payroll registers are retained in active status for 1 year, transferred to secured off-site storage facility for 5 years, and to National Personnel Records Center for an additional 50 years. Magnetic tapes processed by the Controller are retained for 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Controller, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, employing organization, and date of last employment. The social security number is also required to expedite TVA's response and prevent the erroneous retrieval of records for another individual with the same name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information on them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information on them in this

system of records should contact the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; employee's supervisor for report of hours worked.

TVA–12

SYSTEM NAME:

Travel History Records—TVA.

SYSTEM LOCATION:

Travel and Benefits Accounting, Controller, TVA, Knoxville, TN 37902–1499. Duplicate copies of certain records may also be maintained in the files of the employing organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees who traveled on official business and filed travel expense vouchers, applied for a travel advance, or transferred between official stations; recently-hired employees who filed for reimbursement of relocation expenses; candidates for TVA positions who filed for reimbursement of travel expenses; and contractors with which there is an employer/employee relationship (i.e., personal services contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel advance requests, travel expense vouchers and supporting documentation, travel charge card program records and reports, and travel orders. Records supporting relocation expense claims also include Government Bills of Lading, real estate sales agreements and settlements, Federal Truth-In Lending disclosure statements, lease agreements, receipts for loss of rental deposit, and relocation income tax allowance documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.; 5 U.S.C. 5701–5709, and related Federal travel regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To TVA contractors and subcontractors engaged at TVA's direction who are providing support services to TVA's travel charge card program.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media, hard-copy printouts, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Security will be provided by physical, administrative, and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Travel and Benefits Accounting, Controller, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and social security number.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name and social security number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above. Requests should include the individual's full name and social security number.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA disbursement voucher records; TVA application for travel advance; travel charge card program records and reports.

TVA–13

SYSTEM NAME:

Employment Applicant Files—TVA.

SYSTEM LOCATION:

Human Resources, Shared Resources and Human Resource Information System, TVA, Knoxville, TN 37902–1499; area and project human resources offices; Information Services, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment including former employees seeking reemployment and current employed college recruitment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms, resumes, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 5 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an individual's application.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule,

regulation, or order issued pursuant thereto.

To request from any pertinent source, directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring of an employee, the issuance of a security clearance, or other decision within the purposes of this system or records.

To disclose test results to State employment services.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To provide information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on the Resumix automated data storage device.

RETRIEVABILITY:

Records are indexed by name and resume identification number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. The Resumix system is secured by password. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Applications/resumes are kept for one year from last indication of interest, with the exception of apprenticeship applications, which are kept for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Human Resources, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals submitting applications for employment are accepted for processing into the Resumix System only when a vacancy has been identified. Unsolicited resumes/applications will receive a postcard acknowledgment which refers them to the jobline and TVA homepage for future information concerning current employment opportunities. Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to Manager, Shared Resources, TVA, Knoxville, TN 37902–1499. Requests should include the individual's full name, social security number, date of birth, and approximate date of application.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the Manager, Shared Resources, TVA, Knoxville, TN 37902–1499. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to Manager, Shared Resources, TVA, Knoxville, TN 37902–1499.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; educational institutions, employers, and other references; State employment services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA—14

SYSTEM NAME:

Grievance Records—TVA.

SYSTEM LOCATION:

Labor Relations Staff, TVA, Knoxville, TN 37902–1499.

Original correspondence on the initial grievance steps below the Labor Relations level is maintained in the organization in which the grievance originated. Original correspondence on grievance appeals to the corporate level are maintained in the files of the Labor Relations office.

Duplicate copies of such correspondence are also maintained in the files of the organization concerned with the grievance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees and former employees who have formally appealed to TVA for adjustment of their grievances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evidence and arguments relevant to the matter giving rise to the grievance and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an employee's grievance.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency, or private individual, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices in some organizations and in file folders.

RETRIEVABILITY:

Records are indexed by name or by craft.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Labor Relations, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals who have filed grievances are aware of that fact. Inquiries may, however, be addressed to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

RECORD ACCESS PROCEDURES:

Individuals who have filed a grievance may gain access to the official copy of the grievance record by contacting the system manager named above. Requests should include the grievant's full name, craft, and location of employment.

CONTESTING RECORD PROCEDURES:

The contest, amendment, or correction of a grievance record is permitted during the prosecution of that grievance. However, an individual may address requests for amendment or correction of items not involved in prosecution of the grievance to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; statements and testimony of witnesses and related correspondence.

TVA–15

SYSTEM NAME:

LAND BETWEEN THE LAKES HUNTER Records—TVA.

SYSTEM LOCATION:

Land between the Lakes, TVA, Golden Pond, Kentucky 42211–9001; Computer Operations, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom hunter use permits are issued and those who apply for participation in managed hunts at LAND BETWEEN THE LAKES.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, State hunting license(s) number(s), and information related to the hunts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an applicant.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, or to request information from a private individual to the extent necessary to obtain information relevant to a TVA decision concerning the issuance of a permit to hunt or any other privilege.

To provide hunt information to State agencies concerned with wildlife management practices.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To provide mailing lists to organizations or contractors cooperating with LAND BETWEEN THE LAKES in activities or events for the purpose of publicizing those activities or events.

To provide mailing lists to an independent LAND BETWEEN THE LAKES support organization for the purpose of soliciting members for the organization.

To provide mailing lists to nonprofit conservation organizations, having missions related to that of LAND BETWEEN THE LAKES, for the purpose of soliciting membership in such organizations.

To provide mailing lists to students or faculty of educational institutions for the purposes of research.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, card files, and computer printouts.

RETRIEVABILITY:

Records are indexed by name; automated files may be retrieved by any key data element.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official

duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Applications for managed hunts are maintained for one year; carbon copies of hunter use permits are maintained two years; and automated records on those permits are maintained five years. Other information may be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of LAND BETWEEN THE LAKES, TVA, Golden Pond, KY 42211–9001.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address their inquiries to the system manager named above. Requests should include the name as listed on the application or hunter use permit or the hunter use permit number.

RECORD ACCESS PROCEDURE:

All information maintained in this system of records has normally been supplied by the subject individual. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

TVA–18

SYSTEM NAME:

Employee Supplementary Vacancy Announcement Records—TVA.

SYSTEM LOCATION:

Human Resource officers throughout TVA that issue or receive response to supplementary vacancy announcements will maintain records in their respective offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for placement in positions covered by the supplementary vacancy announcement procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and supporting material submitted by employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 11478; Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 86 Stat. 103; 5 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES AND USERS AND THE PURPOSES OF SUCH USES:

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Records are maintained in secured facilities.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Human Resources, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals upon whom records are maintained in this system are aware of that fact through filing an application. However, inquiries may be addressed to the name and address to which application was submitted. Requests should include the individual's full name, position applied for, and location of job.

RECORD ACCESS PROCEDURES:

Individuals upon whom records are maintained in this system have supplied all information in this system. However, requests for access may be addressed to the name and address to which application was submitted.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the name and address to which application was submitted.

RECORD SOURCE CATEGORIES:

The individual upon whom the record is maintained.

TVA–19

SYSTEM NAME:

Consultant and Personal Service Contractor Records—TVA.

SYSTEM LOCATION:

Human Resources and Information Services and Personnel History Records, TVA, Knoxville, TN 37902–1499; Procurement, TVA, Chattanooga, TN 37402–2801; Computer Operations, TVA, Chattanooga, TN 37402–2801; and TVA user organizations.

Payment records are located at these TVA Controller offices: Knoxville, TN 37902–1499; Chattanooga, TN 37402–2801; and Muscle Shoals, AL 35660–1010.

Records related to personal service contractors employed under the Comprehensive Employment and Training Act of 1973, Pub. L. 93–203, are located at the National Personnel Records Center, St. Louis, MO 63118.

Records on individuals who provide services under a TVA contract with an organization are kept in the files of that organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who provide services to TVA; participants in TVA-State employment programs; individuals who provide services under a TVA contract with an organization; and participants in other special employment programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each organization maintains its contracts, records of the qualifications, performance, and evaluation of the contractor, and related correspondence. For public service employment program participants, Human Resources maintains information related to job placement such as test scores, interest inventories, and supervisor's evaluations. Payment information is maintained by the Controller.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Comprehensive Employment and Training Act, Pub. L. 93–203, 87 Stat. 839; Executive Order 11222; Executive Order 10450; Executive Order 10577;

provisions of 5 U.S.C. applicable to employment with TVA; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To transmit reports as requested to the Office of Personnel Management, pursuant to 5 U.S.C. 3323, Executive Orders 10577 and 10450, and other laws.

To report earnings information to the Internal Revenue Service and the Social Security Administration.

To respond to a request from a Member of Congress regarding the status of a contractor or consultant.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transmit to the appropriate State contracting agency reports of hours worked by participants in the public service employment program, and to request reimbursement.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA consultant or personal service contractor: Job descriptions, dates of employment, and reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by name, social security number, or contract number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Human Resources, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know if records on them are maintained in the system should address inquiries to the system manager named above. Requests shall include the individual's full name, employing or contracting organization, and whether the individual was a participant in the public service employment program. Social security numbers are not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions, former employers, and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity of fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–21

SYSTEM NAME:

Nuclear Assurance Personnel Records-TVA.

SYSTEM LOCATION:

Nuclear Assurance, TVA, Chattanooga, TN 37402–2801.

Copies of records for Quality Assurance personnel are maintained for the General Manager, Nuclear Assurance in the Enterprise Document Management System.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, or contractors involved in quality assurance work.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the qualifications of employees or contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233 as implemented at Nuclear Regulatory Commission Regulatory Guides 1.58 and 1.146.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission or its authorized representatives for inspection or evaluation of TVA Quality Assurance procedures.

To respond to a request from a Member of Congress regarding the status of an employee.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigation and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic files.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Manager, Nuclear Assurance, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name and employing organization.

RECORD ACCESS PROCEDURE:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from subsection (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. The exemption is pursuant to 5 U.S.C. 552a(k)(5) and TVA regulations at 18 CFR 1301.24.

TVA–22

SYSTEM NAME:

Questionnaire-Land Use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant-TVA.

SYSTEM LOCATION:

Environmental Radiological Monitoring and Instrumentation, Radiological and Chemistry Services, Engineering and Technical Services, TVA, Muscle Shoals, AL 35662–1010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from whom TVA purchases land for proposed nuclear plant sites, individuals having vegetable gardens, irrigated land, dairy cows, and milk goats within a five-mile radius of a proposed or licensed plant site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to agriculture, milk consumption, water resources, and farm product value.

This information is not used for making determinations about the rights, benefits, or privileges of any individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; National Environmental Policy Act, Pub. L. 91–190, 83 Stat. 852; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used in developing environmental evaluations and impact statements. Certain relevant but nonsensitive information may be disclosed in these statements. Information may also be used:

In administrative and licensing proceedings including the presentation

of evidence and disclosure to opposing counsel in the course of discovery.

To disclose to any agency of the Federal Government having oversight or review authority with regards to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfilm, microfiche, and in file folders

RETRIEVABILITY:

Records are indexed by assigned number and aerial photo number and/or name of survey participant, plant site and year of survey.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Security is provided by physical, administrative and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals or are locked when unattended.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Environmental Radiological Monitoring and Instrumentation, TVA, Muscle Shoals, AL 35662–1010.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained in this system are aware of that fact through response to the questionnaire. However, inquiries may be addressed to the system manager named above. Requests should include the individual's full name, address, and approximate date of survey.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name, address, and approximate date of survey.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains: the nearest resident, to a distance of 5 miles, in each of the 16 compass sectors around each TVA nuclear site; farms with dairy cows or milk goats within a five mile radius of each site and additional dairy farms used as control locations for environmental monitoring; and individuals within a five mile radius of each site with home gardens meeting the survey criteria.

TVA–23

SYSTEM NAME:

Radiation Dosimetry Personnel Monitoring Records—TVA.

SYSTEM LOCATION:

Radiological Control Department, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and visitors who might be exposed or are exposed to radiation while in TVA installations.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Information on the magnitude of exposure at TVA installations, exposure prior to employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233; 10 CFR parts 19, 20.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission for its use in evaluating TVA radiological control measures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

Radiation dosimetry records may be used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items of radiation dosimetry data to health-related agencies, organizations, or professionals for the purpose of compiling vital health statistics, or conducting biomedical investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfilm, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by individual name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Security is provided by physical, administrative and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals or are locked when unattended.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Radiological and Chemistry Services, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals should address inquiries to the system manager named above, or if a current employee, to the Radiological Control office at the TVA facility where employed. Requests should include the individual's full name, social security number and date of birth.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above, or if a current employee, to the Radiological Control office at the TVA facility where employed. Requests should include the

individual's full name, social security number and date of birth.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the subject individual; previous licensees where the individual was monitored for radiation exposure; and TVA personnel conducting radiation monitoring programs.

TVA–26

SYSTEM NAME:

Retirement System Records—TVA.

SYSTEM LOCATION:

Retirement Services, TVA, 400 W. Summit Hill Drive, Knoxville, TN 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active, retired, and former members of the TVA Retirement System; TVA employees and former employees who are members of the Civil Service Retirement System and the Federal Employees Retirement System; designated beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information; retirement, benefit, and investment information; related correspondence; and legal documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings to the Internal Revenue Service.

To disclose information to actuarial firms for valuation and projecting benefits.

To disclose information to the Medical Board of the TVA Retirement System for determinations related to disability retirement.

To certify insurance status to the Office of Personnel Management and the Office of Federal Employees' Group Life Insurance.

To respond to a request from a Member of Congress regarding the status of a system member.

To disclose information to auditing firms for use in auditing benefit calculations and financial statements.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision within the purpose of this system of records.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the issuance of any benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide the TVA Retirees Association with names and mailing addresses of other retired members and retired employees.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To Contractors and subcontractors of TVA or the Retirement System who are provided records maintenance or other similar support service to the Retirement System.

Retirement records may be used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items to health-related agencies, organizations, or professionals for the purpose of compiling vital health statistics, or conducting biomedical investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a computerized magnetic disk system and in file folders.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of the computerized magnetic disk system requires security access codes and are limited to those persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records in the magnetic disk system and files are scheduled for disposal in accordance with an approved TVA retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Retirement Services, TVA, 400 W. Summit Hill Drive, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name, date of birth, and social security number.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained on them in this system should address inquiries to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel and payroll records.

TVA–28

SYSTEM NAME:

Woodland Resource Analysis Program Input Data—TVA.

SYSTEM LOCATION:

Secured off-site storage facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private landowners, agencies, and corporations owning woodlands in Valley region and participating in TVA

woodland resource management demonstration program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal, financial, and land resource information pertinent to woodland resource planning. The information in this system is not used by TVA in the determination about the rights, benefits, or privileges of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Evaluated information is supplied to State forestry personnel for use in assisting the landowner.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on microfiche.

RETRIEVABILITY:

Records are indexed by State.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are retained for 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Resource Stewardship, TVA, Norris, TN 37828.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, State of residence, and the calendar year(s) of participation in the program.

RECORD ACCESS PROCEDURE:

Individuals on whom records are maintained have been provided copies of all information in that record. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains provides the information to State forestry personnel. The information is evaluated by TVA and returned to the State forestry personnel who utilize the information in evaluated form to assist the landowner.

TVA–29

SYSTEM NAME:

Electricity Use, Rate, and Service Study Records—TVA.

SYSTEM LOCATION:

TVA Customer Service & Marketing, Pricing, PO Box 292409, HRI–2P, Nashville, TN 37229–2409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals residing in households which are participating in electricity use, rate, and service studies including those receiving electricity conservation assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about an individual's income; employment; family size; characteristics of his dwelling, including type of heating and cooling systems and number and kind of appliances; and other characteristics of study participants relevant to patterns of residential electrical use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To distributors and contractors assisting TVA in the study.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in locked file cabinets.

RETRIEVABILITY:

Records are indexed by an identification number assigned to each household.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Survey information will be retained until completion of the program and for seven years thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager of Pricing, TVA, PO Box 292409 HRI–2P, Nashville, TN 37229–2409.

NOTIFICATION PROCEDURE:

Individuals about whom information is maintained in this system of records are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Request should include the individual's full name and address.

RECORD ACCESS PROCEDURES:

Requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORDS SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains.

TVA–30

SYSTEM NAME:

LAND BETWEEN THE LAKES Mailing Lists—TVA.

SYSTEM LOCATION:

LAND BETWEEN THE LAKES, TVA, Golden Pond, KY 42211–9001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons using, visiting, or having an interest in the activities, programs, or facilities of LAND BETWEEN THE LAKES.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, address, and information about their LAND BETWEEN THE LAKES associated interests, activities, or program participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order No. 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide mailing lists to organizations or TVA contractors cooperating with LAND BETWEEN THE LAKES in activities or events for the purpose of publicizing activities or events.

To provide mailing lists to an independent LAND BETWEEN THE LAKES support organization for the purposes of soliciting members for the organization.

To provide mailing lists to nonprofit conservation organizations, having missions related to that of LAND BETWEEN THE LAKES, for the purpose of soliciting memberships in such organizations.

To provide mailing lists to students or faculty of educational institutions for the purposes of research.

To provide mailing lists to participants in LAND BETWEEN THE LAKES Leadership Training programs for the purpose of facilitating communication among participants.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on card files, automated data storage devices, and computer printouts.

RETRIEVABILITY:

Records are primarily indexed by name and identification code. They may also be retrieved by reference to interests, organization, or address elements.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Access facilities are secured through physical administrative, and system-based safeguards.

RETENTION AND DISPOSAL:

Records are kept for the period of time the individual is to receive mailings.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of LAND BETWEEN THE LAKES, TVA, Golden Pond, KY 42211–9001.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address their inquiries to the system manager named above. Request should include the individual's full name and address.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their requests to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, organization representatives, and TVA employees.

TVA–31

SYSTEM NAME:

OIG Investigative Records—TVA.

SYSTEM LOCATION:

Office of the Inspector General, TVA, Knoxville, TN 37902–1499. Duplicate copies of certain documents may also be located in the files of other offices and divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG), or who provide information in connection with such investigations, including but not limited to: Employees; former employees; current or former contractors and subcontractors and their employees; consultants; and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (e.g., coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority, and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987; and Inspector General Act Amendments of 1988, Pub. L. 100–504, 102 Stat. 2515.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters, or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutive, investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual, or to report to a Member on the results of investigations, audits, or other activities of OIG.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the subjects of an investigation and their representatives in the course of a TVA investigation of misconduct; to any other person or entity that has or may have information relevant to the investigation to the extent necessary to assist in the conduct of the investigation, such as to request information.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant or potentially relevant information; and to request information from private individuals or entities, if necessary, to acquire information pertinent to the hiring, retention, or promotion of an employee; the issuance of a security clearance; the conduct of a background or other investigation; or other matter within the purposes of this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or case file number.

SAFEGUARDS:

Access to and use of records is limited to authorized staff in OIG and to other authorized officials and employees of TVA on a need-to-know basis as determined by OIG management. Security will be provided by physical, administrative, and computer system safeguards. Files will be kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3); (d); (e)(1); (4)(G); (4)(H); and (4)(I); and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

TVA–32

SYSTEM NAME:

Call Detail Records-TVA.

SYSTEM LOCATION:

Data Center, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees, contractor personnel, and other individuals who make telephone calls from or charge telephone calls to TVA telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of TVA telephones, records relating to long distance telephone calls charged to TVA; records indicating assignment of telephone numbers and authorization numbers; records relating to locations of TVA telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To a telecommunications company as well as to other TVA contractors providing telecommunications support to permit servicing the account.

To TVA contractors engaged at TVA's direction in investigations of abuse of TVA telephone service or other related issues.

To TVA contractors and contractor personnel to determine individual responsibility for telephone calls.

To TVA contractors in connection with amounts due TVA for telecommunications services provided to them.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are retrieved by name, authorization number, or telephone number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Automated data is secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Network Services, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in

this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

TVA Telecommunication Control System; telecommunications companies with which TVA contracts for telephone service; telephone and authorization number assignment records; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

TVA–34

SYSTEM NAME:

Project/Tract Files—TVA.

SYSTEM LOCATION:

Realty Administration, TVA, Chattanooga, TN 37402–2801, and secured off-site storage facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or business entities from/to whom TVA is in the process of or has (1) acquired, transferred, or sold land or landrights, (2) made payment for construction, maintenance, or other damage to real property, or (3) made payment for relocation assistance. A project/tract file may name more than one individual and/or business entity involved in a transaction. (The system records that pertain to individuals and reflect personal information are subject to the Privacy Act. Noncovered records include public information and records on corporations and other business entities.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Maps, property descriptions, appraisal reports, and title documents on real property; reports on contracts and transaction progress; contracts and options; records of investigations, claims, and/or payments related to land transactions, damage restitution, and relocation assistance; related correspondence and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Pub. L. 87–852, 76 Stat. 1129; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To lienholders as necessary to secure subordinations or releases of liens or to protect lienholders rights.

To county clerk and register of deeds offices to document and put on record the title acquired by TVA.

To landowners, prospective landowners, claimants, or trespassers to establish or cure titles, to resolve encroachments, to resolve boundary disputes, or to resolve questions about easement rights or the application of Section 26a of the TVA Act 16 U.S.C. 831y-1.

To contractors to secure appraisals and title abstracts.

To request information from a Federal, State, or local agency or from private individuals, as necessary, to obtain information relevant to a TVA decision to acquire or dispose of property or to pay claims or make payments related to land transactions, damage restitution, and relocation assistance.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To report any required information to Federal, State, and local taxing authorities as required by law.

To genealogical researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years, to establish historical records.

To archaeological researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years, to reconstruct historical settings.

To respond to a request from a Member of Congress regarding the status of a matter relating to a specific project or tract.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on registers, index and aperture cards, microfilm, in file folders, and/or on automated data storage devices.

RETRIEVABILITY:

Records are primarily indexed by tract number and project symbol. Records may also be retrieved by cross-index reference to individual and business entity names.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Realty Administration, TVA, 1101 Market Street, EB 4A, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and, to the extent known, any project/tract identifying information such as the project name, tract number, address, or related data.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name, and to the extent known, any project/tract identifying information such as project name, tract number, address, or related data. Access will be granted only to individually segregable personal information about the requester and to segregable nonpersonal information in accordance with TVA regulations on release of records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their requests to the system manager named above.

RECORD SOURCE CATEGORIES:

Public records and directories, landowners, tenants, and other individuals and business entities (including financial institutions) having an interest in or knowledge related to land ownership, appraisal, or title history; TVA personnel and contractors including independent appraisers and commercial title companies.

TVA–36

SYSTEM NAME:

Section 26a Permit Application Records—TVA.

SYSTEM LOCATION:

For applications involving private facilities located on TVA reservoirs, such as boathouses, piers, docks, launching ramps, marine railways, beaches, utilities, and ground improvements, the records are maintained in the following locations:

—Facilitator, TVA, 17 Ridgeway Road, Norris, TN 37828 (Norris).
—Facilitator, TVA, 804 Highway 321 North, Suite 300, Lenoir City, TN 37771–6440 (Fort Loudon, Tellico, and Fontana).
—Facilitator, TVA, Heritage Federal Bank Bldg, 4105 Fort Henry Dr., Suite 218, Kingsport, TN 37663 (Boone, Bristol Project, Watauga, Wilbur, Ft. Patrick Henry, and South Holston).
—Facilitator, TVA, 4833 Highway 58, Chattanooga, TN 37416 (Chickamauga and Nickajack).
—Facilitator, TVA, 201 Old Murphy Road, Murphy, NC 28906 (Hiwassee, Chatuge, Blue Ridge, Nottely, Appalachia, and Ocoees).
—Facilitator, TVA, 2009 Grubb Road, Lenior City, TN 37771 (Watts Bar and Melton Hill).
—Facilitator, TVA, 2611 West Andrew Johnson Highway, Morristown, TN 37814–3295 (Cherokee and Douglas).
—Facilitator, TVA, 2325 Henry Street, Guntersville, AL 35976–1868 (Guntersville).
—Facilitator, TVA, 119 County Road No. 412, Town Creek, AL 35672–8789 (Great Falls, Tims Ford, Normandy, and Wheeler).
—Facilitator, TVA, 202 West Blythe Street, Post Office Box 280, Paris, TN 38242–2080 (Kentucky, Beech River, and Columbia).
—Facilitator, TVA, Reservation Road, Post Office Box 1010, Muscle Shoals, AL 35662–1010 (Pickwick, Bear Creek, and Wilson).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes individuals who have filed a Section 26a application for approval of construction of such structures as boat ramps, docks, bridges, and dams located along, across, or in the Tennessee River and its tributaries. Also included in this system may be individuals whose structures do not have Section 26a permits, or whose approved structures have deteriorated so as to pose a threat to navigation, flood control, public lands or reservations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section 26a permit applications made by individuals, businesses and industries, utilities, and Federal, State, county and city Government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

PURPOSE(S):

Section 26a of the Tennessee Valley Authority Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and the environment and determine if the project can be approved. Rules on the application for review and approval of such plans are published in 18 CFR part 1304, Approval of Construction in the Tennessee River System and Regulation of Structures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To State or other Federal agencies for use in program evaluation, providing assistance to program participants, or engaged at TVA's direction in providing support services to the program, to the extent necessary to the performance of those services.

To TVA consultants, contractors, subcontractors or individuals who contract or subcontract with TVA, who are engaged in studies and evaluation of TVA's administration or other matters involving its Section 26a program or who are providing support services to the program, to the extent necessary to the performance of the contract.

To provide information to a Federal, State, or local entity in response to its request, in connection with the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant and necessary to the requesting agency's decision on such matters.

To respond to a request from a Member of Congress regarding the status of a specific application.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, on microfilm, and in hard copy files.

RETRIEVABILITY:

Records may be retrieved by personal identifier (name of applicant), land tract number, or Section 26a application number, stream location, reservoir, county, or subdivision. Records in field offices are interfiled with land tract records and are retrieved by land tract number.

SAFEGUARDS:

Access to and use of these records are limited through physical, administrative, and computer system safeguards to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Resource Stewardship, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name. A land tract number, Section 26a permit application number, stream location or legal property description is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system is solicited from the individual to whom the record pertains. Information may also be obtained from other Federal, State, county or city Government agencies; public records and directories; landowners, tenants, and other individuals and business entities, including financial institutions, having an interest in or knowledge related to land ownership, appraisal, or title history; and TVA personnel and contractors including independent appraisers and commercial title companies.

TVA–37

SYSTEM NAME:

U.S. TVA Police Records—TVA.

SYSTEM LOCATION:

U.S. TVA Police, TVA, 400 West Summit Hill Drive, SPT 5A, Knoxville, Tennessee 37902–1499. Duplicate copies of certain documents may also be located in the field offices of the various U.S. TVA Police Districts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who relate in any manner to official U.S. TVA Police investigations into incidents or events occurring within the jurisdiction of TVA, including but not limited to suspects, victims, witnesses, close relatives, medical personnel, and associates who have relevant information to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals including, but not limited to, current or former employees; current or former contractor and subcontractor personnel; visitors and other individuals that have or are seeking to obtain business or other relations with TVA; individuals who have requested and/or have been granted access to TVA buildings or property, or secured areas within a building or property.

D. Individuals who are the subject of research studies including, but not limited to, crime profiles, scholarly journals, and news media references.

E. Individuals who respond to emergency situations at TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to case investigation reports on all forms of incidents or events, visitor and employee registers, TVA forms authorizing access for individuals into TVA buildings or secured areas within a building, and historical information on an individual's building access or denial of access; U.S. TVA Police Uniform Incident Reports (UIRs) on incidents or events; visitor and employee registers, TVA forms, or permits authorizing access for individuals into TVA buildings, property, or secured areas within buildings or property, and historical information on an individual's access or denial of access within buildings or property; the U.S. TVA Police confrontational data base; emergency personnel information data bases; permit applications under the Archaeological Resources Protection Act (ARPA); risk, security, emergency preparedness, and fire protection assessments conducted by the U.S. TVA Police on facilities, property, or officials; research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to U.S. TVA Police personnel; an index of all detected trends, patterns, profiles and methods of operation of known and unknown criminals whose records are maintained in the system; an index of the names, address, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the U.S. TVA Police; an index of public record sources for historical, statistical, geographic, and demographic data; and an alphabetical name index of all individuals whose records are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 5 U.S.C. 552a; and 28 U.S.C. 534.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the appropriate official agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

In litigation where TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, information may be disclosed to respond to process issued under color of authority of a court of competent jurisdiction.

To provide information to a Federal, State, or local entity in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter, or in connection with any other matter properly within the jurisdiction of such other agency and related to its responsibilities to prosecute, investigate, regulate, and administrate, or other responsibilities.

To any Federal, State, local or foreign Government agency directly engaged in the criminal justice process where access is directly related to a law enforcement function of the recipient agency in connection with the tracking, identification, and apprehension of persons believed to be engaged in criminal activity.

To an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding or if deemed necessary, to elicit information or cooperation from the recipient for use by TVA in the performance of an authorized activity.

To an organization or individual in the public or private sector where there

is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

To the news media and general public where there exists a legitimate public interest such as obtaining public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of criminal behavior; notifying the public and/or media of arrests; protecting the public from imminent threat to life or property where necessary; and disseminating information to the public and/or media to obtain cooperation with research, evaluation, and statistical programs.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To appropriately respond to congressional inquiries on behalf of constituents.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in locked file cabinets, either in hard copy or on microfilm at the U.S. TVA Police offices in Knoxville, TN. The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. In addition, some of the information is stored in computerized data storage devices at the U.S. TVA Police offices in Knoxville, TN. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on computer printed listings.

RETRIEVABILITY:

On-line computer access to U.S. TVA Police files is achieved by using the following search descriptors:

A. The names of individuals, their birth dates, physical descriptions, social security numbers, and other identification numbers, such as Uniform Incident Report numbers.

B. As previously described, summary variables contained on Uniform Incident Reports submitted to the U.S. TVA Police.

C. Key word citations to research studies, scholarly journals, textbooks, training materials, and news media references.

SAFEGUARDS:

Records are maintained in restricted areas and are accessed only by U.S. TVA Police employees. Security is provided by a comprehensive program of physical, administrative, personnel, and computer system safeguards. Access to and use of records is limited to authorized U.S. TVA Police personnel and to other authorized officials and employees of TVA on a need-to-know basis. Sensitive or classified information in electronic form is encrypted prior to transmission to ensure confidentiality, security, and to prevent interception and interpretation.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules. U.S. TVA Police will conduct periodic review to determine if these records are historical and should be placed in permanent files after established retention periods and administrative needs of the U.S. TVA Police have elapsed. As deemed necessary, certain records may be subject to restricted examinations by 44 U.S.C. 2104.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. TVA Police, TVA, 400 West Summit Hill Drive, SPT 5A, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3); (d); (e)(1), (e)(G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24. This system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) pursuant to 5 U.S.C. 552(j)(2) and TVA regulations at 18 CFR 1301.24.)

TVA–36

SYSTEM NAME:

Wholesale and Retail Data System—TVA.

SYSTEM LOCATION:

Customer Service and Marketing, Nashville, TN 37229–2409, and Customer Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA wholesale and retail customers' key personnel and governing bodies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, emergency numbers, interests, key dates, associates, and credentials of TVA's wholesale and retail customers and their officers and other personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To respond to a referral from a Member of Congress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices.

RETRIEVABILITY:

Records are organized by wholesale and retail customer name and indexed by individual's name.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in a secured database. Access requires a login ID and password.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Project Manager, Customer Service, TVA, P.O. Box 292409, Nashville, TN 37229–2409.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employer.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The information for this system is obtained from TVA's wholesale and retail customers and their personnel.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 99–13535 Filed 5–28–99; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week of May 21, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5694.
Date Filed: May 17, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0062 dated 20 April 1999 (Issuance)
PTC2 ME 0064 dated 14 May 1999 (Adoption)
Mail Vote 997—Resolution 010d
TC2 Special Passenger Amending Resolution Within
Middle East Fares from Bahrain, Oman, Qatar, United
Arab Emirates
Intended effective date: 1 June 1999.

Docket Number: OST–99–5695.
Date Filed: May 17, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR–ME 0074 (Re-issue) dated 21 April 1999 (Issuance)
PTC2 EUR–ME 0076 dated 14 May 1999 (Adoption)
Mail Vote 998—Resolution 010e
TC2 Special Passenger Amending Resolution Europe-Middle
East Fares from Bahrain, Oman, Qatar, United Arab Emirates
Intended effective date: 1 June 1999.

Docket Number: OST–99–5703.
Date Filed: May 18, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0453 dated 18 May 1999
Mail vote 996—Resolution 024e
Rules for Payment of Local Currency Fares (Amending)
Intended effective 15 June 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–13807 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on 12 currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the 12 currently approved public information collection activities which will be submitted to OMB for review and renewal:

1. 2120–0014, Procedures for Non-Federal Navigation Facilities—FAR 171. The respondents are an estimated 1300 facility sponsors. The estimated annual burden is 20,800 hours. *Abstract:* The non-Federal navigation facilities are aids to air navigation which are purchased, installed, operated and maintained by a public entity other than the FAA and are available for use by the flying public. Navigation aids may be located at unattended remote enrollee sites or at manned airport terminal locations.

2. 2120–0015, FAA Airport Master Record. The respondents are approximately 14,300 civil airports. The estimated annual burden is 4,500 hours. *Abstract:* 49 USC 329(b) empowers and directs the Secretary of Transportation to collect and disseminate information on civil aeronautics. Aeronautical information is required by the FAA in order to carry out FAA missions related to safety, flight planning, forecasting, airport engineering, and Federal grants analyses. The data is the basic source of data for private, state, Federal and governmental aeronautical charts and publications.

3. 2120–0044, Rotorcraft External Load Operator Certificate Application—FAR 133. The respondents are an estimated 400 rotorcraft external load operators. The estimated annual burden is 3,300 hours. *Abstract:* 14 CFR part 133, was adopted to establish certification and operating rules governing nonpassenger-carrying rotorcraft external-load operations conducted for compensation or hire. As such, the FAA requires information in order to maintain its regulatory responsibilities.

4. 2120–0060, General Aviation and Air Taxi Activity and Avionics Survey. The respondents are approximately 21,000 owners of general aviation aircraft. The estimated annual burden is 5,300 hours. This information is used by FAA, NTSB, and other government agencies, the aviation industry, and others for safety assessment, planning, forecasting, cost/benefit analysis and to target areas for research.

5. 2120–0098, Aircraft Operator Security, 14 CFR part 108. The respondents are an estimated 270 air carriers. The burden hours are an estimated 11,000 hours. The security programs identify the procedures to be

used by air carriers in carrying out their responsibilities under the law to protect persons and property on an aircraft operating in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy.

6. 2120–0535, Anti Drug-Abuse Program for Personnel Engaged in Specified Aviation Activities. The respondents are an approximate 5,500 specified aviation employers. The estimated annual burden is 35,500 hours. *Abstract:* FAA regulations require specified aviation employers to implement and conduct FAA approved anti-drug-plans. They monitor program compliance, institute program improvements, and anticipate program problem areas. The FAA receives drug test reports from the aviation industry. More detailed and specified information is necessary to effectively manage the anti-drug program.

7. 2120–0572, Operating Procedures for Airport Traffic Control towers (ATCT) that are not Operated by or Under Contract with the United States (non-Federal Advisory Circular (AC) 90–93). The respondents are an estimated 65 non-Federal airport traffic control tower venders, managers, and air traffic controllers. The estimated annual burden is 2,300 hours. *Abstract:* The FAA is requesting operators of non-Federal ATCT's to voluntarily comply with the recommendations as stated in the Advisory Circular as well as to voluntarily submit information by using the listed forms, in the same manner as is currently prescribed for FAA air traffic personnel.

8. 2120–0576, Kansas City Customer Satisfaction Questionnaire. The respondents are 100 general aviation pilots, air taxi operators, airlines, military pilots, and adjacent facilities. The estimated annual burden is 25 hours. *Abstract:* The information collected on this form represents customer feedback concerning the quality of service provided to the users of Kansas City ARTCC airspace. This information may be used to solve problems, improve safety, and increase system efficiency.

9. 2120–0577, Explosives Detection Systems Certification Testing. The respondent is the manufacturer of explosives detection systems. The estimated annual burden is 750 hours. *Abstract:* Pub. L. 101–604 requires the FAA Administrator to certify explosives detection systems, pursuant to protocols developed outside the agency, prior to mandating their use. The information is necessary for the FAA to perform certification testing on systems submitted by manufacturers.

10. 2120–0578, Training and Checking in Ground Icing Conditions. The respondents are an estimated 25 new air carriers. The estimated annual hours is 1,000 hours. *Abstract.* The required collection that respondents must prepare and submit to the FAA contains those airplane ground deicing/anti-icing policies and procedures that ensure the highest level of safety during icing conditions.

11. 2120–0604, Aviation Medical Examiner Program. The respondents would be an estimated 450 people who desire to become aviation medical examiner. We estimate an annual burden of 225 hours. *Abstract:* The collection of information is for the purpose of obtaining essential information concerning the applicant's professional and personal qualifications. The FAA uses the information provided to screen and select the designees who serve as aviation medical examiners. The collection of information is currently accomplished through the use of FAA Form 8520–2, Aviation Medical Examiner Designation Application.

12. 2120–0605, ACSEP Evaluation Customer Feedback Report. The information will be collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP). The agency will use the information as a customer service standard and to continually improve ACSEP. We estimate 450 respondents for a burden of 225 hours.

Issued in Washington, DC, on May 25, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–13821 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key Field Airport, Meridian, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose the revenue and use the revenue from a PFC at Key Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 1, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports District Office, Federal Aviation Administration, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Tom Williams, Executive Director of the Meridian Airport Authority at the following address: Post Office Box 4351, Meridian, MS 39304–4351.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Meridian Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, FAA Airports District Office, 120 North Hanger Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number (601) 965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose the revenue from and use the revenue from a PFC at Key Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 20, 1999, the FAA determined that the application to impose the revenue from and use the revenue from a PFC submitted by Meridian Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 10, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–06–C–00–MEI.

Level of the proposed PFC: $3.00

Proposed charge effective date: September 1, 2002.

Proposed charge expiration date: May 1, 2004.

Total estimated PFC revenue: $148,000.

Brief description of proposed project(s): Rehabilitate Beacon; Rehabilitate Security Fencing; Rehabilitate Emergency Access Road; Rehabilitate Runway 1/19 HIRL and Taxiway B MITL; Replace Terminal Seating; Rehabilitate General Aviation Ramp; and Update Master Plan.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Meridian Airport Authority.

Issued in Jackson, Mississippi, on May 20, 1999.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 99–13822 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Adirondack Scenic Railroad

Docket Number FRA–1999–5515

Adirondack Scenic Railroad (ADCX) seeks a permanent waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.11, and 223.15, that requires certified glazing, for one locomotive and seven passenger cars utilized on the Old Forge train, and a temporary waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.15, that requires certified glazing, for seven passenger cars utilized on the Utica train. The ADCX is located in Thendara, New York, and in Utica, New York. The railroad states that it operates tourist excursions over 20 miles of track from Thendara, New York (Old Forge train), six days a week, four trips a day, and a 104-mile round trip excursion from Utica, New York, two round trips on weekends, one round trip weekdays. Maximum operating speed does not exceed 30 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–5515) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on May 21, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–13790 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favour of relief.

Mc Cloud Railway Company

(Docket Number FRA–1998–4855)

The Mc Cloud Railway Company (MCR) seeks a waiver of compliance from 49 CFR 230.108 (b) (which requires that main air reservoirs shall be hammer tested over its entire surface not less then once every 18 months) for steam locomotive number 25. MCR would like to substitute ultrasonic testing of the reservoir in lieu of hammer testing. Ultrasonic testing would be performed each time the locomotive is shopped for general repairs, but not less frequently then once each 18 months. The railroad feels that ultrasonic testing will provide a more accurate evaluation of the reservoir's condition than hammer testing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1998–4855) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days from the publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on May 21, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–13789 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No.: FRA–1999–5432.

Applicant: Belt Railway Company of Chicago, Mr. Charles S. Ridgeway, Signal Supervisor/Manager, 6900 South Central Avenue, Bedford Park, Illinois 60638.

The Belt Railway Company of Chicago seeks approval of the proposed temporary discontinuance of the signal system, on all tracks within interlocking limits, at East End Switches Interlocking Plant, in Chicago Illinois, for approximately three months, during construction associated with the complete upgrading and replacement of the power-operated switches and interlocking signal system.

The reason given for the proposed changes is the need to replace the 1950's, installed electro-pneumatic switch machines and all-relay interlocking, with new dual-control, electric switch machines and new microprocessor-based interlocking, associated with significant track changes.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 21, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–13788 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No.: FRA–1999–5430.

Applicant: Union Pacific Railroad Company, Mr. P. M. Abaray, Chief Engineer Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the Hope Industrial Lead, between Herington, Kansas, milepost 451.4 and Hope, Kansas, milepost 459.2, on the Herington Subdivision, a distance of approximately 7.8 miles.

The reason given for the proposed changes is that rails have been removed in both directions from the industrial lead and train movements are infrequent so signals are no longer needed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 21, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–13786 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No: FRA–1999–5431.

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the signal system at Katy Neck, milepost 1.6, near Houston, Texas, on the Glidden Subdivision, including conversion of the interconnecting track between Harrisburg Junction and Manchester Junction to dark yard limits, and removal of the electrically locked gate.

The reason given for the proposed changes is that due to changes in train operations, the electrically locked gate at Katy Neck causes unnecessary train delays.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 21, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4033; Notice 2]

Cosco, Inc.; Denial of Application for Decision of Inconsequential Noncompliance

Cosco, Incorporated, of Columbus, Indiana, has determined that a number of child restraint systems that it manufactured fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR part 573, "Defects and Noncompliance Reports." Cosco has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 " "Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on July 22, 1998, in the **Federal Register** (63 FR 39359). We received no comments.

FMVSS No. 213, S5.4.3.5(b), requires that, after the dynamic test of S6.1 of the standard, when tested in accordance with the appropriate sections of S6.2 of the standard, any buckle in a child restraint system belt assembly designed to restrain a child using the system shall release when a force of not more than 71 Newtons (N) (16 pounds) is applied, provided that the conformance of any child restraint to this requirement is determined using the largest of the test dummies specified in S7 for use in testing that restraint when the restraint is facing forward, rearward, and/or laterally. Additionally, S5.4.3.5(e) requires that any buckle in a child restraint system belt assembly designed to restrain a child using the system shall not release during the dynamic testing specified in S6.1 of the standard.

Four Cosco Touriva T-shield convertible child restraints, Model 02–096, were tested at Calspan Corporation as part of NHTSA's child restraint compliance testing program. When tested with the 3-year-old dummy in the upright position, the plunger pin of the buckle assembly of one of the seats was sheared, and the buckle released during the dynamic test. Following a retest of another seat conducted using the same configuration, the post-test buckle release force exceeded 71 N (77.8 N, or 17.5 lb). The post-test release forces for units tested with the infant dummy and with the 3-year-old dummy in the reclined position did not exceed 71 N.

We notified Cosco of the test failures noted above, as documented in Calspan Report Number 213–CAL–96–013. Following that notification, Cosco conducted its own investigation, in which it obtained results that, in some cases, were similar to those in our tests. Thereafter, Cosco notified us of its determination that it manufactured and distributed a number of Touriva convertible child restraint systems that do not comply with the above requirements. The units covered by that determination are those Touriva T-shield models manufactured from May 1, 1996, through November 26, 1997, as follows: Touriva Convertible Safe T-Shield, Full Wrap Fabric Cover (Model 02–084, 5/96 to 11/97, quantity: 11,018); Touriva Convertible Safe T-Shield, Partial Wrap Fabric Cover (Model 02–094, 5/96 to 11/97, quantity: 7,202); Touriva Convertible Safe T-Shield, Full Wrap Fabric Cover with Pillow (Model 02–096, 5/96 to 10/97, quantity: 1,411); Touriva Convertible Safe T-Shield, Partial Wrap Vinyl Cover (Model 02–404, 5/96 to 5/97, quantity: 682); Touriva Convertible Safe T-Shield, Partial Wrap Fabric Cover (Model 02–821, 5/96 to 11/97, quantity: 186,040).

Cosco supports its application for a determination of inconsequential noncompliance with the following:

Cosco was able to obtain units manufactured both on and near the dates in question as well as subsequent production units. After extensive in-house dynamic testing and analysis, units were sent to Calspan for testing. Cosco made repeated trips to Calspan in an attempt to understand and resolve this potential noncompliance. Cosco was able to obtain results in isolated tests similar to that of the FY96 NHTSA tests. Cosco was not able to attribute the potential noncompliance to the design or manufacture of any particular component. We ran dozens of in-house tests and spent hundreds of hours in an effort to determine the reason isolated units manufactured on or after 5/10/96 were inconsistently exhibiting high post-test buckle release pressure and shearing of the plunger pin. The results have been inconsistent. The T-shield units involved in NHTSA's FY97 test program tested successfully, but were of identical construction and design to those which failed the FY96 testing.

Since the Touriva T-shield models were first introduced in 1994, Cosco has required the vendor who is molding the housing and plunger pin and assembling the buckle assembly housing, spring and plunger pin to perform a pretest buckle release pressure on *each* assembly. No buckle assembly exhibiting a pretest buckle release pressure of over 13 lb nor under 10 lb has ever been used in the production of any Touriva convertible child restraint, including the T-shield units in question. In searching for possible explanations for the isolated deficiencies, Cosco made a material change to the housing

of the buckle assembly and the material of the plunger pin. This material change has resulted in eliminating any potential noncompliance related to both the high post-test buckle release pressure and the shearing of the plunger pin, although the minimal differences in properties between the materials does not adequately or conclusively explain the test results. All T-shield units manufactured after November 27, 1997 have a housing manufactured using 30% glass-filled nylon instead of ABS and a plunger pin using Delrin 100P versus Delrin 500. The T-shield units supplied for NHTSA FY98 testing had the new materials incorporated into the buckle assembly.

In its part 573 Report to the agency, Cosco stated that it:

* * * does not believe that any defect or repeatedly discernable noncompliance exists with the subject child restraint...While a small percentage of the Calspan tests performed on the subject units did exhibit noncompliance results, a vast majority of identical child restraints manufactured during the same period produced complying test results. Cosco concludes from this testing and our exhaustive analysis of the subject child restraints and testing procedures that the noncompliance test results are not the result of the design, materials, or manufacturing processes involved in the production of the subject child restraints, but rather test variables and anomalies that are inherent in the 213 test procedures.

In the summary of its application for inconsequential noncompliance, Cosco stated that it "does not believe the inconsistent deficiency exhibited by a few of the tested units warrants a recall." Cosco concluded that "reasonable evaluation of the facts surrounding this technical noncompliance will result in the decision that no practical safety issue exists."

We are denying Cosco's application for the following reasons.

Ultimately, the issue in this case is whether this particular noncompliance is likely to increase the risk to safety through an evaluation of the potential injuries that would be incurred by a child in the event that a seat exhibited the noncompliance at issue. Instead of assessing the gravity of the noncompliance based upon the likely consequences, Cosco simply attributes the noncompliant conditions to "test variables and anomalies that are inherent in the 213 test procedures." In essence, Cosco's primary contention appears to be that many of the seats in question would not have failed to meet the performance requirements of the standard. However, this claim is relevant only to the issue of whether a noncompliance exists in a particular seat or some number of seats, not whether the noncompliance has significant safety consequences. Cosco has failed to provide any information which would support a determination that these noncompliances do not create a significant safety risk. Thus, we are unable to reasonably conclude that existence of the acknowledged noncompliant condition is inconsequential to safety.

The purpose of the post-dynamic test buckle force requirement of S5.4.3.5(b) is to assure that adults can easily and quickly remove a child from the restraint following a crash. When we issued FMVSS No. 213 (44 FR 72131, December 13, 1979), we specified that buckles must release when a force of not more than 20 pounds was applied after conducting the dynamic systems test required by section S6.1 of the standard. After adoption of the standard, we received information indicating that at this force level, many adults would not be able to easily release the buckle. A report done for us by K. Weber and N.P. Allen concluded that a force of 20 pounds is difficult for most women to generate with one hand. We had also been provided with consumer letters received by one child restraint manufacturer commenting on the difficulty of operating the child restraint harness buckles, and had received numerous telephone calls from consumers complaining about the size of the release buttons on child restraint belts and the high force levels required to operate them.

We subsequently amended the requirement regarding the maximum allowable force to operate the buckle release mechanism following the dynamic sled test described in S6.1 of the standard from the original level of 20 pounds to 16 pounds (50 FR 33722, August 21, 1985). A research study conducted by Peter Arnberg for the National Swedish Road and Traffic Institute ("Handling Performance of Buckles on Child Seats with Regard to Opening Force Requirements", 1975) showed that a 20 pounds force requirement allowed buckles which require two hand operation by many adults, particularly adult females, and two hand operation is often awkward and may adversely affect safety in emergency situations. The Arnberg study showed that while two hands were necessary to operate buckles with a 80 N (18 pounds) release force, 95 percent of adult females tested were able to operate buckles with a 70 N (15.6 pound) release force with only one hand. While facilitating operation of buckles by one hand, this lower force was also considered sufficient to account for damage which might occur to the buckle during the impact test and to counter the forces which could be exerted on the buckle by a child hanging upside down in rollover crash conditions.

We have been consistent in the manner in which we have addressed other instances of noncompliances with the post-test buckle release force requirements in the past. Since 1992, three other child restraints have failed to satisfy these requirements in compliance tests. One of these cases is currently under investigation, while in the other two cases, the manufacturer recalled the affected seats. In one instance, the post-test buckle release force was measured three times at 16.4, 16.4, and 19.9 pounds—only marginally above the requirement of 16 pounds as stated in S5.4.3.5(b) of the standard.

When the Cosco Touriva T-shield (Model 02–096) was tested with the 3-year-old dummy in the upright position, the plunger pin of the buckle assembly was sheared, and the buckle released during the dynamic test. In a retest conducted using the same configuration, the buckle assembly did not release, but the post-test buckle release force was 77.8 N (17.5 lb). Testing performed by Calspan for Cosco in an effort to isolate the cause of these test failures yielded results identical to those found in our compliance testing program with respect to both failure types. Excluding a number of tests that appear to have been conducted outside of the FMVSS 213 test envelope, and others where the pre- and post-buckle release forces were not measured for some reason, Cosco notes that four of 40 tests resulted in the buckle releasing during the dynamic test while another four exceeded the allowable post-buckle release force. We do not agree with Cosco's assertion that a "small percentage of the Calspan tests performed on the subject units did exhibit noncompliance results," since we do not consider a failure rate of 20 percent to constitute a "small percentage." Moreover, as stated above, the percentage of seats covered by a noncompliance determination that actually will exhibit the noncompliance is not relevant to the issue of consequentiality. It is often not possible to identify precisely which vehicles or items of equipment covered by a noncompliance determination actually are noncompliant. The issue is whether the noncompliance is consequential to safety.

It is also important to note that in most instances where the buckle released during the dynamic test (both in NHTSA compliance tests and in tests performed for Cosco), the head excursion measurements were above the acceptable limit prescribed in section S5.1.3.1(a) of Standard No. 213, and in

at least one instance, the dummy was not retained within the restraint. Failure of the child restraint system in this manner increases the likelihood of head injury to the occupant, which is clearly not insignificant or inconsequential to safety.

Following the NHTSA compliance test failures, Cosco implemented a material change to the housing of the buckle assembly and the material of the plunger pin. Cosco incorporated these material changes into all T-shield restraints manufactured after November 27, 1997 (the effective date for this engineering change is December 5, 1997, as no soft shield units were produced between November 27 and December 5). Testing performed by Cosco has demonstrated that this material change has resulted in the elimination of any noncompliance related to both the high post-test buckle release force and the shearing of the plunger pin. Test results provided in Cosco's application show that some units manufactured as late as November 1997—immediately prior to incorporation of the material change—failed to meet the performance requirements of the standard because the buckle released during dynamic testing, head excursion exceeded 813 mm (32.0 inches), and in one case, the dummy was not retained within the restraint. All subsequent tests of units with the revised materials, including compliance tests performed for NHTSA, have yielded passing results. Despite this, in its application for decision of inconsequential noncompliance, Cosco contends that the "minimal differences in properties between the materials does not adequately or conclusively explain the test results."

However, if the material properties of the differing buckle assembly housing and plunger pin are virtually identical as stated by Cosco, T-shields manufactured with the new materials would be expected to exhibit inconsistent test results similar to those in question, specifically with respect to release of the buckle assembly during dynamic testing and excessive post-test buckle release forces. Testing of child restraint systems with the material change incorporated has not demonstrated this. Accordingly, we are unconvinced that the noncompliant conditions are simply attributable to "test variances and anomalies that are inherent in the 213 test procedures" as Cosco claims. Rather, these test results indicate that a recall by Cosco in which the earlier seats were modified by bringing them up to the performance level of the later seats would have a beneficial and "consequential" impact on safety.

In its application for decision of inconsequential noncompliance, Cosco states that:

> The public, upon seeing the number of recalls, concludes that child restraints currently available are unsafe and therefore declines to use them. The agency is aware and, in fact, has publicly advised consumers to use child restraints which have defects or noncompliances that have resulted in recalls until such child restraints can be corrected. This is in recognition of the fact that technical noncompliance does not compromise the overall effectiveness of child restraints.

We wish to clarify and correct the above statement. It is correct that we generally advise consumers to continue using child restraints which have identified defects or noncompliances until such a time when the appropriate remedy can be effected. However, this is in recognition that—in most cases—use of a child restraint with an identified defect or noncompliance is safer than the alternatives of (a) restraining the young child with a vehicle belt system that does not fit properly, or (b) not restraining the the child at all. In the absence of a grant of an inconsequentiality petition, we have never stated, nor implied, that a noncompliance—"technical" or otherwise—does not compromise the safety or effectiveness of child restraints.

In consideration of the foregoing, we have decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied.

(49 U.S.C. 30118, 30120, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on May 26, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13823 Filed 5–28–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4383; Notice 2]

Kolcraft Enterprises, Inc.; Denial of Application for Decision of Inconsequential Noncompliance

Kolcraft Enterprises of Chicago, Illinois, has determined that 706,068 child restraint systems it manufactured fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR part 573, "Defects and Noncompliance Reports." Kolcraft has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to safety.

Notice of receipt of the application was published on September 8, 1998, in the **Federal Register** (63 FR 47545), with a 30-day comment period. We received no comments.

FMVSS No. 213, S5.6.1.8, requires:

> In the case of each child restraint system that can be used in a position so that it is facing the rear of the vehicle, the instructions shall provide a warning against using rear-facing restraints at seating positions equipped with air bags, and shall explain the reasons for, and consequences of not following the warning. The instructions shall also include a statement that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child restraint installation instructions.

In adopting S5.6.1.8, we said that such instructions would "complement" the requirement that owner's manuals of vehicles having a front passenger side air bag provide information regarding "proper positioning of occupants, including children, at seating positions equipped with an air bag." 59 FR 7643, 7646 (Feb. 16, 1994) (final rule). This requirement appears in S4.5.1(f) of FMVSS No. 208, which was added in 1993. 58 FR 46551, 46564 (Sep. 2, 1993) (final rule).

The items affected by the noncompliance are the instructions for proper use that were provided after August 15, 1994, with certain models of Kolcraft's child restraints in its effort to comply with S5.6 of FMVSS No. 213. Kolcraft's instructions provided the appropriate warning against using rear-facing restraints at seating positions equipped with air bags, as well as the reason for the warning and the consequences of not following it. However, Kolcraft's instructions did not include a statement expressly referring owners of vehicles with front passenger side air bags to their vehicle owner's manual for child restraint installation instructions. The noncompliances began August 15, 1994, the effective date of S5.6.1.8. The following models of child restraints were affected by the noncompliance: Rock'n Ride (until April 1996); Auto-Mate (until June 1997); Traveler 700 (until December 1995); Performa (until June 1997); and Secure Fit (until June 1997). The total number of child restraints involved is 706,068. In response to an April 17, 1997, letter from us concerning miscellaneous compliance issues,

Kolcraft has subsequently revised its instructions to conform to S5.6.1.8.

Kolcraft supports its application for inconsequential noncompliance with the following:

S4.5.1(f) of FMVSS No. 208 requires owner's manuals to provide information regarding "proper positioning of occupants, including children, *at seating positions equipped with air bags.*" (Emphasis supplied.) It does not, however, require a vehicle manufacturer to include "child restraint installation instructions" in general. Indeed, for rear-facing infant restraints such as Kolcraft's Rock 'n Ride, there should be no child restraint installation instructions for "seating positions equipped with air bags," because rear-facing restraints should not be used in air bag equipped seats. And not surprisingly, no owner's manual we reviewed contains installation instructions for rear-facing infant seats at "seating positions equipped with air bags'; rather, they consistently warn against installation of a rear-facing restraint at an air bag equipped seating position. While some owner's manuals contain child restraint installation instructions for other (non-air bag) seating positions, not all owner's manuals contain such information. Thus, since the vehicle owner's manual will not always yield the "child restraint installation" information apparently contemplated by S5.6.1.8 of FMVSS No. 213, the inadvertent omission from the Kolcraft instruction sheets of a reference to the vehicle owner's manual is not consequential to motor vehicle safety.

Moreover, although Kolcraft does not question the usefulness of a statement directing vehicle owners to their owner's manual for "complement[ary]" (59 FR at 7646) information relating to the positioning of occupants—especially children—at seat positions equipped with air bags, Kolcraft's inadvertent failure to include such a statement in its instructions is inconsequential because Kolcraft's instructions set forth in detail the very information about child restraint installation and the proper positioning of children that is contemplated in S5.6.1.8 and the final rule promulgating the regulation, and, in many cases, exceed that information. In short, the omission of the statement directing owners of vehicles with front passenger side air bags to their owner's manual would not deprive vehicle owners using Kolcraft child restraints from any information germane to the safe installation of child restraints in vehicles equipped with air bags.

For example, Kolcraft's instructions include warnings not to place a rear-facing child restraint in a seat equipped with air bags, as well as a statement explaining the reason for the warning and the consequences of ignoring it. The instructions provide information regarding appropriate seating positions. The instructions also provide elaborate information about how to install child restraints with a variety of seat belts, and they illustrate a number of different seat belt configurations, explaining which are and which are not appropriate for use in installing child restraints. The instructions also explain why certain configurations are inappropriate and what vehicle owners should do if a seat belt will not hold a child restraint tightly. Thus, Kolcraft's instructions provide all the information concerning installation and positioning of children that S5.6.1.8 apparently contemplates would be provided in owner's manuals, and, in many respects, exceed the information described in S5.6.1.8. Accordingly, Kolcraft's inadvertent noncompliance with S5.6.1.8's requirement of a statement referring to the vehicle owner's manual is inconsequential as it relates to motor vehicle safety.

Kolcraft does not question the usefulness or importance of S5.6.1.8's requirement that the instructions for child restraints direct owners of vehicles with front passenger side air bags to their vehicle owner's manual for child restraint installation instructions. As soon as it learned of its noncompliance with the requirement, Kolcraft revised its instructions to conform exactly to S5.6.1.8. However, because Kolcraft's noncompliant instructions provide detailed information relating to the installation of child restraints with a variety of seat belt configurations, as well as information concerning the proper positioning of children in vehicles equipped with air bags, the omission of a statement referring to the owner's manual in Kolcraft's instructions was inconsequential with respect to vehicle safety.

We are denying Kolcraft's application for the following reasons.

By way of background, upon conducting dynamic testing in 1991 that indicated air bags generally produce substantial increases in the values for the head injury criterion (HIC) and chest acceleration of dummies seated in rear-facing child restraints (compared to dummies in rear-facing restraints tested with no air bag), we sought to inform consumers about the adverse interaction of rear-facing child restraints and air bags as quickly as possible. We issued a "Consumer Advisory" (December 10, 1991) which warned parents about using rear-facing child seats in vehicle seats equipped with an air bag. Subsequently, we initiated actions in two separate areas to ensure that consumers would be provided important safety information about the effect of air bags on rear-facing child restraints.

First, on December 14, 1992, we published a Notice of Proposed Rulemaking (NPRM) which proposed to amend FMVSS No. 208, "Occupant Crash Protection," to (1) specify that vehicle manufacturers must install air bags as the means to provide the automatic crash protection required by the standard, and (2) require that labels bearing specified information about air bags be placed in vehicles equipped with air bags, and that additional, more detailed information about air bags be provided in the vehicle owner's manual (57 FR 59043). The proposed labeling requirements were intended to ensure that consumers will have access to important safety information with respect to the air bags installed in their vehicles, including specific warnings against installing rearward-facing child restraint systems in front passenger seating positions equipped with an air bag. We published a final rule adopting these amendments on September 2, 1993 (58 FR 46551). The owner's manual requirements became effective on March 1, 1994, and the vehicle label requirements became effective on September 1, 1994.

Second, on April 16, 1993, we supplemented these actions by publishing an NPRM which proposed to amend labeling and other requirements of FMVSS No. 213 for rear-facing infant restraint systems (58 FR 19792). We proposed to require that (1) warning labels for these systems include a warning against using the restraint in any vehicle seating position equipped with an air bag, and (2) printed instructions for rear-facing restraints include safety information about air bags. We published a final rule adopting these requirements on February 16, 1994 (59 FR 7643). In response to a suggestion from Volkswagen, we also included the requirement at question in Kolcraft's application, namely, that the written instructions provided with child restraint systems that can be used in a position so that it is facing the rear of the vehicle must include a statement that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child restraint installation instructions. The vehicle owner's manual would include precautions specific to the vehicle that should be heeded for the safety of occupants, including children. These would include information on where to place a child restraint system in the air-bag equipped vehicle, which is an item of vehicle-specific information that only the vehicle manufacturer—and not the child restraint manufacturer—can provide. These requirements became effective on August 15, 1994.

We firmly believe that strict adherence to the requirements addressing warning labels, printed instructions, and information in the owner's manual as outlined above will maximize to the extent practicable the implementation of precautionary measures to preserve the safety of infants and young children traveling in motor vehicles equipped with air bags. Each of these warnings was developed with care to ensure that the specific content and location of the labels and instructions clearly and concisely convey the hazards of placing of rear-

facing child restraints in air bag-equipped seating positions. In addition, the requirements help ensure that consumers are provided information about where a rear-facing child restraint can appropriately be placed in the vehicle.

In the years since these amendments were adopted, we have continued to work very closely with both vehicle and child restraint manufacturers and others in the child passenger safety community to reduce the likelihood that a rear-facing infant restraint would be placed in a vehicle seating position that has an air bag. Through media advisories, consumer information fact sheets, revisions to the vehicle and restraint labeling and information requirements noted above, and other means, the entire child passenger safety community has taken measures to educate the public regarding the detrimental effects of a quickly deploying air bag when it strikes the seat back of a rear-facing infant restraint.

However, between 1995 and 1998, and despite the concerted efforts detailed above, we have confirmed that 15 children have been fatally injured in crashes where their rear-facing child restraints were installed in a seating position that was equipped with an air bag that had deployed, and another nine have sustained serious, but nonfatal, injuries.

The statement missing from Kolcraft's product conveys important safety information. Kolcraft contends that, while (1) S5.6.1.8 of FMVSS No. 213 requires written instructions for child restraints to include a statement "that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child restraint *installation instructions*," (emphasis added), and (2) the corresponding requirements of S4.5.1(f) of FMVSS No. 208 requires vehicle owner's manuals to provide information regarding "proper positioning of occupants, including children, *at seating positions equipped with air bags*," (emphasis added), there, in fact, should be no child restraint "installation instructions" for "seating positions equipped with air bags," because rear-facing restraints should not be used in air bag equipped seats. We believe that Kolcraft is too narrowly interpreting the phrase "installation instructions" in the S5.6.1.8 requirement of FMVSS No. 213 as it relates to the S4.5.1(f) requirements of FMVSS No. 208.

In the final rule addressing installation of air bags and associated information to appear on labels and in owner's manuals (58 FR 46551), we specified that the vehicle owner's manual must provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. In commenting on our proposal to adopt this requirement, SafetyBeltSafe U.S.A. stated that it felt:

> Complete information on the positioning of infants in cars with passenger side air bags would be essential in the vehicle owner's manual. It should include these points: (1) Children riding in a rear-facing restraint must never ride in the front seat if a passenger air bag is installed, because the air bag could hit the leading edge of the child restraint with great force if it deploys; (2) therefore, children under 20 pounds (and about one year of age) must always ride in a child restraint that faces the rear (or in a car bed that meets FMVSS 213) and must be placed in the rear seat, so they will not be hit by the air bag. If a child uses a car bed, this advice also applies, because current car beds have not been accepted for use in an air bag position. A child under this size must never be turned to face forward in the front or rear seat, due to the risk of neck and spinal cord injury; and (3) If there is no rear seat, this vehicle is not suitable for children under 20 pounds and one year, given the current state of the art of child restraints." (Docket 74–14–N79–005)

We adopted the requirement without incorporating the SafetyBeltSafe recommendations, explaining that "the agency believes that a requirement specifying that the owner's manual must provide any necessary precautions regarding the proper positioning of children at seating positions equipped with air bags to ensure maximum safety protection for those occupants is sufficient to ensure that information along the lines identified by SafetyBeltSafe U.S.A. will be provided." (58 FR 46557.) From this, it is clear that we did not intend to limit the information included in the vehicle owner's manual to specific "installation instructions" for child restraints per se, but rather, for the owner's manual to detail all necessary precautions to ensure safety, such as identification of which seating positions are appropriate, and which are not, for positioning child restraints depending upon the orientation of the child restraint, forward or rear facing. We consider this information to be "installation instructions," and in fact, most vehicle manufacturers now include specific warnings against the use of rear-facing child restraints in air bag-equipped seating positions in their owner's manuals similar to those suggested by SafetyBeltSafe USA. Kolcraft's argument that the subject noncompliance is inconsequential on the theory that rear-facing child restraints should not be used in seating positions equipped with air bags, and as such, no "installation instructions" for such seating positions need be provided in the vehicle's owner's manual, is incorrect.

Further, in an issue as sensitive as air bags and infants, Kolcraft's failure to fully comply with the requirements of Standard No. 213—specifically, by not including the statement required in S5.6.1.8 referring owners of vehicles with front passenger side air bags to their vehicle owner's manual for child restraint installation instructions for supplemental information in 706,068 of its child restraints between 1994 and 1997—should not be excused. We do not accept Kolcraft's explanation as an indication that it exercised reasonable care in developing its product and associated documentation when Kolcraft states that "Kolcraft believes that the S5.6.1.8 requirement was overlooked because the NPRM did not propose the requirement * * * thus, because it (Kolcraft) was already in compliance with the requirement contemplated in that subsection of the NPRM, Kolcraft believes that its personnel did not check that subsection in the final rule and, therefore, did not discover that the requirement of a statement referring to the owner's manual had been added in the final rule." We cannot condone Kolcraft's approach given the grave potential consequences should a parent mistakenly place a child in a rear-facing child restraint in a seating position equipped with an air bag that subsequently deploys in a crash.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied.

Authority: 49 U.S.C. 30118(d), 30120(h) delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 26, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13824 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Rearch and Special Programs Administration

[Docket: RSPA–98–4957: Notice 4]

Information Collection; Request for Comment

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for comments and OMB approval.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA published a notice in the **Federal Register** to announce the Research and Special Programs Administration's request to renew an information collection in support of the Office of Pipeline Safety (OPS) for Customer Owned Service Lines. RSPA's information collection concerns a pipeline safety regulation that requires gas service line operators who do not maintain certain customer piping to notify the customers of the need to maintain the piping. One comment was received. This comment was with regard to a definition of service lines. The operator of this particular line is not subject to this regulation. This notice gives the public an additional 30 day comment period.

DATES: Comments on this notice must be received by July 1, 1999, to be assured of consideration.

ADDRESSES: Copies of this information collection can be reviewed at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh St., SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Customer-Owned Service Lines.

OMB Number: 2137–0594.

Type of Request: Existing information collection.

Abstract: RSPA regulation (49 CFR 192.16) requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take this action in view of service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of further accidents.

In addition, each operator must make the following records available for inspection by RSPA or a State agency participating under 49 U.S.C. 60105 or 60106: (1) A copy of the notice currently in use; and (2) evidence that notices have been sent to customers within the previous 3 years.

Estimate of Burden: Minimal.

Respondents: Gas transmission and distribution operators.

Estimated Number of Respondents: 1,590.

Estimated Number of Responses per Respondent: 350.

Estimated Total Annual Burden on Respondents: 9,137 hours.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Send comments to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on May 26, 1999.

Jeffrey D. Wiese,

Program Development Manager, Office of Pipeline Safety.

[FR Doc. 99–13817 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–99–4957; Notice 3]

Information Collection; Request for Comments

ACTION: Request for Comments and OMB Approval.

AGENCY: Research and Special Programs Administration, DOT.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA published a notice in the **Federal Register** to announce the Research and Special Programs Administration's (RSPA) request to renew an information collection in support of the Office of Pipeline Safety (OPS) for Excess Flow Valves (EFV) Customer Notification. Comments were requested from the public. No comments were received. The public is being given another 30 days to provide comments on this information collection.

DATES: Comments on this notice must be received by July 1, 1999, to ensure consideration.

ADDRESSES: Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC, 10 a.m. to 4 p.m. Monday through Friday excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20950, telephone (202) 366–1640 or e-mail marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Excess Flow Valves, Customer Notification.

OMB Number: 2137–0593.

Abstract: 49 U.S.C. 60110 directed DOT to prescribe regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and the costs associated with installation. The regulations provide that, except where installation is already required, the operator will install an EFV that meet prescribed performance criteria at the customer's request, if the customer pays for the installation.

Estimate of Burden: The average burden hours per response is.

Respondents: Gas Distribution Pipeline Operators.

Estimated Number of Respondents: 1590.

Estimated Total Annual Burden on Respondents: 82,500 hours.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated,

electronic, mechanical, or other technological collection techniques.

Send comments to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation. All comments will be a matter of public record.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on May 26, 1999.

Jeffrey D. Wiese,

Program Development Manager, Office of Pipeline Safety.

[FR Doc. 99–13818 Filed 5–28–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33748]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail line between Shawnee Jct., WY, at milepost 117.1 (Orin Subdivision) and Northport, NE, at milepost 33.8 (Angora Subdivision), a distance of 146.4 miles.[1]

The transaction was scheduled to be consummated on June 13, 1999.

The purpose of the trackage rights is to permit UP to use the BNSF trackage when UP's trackage is out of service for scheduled maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33748, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Joseph D. Anthofer, 1416 Dodge Street, #830, Omaha, NE 68179.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided:

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–13832 Filed 5–28–99; 8:45 am]

BILLING CODE 4915–00–P

[1] On May 21, 1999, UP filed a petition for exemption in STB Finance Docket No. 33748 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP requests that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on June 29, 1999. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33749]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail line known as the Madill Subdivision between Carrollton, TX, BNSF milepost 700.17, and South Joe, TX, BNSF milepost 633.0, a total distance of approximately 67.5 miles.[1]

The transaction is scheduled to be consummated on or shortly after June 21, 1999.

The purpose of the trackage rights is to permit UP to use the BNSF trackage when UP's trackage is out of service for maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33749, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 25, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–13831 Filed 5–28–99; 8:45 am]

BILLING CODE 4915–00–P

[1] On May 21, 1999, UP filed a petition for exemption in STB Finance Docket No. 33749 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP requests that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on August 28, 1999. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Forms SS–4 and SS–4PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form SS–4, Application for Employer Identification Number, and Form SS–4PR, Solicitud de Número de Identificación Patronal (EIN).

DATES: Written comments should be received on or before August 2, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions

should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form SS–4, Application for Employer Identification Number, and Form SS–4PR, Solicitud de Número de Identificación Patronal (EIN).

OMB Number: 1545–0003.

Form Number: Forms SS–4 and SS–4PR.

Abstract: Taxpayers who are required to have an identification number for use on any return, statement, or other document must prepare and file Form SS–4 or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the Internal Revenue Service and the Social Security Administration in tax administration and by the Bureau of the Census for business statistics.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, Federal government and state, local or tribal governments.

Estimated Number of Respondents: 2,419,064.

Estimated Time Per Respondent: 1 hour, 35 minutes.

Estimated Total Annual Burden Hours: 3,846,692.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13836 Filed 5–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, 9789(SP) and 12252

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, 9789(SP) and 12252, Electronic Federal Tax Payment System (EFTPS).

DATES: Written comments should be received on or before August 2, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic Federal Tax Payment System (EFTPS).

OMB Number: 1545–1467.

Form Number: Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, 9789(SP) and 12252.

Abstract: These forms are used by business and individual taxpayers to enroll in the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service uses to accept electronically transmitted federal tax payments. EFTPS (1) establishes and maintains a taxpayer data base which includes entity information from the taxpayers or their banks, (2) initiates the transfer of the tax payment amount from the taxpayer's bank account, (3) validates the entity information and selected elements for each taxpayer, and (4) electronically transmits taxpayer payment data to the IRS.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and state, local or tribal governments.

Estimated Number of Respondents: 4,471,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 1,490,019.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13837 Filed 5–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Citizen Advocacy Panel, Pacific-Northwest District

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest District Citizen Advocacy Panel will be held in McLean, Virginia.

DATES: The meeting will be held Thursday, July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah A. Diamond at 1–888–912–1227 or 206–220–6099.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, July 1, 1999, 1:00 p.m. to 4:00 p.m. at the Booz Allen & Hamilton Conference Center, 8283 Greensboro Drive, McLean, VA. Due to limited conference space, notification of intent to attend the meeting must be made with Deborah Diamond. Ms. Diamond can be reached at 1–888–912–1227 or 206–220–6099. The public is invited to make oral comments from 2:00 p.m. to 3:00 p.m. on Thursday, July 1, 1999. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6099, or write Deborah Diamond, CAP Office, 915 2nd Avenue; M/S W–406, Seattle, WA 98174.

The Agenda will include the following: subcommittee reports and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 26, 1999.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 99–13834 Filed 5–28–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of Citizen Advocacy Panel, Brooklyn District.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel to be held in Brooklyn, New York.

DATES: The meeting will be held Thursday, June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin McKeon at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, June 10, 1999, 6:00 p.m. to 9:00 p.m. at 10 MetroTech Center, 6th Floor, 625 Fulton Street, Brooklyn, N.Y. 11201. Due to limited conference space, notification of intent to attend the meeting must be made with Kevin McKeon. Mr. McKeon can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:00 p.m. to 8:00 p.m. on Thursday, June 10, 1999. Individual comments will be limited to 5 minutes.

If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Kevin McKeon, CAP Office, P.O. Box R, Brooklyn, N.Y., 11202.

The Agenda will include the following: reports of the sub-committees and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 18, 1999.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 99–13835 Filed 5–28–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Modern Masterworks From the Israel Museum, Jerusalem"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Modern Masterworks From the Israel Museum, Jerusalem," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Cleveland Museum of Art, Cleveland, OH, from, on or about June 13, 1999, to, on or about August 29, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6982, or USIA, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: May 26, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–13782 Filed 5–28–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Adjustments for Service-Connected Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Veterans Programs Enhancement Act of 1998, Pub. L. 105–368, the Department of Veterans Affairs (VA) is hereby giving notice of adjustments in certain benefit rates. These adjustments affect the compensation, dependency and indemnity compensation (DIC), and Medal of Honor pension programs.

DATES: These adjustments are effective December 1, 1998, the date provided by Pub. L. 105–368.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213B), Veterans Benefits Administration, Department of Veterans

Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Section 301 of Pub. L. 105–368 increases the rate of Medal of Honor pension under 38 U.S.C. 1562(a) to $600. Section 1101 of Pub. L. 105–368 provides for an increase in each of the rates in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of the title 38, United States Code. VA is required to increase these benefit rates by the same percentage as increased in the benefit amounts payable under title II of the Social Security Act. In computing increased rates in the cited title 38 sections, fractions of a dollar are rounded down to the nearest dollar. The increased rates are required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 1.3 percent cost-of-living increase in Social Security benefits. Therefore, applying the same percentage, the following rates for VA compensation and DIC programs will be effective December 1, 1998:

	Monthly rate (dollars
Disability Compensation (38 U.S.C. 1114)	
Disability Evaluation:	
10%	96
20%	184
30%	282
40%	404
50%	576
60%	726
70%	916
80%	1,062
90%	1,196
100%	1,989
(38 U.S.C. 1114(k) through (s)):	
38 U.S.C. 1114(k)	75; 2,474; 75; 3,470
38 U.S.C. 1114(l)	2,474
38 U.S.C. 1114(m)	2,729
38 U.S.C. 1114(n)	3,105
38 U.S.C. 1114(o)	3,470
38 U.S.C. 1114(p)	3,470
38 U.S.C. 1114(r)	1,490; 2,218
38 U.S.C. 1114(s)	2,227
Additional Compensation for Dependents (38 U.S.C. 1115(1))	
38 U.S.C. 1115(1):	
38 U.S.C. 1115(1)(A)	115
38 U.S.C. 1115(1)(B)	197; 60
38 U.S.C. 1115(1)(C)	79; 60
38 U.S.C. 1115(1)(D)	93
38 U.S.C. 1115(1)(E)	217
38 U.S.C. 1115(1)(F)	182
Clothing Allowance (38 U.S.C. 1162)—$534 per year	
DIC to a Surviving Spouse (38 U.S.C. 1311)	
Pay Grade:	
E–1	861
E–2	861
E–3	861
E–4	861
E–5	861
E–6	861
E–7	890
E–8	940
E–9[1]	980
W–1	909
W–2	946
W–3	974
W–4	1,030
O–1	909
O–2	940
O–3	1,004
O–4	1,062
O–5	1,170
O–6	1,318
O–7	1,424
O–8	1,561
O–9	1,672
O–10[2]	1,834
DIC to a Surviving Spouse (38 U.S.C. 1311(a) Through (d))	
38 U.S.C. 1311(a) through (d):	
38 U.S.C. 1311(a)(1)	861
38 U.S.C. 1311(a)(2)	187
38 U.S.C. 1311(b)	217
38 U.S.C. 1311(c)	217
38 U.S.C. 1311(d)	105
DIC to Children (38 U.S.C. 1313)	
38 U.S.C. 1313:	
38 U.S.C. 1313(a)(1)	365
38 U.S.C. 1313(a)(2)	526
38 U.S.C. 1313(a)(3)	683
38 U.S.C. 1313(a)(4)	683; 133
Supplemental DIC to Children (38 U.S.C. 1314)	
38 U.S.C. 1314:	
38 U.S.C. 1314(a)	217
38 U.S.C. 1314(b)	365
38 U.S.C. 1314(c)	184

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, the surviving spouse's monthly rate is $1,057.

[2] If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the surviving spouse's monthly rate is $1,966.

Dated: May 21, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99–13772 Filed 5–28–99; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6344–7]

RIN 2060–AE–85

National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing plant sites that manufacture polyether polyols. The hazardous air pollutants (HAP) emitted by the facilities covered by this rule include ethylene oxide (EO), propylene oxide (PO), hexane, toluene, and incidental emissions of several other HAP. Some of these pollutants are considered to be probable human carcinogens when inhaled, and all can cause toxic effects following exposure. The rule is estimated to reduce emissions of these pollutants by 1,810 Megagrams per year (Mg/yr) (2,000 tons per year (tons/yr)). Because all of the pollutants are also volatile organic compounds (VOC), which are precursors to ambient ozone, the promulgated rule will also aid in the reduction of tropospheric ozone.

DATES: This regulation is effective on June 1, 1999.

ADDRESSES: *Docket.* Docket No. A–96–38, containing information considered by the EPA in development of the promulgated standards, is available for public inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, at the following address in room M–1500, Waterside Mall (ground floor): U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule or the analyses performed in developing this rule, contact Mr. David Svendsgaard, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380, facsimile number (919) 541–3470, electronic mail address svendsgaard.dave@epa.gov. For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representatives. For a listing of EPA Regional contacts, see the following.

SUPPLEMENTARY INFORMATION:

Electronic Access

These final standards and all other information considered by the EPA in the development of these final standards are available in Docket Number A–96–38 by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). Electronic versions of documents from the Office of Air and Radiation (OAR) are available through the EPA's OAR Technology Transfer Network Web site (TTNWeb). The TTNWeb is a collection of related Web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the Internet via the World Wide Web location at the following address: http://www.epa.gov/ttn. Electronic versions of this preamble and rule are located under the OAR Policy and Guidance Information Web site, at http://www.epa.gov/ttn/oarpg/, under the **Federal Register** notices section. If more information on the TTNWeb is needed, contact the Systems Operator at (919) 541–5384.

EPA Regional Office Contacts

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Regulated Entities

Entities regulated by this action are polyether polyols production facilities. Regulated categories and entities include:

Category	Standard industrial classification (SIC) codes	North American industrial classification system (NAICS) codes	Examples of potentially regulated entities
Industry	Typically, 2843 and 2869	Typically, 325199 and 325613	Producers of polyether polyols and polyether mono-ols.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business organization, etc., is subject to this rule, you should carefully examine the applicability criteria in 40 CFR 63.1420. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

National emission standards for polyether polyols production were proposed in the **Federal Register** on September 4, 1997 (62 FR 46804). Today's **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading the preamble to the final rule.

I. List of Source Categories
II. Summary of Considerations Made in Developing This Standard
A. Background and Purpose of the Regulation
B. Source of Authority
C. Stakeholder and Public Participation
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VI. Significant Comments and Changes to the Proposed Standards
A. Primary Product Determination
B. Definition of "Polyether Polyol"
C. Definition of "Process Vent"
D. Outlet Concentration Limit as an Alternative Epoxide Process Vent Emission Limit for New Sources
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F. Group Determination on an Individual Process Vent Basis for Nonepoxide Organic HAP Emissions from Making or Modifying the Product
G. Possibility of Dual Controls for Nonepoxide Organic HAP Emissions from Making or Modifying the Product
H. Worst-Case Testing Requirements
I. Engineering Calculations as an Alternative to Performance Testing
J. Allowable Test Methods for Control Efficiency Determinations
K. Site-Specific Onset of Extended Cookout
L. Parameter Monitoring Excursion Definitions
M. Monitoring During Start-ups, Shutdowns, and Malfunctions
N. Process Vent Control Requirement for Epoxide Emissions from New Sources
VII. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Executive Order 13045
D. Paperwork Reduction Act
E. Regulatory Flexibility Act
F. Submission to Congress and the Comptroller General
G. Unfunded Mandates
H. Executive Order 12875
I. Executive Order 13084
J. National Technology Transfer and Advancement Act

I. List of Source Categories

The EPA identified a total of approximately 84 plant sites producing polyether polyols. Of the 84 facilities, 78 were considered in the analysis supporting the proposed rule and are believed to be major sources according to the 1990 CAA Amendments' criteria of having the potential to emit 10 tons/yr (9.1 Mg/yr) of any one HAP or 25 tons/yr (22.7 Mg/yr) of combined HAP. Today's final rule applies to all major sources that produce polyether polyols. Area sources are not subject to today's final rule.

In developing the background information to support the proposed rule, the EPA decided it was appropriate to subcategorize the source category for purposes of analyzing the maximum achievable control technology (MACT) floors and regulatory alternatives. The subcategories were: polyether polyols made from the polymerization of epoxides, and polyether polyols made from the polymerization of tetrahydrofuran (THF). An "epoxide" is a chemical compound consisting of a three-membered cyclic ether. Ethylene oxide and propylene oxide are the only epoxides that are listed as HAP under section 112(b) of the CAA. Subcategorization was necessary due to the distinctively different nature of the epoxide and THF processes and their effect on the applicability of controls. One noteworthy distinction between the two subcategories is that the first group, polyols made with epoxides, uses a HAP as the monomer, whereas the second group, polyols made with THF, does not use a HAP monomer. Additionally, the first group (epoxide reactants) performs the reaction primarily on a batch basis, while the second group (THF) performs the reaction on a continuous basis.

The Agency obtained data from facilities that make polyether products by polymerizing a compound having multiple reactive hydrogen atoms, resulting in the formation of a "polyol," and from facilities that make polyethers by polymerizing a compound with a single reactive hydrogen, which forms a "mono-ol." The Agency then investigated the distinctions between the production units and the emissions controls for products from these two groups. The Agency found no fundamental difference between the processes, the chemistry, the emissions, or the types of control equipment. Further, many producers use the same process equipment to produce polyols and mono-ols, yet they generically refer to both types of products as "polyols." Therefore, for the purposes of this regulation, the Agency uses the term "polyether polyols" to represent both polyether polyols and polyether mono-ols.

II. Summary of Considerations Made in Developing This Standard

A. Background and Purpose of the Regulation

The CAA was created in part "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." (section 101(b)(1)). Section 112(b) of the CAA, as revised in 61 FR 30816 (June 18, 1996), lists 188 HAP believed to cause adverse health or environmental effects. Section 112(d) requires that emission standards be promulgated for all categories and subcategories of "major" sources of these HAP, and for many smaller "area" sources listed for regulation, pursuant to section 112(c). Major sources are defined as those that emit or have the potential to emit at least 10 tons/yr (9.1 Mg/yr) of any one HAP or 25 tons/yr (22.7 Mg/yr) of any combination of HAP.

On July 16, 1992 (57 FR 31576), the EPA published a list of categories of sources slated for regulation. This list included the polyether polyol production source category regulated by the standards being promulgated today. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On December 3, 1993, the EPA published a schedule for promulgating these standards (58 FR 63941). Standards for the polyether polyols production source category covered by this rule were proposed on September 4, 1997 (62 FR 46804).

The final standards give existing affected sources 3 years from the date of promulgation to comply with the emission limitations for storage vessels, process vents, wastewater, and heat exchangers. Subject to certain limited exceptions, this is the maximum amount of time allowed under the CAA. The final standards give existing affected sources 6 months to comply with the equipment leak provisions. New affected sources are required to comply with the standards upon initial startup. The EPA believes these standards to be achievable for all affected sources within the time provided.

Monitoring, recordkeeping, and reporting requirements are also included in this final rule. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule.

B. Source of Authority

The amended CAA requires the EPA to promulgate national emission standards for sources of HAP. Section 112(d) provides that these standards must reflect:

> * * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies. * * * (42 U.S.C. § 7412(d)(2)).

This level of control is referred to as the MACT. The CAA goes on to establish the least stringent level of control for MACT; this level is termed the "MACT floor."

According to the CAA, new source standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3)). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for source categories and subcategories with 30 or more sources, or the average emission limitation achieved by the best performing 5 sources for sources or subcategories with fewer than 30 sources (section 112(d)(3)). These two minimum levels of control define the MACT floor for new and existing sources. When the EPA considers control levels more stringent than the MACT floor described above, the selection of MACT must take into consideration the cost of achieving the emission reduction, any non-air quality, health, and environmental impacts, and energy requirements.

C. Stakeholder and Public Participation

Numerous representatives of the polyether polyol production industry were consulted during the development of this standard. Industry representatives have included both trade associations and polyether polyol producers. The EPA also received input from representatives from State environmental agencies. Representatives from other EPA offices and programs participated in the regulatory development process as members of the work group. The work group was involved in the regulatory development process and was given opportunities to review and comment on the standards before proposal and promulgation. Therefore, the EPA believes that the impact on other EPA offices and programs has been adequately considered during the development of these standards. Finally, industry representatives, regulatory authorities, environmental groups, and the public, as a whole, had the opportunity to comment on the proposed standards and to provide additional information during the public comment period that followed proposal.

The Polyether Polyols NESHAP was proposed in the **Federal Register** on September 4, 1997 (62 FR 46604). The preamble and Basis and Purpose Document for the proposed standards for polyether polyols sources (published on September 4, 1997) described the rationale for the proposed standards. Public comments on the Polyether Polyols NESHAP were solicited at the time of its proposal.

In addition, amendments to the Polymers and Resins I NESHAP (which some of the requirements in this final rule cross-reference that existing rule) were proposed on March 9, 1999 (63 FR 11560). Public comments were solicited by the EPA regarding how those proposed amendments, and the incorporation of concepts in the Polymers and Resins proposed rule into subpart PPP, would affect sources subject to the Polyether Polyols final rule.

To provide interested individuals the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal of these requirements. However, the public did not request a hearing and, therefore, one was not held. The public comment period for the proposed rule was from September 4, 1997 to December 3, 1997. A total of 11 comment letters were received during the public comment period, and 4 comment letters were received after the end of the public comment period. Commenters included industry representatives and trade organizations. The comments were carefully considered, and changes were made in the promulgated standards when determined by the EPA to be appropriate. A detailed discussion of these comments and responses can be found in the Basis and Purpose Document for Final Standards, which is referenced in Section V of this preamble and serves as the basis for the revisions that have been made to these standards between proposal and promulgation. Section V of this preamble discusses some of the major changes made to the proposed standards.

III. Summary of Promulgated Standards

This section provides a summary of the final standards contained in subpart PPP. The full regulatory text is printed in today's final rule and is also available in Docket No. A–96–38, directly from the EPA, or from the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. More information on how to obtain a copy of the proposed regulation is provided at the beginning of the **SUPPLEMENTARY INFORMATION** section of this document.

A. Affected Sources

For this final rule, an affected source is defined as each group of one or more polyether polyols manufacturing process units (PMPUs) that is located at a plant site that is a major source. Polyether polyols are defined as the products formed by the reaction of EO, PO, or other cyclic ethers with compounds having one or more reactive hydrogens (i.e., a hydrogen atom bonded to nitrogen, sulfur, oxygen, phosphorous, etc.) to form polyethers (i.e., compounds with two or more ether bonds). The definition of "polyether polyol" excludes hydroxy ethyl cellulose and materials regulated under the Hazardous Organics NESHAP (HON), such as glycols and glycol ethers.

An existing affected source is any affected source that is not a new affected source. A new affected source can be created by one of four ways. If a plant site with an existing polyols-affected source adds one or more new PMPUs, the added group of one or more new PMPUs is a new affected source if the added group of one or more new PMPUs has the potential to emit more than 10 tons/yr (9.1 Mg/yr) of any one HAP or 25 tons/yr (22.7 Mg/yr) of all HAP. In this situation, the plant site would have an existing affected source and a new affected source. Each subsequent set of one or more added PMPUs with potential HAP emissions above the 10/25 levels cited above would be a separate new affected source.

New affected sources are also created when one or more PMPUs are constructed at a major source plant site where polyether polyols were not previously produced (with no consideration of the potential HAP emissions from the PMPU). Another instance where a new affected source is created is if one or more PMPUs are constructed at a new plant site (i.e., green field site) that will be a major source. The final manner in which a new affected source is created is when

an existing affected source undergoes reconstruction.

Affected sources covered by the promulgated rule emit a variety of HAP from several different types of emission points. The most significant emissions are of the following HAP: EO, PO, hexane, and toluene. These final standards regulate emissions of these compounds, as well as all other organic HAP that are emitted during the production of polyether polyols.

Emissions from the following types of emission points (i.e., emission source types) are being covered by the promulgated rule: storage vessels, process vents, heat exchange systems, equipment leaks, and wastewater operations. Tables 1 and 2 summarize the level of control for existing and new affected sources, respectively, for each of these types of emission points. Where the applicability criteria and required level of control are the same as the HON (40 CFR Part 63, subparts F, G, and H), this is indicated in Tables 1 and 2 as "HON." "Epoxides," in Tables 1 and 2, refer to EO and PO. "Nonepoxide organic HAP" refers to organic HAP other than EO and PO that are used in the polyether polyols production process. The following sections describe these standards in more detail, by emission source type.

TABLE 1.—SUMMARY OF LEVEL OF THE STANDARDS FOR EXISTING AFFECTED SOURCES

	Emission sources	Storage			Heat exch. syst.	Equip. leaks
		Process vents		Wastewater		
Polyether Polyols made with tetrahydro-furan.	HON	HON		HON	HON	HON.
		Epoxide emissions	Nonepoxide organic HAP emissions from making or modifying product	Nonepoxide organic HAP in catalyst extraction		
Polyether Polyols made with epoxides.	HON	98 percent aggregate emission reduction; or flare emissions from all vents; or maintain outlet conc. ≤ 20 ppmv; or maintain emiss. factor < 1.69 × 10^{-2} kg epox./Mg product.	Group 1 combination of process vents from batch unit operations: 90 percent aggregate emission reduction; or flare emissions from all vents.. Group 1 process vents from continuous unit operations: 98 percent emission reduction; or flare emissions.	90 percent aggregate emission reduction; or flare emissions from all vents.	HON	HON	HON.

TABLE 2.—SUMMARY OF LEVEL OF THE STANDARDS FOR NEW AFFECTED SOURCES

	Emission sources				Heat exch. syst.	Equip. leaks
	Storage	Process vents		Wastewater		
Polyether Polyols made with tetrahydro-furan.	Existing source HON.	HON		Exist. source HON.	HON	HON.
		Epoxide emissions	Nonepoxide organic HAP emissions from making or modifying product	Nonepoxide organic HAP in catalyst extraction		
Polyether Polyols made with epoxides.	Existing source HON.	99.9 percent aggregate emission reduction; or maintain outlet conc. ≤ 20 ppmv; or maintain emiss. factor < 4.43 × 10^{-3} kg epox./Mg product.	Group 1 combination of process vents from batch unit operations: 90 percent aggregate emission reduction; or flare emissions from all vents.. Group 1 process vents from continuous unit operations: 98 percent emission reduction; or flare emissions..	90 percent aggregate emission reduction; or flare emissions from all vents.	Exist. source HON.	HON	HON.

B. Storage Vessels

For polyether polyols made with either epoxides or THF, the storage vessel requirements at new and existing affected sources are nearly identical to the HON storage vessel requirements in subpart G for existing sources. The final rule specifies procedures for determining whether a storage vessel is assigned to a PMPU. Group 1 storage vessels require control, while Group 2 storage vessels do not. If a storage vessel has a capacity below 75 cubic meters, it is Group 2. For vessels with capacities

between 75 and 151 cubic meters, they are Group 1 if the vapor pressure of the liquid being stored is 13.1 kilopascals or greater. Storage vessels with capacities greater than 151 cubic meters are Group 1 if the vapor pressure of the liquid being stored is 5.2 kilopascals or greater.

The storage vessel provisions require that one of the following control systems be applied to Group 1 storage vessels: (1) An internal floating roof with proper seals and fittings; (2) an external floating roof with proper seals and fittings; (3) an external floating roof converted to an internal floating roof with proper seals and fittings; or (4) a closed vent system with a 95 percent efficient combustion, recovery, or recapture device. The storage vessel provisions give details on the types of seals and fittings required. Monitoring and compliance provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a closed vent system and combustion, recovery, or recapture device is used, the owner or operator must establish appropriate monitoring procedures. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the storage vessel provisions.

C. Process Vents

There are separate process vent provisions for affected sources that produce polyether polyols using epoxide reactants and affected sources that produce polyether polyols using THF. The control requirements for each type of affected source are discussed below, followed by a discussion of the monitoring, reporting, and recordkeeping provisions.

1. Polyether Polyols That Use Epoxides as a Reactant

For the polyether polyols that use epoxides as a reactant, the process vent provisions are separated into three groups that are based on the function of the organic HAP in the production process. These groups are: (1) Epoxide (i.e., EO and PO) emissions resulting from the use of these chemicals as reactants; (2) emissions of organic HAP other than EO or PO (i.e., "nonepoxide organic HAP") resulting from their use in making or modifying the polyether polyol product; and (3) emissions of nonepoxide organic HAP resulting from their use in catalyst extraction.

a. *Requirements for epoxide emissions.* The existing source requirement for epoxide emissions from process vents is to reduce epoxide emissions by 98 weight-percent. For new sources, this requirement is 99.9 weight-percent. This is an aggregated percent reduction applied to all process vents that emit epoxides in the PMPU. Therefore, the owner or operator has the flexibility to select which vents to control, provided that the overall epoxide emission reduction from the PMPU is equal to, or greater than, the required efficiency.

In addition to using a combustion, recovery, or recapture device to achieve the 98 percent reduction (or 99.9 percent for new sources), the final rule allows the use of "extended cookout" (ECO) as a means of reducing emissions by the required percentage. This pollution prevention technique reduces emissions by extending the time of reaction, thus leaving less unreacted epoxides to be emitted downstream.

Instead of complying with the 98 (or 99.9) weight-percent reduction limitation, an owner or operator may comply by demonstrating that each outlet stream has a concentration of 20 parts per million by volume (ppmv) epoxide or total organic compound (TOC). This option is available for existing and new affected sources, but only if a combustion, recovery, or recapture device is used.

As another alternative to the 98 percent emission reduction, owners or operators of existing affected sources may maintain an epoxide emission factor from the PMPU of no more than 1.69×10^{-2} kilograms of epoxide emissions per megagram of product made (kg/Mg), or 1.69×10^{-2} pounds of epoxide emissions per 1,000 pounds of product made (lb/1000 lb). The corresponding emission factor for new affected sources is 4.43×10^{-3} kg/Mg (4.43×10^{-3} lb/1000 lb). Compliance with this alternative limitation is achieved by developing and following an epoxide annual emissions plan, which must include provisions for the monitoring of the process and any combustion, recovery, or recapture device parameters to demonstrate continuous compliance with the emission limitation.

Finally, for affected existing sources, if a flare is used to reduce epoxide HAP emissions from all process vents in the PMPU, then a demonstration of 98 percent epoxide emission reduction is not required. If an owner or operator of an new affected source wants to use only a flare, a demonstration that the flare will achieve 99.9 percent epoxide emission reduction is required.

An owner or operator can also choose to use a combination of the percent reduction, 20 ppmv, and flare compliance options discussed above in a single PMPU.

b. *Requirements for emissions resulting from the use of nonepoxide organic HAP to make or modify the product.* For nonepoxide organic HAP emissions that result from the use of nonepoxide organic HAP to make or modify the product, the final rule uses a "group" approach, where those vents that are classified as Group 1 are required to be controlled. This provision only applies if a nonepoxide organic HAP is used to make or modify the product.

In many instances, the process vent stream containing these nonepoxide organic HAP will also contain epoxides. The combustion, recovery, or recapture device used to comply with the epoxide emission provisions discussed above may also reduce nonepoxide emissions. It is for this reason that the final rule requires that the group determination for nonepoxide organic HAP emissions from making or modifying the product be conducted after the emissions exit the epoxide combustion, recovery, or recapture device (or after the ECO). Therefore, any nonepoxide emission reduction that is coincidentally achieved in the epoxide combustion, recovery, or recapture device will impact whether the process vent is classified as Group 1.

The group determination approach for process vents from batch unit operations differs from that for process vents from continuous unit operations. Each approach is discussed below.

For process vents from batch unit operations, the approach is to determine if the collection of process vents in each PMPU that is associated with the use of nonepoxide organic HAP to make or modify the product is Group 1 or Group 2. If the combination of batch process vents is determined to be Group 1, the aggregate nonepoxide organic HAP emissions are required to be reduced by 90 weight-percent. As with the epoxide percent emission reduction requirement, this requirement is on an aggregated basis. Therefore, the owner or operator has the flexibility to select which vents to control, provided that the overall nonepoxide emission reduction from the PMPU is equal to, or greater than, 90 weight-percent. If a flare is used to reduce these nonepoxide organic HAP emissions from all process vents associated with the use of a nonepoxide organic HAP to make or modify the product, then a demonstration of 90 weight-percent emission reduction is not required. These requirements are the same for new and existing affected sources.

The group status for the combination of batch vents in a PMPU is determined by calculating the annual emissions

from all of the applicable vents. If the total nonepoxide organic HAP emissions are less than 11,800 kilograms per year (26,000 pounds per year), then the collection of vents is classified as Group 2, and no control is required. If the emissions are greater than 11,800 kilograms per year (26,000 pounds per year), they are used to calculate a "cut-off" flow rate. This cutoff flow rate is then compared to the actual combined annual average flow rate for all the vents. If the actual combined annual average flow rate is less than the cutoff flow rate, the group of vents is Group 1.

For process vents from continuous unit operations, the approach is to determine if each process vent in the PMPU that is associated with the use of nonepoxide organic HAP to make or modify the product is Group 1. If a continuous process vent is determined to be Group 1, the nonepoxide organic HAP emissions are required to be reduced by using a flare or by 98 weight-percent. As with batch vents, these requirements are the same for new and existing affected sources.

A continuous process vent is Group 1 if it has a flow rate greater than or equal to 0.005 standard cubic meters per minute, a HAP concentration greater than or equal to 50 ppmv, and a total resource effectiveness (TRE) index value less than or equal to 1.0. The final rule directly refers to the HON TRE equation in subpart G.

c. *Requirements for nonepoxide organic HAP emissions from catalyst extraction.* This provision only applies if a nonepoxide organic HAP is used in the catalyst extraction process. The promulgated process vent provisions require the owner or operator of existing affected sources using epoxides to reduce the aggregate total nonepoxide organic HAP emissions by 90 weight-percent from process vents associated with catalyst extraction at new or existing affected sources. This is also an aggregate emission reduction requirement for the PMPU. If a flare is used to reduce these nonepoxide organic HAP emissions from all process vents associated with catalyst extraction, then a demonstration of 90 weight-percent emission reduction is not required.

Uncontrolled nonepoxide organic HAP emissions from continuous or batch catalyst extraction unit operations are measured after the exit from the continuous or batch unit operation, but before any recovery devices; and controlled emissions are measured at the outlet of the combustion, recovery, or recapture device. Primary condensers operating as reflux condensers are considered to be part of the unit operation and are not considered to be recovery devices.

2. Polyether Polyols That Use THF as a Reactant

The promulgated rule directly references the HON process vent provisions in subpart G for polyether polyols processes that use THF as a reactant. These provisions require a Group 1/Group 2 determination. A group 1 process vent is one with a flow rate greater than or equal to 0.005 standard cubic meters per minute, a HAP concentration greater than or equal to 50 ppmv, and a TRE less than or equal to 1.0. Owners or operators of Group 1 process vents at THF facilities are required to either reduce organic HAP emissions by 98 weight-percent, maintain an outlet concentration of 20 ppmv, or route emissions to a flare.

3. Monitoring, Reporting, and Recordkeeping Provisions for Process Vents

Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the process vent provisions. Compliance with the monitoring provisions is based on parametric monitoring of the combustion, recovery, or recapture device, or monitoring of the process parameters if ECO is used to control epoxide emissions.

D. Wastewater Operations

The final wastewater provisions in subpart PPP refer directly to the HON wastewater provisions. Water that is discarded from a PMPU is considered to be wastewater if the water has an annual average concentration of organic HAP of 5 parts per million by weight (ppmw) or greater and an annual average flow rate of 0.02 liters per minute (0.0053 gallons per minute) or greater, or an annual average concentration of organic HAP of at least 10,000 ppmw at any flow rate. There are two types of wastewater: maintenance wastewater and process wastewater. The requirements for each type of wastewater are discussed below.

1. Maintenance Wastewater

The final rule directly incorporates the HON requirements in § 63.105 of subpart F for maintenance wastewater. The provisions of § 63.105 require owners or operators to prepare a description of procedures that will be used to manage HAP-containing wastewater created during maintenance activities and to implement these procedures.

2. Process Wastewater

The final rule also directly incorporates HON provisions for process wastewater, which are contained in § 63.132 through § 63.149 of subpart G. These provisions employ a Group 1/Group 2 approach with Group 1 process wastewater streams requiring control. However, subpart PPP does not incorporate the HON new source Group 1 process wastewater stream criteria. That is, the Group 1 process wastewater stream criteria for new and existing affected sources are equivalent to the HON existing source Group 1 criteria. These criteria are as follows. A Group 1 wastewater stream is a wastewater stream with a total annual average concentration of organic HAP greater than or equal to 10,000 ppmw at any flow rate, or a total annual average concentration greater than or equal to 1,000 ppmw and an annual average flow rate greater than or equal to 10 liters per minute (2.6 gallons per minute).

An owner or operator may determine the organic HAP concentration and flow rate of wastewater streams either (1) at the point of determination (where the wastewater exits the PMPU); or (2) downstream of the point of determination, provided that adjustments are made for changes that occur to the stream from the point of determination to the downstream location. Both the applicability determination and the Group 1/Group 2 determination must reflect the wastewater characteristics before losses due to volatilization, a concentration differential due to dilution, or a change in organic HAP concentration or flow rate due to treatment.

There are requirements for wastewater tanks, surface impoundments, containers, individual drain systems, and oil/water separators that handle Group 1 wastewater streams. These provisions require either that specified measures be undertaken to suppress organic emissions from the wastewater stream, or that emissions be vented to a control device.

There are also treatment requirements for Group 1 wastewater streams to reduce the organic HAP content in the wastewater prior to placement in units without air emissions controls. There are a number of treatment options for Group 1 wastewater streams. These include reducing the total concentration of organic HAP to a level less than 50 ppmw, treating the stream in a steam stripper meeting specified design criteria, reducing the organic HAP mass flow rate by 99 percent (or by the fraction removed, or F_r, value for the HAP), achieving the required mass

removal (RMR) for the HAP, achieve a RMR of 95 percent in a biological treatment process, or treating the stream in a unit complying with specified Resource Conservation and Recovery Act (RCRA) requirements. Also, there is an exemption if the total source organic HAP mass flow rate is less than 1 Mg/yr (1.1 tons/yr).

The rule requires that inspections be conducted on waste management units. It also requires that design steam strippers and biological treatment units be monitored, along with control devices on waste management units. The rule also contains extensive provisions outlining how to demonstrate compliance, including reporting and recordkeeping provisions. For more information regarding the wastewater provisions in this final rule, consult the January 17, 1997 amendments to the HON (62 FR 2722).

E. Equipment Leaks

The equipment leak provisions in the promulgated rule refer directly to the HON requirements contained in 40 CFR part 63, subpart H. These final standards apply to equipment in organic HAP service for 300 or more hours per year that is associated with a PMPU, including valves, pumps, connectors, compressors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, surge control vessels, bottoms receivers, and agitators. The provisions also apply to closed-vent systems and combustion, recovery, or recapture devices used to control emissions from any of the listed equipment.

The promulgated standard requires leak detection and repair (LDAR) for pumps in light liquid service and for valves in gas or light liquid service. The LDAR program involves a periodic check for organic vapor leaks with a portable instrument using Method 21 of appendix A of part 60. If leaks are found, they must be repaired within a certain period of time. These provisions contain programs where owners or operators that have demonstrated success in eliminating leaking equipment can increase the interval between leak inspections.

The final rule also requires LDAR of connectors in gas or light liquid service. The monitoring frequency for connectors is determined by the percent leaking connectors in the process unit and the consistency of performance.

Subpart H also contains standards for compressors, open-ended lines, pressure relief devices, and sampling connection systems. Compressors are required to be controlled using a barrier-fluid seal system, by a closed vent system to a combustion, recovery, or recapture device, or must be demonstrated to have no leaks greater than 500 parts per million (ppm) HAP. Sampling connections must be a closed-purge or closed-loop system, or must be controlled using a closed vent system to a combustion, recovery, or recapture device. Agitators must either be monitored for leaks or use systems that are better designed such as dual mechanical seals. Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service are subject to instrumental monitoring only if evidence of a potential leak is found through sight, sound, or smell. Instrumentation systems consist of smaller pipes and tubing that carry samples of process fluids to be analyzed to determine process operating conditions or systems for measurement of process conditions.

Surge control vessels and bottoms receivers are required to be controlled using a closed vent system vented to a combustion, recovery, or recapture device. However, the applicability of controls to surge control vessels and bottoms receivers is based on the size of the vessel and the vapor pressure of the contents. The criteria for determining whether controls are required for surge control vessels and bottoms receivers are the same as the criteria for determining whether controls are required for storage vessels.

The standards require certain records to demonstrate compliance with the standard, and the records must be retained in a readily accessible recordkeeping system. Subpart H requires that the following records be maintained for equipment that would be subject to the standards: records of testing associated with batch processes; design specifications of closed vent systems and combustion, recovery, or recapture devices; and test results from performance tests.

F. Heat Exchangers

The final standards for heat exchange systems directly refer to the heat exchange provisions listed in subpart F of the HON at § 63.104. These provisions require that the owner or operator monitor heat exchange systems for leaks and repair any leaks that are detected.

G. General Testing Requirements

Specific testing requirements related to each emission source type are included in the applicable sections of the final rule. Section 63.1437 of the final rule addresses conditions for performance tests and compliance determination procedures for flares.

Section 63.1437 requires that performance testing be conducted during maximum operating conditions for all emissions sources except for process vents from batch unit operations. Tests for process vents from batch unit operations are to be performed at worst-case conditions.

This section limits the time frame for the maximum operating and worst-case conditions to either the 6-month period that ends 2 months before the Notification of Compliance Status is due, or the 6-month period that begins 3 months before the performance test and ends 3 months after the performance test. This section also indicates that tests should not be performed under conditions that: (1) Cause damage to equipment, (2) necessitate that product made does not meet an existing specification for sale to a customer, (3) necessitate that product made is in excess of demand, or (4) cause plant or testing personnel to be subject to unsafe conditions.

This section clarifies that a performance test is not required for flares, and requires that a compliance determination be conducted for flares in accordance with § 63.11(b) of the General Provisions.

H. Monitoring Levels and Excursions

Specific monitoring requirements related to each emission source type are included in the applicable sections of the final rule. Section 63.1438 of the final rule addresses the establishment of parameter monitoring levels and excursions.

This section specifies how parameter monitoring levels are to be established. The three methods are: (1) To establish parameter levels based exclusively on performance testing; (2) to establish parameter monitoring levels based on performance tests, supplemented by engineering assessments and/or manufacturer's recommendations; and (3) to establish parameter monitoring levels based on engineering assessments and/or manufacturer's recommendations.

This section also provides definitions of excursions and how excursions are related to compliance. Table 3 in this preamble illustrates instances that are defined as excursions.

TABLE 3.—SUMMARY OF EXCURSIONS

Emission source type	Type of excursion	Description of excursion
Storage vessels, where continuous monitoring is required.	Daily average exceedance	When the daily average of a monitored parameter is above the maximum, or below the minimum, established level.
	Insufficient monitoring data	Depends on the monitoring plan.
Storage vessels, where continuous monitoring is not required.	If monitoring plan specifies monitoring a parameter, a filling period exceedance.	When the average value of one or more parameters, averaged over the duration of the filling period for the storage vessel, is above the maximum level or below the minimum level.
	If monitoring plan specifies that a value must be recorded at specific intervals, insufficient monitoring data.	When measured values are not available for at least 75 percent of the specific intervals at which parameters are to be monitored and recorded, according to the monitoring plan, during the filling period for the storage vessel.
Process wastewater streams, heat exchange systems, or equipment leaks.	[See the HON]	[See the HON Requirements.]
Continuous process vents using combustion, recovery, or recapture devices.	Daily average exceedance	When the daily average of a monitored parameter is above the maximum, or below the minimum, established level.
	Insufficient monitoring data	Insufficient monitoring data is when an owner or operator fails to obtain a valid hour of data for at least 75 percent of the operating hours during an operating day. Four 15-minute parameter measurements must be obtained to constitute a valid hour of data.
Batch process vents using combustion, recovery, or recapture devices.	Daily average exceedance	When the daily average of a monitored parameter is above the maximum, or below the minimum, established level.
	Insufficient monitoring data	Insufficient monitoring data is when an owner or operator fails to obtain valid parameter measurements for at least 75 percent of the 15-minute periods during an operating day.
Process vents using ECO	Batch cycle parameter exceedance.	If time is monitored, when the time from the end of the epoxide feed to the end of an ECO is shorter than the minimum duration established for the product class.
		If reactor partial pressure is monitored, when the reactor epoxide partial pressure at the end of an ECO is above the maximum pressure established for the product class.
		If epoxide concentration is monitored, when the epoxide concentration in the reactor at the end of an ECO is above the maximum epoxide concentration established for the product class.

The owner or operator is allowed a certain number of "excused" excursions. In the first semiannual period, the owner or operator is allowed to excuse six excursions. This diminishes to one excused excursion for each semiannual period after the sixth semiannual period.

For each excursion that is not excused, the owner or operator is deemed to be out of compliance with the provisions of the final rule. If a condenser is used and temperature is the parameter monitored, or if another recovery or recapture device is used and organic HAP concentration is the parameter monitored, then the excursion is a violation of the emission limitation. For all other parameter monitoring situations, an excursion is a violation of the operating limit.

I. General Provisions

The final rule incorporates by reference the General Provisions in subpart A as promulgated on March 13, 1994. However, the EPA is in the process of drafting amendments to the General Provisions. After the promulgation of the amendments to the General Provisions, the amended General Provisions will be automatically considered to be incorporated into this subpart. For that reason, as amendments are proposed for the General Provisions, owners and operators are encouraged to comment on how those amendments could potentially affect owners and operators subject to subpart PPP of part 63.

The final rule references the start-up, shutdown, and malfunction plan requirements in § 63.6(e)(3) of the General Provisions. The start-up, shutdown, and malfunction plan developed for each affected source must describe procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction, and must describe procedures and a program for corrective action for malfunctioning process and air pollution equipment used to comply with this subpart.

J. General Recordkeeping and Reporting Requirements

Specific recordkeeping and reporting requirements related to each emission source type are included in the applicable sections of the final rule. Section 63.1439 of the final rule provides more general reporting, recordkeeping, and testing requirements. The following are the types of reports that must be submitted to the Administrator, as appropriate: Initial Notification, Precompliance Report, Notification of Compliance Status, Periodic Reports, and Other Reports. The requirements for each of the types of reports are summarized below.

Section 63.1434 of the final rule incorporates the reporting requirements of subpart H. The subpart H reporting requirements include an Initial Notification, a Notification of Compliance Status, and Periodic Reports. The information required by subpart H should be submitted along with the information specified in subpart PPP for the applicable report.

1. Initial Notification

For existing sources, the Initial Notification is required to be submitted June 1, 2000. For new sources, the due date is dependent on the date of initial start-up date. The Initial Notification must include the following information:

a. The name and address of the owner or operator.

b. The address (i.e., physical location) of the affected source.

c. An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date.

d. An identification of the kinds of emission points within the affected source.

e. A statement of whether or not the affected source is a major source.

2. Precompliance Report

Affected sources making one or more of the following requests must submit a Precompliance Report 1 year before their compliance date: (1) Requesting an extension for compliance; (2) requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; (3) requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data; or (4) requesting to establish parameter monitoring levels based on engineering assessments and manufacturing recommendations. Supplements to the Precompliance Report may also be submitted after the due date of the Precompliance Report, if the owner or operator finds it necessary to clarify or modify information previously submitted under the original Precompliance Report. In addition, the final rule provides that, unless the Administrator has objected to a request made in the Precompliance Report or a supplement to the Precompliance Report within 45 days of its receipt, the request shall be automatically deemed "approved."

An owner or operator who submits an operating permit application may submit the information specified in the Precompliance Report, as applicable, with the operating permit application, in addition to any other information required to be included in the operating permit application.

3. Notification of Compliance Status

The Notification of Compliance Status is required to be submitted within 150 days after the source's compliance date. The information required to show compliance for each emission point must be included in the Notification of Compliance Status. Such information includes, but is not limited to, results of any performance tests, design analyses, and parameter monitoring levels for each emission point and supporting data for the designated level.

4. Periodic Reports

Generally, Periodic Reports are required to be submitted semiannually. However, if a combustion, recovery, or recapture device for a particular emission point or process section has more than the excused number of excursions, or if the regulatory authority requests it of the owner or operator, quarterly reports may be required for 1 year for that emission point. After 1 year, semiannual reporting may be resumed, if no additional excursions occur.

The Periodic Report must report when excursions occur, as well as results of any performance tests conducted during the reporting period. For equipment leaks, Periodic Reports must contain summary information on the LDAR program, changes in monitoring frequency or monitoring alternatives, and/or initiation of a quality improvement program (QIP).

5. Other Reports

Other reports required under the final rule include: (1) Reports of process changes that change the compliance status of process vents; (2) reports of changes to the primary product of a PMPU or process unit that becomes a PMPU as a result of the change; (3) reports of the addition of a new PMPU or emission point (other than an equipment leak); (4) reports of reconstruction or new source construction; (5) requests for approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, or alternative controls; and (5) requests for extensions of the allowable repair period and notifications of inspections for storage vessels and wastewater.

IV. Control Technology Basis of the Standard

The rule requirements are based on the MACT floor level of control for the following emission types for polyether polyols made with epoxides: storage vessels, process vent epoxide emissions, process vent nonepoxide emissions from catalyst extraction, and equipment leaks. The Agency selected requirements more stringent than the floor for wastewater emissions and for nonepoxide organic HAP process vent emissions from making or modifying the product. For polyether polyols made with THF, the Agency selected requirements more stringent than the MACT floor level of control for all of the emission types (i.e., storage, process vent emissions, equipment leaks and wastewater). These MACT control levels have not changed since the September 4, 1997 proposal (62 FR 46804).

The HON control basis establishes MACT for both polyether polyols made with epoxides and polyether polyols made with THF, although for polyether polyols made with THF, the HON control level is above the floor. The only exception to this HON control basis is where control levels established in the "Control of Volatile Organic Compound Emissions From Batch Processes—Alternative Control Techniques Information Document," Document No. EPA–453/R–94–020 (i.e., the Batch ACT), are the above the floor control basis for process vents from batch unit operations.

The HON level of control establishes the basis for MACT for this standard because the continuous unit operations in polyether polyols manufacturing plants are fairly similar to the process units at sources that are subject to the HON. Given the similarity of PMPUs to process units subject to the HON and the fact that the HON level of control had received extensive evaluation during the development of the HON, the EPA concluded that the cost and other impacts of the HON levels were representative of those that could be expected for the polyether polyols production industry. The estimated cost effectiveness for the Batch ACT was determined to be comparable to the cost effectiveness of the HON continuous vent provisions and is expected to be comparable to the cost effectiveness of the process vent requirements in this final rule.

V. Summary of Impacts

The impacts discussed in this section are presented relative to a baseline reflecting the level of control in the absence of the rule. See the baseline emissions memorandum in the Supplementary Information Document for Proposed Standards (EPA–453/R–97–010c, May 1997) for a detailed discussion of this approach. The impacts for existing sources were estimated by bringing each facility's control level up to the levels of the standards. According to industry representatives, no new sources were projected to be constructed in the next 5 years. Therefore, no new source impacts were estimated.

A: Air Impacts

These promulgated standards are estimated to reduce HAP emissions from all existing sources of polyether polyols by 1,810 Mg/yr (2,000 tons/yr). This represents a 47 percent reduction from the baseline level of emissions. This reduction is relatively low, since

several affected facilities have already installed stringent pollution controls in response to State air toxics rules.

B. Other Environmental Impacts

All the HAP being reduced by this regulation are also volatile organic compounds (VOC); thus, a reduction of 1,810 Mg/yr (2,000 tons/yr) of VOC is anticipated as a result of implementing these standards. However, emissions of other criteria pollutants are estimated to increase by 80 Mg/yr (88 tons/yr) as a result of operating process vent and wastewater emission control systems to comply with the standards. Therefore, the net reduction in criteria pollutants resulting from this regulation is anticipated to be 1,730 Mg/yr (1,900 tons/yr).

C. Energy Impacts

The total nationwide energy demands that will result from implementing the process vent and wastewater requirements are around 4.7×10^{10} British thermal units annually (Btu/yr).

D. Cost Impacts

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable raw materials in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with these promulgated standards.

Under the final rule, it is estimated that total capital costs for existing sources will be $10.2 million (August 1996 dollars) and that total annual costs will be $7.7 million per year. The actual compliance cost impacts of the final rule could be less than estimated, due to the potential to use common combustion, recovery, or recapture devices, upgrade existing combustion, recovery, or recapture devices, use other less expensive control technologies, or implement pollution prevention. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance costs will be reduced.

E. Economic Impacts

The goal of the economic impact analysis (EPA Document No. EPA–453/R–97–013, May 1997) is to estimate the market response of the polyether polyols industry to the emission standards and determine any adverse effects that may result from the regulation. Approximately 78 facilities owned by 36 different companies producing polyether polyols domestically may potentially be affected by the regulation.

Since the nationwide annualized cost of this regulation of $7.7 million represents approximately 0.06 percent of the estimated 1996 sales revenues for domestically produced polyether polyols, the EPA determined that the regulation is not likely to have a significant economic impact on this industry as a whole. For this reason, a streamlined economic analysis was performed to determine facility-specific impacts. Facility-specific impacts were examined by calculating the ratio of the estimated annualized costs of controls for each facility to the estimated revenues per facility (i.e., cost-to-sales ratio) to assess the likelihood of facility closures and employment impacts. A cost-to-sales ratio exceeding 1 percent was determined to be an initial indicator of the potential for a significant facility impact.

Costs exceeded 1 percent of sales for only one facility out of the 78 facilities affected by the regulation. This firm is estimated to potentially experience a cost-to-sales ratio of 1.5 percent. Based on an analysis of the costs of compliance compared to facility and company financial data for this firm, the EPA concluded that it was unlikely that the company owning this facility would choose to close it. The company is financially robust and the costs are a small share of the total company sales and net income. Therefore, the facility-specific impacts are not considered to be significant for any facility affected by this promulgated regulation. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using polyether polyols, such as polyurethanes. For more information, consult the economic impact report entitled "Economic Analysis Of Air Pollution Regulations: Polyether Polyols Production, May 1997" in the docket for today's rule.

VI. Significant Comments and Changes to the Proposed Standards

Comments on the proposed rule were received from industry and trade organizations. A detailed discussion of these comments and responses can be found in the Basis and Purpose Document for the Final Standards (EPA–453/R–99–002b).

There were a number of comments submitted that were considered to be significant by the EPA. These significant comments covered many aspects of the rule. The Agency's review of the significant issues raised by the commenters resulted in changes to the proposed rule in many instances. This section summarizes the significant comments raised and provides the EPA's response.

A. Primary Product Determination

One commenter expressed confusion over aspects of the primary product determination in the proposed rule, particularly the provision that specified how a non-PMPU could become a PMPU after the initial determination based on actual production. The EPA agrees that this portion of the proposed primary product provisions needed clarification. In fact, the EPA conducted an overall review of the proposed primary product provisions, and concluded that several structural and clarifying changes were needed. In addition, the EPA noted some potential situations that could occur that were not addressed in the proposed provisions.

The specific concern raised by the commenter was addressed by clearly stipulating how owners or operators of non-PMPUs are to determine whether they have become subject to the rule after the initial primary product determination. The final rule specifies that non-PMPUs that have produced polyether polyols in the past 5 years are to annually re-determine the primary product using actual production values. The rule also specifies how a non-PMPU process unit is to determine the primary product if it has not produced polyether polyols in the past 5 years, but plans to produce polyether polyols in the future.

The proposed provisions required that initial primary product determination be based on a 5-year prediction of anticipated production by the owner or operator. The EPA is aware that, in some instances, the owner or operator may not be able to make such a prediction. Clarifications and/or revisions were made to the primary product provisions to address this situation. First, in the initial determination, the time frame for which production must be anticipated for new process units was changed to 1 year. Also, provisions were added for owners or operators that cannot determine their primary product based on anticipated 5-year (or 1-year) production. To summarize, if polyether polyols have been produced in an existing process unit for 5 percent or greater of the time since September 4, 1997, then the process unit is designated as a PMPU and is subject to the existing source provisions of subpart PPP. For new process units, if polyether polyols will be produced at any time during the first

year of production, then the unit is a PMPU and is subject to the new source provisions of subpart PPP.

In addition to the provisions discussed above that specify how non-PMPUs are to determine if they become PMPUs (i.e., subject to subpart PPP), the EPA has also clarified and expanded the provisions that specify how the PMPU designation can be removed from a process unit. The first case, which is retained from the proposed rule, is where production of polyether polyols ceases and the owner or operator does not anticipate the production of polyether polyols in the future. Also, the EPA has added provisions that specify procedures for a primary product reevaluation based on actual production. If an owner or operator of a PMPU finds that another product has been produced for a greater amount of time than polyether polyols over a specified time period (previous 5 years or since beginning the production of polyether polyols), then the PMPU designation could possibly be removed. The stipulation is that production of the "new" primary product must make the process unit subject to another part 63 NESHAP. If the new primary product is not subject to another part 63 NESHAP and polyether polyols continue to be produced, the process unit continues to be classified as a PMPU and continues to be subject to subpart PPP.

The EPA has also added provisions addressing the determination of the primary product in situations where two or more products are produced simultaneously. Also, clarifications were made in the reporting and recordkeeping requirements associated with the primary product determination. A more in-depth explanation of the primary product determination procedures in § 63.1420(e) can be found in the preamble to the proposed amendments to the Polymers and Resins I and IV NESHAP (64 FR 11563). The primary product provisions in § 63.1420(e) mirror those proposed in §§ 63.480(f) and 63.1310(f).

B. Definition of "Polyether Polyol"

In the proposed rule a "Polyether Polyol" was defined as:

> * * * a compound formed through the polymerization of ethylene oxide (EO) or propylene oxide (PO) or other cyclic ethers with compounds having one or more reactive hydrogens (i.e., a hydrogen atom bonded to nitrogen, oxygen, phosphorus, sulfur, etc.) to form polyethers. This definition excludes materials regulated under the HON, such as glycols and glycol ethers.

One commenter requested that the EPA revise the definition of "polyether polyol" to clarify that the production of typical alkanolamines, which lack repeating ether units, is not regulated under subpart PPP. Another commenter explained that hydroxy ethyl cellulose is formed through the reaction of EO on cellulose polymer molecules. This commenter requested that the EPA clarify whether hydroxy ethyl cellulose manufacturing is included or excluded from the definition of "polyether polyol."

The EPA has revised the definition of "polyether polyol" in the final rule addressing both of these issues by excluding the production of hydroxy ethyl cellulose and by specifying that a polyether must have two or more ether bonds.

C. Definition of "Process Vent"

The definition of "process vent" in the proposed rule did not include any cutoffs based on the flow or HAP concentration of the process vent. One commenter was concerned that the definition of "process vent" did not have a de minimis cutoff, as does the definition of "process vent" in the HON. The cutoff suggested by the commenter (0.005 weight-percent total organic HAP) has been incorporated into the final definition of a process vent, for process vents from continuous unit operations. This decision was based on the fact that the EPA considers it to be impractical to impose requirements for process vent streams with such low HAP concentrations (less than 0.005 weight percent organic HAP). For similar reasons, a de minimis cutoff for process vents from batch unit operations was also added in the final rule. In the Polymers and Resins I and IV NESHAP, the batch process vent definition contains a de minimis cutoff of 225 kg/yr uncontrolled HAP emissions. The EPA believes that this level is also an appropriate de minimis level for process vents from batch unit operations in the polyether polyols industry.

D. Outlet Concentration Limit as an Alternative Epoxide Process Vent Emission Limit for New Sources

The proposed rule did not include a concentration limit as an alternative epoxide process vent emission limit for new sources. The preamble to the proposed rule solicited comments on this subject, to which four commenters responded. All four recommended a 20 ppmv alternative concentration limit. The commenters indicated that the preambles for the New Source Performance Standards for VOC Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations (40 CFR part 60, subpart NNN), and the HON (40 CFR part 63, subpart G) provided rationales for a 20 ppmv limitation that also are applicable to the polyether polyols rule.

In subpart NNN's preamble (48 FR 48932, October 21, 1983), the EPA stated that the outlet concentration of 20 ppmv was established based on kinetic calculations of incinerators. It was demonstrated that, at a given temperature and residence time, a stream with a low inlet concentration could not demonstrate an outlet concentration below 20 ppmv. In the preamble to the proposed amendments to the HON (61 FR 43698, August 26, 1996), the EPA expanded the application of this lower bound concentration performance standard to control/recovery devices other than incinerators. In the HON preamble, the EPA explained that recovery devices are designed to typically reduce emissions to the same outlet concentration level given a relatively wide range of inlet concentrations. When the inlet concentration is substantially below the design maximum leading conditions (and begins to approach the residual level in the outlet stream), the recovery device efficiency will decrease.

The EPA agrees that the rationales for the 20 ppmv concentration limit provided in the preambles discussed above are also applicable to subpart PPP. Further, the technological limitations that form the basis for this alternative 20 ppmv limit are applicable to combustion, recovery, and recapture devices that may be used at existing affected sources or new affected sources. Therefore, the EPA believes it is appropriate to also allow this alternative for new sources.

Therefore, the final rule contains an alternative concentration limit of 20 ppmv for both new and existing sources. This concentration is measured at the outlet of the combustion, recovery, or recapture device.

Another commenter advocated that the alternative 20 ppmv concentration limit should apply more broadly to process vents that do not utilize a combustion, recovery, or recapture device to reduce epoxide emissions. The examples provided by the commenter included vents from equipment practicing a very long ECO or vents from equipment where the epoxide content is very low and emissions are very small.

As discussed above, the lower outlet concentration limit recognizes that there is a lower outlet concentration boundary, below which combustion, recapture and control devices cannot achieve. The EPA understands that the outlet concentration after ECO may be

as low as that after a combustion, recovery, or recapture device. However, this is not based on technological limitations of ECO, as is the basis for the 20 ppmv concentration limit for combustion, recovery, and recapture devices. Therefore, the EPA believes that allowing the 20 ppmv concentration limit for ECO is not appropriate.

Further, the EPA does not believe that it is appropriate to use this alternative concentration requirement as a de minimis cutoff for vents where the epoxide content is very low and emissions are very small. The EPA believes that the HAP concentration and emission de minimis cutoffs in definition of the process vent (discussed above in Section V.C) adequately address these vents.

Finally, the proposed existing source concentration limit was 20 ppmv of total epoxides. Other rules, such as the HON, allow the option of determining outlet concentration limits on a TOC basis. In many instances in the polyether polyols industry, the EPA believes that all the TOC in the emission stream will be epoxides, making the TOC and epoxide concentration equivalent. In fact, if there were other TOC in the stream, compliance with a 20 ppmv TOC limit would mean that the epoxide concentration would necessarily be less than 20 ppmv. For these reasons, the EPA believes that having the alternative concentration limits based on total epoxides or TOC is appropriate for this rule. As discussed later in Section V.J, the EPA decided to allow Method 25A (which is designed to measure TOC) to determine compliance with the alternative concentration limits.

E. Flares as a Reference Control Technology

Two commenters requested that the EPA allow flares as a reference control technology for process vents at existing and new sources. The EPA agreed with the commenters that flares are an acceptable reference control technology for situations where the required organic HAP emission reduction is 98 percent or less. The final rule allows flares as a reference control technology for epoxide process vent emissions at existing sources, for Group 1 nonepoxide organic HAP process vent emissions at new and existing sources, and for nonepoxide organic HAP process vent emissions from catalyst extraction at new and existing sources. However, the data presented by the commenters do not support a destruction efficiency of 99.9 percent for flares combusting EO and PO, which is the equivalent percent reduction efficiency for the epoxide process vent limitation for new sources. Therefore, the EPA cannot allow flares as a reference control technology for epoxide process vent emissions at new sources.

F. Group Determination on an Individual Process Vent Basis for Nonepoxide Organic HAP Emissions From Making or Modifying the Product

In addition to the use of epoxides reactants, some polyether polyol producers use organic HAP as initiators, solvents, viscosity adjusters, or in other ways to provide special properties to the final products. To address emissions of these nonepoxide organic HAP, the proposed rule contained requirements for "nonepoxide organic HAP used in making or modifying the product." To determine whether control of these nonepoxide organic HAP emissions was required, the proposed rule used a "group" applicability approach, where vents that were classified as Group 1 were required to be controlled by 90 percent. The proposed rule required that the group determination be performed on an aggregate basis. That is, the stream characteristics for all process vents from continuous unit operations within the PMPU that were associated with the use of the nonepoxide organic HAP to make or modify the product were combined and the group criteria applied to the theoretical combined stream. Similarly, the batch vent group determined was on an aggregate basis.

Two commenters raised the point that the equations and other criteria for deciding whether a vent is Group 1 or Group 2 were based on cost-effectiveness decisions related to controlling individual process vents, and that those equations were borrowed from other rules, where they were applied on an individual vent basis. The commenters requested that owners or operators have the option of making the group determinations for nonepoxide process vents on a vent-by-vent basis, rather than being required to do the group determination for the combination of all process vents.

The EPA agrees with the statement that the Group 1 criteria are essentially cost-effectiveness decisions. The group determination criteria in other MACT standards, specifically the HON (for process vents from continuous unit operations) and Polymers and Resins I and IV (for process vents from batch unit operations), are based on cost effectiveness. Prior to proposal, the EPA concluded that the cost-effectiveness based group criteria from the HON and the Polymers and Resins rules were also appropriate measures of the cost effectiveness of controlling process vent streams at polyether polyols facilities, given the similarities in the process vent stream parameters between the affected industries. Therefore, these group determination criteria were borrowed for the proposed subpart PPP. However, the EPA does recognize that in all three of the rules cited above, the group determination is applied to individual process vents.

The EPA agrees that the TRE index approach was developed for, and has been applied to, individual vents. The EPA further agrees that applying the TRE approach to the combination of process vents from continuous unit operations in a PMPU is not appropriate without conducting an analysis to validate the equations for the combination of vents, or developing new equations. Rather than take this approach, the EPA has decided, in the final rule, to apply the Group 1 criteria for process vents from continuous unit operations that use nonepoxide organic HAP to make or modify the product to individual process vents.

For process vents from batch unit operations that use nonepoxide organic HAP to make or modify the product, the Group 1 equations are the same equations employed in the Polymers and Resins I and IV MACT standards (40 CFR part 63, subparts U and JJJ, respectively). The EPA agrees with the commenters that in these polymers and resins standards, the Group criteria are applied to individual vents. However, unlike the TRE for process vents from continuous unit operations, the group determination approach that is used in subparts U, JJJ, and PPP, was originally developed to be used for either individual vents or the combination of vents.

The original source of the batch vent group determination approach is the Batch ACT document. On page 7–5 of that document, the EPA states "The control option requirements presented in Chapter 6 apply to (1) individual batch VOC process vents to which the annual mass emissions and average flowrate cutoffs are applied directly, and (2) aggregated VOC process vents for which a singular annual mass emission total and average flowrate cutoff value is calculated and for which the option is applied across an aggregate of sources." Therefore, for process vents from batch unit operations, the EPA disagrees with the statements that the group determination equations are being used "in a totally different context" and that there is no supporting rationale for using them. The final rule retains the requirement that the Group criteria be applied to the nonepoxide organic HAP

emissions from the combination of process vents from batch unit operations associated with the use of nonepoxide organic HAP to make or modify the product.

G. Possibility of Dual Controls for Nonepoxide Organic HAP Emissions From Making or Modifying the Product

As discussed above, the proposed rule required group determinations for the nonepoxide organic HAP process vent emissions from making or modifying the product. One commenter pointed out that the proposed rule was not clear about when and where to make this group determination. The commenter also noted that a process vent that uses a control technique for epoxides only (e.g., a scrubber or ECO) would require a second control technique for the nonepoxide organic HAP emissions.

The EPA considered the commenter's points and the options suggested by the commenter. The final rule requires that the group determination for nonepoxide organic HAP emissions be made after the stream has been controlled for the epoxide emissions. The EPA believes that this approach addresses the situation regarding the possibility of dual control. If the epoxide control device also reduces nonepoxide emissions, then that control would impact whether the vent (or group of batch vents) is Group 1. Therefore, control of nonepoxide emissions along with the epoxides will impact whether controls are required at all. If the vent (or group of vents) still has sufficient nonepoxide organic HAP emissions after the epoxide control device to satisfy the Group 1 criteria, the EPA does not believe it is unreasonable to require an additional control device to achieve the specified percent reduction of the nonepoxide emissions.

H. Worst-Case Testing Requirements

The proposed rule required that performance tests for process vents be conducted during worst-case operating conditions for the process. Four commenters requested that this requirement be deleted from the rule.

Worst-case testing requirements were not deleted from the final rule, but were revised. The EPA's reason for requiring compliance testing under worst-case conditions is so that the reduction efficiency of the control device is documented under the most challenging conditions for that control device, especially since commenters noted how difficult it is to represent a typical venting episode. The phrase "worst-case" in the proposed rule referred to the operating conditions of the process (or PMPU). The worst-case testing requirement has been revised to require testing during the worst-case conditions with respect to the combustion, recovery, or recapture (i.e., control) device.

Presumably, the control device should function as well or better under conditions that are not as challenging. By revising the rule to require testing during the worst-case conditions with respect to the control device, continuous monitoring of operating parameters established during the test provides a reasonable measure of continuous compliance with the efficiency requirement under all conditions.

The commenters asserted that there is no obvious technological difference that would require a different approach to performance testing in this rule from other regulations that have allowed performance tests during representative operating conditions. The EPA disagrees with the commenters' rationale. The EPA believes that there are obvious technological differences from the polyether polyols industry to industries previously regulated (particularly SOCMI type industries) since polyether polyols are produced on a batch basis. There is much more variance in the process vent parameters (i.e., flow and concentration) for process vent streams from batch unit operations, compared to process vents from continuous unit operations. In fact, this point was stressed by commenters. The EPA believes that it is more appropriate to compare the requirements of this rule with other rules that also regulate industries that operate on a batch basis. For this rule, the EPA not only compared the worst-case testing conditions with other rules regulating batch processes, but adopted similar language to that which is contained in the Pharmaceutical Production NESHAP (40 CFR part 63, subpart GGG).

The EPA would like to clarify a misconception related to these worst-case testing provisions. It is not the intent that production schedules be significantly altered, or that impractical scenarios be created for testing that would never occur in actual production. In other words, the EPA intends that testing be conducted for the worst-case situation that can reasonably be expected to occur during normal production. In order to clarify this intent, the EPA has added language in § 63.1438, the general testing section of the rule. This new language specifies that absolute worst case testing conditions does not include situations that could cause damage to equipment, situations that necessitate that the owner or operator make products that do not meet an existing specification for sale to a customer, or situations that necessitate that the owner or operator make products in excess of demand.

The added language in § 63.1438 also specifies the time period in which the worst-case conditions are to be determined. This time period is either the 6-month period that ends 2 months before the Notification of Compliance Status is due, or the 6-month period that begins 3 months before the performance test and ends 3 months after the performance test. By limiting the worst-case conditions to one of these 6-month periods, the rule eliminates the need for an owner or operator to consider endless possible production scenarios, and allows them to focus on those production scenarios in the 6-month period selected by the owner or operator.

In conclusion, the EPA believes that requiring that performance tests for process vents from batch unit operations during absolute worst-case conditions is necessary to ensure that the emission limitations in the rule are achieved. The EPA also believes that, with the modifications to the rule made after proposal, that the worst-case provisions are reasonable and workable for the polyether polyols industry.

I. Engineering Calculations as an Alternative to Performance Testing

Three commenters voiced concern over the feasibility, accuracy, expense, and safety of measuring emissions from process vents from batch unit operations. The commenters stated that a performance test on these short duration, variable vents is likely to be very inaccurate and potentially dangerous. Two of the commenters recommended that a material balance based on common engineering calculations should be allowed in the final rule as a compliance demonstration option. The commenters stated that engineering calculations would provide a more accurate, less costly, and significantly safer means to verify compliance.

The EPA recognizes that there are issues related to the feasibility, accuracy, and expense of testing process vents from batch unit operations. The EPA would refer readers to Section 7.3 of the Batch ACT for a detailed discussion of these issues. However, the EPA does believe that accurate emission tests can be conducted for these process vents.

One reason that the EPA has historically required performance testing for control devices that reduce emissions from process vents, when engineering analyses are allowed for

other emission sources (such as storage vessels), is that emissions from process vents are typically significantly larger than those from other emission sources. When emissions are larger, the EPA believes that it is important that the effectiveness of the control device be accurately determined by a performance test.

Given that the magnitude of the emissions was a part of the basis for requiring performance tests, the EPA believes that it is reasonable to allow an alternative to performance testing for a process vent control device if emissions being routed to the device are comparable to the emissions that would be vented to control devices for other emission sources for which performance tests are not required. Therefore, the EPA decided that engineering assessments could be allowed in lieu of performance testing for "small" control devices that reduce HAP emissions from process vents. For the Pharmaceutical Production NESHAP, the EPA also determined that it was appropriate to allow engineering calculations as an alternative to performance testing for small control devices, where a small control device is defined as one with uncontrolled annual HAP emissions of less than 10 tons/yr (9.1 Mg/yr). The EPA believes that this level of uncontrolled emissions is also appropriate to define a small control device for the polyether polyols industry. Therefore, the final rule allows the use of a design evaluation instead of a performance test if the control device receives less than 10 tons/yr (9.1 Mg/yr) uncontrolled emissions from one or more PMPUs.

The exemption from performance testing for small control devices discussed above should help to alleviate some of the concerns raised by the commenters. Many of the concerns related to the feasibility, accuracy, and expense of testing these batch vents are due to the short duration, variable nature of batch venting episodes. The EPA believes that if a control device receives more than 10 tons/yr (9.1 Mg/yr) of uncontrolled HAP emissions, it is likely that the vent streams being routed to the device are of longer duration and less variable, thus making it easier to conduct the performance test.

However, the EPA also recognizes that the small control device exemption will not totally eliminate the concerns raised by the commenters. Therefore, the EPA made other changes to the testing requirements to address potential problems related to the testing of batch process vents, which are briefly discussed below.

Since batch emission episodes can be less than 1 hour, the rule was changed to specify that test runs be conducted for the complete duration of the batch venting episode or 1 hour, whichever is less. Other references to 1-hour periods were also removed.

The proposed rule required the use of Method 1 or 1A to select sampling sites. Commenters claimed that, in many instances, neither method would be appropriate for the batch vent streams. The rule was restructured by separating the paragraph addressing the use of Method 1 or 1A for sample or velocity traverses from the paragraphs specifying the sampling site location. In other words, if the owner or operator conducts a sample or velocity traverse, the final rule requires that Method 1 or 1A be used. However, it does not require that these methods be used to select sampling sites.

With regard to the safety issue, the final rule states that, in cases where it is imperative to limit any leakage of emissions into the work atmosphere, a sampling port with a double seal should be installed so that the probe can be inserted and removed without any leakage of exhaust gas into the work atmosphere. Further, the final rule requires that permanent sampling ports be installed at the inlet to the control device during a period when it is most convenient (or least disruptive) to shut the process down (e.g., during a scheduled maintenance outage). In addition to these specific requirements, a general requirement was added that allows owners or operators to eliminate potential testing scenarios if the test could create a situation which could cause plant or testing personnel to be subject to unsafe conditions.

In conclusion, the EPA acknowledges that issues exist with regard to the testing of emissions from batch process units. Changes have been made to the final rule to address these issues. However, the Agency maintains that numerous other industries that utilize batch processes are regulated by MACT standards, and are able to conduct performance tests. The EPA believes that the commenters did not provide sufficient rationale why the polyether polyols industry presents unique testing problems that are not present in these other industries that utilize batch processes. Therefore, the final rule requires that control devices that receive more than 10 tons/yr (9.1 Mg/yr) of uncontrolled organic HAP emissions conduct tests to demonstrate control device performance.

J. Allowable Test Methods for Control Efficiency Determinations

The proposed rule required test Method 18 (40 CFR part 60, appendix A), or any other method or data that have been validated according to Method 301 (40 CFR part 63, appendix A) for control device efficiency determinations. Three commenters noted that this requirement was inconsistent with the test methods used by the facility whose data established the new source MACT floor for epoxide process vent emissions (Method 25A of 40 CFR part 60, appendix A, was used). These commenters also discussed the expense of Method 301 validations, and noted that the proposed rule relied on Method 25A in other parts of the rule (for wastewater), and that other rules (such as the Polymers and Resins IV rule) allow Method 25A without Method 301 validation.

The EPA agrees that allowing of the use of Method 25A would provide more flexibility, and potentially provide the opportunity for less costly testing. However, the EPA believes that Method 25A should be used only after an accurate response factor has been determined. The importance of calibrating a flame ionization detector (FID) reading obtained using Method 25A with respect to a certain compound (adjustment by response factor) depends on how the Method will be used to demonstrate compliance with the standard. In general, the EPA believes that an accurate response factor is necessary in cases where Method 25A is used to demonstrate control efficiency across a device where the composition of the stream may change, or in situations where multiple components, including non-HAP VOC, are present. Because the relative proportion of organic compounds may change across the control device, appropriate response factors are needed to accurately quantify TOC at the inlet and outlet of a control device. In addition, the EPA believes that owners and operators should have the opportunity to demonstrate compliance at the outlet of a control device by measuring 20 ppmv TOC or less. Therefore, the final rule does allow the use of Method 25A under certain conditions. The following describes the choices of test methods allowed in the final rule: (1) Method 18 (40 CFR part 60, appendix A) to determine HAP concentration in any control device efficiency determination; (2) Method 25 (40 CFR part 60, appendix A) to determine total gaseous nonmethane organic concentration for control efficiency determinations in combustion devices; (3) Method 25A (40 CFR part

60, appendix A) to determine the HAP or TOC concentration for control device efficiency determinations under the conditions specified in Method 25 (40 CFR part 60, appendix A) for direct measurement of an effluent with a flame ionization detector, or in demonstrating compliance with the 20 ppmv TOC outlet standard. As an alternative, any other method or data that have been validated according to the applicable procedures in Method 301 (40 CFR part 63, appendix A) may be used.

K. Site-Specific Onset of Extended Cookout

In the proposed rule, the EPA recognized that extended cookout, or ECO, is a pollution prevention alternative used by some polyether polyols producers to reduce epoxide emissions. The proposed rule required that owners or operators of existing sources using ECO achieve the same 98 percent emission reduction (99.9 percent for new sources) that was required for owners or operators using combustion, recovery, or recapture devices. In order to demonstrate a percent efficiency, it was necessary to designate the basis, or the "uncontrolled" emissions, for assessing the percent reduction. The point where uncontrolled emissions were to be assessed, called the "onset" of the ECO, was defined in the proposed rule as the point when the epoxide concentration in the reactor liquid is equal to 25 percent of the concentration of epoxide in the liquid at the end of the epoxide feed. Commenters supported this default ECO onset, and it has been retained in the final rule.

In addition to using this "default" definition of the ECO onset, the proposed rule allowed owners and operators the option of defining the onset of the ECO for their specific process, at another point. The factors required to allow an owner or operator to set a site-specific ECO onset were the profit variable margin (the difference between variable costs (raw materials and energy) of the product and the cost of the raw material). One commenter objected to allowing the establishment of a site-specific ECO onset based on economics, stating that economics can be subjective, making it easy to demonstrate a 98-percent emission reduction.

A late submittal from one commenter challenged the first commenter's argument that the onset of ECO is subjective, noting that one of the pieces of economic information, the price of the raw material, comes from the *Chemical Market Reporter*. However, the other variable in defining the onset of ECO, the product variable margin and the selling price, was the variable that provoked the original commenter's concern. In fact, the commenter providing the late comment stated that the product variable margin has "a much stronger correlation between product profitability and the economic onset of ECO."

Due to the subjectivity of the product variable margin, and the strong correlation between the product variable margin and the ECO onset, the EPA agreed with the first commenter. The EPA revised the final rule, removing the option of setting site-specific ECO onsets. Allowing the determination of a site-specific ECO onset is not consistent with the concept of MACT, since, given the subjectivity of this approach, it could effectively result in different levels of control for facilities in the same source category.

L. Parameter Monitoring Excursion Definitions

As a result of public comments, the EPA decided to restructure and expand the sections associated with parameter monitoring excursions in order to simplify and clarify these provisions in subpart PPP. The goal of these revisions was to include all of the necessary information about excursions and compliance in one location.

At proposal, the definitions of excursions and the statement that owners and operators were out of compliance for each parameter monitoring excursion were located in separate paragraphs. In the final rule, these concepts are combined into the same paragraph (§ 63.1438(f)).

Basically, there are two ways for excursions to occur. The first is if the average parameter value measured is above a maximum, or below a minimum, established value. The second is if insufficient monitoring data are collected. Revisions were made for both of these instances.

Provisions were added specifying that monitoring data recorded during start-ups, shutdowns, and malfunctions, and during periods of non-operation of the affected source (or portion thereof) are not to be included in any average computed. In addition, the EPA has added paragraphs that describe the periods that are not to be included when determining the period of control or recovery device operation, for purposes of determining whether sufficient monitoring data were collected. Under the new provisions, the following periods are not to be used when determining if sufficient monitoring data are available for the owner or operator to avoid having an excursion: periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; start-ups; shutdowns; malfunctions; and periods of non-operation of the affected source that result in the cessation of emissions to which the monitoring applies.

M. Monitoring During Start-ups, Shutdowns, and Malfunctions

The proposed rule required that monitoring data be collected during periods of start-up, shutdown, or malfunction (SSM). Commenters requested that the EPA allow a provision for ceasing to collect monitoring data at a particular control device if operating that monitoring device during periods of SSM would damage the monitoring device. The EPA revised the final rule to allow the owner or operator to cease collecting monitoring data if the owner or operator has illustrated that the monitoring device would be damaged or destroyed if it were not shut down during the SSM period. Such a provision must be included in the Start-up, Shutdown, and Malfunction Plan. Getting such a provision in the Start-up, Shutdown, and Malfunction Plan is accomplished by submitting a request, and rationale defending the request, in the Precompliance Report or in a supplement to the Precompliance Report.

N. Process Vent Control Requirement for Epoxide Emissions From New Sources

A major issue raised in the public comments that did not result in a rule change was related to the new source limitation for process vent epoxide emissions. The proposed rule included a requirement that epoxide emissions from process vents at new affected sources be reduced by 99.9 percent or greater. Several commenters objected to this requirement, and provided numerous reasons supporting their objections. Most of these reasons were related to the facility identified by the EPA as the "best performing facility," upon which this new source limitation was based. The commenters felt that this facility was not representative of the industry, and that a separate subcategory should be created for this facility. The commenters also pointed out that there were inconsistencies between the test methods used by this best performing facility to verify their epoxide emission reduction and the test methods that were contained in the proposed rule. Further, the commenters stated that the 99.9 percent limitation would force new sources to utilize combustion technology, which would

increase criteria pollutants and create potential safety hazards.

The EPA spent a great deal of time evaluating all aspects of this issue. The EPA concluded that the available data do not support the assertion that the polyether polyols source category should be subcategorized in the manner suggested by the commenters. Also, the fact that specific test data (which were analyzed in detail by the Agency) are available for this facility and that permit conditions are in place requiring compliance at the 99.9 percent level leaves the Agency little latitude in establishing new source MACT at a less stringent level. Discussion of each of the individual points raised by commenters is provided below.

1. Subcategorization

As noted above, several commenters stated their belief that the facility that formed the basis for the 99.9 percent new source epoxide emission requirement was not representative of the industry, and that a separate subcategory should be created for this facility. The commenters discussed three characteristics of this facility to support this assertion. The first was the method of operation. The other two were the facility's size and the fact that the facility utilized two incinerators.

By "method of operation," commenters were referring to the venting method employed during the reaction phase of the production process. The commenters stated that the best performing facility is not a similar source, due to the fact that the reactor vents during the epoxide feed step of the reaction. The commenters claimed that such an operation would send high concentrations of epoxides to the control device as a continuous or semi-continuous stream, resulting in an artificially high destruction efficiency (compared to a facility that does not vent unreacted epoxides continuously).

Prior to the development of the proposed rule, the EPA understood the technical merits of this argument, but did not have sufficient data to allow a comparison of the venting and emission characteristics of this facility with other polyether polyols production facilities. Therefore, the EPA requested additional data in order to conclude whether or not subcategorization was warranted on this basis. Therefore, the preamble to the proposed rule stated this data need and specifically requested facility-specific information, in order to allow for further evaluation of this issue (62 FR 46814).

In response to this request, one commenter presented a comparison of uncontrolled and controlled epoxide emissions for a facility owned by the commenter that does not vent during the epoxide feed (i.e., a "nonvented" facility) with the best controlled facility, which does vent during the epoxide feed (i.e., "vented"). Another commenter provided a comparison of two facilities owned by the same company that were reported to be similar in most aspects, except with respect to when the facility vents the reactor (one was vented and one was nonvented). In addition, one commenter presented a hypothetical comparison between a venting facility and a nonventing facility. All of these comparisons led to conclusions by these commenters that uncontrolled emissions at vented facilities are much higher than uncontrolled emissions at nonvented facilities, which would give vented facilities an unfair advantage in achieving a higher epoxide emission reduction.

The EPA appreciated these comparisons. However, several inconsistencies and assumptions were identified that caused the Agency to conclude that these comparisons do not, independently, provide a sufficient basis for subcategorizing the polyether polyols source category into vented and nonvented subcategories. Some of EPA's concerns with these comparisons are discussed below.

With regard to the comparison of an actual facility with the best performing facility, the EPA found that the epoxide emission estimates used for the best performing facility in the commenter's comparison were drastically different from the emission data that were directly submitted to the EPA by the best performing facility. Also, the emission data from the commenter's facility had been updated from the data originally submitted during an EPA plant site visit to that facility. The estimates provided in the comments were lower than the original estimates due to process improvements at the facility (that were not related to the method of operation). The EPA conducted a similar comparison of the uncontrolled epoxide emissions at these same two facilities using the data originally submitted to the EPA by the two companies. The results were not in accordance with those presented by the commenter. In fact, the uncontrolled emission factor for the commenter's facility was higher than the best controlled facility's factor. Clearly, the analysis of the data available to the Agency does not support this commenter's analysis.

The actual facility analysis conducted by a second commenter stated that their analysis consisted of two facilities owned by the commenter that were "similarly sized units." However, the EPA found that the production capacity for the nonvented reactor was larger than that for the vented reactor, and the emissions were not adjusted accordingly.

Finally, the hypothetical analysis assumed that a water-cooled condenser was used at the reactor vent. The EPA believes that the use of more efficient refrigerated condensers, which would result in considerably lower uncontrolled emissions, is more representative of practice in the industry.

Given these and other inconsistencies in the facility comparisons provided by commenters, the EPA could not conclude that subcategorization was necessary.

No commenters submitted the facility-specific data that were requested in the proposal preamble. Therefore, even if the examples provided by the commenters had led to the conclusion that subcategorization was warranted, the EPA did not have sufficient facility information to allow a complete subcategorization evaluation.

However, the Agency still wanted to attempt to address the commenters' concerns on this issue. Given the lack of facility-specific data provided by the industry prior to proposal and during the public comment period, the EPA conducted a brief telephone survey to inquire specifically about the method of operation at polyether polyol production facilities. Representatives from all the facilities in the process vent database were called and asked to describe their method of venting during epoxide feed. Of the facilities for which the EPA was able to collect method-of-venting data, 24 percent (including the best-controlled facility) reported venting during the epoxide feed step, and 76 percent reported that their facilities did not vent during the epoxide feed step. Therefore, the EPA concluded that the manner of operation of the best-controlled facility was not "unique," as was claimed by several of the commenters.

The EPA then sought to determine whether the different venting modes during epoxide feed resulted in differences in the amount and pattern of emissions and the achievable degree of emission reduction. The EPA determined that using a facility's uncontrolled emission factor (mass uncontrolled epoxide emissions per mass of polyol product produced) was the best method of comparison, and calculated such a factor for each facility for which sufficient information was available. For the vented facilities, the median uncontrolled emission factor

was 0.17 lb epoxide emissions per 1000 lb of product. The mean uncontrolled emission factor was considered to be an inadequate measure of central tendency, because the data points for vented facilities had a widely varied distribution, with two orders of magnitude difference between the ends of the range. For the nonvented facilities, the median uncontrolled emission factor was 1.09. The commenters asserted that uncontrolled epoxide emissions at vented facilities are considerably higher than those at nonvented facilities. However, the results of the EPA's analysis, based on the best information available, clearly do not support this assertion, since the median uncontrolled emission factor calculated for nonvented facilities is over six times higher than the median uncontrolled emission factor for vented facilities.

In conclusion, based on all of the information available to the Agency, the EPA was unable to determine a different emission trend between the vented and nonvented groups from the data made available to the Agency between proposal and promulgation. Therefore, the EPA did not subcategorize the industry based on the method of operation.

The commenters' second rationale for supporting their claim that the best-controlled facility is not a similar source was that the facility's production capacity is many times that of other sources in the source category. It is the EPA's policy (57 FR 31576; July 16, 1992) that subcategories, or subsets of similar emission sources within a source category, be defined if technical differences in emissions characteristics, processes, control device applicability, or opportunities for pollution prevention exist within the source category. The EPA does not believe that the fact that the best-controlled facility has a larger production capacity satisfies any of these criteria. Further, since one facility in the process vent database has a capacity that is 83 percent of the best-controlled facility's capacity, the EPA also disagrees that the production capacity at the best-controlled facility is unusually large in comparison to the rest of the source category.

The third argument given by the commenters to support their claim that the best-controlled facility is not similar to other affected sources was that this facility has two incinerators, and that no other source uses incineration. The EPA disagrees with the commenters' claim that the best-controlled facility is the only source using an incinerator to control epoxide emissions, since there is another facility in the database that also uses incineration. Further, the fact that a source has a better control than all other facilities in the source category through the use of one or more incinerators is not a sufficient basis for asserting that the source should be subcategorized. The purpose of MACT is to ensure that regulated sources meet the control standards achieved by the best performing sources in the category. Subcategorization on the basis of the control technology utilized would undermine the very concept of MACT.

In addition to the evaluation of the individual points raised by commenters, the EPA also considered whether these characteristics of the best-controlled facility collectively form a basis for subcategorization. The EPA concluded that, based on the facility-specific process, emissions, and emissions control information provided to the Agency by the polyether polyol industry, a separate subcategory should not be created solely for the best-controlled facility.

2. Inconsistency in Test Methods

An additional concern raised by two commenters was that the data from the best-controlled facility do not support the new source standard because the Agency used information from the State permit and its corresponding performance test reports as data for the best-controlled facility. The commenters claimed that these data were submitted to the State agency to demonstrate compliance with permit emission limitations for VOC, not HAP, and to document that the incinerators were meeting the required VOC destruction efficiency. They noted that there are several significant inconsistences between the test methods used and the methods required in the proposed standards.

The EPA disagrees with the commenters' statement that the data from the best-controlled facility do not support the new source standard because the performance test was conducted to determine VOC destruction efficiency instead of epoxide emission destruction efficiency, and that the permit conditions are specific to VOC. The primary pollutant in the stream was propylene oxide (PO), and this is the pollutant for which Method 18, at the inlet of the incinerator, and Method 25A, at the outlet of the incinerator, were calibrated during the test at the best-controlled facility. Therefore, even though the test and permit cite VOC destruction efficiency, it is clear that it is the destruction of PO that was tested and regulated at the best-controlled facility. The commenters' concerns about inconsistencies between the test reports and the proposed standards was discussed in greater detail earlier in this document, in relation to the changes to the test method requirements.

3. Increase in Criteria Pollutant Emissions

Two commenters explained that the combustion technology utilized by the best-controlled facility (which would be necessary to meet the 99.9 percent requirement) results in an increase in criteria pollutants, which were not included in EPA's MACT floor analysis, while alternative control technologies, such as scrubbers or ECO, would be expected to cause significantly lower nitrogen oxides (NO_X) emissions. The EPA is aware that incineration has secondary criteria pollutant emissions. However, MACT floor decisions, under the Clean Air Act, are based on the reduction of HAP emissions, and not on their secondary impacts. The EPA also realizes that an increase in criteria pollutants could trigger Prevention of Significant Deterioration (PSD) and/or New Source Review (NSR). The EPA has addressed this issue in previous NESHAP, by referring to a July 1, 1994 guidance memorandum issued by the EPA (available on the Technology Transfer Network; see "Pollution Control Projects (PCP) and NSR Applicability" from John S. Seitz, Director, Office of Air Quality Planning and Standards to EPA Regional Air Division Directors). In that memorandum, the EPA provided guidance for permitting authorities regarding their ability to approve the PCP exemptions (from PSD review and major NSR) for source categories other than electric utilities that use add-on controls and switching to less-polluting fuels to reduce emissions of toxic pollutants. In the July 1, 1994 guidance memorandum, the EPA specifically identified the combustion of organic toxic pollutants as an example of an add-on control that could be considered a PCP and an appropriate candidate for a case-by-case exclusion from major NSR. The EPA is alert to potential NSR conflicts and feels that this memorandum will alleviate most NSR/PSD review concerns. In the event that it will not, the EPA will attempt to create implementation flexibility on a case-by-case basis.

4. Safety Concerns

The commenters claimed that the EPA has failed to account for potential process safety considerations associated with the combustion of ethylene oxide (EO). The safety issues of incineration of epoxides were adequately addressed at

the best-controlled facility and the other facility in the database that has incineration. Therefore, the EPA did not find these reasons to be sufficient to justify eliminating the data from the best-controlled facility when determining the MACT floor for new sources.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of the final standards. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA has determined that this rule does not meet any of the criteria enumerated above and therefore, does not constitute a "significant regulatory action" under the terms of Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule falls into that category only in part: The minimum rule stringency is set according to a congressionally-mandated, technology-based lower limit called the "floor," while a decision to increase the stringency beyond this floor can be based on risk considerations. Only to the extent that the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impact such a pollutant may have on children's health, in deciding whether to adopt control requirements more stringent than the floor level.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. No children's risk analysis was performed for this rulemaking because no alternative technologies exist that would provide greater stringency at a reasonable cost, and therefore the results of any such analysis would have no impact on the stringency decision.

D. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1811.02) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The public recordkeeping and reporting burden for this collection of information is estimated to average 1,046 hours per respondent for the first year and 162 hours for each of the second and third years (following promulgation of the rule). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

E. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant adverse economic impact on a substantial number of small businesses. Consistent with Small Business Administrative (SBA) size standards, a polyether polyols producing firm is classified as a small entity if it has less than 750 employees and is unaffiliated with a larger domestic entity. Based upon this standard, 7 of the 36 polyether polyol producing firms are classified as small entities (i.e., having fewer than 750 employees). The EPA determined that none of these seven small entities will experience an increase in costs as a result of the promulgation of today's rule that is greater than one percent of revenues. This does not qualify as a significant economic impact on a substantial number of small businesses.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

G. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

H. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule implements requirements specifically set forth by the Congress in section 112 of the CAA without the exercise of any discretion by the EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not affect these entities because they do no own or operate sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards. This section summarizes the EPA's response to the requirements of the NTTAA for the analytical and test methods to be required by this final rule.

Consistent with the NTTAA, the EPA conducted a search to identify voluntary consensus standards. The search identified 15 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods in this rule. However, after reviewing available standards, EPA determined that eight of the candidate consensus standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data or other important technical and policy considerations. Seven of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

One consensus standard, ASTM Z7420Z, is potentially practical for EPA use in lieu of EPA Method 18 (See 40 CFR part 60, appendix A). At the time of EPA's search, the ASTM standard was still under development and EPA had provided comments on the method. The EPA also compared a draft of this ASTM standard to methods previously approved as alternatives to EPA Method 18 with specific applicability limitations. These methods, designated as ALT–017 and CTM–028, are available through EPA's Emission Measurement Center Internet site at www.epa.gov/ttn/emc/tmethods.html. The proposed ASTM Z7420Z standard is very similar to these approved alternative methods. When finalized and adopted by ASTM, the standard may be equally suitable for specific applications. However, today's rule does not adopt the ASTM standard qt this time as it is not practical to do so until the potential candidate is final and EPA has reviewed the final standard. The EPA plans to continue to follow the progress of the standard and will consider adopting the ASTM standard at a later date.

This rule requires standard EPA methods known to the industry and States. Approved alternative methods also may be used with prior EPA approval.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AFFECTED SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et. seq.

2. Part 63 is amended by adding subpart PPP to read as follows:

Subpart PPP—National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

Sec.

63.1420 Applicability and designation of affected sources.
63.1421 Delegation of authority.
63.1422 Compliance dates and relationship of this rule to existing applicable rules.
63.1423 Definitions.
63.1424 Emission standards.
63.1425 Process vent control requirements.
63.1426 Process vent requirements for determining organic HAP concentration, control efficiency, and aggregated organic HAP emission reduction for a PMPU.
63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction technique.
63.1428 Process vent requirements for group determination of PMPUs using a nonepoxide organic HAP to make or modify the product.
63.1429 Process vent monitoring requirements.
63.1430 Process vent reporting and recordkeeping requirements.
63.1431 Process vent annual epoxides emission factor plan requirements.
63.1432 Storage vessel provisions.
63.1433 Wastewater provisions.
63.1434 Equipment leak provisions.
63.1435 Heat exchanger provisions.
63.1436 [Reserved]
63.1437 Additional requirements for performance testing.
63.1438 Parameter monitoring levels and excursions.
63.1439 General recordkeeping and reporting provisions.
Table 1 to Subpart PPP of Part 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES
Table 2 to Subpart PPP of Part 63—APPLICABILITY OF SUBPARTS F, G, H, AND U TO SUBPART PPP AFFECTED SOURCES
Table 3 to Subpart PPP of Part 63—GROUP 1 STORAGE VESSELS AT EXISTING AND NEW AFFECTED SOURCES
Table 4 to Subpart PPP of Part 63—KNOWN ORGANIC HAP FROM POLYETHER POLYOL PRODUCTS
Table 5 to Subpart PPP of Part 63—PROCESS VENTS FROM BATCH UNIT OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS
Table 6 to Subpart PPP of Part 63—PROCESS VENTS FROM CONTINUOUS UNIT OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS
Table 7 to Subpart PPP of Part 63—OPERATING PARAMETERS FOR WHICH MONITORING LEVELS ARE REQUIRED TO BE ESTABLISHED FOR PROCESS VENTS STREAMS
Table 8 to Subpart PPP of Part 63—ROUTINE REPORTS REQUIRED BY THIS SUBPART

Subpart PPP—National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

§ 63.1420 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. Affected sources are described in paragraphs (a)(1) through (4) of this section.

(1) An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(2) of this section, and new affected source is defined in paragraph (a)(3) of this section.

(2) An existing affected source is defined as the group of one or more polyether polyol manufacturing process units (PMPUs) and associated equipment, as listed in paragraph (a)(4) of this section, that is not part of a new affected source, as defined in paragraph (a)(3) of this section, and that is located at a plant site that is a major source.

(3) A new affected source is defined as a source that meets the criteria of paragraph (a)(3)(i), (ii), or (iii) of this section. The situation described in paragraph (a)(3)(i) of this section is distinct from those situations described in paragraphs (a)(3)(ii) and (iii) of this section.

(i) At a site without organic HAP emission points before September 4, 1997 (i.e., a "greenfield" site), the group of one or more PMPUs and associated equipment, as listed in paragraph (a)(4) of this section, that is part of a major source, and on which construction for the PMPU(s) commenced after September 4, 1997;

(ii) The group of one or more PMPUs meeting the criteria in paragraph (g)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (g)(2)(i) of this section.

(4) The affected source also includes the emission points and equipment specified in paragraphs (a)(4)(i) through (vi) of this section that are associated with a PMPU (or a group of PMPUs) making up an affected source, as defined in § 63.1423.

(i) Each waste management unit.

(ii) Maintenance wastewater.

(iii) Each heat exchange system.

(iv) Equipment required by or utilized as a method of compliance with this subpart which may include control techniques and recovery devices.

(v) Product finishing operation.

(vi) Each feed or catalyst operation.

(b) *PMPUs without organic HAP.* The owner or operator of a PMPU that is part of an affected source, as defined in paragraph (a) of this section, but that does not use or manufacture any organic HAP during the production of one or more products is only subject to the provisions of this subpart as specified in paragraph (b)(1) or (2) of this section, as applicable. Products or raw material(s) containing organic HAP as impurities

only are not considered organic HAP for the purposes of this paragraph.

(1) If an organic HAP is not used or manufactured in the production of polyether polyols, the PMPU is not subject to any provisions of this subpart, except that the owner or operator shall comply with either paragraph (b)(1)(i) or (ii) of this section. The owner or operator is not required to comply with the provisions of 40 CFR part 63, subpart A (the General Provisions) for that PMPU.

(i) Retain information, data, and analyses used to document the basis for the determination that the PMPU does not use or manufacture any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(ii) When requested by the Administrator, demonstrate that the PMPU does not use or manufacture any organic HAP.

(2) If an organic HAP is used or manufactured in the production of polyether polyols, but an organic HAP is not used in the production of one or more products that are not polyether polyols, the PMPU is not subject to any provision of this subpart other than paragraph (b)(1)(i) or (ii) of this section during the production of the non-polyether polyol products that do not use or manufacture any organic HAP.

(c) *Emission points included in the affected source but not subject to the provisions of this subpart.* The affected source includes the emission points listed in paragraphs (c)(1) through (12) of this section, but these emission points are not subject to the requirements of this subpart or the provisions of 40 CFR part 63, subpart A.

(1) Equipment that does not contain organic HAP or that contains organic HAP as impurities only and is located at a PMPU that is part of an affected source.

(2) Stormwater managed in segregated sewers.

(3) Water from fire-fighting and deluge systems in segregated sewers.

(4) Spills.

(5) Water from safety showers.

(6) Water from testing of deluge systems.

(7) Water from testing of firefighting systems.

(8) Vessels that store and/or handle material that contains no organic HAP or organic HAP as impurities only.

(9) Equipment that operates in organic HAP service for less than 300 hours during the calendar year.

(10) Loading racks, loading arms, or loading hoses that only transfer liquids containing HAP as impurities.

(11) Loading racks, loading arms, or loading hoses that vapor balance during all loading operations.

(12) Utility fluids, such as heat transfer fluids.

(d) *Processes exempted from the affected source.* The processes specified in paragraphs (d)(1) through (3) of this section are not part of the affected source and are exempted from the requirements of both this subpart and subpart A of this part.

(1) Research and development facilities.

(2) Solvent reclamation, recovery, or recycling operations at hazardous waste treatment, storage, and disposal facilities (TSDF) requiring a permit under 40 CFR part 270 that are not part of a PMPU to which this subpart applies.

(3) Reactions or processing that occur after the epoxide polymerization is complete and after all catalyst removal steps, if any, are complete.

(e) *Primary product determination and applicability.* An owner or operator of a process unit that produces or plans to produce a polyether polyol shall determine if the process unit is subject to this subpart in accordance with this paragraph.

(1) *Initial primary product determination.* The owner or operator shall initially determine the primary product of each process unit in accordance with paragraphs (e)(1)(i) through (iii) of this section.

(i) If a process unit manufactures only one product, then that product shall represent the primary product of the process unit.

(ii) If a process unit produces more than one intended product at the same time, the primary product shall be determined in accordance with paragraph (e)(1)(ii)(A) or (B) of this section.

(A) The product for which the process unit has the greatest annual design capacity on a mass basis shall represent the primary product of the process unit, or

(B) If a process unit has the same maximum annual design capacity on a mass basis for two or more products and if one of those products is a polyether polyol, then the polyether polyol shall represent the primary product of the process unit.

(iii) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraph (e)(1)(iii)(A) or (B) of this section based on the anticipated operations for the 5 years following September 4, 1997 for existing process units, or for the first year after the process unit begins production of any product for the new process units. If operations cannot be anticipated sufficiently to allow the determination of the primary product for the specified period, applicability shall be determined in accordance with paragraph (e)(2) of this section.

(A) If the flexible operation unit will manufacture one product for the greatest operating time over the specified 5-year period for existing process units, or the specified 1-year period for new process units, then that product shall represent the primary product of the flexible operation unit.

(B) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest expected production on a mass basis over the specified 5-year period for existing process units, or the specified 1-year period for new process units shall represent the primary product of the flexible operation unit.

(iv) If, according to paragraph (e)(1)(i), (ii), or (iii) of this section, the primary product of a process unit is a polyether polyol, then that process unit shall be designated as a PMPU. If the plant site is a major source, that PMPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source or part of an affected source comprised of one or more other PMPUs and associated equipment, as listed in paragraph (a)(4) of this section, and subject to this subpart. If the primary product of a process unit is not a polyether polyol, then that process unit is not a PMPU.

(2) *Provisions if primary product cannot be determined.* If the primary product cannot be determined for a flexible operation unit in accordance with paragraph (e)(1)(iii) of this section, applicability shall be determined in accordance with this paragraph.

(i) If the owner or operator can determine that a polyether polyol is not the primary product, then that flexible operation unit is not a PMPU.

(ii) If the owner or operator cannot determine that a polyether polyol is not the primary product as specified in paragraph (e)(2)(i) of this section, applicability shall be determined in accordance with paragraph (e)(2)(ii)(A) or (B) of this section.

(A) If the flexible operation unit is an existing process unit, the flexible operation unit shall be designated as a PMPU if a polyether polyol was produced for 5 percent or greater of the total operating time of the flexible operation unit since September 4, 1997.

(B) If the flexible operation unit is a new process unit, the flexible operation unit shall be designated as a PMPU if the owner or operator anticipates that a polyether polyol will be manufactured in the flexible operation unit at any time in the first year after the date the unit begins production of any product.

(3) *Annual applicability determination for non-PMPUs that have produced a polyether polyol.* Once per year beginning June 1, 2004 the owner or operator of each flexible operation unit that is not designated as a PMPU, but that has produced a polyether polyol at any time in the preceding 5-year period or since the date that the unit began production of any product, whichever is shorter, shall perform the evaluation described in paragraphs (e)(3)(i) through (iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time over which the product was produced during the preceding 5-year period.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the preceding 5-year period.

(iii) If the primary product identified in paragraph (e)(3)(ii) is a polyether polyol, the flexible operation unit shall be designated as a PMPU. The owner or operator shall notify the Administrator no later than 45 days after determining that the flexible operation unit is a PMPU, and shall comply with the requirements of this subpart in accordance with paragraph (g)(1) of this section for the flexible operation unit.

(4) *Applicability determination for non-PMPUs that have not produced a polyether polyol.* The owner or operator that anticipates the production of a polyether polyol in a process unit that is not designated as a PMPU, and in which no polyether polyol products have been produced in the previous 5-year period or since the date that the process unit began production of any product, whichever is shorter, shall use the procedures in paragraph (e)(1) or (2) of this section to determine if the process unit is designated as a PMPU, with the exception that for existing process units, owners or operators shall project production for the 5 years following the date that the owner or operator anticipates initiating the production of a polyether polyol, instead of the 5 years following September 4, 1997. If the unit is designated as a PMPU, the owner or operator shall comply in accordance with paragraph (g)(1) of this section.

(5) *Applicability of requirements for PMPUs that are flexible operation units.* The owner or operator of PMPUs that are flexible operation units shall comply with the provisions of this subpart in accordance with paragraphs (e)(5)(i) through (iii) of this section.

(i) *Control requirements.* The owner or operator shall comply with the control requirements of this subpart in accordance with paragraphs (e)(5)(i)(A) and (B) of this section.

(A) During periods when the PMPU produces polyether polyols, the owner or operator shall comply with the provisions of this subpart.

(B) During periods when the PMPU produces products other than polyether polyols, the owner or operator is not required to install additional combustion, recovery, or recapture devices (to otherwise demonstrate compliance). However, the owner or operator shall continue to operate any existing combustion, recovery, or recapture devices that are required for compliance during the production of polyether polyols, with the exceptions provided in paragraph (e)(5)(iv) of this section. If extended cookout (ECO) is the control technique chosen for epoxide emission reduction, then ECO or a control technique providing an equivalent reduction in epoxide emissions should continue to be used for epoxide emission reduction, if the non-polyether polyol being produced uses epoxide monomers.

(ii) *Monitoring requirements.* The owner or operator shall comply with the monitoring requirements of this subpart in accordance with paragraphs (e)(5)(ii)(A) and (B) of this section, and paragraph (e)(5)(ii)(C) of this section if applicable.

(A) The owner or operator shall establish a single parameter monitoring level (for each parameter required to be monitored at each device subject to monitoring requirements) in accordance with § 63.1438(a) based on emission point and control technique characteristics when polyether polyol is being produced.

(B) The owner or operator shall monitor each parameter at each device subject to monitoring requirements at all times (during periods when the PMPU produces polyether polyols, and during periods when the PMPU produces products other than polyether polyols), with the exceptions provided in paragraph (e)(5)(iv) of this section.

(C) If ECO is used to reduce epoxide emissions, a parameter monitoring level shall be established for the production of non-polyether polyol products as the average of the established parameter levels for all product classes produced. During periods when products other than polyether polyols are produced, the ECO shall be performed so that the parameter monitoring level established for the production of non-polyether polyol products is maintained when the ECO is used as a control technique.

(iii) *Group determinations.* For emission points where the owner or operator is required to determine if the emission point is Group 1 according the definitions in § 63.1423 (storage vessels, process vents for nonepoxide organic HAP emissions used to make or modify the product, and wastewater), the owner or operator shall determine the group status based on emission point characteristics when polyether polyol is being manufactured. Group 1 emission points shall be controlled in accordance with paragraph (e)(5)(i) of this section.

(iv) *Exceptions.* During periods when products described in paragraphs (e)(5)(iv)(A) and (B) of this section are produced, the owner or operator is not required to comply with the provisions of this subpart.

(A) Products in which no organic HAP is used or manufactured, provided that the owner or operator comply with paragraph (b)(2) of this section.

(B) Products that make the PMPU subject to 40 CFR part 63, subpart GGG (Pharmaceuticals Production NESHAP).

(6) [Reserved]

(7) [Reserved]

(8) *Requirements for process units that are not PMPUs.* If it is determined that a process unit is not subject to this subpart, the owner or operator shall either retain all information, data, and analysis used to document the basis for the determination that the process unit is not a PMPU, or, when requested by the Administrator, demonstrate that the process unit is not a PMPU.

(9) *PMPUs terminating production of polyether polyols products.* If a PMPU terminates the production of polyether polyol and does not anticipate the production of a polyether polyol in the future, the process unit is no longer a PMPU and is not subject to this subpart after notification is made to the Administrator. This notification shall be accompanied by a rationale for why it is anticipated that no polyether polyol will be produced in the process unit in the future.

(10) *Redetermination of applicability to PMPUs that are flexible operation units.* Whenever changes in production occur that could reasonably be expected to change the primary product of a PMPU that is operating as a flexible operation unit from a polyether polyol to a product that would make the process unit subject to another subpart of this part, the owner or operator shall

reevaluate the primary product, in accordance with paragraphs (e)(3)(i) and (ii) of this section. If the conditions in paragraphs (e)(10)(i) through (iii) of this section are met, the flexible operation unit shall no longer be designated as a PMPU after the compliance date of the other subpart, and shall no longer be subject to the provisions of this subpart after the date that the process unit is required to be in compliance with the provisions of the other subpart. If the conditions in paragraphs (e)(10)(i) through (iii) of this section are not met, the flexible operation unit shall continue to be considered a PMPU and subject to the requirements of this subpart.

(i) The product identified as the primary product is not polyether polyol;

(ii) The production of the product identified as the primary product is subject to another subpart of this part; and

(iii) The owner or operator submits a notification to the Administrator of the pending change in applicability.

(f) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (f)(1) through (7) of this section to determine to which process unit a storage vessel shall be assigned.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) on June 1, 1999, that storage vessel shall be assigned to the process unit subject to the other subpart, and none of the other provisions in this subpart shall apply to that storage vessel.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall be assigned to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall be assigned to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., the process unit that has the predominant use of the storage vessel.)

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is a PMPU subject to this subpart, the storage vessel shall be assigned to that PMPU.

(5) If predominant use cannot be determined for a storage vessel that is shared among process units and if more than one of the process units are PMPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the storage vessel to any one of the PMPUs sharing the storage vessel.

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding June 1, 1999 or based on the expected utilization for the 5 years following June 1, 1999 for existing affected sources, whichever is more representative of the expected operations for that storage vessel, and based on the expected utilization for the 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.1439(e)(5)(v).

(7) Where a storage vessel is located at a major source that includes one or more process units which place material into or receive material from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (f)(7)(i) through (iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw materials, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping to both the process unit and the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (f)(7)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (f)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (f)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraphs (f)(3) through (6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (f)(7)(i) of this section.

(8) If the storage vessel begins receiving material from (or sending material to) a process unit that was not included in the initial determination, or ceases to receive material from (or send material to) a process unit that was included in the initial determination, the owner or operator shall reevaluate the applicability of this subpart to that storage vessel.

(g) *Changes or additions to plant sites.* The provisions of this paragraph apply to the owner or operator that changes or adds to their plant site or affected source.

(1) *Adding a PMPU to a plant site.* The provisions of paragraphs (g)(1)(i) and (ii) of this section apply to the owner or operator that adds one or more PMPUs to a plant site. A PMPU may be added to a plant site by constructing or reconstructing a process unit to produce polyether polyols. A PMPU may also be added to a plant site due to changes in production (anticipated production or actual past production) such that a polyether polyol becomes the primary product of a process unit that was not previously a PMPU.

(i) If a group of one or more PMPUs is added to a plant site, the added group of one or more PMPUs and their associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by June 1, 1999, whichever is later, if the criteria specified in paragraph (g)(1)(i)(A) is met and either the criteria in paragraph (g)(1)(i)(B) or (C) of this section are met.

(A) The process units are new process units, as defined in § 63.1423.

(B) The added group of one or more PMPUs and associated equipment, as listed in paragraph (a)(4) of this section, has the potential to emit 10 tons per year (9.1 megagrams per year) or more of any organic HAP or 25 tons per year (22.7 megagrams per year) or more of any combination of organic HAP, and polyether polyols are currently produced at the plant site as the primary product of an affected source.

(C) A polyether polyol is not currently produced at the plant site as the primary product of an affected source, and the plant site meets, or after the addition is constructed will meet, the General Provisions' definition of a major source in § 63.2.

(ii) If a group of one or more PMPUs is added to a plant site, and the added group of one or more PMPUs does not meet the criteria specified in paragraph (g)(1)(i)(A) of this section and one of the criteria specified in either paragraph (g)(1)(i)(B) or (C) of this section, and the plant site meets, or after the addition will meet, the definition of a major source, the owner or operator of the added group of one or more PMPUs and associated equipment, as listed in

paragraph (a)(4) of this section, shall comply with the requirements for an existing affected source in this subpart upon initial start-up; by June 1, 2002; or by 6 months after notifying the Administrator that a process unit has been designated as a PMPU (in accordance with paragraph (g)(3) of this section), whichever is later.

(2) *Adding emission points or making process changes to existing affected sources.* The provisions of paragraphs (g)(2)(i) and (ii) of this section apply to the owner or operator that adds emission points or makes process changes to an existing affected source.

(i) If any process change or addition is made to an existing affected source that meets the criteria specified in paragraphs (g)(2)(i)(A) and (B) of this section, the entire affected source shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by June 1, 1999.

(A) It is a process change or addition that meets the definition of reconstruction in § 63.1423(b). For purposes of determining whether the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct an entire affected source, the equivalent capital cost shall be the entire potentially affected source; and

(B) Such reconstruction commenced after September 4, 1997.

(ii) If any process change is made or emission point is added to an existing affected source, and the process change or addition does not meet the criteria specified in paragraph (g)(2)(i)(A) of this section, the resulting emission point(s) shall be subject to the requirements for an existing affected source in this subpart. The resulting emission point(s) shall be in compliance upon initial start-up or by the appropriate compliance date specified in § 63.1422 (i.e., December 1, 1999 for most equipment leak components, and June 1, 2002 for emission points other than equipment leaks).

(3) *Determining what are and are not process changes.* For purposes of paragraph (g) of this section, examples of process changes include, but are not limited to, additions in process equipment resulting in changes in production capacity; production of a product outside the scope of the compliance demonstration; or whenever there is a replacement, removal, or addition of recovery equipment. For purposes of paragraph (g) of this section, process changes do not include: Process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.1439(e)(5).

(4) *Reporting requirements for owners or operators that change or add to their plant site or affected source.* An owner or operator that changes or adds to their plant site or affected source, as discussed in paragraphs (g)(1) and (2) of this section, shall submit a report as specified in § 63.1439(e)(7)(ii).

(h) *Applicability of this subpart during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (h)(1) through (4) of this section shall be followed during periods of start-up, shutdown, malfunction, and non-operation of the affected source or any part thereof.

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. These emission limitations shall not apply during periods of start-up, shutdown, or malfunction, during which the owner or operator shall follow the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3). However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable emission limitations of this subpart during the start-up, shutdown, malfunction, or period of non-operation. For example, if there is an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with the storage tank provisions in § 63.1432. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the emission limitations for process vents in §§ 63.1425 through 63.1430.

(2) The emission limitations set forth in 40 CFR part 63, subpart H, as referred to in the equipment leak provisions in § 63.1434, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.1434 applies, or during periods of start-up, shutdown, malfunction, or process unit shutdown (as defined in § 63.161).

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during periods of start-up, shutdown, or malfunction during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment if the shutdown would contravene requirements applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning. This paragraph also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof, the owner or operator shall provide documentation supporting such a claim in the Precompliance Report or in a supplement to the Precompliance Report, as provided for in § 63.1439(e)(4). Once approved by the Administrator in accordance with § 63.1439(e)(4)(vii), the provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart shall be incorporated into the start-up, shutdown, malfunction plan for that affected source, as stated in § 63.1439(b)(1).

(4) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (h)(1) through (3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term "excess emissions" means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Use of back-up control techniques is not required, but is allowed, if available.

§ 63.1421 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the Act, the authorities

contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to the States: the permission to use an alternative means of emission limitation, from § 63.6(g), and the authority of § 63.177.

§ 63.1422 Compliance dates and relationship of this rule to existing applicable rules.

(a) [Reserved]

(b) New affected sources that commence construction or reconstruction after September 4, 1997 shall be in compliance with this subpart upon initial start-up or by June 1, 1999, whichever is later, as provided in § 63.6(b).

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1434 for which compliance is covered by paragraph (d) of this section) no later than June 1, 2002, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section.

(d) Except as provided for in paragraphs (d)(1) through (5) of this section, existing affected sources shall be in compliance with § 63.1434 no later than December 1, 1999 unless an extension has been granted as specified in paragraph (e) of this section.

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than June 1, 2000 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (iv) of this section, if the work can be accomplished without a process unit shutdown, as defined in § 63.161.

(i) The seal system will be replaced.

(ii) A barrier fluid system will be installed.

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system.

(iv) The compressor shall be modified to permit connecting the compressor to a closed vent system.

(2) Compliance with the compressor provisions of § 63.164 shall occur no later than December 1, 2000, for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i) through (iv) of this section.

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161.

(iii) The additional time is necessary, due to the unavailability of parts beyond the control of the owner or operator.

(iv) The owner or operator submits the request for a compliance extension to the appropriate U.S. Environmental Protection Agency Regional Office at the addresses listed in § 63.13 no later than 45 days before December 1, 1999. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161, the owner or operator shall achieve compliance no later than June 1, 2001. The owner or operator who elects to use this provision shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(4) Compliance with the compressor provisions of § 63.164 shall occur not later than June 1, 2002 for any compressor meeting one or more of the criteria in paragraphs (d)(4)(i) through (iii) of this section. The owner or operator who elects to use these provisions shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(i) Compliance cannot be achieved without replacing the compressor.

(ii) Compliance cannot be achieved without recasting the distance piece.

(iii) Design modifications are required to connect to a closed-vent system.

(5) Compliance with the surge control vessel and bottoms receiver provisions of § 63.170 shall occur no later than June 1, 2002.

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, except as discussed in paragraph (e)(3) of this section. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i)(A), (B), and (D).

(2) The requirements in § 63.6(i)(8) through (14) shall govern the review and approval of requests for extensions of compliance with this subpart.

(3) An owner or operator may submit a compliance extension request after the date specified in paragraph (e) of this section, provided that the need for the compliance extension arose after that date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information specified in paragraph (e)(1) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problem.

(f) Table 1 of this subpart specifies the requirements in 40 CFR part 63, subpart A (the General Provisions) that apply and those that do not apply to owners and operators of affected sources subject to this subpart. For the purposes of this subpart, Table 3 of 40 CFR part 63, subpart F is not applicable.

(g) Table 2 of this subpart summarizes the provisions of 40 CFR part 63, subparts F, G, and H (collectively known as the "HON") that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(h)(1) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 63, subpart I, is required to comply only with the provisions of this subpart.

(2) Sources subject to the provisions in 40 CFR part 63, subpart I, that have elected to comply through a quality improvement program, as specified in § 63.175 or § 63.176 or both, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the "compliance clock" as it relates to reduced burden earned through a quality improvement program.

(i) After the compliance dates specified in this section, a storage vessel that is assigned to an affected source subject to this subpart that is also subject to the 40 CFR part 60, subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984) is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, that storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(j) After the compliance dates specified in this subpart, if any combustion device, recovery device or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements for hazardous waste, disposal, and treatment facilities in 40 CFR part 264, subpart AA (Air Emission Standards for Process Vents) or subpart CC (Air Emission Standards for Tanks, Surface Impoundment, and Containers), the owner or operator may comply with either paragraph (j)(1) or (2) of this section. If, after the compliance dates specified in this subpart, any combustion device, recovery device, or recapture device subject to this subpart is subject to monitoring and recordkeeping requirements hazardous waste treatment, storage, and disposal facilities in 40 CFR part 265, subpart AA (Air Emission Standards for Process Vents) or subpart CC (Air Emission Standards for Tanks, Surface Impoundments, and Containers), the owner or operator may comply with either paragraph (j)(1) or (3) of this section. If the owner or operator elects to comply with either paragraph (j)(2) or (3) of this section, the owner or operator shall notify the Administrator of this choice in the Notification of Compliance Status required by § 63.1439(e)(5).

(1) The owner or operator shall comply with the monitoring, recordkeeping and reporting requirements of this subpart.

(2) The owner or operator shall comply with the monitoring, recordkeeping and reporting requirements in 40 CFR part 264, with the following exception. All excursions, as defined in § 63.1438(f), shall be reported in the periodic report. Compliance with this paragraph shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart.

(3) The owner or operator shall comply with the monitoring and recordkeeping requirements of 40 CFR part 265, subpart AA or subpart CC, and the periodic reporting requirements under 40 CFR part 264, subpart AA or subpart CC, that would apply to the device if the facility had final-permitted status, with the following exception. All excursions, as defined in § 63.1438(f), shall be reported in the periodic report. Compliance with this paragraph shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart.

(k) Paragraphs (k)(1) and (2) of this section address instances in which requirements from other regulations overlap for the same heat exchange system(s) or waste management unit(s) that are subject to this subpart.

(1) After the applicable compliance date specified in this subpart, if a heat exchange system subject to this subpart is also subject to a standard identified in paragraph (k)(1)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraph (k)(1)(i) or (ii) shall constitute compliance with the applicable provisions of this subpart with respect to that heat exchange system.

(i) 40 CFR part 63, subpart F.

(ii) A subpart of this part which requires compliance with the HON heat exchange system requirements in § 63.104 (e.g., 40 CFR part 63, subpart JJJ or U).

(2) After the applicable compliance date specified in this subpart, if any waste management unit subject to this subpart is also subject to a standard identified in paragraph (k)(2)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraph (k)(2)(i) or (ii) shall constitute compliance with the applicable provisions of this subpart with respect to that waste management unit.

(i) 40 CFR part 63, subpart G.

(ii) A subpart of this part which requires compliance with the HON process wastewater provisions in §§ 63.132 through 63.147 (e.g., subpart JJJ or U).

(l) All terms in this subpart that define a period of time for completion of required tasks (e.g., monthly, quarterly, annual), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods, unless altered by mutual agreement between the owner or operator and the Administrator in accordance with paragraph (l)(1) of this section.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in the General Provisions in 40 CFR part 63, subpart A (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (l)(2)(i) or (ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remains at least 2 weeks for tasks that shall be performed monthly, at least 1 month for tasks that shall be performed each quarter, or at least 3 months for tasks that shall be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 63.1423 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in subparts A (§ 63.2), F (§ 63.101), G (§ 63.111), and H (§ 63.161) as specified after each term:

Act (subpart A)
Administrator (subpart A)
Automated monitoring and recording system (subpart G)
Boiler (subpart G)
Bottoms receiver (subpart H)
By-product (subpart F)
Car-seal (subpart G)
Closed-vent system (subpart G)
Combustion device (subpart G)
Commenced (subpart A)
Compliance date (subpart A)
Continuous monitoring system (subpart A)
Emission standard (subpart A)
EPA (subpart A)
Equipment (subpart H)
Flow indicator (subpart G)
Fuel gas (subpart F)
Fuel gas system (subpart F)
Hard-piping (subpart G)
Heat exchange system (subpart F)
Impurity (subpart F)
Incinerator (subpart G)
Major source (subpart A)
Malfunction (subpart A)
Open-ended valve or line (subpart H)
Operating permit (subpart F)
Organic monitoring device (subpart G)
Owner or operator (subpart A)
Performance evaluation (subpart A)
Performance test (subpart A)
Permitting authority (subpart A)
Plant site (subpart F)
Potential to emit (subpart A)
Primary fuel (subpart G)
Process heater (subpart G)
Process unit shutdown (subpart H)
Reactor (subpart G)
Recapture device (subpart G)
Relief valve (subpart G)

Research and development facility (subpart F)
Run (subpart A)
Secondary fuel (subpart G)
Sensor (subpart H)
Specific gravity monitoring device (subpart G)
Start-up, shutdown, and malfunction plan (subpart F)
State (subpart A)
Surge control vessel (subpart H)
Temperature monitoring device (subpart G)
Test method (subpart A)
Total resource effectiveness index value (subpart G)
Treatment process (subpart G)
Visible emission (subpart A)

(b) All other terms used in this subpart shall have the meaning given them in this section.

Annual average concentration, as used in conjunction with the wastewater provisions, means the flow-weighted annual average concentration and is determined by the procedures in § 63.144(b), except as provided in § 63.1433(a)(2).

Annual average flow rate, as used in conjunction with the wastewater provisions, is determined by the procedures in § 63.144(c).

Batch cycle means the step or steps, from start to finish, that occur in a batch unit operation.

Batch unit operation means a unit operation involving intermittent or discontinuous feed into equipment, and, in general, involves the emptying of equipment after the batch cycle ceases and prior to beginning a new batch cycle. Mass, temperature, concentration and other properties of the process may vary with time. Addition of raw material and withdrawal of product do not simultaneously occur in a batch unit operation.

Catalyst extraction means the removal of the catalyst using either solvent or physical extraction method.

Construction means the on-site fabrication, erection, or installation of an affected source. Construction also means the on-site fabrication, erection, or installation of a process unit or a combination of process units which subsequently becomes an affected source or part of an affected source due to a change in primary product.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once during approximately equal intervals of 15 minutes and recorded at the frequency specified in § 63.1439(d).

Continuous recorder is defined in § 63.111, except that when the definition in § 63.111 reads "or records 15-minute or more frequent block average values," the phrase "or records 1-hour or more frequent block average values" shall apply for purposes of this subpart.

Continuous unit operation means a unit operation where the inputs and outputs flow continuously. Continuous unit operations typically approach steady-state conditions. Continuous unit operations typically involve the simultaneous addition of raw material and withdrawal of the product.

Control technique means any equipment or process control used for capturing, recovering, or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, adsorbers, boilers, condensers, flares, incinerators, process heaters, and scrubbers, or any combination thereof. Process control includes extended cookout (as defined in this section). Condensers operating as reflux condensers that are necessary for processing, such as liquid level control, temperature control, or distillation operation, shall be considered inherently part of the process and will not be considered control techniques.

Emission point means an individual process vent, storage vessel, wastewater stream, or equipment leak.

Epoxide means a chemical compound consisting of a three-membered cyclic ether. Only emissions of epoxides listed in Table 4 of this subpart (i.e., ethylene oxide and propylene oxide) are regulated by the provisions of this subpart.

Equipment leak means emissions of organic HAP from a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, surge control vessel, bottoms receiver, or instrumentation system in organic HAP service.

Extended Cookout (ECO) means a control technique that reduces the amount of unreacted ethylene oxide (EO) and/or propylene oxide (PO) (epoxides) in the reactor. This is accomplished by allowing the product to react for a longer time period, thereby having less unreacted epoxides and reducing epoxides emissions that may have otherwise occurred.

Flexible operation unit means a process unit that manufactures different chemical products by periodically alternating raw materials fed to the process unit or operating conditions at the process unit. These units are also referred to as campaign plants or blocked operations.

Group 1 combination of batch process vents means a collection of process vents in a PMPU from batch unit operations that are associated with the use of a nonepoxide organic HAP to make or modify the product that meet all of the following conditions:

(1) Has annual nonepoxide organic HAP emissions, determined in accordance with § 63.1428(b), of 11,800 kg/yr or greater, and

(2) Has a cutoff flow rate, determined in accordance with § 63.1428(e), that is greater than or equal to the annual average flow rate, determined in accordance with § 63.1428(d).

Group 2 combination of batch process vents means a collection of process vents in a PMPU from batch unit operations that are associated with the use of a nonepoxide organic HAP to make or modify the product that is not classified as a Group 1 combination of batch process vents.

Group 1 continuous process vent means a process vent from a continuous unit operation that is associated with the use of a nonepoxide organic HAP to make or modify the product that meets all of the following conditions:

(1) Has a flow rate greater than or equal to 0.005 standard cubic meters per minute,

(2) Has a total organic HAP concentration greater than or equal to 50 parts per million by volume, and

(3) Has a total resource effectiveness index value, calculated in accordance with § 63.1428(h)(1), less than or equal to 1.0.

Group 2 continuous process vent means a process vent from a continuous unit operation that is associated with the use of a nonepoxide organic HAP to make or modify the product that is not classified as a Group 1 continuous process vent.

Group 1 storage vessel means a storage vessel that meets the applicability criteria specified in Table 3 of this subpart.

Group 2 storage vessel means a storage vessel that does not fall within the definition of a Group 1 storage vessel.

Group 1 wastewater stream means a process wastewater stream at an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c), with the exceptions listed in § 63.1433(a)(2) for the purposes of this subpart (i.e., for organic HAP listed on Table 4 of this subpart only).

Group 2 wastewater stream means any process wastewater stream as defined in § 63.101 at an existing affected source that does not meet the definition (in this section) of a Group 1 wastewater stream.

In organic hazardous air pollutant service or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP (as defined in this

section), as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.

Initial start-up means the first time a new or reconstructed affected source begins production, or, for equipment added or changed as described in § 63.1420(g), the first time the equipment is put into operation to produce a polyether polyol. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups of an affected source or portion thereof following malfunctions or shutdowns or following changes in product for flexible operation units. Further, for purposes of § 63.1422, initial start-up does not include subsequent start-ups of affected sources or portions thereof following malfunctions or process unit shutdowns.

Maintenance wastewater is defined in § 63.101, except that the term "polyether polyol manufacturing process unit" shall apply whenever the term "chemical manufacturing process unit" is used. Further, the generation of wastewater from the routine rinsing or washing of equipment in batch operation between batches is not maintenance wastewater, but is considered to be process wastewater, for the purposes of this subpart.

Make or modify the product means to produce the polyether polyol by polymerization of epoxides or other cyclic ethers with compounds having one or more reactive hydrogens, and to incorporate additives (e.g., preservatives, antioxidants, or diluents) in order to maintain the quality of the finished products before shipping. Making and modifying the product for this regulation does not include grafting, polymerizing the polyol, or reacting it with compounds other than EO or PO.

Maximum true vapor pressure is defined in § 63.111, except that the terms "transfer" and "transferred" shall not apply for the purposes of this subpart.

New process unit means a process unit for which the construction or reconstruction commenced after September 4, 1997.

On-site or on site means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, a location within the plant site where the affected source is located. On-site storage of records includes, but is not limited to, a location at the affected source or PMPU to which the records pertain or a location elsewhere at the plant site where the affected source is located.

Operating day refers to the 24-hour period defined by the owner or operator in the Notification of Compliance Status required by § 63.1439(e)(5). That 24-hour period may be from midnight to midnight or another 24-hour period. The operating day is the 24-hour period for which daily average monitoring values are determined.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 4 of this subpart, or any other chemical which:

(1) Is knowingly produced or introduced into the manufacturing process other than as an impurity; and

(2) Is listed in Table 2 of 40 CFR part 63, subpart F in the HON.

Polyether polyol means a compound formed through the polymerization of EO or PO or other cyclic ethers with compounds having one or more reactive hydrogens (i.e., a hydrogen atom bonded to nitrogen, oxygen, phosphorus, sulfur, etc.) to form polyethers (i.e., compounds with two or more ether bonds). This definition of "polyether polyol" excludes hydroxy ethyl cellulose and materials regulated under 40 CFR part 63, subparts F, G, and H (the HON), such as glycols and glycol ethers.

Polyether polyol manufacturing process unit (PMPU) means a process unit that manufactures a polyether polyol as its primary product, or a process unit designated as a polyether polyol manufacturing unit in accordance with § 63.1420(e)(2). A polyether polyol manufacturing process unit consists of more than one unit operation. This collection of equipment includes purification systems, reactors and their associated product separators and recovery devices, distillation units and their associated distillate receivers and recovery devices, other associated unit operations, storage vessels, surge control vessels, bottoms receivers, product transfer racks, connected ducts and piping, combustion, recovery, or recapture devices or systems, and the equipment (i.e., all pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are associated with the PMPU) that are subject to the equipment leak provisions as specified in § 63.1434.

Pressure decay curve is the graph of the reactor pressure versus time from the point when epoxide feed is stopped until the reactor pressure is constant, indicating that most of the epoxide has reacted out of the vapor and liquid phases. This curve shall be determined with no leaks or vents from the reactor.

Primary product is defined in and determined by the procedures specified in § 63.1420(e).

Process unit means a collection of equipment assembled and connected by pipes or ducts to process raw materials and to manufacture a product.

Process vent means a point of emission from a unit operation having a gaseous stream that is discharged to the atmosphere either directly or after passing through one or more combustion, recovery, or recapture devices. A process vent from a continuous unit operation is a gaseous emission stream containing more than 0.005 weight-percent total organic HAP. A process vent from a batch unit operation is a gaseous emission stream containing more than 225 kilograms per year (500 pounds per year) of organic HAP emissions. Unit operations that may have process vents are condensers, distillation units, reactors, or other unit operations within the PMPU. Process vents exclude pressure relief valve discharges, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under § 63.1434. A gaseous emission stream is no longer considered to be a process vent after the stream has been controlled and monitored in accordance with the applicable provisions of this subpart.

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; equipment washes between batches in a batch process; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

Product means a compound or material which is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Product class means a group of polyether polyols with a similar pressure decay curve (or faster pressure decay curves) that are manufactured within a given set of operating conditions representing the decline in pressure versus time. All products within a product class shall have an essentially similar pressure decay curve, and operate within a given set of

operating conditions. These operating conditions are: a minimum reaction temperature; the number of -OH groups in the polyol; a minimum catalyst concentration; the type of catalyst (e.g., self-catalyzed, base catalyst, or acid catalyst); the epoxide ratio, or a range for that ratio; and the reaction conditions of the system (e.g., the size of the reactor, or the size of the batch).

Reactor liquid means the compound or material made in the reactor, even though the substance may be transferred to another vessel. This material may require further modifications before becoming a final product, in which case the reactor liquid is classified as an "intermediate." This material may be complete at this stage, in which case the reactor liquid is classified as a "product."

Reconstruction means the replacement of components of an affected source or of a previously unaffected stationary source that becomes an affected source as a result of the replacement, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers (except reflux condensers), oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin film evaporation units. For the purposes of the monitoring, recordkeeping, or reporting requirements of this subpart, recapture devices are considered to be recovery devices.

Residual is defined in § 63.111, except that when the definition in § 63.111 uses the term "Table 9 compounds," the term "organic HAP listed in Table 9 of subpart G" shall apply, for the purposes of this subpart.

Shutdown means the cessation of operation of an affected source, a PMPU within an affected source, a waste management unit or unit operation within an affected source, equipment required or used to comply with this subpart, or the emptying or degassing of a storage vessel. The purposes for a shutdown may include, but are not limited to, periodic maintenance, replacement of equipment, or equipment repairs. Shutdown does not include the normal periods between batch cycles. For continuous unit operations, shutdown includes transitional conditions due to changes in product for flexible operation units. For batch unit operations, shutdown does not include transitional conditions due to changes in product for flexible operation units. For purposes of the wastewater provisions, shutdown does not include the routine rinsing or washing of equipment between batch cycles.

Start-up means the setting into operation of an affected source, a PMPU within the affected source, a waste management unit or unit operation within an affected source, equipment required or used to comply with this subpart, or a storage vessel after emptying and degassing. For all processes, start-up includes initial start-up and operation solely for testing equipment. Start-up does not include the recharging of batch unit operations. For continuous unit operations, start-up includes transitional conditions due to changes in product for flexible operation units. For batch unit operations, start-up does not include transitional conditions due to changes in product for flexible operation units.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do not vary significantly with time; minor fluctuations about constant mean values may occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP. Storage vessels do not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels and equipment storing and/or handling material that contains no organic HAP, or organic HAP as impurities only;

(5) Surge control vessels and bottoms receiver tanks;

(6) Wastewater storage tanks; and

(7) Storage vessels assigned to another process unit regulated under another subpart of part 63.

Total organic compounds (TOC) are those compounds, excluding methane and ethane, measured according to the procedures of Method 18 or Method 25A of 40 CFR part 60, appendix A.

Unit operation means one or more pieces of process equipment used to make a single change to the physical or chemical characteristics of one or more process streams. Unit operations include, but are not limited to, reactors, distillation units, extraction columns, absorbers, decanters, condensers, and filtration equipment.

Vent stream, as used in reference to process vents, means the emissions from a process vent.

Waste management unit is defined in § 63.111, except that when the definition in § 63.111 uses the term "chemical manufacturing process unit," the term "PMPU" shall apply for the purposes of this subpart.

Wastewater means water that:

(1) Contains either

(i) An annual average concentration of organic HAP listed in Table 4 of this subpart of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater, or

(ii) An annual average concentration of organic HAP listed on Table 4 of this subpart of at least 10,000 parts per million by weight at any flow rate; and that

(2) Is discarded from a PMPU that is part of an affected source. Wastewater is process wastewater or maintenance wastewater.

§ 63.1424 Emission standards.

(a) Except as provided under paragraph (b) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

(1) Sections 63.1425 through 63.1430 for process vents;

(2) Section 63.1432 for storage vessels;

(3) Section 63.1433 for wastewater;

(4) Section 63.1434 for equipment leaks;

(5) Section 63.1435 for heat exchangers;

(6) Section 63.1437 for additional test methods and procedures;

(7) Section 63.1438 for monitoring levels and excursions; and

(8) Section 63.1439 for general reporting and recordkeeping requirements.

(b) When emissions of different kinds (i.e., emissions from process vents subject to §§ 63.1425 through 63.1430, storage vessels subject to § 63.1432, process wastewater, and/or in-process equipment subject to § 63.149) are combined, and at least one of the emission streams would require control according to the applicable provision in the absence of combination with other

emission streams, the owner or operator shall comply with the requirements of either paragraph (b)(1) or (2) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emission in the stream as specified in paragraphs (a)(1) through (5) of this section; or

(2) Comply with the most stringent set of requirements that applies to any individual emission stream that is included in the combined stream, where either that emission stream would be classified as requiring control in the absence of combination with other emission streams, or the owner chooses to consider that emission stream to require control for the purposes of this paragraph.

§ 63.1425 Process vent control requirements.

(a) *Applicability of process vent control requirements.* For each process vent at an affected source, the owner or operator shall comply with the provisions of this section. Owners and operators of all affected sources using epoxides in the production of polyether polyols are subject to the requirements of paragraph (b) of this section. Owners or operators are subject to the requirements of paragraph (c) of this section only if epoxides are used in the production of polyether polyols and nonepoxide organic HAP are used to make or modify the product. Similarly, owners or operators are subject to the requirements of paragraph (d) of this section only if epoxides are used in the production of polyether polyols and organic HAP are used in catalyst extraction. The owner or operator of an affected source where polyether polyol products are produced using tetrahydrofuran shall comply with paragraph (f) of this section.

(b) *Requirements for epoxide emissions.* The owner or operator of an affected source where polyether polyol products are produced using epoxides shall reduce epoxide emissions from process vents from batch unit operations and continuous unit operations within each PMPU in accordance with either paragraph (b)(1) or (2) of this section.

(1) For new affected sources, the owner or operator shall comply with paragraph (b)(1)(i), (ii), or (iii) this section. The owner or operator also has the option of complying with a combination of paragraphs (b)(1)(i) and (ii) of this section. If the owner or operator chooses to comply with a combination of paragraphs (b)(1)(i) and (ii) of this section, each process vent not controlled in accordance with paragraph (b)(1)(ii) of this section shall be part of the group of applicable process vents that shall then comply with paragraph (b)(1)(i) of this section.

(i) Reduce the total epoxide emissions from the group of applicable process vents by an aggregated 99.9 percent;

(ii) Maintain an outlet concentration of total epoxides or TOC after each combustion, recapture, or recovery device of 20 ppmv or less; or

(iii) Maintain an emission factor of no greater than 4.43×10^{-3} kilogram epoxide emissions per megagram of product (4.43×10^{-3} pounds epoxide emissions per 1,000 pounds of product) for all process vents in the PMPU.

(2) For existing affected sources, the owner or operator shall comply with either paragraph (b)(2)(i), (ii), (iii), or (iv) of this section. The owner or operator also has the option of complying with a combination of paragraphs (b)(2)(ii) and (iii) of this section. If the owner or operator chooses to comply with a combination of paragraphs (b)(2)(ii) and (iii) of this section, each process vent that is not controlled in accordance with paragraph (b)(2)(iii) of this section shall be part of the group of applicable process vents that shall then comply with paragraph (b)(2)(ii) of this section. The owner or operator also has the option of complying with a combination of paragraphs (b)(2)(i) and (iii) of this section.

(i) Reduce the total epoxide emissions from each process vent using a flare;

(ii) Reduce the total epoxide emissions from the group of applicable process vents by an aggregated 98 percent;

(iii) Maintain an outlet concentration of total epoxides or TOC after each combustion, recapture or recovery devices of 20 ppmv or less; or

(iv) Maintain an emission factor of no greater than 1.69×10^{-2} kilogram epoxide emissions per megagram of product (1.69×10^{-2} pounds epoxide emissions per 1,000 pounds of product) for all process vents in the PMPU.

(c) *Requirements for nonepoxide organic HAP emissions from making or modifying the product.* The owner or operator of a new or existing source where polyether polyols are produced using epoxides, and where nonepoxide organic HAP are used to make or modify the product, shall comply with this paragraph. For each process vent from a continuous unit operation that is associated with the use of a nonepoxide organic HAP to make or modify the product, the owner or operator shall determine if the process vent is a Group 1 continuous process vent, as defined in § 63.1423. For the combination of process vents from batch unit operations that are associated with the use of a nonepoxide organic HAP to make or modify the product, the owner or operator shall determine if the combination of process vents is a Group 1 combination of batch process vents, as defined in § 63.1423.

(1) *Requirements for Group 1 combinations of batch process vents.* For each Group 1 combination of batch process vents, as defined in § 63.1423, the owner or operator shall comply with either paragraph (c)(1)(i) or (ii) of this section.

(i) Reduce nonepoxide organic HAP emissions using a flare.

(ii) Reduce nonepoxide organic HAP emissions by 90 percent using a combustion, recovery, or recapture device.

(2) *Requirements for Group 2 combinations of batch process vents.* For each Group 2 combination of batch process vents, as defined in § 63.1423, the owner or operator reassess the group status when process changes occur, in accordance with the provisions of § 63.1428(g). No control requirements apply to these process vents.

(3) *Requirements for Group 1 continuous process vents.* For each Group 1 continuous process vent, as defined in § 63.1423, the owner or operator shall comply with either paragraph (c)(3)(i) or (ii) of this section.

(i) Reduce nonepoxide organic HAP emissions using a flare.

(ii) Reduce nonepoxide organic HAP emissions by 98 percent using a combustion, recovery, or recapture device.

(4) *Requirements for Group 2 continuous process vents.* For each Group 2 continuous process vent, as defined in § 63.1423, the owner or operator shall comply with either paragraph (c)(4)(i) or (ii) of this section.

(i) If the TRE for the process vent is greater than 1.0 but less than 4.0, the owner or operator shall comply with the monitoring provisions in § 63.1429, the recordkeeping provisions in § 63.1430(d), and recalculate the TRE index value when process changes occur, in accordance with the provisions in § 63.1428(h)(2).

(ii) If the TRE for the process vent is greater than 4.0, the owner or operator shall recalculate the TRE index value when process changes occur, in accordance with the provisions in § 63.1428(h)(2).

(d) *Requirements for nonepoxide organic HAP emissions from catalyst extraction.* The owner or operator of a new or existing affected source where polyether polyol products are produced using epoxide compounds shall comply with either paragraph (d)(1) or (2) of this

section. A PMPU that does not use any nonepoxide organic HAP in catalyst extraction is exempt from the requirements of this paragraph.

(1) Reduce emissions of nonepoxide organic HAP from all process vents associated with catalyst extraction using a flare; or

(2) Reduce emissions of nonepoxide organic HAP from the sum total of all process vents associated with catalyst extraction by an aggregated 90 percent for each PMPU.

(e) [Reserved]

(f) *Requirements for process vents at PMPUs that produce polyether polyol products using tetrahydrofuran.* For each process vent in a PMPU that uses tetrahydrofuran (THF) to produce one or more polyether polyol products that is, or is part of, an affected source, the owner or operator shall comply with the HON process vent requirements in §§ 63.113 through 63.118, except as provided for in paragraphs (f)(1) through (10) of this section.

(1) When December 31, 1992 is referred to in the HON process vent requirements in § 63.113, it shall be replaced with September 4, 1997, for the purposes of this subpart.

(2) When § 63.151(f), alternative monitoring parameters, and § 63.152(e), submission of an operating permit application, are referred to in §§ 63.114(c) and 63.117(e), § 63.1439(f), alternative monitoring parameters, and § 63.1439(e)(8), submission of an operating permit application, respectively, shall apply for the purposes of this subpart.

(3) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.114, 63.117, and 63.118, the Notification of Compliance Status requirements contained in § 63.1439(e)(5) shall apply for the purposes of this subpart.

(4) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.117 and 63.118, the Periodic Report requirements contained in § 63.1439(e)(6) shall apply for the purposes of this subpart.

(5) When the definition of excursion in § 63.152(c)(2)(ii)(A) is referred to in § 63.118(f)(2), the definition of excursion in § 63.1438(f) shall apply for the purposes of this subpart.

(6) When § 63.114(e) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator shall comply with the provisions of § 63.1438 for establishing the parameter monitoring level and shall comply with § 63.1439(e)(5)(ii) or § 63.1439(e)(8) for the purposes of reporting information related to the establishment of the parameter monitoring level, for the purposes of this subpart. Further, the term "level" shall apply whenever the term "range" is used in §§ 63.114, 63.117, and 63.118.

(7) When reports of process changes are required under § 63.118(g), (h), (i), or (j), paragraphs (f)(7)(i) through (iv) of this section shall apply for the purposes of this subpart.

(i) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent to become a Group 1 process vent, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report. A description of the process change shall be included in this report.

(ii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with a TRE greater than 4.0 to become a Group 2 process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator, unless the flow rate is less than 0.005 standard cubic meters per minute. This report may be included in the next Periodic Report. A description of the process change shall be included in this report.

(iii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with a flow rate less than 0.005 standard cubic meter per minute (scmm) to become a Group 2 process vent with a flow rate of 0.005 scmm or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator, unless the organic HAP concentration is less than 50 ppmv. This report may be included in the next Periodic Report. A description of the process change shall be submitted with the report.

(iv) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with an organic HAP concentration less than 50 parts per million by volume (ppmv) to become a Group 2 process vent with an organic HAP concentration of 50 ppmv or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator, unless the flow rate is less than 0.005 standard cubic meters per minute. This report may be included in the next Periodic Report. A description of the process change shall be submitted with this report.

(8) When § 63.118 refers to § 63.152(f), the recordkeeping requirements in § 63.1439(d) shall apply for the purposes of this subpart.

(9) When §§ 63.115 and 63.116 refer to Table 2 of 40 CFR part 63, subpart F, the owner or operator shall only consider organic HAP as defined in this subpart.

(10) When the provisions of § 63.116(c)(3) and (4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (f)(10)(i) and (ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

§ 63.1426 Process vent requirements for determining organic HAP concentration, control efficiency, and aggregated organic HAP emission reduction for a PMPU.

(a) *Use of a flare.* When a flare is used to comply with § 63.1425(b)(1)(i) (in combination with other control techniques), (b)(2)(i), (c)(1)(i), (c)(3)(i), or (d)(1), the owner or operator shall comply with § 63.1437(c), and is not required to demonstrate the control efficiency for the flare, if the owner or operator chooses to assume a 98 percent control efficiency for that flare, as allowed under paragraph (e)(2)(i) of this section. In order to use only a flare to comply with § 63.1425(b)(1)(i), or to use a flare and apply a control efficiency greater than 98 percent, an owner or operator shall submit a request in accordance with § 63.6(g) in either the Precompliance Report described in § 63.1439(e)(4), or in a supplement to the precompliance report, as described in § 63.1439(e)(4)(vii).

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a combustion, recovery, or recapture

device specified in paragraphs (b)(1) through (6) of this section is used to comply with § 63.1425(b), (c), or (d).

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(2) A boiler or process heater where the process vent stream is introduced with the primary fuel or is used as the primary fuel.

(3) A combustion, recovery, or recapture device for which a performance test was conducted within the preceding 5-year period, using the same Methods specified in this section and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. The operating parameters reported under the previous performance test shall be sufficient to meet the parameter monitoring requirements in this subpart.

(4) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final hazardous waste permit under 40 CFR part 270 and complies with the requirements for hazardous waste burned in boilers and industrial furnaces in 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements for hazardous waste burned in boilers and industrial furnaces in of 40 CFR part 266, subpart H.

(5) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements for incinerators in 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements for incinerators in 40 CFR part 265, subpart O.

(6) Combustion, recovery or recapture device (except for condensers) performance may be determined by using the design evaluation described in paragraph (f) of this section, provided that the combustion, recovery or recapture device receives less than 10 tons per year (9.1 megagrams per year) of uncontrolled organic HAP emissions from one or more PMPUs, determined in accordance with paragraph (d) of this section. If a combustion, recovery or recapture device exempted from testing in accordance with this paragraph receives more than 10 tons per year (9.1 megagrams per year) of uncontrolled organic HAP emissions from one or more PMPUs, the owner or operator shall comply with the performance test requirements in paragraph (c) of this section and shall submit the test report in the next Periodic Report.

(c) *Determination of organic HAP concentration and control efficiency.* Except as provided in paragraphs (a) and (b) of this section, an owner or operator using a combustion, recovery, or recapture device to comply with an epoxide or organic HAP percent reduction efficiency requirement in § 63.1425(b)(1)(i), (b)(2)(ii), (c)(1)(ii), (c)(3)(ii), or (d)(2); an epoxide concentration limitation in § 63.1425(b)(1)(ii) or (b)(2)(ii); or an annual epoxide emission limitation in § 63.1425(b)(1)(iii) or (b)(2)(iv), shall conduct a performance test using the applicable procedures in paragraphs (c)(1) through (4) of this section. The organic HAP or epoxide concentration and percent reduction may be measured as total epoxide, total organic HAP, or as TOC minus methane and ethane according to the procedures specified. When conducting testing in accordance with this section, the owner or operator is only required to measure HAP of concern for the specific requirement for which compliance is being determined. For instance, to determine compliance with the epoxide emission requirement of § 63.1425(b), the owner or operator is only required to measure epoxide control efficiency or outlet concentration.

(1) *Sampling site location.* The sampling site location shall be determined as specified in paragraphs (c)(1)(i) and (ii) of this section.

(i) For determination of compliance with a percent reduction of total epoxide requirement in § 63.1425(b)(1)(i), (b)(2)(ii), or a percent reduction of total organic HAP requirement in § 63.1425(c)(1)(ii), (c)(3)(ii), or (d)(2), sampling sites shall be located at the inlet of the combustion, recovery, or recapture device as specified in paragraphs (c)(1)(i)(A), (B), and (C) of this section, and at the outlet of the combustion, recovery, or recapture device.

(A) For process vents from continuous unit operations, the inlet sampling site shall be determined in accordance with either paragraph (c)(1)(i)(A)(*1*) or (*2*) of this section.

(*1*) To demonstrate compliance with either the provisions for epoxide emissions in § 63.1425(b) or the provisions for nonepoxide organic HAP emissions from catalyst extraction in § 63.1425(d), the inlet sampling site shall be located after the exit from the continuous unit operation but before any recovery devices, or

(*2*) To demonstrate compliance with the requirements for nonepoxide organic HAP emissions from the use of nonepoxide organic HAP in making or modifying the product in § 63.1425(c), the inlet sampling site shall be located after all control techniques to reduce epoxide emissions and after the final nonepoxide organic HAP recovery device.

(B) For process vents from batch unit operations, the inlet sampling site shall be determined in accordance with either paragraph (c)(1)(i)(B)(*1*) or (*2*) of this section.

(*1*) To demonstrate compliance with either the provisions for epoxide emissions in § 63.1425(b) or the provisions for nonepoxide organic HAP emissions from catalyst extraction in § 63.1425(d), the inlet sampling site shall be located after the exit from the batch unit operation but before any recovery device.

(*2*) To demonstrate compliance with the requirements for nonepoxide organic HAP emissions in making or modifying the product in § 63.1425(c), the inlet sampling site shall be located after all control techniques to reduce epoxide emissions but before any nonepoxide organic HAP recovery device.

(C) If a process vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all process vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) To determine compliance with a parts per million by volume total epoxide or TOC limit in § 63.1425(b)(1)(ii) or (b)(2)(iii), the sampling site shall be located at the outlet of the combustion, recovery, or recapture device.

(2) [Reserved]

(3) *Testing conditions and calculation of TOC or total organic HAP concentration.* (i) Testing conditions shall be as specified in paragraphs (c)(3)(i)(A) through (E) of this section, as appropriate.

(A) Testing of process vents from continuous unit operations shall be conducted at maximum representative operating conditions, as described in § 63.1437(a)(1). Each test shall consist of three 1-hour runs. Gas stream volumetric flow rates shall be measured at approximately equal intervals of about 15 minutes during each 1-hour run. The organic HAP concentration (of the HAP of concern) shall be determined from samples collected in an integrated sample over the duration of each 1-hour

test run, or from grab samples collected simultaneously with the flow rate measurements (at approximately equal intervals of about 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. For gas streams from continuous unit operations, the organic HAP concentration or control efficiency used to determine compliance shall be the average organic HAP concentration or control efficiency of the three test runs.

(B) Testing of process vents from batch unit operations shall be conducted at absolute worst-case conditions or hypothetical worst-case conditions, as defined in paragraphs (c)(3)(i)(B)(*1*) through (*5*) of this section. Worst-case conditions are limited to the maximum production allowed in a State or Federal permit or regulation and the conditions specified in § 63.1437(a)(1). Gas stream volumetric flow rates shall be measured at 15-minute intervals, or at least once during the emission episode. The organic HAP or TOC concentration shall be determined from samples collected in an integrated sample over the duration of the test, or from grab samples collected simultaneously with the flow rate measurements (at approximately equal intervals of about 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate.

(*1*) Absolute worst-case conditions are defined by the criteria presented in paragraph (c)(3)(i)(B)(*1*)(*i*) or (*ii*) of this section if the maximum load is the most challenging condition for the control device. Otherwise, absolute worst-case conditions are defined by the conditions in paragraph (c)(3)(i)(B)(*1*)(*iii*) of this section.

(*i*) The period in which the inlet to the control device will contain at least 50 percent of the maximum HAP load (in lbs) capable of being vented to the control device over any 8-hour period. An emission profile as described in paragraph (c)(3)(i)(B)(*3*)(*i*) of this section shall be used to identify the 8-hour period that includes the maximum projected HAP load.

(*ii*) A period of time in which the inlet to the control device will contain the highest HAP mass loading rate capable of being vented to the control device. An emission profile as described in paragraph (c)(3)(i)(B)(*3*)(*i*) of this section shall be used to identify the period of maximum HAP loading.

(*iii*) The period of time when the HAP loading or stream composition (including non-HAP) is most challenging for the control device. These conditions include, but are not limited to the following: periods when the stream contains the highest combined VOC and HAP load described by the emission profiles in paragraph (c)(3)(i)(B)(*3*) of this section; periods when the streams contain HAP constituents that approach limits of solubility for scrubbing media; or periods when the streams contain HAP constituents that approach limits of adsorptivity for carbon adsorption systems.

(*2*) Hypothetical worst-case conditions are simulated test conditions that, at a minimum, contain the highest hourly HAP load of emissions that would be predicted to be vented to the control device from the emissions profile described in paragraph (c)(3)(i)(B)(*3*)(*ii*) or (*iii*) of this section.

(*3*) The owner or operator shall develop an emission profile for the vent to the control device that describes the characteristics of the vent stream at the inlet to the control device under worst case conditions. The emission profile shall be developed based on any one of the procedures described in paragraphs (c)(3)(i)(B)(*3*) (*i*) through (*iii*) of this section, as required by paragraph (c)(3)(i)(B) of this section.

(*i*) The emission profile shall consider all emission episodes that could contribute to the vent stack for a period of time that is sufficient to include all processes venting to the stack and shall consider production scheduling. The profile shall describe the HAP load to the device that equals the highest sum of emissions from the episodes that can vent to the control device in any given period, not to exceed 1 hour. Emissions per episode shall be divided by the duration of the episode only if the duration of the episode is longer than 1 hour, and emissions per episode shall be calculated using the procedures specified in Equation 1:

$$E = \sum_{i=1}^{n} P_i MW_i \times \frac{(V)(t)}{(R)(T)} \times \frac{P_T}{P_T - \sum_{j=1}^{m} (P_j)} \qquad \text{[Equation 1]}$$

Where:

E = Mass of HAP emitted.
V = Purge flow rate at the temperature and pressure of the vessel vapor space.
R = Ideal gas law constant.
T = Temperature of the vessel vapor space (absolute).
P_i = Partial pressure of the individual HAP.
P_j = Partial pressure of individual condensable VOC compounds (including HAP).
P_T = Pressure of the vessel vapor space.
MW_i = Molecular weight of the individual HAP.
t = Time of purge.
n = Number of HAP compounds in the emission stream.
i = Identifier for a HAP compound.
j = Identifier for a condensable compound.
m = Number of condensable compounds (including HAP) in the emission stream.

(*ii*) The emission profile shall consist of emissions that meet or exceed the highest emissions that would be expected under actual processing conditions. The profile shall describe equipment configurations used to generate the emission events, volatility of materials processed in the equipment, and the rationale used to identify and characterize the emission events. The emissions may be based on using compounds more volatile than compounds actually used in the process(es), and the emissions may be generated from all equipment in the process(es) or only selected equipment.

(*iii*) The emission profile shall consider the capture and control system limitations and the highest emissions that can be routed to the control device, based on maximum flow rate and concentrations possible because of limitations on conveyance and control equipment (e.g., fans, LEL alarms and safety bypasses).

(*4*) Three runs, each at a minimum of the complete duration of the batch venting episode or 1 hour, whichever is shorter, and a maximum of 8 hours, are required for performance testing. Each run shall occur over the same worst-case conditions, as defined in paragraph (c)(3)(i)(B) of this section.

(5) If a condenser is used to control the process vent stream(s), the worst case emission episode(s) shall represent a period of time in which a process vent from the batch cycle or combination of cycles (if more than one cycle is vented through the same process vent) will require the maximum heat removal capacity, in Btu/hr, to cool the process vent stream to a temperature that, upon calculation of HAP concentration, will yield the required removal efficiency for the entire cycle. The calculation of maximum heat load shall be based on the emission profile described in paragraph (c)(3)(i)(B)(3) of this section that will allow calculation of sensible and latent heat loads.

(ii) The concentration of either TOC (minus methane or ethane) or total organic HAP (of the HAP of concern) shall be calculated according to paragraph (c)(3)(ii)(A) or (B) of this section.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 2:

$$C_{TOC} = \sum_{\theta=0}^{y} \frac{\left(\sum_{j=0}^{n} C_{ji}\right)}{x} \qquad \text{[Equation 2]}$$

Where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

C_{ji} = Concentration of sample components j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(B) The total organic HAP concentration (C_{HAP}) shall be computed according to Equation 2, except that only the organic HAP species shall be summed.

(iii) The concentration of TOC or total organic HAP shall be corrected to 3 percent oxygen if a combustion device is used.

(A) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the TOC (minus methane or ethane) or total organic HAP samples are taken.

(B) The concentration corrected to 3 percent oxygen shall be computed using Equation 3, as follows:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{[Equation 3]}$$

Where:

C_c = Concentration of TOC or organic HAP corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of TOC (minus methane and ethane) or organic HAP, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(4) *Test methods.* When testing is conducted to measure emissions from an affected source, the test methods specified in paragraphs (c)(4)(i) through (iv) of this section shall be used, as applicable.

(i) For sample and velocity traverses, Method 1 or 1A of appendix A of part 60 shall be used, as appropriate, except that references to particulate matter in Method 1A do not apply for the purposes of this subpart.

(ii) The velocity and gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(iii) The concentration measurements shall be determined using the methods described in paragraphs (c)(4)(iii) (A) through (C) of this section.

(A) Method 18 of appendix A of part 60 may be used to determine the HAP concentration in any control device efficiency determination.

(B) Method 25 of appendix A of part 60 may be used to determine total gaseous nonmethane organic concentration for control efficiency determinations in combustion devices.

(C) Method 25A of appendix A of part 60 may be used to determine the HAP or TOC concentration for control device efficiency determinations under the conditions specified in Method 25 of appendix A of part 60 for direct measurements of an effluent with a flame ionization detector, or in demonstrating compliance with the 20 ppmv standard, the instrument shall be calibrated on methane or the predominant HAP. If calibrating on the predominant HAP, the use of Method 25A of appendix A of part 60 shall comply with paragraphs (c)(4)(iii)(C) (*1*) through (*3*) of this section.

(*1*) The organic HAP used as the calibration gas for Method 25A of appendix A of part 60 shall be the single organic HAP representing the largest percent by volume.

(*2*) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(*3*) The span value of the analyzer shall be less than 100 ppmv.

(iv) Alternatively, any other method or data that have been validated according to the applicable procedures in 40 CFR part 63, appendix A, Method 301 may be used.

(5) *Calculation of percent reduction efficiency.* The following procedures shall be used to calculate percent reduction efficiency:

(i) Test duration shall be as specified in paragraphs (c)(3)(i) (A) through (B) of this section, as appropriate.

(ii) The mass rate of either TOC (minus methane and ethane) or total organic HAP of the HAP of concern (E_i, E_o) shall be computed.

(A) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=0}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{[Equation 4]}$$

$$E_o = K_2\left(\sum_{j=0}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{[Equation 5]}$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the combustion, recovery, or recapture device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total organic HAP at the inlet and outlet of the combustion, recovery, or recapture device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the combustion, recovery, or recapture device, respectively, gram/gram-mole.

Q_i, Q_o = Flow rate of gas stream at the inlet and outlet of the combustion, recovery, or recapture device, respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

(B) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by Method 18 of 40 CFR part 60, appendix A are summed using Equations 4 and 5 in paragraph (c)(5)(ii)(A) of this section.

(C) Where the mass rate of total organic HAP is being calculated, only the organic HAP species shall be summed using Equations 4 and 5 in paragraph (c)(5)(ii)(A) of this section.

(iii) The percent reduction in TOC (minus methane and ethane) or total organic HAP shall be calculated using Equation 6 as follows:

$$R = \frac{E_i - E_o}{E_i}(100) \qquad \text{[Equation 6]}$$

Where:

R = Control efficiency of combustion, recovery, or recapture device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total organic HAP at the inlet to the combustion, recovery, or recapture device as calculated under paragraph (c)(5)(ii) of this section, kilograms TOC per hour or kilograms organic HAP per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total organic HAP at the outlet of the combustion, recovery, or recapture device, as calculated under paragraph (c)(5)(ii) of this section, kilograms TOC per hour or kilograms organic HAP per hour.

(iv) If the process vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total organic HAP in all combusted process vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total organic HAP, respectively, exiting the combustion device.

(d) *Determination of uncontrolled organic HAP emissions.* For each process vent at a PMPU that is complying with the process vent control requirements in § 63.1425(b)(1)(i), (b)(1)(iii), (b)(2)(ii), (b)(2)(iv), (c)(1)(ii), or (d)(2) using a combustion, recovery, or recapture device, the owner or operator shall determine the uncontrolled organic HAP emissions in accordance with the provisions of this paragraph, with the exceptions noted in paragraph (d)(1) of this section. The provisions of § 63.1427(c)(1) shall be used to calculate uncontrolled epoxide emissions prior to the onset of an extended cook out.

(1) *Exemptions.* The owner or operator is not required to determine uncontrolled organic HAP emissions for process vents in a PMPU if the conditions in paragraph (d)(1)(i), (ii), or (iii) of this section are met.

(i) For PMPUs where all process vents subject to the epoxide emission reduction requirements of § 63.1425(b) are controlled at all times using a combustion, recovery, or recapture device, or extended cookout, the owner or operator is not required to determine uncontrolled epoxide emissions.

(ii) For PMPUs where the combination of process vents from batch unit operations associated with the use of nonepoxide organic HAP to make or modify the product is subject to the Group 1 requirements of § 63.1425(c)(1), the owner or operator is not required to determine uncontrolled nonepoxide organic HAP emissions for those process vents if every process vent from a batch unit operation associated with the use of nonepoxide organic HAP to make or modify the product in the PMPU is controlled at all times using a combustion, recovery, or recapture device.

(iii) For PMPUs where all process vents associated with catalyst extraction that are subject to the organic emission reduction requirements of § 63.1425(d)(2) are controlled at all times using a combustion, recovery, or recapture device, the owner or operator is not required to determine uncontrolled organic HAP emissions for those process vents.

(2) *Process vents from batch unit operations.* The uncontrolled organic HAP emissions from an individual batch cycle for each process vent from a batch unit operation shall be determined using the procedures in the NESHAP for Group I Polymers and Resins (40 CFR part 63, subpart U), § 63.488(b)(1) through (9). Uncontrolled emissions from process vents from batch unit operations shall be determined after the exit from the batch unit operation but before any recovery device.

(3) *Process vents from continuous unit operations.* The uncontrolled organic HAP emissions for each process vent from a continuous unit operation in a PMPU shall be determined at the location specified in paragraph (d)(3)(i) of this section, using the procedures in paragraph (d)(3)(ii) of this section.

(i) For process vents subject to either the provisions for epoxide emissions in § 63.1425(b) or the provisions for organic HAP emissions from catalyst extraction in § 63.1425(d), uncontrolled emissions shall be determined after the exit from the continuous unit operation but before any recovery device.

(ii) The owner or operator shall determine the hourly uncontrolled organic HAP emissions from each process vent from a continuous unit operation in accordance with paragraph (c)(4)(ii) of this section, except that the emission rate shall be determined at the location specified in paragraph (d)(2)(i) of this section.

(e) *Determination of organic HAP emission reduction for a PMPU.* (1) The owner or operator shall determine the organic HAP emission reduction for process vents in a PMPU that are complying with § 63.1425(b)(1)(i), (b)(2)(ii), (c)(1)(ii), or (d)(2) using Equation 7. The organic HAP emission reduction shall be determined for each group of process vents subject to the same paragraph (i.e., paragraph (b), (c), or (d)) of § 63.1425. For instance, process vents that emit epoxides are subject to paragraph (b) of § 63.1425. Therefore, if the owner or operator of an existing affected source is complying with the 98 percent reduction requirement in § 63.1425(b)(2)(ii), the organic HAP (i.e., epoxide) emission reduction shall be determined for the group of vents in a PMPU that are subject to this paragraph.

$$RED_{PMPU} = \left(\frac{\sum_{i=1}^{n} \left(E_{unc,i}\right)\left(\frac{Ri}{100}\right)}{\sum_{i=1}^{n} \left(E_{unc,i}\right) + \sum_{j=1}^{m} \left(E_{unc,j}\right)} \right) * 100 \qquad \text{[Equation 7]}$$

Where:

RED_{PMPU} = Organic HAP emission reduction for the group of process vents subject to the same paragraph of § 63.1425, percent.

$E_{unc,i}$ = Uncontrolled organic HAP emissions from process vent i that is controlled using a combustion,

recovery, or recapture device, or extended cookout, kg/batch cycle for process vents from batch unit operations, kg/hr for process vents from continuous unit operations.

n = Number of process vents in the PMPU that are subject to the same paragraph of § 63.1425 and that are controlled using a combustion, recovery, or recapture device, or extended cookout.

R_i = Control efficiency of the combustion, recovery, or recapture device, or extended cookout, used to control organic HAP emissions from vent i, determined in accordance with paragraph (e)(2) of this section.

$E_{unc,j}$ = Uncontrolled organic HAP emissions from process vent j that is not controlled using a combustion, recovery, or recapture device, kg/batch cycle for process vents from batch unit operations, kg/hr for process vents from continuous unit operations.

m = Number of process vents in the PMPU that are subject to the same paragraph of § 63.1425 and that are not controlled using a combustion, recovery, or recapture device.

(2) The control efficiency, R_i, shall be assigned as specified below in paragraph (e)(2)(i), (ii), (iii), or (iv) of this section.

(i) If the process vent is controlled using a flare (and the owner or operator has not previously obtained approval to assume a control efficiency greater than 98 percent in accordance with § 63.6(g)) or a combustion device specified in paragraph (b)(1), (2), (4), or (5) of this section, and a performance test has not been conducted, the control efficiency shall be assumed to be 98 percent.

(ii) If the process vent is controlled using a combustion, recovery, or recapture device for which a performance test has been conducted in accordance with the provisions of paragraph (c) of this section, or for which a performance test that meets the requirements of paragraph (b)(3) of this section has been previously performed, the control efficiency shall be the efficiency determined by the performance test.

(iii) If epoxide emissions from the process vent are controlled using extended cookout, the control efficiency shall be the efficiency determined in accordance with § 63.1427(e).

(iv) If the process vent is controlled using a flare, and the owner or operator has obtained approval to assume a control efficiency greater than 98 percent in accordance with § 63.6(g), the control efficiency shall be the efficiency approved in accordance with § 63.6(g).

(f) *Design evaluation.* A design evaluation is required for those control techniques that receive less than 10 tons per year (9.1 megagrams per year) of uncontrolled organic HAP emissions from one or more PMPU, if the owner or operator has chosen not to conduct a performance test for those control techniques in accordance with paragraph (b)(6) of this section. The design evaluation shall include documentation demonstrating that the control technique being used achieves the required control efficiency under worst-case conditions, as determined from the emission profile described in § 63.1426(c)(3)(i)(B)(*3*)(*i*).

(1) Except for ECO whose design evaluation is presented in paragraph (f)(2) of this section, to demonstrate that a control technique meets the required control efficiency, a design evaluation shall address the composition and organic HAP concentration of the vent stream, immediately preceding the use of the control technique. A design evaluation shall also address other vent stream characteristics and control technique operating parameters, as specified in any one of paragraphs (f)(1)(i) through (vi) of this section, depending on the type of control technique that is used. If the vent stream is not the only inlet to the control technique, the owner or operator shall also account for all other vapors, gases, and liquids, other than fuels, received into the control technique from one or more PMPUs, for purposes of the efficiency determination.

(i) For an enclosed combustion technique used to comply with the provisions of § 63.1425(b)(1), (c)(1), or (d), with a minimum residence time of 0.5 seconds and a minimum temperature of 760° C, the design evaluation shall document that these conditions exist.

(ii) For a combustion control technique that does not satisfy the criteria in paragraph (f)(1)(i) of this section, the design evaluation shall document the control efficiency and address the characteristics listed in paragraphs (f)(1)(ii)(A) through (C) of this section, depending on the type of control technique.

(A) For a thermal vapor incinerator, in the design evaluation the owner or operator shall consider the autoignition temperature of the organic HAP, shall consider the vent stream flow rate, and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, in the design evaluation the owner or operator shall consider the vent stream flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, in the design evaluation the owner or operator shall consider the vent stream flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(iii) For a condenser, in the design evaluation the owner or operator shall consider the vent stream flow rate, relative humidity, and temperature, and shall establish the design outlet organic HAP compound concentration level, design average temperature of the exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. The temperature of the gas stream exiting the condenser shall be measured and used to establish the outlet organic HAP concentration.

(iv) For a carbon adsorption system that regenerates the carbon bed directly onsite as part of the control technique (such as a fixed-bed adsorber), in the design evaluation the owner or operator shall consider the vent stream flow rate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for the carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon. For vacuum desorption, the pressure drop shall also be included.

(v) For a carbon adsorption system that does not regenerate the carbon bed directly onsite as part of the control technique (such as a carbon canister), in the design evaluation the owner or operator shall consider the vent stream mass or volumetric flow rate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control technique and source operating schedule.

(vi) For a scrubber, in the design evaluation the owner or operator shall consider the vent stream composition, constituent concentrations, liquid-to-

vapor ratio, scrubbing liquid flow rate and concentration, temperature, and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation shall establish the design exhaust vent stream organic compound concentration level and shall include the additional information in paragraphs (f)(1)(vi) (A) and (B) of this section for trays and a packed column scrubber.

(A) Type and total number of theoretical and actual trays.

(B) Type and total surface area of packing for entire column and for individual packed sections, if the column contains more than one packed section.

(2) For ECO, the design evaluation shall establish the minimum duration (time) of the ECO, the maximum pressure at the end of the ECO, or the maximum epoxide concentration in the reactor liquid at the end of the ECO for each product class.

§ 63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction technique.

(a) *Applicability of extended cookout requirements.* Owners or operators of affected sources that produce polyether polyols using epoxides, and that are using ECO as a control technique to reduce epoxide emissions in order to comply with percent emission reduction requirements in § 63.1425(b)(1)(i) or (b)(2)(ii) shall comply with the provisions of this section. The owner or operator that is using ECO in order to comply with the emission factor requirements in § 63.1425(b)(1)(iii) or § 63.1425(b)(2)(iv) shall demonstrate that the specified emission factor is achieved by following the requirements in § 63.1431. If additional control devices are used to further reduce the HAP emissions from a process vent already controlled by ECO, then the owner or operator shall also comply with the testing, monitoring, recordkeeping, and reporting requirements associated with the additional control device, as specified in §§ 63.1426, 63.1429, and 63.1430, respectively.

(1) For each product class, the owner or operator shall determine the batch cycle percent epoxide emission reduction for the most difficult to control product in the product class, where the most difficult to control product is the polyether polyol that is manufactured with the slowest pressure decay curve.

(2) The owner or operator may determine the batch cycle percent epoxide emission reduction by directly measuring the concentration of the unreacted epoxide, or by using process knowledge, reaction kinetics, and engineering knowledge, in accordance with paragraph (a)(2)(i) of this section.

(i) If the owner or operator elects to use any method other than direct measurement, the epoxide concentration shall be determined by direct measurement for one product from each product class and compared with the epoxide concentration determined using the selected estimation method, with the exception noted in paragraph (a)(2)(ii) of this section. If the difference between the directly determined epoxide concentration and the calculated epoxide concentration is less than 25 percent, then the selected estimation method will be considered to be an acceptable alternative to direct measurement for that class.

(ii) If uncontrolled epoxide emissions prior to the end of the ECO are less than 10 tons per year (9.1 megagrams per year), the owner or operator is not required to perform the direct measurement required in paragraph (a)(2)(i) of this section. Uncontrolled epoxide emissions prior to the end of the ECO shall be determined by the procedures in paragraph (d)(1) of this section.

(b) *Define the end of epoxide feed.* The owner or operator shall define the end of the epoxide feed in accordance with paragraph (b)(1) or (2) of this section.

(1) The owner or operator shall determine the concentration of epoxide in the reactor liquid at the point in time when all epoxide has been added to the reactor and prior to any venting. This concentration shall be determined in accordance with the procedures in paragraph (f)(1)(i) of this section.

(2) If the conditions in paragraphs (b)(2)(i), (ii), and (iii) of this section are met, the end of the epoxide feed may be defined by the reactor epoxide partial pressure at the point in time when all epoxide reactants have been added to the reactor. This reactor epoxide partial pressure shall be determined in accordance with the procedures in paragraph (g) of this section.

(i) No epoxide is emitted before the end of the ECO;

(ii) Extended cookout is the only control technique to reduce epoxide emissions; and

(iii) The owner or operator elects to determine the percent epoxide emission reduction for the ECO using reactor epoxide partial pressure in accordance with paragraph (e)(2) of this section.

(c) *Define the onset of the ECO.* The owner or operator shall calculate the uncontrolled emissions for the batch cycle by calculating the epoxide emissions, if any, prior to the onset of the ECO, plus the epoxide emissions at the onset of the ECO. The onset of the ECO is defined as the point in time when the combined unreacted epoxide concentration in the reactor liquid is equal to 25 percent of the concentration of epoxides at the end of the epoxide feed, which was determined in accordance with paragraph (b) of this section.

(1) The uncontrolled epoxide emissions for the batch cycle shall be determined using Equation 8.

$$E_{e,u} = (C_{liq,i})(V_{liq,i})(D_{liq,i}) + (C_{vap,i})(V_{vap,i})(D_{vap,i}) + (E_{epox,bef}) \quad \text{[Equation 8]}$$

Where:

$E_{e,u}$ = Uncontrolled epoxide emissions at the onset of the ECO, kilograms per (kg/)batch.

$C_{liq,i}$ = Concentration of epoxide in the reactor liquid at the onset of the ECO, which is equal to 25 percent of the concentration of epoxide at the end of the epoxide feed, determined in accordance with paragraph (b)(1) of this section, weight percent.

$V_{liq,i}$ = Volume of reactor liquid at the onset of the ECO, liters.

$D_{liq,i}$ = Density of reactor liquid, kg/liter.

$C_{vap,i}$ = Concentration of epoxide in the reactor vapor space at the onset of the ECO, determined in accordance with paragraph (f)(2) of this section, weight percent.

$V_{vap,i}$ = Volume of the reactor vapor space at the onset of the ECO, liters.

$D_{vap,i}$ = Vapor density of reactor vapor space at the onset of the ECO, kg/liter.

$E_{epox,bef}$ = Epoxide emissions that occur prior to the onset of the ECO, determined in accordance with the provisions of § 63.1426(d), kilograms.

(2) If the conditions in paragraphs (b)(2)(i), (ii), and (iii) of this section are met, the owner or operator may define the onset of the ECO as the point in time

when the reactor epoxide partial pressure equals 25 percent of the reactor epoxide partial pressure at the end of the epoxide feed, and is not required to determine the uncontrolled epoxide emissions in accordance with paragraph (c)(1) of this section.

(d) *Determine emissions at the end of the ECO.* The owner or operator shall calculate the epoxide emissions at the end of the ECO, where the end of the ECO is defined as the point immediately before the time when the reactor contents are emptied and/or the reactor vapor space purged to the atmosphere or to a combustion, recovery, or recapture device.

(1) The epoxide emissions at the end of the ECO shall be determined using Equation 9.

$$E_{e,E} = (C_{liq,f})(V_{liq,f})(D_{liq,f}) + (C_{vap,f})(V_{vap,f})(D_{vap,f}) \quad \text{[Equation 9]}$$

Where:

$E_{e,E}$ = Epoxide emissions at the end of the ECO, kg.

$C_{liq,f}$ = Concentration of epoxide in the reactor liquid at the end of the ECO, determined in accordance with paragraph (f)(1) of this section, weight percent.

$V_{liq,f}$ = Volume of reactor liquid at the end of the ECO, liters.

$D_{liq,f}$ = Density of reactor liquid, kg/liter.

$C_{vap,f}$ = Concentration of epoxide in the reactor vapor space as it exits the reactor at the end of the ECO, determined in accordance with paragraph (f)(2) of this section, weight percent.

$V_{vap,f}$ = Volume of the reactor vapor space as it exits the reactor at the end of the ECO, liters.

$D_{vap,f}$ = Vapor density of reactor vapor space at the end of the ECO, kg/liter.

(2) If the conditions in paragraphs (b)(2)(i), (ii), and (iii) of this section are met, the owner or operator may determine the reactor epoxide partial pressure at the end of the ECO instead of determining the uncontrolled epoxide emissions at the end of the ECO in accordance with paragraph (d)(1) of this section.

(e) *Determine percent epoxide emission reduction.* (1) The owner or operator shall determine the percent epoxide emission reduction for the batch cycle using Equation 10.

$$R_{batchcycle} = \left[\frac{E_{e,u} - (E_{e,E})\left(1 - \frac{R_{addon,i}}{100}\right) + (E_{e,o})\left(1 - \frac{R_{addon,j}}{100}\right)}{E_{e,u}}\right] * 100 \quad \text{[Equation 10]}$$

Where:

$R_{batchcycle}$ = Epoxide emission reduction for the batch cycle, percent.

$E_{e,E}$ = Epoxide emissions at the end of the ECO determined in accordance with paragraph (d)(1) of this section, kilograms.

$R_{addon,i}$ = Control efficiency of combustion, recovery, or recapture device that is used to control epoxide emissions after the ECO, determined in accordance with the provisions of § 63.1426(c), percent.

$E_{e,o}$ = Epoxide emissions that occur before the end of the ECO, determined in accordance with the provisions of § 63.1426(d), kilograms.

$R_{addon,j}$ = Control efficiency of combustion, recovery, or recapture device that is used to control epoxide emissions that occur before the end of the ECO, determined in accordance with the provisions of § 63.1426(c), percent.

$E_{e,u}$ = Uncontrolled epoxide emissions determined in accordance with paragraph (c)(1) of this section, kilograms.

(2) If the conditions in paragraphs (b)(2)(i), (ii), and (iii) of this section are met, the owner or operator may determine the percent epoxide emission reduction for the batch cycle using reactor epoxide partial pressure and Equation 11, instead of using the procedures in paragraph (e)(1) of this section.

Where:

$R_{batchcycle}$ = Epoxide emission reduction for the batch cycle, percent.

$P_{epox,i}$ = Reactor epoxide partial pressure at the onset of the ECO, determined in accordance with paragraph (c)(2) of this section, mm Hg.

$P_{epox,f}$ = Reactor epoxide partial pressure at the end of the ECO, determined in accordance with paragraph (c)(2) of this section, mm Hg.

(f) *Determination of epoxide concentrations.* The owner or operator shall determine the epoxide concentrations in accordance with the procedures in this paragraph.

(1) The owner or operator shall determine the concentration of epoxide in the reactor liquid using either direct measurement in accordance with paragraph (f)(1)(i) of this section, or reaction kinetics in accordance with paragraph (f)(1)(ii) of this section. An owner or operator may also request to use an alternative methodology in accordance with paragraph (f)(1)(iii) of this section.

(i) The owner or operator shall submit a standard operating procedure for obtaining the liquid sample, along with the test method used to determine the epoxide concentration. This information shall be submitted in the Precompliance Report.

(ii) Determine the epoxide concentration in the reactor liquid using Equation 12. [Equation 12]

$$C_{liq,f} = C_{liq,i}\, e^{-kt} \quad \text{[Equation 12]}$$

$C_{liq,f}$ = Concentration of epoxide in the reactor liquid at the end of the time period, weight percent.

$C_{liq,i}$ = Concentration of epoxide in the reactor liquid at the beginning of the time period, weight percent.

k = Reaction rate constant, 1/hr.

t = Time, hours.

Note: This equation assumes a first order reaction with respect to epoxide concentration. where:

(iii) If the owner/operator deems that the methods listed in paragraphs (f)(1)(i) and (ii) of this section are not appropriate for the reaction system for a PMPU, then the owner/operator may submit a request for the use of an alternative method.

(2) The owner or operator shall determine the concentration of epoxide in the reactor vapor space using either direct measurement in accordance with paragraph (f)(2)(i) of this section, or by engineering estimation in accordance

with paragraph (f)(2)(ii) of this section. An owner or operator may also request to use an alternative methodology in accordance with paragraph (f)(2)(iii) of this section.

(i) The owner or operator shall take two representative samples from a bleed valve off the reactor's process vent. The owner or operator shall determine the total epoxide concentration using 40 CFR part 60, appendix A, Method 18.

(ii) Determine the epoxide concentration in the vapor space using Raoult's Law or another appropriate phase equilibrium equation and the liquid epoxide concentration, determined in accordance with paragraph (f)(1) of this section.

(iii) If the owner/operator deems that the methods listed in paragraphs (f)(1)(i) and (ii) of this section are not appropriate for the reaction system for a PMPU, then the owner/operator may submit a request for the use of an alternative method.

(g) *Determination of pressure.* The owner or operator shall determine the total pressure of the system using standard pressure measurement devices calibrated according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(h) *Determination if pressure decay curves are similar.* The owner or operator shall determine the pressure decay curve as defined in § 63.1423. Products with similar pressure decay curves constitute a product class. To determine if two pressure decay curves are similar when the pressure decay curves for products have different starting and finishing pressures, the owner or operator shall determine the time when the pressure has fallen to half its total pressure by using Equation 13:

$$\text{Time}\left(P_{half^1}\right) - \text{Time}\left(P_{half^2}\right) < 20\,\% \, T_{AVG\ P_{AVG}} \quad \text{[Equation 13]}$$

Where:

$P_{half}{}^1$ = Half the total pressure of the epoxide for product 1.

Time (P_{half} 1) = Time when the pressure has fallen to half its total pressure for product 1.

$P_{half}{}^2$ = Half the total pressure of the epoxide for product 2.

Time ($P_{half}{}^2$) = Time when the pressure has fallen to half its total pressure for product 2.

T_{AVG} P_{AVG} = The average time to cookout to the point where the epoxide pressure is 25 percent of the epoxide pressure at the end of the feed step for products 1 and 2.

(i) *ECO monitoring requirements.* The owner or operator using ECO shall comply with the monitoring requirements of this paragraph to demonstrate continuous compliance with this subpart. Paragraphs (i)(1) through (3) of this section address monitoring of the extended cookout.

(1) To comply with the provisions of this section, the owner or operator shall monitor one of the parameters listed in paragraphs (i)(1)(i) through (iii) of this section, or may utilize the provision in paragraph (i)(1)(iv) of this section.

(i) Time from the end of the epoxide feed;

(ii) The epoxide partial pressure in the closed reactor;

(iii) Direct measurement of epoxide concentration in the reactor liquid at the end of the ECO; when the reactor liquid is still in the reactor, or after the reactor liquid has been transferred to another vessel; or

(iv) An owner or operator may submit a request to the Administrator to monitor a parameter other than the parameters listed in paragraphs (i)(1)(i) through (iii) of this section, as described in § 63.1439(f).

(2) During the determination of the percent epoxide emission reduction in paragraphs (b) through (e) of this section, the owner or operator shall establish, as a level that shall be maintained during periods of operation, one of the parameters in paragraphs (i)(2)(i) through (iii) of this section, or may utilize the procedure in paragraph (i)(2)(iv) of this section, for each product class.

(i) The time from the end of the epoxide feed to the end of the ECO;

(ii) The reactor epoxide partial pressure at the end of the ECO;

(iii) The epoxide concentration in the reactor liquid at the end of the ECO, when the reactor liquid is still in the reactor, or after the reactor liquid has been transferred to another vessel; or

(iv) An owner or operator may submit a request to the Administrator to monitor a parameter other than the parameters listed in paragraphs (i)(2)(i) through (iii) of this section, as described in § 63.1439(f).

(3) For each batch cycle where ECO is used to reduce epoxide emissions, the owner or operator shall record the value of the monitored parameter at the end of the ECO. This parameter is then compared with the level established in accordance with paragraph (i)(2) of this section to determine if an excursion has occurred. An ECO excursion is defined as one of the situations described in paragraphs (i)(3)(i) through (v) of this section.

(i) When the time from the end of the epoxide feed to the end of the ECO is less than the time established in paragraph (i)(2)(i) of this section;

(ii) When the reactor epoxide partial pressure at the end of the ECO is greater than the partial pressure established in paragraph (i)(2)(ii) of this section;

(iii) When the epoxide concentration in the reactor liquid at the end of the ECO is greater than the epoxide concentration established in paragraph (i)(2)(iii) of this section;

(iv) When the parameter is not measured and recorded at the end of the ECO; or

(v) When the alternative monitoring parameter is outside the range established under § 63.1439(f) for proper operation of the ECO as a control technique.

(j) *Recordkeeping requirements.* (1) The owner or operator shall maintain the records specified in paragraphs (j)(1)(i) and (ii) of this section, for each product class. The owner or operator shall also maintain the records related to the initial determination of the percent epoxide emission reduction specified in paragraphs (j)(1)(iii) through (x) of this section, as applicable, for each product class.

(i) Operating conditions of the product class, including:

(A) Pressure decay curve;

(B) Minimum reaction temperature;

(C) Number of reactive hydrogens in the raw material;

(D) Minimum catalyst concentration;

(E) Ratio of EO/PO at the end of the epoxide feed; and

(F) Reaction conditions, including the size of the reactor or batch.

(ii) A listing of all products in the product class, along with the information specified in paragraphs (j)(1)(i)(A) through (F) of this section, for each product.

(iii) The concentration of epoxide at the end of the epoxide feed, determined in accordance with paragraph (b)(1) of this section.

(iv) The concentration of epoxide at the onset of the ECO, determined in

accordance with paragraph (c) of this section.

(v) The uncontrolled epoxide emissions at the onset of the ECO, determined in accordance with paragraph (c)(1) of this section. The records shall also include all the background data, measurements, and assumptions used to calculate the uncontrolled epoxide emissions.

(vi) The epoxide emissions at the end of the ECO, determined in accordance with paragraph (d)(1) of this section. The records shall also include all the background data, measurements, and assumptions used to calculate the epoxide emissions.

(vii) The percent epoxide reduction for the batch cycle, determined in accordance with paragraph (e)(1) of this section. The records shall also include all the background data, measurements, and assumptions used to calculate the percent reduction.

(viii) The parameter level, established in accordance with paragraph (i)(3) of this section.

(ix) If epoxide emissions occur before the end of the ECO, the owner or operator shall maintain records of the time and duration of all such emission episodes that occur during the initial demonstration of batch cycle efficiency.

(x) If the conditions in paragraphs (b)(2)(i), (ii), and (iii) of this section are met, the owner or operator is not required to maintain the records specified in paragraphs (j)(1)(iii) through (iv) of this section, but shall maintain the records specified in paragraphs (j)(1)(x)(A), (B), and (C) of this section.

(A) The reactor epoxide partial pressure at the following times:

(1) At end of the epoxide feed, determined in accordance with paragraph (b)(2) of this section;

(2) At the onset of the ECO, established in accordance with paragraph (c)(2) of this section; or

(3) At the end of the ECO, determined in accordance with paragraph (d)(2) of this section.

(B) The percent epoxide reduction for the batch cycle, determined in accordance with paragraph (e)(2) of this section. The records shall also include all the measurements and assumptions used to calculate the percent reduction.

(C) The reactor epoxide partial pressure at the end of the ECO.

(2) The owner or operator shall maintain the records specified in paragraphs (j)(2)(i) through (iv) of this section.

(i) For each batch cycle, the product being produced and the product class to which it belongs.

(ii) For each batch cycle, the owner or operator shall record the value of the parameter monitored in accordance with paragraph (i)(3) of this section.

(iii) If a combustion, recovery, or recapture device is used in conjunction with ECO, the owner or operator shall record the information specified in § 63.1430(d) and comply with the monitoring provisions in § 63.1429.

(iv) If a combustion, recovery, or recapture device is used to reduce emissions, the owner or operator shall maintain the records specified in § 63.1430(d).

(v) If epoxide emissions occur before the end of the ECO, the owner or operator shall maintain records of the time and duration of all such emission episodes.

(k) *Reporting requirements.* The owner or operator shall comply with the reporting requirements in this paragraph.

(1) The information specified in paragraphs (k)(1)(i) through (ii) of this section shall be provided in the Precompliance Report, as specified in § 63.1439(e)(4).

(i) A standard operating procedure for obtaining the reactor liquid sample and a method that will be used to determine the epoxide concentration in the liquid, in accordance with paragraph (f)(1)(i) of this section.

(ii) A request to monitor a parameter other than those specified in paragraph (i)(1)(i), (ii), or (iii) of this section, as provided for in paragraph (i)(1)(iv) of this section.

(2) The information specified in paragraphs (k)(2)(i) through (iv) of this section shall be provided in the Notification of Compliance Status, as specified in § 63.1439(e)(5).

(i) For each product class, the information specified in paragraphs (k)(2)(i)(A) through (C) of this section.

(A) The operating conditions of this product class, as specified in paragraph (j)(1)(i) of this section.

(B) A list of all products in the product class.

(C) The percent epoxide emission reduction, determined in accordance with paragraph (e) of this section.

(ii) The parameter for each product class, as determined in accordance with paragraph (i)(2) of this section.

(iii) If a combustion, recovery, or recapture device is used in addition to ECO to reduce emissions, the information specified in § 63.1430(g)(1).

(iv) If epoxide emissions occur before the end of the ECO, a listing of the time and duration of all such emission episodes that occur during the initial demonstration of batch cycle efficiency.

(3) The information specified in paragraphs (k)(3)(i) through (iii) of this section shall be provided in the Periodic Report, as specified in § 63.1439(e)(6).

(i) Reports of each batch cycle for which an ECO excursion occurred, as defined in paragraph (i)(3) of this section.

(ii) Notification of each batch cycle when the time and duration of epoxide emissions before the end of the ECO, recorded in accordance with paragraph (j)(2)(iv) of this section, exceed the time and duration of the emission episodes during the initial epoxide emission percentage reduction determination, as recorded in paragraph (j)(1)(viii) of this section.

(iii) If a combustion, recovery, or recapture device is used to reduce emissions, the information specified in § 63.1430(h).

(l) *New polyether polyol products.* If an owner or operator wishes to utilize ECO as a control option for a polyether polyol not previously assigned to a product class and reported to the Agency in accordance with either paragraph (k)(2)(i)(B), (l)(1)(ii), or (l)(2)(iii) of this section, the owner or operator shall comply with the provisions of paragraph (l)(1) or (2) of this section.

(1) If the operating conditions of the new polyether polyol are consistent with the operating conditions for an existing product class, the owner or operator shall comply with the requirements in paragraphs (l)(1)(i) and (ii) of this section.

(i) The owner or operator shall update the list of products for the product class required by paragraph (j)(1)(ii) of this section, and shall record the information in paragraphs (j)(1)(i)(A) through (F) of this section for the new product.

(ii) Within 180 days after the production of the new polyether polyol, the owner or operator shall submit a report updating the product list previously submitted for the product class. This information may be submitted along with the next Periodic Report.

(2) If the operating conditions of the new polyether polyol do not conform with the operating characteristics of an existing product class, the owner or operator shall establish a new product class and shall comply with provisions of paragraphs (l)(2)(i) through (iii) of this section.

(i) The owner or operator shall establish the batch cycle percent epoxide emission reduction in accordance with paragraphs (b) through (g) of this section for the product class.

(ii) The owner or operator shall establish the records specified in

paragraph (j)(1) of this section for the product class.

(iii) Within 180 days of the production of the new polyether polyol, the owner or operator shall submit a report containing the information specified in paragraphs (k)(2)(i) and (ii) of this section.

(m) *Polyether polyol product changes.* If a change in operation, as defined in paragraph (m)(1) of this section, occurs for a polyether polyol that has been assigned to a product class and reported to the Agency in accordance with paragraph (k)(2)(i)(B), (l)(1)(ii), or (l)(2)(iii) of this section, the owner or operator shall comply with the provisions of paragraphs (m)(2) through (3) of this section.

(1) A change in operation for a polyether polyol is defined as a change in any one of the parameters listed in paragraphs (m)(1)(i) through (ix) of this section.

(i) A significant change in reaction kinetics;

(ii) Use of a different oxide reactant;

(iii) Use of a different EO/PO ratio;

(iv) A lower reaction temperature;

(v) A lower catalyst feed on a mole/mole fraction OH basis;

(vi) A shorter cookout;

(vii) A lower reactor pressure;

(viii) A different type of reaction, (e.g., a self-catalyzed vs. catalyzed reaction); or

(ix) A marked change in reaction conditions (e.g., a markedly different liquid level).

(2) If the operating conditions of the product after the change in operation remain within the operation conditions of the product class to which the product was assigned, the owner or operator shall update the records specified in paragraphs (j)(1)(i)(A) through (F) of this section for the product.

(3) If the operating conditions of the product after the change in operation are outside of the operating conditions of the product class to which the product was assigned, the owner or operator shall comply with the requirements in paragraph (m)(3)(i) or (ii) of this section, as appropriate.

(i) If the new operating conditions of the polyether polyol are consistent with the operating conditions for another existing product class, the owner or operator shall comply with the requirements in paragraphs (m)(3)(i)(A) and (B) of this section.

(A) The owner or operator shall update the list of products for the product class that the product is leaving, and for the product class that the product is entering, and shall record the new information in paragraphs (j)(1)(i)(A) through (F) of this section for the product.

(B) Within 180 days after the change in operating conditions for the polyether polyol product, the owner or operator shall submit a report updating the product lists previously submitted for the product class. This information may be submitted along with the next Periodic Report.

(ii) If the new operating conditions of the polyether polyol product do not conform with the operating characteristics of an existing product class, the owner or operator shall establish a new product class and shall comply with provisions of paragraphs (m)(3)(ii)(A) through (C) of this section.

(A) The owner or operator shall establish the batch cycle percent epoxide emission reduction in accordance with paragraphs (b) through (g) of this section for the product class.

(B) The owner or operator shall establish the records specified in paragraph (j)(1) of this section for the product class.

(C) Within 180 days of the change in operating conditions for the polyether polyol, the owner or operator shall submit a report containing the information specified in paragraphs (k)(2)(i) and (ii) of this section.

§ 63.1428 Process vent requirements for group determination of PMPUs using a nonepoxide organic HAP to make or modify the product.

(a) *Process vents from batch unit operations.* The owner or operator shall determine, for each PMPU located at an affected source, if the combination of all process vents from batch unit operations that are associated with the use of nonepoxide organic HAP to make or modify the product is a Group 1 combination of batch process vents, as defined in § 63.1423. The annual uncontrolled nonepoxide organic HAP emissions, determined in accordance with paragraph (b) of this section, and annual average flow rate, determined in accordance with paragraph (c) of this section, shall be determined for all process vents from batch unit operations associated with the use of a nonepoxide organic HAP to make or modify the product, with the exception of those vents specified in paragraph (i) of this section, at the location after all applicable control techniques have been applied to reduce epoxide emissions in accordance with paragraph (a)(1) or (2) of this section.

(1) If the owner or operator is using a combustion, recovery, or recapture device to reduce epoxide emissions, this location shall be at the exit of the combustion, recovery, or recapture device.

(2) If the owner or operator is using ECO to reduce epoxide emissions, this location shall be at the exit from the batch unit operation. For the purpose of these determinations, the primary condenser operating as a reflux condenser on a reactor or distillation column shall be considered part of the unit operation.

(b) *Determination of annual nonepoxide organic HAP emissions.* The owner or operator shall determine, for each PMPU, the total annual nonepoxide organic HAP emissions from the combination of all process vents from batch unit operations that are associated with the use of a nonepoxide organic HAP to make or modify the product in accordance with paragraphs (b)(1) and (2) of this section.

(1) The annual nonepoxide organic HAP emissions for each process vent from a batch unit operation associated with the use of a nonepoxide organic HAP to make or modify the product shall be determined using the batch process vent procedures in the NESHAP for Group I Polymers and Resins (40 CFR part 63, subpart U), § 63.488(b).

(2) The owner or operator shall sum the annual nonepoxide organic HAP emissions from all individual process vents from batch unit operations in a PMPU, determined in accordance with paragraph (b)(1) of this section, to obtain the total nonepoxide organic HAP emissions from the combination of process vents associated with the use of a nonepoxide organic HAP to make or modify the product, for the PMPU.

(c) *Minimum emission level exemption.* If the annual emissions of TOC or nonepoxide organic HAP from the combination of process vents from batch unit operations that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol for a PMPU are less than 11,800 kg/yr, the owner or operator of that PMPU is not required to comply with the provisions in paragraphs (d) and (e) of this section.

(d) *Determination of average flow rate and annual average flow rate.* The owner or operator shall determine, for each PMPU, the total annual average flow rate for the combination of all process vents from batch unit operations that are associated with the use of a nonepoxide organic HAP to make or modify a product in accordance with paragraphs (d)(1) and (2) of this section.

(1) The annual average flow rate for each process vent from batch unit operations that is associated with the use of nonepoxide organic HAP to make or modify the product shall be determined using the batch process vent

procedures in the NESHAP for Group I Polymers and Resins (40 CFR part 63, subpart U), § 63.488(e).

(2) The owner or operator shall sum the annual average flow rates from the individual process vents from batch unit operations in a PMPU, determined in accordance with paragraph (d)(1) of this section, to obtain the total annual average flow rate for the combination of process vents associated with the use of a nonepoxide organic HAP to make or modify the product, for the PMPU.

(e) *Determination of cutoff flow rate.* For each PMPU at an affected source that uses nonepoxide organic HAP to make or modify the product, the owner or operator shall calculate the cutoff flow rate using Equation 14.

$$CFR = (0.00437)(AE) - 51.6 \quad \text{[Equation 14]}$$

Where:

CFR = Cutoff flow rate, standard cubic meters per minute (scmm).

AE = Annual TOC or nonepoxide organic HAP emissions from the combination of process vents from batch unit operations that are associated with the use of nonepoxide organic HAP to make or modify the product, as determined in paragraph (b)(2) of this section, kg/yr.

(f) [Reserved]

(g) *Process changes affecting Group 2 combinations of process vents in a PMPU that are from batch unit operations.* Whenever process changes, as described in paragraph (g)(1) of this section, are made that affect a Group 2 combination of batch process vents and that could reasonably be expected to change the group status from Group 2 to Group 1, the owner or operator shall comply with paragraphs (g)(2) and (3) of this section.

(1) Examples of process changes include, but are not limited to, increases in production capacity or production rate, changes in feedstock type or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation. Any change that results in an increase in the annual nonepoxide organic HAP emissions from the estimate used in the previous group determination constitutes a process change for the purpose of these provisions. Process changes do not include: process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(2) For each process affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (e) of this section, as applicable, and determining if the combination of process vents is a Group 1 combination of batch process vents, as defined in § 63.1423. Alternatively, engineering assessment, as described in § 63.488(b)(6)(i), may be used to determine the effects of the process change.

(3) Based on the results of paragraph (g)(2) of this section, the owner or operator shall comply with either paragraph (g)(3)(i) or (ii) of this section.

(i) If the redetermination described in paragraph (g)(2) of this section indicates that the group status of the combination of process vents from batch unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify the product changes from Group 2 to Group 1 as a result of the process change, the owner or operator shall submit a report as specified in § 63.1439(e)(6)(iii)(D)(*1*) and shall comply with Group 1 combination of batch process vents provisions in this subpart, as specified in § 63.1420(g)(3).

(ii) If the redetermination described in paragraph (g)(2) of this section indicates no change in group status, the owner or operator is not required to submit a report.

(h) *Process vents from continuous unit operations.* (1) The owner or operator shall determine the total resource effectiveness (TRE) index value for each process vent from a continuous unit operation that is associated with the use of nonepoxide organic HAP to make or modify the product. To determine the TRE index value, the owner or operator shall conduct a TRE determination and calculate the TRE index value according to the HON process vent group determination procedures in § 63.115(d)(1) or (2) and the TRE equation in § 63.115(d)(3). The TRE index value shall be determined at the location after all applicable control techniques have been applied to reduce epoxide emissions in accordance with paragraph (h)(1)(i), (ii), or (iii) of this section.

(i) If the owner or operator uses one or more nonepoxide recovery devices after all control techniques to reduce epoxide emissions, this location shall be after the last nonepoxide recovery device.

(ii) If the owner or operator does not use a nonepoxide recovery device after a combustion, recovery, or recapture device to reduce epoxide emissions, this location shall be at the exit of the combustion, recovery, or recapture device.

(iii) If the owner or operator does not use a nonepoxide recovery device after extended cookout to reduce epoxide emissions, this location shall be at the exit from the continuous unit operation. For the purpose of these determinations, the primary condenser operating as a reflux condenser on a reactor or distillation column shall be considered part of the unit operation.

(2) The owner or operator of a Group 2 continuous process vent shall recalculate the TRE index value as necessary to determine whether the process vent is Group 1 or Group 2, whenever process changes are made that could reasonably be expected to change the process vent to Group 1. Examples of process changes include, but are not limited to, increases in production capacity or production rate, changes in feedstock type or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: process upsets; unintentional, temporary process changes; and changes that are within the range on which the original TRE calculation was based.

(i) The TRE index value shall be recalculated based on measurements of process vent stream flow rate, TOC, and nonepoxide organic HAP concentrations, and heating values as specified in the HON process vent group determination procedures in § 63.115(a), (b), (c), and (d), as applicable, or on best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 63.115(d)(1).

(ii) Where the recalculated TRE index value is less than or equal to 1.0, or, where the TRE index value before the process change was greater than 4.0 and the recalculated TRE index value is less than or equal to 4.0 but greater than 1.0, the owner or operator shall submit a report as specified in the process vent reporting and recordkeeping provisions in § 63.1430(j) or (k), and shall comply with the appropriate provisions in the process vent control requirements in § 63.1425 by the dates specified in

§ 63.1422 (the section describing compliance dates for sources subject to this subpart).

(iii) Where the recalculated TRE index value is greater than 4.0, the owner or operator is not required to submit a report.

(i) *Combination of process vents from batch unit operations and process vents from continuous unit operations.* If an owner or operator combines a process vent from a batch unit operation that is associated with the use of a nonepoxide organic HAP to make or modify the product with a process vent from a continuous unit operation that is associated with the use of a nonepoxide prior to the epoxide control technique, or prior to a nonepoxide recovery device that is after the epoxide control technique, then the provisions in paragraphs (i)(1) and (2) of this section shall apply.

(1) The process vent from the batch unit operation is not required to be included in the group determination required by paragraphs (a) through (e) of this section.

(2) The TRE index value of the combined stream shall be determined in accordance with paragraph (h) of this section, and the TRE index value shall be calculated during a period when nonepoxide organic HAP emissions are being generated by the batch unit operation.

§ 63.1429 Process vent monitoring requirements.

(a) *Monitoring equipment requirements.* The owner or operator of a process vent that uses a combustion, recovery, or recapture device to comply with the process vent control requirements in § 63.1425(b)(1), (b)(2), (c)(1), (c)(3), or (d) shall install monitoring equipment specified in paragraph (a)(1), (2), (3), (4), (5), (6), or (7) of this section, depending on the type of device used. Also, the owner or operator that uses a recovery or recapture device to comply with § 63.1425(c)(4) shall install monitoring equipment as specified in paragraph (a)(4), (5), (6), or (7) of this section. All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers' specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(1) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Where a flare is used, the following monitoring equipment is required: a device (including but not limited to a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting the presence of a pilot flame.

(3) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, the following monitoring equipment is required: a temperature monitoring device in the firebox equipped with a continuous recorder. Any boiler or process heater in which all process vent streams are introduced with primary fuel or are used as the primary fuel is exempt from this requirement.

(4) Where an absorber is used, a scrubbing liquid flow rate meter or a pressure monitoring device is required and should be equipped with a continuous recorder. If an acid or base absorbent is used, a pH monitoring device to monitor scrubber effluent is also required. If two or more absorbers in series are used, a scrubbing liquid flow rate meter, or a pressure monitoring device, equipped with a continuous recorder, is required for each absorber in the series. An owner or operator may submit a request to instead install the scrubbing liquid flow rate meter, or a pressure monitoring device, equipped with a continuous recorder, on only the final absorber in a series, in accordance with the alternative parameter monitoring reporting requirements in § 63.1439(f).

(5) Where a condenser is used, a condenser exit temperature (product side) monitoring device equipped with a continuous recorder is required.

(6) Where a carbon adsorber is used, an integrating regeneration stream flow monitoring device having an accuracy of +10 percent or better, capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle, and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

(7) As an alternative to paragraphs (a)(4) through (6) of this section, the owner or operator may install an organic monitoring device equipped with a continuous recorder.

(b) *Alternative parameters.* An owner or operator of a process vent may request approval to monitor parameters other than those listed in paragraph (a) of this section. The request shall be submitted according to the procedures specified in the process vent reporting and recordkeeping requirements in § 63.1430(j) and the alternative parameter monitoring reporting requirements in § 63.1439(f). Approval shall be requested if the owner or operator:

(1) Uses a combustion device other than an incinerator, boiler, process heater, or flare; or

(2) For a Group 2 continuous process vent, maintains a TRE greater than 1.0 but less than or equal to 4.0 without a recovery device or with a recovery device other than the recovery devices listed in paragraph (a) of this section; or

(3) Uses one of the combustion, recovery, or recapture devices listed in paragraph (a) of this section, but seeks to monitor a parameter other than those specified in paragraph (a) of this section.

(c) *Monitoring of bypass lines.* The owner or operator of a process vent using a process vent system that contains bypass lines that could divert a process vent stream away from the combustion, recovery, or recapture device used to comply with the process vent control requirements in § 63.1425(b), (c), or (d) shall comply with paragraph (c)(1) or (2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to paragraphs (c)(1) or (2) of this section.

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once at approximately equal intervals of about 15 minutes. Records shall be generated as specified in the process vent reporting and recordkeeping provisions in § 63.1430(d)(3). The flow indicator shall be installed at the entrance to any bypass line that could divert emissions away from the combustion, recovery, or recapture device and to the atmosphere; or

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in the process

vent reporting and recordkeeping provisions in § 63.1430(d)(4)(i).

(d) *Establishment of parameter monitoring levels.* Parameter monitoring levels for process vents from continuous or batch unit operations using a combustion, recovery, or recapture device to comply with the process vent control requirements in § 63.1425(b), (c), or (d) shall be established as specified in paragraphs (d)(1) through (3) of this section.

(1) For each parameter monitored under paragraph (a) or (b) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 5 of this subpart (the table listing the monitoring, recordkeeping, and reporting requirements for process vents from batch unit operations), that indicates that the combustion, recovery, or recapture device is operated in a manner to ensure compliance with the provisions of this subpart. The level shall be established in accordance with the procedures specified in the process vent control requirements in § 63.1430(d). The level may be based upon a prior performance test conducted for determining compliance with a regulation promulgated by the EPA, and the owner or operator is not required to conduct a performance test under the process vent requirements for determining organic HAP concentration, control efficiency, and aggregated organic HAP emission reductions in § 63.1426, provided that the prior performance test meets the conditions of § 63.1426(b)(3).

(2) The established level, along with supporting documentation, shall be submitted in the Notification of Compliance Status or the operating permit application as required in the Notification of Compliance Status requirements in § 63.1439(e)(5) or in the operating permit application requirements in § 63.1439(e)(8), respectively.

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (d)(2) of this section. The definition of operating day shall specify the time(s) at which an operating day begins and ends.

§ 63.1430 Process vent reporting and recordkeeping requirements.

(a) [Reserved]

(b) *Records to demonstrate compliance.* The owner or operator complying with the process vent control requirements in § 63.1425(b), (c), or (d) shall keep the following records, as applicable, readily accessible:

(1) When using a flare to comply with the process vent control requirements in § 63.1425(b)(2)(i), (c)(1)(i), (c)(3)(i), or (d)(1):

(i) The flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate determinations, and exit velocity determinations made during the flare specification determination required by § 63.1437(c); and

(iii) All periods during the flare specification determination required by § 63.1437(c) when all pilot flames are absent.

(2) The following information when using a combustion, recovery, or recapture device (other than a flare) to achieve compliance with the process vent control requirements in § 63.1425(b), (c), or (d):

(i) For a combustion, recovery, or recapture device being used to comply with a percent reduction requirement of § 63.1425(b)(1)(i), (b)(2)(ii), (c)(1)(ii), (c)(3)(ii), or (d)(2), or the annual epoxide emission limitation in § 63.1425(b)(1)(iii) or (b)(2)(iv), the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in the process vent requirements in § 63.1426;

(ii) For a combustion device being used to comply with an outlet concentration limitation of § 63.1425(b)(1)(ii) or (b)(2)(iii), the concentration of organic HAP or TOC outlet of the combustion device, as determined using the procedures specified in the process vent requirements in § 63.1426;

(iii) For a boiler or process heater, a description of the location at which the process vent stream is introduced into the boiler or process heater;

(iv) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the process vent stream is introduced with combustion air or is used as a secondary fuel and is not mixed with the primary fuel, the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in § 63.1426.

(c) *Records related to the establishment of parameter monitoring levels.* For each parameter monitored according to the process vent monitoring requirements in § 63.1429(a) and Table 5 of this subpart, or for alternate parameters and/or parameters for alternate control techniques monitored according to the alternative parameter monitoring reporting requirements in § 63.1439(f) as allowed under § 63.1429(b), maintain documentation showing the establishment of the level that indicates that the combustion, recovery, or recapture device is operated in a manner to ensure compliance with the provisions of this subpart, as required by the process vent monitoring requirements in § 63.1429(d).

(d) *Records to demonstrate continuous compliance.* The owner or operator that uses a combustion, recovery, or recapture device to comply with the process vent control requirements in § 63.1425(b), (c), or (d) shall keep the following records readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under the process vent monitoring requirements in § 63.1429(a) as applicable, and listed in Table 5 of this subpart, or specified by the Administrator in accordance with the alternative parameter monitoring reporting requirements in § 63.1439(f), as allowed under § 63.1429(b). These records shall be kept as specified under § 63.1439(d), except as specified in paragraphs (d)(1)(i) and (ii) of this section.

(i) For flares, the records specified in Table 5 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers used for process vents from batch unit operations, the records specified in Table 5 of this subpart shall be maintained in place of daily averages.

(2) Records of the daily average value for process vents from continuous unit operations or batch unit operations of each continuously monitored parameter, except as provided in paragraphs (d)(2)(i) and (ii) of this section.

(i) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the daily averages. In addition, monitoring data recorded during periods of non-operation of the process (or specific portion thereof) resulting in cessation of organic HAP emissions, (or periods of start-up, shutdown, or malfunction) shall not be included in computing the daily averages.

(ii) If all recorded values for a monitored parameter during an operating day are above the minimum or below the maximum parameter monitoring level established in accordance with the process vent monitoring requirements in § 63.1429(d), the owner or operator may record that all values were above the

minimum or below the maximum level established, rather than calculating and recording a daily average for that operating day.

(3) Hourly records of whether the flow indicator for bypass lines specified under § 63.1429(c)(1) was operating and whether a diversion was detected at any time during the hour. Also, records of the time(s) of all periods when the process vent was diverted from the combustion, recovery, or recapture device, or the flow indicator specified in § 63.1429(c)(1) was not operating.

(4) Where a seal or closure mechanism is used to comply with the process vent monitoring requirements for bypass lines in § 63.1429(c)(2), hourly records of flow are not required. For compliance with § 63.1429(c)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanism has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has been broken.

(5) Records specifying the times and duration of periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high level adjustments. In addition, records specifying any other periods of process or combustion, recovery, or recapture device operation when monitors are not operating.

(e) *Records related to the group determination for process vents that are associated with the use of nonepoxide organic HAP to make or modify the product.* (1) *Process vents from batch unit operations.* Except as provided in paragraphs (e)(1)(vi) and (vii) of this section, the owner or operator of an affected source shall maintain the records specified in paragraphs (e)(1)(i) through (v) of this section for each PMPU that uses a nonepoxide organic HAP to make or modify the product in batch unit operations. The records required to be maintained by this paragraph are limited to the information developed and used to make the group determination under the process vent requirements for processes using a nonepoxide organic HAP to make or modify the product in § 63.1428(a) through (e), as appropriate. If an owner or operator did not need to develop certain information (e.g., annual average flow rate) to determine the group status, the owner or operator is not required to develop additional information. The owner or operator may elect Group 1 status for process vents without making a Group 1/Group 2 determination. In such event, none of the records specified in paragraphs (e)(1)(i) through (v) are required.

(i) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle for each unique product class made in the PMPU.

(ii) Total annual uncontrolled TOC or nonepoxide organic HAP emissions from the combination of process vents from batch unit operations associated with the use of nonepoxide organic HAP to make or modify the product, as determined in accordance with the process vent requirements for group determinations in § 63.1428(b).

(iii) The annual average flow rate for the combination of process vents from batch unit operations associated with the use of organic HAP to make or modify the product, as determined in accordance with the process vent requirements for group determinations in § 63.1428(d).

(iv) The cutoff flow rate, determined in accordance with the process vent requirements for group determinations in § 63.1428(e).

(v) The results of the PMPU group determination (i.e., whether the combination of process vents is Group 1 or Group 2).

(vi) If the combination of all process vents from batch unit operations associated with the use of an organic HAP to make or modify the product is subject to the Group 1 batch process vent control requirements for nonepoxide HAP emissions from making or modifying the product in § 63.1425(c)(1), none of the records in paragraphs (b)(1)(i) through (v) of this section are required.

(vii) If the total annual emissions from the combination of process vents from batch unit operations associated with the use of an organic HAP to make or modify the product are less than 11,800 kg per year, only the records in paragraphs (b)(1)(i) and (ii) of this section are required.

(2) *Process vents from continuous unit operations.* The owner or operator of an affected source that uses nonepoxide organic HAP to make or modify the product in continuous unit operations shall keep records regarding the measurements and calculations performed to determine the TRE index value of each process vent stream. The owner or operator of Group 1 continuous process vents that are subject to the control requirements of § 63.1425(c)(3) is not required to keep these records.

(f) *Records for Group 2 process vents that are associated with the use of nonepoxide organic HAP to make or modify the product.* The following records shall be maintained for PMPUs with a Group 2 combination of batch process vents and/or one or more Group 2 continuous process vents.

(1) *Process vents from batch unit operations—emission records.* The owner or operator shall maintain records of the combined total annual nonepoxide organic HAP emissions from process vents associated with the use of nonepoxide organic HAP to make or modify the product for each PMPU where the combination of these process vents is classified as Group 2.

(2) *Process vents from continuous unit operations—monitoring records for vents with TRE between 1.0 and 4.0.* The owner or operator using a recovery device or other means to achieve and maintain a TRE index value greater than 1.0 but less than 4.0 as specified in the HON process vent requirements in § 63.113(a)(3) or § 63.113(d) shall keep the following records readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.114(b) and listed in Table 5 of this subpart or specified by the Administrator in accordance with § 63.114(c) and § 63.117(e); and

(ii) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.152(f). If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in Table 5 of this subpart shall be kept instead of the daily averages.

(3) *Process vents from continuous unit operations—records related to process changes.* The owner or operator subject to the provisions of this subpart who has elected to demonstrate compliance with the TRE index value greater than 4.0 under § 63.113(e) or greater than 1.0 under § 63.113(a)(3) or § 63.113(d) shall keep readily accessible records of:

(i) Any process changes as defined in § 63.115(e); and

(ii) Any recalculation of the TRE index value pursuant to § 63.115(e).

(4) *Process vents from continuous unit operations—records for vents with a flow rate less than 0.005 standard cubic meter per minute.* The owner or operator who elects to comply by maintaining a flow rate less than 0.005 standard cubic meter per minute under § 63.113(f), shall keep readily accessible records of:

(i) Any process changes as defined in § 63.115(e) that increase the process vent stream flow rate;

(ii) Any recalculation or measurement of the flow rate pursuant to § 63.115(e); and

(iii) If the flow rate increases to 0.005 standard cubic meter per minute or greater as a result of the process change, the TRE determination performed according to the procedures of § 63.115(d).

(5) *Process vents from continuous unit operations—records for vents with an organic HAP concentration less than 50 parts per million.* The owner or operator who elects to comply by maintaining an organic HAP concentration less than 50 parts per million by volume organic HAP concentration under § 63.113(g) shall keep readily accessible records of:

(i) Any process changes as defined in § 63.115(e) that increase the organic HAP concentration of the process vent stream;

(ii) Any recalculation or measurement of the concentration pursuant to § 63.115(e); and

(iii) If the organic HAP concentration increases to 50 parts per million by volume or greater as a result of the process change, the TRE determination performed according to the procedures of § 63.115(d).

(g) *Notification of Compliance Status.* The owner or operator of an affected source shall submit the information specified in paragraphs (g)(1) through (3) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.1439(e)(5).

(1) For the owner or operator complying with the process vent control requirements in § 63.1425(b), (c)(1), (c)(3), or (d), the information specified in paragraph (b) of this section related to the compliance demonstration, and the information specified in paragraph (c) of this section related to the establishment of parameter monitoring levels,

(2) For each PMPU where the combination of process vents from batch unit operations that are associated with the use of nonepoxide organic HAP to make or modify the product is Group 2, the information related to the group determination specified in paragraph (e)(1) of this section.

(3) For each process vent from a continuous unit operation that is associated with the use of nonepoxide organic HAP to make or modify the product that is Group 2, the information related to the group determination specified in paragraph (e)(2) of this section.

(h) *Periodic Reports.* The owner or operator of an affected source shall submit Periodic Reports of the recorded information specified in paragraphs (h)(1) through (6) of this section, as appropriate, according to the schedule for submitting Periodic Reports in § 63.1439(e)(6)(i).

(1) Reports of daily average values of monitored parameters for all operating days when the daily average values recorded under paragraph (d)(2) of this section were above the maximum, or below the minimum, level established in the Notification of Compliance Status or operating permit.

(2) Reports of the duration of periods when monitoring data are not collected for each excursion caused by insufficient monitoring data as defined in § 63.1438(f)(1)(iv), (f)(2)(i)(B), or (f)(3)(ii).

(3) Reports of the times and durations of all periods recorded under paragraph (d)(3) of this section when the process vent stream is diverted from the combustion, recovery, or recapture device through a bypass line.

(4) Reports of all periods recorded under paragraph (d)(4) of this section in which the seal mechanism is broken, the bypass line valve position has changed, or the key to unlock the bypass line valve was checked out.

(5) Reports of the times and durations of all periods recorded under paragraph (d)(1)(i) of this section in which all pilot flames of a flare were absent.

(6) Reports of all carbon bed regeneration cycles during which the parameters recorded under paragraph (d)(1)(ii) of this section were above the maximum, or below the minimum, levels established in the Notification of Compliance Status or operating permit.

(i) *Reports of process changes.* Whenever a process change, as defined in § 63.1420(g)(3), is made that causes a Group 2 combination of batch process vents at a PMPU that are associated with the use of nonepoxide organic HAP to make or modify the product to become Group 1, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report or in a separate submittal to the Administrator, as specified in § 63.1439(e)(6)(iii)(D)(1). A description of the process change shall be submitted with the report.

(j) *Reporting requirements for Group 2 continuous process vents.* (1) Whenever a process change, as defined in § 63.1420(g)(3), is made that causes a Group 2 continuous process vent with a TRE greater than 4.0 to become a Group 2 continuous process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 calendar days after the process change is made or the information regarding the process change is known, unless the flow rate is less than 0.005 standard cubic meters per minute. The report may be submitted as part of the next periodic report. The report shall include:

(i) A description of the process change;

(ii) The results of the recalculation of the TRE index value required under § 63.1428(h)(2), and recorded under paragraph (f)(3) of this section; and

(iii) A statement that the owner or operator will comply with the process vent monitoring requirements specified in § 63.1429, as appropriate.

(2) Whenever a process change, as defined in § 63.1420(g)(3), is made that causes a Group 2 continuous process vent with a flow rate less than 0.005 standard cubic meters per minute to become a Group 2 continuous process vent with a flow rate of 0.005 standard cubic meters per minute or greater, the owner or operator shall submit a report within 180 calendar days after the process change is made or the information regarding the process change is known, unless the organic HAP concentration is less than 50 ppmv. The report may be submitted as part of the next periodic report. The report shall include:

(i) A description of the process change;

(ii) The results of the calculation of the TRE index value required under § 63.1428(h)(2), and recorded under paragraph (f)(3) of this section; and

(iii) A statement that the owner or operator will comply with the process vent monitoring requirements specified in § 63.1429, as appropriate.

(3) Whenever a process change, as defined in § 63.1420(g)(3), is made that causes a Group 2 continuous process vent with an organic HAP concentration less than 50 ppmv to become a Group 2 continuous process vent with an organic HAP concentration of 50 ppmv or greater and a TRE index value less than 4.0, the owner or operator shall submit a report within 180 calendar days after the process change is made or the information regarding the process change is known, unless the flow rate is less than 0.005 standard cubic meters per minute. The report may be submitted as part of the next periodic report. The report shall include:

(i) A description of the process change;

(ii) The results of the calculation of the TRE index value required under § 63.1428(h)(2), and recorded under paragraph (f)(3) of this section; and

(iii) A statement that the owner or operator will comply with the process

vent monitoring requirements specified in § 63.1429, as appropriate.

(k) *Alternative requests.* If an owner or operator uses a combustion, recovery, or recapture device other than those specified in the process vent monitoring requirements in § 63.1429(a)(1) through (7) and listed in Table 5 of this subpart; requests approval to monitor a parameter other than those specified in § 63.1429(a)(1) through (7) and listed in Table 5 of this subpart; or uses ECO and requests to monitor a parameter other than those listed in § 63.1427(i)(1)(i) through (iii), as allowed under § 63.1427(i)(1)(iv), the owner or operator shall submit a description of planned reporting and recordkeeping procedures, as specified in § 63.1439(f)(3), as part of the Precompliance Report as required under § 63.1439(e)(4), or to the Administrator as a separate submittal. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report.

§ 63.1431 Process vent annual epoxides emission factor plan requirements.

(a) *Applicability of emission factor plan requirements.* An owner or operator electing to comply with an annual epoxide emission factor limitation in § 63.1425(b)(1)(iii) or (b)(2)(iv) shall develop and implement an epoxides emission factor plan in accordance with the provisions of this section.

(b) *Emission factor plan requirements.* The owner or operator shall develop an epoxides emission factor plan.

(1) If epoxide emissions are maintained below the epoxide emission factor limitation through the use of a combustion, recovery, or recapture device (without extended cookout), the owner or operator shall develop and implement the plan in accordance with paragraph (c) of this section.

(2) If epoxide emissions are maintained below the epoxide emission factor limitation through the use of extended cookout (without a combustion, recovery, or recapture device), the owner or operator shall develop and implement the plan in accordance with paragraph (d) of this section.

(3) If epoxide emissions are maintained below the epoxide emission factor limitation through the use of extended cookout in conjunction with a combustion, recovery, or recapture device, the owner or operator shall develop and implement the plan in accordance with paragraph (e) of this section.

(c) *Compliance with epoxide emission factor limitation using a combustion, recovery, or recapture device.* (1) The owner or operator shall notify the Agency of the intent to use a combustion, recovery, or recapture device to comply with the epoxide emission factor limitation in § 63.1425(b)(1)(iii) or (b)(2)(iv). The owner or operator shall prepare an estimate of the annual epoxide emissions and the actual production rate in accordance with paragraphs (c)(1)(i) through (iv) of this section. This notification and emission estimate shall be submitted in the Precompliance Report as specified in § 63.1439(e)(4), or in the operating permit application, as allowed in § 63.1439(e)(8).

(i) Annual uncontrolled epoxide emissions. These emission estimates shall be determined in accordance with the batch process vent group determination procedures in the NESHAP for Group I Polymers and Resins (40 CFR part 63, subpart U, § 63.488(b)) and shall be based on anticipated production.

(ii) A description of the combustion, recovery, or recapture device, along with the expected percent efficiency.

(iii) Annual emissions after the combustion, recovery, or recapture device. The expected annual emissions after control shall be determined using Equation 15.

$$AE_{control} = (AE_{uncontrolled})\left[\left(1 - \frac{R}{100}\right)\right] \quad \text{[Equation 15]}$$

Where:

$AE_{control}$ = Annual epoxide emissions after control, kg/yr.

$AE_{uncontrolled}$ = Annual uncontrolled epoxide emissions, determined in accordance with paragraph (c)(1)(i) of this section, kg/yr.

R = Expected control efficiency of the combustion, recovery, or recapture device, percent, as determined in § 63.1426(c).

(iv) The actual annual production rate means the annual mass of polyether polyol product produced from the applicable PMPU. This production rate shall be for the same annual time period as the annual emission estimate as calculated in accordance with paragraph (c)(1)(iii) of this section.

(2) The owner or operator shall conduct a performance test in accordance with § 63.1426(c) to determine the epoxide control efficiency of the combustion, recovery, or recapture device. The owner or operator shall then recalculate the annual epoxide emissions after control using Equation 15, except that the control efficiency, R, shall be the measured control efficiency. This information shall be submitted as part of the Notification of Compliance Status, as provided in § 63.1439(e)(5).

(3) The owner or operator shall comply with the process vent monitoring provisions in § 63.1429.

(4) The owner or operator shall comply with the process vent recordkeeping requirements in paragraphs § 63.1430(b) through (d), and the process vent reporting requirements in § 63.1430(g)(1) and (h).

(d) *Compliance with epoxide emission factor limitation using extended cookout.* (1) The owner or operator shall notify the Agency of the intent to use extended cookout to comply with the epoxide emission factor limitation in § 63.1425(b)(1)(iii) or (b)(2)(iv). The owner or operator shall prepare an estimate of the annual epoxide emissions after the extended cookout. This notification and emission estimate shall be submitted in the Precompliance Report as specified in § 63.1439(e)(4), or in the operating permit application, as allowed in § 63.1439(e)(8).

(2) The owner or operator shall determine the annual epoxide emissions in accordance with § 63.1427(d), based on anticipated production. This information shall be submitted as part of the Notification of Compliance Status, as provided in § 63.1439(e)(5).

(3) The owner or operator shall comply with the ECO monitoring provisions in § 63.1427(i).

(4) The owner or operator shall comply with the process vent recordkeeping and reporting requirements in § 63.1430.

(e) *Compliance with the epoxide emission factor limitation through the use of extended cookout in conjunction with one or more combustion, recovery, and/or recapture device.* (1) The owner or operator shall notify the Agency of the intent to use extended cookout in conjunction with one or more combustion, recovery, and/or recapture device to comply with the annual

epoxide emission factor limitation in § 63.1425(b)(1)(iii) or (b)(2)(iv). The owner or operator shall prepare an estimate of the annual epoxide emissions after control. This notification and emission estimate shall be submitted in the Precompliance Report as specified in § 63.1439(e)(4), or in the operating permit application, as allowed under § 63.1439(e)(8).

(2) The owner or operator shall determine the annual epoxide emissions after control. This information shall be submitted as part of the Notification of Compliance Status, as provided in § 63.1439(e)(5).

(3) The owner or operator shall comply with the ECO monitoring provisions in § 63.1427(i).

(4) The owner or operator shall comply with the ECO recordkeeping and reporting requirements in § 63.1427(j) and (k).

(f) *Compliance with epoxide emission factor limitation without using extended cookout or a combustion, recovery, or recapture device.* (1) The owner or operator shall notify the Agency of the intent to comply with the epoxide emission factor limitation in § 63.1425(b)(1)(iii) or (b)(2)(iv) without the use of ECO or a combustion, recovery, or recapture device. The owner or operator shall prepare an estimate of the annual epoxide emissions. This notification and emission estimate shall be submitted in the Precompliance Report as specified in § 63.1439(e)(4), or in the operating permit application, as allowed in § 63.1439(e)(8).

(2) Each year after the compliance date, the owner or operator shall calculate the epoxides emission factor for the previous year. This information shall be submitted in the second Periodic Report submitted each year, as specified in § 63.1439(e)(6).

§ 63.1432 Storage vessel provisions.

(a) For each storage vessel located at an affected source, the owner or operator shall comply with the HON storage vessel requirements of §§ 63.119 through 63.123 and the HON leak inspection provisions in § 63.148, with the differences noted in paragraphs (b) through (p) of this section, for the purposes of this subpart.

(b) When the term "storage vessel" is used in the HON storage vessel requirements in §§ 63.119 through 63.123, the definition of this term in § 63.1423 shall apply for the purposes of this subpart.

(c) When the term "Group 1 storage vessel" is used in the HON storage vessel requirements in §§ 63.119 through 63.123, the definition of this term in § 63.1423 shall apply for the purposes of this subpart.

(d) When the term "Group 2 storage vessel" is used in the HON storage vessel requirements in §§ 63.119 through 63.123, the definition of this term in § 63.1423 shall apply for the purposes of this subpart.

(e) When the HON storage vessel requirements in § 63.119 refer to "December 31, 1992," the phrase "September 4, 1997" shall apply instead, for the purposes of this subpart.

(f) When the HON storage vessel requirements in § 63.119 refer to "April 22, 1994," the phrase "June 1, 1999," shall apply instead, for the purposes of this subpart.

(g) The owner or operator of an affected source shall comply with this paragraph instead of § 63.120(d)(1)(ii) for the purposes of this subpart. If the combustion, recovery, or recapture device used to comply with § 63.119(e) is also used to comply with any of the requirements found in §§ 63.1425 through 63.1431 and/or § 63.1433, the performance test required in or accepted by §§ 63.1425 through 63.1431 and/or § 63.1433 is acceptable for demonstrating compliance with the HON storage vessel requirements in § 63.119(e), for the purposes of this subpart. The owner or operator will not be required to prepare a design evaluation for the combustion, recovery, or recapture device as described in § 63.120(d)(1)(i), if the performance test meets the criteria specified in paragraphs (g)(1) and (2) of this section.

(1) The performance test demonstrates that the combustion, recovery, or recapture device achieves greater than or equal to the required control efficiency specified in the HON storage vessel requirements in § 63.119(e)(1) or (2), as applicable; and

(2) The performance test is submitted as part of the Notification of Compliance Status required by § 63.1439(e)(5).

(h) When the HON storage vessel requirements in § 63.120(d)(3)(i) uses the term "operating range," the term "level," shall apply instead, for the purposes of this subpart.

(i) For purposes of this subpart, the monitoring plan required by the HON storage vessel requirements in § 63.120(d)(2) shall specify for which combustion, recovery, or recapture device the owner or operator has selected to follow the procedures for continuous monitoring specified in § 63.1438. For the combustion, recovery, or recapture device(s) for which the owner or operator has selected not to follow the procedures for continuous monitoring specified in § 63.1438, the monitoring plan shall include a description of the parameter(s) to be monitored to ensure that the combustion, recovery, or recapture device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter(s), and the frequency with which monitoring will be performed (e.g., when the liquid level in the storage vessel is being raised), as specified in § 63.120(d)(2)(i).

(j) For purposes of this subpart, the monitoring plan required by § 63.122(b) shall be included in the Notification of Compliance Status required by § 63.1439(e)(5).

(k) When the HON Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.120, 63.122, and 63.123, the Notification of Compliance Status requirements contained in § 63.1439(e)(5) shall apply for the purposes of this subpart.

(l) When the HON Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120, 63.122, and 63.123, the Periodic Report requirements contained in § 63.1439(e)(6) shall apply for the purposes of this subpart.

(m) When other reports as required in § 63.152(d) are referred to in § 63.122, the reporting requirements contained in § 63.1439(e)(7) shall apply for the purposes of this subpart.

(n) When the HON Initial Notification requirements contained in § 63.151(b) are referred to in § 63.119 through § 63.123, the owner or operator shall comply with the Initial Notification requirements contained in § 63.1439(e)(3), for the purposes of this subpart.

(o) When the determination of equivalence criteria in § 63.102(b) are referred to in the HON storage vessel requirements in § 63.121(a), the General Provisions' alternative nonopacity emission provisions in § 63.6(g) shall apply for the purposes of this subpart.

(p) The compliance date for storage vessels at affected sources subject to the provisions of this section is specified in § 63.1422.

(q) In addition to the records required by § 63.123, the owner or operator shall maintain records of all times when the storage tank is being filled (i.e., when the liquid level in the storage vessel is being raised). These records shall consist of documentation of the time when each filling period begins and ends.

§ 63.1433 Wastewater provisions.

(a) *Process wastewater.* Except as specified in paragraph (c) of this section, the owner or operator of each

affected source shall comply with the HON wastewater requirements in §§ 63.132 through 63.147 for each process wastewater stream originating at an affected source, with the HON leak inspection requirements in § 63.148, and with the HON requirements in § 63.149 for equipment that is subject to § 63.149, with the differences noted in paragraphs (a)(1) through (20) of this section. Further, the owner or operator of each affected source shall comply with the requirements of § 63.105(a) for maintenance wastewater, as specified in paragraph (b) of this section.

(1) Owners and operators of affected sources are not required to comply with the HON new source wastewater requirements in § 63.132(b)(1) and § 63.132(d), for the purposes of this subpart. Owners or operators of all new affected sources, as defined in this subpart, shall comply with the HON requirements for existing sources in §§ 63.132 through 63.149.

(2) When the HON requirements in §§ 63.132 through 63.149 refer to Table 9 or Table 36 of 40 CFR part 63, subpart G, the owner or operator is only required to consider organic HAP listed in Table 9 or Table 36 of 40 CFR part 63, subpart G, that are also listed on Table 4 of this subpart, for the purposes of this subpart. Owners and operators are exempt from all requirements in §§ 63.132 through 63.149 that pertain solely and exclusively to organic HAP listed on Table 8 of 40 CFR part 63, subpart G. In addition, when §§ 63.132 through 63.149 refer to List 1 or List 2, as listed in Table 36 of 40 CFR part 63, subpart G, the owner or operator is only required to consider organic HAP contained in those lists that are also listed on Table 4 of this subpart, for the purposes of this subpart.

(3) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the General Provisions' alternative nonopacity emission standard provisions in § 63.6(g) shall apply for the purposes of this subpart.

(4) When the HON storage vessel requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.148, the HON storage vessel requirements in §§ 63.119 through 63.123 are applicable, with the exception of the differences referred to in the storage vessel requirements in § 63.1432, for the purposes of this subpart.

(5) When the HON process wastewater reporting requirements in § 63.146(a) require the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(g) or § 63.152(e), the owner or operator requesting to monitor alternative parameters shall follow the procedures specified in § 63.1439(f), for the purposes of this subpart.

(6) When the HON process wastewater recordkeeping requirements in § 63.147(d) require the owner or operator to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in the HON recordkeeping provisions in § 63.152(f), the owner or operator shall instead keep records of the daily average value of each continuously monitored parameter as specified in § 63.1439(d), for the purposes of this subpart.

(7) When the HON requirements in §§ 63.132 through 63.149 refer to an "existing source," the term "existing affected source," as defined in § 63.1420(a)(3) shall apply, for the purposes of this subpart.

(8) When the HON requirements in §§ 63.132 through 63.149 refer to a "new source," the term "new affected source," as defined in § 63.1420(a)(4) shall apply, for the purposes of this subpart.

(9) When the HON process wastewater provisions in § 63.132 (a) and (b) refer to the "applicable dates specified in § 63.100 of subpart F of this part," the applicable compliance dates specified in § 63.1422 shall apply, for the purposes of this subpart.

(10) Whenever the HON process wastewater provisions in §§ 63.132 through 63.147 refer to a Group 1 wastewater stream or a Group 2 wastewater stream, the definitions of these terms contained in § 63.1423 shall apply, for the purposes of this subpart.

(11) When the HON control requirements for certain liquid streams in open systems, in § 63.149(d), refer to "§ 63.100(f) of subpart F," the phrase "§ 63.1420(c)," shall apply for the purposes of this subpart. In addition, where § 63.149(d) states "and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, or H of this part," the phrase "and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, H, or PPP of this part," shall apply for the purposes of this subpart.

(12) When the HON control requirements for certain liquid streams in open systems, in § 63.149(e) (1) and (2), refer to "a chemical manufacturing process unit subject to the new source requirements of 40 CFR 63.100(l) (1) or (2)," the phrase "a new affected source as described in § 63.1420(a)(4)," shall apply for the purposes of this subpart.

(13) When the HON Notification of Compliance Status requirements contained in § 63.152(b) are referred to in the HON process wastewater provisions in § 63.138 or § 63.146, the Notification of Compliance Status requirements contained in § 63.1439(e)(5) shall apply for the purposes of this subpart. In addition, when the HON process wastewater provisions in § 63.138 or § 63.146 require that information be reported according to § 63.152(b) in the HON Notification of Compliance Status, owners or operators of affected sources shall report the specified information in the Notification of Compliance Status required by § 63.1439(e)(5), for the purposes of this subpart.

(14) When the HON Periodic Report requirements contained in § 63.152(c) are referred to in the HON process wastewater provisions in § 63.146, the Periodic Report requirements contained in § 63.1439(e)(6) shall apply for the purposes of this subpart. In addition, when § 63.146 requires that information be reported in the HON Periodic Reports required in § 63.152(c), owners or operators of affected sources shall report the specified information in the Periodic Reports required in § 63.1439(e)(6), for the purposes of this subpart.

(15) When the term "range" is used in the HON requirements in §§ 63.132 through 63.149, the term "level" shall be used instead, for the purposes of this subpart. This level shall be determined using the procedures specified in parameter monitoring procedures in § 63.1438.

(16) When the HON process wastewater monitoring and inspection provisions in § 63.143(f) specify that the owner or operator shall establish the range that indicates proper operation of the treatment process or control technique, the owner or operator shall instead comply with the requirements § 63.1438 (c) or (d) for establishing parameter level maximums/minimums, for the purposes of this subpart.

(17) When the HON process wastewater provisions in § 63.146(b) (7) and (8) require that "the information on parameter ranges specified in § 63.152(b)(2)" be reported in the HON Notification of Compliance Status, owners and operators of affected sources are instead required to report the information on parameter levels in the Notification of Compliance Status as specified in § 63.1439(e)(5)(ii), for the purposes of this subpart.

(18) For the purposes of this subpart, the owner or operator is not required to comply with the HON process wastewater emission reduction provisions in § 63.138(g).

(19) When the provisions of HON process wastewater provisions in § 63.139(c)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (a)(19)(i) and (ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(20) The owner or operator of a facility which receives a Group 1 wastewater stream, or a residual removed from a Group 1 wastewater stream, for treatment pursuant to the HON provisions in § 63.132(g) is subject to the requirements of § 63.132(g), with the differences identified in this section, and is not subject to the NESHAP from off-site waste and recovery operations in 40 CFR part 63, subpart DD, with respect to the received material.

(b) *Maintenance wastewater.* The owner or operator of each affected source shall comply with the HON maintenance wastewater requirements in § 63.105, with the exceptions noted in paragraphs (b) (1), (2), and (3) of this section.

(1) When the HON maintenance wastewater provisions in § 63.105(a) refer to "organic HAPs," the definition of "organic HAP" in § 63.1423 shall apply, for the purposes of this subpart.

(2) When the term "maintenance wastewater" is used in the HON maintenance wastewater provisions in § 63.105, the definition of "maintenance wastewater" in § 63.1423 shall apply, for the purposes of this subpart.

(3) When the term "wastewater" is used in the HON maintenance wastewater provisions in § 63.105, the definition of "wastewater" in § 63.1423 shall apply, for the purposes of this subpart.

(c) *Compliance date.* The compliance date for the affected source subject to the provisions of this section is specified in § 63.1422.

§ 63.1434 Equipment leak provisions.

(a) The owner or operator of each affected source shall comply with the HON equipment leak requirements in 40 CFR part 63, subpart H for all equipment in organic HAP service, except as specified in paragraphs (b) through (g) of this section.

(b) The compliance date for the equipment leak provisions in this section is provided in § 63.1422(d).

(c) Affected sources subject to the HON equipment leak provisions in 40 CFR part 63, subpart I shall continue to comply with 40 CFR part 63, subpart I until the compliance date specified in § 63.1422. After the compliance date in § 63.1422, the source shall be subject to this subpart (40 CFR part 63, subpart PPP), and shall no longer be subject to 40 CFR part 63, subpart I. However, sources subject to 40 CFR part 63, subpart I that have elected to comply through a quality improvement program, as specified in the HON quality improvement plans for valves or pumps in § 63.175 or § 63.176 or both, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the "compliance clock" as it relates to reduced burden earned through a quality improvement program.

(d) When the HON equipment leak Initial Notification requirements contained in § 63.182(a)(1) and § 63.182(b) are referred to in 40 CFR part 63, subpart H, the owner or operator shall comply with the Initial Notification requirements contained in § 63.1439(e)(3), for the purposes of this subpart. The Initial Notification shall be submitted no later than June 1, 2000 for existing sources, as stated in § 63.1439(e)(3)(ii)(A).

(e) The HON equipment leak Notification of Compliance Status required by § 63.182(a)(2) and § 63.182(c) shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.1422 for the equipment leak provisions. The notification may be submitted as part of the Notification of Compliance Status required by § 63.1439(e)(5).

(f) The Periodic Reports required by § 63.182(a)(3) and § 63.182(d) may be submitted as part of the Periodic Reports required by § 63.1439(e)(6).

(g) If specific items of equipment, comprising part of a process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any PMPU within the affected source for all purposes under subpart H, providing there is no delay in achieving the applicable compliance date.

(h) The phrase "the provisions of subparts F, I, or PPP of this part" shall apply instead of the phrase "the provisions of subparts F or I of this part," and instead of the phrase "the provisions of subpart F or I of this part" throughout §§ 63.163 and 63.168, for the purposes of this subpart. In addition, the phrase "subparts F, I, and PPP" shall apply instead of the phrase "subparts F and I" in § 63.174(c)(2)(iii), for the purposes of this subpart.

§ 63.1435 Heat exchanger provisions.

(a) The owner or operator of each affected source shall comply with the requirements of § 63.104 for heat exchange systems, with the exceptions noted in paragraphs (b) through (e) of this section.

(b) When the term "chemical manufacturing process unit" is used in § 63.104, the term "polyether polyols manufacturing process unit" shall apply for the purposes of this subpart. Further, when the phrase "a chemical manufacturing process unit meeting the conditions of § 63.100(b)(1) through (3) of this subpart, except for chemical manufacturing process units meeting the condition specified in § 63.100(c) of this subpart" is used in § 63.104(a), the term "PMPU, except for PMPU meeting the conditions specified in § 63.1420(b)" shall apply for the purposes of this subpart.

(c) When the HON heat exchange system requirements in § 63.104(c)(3) and § 63.104(f)(1) specify that the monitoring plan and records required by § 63.104(f)(1)(i) through (iv) shall be kept as specified in the HON general compliance, reporting, and recordkeeping provisions in § 63.103(c), the provisions of the general recordkeeping and reporting requirements in § 63.1439(a) and the applicable provisions of the General Provisions in 40 CFR part 63, subpart A, as specified in Table 1 of this subpart, shall apply for the purposes of this subpart.

(d) When the HON heat exchange system requirements in § 63.104(f)(2) require information to be reported in the Periodic Reports required by the HON general reporting provisions in § 63.152(c), the owner or operator shall instead report the information specified in § 63.104(f)(2) in the Periodic Reports required by the general reporting requirements in § 63.1439(e)(6), for the purposes of this subpart.

(e) When the HON heat exchange system requirements in § 63.104 refer to Table 4 of 40 CFR part 63, subpart F or Table 9 of 40 CFR part 63, subpart G, the owner or operator is only required to consider organic HAP listed in Table 4

of 40 CFR part 63, subpart F or 40 CFR part 63, Table 9 of subpart G that are also listed on Table 4 of this subpart, for the purposes of this subpart.

§ 63.1436 [Reserved]

§ 63.1437 Additional requirements for performance testing.

(a) Performance testing shall be conducted in accordance with § 63.7(a)(1), (a)(3), (d), (e)(1), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (4) of this section and the additions specified in paragraph (b) of this section.

(1) Performance tests shall be conducted according to the General Provisions' performance testing requirements in § 63.7(e)(1) and (2), except that for all emission sources except process vents from batch unit operations, performance tests shall be conducted during maximum representative operating conditions for the process achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) or (iii) of this section to occur. For process vents from batch unit operations, performance tests shall be conducted at absolute worst-case conditions, as defined in § 63.1426(c)(3)(i)(B), that are achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) or (iii) of this section to occur.

(i) The 6-month period that ends 2 months before the Notification of Compliance Status is due, according to § 63.1439(e)(5); or the 6-month period that begins 3 months before the performance test and ends 3 months after the performance test.

(ii) Causing damage to equipment; necessitating that the owner or operator make a product that does not meet an existing specification for sale to a customer; or necessitating that the owner or operator make a product in excess of demand.

(iii) Causing plant or testing personnel to be subject to unsafe conditions. Owners or operators that limit testing based on this paragraph shall maintain documentation that demonstrates the nature of the unsafe conditions and explains measures considered by the owner or operator to overcome these conditions. If requested, this documentation shall be provided to the Administrator.

(2) When the General Provisions' data analysis, recordkeeping, and reporting requirements in § 63.7(g) refer to the Notification of Compliance Status requirements in § 63.9(h), the Notification of Compliance Status requirements in § 63.1439(e)(5) shall instead apply, for the purposes of this subpart.

(3) Because the General Provisions' site-specific test plan in § 63.7(c)(3) is not required, the General Provisions' requirement for the Administrator to approve or deny site-specific test plans, in § 63.7(h)(4)(ii), is not applicable for the purposes of this subpart.

(4) The owner or operator of an affected source shall provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected source shall notify the Administrator (or delegated State or local agency) as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled test date of the performance test, or by arranging a rescheduled date with the Administrator (or delegated State or local agency) by mutual agreement.

(b) Data shall be reduced in accordance with the EPA approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301, 40 CFR part 63, appendix A.

(c) Notwithstanding any other provision of this subpart, if an owner or operator of an affected source uses a flare to comply with any of the requirements of this subpart, the owner or operator shall comply with paragraphs (c)(1) through (3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration. If a compliance demonstration has been conducted previously for a flare, using the techniques specified in paragraphs (c)(1) through (3) of this section, that compliance demonstration may be used to satisfy the requirements of this paragraph if either no deliberate process changes have been made since the compliance demonstration, or the results of the compliance demonstration reliably demonstrate compliance despite process changes.

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4) of the General Provisions;

(2) Determine the net heating value of the gas being combusted, using the techniques specified in § 63.11(b)(6) of the General Provisions; and

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8) of the General Provisions, as appropriate.

§ 63.1438 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a combustion, recovery, or recapture device that has one or more parameter monitoring level requirements specified under this subpart shall establish a maximum or minimum level for each measured parameter. If a performance test is required by this subpart for a combustion, recovery, or recapture device, the owner or operator shall use the procedures in either paragraph (b) or (c) of this section to establish the parameter monitoring level(s). If a performance test is not required by this subpart for a combustion, recovery, or recapture device, the owner or operator may use the procedures in paragraph (b), (c), or (d) of this section to establish the parameter monitoring levels. When using the procedures specified in paragraph (c) or (d) of this section, the owner or operator shall submit the information specified in § 63.1439(e)(4)(viii) for review and approval, as part of the Precompliance Report.

(1) The owner or operator shall operate combustion, recovery, and recapture devices such that the daily average value of monitored parameters remains at or above the minimum established level, or remains at or below the maximum established level, except as otherwise provided in this subpart.

(2) As specified in § 63.1439(e)(5)(ii), all established levels, along with their supporting documentation and the definition of an operating day, shall be submitted as part of the Notification of Compliance Status.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of 40 CFR part 63, subparts A, F, G, or H.

(b) *Establishment of parameter monitoring levels based exclusively on performance tests.* In cases where a performance test is required by this subpart, or the owner or operator of the affected source elects to do a performance test in accordance with the provisions of this subpart, and an owner or operator elects to establish a

parameter monitoring level for a combustion, recovery, or recapture device based exclusively on parameter values measured during the performance test, the owner or operator of the affected source shall comply with the procedures in paragraph (b)(1) or (2) of this section, as applicable.

(1) *Process vents from continuous unit operations.* During initial compliance testing, the appropriate parameter shall be continuously monitored during the required 1-hour runs for process vents from continuous unit operations. The monitoring level(s) shall then be established as the average of the maximum (or minimum) point values from the three 1-hour test runs. The average of the maximum values shall be used when establishing a maximum level, and the average of the minimum values shall be used when establishing a minimum level.

(2) *Process vents from batch unit operations.* For process vents from batch unit operations, during initial compliance testing, the appropriate parameter shall be monitored continuously during the entire test period. The monitoring level(s) shall be those established during from the compliance test.

(c) *Establishment of parameter monitoring levels based on performance tests, supplemented by engineering assessments and/or manufacturer's recommendations.* Parameter monitoring levels established under this paragraph shall be based on the parameter values measured during the performance test supplemented by engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values. The information specified in paragraphs (c)(1) and (2) of this section shall be provided in the Notification of Compliance Status.

(1) The specific level of the monitored parameter(s) for each emission point.

(2) The rationale for the specific level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the combustion, recovery, or recapture device.

(d) *Establishment of parameter monitoring based on engineering assessments and/or manufacturer's recommendations.* If a performance test is not required by this subpart for a combustion, recovery, or recapture device, the maximum or minimum level may be based solely on engineering assessments and/or manufacturers' recommendations. As required in paragraph (a)(2) of this section, the determined level and all supporting documentation shall be provided in the Notification of Compliance Status.

(e) *Monitoring violations.* (1) With the exception of excursions excused in accordance with paragraph (g) of this section, each excursion, as defined in paragraphs (f)(1)(i), (f)(2)(i)(A), (f)(2)(ii), (f)(3)(i), and (f)(4) of this section, constitutes a violation of the provisions of this subpart in accordance with paragraph (e)(1)(i), (ii), or (iii) of this section.

(i) For each condenser, each excursion constitutes a violation of the emission limit.

(ii) For each recovery or recapture device other than a condenser, where an organic monitoring device is used to monitor concentration, each excursion constitutes a violation of the emission limit.

(iii) For each combustion, recovery, or recapture device other than a condenser, each excursion constitutes a violation of the operating limit.

(2) With the exception of excursions excused in accordance with paragraph (g) of this section, each excursion, as defined in paragraphs (f)(1)(ii), (f)(1)(iii), (f)(2)(i)(B), and (f)(3)(ii) of this section constitutes a violation of the operating limit.

(f) *Parameter monitoring excursion definitions.* Parameter monitoring excursions are defined in paragraphs (f)(1) through (3) of this section.

(1) With respect to storage vessels (where the applicable monitoring plan specifies continuous monitoring), process vents from continuous unit operations using combustion, recovery, or recapture devices for purposes of compliance, and for process wastewater streams, an excursion means any of the three cases listed in paragraphs (f)(1)(i) through (iii) of this section.

(i) The daily average value of one or more monitored parameters is above the maximum level or below the minimum level established for the given parameters.

(ii) The period of combustion, recovery, or recapture device operation, with the exception noted in paragraph (f)(1)(v) of this section, is 4 hours or greater in an operating day and monitoring data are insufficient, as defined in paragraph (f)(1)(iv) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) The period of combustion, recovery, or recapture device operation, with the exception noted in paragraph (f)(1)(v) of this section, is less than 4 hours in an operating day and more than 2 of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (f)(1)(iv) of this section.

(iv) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (f)(1)(ii) and (iii) of this section, if measured values are unavailable due to monitoring system breakdowns, repairs, calibrated checks, or zero (low-level) and high level adjustments, for any of the 15-minute periods within the hour. For data compression systems approved under § 63.1439(g)(3), monitoring data are insufficient to calculate a valid hour of data if there are less than four data measurements made during the hour.

(v) The periods listed in paragraphs (f)(1)(v)(A) through (D) of this section are not considered to be part of the period of combustion, recovery, or recapture device operation, for the purposes of paragraphs (f)(1)(ii) and (iii) of this section.

(A) Start-ups;

(B) Shutdowns;

(C) Malfunctions; or

(D) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(2) For storage vessels where the applicable monitoring plan does not specify continuous monitoring, an excursion is defined in paragraph (f)(2)(i) or (ii) of this section, as applicable.

(i) If the monitoring plan specifies monitoring a parameter and recording its value at specific intervals (such as every 15 minutes or every hour), either of the cases listed in paragraph (f)(2)(i)(A) or (B) of this section is considered a single excursion for the combustion device.

(A) When the average value of one or more parameters, averaged over the time during which the storage vessel is being filled (i.e., when the liquid level in the storage vessel is being raised), is above the maximum level or below the minimum level established for the given parameters.

(B) When monitoring data are insufficient. Monitoring data shall be considered insufficient when measured values are not available, due to monitoring system breakdowns, repairs, calibration checks, or zero (low-level) and high-level adjustments, for at least 75 percent of the specific intervals at which parameters are to be monitored and recorded, according to the storage vessel's monitoring plan, during which the storage vessel is being filled.

(ii) If the monitoring plan does not specify monitoring a parameter and

recording its value at specific intervals (for example, if the relevant operating requirement is to exchange a disposable carbon canister before expiration of its rated service life), the monitoring plan shall define an excursion in terms of the relevant operating requirement.

(3) With respect to process vents from batch unit operations, an excursion means one of the two cases listed in paragraphs (f)(3)(i) and (ii) of this section.

(i) When the daily average value of one or more monitored parameters is above the maximum or below the minimum established level for the given parameters.

(ii) When monitoring data are insufficient for an operating day. Monitoring data shall be considered insufficient when measured values are not available, due to monitoring system breakdowns, repairs, calibration checks, or zero (low-level) and high-level adjustments, for at least 75 percent of the 15-minute periods when batch emission episodes selected to be controlled are being vented to the control device during the operating day, using the procedures specified in paragraphs (f)(3)(ii)(A) through (D) of this section.

(A) Determine the total amount of time during the operating day when batch emission episodes selected to be controlled are being vented to the control device.

(B) Subtract the time during the periods listed in paragraphs (f)(3)(ii)(B)(*1*) through (*4*) of this section from the total amount of time determined above in paragraph (f)(3)(ii)(A) of this section, to obtain the operating time used to determine if monitoring data are insufficient.

(*1*) Start-ups;

(*2*) Shutdowns;

(*3*) Malfunctions; or

(*4*) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(C) Determine the total number of 15-minute periods in the operating time used to determine if monitoring data are insufficient, as was determined in accordance with paragraph (f)(3)(ii)(B) of this section.

(D) If measured values are not available for at least 75 percent of the total number of 15-minute periods determined in paragraph (f)(3)(ii)(C) of this section, the monitoring data are insufficient for the operating day.

(4) With respect to process vents using ECO to reduce epoxide emissions, an excursion means any of the situations described in § 63.1427(i)(3)(i) through (v). For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, in accordance with paragraph (e) of this section, except as provided in paragraph (g) of this section.

(g) *Excused excursions.* A number of excused excursions shall be allowed for each combustion, recovery, or recapture device for each semiannual period. The number of excused excursions for each semiannual period is specified in paragraphs (g)(1) through (6) of this section. This paragraph applies to affected sources required to submit Periodic Reports semiannually or quarterly. The first semiannual period is the 6-month period starting the date the Notification of Compliance Status is due.

(1) For the first semiannual period—six excused excursions.

(2) For the second semiannual period—five excused excursions.

(3) For the third semiannual period—four excused excursions.

(4) For the fourth semiannual period—three excused excursions.

(5) For the fifth semiannual period—two excused excursions.

(6) For the sixth and all subsequent semiannual periods—one excused excursion.

§ 63.1439 General recordkeeping and reporting provisions.

(a) *Data retention.* Unless otherwise specified in this subpart, the owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years. All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provide access within 2 hours after a request. The remaining 4 and one-half years of records may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on microfilm, computer, floppy disk, magnetic tape, or microfiche. If an owner or operator submits copies of reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of reports.

(b) *Subpart A requirements.* The owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in 40 CFR part 63, subpart A (the General Provisions) as specified in Table 1 of this subpart. These requirements include, but are not limited to, the requirements specified in paragraphs (b)(1) and (2) of this section.

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in the General Provisions' requirements for a Startup, Shutdown, and Malfunction Plan in § 63.6(e)(3). This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. A provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart may be included in the start-up, shutdown, and malfunction plan only if the owner or operator has demonstrated to the Administrator, through the Precompliance Report or a supplement to the Precompliance Report, that the monitoring system would be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. The owner or operator of the affected source shall keep the start-up, shutdown, and malfunction plan on site. In addition, if the start-up, shutdown, and malfunction plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the start-up, shutdown, and malfunction plan for a period of 5 years after each revision to the plan. If the new version of the start-up, shutdown, and malfunction plan includes a provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required, the owner or operator shall submit a supplement to the Precompliance Report to the Administrator for the Administrator's approval, documenting that the monitoring system would be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) and (B) of this section. Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) and (B) of this section.

(A) Records of the occurrence and duration of each start-up, shutdown,

and malfunction of operation of process equipment or combustion, recovery, or recapture devices or continuous monitoring systems used to comply with this subpart during which excess emissions (as defined in § 63.1420(h)(4)) occur.

(B) For each start-up, shutdown, or malfunction during which excess emissions (as defined in § 63.1420(h)(4)) occur, records reflecting whether the procedures specified in the affected source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a combustion, recovery, or recapture device to a backup combustion, recovery, or recapture device, records shall be kept of whether the plan was followed. These records may take the form of a "checklist," or other form of recordkeeping that confirms conformance with the start-up, shutdown, and malfunction plan for the event.

(ii) For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of according to the General Provisions' Periodic Reporting schedule specified in § 63.10(d)(5)(i). The reports shall include the information specified in paragraphs (b)(1)(i)(A) and (B) of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(2) *Application for approval of construction or reconstruction.* For new affected sources, the owner or operator shall comply with the General Provisions' requirements for the application for approval of construction or reconstruction, as specified in § 63.5, excluding the provisions specified in § 63.5(d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii).

(c) *Subpart H requirements.* The owner or operator of an affected source shall comply with the HON equipment leak reporting and recordkeeping requirements in 40 CFR part 63, subpart H, except as specified in § 63.1434(b) through (g).

(d) *Recordkeeping and documentation.* The owner or operator required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (7) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) of this section, and except as provided in paragraph (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.1432(i) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (7) of this section apply. As described in § 63.1432(i), certain storage vessels are not required to keep continuous records as specified in this paragraph. The owner or operator of such storage vessels shall keep records as specified in the monitoring plan required by § 63.1432(i).

(1) The monitoring system shall measure data values at least once during approximately equal 15-minute intervals.

(2) The owner or operator shall record either each measured data value or block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values. The owner or operator of process vents from batch unit operations shall record each measured data value.

(3) Daily average values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (ii) of this section, except as specified in paragraphs (d)(6) and (7) of this section.

(i) The daily average value shall be calculated as the average of all parameter values recorded during the operating day, except as specified in paragraph (d)(7) of this section. The calculated average shall cover a 24-hour period if operation is continuous. If intermittent emissions episodes occur resulting in emissions being vented to a combustion, recapture, or recovery device for a period of less than 24 hours in the operating day, the daily average shall be calculated based only on the period when emissions are being vented to the combustion, recapture, or recovery device. For example, if a batch unit operation operates such that emissions are vented to a combustion device for 6 hours, then the daily average is the average of the temperature measurements taken during those 6 hours.

(ii) The operating day shall be the 24-hour period that the owner or operator specifies in the operating permit or the Notification of Compliance Status, for purposes of determining daily average values.

(4) [Reserved]

(5) [Reserved]

(6) If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average for that operating day.

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) through (v) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or combustion, recovery, or recapture device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions; or

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(8) For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks, and records documenting the maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or that are specified in other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(9) The owner or operator of an affected source granted a waiver of recordkeeping or reporting requirements under the General Provisions' recordkeeping and reporting requirements in § 63.10(f) shall maintain the information, if any, specified by the Administrator as a condition of the waiver of recordkeeping or reporting requirements.

(e) *Reporting and notification.* In addition to the reports and notifications required by 40 CFR part 63, subpart A, as specified in this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (8) of this section, as applicable. All reports required by this subpart, and the schedule for their submittal, are listed in Table 8 of this subpart.

(1) *Violation of reporting requirements.* Owners and operators shall not be in violation of the reporting requirements of this paragraph (e) for failing to submit information required to

be included in a specified report if the owner or operator meets the requirements in paragraphs (e)(1)(i) through (iii) of this section. Examples of circumstances where this paragraph may apply include information related to newly-added equipment or emission points, changes in the process, changes in equipment required or utilized for compliance with the requirements of this subpart, or changes in methods or equipment for monitoring, recordkeeping, or reporting.

(i) The information was not known in time for inclusion in the report specified by this subpart.

(ii) The owner or operator has been diligent in obtaining the information.

(iii) The owner or operator submits a report according to the provisions of paragraphs (e)(1)(iii)(A) through (C) of this section.

(A) If this subpart expressly provides for supplements to the report in which the information is required, the owner or operator shall submit the information as a supplement to that report. The information shall be submitted no later than 60 days after it is obtained, unless otherwise specified in this subpart.

(B) If this subpart does not expressly provide for supplements, but the owner or operator must submit a request for revision of an operating permit pursuant to the State operating permit programs in part 70 or the Federal operating permit programs in part 71, due to circumstances to which the information pertains, the owner or operator shall submit the information with the request for revision to the operating permit.

(C) In any case not addressed by paragraph (e)(1)(iii)(A) or (B) of this section, the owner or operator shall submit the information with the first Periodic Report, as required by this subpart, which has a submission deadline at least 60 days after the information is obtained.

(2) *Submittal of reports.* All reports required under this subpart shall be sent to the Administrator at the applicable address listed in the General Provisions' list of addresses of State air pollution control agencies and EPA Regional Offices, in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(3) *Initial Notification.* The owner or operator of an existing or new affected source shall submit a written Initial Notification to the Administrator, containing the information described in paragraph (e)(3)(i) of this section, according to the schedule in paragraph (e)(3)(ii) of this section. The General Provisions' Initial Notification requirements in § 63.9(b)(2), (3), and (6) shall not apply, for the purposes of this subpart.

(i) The Initial Notification shall include the following information:

(A) The name and address of the owner or operator;

(B) The address (physical location) of the affected source;

(C) An identification of the kinds of emission points within the affected source;

(D) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date; and

(E) A statement of whether or not the affected source is a major source.

(ii) The Initial Notification shall be submitted according to the schedule in paragraph (e)(3)(ii)(A), (B), or (C) of this section, as applicable.

(A) For an existing source, the Initial Notification shall be submitted no later than June 1, 2000.

(B) For a new source that has an initial start-up on or after August 30, 1999, the application for approval of construction or reconstruction required by the General Provisions in § 63.5(d) shall be submitted in lieu of the Initial Notification. The application shall be submitted as soon as practical before construction or reconstruction is planned to commence (but it need not be sooner than August 30, 1999).

(C) For a new source that has an initial start-up prior to August 30, 1999, the Initial Notification shall be submitted no later than August 30, 1999. The application for approval of construction or reconstruction described in the General Provisions' requirements in § 63.5(d) is not required for these sources.

(4) *Precompliance Report.* The owner or operator of an affected source requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as permitted under § 63.1420(h)(3); or requesting approval to establish parameter monitoring levels according to the procedures contained in § 63.1438(c) or (d) shall submit a Precompliance Report according to the schedule described in paragraph (e)(4)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(4)(ii) through (viii) of this section, as appropriate.

(i) The Precompliance Report shall be submitted to the Administrator no later than 12 months prior to the compliance date. Unless the Administrator objects to a request submitted in the Precompliance Report within 45 days after its receipt, the request shall be deemed approved. For new affected sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section. Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(4)(vii) of this section.

(ii) A request for an extension for compliance, as specified in § 63.1422(e), may be submitted in the Precompliance Report. The request for a compliance extension shall include the data outlined in the General Provisions' compliance requirements in § 63.6(i)(6)(i)(A), (B), and (D), as required in § 63.1422(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted in the Precompliance Report if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in 40 CFR part 63, subpart G, or seeks to comply by monitoring a different parameter than those specified in this subpart or in 40 CFR part 63, subpart G.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the owner or operator shall submit a request for approval in the Precompliance Report.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem alternative controls to be equivalent to the controls required by the standard, under the procedures outlined in the General Provisions' requirements for use of an alternative nonopacity emission standard, in § 63.6(g).

(vi) If the owner or operator is requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, the information specified in paragraphs (e)(4)(vi)(A) and

(B) of this section shall be supplied in the Precompliance Report or in a supplement to the Precompliance Report. The Administrator shall evaluate the supporting documentation and shall approve the request only if, in the Administrator's judgment, the specific monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction.

(A) Documentation supporting a claim that the monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction; and

(B) A request to incorporate such a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan.

(vii) Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(4)(vii)(A) of this section, or as specified in paragraph (e)(4)(vii)(B) of this section. Unless the Administrator objects to a request submitted in a supplement to the Precompliance Report within 45 days after its receipt, the request shall be deemed approved.

(A) Supplements to the Precompliance Report may be submitted to clarify or modify information previously submitted.

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(4)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(4)(iv) of this section; to use alternative controls, as specified in paragraph (e)(4)(v) of this section; or to include a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, in the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as specified in paragraph (e)(4)(vi) of this section.

(viii) If an owner or operator establishes parameter monitoring levels according to the procedures contained in the parameter monitoring provisions in § 63.1438(c) or (d), the following information shall be submitted in the Precompliance Report:

(A) Identification of which procedures (i.e., § 63.1438(c) or (d)) are to be used; and

(B) A description of how the parameter monitoring level is to be established. If the procedures in § 63.1438(c) are to be used, a description of how performance test data will be used shall be included.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted within 150 days after the compliance dates specified in § 63.1422. For equipment leaks subject to § 63.1434, the owner or operator shall submit the information specified in the HON equipment leak Notification of Compliance Status requirements in § 63.182(c), in the Notification of Compliance Status required by this paragraph. For all other emission points, including heat exchange systems, the Notification of Compliance Status shall contain the information listed in paragraphs (e)(5)(i) through (vii) of this section.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information required by the test method to be in the test report used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in a Notification of Compliance Status under the requirements for overlapping regulations in § 63.1422(j), the HON storage vessel reporting provisions in § 63.122 and the storage vessel provisions in § 63.1432, and the HON process wastewater reporting provisions in § 63.146. In addition, the owner or operator shall comply with paragraphs (e)(5)(i)(A) and (B) of this section.

(A) For performance tests, group determinations, or determination that controls are needed, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other information required by the test method to be in the test report shall be submitted, but a complete test report is not required.

(B) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards (if the owner or operator prepares the standards), record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method to be in the test report.

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under the HON process vent monitoring requirements in § 63.114(e) and the process vent monitoring requirements in § 63.1429(d), the HON process wastewater parameter monitoring requirements in § 63.143(f), paragraph (e)(8) of this section, or paragraph (f) of this section, the information specified in paragraphs (e)(5)(ii)(A) through (C) of this section shall be submitted. Further, as described in the storage vessel provisions in § 63.1432(k), for those storage vessels for which the parameter monitoring plan (required to be submitted under the HON Notification of Compliance Status requirements for storage vessels in § 63.120(d)(3)) specifies compliance with the parameter monitoring provisions of § 63.1438, the owner or operator shall provide the information specified in paragraphs (e)(5)(ii)(A) through (C) of this section for each monitoring parameter. For those storage vessels for which the parameter monitoring plan required to be submitted under the HON Notification of Compliance Status requirements for storage vessels in § 63.120(d)(2) does not require compliance with the provisions of § 63.1438, the owner or operator shall provide the information specified in § 63.120(d)(3) as part of the Notification of Compliance Status.

(A) The required information shall include the specific maximum or minimum level of the monitored parameter(s) for each emission point.

(B) The required information shall include the rationale for the specific maximum or minimum level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates that the combustion, recovery, or recapture device is operated in a manner to ensure compliance with the provisions of this subpart.

(C) The required information shall include a definition of the affected source's operating day, as specified in paragraph (d)(3)(ii) of this section, for purposes of determining daily average values of monitored parameters.

(iii) The determination of applicability for flexible operation units as specified in § 63.1420(e)(1)(iii).

(iv) The parameter monitoring levels for flexible operation units, and the basis on which these levels were selected, or a demonstration that these levels are appropriate at all times, as specified in § 63.1420(e)(7).

(v) The results for each predominant use determination made under § 63.1420(f)(1) through (7), for storage vessels assigned to an affected source subject to this subpart.

(vi) If any emission point is subject to this subpart and to other standards as specified in § 63.1422(j), and if the provisions of § 63.1422(j) allow the owner or operator to choose which testing, monitoring, reporting, and recordkeeping provisions will be followed, then the Notification of Compliance Status shall indicate which rule's requirements will be followed for testing, monitoring, reporting, and recordkeeping.

(vii) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 63.132(g) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual sent to the treatment facility.

(6) *Periodic Reports.* For existing and new affected sources, the owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (viii) of this section. In addition, for equipment leaks subject to § 63.1434, the owner or operator shall submit the information specified in the HON periodic reporting requirements in § 63.182(d), and for heat exchange systems subject to § 63.1434, the owner or operator shall submit the information specified in the HON heat exchange system reporting requirements in § 63.104(f)(2), as part of the Periodic Report required by this paragraph (e)(6).

(i) Except as specified in paragraphs (e)(6)(viii) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or paragraphs (e)(6)(iii) through (vii) of this section, as appropriate, shall be submitted semiannually no later than 60 days after the end of each 180-day period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due. Subsequent reports shall cover each preceding 6-month period.

(ii) If none of the compliance exceptions in paragraphs (e)(6)(iii) through (vii) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that there were no compliance exceptions, as described in this paragraph, for the 6-month period covered by that report and that none of the activities specified in paragraphs (e)(6)(iii) through (vii) of this section occurred during the period covered by that report.

(iii) For an owner or operator of an affected source complying with the provisions of §§ 63.1432 through 63.1433 for any emission point, Periodic Reports shall include:

(A) All information specified in the HON periodic reporting requirements in § 63.122(a)(4) for storage vessels and in § 63.146(c) through § 63.146(f) for process wastewater.

(B) The daily average values of monitored parameters for all excursions, as defined in § 63.1438(f).

(C) The periods when monitoring data were not collected shall be specified; and

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (*3*) of this section, as applicable:

(*1*) Notification if a process change is made such that the group status of any emission point changes from Group 2 to Group 1. The owner or operator is not required to submit a notification of a process change if that process change caused the group status of an emission point to change from Group 1 to Group 2. However, until the owner or operator notifies the Administrator that the group status of an emission point has changed from Group 1 to Group 2, the owner or operator is required to continue to comply with the Group 1 requirements for that emission point. This notification may be submitted at any time.

(*2*) Notification if one or more emission points (other than equipment leak components subject to § 63.1434), or one or more PMPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*2*)(i) and (*ii*) of this section.

(*i*) A description of the addition to the affected source.

(*ii*) Notification of the group status or control requirement for the additional emission point or all emission points in the PMPU.

(*3*) For process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the treatment facility or transferee.

(E) The information in paragraph (b)(1)(ii) of this section for reports of start-up, shutdown, and malfunction.

(iv) If any performance tests are reported in a Periodic Report, the following information shall be included:

(A) One complete test report shall be submitted for each test method used for a particular kind of emission point tested. A complete test report shall contain the information specified in paragraph (e)(5)(i)(B) of this section.

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information required by the test method to be in the test report shall be submitted, but a complete test report is not required.

(v) The results for each change made to a primary product determination for a PMPU made under § 63.1420(e)(3) or (10).

(vi) The results for each reevaluation of the applicability of this subpart to a storage vessel that begins receiving material from (or sending material to) a process unit that was not included in the initial determination, or a storage vessel that ceases to receive material from (or send material to) a process unit that was included in the initial determination, in accordance with § 63.1420(f)(8).

(vii) The Periodic Report required by the equipment leak provisions in § 63.1434(f) shall be submitted as part of the Periodic Report required by paragraph (e)(6) of this section.

(viii) The owner or operator of an affected source shall submit quarterly reports for particular emission points and process sections as specified in paragraphs (e)(6)(viii)(A) through (D) of this section.

(A) The owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point or process section if the emission point or process section meets the conditions in paragraph (e)(6)(viii)(A)(*1*) or (*2*) of this section.

(*1*) A combustion, recovery, or recapture device for a particular emission point or process section has more excursions, as defined in § 63.1438(f), than the number of excused excursions allowed under § 63.1438(g) for a semiannual reporting period; or

(*2*) The Administrator requests the owner or operator to submit quarterly reports for that emission point or process section.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) through (vii) of this section, as applicable to the emission point or process section for which quarterly reporting is required under paragraph (e)(6)(viii)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year without more excursions occurring

(during that year) than the number of excused excursions allowed under § 63.1438(g), the owner or operator may return to semiannual reporting for the emission point or process section.

(7) *Other reports.* The notifications of inspections required by the storage vessel provisions in § 63.1432 shall be submitted, as specified in the HON storage vessel provisions in § 63.122(h)(1) and (2), and in paragraphs (e)(7)(i) and (ii) of this section.

(i) When the conditions in the HON storage vessel provisions in §§ 63.1420(e)(3)(i) or 63.1420(e)(4)(i) are met, reports of changes to the primary product for a PMPU or process unit, as required by § 63.1420(e)(3)(ii) or § 63.1420(g)(3), respectively, shall be submitted.

(ii) Owners or operators of PMPU or emission points (other than equipment leak components subject to § 63.1434) that are subject to provisions for changes or additions to plant sites in § 63.1420(g)(1) or (2) shall submit a report as specified in paragraphs (e)(7)(ii)(A) and (B) of this section.

(A) Reports shall include:

(*1*) A description of the process change or addition, as appropriate;

(*2*) The planned start-up date and the appropriate compliance date, according to § 63.1420(g)(1) or (2); and

(*3*) Identification of the group status of emission points (except equipment leak components subject to the requirements in § 63.1434) specified in paragraphs (e)(7)(ii)(A)(3)(*i*) through (*iii*) of this section, as applicable.

(*i*) All the emission points in the added PMPU, as described in § 63.1420(g)(1).

(*ii*) All the emission points in an affected source designated as a new affected source under § 63.1420(g)(2)(i).

(*iii*) All the added or created emission points as described in § 63.1420(g)(2)(ii).

(*4*) If the owner or operator wishes to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, alternative controls, or wishes to establish parameter monitoring levels according to the procedures contained in § 63.1438(c) or (d), a Precompliance Report shall be submitted in accordance with paragraph (e)(7)(ii)(B) of this section.

(B) Reports shall be submitted as specified in paragraphs (e)(7)(ii)(B)(*1*) through (*3*) of this section, as appropriate.

(*1*) Owners or operators of an added PMPU subject to § 63.1420(g)(1) shall submit a report no later than 180 days prior to the compliance date for the PMPU.

(*2*) Owners or operators of an affected source designated as a new affected source under § 63.1420(g)(2)(i) shall submit a report no later than 180 days prior to the compliance date for the affected source.

(*3*) Owners and operators of any emission point (other than equipment leak components subject to § 63.1434) subject to § 63.1420(g)(2)(ii) shall submit a report no later than 180 days prior to the compliance date for those emission points.

(8) *Operating permit application.* An owner or operator who submits an operating permit application instead of a Precompliance Report shall submit the information specified in paragraph (e)(4) of this section, as applicable, with the operating permit application.

(f) *Alternative monitoring parameters.* The owner or operator who has been directed by any section of this subpart, or any section of another subpart referenced by this subpart, that specifically references this paragraph to set unique monitoring parameters, or who requests approval to monitor a different parameter than those listed in § 63.1432 for storage vessels, § 63.1427 for ECO, § 63.1429 for process vents, or § 63.143 for process wastewater shall submit the information specified in paragraphs (f)(1) through (3) of this section in the Precompliance Report, as required by paragraph (e)(4) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (3) of this section.

(1) The required information shall include a description of the parameter(s) to be monitored to ensure the combustion, recovery, or recapture device; control technique; or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) The required information shall include a description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation, the schedule for this demonstration, and a statement that the owner or operator will establish a level for the monitored parameter as part of the Notification of Compliance Status report required in paragraph (e)(5) of this section, unless this information has already been included in the operating permit application.

(3) The required information shall include a description of the proposed monitoring, recordkeeping, and reporting system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (ii) of this section is met:

(i) If monitoring and recordkeeping is not continuous; or

(ii) If reports of daily average values will not be included in Periodic Reports when the monitored parameter value is above the maximum level or below the minimum level as established in the operating permit or the Notification of Compliance Status.

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the continuous parameter operating and recordkeeping provisions listed in § 63.1429 for process vents, and § 63.1433 for wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(4)(iv) of this section, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

(1) The provisions in the General Provisions requirements for the use of an alternative monitoring method in § 63.8(f)(5)(i) shall govern the review and approval of requests.

(2) An owner or operator of an affected source that does not have an automated monitoring and recording system capable of measuring parameter values at least once during approximately equal 15-minute intervals and that does not generate continuous records may request approval to use a nonautomated system with less frequent monitoring, in accordance with paragraphs (g)(2)(i) and (ii) of this section.

(i) The requested system shall include visual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily averages shall be calculated from these hourly values and recorded.

(ii) The request shall contain:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the affected source does not have an automated monitoring and recording system;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration that the proposed monitoring frequency is sufficient to represent combustion, recovery, or

recapture device operating conditions, considering typical variability of the specific process and combustion, recovery, or recapture device operating parameter being monitored.

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once at approximately equal intervals of about 15 minutes), but that records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (ii) of this section.

(i) The requested system shall be designed to:

(A) Measure the operating parameter value at least once during approximately equal 15-minute intervals;

(B) Record at least four values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident;

(E) Calculate daily average values of the monitored operating parameter based on all measured data; and

(F) If the daily average is not an excursion, as defined in § 63.1438(f), the data for that operating day may be converted to hourly average values and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain:

(A) A description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained;

(B) The method for calculating daily averages; and

(C) A demonstration that the system meets all criteria in paragraph (g)(3)(i) of this section.

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in the General Provisions' requirements for using an alternative monitoring method in § 63.8(f)(4).

(h) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (h)(1) or (2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions that would otherwise apply under this subpart. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (2) of this section.

(1) The owner or operator may retain only the daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (iv) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than start-ups, shutdowns or malfunctions (e.g., a temperature reading of −200°C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (h)(1)(ii)(A) through (C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour average values; and

(C) The running average reflects a period of operation other than a start-up, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than start-ups, shutdowns or malfunctions, except in circumstances where the presence of unchanging data are the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm or other means, if the running average parameter value calculated under paragraph (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (h)(1) of this section, at the times specified in paragraphs (h)(1)(v)(A) through (C) of this section. The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (D) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (h) of this section.

(B) A description of the applicable monitoring system(s), and how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description, as specified in paragraph (h)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (h)(1) of this section.

(D) The owner or operator subject to paragraph (h)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current. The current description shall, at all times, be retained on-site or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain all superseded descriptions for at least 5 years after the date of their creation. Superseded descriptions shall be retained on-site (or accessible from a central location by computer or other means that provides access within 2 hours after a request) for

at least 6 months after their creation. Thereafter, superseded descriptions may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (h)(1) of this section for a monitored parameter with respect to an item of equipment and a period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value, for any operating day when the daily average is less than the maximum, or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring accomplished during the period prior to the compliance date was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next Periodic Report. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily average values as provided in paragraph (h)(2) of this section, there is an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average value for each operating day and shall notify the Administrator in the next Periodic Report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraph (h)(1) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(iv) For the purposes of paragraph (h) of this section, an excursion means that the daily average of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (h)(2)(iv)(A) and (B) of this section.

(A) The daily average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by the General Provisions in § 63.6(e)(3).

(B) An excused excursion, as described in § 63.1438(g), shall not be considered an excursion for the purposes of paragraph (h)(2) of this section.

TABLE 1 TO SUBPART PPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation
63.1(a)(1)	Yes	§ 63.1423 specifies definitions in addition to or that apply instead of definitions in § 63.2.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes	§ 63.1422(f) through (k) of this subpart and § 63.160(b) identify those standards which overlap with the requirements of subparts PPP and H and specify how compliance shall be achieved.
63.1(a)(4)	Yes	Subpart PPP (this table) specifies the applicability of each paragraph in subpart A to subpart PPP.
63.1(a)(5)	No	Reserved.
63.1(a)(6)–(8)	Yes.	
63.1(a)(9)	No	Reserved.
63.1(a)(10)	Yes.	
63.1(a)(11)	Yes.	
63.1(a)(12)–(14)	Yes.	
63.1(b)(1)	No	§ 63.1420(a) contains specific applicability criteria.
63.1(b)(2)	Yes.	
63.1(b)(3)	Yes.	
63.1(c)(1)	Yes	Subpart PPP (this table) specifies the applicability of each paragraph in subpart A to subpart PPP.
63.1(c)(2)	No	Area sources are not subject to subpart PPP.
63.1(c)(3)	No	Reserved.
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications overridden by this table.
63.1(d)	No	Reserved.
63.1(e)	Yes.	
63.2	Yes	§ 63.1423 specifies those subpart A definitions that apply to subpart PPP.
63.3	Yes.	
63.4(a)(1)–(3)	Yes.	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except the terms "source" and "stationary source" should be interpreted as having the same meaning as "affected source".
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Except § 63.1420(g) defines when construction or reconstruction is subject to new source standards.

TABLE 1 TO SUBPART PPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

Reference	Applies to subpart PPP	Explanation
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except that the Initial Notification requirements in § 63.1439(e)(3) shall apply instead of the requirements in § 63.9(b).
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except that § 63.1420(g) defines when construction or reconstruction is subject to the new source standards.
63.5(c)	No	Reserved.
63.5(d)(1)(i)	Yes.	
63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	§ 63.1439(e)(5) and § 63.1434(e) specify Notification of Compliance Status requirements.
63.5(d)(2)	No.	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.1434 are exempt.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply.
63.6(a)	Yes.	
63.6(b)(1)	Yes.	
63.6(b)(2)	Yes.	
63.6(b)(3)	Yes.	
63.6(b)(4)	Yes.	
63.6(b)(5)	Yes.	
63.6(b)(6)	No	Reserved.
63.6(b)(7)	No.	
63.6(c)(1)	Yes	§ 63.1422 specifies the compliance date.
63.6(c)(2)	No.	
63.6(c)(3)	No	Reserved.
63.6(c)(4)	No	Reserved.
63.6(c)(5)	Yes.	
63.6(d)	No	Reserved.
63.6(e)	Yes	Except as otherwise specified for individual paragraphs (below), and § 63.6(e) does not apply to Group 2 emission points.[a]
63.6(e)(1)(i)	No	This is addressed by § 63.1420(h)(4).
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.1434), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to combustion, recovery, or recapture devices and is optional for other equipment. The start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(A)	Yes	This is also addressed by § 63.1420(h)(4).
63.6(e)(3)(i)(B)	Yes.	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes.	
63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.1439(b)(1).
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.1439(b)(1).
63.6(e)(3)(v)	No	Requirement is specified in § 63.1439(b)(1).
63.6(e)(3)(vi)	Yes.	
63.6(e)(3)(vii)	Yes.	
63.6(e)(3)(vii)(A)	Yes.	
63.6(e)(3)(vii)(B)	Yes	Except the plan shall provide for operation in compliance with § 63.1420(i)(4).
63.6(e)(3)(vii)(C)	Yes.	
63.6(e)(3)(viii)	Yes.	
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except 63.7(c), as referred to in § 63.6(f)(2)(iii)(D) does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.1434.
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	Subpart PPP does not require opacity and visible emission standards.
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	Yes.	
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in § 63.1422(e) and § 63.1439(e)(4)(i) for all emission points except equipment leaks, which are covered under § 63.182(a)(6)(i).

TABLE 1 TO SUBPART PPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

Reference	Applies to subpart PPP	Explanation
63.6(i)(4)(ii)	No.	
63.6(i)(5)(14)	Yes.	
63.6(i)(15)	No	Reserved.
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§ 63.1439(e)(5) and § 63.1439(e)(6) specify the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
63.7(a)(3)	Yes.	
63.7(b)	No	§ 63.1437(a)(4) specifies notification requirements.
63.7(c)	No	Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g).
63.7(d)	Yes.	
63.7(e)(1)	Yes	Except that all performance tests shall be conducted during worst case operating conditions.
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subpart PPP specifies requirements.
63.7(e)(4)	Yes.	
63.7(f)	Yes	Since a site specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3) approval or disapproval of the alternative test method shall not be tide to the site specific test plan.
63.7(g)	Yes	Except that references to the Notification of Compliance Status report in § 63.9(h) are replaced with the requirements in § 63.1439(e)(5). In addition, equipment leaks subject to § 63.1434 are not required to conduct performance tests.
63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, since the site-specific test plans in § 63.7(c)(2) are not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No.	Reserved.
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Support PPP specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with § 63.1439(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(ii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§ 63.1436 specifies monitoring requirements; not applicable to equipment leaks, because § 63.1434 does not require continuous monitoring systems.
63.8(c)(5)–(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–(3)	Yes.	
63.8(f)(4)(i)	Yes	Except the timeframe for submitting request is specified in § 63.1439(f) or (g); not applicable to equipment leaks, because § 63.1434 (through subpart H) specifies acceptable alternative methods.
63.8(f)(4)(ii)	Yes.	
63.8(f)(4)(iii)	Yes.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subpart PPP does not require CEM's.
63.8(g)	No	Data reduction procedures specified in § 63.1439(d) and (h); not applicable to equipment leaks.
63.9(a)	Yes.	
63.9(b)	No	The Initial Notification requirements are specified in § 63.1439(e)(3).
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No	§ 63.1437(a)(4) specifies notification deadline.
63.9(f)	No	Subpart PPP does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§ 63.1439(e)(5) specifies Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	

TABLE 1 TO SUBPART PPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

Reference	Applies to subpart PPP	Explanation
63.10(b)(1)	No	§63.1439(a) specifies record retention requirements.
63.10(b)(2)	No	Subpart PPP specifies recordkeeping requirements.
63.10(b)(3)	Yes.	
63.10(c)	No	§63.1439 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No	§63.1439(e)(5) and §63.1439(e)(6) specify performance test reporting requirements; not applicable to equipment leaks.
63.10(d)(3)	No	Subpart PPP does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except that reports required by §63.10(d)(5)(i) shall be submitted at the same time as Periodic Reports specified in §63.1439(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points.
63.10(e)	No	§63.1439 specifies reporting requirements.
63.10(f)	Yes.	
63.11	Yes.	
63.12	Yes	Except that the authority of §63.177 (for equipment leaks) will not be delegated to States.
63.13–63.15	Yes.	

[a] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points.

TABLE 2 TO SUBPART PPP OF PART 63.—APPLICABILITY OF SUBPARTS F, G, H, AND U TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation	Applicable section of subpart PPP
Subpart F:			
63.100	No.		
63.101	Yes	Several definitions from 63.101 are referenced at 63.1423	63.1423.
63.102–63.103	No.		
63.104	Yes	With the differences noted in 63.1435(b) through (d)	63.1435.
63.105	Yes	With the differences noted in 63.1433(b)	63.1433.
63.106	No.		
Subpart G:			
63.110	No.		
63.111	Yes	Several definitions from 63.111 are incorporated by reference into 63.1423.	63.1423.
63.112	No.		
63.113–63.118	Yes	For THF facilities, with the differences noted in 63.1425(f)(1) through (f)(10).	63.1425.
	No	For epoxide facilities, except that 63.115(d) is used for TRE determinations.	63.1428.
63.119–63.123	Yes	With the differences noted in 63.1432(b) through 63.1432(p)	63.1432.
63.124–63.125	No	Reserved.	
63.126–63.130	No.		
63.131	No	Reserved.	
63.132–63.147	Yes	With the differences noted in 63.1433(a)(1) through 63.1433(a)(19).	63.1433.
63.148–63.149	Yes	With the differences noted in 63.1432(b) through 63.1432(p) and 63.1433(a)(1) through 63.1433(a)(19).	63.1432 and 63.1433.
63.150	No.		
63.151–63.152	No.		
Subpart H:			
63.160–63.182	Yes	Subpart PPP affected sources shall comply with all requirements of subpart H, with the differences noted in 63.1422(d), 63.1422(h), and 63.1434(b) through (g).	63.1434.
Subpart U:			
63.480–63.487	No.		
63.488	Yes	Portions of 63.488(b) and (e) are cross-referenced in subpart PPP..	
63.489–63.506	No.		

TABLE 3 TO SUBPART PPP OF PART 63.—GROUP 1 STORAGE VESSELS AT EXISTING AND NEW AFFECTED SOURCES

Vessel capacity (cubic meters)	Vapor Pressure[a] (kilopascals)
75 ≤ capacity < 151	≥ 13.1
capacity ≥ 151	≥ 5.2

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 4 TO SUBPART PPP OF PART 63—KNOWN ORGANIC HAP FROM POLYETHER POLYOL PRODUCTS

Organic HAP/Chemical Name (CAS No.)
1,3 Butadiene (106990)
Ethylene Oxide (75218)
n-Hexane (110543)
Methanol (67561)
Propylene Oxide (75569)
Toluene (108883)

CAS No. = Chemical Abstracts Service Registry Number

TABLE 5 TO SUBPART PPP OF PART 63.—PROCESS VENTS FROM BATCH UNIT OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control technique	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature[a]	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the daily average firebox temperature as specified in § 63.1429. 4. Report all daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.1429. 4. Report all daily average upstream temperatures that are below the minimum upstream temperature established in the NCS or operating permit—PR.[d e] 5. Report all daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d e] 6. Report all instances when monitoring data are not collected.[e]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the process vents are *not* introduced with or used as the primary fuel.	Firebox temperature[a]	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the average firebox temperature measured during the performance test—NCS[c] 3. Record the daily average firebox temperature as specified in § 63.1429.[d] 4. Report all daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Flare	Presence of a flame at the pilot light.	1. Hourly records of whether the monitor was continuously operating during batch emission episodes selected for control and whether a flame was continuously present at the pilot light during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes selected for control when all flames at the pilot light of a flare are absent—Pr.[d]
Absorber[f]	Liquid flow rate into or out of the scrubber, or the pressure drop across the scrubber.	1. Records every 15 minutes, as specified in § 63.1429.[b] 2. Record and report the average liquid flow rate into or out of the scrubber, or the pressure drop across the scrubber, measured during the performance test—NCS.

TABLE 5 TO SUBPART PPP OF PART 63.—PROCESS VENTS FROM BATCH UNIT OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control technique	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
		3. Record the liquid flow rate into or out of the scrubber, or the pressure drop across the scrubber, every 15 minutes, as specified in §63.1429. 4. Report all scrubber flow rates or pressure drop values that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
	pH of the scrubber	1. Once daily records as specified in §63.1429.[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record at least once daily the pH of the scrubber effluent. 4. Report all pH scrubber effluent readings out of the range established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e] If a base absorbent is used, report all pH values that are below the minimum operating values. If an acid absorbent is used, report all pH values that are above the maximum operating values.
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in §63.1429.[b] 2. Record and report the average exit temperature measured during the performance test—NCS. 3. Record the daily average exit temperature as specified in §63.1429. 4. Report all daily average exit temperatures that are above the maximum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Carbon Adsorber[f]	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s), and.	1. Record of total regeneration stream mass or volumetric flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass or volumetric flow during each carbon bed regeneration cycle during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration stream mass or volumetric flow is above the maximum flow rate established in the NCS or operating permit—PR.[d e]
	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s) measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum temperature established in the NCS or operating permit—PR.[d e]
Absorber, Condenser, and Carbon Adsorber (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device.	1. Continuous records as specified in §63.1429.[b] 2. Record and report the average concentration level or reading measured during the performance test—NCS. 3. Record the daily average concentration level or reading as specified in §63.1429. 4. Report all daily average concentration levels or readings that are above the maximum concentration or reading established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
All Combustion, recovery, or recapture devices.	Diversion to the atmosphere from the combustion, recovery, or recapture device or.	1. Hourly records of whether the flow indicator was operating during batch emission episodes selected for control and whether a diversion was detected at any time during the hour, as specified in §63.1429. 2. Record and report the times of all periods during batch emission episodes selected for control when emissions are diverted through a bypass line, or the flow indicator is not operating—PR.[d]
	Monthly inspections of sealed valves.	1. Records that monthly inspections were performed as specified in §63.1429. 2. Record and report all monthly inspections that show that valves are in the diverting position or that a seal has been broken—PR.[d]

TABLE 5 TO SUBPART PPP OF PART 63.—PROCESS VENTS FROM BATCH UNIT OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control technique	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
ECO	Time from the end of the epoxide feed, or the epoxide partial pressure in the reactor or direct measurement of epoxide concentration in the reactor liquid at the end of the ECO.	1. Records at the end of each batch, as specified in § 63.1427(i). 2. Record and report the average parameter value of the parameters chosen, measured during the performance test. 3. Record the batch cycle ECO duration, epoxide partial pressure, or epoxide concentration in the liquid at the end of the ECO 4. Report all batch cycle parameter values outside of the ranges established in accordance with § 63.1427(i)(3) and all instances when monitoring data were not collected—PR.[d e]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in § 63.111.
[c] NCS = Notification of Compliance Status described in § 63.1429.
[d] PR = Periodic Reports described in § 63.1429.
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.1439.
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 6 TO SUBPART PPP OF PART 63.—PROCESS VENTS FROM CONTINUOUS UNIT OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control technique	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature[a]	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the daily average firebox temperature for each operating day. 4. Report all daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when sufficient monitoring data are not collected—PR.[d e]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS[c] 3. Record the daily average upstream temperature and temperature difference across catalyst bed for each operating day. 4. Report all daily average upstream temperatures that are below the minimum upstream temperature established in the NCS or operating permit—PR.[d e] 5. Report all daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d e] 6. Report all operating days when insufficient monitoring data are collected.[f]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the process vents are *not* introduced with or used as the primary fuel.	Firebox temperature[a]	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the average firebox temperature measured during the performance test—NCS[c] 3. Record the daily average firebox temperature for each operating day.[d] 4. Report all daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d e]
Flare	Presence of a flame at the pilot light.	1. Hourly records of whether the monitor was continuously operating and whether a flame was continuously present at the pilot light during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods when all flames at the pilot light of a flare are absent—Pr.[d]
Absorber[f]	Exit temperature of the absorbing liquid, and.	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the exit temperature of the absorbing liquid averaged over the full period of the TRE determination—NCS.[c] 3. Record the daily average exit temperature of the absorbing liquid for each operating day. 4. Report all the daily average exit temperatures of the absorbing liquid that are below the minimum operating value established in the NCS or operating—PR.[d e]

TABLE 6 TO SUBPART PPP OF PART 63.—PROCESS VENTS FROM CONTINUOUS UNIT OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control technique	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
	Exit specific gravity for the absorbing liquid.	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the exit specific gravity averaged over the full period of the TRE determination—NCS. 3. Record the daily average exit specific gravity for each operating day. 4. Report all daily average exit specific gravity values that are below the minimum operating value established in the NCS or operating—PR.[d e]
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the exit temperature averaged over the full period of the TRE determination—NCS. 3. Record the daily average exit temperature for each operating day. 4. Report all daily average exit temperatures that are above the maximum operating temperature established in the NCS or operating—PR.[d e]
Carbon Adsorber[f]	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s), and.	1. Record of total regeneration stream mass or volumetric flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass or volumetric flow during each carbon bed regeneration cycle during the period of the TRE determination—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration stream mass or volumetric flow is above the maximum flow rate established in the NCS or operating permit—PR.[d e]
	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration during the period of the TRE determination—NCS[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration is above the maximum temperature established in the NCS or operating permit—PR.[d e]
Absorber, Condenser, and Carbon Adsorber (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device.	1. Continuous records as specified in § 63.1429.[b] 2. Record and report the concentration level or reading averaged over the full period of the TRE determination—NCS. 3. Record the daily average concentration level or reading for each operating day. 4. Report all daily average concentration levels or readings that are above the maximum concentration or reading established in the NCS or operating—PR.[d e]
All Combustion, recovery, or recapture devices.	Diversion to the atmosphere from the combustion, recovery, or recapture device *or*.	1. Hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during each hour. 2. Record and report the times of all periods when the vent stream is diverted through a bypass line, or the flow indicator is not operating—PR.[d]
	Monthly inspections of sealed valves.	1. Records that monthly inspections were performed as specified in § 63.1429. 2. Record and report all monthly inspections that show that valves are in the diverting position or that a seal has been broken—PR.[d]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in § 63.111.
[c] NCS = Notification of Compliance Status described in § 63.1429.
[d] PR = Periodic Reports described in § 63.1429.
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.1439.
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 7 TO SUBPART PPP OF PART 63.—OPERATING PARAMETERS FOR WHICH MONITORING LEVELS ARE REQUIRED TO BE ESTABLISHED FOR PROCESS VENTS STREAMS

Control technique	Parameters to be monitored	Established operating parameter(s)
Thermal incinerator	Firebox temperature	Minimum temperature.
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	Minimum upstream temperature; and minimum temperature difference across the catalyst bed.
Boiler or process heater	Firebox temperature	Minimum temperature.
Absorber	Liquid flow rate or pressure drop; and pH of scrubber effluent, if an acid or base absorbent is used.	Minimum flow rate or pressure drop; and maximum pH if an acid absorbent is used, or minimum pH if a base absorbent is used.
Condenser	Exit temperature	Maximum temperature.

TABLE 7 TO SUBPART PPP OF PART 63.—OPERATING PARAMETERS FOR WHICH MONITORING LEVELS ARE REQUIRED TO BE ESTABLISHED FOR PROCESS VENTS STREAMS—Continued

Control technique	Parameters to be monitored	Established operating parameter(s)
Carbon adsorber	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum mass or volumetric flow; and maximum temperature.
Extended Cookout (ECO)	Time from the end of the epoxide feed to the end of the ECO, or the reactor epoxide partial pressure at the end of the ECO, or the epoxide concentration in the reactor liquid at the end of the ECO.	Minimum duration, or maximum partial pressure at the end of ECO, or maximum epoxide concentration in the reactor liquid at the end of ECO.
Other devices (or as an alternate to the above).[a]	HAP concentration level or reading at outlet of device.	Maximum HAP concentration or reading.

[a] Concentration is measured instead of an operating parameter.

TABLE 8 TO SUBPART PPP OF PART 63.—ROUTINE REPORTS REQUIRED BY THIS SUBPART

Reference	Description of Report	Due Date
§ 63.1439(b) and Subpart A	Refer to § 63.1439(b), Table 1 of this subpart, and to subpart A.	Refer to subpart A.
§ 63.1439(e)(3)	Initial notification	Existing affected sources: by 120 days after June 1, 1999. New affected sources w/initial start-up at least 90 days after June 1, 1999: submit the application for approval of construction or reconstruction in lieu of the Initial Notification. New affected sources w/initial start-up prior to 90 days after June 1, 1999: by 90 days after June 1, 1999.
§ 63.1439(e)(4)	Precompliance Report[a]	Existing affected sources: 12 months prior to compliance date. New affected sources: with the application for approval of construction or reconstruction.
§ 63.1439(e)(5)	Notification of Compliance Status[b]	Within 150 days after the compliance date.
§ 63.1439(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.1439(e)(6)(i) for the due date for this report.
§ 63.1439(e)(6)(v)(iii)	Quarterly reports for sources with excursions (upon request of the Administrator).	No later than 60 days after the end of each quarter.
§ 63.506(e)(7)(i)	Storage Vessels Notification of Inspection.	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.1434 and one for other emission points subject to this subpart.

[b] There will be two versions of this report due at different times; one for equipment subject to § 63.1434 and one for other emission points subject to this subpart.

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Part III

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutants for Source Categories and for Mineral Wool Production; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[FRL–6345–4]

RIN 2060–AE08

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in mineral wool production facilities. Hazardous air pollutants (HAPs) emitted by the facilities covered by this rule include carbonyl sulfide (COS), nine hazardous metals, formaldehyde, and phenol. Exposure to these HAPs may be associated with adverse carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects. The EPA estimates that the final rule will reduce nationwide emissions of HAPs from these facilities by 46 megagrams per year (Mg/yr) (51 tons per year (tpy)). In addition, emissions of particulate matter (PM) will be reduced by approximately 186 Mg/yr (205 tpy). This action also amends 40 CFR part 9 by updating the table of currently approved information collection control numbers to include the information requirements contained in this final rule.

These standards implement section 112(d) of the Clean Air Act (Act) by requiring all mineral wool production facilities that are major sources to meet hazardous air pollutant (HAP) emission standards reflecting the application of the maximum achievable control technology (MACT). The emissions reductions achieved by these standards, when combined with the emissions reductions achieved by other similar standards, will provide protection to the public and achieve a primary goal of the Act.

A supplement to the proposed rule was proposed in the **Federal Register** on February 12, 1999 (64 FR 7149). The EPA will give careful consideration to all comments on the supplemental proposal and will amend this final rule in a future action as appropriate.

EFFECTIVE DATE: June 1, 1999. See the **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: *Docket.* The docket for this rulemaking containing the information considered by the EPA in development of the final rule is Docket A–95–33. This docket is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday, excluding Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Washington, DC 20460; telephone number (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Johnson, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5025; facsimile number (919) 541–5600; electronic mail address "johnson.mary@epamail.epa.gov".

SUPPLEMENTARY INFORMATION:

Regulated Entities

Categories and entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Mineral wool production facilities (SIC 3296).
Federal government	None.
State/local/tribal government.	None.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.1177 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate regional representative:

Region I:
Janet Bowen, Office of Ecosystem Protection, U.S. EPA, Region I, CAP, JFK Federal Building, Boston, MA 02203, (617) 565–3595

Region II:
Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4000

Region III:
Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III, 3AT10, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2110

Region IV:
Lee Page, Air Enforcement Branch, U.S. EPA, Region IV, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104, (404) 562–9131

Region V:
George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V, 5AE–26, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088

Region VI:
John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 665–7220

Region VII:
Donald Toensing, Air Permitting and Compliance, Branch Chief, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7446

Region VIII:
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Plain Language

The final rule is written in plain language. Plain language regulatory writing involves structuring the rule around questions the user may have. It takes the form of questions and answers and uses the words "I" and "you" to represent the owner or operator.

Judicial Review

The NESHAP for mineral wool production plants was proposed on May 8, 1997 (62 FR 25370). This action announces the EPA's final decisions on the rule. Under section 307(b)(1) of the Act, judicial review of the NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Technology Transfer Network

In addition to being available in the docket, an electronic copy of today's notice is also available through the Technology Transfer Network (TTN). Following promulgation, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline

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I. Statutory Authority

The statutory authority for this rule is provided by sections 101, 112, 113, 114, 116, and 301 of the Act, as amended (42 U.S.C. 7401, 7412, 7413, 7414, 7416, and 7601). This rule is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

II. Background and Public Participation

Section 112(d) of the Act directs the EPA to establish standards to control all major sources emitting HAPs. On July 16, 1992, the EPA published a list of major source categories, including "Mineral Wool Production," for which NESHAP are to be promulgated (57 FR 3156). The NESHAP for mineral wool production (40 CFR part 63, subpart DDD) was proposed in the **Federal Register** on May 8, 1997 (62 FR 25370). The public comment period ended on July 7, 1997. Industry representatives, regulatory authorities, environmental groups, and the general public had the opportunity to comment on the proposed standards and to provide additional information during the public comment period. Three comment letters were received. Comments were received from the association representing industry and from two representatives of air pollution control equipment manufacturers. Today's final rule reflects the EPA's full consideration of the comments. A summary of the major public comments along with the EPA's responses are summarized in this preamble. A more detailed discussion of public comments and the EPA's responses are contained in the docket (Docket No. A–95–33; Item V–C–2).

III. Summary of Final Rule

A. Applicability

The final NESHAP applies to each existing, new, and reconstructed cupola and curing oven at a mineral wool production facility that is located at a plant site that is a major source of HAP emissions. Facilities that manufacture wool fiberglass are not subject to this rule but are subject to a separate NESHAP rulemaking for wool fiberglass manufacturing.

B. Standards

Emissions of PM are regulated for existing cupolas. For new and reconstructed cupolas, emissions of carbon monoxide (CO) are also regulated. Emissions of formaldehyde are regulated for existing, new, and reconstructed curing ovens. Particulate matter serves as a surrogate for metal HAPs and CO is a surrogate for COS. In addition to being a HAP itself, formaldehyde serves as a surrogate for phenol. A numerical emission limit for PM expressed in kilograms per megagram (kg/Mg) or pound per ton (lb/ton) of melt is promulgated in the final rule. For CO or formaldehyde, the owner or operator may comply with percent removal or numerical emission limits. The emission limits for existing sources and new sources are presented below.

SUMMARY OF EMISSION LIMITS FOR EXISTING SOURCES

Source	Pollutant	Emission limit
Cupola	PM	0.05 kg/Mg (0.10 lb/ton) of melt.
Curing oven	Formaldehyde	0.03 kg/Mg (0.06 lb/ton) of melt or 80 percent formaldehyde removal.

SUMMARY OF EMISSION LIMITS FOR NEW AND RECONSTRUCTED SOURCES

Source	Pollutant	Emission limit
Cupola	PM	0.05 kg/Mg (0.10 lb/ton) of melt.
	CO	0.05 kg/Mg (0.10 lb/ton) of melt or 99 percent CO removal.
Curing oven	Formaldehyde	0.03 kg/Mg (0.06 lb/ton) of melt or 80 percent formaldehyde removal.

The owner or operator must also comply with operating limits. Operating limits for cupolas are as follows:

(1) Within one hour after the alarm on a bag leak detection system sounds, the owner or operator must begin, and complete in a timely manner, corrective actions as specified in their operations, maintenance, and monitoring plan.

(2) When the alarm on a bag leak detection system sounds for more than

five percent of the total operating time in a six-month reporting period, the owner or operator must develop and implement a written quality improvement plan (QIP) consistent with the compliance assurance monitoring requirements in § 64.8(b)–(d) of 40 CFR part 64 (62 FR 54900, October 22, 1997).

(3) For each new or reconstructed cupola, the owner or operator must maintain the operating temperature of the thermal incinerator such that the average operating temperature for each three-hour block period never falls below the average temperature established during the performance test.

The owner or operator must meet the following operating limits for curing ovens:

(1) The owner or operator must maintain the free-formaldehyde content of each resin lot and formaldehyde content of each binder formulation at or below the specification ranges of the resin and binder used during the performance test.

(2) The owner or operator must maintain the operating temperature of each thermal incinerator such that the average operating temperature for each three-hour block period never falls below the average temperature established during the performance test.

C. Compliance and Performance Test Provisions

For existing sources, compliance with the standards must be demonstrated no later than three years from the effective date of the final rule. An extension for a fourth year may be granted by the Administrator under section 112(i)(3)(B) of the Act if necessary for the installation of controls. For new and reconstructed sources, any control devices or monitoring equipment necessary to meet the standards must be installed. Performance testing must be completed and compliance with all requirements of the final rule must be demonstrated by the dates in § 63.7 of the general provisions in subpart A of 40 CFR part 63. On and after these dates, the owner or operator must comply with the standards. The standards will apply at all times except during periods of startup, shutdown, or malfunction.

A performance test is required to demonstrate initial compliance with the percent removal or numerical emissions limits for cupolas and curing ovens. The performance test must be conducted while operating at the maximum production rate and must consist of three test runs. All monitoring systems and equipment must be installed, operational, and properly calibrated prior to the performance tests. To comply with the CO or formaldehyde emission limit for a cupola or curing oven controlled by a thermal incinerator, or the PM limit for a fabric filter-controlled cupola, measurements are made at the outlet of the control device. If the owner or operator elects to comply with the percent removal emission limit for CO or formaldehyde, measurements are required at the inlet and outlet of the control device.

The owner or operator is required to measure and record the amount of raw materials, excluding coke, charged into and melted in each cupola during each performance test run, determine the average hourly melt rate for each performance test run, and determine the arithmetic average of the average hourly melt rates associated with the three performance test runs. The average hourly melt rate of the three performance test runs is used to determine compliance.

The owner or operator must conduct the performance test for each curing oven while manufacturing the product that requires a binder formulation made with the resin containing the highest free-formaldehyde content specification range. During the performance test, the owner or operator must record the free-formaldehyde content specification range of the resin used and the formulation of the binder used, including formaldehyde content and binder specification.

During the performance test for each cupola that uses a thermal incinerator to comply with the emission limit for CO and each curing oven that uses a thermal incinerator to comply with the formaldehyde emission limit, the owner or operator is required to establish the average operating temperature of the incinerator. The owner or operator must continuously measure the operating temperature, determine the average temperatures in consecutive 15-minute blocks, determine the arithmetic average of the 15-minute block temperatures for each performance test run, and determine the arithmetic average of the average operating temperatures associated with the three performance test runs.

With prior approval from the Administrator, operating limits established for control devices or processes during the initial performance tests and used to monitor compliance may be expanded by conducting additional performance tests to demonstrate compliance at the new levels. Also, owners or operators of curing ovens may conduct short-term experimental production runs without conducting additional performance tests with prior approval from the Administrator.

D. Monitoring Requirements

Each fabric filter used on a cupola must be equipped with a bag leak detection system having an audible alarm that automatically sounds when an increase in particulate emissions above a predetermined level is detected. The alarm must be located in an area where appropriate plant personnel will be able to hear it. Such a device serves as an indicator of the performance of the fabric filter and provides an indication of when maintenance of the fabric filter is needed. The rule requires that in response to an alarm, corrective actions be initiated within one hour, and completed in a timely manner, according to the operations, maintenance, and monitoring plan. The owner or operator is in violation of this operating limit upon a failure to begin corrective actions within one hour of the alarm.

When the alarm is activated for more than five percent of the total operating time during a six-month reporting period, the owner or operator must develop and implement a written QIP consistent with the compliance assurance monitoring requirements in § 64.8(b)–(d) of 40 CFR part 64 (62 FR 54900, October 22, 1997). Failure to develop and implement a written QIP that is consistent with the compliance assurance monitoring requirements is a violation of this operating limit.

Each owner or operator of an affected curing oven must monitor and record the free-formaldehyde content of each resin lot and the formulation of each batch of binder used, including formaldehyde content. Following the performance test, the owner or operator must maintain the free-formaldehyde content of each resin lot and the formaldehyde content of each binder formulation at or below the specification ranges of the resin and binder used during the performance test. If the free-formaldehyde content of a resin lot or the formaldehyde content of a binder formulation exceeds the performance test specification ranges, the owner or operator is in violation of this operating limit.

For each thermal incinerator used to control emissions from affected cupolas or curing ovens, the owner or operator must continuously measure the operating temperature of the incinerator. The owner or operator must determine the average temperatures in consecutive 15-minute blocks and then determine the arithmetic average of the 15-minute averages for each one-hour period. The average operating temperature of the

incinerator is based on the arithmetic average of the one-hour average temperatures for each consecutive three-hour period. Following the performance test, the owner or operator is required to maintain the operating temperature so that the average operating temperature for each three-hour block period never falls below the average temperature established during the performance test. If the average temperature in any three-hour block period falls below the average established during the performance test, the owner or operator is in violation of this operating limit. The owner or operator must operate and maintain each incinerator as specified in their operations, maintenance, and monitoring plan. Procedures for properly operating and maintaining an incinerator must include an annual inspection.

Under today's rule, the owner or operator may change control device and process operating parameter levels established during performance tests and used to monitor compliance. The owner or operator must notify the Administrator and upon approval, conduct additional performance tests at the proposed new control device or process operating parameter levels to verify compliance with the applicable emission limits.

E. Notification, Recordkeeping, and Reporting Requirements

Notification, recordkeeping, and reporting requirements for NESHAP are included in the general provisions (40 CFR part 63, subpart A). The general provisions include requirements for: (1) Initial notification(s) of applicability, notification of performance test, and notification of compliance status; (2) a report of performance test results; (3) a startup, shutdown, and malfunction plan, including a semiannual report when a reportable event occurs and the steps in the plan were not followed; and (4) semiannual reports of deviations from established parameters. If deviations from established parameters are reported, the owner or operator must report quarterly until a request to return the reporting frequency to semiannual is approved.

Owners or operators of affected cupolas and curing ovens must submit an operations, maintenance, and monitoring plan as part of their application for a title V permit. The plan must include procedures for the proper operation and maintenance of processes and control devices used to comply with the emission limits, including an annual inspection of each thermal incinerator. The plan also must identify the process or control device parameters to be monitored for compliance; the established operating levels or ranges for each process or control device; a monitoring schedule; the corrective actions to be taken when process or control device parameters deviate from the levels established during performance testing; and procedures for keeping records to document compliance.

In addition to requirements of the general provisions, the final rule specifies additional records to be kept by the owner or operator. The owner or operator is required to maintain records of the following, as applicable:

(1) Cupola production (melt) rate;

(2) bag leak detection system alarms, the date and time of the alarm, when corrective actions were initiated, the cause of the alarm, an explanation of the corrective actions taken, and when the cause of the alarm was corrected;

(3) free-formaldehyde content of each resin lot and the binder formulation, including formaldehyde content, of each binder batch used in the manufacture of bonded products; and

(4) incinerator operating temperature and results of incinerator inspections, including periods when the average temperature in any three-hour block period fell below the average temperature established during the performance test and periods when the inspection identified incinerator components in need of repair or maintenance, the date and time of the problem, when corrective actions were intiated, the cause of the problem, an explanation of the corrective actions taken, and when the cause of the problem was corrected.

The NESHAP general provisions require that records be maintained for at least five years from the date of each record. The owner or operator must retain the records on site for at least two years but may retain the records off site the remaining three years. The records may be retained on microfilm, on microfiche, on a computer, on computer disks, or on magnetic tape disks. Reports may be made on paper or on labeled computer disks using commonly available and compatible computer software.

IV. Summary of Changes Since Proposal

Changes have been incorporated into the final NESHAP for mineral wool production facilities in response to comments on the proposed rule, with the exception of the format change to plain language. A number of clarifications to the proposal language are reflected in the final rule as a result of this question and answer format. The principal changes made since proposal are summarized below. Additional discussion of the changes and the rationale for these changes is presented in section VI of this preamble.

A. Definitions

In response to public comments, minor clarifying changes were made to the definition of *mineral wool*. Also, a definition for *new source*, that incorporates the May 8, 1997 date that the NESHAP was proposed, was added to the list of terms used in the final rule.

B. Standards

The final rule incorporates some changes to the proposed rule regarding emission standards. Depending on available control and monitoring technologies for particular source categories, emission limits, as well as operating limits, are set forth as enforceable regulatory requirements. In addition to emission limits, operating limits are also included as part of the final rule regulating mineral wool production facilities. These operating limits were included in the proposed rule as monitoring requirements and have been moved into the sections containing the emission limits in the final rule. These operating limits specify the established requirements which are enforceable and will be used to determine compliance.

As a result of additional PM emissions data from fabric filter-controlled cupolas, the proposed PM emission limit of 0.03 kg/Mg (0.06 lb/ton) has been revised to 0.05 kg/Mg (0.10 lb/ton) in the final rule. The additional data considered in making this determination are for three cupolas controlled by fabric filters with identical parameters as those previously determined to be representative of the MACT floor for existing and new cupolas. An emissions limit of 0.05 kg/Mg (0.10 lb/ton) represents a level that can be achieved by the fabric filter-controlled cupola upon which the proposed PM emission limit was based, as well as by these three fabric filter-controlled cupolas which are also representative of the MACT floor.

C. Performance Test Provisions

A few changes were made to the performance test requirements in the proposed rule. Revisions were made to clarify the proposed requirements for performance testing by specifying in the final rule how to establish the average operating temperature of an incinerator. The proposed provision that would allow the owner or operator of curing ovens subject to the NESHAP to conduct short-term experimental production

runs without conducting additional performance tests was revised. The final rule clarifies that the process modifications referred to in the proposed rule mean pollution prevention process modifications.

The proposed rule required the use of method 5 for determining the concentration of PM with a minimum performance test run time of two hours and a minimum sample volume of 2.5 dry standard cubic meters (dscm) (90 dry standard cubic feet (dscf)). The final rule specifies a minimum performance test run time of three hours and a minimum sample volume of 3.75 dscm (135 dscf). These revisions are the result of re-evaluation of the test method procedures in response to public comments regarding the level of the proposed emission limit for PM, and are to ensure that an adequate amount of PM is captured on the filter for analysis and subsequent compliance determination.

D. Monitoring Requirements

Several changes were made to the monitoring requirements in the proposed rule. The final rule does not include the proposed requirements to maintain the average hourly melt rate so that it does not exceed the average melt rate established during the performance test by more than 20 percent for more than five percent of the total operating time in each six-month reporting period, and to do a repeat performance test at the higher melt rate if the average hourly melt rate exceeds the average melt rate established during the performance test by more than 20 percent for more than five percent of the total operating time in a six-month reporting period. The EPA determined that these monitoring requirements are not necessary because compliance with the PM standards will be assessed through use of a bag leak detection system; compliance with the CO standards will be assessed through monitoring incinerator operating temperature; and compliance with the formaldehyde standards will be assessed through monitoring incinerator operating temperature, monitoring free-formaldehyde content of resin, and monitoring binder formulation. The average melt rate must still be determined during each performance test in order to assess compliance with the emissions standards. As a recordkeeping requirement, the final rule continues to require that records of cupola melt rate be maintained.

As proposed, each fabric filter used on a cupola must be equipped with a bag leak detection system having an audible alarm that automatically sounds when an increase in particulate emissions above a predetermined level is detected. The final rule clarifies that each triboelectric bag leak detection system must be installed, operated, adjusted, and maintained according to the EPA's "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997) which is available on the TTN under Emission Measurement Center (EMC), Continuous Emission Monitoring. Other bag leak detection systems must be installed, operated, adjusted, and maintained according to the manufacturer's written specifications and recommendations. In response to public comments and to maintain consistency with sensitivity (range) specifications in other regulations, the final rule requires that the bag leak detection system be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot). To maintain consistency with bag leak detection system requirements in other regulations and to allow owners and operators flexibility to make necessary bag leak detection system adjustments, the final rule specifies that following initial adjustment, the owner or operator may adjust the range, averaging period, alarm set points, or alarm delay time as specified in the approved operations, maintenance, and monitoring plan. The final rule further specifies that in no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a 365 day period unless a responsible official, as defined in § 63.2 of the general provisions in subpart A of 40 CFR part 63, certifies in writing to the Administrator that the fabric filter has been inspected and found to be in good operating condition. The final rule clarifies that the alarm must be located in an area where appropriate plant personnel will be able to hear it and that in response to the sounding of an alarm, the owner or operator must complete corrective actions in a timely manner.

Under the proposed rule, the owner or operator would monitor and record the free-formaldehyde content of each resin lot and the binder formulation, including the formaldehyde content of each binder batch, and would maintain the formaldehyde content of each binder formulation at or below the level established during the performance test. The final rule clarifies that the owner or operator must maintain the free-formaldehyde content of each resin lot and the formaldehyde content of each binder formulation at or below the specification ranges of the resin and binder used during the performance test. The use of ranges in the final rule accommodates the fact that resins and binders are produced in accordance with specification ranges rather than levels as proposed.

As proposed, the owner or operator would obtain, at a minimum, valid three-hour block average incinerator operating temperatures for 75 percent of the operating hours per day for 90 percent of the operating days per six-month reporting period. This requirement is not included in the final rule in order to maintain consistency with the compliance assurance monitoring final rule (62 FR 54899, October 22, 1997), which was revised based on comments received on its proposal and now requires monitoring devices to be operational at all times that the process is operational. Revisions were also made to clarify the proposed requirements for monitoring incinerator operating temperature by specifying in the final rule how to determine the average operating temperature.

Under the proposed rule, the owner or operator could change a control device or process operating parameter level established during the performance test by conducting additional performance tests at the new parameter level. The final rule clarifies that the owner or operator must notify the Administrator of the desire to expand the range of a control device or process operating parameter level, and upon approval, conduct additional performance tests at the proposed new parameter levels before operating at these levels to verify compliance with the emission limits.

E. Notification, Recordkeeping, and Reporting Requirements

A few changes were made since proposal to the notification, recordkeeping, and reporting requirements. The final rule clarifies that notifications of performance tests must be submitted to the Administrator at least 60 days prior to the performance test. The final rule also clarifies what elements are required to be included in performance test reports. The proposed rule required an operations, maintenance, and monitoring plan for each affected source that would contain information on the proper operation and maintenance of control devices, the parameters to be monitored for compliance and their established operating levels, a monitoring schedule, corrective actions to be taken when parameters deviate from the levels established during performance testing, and procedures for keeping records to document compliance. The final rule

specifies some example corrective actions for bag leak detection system alarms that may be included in the operations, maintenance, and monitoring plan. Consistent with the general provisions requirements to operate and maintain air pollution control equipment in a manner consistent with good air pollution control practices, the final rule clarifies that the operations, maintenance, and monitoring plan procedures for properly operating and maintaining control devices must include, where applicable, an inspection of each incinerator at least once per year. The final rule also clarifies that records of when corrective actions were initiated and when the cause of the problem was corrected must be maintained.

V. Summary of Impacts

The impacts estimated to be attributable to the final rule are the same as those estimated to be attributable to the proposed rule. Nationwide emissions of metal HAPs from mineral wool production cupolas are estimated to be 1.0 Mg/yr (1.1 tpy) at the current level of control. Existing PM emissions are estimated to be 239 Mg/yr (263 tpy). Implementation of the final rule will reduce nationwide metal HAP and PM emissions from existing cupolas by 0.91 Mg/yr (1.0 tpy) and 186 Mg/yr (205 tpy), respectively. Formaldehyde and phenol emissions from existing curing ovens are estimated to be 54 Mg/yr (59 tpy) and 14 Mg/yr (16 tpy), respectively. Nationwide emissions of formaldehyde and phenol will be reduced by about 30 Mg/yr (34 tpy) and 14 Mg/yr (16 tpy), respectively, as a result of this final rule. Although the EPA does not anticipate any new cupolas or curing ovens within the next five years, installation of a new cupola with a 7.3 megagram per hour (8 ton per hour) capacity would result in estimated reductions of COS and CO emissions by 104 Mg/yr (114 tpy) and 1,256 Mg/yr (1,384 tpy), respectively, in addition to metal HAP and PM reductions.

Because this rule is based on the use of fabric filters and thermal incinerators, there are no water pollution impacts. Solid waste generated by fabric filters in the form of ash is disposed of by landfilling. With the addition of fabric filters to five cupolas, the amount of solid waste is expected to increase by about 350 Mg/yr (390 tpy) from the current level of 24,800 Mg/yr (27,300 tpy) nationwide. The rule is estimated to have no significant effect on energy consumption.

The total nationwide capital and annualized costs for existing cupolas under the final rule are estimated to be $1.5 million and $608,900/yr, respectively. These costs represent the addition of fabric filters to five cupolas but do not include the monitoring costs of bag leak detection systems required on all affected cupolas. Capital and annualized costs for a bag leak detection system are estimated at $9,100 and $1,800/yr for each affected cupola, respectively.

The total nationwide capital cost of complying with the requirements for existing curing ovens is estimated to be $795,800 with a nationwide annual cost of $641,600. These costs result from the addition of thermal incinerators to two curing ovens.

Total nationwide capital costs for the standard are estimated at $2.6 million and nationwide annual costs are estimated at $1.4 million, including installation, operation, and maintenance of emission control and monitoring systems.

Under the final rule, market-level price increases are estimated to range from 0.5 percent to 2.1 percent, resulting in quantity adjustments of -0.59 percent and -1.71 percent, respectively. The decreases in quantity demanded may lead to the loss of approximately nine jobs. There is no indication that the costs associated with achieving the reductions required by the final rule will cause facility closure.

VI. Summary of Responses to Major Comments

The EPA proposed the NESHAP for the mineral wool production source category on May 8, 1997 (62 FR 25370). A 60-day comment period from May 8, 1997 to July 7, 1997, was provided to accept written comments from the public on the proposed rule.

The EPA received a total of three comment letters regarding the proposed NESHAP for mineral wool production. A copy of each comment letter is available for public inspection in the docket for the rulemaking (Docket No. A–95–33; see the ADDRESSES section of this document for information on inspecting the docket). The EPA has had follow-up discussions with commenters regarding specific issues initially raised in their written comments that were submitted to the EPA during the comment period. Copies of correspondence and other information exchanged between the EPA and the commenters during the post-comment period are available for public inspection in the docket for the rulemaking.

All of the comments received by the EPA were reviewed and carefully considered by the EPA. Changes to the rule were made where the EPA determined it to be appropriate. A summary of responses to major comments received on the proposed rule is presented below. Additional discussion of the EPA's responses to public comments is presented in the document "Summary of Public Comments and Responses on Mineral Wool Production NESHAP" (docket item V–C–2).

A. General

Comment: One commenter stated that there have been some shutdowns in the industry that affect the information presented in the preamble to the proposed rule. Currently, there are 15 mineral wool production facilities located in eight states. Five of the 15 plants manufacture bonded products and contain a total of ten cupolas and five curing ovens. Ten active plants manufacture only nonbonded products, with a total of 21 cupolas. Thus, the total industry currently operates 31 cupolas and five curing ovens, rather than the 36 cupolas and six curing ovens reported by the EPA in the **Federal Register** document. The commenter further stated that six of the ten companies in the mineral wool production industry are small businesses, rather than seven of the ten companies being small businesses as stated in the EPA's **Federal Register** document.

Response: The EPA acknowledges the information regarding shutdowns and changes in the industry profile as noted by the commenter. The EPA believes, however, that temporary shutdown of production lines is not unusual in this industry because the manufacture of mineral wool products is order-driven, and that these lines could be restarted in the future. The EPA, therefore, has not made any changes to the estimated impacts resulting from the rule. When considering these changes in the industry profile, the technology representative of the best controlled cupolas and curing ovens remains fabric filters and thermal incinerators, respectively. Therefore, these changes do not affect the proposed MACT floors for cupolas and curing ovens. Regarding the number of small businesses within the source category, two separate sources of information obtained by the EPA indicate that the company in question has less than 750 employees. Thus, the EPA continues to believe that seven of the ten mineral wool manufacturing companies are small businesses. No revisions to the final rule are necessary as a result of these comments.

B. Definitions

Comment: One commenter suggested that the definition of "bonded product" be amended to read "Bonded product means mineral wool to which a hazardous air pollutant-based binder (e.g., phenol, formaldehyde) has been applied and cured."

Response: After consideration of this comment, the EPA has decided to leave the definition of "bonded product" as it is in the proposed rule to allow the broadest coverage of this term. Once binder has been applied to mineral wool, whether cured or not, hazardous air pollutants, which are the focus of the definition, have been introduced into the production process.

Comment: One commenter suggested that the definition of "mineral wool" be amended to read "Mineral wool means a fibrous glassy substance made from natural rock (such as basalt), recycled blast furnace slag, or a mixture of rock and slag; it may be used as a thermal or acoustical insulation material or in the manufacturing of other products to provide structural strength, sound absorbency, fire resistance, or other uses."

Response: After consideration of this comment, the EPA has decided to modify the definition of "mineral wool" by adding "or other required properties" rather than "or other uses" as suggested by the commenter. The EPA believes that this modification adequately expands the definition of "mineral wool" as the commenter requested, as well as provides more clarification than the commenter's suggested revision. The EPA does not believe it is necessary or technically correct to add "recycled" to the definition.

Comment: One commenter suggested that the definition of "cupola" be amended to read "Cupola means a melting system consisting of raw material bins, weighing and charging equipment, electrical power system, controls, a large water cooled metal vessel with water cooling system, combustion air fans, duct work, tuyeres and oxygen enrichment system with combustion air preheater, molten slag handling and spinning equipment, off gas duct work, fan and a structure to support and house the melting system. The cupola is charged with a mixture of fuel, rock and/or blast furnace slag and additives; as the fuel is burned, the charged mixture is heated to a molten state, flows from the metal vessel and is spun into mineral wool."

Response: After consideration of this comment, the EPA has decided to leave the definition of "cupola" as it is in the proposed rule to allow the broadest coverage of this term. The EPA does not agree that all of the items in the commenter's suggested definition are part of a cupola. It is the EPA's intention to define "cupola" in general terms in order to cover all possible configurations. Some configurations may not include all of the items included in the commenter's suggested definition.

C. Selection of Emission Standards

Comment: One commenter strongly supported the subcategorization in the proposed rule of plants with and without bonded lines. The commenter further stated that it is within the EPA's authority under the Act to define appropriate subcategories and that the differences between plants with and without bonded lines are substantial and consistent with the types of differences that the EPA has used to subcategorize other source categories.

Response: No changes in the final rule are necessary as a result of this comment.

Comment: One commenter supported the EPA's proposed MACT floor for new and existing sources.

Response: No changes in the final rule are necessary as a result of this comment.

Comment: One commenter strongly supported the EPA's proposed decision not to require an incinerator as above the MACT floor control for existing cupolas. Reasons cited by the commenter are that a cupola incinerator requirement would be unduly costly and economically devastating to an industry that produces an environmentally beneficial product using a waste product that would otherwise be landfilled, that a cupola incinerator requirement would not provide any significant health benefits, and that a cupola incinerator may even have negative net health impacts due to secondary emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2).

Response: No changes in the final rule are necessary as a result of this comment.

Comment: One commenter stated that the EPA should require control of CO and COS emissions from existing cupolas. The commenter further stated that thermal oxidizers provide excellent control of cupola CO/COS emissions and that the EPA incorrectly concluded that the costs and ancillary emissions from thermal oxidizers are too high for the EPA to require their use on existing cupolas. The commenter stated that in fact, thermal oxidizer costs have been declining in real terms, and NO_X emissions from thermal oxidizers currently are guaranteed at very low levels. Further, the commenter believes that the EPA's subcategorization of mineral wool production facilities based on the production of bonded products, and leading to MACT floors for cupola CO/COS emissions of no control, is inappropriate. Where subcategorization does not result in distinct emission limits or floors, the commenter believes that regulatory simplicity dictates that it should be avoided. The commenter also believes that the MACT floor for existing cupolas does call for thermal oxidizer-based limits given that the MACT floor level of control would be the use of thermal incineration or its equivalent in the absence of subcategorization.

Response: The EPA disagrees that subcategorization is either prohibited by the statute or unwise as a policy matter. While regulatory simplicity may be a consideration in how the EPA exercises its discretion, the statute does not dictate that this consideration supersede other legitimate considerations in establishing subcategories. As the EPA has noted in several rulemakings, the Act provides the EPA with substantial discretion to consider various factors when determining whether subcategorization is appropriate (see, e.g., 59 FR 29196–29200, June 6, 1994, **Federal Register** notice on determination of MACT floor for medium storage vessels at facilities subject to the hazardous organic NESHAP which indicates that the EPA may consider whether production processes used at different sources are sufficiently distinct to justify the creation of a subcategory).

In considering whether it is appropriate to subcategorize in this rule, the EPA continues to believe the basis for subcategorizing stated in the preamble to the proposed rule is valid (see 62 FR 25376–25377, May 8, 1997). Another commenter supported the EPA's view that it has substantial discretion to subcategorize and agreed with the EPA's decision to subcategorize in the proposed rule. Further, the EPA has taken several steps to accomplish the goal of regulatory simplicity in this rulemaking. For example, the EPA has emphasized readability in the plain language format of the final rule. In addition, the EPA has promulgated the cupola standards in one section, rather than in separate sections for each subcategory. Therefore, the EPA believes it has accomplished the goal of making the regulations as simple as possible while at the same time recognizing appropriate distinctions between the different types of facilities in the industry through subcategorization.

Regarding the commenter's statement about thermal oxidizer costs and ancillary emissions, the commenter did not provide any cost or NO_X emissions data to substantiate the assertion that a requirement to install thermal oxidizers on existing cupolas would be cost effective. The EPA continues to believe that the data in the record does not indicate that CO/COS controls are cost effective or otherwise appropriate for either subcategory. The EPA has not made any changes to the rule as a result of these comments.

Comment: One commenter supported the EPA's proposing thermal incineration as the MACT floor for both new and existing curing ovens and new cupolas. The commenter further stated that significantly higher control efficiencies can be achieved beyond the 80 percent discussed in the proposed rule with the use of catalytic incineration or oxidation and, in fact, volatile organic compound (VOC) reductions in excess of 98 percent can be achieved. According to the commenter, catalytic oxidation is a cost-effective control option which has been used for many years in diverse applications and the commenter believes that significant further VOC reductions can be cost-effectively achieved by using the technology to also control the emissions from existing cupolas. The commenter stated that catalytic incineration minimizes the temperature required for the destruction of VOCs and consequently, minimizes the production of NO_X and sulfur oxide (SO_X) emissions from the combustion of sulfur bearing fuels. Another commenter stated that thermal oxidizers or equivalent controls can easily provide the proposed 80 percent reduction in curing oven formaldehyde emissions and suggested that the EPA mention the capabilities of regenerative thermal oxidizers to reduce fuel costs in the preamble to the final rule.

Response: Neither commenter provided costs or data indicating destruction efficiency of catalytic oxidizers or regenerative thermal oxidizers on a mineral wool cupola or curing oven. In addition, catalytic oxidizers and regenerative thermal oxidizers are not demonstrated in the mineral wool production industry. The proposed 80 percent reduction in curing oven formaldehyde emissions is based upon test data from a recuperative thermal incinerator representative of MACT for curing ovens in the mineral wool production industry. The EPA has not made any changes to the rule as a result of these comments.

Comment: One commenter recommended that the proposed PM emission standard for existing cupolas be increased significantly from the proposed limit of 0.06 lb/ton of melt to 0.9 lb/ton to ensure that cupolas equipped with a fabric filter (also known as a baghouse) can comply with the standard. The commenter believes that emissions tests upon which the EPA based the proposed PM standard involved invalid tests that resulted in unrepresentative PM emission levels. According to the commenter, the baghouse had defects that resulted in the improper influx of air into the outlet stream, thereby diluting the observed PM emission level. The commenter stated that approximately 70–90 percent more air was emitted at the outlet than entered the intake and that this defect prevents the test results from being used to establish emission levels representative of a properly functioning baghouse. The commenter also noted that the baghouse differential pressures varied widely during the emissions tests, which could indicate a number of problems with the baghouse including air leaks or problems with bag cleaning.

Response: The commenter's request to increase the proposed PM emission standard to ensure that cupolas equipped with fabric filters can comply with the standard indicates a misunderstanding of the nature of section 112 of the Act, as well as the MACT determination process, which requires that emission standards for existing sources be set not less stringent than the level achieved by the average of the best performing five sources for categories or subcategories with fewer than 30 sources. This determination is made assuming that some sources will need to install new emission controls or improve performance of their existing controls to meet a standard that is not less stringent than the MACT floor.

Regarding the commenter's statement that baghouse defects resulted in improper influx of air into the outlet stream and dilution of the PM emission level, dilution air is of no significance given that the proposed PM emission standard is in pounds of PM per ton of melt. Emissions data from the baghouse-controlled cupola indicates a PM removal efficiency of about 99.8 percent, and therefore, casts doubt upon the commenter's assertion that the data are not representative of a properly functioning baghouse. In addition, EPA believes that if the commenter's statement about baghouse operational problems during the emissions testing upon which the proposed PM standard is based accurately assessed the situation, then the emission test results would be biased high and the emission standard would, therefore, be biased high. This certainly does not support raising the limit to an even higher level. When provided the opportunity to review the emissions test report, the facility did not have any comments regarding baghouse defects resulting in the improper influx of air into the outlet stream and diluted PM emission levels. Furthermore, when the EPA discussed the proposed PM emission standard of 0.06 lb/ton with industry representatives and State and local environmental agency representatives prior to proposal, no concerns were expressed. In addition, the commenter provided no basis for a PM emission standard of 0.9 lb/ton of melt. Based on the above discussion, the EPA has not made any changes to the proposed PM emission standard as a result of these comments.

During a follow-up meeting with the commenter (see Docket Item IV–E–1), held at the commenter's request to provide an opportunity to present to the EPA clarification of the comments and issues of concern regarding the proposed emission standards, the commenter provided the EPA with additional PM emissions data from fabric filter-controlled cupolas. These data are from the Emission Factor Documentation for AP–42 Section 8.16, Mineral Wool Manufacturing. These PM data are from three fabric filter-controlled cupolas at the same facility as the fabric filter-controlled cupola upon which the EPA based its proposed PM emission standard. Because the parameters for these three fabric filters are the same as those parameters previously determined to be representative of the MACT floor for existing and new sources and because these cupolas are at the same facility as the cupola tested by the EPA and would therefore experience similar operating and maintenance practices, the EPA has decided that the PM data from these three fabric filter-controlled cupolas should be considered in development of the final rule. When data from these three additional fabric filter-controlled cupolas are included in the data base, PM data representative of the MACT floor for cupolas now consists of the following: 0.04 lb/ton, 0.05 lb/ton, 0.065 lb/ton, and 0.099 lb/ton. Based on these data, the EPA has determined that a PM emission limit of 0.10 lb/ton represents a level that can be achieved by all four cupolas controlled with well designed, operated, and maintained fabric filters, and is representative of the MACT floor in the final rule.

Comment: One commenter stated that emissions data from the second facility in the EPA test program indicate that PM emissions from a cupola also

controlled with a baghouse averaged 0.6 lb/ton of melt, an order of magnitude higher than the proposed PM standard of 0.06 lb/ton. Thus, emissions from this facility would not meet the EPA's proposed PM emission standard, even though the facility is equipped with the control technology that represents the MACT floor. The commenter acknowledged that the PM emissions data from this facility includes emissions from both the cupola and fiber collection process but stated that the facility is nevertheless required to meet the emission limit set by the EPA. The commenter further stated that at least one other mineral wool company vents the fiber collection process as well as the cupola through a baghouse and it would be infeasible for this facility to meet the proposed PM standard. Further, it would be very expensive and counter-productive with respect to emission levels to force the facility to rearrange its baghouse operation to exclude the fiber collection process air. Because it is possible that the collection chamber may require additional PM controls in the future as a result, for example, of the EPA's recently proposed $PM_{2.5}$ ambient standard, an additional reason to set the cupola PM emission standard at a higher level is therefore to permit the facility to meet the proposed PM emission standard with its current configuration, and to provide other companies additional flexibility to reduce PM emissions in the future.

Response: The EPA cannot foresee or accommodate all configurations of processes ducted to a common control device. Section 63.7 of the general provisions in subpart A of 40 CFR part 63 allows the use of alternative test methods and procedures based on review and approval by the EPA of relevant supporting information. The supporting data and information are submitted as part of the site specific test plan and are evaluated for approval by the EPA on a case-by-case basis. Because all facilities have the opportunity to request alternative methods and procedures for testing and demonstrating compliance with the cupola emission standards, the EPA again believes the proposed PM emission standard should not be raised to consider emissions not regulated by the MACT standards, and has therefore, not made any changes to the rule as a result of these comments.

Comment: One commenter stated that other mineral wool manufacturing companies indicated that a 0.06 lb/ton PM standard would not be feasible with their existing installed baghouse controls. Earlier data collected by the EPA as part of a screening study not associated with the MACT standards development process found controlled particulate emissions from industry tests of six mineral wool cupolas equipped with baghouses ranged from 0.0044 to 0.70 lb/ton, while the average controlled emission level was 0.42 lb/ton. The commenter further stated that because most if not all mineral wool facilities will be unable to meet the proposed 0.06 lb/ton of melt PM standard on a consistent basis, the proposed standard is inconsistent with the intended objective of basing the standard on the existing baghouse technology installed by many facilities that represent the MACT floor.

Response: The EPA reviewed the 1980 document "Source Category Survey: Mineral Wool Manufacturing Industry" which contains the earlier data referred to by the commenter. Upon review, it was noted that only one facility with a cupola controlled by a baghouse as referenced in the 1980 report is still operational and it is not apparent from the study what the PM emissions associated with the cupola at this facility were. It is apparent, however, from an information collection request response submitted by this facility to the EPA in 1993, that new baghouses were installed in 1986 and 1987 for each of their two operating cupolas. Thus, the test data supplied by this facility for the 1980 study is not relevant. The commenter did not provide any data on baghouse design, maintenance, or operation characteristics to show that the facilities tabulated in the 1980 study were representative of MACT.

The commenter's statement that the proposed standard is inconsistent with the intended objective of basing the standard on the existing baghouse technology installed by many facilities that represent the MACT floor mischaracterizes the intent of the EPA and of section 112 of the Act. As previously stated, the statute requires the level of control to be not less stringent than the average level achieved by the best performing five sources, rather than be based on what all facilities can achieve with their current control and maintenance practices. The Act, through requiring all sources to meet a standard that is not less stringent than the MACT floor, assumes that existing controls may need to be replaced or upgraded at some sources. In many cases, bags within the fabric filter may need to be replaced and a more rigorous operation and maintenance plan may be necessary to meet the MACT. Accordingly, the EPA has decided that no changes in the final rule are necessary as a result of these comments.

Comment: One commenter recommended that the proposed formaldehyde emission standard for existing curing ovens be increased significantly from 0.06 pounds of formaldehyde per ton of melt (lb/ton) to 0.4 lb/ton because the commenter has concerns that the proposed standard may not be consistently achieved by an incinerator on the curing oven. The commenter stated that for example, the EPA's data from one tested facility (Facility B) showed that formaldehyde emissions from a curing oven equipped with an incinerator were 0.4 lb/ton, which is almost an order of magnitude above the proposed formaldehyde standard. The commenter acknowledged that the EPA's background documentation explains that only a portion of Facility B's curing oven exhaust passes through the high temperature incinerator but nevertheless, the input formaldehyde concentration into Facility B's curing oven incinerator was still over six times higher (1.3 lb/ton) than the low measured formaldehyde input at the facility upon which the proposed emission standard is based (0.2 lb/ton) (Facility A). The commenter stated that because the Facility A input level was abnormally low, the low output after incineration may also not be representative of other curing ovens. The commenter further stated that assuming Facility B's curing oven incinerator is the least efficient of the three curing oven incinerators existing in the industry, Facility B would be the median of the 5 curing ovens remaining in the industry. Thus, the commenter concluded that the MACT floor should be set at the emission limit corresponding to Facility B's curing oven incinerator.

Response: While the commenter characterizes the input formaldehyde concentration into Facility A's curing oven incinerator as strikingly low relative to the input formaldehyde concentration into Facility B's curing oven incinerator, the commenter did not submit data to indicate that the emissions measured for Facility A's curing oven incinerator are in error. The EPA recognized the potential variability in input formaldehyde, and for this reason proposed an alternative emission standard, also based on Facility A, requiring reduction of uncontrolled formaldehyde emissions by at least 80 percent. Regarding the commenter's concern that the proposed standards may not be consistently achieved by an incinerator, another commenter indicated that thermal oxidizers or equivalent controls can easily provide

the proposed 80 percent reduction in curing oven formaldehyde emissions. Furthermore, in the preamble to the proposed national emission standards for hazardous air pollutants for wool fiberglass manufacturing (62 FR 15228), the EPA stated that emission test measurements demonstrate that a thermal incinerator installed at these facilities is at least 99 percent effective in the removal of formaldehyde and phenol from curing ovens. Additionally, under the relevant emission standard for Facility B, 80 percent removal would translate into a limit of 0.26 lb/ton of melt, not 0.4 lb/ton of melt as proposed by the commenter.

Originally, Facility A's curing oven incinerator was selected as being representative of the MACT floor for existing sources and Facility B's curing oven incinerator was selected as being representative of MACT for new sources. These determinations were based on incinerator operating temperatures and gas residence times. After emissions testing was completed, the EPA decided to discount the data from Facility B because the curing oven incinerator was not operating properly as evidenced by a low formaldehyde removal efficiency of about 69 percent. Also, discussions with Facility B personnel revealed that gas flows within the curing oven were not within design parameters during the emissions test. Based on the above information, the EPA determined that Facility A's curing oven incinerator represented MACT for existing and new sources. Accordingly, other facilities with curing ovens, including Facility B, will be required to install new incinerators, or replace or modify their existing incinerators, as necessary, to meet the curing oven formaldehyde emission standards. After consideration of these comments, the EPA has decided to leave the formaldehyde emissions standards at 0.06 lb/ton of melt and 80 percent reduction of uncontrolled formaldehyde as in the proposed rule.

Comment: One commenter recommended that the EPA include an emission limit for COS of 0.05 pounds of COS per ton of melt (lb/ton) as an alternative to proposed emission standards for new cupolas of 0.10 pounds of CO per ton of melt (lb/ton) or 99 percent CO removal. The commenter stated that this alternative emission limit would give new sources in the future the flexibility to explore alternative methods to reduce COS through process modifications or other approaches. The commenter further stated that while they are not aware of any feasible process modifications that can significantly reduce COS at this time, it is possible that alternative designs or processes that reduce COS emissions may be developed in the future that could be feasible for a new plant. The commenter believes that because the relationship between CO and COS involves some fluctuation and uncertainty, a direct COS alternative would be helpful to encourage exploration of such alternative means of compliance in any future new mineral wool plants.

Response: During development of the cupola emission standards, the EPA considered including an emission standard for COS for plants that choose to use process modifications, rather than thermal incineration, as a means of reducing COS emissions from new cupolas. When the EPA discussed this option with industry representatives, they considered this approach and strongly indicated, as the commenter does, that there are no feasible process modifications capable of reducing COS emissions to the level contemplated for a standard. In addition, the commenter provided no basis for a COS emission standard of 0.05 lb/ton of melt. Accordingly, the EPA has not made any changes to the rule as a result of this comment.

D. Monitoring

Comment: One commenter expressed concern that the monitoring equipment for baghouses required to meet the proposed PM standard is overly sensitive, would be unduly costly, and would trigger false alarms. The commenter recommended revising the bag leak detection system specifications from 1 milligram per cubic meter (mg/m^3) to 10 mg/m^3 in order to be consistent with other MACT standards, such as the secondary lead standard where the minimum detection capability of the bag leak detection system was revised from 1 to 10 mg/m^3.

Response: After consideration of this comment, the EPA has decided to modify the required minimum detection capability for bag leak detection systems to 10 mg/m^3 (0.0044 gr/ft^3). This change does not alter the intended function of the bag leak detector, which is to detect broken bags or other defects in baghouses, and is consistent with the specification for sensitivity in other EPA standards.

Comment: One commenter suggested that the EPA allow the use of opacity monitors for bag leak detection because these monitors comply with Performance Specification 1 of Appendix B of 40 CFR part 60, and have been used for many years on electric arc furnace baghouses where the opacity limit is set at 3 percent.

Response: The commenter did not submit data to prove that opacity monitors are as sensitive as bag leak detection systems or can meet their minimum detection capability specification. The facts that opacity monitors comply with Performance Specification 1 of Appendix B of 40 CFR part 60 and that opacity monitors have been used on electric arc furnace baghouses are no indication that opacity monitors are suitable for use on cupola baghouses. The EPA continues to believe that a bag leak detection system will provide the best indication of cupola baghouse performance at the low PM levels characteristic of these sources. The EPA has not made any changes to the rule as a result of this comment.

E. Recordkeeping and Reporting

Comment: One commenter stated that although they agree with the need for startup, shutdown, and malfunction plans, the proposed rule does not clearly provide that emissions may temporarily exceed the emission limits during startup, shutdown, or malfunctions. The commenter recommended that the proposed rule should therefore specify that emission limits may be temporarily exceeded during startup, shutdown, or malfunctions without violating the standard provided the company is taking appropriate actions consistent with its startup, shutdown, and malfunction plan. The commenter further recommended that the EPA should provide some flexibility in the rule for unexpected developments and upsets that are difficult to predict and control in the mineral wool industry. The commenter stated that there is no practical or legal reason why a single perceived deviation from a defined operating range should be deemed to be out of compliance, but rather, some margin of error should be permitted in the form of one or two allowable excursions per month.

Response: Section 63.6(f) of the general provisions in subpart A of 40 CFR part 63 provides that nonopacity emission standards shall apply at all times except during periods of startup, shutdown, and malfunction. The situation the commenter describes regarding unexpected developments and upsets are covered under the definition of a malfunction in the general provisions provided the failures are not caused in part by poor maintenance or careless operation. The EPA, therefore, does not believe that an additional provision in the form of one or two allowable excursions per month is warranted. The EPA has specified in the

final rule, however, that the owner or operator must comply with the standards at all times except during periods of startup, shutdown, or malfunction.

VII. Administrative Requirements

A. Docket

The docket is intended to be an organized file of the administrative records compiled by the EPA. The docket is a dynamic file because information is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket will contain the record in case of judicial review. (See section 307(d)(7)(A) of the Act.) The location of the docket, which includes all public comments received on the proposed rule, is in the **ADDRESSES** section at the beginning of this preamble.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a "significant regulatory action" under the terms of the Executive Order and is therefore not subject to OMB review.

C. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on State, local or tribal governments, because they do not own or operate any sources that would be subject to this rule. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. No affected facilities are owned or operated by Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100

million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA projects that annual economic impacts would be far less than $100 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it does not impose any enforceable duties on small governments; such governments own or operate no sources subject to the rule and therefore would not be required to purchase control systems to meet the requirements of the rule.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA has determined that seven of the ten firms that potentially would be subject to the final rule are small firms. The EPA has met with all of these small firms and their trade association. They have been fully involved in this rulemaking and their concerns and comments have been considered in the development of this rule. Also, a representative of the EPA's Office of the Small Business Ombudsman participated in the development of these standards as a work group member to ensure that the requirements of the standards were examined for potential adverse economic impacts and those impacts were mitigated to the extent feasible while still achieving the rule's environmental objectives.

Five of the seven small firms would incur emission control costs that are less than 0.1 percent of sales; one firm would incur control costs estimated to be 2.4 percent of the firm's sales; and another firm would incur control costs believed to be in excess of 3 percent. (See Docket Item II–A–16 for a discussion of this analysis.) Thus, this rule affects only a small number of small businesses. Further, most of the small businesses impacted by this rule will experience minimal increases in costs. Only two small businesses are projected to incur costs exceeding 0.1 percent of sales.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 1, 1999.

H. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of PRA, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0362.

The information collection requirements include the notification, recordkeeping, and reporting requirements of the NESHAP general provisions, authorized under section 114 of the Act, which are mandatory for all owners and operators subject to national emission standards. All information submitted to the EPA for which a claim of confidentiality is made is safeguarded according to EPA policies in 40 CFR part 2, subpart B. This rule does not require any notifications or reports beyond those required by the general provisions. Subpart DDD does require additional records of specific information needed to determine compliance with the rule. These include records of: (1) Cupola production (melt) rate; (2) all bag leak detection system alarms, the date and time of the alarm, when corrective actions were initiated, the cause of the alarm, an explanation of the corrective actions taken, and when the cause of the alarm was corrected; (3) the free-formaldehyde content of each resin lot and the binder formulation, including formaldehyde content, of each binder batch used in the manufacture of bonded products; and (4) incinerator operating temperature, including all periods when the average temperature in any three-hour block period fell below the average temperature established during the performance test, and the results of the annual inspection, including any problems discovered during the inspection, the date and time of the problem, when corrective actions were initiated, the cause of the problem, an explanation of the corrective actions taken, and when the cause of the problem was corrected. Each of these information requirements is needed to determine compliance with the standards.

The annual public reporting and recordkeeping burden to industry for this collection is estimated to be 6,107 labor hours per year at an annual cost of $196,206. This estimate includes a one-time performance test and report (with repeat tests where needed); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event in which the procedures were not followed; preparation of an operations, maintenance, and monitoring plan; semiannual excess emissions reports; notifications; and recordkeeping. The total capital cost associated with the monitoring requirements is estimated to be $309,400. This estimate includes the capital and startup costs associated with installation of a bag leak detection system for each affected cupola. The annualized cost of that capital is $44,059 per year, and the operation and maintenance of the monitoring equipment is estimated to be $17,000 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. In compliance with the Paperwork Reduction Act (PRA), the EPA is amending the table in 40 CFR part 9 of currently approved information collection request (ICR) control numbers issued by the OMB for various regulations.

This amendment updates the table to accurately display those information requirements contained in this final rule. The EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the EPA's regulations, and in each Code of Federal Regulations volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control number and its subsequent codification in the CFR satisfy the requirements of the PRA (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, the EPA finds there is "good cause" under section 553(b)(3)(B) of the Administrative Procedures Act (5 U.S.C. 553(b)(3)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, the EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

I. Pollution Prevention Act

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. During the development of these standards, the EPA explored opportunities to eliminate or reduce emissions through the application of new processes or work practices. By reducing or eliminating the formaldehyde and phenol in binder formulations, HAPs from the curing process would be reduced or eliminated without the use of air pollution control equipment. Alternative binders have been investigated by various mineral wool producers. Acceptable alternatives have been difficult to identify due to the higher costs of the potential alternative binders; the problems associated with requalification of altered products to meet required product specifications; the production process changes necessitated by the use of modified binders; and the concerns regarding potential toxicity of new binder ingredients. Thus, at this time an acceptable alternative binder has not been commercially demonstrated.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), directs the EPA to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation for not using such standards. This section summarizes the EPA's response to the requirements of the NTTAA for the analytical test methods promulgated as part of this final rule.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for the EPA's emissions sampling and analysis reference methods and industry recommended materials analysis procedures cited in this rule. Candidate voluntary consensus standards for materials analysis were identified for free-formaldehyde content. Consensus comments provided by industry experts were that the candidate standards did not meet industry materials analysis requirements. Therefore, EPA has determined these voluntary consensus standard are impractical for the mineral wool production NESHAP. The EPA, in consultation with the North American Insulation Manufacturers Association (NAIMA), has formulated an industry-specific materials analysis, consensus standard for free-formaldehyde content which is promulgated in this rule.

The EPA search to identify voluntary consensus standards for the EPA's emissions sampling and analysis reference methods cited in this rule identified 17 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 12 of the candidate consensus standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Five of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date. This rule requires standard EPA emission test methods known to the industry and States. Approved alternative methods also may be used with prior EPA approval.

K. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns the environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it is based on technology performance and not on health or safety risks.

List of Subjects

40 CFR Part 9

Environmental protection, Recordkeeping and reporting requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Mineral wool production, Recordkeeping and reporting requirements.

Dated: May 13, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*,

6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry in numerical order to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories[3]	
* * * * *	
63.1178—63.1194	2060–0362
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

4. Part 63 is amended by adding subpart DDD to read as follows:

Subpart DDD—National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

Sec.

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63.1197–63.1199 [Reserved]
Table 1 to Subpart DDD of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart DDD of Part 63.
Appendix A to Subpart DDD of Part 63—Free Formaldehyde Analysis of Insulation Resins by the Hydroxylamine Hydrochloride Method.

Subpart DDD—National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

§ 63.1175 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants emitted from existing, new, and reconstructed cupolas and curing ovens at facilities that produce mineral wool.

§ 63.1176 Where can I find definitions of key words used in this subpart?

The definitions of key words used in this subpart are in the Clean Air Act (Act), in § 63.2 of the general provisions in subpart A of this part, and in § 63.1196 of this subpart.

§ 63.1177 Am I subject to this subpart?

You are subject to this subpart if you own or operate an existing, new, or reconstructed mineral wool production facility that is located at a plant site that is a major source of hazardous air pollutant (HAP) emissions, meaning the plant emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAPs at a rate of 22.68 megagrams (25 tons) or more per year.

Standards

§ 63.1178 For cupolas, what standards must I meet?

(a) You must control emissions from each cupola as follows:

(1) Limit emissions of particulate matter (PM) from each existing, new, or reconstructed cupola to 0.05 kilograms (kg) of PM per megagram (MG) (0.10 pound [lb] of PM per ton) of melt or less.

(2) Limit emissions of carbon monoxide (CO) from each new or reconstructed cupola to either of the following:

(i) 0.05 kg of CO per MG (0.10 lb of CO per ton) of melt or less.

(ii) A reduction of uncontrolled CO emissions by at least 99 percent.

(b) You must meet the following operating limits for each cupola:

(1) Begin within one hour after the alarm on a bag leak detection system sounds, and complete in a timely manner, corrective actions as specified in your operations, maintenance, and monitoring plan required by § 63.1187 of this subpart.

(2) When the alarm on a bag leak detection system sounds for more than five percent of the total operating time in a six-month reporting period, develop and implement a written quality improvement plan (QIP) consistent with the compliance assurance monitoring requirements of § 64.8(b)–(d) of 40 CFR part 64.

(3) Additionally, for each new or reconstructed cupola, maintain the operating temperature of the incinerator so that the average operating temperature for each three-hour block period never falls below the average temperature established during the performance test.

§ 63.1179 For curing ovens, what standards must I meet?

(a) You must control emissions from each existing, new, or reconstructed curing oven by limiting emissions of formaldehyde to either of the following:

(1) 0.03 kg of formaldehyde per MG (0.06 lb of formaldehyde per ton) of melt or less.

(2) A reduction of uncontrolled formaldehyde emissions by at least 80 percent.

(b) You must meet the following operating limits for each curing oven:

(1) Maintain the free-formaldehyde content of each resin lot and the formaldehyde content of each binder formulation at or below the specification ranges of the resin and binder used during the performance test.

(2) Maintain the operating temperature of each incinerator so that

the average operating temperature for each three-hour block period never falls below the average temperature established during the performance test.

§ 63.1180 When must I meet these standards?

(a) *Existing cupolas and curing ovens.* You must install any control devices and monitoring equipment necessary to meet the standards in this subpart, complete performance testing, and demonstrate compliance with all requirements of this subpart no later than the following:

(1) June 2, 2002; or

(2) June 3, 2003 if you apply for and receive a one-year extension under section 112(i)(3)(B) of the Act.

(b) *New and reconstructed cupolas and curing ovens.* You must install any control devices or monitoring equipment necessary to meet the standards in this subpart, complete performance testing, and demonstrate compliance with all requirements of this subpart by the dates in § 63.7 of the general provisions in subpart A of this part.

(c) You must comply with the standards in §§ 63.1178 and 63.1179 of this subpart on and after the dates in paragraphs (a) and (b) of this section.

(d) You must comply with these standards at all times except during periods of startup, shutdown, or malfunction.

Compliance With Standards

§ 63.1181 How do I comply with the particulate matter standards for existing, new, and reconstructed cupolas?

To comply with the PM standards, you must meet all of the following:

(a) Install, adjust, maintain, and continuously operate a bag leak detection system for each fabric filter.

(b) Do a performance test as specified in § 63.1188 of this subpart and show compliance with the PM emission limits while the bag leak detection system is installed, operational, and properly adjusted.

(c) Begin corrective actions specified in your operations, maintenance, and monitoring plan required by § 63.1187 of this subpart within one hour after the alarm on a bag leak detection system sounds. Complete the corrective actions in a timely manner.

(d) Develop and implement a written QIP consistent with compliance assurance monitoring requirements of 40 CFR 64.8(b) through (d) when the alarm on a bag leak detection system sounds for more than five percent of the total operating time in a six-month reporting period.

§ 63.1182 How do I comply with the carbon monoxide standards for new and reconstructed cupolas?

To comply with the CO standards, you must meet all of the following:

(a) Install, calibrate, maintain, and operate a device that continuously measures the operating temperature in the firebox of each thermal incinerator.

(b) Do a performance test as specified in § 63.1188 of this subpart and show compliance with the CO emission limits while the device for measuring incinerator operating temperature is installed, operational, and properly calibrated. Establish the average operating temperature as specified in § 63.1185(a) of this subpart.

(c) Following the performance test, measure and record the average operating temperature of the incinerator as specified in § 63.1185(b) of this subpart.

(d) Maintain the operating temperature of the incinerator so that the average operating temperature for each three-hour block period never falls below the average temperature established during the performance test.

(e) Operate and maintain the incinerator as specified in your operations, maintenance, and monitoring plan required by § 63.1187 of this subpart.

§ 63.1183 How do I comply with the formaldehyde standards for existing, new, and reconstructed curing ovens?

To comply with the formaldehyde standards, you must meet all of the following:

(a) Install, calibrate, maintain, and operate a device that continuously measures the operating temperature in the firebox of each thermal incinerator.

(b) Do a performance test as specified in § 63.1188 of this subpart while manufacturing the product that requires a binder formulation made with the resin containing the highest free-formaldehyde content specification range. Show compliance with the formaldehyde emission limits while the device for measuring incinerator operating temperature is installed, operational, and properly calibrated. Establish the average operating temperature as specified in § 63.1185(a) of this subpart.

(c) During the performance test that uses the binder formulation made with the resin containing the highest free-formaldehyde content specification range, record the free-formaldehyde content specification range of the resin used, and the formulation of the binder used, including the formaldehyde content and binder specification.

(d) Following the performance test, monitor and record the free-formaldehyde content of each resin lot and the formulation of each batch of binder used, including the formaldehyde content.

(e) Maintain the free-formaldehyde content of each resin lot and the formaldehyde content of each binder formulation at or below the specification ranges established during the performance test.

(f) Following the performance test, measure and record the average operating temperature of the incinerator as specified in § 63.1185(b) of this subpart.

(g) Maintain the operating temperature of the incinerator so that the average operating temperature for each three-hour block period never falls below the average temperature established during the performance test.

(h) Operate and maintain the incinerator as specified in your operations, maintenance, and monitoring plan required by § 63.1187 of this subpart.

(i) With prior approval from the Administrator, you may do short-term experimental production runs using resin where the free-formaldehyde content, or binder formulations where the formaldehyde content, is higher than the specification ranges of the resin and binder used during previous performance tests, or using experimental pollution prevention process modifications without first doing additional performance tests. Notification of intent to perform a short-term experimental production run must include the following information:

(1) The purpose of the experimental run.

(2) The affected production process.

(3) How the resin free-formaldehyde content or binder formulation will deviate from previously approved levels or what the experimental pollution prevention process modifications are.

(4) The duration of the experimental run.

(5) The date and time of the experimental run.

(6) A description of any emissions testing to be done during the experimental run.

Additional Monitoring Information

§ 63.1184 What do I need to know about the design specifications, installation, and operation of a bag leak detection system?

A bag leak detection system must meet the following requirements:

(a) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

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(b) The sensor on the bag leak detection system must provide output of relative PM emissions.

(c) The bag leak detection system must have an alarm that will sound automatically when it detects an increase in relative PM emissions greater than a preset level.

(d) The alarm must be located in an area where appropriate plant personnel will be able to hear it.

(e) For a positive-pressure fabric filter, each compartment or cell must have a bag leak detector. For a negative-pressure or induced-air fabric filter, the bag leak detector must be installed downstream of the fabric filter. If multiple bag leak detectors are required (for either type of fabric filter), detectors may share the system instrumentation and alarm.

(f) Each triboelectric bag leak detection system must be installed, operated, adjusted, and maintained so that it follows EPA's "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997). Other bag leak detection systems must be installed, operated, adjusted, and maintained so that they follow the manufacturer's written specifications and recommendations.

(g) At a minimum, initial adjustment of the system must consist of establishing the baseline output in both of the following ways:

(1) Adjust the range and the averaging period of the device.

(2) Establish the alarm set points and the alarm delay time.

(h) After initial adjustment, the range, averaging period, alarm set points, or alarm delay time may not be adjusted except as specified in the operations, maintenance, and monitoring plan required by § 63.1187 of this subpart. In no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a 365 day period unless a responsible official as defined in § 63.2 of the general provisions in subpart A of this part certifies in writing to the Administrator that the fabric filter has been inspected and found to be in good operating condition.

§ 63.1185 How do I establish the average operating temperature of an incinerator?

(a) During the performance test, you must establish the average operating temperature of an incinerator as follows:

(1) Continuously measure the operating temperature of the incinerator.

(2) Determine and record the average temperatures in consecutive 15-minute blocks.

(3) Determine and record the arithmetic average of the recorded average temperatures measured in consecutive 15-minute blocks for each of the one-hour performance test runs.

(4) Determine and record the arithmetic average of the three one-hour average temperatures during the performance test runs. The average of the three one-hour performance test runs establishes the temperature level to use to monitor compliance.

(b) To comply with the requirements for maintaining the operating temperature of an incinerator after the performance test, you must measure and record the average operating temperature of the incinerator as required by §§ 63.1182 and 63.1183 of this subpart. This average operating temperature of the incinerator is based on the arithmetic average of the one-hour average temperatures for each consecutive three-hour period and is determined in the same manner described in paragraphs (a)(1) through (a)(4) of this section.

§ 63.1186 How may I change the compliance levels of monitored parameters?

You may change control device and process operating parameter levels established during performance tests and used to monitor compliance if you do the following:

(a) You must notify the Administrator of your desire to expand the range of a control device or process operating parameter level.

(b) Upon approval from the Administrator, you must conduct additional performance tests at the proposed new control device or process operating parameter levels. Before operating at these levels, the performance test results must verify that, at the new levels, you comply with the emission limits in §§ 63.1178 and 63.1179 of this subpart.

§ 63.1187 What do I need to know about operations, maintenance, and monitoring plans?

(a) An operations, maintenance, and monitoring plan must be submitted to the Administrator for review and approval as part of your application for the title V permit.

(b) The operations, maintenance, and monitoring plan must include the following:

(1) Process and control device parameters you will monitor to determine compliance, along with established operating levels or ranges for each process or control device.

(2) A monitoring schedule.

(3) Procedures for properly operating and maintaining control devices used to meet the standards in §§ 63.1178 and 63.1179 of this subpart. These procedures must include an inspection of each incinerator at least once per year. At a minimum, you must do the following as part of an incinerator inspection:

(i) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation. Clean pilot sensor if necessary.

(ii) Ensure proper adjustment of combustion air, and adjust if necessary.

(iii) Inspect, when possible, all internal structures (such as baffles) to ensure structural integrity per the design specifications.

(iv) Inspect dampers, fans, and blowers for proper operation.

(v) Inspect motors for proper operation.

(vi) Inspect, when possible, combustion chamber refractory lining. Clean, and repair or replace lining if necessary.

(vii) Inspect incinerator shell for proper sealing, corrosion, and/or hot spots.

(viii) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments.

(ix) Generally observe whether the equipment is maintained in good operating condition.

(x) Complete all necessary repairs as soon as practicable.

(4) Procedures for keeping records to document compliance.

(5) Corrective actions you will take if process or control device parameters vary from the levels established during performance testing. For bag leak detection system alarms, example corrective actions that may be included in the operations, maintenance, and monitoring plan include:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective fabric filter compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

Performance Tests and Methods

§ 63.1188 What performance test requirements must I meet?

You must meet the following performance test requirements:

(a) All monitoring systems and equipment must be installed, operational, and properly calibrated before the performance tests.

(b) Do a performance test, consisting of three test runs, for each cupola and curing oven subject to this subpart at the maximum production rate to demonstrate compliance with each of the applicable emission limits in §§ 63.1178 and 63.1179 of this subpart.

(c) Measure emissions of PM from each existing cupola.

(d) Measure emissions of PM and CO from each new or reconstructed cupola.

(e) Measure emissions of formaldehyde from each existing, new or reconstructed curing oven.

(f) Measure emissions at the outlet of the control device if complying with a numerical emission limit for PM, CO, or formaldehyde, or at the inlet and outlet of the control device if complying with a percent reduction emission limit for CO or formaldehyde.

(g) To determine the average melt rate, measure and record the amount of raw materials, excluding coke, charged into and melted in each cupola during each performance test run. Determine and record the average hourly melt rate for each performance test run. Determine and record the arithmetic average of the average hourly melt rates associated with the three performance test runs. The average hourly melt rate of the three performance test runs is used to determine compliance with the applicable emission limits.

(h) Compute and record the average emissions of the three performance test runs and use the equations in § 63.1190 of this subpart to determine compliance with the applicable emission limits.

(i) Comply with control device and process operating parameter monitoring requirements for performance testing as specified in this subpart.

§ 63.1189 What test methods do I use?

You must use the following test methods to determine compliance with the applicable emission limits:

(a) Method 1 in appendix A to part 60 of this chapter for the selection of the sampling port locations and number of sampling ports.

(b) Method 2 in appendix A to part 60 of this chapter for stack gas velocity and volumetric flow rate.

(c) Method 3 or 3A in appendix A to part 60 of this chapter for oxygen and carbon dioxide for diluent measurements needed to correct the concentration measurements to a standard basis.

(d) Method 4 in appendix A to part 60 of this chapter for moisture content of the stack gas.

(e) Method 5 in appendix A to part 60 of this chapter for the concentration of PM. Each PM test run must consist of a minimum run time of three hours and a minimum sample volume of 3.75 dscm (135 dscf).

(f) Method 10 in appendix A to part 60 of this chapter for the concentration of CO, using the continuous sampling option described in section 7.1.1 of the method. Each CO test run must consist of a minimum run time of one hour.

(g) Method 318 in appendix A to this part for the concentration of formaldehyde or CO.

(h) Method to determine the free-formaldehyde content of each resin lot in appendix A of this subpart.

§ 63.1190 How do I determine compliance?

(a) Using the results of the performance tests, you must use the following equation to determine compliance with the PM emission limit:

$$E = \frac{C \times Q \times K_1}{P}$$

where:

E = Emission rate of PM, kg/Mg (lb/ton) of melt.

C = Concentration of PM, g/dscm (gr/dscf).

Q = Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr).

$K 5_1$ = Conversion factor, 1 kg/1,000 g (1 lb/7,000 gr).

P = Average melt rate, Mg/hr (ton/hr).

(b) Using the results of the performance tests, you must use the following equation to determine compliance with the CO and formaldehyde numerical emission limits:

$$E = \frac{C \times MW \times Q \times K_1 \times K_2}{K_3 \times P \times 10^6}$$

where:

E = Emission rate of measured pollutant, kg/Mg (lb/ton) of melt.

C = Measured volume fraction of pollutant, ppm.

MW = Molecular weight of measured pollutant, g/g-mole:

CO = 28.01, Formaldehyde = 30.03.

Q = Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr).

K_1 = Conversion factor, 1 kg/1,000 g (1 lb/453.6 g).

K_2 = Conversion factor, 1,000 L/m^3 (28.3 L/ft^3).

K_3 = Conversion factor, 24.45 L/g-mole.

P = Average melt rate, Mg/hr (ton/hr).

(c) Using the results of the performance tests, you must use the following equation to determine compliance with the CO and formaldehyde percent reduction performance standards:

$$\%R = \frac{L_i - L_o}{L_i} \times 100$$

where:

%R = Percent reduction, or collection efficiency of the control device.

L_i = Inlet loading of pollutant, kg/Mg (lb/ton).

L_o = Outlet loading of pollutant, kg/Mg (lb/ton).

Notification, Recordkeeping, and Reporting

§ 63.1191 What notifications must I submit?

You must submit written notifications to the Administrator as required by § 63.9(b)–(h) of the general provisions in subpart A of this part. These notifications include, but are not limited to, the following:

(a) Notification that the following types of sources are subject to the standard:

(1) An area source that increases its emissions so that it becomes a major source.

(2) A source that has an initial startup before the effective date of the standard.

(3) A new or reconstructed source that has an initial startup after the effective date of the standard and doesn't require an application for approval of construction or reconstruction under § 63.5(d) of the general provisions in subpart A of this part.

(b) Notification of intention to construct a new major source or reconstruct a major source where the initial startup of the new or reconstructed source occurs after the effective date of the standard and an application for approval of construction or reconstruction under § 63.5(d) of the general provisions in subpart A of this part is required.

(c) Notification of special compliance obligations for a new source that is subject to special compliance requirements in § 63.6(b)(3) and (4) of the general provisions in subpart A of this part.

(d) Notification of a performance test at least 60 calendar days before the performance test is scheduled to begin.

(e) Notification of compliance status.

§ 63.1192 What recordkeeping requirements must I meet?

You must meet the following recordkeeping requirements:

(a) Maintain files of all information required by § 63.10(b) of the general provisions in subpart A of this part, including all notifications and reports.

(b) Maintain records of the following information also:

(1) Cupola production (melt) rate (Mg/hr (tons/hr) of melt).

(2) All bag leak detection system alarms. Include the date and time of the alarm, when corrective actions were initiated, the cause of the alarm, an explanation of the corrective actions taken, and when the cause of the alarm was corrected.

(3) The free-formaldehyde content of each resin lot and the binder formulation, including formaldehyde content, of each binder batch used in the manufacture of bonded products.

(4) Incinerator operating temperature and results of incinerator inspections. For all periods when the average temperature in any three-hour block period fell below the average temperature established during the performance test, and all periods when the inspection identified incinerator components in need of repair or maintenance, include the date and time of the problem, when corrective actions were initiated, the cause of the problem, an explanation of the corrective actions taken, and when the cause of the problem was corrected.

(c) Retain each record for at least five years following the date of each occurrence, measurement, corrective action, maintenance, record, or report. The most recent two years of records must be retained at the facility. The remaining three years of records may be retained off site.

(d) Retain records on microfilm, on a computer, on computer disks, on magnetic tape disks, or on microfiche.

(e) Report the required information on paper or on a labeled computer disk using commonly available and compatible computer software.

§ 63.1193 What reports must I submit?

You must prepare and submit reports to the Administrator as required by this subpart and § 63.10 of the general provisions in subpart A of this part. These reports include, but are not limited to, the following:

(a) A performance test report, as required by § 63.10(d)(2) of the general provisions in subpart A of this part, that documents the process and control equipment operating parameters during the test period, the test methods and procedures, the analytical procedures, all calculations, and the results of the performance tests.

(b) A startup, shutdown, and malfunction plan, as described in § 63.6(e)(3) of the general provisions in subpart A of this part, that contains specific procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and control systems used to comply with the emission standards. In addition to the information required by § 63.6(e)(3), your plan must include the following:

(1) Procedures to determine and record what caused the malfunction and when it began and ended.

(2) Corrective actions you will take if a process or control device malfunctions, including procedures for recording the actions taken to correct the malfunction or minimize emissions.

(3) An inspection and maintenance schedule for each process and control device that is consistent with the manufacturer's instructions and recommendations for routine and long-term maintenance.

(c) A report of each event as required by § 63.10(b) of the general provisions in subpart A of this part, including a report if an action taken during a startup, shutdown, or malfunction is inconsistent with the procedures in the plan as described in § 63.6(e)(3) of the general provisions in subpart A of this part.

(d) An operations, maintenance, and monitoring plan as specified in § 63.1187 of this subpart.

(e) A semiannual report as required by § 63.10(e)(3) of the general provisions in subpart A of this part if measured emissions exceed the applicable standard or a monitored parameter varies from the level established during performance testing. The report must contain the information specified in § 63.10(c) of the general provisions, as well as the relevant records required by § 63.1192(b) of this subpart.

(f) A semiannual report stating that no excess emissions or deviations of monitored parameters occurred during the reporting period as required by § 63.10(e)(3)(v) of the general provisions in subpart A of this part if no deviations have occurred.

Other Requirements and Information

§ 63.1194 Which general provisions apply?

The general provisions in subpart A of this part define requirements applicable to all owners and operators affected by NESHAP in part 63. See Table 1 of this subpart for general provisions that apply (or don't apply) to you as an owner or operator subject to the requirements of this subpart.

§ 63.1195 Who enforces this subpart?

If the Administrator has delegated authority to your State, then the State, along with the EPA, enforces this regulation. If the Administrator has not delegated authority to your State, then the EPA enforces this regulation.

§ 63.1196 What definitions should I be aware of?

Terms used in this subpart are defined in the Act, in § 63.2 of the general provisions in subpart A of this part, and in this section as follows:

Bag leak detection system means a monitoring device for a fabric filter that identifies an increase in particulate matter emissions resulting from a broken filter bag or other malfunction and sounds an alarm.

Bonded product means mineral wool to which a hazardous air pollutant-based binder (containing such hazardous air pollutants as phenol or formaldehyde) has been applied.

CO means, for the purposes of this subpart, emissions of carbon monoxide that serve as a surrogate for emissions of carbonyl sulfide, a compound included on the list of hazardous air pollutants in section 112 of the Act.

Cupola means a large, water-cooled metal vessel to which is charged a mixture of fuel, rock and/or slag, and additives. As the fuel is burned, the charged mixture is heated to a molten state for later processing to form mineral wool.

Curing oven means a chamber in which heat is used to thermoset a binder on the mineral wool fiber used to make bonded products.

Fabric filter means an air pollution control device used to capture particulate matter by filtering gas streams through fabric bags. It also is known as a baghouse.

Formaldehyde means, for the purposes of this subpart, emissions of formaldehyde that, in addition to being a HAP itself, serve as a surrogate for organic compounds included on the list of hazardous air pollutants in section 112 of the Act, including but not limited to phenol.

Hazardous air pollutant means any air pollutant listed in or pursuant to section 112(b) of the Act.

I means the owner or operator of a mineral wool production facility.

Incinerator means an enclosed air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases.

Melt means raw materials, excluding coke, that are charged into the cupola, heated to a molten state, and discharged to the fiber forming and collection process.

Melt rate means the mass of molten material discharged from a single cupola over a specified time period.

Mineral wool means a fibrous glassy substance made from natural rock (such as basalt), blast furnace slag or other slag, or a mixture of rock and slag. It

may be used as a thermal or acoustical insulation material or in the making of other products to provide structural strength, sound absorbency, fire resistance, or other required properties.

New source means any affected source the construction or reconstruction of which is commenced after May 8, 1997.

PM means, for the purposes of this subpart, emissions of particulate matter that serve as a surrogate for metals (in particulate or volatile form) on the list of hazardous air pollutants in section 112 of the Act, including but not limited to: antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium.

You means the owner or operator of a mineral wool production facility.

TABLE 1 TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD OF PART 63

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
63.1(a)(1)–(a)(4)	General Applicability	Yes.	
63.1(a)(5)		No	[Reserved].
63.1(a)(6)–(a)(8)		Yes.	
63.1(a)(9)		No	[Reserved].
63.1(a)(10)–(a)(14)		Yes.	
63.1(b)	Initial Applicability Determination	Yes.	
63.1(c)(1)	Applicability After Standard Established	Yes.	
63.1(c)(2)		Yes	Some plants may be area sources.
63.1(c)(3)		No	[Reserved].
63.1(c)(4)–(c)(5)		Yes.	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions	Yes	Additional definitions in § 63.1196.
63.3	Units and Abbreviations	Yes.	
63.4(a)(1)–(a)(3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)		Yes.	
63.4(b)–(c)	Circumvention/Severability	Yes.	
63.5(a)	Construction/Reconstruction Applicability	Yes.	
63.5(b)(1)	Existing, New, Reconstructed Sources Requirements.	Yes.	
63.5(b)(2)		No	[Reserved].
63.5(b)(3)–(b)(6)		Yes.	
63.5(c)		No	[Reserved].
63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes.	
63.5(e)	Approval of Construction/Reconstruction	Yes.	
63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
63.6(a)	Compliance with Standards and Maintenance Applicability.	Yes.	
63.6(b)(1)–(b)(5)	New and Reconstructed Sources Dates	Yes.	
63.6(b)(6)		No	[Reserved].
63.6(b)(7)		Yes.	
63.6(c)(1)	Existing Sources Dates	Yes	§ 63.1180 specifies compliance dates.
63.6(c)(2)		Yes.	
63.6(c)(3)–(c)(4)		No	[Reserved].
63.6(c)(5)		Yes.	
63.6(d)		No	[Reserved].
63.6(e)(1)–(e)(2)	Operation & Maintenance Requirements	Yes	§ 63.1187 specifies additional requirements.
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes.	
63.6(f)	Compliance with Emission Standards	Yes.	
63.6(g)	Alternative Standard	Yes.	
63.6(h)	Compliance with Opacity/VE Standards	No	Subpart DDD does not include VE/opacity standards.
63.6(i)(1)–(i)(14)	Extension of Compliance	Yes	§ 63.1180 specifies date.
63.6(i)(15)		No	[Reserved].
63.6(i)(16)		Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)	Performance Test Requirements Applicability.	Yes.	
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)	Conduct of Tests	Yes	§ 63.1188 specifies additional requirements.
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	

TABLE 1 TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD OF PART 63—Continued

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
63.8(a)(1)	Monitoring Requirements Applicability	Yes.	
63.8(a)(2)		No	Subpart DDD does not require CMS performance specifications.
63.8(a)(3)		No	[Reserved].
63.8(a)(4)		Yes.	
63.8(b)	Conduct o. Monitoring	Yes.	
63.8(c)(1)–(c)(3)	CMS Operation/Maintenance	Yes.	
63.8(c)(4)–(c)(8)		No	Subpart DDD does not require COMS or CMS performance specifications.
63.8(d)	Quality Control	No	Subpart DDD does not require a CMS quality control program.
63.8(e)	CMS Performance Evaluation	No	Subpart DDD does not require CMS performance evaluations.
63.8(f)(1)–(f)(5)	Alternative Monitoring Method	Yes.	
63.8(f)(6)	Alternative to RATA Test	No	Subpart DDD does not require CEMS.
63.8(g)(1)	Data Reduction	Yes.	
63.8(g)(2)		No	Subpart DDD does not require COMS or CEMS.
63.8(g)(3)–(g)(5)		Yes.	
63.9(a)	Notification Requirements Applicability	Yes.	
63.9(b)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
63.9(f)	Notification of VE/Opacity Test	No	Subpart DDD does not include VE/opacity standards.
63.9(g)	Additional CMS Notifications	No	Subpart DDD does not require CMS performance evaluation, COMS, or CEMS.
63.9(h)(1)–(h)(3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No	[Reserved].
63.9(h)(5)–(h)(6)		Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting-Applicability	Yes.	
63.10(b)	General Recordkeeping Requirements	Yes	§ 63.1192 includes additional requirements.
63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
63.10(c)(2)–(c)(4)		No	[Reserved].
63.10(c)(5)		Yes.	
63.10(c)(6)		No	Subpart DDD does not require CMS performance specifications.
63.10(c)(7)–(c)(8)		Yes.	
63.10(c)(9)		No	[Reserved].
63.10(c) (10)–(c)(13)		Yes.	
63.10(c)(14)		No	Subpart DDD does not require a CMS quality control program.
63.10(c)(15)		Yes.	
63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements in § 63.1193.
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	No	Subpart DDD does not include VE/opacity standards.
63.10(d)(4)–(d)(5)	Progress Reports/ Startup, Shutdown, and Malfunction Reports.	Yes.	
63.10(e)(1)–(e)(2)	Additional CMS Reports	No	Subpart DDD does not require CEMS or CMS performance evaluations.
63.10(e)(3)	Excess Emissions/CMS Performance Reports.	Yes.	
63.10(e)(4)	COMS Data Reports	No	Subpart DDD does not require COMS.
63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
63.11(a)	Control Device Requirements Applicability.	Yes.	
63.11(b)	Flares	No	Flares not applicable.
63.12	State Authority and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporation by Reference	Yes.	
63.15	Information Availability/Confidentiality	Yes.	

Appendix A to Subpart DDD of Part 63—Free Formaldehyde Analysis of Insulation Resins by the Hydroxylamine Hydrochloride Method

1. Scope

The method in this appendix was specifically developed for water-soluble phenolic resins that have a relatively high free-formaldehyde (FF) content such as insulation resins. It may also be suitable for other phenolic resins, especially those with a high FF content.

2. Principle

2.1 a. The basis for this method is the titration of the hydrochloric acid that is liberated when hydroxylamine hydrochloride reacts with formaldehyde to form formaldoxine:

$$HCHO + NH_2OH{:}HCl \rightarrow CH_2{:}NOH + H_2O + HCl$$

b. Free formaldehyde in phenolic resins is present as monomeric formaldehyde, hemiformals, polyoxymethylene hemiformals, and polyoxymethylene glycols. Monomeric formaldehyde and hemiformals react rapidly with hydroxylamine hydrochloride, but the polymeric forms of formaldehyde must hydrolyze to the monomeric state before they can react. The greater the concentration of free formaldehyde in a resin, the more of that formaldehyde will be in the polymeric form. The hydrolysis of these polymers is catalyzed by hydrogen ions.

2.2 The resin sample being analyzed must contain enough free formaldehyde so that the initial reaction with hydroxylamine hydrochloride will produce sufficient hydrogen ions to catalyze the depolymerization of the polymeric formaldehyde within the time limits of the test method. The sample should contain approximately 0.3 grams (g) free formaldehyde to ensure complete reaction within 5 minutes.

3. Apparatus

3.1 Balance, readable to 0.01 g or better.
3.2 pH meter, standardized to pH 4.0 with pH 4.0 buffer and pH 7 with pH 7.0 buffer.
3.3 50-mL burette for 1.0 N sodium hydroxide.
3.4 Magnetic stirrer and stir bars.
3.5 250-mL beaker.
3.6 50-mL graduated cylinder.
3.7 100-mL graduated cylinder.
3.8 Timer.

4. Reagents

4.1 Standardized 1.0 N sodium hydroxide solution.
4.2 Hydroxylamine hydrochloride solution, 100 grams per liter, pH adjusted to 4.00.
4.3 Hydrochloric acid solution, 1.0 N and 0.1 N.
4.4 Sodium hydroxide solution, 0.1 N.
4.5 50/50 v/v mixture of distilled water and methyl alcohol.

5. Procedure

5.1 Determine the sample size as follows:
a. If the expected FF is greater than 2 percent, go to Part A in 5.1.c to determine sample size.
b. If the expected FF is less than 2 percent, go to Part B in 5.1.d to determine sample size.
c. Part A: Expected FF ≥2 percent.
Grams resin = 60/expected percent FF
I. The following table shows example levels:

Expected percent free formaldehyde	Sample size, grams
2	30.0
5	12.0
8	7.5
10	6.0
12	5.0
15	4.0

ii. It is very important to the accuracy of the results that the sample size be chosen correctly. If the milliliters of titrant are less than 15 mL or greater than 30 mL, reestimate the needed sample size and repeat the tests.
d. Part B: Expected FF < 2 percent
Grams resin = 30/expected percent FF
I. The following table shows example levels:

Expected percent free formaldehyde	Sample size, grams
2	15
1	30
0.5	60

ii. If the milliliters of titrant are less than 5 mL or greater than 30 mL, reestimate the needed sample size and repeat the tests.
5.2 Weigh the resin sample to the nearest 0.01 grams into a 250-mL beaker. Record sample weight.
5.3 Add 100 mL of the methanol/water mixture and stir on a magnetic stirrer. Confirm that the resin has dissolved.
5.4 Adjust the resin/solvent solution to pH 4.0, using the prestandardized pH meter, 1.0 N hydrochloric acid, 0.1 N hydrochloric acid, and 0.1 N sodium hydroxide.
5.5 Add 50 mL of the hydroxylamine hydrochloride solution, measured with a graduated cylinder. Start the timer.
5.6 Stir for 5 minutes. Titrate to pH 4.0 with standardized 1.0 N sodium hydroxide. Record the milliliters of titrant and the normality.

6. Calculations

$$\%\ FF = \frac{mL\ sodium\ hydroxide \times normality \times 3.003}{grams\ of\ sample}$$

7. Method Precision and Accuracy

Test values should conform to the following statistical precision:
Variance = 0.005
Standard deviation = 0.07
95% Confidence Interval, for a single determination = 0.2

8. Author

This method was prepared by K.K. Tutin and M.L. Foster, Tacoma R&D Laboratory, Georgia-Pacific Resins, Inc. (Principle written by R. R. Conner.)

9. References

9.1 GPAM 2221.2.
9.2 PR&C TM 2.035.
9.3 Project Report, Comparison of Free Formaldehyde Procedures, January 1990, K. Tutin.

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federal register

Tuesday
June 1, 1999

Part IV

Department of Education

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs; Notice

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

AGENCY: Office of Student Financial Assistance, Department of Education.

ACTION: Notice of revision of the Federal need analysis methodology for the 2000–2001 award year.

SUMMARY: The Secretary of Education announces the annual updates to the tables that will be used in the statutory "Federal Need Analysis Methodology" to determine a student's expected family contribution (EFC) for award year 2000–2001 under Part F of Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV, HEA Programs include the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs), Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs.

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Program Specialist, General Provisions Branch, Policy Development Division, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3053, ROB–3), Washington, DC 20202–5444. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of Part F of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to take into account inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For the award year 2000–2001, the Secretary is charged with updating the income protection allowance, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 1998 and December 1999. However, since the Secretary must publish these tables before December 1999, the increases in the tables must be based upon the percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 1998. The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 1998 through December 1999 will be 2.4 percent. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the table on asset protection allowance as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for the award year 2000–2001 has been updated in section 3 of this notice.

Section 477(b)(5) of Part F of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of reasonable living expenses that would be associated with the maintenance of an individual or family. The allowance is offset against the family's income and varies by family size. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for award year 2000-2001 are:

Family size	Number in college				
	1	2	3	4	5
2	$12,450	$10,320			
3	15,500	13,380	$11,250		
4	19,140	17,010	14,890	$12,760	
5	22,580	20,450	18,340	16,210	$14,090
6	26,420	24,290	22,170	20,040	17,920

For each additional family member add $2,940.
For each additional college student subtract $2,090.

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since—(1) the income produced from these assets is already assessed in anther part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business of farm is	Then the adjusted new worth is
Less than $1	$0.
$1 to $90,000	$0 + 40% of NW.
$90,001 to $265,000	$36,000 + 50% of NW over $90,000.
$265,001 to $445,000	$123,500 + 60% of NW over $265,000.
$445,001 or more	$231,500 + 100% of NW over $445,000.

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parents is:	And there are	
	Two parents	One parent
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,600	1,600
27	5,200	3,300
28	7,800	4,900
29	10,500	6,600
30	13,100	8,200
31	15,700	9,800
32	18,300	11,500
33	20,900	13,100
34	23,500	14,800
35	26,100	16,400
36	28,700	18,000
37	31,400	19,700
38	34,000	21,300
39	36,600	23,000
40	39,200	24,600
41	39,900	25,200
42	40,900	25,800
43	42,000	26,300
44	43,100	26,900
45	44,400	27,400
46	45,600	28,100
47	46,700	28,700
48	47,900	29,300
49	49,100	30,000
50	50,300	30,700
51	51,900	31,400
52	53,200	32,000
53	54,800	33,000
54	56,200	33,800
55	57,900	34,700
56	59,700	35,600
57	61,500	36,400
58	63,400	37,500
59	65,300	38,500
60	67,200	39,400
61	69,600	40,600
62	71,600	41,700
63	74,100	42,900
64	76,600	44,100
65 and over	78,900	45,500

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And the student is	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,600	1,600
27	5,200	3,300
28	7,800	4,900
29	10,500	6,600
30	13,100	8,200
31	15,700	9,800
32	18,300	11,500
33	20,900	13,100
34	23,500	14,800
35	26,100	16,400
36	28,700	18,000
37	31,400	19,700
38	34,000	21,300
39	36,600	23,000
40	39,200	24,600
41	39,900	25,200
42	40,900	25,800
43	42,000	26,300
44	43,100	26,900
45	44,400	27,400
46	45,600	28,100
47	46,700	28,700
48	47,900	29,300
49	49,100	30,000
50	50,300	30,700
51	51,900	31,400
52	53,200	32,200
53	54,800	33,000
54	56,200	33,800
55	57,900	34,700
56	59,700	35,600
57	61,500	36,400
58	63,400	37,500
59	65,300	38,500
60	67,200	39,400
61	69,600	40,600
62	71,600	41,700
63	74,100	42,900
64	76,600	44,100
65 and over	78,900	45,500

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the students is	And the student is	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,600	1,600
27	5,200	3,300
28	7,800	4,900
29	10,500	6,600
30	13,100	8,200
31	15,700	9,800
32	18,300	11,500
33	20,900	13,100
34	23,500	14,800

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the students is	And the student is	
	Married	Single
	Then the education savings and asset protection allowance is—	
35	26,100	16,400
36	28,700	18,00
37	31,400	19,700
38	34,000	21,300
39	36,600	23,000
40	39,200	24,600
41	39,900	25,200
42	40,900	25,800
43	42,000	26,300
44	43,100	26,900
45	44,400	27,400
46	45,600	28,100
47	46,700	28,700
48	47,900	29,300
49	49,100	30,000
50	50,300	30,700
51	51,900	31,400
52	53,200	32,200
53	54,800	33,000
54	56,200	33,800
55	57,900	34,700
56	59,700	35,600
57	61,500	36,400
58	63,400	37,500
59	65,300	38,500
60	67,200	39,400
61	69,600	40,600
62	71,600	41,700
63	74,100	42,900
64	76,600	44,100
65 and over	78,900	45,500

4. *Assessment Schedules and Rates.* Two schedules, one for dependent students and one for independent students with dependents other than a spouse, are used to determine the expected contribution toward educational expenses from family financial resources. For dependent students, the expected parental contribution is derived from an assessment of the parents adjusted available income (AAI). For independent students with dependents other than a spouse, the expected contribution is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than—$3,409 ($3,409)	−$750.
($3,409) to $11,100	22% of AAI.
$11,101 to $14,000	$2,442 + 25% of AAI over $11,100.
$14,001 to $16,800	$3,167 + 29% of AAI over $14,000.
$16,801 to $19,600	$3,979 + 34% of AAI over $16,800.
$19,601 to $22,500	$4,931 + 40% of AAI over $19,600.
$22,501 or more	$6,091 + 47% of AAI over $22,500.

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409 ($3,409)	−$750.
($3,409) to $11,100	22% of AAI.
$11,101 to $14,000	$2,442 + 25% of AAI over $11,100.
$14,001 to $16,800	$3,167 + 29% of AAI over $14,000.
$16,801 to $19,600	$3,979 + 34% of AAI over $16,800.
$19,601 to $22,500	$4,931 + 40$ of AAI over $19,600.
$22,501 or more	$6,091 + 47% of AAI over $22,500.

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents or dependent students and for married independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal difference in costs for a two-earner family compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $2,800 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* This allowance for State and other taxes protects a portion of the parents' and students' income from being considered available for postsecondary educational expenses. There are four tables for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If parents' State or territory of residence is	And parents' total income is—	
	Less than $15,000 or	$15,000 or more
	Then the percentage is—	
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is	And student's total income is—	
	Less than $15,000 or	$15,000 or more
	Then the percentage is	
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

DEPENDENT STUDENTS

If student's State or territory of residence is	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraka, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; William D. Ford Federal Direct Loan Program, 84.268)

Dated: May 26, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

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Copyright Office

37 CFR Part 201 et al.

Fees and Registration of Claims to Copyright; Group Registration of Daily Newsletters; Final Rules

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 204, and 211

[Docket No. 98–2C]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Final Regulations.

SUMMARY: The Copyright Office is issuing final regulations adjusting certain fees it charges for copyright registration, recordation, and related services in order more nearly to recover the reasonable costs of providing these services. Formerly most of these fees were determined by Congress and were referred to as statutory fees. In the future, they will be referred to as fees for registration, recordation, and related services. To facilitate public reference and Copyright Office administration, the Office is also consolidating and relocating in one new regulatory section most references to fees for other services, including fees for discretionary or special services and services performed by the Licensing Division.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 1997, Congress amended Section 708 of title 17, United States Code, to authorize the Register of Copyrights to fix the basic registration and other fees described in section 708(a)(1)–(9) to recover reasonable costs incurred for providing the service and to add an adjustment for inflation. Pub. L. 105–80, 111 Stat. 1529 (1997). Congress had adjusted these fees in 1990. Copyright Fees and Technical Amendments Act, Pub. L. 101–318, 104 Stat. 287 (1990). The 1997 legislation authorizes the Register of Copyrights to set all fees assessed by the Copyright Office rather than follow the former practice whereby Congress set some and the Register set others. Congress went on, however, to state what the Register must do in order to increase copyright fees. First the Register has to conduct a study of the costs for provision of services. Then on the basis of the study, barring legislation to the contrary, the Register can fix fees that (1) recover reasonable costs and (2) are fair, equitable, and consistent with the objectives of the copyright system.

In preparation for increasing fees, the Office undertook a comprehensive economic analysis of the operating costs involved in providing services to users that culminates with the fees identified in this final regulation. The Register began by appointing an internal task force, the Fee Analysis Task Force Group (FEATAG), to conduct the eighteen month project. The Register then commissioned financial management consultants and an outside company, Abacus, to determine what cost recovery would be after certain necessary adjustments were made. FEATAG analyzed Abacus's study and made recommendations of its own, including a recommendation to amend the special service fees described in 17 U.S.C. 710(a)(10). See Notice of Proposed Rulemaking, 63 FR 15802 (1998). After full consideration of public comments, on May 28, 1998, the Office issued final regulations adjusting the special service fees. 63 FR 29137 (1998).

On August 13, 1998, in the second phase of consideration of fee adjustments, the Copyright Office proposed two alternative schedules of fees that would increase basic registration fees and other statutory or required fee services in a Notice of Inquiry (NOI). This NOI was designed specifically to address the congressional criteria for statutory fees. Schedule I fees would have increased basic registration fees from $20.00 to $45.00. Preliminarily, the Office met with representatives of several authors' groups and representatives of other copyright interests with concerns about potential fee increases. These initial comments led the Office to propose an alternative to Schedule I which would have increased basic registration fees for individual authors more modestly, from $20 to $35. To make up for the shortfall in income from individual authors, Schedule II would have set basic registration fees for nonindividual authors at $50. The Office requested public comment on these two proposals, and announced a public hearing to be held on October 1, 1998. See FR 43426 (1998).

Comments

The Office heard nine witnesses and received twenty-three written comments on the matter of adjusting statutory fees. The hearing yielded additional data to fulfill the congressional directives of cost recovery, fairness, equity, and adherence to the objectives of the copyright system. This material enabled the Office to review the costs of providing services in light of the particular needs of the public, the Library of Congress, and the overall objectives of the copyright system. With the hearing and subsequent analysis, the Office was able to conclude its extensive study of costs and consideration of all other pertinent information including the effect of a fee increase on collections and exchange programs of the Library of Congress.

Following its analysis of all information, the Office completed the last phase of its study, presenting its fee recommendations in a comprehensive report to Congress on February 1, 1999. Analysis and Proposed Copyright Fee Schedule to Go Into Effect July 1, 1999, Register of Copyrights, U.S. Copyright Office (1999).[1] The report analyzes the testimony and written comments in detail, and shows how the statutory criteria were applied to the ultimate decision to reduce the amount of the proposed fee increase for basic registration.

Although the Office believes that generally a schedule of fees should be based on full recovery of direct costs, it recognizes that not all costs of the Office should be borne by the fees, in view of the many services the Copyright Office performs for the Library of Congress, the U.S. Congress, the administration, and the public in general. In the past, Congress has consistently set fees for basic services at a level that recovers about two-thirds of the Office's costs, with the rest of the budget coming from taxpayer revenue. The public comments also revealed that the registering public, based on its view of what is reasonable, fair, and equitable, believed that not all costs of the Copyright Office should be borne by the user. The major concern addressed by individual authors and representatives of interest groups was the size of both proposed increases for registration. Some significant concerns of the witnesses and commentators are reflected in the following questions and answers.

1. Based on the Fees Proposed, Who Is Unlikely To Register

Witnesses representing small and mid-size music publishers, individual songwriters and their estates, and graphic artists and journalists, newsletter publishers and photographers, as well as a representative of the Copyright Office's largest single customer stated that they would be unable to register if fees were

[1] This report has been published on the Copyright Office website [www.loc.gov/copyright].

increased to the proposed levels. Some commentators pointed to the potential for overall erosion of the value of the copyright registration record that would result from the inability of many applicants to afford registration. The link between registration and the availability of strong remedies for registration afforded by section 412 of the copyright law concerned most commentators, and one stated that the assumption that these remedies would be available to all underlies the premise of reasonable registration fees.

2. Should an Individual Author of Unpublished Works Pay a Lower Registration Fee

All the groups representing individual authors supported a lower fee for registrations made by their members, but their request for reduced fees were not restricted to unpublished works. Some organizations noted that given the higher susceptibility of published works to infringement, particularly when placed online, published works by individual authors should be included in this option.

3. Should There Be Other Distinctions in Assessing Fees

a. Should there be a small business exemption? A number of organizations favored a small business exemption, offering various solutions for how the exemption should be crafted. One witness, however, testified that organizations would be unwilling to disclose net worth information to qualify for such an exemption. Even organizations favoring this exemption noted potential problems with administering the exemption, in addition to expected new costs solely attributable to its administration.

b. Should there be a higher fee for works made for hire? This two-tier option was strongly supported by writers' organizations, while representatives of the motion picture, computer software, and other industries opposed it. One common interest of groups favoring higher fees for works for hire was the collective desire to deter publishers from forcing work made for hire agreements on unwilling authors. Underlying this concern is their presumption that publisher/employers are better able to pay higher fees than individual authors.

c. Should the fee be based on the commercial value of the work? While some organizations urged the Copyright Office to set fees based on the value of the work, such as a sliding scale related to a work's expected revenue, most commentators rejected this alternative. This also could be expected to add significant administrative costs. On the whole, witnesses and commentators believed the Office should avoid tying fees to distinctions unrelated to the cost of providing particular services.

4. Should the Office Exclude Certain Costs That Do Not Relate Directly to Core Registration/Recordation Functions and Allocate Some Registration Costs to Other Beneficiaries

Although numerous commentators discussed the detrimental impact that increased costs would have on the objectives of the copyright system, three commentators specifically supported the exclusion of certain costs not directly related to core functions. One urged that the taxpayer bear a greater portion of registration costs since the public benefits from the copyright system. Other commentators questioned whether the statutory mandate of fairness and equity was addressed in the proposed increase, given that fees would in some cases more than double current levels.

Finally, commentators stated that the proposed fees threatened the goals of the copyright system. Emphasizing that the size of the proposed fee increase threatened erosion of the public record, they noted the wide range of beneficiaries of the copyright system available to share the full economic burden of registration. The commentators left the clear impression that imposing full or nearly full cost recovery on applicants whose works are marginally profitable and to whom completion of their own copyright application materials is an administrative burden will likely cause them to drop out of the system, vitiating the value of a comprehensive public record of registrations.

A more complete summary of all phases of the Office's work in setting new copyright fees is included in Analysis and Proposed Copyright Fee Schedule To Go Into Effect July 1, 1999, the report the Register submitted to Congress on February 1, 1999.

II. Final Regulations

A. Adoption of new fees for registration, recordation and other required services

As detailed in the report, after careful consideration of all hearing testimony and written comments, the Copyright Office determined it should recommend registration fees that were not as great an increase as those originally proposed. To avoid undermining the value of the registration system, particularly for individual authors and small businesses, thereby reducing the availability of works for the Library of Congress' collections and programs, the Register reduced the proposed fee for basic registration from $45 (or $35/$50) to $30. By maintaining the other fees at the levels proposed to recover reasonable costs, this fee adjustment responds both to individual authors' wish not to face a dramatic fee increase that would price them out of the system and to the Office's obligation to recover more of its operating costs through fees.

B. Fees Related to Group Registration of Daily Newsletters

In one special adjustment, the Office is amending the group registration procedure for daily newsletters that are published at least twice weekly. Information on this amendment is being published today elsewhere in this issue.

C. Clarification and Consolidation of Fees in Regulatory Text

The Office is also clarifying an existing procedure related to requests for material under § 202.2(b)(4).

With respect to organization of fee information in the Copyright Office regulations, these regulations consolidate most fees in one new section, 37 CFR 201.3, and remove specific references to fees in disparate sections. In making this consolidation, the Office identifies in § 201.3(c) fees for certain registration, recordation and related services including those formerly known as "statutory fees" which are currently located in 17 U.S.C. 708(a)(1)–(9);[2] identifies in § 201.3(d) special service fees referred to in section § 708(a)(10) and formerly located at 37 CFR 201.32; and identifies in § 201.3(e) fees related to services provided by the Licensing Division.

New subsection § 201.3(e) provides a quick reference for certain services provided by the Licensing Division. Some of the licensing fees contained in § 201.3(e) relate to basic services described in § 201.3(c) and have been adjusted; others remain the same. Royalty payments for compulsory licenses are not included in § 201.3(e).

This reorganization of copyright fees should facilitate public reference to current fees and the Office's future amendment of fees. Future fee adjustments will be considered every three years; the percentage increase, however, is expected to be smaller.

[2] The Office notes that beginning on July 1, 1999, the fees currently set out in 17 U.S.C. § 708(a)(1)–(9) will no longer be in effect. The Office will publish all new fees in the Code of Federal Regulations, in Copyright Office Circular 4, and on its website.

D. Fees Identified in Other Regulatory Sections

Certain fees relating to submitting royalties under the compulsory licenses, the processing of Uruguay Round Amendments Act filings, the charges assessed for services related to providing information under the Freedom of Information Act, and new services where a final fee has not been established may be included in other sections of the regulations.

E. Effective Date

Congress has had 120 days to review the fees submitted to it on February 1, 1999. No legislation has been enacted barring adoption of these fees. The Office is, therefore, adopting the proposed fee schedule for registration, recordation, and other related services effective July 1, 1999.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Registration.

37 CFR Part 203

Freedom of Information Act.

37 CFR Part 204

Privacy.

37 CFR Part 211

Mask work protection, Fees.

In consideration of the foregoing, parts 201, 202, 203, 204, and 211 of 37 CFR chapter II are amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.2 [Amended]

2. Amend § 201.2(b)(4) by removing "No charge will be made for this service." and adding in its place "No charge will be made for reviewing these materials; the appropriate search fee identified in § 201.3(c) or § 201.3(d) will be assessed, and the appropriate copying fee identified in § 201.3(c) or § 201.3(d) will be assessed if the claimant wants and is entitled to a copy of the material."

3. Add a new § 201.3 as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

(a) General. This section prescribes the fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

(b) Definitions. For purposes of this section, the following definitions apply:

(1) Registration, recordation, and related service fee. This is the fee for a registration or recordation service that the Office is required to perform under 17 U.S.C., or a directly related service. It includes those services described in section 708(a)(1)–(9) and authorized by Pub. L. 105–80.

(2) Special service fee. This is a fee for a special service not specified in title 17, which the Register of Copyrights may fix at any time on the basis of the cost of providing the service, as provided by 17 U.S.C. 708(a)(10).

(3) Licensing Division service fee. This is a fee for a service performed by the Licensing Division.

(c) Registration, Recordation and Related Service Fees. The Copyright Office has established the following fees for these services:

Registration, recordation and related services	Fees
(1) Basic registrations: Form TX, Form VA, Form PA, Form SE, (including Short Forms), and Form SR	$30
(2) Registration of a claim in a group of contribution to periodicals (GR/CP)	30
(3) Registration of a renewal claim (Form RE):	
• Claim without Addendum	45
• Addendum	15
(4) Registration of a claim in a Mask Work	75
(5) Registration of a claim in a group of series (Form SE/Group) $30 minimum	10
(6) Registration of a claim in a group of daily newspapers, and qualified newsletters (Form G/DN)	55
(7) Registration of a restored copyright (Form GATT)	30
(8) Registration of a claim in a group of restored works (Form GATT Group) $30 minimum	10
(9) Registration of a correction or amplification to a claim (Form CA)	65
(10) Providing an additional certificate of registration	25
(11) Any other certification, per hour	65
(12) Search—report prepared from official records, per hour	65
(13) Search—locating Copyright Office records, per hour	65
(14) Recordation of documents (single title)	50
• Additional titles (per group of 10 titles)	15
(15) Recordation of a notice of intention (NIE) to enforce a restored copyright containing no more than one title	30
• Additional NIE titles (each)	1
(16) Recordation of Notice of Intention to Make and Distribute Phonorecords	12
(17) Issuance of a receipt for a deposit	4

[1] Per issuse.
[2] Per claim.

(d) Special Service Fees. The Copyright Office has established the following fees for special services:

Special services	Fees
(1) Service charge for deposit account overdraft	$70
(2) Service charge for dishonored deposit account replenishment check	35
(3) Service charge for insufficient fee	(1)
(4) Appeals:	
(i) First appeal	200
Additional claim in related group	20
(ii) Second appeal	500
Additional claim in related group	20
(5) Secure test processing charge, per hour	60

Special services	Fees
(6) Copying charge, 15 pages or fewer	15
Each additional page over 15	.50
(7) Inspection charge	65
(8) Special handling fee for a claim	500
Each additional claim using the same deposit	50
(9) Special handling fee for recordation of a document	330
(10) Full-term storage of deposits	365
(11) Surcharge for expedited Certifications and Documents Section services:	
(i) Additional certificates, per hour	75
(ii) In-process searches, per hour	75
(iii) Copy of assignment or other document, per hour	75
(iv) Certification, per hour	75
(v) Copy of registered deposit:.	
First hour	95
Each additional hour	75
(vi) Copy of correspondence file:	
First hour	95
Each additional hour	75
(12) Surcharge for expedited Reference & Bibliography Section searches:	
First hour	125
Each additional hour	95

[1] Reserved.

(e) Licensing Division Service Fees. The Copyright Office has established the following fees for certain services performed by the Licensing Division:

Licensing division services	Fees
(1) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115)	$12
(2) Certificate of Filing a Notice of Intention (17 U.S.C. 115)	8
(3) Filing Fee for Recordation of License Agreements under 17 U.S.C. 118	50
(4) Recordation of Certain Contracts by Cable Television Systems Located Outside the Forty-Eight Contiguous States	50
(5) Initial Notice of Digital Transmission of Sound Recording (17 U.S.C. 114)	20
Amendment of 17 U.S.C. 114 Notice	20
(6) Statement of Account Amendment (Cable Television Systems and Satellite Carriers, 17 U.S.C. 111 and 119)	15
(7) Statement of Account Amendment (Digital Audio Recording Devices or Media, 17 U.S.C. 1003)	20
(8) Using Public Photocopier, per page	.25
Photocopies Made by Licensing Staff, per page	.40
(9) Search, per hour	65
(10) Certification of Search Report	65

4. Amend § 201.4 by revising paragraph (d) to read as follows:

§ 201.4 Recordation of transfers and certain other documents.

* * * * *

(d) Fees. The fee for recordation of a document is prescribed in § 201.3(c).

* * * * *

§ 201.5 [Amended]

5. Amend § 201.5(c)(1) by removing "a fee of $20" and the accompanying footnote and adding in its place "the appropriate fee identified in § 201.3(c)".

6. In § 201.9, amend paragraph (a) by adding ", Licensing Division" after "Copyright Office", by removing "this section" and adding in its place "§ 201.3" and by revising paragraph (b) to read as follows:

§ 201.9 Recordation of agreements between copyright owners and public broadcasting entities.

* * * * *

(b) The fee for recordation of a voluntary license agreement under this section is the basic recordation fee as prescribed in § 201.3(c).

* * * * *

7. In § 201.10, revise paragraph (f)(2) to read as follows:

§ 201.10 Notices of termination of transfers and licenses covering extended renewal term.

* * * * *

(f) * * *

(2) The fee for recordation of a document is prescribed in § 201.3(c).

* * * * *

8. Amend § 201.12 by revising the first sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 201.12 Recordation of certain contracts by cable systems located outside of the forty-eight contiguous States.

(a) Written, nonprofit contracts providing for the equitable sharing of costs of videotapes and their transfer, as identified in section 111(e)(2) of title 17 of the United States Code as amended by Pub. L. 94–553, will be filed in the Copyright Office Licensing Division by recordation upon payment of the prescribed fee. * * *

* * * * *

(b) The fee for recordation of a document is prescribed in § 201.3.

* * * * *

§ 201.18 [Amended]

9. In § 201.18, amend paragraph (e)(1) by removing "a fee of $12" and by adding in its place "the fee specified in § 201.3(e)", by removing "an additional fee of $8" and adding in its place "the fee specified in § 201.3(e)", and amend paragraph (e)(3) by removing "a fee of $8" and adding in its place "the fee specified in § 201.3(e)".

§ 201.19 [Amended]

10. In § 201.19, amend paragraph (e)(7)(ii)(D) by removing "a fee of $8" and adding in its place "the fee specified in § 201.3(e)" and amend paragraph (f)(7)(iii)(D) by removing "a fee of $8" and adding in its place "the fee specified in § 201.3(e)".

11. Amend § 201.25 by revising paragraph (d) to read as follows:

§ 201.25 Visual Arts Registry.

* * * * *

(d) **Fee.** The fee for recording a Visual Arts Registry statement, a Building Owner's Statement, or an updating statement is the recordation fee for a document, as prescribed in § 201.3(c).

* * * * *

12. Amend § 201.26 by revising paragraph (e) to read as follows:

§ 201.26 Recordation of documents pertaining to computer shareware and donation of public domain computer shareware.

* * * * *

(e) **Fee.** The fee for recording a document pertaining to computer shareware is the recordation fee for a document, as prescribed in § 201.3(c).

* * * * *

§ 201.32 [Removed and Reserved]

13. Section 201.32 is removed and reserved.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

14. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 202.3 [Amended]

15. Amend § 202.3(b)(4)(ii)(B) by removing "A filing fee of $20" and adding in its place "The appropriate filing fee, as required in § 201.3(c)".

16. Amend § 202.3(b)(5)(v)(B) by removing "A filing fee of $10" and adding in its place "The appropriate filing fee, as required in § 201.3(c)".

17. Amend § 202.3(b)(6)(i)(E) by removing "A nonrefundable filing fee of $40" and adding in its place "The appropriate filing fee, as required in § 201.3(c),".

18. Amend § 202.3(b)(7)(ii)(C) by removing "A fee of $20" and adding in its place "The appropriate filing fee, as required in § 201.3(c),".

19. Amend § 202.3(b)(8)(vii) by removing "a filing fee of $10" and adding in its place "the appropriate filing fee, as required in § 201.3(c),".

20. Amend § 202.3(c)(2) by removing "a fee of $20" and adding in its place "the appropriate filing fee, as required in § 201.3(c),".

§ 202.12 [Amended]

21. Amend § 202.12 (c)(3)(i) by removing "20" each place it appears and adding in its place "30" and adding after "work" in the last sentence ", with a minimum fee of US$30".

22. Amend § 202.12(c)(5)(i) by removing "$20" and adding in its place "$30".

23. Amend § 202.12(c)(5)(ii) by adding after "work" in the last sentence ", with a minimum fee of $30".

§ 202.17 [Amended]

24. Amend § 202.17(g)(2)(ii) by removing "a fee of $20" and adding in its place "the appropriate fee, as required in § 201.3(c)".

§ 202.19 [Amended]

25. Amend § 202.19(f)(3) by removing "a fee of $4" and adding in its place "the appropriate fee, as required in § 201.3(c)".

§ 202.23 [Amended]

26. Amend § 202.23(e)(1) by removing "at $365.00" and adding in its place ", as prescribed in § 201.3(d),".

27. Amend § 202.23(e)(2) by removing "of $365.00" and adding in its place "prescribed in § 201.3(d)".

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

28. The authority citation for part 203 continues to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552.

§ 203.6 [Amended]

29. Amend § 203.6(a) by removing "section 708 of title 17 U.S.C." and adding in its place "§ 201.3 of this chapter".

30. Amend § 203.6(b)(1) by removing "$8" and adding in its place "$25".

31. Amend §§ 203.6(b)(3) and (b)(4) by removing "$20" each time it appears and adding in its place "$65".

32. Amend § 203.6(b)(6) by removing "$20.00" and adding in its place "$65".

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

33. The authority citation for part 204 continues to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552.

§ 204.6 [Amended]

34. Amend § 204.6(a) by removing "under section 708 of title 17 of the United States Code" and adding in its place "and identified in § 201.3 of this chapter".

PART 211—MASK WORK PROTECTION

35. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

36. Amend § 211.3 by revising paragraph (a) to read as follows:

§ 211.3 Mask work fees.

(a) Section 201.3 of this chapter prescribes the fees or charges established by the Register of Copyrights for services relating to mask works.

* * * * *

Dated: May 20, 1999.

Marybeth Peters,

Register of Copyright.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–13736 Filed 5–28–99; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 99–3]

Registration of Claims to Copyright; Group Registration of Daily Newsletters

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is adopting a new regulation that permits group registration of daily newsletters under conditions similar to those presently in place for group registration of daily newspapers and for the same fee, but with different deposit requirements. A claimant in daily newsletters that are routinely issued at least two days each week may register these newsletters in a group at a reduced fee, on a single application, if they meet certain requirements. The group registration privilege is contingent upon the claimant meeting the conditions specified in the regulation.

EFFECTIVE DATE: This rule will become effective July 1, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax (202) 707–8366. Harriet L. Oler, Assistant Register for Legal Education and Special Programs, Telephone: (202) 707–8350. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Under section 407 of the Copyright Act of 1976, title 17 of the U.S. Code, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two copies of the work in the Copyright Office for the use or

disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required deposit does not affect the copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights.

Section 408 of title 17 requires deposit of material in connection with applications for registration of claims to copyright in unpublished and published works. Subsection 408(c)(1) authorizes the Register of Copyrights to establish by regulation the nature of the deposit that is required. These regulations may require or permit "a single registration for a group of related works."

On December 7, 1990, the Copyright Office issued regulations permitting group registration of serials [55 FR 50556 (Dec. 7, 1990)]; on September 1, 1992, it issued regulations permitting group registration of daily newspapers [57 FR 39615 (Sept. 1, 1992)]; and on March 28, 1995, it issued regulations permitting group registration of daily newsletters [59 FR 15874 (Mar. 28, 1995)]. The regulations adopted in 1990 and 1992 continue to govern group registration of serials other than those daily newsletters qualified to register under this new regulation.

On October 1, 1998, the Copyright Office conducted public hearings prior to proposing increased fees for providing certain services including registration. [Hearing on Proposed Fee Increase, U.S. Copyright Office (October 1, 1998); 63 FR 43426, (Aug. 13, 1998)]. At this hearing, and in response to written comments submitted to the Office during this process, publishers of daily newsletters argued that they should be entitled to a price reduction for registering groups of claims similar to that presently enjoyed by publishers of daily newspapers. The Office agrees that daily newsletters should be treated similarly in terms of required registration fees, but it believes that the deposit requirements for daily newsletters should be different in order to respond to the acquisitions needs of the Library of Congress.

Definition

For purposes of this regulation, a daily newsletter is defined as a serial published and distributed by mail or electronic media (online or telefacsimile) or in any medium including, but not limited to, paper, cassette tape, diskette or CD–ROM. Publication must occur on at least two days each week and the newsletter must contain news or information of interest chiefly to a special group (for example, trade and professional associations, corporate in-house groups, schools, colleges, or churches).

Requirements

The Copyright Office is now amending its regulation that permits group registration of daily newsletters in order to permit qualified newsletters that meet all of the specified conditions to use the same form and pay the same fee as daily newspapers. Under the regulation, daily newsletters that are published routinely on at least two days each week may be registered in groups at a reduced fee if all other requirements are met. Claimants in works that meet these qualifications may register all newsletters bearing issue dates within a single calendar month under the same continuing title on a single Form G/DN with the deposit specified below. Each issue must be an essentially new collective work or all new issue that has not been published before and must be a work made for hire. The author(s) and claimant(s) must be the same for all of the issues. To accommodate the Library's need for timely receipt of these published materials, registration of the group must be sought within three months from the date of publication of the last issue included in the group registration application. If a claimant wishes to register a claim in a group of daily newsletters that meet the above definition, but is unable to submit the deposit requested by the Library or has failed to seek registration within the prescribed three months from the publication date of the last issue included in the group, that claimant is not eligible for this group registration and may file Form SE or Short Form SE, along with the fee corresponding to the appropriate form.

Deposit

The deposit required for a group of daily newsletters on form G/DN shall be as follows: One complete copy of each issue included in the group must be submitted with the application form. In addition, if the Library of Congress makes a written request before an application for registration is submitted, the claimant must give the Library up to two complimentary subscriptions of the specified newsletter or, at the Library's alternative written request, a single microfilm of the issues included in the group. Any microfilm deposit must consist of positive, 35 mm silver halide microfilm meeting the Library's best edition criteria that reproduces in their entirety all issues published as final editions with issue dates in the designated calendar month.

Effective Date

This regulation and the new procedures it establishes will be applied prospectively only to the issues of daily newsletters first published on or after the effective date of the regulation. The regulation is issued in final form for these reasons: The regulation confers a positive benefit on the public affected; the regulation establishes an optional procedure; other procedures are available for registering newsletters; and the Copyright Office prepared the regulation based upon its experience in administering other group registrations and its review of comments received in response to an earlier request for comments. [63 FR 43426 (Aug. 13, 1998)].

List of Subjects in 37 CFR Part 202

Copyright registration.

Final Regulation

In consideration of the foregoing, the Copyright Office amends 37 CFR part 202 in the manner set forth below:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702, 202.3, 202.19, 202.20, 202.21, and 202.22 are also issued under 17 U.S.C. 407 and 408.

2. In § 202.3, paragraph (b)(8) and the footnote to paragraph (c)(2) are revised to read as follows:

§ 202.3 Registration of Copyright

* * * * *

(b) * * *

(8) *Group registration of daily newsletters.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for a group of two or more issues of a daily newsletter if the following conditions are met:

(i) As used in this regulation, daily newsletter means a serial published and distributed by mail or electronic media (online or telefacsimile), or in any medium including but not limited to, paper, cassette tape, diskette or CD–ROM). Publication must occur on at least two days each week and the newsletter must contain news or information of interest chiefly to a special group (for example, trade and professional associations, corporate in-house groups, schools, colleges, or churches).

(ii) The works must be essentially all new collective works or all new issues that have not been published before.

(iii) Each issue must be a work made for hire.

(iv) The author(s) and claimant(s) must be the same person(s) or organization(s) for all of the issues.

(v) All the items in the group must bear issue dates within a single calendar month under the same continuing title.

(vi) Deposit. (A). The deposit for newsletters registered under this section is one complete copy of each issue included in the group.

(B). In addition, if requested in writing by the Copyright Acquisitions Division before an application for registration is submitted, the claimant must give the Library of Congress whichever of the following the Library prefers: either as many as two complimentary subscriptions of the newsletter in the edition most suitable to the Library's needs, or a single positive, 35 mm silver halide microfilm meeting the Library's best edition criteria that includes all issues published as final editions in the designated calendar month. Subscription copies must be delivered to the separate address specified by the Copyright Acquisitions Division in its request. Subscription copies or a microfilm are not required unless expressly requested by the Copyright Acquisitions Division.

(C) The copyright owner of any newsletter that cannot meet the criteria set out in this section may continue to register on Form SE or Short Form SE.

(vii) Registration is sought within three months after the publication date of the last issue included in the group.

(viii) A Form G/DN shall be submitted for daily newsletters bearing issue dates within a single month, together with one copy of each issue, and a filing fee. The application shall designate the first and last day that issues in the group were published.

* * * * *

(c) * * *

(2) * * * [6]

* * * * *

Dated: May 17, 1999.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–13737 Filed 5–28–99; 8:45 am]

BILLING CODE 1410–30–P

[6] In the case of applications for group registration of newspapers, contributions to periodicals, and newsletters, under paragraphs (b)(6), (b)(7), and (b)(8) of this section, the deposits shall comply with the deposits specified in the respective paragraphs, and the fees with those specified in § 201.3.

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Part VI

Department of Education

Office of Student Financial Assistance; Availability of the Amendments to the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1998–99 School Year; Notice

VOL 64 ISS 104 JE 1 1999 UMI

DEPARTMENT OF EDUCATION

[CFDA 84.037]

Office of Student Financial Assistance; Notice of Availability of the Amendments to the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1998–99 School Year

AGENCY: Department of Education.

SUMMARY: The Secretary of Education (the Secretary) announces that the 1998–99 Amendments to the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools (the Directory) have been incorporated into the 1998–99 Directory currently available on the Department of Education's (the Department) website. Under the Federal Perkins Loan and National Direct Student Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan canceled if the borrower teaches full-time for a complete academic year in a designated elementary or secondary school having a high concentration of students from low-income families. The 1998–99 Directory lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1998–99 school year to qualify for deferment and cancellation benefits. The Amendments to the Directory identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The Amendments to the Directory are currently available in electronic format at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, (4) the U.S. Department of Education, including its regional offices, and (5) on the Internet at http://www.ed.gov/studentaid.

FOR FURTHER INFORMATION CONTACT: Information concerning specific schools listed in the Amendments to the Directory may be obtained from Chrisetta Nelson, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, S.W., (Portals Building, Room 6200), Washington, D.C. 20202–5447, telephone (202) 708–7738. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Information concerning deferment and cancellation of a National Direct or Federal Perkins Loan may be obtained from Vanessa Freeman or Gail McLarnon, Program Specialists, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, S.W., (Regional Office Building 3, Room 3045), Washington, D.C. 20202–5447, telephone (202) 708–8242.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, and computer diskette) from the contact person listed in the first paragraph of this section.

SUPPLEMENTARY INFORMATION: The Secretary selects schools that qualify a borrower for deferment and cancellation benefits under the procedures contained in the Federal Perkins Loan program regulations in 34 CFR 674.53, 674.54 and 674.55.

The Secretary has determined that, the 1998–99 academic year, full-time teaching in the schools identified by the 1998–99 Amendments to the Directory qualifies a borrower for deferment and cancellation benefits.

The Secretary is providing the Amendments to the Directory to each institution participating in the Federal Perkins Loan Program in an electronic format only. Borrowers and other interested parties may check the Department's website, their lending institution, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1998–99 academic year. The Office of Student Financial Assistance retains, on a permanent basis, copies of past directories.

Electronic Access to the Notice

Anyone may view this notice, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: May 26, 1999.

Greg Woods,

Chief Operating Officer for the Office of Student Financial Assistance.

[FR Doc. 99–13854 Filed 5–28–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Tuesday
June 1, 1999

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research; Funding Priority for Fiscal Years 1999–2000 for a Disability and Rehabilitation Research Project; Inviting Applications for a New Disability and Rehabilitation Research Project for Fiscal Year 1999; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Funding Priority for Fiscal Years 1999–2000 for a Disability and Rehabilitation Research Project

AGENCY: Department of Education.

ACTION: Notice of funding priority for fiscal years 1999–2000 for a Disability and Rehabilitation Research Project.

SUMMARY: The Secretary announces a funding priority for a Disability and Rehabilitation Research Project (DRRP) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1999–2000. The Secretary takes this action to focus research attention on areas of national need. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, SW., Room 3418, Switzer Building, Washington, DC. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains a final priority under the Disability and Rehabilitation Research Projects and Centers Program for a DRRP on leadership training. There is a reference in the proposed priority to NIDRR's Long-Range Plan (LRP). The LRP can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/announcements/1998–4/102698a.html

This final priority supports the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priority.

Analysis of Comments and Changes

On March 9, 1999 the Secretary published a notice of proposed priority in the **Federal Register** (64 FR 11748). The Department of Education received five letters commenting on the notice of final priority by the deadline date. An analysis of the comments and of the changes in the priority since publication of the proposed priority follows. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Priority: Leadership Training

Comment: The areas of training should be broader and include training in interpersonal communication. In addition, the training should increase knowledge across a broad range of disabilities including physical, cognitive, and emotional disabilities.

Discussion: The priority states the goal of the leadership training and the areas of training that may be included in the project. Working toward that goal, applicants have the discretion to propose the specific areas of training. An applicant could propose to provide training in interpersonal communication and increase knowledge across a broad range of disabilities including physical, cognitive, and emotional disabilities. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to provide training on interpersonal communication and knowledge across a broad range of disabilities including physical, cognitive, and emotional disabilities.

Changes: None.

Comment: Four commenters recommended that potential trainees should include not only those who work for community-based organizations, but also those who work with those organizations (e.g., volunteers). One commenter recommended that persons with disabilities who are served by community-based organizations should be eligible to be trainees.

Discussion: NIDRR believes that the pool of eligible trainees should be as large as possible, and therefore agree that all of these individuals could be included, on the condition that they have demonstrated leadership potential. NIDRR agrees that individuals who work with, or who are served by community-based organizations should be eligible to be trainees along with those who are employed by those organizations.

Changes: The priority has been revised to include as potential trainees those individuals with disabilities who have demonstrated leadership potential, including those from minority backgrounds, who work for, or with, or are served by community-based organizations.

Comment: The entities listed in the first required activity should not be limited to those that are disability-related.

Discussion: The priority's purpose is to increase the leadership competencies of persons with disabilities in order to enhance their ability to improve the lives of persons with disabilities. Eliminating the requirement that cooperating entities must be disability-related would undermine this purpose.

Changes: None.

Comment: Can the priority's focus be expanded to include international exchange activities and participants from other countries?

Discussion: The priority is intended to train emerging leaders who work for, or with, or are served by community-based organizations in cooperation with national, State, and local entities. International exchange activities are outside the scope of the priority, and participation of individuals from other countries is outside the scope of the priority unless they work for, or with, or are served by eligible community-based organizations.

Changes: None.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the

following priority. The Secretary will fund under this competition only applications that meet this priority.

Priority: Leadership Training

Introduction

Chapter Two of NIDRR's proposed LRP (63 FR 57194–57198) describes the increased rate of disability in racial and ethnic minorities. Disability services providers, including providers of vocational rehabilitation services, are studying ways to improve access to, and the provision of, services to minority populations. There is a need for new training approaches in order to increase the number of leaders with disabilities, including those from minority backgrounds, to become effective advocates for all persons with disabilities.

Section 21 of the Rehabilitation Act of 1973, as amended, requires that NIDRR reserve a portion of its appropriated funds for a fiscal year to carry out certain activities. Section 21(b)(2)(A) authorizes NIDRR to make awards to minority entities and Indian tribes to carry out activities authorized under Title II of the Act. Minority entities are defined as a historically Black college or university (a Part B institution, as defined in Section 322(2) of the Higher Education Act of 1965), a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent. Consistent with Section 21(b)(2)(A), eligibility to apply for this grant will be limited to minority entities and Indian tribes.

Priority: The Secretary will establish a DRRP to increase the leadership competencies of individuals with disabilities, including those from minority backgrounds, who work for, or with, or are served by community-based organizations, whose purpose is to improve the educational, employment, and socio-economic status of diverse communities of people. The purpose is to enable these trained individuals to maximize the full inclusion and integration of individuals of disabilities of all ages into society, employment, independent living, family support, and economic and social self-sufficiency. The DRRP must:

(a) Identify national, State, and local disability-related education, service, civil rights, and policy entities to participate in the development of leadership training activities and strategies; and

(b) In cooperation with the entities identified under paragraph (a), train individuals with disabilities who have demonstrated leadership potential, including those from minority backgrounds, who work for, or with, or are served by community-based organizations whose purpose is to improve the educational, employment, and socio-economic status of diverse communities of people. Areas of training may include: service delivery, disability civil rights history and advocacy, management, policy and financial analysis, and establishment of policies and direction for rehabilitation programs.

In carrying out these purposes, the project must:

- Address issues of equal access of minority individuals with significant disabilities to rehabilitation services; and
- Provide training on the philosophy of disability-related self-determination and self-advocacy, development of peer relationships, inclusion, independent living, and peer role models.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm

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http://www.access.gpo.gov/nara/index.html

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Dated: May 20, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–13851 Filed 5–28–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A–14]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Inviting Applications for a New Disability and Rehabilitation Research Project for Fiscal Year 1999

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1999 competition under the National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Project. The purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Act. Section 21 of the Rehabilitation Act of 1973, as amended, requires that NIDRR reserve a portion of its appropriated funds for a fiscal year to carry out certain activities. Section 21(b)(2)(A) authorizes NIDRR to make awards to minority entities and Indian tribes to carry out activities authorized under Title II of the Act.

This notice supports the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

Deadline for Transmittal of Applications: July 16, 1999.

Application Available: June 1, 1999.

Maximum Award Amount Per Year: $175,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

Eligible Applicants: Parties eligible to apply for grants under this program are minority entities and Indian tribes. Minority entities are defined as a historically Black college or university (a Part B institution, as defined in Section 322(2) of the Higher Education Act of 1965), a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR),

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34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; (b) Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, particularly Subpart B; and (c) the notice of final funding priority on Leadership Training published elsewhere in this issue of the **Federal Register**.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the proceeding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 760–762.

Dated: May 26, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–13852 Filed 5–28–99; 8:45 am]

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federal register

Tuesday
June 1, 1999

Part VIII

Department of Education

34 CFR Part 99
Family Educational Rights and Privacy; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 99

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Family Educational Rights and Privacy Act (FERPA). The amendments are needed to implement sections 951 and 952 of the Higher Education Amendments of 1998 (HEA), and to clarify several existing provisions.

DATES: Comments must be received by the Department on or before August 2 1999.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–4605. Comments may also be sent through the Internet to FERPA__Comments@ED.Gov.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–4605. Telephone: (202) 260–3887.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

The Secretary particularly requests comments from institutions of postsecondary education on whether the new regulatory definitions of "crime of violence," and "final results" under § 99.39 are sufficiently clear and provide adequate guidance in interpreting and applying the statutory amendment.

The Secretary also particularly requests comments on whether the provision concerning the nonconsensual disclosure of information to parents and guardians under § 99.31(a)(14) is sufficiently clear and whether it provides adequate guidance on this new permissible disclosure.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2W113, FB–6, 400 Maryland Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Background

These proposed regulations have been reviewed and revised in accordance with the Department's "Principles for Regulating," which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Partnership for Reinventing Government and are essential to an effective partnership with States and localities. The Secretary proposes these regulations and believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, the regulations minimize burden while protecting parents' and students' rights.

Summary of Major Provisions

The following is a summary of the regulatory provisions the Secretary proposes as necessary to implement the statute (Pub. L. 105–244, effective October 1, 1998), such as interpretations of statutory text or standards and procedures for the operation of the program. Some of the provisions merely restate statutory language.

The Secretary is not authorized to change statutory requirements. Commenters are requested to direct their comments to the regulatory provisions that would implement the statute.

1. Section 99.1 Applicability

FERPA applies to educational agencies and institutions to which funds are made available under any program which is administered by the Secretary. The proposed clarification of the term "educational agency" is necessary because the phrase "performs service functions for" causes confusion with the public. This revision clarifies that FERPA generally applies to educational agencies that have direct administrative responsibilities for the educational services provided by public elementary and secondary schools or by postsecondary institutions.

2. Section 99.3 Definitions

The Secretary proposes to amend the definition of the term "directory information" by adding additional items that may be designated by an educational agency or institution as "directory information" and to clarify the meaning of "dates of attendance." The term "dates of attendance" is intended to refer to the period of time during which an individual attended or was enrolled in an educational agency or institution and not to a student's daily attendance record.

The Secretary also proposes to clarify the definition of sole possession records. The Secretary proposes to provide more detailed guidance on the definition because there has been confusion over the term. Sole possession records are memory aids or reference tools that do not contain information taken directly from a student or records that are used to make decisions about the student.

3. Section 99.5 Rights of Students

The Secretary proposes to provide additional guidance regarding the requirement that a student attending one component of an educational agency or institution does not have rights under FERPA with respect to other components of the same agency or institution to which the individual has applied for admission. This clarification restates § 99.5(c) in a more direct manner in order to explain that an individual who is or has been a student at an agency or institution and who has been rejected for admission by a

component of that agency or institution does not have rights under FERPA with respect to that application for admission.

4. Section 99.31(a)(3) Prior Consent Not Required for Disclosure to Attorney General of the United States

The proposed regulations implement a new statutory provision that permits the disclosure of education records to authorized representatives of the Attorney General of the United States for law enforcement purposes without specific consent of the student.

5. Section 99.31(a)(8) Prior Consent Not Required for Disclosures to Parents of a Dependent Student

The Secretary clarifies that educational agencies and institutions may disclose education records to the parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986, without the student's consent. An educational agency or institution may disclose education records to either parent of a dependent student, regardless of which parent claims the student as a dependent.

6. Section 99.31(a)(9)(iv) Prior Consent Not Required for Disclosures That Are Necessary for the Educational Agency or Institution To Defend Itself

A new regulatory provision states that FERPA permits an educational agency or institution to release education records to a court, without a parent's or an eligible student's prior written consent and without a court order or lawfully issued subpoena, if the parent or eligible student has initiated legal action against the school. The disclosure is limited to those records that are necessary for the agency or institution to defend itself in court.

7. Section 99.31(a)(13) and § 99.39 Disclosure of Final Results of Certain Disciplinary Proceedings

The HEA amended the statute to allow a postsecondary institution to disclose the final results of any disciplinary proceeding conducted by the institution against a student who is an alleged perpetrator of a crime of violence if the institution determines, as a result of the proceeding, that the student committed a violation of the institution's rules or policies with regard to that crime.

A new section (§ 99.39) provides guidance to institutions regarding this change, and lists the applicable definitions. The Secretary particularly welcomes comment on this provision.

8. Section 99.31(a)(14) Prior Consent Not Required for Disclosures to Parents and Legal Guardians Regarding Violations of Alcohol or Drug Laws or Rules

The HEA amended the statute to permit postsecondary institutions to disclose to parents and legal guardians of students under the age of 21, without the student's consent, information regarding the student's violation of any Federal, State, or local law, or any rule or policy of the institution governing the use or possession of alcohol or a controlled substance.

In addition to this new provision, the statute already provides that postsecondary institutions may disclose certain information from a student's education records to parents or legal guardians under several exceptions to the prior consent rule. Under § 99.31(a)(8) of the regulations, institutions may release information to parents or guardians, without the student's consent, if the student is a dependent for tax purposes. Also, under § 99.31(a)(10), an institution may release information to a parent or guardian in connection with a health or safety emergency. This provision adds a new exception to the prior consent requirement of FERPA.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 99.31.)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) receiving Federal funds from the Department and certain 4- and 2-year colleges and for-profit postsecondary trade and technical schools with small enrollments that receive federal funds, such as student aid programs under Title IV of the Higher Education Act of 1965. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure that LEAs comply with the educational privacy protection requirements in FERPA.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Privacy, Parents, Records, Reporting and recordkeeping requirements, Students.

Dated: May 25, 1999.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.1 is amended by revising paragraph (a)(2) to read as follows:

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) * * *

(2) The educational agency provides administrative control of or direction of public elementary or secondary schools or by postsecondary institutions.

3. Section 99.3 is amended by revising the definition of "Directory information", and by revising paragraphs (b) introductory text and (b)(1) under the definition of "Education records" to read as follows:

§ 99.3 What definitions apply to these regulations?

* * * * *

Directory information. (a)(1) The term means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, photograph, degrees, honors and awards received, and the most recent educational agency or institution attended.

(2)(i) "Dates of attendance" refers to the general periods of time during which an individual attended or was enrolled in an educational agency or institution. Examples of "dates of attendance" include an academic year, a spring semester, or a first quarter.

(ii) The term "dates of attendance" does not include daily specific records of a student's attendance at an educational agency or institution. A student's attendance record is not "directory information" and may not be disclosed without consent under FERPA.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

* * * * *

Education records.

* * * * *

(b) The term does not include—

(1) Records that are kept in the sole possession of the maker of the record—often called sole possession records—that are not used for purposes other than a memory or reference tool, that are not accessible or revealed to any other person except a temporary substitute for the maker of the record, and that are typically maintained by the school official unbeknownst to other individuals. Records that contain information taken directly from a student or that are used to make decisions about the student are not sole possession records.

* * * * *

4. Section 99.5 is amended by revising paragraph (c) to read as follows:

§ 99.5 What are the rights of students?

* * * * *

(c) An individual who is or has been a student at an educational agency or institution and who has been rejected for admission by a component of that educational agency or institution does not have rights under this part with respect to records collected and maintained in connection with consideration of that application for admission.

5. Section 99.31 is amended by revising paragraph (a)(3), revising paragraph (a)(8), adding paragraph (a)(9)(iv), revising paragraph (a)(13), adding a new paragraph (a)(14), and revising paragraph (b) to read as follows:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) * * *

(3) The disclosure is, subject to the requirements of § 99.35, to authorized representatives of—

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States (for law enforcement purposes);

(iii) The Secretary; or

(iv) State and local educational authorities.

* * * * *

(8)(i) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

(ii) The educational agency or institution may disclose information under paragraph (a)(8)(i) of this section to either parent of a dependent student, regardless of which parent claims the student as a dependent.

* * * * *

(9) * * *

(iv) If a parent or eligible student initiates legal action against the educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are necessary for the educational agency or institution to defend itself.

* * * * *

(13) The disclosure is in connection with a disciplinary proceeding conducted by an institution of postsecondary education against a student who is an alleged perpetrator of a crime of violence subject to § 99.39.

(14)(i) The disclosure is to a parent or a legal guardian of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if—

(A) The student is under the age of 21; and

(B) The institution determines that the student has committed a disciplinary violation with respect to that use or possession.

(ii) Paragraph (a)(14)(i) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from making the disclosure permitted in this section.

(b) This section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) through (14) of this section.

6. A new § 99.39 is added to read as follows:

§ 99.39 What conditions apply to disclosure of records pertaining to disciplinary proceedings?

(a) An institution of postsecondary education may disclose the final results of a disciplinary proceeding conducted by the institution concerning an allegation of a crime of violence against a student who is an alleged perpetrator of a crime of violence, without the prior written consent of the student, if the institution determines as a result of that

disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to that crime.

(b) As used in this part:

Crime of violence, as that term is defined in section 16 of title 18, United States Code, means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. It includes, but is not limited to, the following offenses: criminal homicide, forcible sex offense, robbery, aggravated assault, and arson, as these terms are defined in appendix E to 34 CFR part 668, as well as burglary of an occupied structure or dwelling and kidnaping.

Final results means only the name of the student charged, the violation committed, and any sanction imposed by the institution on the student.

(c) The institution must not disclose the name of any other student, such as a victim or witness, without the prior written consent of that other student.

(d) This section applies to disclosures made or to requests received by an institution of postsecondary education on or after October 1, 1998.

7. Section 99.63 is revised to read as follows:

§ 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, 400 Maryland Avenue, SW, Washington, D.C. 20202–4605.

(Authority: 20 U.S.C. 1232g(g))

§ 99.64 [Revised]

8. Section 99.64(d) is removed and reserved.

[FR Doc. 99–13853 Filed 5–28–99; 8:45 am]
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CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

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To designate the North/South Center as the Dante B. Fascell North-South Center. (May 21, 1999; 113 Stat. 54)

H.R. 869/P.L. 106–30
To amend the Peace Corps Act to authorize appropriations for fiscal years 2000 through 2003 to carry out that Act, and for other purposes. (May 21, 1999; 113 Stat. 55)

H.R. 1141/P.L. 106–31
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Last List May 18, 1999

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

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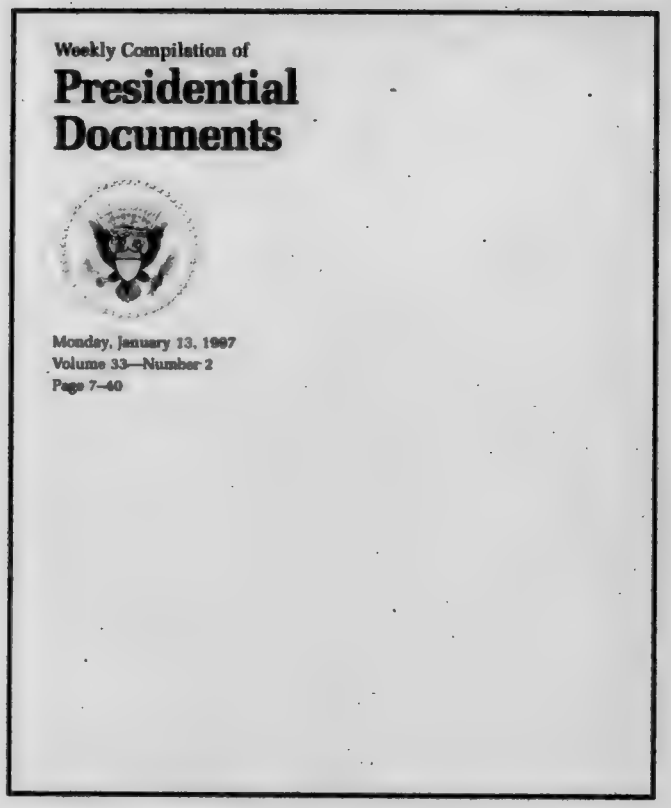

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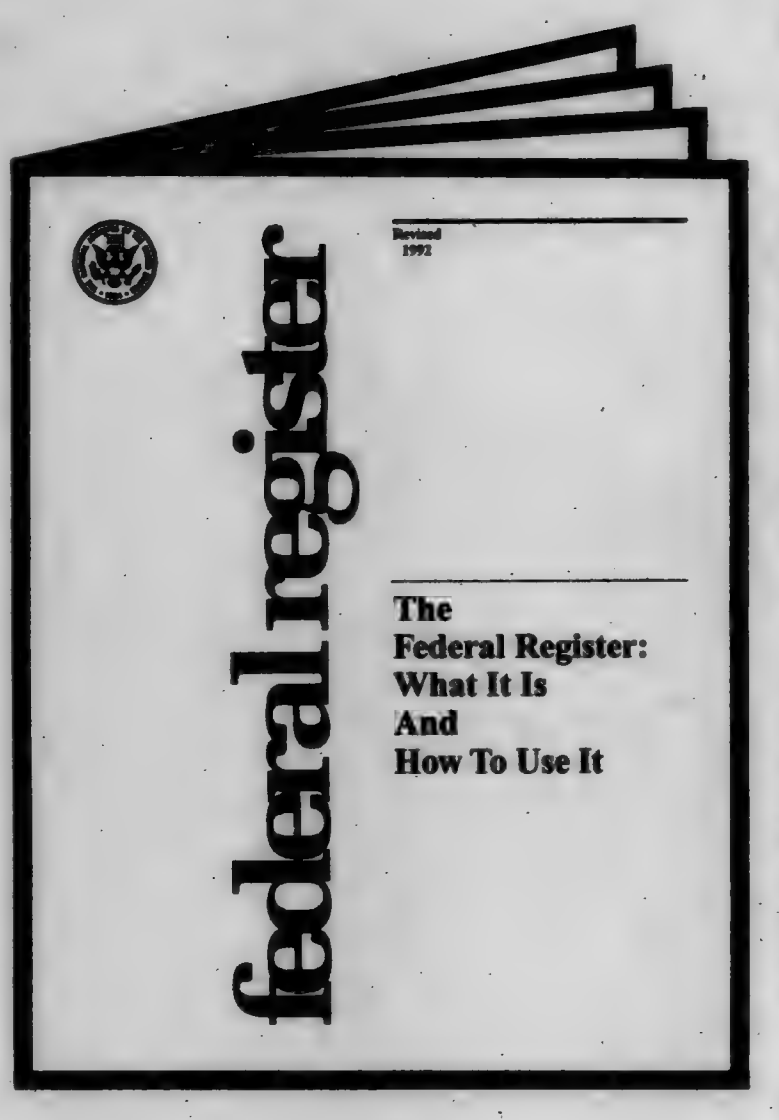

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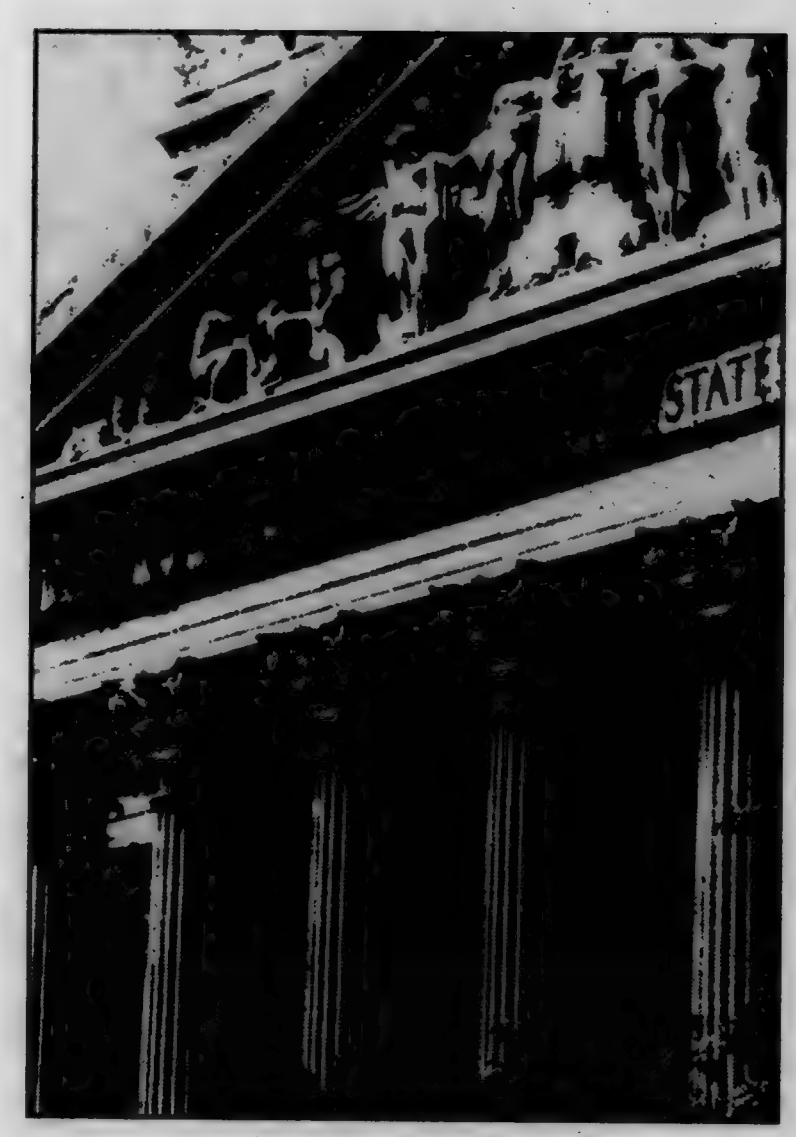

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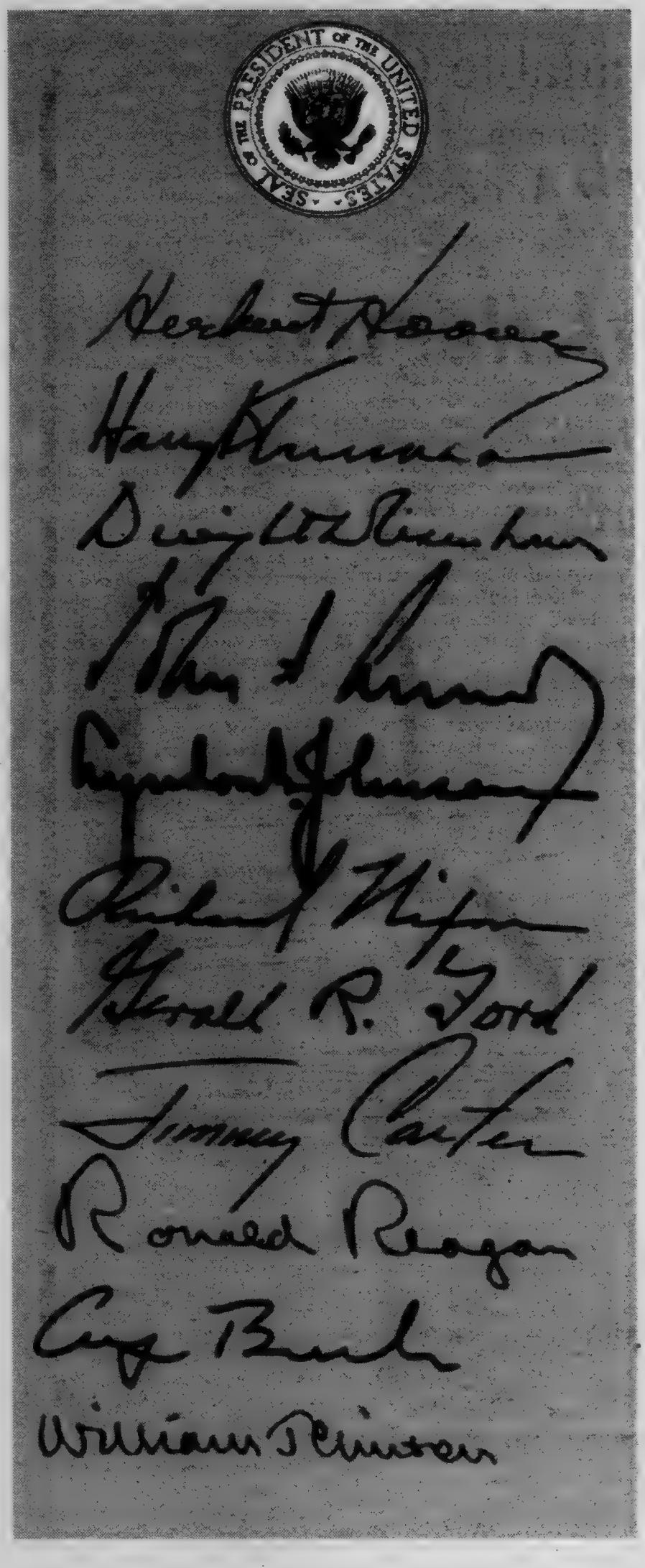

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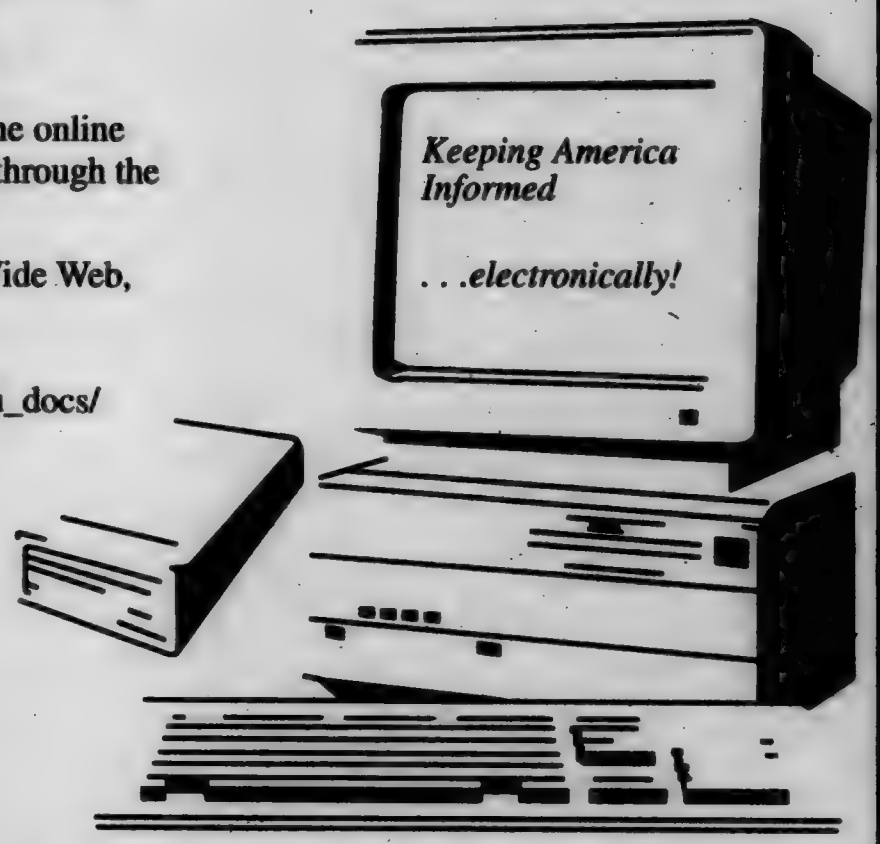

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Federal Register
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Wednesday, June 2, 1999

Presidential Documents

Title 3—

The President

Presidential Determination No. 99–25 of May 24, 1999

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me under section 540(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, Public Law 105–277, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, through October 21, 1999.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 24, 1999.

[FR Doc. 99–14062
Filed 6–1–99; 8:45 am]
Billing code 4710–10–M

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Presidential Documents

Memorandum of May 26, 1999

Delegation of Authority Under Section 2106 of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277)

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate the functions and authorities conferred upon the President by section 2106 of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), to the Secretary of State, who is authorized to redelegate these functions and authorities consistent with applicable law.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 26, 1999.

[FR Doc. 99–14063
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Rules and Regulations

Federal Register
Vol. 64, No. 105
Wednesday, June 2, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–24]

RIN 0579–AA83

Karnal Bunt Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, an interim rule that amended the Karnal bunt regulations by modifying the criteria for classifying regulated areas and by modifying the classification of restricted areas. The interim rule required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. The interim rule also established separate restricted areas for seed and for regulated articles other than seed. The actions taken in the interim rule were necessary because tests currently available for use in identifying spores do not allow us to differentiate between small numbers of Karnal bunt spores and the spores of an as yet unnamed, but widely distributed, ryegrass smut. The interim rule had the effect of removing some areas in Arizona and California from the list of regulated areas and relieving restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14.

In an interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997 (62 FR 23620–23628, Docket No. 96–016–19), we amended the Karnal bunt regulations by modifying the criteria for classifying regulated areas. We required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. In that interim rule, we also modified the classification of restricted areas by establishing separate restricted areas for seed and for regulated articles other than seed.

We solicited comments concerning the interim rule for 60 days ending June 2, 1997. We received 13 comments by that date. They were from five State agricultural agencies, three associations representing grain growers and processors, a food corporation, a grain handler, a wheat grower, and a scientific society. One of the commenters fully supported the interim rule as written. The remaining 12 commenters expressed concerns or made suggestions regarding certain aspects of the interim rule, although 8 of those commenters did offer their support for the changes contained in the interim rule. The issues raised by those 12 commenters are discussed in detail below.

Comment: The definition of *infestation (infected)* in § 301.89–1 of the regulations states that an area is infected if any stage of the fungus *Tilletia indica* (Mitra) Mundkur is present. Section 301.89–3(e) lists several criteria that are used to classify regulated areas, with the classification of regulated areas being based on the discovery of bunted kernels. If the discovery of bunted kernels is now the criterion on which an area is regulated, rather than the detection of spores, should the definition of *infestation (infected)* be modified to reflect that change?

Response: If the discovery of bunted kernels was the sole criterion on which an area's regulatory status was based, it would be appropriate to modify the definition of *infestation (infected)* as suggested by the commenter. However, § 301.89–3(e) still provides for the designation of regulated areas based on the detection of spores in a field when that field is found to be associated with grain at a handling facility containing a bunted wheat kernel. Therefore, it would be inaccurate to base the definition of *infestation (infected)* only on the detection of bunted kernels.

Comment: Is the designation of regulated areas in § 301.89–3(f) valid only for the 1996–1997 crop production year? Since those regulated areas differ from those regulated in the 1995–1996 crop year, will the 1996–1997 regulated areas be modified for the 1997–1998 crop year? If so, what criteria will be used to define those areas?

Response: We do not intend to update the list of regulated areas in § 301.89–3(f) on a "crop year" basis as envisioned by the commenter. Rather, we will continue to amend the list of regulated areas when the situation warrants, removing areas from the list when we determine that it is no longer necessary to regulate them to prevent the spread of Karnal bunt and adding new areas to the list based upon the detection of Karnal bunt. The criteria used to define regulated areas are found in § 301.89–3.

Comment: In § 301.89–3(d), we would suggest that State plant regulatory officials be included in the written notification of the designation of an area as a regulated area. It is vital that State and Federal agencies interact closely with industry on this issue.

Response: Paragraph (d) of § 301.89–3 deals with the temporary designation of a nonregulated area as a regulated area. Because the movement of regulated articles from the temporarily designated regulated area will be subject to the regulations, the written notification is directed to the person most immediately affected by the designation of an area as a regulated area, i.e., the owner or person in possession of the land or, in the case of

publicly owned land, the person responsible for the management of the land. The notification of State plant regulatory officials in such cases is handled by the Animal and Plant Health Inspection Service (APHIS) State Plant Health Director in each State and through updates to the National Agricultural Pest Information Service database that is maintained by the joint APHIS/State Cooperative Agricultural Pest Survey. We do not, therefore, believe that it is necessary to include State officials in the notification provisions of § 301.89–3(d) to ensure that they receive timely notice of the temporary designation of nonregulated areas as regulated areas.

Comment: Intensive surveys should be conducted to ensure continued confidence in the freedom of areas released from regulation and areas outside the regulated area. It would be scientifically invalid to assume that the bunted kernel fields now regulated will be the only fields in which viable Karnal bunt spores may exist. The needs of the wheat industry in the Southwest should be considered in APHIS' regulatory decisionmaking, but the credibility of the U.S. export certification program must be maintained for the benefit of the entire nation. A thorough survey program will validate the regulatory program and ensure continued confidence in our exports.

Response: We agree with the commenter's position regarding the need for maintaining adequate delimiting surveys and detection programs. Our work in that respect continues on two fronts. First, there are the survey and detection activities that are carried out as part of the regulatory program within those areas of Arizona, California, New Mexico, and Texas that have been designated as regulated areas. In addition to the regulatory program, we are also conducting an ongoing National Survey of all wheat production areas in the United States in order to gather information about the presence or absence of Karnal bunt. The phytosanitary requirements of some of our trading partners necessitate the collection of documentable evidence that production areas are not infested at detectable levels. Without that documentation, we cannot provide the certifications that allow wheat to be sold into certain foreign markets. The intensity of this survey will provide a high level of confidence that Karnal bunt is not detectable in those parts of our wheat production system that contribute to the export trade. As well as identifying areas that are free of Karnal bunt infestations, the National Survey will provide information about potential infections in new areas. By the end of 1997, the National Survey had covered all wheat growing areas of the United States where Karnal bunt had not previously been detected. In the National Survey, composite wheat samples are collected at county elevators, feed mills, seed laboratories, and seed trade and research locations. During 1996, the first year Karnal bunt was known to be present in the United States, 15,000 samples were collected and processed. By the end of 1997, over 11,000 additional composite samples had been collected, in proportion to wheat production, from wheat-producing areas where Karnal bunt had not been detected. We believe that our ongoing regulatory program and National Survey activities provide the assurances sought by the commenter and by our trading partners regarding the Karnal bunt status of areas released from regulation and areas outside the regulated areas.

Comment: APHIS should use the selective sieve technique, rather than a bunted kernel search technique, to check samples from the pre-release survey. The selective sieve technique can be used to eliminate samples that do not require further inspection so that efforts can be concentrated on those samples that do. In addition, all samples should be processed in a timely manner, rather than being processed as time allows.

Response: We have not limited ourselves to using any one method of examining samples, and we do not believe it is necessary to do so. In order to make the best use of our resources, we use the methodology best suited to the situation and operational circumstances at hand. Currently, the bunted kernel search technique is used in our survey activities in the regulated areas. The selective sieve technique, which involves the washing of grain samples and the subsequent examination of only those samples from which spores were collected, cannot be performed in the field. The bunted kernel search technique can be performed expeditiously in the field. Therefore, while the selective sieve technique may meet our operational needs in other situations, it does not meet the need for quick results in the field test situation.

Comment: The current seed treatment requirement is a costly procedure that could be a marketing problem within California and abroad if it is determined that excess chemicals were used in the production of California wheat. APHIS should review the efficacy of the required seed treatments, their adverse effects on germination, and whether the prescribed use of carboxin thiram and pentachloronitrobenzene is consistent with the labeling of those chemicals.

Response: We are satisfied that the use of carboxin thiram and pentachloronitrobenzene as a double-fungicide treatment under § 301.89–13(d) is consistent with the labeling of those chemicals. With regard to their effects on germination, preliminary data from research gathered by APHIS' Karnal bunt regulatory program staff and the Arizona Department of Agriculture suggested that the double-fungicide treatment may negatively affect germination in some varieties of seed. Specifically, this research data indicated that for the seed varieties tested, double-treated seed may germinate at a lower rate than untreated seed in some cases. However, as a result of our continuing efficacy research, three single-fungicide treatment options have been made available for seed originating in a regulated area that will be planted within a regulated area. Those single-fungicide treatments were added to § 301.89–13(d) by an interim rule that was effective on November 28, 1997, and published in the **Federal Register** on December 5, 1997 (62 FR 64263–64265, Docket No. 96–016–27). In answer to the commenter's concerns, the single-fungicide treatments now available will reduce the cost of seed treatment and lessen the level of chemicals used in the production of wheat. Further, we anticipate that single-treated seeds may in some cases have germination rates slightly higher than double-treated seeds. It should be noted, however, that many factors affect germination, and it is not possible to attribute increase or decrease in germination only to seed treatments.

Comment: The presence of regulated areas within California has resulted in Mexico placing restrictions on the importation of wheat from all wheat-producing areas of California. APHIS should ensure that California wheat produced outside the regulated areas receives the same consideration by our trading partners as wheat produced elsewhere in the United States.

Response: APHIS routinely seeks to answer any concerns raised by our trading partners regarding the phytosanitary status of U.S.-grown agricultural commodities. Addressing concerns related to Karnal bunt has been a part of our activities since the disease was first detected in this country. Since that initial detection, APHIS has been able to maintain export markets for U.S. wheat in more than three dozen countries with concerns about Karnal bunt. In an instance such

as that brought up by the commenter, APHIS will act to address the concerns of our trading partners and will seek the removal of any unjustifiable phytosanitary restrictions.

Comment: The move by APHIS to regulate areas based on their association with bunted kernels was a good one. However, the restrictions placed on wheat grown as seed in the regulated area is not consistent with that approach. If wheat seed grown in a regulated area was found to contain spores (and is thus ineligible for planting), the seed could be designated as grain and moved out of the regulated area without restriction if it was grown in the area outside the surveillance area. On the other hand, if grain to be moved from within a surveillance area is found to have spores, it must move under a limited permit. If testing cannot positively determine the presence of Karnal bunt on the basis of spores alone, then none of this seed or grain can be considered infected.

Response: We explained in the interim rule that grain from a surveillance area found to contain spores must be moved under a limited permit because it originated in an area that includes at least one field in which a bunted wheat kernel had been detected, and that the link to bunted wheat kernels gave us reason to believe that grain containing spores was at greater risk for being infected with Karnal bunt. We agree with the commenter's observation that current testing methods cannot be used to determine the presence of Karnal bunt on the basis of spores alone. It was that fact that led to the interim rule's amendments to the Karnal bunt regulations to require that an area or regulated article be associated with a bunted kernel before regulatory restrictions would be applied. Following the publication of the interim rule, we further amended the regulations (63 FR 50747–50752, Docket No. 96–016–32, published September 23, 1998) to allow the certified movement of grain for uses other than seed if the grain was tested prior to movement from the field, or before being commingled with other grain, and found free of bunted kernels only, rather than Karnal bunt spores and bunted kernels.

Comment: APHIS should recognize that Karnal bunt is a minor disease—it is more a quality or grading issue than it is a quarantine pest issue—and should remove its importation and interstate movement restrictions and encourage our trading partners to adopt the same view.

Response: Given the continuing international perception of Karnal bunt as a quarantine pest issue, we do not believe that it would serve the interests of American agriculture to unilaterally remove our regulatory restrictions through which we seek to prevent the introduction and dissemination of Karnal bunt. The position that Karnal bunt is a grading issue rather than a quarantine issue is one that has been discussed in international trade and scientific circles, but until such time as our trading partners view the disease as a grading issue, we believe that it will be necessary to continue our Karnal bunt-related regulatory activities and restrictions in order to protect our international agricultural standing.

Comment: The Palo Verde Valley of California should not be a surveillance area. The bunted kernels found in storage there were found in facilities that were not cleaned prior to the storage of the 1996 crop, and no bunted kernels were found in any trucks hauling the valley's 1996 crop. Given the low spore counts, it is unlikely any bunted kernels could now be found.

Response: As we stated in the interim rule, the regulatory status of the Palo Verde Valley is based on the presence of fields within the valley that are considered to be positive for Karnal bunt. Those fields had not been examined individually for bunted wheat kernels during the 1996 surveys, but they were found to contain spores. Further, grain from those fields was part of a commingled lot of grain at a storage facility that was found to contain bunted wheat kernels. However, because the grain in that commingled lot came from several sources, the bunted kernels could not be traced back to any individual field or fields. It is the combination of spores in the fields and bunted wheat kernels in grain associated with the fields that gives us reason to believe that those fields are affected with Karnal bunt. At the present time, we believe that regulatory restrictions on the Palo Verde Valley should remain in place because we do not possess sufficient data that would allow us to change our conclusion that those fields, and the areas that surround them, are associated with Karnal bunt. Although the programmatic classification of "surveillance area" was removed in a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36), we retained the Palo Verde Valley as a regulated area for the same reasons that the area was designated as a surveillance area in the interim rule. However, we will continue to reevaluate the regulatory status of areas, including the Palo Verde Valley, as additional information becomes available.

Comment: If seed treatment is truly effective and significantly reduces the possibility of spreading Karnal bunt, then seed treatment should be required for all seed planted in the United States. Similarly, if the treatment is effective, then treated seed from a regulated area should be approved for planting outside the regulated areas.

Response: With regard to requiring treatment for all seed planted in the United States, we believe that it would be an unjustifiable burden from a risk standpoint to require the treatment of seed that has no association with Karnal bunt. As for the commenter's suggestion about allowing treated seed from a regulated area to be planted outside the regulated areas, we did amend our regulations on September 23, 1998 (63 FR 50747–50752, Docket No. 96–016–32) to allow, among other things, commercial lots of treated seed from that portion of the restricted area for seed lying outside the surveillance area to be moved outside the regulated area for planting. However, that provision was rendered unnecessary, and was therefore removed, by a subsequent final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36). The May 1999 final rule removed the programmatic classification of "restricted area for seed" and released nearly all of the areas that had been designated as such from regulation, thus making it possible for seed to be moved from those areas without restriction.

Comment: Paragraph (f) of § 301.89–3 of the interim rule states that the areas listed in the section are designated as "regulated areas," and that those regulated areas are designated as either "restricted areas" or "surveillance areas." Paragraph (a) of § 301.89–5 of the interim rule states that any regulated article (i.e., certain articles from a regulated area) may be moved into or through an area that is not regulated only if moved under certain conditions. That restriction on the movement of regulated articles would seem to apply to the movement of grain from any part of the regulated area, but it appears that this is not the intent of the interim rule. As explained in the interim rule, grain is a regulated article, but its movement is restricted only from a surveillance area and not from the entire regulated area, which includes the restricted area for seed that extends beyond the surveillance area.

Response: The commenter is correct. The intent of the interim rule was that:

- Grain (wheat, durum wheat, and triticale) may not be grown in a

restricted area for regulated articles other than seed. Because grain may not be grown in such an area, there was no need to provide for the movement of grain from a restricted area for regulated articles other than seed. This was spelled out in the interim rule.

• Grain may be grown in a surveillance area, and may be eligible for movement from a surveillance area with a certificate under the conditions set forth in § 301.89–6(b). This, too, was spelled out in the interim rule.

• Outside the surveillance area, grain may be grown in the restricted area for seed and may be moved from that area without a certificate or limited permit. This was not made clear in the interim rule and, as noted by the commenter, § 301.89–5(a) does not provide for the movement of grain from a restricted area for seed.

Although the commenter was correct in noting that the interim rule did not provide for the movement of grain from a restricted area for seed, we are not making any changes to the regulations as a result of that comment. Such a change is now unnecessary due to the changes made in a final rule that was effective on April 28, 1999, and published in the **Federal Register** on May 5, 1999 (64 FR 23749–23754, Docket No. 96–016–36), which removed the restricted area for seed classification.

Comment: APHIS' move to require only a single test for grain moved from a surveillance area was a good one, but the single test that is required should be for bunted kernels and not spores. It is illogical to have a bunted kernel standard for establishing regulated areas and a "one spore and you're out" standard for moving grain and other regulated articles. Placing restrictions on the movement of grain based on the presence of spores that are assumed—but not proven—to be associated with Karnal bunt holds growers to standards that are stricter than the disease demands. In that same vein, there is no explanation in the interim rule as to why double testing is still required for the movement of grain out of a restricted area.

Response: As we noted in the response to another comment, our September 23, 1998, final rule amended the regulations to allow the certified movement of grain for uses other than seed if the grain is tested prior to movement from the field, or before being commingled with other grain, and found free of bunted kernels only, rather than Karnal bunt spores and bunted kernels. Regarding the commenter's reference to double-testing for the movement of grain from a restricted area, that requirement, which had been found in § 301.89–6(d), was removed by the interim rule.

Comment: The interim rule contains an open-ended prohibition on the planting of wheat in restricted areas for regulated articles other than seed, i.e., the prohibition is not limited to a single crop season. Although it may not have been the intent of the interim rule, it appears that a significant amount of farm acreage could be permanently barred from growing wheat. APHIS should adopt a timetable for the release of those areas from regulation.

Response: In a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36), we removed the prohibition on the planting of Karnal bunt host material in those fields that had been designated as restricted areas for regulated articles other than seed, thus answering this commenter's concerns.

Comment: If APHIS is considering Mexico's request that the Mexicali Valley be declared free from Karnal bunt, then APHIS should also consider the adjacent areas in Yuma County, AZ, as free from Karnal bunt, since the two areas can be viewed as comprising a single "distinct, definable area" as that term is defined in § 301.89–1.

Response: Given that an international border lies between Mexico's Mexicali Valley and the adjacent areas of Yuma County, AZ, and given that restrictions are in place regarding the movement of Karnal bunt host material between the United States and Mexico, we do not believe that it is appropriate to consider the Mexicali Valley and Yuma County, AZ, as a single "distinct, definable area." Rather, Mexico's request regarding the Karnal bunt status of the Mexicali Valley was evaluated on its own merits, as should any decision regarding the regulatory status of Yuma County, AZ.

Other Comments

In addition to the issues discussed above, several commenters questioned the continuing regulatory status of areas in New Mexico. Two commenters noted that Karnal bunt has been linked to New Mexico only through the 106 fields identified as having been planted with potentially contaminated seed. One of those commenters stated that those 106 fields should be the only regulated areas in New Mexico—i.e., there should be no restricted areas for seed in the State—while the other commenter took the position that even those 106 fields should be released from regulation because the wheat in those fields was destroyed before heading out and no bunted kernels have been detected in New Mexico in the course of subsequent testing. Other commenters asked that specific fields in New Mexico be removed from regulation due to their isolation from other farm areas and the lack of evidence—other than the contaminated seed that was planted there—pointing to the presence of Karnal bunt in New Mexico.

Even though the wheat in those 106 fields was plowed down and destroyed before heading out, available information regarding Karnal bunt indicates that viable *T. indica* inoculum could persist in the soil for several years. Therefore, we believe that it is necessary for those fields to continue to be designated as regulated areas. We have, however, removed the regulatory restrictions that applied to the areas surrounding those fields, which had been designated as restricted areas for seed. As noted elsewhere in this document, the "restricted area for seed" classification was eliminated by a final rule that was effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36), so those 106 individual fields are now the only regulated areas in New Mexico. We will continue to reevaluate the regulatory status of those fields in New Mexico, as well as the regulated areas in other States. As we continue to accumulate negative survey data, we will be in a better position to make and defend decisions regarding the further release of areas from regulatory restrictions.

Three of the commenters raised the issue of compensation. The issue of compensation was not raised in the interim rule and is, therefore, outside the scope of this final rule. Rather, compensation has been, and will continue to be, addressed in separate rulemakings that focus exclusively on that issue.

Changes Made in This Document

In the interim rule, we amended the regulations by redesignating footnotes 2 through 6 as footnotes 1 through 5, respectively. When we redesignated footnote 3 as footnote 2, we should have amended the text of what is now footnote 5, which refers the reader to footnote 3, to reflect the redesignation of footnote 3. We are correcting that omission in this document.

Since the interim rule that is the subject of this document became effective, we have published two other rulemakings in the **Federal Register** that amended the provisions established in the interim rule. This document does not affect those rulemakings. The provisions of those rulemakings are:

• In the interim rule, we revised paragraphs (e) and (f) of § 301.89–3. Those two paragraphs were revised again by a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36).

• In the interim rule, we revised § 301.89–4. That section was revised again by the May 1999 final rule.

• In the interim rule, we revised paragraph (b) of § 301.89–6. That paragraph was revised again by a final rule published and effective on September 23, 1998 (63 FR 50747–50752, Docket No. 96–016–32), and that September 1998 revision was further amended by the May 1999 final rule.

• In the interim rule, we amended § 301.89–6 by removing and reserving paragraph (d). In the September 1998 final rule, we added a new paragraph (d) to § 301.89–6. Then, in the May 1999 final rule, we removed the paragraph (d) that had been added by the September 1998 final rule and redesignated paragraph (e) as paragraph (d).

Therefore, for the reasons set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This document adopts as a final rule, with one change, an interim rule that amended the Karnal bunt regulations by modifying the criteria for classifying regulated areas and by modifying the classification of restricted areas. The interim rule required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. The interim rule also established separate restricted areas for seed and for regulated articles other than seed. The actions taken in the interim rule had the effect of removing some areas in Arizona and California from the list of regulated areas and relieving restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas.

In the interim rule, we stated that we were taking those actions on an expedited basis in order for the amended regulations to be in place prior to the spring wheat harvest in the affected States, and that the need to publish the interim rule on an expedited basis made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable.

The interim rule substantially reduced the amount of acreage regulated for Karnal bunt, which meant that regulated articles like grain, seed, and straw from the areas released from regulation could be moved without restriction. The interim rule also eased restrictions on the movement of grain and other regulated articles from those areas that remained under regulation. Given those changes, we stated our expectation that the interim rule would have a significant deregulatory impact on affected entities. We further stated that, because the majority of the affected entities in the regulated areas have been determined to be small entities, we would discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Act Analysis. That Final Regulatory Flexibility Act Analysis, which also serves as our cost-benefit analysis, is set forth below.

Entities Affected

The Regulatory Flexibility Act requires that agencies assess the impact of regulations on small businesses, organizations, and governments. We have assumed that the majority of the wheat producers in the regulated area would be classified as small entities, based on criteria established by the Small Business Administration (SBA) that defines a "small" wheat producer as one having annual sales of less than $500,000. We have also assumed that the economic impacts on all wheat producers would tend to be lower over time, especially if wheat production and marketings increase in the regulated area in response to the deregulatory effects of the interim rule. The economic impact of the interim rule on seed producers, however, depends largely on the degree to which foreign and domestic markets are willing to accept seed produced in areas that had been regulated for Karnal bunt.

The interim rule greatly reduced the number of nonpropagative wheat (i.e., grain) growers operating under regulatory constraints. Prior to the effective date of the interim rule, there were an estimated 598 growers affected by the regulations (236 in California, 310 in Arizona, 40 in New Mexico, and 12 in Texas). Once the interim rule became effective, the number of affected growers dropped to 93, a decline of 84.4 percent. Of those remaining affected growers, 56 were located in restricted areas for seed (29 in Arizona, 2 in California, 23 in New Mexico, and 2 in Texas) and 37 were located in surveillance areas (20 in Arizona, 17 in California, and none in New Mexico and Texas).

Although nonpropagative wheat (grain) growers are the entities primarily affected by the interim rule, there are other businesses that provide supplies and that harvest, transport, and process wheat grown in the regulated areas that were also affected by the interim rule. These entities include harvesters and grain trucks, grain storage and load-out facilities, railroad companies, grain handlers and marketers, seed producers and seed companies, seed research firms and universities, millers and other users of milling grain and millfeed, straw producers and users, and other entities involved in providing supplies to wheat growers and services to market and process their production.

Rationale for and Benefits of Regulation

Upon detection of Karnal bunt in the southwestern United States in the spring of 1996, quarantine and emergency actions were immediately imposed by APHIS in order to prevent the interstate spread of the disease to noninfected wheat producing areas in the country, which would have had serious economic impact on the $4 billion wheat export market,[1] given that 50 percent of exports were to countries that maintain restrictions against wheat imports from countries where Karnal bunt is known to occur. These actions included designating areas where Karnal bunt had been detected as regulated areas from which the movement of Karnal bunt host material was restricted or prohibited.

In addition to the quarantine, the Karnal bunt program consisted of a National Survey component in which samples of wheat from fields throughout the United States were collected and tested for Karnal bunt. The National Survey program provided assurances to wheat importing countries that fields outside the regulated areas were monitored for the disease. Countries that are willing to accept wheat from the regulated areas are assured that grain grown in those areas has been tested and found negative for the disease. Through these means, the Federal Karnal bunt program served to maintain and preserve the economic viability of

[1] About 1.2 billion bushels of wheat was exported from the United States in 1995, at a value of $4 billion.

the U.S. wheat export market. The main benefit of the regulatory program, therefore, can be viewed as the avoidance of the potentially significant losses to the wheat export market that would likely have occurred in the absence of regulation. Without Federal regulation, it is conceivable that farm income both within and outside the regulated areas could have been further jeopardized.

As additional information from sampling and testing became available, the Agency was able to ease the initial quarantine, which was necessarily broad due to the lack of data available at the time as to the extent of the infestation. Our subsequent modifications to the classification criteria for regulated areas and the classification of restricted areas, and the relief from restrictions that accompanied those changes, are the focus of this analysis. As a result of those modifications to the program, the Agency has been able to continue to assure importing countries that U.S. grain exports are coming from areas where Karnal bunt is not known to exist, but at a lower cost to producers and handlers than had been possible under the initial quarantine.

Changes in Planted Acreage

When Karnal bunt was first detected in the United States in March 1996, APHIS responded by placing nearly 1.7 million acres of agricultural land, including approximately 330,149 acres of wheat, under regulation through a series of interim rules in order to prevent the further spread of the disease. After gathering additional information through sampling, testing, and research, we published a final rule in the **Federal Register** on October 4, 1996 (61 FR 52189–52213, Docket No. 96–016–14), that amended the Karnal bunt regulations that had been established in that series of interim rules.

The October 1996 final rule established criteria for levels of risk, the movement of regulated articles, and the planting of seed from Karnal bunt host crops, and divided the regulated areas into surveillance areas and restricted areas. Under the October 1996 final rule, wheat could not be grown within the restricted areas (which amounted to about 16,859 acres), but grain could be grown in and moved from the surveillance areas (which amounted to about 207,670 acres of wheat grown for grain) if the grain was tested for spores and found negative. The final rule also prohibited the movement of commercial wheat seed from anywhere in a regulated area (i.e., both restricted areas and surveillance areas). On April 3, 1997, we published in the **Federal Register** (62 FR 15809–15819, Docket No. 96–016–18) the regulatory flexibility analysis prepared for the October 1996 final rule. While the October 1996 final rule did not reduce the size of the regulated area, it did ease restrictions on the movement of grain grown in regulated areas.

The May 1997 interim rule (Docket No. 96–016–19) that is the subject of this final rule reduced the size of the area regulated for Karnal bunt and further eased restrictions on the movement of grain and other regulated articles from those areas that remained under regulation, so its long-term economic effect is expected to be positive. The changes contained May 1997 interim rule were made possible in large part by research that led the Agency to conclude the detection of a bunted wheat kernel—and not spores alone—was necessary to confirm the presence of Karnal bunt in an area or article. The shift to this bunted kernel standard had an immediate positive effect on the States of Alabama, Florida, Georgia, and Tennessee, where grain in a number of storage facilities had been found to be contaminated with spores that appeared to be Karnal bunt spores, and on South Carolina, where seed from a seed lot contaminated with those spores had been planted. Because no bunted kernels were detected in those storage facilities or the seed lot, it was not necessary to place those areas under regulation.

Under both the October 1996 final rule and the May 1997 interim rule, the movement of grain from a surveillance area is subject to restrictions. However, in the interim rule, the size of the surveillance areas was greatly reduced by limiting the size of the surveillance area to an approximately 3-square-mile buffer around restricted fields, with the remainder of the former surveillance area being designated as a restricted area for seed from which grain could move without a certificate or limited permit. Thus, the interim rule reduced the size of the areas from which the movement of grain was subject to restrictions by about 95 percent, from 207,670 acres to 9,806 acres. By requiring that an area or article be associated with a bunted kernel (and not just spores), the interim rule eliminated the need to expand the regulated area into the five southeastern States where Karnal bunt-like spores had found and into any other area of the United States where such spores might have been found in the future. The interim rule also allowed grain grown in restricted areas for seed lying outside surveillance areas (which amounted to 91,924 acres of grain in the 1996–1997 crop season) to be moved without a certificate or limited permit. This represented an increase of more than 44 percent in the amount of grain eligible for unrestricted movement.

Additional positive impacts are expected to occur as a result of the reduction in the size of the areas in which the growing of wheat is prohibited. The restricted area acreage fell from 16,859 acres under the October 1996 final rule to 13,519 acres under the May 1997 interim rule, a reduction of nearly 20 percent. Table 1 summarizes the changes in regulatory designations and regulated acreage in the 1995–1996 and 1996–1997 crop seasons.

TABLE 1.—ACREAGE IN REGULATED AREAS UNDER 1995–96 REGULATIONS AND UNDER THE MAY 1997 INTERIM RULE

Year	Regulatory designation	Regulated acreage by state				Total
		AZ	CA	NM	TX	
1995–96 ...	Total planted wheat acreage in regulated areas	181,339	137,870	10,235	705	330,149
	Total agricultural acreage in regulated areas	928,542	500,000	215,000	35,000	1,678,542
1996–97 Acreage Regulated Under the October 4, 1996, Final Rule (Docket No. 96–016–14)						
1996–97 ...	Acreage in which wheat planting prohibited (restricted areas).	9,200	3,200	3,990	469	16,859
	Total planted wheat acreage in regulated areas	105,800	98,010	3,327	533	207,670
	Total agricultural acreage in regulated areas	928,542	500,000	215,000	35,000	1,678,542

TABLE 1.—ACREAGE IN REGULATED AREAS UNDER 1995–96 REGULATIONS AND UNDER THE MAY 1997 INTERIM RULE.—Continued

Year	Regulatory designation	Regulated acreage by state				Total
		AZ	CA	NM	TX	
1996–97 Acreage Regulated Under the May 1, 1997, Interim Rule (Docket No. 96–016–19)						
1996–97 ...	Acreage in which wheat planting prohibited (restricted areas for regulated articles other than seed).	5,947	3,113	3,990	469	13,519
	Planted wheat acreage in surveillance areas	7,023	2,783	0	0	9,806
	Planted wheat acreage in restricted areas for seed	81,977	6,087	3,327	533	91,924
	Total planted wheat acreage in regulated areas	89,000	8,870	3,327	533	101,730
	Total agricultural acreage in regulated areas	875,000	301,772	215,000	35,000	1,426,772

Although the May 1997 interim rule further reduced the size of the area regulated for Karnal bunt, there was an observed reduction in 1996–1997 wheat plantings. While those reductions were likely due in part to planting decisions influenced by the continuing Karnal bunt regulatory program, we do not believe that the reductions can be attributed entirely to Karnal bunt regulations. Accordingly, the analysis of impacts addresses certain factors that could explain the observed changes in plantings in the affected areas.

Impact of Karnal Bunt Regulations and Other Factors on Wheat Acreage Reductions in 1996–1997

Propagative (seed) and nonpropagative (grain) wheat acreage in the regulated area in the 1995–1996 crop season had been planted and was at various preharvest stages when Karnal bunt was first detected in early March 1996. The initial regulatory action, therefore, mainly affected wheat marketings and not wheat production. Production in the regulated areas had increased from the 1994–1995 crop season due to expected higher prices fueled by strong export demand (*California Farmer*, "Scion of the Irrigated West," mid-March 1996, p. 14). However, by the time the 1995–1996 crop was marketed, wheat prices had dropped nationwide due to a number of reasons, including record increases in planted spring wheat acreage in the Midwest (*Agricultural Outlook*, USDA, Economic Research Service, August 1996). Due to lower prices and the changed regulatory environment, in addition to the risk of being infected with Karnal bunt, planted wheat acreage in the regulated areas was expected to be lower in the 1996–97 crop season. Assuming an average 25 percent decline in wheat prices in the regulated areas from 1995 to 1996, it is estimated that 1996–1997 planted wheat acreage in the regulated areas should have totaled 280,627 acres, a decline in planted acreage of almost 15 percent based solely on producer reaction to lower prices.[2] The past average ratio of planted propagative to nonpropagative wheat acreage in the regulated area suggests that 14,031 acres of this planted acreage would have been devoted to seed production. Thus, the planted acreage totals for grain and seed production that would have been expected in 1997, based entirely on lower expected prices, are 266,595 and 14,031 acres, respectively (Table 2).

TABLE 2.—1995–96 AND 1996–97 ACTUAL PLANTED WHEAT ACREAGE IN THE REGULATED AREA AND 1997 ACREAGE ESTIMATE AS A RESULT OF LOWER PRICES

Scenario	Estimated acreage in:		
	Total Wheat	Grain	Seed
Actual 1995–1996	330,149	313,642	16,507
1996–1997 estimated acreage as a result of lower prices	280,627	266,595	14,031
Actual 1996–1997	101,730	97,865	3,865
	Acreage change as compared with actual 1996 acreage:		
Estimated decrease in 1997 acreage due to lower prices	−49,522 (−15%)	−47,047 (−15%)	−2,476 (−15%)
Actual decrease in 1997 acreage	−228,419 (−70%)	−215,777 (−69%)	−12,642 (−77%)
Difference Between Estimated Lower Price 1997 Acreage and Actual 1997:			
Lower price acreage minus actual 1997 acreage	−178,897	−168,730	−10,166

The actual total planted wheat acreage in the regulated areas for the 1996–1997 crop season is estimated at 101,730 acres, which is a 70 percent decrease from the 330,149 planted acres in the 1995–1996 crop season (a far larger decrease than the 15 percent reduction that, as noted above, would have been expected due solely to lower prices). Planted wheat seed acreage showed a greater decline, falling by 12,642 acres or more than 77 percent. Evidently,

[2] This estimate is produced using a standard planted acreage to price response function for wheat set at 0.6 (a 10 percent decrease in wheat price elicits a 6 percent decline in planted wheat acreage) multiplied by the estimated average 25 percent decrease in wheat prices in the regulated areas.

grain and seed producers cut back production due to reasons other than lower prices, such as the presence of Federal regulations and the threat of Karnal bunt infection.

Because only 49,522 acres (22 percent) of the actual 228,419-acre decline in total 1996–1997 planted wheat acreage in the regulated area can be explained as occurring in response to lower prices, there is the implication that the remaining 178,897 acres of planted wheat acreage were dropped due to factors unrelated to price. Attention is now focused on explaining this non-price-generated 178,897-acre (168,730 acres of grain, 10,166 acres of seed) decrease in planted wheat acreage in the regulated area.[3]

Of the 168,730-acre non-price-generated decline in grain acreage, Federal regulations that prohibit wheat planting in restricted areas can explain acreage reductions of 13,519 acres (see Table 1). Assuming that half of this restricted area acreage would have been rotated out of wheat production in 1996–1997 in any case, it is estimated that Federal planting restrictions reduced grain acreage by about 6,760 acres (Table 3). A certain amount of wheat seed would have been needed to produce wheat on this restricted area acreage; this associated seed acreage is estimated at 125 acres.[4] Deducting the impact of planting restrictions on grain and its associated seed production needs from the total non-price-generated acreage reductions leaves a cutback of 162,095 acres of grain and 10,042 acres of seed left unexplained by lower prices.

TABLE 3.—NON-PRICE-GENERATED ACREAGE SHIFTS IN THE REGULATED AREA, 1996–97 CROP SEASON

Item	Acreage reductions associated with the Interim Rule in 1996–97:		
	Total	Grain	Seed
Total non-price-generated acreage reduction	178,897	168,730	10,166
Reduction due to planting restrictions	−6,760	−6,635	−125
Total	172,137	162,095	10,042

The estimated 1996–97 grain and seed acreage reductions are assumed to have occurred as a result of several non-price factors, including reduced interest from buyers outside the regulated area and possible Karnal bunt-related production and marketing concerns. This planted wheat acreage cutback may have resulted from a combination of producer reaction to lower demand for wheat—both domestically and in foreign markets—and grower reluctance to plant wheat due to the possibility of becoming infected with Karnal bunt. No attempt is made to estimate the relative influence among these non-price factors on the remaining planted grain and seed wheat acreage reductions.

Potential Economic Losses in 1996–97 Due to Reduced Planted Acreage

The potential economic losses resulting from lost sales of wheat grain and seed due to the non-price-generated acreage reductions described in the previous paragraphs are presented below. These potential economic losses are broken down into three categories: (1) Losses associated with the prohibition on planting wheat in restricted areas; (2) losses in gross value of grain and associated seed; and (3) losses resulting from reduced seed sales.

Losses Associated With the Prohibition on Planting Wheat in Restricted Areas

The gross economic losses resulting from the prohibition on planting wheat on the 6,635 acres in the restricted areas is estimated at $3 million for the 1996–1997 crop season.[5] This gross loss implies a net wheat income reduction of $1.5 million.[6] To offset those losses, other crops with historically high returns, such as barley, could be grown as replacement crops in the restricted areas. Assuming the substitution of barley, which yields returns of about 80 percent of that of wheat, gross economic losses to wheat producers are reduced to $0.6 million, and the associated net loss to producers on these barley sales would be even lower, at $0.35 million.

Losses in Gross Value of Grain

The loss in gross value of the remaining non-price-generated wheat grain acreage reduction of 162,095 acres is estimated at $72.9 million. Again, if we assume the substitution of barley for wheat on this acreage, gross grower losses are lowered to $14.6 million and the corresponding net losses to growers would be even lower, estimated at around $7.3 million.

Losses Resulting From Reduced Seed Sales

The entire amount of non-price-generated wheat grain acreage reductions and their associated needed wheat seed production was totally accounted for in the loss calculations above. Some of the additional seed acreage reductions were left unaccounted for because the acreage reductions were proportionately greater for wheat seed than for wheat grain. These remaining wheat seed acreage reductions of 10,042 acres have an associated gross and net grower economic loss of $7.6 and $3.7 million, respectively. This planted seed acreage cutback probably was due primarily to seed producers reacting to lower seed demand in export markets.

Reduced Surveillance Area

The interim rule reduced the acreage in surveillance areas, which reduces the amount of potential economic losses to growers and handlers of grain. That reduction is based on the assumption that 15 percent of production in a surveillance area will be found to be infected with Karnal bunt, and that the value of such Karnal bunt positive wheat is reduced by $0.60 per bushel. Thus, under the October 1996 final rule, which included 207,670 acres of

[3] Comparing the expected amount of planted wheat seed acreage (14,031) that would have been expected as a result of lower prices with the actual 1997 planted wheat seed acreage (3,865) gives a total of 10,166 fewer acres of seed left unexplained by lower prices in 1997. Deducting the 10,166 fewer acres of wheat seed from the total wheat acreage decrease left unexplained by lower prices in 1997 produces a non-price-generated drop of 168,730 acres of grain.

[4] This assumes that 1 acre of wheat seed produces enough clean propagative seed to plant 54 acres.

[5] The calculation of the value of wheat grain is based on the assumption that an acre of wheat yields 100 bushels of grain, and a bushel of grain is valued at $4.50 per bushel.

[6] This net income calculation is made using the same net income to gross income proportion used in the Karnal Bunt Regulatory Flexibility Analysis published in the Federal Register on April 3, 1997 (62 FR 15809–15819, Docket No. 96–016–18).

surveillance area, there was a potential economic loss, due to the $0.60 per-bushel decline in market value, of $1.9 million. With the interim rule's reduction of surveillance areas to 9,806 acres, this potential loss is reduced to under $100,000.

Summary of Potential Economic Losses in the Regulated Area in 1996–1997

Planted wheat acreage in the regulated areas in 1997 showed a drop of over 70 percent from 1996. Growers cut back wheat production due to a host of factors, including expected lower prices, the presence of Federal regulations, and the threat of Karnal bunt. Standard economic models correlating acreage changes to price changes explain only about 22 percent of the actual acreage reduction from 1995–96 in the regulated area. It is assumed that the remaining 178,897 acres were dropped from wheat production due to nonprice factors. One of these factors was the prohibition on planting wheat in fields designated as restricted areas for regulated articles other than seed. This drop in grain production and its associated seed acreage produced an estimated net income loss to growers of about $0.35 million in 1996–97.[7] However, much of this loss would have been incurred with or without the interim rule, as the number of fields in which wheat could not be grown was largely unchanged by the interim rule.

Reductions in grain demand ($7.3 million) and its associated seed acreage ($3.7 million) generated net losses to growers of about $11 million, even with the reduction in the size of the regulated area resulting from the interim rule (see table 4). It should be noted that these losses are estimated annual losses in the 1996–1997 crop season. The amount of losses that may be incurred in the future will be affected by changes in the size of the regulated areas and the presence or absence of regulatory restrictions on the planting and movement of Karnal bunt host crops within the regulated areas.

TABLE 4.—POTENTIAL ECONOMIC LOSSES IN THE 1996–1997 CROP SEASON DUE TO REDUCED PLANTED ACREAGE

Loss in value associated with:	Gross value ($ million)	Net value ($ million)
Prohibition on wheat planting in restricted areas for regulated articles other than seed	0.6	0.35
Reduced wheat grain acreage	14.6	7.3
Reduced seed planting and sales	7.6	3.7
Total	22.8	11.35

The area in which the interim rule may have reduced losses is in its reduction in the acreage designated as surveillance areas. As explained previously in this analysis, the reduction in the acreage designated as surveillance areas could be expected to lower potential Karnal bunt-positive wheat value losses from $1.9 million to $0.1 million.[8] The reduction in the acreage designated as surveillance areas may cause some price strengthening in the short run, but most likely this change will be more beneficial in the future. The same is true for the reduction in the acreage designated as restricted areas for seed—little short-run relief was expected, but future production shifts may significantly reduce the effect of regulations. No quantitative estimate for 1997 is made on either of these two possible market adjustments.

Federal Compensation To Mitigate Losses

In order to alleviate some of the economic hardships and to ensure full and effective compliance with the regulatory program, compensation to mitigate certain losses described above was offered to producers and other affected entities in the regulated area. The rationale for the use of compensation was that the emergency actions taken by the Agency to prevent further spread of Karnal bunt disrupted normal production and marketing activities in regulated areas. Producers and other affected individuals had little time or ability to avoid the unexpected costs or pass those costs on to others in the marketing chain. The impact was particularly severe on the wheat industry in the regulated area because much of the crop was grown under contract at specified amounts and prices.

The Agency compensation plan reflected the fact that while significant benefits of regulation (in terms of the avoidance of greater losses in the export market) accrue to producers outside the regulated areas, the regulatory burden fell disproportionately on those within the regulated area. Compensation would therefore be appropriate where a small number of parties necessarily bear a disproportionate share of the burden of providing such benefits.

For comparison purposes, when Karnal bunt was first detected in the 1995–1996 crop season, compensation was paid for the plow-down of fields in New Mexico and Texas that were planted with seed containing bunted wheat kernels, loss in value of wheat testing positive for Karnal bunt to producers and handlers, loss in value of wheat testing negative for Karnal bunt to producers and handlers, cost of millfeed treatment, cleaning and disinfecting of grain storage facilities, and wheat inventories from past crop season (for further details, see docket No. 96–016–20, published in the **Federal Register** on May 6, 1997, 62 FR 24753–24765). Compensation funding of nearly $40 million was made available to the Agency through budget apportionment for losses suffered in the 1995–96 crop year. As of December 31, 1998, about $33 million has been paid in compensation: $18.5 million to producers and handlers who suffered losses from the sale of their 1996 wheat crop, $8.5 million to seed and straw producers and handlers, and $3 million in claims for custom harvesters, millfeed treatment, storage facility decontamination).[9]

For the 1996–97 crop season, the crop year pertinent to the regulatory changes addressed in this final rule, compensation was limited to certain growers and handlers within the regulated area for grain that tested positive for bunted wheat kernels, flour millers who choose to handle positive wheat, and growers and handlers of grain or seed in areas where Karnal bunt was discovered outside the regulated

[7] These losses assume that a large part of the reduced wheat acreage was planted into barley in 1997 so that barley receipts offset gross and net wheat income losses by almost 80 percent.

[8] Compensation in these areas could further reduce the economic effect on producers and handlers.

[9] The remaining $3 million of the $33 million total is accounted for by outstanding claims that have been reviewed and approved by the Farm Service Agency, but that are not reflected in the three subtotals.

area (63 FR 31593–31601, Docket No. 96–016–29, published June 10, 1998). Of the $3.6 million apportioned for compensation for 1997 crop losses, less than $50,000 in compensation has been paid. Due to the small number of positive finds, total losses are not expected to exceed $200,000.

In conclusion, the lifting of certain restrictions as a result of the interim rule was expected to only marginally reduce the 1997 economic effect on production and marketing for most wheat in the regulated areas. Planting for the May/June 1997 harvest was already complete when the interim rule was published, so growers could not react to the change in regulations by making different planting decisions. However, the reduction in the acreage designated as surveillance areas could be expected to lower potential Karnal bunt-positive wheat value losses from $1.9 million to $0.1 million. Thus, benefits of $1.8 million in 1997 could be realized as a result of the interim rule, based on a lower incidence of Karnal bunt-positive grain, which reduces the losses associated with the lower value of Karnal bunt-positive grain. Compensation in these areas could further reduce the economic effect on producers and handlers. Payments for the 1996–1997 crop season are not expected to exceed $200,000 due to the small number of positive finds.

Alternatives Considered

The only significant alternative to the interim rule would have been to retain the classification criteria provided by the Karnal bunt regulations established in the October 1996 final rule. In that final rule, levels of risk were assigned to areas based on their proximity to fields in which Karnal bunt spores were detected during preharvest samples or in which contaminated seed was planted. Under those criteria, it is unlikely that any of the significant reductions in the size of the regulated areas and the number of affected growers achieved by the May 1997 interim rule could have been accomplished. In addition, maintaining those criteria would likely have resulted in the placement of regulatory restrictions in the States of Alabama, Florida, Georgia, and Tennessee, where grain in a number of storage facilities had been found to be contaminated with spores that appeared to be Karnal bunt spores, and in South Carolina, where seed from a seed lot contaminated with those Karnal bunt-like spores had been planted. However, given our conclusion that the detection of spores alone does not allow us to make a conclusive determination that Karnal bunt disease is present in an area or article, that alternative was rejected. By rejecting that alternative, APHIS was able to prevent the enormous cost impacts on producers and eliminate the need for large compensation payments while continuing to assure importing countries that U.S. wheat exports are coming from areas where Karnal bunt is not known to exist.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rule amending 7 CFR part 301 that was published at 62 FR 23620–23628 on May 1, 1997, is adopted as a final rule with the following change:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.89–9 [Amended]

2. In § 301.89–9, in paragraph (a), the text of footnote 5 is amended by removing the words "footnote 3" and adding the words "footnote 2" in their place.

Done in Washington, DC, this 25th day of May 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–13793 Filed 6–1–99; 8:45 am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41453, International Series Release No. 1198, File No. S7–4–99]

RIN 3235–AH68

Exemption of the Securities of the Kingdom of Sweden Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting an amendment to Rule 3a12–8 that would designate debt obligations issued by the Kingdom of Sweden as "exempted securities" for the purpose of marketing and trading futures contracts on those securities in the United States. The amendment is intended to permit futures trading on the sovereign debt of Sweden.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Joshua Kans, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001, at 202/942–0079.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission ("SEC" or "Commission"), however, has adopted Rule 3a12–8[1] ("Rule") under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela and Belgium (the "Designated Foreign Governments"). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

On February 23, 1999, the Commission issued a release proposing to amend Rule 3a12–8 to designate the debt obligations of the Kingdom of Sweden ("Sweden") as exempted securities, solely for the purpose of futures trading.[2] No comment letters were received in response to the proposal.

The Commission today is adopting this amendment to the Rule, adding Sweden to the list of countries whose debt obligations are exempted by Rule

[1] 17 CFR 240.3a12–8.

[2] *See* Securities Exchange Act Release No. 41090 (February 23, 1999), 64 FR 9948 (March 1, 1999) ("Proposing Release").

3a12–8. In order to qualify for the exemption, futures contracts on the debt obligations of Sweden would have to meet all the other existing requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984[3] pursuant to the exemptive authority in section 3(a)(12) of the Exchange Act in order to provide a limited exception from the CEA's prohibition on futures overlying individual securities.[4] As originally adopted, the Rule provided that the debt obligations of Great Britain and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on the covered debt obligation under the Rule is deemed to be a "qualifying foreign futures contract" if the contract is deliverable outside the United States and is traded on a board of trade.[5]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela and, most recently, Belgium.[6]

OM Stockholm AB of Sweden ("OM"), and its British affiliate OMLX, The London Securities and Derivatives Exchange Limited ("OMLX"), have proposed that the Commission amend 3a12–8 to include the sovereign debt of Sweden. OM and OMLX (which will be collectively referred to as "OM") have stated that they are listing standardized futures contracts on Swedish government securities for trading on their respective markets, beginning with a futures contract on the ten-year Swedish government bond. The applicants wish to make those futures contracts available to U.S. investors.[7]

The Swedish National Debt Office submitted a letter supporting OM's application to amend the Rule.[8] In 1988, the Commission proposed adding Sweden to the list of countries designated under the Rule,[9] but rejected the proposal because of opposition from the Swedish government.[10]

The Commission is amending Rule 3a12–8 to add Sweden to the list of countries whose debt obligations are deemed to be "exempted securities" under the terms of the Rule. Under this amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, that futures contracts require delivery outside the United States, and that contracts be traded on a board of trade) would continue to apply.

III. Discussion

For the reasons discussed below, the Commission finds that it is consistent with the public interest and the protection of investors that Rule 3a12–8 be amended to include the sovereign debt obligations of Sweden. The Commission believes that the trading of futures contracts on the sovereign debt of Sweden could provide U.S. investors and dealers with a vehicle for hedging the risks involved in holding debt instruments of Sweden, and that the sovereign debt of Sweden should be subject to the same regulatory treatment under the Rule as that of the Designated Foreign Governments.

When amending the Rule to include Belgium, the Commission stated that it would consider two types of evidence about whether there was an active and liquid secondary trading market for the security—credit rating (as indirect evidence) and trading data.[11] Earlier, when amending the Rule to include Mexico, Brazil, Argentina, and

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[3] *See* Securities Exchange Act Release No. 20708 ("Original Adopting Release") (March 2, 1984), 49 FR 8595 (March 8, 1984); Securities Exchange Act Release No. 19611 ("Original Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

[4] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 3, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[5] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[6] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Original Adopting Release, *supra* note 3. In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of "West Germany" to the "Federal Republic of Germany," and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 8, 1992), 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994). In 1995, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995). In 1996, the Rule was amended to include debt securities issued by Brazil, Argentina, and Venezuela. *See* Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996). Finally, earlier in 1999, the Rule was amended to include debt securities issued by Belgium. *See* Securities Exchange Act Release No. 41116 (February 26, 1999), 64 FR 10564 (March 5, 1999).

[7] *See* Letters from Philip McBride Johnson, counsel for OM and OMLX, to Jonathan Katz, Secretary, Commission, dated June 11, 1998; Memorandum provided by OM and OMLX to the Division of Market Regulation on July 6, 1998; Letter from Philip Johnson to Michael Walinskas, Deputy Associate Director, Division, Commission, dated July 24, 1998; Letters from Philip Johnson to Joshua Kans, Attorney, Division, Commission, dated August 20, September 11 and October 2, 1998; Letter from Philip Johnson to Michael Walinskas, dated December 7, 1998; Letters from Philip Johnson to Joshua Kans, dated March 31 and April 19, 1999 (collectively "OM petition").

[8] *See* Letter from Tomas Magnusson, Director and General Counsel, Swedish National Debt Office, to Jonathan Katz, Secretary, Commission, dated June 29, 1998.

[9] *See* Securities Exchange Act Release No. 25998 (August 16, 1988), 53 FR 31709 (August 19, 1988).

[10] The Embassy of Sweden submitted two letters in response to the 1988 proposal, noting that currency controls prohibiting non-residents from holding Swedish kronor-denominated securities would preclude development of a market for physically settled futures on such securities, and stating that in any case it was not in the Swedish government's interest that such a market develop. As a matter of international comity, the Commission chose not to add Sweden to the Rule. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988).

[11] *See* Securities Exchange Act Release No. 41116 (February 26, 1999), 64 FR 10564 (March 5, 1999).

Venezuela, the Commission considered primarily whether market evidence indicated that an active and liquid secondary trading market exists for the sovereign debt of those countries.[12] Prior to the addition of those countries to the Rule, the Commission considered principally whether the particular sovereign debt had been rated in one of the two highest rating categories [13] by at least two nationally recognized statistical rating organizations ("NRSROs").[14]

Sweden meets the credit rating standard. Moody's has assigned Sweden a long-term local currency credit rating of Aa1 and a long-term foreign currency credit rating of Aa2. S&P has assigned Sweden a long-term local currency credit rating of AAA and a long-term foreign currency credit rating of AA+.

Market data also indicates that there exists an active and liquid trading market for Swedish issued debt instruments. As of February 28, 1999, the total Swedish public debt outstanding was equivalent to approximately US$173 billion (1428 billion Swedish kronor ("SEK")).[15] The largest portion of this debt, Treasury bonds (Statsobligationslån) denominated in Swedish kronor, amounted to approximately US$94 billion (SEK 773 billion).[16] Treasury bills (Statsskuldväxlar) denominated in Swedish kronor amounted to approximately US$27 billion (SEK 227 billion).[17]

OM has submitted data indicating that secondary market trading in Treasury bonds amounted to approximately US$1.2 trillion (SEK 9079 billion) in 1996, approximately US$1.3 trillion (SEK 10,550 billion) in 1997, and approximately US$1.2 trillion (SEK 9098 billion) in 1998.[18] The average daily trading volume during that period ranged from approximately US$2.1 billion (SEK 16.6 billion) for the month of July 1998 to approximately US$8.3 billion (SEK 65.6 billion) for the month of October 1997. OM adds that there were approximately 109,100 transactions in benchmark Treasury bonds in 1997 and 274,000 in 1998; 27,500 transactions in non-benchmark Treasury bonds in 1997 and 7900 in 1998; and 2000 transactions in inflation-linked Treasury bonds in 1997 and 10,800 in 1998.[19]

OM has also submitted data stating that secondary market trading in Treasury bills amounted to approximately US$440 billion (SEK 3452 billion) in 1996, approximately US$488 billion (SEK 3831 billion) in 1997, and approximately US$447 billion (SEK 3511 billion) in 1998. The average daily trading volume during that period ranged from approximately US$1.2 billion (SEK 9.3 billion) for the month of May 1996 to approximately US$2.6 billion (SEK 20.7 billion) for the month of March 1997. OM adds that there were approximately 38,600 transactions in Treasury bills in 1997 and 76,800 in 1998.[20]

The Commission finds that this trading data, coupled with a high debt rating, provides sufficient evidence that there exists an active and liquid market for Swedish sovereign debt.

IV. Costs and Benefits of the Proposed Amendments

The Commission believes that the amendment offers potential benefits for U.S. investors. As stated above, the amendment will allow U.S. and foreign boards of trade to offer in the United States, and U.S. investors to trade, futures contracts on the debt obligations of Sweden. Consistent with Congressional support for futures on foreign sovereign debt securities, the trading of futures on the sovereign debt of Sweden should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of Sweden. The amendment does not impose any

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[12] *See, e.g.*, Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995) (amending the Rule to add Mexico because the Commission believed that as a whole, the market for Mexican sovereign debt was sufficiently liquid and deep for the purposes of the Rule); Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996) (amending the Rule to add Brazil, Argentina and Venezuela because the Commission believed that the market for the sovereign debt of those countries was sufficiently liquid and deep for the purposes of the Rule).

[13] The two highest categories used by Moody's Investor Services ("Moody's") for long-term debt are "Aaa" and "Aa." The two highest categories used by Standard and Poor's ("S&P") for long-term debt are "AAA" and "AA."

[14] *See, e.g.*, Securities Exchange Act Release No. 30166 (January 6, 1992) 57 FR 1375 (January 14, 1992) (amending the Rule to include debt securities issued by Ireland and Italy—Ireland's long-term sovereign debt was rated Aa3 by Moody's and AA- by S&P, and Italy's long-term sovereign debt was rated Aaa by Moody's and AA+ by S&P); and Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994) (amending the Rule to include Spain, which had long-term debt ratings of Aa2 from Moody's and AA from S&P); *See also* Securities Exchange Act Release No. 36213 (September 11, 1995), 60 FR 48078 (September 18, 1995) (proposal to add Mexico to list of countries encompassed by the Rule); Securities Exchange Act Release No. 24428 (May 5, 1987), 52 FR 18237 (May 14, 1987) (proposed amendment, which was not implemented, that would have extended the Rule to encompass all countries rated in one of the two highest categories by at least two NRSROs).

[15] Data regarding the amount of outstanding debt was obtained from "Den Svenska Statsskulden: The Swedish Central Government Debt," February 28, 1999, available from the website of the Swedish National Debt Office (http://www.sndo.se). U.S. dollar equivalents for the February 28, 1999 data about outstanding debt is based on the conversion rate of SEK 8.2536 for US$1.00 in effect as of March 1, 1999.

The last country added to the index, Belgium, had an outstanding public debt equal to approximately US$264 billion at the end of 1997. *See* Securities Exchange Act Release No. 41116 (February 26, 1999), 64 FR 10564 (March 5, 1999). The four countries last added to the list prior to Belgium—Mexico, Brazil, Argentina and Venezuela—had lower amounts of public debt. *See* Securities Exchange Act Release No. 36530 (December 6, 1995), 60 FR 62323 (December 6, 1995) (outstanding Mexican government debt amounted to approximately US$87.5 billion face value as of March 31, 1995); Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996) (public and publicly guaranteed debt of Brazil, Argentina and Venezuela amounted to approximately US$86 billion, US$55 billion and US$74 billion, respectively, as of December 31, 1993).

[16] The outstanding Treasury bonds include approximately US$79 billion (SEK 654 billion) worth of benchmark bonds, approximately US$2.8 billion (SEK 23 billion) worth of non-benchmark bonds, and approximately US$11 billion (SEK 94 billion) worth of inflation linked bonds.

[17] Other types of Swedish currency-denominated debt included approximately US$6.8 billion (SEK 56 billion) worth of lottery bonds. A total of approximately US$132 billion (SEK 1086 billion) in Swedish government debt was denominated in Swedish kronor.

Foreign currency-denominated debt amounted to approximately US$41 billion (SEK 342 billion). Foreign-currency denominated debt includes approximately US$32 billion (SEK 266 billion) worth of public issues, US$6.7 billion (SEK 56 billion) worth of private placements, and US$2.0 billion (SEK 16 billion) worth of commercial paper.

[18] OM petition, *supra* note 7. OM states that the statistics about secondary market trading in Swedish debt were derived from data specially prepared by the Swedish Central Securities Depository. *Id.*

For the historical 1996 to 1998 secondary market trading data discussed in this release, U.S. dollar equivalents are based on the conversion rate of SEK 7.8565 for US$1.00 in effect as of September 30, 1998. The exchange rate varied from 6.5340 to 7.0114 in 1996, from 6.8074 to 8.0780 in 1997, and from 7.5763 to 8.3397 in 1998.

[19] OM states that secondary market trading for Swedish government debt is primarily conducted on a phone-based and screen-based over-the-counter market conducted by a number of dealers, with transactions in Treasury bonds and Treasury bills registered at the PMX Exchange at the end of the trading day. *Id.*

[20] OM states that secondary market trading in lottery bonds was equivalent to approximately US$512 million (SEK 4.03 billion) in 1996, US$449 million (SEK 3.53 billion) in 1997, and US$213 million (SEK 1.67 billion) in the first half of 1998. OM has not provided secondary market trading data for other Swedish debt securities. According to OM, transaction data for Swedish government debt denominated in foreign currencies is extremely difficult to obtain. OM further contends that because a number of Swedish government debt securities denominated in U.S. dollars have been registered under the Securities Act of 1933, and therefore are not eligible for exemption under the Rule, secondary market data for securities denominated in non-kronor currencies is less significant. *See id.*

OM states that it presently does not intend to list any futures on inflation-linked bonds, treasury bonds with repurchase agreements, lottery bonds or commercial papers. *Id.*

direct recordkeeping or compliance costs, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

V. Effects of the Proposed Amendment on Competition, Efficiency and Capital Formation, and Other Findings

Section 23(a)(2) of the Exchange Act[21] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Moreover, section 3 of the Exchange Act[22] as amended by the National Securities Markets Improvement Act of 1996[23] provides that whenever the Commission is engaged in a rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The Commission has considered the amendment to the Rule in light of the standards cited in sections 3 and 23(a)(2), and the Commission believes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of futures contracts on the government debt of Sweden that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. The Commission has considered the amendment's impact on efficiency, competition, and capital formation and concludes that it would promote these three objectives, by making available to U.S. investors an additional product to use to hedge the risks associated with the trading of the underlying sovereign debt of Sweden.[24] Insofar as the Rule contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on government securities of Sweden is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

Because the amendment to the Rule is exemptive in nature, the Commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register**.[25]

VI. Administrative Requirements

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(h), the Chairman of the Commission has certified in connection with the Proposing Release that this amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

The Paperwork Reduction Act does not apply because the amendment does not impose recordkeeping or information collection requirements, or other collections of information which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

VII. Statutory Basis

The amendment to Rule 3a12–8 is being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendment

For the reasons set forth in the preamble, the Commission amends part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word "or" at the end of paragraph (a)(1)(xviii), removing the period at the end of paragraph (a)(1)(xix) and adding "; or" in its place, and adding paragraph (a)(1)(xx), to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xxi) The Kingdom of Sweden.

* * * * *

Dated: May 26, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13927 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–P

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[21] 15 U.S.C. 78w(a)(2).

[22] 15 U.S.C. 78c.

[23] Pub. L. 104–290, 110 Stat. 3416 (1996).

[24] 15 U.S.C. 78f(b).

[25] 5 U.S.C. 553(d).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 98F–0823]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1-octene as an optional monomer in the preparation of polymers for use as resins in adhesives for articles used in contact with food. This action responds to a petition filed by The Dow Chemical Co.

DATES: This regulation is effective June 2, 1999. Submit written objections and requests for a hearing by July 2, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 6, 1998 (63 FR 53679), FDA announced that a food additive petition (FAP 8B4628) had been filed by The Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of 1-octene as an optional monomer in the preparation of polymers for use as resins in adhesives for articles used in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4628. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before July 2, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding an entry under the category "Polymers: Homopolymers and copolymers of the following monomers" under the heading "Substances" to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* * *
Polymers: Homopolymers and copolymers of the following monomers:	
* * *	
1–Octene (CAS Reg. No. 111–66–0).	
* * *	* * *

Dated: May 19, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13858 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162, and 165

[CGD17–99–002]

RIN 2115–AF81

Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard has changed the portions of Tongass Narrows that have a seven-know speed limit. The interim rule will extend seven-knot speed limit approximately 1600 yards northward in Tongass Narrows, to Tongass Narrows Buoy 9, to reduce wakes near the airport where floatplanes take off and land. Non-commercial, open skiffs are exempted to allow them to transit crowded areas of Tongass Narrows more quickly, thereby relieving congestion. The speed limit boundaries on the southern end of Tongass Narrows are moved northward, reducing the size of the speed limit zone to the south. This rule also re-designates the safety zone in Ketchikan Harbor as an anchorage ground to reflect its actual use as an anchorage for large passenger vessels and require that transiting vessels proceed through the anchorage directly, without delay or sudden course changes, to make the final approach,

anchoring, and departure of very large passenger vessels, safer for the vessels involved.

DATES: The interim rule becomes effective June 2, 1999. Comments regarding this interim rule must be received by November 30, 1999.

A public hearing will be held on August 27, 1999 at 7 p.m. (AST).

ADDRESSES: You may mail comments to the Commander (mo), Seventeenth Coast Guard District, PO Box 25517, Juneau, Alaska 99802–5517, or deliver them to the Federal Building, 709 West 9th Street, sixth floor, room 661, Juneau, Alaska, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 907–463–2242. The Seventeenth Coast Guard District, Maritime Operations Division, maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 661, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The public hearing will be held at the Ted Ferry Civil Center, 888 Venetia Avenue, Ketchikan, Alaska.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, call Lieutenant P.W. Clark, Supervisor, U.S. Coast Guard Marine Safety Detachment, Ketchikan, Alaska, telephone 907–225–4496.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD17–99–002) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgement of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this interim rule in view of the comments.

The Coast Guard has scheduled a public hearing for 7 p.m. (AST), August 26, 1999, at the Ted Ferry Civil Center, 888 Venetia Ave., Ketchikan, Alaska.

Persons may request an additional public hearing by writing to Commander (mo), Seventeenth Coast Guard District at the address under **ADDRESSES**. The request should include the reasons why an additional hearing would be beneficial. If it determines that the opportunity for additional oral presentations will aid this rulemaking, the Coast Guard will hold an additional public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On March 25, 1999, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Anchorage ground, safety zone, speed limit, Tongass Narrows and Ketchikan, AK" in the **Federal Register** (64 FR 14414). The Coast Guard received 8 letters, including two petitions, regarding the proposed rule during a 45-day comment period. A public hearing was held on March 26th at the Ted Ferry Civic Center in Ketchikan, AK.

Background and Purpose

During the last two years the Coast Guard and the Federal Aviation Administration have held a series of public meetings in Ketchikan, Alaska, to assess maritime traffic, congestion, safety, and wake concerns in Tongass Narrows. The individuals and groups represented at these meetings included recreational vessel operators, passenger vessel operators, commercial fishing vessel operators, commercial kayak operators, floatplane operators, charter vessel operators, and local residents.

The Notice of Proposed Rulemaking proposed changes to the seven-knot speed limit on Tongass Narrows. The existing speed limit did not address the needs of floatplane traffic, may have unnecessarily slowed the transits of smaller vessels, and did not apply in the northern portions of Tongass Narrows where traffic congestion and wake from larger vessels had become a concern. The proposed changes extended the speed zone northward to Channel Island, but exempted vessels of 26 feet or less in length.

The Notice of Proposed Rulemaking also proposed to re-designate the safety zone in Ketchikan Harbor as an anchorage ground. Vessels transiting the anchorage ground other than those engaged in anchoring evolutions would be required to proceed through the anchorage by the most direct route without delay or sudden course changes. The redesignation of the area would reflect its actual use as an anchorage for large passenger vessels. The slow or erratic operation of small vessels in the former safety zone has made it very difficult for large vessels to safely maneuver to and from anchor. The requirement that transiting vessels proceed through the anchorage directly, without delay or sudden course changes, would make the final approach, anchoring, and departure of very large passenger vessels, safer for the vessels involved.

Discussion of Comments and Changes

The Coast Guard received comments from 134 persons regarding the proposed rule. The comments included oral comments made at the public meeting, 2 petitions with multiple signatures, 5 letters from small businesses and 1 letter from a private individual. Responses to these comments and changes made in the proposed rule are discussed in the following paragraphs.

The most frequent comments addressed the northward extension of the seven-knot boundary to Channel Island. Of the 134 persons that commented on the proposed rule (several persons commented on multiple aspects of the proposed rule), 129 commented on the northward extension. Three comments favored the proposed extension of the seven-knot boundary to Channel Island. Six comments were opposed to any extension of the seven-knot boundary; and 120 comments favored a slight extension of the zone. One hundred and five persons stated that an extension of Wolf Point would be appropriate. Fifteen persons stated that an extension to Tongass Narrows Buoy 9 was needed but to extend the zone no further than Tongass Narrows Lighted Buoy 10.

These comments also raised the concern of possible financial impact on the charter sport fishing industry. This was due to the proposed extension of the seven-knot zone boundary northward 3 nautical miles to Channel Island, which may have increased charter vessel transit time by as much as 50 minutes during a 5-hour charter. The Coast Guard believes that an extension of the current boundary from Charcoal Point, northward, is necessary to provide a safe operating area for the Ketchikan International Airport Ferry, for floatplanes using the Ketchikan International Airport floatplane facility and for vessels using the facilities at Petro Alaska's fuel pier. The Coast Guard agrees that an extension of the seven-knot zone to Tongass Narrows Buoy 9 would satisfy these safety concerns. Additionally, this northerly extension of the boundary (approximately 1600 yards) results in an increase in transit time of just 13 minutes round trip (for a vessel that would otherwise have traveled at 21

knots). The Coast Guard believes that the economic impact of this small increase in transit time on the charter sport fishing industry or other vessels is minor when considering the enhanced safety benefits provided to floatplanes, ferry traffic and fueling operations.

Two persons commented on the southern boundaries of the seven-knot speed limit. One comment stated that the existing boundary of Idaho Rock was appropriate. One comment recommended modifying the southern boundaries in the east channel, to the Coast Guard Base; and in the west channel, to a line running from East Clump light to Pennock Reef light to the southern most point of Radenbough Cove on Pennock Island. The Coast Guard, after due consideration, agrees that the southern boundaries of the zone can be reduced. The southern boundaries of the speed zone are moved northward approximately 1000 yards in the east channel and 3000 yards in the west channel. The new boundaries will be marked by Tongass Narrows East Channel Regulatory Buoy and Tongass Narrows West Channel Regulatory Buoy, respectively. These buoys are white, cylindrical buoys with an orange line at the top and bottom and an orange circle containing the words "7 knots".

The Coast Guard believes that the decrease in transit times for charters in the southern reaches of Tongass Narrows more than offsets the slight increase in transit time for charters in the northern reaches of Tongass Narrows.

Twenty comments were received regarding the size exemption for vessels 26 feet or under. Of these comments, 15 were in the form of a petition and stated that there should be an exemption for planing hull vessels. This suggested exemption would allow planing hull vessels 26 feet or under in length to operate at any speed within the seven-knot zone and would create a speed corridor for planing hull vessels from 26–40 feet in length from Tongass Narrows Buoy 9 to Channel Island. This petition favored keeping the seven-knot speed limit for displacement hull vessels and extending the limit for displacement hull vessels to Channel Island. The petition also stated that the proposed rule would create a financial advantage for those charter operators using vessels of 26 feet in length or less. One comment recommended reducing the size of the exempted vessels to 24 feet and one favored an exemption for only open skiffs. One comment received favored an exemption for planing hull vessels and vessels of 26 feet or less in length; and 2 comments recommended keeping the 26 feet or less length limit for all vessels, regardless of hull type.

Additionally, several comments were received that pointed out that the 26 feet or less exemption split the charter sport fishing industry and provided an unfair advantage to those persons running charters on vessels of 26 feet in length or less.

The Coast Guard agrees that the proposed rule would unintentionally create an unfair advantage for a portion of the charter sport fishing industry. The Coast Guard considered the recommendations to exempt planing hull vessels from the seven-knot speed limit but does not agree. This is because an exemption based on hull type would most likely split the charter or other commercial fishing fleets and cause unfair economic advantages. In addition, an exemption based on hull type would be very difficult to enforce due to the variety of hull types and nomenclature. Therefore, the Coast Guard has changed the exemptions in the interim rule to read "no vessel, except floatplanes during landings and take-offs and non-commercial, open skiffs of less than 20 feet in length shall exceed a speed of seven-knots * * *"

Two comments were received regarding the re-designation of the safety zone to an anchorage. One comment was in favor of the change and the other questioned if the proposed change would impact the waterfront operation. The Coast Guard intends for this rule to allow free and unrestricted access to waterfront facilities as is the current practice. This portion of the rule remains unchanged.

No comments were received concerning the exemption of floatplans during take-offs and landings. This portion of the rule remains unchanged.

One hundred and five comments were received regarding the degree and focus of enforcement of the existing seven-knot rule. The Coast Guard recognizes the need for fair and equitable enforcement and anticipates the interim rule will help achieve these ends.

One comment was received regarding the removal of 2 underwater obstructions. This comment is outside the scope of this rule making and is therefore not addressed in the interim rule. The comment was forwarded to the U.S. Army Corps of Engineers for review and consideration.

Discussion of Interim Rule

The interim rule changes the existing seven-knot speed zone on Tongass Narrows. The new speed zone is bounded on the north by Tongass Narrows Buoy 9; marked by a green can buoy located at the northwest end of the Ketchikan International Airport. The southern boundaries are reduced in the east channel to a point just northwest of the City of Saxman at approximate position 55°19′ 22.0″ N, 131°36′40.5″ W, and in the west channel at approximate position 55°19′ 28.5″ N, 131°39′09.7″ W. A regulatory buoy, that is white with an orange line at the top and bottom and an orange circle with the words "7 knots", will mark these positions.

The interim rule exempts "non-commercial, open skiffs of less than 20 feet in length" from the seven-knot speed limit. The existing rule was applicable to all vessels regardless of size or type. Because of the unique nature of Tongass Narrows, many of the local residents must commute between the islands in small open skiffs. These commuters may have to make numerous trips each day regardless of weather. The existing rule caused undue delay and may have caused increased safety risks for this class of vessels. The proposed rule attempted to exempt vessels 26 feet in length or less but had the unintended affect of splitting the charter sport fishing industry; thereby giving a competitive advantage to smaller charter vessels. The Coast Guard agrees that this economic impact is unacceptable and has withdrawn that exemption from the interim rule.

By exempting "non-commercial, open skiffs of less than 20 feet in length", the traffic congestion in the affected areas of Tongass Narrows should be eased and the safety of the non-commercial operators in open skiffs enhanced. With the exemption for these entities, they will be able to depart from, or transit through the congested areas more quickly. This in turn should ease congestion and reduce navigational conflicts that have arisen between slow moving small boats and cruise ships and other large waterway users and will allow them to spend less time on the water during periods of inclimate weather. Large wakes would not become a problem because the exemption is limited to smaller vessels and because Tongass Narrows regularly experiences substantial wave action that is equivalent to the wake from these smaller vessels. The speed limit will be retained for all other vessels, except floatplanes.

Due to safety considerations, the Coast Guard has determined there is good cause to make this rule effective immediately upon publication instead of waiting the usual 30-day period required by 5 U.S.C. 553(d). The immediate implementation is needed so that the interim rule may be in place by the beginning of the 1999 summer boating season.

The Coast Guard encourages persons to comment on the effectiveness of the interim rule, especially during the busy summer season. The Coast Guard will review all written comments received and oral comments made at the public hearing and will consider these comments prior to the publishing of the Final Rule in the fall of 1999.

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the regulation is designed to reduce the impacts of the speed limit upon waterway users. With regards to the northward extension of the seven-knot zone, the majority of the comments received on the proposed rule recognized the need for a slow speed area in the vicinity of the Ketchikan International Airport Ferry Terminal and the Ketchikan International Airport Floatplane Facility, but objected to the full extension to Channel Island. After reviewing the comments submitted and listening to the oral arguments, the Coast Guard concurred and has revised the northern boundary. The Coast Guard also reduced the boundaries on the southern end of the zone to further reduce the impact of the present regulation to vessel operators. The new requirement to proceed directly, without erratic maneuvering, through the anchorage area, is expected, in combination with the relaxation of the speed limit for non-commercial open skiffs, to result in less congestion and quicker and safer transits for all users over the course of the summer season.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this interim rule will have significant economic impacts on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard believes there may be some impact to small entities, but that it will be minimal or non-existent, based on the extensive comments received from the charter sport fishing industry. This is because the area bounded by the seven-knot zone is reduced substantially on the southern end and is extended only slightly in the northern portion of Tongass Narrows. This reduction in the overall size of the speed zone will ease the transit times of the charter sport fishing community. Although no comment was received regarding the economic impacts on other users, the Coast Guard believes such impact will generally be beneficial because the combination of regulatory changes should reduce congestion and navigational conflicts throughout the waterway and make transits safer and more efficient for all user groups. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This interim rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this interim rule under the principles and criteria contained in E.O. 12612 and has determined that this interim rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that under figure 2–1, paragraph (34)(g) of COMDTINST M16475.1C, this interim rule is categorically excluded from further environmental documentation because it establishes a regulated navigation area. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 162 as follows:

PART 162—[AMENDED]

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Revise § 162.240(b) to read as follows:

§ 162.240 Tongass Narrows, Alaska; navigation.

* * * * *

(b) No vessel, except for floatplanes during landings and take-offs and non-commercial, open skiffs of less than 20

feet in length, shall exceed a speed of seven knots in the region of Tongass Narrows East Channel Regulatory Buoy at position 55°19′22.0″ N 131°36′40.5″ W and Tongass Narrows West Channel Regulatory Buoy at position 55°19′28.5″ N 131°39′09.7″ W, respectively.

* * * * *

PART 110—[AMENDED]

PART 165—[AMENDED]

3. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 33 U.S.C. 2071; 33 CFR 1.05–1(g); 49 CFR 1.46. Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

4. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under the authority of sec. 311, Pub. L. 105–383.

§ 165.1705 [Redesignated as § 110.231 and revised]

5. Section 165.1705 is redesignated as § 110.231 and is revised to read as follows:

§ 110.231 Ketchikan Harbor, Alaska, Large Passenger Vessel Anchorage.

(a) *The anchorage grounds. Ketchikan Harbor, Alaska, Large Passenger Vessel Anchorage.* The waters of Ketchikan harbor, Ketchikan, Alaska, enclosed by the following boundary lines: A line from Thomas Basin Entrance Light "2" to East Channel Lighted Buoy "4A", to Pennock Island Reef Lighted Buoy "PR", to Wreck Buoy "WR6", then following a line bearing 064 degrees true to shore. This anchorage is effective 24 hours per day from 1 May through 30 September, annually.

(b) *The regulations.* (1) When transiting through the anchorage, all vessels using propulsion machinery shall proceed across the anchorage by the most direct route and without unnecessary delay. Sudden course changes within the anchorage are prohibited.

(2) No vessels, other than a large passenger vessel of over 1600 gross tons, (including ferries), may anchor within the anchorage without the express consent of the Captain of the Port, Southeast Alaska.

Dated: May 14, 1999.

A. Regalbuto,

Captain, U.S. Coast Guard, Acting Commander, Seventeenth Coast Guard District.

[FR Doc. 99–13935 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 117

[CGD08–99–033]

RIN 2115–AE47

Drawbridge Operating Regulation; Massalina Bayou, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The draw of the bridge may remain closed o navigation from 9 p.m. until 11 p.m. on July 4, 1999. This temporary rule is issued to facilitate movement of vehicular traffic associated with a fireworks display. Presently the draw opens on signal at all times.

DATES: This rule is effective from 9 p.m. to 11 p.m. on July 4, 1999. Comments must be received on or before June 28, 1999

ADDRESSES: The public docket and all documents referred to in its notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–34396 between 7 a.m. and 4 p.m. Monday through Friday, except Federal holidays. You may also mail comments to the address given above or deliver them to the same address between 7 a.m. and 4 p.m.; Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at the address given above. Telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–99–033) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. This temporary rule may be changed in view of the comments.

Background

The City of Panama City, Florida requested a temporary rule, changing the operation of the Tarpon Dock bascule span drawbridge. The rule is needed to accommodate the additional volume of vehicular traffic that the fireworks display is expected to generate.

Discussion of Temporary Rule

The Tarpon Dock bascule span drawbridge across Massalina Bayou has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft.

A comment period is being provided for interested parties to express their views. If comments are received, the Coast Guard may change this rule.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the number of vessels impaired during the closed-to-navigation period is minimal.

All commercial vessels still have ample opportunity to transit this waterway before and after the two-hour closure on July 4, 1999.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Local commercial fishing vessels will only be inconvenienced for two hours on one evening. Thus, the economic impact is expected to be minimal. there is no indication that other waterway users would suffer any type of economic hardship if they are precluded from transiting the waterway during the two hours that the draw is scheduled to remain in the closed-to-navigation position. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that this temporary rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 9 p.m. to 11 p.m. on July 4, 1999, § 117.301 is temporarily added to read as follows:

§ 117.301 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0 at Panama City, shall open on signal, except that from 9 p.m. until 11 p.m. on July 4, 1999, the draw need not open for vessel traffic and may be maintained in the closed-to-navigation position.

Dated: May 20, 1999.

Paul J. Pluta

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–13939 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–029]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Harvey Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Lapalco Boulevard bascule span drawbridge across the Harvey Canal, Intracoastal Waterway, mile 2.8 at New Orleans, Jefferson Parish, Louisiana. This deviation allows the draw of the Lapalco Boulevard bascule span drawbridge to remain closed to navigation continuously from 6 p.m. on July 9, 1999 until 6 a.m. on July 26, 1999 and from 6 a.m. until 6 p.m. on August 7, 1999. This temporary deviation will allow for replacement of worn components in the electrical an mechanical operating mechanisms.

DATES: This deviation is effective from 6 p.m. on July 9, 1999 through 6 p.m. on August 7, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Lapalco Boulevard bascule span drawbridge across the Intracoastal Waterway, Harvey Canal, mile 2.8, in New Orleans, Louisiana has a vertical clearance of 45 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, small ships, fishing vessels, sailing vessels and other recreational craft. The Jefferson Parish Public Works Department requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work, involving removing and replacing numerous components of the electrical and mechanical operating mechanisms. This work is essential for continued efficient operation of the bridge.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.451(a), authorizing the draw of the Lapalco Boulevard bascule span drawbridge to remain closed to navigation continuously from 6 p.m. on July 9, 1999 until 6 a.m. on July 26, 1999 and from 6 a.m. until 6 p.m. on August 7, 1999.

Presently, the draw opens on signal; except that, from 6:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m. Monday through Friday except holidays, the draw need not be opened for the passage of vessels. In the event of an approaching tropical storm or hurricane, the draw will return to normal operation within 12 hours notice from the Coast Guard.

Dated: May 20, 1999.

Paul J. Pluta,

Rear Admiral, Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–13938 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33CFR Part 117

[CCGD08–99–020]

RIN 2115–AE47

Drawbridge Operating Regulation; Muskingum River, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Lock Street Drawbridge, Mile 49.7, Muskingum River. The drawbridge need not open for vessel traffic and may remain in the closed-to-navigation position from May 15, 1999 to March 17, 2000 while Lock No. 7 is closed for renovation. This temporary rule is issued to allow for the repair of the subject bridge.

DATES: This temporary rule is effective from 12:01 a.m. on May 15, 1999 to 12:01 a.m. on March 17, 2000.

ADDRESSES: The Public docket and all documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m,, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Weibusch, Bridge Administrator, Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone 314–539–3900 extension 378.

SUPPLEMENTARY INFORMATION:

Request For Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–99–020) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. This final rule may be changed in view of the comments.

Discussion of Temporary Rule

The Lock Street Drawbridge navigation span has a vertical clearance of 18 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists of recreational watercraft. Presently, the draw opens on signal for passage of river traffic. This temporary drawbridge operation amendment has been coordinated with waterway users and no objections were raised.

In order to minimize public inconvenience the Ohio Department of Natural Resources (OHDNR) intends to run the bridge repairs simultaneously with the repairs to Lock No. 7. Accommodating this repair schedule leaves insufficient time to provide for notice and an opportunity to comment or for a delayed effective date for this rule. Therefore, in accordance with 5 U.S.C. 553, good cause exists for issuing this rule without notice and opportunity for comment and for making this rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

On April 14, 1999, the Ohio Department of Natural Resources (OHDNR) submitted plans for repairs on the Lock Street Drawbridge which will be accomplished while the river is closed for renovation of the Lock No. 7, located 2,000 feet downstream of the bridge. The repairs are necessary to meet the navigational needs of the waterway, which depend on both the bridge and lock being operational.

The Lock Street Drawbridge serves as a pedestrian crossing from the riverbank to an island separating the river from the canal. The OHDNR requested permission to undertake bridge repairs at the same time as the lock renovation so that the public would be inconvenienced only once by the lock and canal closure.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because there are no commercial users of this waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and re not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Since there are no commercial users of the waterway spanned by the Lock Street Drawbridge, the Coast Guard expects there to be no significant impact on any waterway users as a result of the closure Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612, and has determined that this temporary rule does not raise sufficient implications of federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Enviromental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. Effective 12:01 a.m. May 15, 1999 to 12:01 a.m. March 17, 2000, § 117.T 848 is added to read as follows:

§ 117.T848 Muskingum River.

Lock Street Drawbridge Mile 49.7, Muskingum River. From 12:01 a.m. May 15, 1999 to 12:01 a.m. March 17, 2000, the drawspan need not open for vessel traffic and may be maintained in the close-to-navigation position.

Dated: May 7, 1999.

A.L. Gerfin, Jr.,

Captain, Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 99–13937 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–035]

Drawbridge Operating Regulation; Falgout Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.444 governing the operation of the SR 315 drawbridge across the Falgout Canal, mile 3.1, in Terrebonne Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to maintain the bridge in the closed-to-navigation position from 7 a.m. until 3 p.m. on Monday through Wednesday, from June 7 through June 30, 1999 and from July 12 through July 21, 1999. During the scheduled closures, the bridge will open for the passage of vessels at 9 a.m. and 12 noon. At all other times outside the closed-to-navigation period, the bridge will open on signal for the passage of vessels. This temporary deviation is issued to allow for the painting of the bridge structure.

DATES: This deviation is effective from 7 a.m. on June 7, 1999, until 3 p.m., July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Navigation on the waterway consists of tugs with tows, fishing vessels, and other recreational craft. Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to accommodate the contractor in scheduling his work crews to repair the bridge structure.

This deviation allows the draw of the SR 315 drawbridge across the Falgout Canal, miles 3.1, in Terrbonne Parish, Louisiana, to remain in the closed-to-navigation position from 7 a.m. on Monday through Wednesday, from June 7, 1999 through June 30, 1999 and from 7 a.m. until 3 p.m. on Monday through Wednesday, from July 12, 1999 through July 21, 1999. During the scheduled closures, the bridge will open for the passage of vessels at 9 a.m. and 12 noon. At all other times, the bridge will open on signal for the passage of vessels.

Dated: May 20, 1999.

Paul J. Pluta,

Rear Admiral, Coast Guard Commander, Eighth Coast Guard District.

[FR Doc 99–13940 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 99–003]

RIN 2115–AA97

Safety Zone; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule, request for comments.

SUMMARY: The Coast Guard is extending the effective period of an existing temporary safety zone in the navigable waters of San Pedro Bay, California, south of the Middle Breakwater, part of the breakwater system enclosing the Ports of Los Angeles and Long Beach. This safety zone is established as a result of the construction of an artificial habitat and is necessary to protect vessels from the hazards associated with the construction.

All vessels with a draft of 50 feet or more are prohibited from entering this exclusionary area, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is enforced by the Captain of the Port. All other vessels are prohibited from entering the area, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress. The Captain of the Port will announce, via Broadcast Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft (because construction activities are in progress).

DATES: This safety zone will be in effect from 11:59 p.m. PDT on May 17, 1999 until 11:59 p.m. PST on December 31, 1999. Comments must be received on or before August 2, 1999.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying within the Waterways Management Division at Marine Safety Office Los Angeles–Long Beach. Normal office hours are 8 a.m. to 4 p.m. PDT, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rob Coller, Chief, Waterways Management Division, Marine Safety Office Lost Angeles-Long Beach, 165 N. Pico Ave., Long Beach, CA 90802; (562) 980–4425.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, there is good cause why a notice of proposed rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the details concerning the construction of the artificial habitat and the completion date were not known until a date fewer than 30 days prior to the continuation of the construction.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed in **ADDRESSES** in this preamble. Those providing comments should identify the docket number for the regulation (COTP Los Angeles-Long Beach, CA; 99–003) and also include their name, address, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to Marine Safety Office Los Angeles-Long Beach at the address listed in **ADDRESSES** in this preamble.

Discussion of Regulation

A prior temporary final rule was promulgated imposing an identical safety zone for the period May 17, 1998 through May 17, 1999 (63 FR 31625, June 10, 1998). The Coast Guard has recently been notified that the construction of the habitat artificial habitat south of the San Pedro Bay Federal Breakwater will not be completed as originally scheduled. It is thus necessary to extend the effective period of the safety zone through December 31, 1999. An opportunity for public comment was provided for the original temporary final rule; that comment period closed on August 10, 1998. Due to the significant extension of the effective period of the safety zone, a new public comment period has been established, extending 60 days from the date of publication.

This safety zone is necessary for safeguarding recreational and commercial vessels from the dangers of the construction activities in the project area and to prevent interference with vessels engaged in these operations. All vessels with a draft of 50 feet or more are prohibited from entering this exclusionary area, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is enforced by the Captain of the Port. All other vessels are prohibited from entering the area, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress. The Captain of the Port will announce, via Broadcast Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft (because construction activities are in progress).

This safety zone consists of all navigable waters within the geographic area bounded by lines connecting the following coordinates:

	Latitude	Longitude
Safety Zone Point #1	33°–41′.16″ N	118°–13′.15″ W; thence to:
Safety Zone Point #2	33°–40′.45″ N	118°–13′.01″ W; thence to:
Safety Zone Point #3	33°–40′.34″ N	118°–13′.37″ W; thence to:
Safety Zone Point #4	33°–41′.04″ N	118°–13′.51″ W; thence returning to the point of beginning.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. Only minor delays to mariners are foreseen when vessel traffic is directed around the area of the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Rob Coller, U.S. Coast Guard Marine Safety Office Los Angeles-Long Beach, at (562) 980–4425.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 35401 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis checklist is available for inspection and copying and the docket is to be maintained at the address listed in **ADDRESSES** in the preamble.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary

final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. A new § 165.T11–064 is added to read as follows:

§ 165.T11–064 Safety Zone: San Pedro Bay.

(a) *Location.* All navigable waters bounded by lines connecting the following coordinates are established as safety zone:

	Latitude	Longitude
Safety Zone Point #1	33°–41′.16″ N	118°–13′.15″ W; thence to :
Safety Zone Point #2	33°–40′.45″ N	118°–13′.01″ W; thence to :
Safety Zone Point #3	33°–40′.34″ N	118°–13′.37″ W; thence to :
Safety Zone Point #4	33°–41′.04″ N	118°–13′.51″ W; thence returning to the point of beginning.

Datum: NAD 83.

(b) *Effective dates:* This regulation will be in effect from 11:59 p.m. PDT on May 17, 1999 until 11:59 p.m. PST on December 31, 1999. If the need for this safety zone terminates before December 31, 1999, the Captain of the Port will cease enforcement of this safety zone and will announce that fact by broadcast notice to mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone in prohibited for all vessels with a draft of 50 feet or more, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is enforced by the Captain of the Port.

(1) All other vessels are prohibited from entering into, transiting through, or anchoring within this safety zone, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress.

(2) The Captain of the Port will announce, via Broadcast, Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft (because construction activities are in progress).

Dated: May 17, 1999.

G.F. Wright,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles, Long Beach, California.

[FR Doc. 99–13936 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–39–6999a; A–1–FRL–6346–5]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Amendments to Air Pollution Control Regulation Number 9

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision makes amendments to 3 portions of Rhode Island's Air Pollution Control Regulation No. 9. The intended effect of this action is to modify the definition of a point source for purposes of new source review pre-construction permitting, to eliminate the requirement for monitoring of total suspended particulates (TSP) and insert requirements for addressing particles with a mean aerodynamic diameter of 10 microns or less (PM10), and to clarify the definition of Best Available Control Technology (BACT). This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on August 2, 1999, without further notice, unless EPA receives relevant adverse comments by July 2, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (CAA), Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 918–1655.

SUPPLEMENTARY INFORMATION: On August 9, 1996, the State of Rhode Island submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amendments to Rhode Island's Air Pollution Control Regulation No. 9, which governs pre-construction new source review (NSR) permitting for new and modified sources of air pollution. These changes will revise the State Implementation plan to reflect revisions in EPA rules and policy.

I. Background

The proposed SIP Revision will make changes to 3 portions of Rhode Island's Rule: it will remove the "dual source" definition for stationary sources, and will replace it with the "plantwide" definition; it will make PM10 the standard for particulate matter; and it will include all Federal and State rules in the definition of BACT.

A. Federal Regulatory Framework

Dual Source Definition

On August 7, 1980 (45 FR 52676), EPA promulgated a rule which defined a "source" as being a "building, structure, facility, or installation." This has become known as the "dual source" definition. Rhode Island has patterned its current definition of a source after this definition. On October 14, 1981 (46 FR 50766), EPA revised its NSR regulations to allow adoption of a "plantwide" definition. This allows the entire installation to be considered a single "source" under the NSR rules.

Particulates

On July 1, 1987, (52 FR 24634) EPA promulgated revised National Ambient Air Quality Standards (NAAQS) for particulate matter. This changed the standard for particulates from TSP to particulates with a mean aerodynamic diameter of 10 microns or less, PM10. On June 3, 1993, EPA promulgated a further revision (59 FR 31636) which replaced TSP with PM10 in the Prevention of Significant Deterioration (PSD) program, and the NSR program for attainment area pollutants. The effect of these rules was to eliminate the need to measure TSP as a pollutant. With these amendments, Rhode Island removes all remaining references to TSP, and specifies PM10 as the standard for particulate matter.

BACT

Best Available Control Technology (BACT) is defined as an emissions limitation based on the maximum degree of reduction for each air pollutant which would be emitted from a proposed new stationary source or modification to an existing stationary source. BACT is decided on a case-by-case basis. The federal definition of BACT requires that BACT limits be no less stringent than any emission standard promulgated under sections 111 and 112 of the Act. Rhode Island will increase the number of regulations which will be considered to determine the minimum BACT requirement. This change will make BACT more stringent.

Rhode Island's Revision

Rhode Island's Revision makes several changes to Air Pollution Control Regulation Number 9, Air Pollution Control Permits. Revisions to sections 9.1.7, 9.1.18, and 9.5.1 delete the word "installation" from the definition of "stationary source." Revisions to sections 9.1.23, 9.5.1, and 9.5.2 delete all reference to TSP and make PM10 emissions the criterion used to evaluate net emissions increases for particulate matter. A revision to section 9.1.6 amends the definition of BACT. A public hearing was held on July 17, 1996. There were no adverse comments.

Dual Source Definition

Rhode Island's SIP revision will allow all pollutant emitting activities at a single facility, under common control, and which belong to the same industrial grouping to be counted together when computing the changes in emissions for purposes of new source review.

This action will give sources flexibility by allowing them to make modifications which may increase pollution from one emission unit at a plant, but result in a decrease in the pollutant on a plantwide basis. Through the process of "netting," in which reductions of emissions at one site within a plant can be credited against increases in emissions at another site, unnecessary new source review actions can be eliminated. This change will free time and resources for those actions which would result in overall increases of a pollutant, and therefore require more careful new source review.

Pursuant to section 193 of the Clean Air Act, the "general savings clause," EPA must determine whether this revision to Rhode Island's NSR Program ensures equivalent or greater reductions of nonattainment area pollutants. In conducting this analysis, EPA examined the impact of all revisions to Rhode Island's SIP since 1990. EPA's analysis found that Rhode Island's SIP revision will ensure equivalent or greater emissions reductions as compared with the existing Rhode Island SIP.

To determine the impact of Rhode Island's change from the dual source definition to the plantwide definition, EPA considered the number of sources effected by the change. Typically, the change in the source definition from dual source to plantwide may allow more sources to "net out" of NSR. However, the NSR rules contain numerous applicability provisions that all work together in determining if a new source is subject to NSR or if it can "net out." EPA concludes that, while the revision may allow more sources to net out of NSR, EPA could not determine the number of sources directly effected by the revision.

In addition, EPA found that from 1990 through 1997, no new sources triggered Rhode Island's current NSR applicability requirements for major modifications. Considering the small number of sources effected by Rhode Island's permitting program, EPA concludes that relaxing one element of Rhode Island NSR applicability provisions would result in an insignificant increase in emissions, if any.

To offset the relatively small increase in emissions from the revision, EPA considered other revisions submitted by Rhode Island since 1990 that strengthen its SIP. EPA notes that as part of the plantwide definition revision submittal, Rhode Island is revising its BACT rules. The BACT revision clarifies the minimum control standards that all new major and minor source must implement. Rhode Island's BACT revision will ensure that BACT controls and procedures meet high standards of performance and result in greater emission reductions for all new sources throughout Rhode Island.

EPA concludes that the overall effect of Rhode Island's revised SIP will ensure reductions equivalent to those obtained in the existing SIP. EPA understands that the plantwide definition is a relaxation of the SIP that may cause a slight increase in emissions. However, EPA believes that Rhode Island's revision clarifying the minimum requirements for the State's BACT provisions strengthens the SIP and provides emission decreases that more than offset the emission increases from the new source definition revision. Therefore, EPA finds that approving Rhode Island's nonattainment area NSR revisions is consistent with the Act.

Particulates

Prior to 1987, the NAAQS for particulates was evaluated using TSP. States maintained monitoring networks to track levels of TSP. In 1987, EPA revised the NAAQS for particulates to measure PM10. This was in response to evidence that the smaller particles were responsible for the majority of the health problems which had been linked to particulates. In 1993, EPA made PM10 the standard for PSD. This revision eliminated the need for requirements for TSP monitors. Rhode Island still maintained some TSP monitors, since their state regulations still required TSP measurements for NSR purposes. The changes Rhode Island is making will eliminate those TSP requirements and make PM10 the

sole criterion for particulates. In the future, Rhode Island will have to amend these rules to incorporate EPA's recently promulgated standard for yet finer particles, so-called PM2.5. This change can be accomplished by a future SIP revision.

BACT

Rhode Island's current regulations define BACT so that it must be no less stringent than the emission standards found in 40 CFR parts 60 and 61. 40 CFR part 60 includes performance standards for new stationary sources; 40 CFR part 61 includes requirements from hazardous air pollutants. The revised rule will require that BACT be no less stringent than all applicable State and Federal standards. This change will make BACT more stringent by adding the new post-1990 hazardous air pollution requirements from 40 CFR part 63 and any further State controls to the floor of BACT. By making BACT more stringent, Rhode Island will require sources to consider a wider range of technologies and, when BACT is required, utilize the strongest available technology.

II. Final Action

EPA is approving amendments to Air Pollution Control Regulation Number 9. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This action will be effective August 2, 1999 without further notice unless the Agency receives relevant adverse comments by July 2, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 2, 1999 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State

relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission To Congress And The Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804 (2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Best available control technology, Air pollution control, Incorporation by reference, Intergovernmental relations, Monitoring requirements, New Source Review, Particulate matter, Prevention of significant deterioration, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(54) to read as follows:

§ 52.2070 Identification of plan

* * * * * *

(c) * * *

(54) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated 9 August 1996 submitting a revision to the Rhode Island State Implementation Plan.

(B) Changes to Air Pollution Control Regulation Number 9.

For the State of Rhode Island.

3. In § 52.2081 Table 52.2081 is amended by adding new entries to existing state citations for Air Pollution Control Regulation No 9:

§ 52.2081— EPA—approved Rhode Island state regulations

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/ Unapproved sections
*	*	*	*	*	*	*
No. 9	Air Pollution Control Permits.	7/30/96	6/2/99	[Insert *FR* citation from published date].	(c)(54)	5
*	*	*	*	*	*	*

[FR Doc. 99–13028 Filed 6–1–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–67–7202a; A–1–FRL–6346–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the States of Rhode Island (RI) and Massachusetts (MA). This action consists of approving regulations in RI and MA which are part of a regional nitrogen oxide (NO_X) reduction program designed to reduce stationary source NO_X emissions during the ozone season in the Ozone Transport Region (OTR) of the northeastern United States. (Section 184(a) of the Clean Air Act defines an ozone transport region in the northeastern United States comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated metropolitan Statistical Area that includes the District of Columbia.) Additionally, this action involves the approval of a source specific order which establishes alternative NO_X reasonably available control technology (RACT) requirements for four boilers at the Rhode Island Economic Development Corporation (RIEDC). These SIP revisions were submitted pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective on August 2, 1999 without further notice, unless EPA receives adverse comment by July 2, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; at the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767, and at the Massachusetts Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: On December 19, 1997, the Massachusetts (MA) Department of Environmental Protection (DEP) submitted to EPA a request to revise its State Implementation Plan (SIP). The request proposes to add 310 CMR 7.27, "NO_X Allowance Program" to the SIP. Similarly, on January 20, 1999, the Rhode Island (RI) Department of Environmental Management (DEM) submitted Regulation No. 38, "Nitrogen Oxides Allowance Program," and Consent Agreement No. 96–04–AP for the Rhode Island Economic Development Corporation (RIEDC) as revisions to the Rhode Island SIP. The two regulations are part of a regional NO_X reduction program designed to reduce stationary source NO_X emissions during the ozone season in the OTR. The consent agreement no. 96–04–AP establishes alternative NO_X reasonably available control technology (RACT) requirements for four boilers at the RIEDC facility in North Kingstown, RI.

I. Summary of SIP Revisions

NO_X RACT Consent Agreement No. 96–04–AP for RIEDC

On September 2, 1997, EPA approved Regulation No. 27, "Control of Nitrogen Oxides Emissions" as meeting the NO_X RACT requirements of sections 182(b) and (c) of the Clean Air Act and revised the Rhode Island SIP accordingly (see 62 FR 46202). Section 27.4.8 allows RI DEM to relax the RACT requirements on a case-by-case basis, upon approval by EPA. The NO_X RACT Consent Agreement No. 96–04–AP for RIEDC represents a case-specific alternative RACT determination as provided for under section 27.4.8.

Ozone Transport Region Nitrogen Oxides Allowance Program in Massachusetts and Rhode Island

Sections 182(b)(1)(A) and 182(c)(2)(A) of the CAA require States with areas classified as "moderate," "serious," and "severe" ozone nonattainment to submit revisions to their applicable SIPs to provide for specific annual reductions in emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) as necessary to attain the national primary ambient air quality standard for ozone. Additionally, section 110 of the Act requires that such plans be subject to public notice, comment, and hearing procedures and that the States adopt and submit the plans to EPA.

As part of MA's and RI's efforts to meet these requirements, the States have submitted regulations which impose statewide caps on NO_X emissions from certain industrial sectors (e.g., electric utility boilers, industrial boilers, combustion turbines, etc.). RI's Regulation No. 38 and MA's Regulation 310 CMR 7.27 are based closely on a model rule which was developed using the EPA's economic incentive program rules (67 FR 16690, April 7, 1994) as the general regulatory framework. This model rule was developed by the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA) and is entitled, "NESCAUM/MARAMA NO_X Budget Model Rule," issued on May 1, 1996. The basis for the model rule was a memorandum of understanding entitled, "Memorandum of Understanding Among the States of the Ozone Transport Commission on Development of a Regional Strategy Concerning the Control of Stationary Source Nitrogen Oxide Emissions," dated September 27, 1994, otherwise known as the OTC MOU.

RI's and MA's NO_X budget regulations set statewide, five month (May 1 through September 30) NO_X "budgets," or mass emission limits in tons, to reduce the aggregate emissions from large fossil fuel fired combustion equipment by as much as 75% from a 1990 baseline. In order to achieve the aggregate NO_X reductions, the regulations proportion NO_X "allowances" (in tons) to the facilities with emission units subject to the program. The regulations require each owner or operator of each unit to hold, by December 31 of each year, at least as many NO_X allowances in their compliance account as total tons of NO_X emitted during the previous five month ozone season. Under these regulations, NO_X allowances may be bought or sold and unused allowances may be banked from one year to another in a central registry administered by EPA. The program requires NO_X emissions to be monitored by either a continuous emission monitoring system (CEMS) or equivalent, although the use of alternatives is allowed where approved

by the State and EPA. The program will begin on May 1, 1999. Starting in 2002 and occurring every three years after, an audit of the program will be conducted to ensure that the program is providing the expected reductions.

Additional information concerning EPA's evaluation of the RI and MA NO_X allowance program regulations is detailed in two memoranda: "Technical Support Document for Massachusetts" Regulation 310 CMR 7.27, "NO_X Allowance Program," dated December 16, 1998, and "Technical Support Document for Rhode Island's Regulation No. 38, "Nitrogen Oxides Allowance Program" and NO_X RACT Consent Agreement No. 96–04–AP for Rhode Island Economic Development Corporation," dated February 2, 1999. Copies of those documents are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

II. Issues

An issue associated with the approval of the Rhode Island and Massachusetts regulations is that the regulations currently contain NO_X emissions budget and allocation schemes only for 1999 through the ozone season of 2002, i.e., "phase II" of the OTC NO_X Budget program. However, the OTC MOU obliges Massachusetts and Rhode Island to require its allowance program sources to make specific additional NO_X reductions by May 1, 2003 and continuing thereafter, i.e., "phase III." Additionally, in May 1998, Massachusetts proposed an attainment demonstration for the western MA nonattainment area which relies on the NO_X reductions associated with the OTC program in 2003 and beyond to achieve attainment with the one hour ozone standard.

Section 7.27 (3)(b) of the MA regulation and section 38.2.1(b) of the RI regulation are currently reserved for the purpose of setting the statewide allocation for 2003 and beyond. In their current form, Regulation No. 38 and 310 CMR 7.27 are approvable for 1999, 2000, 2001, and 2002. However, in order to meet the interstate MOU and for MA to have a credible attainment demonstration, both MA and RI will need to amend their regulations to establish the NO_X caps in those States during 2003 and beyond.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective August 2, 1999 without further notice unless the Agency receives adverse comments by July 2, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 2, 1999, and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving Massachusetts' regulation 310 CMR 7.27, "NO_X Allowance Program," Rhode Island's Regulation No. 38, "Nitrogen oxides Allowance Program," and Rhode Island's Consent Agreement No. 96–04–AP. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks and is not economically significant under E.O. 12866.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other

representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts and Rhode Island was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: May 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(118) to read as follows:

§ 52.1120 Identification of plan

* * * * * *

(c) * * *

(118) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on December 19, 1997.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated December 19, 1997 submitting a revision to the Massachusetts State Implementation Plan.

(B) Regulation 310 CMR 7.27, NO_X Allowance Program, effective on June 27,1997.

(ii) Additional materials.

(A) Letter from the Massachusetts Department of Environmental Protection dated March 9, 1998 clarifying the program implementation process.

3. In § 52.1167 Table 52.1167 is amended by adding a new state citation for regulation 310 CMR 7.27, "NO_X Allowance Program" to read as follows:

§ 52.1167—EPA-approved Massachusetts State regulations.

* * * * *

Table 52.1167. EPA-Approved Massachusetts Regulations

State citation	Title/Subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.27.	NO_x Allowance Program.	12/19/97	6/2/99	[Insert FR citation from published date].	(c)(118)	Approval of NOx cap and allowance trading regulations
*	*	*	*	*	*	*

Subpart OO—Rhode Island

4. Section 52.2070 is amended by adding paragraph (c)(55) to read as follows:

§ 52.2070 Identification of plan

* * * * *

(c) * * *

(55) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on February 13, 1998 and January 20, 1999 which define alternative NO_x RACT requirements and impose seasonal limitations on the emissions of nitrogen oxides at certain major stationary sources in Rhode Island.

(i) Incorporation by reference.

(A) Letters from the Rhode Island Department of Environmental Management, dated February 13, 1998 and January 20, 1999 submitting revisions to the Rhode Island State Implementation Plan.

(B) Regulation number 38, "Nitrogen Oxides Allowance Program," as adopted on May 21, 1998, submitted on effective on June 10, 1998.

(C) An administrative consent agreement between Rhode Island Department of Environmental Management and Rhode Island Economic Development Corporation, file no. 96–04–AP, adopted and effective on September 2, 1997.

5. In § 52.2081, Table 52.2081 is amended by revising the state citation for Regulation No. 27 and by adding a new state citation for Regulation No. 38, "Nitrogen Oxides Allowance Program" to read as follows:

§ 52.2081—EPA—approved Rhode Island state regulations.

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/Unapproved sections
*	*	*	*	*	*	*
No. 27	Control of Nitrogen Oxides Emissions.	9/2/97	6/2/99	[Insert FR citation from published date].	(c)(55)	Establishes alternative NOx RACT for Rhode Island Economic Development Corporation in North Kingstown, RI
*	*	*	*	*	*	*
No. 38	Nitrogen Oxides Allowance Program.	5/21/98	6/2/99	[Insert FR citation from published date].	(c)(55)	Adds ozone season NOx emission limitations at certain stationary sources.
*	*	*	*	*	*	*

[FR Doc. 99–13026 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 107–1–7407; FRL–6349–3]

Finding of Failure To Submit Required State Implementation Plans for Ozone; Texas; Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We, the EPA, are taking final action to find that the State of Texas failed to submit the required State Implementation Plan (SIP) for the Dallas/Fort Worth (DFW) ozone nonattainment area, as required by the Federal Clean Air Act (Act). The required submittal is the serious area plan requirements for attainment of the ozone National Ambient Air Quality Standards (NAAQS). The deadline for the State to make the submittal was

March 20, 1999. The State submitted a SIP for the DFW area on March 18, 1999. The submittal included an attainment demonstration, a Rate-Of-Progress (ROP) Plan, and revisions to the State's rules for Nitrogen Oxides (NO_X) and Volatile Organic Compounds (VOC) Reasonably Available Control Technology (RACT), and NO_X New Source Review, to make them applicable to the DFW area. We find that the attainment demonstration is incomplete because it does not demonstrate, based on photochemical modeling, that the SIP will result in attainment as expeditiously as practicable but no later than November 15, 1999, as required by the Act. We find that the ROP Plan is incomplete because it does not demonstrate a rate of progress in emission reductions of at least three percent-per-year, after accounting for growth, during the 1997 to 1999 period as required by the Act. The finding of an incomplete submittal for the attainment demonstration and the ROP Plan triggers the 18-month time clock for mandatory application of sanctions and a two-year time clock for a Federal Implementation Plan (FIP) under the Act. This action is consistent with the Act's mechanism for assuring timely SIP submissions.

EFFECTIVE DATE: May 13, 1999.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr. of the EPA Region 6 Air Planning Section at (214) 665–7237 or at the address above.

SUPPLEMENTARY INFORMATION:

I. Final Action

What Action is EPA Taking?

We find that the State of Texas failed to submit by March 20, 1999, all elements of the SIP revisions necessary for the DFW ozone nonattainment area to meet the Act's serious area plan requirements for the 1-hour ozone NAAQS under section 182(c).

The elements that the State failed to submit are a complete attainment demonstration as required by section 182(c)(2)(A)and a complete post-1996 ROP Plan under section 182(c)(2)(B) and (C).

This finding starts the sanctions clocks in section 179(a) and FIP clock in section 110(c). If Texas has not corrected and resubmitted the complete serious area plan elements by November 13, 2000, the offset sanction in section 179(b)(2) and 40 CFR 52.31 will be imposed on the DFW nonattainment area. If Texas still has not corrected and resubmitted the complete serious area plan elements by May 14, 2001, the highway funding sanction in section 179(b)(1) will also be imposed in accordance with the Act and 40 CFR 52.31. Also, section 110(c) of the Act requires EPA to promulgate a FIP no later than two years after a finding of failure to submit.

What is the Effective Date for This Rule?

The effective date for this rule is May 13, 1999, the date this action was signed.

The EPA is treating this action as a "rule." Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rule makings may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. This action concerns implementation plan submittals that are already overdue and for which the State of Texas has submitted some incomplete elements. We have previously alerted Texas through our public comments and meetings that the SIP submittal, as proposed, would not be complete. Also, on May 3, 1999, we sent a letter to Texas stating that we were planning to take the action we are taking today. Consequently, the State has been on notice that today's action was pending. The State and general public are aware of applicable provisions of the Act that relate to failure to submit a required implementation plan. In addition, this action simply starts a sanctions/FIP clock that will not result in offset sanctions for 18 months and that the State may stop by submitting a serious ozone area implementation plan that is complete under section 110(k) of the Act and approvable under section 110 and part D of the Act. These reasons support an effective date prior to 30 days after the date of publication.

Why is EPA Taking This Action Without Proposing and Taking Comments First?

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). We believe that, because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception in the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of an implementation plan required by the Act. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the Act for making such determinations.

Finally, notice and comment would be contrary to the public interest because it would divert our resources from the critical substantive review of submitted implementation plans. *See* 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

II. Background

Why is This SIP Submittal Required?

We reclassified the DFW area from moderate to serious ozone status on February 18, 1998, since the area had not attained the NAAQS by November 15, 1996 (63 FR 8128). As a result, the State was required to submit a serious area SIP by March 20, 1999. The SIP required attainment and rate of progress demonstrations and revised rules for major source thresholds and a more stringent New Source Review program.

The state submitted revisions to its rules for NO_X RACT, NO_X NSR, and VOC RACT with the March 18, 1999, submittal. We have reviewed these rules for administrative completeness and found them complete on the date of completeness finding. We will take action on them in separate **Federal Register** notices.

The State had already submitted the other elements of a serious area plan (e.g.; enhanced Inspection and Maintenance Program and a Clean Fuel Fleet program).

Why is the Attainment Demonstration and the Rate-of-Progress Plan Incomplete?

The attainment demonstration is incomplete because it does not demonstrate, based on photochemical modeling, that the SIP will result in attainment as expeditiously as practicable but no later than November 15, 1999 (section 182(c)(2)(A)). The photochemical modeling submitted is sensitivity modeling which only identifies emission reduction targets

with no specific control strategy or attainment date.

The ROP Plan is incomplete because it does not demonstrate a rate of progress in emission reductions of at least three percent-per-year, after accounting for growth, during the 1997 to 1999 period (section 182(c)(2)(B)). The plan shows a VOC target of 28.68 tons per day and reductions of 22.81 tons per day which leaves the plan 5.87 tons per day short of meeting the target. The plan does not substitute NO_X reductions and meet the target (section 182(c)(2)(C). The Plan's NO_X table, on its face, considers NO_X reductions but those NO_X reductions do not offset growth in NO_X emissions since 1990; therefore, they are not creditable to the shortfall.

What are the Consequences of This Action?

The Act establishes specific consequences if a state fails to submit a required SIP. These consequences include the mandatory sanctions provision in section 179(a)(1) and the federal planning requirement in section 110(c).

Under section 179(a) and 40 CFR 52.31, if Texas has not corrected the incomplete elements and resubmitted a complete SIP within 18 months of the effective date of today's rulemaking, the 2 to 1 offset sanction of section 179(b) will apply in the DFW nonattainment area. This sanction requires a company that is constructing a new or modifying an existing facility over a certain size to reduce emissions in the area by two tons for every new ton the new/modified facility will emit.

If the State has still not corrected the incomplete elements and resubmitted a complete SIP six months after the offset sanction is imposed, then the highway approval and funding sanction will apply in the nonattainment area. This sanction prohibits the U.S. Department of Transportation from approving or funding all but a few specific types of transportation projects.

The order of sanctions, offsets sanctions first then highway sanctions, is documented in our regulations at 40 CFR 52.31.

In addition to these sanctions, section 110(c) requires us to issue a FIP no later than two years after a finding under section 179(a). This FIP would need to address any outstanding serious area ozone requirements for an attainment demonstration and a ROP Plan that we had not yet approved.

The sanctions will not be imposed if, prior to the implementation date of the offset sanction, we determine that the State has submitted a complete plan addressing the two incomplete elements of the serious area ozone requirements for the DFW area. If the state relies on the control measures in the existing approved contingency plan for its ROP Plan and/or attainment demonstration, the State would also need to submit a new contingency plan. In addition, we are not required to promulgate a FIP if the State makes the required SIP submittals and we take final action to approve the submittals within two years of the effective date of today's finding.

This preamble merely summarizes the Act's requirements for serious ozone area plans and the Act's provisions regarding the consequences of the failure to submit a required implementation plan. The specific language of the Act and our regulations and policies interpreting the Act, rather than the language of this document, govern the exact submittals required from the State and the implementation of any sanctions.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing The Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on any of these entities. This action implements EPA's requirements to review SIPs for completeness under 40 CFR Part 51, Appendix V. The SIP submission requirements for stopping clocks are not judicially enforceable. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it implements a previously promulgated health or safety-based standard.

D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide

meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Since this final rule is not subject to notice-and-comment requirements under the APA, or any other statutes, it is not subject to sections 603 or 604 of the RFA. Furthermore, this action will not have a significant impact on a substantial number of small entities because these findings under section 110 and subchapter I, part D of the Act do not, in-and-of-themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FEC*, 773 F.2nd 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this action makes findings of failure to submit and establishes a schedule for Texas to stop the clocks and does not directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Sections 202 and 205 do not apply to this action because the findings that Texas failed to submit the required SIP for the DFW area do not, in-and-of-themselves constitute a Federal mandate, because they do not impose any enforceable duty on any entity. In addition, the Act does not permit EPA to consider the type of analyses described in section 205 in determining whether a State has failed to submit a required SIP. Finally, section 203 does not apply to the action because the SIP submittal schedule to stop the clocks would only affect the State of Texas, which is not a small government.

G. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(z). As stated previously, EPA has made a good cause finding, including the reasons therefor, and established an effective date of May 13, 1999, the date of signature. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Paperwork Reduction Act

This rule does not contain any information requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

I. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 13, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–13806 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–034–0016; FRL–6350–5]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the Nevada State Implementation Plan (SIP) proposed in the **Federal Register** on December 11, 1998. This action specifically includes approval of revisions to Clark County Health District's wintertime oxygenated fuels program. This approval action will incorporate these revisions into the federally approved SIP. The intended effect of approving these revisions is to regulate emissions of carbon monoxides (CO) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the Nevada SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 2, 1999.

ADDRESSES: Copies of the SIP revision and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of these documents are

also available for inspection at the following locations:

Nevada Division of Environmental Protection, Bureau of Air Quality, 123 W. Nye Lane, Carson City, NV

Clark County Health District, P.O. Box 3902, 625 Shadow Lane, Las Vegas, NV

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1225.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revisions being approved into the Nevada SIP include: Clark County District Board of Health, (Clark County), Air Pollution Control (APC) Section 53, *Oxygenated Gasoline Program* (as amended and approved on September 25, 1997). This SIP revision was submitted by the Nevada Division of Environmental Protection to EPA on August 7, 1998.

II. Background

On December 11, 1998, EPA proposed to approve Clark County's Oxygenated Gasoline Program as a revision to the Nevada SIP. 63 FR 68415. EPA has evaluated the revisions for consistency with the requirements of the CAA and EPA regulations. EPA has found that Clark County's revisions to its wintertime gasoline oxygenated fuels program meet applicable EPA requirements. A detailed discussion of the SIP revisions and evaluation has been provided in the December 11, 1998 **Federal Register** (63 FR 68415), and in the technical support document (TSD) available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in the notice of proposed rulemaking, 63 FR 68415, December 11, 1998. EPA received only one comment letter, from the Western States Petroleum Association (WSPA). WSPA's comments and EPA's responses are set forth below.

A. Preemption

WSPA commented that Nevada's 3.5% oxygen content requirement is preempted by section 211(c)(4) of the Act because EPA has previously promulgated regulations to prescribe controls or prohibitions on the oxygen content of gasoline and by section 211(m)(2) because this section of the Act requires certain nonattainment areas to implement an oxygenated gasoline program with not less than 2.7% oxygen. WSPA also commented that Clark County's 3.5% gasoline oxygen content requirement is preempted under the doctrines of conflict and field preemption.

EPA does not believe that Clark County's 3.5% gasoline oxygen content requirement is barred by section 211(m) or preempted by the Act, either explicitly under section 211(c)(4)(A) or implicitly based on the judicial doctrines of conflict preemption or field preemption. EPA's response to WSPA's preemption comments begins with a discussion of consistency with section 211(m), followed by a response to the other preemption arguments.

1. Consistency with Section 211(m)

On March 18, 1997, the Clark County Commission adopted a resolution requesting that the Board of Health adopt the proposed regulations specifying that the minimum oxygen content of wintertime gasoline shall be 3.5% oxygen by weight, starting October 1, 1997. Because the Las Vegas Valley was being designated by EPA as a serious nonattainment area for carbon monoxide (CO), the Board of Health moved to propose the minimum 3.5% oxygenate regulation to help reach attainment of the National Ambient Air Quality Standards for CO.

Section 211(m)(1) requires that certain states with areas designated nonattainment for CO implement an oxygenated gasoline program. This applies to states containing CO nonattainment areas with a CO design value [1] of at least 9.5 parts per million based on 1988 and 1989 data.

Section 211(m) requires that various states submit revisions to their SIP, and implement oxygenated gasoline programs. This section also identifies certain elements that the state program must contain. Section 211(m)(2)(A) identifies the geographic area of the state program (it must apply throughout the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA)) and the time period of the program (it must apply during that portion of the year in which the area is prone to high ambient concentrations of CO, as determined by the Administrator, but no less than four months). Section 211(m)(2)(A)(B) requires that gasoline be blended to contain not less than 2.7% oxygen. Under certain circumstances (section 211(m)(7)), gasoline must be blended to contain not less than 3.1% oxygen. Section 211(m)(5) requires that EPA promulgate guidelines for states to implement provisions for marketable oxygen credits. This section also authorizes EPA to waive the above requirements under limited circumstances.

WSPA argues that, under section 211(m), a state must adopt a 2.7% standard and may not adopt any other standard, except as expressly provided in section 211(m)(7). The requirement that gasoline be blended to contain "not less than 2.7 percent oxygen by weight" would therefore set both a floor and a ceiling for a minimum oxygen content that a state must establish.[2] Clark County's requirement of a 3.5% minimum oxygen content would violate the requirements of section 211(m) under this interpretation. EPA believes that the better reading of section 211(m)(2) is that, at a minimum, states must require that gasoline contain 2.7% oxygen by weight, and that states could satisfy this by requiring gasoline to contain 2.7% oxygen or by setting any higher requirement such as 3.1% oxygen content, or 3.5% oxygen content.

Neither the text of section 211(m) nor the legislative history indicate a clear Congressional intent to prohibit states from adopting any oxygen content requirement greater than 2.7%. This interpretation would be inconsistent with the general structure of the Act because it would restrict the ability of states to develop programs to meet the federal ambient air quality standards. *See* Title I generally, sections 107, 110, and 116. Oxygenated gasoline is one of the simplest and most cost-effective measures for control of carbon monoxide. This interpretation would limit a state's ability to use this strategy for air quality purposes, as any increase above the 2.7% minimum would only be allowed where a severe nonattainment area had already failed to meet its statutory deadline for attaining the NAAQS. Thus, states would be barred from adopting any oxygen content requirement above 2.7%, even where an area needed a more stringent

[1] The carbon dioxide design value is a surrogate measure of attainment status, a measure of progress, and an indicator of how much concentrations must be reduced to meet the standard.

[2] In support of its claim, WSPA points to the 1996 extension of the CO attainment date for the Las Vegas area. WSPA argues that in the preamble to that action EPA identified the 2.7% oxygen content requirement without expressing that the requirement for the area was a minimum content requirement. EPA believes WSPA has read too much into the preamble's abbreviated listing of requirements for the area. Nothing in that preamble indicated an intent to interpret the confines of section 211(m)(2). In fact, EPA noted that Clark County had revised its regulations "to meet the minimum 2.7% oxygenate by weight requirement of the CAA." 61 FR 41759, 41763 (Aug. 12, 1996).

standard to attain the NAAQS. Instead, such a state with a moderate nonattainment area could not take action needed to meet the air quality standard. The area would likely have to continue to violate the standard until it had been upgraded to a severe nonattainment area and had missed the deadline for severe nonattainment areas to come into compliance with the NAAQS, before it could adopt a more effective control measure designed to help attain the NAAQS. There is no indication that Congress intended a limitation so potentially injurious to public health and so contrary to rational planning. This interpretation is also inconsistent with the principle that a statute should not be read to preempt state authority unless it is clear that Congress intended such a result. *See Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996); *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 518 (1992).

WSPA asserts that the legislative history of sections 211 (m) and (k) shows that the 2.7% oxygen content level was set to ensure fuel neutrality and opportunity for all oxygenates in the marketplace. They argue that state programs requiring greater than 2.7% oxygen conflict with this goal and Congress therefore intended to prohibit them.[3] However, while much of the legislative history of section 211(m) concerns the appropriate level at which to set the minimum federally mandated oxygenate requirement in the Clean Air Act, there is no indication that Congress intended to bar the states from setting more stringent oxygenate requirements.

The Chafee-Baucus Statement of the Senate Managers (discussing the Conference Committee version of the bill which Congress adopted as the 1990 Amendments to the CAA) states merely that "[t]he conference agreement requires any gasoline sold in a carbon monoxide nonattainment area to contain at least 2.7 percent oxygen. * * *" Senate Committee on Environment and Public Works, 103d Cong., 1st Sess., A Legislative History of the Clean Air Act Amendments of 1990 (hereinafter "Legislative History") at 896 (1993) (statement from Senate debate on October 27, 1990). Senator Simpson and Congressmen Sharp and Hall all reiterated a statement that has been cited in support of the proposition that section 211(m) bars states from requiring a higher fuel oxygen content. "The level of 2.7 percent was chosen in part to provide more even opportunities for competition between the two major oxygenates, methyl tertiary butyl ether, or MTBE, and ethyl alcohol, or ethanol. * * * The *Administrator* may not discriminate among these different oxygenates, and should encourage fair competition among them." Legislative History at 1171 (statement from Senate debate on October 26, 1990) (emphasis added). *See also id.* at 1216, 1328. Senator Simpson and others added that in exercising its waiver authority under section 211(m)(3), EPA may not approve partial waivers of the oxygenate requirements. "In particular, new 211 (k) and (m) already create several new kinds of gasoline, and different oxygen concentrations may already exist under the various NO_x cap provisions of these two subsections. Further balkanizing of the gasoline industry—with different oxygenate concentrations in different east coast cities, for example—potentially risks further disruptions and precision from refiners that may not be possible." *Id.* at 1169 (statement from Senate debate October 26, 1990). All of these statements address limitations on EPA's, not states', authority to choose between oxygenates or set more or less stringent oxygen content requirements. These statements simply give no indication of whether or not Congress intended to limit states' ability to set more stringent requirements, which might be critical to carry out their responsibility to adopt state implementation plans to protect the health of their citizens.

Other statements in the legislative history suggest that Congress was primarily concerned about establishing a preference for one oxygenate over another as a matter of federal law and intended to give states flexibility in their fuels programs. The Senate version of the bill provided that the wintertime oxygen content requirements would be a direct federal mandate on the fuel producers to sell gasoline with at least 3.1% oxygen content, rather than a directive to states for their state implementation plans. S.1630, 103d Cong. (1990), *reprinted in* Legislative History at 4119, 4388. Commenting on his proposed amendment to substitute 2.7% for 3.1% oxygen content, Senator Lautenberg stated:

> But the question is, should we, *as a Federal initiative*, provide an advantage to one of these fuels over another? I do not think so. * * * [A 2.7% requirement] would allow for open and free competition among the various fuels and *provide State and local officials with the flexibility to decide what fuels they need in their areas.* * * * [The 3.1% requirement] takes away flexibility from State and local officials. * * * [Quoting from State and Territorial Air Pollution Program Administrators (STAPPA) and Association of Local Air Pollution Control Officials (ALAPCO) letter] "We believe it is critically important that any alternative fuels programs be 'fuel neutral.' This *would provide State and local governments with the ability to select from a variety of fuels*—not just gasohol—to address problems (e.g., carbon monoxide and ozone) unique to their jurisdictions." * * * [A]nd most importantly, as STAPPA noted, [my amendment] *would allow localities to use the fuels that best meet their particular needs.* * * * USDA notes that four States have oxygenated fuels program in place: Arizona, Colorado, Nevada, and New Mexico. * * * [The 3.1% requirement] would force the areas that already have oxygenated fuels programs to scrap them and switch to gasohol. * * *

Legislative History at 5429–5430 (statement from Senate debate on March 7, 1990) (emphasis added). Senator Wirth added: "As I understand it, the amendment offered by the Senator from New Jersey would not set this issue in concrete. It would require that oxygenated fuels sold in these nonattainment areas contain 2.7 percent oxygen. *If, a few years down the road it makes sense for a State*, or a city like Denver, *to set a higher minimum oxygen content, that possibility always exists. All we are saying with this amendment is that we don't want to set a national minimum oxygen content standard* of 3.1 percent." *Id.* at 5457 (emphasis added).

While Senator Lautenberg's 2.7% oxygen content amendment did not pass in the Senate, the final CAA set a 2.7% oxygen content requirement. Consequently, the arguments advanced by Senators Lautenberg and Wirth should be considered indicative of some of the reasons underlying Congress' final decision to adopt a 2.7% minimum standard rather than a 3.1% minimum standard. As enunciated by Senators Lautenberg and Wirth, preserving state flexibility to make choices regarding the best fuel requirements for a particular locality was an important motivation for preferring 2.7% over 3.1%. This goal hardly comports with an intent to limit states' ability to adopt oxygen content requirements more stringent than 2.7%. Senator Wirth's statement, in particular, makes it clear that these provisions were not intended to prevent states from adopting more stringent requirements. Nor did Senator Wirth anticipate that states would have to jump any particular hurdle before adopting such requirements. Rather, he stated "that possibility always exists" if "down the road it makes sense."

In addition, during the debates over the Senate bill several senators referred to the existing oxygenated fuels

[3] This concern arises because ethanol is currently the only oxygenate additive that may lawfully be blended in gasoline at levels greater than 2.7% oxygen by weight.

programs that states were already implementing at that time. At least one of those programs was more stringent than 2.7%. Nowhere was it suggested or noted that the legislation would require the state to remove that program. In contrast, Senator Lautenberg explicitly raised as an objection to the 3.1% requirement that it would negate existing state programs mandating a 2.7% oxygen content.

The most reasonable inference from this legislative history is that Congress did not want to directly mandate that all state programs under section 211(m) require greater than 2.7% oxygen, as this would severely reduce the flexibility of states to develop their own programs and would by act of Congress directly limit open competition in the marketplace between oxygenates.[4] Congress rejected a provision that would require all state oxygenated gasoline programs under section 211(m) to require 3.1% oxygen content. Instead, Congress set the minimum amount acceptable under section 211(m) at 2.7%, and only mandated that states adopt standards setting a higher oxygen content under limited circumstances. Section 211(m)(7)[5]. While Congress rejected a federal requirement for an oxygen content greater than 2.7%, there is no similar indication that Congress intended to prohibit states from adopting such programs where the state considered it appropriate. To the contrary, the statements of individual congressmen indicate an intent to preserve state flexibility. Section 211(m)'s provision on marketable oxygen credits also supports this view. While Congress did not mandate that states adopt such credit programs, they are explicitly authorized to do so. This gives states the flexibility to structure their programs as desired, including the ability to adopt credit programs to promote the use of various oxygenates even where the minimum oxygen content is greater than 2.7%.[6]

Section 211(m) is most reasonably interpreted as requiring adoption of an oxygenated gasoline program with any weight percent oxygen content requirement that will result in gasoline being blended to contain not less than 2.7% oxygen by weight. A content requirement of 2.7% or higher satisfies this requirement and is authorized by section 211(m). This interpretation is consistent with the terms of section 211(m) and the legislative history discussed above. It is also consistent with the Clean Air Act's basic approach of providing flexibility to the states in developing state programs to achieve and maintain the NAAQS. Under the Act, states have the primary responsibility for determining the manner by which to achieve these air quality standards. *See* CAA section 116; *Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997), *reh'g* granted, 116 F.3d 499 (D.C. Cir. 1997) (modifying so as not to vacate Part 85 of EPA's final rule). EPA has relied on this interpretation in approving SIP revisions for state programs. *See* 62 FR 10690 (March 10, 1997) (approval of 3.1% oxygen content requirement for Denver, CO); 62 FR 49442 (September 22, 1997) (approval of 3.5% oxygen content as a contingency measure for Spokane, WA).

2. Preemption under the Clean Air Act

WSPA has raised three separate arguments claiming that state programs under section 211(m) requiring gasoline blending at levels greater than 2.7% are preempted under the Act, except where required under section 211(m)(7). The first argument is that section 211(c)(4)(A) prohibits such programs absent a showing of necessity under section 211(c)(4)(C). The second argument is that the state program is in conflict with the Clean Air Act and is therefore preempted. Finally, it has been argued that the state program is preempted because Congress through the Clean Air Act has occupied the field of gasoline oxygen content controls.

a. *Preemption under section 211(c)(4).* Section 211(c)(4) of the Act is a provision of general applicability that expressly prohibits state fuel controls under specified circumstances. Section 211(c)(1) of the Act authorizes EPA to prescribe a control or prohibition on a fuel or fuel additive upon a finding that emissions products from such fuel or fuel additive may endanger public health or welfare, or impair emission control devices or systems.

Section 211(c)(4)(A) prohibits states from prescribing or attempting to enforce a control or prohibition respecting any characteristic or component of a fuel or fuel additive if EPA has prescribed a control or prohibition applicable to the same characteristic or component under section 211(c)(1).[7] This prohibition does not apply if the state control is identical to EPA's.[8] Section 211(c)(4)(C) provides that a state may prescribe and enforce such a nonidentical fuel control or prohibition if EPA approves the provision in a state implementation plan (SIP). EPA may approve the state control or prohibition in a SIP only if it is necessary to achieve the NAAQS that the plan implements.

For the purpose of determining whether a state gasoline requirement is preempted under section 211(c)(4)(A), EPA believes it is appropriate to look at the federal gasoline requirements applicable in the area where the state requirements would apply. For further discussion see the May 26, 1998 letter from Margo T. Oge, Director, US EPA Office of Mobile Sources in the docket for this action. (See docket file: NV–OXY–98–VI.) Clark County is subject to the conventional gasoline requirements, not the RFG requirements. 40 CFR 80.70; 40 CFR 80.101(b)(3). Thus, any preemption under section 211(c)(4)(A) of Clark County's oxygen content controls would have to be based on federal oxygen content requirements found in the conventional gasoline regulations. The only conventional gasoline provision adopted under section 211(c)(1) that directly references oxygen content is the use of oxygen content as an input into the Complex Model, which is used to measure emissions performance for the exhaust toxics and NO_X performance standards. As discussed below, however, EPA need not address the issue of whether the conventional gasoline provisions arguably preempt state control of oxygen in conventional gasoline areas because EPA believes that section 211(m) authorizes the Clark County requirement and overrides any potential preemption under section 211(c)(4).

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[4] Similarly, certain members of Congress indicated that they did not want EPA, the federal agency implementing section 211(m), to use its waiver authority under sections 211(m) and 211(k) in a manner that would limit the marketplace.

[5] WSPA claims that treating the 2.7% oxygen content requirement in section 211(m)(2) as merely a floor would effectively read out of the statute section 211(m)(7), which requires serious nonattainment areas to require gasoline with a minimum oxygen content of 3.1 %. EPA is not persuaded by WSPA's logic. Because both section 211(m)(2) and 211(m)(7) are phrased in terms of minimum requirements, there is no inconsistency created by allowing states to adopt programs that meet or exceed these requirements. Section 211(m)(7) still serves a purpose—it requires an increase in the minimum oxygenate content for certain serious nonattainment areas that have not previously exercised their discretion to require greater oxygen content levels.

[6] For example, if a state sets an oxygen content standard of 3.1% without any provisions for a credit program, refiners could not meet such a requirement by using MTBE. If a state included a credit program, however, refiners could meet a 3.1% oxygen content standard by supplying a combination of some oxygenated gasoline using ethanol (at 3.5% oxygen content) and some oxygenated gasoline using MTBE (at 2.7% oxygen content).

[7] State regulation is also prohibited if EPA publishes a finding in the **Federal Register** that no control or prohibition of the characteristic or component is necessary.

[8] The prohibition also does not apply to California. Section 211(c)(4)(B).

Even assuming a state control on oxygen content would otherwise be preempted under section 211(c)(4)(A), in the absence of section 211(m), a threshold issue is whether the CAA requires the state to satisfy both the necessity requirement of section 211(c)(4)(C) as well as the requirements of section 211(m) for the state oxygenated gasoline program to be approved into a SIP.[9] WSPA asserts, "[I]f Congress intended to exempt CAA § 211(m) from the preemption provisions of § 211(c)(4)(A) it would certainly have done so expressly within § 211(m)." EPA disagrees. EPA believes section 211(m) itself is an express statement on the ability of states to control oxygen content. It seems more logical to conclude that, given Congress' intent to provide state flexibility and ensure attainment of the CO NAAQS, if Congress has intended states also to satisfy the conditions of 211(c)(4), it would have expressly referenced that section.

EPA believes the most reasonable interpretation is that those elements of a state oxygenated gasoline program within the range of programs specified by section 211(m) are not subject to the preemption provisions of section 211(c)(4). However, those elements of a state oxygenated gasoline program beyond the range of programs specified by section 211(m) would be subject to section 211(c)(4)(A) and, if preempted, would be required to show necessity under section 211(c)(4)(C).[10]

The interaction of section 211(c)(4) and section 211(m) is not addressed in the text of these provisions, and it is not discussed in the legislative history. The structure of section 211, however, indicates that section 211(m) is the best indication of Congressional intent concerning the criteria for SIP approval of state programs in the designated CO nonattainment areas. While section 211(c)(4) addresses state fuel control programs in general, Congress specifically addressed state oxygenated gasoline programs in section 211(m). Congress required that certain states adopt these programs, and Congress specified several elements that the programs must contain. Yet Congress did not indicate that the section 211(m) requirements for a state oxygenated gasoline program may be subject to preemption under section 211(c)(4) and, if preempted, could not be approved absent a showing of necessity under section 211(c)(4)(C). It is reasonable to interpret section 211 such that the requirement of a necessity showing under section 211(c)(4)(C) does not apply to those elements of a state program that are specified in section 211(m) because the more specific provisions of section 211(m) take precedence over the more general provisions of section 211(c)(4) for those elements. Congress required states to adopt those elements of a program and submit them as a SIP revision, and Congress expected that EPA would be able to approve such a SIP revision without a further showing of necessity under section 211(c)(4)(C).

Consider, for example, a state oxygenated gasoline program that extends beyond the boundaries of the CMSA or MSA. Section 211(m) contains a specific requirement regarding geographic scope—the program must include the entire CMSA or MSA. Requiring oxygenated gasoline within the CMSA/MSA is clearly within the range of program elements specified under section 211(m), and thus such a state requirement would not be subject to the preemption and necessity demonstration provisions of section 211(c)(4). If section 211(m) and 211(c)(4) were not interpreted in this manner, a state program might satisfy this requirement of section 211(m), but if oxygen content requirements were preempted under section 211(c)(4)(A), the state program might still not be approvable into the SIP.[11] This would be contrary to the clear purpose of section 211(m) that certain states would have approved into their SIPs and implement the oxygenated gasoline requirements specified in section 211(m).

That portion of the state program requiring oxygenated gasoline beyond the CMSA or MSA, however, involves a state gasoline control beyond that which Congress required or expected in order to comply with section 211(m). Hence, such a provision should be subject to the requirements of section 211(c)(4)(C) if the state program would otherwise be preempted under section 211(c)(4)(A). The structure of section 211 does not indicate that oxygenated gasoline requirements beyond the geographic area specified in section 211(m) should be approvable without restriction under section 211(c)(4)(C).

The elements of geographic scope and control period are clearly specified in section 211(m) as a single area or time period.[12] However, the oxygen content requirement is not limited to a single specified value. Congress did not specify, for example, that the state program must require exactly 2.7% oxygen content, nor, as discussed above, did Congress prohibit states from establishing a larger weight percent requirement. Instead Congress specified that the SIP revisions must contain provisions requiring that gasoline be blended to contain not less than 2.7% oxygen by weight.

Arguably, the oxygen content requirements of section 211(m) could be read in the same manner as the geographic scope and control period provisions. Under this approach, a state requirement that is set at 2.7% would not be subject to the preemption provisions of section 211(c)(4), including the necessity showing under section 211(c)(4)(C). However, for any requirement above 2.7%, the state would have to show that the requirement is necessary, if the state program would otherwise be preempted under section 211(c)(4)(A).[13]

An alternative interpretation is that the oxygen content requirements of section 211(m)(2) call for any one of a range of minimum concentrations, and not one specific level. Any content requirement that results in gasoline containing not less 2.7% oxygen is within the scope of programs authorized and envisioned by Congress under section 211(m). Under this interpretation, a state requirement of greater than 2.7% oxygen content would not be subject to preemption under section 211(c)(4) and the state would

[9] This issue only arises where a state control would be preempted under section 211(c)(4)(A) (without reference to the requirements of section 211(m)). If the state control would not be preempted under section 211(c)(4)(A), then the criteria for approval of a SIP in section 211(c)(4)(C) are not applicable. The SIP revision would have to be consistent with section 211(m) but not section 211(c)(4)(C).

[10] EPA discussed the relationship between 211(m) and 211(c)(4) in approving a CO SIP revision for New Jersey. *See* 61 FR 5299 (February 12, 1996).

[11] For example, preempted state fuel controls may not be approved for a waiver unless they are necessary for achieving a NAAQS. As a result, waivers for fuel measures can only be justified for areas where emission reductions are necessary for a NAAQS. The 211(m) program, however, requires adoption of the oxygen control throughout the MSA or CMSA, irrespective of need. It is conceivable that the area needing CO reductions to achieve the NAAQS is smaller than the MSA or CMSA. Thus a state might find itself required by 211(m) to adopt a control for the entire MSA or CMSA, and yet unable to justify a waiver under 211(c)(4) for an oxygen control applicable to the entire area.

[12] Section 211(m)(2) provides that the requirements shall apply during the portion of the year in which the area is prone to high ambient concentrations of CO, which shall be as determined by the Administrator. The Administrator may not select a time period of less than four months, except under limited specified circumstances. For any given area, the Administrator would determine a specific time period in which the area is prone to high ambient concentrations of CO.

[13] Section 211(c)(4)(C) would not apply under this interpretation where a state program was required to require at least 3.1% oxygen content under section 211(m).

not need to show necessity under section 211(c)(4)(C).

EPA believes that the latter interpretation better implements Congressional intent. The text of section 211(m)(2) is reasonably read to envision a range of oxygen contents, whereas the geographic scope and control period are specifically identified as a single area or time period. The legislative history indicates that Congress intended to provide flexibility to states regarding oxygen content, and did not want to restrain that flexibility by setting a federal mandate for a specific oxygen level that states must require. While Congress deliberately rejected a federal mandate that would reduce the market opportunities for various oxygenates, it did this with the goal of preserving state flexibility, not limiting it, and the latter interpretation is consistent with this goal. Moreover, the overall structure established by the Act supports this interpretation, as the Act assigns states the primary responsibility to adopt programs to achieve clean air goals and preserves flexibility for the states in developing the programs needed to satisfy this role. This interpretation is also consistent with the general principle of avoiding a statutory interpretation that preempts state action unless Congressional intent to do so is clear. *See Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996); *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 518 (1992); *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Thus, EPA believes that a state is not preempted under the provisions of section 211(c)(4) from adopting a weight percent oxygen requirement greater than 2.7% under a section 211(m) state program, within the geographic scope and control period specified in section 211(m), and that EPA may approve a SIP revision to implement such a section 211(m) program without a showing of necessity under section 211(c)(4)(C).

b. Conflict preemption. WSPA commented that Clark County's 3.5% oxygen rule is preempted under the doctrine of conflict preemption because it hinders the accomplishment of a federal objective—namely EPA's "charge" under the waiver provisions of section 211(m)(3) to "ensur(e) that the areas with the greatest need for oxygenated gasoline receive priority in obtaining such gasoline." WSPA has not documented any problem with the supply or availability of compliant gasoline or oxygenates. In fact, refiners have been providing gasoline containing a minimum 3.5% oxygen content for at least two winter seasons, and there are no indications of a lack of supply of oxygenates in other areas subject to section 211(m). Thus, there do not appear to be concerns under 211(m)(3). Likewise, WSPA has not supported its conflict preemption assertion.

A federal statute implicitly overrides a state law when the state law is in actual conflict with the federal law. This occurs when it is impossible for a private party to comply with both the state and federal requirements, or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Freightliner Corp.* v. *Myrick*, 514 U.S. 280, 287 (1995) (quoting *English* v. *General Electric Co.*, 496 U.S. 72, 78–79 (1990) and *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). Contrary to WSPA's comments, EPA has not seen any evidence indicating that the Clark County provisions for oxygenated gasoline would lead to either of these results. First, there is no impossibility here; it is practically and legally possible to blend and supply gasoline that meets the federal conventional gasoline requirements and that has an oxygen content of 3.5%. Second, EPA does not believe that the 3.5% oxygen content requirement would be an obstacle to the accomplishment and execution of Congress' purposes. Here, a primary objective of Congress is that gasoline meet all of the applicable requirements specified in section 211, including the oxygenated gasoline provisions of section 211(m), the summertime RVP requirements of section 211(h), and the conventional gasoline requirements of section 211(k)(8). A state program requiring greater than 2.7% oxygen content is not an obstacle to accomplishing this Congressional objective; rather, it is consistent with the requirements of section 211(m) and the goals of Congress embodied in this provision. By providing that states must set an oxygen content at least as stringent as 2.7%, section 211(m) contemplates that states may require higher oxygen contents. In addition, such higher oxygen content requirements do not conflict with the federal summertime RVP or conventional gasoline requirements applicable in Clark County.[14] There is no evidence that the Clark County requirement would conflict with or interfere with the specifications for annual oxygen content limits in the conventional gasoline program, or interfere with refiners' or importers' ability to produce complying conventional gasoline.

c. Field preemption. WSPA further commented that Clark County's 3.5% oxygen requirement is preempted under the doctrine of field preemption. WSPA, however, does not elaborate on this claim.

A state program is preempted under field preemption where Congress has implicitly indicated an intent to occupy a given field to the exclusion of state law. "Such a purpose properly may be inferred where the pervasiveness of the federal regulation precludes supplementation by the States, where the federal interest in the field is sufficiently dominant, or where the object sought to be obtained by federal law and the character of obligations imposed by it * * * reveal the same purpose." *Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. 293, 300 (1987) (quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

Here, neither section 211(m) nor section 211 as a whole establishes a comprehensive federal presence. Instead, the fuels programs under section 211 provide a number of federal requirements but also explicitly preserve a role for the states in regulating fuels. Section 211(c)(4) explicitly preempts state action, but only under certain circumstances, and provides an exemption from preemption under section 211(c)(4)(C). Section 211(m) requires states, not the federal government, to adopt oxygenated gasoline programs. As discussed above, state programs requiring greater than 2.7% oxygen content are within the range of programs authorized under section 211(m), and Congress did not intend to prohibit them. Thus, federal regulation here is not so pervasive as to preclude supplementation by states, nor is the federal interest in the field sufficiently dominant to preempt state action.

State programs under section 211(m) requiring greater than 2.7% oxygen content are therefore not preempted based on either conflict or field preemption.

d. Preemption under 211(f). WSPA also appears to argue that EPA's authority to grant waivers from the substantially similar prohibition of section 211(f)(1), and its authority to control or ban fuel additives under section 211(c)(1), mean that only EPA can act to allegedly ban the use of a fuel additive such as MTBE, not states. In addition, WSPA claims that EPA must satisfy the requirements of section 211(c)(1) before it could approve Nevada's SIP provision.

[14] Issues concerning conflict with the requirements or goals of the federal reformulated gasoline program need not be addressed to evaluate the Clark County program.

EPA has explained above that the Clark County provision is neither expressly prohibited under section 211(c)(4), nor implicitly prohibited under conflict or field preemption. EPA's authority under sections 211(c)(1) and (f)(4) does not provide an additional basis for preemption of state fuel controls. Congress indicated expressly in section 211(c)(4) what state fuel controls are prohibited, and there is no reason to believe EPA's authority to act under section 211(c)(1) and (f)(4) indicates a Congressional intent to preempt state fuel controls not otherwise preempted under section 211(c)(4). In addition, EPA's authority to act on a state SIP submission is not based on or limited by section 211(c)(1). Nothing in section 211(c) or (m) or section 110 indicates that section 211(c)(1) applies to EPA's action on a state SIP submission involving a state oxygenated gasoline program. Such an interpretation would run counter to the central structure of the Act, by limiting a state's SIP measures to only those provisions that EPA could or would be able to adopt under it's own federal authority.

B. Regulatory Negotiation Agreement

WSPA commented that EPA's approval of Clark County's SIP revision "violates the spirit, if not the letter * * *" of an Agreement in Principle entered into in August 1991 between EPA, environmental groups, state and local agencies, and industry. WSPA claims the parties agreed that during the control periods for CO nonattainment areas the required oxygenate level in gasoline would be set at 2.7 percent by weight. WSPA also claims that EPA agreed on how to limit components in conventional gasoline areas and to invoke 211(c) to preempt state regulation of fuel. The 1991 Agreement in Principle was an agreement on the underlying principles to be proposed for implementation of the then-new provisions of sections 211(k) and 211(m). Nothing in the Agreement suggests that states subject to 211(m) are prohibited from requiring oxygen content levels greater than the statutory minimum. The Agreement outlines the minimum oxygen content levels to be proposed for reformulated gasoline (RFG) and describes the ranges of oxygen content that will be deemed to comply with NO_X standards in RFG areas. These provisions both applied to the "simple model" for certifying RFG. These provisions are not informative for this rulemaking because: (1) Las Vegas is not an RFG area; (2) nothing in the provisions states that higher oxygen content levels are prohibited; and, (3) the simple model described in these provisions has been replaced by the "complex model" throughout the country.[15] *See* 40 CFR 80.42(c)(2).

The Agreement also described the oxygenated gasoline guidelines that EPA would recommend. This section of the Agreement highlighted state flexibility by stating, "While recognizing state discretion, EPA guidelines shall recommend a credit program. * * *" The elements of the recommended credit program do not suggest that states be limited to the statutory minimum requirements of 211(m). Likewise nothing in the Agreement suggests that 211(c) preempts state compliance with 211(m) or that 211(c) would be used in any way beyond that provided by the statute.

C. Commerce Clause of the U.S. Constitution

Finally, WSPA commented that Clark County's 3.5% gasoline oxygen content requirement is barred by the Commerce Clause. WSPA argues that the Clark County Board of Health's purpose for enacting the requirement is unclear and that the Board may have enacted the requirement with the ulterior motive of "protect(ing) economic interests of ethanol providers within the state. * * *" The record clearly indicates that the Board's purpose in adopting the requirement is to address Clark County's carbon monoxide air quality problem and the attendant health risks which it poses to the local population. WSPA has not submitted any documentation to the contrary and there is no basis for EPA to believe that the Board's motives were other than those stated in the record. WSPA has also failed to submit documentation to support its assertion that the 3.5% oxygen content requirement imposes an unreasonable burden on interstate commerce. Fuel suppliers in Clark County have been complying with the 3.5% oxygen requirement for a number of years—first voluntarily and, since October 1997, pursuant to the Clark County rule.

IV. EPA Action

EPA is finalizing action to approve the above revisions for inclusion into the Nevada SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate Clark County's revisions into the federally approved SIP. The intended effect of approving these revisions is to regulate emissions of CO in accordance with the requirements of the CAA.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review..

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

[15] The complex model includes ranges of fuel components that the model can accept for predicting the emissions that will result from use of a particular fuel. The range for oxygen content that the model can accept is 0.0 to 4.0 percent by weight. *See* 40 CFR 80.45(f)(1). Clark County's 3.5% requirement fits within the range limits of the model.

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 19, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

2. Section 52.1470 is amended by adding paragraph (c)(38)to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(38) On August 7, 1998, regulations for the following Health District were submitted by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Health District.

(*1*) Section 53 adopted on September 25, 1997.

[FR Doc. 99–13805 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

OPP–300863; FRL–6081–5

RIN 2070–AB78

Difenoconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the fungicide difenoconazole (((2*S*,4*R*)/(2*R*,4*S*)/(2*R*,4*R*)/(2*S*,4*S*)) 1–(2–(4–(4-chlorophenoxy)-2-chlorophenyl)-4-methyl-1,3-dioxolan-2-yl)methyl-1*H*–1,2,4-triazole) in or on the raw agricultural commodities bananas at 0.2 parts per million (ppm); wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; wheat straw at 0.1 ppm; eggs at 0.05 ppm; milk at 0.01 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm. Novartis Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 2, 1999. Objections and requests for hearings must be received by EPA on or before August 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300863], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300863], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300863]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7740, giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 25, 1997 (62 FR 40075) (FRL–5726–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 5E4526) to establish an import tolerance on bananas by Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing. In the **Federal Register** of December 2, 1998 (63 FR 66535) (FRL–6043–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA of 1996 (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 2F4107) to establish a tolerance on wheat and related animal commodities by Novartis Crop Protection, Inc. that included a summary of the petition prepared by the same company. There were also no comments received in response to this second notice of filing.

The petitions requested that 40 CFR 180.475 be amended by establishing tolerances for the fungicide, difenoconazole, in or on the raw agricultural commodities bananas at 0.2 ppm; wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; wheat straw at 0.1 ppm; eggs at 0.05 ppm; milk at 0.01 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of difenoconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances in/on the raw agricultural commodities wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; wheat straw at 0.1 ppm; eggs at 0.05 ppm; milk at 0.01 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm, and an import tolerance for the fungicide difenoconazole in or on the raw agricultural commodity bananas at 0.2 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by difenoconazole are discussed in this unit.

B. Toxicological Endpoints

1. *Acute toxicity.* Difenoconazole possesses low acute toxicity by the oral, dermal and inhalation routes of exposure. It is considered to be a mild eye and slight skin irritant and is not a dermal sensitizer. The acute oral LD_{50} in rats is 1,453 milligrams per kilogram (mg/kg). The acute dermal LD_{50} is estimated to be greater than 2,010 mg/kg. The acute inhalation LC_{50} in rats is greater than 3,300 mg/m^3. The primary eye irritation category is III and the primary skin irritation category is IV.

2. *Short- and intermediate-term toxicity.* Subchronic studies of the effects of difenoconazole in mice and rats manifested decreased body weights, decreased body weight gains, and effects on the liver at 200 ppm and higher. Microscopic examination of the eyes of dogs at 3,000 ppm revealed unilateral and bilateral lenticular cataracts in both sexes of animals. In a 13–week feeding study in mice, nearly all mice fed 7,500 or 15,000 ppm died during the first week of the study; there was a significantly decreased body weight gain, hepatocellular enlargement and vacuolation in animals receiving 2,500 ppm difenoconazole in the diet; and hepatocyte enlargement in animals receiving 200 ppm. The lowest observable adverse effect level (LOAEL) was considered to be 200 ppm based on decreased body weight gains and liver histopathology and the no observable adverse effect level (NOAEL) was 20 ppm (equivalent to 2.0 mg/kg in males and 4.4 mg/kg in females). In a 13–week feeding study in rats, the LOAEL was 200 ppm (10 mg/kg/day) in females, based on a decrease in body weights (concurrent with a negative trend for food consumption), and 750 ppm (37.5 mg/kg/day) for males, based on increases in absolute liver weights; the NOAEL was 20 ppm (equivalent to 1 mg/kg/day). A 21–day dermal toxicity study using rabbits produced a LOAEL of 100 mg/kg/day based on statistically significant decrements in body weight, body weight gain, and food consumption, and a NOAEL of 10 mg/kg/day. A feeding study in dogs for 26 weeks produced a LOAEL of 3,000 ppm based on unilateral or bilateral cataracts in all three female and one of three male dogs. The NOAEL was concluded to be 1,000 ppm (31.3 to 34.0 mg/kg/day).

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for difenoconazole at 0.01 mg/kg/day. This RfD is based on the NOAEL of 0.96 mg/kg/day (20 ppm) for males in a 104–week chronic toxicity/carcinogenicity study in rats and using an uncertainty factor of 100 (10x for interspecies extrapolation and 10x for intraspecies variability. The NOAEL for females (at the 20 ppm dietary exposure) was 1.27 mg/kg/day. The LOAEL in this study was 500 ppm (24.12 mg/kg/day for males and 32.79 mg/kg/day for females), based on cumulative decreases in body weight gains and hepatocellular hypertrophy. In the dog, the LOAEL was 500 ppm, based on decreased body weight gains (and decreased food intake) and the NOAEL was 100 ppm (3.4 to 3.7 mg/kg/day) in a 52–week chronic dietary toxicity study.

The results of the 2–generation reproductive and developmental toxicity studies do not demonstrate increased sensitivity of infants and children to difenoconazole. In a developmental toxicity study in rats, the maternal NOAEL was determined to be 20 mg/kg/day and the maternal LOAEL was 100 mg/kg/day based on decreased body weight gains and decreased food consumption. In the same study, the developmental NOAEL was 100 mg/kg/day and the developmental LOAEL was 200 mg/kg/day based on the incidence of bifid or unilateral ossification of the thoracic vertebrae, which was significantly increased on a fetal basis, and significant increases in the average number of ossified hyoid and decreases in the number of sternal centers of ossification (per fetus per litter). The average number of ribs was also significantly increased with accompanying increases in the number of thoracic vertebrae and decreases in the number of lumbar vertebrae in this group. In a developmental toxicity study in rabbits, the LOAEL is 75 mg/kg/day for maternal toxicity based on decreases in body weight gain and food consumption, and the NOAEL is 25 mg/kg/day for maternal toxicity; for developmental toxicity, the LOAEL is 75 mg/kg/day based on increases in post-implantation loss and resorptions per doe, and decreases in fetal body weight, and the NOAEL is 25 mg/kg/day. In a 2–generation reproduction study in rats, for parental toxicity, the LOAEL of 250 ppm (12.5 mg/kg/day) is based on the decrease in maternal body weight gain and the NOAEL is 25 ppm (1.25 mg/kg/day; for reproductive toxicity the LOAEL of 250 ppm (12.5 mg/kg/day) is based on decreased pup weights at day 21 and the NOAEL is 25 ppm (1.25 mg/kg/day).

Neurotoxicity studies are not applicable because difenoconazole is not a cholinesterase inhibitor and there is no evidence in the available data base that difenoconazole possesses neurotoxic properties. It is not structurally related to known neurotoxic compounds.

Difenoconazole was not mutagenic with or without metabolic activation in two microbial/mammalian microsome plate incorporation assays. In an *in vivo* micronucleus assay, no increases in micronucleated polychromatic erythrocyte counts were seen in the bone marrow cells of mice given difenoconazole. This chemical was negative in an *in vitro* unscheduled DNA synthesis (UDS) assay with primary rat hepatocytes.

4. *Carcinogenicity.* Chronic feeding studies in mice showed decreased body weight gains in male and female mice at termination. Treatment related non-neoplastic lesions were confined to the liver and were supported by the clinical chemistry data at a level of 300 ppm (46.29 and 57.79 mg/kg/day for males and females, respectively). Liver tumors were observed in mice at 300 ppm and higher; however, based on the excessive toxicity observed at the two highest doses of 2,500 and 4,500 ppm (females terminated after 2 weeks due to excessive toxicity resulting in moribundity and death), the absence of tumors at the two lower doses of 10 and 30 ppm, and the absence of genotoxic effects, in 1994 the Agency determined that the appropriate cancer classification for difenoconazole is C (possible human carcinogen) and advocated the use of the margin of exposure (MOE) approach to determining exposure/risk. However, at this time the Agency has not defined the level of concern for cancer using the MOE approach. Therefore, a quantitative risk analysis was conducted using the Q_1^* approach. The Q_1^* was determined to be 1.57×10^{-1} (mg/kg/day)$^{-1}$. This value incorporates the 3/4 scaling factor and is based on the male mouse liver adenomas and/or carcinomas combined.

Metabolism studies in rats indicated that peak absorption occurred between 24 and 48 hours post-dosing. Elimination in the feces ranged between 78 and 94% and in the urine between 8 and 21%. Difenoconazole did not accumulate to any appreciable extent since tissues contained less than 1.0%

of the radioactivity after 7 days post-exposure. From the proposed metabolic pathway of difenoconazole in rats, the compound undergoes successive oxidation and conjugation reactions. One of the metabolites, CGA–205375, accounts for 6–24% of the applied dose and is found only in the urine and feces of high dose (300 mg/kg) rats. The presence of this intermediate in the excreta of only high dose rats suggests that its rate of further biotransformation has reached saturation at the high dose. Additionally, excretion of radioactivity in the bile, feces, and urine of rats orally dosed with ^{14}C-difenoconazole is consistent with saturation of the gastrointestinal absorption of the chemical at 300 mg/kg. The distribution, metabolism, and excretion of difenoconazole are not sex-dependent.

C. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances previously existed in (40 CFR 180.475) for the residues of difenoconazole in or on the following raw agricultural commodities: eggs at 0.05 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk at 0.01 ppm; wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; and wheat straw at 0.1 ppm. The time limits were conditional on submission by the company of several studies. However, even though Novartis Crop Protection, Inc. submitted the studies before the expiration date of these tolerances, the tolerances expired on December 31, 1998, because the Agency was unable to complete review of the studies by that date. These tolerances are reestablished and made permanent by this rule. In addition to the above tolerances, import tolerances also exist for the residues of difenoconazole on barley grain at 0.1 ppm; eggs at 0.05 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk at 0.01 ppm; rye grain at 0.1 ppm; and wheat grain at 0.1 ppm. These import tolerances are unaffected by this rule. Risk assessments were conducted by EPA to assess food exposures from difenoconazole as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance. Anticipated residue data used in the current dietary risk analysis were calculated from field trial data. The anticipated residues used were 0.01 for bananas; 0.000019 for eggs; 0.0000043 for egg whites; 0.000046 ppm for egg yolk; 0.000041 ppm for fat of cattle, goats, hogs, horses, and sheep; 0.00012 ppm for kidney of cattle, goats, hogs, horses, and sheep; 0.000014 ppm for meat of cattle, goats, hogs, horses, and sheep; 0.00044 ppm for meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep; 0.000013 ppm for milk; 0.01 ppm for plantains; 0.0000030 ppm for poultry fat; 0.000034 ppm for poultry kidney; 0.000006 ppm for poultry meat; 0.000023 ppm for poultry meat byproducts (except kidney); 0.005 ppm for sweet corn; and 0.005 ppm for wheat grain.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 3% crop treated for sweet corn, 9% crop treated for wheat, and 10.5% imported for barley. The percent imported data are used in the same way PCT data are used. This refinement is used because difenoconazole is not registered for use in the United States. The percentage means that 10.5% of the barley used (potentially or actually) for human consumption in the United States is imported; it is even more conservative because it also assumes that all such imported barley has difenoconazole residues.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates is supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which difenoconazole may be applied in a particular area.

i. *Acute exposure and risk.* Acute risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute risk assessment is required for difenoconazole. The acute NOAEL of 25 mg/kg/day is based on the developmental toxicity study in rabbits, in which the endpoint effects at the LOAELs were post-implantation loss and resorptions per doe and a significant decrease in fetal weight at 75 mg/kg/day during days 7 and 19. The uncertainty factor used was 100, resulting in an acute RfD of 0.25 mg/kg/day. The Agency's detailed acute analysis estimated the distribution of single-day exposures for females older than 13 years. A dose and endpoint were not selected for the general U.S. population and infants and children because there were no effects observed in oral toxicology studies including maternal toxicity in the developmental toxicity studies in rats or rabbits that are attributable to a single exposure. The

Dietary Exposure Evaluation Model (DEEM) analysis evaluated the data in the USDA 1989–91 Continuing Surveys for Food Intake by Individuals (CSFII). The acute analysis used tolerance level residues and 100% crop treated. The FQPA Safety Factor was reduced to 1x. Therefore, the acute Population Adjusted Dose (PAD) and the acute RfD are the same. For acute risk the Agency's level of concern is for estimated exposure greater than 100% of the RfD. Total exposures from the proposed new and preexisting food and feed uses of difenoconazole, at the 95th percentile of exposure are: (a) Females (13+/pregnant/not nursing), 0.000913 mg/kg/day (<1% of the RfD); (b) females (13+/nursing), 0.001079 mg/kg/day (<1% of the RfD); (c) females (13–19 years/not pregnant or nursing), 0.000941 mg/kg/day (<1% of the RfD); (d) females (20+ years/not pregnant or nursing), 0.000804 mg/kg/day (<1% of the RfD); and (e) females (13–50 years), 0.000869 mg/kg/day (<1% of the RfD). The acute risk from food exposure does not exceed the Agency's level of concern.

ii. *Chronic exposure and risk.* A chronic risk assessment was required for difenoconazole. The RfD used for the chronic analysis is 0.01 mg/kg based on the NOAEL of 0.96 mg/kg/day for male rats in the 104–week combined chronic and carcinogenicity study in rats, in which the effects at the LOAEL were reduced body weight gains and hepatocellular hypertrophy. The chronic Dietary Exposure Evaluation Model (DEEM) exposure analysis used mean consumption (3–day average). Anticipated residues and PCT or percent imported data were used for selected commodities. The DEEM analysis evaluated the individual food consumption as reported by respondents in the 1989–91 CSFII and accumulated exposure to the chemical for each commodity. The FQPA Safety Factor was reduced to 1x. Therefore, the chronic PAD and the RfD are the same. The Agency's level of concern for chronic risk is exceeded if the exposure utilizes more than 100% of the RfD. Food exposures for the U.S. population and the most highly exposed subgroups are: (a) U.S. Population (48 states), 0.000005 mg/kg/day; (b) non-Hispanic (other than black or white), 0.000006 mg/kg/day; (c) all infants (<1 year old), 0.000016 mg/kg/day; (d) nursing infants (<1 year old), 0.000007 mg/kg/day; (e) non-nursing infants (<1 year old), 0.000019 mg/kg/day; (f) children (1–6 years old), 0.000011 mg/kg/day; (g) children (7–12 years old), 0.000005 mg/kg/day; (h) females (13+/nursing), 0.000006 mg/kg/day; and (i) seniors (55+), 0.000006 mg/kg/day. The subgroups presented are all children subgroups and the food exposures for the subgroups whose food exposures are higher than that of the U.S. population. The chronic risk from residues in food does not exceed the Agency's level of concern.

iii. *Cancer exposure and risk.* The Agency previously classified difenoconazole as a possible human carcinogen. This chemical would now be classified as a likely human carcinogen in accordance with the Agency's "Proposed Guidelines for Carcinogenic Risk Assessment" (April 10, 1996). Initially a non-linear, MOE approach was used for human risk characterization and extrapolation of risk using the 78–week mouse carcinogenicity study, in which the LOAEL effects related to tumor development (non-neoplastic hepatic lesions) were hepatocellular hypertrophy, necrosis, fatty changes, and bile stasis. Using the NOAEL of 4.7 mg/kg/day, the cancer MOE was determined to be 8,400 for the U.S. population. However, at this time the Agency has not defined the acceptable level of concern for cancer risk using the MOE approach. Therefore, the linear Q_1^* approach was used for calculating cancer risk. A Q_1^* of 0.157 (mg/kg/day)$^{-1}$ was determined, based on the male mouse liver adenoma and/or carcinoma combined tumor rates in the 78–week carcinogenicity study in mice. The exposure analysis estimating potential cancer risks for difenoconazole was performed using anticipated residues and PCT or percent imported refinements for selected commodities to determine Estimated Lifetime Cancer Risk for the general population. The DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide CSFII and accumulated exposure to the chemical for each commodity. The DEEM analysis used mean consumption values and assumes a 70–year lifetime exposure. The exposure calculated for the U.S. population (48 states) was 0.000005 mg/kg/day, providing a lifetime cancer risk estimate of 8.4×10^{-7} from residues in food. The cancer risk does not exceed the Agency's level of concern.

2. *From drinking water.* A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary, depending on the toxic endpoint, with drinking water consumption and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water but they do have an indirect regulatory impact through aggregate exposure and risk assessments.

In calculating DWLOCs, the default assumptions for drinking water consumption are 2 liters consumed per day by adults and 1 liter consumed per day by children. The default assumptions for body weights are 70 kg for adult males, 60 kg for adult females, and 10 kg for children. Difenoconazole is used solely as a fungicidal seed treatment and is not expected to pose a major threat to ground and surface waters.

i. *Acute exposure and risk.* Model-derived estimates of the maximum concentrations of difenoconazole for acute exposure in ground and surface water are 0.125 parts per billion (ppb) and 0.00084 ppb, respectively, generated by the Screening Concentration in Ground Water (SCI-GROW) and Generic Expected Environmental Concentration (GENEEC) models, respectively. The SCI-GROW and GENEEC model estimated maximum concentrations were compared directly to the DWLOC for acute exposure. The Agency has calculated the DWLOC for acute exposure to difenoconazole in surface and ground water for females (13+ years old, nursing) to be 7,500 ppb. To calculate the DWLOC for acute exposure relative to an acute toxicity endpoint, the acute food exposure (from the DEEM analysis) was subtracted from the acute RfD to obtain the acceptable acute exposure to difenoconazole in drinking water. The DWLOC was then calculated using the default body weights and drinking water consumption figures. The maximum estimated concentrations of difenoconazole in surface water are less than the Agency's DWLOCs for difenoconazole in drinking water as a contribution to acute aggregate exposure.

ii. *Chronic exposure and risk.* The SCI-GROW model was used to estimate a maximum concentration of difenoconazole in ground water of 0.00084 ppb and the GENEEC model concentration was divided by three and used to estimate an average concentration of difenoconazole in surface water of 0.016 ppb. For chronic

(non-cancer) exposure to difenoconazole in surface and ground water, the DWLOCs are 350 ppb for the U.S. population, 300 ppb for the subgroup females (13+ years old/nursing), and 100 ppb for the subgroup non-nursing infants (<1 year old). To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic food exposure (from the DEEM analysis) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to difenoconazole in drinking water. The maximum estimated concentration of difenoconazole in surface water is less than the Agency's DWLOCs for difenoconazole in drinking water as a contribution to chronic (non-cancer) exposure.

iii. *Cancer exposure and risk.* Estimates generated by models of the maximum concentration of difenoconazole for chronic exposure in ground water is 0.00084 ppb (from the SCI-GROW model) and for the estimated average concentration in surface water is 0.016 ppb (from the GENEEC model). For chronic (cancer) exposure to difenoconazole in surface and ground water, the DWLOC is 0.048 ppb for the U.S. population. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) food exposure (from the DEEM analysis) was subtracted from the ratio of the negligible cancer risk to the Q_1^* to obtain the acceptable chronic (cancer) exposure to difenoconazole in drinking water. DWLOCs were then calculated using the default drinking water consumptions and body weights. The average estimated concentration of difenoconazole in surface water is less than the Agency's DWLOC for difenoconazole in drinking water as a contribution to cancer aggregate exposure.

3. *From non-dietary exposure.* Difenoconazole is not currently registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Difenoconazole is a member of the triazole class of pesticides. Other members of this class include cyproconazole, fenbuconazole, propiconazole, tebuconazole, and uniconazole. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." While the Agency has some information in its files that may be helpful in determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodology to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable it to develop and apply policies for evaluating the cumulative effects of chemicals having a common mechanism of toxicity. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments. There are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism will be assumed).

EPA does not have, at this time, available data to determine whether difenoconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, difenoconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that difenoconazole has a comon mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

There are no proposed or existing residential uses for difenoconazole and occupational uses of difenoconazole will not result in post-application residential exposure. Therefore, aggregate exposure risk assessment has been limited to food and water only, using the exposure estimates and risk characterizations described above.

1. *Acute risk.* From the acute food risk assessment, a high-end exposure estimate was calculated for the subgroup females 13+ years old. In this subgroup less than 1% of the RfD is occupied by food exposure. The acute food exposure for females 13+ years old is below the Agency's level of concern. An acute RfD is not established for the general population including infants and children because there were no effects observed in oral toxicity studies including maternal toxicity in the developmental toxicity studies in rats and rabbits attributable to a single exposure. The maximum estimated concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOCs for difenoconazole as a contribution to acute aggregate exposure. Therefore, the Agency concludes with reasonable certainty that residues of difenoconazole in drinking water do not contribute significantly to the aggregate acute human health risk at the present time, considering the present uses and the uses proposed in this action. EPA bases this determination on a comparison of estimated concentrations of difenoconazole in surface waters and ground waters to DWLOCs for difenoconazole. The estimated concentrations of difenoconazole in surface and ground waters are derived from water quality models that use conservative assumptions regarding pesticide transport from the point of application to surface and ground water. Because the Agency considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, DWLOC may vary as those uses change. If new uses are added in the future, the Agency will reassess the potential impacts of difenoconazole on drinking water as a part of the aggregate acute risk assessment process.

2. *Chronic risk.* Chronic risk estimates associated with exposure to difenoconazole in food and water do not exceed the Agency's level of concern. The chronic DEEM food exposure analysis used mean consumption (3–day average). Anticipated residues and PCT data for select commodities were used to determine food exposure for the general population and 28 subgroups. The Agency has concluded that the percentage of the RfD that will be utilized by chronic food exposure to residues of difenoconazole is less than 1% of the RfD for all groups and subgroups. The estimated average concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOCs for

difenoconazole as a contribution to chronic dietary aggregate exposure. Therefore, the Agency concludes with reasonable certainty that residues of difenoconazole in drinking water do not contribute significantly to the aggregate chronic human health risk at the present time considering the present uses and the uses proposed in this action. The Agency bases this determination on a comparison of estimated concentrations of difenoconazole in surface and ground waters to DWLOCs for difenoconazole. The estimates of difenoconazole in surface and ground waters are derived from water quality models that use conservative assumptions regarding pesticide transport from the point of application to surface and ground water. Because the Agency considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, DWLOCs may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of difenoconazole on drinking water as a part of the aggregate chronic risk assessment process.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since no registered residential uses or exposure scenarios were identified for short- and intermediate-term exposure scenarios, short- and intermediate-term aggregate risks are deemed to be negligible.

4. *Aggregate cancer risk for U.S. population.* The DEEM cancer food exposure analysis used anticipated residues and PCT information to estimate the lifetime cancer risk for the general population. The food exposure was calculated to be 0.000005 mg/kg/day and the lifetime dietary risk was 8.4×10^{-7}, since there are no uses resulting in post-application exposure. The aggregate exposure for cancer includes only food and water. Cancer risk estimates associated with exposure to difenoconazole from food and water do not exceed the Agency's level of concern.

The estimated average concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOCs for difenoconazole as a contribution to cancer aggregate exposure. Therefore, the Agency concludes with reasonable certainty that residues of difenoconazole in drinking water do not contribute significantly to the aggregate chronic human health risk at the present time considering the present use and uses proposed in this action. The Agency bases this determination on a comparison of estimated concentrations of difenoconazole in surface and ground waters to DWLOCs for difenoconazole. The estimates of difenoconazole in surface and ground waters are derived from water quality models that use conservative assumptions regarding pesticide transport from the point of application to surface and ground water. Because the Agency considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, DWLOCs may vary as those uses change. If new uses are added in the future, the Agency will reassess the potential impacts of difenoconazole on drinking water as a part of the aggregate cancer risk assessment process.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to difenoconazole residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of difenoconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and postnatal sensitivity.* The data provided no indication of increased susceptibility of rats or rabbits to in utero or postnatal exposure to difenoconazole.

iii. *Conclusion.* There is a complete toxicity data base for difenoconazole and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

The FQPA 10x additional safety factor for infants and children was reduced to 1x because: (a) The toxicology data base is complete, (b) there is no indication of increased susceptibility of rat or rabbit fetuses during in utero and/or postnatal exposure in the developmental and reproductive toxicity data, (c) in the absence of complete environmental fate data for difenoconazole and for protection of infants and children, worst-case fate parameters will be used in the models for ground and surface source drinking water exposure assessments resulting in estimates that are upper-bound concentrations, and (d) there are currently no registered residential uses for difenoconazole and therefore, non-dietary exposure to infants and children is not expected.

2. *Acute risk.* An acute RfD is not established for the general population including infants and children because there were no effects observed in oral toxicity studies including maternal toxicity in the developmental toxicity studies in rats and rabbits attributable to a single exposure. The Agency concludes that acute risks to infants and children are negligible.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to difenoconazole from food will utilize less than 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The estimated average concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOC for chronic exposure among nursing infants (<1 year old) to difenoconazole. Despite the potential for exposure to difenoconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Since no registered residential uses or exposure scenarios were identified for

short- and intermediate-term exposure scenarios among the general population, short- and intermediate-term aggregate risk are negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to difenoconazole residues.

III. Other Considerations

A. Nature of the Residue In Plants and Animals

The nature of the residue in wheat is understood as a result of acceptable metabolism studies being performed in wheat RACs. The major terminal residues in wheat grain were the metabolites triazole and triazole acetic acid, and in wheat straw and forage were triazole alanine, triazole acetic acid, and CGA–205375. Parent difenoconazole was not detected in the grain and comprised <8% of the total recoverable residue (TRR) in forage and <0.4% of the TRR in straw. The nature of the residue is also understood in tomatoes, potatoes, and grapes, with the major terminal residues consisting of parent compound and triazole alanine in tomatoes, triazole alanine and conjugation with a number of naturally occurring substrates in potatoes, and metabolism of parent by hydroxylation of the phenyl ring and/or oxidative cleavage of the dioxolane ring, followed by cleavage of the carbon-carbon bridge between the phenyl and triazole rings. Similar results were observed in the wheat, tomato, and potato metabolism studies. Since the nature of the residue is understood in different crops, no metabolism studies for bananas were required. The Agency concluded that none of the difenoconazole metabolites warrant inclusion in the tolerance regulation or separate regulation or inclusion in the dietary risk assessment or additional metabolism or toxicological studies. The triazole metabolites (triazole, triazole alanine, triazole acetic acid) have previously been determined not to be of toxicological concern. CGA–205375 was determined not to be of concern due to the low potential for residues associated with seed treatment. This conclusion can be expanded to include triazole propanoic acid. Only the parent compound difenoconazole will be used in the tolerance expression.

The nature of the residue in animals is considered understood, for the purposes of the proposed uses, because the triazole metabolites have previously been determined not to be of toxicological concern and because CGA–205375 was determined not to be of concern due to the low potential for residues associated with seed treatment. The additional animal metabolite triazole propanoic acid was also determined not to be of concern because of the low residue potential associated with seed treatment.

B. Analytical Enforcement Methodology

The registrant proposed Method AG–575B as the analytical enforcement method for banana and wheat. Detection is then achieved by gas chromatography (GC) with a nitrogen/phosphorous detector. A confirmatory method, AG–657, differing from the enforcement method in the GC column and detector used, achieved good results in bananas fortified with difenoconazole. The Agency concludes that method AG–575B is adequate for enforcement purposes. The Agency has validated this method.

The registrant proposed method AG–544A as the analytical enforcement method for dairy and poultry tissue, eggs, and milk. The Agency concludes that method AG–544A is adequate for enforcement purposes. The Agency has validated this method.

Adequate enforcement methodology (e.g., gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

1. *Wheat.* For wheat, 15 field trials were conducted in 13 states. The wheat field trials were conducted at two application rates, 10.9 grams active ingredient (a.i.) per 100 lb. seed (1x) and 21.8 grams a.i. per 100 lb. seed (2x). The residue levels of difenoconazole in wheat grain (<0.01 ppm) and in wheat hay and straw (0.05 ppm) were less than the limit of quantitation (LOQ). The LOQ for wheat grain is 0.01 ppm and 0.05 ppm in wheat straw, hay, and forage. Wheat forage had levels ranging from <0.05 ppm to 0.077 ppm. The submitted data indicate that residues of difenoconazole will not exceed the tolerance for wheat RACs. The Agency has previously reviewed a processing study for spring wheat which was seed-treated (2x) and also foliar treated (10x) 28 days before harvest. No residues (<0.01 ppm) were detected in grain or any processed fraction.

2. *Bananas.* Nine field trials were conducted in Columbia, Honduras, and Ecuador. Field trials in each country were conducted at the single maximum application rate 0.22 lb. a.i. per hectare. Difenoconazole was applied 8 times for a total maximum application rate of 1.76 lb. a.i. per hectare. At each site whole banana fruit were collected zero days after the last application from the unbagged racemes (bunches). The residue levels of difenoconazole in whole bananas ranged from <0.02 to 0.13 ppm. The residue levels in banana pulp were all less than the LOQ (0.02 ppm). The residue levels in banana peel ranged from <0.02 to 0.25 ppm. An additional six field trials had been submitted and reviewed previously. These field trials were conducted in Costa Rica, Ecuador, Mexico, Guatemala, and Belize. Residue levels in these six field trials ranged from 0.03 to 0.16 ppm in whole unbagged bananas and <0.02 to 0.03 ppm in unbagged banana pulp. The submitted data indicate that residues of difenoconazole will not exceed the proposed tolerance level of 0.2 ppm for bananas. There are no processed commodities associated with bananas and therefore no tolerances for processed commodities are required.

3. *Meat, milk, poultry, and eggs.* The registrant requested a waiver for animal feeding studies based on the low potential for residues in feed items and the exaggerated rates used in the animal feeding studies. For now, the Agency is willing to accept the registrant's proposal to allow the animal metabolism studies to also serve as feeding studies. Feeding studies in cattle and poultry, as appropriate, will be needed for any future tolerance requested on potential livestock feed commodities which could lead to higher residues of concern in meat, milk, and eggs.

D. International Residue Limits

There are pending Codex Maximum Residue Levels for this compound in Mexico for oats, wheat, and barley.

E. Rotational Crop Restrictions

The nature of the residue is understood. The data indicate that the phenyl/triazole bridge of difenoconazole is cleaved in the soil and that triazole-specific metabolites are preferentially taken up by the rotational crops. The maximum TRR observed with phenyl-labeled difenoconazole was 0.009 ppm (wheat stalks) and with triazole-labeled difenoconazole was 0.314 ppm in wheat grain. The registrant has submitted the results of two confined crop rotation studies using phenyl-labeled difenoconazole. In the raw agricultural commodities of all rotational crops

planted 30–33 days after application of difenoconazole, the TRR was <0.01 ppm. These results support the proposed 30 –day plantback restrictions for all rotational crops.

IV. Conclusion

Therefore, tolerances are established for the fungicide difenoconazole (((2*S*,4*R*)/(2*R*,4*S*)/(2*R*,4*R*)/(2*S*,4*S*) 1–(2–(4–(4-chlorophenoxy)-2-chlorophenyl)-4-methyl-1,3-dioxolan-2-yl)methyl-1*H*–1,2,4-triazole) in or on the raw agricultural commodities bananas at 0.2 ppm; eggs at 0.05 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk at 0.01 ppm; wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; and wheat straw at 0.1 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 2, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number OPP–300863 (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4,

1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 25, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.475 is revised to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide difenoconazole (((2*S*,4*R*)/(2*R*,4*S*)/(2*R*,4*R*)/(2*S*,4*S*)) (1–((2–(2-chloro-4–(4-chlorophenoxy)phenyl)-4-methyl-1,3-dioxolan-2-yl)methyl)-1*H*–1,2,4-triazole) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat by-products	0.05
Eggs	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats, meat by-products	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, meat by-products	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, meat by-products	0.05
Milk	0.01
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, meat by-products	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat by-products	0.05
Wheat, forage	0.1
Wheat, grain	0.1
Wheat, straw	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.*

Commodity	Parts per million
Bananas[1]	0.2

[1]There are no U.S. registrations.

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–13947 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300807; FRL 6064–5]

RIN 2070–AB78

Iprodione; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-

dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on cottonseed. Rhone-Poulenc Ag Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 2, 1999. Objections and requests for hearings must be received by EPA on or before August 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300807], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300807], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300807]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Product Manager (21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 24, 1997 (62 FR 3696) (FRL 5582–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by Rhone-Poulenc Ag Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.399 be amended by establishing a tolerance for combined residues of the fungicide iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], in or on cottonseed at 0.10 part per million (ppm).

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL 5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of iprodione and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide on cottonseed at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by iprodione are discussed in this unit.

1. *Acute studies.* Iprodione is not acutely toxic by oral, dermal, inhalation, or ocular routes of exposure. Acute oral, acute dermal and primary eye irritation studies were in toxicity category III. Acute inhalation and primary skin irritation studies were in toxicity category IV. Iprodione is not a dermal sensitizer.

2. *Subchronic toxicity testing*—a. In a dermal toxicity study, rabbits were administered iprodione on the skin at dose levels of 0, 100, 500, and 1,000 mg/kg/day for 21 days. There were no deaths or clinical signs of toxicity and no adverse effects were observed on body weight, food consumption, the skin, liver or kidneys. The NOAEL was 1,000 mg/kg/day, the highest dose tested.

b. In a 90–day subchronic feeding study, rats were administered iprodione in the diet at doses of 0, 1,000, 2,000, 3,000 and 5,000 ppm (0, 78, 151, 252 and 355 mg/kg/day for males and 0, 89, 189, 266 and 408 mg/kg/day for females). The NOAEL in this study was 1,000 ppm (78 mg/kg/day for males and

89 mg/kg/day for females). The LOAEL was 2,000 ppm (151 mg/kg/day for males and 189 mg/kg/day for females), based on decreased body weight gain, decreased food consumption and food utilization, organ weight effects, and microscopic lesions in the sex organs.

3. *Chronic toxicity studies*—a. In a chronic feeding study, dogs were administered iprodione in the diet at dose levels of 0, 100 ppm (4.1 mg/kg/day for males and 4.3 mg/kg/day for females), 600 ppm (24.9 mg/kg/day for males and 28.3 mg/kg/day for females) and 3,600 ppm (145.3 mg/kg/day for males and 152.5 mg/kg/day for females) for one year. The NOAEL was 100 ppm (4.1 mg/kg/day for males and 4.3 mg/kg/day for females, and the LOAEL was 600 ppm (24.9 mg/kg/day for males and 28.3 mg/kg/day for females) based on decreased prostate weight and an increased incidence of erythrocytes with Heinz bodies.

b. A second chronic feeding study designed to compliment the above study was conducted using dose levels of 0, 200 ppm (7.8 mg/kg/day for males and 9.1 mg/kg/day for females), 300 ppm (12.4 mg/kg/day for males and 13.1 mg/kg/day for females), 400 ppm (17.5 mg/kg/day for males and 18.4 mg/kg/day for females) and 600 ppm (24.6 mg/kg/day for males and 26.4 mg/kg/day for females) for 12 months. The NOAEL for systemic toxicity is 400 ppm (17.5 mg/kg/day for males and 18.4 mg/kg/day for females). The LOAEL is 600 ppm (24.6 mg/kg/day for males and 26.4 mg/kg/day for females) based on decreased red blood cell values. When both chronic dog studies are considered together, the NOAEL is 400 ppm (18 mg/kg/day).

4. *Carcinogenicity*—a. In a combined chronic toxicity/carcinogenicity study in rats, iprodione was administered in the diet of rats at dose levels of 0, 150, 300 and 1,600 ppm (6.1, 12.4, and 69 mg/kg/day for males and 8.4, 16.5, and 95 mg/kg/day for females, respectively) for 24 months. The NOAEL for non-neoplastic changes in this study was 150 ppm (6.1 mg/kg/day for males and 8.4 mg/kg/day for females). The LOAEL was 300 ppm (12.4 mg/kg/day for males and 16.5 mg/kg/day for females) based on increases in generalized enlargement of the cells of the zona glomerulosa in males and females, in fine vacuolation of the zona fasciculata and in generalized fine vacuolation of the zona reticularis in males in the adrenal cortex, an increased incidence of interstitial cell hyperplasia, reduced spermatozoa in the epididymides, reduced secretion of the seminal vesicles, increased hemosiderosis in the spleen in females, and increased liver weight.

b. In a carcinogenicity study, iprodione was administered in the diet to mice for 99 weeks at dose levels of 0, 160, 800, and 4,000 ppm (0, 23, 115, and 604 mg/kg/day for males and 0, 27, 138, and 793 mg/kg/day for females, respectively). The NOAEL for this study was 160 ppm (23 mg/kg/day for males and 27 mg/kg/day for females). The LOAEL was 800 ppm (115 mg/kg/day for males and 138 mg/kg/day for females) based on the increased incidence of centrilobular hepatocyte enlargement in females and the increased incidence of generalized vacuolation/hypertrophy of the interstitial cells in the testes of males.

5. *Developmental toxicity*—a. In a developmental toxicity study, pregnant rats were administered iprodione at dose levels of 0, 40, 90, and 200 mg/kg/day by gavage from day 6 through 15 of gestation. There were no significant differences observed in the mean number of viable fetuses, implantations, corpora lutea, resorptions, and pre- and post-implantation losses were comparable among the groups. There was no evidence of maternal toxicity at any dose level. The developmental NOAEL was 90 mg/kg/day and the developmental toxicity LOAEL was 200 mg/kg/day, based on delayed fetal development (slightly reduced fetal body weight and increased incidences of space between the body wall and organs in the fetuses).

b. In a special prenatal developmental toxicity study, pregnant rats received iprodione by gavage at dose levels of 0, 20, 120 or 250 mg/kg/day during gestation days 6 through 19. For maternal toxicity, the NOAEL was 20 mg/kg/day and the LOAEL was 120 mg/kg/day based on decreased body-weight gain and decreased food efficiency. For developmental toxicity, the NOAEL was 20 mg/kg/day and the LOAEL was 120 mg/kg/day, based on decreased anogenital distance in the male pups.

c. In a prenatal developmental toxicity study on rabbits, dosed by gavage with iprodione at 0, 20, 60 or 200 mg/kg/day during gestation days 6 through 18, the NOAEL for maternal toxicity was 20 mg/kg/day and the LOAEL was 60 mg/kg/day based on decreased body weight gain. For developmental toxicity, the NOAEL was 60 mg/kg/day and the LOAEL was 200 mg/kg/day based upon increased skeletal variations.

6. *Reproductive toxicity*. In a 2-generation reproduction study, male and female rats received diets containing iprodione at 0, 300, 1,000, or 3,000/2,000 ppm (0, 18.5, 61.4, or 154.8 mg/kg/day for males and 22.49, 76.2, or 201.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 300 ppm (21 mg/kg/day) and the LOAEL was 1,000 ppm (69 mg/kg/day), based on decreased body weight, body weight gain, and food consumption in both sexes and generations. For offspring toxicity, the NOAEL was 1,000 ppm (69 mg/kg/day) and the LOAEL was 3,000/2,000 ppm (178 mg/kg/day), based on decreased pup viability (as evidenced by an increased number of still born pups and decreased survival during postnatal days 0–4), decreased pup body weight throughout lactation, and an increased incidence in clinical signs (smallness, reduced mobility, unkempt appearance, hunching and or tremors) in pups during the lactation period.

7. *Mutagenicity*. Several mutagenicity studies were conducted. Iprodione was negative for induction of reverse gene mutations at the histidine locus in *Salmonella typhimurium* strains, both in the presence and absence of S9 activation. Iprodione did not induce mutation with or without metabolic activation in the *in vitro* forward gene mutation (CHO/HGPRT) assay at adequate dose levels. Iprodione was negative in an *in vitro* chromosomal aberration assay in Chinese hamster ovary (CHO) cells both in the presence and absence of metabolic activation. In an *in vivo* mouse micronucleus assay, iprodione was administered by oral gavage once at dose levels of 750, 1,500, and 3,000 mg/kg. Bone marrow cells were collected for micronucleated polychromatic erythrocytes (MPEs). One male and eight females died at the high dose. Dose-related cytotoxic effects on the target tissue were also seen at 48 hours post dose. The positive control induced the expected high yield of MPEs in both sexes. There was no evidence of a clastogenic or aneugenic effect at any dose or harvest time. Iprodione was negative in a sister chromatid exchange assay in Chinese hamster ovary cells both with and without metabolic activation. Iprodione was tested against 19 strain of *Bacillus subtilis* both with and without metabolic activation. Iprodione was positive both with and without metabolic activation.

8. *Metabolism*. A general metabolic pathway for iprodione in the rat indicates that biotransformation results in hydroxylation of the aromatic ring, degradation of the isopropylcarbamoyl chain, and rearrangement followed by cleavage of the hydantoin moiety. Additionally, structural isomers of iprodione resulting from molecular rearrangement, as well as intermediates in the pathway, were detected.

9. *Neurotoxicity* Neurotoxicity studies are not required since iprodione is not an organophosphate nor structurally related to compounds that are known to induce neurotoxicity.

10. *Other toxicological considerations.* In a dermal penetration study, rats were exposed dermally to a single dose of iprodione at dose levels of 0.4, 4.0, and 40 mg/rat for 0.5, 1, 2, 4, 10, and 24 hours. Skin residues increased with the duration of exposure to 5–10% of the applied dose, although there was no apparent dose response. The portion of the test material absorbed increased with the duration of exposure to 7.41%, 3.16% and 0.19% of the applied dose at 0.4, 4.0 and 40 mg/rat, respectively. Absorption appears to be saturated at the two highest dose levels. Following a 10–hour exposure period, about 5% iprodione is absorbed.

B. Toxicological Endpoints

1. *Acute toxicity.* The Agency determined that the developmental NOAEL of 20 mg/kg/day based on decreased anogenital distance (AGD) in male fetuses at 120 mg/kg/day (LOAEL) should be used for acute dietary risk assessment). This NOAEL is from a special rat developmental study which was designed to determine the impact of iprodione on sexual differentiation. This endpoint applies only for females 13 years or older because the endpoint (decreased AGD) is an *in utero* effect occurring during prenatal exposure. An appropriate endpoint attributable to a single dose was not identified for the general population including infants and children. The target acute dietary margin of exposure (MOE) for iprodione is 300, based on uncertainty factors of 10x for interspecies variability, 10x for intraspecies variability, and 3x for added protection of infants and children. The acute RfD is 0.06 mg/kg/day based on the 20 mg/kg/day NOAEL and an uncertainty factor of 300.

2. *Short- and intermediate-term toxicity.* The Agency determined that short- and intermediate-term dermal risk assessments are not required since no dermal or systemic toxicity was seen. It was concluded that there is no potential hazard by the dermal route because of lack of systemic toxicity at the limit-dose (1,000 mg/kg/day) and the demonstration of low (5%) absorption by the dermal route. For short-term inhalation exposure, the developmental NOAEL of 20 mg/kg/day from the special rat developmental toxicity study was selected. This NOAEL is based on decreased AGD in male fetuses at 120 mg/kg/day. For intermediate-term inhalation exposure, the NOAEL of 6.1 mg/kg/day from the rat combined chronic toxicity/carcinogenicity study was selected. This NOAEL is based on histopathological lesions in the male reproductive system and effects on the adrenal glands in males at 12.4 mg/kg/day and in females at 16.5 mg/kg/day (LOAEL). The inhalation unit exposures (in ug ai/lb/day) should be converted to an equivalent oral dose (mg/kg/day) using a 100% absorption rate (default value). The converted oral doses should then be compared to the NOAELs identified above.

3. *Chronic toxicity.* EPA has established the RfD for iprodione at 0.02 milligrams/kilogram/day (mg/kg/day). This Reference Dose (RfD) is based on a NOAEL of 6.1 mg/kg/day from the rat combined chronic toxicity/carcinogenicity study in which histopathological lesions occurred in the male reproductive system and there were effects on the adrenal glands in males at 12.4 mg/kg/day and in females at 16.5 mg/kg/day (LOAEL). The NOAEL was adjusted with an uncertainty factor of 300 (10x for interspecies extrapolation, 10x for intraspecies extrapolation and 3x for added protection for infants and children).

4. *Carcinogenicity.* In accordance with the EPA Proposed Guidelines for Carcinogenic Risk Assessment (April 10, 1996), iprodione was classified as a "likely" human carcinogen based on the combined hepatocellular adenomas/carcinomas in mice and testicular tumors in male rats with a linear low-dose extrapolation approach and a 3/4s interspecies scaling factor for human risk characterization. For the combined hepatocellular adenomas/carcinomas, the Q_1*s are 8.7×10^{-3} mg/kg/day for the male mouse and 5.07×10^{-3} mg/kg/day for the female mouse. The Leydig cell tumor Q_1* is 4.3×10^{-2} mg/kg/day which was determined to be appropriate for estimating carcinogenic risk.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.399) for the combined residues of iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, in or on a variety of raw agricultural commodities. Commodities include various vegetable crops, field crops, stone fruits, small fruit and berry crops and commodities of animal origin (meat, milk, poultry and eggs). Risk assessments were conducted by EPA to assess dietary exposures from iprodione as follows:

Dietary exposures for iprodione were reevaluated as part of the reregistration process. The risk assessment in the Reregistration Eligibility Decision (RED) document is being used to establish the tolerance for iprodione on cottonseed. The resulting estimates included refinements using both anticipated residues and percent crop treated for many crops but not for cottonseed. The requirements indicated below regarding anticipated residues and percent crop treated apply to both iprodione and its 3,5- dichloroaniline metabolite.

Section 408(b)(2)(e) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(e), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(f) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(f), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: PCT was used for various crops in reevaluating dietary exposures for iprodione as part of the reregistration process. For cottonseed, it was considered that 100% of the crop would be treated with iprodione.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(f) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which iprodione may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The acute dietary risk for iprodione was reevaluated as part of the reregistration process. The target margin of exposure (MOE) for dietary risk for iprodione is 300. MOEs above 300 are not considered to be of concern. Prior to the reevaluation, dietary MOEs were 111 for existing tolerances and 66.6 for existing and proposed tolerances. Following reevaluation, which included risk mitigation measures imposed in the Reregistration Eligibility Decision (RED) document, the acute dietary MOE was calculated to be 351 for the population subgroup of concern (females 13 years old or older).

ii. *Chronic exposure and risk.* The total dietary exposure for iprodione, expressed as percent of the RfD for the chronic (non-carcinogenic) risk was calculated based on the theoretical maximum residue contribution (TMRC) and the RfD of 0.02 mg/kg/day to be less than 1% for all populations from the registered uses. The additional use on cotton would not increase the chronic (non-carcinogenic) risk to an unacceptable level. The upper bound carcinogenic risk from food uses of iprodione for the general U.S. population was calculated using the equation: upper bound cancer risk equals dietary exposure (anticipated residue contribution) multiplied by the $Q1^*$. Based on a Q_1^* of 0.0439 $(mg/kg/day)^{-1}$ the upper bound cancer risk for all commodities with proposed and established tolerances was calculated to be 3.9×10^{-6}. This risk estimate is above the range the Agency generally considers negligible for excess life-time cancer risk. During the reregistration process, the upper bound cancer risk was reevaluated, taking into consideration the risk mitigation measures imposed in the RED. The reevaluated dietary cancer risk for iprodione with mitigation measures in place is estimated to be approximately 1.8×10^{-6} and is within the range the Agency generally considers negligible for excess life-time cancer risk. The upper bound cancer risk attributed to the use of iprodione on cotton was calculated to be 1.8×10^{-8}.

2. *From drinking water.* In the absence of reliable, available monitoring data, EPA uses models to estimate concentrations of pesticides in ground and surface water. For iprodione, modeling was used to estimate surface water concentrations because of very limited surface water monitoring data. However, EPA does not use these model estimates to quantify risk. Currently, EPA uses drinking water levels of comparison (DWLOCs) as a surrogate to capture risk associated with exposure to pesticides in drinking water. A DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses (if any). A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and with drinking water consumption patterns and body weights for specific subpopulations. The calculated DWLOC is compared with the model estimate from PRZM 2.3/EXAMS 2.94 model estimates. If the estimates are below the DWLOC, the risks are not considered to be of concern. EPA believes the PRZM 2.3/EXAMS 2.94 model estimates to be overestimations of concentrations of iprodione expected in drinking water. Iprodione is strongly absorbed to sediment and is expected to be removed through treatment. Given low concentrations estimated in surface water (1–3 ppb), expected absorption to sediments, and the likelihood of removal through treatment, the Agency does not believe iprodione will be present in drinking water.

i. *Acute exposure and risk.* The acute DWLOC for iprodione was calculated for the population subgroup females 13 years old or older to be 324 µg/L. Conservative model estimates of maximum concentrations in surface water associated with use of iprodione range from 10–15 ppb (µg/L). The estimated concentrations in surface water are much lower than EPA's DWLOC of 324 µg/L for the population of females 13 years old or older. Therefore, acute drinking water exposures and risks are not of concern.

ii. *Chronic exposure and risk.* The chronic DWLOC was calculated for adult males, adult females and children. The DWLOCs were 693 µg/L for adult males, 594 µg/L for adult females and 197 µg/L for children. Conservative model estimates of a long-term average concentration of iprodione in surface water range up to a few parts per billion (1–3 µg/L) The estimated concentrations in surface water are much lower than EPA's calculated DWLOCs for the above subpopulations for chronic exposure and risk assessments. Therefore, chronic drinking water exposures and risks are not of concern.

iii. *Carcinogenic exposure and risk.* Because cancer risk estimates (without risk mitigation) for exposure to iprodione residues through food and residential uses each exceeded EPA's level of concern individually, combined exposures through these routes resulted in an aggregate risk that further exceeded the level of concern. Any additional exposure through drinking water would result in aggregate risks that further exceed the level of concern. In effect, the drinking water level of comparison (DWLOC) is zero. So, effectively, with risk reduction measures is place, exposures from food, residential uses and through drinking water would be below the level of concern.

3. *From non-dietary exposure.* Iprodione is currently registered for use on the following residential non-food sites: ornamental plants including shade trees, evergreens and shrubs, and turfgrass. As one of the risk mitigation measures included in the RED, the registrant has agreed to cancel all residential uses for iprodione. Therefore, there will be no exposure or risk from residential uses.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the

Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments.

Although at present the Agency is still considering how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides for which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Iprodione is structurally related to vinclozolin and procymidone, which belong to the imide class of fungicides. Each of these three pesticides can metabolize to 3,5-dichloroaniline (3,5-DCA). FQPA requires EPA to estimate cumulative risk from consumption of food and water containing 3,5-DCA derived from iprodione, vinclozolin, and procymidone.

The Agency has determined that it is not necessary to include exposure to DCA derived from vinclozolin and procymidone in a cumulative exposure assessment for iprodione *per se*. Based on available metabolism data (discussed below), the contribution of DCA from vinclozolin and procymidone to the total chronic iprodione dietary exposure is less than an order of magnitude. Therefore, inclusion of DCA from vinclozolin and procymidone in the iprodione chronic exposure assessment would not have a significant impact on the risk estimates. A similar negligible contribution is expected for acute dietary exposure. Iprodione residues are measured as DCA by the analytical method, thus, any DCA formed from iprodione is already accounted for in the iprodione exposure assessment.

3,5-DCA is not a registered pesticide; therefore, there are no FIFRA toxicology data for this compound so EPA has used the Q_1^* for *p*-chloroaniline (PCA) to assess the carcinogenic risk for other structurally related chloroanilines. The EPA policy on chloroanilines specifies that chloroaniline metabolites should be considered to be toxicologically equivalent to PCA unless there is sufficient evidence that the metabolite is not carcinogenic. No other toxicological endpoints have been identified for DCA. A Q_1^* of 6.38×10^{-2} $(mg/kg/day)^{-1}$ in human equivalents has been calculated for p-chloroaniline. This is based on the spleen sarcoma rate in male rats from an NTP bioassay, linearized low dose multistage model, and the 3/4s interspecies scaling factor.

i. *3,5-DCA residues in food and wine*—a. For iprodione, metabolism data submitted to fulfill reregistration data requirements indicated that 3,5-DCA represented 1% of the total radioactive residue (TRR) in eggs, smaller proportions in other livestock commodities, and was not detected in primary or rotational crops. The total estimated exposure to iprodione-derived 3,5-DCA in food is 0.00000009219 mg/kg/day.

b. For vinclozolin, metabolism data indicated that DCA represented 9.6% TRR in peaches, smaller proportions in strawberries and was not detected in lettuce or grapes. Therefore, EPA assumed that 10% vinclozolin residues would be appropriate for use in an assessment for 3,5-DCA. Wine was included in the analysis because the metabolism studies for procymidone showed that the 3,5-DCA metabolite is formed in wine even though it is not detected in grapes. The total estimated exposure to vinclozolin-derived 3,5-DCA in food is 0.000143224 mg/kg/day.

c. Procymidone is not registered for use in the U.S. so only imported wine was considered under the procymidone tolerance for wine grapes. The 3,5-DCA metabolite was not detected in grapes, but occurs during fermentation. Residues in wine were 0.3 ppm for parent procymidone and 0.06 ppm for 3,5-DCA. The estimated exposure to procymidone-derived 3,5 DCA in wine is 0.0000058 mg/kg/day using tolerance levels and 100% of crop treated.

ii. *3,5-DCA residues in water*—a. EPA estimated the concentration of iprodione in surface water as a result of an application to peaches for a chronic exposure to be 1.5 parts per billion (ppb). This assessment was refined by assuming that only some of the iprodione will convert to 3,5-DCA. A soil photolysis study indicated that a value of 30% would be reasonable to account for the iprodione that is actually converted. The concentration of 3,5-DCA was estimated to be 0.45 ppb in surface water.

b. A tier 1 estimated environmental concentration (EEC) was calculated for 3,5-DCA from degradation of vinclozolin when applied to peaches. EPA estimated the concentration of vinclozolin in surface water for a chronic exposure to be 2.6 ppb. The maximum of the parent vinclozolin that would be expected to convert to 3,5-DCA based on a field dissipation study is 20%. The concentration of 3,5-DCA in surface water was estimated to be 0.52 ppb.

c. There are no U.S. registrations for procymidone; therefore, an evaluation of exposure to procymidone-derived 3,5-DCA in water is not appropriate.

iii. *Cumulative risk from all sources of 3,5-DCA*. The cumulative carcinogenic risk estimate for consumption of food and wine containing residues of 3,5-DCA as a result of use of iprodione, vinclozolin and procymidone is 9.5×10^{-7}. This can be considered to be a conservative estimate. Metabolism studies for iprodione and vinclozolin were used to estimate the amount of 3,5-DCA present in various commodities by using total radioactive residues to convert iprodione or vinclozolin exposures to 3,5-DCA exposures. There is another uncertainty in the risk estimate in that a surrogate Q_1^* is being used for 3,5-DCA. However, due to the structural similarities of 3,5-DCA and PCA, EPA believes that for 3,5-DCA, the use of the PCA Q_1^* represents an upper-bound estimate. This risk estimate is within the range the Agency generally considers negligible for excess life-time cancer risk. Because drinking water data on DCA residues in water are not available, EPA compared the conservative screening-level model estimates of iprodione concentrations in surface water to drinking water levels of comparison (DWLOCs) for DCA. The estimated concentrations of 3,5-DCA from iprodione applications in water was 0.22 ppb and is less than the DWLOC calculated for the cancer risk assessment. From applications of vinclozolin, the model estimated the concentration of DCA in water at 0.37 ppb. This is above the DWLOC calculated for the cancer risk assessment. However, the Agency recognizes that the model estimates are very conservative (upper bound estimates with a high degree of uncertainty) and are not likely to be representative of what might be expected in drinking water. When model estimates for water exceed DWLOCs, EPA makes an attempt to gather monitoring data (required for surface water). These data are used to confirm or deny the model estimate. The RED for iprodione requires that registrants develop and submit surface water monitoring data to confirm or deny the model estimates. The risks indicated for 3,5-DCA are not added to

those for the parent compounds since the risk estimates for the parent already include the 3,5-DCA component.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The aggregate acute dietary risk estimate includes exposure to iprodione residues in foods and water. Iprodione uses are not expected to impact ground water. Upper bound estimates of iprodione in surface waters from conservative screening models indicate concentrations of a few parts per billion. For the acute dietary exposure and risk assessment, the toxic endpoint selected for risk assessment was the NOAEL of 20 mg/kg/day based on decreased anogenital distance (AGD) in male offspring observed in the developmental study in rats, in which the LOAEL was 120 mg/kg/day. The FQPA safety factor is applied for acute dietary risk assessment for only females 13+ because the endpoint (decreased AGD) is an in utero effect occurring during prenatal exposures. The MOE for this subgroup was calculated to be 351.

2. *Chronic risk.* The chronic aggregate risk assessment for iprodione includes risk estimates associated with exposure through food, water, and registered residential uses. Using anticipated residues and percent crop-treated data for commodities with published tolerances results in an exposure to iprodione through food that will utilize 1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old, (discussed below) which represents up to 1.6% of the chronic FQPA RfD. Exposure to all other groups is less than or equal to 1% of the chronic FQPA RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human beings. Chronic aggregate risk from iprodione in food and drinking water associated with registered uses of iprodione is not of concern. Estimated average concentrations of iprodione in ground water were not available for comparison against DWLOC values; however, based on iprodione's physical/chemical characteristics and available, but limited monitoring data, iprodione is not expected to impact ground water. No chronic exposure scenarios for residential uses of iprodione were identified; therefore, no chronic exposure from residential uses was included in the aggregate risk estimate.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

4. *Short-term aggregate risk.* Aggregate risk estimates associated with short-term risk include exposures to average residues of iprodione in the diet (food and water) and inhalation exposure (1 to 7 days in duration) through the residential application of iprodione. The resulting risk, calculated without any risk mitigation, represented 3.6% of the acute FQPA RfD for the U.S. population representing the most exposed population of adult males and females. It was assumed that children and infants do not apply pesticides. The Agency believes that iprodione's impact on drinking water will not affect the aggregate short-term risk significantly. Therefore, the Agency concluded with reasonable certainty that residues of iprodione in drinking water (when considered along with exposure from food and residential uses) would not result in an unacceptable short-term aggregate human health risk estimate. Since residential uses will be canceled, short-term risk would be even lower.

5. *Intermediate-term aggregate risk.* Aggregate risk estimates associated with intermediate-term risk include exposures to average residues of iprodione in the diet (food and water) and inhalation exposure (7 days to several months in duration) through the residential application of iprodione. The resulting risk, calculated without mitigation measures, was 9.5% of the chronic FQPA RfD for the U.S. population representing the most exposed population of adult males and females. It was assumed that children and infants do not apply pesticides. The Agency believes that iprodione's impact on drinking water will not affect the aggregate intermediate-term risk significantly. Therefore, The Agency concluded with reasonable certainty that residues of iprodione in drinking water (when considered along with exposure from food and residential uses) would not result in an unacceptable intermediate-term aggregate human health risk estimate. Since residential uses of iprodione will be canceled, intermediate-term risk would be even lower. Assuming that the conditions imposed by the RED are met by the registrant, the Agency concludes that aggregate risks for the general population resulting from iprodione uses are not of concern.

6. *Aggregate cancer risk for U.S. population.* Without risk mitigation measures in place, combined exposure and the risk estimates for each of the residential exposure scenarios plus dietary exposure to iprodione residues results in cancer risk estimates that are all greater than 10^{-6}. The first step in reducing the cancer aggregate risk is to make ineligible for reregistration all those residential uses which are greater than 10^{-6}. Therefore, the Agency has decided, based on the current risk assessment, that residential use of iprodione on vegetable/small fruit gardens is ineligible for reregistration; use of iprodione on residential turf and lawns will be reclassified as restricted-use (professional application only); and, residential use of iprodione on ornamentals using a garden hose end-sprayer is ineligible for reregistration. The registrant has agreed to cancel these uses. With these mitigation measures in place cancer risks from residential uses of iprodione are expected to be negligible.

For dietary cancer risk, with no risk mitigation measures in place, the upper bound dietary cancer risk estimate (3.9×10^{-6}) exceeds EPA's level of concern. With risk mitigation measures in place, the upper bound dietary cancer risk estimate is approximately 1.8×10^{-6} and is within the range the Agency generally considers negligible for excess life-time cancer risk. This risk estimate is based the new use patterns which include the risk mitigation measures in the RED, which is based on a refined estimate of dietary exposure using the most recent percent crop-treated data (1995) and anticipated residue data from monitoring programs (USDA's PDP) and field trials. Residues of iprodione, including its metabolites, are not expected to exceed the Agency's drinking water level of comparison as indicated above.

7. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to iprodione residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of iprodione, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the

reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Conclusion.* Based on developmental and reproductive data for iprodione, EPA determined that an additional 10x safety factor for the protection of infants and children (as required by FQPA) should be reduced to 3x. The rationale for reducing the 10x factor to 3x is as follows: No enhanced susceptibility was seen in rat and rabbit developmental and 2–generation reproduction study in rats.

a. The critical endpoint for acute dietary risk assessment (decreased AGD) was seen at a high dose (120 mg/kg/day) and there were only marginal differences in the degree of decreased AGD between the doses 20 mg/kg/day, 120 mg/kg/day and 250 mg/kg/day , thus indicating the "true" NOAEL could be higher than the one established at 20 mg/kg/day.

b. The proposed mode of action of iprodione is disruption of testosterone biosynthesis with a corresponding increase in plasma luteinizing hormone to dose levels which induce benign Leydig cell tumors. The dose response for this type of hormonally-mediated effect would be expected to be non-linear.

c. The use of realistic dietary exposure data (refined using monitoring data and percent crop treated).

d. The endpoints selected for both the acute (AGD) and the chronic (histopathology of the male reproductive system) risk assessments are based on developmental/ reproductive effects and therefore, these effects are already adequately considered in the risk evaluation. These factors favor removal of the safety factor but, although the data base for iprodione is complete, the Agency still has questions about any effects that iprodione may have on the developing reproductive system. The Agency is requiring an additional pre/post exposure study to assess the effects of iprodione on the male reproductive system. A safety factor of 3x is being retained pending completion of this additional study. There is a complete toxicity database for [iprodione] and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* The acute dietary risk for iprodione was calculated and the MOE was determined to be 351. Using the 3x safety factor for protection of infants and children, MOEs above 300 are not considered to be of concern. For drinking water, the estimated concentrations in surface water are much lower than the DWLOC of 324 µg/L for the population subgroup females 13 years old or older, so no acute risk concerns are posed by drinking water. There will be no residential exposure.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to iprodione from food will utilize 1.6% of the RfD for non-nursing infants less than 1 year old and less than 1% for all other population subgroups. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since the potential for exposure to iprodione in drinking water is low and there will be no risk from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* EPA has concluded that there are no short- or intermediate-term risk factors associated with infants and children. Residential handler exposure scenarios for short- and intermediate-term inhalation exposures are not applicable to children.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to iprodione residues.

III. Other Considerations

A. Metabolism In Plants and Animals

1. *Plants.* The metabolism of iprodione in plants is well understood. EPA concluded that the residues of concern in plants are the parent, its isomer 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4--dioxo-1-imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide.

2. *Animals.* In rats, radio-labeled iprodione was absorbed readily from the gastrointestinal tract, metabolized and excreted by rats of both sexes. Peak blood levels were observed at 4 and 2 hours, respectively, in the low-dose males and females and at 6 hours in the high dose rats of both sexes. The elimination from the blood was slower in males than in females. Although radioactivity was found in most tissues monitored, the levels were <0.05% of the total amount administered. The primary route of elimination following single and repeat low-dose exposure was the urine, and the feces was the primary route following high-dose exposure. Dealkylation and cleavage of the hydantoin ring were the two primary steps in the metabolism of iprodione. Hydroxylation of the phenyl ring and oxidation of the alkyl chain also occurred. The nature of residues in animals is adequately understood for the use on cotton since the dietary contribution for animals from cottonseed as a result of the use on cotton will be small and the secondary residues in animal commodities would be expected to be nondetectable. The residues of concern in animal commodities are the parent, its isomer 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolites 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and *N*-(3,5-dichloro-4-hydroxyphenyl)-ureidocarboxamide.

B. Analytical Enforcement Methodology

An adequate analytical method, gas-liquid chromatography using an electron-capture detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

C. Magnitude of Residues

The combined residues of iprodione, its isomer and its metabolite resulting from the use of iprodione on cotton will not exceed the tolerance level of 0.10 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances for iprodione on cottonseed. Therefore, no compatibility questions exist for cottonseed with respect to Codex.

E. Rotational Crop Restrictions

The following crops may be rotated after harvest: beans, broccoli, carrots, Chinese mustard, cotton, dry bulb onions, garlic, lettuce, peanuts, potatoes and rice.

IV. Conclusion

Therefore, the tolerance is established for combined residues of iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, in cottonseed at 0.10 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408 and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 2, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300807] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is locatgd in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the (tolerance) in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (R.A.) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a

generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 180, 185 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 16, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.399 is amended as follows:

a. By revising the phrase "raw agricultural commodities" or "raw agricultural commodity" to read "food commodities" or "food commodity", respectively, wherever it appears.

b. By adding a paragraph heading to paragraph (a), and redesignating the text following the heading as paragraph (a)(1).

c. By adding alphabetically to the table in paragraph (a)(1) the entries: Cottonseed at 0.10 ppm; Ginseng, dried 4.0 ppm; Raisins 300 ppm; Rice bran 30.0 ppm and Rice hulls 50.0 ppm.

d. By redesignating paragraph (b) as paragraph (a)(2).

e. By adding a paragraph heading to paragraph (c).

f. By adding and reserving with a paragraph heading, new paragraph (b), and by removing and reserving paragraph (d) with a paragraph heading to read as follows:

The additions read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) *General.* (1) * * *

* * * * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185 — [AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§185.3750 [Removed]

b. Section 185.3750 is removed.

PART 186 — [AMENDED]

3. In part 186:

a. The authority citiation for part 186 continues to read as follows:

Authority 21 U.S.C. 342, 348, and 371.

§186.3750 [Removed]

b. Section 186.3750 is removed.

[FR Doc. 99–13948 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 99–48]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission amended its rules relating to local competition. The

First Report and Order adopted several measures designed to promote competition in the advanced services markets. The intended effect was to remove barriers to competition so that competing providers are able to compete effectively with incumbent local exchange carriers (LECs) and their affiliates in the provision of advanced services. An additional effect of the First Report and Order was to ensure that incumbent LECs are able to make their decisions to invest in, and deploy, advanced telecommunications services based on market demand and their own strategic business plans, rather than on regulatory requirements.

EFFECTIVE DATE: The amendments to 47 CFR 51.321(f) and (h) and 51.323(b) and (i)(3) published at 64 FR 23229 (April 30, 1999) are effective on May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Staci Pies, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580 or via the Internet at spies@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: On March 18, 1999, the Commission adopted a report and order revising its local competition rules in order to promote competition in the advanced services markets, a summary of which was published in the **Federal Register**. *See* 63 FR 23229, April 30, 1999. Sections 51.321(f) and (h) and 51.323(b) and (i)(3) of these rules contain new and modified information collection requirements. We stated that "the information collection requirements adopted in this Report and Order will become effective following Office of Management and Budget (OMB) approval. The Commission will publish a document at a later date establishing the effective date." The information collections were approved by OMB on May 13, 1999. *See* OMB 3060–0848. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Part 51

Communications common carriers, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13912 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97–80; FCC 99–95]

Commercial Availability of Navigation Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements rules to achieve commercial availability of set top boxes and other consumer equipment used to receive video signals and other services. Section 629 of the Communications Act directed the FCC to create rules that allow consumers to obtain set top boxes from commercial sources other than their multichannel video programming distributor.

DATES: Effective July 2, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. The *Order on Reconsideration* addresses the petitions seeking reconsideration of decisions in the *Report and Order* in CS Docket No. 97–80, 63 FR 38089 (July 15, 1999). The *Report and Order* adopted rules to implement Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. 549.

2. Section 629 instructs the FCC to promote the commercial availability to consumers of navigation devices, that is, equipment used to access multichannel video programming and other services offered over multichannel video programming systems. In the *Report and Order*, the FCC adopted rules to implement Section 629. Five petitions requesting reconsideration or clarification of the rules were filed.

3. Application of Rules to Analog Equipment. On reconsideration, the Commission will defer application of the requirement that multichannel video programming distributors (MVPDs) provide a separation of security from equipment that performs other functions for devices that (1) employ only an analog conditional access mechanism; (2) are capable only of providing access to analog video programming offered over an MVPD system and (3) do not provide access to any digital transmission of MVPD programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or services to an analog format.

4. Integrated Boxes. The Commission will maintain the prohibition on MVPDs providing new integrated equipment combining both security and non-security functions after January 1, 2005. In the year 2000, once non-integrated equipment is available, the Commission will assess the state of the market to determine whether the designated time frame is appropriate.

5. Application of Rules to Various MVPDs. The Commission reiterates its view that there is justification for not applying the rule requiring separation of security functions to MVPDs that support navigation devices that are portable throughout the continental United States, and are available from retail outlets and other vendors. Similarly, operators of open video systems are exempt from the requirements of Section 629.

6. CableLabs Standards Process. The Commission expects that the standards developed by CableLabs through the OpenCable process will be sufficient for manufacturers and designers unaffiliated with MVPDs to build devices that can be sold through national retail distribution. The Commission will continue to monitor the OpenCable project to ensure that the standards are specific enough and that a wide range of interests continue to have an opportunity to participate in OpenCable.

7. Wireless Cable Antennas and Downconverters. The Commission finds that equipment used to access wireless cable service cannot be excluded from the definition of navigation devices in all circumstances, nor is a separate demarcation point for attachment of navigation devices required.

8. Permitted Functions of Separated Conditional Access Equipment. The *Order on Reconsideration* clarifies that the components of the security module should closely be related to the security functions of the navigation device, and enhance, rather than assume, a function of the host device.

9. Interface Information. The *Order on Reconsideration* clarifies that 47 CFR 76.1205 requires the release of information sufficient to allow for interaction between the multichannel video programming system and the navigation device through the separated security device. This information must allow manufacturers and retailers the ability to provide compatible equipment. Problems regarding development of interface specifications brought to the Commission attention will be addressed in the review in 2000.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA), the Commission included a Final Regulatory Flexibility Analysis (FRFA) in the *Report and Order*. While no petitioners seeking reconsideration of the *Report and Order* raised issues directly related to the FRFA, the Commission is amending the rules in a manner that may affect small entities. Accordingly, this Supplemental Regulatory Flexibility Analysis ("Supplemental FRFA") addresses those amendments and conforms to the RFA.

11. Need for Action and Objectives of the Rules. The 1996 Act added a new Section 629 to the Communications Act of 1934, as amended, that requires the Commission to develop rules to assure competitive availability of navigation devices used in conjunction with MVPD. The statutory objective of Section 629 is assure that navigation devices used by consumers to access a particular MVPD's programming are available to consumers from manufactures, retailers and other vendors not affiliated with that MVPD.

12. Summary of Significant Issues Regarding FRFA Raised in Petitions for Reconsideration. No parties address the FRFA in their petitions for reconsideration, or any subsequent filings.

13. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the SA.

14. As noted, a FRFA was incorporated into the *Report and Order*. In that analysis, the Commission described in detail the various small business entities that may be affected by these rules. Those entities consist of cable systems, multipoint multichannel distribution systems, direct broadcast satellites, home satellite dish, satellite master antenna television, local multipoint distribution systems, small manufacturers, electronic equipment manufacturers, computer manufacturers, and small retailers. In this present *Order on Reconsideration*, the Commission addresses petitions for reconsideration filed in response to the *Report and Order*. In this Supplemental FRFA, the Commission incorporates by reference the description and estimate of the number of small entities from the FRFA in this proceeding.

15. Description of Reporting, Recordkeeping and Other Compliance Requirements. The rules adopted in the *Report and Order* require MVPDs to make available upon request technical information concerning interface parameters. The Commission believes, however, that this requirement would not necessitate any additional professional, engineering, or customer service skills beyond those already utilized in the ordinary course of business by MVPDs. The rules adopted on reconsideration do not affect this requirement.

16. Steps Taken to Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered. In the *Report and Order*, the Commission stated the belief that its rules, implemented to assure commercial availability of navigation devices, would have the result of opening up to small retailers the market to sell or lease navigation devices to MVPD subscribers. The rules also consider situations and offer relief where the commercial availability of navigation devices performing conditional access functions could adversely impact an MVPD. An MVPD is not subject to the rules requiring the commercial availability of navigation devices if: (1) it is not reasonably feasible to separate conditional access functions from other functions; or (2) it is not reasonably feasible to prevent the unauthorized reception of service by subscribers using navigation devices obtained from other sources. In the *Order on Reconsideration*, an additional subpart of a rule is adopted to defer the requirement that an MVPD offer equipment that incorporates only the conditional access functions of device if a navigation device (1) employs conditional access mechanisms only to access analog video programming; (2) is capable only of providing access to analog video programming offered over a multichannel video programming distribution system; and (3) does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or service to an analog format. The deferral of analog boxes at this time is to allow the market participants to focus on digital devices.

17. It is ordered that the Petitions for Reconsideration filed by the Consumer Electronics Manufacturers Association, the National Cable Television Association, the Telecommunication Industry Association, Time Warner Entertainment Company L.P., and the Wireless Cable Association International, Inc. are granted to the extent discussed herein, and are otherwise denied.

18. It is ordered that, pursuant to authority found in sections 4(i), 303(r) and 629 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 549, the Commission's rules are hereby amended as set forth below.

19. It is further ordered that the rules as amended shall become effective upon July 2, 1999.

20. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1204 is amended by adding paragraph (f) to read as follows:

§ 76.1204 Availability of equipment performing conditional access or security functions.

* * * * *

(f) Paragraphs (a)(1), (b), and (c) of this section shall not apply to the provision of any navigation device that:

(1) Employs conditional access mechanisms only to access analog video programming;

(2) Is capable only of providing access to analog video programming offered over a multichannel video programming distribution system; and

(3) Does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or service to an analog format.

[FR Doc. 99–13915 Filed 6–1–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–299]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, authority to implement and enforce measures to reduce the likelihood of collisions between ships and right whales.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Blane Workie, Office of the General Counsel, C–50, (202) 366–4723, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Coast Guard Authorization Act of 1998, (Pub. L. 105–383) Section 313 amends the Ports and Waterways Act (codified at 33 U.S.C. 1230) to authorize the Secretary, as Secretary of the Department in which the Coast Guard is operating, in cooperation with the International Maritime Organization (IMO), to implement and enforce two mandatory ship reporting systems in designated areas. The Secretary is delegating this authority to the Commandant of the Coast Guard. These reporting systems will be implemented internationally, in cooperation with the IMO, to reduce the likelihood of collisions between ships and right whales by dissemination of information to mariners through a variety of means. Right whales are the most endangered of the big whales. With the dwindling number of right whale spottings in U.S. waters, scientists are worried about the future of the endangered species. We publish this rule as a final rule effective on the date of publication. Since this amendment relates to the departmental organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 533(b). Furthermore, since this amendment expedites the Coast Guard's ability to meet the needs of its conservation and enforcement obligations, the Secretary finds good cause, under 5 U.S.C. 553(b) and 5 U.S.C. 553(d) (3), that notice and public comment on the rule are unnecessary and that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711 (a)(2).

2. In § 1.46, paragraph (rrr) is added to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(rrr) Implement and enforce two mandatory ship reporting systems, in cooperation with the International Maritime Organization, pursuant to the Coast Guard Authorization Act of 1998, (Pub. L. 105–383), section 313, codified at 33 U.S.C. 1230(d).

Issued in Washington, DC this 24th day of May, 1999.

Rodney E. Slater,

Department of Transportation.

[FR Doc. 99–13897 Filed 6–1–99; 8:45 am]
BILLING CODE 4910–KE–P

Proposed Rules

Federal Register

Wednesday, June 2, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 318, and 381

[Docket No. 97–076N]

RIN 0583–AC50

Irradiation of Meat and Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for the proposed rulemaking, "Irradiation of Meat and Meat Products," which closed on April 26, 1999, in response to the great interest in this proposal. (64 FR 9089, February 24, 1999). The comment period will be reopened to include comments received from April 27, 1999, until 15 days after the date of publication of this notice.

DATES: Comments must be received on or before June 17, 1999.

ADDRESSES: Send one original and two copies of written comments to: FSIS Docket #97–076P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulation Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–5627.

Done in Washington, DC on: May 26, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–13933 Filed 6–1–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that would have required repetitive testing of certain main tank fuel boost pumps to identify those with degraded performance, and replacement of degraded pumps with new or serviceable pumps. That originally proposed AD also would have required eventual replacement of the existing low pressure switches for boost pumps located in the main fuel tanks with higher threshold low pressure switches, which, when accomplished, would terminate the repetitive testing. That proposal was prompted by reports of engine power loss caused by unsatisfactory performance of the fuel boost pumps. This new action revises the proposed rule by reducing the compliance time for certain airplanes. The actions specified by this new proposed AD are intended to prevent fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss.

DATES: Comments must be received by June 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–150–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 10, 1998 (63 FR 42596). That NPRM would have required repetitive testing of certain main tank fuel boost pumps to identify those with degraded performance, and replacement of degraded pumps with new or serviceable pumps. That NPRM also would have required eventual replacement of the existing low pressure switches for boost pumps located in the main fuel tanks with higher threshold low pressure switches, which, when accomplished, would terminate the repetitive testing. That NPRM was prompted by reports of engine power loss caused by unsatisfactory performance of the fuel boost pumps. That condition, if not corrected, could result in fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss.

Clarification of this Supplemental NPRM

The FAA clarifies in this supplemental NPRM that any description of the relationship between the low pressure switches and the fuel pump assembly does not imply that those switches are part of the fuel pump assembly.

Comments

Due consideration has been given to the comments received in response to the NPRM.

Request to Address All Fuel Pumps

One commenter questions whether the proposed AD applies to fuel boost pumps other than those of the three manufacturers [i.e., Thompson Ramo Wooldridge (TRW), Argo-Tech, and General Electric Company (GEC)] identified in the proposed AD. The FAA infers that the commenter requests that the final rule be revised to include additional boost pumps to ensure that all possible pump configurations are addressed.

The FAA concurs. The FAA agrees that all pump configurations on affected Boeing Model 737 series airplanes may be subject to the identified unsafe condition. In the originally proposed rule, the FAA addressed only currently certified pumps [GEC (formerly Plessey), TRW, and Argo-Tech]. However, in order to also consider additional pump types that may become certified in the future, the FAA has revised the groups affected by this AD to distinguish only "GEC fuel pumps" [paragraph (a)] and "non-GEC fuel pumps" [paragraph (b)].

Request to Revise Actions and Compliance Time for Certain Airplanes

One commenter, a manufacturer of fuel boost pumps, requests that the actions and compliance times specified in the originally proposed rule apply to TRW and Argo-Tech pumps equally, based on the pumps' similarity and use of many common parts. The commenter reports that it builds TRW pumps with Argo-Tech nameplates.

The FAA concurs with this request and rationale. As stated previously, new paragraph (b) of this supplemental NPRM would apply to all non-GEC fuel pumps, which includes both TRW and Argo-Tech fuel pumps. Fuel pumps manufactured by TRW or Argo-Tech are identified as "Argo-Tech/TRW" pumps in this supplemental NPRM. This supplemental NPRM proposes a uniform compliance time of 2 years for all fuel pumps.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Additional Comments Received

The following are additional comments to the originally proposed rule, with the FAA's responses to those comments.

Support for the Proposal

One commenter has no objection to the originally proposed rule. Another commenter states its intention to comply with the requirements of the originally proposed rule.

Request for Name Correction

One commenter requests that the final rule identify "Thompson Ramo Wooldridge," rather than "Thompson Rand Wooldridge," as the correct name of the pump manufacturer. The FAA acknowledges this correction and has included the correct name in this supplemental NPRM.

Requests to Revise Compliance Time

Several commenters discussed the compliance periods in the proposed rule.

1. One commenter, a foreign civil airworthiness authority, indicates that a 2-year compliance period should be applied to all pumps regardless of the manufacturer, because the primary concern of the proposed AD is not the pump type but undetected low fuel delivery pressure.

The FAA concurs with this request. As stated previously, this supplemental NPRM has been revised to apply the same compliance times for all pump types. In the originally proposed rule, the FAA proposed a compliance time of 3 years for airplanes equipped with TRW pumps to accommodate the fleetwide demand for parts (approximately 12,000 pressure switches will be required), recognizing that the degraded mode of operation has not been observed to date on boost pumps other than those manufactured by GEC. However, in light of the amount of time that has elapsed since the originally proposed rule was issued, the FAA finds it likely that all parts will be available within the 2-year compliance time.

2. Another commenter, an association of airline pilots, recommends a 1-year compliance time for airplanes equipped with boost pumps manufactured by GEC and a 2-year compliance time for all other affected airplanes. The commenter provides no justification for its request.

As explained previously, the FAA has revised the compliance times for all airplanes to 2 years. The FAA does not concur with the request to reduce the compliance time to 1 year. Sufficient parts will not be available to support a 1-year incorporation period for the GEC pumps. In addition, the unsafe condition does not warrant the excessive amount of industry disruption that would result from a 1-year compliance time. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely replacement of the low pressure switches. In consideration of all of these factors, the FAA determined that the compliance time, as proposed, represents an appropriate interval in which replacement of the switches can be accomplished in a timely manner within the fleet, while still maintaining an adequate level of safety. Operators are permitted to accomplish the requirements of an AD at a time earlier than that specified as the compliance time; therefore, if an operator elects to accomplish the switch replacement prior to the end of the compliance period (2 years after the effective date of this AD), it is that operator's prerogative to do so. If additional data are presented that would justify a shorter compliance time, the FAA may consider further rulemaking on this issue.

3. Another commenter, the airplane manufacturer, recommends that compliance times be based on airplane model (i.e., 2 years for Model 737–300, –400, and –500 series airplanes; 3 years for Model 737–100 and –200 series airplanes), rather than boost pump type. The commenter provides no justification for its request.

The FAA does not concur. No certification tests have been conducted confirming that Boeing Model 737–100 and –200 series airplanes are less susceptible to power loss on suction feed operation than Boeing Model 737–300, –400, and –500 series airplanes. No change to the originally proposed rule in this regard is necessary.

Requests to Revise Applicability

One commenter, the airplane manufacturer, requests that Boeing Model 737–100 and –200 series airplanes equipped with Argo-Tech/TRW pumps be excluded from the applicability statement of the originally proposed rule. In support of its request, the commenter states that there is no known history of problems with pressure degradation with Argo-Tech/TRW pumps, and no fleet experience of engine power loss events on Model 737–100 and –200 series airplanes due to the low threshold pressure switches. The manufacturer concludes that the data do not indicate that modification of airplanes equipped with Argo-Tech/TRW pumps would improve safety.

The FAA does not concur with the commenter's request to revise the applicability of this AD. The FAA recognizes that Argo-Tech/TRW fuel boost pumps have not exhibited pressure degradation to the extent that pump performance is affected. However, the unsafe condition addressed by this final rule is not limited to the causes of degraded pump output pressure. The FAA's determination of the unsafe condition is based on the fact that airplanes may transition to suction feed operation without an indication to the flight crew. With the currently installed low pressure switches, this transition may occur on any Boeing Model 737–100, –200, –300, –400, or –500 series airplane. In addition, the FAA notes that no testing of in-service Boeing Model 737 series airplanes operating on suction feed fuel has been conducted to ensure proper operation during all phases of flight. In fact, the limited information available to the FAA and the airplane manufacturer regarding suction feed operation on Boeing Model 737 series airplanes indicates that the engines will experience power loss during particular phases of flight. This is true for both types of engines—on new as well as older airplanes. The FAA considers dual engine power loss to be an unsafe condition. No change to the applicability of this supplemental NPRM is necessary.

Request to Revise Repetitive Interval

One commenter recommends that the boost pump pressure tests be repeated at intervals of 90 days rather than 6 months. This commenter provides no justification for its request.

The FAA does not concur with the request to reduce the repetitive test interval. Based on the apparent gradual nature of pump degradation, the FAA has determined that the 6-month interval for the repetitive pressure tests is sufficient to verify acceptable pump performance and detect gradual pump degradation. Therefore, no change to the originally proposed rule in this regard is required.

Request to Remove Minimum Equipment List (MEL) Restriction

One commenter, the airplane manufacturer, requests that the FAA remove the restriction on dispatch with the main tank boost pumps inoperative. The commenter indicates that the restriction would unnecessarily ground airplanes that are operating under the MEL. Alternatively, the commenter recommends a minimum amount of time (after the effective date of the AD) before the restriction becomes active. The commenter states that a 90-day compliance time for the initial test is sufficient to ensure that tests are completed in a timely manner. The commenter explains that such a grace period would ensure that no airplanes are grounded.

The FAA does not concur with the commenter's request to remove the MEL restriction. The FAA cannot allow dispatch with inoperative boost pumps unless the assumed operative pump can be shown to be operating in a nondegraded mode. This restriction will prevent possible dispatch on suction feed operation. In addition, the FAA does not concur with the commenter's request for a grace period before restricting dispatch. In its efforts to prevent grounding airplanes, the FAA has considered several issues. The alert service bulletin informing operators of this potential condition (Boeing Alert Service Bulletin 737–28A1114) was issued October 30, 1997, and the FAA has determined that this initial testing has been completed on almost all U.S.-registered airplanes. In addition, any remaining airplanes on which initial testing has not been completed may be tested during overnight stops. Further, operators have had sufficient time to position spares to prevent grounding airplanes. Therefore, no change to the originally proposed NPRM in this regard is necessary.

Request to Apply Life Limits to Boost Pumps

One commenter, an association of airline pilots, requests that the FAA impose appropriate life limiting measures to GEC-manufactured fuel boost pumps to minimize the possibility of significant degradation of pump performance. The commenter further requests that the FAA add a requirement to modify GEC pumps to eliminate the corrosion problem.

The FAA does not concur with the requests. The FAA finds that this degraded mode condition is expected to affect less than 10% of GEC-manufactured pumps. The FAA anticipates that the overwhelming majority of GEC boost pumps will not require replacement. Therefore, the FAA does not consider that imposing life limits on the pumps is an appropriate action at this time. In addition, the FAA finds that replacement of the low pressure switches with improved higher threshold pressure switches will ensure that low pump output pressure will be indicated properly and addressed to prevent engine operation on suction feed. Despite these findings, it should be noted that GEC has indicated its full intent to provide improved boost pumps to replace pumps that exhibit degraded mode operation, and in fact is implementing a retrofit plan to replace degraded pumps with improved pumps. The FAA's method to ensure that all pumps are performing to specification is to require periodic pressure tests and eventual replacement of the low pressure switches with higher threshold pressure switches. No change to this proposed AD in this regard is necessary.

Request for Revision of Parts Cost

One commenter, the airplane manufacturer, requests that the cost impact information of the originally proposed rule be revised to clarify parts cost and responsibility. The commenter requests deletion of the incorrect claim that parts would be provided by the manufacturer at no cost to operators. The manufacturer also provides cost estimates for replacement switches.

The FAA concurs with the commenter's request and acknowledges that the originally proposed rule implies that replacement parts will be provided at no cost by the manufacturer. The FAA's intent was that the originally proposed rule indicate that no parts cost would be associated with testing of the fuel boost pumps. The cost impact

information of this proposed AD has been revised to include the cost estimates for replacement switches provided by the manufacturer.

Request to Revise Compliance Time to Credit Work Accomplished

One commenter, the airplane manufacturer, requests clarification of the compliance time specified as "within 90 days after the effective date of the AD" for the proposed requirement to perform initial testing of the boost pump. The commenter recommends that the compliance language be revised to "Prior to 90 days after the effective date of this AD. * * *" The commenter questions whether operators would be considered to be in compliance if they performed the initial tests prior to the effective date of the AD, or whether they would be required to repeat those tests.

The FAA does not consider that a change to this supplemental NPRM is necessary in this regard. The FAA recognizes the commenter's concern regarding the 90-day compliance time for the initial test. Operators are given credit for work previously performed by means of the phrase in the Compliance section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of this supplemental NPRM, if the initial inspection has been accomplished previously (i.e., prior to the effective date of the AD), this supplemental NPRM would not require that the inspection be repeated. However, this supplemental NPRM does propose to require that repetitive tests be performed thereafter at intervals not to exceed 6 months, for airplanes equipped with GEC fuel pumps, and that the other follow-on actions be accomplished as necessary.

Request for Clarification of Power Loss Events

One commenter, the airplane manufacturer, requests that the FAA clarify the description of the engine power loss events to indicate that they occurred only on airplanes equipped with GEC pumps and that total power loss occurred on only one engine of an affected airplane.

The FAA agrees that the Discussion section of the proposed rule may have been unclear regarding whether both engines on affected airplanes experienced power losses.

The FAA acknowledges that power loss events have been reported on only one engine per airplane, that these events occurred only on airplanes equipped with GEC fuel boost pumps, and that no cases of dual engine power loss have been reported.

Request for Clarification of the Unsafe Condition

One commenter requests that the proposed AD be revised to clarify whether "products" refers to airplanes or to fuel boost pumps in the statement "* * * an unsafe condition is likely to exist or develop on other products of the same type design."

The FAA recognizes that the cited statement may have been unclear in the context of the originally proposed rule. By this statement, the FAA is addressing airplanes of the same type design as the Boeing Model 737 series airplanes on which the engine power loss events occurred.

Request to Require Improved Pumps

One commenter recommends that airplanes "equipped with one or more of the subject GEC fuel pumps should be required to be equipped with at least one Argo-Tech, TRW, or new-design (if/when available) GEC fuel pump at the most critical position (if applicable) in each main tank within 2 years." The FAA infers that the commenter requests that GEC pumps be replaced with improved pumps within 2 years. The commenter provides no justification for its recommendation.

The FAA does not concur with the commenter's request. The FAA has determined that the vast majority of GEC boost pumps will not experience such pump degradation. Therefore, a requirement to replace those boost pumps is considered an unjustifiable burden to operators. No change to this supplemental NPRM in this regard is necessary.

Request for Clarification of Requirements

One commenter requests that the originally proposed rule be revised to clarify certain requirements. The commenter suggests that additional text be included under the heading "Differences Between Proposed Rule and Service Bulletin" to further specify those Argo-Tech/TRW fuel pumps that are affected by paragraphs (b) and (c) of the originally proposed rule.

The FAA concurs partially. The FAA agrees that further specification of the parts numbers of the affected fuel pumps might have clarified certain proposed requirements; however, as stated previously, paragraphs (b) and (c) of the originally proposed rule have been revised to remove any distinction between Argo-Tech and TRW fuel pumps and to group them with "non-GEC fuel pumps."

Request for Clarification of Design Responsibility

One commenter, the pump manufacturer, requests that the FAA clarify in the Discussion section that the low pressure switches are not part of the fuel pump assembly or within the pump manufacturer's control.

The FAA concurs with the commenter's request. Although there was no intent in the originally proposed rule to imply such a relationship, the FAA acknowledges that low pressure switches are not part of the fuel pump assembly and has revised the Discussion section of this supplemental NPRM accordingly.

Request for a Review of Other Airplane Models

One commenter, an association of airline pilots, recommends that the FAA conduct a review to determine whether similar incompatibilities between fuel system low pressure switches and check valves exist elsewhere in the transport airplane fleet. The commenter expressed concern that additional airplane models may be susceptible to the unsafe condition identified in the proposed rule.

The FAA concurs with the commenter's request. The FAA has completed a review of large transport airplanes manufactured by Airbus, Boeing, and Lockheed. A deficiency in the low fuel pressure indication has not been identified on any of those other airplane models.

Additional Change to this Supplemental NPRM

The FAA notes that it may be necessary to clarify the proposed criteria for allowing dispatch with a main tank fuel boost pump inoperative. As a result, paragraph (a)(1) of this supplemental NPRM has been revised to specify that, prior to dispatch, the operative pump must be tested and any necessary follow-on corrective actions performed.

Cost Impact

There are approximately 2,772 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,140 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2–8 work hours per airplane to accomplish the proposed testing for airplanes equipped with GEC pumps, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the testing proposed by this AD on U.S. operators is estimated to be $120–$480 per airplane, per testing cycle.

It would take approximately 4–6 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost $1,900 [for airplanes equipped with part number (P/N) 60B92400–3 low pressure switches] or $2,700 (for airplanes equipped with P/N 10–3067–3 low pressure switches). Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $273,600–$410,400, or $2,140–$3,060 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–150–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; line numbers 1 through 3002 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss, accomplish the following:

Requirements for Airplanes Equipped with GEC Boost Pumps:

(a) For airplanes equipped with one or more main tank fuel boost pumps manufactured by the General Electric Company (GEC), of the United Kingdom: Accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) As of the effective date of this AD, no airplane shall be dispatched with any main tank fuel boost pump inoperative unless the initial testing and any follow-on corrective actions required by paragraph (a)(2) of this AD have been accomplished on the operative pump in that main tank.

(2) Test each GEC-manufactured main tank fuel boost pump to determine the output pressure, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998; at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. If the fuel boost pump output pressure measured during the testing required by this paragraph is less than 23 pounds per square inch gauge (psig), as measured at the input to the engine fuel pump; or less than 36 psig, as measured at the fuel boost pump low pressure switch; prior to further flight, replace the fuel boost pump with a new or serviceable fuel pump, in accordance with the alert service bulletin.

(i) Prior to the accumulation of 3,000 total flight hours, or within 1 year since date of manufacture of the airplane, whichever occurs first; or

(ii) Within 90 days after the effective date of this AD.

(3) Repeat the testing required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 6 months, until accomplishment of the requirements of paragraph (a)(4) of this AD.

(4) Within 2 years after the effective date of this AD, replace all four low pressure switches installed downstream of the main tank fuel boost pumps with higher threshold low pressure switches, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

Requirements for Airplanes Equipped with non-GEC boost pumps:

(b) For airplanes other than those identified in paragraph (a) of this AD: Within 2 years after the effective date of this AD, replace all four low pressure switches installed downstream of the main tank fuel boost pumps with higher threshold low pressure switches, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–13877 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–270–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require modification of the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent damage to computer electrical connectors due to ingress of water into the avionics bay, which could result in malfunctioning of the avionics computers.

DATES: Comments must be received by July 2, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–270–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it has received reports of water dripping into the avionics bay. Analysis by the manufacturer has shown that the computers in the avionics bay may not be adequately protected from ingress of water. This condition, if not corrected, could result in damage to computer electrical connectors due to ingress of water into the avionics bay, and consequent malfunctioning of the avionics computers.

Related AD's

The FAA has issued AD 98–20–04, amendment 39–10770 (63 FR 50129, September 21, 1998), which requires replacing certain toilet rinse valves with modified rinse valves.

The FAA also has issued AD 99–02–03, amendment 39–10992 (64 FR 2552, January 15, 1999), which requires installation of a rubber strip and replacement of connection sheets and the seal retainer on the avionics compartment access door with new parts; and installation of drip pans and additional drain gutters on the avionics racks.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–25–1186, Revision 01, dated September 23, 1998, which describes procedures for modification of the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack. Accomplishment of modifications specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98–178–115(B), dated May 6, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 140 Airbus Model A319, A320, and A321 series airplanes of U.S. registry would be affected by this proposed AD, that it

would take approximately 19 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $159,600, or $1,140 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98–NM–270–AD.

Applicability: Models A319, A320, and A321 series airplanes on which Airbus Modification 25995 has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to computer electrical connectors due to ingress of water into the avionics bay, which could result in malfunctioning of the avionics computers, accomplish the following:

Modification

(a) Within 2 years after the effective date of this AD, modify the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack; in accordance with Airbus Service Bulletin A320–25–1186, Revision 01, dated September 23, 1998.

Note 2: Accomplishment of the modification required by paragraph (a) of this AD in accordance with Airbus Service Bulletin A320–25–1186, dated December 1, 1997, prior to the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–178–115(B), dated May 6, 1998.

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–13876 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41442; File No. S7–17–99]

RIN 3235–AH74

Recordkeeping Requirements for Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (Commission) is publishing for comment a proposal to allow registered transfer agents to use electronic storage media to produce and preserve the records that they are required to retain. In addition, the Commission is proposing to expressly allow registered transfer agents to use microfiche in addition to microfilm for record retention purposes. The proposed amendments are designed to increase the flexibility and efficiency of transfer agent recordkeeping.

DATES: Comments should be received on or before July 2, 1999.

ADDRESSES: Interested persons should submit three copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–17–99; this file number should be used on the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Theodore R. Lazo, Attorney, at 202/942–4187, Office of Risk Management and

Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 1001, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 17(a)(1) of the Securities Exchange Act of 1934 (Exchange Act) requires registered transfer agents to make, keep, and disseminate reports prescribed by the Commission as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[1] Rules 17Ad–6 and 17Ad–7 under the Exchange Act specify the records that registered transfer agents must make and keep and the amount of time that the records must be preserved.[2] Depending on the type of record, the records covered by these rules generally must be maintained for two years,[3] six years,[4] or until one year after the termination of a transfer agency relationship.[5]

Rule 17Ad–7(f) permits registered transfer agents to preserve the records listed in Rule 17Ad–6 on microfilm, subject to certain conditions.[6] However, Rule 17Ad–7 provides no other alternative to maintaining records in hard copy. In light of advances in electronic recordkeeping technology, we believe that Rule 17Ad–7 should be amended to accommodate a wider range of storage media.

The Securities Transfer Association has requested the Commission to allow transfer agents to use optical disk storage systems to fulfill their recordkeeping requirements under Rule 17Ad–7.[7] We believe that this request has merit, and so we are proposing to amend Rule 17Ad–7 under the Exchange Act to permit registered transfer agents to preserve records using electronic storage media. We also are proposing to amend Rule 17Ad–7 to permit the preservation of records on micrographic media.[8] These proposals incorporate the essential provisions of our rule that permits broker-dealers to use alternative recordkeeping methods.[9]

B. Alternative Recordkeeping Methods

1. Electronic Storage Media

There are different types of electronic storage media available for recordkeeping purposes. The principal focus of the proposed amendments is on optical storage technology, which allows for digital data recording in a non-rewriteable, non-erasable format that provides a permanent and unalterable record.[10] Optical storage systems record digital information by using a laser to burn a pattern on a metallic film on a disk surface (known as an optical disk) that can hold billions of bytes of data. Optical disks are removable from the hardware that records the information onto the disk. Using optical disk storage, any record, whether it is computer generated (such as a computer report) or electronically digitized from another medium (such as paper or micrographics), can be recorded and then accessed and managed using computers.

2. Micrographic Media

Microfilm and microfiche are types of micrographic media that photographically reduce the size of document images. However, microfiche images are stored on a sheet of film while microfilm images are stored on spooled film.

II. Proposed Amendments and Discussion

The Commission believes that the use of optical disks and other electronic storage media for the preservation of records must be conditioned with safeguards against erasability, provisions for the immediate verification of the stored information, and mandatory backup facilities. The proposed amendments to Rule 17Ad–7 would contain additional conditions to ensure that the documents stored on the disk are indexed and may be accessed by Commission examiners or by examiners from another appropriate regulatory agency.[11]

Exchange Act Rule 17a–4 contains conditions on broker-dealers' use of electronic storage media that are similar to the ones we are proposing for transfer agents. However, we anticipate that transfer agents (unlike broker-dealers) would use electronic storage media to store canceled securities certificates. The storage and destruction of canceled securities certificates present issues unique to transfer agents' use of electronic storage media. As a result, we believe that these conditions are particularly necessary for transfer agents. In addition, we believe that these conditions are necessary because optical disk storage technology is relatively new and there does not appear to be an industry standard for its development and for compatibility among different optical disk storage systems.

The proposed amendments to Rule 17Ad–7 would contain additional conditions to ensure that the documents stored on the disk are indexed and may be downloaded by Commission examiners or by examiners from another appropriate regulatory agency.[12]

The proposed amendments would require transfer agents that use electronic storage media to store the records in a non-rewriteable, non-erasable format. This requirement should ensure that the information stored on electronic storage media cannot be modified or removed without detection. As an additional protection, the proposed amendments would require that electronic storage media label the storage units used (*e.g.*, the optical disks) in sequential order and record the date and time that information is electronically stored. In addition, transfer agents would be required to keep a duplicate of any records that are stored using electronic storage media. The duplicates may be kept on any type of medium that is acceptable under Rule 17Ad–7.[13]

In order to ensure efficient and complete access to records during examinations, transfer agents using electronic storage media would be required to create an index of the records that are electronically stored and store the index with those records. In addition, the proposed amendments would require transfer agents to maintain a duplicate index along with the duplicates of the indexed records separately from the originals. Transfer

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[1] 15 U.S.C. 78q(a)(1).

[2] 17 CFR 240.17Ad–6 and 240.17Ad–7.

[3] 17 CFR 240.17Ad–7 (a) and (b).

[4] 17 CFR 240.17Ad–7(d).

[5] 17 CFR 240.17Ad–7(c).

[6] 17 CFR 240.17Ad–7(f).

[7] Letter from Charles Rossi, President, Securities Transfer Association, to Arthur Levitt, Chairman, Commission (July 2, 1996). The letter is available for inspection and copying in the Commission's Public Reference Room in File No. S7–17–99.

[8] Under the proposed amendments, the term "micrographic media" would be defined to mean microfilm or microfiche, or any similar medium.

[9] *See* Securities Exchange Act Release No. 38245 (February 5, 1997), 62 FR 6469 (Broker-Dealer Release) (adopting amendments to Rule 17a–4(f) to allow broker-dealers to use electronic storage media and micrographic media).

[10] This format is sometimes referred to as "write once, read many" or "WORM."

[11] The term "appropriate regulatory agency" is defined in section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34), and includes the Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

[12] The term "appropriate regulatory agency" is defined in section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34), and includes the Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

[13] The Commission does not intend that the proposed amendments to Rule 17Ad–7 would override any state laws or regulations regarding destruction of canceled securities certificates.

agents would also be required to have the capacity to download records stored on electronic storage media so that the records could be promptly transferred to an alternate medium such as paper, microfilm or microfiche.

In addition, the proposed amendments contain conditions on the use of electronic storage media that are designed to provide access to information stored on electronic storage media if a transfer agent is no longer operating, refuses to cooperate with the Commission or another appropriate regulatory agency, or has not properly or fully indexed electronically stored records. Accordingly, the proposed amendments to Rule 17Ad–7 would require transfer agents to preserve, keep current, and surrender upon request the information necessary to download records stored on electronic storage media. As an alternative, transfer agents that use another party to maintain their records (such as an outside service bureau) would be permitted to place in escrow and keep current a copy of the information necessary to access the format of the electronic storage media and to download records that are electronically stored. Moreover, before a transfer agent uses electronic storage media, the proposed amendments would require that at least one party other than the transfer agent (*e.g.*, the transfer agent's electronic storage media vendor) file representations with the Commission that it has the ability to download information from the transfer agent's electronic storage system and that it would do so at the request of either the Commission or its appropriate regulatory authority.

We understand that some broker-dealers now use electronic storage media and micrographic media to fulfill their recordkeeping requirements. We believe that the proposed amendments to Rule 17Ad–7 will similarly increase the flexibility and efficiency of transfer agent recordkeeping.

III. General Request for Comments

Any interested person wishing to submit comments on the proposed amendments to Rule 17Ad-7, as well as on other matters that might have an impact on the proposal, is requested to do so. We seek comment on whether the proposed requirements regarding the use of electronic storage media will create an undue burden on transfer agents or others. We seek comment on whether additional or fewer safeguards may be required in the context of transfer agents' use of electronic storage media. We also request comments on whether other new technologies are available for use in retaining records, and whether the rule should allow use of these technologies. If so, under what conditions?

We specifically solicit comments as to whether the proposed amendments to Rule 17Ad-7 present any issues that are unique to transfer agents that did not arise with respect to the amendments to Rule 17a-4. In particular, we request commenters to address any issues that may arise from the use of electronic storage media to store canceled securities certificates. Are there legal issues associated with transfer agents destroying canceled securities certificates that have been electronically stored? For example, could the inability to produce an original certificate during a legal proceeding create evidentiary problems even if a facsimile of the certificate could be downloaded from the electronic storage media? Should transfer agents that use electronic storage media to store canceled securities certificates be permitted to destroy canceled securities certificates as soon as they are electronically stored, or should transfer agents be required to maintain the original certificates for some period of time after storing them electronically?

Should Rule 17Ad-7 contain specific standards regarding image quality for electronic storage media used by transfer agents? Should Rule 17Ad-7 require that any electronic storage media used by transfer agents automatically verify the resolution quality of the electronically stored records? Should transfer agents using electronic storage media be required to periodically audit the resolution quality?

IV. Cost and Benefits of the Proposed Amendments

The Commission is considering the costs and the benefits of the proposed amendments to Rule 17Ad-7. The Commission has identified certain costs and benefits relating to the proposed amendments, which are discussed below, and encourages commenters to discuss any additional costs or benefits. In particular, the Commission requests comment on the potential costs for any necessary modifications to information gathering, management, and recordkeeping systems or procedures as well as any potential benefits resulting from the proposals for issuers, transfer agents, regulators, or others. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed amendments.

A. Benefits

The proposed amendments to Rule 17Ad-7 should provide specific benefits to U.S. investors, issuers, transfer agents, and other financial intermediaries. These benefits are not readily quantifiable in terms of dollar value. Allowing registered transfer agents to maintain their records using micrographic media and electronic storage media should increase the efficiency of their recordkeeping operations by reducing the need to maintain records in hard copy format. In addition, the use of micrographic media and electronic storage media should reduce storage burdens (*e.g.*, the need for storage space) that transfer agents currently face in keeping paper records.

B. Costs

The proposed amendments to Rule 17Ad-7 should not result in significant costs to any particular person or entity. We have identified costs associated with the proposed amendments. Transfer agents that use micrographic media or electronic storage media may incur some costs in transferring hard copy records to micrographic or electronic storage media. In addition, there could be some cost to registered transfer agents to fulfill the conditions that would be imposed on the use of electronic storage media. Specifically, the requirements that transfer agents using electronic storage media create a duplicate of the records electronically stored, that they create an index of the electronically stored records, and that they establish an audit system to account for inputting of and changes to electronically stored records all could result in costs to those transfer agents. However, any costs related to the use of micrographic media or electronic storage media should be at least partly offset by the resulting elimination of the need to maintain and store records in hard copy format. In addition, we note that transfer agents' use of micrographic media or electronic storage media would be voluntary.

We request comment on these costs and invite commenters to submit their own estimates of the costs and benefits that would result from the proposed amendments to Rule 17Ad-7. In order to fully evaluate the costs and benefits associated with the proposed amendments, we request that commenters' estimates of the costs and benefits of the proposed amendments be accompanied by specific empirical data supporting the estimates.

V. Effect of the Proposed Amendments on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act [14] requires the Commission, in adopting rules under the Exchange Act, to consider the impact any such rule would have on competition, and to not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, section 3 of the Exchange Act [15] as amended by the National Securities Markets Improvement Act of 1996 [16] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We are considering the proposed amendments to Rule 17Ad-7 in light of the standards cited in sections 3 and 23(a)(2) of the Exchange Act. For the reasons stated herein, the proposed amendments (i) should promote efficiency by allowing registered transfer agents to benefit from advances in recordkeeping technology, (ii) should not adversely affect capital formation because they relate solely to post-issuance activity, and (iii) should not impose any burden on competition because they will apply equally to all registered transfer agents.

We do not anticipate that the proposed amendments would have a significant effect on competition or impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. Under the proposed amendments, all registered transfer agents would be permitted to use micrographic media and electronic storage media to fulfill their recordkeeping obligations. In addition, the proposed conditions with respect to using electronic storage media would apply equally to all registered transfer agents. However, in order to fully evaluate fully the effects on competition of the proposed amendments, the Commission requests commenters to provide their views and specific empirical data as to any effects on competition that might result from the Commission's proposed amendments to Rule 17Ad-7.

[14] 15 U.S.C. 78w(a)(2).
[15] 15 U.S.C. 78c.
[16] Pub. L. 104–290, 110 Stat. 3416 (1996).

VI. Summary of Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis ("IRFA") in accordance with 5 U.S.C. 603(a) regarding the proposed amendments to Rule 17Ad-7. The IRFA states that the proposed amendments are intended to allow registered transfer agents to take advantage of advances in electronic recordkeeping technology. The IRFA sets forth the statutory basis for the proposed amendments.

The IRFA states that, for purposes of Commission rulemaking, paragraph (h) of Rule 0–10 under the Exchange Act defines the term "small business" or "small organization" to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed "small businesses" or "small organizations" as defined in Rule 0–10 under the Exchange Act; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10.[17] The IRFA states that we estimates that 180 registered transfer agents qualify as small entities and would be subject to the proposed amendments to Rule 17Ad-7.

The IRFA states that the proposed amendments would impose certain reporting, recordkeeping, and compliance requirements. The proposed amendments also would require each registered transfer agent that uses electronic storage media to set up a system to record the inputting of records to electronic storage media and the inputting of any changes to that are electronically stored.

The proposed amendments would require transfer agents that use electronic storage media to store the records in a non-rewriteable, non-erasable format. In addition, the proposed amendments would require that electronic storage media label the storage units used in sequential order and record the date and time that the information is electronically stored. Transfer agents would be required to keep a duplicate of any records that are stored using electronic storage media which could be kept on any type of medium that is acceptable under Rule 17Ad-7.

Transfer agents using electronic storage media would be required to create an index of the records that are electronically stored and store the index with those records. In addition, transfer agents would be required to maintain a duplicate index along with the duplicate records separately from the originals. Transfer agents would also be required to have the capacity to download records stored on electronic storage media so that the records could be promptly transferred to an alternate medium such as paper, microfilm or microfiche.

The proposed amendments would require transfer agents to preserve, keep current, and surrender upon request the information necessary to download records stored on electronic storage media. Moreover, before a transfer agent uses electronic storage media, the proposed amendments would require that at least one party other than the transfer agent (*e.g.*, the transfer agent's electronic storage media vendor) file representations with the Commission that the third party has the ability to download information from the transfer agent's electronic storage system and that it would do so at the Commission's request.

The IRFA notes that the reporting, recordkeeping, and compliance requirements contained in the proposed amendments to Rule 17Ad-7 would apply only to registered transfer agents that specifically choose to use electronic storage media. The IRFA notes further that some small transfer agents will not be able to afford the costs involved with storing records electronically and therefore will not choose to use electronic storage media. The IRFA states that the proposed amendments to Rule 17Ad-7 should not have a significant economic impact on a substantial number of small entities.

The IRFA states that as an alternative to the proposed amendments we considered proposing different compliance and reporting requirements and timetables with respect to transfer agents' use of electronic storage media. However, the IRFA states that the Commission believes that the compliance and reporting requirements and timetables as proposed are necessary to ensure the accuracy and integrity of transfer agent records that are electronically stored and to ensure the access to such records by the Commission or another appropriate regulatory agency. The IRFA also states that the timetables contained in the proposed amendments are consistent

[17] 17 CFR 240.0–10(h).

with the timetables that are already contained in Rule 17Ad-7.

The IRFA states that we believe that it is not feasible to further clarify, consolidate, or simplify the proposed amendments for small entities. The IRFA also states that the Commission believes that the use of performance standards rather than design standards is not applicable to the proposed amendments.

The IRFA states that we believe that creating an exemption from the requirements of the proposed amendments would not reduce the impact of the proposed amendments on small entities. The IRFA notes that Rule 17Ad-4(b) under the Exchange Act [18] already exempts small transfer agents from many of the recordkeeping requirements of Rules 17Ad-6 and 17Ad-7. In addition, the IRFA notes that any burden imposed by the proposed amendments would apply only to those transfer agents that choose to use electronic storage media. The IRFA states that we believe that there are no rules that duplicate, overlap, or conflict with the proposed alternative versions of the rule.

The IRFA contains information concerning the solicitation of comments with respect to the IRFA. In particular, the IRFA requests comment on whether the proposed amendments to Rule 17Ad-7 would have a significant economic impact on a substantial number of small entities and requests that any such comments be accompanied by specific empirical data. Cost-benefit information reflected in the "Cost/Benefit Analysis" section of this Release also is reflected in the IRFA. A copy of the IRFA may be obtained by contacting Theodore R. Lazo, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 1001, Washington, DC 20549–1001.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

VII. Paperwork Reduction Act

Certain provisions of the proposed amendments to Rule 17Ad-7 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[19] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Record Retention Requirements for Registered Transfer Agents." The OMB control number for the collection of information is 3235-0136. The collection of information requirements are necessary both to ensure the integrity of transfer agents' records that are maintained on electronic storage media and to ensure the Commission's ability to access such records.

Proposed Rules 17Ad-7(f)(1)(iii) and 17Ad-7(f)(1)(iv) contain a collection of information requirements that are intended to ensure that the Commission would have full and complete access to transfer agents' records during examinations. Proposed Rule 17Ad-7(f)(1)(iii) and 17Ad-7(f)(1)(iv) would require transfer agents that use electronic storage media to create an index of all electronically stored records and to maintain a duplicate of each index. We do not propose to specify the format of the index that would be required to be maintained. However, the original and duplicate indexes would be required to be kept in separate locations in order to protect against loss or damage. The indexes would be required to be maintained for as long as the transfer agent was using electronic storage media.

Proposed Rule 17Ad-7(f)(3) contains a collection of information requirement that is intended to ensure the integrity of transfer agents' records that are stored on electronic storage media. Proposed Rule 17Ad-7(f)(3) would require each registered transfer agent that uses electronic storage media to set up a system to record the inputting of records to electronic storage media and to record the inputting of any changes to records that are electronically stored. We do not propose to specify the contents of each audit system, but any data stored regarding inputting of records and changes to existing records would be part of that system. We anticipate that the names of the individuals that input and make changes to records and the identities of documents inputted and changed are the kinds of information that automatically should be collected pursuant to the audit system requirement. The results of the audit system would be required to be preserved for the time required for the audited records.

Proposed Rules 17Ad-7(f)(4) and 17Ad-7(f)(5) contain collection of information requirements that would ensure the Commission's access to records of a transfer agent that was no longer operating, refused to cooperate with the investigative efforts of the Commission or another appropriate regulatory agency, or had not properly or fully indexed electronically stored records. Proposed Rule 17Ad-7(f)(4) would require each transfer agent that uses electronic storage media to maintain and provide upon request or to keep in escrow all information necessary to access records and indexes that are electronically stored. We do not propose to specify the types of information that the transfer agent would be required to maintain if such information is maintained on the transfer agent's premises. However, if the transfer agent chose to place such information in escrow, it would have to keep in escrow a copy of the physical and logical format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with appropriate documentation and information necessary to access records and indexes. The information required by Proposed Rule 17Ad-7(f)(4) would be required to be maintained for as long as the transfer agent was using electronic storage media.

Proposed Rule 17Ad-7(f)(5) would require that for each transfer agent using electronic storage media at least one party other than the transfer agent would have to file with the Commission written undertakings that it has the ability to download the transfer agent's electronically stored records and that it would do so at the request of either the Commission or its appropriate regulatory authority. This requirement is intended to assure that examining authorities would be able to access a transfer agent's electronically stored records if the transfer agent could not or would not download the records. We anticipate that this requirement could be fulfilled in the form of a letter to the Commission staff. This collection of information requirement does not contain any new recordkeeping requirements.

The collection of information required by the proposed amendments to Rule 17Ad-7 should not result in any new significant burden to transfer agents. All information required as a condition of transfer agents' use of electronic storage media is specifically tied to a transfer agent's decision to use electronic storage media to satisfy its already existing recordkeeping obligations.

The likely respondents to the collection of information are large registered transfer agents. At this time, we estimate that there are 40 likely respondents to the collection of information requirements contained in the proposed amendments to Rule

[18] 17 CFR 240.17Ad-4(b).

[19] 44 U.S.C. 3501 *et seq.*

17Ad-7. The proposed frequency of response to the collection of information requirements varies depending on the specific requirement. The collection of information requirements contained in Proposed Rules 17Ad-7(f)(3)(vi) and 17Ad-7(f)(3)(vii) would require a one time response. The collection of information requirements contained in Proposed Rules 17Ad-7(f)(3)(iv) and 17Ad-7(f)(3)(v) would require continuing responses.

The Commission estimates that the average amount of time needed to comply with the collection of information requirements of the proposed amendments to Rule 17Ad-7 would be 125 hours per year. However, this time burden would apply only to registered transfer agents that choose to use electronic storage media. Based on the Commission's estimate of 40 likely respondents, we estimate that the proposed collection of information requirements would result in 5000 additional burden hours (40 x 125) and would increase the total number of burden hours for Rule 17Ad-17 from 142,272 to 147,272.[20]

If a transfer agent chooses to use electronic storage media, then providing the information will be mandatory. Responses to the collection of information requirements will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 0609, Washington, DC 20549–0609, and refer to File No. S7–17–99. The Office of Management and Budget (OMB) is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

[20] Based on an estimated average administrative labor cost of $50.00 per hour, the Commission's staff estimates that the total labor cost to the transfer agent industry for complying with the collection of information requirements contained in the proposed amendments would be $250,000 annually ($50.00 x 5000). The Commission's staff developed these estimates in consultation with representatives of the transfer agent industry.

VIII. Statutory Bases

The amendments to Rule 17Ad-7 are being proposed pursuant to sections 17A(a)(2) and 17A(d) of the Exchange Act (15 U.S.C. 78q-1(a)(2) and 78q-1(d)).

Text of the Amendments

List of Subjects in 17 CFR part 240

Reports and recordkeeping requirements, Securities, Transfer agents.

In accordance with the foregoing, the Commission proposes to amend part 240 of Chapter II of Title 17 of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80–23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

* * * * *

2. Section 240.17Ad-7 is amended by revising paragraph (f) to read as follows:

§ 240.17Ad-7 Record retention.

* * * * *

(f) *Record retention using micrographic media or electronic storage media.* Registered transfer agents may use micrographic media or electronic storage media that complies with the conditions in this paragraph to store the records that they are required to keep under §§ 240.17Ad-6 and 240.17Ad-7.

(1) If you as a registered transfer agent use either micrographic media or electronic storage media to store your records you must:

(i) Have available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) facilities for immediate projection or production of easily readable images of the records that you store on electronic storage media;

(ii) Be ready at all times to immediately provide any facsimile enlargement of the records that you store on electronic storage media that the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) or their representatives may request;

(iii) Create an accurate index of the records that you store on electronic storage media, store the index with those records, and have the index available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency); and

(iv) Maintain a duplicate of the index of the records that you stofe on electronic storage along with duplicates of the indexed records separately from the originals. You may store the duplicates of the indexed records on any medium permitted by this section. You must preserve the duplicate index and the duplicates of the indexed records for the same time that is required by this section for the indexed records, and you must have them available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency).

(2) Any electronic storage media that you use to store your records must:

(i) Preserve the records in a format that is not rewriteable and not erasable;

(ii) Automatically verify the quality and accuracy of its recording process;

(iii) Label all units of storage media used in sequential order and record the date and time that information is stored on the electronic storage media; and

(iv) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph as required by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency).

(3) If you use electronic storage media to store your records, you must set up an audit system that accounts for the inputting of and any changes to every record that is stored on electronic storage media:

(i) You must be able to have the results of the audit system available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency); and

(ii) The audit results must be preserved for the time required for the audited records.

(4) If you use electronic storage media to store your records you must either:

(i) Maintain, keep current, and provide promptly upon request by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) all information necessary to access records and indexes stored on electronic storage media; or

(ii) If you use another party to maintain your records, place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access records and indexes.

(5) Before you begin to use electronic storage media to preserve some or all of your records under this section, there must be at least one party other than you who has access to your electronic storage media system and has the ability to download information from your system and that party must file with the Commission and with your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission ("Commission"), the transfer agent's appropriate regulatory agency ("ARA") (if its ARA is not the Commission), and their designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission's, ARA's, or designee's staff to download information kept on the registered transfer agent's electronic storage media to any medium acceptable pursuant to Rule 17Ad-7 under the Securities Exchange Act of 1934.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the registered transfer agent's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the registered transfer agent pursuant to Rules 17Ad-6 and 17Ad-7 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff and the ARA's staff or their designees. Such arrangements will provide specifically that in the event of the registered transfer agent's failure to download the record into a readable format and, after reasonable notice to the registered transfer agent, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to download the record into a readable format as the Commission's staff and the ARA's staff or their designees may request.

(6) For purposes of this section, the following definitions apply:

(i) The term *micrographic media* means microfilm or microfiche or any similar medium; and

(ii) The term *electronic storage media* means any digital storage medium or system that meets the conditions in this paragraph.

* * * * *

By the Commission.

Dated: May 25, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13865 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. PL98–1–001]

Public Access to Information and Electronic Filing; Technical Conference

May 26, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference on electronic filing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) notifies interested persons that the Commission Staff will conduct a technical conference for the purpose of discussing: the phasing plan and schedule for implementing electronic filings; the proposed policies and procedures for electronic filings; the changes to the Commission's regulations that will be required to accommodate electronic filing; a prototype for submitting certain electronic filings to the Commission; the profile of capabilities that the Commission plans to pilot by October 1, 1999; and other electronic filing-related issues of concern to those in attendance.

DATES: The conference will be held on Thursday, June 24, 1999, beginning at 9:30 a.m.

ADDRESSES: The technical conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 42–29, Washington, D.C. 20426, (202) 501–8145, FAX: (202) 208–2425, E-Mail: brooks.carter@ferc.fed.us

Wilbur Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 91–17, Washington, D.C. 20426, (202) 208–0953

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20436.

Technical Conference

Take notice that the Commission Staff (Staff) will convene a technical conference to discuss issues related to the Commission's Electronic Filing Initiative (EFI). The conference will be held on Thursday, June 24, 1999, and will commence at 9:30 a.m. in the

Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The conference is open to all interested persons.

Staff is convening the conference to discuss: the phasing plan and schedule for implementing electronic filings; the proposed policies and procedures for electronic filing; the changes to the Commission's regulations that will be required to accommodate electronic filing; a prototype for submitting certain electronic filings to the Commission; the profile of capabilities that the Commission plans to pilot by October 1, 1999; and other electronic filing-related issues of concern to those in attendance.

The main conference discussion topics are attached to this notice. To facilitate discussion, Staff will post proposed electronic filing policies and procedures, and information on the other topics to be discussed, on the Commission's website (*www.ferc.fed.us*) in advance of the conference. Staff will publish a subsequent notice when the information is available. These proposals are based in part on comments received in response to a request for comments issued in Docket No. PL98–1–000 on May 13, 1998.[1]

We urge persons planning to attend the conference to review the materials in advance and be prepared to discuss them at the conference.

In order that we can develop a mailing list and contact persons interested in prototype testing, please contact Brooks Carter via e-mail (brooks.carter@ferc.fed.us), FAX (202–208–2425) or telephone (202–501–8145) and provide: your name, title, company, mailing address, the industry or industries you work with (natural gas, oil, electric, or hydropower), voice and FAX numbers, and your Internet e-mail address if you have one.

Although this is an informal technical conference, a court reporter will transcribe the proceedings and make a transcript available for interested parties.

The Capitol Connection offers all Open and special FERC meetings *live* over the Internet as well as via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's live Internet, phone bridge or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100 or visit Capitol Connection's website at (*www.capitolconnection.gmu.edu*). The Capitol Connection also offers FERC Open Meetings through its Washington, D.C. area television service.

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211.

Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703–715–7999).

Linwood A. Watson, Jr.,
Acting Secretary.

Topics for Discussions at Electronic Filing Technical Conference June 24, 1999

Current Process for Electronic Filing Rulemaking Comments via e-mail

- Filing and processing issues
- Posting of comments

Description of "FERC Doorway": Discussion

- Conceptual Diagram
- Proposed Phases for Electronic Filing Implementation
- Profile of Interventions, Comments, and Protests to be Included in the October, 1999 pilot (Phase1)
- Y2K Docket Number format

Proposed Policies and Procedures (by Function)

Submit Function:
1. Filing Formats
2. Use of Interactive Forms for simple motions
3. Signature, User ID/Password, Certificate of Service
4. Citation rules to ensure consistent citation to submitted documents
5. Joint and Several Motions to Intervene
6. File retraction or correction

Receive Function:
1. Date/Time of Receipt and Filing Date
2. Session and File Control numbers
3. Docketing and Docket No. Validation
4. Acknowledgment of Receipt
5. System availability/delays

Inspect Function:
1. Virus scan
2. Check for completeness and file integrity

Return Function (if filng is not accepted):
1. Notification with reason (*e.g.*, virus, corruption)
2. Resubmission procedures /Impact on Filing Date

Document Management Function:
1. File Conversion Issues
2. Load Databases (Service List, Docket Sheet, RIMS Index, Daily Filings List, CIPS)

Prototype: Screens for Phase 1 Filings (Motions to Intervene, Comments, and Protests)

[FR Doc. 99–13898 Filed 6–1–99; 8:45 am]
BILLING CODE 6717–01–M

[1] The comments are available on the Commission's website through the Records and Information Management System (RIMS) link. A summary of the comments and additional materials from conference on electronic filing held on October 22, 1998, are also available on the Commission's website via the "Rulemaking Comments" link on the main page.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–39–6999b; A–1–FRL–6346–4]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Amendments to Air Pollution Control Regulation Number 9

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision amends Rhode Island's Air Pollution Control Regulation No. 9, "Air Pollution Control Permits" which govern pre-construction permitting for new and modified sources of air pollution. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before July 2, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency,

Region I, One Congress Street, Suite 1100 (CAA), Boston, MA 02114–2023. Region 1's technical support documents are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 918–1655.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 et seq.

Dated: May 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–13029 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–67–7202b; A–1–FRL–6346–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the States of Rhode Island (RI) and Massachusetts (MA). The revisions consists of adding a regulation entitled, "Nitrogen Oxides Allowance Program," and a consent agreement to the RI SIP and a regulation entitled, "NO_X Allowance Program," to the MA SIP. The consent agreement in Rhode Island establishes alternative NO_X reasonably available control technology (RACT) requirements for four boilers. The RI and MA regulations are part of a regional nitrogen oxides (NO_X) emissions cap and allowance trading program designed to reduce stationary source NO_X emissions during the ozone season in the Ozone Transport Region (OTR) of the northeastern United States. These SIP revisions were submitted pursuant to section 110 of the Clean Air Act (CAA).

In the Final Rules section of this **Federal Register**, EPA is approving the States' SIP submittals as direct final rules without prior proposal because the Agency views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to these actions, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 2, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittals and EPA's technical support documents are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, at the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767, and at the Massachusetts Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven Rapp, (617) 918–1048 or at Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–13027 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–99–5737]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: In this document, we deny a petition for rulemaking submitted by Marie E. Birnbaum, a private individual. The petitioner asked us to initiate rulemaking to require passenger cars and light trucks to be equipped with "black boxes" (data recorders) analogous to those found on commercial airliners. We agree with the petitioner that the recording of crash data can provide information that is very valuable in understanding crashes, and which can be used in a variety of ways to improve motor vehicle safety. However, we are denying the petition because the motor vehicle industry is already voluntarily moving in the direction recommended by the petitioner. Further, we believe this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: We received a petition for rulemaking from Marie E. Birnbaum, a private individual, asking us to initiate rulemaking to require passenger cars and light trucks to be equipped with "black boxes" (data recorders) analogous to those found on commercial airliners. The petitioner stated that the purpose of the devices would be to record speed and possibly other data in order to (1) improve public safety by encouraging responsible driving, and (2) provide records of pre-crash speed and possibly other information. Ms. Birnbaum stated that this pre-crash information would work to improve driver accountability

through better crash investigation, enforcement and adjudication.

We note that we received Ms. Birnbaum's petition just after we had denied another petition making essentially the same request. Price T. Bingham, a private individual, had asked us to initiate rulemaking to require air bag sensors to be designed so that similar information is recorded during a crash and can be read by crash investigators.

In responding to Mr. Bingham's petition, we noted that the safety community in recent years has shown considerable interest in the concept of crash event recorders. Such recorders can, in conjunction with air bag and other sensors already provided on many vehicles, collect and record a variety of relevant crash data. These data include such things as vehicle speed, belt use, and crash pulse.

While we agreed with Mr. Bingham that the recording of crash data can provide information that is very valuable in understanding crashes, and which can be used in a variety of ways to improve motor vehicle safety, we nonethless denied the petition. One reason for denying the petition was the fact that the motor vehicle industry is already voluntarily moving in the direction recommended by the petitioner. Another was our belief that this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.

We issued our denial of Mr. Bingham's petition on November 3, 1998, and published it in the November 9, 1998 edition of the **Federal Register** (63 FR 60270). Ms. Birnbaum's petition was dated November 7, 1998.

After reviewing Ms. Birnbaum's petition, we conclude that our reasons for denying Mr. Bingham's petition are also applicable to her petition. A full explanation of those reasons is provided in our November 9, 1998 **Federal Register** notice, which we incorporate by reference.

The November 1998 notice included a discussion of ongoing work in this area by NHTSA's Motor Vehicle Safety Research Advisory Committee (MVSRAC). The agency noted that MVSRAC had set up a working group on event data recorders under the Crashworthiness Subcommittee and that the first meeting of the working group had taken place in October 1998. Since publication of the November 1998 notice, another working group meeting has been held, and a third meeting is planned for this summer. The Event Data Recorder Working Group is considering a wide variety of subjects related to crash event recording devices and anticipates producing a report by the end of calendar year 2000.

Minutes of the Event Data Recorder Working Group meetings are being placed in the public docket. The public may access these materials via the Web. The Docket Management Web site is at "*http://dms.dot.gov*". You should search for Docket number 5218.

For the reasons discussed above, we are denying Ms. Birnbaum's petition for rulemaking.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 27, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13895 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4422]

RIN 2127–AE22

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: This notice withdraws a proposed rulemaking action to amend Federal motor vehicle safety standard No. 210 Seat Belt Assembly Anchorages. The proposed amendment would require that the lap belt angle for rear adjustable seats be measured in the rearmost adjustment position. However, the agency has determined that the proposed amendment may reduce vehicle safety and affect some front adjustable anchorage locations.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. John Lee, Office of Crashworthiness, NPS–11, Telephone (202) 366–2264. FAX number (202) 493–2739, Mr. Lee's e-mail address is: jlee@nhtsa.dot.gov.

For legal information: Mr. Otto Matheke, Office of Chief Counsel, NHTSA, (202) 366-5263 Fax number (202) 366–3820.

Both may be reached at: National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Federal motor vehicle safety standard (Standard) No. 210 Seat Belt Assembly Anchorages specifies performance requirements for safety belt anchorages to ensure their proper location for effective occupant protection and to reduce the likelihood of the anchorages' failure in a crash. The requirements of the standard apply to passenger cars, trucks, buses and multipurpose passenger vehicles (MPVs). The standard sets zones within the vehicle where the anchorage must be located. The anchorage for a lap belt or the lap portion of a lap/shoulder belt is required to meet a minimum and maximum mounting angle. The standard also sets minimum strength requirements.

On December 4, 1991, NHTSA published a notice of proposed rulemaking (NPRM) to amend the lap belt angle measurement procedure for adjustable rear seats of Standard No. 210. The current procedure measures the angle from the seat aligned with the seating reference point. The proposed procedure measured the lap belt angle with the seat in the rearmost adjustable position. The intent of the amendment was to establish a more easily identified seat position for measuring the lap belt angle of the moveable rearward seats. The agency believed the seating reference point may not have been an adequate reference point for these rearward moveable seats.

The agency received five comments to the NPRM. All were opposed to the proposal as written. One commenter, Ford Motor Company (Ford), stated, "* * * the proposal may reduce vehicle safety, by requiring that anchorages be located in positions that produce a flatter lap belt angle than is ideal when the seat is adjusted to a forward adjustment position. Ford suggest that anchorages for rear adjustable seats be located from the hip point of the template when the seat is in the middle of its adjustment range." Ford also stated, "* * * an 18 month leadtime would be insufficient if anchorages were to be relocated as proposed."

Ford, Chrysler, Toyota and GM were concerned about the proposed wording of S4.3.1.1(b) in which "* * * a line 2.5 inches forward of and 0.375 inches above the seating reference point * * *" is replaced by "* * * a line from the seating reference point to the contact point of the belt with the anchorage * * *" would be a substantial rulemaking. The change could affect the dummy kinematics during Standard No. 208 testing as well as the anchorage location at front adjustable seats, not just the rear adjustable seats. Chrysler stated, "As

written, the amendment would substantially change the anchorage location requirements for lap belts or the lap portion of the lap/shoulder belts at front adjustable seats, not just those at rear adjustable seats. Since the agency did not present an argument to support changing the location requirements for anchorages at front center seating positions, we conclude that the modification to the existing language to that end was inadvertent. In any event, we would not support such a change if it were proposed." GM stated, "GM supports the agency's intent to clarify any ambiguity in the standard regarding adjustable rear seat positions, but can not support the actual proposal because of its effect on the front seating position requirements."

Volkswagen of America, Inc. (Volkswagen) recommends that the proposed amendment be revised to change the words "rearmost position" to "rearmost normal design driving or riding position as designated by the manufacturer." The reference to "rearmost position" could create difficulties with regard to special seats such as those in the rear seat of passenger cars or MPVs where a storage compartment or battery might be located under the seat and in which case the seat track is provided with special extended travel to permit access to such a compartment. Such a change would also make the wording of Standard No. 210 consistent with the definition of the seating reference point in § 571.3. VW stated that a lead time of 18 months after publication of the final rule is acceptable.

After reviewing the public comments, the agency has decided to withdraw this rulemaking. The intent of the proposed rulemaking was to clarify the lap belt angle measurement test procedure for rear adjustable seats by measuring the lap belt angle in the rearmost position. The agency did not intend to decrease vehicle safety. As pointed out by Ford, the NPRM could cause lower or flatter lap belt angles and could increase the likelihood of occupant submarining. The proposed amendment could also affect the front anchorage locations and the dummy kinematics during Standard No. 208 full barrier testing.

In conclusion, the proposed rulemaking could decrease vehicle safety and affect the front anchorage locations without providing any significant benefit. This was not the intent of this rulemaking and the agency is withdrawing this rulemaking action.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: May 27, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13957 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 990525143–9143–01; I.D. 120197A]

RIN 0648–AM41

Designated Critical Habitat; Proposed Revision of Critical Habitat for Snake River Spring/Summer Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise critical habitat for Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), pursuant to the Endangered Species Act (ESA) of 1973. After a review of the best available scientific information, NMFS concludes that Napias Creek Falls constitutes a naturally impassable migrational barrier for Snake River spring/summer chinook salmon. Therefore, NMFS proposes to exclude areas above Napias Creek Falls from designated critical habitat because such areas are outside the species' current and historic range.

DATES: Comments must be received by August 2, 1999. Requests for additional public hearings must be received by July 19, 1999.

ADDRESSES: Requests for information concerning this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Protected Resources Division, Northwest Region, (503) 231–2005 or Chris Mobley, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1991, NMFS proposed the listing of Snake River spring/summer chinook salmon as a threatened species under the ESA (56 FR 29542). The final determination listing Snake River spring/summer chinook salmon as a threatened species was published on April 22, 1992 (57 FR 14653), and corrected on June 3, 1992 (57 FR 23458). Critical habitat was designated on December 28, 1993 (58 FR 68543). In that document, NMFS designated all river reaches presently or historically accessible to listed spring/summer chinook salmon (except river reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) in various hydrologic units as critical habitat (58 FR 68543). Napias Creek, the area in question, occurs within one of these designated hydrologic units (Middle Salmon-Panther, USGS Hydrologic Unit 17060203).

On January 6, 1997, the Secretary of Commerce (Secretary) received a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to Panther Creek which flows into the Salmon River in central Idaho. In accordance with section 4(b)(3)(D) of the ESA, NMFS issued a determination on April 28, 1997, that the petition presented substantial scientific information indicating that a revision may be warranted (62 FR 22903). In that document, NMFS solicited information and comments from interested parties concerning the petitioned action.

On September 16, 1997, Meridian submitted additional information in support of its petition. Specifically, Meridian submitted three new reports entitled: (1) "Ability of Salmon and Steelhead to Pass Napias Creek Falls"; (2) "Investigation of Physical Conditions at Napias Creek Falls"; and (3) "Historical and Ethnographic Analysis of Salmon Presence in the Leesburg Basin, Lemhi County, Idaho." This new information was added to the administrative record and was considered by NMFS in its 12-month determination published on January 30, 1998 (63 FR 4615).

On January 30, 1998, NMFS determined the petitioned action was not warranted since available information indicated the falls was likely passable to chinook salmon at some flows and that the presence of relict indicator species indicated historical usage by anadromous species (63 FR 4615). NMFS also concluded that habitat above Napias Creek Falls contained unique features that may aid in the conservation and recovery of listed salmonid species (63 FR 4615). However, NMFS did not address the question of whether or not habitat above the falls was essential for recovery of the species since it concluded that the area was within the species' current range (63 FR 4615; see also 50 CFR 424.12(e) which states that areas outside of the

species' current range shall be designated only when the species' current range is inadequate for conservation purposes).

Subsequent to NMFS' January 30, 1998, determination, Meridian submitted a "petition for reconsideration," providing additional data and analyses concerning the likelihood that Napias Creek Falls constitutes a naturally impassable barrier to anadromous salmonid migration (Meridian 1998a, 1998b; Chapman 1998). While NMFS' ESA implementing regulations do not provide a process for reconsidering findings on petitions, NMFS nonetheless agreed in a letter dated July 31, 1998, to consider Meridian's new information and provide Meridian with a written determination regarding its findings (NMFS, 1998a; Meridian, 1998d). On October 30, 1998, NMFS staff met with Meridian representatives to discuss the new technical information and its interpretations (NMFS, 1998b).

On December 29, 1998, Meridian expressed its desire to withdraw its "petition for reconsideration" stating that it interpreted NMFS' continuing treatment of the area as critical habitat as a denial of its petition (Meridian, 1998c). However, at the time of that letter, NMFS had not yet reached a conclusion regarding the additional information submitted by Meridian, nor had NMFS provided Meridian with a written determination on the matter as it had committed to do in its July 31, 1998, letter (NMFS, 1998a).

While Meridian now seeks to withdraw its additional information concerning Napias Creek Falls, NMFS concludes this information is part of the best scientific information available regarding whether this area constitutes critical habitat for the species. Therefore, in accordance with section 4(b)(1)(A) of the ESA, NMFS bases the conclusions in this proposal on Meridian's new information. NMFS likewise considered this information in its recent proposed rule to designate critical habitat for Snake River steelhead (64 FR 5740, February 5, 1999).

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species" (see 16 U.S.C. 1532(5)(A)). The term "conservation," as defined in section 3(3) of the ESA, means " * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (see 16 U.S.C. 1532(3)).

Defining specific river reaches that constitute critical habitat for chinook salmon, and anadromous fish species in general, is difficult to do because of NMFS' imperfect understanding of the species' freshwater distribution, both current and historical, and the lack of comprehensive sampling efforts dedicated to monitoring these species. Given this scientific uncertainty, NMFS' approach to designating critical habitat for chinook salmon is to designate all areas currently and historically accessible to the species within the range of the ESU. NMFS believes this inclusive approach to designating critical habitat is appropriate because it: (1) recognizes the species' extensive use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' juvenile and adult freshwater and estuarine life stages; and (2) takes into account the natural variability in the species' habitat use; and (3) recognizes data limitations and scientific uncertainty that exist concerning the distribution and habitat usage of the listed species.

Process for Defining Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated, and essential habitat areas and features are identified. Second, the need for special management considerations or protection of the area(s) or features identified are evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, a notification of the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is typically published within 1 year of the proposed rule. Final critical habitat designations may be revised as new information becomes available.

At this time, new information exists that indicates a revision in NMFS' final critical habitat designation is warranted. A discussion of this information follows.

Analysis of Available Information

Two lines of evidence indicate that areas above Napias Creek Falls do not constitute critical habitat for the listed species. This evidence includes: (1) current passage conditions at the falls; and (2) surveys of current and historic salmonid presence above the falls.

Current Passage Conditions at Napias Creek Falls

On September 16, 1997, Meridian submitted the results of several studies conducted to determine the ability of chinook salmon to migrate above Napias Creek Falls. One study evaluated the geomorphology of the falls, while another study assessed the potential for fish passage using the methods of Powers and Orsborn as described in "Analysis of Barriers to Upstream Fish Migration" (Bonneville Power Administration, 1984). A third study entitled "Ability of Salmon and Steelhead to Pass Napias Creek Falls" analyzed information and conclusions of the preceding two studies and concluded that "Napias Creek Falls is an absolute barrier to upstream migration of salmon and steelhead in Napias Creek" (Meridian, 1997). NMFS analyzed Meridian's studies which indicated that the falls was a historic barrier to chinook salmon passage in the January 30, 1998, determination (63 FR 4615, 4617). NMFS also conducted its own passage assessment of Napias Creek Falls.

On May 29, 1998, and dates thereafter, Meridian commented on NMFS' passage assessment and provided additional explanation of its own prior analyses (Meridian 1998a, 1998b; Chapman 1998). NMFS analyzed these comments in a memo entitled "Analysis of Meridian Gold Company's May 29, 1998, Submittal Concerning Chinook Salmon Passage Conditions at Napias Creek Falls" (NMFS 1998c). In this memo, NMFS concluded that while Meridian's May 29, 1998, submittal provides additional information regarding the passage issue at Napias Creek Falls, such information does not change NMFS' original conclusion reached in its November 21, 1997, analysis (NMFS, 1997). Specifically, NMFS concluded that Napias Creek Falls is likely passable to listed chinook salmon under certain flow conditions (NMFS, 1998c).

However, NMFS recognizes that it is difficult to determine whether the falls

constitutes an "effective" migrational barrier to the species, thus, precluding the species from colonizing areas above the falls (see NMFS, 1999). NMFS believes that current and historic usage information is informative on the question of whether or not the falls constitutes an effective migrational barrier for the species. From such information, one can infer whether Napias Creek Falls effectively constitutes a migrational barrier for the species and, therefore, is outside the species' current and historic range.

Surveys of Current and Historic Salmonid Presence

Meridian conducted two studies to determine if, historically, chinook salmon were observed above Napias Creek Falls. The first study reviewed historical accounts of chinook salmon occurring above Napias Creek Falls (Meridian, 1997a). Meridian states that reviews of historical and independent ethnographic research document that salmon or steelhead were not observed or caught above Napias Creek Falls and, therefore, the fish were not historically present in this area. A second study reviews the genesis of Napias Creek Falls and concludes that the falls are a natural feature and not the result of development activities near the area (Meridian, 1997b).

Meridian's studies and the opinions of Federal and state resource agencies (i.e., U.S. Forest Service (USFS), and Idaho Department of Fish and Game (IDFG)) indicate that areas above Napias Creek Falls are outside the range of listed chinook salmon and do not constitute critical habitat for the species (USFS, 1996; IDFG undated); however, this conclusion is in conflict with comments from a USFS fishery biologist. In a report dated February 8, 1996, Bruce Smith, Salmon and Challis National Forest Fisheries Biologist, concludes that Napias Creek historically contained chinook salmon (Smith, 1996a). Smith also states that areas above Napias Creek Falls currently contain relict indicator species (Smith, 1996a), indicating pre-historic accessibility of this area to anadromous salmonid species (Smith, 1996b).

In its January 30, 1998, determination, NMFS found Smith's analysis persuasive on the question of the historical presence of chinook salmon above Napias Creek Falls primarily based on Smith's identification of relict indicator species above the falls (63 FR 4615; 4617). However, Meridian points out in their recently submitted study that while relict indicator species such as rainbow trout and bull trout occur above the falls, other native species (e.g., mountain whitefish, westslope cutthroat trout, scuplins, and dace) do not presently occur above the falls, indicating that salmonids in the area may have been the result of hatchery plantings or other introductions (Chapman, 1998). This explanation is supported by the presence of other nonnative fish species above the falls (i.e., brook trout), and the history of stocking activities in Napias Creek (Smith, 1996a).

Interpretation of Available Scientific Data

While NMFS concludes that Napias Creek Falls is most likely passable to chinook salmon at certain flows, it is difficult to predict the likelihood that this species would colonize areas above the falls if present in sufficient numbers in Napias Creek. The presence of relict indicator species (e.g., rainbow trout) above the falls suggests historic usage by anadromous species; however, the origin of these indicator species is uncertain. The presence of nonnative species and the absence of other common native species suggest that such indicator species may be the result of hatchery plantings or other introductions. Historical records of hatchery plantings by IDFG support this conclusion. Furthermore, historical surveys indicate that in recent history (since the 1930s), chinook salmon have not occurred above the falls, supporting the conclusion that the falls effectively constitutes a migrational barrier for the species.

After reconsidering its prior analysis in light of new information provided by Meridian, NMFS concludes that the best available scientific information indicates that habitat above Napias Creek Falls is outside the current range of listed spring/summer chinook salmon and, therefore, does not constitute critical habitat for the species. This conclusion is supported by NMFS' assessment of available scientific data and the independent opinions of other Federal and state resource agencies (USFS, 1996; IDFG, undated). The apparent lack of historic usage of this area by chinook salmon also indicates that this area is not essential for conservation of the species. This conclusion is consistent with NMFS' previous spring/summer chinook salmon critical habitat finding that the species' current range is likely adequate for conservation purposes (See 58 FR 68543, Final Designation of Critical Habitat for Snake River Spring/Summer Chinook Salmon).

NMFS recognizes that scientific uncertainty remains regarding its conclusion that areas above Napias Creek Falls do not constitute critical habitat for listed spring/summer chinook salmon. Specifically, uncertainty remains regarding whether chinook salmon could establish a naturally reproducing population above the falls if they were present in sufficient numbers in Napias Creek, or if chinook salmon historically inhabited areas above Napias Creek Falls. To resolve remaining uncertainties, NMFS requests comments and information regarding its proposed determination (See Public Comments Solicited).

Even though scientific uncertainty remains regarding NMFS' conclusion, chinook salmon do not now occur in Napias Creek and, therefore, habitat above the falls would not likely be used by the species in the near-term even if it were accessible. Therefore, if this proposal is finalized, the long-term risk of harm to the species is lessened by the fact that NMFS may revise its determination in the future if additional information indicates that areas above Napias Creek Falls constitute critical habitat for the species.

While NMFS concludes that areas above Napias Creek Falls do not constitute critical habitat for chinook salmon, NMFS believes that Napias Creek constitutes an important source of dilution water within the Panther Creek system (63 FR 4615 and 4618, January 30, 1998). Any degradation of dilution flows from Napias Creek would likely hinder efforts to reestablish anadromous species in Panther Creek (63 FR 4615 and 4618, January 30, 1998). Consequently, NMFS intends to carefully evaluate any proposed impacts on Napias Creek water quality to ensure that the survival and recovery of listed species are not jeopardized.

Expected Economic Impacts

Section 4(b)(2) of the ESA requires NMFS to consider the economic impact of specifying any particular areas as critical habitat. However, section 4(b)(1)(A) of the ESA prohibits NMFS from considering economic impacts associated with species listings. Consequently, when designating critical habitat, NMFS considers only the incremental economic impacts associated with the designation above the economic impacts attributable to the listing of the species or authorities other than the ESA. Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential for the conservation of the species.

For this Evolutionarily Significant Unit (ESU), NMFS determines that the

present geographic extent of the species' freshwater and estuarine range is likely sufficient to provide for conservation of the species. Since NMFS believes that virtually all "adverse modification" determinations pertaining to critical habitat would also result in "jeopardy" conclusions under section 7 consultations of the ESA (i.e., as a result of the species being listed), the designation of critical habitat is not expected to result in significant incremental restrictions on Federal agency activities. Critical habitat designation will, therefore, result in few, if any, additional economic effects beyond those that may be attributable to the listing and other statutes.

The USFS and U.S. Army Corp of Engineers (COE) manage areas of critical habitat for this ESU, both as it is now designated and as proposed for revision. COE and other Federal agencies that may be involved with funding or permits for projects in critical habitat areas may also be affected by this designation. Since the proposed revision will result in eliminating areas above Napias Creek Falls from designated critical habitat, the impact of this action on these Federal agencies should be minimal.

Proposed Determination

After reconsidering its prior analysis and analyzing new information and analyses submitted by Meridian, NMFS concludes that Napias Creek Falls constitutes a naturally impassable migrational barrier for Snake River spring/summer chinook salmon and, therefore, is outside the species' range. While the falls may be passable to chinook salmon at certain flows, available historical evidence suggests that this species has not navigated this falls in the recent past, nor is it likely do so in the future. NMFS specifically requests data and analyses to address remaining scientific uncertainty associated with this conclusion (See Public Comments Solicited).

Public Comments Solicited

To ensure that NMFS' final determination is based on the best available scientific data as required by the ESA, NMFS solicits comments from the public, other governmental agencies, the scientific community, industry, and any other interested parties on the following issues: (1) The sufficiency of the evidence supporting NMFS' determination that Napias Creek Falls constitutes a naturally impassable migrational barrier for chinook salmon; (2) the existence of any evidence that may address the potential for fish passage above the falls, such as historic accounts indicating chinook salmon or other anadromous salmonids occurred above Napias Creek Falls, data or reports analyzing the likelihood that chinook salmon or other anadromous salmonids would migrate above Napias Creek Falls if present in Napias Creek, or information pertaining to the origin of rainbow trout or other residualized anadromous species above Napias Creek Falls (e.g., hatchery stocking records); and (3) other information indicating whether areas above Napias Creek Falls do or do not constitute critical habitat for the species. NMFS will analyze all comments and information received prior to issuing a final determination.

Public Hearings

Joint Department of Commerce and Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list species or to designate critical habitat (50 CFR 424.16(c)(3)). Requests for public hearings must be received by July 19, 1999.

References

A complete list of all references cited herein and maps describing the range of proposed Snake River spring/summer chinook salmon are available upon request (see **ADDRESSES**).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS proposes to designate only the current range of this ESU as critical habitat. This current range encompasses a wide range of habitat, including tributary streams, as well as mainstem, off-channel and estuarine areas. Areas not included in this proposed redesignation include marine habitats in the Pacific Ocean and areas above impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS concludes that the currently accessible areas within the species' range are the minimum habitat necessary to ensure the species' conservation and recovery. The proposed action would revise critical habitat for the listed ESU to realign critical habitat with the current range of the ESU. Having determined that Napias Creek Falls constitutes a naturally impassable barrier for Snake River spring/summer chinook, NMFS proposes to remove the habitat above the Falls from designated critical habitat.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on small businesses, organizations, and governments.

Meridian owns and operates Beartrack Mine, which is adjacent to Upper Napias Creek (Napias Creek above the Falls), within the Salmon National Forest. NMFS is not aware of any other business operating in Upper Napias Creek whose operations might adversely modify potential salmon habitat. The proposed action would reduce the ESU's critical habitat, by eliminating Upper Napias Creek from critical habitat. To the extent that Meridian may be impacted by the current designation of Upper Napias Creek as critical habitat, the proposed reduction of critical habitat would lessen Meridian's economic burden, if any, from that impact.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this

critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S. Ct. 698 (1996).

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: May 26, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. In § 226.205, paragraph (b) is revised to read as follows:

§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon and Snake River spring/summer chinook salmon.

* * * * *

(b) *Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha).* Geographic boundaries. Critical habitat is designated to include the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to Hells Canyon Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls (including Napias Creek Falls), and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Hells Canyon, Imnaha, Lemhi, Little Salmon, Lower Grande Ronde, Lower Middle Fork Salmon, Lower Salmon, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, Pahsimeroi, South Fork Salmon, Upper Middle Fork Salmon, Upper Grande Ronde, Upper Salmon, Wallowa. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Blaine, Custer, Idaho, Lemhi, Lewis, Nez Perce, Valley.

* * * * *

[FR Doc. 99–13958 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506120–9120–01; I.D. 020399A]

RIN 0648–AL80

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes to increase the total allowable catch (TAC) for Atlantic group king mackerel; decrease TAC for Atlantic group Spanish mackerel; revise the commercial trip limits for Atlantic group king mackerel off North Carolina and the Mid-Atlantic states, and for Gulf group king mackerel off the Florida east coast; establish a trip limit for Gulf group king mackerel in the western zone; establish a bag limit of zero Gulf group king mackerel for captain and crew on for-hire vessels; increase the minimum size limit for Atlantic and Gulf group king mackerel; and, for Atlantic group Spanish mackerel, revise the allocation of TAC between the commercial and recreational sectors and establish an incidental catch allowance for vessels using gillnets with a mesh size less than 3.5 inches (8.9 cm). The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

DATES: Written comments must be received on or before June 17, 1999.

ADDRESSES: Comments on the proposed rule must be sent to Mark Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the environmental assessment, social impact assessment/fishery impact statement, and regulatory impact review (RIR) supporting aspects of this action relating to Atlantic migratory groups of king and Spanish mackerel should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, PHONE: 843–571–4366, FAX: 843–769–4520. Requests for comparable documents relating to Gulf group king mackerel should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL, 33619–2266, PHONE: 813–228–2815, FAX: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils made recommendations in separate regulatory amendments to the Regional Administrator, Southeast Region, NMFS (RA). The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

Proposed TACs, Allocations, and Quotas

The South Atlantic Council recommended that TACs be effective immediately for the fishing year in which they are implemented for the Atlantic groups of king and Spanish mackerel. The South Atlantic Council recommended an increase fn the annual TAC for Atlantic group king mackerel from 6.80 million lb (3.08 million kg) to 8.40 million lb (3.81 million kg).

For Atlantic group Spanish mackerel, the South Atlantic Council recommended a decrease in the annual TAC from 8.00 million lb (3.63 million kg) to 6.60 million lb (2.99 million kg) and recommended that the current 50/50 allocation of TAC between commercial and recreational sectors be changed to 55 percent commercial and 45 percent recreational. The recreational fishery has consistently failed to reach

its allocation, and the increased allocation of TAC to the commercial sector would allow harvest near levels landed last season.

Consistent with the FMP's framework procedure, these recommended TAC changes are within the range of the acceptable biological catch established by the Councils and represent a conservative approach supported by their Scientific and Statistical Committees and Mackerel Advisory Panels. These TACs are consistent with current stock rebuilding programs and with the attainment of optimum yield (OY) for Atlantic group king and Spanish mackerel as provided by the FMP. The resulting quotas and allocations would be higher than recent harvest levels; consequently, no early or unexpected fishery closures or quota/allocation overruns would be likely.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. Under the established percentages for Atlantic group king mackerel and the revised percentages specified for Atlantic group Spanish mackerel in this proposed rule, the TACs for the Atlantic groups of king and Spanish mackerel would be allocated as follows:

Species/Migratory Group	m. lb.	m. kg
Atlantic Group King Mackerel - TAC	8.40	3.81
Recreational allocation (62.9%)	5.28	2.40
Commercial quota (37.1%)	3.12	1.42
Atlantic Group Spanish Mackerel - TAC	6.60	2.99
Recreational allocation (45%)	2.97	1.35
Commercial quota (55%)	3.63	1.65

Atlantic Group Spanish Mackerel: Commercial Vessel Trip Limits and Incidental Catch Allowance

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone (i.e., south of a line extending directly east from the Georgia/Florida boundary), the trip limits vary depending on the percentage of the adjusted quota landed. The adjusted quota is the commercial quota reduced by an amount calculated to allow continued harvest of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Along with the reduced commercial quota, the South Atlantic Council recommended that the adjusted quota be decreased from 3.75 million lb (1.70 million kg) to 3.38 million lb (1.53 million kg).

The South Atlantic Council also recommended an allowance for vessels operating in the South Atlantic or Mid-Atlantic exclusive economic zone (EEZ) to possess on board, and land in a day, up to 500 lb (227 kg) of Spanish mackerel incidentally caught in a gillnet having a mesh size less than 3.5 inches (8.9 cm), stretched mesh. The South Atlantic Council determined that such an adjustment of the regulations would be necessary to preclude discard and waste of Spanish mackerel incidentally taken in prohibited gear, maintain the multi-species nature of the South and Mid-Atlantic gillnet fisheries, and minimize the negative socioeconomic impacts on fishermen involved in these fisheries. The proposed incidental catch allowance would continue the long-time practice of possessing and landing Spanish mackerel incidentally captured in inshore and nearshore gillnet fisheries.

Gulf Group King Mackerel: Commercial Vessel Trip Limits and Recreational Bag Limits

The Gulf Council proposed a 3,000–lb (1,361–kg) commercial trip limit for Gulf group king mackerel in the western zone off Texas, Louisiana, Mississippi, and Alabama. The Council believes that the trip limit would increase the socioeconomic benefits of the available quota, reduce the intensity of derby fishing, increase vessel safety, and reduce the risks of overfishing king mackerel and other stocks that might be targeted after closure of the king mackerel fishery. The Council believes that the trip limit would prevent market gluts and would stabilize the exvessel value of king mackerel at a higher level throughout a longer harvest season. Limiting landings per trip, and shortening trip length should result in a higher quality, more valuable product.

The South Atlantic Council proposed to increase the commercial trip limit for Gulf group king mackerel in the eastern zone, Florida east coast subzone, from 50 to 75 fish per day to optimize the opportunity for fishermen to achieve the quota while preventing early season closure. The Councils concluded that the 50–fish trip limit was too low and would lead to underutilization of the quota.

The Gulf Council recommended that the daily bag limit for Gulf group king mackerel be reduced to zero fish for the captain and crew on for-hire vessels. The Gulf Council determined that the zero-fish bag limit for captain and crew on for-hire vessels would be necessary to reduce harvest and prevent overrun of the recreational allocation and TAC. Representatives of the for-hire industry have indicated that the sale of king mackerel taken under the recreational bag limit represents important income to their businesses.

Atlantic Group King Mackerel: Commercial Vessel Trip Limits

The South Atlantic Council proposed to reduce the commercial trip limit for Atlantic group king mackerel off North Carolina and the Mid-Atlantic states from 3,500 lb (1,588 kg) to 2,000 lb (907 kg) per day. Further, the trip limit would reduce to 1,000 lb (454 kg) per day if 80 percent of the quota is taken before February 1. In response to fishermen's requests, the South Atlantic Council has proposed this revision to prevent early closure of the fishery and preserve a portion of the quota for the Lenten market that usually provides premium market value, an important source of annual income.

Atlantic Group and Gulf Group King Mackerel: Minimum Size Limits

The Gulf and South Atlantic Councils proposed to increase the minimum size limit for Gulf group and Atlantic group king mackerel from 20 to 24 inches (50.8 to 60.1 cm). Besides reducing harvest of immature fish, the increased minimum size limit would decrease recreational harvest and prevent overrun of the recreational allocation and TAC.

The RA initially concurs that the Council's recommendations are necessary to protect the king and Spanish mackerel stocks and prevent overfishing and that they are consistent with the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law. Accordingly, the Councils' recommended changes are published for comment.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The determination based on the RIR - Threshold Analyses, is summarized below. Copies of these analyses are available (see **ADDRESSES**).

There are 3,819 commercial fishing and for-hire small business entities that have permits to harvest coastal migratory species

and more than 20 percent of these are expected to be impacted to some degree, but not to a significant degree. A Gulf Council proposal for a zero bag limit of Gulf group king mackerel for the captain and crew of for-hire businesses will have an effect in the Florida Keys because some for-hire entities sell fish caught under the bag limit, but will have very minor effects in other areas. The maximum effect would be to decrease annual gross revenues by 2.6 to 4.3 percent and that would occur only if all the sales of fish were attributed to king mackerel. Both Councils propose to increase the minimum size limit for king mackerel from 20 to 24 inches (51 to 61 cm) fork length (FL). The RIR findings were that most commercial catches are composed of fish that exceed 24 inches FL and the effects are expected to be negligible. The effect on for-hire operations would be a reduction of 10 percent in the recreational catch of king mackerel by their clients, but there are a number of substitute species, and the overall effect is expected to be small. A Gulf Council proposal for a trip limit of 3,000 lb (1361 kg) of king mackerel for fishermen in the Gulf western zone would not create a revenue impact because the commercial quota would be taken with or without the trip limit.

A South Atlantic Council proposal to increase TAC for Atlantic group king mackerel from 6.8 to 8.4 million lb (3.1 to 3.8 million kg) may have no effect because the current quota may not be met, but could provide for an annual revenue gain of $496,000 if all the increased quota is taken. The proposal to change the king mackerel trip limit for the North Carolina/Mid-Atlantic area from 3,500 to 2,000 lb (1,586 to 907 kg) per day, however, has a maximum estimated decrease in annual revenue of $57,000 for the fishermen in that area.

The South Atlantic Council proposal to decrease TAC for Atlantic group Spanish mackerel from 8.0 to 6.6 million lb (3.6 to 3.0 million kg) and to change the allocation of TAC to 55 percent commercial and 45 percent recreational is expected to result in an annual revenue loss of $174,000, if fishing and market conditions and implementation of the proposed 3.63 million-lb (1.65 million-kg) quota would restrain commercial harvest below the existing 4.0 million-lb (1.8 million-kg) quota level. Offsetting this potential loss in sales is a gain in revenues that would result from the proposal to allow a 500–lb (227–kg) take of Atlantic group Spanish mackerel incidentally captured in gillnets constructed of webbing less than the required minimum stretched mesh size of 3.5 inches (8.9 cm).

None of the proposals described here would result in increased compliance costs of reporting or record keeping, and there would be no differential large business versus small business impacts because the entire population is composed of small businesses. Additionally, the proposals would not create new capital costs, and no businesses would be expected to cease operations if the proposals are implemented.

None of the proposals are expected to affect changes in revenue that would result in a negative effect of greater than 5 percent on gross revenues for the identified small businesses. Accordingly, the results of the threshold analyses lead to a determination that the criteria for a significant impact on a substantial number of firms are not met, and an IRFA was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 26, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.37, paragraph (c)(2) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(c) * * *

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

* * * * *

3. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2, except that for an operator or crew member of a charter vessel or headboat, the bag limit is 0.

* * * * *

4. In § 622.41, paragraph (c)(3)(ii)(A) is revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(3) * * *

(ii) * * * (A) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(*1*) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(*2*) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

* * * * *

5. In § 622.42, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.12 million lb (1.42 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

* * * * *

(2) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.63 million lb (1.65 million kg).

* * * * *

6. In § 622.44, paragraphs (a)(1)(i) through (a)(1)(iv) are redesignated as paragraphs (a)(1)(ii) through (a)(1)(v), respectively; a new paragraph (a)(1)(i) and paragraph (a)(2)(iv) are added; and newly redesignated paragraph (a)(1)(ii), paragraph (a)(2) introductory text, paragraph (a)(2)(i), paragraph (a)(2)(ii) heading, and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(i) North of a line extending in a direction of 135°34'55" from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51'07.9" N. lat., 78°32'32.6" W. long., king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day:

(A) From April 1, each fishing year, until 80 percent of the quota has been harvested—in amounts exceeding 2,000 lb (907 kg) per day.

(B) From the date that 80 percent of the quota has been harvested, until a closure of the fishery has been effected under § 622.43(a)—in amounts exceeding 1,000 lb (454 kg) per day.

(ii) In the area between 29°25' N. lat. (which is a line directly east from the

Flagler/Volusia County, FL, boundary) and a line extending in a direction of 135°34'55" from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51'07.9" N. lat., 78°32'32.6" W. long., king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

* * * * *

(2) Gulf Group. Commercial trip limits are established in the eastern and western zones as follows. (See § 622.42(c)(1)(i) for specification of the eastern and western zones and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone—Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 75 fish per day.

(ii) *Eastern zone—Florida west coast subzone–** * *

* * * * *

(iv) *Western zone.* In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.43(a)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.38 million lb (1.53 million kg). * * *

* * * * *

[FR Doc. 99–13960 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 105
Wednesday, June 2, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Cotton Storage Agreement Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of fees.

SUMMARY: The purpose of this notice is to publish a schedule of fees to be paid to Commodity Credit Corporation (CCC) by cotton warehouse operators entering into an agreement to store CCC cotton or cotton pledged as collateral for CCC loans; increasing the amount of storage covered by an existing storage agreement for storage of such cotton; or renewing an existing agreement for the storage of such cotton.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Froehlich, Chief, Storage Contract Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, S.W., STOP 0553, Washington, D.C. 20250–0553, telephone (202) 720–7398, or FAX (202) 690–3123.

Determination

In accordance with the provisions of the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), CCC enters into storage agreements with cotton warehouse operators to provide for the storage of cotton owned by CCC or pledged as security to CCC for marketing assistance loans.

Specifically, 7 CFR 1427.1088 provides that all cotton warehouse operators who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and examination fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination.

A review of the revenue collected for application and examination fees indicates that the fees collected are insufficient to meet costs incurred by CCC for warehouse examinations and contract origination administrative functions. Accordingly, beginning with the start of the 1999–2000 contract year, the fees applicable to the 1999–2000 contract year are increased by 7.5 percent.

The fee will be computed at the rate of $80 for each 1,000 bales of storage capacity or fraction thereof, but the fee will be not less than $160 nor more than $1,600.

Signed at Washington, DC, on May 25, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–13932 Filed 6–1–99; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Salvage Harvest Due to 1998 Storm Damage, Daniel Boone National Forest, McCreary and Pulaski Counties, KY; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published a Notice of Intent to prepare an environmental impact statement in the **Federal Register** of July 31, 1998, concerning request for comments on removing trees damaged by severe snow and two wind storms in February, April, and May 1998, respectively. The Draft Environmental Impact Statement (DEIS) was planned to be available for review in November 1998, but is not yet available. The delay in preparing the DEIS is unfortunate, but necessary, in order to adequately assess and disclose the impacts of the proposal including alternatives to the proposal. This correction, changes when the DEIS is expected to be available for review.

CORRECTION: In the **Federal Register** of July 31, 1998, FR Doc. 98–45, on page 40875, correct section F—Estimated Date for the DEIS and FEIS, first sentence of first paragraph to read: The DEIS is expected to be filed with the Environmental Protection Agency and to be available for public comment by August 1999, and the FEIS is expected to be released by January 2000.

FOR FURTHER INFORMATION CONTACT: Myra Williamson, 606–376–5323.

Dated: May 17, 1999.

Charles Eury,

Acting Forest Supervisor, Daniel Boone National Forest.

[FR Doc. 99–13872 Filed 6–1–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052199C]

Marine Mammals; Photography Permit (File No. 955–1518–00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Julian Hector, The Natural History Unit, BBC, Whiteladies Road, Bristol, BS8 2LU UK, has applied in due form for a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of commercial photography.

DATES: Written comments must be received on or before July 2, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, 709 W 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907–586–7235).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a "pilot" application for Level B Harassment of non-listed and non-depleted marine mammals for photographic purposes. The applicant seeks authorization to harass up to 35,500 northern fur seals (*Callorhinus ursinus*) during the course of filming activities on St. Paul Island, Alaska, from July 7, 1999 through August 7, 1999. Filming will take place under the direct supervision of National Marine Fisheries Service biologists.

Dated: May 25, 1999.

Jeannie K. Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–13959 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Export Visa Arrangement for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji; Correction

May 27, 1999.

In the letter to the Commissioner of Customs published in the **Federal Register** on May 18, 1999 (64 FR 26945), insert Annex A on page 26946, 3rd column, 7th line, right under "Textile Agreements."

Annex A

Part Categories (Descriptions below are for general reference only.)

338–S: Men's and boys' cotton knit shirts, other than tee shirts and tank tops: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005.

338–O: Other men's and boys' cotton knit shirts: all HTS numbers except those in Category 338–S.

339–S: Women's and girls' cotton knit shirts and blouses, other than tee shirts and tank tops: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

339–O: Other women's and girls' cotton knit shirts and blouses: all HTS numbers except those in Category 339–S.

638–S: Men's and boys' man-made fiber knit shirts, other than tee shirts and tank tops: all HTS numbers in Category 638 except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025 .

638–O: Other men's and boys' man-made fiber knit shirts: only HTS numbers 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025.

639–S: Women's and girls' man-made fiber knit shirts and blouses, other than tee shirts and tank tops: all HTS numbers in Category 639 except: 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

Annex A—Continued

639–O: Other women's and girls' man-made fiber knit shirts and blouses: only HTS numbers 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

Merged Categories

338–S/339–S/638–S/639–S

338–O/339–O/638–O/639–O

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–14040 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

May 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also

see 63 FR 53879, published on October 7, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on June 3, 1999, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia:

Category	Adjusted twelve-month limit [1]
434	9,545 dozen.
435	26,349 dozen.
443	182,168 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[Doc.99–13955 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

May 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69056, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 3, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
331	621,345 dozen pairs.
338/339	1,598,361 dozen of which not more than 981,854 dozen shall be in Category 338 and not more than 1,053,654 dozen shall be in Category 339.
347/348	1,298,573 dozen of which not more than 811,607 dozen shall be in Category 347 and not more than 601,141 dozen shall be in Category 348.
604	1,078,706 kilograms.
639	4,009,717 dozen.
642	322,663 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–13954 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

May 26, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward, recrediting unused carryforward and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59948, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 26, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 2, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Fabric Group 219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629, as a group.	172,433,311 square meters of which not more than 43,680,621 square meters shall be in Category 219; not more than 53,387,425 square meters shall be in Category 313–O; not more than 31,061,775 square meters shall be in Category 314–O; not more than 41,739,262 square meters shall be in Category 315–O; not more than 43,680,621 square meters shall be in Category 317–O; not more than 4,853,401 square meters shall be in Category 326–O; and not more than 29,120,416 square meters shall be in Category 617.
Sublevel in Fabric Group 625/626/627/628/629	19,663,562 square meters of which not more than 8,908,799 shall be in Category 625; not more than 7,865,424 square meters shall be in Category 626; not more than 7,865,424 square meters shall be in Category 627; not more than 7,865,424 square meters shall be in Category 628; and not more than 7,865,424 square meters shall be in Category 629.
Limits not in a group 338/339/638/639	6,107,779 dozen of which not more than 5,710,961 dozen shall be in Categories 338–S/339–S/638–S/639–S [7].
347/348	6,522,707 dozen of which not more than 2,268,881 dozen shall be in Categories 347–T/348–T [8].
350	651,136 dozen.
351/651	1,028,962 dozen.
352/652	3,584,853 dozen.
361	2,121,363 numbers.
369–S [9]	2,263,146 kilograms.
410/624	1,119,683 square meters of which not more than 885,669 square meters shall be in Category 410.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[8] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[9] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–13873 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Meeting Notice

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, June 9, 1999, 10:00 am.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Children's Sleepwear Amendment Revocation

The staff will brief the Commission on options related to the proposed revocation of the amendments to the children's sleepwear flammability standards issued in 1996 and 1999.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4430 East West Highway., Bethesda, MD 20207, (301) 504–0800.

Dated: May 28, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–14058 Filed 5–28–99; 2:51 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Supplement to the Final Environmental Impact Statement (SEIS) on Modified Water Deliveries to Everglades National Park, Florida

AGENCY: U.S. Army corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The congressionally authorized Modified Water Deliveries to Everglades National Park (Mod Waters) project consists of structural modifications and additions to the existing Central and Southern Florida project required to improve water deliveries for ecosystem restoration of the Park. The June 1992 Final Environmental Impact Statement on the Mod Waters project-induced an evaluation of a plan element consisting of structural features to mitigate project-induced flooding in a residential area in the East Everglades called the 8.5 Square Mile Area (SMA). In 1998, the local sponsor of the project, the South Florida Water Management District (SFWMD), responded to a Florida Governor's Commission recommendation to evaluate other alternatives and requested that the U.S. Army Corps of Engineers (Corps) modify the authorized project to provide for a total buy-out of the area in lieu of the authorized flood mitigation plan. Additionally, the National Park Service recently stated that the 1992 authorized flood mitigation plan is not consistent with long term restoration of Everglades National Park. The proposed total buy-out of the 8.5 SMA will be addressed as a locally preferred option (LPO) in a Supplement to the Mod Waters Final Environmental Impact Statement (SEIS).

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232; Attn: Mr. Elmar Kutzbach, 904/232–2325.

SUPPLEMENTARY INFORMATION: 1. The action proposed by the SFWMD is for a plan of total purchase of all private property within the 8.5 SMA to be substituted for the 1992 Federally authorized plan of constructing structural features to prevent the additional flooding in the 8.5 SMA that is expected when the Mod Waters project is fully operational (the flood mitigation plan).

2. Alternatives to be discussed include the LPO, the Federally authorized plan, and various water management structural configurations for the 8.5 SMA.

3. A Scoping letter and public Scoping Meeting will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

4. The Draft SEIS will analyze issues related to loss of unique farm lands, water quality degradation endangered species protection, urban development impacts, agricultural flood protection, Everglades National Park ecosystem restoration, implementation time, potential impacts on other project features, and direct and secondary costs for construction, operation and maintenance, land management, and acquisition for each alternative plan.

5. The National Park Service and the U.S. Fish and Wildlife Service have been identified as Cooperating Agencies under the lead of the Corps for preparation of the SEIS.

6. The alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and Farmland Protection Policy Act.

7. A Scoping meeting will be held in Homestead, Florida at the Miami-Dade County Extension Office. The date and time will be announced in the Scoping letter.

8. The Draft SEIS is expected to be available for public review in the 4th quarter CY 1999.

Mary V. Yonts,

Alternate U.S. Army Federal Register Liaison Officer.

[FR Doc. 99–13888 Filed 6–1–99; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Army Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Construction of a Containerized Cargo and Cruise Ship Terminal, Along Port Road, East of Old Highway 146, in the Extra-territorial Jurisdiction of the City of Pasadena and the City of Seabrook, Harris County, TX

AGENCY: U.S. Army Corps of Engineers, Galveston District, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District intends to prepare a DEIS to access the social, economic and environmental effects of the proposed multi-year phased construction of a container terminal and cruise ship facility. The DEIS will access potential impacts on a range of alternatives, including the preferred alternative.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed action and DEIS, please contact Mr. Mark King, Project Manager, by letter at U.S. Army Corps of Engineers, P.O. Box 1229, Galveston, Texas 77550, by telephone at (409) 766–3991, or by electronic mail at *john.m.king@swg02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Galveston District intends to prepare a DEIS on the proposed container cargo and cruise ship terminal which would be located along Port Road, east of Old Highway 146, in the Extra-territorial Jurisdiction of the City of Pasadena and the City of Seabrook, Harris County, Texas. The Port of Houston Authority (PHA) proposes this project.

1. Description of the Proposed Project

The PHA proposes to construct containerized cargo loading areas, roadways, rail lines, an intermodal transit yard, and associated warehouses, administration, and operations buildings. It is the PHA's projection that initial construction would use approximately 1,600 feet of waterfront and 54 acres of land for a container yard. Construction beyond this initial phase would occur in increments (50–100 acre yard expansions and associated waterfront construction). These additional phases of construction would occur based upon cargo demand. It is currently estimated that the ultimate build-out of the container terminal to seven berths and over 608 acres of container yard and a 90 acre intermodal transit facility (rail yard) could take 15 to 20 years. Cruise ship facilities beyond the initial single berth would be construction based upon passenger demand.

2. Alternatives

The following alternatives will be examined to identify the reasonable alternatives to be fully evaluated in the DEIS: No Action; the modification of existing PHA facilities to meet the purpose and need of and for the proposed project; alternative locations within the jurisdictional authority of the PHA where the proposed facilities might be developed; off-site alternatives such as Spillman Island, Shoal Point (Texas City), and Galveston Harbor; modified on-site alternatives. The applicant's preferred alternative is the PHA owned property on the Bayport

Ship Channel (95°00′ longitude and 29°36.7′ latitude).

3. Scoping and Public Involvement Process

A workshop and scoping meeting to gather information on the subjects to be studied in detail in the DEIS will be conducted on July 8, 1999, at the Texas Chiropractic College, Russell Building, 5912 Spencer Highway, Pasadena, Texas.

4. Significant Issues

Issues associated with the proposed facilities to be given significant analysis in the DEIS are likely to include, but may not be limited to, the potential impacts of the proposed dredging, the beneficial uses of dredged material, placement of fill, construction and operation of the proposed facility and surface transportation facilities, and of induced developments on: Wetland resources; upland and aquatic biotic communities; water quality; fish and wildlife values including threatened and endangered species; noise and light levels in areas adjoining the proposed facilities; air quality; land forms and geologic resources; community cohesion; environmental justice; roadway traffic, socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; public infrastructure and services; energy supply and natural resources; hazardous waste and materials; land use; aesthetics; public health and safety; navigation; flood plain values; shoreline erosion and accretion; and the needs and welfare of the people.

5. Cooperating Agencies

Those agencies having permitting, certifying, or other approved authorities will be asked to be cooperating agencies and to assist in the preparation of this DEIS. Cooperating agencies may include the Federal Highway Administration, the Environmental Protection Agency and Texas Natural Resources Conservation Commission.

6. Additional Review and Consultation

Additional review and consultation which will be incorporated into the preparation of this DEIS will include: Compliance with the Texas Coastal Management Program; protection of cultural resources under section 106 of the Historic Preservation Act; protection of navigation under the Rivers and Harbors Act of 1899; protection of water quality under section 401 of the Clean Water Act; and protection of endangered and threatened species under section 7 of the Endangered Species Act.

7. Availability of the DEIS

The Draft Environmental Impact Statement is projected to be available in February 2000. A Public Hearing will be conducted following the release of the DEIS.

Dated: May 24, 1999.

Nicholas J. Buechler,

COL, EN, Commanding.

[FR Doc. 99–13883 Filed 6–1–99; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–160–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1999.

Take notice that on May 18, 1999, Discovery Gas Transmission LLC (Discovery) filed to comply with the terms of its FERC Gas Tariff, Sheet Nos. 34, 44, and 53 relating to lost and unaccounted for gas for the calendar year 1998.

Discovery states that it has reviewed its 1998 actual losses from lost and unaccounted for gas experienced during the calendar year 1998. Discovery proposes to retain the current rate of recovery for lost and unaccounted for gas as currently stated in its tariff of .50% effective July 1, 1999.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties. In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Discovery's offices at 1111 Bagby Street in Houston, Texas and 120 Mallard Street, St. Rose, Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13910 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–127–000]

Foote Creek III, LLC; Amended Application for Commission Determination of Exempt Wholesale Generator Status

May 26, 1999.

Take notice that on May 20, 1999, Foote Creek III, LLC tendered for filing with the Federal Energy Regulatory Commission an amendment to its original request for Commission Determination of Exempt Wholesale Generator Status. In its amendment, Foote Creek III, LLC states, among other things, that it will be both the owner and the operator of the Foote Creek III, LLC facility described in its application.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before June 16, 1999, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us./online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13868 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–251–001]

Northern Natural Gas Company; Compliance Filing

May 26, 1999.

Take notice that Northern Natural Gas Company (Northern) on May 21, 1999, tendered for filing to become part of Northern's F.E.R.C. Gas Tariffs, the following tariff sheets proposed to be effective on June 21, 1999:

Fifth Revised Volume No. 1

Second Revised Sheet No. 7

Original Volume No. 2

Eighth Revised Sheet No. 1A.2
33 Revised Sheet No. 1C.a
First Revised Sheet No. 2494

Northern asserts that the purpose of this filing is to comply with the Commission's Order issued May 6, 1999, in Docket No. CP99–251–000, and the requirements of 18 CFR Section 154.602 of the Commission's Regulations. The above tariff sheets represent cancellation of Rate Schedule T–59 from Northern's Original Volume No. 2 F.E.R.C. Gas Tariff, and its associated deletion from the Table of Contents in Northern's Volume Nos. 1 and 2 Tariffs.

Copies of the filing were served upon the company's customers and interested state Commission's.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13900 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–532–000]

Northern Natural Gas Company; Application

May 26, 1999.

Take notice that on May 21, 1999, Northern Natural Gas Company (Northern) 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–532–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to upgrade and operate Unit #6 at the Farmington Compressor Station in Dakota County, Minnesota, in order to increase the mainline capacity so that Northern can provide incremental/firm transportation service to Reliant Energy Minnegasco (Minnegasco), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Specifically, Northern states that the upgrade would involve the modification of the unit controls of the electric motor driven reciprocating compressor without any ground disturbance. Northern estimates the cost for the proposed construction to be approximately $50,000 that would be financed with internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 16, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13901 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–59–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1999.

Take notice that Northern Natural Gas Company (Northern), on May 20, 1999 tendered for filing to become part of Northern's FERC Gas Tariff the following tariff sheets proposed to become effective on June 1, 1999:

Fifth Revised Volume No. 1

Substitute Tenth Revised Sheet No. 61
Substitute Tenth Revised Sheet No. 62
Substitute Tenth Revised Sheet No. 63
Substitute Tenth Revised Sheet No. 64

The revised tariff sheets are being filed to reflect reductions to certain fuel rates contained in Northern's April 30, 1999 annual PRA Filing.

Copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13911 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP95–737–005 and CP98–771–002]

Texas Eastern Transmission Corporation; Compliance Filing

May 26, 1999.

Take notice that on May 21, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective June 21, 1999:

Sixth Revised Volume No. 1

Seventh Revised Sheet No. 6
Fourth Revised Sheet No. 10

Original Volume No. 2

Thirteenth Revised Sheet No. 1D
Seventh Revised Sheet No. 1I
First Revised Sheet No. 499
First Revised Sheet No. 1247

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued February 21, 1996 in Docket No. CP95–737–000 which approved abandonment of Rate Schedule X–132 and order dated October 29, 1998 in Docket No. CP98–771–000 which approved the abandonment of Rate Schedule X–72.

Texas Eastern states that the tariff sheets listed above remove Rate Schedule X–72 and X–132 from Volume No. 2 of Texas Eastern's tariff and update the Table of Contents of both Volume No. 1 and Volume No. 2 of the tariff to reflect such abandonments.

Copies of the filing were mailed to all affected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13899 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–016 and RP97–312–007]

Transcontinental Gas Pipe Line Corporation; Notice of PBS Revenue Sharing Refund Report

May 26, 1999.

Take notice that on May 20, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on April 29, 1999, Transco submitted PBS revenue sharing refunds (total principal and interest amount of $405,331.34) to all affected shippers in Docket Nos. RP97–71 and RP97–312.

Section 3.4 of Transco's Rate Schedule PBS provides that, during the effectiveness of the Docket No. RP97–71 rate period, which began on May 1, 1997, Transco shall refund annually 75% of the fixed cost component of all revenues collected under Rate Schedule PBS to maximum rate firm transportation, maximum rate interruptible transportation and maximum rate firm storage Buyers (collectively, Eligible Shippers). Transco has calculated that the refund amount for the period July 1, 1997 (the date Rate Schedule PBS became effective) through April 30, 1998 (the end of the first annual period) equals $405,331.34. Pursuant to Section 3.4 of Rate Schedule PBS, Transco refunded that amount to Eligible Shippers based on each Eligible Shipper's actual fixed cost contribution as a percentage of the total fixed cost contribution of all such Eligible Shippers (exclusive of the fixed cost contribution pertaining to service purchased by Seller from third parties).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13908 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP87–15–036, Docket No. RP92–122–008]

Trunkline Gas Company & Trunkline LNG Company; Notice of Compliance Filing

May 26, 1999.

Take notice that Trunkline Gas Company (Trunkline) and Trunkline LNG Company (TLNG) on May 19, 1999, tendered for filing revised tariff sheets, listed on Appendix A attached to the filing, to TLNG's FERC Gas Tariff, Original Volume No. 1. TLNG requests an effective date of April 1, 1999.

Trunkline and TLNG state that this filing is being made in accordance with Section 154.203 of the Federal Energy Regulatory Commission's (Commission) Regulations and Article VIII of the provisions of the Stipulation and Agreement dated July 15, 1992, as approved by Commission Order dated August 28, 1992 in Docket Nos. RP87–15–000, *et al.*

Trunkline and TLNG further state that on March 29, 1999, Panhandle Eastern Pipe Line Company (Panhandle) and its principal consolidated subsidiaries, Trunkline and Pan Gas Storage Company, as well as Panhandle's affiliates, TLNG and Panhandle Storage Company, were acquired by CMS Panhandle Holding Company, which is an indirect wholly-owned subsidiary of CMS Energy Corporation. The acquisition by CMS Energy Corporation of TLNG requires the implementation of Article VIII of the referenced Settlement. Specifically, Article VIII requires TLNG, and Trunkline in turn, to make refunds to customers, who were parties to the proceedings, if the ownership of all or a portion of the LNG terminal is transferred to an unaffiliated entity.

This filing implements the provisions of Article VIII of the Settlement as the triggering event described therein has transpired. The total refund due customers is $17,111,508. The refunds will be paid within 30 days of final Commission approval of this compliance filing.

Trunkline and TLNG request waiver, to the extent necessary, of any Commission Regulation, especially Section 154.207, to make this compliance filing and the enclosed tariff sheets effective April 1, 1999. Trunkline and TLNG request an effective date of April 1, 1999 in order to implement the Settlement on the first day of the month after the acquisition of Panhandle and its subsidiaries and affiliates.

Trunkline and TLNG state that copies of this filing have been served on all participants in the proceedings, jurisdictional customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13907 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1354]

Pacific Gas & Electric Company California; Pacific Gas & Electric Company's Request To Use Alternative Procedures In Filing an Amendment to a Hydroelectric License Application

May 26, 1999.

By letter dated May 11, 1999, Pacific Gas & Electric Company (PG&E) asked for Commission approval to use an alternative procedure in filing an amended application for the 26.7-megawatt Crane Valley Project. PG&E has demonstrated that it made a reasonable effort to contact the resource agencies, Indian tribes, non-governmental organizations (NGOs), and others who may be affected by their proposal, and has submitted a communication protocol governing how participants in the proposed process communicate with each other. PG&E believes there is a consensus on using the alternative process. PG&E's request to use an alternative process says the United States Forest Service, the California Department of Fish and Game, Madera County, and the Madera County Irrigation District have indicated their agreement.

The purpose of this notice is to invite comments on PG&E's request to use the alternative procedure, as required by section 4.34(i)(5) of the Commission's regulations. Additional notices seeking comments on specific project proposals, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure combines the prefiling consultation process with the environmental review process and allows the applicant to file an Applicant-Prepared Environmental Assessment (APEA) in lieu of Exhibit E of the amended license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedure can be tailored to the project under consideration.

Alternative Process and the Crane Valley Project Schedule

In 1996 PG&E began a process of amending its application for a new license for the Crane Valley Project. Because the changes PG&E proposes are material changes, the Commission required PG&E to meet the consultation requirements of section 16.8 of the Commission's regulations. Since then, PG&E has been working collaboratively with the various interested entities to identify issues and environmental enhancement measures needed at the project. PG&E held public meetings on May 17, 1999 to receive public input and identify what, if any, additional studies are needed. The Commission may schedule additional public scoping meetings and issue scoping documents to fulfill its National Environmental Policy Act (NEPA) responsibilities. Notice of any such scoping meetings would be published at least 30 days prior to the meetings.

Based on completing any required studies during the Summer of 1999, a draft amended license application with preliminary APEA would be distributed by PG&E for comment in April, 2000. The final amended license application and APEA would be filed with the Commission by June 30, 2000.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on PG&E's proposal to use the alternative procedures to file an amended application for the Crane Valley Project.

Filing Requirements

Any comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading "Comments on the Alternative Procedure," and include the project name and number (Crane Valley Hydroelectric Project, No. 1354–000). For further information, please contact Charles Hall at (202) 219–2853 or e-mail at charles.hall@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13902 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

May 26, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI99–5–000.

c. *Date Filed:* May 4, 1999.

d. *Applicant:* Leonard Murphy.

e. *Name of Project:* Lovejoy Mill Project.

f. *Location:* On Schoodic Stream, near Medford, Maine, in Piscataquis County.

Maine. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Application Contact:* Mr. Leonard Murphy, Energy Lane, HC 65, Box 5440, Lincoln, ME 04457–9423, (207) 746–9212.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton at (202) 219–2678, or e-mail address: henry.ectone@ferc.fed.us.

j. *Deadline for filing comments and or motions:* July 5, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

Please include the docket number (DI99–5–000) on any comments or motions filed.

k. *Description of Project:* The proposed run-of-river project will consist of a one-half-acre reservoir; an 8-foot-high, 110-foot-wide timber crib dam; a powerhouse containing a 12-kw generator; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13903 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Declaration of Intention and Soliciting Comments Motions to Intervene, and Protests

May 26, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection

a. *Application Type:* Declaration of Intention.

b *Docket No:* DI99–6–000.

c. *Date Filed:* April 20, 1999.

d. *Applicant:* Deseret Generation & Transmission Cooperative.

e. *Name of Project:* Bonanza Power Project.

f. *Location:* At the Cooperative's Raw Water Terminal Building, 12500 East 25500 South, Vernal, UT (T. 8 S., R. 23 E., sec. 25, Salt Lake Meridian). The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Michael D. Goddard, 12500 East 2550 South, Vernal UT 84078–8525, (435) 781–5704 or E-mail address: mgoddard@desgt.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E-mail address: diane.mrray@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* July 5, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the docket number (DI99–6–000) on any comments or motions filed.

k. *Description of Project:* The site consists of the Raw Water Terminal Building. The building currently houses a 440 MW fossil-fired plant. Three Ranney-style wells, located approximately 12 miles southeast of Vernal, Utah, draw water from the Green River. The water is then conveyed through a 22-mile-long concrete-lined pipeline to the Raw Water Terminal Building.

The hydro generator will be installed in the Raw Water Terminal Building between the existing inlet and outlet headers taking advantage of the pressure and flow through the Raw Water system.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13904 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

May 26, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Transfer of License.

b. *Project No.:* Transfer #1: 2538–029 Transfer #2: 2538–028.

c. *Date Filed:* Both applications filed May 11, 1999.

d. *Applicants:* Transfer #: Beebee Island Corporation (Beebee Island) and Niagara Mohawk Power Corporation (NIMO); Transfer #2: NIMO and Erie Boulevard Hydropower, L.P. (Erie).

e. *Name of Project:* Beebee Island Water Power (Beebee).

f. *Location:* On the Black River, within the City of Watertown, in Jefferson County, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* For Beebee Island: Robert E. Pohl @ D–1, Treasurer, Beebee Island Corporation, c/o Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6094, and Michael W. Murphy @ A–3, Secretary, Beebee Island Corporation, c/o Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6941; For NIMO: Stephen C. Palmer, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007–5116, (202) 424–7576, and M. Margaret Fabic, Esq., Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6187. For Erie: W. Thaddeus Miller, Erie Boulevard Hydropower, L.P., c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, MD 21202, (410) 468–3692, and Mitchell F. Hertz, Kirkland & Ellis, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005 (202) 879–5270.

i. *FERC Contact:* Regina Saizan, (202) 219–2673, or e-mail address: regina.saizan@ferc.fed.us.

j. Deadline for filing comments and or motions for the respective applications (This single notice for the two applications is for informational purposes.): JUNE 25, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

k. NIMO and Beebee Island (a wholly-owned subsidiary of NIMO) are the co-licensees for the Beebee Island Project. The subject transfers are being sought in connection with NIMO's asset sales agreement with Erie for the sale of NIMO's non-nuclear generating assets pursuant to the electric industry restructuring policies of New York State. *See* NIMO and Erie's "Amended Joint Application for Approval of Transfer of Licenses and Exemptions, Partial Transfer of Licenses, and Substitution of Applicants" for Project Nos. 0013, *et al.*, filed April 14, 1999, which reflects the divestiture sale and which is the subject of separate public notice. Transfer #1 would eliminate Beebee Island as a co-licensee for the Beebee Island Project, which is a prerequisite to Transfer #2 conveying the project properties and license from NIMO to Erie, which in turn is a necessary element in NIMO's divestiture sale to Erie.

l. Location of the Applications: A copy of each application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc. fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies of the applications are also available for inspection and reproduction at the applicable addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular

application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13905 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

May 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11703–000.

c. *Date Filed:* March 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Alvin R. Bush Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Alvin R. Bush Dam on Kettle Creek, near the city of Westport in Clinton County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Project:* The project would utilize the existing U.S. Army Corps of Engineers Alvin R. Bush Dam and consist of: (1) a new powerhouse on the downstream side of the dam with a total installed capacity of 1,300 kW; (2) a new 14.7 kV transmission line; and (3) other appurtenances.

Applicant estimates that the average annual generation would be 8,000 MWh and the cost of the studies under the permit would be $650,000.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring a file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development applicant to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE of INTENT TO FILE COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent,

competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13906 Filed 6–1–99; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests, and Comments

May 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11657–000.

c. *Date filed:* January 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Loyalhanna Dam.

f. *Location:* At the existing U.S. Corps of Engineers' Loyalhanna Dam located on Loyalhanna Creek, near the Town of Saltsburg, Westmoreland County, Pennsylvania. The proposal would utilized federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

h. *Application Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William H. Diehl, William.Diehl@FERC.fed.us, (202) 219–2813.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Loyalhanna Dam and would consist of: (1) Two new 50-foot-long, 36-inch-diameter steel penstocks; (2) a new 50-foot-long, 40-foot-wide, 25-foot-high powerhouse containing two 300–kW generating units for a total installed capacity of 600–kW; (3) new exhaust aprons; (4) a new 500-foot-long, 14.7–KW; transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 4 GWh and that the cost of the studies to be performed under the terms of the permit would be $500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32 (a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed scope of Studies under Permit—A preliminary permit, it issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each

representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13909 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6353–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants (CTEPP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants, EPA ICR Number 1892.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1892.01.

SUPPLEMENTARY INFORMATION:

Title: Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants, EPA ICR Number 1892.01. This is a new collection.

Abstract: The National Exposure Research Laboratory of the Office of Research and Development (ORD) at EPA plans to conduct a research study investigating preschool children's exposure to persistent pesticides and other persistent organic pollutants. This study is necessary to respond to the Food Quality Protection Act (FQPA) of 1996 which requires that EPA evaluate non-occupational sources (e.g., food, water, air, dust, soil, etc.) of exposures to pesticides when constructing risk assessments, consider the cumulative health impact of pesticides, and provide particular attention to young children such that "there is reasonable certainty that no harm will result to infants and children from aggregate exposure to pesticide chemical residue."

Study respondents will be children between the ages of 2–5 and their adult caregivers in approximately 260 households. Participation will be entirely voluntary. The participants' exposures will be estimated by collection and analysis of samples of food, beverages, air, house dust, soil, hand wipes, and urine in conjunction with information from questionnaires including activity diaries. Young children, especially those of the preschool ages, are believed to have greater exposures than do older children or adults to persistent organic pesticides, including some compounds that may have endocrine-disrupting effects or developmental toxicity. These greater exposures may result from what children eat and drink, where they spend their time, and what they do there. The impact of the exposures may be greater on young children because of their smaller body masses, immature body systems, and rapid physical development.

The data will be used by scientists within ORD and external to the Agency to refine and validate exposure models which, in turn, will be used to reduce the uncertainty in the health risk estimates of young children to these toxic pollutants. The information will also be used by the EPA Office of Children's Health Protection and the EPA Office of Prevention, Pesticides, and Toxic Substances in their consideration of children's risk assessment and risk management options. The information will appear in the form of final EPA reports, journal articles, and will also be made publicly available in an electronic data base.

The total cost of the study is estimated to be $4.5M over a three year period. Approximately 308 respondents will be included. An incentive payment will be offered to defray the burden to the respondent.

Responses to the collection of information are voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 2/1/1999 (64 FR 4868); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.2 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Parents/households, day care or pre-school operators.

Estimated Number of Respondents: 308.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 670 hours.

Estimated Total Annualized Cost Burden (non-labor costs only): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1892.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 27, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–13946 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34187; FRL–6083–5]

Bensulide and Profenofos, Revised Organophosphate Pesticide Risk Assessments; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessments for two organophosphate pesticides, bensulide and profenofos, to interested stakeholders. This public meeting, called a "Technical Briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessments for bensulide and profenofos. In addition, representatives of the U.S. Department of Agriculture (USDA) will provide ideas on possible risk management for bensulide and profenofos.

DATES: The technical briefings will be held on Wednesday, June 16, 1999. The bensulide technical briefing is scheduled from 9 a.m. to noon, and the profenofos technical briefing is scheduled from 1 p.m. to 4 p.m.

ADDRESSES: The technical briefings will be held at the Holiday Inn-Old Town, 625 First St., Alexander, VA 703–548–6300.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphates, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the revised risk assessments for bensulide and profenofos organophosphate pesticides, go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/op/. In addition, brief summaries of the bensulide and profenofos revised risk assessments are now available at: http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2. of this document.

2. *In person.* The Agency has established an official record for these actions under docket control numbers: Bensulide, OPP–34132A and profenofos, OPP–34138A. The official record consists of the documents specifically referenced in this action, any public comments received during the applicable comment period, and other information related to this action, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during the applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

II. What Action Is EPA Taken?

This document announces the Agency's intention to hold technical briefings for the organophosphate pesticides, bensulide and profenofos. The Agency is presenting the revised risk assessments for bensulide and profenofos to interested stakeholders. The technical briefings are designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessments, including: The major-points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessments affected the revised risk assessments; and the pesticide use information/data that was used in developing the revised risk assessments. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management for bensulide and profenofos.

Technical briefings are part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefings, in addition to making copies available at the meeting site, the Agency will also release for public viewing the bensulide and profenofos revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. of this document. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day

public participation period during which the public may submit risk management and mitigation ideas, and recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 25, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–14043 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00599; FRL–6079–4]

Pesticidee; Draft Guidance on Mandatory/Advisory Labeling Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency seeks public comment on a draft Pesticide Registration (PR) Notice entitled "Guidance for Mandatory and Advisory Labeling Statements." This draft notice provides guidance to the registrant for improving the clarity of labeling statements in order to avoid confusing directions and precautions and to prevent the misuse of pesticides.

DATES: Written comments, identified by docket control number OPP–00599, should be submitted by August 2, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section of this document. To ensure proper receipt by EPA, your comments must identify docket control number OPP–00599 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460, telephone number: (703) 305–5448; fax: (703) 305–6920; e-mail address: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" at the beginnng of this document.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and the draft PR Notice from the EPA Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the **Federal Register** — Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

2. *Fax on Demand.* You may request to receive a faxed copy of this document, as well as supporting information, by using a faxphone to call (202) 401–0527 and selecting item 6120. You may also follow the automated menu.

3. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the appropriate technical person identified in the "FOR FURTHER INFORMATION CONTACT" at the beginning of this document. In addition, the official record for this document and the draft paper listed in the "SUMMARY" at the beginning of this document, including the public versions, has been established under docket control number OPP–00599 (including comments and data submitted electronically as described below). This record not only includes the documents that are physically located in the docket, but also includes all the documents that are referenced in those documents. A public version of this record, including printed, paper versions of any electronic comments, which do not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–00599 in the subject line on the first page of your response.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in

40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please call the Public Information and Records Integrity Branch telephone number is (703) 305–5805.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the draft PR Notice. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing docket control number OPP–00599, along with the name, date and **Federal Register** citation.

II. Background

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 2(ee) defines "to use any registered pesticide in a manner inconsistent with its labeling" (misuse) as use of "* * * any registered pesticide in a manner not permitted by the labeling * * *," and goes on to list a number of exceptions to the term. Use includes storage, transportation, handling, pre-application activities, mixing and loading, worker notification and worker protection, application, post-application activities and disposal.

Statements on the pesticide labeling may be interpreted by users different from what the registrant or EPA intended when the labeling was accepted. If EPA believes that misuse has occurred, a court may have to decide whether a product's labeling statements are clear enough for the user to understand how to lawfully use the product. Pesticide labeling needs to clearly identify what is required of the user to handle and apply a pesticide safely. The Agency is engaged in numerous efforts to improve labels in general (e.g., the Consumer Labeling Initiative), as well as specific areas of the labeling of pesticide products (e.g., bee precautionary labeling and pesticide drift labeling).

III. Summary of Draft PR Notice

Following is an excerpt from draft PR Notice which summarizes its key points:

Mandatory statements, which commonly use imperative verbs such as "must" or "shall," either require action or prohibit the user from taking certain action. *Advisory statements* simply provide information, either in support of the mandatory statements or about the product in general. *To ensure that the intent of each labeling statement is clear, mandatory statements need to be clearly distinguishable from advisory statements.*

Currently, labeling provisions are enforced by taking into consideration all the information presented on the label and reading advisory statements in the context of the entire label. Problems can arise when advisory statements are either vague or ambiguous in meaning, or are inconsistent with other labeling. In the past, advisory statements have commonly used suggestive verbs such as "should," "may," or "recommend" to help the user achieve the directed behavior, but sometimes these statements can be unclear as to whether they are mandatory or advisory. In a recent misuse enforcement action, for example, the person charged with the violation argued that advisory statements misled him into taking action which was inconsistent with the mandatory statements.

The Agency seeks to improve mandatory and advisory labeling statements by providing guidance (see Appendix to the PR Notice) on how they can best be written. This guidance consists of two steps. First, mandatory statements are generally written in imperative or directive terms (such as "shall," "must," "do this," "do not") so that a typical user will understand that these statements direct the user to take or avoid certain actions. Second, advisory statements are best written in descriptive or nondirective terms to support the mandatory statements or provide information. Suggestive terms such as "should," "may," or "recommend" may be confusing or ambiguous, or potentially conflict with mandatory labeling statements; thus, they are to be avoided whenever possible. EPA realizes that the use of descriptive terms for advisory statements is not appropriate for every situation and that there are times where it may be necessary to use "should," "may," "recommend," or similar words. However, in most cases it is best to state advisory labeling statements in straightforward, descriptive language.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the draft PR Notice, EPA is particularly interested in comments on the following questions:

1. Are the descriptions of mandatory and advisory labeling statements clear and complete? If not, how should they be changed?
2. Is the basic policy that mandatory and advisory statements should be distinguishable from each other clear and adequate? If not, how can this policy be better expressed?

V. Policies Not Rules

The draft PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, this policy is not binding on either EPA or any outside parties. Although this guidance document provides a starting point for EPA decisions, EPA will depart from this policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific pesticide or that the specific circumstances demonstrate that this policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting this guidance document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of this guidance.

The "revised" guidance will not be an unalterable document. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on this guidance document, EPA would welcome comments that specifically address how the guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VI. Contents of Docket

Documents that are referenced in this notice will be inserted in the docket under the docket control number OPP–00599.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: May 21, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–13795 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 24, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 2, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0641.

Title: Notification to File Progress Report.

Form Number: FCC 218–I.

Type of Review: Revision to a currently approved collection.

Respondents: Business or other for-profit entities; and individuals or households.

Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Frequency of Response: 3 years and 5 years.

Total Annual Burden: 500 hours.

Total Annual Cost: None.

Needs and Uses: The data collected are used by FCC staff to determine whether the 218–219 MHz licensee (previously IVDS) is entitled to their authorization to operate. From this data, the Commission is able to confirm that service has been made available to at least 30 percent of the population or land area within three years of license grant and 50 percent of the population or land area within five years of license grant. The data collected ensures licensees are making proper use of the frequency spectrum.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13914 Filed 6–1–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Federal Advisory Committee Websites

AGENCY: Federal Communications Commission.

ACTION: Notice

SUMMARY: This announcement advises interested persons that publicly accessible websites have been established for members of the Technological Advisory Council ("Council") of the Federal Communications Commission. Members of the Council will provide their views on a continuing basis at the Internet websites listed below.

Focus Groups

Spectrum Management—*http://www.jacksons.net/tac*

Network Access—*http://www.fcc.ini.cmu.edu/FCC/index.html*

Accessibility for Disabled Persons—*http://trace.wisc.edu/docs/fccadv/disability.htm*

FOR ADDITIONAL INFORMATION CONTACT: Kent Nilsson, 445 12th St. S.W., Washington, D.C. 20554; telephone (202) 418–2478.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13961 Filed 6–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Eighth Meeting of the Advisory Committee for the 2000 World Radiocommunication Conference (WRC–2000 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–2000 Advisory Committee will be held on June 24, 1999, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2000 World Radiocommunication Conference. The Advisory Committee will consider final consensus views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: June 24, 1999; 10:00 am–12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–C305, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–2000 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2000 World Radiocommunication Conference (WRC–2000). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of

the eighth meeting of the WRC–2000 Advisory Committee. The WRC–2000 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the eighth meeting is as follows:

Agenda

Eighth Meeting of the WRC–2000 Advisory Committee, Federal Communications Commission, 445 12th Street, S.W., Room TW–C305, Washington, D.C. 20554

June 24, 1999; 10:00 am—12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Seventh Meeting
4. Final IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
5. Future Meetings
6. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13913 Filed 6–1–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 24, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reductfon Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0817.

Expiration Date: 11/30/99.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 500 respondents; 72.5 hours per response (avg.); 36,250 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; third party disclosures.

Description: In the Report and Order issued in CC Docket No. 95–20, released March 10, 1998, the Commission eliminates outdated, unnecessary regulations, while continuing to protect against potential anticompetitive behavior by the Bell Operating Companies (BOCs) in the provision of information services. The Commission has established the following collections of information: (a) The Commission no longer requires BOCs to file their Comparably Efficient Interconnection (CEI) plans with the Commission and to obtain pre-approval of CEI plans and amendments before initiating or altering an intraLATA information service. Instead, we require BOCs to post their CEI plans and plan amendments on their publicly accessible Internet sites linked to and searchable from the BOC's main Internet page, and to notify the Common Carrier Bureau at the time of the posting. The substance of the notification may be limited to the Internet address and path to the relevant CEI plan or amended plan; the form may consist of a letter to the Secretary with a copy to the Bureau. The requirement extends to CEI plans for new or modified telemessaging or alarm monitoring services, and for new or amended payphone services. In addition, if the BOC receives a good faith request for a plan from someone who does not have internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. (No. of respondents: 5; hours per respondent: 50 hours; total annual burden: 250 hours). (b) The Commission removes the Computer II network disclosure rules for BOCs providing information through a Computer II separate subsidiary, the Computer II all-carrier rule, and the Computer III network disclosure rules. The Commission extends the disclosure requirements in section 51.325(a) of its rules to require incumbent LECs to provide public notice of any network changes that will affect the manner in which Customer Premises Equipment (CPE) is attached to the network. (No. of respondents: 500; hours per response: 72 hours; total annual burden: 36,000 hours. See also OMB control number 3060–0741. Note that burden estimate for 47 CFR Section 51.35(a) is approved under OMB control number 3060–0741). The collections of information relating to CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services. The disclosure of CPE is necessary to encourage competition in the telecommunications services market by lifting operations barriers to entry. Obligation to comply: Mandatory.

OMB Control No.: 3060–0687.

Expiration Date: 05/31/2002.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities—CC Docket No. 87–124.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 806,100 respondents; 1.2 hours per response (avg.); 991,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $638,000.

Frequency of Response: On occasion; third party disclosures.

Description: Title II of the Communications Act of 1934, as amended, 47 U.S.C. section 201 *et al.*, provides the statutory authority for the Commission to promulgate the rules and regulations contained in part 68 of FCC Rules, 47 CFR Part 68. Requirements in part 68 are necessary to prevent degradation of the telephone network. The following collections are necessary to inform consumers who purchase and/or use telephone equipment to determine whether the telephone is hearing aid compatible. a. section 68.300(c) Equipment Labeling Requirements. Pursuant to Section 68.300(c), all registered telephone manufactured in the U.S. or imported for use in the U.S. that are hearing aid compatible must be stamped with the letters HAC. The provision applies to all telephones manufactured or imported as of March 1, 1997 for use in the United States. The provision excludes telephones used with public mobile services or private radio services, and secure telephones. (No. of respondents: 1100; hours per response: 11.36; total annual burden: 12,500). b. Section 68.112(b)(3)(E) to designate emergency telephones. Section 68.112(b)(3)(E) requires that employers with fifteen or more employees provide emergency telephones for use by employees with hearing disabilities, and that the employers "designate" such telephones for emergency use. The "designation" might be a sign or a written notice to employees, or some other means of designation. The type of designation is left up to the employer. (No. of respondents: 805,000; hours per response 1.2; total annual burden:

966,000). c. Section 68.224 Equipment packaging. Section 68.224(a) requires a notice to be contained on the surface of the packaging of a non-hearing aid compatible telephone that the telephone contained therein is not hearing aid compatible, as defined in Sections 68.4(a)(3) and 68.316, or if offered for sale without a surrounding package, shall be fixed with a written statement that the telephone is not hearing aid-compatible, as defined by sections 68.4(a)(3) and 68.316. Section 68.224(b) also requires that the telephone equipment be accompanied by instructions in accordance with § 68.218(b)(5) of the rules. (No. of respondents: 1100; hours per respondent: 11.36; total annual burden: 12,500 hours). The collections are third party disclosure requirements. They are useful primarily to consumers who purchase and or use telephone equipment to determine whether the telephone is hearing aid compatible. Obligation to respond: Mandatory.

OMB Control No.: 3060–0859.
Expiration Date: 8/31/99.
Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 80 respondents; 78.5 hours per response (avg.); 6280 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: Section 253 of the Communications Act of 1934, as amended requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission issued a Public Notice that establishes guidelines relating to its consideration of preemption petitions. The Commission expects petitioners and commenters to provide it with relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision. Factual assertions should be supported by credible evidence, including affidavits, and, where appropriate, studies or other descriptions of the economic effects flowing from the legal requirement that is the subject of the petition. The Commission identifies specific issues that petitioners are expected to include when addressing whether a legal requirement materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment in a particular market. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements. Obligation to comply: Voluntary. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–13962 Filed 6–1–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:00 a.m. on Thursday, June 3, 1999, to consider the following matters:

Summary Agenda: No substantive discussions of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.
Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.
Memorandum and resolution re: Revisions to Interagency Branch Closing Policy Statement.

Discussion Agenda:

Memorandum re: Interim Rule—Asset and Liability Backup Program.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 27, 1999.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 99–14046 Filed 5–28–99; 2:56 pm]
BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 25, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Merchants and Manufacturers Bancorporation, Inc., New Berlin, Wisconsin; to merge with Pyramid Bancorp, Inc., Grafton, Wisconsin, and thereby indirectly acquire Grafton State Bank, Grafton, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Jamesmark Bancshares, Inc., Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Old Missouri National Bank, Springfield, Missouri (in organization).

2. Town and Country Financial, Inc., Dundee, Kentucky; to acquire 81 percent of the voting shares of Main Street Bancshares, Inc., Vine Grove, Kentucky (in organization). Main Street Bancshares, Inc., Vine Grove, Kentucky (in organization), also has applied to become a bank holding company by acquiring 60.66 percent of the voting shares of Farmers Bank of Vine Grove, Vine Grove, Kentucky.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Pembina County Bankshares, Ltd., Cavalier, North Dakota; to merge with Stephen Bancshares, Inc., Stephen, Minnesota, and thereby indirectly acquire Farmers State Bank, Stephen, Minnesota.

Board of Governors of the Federal Reserve System, May 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13856 Filed 6–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 15, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. BankFirst Corporation, Knoxville, Tennessee; to retain BankFirst Trust Company, Knoxville, Tennessee, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Sumitomo Bank, Limited, Osaka, Japan; to retain an existing indirect interest in Daiwa SB Investments (USA) Ltd., New York, New York, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, May 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13855 Filed 6–1–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, June 14, 1999, from 8:30 a.m. to 5:00 p.m., and Tuesday, June 15, 1999, from 8:30 a.m. to 11:00 a.m., in room 7C13 of the General Accounting Office building 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, 202–512–9321.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 99–13859 Filed 6–1–99; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99095]

Cooperative Agreements for Capacity-Building Assistance (CBA) to Community-Based Organizations Serving African American Populations Heavily Affected by the Human-Immunodeficiency Virus (HIV); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 1999 funds for cooperative agreements with non-governmental minority organizations to develop and implement regionally structured and focused capacity-building assistance for CDC-funded community-based organizations (CBOs) providing HIV prevention services to African-Americans and for African-American community stakeholders. For the purpose of this program announcement, community stakeholders are individuals who have an interest in preventing HIV in a community and are potential or actual agents of change. The purpose of this program announcement is to provide capacity-building assistance that will sustain, improve, and expand HIV prevention services for African-American individuals whose behavior places them at risk for HIV and other sexually transmitted diseases (STDs).

This program addresses the "Healthy People 2000" priority areas of Educational and Community-Based Programs, Human Immunodeficiency Virus (HIV) Infection, and Sexually Transmitted Diseases (STDs).

The purpose of this program is to serve four regional groups as follows:

Northeast Region: CT, MA, ME, NH, NJ, NY, PA, RI, VT, PR, U.S. Virgin Islands

Midwest Region: IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI

South Region: AL, AR, D.C., DE, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV

West Region: AK, AZ, CA, CO, HI, ID, NV, NM, OR, MT, UT, WA, WY

The goals for this program are as follows:

1. Improve the capacity of CBOs serving African-Americans to develop and sustain organizational infrastructures to support their program services and interventions.

2. Improve the capacity of CBOs serving African-Americans to design, develop, implement, and evaluate effective HIV prevention interventions.

3. Improve the capacity of CBOs serving African-Americans to mobilize African-American communities to increase their awareness, leadership, participation and support for HIV prevention.

4. Enhance the capacity of CBOs serving African-Americans to effectively participate in, and improve the responsiveness of the HIV prevention community planning process to the HIV prevention needs of African-Americans.

5. Enhance the capacity of African-American community stakeholders to provide leadership and support for HIV prevention.

Capacity-Building Assistance will be provided in two categories (A and B). Category A includes capacity-building assistance in (1) Organizational Infrastructure Development and Assessment, and (2) Intervention Design, Development, Implementation, and Evaluation. Category B includes capacity-building assistance in (1) Community Capacity-Building for HIV Prevention, and (2) HIV Prevention Community Planning Effectiveness and Participation. For additional information, refer to the Addendum to this program announcement.

B. Eligible Applicants

Eligible applicants for Category A are: (1) A national minority organization serving all four regions either independently or as the lead agency within a coalition; or (2) a lead regional minority organization within a coalition of regional minority organizations representing and serving all four regions.

Eligible applicants for Category B are (1) A national minority organization serving up to four regions either independently or as the lead agency within a coalition; or (2) a regional minority organization serving one region either independently or as the lead agency within a coalition; or (3) a local minority organization as the lead agency within a coalition serving one region.

Note: Applicants that meet the eligibility requirements for Categories A and B may apply for both under separate applications.

The lead agency must be the legal applicant and all applicants must meet the following criteria:

1. Have a copy of a currently valid IRS Tax Determination letter stating that the organization is a 501(c)3.

2. If applying for Category A, have a documented and established 3-year record of service to community-based organizations serving African-Americans. If applying for Category B, applicants must meet the criteria for Category A and must also have a documented and established 3-year record of service to African-American communities or an African-American sub-population heavily affected by HIV. Acceptable documentation for both Category A and B includes letters of support, agency annual reports, client satisfaction survey summaries, and memoranda of agreement.

3. Have a governing body composed of greater than 50 percent African-American members.

4. Have 50 percent of key positions in the applicant organization, including management, supervisory, administrative, and service positions filled by African-American persons (for example, executive director, program director, fiscal director, trainer, technical assistance provider, curricula development specialist, or group facilitator).

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

In Category A, approximately $1.55 million is expected to be available in FY 1999 to fund one program. In Category B, approximately $1 million is expected to be available in FY 1999 to fund up to four programs with an average award of $225,000, and a range from $100,000 to $1 million. It is expected that the awards will begin about September 1999 and will be made for a 12-month budget period within a project period of up to five years.

Funding estimates may change based on the availability of funds, scope and quality of the applications received, appropriateness and reasonableness of the budget justifications, and proposed use of project funds.

Continuation awards for a new 12 month budget period within an approved project period may be made on the basis of the availability of funds and satisfactory progress towards accomplishing stated objectives as evidenced by required reports. Satisfactory progress will also be determined through site visits by CDC representatives and the quality of future program plans. Proof of continued eligibility will be required with the noncompeting continuation application.

Use of Funds

These federal funds may not supplant or duplicate existing funding.

The applicant must perform a substantial portion of the program activities and can not serve as merely a fiduciary agent. Applications requesting funds to support only managerial and administrative functions will not be accepted.

Funds available under this announcement must support assistance that increases the capacity of CBOs to expand and sustain effective HIV prevention for African-American individuals whose behavior places them at high risk for HIV and other STDs.

No funds will be provided for direct patient care, including substance abuse treatment, and medical treatment or medications.

Note: Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's National Prevention Information Network (NPIN) maintains a collection of HIV, STD and TB resources for use by organizations and the public. Successful applicants will be contacted by NPIN to obtain information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials and resources developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1–800–458–5231; visit their web site: www.cdcnpin.org or send requests by fax to 1–888–282-7681. (TTY users: 1–800–243–7012).

Funding Priorities

In making awards, CDC's priorities for funding will be given to:

(1) Ensuring capacity-building assistance in both Categories A and B for all four regions identified in the introduction of this announcement; and

(2) Ensuring that funding for capacity-building assistance is distributed in proportion to the disease burden for

African American populations in each region.

Interested persons are invited to comment on the proposed funding priority. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities for Category A) or 2. (Recipient Activities for Category B). CDC will be responsible for activities specified under 3. (CDC Activities).

1. Recipient Activities for Category A

a. Create a regionally-based resource network that includes the applicant's current and proposed staff, a consultant retainer system or pool, and may include a coalition, and collaborative relationships.

b. Ensure the effective and efficient provision of capacity-building assistance in the following areas: Organizational Infrastructure Development and Assessment, and Intervention Design, Development, Implementation, and Evaluation. These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer. See Addendum for additional information.

c. Ensure that capacity-building assistance is allocated according to priority needs of CBOs serving highly affected sub-populations, such as men who have sex with men (MSM); gay, lesbian, bisexual, and transgender youth (GLBT Youth); high risk heterosexuals (HRH) including youth, men, and women; injection drug users and other substance abusers (IDU/SA); and incarcerated, soon-to-be-released and released persons.

d. Develop and implement a plan for targeting, engaging, and maintaining long term capacity-building relationships with CDC-funded community based organizations serving African-American populations. The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity building packages to be delivered over the course of the project period.

e. Develop and implement a system that responds to capacity-building assistance requests. This system must include mechanisms for conducting needs assessments, prioritizing capacity-building assistance requests, linking requests to other capacity-building resources (including those funded under Category B), assigning and evaluating consultants and agency personnel, delivering services, reporting on service delivery, and conducting quality assurance.

f. Develop a standardized system for tracking, assessing and documenting all capacity-building assistance requests and delivery with CDC assistance as needed.

g. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

h. Develop and implement an effective strategy for marketing capacity-building assistance.

i. Participate in a CDC-coordinated capacity-building network.

j. Coordinate program activities with appropriate national, regional, state, and local HIV prevention programs and community planning groups to prevent duplication of efforts and optimize use of resources.

k. Monitor and evaluate the accomplishment of program objectives, and the process of capacity-building assistance.

l. Facilitate the dissemination of information about successful capacity-building assistance strategies and "lessons learned" through peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

m. Participate in CDC coordinated train-the-trainer opportunities.

n. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

o. Develop a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

2. Recipient Activities for Category B

a. Conduct regional community needs and resource assessments around issues related to HIV prevention, leadership development, and community mobilization.

b. Develop a regional plan of action to mobilize community and agency resources to meet priority needs related to Community Capacity-Building for HIV prevention.

c. Develop a regional plan of action to provide capacity-building assistance in HIV Prevention Community Planning Effectiveness and Participation.

d. Provide capacity-building assistance to CBOs serving African-Americans and to African-American community stakeholders in the following areas: Community Capacity-Building for HIV Prevention, and HIV Prevention Community Planning Effectiveness and Participation. These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services and Technology Transfer. See Addendum for additional information.

e. Develop and implement a plan for targeting, engaging, and maintaining long term capacity-building relationships with CBOs serving African-American populations and African-American community stakeholders. The plan should include strategies for conducting ongoing CBO and HIV prevention stakeholder needs assessments related to areas listed in section d above. The plan should also include the strategy for developing tailored capacity building packages to be delivered over the course of the project period.

f. Develop a strategy that includes forming a regional community advisory board which includes CDC-funded CBOs, members of the target population(s), and community representatives and other HIV prevention stakeholders. This community advisory board should be involved with providing input into the overall direction of the proposed program and in assessing the proposed program's communication, linkages, performance, and services to the target population.

g. Ensure that capacity-building assistance is allocated according to priority capacity-building assistance needs of CBOs and highly affected African-American communities and sub-populations, such as men who have sex with men (MSM); gay, lesbian, bisexual and transgender youth (GLBT Youth); high risk heterosexuals (HRH) including youth, men, and women; injection drug users and other substance abusers (IDU/SA); and incarcerated, soon-to-be-released and released persons.

h. Develop and implement a system that responds to requests for assistance in Community Capacity-Building; HIV Prevention Community Planning Participation and Effectiveness; and other types of capacity-building

assistance from CBOs and African-American community stakeholders. This process must include mechanisms for conducting needs assessments, prioritizing requests, assigning staff or consultants, linking requests (where appropriate) to the retainer consultant system funded under Category A, delivering services, reporting on service delivery, and conducting quality assurance.

i. Develop a standardized system for tracking, assessing and documenting all capacity-building assistance requests and delivery with CDC assistance as needed.

j. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

k. Develop and implement an effective strategy for marketing capacity-building assistance and services.

l. Participate in a CDC-coordinated capacity-building network.

m. Coordinate program activities with appropriate national, regional, state, and local HIV prevention programs and community planning groups to prevent duplication of efforts and optimize use of resources.

n. Monitor and evaluate the accomplishment of program objectives, and the process of capacity-building assistance.

o. Facilitate the dissemination of information about successful capacity-building assistance strategies and "lessons learned" through peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

p. Participate in CDC coordinated train-the-trainer opportunities.

q. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

r. Develop a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

3. CDC Activities:

a. Serve as the coordinator for CDC's capacity-building programs, which will include organizations providing capacity-building assistance under this program announcement.

b. Provide recipients with consultation in planning, developing, managing, and evaluating capacity-building services. CDC will provide consultation and assistance both directly through CDC and indirectly through contractors; national, regional and local organizations; and peer-to-peer assistance from CDC-funded partners.

c. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Facilitate and promote collaboration through the exchange of program information, coalition maintenance strategies, and technical assistance among CBOs; State and local health departments; HIV prevention community planning groups; national, regional, and local organizations; and other HIV prevention partners.

e Support train-the-trainer opportunities that enhance capacity-building assistance delivery systems.

f. Facilitate and collaborate in the dissemination of successful capacity-building strategies and "lessons learned" through meetings of grantees, workshops, conferences, and communications.

g. Work with recipients to standardize a system for tracking and reporting all capacity-building assistance requests and delivery.

h. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with federally mandated requirements.

i. Coordinate an evaluation of the overall capacity-building assistance program.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 48 pages. Number each page clearly, and provide a complete index to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with a font of 10 pitch or 12 point on 8½" by 11" paper, with at least 1" margins, headings and footers, and printed on one side only. Materials which should be part of the basic plan will not be accepted if placed in the appendices.

In developing the application, you must follow the format and instructions below:

1A. Format for Category A

a. Abstract

b. Long-term Goals

c. Organizational History and Capacity

(1) Organizational Structure

(2) History Providing Capacity-Building Assistance to CBOs serving African-American Populations and African-American Communities

(3) Capacity for Cultural Competence

(4) Current Capability in Providing Capacity-Building Assistance

(5) Experience Creating and Maintaining Consultant Retainer Systems or Pools and Working with Coalitions

(6) Current Collaborations

d. Assessing the Need for Capacity-Building Assistance

(1) Characteristics of African-American Population(s)

(2) Capacity-Building Priority Needs

(3) Use of HIV Comprehensive Plans

e. Program Plan

(1) Involvement of Local CBOs

(2) Objectives

(3) Plan of Operation

(4) Coordination and Collaboration

(5) Timeline

f. Program Evaluation Plan

g. Communication and Dissemination Plan

h. Plan for Acquiring Additional Resources

i. Budget and Staffing Breakdown and Justification

(1) Detailed Budget

(2) Mechanisms for Use of Funds

(3) Staffing Plan

j. Training and Technical Assistance Plan

k. Attachments

1B. Instructions for Category A

a. Abstract (not to exceed 3 pages) Briefly summarize the following:

(1) The type of organization (national or regional) and, if national, whether applying independently or with a coalition

(2) Organizational structure, philosophy, mission, history

(3) Long term goals of the proposed project

(4) Overview of plan of operation

(5) Overview of plan for collaboration and coordination with other capacity-building service providers, state and local health departments, and community planning groups

(6) Composition of proposed coalition (where appropriate)

(7) Future year activities.

b. Long-term Goals (not to exceed 1 page) Describe the broad capacity-building goals that your proposed program aims to achieve over the course of the project period.

c. Organizational History and Capacity (not to exceed 10 pages)

(1) Describe your existing organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; board committee structure (including advisory board); board recruitment and training process; organizational management, administrative, and program components; constituent or affiliate organizations or networks; and how the organizational structure offers the ability to provide capacity-building assistance.

(2) Describe your organization's history providing capacity-building assistance to CBOs and other types of organizations serving the HIV prevention needs of African-American populations.

(3) Describe your organization's capability in providing services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs serving African-American populations. Include a description of the types of services provided and a list summarizing culturally, linguistically, and developmentally appropriate curricula and materials.

(4) Describe your organization's capability in developing and implementing capacity-building assistance programs, strategies, or activities (refer to recipient activities section), and in developing and implementing programs similar to the one proposed in this program announcement.

(5) Describe your organization's experience or capability in creating a consultant retainer system or pools and, if appropriate, experience working with a coalition(s).

(6) Describe your experience in collaborating and coordinating with governmental and non-governmental organizations, including national or regional agencies or organizations, State and local health departments, community planning groups, State and local non-governmental organizations that provide HIV prevention services, and State and local criminal justice systems (prisons, jails, detention centers, halfway houses, etc.), and national African-American correctional health organizations (e.g., African American Correctional Officers Association).

d. Assessing the Need for Capacity-Building Assistance (not to exceed 5 pages)

(1) Describe the demographics of the African-American populations across the four regions. Describe the impact of the AIDS epidemic on these populations and any specific environmental, social, cultural, or linguistic characteristics which will be considered in your capacity-building strategy.

(2) Describe the capacity-building priority needs of CBOs serving the African-American populations described above. Describe the process for determining these needs by addressing areas such as: the use of epidemiologic and other data, resource inventories, regional needs assessments, and the use of gap analyses.

(3) Describe how your proposed program complements the HIV comprehensive plans in these regions.

e. Program Plan (not to exceed 20 pages)

Describe your proposed program, including:

(1) Involvement of CDC-funded CBOs: Describe how CDC-funded CBOs within the four regions will be involved in evaluating and providing input into activities and services provided by the proposed program throughout the project period.

(2) Objectives: Provide specific, realistic, time-phased, and measurable objectives to be accomplished during the first budget period. Describe how these objectives relate to the goals described in this announcement. Describe possible barriers to or facilitators for reaching these objectives.

(3) Plan of Operation: Describe the following: (a) The strategies (in detail) that will be used and activities that will be conducted to meet the proposed goals and objectives and to complete all the required recipient activities (including the provision of services through the use of the "capacity-building assistance delivery mechanisms"); (b) the process for responding to capacity-building assistance requests, include in your description how you will: (i) Conduct needs assessments, (ii) prioritize requests to place major emphasis on assistance to CBOs serving African-American sub-populations most heavily affected by HIV, (iii) make referrals to other capacity-building providers (when appropriate), (iv) assign consultants, (v) deliver services, (vi) report on service delivery, and (vii) conduct quality assurance; (c) how your organization will ensure that assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally appropriate, linguistically-specific, educationally appropriate and targeted to the needs of CBOs serving African-Americans; (d) how your organization will market program services; (e) how your organization will develop the retainer consultant pool; (f) how the proposed program will be managed and staffed, including the fiscal, administrative, managerial, and personnel infrastructure and resources that will be used to support the proposed capacity-building program; (g) the placement of the program within your organizational structure and the space that will be used to house the proposed program staff; (h) the equipment and information management systems that could be used to maintain information related to this announcement; and (i) the respective roles and responsibilities of your organization and those of each coalition member performing any of the proposed activities or functions.

(4) Coordination and Collaboration: Describe how you will coordinate and collaborate with other national, regional, state, and local governmental and nongovernmental organizations and HIV prevention providers (see Addendum for examples of collaborating agencies).

(5) Timeline: Provide a timeline that identifies major implementation phases and assigns approximate dates for inception and completion.

f. Program Evaluation Plan (not to exceed 5 pages).

Describe your plan for monitoring progress to determine if the objectives are being achieved and demonstrating that the methods used to deliver the proposed capacity-building services are effective and efficient. At a minimum, the plan should (1) outline strategies for implementing process evaluation of capacity building activities to determine if the process objectives are being achieved, (2) outline strategies for outcome monitoring to determine if the services and methods used to deliver the services are effective and efficient, (3) describe what data will be collected and how this data will be collected, analyzed, and used to evaluate and improve the program, and (4) specify the persons responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings.

g. Communication and Dissemination Plan (not to exceed 2 pages).

Describe how you will share successful approaches and "lessons learned" with other organizations.

h. Plan for Acquiring Additional Resources (not to exceed 2 pages).

Describe your plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

i. Budget and Staffing Breakdown and Justification.

(1) Provide a detailed budget for each proposed activity. Justify all operating

expenses in relation to the stated objectives and planned activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

(2) For contracts contained within the application budget, identify the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown of and justification for the estimated costs of the contracts; the kinds of organizations or parties to be selected; the period of performance; and the method of selection.

(3) Describe in detail each existing or proposed position by job title, function, general duties, and activities. Include the level of effort and allocation of time for each project activity by staff positions, job title, function, general duties and activities, annual salary/rate of pay, and percentage of time spent on this program.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement. In the absence of an indirect cost rate agreement, the recipient may request, with detailed justification, a maximum of 10 percent for the executive director. This limitation also applies to contracts and coalitions. If the organization has an indirect rate that includes the executive director's salary, no additional funds will be provided. Funds will not be provided for the salary of an executive director that is also a member of the organization's Board of Directors.

j. Training and Technical Assistance Plan (not scored).

Describe areas in which you anticipate a need for technical assistance in designing, implementing, and evaluating your proposed program and how you will obtain this technical assistance. Describe anticipated staff training needs related to the proposed program and how these needs will be met.

k. Attachments

(1) Proof of Eligibility.

Applicants should provide a separate section within the Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

i. IRS determination letter of your organization's 501(c)(3) tax—exempt status.

ii. Evidence of a 3-year record of service to African-American community-based organizations.

iii. Section of Bylaws or Agency Charter that indicates organization's national or regional scope of work.

iv. A list and organizational chart of the members of your governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. Submission of information regarding the HIV status or other confidential information regarding individuals is optional, but must not be linked to a specific individual.

v. A list and an organizational chart of existing and proposed staff for this program, their race/ethnicity, their area of expertise, and relevant experience. Include resumes (not to exceed 2 pages per person).

(2) Other Attachments.

i. A list of all collaborating or coordinating entities and memoranda of agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.

ii. Description of coalition organizations and original signed letters from the chief executive officers of each organization assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.

iii. A list summarizing services currently delivered and culturally, linguistically, and developmentally appropriate curricula and materials.

iv. A description of any funding being received from CDC or other sources to conduct similar activities which includes:

(a) A summary of funds and income received to conduct capacity-building assistance programs. This summary must include the name of the sponsoring organization/source of income, level of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(b) A summary of the objectives and activities of the funded programs described above.

(c) A description of how funds requested in this application will be used differently or in ways that will expand upon the funds already received, applied for, or being received.

(d) An assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds.

v. Independent audit statements from a certified public accountant for the previous 2 years.

vi. A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

2A. Format for Category B

a. Abstract.

b. Long-term Goals.

c. Organizational History and Capacity.

(1) Organizational Structure

(2) History Providing Community Capacity-Building and Other Capacity-Building Assistance to CBOs Serving African-American Populations and African-American community stakeholders.

(3) Capacity for Cultural Competence.

(4) Current Capability in Providing Capacity-Building Assistance.

(5) Experience Working with Coalitions (where appropriate) and Current Collaborations.

d. Assessing the Need for Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation

(1) Characteristics of African-American Population(s) and Communities

(2) Capacity-building Needs

e. Program Plan

(1) Involvement of CDC-Funded CBOs and African-American community stakeholders

(2) Objectives

(3) Plan of Operation

(4) Coordination/Collaboration

(5) Timeline

f. Program Evaluation Plan

g. Communications/Dissemination Plan

h. Plan for Acquiring Additional Resources

i. Budget and Staffing Breakdown and Justification

(1) Detailed Budget

(2) Mechanisms for Use of Funds

(3) Staffing Plan

j. Training and Technical Assistance Plan.

k. Attachments.

2B. Instructions for Category B

a. Abstract (not to exceed 3 pages).

Briefly summarize the following:

(1) Region(s) applying for and the type of organization (national, regional, or local) and, if national or regional, whether applying independently or with a coalition.

(2) Organizational structure, philosophy, mission, history.

(3) Long term goals of the proposed project.

(4) Overview of plan of operation.
(5) Overview of plan for collaboration and coordination with other capacity-building service providers, state and local health departments, and community planning groups.
(6) Composition of proposed coalition (where appropriate).
(7) Future year activities.
b. Long-term Goals (not to exceed 1 page).
Describe the broad capacity-building goals that your proposed program aims to achieve over the course of the project period.
c. Organizational History and Capacity (not to exceed 10 pages).
(1) Describe your existing organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; board committee structure (including advisory board); board recruitment and training process; organizational management, administrative, and program components; constituent or affiliate organizations or networks; and how the organizational structure offers the ability to provide capacity-building assistance.
(2) Describe your organization's history with providing assistance in Community Capacity-Building; HIV Prevention Community Planning Effectiveness and Participation; and other capacity-building assistance to CBOs serving African-American populations and to African-American community stakeholders (especially African-American sub-populations heavily affected by HIV and other STDs). Describe specific assistance or services provided.
(3) Describe your organization's capability to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs and African-American community stakeholders. Include a description of the types of services provided and a list summarizing culturally, linguistically, and developmentally appropriate curricula and materials.
(4) Describe your organization's capability in developing and implementing capacity-building programs, strategies, or activities (refer to recipient activities section), and in developing and implementing programs similar to the one proposed in this program announcement.
(5) Describe your organization's experience, if appropriate, working with a coalition(s) and in collaborating with governmental and non-governmental organizations, including national or regional agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services.
d. Assessing the Need for Community Capacity-Building, and HIV Prevention Community Planning Effectiveness and Participation (not to exceed 5 pages).
(1) Describe the demographics and structure of the HIV prevention stakeholders you intend to serve. Describe the impact of the HIV and AIDS epidemic on these stakeholders and any specific environmental, social, cultural, or linguistic characteristics which will be considered in your capacity-building strategy.
(2) Describe the priority needs related to Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation for CBOs and the HIV prevention stakeholders you intend to serve. Describe the process for determining these needs, including where appropriate: The use of epidemiologic and other data, resource inventories, regional needs assessments, and the use of gap analyses.
(3) Describe how your proposed program complements the HIV comprehensive plans in the region(s) you plan to serve.
e. Program Plan (not to exceed 20 pages).
Describe your proposed program, including:
(1) Involvement of CDC-funded CBOs and HIV Prevention Stakeholders. Describe how CDC-funded CBOs and HIV prevention stakeholders within a region will be involved in providing input into the direction of the proposed program and in assessing the proposed program's communication, linkages, performance and services provided throughout the project period.
(2) Objectives: Provide specific, realistic, time-phased, and measurable objectives to be accomplished during the first budget period. Describe how these objectives relate to the goals described in this announcement. Describe possible barriers to or facilitators for reaching these objectives.
(3) Plan of Operation: Describe the following: (a) The strategies (in detail) that will be used, the activities that will be conducted, and the services that will be provided to meet the proposed goals and objectives and to complete all the required recipient activities (including the provision of services through the use of the ("capacity-building assistance delivery mechanisms"); (b) the process for responding to requests for assistance in community Capacity-Building; HIV Prevention Community Planning Participation and Effectiveness; and other types of capacity-building assistance from CBOs and HIV prevention stakeholders in African-American communities. Include in your description how you will: (i) Conduct needs assessments, (ii) prioritize requests to place major emphasis on assistance to CBOs and other prevention stakeholders serving African-American sub-populations most heavily affected by HIV, (iii) make referrals to the retainer consultant system funded under Category A, (iv) assign staff and consultants, (v) deliver services, (vi) report on service delivery, and (vii) conduct quality assurance; (c) how your organization will ensure that assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally appropriate, linguistically-specific, educationally appropriate, and targeted to the needs of CBOs and African-American community stakeholders (d) how your organization will market program services; (e) how the proposed program will be managed and staffed, including the fiscal, administrative, managerial, and personnel infrastructure and resources that will be used to support the proposed capacity-building program; (f) the placement of the program within your organizational structure and the space that will be used to house the proposed program staff; (g) the equipment and information management systems that could be used to maintain information related to this announcement; and (h) the respective roles and responsibilities of your organization and those of each coalition member performing any of the proposed activities or functions.
(4) Coordination and Collaboration: Describe how you will coordinate and collaborate with other national, regional, state, and local governmental and nongovernmental organizations and HIV prevention providers (see Addendum for examples of collaborating agencies).
(5) Timeline: Provide a timeline that identifies major implementation phases and assigns approximate dates for inception and completion.
f. Program Evaluation Plan (not to exceed 5 pages).
Describe your plan for monitoring progress to determine if the objectives are being achieved and demonstrating that the methods used to deliver the proposed capacity-building services are effective and efficient. At a minimum, the plan should (1) outline strategies for implementing process evaluation of capacity building activities to determine if the process objectives are being achieved, (2) outline strategies for outcome monitoring to determine if the services and methods used to deliver

the services are effective and efficient, (3) describe what data will be collected and how this data will be collected, analyzed, and used to evaluate and improve the program, and (4) specify the persons responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings.

g. Communication and Dissemination Plan (not to exceed 2 pages).

Describe how you will share successful approaches and "lessons learned" with other organizations.

h. Plan for Acquiring Additional Resources (not to exceed 2 pages).

Describe your plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

i. Budget and Staffing Breakdown and Justification (not scored).

(1) Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the stated objectives and planned activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

(2) For contracts contained within the application budget, identify the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown of and justification for the estimated costs of the contracts, the kinds of organizations or parties to be selected, the period of performance, and the method of selection.

(3) Describe in detail each existing or proposed position by job title, function, general duties, and activities. Include the level of effort and allocation of time for each project activity by staff positions, job title, function, general duties and activities, annual salary/rate of pay, and percentage of time spent on this program.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement. In the absence of an indirect cost rate agreement, the recipient may request, with detailed justification, a maximum of 10 percent for the executive director. If the organization has an indirect rate that includes the executive director's salary, no additional funds will be provided. Funds will not be provided for the salary of an executive director that is also a member of the organization's Board of Directors.

j. Training and Technical Assistance Plan (not scored).

Describe areas in which you anticipate a need for technical assistance in designing, implementing, and evaluating your proposed program and how you will obtain this technical assistance. Describe anticipated staff training needs related to the proposed program and how these needs will be met.

k. Attachments.

(1) Proof of Eligibility.

Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

i. IRS determination letter of your organization's 501(C)(3) tax—exempt status.

ii. Evidence of a 3-year record of service to CBOs serving African-Americans, and to African-American communities or an African-American sub-population heavily affected by HIV.

iii. Section of Bylaws or Agency Charter that indicates organization's national or regional scope of work.

iv. A list and organizational chart of the members of your governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. Submission of information regarding the HIV status or other confidential information regarding individuals is optional, but must not be linked to a specific individual.

v. A list and an organizational chart of existing and proposed staff for this program, their race/ethnicity, their area of expertise, and relevant experience. Include resumes (not to exceed 2 pages per person).

(2) Other Attachments.

i. A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.

ii. Description of coalition organizations and original signed letters from the chief executive officers of each organization assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.

iii. A list summarizing services currently delivered and culturally, linguistically, and developmentally appropriate curricula and materials.

iv. A description of any funding being received from CDC or other sources to conduct similar activities which includes:

(a) A summary of funds and income received to conduct capacity-building assistance programs. This summary must include the name of the sponsoring organization/source of income, level of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(b) A summary of the objectives and activities of the funded programs described above.

(c) A description of how funds requested in this application will be used differently or in ways that will expand upon the funds already received, applied for, or being received.

(d) An assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds.

v. Independent audit statements from a certified public accountant for the previous 2 years.

vi. A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

F. Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/od/pgo/funding/grantmain.htm, or in the application kit. On or before July 26, 1999, submit the application to the Grants Management specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Independent Review Group. (Applicants must request a legibly dated U.S. Postal service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late

applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Evaluation Criteria for Category A

a. Long-term Goals. (Total 5 points)

The quality of the applicant's stated long-term goals and the extent to which the goals are consistent with the purpose of this program announcement.

b. Organizational History and Capacity. (Total 35 points)

The extent to which the applicant has demonstrated history and capacity to provide capacity-building assistance and to implement the proposed program. These criteria include:

(1) The extent to which the applicant's organizational structure (including planned collaborations or coalition) will support the proposed program activities. (5 points)

(2) The extent to which the applicant demonstrates a history in providing capacity-building assistance to CBOs and other types of organizations serving the HIV prevention needs of African-American populations, and to African-American communities heavily affected by HIV and other STDs. (7 points)

(3) The extent to which the applicant demonstrates capacity to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs serving African American populations. (7 points)

(4) The extent to which the applicant demonstrates capability in developing and implementing capacity-building assistance programs, strategies or activities, and in developing and implementing programs similar to those proposed in this application. (7 points)

(5) The extent to which the applicant demonstrates experience in creating consultant retainer pool(s) and, if appropriate, experience working with a coalition(s). (5 points)

(6) The extent to which the applicant demonstrates experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services. (4 points)

c. Assessing the Need for Capacity-Building Assistance. (Total 10 Points)

The extent to which the applicant demonstrates an understanding of the need for capacity-building assistance. These criteria include:

(1) The extent to which the applicant describes the demographics of the African-American populations across the four regions, the impact of the HIV and AIDS epidemic on these populations, and any specific environmental, social, cultural, or linguistic characteristics which will be considered in the capacity-building strategy.

(2) The extent to which the applicant describes the capacity-building priority needs of CBOs serving the African-American populations and the process for determining these needs.

(3) The extent to which the applicant describes how the proposed program complements the HIV comprehensive plans across the four regions.

d. Program Plan. (Total 35 points)

(1) Involvement of CBOs. (5 points)

The extent to which CBOs serving African-American populations will be involved in planning, implementing, and evaluating activities and services provided by the proposed program throughout the project period.

(2) Objectives. (5 points)

(a) The extent to which the proposed first-year objectives are specific, realistic, time-phased, measurable, and consistent with the program's long-term goals and proposed services; and

(b) The extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

(3) Plan of Operation. (15 points)

(a) The overall quality of the applicant's plan for conducting capacity-building assistance and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives.

(b) The extent to which the applicant's plans address all the activities listed under Required Recipient Activities.

(c) The extent to which the roles and responsibilities of the primary applicant and each collaborating institution, organization, or subcontractor are consistent with the proposed activities.

(4) Coordination/Collaboration. (5 points)

(a) The extent to which the applicant describes and documents, as applicable, intended coordination with other national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments.

(b) The extent to which the applicant provides memoranda of agreement or understanding as evidence of agreed-upon collaborative relationships.

(5) Timeline. (5 points)

The extent to which the applicant's proposed timeline is specific and realistic.

e. Program Evaluation Plan. (Total 5 points)

The quality of the applicant's evaluation plan for monitoring and evaluating the implementation of proposed services and measuring the achievement of program goals and objectives.

f. Communication and Dissemination Plan. (Total 5 points)

The quality of the applicant's plan for sharing successful approaches and "lessons learned" with other organizations.

g. Plan for Acquiring Additional Resources. (Total 5 points)

The quality of the applicant's plan for obtaining additional resources from other non-CDC sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period.

h. Budget and Staffing Breakdown and Justification. (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with intended use of funds.

i. Training and Technical Assistance Plan. (not scored)

The quality of the applicant's plan for obtaining needed technical assistance and staff training to support the proposed program.

j. Pre-decisional Site Visits.

Site visits by CDC staff will be conducted before final funding decisions are made by CDC. Only organizations with high ranking applications will be visited. During the visit, CDC staff will meet with project staff, representatives of the board of directors, and outside consultants to assess the applicant's organizational and financial capability to implement the proposed program, review the application and program plans for current or planned activities, and determine the special programmatic conditions and technical assistance requirements of the applicant. As part of these visits, CDC and its consultants may visit state/local health departments and CBOs serving the geographic area in which the program will be implemented. A fiscal Recipient Capability Assessment (RCA) may be required of some applicants before funds are awarded.

2. Evaluation Criteria for Category B

a. Long-term Goals. (Total 5 points)

The quality of the applicant's stated long-term goals and the extent to which

the goals are consistent with the purpose of this program announcement.

b. Organizational History and Capacity (Total 35 points).

The extent to which the applicant has demonstrated history and capacity to provide capacity-building assistance and to implement the proposed program. These criteria include:

(1) The extent to which the applicant's organizational structure (including planned collaborations or coalition) will support the proposed program activities. (5 points)

(2) The extent to which the applicant demonstrates a history in providing assistance in Community Capacity-Building; HIV Prevention Community Planning Effectiveness and Participation; and other capacity-building assistance to CBOs serving African-American populations and to African-American community stakeholders (especially African-American sub-populations heavily affected by HIV and other STDs). (7 points)

(3) The extent to which the applicant demonstrates capacity to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs and HIV prevention stakeholders in African-American communities (especially African-American sub-populations at risk for HIV). (7 points)

(4) The extent to which the applicant demonstrates capability in developing and implementing capacity-building programs, strategies or activities, and in developing and implementing programs similar to those proposed in this application. (10 points)

(5) The extent to which the applicant demonstrates experience and ability in working with coalitions (where appropriate) and in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services. (6 points)

c. Assessing the Need for Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation (Total 10 Points) The extent to which the applicant demonstrates an understanding of the need for Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation. These criteria include:

(1) The extent to which the applicant describes the demographics and structure of the HIV prevention stakeholders it intends to serve, the impact of the HIV and AIDS epidemic on these stakeholders, and any specific environmental, social, cultural, or linguistic characteristics which will be considered in the capacity-building strategy.

(2) The extent to which the applicant describes the priority needs related to Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation for CBOs serving African-Americans and for African-American community stakeholders in the region(s) to be served, and the process for determining these needs.

(3) The extent to which the applicant describes how the proposed program complements the HIV comprehensive plans in the region(s) to be served.

d. Program Plan. (Total 35 points)

1. Involvement of CDC-Funded CBOs (5 Points).

The extent to which CDC-funded CBOs and African-American community stakeholders will be involved in providing input into the direction of the program and the program's communication, linkages, performance and services provided throughout the project period.

2. Objectives (5 Points)

(a) The extent to which the proposed first-year objectives are specific, realistic, time-phased, measurable, and consistent with the program's long-term goals and proposed services; and

(b) The extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

3. Plan of Operation (15 Points)

(a) The overall quality of the applicant's plan for providing capacity-building assistance in Community Capacity-Building, and HIV Prevention Community Planning Effectiveness and Participation to CBOs serving African-American populations and to African-American community stakeholders and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives.

(b) The extent to which the applicant's plans address all the activities listed under Required Recipient Activities.

(c) The extent to which the roles and responsibilities of the primary applicant and each coalition member (where appropriate), collaborating organization, or subcontractor are consistent with the proposed activities.

4. Coordination and Collaboration (5 Points)

(a) The extent to which the applicant describes and documents, as applicable, intended coordination with national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments.

(b) The extent to which the applicant provides memoranda of agreement or understanding as evidence of agreed-upon collaborative relationships.

5. Timeline (5 Points)

The extent to which the applicant's proposed timeline is specific and realistic.

e. Program Evaluation Plan. (Total 5 points)

The quality of the applicant's evaluation plan for monitoring and evaluating the implementation of proposed services and measuring the achievement of program goals and objectives.

f. Communication and Dissemination Plan. (Total 5 points)

The quality of the applicant's plan for sharing successful approaches and "lessons learned" with other organizations.

g. Plan for Acquiring Additional Resources. (Total 5 points)

The quality of the applicant's plan for obtaining additional resources from other, non-CDC sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period.

h. Budget and Staffing Breakdown and Justification (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with intended use of funds.

i. Training and Technical Assistance Plan (not scored)

The quality of the applicant's plan for obtaining needed technical assistance and staff training to support the proposed program.

j. Pre-decisional Site Visits

Site visits by CDC staff will be conducted before final funding decisions are made by CDC. Only organizations with high ranking applications will be visited. During the visit, CDC staff will meet with project staff, representatives of the board of directors, and outside consultants to assess the applicant's organizational and fiscal capability to implement the proposed program, review the application and program plans for current or planned activities, and determine the special programmatic conditions and technical assistance requirements of the applicant. As part of these visits, CDC and its consultants may visit state/local health departments and CBOs serving the geographic area in which the program will be implemented. A fiscal Recipient

Capability Assessment (RCA) may be required of some applicants before funds are awarded.

H. Other Requirements

1. Technical Reporting Requirements

Provide CDC with the original plus two copies of:

a. Quarterly progress reports;

b. Financial status report, no more than 90 days after the end of the budget period; and

c. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions
AR98–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, section 301(a)(42 U.S.C. 241(a)), 317(k)(2) (42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance Number is 93.939.

J. Where To Obtain Additional Information

To receive additional written information and to request an application and tool kit, call NPIN at 1–800–458–5231 (TTY users: 1–800–243–7012); visit their Web site: www.cdcnpin.org/program; send requests by fax to 1–888–282–7681 or send requests by e-mail: application-CBA@cdcnpin.org. This information is also posted on the Division of HIV/AIDS Prevention (DHAP) Web site at http://www.cdc.gov/nchstp/hiv_aids/funding/toolkit/.

CDC maintains a Listserv (HIV–PREV) related to this program announcement. By subscribing to the HIV–PREV Listserv, members can submit questions and will receive information via e-mail with the latest news regarding the program announcement. Frequently asked questions on the Listserv will be posted to the Web site. You can subscribe to the Listserv on-line or via e-mail by sending a message to: listserv@listserv.cdc.gov and writing the following in the body of the message: subscribe hiv-prev first name last name.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Maggie S. Warren, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement (99095), Centers for Disease Control and Prevention, 2920 Brandywine Road, Room. 3000, Atlanta, GA 30341–4146, Telephone (770) 488–2736, E-mail: mcs9@cdc.gov

For program technical assistance, contact: Samuel Taveras, Community Assistance, Planning, and National Partnerships Branch National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. Mailstop E–58, Atlanta, GA 30333, Telephone (404) 639–5241, E-mail address: syta@cdc.gov

See also the CDC home page on the Internet: http://www.cdc.gov

Dated: May 26, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13884 Filed 6–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–IV–E–1 Foster Care and Adoption Assistance Financial Reporting Form.

OMB No.: New.

Description: The form provides specific data regarding claims and provides a mechanisms for States to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

Respondents: State, local or tribal government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–IV–E–1	51	4	8	1,632

Estimated Total Annual Burden Hours: 1,632.

Additional Information: Copies of the proposed collection may be writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Ms. Lori Schack.

Dated: May 26, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–13860 Filed 6–1–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1454]

Draft Guidance for Industry on Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products; Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products; Chemistry, Manufacturing, and Controls Documentation." This draft document is intended to provide guidance for industry on the chemistry, manufacturing, and controls (CMC) documentation to be submitted in new drug applications (NDA's) and abbreviated new drug applications (ANDA's) for nasal spray and inhalation solution, suspension, and spray drug products. This draft guidance also covers CMC information recommended for inclusion in the NDA's and ANDA's regarding the components, manufacturing process, and associated controls with each of these areas.

DATES: Written comments on the draft guidance may be submitted by August 31, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Guiragos K. Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products; Chemistry, Manufacturing, and Controls Documentation." This draft guidance sets forth information that should be provided to ensure continuing quality and performance characteristics for these drug products.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on CMC documentation to be submitted in NDA's and ANDA's for nasal spray and inhalation solution, suspension, and spray drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before August 31, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 25, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–13921 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–281]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The HCFA–R–281 will be used to evaluate the effects of the "Medicare and You Handbook: 2000" to determine that beneficiaries not only received it and are aware of the information, but whether they understand the information and are able to use it in making informed choices about their Medicare plan. Without this information, HCFA would not be able to obtain the information necessary to determine whether these goals have been met. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the possibility of beneficiaries not being properly informed/educated as to the importance of their Medicare plan choices.

HCFA is requesting OMB review and approval of this collection by 6/14/99, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below, by 6/10/99. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection.

Title of Information Collection: Survey of Medicare Beneficiaries for the

National "Medicare and You Handbook: 2000" Evaluation.

Form No.: HCFA–R–281 (OMB 0938–NEW).

Use: As part of the National Medicare Education Program (NMEP), HCFA plans a national mailing of the Medicare & You 2000 handbook to the entire Medicare population in September 1999. To evaluate the effects of the handbook, HCFA needs to know not only that beneficiaries received it and are aware of the information, but whether they understand the information and are able to use it in making informed choices about their Medicare plan.

To quantify whether these goals have been met, measures of what beneficiaries currently know and understand about the Medicare program must be established. It is also necessary to compare attitudes and behavior of beneficiaries who receive the information to those who do not to determine if the print campaign of the NMEP (Medicare & You handbook) has been effective.

This survey will be used to determine the effectiveness of the "Medicare and You Handbook: 2000".

Frequency: Other: one time.

Affected Public: Business or other for-profit, and Individuals or Households.

Number of Respondents: 4,000.

Total Annual Responses: 4,000.

Total Annual Hours: 2,950.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 6/10/99:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: May 20, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–13870 Filed 6–1–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Organ Procurement and Transplantation Network (OPTN) Data System (OMB No. 0915–0157)—Revision

This is a request for revision of the data system for the Organ Procurement and Transplantation Network (OPTN) and the Scientific Registry of Transplant Recipients (SRTR) and the following associated forms: (1) cadaver donor registration/referral; (2) living donor registration; (3) donor histocompatibility; (4) potential recipient form; (5) recipient histocompatibility; (6) transplant candidate registration; (7) thoracic organ recipient registration; (8) thoracic organ recipient follow-up; (9) kidney transplant recipient registration; (10) kidney transplant recipient follow-up form; (11) liver transplant recipient registration; (12) liver transplant recipient follow-up; (13) pancreas transplant recipient registration; (14) pancreas transplant recipient follow-up; (15) intestine transplant recipient registration; and (16) intestine transplant recipient follow-up. New forms are related to intestine transplants to collect data similar to other types of transplants.

The estimated respondent burden is as follows:

	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Cadaveric Registration or Referral	65	277	0.3	5,400
Living Donor Registration	680	7	0.2	920
Living Donor Follow-up	680	14	0.1	952
Donor Histocompatibility	159	75	0.1	1,200
Potential Recipient Form	65	385	0.3	7,500
Recipient Histocompatibility	159	157	0.1	2,500
Transplant Candidate Registration	387	114	0.2	15,600
Thoracic Registration	153	27	0.3	1,230
Thoracic Follow-up	153	144	0.2	4,400
Kidney Registration	252	58	0.3	4,380
Kidney Follow-up	252	500	0.2	25,200
Liver Registration	125	40	0.4	2,000

	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Liver Follow-up	125	192	0.3	7,200
Pancreas Registration	125	11	0.3	420
Pancreas Follow-up	125	56	0.2	1,400
Intestine Registration	33	3	0.2	20
Intestine Follow-up	33	6	0.2	40
Total	911			80,362

Send comments to: Susan Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: May 26, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–13924 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

"Low Income Levels" for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of providing training in the various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low income levels used for grants and cooperative agreements to institutions providing training for (1) Disadvantaged individuals, (2) individuals from a disadvantaged background, or (3) low-income families.

The programs under the Act that may use "low income levels" as one of the factors in determining a disadvantaged or low-income status are the:

Advanced Education Nursing (section 811)
Allied Health Special Projects (section 755)
Basic Nurse Education and Practice (section 831)
Dental Public Health (section 768)
Faculty Loan Repayment and Fellowships Program (section 738)
Financial Assistance for Disadvantaged Health Professions Students (section 739 (a)(2)(F))
General or Pediatric Dentistry (section 747)
Health Administration Traineeships and Special Projects (section 769)
Health Careers Opportunity (section 739)
Loans to Disadvantaged Students (section 724)
Maternal and Child Health Research (section 701)
Physician Assistant Training (section 747)
Primary Care Residency Training (section 747)
Public Health Traineeships (section 767)
Quentin N. Burdick Rural Health (section 754)
Residency Training in Preventive Medicine (section 768)
Scholarships for Health Professions Students From Disadvantaged Backgrounds (section 737)
Public Health Training Centers (section 766)
Workforce Diversity (section 821)

These programs generally award grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, nursing, chiropractic, public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist the disadvantaged to enter and graduate from health professions schools. Some programs provide for the repayment of health professions education loans for disadvantaged students.

The following income figures were taken from low income levels published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for disadvantaged individuals or those from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1998.

Size of parents' family [1]	Income level [2]
1	$10,900
2	14,100
3	16,800
4	21,500
5	25,400
6 or more	28,500

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1998.

Definition

(a) *Income.* The Bureau of the Census and the Department of Health and Human Services define "income" to include total annual cash receipts before taxes from all sources with the following exceptions: Capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; or tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. A more detailed definition of "income" is available from the Bureau of Census.

Dated: May 25, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–13923 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Extramural Support Program for Projects To Increase Organ and Tissue Donation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Announcement for submitting applications for funding.

On April 5, 1999, the Health Resources and Services Administration (HRSA) published in the **Federal Register** a notice announcing a proposed competitive extramural support program for fiscal year 1999 to fund projects to increase organ and tissue donation (64 FR 16473).

Comments were solicited on the parameters of the program, including performance measures, funding priorities, and review criteria. The comment period closed on May 5, 1999, and we have considered the comments that were submitted as we developed the final guidance.

Guidance for submitting applications for funding under the "Extramural Support Program: Model Interventions to Increase Organ and Tissue Donation," sponsored by HRSA, can be obtained by calling the HRSA Grants Application Center, at 1–888–333–4772, or by assessing the following three web sites: www.hrsa.gov, www.organdonor.gov, and www.hrsa.gov/osp/dot. Submission of the applications should be in accordance with the provisions of the Guidance.

Dated: May 25, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–13922 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Request for Comments for Scholarships for Disadvantaged Students

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1999 for the Scholarships for Disadvantaged Students (SDS) program are being accepted under the authority of section 737 of the Public Health Service Act (the Act), Title VII, Part B, as amended by the Health Professions Education Partnerships Act of 1998, Pub. L. 105–392, dated November 13, 1998. This notice requesting comments on proposed eligibility criteria, preferences and priorities includes updates to information provided in the January 6, 1999 program announcement.

Purpose

The SDS program provides funds to health professions and nursing schools for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who are enrolled (or accepted for enrollment) as full-time students in the schools.

For purposes of the SDS program in FY 1999, an "individual from a disadvantaged background" is defined in 42 CFR 57.1804, subpart S, as one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions or nursing school, or from a program providing education or training in allied health professions; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions and nursing programs. The Secretary will periodically publish these low income levels in the **Federal Register**.

The following income figures determine what constitutes a low-income family for purposes of the SDS program for FY 1999.

Size of parents' family [1]	Income level [2]
1	$10,900
2	14,100
3	16,800
4	21,500
5	25,400
6 or more	28,500

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1998, rounded to nearest $100.

Under the FY 1999 appropriations bill, $38.1 million has been appropriated for this program. Of the funds available for FY 1999, 16 percent shall be made available to schools agreeing to expend the funds only for nursing scholarships. The balance will support scholarships for eligible health professions students. An estimated 490 awards will be made to institutions participating in this program. The period of fund availability will be for one academic year.

Use of Funds

Funds awarded to a school under this program may be used as follows:

(1) To award scholarships to former recipients of scholarships under the Exceptional Financial Need (EFN) Scholarship program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) program (sections 736 and 740(d)(2)(B) of the Public Health Service Act, as such sections existed prior to the enactment of Pub. L. 105–392), at levels comparable to what these students would have received prior to phase out of the EFN and FADHPS programs, and with service agreements that are consistent with those the students entered into to receive EFN and FADHPS funds in FY 1998. The Secretary has notified those schools with former EFN and FADHPS recipients (who are enrolled in allopathic medical, osteopathic medical, or dental schools only) regarding the procedures for receiving funding for these students.

(2) To award scholarships to eligible students enrolled in the school, to be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses (as defined by the school for all students attending the school) incurred while enrolled in a school as a full-time student. The amount of the scholarship may not, for any year of attendance, exceed the total amount required for the year for the expenses specified above, and may not exceed the student's financial need, as determined in accordance with a need analysis procedure approved by the Department of Education.

Any school receiving SDS funds must maintain separate accountability for these funds.

School Eligibility

An entity that is eligible to receive funds under this program is:

(1) As defined in section 799B of the Act, a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, chiropractic, or allied health, a school offering a graduate program in behavioral and mental health practice, or an entity providing programs for the training of physician assistants; or, as defined in section 801 of the Act, is a school of nursing. Each school or program must be accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, and by a specialized accrediting body approved for the health discipline applying for program participation; and

(2) Carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minorities.

Proposed School or Program Eligibility Criteria

The Senate Report accompanying Pub. L. 105–392 states that the committee expects the Secretary to apply appropriate standards in determining which schools or programs from all eligible disciplines have complied with the requirement to be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, using

outcome-based measures that provide an indication of the success of the program. The report further states that the existence of a recruitment and retention program for students from disadvantaged backgrounds should not, in itself, result in the eligibility of a school or program if the school or program is unable to demonstrate that the recruitment and retention program has achieved success, based on the number and/or percentage of disadvantaged students who graduate from the school (p. 20, Senate Report 105–220). Accordingly, the Secretary is proposing to establish the following outcome-based measures with which a school or program must comply to be eligible to receive SDS funds in FY 1999:

(1) Individuals from disadvantaged backgrounds must comprise at least 5 percent of the total enrollment in the school or program for which funds are requested, based on enrollment data for academic year 1997–98;

(2) Individuals from disadvantaged backgrounds must comprise at least 5 percent of the total graduates from the school or program for which funds are requested, based on graduates for academic year 1997–98; and

(3) The ratio of individuals from disadvantaged backgrounds who graduated, compared with the individuals from disadvantaged backgrounds who are enrolled, must be at least 15 percent for 5-year programs, 20 percent for 4-year programs, 25 percent for 3-year programs, and 40 percent for 2-year programs.

Since the use of outcome measures to determine eligibility would be a new requirement in FY 1999, and since the timing of the enactment of the new statute has provided very little lead time to notify schools or programs of the new outcome measures, the Secretary has established very low measures for FY 1999. It is the Secretary's view that any school or program that cannot meet the 5 percent thresholds and the retention ratio described above cannot reasonably be considered to have a strong commitment to the recruitment and retention of individuals from disadvantaged backgrounds. However, recognizing that these initial levels are very low, and that many schools and programs have indicated since the SDS program began that they have activities in place to support the education of individuals from disadvantaged backgrounds, the Secretary is proposing that the outcome-based measures with which a school or program must comply to be eligible to receive SDS funds be increased, for FY 2000, to the following levels:

(1) Individuals from disadvantaged backgrounds must comprise at least 10 percent of the total enrollment in the school or program for which funds are requested, based on enrollment data for academic year 1998–99;

(2) Individuals from disadvantaged backgrounds must comprise at least 10 percent of the total graduates from the school or program for which funds are requested, based on graduates for academic year 1998–99; and

(3) The ratio of individuals from disadvantaged backgrounds who graduated, compared with the individuals from disadvantaged backgrounds who are enrolled, must be at least 15 percent for 5-year programs, 20 percent for 4-year programs, 25 percent for 3-year programs, and 40 percent for 2-year programs.

The Secretary intends that the proposed threshold levels for determining a school or program's eligibility will continue to increase gradually each year until they reach an optimal level for assuring that disadvantaged students are represented in the health care workforce at levels that best address the HRSA goals of improved diversity and distribution.

Evaluation Criteria for Fiscal Year 1999

For FY 1999, the Secretary is proposing that applications will be evaluated based on the degree to which a school or program meets the requirements listed above under "School Eligibility." Guidance for presenting the information will be provided in the FY 1999 application materials. Due to the new eligibility requirements, all applicant schools and programs, including schools and programs that received funds for academic year 1998–99, must submit an application to be considered for funding in FY 1999.

Student Eligibility

To qualify for the SDS program, a student would be required to:

(1) Be a resident of the U.S. and either be a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Commonwealth of Puerto Rico, or a citizen of the Republic of Palau, or a citizen of the Marshall Islands, or a citizen of the Federated States of Micronesia;

(2) Meet the definition of an "individual from a disadvantaged background" as defined above; and

(3) Have a financial need for a scholarship, in accordance with a need analysis procedure approved by the Department of Education (Pub. L. 105–244, Part F, The Higher Education Act of 1965 as amended). In addition, any student who is enrolled (or accepted for enrollment) in a health profession school or program must provide information on his or her parents' financial situation, regardless of the tax status of the student; and

(4) Be enrolled (or accepted for enrollment) at an eligible school for enrollment as a full-time student in a program leading to a degree in a health profession or nursing.

Student Preferences

The law requires that in providing SDS scholarships, the school or program give preference to students for whom the cost of attending an SDS school or program would constitute a severe financial hardship. Severe financial hardship is to be determined by the school or program in accordance with standard need analysis procedures prescribed by the Department of Education for its Federal student aid programs. The school or program has discretion in deciding how to determine which students have "severe financial hardship," as long as the standard is applied consistently to all eligible students.

The law also requires that schools give preference to former recipients of scholarships under sections 736 (EFN Scholarships) and 740(d)(2)(B) (FADHPS Scholarships), as such sections existed on November 12, 1998. The Secretary is implementing this preference by making a separate allocation of funds for these students, based on information provided by schools (allopathic medical, osteopathic medical, and dental schools with former EFN and FADHPS recipients only), prior to allocating the remaining SDS money for all other eligible students.

Proposed Student Preference

The Secretary is also proposing that, beginning in academic year 2000–2001, schools or programs give preference in the awarding of SDS funds to students who have participated in an academic enrichment program funded in whole or in part by the Health Careers Opportunity Program (HCOP), authorized by section 739 of the Act. This preference is intended to help assure that students who have participated in HCOP programs are not deterred from enrolling in a health professions school or program due to a lack of financial aid. Under this preference, it would be the school's or program's responsibility to identify HCOP students to assure that they receive preference in the awarding of SDS funds. For example, the school or

program could ask, as part of the financial aid application, whether the student participated in an academic enrichment program funded by HCOP, or could work with the admissions office to determine which students have been involved in HCOP programs. The Secretary intends that schools and programs implement this preference without a significant additional burden. Under this preference, the school or program would continue to have discretion in determining the amount of funds to award to HCOP students, but would be required to identify and fund HCOP students (provided they have financial need) before funding other eligible students who do not meet a student preference.

Schools and programs that currently have access to information on which students have participated in HCOP programs are encouraged to implement this preference beginning in academic year 1999–2000. However, since some schools and programs may not currently have access to this information, the Secretary would not require schools and programs to implement the preference for HCOP students until academic year 2000–2001.

Definitions

Black or African American means a person having origins in any of the black racial groups of Africa.

Hispanic or Latino means a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race.

American Indian or Alaska Native means a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

Definitions listed above are contained in Directive No. 15 of Office of Management and Budget Circular No. A–46, as revised.

Native American as defined in Pub. L. 101–527, means American Indian, Alaska Native, Aleut, or Native Hawaiian.

Graduate program in behavioral health and mental health practice means a graduate program in clinical psychology, clinical social work, professional counseling, or marriage and family therapy as defined in section 799B(1)(D) of the Act.

Graduate program in clinical social work means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration in health or mental health care leading to a graduate degree in social work as defined in section 799B(1)(C) of the Act.

Graduate program in marriage and family therapy means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration leading to a graduate degree in marriage and family therapy as defined in section 799B(1)(C) of the Act.

Graduate program in professional counseling means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration leading to a graduate degree in gerontological counseling, mental health counseling, or rehabilitation counseling.

Medically underserved community means any geographic area and/or population served by any of the following practice sites—

(1) Community Health Centers (section 330 of the Act);

(2) Migrant Health Centers (section 329 of the Act);

(3) Health Care for the Homeless Grantees (section 340 of the Act);

(4) Public Housing Primary Care Grantees (section 340A of the Act);

(5) Rural Health Clinics, federally designated (section 1861(aa)(2) of the Social Security Act);

(6) National Health Service Corps sites, freestanding (section 333 of the Act);

(7) Indian Health Service sites (Pub. L. 93–638 for tribally operated sites and Pub. L. 94–437 for Indian Health Service operated sites);

(8) Federally Qualified Health Centers (section 1905(a) and (1) of the Social Security Act);

(9) Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas (HPSAs) (designated under section 332 of the Act);

(10) State or Local Health Departments as defined and published in the **Federal Register** Notice of April 4, 1994 (59 FR 15741–44); or

(11) Ambulatory practice sites designated by State Governors as serving medically underserved communities as defined and published in the **Federal Register** Notice of April 4, 1994 (59 FR 15741–44).

Proposed Institutional Preferences

The Senate Report accompanying Pub. L. 105–392 directs the Secretary to restrict eligibility, for purposes of "allied health," to the following baccalaureate or graduate degree allied health professions schools or programs: Dental hygiene, medical laboratory technology, occupational therapy, physical therapy, radiologic technology, speech pathology, audiology, and registered dieticians (Senate Report 105–220, p. 20). Accordingly, for fiscal year 1999 and beyond, among allied health schools or programs, the Secretary proposes to give preference to the allied health schools or programs listed above.

Proposed Institutional Funding Priorities

In accordance with section 737(c) of the Act, the Secretary shall give priority to eligible entities based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities. Any eligible school or program that qualifies for one or more funding priorities will receive extra weighting in the allocation formula.

Primary Care Funding Priority

For purposes of determining which schools and programs receive priority based on the proportion of graduating students going into primary care, the Secretary proposes to define primary care to include:

(1) Allopathic and osteopathic medical students that enter family medicine, general internal medicine, general pediatrics, and preventive medicine, and general osteopathic medicine. This is consistent with the statutory definition of primary care for the Primary Care Loan (PCL) program, authorized under section 723 of the Act;

(2) General dentistry, which has been included as primary care for purposes of the Exceptional Financial Need (EFN) Scholarship program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) program;

(3) Nurse practitioners and nurse midwives who are practicing primary care; and

(4) Physician assistants who are practicing primary care.

For purposes of the SDS program, the Secretary is defining "primary care" to include the above disciplines because, with the exception of general dentistry, they are involved in the provision of comprehensive and continuous care and provide an entry to the health care system. The Secretary has included general dentistry because it acts as the entry to the health care system for a particular type of care which is not covered by the other disciplines.

For the above disciplines, a school or program may qualify for the primary care priority if at least 50 percent of its graduates from the specified year are practicing primary care. For allopathic and osteopathic medical schools, the determination of which schools are eligible for the funding priority would

be based on the same data used to determine compliance with the PCL school requirements. Thus, for the FY 1999 award process, priority would be based on the activities, during academic year 1997–98, of Post Graduate Year (PGY)–3 graduates (i.e., those who graduated during academic year 1994–95), but for FY 2000, priority would be based on the activities, during academic year 1998–99, of PGY–4 graduates (i.e., those who graduated during academic year 1994–95). This would allow allopathic and osteopathic medical schools to submit, for the SDS program, the same data submitted for the PCL program if they are PCL participants. For the remaining primary care disciplines, the determination of compliance would be based on the activities, during academic year 1997–98, of students who graduated during academic year 1996–97.

Underrepresented Minority Funding Priority

For purposes of granting priority based on the proportion of underrepresented minority students in FY 1999, the Secretary proposes to give priority to any school or program that has an underrepresented minority enrollment that is above the national average for the discipline. It is the Secretary's intention to gradually increase this percentage in future years until it is equal to the underrepresented minority enrollment needed to reach parity in the health care workforce.

Medically Underserved Community Funding Priority

For purposes of granting priority based on the proportion of graduates working in medically underserved communities, the Secretary proposes to give priority to any school or program for which at least 10 percent of the graduates from the specified year are practicing in medically underserved communities. It is the Secretary's intention to gradually increase this percentage in future years until it is representative of a level that has a meaningful impact on the elimination of medically underserved communities. For allopathic and osteopathic medical schools, the determination of which schools are eligible for the funding priority would be based on the same population of graduates used to determine compliance with the primary care funding priority. Thus, for the FY 1999 awards, priority would be based on the activities, during academic year 1997–98, of allopathic and osteopathic medical students who graduated 3 years earlier (academic year 1994–95), but for FY 2000, priority would be based on the activities, during academic year 1998–99, of allopathic and osteopathic medical students who graduated 4 years earlier (academic year 1994–95). For other schools and programs, priority would be based on the activities of students during 1997–98 who graduated in 1996–97. Schools and programs that do not have data on the percentage of their graduates who are practicing in medically underserved communities may still apply for SDS funds, but would not be considered for this funding priority.

Proposed Procedures for Calculating Awards

Awards to eligible schools and programs would be calculated by comparing the weighted number of eligible students in each eligible school and program with the total weighted number of eligible students in all eligible schools and programs. For FY 1999 and beyond, the number of "eligible students" for each school or program would be the lesser of:

(1) The number of disadvantaged graduates for academic year 1997–98 multiplied times the number of years required to complete the program (based on a 9-month academic year); or

(2) The total disadvantaged enrollment during academic year 1997–98. For example, if a 4-year program had 100 disadvantaged graduates and a disadvantaged enrollment of 500, its award would be based on 400 eligible students (100 graduates times 4). If another 4-year program had 100 disadvantaged graduates and a disadvantaged enrollment of 300, its award would be based on 300 eligible students (the total disadvantaged enrollment).

After determining the number of eligible students at each school or program, this number would be adjusted to reflect the extra weighting associated with any funding priorities. Depending upon the number of schools and programs that qualify for one or more funding priorities, it is possible that some eligible schools and programs may not receive funding.

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Scholarships for Disadvantaged Students program is related to the priority area of Academic and Community Partnership Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–0325; telephone (202) 783–3238.

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Department education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Department strongly encourages all award recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Interested persons are invited to comment on the proposed eligibility criteria and preferences for participating institutions, institutional funding priorities and preferences, nonstatutory preference of awarding funds to prior HCOP recipients, and procedures for calculating scholarship awards. The comment period will close on July 2, 1999.

All comments received before the deadline date will be considered before final acceptability of the eligibility criteria for participating institutions, institutional funding priorities and preferences, nonstatutory preference of awarding funds to prior HCOP recipients, and procedures for calculating scholarship awards for the FY 2000 will be applied.

Written comments should be addressed to: Capt. Bruce C. Baggett, Director, Division of Student Assistance; Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers lane, Rockville, Maryland 20857; telephone (301) 443–5395.

Application Availability

Applications are required from all schools and programs which are interested in applying for funding in FY 1999. The SDS application for FY 1999 must be filed via the Internet. Schools may access the SDS application at www.hrsa.gov/bhpr/dsa/sds. All applications and fiscal reports will be required to be filed electronically. However, if assistance is required,

please contact the Scholarship Team at the above address.

The deadline for submitting application materials is July 2, 1999. The materials for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0061.

The Catalog of Federal Domestic Assistance Number for the Scholarships for Disadvantaged Students program is 93.925. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: May 25, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–13925 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SPECIAL NOTE: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories *, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (formerly: Cedars Medical Center, Department of Pathology)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (formerly: NorthWest Toxicology, Inc.)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851
UTMB Pathology—Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–13869 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Grants to State Mental Health Authorities and Single State Agencies for Alcohol and Other Drug Abuse for Technical Assistance

AGENCY: Center for Mental Health Services, and the Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, (SAMHSA), HHS.

ACTION: Grants to State Mental Health Authorities and Single State Agencies for Alcohol and Other Drug Abuse for technical assistance to States to improve the availability and use of data related to mental health and substance abuse needs.

SUMMARY: This notice is to inform the public of planned grants for technical assistance that the Center for Mental Health Services (CMHS), under its State Reform Grant Program, and the Center for Substance Abuse Treatment (CSAT), under its State Treatment Needs Assessment Program, intend to award to State Mental Health Authorities (SMHAs) and Single State Agencies (SSAs) for Alcohol and Other Drug Abuse. In fiscal year 1999, CMHS has approximately $500,000 available to fund 5 grants; CSAT has approximately $4.5M available to fund 9–15 grants. Depending on the availability of funds in future fiscal years, CMHS and CSAT may re-announce the program and award additional grants. Awards will be made if the applications are scored by the initial review groups and concurred with by the CMHS and CSAT National Advisory Councils, respectively. This is not a formal request for applications; assistance will be provided only to SMHAs and SSAs for Alcohol and Other Drug Abuse.

Eligibility for grants is limited to SMHAs and SSAs for Alcohol and Other Drug Abuse because these entities have the statutory responsibility to develop and submit needs assessment data as part of their Block Grant applications. By providing assistance to the States in the area of needs assessment, CSAT, under its State Treatment Needs Assessment Program, seeks to insure that data needed for the rational allocation of scarce resources for substance abuse treatment are available for States to use in their planning activities. Grant funds will support States in (1) developing the infrastructure, and (2) improving the availability and use of data of treatment needs beyond that required to meet statutory requirements under the Substance Abuse Prevention and Treatment Block Grants. CMHS, under its State Reform Grants Programs, seeks to support States to facilitate the integration, analysis, synthesis, and use of information for State mental health planning efforts and to manage State mental health care reform efforts.

Authority: Grants to SMHAs will be made under the authority of section 1948(a) of the Public Health Service Act, as amended (42 U.S.C. 300x–58). Grants to SSAs for Alcohol and Other Drug Abuse will be made under the authority of section 1935(b)(1)(A) of the Public Health Service Act, as amended, (42 U.S.C. 300x–35). The Catalog of Federal Domestic Assistance number for the CSAT State Treatment Needs Assessment Program is 93.238; the Catalog of Federal Domestic Assistance for the CMHS State Reform Grants is 93.119.

CONTACTS: For the CMHS State Reform Grants Program contact: Olinda Gonzales, Ph.D., CMHS/SAMHSA , Parklawn Building, Room 15C–04 (Tele: 301–443–3343). For the CSAT State Treatment Needs Assessment Program contact: Roger Straw, Ph.D., CSAT/SAMHSA, Rockwall II Building, Suite 840 (Tele: 301–443–7747). The mailing address for these individuals is 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: May 26, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–13857 Filed 6–1–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–FA–10]

FY 1998 Public and Indian Housing New Approach Anti-Drug Program (Formerly Known as the Safe Neighborhood Grant Program Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY 1998 Super Notice of Funding Availability (SuperNOFA) for the New Approach Anti-Drug Program. This announcement contains the consolidated names and addresses of those award recipients under the New Approach Anti-Drug Program and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: For questions concerning awards, contact the Office of Public and Indian Housing's Grant Management Center Director Michael E. Diggs, Department of Housing and Urban Development, Washington, DC, telephone (202) 358–0221. For the hearing- or speech-impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: This program is a comprehensive neighborhood/community-based approach to crime. The purpose of these competitive grants under the New Approach Anti-Drug Program, is to assist entities managing or operating Federally assisted multifamily housing developments, public and Indian housing developments or other multifamily-housing developments for low-income families supported by non-Federal governmental housing entities or similar housing developments supported by nonprofit private sources, to augment security (including personnel costs), assist in the investigation and/or prosecution of drug-related criminal activity in and around such developments, and provide for the development of capital improvements directly related to security.

Crime-fighting efforts are most effective when partnering takes place with law-enforcement agencies at various levels and with a full range of community stakeholders (such as public housing agencies (PHAs) and Tribally Designated Housing Entities (THDEs)).

The 1998 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on March 31, 1998 (63 FR 15597). Applications were scored and selected for funding based on the selection criteria in that Notice.

A total of $11,665,903.98 was awarded to 53 New Approach grantees who have submitted comprehensive implementation plans with specific measurable goals to promote self sufficiency of public and Native American housing residents. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards

provided in Appendix A to this document.

Dated: March 17, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—GRANTEES FOR THE FY 1998 PUBLIC AND INDIAN HOUSING NEW APPROACH ANTI-DRUG PROGRAM FORMERLY KNOWN AS THE SAFE NEIGHBORHOOD GRANT PROGRAM

Grantees	Amount
American Housing Foundation, James I. Fletcher, 1800 South Washington, Amarillo, TX 79102	$250,000.00
Arbor Court, L.P., Steve Sisson, 2171 Judicial Drive, Germantown, TN 38183	250,000.00
Armory Square L.P., Ann Beregin, 667 Main Street, Holyoke, MA	88,390.00
Armour Boulevard Neighborhood Task Force, Nancy Lee, 914 E. Armour Blvd., Kansas City, MO	126,960.00
Beacon Residential Management, William J. Bransky, 2 Oliver Street, Boston, MA 21090	245,440.18
Bethesda Apts. Assoc., George Arendas, c/o Brandywine agncy. 480 Lincoln Hway, N. Versailles, PA 15137	223,060.00
Broad Street Management, Inc. A, Gregory J. Dara, 935 E. Broad Street, Columbus, OH 43205	250,000.00
Broad Street Management, Inc. B, Gregory J. Dara, 935 E. Broad Street, Columbus, OH 43205	227,500.00
Casa Community Association, Frank J. Desantis, Jr., 7225 Cartwright Avenue, Sun Valley, CA	250,000.00
Century Pacific Housing Partnership VI, Dilia Camacho-Saeedi, 1610A Edgewood Drive, Danville, IL 61832	171,448.80
Chelsea Plaza Homes, Ltd., Angela Chico-Augustin, 1021 North Seventh Street, Kansas City, MO 66101	155,000.00
City of Mount Vernon, Constance G. Post, Roosevelt Square, 2nd Floor, Mount Vernon, NY 10550	250,000.00
Colonial American Development Corporation, Jeanne M. Shull, 400 S. Fifth Street, Columbus, OH 43215	243,000.00
Corinthian Housing Development Corporation, Hal Hamilton, 595 South 10th Street, Newark, NJ 07103	250,000.00
Creative Choice West Ltd., Vera Banks, 4243–D Northlake Boulevard, Palm Beach Gardens, FL 33410	250,000.00
Detroit Int'l Stake Adult Housing Corp., Thomas Jeffers, 16651 Lahser, Detroit, MI	250,000.00
Foresight Affordable Housing of MD, Inc., Robert E. Sampson, Jr., 1395 Kersey Lane, Rockville, MD 20854	209,525.00
G Management Corporation (A), Juan Gonsalez Feliciano, P.O. Box 276, St Just, PR 978	250,000.00
G Management Corporation (B), Juan Gonsalez Feliciano, P.O. Box 276, St Just, PR 978	250,000.00
Haddington Family Associates, Robert Sampson, Jr., 1 East Stowe Road, Marlton, NJ 08053	249,542.00
Hart Realty, Inc., Thomas Denhart, 1534 Race Street, Cincinatti, OH 45210	250,000.00
Hickory Heights L.P., Claude Killingeworth, 1108 Cambridge Street, Abbeville, SC 29620	212,045.00
Homes of Oakridge, Inc., Margaret M. Toomey, 1236 Oakridge Drive, Des Moines, IA 50314	250,000.00
Insignia Residential Group, Dan Hoefner, P.O. Box 1089, Greenville, SC 29602	250,000.00
Jackson Terrace Associates, Peter G. Florey, 100 Terrace Ave, Hempstead, NY 11550	250,000.00
Jersey City Management, Inc., John Skelly, 50 Journal Square, Jersey City, NJ 07306	218,900.00
King of Kings Housing Development Corporation I, Charles E. Figgs, P.O. Box 8036, Fresno, CA 93747	250,000.00
L.A. Gardens Community Association, Joseph Fernandez, 7225 Cartwright Avenue, Sun Valley, CA 91352	250,000.00
Lakeview Presbyterian Homes, Inc., Thomas Ahrenhozz, 515 E. Orange Street, Lakeland, FL 33801	250,000.00
LDC Borinquen, Inc., Alan Regon, 3 Townline Circle, Rochester, NY 14623	250,000.00
Montgomery Family Associates, Robert Sampson, Jr., P.O. Box 994, Marlton, NJ 08053	249,542.00
Morehouse Gardens Apartments, LTD, M. Barclay Coffman, 601 Pleasant Drive, Morehouse Parish, LA 71220	209,000.00
Mt. Zion Housing Corporation, Edith Parkman, 2445 Amsterdam Drive, Augusta, GA 30906	250,000.00
Northwood Apartments, LTD, Becky Thompson, 531 Brower Road, Lima, OH 45801	197,305.00
Nueva Esperanza Inc., Carlos A. Vega, 401 Main Street, Holyoke, MA 01040	211,845.00
Peabody Properties, Doreen Bushaskin, 159 Burgin Parkway, Quincy, MA 02169	244,400.00
People Self-Help Housing Corporation, Jill Martinez, 29 East Canon Perdido, Santa Barbara, CA 93101	148,120.00
River Place Limited Partnership, Ann Berezin, 667 Main Street, Holyoke, MA 01040	129,960.00
Ross Management Group, Deborah Ross-Weseloh, 2211 Olive Street, Denver, CO 80207	209,108.00
RPS Management Company, Mike Meyer, 1935 El Camino Vida Roble, Carlsbad, CA 92008	250,000.00
Sherwood Glen on the Fox I & II, Diane Pedersen, 3 Oxford Road #14, Carpentersville, IL 60110	247,077.00
Shoreline Limited Partnership, Eric R. Vogt, 200 Niagra Street, Buffalo, NY 14201	250,000.00
Swift Creek Apts., Melanie Thompson, 405 Swift Creek Road, Hartsville, SC 29550	112,125.00
Talcott Gardens Apartments, 135 West Street, New Britain, CT 06051	242,000.00
Terra Genesis Housing, Inc., Ron Anderson, 301 S. Frio, #470, San Antonio, TX 78207	250,000.00
Thetford Properties III, David Nagel, 7610 Falls of the Neuse, Raleigh, NC 27624	228,000.00
Thetford Properties IV, David Nagel, P.O. Box 97188, Raleigh, NC 27624	240,000.00
Tulsa Senior Housing Association, Steve Cowen, P.O. Box 3465, Tulsa, OK 74101	121,514.00
Tyler Apartments, LDC, Grant Trivett II, P.O. Box 58, Johnson City, TN 37605	232,978.00
US Shelter Corp., Melanie Thompson, 619 Ervine Court, Florence, SC 29506	32,275.00
Victory Economy Development/Washington Invests in, John J. Lucas, Jr., 907 East Tuscarawas Street, Canton, OH 44707	249,936.00
West Gate Apartments, Inc., Beverly Rochell, c/o RPM Management P.O. Box 7300, Little Rock, AR 72212	246,908.00
Williamsport Village Apartments, Deborah Orolin, 357 Federal Avenue, Williamsport, PA 17701	243,000.00

[FR Doc. 99–13882 Filed 6–1–99; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Golden-Cheeked Warbler During the Construction of One Single Family Residence on 0.75 Acre of the 5 Acres on Spicewood Springs Road in Travis County, TX

SUMMARY: Anita and Kent Chambers (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–010979–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction of one single family residence on Spicewood Springs Road, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by July 2, 1999.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–010979–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Anita and Kent Chambers plan to construct a single family residence on Spicewood Springs Road in Austin, Travis County, Texas. This action will eliminate less than one acre of habitat and indirectly impact less than four additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by donating $1,500 into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not decrease the impacts.

Geoffery L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–13885 Filed 6–1–99; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management.

ACTION: Resource advisory councils' meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BlM), Council meetings will be held as indicated below. The agenda for the June 18, 1999 meeting includes: Approval of minutes of the previous meeting, Standards and Guidelines for wild horses, renewal of the RAC Charter and subject matter for future meetings.

All meetings are open to the public. Citizens may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Curtis Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

DATES, TIMES & LOCATION: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council meeting, June 18, 1999, starting at 9:00 a.m., Ely Field Office, 702 North Industrial Way, Ely, NV; public comments will be at 11:30 a.m.; tentative adjournment 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: May 20, 1999.

Helen Hankins,

District Manager, Elko.

[FR Doc. 99–13871 Filed 6–1–99; 8:45 am]

BILLING CODE 4310–HC–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

June 15, 1999 Board of Directors Meetings.

TIME AND DATE: Tuesday, June 15, 1999, 1:00 pm (open Portion); 1:30 pm (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting open to the Public from 1:00 pm to 1:30 pm; Closed portion will commence at 1:30 pm (approx.).

MATTERS TO BE CONSIDERED: 1. President's Report.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 pm)

1. Finance Project in Brazil and Bolivia

2. Insurance Project in Brazil
3. Insurance Project in Argentina
4. Insurance Project in Argentina
5. Insurance Project in Turkey
6. Insurance Project in Algeria
7. Pending Major Projects
8. Report on Equity Fund

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 28, 1999.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 99–14045 Filed 5–28–99; 2:53 pm]

BILLING CODE 2210–01–M

INTERNATIONAL TRADE COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 11, 1999 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–807 (Final) (Certain Hot-Rolled Steel Products from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on June 18, 1999.)
5. Outstanding action jackets:

(1.) Document No. EC–99–008: Approval of 50th report of the Operations of the Trade Agreements Program, The Year in Trade, 1998.

(2.) Document No. EC–99–009: Approval of final report in Inv. No. 332–325 (The Economic Effects of Significant U.S. Import Restraints: Second Update).

(3.) Document No. GC–99–047: Inv. Nos. 751–TA–17–20 (Titanium Sponge from Japan, Russia, Kazakhstan, and Ukraine).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 25, 1999
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14057 Filed 5–28–99; 2:49 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DeepVision L.L.C.

Notice is hereby given that, on March 12, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Baker Hughes DeepVision Holdings, Incorporated has filed written notification simulataneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Baker Hughes DeepVision Holdings, Inc., Houston, TX; Baker Hughes Oilfield Operations, Inc., Houston, TX; Transocean Offshore Inc., Houston, TX; and Transocean Offshore D.V. Inc., Houston, TX. In addition, each of the following companies, none of which has an equity or other ownership interest in DeepVision L.L.C. ("DeepVision"), has agreed to fund a portion of the costs required to determine the feasibility of, and to develop, certain technology to be used in the services proposed to be offered by DeepVision: Amoco Production Company, New Orleans, LA; Mobil Technology Company, Dallas, TX; EEX Corporation, Houston, TX; and Chevron Petroleum Company, Houston, TX (collectively, the Operator participants). In return for such funding, the Operator Participants will have preferential rights to contract with DeepVision for such services, if such technology is developed and is determined to be commercially feasible.

The nature and objectives of the venture are for the purpose of marketing and selling services (and developing technology to provide those services) for offshore oil and gas wells that have all of the following elements: (1) The services are provided to offshore wells and for offshore operations; (2) the services utilize reeled systems technology that DeepVision has developed or acquired; and (3) the services consist of services for one or more of the following activities: (a) the drilling and/or completion of new subsea wellbores; (b) the intervention and/or workover of existing subsea wellbores; or the installation, maintenance and repairs of subsea oilfield facilities associated with subsea wellbores. As used herein, "subsea wellbores" means offshore wellbores having a subsea wellhead at or near the sea bottom. However, the scope of DeepVision's operations does not extend to services provided by Transocean Offshore Inc.'s (and its affiliates') existing fleet of conventional coiled tubing drillling vessels and systems for semi-submersibles and offshore platforms, nor to Baker Hughes Incorporated's (and its affiliates') coil tubing services of the type corresponding to their existing services that operate (a) Onshore, (b) through surface completions or (c) through conventional subsea workover, drilling or production risers.

Constance K. Robinson,

Director of Operations, Antitrust Divison.

[FR Doc. 99–13275 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for Nonresident Alien's Mexican Border Crossing Card.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 23, 1999 at 64 FR 8861, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 2, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Application for Nonresident Alien's Mexican Border Crossing Card.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–190, Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This form will be used to obtain data from an applicant for replacement lost, stolen, or mutilated Mexican Border Crossing Card.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 270,410 responses at 5 minutes (.083 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 22,444 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

In additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 27, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13889 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Petition for nonimmigrant worker.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 22, 1999 at 64 FR 3572, allowing for emergency OMB review and a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 2, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 1 hour 55 minutes (1.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 706,904 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally,

comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 27, 1999.

Richard A Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13890 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Registration for Classification as Refugee.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 2, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–590. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 35 (.583) Minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 27, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13891 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information collection under Review: Medical Certification for Disability Exceptions.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. A final rule containing this information collection was previously published in the **Federal Register** on February 18, 1999 at 64 FR 7990. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 2, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–648. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. These medical certifications will be used to support an applicant's claim to an exception of the literacy and history/government knowledge requirements found in section 312 of the Immigration and Nationality Act. These certifications which are executed by licensed health care providers, are needed to support the applicant's claim of an exception to this naturalization requirement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at two (2) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 27, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13892 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Office of Job Training Programs; Workforce Investment Act; Title I, National Programs: Youth Opportunity Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: The U.S. Department of Labor, Employment and Training Administration, announces the competitive grants to be awarded under the Youth Opportunity initiative. Part I of this announcement provides the legislative authority and provides background information on this initiative; Part II provides instructions on the application submission process; Part III describes the Youth Opportunity Grant initiative; Part IV describes how to apply for urban and rural grants; and Part V describes how to apply for Native American grants. This announcement includes all of the information and forms needed to apply for Youth Opportunity Grants.

DATES: The closing date for receipt of applications is September 30, 1999, by 4 p.m. eastern standard time. No exceptions to the mailing and hand-delivery conditions set forth in Part II of this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications must be mailed or hand-delivered to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Yvonne Harrell, Reference: SGA/DFA 99–015; 200 Constitution Avenue, NW., Room S–4203; Washington, DC 20210. Your application should specify on the cover whether you are applying for an urban, rural, or Native American grant. Areas that are not EZ/ECs are urban if they are located in metropolitan areas as defined by the Census.

FOR FURTHER INFORMATION CONTACT: Fax questions to Yvonne Harrell, Division of Federal Assistance at (202) 219–8739. This is not a toll-free number. All inquiries sent via fax should include the SGA number (DFA 99–015) and a contact name and phone number. This announcement is also being published on the Internet on the Employment and Training Administration's Home Page at http://doleta.gov. Commonly asked questions and answers regarding these grants will also be published on the ETA Home Page. Award notifications will also be published on the Home Page.

SUPPLEMENTARY INFORMATION:

Part I. Authority

Section 169 of the Workforce Investment Act of 1998. Regulations applicable to this Act are at 20 CFR parts 660 through 671, published at 64 F.R. 18662 (April 15, 1999). Regulations specifically applicable to Youth Opportunity Grants are at 20 CFR part 664, subpart H (§§ 664.800–664.830).

Background

The Nation's overall unemployment rate is near its lowest level in almost 30 years, but there continue to be serious economic inequalities and pockets of poverty in this country. Youth living in inner-city and rural areas with poverty rates of 30 percent or higher face considerable barriers to succeeding in life. The employment rate for out-of-school youth in high-poverty areas typically is less than 50 percent. In our country's largest urban school districts, less than 50 percent of each year's entering 9th grade class graduates four years later. Many of these out-of-school youth are at risk of becoming permanently lost to the legitimate economy. The labor market is simply not working for these youth.

The Youth Opportunity Grants authorized under Section 169 of the Workforce Investment Act (WIA) of 1998 significantly increase resources available for serving youth growing up in high-poverty urban and rural areas. The Department of Labor (DOL) envisions that these new resources will be used as a complement to the Job Corps, School-to-Work, formula-funded WIA programs, Department of Education programs, and other programs funded at the Federal, State, and local level to help youth make the transition to adulthood. We expect through these grants to develop high-quality programs that help individual youth find better jobs and increase their educational attainment. In addition to these positive outcomes for individual youth, we also expect to achieve community-wide impacts in increasing youth employment rates and educational attainment.

The Youth Opportunity Grants also offer a chance to build improved systems for serving youth. Planning and implementing these grants will require local areas to think geographically in targeting resources; to coordinate more closely with the public school system, juvenile justice system, the private sector, community-based organizations, and existing programs providing services to youth; to retain dedicated staff over several years; to develop high-quality programs based on best practices; and to provide follow-up services to youth for a longer period than previously required by employment and training grants. A primary goal of Youth Opportunity Grants is to put systems in place that will be sustained after grant funds cease and result in long-term improvements in our capacity to serve youth.

Grantees must assure that youth with disabilities have physical and programmatic access to programs operated with Youth Opportunity funds, and that programs include extensive and targeted outreach to ensure that eligible disabled youth are served under these initiatives.

DOL also requires that grantees ensure that young workers placed by their programs receive on-the-job occupational safety and health training, and that employers guarantee that jobs provided are in compliance with all appropriate State and Federal labor standards, including child labor.

Part II. Application Submission Process

This part pertains to "ALL" eligible applicants (Workforce Investment Boards, SDA administrative entity receiving JTPA formula funds, and Native American, JTPA section 401 or WIA section 166 Grantees).

What Should My Application Consist of?

You must include both a financial and a technical proposal. An original and three (3) copies of the application must be submitted. The application will consist of two (2) separate and distinct Sections: (1) The Financial Proposal, (2) the Technical Proposal. Your application must specify on the cover sheet whether you are applying for an urban, rural, or Native American grant. Areas that are not EZ/ECs are urban if they are located in metropolitan areas as defined by the Census.

What Information Should Be Included in Section I—The Financial Proposal?

Section I must include your Financial Proposal which consists of the required forms listed in Appendix "A" (Cover Sheet, Application for Federal Assistance, SF424 and the Budget Information Sheet). Do not attach any documents on top of the "Cover Sheet". This sheet must be the first page of your application package. The "Budget Information Sheet" must reflect the 12-month initial grant period. The budget include on a separate page a detailed breakout of each proposed budget line item. For each budget line item that includes funds or in-kind contributions from a source other than grant funds, identify the source, the amount, and any restrictions that may apply to these funds. You should reserve funds in the budget for staff development and travel to training conferences. Also include in this section a two page Executive/Project Summary, and the letter from the Governor designating your area as eligible for award if you are not an EZ/EC. The Federal Domestic Assistance Catalogue Number is 17.249. This number must be placed in Block # 10 of the SF424.

What Information Should Be Included in Section II—Technical Proposal?

Section II of your application will contain your "Technical Proposal" which should address the grant requirements identified in Part IV for urban and rural grants and Part V for Native American grants. Technical proposal must be limited to 30 double-spaced single-side, 8.5-inch × 11-inch pages with a 1-inch margin. The text type must be 12 point or larger. Attachments must not exceed ten (10) pages. Applications that do not meet these requirements will not be considered. Each application must include the Checklist provided as Appendix B. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

May an Application Be Hand-Delivered?

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. All applications that fail to adhere to the above instructions will not be honored.

What Happens if an Application Is Delivered Late?

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays. The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next-Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

How May I Withdraw an Application?

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative sign a receipt for the proposal.

Part III. Youth Opportunity Grant Initiative

What Is DOL's Vision of the Youth Opportunity Initiative?

At DOL, the vision of the Youth Opportunity Grant Program, and all of its other youth programs, is to assist all youth, particularly those out of school, to acquire the necessary academic, technical, and workplace skills and work experience to successfully transition into adulthood, careers, and further education and training. The Department envisions a "youth movement," involving partnerships with local education agencies, the private sector, post-secondary institutions, community-based organizations, and foundations. As well, we will be promoting public awareness of the Department's commitment to America's youth.

What Are the Objectives and Goals of the Initiative?

The Workforce Investment Act specifies that Youth Opportunity grants are to be used to increase the long-term employment of youth who live in empowerment zones, enterprise communities, and high-poverty areas. Currently, both the employment rates and the educational attainment of youth in these areas are very low. DOL expects to achieve individual positive outcomes in job placement and retention, high school completion, and college enrollment. By serving large numbers of youth in target areas, DOL also expects to achieve community-wide impacts on employment rates, high school completion rates, and college enrollment rates.

Am I an Eligible Applicant for These Grants?

You are an eligible applicant for these grants if you are a Local Workforce Investment Board (or, in areas that have not yet made the transition to Workforce Investment Boards, the administrative entity that receives formula funds for a local service delivery area (SDA) under the Job Training Partnership Act) serving a community that meets one of the following three criteria:

(1) The community has been designated a federal Empowerment Zone or Enterprise Community (EZ/EC) by the Department of Housing and Urban and Development or the Department of Agriculture under section 1391 of the Internal Revenue Code of 1986;

(2) If the State has no federally designated EZ/EC, the community has been designated by the Governor as a high poverty area; or

(3) If the State has one or more EZs or ECs, the community is one of two additional areas in the state that the Governor has designated as eligible to apply for funds under this grant program. Such communities must meet the poverty criteria for EZ/ECs set forth in section 1392 (a)(4), (b), and (d) of the Internal Revenue Code of 1986.

You may also apply for a Youth Opportunity Grant if you are a Workforce Investment Act section 166 (JTPA section 401) Native American Grantee and the community that you serve meets certain criteria. Part V of this grant announcement, which deals specifically with Native American applications, lists these criteria.

What Are Applicant Restrictions?

Under the Lobbying Disclosure Act of 1995, section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting a award grant or loan.

How Large Should the Target Area Be?

We recommend that you make your entire EZ/EC the target area for this grant, except for the largest urban EZs with populations of over 70,000. For these large EZs, we recommend that the target area be limited to a population of 70,000 and be among the poorest areas within the EZ. In the interest of fairness, we recommend that Governors follow EZ/EC population criteria in designating areas other than EZ/ECs as eligible for these grants. Thus, we are recommending that (1) cities with populations of over 700,000 have target areas limited to 70,000 people; (2) cities with populations of less than 700,000 have target areas limited to 50,000 people; and (3) rural areas have target areas limited to 30,000 people.

Do Target Areas Need To Be Contiguous?

For EZ/ECs that are not contiguous, local boards can submit the entire EZ/EC as the target area or a sub-part of the EZ/EC. For areas that are not EZ/ECs, we recommend that the target area be contiguous. Having contiguous areas will make it much easier for sites to operate their projects. Further, for areas that are not EZ/ECs or are part of EZ/ECs, the target area should follow existing and meaningful geographic, labor market, neighborhood, and economic borders as much as possible. Following service area demarcations that are meaningful to the local neighborhood will increase a project's chances of affecting community-wide change.

How Large a Grant May I Apply for?

Cities serving a target area with a population of 70,000 can apply for a first-year grant of up to $12 million. Cities serving a target area with a population of 45,000 to 70,000 can apply for first-year grants of up to $8 million. Cities with target areas with a population of less than 45,000 and rural areas can apply for first-year grants of up to $5 million.

What Is the Grant Period?

Grant awards will be made for an initial period of one year, with up to 4 additional option years based on the availability of funds and satisfactory progress towards achieving the goals and objectives of the grant. If the grant is extended to the third and fourth years, the grant will be reduced to 75 percent of the initial grant amount. If the grant is extended to the fifth year, the grant will be 50 percent of the initial grant amount.

What Is the Expected Number of Awards?

We expect to award approximately 25 and 30 grants. Grants will be distributed equitably among local boards and entities serving urban areas, rural areas, and Indian reservations based on factors such as the poverty rate in these areas, the number of people in poverty in these areas, and the quality of proposals received.

Can DOL Migrant Worker Grantees Apply for These Grants?

Separate funds have been authorized for new projects to serve youth from migrant and seasonal farmworker families, and these funds will be competed separately. Youth from migrant and seasonal farm worker families can be served in the rural projects funded under Youth Opportunity Grants, and we encourage sites to include services to such youth in these proposals, but Local Boards rather than Migrant Worker Grantees must apply for these grants.

How Will Applications Be Reviewed and Selected?

The Department will screen all applications to determine whether all required elements are present and clearly identifiable. These required elements are discussed in the application process in Sections IV and V and are summarized in Appendix B "Application Checklist." Failure to include all required elements will result in rejection of the application. Proposals will be reviewed by an independent panel including both federal staff and peer reviewers. Site visits will be made

to finalists. We will put more weight on site visits in this competition than we have in any recent grant selection process, and expect to meet with all key local partners during these site visits. The panel recommendations to the Grant Officer are advisory in nature. Final award decisions will be based on the best interests of the government, including consideration of geographic and urban/rural balance. The Grant Officer may elect to award grants either with or without discussions with the applicant. In situations where no discussions occur, an award will be based on the applicant's signature on the SF424 form, which constitutes a binding offer.

Will There Be Technical Assistance Conferences?

Technical assistance conferences will be held at the following times and places:

June 15: Washington, DC at the Hilton Washington Embassy Row Hotel, 2015 Massachusetts Avenue NW, Washington, DC 20036 (202–265–1600)
June 16: Chicago at the Westin O'Hare Hotel, 6100 River Road, Rosemont, Illinois 60018 (847–698–6000)
June 23: Denver (for Native American grants only, see Section V)
June 24: Los Angeles (location to be announced on the DOL Home Page)
June 29: Atlanta (location to be announced on the DOL Home Page)

For general information and up-to-date information regarding these technical assistance conferences, please call 703–299–1680. You can register for one of these conferences by fax at 703–299–4589 or by e-mail at youthbid@dtihq.com. To register, please include the following information: Full name, Title, Organization, Address, Phone, Fax, E-mail, number of participants, and which conference you will be attending. Please identify any special needs. You will need to make hotel reservations on your own. Please call the above number for information on the hotels in which the technical assistance conferences will be held.

Who May Be Served Under These Grants?

These grants can serve all youth who live in the target community who are not less than age 14 and not more than age 21 at the time of initial enrollment. We are looking for proposals that address the needs of both in-school and out-of-school youth. We expect that the largest share of funds from these grants will go towards serving out-of-school youth, with some grant funds and many complementary activities going towards decreasing the dropout rate and increasing the college enrollment of in-school youth. Project operators should take care not to give incentives for in-school youth to drop out of high school to participate in any programs offered here.

What Are Allowable Uses of Grant Funds?

The allowable uses of grant funds are described in the activities authorized at sections 129 and 169(b)(2) of the Workforce Investment Act, and at 20 CFR 664.400 through 664.620 of the WIA regulations. Allowable activities include intensive placement services and follow-up services. (Specific examples of all allowable uses of funds, including intensive placement services and follow-up services are described in detail later in this announcement.)

What Restrictions Are There on the Use of These Grant Funds?

The restrictions described at section 181 of the Workforce Investment Act and at 20 CFR 667.260 through 667.268 of the WIA regulations apply to the use of these grant funds.

Will There Be a Planning Period for Sites After Grant Award?

We understand that it will take sites that have been awarded grants some time to hire staff, formalize partnerships, and locate and renovate operating space. We will work with sites and provide technical assistance from the beginning of the grant period to help sites avoid start-up problems and get off as fast a start as is possible. Most likely, sites will be able to start some components of their projects fairly quickly, and then gradually introduce other components.

Will DOL Conduct an Evaluation of This Initiative?

DOL will conduct an evaluation of the Youth Opportunity Grant initiative. Grantees will be required to cooperate by providing enrollment and participation data and other information, but there will be no significant burden on sites for this evaluation. We also may require quarterly progress reports.

Part IV. Application for Urban and Rural Grants

What Should I Do if I Wish To Apply for an Urban or Rural Grant?

Begin your planning process early and include the public and private sectors and members of the community. Suggested agencies that should be represented in the planning include local youth councils, the mayor's office in urban sites and county government in rural areas, One-Stop Centers, local employers, high schools and middle schools in the target area, EZ/EC Boards, the juvenile justice system, public housing agencies, community colleges, local four-year colleges, local Job Corps centers, representatives of Job Corps center industry councils, community-based organizations, local foundations, and faith-based organizations. You should also try to get the community involved, including youth and their parents or guardians. This is not an exhaustive list. Considering how the various components in your project will be sustained after grant funds cease should be an integral part of your planning process.

What Will Be the Criteria for Award?

Panelists will rate proposals based on answers to the questions which are more fully explained below in this section. DOL is especially interested in how grantees will sustain their programs after federal funds cease, and plans for sustainment will be a key factor for award. For urban and rural grants, the weight for each answer is as follows:

(1) Need in the target area (no regular points, but up to 10 bonus points)

(2) Project design and service strategy (40 points)

(3) Management and accountability (20 points)

(4) Sustainability: Public sector and community partnerships and complementary resources (15 points)

(5) Private sector resources (15 points)

(6) Dropout prevention plans (10 points)

How Should My Technical Proposal Be Organized?

The technical proposal must be organized to follow the format and answer the questions below. The criteria below will be used to evaluate your proposal. Points will be deducted from applications that are not responsive to these questions. The technical questions are as follows:

1. What Is the Need for the Project in the Target Area? (up to 10 bonus points)

Provide a good general description of the target area and the extent of poverty and other risk factors for youth. Most important, provide the population of the area in the 1990 Census, the poverty rate of the area in the 1990 Census, and the dropout rate of target area high schools calculated by showing the 9th grade enrollment at each high school in 1994 and the graduating class in June of 1998. If circumstances have changed markedly in the target community since the 1990

Census, describe such changes and provide any additional information on the community. Also provide an estimate of the number of youth in the target community based on the 1990 Census or other information. Describe how the area compares with other communities in the city or State regarding poverty and unemployment. Describe what the target area looks like; its relation to downtown or the center of activity and/or commerce; the elementary, middle, and high schools in the area; other organizations in the target community that serve youth such as Job Corps, One-Stop Centers, and YouthBuild, and the number of youth they serve; and other features that will help us understand the area. Also provide a map of the target community, with schools in the area identified, and the planned location of program activities.

2. What Is the Project Design and Service Strategy? (40 points)

The Department of Labor is committed to ensuring that several core principles underlie an effective youth strategy. These principles include: Providing comprehensive services; ensuring the participation of caring adults; a commitment to excellence; and guaranteeing long term follow-up to all youth participants. We are also committed to instilling in youth a sense of personal responsibility and accountability for their actions. These core principles must be present in all Youth Opportunity Grant initiatives. These principles are quite similar to the effective practices common to successful youth programs identified by the Promising and Effective Practices Network (PEPNet). Information from PEPNet can be obtained from the National Youth Employment Coalition at 202–659–1064 (nyec@nyec.org).

Two critical components for ensuring that design requirements will be enhanced are: Youth Opportunity Community Centers, where most of the project activities such as case management should take place; and a core staff of youth development specialists serving as case managers who will play a critical role in recruiting youth and assuring intensive placement, follow-up, and other identified services are provided to youth. Applications must address how these two critical components will be provided.

A. Youth Opportunity Community Center. We expect that Community Youth Opportunity Centers and perhaps some satellites offices will be set up in the target area. This center must be tied into One-Stop Centers serving the target area—either co-located at a One-Stop Center or as a satellite of a full One-Stop Center. The youth center must be a well-situated place where youth can enroll, receive an individual assessment, develop their service strategy, and meet with youth development specialists for referrals to job training, intensive placement, education programs, the Job Corps, other youth programs, follow-up, job development, and other services. It must also be a place where youth receive training in basic employability skills, and access to program information, referrals, and other youth development activities. Applications must discuss tentative locations for such centers and satellites. Also be specific about renovations that will be needed to establish the center, and the costs of such renovations.

B. Core Staff. The staff must be of a size sufficient to handle the expected demand for services. We expect that typical urban sites will have a core staff of 40 to 50 youth development specialists and job developers working to place and retain out-of-school youth in private sector jobs and to keep in-school youth from dropping out of school, as well as up to 10 additional outreach workers actively recruiting youth into the program. For urban grants in target areas with populations of 70,000, we expect even larger numbers of core staff. Rural sites will have smaller grants and may wish to have fewer job developers. Grantees must hold steady the amount of grant funds for core staff throughout the five years of the grant, even though the overall grant funding will decline over time. Your plan must also indicate the expected number of youth each case worker will be assigned to at a given point in time, understanding that, over time, many youth will require less attention and new youth can be brought onto the caseload. You must indicate how many staff will be working with out-of-school youth and how many will be working with in-school youth.

C. Building a Better System for Serving Youth. Describe in this section the gaps in the current system for serving youth in the target community. Explain how the services provided under this grant will improve this system. Describe your vision of how the new system for serving youth will work as opposed to the old system. Also describe gaps that will remain, and plans for building capacity so as to eventually fill these gaps. The existing Out-of-School Youth Opportunity grantees applying under this solicitation should indicate how they plan to include and transition their current project into a larger initiative funded under the Youth Opportunity Grant.

D. Program Activities. The framework for serving youth under the Workforce Investment Act and in this project must provide for: Individual needs assessments; individual service strategies; preparation for employment and/or post-secondary education; linkages between academic and occupational learning and connections to intermediaries; a menu of program elements; intensive placement and follow-up services; and access to information and referrals.

Individual assessments and services strategies. Discuss how you will actively recruit youth through various strategies rather than waiting for them to apply. Provide a description of the individual assessment and service strategy development processes.

Program elements. 20 CFR 664.410 lists ten elements that must be included in all local workforce investment area youth programs. These ten program elements can be grouped around four broad themes: (1) Preparation for and success in employment (including summer jobs, paid and unpaid work experience, and occupational skills training); (2) improving educational achievement (including such elements as tutoring, study skills training, instruction leading to a high school diploma, alternative school and dropout prevention); (3) support for youth (including meeting supportive service need.., providing mentoring and follow-up activities); and (4) services to develop the potential of youth as citizens and leaders (the concept of leadership and youth development). In addition, these program elements must incorporate preparation for employment and/or post-secondary education; linkages between academic and occupational learning; and connections to intermediaries for job development assistance. We are particularly interested in teaching methods which put learning in a real-world context. Applications must describe how each of these program elements is present in your project. While every youth does not have to be provided each of the ten program elements (with the exception of intensive placement and follow-up services), each site must ensure that they are available as the services will be provided on an individual assessment. Discuss how the array of services will be sequenced, and how various activities will be available taking into account the different ages, language proficiency, ethnicity, culture, disabilities, stages of development, and job readiness of individual youth.

DOL expects that the costs for serving individual youth will vary greatly—from perhaps $20,000 a year for conservation corps programs to less than $2,000 for youth who primarily need job placement. The Department of Labor's budget presented to Congress assumes that the average cost for serving youth will be $5,000 a year in Youth Opportunity Grant funds. The average cost per youth can be supplemented with other resources. Applicants can use this average cost figure as a guide, but will not be penalized for proposing a different average cost figure.

The program elements can be met in a variety of ways. Possible new initiatives which correspond to the required program elements include, but are not limited to, the following activities (where we refer to an existing program, we have provided a telephone number as well as a web site where available where additional information can be obtained):

—Pre-employment training emphasizing the development of positive social behaviors and then job placement, with long-term follow-up by case managers;
—A new alternative school started in partnership with the public school system, using average daily attendance funds as a match;
—A vocational training program modeled after the Center for Employment Training (CET) (408–294–7849) in San Jose, California;
—A pre-apprenticeship program to train and place youth in construction or other trades;
—Training programs to get youth interested in non-traditional occupations;
—On-the-job training with local employers;
—A YouthBuild construction training program (617–623–9900, www.youthbuild.org);
—A Youth Conservation Corps (National Association of Service and Conservation Corps, 202–737–6272, www.nascc.org);
—A work/study program started by the local community college;
—Offering incentives to youth for completing education or training;
—A dropout prevention program in the target area high schools;
—Expanded tutoring and mentoring programs for high school youth, including tutoring programs conducted by Sylvan Learning Centers (800–338–2283, www.educate.com/home.html), Score! Educational Services (949–363–6764, www.score-ed.com), and Huntington Learning Centers (201–261–8400, www.tutoringhlc.com);
—Remedial education and GED courses, including those that lead to regular high school diplomas;
—A comprehensive sports, cultural, music, dance, art, and drama program;
—Expanded work-based learning opportunities for high-school youth, and 2+2+2 programs with community colleges and four-year colleges;
—The Federal Bonding Program to cover job applicants, such as youth without prior work history, who employers may otherwise consider too much of a risk to hire (888–266–3562);
—English to Speakers of Other Languages services; and
—An on-the-job mentor training program operated by the local Chamber of Commerce designed to build relationships between youth placed in work experiences and local employers.

Leadership development, citizenship, community service, and recreation activities. These activities are specifically authorized in the Youth Opportunity section of the legislation. DOL expects that all sites will place great emphasis on having youth participate in community service. We encourage applicants to coordinate with community service programs such as AmeriCorps wherever possible. Discuss plans for engaging both in-school and out-of-school youth in community service projects, and the skills you expect them to learn from these projects. Discuss plans for youth development activities, including how you will provide training in positive social behavior. For example, conflict resolution classes and diversity training can be provided. Also discuss peer-centered activities that encourage youth to take responsibility for their own lives, and efforts to develop youth leadership through activities that build decision-making skills, team work, and self-esteem. Comprehensive sports and cultural programs are one way grantees can instill leadership and a sense of community to participants. Leagues can be started in the target area in several sports for both boys and girls. Cultural activities can also be provided. Discuss the availability of existing resources such as cultural offerings and playing fields in the target area. Also discuss whether you will have youth sign a contract describing program rules of conduct, mutual responsibilities of enrollees and staff, and expected outcomes for each enrollee. Also discuss how you will involve the parents and guardians of youth and how you will involve youth in advisory boards.

Intensive placement and follow-up services. As required under the WIA youth formula-funded program, intensive placement and follow-up services must be provided to every youth enrolled in the program. The Youth Opportunity Grant section of the legislation goes further in requiring that every youth must receive follow-up services for a minimum of 24-months. Describe complementary strategies for placement and long-term follow-up activities.

One-Stop Center linkages. Describe linkages with local One-Stop Centers and how these connections will be accomplished. In most cases, we expect that the Youth Opportunity Community Center will be co-located at the One-Stop Center or a satellite of the One-Stop Center.

Job Corps center linkages. The plan must describe linkages with local Job Corps centers, and how these connections will be accomplished.

Access to information and referrals. Project staff must ensure that eligible youth receive information on the full array of appropriate services available to them and referrals to appropriate training and educational programs. Discuss how you will tie into the existing One-Stop system to provide such information and referrals.

Serving youth with disabilities. Describe how you will recruit and serve youth with disabilities, and how you will assure that they have full access to programs under the grant.

E. Case Studies. To help us better understand how your new system will work in serving youth in the target community, describe how your project would address the needs of the following youth. Feel free to add other details to these examples, and contrast how these youth would be served under the old system and the new system you are planning.

Case Study #1. An 17-year-old who has completed the eighth grade has a history of substance abuse and school suspensions due to fighting, and has subsequently dropped out of school with a poor academic record. This youth has had limited and intermittent work experience at fast food restaurants, since the age of 14, but has never held any one job for longer than 3 months. This youth lives in a household headed by a grandmother who also cares for three younger siblings. This youth has had minor brushes with the juvenile justice system, but hangs out with other youth and young adults who have serious criminal records. This youth has been identified by a school counselor as having certain artistic gifts which have never been developed.

Case Study #2. An 18-year-old is a teen mother. She has a learning

disability, and is not interested in returning to school. Her main goal in life is to be able to support herself.

Case Study #3. A brother and sister have become involved in your program through sports activities you provide. The brother is age 19 and has just lost his job after getting into a fight with his boss. He does not do well in school, and mainly he wants to work right now. The sister is age 15 and will be entering ninth grade in the fall. She has only average grades, but always gets one of the highest scores at her school on national standardized tests. She has a lot of energy, but has given little thought to what she wants to do with her life.

3. How Will the Project Be Managed? (20 points)

A commitment to excellence and quality management reflect both DOL and PEPNet core principles discussed earlier in this section. You should discuss in your answer here how this project will be managed to ensure excellence.

Program Structure. You must provide a diagram to show the sequence and flow of Youth Opportunity services. You must show coordination between Youth Opportunity sub-grantees and other programs and services in terms of recruitment, assessment, and referrals. Also show links between the Youth Opportunity program and complementary new activities promised by public and private sector partners. You should also show links between the Youth Opportunity program and existing services available to youth in the target community, including the Job Corps and other youth employment, education, and training programs.

Fiscal Management. Describe the fiscal management systems that you have in place. Describe the fiscal management experience of your organization. How will you provide fiscal oversight of sub-grantees?

Staffing Plan. Provide a staffing plan in which you discuss how you will select a project coordinator and the qualifications this person must possess; how you will recruit and retain quality staff, including paying competitive salaries; how you will select staff, with the main criteria for selection being their ability to motivate youth and be positive role models. We expect that most staff will have attended college, so that they can be role models for youth to further their education.

Accountability. Which agency or agencies will hire the case managers and other core staff for this project? Describe why this agency was selected to be the lead for this project, the background of the agency, and current or past projects conducted by the agency. We wish to avoid situations in which case managers and job developers are spread out over several agencies, with little or no accountability to the lead agency. We also wish to avoid situations in which case managers are accountable to one agency and job developers to another. Where possible, the bulk of core staff should be hired by one agency, and then perhaps stationed at different sites. An alternative is to divide the target area into three or four geographic segments and assign agencies to be accountable for each of these segments.

Expected Performance Levels. Your application must propose expected levels of performance. (The levels of performance will be negotiated with the Department before the grant is awarded.) Your plan must indicate the number of 14–18 year-olds and 19–21 year-olds you plan to enroll during the first year of the project. For 19–21 year-olds, you must indicate the number of first-year enrollees who will enter unsubsidized employment, enter education or training programs, join the military, be retained in employment for six months, one year, and two years, and the earnings of these youth six months, one year, and two years after placement. For 14–18 year-olds, you must indicate the number of first-year enrollees who will attain basic skills, work readiness skills, and occupational skills; attain high school diplomas or GEDs; and be placed and retained in post-secondary education, employment, the military, or apprenticeships. In particular, we want to know the overall number of youth who will be placed in jobs, school, training, college, and the military. You must also estimate the proportion of employers and participants who will indicate satisfaction with services received in surveys which you will need to conduct. You can also propose other performance measures for the indicators of performance described in WIA section 136 to either replace some of the above measures or complement them, and we will negotiate the measures with you prior to grant award. DOL expects to implement a performance incentive system in which the best performing sites receive some increases in grant funds, while sites not meeting their goals are subject to sanctions. Urban, rural, and Native American sites will be judged separately in determining these incentives.

Role of Local Workforce Investment Board and Youth Council. DOL expects that the Local Board, through its Youth Council, will be heavily involved in this project and will be ultimately responsible for the project's success or failure. We also envision the chief elected official being accountable for the success of the project. We also see Local Boards taking the lead in helping business leaders see youth in the target community as a positive resource and their future workforce. How will the Board and Youth Council involve itself in the project so that it is responsible for the project's success? How will the Local Board provide programmatic oversight? How will the Board hold the staff accountable? How will the chief local elected official provide oversight and direction? How will the Board work with business leaders to promote the sustainment of the project after grant funds cease? What will be the relationship between the Board and the One-Stop Center? If you do not have a Youth Council yet, you can discuss your plans for developing the Council.

Community Involvement. How will you use your Youth Council to involve the community served by this grant? DOL expects that each site will set up a community advisory board to participate in the planning and oversight of this project. You must discuss what the role of this community advisory board will be. You must also discuss how you plan to have community residents and families involved in program efforts, including sports leagues, cultural activities, community service, job shadowing, mentoring, and leadership development.

Staff Development. You must discuss how you provide initial training and offer development opportunities to project staff, including educational opportunities at local community colleges and four-year colleges and additional training to help support the case managers and job developers with the demands of their jobs. Describe ways in which existing local resources such as technical assistance and supportive services from staff in other youth programs such as the Job Corps and YouthBuild can be used and integrated into staff development.

4. How Will You Sustain Your Program and Leverage Other Resources? (15 points)

Sustainability. Discuss in this section how you plan to sustain this project after grant funds cease. Your sustainment plan must include a combination of federal, state, and local public sector resources, as well as local non-profit sector resources. Sustainment must be built into the design and ongoing operation of the project. We are particularly interested in service strategies that can be sustained with average daily attendance funds provided through State Educational Agencies.

Encouraging community ownership and participation in these projects will also help promote sustainment. We especially encourage sites to commit increasing cash resources during the declining years of federal funding to encourage sustainability, and up to five of the 15 points under this criteria will be awarded based on the increasing cash commitments.

Other Resources. You must discuss here how you will use Workforce Investment Act adult and youth formula funds to complement these grant funds, including having a One-Stop satellite center co-located with the Youth Opportunity Community Center. You also must discuss the role of the public school system, the EZ/EC Board, social service agencies, the Parks and Recreation Department, the juvenile justice system, the Police Athletic League, police, health service agencies, local charter schools, community colleges, four-year colleges, local foundations, Boys and Girls Clubs, adult education, YWCAs and YMCAs, 4–H Youth Development, Big Brothers/Big Sisters, parents, faith-based organizations, community development corporations, and State agencies, including State Educational Agencies, and any other potential community participants. You should also show linkages with agencies that serve youth with disabilities and youth who will be leaving foster care. Rural sites must show coordination with the cooperative extension of Land-Grant Universities, and with the research and extension of Regional Rural Development Centers.

We also encourage grantees to use the Department of Housing and Urban Development's Community Development Block Grants (CDBG) funds to help renovate buildings for the new Youth Centers that will be needed for these grants. Other possible federal collaborations include Juvenile Justice gang prevention projects; the Department of Education's 21st Century Community Learning Centers, Kids in Family Camp, and Upward Bound programs; the Department of Agriculture's Children, Youth and Families at Risk program; Housing and Urban Development's Youth Build projects; Welfare-to-Work formula and competitive grants; School-to-Work local partnership activities; the Job Corps; the Department of Health and Human Services' child health and child development programs; the AmeriCorps and VISTA programs; and the National Guard's Community Learning and Information Network.

We are not interested in promises of in-kind commitments representing already existing services. Rather, we are looking for detailed commitments for specific new activities in the target area. These commitments can be either to complement services to 14–21 year-olds or to serve younger youth or young adults above 21 years old. If you have recently received a grant from another agency or started a new initiative in the target area, you can discuss this in the proposal—but be precise about which activities precede this grant and which will occur because of the grant. You must discuss in this section how supportive services such as child care, substance abuse assistance, health services, and mental health services will be made available to enrollees through your partners. You must also discuss in this section how public sector commitments can contribute to the sustainment of this project after federal funds cease. It may be helpful to include a flowchart that describes the interrelationships between the various agencies and partners described in your plan. Examples of the types of public sector commitments we are looking for include the following:

—The Workforce Investment Board commits to use WIA adult formula funds and Welfare-to-Work funds for job training and placement in the target area, and to opening a One-Stop Center or satellite in the target area.
—The school system commits to starting an alternative school in the target community and to use average daily attendance funds, as well as funds from this grant, to operate the school.
—The school system commits to a major early intervention and dropout prevention program in the target area's elementary and middle schools, including home visits, modeled after the program operated by the Rheedlen Foundation (212–866–0770, or at www.pbs.org/jobs/rheedlen.html) in New York City.
—The mayor's office commits to starting a comprehensive after-school program for elementary and middle school youth in the target community similar to the LA's Best After School Program (213–847–3681) in Los Angeles.
—The city commits to using CDBG funds to renovate a building for the Youth Community Opportunity Center.
—The Parks Department and the school district jointly agree to develop new baseball and soccer fields in the target neighborhood and to open school playing fields after school so that a comprehensive sports and recreation program can be developed in the community.
—The Police Department commits to increase community policing in the target community and an expanded Police Athletic League in the area, and the juvenile justice system commits to a new alternative sentencing program for youth offenders in the target community.
—The city starts a new program to assist youth leaving foster care to make the transition to independence.
—The local school board authorizes the use of school buses for transporting youth who participate in after-school training and education programs. (Oran MOU with the local Head Start agency to use their vehicles during non-Head Start time).
—AmeriCorps commits to financing education awards for a certain number of youth in the target area.

Summary Table of New Initiatives. Your plan should include a summary table of the various new initiatives started under this grant, numbers of youth to be served by each initiative each year, and annual funding levels. An example of such a summary table is provided below:

	DOL grant	Other resources
Job developers/case managers (staff of 50)	$1,800,000	.....
Outreach workers (staff of 10)	300,000	.....
Pre-employment soft skills (500 youth @ $1,000)	500,000	.....
CET training (100 youth @ $6,000)	300,000	300,000
Work experience (80 youth @ $5,000)	400,000	.....
Pre-apprenticeship (200 youth @ $5,000)	500,000	500,000
Local conservation corps (80 youth @ $20,000)	800,000	800,000
Alternative school (120 youth @ $8,000)	500,000	440,000
Community College 2+2+2 (100 @ $10,000)	500,000	500,000
Futures program in high school (500 @ $4,000)	1,000,000	1,000,000
Sylvan, Score!, or Huntington Learning Center	200,000	200,000

	DOL grant	Other resources
College Bound program (400 @ $2,000)	800,000	.....
Sports and cultural program	240,000	100,000
Transportation and supportive services	500,000	500,000
Juvenile alternative sentencing program	300,000	200,000
Gang prevention program	160,000	160,000
Renovation of Youth Opportunity Center	.....	500,000
Job Corps (80 youth)	.....	.....
Total	8,000,000	6,000,000

5. How Will You Involve the Private Sector? (15 points)

You must include in your answer here a description of the local labor market in the target area, city, and surrounding region—who are the employers, what kinds of jobs are available, the skill requirements for available jobs, the employment outlook, the unemployment rate in the area, and wage data for the area. You could also discuss the public transportation system, and the availability of transportation to jobs downtown and in the suburbs. A goal of the project is to expand the job horizon of youth to occupations and employers throughout the local area.

Vocational training must be available for a range of occupations that are in demand locally and that offer career-track jobs. Identify the occupations for which you plan to provide training, the reasons why you selected these occupations, how employers will be involved in designing the training, and any commitments made by employers to offer apprenticeship, work-based learning, or employment opportunities. Describe how you will use existing vocational training programs like the Job Corps and vocational schools to assist in providing training.

Discuss in this section the private sector role in your project. We are not looking here for vague promises of hundreds of jobs, but rather for detailed commitments for specific activities. Explain how you will identify potential employers, secure job commitments, and maintain the participation of those employers. Discuss new school-to-work initiatives that will be started in conjunction with this project, including new work-based learning opportunities. Explain the role in the project of business representatives on your local Workforce Investment Board or Private Industry Council, and the role of major Corporate Partnerships or Compacts in your area and the role of the Chamber of Commerce. Also discuss possible mutual agreements in which the private sector commits jobs or resources in exchange for commitments from schools, public agencies, or students. Also discuss how private sector commitments can help sustain this project after federal funds cease. Examples of possible commitments include the following:

—A consortium of major corporations agrees to be partners in the project and assign a staff person responsible for coordinating work-based internships with target area high schools and identifying job openings within the corporations for target area youth.

—A firm agrees to be a corporate sponsor of the project and to make available its management expertise, advertising department, and other resources to the project.

—Local foundations and corporations form a public/private partnership to start a college access program for target area youth similar to the CollegeBound Foundation (410–783–2905) in Baltimore.

—A corporation adopts a high school in the target community and agrees to provide school-to-work opportunities for students and $1,000 college scholarships to all youth who graduate with a B average or higher.

—The local Chamber of Commerce recruits small business owners and operators to serve as mentors and entrepreneurial coaches for youth interested in business operation (including providing apprenticeship opportunities).

—A faith-based organization commits to finding mentors for 100 middle school youth in the target area.

—A university commits to providing 100 student volunteers for an after-school tutoring program in target area elementary and middle schools.

—Various community agencies commit to providing part-time jobs for youth in the target area.

Special Note to Rural Areas: We fully understand that rural sites will not have as much access to private sector jobs and partnerships as urban sites, and that some extremely poor rural areas may have few if any private sector partners with which to work. Rural sites can still get full credit under this question if they make the best use of private sector resources available. For example, rural sites could propose either paid or unpaid internships at small stores or small companies in the target area. Rural sites can also substitute public and non-profit sector internships and job placements for private sector job placements. Rural sites can also propose strong school-to-work components, which include work-based learning opportunities and class trips to major corporations in nearby cities to expand the career horizons of students. Rural sites could also propose school-to-work efforts to expand the interest of students in science and technology careers.

6. How Will You Reduce the School Dropout Rate and Increase the College Enrollment of Youth in the Target Area (10 points)

Increasing high school graduation and college enrollment rates are fundamental steps to improving the long-term employability of target area youth. In this section you must present a detailed plan for increasing the educational attainment of youth growing up in the target community. We expect that local public schools will have the lead in developing this section of the proposal, and that the plan presented includes new initiatives in target area schools and new collaborations with the public, private, and non-profit sectors. Dramatic increases in the educational attainment will require new dropout prevention efforts in neighborhood elementary and middle schools as well as high schools. Given the age restrictions on this grant, new dropout prevention efforts in elementary and middle schools must be paid for with other sources of funds. Your answer to this question must include both efforts paid for through this grant and new complementary efforts that are proposed. Your answer must clearly distinguish between what is being paid for by the grant and what

will be provided through other resources.

Discuss current efforts and future plans for breaking large high schools and middle schools in the target area into "houses" or schools-within-schools. Discuss plans for reducing the student-teacher ratio in target area schools. A dropout prevention model that sites may wish to consider is the Futures Program operated by the City of Baltimore's Office of Employment Development (410–396–1910). In this program, entering ninth graders are provided remedial education in August prior to starting high school, receive various incentives throughout their four years of high school, and have case managers who are stationed at their high school. Other dropout prevention models include the Rheedlen Foundation's efforts to serve chronic truants in elementary and middle schools, the Quantum Opportunity Program developed by Opportunities Industrialization Centers (OIC) of America (215–236–4500), and the LA's Best After-School Program. Other options include hiring additional reading teachers, a new remedial reading program for middle school youth, or hiring outreach counselors to work with truant youth. Another option is tutoring programs in which high school youth, local Job Corps youth, or AmeriCorps volunteers serve as tutors for elementary school children. You may also want to introduce or expand Communities in Schools programs (703–519–8999) in the target area middle schools and high schools. You may also may wish to involve private sector educational services such as Sylvan Learning Centers, Score! Educational Centers, and Huntington Learning Centers. Grant funds can be used to pay for tutoring services for youth ages 14 and above, while matching funds would be needed to pay for tutoring services for younger youth.

We would also like local community colleges, four-year colleges, and corporations to take on the challenge of increasing the college enrollment rate of target area youth. There are numerous ways corporations could become involved in such an effort. Baltimore's CollegeBound Foundation is a partnership of major corporations and the public sector that provides counselors and financial aid to help inner-city youth enter college. The Chamber of Commerce in Detroit (313–596–0478) guarantees college financial aid to youth meeting attendance and academic criteria. There are also examples of colleges making special efforts to serve youth from particular high-poverty areas. Berea College (606–986–9341) serves youth from Appalachia; Alice Lloyd College (606–368–2101) serves youth from specific counties in Kentucky and Tennessee; and Brandeis University (781–736–3500) has a program guaranteeing acceptance to youth in certain neighborhoods in Boston who meet specified criteria.

Should Letters of Support Be Included?

You can include letters of support if they provide specific commitments. Such letters can increase your score by showing that commitments presented in the text of your proposal are serious. Form letters will not be considered. We encourage you to have letters of support from your chief local elected official and the public school superintendent. Letters of support must be included as part of the 10 page attachment to your proposal.

Is a Letter from the Governor Required?

If you are not an EZ/EC, you must include a letter from the Governor stating that your area has been designated as eligible to apply for one of these grants. We encourage State involvement in all of these projects and if the State is contributing resources to the project, then a letter indicating such support from the Governor would show that the State's commitment is serious. We especially encourage States to help rural areas prepare their proposals and to contribute resources to these grants, as these sites may not have the resources available to them that large cities will have. States must be given an information copy of all urban and rural proposals when they are submitted to the Department of Labor.

What Should Be Included in the Financial Proposal? (Please See Part II)

Part V. Application for Native American Grants

Can I Apply for One of These Grants?

You may apply for a Youth Opportunity Grant if you are a Workforce Investment Act Section 166 (JTPA Section 401) Native American Grantee and the community that you serve meets both of the following criteria:

(1) It meets the poverty rate criteria set forth in Section 1392 (a)(4), (b), and (d) of the Internal Revenue Code; and

(2) It is located on an Indian reservation or serves Oklahoma Indians or Alaska Native villages or Native groups (as such defined in section 3 of the Alaska Native Claims Settlement Act).

Can DOL Native American Grantees Serving Persons in State-Wide or Urban Programs Apply for One of These Grants?

Except for the provisions pertaining to Oklahoma Indians and Alaskan Native Villages, Native American Grantees can only apply for projects serving reservations. Native Americans living in cities and rural areas outside of reservations can be served in urban and rural Youth Opportunity Grant projects and we encourage services to such youth in these proposals, but Local Boards rather than Section 166 Native American Grantees must apply for grants outside of reservations.

How Large of a Grant Can I Apply For?

Reservations with a Native American population of over 70,000 can apply for a first-year grant of up to $12 million. Reservations and target areas with a population of 5,000 to 70,000 Native Americans can apply for a first-year grant of up to $5 million. Reservations and target areas with a Native American population of less than 5,000 can apply for first-year grants of up to $2 million.

What Will Be the Criteria for Award for Native American Grants?

Panelists will rate proposals based on answers to the questions presented below. The weights for each answer are as follows:

(1) Need in the target area (no regular points, but up to 10 bonus points)

(2) Project design and service strategy (40 points)

(3) Youth development and community service (20 points)

(4) Dropout prevention (20 points)

(5) Management and accountability (20 points)

These questions are discussed in more detail below.

Will There Be a Technical Assistance Conference for Sites Applying for Native American Grants?

There will be a technical assistance conference specifically for sites applying for Native American grants on June 23 in Denver. It will be held at the Stapleton Plaza Hotel & Fitness Center, 3333 Quebec Street, Denver CO 80207 (1–800–950–6070). A block of hotel rooms have been reserved. Please indicate to the hotel that you will be attending the U.S. Department of Labor-Employment & Training Administration conference.

For general information and up-to-date information regarding this technical assistance conference, please call 703–299–1680. You should make hotel reservations on your own, but we would also like you to let us know you

will be attending the conference by fax at 703–299–4589 or by e-mail at youthbid@dtihq.com. Please include the following information: Full name, Title, Organization, Address, Phone, Fax, and e-mail.

What Should My Application Consist Of?

You must include both a technical proposal and a financial proposal. The technical proposal must be limited to 30 double-spaced pages and must be organized to follow the format and questions below.

1. What Is the Need for the Project on Your Reservation or in Your Target Area? (up to 10 bonus points)

You must provide a good general description of the reservation or, in the case of Oklahoma Indians or Alaskan Villages, the target area. Most importantly, you must provide the Native American population of the reservation or target area, the Native American youth population, the poverty rate, and the dropout rate of target area high schools. You can use the best data available to you including statistics from the Bureau of Indian Affairs and the Department of Health and Human Services. Dropout rates must be calculated by showing the ninth grade enrollment at each high school in 1994 and the graduating class in June of 1998. You must also describe what the target area looks like; the towns in the area; the elementary, middle, and high schools in the area; other organizations in the target community that serve youth and the number of youth they serve; and other features that will help us understand the area. You must also provide a map of the reservation or target community, with schools identified and the planned location of program activities.

2. What Is Your Project Design and Service Strategy? (40 points)

The Department of Labor is committed to ensuring that several core principles underlie an effective youth strategy. These principles include: providing comprehensive services; ensuring the participation of caring adults; a commitment to excellence, and guaranteeing long term follow-up to all youth participants. These core principles must be present in all youth Opportunity Grant initiatives. These principles are quite similar to the effective practices common to successful youth programs identified by the Promising and Effective Practices Network (PEPNet). Information from PEPNet can be obtained from the National Youth Employment Coalition at 202–659–1064 (nyec@nyec.org).

Two critical components for ensuring that design requirements will be enhanced are: Youth Opportunity Community Centers, where most of the project activities such as case management should take place; and a core staff of youth development specialists serving as case managers who will play a critical role in assuring intensive placement, follow-up, and other identified services are provided to youth. Your plan must address how these two critical components will be provided.

A. Youth Opportunity Community Center. We expect that Youth Opportunity Community Centers and perhaps some satellites offices will be set up on the reservation or in the target area. The center should be a well-situated place where youth can enroll, receive an individual assessment, develop their service strategy and meet with youth development specialists for referrals to job training, intensive placement, follow-up, job development, other youth programs, and other services. It should also be a place where there is access to program information, referrals, and other youth development activities. If there is a tribal college on your reservation, this may be the most appropriate place to have the center. Discuss tentative locations for such centers and satellites and how the proposed Center meets the criteria discussed in this paragraph. Also, be specific about renovations that will be needed to establish the center, and the costs of such renovations.

B. Core Staff. The staff must be of a sufficient size to handle the expected demand for services. We expect that reservations with total Native American populations in the 5,000 to 12,000 range will have a core staff of 25 to 35 youth development specialists working with youth. We would expect even a larger core staff for a larger reservation, and less core staff in smaller reservations. Sites must hold steady the amount of grant funds for core staff throughout the five years of the grant, even though the overall grant funding will decline over time. Indicate the expected number of youth each case worker will be assigned to at a given point in time, understanding that over time many youth will require less attention and new youth can be brought onto the caseload. You must indicate how many staff will be working with out-of-school youth and how many will be working with in-school youth.

C. Building a Better System for Serving Youth. Describe in this section the gaps in the current system for serving youth on the reservation or in the target community. Explain how the services provided under this grant will improve this system. Describe your vision of how the new system for serving youth will work as opposed to the old system. Also describe gaps that will remain, and plans for building capacity so as to eventually fill these gaps.

D. Program Activities. The framework for serving youth under the Workforce Investment Act and in this project must provide for: individual needs assessments; individual service strategies; preparation for employment and/or post-secondary education; linkages between academic and occupational learning and connections to intermediaries; a menu of program elements; intensive placement and follow-up services; and access to information and referrals.

Individual assessments and services strategies. Discuss how you will actively recruit youth through various strategies rather than waiting for them to apply. Provide a description of the individual assessment and service strategy development processes.

Program elements. 20 CFR 664.410 lists ten elements that must be included in all local workforce investment area youth programs. These ten program elements can be grouped around four broad themes: (1) Preparation for and success in employment (including summer jobs, paid and unpaid work experience, and occupational skills training); (2) improving educational achievement (including such elements as tutoring, study skills training, instruction leading to a high school diploma, alternative school and dropout prevention); (3) Supports for youth (including meeting supportive service needs, providing mentoring and follow-up activities; and (4) services to develop the potential of youth as citizens and leaders (the concept of leadership and youth development). In addition, as required under program design, these program elements should incorporate preparation for employment and/or post-secondary education; linkages between academic and occupational learning and connections to intermediaries for job development assistance.

Describe how you will ensure that each of these program elements is present in your project. Although every youth does not have to be provided each of the ten program elements (with the exception of intensive placement and follow-up services), each site must ensure that they are available. In particular, describe the supportive services that will be provided to youth.

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Supportive services can include, but are not limited to, transportation, life skills development, alcohol and drug rehabilitation, teen pregnancy prevention, and job retention skills. Supportive services need to be limited to 14 to 21 year-olds, but we encourage you to find other resources to address the needs of the entire family through other WIA funds, Welfare-to-Work Funds, or other resources. DOL expects that the costs for serving individual youth will vary greatly—from perhaps $20,000 a year for conservation corps programs to less than $2,000 for youth who primarily need job placement. The Department of Labor's expects that the average cost for serving youth will be $7,500 a year in Native American Youth Opportunity Grant funds. The average cost per youth can be supplemented with other resources. Applicants can use this average cost figure as a guide, but will not be penalized for proposing a different average cost figure.

Work experience. Discuss how you will provide work experience for youth. In particular, you may wish to establish either a Youth Conservation and Service Corps or YouthBuild program, or both of these. Conservation and Service Corps (202–737–6272, www.nascc.org) allow youth to work on community service and environmental projects. Such programs can serve large numbers of youth, perhaps 100 at a time. The California Conservation Corps (916–324–4785, www.ccc.ca.gov/frame.ntm) is probably the best example of such a program. YouthBuild (617–623–9900, www.youthbuild.org) teaches construction skills to enrollees while they rehabilitate houses and public buildings.

Career development. Discuss adding new or expanded fields of study at the tribal college that would allow youth to get a college degree yet still return to work on or near the reservation if they so chose. For example, youth getting degrees in forestry and conservation would be able to find work for federal land management agencies near their reservation if they so chose. We are particularly interested in proposals that link new fields of study in forestry and land management with efforts to have the reservation become involved in land preservation and conservation. One example of tribal involvement in conservation is the work done by the Department of Resource Preservation in the Pueblo Jemez. We also are very interested in proposals that include linkages with state universities in which youth would take the first and possibly second years of study at the tribal college and then move on to the state university to complete the degree. We also are interested in links between land grant extension services at State universities and tribal colleges that could increase the number of jobs near the reservation in land conservation.

Job training. Discuss how you will provide vocational training or on-the-job training in occupations in demand on or near the reservation. For example, job training could be provided in health professions or construction. We are particularly interested in commitments from the Bureau of Indian Affairs and nearby federal and State land management agencies to provide on-the-job training or work experience slots. Discuss possible links to nearby Job Corps Centers for vocational training.

Intensive placement and follow-up services. As required under WIA section 169, intensive placement and follow-up services must be provided to every youth enrolled in the program. Since an increased level of funding is available under this initiative for intensified follow-up services, the requirement is that every youth must receive follow-up services for a minimum of 24 months. Describe complementary strategies for long-term follow-up activities.

E. Case Studies. To help us better understand how your new system will work in serving youth in the target community, describe how your project would address the needs of the following youth. Feel free to add other details to these examples, and contrast how these youth would be served under the old system and the new system you are planning.

Case Study #1. A 19-year-old who has completed the eighth grade, has a history of substance abuse, school suspensions due to fighting and has subsequently dropped out of school with a poor academic record. This youth has had limited work experience since the age of 14, but has never held any one job for longer than 3 months. This youth lives in a household headed by a grandmother who also cares for three younger siblings. This youth has had minor brushes with the tribal justice system, but hangs out with other youth and young adults who have serious criminal records. This youth has been identified by a school counselor as having certain artistic gifts which have never been developed.

Case Study #2. An 18-year-old is a teen mother. She has a learning disability, and is not interested in returning to school. Her main goal in life is to be able to support herself.

Case Study #3. A brother and sister have become involved in your program through sports activities you provide. The brother is age 19 and has just lost his job after getting into a fight with his boss. He does not do well in school, and mainly he wants to work right now. The sister is age 15 and will be entering ninth grade in the fall. She has only average grades, but always gets one of the highest scores at her school on national standardized tests. She has a lot of energy, but has given little thought to what she wants to do with her life.

3. What Youth Development and Community Service Activities Will You Establish? (20 points)

DOL expects that youth development will be a key part of Native American Youth Opportunity Grants. Youth development can include community service, UNITY (405–236–2800, www.unityinc.org) leadership development activities, and sports and cultural programs. Some examples of possible youth development activities include the following. Youth development specialists from your core staff could serve as the staff for these programs.

—The forming of a UNITY Youth Council in which youth identify and carry out community service projects. For example, on one reservation, youth councils have repaired homes of elders, become Big Brothers and Big Sisters to elementary school youth, and helped the Forestry Department by serving as guides and tree planting.

—A leadership development program in which youth visit other reservations to learn about their culture and tribal governments; visit Washington, D.C. to learn about the national government; and tour the United Nations headquarters to learn about international conflict resolution;

—Computer links to youth from other reservations and other exchanges and research projects with elders to help youth better understand the history and shared culture of the various Native American peoples;

—A community service project developed by UNITY in which youth help promote health on their reservation through a National Fitness Initiative;

—A comprehensive sports and recreation program, including baseball, basketball, and soccer leagues;

—A 4–H community service project in which older youth tutor younger youth; and

—An outdoors group in which youth participate in community service conservation projects, and also go on hiking, backpacking, cross-country skiing, and camping trips.

4. How Will You Reduce the School Dropout Rate and Increase the College Enrollment of Youth on the Reservation or Target Area? (20 points)

DOL also sees efforts to reduce the dropout rate and increase college enrollment as critical to Native American Youth Opportunity projects. We are also interested in programs to better prepare youth for college so that they have a better chance of graduating once they get there. We are particularly interested in tribal colleges being involved in dropout prevention and college bound efforts, especially instances in which tribal colleges in turn are linked to State universities or other colleges. We would like to see dropout prevention efforts at the elementary, middle school, and high school levels. Given the age restrictions on this grant, new dropout prevention efforts in elementary and middle schools will need to be paid for with other sources of funds.

Describe how you will reduce the dropout rate and increase the college enrollment rate of youth on your reservation.

Dropout prevention and college bound programs you may wish to consider include the following. Youth development specialists from your core staff could serve as the staff for these programs. The following are some examples of successful youth development programs:

—The Futures Program operated by the City of Baltimore's Office of Employment Development (410–396–1910) provides entering ninth graders with remedial education in August prior to starting high school; students receive various incentives throughout their four years of high school; and students have case managers who are stationed at their high school.

—The Rheedlen Foundation (212–866–0770) in New York City begins serving chronic truants in elementary and middle schools. Case managers make home visits to the families of these children, and attempt to work with parents and guardians to get children attending school regularly.

—The Opportunities Industrialization Centers (OIC) of America (215–236–4500) Quantum Opportunity Program combines entering ninth graders into groups of 20 or 25, and students stay with the same group and same youth worker throughout their four years in high school. Students participate in community service projects, receive remedial education and tutoring, make trips to college campuses and cultural events, and receive stipends and educational accrual accounts based on hours of participation.

—Sylvan Learning Centers (800–338–2283, www.educate.com./home.html), Score! Educational Centers (949–363–6764, www.score-ed.com), and Huntington Learning Centers (201–261–8400, www.tutoringhlc.com) are for-profit firms that provide remedial education and tutoring. Their programs can be set up both within schools or after school.

—Baltimore's CollegeBound Foundation (410–783–2905) provides counselors to let students and their parents know about college, take students on visits to college campuses, make sure that students take the necessary courses to go to college, take SAT tests, and apply on time to colleges and for financial aid. The program also works with colleges to get youth accepted, and provides "last dollar" financial aid if scholarships and loans do not fully cover students needs.

—A program being developed by UNITY takes students on trips to visit major corporations in order to widen the occupational awareness and aspirations of youth.

—2+2+2 Programs link courses in high school, community colleges, and four-year colleges to increase high school graduation and college enrollment rates. Such programs could be developed with tribal colleges and State universities.

—There are efforts in some communities to turn high schools into "high-technology schools" with the latest generation of computers and software and teachers trained in computer technology.

—Bridge projects help youth make the transition from grade school to middle school, middle to high school, and high school to college. Examples of bridges to college programs include the American Summer Bridge program operated by the University of New Mexico (305–277–2611), and similar programs at Arizona State University, Northern Arizona, Montana State, and Stanford. The Tribal Institute for Business, Engineering, and Science also offers such a bridge program.

—The High Plains Rural Systemic Initiative funded by the National Science Foundation encourages youth to go into math and science careers, and similar efforts could be funded through this grant.

—Communities in Schools (703–519–8999) provide counseling and a variety of supportive services to in-school youth.

—State universities could form linkages with tribal colleges to guarantee admission to two-year graduates of tribal colleges; exchange professors; and share resources, research projects, and supportive services available to students.

—On reservations with State-funded public schools, the State could commit to additional resources for additional reading, math, and science teachers at the elementary, middle school, and high school levels.

—Summer Institutes could be set up at tribal colleges to give high school youth summer jobs, remedial education, and a chance to become familiar with college environments.

5. How Will the Project Be Managed? (20 points)

A commitment to excellence and quality management reflect both DOL and PEPNet core principles discussed earlier in this section. You must discuss in your answer here how this project will be managed to ensure excellence.

Program Structure. You must provide a diagram to show the sequence and flow of Youth Opportunity services. You must show coordination between Youth Opportunity sub-grantees in terms of recruitment, assessment, and referrals. You must also show links between the Youth Opportunity program and existing services available to youth in the target community.

Fiscal Management. Describe the fiscal management systems that you have in place. Describe the fiscal management experience of your organization. How will you provide fiscal oversight of sub-grantees?

Staffing Plan. Discuss how you will select a project coordinator and the qualifications this person should possess. Discuss how you will recruit and retain quality staff, including paying competitive salaries. In particular, discuss how you will recruit the project coordinator and youth development specialists, as these will be key people for your project. We expect that most youth development specialists will have attended college, so that they can be role models for youth to further their education. We expect that you will recruit widely—either regionally or nationally—for these positions.

Accountability. Which entity (tribal government, tribal college, employment and training department) will hire the youth development specialists and other core staff for this project? Describe why this entity was selected to be the lead for this project and current or past projects conducted by the entity. If you have a tribal college on your reservation, the tribal college may be best positioned to be the lead agency. We wish to avoid situations in which case managers and

job developers are spread out over several agencies, with little or no accountability to the lead agency. We also wish to avoid situations in which case managers are accountable to one agency and job developers to another. Where possible, the bulk of core staff should be hired by one agency, and then perhaps out stationed at different sites. For a large reservation, an alternative would be to divide the target area into three or four geographic segments and assign agencies to be accountable for each of these segments.

Your plan must propose expected levels of performance. (The levels of performance will be negotiated with the Department before the grant is awarded.) Your plan must indicate the number of 14–18 year-olds and 19–21 year-olds you plan to enroll during the first year of the project. For 19–21 year-olds, you must indicate the number of first-year enrollees who will enter unsubsidized employment, enter education or training programs, join the military, be retained in employment for six months, one year, and two years, and the earnings of these youth six months, one year, and two years after placement. For 14–18 year-olds, you must indicate the number of first-year enrollees who will attain basic skills, work readiness skills, and occupational skills; attain high school diplomas or GEDs; and be placed and retained in post-secondary education, employment, the military, or apprenticeships. In particular, we want to know the overall number of youth who will be placed in jobs, school, training, college, and the military. You must also estimate the proportion of employers and participants who will indicate satisfaction with services received in surveys which you will need to conduct. You can also propose other performance measures for the indicators of performance described in WIA section 136, to either replace some of the above measures or complement them, and we will negotiate the measures with you prior to grant award. DOL expects to implement a performance incentive system in which the best performing sites receive some increases in grant funds, while sites not meeting their goals are subject to sanctions. Urban, rural, and Native American sites will be judged separately in determining these incentives.

Community Involvement. How will the tribal government encourage community participation and ownership in this project? We encourage the tribal government to set up a community advisory board made up of the various partner agencies, community residents, and youth to participate in the planning and oversight of this project. Discuss what the role of this community advisory board will be. Discuss how you plan to have community residents and families involved in program efforts, including sports leagues and cultural activities.

Staff Development. Discuss how you provide initial training and offer development opportunities to project staff, including educational opportunities at local community colleges and four-year colleges and additional training to help support the case managers and job developers with the demands of their jobs.

Summary Table of New Initiatives. Include a summary table of the various new initiatives started under this grant, numbers of youth to be served by each initiative each year, and annual funding levels. An example of such a summary table is provided below:

	DOL grant
Youth Development Specialists (staff of 30)	$1,080,000
Conservation corps (80 youth @ $20,000)	1,600,000
Tribal College 2+2+2 Pre-Forestry Program	320,000
Work experience (50 youth @ $3,000)	150,000
Pre-construction training (50 youth @ $3,000)	150,000
Futures program in high school (100 @ $4,000)	400,000
Sylvan, Scorel, or Huntington Learning Center	200,000
College Bound program (100 youth @ $2,000)	200,000
Youth Leadership Program (100 youth @$1,000)	100,000
Community Service Projects (100 youth @ $2,000)	200,000
Residential summer program (100 youth @ $1,000)	100,000
Transportation and other supportive services	200,000
Sports and cultural program	100,000
Making the high school a "High-Tech School"	200,000
Job Corps (50 youth)	.....
Total	5,000,000

Should Letters of Support Be Included?

You can include letters of support if they provide specific commitments. Such letters can increase your score by showing that commitments presented in the text of your proposal are serious. Form letters will not be considered. You must have a letter from tribal government and we encourage a letter from the tribal college if one exists on your reservation. Letters of support must be included as part of the 10 page attachment to your proposal. The closing date for receipt of proposals is September 30, 1999. Your application should specify on the cover sheet, whether you are applying for an urban, rural, or Native American grant.

Signed at Washington, DC this 26th day of May 1999.

Janice E. Perry,

Chief, Division of Federal Assistance.

Appendices

1. Appendix A—Cover Sheet, Application for Federal Assistance (Standard Form 424), and Budget Information Sheet.
2. Appendix B—Application Checklist.

BILLING CODE 4510-30-P

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H Independent School Dist.
B. County I State Controlled Institution of Higher Learning
C. Municipal J . Private University
D. Township K Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify):

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable for Local Reproduction

Standard Form 424 (REV 4-88) Authorized Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required face sheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix A

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Cover Sheet **Applicant #:** _____
(Leave Blank)

SOLICITATION FOR GRANT APPLICATION
(SGA# 99-015)

YOUTH OPPORTUNITY INITIATIVE GRANT

_____
Enter Legal Name of Applying Organization

Your application must specify, on this sheet, whether you are applying for an Urban, Rural or Native American grant.
(ONLY CHECK ONE BELOW)

_____ **Urban**

_____ **Rural**

_____ **Native American**

PLEASE NOTE: Areas that are not EZ/ECs are urban, if they are located in metropolitan areas as defined by the census.

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Appendix B

Application Checklist

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the solicitation and whether or not these provisions have been included, complied with or addressed. This document is not intended to be comprehensive or address every aspect of the solicitation.

Organization Applying: _____.

Contact Person: _____.

Phone Number: _____.

Date submitted: _____.

1. ____ Cover Sheet

2. ____ Standard Form 424

3. ____ Detailed budget and budget information sheet

4. ____ Eligibility Status
   a. ___ Applicant must be a Local Workforce Investment Board;
   b. ___ Applicant is the SDA administrative entity receiving JTPA formula funds in an area not yet transitioned to a Workforce Investment Board; or
   c. ___ Applicant is a Native American WIA Section 166 Grantee or a JTPA 401 Grantee

5. ____ Target area:
   (1) ___ EZ/EC or part of an EZ/EC
   (2) ___ Governor has designated as a high poverty area in state without EZ/EC
   (3) ___ Additional area designated by the Governor as eligible to apply in states with EZ/ECs
   (4) ___ Native American Reservation, Native Alaskan Village(s), or area serving Oklahoma Indians

6. ____ Letter from the Governor designating your area as eligible for award if you are not an EZ/EC.

[FR Doc. 99–13920 Filed 6–1–99; 8:45 am]
BILLING CODE 4510–30–C

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THE U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

Sunshine Act Meeting and Open Hearing

TIME, DATE, AND PLACE: July 8, 1999 from 9:00 a.m. to 3:00 p.m.; Kellogg Conference Center, Gallaudet University, 800 Florida Avenue, NW, Washington, DC.

Hearing on Library and Information Services for Individuals With Disabilities

Purpose of the Hearing: The Commission recognizes that recent advances in information technology have improved conditions for some people with disabilities while presenting new challenges to others. Commission members wish to explore the gamut of issues raised in order to develop policy recommendations to appropriate government agencies and other organizations.

The NCLIS hearing is being held to offer the NCLIS members an opportunity to hear from individuals with disabilities of all types, as well as from legislators, educators, parents, library and information service professionals, representatives from national associations and organizations, volunteers, physicians, and researchers. The Commission wants to hear, first hand, of the various kinds of assistance being provided by libraries to persons with permanent or temporary disabilities, including assistance in ordering materials in alternative formats, searching and retrieving materials (both online and print), accessing library buildings and parking facilities, providing adequate space for study and testing, and furnishing special equipment.

Requests to present oral testimony should be received by June 18, 1999. Because of time constraints, participation will be limited. Written comments will be accepted before, during or up to 30 days after the hearing. All comments must be received at NCLIS no later than the close of business on July 8, 1999 to become part of the hearing record.

Written request for invitations must be submitted to NCLIS, Attn: Barbara Whiteleather, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3522; fax 202–606–9203; or e-mail <bw__nclis@inet.ed.gov>

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

For further information contact Robert Willard, Executive Director (202) 606–9200.

Dated: May 27, 1999.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 99–14094 Filed 5–28–99; 3:57 pm]

BILLING CODE 7527–55–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Comment Request Entitled Small Business Competitiveness Demonstration Program

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

ACTION: Notice of request regarding the reinstatement, with changes, of a previously approved collection (OMB Clearance 9000–0100) for which approval is now being requested by OFPP.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), OFPP notified the public concerning a request to reinstate, with changes, a previously approved information collection requirement concerning the Small Business Competitiveness Demonstration Program. A request for public comment was published at 63 FR 51962, September 29, 1998. No comments were received. This is a second request for comments and notice that the proposed information collection has been submitted to OMB for approval.

COMMENTS: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to Edward Springer at the Office of Management and Budget, Desk Officer for OMB, Room 10236, New Executive Office Building, Washington, DC 20503. Please cite the Small Business Competitiveness Demonstration Program.

DATES: Comments may be submitted on or before July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 202–395–3302.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100–656), as amended, established the Small Business Competitiveness Demonstration Program (Program). The Program was established to (1) demonstrate whether or not small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts, and (2) to demonstrate whether or not targets goaling and management techniques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105–135) extends the Program indefinitely.

Under the current Federal Acquisition Regulation (FAR), small businesses are required only to represent their status (i.e., whether small, small disadvantaged, or women-owned small businesses). Section 714(c) of the Small Business Competitiveness Demonstration Program Act requires each participating agency to collect data pertaining to the size as well as the status of the small business concern receiving any award for services in the designated industry groups and products or services in the agencies' ten targeted industry categories. The size of the small business is collected in terms of the number of employees or dollar volume of sales. The number of employees is based on the average of the pay periods for the last twelve months. The volume of sales is based on the average annual gross revenue for the last three fiscal years (See FAR 19.101). The size information is collected during the solicitation process as part of the representation requirement. This data will be used to evaluate the small business impact of the Program.

The former information collection requirements set forth in Section 714(b) of the Small Business Competitiveness Demonstration Program Act, pertaining to the simplified system to collect data on the participation of small business concerns as subcontractors under prime contracts for architectural and engineering (A&E) services, expired on September 30, 1997. Accordingly, this proposed reinstatement excludes that data collection requirement.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time to gather the information and complete the solicitation provision. The annual

reporting burden is estimated as follows: Respondents, 603,524; responses per respondent, 1; total annual responses, 603,524; preparation hours per response, .08333, and total response burden hours, 50,273. The collection is voluntary.

Copies of the Proposal

A copy of the Paperwork proposal is available from the Office of Federal Procurement Policy, Room 352, OEOB, Washington, DC 20503. Please cite the Small Business Competitiveness Demonstration Program in all correspondence.

Deidre A. Lee,

Administrator.

[FR Doc. 99–13880 Filed 6–1–99; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Small Business Administration

Final Policy Directive, Small Business Competitiveness Demonstration Program

AGENCIES: Office of Federal Procurement Policy (OFPP), and Small Business Administration (SBA), OMB.

ACTION: Notice of final policy directive.

SUMMARY: The OFPP and SBA are issuing a final policy directive and implementation plan to implement the Small Business Competitiveness Demonstration Program established by the Small Business Competitiveness Demonstration Program Act of 1988 (Pub. L. 100–656), as amended, 15 U.S.C. 644 note. As a result of comments received following publication of an interim policy directive and implementation plan in the **Federal Register** on September 19, 1998 (63 FR 51981), we are revising the interim policy directive and implementation plan as indicated below. The changes to the implementation plan include:

1. We added a new subparagraph 7. in section III.A. to make clear that the very small business pilot program does not apply to any requirement that is subject to the Small Business Competitiveness Demonstration Program.

2. We revised section IIIC.1. to allow participating agencies to apply the 40 percent small business goal separately for east coast non-nuclear ship repair and west coast non-nuclear ship repair.

3. We revised section IVA.5. to clarify that SBA has the authority to request quarterly reports from the Federal Procurement Data System (FPDS) to monitor agencies' progress towards meeting their annual goals.

4. We revised section V.A.1 to delete reference to the solicitation date, but retained the requirement for agencies to distinguish awards made under the Program from other contract awards.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, (202) 395–3302.

SUPPLEMENTARY INFORMATION:

A. Background

Congress established the Small Business Competitiveness Demonstration Program in 1988 to test the effectiveness of eliminating small business set-asides in certain industries. (See Pub. L. 100–656, the Small Business Competitiveness Demonstration Program Act of 1988 ("Act"), as amended, at 15 U.S.C. 644 note.) The Program has two primary objectives: (1) to demonstrate whether or not small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts, and (2) to demonstrate whether or not targeted goaling and management techniques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. A separate program to expand small business participation in the dredging industry, to be overseen by the Department of the Army, was also included in the Act. As originally established, the Demonstration Program extended through December 31, 1992.

To implement the Program, Congress in section 715(a) of the Act, authorized the OFPP Administrator to issue a test plan pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413). In addition, in section 715(b), Congress directed the OFPP Administrator, in cooperation with the SBA Administrator, to issue a policy directive (binding on all participating agencies) to ensure consistent government-wide implementation of the Act in the Federal Acquisition Regulation (FAR).

After requesting public comment on an interim policy directive and test plan (53 FR 52889 (December 29, 1988), OFPP implemented the Program by issuing a final policy directive and test plan dated August 31, 1989, 54 FR 37741 (September 12, 1989). In accordance with section 715(b) of the Act, the policy directive and test plan were implemented in the FAR (48 CFR subpart 19.10).

In 1992, Congress in sections 201–203 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366; "1992 Act"), extended the Demonstration Program through September 30, 1996, and made amendments to the Program. To carry out these amendments, Congress in Section 202(i) of the 1992 Act directed the OFFP Administrator to issue conforming modifications to the test plan and policy directive. The conforming modifications were issued in an interim policy directive with request for comments (58 FR 19849, April 16, 1993), and were incorporated into the FAR (48 CFR subpart 19.10). In 1996, Congress extended the Demonstration Program for one year, through September 30, 1997. Public Law 104–208, Div. D, Title I, Sec. 108. In 1997, Congress also extended the aspect of the Program covering expansion of small business participation in the dredging industry. Public Law.105–18, Title II, Sec. 2002.

In December 1997, the Small Business Reauthorization Act of 1997 (Public Law 105–135) was enacted into law ("1997 Act"). Sections 401–405 of the 1997 Act made the Demonstration Program permanent, and made further amendments to the Program.

In order to respond to the comments that we received on the April 1993 interim policy directive and test plan, and to make conforming changes to reflect the amendments made by the 1997 Act, we issued a newly revised interim OFPP policy directive and implementation plan on September 29, 1998. In addition to making conforming revisions to reflect the amendments made by Congress in the 1997 Act, we made non-substantive revisions in various parts of the document, which are intended to improve its clarity. For ease of reading, we reissued the interim policy directive and implementation plan in its entirety for comment.

B. Public Comments

OFPP received seven letters in response to the request for comments on the September 29, 1998, interim policy directive and implementation plan. A summary of the main issues and concerns raised in the comments follows:

1. *Comment:* SBA should change the small business size standard for the construction industry to make appropriate adjustments for inflation.

Response: SBA is reviewing the size standards for construction and will make adjustments for inflation if deemed necessary. SBA will publish

any new size standards in the **Federal Register** for public comment. No changes to the policy directive and implementation plan would be necessary because they do not contain the size standards. SBA size standards are published in the FAR.

2. *Comment:* The policy directive should allow subcontract awards to count towards the 40 percent small business goal in construction. OFPP should continue and expand the use of the simplified data collection system for architectural and engineering (A&E) services, which expired on September 30, 1997, to allow participating agencies to track subcontract awards under construction contracts. If agencies cannot count subcontracts to small businesses towards their goal accomplishments, the policy directive should exempt task order contracts for construction. In addition, the policy directive ignores the provision at 713(b) of Public Law 100–656, which establishes a 35 percent goal for A&E until the subcontracting reporting system is implemented.

Response: The commenter states that agencies with recurring construction needs use task order IDIQ contracts to respond quickly to maintenance, alteration, and repair services. Under these task order contracts, small businesses perform more than 75 percent of the work as subcontracts. We support the use of small businesses as subcontractors under construction projects. However, there is no statutory basis to require participating agencies to count subcontracts to small businesses toward goal achievement for A&E services or to expand the subcontracting reporting system to other industries. As the commenter recognizes, section 714(b) of Public Law 100–656, which required OFPP to develop a simplified data collection system to collect data on the participation of small business concerns as subcontractors under prime contracts for A&E services, expired on September 30, 1997. Accordingly, the implementation plan excludes the subcontracting reporting system and deletes reference to the 35 percent goal for A&E services. Under current law, each participating agency has a small business goal that is 40 percent of the agency's total contract dollars awarded in each designated industry group. Participating agencies determine their small business goal achievement using prime contract award data.

3. *Comment:* The policy directive should not refer to the Program as a "demonstration" program since it was extended indefinitely by the Small Business Reauthorization Act of 1997.

Response: The Small Business Reauthorization Act did not amend section 711(a) of Public Law 100–656 to rename the Program. Section 711(a) established the Program as the "Small Business Competitiveness Demonstration Program." Therefore, we do not believe it is appropriate to change the Program title.

4. *Comment:* The policy directive substitutes "unrestricted competition" for "full and open competition" throughout the document whenever it refers to procurements below the simplified acquisition threshold (SAT) but above the emerging small business reserve amount. The directive also allows for "maximum practicable competition" below the simplified acquisition threshold. The references to "unrestricted competition" and "maximum practicable competition" should be amended to confirm that neither phrase excludes "Brooks Act A&E procurements" from its terms.

Response: Contrary to the commenter's statement, the policy directive substitutes "unrestricted competition" for "full and open competition" throughout the interim policy directive for all procurements, not just those below the SAT and above the emerging small business reserve amount. As explained in the preamble to the Sept. 29, 1998 interim policy directive, we used the term "unrestricted competition" to encompass both agencies' use of "maximum practicable competition" for procurements below the SAT and "full and open competition" for procurements above the SAT. This is necessary because the Federal Acquisition Streamlining Act and the Competition in Contracting Act establish different competition standards for procurements above and below the SAT. This change does not affect the qualification-based selection procedures for acquiring A&E services because these procedures are considered full and open competition under FAR subpart 6.102.

5. *Comment:* FAR 19.1202–2 provides that the extent of small disadvantaged business (SDB) participation shall be an evaluation factor in competitive procurements over $500,000 ($1 million in construction) and does not list the Small Business Competitiveness Demonstration Program as an exception. This is contrary to the intent of the Program which seeks to provide an open competition among firms with qualifications and experience related to the scope of work. By reference to "construction" it is clear that FAR 19.1202–2 does not recognize the exemption for the four designated industry groups from restraints on their competition. FAR 19.1202–2 seeks to impose an evaluation factor inconsistent with either the "unrestricted competition" or full and open competition terminology used in the Program. OFPP should change the final directive to resolve the conflict with FAR 19.1202–2.

Response: The policy directive and the SDB reform program are consistent. FAR subpart 19.12 requires agencies to use the SDB participation evaluation factor (FAR 19.1202) in certain unrestricted negotiated procurements. Agencies use the SDB participation evaluation factor along with other evaluation factors or subfactors to determine the successful contractor. The use of this evaluation factor is consistent with the "unrestricted competition" terminology used in the Program.

6. *Comment:* There is no statutory basis to reimpose set-asides in the event small business participation in a SIC code falls below 35 percent even if the major group exceeded the 40 percent small business goal.

Response: The legislative history supporting Public Law 100–656 states that consistent efforts shall be made to achieve the 40 percent small business goal and the 15 percent emerging small business goal evenly across all the SIC codes that comprise a designated industry group. Firms within individual SIC codes shall not be disproportionally burdened. Therefore, to comply with the legislative intent, we included the requirement for set-asides to be reimposed when an individual SIC code falls below 35 percent even if the industry group exceeded 40 percent.

7. *Comment:* Transferring from OFPP to SBA the responsibility to report to the Congress within 180 days after FPDS data are available should not deter or disrupt an agency's process of maintaining or returning, by the start of the calendar year, to open competition where such action is supported by the data. The directive should make clear that there is no congressional action required prior to agency action on data from the prior fiscal year.

Response: The Federal Register notice preamble mentions SBA's responsibility to report to the Congress on the results of the Program. However, there is no mention of a Congressional requirement in the directive and implementation plan. Rather, the implementation plan (Paragraph IIID.2.c.) makes clear that agencies must make appropriate changes to solicitation practices (reinstituting restricted competition or reinstituting unrestricted competition)

not later than 30 days following their annual reviews.

8. *Comment:* The final policy directive should separate east and west coast non-nuclear ship repair when monitoring goal achievement rather than considering performance of the industry as a whole.

Response: The comments suggest that small business participation in non-nuclear ship repair is significantly different on the east coast and the west coast. Small firms are performing above the 40 percent goal on the east coast while performance on the west coast is below the 40 percent goal. The comments suggest that the policy directive should recognize the non-nuclear ship repair industry as two separate markets, rather than monitoring small business performance for the industry as a whole. We believe this suggestion has merit. Therefore, we will revise the Policy Directive and Implementation Plan to allow participating agencies to apply the 40 percent small business goal separately for east coast non-nuclear ship repair and west coast non-nuclear ship repair.

9. *Comment:* The policy directive should allow organizational units within a participating agency to return to unrestricted competition independent of the overall agency review to determine if the goal has been met.

Response: Section 712(d) of Public Law 100–656 requires participating agencies to monitor attainment of small business goals. Any modification to a participating agency's solicitation practices (using restricted or unrestricted competitions) shall be made as soon as possible after the agency's annual review. Allowing organizational units within a participating agency to return to unrestricted or restricted competition independent of the overall agency review would be contrary to the statutory intent.

10. *Comment:* It is not clear why the policy directive excludes awards made under Federal supply schedules (FSS) contracts from being covered by the Program. Given the increased emphasis on the use of FSS contracts, exclusion of these awards could distort small business participation in the designated industry groups. Consideration should be given to allowing participating agencies to count awards under FSS contracts in the designated industry groups toward their small business goals under this program.

Response: We did not include FSS contracts when the Program began because there were no FSS contracts for the services in the four designated industries groups. In addition, SBA historically did not count such awards toward attainment of the government-wide small business goal. Although SBA now allows agencies to count awards under the FSS contracts toward the government-wide goal, there still are no schedule contracts for the designated industry groups covered by the Program. Therefore, the Policy Directive will continue to exclude awards under the FSS from coverage in the Program.

11. *Comment:* The policy directive should include language that gives SBA the authority to obtain regular quarterly reports from the Federal Procurement Data System to monitor agencies' progress in meeting their goal attainment under the Program.

Response: SBA already has the authority to obtain quarterly reports from the Federal Procurement Data System to monitor agencies' progress toward meeting their annual goals. For purposes of clarity, however, we will revise section IV.A.5. of the implementation plan to include SBA's authority.

12. *Comment:* OFPP should establish a web site to maintain a current statement of the emerging small business reserve amount and include the web site in the implementation plan.

Response: OFPP has made only one adjustment to the emerging small business reserve amount (for architectural and engineering services) since the beginning of the Program. Therefore, we believe a **Federal Register** notice is the most appropriate way to provide notice of any change in the reserve amount. We also will include the final policy directive and any subsequent changes to it on the Acquisition Reform Network (ARNet).

13. *Comment:* The policy directive should no longer require participating agencies to track awards made outside the Program because the requirement has outlived its usefulness.

Response: It is essential that participating agencies distinguish awards made under the Program from other contract awards so that SBA and other data users can easily retrieve information about the Program. We do, however, believe that a reference to the solicitation date is no longer necessary. Therefore, we will revise the language in section V.A.1 accordingly.

C. Regulatory Flexibility Act Statement and Review Under E.O. 12866

OFPP and SBA certify that the changes made by this final directive will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because this final directive makes ministerial changes to the Program required by the Small Business Reauthorization Act of 1997 (Sections 401–405 of Pub. L. 105–135). For this same reason, the changes made by this final directive are not "significant" under Executive Order 12866.

For those interested in the overall economic scope and effect of this Program, we note that SBA forwards a report to Congress on an annual basis describing the economic impact of the program, and that copies of such report are available from SBA.

D. Paperwork Reduction Act

The information collection requirements related to this policy directive and implementation plan were previously approved by OMB and assigned OMB control number 9000–0100. A revised information collection request was submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Public comments concerning this request were invited through a **Federal Register** notice published on September 29, 1998. No comments were received.

Deidre A. Lee,

Administrator, Office of Federal Procurement Policy.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, Small Business Administration.

MEMORANDUM FOR: THE SECRETARY OF AGRICULTURE, THE SECRETARY OF DEFENSE, THE SECRETARY OF ENERGY, THE SECRETARY OF HEALTH AND HUMAN SERVICES, THE SECRETARY OF THE INTERIOR, THE SECRETARY OF TRANSPORTATION, THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, THE ADMINISTRATOR OF GENERAL SERVICES, THE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, THE SECRETARY OF VETERANS AFFAIRS;

SUBJECT: The Small Business Competitiveness Demonstration Program

Dated: May 25, 1999.

1. *Purpose.* This memorandum provides policy direction to the participating agencies for implementation of the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Pub. L. 100–656), as amended by sections 23–27 of the Business Opportunity Development Reform Act Technical Corrections Act (Pub. L. 101–37), sections 201 and 202 of the Small

Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366), section 108 of the Omnibus Consolidation Appropriation Act of 1997 (Pub. L. 104–208), and sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135).

2. *Authority.* This memorandum is issued pursuant to section 715 of Public Law 100–656, which requires that the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA) issue a policy directive to ensure consistent government-wide implementation of Title VII in the Federal Acquisition Regulation (FAR); section 202(i) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366), which requires appropriate modifications to the policy directive to conform to amendments made by that Act; sections 401–405 of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135), which further amends Title VII; and section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.

3. *Background.* Section 15(a) of the Small Business Act mandates that small businesses receive a fair proportion of Federal procurements. To achieve this goal, subpart 19.5 of the FAR requires that Federal agencies reserve, or set aside, procurements for exclusive small business participation when a contracting officer determines that two or more small businesses are capable of providing the goods or services at reasonable prices. While restricting procurements for exclusive small business participation has been very effective in assuring a small business share of Federal contracts, one unintended result is a concentration of awards in certain industries often dominated by small businesses. A further result is that agencies expend resources in those industries that are conducive to high levels of small business participation rather than expand the base of small business contracting into areas where small businesses do not traditionally obtain a significant share of procurement awards.

4. *Policy.* The goals of the Program are to assess the ability of small businesses in certain designated industry groups to retain a fair proportion of procurement awards in unrestricted competition in those industry groups and to expand small business participation in a broader range of industry categories. The Act designates the Small Business Administration as OFPP's executive agent to monitor the Program. The procedures for implementing the Program are set forth in the attached implementation plan.

5. *Implementation.* This policy directive shall be implemented in FAR Part 19. Pursuant to Section 715(a) of the Small Business Competitiveness Demonstration Program Act, provisions of the FAR that are inconsistent with this policy directive and the attached implementation plan are hereby waived.

6. *Expiration Date.* The Small Business Competitiveness Demonstration Program has no expiration date.

Deidre A. Lee,

Administrator, Office of Federal Procurement Policy.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, Small Business Administration.

Small Business Competitiveness Demonstration Program Implementation Plan

I. Purpose

This document implements the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Pub. L. 100–656), as amended by sections 23–27 of the Business Opportunity Development Reform Act Technical Corrections Act (Pub. L. 101–37), sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366), section 108 of the Omnibus Consolidation Appropriations Act of 1997 (Pub. L. 104–208), and sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135). The Program seeks to assess whether or not the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. In addition, the Program attempts to assess whether or not the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in Federal contracting opportunities that have been historically low despite adequate numbers of qualified small business contractors in the economy. The Program further seeks to assess whether or not expanded use of unrestricted competition adversely affects small business participation in certain industry groups, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

II. Authority

The Program is established pursuant to the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Pub. L. 100–656), sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366), Sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135), and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413.

III. Program Requirements

A. Applicability

1. The Program began on January 1, 1989 and consists of two major components: (1) unrestricted competition in four Designated Industry Groups, and (2) enhanced small business participation in agencies' ten Targeted Industry Categories. Contracts resulting from solicitations issued on or after January 1, 1989 and any subsequent modifications to such contracts, are covered by this Program.

2. Contract awards in the following designated industry groups are covered by this Program:

a. Construction under standard industrial classification (SIC) codes that comprise major groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216);

b. Refuse systems and related services, including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205;

c. Architectural and engineering (A&E) services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404), awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act"); and

d. Non-nuclear ship repair—ship repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

3. Upon regulatory implementation by SBA and the FAR Council, the North American Industry Classification System (NAICS) codes will be substituted for SIC codes.

4. Targeted industry categories for enhanced participation are determined

by each participating agency, in conjunction with SBA.

5. Contract awards under the Federal Schedule Program are not covered by the Program.

6. Contract awards to educational and non-profit institutions or governmental entities are not covered by the Program.

7. The Very Small Business Pilot Program does not apply to any requirement that is covered by the Program.

B. Participating Agencies

The following agencies are participants in the Program:

1. The Department of Agriculture,
2. The Department of Defense, except the National Imagery and Mapping Agency,
3. The Department of Energy,
4. The Department of Health and Human Services,
5. The Department of Transportation,
6. The Environmental Protection Agency,
7. The General Services Administration,
8. The National Aeronautics and Space Administration,
9. The Department of Veterans Affairs, and
10. The Department of the Interior.

C. Agency Goals for the Four Designated Industry Groups

1. Each participating agency shall have a small business participation goal that is 40 percent of the agency's total contract dollars awarded for construction major group 15, major group 16, and major group 17; A&E services; refuse systems and related services; east coast non-nuclear ship repair; and west coast non-nuclear ship repair. The 40 percent goal applies separately to each construction major group and to east coast and west coast non-nuclear ship repair. In addition, each participating agency must make a good faith effort to assure that emerging small businesses receive not less than 15 percent of the agency's total contract dollars awarded for each of the four designated industry groups.

2. The Small Business Competitiveness Demonstration Program Act of 1988 defines an emerging small business as one whose size is no greater than 50 percent of the numerical size standard applicable to the SIC Code assigned to the procurement. Subject to the requirements of paragraph III.D.3 below, contract opportunities in the four designated industry groups, which have an estimated award value equal to or less than the reserve amount established for emerging small businesses, are reserved for such businesses.

3. Contract awards made to fulfill the 15 percent goal for emerging small businesses also count toward attainment of the 40 percent goal. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135); and sole source awards, count toward attainment of goals.

D. Procurement Procedures for the Four Designated Industry Groups

Participating agencies shall use the following procedures for procurements in the four designated industry groups.

1. Unrestricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount

a. Subject to the requirements of the Competition in Contracting Act of 1984 and section 4201 of the Federal Acquisition Streamlining Act of 1994, participating agencies are required to use unrestricted competition for all solicitations in the four designated industry groups, if the anticipated award value exceeds the dollar amount reserved for emerging small businesses (unless the procurement is placed under section 8(a) of the Small Business Act; or is set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135). Each participating agency shall continue to use unrestricted competition as long as annual reviews show that the agency's 40 percent goal is being attained. The continued use of unrestricted competition is not affected by an agency's failure to meet its 15 percent award goals for emerging small businesses.

b. Notwithstanding the provisions of paragraph III.D.1.a., above, the Department of Defense shall solicit contracting opportunities for A&E services (including surveying and mapping), in accordance with the provisions of subsections (a) and (b) of section 2855 of title 10, United States Code.

2. Restricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount

a. If any participating agency's annual review of its awards to small businesses in the four designated industry groups shows that the agency has failed to attain its 40 percent goal for any of the groups, subsequent contracting opportunities, in excess of the amount reserved for emerging small businesses, shall be solicited through competition restricted to eligible small businesses only at the organizational unit(s) within the agency that failed to attain the small business participation goals. (Organizational unit(s) shall be no larger than the major agency components or services, e.g., Army, Air Force, Navy, etc. for Department of Defense, regional offices for the General Services Administration, or space flight and research centers for the National Aeronautics and Space Administration.) Such solicitations (unless placed under section 8(a) of the Small Business Act or set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135) shall be conducted in accordance with section 15(a) of the Small Business Act and Subpart 19.5 of the Federal Acquisition Regulation (FAR).

b. Agencies shall return to the use of unrestricted competition upon determining, after their annual review, that their contract awards to small business concerns again meet the required goals.

c. Modifications to agency solicitation practices (instituting restricted competition and reinstituting unrestricted competition) shall be made as soon as practicable, but no later than 30 days following completion of the review indicating the need for such change. The reinstitution of restricted competition or unrestricted competition shall be announced to the public through a notice published in the **Federal Register** if restricted or unrestricted competition is to be reimposed broadly by a participating agency. "Special notices" in the *Commerce Business Daily* shall be used periodically to supplement such **Federal Register** notices, and may be used as an alternative means of providing such notices, if the reinstitution of restricted competition or unrestricted competition will affect only a limited number of buying activities.

3. Reserve Program for Emerging Small Businesses

a. The emerging small business reserve amount is $25,000, or such higher amount as OFPP sets in the event that emerging small concerns are not receiving 15 percent of the total dollar value of contract awards in one or more of the four designated industry groups. The emerging small business reserve amount for architectural and engineering services is $50,000 (56 FR

46656, September 13, 1991). Any required adjustments to the emerging small business reserve amount will be made annually by industry group.

b. Competition for all contract opportunities in the four designated industry groups with an estimated award value that is equal to or less than the emerging small business reserve amount shall be restricted to emerging small businesses, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, requirements will be processed in accordance with FAR 19.5 or FAR 19.8. However, if no such reasonable expectation exists where OFPP has raised the small business reserve amount to a level over $25,000, requirements over $25,000 will be processed in accordance with paragraphs III.D.1 and III.D.2, above.

c. The use of simplified acquisition procedures is not required under the reserve program; any competitive source selection method may be used. The reserve program applies only to new awards within the emerging small business reserve threshold. Modifications within the scope of work of contracts having an initial award value in excess of the emerging small business reserve amount are not subject to the reserve program.

d. Each solicitation under the Program that utilizes simplified acquisition procedures shall include the applicable SIC code and size standard for the procurement.

4. Solicitation Provisions for Procurements in the Four Designated Industry Groups

a. The provision set forth in FAR 52.219–19 entitled "Small Business Concern Representation for the Small Business Competitiveness Demonstration Program" shall be inserted in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups.

b. The provision set forth in FAR 52.219–20 entitled "Notice of Emerging Small Business Set-Aside" shall be inserted in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III.D.3.

c. The face of each award issued by a participating agency under the Small Business Competitiveness Demonstration Program for the four designated industry groups shall contain a statement that the award is being issued pursuant to such Program.

E. Agency Programs for Targeted Industry Categories With Limited Small Business Participation

1. Each participating agency is required to select ten industry categories (four-digit SIC Code or some segmented portion(s) of such code(s), as identified by FPDS product or service code) as targeted categories for expansion of small business participation.

2. In order to achieve such expanded participation, agencies shall select categories that represent products and services purchased in substantial quantities by the agency; that historically have had a small business participation rate of less than 10 percent by category, and in which there is a significant amount of small business productive capacity that has not been utilized by the Government.

3. Each participating agency shall consult with the Administrator of SBA in selecting the ten targeted categories, developing the plan for expanded small business participation, and establishing the goals for the Program. Upon completion of their consultation with SBA, participating agencies shall publish in the **Federal Register**, an announcement soliciting public comment on that agency's program for expansion of small business participation in the targeted categories. Each participating agency shall notify SBA of any additions or deletions to the ten targeted industry categories. Subsequent to the SBA notification, the participating agency shall publish the changes in the **Federal Register**.

4. Each plan shall be submitted to the Administrator of SBA and shall contain a detailed time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be included. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability. Such joint ventures or teams shall comply with the applicable small business guidelines. (See 13 CFR 121.103(f) and 121.105(b)).

5. Participating agencies shall report to SBA on the results of the expansion program regarding the ten targeted categories on the same annual schedule as required for the four designated industry groups.

6. Goal attainment for the ten targeted industry categories shall be determined on the basis of awards to U.S. business firms. Participating agencies may use the format in Attachment A to report accomplishments.

7. The provision set forth in FAR 52.219–21 entitled "Small Business Size Representation For Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program" shall be inserted in full text in any solicitation issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of $25,000.

8. The face of each award issued in any of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program shall contain a statement that the award is being issued pursuant to such Program.

IV. Monitoring and Reporting for Four Designated Industry Groups

A. Monitoring of Goals for the Four Designated Industry Groups

1. Each participating agency shall monitor attainment of its small business and emerging small business participation goals on an annual basis and provide the information in a written report to SBA. The report shall specify the industry groups for which restricted or unrestricted competition have been imposed. Agencies shall complete their annual reviews and submit their reports not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30. The Department of Defense shall submit a report that separately identifies performance by the Army, Air Force, Navy and the Defense Agencies. The report submitted by the General Services Administration shall separately identify performance by the Public Building Service.

2. Monitoring and reporting of goal attainment will be based on awards (and any subsequent modifications to those awards) in the individual codes comprising the industry, as specified in paragraph IV.B., below.

3. Any necessary modifications to agency solicitation practices for the purpose of achieving the agency's small business participation goals (instituting restricted competition or reinstituting unrestricted competition) will be accomplished for each of the industry groups as follows:

a. Construction (excluding dredging)

i. Major group 15

ii. Major group 16
iii. Major group 17

b. Refuse systems and related services.

c. A&E services (including surveying and mapping), limited to contracts awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A–E Act").

d. Non-nuclear ship repair.
i. FPDS Code J998 (East Coast)
ii. FPDS Code J999 (West Coast)

However, if goal attainment for any individual FPDS service code within the A&E services industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual service code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the industry group is 40 percent or more. In addition, if goal attainment for any individual SIC code within one of the major groups comprising the construction industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual SIC code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the major group is 40 percent or more. The 35 percent rule does not apply to refuse systems and related services, east coast non-nuclear ship repair, and west coast non-nuclear ship repair because there are no individual FPDS service codes or SIC codes within the major group.

4. Agencies shall monitor goal attainment in the four designated industry groups by reviewing total prime contract award dollars to (a) All U.S. business firms, (b) small U.S. business concerns and (c) emerging small U.S. business concerns. Awards to educational and non-profit institutions or governmental entities are not part of the Program and do not count towards goal attainment.

5. SBA will closely monitor the Program to ensure that each participating agency makes a consistent effort to achieve goals evenly across all individual codes that comprise a designated industry group. SBA may obtain quarterly reports from the FPDS using the format set forth at Attachment A to monitor agencies' progress during the fiscal year.

6. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135); and sole source awards, count toward attainment of goals.

B. Codes for Monitoring and Reporting Goal Attainment for the Four Designated Industry Groups

1. Refuse Systems and Related Services

The Small Business Competitiveness Demonstration Program Act of 1988 outlines the SICs that are included in the designated industry groups. However, in the area of refuse systems and related services, SIC codes 4212 and 4953 include services that should not be included in the Program. The Program is designed to assess small firms' competitiveness generally in procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse, and waste materials. For example, contracts for the regular collection and disposal at publicly or privately operated landfills of residential and nonhazardous commercial solid waste, garbage, debris, or other refuse from military installations, federal office buildings, and other federal facilities, and garbage processing and recycling activities, should be included. Contracts for the operation of those facilities, collection and disposal of acid, radioactive, or other hazardous waste should not be included. Therefore, participating agencies shall use FPDS service code S205 (trash/garbage collection services—including portable sanitation services) to monitor goal attainment for refuse systems and related services.

2. Architectural and Engineering Services

a. The Small Business Competitiveness Demonstration Act of 1988 provides that A&E services (including surveying and mapping) shall include contracts assigned SIC codes 8711, 8712, 8713, and 7389 (if identified as mapping), and awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A–E Act"). Since SIC code 7389 includes many more services than mapping, participating agencies shall use the following FPDS service codes to monitor goal attainment for mapping services:
T002 Cartography services
T004 Charting services
T008 Photogrammetry services
T009 Aerial photographic services
T014 Topography services

b. Participating agencies shall use the following FPDS service codes to monitor A&E services under SIC codes 8711, 8712, and 8713:
C111 Administrative and Service Buildings
C112 Airfield, Communication and Missile Facilities
C113 Educational Buildings
C114 Hospital Buildings
C115 Industrial Buildings
C116 Residential Buildings
C117 Warehouse Buildings
C118 Research and Development Facilities
C119 Other Buildings
C121 Conservation and Development
C122 Highways, Roads, Streets and Bridges
C123 Electric Power Generation (EPG)
C124 Utilities
C129 Other Non-Building Structures
C130 Restoration
C211 Architect—Engineer Services (non-construction)
C212 Engineering Drafting Services
C213 A&E Inspection Services (non-construction)
C214 A&E Management Engineering Services
C215 A&E Production Engineering Services
C216 Marine A&E Services
C219 Other Architect and Engineering Services
R404 Land Surveys, Cadastral Services—non construction

3. Non-nuclear Ship Repair

Non-nuclear ship repair is included within SIC code 3731. Since this SIC includes all ship repair as well as shipbuilding, participating agencies shall use the following FPDS service codes to monitor goal attainment for non-nuclear ship repair: J998 Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships East of the 108th Meridian) or J999 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships West of the 108th Meridian).

4. Construction

Goal attainment for construction shall be monitored through the use of the SIC codes identified in Attachment A.

V. FPDS Data Collection Requirements

Participating agencies shall maintain and report procurement data to the Federal Procurement Data System (FPDS) in order to determine the level of small business participation in the four designated industry groups and the ten targeted industry categories for the small business expansion program.

A. Awards in Excess of $25,000

For contract awards in excess of $25,000, the FPDS (1) has information on the SIC code of the procurement and (2) can distinguish awards to small business concerns and small

disadvantaged business concerns, as required by section 714(c) of the Small Business Competitiveness Demonstration Program Act of 1988. However, for purposes of the Program, the FPDS reporting requirements have been revised to also:

1. Distinguish awards made under the Program in the four designated industry groups and the targeted industry categories.

2. Distinguish emerging small business firms from other small businesses. Participating agencies must make a good faith effort to award not less than 15 percent of the dollar value of awards in the four designated industry groups to emerging small businesses.

3. Distinguish awards to emerging small business firms in the small business reserve program. Participating agencies must reserve for exclusive competition among emerging small business concerns all contracts of $25,000 or less in the four designated industry groups or a greater amount set by OFPP if the 15 percent goal is not attained. Emerging small businesses can also receive awards above the small business reserve threshold.

4. Provide the size of the small business concern in terms of number of employees or dollar volume of sales for awards in the four designated industry categories and ten targeted industry categories. Section 714(c) of the Small Business Competitiveness Demonstration Program Act requires each participating agency to collect data pertaining to the size of the small business concern receiving any award for services in the four designated industry groups and products or services in the ten targeted industry categories. The number of employees shall be based on the average of the pay periods for the last twelve months. The volume of sales shall be based on the average annual gross revenue for the last three fiscal years (See FAR 19.101).

5. Limit A&E services to contracts awarded under the qualification-based selection procedures of 40 U.S.C. 541 *et seq.* (the "Brooks A–E Act").

6. Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

B. Awards of $25,000 or less

Each award of $25,000 or less made by a participating agency for the procurement of a service in the four designated industry groups shall be reported to the Federal Procurement Data Center in the same manner as if the award was in excess of $25,000. This means that all applicable data collected in the FPDS via the Individual Contract Action Report (SF 279), or agencies' equivalent computer-generated format, shall be reported for these purchases. It should be noted that awards of $500 or less are not reportable to the FPDS.

Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

Attachment A—Report on Small Business Participation Under the Small Business Competitiveness Demonstration Program for Designated Industry Groups

Fiscal Year _____ Quarter_____

Agency: _____

Subagency (if applicable) _____

Designated groups	Total US business actions/ dollars	Small business actions/ dollars*	Percentage of dollars	Small disadvantaged business Actions/dollars	Percentage of dollars	Emerging small business Actions/dollars	Percentage of dollars
I. Construction, Excluding Dredging (Dollars in Thousands; Percentage in Whole Numbers)							
SIC Group 15:							
1521							
1522							
1531							
1541							
1542							
Subtotal							
SIC Group 16:							
1611							
1622							
1623							
1629							
Subtotal							
SIC Group 17:							
1711							
1721							
1731							
1741							
1742							
1743							
1751							
1752							
1761							
1771							
1781							
1791							
1793							
1794							

Designated groups	Total US business actions/ dollars	Small business actions/ dollars*	Percentage of dollars	Small disadvantaged business Actions/dollars	Percentage of dollars	Emerging small business Actions/dollars	Percentage of dollars
1795							
1796							
1799							
Subtotal							
Grand Total							
II. Refuse Systems and Related Services (Dollars in Thousands; Percentages in Whole Numbers)							
PSC S205:							
Total							
III. Architectural and Engineering Services, Including Mapping and Surveying (Dollars in Thousands; Percentages in Whole Numbers)							
SIC 7389:							
PSC T002							
PSC T004							
PSC T008							
PSC T009							
PSC T014							
Subtotal							
SIC 8711 or SIC 8712 or 8713:							
PSC C111							
PSC C112							
PSC C113							
PSC C114							
PSC C115							
PSC C116							
PSC C117							
PSC C118							
PSC C119							
PSC C121							
PSC C122							
PSC C123							
PSC C124							
PSC C129							
PSC C130							
PSC C211							
PSC C212							
PSC C213							
PSC C214							
PSC C215							
PSC C216							
PSC C219							
PSC R404							
Subtotal							
Grand Total							
IV. Non-Nuclear Ship Repair (Dollars in Thousands; Percentages in Whole Numbers)							
SIC 3731:							
PSC J998							
PSC J999							
Total							

*Small Business Dollars include dollars to Emerging Small Businesses.

[FR Doc. 99–13879 Filed 6–1–99; 8:45 am]
BILLING CODE 3110–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–071]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Wednesday, June 16, 1999, 8:30 a.m. to 5:00 p.m.; Thursday, June 17, 1999, 8:30 a.m. to 5:00 p.m.; and Friday, June 18, 1999, 8:30 a.m. to 2:00 p.m.

ADDRESSES: NASA Headquarters, Conference Room 7H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the Public up to the capacity of the room. The agenda for the meeting is as follows:

—Theme Director's Report: Status of SEU programs
—Constellation-X project report
—SEUS Technology Working Group
—SEU outreach efforts: Report from the SEU Forum
—Discussion of Action Items and Matters Arising
—SEU contributions to NASA Strategic Plan

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 26, 1999.

Lori Garver,

Associate Administrator for Policy and Plans.

[FR Doc. 99–13952 Filed 6–1–99; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Eandowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Media Arts Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on June 28–30, 1999. The panel will meet from 9 a.m. to 6 p.m. on June 28th, from 9 a.m. to 6:30 p.m. on June 29th, and from 9 a.m. to 5:30 p.m. on June 30th, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 1 p.m. to 2:30 p.m. on June 30th, will be open to the public for a policy discussion.

The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 28th, from 9 a.m. to 6:30 p.m. on June 29th, and from 9 a.m. to 1 p.m. and 2:30 p.m. to 5:30 p.m. on June 30th, are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and(9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 25, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–13916 Filed 6–1–99; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 24, 1999.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for Art Museums: Other Humanities Organizations and Programs, submitted to the Office of

Challenge Grants at the May 1, 1999 deadline.

2. *Date:* June 28, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Room: 415.

Program: This meeting will review applications for College and Universities I, submitted to the Office of Challenge Grants at the May 1, 1999 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 99–13862 Filed 6–1–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Revisions to System of Records: Revised Systems

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of revisions to two existing systems and the planned creation of one new system. The revisions to current systems NSF–52 "Office of Inspector General—Investigative Files" and NSF–59 "Science and Technology Centers (STC) Database" are being made to more accurately reflect the current system records and use. The new system, NSF–71 "General Correspondence Files," covers general correspondence with individuals that is filed alphabetically rather than chronologically.

EFFECTIVE DATE: Sections 552a(e)(4) and (11) of Title 5 of the U.S. Code require that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect on July 2, 1999, unless modified by a subsequent notice to incorporate comments received from the public.

COMMENTS: Written comments should be submitted to Leslie Crawford, NSF Privacy Act Officer, National Science Foundation, Office of the General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230.

Dated: May 27, 1999.

Leslie Crawford,

Privacy Act Officer.

NSF–52

SYSTEM NAME:

Office of Inspector General—Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, the Office of Inspector General (OIG) maintains records on the following categories of individuals: (a) Individuals or entities who are or have been the subject of inquiries or investigations conducted by OIG, including current and former employees of NSF; and current and former contractors (or applicants for contracts), subcontractors, consultants, or the recipients of (or applicants for) NSF grants or cooperative agreements, and their current or former employees, students, or collaborators; and (b) Individuals who are witnesses; complainants; confidential or nonconfidential informants; and parties who have been identified by OIG (on the basis of information received or developed by OIG) as potentially possessing information relevant to an investigation under the jurisdiction by the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations including: (a) Letters, memoranda, and other documents citing complaints or alleged criminal, civil, or administrative misconduct; (b) Investigative files, which include: reports of investigations to resolve allegations of misconduct or violations of law or administrative or ethical requirements; exhibits, statements, affidavits, or other records obtained or generated during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; and public source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act, as amended, 5 U.S.C. app.

PURPOSE(S):

The Office of the Inspector General (OIG) for the National Science Foundation (NSF) maintains this system of records in order to conduct its responsibilities pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. app. section 4. The OIG is statutorily directed and authorized to conduct and supervise investigations relating to programs and operations of NSF, to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste and abuse in such programs and operations. Accordingly, the records are used in investigations of individuals and entities suspected of having committed illegal or unethical acts, and in any resulting criminal prosecutions, civil proceedings, or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed as follows:

1. In the event that records indicate a violation or potential violation of a requirement, whether criminal, civil, regulatory, administrative, contractual, or ethical in nature, whether arising by statute, regulation, rule, order, contract (including a grant or cooperative agreement), or ethical practices or norms, the relevant records in the system of records may be disclosed, as a routine use, to the appropriate entity, whether governmental (federal, foreign, state, local, or international) or non-governmental, charged with the responsibility of investigating or prosecuting such violation or potential violation, or charged with enforcing, implementing, or complying with such statute, regulation, rule, order, contract, or ethical practices or norms.

2. Disclosure may be made to appropriate entities, whether governmental (federal, foreign, state, local or international) or non-governmental, or to an individual, when necessary to elicit information that will assist an investigation or audit.

3. Disclosure may be made to a federal, state, local, foreign, or international entity maintaining civil, criminal, or other relevant information if necessary to obtain information relevant to an OIG decision concerning the assignment, hiring, or retention of an individual and/or employee or disciplinary or other administrative action concerning an employee, the issuance or revocation of a security clearance, the reporting of an investigation of an individual and/or employee, or the award of a contract (including a grant or cooperative agreement).

4. Disclosure may be made to a federal, state, local, foreign, or international entity in response to its request in connection with the assignment, hiring, or retention of an individual and/or employee, or disciplinary or other administrative action concerning an employee, the issuance or revocation of a security clearance, the reporting of an investigation of an individual and/or employee, or the award of a contract

(including a grant or cooperative agreement) or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. Disclosure may be made to the Office of Personnel Management or the Merit Systems Protection Board (including the Office of the Special Counsel) of information relevant and necessary to carrying out their functions.

6. In the event OIG is aware of information about possible misconduct in science and engineering, disclosure of relevant records may be made by OIG to institutions or entities that have proposed or received contracts, grants, or cooperative agreements so that they can conduct inquiries and investigations into possible misconduct in science and engineering pursuant to 45 CFR part 689.

7. Disclosure may also be made to independent auditors, contractors, experts, and other individuals who perform a service to or work on or under a contract, or other arrangement with or for the federal government, as necessary to carry out their duties. Such contractors will be required to maintain Privacy Act safeguards with respect to such records.

8. Disclosure may be made to another federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

9. In the event the OIG deems it desirable or necessary, in processing a Freedom of Information Act or Privacy Act request, disclosure may be made to the Department of Justice or the Office of Management and Budget for the purpose of obtaining its advice.

10. Disclosure may be made to the Department of Justice, to the extent it is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his or her official capacity; (c) an NSF employee in his or her official capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect NSF.

11. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

12. Disclosure may be made to representatives of the General Services Administration and the National Archives and Records Administration who are conducting record management inspections under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of automated data and paper records. The paper records are stored in file cabinets and the automated data are maintained in computers in OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

These records are kept in OIG offices within limited access areas of the National Science Foundation during duty hours, and in locked offices at all other times. Passwords are required to access the automated data.

RETENTION AND DISPOSAL:

The Investigative Files are kept indefinitely pending adoption of an NSF-specific approved records retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. Access requests must be sent to the Privacy Act Officer in accordance with procedures found at 45 CFR part 613.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requests must be sent to the Privacy Act Officer in accordance with procedures found at 45 CFR part 613.

RECORD SOURCE CATEGORIES:

The subjects of investigations; individuals with whom the subjects of investigations are associated; current and former NSF employees; federal, state, local, and foreign law enforcement and non-law enforcement agencies; private citizens; witnesses; confidential and nonconfidential informants; and public source materials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted from 5 U.S.C. 552a except subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e) (6), (7), (9), (10), and (11); and (i) under 522a(j)(2) to the extent the system of records pertains to enforcement of criminal laws; and is exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) under 5 U.S.C. 552a(k)(2) to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). These exemptions are contained in 45 CFR 613.

NSF–59

SYSTEM NAME:

Science and Technology Centers (STC) Database.

SYSTEM LOCATION:

Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in NSF funded Science and Technology Center (STC) Activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records vary by year. From FY90 until FY98, the records may include name, institution, social security number, gender, ethnicity, year of highest degree, citizenship, areas of research, type of financial support and other related information. These STC databases may also include the results of follow-up surveys of STC Center participants. The records will be used to help evaluate the STC Center's achievement of program goals. Evaluation may include follow-up surveys of STC Center participants. The results of evaluations will be statistical and will not identify individual participants.

Beginning with FY98, covered records include only faculty names associated with type of financial support. Other program records from FY98 forward are not part of this system of records because they include no individual names or identifiers. These records report only the number of STC participants by STC Center categorized as faculty, postdoctoral fellows, graduate students, undergraduate students, visiting scientists, support staff (scientific, technical, and administrative), and precollege students and teachers. These records include data on gender, disability status, citizenship, ethnicity/race, areas of research, shared experimental facilities, type of financial support, and other related information. Because these data are collected without individual name or other identifier, it cannot be so retrieved and are not part of this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE(S):

Information from this system may be used to enable NSF to identify research areas under STC Center awards and determine the level of support for STC Center personnel and STC Center research; to help evaluate the STC Center's achievement of program goals, such as enhancement of skills; to report periodically, in statistical form only, on the participation of men and women by ethnicity, disability, discipline, and citizenry; and to enable NSF to monitor the effectiveness of NSF-sponsored STC Centers for management evaluation and for reporting to the Administration and Congress, especially under the Government Performance and Results Act, 5 U.S.C. 306 and 39 U.S.C. 2801–2805.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. An STC Center and its authorized personnel may have access to data submitted by that Center for the purpose of administration and for other uses consistent with the purpose above.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Information from the system may be disclosed to contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties in pursuit of the purposes described above. The contractors are subject to the provisions of the Privacy Act.

4. Information from the system may be merged with other computer files in order to carry out statistical studies or assist with program management, evaluation, and reporting. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staffs. The results of such studies, evaluations, or reports are statistical in nature and do not identify individuals.

5. Information from the system may be disclosed to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

6. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

7. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

8. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Some of the records are stored electronically and some are stored in paper format in file folders.

RETRIEVABILITY:

By the STC Center and then alphabetically by individual.

SAFEGUARDS:

Building is locked during non-business hours. Records at NSF are kept in rooms that are locked during non-business hours. Records maintained in electronic form are password protected.

RETENTION AND DISPOSAL:

The file for each STC Center is cumulative and maintained indefinitely pending adoption of an approved records retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Science and Technology Centers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–71

SYSTEM NAME:

General Correspondence Files.

SYSTEM LOCATION:

Correspondence files maintained by name, rather than chronologically, in some NSF offices or divisions at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Most NSF general correspondence is filed chronologically. This system covers only individuals who write to the NSF or its officers or employees, or individuals whose letter has been referred to NSF by other parts of the Federal government when such general correspondence is filed by name of the sender rather than chronologically.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the original correspondence received as well as any response, referral letters concerning the correspondence and copies of any enclosures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are kept for administrative convenience pursuant to 44 U.S.C. 3101.

PURPOSE(S):

These records are kept for administrative convenience to document responses to general correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information from the system may be provided to a referrer of the original correspondence.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Information from the system may be disclosed to contractors, volunteers, advisors, and other individuals who perform a service to or work on or under a contract, or other arrangement with or for the Federal government, as necessary to carry out their duties. The contractors are subject to the provisions of the Privacy Act.

4. Information from the system may be disclosed to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

5. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

6. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

7. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The material is stored in file folders within file cabinets in individual Offices or Divisions of NSF.

RETRIEVABILITY:

The system covers correspondence maintained within individual Offices or Divisions that is arranged alphabetically by name of original correspondent.

SAFEGUARDS:

Correspondence is maintained in rooms occupied by office personnel during the work day and locked during non-business hours.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with approved record retention plans, and are maintained for a minimum of three months.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Division or Office maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Letters received from the original correspondent along with any referral letters, and the NSF office which wrote the response, along with any transmitted information or enclosures.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–13950 Filed 6–1–99; 8:45 am]

BILLING CODE 7555–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 31, June 7, June 14, and 21, 1999.

PLACE: Commissioners's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Weeks of May 31

There are no meetings scheduled for the Week of May 31.

Week of June 7—Tentative

There are no meetings scheduled for the Week of June 7.

Week of June 14—Tentative

Monday, June 14

2:00 p.m. Briefing on 10 CFR Part 70—Proposed Rule for Revised Requirements for Domestic Licensing of Special Nuclear Material (Public Meeting) (Contact: Ted Sherr, 301–415–7218)

Tuesday, June 15

10:30 a.m. All Employees Meeting (Public Meeting) ("The Green" Plaza Area)

1:30 p.m. All Employees Meeting (Public Meeting) ("The Green" Plaza Area)

Wednesday, June 16

9:00 a.m. Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting) (Contact: Ron Hauber, 301–415–2344)

Thursday, June 17

9:00 a.m. Briefing on Status of Uranium Recovery (Public Meeting) (Contact: King Stablein, 301–415–7238)

11:00 a.m. Affirmation Session (Public Meeting) (If needed)

1:30 p.m. Discussion of Management Issues (Closed-Ex. 2 and 6)

Friday, June 18

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson 301–415–1771)

Week of June 21—Tentative

There are no meetings scheduled for the Week of June 21.

*The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on May 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (a) Final Rule: Amendments to 10 CFR Part 72—Miscellaneous Changes to Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste and (b) Hydro Resources, Inc. (HRI)—ENDAUM's & SRIC's Petition for Interlocutory Review of Presiding Officer's Order Seeking Additional Information (April 21, 1999) & ENDAUM's & SRIC's Motion for

Reconsideration of a May 3, 1999 Order" (Public Meeting) be held on May 27, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.ncr.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 27, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–14041 Filed 5–28–99; 12:10 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 8, 1999, through May 20, 1999. The last biweekly notice was published on May 19, 1999.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 2, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed amendment would change the technical specifications (TS) and licensing basis for the required amount of diesel fuel to be stored on-site and its sources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only the on-site diesel fuel storage capacity for the operation of emergency diesel generators [EDG]. The on-site storage capacity is not associated with an accident precursor/initiator; thus, it has no impact on the probability of [an] accident occurring. The consequences of an accident would not be significantly increased because reasonable measures will be available to ensure the EDGs are supplied with enough fuel from the on-site sources to operate for seven days at rated capacity.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect normal plant operation or the immediate response to an accident. The only change is the proposed refilling operation to transfer fuel from the Class II SBODG [Station Blackout Diesel Generators] storage tanks to the Class I EDG tanks. The refilling operation would occur entirely outdoors through above ground hoses connecting the EDG and SBODG tanks. This operation would only be required following a LOCA [loss-of-coolant accident], an accident already analyzed. Since the proposed refilling operation is a post-accident evolution, it would not be in place to cause an accident of a different type during non-accident conditions. No reasonable malfunction of equipment associated with the evolution could create a new or different kind of accident than previously evaluated.

The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment for licensing basis change and TS change does not significantly reduce the margin of safety. The proposed change restores the licensing basis to provide sufficient fuel in on-site storage tanks for continuous operation of each EDG for approximately seven days. The revised licensing basis requires 36,800 gallons of fuel per EDG to be stored on-site. A minimum of 19,800 gallons of fuel will be stored in Class I EDG storage tanks and the remaining will be stored in Class II SBODG on-site storage tanks. The storage of fuel in Class I tanks does not reduce the margin of safety. The only potential reduction in the margin of safety is due to the use of Class II SBODG tanks and associated transfer equipment for the storage and transfer of additional fuel. These Class II tanks are rugged, double-wall fiberglass tanks. While not designed to safety-related requirements, the failure of these tanks under extreme environmental conditions, such as an earthquake, has been evaluated to be very unlikely. Thus, on-site storage of sufficient fuel for operation of both EDGs is assured to mitigate the consequences of an accident previously evaluated. All stored fuel is maintained at the same quality standard. The proposed diesel fuel refilling operation is a post design basis accident activity, which does not create the possibility of a new accident or impact an accident previously evaluated. Therefore, there is no significant reduction in the safety margin.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Attorney for licensee: J. Fulton, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application of amendment request: October 2, 1998, as supplemented by letter dated April 19, 1999.

Description of amendment request: By letter dated February 13, 1998, Commonwealth Edison Company (ComEd) certified that they have permanently ceased operations at Zion Nuclear Power Station (ZNPS), Units 1 and 2. Since ComEd has permanently ceased operations at ZNPS, they have requested an amendment to the Facility Operating Licenses to eliminate license conditions that are no longer applicable and to replace the existing technical specifications in their entirety with permanently defueled technical specifications (PDTS). The PDTS reflect the permanently shutdown and defueled condition of the ZNPS.

Basis for a proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration and has determined that the proposed changes do not:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative changes remove requirements that are not invoked with the reactors permanently defueled. The editorial changes alter format, word choice, grammar, terminology, etc., but do not change requirements. The more restrictive changes add new requirements, remove existing exceptions, or make existing limits more conservative. The relocation or redundancy changes remove requirements from the facility operating licenses or technical specifications because they exist in another document controlled by other approved methods. None of these types of changes affect the probability or consequences of a previously evaluated accident since there is no functional reduction in the limitations imposed on structures, systems, components or activities with the reactors permanently defueled.

The less restrictive changes to the license conditions eliminate requirements for programs and commitments that address hazards or conditions that are no longer credible with both reactors permanently defueled. Since these hazards or conditions are not credible, no increase in the probability or consequences of a previously evaluated accident will result from the elimination of these requirements.

The less restrictive changes to the equipment-related technical specifications eliminate or modify restrictions involving certain structures systems and components (SSCs). Some of the equipment-related technical specifications have been eliminated because, with both reactors permanently defueled, the spectrum of previously evaluated credible accidents has been significantly reduced and many of the associated hazards (such as reactor coolant gaseous activity, hydrogen, and radioactive iodine) will not occur. Since those previously evaluated accidents and associated hazards are no longer credible, their probability and consequences are not increased by the changes eliminating the associated technical specifications. Other equipment-related technical specifications have been modified to address previously evaluated accidents that are still relevant in the permanently defueled condition more logically and consistently, without increasing their probability or consequences.

The less restrictive changes to the Administrative Control technical specifications affect a variety of functions. They provide flexibility in Quality Assurance Program administration, allow a reduction in shift staffing, eliminate certain training requirements for personnel who have little or no safety involvement, change certain procedure processing requirements, provide consistency in scheduling certain radiological surveillances and reports, eliminate reports that are no longer needed, eliminate unnecessary flood door requirements, and allow alternative methods of administering Process Control Program changes. Since none of these changes directly involve the previously evaluated accidents that remain credible with both reactors permanently defueled, the changes will not increase the probability or consequences of any previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The administrative changes do not alter any SSCs or activities involved with the safe storage of nuclear fuel. The editorial changes do not alter any requirements. The more restrictive changes make the technical specifications more limiting. The relocation/redundancy changes only change the location of requirements. None of these types of changes create the possibility of a new or different kind of accident from any accident previously evaluated.

The less restrictive changes to the license conditions eliminate requirements for programs and commitments involving hazards or conditions that are no longer credible with both reactors permanently defueled. Since these changes do not result in any new programs or activities, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The less restrictive changes to the equipment-related technical specifications do not alter any SSC or cause any SSC to be operated in a manner that could initiate any event or accident. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The less restrictive changes to the Administrative Control technical specifications do not change the design, function, or operation of any SSC except the flood doors and the change involving the flood doors does not introduce any new type of event. Therefore, the less restrictive changes to the Administrative Control technical specifications do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The administrative changes do not alter any SSCs or activities involved with the safe storage of nuclear fuel. The editorial changes do not alter any requirements. The more restrictive changes make the technical specifications more limiting. The relocation/redundancy changes only change the location of requirements. None of these types of changes reduce any safety margin.

The less restrictive changes to the license conditions eliminate requirements that apply to hazards or conditions that are no longer relevant with both reactors permanently defueled. The safety margins that may have been associated with those license conditions are no longer relevant.

There are no longer any relevant margins of safety associated with the less restrictive changes to the equipment-related technical specifications except for those involving criticality control and seismic criteria. The proposed technical specifications maintain the same margin of safety for criticality control in the spent fuel pool, and the Defueled Safety Analysis Report imposes seismic criteria that provide an adequate safety margin.

The less restrictive changes to the Administrative Control technical specifications do not directly involve any limits or parameters and therefore cannot affect any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Pamela B. Strobel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–076.

NRC Project Director: Stuart A. Richards.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 14, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specification requirements affecting the surveillance criteria for that portion of the once-through steam generator tubes regarded

as a primary-to-secondary pressure boundary located within the upper tube sheet and impacted by a specific degradation mechanism, namely, outside diameter intergranular attack.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The once-through steam generators OTSG are used to remove heat from the reactor coolant system during normal operation and during accident conditions. The OTSG tubing forms a substantial portion of the reactor coolant pressure boundary. An OTSG tube failure is a breach of the reactor coolant pressure boundary and is a specific accident analyzed in the ANO–1 [Arkansas Nuclear One, Unit 1] Safety Analysis Report.

The purpose of the periodic surveillance performed on the OTSGs in accordance with ANO–1 Technical Specification (TS) 4.18 is to ensure that the structural integrity of this portion of the reactor coolant system will be maintained. The TS plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the TS as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line or feedwater line break. The proposed TS change allows OTSG tubes with ODIGA [outside diameter intergranular attack] indications contained within a defined area of the UTS [upper tube sheet] to remain in service with existing degradation exceeding the existing 40% through-wall (TW) plugging limit.

Extensive testing and plant experience has illustrated that ODIGA flaws confined to this area within the OTSG will not result in tube burst or tube leakage. Therefore, allowing ODIGA flaws in this specific region to remain in service will not alter the conditions assumed in the current ANO–1 accident analysis for OTSG tube failures under postulated accident conditions. In addition, the condition of the OTSG tubes in this region are monitored during regular inspection intervals to assess for evidence of growth. Any growth noted will be addressed through testing and the operational assessment * * *.

Application of the ODIGA alternate repair criteria will allow leaving tubes with ODIGA indications found in the defined area of the UTS in service while ensuring safe operation by monitoring and assessing the present and future conditions of the tubes. ANO–1 has operated since 1984 with ODIGA affected tubes in service with no appreciable effect on structural integrity or indications of tube leakage from ODIGA sources within the UTS. Through the inspection, testing, monitoring, and assessment program previously mentioned, and the on-line leak detection capabilities available during plant operation, continued safe operation of ANO–1 is reasonably assured.

Therefore, the application of the ODIGA alternate repair criteria...does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The implementation of the ODIGA alternate repair criteria will not result in any failure mode not previously analyzed. The OTSGs are passive components. The intent of the TS surveillance requirements are being met by these proposed changes in that adequate structural and leak integrity will be maintained. Additionally, the proposed change does not introduce any new modes of plant operation.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The application of an alternate repair criteria for ODIGA provides adequate assurance with margin that ANO–1 steam generator tubes will retain their integrity under normal and accident conditions. The structural requirements of ODIGA affected tubes have been evaluated satisfactorily and meet or exceed regulatory requirements. Leakage rates for these tubes within the defined region of the upper tubesheet are essentially zero and are reasonably assured to remain within the assumptions of the accident analysis by proper application of the ODIGA alternate repair criteria program. Because no appreciable impact is evidenced on the tubes structural integrity or its resulting leak rate, the margin to safety remains effectively unaltered.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 (CR–3) Improved Technical Specifications to approve an alternate repair criteria (ARC) for axial tube end crack-like indications in the upper and lower tubesheets of the CR–3 Once Through Steam Generators (OTSGs). The ARC will allow leaving OTSG tubes with axially oriented tube end cracks located within the clad region of the tube-to-tubesheet roll joint in service. Tubes with crack-like indications within the carbon steel portion of the tubesheet, or tubes with circumferentially oriented tube end cracks or volumetric indications within the Inconel clad region of the tubesheet, would be repaired or removed from service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This LAR [License Amendment Request] proposes to implement an alternate repair criteria (ARC) for Once Through Steam Generator (OTSG) tubes with axial tube end crack (TEC) indications. Application of the ARC will allow tubes with axially oriented TEC to remain in service in accordance with specific conditions. Based on a combination of structural analyses, mock-up testing and inservice inspections, as detailed in Topical Report BAW–2346P, allowing tubes with TEC indications to remain in service is safe and justified.

Potential leakage from tubes with TEC will be bounded by the main steam line break (MSLB) evaluation presented in the Final Safety Analysis Report (FSAR). The proposed change requires inspections during subsequent outages of tubes remaining in-service with the TEC indications. The addition of this inspection does not change any accident initiators. The proposed inspection of these indications during the subsequent OTSG inservice inspections assures continuous monitoring of these tubes such that degradation of tubes containing TEC indications will be detected. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed alternate repair criteria for axial TEC indications introduces no new failure modes or accident scenarios. Topical Report BAW–2346P demonstrated structural and leakage integrity for all normal operating and accident conditions for Crystal River Unit 3 (CR–3). Furthermore, leaving TEC in service does not change the design or operating characteristics of the OTSGs. In the unlikely event that a tube with a TEC should

fail and sever completely, the tube would remain engaged in the tubesheet bore, preventing interaction with other surrounding tubes. In this case, leakage is bounded by the steam generator tube rupture (SGTR) accident analysis. Therefore, this change does not create a possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The mechanical joint is constrained within the tubesheet bore; thus, there is no additional risk associated with tube rupture. ITS [Improved Technical Specifications] Bases 3.4.12 contains relevant information pertaining to limitations on Reactor Coolant System leakage. The accident leakage is shown to be less than one gallon per minute primary-to-secondary leakage. Therefore, the FSAR analyzed accident scenarios remain bounding, and the use of the proposed alternate repair criteria does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Sheri R. Peterson.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: April 26, 1999.

Description of amendment request: The proposed amendments would revise the Turkey Point Plant, Units 3 and 4, Facility Operating Licenses and the Technical Specifications (TS): (1) To remove a part of license condition 3.L that is obsolete, (2) to update the TS Index to reflect all changes made to the TS Sections, TS Figures, and TS Tables by previously approved license amendments, and (3) to remove Table and Figure numeration inconsistencies found in TS 3/4.1.2.5 and TS 3/4.7.6. These proposed changes represent an administrative update to the Turkey Point Plant, Units 3 and 4, Facility Operating Licenses and to the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature removing obsolete references in the license conditions, updating the Technical Specification (TS) Index to reflect the revisions made to the TS Sections, Tables, and Figures via previous TS amendments. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The proposed changes to the Facility Operating License Conditions and to the Technical Specifications are administrative and do not significantly reduce any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Herbert N. Berkow.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 1, 1999.

Description of amendment request: Changes are proposed to support a modification which will install a digital Power Range Neutron Monitoring (PRNM) system and incorporate long-term thermal-hydraulic stability solution hardware.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

i. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

As discussed in the LTR [licensing topical report], the [Nuclear Measurements Analysis and Control] NUMAC PRNM modification and associated changes to the TS [technical specifications] involve equipment that is designed to detect the symptoms of certain events or accidents and initiate mitigating actions. The worst case failure of the equipment involved in the modification is a failure to initiate mitigating action (scram or rod block), but no failure can cause an accident. The PRNM replacement system is designed to perform the same operations as the existing Power Range Monitor system and meets or exceeds all operational requirements. Therefore, it is concluded that the probability of an accident previously evaluated is not increased as a result of replacing the existing equipment with the PRNM equipment.

The PRNM system reduces the need for tedious operator actions during normal conditions and allows the operator to focus more on overall plant conditions. The automatic self-test and increased operator information provided with the replacement system are likely to reduce the burden during off-normal conditions as well. The replacement equipment qualifications fully envelope the environmental conditions, including electromagnetic interference, in the PBAPS [Peach Bottom Atomic Power Station] control room.

The replacement equipment has been specifically designed to assure that it fully meets the response time requirements in the worst case. As a result, due to statistical variations resulting from the sampling and update cycles, the response time is typically faster than required in order to assure that the required response time is always met.

Setpoints are changed only when justified by the improved equipment performance specifications and by setpoint calculations which show that safety margins are maintained. There is no impact to the Control Rod Drop accident analysis because the PRNM system maintains all existing system functions with a reliability equal to or better than the existing Power Range Monitor system.

The replacement equipment includes up to 5 LPRM [Local Power Range Monitor] inputs on a single module compared to one per module on the current system. Up to 17 LPRM signals are processed through one preprocessor. The recirculation flow signals are processed in the same hardware as the LPRM processing. The net effect of these architectural aspects is that there are some single failures that can cause a greater loss of "sub-functionality" than in the current system. Other architectural and functional aspects, however, have an offsetting effect. Redundant power supplies are used so that a single failure of AC power has no effect on the overall PRNM system functions while still resulting in a half scram as does the current system. Continuous automatic self-test also assures that if a single failure does occur, it is much more likely to be detected immediately. The net effect is that from a total system level, unavailability of the safety-related functions in the replacement system is equal to or better than the current Power Range Monitor system.

Based on the extensive and through [sic] [thorough] verification and validation program used in the PRNM design and field operating experience, common cause failures in software controlled functions are judged to not be a significant failure mode. However, in spite of that conclusion, means are provided within the system to mitigate the effects of such a failure and alert the operator. Therefore, such a failure, even if it occurred, will not increase the consequences of a previously evaluated accident.

To reduce the likelihood of common cause failure of software controlled functions, thorough and careful verification and validation (V&V) activities are performed both for the requirements and the implementing software design. In addition, the software is designed to limit the loading that external systems or equipment can place on the system, thus significantly reducing the risk that some abnormal dynamic condition external to the system can cause system functional performance problems due to processing "overload" (i.e., "slowing down" or stopping the processing).

As a conservatism, however, despite these V&V activities, common cause failures of software controlled functions due to residual software design faults are assumed to occur. Both the software and hardware are designed to manage the consequences of such failure (and also cover potential common cause hardware failures). Safety outputs are designed to be fail safe by requiring dynamic update of output modules or data signals, where failure to update the information is detected by simple receiving hardware, which, in turn, forces a trip. This aspect covers all but rather complex failures where the software or hardware executes a portion of the overall logic but fails to process some portion of new information (inputs "freeze") or some portion of the logic (outputs "freeze").

To help reduce the likelihood of complex failures, a watchdog timer is used which is updated by a very simple software routine that in turn monitors the operational cycle time of all tasks in the system. The software design is such that as long as all tasks are updated at the design rate, it is likely that software controlled functions are executing as intended. Conversely, if any task fails to update at the design rate, that is a strong indication of at least some unanticipated condition. If such a condition occurs, the watchdog timer will not be updated, the computer will be automatically restarted, and the system will detect an abnormal condition and provide an alarm and trip.

The information available to the operator is at least the same as with the current system and, in many cases, improved. No actions are required by the operator to obtain information normally used and equivalent to that available with the current equipment. However, the replacement system does provide more directly accessible information regarding the condition of the equipment, including automatic self-test, which can aid the operator in diagnosing unusual situations beyond those defined in the licensing basis.

In summary, the reliability of the new PRNM system and its ability to detect and mitigate abnormal flux transients have either remained the same or improved over the existing Power Range Monitor system. Since these postulated reactivity transients are mitigated by the new system as effectively and reliability [sic] [reliably] as the existing system, the consequences of these transients have not changed. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

ii. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

PBAPS Modification P00507 uses digital processing with software (firmware) control for the main signal processing part of the modification. The remainder of the equipment in the modification uses conventional equipment similar to the current system (e.g., penetrations, cables, interface panels).

The digital equipment has "control" processing points and software controlled digital processing where the current system has analog and discrete component processing. The result is that the specific failures of hardware and potential software common cause failure are different from the current system. The effects of software common cause failure are mitigated by hardware design and system architecture, but are of a "different type" of failure than those evaluated in the PBAPS Updated Final Safety Analysis Report (UFSAR). In general, the PBAPS UFSAR assumes simplistic failure modes (relays for example) but does not specifically evaluate such effects as self-test detection and automatic trip or alarm. Therefore, the replacement system may have a malfunction of a different type from those evaluated in the PBAPS UFSAR [* * *]. However, when these PRNM failures are evaluated at the system level, there are no new effects.

PBAPS Modification P00507 involves equipment that is intended to detect the symptoms of certain transients and accidents and initiate mitigating action. The worst case failure of the equipment involved in the modification is a failure to initiate mitigating action (scram), but no failure can cause an accident. This is unchanged from the current system. Software common cause failures could cause the system to fail to perform its safety function, but this possibility is addressed in Section (i) above. In that case, it might fail to initiate action to mitigate the consequences of an accident, but would not cause one. No new system level failure modes are created with the PRNM system.

Therefore, PBAPS Modification P00507 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

iii. The proposed changes do not involve a significant reduction in a margin of safety.

The PRNM system response time and operator information is either maintained or improved over the current Power Range Monitor system.

The PRNM system has improved channel trip accuracy compared to the current system and meets or exceeds system requirements assumed in setpoint analysis. The channel response time exceeds the requirements.

The channel indicated accuracy is improved over the current system and meets or exceeds all of the system requirements.

The PRNM system was developed to detect the presence of thermal-hydraulic instabilities and automatically initiate the necessary actions to suppress the oscillations prior to violating the MCPR Safety Limit. The NRC has reviewed and approved the LTR concluding that the PRNM system will provide the intended protection.

Therefore, PBAPS Modification P00507 does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 28, 1999, as supplemented April 29, 1999, and May 17, 1999. This notice supersedes a previous notice (64 FR 19563) published April 21, 1999, which was based upon the licensee's application for amendment dated January 28, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSs) proposes to reduce the number of Emergency Diesel Generators (EDGs) required to be operable during cold shutdown from 2 to 1 under certain conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No. The equipment, which is affected by the proposed Technical Specification change, is not an initiator to those accidents postulated to occur during Cold Shutdown or Refueling operating conditions. A comprehensive systems review and EDG loading electrical analysis has demonstrated the ability of those shutdown support systems, necessary to provide safe shutdown needs, to perform their safety functions for the postulated accidents during Cold Shutdown and Refueling conditions. One EDG can support the necessary electrical loads required in Cold Shutdown and Refueling in the event of postulated accidents along with a LOOP [loss of offsite power] in the time frame required to prevent reactor core/cavity/SFP [spent fuel pit] heatup concerns. This EDG support relies upon existing plant designed manual closure of 480VAC EDS [electrical distribution system] bus tie breakers to allow a single EDG to pick up other 480VAC EDS bus loads, such as supplying an RHR [residual heat removal] pump and SFP cooling pump, located on 480VAC EDS buses 3A, 5A, or 6A. Together, operability of the required offsite circuit(s) and one EDG along with necessary portions of the AC, DC and 120 VAC vital instrument bus electrical power distribution subsystems ensures the availability of sufficient electrical sources to operate the unit in a safe manner and to mitigate the consequences of postulated accidents during shutdown (e.g., Fuel Handling Accidents), as well as other postulated events. Action statements provide prompt, specific guidance to ensure sufficiently conservative plant response should the expected EDG power supply or required offsite power supply feeders or necessary portions of AC, DC and 120 VAC vital instrument bus electrical power distribution subsystems not be available. These Action Statements are similar to those in the STS [Standard Technical Specifications]. Therefore, the proposed license amendment (i.e., changes to 3.7.F.4 and the added sections of 3.7.F.5 & 3.7.F.6) does not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed license amendment does not involve any physical changes to plant systems or component set points. The use of 480VAC EDS bus tie breakers to power loads from necessary energized 480VAC bus(es) is part of present plant design and included within the present LOOP Off-Normal operating procedures when the reactor is in Cold Shutdown operating conditions. As discussed in the Standard Technical Specifications, NUREG 1431, during plant shutdown with one EDG, it is not required to assume a single failure and concurrent loss of all offsite or all onsite power. Worst case bounding events are deemed not credible in Cold Shutdown and Refueling conditions because the energy contained within the reactor pressure boundary, reactor coolant temperature and pressure, and the corresponding stresses result in the probabilities of occurrence being significantly reduced or eliminated, and ultimately result in minimal consequences. The lone EDG is capable of accepting and starting required loads within the assumed loading sequence intervals and in the time frame required to prevent reactor core/cavity/SFP heatup concerns, with sufficient "kW loading". Action statements provide prompt, specific guidance to ensure sufficiently conservative plant response should the expected EDG or offsite supply feeder or the necessary portions of the AC, DC and 120 VAC vital instrument bus electrical power distribution subsystems not be available. These action statements are similar to those in the STS. Therefore, the proposed license amendment (i.e., changes to 3.7.F.4 and added sections 3.7.F.5 & 3.7.F.6) does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in the margin of safety?

Response: No. The electrical power system specifications support the equipment required to be operable, commensurate with the current level of safety, including the equipment requiring an EDG backed power source. The design review results demonstrate that operation in the conditions of Cold Shutdown and Refueling, in accordance with the proposed Technical Specification change, is acceptable from an accident mitigation standpoint. The basic system functions in Cold Shutdown and Refueling operating conditions are not changed. One EDG, along with the necessary portions of the AC, DC and 120 VAC vital instrument electrical power distribution subsystems available, can supply the necessary electrical power requirements during these plant operating conditions, and in the time frame required to prevent reactor core/cavity/SFP heatup concerns, with sufficient "kW loading". The analysis conducted shows that the systems are capable of performing their design basis functions. Applicable safety analysis in the Standard Technical Specifications, NUREG 1431, discusses these system requirements as well (i.e., it is not required to assume a single failure and concurrent loss of all offsite or all onsite power). Action statements, similar to those in the Standard Technical Specifications, provide prompt, specific operator actions to ensure sufficiently conservative plant response should the expected EDG power supply or the required offsite power supply feeders or AC, DC and 120 VAC vital instrument bus electrical power distribution subsystems not be available. On this basis, the proposed license amendment (i.e., changes to 3.7.F.4 and added sections 3.7.F.5 & 3.7.F.6) does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 6, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 (IP3) Technical Specifications (TSs) proposes to change sections 3.7.A.5 and 3.7.F.4 by removing the words "three individual underground" and "underground" from the limiting conditions for operation (LCO) when referring to the emergency diesel generator (EDG) fuel oil storage tanks (FOSTs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change would not change the design configuration or function of the permanently installed EDG FOSTs. The revision of TS 3.7.A.5 and 3.7.F.4 to remove the descriptive words "three individual underground" and "underground" from the text of the two LCOs is intended as a line item change, to remove unnecessarily restrictive wording in the TS. While the Standard Technical Specifications (STS), NUREG–1431, mentions in the Bases section that "all outside tanks, pumps, and piping are located underground", the specification itself does not contain this requirement. The intent of this TS change is to allow for, if acceptable under 10CFR50.59, the potential installation of an alternate above ground FOST to an EDG if needed to perform repairs/testing of the permanently installed FOST. This alternate tank would need to be qualified and have the required capacity to maintain the associated EDG operable. This potential modification would include design of the temporary tank to preclude winds loads from a tornadic event causing the associated EDG to become inoperable. Installation of this temporary tank would then permit repair work or replacement of an installed EDG FOST, or subsequent similar work on either of the other EDG FOSTs, one at a time. The changes to the Bases for Specification 3.7 are consistent with the change in the LCO Specification and do not alter the design or functionality of the existing EDG FOSTs. The revised LCOs are consistent with the STS in that the FOSTs will no longer be identified as "three individual underground". Control of future modifications to support EDG FOST work would ensure proper licensing and design basis compliance in accordance with the change process of 10CFR50.59. The associated changes of the TS Bases provide clarification regarding the normal underground configuration of the EDG FOSTs. The proposed TS change will not reduce the ability of any system, structure, or component in preventing or mitigating a design basis accident since no plant features are being altered in conjunction with this change, and future changes would be evaluated under 10CFR50.59. The description of the FOSTs, including the fact that they are underground, remains part of the current licensing basis because it is described in FSAR [final safety analysis report] section 8.2.

Therefore, the proposed changes to the TS will not result in an increase in the probability or consequences of any previously evaluated accidents. The other changes to the TS pages are editorial only, moving text to different pages.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change would not change the design configuration or function of the permanently installed EDG FOSTs. The changes to TS 3.7 and its bases in describing the physical location of the EDG FOSTs will not alter the required design criteria of these tanks nor their ability to withstand the effects of a tornado. These changes will not reduce the ability of the EDG's in meeting their design requirements of providing emergency power towards mitigating an accident. The intent of these changes is to permit the potential use of a temporary above ground FOST(s) to supply the EDGs and to fulfill the intent and requirements of the present EDG fuel oil storage system while allowing for maintenance on an EDG FOST. The 10CFR50.59 change process will be used to determine this potential modification acceptability. The intent of the temporary configuration of an above ground FOST would be to maintain the fuel oil system and EDG operable. The associated changes to the Bases section of TS 3.7 provide additional clarification of the "underground" nature of the EDG FOSTs. Neither the changes to the LCO in describing the EDG FOSTs (whether the normal underground tanks or any temporary above ground FOSTs) nor any changes to the TS Bases (which do not alter the design or operation of the EDG fuel oil transfer system) will affect the ability of the EDGs to provide the necessary power for operation of equipment required for mitigating previously analyzed accident scenarios. No plant features, or FSAR description of such, are being altered in conjunction with this change, and future changes would be evaluated under 10CFR50.59. Therefore, the proposed changes will not result in an unanalyzed condition and does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

No. The proposed changes will not alter any assumptions, initial conditions, or the results of any accident analyses. The design and licensing requirements for the EDG fuel oil storage system are defined in other parts of the IP3 licensing and design basis, specifically in FSAR section 8.2. Potential modifications supported by this change would require a subsequent safety evaluation in accordance with 10 CFR 50.59 regarding the design requirements (e.g., fire loads, tornadic wind loads, tornado missile criteria, security, etc.) for an alternate FOST if repairs to present "underground" FOSTs are undertaken. The proper design criteria for the presently installed EDG FOSTs or for potential, alternate EDG FOSTs will be maintained via present licensing and design basis requirements and through the 10 CFR 50.59 change process as required. No plant features are being altered in conjunction with this change, and future changes would be evaluated under 10 CFR 50.59. Therefore, this proposed license amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 9, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSs) proposes to increase the allowed outage time (AOT) for any one safety injection pump from 24 hours to 72 hours.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: The proposed 72-hour allowed outage time for any one safety injection pump does not involve a significant increase in the probability or consequences of an accident previously analyzed. The plant Technical Specifications provides allowed outage times for systems and components to accommodate preventive or corrective maintenance. A variation in the allowed outage time is not an accident initiator and thus does not result in a significant increase in the probability of an accident previously analyzed. The proposed change provides for an increase in allowed outage time for any one safety injection pump. The operability of the remaining two safety injection pumps is required by the Technical Specifications during this period. The Indian Point 3 High Head Safety Injection System consists of three safety injection pumps, each capable of providing 50 percent of the Emergency Core Cooling System [ECCS] design flow requirement. Therefore, with only one pump inoperable the remaining two pumps are capable (assuming that no single failure occurs during the period of the allowed outage time) of mitigating the consequences of previously analyzed accidents. In addition, a 72-hour allowed outage time for safety injection pumps was evaluated by the NRC (Reference 3) [NRC Memorandum, R.L. Baer to V. Stello, "Recommended Interim Revisions to LCOs for ECCS Components," dated December 1, 1975] and generically approved in the Standard Technical Specifications (Reference 1) [NUREG–1431 "Standard Technical Specifications—Westinghouse Plants," Revision 1, dated April 1995].

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed 72-hour allowed outage time for any one safety injection pump does not create the possibility of a new or different kind of accident from any accident previously evaluated. Changing the allowed outage time is accomplished through administrative changes, such as changes to plant procedures that implement Technical Specification requirements for allowed outage time. This change does not require physical changes to plant systems or components and also does not involve changes to plant setpoints. This change also does not affect how the safety injection pumps are operated under design basis accident conditions. Therefore there are no changes resulting from the proposed new allowed outage time that alter system operation or that could create the possibility of a new or different kind of accident. In addition, a 72-hour allowed outage time safety injection [pump] was generically approved in the Standard Technical Specifications.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed 72-hour allowed outage time for any one safety injection pump does not involve a significant reduction in a margin of safety. With one safety injection pump inoperable, the remaining two pumps are capable of providing 100% of the fuel cooling flow assumed for pertinent accident analyses with the provision that the single-failure assumption is relaxed during the time period of the allowed outage time. The acceptability of a 72-hour allowed outage time for ECCS components was established in an NRC reliability analysis (Reference 3) [NRC Memorandum, R.L. Baer to V. Stello, "Recommended Interim Revisions to LCOs for ECCS Components," dated December 1, 1975]. The use of the 72-hour allowed outage time was generically approved in the Standard Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 14, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.9.12, "Fuel Handling Area Ventilation System (FHAVS)," to (1) reflect the latest filter testing standards in the test requirements, (2) add, modify, or delete certain surveillance test requirements, and (3) clarify the information in the applicable TS Bases section. The proposed amendments would also make the TS requirements more consistent with the system design basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A Fuel Handling Accident, as described in the Updated Final Safety Analysis Report (UFSAR) Section 15.4.6, is the design basis accident considered for establishing system configuration and performance capability for the FHAVS. This accident is defined as the dropping of a spent fuel assembly onto the spent fuel rack resulting in a rupture of the cladding of all the spent fuel rods in the assembly.

The probability of a fuel handling accident is independent of the changes proposed in this submittal and it is unaffected by this submittal. The consequences of a dropped fuel rod are significantly reduced by pre-aligning the system to its design basis function prior to moving fuel in the fuel handling building. Pre-aligning the system eliminates the potential detrimental consequences associated with a single failure of an active component on the filter train. The proposed change will not change the way the FHAVS functions to control the release of radioactive gaseous effluents. Filter testing is improved by applying more current filter testing requirements to both Units 1 and 2.

The proposed change will not modify equipment used to store or move irradiated fuel assemblies, or equipment used to move heavy loads in the Fuel Handling Building. The proposed new surveillance will be incorporated into a new or existing procedure.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not result in any design or physical configuration changes to the FHAVS, or to the equipment used to store or move irradiated fuel within the Fuel Handling Building. Pre-aligning the system to its design basis function prior to moving fuel in the fuel handling building eliminates the potential detrimental consequences associated with a single failure of an active component on the filter train. The system will not be operated or placed in a configuration that is different from the configuration that it was designed to operate.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will ensure that the FHAVS is operated and tested in accordance to its design basis requirements as specified in the Salem UFSAR.

The proposed changes will clarify the requirements of the system to be considered operable to ensure that the FHAVS will perform its intended safety function in the event of a Fuel Handling Accident. These changes ensure that the existing margin is maintained and improved by pre-aligning the system to its accident configuration.

The proposed change does not involve the addition or modification of plant equipment. It is consistent with the intent of the existing TS, the design basis of the FHAVS as described in the UFSAR, and the [Standard Technical Specifications Westinghouse Plants, NUREG–1431] ITS and associated Bases.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: May 4, 1999.

Brief description of amendments: The proposed license amendments would change the CPSES Units 1 and 2 Technical Specifications. The first change revises Surveillance Requirement (SR) 3.8.4.7 to allow the unrestricted substitution of the modified battery performance discharge test in lieu of the service discharge test. The second change revises SRs 3.8.1.7, 3.8.1.12 , 3.8.1.15, and 3.8.1.20 to separate the voltage and frequency acceptance criteria for the Diesel Generator (DG) start surveillances into two sets of criteria; those criteria required to be met within 10 seconds, and those criteria required to be met following achievement of steady state conditions. The third change corrects

miscellaneous editorial errors resulting from issuance of Amendment No. 64.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

(1) Batteries are used to support mitigation of the consequences of an accident, and are not considered to be an initiator of any previously analyzed accident. The proposed change would not effect the design or performance of the batteries. The allowance to perform the modified performance discharge test in lieu of the service test at any time is permissible since the test's discharge rate envelopes the duty cycle of the service test. Therefore, the allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The diesel generators are used to support mitigation of the consequences of an accident, and are not considered to be an initiator of any previously analyzed accident. The proposed change does not affect the accident analysis assumption that the DG reaches minimum conditions to accept load within 10 seconds. The ability of the DG to maintain steady state operation within 10 seconds is not an accident analysis assumption and is primarily used to identify degradation of governor and voltage regulator performance. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(3) The editorial changes are non-technical and therefore do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

(1) The allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test does not involve any physical alteration to the plant. No new failure mechanisms will be introduced and the change does not affect the ability of the batteries to fulfill their safety-related function. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(2) The separation of the DG start surveillance criteria into those criteria required to be met within 10 seconds, and those criteria required to be met following achievement of steady state conditions, does not involve any physical alteration to the plant. No new failure mechanisms will be introduced and the change does not affect the ability of the DGs to fulfill their safety-related function. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The editorial changes are non-technical and therefore do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

(1) The allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test will not alter any accident analysis assumptions, initial conditions, or results. Consequently, it does not have any effect on the margin of safety. Therefore, this change does not involve a significant reduction in a margin of safety.

(2) The proposed change to delete the requirement to demonstrate that the DG can achieve and maintain steady state operation within 10 seconds is not an accident analysis assumption. The accident analysis assumption that the DG reaches minimum conditions to accept load within 10 seconds is preserved. Consequently, it does not have any effect on the margin of safety. Therefore, this change does not involve a significant reduction in a margin of safety.

(3) The editorial changes are non-technical and therefore do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit No. 1 and Unit No. 2, Louisa County, Virginia

Date of amendment request: May 3, 1999.

Description of amendment request: The proposed changes will delete and/or relocate the additional primary-to-secondary leak rate limits and enhanced leakage monitoring requirements imposed following the 1987 steam generator tube rupture event.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[O]peration of the North Anna Power Station in accordance with the proposed Technical Specification changes will not:

Involve a significant increase in the probability or consequences of an accident previously evaluated.

Eliminating the conservative primary-to-secondary leakage limits associated with the replaced steam generators and the operability requirements for the leakage monitoring instrumentation does not change the operation of the plant. The steam generators will be operated, inspected, and maintained in the same manner. No new accident initiators are established as a result of the proposed changes. Therefore, the probability of occurrence is not increased for any accident previously evaluated.

Removing the conservative primary-to-secondary leakage limits associated with the replaced steam generators and the operability requirements for the leakage monitoring instrumentation does not change the operation of the plant. Although the conservative leakage limits are being deleted, the remaining leakage limits will maintain the dose rate, in the event of a tube rupture, within the analyzed limits. Therefore, there is no increase in the consequences of any accident previously analyzed[.]

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the operation of the plant. The steam generators will be operated, inspected, and maintained in the same manner. There are no modifications to the plant or steam generators as a result of the change. No new accident or event initiators are created by the removal of the conservative primary-to-secondary leakage limits associated with the replaced steam generators and the operability requirements for the leakage monitoring instrumentation. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type.

Involve a significant reduction in the margin of safety as defined in the bases on any Technical Specifications.

The proposed changes have no effect on any safety analyses assumptions. The remaining limits maintain primary-to-secondary leakage within the accident analysis assumptions. The proposed changes only eliminate overly conservative primary-to-secondary leakage requirements and the operability and surveillance requirements for the leakage monitoring system associated with the replaced steam generators. Therefore, the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams,

Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia.

NRC Section Chief: Richard L. Emch, Jr.

Yankee Atomic Electric Co., Docket No. 50–029, Yankee Nuclear Power Station (YNPS) Franklin County, Massachusetts

Date of amendment request: March 24, 1999.

Description of amendment request: The licensee submitted a request to delete License Condition 2.C.(10), which states: "The licensee shall maintain a Fitness for Duty Program in accordance with the requirements of 10 CFR Part 26."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change is administrative in nature in that it removes a reference in the YNPS Part 50 License to a regulatory requirement no longer applicable to a plant which has permanently ceased power operations and permanently removed fuel from its reactor vessel. This will permit more cost beneficial use of available resources with no diminution in the YNPS staff's ability to maintain the safe operation of the YNPS SFP [spent fuel pool]. The change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Each potential accident in the YNPS FSAR [final safety analysis report] projects a maximum release of activity and no prompt mitigation actions. None of the analyzed scenarios resulted in a situation which could significantly [a]ffect the public health and safety. Removal of a regulatory requirement which does not apply to a plant which has permanently ceased power operations and permanently removed fuel from its reactor vessel cannot be deemed to involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different accident from any previously evaluated. The proposed change will not modify any plant systems or components and, therefore will not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety. Removal of a regulatory requirement which does not apply to a plant which has permanently ceased power operations and permanently removed fuel from its reactor vessel cannot be deemed to involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Section Chief: Michael T. Masnik.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Texas Utilities Electric Company, et al., Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 11, 1999.

Description of amendment request: The proposed amendments would credit soluble boron in the spent fuel pool water, in the maintenance of a subcritical condition, and allow an increase in spent fuel storage from 1291 to 2026 fuel assemblies.

Date of publication of individual notice in Federal Register: May 12, 1999 (64 FR 25522).

Expiration date of individual notice: June 11, 1999.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P. O. Box 19497, Arlington, Texas.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: January 17, 1998, as supplemented by letters dated February 10, 1998, November 9, 1998, February 8, 1999, and February 26, 1999.

Brief description of amendment: This amendment authorizes changes to the Beaver Valley Power Station, Unit No. 1 (BVPS–1) Updated Final Safety Analysis Report (UFSAR). Specifically, the authorized changes to the UFSAR reflect revisions to the control room radiological dose calculations for the waste gas system line break accident analysis to correct a mathematical error discovered in a previous calculation, and use of more conservative assumptions in the revised analysis.

Date of issuance: May 12, 1999.

Effective date: As of the date of issuance.

Amendment No: 222.

Facility Operating License No. DPR–66. Amendment approved changes to the UFSAR.

Date of initial notice in ***Federal Register***: February 25, 1998 (63 FR 9601).

The February 10, 1998, November 9, 1998, February 8, 1999, and February 26, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: August 23, 1996, as supplemented on April 9, 1999.

Brief description of amendment: The amendment revises Section 5.0, "Design Features," and Section 6.0, "Administrative Controls," of the Technical Specifications, adopting, for the most part, the format and content of the NUREG–1432, Revision 1, "Standard Technical Specifications [STS] for Combustion Engineering Plants" for the changes requested. This amendment also relocates certain portions of the design features section to other licensee-controlled documents in accordance with the STS.

Date of issuance: May 19, 1999.

Effective date: As of its date of issuance and shall be implemented within 30 days from the date of issuance: May 19, 1999.

Amendment No: 205.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: October 9, 1996 (61 FR 52965).

The April 9, 1999, letter provided clarifying information that did not change the scope of the original application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: December 19, 1996, as supplemented by letters dated August 6, 1998, and December 3, 1998.

Brief description of amendments: The amendments change requirements for the control room ventilation system for both Units 1 and 2.

Date of issuance: May 19, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of the date of issuance.

Amendment Nos.: 196 and 206.

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: January 29, 1997 (62 FR 4348).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: January 12, 1999, which superseded application dated May 31, 1996.

Brief description of amendment: The amendment adds an additional required action to the Limiting Condition for Operation (LCO) 3.9.1, "Refueling Equipment Interlocks," of the Grand Gulf Technical Specifications. The additional action will allow an alternative to the current action for one or more inoperable refueling equipment interlocks. The current action is to "suspend in-vessel fuel movement with equipment associated with the inoperable interlock(s)." The alternative action will be to (1) insert a control rod withdrawal block, and (2) verify all control rods are fully inserted in core cells containing one or more fuel assemblies. The amendment also revised the Bases for LCO 3.9.1 actions to describe the alternative action.

Date of issuance: May 7, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 138.

Facility Operating License No. NPF–29: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: February 10, 1999 (64 FR 6695), which superseded original notice of June 16, 1996 (61 FR 31178).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: October 28, 1998, as modified by letter dated March 19, 1999.

Brief description of amendment: This amendment revises administrative requirements relating to: TS 6.5.1.6, Station Review Board Responsibilities; TS 6.8.4.d, Radioactive Effluent Controls Program; TS 6.10, Records Retention; TS 6.11, Radiation Protection Program; TS 6.12, High Radiation Area; and TS 6.15, Offsite Dose Calculation Manual.

Date of issuance: May 19, 1999.

Effective date: May 19, 1999.

Amendment No.: 231.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 18, 1998 (63 FR 64126).

The supplemental information contained clarifying information and did not change the initial proposed no significant hazards consideration determination and did not expand the scope of the application as described in the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: May 5, 1998, as supplemented August 3 (2 letters), September 14, and December 22, 1998.

Brief description of amendment: The amendment approves the use of a small amount of containment overpressure to ensure sufficient net positive suction head for the emergency core cooling system pumps.

Date of Issuance: May 13, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 206.

Facility Operating License No. DPR–16. Amendment authorizes changes to the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register***: October 21, 1998 (63 FR 56250).

The supplemental letters provided additional information that was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 10, 1998.

Brief description of amendment: The proposed Technical Specification (TS) change would remove the restriction on the sale or lease of property within the exclusion area and replace the restriction with a requirement to retain complete authority to determine and maintain sufficient control of all activities including the authority to exclude or remove personnel and property within the minimum exclusion distance. A TS Bases page for the proposed change is included. Also included are clarifications and administrative changes which: (1) clarify TS definition 1.38 to become "Site Boundary" rather than the current term "Exclusion Area" to be consistent with the 10 CFR 20.1003 definition for Site Boundary and the 10 CFR 100.3 definition of Exclusion Area, (2) revise the TS definition from Exclusion Area to Site Boundary in TS 6.8.4(a)(9), and (3) revise and update the TS Table of Contents for Section I Definitions.

Date of Issuance: May 12, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 205.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register: December 12, 1998 (63 FR 66595).***

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 12, 1999.

Brief description of amendment: The amendment deletes the organizational chart and related references from the Appendix B Environmental Technical Specifications (ETS). In addition, the appearance and format of the ETS have been extensively revised.

Date of Issuance: May 18, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days from the date of issuance.

Amendment No.: 207.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register: April 7, 1999 (64 FR 17026).***

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 18, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 18, 1999, as supplemented February 3 and March 17, 1999.

Brief description of amendment: The amendment removes Technical Specification (TS) 3/4.6.4.3, "Containment Systems, Hydrogen Purge System," from the TS and allows downgrading the system to a non-safety-related system.

Date of issuance: April 12, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 233.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 10, 1999 (64 FR 6704).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 18, 1999.

Brief description of amendment: The amendment modifies Technical Specification 3/4.2.2 to be in accordance with NRC-approved Westinghouse methodologies for the heat flux hot channel factor—$F_Q(Z)$. In addition, the amendment makes changes to the core operating limits and the analytical methods used to determine core operating limits contained in Section 6.9.1.6.a and-b, respectively, by adding, modifying, or deleting references.

Date-of issuance: May 10, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 170.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 10, 1999 (64 FR 6705).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, ThreeRivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of application for amendments: October 30, 1998, as supplemented February 22, 1999.

Brief description of amendments: These amendments revised the overvoltage, undervoltage, and underfrequency allowable values

associated with the reactor protection system monitoring channels and add supporting details to the Technical Specifications Bases 3/4.8.4.

Date of issuance: May 13, 1999.

Effective date: Units 1 and 2, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 134 and 96.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 18, 1998 (64 FR 64120)

The February 22, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

PECO Energy Company, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: January 12, 1999, as supplemented January 29 and March 10, 1999.

Brief description of amendment: This amendment revised Technical Specifications (TSs) Section 3/4.4.2, "Safety/Relief Valves," and TS Bases Sections B 3/4.4.2, B 3/4.5.1 and B 3/4.5.2 to increase the allowable as-found main steam safety relief valve (SRV) code safety function lift setpoint tolerance from plus or minus 1% to plus or minus 3%. Also, the required number of operable SRVs in operational conditions 1, 2 and 3 will be increased from 11 to 12.

Date of issuance: May 17, 1999.

Effective date: May 17, 1999.

Amendment No.: 98.

Facility Operating License No. NPF–85. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 24, 1999 (64 FR 9194)

The January 29 and March 10, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

PECO Energy Company, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: March 11, 1999, as supplemented April 21, 1999.

Brief description of amendment: The amendment revised the minimum critical power ratio safety limits and revised the associated Technical Specification Bases.

Date of issuance: May 14, 1999.

Effective date: As of the date of issuance and shall be implemented prior to restart following completion of the April 1999 refueling outage.

Amendment No.: 97.

Facility Operating License No. NPF–85. The amendment revised the Technical Specifications and/or License.

Date of initial notice in Federal Register: April 7, 1999 (64 FR 17028). The April 21, 1999, letter provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 22, 1997, as supplemented by letters dated June 12, 1997, August 28, 1997, January 29, 1998, July 9, 1998, and March 12, 1999.

Brief description of amendments: The amendments authorize revisions to the licensing basis as described in the Final Safety Analysis Report (FSAR) Update to incorporate a modification to the Diablo Canyon Power Plant, Unit Nos. 1 and 2 component cooling water system.

Date of issuance: May 13, 1999.

Effective date: May 13, 1999, and shall be implemented in the next periodic update to the FSAR Update in accordance with 10 CFR 50.71(e).

Amendment Nos.: UNIT 1–134; UNIT 2–132.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Final Safety Analysis Report Update.

Date of initial notice in Federal Register: July 29, 1998 (63 FR 40558).

The supplemental letters dated July 9, 1998, and March 12, 1999 provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: May 8, 1996, as supplemented January 13, 1999.

Brief description of amendments: The amendments modified the technical specifications to allow refueling operation with 20 feet of water level in the refueling cavity for many operating conditions and at 12 feet of water level for certain specified conditions. The amendments also restored a phrase to a note to Limiting Conditions for Operation for TSs 3.9.4 and 3.9.5 that was inadvertently deleted by previous amendments.

Date of issuance: May 13, 1999.

Effective date: May 13, 1999, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2–153; Unit 3–144.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14285).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: April 2, 1999.

Brief Description of amendments: The amendment changes TS 3/4.4.9, "Specific Activity," and the associated bases to increase the limit associated with dose equivalent iodine-131. The

steady-state dose equivalent iodine-131 limit would be increased from 0.15μCurie/gram to 0.3 μCurie/gram and the transient limit for 80 percent to 100 percent power provided by Technical Specificaton Figure 3.4–1 will increase 9 μCurie/gram to 18 μCurie/gram with a corresponding increase in the 0 percent to 80 percent power limits.

Date of issuance: May 10, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–142; Unit 2–134.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register***: April 8, 1999 (64 FR 17201).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: September 29, 1998.

Brief description of amendments: The amendments authorize the revision of the South Texas Project updated final safety analysis report (UFSAR) to incorporate the revised methodology to calculate the mass and energy release following a postulated large-break loss-of-coolant accident.

Date of issuance: May 20, 1999.

Effective date: May 20, 1999 Revisions will be incorporated into the next UFSAR update in accordance with the schedule in 10 CFR 50.71(e).

Amendment Nos.: Unit 1–110; Unit 2–97.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments authorize the revision of the UFSAR to incorporate the revised methodology.

Date of initial notice in ***Federal Register***: November 18, 1998 (63 FR 64123).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location:

Wharton County Junior College, J. M. Hodges.

Learning Center, 911 Boling Highway, Wharton, Texas 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 29, 1998, supplemented by letter dated March 15, 1999.

Brief description of amendments: The amendments relocate the requirements in Technical Specifications 3/4.7.9 and 6.10.3.l for snubbers to the Technical Requirements Manual.

Date of issuance: May 17, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–109; Unit 2–96.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 16, 1998 (63 FR 69346); renoticed April 7, 1999 (64 FR 17031).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: February 15, 1999.

Brief description of amendment: This amendment revised Technical Specification Section 6, "Administrative Controls," to reflect organizational changes, to relocate certain review and audit functions to the Operational Quality Assurance Program Description, and to eliminate redundant requirements.

Date of issuance: May 11, 1999.

Effective date: May 11, 1999.

Amendment No.: 145.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: April 7, 1999 (64 FR 17031).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Dated at Rockville, Maryland, this 25th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13765 Filed 6–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About 10 CFR Part 36 Irradiator Licenses, Dated January 1999

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1556, Volume 6, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Part 36 Irradiator Licenses," dated January 1999.

ADDRESSES: Copies of NUREG–1556, Vol. 6, may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, PO Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7874, E-mail: slm2@nrc.gov.

SUPPLEMENTARY INFORMATION: On April 23, 1998 (63 FR 20224), NRC announced the availability of draft NUREG–1556, Volume 6, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Self-Shielded Irradiator Licenses," dated March 1998, and requested comments on it. This draft NUREG report was the sixth program-specific guidance developed to support an improved materials licensing process. The NRC staff considered all the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG–1556, Volume 6, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in Draft Regulatory Guide DG–0003, "Guide for the Preparation of Applications for Licenses for Non-Self-Contained Irradiators," dated January 1994, and the guidance for licensing staff previously found in NMSS Policy and Guidance Directive, FC 84–23, "Standard Review Plan for Licenses for the Use of Panoramic Dry Source-Storage Irradiators, Self-Contained Wet Source-Storage, and Panoramic Wet Source-Storage Irradiators," dated December 27, 1984. In addition, this report also contains information found in pertinent Technical Assistance Requests and Information Notices. NRC staff will use this final report in reviewing these applications.

Electronic Access

NUREG–1556, Volume 6, will also be available electronically approximately 1 month after publication of this notice by visiting http://www.nrc.gov/NRC/NUREGS/SR1556/V6/index.html.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 3rd day of May, 1999.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 99–13893 Filed 6–1–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review Under the Paperwork Reduction Act; Comment Request; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget extend its approval of a collection of information under the Paperwork Reduction Act, with revisions. The information collection is used by the PBGC to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program. The revisions are to PBGC forms and instructions related to benefit payments.

ADDRESSES: All written comments should be addressed to: Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 340, 1200 K St., NW., Washington, DC 20005. The comments will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between the hours of 9 a.m. and 4 p.m. A copy of the proposed collection can be obtained, without charge, by writing to the PBGC at the above address.

DATES: Comments should be received by August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC intends to request that OMB extend its approval of a collection of information needed to pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated (OMB Control No. 1212–0055; expires June 30, 2000). The collection consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, the PBGC requests individuals to provide identifying information as part of an initial contact with the PBGC. All requested information is needed to enable the PBGC to determine benefit entitlements and to make appropriate payments.

The PBGC intends to request that OMB approve revisions to the forms and instructions. The revisions simplify language and incorporate regulatory changes. The PBGC does not anticipate a change in burden hours currently approved as a result of these revisions.

The PBGC estimates that it will request that 71,250 individuals submit identifying applications for benefits and that the associated burden is 30,875 hours (an average of slightly less than 30 minutes per individual). The PBGC further estimates that 5,000 individuals will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 1,250 hours (15 minutes per individual). The average annual postage cost is approximately $24,400. Thus, the total estimated burden associated with this collection of information is approximately 32,125 hours and $24,400.

The PBGC solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued at Washington, DC, this 26th day of May, 1999.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–13926 Filed 6–1–99; 8:45 am]

BILLING CODE 7708–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 15, 1999
Thursday, July 29, 1999

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: May 24, 1999.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 99–13861 Filed 6–1–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41441; File No. SR–NYSE–98–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Rule 440 I Requiring Records of Compensation Arrangements Concerning Floor Brokerage

May 24, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed with the Commission on May 14, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is filing a proposed rule change to adopt new Rule 440 I, *Records of Compensation Arrangements—Floor Brokerage*. Below is the text of the proposed rule change. Additions are italicized.

Rule 440 I Records of Compensation Arrangements—Floor Brokerage

(a) Every member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor of the Exchange must maintain a written record including a description of each type of compensation arrangement entered into with other members, member organizations, non-member organizations and customers in connection with transactions executed on the Floor of the Exchange.

(b) Records maintained in accordance with paragraph (a) of this Rule must identify, by name, the members, member organizations, non-member organizations and customers who are parties to each type of compensation arrangement in effect.

••• Supplementary Material

.10 For purposes of paragraphs (a) and (b) of this Rule 440 I, the requirement to maintain a written record of each type of compensation arrangement shall not apply to:

(a) any compensation arrangement wherein a member or member organization receives gross compensation of less than $10,000 per year from any member, member organization, non-member organization or customer; or

(b) any compensation arrangement involving the transmission of orders solely through the Exchange's electronic order routing system.

.20 A member or member organization is deemed to be primarily engaged as an agent in executing transactions on the Floor of the Exchange if at least 75% of its revenue is derived from floor brokerage.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

New Rule 440 I will require that every member not associated with a member organization, and each member organization primarily engaged as an agent in executing transactions on the Floor of the Exchange, maintain a written record of each type of compensation arrangement that they enter into with other members, member organizations, non-member organizations, or customers relating to transactions on the Floor. The written record must include a description of each type of arrangement and identify, by name, the parties to each type of arrangement in effect.

In addition, proposed Rule 440 I, Supplementary Material .10 excludes the following compensation arrangements from the requirements to maintain a written record:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter to Richard C. Strasser, Assistant Director, Division of Market Regulation, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE dated May 12, 1999.

(1) arrangements involving gross compensation of less than $10,000 per year; and

(2) arrangements involving orders transmitted solely through the Exchange's electronic order routing system (*e.g.* SuperDot).

Rule 440 I, Supplementary Material .20 provides that a member or member organization is deemed to be primarily engaged as an agent in executing transactions on the Floor of the Exchange if at least 75% of its revenue is derived from floor brokerage.

Rule 440 I will enhance the Exchange's oversight of floor brokerage compensation arrangements in connection with Exchange members' and member organizations' compliance with Section 11(a) of the Act[4] and Rule 11a–1[5] thereunder which, among other things, prohibit a member or member organization from executing on the Exchange an order for that member's or member organization's "own account" or any account in which the member or member organization has an interest, unless the member or member organization acts in reliance on one of the exceptions provided in Section 11(a).[6]

The new rule will apply to members and member organizations primarily engaged as agents in executing transactions on the Floor of the Exchange (*e.g.*, so called "$2 brokers" or "independent brokers"). The Exchange has determined to exclude from the scope of proposed new Rule 440 I "upstairs" (*i.e.*, off the Floor) members and member organizations because the Exchange believes that the requirements would be unduly burdensome on and impractical for those members and member organizations, based on the diverse nature and size of their business activities and customer base. Because of their size, the Exchange believes that these upstairs organizations generally have independent supervisory structures and internal control procedures of the supervision and review of the organization's diverse business activities, including the monitoring and review of compensation arrangements. Accordingly, the Exchange believes that the existing regulatory scheme is adequate, and that the application of the requirements of the new rule to upstairs organizations would be duplicative and unnecessary.

In contrast, according to the NYSE, the supervisory oversight and review structure for Floor members and member organizations is very different from upstairs organizations. Many Floor members act as sole proprietors with a limited customer and product base and, therefore, do not generally have independent supervisory structures nor are they subject to the same formalized internal supervisory oversight as upstairs organizations. Absent the requirements of proposed new Rule 440 I, records of compensation arrangements may not be maintained in a formalized manner by the Floor members and member organizations. Rule 440 I will provide an audit trail by requiring the creation of records of compensation arrangements that will facilitate the implementation and maintenance of the Exchange's new examination program geared specifically to such members. Proposed Rule 440 I specifies a type of record, records of compensation arrangements, in addition to the records required to be maintained pursuant to Rules 17a–3[7] and 17a–4 of the Act,[8] that will be critical in providing the Exchange the ability to monitor Floor Broker activities.

Maintaining records of compensation arrangements by members and member organizations primarily engaged as agents in executing transactions on the Floor will facilitate the Exchange's review of these members' and member organizations' activities on an ongoing basis as part of the routine examination process, as well as on a for cause basis. During the course of routine reviews and examinations, the Exchange will be able to sample those compensation arrangements in place to review for compliance with section 11(a) of the Act in terms of whether any such arrangement constitutes a member or member organization having an interest in an account.

The adoption of proposed new Rule 440 I will better enable the Exchange to review and examine, as necessary, members' and member organizations' activities in connection with the Exchange's regulatory oversight responsibility to surveil for potentially violative conduct.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general to protect investors and the public interest. The Exchange represents that the proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to examine and surveil activities on the Exchange Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

[4] 15 U.S.C. 78k(a).

[5] 17 CFR 240.11a–1.

[6] The circumstances under which a member or member organization may trade for its "own account" or any account in which the member or member organization has a interest are listed in Section 11(a)(1)(A)–(I). 15 U.S.C. 78k(a)(1)(A)–(I).

[7] 17 CFR 204.17a–3.

[8] 17 CFR 204.17a–4.

[9] 15 U.S.C. 78f(b)(5).

Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–47 and should be submitted by June 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13867 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41449; File No. SR–PHLX–99–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Exchange Fees for Trading Floor Members Participating in the Wireless Telephone System

May 25, 1999.

Pursuant Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is thereby given that on April 19, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its schedule of dues, fees and charges to adopt user fees for all option floor members participating in Phlx's new wireless telephone system.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Phlx's fee schedule to adopt a wireless telephone system fee applicable to all option floor members participating in the Ericsson wireless telephone system offered by Phlx. All options floor members participating in the wireless telephone system would be assessed a one-time fee of $1,000 to purchase a handset, headset, battery, charger and clip. In addition, for each handset purchased, each participant must agree to pay a monthly charge of $200 for a period of twelve months. The twelve-month period will commence on the date of the agreement signed by the participant. At the end of the twelve-month period, a new agreement will be presented to the participant. Payment of the monthly fees will be governed by Phlx Rule 50.

Furthermore, a fee for a lost, stolen or damaged headset, handset, battery charger or clip will be assessed at the current replacement or repair cost.[5]

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with Section 6(b)[6] of the Act in general and furthers the objectives of Section 6(b)(4)[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among Phlx members using its facilities.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

the Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) or rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–99–10 and should be submitted by June 23, 1999.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which proposed a Wireless Telephone System policy, was submitted on April 19, 1999. The Amendment was replaced by SR–PHLX–99–14 and subsequently withdrawn on May 18, 1999. *See* Letter to Michael Walinskas, Associate Director, Division of Market Regulation SEC from John Dayton Counsel Phlx, dated May 18, 1999. *See also* SR–PHLX–99–14 and SR–PHLX–99–15 relating to the use of wireless telephones. Securities Exchange Act Release Nos. 41450 (May 25, 1999) and 41451 (May 25, 1999).

[4] Phlx currently intends to make this telephone system available to the equity and index options floor, not the foreign currency options floor.

[5] Each Participant will be required to sign an agreement that states that a one-year warranty period does not apply (i) to damage caused by a subscriber, third parties or force of nature, and (ii) to any system repaired or altered, except by Ericsson, or subjected to misuse, negligence or accident. Batteries and accessories are not covered under the warranty.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13866 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41451; File No. SR–PHLX–99–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Use of Wireless and Radio Frequency Communications and the Prevention of Related Interference

May 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" of "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt a policy and rule regarding the use of wireless and radio frequency ("RF") communications and the prevention of related interference at Phlx. Specifically, proposed Rule 606(b)(2) would state that no member, member organization or person associated with a member organization shall (i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or (ii) operate any other equipment on the Options Floor that creates RF or other interference with the systems of the Exchange or other members.[4] Proposed rule 606(c) would state that the Exchange may remove any telephonic, electronic or wireless equipment that violates Rule 606(b)(2) from any Exchange facility.

Below is the text of the proposed rule change. Proposed additions are in italics and deletions are in brackets.

Rule 606. [Connection with Non-members] *Communications and Equipment*

(a) No member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system, between the Exchange Trading Floor and a nonmember without application to and approval by the Committee.

Every such means of communication shall be registered with the Committee. Notice of the discontinuance of any such means of communication shall be promptly given to the Committee.

(b)

* * * * *

(2) No member, member organization or person associated with a member organization shall:

(i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or

(ii) operate any other equipment on the Options Floor that creates radio frequency (RF) or other interference with the systems of the Exchange or other members.

(c) The Exchange may remove any telephonic, electronic or wireless equipment that violates subsection (b)(2) from any Exchange facility.

Supplementary Material:

.01 Specialists on the Exchange's equity floor shall permit each NASDAQ System market maker telephone access to the specialist post in any NASDAQ/NMS Security for which the latter is the assigned specialist.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a policy and a rule concerning wireless and RF interference emanating from member systems on the (index/equity) Options Floor. The Financial Automation Department ("FA") of the Exchange has determined that certain member's wireless and RF equipment operating on the Options Floor is causing interference with other member and Exchange systems. The uncoordinated use of RF and other wireless equipment on the trading floor creates an unmanageable environment for both the Exchange and the members.

The proposed policy and rule will prohibit any member, member organization or person from establishing, maintaining or operating any telephonic, electronic or wireless transmitting system or device, including related antennas on the Option Floor that create RF or other interference with the systems of the Exchange or other members. In addition to the normal disciplinary proceedings that accompany violation of an Exchange rule, the proposed rule will allow the Exchange to remove any telephonic, electronic or wireless equipment that causes such interference. The proposed policy will be included in a memorandum that will be distributed to all Option Floor members.

FA has employed a wireless industry consultant to investigate the current situation and environment on the entire trading floor. Following this effort, FA intends to issue a comprehensive plan which will manage the finite RF and wireless availability on the trading floor. However, at this time, FA is concerned about potential, existing interference. This proposed policy and rule will address this issue by explicitly prohibiting equipment that creates interference and allow the Exchange to immediately act to curtail it.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with Section 6[5] of the Act in general and furthers the objectives of Section 6(b)(5)[6] in particular, because it removes

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was initially submitted on May 7, 1999. Amendment No. 1, correcting the numbering of proposed subparagraph "(c)" to "9d)," was filed with the Commission on May 11, 1999. *See* Letter from John Dayton, Counsel, Phlx, to Michael A. Walinskas, Associate Director, Division of Market Regulation, SEC (May 11, 1999).

[4] The Phlx also has filed a proposed rule change to adopt Rule 606(b)(1) and Supplementary Material .02 and add language to Rule 606(c) respecting wireless telephone access. *See* Securities Exchange Act Release No. 41450 (May 25, 1999) (SR–PHLX–99–14).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by prohibiting wireless and RF interference and allowing the Exchange to manage wireless and RF transmissions on the floor of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder[8] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

The Exchange has requested that the rule change be accelerated to become operative immediately, in order to address existing interference issues. According to the Exchange, the uncoordinated use of RF communications and other wireless equipment on the trading floor creates an unmanageable environment for both the Exchange and the members. Because the proposed policy helps to remove these impediments to and perfect the mechanism of a free and open market by making more efficient the process by which members receive and execute orders on the floor of the Exchange,[9] the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates May 25, 1999, the date of this notice, as the operative date of this filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–99–15 and should be submitted by June 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13928 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] *C.f.*, Securities Exchange Act Release No. 40019 (May 21, 1998), 63 FR 29272 (May 28, 1998) (allowing the American Stock Exchange, LLC, to immediately terminate a member's ability to send wireless communications for failure to comply with the Wireless Communications Policy).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41450; File No. SR–PHLX–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Wireless Communications Policy Relating to the Use of the Wireless Telephone System on the Options Floor

May 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on May 11, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt a policy and rule regarding the use of telephonic communications devices at Phlx. Specifically, proposed Rule 606(b)(1) will state that no member, member organization or person associated with a member organization shall establish or maintain any telephonic communication between the (index/equity) Options Floor and any other location, or between locations on the Options Floor, without the prior written approval of the Options Committee.[3] Rule 606, Supplementary Material .02, will state that the Exchange has established a Wireless Telephone System policy.[4] Violations of the Wireless Telephone System policy may result in disciplinary action by the Exchange.

Below is the text of the proposed rule change. Proposed additions are in *italics*, and deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange also has filed a proposed rule change to adopt Rule 606(b)(2) and (d) respecting wireless and radio frequency interference on the Options Floor. *See* Securities Exchange Act Release No. 41451 (May 25, 1999) (SR–Phlx–99–15).

[4] The Wireless Telephone System policy comprises proposed Rule 606b(1), (c), and Supplementary Materials .02. Telephone conversation between John Dayton, Counsel, Phlx, and Kathy England, Assistant Director, Division of Market Regulation, SEC (May 18, 1999).

Rule 606. [Connection with Non-members] *Communications and Equipment*

(a) No member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system, between the Exchange Trading Floor and a non-member without application to and approval by the Committee.

Every such means of communication shall be registered with the Committee. Notice of the discontinuance of any such means of communication shall be promptly given to the Committee.

(b) (1) No member, member organization or person associated with a member organization shall establish or maintain any telephonic communication between the Options Floor and any other location, or between locations on the Options Floor, without the prior written approval of the Options Committee.

(c) The Exchange may remove any telephonic, electronic and wireless equipment that has not received written approval under subsection (b)(1) from any Exchange facility.

Supplementary Material

.01 Specialists on the Exchange's equity floor shall permit each NASDAQ System market maker telephone access to the specialist post in any NASDAQ/NMS Security for which the latter is the assigned specialist.

.02 The Exchange has established a Wireless Telephone System policy. Violations of the Wireless Telephone System policy may result in disciplinary action by the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a wireless communications policy relating to the use of the Wireless Telephone System on the Options Floor. The Exchange has arranged for Ericsson, Inc. to install a wireless telephone communication system on the Exchange's Options Floor. This system will allow only intra-floor telephone calls.[5]

The proposed policy will address restrictions on use of the Wireless Telephone System. The proposed rule also will address sanctions for violations of the policy. For example, all members wishing to use the Ericsson system will be required to sign an agreement prior to receiving their Ericsson phone system. This agreement contains provisions that deal with liability issues, specifically paragraphs 13, 14, and 15.[6] In addition, the policy will amend the Exchange's current prohibition against the use of any wireless voice communications on the equity option trading floor. The proposed policy will be included in a memorandum that will be distributed to all Options Floor members.

The Exchange believes that its customary floor surveillance procedures are sufficient to monitor the system. The Exchange's Wireless Telephone System is designed to allow only intra-floor telephone calls. Members will be allowed to dial only in-house four digit extension telephone numbers. These four digit telephone numbers are not enabled to place outside telephone calls. Therefore, a member will not be able to make outside calls from an Exchange wireless headset. In addition, all incoming and outgoing telephone calls will be captured on a monthly report and may be reviewed by the Exchange's Market Surveillance department.

[5] The system will also allow users to place a telephone call to another four-digit Phlx Complex telephone number.

[6] Paragraph 13 states that Phlx shall not be liable to the Subscriber for any consequential, indirect, special, or incidental damages whatsoever (including, without limitation, any damages claimed for loss of revenues, good will, or profits or claims by third parties) arising from or related to this Agreement. Phlx's sole liability to the Subscriber for any damages claimed under this Agreement shall be limited to the amount of charges actually assessed against the Subscriber by Phlx for the specific time period of the incident(s) for which damages are claimed, and the Subscriber's sole remedy against Phlx in the event of such claims shall be the recovery of an appropriate billing credit. Paragraph 14 states that Phlx assumes no liability to Members or Member firms due to conflicts between handsets in use on the Trading Floor or due to electronic interference problems resulting from the use of the intra-floor handsets on the Trading Floor. Finally, paragraph 15 states that the Subscriber shall indemnify Phlx and hold it harmless from and against any claim, damage, liability or expense referred to in the foregoing paragraphs.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with Section 6[7] of the Act in general and furthers the objectives of Section 6(b)(5)[8] in particular, because it removes impediments and perfects the mechanism of a free and open market and protects investors and the public interest by expediting and making more efficient the process by which members receive and execute orders on the floor of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments or the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

The Exchange has requested that the rule change be accelerated to become operative immediately to allow for immediate use and enforcement of the Wireless Telephone System policy.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Because the proposed policy helps to remove impediments to and perfect the mechanism of a free and open market by making more efficient the process by which members receive and execute orders on the floor of the Exchange, the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest. The Commission also finds that the proposal is sufficiently similar to a previously approved policy of the American Stock Exchange LLC.[11] Thus, the Commission designates May 25, 1999, the date of this notice, as the operative date of this filing.

IV. Solicitation Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–14 and should be submitted by June 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13929 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

[11] *See* Securities Exchange Act Release No. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41440; File No. SR–Phlx–98–09]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change to Amend Exchange Rule 1101A and Revise the Intervals Between Index Option Strike Prices

May 24, 1999.

I. Introduction

On February 5, 1998, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would revise Exchange Rule 1101A(a) to modify the strike price intervals for index options. The proposed rule change was published for comment in the **Federal Register** on May 13, 1998.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

During recent years, the number of new option products and total series listed by the national securities exchanges has significantly risen. This growth in new options products has increased the number of continuous quote changes disseminated by the exchanges to the Options Price Reporting Authority ("OPRA")[4] and by OPRA to securities information vendors. In an effort to curb the growth of strike price dissemination and to more accurately reflect the strike prices currently being listed, the Exchange proposes to amend Exchange Rule 1101A(a), "Terms of Options Contracts," to revise the intervals between index option strike (exercise) prices. The Exchange believes the revisions will facilitate the prompt dissemination of quote information and more accurately reflect the strike prices currently being listed.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39964 (May 6, 1998), 63 FR 26667 (May 13, 1998).

[4] OPRA is a National Market System Plan under Section 11A of the Act that provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchange markets that are members of the OPRA Plan are the American Stock Exchange, Chicago Board Options Exchange, New York Stock Exchange, Pacific Exchange, and Phlx.

Presently, Exchange Rule 1101A(a) establishes a formula for strike price intervals which takes into consideration the index value and time remaining until expiration. The Rule establishes a stroke price interval of $5, except: (i) Where the strike price exceeds $500, the strike price interval may be $10; and (ii) where the strike price exceeds $1,000, the interval may be $20. The Exchange may also determine to list strike prices at wider intervals in "out-of-the money" for far term series, generally $25, except: (i) Where the strike price exceeds $500, the interval may be $50; and (ii) where the strike price exceeds $1,000, the interval may be $100. Furthermore, where strike price intervals would be greater than $5, the Exchange may list additional strike prices at alternative $5 intervals in response to demonstrated customer interest or specialist request.

The current version of Exchange Rule 1101A(a) was adopted in 1996,[5] and was intended to improve the Exchange's strike price dissemination policy. Based on its experience implementing Rule 1101A(a), the Exchange has determined to revise and simplify the Rule for easier administration. The Exchange believes the revised Rule will more accurately reflect the needs of the marketplace. The Exchange has concluded that basing the strike price interval on an option's value (in the case of options greater than $500 or $1000) has not proven useful. The Exchange believes that widening the interval in far-term series should help to reduce the number of outstanding series listed.

The Exchange's proposed rule change would establish new strike price intervals of: (i) $5 for the three consecutive near-term months; (ii) $10 for the fourth month; and (iii) $30 for the fifth month. However, the Exchange would retain the ability to list additional strike prices at alternative $5 intervals in response to demonstrated customer interest or specialist request. The Exchange believes the continued ability to add strike prices at alternative $5 intervals in response to customer interest will maintain flexibility in the marketplace and preserve specific trading opportunities.

The Exchange believes that listing far-term series at wider strike price intervals should improve the efficiency of quotation dissemination and facilitate speedy pricing by reducing the number of listed strike prices. The Exchange predicts the immediate effect should be a reduction in the number of index option strike prices. Furthermore, the Exchange believes it will experience a

[5] *See* Securities Exchange Release No. 37003 (Mar. 21, 1996), 61 FR 13913 (Mar. 28, 1996).

reduction in its systems capacity and usage as well as its operational burdens. For instance, strike prices currently occupy trading floor screen space and consume transmission line traffic to OPRA and outside vendors that disseminate Exchange trading information. Lastly, the Exchange believes the proposal will enhance the role of the specialist in monitoring multitudes of strike prices.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange market be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.[8]

Compared to the equity securities that underlie many exchange-traded derivative products, option contracts generate significant quote volume because of the various contract months, differentiation between puts and calls, and multiple strike prices. Although trading in option contracts accounts for a small percentage of securities transactions in the aggregate, some have estimated that options quotes—reflecting the numerous classes and series—comprise more than 50% of all quote traffic.[9] In some cases, vendors lacking technological capacity have resorted to screening options quotes and selectively disseminating those quotes believed to be of most interest to customers.[10]

In addition, the number of new option products and total series listed by the national securities exchanges has grown dramatically, thereby increasing the number of continuous quote changes disseminated by the exchanges to the OPRA.

The Commission believes the Exchange's proposal is reasonable and will help to ameliorate quote traffic by reducing the number of index option strike prices. In particular, the proposal will establish new strike price intervals of: (i) $5 for the three consecutive near-term months; (ii) $10 for the fourth month; and (iii) $30 for the fifth month. The Exchange will retain the ability to list additional strike prices at alternative $5 intervals in response to demonstrated customer interest or specialist request.

The Commission believes the wider strike price intervals for the fourth and fifth month series reasonably balances the Exchange's interest in limiting the number of outstanding strike prices in less active series with its interest in accommodating the needs of investors. Generally, index option series nearest to expiration attract most of the trading activity while those farther out tend to attract less interest from customers and floor traders. Although far-term index option series are more likely to have no open interest,[11] their quotes nonetheless contribute to the congestion. Therefore, eliminating, some of the quotes for less active, far-term index option series through wider strike price intervals will help to decrease quote traffic without disrupting the active trading in near-term index option series. By maintaining the $5 strike price interval for the three consecutive near-term months, the Exchanger has ensured that the revised strike price intervals will not affect the overwhelming majority of index options trading that now regularly occurs in near-term months. Thus, the proposed reduction of strike prices for index options will be limited to the series with the least active trading interest.

The Commission notes that the revised strike price intervals will apply only to index options and will not modify the strike price intervals for equity or currency options traded on the Exchange. At the present, the Exchange offers options on 14 different stock indexes.[12] Although the quote traffic relating to a substantial segment of the Exchange's options products will therefore remain unaffected by the proposal,[13] the Commission believes the Exchange's proposal is a practical initiative that addresses the problem of increasing quote traffic.

To evaluate the impact of the proposal, the Exchange analyzed the distribution of strike prices for several of its actively traded stock indexes. The review indicates that in some cases the number of strike prices can be expected to significantly drop as a result of the revised intervals. For example, the number of strike prices for options on the Gold/Silver Sector Index would fall from 75 to 59, a 21% reduction. Likewise, the number of strike prices for options on the Oil Service Sector Index would drop 17%, from 58 to 48.[14] The Commission believes the reduction in strike prices will help to alleviate the quote traffic that currently flows from the Exchange.

The Commission believes it is important that the Exchange will retain the ability to list additional strike prices at alternative $5 intervals in response to demonstrated customer interest[15] or specialist request. The Commission believes the continued ability to add strike prices at alternative $5 intervals will provide the Exchange with the requisite flexibility to satisfy investor needs and respond to customer interest in specific trading opportunities. Furthermore, the customer request provision should help to ensure the availability of options series that provide investors with a means to adequately hedge their portfolios and implement trading strategies designed to meet their investment objectives. The Commission expects the Exchange to closely monitor the listing of additional strike prices at alternative intervals to ensure that new strike prices are added only in response to demonstrated customer interest or specialist request. Unless the Exchange properly controls the addition of alternative strike prices, the effectiveness of the proposal may be undermined if strike prices proliferate

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

[9] *See e.g.*, SEC's Lindsey to Host Meeting Tomorrow on Quote Traffic, Wall Street Letter, June 8, 1998, at 6.

[10] *See* Options Marts to oversee Selective Quoting, Wall Street Letter, December 15, 1997, at 9. The screening usually occurs during the first 15–20 minutes of the trading day when vendors receive a wave of options quotes from the options exchanges.

[11] According to some options industry studies, up to 40% of listed options issues have no open interest. *See* Gregory Crawford, No Easy Answers to US Options Quote Volume Problem, Reuters Financial Service, May 4, 1997.

[12] The Exchange offers options on the following stock indexes: Computer Box Maker Sector, KBW Bank Sector, Forest & Paper Products Sector, Gold/Silver Sector, National Over-the-Counter Sector, Oil Service Sector, OTC Prime Sector, Phone Sector, Semiconductor Sector, SuperCap Sector, TheStreet.com Internet Sector, U.S. Top 100 Index, Utility Sector, and Value Line Composite Index.

[13] In addition to offering options on 14 stock indexes, the Exchange lists nearly 870 equity options and 100 currency pairs.

[14] *See* Letter to Michael Loftus, Attorney, Division of Market Regulation, Commission, from Nandita Yagnik, Attorney, Exchange, dated November 6, 1998. The Exchange's analysis further indicates that the number of strike prices for options on the U.S. Top 100 Index would decline from 61 to 54, a 12% reduction.

[15] As defined in Exchange Rule 1101A, the term "demonstrated customer interest" includes institutional (firm), corporate, or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a ROT (Registered Options Trader) with respect to trading for the ROT's own account.

without good cause (*i.e.*, genuine customer interest or specialist request).

The Commission is confident that the Exchange's proposal will not adversely affect or disrupt the current system of option quote collection and dissemination. Specifically, OPRA has advised the Commission that the Exchange's proposal would have no negative impact on the operations of OPRA.[16] In addition, OPRA stated that if the other options exchanges adopted similar proposals, the number of strike prices and the level of quote traffic would be reduced.

The Commission believes the Exchange's proposal is consistent with efforts undertaken to limit the unnecessary proliferation of option strike prices.[17] In recently approving 2½ point strike price intervals for 200 exchange-listed equity options classes, the Commission cited the need to balance an exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series.[18] The Commission believes the Exchange's proposal achieves such a balance by reducing the number of index option strike prices but also retaining varied investment opportunities through the listing of alternative, customer-requested strike prices.

Moreover, because strike prices for index options must be displayed on the Exchange's trading floor, disseminated to outside vendors, and monitored by specialists, the Commission believes the proposal should reduce the systems and operational burdens associated with the listing of strike prices in far-term series of index options. By reducing the number of listed strike prices, the proposal should improve the efficiency of quotation dissemination and speedy pricing of index options, thereby helping the Exchange to maintain fair and orderly options markets.

Finally, the Commission believes the Exchange will implement the proposal in an orderly manner that will not disrupt current trading in far-term options series. In particular, the Exchange will begin listing index option strike prices at the new, wider intervals following the first quarterly expiration after Commission approval of the proposed rule change.[19] Therefore, after the next quarterly expiration in June, 1999, the Exchange will implement the proposal by listing strike prices for far-term index option series at wider intervals. The Commission expects the Exchange to issue a circular to members informing them of the new strike price intervals and the scheduled date of implementation. The Commission believes it is important that all market participants be advised of the changes so they are provided with sufficient time and notice to make any necessary adjustments to their positions and strategies.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13930 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

[16] *See* Letter to Michael Loftus, Attorney, Division of Market Regulation, Commission, from Joseph P. Corrigan, Executive Director, OPRA, dated September 10, 1998.

[17] For example, the American Stock Exchange delisted 250 inactively traded index option series in September, 1997, in an attempt to reduce quote traffic. *See* Amex Delists Index Options Series, Wall Street Letter, September 1, 1997, at 4.

[18] *See* Securities Exchange Act Release No. 40662 (Nov. 12, 1998), 63 FR 64297 (Nov. 19, 1998) (joint order approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[19] Telephone conversation between Michael Loftus, Attorney, Division of Market Regulation, Commission, and Nandita Yagnik, Attorney, Exchange (Dec. 17, 1998). The Commission notes that this practice is consistent with the one employed by the Exchange in 1996 to implement previous revisions to index option strike price intervals. *See* Securities Exchange Act Release No. 37003 (Mar. 21, 1996), 61 FR 13913 (Mar. 28, 1996).

[20] 17315 U.S.C. 87s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3056]

Bureau of Economic and Business Affairs; Guidelines Implementing Title XXII, Section 2225(a) of the Foreign Affairs Reform and Restructuring Act of 1998

AGENCY: Bureau of Economic and Business Affairs.

ACTION: Notice.

SUMMARY: Section 2225(a), of the Foreign Affairs Reform and Restructuring Act of 1998 ("Act"), provides that

Except as otherwise provided in section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104–114), and subject to subsection (b), the Secretary of State may deny the issuance of a visa to any alien who—

(1) through the abuse of position, including a governmental or political party position, converts or has converted for personal gain real property that has been confiscated or expropriated, a claim to which is owned by a national of the United States, or who is complicit in such a conversion; or

(2) induces any of the actions or omissions described in paragraph (1) by any person.

The following guidelines will be used by the Department of State for the purpose of implementing Sec. 2225 of the Act.

EFFECTIVE DATE: This notice is effective on June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Watts, Office of Investment Affairs, Bureau of Economic and Business Affairs, Department of State, 2201 C Street, NW, Washington, D.C. 20520, 202–736–4012.

SUPPLEMENTARY INFORMATION:

Department of State Guidelines for Implementation of Title XXII, Section 2225 of the Foreign Affairs Reform and Restructuring Act of 1998.

1. Purpose and Authority. These guidelines will be used by the Department of State ("Department") for the purpose of implementing Section 2225 of the Foreign Affairs Reform and Restructuring Act of 1998, P.L. 105–277, and other applicable legislation as appropriate.

2. Delegation of Authority. The Secretary of State has delegated authority to the Assistant Secretary of State for Economic and Business Affairs to make determinations under section 2225(a) of the Act, in consultation with the Assistant Secretary of State for the regional bureau or bureaus with jurisdiction over the country where the confiscation or expropriation took place and the country of which the alien who is to be denied a visa is a national, and others as appropriate.

3. Point of Contact. The Office of Investment Affairs in the Bureau of Economic and Business Affairs at the Department is the central point of contact for all inquiries about implementation of Sec. 2225 of the Act. The Office may be contacted in Room 3336, U.S. Department of State, Washington, DC 20520; telephone number 202–736–4012.

4. Collection of Information:

a. The Department will collect information from available sources on whether property abroad, a claim to which is owned by a U.S. national, has been confiscated or expropriated and converted for personal gain by a person in a position covered by the Act. U.S. Embassies will also collect information and provide information and recommendations to the responsible bureaus in the Department of State

concerning activities relevant to Section 2225.

b. As appropriate, the Department will request claimants to provide additional information related to ownership and confiscation or expropriation of the property concerned.

c. The Department will consult as appropriate with other agencies of the U.S. government regarding the identity persons whose actions may be covered by Sec. 2225(a)(1) or Sec. 2225(a)(2).

5. Determinations under Section 2225. Determinations under Section 2225 will be made when facts or circumstances exist that lead the Department to conclude that a person has committed an act covered by Sec. 2225(a)(1) or Sec. 2225(a)(2).

6. Prior Notification:

a. An alien who is the subject of a determination under Sec. 2225 will be sent notification by registered mail that his/her name will be entered in the appropriate consular visa and immigration lookout systems, and that he/she will be denied a visa upon application and/or have his/her visa revoked, 45 days after the date of the notification letter. The Department may inform the government of the alien's country of nationality in confidence through diplomatic channels of the pending action.

b. If no information is received within the 45 day period above that leads the Department to conclude that the person should not be denied a visa pursuant to Sec. 2225(a), the Department will enter the alien's name, including the names of the alien's agents, if applicable, in the appropriate consular visa and immigration lookout systems. Any then-pending visa application from the named alien will be denied, and any visa previously issued to the alien will be revoked in accordance with law.

7. Review of Determinations: The Department may review a determination made under Section 2225 at any time, as appropriate in its discretion.

8. Exceptions: Section 2225 subsection (a) will not be applied to property in (1) any country established by international mandate through the United Nations; or (2) any territory recognized by the United States Government to be in dispute.

9. Relationship to Section 527 of P.L. 103–236: This section supplements Section 527 of the 1994–1995 Foreign Relations Authorization Act, P.L. 103–326 (April 30, 1994), and is not meant to revise or otherwise detract from the substantive requirements of that section of law.

Dated: May 27, 1999.

Wesley S. Scholz,

Director, Office of Investment Affairs.

[FR Doc. 99–13953 Filed 6–1–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 16, 1999 [64 FR 13048].

DATES: Comments must be submitted on or before July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime Labor, Training and Safety, MAR–250, Maritime Administration, Room 7302, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5755 or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Request for Waiver of Service Obligation/Request for Deferment of Service Obligation.

OMB Control Number: 2133–0510.

Type of Request: Extension of currently approved collection.

Affected Public: Students and graduates of the U.S. Merchant Marine Academy and subsidized students or graduates of the State Maritime Academies who request waivers of service obligations.

Form (s): MA–355; MA–528; MA–742; MA–828; and MA–942.

Abstract: This information collection is essential for determining if a student or graduate of the U.S. Merchant Marine Academy (USMMA) or subsidized student or graduate of a State Maritime Academy has a waivable situation preventing them from fulfilling the requirements of a service obligation contract signed at the time of their enrollment in a Federal maritime training program.

Annual Estimated Burden Hours: 75.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on May 27, 1999.

Joel C. Richard

Secretary, Maritime Administration.

[FR Doc. 99–13949 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5287; Notice 2]

Dailey Body Company; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

We have decided to grant the application by Dailey Body Company of Oakland, California, to exempt five trailers from Motor Vehicle Safety Standard No. 121 *Air Brake Systems.* The statutory basis for our action is that we have found that "compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard." 49 U.S.C. 30113.

We published notice of receipt of the application on March 22, 1999, and afforded an opportunity to comment (64 FR 13843). However, no comments were received.

The discussion below is based upon the information that Dailey provided in its application.

Why Dailey Needs an Exemption

Dailey requested an exemption for five "special reel hauling" trailers that it was unable to complete before March 1, 1998, because of changes requested by its customer, Pacific Gas & Electric Co., (PG&E) during construction of the trailers. On March 1, 1998, an amendment to Federal Motor Vehicle Safety Standard No. 121 *Air Brake Systems* became effective, requiring these trailers to be equipped with an anti-lock brake system. According to the company, there is no after market kit available to convert the air-over-hydraulic brake system to meet the new requirements of S5.1.6.

Why Compliance Would Cause Dailey Substantial Economic Hardship

Since there is no aftermarket kit available to convert the trailers to a conforming brake system, Dailey would be unable to sell them absent an exemption. It has $250,000 of its operating capital tied up in the trailers, and would have to absorb the loss. This figure is almost equal to its combined net income for the years 1996 and 1997, $252,519.

How Dailey Tried in Good Faith To Comply With Standard No. 121

Dailey's total trailer production in the 12-month period preceding the filing of its application was 43. It was also the final-stage manufacturer and certifier of 938 "chassis with bodies." Other than the five trailers for which it requests exemption, its trailers manufactured since March 1, 1998, comply with Standard No. 121.

Why an Exemption for Dailey Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Dailey believes that it would be in the public interest "to keep from imposing a hardship, that could adversely affect employment, on a company that has been successfully building truck body equipment for over 50 years." Because only five trailers will be exempted, the risk to the public will be small. The trailers were manufactured to conform with regulations that existed at the time production was scheduled.

Our Finding That Compliance Would Cause Substantial Economic Hardship to a Manufacturer That Has Tried in Good Faith To Comply With Standard No. 121

If we denied Dailey's application, the company would be unable to sell the five trailers. We assume that some of the $250,000 of its operating capital tied up in the vehicles would not be totally lost as Dailey indicates, but, in large part, could be reclaimed over time by sales of components of the trailers as replacement parts. Nevertheless, it is evident that the company's net income has been marginal in recent years, and that recoupment of $250,000 plus profit from the sales of the five trailers would make an immediate and material improvement in its income statements. These trailers represent over 10 percent of its annual trailer production.

With the exception of these trailers, Dailey's vehicles are complying with Standard No. 121. These trailers also would have complied had not the customer ordered changes during their production. Dailey has sought, but not found, a means of bringing them into conformity.

Our Finding That an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Dailey argued that an exemption would be in the public interest as avoiding an adverse effect upon employment. We agree that full employment is in the public interest, and also conclude that the fact that the vehicles are intended for work-performing use by a public utility is also a factor in favor of an exemption. The presence of five reel-hauling trailers on the public roads will not have a discernable effect on motor vehicle safety. Further, the trailers will be certified as meeting all other applicable Federal motor vehicle safety standards.

For the reasons discussed in the two sections above, it is hereby found that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard from which it has requested exemption. It is further found that a temporary exemption would be in the public interest and consistent with the objectives of motor vehicle safety.

Accordingly, Dailey Body Company is hereby granted NHTSA Temporary Exemption No. 99–6, from S5.1.6 of 49 CFR 571.121 *Air Brake Systems,* to cover the manufacture for sale, sale, offer for sale, introduction into interstate commerce, and delivery for introduction in interstate commerce, of five reel-hauling trailers manufactured for Pacific Gas & Electric Co., said exemption to expire when the last of the acts stated above occurs with respect to the last trailer exempted by this notice, or August 1, 1999, whichever first occurs.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: May 26, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–13894 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–3343; Notice 2]

Mercedes-Benz U.S. International, Inc.; Grant of Application for Temporary Exemption From Five Federal Motor Vehicle Safety Standards

Mercedes-Benz U.S. International, Inc., of Vance, Alabama ("MBUSI"), applied for a temporary exemption from five Federal motor vehicle safety standards on behalf of the Mercedes-Benz M Class vehicle. The basis of the application was that, in the absence of an exemption, MBUSI would be prevented from selling a motor vehicle whose overall level of safety equals or exceeds that of a non-exempted vehicle. The company asked for an exemption of 2 years.

We published notice of receipt of the application on February 2, 1998, and afforded an opportunity for comment (63 FR 5415), receiving two of them. James C. Walker of JCW Consulting, Ann Arbor, Michigan, supported MBUSI. Advocates for Highway and Auto Safety ("Advocates") opposed granting the requested exemptions for the reasons set forth below. Subsequently, MBUSI submitted a rebuttal of Advocates' comments. We also asked MBUSI to submit a photo of the M Class showing its nighttime illumination from the side, and later requested information pertaining both to German and U.S. tourist delivery programs.

Under the authority of 49 U.S.C. 30113(b)(3)(iv), as implemented by 49 CFR 555.6(d), we may exempt motor vehicles, on a temporary basis of up to 2 years, from compliance with a Federal motor vehicle safety standard upon a finding that "(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles" (We must also find that the exemption is in the public interest and consistent with objectives of traffic safety). The exemption covers up to 2,500 vehicles for any 12-month period that it is in effect.

MBUSI manufactures the Mercedes-Benz M Class sport utility vehicle. It has developed a version of the M Class for

export which is manufactured to European specifications. It proposes to sell a limited number of these vehicles to "European citizens" who "are either visiting or temporarily assigned to work in the United States." This program is similar to those in which a vehicle conforming to U.S. specifications is sold to Americans from various factories in Europe. MBUSI relates that its planned program is similar to one established by General Motors for which we granted GM's petition on August 18, 1988 (53 FR 31411).

MBUSI originally stated that it was developing procedures that will ensure that the vehicles will, in fact, "be exported within a one year time frame, or at the conclusion of a diplomatic assignment, whichever is applicable." Advocates contested the efficacy of such procedures, saying that it is inevitable that some exempted vehicles will be sold and operated on American roads. MBUSI stated that it will retain title along with other shipping documents until the vehicle is exported, thereby rendering subsequent sale impossible. In addition, each European owner will be required to place a deposit on the vehicle to ensure export, refundable at that time. The vehicles will have European VINs so that it will not be possible to register them in any of the states. In February 1999, MBUSI informed us that it had reached a tentative agreement with the Alabama Department of Motor Vehicles that all exempted vehicles that are sold will be fitted with non-renewable registration plates that expire at the end of the next month following delivery, i.e., an exempted vehicle delivered on July 15 will bear plates that expire on August 31. NHTSA is satisfied that MBUSI has met Advocates' objections on this issue.

In MBUSI's view, it requires partial exemptions from five Federal motor vehicle safety standards if it is not to be prevented from selling the M Class. These are set forth below.

1. *Standard No. 101, Controls and Displays.* The European specification M Class brake indicator warning light depicts the ISO brake symbol, rather than the word "BRAKE" as required by Table II of Standard No. 101 (this is also a requirement imposed by Standard No. 105 *Hydraulic Brake Systems).*

MBUSI does not believe that this noncompliance degrades the safety of the vehicle. The ISO symbol is well known to the Europeans who will own and drive the M Class. On the other hand, the word "BRAKE" could be confusing to operators with a limited command of English.

Advocates opposed granting an exemption from this requirement on the basis that NHTSA rejected the use of ISO symbols in a recent rulemaking as "inferior in design and comprehension to U.S. symbols. 61 FR 27039, 27041 (May 30, 1996)." The agency did not adopt certain ISO symbols for vehicles intended for sale in the United States to inhabitants of this country. But it fails to see the relevance of this fact to vehicles that will be sold to drivers who are inhabitants of countries where the ISO symbol is required, and to whom the meaning should be clear. MBUSI commented that the sale of the exempted vehicles will occur in Europe, with delivery only in the United States, so that there is no means by which other persons can purchase a European M Class in the United States. NHTSA concludes that use of the ISO symbol by MBUSI ought to provide protection to European drivers at least equal to the protection provided drivers of American cars though use of the word "BRAKE" in Standard No. 101.

2. *Standard No. 108, Lamps, Reflective Devices and Associated Equipment.* There are two requirements of Standard No. 108 from which MBUSI requests relief.

A. *Front and rear side marker lamps and reflectors.* Table II of Standard No. 108 requires vehicles such as the M Class to be equipped with front and rear side marker lamps and reflectors. The M Class will not be equipped with these items.

Although the M Class vehicles will lack side marker lamps and reflectors, they will be equipped with other lighting equipment not required by Standard No. 108, such as side turn signal repeaters. In addition, they will be equipped with front and rear fog lamps. Vehicles destined for Scandinavian countries will be equipped with daytime running lamps. In summary, the combined addition of these devices will, in MBUSI's opinion, add to the visibility of exempted vehicles.

Advocates opposes any exemption from side marker requirements, saying that these are lamps and reflectors which are intended "to provide constant alerting information to other motorists and to pedestrians of the presence of a motor vehicle under conditions of adverse visibility." It does not regard daytime running lamps and turn signals as an acceptable substitute for markers that delineate the side.

Neither do fog lamps, in Advocates' view, serve as an acceptable substitute, because they are used infrequently, and can even be disengaged. Their use, according to Advocates, can increase the risks to highway safety "because they are often misaimed, resulting in blinding levels of glare."

NHTSA has considered these views, and reviewed its 1988 grant of an exemption to General Motors (GM) from the side marker lamp and headlamp photometric requirements for a similar tourist delivery program (53 FR 31411). In granting GM's petition, the agency observed:

> Although the safety benefits of side marker lamps and reflectors will not be realized there are other aspects of motor vehicle conspicuity not covered by Standard No. 108 which will be benefitted. Side turn signal lamps, daytime running lamps, * * * and red rear fog lamps have no mandatory U.S. counterparts but will be fitted on exempted vehicles. (p. 31412).

Thus, there is a precedent for granting MBUSI's request from the side marker requirements. The M Class has much the same auxiliary lighting equipment. Moreover, the rear lamp cluster wraps around the side of the vehicle while the front lamp cluster is oriented so that, it, too, is visible from the side. NHTSA asked MBUSI to provide a photograph taken in the dark, showing the side of the vehicle with the headlamps on. This photograph clearly shows that the light from these front and rear lamps allows them to serve as surrogate front and rear side marker lamps, even though the light provided by the headlamp housing wraparound is white rather than amber. In our view, this provides an equivalent level of safety, bearing in mind also that the vehicles will be operated on American roads a limited amount of time (60 days at most), and that the company expects to sell only a small number of them (in an informal conversation, fewer than 100 annually).

B. *Certain headlamp photometrics.* The M Class headlamps are designed to meet the European photometric specifications of ECE R8 rather than those of Standard No. 108. The exempted M Class would not meet the minimum candela prescribed by Standard No. 108 for the upper beam. This affects eight test points. At these points, only 20 percent to 44.9 percent of the minimum required would be reached. With respect to the lower beam, there are two test points that fail to reach the minimum, one achieving 20.2 percent of the required figure and the other 71 percent. At test point 10U–90U, the maximum candela established by Standard No. 108 is exceeded by 270.4 percent.

MBUSI relates that the "continental European low beam pattern puts less light into the eyes of oncoming drivers * * * thereby reducing the glare experienced by oncoming drivers." Although the headlamps do not project

as much light down the road as U.S. headlamps, there are differing opinions "as to which set of photometric requirements offers the optimum compromise in satisfying competing safety objectives." Some countries permit both European and U.S. specification headlamps, but there are no data from these countries suggesting that one type is over or under represented in crashes.

With respect to the upper beam, MBUSI states that the lamps do meet the minimum for test point HV, but not the minima at 9 degrees right and left and 12 degrees right and left. Because the European owners will be accustomed to the forward illumination characteristics of European beam patterns, "the lighting on these vehicles should provide 'equivalent safety' for these drivers. * * *"

Advocates disagrees with these arguments. In its view, "the low beam illumination pattern, in particular, is clearly inadequate for even minimum illumination of post- and overhead-mounted U.S. retroreflective traffic control devices, especially signs." As a result, "it would not be tolerable for the agency to permit the operation of thousands of vehicles with substandard headlamps in the U.S. nighttime environment, regardless of the operating familiarity with the beam patterns and illumination characteristics of such headlamps by foreign nationals residing temporarily in the U.S." In rebuttal, MBUSI submitted that this deviation from the standard will not cause any adverse impacts to motor vehicle safety. Since Advocates has not cited "any information indicating any potential for drivers accustomed to this lighting to have a greater likelihood of accidents, there is no basis to suggest this difference is significant for brief operation in the United States."

Again, we would like to emphasize that we are not making a judgment about the relative equivalence of the U.S. and European beam patterns for vehicles manufactured for use on roads in the United States. We have consistently expressed doubts about the adequacy of the light provided by the European headlamp beam pattern for highway signs and down-the-road lighting. However, MBUSI is not asking us to make a judgment about the relative merits of the European headlamp beam for drivers of vehicles manufactured for use in the United States. Instead, the question is solely whether this beam pattern offers equivalent safety for the driver of a vehicle not manufactured for use in the United States, i.e., European drivers who are familiar with the European beam pattern. In these narrow circumstances we have concluded that, given the continental driving experience of the European M Class purchasers, no safety risk is presented by allowing a limited number of M Class vehicles to be operated for a limited period of time on American roads.

3. *Standard No. 111, Rear View Mirrors.* The passenger side convex rear view mirror will not contain the warning required by S5.4.2 for American-market cars that "Objects in Mirror Are Closer Than They Appear."

According to MBUSI, the European drivers will be familiar with outside convex mirrors because they are used throughout Europe without a legend inscribed, and no safety value is added by requiring the legend to be etched into the mirror.

Advocates expressed general opposition to this request, without specific comment. Given that the exempted mirrors will provide an even larger unobstructed field of view without the legend, and that European drivers are used to convex mirrors without the warning, we have concluded that these mirrors will provide an overall level of safety at least equal to that of passenger side exterior rearview mirrors which comply with Standard No. 111.

4. *Standard No. 120, Tires for Vehicles Other Than Passenger Cars.* The M Class exempted vehicles will not carry a tire information label as required by S5.3 of Standard No. 120.

However, there will be a European tire pressure information label adjacent to the fuel filler opening, the location for many European vehicles. Since Europeans are accustomed to that location for the tire information label, there is no safety value added by placing the label in the locations required under the standard. In addition, according to MBUSI, "since the vehicle will be permanently exported for use in Europe, the tire information label must contain the information required by European standards."

During the comment period, we asked MBUSI to provide a copy of the tire information label mentioned in its application. MBUSI did so on February 24, 1998, with the contradictory statement that "under European law, a tire placard is not required. Therefore, there are no European regulations specifying the contents of a tire placard." However, the company voluntarily provides tire pressure information on a label affixed to the fuel filler door.

Advocates opposed this exemption on general grounds, without specific comments. MBUSI commented in rebuttal that the location of the label, near the fuel filler opening, may serve to remind drivers to check the vehicle's tires and tire inflation pressure when refueling. Our review of the label shows that it lacks the tire and rim information required by Standard No. 120. This information is required to ensure a correct match between a vehicle and its tires, and its tires and their rims. Given the fact that the vehicles are intended to be exported after no more than 60 days' use in the United States, it is unlikely that tires and rims will have to be replaced before that time. Therefore, while the vehicles are in use in the United States, the tire pressure information should provide a level of safety at least equal to that afforded by a conforming label under Standard No. 120.

5. *Standard No. 209, Seat Belt Assemblies.* The seat belts in the exempted M Class vehicles will not carry the marking required by S4.1(j) of the standard). They will, however, meet ECE R16 and bear the required approval mark. MBUSI believes that the purpose of this information is to allow the belts to be tracked in a recall campaign occurring in the United States. In this case, the vehicles will be shipped to Europe, outside the coverage of any recall campaign, or the United States part-replacement system, and the respective European label is more appropriate for these vehicles.

The information required under S4.1(j) of Standard No. 209 is the name or trademark of the manufacturer, distributor, or importer; the year of manufacture, and the model. During the comment period, we also asked MBUSI to describe the information required under ECE R16. This regulation calls for the manufacturer's name, initials or trademark, the E mark, "an approval number," and symbols indicating the types and performance characteristics of the restraint.

Advocates opposed a grant of the application for exemption from Standard No. 209 only on a general basis, without specific comment. We are satisfied that the ECE marking is sufficiently different from that of Standard No. 209 that, were a recall or replacement required during the period the exempted vehicle is being operated in the United States, the belts could be readily identified. We believe that MBUSI's procedures to ensure timely export will aid in locating exempted vehicles in the United States in the event of a recall. In sum, the information furnished under ECE R16 should provide a level of safety to European owners of M Class vehicles at

least equal to that provided to American owners by S4.1(j).

The Public Interest and Safety

MBUSI argued that the exemption "would be helpful in improving the trade deficit currently being suffered by the United States," possessing the potential to expand into other lines. The owners of exempted M Class vehicles will contribute to local economies during their sojourn in the United States. Advocates argued that foreign tourists will continue to visit the United States and contribute to local economies if the application is denied. Although it may be in the public interest to encourage sales of products made in this country, particularly those that are exclusively made in the United States such as the M Class, this is not a factor that NHTSA considers in its regulatory decisions under the vehicle safety law.

Advocates contends that MBUSI's application "makes only superficial and conclusory assertions that the vehicles will provide safety equal to that of vehicles built to all U.S. standards." Based on our review of the MBUSI petition, as supplemented by materials submitted in response to our request, we conclude that MBUSI has adequately supported its request.

An exemption from the standards would be consistent with motor vehicle safety since the exempted vehicles possess an overall level of safety at least equal to that of nonexempted vehicles and will only be used for a limited time in the United States in any event.

Decision

In consideration of the foregoing, it is hereby found that compliance with each of the standards discussed above would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles, and that an exemption is consistent with the public interest and motor vehicle safety. Accordingly, Mercedes-Benz U.S. International, Inc., is hereby granted NHTSA Temporary Exemption No. 99–3, expiring May 1, 2001, for M Class vehicles, from: providing the word "brake" required by Table 2 of 49 CFR 571.101 Standard No. 101 *Controls and Displays*, requirements for side marker lamps and reflectors, and headlamps complying with S7 of 49 CFR 571.108 Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, S5.4.2 of 49 CFR 571.111 Standard No. 111 *Rearview Mirrors*, S5.3 of 49 CFR 571.120 Standard No. 120 *Tires for Vehicles Other Than Passenger Cars*, and S4.1(j) of 49 CFR 571.209 Standard No. 209 *Seat Belt Assemblies*.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: May 26, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–13896 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of Exemption From the Vehicle Theft Prevention Standard; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of a petition for modification for previously approved antitheft devices.

SUMMARY: This agency granted in part General Motors Corporation's (GM) petitions for exemption from the parts-marking requirements of the vehicle theft prevention standard on April 27, 1990, April 9, 1991 and March 26, 1992, for the Cadillac DeVille, Pontiac Bonneville, and Buick LeSabre car lines, respectively. On August 25, 1993, this agency granted in full General Motors Corporation's (GM) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the Oldsmobile Aurora car line. This notice grants in full GM's petition for modification of the previously approved antitheft device for the Aurora car line, and provides for full exemption of three car lines (Cadillac DeVille, Pontiac Bonneville, and Buick LeSabre) that were previously granted partial exemptions. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in GM's petition to be placed on the car lines as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–4807. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In April 1990, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1991 Cadillac DeVille. The DeVille car line was equipped with the "PASS-Key" antitheft device. (See 55 FR 17854, April 27, 1990). In April 1991, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1992 Pontiac Bonneville. The Bonneville car line was equipped with the "PASS-Key" antitheft device. (See 56 FR 14413, April 9, 1991). In March 1992, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1993 Buick LeSabre. The LeSabre car line was equipped with the "PASS-Key II" antitheft device. (See 57 FR 10517, March 26, 1992). In August 1993, NHTSA published in the **Federal Register** a notice granting in full the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year 1995 Oldsmobile Aurora. The Aurora car line was equipped with the "PASS-Key II" antitheft device. (See 58 FR 44872, August 25, 1993).

The agency granted partial exemptions for the Cadillac DeVille, Pontiac Bonneville and Buick LeSabre lines at that time because the devices lacked an audible and visual alarm system. As such, the GM systems lacked, as standard equipment, an important feature that the agency has defined in its rulemaking on Part 543 as one of several attributes which contribute to the effectiveness of an antitheft device: automatic activation of the device; an audible or visual signal that is connected to the hood, doors, and trunk, and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key. The lack of an audible or visual warning device made the agency uncertain as to whether the device would be as effective as parts marking in deterring theft of these vehicles. Consequently, the agency believed that because of the lack of theft data and information available at that time for lines installed with antitheft

devices that did not have an audible or visual alarm system, GM should be granted a partial rather than full exemption. Therefore, GM was required to mark the lines' engine and transmission only.

The "PASS-Key" theft deterrent system utilized an ignition key, an ignition lock cylinder and a decoder module. The conventional mechanical code permits the key to release the steering wheel and transmission shift lever locks. Before the vehicle can be started the electrical resistance of a pellet embedded in the shank of the key must be sensed by elements in the lock cylinder and its value compared to a fixed resistance in the decoder module located in the instrument panel in the passenger compartment. If the key pellet has the proper resistance, the starter enable relay is energized and a discrete signal is transmitted to the electronic control module. If a key other than the one with the proper resistance for that vehicle is inserted, the decoder module will shut down for two to four minutes. Use of any keys with different resistance pellets will cause the time to recycle and begin again with each failed attempt. The components are located in the passenger compartment behind the instrument panel, with the exception of the starter solenoid/starter motor combination which is physically located in the engine compartment.

GM's "PASS-Key II" device, used on the Oldsmobile Aurora beginning in the1995 model year, utilizes an ignition key, an ignition lock cylinder and a decoder module and is passively activated. Unlike the "PASS-Key", in the "PASS-Key II", if a key other than the one with proper resistance for the vehicle is inserted, the decoder module will shut down the fuel injector pulses to the engine for three minutes plus or minus eighteen seconds. In the "PASS-Key" this shut down period is two to four minutes. Additionally, if during the time the decoder module has shut down in "PASS-Key II," trial and error attempts are made to start the engine with various keys, the timer for the decoder module does not reset back to zero.

"PASS-Key II" is a modification of the "PASS-Key" theft deterrent system. Since August 1989, the agency has determined that the "PASS-Key" system, installed as standard equipment, will likely be as effective reducing and deterring motor vehicle theft as compliance with the theft prevention standard (see 54 FR 33655, August 15, 1989). In a February 7, 1992 letter to GM, the agency determined that changes in the "PASS-Key II" constituted a de minimis change in the "PASS-Key" system, which was the basis for the agency's previous granting of a partial theft exemption for car lines that had, as standard equipment, the "PASS-Key" system.

GM stated that for MY 2000, the "PASS-Key III" antitheft device to be used on the Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora car lines will utilize more advanced technology than the "PASS-Key" or "PASS-Key II" devices. The "PASS-Key III" device will add new features and refinements to some of the previous "PASS-Key/PASS-Key II" components. As with the "PASS-Key" and "PASS-Key II" antitheft devices, the "PASS-Key III" device will remain fully functional once the ignition has been turned off and the key has been removed. No operator action will be required other than removing the key. The "PASS-Key III" will also use a special ignition key and decoder module. The conventional mechanical key unlocks and releases the steering wheel and transmission lever. However, before the vehicle can be operated, the key's electrical code must be sensed by the key cylinder and properly decoded by the decoder module.

GM stated that the transponder, now embedded in the head of the key for the "PASS-Key III" device, is stimulated by a coil surrounding the key cylinder. The transponder in the key then emits a modulated signal at a specified radio frequency. The identity of the key is an integral and unique code within the modulated signal. The key cylinder coil receives and sends the modulated signal to the decoder. When the decoder module recognizes a valid key code, it sends an encoded message to the Powertrain Control Module (PCM) to enable fuel flow and starter operation. If an invalid key is detected, the "PASS-Key III" decoder module will transmit a different password to the PCM to disable fuel flow and starter operation.

The "PASS-Key III" device has the potential for over four trillion unique electrical key codes. GM states that the sheer volume of these codes is a highly effective deterrent to the common intruder. If an invalid key is detected, the "PASS-Key" was designed to shut down for two to four minutes and, the "PASS-Key II" for three minutes plus or minus eighteen seconds, preventing further attempts at starting the vehicle during that shutdown. GM believes that the time-consuming task of attempting to defeat a device having over four trillion key codes by a trial-and-error method eliminates the need for such an extensive shutdown period.

The "PASS-Key III" antenna will be located in the ignition switch assembly, and the decoder module will be mounted behind the instrument panel for the MY 2000 Oldsmobile Aurora and Pontiac Bonneville. The "PASS-Key III" decoder module and antenna will be located in the steering column for the MY 2000 Cadillac DeVille and Buick LeSabre lines. GM stated that the device cannot be defeated by removing and then subsequently reapplying vehicle power. Additionally, GM stated that replacement of the decoder module will not defeat the device because of its decoder module password.

GM stated that the "PASS-Key III" device has been designed to enhance the functionality and theft protection of the first and second-generation "PASS-Key" and "PASS-Key II" devices. However, as in the first and second-generation "PASS-Key" devices, the "PASS-Key III" device does not provide an alarm, either audible or visual to attract the attention to the efforts of an unauthorized person to enter or move the vehicle by means other than a key (49 CFR § 543.6(a)(3)(ii)). To substantiate its belief that an alarm system is not a necessary feature to effectively deter the theft of a vehicle, GM compared the reduction in thefts for Corvettes equipped with a passive antitheft device with an audible/visible alarm feature, and the Chevrolet Camaro and Pontiac Firebird car lines equipped with a passive antitheft device without an alarm feature. Results of the GM comparison indicate that the lack of an alarm feature did not reduce the effectiveness of the anti-theft system. In fact, while there was a 24 percent reduction in thefts of Corvettes, the Camaro and Firebird car lines experienced theft reductions of 66 and 69 percent respectively.

The following GM car lines have the "PASS-Key" device as standard equipment and have been exempted in part from the requirements of 49 CFR Part 541: the Chevrolet Camaro and Pontiac Firebird, beginning with MY 1990 (See 54 FR 33655, August 15, 1989); the Cadillac DeVille/Fleetwood and Oldsmobile 98, beginning with MY 1991 (See 55 FR 17854, April 27, 1990); and the Pontiac Bonneville and Buick Park Avenue, beginning with MY 1992 (See 56 FR 14413, April 9, 1991). NHTSA has also granted exemptions in part for the following GM car lines that have "PASS-Key II" as standard equipment: the Oldsmobile 88 Royale and Buick LeSabre, beginning with MY 1993 (See 57 FR 10517, March 26, 1992) and the Cadillac Eldorado and Cadillac Seville, beginning with MY 1994 (see 58 FR 11659, February 26, 1993).

Since deciding those petitions, the agency has become aware that theft data

show declining theft rates for GM vehicles equipped with either version of the "PASS-Key" device. A comparison of theft data for car lines incorporating the "PASS-Key" and "PASS-Key II" devices do not show that the lack of an audible or visual alarm system detracts from the effectiveness of the "PASS-Key" and "PASS-Key II" devices. The agency believes that the data show that over time, despite the absence of an audible or visual alarm system, the "PASS-Key" and "PASS-Key II" devices, when placed on car lines as standard equipment, are as likely to be as effective in deterring and reducing motor vehicle theft as compliance with the parts-marking requirements.

Based on this information, the agency has granted two GM petitions for full exemptions for car lines equipped with the "PASS-Key II" antitheft device. Those lines are the Chevrolet Lumina and Buick Regal car lines, beginning with the 1997 model year (See 60 FR 25938, May 15, 1995) and the Buick Riviera and Oldsmobile Aurora car lines, beginning with the 1995 model year (See 58 FR 44872, August 25, 1993). In both of those instances, the agency concluded that a full exemption was warranted because the "PASS-Key II" device had shown itself to be as likely as parts marking to be effective protection against theft despite the absence of a visual or audible alarm. NHTSA has also granted two exemptions in full for car lines which have the "PASS-Key III" device as standard equipment. Those lines are the Buick Park Avenue (See 61 FR 25734, May 22, 1996) beginning with the 1997 model year and the Cadillac Seville beginning with the 1998 model year (See 62 FR 20058, April 24, 1997).

To ensure reliability and durability of the device, GM stated that it conducted tests based on its own specified standards. GM provided a detailed list of specific tests used to validate the integrity, reliability and durability of the "PASS-Key III" device. GM stated that the "PASS-Key III" device complied with the specified requirements for each test.

To substantiate its beliefs as to the effectiveness of the "PASS-Key III" antitheft device, GM referenced data which provide the basis for GM's confidence that the "PASS-Key III" system will be effective in reducing and deterring motor vehicle theft that are contained in the response of the American Automobile Manufacturers Association to Docket 97–042; Notice 1 (NHTSA Request for Comments on its preliminary report to Congress on the Anti Car Theft Act of 1992 and the Motor Vehicle Theft Law Enforcement Act of 1984).

Additionally, GM compared its MY 2000 antitheft modification to similar devices that have previously been granted exemptions by the agency. GM stated that theft data have indicated a decline in theft rates for vehicle lines that have been equipped with the "PASS-Key"-like systems which have exemptions from the parts-marking standard greater than that for earlier models which were parts marked. "PASS-Key" was made standard on the Camaro, Firebird, Seville and Eldorado beginning with MY 1989 and on Eldorado beginning with MY 1989 and on the DeVille/Fleetwood beginning with 1990. The data provided by GM were reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), which is NHTSA's official source of theft data (See 50 FR 46666, November 12, 1985). The NCIC receives reports on all thefts.

GM believes that based on the reduced theft rates of its "PASS-Key" and "PASS-Key II" equipped car lines and the proven theft-deterrence success of transponder electronics security, the "PASS-Key III" device to be introduced on the MY 2000 Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora lines is likely to be more effective in reducing and deterring motor vehicle theft than compliance with the parts marking requirements of 49 CFR Part 541.

The agency believes that there is substantial evidence indicating that the modified antitheft device to be installed as standard equipment on the MY 2000 Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora car lines will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the Theft Prevention Standard (49 CFR Part 541). This determination is based on the information that GM submitted with its petition and on other available information. The agency believes that the modified device will continue to provide four of the five types of performance listed in Section 543.6(a)(3): promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR Section 543.6(a)(4), the agency also finds that GM has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its "PASS-Key III" device. This information included a description of reliability and functional tests conducted by GM for the "PASS-Key III" antitheft device and its components.

The agency has evaluated GM's MY 2000 petition for modification of the previous exemptions granted for the Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora car lines from the parts-marking requirements of 49 CFR Part 541. The agency has determined that the modified device to be installed on the DeVille, Bonneville and LeSabre car lines are likely to be as effective as parts marking in preventing and deterring theft of these vehicles, and therefore qualifies for a full rather than partial exemption under 49 CFR Part 543.

Additionally, the agency concludes that the improvements made to the device to be installed on the MY 2000 Oldsmobile Aurora car line constitute a de minimis modification to the existing antitheft device.

For the foregoing reasons, the agency hereby grants GM's petition for modification of the exemptions from the parts-marking requirements previously granted to the MY 2000 Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora car lines beginning with the 2000 model year.

If, in the future, GM decides not to use the exemption for the car lines that are the subject of this notice, it should formally notify the agency. If such a decision is made, the car line(s) must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, it may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Section 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de

minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de *minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 27, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13956 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 24, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 2, 1999 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems

OMB Number: 1505–0001.

Form Number: Treasury International Capitol Form S.

Type of Review: Extension.

Title: Purchases and Sales of Long-Term Securities by Foreigners.

Description: Form S is required by law and is designed to collect timely information on international portfolio capital movements, including foreigners' purchases and sales of long-term securities in transactions with U.S. persons. This information is necessary for compiling the U.S. balance of payments, for calculating the U.S. international investment position, and for formulating U.S. financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 475.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 28,500 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–13863 Filed 6–1–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 24, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 2, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0987.

Regulation Project Number: IA–62–91 Final and Temporary (formerly LR–168–86 NPRM and LR–129–86 Temporary).

Type of Review: Extension.

Title: Capitalization and Inclusion in Inventory of Certain Costs.

Description: The paperwork requirements are necessary to determine whether taxpayers comply with the cost allocation rules of section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayers' changes in methods accounting.

Respondents: Business or others for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours.

Frequency of Response: Other (in the year of change).

Estimated Total Reporting/Recordkeeping Burden: 100,000 hours.

OMB Number: 1545–1496.

Regulation Project Number: REG–209673–93 Final.

Type of Review: Extension.

Title: Mark to Market for Dealers in Securities.

Description: Under section 1.475(b)–4, the information required to be recorded is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed, and will be used to make that determination upon audit of taxpayers' books and records. Also, under section 1.475(c)–1(a)(3)(iii), the information is necessary for the Service to determine whether a consolidated group has elected to disregard inter-member transactions in determining a member's status as a dealer in securities.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3,400.

Estimated Burden Hours Per Respondent/Recordkeeper: 52 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 63,360 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–13864 Filed 6–1–99; 8:45 am]

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June 2, 1999

Part II

Department of Transportation

Office of the Secretary

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

23 CFR Part 180
49 CFR Parts 80, 261 and 640
Credit Assistance for Surface Transportation Projects; Fiscal Year 1999 Applications for TIFIA Credit Assistance; Final Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 180

Office of the Secretary

49 CFR Part 80

Federal Railroad Administration

49 CFR Part 261

Federal Transit Administration

49 CFR Part 640

[OST Docket No. OST–99–5728]

RIN 2125–AE49

Credit Assistance for Surface Transportation Projects

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is implementing the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) to provide credit assistance to surface transportation projects. The TIFIA authorizes the DOT to provide secured (direct) loans, lines of credit, and loan guarantees to public and private project sponsors of eligible surface transportation projects. Projects will be evaluated and selected by the Secretary of Transportation. Following selections, individual credit agreements will be developed through negotiations between the project sponsors and the DOT.

EFFECTIVE DATE: This final rule is effective August 2, 1999.

FOR FURTHER INFORMATION CONTACT: FHWA: Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; or Mr. Steven M. Rochlis, Office of the Chief Counsel, (202) 366–1395. *FRA:* Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; or Mr. Joseph Pomponio, Office of the Chief Counsel, (202) 493–6051. FTA: Mr. Paul Marx, Office of Policy Development, (202) 366–1734; or Ms. Paula Schwach, Office of the Chief Counsel, (816) 523–0204. OST: Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; or Mr. Terence W. Carlson, Office of the General Counsel, (202) 366–9161. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

Additional information on the TIFIA program and credit assistance for surface transportation projects generally is available at the TIFIA web site at http://tifia.fhwa.dot.gov. Among other information, the DOT will provide responses to commonly asked questions and information on participation in the TIFIA program.

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 241, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA, as amended by section 9007, Public Law 105–206, 112 Stat. 685, 849, and codified at 23 U.S.C. 181–189, establishes a new Federal credit program for surface transportation projects. Funding for this program is limited, meaning that projects obtaining assistance under the TIFIA program will be selected on a competitive basis. Final selections of projects will be made by the Secretary of Transportation.

Credit assistance programs such as TIFIA are designed to assist financial markets in developing the capability to supplement the role of the Federal Government in financing the costs of large projects of national significance. Developing, implementing, and evaluating financial assistance programs is a crucial mission of the DOT. To help ensure financial and programmatic success, the DOT has established a multi-agency Credit Program Steering Committee and Working Group. The Steering Committee and Working Group are comprised of representatives from the Office of the Secretary, the Office of Intermodalism, the FHWA, the FRA, and the FTA, as well as other DOT agencies and offices. The Steering Committee and Working Group will coordinate and monitor all policy decisions and implementation actions associated with this Federal credit assistance program.

NPRM

The DOT published a notice of proposed rulemaking (NPRM) on February 8, 1999, in the **Federal Register** (64 FR 5996). Comments were filed by: Commonwealth of Virginia Department of Transportation; North Texas Tollway Authority; Transportation Corridor Agencies; Texas Department of Transportation; Washington Airports Task Force; City of Reno, Nevada; San Francisco Bay Area Rapid Transit District; Commonwealth of Pennsylvania Department of Transportation; State of Michigan Department of Transportation; American Public Transit Association; Goldman, Sachs, and Co.; and Salomon Smith Barney. The DOT is now issuing this final rule concerning administration of the TIFIA credit assistance program. This rule reflects the DOT's consideration of the comments filed in response to the NPRM.

Discussion of Rulemaking Text

The following discussion summarizes the comments submitted to the DOT by the twelve commenters on the NPRM, notes where and why changes have been made to the rule, and, where relevant, states why particular recommendations or suggestions have not been incorporated into the following regulations. Paragraph references are as designated in the NPRM.

Discussion of Comments and Responses by Section

Section ____.3 Definitions

Investment-Grade Rating. One commenter suggested that the definition of investment-grade rating include references to the equivalent short-term investment-grade ratings in addition to the long-term investment-grade ratings currently presented.

DOT Response: The ratings specified in the current definition pertain to any fixed-rate debt obligation with a term of one year or longer. For a project with long-term obligations in the form of variable-rate demand notes or other floating-rate instruments, it will be

necessary for the project sponsor to secure a long-term rating as well as a short-term rating.

Lender. One commenter asked whether a lender may be an entity other than a non-Federal qualified buyer (institutional investor).

DOT Response: The DOT must adhere to statutory language appearing at 23 U.S.C. 181(4). This language is explicit in defining lender as a "non-Federal qualified institutional buyer."

Local Servicer. One commenter suggested that the definition of "local servicer" be revised to clarify that the local servicer may also be the obligor in TIFIA credit transactions.

DOT Response: Although the statutory language appearing at 23 U.S.C. 185 does not address whether a governmental obligor may be its own servicer, it would be unsuitable for an obligor to be a servicer of its own credit instrument. Any local servicer will need to be an agent of the Secretary, rather than the obligor. The Secretary will determine the acceptability of proposed servicers for each project.

Project. One commenter suggested that discrete pieces of a larger project qualify for TIFIA assistance under the definition of "project."

DOT Response: In general, the scope of a TIFIA project should align with the definition that appears or will appear in that project's environmental Record of Decision (ROD). However, if one environmental document is prepared for a project of considerable length (such as a facility where various segments of independent utility may be separately financed, constructed, and operated over a significant period of time), that entire facility may not necessarily be considered a single project. The Secretary will make such determinations on a case-by-case basis.

Project Obligation. One commenter suggested that "project obligation" include any refinanced or refunded debt that was previously supported by a TIFIA credit instrument.

DOT Response: A project sponsor that receives a TIFIA loan guarantee or line of credit may refund the guaranteed loan or project obligations issued in connection with the line of credit at a subsequent date, provided that the Secretary determines that such refunding does not increase the DOT's credit risk.

Substantial Completion. One commenter suggested more flexibility in the definition of "substantial completion."

DOT Response: The definition of substantial completion that appears in § ____.3 of this rule is quoted directly from statutory language appearing at 23 U.S.C. 181(15). The DOT agrees that, in some cases, this statutory language may require elaboration to accommodate certain types of projects that are eligible for TIFIA assistance. Section ____.3 of the rule, therefore, has been revised to reflect that substantial completion means the opening of a project to vehicular or passenger traffic or a comparable event as determined by the Secretary and specified in the credit agreement.

Section ____.5 Limitations on Assistance

Section ____.5(a). Two commenters suggested that eligible project costs should be measured on an aggregate cash (future value) basis when determining the 33 percent ceiling on Federal credit assistance for projects receiving TIFIA funding.

DOT Response: The DOT agrees with the commenters' suggested approach to calculating eligible project costs. The rule has been revised to state that the total amount of credit assistance offered to any project under this part shall not exceed 33 percent of the anticipated eligible project costs, as measured on an aggregate cash (year-of-expenditure) basis.

Section ____.5(b). One commenter requested clarification regarding the need to obtain Secretarial approval for incurring costs before the application process begins.

DOT Response: The project sponsor need not obtain Secretarial approval before incurring costs on a project for which it is seeking TIFIA assistance. However, upon applying for TIFIA assistance, the applicant must obtain Secretarial approval for counting such costs toward "eligible project costs." The Secretary may grant such approval after costs have been incurred and after the application has been submitted. Generally, such costs will be confined to acquisition of right-of-way or development phase expenses incurred no earlier than three years prior to the date of application. The DOT determines that existing language in the rule is sufficiently broad to accommodate this understanding.

The DOT emphasizes that the Secretary will not recognize as "eligible project costs" any costs incurred for projects other than the one for which TIFIA assistance is being sought. Eligible project costs will be determined on a project basis, not a system basis.

Section ____.5(d). The DOT received multiple comments regarding contingent commitments of budget authority becoming available in subsequent years and the proposed letter of intent to be used to execute these commitments. Those comments relating to § ____.5(d) are addressed by subtopic below.

Section ____.5(d). Two commenters suggested that a "letter of intent" may not be the appropriate vehicle for executing multi-year commitments of funds under TIFIA since, in other Federal programs, it is often deemed unacceptable as a viable and predictable funding source within the investment community.

DOT Response: The DOT acknowledges that the term "letter of intent" may be perceived by the financial community in the context of other programs with terms and provisions different from TIFIA, potentially creating confusion or uncertainty. The DOT also recognizes that the TIFIA program's effectiveness in stimulating private investment in transportation infrastructure projects depends, in large part, on investor recognition that TIFIA credit instruments represent solid and reliable Federal commitments. Therefore, the DOT will make a future-year or multi-year contingent commitment of funds for a project using a conditional term sheet. The conditional term sheet will resemble the standard term sheet that activates DOT's obligation of budget authority, but will also include the specific actions necessary to trigger subsequent obligation(s).

Upon execution of the conditional term sheet, the DOT will reserve budget authority attributable to the appropriate year(s). This reservation will ensure that the project has a priority claim (together with that of any other projects receiving such contingent commitments) on budget authority becoming available for the specified year, provided that the project sponsor satisfies each condition outlined in the conditional term sheet. Although the DOT will reserve funding based on the conditional term sheet, it will not obligate budget authority until the specified conditions have been met. Upon satisfaction of those conditions, the conditional term sheet can be amended and/or restated to trigger an obligation of funds.

Section ____.5(d). One commenter voiced concern regarding the potential impact of annual appropriations on the availability of TIFIA budget authority. Another commenter expressed support for the possibility of the DOT placing limits on the amount of future-year budget authority that may be reserved through a conditional document, but noted that the DOT should not place a strict cap on the amount of budget authority that may be reserved in this fashion.

DOT Response: The TIFIA funding is provided through multi-year contract

authority from the Highway Trust Fund, which can be obligated in advance of appropriations. However, this contract authority is subject to the annual Federal-aid highway obligation limitation, so the DOT will exercise restraint in executing conditional term sheets and reserving budget authority. In no event shall the DOT reserve more than 50 percent of the amount of budget authority authorized for a given fiscal year.

Section ____.5(d). One commenter suggested that a project that has not received its environmental Record of Decision (ROD) be eligible for a contingent commitment of funds.

DOT Response: The DOT concurs with the commenter and reserves the right to execute a conditional term sheet with a project sponsor temporarily lacking certain required documents, such as a ROD. Upon satisfaction of the condition(s) specified in the conditional term sheet, the DOT will obligate the budget authority previously reserved. The conditional term sheet will include fixed dates by which any requirements (such as receipt of a ROD) must be satisfied in order for the reserved funding to be obligated. Such requirements should be met within 12 months from the date of execution of the conditional term sheet, except for the project segments or other milestones associated with a multi-year contingent commitment for a project requiring phased funding. In considering requests for contingent commitments of funds for projects temporarily lacking certain requirements, the DOT will give preference to those project sponsors that demonstrate an ability to satisfy such requirements within the fiscal year in which the conditional term sheet is executed.

Section ____.5(d). One commenter asked for clarification regarding how a multi-year commitment would be affected by a downgrade of an initial rating to a below-investment-grade rating.

DOT Response: A project's conditional term sheet, term sheet, and credit agreement, as applicable, will specify the consequences of any changes in its creditworthiness, including a downgraded credit rating. In general, multi-year commitments between the DOT and the project sponsor will specify that future obligations are conditional on the project sponsor maintaining an investment-grade rating on its senior obligations.

Section ____.5(d). Three commenters suggested clarification of the phrase "satisfactory progress" in the discussion of multi-year contingent commitments of funds. One of these commenters requested an elaboration on the consequences of a project sponsor's failure to achieve "satisfactory progress."

DOT Response: The DOT concurs with the need for specificity when assessing a project's "satisfactory progress." Upon deciding to make a future-year or multi-year contingent commitment of funds for a project, the DOT and the project sponsor will identify precise project-specific milestones or other events to serve as prerequisites for future obligations of funds. These milestones or events will be determined for each project and specified in the conditional term sheet that the DOT and the project sponsor execute when formalizing a future-year or multi-year contingent commitment of funds.

Section ____.7 Application Process

Section ____.7(b). One commenter addressed a number of issues regarding the application checklist included as an appendix to the NPRM. Specific concerns related to: the impracticality of requesting copies of all governmental permits obtained for the project; the number of years for which historical information on the project applicant will be required; and the format of a project schedule, particularly with regard to whether the project's annual increments would be represented as dollars or milestones and how costs for design/build projects would be calculated when there are no base years or annual cost escalations.

DOT Response: The DOT agrees with the commenter regarding the impracticality of requiring applicants to include copies of all permits associated with the relevant project. Therefore, the DOT will request copies of only those permits that represent major milestones on the path to construction and completion either as part of the TIFIA application or as part of the credit agreement, as appropriate.

Regarding the number of years for which historical information will be required from the applicant, the DOT intends to require applicants to provide three years of historical financial information.

Concerning the project schedule, the DOT will require applicants to provide a timeline that illustrates the estimated start and completion dates for each major phase of development and construction and/or acquisition. In addition, applicants will be required to provide a statement of sources and uses of funds and a projection of annual cash flows.

Although design/build projects are typically budgeted as a total amount, the cash flow pro forma should indicate the scheduled payouts. Additionally, the terms or anticipated terms of the design/build contract (including incentive payments or penalty provisions) should be explained.

These clarifications will be reflected in the text of the TIFIA application form, and do not necessitate any changes to the final rule itself.

Section ____.7(b)(1). Four commenters were concerned that the application process for the TIFIA program would require them to produce more permits and approvals than would be feasible at the time of application, especially with respect to environmental documentation. These commenters requested that DOT clarify that certain permits, approvals, and ratings referred to in the threshold and selection criteria do not necessarily have to be obtained at the time of application.

DOT Response: The DOT recognizes the need for distinguishing between the documentation that must accompany the TIFIA application and the documentation that must be produced later in the funding process. For example, it is not necessary for the applicant to obtain an environmental Record of Decision (ROD) prior to the time of application submission; however, at a minimum the DOT will require applicants to have already circulated a draft Environmental Impact Statement or received a Finding of No Significant Impact or Categorical Exclusion, as applicable. The ROD will then be required as a condition for obligation of funds.

As another example, the DOT will not require that applicants submit a formal investment-grade rating on the project's senior obligations at the time of application submission. Instead, the DOT will require that project sponsors provide a preliminary rating opinion letter at that point. However, the DOT shall disburse TIFIA funds only after the project's senior obligations have obtained a formal investment-grade rating and a formal credit agreement has been executed. This rating requirement is clarified in § ____.11 (a) and (b).

The application materials explicitly state what documentation is required at specific points in the process. As noted above, under limited circumstances, the DOT will consider executing a conditional term sheet that reserves budget authority but postpones obligation until the receipt of specified documentation or satisfaction of other requirements.

Section ____.7(d). Several commenters suggested that DOT establish a rolling, rather than annual application and approval process.

DOT Response: The DOT has determined that a rolling application and approval process, which could result in a "first-come, first-served" funding process, would be contrary to the public interest. The DOT's commitment to building the strongest TIFIA portfolio possible requires that the Secretary have the opportunity to compare competing proposals each fiscal year.

The DOT recognizes that some prospective applicants may view an annual application process as unduly restrictive. To build greater flexibility into the application process, the DOT may consider establishing a semi-annual process for accepting and approving applications starting in fiscal year 2000. Such a process might be divided into a primary and secondary round of application submissions. For a given fiscal year, the DOT could accept an initial round of applications early in the year and announce project selections by mid-year. If there were current-year budget authority remaining after this initial round, the DOT could choose to accept a second round of applications later in the year, making any additional project selections before the fiscal year-end. Alternatively, the DOT may elect to carry forward unused budget authority without accepting additional applications in a given year. The exact timing of application submittals and project selections in a given fiscal year will be published in advance in the **Federal Register**.

Section ____.11 Investment-grade ratings

Section ____.11. One commenter suggested that DOT consider extending loan guarantees to non-investment-grade credits.

DOT Response: The TIFIA statute is explicit in stating that DOT's funding of a secured (direct) loan is contingent on the project's senior obligations receiving an investment-grade rating (23 U.S.C. 183(a)(4)) and applies this requirement to loan guarantees as well (23 U.S.C. 183(e)). Accordingly, the DOT will not guarantee loans to any project whose senior obligations fail to attain an underlying investment-grade rating.

Section ____.11. One commenter suggested that the formal rating requirement be waived if the project has bond insurance.

DOT Response: The project sponsor's purchase of bond insurance is relevant to the DOT only if the Federal Government enjoys the same security as do other investors in the project. Neither the preliminary rating opinion letter nor the formal credit rating should reflect the effect of bond insurance, unless that insurance provides credit enhancement that secures the TIFIA obligation as well. This clarification appears at § ____.11(c).

Section ____.11. One commenter requested clarification regarding the term "rating agency." Specifically, the commenter asked if a rating agency must be nationally recognized.

DOT Response: The term "rating agency" is defined to mean "a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization" in § ____.3 (Definitions) of the final rule.

Section ____.13 Threshold Criteria

Section ____.13(a)(1). Two commenters suggested that the DOT require a project's inclusion on a local and/or regional plan as appropriate, but not on a long-range State transportation plan because many States' plans are policy documents that are not project-specific.

DOT Response: In recognition of commenters' concerns regarding the planning requirements for TIFIA projects, the DOT has clarified its interpretation of the TIFIA statutory provisions that address this issue (23 U.S.C. 182(a)(1) and 23 U.S.C. 182(a)(2)). The DOT has revised Section ____.13(a)(1) to require an applicant to demonstrate that its project is consistent with the long-range State transportation plan and, if located in a metropolitan area, is included in that area's metropolitan transportation plan. As stated in the NPRM, any approved project must appear in an approved State transportation improvement program before the DOT will obligate funds on the project's behalf.

Section ____.13(a)(1). One commenter suggested that for a project subject to multi-State jurisdiction, the DOT accept a plan adopted by an agency's Board of Directors rather than require the project to be in a State transportation improvement program.

DOT Response: The TIFIA statute is explicit in requiring that State support for any TIFIA project be evidenced by the project's inclusion in the State transportation improvement program (23 U.S.C. 182(a)(1)(B)). The fact that a project spans multiple jurisdictions or States does not obviate this requirement. In the event of a multi-jurisdictional project, the project must appear on the approved State transportation improvement program for each State involved.

Section ____.13(a)(4). One commenter requested clarification regarding the threshold criterion that requires a pledge of dedicated revenue sources (23 U.S.C. 182(a)(4)). The commenter asked whether the referenced requirement applies to the entirety of the project financing or only to the portion of the project financing deriving from TIFIA credit assistance.

DOT Response: The TIFIA statute states that "project financing shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources," (23 U.S.C. 182(a)(4)). The DOT interprets this to mean that an applicant must pledge a dedicated revenue source, as approved by the Secretary, to repay at least part of the entire project financing. Regarding pledged security for the TIFIA credit instrument, the TIFIA statute is again clear in requiring that at least part, but not necessarily all, of the pledge must derive from an approved dedicated revenue source (23 U.S.C. 183(b)(3) and 23 U.S.C. 183 (c)(3)). Securing the TIFIA credit instrument with dedicated revenue sources, at least in part, would satisfy these statutory requirements.

Section ____.13(a)(5). One commenter suggested that the DOT require private project sponsors to demonstrate State support for the project and prove that they will be given the authority from the State to develop the project for which assistance is being sought. The commenter proposed these requirements in addition to the current requirement that projects be included in the State transportation plan and the approved State transportation improvement program.

DOT Response: The DOT considers any project appearing in an approved State transportation improvement program (23 U.S.C. 135(f)) to have been fully reviewed by the State in question. The DOT considers that a project's appearance in the approved State transportation improvement program and its acquisition of necessary permits demonstrate State support for the project, regardless of whether the project is publicly or privately sponsored.

Section ____.13(c). One commenter suggested that the DOT recognize alternative forms of collateral (e.g., revenues from leases or real estate) as pledged security (dedicated revenue sources).

DOT Response: The DOT agrees that the collateral value of other types of pledged assets (such as lease income) should be explicitly recognized, and may, upon thorough evaluation, be deemed to represent a satisfactory dedicated revenue source for the purposes of administering the TIFIA program. The DOT has clarified its position on acceptable forms of dedicated revenue sources and/or pledged security in the rule. New

language has been added to § ____13(c) to specify that the Secretary will determine the acceptability of contributions of collateral and other proposed pledges on a case-by-case basis.

Section ____.13(c). One commenter suggested that the DOT accept a general obligation as a dedicated revenue source and permit project obligations to be repaid from general revenues as well as dedicated revenue sources.

DOT Response: The DOT agrees that general obligation pledges or general corporate promissory pledges should be explicitly recognized, and may represent a satisfactory dedicated revenue source for the purposes of administering the TIFIA program. The DOT has clarified its position on acceptable forms of dedicated revenue sources and/or pledged security in the rule. New language has been added to § ____.13(c) to specify that general obligation pledges may be acceptable.

Section ____.13(c). Two commenters suggested that the DOT allow limited use of Federal funds to repay TIFIA credit.

DOT Response: Federal funds, regardless of source, are not eligible to serve as pledged security for a TIFIA credit instrument. This position is consistent with both Federal credit policy and Congressional intent that the Federal Government encourage the utilization of project-based revenue sources. Revised regulatory language appearing at § ____.13(c) upholds this policy.

Section ____.*15 Selection Criteria*

Section ____.15(a). One commenter suggested that the DOT clarify how projects will be evaluated and selected.

DOT Response: The TIFIA statute specifies eight criteria by which the Secretary shall evaluate and select qualified projects. The DOT finds these eight mandatory selection criteria to be sufficient, and does not plan to favor certain criteria over others or to establish additional criteria for fiscal year 1999 evaluations and selections. Beginning with fiscal year 2000, and in conjunction with the TIFIA application process, the Secretary will announce specific weighting factors for the statutory selection criteria as well as policy goals for the program. In addition, the Secretary will make publicly available the summary results of each project's evaluation as well as the final project selections.

Section ____.15(a). One commenter suggested that the DOT give priority to projects that improve airport access.

DOT Response: Eligibility for TIFIA assistance extends to all surface transportation projects specified in § ____.3 of this rule, including those that provide airport access. Accordingly, the DOT sees no need for specially recognizing ground transportation systems that seek to improve regional access to airports.

Section ____.15(a)(2). One commenter suggested that a rate covenant is unnecessarily restrictive and that an investment-grade rating should be sufficient to demonstrate a project's creditworthiness.

DOT Response: The TIFIA statute does not require that a rate covenant be provided for proposed TIFIA projects. Rather, the statute notes the need for sufficient pledged security to support the project obligations, and that such security may include a rate covenant, coverage requirement, or other security features (23 U.S.C. 183(b)(3)(iii) and 23 U.S.C. 184 (b)(5)(ii)). The acceptability of pledged security will be determined by the Secretary on a case-by-case basis. There is no need for further clarification in the rule.

Section ____.15(a)(3). One commenter suggested that the DOT modify the language in this paragraph to read: "The extent to which such assistance would foster innovative public-private partnerships [OR] attract private debt or equity investment."

DOT Response: The TIFIA statute is clear in its use of the word "and." Accordingly, the DOT will apply this criterion conjunctively by assessing both the extent to which the project involves a public-private partnership and the extent to which the project is funded with private investment. A project may achieve each of the two objectives in varying degrees.

Section ____.15(a)(3). Two commenters suggested that the DOT recognize local and State government investment in projects when evaluating applications for TIFIA assistance.

DOT Response: The DOT recognizes that the TIFIA program will leverage Federal funds with both private investment and State and local government investment. The DOT will acknowledge all sources of contributed or invested capital when evaluating applications and sees no justification for amending the rule on this issue.

Section ____.15(a)(5). One commenter suggested that the DOT further emphasize technology as an evaluation criterion and that the technology requirement not be limited strictly to intelligent transportation systems (ITS).

DOT Response: The selection criterion related to the applicant's use of new technologies appearing in the TIFIA statute (23 U.S.C. 182(b)(2)(A)(v)) and in § ____.15(a)(5) of the rule, which references ITS, is not intended to be limiting. The DOT's project evaluation will take into account all new technologies being deployed.

Section ____.15(a)(6). Two commenters suggested that the DOT measure the impact of TIFIA financing on a relative basis rather than strictly calculating the absolute amount of budget authority needed or the amount of private investment attracted.

DOT Response: The DOT agrees that the absolute amount of budget authority required to fund a TIFIA credit instrument will not indicate the leveraging effect of the credit assistance as effectively as a relative comparison of the required budget authority and nominal value of credit assistance. The DOT intends to evaluate projects on the basis of ratios as opposed to absolute amounts wherever appropriate. The DOT believes that this approach is consistent with the language in § ____.15(a)(6) and does not necessitate any change to the rule.

Section ____.15(d). Two commenters requested that the DOT clarify what is meant by a "small" Federal contribution. Additionally, the commenters suggested that the DOT refrain from placing any limits on the level of Federal contribution for those projects receiving TIFIA assistance.

DOT Response: The DOT's assessment of total Federal contributions is intended to support selection criteria three and eight as specified in the TIFIA statute (23 U.S.C. 182(b)(2)(A)(iii and viii)) and the rule (§ ____.15(a)(3 and 8)). The DOT will implement these criteria through a relative evaluation of the total Federal contribution as a share of total project costs, and in considering criterion eight will give preference to projects for which total Federal assistance would be reduced due to the use of the TIFIA credit instrument. The DOT has revised the rule in § ____.15(d) to reflect the Federal Government's interest in the relative reduction in Federal assistance rather than a "small" contribution as measured in absolute terms.

Section ____.*17 Charges*

Section ____.17(c). Two commenters suggested placing limits on the amount of any application initiation charges or credit processing charges. Allowing the DOT to increase the application initiation or credit processing charges up to the full cost of the Federal subsidy seemed unreasonable and could potentially result in lower-risk projects "subsidizing" higher-risk projects.

DOT Response: The DOT has clarified its position on various charges relating to the TIFIA program. The DOT will

require a non-refundable application initiation charge for each project applying for TIFIA assistance. The DOT may also require an additional credit processing charge for projects selected to receive assistance. Any required application initiation or credit processing charge must be paid by the project sponsor applying for the TIFIA assistance and cannot be paid by another party on behalf of the project sponsor. The proceeds of any such charges will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For fiscal year 1999, the DOT will require an application initiation charge of $5,000 for each project applying for TIFIA assistance. The DOT will not require any credit processing charges for fiscal year 1999. For each application and approval cycle in fiscal year 2000 and beyond, the DOT may adjust the amount of the application initiation charge and will determine the appropriate amount of the credit processing charge on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive TIFIA assistance, the DOT and the approved applicant may agree upon a supplemental charge to be paid by or on behalf of the approved applicant to reduce the subsidy cost of that project.

Project sponsors shall not include any of these fees or charges among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

Sections ____.17(a), ____.17(b), and ____.17(c) have been revised to reflect these clarifications regarding charges.

General Comments

One commenter suggested that the TIFIA regulations be amended to clarify that a project sponsor may draw on a line of credit before drawing on its debt service reserve fund.

DOT Response: Section 184(b)(3) of title 23 provides that the obligor may draw upon the line of credit only if net project revenues (including, among other sources, any debt service reserve fund) are insufficient to pay costs specified in 23 U.S.C. 184(a)(2). These costs include debt service costs. The DOT interprets debt service costs to include both direct payments of principal and interest as well as reimbursements for such payments in the form of legally required deposits to a debt service reserve fund. Nothing would prohibit a credit agreement for a line of credit from allowing immediate reimbursements to a debt service reserve fund in the event of withdrawals from such a fund. This clarification appears at ____.5(e).

One commenter suggested that the 20 percent limitation on annual draws on a line of credit should be adjusted to reflect the amount's future value for the year in which the draw may be made, as opposed to the present value for the year in which the line of credit is executed.

DOT Response: The TIFIA statute is explicit in stating that the total amount of a line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs (23 U.S.C. 184(b)(2)(A)), and that the amount drawn in any one year shall not exceed 20 percent of the total amount of the line of credit (23 U.S.C. 184(b)(2)(B)). Also, the DOT has determined that eligible project costs will be measured on an aggregate cash basis (i.e., year-of-expenditure dollars) through the end of the construction period (without any discounting or inflating of nominal amounts). It would be both contrary to statute and internally inconsistent to inflate future-year amounts for the draws on a line of credit.

One commenter suggested that the DOT consider the possibility of purchasing the loans it has guaranteed.

DOT Response: While the TIFIA statute explicitly authorizes the DOT to sell direct loans (23 U.S.C. 183(d)), the statute does not provide similar language that would authorize the DOT to purchase guaranteed loans. Moreover, the policy of the DOT acquiring loans it has guaranteed would be contrary to the program's goal of supporting the private sector's ability to accurately assess the risk of revenue-backed surface transportation projects. Other than instances involving the assignment of guaranteed loans due to default, the DOT will not consider the acquisition of guaranteed loans.

Several commenters requested clarification of the statements in the NPRM regarding the provisions of section 149(b) of the Internal Revenue Code (the "Code") that deny tax-exempt status to obligations that are directly or indirectly federally guaranteed within the meaning of the Code. Two commenters asked whether interest on otherwise tax-exempt bonds used to finance a TIFIA-assisted project would be deemed taxable as a consequence of Federal assistance to the project under the TIFIA program.

DOT Response: The Conference Report for TIFIA contains the following statements: "The Conference recognizes that the Congress enacted the Deficit Reduction Act of 1984 provision prohibiting the combination of Federal guarantees with tax-exempt debt, because of concerns that such a double-subsidy could result in the creation of a 'AAA' rated security superior to U.S. Treasury obligations. Accordingly, any project loan backed by a loan guarantee as provided in TIFIA must be issued on a taxable basis." And, "The Conferees are aware that present Federal income tax law prohibits the use of direct or indirect Federal guarantees in combination with tax-exempt debt (section 149(b) of the Internal Revenue Code of 1986). The TIFIA provisions of the conference agreement do not override or otherwise modify this provision of the Code."

The Internal Revenue Service and the Department of the Treasury, rather than the DOT, are responsible for the interpretation of the Federal tax laws, including Federal guarantee provisions. Applicants intending to use tax-exempt bonds in connection with TIFIA loans or lines of credit should consult with the Internal Revenue Service, the Department of the Treasury, or their bond counsel. The DOT will be available to provide applicants with assistance on the interpretation of the non-tax legal and financial provisions of TIFIA.

One commenter suggested that since mass transit capital projects are eligible for TIFIA credit assistance, the Mass Transit Account of the Highway Trust Fund should fund the subsidy costs of TIFIA credit instruments provided for such projects.

DOT Response: The TIFIA statute explicitly authorizes that funding will be provided from the Highway Trust Fund other than the Mass Transit Account (23 U.S.C. 188(a)(1)).

One commenter requested that DOT clarify how long TIFIA funds are available and whether funds carry over to future years.

DOT Response: As specified in the preamble of the NPRM, the TIFIA authorizes annual funding levels for both total credit amounts (i.e., the total principal amounts that may be disbursed in the form of direct loans, loan guarantees, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund, other than the Mass Transit Account. As a practical

example, for fiscal year 1999, the TIFIA authorizes $80 million in budget authority to fund the subsidy costs associated with a total nominal amount of direct loans, loan guarantees, and lines of credit that is limited to $1.6 billion. Depending on the individual risk assessments made for each of the projects receiving assistance, the total amount of credit assistance provided in fiscal year 1999 may be less than the $1.6 billion limitation.

Total Federal credit assistance authorized under the TIFIA program is limited to $1.6 billion in fiscal year 1999; $1.8 billion in fiscal year 2000; $2.2 billion in fiscal year 2001; $2.4 billion in fiscal year 2002; and $2.6 billion in fiscal year 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support this assistance by funding the required subsidy amounts, the TIFIA provides budget authority of $80 million in fiscal year 1999; $90 million in fiscal year 2000; $110 million in fiscal year 2001; $120 million in fiscal year 2002; and $130 million in fiscal year 2003. Of the amounts made available, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Unobligated budget authority remains available for obligation in subsequent years.

Note that TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid obligation ceiling, the TIFIA budget authority likely will be reduced each year before it is made available to fund credit instruments. The extent of any budget authority reduction will depend on the ratio of the obligation ceiling, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. For fiscal year 1999, this reduction was 11.7 percent, which left about $70.6 million of TIFIA budget authority instead of the $80 million originally authorized under TEA–21. Future annual reductions of like amount would result in a cumulative amount of budget authority available to fund TIFIA credit instruments of about $470 million through fiscal year 2003 instead of the $530 million originally authorized under TEA–21. The TIFIA credit amounts authorized under TEA–21 are not subject to this annual reduction.

One commenter suggested that the DOT clarify its position in regard to the Federal Government's "parity" claim in the event of bankruptcy.

DOT Response: The statute permits the DOT to have a lien on revenues subject to any lien securing project obligations (see 23 U.S.C. 183(b)(3)(B) and 184(b)(5)(B)), but TIFIA also requires that the secured loan, loan guarantee, or line of credit "shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor" (see 23 U.S.C. 183(b)(6) and 184(b)(8)). The credit agreement will specify the DOT's interest in the pledged security consistent with these provisions of law and in relation to the interests of any other creditors.

Rule Document Format

In the NPRM, the DOT proposed a common rule that would have been issued by FHWA, FRA, and FTA and repeated verbatim in each of the three Operating Administration's chapters of the Code of Federal Regulations (CFR). After reconsideration, the Secretary of Transportation is issuing the final rule once in a new CFR part (49 CFR Part 80). For clarity, three brief cross-references to the final rule are being added to each of the three Operating Administration's rules. The cross-references are found in 23 CFR Part 180 for FHWA, 49 CFR Part 261 for FRA, and 49 CFR Part 640 for FTA. These cross-references will enable members of the public who are familiar with only one of the Operating Administrations to have a simple way of locating the final rule.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

DOT has determined that issuance of a rule is necessary to implement TIFIA, and has concluded that this action represents a "significant regulatory action" within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866. This determination is based on a finding that the rule may have an annual effect on the economy of $100 million or more. This rule was reviewed by the Office of Management and Budget under E.O. 12866.

This section summarizes the estimated economic impact of this rule. This regulation would affect only those entities that voluntarily elected to apply for TIFIA assistance and were selected to receive a Federal credit instrument. It would not impose any direct costs on non-participants.

The DOT has evaluated the economic impact of this regulatory action. However, because the number, nature, and size of projects to be assisted will not be known until specific project applicants come forward, this analysis is by necessity an estimate. Congress recognized this by including a provision in TIFIA (23 U.S.C. 189) requiring the Secretary to submit a report summarizing the effectiveness of the program within four years of the date of enactment of the legislation (June 9, 2002).

DOT and industry research has indicated that there are substantial economic productivity gains to be derived from capital investment in surface transportation facilities. One study estimates that in the four-decade period from 1950 to 1989, U.S. firms realized annual production cost savings of 18 percent from general highway investment (yearly return of 18 cents per dollar invested in all roads) and 24 percent from investment in non-local roads.[1] In addition to these direct returns, transportation capital investment typically generates significant spillover benefits, which may be of a non-financial nature, such as reduced pollution, increased safety, improved international competitiveness, and enhanced accessibility.

Just as transportation investment produces benefits, failure to invest results in cost increases. Another recent study estimates that congestion costs the average U.S. citizen $370 annually, in terms of time lost and fuel wasted.[2] These costs are expected to increase as growing investment needs—both in terms of system renewal and capacity expansion—and limited availability of public funding contribute to declining performance.

There has been dramatic growth in both freight movement and passenger travel in recent years, which is expected to continue. For example, since 1980, total ton-miles and intercity passenger miles have grown by 30 percent and 60 percent, respectively, according to a recent study by the American Association of State Highway and Transportation Officials.

Despite substantial increases in authorized Federal funding levels for surface transportation under the Transportation Equity Act for the 21st Century, current resources from all levels of government are not expected to be able to keep pace with maintenance and preservation needs, let alone the additional demands resulting from

[1] Contribution of Highway Capital to Industry and National Productivity Growth—Executive Summary, Ishaq Nadirir, New York, FHWA, 1996.

[2] Measuring and Monitoring Urban Mobility, Texas Transportation Institute, November 1996.

growth in population and goods movement. Funding shortfalls can be particularly acute for large infrastructure projects (costing $100 million or more) which, due to their scale, often cannot be readily accommodated in ongoing State and local capital renewal programs.

The economic drag created by under-investment in the nation's transportation network is substantial, as shippers and motorists incur increased vehicle maintenance and fuel costs, shipping delays, safety hazards, and time delays associated with congestion and poorly maintained roads.

The TIFIA was established to provide fractional credit assistance to major transportation infrastructure projects—such as border crossings, trade corridors, and intermodal transfer facilities—that have the potential of generating substantial economic benefits both regionally and nationally. In many cases, such projects are capable of being supported through direct user charges or dedicated revenue streams that can be used to access private capital and other non-Federal funding sources. The TIFIA is designed to fill market gaps through providing supplemental and/or subordinate capital to such projects. It should facilitate their ability to access the capital markets or other financing sources for the majority of their funding needs. Through the TIFIA program's leverage of limited Federal funds with private capital, these capital-intensive projects can be advanced without displacing smaller, more traditional grant-supported projects. Federal risk exposure should be mitigated by substantial co-investment from non-Federal parties and the use of objective, market-based credit evaluation criteria.

The TIFIA is authorized to receive $530 million of budget authority to support up to $10.6 billion in nominal amounts of credit (or such lesser amounts of credit as can be supported by the budget authority). Under the terms of the legislation, the Federal share is limited to not more than 33 percent of total eligible project costs. In many cases, the actual share of TIFIA assistance may be considerably less. For example, prior to passage of the TIFIA, three major surface transportation projects in southern California obtained Federal credit instruments pursuant to special appropriations from Congress. Between 1993 and 1996, the Congress approved a $120 million standby Federal line of credit for the San Joaquin Hills Toll Road; two standby lines of credit totaling $145 million for the Foothill-Eastern Toll Road; and a $400 million direct Federal loan for the Alameda Corridor project. Each of these projects would have met the threshold eligibility criteria under the terms of the TIFIA program. The Federal credit assistance as a percent of total project costs for these three investments is approximately 8.5 percent, 11.5 percent, and 17.5 percent, respectively.

Under the Federal Credit Reform Act of 1990 (FCRA), the amount of budget authority necessary to support a Federal credit instrument depends upon the subsidy cost (i.e., the estimated present value cost of estimated losses that will be incurred as a result of defaults, net of any fee income). Each project will be assigned a subsidy cost based upon an evaluation of its creditworthiness.

Since the actual projects participating in the TIFIA program have yet to be identified, it is not possible at this stage to ascertain the appropriate subsidy amounts. If, for example, the assumed average subsidy rate under TIFIA were 10 percent, the $530 million of budget authority could support $5.3 billion in nominal amount of Federal credit instruments, and (assuming a 33 percent TIFIA share of project costs) an aggregate of $15.9 billion in capital investment. This would represent a benefit:cost ratio (total capital investment compared to federal budgetary cost) of 30:1. If the subsidy rate averaged 5 percent, the budget authority could support $31.8 billion in aggregate investment; and if the subsidy rate averaged 15 percent, the budget authority could support approximately $10.6 billion in aggregate investment. The only costs imposed on the participants are the repayment of credit at the U.S. Treasury rate (which in certain instances may be significantly less than their own marginal cost of capital), a credit processing charge, and an application charge based upon direct costs incurred by the DOT in processing applications.

On this basis, the DOT has concluded that the TIFIA will promote the efficient functioning of project delivery and the private markets, and will generate both direct and indirect benefits, including reduced congestion, greater mobility, improved safety, an enhanced environment, and greater economic growth. These benefits are anticipated to far surpass the combined direct costs to the Federal Government ($530 million) and to the entities that elect to participate in the program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires an assessment of the extent to which rules will have an impact on small business or other small entities. Consistent with the Regulatory Flexibility Act, the DOT has evaluated the effects of this rule on small business or other small entities. This rule implements a Federal credit assistance program for surface transportation projects. There will be a substantial economic impact on the projects funded. However, the DOT anticipates that few, if any, of the applicants for assistance, will be small entities. Applicants are likely to be States and large public, or quasi-public entities. Based on that evaluation, the DOT hereby certifies that this action will not have significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The rule simply implements a Federal credit assistance program.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The DOT has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The bases for this determination are that: (a) eligibility for assistance under this program extends to both private and public entities; and (b) the recipients of credit under this voluntary program will receive a benefit, rather than incur costs, through participation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). Based upon preliminary assessments, research reports, meetings

with focus groups, and discussions with potential respondents, the DOT anticipates approximately six respondents to the application annually. If in the future, the DOT anticipates ten or more respondents annually, immediate steps will be taken to seek approval from OMB for an information collection, as required under the Paperwork Reduction Act.

National Environmental Policy Act

As specified under section 1503 of TIFIA, and codified under section 182(c)(2) of title 23, U.S.C., each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). This final rule simply provides the procedure to apply for credit assistance; therefore, by itself, this rule will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 180

Credit programs-transportation, Highways and roads, Investments.

49 CFR Part 80

Credit programs-transportation, Highways and roads, Investments, Mass transit, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 261

Credit programs-transportation, Investments, Railroads.

49 CFR Part 640

Credit programs-transportation, Investments, Mass transit.

Federal Highway Administration

23 CFR Chapter I

For the reasons set forth in the preamble, the Federal Highway Administration amends chapter I, title 23, Code of Federal Regulations, as follows:

1. Add Part 180 to read as follows:

PART 180—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
180.1 Cross-reference to credit assistance.

Authority: secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.48.

§ 180.1 Cross-reference to credit assistance.

The regulations in 49 CFR Part 80 shall be followed in complying with the requirements of this part. Title 49 CFR Part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241.

Dated: May 25, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Office of the Secretary of Transportation

49 CFR Part 80

For the reasons set forth in the preamble, the Office of the Secretary of Transportation amends title 49, Code of Federal Regulations, subtitle 4 as follows:

2. Add Part 80, to read as follows:

PART 80—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
80.1 Purpose.
80.3 Definitions.
80.5 Limitations on assistance.
80.7 Application process.
80.9 Federal requirements.
80.11 Investment-grade ratings.
80.13 Threshold criteria.
80.15 Selection criteria.
80.17 Charges.
80.19 Reporting requirements.

Authority: secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.48, 1.49, and 1.51.

§ 80.1 Purpose.

This part implements a Federal credit assistance program for surface transportation projects.

§ 80.3 Definitions.

The following definitions apply to this part:

Conditional term sheet means a contractual agreement between the U.S. Department of Transportation (DOT) and the project sponsor (and the lender, if applicable) by which the DOT reserves TIFIA funding for a specific project and commits to providing Federal credit assistance to that project at a future point in time upon satisfaction of specified conditions and subject to the future availability of obligation authority. The DOT will not legally obligate budget authority until those conditions are met. Upon satisfaction of those conditions, the conditional term sheet can be amended and/or restated to trigger an obligation of funds.

Credit agreement means a contractual agreement between the DOT and the project sponsor (and the lender, if applicable) that formalizes the terms and conditions established in the term sheet (or conditional term sheet) and authorizes the execution of a secured loan, loan guarantee, or line of credit.

Eligible project costs mean amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of:

(1) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;

(2) Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(3) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

Federal credit instrument means a secured loan, loan guarantee, or line of credit authorized to be made available under this subchapter with respect to a project.

Investment-grade rating means a rating category of BBB minus, Baa3, or higher assigned by a rating agency to project obligations offered into the capital markets.

Lender means any non-Federal qualified institutional buyer (as defined in 17 CFR 230.144A(a)), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), including:

(1) A qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986, 26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(2) A governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986, 26 U.S.C. 414(d)) that is a qualified institutional buyer.

Line of credit means an agreement entered into by the Secretary with an obligor under section 184 of title 23 to provide a direct loan at a future date upon the occurrence of certain events.

Loan guarantee means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt

obligation issued by an obligor and funded by a lender.

Local servicer means:

(1) A State infrastructure bank established under title 23; or

(2) A State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.

Obligor means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

Project means:

(1) Any surface transportation project eligible for Federal assistance under title 23 or chapter 53 of title 49;

(2) A project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

(3) A project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation, and components of magnetic levitation transportation systems; and

(4) A project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.

Project obligation means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

Project sponsor, for the purposes of this part, means an applicant for TIFIA assistance or an obligor, as appropriate.

Rating agency means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

Secured loan means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 183 of title 23.

State means any one of the fifty states, the District of Columbia, or Puerto Rico.

Subsidy amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*).

Substantial completion means the opening of a project to vehicular or passenger traffic or a comparable event as determined by the Secretary and specified in the credit agreement.

Term sheet means a contractual agreement between the DOT and the project sponsor (and the lender, if applicable) that sets forth the key business terms and conditions of a Federal credit instrument. Execution of this document represents a legal obligation of budget authority.

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998, Pub. L. 105–178, 112 Stat. 107, 241 (1998).

§ 80.5 Limitations on assistance.

(a) The total amount of credit assistance offered to any project under this part shall not exceed 33 percent of the anticipated eligible project costs, as measured on an aggregate cash (year-of-expenditure) basis.

(b) Costs incurred prior to a project sponsor's submission of an application for credit assistance may be considered in calculating eligible project costs only upon approval of the Secretary. In addition, applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among the eligible project costs.

(c) No costs financed internally or with interim funding may be refinanced under this part later than a year following substantial completion of the project.

(d)(1) Within the overall credit assistance limitation of 33 percent of eligible project costs, the Secretary may consider making future-year or multi-year contingent commitments of budget authority and associated credit assistance for projects temporarily lacking certain requirements or with extended construction periods and financing needs. The TIFIA's effectiveness in stimulating private investment in transportation infrastructure depends, in large part, on investor recognition that TIFIA credit instruments represent solid and reliable Federal commitments. Therefore, the Secretary shall make any future-year or multi-year contingent commitment of funds for a project using a conditional term sheet. The conditional term sheet will resemble the standard term sheet that enables the obligation of budget authority, but will also specify the additional actions necessary to trigger subsequent obligation(s). The conditional term sheet will include fixed dates by which any requirements must be met in order for the reserved funding to be obligated.

(2) Upon execution of the conditional term sheet, the Secretary shall reserve budget authority attributable to the appropriate year(s). This reservation will ensure that a project with a conditional commitment will have a priority claim (along with that of any other projects receiving such contingent commitments) on budget authority becoming available in the specified year(s), provided that the project sponsor satisfies each condition outlined in the conditional term sheet. The Secretary will limit such reservations to not more than 50 percent of the budget authority becoming available in the applicable year(s). If a multi-year contingent commitment is made, each year's loan will be tied to distinct, clearly identified project segments or stages or other milestones as specified in the credit agreement.

(e) The obligor may draw upon the line of credit only if net project revenues (including, among other sources, any debt service reserve fund) are insufficient to pay costs specified in 23 U.S.C. 184(a)(2) under the line of credit, including debt service costs. Debt service costs include direct payments of principal and interest as well as reimbursements for such payments in the form of legally required deposits to a debt service reserve fund.

(f) The Secretary shall not obligate funds in favor of a project that has not received an environmental Categorical Exclusion, Finding of No Significant Impact, or Record of Decision.

§ 80.7 Application process.

(a) Public and private applicants for credit assistance under this part will be required to submit applications to the DOT in order to be considered for approval by the Secretary.

(b) At a minimum, such applications shall provide:

(1) Documentation sufficient to demonstrate that the project satisfies each of the threshold criteria in § 80.13 and describe the extent to which the project satisfies each of the selection criteria in § 80.15;

(2) Background information on the project for which assistance is sought, such as the project's description, status of environmental and other major governmental permits and approvals, and construction schedule;

(3) Background information on the applicant (project sponsor);

(4) Historical information, if applicable, concerning the applicant's financial condition, including, for

example, independently audited financial statements and certifications concerning bankruptcies or delinquencies on other debt; and

(5) Current financial information concerning both the project and the applicant, such as sources and uses of funds for the project and a forecast of cash flows available to service all debt instruments.

(c) An application for a project located in or sponsored by more than one State or other entity shall be submitted to the DOT by just one State or entity. The sponsoring States or entities shall designate a single obligor for purposes of applying for, receiving, and repaying TIFIA credit assistance.

(d) Each fiscal year for which Federal assistance is available under this part, the DOT shall publish a **Federal Register** notice to solicit applications for credit assistance. Such notice will specify the relevant due dates, the estimated amount of funding available to support TIFIA credit instruments for the current and future fiscal years, contact name(s), and other details for that year's application submissions and funding approvals.

§ 80.9 Federal requirements.

All projects receiving credit assistance under this part shall comply with:

(a) The relevant requirements of title 23, U.S.C., for highway projects, chapter 53 of title 49, U.S.C., for transit projects, and section 5333(a) of title 49 for rail projects, as appropriate;

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*);

(c) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(d) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*); and

(e) Other Federal and compliance requirements as may be applicable.

§ 80.11 Investment-grade ratings.

(a) At the time a project sponsor submits an application, the DOT shall require a preliminary rating opinion letter. This letter is a conditional credit assessment from a rating agency that provides a preliminary indication of the project's overall creditworthiness and that specifically addresses the potential of the project's senior debt obligations to achieve an investment-grade rating. However, the DOT shall disburse funds under a secured (direct) loan or line of credit or extend a loan guarantee only after a formal credit agreement has been executed and the project's senior obligations have obtained a formal investment-grade rating.

(b) The full funding of a secured (direct) loan, loan guarantee, or line of credit shall be contingent on the assignment of an investment-grade rating by a nationally recognized bond rating agency to all project obligations that have a lien senior to that of the Federal credit instrument on the pledged security.

(c) Neither the preliminary rating opinion letter nor the formal credit rating should reflect the effect of bond insurance, unless that insurance provides credit enhancement that secures the TIFIA obligation.

§ 80.13 Threshold criteria.

(a) To be eligible to receive Federal credit assistance under this part, a project shall meet the following five threshold criteria:

(1) The project shall be consistent with the State transportation plan, if located in a metropolitan area shall be included in that area's metropolitan transportation plan, and shall appear in an approved State transportation improvement program before the DOT and the project sponsor execute a term sheet or credit agreement that results in the obligation of funds;

(2) The State, local servicer, or other entity undertaking the project shall submit a project application to the Secretary of Transportation;

(3) A project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State in which the project is located (in the case of a project principally involving the installation of Intelligent Transportation Systems (ITS), eligible project costs shall be reasonably anticipated to equal or exceed $30 million);

(4) Project financing shall be repayable, in whole or in part, from tolls, user fees or other dedicated revenue sources; and

(5) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be included in the State transportation plan and an approved State Transportation Improvement Program as provided in paragraph (a)(1) of this section.

(b) With respect to paragraph (a)(3) of this section, for a project located in more than one State, the minimum cost threshold size shall be the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the participating State that receives the least amount of such funds.

(c) With respect to paragraph (a)(4) of this section, the Secretary may accept general obligation pledges or general corporate promissory pledges and will determine the acceptability of other pledges and forms of collateral as dedicated revenue sources on a case-by-case basis. The Secretary shall not accept a pledge of Federal funds, regardless of source, as security for the TIFIA credit instrument.

§ 80.15 Selection criteria.

(a) The Secretary shall consider the following eight criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system;

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment;

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment;

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed;

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhance the efficiency of the project;

(6) The amount of budget authority required to fund the Federal credit instrument made available;

(7) The extent to which the project helps maintain or protect the environment; and

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project.

(b) In addition, 23 U.S.C. 182(b)(2)(B) conditions a project's approval for credit assistance on receipt of a preliminary rating opinion letter indicating that the project's senior debt obligations have the potential to attain an investment-grade rating.

(c) The Secretary shall evaluate each project's distinct public benefits and contribution to program goals according to each of the selection criteria specified in this section.

(d) In considering the selection criterion in paragraph (a)(8) of this section, the Secretary will give

preference to projects for which the applicant's use of TIFIA credit assistance would reduce the applicant's degree of reliance on Federal grant assistance.

(e) The Secretary may also give preference to applications for loan guarantees rather than other forms of Federal credit assistance. This preference is consistent with Federal policy that, when Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*), deeper than can be provided by a loan guarantee.

§ 80.17 Charges.

(a) The DOT will require a non-refundable application initiation charge for each project applying for credit assistance under TIFIA. The DOT may also require an additional credit processing charge for projects selected to receive assistance. Any required application initiation or credit processing charge must be paid by the project sponsor applying for TIFIA assistance and cannot be paid by another party on behalf of the project sponsor. The proceeds of any such charges will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For fiscal year 1999, the DOT will require an application initiation charge of $5,000 for each project applying for credit assistance under TIFIA. The DOT will not require any credit processing charges for fiscal year 1999. For each application and approval cycle in fiscal year 2000 and beyond, the DOT may adjust the amount of the application initiation charge and will determine the appropriate amount of the credit processing charge on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

(b) Applicants shall not include application initiation or credit processing charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental charge to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such charge may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

§ 80.19 Reporting requirements.

At a minimum, any recipient of Federal credit under this part shall submit an annual project performance report and audited financial statements to the DOT within 120 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the Secretary. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

Issued in Washington, DC on May 25, 1999.

Rodney E. Slater,

Secretary, U.S. Department of Transportation.

FEDERAL RAILROAD ADMINISTRATION

49 CFR Chapter II

For the reasons set forth in the preamble, the Federal Railroad Administration amends chapter II, title 49, Code of Federal Regulations, as follows:

3. Add Part 261 to read as follows:

PART 261—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
261.1 Cross-reference to credit assistance.

Authority: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.49.

§ 261.1 Cross-reference to credit assistance.

The regulations in 49 CFR Part 80 shall be followed in complying with the requirements of this part. Title 49, CFR, Part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241.

Dated: May 25, 1999.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

FEDERAL TRANSIT ADMINISTRATION

49 CFR Chapter VI

For the reasons set forth in the preamble, the Federal Transit Administration amends chapter VI, title 49, Code of Federal Regulations, as follows:

4. Add Part 640 to read as follows:

PART 640—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
640.1 Cross-reference to credit assistance.

Authority: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.51.

§ 640.1 Cross-reference to credit assistance.

The regulations in 49 CFR Part 80 shall be followed in complying with the requirements of this part. Title 49, CFR, Part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241.

Dated: May 25, 1999.

Gordon J. Linton,

Administrator, Federal Transit Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

Office of the Secretary

Fiscal Year 1999 Applications for TIFIA Credit Assistance

AGENCIES: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA, as amended by section 9007, Pub. L. 105–206, 112 Stat. 685, 849 and codified at 23 U.S.C. 181–189, authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The TIFIA rule (49 CFR Part 80) provides specific guidance on the program requirements. Additionally, the DOT will make available a TIFIA program guide for more general information. Funding for this program is limited, and projects obtaining assistance will be evaluated and selected by the DOT on a competitive basis. Following selections, individual credit agreements will be developed through negotiations between the project sponsors and the DOT. The DOT has available $70,640,000 in budget authority in fiscal year 1999 to cover the subsidy costs of up to $1.6 billion in Federal credit assistance.

DEADLINES AND SUBMISSIONS: For consideration in the fiscal year 1999 funding cycle, letters of interest must be submitted by 4:30 p.m. EDT on June 23, 1999. Formal applications may be submitted at any time after July 7, 1999. The deadline for receipt of the formal application (20 copies plus original) and the non-refundable $5,000 application initiation charge is 4:30 p.m. EDT on August 2, 1999. Applications received in the offices of the DOT after that date and time will not be considered. Applications sent to the DOT electronically or by facsimile will not be accepted. Both the letters of interest and completed applications should be submitted to the attention of Ms. Stephanie Kaufman, Office of Budget and Program Performance, Department of Transportation, Room 10105, B–10, 400 Seventh Street, SW., Washington D.C., 20590.

FOR FURTHER INFORMATION CONTACT: FHWA: Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; FRA: Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; FTA: Mr. Paul Marx, Office of Policy Development, (202) 366–1734; OST: Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; Department of Transportation, 400 Seventh Street, SW., Washington, D.C., 20590. Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1–800–877–8339. Additional information, including the TIFIA program guide and application materials, can be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov.

SUPPLEMENTARY INFORMATION:

Program Funding and Limitations on Assistance

The TIFIA provides annual funding levels for both total credit amounts (i.e., the total principal amounts that may be disbursed in the form of direct loans, guaranteed loans, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund (other than the Mass Transit Account). For fiscal year 1999, the TIFIA authorizes $80 million in budget authority to fund the subsidy costs associated with a total nominal amount of direct loans, loan guarantees, and lines of credit that is limited to $1.6 billion. Depending on the individual risk assessments made for each of the projects receiving assistance, the total amount of credit assistance provided in fiscal year 1999 may be less than the $1.6 billion limitation.

Total Federal credit assistance authorized for the TIFIA program is limited to $1.6 billion in fiscal year 1999; $1.8 billion in fiscal year 2000; $2.2 billion in fiscal year 2001; $2.4 billion in fiscal year 2002; and $2.6 billion in fiscal year 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support this assistance by funding the required subsidy amounts, the TIFIA provides budget authority of $80 million in fiscal year 1999; $90 million in fiscal year 2000; $110 million in fiscal year 2001; $120 million in fiscal year 2002; and $130 million in fiscal year 2003. Of these amounts, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid obligation ceiling, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation ceiling, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. For fiscal year 1999, this reduction was 11.7 percent, which left $70,640,000 in TIFIA budget authority instead of the $80 million originally authorized. Future annual reductions of like amount would result in a cumulative amount of budget authority available in fiscal years 1999 through 2003 to fund TIFIA subsidy costs of about $470 million instead of the $530 million originally authorized. The credit amounts authorized in TIFIA are not subject to this annual reduction.

The amount of credit assistance that may be provided to a project under TIFIA is limited to not more than 33 percent of eligible project costs.

Types of Credit Assistance Available

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

Eligible Projects

Highway, rail, transit, and "intermodal" projects may receive credit assistance under the TIFIA. See the definition of "project" in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

Threshold Criteria

Certain threshold criteria must be met by projects seeking TIFIA assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Application and Selection Process

Each applicant for TIFIA assistance will be required to submit a letter of interest and a formal application to the DOT in order to be considered for approval. The DOT anticipates that there will be fewer than ten applicants annually. The following describes the application process:

1. *Letter of Interest.* Initially, any applicant seeking assistance in fiscal year 1999 must submit a brief letter of interest to the DOT by June 23, 1999. The letter of interest should include a brief project description (including its purpose, basic design features, and estimated capital cost), basic information about the proposed financing for the project (including a summary of sources and uses of funds and the type and amount of credit assistance requested from the DOT), and a description of the proposed project participants. The letter of interest should not exceed five pages. A multi-agency DOT Credit Program Working Group will review this preliminary submission to ensure that the project meets the most basic requirements for participation in the TIFIA program. The Working Group will then designate a lead modal agency (FHWA, FRA, or FTA) for the project.

2. *Formal Application.* Once approved for further review, the applicant will be notified by a representative from the designated modal agency of its eligibility to submit a formal application. The applicant must submit all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application) to the DOT by August 2, 1999. The TIFIA application and additional program information may be obtained from the TIFIA web site at *http://tifia.fhwa.dot.gov* or through one of the program contacts listed in this notice.

3. *Sponsor Presentation.* Each applicant that passes an initial screening of the formal application for completeness and satisfaction of the eligibility threshold criteria will be invited to make an oral presentation to the DOT on behalf of its project. The DOT plans to schedule presentations within two weeks of the application deadline, and will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. *Project Selection.* Based on the formal application and oral presentation, the DOT shall evaluate each project's distinct public benefits and contribution to program goals according to each of the selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15. The Secretary of Transportation plans to make final selections of projects within four to six weeks of the application deadline.

Charges

For fiscal year 1999, the DOT will require each TIFIA applicant to pay an application initiation charge of $5,000. The project sponsor applying for TIFIA assistance must submit this payment by the application deadline August 2, 1999. There will be no credit processing charge for the fiscal year 1999 application and approval cycle. For each application and approval cycle in fiscal year 2000 and beyond, the DOT may adjust the amount of the application initiation charge and will determine the appropriate amount of the credit processing charge (established to equal a portion of the costs to the DOT of evaluating applications, selecting projects to receive assistance, and negotiating credit agreements) on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

Applicants shall not include application initiation or credit processing charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

If there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental charge to be paid by or on behalf of the approved applicant at the time of execution of a term sheet to reduce the subsidy cost of that project. No such charge may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

Dated: May 25, 1999.

Rodney E. Slater,

Secretary, Department of Transportation.

[FR Doc. 99–13785 Filed 6–1–99; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 203

Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4411–F–02]

RIN 2502–AH30

Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a recent statutory amendment to HUD's Federal Housing Administration (FHA) Single Family Mortgage Insurance Program. The statutory amendment requires an original lender to provide certain information, in the form of a disclosure notice, to prospective borrowers who have applied for an FHA-insured home mortgage; and that HUD develop this disclosure notice. Specifically, through the disclosure notice, the lender must provide the prospective FHA borrower with an analysis comparing the mortgage costs of the FHA-insured mortgage with the mortgage costs of other similar conventional mortgage products that the lender offers and that the borrower may qualify for. The disclosure notice must also provide information about when the requirement to pay FHA mortgage insurance premiums terminates. This final rule takes into consideration public comment received on the February 16, 1999 proposed rule.

DATES: Effective Date: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9270, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background on the Informed Consumer Choice Disclosure Requirement

HUD's February 16, 1999 proposed rule (64 FR 7726) advised the public of our proposal to amend the Federal Housing Administration (FHA) Single Family Mortgage Insurance Program regulations to require lenders to disclose, through a notice, certain consumer information to prospective FHA borrowers. Because a number of comments received on the proposed rule indicated some misunderstanding about the reasons for this rulemaking, we believe it may be helpful to repeat, in this final rule, the background of the new informed consumer choice disclosure requirement.

a. New Statutory Requirement—Lenders Must Disclose Certain Information to Borrowers in Form of a Notice and HUD Must Develop the Notice

Section 225(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, 112 Stat. 2461)(FY 1999 HUD Appropriations Act) amended section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2))(NHA) by adding the following language at the end of the section:

> In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and for which the borrower would qualify. This notice shall include: (i) A generic analysis comparing note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under this subsection with note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower would qualify with similar loan-to-value ratio in connection with a conventional mortgage . . . assuming prevailing interest rates; and (ii) a statement regarding when the mortgagor's requirement to pay mortgage insurance premiums for a mortgage insured under this section would terminate or a statement that the requirement will terminate only if the mortgage is refinanced, paid off, or otherwise terminated.

1. Statutory Obligations Imposed on Lenders

This statutory amendment requires original lenders to provide prospective FHA-insured mortgage borrowers with:

(1) A one page analysis comparing the mortgage costs of the FHA-insured mortgage with the mortgage costs of other similar conventional mortgage products that the lender offers and that the borrower may qualify for; and

(2) Information about when the requirement to pay FHA mortgage insurance premiums terminates.

2. Statutory Obligations Imposed on HUD

Section 225(b) of the FY 1999 HUD Appropriations Act directs HUD to:

(1) Develop the disclosure notice document, through which the lender must disclose this information; and

(2) Develop this notice within 150 days of enactment of the FY 1999 HUD Appropriations Act through notice and comment rulemaking.

b. How the February 16, 1999 Rule Proposed To Implement These Statutory Requirements

HUD's February 16, 1999 proposed rule included, for comment, a model disclosure notice that provided the consumer information required to be disclosed by section 225(a) of the FY 1999 HUD Appropriations Act (or more accurately by amended section 203(b)(2) of the NHA). The proposed rule also included an amendment to HUD's regulations at 24 CFR part 203 that would add a new § 203.10. New § 203.10 would conform HUD's FHA Single Family Mortgage Insurance Program regulations to the statutory lender disclosure requirement.

In the February 16, 1999 proposed rule, we specifically solicited comments and recommendations regarding the format of the proposed disclosure notice. As we stated in the proposed rule, HUD anticipates lenders will develop generic disclosure notices that compare a typical FHA mortgage in the marketplace with typical conventional mortgages offered by that lender using a $100,000 sales price (or another amount that may be typical within the lender's market). We noted in the rule that lenders will be expected to modify their disclosure notices accordingly as conventional mortgage offerings and pricing change over time.

We also stated in the proposed rule that it was HUD's assessment that a generic disclosure notice (similar to those provided with ARMs) reflects the intent of Congress in passing this statutory requirement and does not place an unreasonable burden on lenders. Therefore, we are not requiring, through this rulemaking, a case-specific disclosure notice for each borrower who may qualify for both an FHA-insured mortgage and conventional financing. We reiterate the statement, made in the proposed rule, that to do otherwise would significantly increase mortgage origination costs and be counter to the intent of Congress in enacting the informed consumer choice requirement and the Paperwork Reduction Act of 1995.

II. Public Comments on the Proposed Rule

In order to complete rulemaking by the deadline imposed by section 225(b) of the FY 1999 HUD Appropriation Act,

we found it necessary to shorten the public comment period for the February 16, 1999 proposed rule to 30 days. By the close of the public comment period on March 18, 1999, we had received 27 comments on the proposed rule. The commenters primarily included mortgage lending institutions and associations representing lenders.

This section of the preamble presents a summary of the significant issues raised by the commenters and HUD's responses to their comments.

a. Support for the Proposal—HUD's Proposal Strikes a Reasonable Balance

The majority of the commenters were supportive of the proposed model disclosure notice and commended HUD's efforts to strike a balance between the borrower's need for information and minimizing the administrative burden placed on lenders. The following reflects a comment typical of these commenters:

[We] applaud HUD's efforts to develop the Informed Consumer Choice Disclosure in a manner that provides consumers with meaningful, relevant information without adding to the administrative burden being borne by lenders. By not requiring case-specific examples, the proposed disclosure format allows lenders to be flexible but consistent in the way which pertinent information is provided to borrowers thereby striking a reasonable balance between the borrower's need for information and the effort required for lenders to produce the disclosure.

b. Opposition to the Proposal—Do Not Mandate Disclosure; Do Not Mandate Use of HUD's Proposed Disclosure Notice

Comments. Several commenters stated their opposition to the requirement that lenders provide a disclosure notice to prospective FHA borrowers. Other commenters in this group recognized that the disclosure requirement was statutory but objected to HUD's proposed model disclosure notice. These commenters stated that HUD's disclosure notice was too summary or brief in form and, therefore, was not very informative. These commenters stated that, because of its brevity, the disclosure notice might be misleading or confusing for the borrower.

Other commenters stated that the consumer is buried with information that he or she has little interest in receiving, and even less ability to decipher, and that implementing the disclosure in any form will only heighten the confusion surrounding mortgage lending. Another commenter stated that responsible lenders already follow procedures that ensure applicants are properly informed of the various products available to them and of the costs associated with mortgage loans. The commenter stated that HUD should focus on the few lenders that do not inform applicants of the various products available to them, instead of mandating that the whole industry adopt another disclosure notice.

HUD Response. As stated in the proposed rule, and reiterated in this final rule, section 225(a) of the FY 1999 HUD Appropriations Act (amended section 203(b)(2) of the NHA) imposes this disclosure requirement on lenders. We have no authority to waive this requirement. The statute specifies that the disclosure notice is to provide a one page analysis of mortgage products offered by the lender for which the prospective FHA borrower would qualify, and that this analysis is to offer comparison information. The statute imposes an obligation on HUD to develop the disclosure notice through notice and comment rulemaking. We have complied with this statutory obligation through this rulemaking.

We recognize that a lender may want to provide a borrower with more comparison information than a one page disclosure notice makes possible. We also recognize, as some commenters pointed out, that many lenders already provide this type of information in booklets and brochures that are readily available to borrowers. Nevertheless, by creating this statutory disclosure requirement, the Congress appears to have sought specific assurances that lenders are advising prospective FHA borrowers of any comparable conventional mortgage products that they may qualify for. The implementation of this requirement through regulation does not prohibit a lender from providing a borrower with information the lender has already compiled in addition to the one-page disclosure notice.

c. Specific Comments on the Model Disclosure Notice and New § 203.10

Comment—Additional Information Should Be Included in the Notice, and Certain Terms Should be Changed. Several commenters suggested various changes to the proposed model disclosure notice. Some of these suggestions consisted of stylistic or editorial changes. Other suggestions included substantive changes to the model notice. These changes included:

—Adding a line to compare the annual percentage rate (APR) of the mortgage products;
—Adding a "total payment" line to include the monthly mortgage insurance premium in line 6;
—Adding a third column to show the dollar differences between the first two columns;
—Changing the title of line 4 to "Downpayment and Closing Costs";
—Changing the title of line 4 to "Required Equity Investment";
—Changing the title of line 4 "Cash Needed at Closing";
—Clarifying that closing costs do not include points;
—Providing more explanation on how mortgage insurance payments change;
—Defining the percentage of private mortgage insurance coverage required;
—Identifying conditions under which mortgage insurance may not be dropped under a conventional mortgage; and
—Identifying any conditions that attach to the conventional loan that may require the continuation of mortgage insurance.

This list does not include all suggestions made by the commenters, but provides an overview of the various types of changes suggested by the commenters.

HUD Response—Model Notice Adheres to Statutory Requirements; Lenders Have Flexibility to Add Information They Believe Relevant. HUD appreciates all the suggestions that commenters offered on how the proposed model notice could be improved. As the model notice included in this final rule reflects, we adopted some, but clearly not all, of the changes recommended by the commenters. Consistent with President Clinton's memorandum on plain language (entitled "Plain Language in Government", 63 FR 31885, June 10, 1998), we revised some language in an effort to make the model notice conform with the President's directive. Of the suggested changes that we did not adopt in the final model notice, we note that many of the suggested changes would require more detailed information than a one-page analysis can reasonably include. More importantly, many of the suggested changes would require more information than the statute requires be included in the disclosure notice.

In developing the disclosure notice, we were cognizant of both the considerable information already provided to borrowers by many lenders and the degree of information we believe that Congress intended lenders to provide to borrowers in a one page analysis. We believe that Congress, in imposing this requirement on lenders, sought assurances that FHA borrowers would be made aware of any non-FHA mortgage products that they may qualify for, and determined that a one page

analysis would provide the appropriate "notification" of these non-FHA mortgage products. We believe that this "notification of possible mortgage options" was the main objective of this statutory requirement. For more complete information, the FHA borrower, once notified by the disclosure notice, can then follow-up with the lender and obtain more information on any conventional mortgages that the borrower may qualify for. We believe that the statutory language is clear that Congress was not mandating a detailed comparison of FHA versus conventional mortgage products, nor was it mandating a notice that would explain all applicable mortgage terms.

In developing the model disclosure notice, HUD's intent was to adhere to the statutorily required components of the notice and not to go beyond these requirements. Therefore, we structured the model notice to provide only the information statutorily required, which is to say, only the information sufficient to put the prospective FHA borrower on notice of conventional mortgage products that the borrower may qualify for, and to provide this information in a manner and format that would not impose an undue administrative burden on lenders.

As discussed in the proposed rule and later in this preamble, lenders may want to make additions to their disclosure notices. The model notice included in the final rule merely represents the format prescribed by the Commissioner. The model notice contains the minimum elements of an informed consumer choice disclosure notice. These elements must be included in a lender's notice. The lender may want to include additional lines, columns, or mortgage features that better reflect their mortgage products, or define terms lenders believe should be explained.

Comment—The Title of the Second Column of the FHA mortgage insurance Premium Information Tables is Unclear. Two commenters wrote that the titles of the second columns of the FHA mortgage insurance premium tables (entitled "You will make payments for:") were unclear. Both commenters were concerned that consumers might not realize that "payments" means insurance premium payments, rather than mortgage payments. One commenter suggested that the titles should be changed to "You will make premium payments for:". The other commenter suggested that the titles should be changed to read: "You will make mortgage insurance payments for:".

HUD Response—Clarification Is Made in Final Version of Model Notice. We agree that the title of the second column of the FHA mortgage insurance premium information tables in the February 16, 1999 proposed model notice was unclear. In order to be as clear as possible, in the model notice included in this final rule, we changed the title to reflect both commenters' suggestions. The title of the second column is now "You will make mortgage insurance premium payments:".

Comment—Does "Associated Costs" Include the Interest Rate? One commenter asked whether the phrase "associated costs" in the first paragraph of the proposed model notice included the interest rate. The commenter was concerned that requiring exact interest rate quotes on the disclosure notice would significantly increase the paperwork burden of the lender. The commenter suggested that the final model notice should clarify whether the phrase "associated costs" includes the interest rate.

HUD Response—Interest Rate Not Included in Associated Costs. The phrase "associated costs" does not include the interest rate. The disclosure notice does not require an interest rate quote.

Comment—Reference to "Upfront Mortgage Insurance Premium" Requires Revision. Three commenters made suggestions about line 10 of the model notice, entitled "Upfront Mortgage Insurance Premium." Two commenters suggested that line 10 should use the upfront mortgage insurance premium (UFMIP) for non-first-time homebuyers. One of these commenters pointed out that the model notice uses the UFMIP for first-time homebuyers who obtain housing counseling, which implies that lenders should use this number. The other commenter suggested that line 10 should state the UFMIP as a percentage of the loan amount (either 1.75% or 2.25%), in addition to the dollar amount.

HUD Response—Lender Should Choose Appropriate UFMIP. The directions in the proposed rule for line 10 of the model notice provided that the lender should "[s]how any upfront mortgage insurance premium charged. . . ." This instruction means that a lender should choose an appropriate UFMIP. In order to be clear, however, the final model notice includes a footnote that indicates which UFMIP was used in the table. Lenders must include a similar footnote.

Comment—The FHA Column Numbers Appear to be Incorrect. One commenter suggested that some of the numbers in the FHA column are incorrect. The commenter wrote that, assuming the base mortgage amount of $97,750 (line 2), the upfront mortgage insurance premium (line 10) would be $2,199.38, and the adjusted mortgage amount would be $99,949 (line 2 in parentheses). The commenter also suggested that the monthly mortgage insurance premium (line 8) would be $40.54.

HUD Response—Model Notice Based on First-Time Homebuyer UFMIP. The numbers in the FHA column in the model notice are based on a first-time home buyer UFMIP. The numbers suggested by the commenter are based on a non-first-time homebuyer UFMIP. As mentioned in the response to the previous comment, the final model notice has been revised to include a footnote that indicates which UFMIP was used in the table. In the case of the final model notice, the footnote indicates that the table uses a first-time homebuyer UFMIP.

Please note, the number listed for the monthly mortgage insurance premium (line 8) has been revised from $41.44 to $40.73 in the final model notice. This is a correction. The number listed in the proposed model notice was based on the mortgage amount including the UFMIP (line 2 in parentheses). It should have been based on the mortgage amount not including the UFMIP. The number listed on line 8 of the final model notice is now correct.

Comment—Remove the Phrase "Lender's Judgment" from Model Notice. The proposed model disclosure notice includes a sentence that states "[I]n your lender's judgment, you may have the credit standing to qualify for more than one mortgage product." A few commenters requested that the phrase "in your lender's judgment" be removed from the model disclosure notice. These commenters stated that the phrase tends to indicate that the lender controls the borrower's eligibility for each mortgage product listed on the disclosure notice and that the lender has the authority to offer a borrower other mortgage products when, in some cases, the lender has no such authority.

HUD Response—Phrase Removed but Statute Requires Lenders to Exercise Judgment. Although we removed this phrase from the final model notice, we have included this language in the text of the final regulation. The statute expects lenders to exercise their judgment in determining whether a prospective FHA borrower may be eligible for a conventional mortgage product. The statute provides that "in conjunction with any loan insured under this section (section 203(b)(2) of

the NHA) an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and *for which the borrower would qualify*" (emphasis added). We believe that this language requires the lender to determine, based on the information the lender has about the prospective FHA borrower, whether the borrower may qualify for a conventional mortgage product. If the lender determines that the prospective FHA borrower may qualify for a conventional mortgage product, the lender must provide the disclosure notice to the borrower.

The final rule does not require, however, that this determination be a formal determination in any way. The final rule only requires the lender to make a determination based on the lender's initial assessment of the prospective FHA borrower's eligibility for a conventional mortgage product. We believe that the Congress intended the disclosure notice to pose as minimal a burden on lenders as possible. We also believe that Congress intended that, to be most useful, the disclosure be provided to borrowers as early as possible in the process. Requiring that the determination be based only on an initial assessment satisfies both these requirements because a lender need only make a quick initial determination, perhaps within a few minutes of meeting with a borrower, before deciding whether to hand out the notice.

The final rule emphasizes that the nature of determination is informal by using the language "may qualify" (§ 203.10(a)) in place of the statutory language "would qualify". The word "may" indicates a less certain determination than the word "would" requires. The use of the word "may" in the final rule indicates that the lender's determination need only be an informal, initial determination. Because we also believe that Congress intended the notice to be distributed as widely as possible, the final rule states that if a lender is unsure about a borrower's eligibility the lender should distribute the disclosure notice.

Comment—Providing the Disclosure Notice Will Mislead Borrowers That They Are Eligible for Non-FHA Products. A few commenters requested clarification regarding to whom the lender must provide the informed consumer choice disclosure notice. One commenter stated that providing the disclosure will lead the average applicant to believe that he or she will be equally likely to qualify for either FHA or conventional financing. This commenter stated that in most cases the average FHA applicant will not qualify for conventional financing. Other commenters asked whether a lender is to provide the disclosure only to applicants who will likely qualify for conventional financing.

HUD Response—The Statute Requires the Lender to Provide the Disclosure to a Prospective FHA Borrower Who "Would Qualify" for a Non-FHA Mortgage Product Offered by the Lender. The statute does not require a lender to provide every prospective borrower or every prospective FHA borrower with an informed consumer choice disclosure notice. As mentioned in the response to the previous comment regarding the phrase "lender's judgment", a lender is required to determine, based on the lender's initial assessment, whether a prospective FHA borrower may be eligible for a conventional mortgage product. If the lender determines that the borrower may be eligible, then the lender must provide a disclosure notice to the borrower.

Again, in imposing this requirement on lenders, we believe that there was concern on the part of the Congress that there are individuals who qualify for both an FHA-insured mortgage and a conventional mortgage, and Congress wanted assurances that these borrowers would be made aware of their choice of financing. In order to ensure that all prospective FHA borrowers that must receive a disclosure notice do, in fact, receive a disclosure notice, the lender should err on the side of providing a disclosure notice to a prospective FHA borrower. The final rule emphasizes this by stating that if a lender is unsure about a prospective FHA borrower's eligibility, the lender should provide a disclosure notice to the borrower.

One commenter suggested that a lender should be able to include in the disclosure notice a comparison of key underwriting requirements between conventional and FHA loan products, and this information would assist the consumer in understanding why conventional financing would not be a viable alternative. The statute, however, does not mandate this action on the part of the lender.

Comment—Clarify the Type of Comparison of FHA/Conventional Mortgage Products That Is Required. One commenter stated that it was the intent of the Congress that the disclosure notice should provide consumers with a broader comparison of conventional loan products and not just a single conventional loan product. Other commenters requested that the final rule make clear that the disclosure notice assumes hypothetical loan terms; that the notice is for illustration purposes only (that actual customer rate and loan terms may be different); or that where a lender serves more than one market, the lender can develop a generic notice suitable for all markets. Other commenters stated that the notice should require lenders to provide only a comparison of the most commonly required FHA mortgages and most commonly available conventional mortgage products, and requested that the final rule clarify that the lender may select a typical, conventional loan for comparison. Another commenter stated that HUD should stipulate to lenders that conventional loans used for comparison should include consideration of all conventional products offered by the lender that the borrower may qualify for with the best alternative used for comparison with the comparable FHA loan parameters. One commenter suggested that HUD's model notice include the following language for clarity purposes: "As such, your lender has prepared a comparison of typical FHA and alternative conventional mortgage products for your review. The information below reflects terms and conditions that we have used recently for our FHA and conventional loans. The loan amount, costs, interest rate, premiums, and other information in the comparison will vary from your own loan transaction."

HUD Response—The Lender Need Only Provide A Generic Comparison. We believe that the proposed rule was clear about the type of comparison that is required by the statute, that is a generic comparison. We stated in the February 16, 1999 proposed rule that HUD would not require a case-specific notice for each prospective FHA borrower who may qualify for both an FHA-insured mortgage and conventional financing. We stated that the disclosure notice should compare a typical FHA mortgage in the marketplace with a typical conventional mortgage offered by the lender. We understand, however, the concerns of lenders about the type of comparison that must be made, and have included additional language in the final rule and in the model notice that we believe eliminates ambiguity about the type of comparison required.

Comment—HUD's Proposal For the Time At Which the Lender Must Provide the Disclosure Should Be Changed. Two commenters stated that borrowers want and need to see the information provided in the disclosure notice before they begin their application process. Other commenters stated that the timing of the disclosure notice should conform to the timing of disclosure established

for statements required by the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). Another commenter suggested that the trigger event should not be the signing of the loan, but when the application is received or prepared by the lender. These same commenters stated that, at a minimum, the final rule must clarify that when the proposed rule stated "three days," HUD meant three business days.

HUD Response—Disclosure Notice Must Be Provided No Later Than Three Days After the Lender's Receipt of the Application. We appreciate these comments and recognize the need for clarification with respect to the time at which the lender must provide the disclosure notice. The final rule provides that the disclosure notice must be provided to a prospective FHA borrower no later than three business days after the lender's receipt of the application.

Comment—Rule Should Clarify If Mortgage Brokers Are Responsible for Providing the Disclosure Notice. A few commenters asked whether a mortgage broker is responsible for delivering the disclosure notice if the application is taken by a mortgage broker. One commenter noted that in the situation in which a broker takes the application, the broker might not deliver the application to the lender until well after the three-day period has expired.

HUD Response—A Mortgage Broker Is Not An Original Lender; Lender Is Responsible for Providing Disclosure Notice. The statute provides that the "original lender" must provide the informed consumer choice disclosure. Therefore, a mortgage broker providing the disclosure notice to the borrower will not fulfill the lender's obligation under the statute. As noted in the previous response, the final rule clarifies that the timing of the disclosure notice is no later than 3 business days after the lender's receipt of the application.

Comment—The Disclosure Notice Should Be Updated Only Once Annually. Several commenters were concerned about the frequency with which they would be required to update the disclosure notice. These commenters stated that since pricing of mortgage products can change as frequently as daily or weekly, it would appear that the expectation is that the lenders would be required to update the disclosure notices with the same frequency. The commenters stated that to update the disclosure notices for pricing changes as frequently as they occur defeats the intent of Congress in mandating a generic comparison. These lenders requested that the final rule provide that lenders need only update the disclosure notice once every 12 months.

HUD Response—The Final Rule Provides that the Disclosure Notice Need Only Be Updated Once Annually. We agree with the commenters that market conditions could technically require frequent revisions to the disclosure notice that would result in an undue administrative burden on lenders. HUD encourages lenders to update their disclosure notices periodically so that the notice remains meaningful to their borrowers, but the final rule only requires lenders to update their disclosure notices once annually.

Comment—Delay the Effective Date of its Rule Requiring Informed Consumer Choice Disclosure. A few commenters requested that HUD delay implementation of the informed consumer choice disclosure notice until after the Homeownership Protection Act (Pub. L. 105–216, 12 U.S.C. 4901 *et seq.*) (HPA) becomes effective on July 29, 1999. These commenters noted that this statute will change the maximum number of years that mortgage insurance will be required. The HPA requires automatic termination of private mortgage insurance (PMI), generally when the loan-to-value (LTV) is scheduled to reach 78 percent of its original level. The commenters stated that in addition to the HPA, the Federal Reserve Board plans to revise the Official Staff Commentary on Regulation Z to explain the interaction between the HPA and TILA.

HUD Response—Statute Provides No Authority for Delaying Implementation. We understand the concerns of the commenters, but believe that the FY 1999 HUD Appropriations Act does not provide HUD with the authority to delay implementation. In requiring HUD to develop the disclosure notice 150 days after enactment of the HUD FY 1999 Appropriations Act and to develop the disclosure notice through notice and comment rulemaking, we interpret this to mean that the only delay in implementation of this statutory requirement is to be HUD's development of the notice. To ensure prompt development, the Congress imposed a statutory deadline on HUD for development of the notice.

Comment—HUD Needs to Provide Additional Guidance on How Calculations Are to Be Made in the Comparison Chart and More Detailed Instructions on Preparing the Notice. A few commenters asked technical questions about how precisely calculations were to be done in the disclosure notice to provide a meaningful comparison to consumers.

HUD Response—HUD Will Provide Lenders More Detailed Instructions Through Mortgagee Letter. It is our intent that the disclosure notice impose as minimal an administrative burden on FHA approved mortgagees as possible. This rule is not the appropriate place to provide detailed processing instructions and additional guidance on calculations to lenders. We will be issuing a Mortgagee Letter and will provide specific guidance to lenders about the disclosure notice.

III. The Informed Consumer Choice Disclosure Notice—HUD's Model Notice

The following provides HUD's model informed consumer choice disclosure notice. To complete the generic disclosure format shown below, lenders should use the following instructions. At the lender's discretion, a lender may revise the disclosure notice to include additional line items or columns, further define terms, or explain additional features that better reflect the lender's FHA and conventional mortgage products so as to make a meaningful comparison.

BILLING CODE 4210-27-P

INSTRUCTIONS FOR CONSTRUCTING AN INFORMED CONSUMER CHOICE DISCLOSURE NOTICE

Line No.	Field Name	Instruction
1	Sales Price	Show $100,000 sales price (or any other amount you wish that is more reflective of the market).
2	Mortgage Amount	Compute the mortgage amount in accordance with FHA requirements and in accordance with the investor or lender requirements for the conventional financing.
3	Closing Costs	Show the same amount of closing costs for both the FHA and conventional financing. You should use good faith estimates to develop typical costs for the various mortgage programs you offer.
4	Downpayment Needed	Show downpayment amounts exclusive of prepaid expenses.
5	Interest Rate and Term of Loan in Years	Show interest rate and term of loan in years.
6	Monthly Payment (principal and interest only)	Show monthly principal and interest only.
7	Loan-to-Value	Compute loan-to-value by dividing mortgage amount, exclusive of any upfront mortgage insurance premiums, by the lesser of the sales price or appraised value.
8	Monthly Mortgage Insurance Premium (first year)	Show the monthly mortgage insurance premium, if applicable, based on FHA and private mortgage insurance company fee schedules.
9	Maximum Number of Years of Monthly Insurance Premium Payments	Show the maximum number of years that the monthly mortgage insurance premiums, if applicable, must be paid based on FHA requirements and lender/investor requirements for the conventional financing (if monthly insurance premiums terminate when the loan balance declines to a certain loan-to-value (LTV) ratio, show the estimated number of years it will take to reach that LTV).
10	Upfront Mortgage Insurance Premium (if applicable)	Show any upfront mortgage insurance premium charged on either the FHA mortgage or the conventional mortgage.

HUD MODEL NOTICE **INFORMED CONSUMER CHOICE DISCLOSURE NOTICE**

In addition to an FHA-insured mortgage, you may also qualify for other mortgage products offered by your lender. To assure that you are aware of possible choices in financing, your lender has prepared a comparison of the typical costs of alternative conventional mortgage product(s) below, using representative loan amounts and costs (the actual loan amounts and associated costs shown below will vary from your own mortgage loan transaction). You should study the comparison carefully, ask questions, and determine which product is best for you. The information provided below was prepared as of [included month and year].

Neither your lender nor FHA warrants that you actually qualify for any mortgage loan offered by your lender. This notice is provided to identify the key differences between these mortgage products offered by your lender. **This disclosure is not a contract and does not constitute loan approval.** Actual mortgage approval can only be made following a full underwriting analysis by your mortgage lender.

		FHA Financing 203(b) Fixed Rate	Conventional Financing 97% with Mortgage
1	Sales Price	$100,000	$100,000
2	Mortgage Amount	$97,750 ($99,460 w/ Upfront Mortgage Insurance Premium)	$97,000
3	Closing Costs	$2000	$2000
4	Downpayment Needed	$4250	$5000
5	Interest Rate and Term of Loan in Years	7.00%/30 Year Loan	7.00%/30 Year Loan
6	Monthly Payment (principal and interest only)	$661	$645
7	Loan-to-Value	97.75%	97%
8	Monthly Mortgage Insurance Premium (first year)	$40.73[1]	$76.63
9	Maximum Number of Years of Monthly Insurance Premium Payments	30 Years	Approx. 13 Years
10	Upfront Mortgage Insurance Premium (if applicable)	$1710[2] (Included in Mortgage Amount, line 2)	n/a

[1]Monthly mortgage insurance premiums are calculated on the average annual principal balance, i.e., as the amount you owe on the loan decreases each year, so does the amount of the monthly premium.
[2]Based on an upfront mortgage insurance premium rate available for first-time homebuyers who obtain housing counseling.

FHA Mortgage Insurance Premium Information:

If you paid an upfront mortgage insurance premium, you will also be charged a monthly mortgage insurance premium for the period of time shown below, based on the initial loan-to-value and term of your mortgage. You are required to make these payments on your FHA-insured loan for the time shown unless you refinance or the mortgage is otherwise paid in full. (If you were *not* charged an upfront premium, as for example on condominiums, you will pay the monthly premium for the life of the mortgage.)

If the term of your mortgage will be greater than 15 years and with a loan-to-value ratio:	You will make mortgage insurance premium payments for:
Of 89.99 or Less	7 Years
Between 90.00 and 95.00	12 Years
Of 95.01 and Greater	30 Years

If the term of your mortgage will be 15 years or less and with a loan-to-value ratio:	You will make mortgage insurance premium payments for:
Of 89.99 or Less	None Required
Between 90.00 and 95.00	4 Years
Of 95.01 and Greater	8 Years

BILLING CODE 4210-27-C

IV. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0537. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852, codified as amended at 42 U.S.C. 4321–4347).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The rule implements a statutory disclosure requirement imposed on lenders and provides lenders with a model format for that disclosure so that the lenders may comply with the statutory requirements.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, review under the order is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (5 U.S.C. 1531–1538)(UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons discussed in the preamble, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Add § 203.10 to read as follows:

§ 203.10 Informed consumer choice for prospective FHA mortgagors.

(a) *Mortgagee to provide disclosure notice.* A mortgagee must provide a prospective FHA mortgagor with an informed consumer choice disclosure notice if, in the mortgagees's judgment, the prospective FHA mortgagor may qualify for similar conventional mortgage products offered by the mortgagee. The mortgagee should base this judgment on the mortgagee's initial assessment of the prospective FHA mortgagor's eligibility for a conventional mortgage product. If a mortgagee is unsure about a prospective FHA mortgagor's eligibility for a conventional mortgage product, the mortgagee should provide the prospective FHA mortgagor with an informed consumer choice disclosure notice.

(b) *Informed consumer choice disclosure notice.* (1) *Contents of notice.* The informed consumer choice disclosure notice must:

(i) Provide a one page generic analysis comparing the mortgage costs of an FHA-insured mortgage with the mortgage costs of similar conventional mortgage products offered by the mortgagee that the prospective FHA mortgagor may qualify for;

(ii) Provide information about when the requirement to pay FHA mortgage insurance premiums terminates; and

(iii) Meet the requirements of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)).

(2) *Format of disclosure notice.* The informed consumer choice disclosure notice must be provided in a format prescribed by the Commissioner. HUD has prepared a model informed consumer choice disclosure notice that represents this format and that meets the requirements of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)). The model informed consumer choice disclosure notice contains the minimum elements of an informed consumer choice disclosure notice. These elements must be included in a mortgagee's informed consumer choice disclosure notice. A mortgagee, however, may include additional elements in an informed consumer choice disclosure notice to better reflect the mortgagee's products or to provide information that the mortgagee believes is meaningful and helpful to the mortgagee's customers.

(3) *Availability of model disclosure notice.* HUD's model informed consumer choice disclosure notice is made available to FHA-approved mortgagees through Mortgagee Letter and is available to the public through the internet at HUD's web site at http://www.hud.gov or by contacting: Home Mortgage Insurance Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number), or the nearest HUD Homeownership Center (Atlanta, GA (888) 696–4687; Denver, CO (800) 543–9378; Philadelphia, PA (800) 440–8647; or Santa Ana, CA (888) 827–5605). Hearing- or speech-impaired individuals may access these numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

(c) *Timing.* When required under paragraph (a) of this section, a mortgagee must provide an informed consumer choice disclosure notice to a prospective FHA mortgagor not later than three business days after the mortgagee receives the prospective FHA mortgagor's application.

(d) *Revision of notice.* A mortgagee should revise its informed consumer choice disclosure notice periodically to reflect prevailing market conditions. To ensure that the informed consumer choice disclosure notice reflects prevailing market conditions, a mortgagee must revise its informed consumer choice disclosure notice at least once annually.

(e) *Applicability.* This section applies to any application for mortgage insurance authorized under section 203(b) of the National Housing Act (12 U.S.C. 1709) that the mortgagee receives on or after July 2, 1999.

(f) *Definitions.* As used in this section:

Application means the submission of financial information in anticipation of a credit decision.

Conventional mortgage means conventional mortgage as used in section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) or section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)), as applicable.

Mortgagee means mortgagee as defined in § 202.2 of this chapter.

Prospective FHA mortgagor means a person who submits an application to a mortgagee to obtain mortgage insurance authorized under section 203(b) of the National Housing Act (12 U.S.C. 1709).

Dated: May 12, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–13917 Filed 6–1–99; 8:45 am]

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Wednesday
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Part IV

The President

Proclamation 7201—Prayer for Peace, Memorial Day, 1999

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Title 3—

The President

Proclamation 7201 of May 26, 1999

Prayer for Peace, Memorial Day, 1999

By the President of the United States of America

A Proclamation

The challenges to our Nation's peace and freedom are as old as American history and as new as today's headlines. They have taken many forms through the years, from the bitter discord of civil war at home to the aggression of tyrants abroad. But the price of peace and freedom has always remained the same: the service and sacrifice of our young men and women in uniform.

Looking back across the decades, we marvel at the valor and determination of these gallant Americans who, in each generation, have stepped forward to preserve our freedom, defend our democracy, uphold our ideals, and protect our interests. The battles in which they fought and died—Brandywine, Gettysburg, San Juan Hill, Belleau Wood, Coral Sea, Inchon, Khe Sahn—are a testament to uncommon courage and indomitable spirit. Those who survived were forever changed. Those who died stay forever young in their loved ones' memories. Their final thoughts most likely were of home and family; their final actions purchased the freedom we enjoy today.

Now, on Memorial Day, our thoughts turn to them. We remember with profound gratitude those who took to the seas and skies in moments of peril for our Nation. We remember those who marched through mud or rice paddies, snow or sand, because they knew, as President Eisenhower reminded us, that "a soldier's pack is not so heavy a burden as a prisoner's chains" and that true peace is won only by those willing to die for it. We remember those in the Normandy American Cemetery overlooking Omaha Beach who, 55 years ago, relit the torch of freedom in a war-weary Europe. We remember those whose final resting place is unknown, but whose sacrifice is known to us all. The passing of time and the blessings of peace and prosperity can never make us forget what these brave Americans endured and what they lost so that right would triumph, freedom would survive, and our Nation would prevail.

In honor of all the courageous men and women who gave their lives in defense of our Nation and our fundamental ideals, I ask that every American say a prayer for lasting peace on this Memorial Day. I ask that every American remember our heroic war dead in some special way, whether by placing flowers on a veteran's grave, lighting a candle, observing a moment of silence, or saying a prayer of thanks. While we can never fully repay our debt to America's fallen warriors, we can remember their service and honor their sacrifice.

In respect and recognition of the courageous men and women to whom we pay tribute, the Congress, by joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the American people might unite in prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 31, 1999, as a day of prayer for permanent peace, and I designate the hour beginning at 3:00 p.m. EDT of that day as a time to join in prayer. I urge the press,

radio, television, and all other information media to take part in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of May, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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Part V

The President

Proclamation 7202—To Eliminate Circumvention of the Quantitative Limitations Applicable to Imports of Wheat Gluten

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Presidential Documents

Title 3—

The President

Proclamation 7282 of May 28, 1999

To Eliminate Circumvention of the Quantitative Limitations Applicable to Imports of Wheat Gluten

By the President of the United States of America

A Proclamation

1. On March 18, 1998, the United States International Trade Commission (USITC) transmitted to the President a unanimous affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2252), with respect to imports of wheat gluten provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS). Under section 202 of the Trade Act, the USITC determined that such wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive article. Further, pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act) (19 U.S.C. 3371(a)), the USITC made negative findings with respect to imports of wheat gluten from Canada and Mexico. Pursuant to section 202(e) of the Trade Act (19 U.S.C. 2253(e)), the USITC also transmitted to the President its recommendation on the action that would address the serious injury to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

2. On May 30, 1998, I issued Proclamation 7103, which implemented action of a type described in section 203(a)(3) of the Trade Act (19 U.S.C. 2253(a)(3)). Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and taking into account the considerations specified in section 203(a)(2) of the Trade Act, I determined to establish quantitative limitations on imports of wheat gluten, provided for in HTS subheadings 1109.00.10 and 1109.00.90, imposed for a period of 3 years plus 1 day, with annual increases in such quota limits of 6 percent in the second year and in the third year. These limitations were to apply to imports from all countries, and the quota quantity was to be allocated among such countries, except for products of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act, and other developing countries that accounted for a minor share of wheat gluten imports that I determined to exclude from any restriction. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I further determined that these actions would facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

3. Despite the quantitative limitations on imports of wheat gluten, during the first restraint period quantities of wheat gluten the product of the European Community have been entered in excess of the allocated amount.

4. Section 204(b)(2) of the Trade Act (19 U.S.C. 2254(b)(2)) authorizes the President to take such additional action under section 203 of the Trade Act as may be necessary to eliminate any circumvention of any action previously taken under such section. Pursuant to section 204(b)(2) of the Trade Act, I have determined it is appropriate and feasible to take additional action pursuant to section 203(a)(3) of the Trade Act. Such action shall take the form of a reduction in the European Community's 1999/2000 wheat

gluten quota allotment in the amount of 5,204,000 kg, which represents the amount of wheat gluten that entered the United States in excess of the European Community's 1998 quota allocation. I determine this action is necessary to eliminate circumvention of the safeguard action previously undertaken in Proclamation 7103.

5. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203, 204, and 604 of the Trade Act, do proclaim that:

(1) The allocation of the quota quantity for wheat gluten for the restraint period from June 1, 1999, through May 31, 2000, inclusive, that was accorded to wheat gluten the product of the European Community by the Annex to Presidential Proclamation 7103 of May 30, 1998, as set forth in subheading 9903.11.06 of subchapter III, chapter 99 of the HTS, is modified by striking the allocated quota quantity set forth for the European Community "25,983,000 kg" from such subheading and by inserting in lieu thereof the new allocated quota quantity for the European Community "20,581,000 kg".

(2) In order to ensure that any imports of wheat gluten the product of any country, or the product of the European Community, having an allocated share of the quantitative restraints set forth in subheadings 9903.11.05 through 9903.11.07, inclusive, of the HTS and superior text thereto, are limited to the specified share during a quota period, the HTS is modified by adding at the end of U.S. Note 7 to subchapter III of chapter 99 the following new paragraph:

> "Whenever a quantity is allocated to a country, to 'other countries' or to the European Community under such subheadings, and the quota quantity specified for such country or countries or for the European Community has been entered for the specified restraint period, any shipments of wheat gluten the product of such country or countries or of the European Community entered in excess of such allocated quota quantity shall be charged to the allocation for such country or countries or for the European Community for the subsequent restraint period. If the allocated quantity for a country or countries or for the European Community under subheading 9903.11.07, including any quantity carried over from the restraint periods provided for in subheadings 9903.11.05 and 9903.11.06 and charged against the appropriate allocation under subheading 9903.11.07, has been entered, any imports in excess of the allocated quota quantity for a country or countries or for the European Community shall be entered into bonded warehouse or shall be exported, and shall not be entered into the customs territory of the United States until 12:00 a.m. e.d.t. June 1, 2001. The Secretary of the Treasury is authorized to take any necessary action in order to ensure that no shipments in excess of the allocation for a country or countries or for the European Community for the period from June 1, 2000 through June 1, 2001, inclusive, is entered into the customs territory of the United States."

(3) Subheading 9903.11.06 is modified by inserting after "Other" the word "countries".

(4) Any provision of any previous proclamation or Executive order that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

(5) The modifications made in this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. e.d.t. on June 1, 1999, and shall continue in effect as provided until 11:59 p.m. e.d.t. on June 1, 2001, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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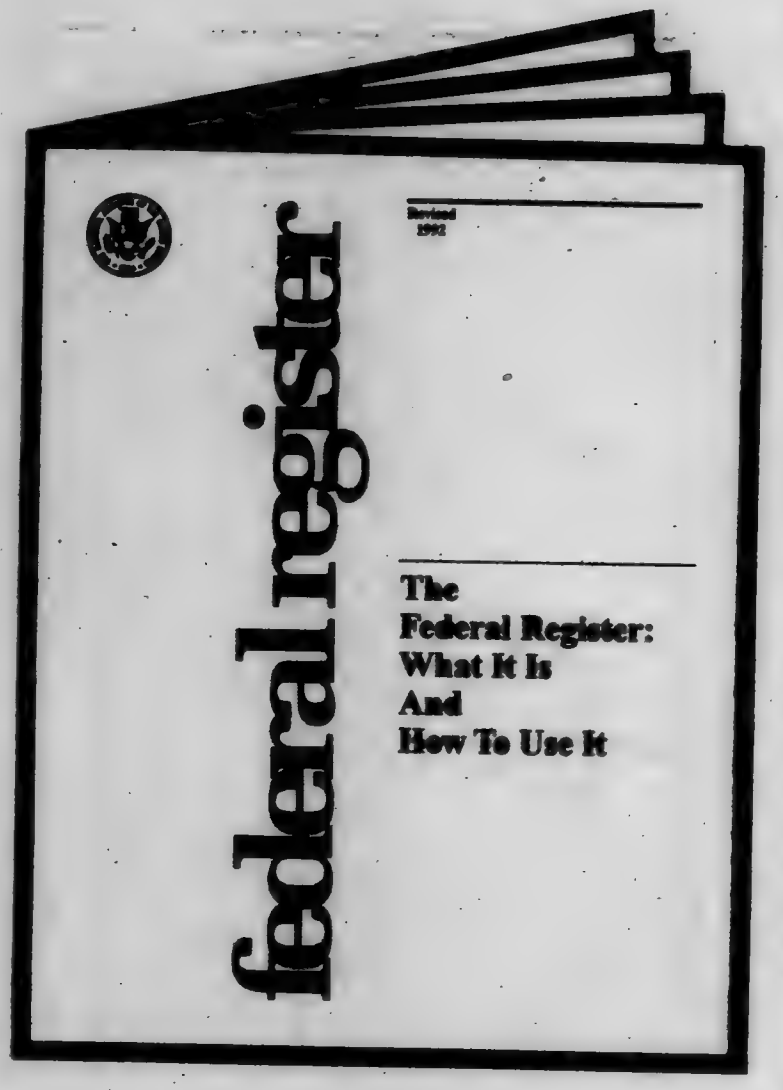

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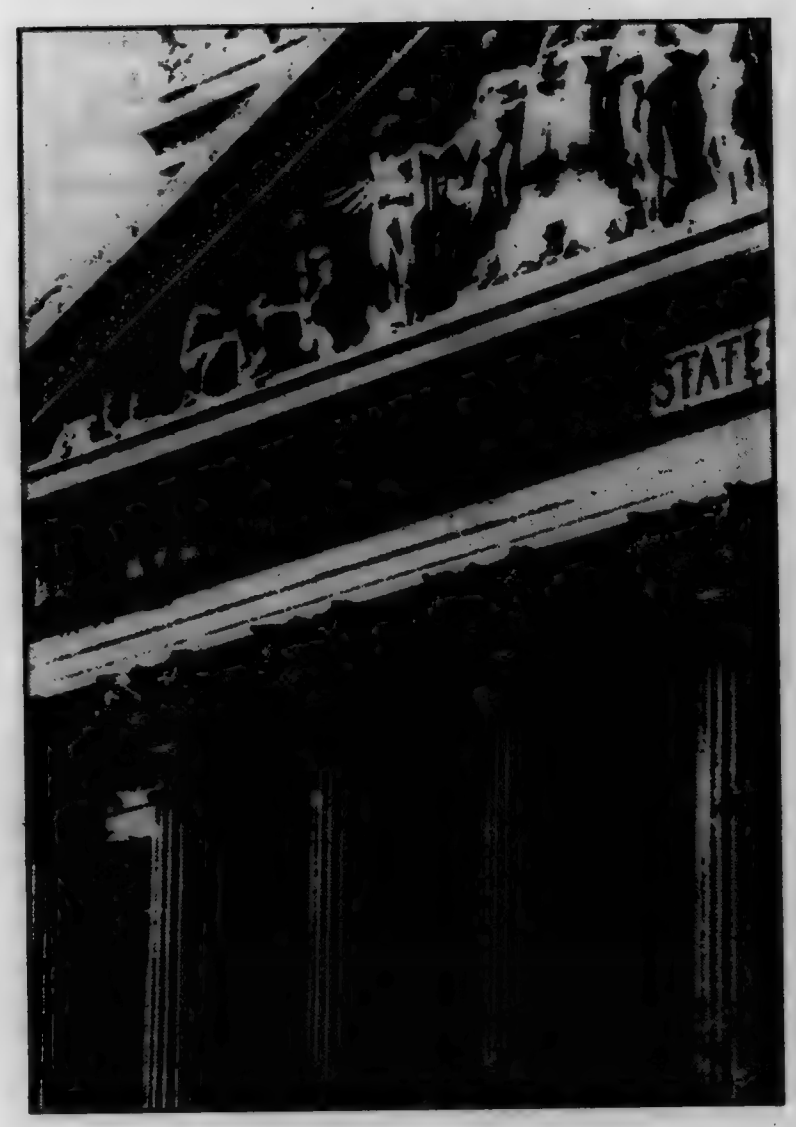

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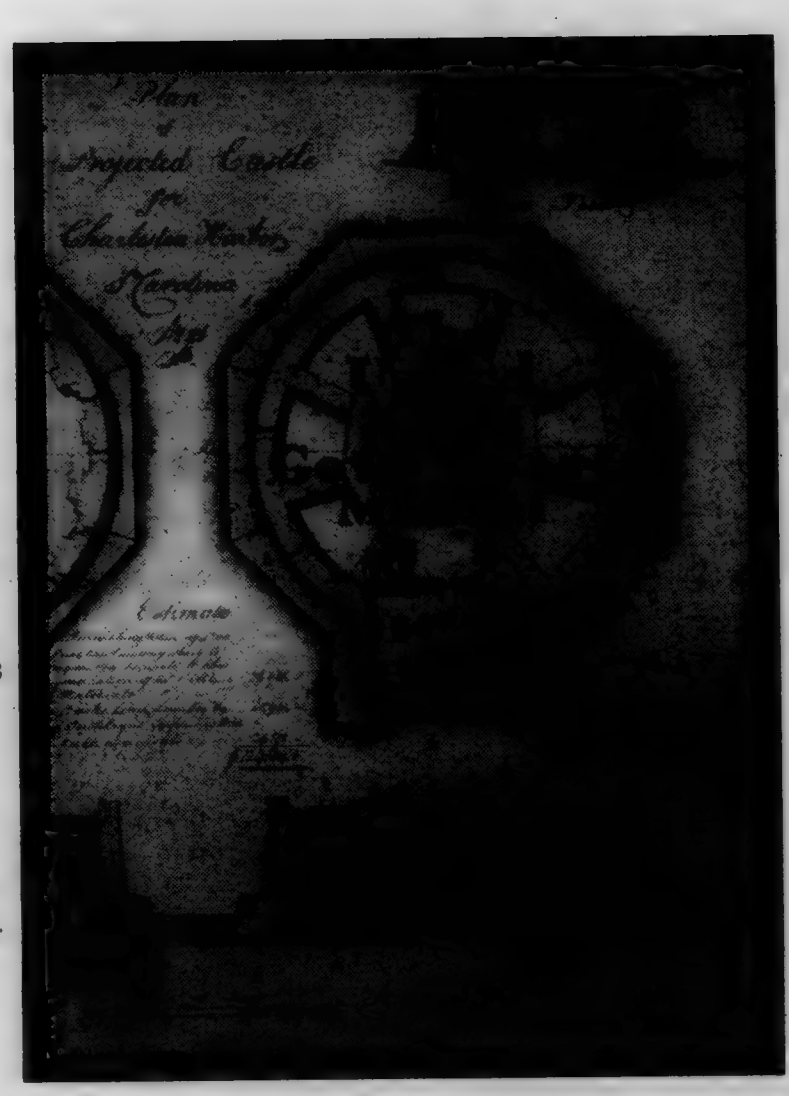

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Rules and Regulations

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Thursday, June 3, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–110–AD; Amendment 39–11177; AD 99–08–05 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects information in an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes, that currently requires repetitive inspections to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door; repair, if necessary; and modification of the fuselage frames and longerons, if necessary, and follow-on repetitive inspections to detect fatigue cracking of the skin adjacent to the modification. That AD was prompted by numerous instances of fatigue cracking of the fuselage frames and longerons. The actions specified by that AD are intended to prevent fatigue cracking of the fuselage frames and longerons 16R and 17R, which could result in reduced structural integrity of the airplane. This amendment corrects an erroneous reference to a certain volume of the Supplemental Inspection Document.

DATES: Effective May 12, 1999.

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997, was approved previously by the Director of the Federal Register as of May 12, 1999 (64 FR 16805, April 7, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Commercial Aircraft Group, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On March 30, 1999, the Federal Aviation Administration (FAA) issued AD 99–08–05, amendment 39–11110 (64 FR 16805, April 7, 1999), which applies to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes. That AD requires repetitive inspections to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door; repair, if necessary; and modification of the fuselage frames and longerons, if necessary, and follow-on repetitive inspections to detect fatigue cracking of the skin adjacent to the modification. That AD was prompted by numerous instances of fatigue cracking of the fuselage frames and longerons. The actions required by that AD are intended to prevent fatigue cracking of the fuselage frames and longerons 16R and 17R, which could result in reduced structural integrity of the airplane.

AD 99–08–05 contains an error in paragraph (d) of the AD. That paragraph contains a reference to McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume III–95, dated September 1995. The correct reference is McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume I, Revision 5, dated July 1997.

Action is taken herein to correct the error in AD 99–08–05 and to correctly add the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains May 12, 1999.

Since this action only corrects an error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11110 (64 FR 16805, April 7, 1999), and by adding a new airworthiness directive (AD), amendment 39–11177, to read as follows:

99–08–05 R1 McDonnell Douglas: Amendment 39–11177. Docket 98–NM–110–AD. Revises AD 99–08–05, Amendment 39–11110.

Applicability: Model DC–9 and C–9 (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage frames and longerons 16R and 17R, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 30,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a visual inspection to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door, in accordance with paragraph 3.B.1. of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997.

(b) *Condition 1.* If no cracking is detected during the inspection required by paragraph (a) of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997.

(1) *Option 1.* Repeat the visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 19,000 landings. Or

(2) *Option 2.* Prior to further flight, modify the fuselage frames and longerons 16R and 17R. Prior to the accumulation of 19,000 landings after accomplishment of the modification, perform the visual inspection specified in paragraph 3.B.1.D. of the Accomplishment Instructions of the service bulletin to detect fatigue cracking of the skin adjacent to the modification.

(i) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 19,000 landings.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) *Condition 2.* If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair the cracked area and modify the fuselage frames and longerons 16R and 17R; in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997. Prior to the accumulation of 19,000 landings after accomplishment of the modification, perform the visual inspection specified in paragraph 3.B.1.D.(5) of the Accomplishment Instructions of the service bulletin to detect fatigue cracking of the skin adjacent to the modification, in accordance with the service bulletin.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 19,000 landings.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(d) Accomplishment of the inspections required by this AD constitutes terminating action for the inspections of Principal Structural Element 53.09.055A (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume I, Revision 5, dated July 1997), as required by AD 96–13–03, amendment 39–9671.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraphs (b)(2)(ii) and (c)(2) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997. The incorporation by reference of this document was approved previously by the Director of the Federal Register as of May 12, 1999 (64 FR 16805, April 7, 1999). Copies may be obtained from Boeing Commercial Aircraft Group, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) The effective date of this amendment remains May 12, 1999.

Issued in Renton, Washington, on May 14, 1999.

Donald E. Gonder,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–12829 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–51–AD; Amendment 39–11185; AD 99–11–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires detailed visual inspections to detect corrosion or chrome plating cracks on the fuse pins of the outboard support of the main landing gear (MLG) beam. This AD also would require either installation of the existing fuse pins and repetitive inspections; or installation of newer-type fuse pins, which constitutes terminating action for the repetitive inspections. This amendment is prompted by a report indicating that corrosion was found on a fuse pin in the outboard support of the MLG beam. The actions specified by this AD are intended to detect and correct such corrosion and cracking, which could result in the failure of a fuse pin and, consequently, lead to collapse of the MLG.

DATES: Effective July 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing

Model 767 series airplanes was published in the Federal Register on July 15, 1998 (63 FR 38120). That action proposed to require detailed visual inspections to detect corrosion or chrome plating cracks on the fuse pins, load distribution plates, and bushings of the outboard support of the main landing gear (MLG) beam. That action also proposed to require either installation of the existing fuse pins and repetitive inspections; or installation of newer-type fuse pins, which would constitute terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Several commenters support the proposed rule.

Removal of References to Bushings and Load Distribution Plates

Several commenters request that all references to the bushings and load distribution plates specified in the proposal be removed. One commenter states that all references to these items have been removed in the latest revision (Revision 3) of Boeing Service Bulletin 767–57A0054. (Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, was referenced in the proposal as the appropriate source of service information for accomplishment of the required actions.) Another commenter requests that the proposed inspection of the bushings and load distribution plates be removed, or if not removed, that accomplishment of the inspection, rework, and fabrication be performed in accordance with Component Maintenance Manual 57–54–23.

The commenters state that the unsafe condition in the proposed AD is related to cracking of the fuse pins and is not in any way related to discrepancies of the bushings and load distribution plates.

The FAA concurs with the commenters' requests. The FAA has determined that the structural integrity of the bushings and load distribution plates is indeed not an issue, and therefore all references to the bushings and load distribution plates have been removed from the final rule.

In addition, the final rule has been revised to include Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997, as an additional source of service information. The FAA finds that this new revision is essentially the same as Revision 2 of the alert service bulletin. However, Revision 3 removes all references to the load distribution plates and bushings described in Revision 2 of the service bulletin.

Request To Allow Class 2 Chrome Plating Finish on Fuse Pins

One commenter requests that the proposed rule be changed to allow a chrome plating finish requirement of Class 2 or better on the 15–5PH CRES fuse pins. The commenter states that the Class 3 plating requirement for the fuse pins is excessive because Class 2 chrome plating is an effective shield against corrosion, and the substrate of the 15–5PH CRES fuse pins is less susceptible to corrosion than the older 4330M steel fuse pins. The commenter also indicates that the requirement for Class 3 chrome plating adds an unwarranted restriction at the next overhaul.

The FAA does not concur with the commenter's request to allow a chrome plating finish requirement of Class 2 or better on the 15–5PH CRES fuse pins, for several reasons:

1. As stated in the AD, the installation of the 15–5PH CRES fuse pins (with Class 3 chrome plating) is not required, but is an optional terminating action.

2. The new 15–5PH CRES fuse pins (with Class 3 chrome plating) were selected for the configuration because they are an improvement in that they are less susceptible to corrosion than the older 4330M steel fuse pins (with Class 2 chrome plating). Considering that Class 2 chrome plating has a history of disbonding from the steel substrate, the FAA finds it practical to select an improved process (i.e., Class 3 plating) for the new, more corrosion-resistant fuse pins.

3. The FAA reiterates that the pins called out in the service bulletin have already been manufactured with the improved Class 3 chrome plating. Compliance with this AD, and even with the optional terminating action (which is the portion of the AD that specifically calls for the installation of the 15–5PH CRES fuse pins), does not generate any excess burden on any operator by specifying that the new 15–5PH CRES fuse pins, as procured, have Class 3 chrome plating.

4. The FAA concludes that the commenter has misinterpreted that the AD requires Class 3 chrome plating be applied to the 4330M steel fuse pins, when, in fact, the AD does not. It requires that the existing 4330M steel fuse pins (with Class 2 plating) be repetitively inspected, or, as an optional terminating action, replaced with improved 15–5PH CRES fuse pins (with Class 3 plating).

5. Finally, in reference to the commenter's statement that Class 3 chrome plating adds an unwarranted restriction at the next overhaul, this AD does not require the existing 4330M steel fuse pins to be repaired with Class 3 plating at overhaul, nor does the AD describe any overhaul practices. Therefore, no change to the final rule is necessary in this regard.

Requests To Limit Applicability

One commenter requests that the applicability of the proposed rule be revised to include only those airplanes with fuse pins that have been identified by the manufacturer as substandard. The commenter states that the manufacturer has been able to connect inferior batches of fuse pins provided by certain suppliers to specific airplane line positions.

The FAA does not concur with the commenter's request. The manufacturer has not provided the FAA with any information that connects inferior batches of fuse pins to specific airplane line positions. Without such substantiating information, the FAA has no justification to revise the applicability of the final rule.

Another commenter requests that the applicability of the proposed rule be revised to exclude those airplanes on which 15–5PH CRES fuse pins have already been installed. The commenter states that the installation of the newer type 15–5PH CRES fuse pins addresses the unsafe condition and, therefore, airplanes with those pins installed are not affected by the proposed rule.

The FAA concurs with the commenter in that installation of the new fuse pins addresses the unsafe condition as stated in the final rule. Therefore, the applicability of the final rule has been revised accordingly.

Request To Revise Cost Impact Information

One commenter states that the service information contains more complete information than the preamble of the proposal and reflects a more accurate statement of the actual costs of the proposal. Although no specific change was requested by the commenter, the FAA infers that the commenter wants the cost impact section of the proposed rule to be revised to reflect the time required to gain access to the area and to return the airplane to normal service.

The FAA does not concur. The FAA acknowledges that the cost impact information, below, describes only the "direct" costs of the specific actions

required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, attempting to estimate such costs would be futile. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 609 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 151 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $36,240, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–11–14 Boeing: Amendment 39–11185. Docket 97–NM–51–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 609 inclusive; certificated in any category; having 4330M steel fuse pins installed in the outboard support of the main landing gear (MLG) beam.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the fuse pins in the outboard support of the MLG beam, which could result in the failure of a fuse pin and, consequently, lead to collapse of the MLG, accomplish the following:

Detailed Visual Inspection

(a) Within 4 years of service since the MLG was new, or within 18 months after the effective date of this AD, whichever occurs later, perform detailed visual inspections of the fuse pins of the MLG outboard support beam to detect corrosion or chrome plating cracks on the fuse pin, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any corrosion or plating crack of a fuse pin is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Install a new or serviceable 4330M steel fuse pin in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997. Repeat the detailed visual inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 48 months. Or

(2) Install a newer-type 15–5PH CRES fuse pin in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997. Accomplishment of this installation constitutes terminating action for the repetitive inspection requirements of paragraphs (a), (b)(1), and (c)(1) of this AD.

(c) If no corrosion or plating crack is found on the fuse pins, prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997.

(1) Install the existing 4330M steel fuse pins in accordance with the Accomplishment Instructions of the service bulletin. Repeat the detailed visual inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 48 months. Or

(2) Install newer-type 15–5PH CRES fuse pins in accordance with the Accomplishment Instructions of the service bulletin. Accomplishment of this installation constitutes terminating action for the repetitive inspection requirements of paragraphs (a), (b)(1), and (c)(1) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996; or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 8, 1999.

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–13878 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–21–AD; Amendment 39–11184; AD 99–11–13]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 402C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model 402C airplanes. This AD requires inspecting the forward, aft, and auxiliary wing spars for cracks; repairing any cracks found; and reporting the results of the inspection to the Federal Aviation Administration (FAA). This AD is the result of an accident of one of the affected airplanes where the right-hand wing failed just inboard of the nacelle at Wing Station (WS) 87. Investigation of this accident revealed fatigue cracking of the forward main spar that initiated at the edge of the front spar forward lower spar cap. The actions specified by this AD are intended to detect and correct any cracks in the forward, aft, and auxiliary wing spars, which could result in reduced or loss of control of the airplane.

DATES: Effective June 21, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550, facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eual Conditt, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone: (316) 946–4128; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report of an accident on a Cessna Model 402C airplane where the right-hand wing failed just inboard of the nacelle at Wing Station (WS) 87 during a normal descent. Investigation of this accident revealed fatigue cracking of the forward main spar that initiated at the edge of the front spar forward lower spar cap.

The airplane involved in the above-referenced accident had accumulated over 20,000 hours time-in-service (TIS). Analysis shows that the fatigue cracks could propagate after 10,000 hours TIS. Information available to the FAA shows that a large percentage of the Cessna Model 402C airplane fleet has already accumulated 10,000 hours TIS.

Relevant Service Information

Cessna has issued Service Bulletin MEB99–3, dated May 6, 1999, which includes procedures for conducting an internal and external inspection of the forward, aft, and auxiliary wing spars for cracks.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

—In order to detect cracking on Cessna Model 402C airplanes, an external and internal inspection of the forward, aft, and auxiliary wing spars for cracks should be accomplished upon accumulating 10,000 hours total TIS on the airplane or within the next 25 hours TIS for those airplanes having already accumulated 10,000 hours TIS; and

—AD action should be taken to assure that these inspections are accomplished.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 402C airplanes of the same type design, this AD requires inspecting the forward, aft, and auxiliary wing spars for cracks; repairing any cracks found; and reporting the results of the inspection to the FAA.

Accomplishment of the inspections as specified in this AD is required in accordance with Cessna Service Bulletin MEB99–3, dated May 6, 1999. The repair, if necessary, is required in accordance with an FAA-approved repair scheme.

Possible Follow-Up AD Action

The FAA is requiring a reporting requirement of the inspection results in order to analyze the situation and determine whether repetitive inspections of the wing spars are necessary. The FAA will review all information received and will then determine whether additional AD action is necessary.

Determination of the Effective Date of the AD

Since a situation (possible loss of control of the airplane caused by a cracked wing spar) exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–21–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–11–13 Cessna Aircraft Company: Amendment 39–11184; Docket No. 99-CE–21–AD.

Applicability: Model 402C airplanes, serial numbers 689; 402C0001 through 402C0125; 402C0201 through 402C0355; 402C0401 through 402C0528; 402C0601 through 402C0653; and 402C0801 through 402C1020, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

Note 2: The compliance times specified in Cessna Service Bulletin MEB99–3, dated May 6, 1999, are different than those required by this AD. The compliance times of this AD take precedence over those specified in the service bulletin.

To detect and correct any cracks in the forward, aft, and auxiliary wing spars, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Upon accumulating 10,000 hours total time-in-service (TIS) on the airplane or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, accomplish the external and internal inspection of the forward, aft, and auxiliary wing spars for cracks, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin MEB99–3, dated May 6, 1999.

(b) If any crack(s) is/are found on any forward, aft, or auxiliary wing spar during the inspections required by paragraph (a) of this AD, prior to further flight, accomplish the following:

(1) Obtain an FAA-approved repair scheme from the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550, facsimile: (316) 942–9008; and

(2) Incorporate this repair scheme.

(c) If any crack(s) is/are found during the inspections required by paragraph (a) of this AD, submit a report of inspection findings to the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; facsimile: (316) 946–4407; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the results of the findings, a description of any cracking found, a description of any previous wing repairs or modifications, the airplane serial number, and the total number of hours TIS on the airplane. The "Lower Wing Spars and Skin Inspection Report" included as page 6 of Cessna Service Bulletin MEB99–3, dated May 6, 1999, may be utilized for this reporting requirement. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) *For airplanes on which the inspections are accomplished after the effective date of this AD:* Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) *For airplanes on which the inspections have already been accomplished prior to the effective date of this AD:* Submit the report within 10 days after the effective date of this AD, unless already accomplished.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a

location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The inspections required by this AD shall be done in accordance with Cessna Service Bulletin MEB99-3, dated May 6, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on June 21, 1999.

Issued in Kansas City, Missouri, on May 21, 1999.

Michael E. Dahl,

Acting Manager, Small Airplane Directorate.

[FR Doc. 99–13875 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–223–AD; Amendment 39–11186; AD 99–11–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires a one-time detailed visual inspection to detect improperly installed or frayed aileron cables, and a one-time detailed visual inspection to detect improper identification or location of the cable markers, and corrective actions, if necessary. This amendment is prompted by a report that an aileron cable failed, due to improper installation onto the wrong groove of an aileron cable drum. The actions specified by this AD are intended to detect and correct an improperly installed aileron cable; such installation could lead to the failure of the aileron cable, and consequent reduced lateral control capability of the airplane.

DATES: Effective July 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on September 8, 1998 (63 FR 47447). That action proposed to require a one-time detailed visual inspection to detect improperly installed or frayed aileron cables, and a one-time detailed visual inspection to detect improper identification or location of the cable markers, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule, and two commenters offered no objection to the proposed rule.

Request To Reference Revised Service Information

One commenter requests that the FAA revise the proposed rule to add references to Revision 1 of Boeing Service Bulletin 747–27–2367, dated December 17, 1998, as an appropriate source of service information for accomplishment of the actions specified by the proposal. The proposed AD referenced only the original issue of the service bulletin, dated June 25, 1998.

The FAA concurs with the commenter's request. The FAA has reviewed and approved Boeing Service Bulletin 747–27–2367, Revision 1. The instructions contained in Revision 1 of the service bulletin are substantially similar to those in the original issue of the service bulletin. Therefore, paragraph (a) of this final rule has been revised to state that the inspections are to be accomplished in accordance with either the original issue or Revision 1 of the service bulletin. However, among other things, Revision 1 removes airplanes from the effectivity listing of the original service bulletin, and revises certain illustrations to clarify the accomplishment instructions. Therefore, the applicability statement of this final rule has been revised to make this AD applicable to, "Model 747 series airplanes, as listed in Boeing Service Bulletin 747–27–2367, Revision 1. . . ." In addition, the cost impact section has been revised in this final rule to reflect the reduction in the number of affected airplanes.

Request To Increase Compliance Threshold

One commenter requests that the compliance threshold for accomplishment of the one-time detailed visual inspections be increased from 18 months to 36 months. The commenter states that the inspections must be accomplished during a heavy maintenance check, and that a similar maintenance task is scheduled for every 2C-check on Model 747 series airplanes. The commenter further states that increasing the compliance threshold would allow operators to accomplish the inspections specified in this AD concurrently with that similar task. The commenter justifies its request for an increased inspection threshold by stating that a failure effects assessment indicates that, in the event of failure of two cables about a cable drum, the handling qualities of Model 747 series airplanes would be "adequate."

The FAA does not concur with the commenter's request to increase the compliance threshold. Service history has indicated that many aileron cable markers are located incorrectly, which may lead to a greater exposure to failures of the aileron cables and possible mishandling of the airplane. The FAA has determined that a compliance time of 18 months is adequate to allow operators to

accomplish the actions required by this AD, while not adversely affecting the safety of the transport airplane fleet. In support of this determination, the FAA has received information indicating that certain operators presently perform a detailed inspection of the aileron cables during every C-check. No change to the final rule is necessary in this regard.

Request To Revise Compliance Time for Replacement of Discrepant Marker

One commenter requests that the FAA revise the proposed compliance time for the replacement of an aileron cable marker that is found to be improperly identified or located. Paragraph (a)(4) of the proposed AD states that any aileron cable marker that is found to be improperly identified or located must be replaced with a new marker prior to further flight. The commenter states that an improperly installed aileron cable marker does not affect the functionality of the aileron control system, and requests that the proposed rule be revised to require replacement of a discrepant cable marker, "at the earliest maintenance opportunity," rather than, "prior to further flight." The operator also points out that if an operator needs to replace or re-route an aileron cable prior to replacement of an improperly installed marker, the cable can be replaced or rerouted in accordance with the Airplane Maintenance Manual (AMM) instead of the aileron cable marker.

The FAA does not concur with the commenter's request. The FAA finds that revising the compliance time from "prior to further flight" to "at the earliest maintenance opportunity" would permit each operator to determine when a discrepant aileron cable marker is replaced. In light of the identified unsafe condition, the FAA has determined that allowing this degree of operator discretion is not appropriate. However, under the provisions of paragraph (c) of the final rule, operators may request approval of an alternative method of compliance that would allow extension of the compliance time for replacement of a discrepant marker. Therefore, no change to the final rule is necessary in this regard.

With regard to the use of the procedures specified in the AMM, rather than the aileron cable marker, to replace or reroute an aileron cable: As pointed out in the "Discussion" section of the proposal, the FAA has received many reports of misrouted aileron cables. These incidents of misrouted aileron cables have occurred in spite of the fact that the AMM specifies procedures for routing the aileron cables that do not rely on the aileron cable markers. For this reason, the FAA finds it likely that the misrouted aileron cables are due to improperly identified or located cable markers. No change to the final rule is necessary in this regard.

Request To Revise the Compliance Time for Reporting Adverse Results

Two commenters request that the FAA increase the proposed compliance time for reporting adverse inspection results from 10 days after the inspection to 30 days after the inspection. One of the commenters states that a 30-day compliance time would allow the paperwork to be handled according to normal, rather than special, procedures. The commenter states that such special handling procedures as would be necessary with a 10-day compliance time often result in lost or incomplete information. The commenter asserts that a 30-day compliance time would allow an affected operator to submit "a concise and accurate report to the FAA."

The FAA concurs with the commenters' request to increase the compliance time for reporting adverse inspection results. The FAA finds that an increase in the compliance time from 10 days after accomplishment of the inspection to 30 days after accomplishment of the inspection would not have an adverse effect on the safety of the transport airplane fleet. Paragraph (b) of this final rule has been revised accordingly.

Explanation of Change Made to the Proposal

The FAA has added a **"Note 2"** to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,023 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 224 airplanes of U.S. registry will be affected by this AD.

It will take approximately 9 work hours per airplane to accomplish the required detailed visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $120,960, or $540 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–11–15 Boeing: Amendment 39–11186. Docket 98–NM–223–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–27–

2367, Revision 1, dated December 17, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct an improperly installed aileron cable, which could lead to the failure of the aileron cable, and consequent reduced lateral control capability of the airplane, accomplish the following:

One-Time Inspections and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time detailed visual inspection to detect improper installation or fraying of the aileron cables on both wings. In addition, perform a one-time detailed visual inspection of the aileron cable markers on both wings to detect improper identification or location. Perform both inspections in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2367, dated June 25, 1998, or Revision 1, dated December 17, 1998.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no improperly installed or frayed aileron cable is found, and if no aileron cable marker is improperly identified or located, no further action is required by this AD.

(2) If any aileron cable is found to be improperly installed (but not frayed), prior to further flight, reroute the discrepant aileron cable in accordance with the Accomplishment Instructions of the service bulletin.

(3) If any aileron cable is found to be frayed, prior to further flight, replace the discrepant aileron cable with a new aileron cable in accordance with the Accomplishment Instructions of the service bulletin.

(4) If any aileron cable marker is found to be improperly identified or located, prior to further flight, replace the discrepant aileron cable marker with a new aileron cable marker in accordance with the Accomplishment Instructions of the service bulletin.

Reporting Requirement

(b) Within 30 days after accomplishing the detailed visual inspections required by paragraph (a) of this AD, submit a report of the inspection results (adverse findings only) to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. Required information for each report must include the following: description of the adverse finding, airplane serial number, and total flight cycles and flight hours accumulated at the time of the inspection. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 747–27–2367, dated June 25, 1998; or Boeing Service Bulletin 747–27–2367, Revision 1, dated December 17, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 8, 1999.

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–13874 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–35]

RIN 2120–AA66

Amendment of VOR Federal Airways; Kahului, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action realigns seven Hawaiian Very High Frequency Omnidirectional Range (VOR) Federal airways due to the relocation of the Maui, HI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). The FAA is taking this action to enhance safety and improve the management of air traffic operations in the vicinity of Kahului, HI.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1998, the FAA proposed to amend 14 CFR part 71 (part 71) to modify the legal descriptions of seven VOR Federal airways, V–1, V–5, V–6, V–11, V–15, V–17, and V–22, located in Kahului, HI, due to the relocation of the Maui, HI, VORTAC (63 FR 12711). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This action amends part 71 by modifying the legal descriptions of seven VOR Federal airways, V–1, V–5, V–6, V–11, V–15, V–17, and V–22, due to the relocation of the Maui, HI, VORTAC. The FAA is taking this action to enhance safety and improve the management of air traffic operations in the vicinity of Kahului, HI.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Hawaiian VOR Federal airways are published in paragraph 6010(c) of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Hawaiian VOR Federal airways listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6010(c)—Hawaiian VOR Federal Airways

* * * * *

V–1 [Revised]

From Kona, HI, via INT Kona 323° and Maui, HI, 180° radials; INT Maui 180° and Upolu Point, HI, 305° radials; INT Maui 197° and Upolu Point 305° radials; to Maui.

* * * * *

V–5 [Revised]

From Kona, HI, via INT Kona 338° and Maui, HI, 180° radials; to INT Maui 180° and Upolu Point, HI, 305° radials.

V–6 [Revised]

From INT Molokai, HI, 067° and Maui, HI, 329° radials, to Maui.

* * * * *

V–11 [Revised]

From INT Kona, HI, 323° and Upolu Point, HI, 211° radials; via Upolu Point; INT Upolu Point 349° and Maui, HI, 081° radials; to Maui.

* * * * *

V–15 [Revised]

From INT South Kauai, HI, 288° radial and long. 162°37′11″ W., via South Kauai; Lihue, HI; INT Lihue 121° and Honolulu, HI, 269° radials; Honolulu; Koko Head, HI; Molokai, HI, Maui, HI, INT Maui 096° and Hilo, HI, 336(radials; Hilo to INT Hilo 099° radial and long. 151°53′00″ W.

* * * * *

V–17 [Revised]

From INT Lanai, HI, 106° and Maui, HI, 197° radials; Maui. From INT Koko Head, HI, 071° and Maui 347° radials; to INT Maui 347° and Lihue, HI, 065° radials.

* * * * *

V–22 [Revised]

From Molokai, HI, via INT Molokai 082° and Maui, HI, 329° radials; Maui; INT Maui 096° and Hilo, HI, 321° radials; Hilo; to INT Hilo 078° radial and long. 152°14′00″ W.

* * * * *

Issued in Washington, DC, on May 27, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–14078 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 411, 413, 415 and 417

[Docket No. 28851; Amdt. Nos. 401–01, 411–01, 413–01, 415–01 and 417–01]

RIN 2120–AF99

Commercial Space Transportation Licensing Regulations; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** of April 21, 1999 (64 FR 19586). That document amends its licensing regulations in order to clarify its license application process generally, and for launches from federal launch ranges, specifically. The regulations are intended to provide applicants and licensees greater specificity and clarity regarding the scope of a license, and to codify and amend licensing requirements and criteria.

EFFECTIVE DATE: June 21, 1999. An application pending at the time of the effective date must conform to any new requirements of this rulemaking as of the effective date. All license terms and conditions, and all safety requirements of this rulemaking also apply as of the effective date.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, (202) 267–8379.

Correction

In final rule FR Doc. 99–9639, published in the **Federal Register** of April 21, 1999 (64 FR 19586), make the following correction:

On page 19586, in column 1, in the heading, correct "[Docket No. 28851; Amdt. Nos. 401–01, 411–01, 413–01, 415–01 and 417–01" to read "[Docket No. 28851; Amdt Nos. 401–01, 411–01, 413–03, 415–03 and 417]".

Issued in Washington, DC, on May 25, 1999.

Gary A. Michel,

Acting Assistant Chief Counsel, Office of Chief Counsel.

[FR Doc. 99–13820 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AF02

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Dates for Several Body System Listings

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: SSA adjudicates claims at the third step of its sequential evaluation process for evaluating disability using the Listing of Impairments (the Listings) under the Social Security and supplemental security income (SSI) programs. This final rule extends the dates on which several body system listings will no longer be effective. We have made no revisions to the medical criteria in these listings; they remain the same as they now appear in the Code of Federal Regulations. These extensions will ensure that we continue to have medical evaluation criteria in these listings to adjudicate claims for

disability based on impairments in these body systems at step three of our sequential evaluation process.

EFFECTIVE DATE: This final regulation is effective June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Barnes, Social Insurance Specialist, Office of Disability, Social Security Administration, 3–A–9 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4171 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: We use the Listings in appendix 1 to subpart P of part 404 at the third step of the sequential evaluation process to evaluate claims filed by adults and individuals under age 18 for benefits based on disability under the Social Security and SSI programs. The Listings are divided into parts A and B. We use the criteria in part A to evaluate the impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, then the medical criteria in part A will be used.

When we published revised listings in 1985 and subsequently, we indicated that medical advances in disability evaluation and treatment and program experience would require that they be periodically reviewed and updated. Accordingly, we established dates ranging from 3 to 8 years on which the various body system listings would no longer be effective unless extended by the Secretary of Health and Human Services or revised and promulgated again. Effective March 31, 1995, the authority to issue regulations was transferred to the Commissioner of Social Security by section 102 of Pub. L. 103–296, the Social Security Independence and Program Improvements Act of 1994.

In this final rule, we are extending the dates on which several body system listings will no longer be effective to July 2, 2001. These body systems are:

Growth Impairment (100.00)
Musculoskeletal System (1.00 and 101.00)
Special Senses and Speech (2.00 and 102.00)
Hemic and Lymphatic System (7.00 and 107.00)
Skin (8.00)
Endocrine System and Obesity (9.00) and Endocrine System (109.00)
Multiple Body Systems (110.00)
Neurological (11.00 and 111.00)
Mental Disorders (12.00 and 112.00)
Neoplastic Diseases, Malignant (13.00 and 113.00)
Immune System (14.00 and 114.00)

We last extended the dates on which these body system listings would no longer be effective in final rules published as follows:

June 5, 1997 (62 FR 30746): Musculoskeletal System; Hemic and Lymphatic System; Skin; Endocrine System; Mental Disorders; and Neoplastic Diseases, Malignant.

June 4, 1998 (63 FR 30410): Growth Impairment; Special Senses and Speech; Multiple Body Systems; Neurological; and Immune System.

We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets or is medically equivalent in severity to an impairment in the Listings or functionally equivalent to the Listings in SSI claims based on disability filed by individuals under age 18 and also meets the statutory duration requirement, we will find that the individual is disabled at the third step of the sequential evaluation process. We are extending these dates because we do not expect to develop revised listings criteria for these body systems by the expiration dates we are revising in this final rule. However, we are reviewing the listings and we plan to publish proposed and final rules over the course of the next two years.

Regulatory Procedures

Justification for Final Rule

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the date on which these body system listings will no longer be effective. It makes no substantive changes to those listings. The current regulations expressly provide that listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in these body system listings. However, without an extension of the expiration dates for these listings, we will lack regulatory guidelines for assessing impairments in these body systems at the third step of the sequential evaluation process after the current expiration dates of these listings. In order to ensure that we continue to have regulatory criteria for assessing impairments under these listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review. We have also determined that this final rule meets the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, reporting and recordkeeping requirements, Social Security.

Dated: May 27, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404 [Amended]

2. Appendix 1 to subpart P of part 404 is amended by revising items 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, and 15 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

1. Growth Impairment (100.00): July 2, 2001.
2. Musculoskeletal System (1.00 and 101.00): July 2, 2001.
3. Special Senses and Speech (2.00 and 102.00): July 2, 2001.

* * * * *

8. Hemic and Lymphatic System (7.00 and 107.00): July 2, 2001.
9. Skin (8.00): July 2, 2001.
10. Endocrine System and Obesity (9.00) and Endocrine System (109.00): July 2, 2001.
11. Multiple Body Systems (110.00): July 2, 2001.
12. Neurological (11.00 and 111.00): July 2, 2001.
13. Mental Disorders (12.00 and 112.00): July 2, 2001.
14. Neoplastic Diseases, Malignant (13.00 and 113.00): July 2, 2001.
15. Immune System (14.00 and 114.00): July 2, 2001.

* * * * *

[FR Doc. 99–14081 Filed 6–2–99; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8821]

RIN 1545–AN54

Group-Term Insurance; Uniform Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations revising the uniform premium table used to calculate the cost of group-term life insurance coverage provided to an employee by an employer. These regulations provide guidance to employers who provide group-term life insurance coverage to their employees that is includible in the gross income of the employees.

DATES: *Effective Date:* These regulations are effective July 1, 1999.

Applicability Date: For the applicability of these regulations to group-term life insurance coverage, see §1.79–3(e).

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations under section 79 of the Internal Revenue Code. These regulations revise the uniform premiums used to calculate the cost of group-term life insurance provided to employees. The revised uniform premiums are effective generally on July 1, 1999. However, employers have until the last pay period of 1999 to make any needed adjustments of amounts withheld for purposes of the FICA. Further, an employer may continue using only 10 age-brackets for making its calculations until January 1, 2000. A special effective date applies to a policy of life insurance issued under a plan in existence on June 30, 1999, if the policy would not be treated as carried directly or indirectly by an employer under § 1.79–0 of the Income Tax Regulations using the section 79 uniform premium table in effect on June 30, 1999. If this is the case, the employer may continue using such table for determining if the policy is carried directly or indirectly by an employer until January 1, 2003.

Section 79 generally permits an employee to exclude from gross income the cost of $50,000 of group-term life insurance carried directly or indirectly by an employer. The remaining cost of the group-term life insurance is included in the employee's gross income to the extent it exceeds the amount, if any, paid by the employee for the coverage. Income imputed under section 79 is not subject to Federal income tax withholding. However, it is subject to FICA tax and, for active employees, an employer is required to withhold the FICA tax at least once a year. Also, the amount of the income imputed under section 79 is reported on an employee's Form W–2.

Section 79 provides for the cost of the group-term life insurance to be determined on the basis of five-year age brackets prescribed by regulations. Those costs are set forth in the regulations in Table I entitled "Uniform Premiums for $1,000 of Group-term Life Insurance Protection." § 1.79–3(d)(2). The group-term life insurance costs are calculated on a calendar month basis. § 1.79–3 (a) through (c).

Table I was initially published on July 6, 1966 (31 FR 9199), and was revised on December 6, 1983 (48 FR 54595). In a notice of proposed rulemaking (REG 209103-89) published in the **Federal Register** (64 FR 2164) on January 13, 1999, the IRS and Treasury proposed revising the Table I rates, effective July 1, 1999. The uniform premiums under the proposed table were lower in all age groups than those under the then-current section 79 regulations.[1] The proposed table also added a new age bracket to the table for ages under 25. A special effective date was proposed solely for purposes of determining whether a policy is carried directly or indirectly by the employer.

Explanation of Provisions

Uniform Premium Table

The IRS received 26 written comments concerning the proposed regulations. No commentator suggested changes to the proposed uniform premium table. The final regulations reflect the uniform premium table that was set forth in the proposed regulations.

General Effective Date

Many of the comments received by the IRS discussed the proposed effective date for the uniform premium rates. Some commentators agreed with the proposed effective date of July 1, 1999. Many of the commentators asked that the effective date be made retroactive to January 1, 1999. A few of the commentators requested that it be postponed, generally until January 1, 2000. Some commentators suggested that each employer should be allowed to decide the effective date for its employees, within a limited period of time set by the IRS. Some commentators requested that the effective date of the

[1] The revised uniform premiums are based on mortality experience for individuals covered by group-term life insurance during the 1985–1989 period, as reflected in a Society of Actuaries report. The mortality rates have been adjusted for improvements in mortality from 1988 (the weighted midpoint for the data used in the 1985–89 study) through 2000, based on the same rates of mortality improvement that were adopted by the Society of Actuaries Group Annuity Valuation Table Task Force for the period 1988–1994. Separate mortality rates have been derived for males and females, and the uniform premium table reflects a 50/50 blend of the male and female mortality rates. The resulting mortality projections have been adjusted to reflect a 10 percent load factor.

revised Table I be the first payroll period beginning on or after July 1, 1999.

Those advocating a January 1, 1999 effective date expressed the view that employees should get the benefit of the lower Table I rates for the entire year. In their opinion, additional administrative costs, if any, for implementing revised rates retroactively, rather than July 1, 1999, would be minimal. Some commentators observed that the use of a January 1 effective date would permit the use of a single set of Table I rates for the entire year, rather than a bifurcated rate for 1999. However, there was no consensus as to whether this factor suggests using an effective date of January 1, 1999 or (as discussed below) January 1, 2000.

Some commentators suggested a January 1, 2000 effective date on account of resource constraints resulting from year 2000 compliance. One of the commentators also observed that many payroll systems are now "hard coded" for making group-term calculations using only 10 age brackets, and that the additional age bracket (for ages under 25) in the revised Table I would make it more difficult to modify those payroll systems by July 1, 1999. In the public hearing that was held on the proposed regulations on May 6, 1999, the sole speaker reiterated its written comment in which it requested that the effective date be postponed, generally until January 1, 2000, and indicated that a change in the proposed regulations to not mandate use of the "Under 25" age bracket would significantly reduce the administrative burden of a July 1, 1999 effective date.

The IRS and Treasury continue to believe that an effective date of July 1, 1999 provides the best way to balance the ability of employees to obtain the tax benefits of the lower Table I rates with the concerns expressed by some commentators about modifying payroll systems. As stated previously, income imputed under section 79 is not subject to Federal income tax withholding. Further, while it must be reported on Form W–2 and it is subject to FICA tax withholding, changes to payroll systems are not required to be effectuated by the July 1, 1999 effective date.

Specifically, Notice 88–82 (1988–2 C.B. 398), "Reporting FICA Taxes on Group-Term Life Insurance," explains that an employer may treat the imputed income amounts as paid either by the pay period, by the quarter, or on any other basis so long as the payments are treated as paid at least as often as once a year. The employer need not inform the IRS of a formal choice of payment dates or the dates chosen. Furthermore, the same choice need not be made for all employees. The employer may change methods at any time, so long as all imputed income amounts includible in a calendar year are treated as paid by December 31 of the calendar year. Notice 88–82, therefore, permits those employers currently withholding the FICA taxes on a pay period basis to either (1) change methods to treat the Table I amounts includible in income after July 1, 1999 as paid on December 31, 1999, or (2) continue to withhold using the old Table I rates, so long as adjustments for the post-July 1, 1999 FICA withholding amounts are made by the last pay period for 1999.

Accordingly, the regulations provide that the revised Table I rates are effective, generally, on July 1, 1999. However, in order to further minimize the administrative burden of a July 1, 1999 effective date, the regulations allow employers to continue using 10 age brackets until January 1, 2000, thereby eliminating the need for "hard coded" systems to be modified during 1999 to include the "Under 25" age bracket.

Special Effective Date

Several comments were received on the topic of the effective date for purposes of determining whether, for purposes of section 79, a policy is carried directly or indirectly by the employer. A policy is considered carried directly or indirectly by the employer if (a) the employer pays any part of the life insurance, or (b) the employer arranges for payment of the cost of the life insurance by its employees and charges at least one employee less than the cost of his or her insurance (as determined under Table I) and at least one other employee more than his or her insurance (as determined under Table I). § 1.79–0.

The IRS and Treasury recognize that the premiums charged to employees under some employee-pay-all plans may involve premiums charged to employees that are all at or below the uniform premium rates prior to the revision of Table I. Because the revised Table I rates are lower than the rates under the prior table, it is likely that the premiums charged under some of those policies will now straddle the new rates. As a result, the life insurance provided under those policies will become subject to section 79. The notice of proposed rulemaking proposed a special effective date rule to apply to any policy of life insurance issued under a plan in existence before the general July 1, 1999 effective date. Under the special rule, if a policy would not be treated as carried directly or indirectly by an employer using the Table I rates in effect on June 30, 1999, the policy would continue to be treated as not carried directly or indirectly by the employer until the first plan year that begins after the general effective date.

Several comments received about the proposed special rule support the use of a special effective date for the purpose of determining whether a policy is carried directly or indirectly by the employer. However, most of those comments requested that the special rule be extended under certain identified circumstances. One commentator favored extending the special effective date for group-term coverage provided under a collectively bargained agreement. The commentator noted that collectively bargained plans may not be able to adjust rates within the time period of the proposed special rule because rate changes would require a substantive change to benefits in the middle of a contract. Two commentators suggested that the special effective date for a plan with a multi-year guarantee be extended until the end of the last plan year covered by the guarantee. Others suggested that the revised Table I rates not be effective for purposes of determining if the plan is carried directly or indirectly by the employer until there is a change in a plan's premium rates. Another comment addressed an issue under the definition of carried directly or indirectly by the employer different from the special effective date issue. The comment suggested that a policy not be treated as carried directly or indirectly by the employer if the policy charges employees actuarially determined, age-specific premium rates, rather than the rates in the five-year age brackets in Table I.

The IRS and Treasury agree that some additional time should be given to employee-pay-all plans that would previously not be subject to section 79. Accordingly, the final regulations provide a special rule under which, until January 1, 2003, an employer can use either the Table I rates in effect on June 30, 1999 or the new Table I rates in the final regulation for determining if a plan in existence on June 30, 1999 is carried directly or indirectly by the employer.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory

Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Betty J. Clary, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and the Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.79–1, paragraph (d)(7) is revised to read as follows:

§ 1.79–1 Group-term life insurance—general rules.

* * * * *

(d) * * *

(7) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. An employer provides insurance to employee A under a policy that meets the requirements of this section. Under the policy, A, who is 47 years old, received $70,000 of group-term life insurance and elects to receive a permanent benefit under the policy. A pays $2 for each $1,000 of group-term life insurance through payroll deductions and the employer pays the remainder of the premium for the group-term life insurance. The employer also pays one half of the premium specified in the policy for the permanent benefit. A pays the other half of the premium for the permanent benefit through payroll deductions. The policy specifies that the annual premium paid for the permanent benefit is $300. However, the amount of premium allocated to the permanent benefit by the formula in paragraph (d)(2) of this section is $350. A is a calendar year taxpayer; the policy year begins January 1. In year 2000, $200 is includible in A's income because of insurance provided by the employer. This amount is computed as follows:

(1) Cost of permanent benefits	$350
(2) Amounts considered paid by A for permanent benefits (½ × $300)	150
(3) Line (1) minus line (2)	200
(4) Cost of $70,000 of group-term life insurance under Table I of § 1.79–3	126
(5) Cost of $50,000 of group-term life insurance under Table I of § 1.79–3	90
(6) Cost of group-term insurance in excess of $50,000 (line (4) minus line(5))	36
(7) Amount considered paid by A for group-term life insurance (70 × $2)	140
(8) Line (6) minus line (7) (but not less than 0)	0
(9) Amount includible in income (line (3) plus line (8))	200

* * * * *

Par. 3. Section 1.79–3 is amended as follows:

1. Paragraph (d)(2) is revised.

2. Paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively.

3. New paragraph (e) is added.

The revision and addition read as follows:

§ 1.79–3 Determination of amount equal to cost of group-term life insurance.

* * * * *

(d) * * *

(2) For the cost of group-term life insurance provided after June 30, 1999, the following table sets forth the cost of $1,000 of group-term life insurance provided for one month, computed on the basis of 5-year age brackets. See 26 CFR 1.79–3(d)(2) in effect prior to July 1, 1999, and contained in the 26 CFR part 1 edition revised as of April 1, 1999, for a table setting forth the cost of group-term life insurance provided before July 1, 1999. For purposes of Table I, the age of the employee is the employee's attained age on the last day of the employee's taxable year.

TABLE I.—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION

5-year age bracket	Cost per $1,000 of protection for one month
Under 25	$0.05
25 to 29	.06
30 to 34	.08
35 to 39	.09
40 to 44	.10
45 to 49	.15
50 to 54	.23
55 to 59	.43
60 to 64	.66
65 to 69	1.27
70 and above	2.06

* * * * *

(e) *Effective date*—(1) *General effective date for table.* Except as provided in paragraph (e)(2) of this section, the table in paragraph (d)(2) of this section is applicable July 1, 1999. Until January 1, 2000, an employer may calculate imputed income for all its employees under age 30 using the 5-year age bracket for ages 25 to 29.

(2) *Effective date for table for purposes of § 1.79–0.* For a policy of life insurance issued under a plan in existence on June 30, 1999, which would not be treated as carried directly or indirectly by an employer under § 1.79–0 (taking into account the Table I in effect on that date), until January 1, 2003, an employer may use either the table in paragraph (d)(2) of this section or the table in effect prior to July 1, 1999 (as described in paragraph (d)(2) of this section) for determining if the policy is carried directly or indirectly by the employer.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: May 25, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–13833 Filed 5–28–99; 11:22 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–0130a; FRL–6331–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District, Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Northern Sonoma County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District and Siskiyou County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following seven districts: Kern County Air Pollution Control District, Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Northern Sonoma County Air Pollution Control District, San Joaquin Valley Unified Air

Pollution Control District, Santa Barbara County Air Pollution Control District, and Siskiyou County Air Pollution Control District. These revisions concern the adoption of various administrative and other rules. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to update and clarify the SIP in accordance with the requirements of the Clean Air Act (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on August 2, 1999 without further notice, unless EPA receives adverse comments by July 6, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370.

Modoc County Air Pollution Control District, 202 West Fourth Street, Alturas, CA 96101–3915.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, California, 93721, and

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B23, Goleta, CA 93117.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, California, 96097–3036.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The following is a list of the rules being approved into the California SIP by District.

Kern County APCD—Rule 101, Title; Rule 112, Circumvention; Rule 113, Separation and Combination; Rule 114, Severability; and Rule 115, Applicability of Emission Limits. These rules were adopted on May 2, 1996, submitted to EPA as a SIP revision on July 23, 1996, and found complete on October 30, 1996.[1]

Modoc County APCD—Rule 4.1–2, Uncombined Water; Rule 4.6, Circumvention; Rule 4.6–1, Exception to Circumvention; and Rule 4.9, Separation of Emissions. These rules were adopted on January 3, 1989, submitted to EPA as a SIP revision on December 31, 1990, and found complete on July 7, 1990.

Mojave Desert AQMD—Rule 103, Description of the District Boundaries was adopted on June 28, 1995, submitted to EPA as a SIP revision on August 10, 1995, and found complete on October 4, 1995.

Northern Sonoma County APCD—Unnumbered rule, known as Appendix A; Unnumbered rule, known as Appendix B; Unnumbered rule, formerly Appendix C, now known as Appendix A; and Unnumbered rule, formerly Appendix D, now known as Appendix B. These appendices were adopted on February 22, 1984 and submitted to EPA as a SIP revision on October 16, 1985.

San Joaquin Valley Unified APCD—Rule 1010, Title and Rule 1130, Severability were adopted on June 18, 1992, submitted to EPA as a SIP revision on September 28, 1994, and found complete on March 30, 1995.

Santa Barbara County APCD—Rule 105, Applicability adopted on July 30, 1991, submitted to EPA as a SIP revision on October 25, 1991, and found complete on December 18, 1991.

Siskiyou County APCD—Rule 4.10, Reduction of Animal Matter, adopted on January 24, 1989, submitted to EPA as a revision to the SIP on March 26, 1990, and found complete on February 28, 1991.

II. Background

The Clean Air Act of 1970 (CAA or the Act) requires the states to develop state implementation plans to enable local districts to attain and maintain national ambient air quality standards. Most of the rules listed above do not directly affect emission reductions. They were adopted, however, to help clarify the procedures and requirements of local air pollution control programs.

III. EPA Evaluation and Action

In determining the approvability of each local rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA, and 40 CFR Part 51. The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents; see, in particular, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book).

These rules involve the names and boundaries of the local districts, prohibitions against circumvention of the rules, and directions on severing sections of the rules that might be unlawful. A more detailed description of the rules, the SIP modifications, and the basis for EPA's approval can be found in the evaluation report for this action.

EPA is publishing these rules without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 2, 1999 without further notice unless the Agency receives adverse comments by July 6, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register**, informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in

[1] The submitted rules were found to be complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V. EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 2, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

"Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by

the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 22, 1999.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(164)(i)(B)(*2*), (179)(i)(E)(*2*), (182)(i)(F), (186)(i)(E), (199)(i)(D)(*4*), (224)(i)(C)(*2*), (239)(i)(C), and (239)(i)(D) introductory text to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(164) * * *

(i) * * *

(B) * * *

(*2*) Appendices A and B adopted on February 22, 1984.

* * * * *

(179) * * *

(i) * * *

(E) * * *

(*2*) Rule 4.10 adopted on January 24, 1989.

* * * * *

(182) * * *

(i) * * *

(F) Modoc County Air Pollution Control District.

(*1*) Rules 4.1–2, 4.6, 4.6–1, and 4.9 adopted on January 3, 1989.

* * * * *

(186) * * *

(i) * * *

(E) Santa Barbara County Air Pollution Control District.

(*1*) Rule 105 adopted on July 30, 1991.

* * * * *

(199) * * *

(i) * * *

(D) * * *

(*4*) Rule 1010 adopted on June 18, 1992 and Rule 1130 adopted on June 18, 1992 and amended on December 17, 1992.

* * * * *

(224) * * *

(i) * * *

(C) * * *

(2) Rule 103 amended on June 28, 1995.

* * * * *

(239) * * *

(i) * * *

(C) Kern County Air Pollution Control District.

(*1*) Rules 101, 112, 113, 114, and 115 amended on May 2, 1996.

(D) Ventura County Air Pollution Control District.

* * * * *

[FR Doc. 99–13657 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX83–1–7340a; FRL–6349–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Harris County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving two revised Commission Orders modifying the sulfur dioxide (SO_2) allowable emissions at two stationary sources in Harris County, Texas. The Orders are separate, enforceable agreements between Simpson Pasadena Paper Company, Lyondel-Citgo Refining Company, and the Texas Natural Resource Conservation Commission (TNRCC). This action will incorporate these two Orders into the federally approved State Implementation Plan (SIP). The intention of this action is to regulate SO_2 emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act).

DATES: This action is effective on August 2, 1999 without further notice, unless EPA receives relevant adverse comments by July 6, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments must be submitted to Mr. Thomas Diggs, Chief of Air Planning Section, EPA Region 6, 1445 Ross Avenue, Suite 1200 (6PD–L), Dallas, Texas 75202–2733. Copies of the technical support document are available for public review at the EPA Region 6 office during normal business hours. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Suite 1200, 6PD–L, Dallas, Texas 75202–2733, telephone (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753, telephone (512) 239–1461.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Petra Sanchez, Air Planning Section, (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone: (214) 665–6686.

SUPPLEMENTARY INFORMATION:

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I. Background Information

A. What Action Is EPA Taking in This Rulemaking?

The EPA is adopting two Agreed Commission Orders containing new emission limits at two facilities into the Harris County SIP for SO_2. The facilities are Simpson Pasadena Paper Company located at North Shaver Street at

Washburn Tunnel in Houston, Texas, and Lyondel-Citgo Refining Company, located at 12000 Lawndale, also in Houston, Texas. Changes to the emission limits were approved by the TNRCC through "Agreed Commission Orders." This action adopts these Orders into the SIP and makes them federally enforceable. In the original SIP for Harris County, emission limits were developed for thirteen non-permitted sources, including Simpson and Lyondel. The EPA approved the Harris County SIP on March 6, 1995 (60 FR 12125), and the contents in the unrevised portions of the SIP remain the same. The reader is referred to this **Federal Register** document for additional background.

B. Why Were Changes in Emission Rates Necessary?

Lyondel-Citgo Refining Company (LCR)

The LCR revision corrects a minor technical problem found with the calculation for the SO_2 emission rate. In the original 1994, SIP submittal, hourly LCR allowable emission rates used for dispersion modeling calculated the annual average fuel gas rates instead of the LCR grandfathered firing rates, resulting in a maximum fuel gas hydrogen sulfide concentration of 160 parts per million (ppm) by volume. The annual average fuel gas emission rates were incorrectly converted to an hourly rate without taking into consideration grandfathered maximum hourly limits for the emission source. Adjusting the emission rates, however, would cause the combined emissions to rise from 199.42 to 263.39 pounds per hour (lbs/hr). Lyondel-Citgo Refining Company, therefore, submitted a request to modify their Agreed Commission Order to reflect their corrected emission rates. The request, with the supporting documentation and a revised dispersion modeling analysis to increase the SO_2 emission rates, was further evaluated by the TNRCC and then by EPA. The analysis demonstrates that the new emission rates from LCR will not cause a violation of the National Ambient Air Quality Standards (NAAQS) for SO_2.

The modeling results predict worst-case concentrations for the 3-hour, 24-hour, and annual averaging periods of 908 ug/m^3, (for the secondary 3-hour), 336 ug/m^3, (for the primary 24-hour standard) and 78 ug/m^3, (for the primary annual standard) respectively. All concentrations are below the applicable NAAQS of 1300 ug/m^3, 365 ug/m^3, and 80 ug/m^3 respectively.

The Industrial Source Complex Short-Term 3 model, and 5 years of meteorological data (i.e., 1981 through 1985) from the Houston Intercontinental surface station and the Lake Charles upper-air station were used for the analysis. Two emission inventories were used in the modeling, based on the original inventory provided by HRM and its contractor, Radian Incorporated. The second scenario used the updated inventory submitted by LCR. The differences from the first and second scenarios were observed, with respect to the 3-hour, 24-hour and annual SO_2 NAAQS. In addition, the differences from the first and second scenarios were added as an increment to the original Radian model results. The results predicted concentrations below the SO_2 NAAQS.

Simpson Pasadena Paper Company

Of the seven emission points identified in the original Commission Order for Simpson Pasadena, the largest is the No.6 Kraft Recovery Boiler (SN15, 400 pounds of SO_2 per hour). Simpson Pasadena submitted a request to modify their order by raising the emission limit on the No. 6 Kraft Recovery Boiler from 400 pounds/hour (lbs/hr) to 600 lbs/hr, when Boiler No. 7 is not operating. As a result, the maximum allowable SO_2 emissions from the two furnaces would decrease from 650 lbs/hr (400 and 250 lbs/hr, for No. 6 and No. 7, respectively) to 600 lbs/hr for one furnace. The revised order allows for this averaging on a permanent basis, whenever maintenance or malfunctions occur. Simpson Pasadena, however, is still responsible for notifying the TNRCC office whenever these temporary changes in emissions will occur, and provide an approximate duration time.

The air quality impact analysis submitted with the SIP revision request demonstrated that the net change in emissions from 650 lbs/hr to 600 lbs/hr would not cause or contribute to a violation of the SO_2 NAAQS.

The modeling approach was conducted in two phases. The first phase compared the predicted concentrations from the net change in emissions to the applicable SO_2 significance levels to determine if the modification was significant. The impacts were above the significance levels for the 3-hour and 24-hour averaging periods. Thus the second phase, a full analysis, was conducted using the complete emission inventory from the original attainment demonstration.

The modeling results predict worst-case concentrations for the 3-hour and 24-hour averaging periods of 691 micrograms/cubic meter (ug/m^3) and 227 ug/m^3, respectively. These concentrations demonstrated they were below the applicable NAAQS.

C. What Is a SIP?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS established by the EPA. These ambient standards are established under section 109 of the Act and they address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect its air quality. These SIPs can be extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations. The Texas SIP contains various "Agreed Commission Orders" (Orders) to meet the SIP requirements and other State statutory requirements. The Orders are developed to contain specific conditions for a particular source and can provide specific conditions such as, emission limits, hours of operation, record keeping requirements, production rates, compliance demonstration requirements, etc., for a particular source. Once the Orders are adopted into the SIP, they become federally enforceable.

D. What Are the Procedural Requirements Texas Must Follow for EPA Approval?

The Act requires States to observe certain procedural requirements while developing SIPs for submission to the EPA. Section 110(l) of the Act requires that a revision to a SIP must be adopted by such State after reasonable notice and public hearing. The EPA must also determine whether a submittal is complete and warrants further action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are found at 40 Code of Federal Regulations (CFR) part 51, appendix V. The submittal was determined to be administratively complete by EPA through a cover letter to the Governor of Texas on April 18, 1997.

The State of Texas held a public hearing on March 31, 1997, for public comment on these rule revisions. The SIP revision was then submitted by the Governor of Texas to the EPA by cover letter dated May 29, 1997. While there are no SO_2 nonattainment areas in Texas, the SIP must demonstrate

attainment and maintenance of the NAAQS.

All State regulations and supporting information approved by the EPA under section 110 of the Act are incorporated into the federally approved SIP. Records of such SIP actions are maintained in the 40 CFR part 52. The actual State regulations which were approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that the EPA has approved a given State regulation with a specific effective date.

E. What Are the Health Effects Associated With This Criteria Pollutant?

Sulfur dioxide belongs to the family of sulfur oxide gases. These gases are formed when fuel containing sulfur, such as coal and oil, is burned and during metal smelting, and other industrial process. Sulfur dioxide is a rapidly-diffusing reactive gas that is very soluble in water. Sulfur dioxide and oxides of nitrogen are the major precursors to acidic deposition (acid rain), and are associated with the acidification of lakes and streams, corrosion of buildings and monuments. They are also associated with reduced visibility. Sulfur dioxide in the Houston area is emitted principally from combustion, or processing, of sulfur-containing fossil fuels and ores. At elevated concentrations, sulfur dioxide can adversely affect human health. The major health concerns associated with exposure to high concentrations of SO_2 include effects on breathing, respiratory illness, alterations in the lungs' defenses, and aggravation of existing cardiovascular disease. Sulfur dioxide can also produce damage to the foliage of trees and agricultural crops.

F. What Are the NAAQS for SO_2?

The primary national ambient air quality standard for sulfur oxides, measured as SO_2, is 0.14 ppm, or 365 ug/m^3, averaged over a period of 24 hours and not to be exceeded more than once per year, and an annual standard of 0.030 ppm, or 80 ug/m^3, never to be exceeded. The secondary standard for SO_2 is 0.50 ppm, or 1300 ug/m^3 averaged over a three-hour period. The secondary standard may not be exceeded more than once per year.

II. Final Action

The EPA has evaluated the submitted Agreed Orders and their provisions along with the modeling demonstration to support the revised emission limits and has determined that they are consistent with the Act, EPA regulations, and EPA policy. Therefore, the revised Agreed Order Nos. 94–15 for Lyondel-Citgo, Refining Company, Ltd., and 94–22 for Simpson Pasadena Paper Company are being approved under section 110(k)(3) of the Act as meeting the requirements of section 110(a) and are acceptable revisions to the SIP. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective August 2, 1999 without further notice unless, by July 6, 1999, relevant adverse comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 2, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on

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matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 600 *et seq.* generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999.

Filing a petition for reconsideration with the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Lists of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 14, 1999.

Sammuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (116) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(116) A revision to the Texas State Implementation Plan (SIP) to include two modified Agreed Orders limiting sulfur dioxide (SO_2) allowable emissions at two facilities in Harris County, submitted by the Governor by cover letter dated May 29, 1997.

(i) Incorporation by reference.

(A) TNRCC Docket No. 96–1188–AIR Order Modifying Commission Order No. 94–15 for Lyondel-Citgo Refining Company, LTD., as adopted by the TNRCC on June 29, 1994, and modified on July 31, 1996;

(B) TNRCC Docket No. 96–1187–AIR, Order Modifying Commission Order No. 94–22 for Simpson Pasadena Paper Company, as adopted by the TNRCC on June 29, 1994, and modified on July 31, 1996.

(ii) Additional material.

TNRCC submittal to the EPA dated May 29, 1997, entitled, "Revisions to the SIP Concerning Sulfur Dioxide in Harris County."

[FR Doc. 99–13800 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SD–001–0003a and SD–001–0004a; FRL–6351–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Dakota Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. South Dakota's regulations require existing MSW landfills to install a landfill gas collection and control system, if the MSW landfill's design capacity and non-methane organic compound (NMOC) emissions are above certain thresholds. South Dakota submitted its original plan to EPA on May 2, 1997 and then submitted revisions to the plan on May 6, 1999.

South Dakota submitted this plan to meet section 111(d) of the Clean Air Act (Act) and EPA's Emission Guidelines for existing MSW landfills at 40 CFR part 60, subpart Cc. We approve South Dakota's plan because the State has met these requirements.

DATES: This rule is effective on August 2, 1999 without further notice, unless we receive adverse comment by July 6, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Department of Environmental and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. EPA Action

A. What Action Is EPA Taking Today?

We approve the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills, except for those landfills located in Indian Country [1]. South Dakota submitted its original plan to us on May 2, 1997 and then submitted revisions to the plan on May 6, 1999. South Dakota's Plan includes the "Section 111(d) State Plan for Municipal Solid Waste Landfills" and the State's regulations in Sections 74:36:07:34 through 74:36:07:42 of the Administrative Rules of South Dakota (ARSD).

We are publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective August 2, 1999 without further notice unless we receive adverse comments by July 6, 1999. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. Why Is EPA Approving South Dakota's Plan for MSW Landfills?

We reviewed South Dakota's plan, as revised by the State, and found that it meets the general requirements for section 111(d) plans in 40 CFR part 60, subpart B, and the specific requirements for existing MSW landfills in 40 CFR part 60, subpart Cc (as revised on June 16, 1998, 63 FR 32743–53).

C. What Does the South Dakota Plan Contain?

South Dakota's plan includes:

1. A demonstration that South Dakota has adequate legal authority to adopt and implement the plan;
2. Sections 74:36:07:34 through 74:36:07:42 of the ARSD as the enforceable mechanism for implementing the Emission Guidelines;
3. An inventory of all existing MSW landfills subject to the State Plan, including an estimation of NMOC emissions and design capacity of each landfill;
4. Emission limits that are no less stringent than the Emission Guidelines;
5. A process for the State's review and approval of the design plan for a landfill's gas collection and control system;
6. A final compliance date of thirty months from the date of the first NMOC emission rate report showing emissions equal to or greater than 50 megagrams per year (Mg/yr);
7. "Increments of progress" deadlines to ensure the landfills are on track to meet the final compliance date;
8. Testing, monitoring, recordkeeping and reporting requirements for existing MSW landfills that are no less stringent than the Emission Guidelines;
9. A commitment to submit annual progress reports to EPA on implementation of the State Plan; and
10. Documentation that the State met all public participation requirements for its two rulemaking hearings. Further details of the State's Plan can be found in the Technical Support Document for this action, which you can obtain by contacting the Regional Office contact listed above. The specific requirements of the State's Plan as it applies to MSW landfills are described below.

D. What MSW Landfills Are Subject to South Dakota's Plan?

If you are the owner or operator of a MSW landfill in South Dakota, then you are subject to South Dakota's plan if

1. The landfill accepted waste since November 8, 1987;
2. The landfill was constructed, reconstructed, or modified before May 30, 1991; and
3. The landfill's design capacity is greater than or equal to 2.5 million Mg and 2.5 million m^3.

If your landfill was constructed, reconstructed, or modified after May 30, 1991, then you are subject to the New Source Performance Standard in 40 CFR part 60, subpart WWW (incorporated into the ARSD in section 74:36:07:43), rather than South Dakota's plan for "existing landfills." If you have questions on how a MSW landfill is defined, refer to the definitions in 40 CFR part 60, subparts Cc and WWW.

If your landfill is located in Indian Country, then you will be subject to the Federal Plan which was proposed on December 16, 1998 (63 FR 69634–69684) and which will be finalized in the near future. We are not approving South Dakota's plan for landfills located in Indian Country. Note that we are currently discussing with the State and the Tribes how to describe Indian Country in South Dakota. A more specific description of Indian Country will be published in a future **Federal Register** notice concerning approval of the State's New Source Performance Standard for MSW landfills.

E. What Requirements Apply to MSW Landfills in South Dakota That Are Subject to the State's Plan?

If you are the owner or operator of an existing MSW landfill that South Dakota determined has a design capacity of 2.5 million Mg or 2.5 million m^3, then you must submit an initial report of your landfill's NMOC emission rate to the State by November 1, 1999. You must also submit updated NMOC emission rate reports annually or every five years as required by ARSD 74:36:07:42.01. The landfill's NMOC emission rate must be calculated in accordance with 40 CFR 60.754.

Once the landfill's NMOC emission rate is equal to or greater than 50 Mg/yr, then you must install a landfill gas collection and control system that meets the specifications of ARSD 74:36:07:36–37. You must also comply with the operational standards, compliance provisions, monitoring provisions, and recordkeeping and reporting

[1] See further discussion in Section I.D. of this preamble.

requirements in sections 74:36:07:39–42 of the ARSD.

F. By What Date Are Existing MSW Landfills Required To Comply With South Dakota's Plan?

If you are required to install a gas collection and control system, then you must complete construction of that system within thirty months of your first annual NMOC emission rate report showing emissions equal to or greater than 50 Mg/yr. You must also meet the interim deadlines specified in sections 74:36:07:35 and 38 for submitting your design plan, awarding contracts, beginning construction, and demonstrating compliance.

G. What Is a Section 111(d) State Plan?

Whenever we issue a New Source Performance Standard for a source category controlling a pollutant which is not a "criteria pollutant" regulated under section 110 of the Act or a hazardous air pollutant (HAP) regulated under section 112 of the Act, EPA must issue guidelines for controlling that pollutant at existing sources of the same source category. Criteria pollutants are pollutants for which EPA has issued national ambient air quality standards (NAAQS) (see 40 CFR part 50).

A section 111(d) State Plan must meet the Emission Guidelines which we issued for that source category, as well as the general requirements that apply to all section 111(d) plans in 40 CFR part 60, subpart B. States are required to submit plans meeting those requirements within nine months after publication of Emission Guidelines.

H. Why Did EPA Regulate Landfill Gas Emissions?

Landfill gas emissions contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. NMOC emissions are measured as a surrogate for MSW landfill emissions. We issued New Source Performance Standards to control landfill gas emissions from new, modified, or reconstructed MSW landfills on March 12, 1996. (See 40 CFR part 60, subpart WWW.) Since NMOCs are not a criteria pollutant or a HAP, we also issued Emission Guidelines for existing MSW landfills on March 12, 1996. (See 40 CFR part 60, subpart Cc.)

Note that we revised the Emission Guidelines and New Source Performance Standards for MSW landfills on June 16, 1998, in response to our proposed settlement in *National Solid Wastes Management Association* v. *Browner, et. al.*, No. 96–1152 (D.C. Cir). (See 63 FR 32743–32784). In addition, we issued technical amendments to the Emission Guidelines and New Source Performance Standard on February 24, 1999 (64 FR 9258–9262).

IV. What Are the Administrative Requirements Associated With This Action?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084 Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval of the State Plan does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated here does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: May 21, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR part 62, subpart QQ, of chapter I, title 40 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Subpart QQ is added to read as follows:

Subpart QQ—South Dakota

Sec.

62.10350 Identification of plan.
62.10351 Identification of sources.
62.10352 Effective date.

Subpart QQ—South Dakota

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10350 Identification of plan.

"Section 111(d) State Plan for Municipal Solid Waste Landfills" and the State's implementing regulations in Sections 74:36:07:34 through 74:36:07:42 of the Administrative Rules of South Dakota (ARSD), submitted by the State on May 2, 1997 with amendments to the plan submitted on May 6, 1999.

§ 62.10351 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.10352 Effective date.

The effective date of the plan for municipal solid waste landfills is August 2, 1999.

[FR Doc. 99–13797 Filed 6–2–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD74

Migratory Bird Hunting: Regulations Regarding Baiting and Baited Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, amend the baiting regulations that apply to any person taking migratory game birds in the United States and/or preparing areas where migratory game birds are hunted. We include new definitions for "baiting," "baited areas," "normal agricultural planting, harvesting, and post-harvest manipulation", "normal agricultural operation," "normal soil stabilization practice," "natural vegetation" and "manipulation," and use these terms to identify allowable hunting methods.

EFFECTIVE DATE: This rule is effective July 6, 1999.

ADDRESSES: You may inspect public written comments by appointment between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday, in Room 500, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia 22203–3247; telephone (703) 358–1949.

FOR FURTHER INFORMATION CONTACT:
Questions may be directed to either:
Refuges and Wildlife: Paul Schmidt, 703–358–1769.
Office of Law Enforcement: Kevin Adams, 703–358–1949.

SUPPLEMENTARY INFORMATION:

Statutory Authority for Rulemaking

We have statutory authority and responsibility for enforcing the Migratory Bird Treaty Act (MBTA) in 16 U.S.C. 703–712 and 16 U.S.C. 742a–j. The MBTA regulates activities involving migratory birds, such as take, possession, transport, sale, and barter. Additionally, the MBTA authorizes us to make determinations about the conditions under which migratory game birds may be hunted. In general, these determinations include prohibitions on certain activities, such as baiting, and provisions that allow hunting in certain areas, such as agricultural areas and areas of natural vegetation. Regulations covering migratory game bird hunting are contained in 50 CFR Part 20.

Purpose of Rulemaking

This rule clarifies the current migratory bird hunting regulations. It provides a framework for sound habitat management, normal agricultural activities, and other practices as they relate to lawful migratory game bird hunting.

Related Federal Register Documents

The review process that produced this rule began in 1991. The review process consisted of numerous, related **Federal Register** documents, as follows: (1) November 14, 1991 (56 FR 57872), notice of intent to review multiple wildlife regulations (50 CFR Parts 12, 13, 14, 20, 21, 22); (2) December 1, 1993 (58 FR 53488), notice of intent to review the migratory bird regulations (50 CFR Parts 20 and 21); (3) March 22, 1996 (61 FR 11805), notice of intent to review the migratory game bird baiting regulations for moist soil management aspects (50 CFR Part 20); (4) March 25, 1998 (63 FR 11415), proposed rule to clarify and simplify the migratory game bird baiting regulations for migratory game bird hunting (50 CFR Part 20); (5) May 22, 1998 (63 FR 28343), notice to extend the comment period on No. 4 (above) to October 1, 1998 (50 CFR Part 20); and (6) October 6, 1998 (63 FR 53635), notice to extend the comment period on No. 4 (above) to October 22, 1998 (50 CFR Part 20).

Summary of Comments on the Notice of Intent and Proposed Rule

In the March 22, 1996, notice of intent, we specified four issues of concern regarding moist-soil management: potential impacts on available habitat, waterfowl populations, law enforcement and existing case law. In the March 25, 1998, proposed rule, we then invited comments on proposed changes to the migratory game bird baiting regulations. We received 509 comments in response. We have carefully reviewed and considered all comments received, including those from hunters, land managers, natural resource professionals, and law enforcement officers during preparation of this rule.

Comments received in response to the proposed rule primarily addressed the following issues: (1) Application of the strict liability standard to migratory game bird baiting regulations, (2) alternate penalties, (3) agricultural terms and definitions, (4) hunting over top-sown seeds, (5) manipulating natural vegetation, (6) millet as natural vegetation, (7) accidental scattering of seeds or grains incidental to hunting activities, (8) concealing blinds with natural vegetation, and (9) concerns about potential impacts on migratory bird habitat and populations.

(1) Application of the Strict Liability Standard

The proposed rule was published before passage of a new Public Law that affects the application of strict liability to migratory game bird baiting offenses. On October 30, 1998, Public Law 105-312 replaced the strict liability standard with a new standard. This law now prohibits the taking of migratory game birds *by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area.* In addition, it is now a separate offense to *place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting or on or over the baited area.* The final rule reflects these changes to the underlying statute.

(2) Alternate Penalties

Because violations of the MBTA are criminal offenses, the proposed rule invited the public to identify alternatives to the existing penalty provisions for baiting. We received 19 comments about this issue, but due to recent legislation do not include any changes from the comments in this rule. In addition to removing strict liability for baiting offenses, Public Law 105-312 changes the penalty provisions by increasing the penalty for any person who takes migratory game birds with the aid of bait or over a baited area, and adds a penalty for any person found responsible for the placement of bait. This rule incorporates the statutory revisions concerning baiting.

(3) Agricultural Terms and Definitions

The proposed rule addressed two current exemptions allowing migratory game bird hunting over agricultural lands. The current exemptions are separated into those practices allowed for hunting waterfowl, and those allowed for the hunting of other migratory game birds, such as doves. We proposed to consolidate the allowed practices into one term, *normal agricultural and soil stabilization practice*, that would apply to the hunting of all migratory game birds in agricultural areas. We received 43 comments about this issue. Although we intended to simplify the rules using one term, the comments reflected concern that this change could potentially restrict hunting methods currently allowed in agricultural areas. Other comments reflected concern that the new term could potentially liberalize the regulations for migratory game bird hunting in agricultural areas, especially for waterfowl.

After careful consideration of the comments, we decided to maintain the current distinction between those agricultural practices allowed for the hunting of waterfowl, cranes, and coots, and those agricultural practices allowed for the hunting of other migratory game birds, such as doves and pigeons, by the addition of three new agricultural terms and definitions: (1) *Normal agricultural planting, harvesting, and post-harvest manipulation*, (2) *normal agricultural operation, and* (3) *normal soil stabilization practice*. The hunting of any migratory game bird, including waterfowl, coots, and cranes, is allowed over lands where either a *normal agricultural planting, harvesting, and post-harvest manipulation* or *normal soil stabilization practice* has occurred, as defined in this rule. The term *normal soil stabilization practice* includes plantings made solely for agricultural soil erosion control or post-mining land reclamation. Finally, the hunting of migratory game birds, except waterfowl, coots, and cranes, is allowed over a *normal agricultural operation*, also defined in this rule. In order to meet the definitions in this rule, all of these practices must be conducted in accordance with official recommendations of State Extension

Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(4) Hunting Over Top-Sown Seeds

The current regulations require a hunter to determine before hunting whether a hunting area has been subjected to a normal agricultural planting or harvesting, a bona fide agricultural operation, a wildlife management practice, or whether the area had been baited with seeds or grains to illegally lure migratory game birds. The proposed rule included a change to prohibit the hunting of all migratory game birds over any lands planted by means of top sowing or aerial seeding where seeds remained on the ground as a result. The prohibition was intended to apply regardless of the purpose of the seeding, and top sowing was explicitly excluded from the proposed term, *normal agricultural and soil stabilization practice.*

We received 221 comments about this issue. The majority of comments opposing this change reflected concern that the change could restrict a valid agricultural practice affecting large areas of land, and discourage both habitat management and migratory game bird hunting in those areas. Other comments reflected concern that this change would adversely affect a time-honored, traditional form of hunting, especially for doves, over prepared agricultural fields. Comments that supported the change indicated that farmers would continue to plant using this method regardless of the hunting prohibition because they could still hunt migratory game birds, specifically doves, using other allowable hunting methods. Other comments supported the change as the only way to resolve the difficulty in determining whether a top-sown field had been planted for agricultural purposes.

After careful consideration, we will not prohibit the hunting of migratory game birds over lands planted by means of top sowing or aerial seeding. Instead, we will allow the hunting of any migratory game bird, including doves, over lands planted by means of top sowing or aerial seeding if seeds are present solely as the result of a *normal agricultural planting*, or a *normal soil stabilization practice.*

We have included post-mining land reclamations that are consistent with plantings for agricultural soil erosion control in the definition of a *normal soil stabilization practice.* These lands were included to provide hunting opportunities on land reclamations in non-agricultural areas.

Whether agricultural plantings, harvestings, post-harvest manipulations, operations, or soil stabilization practices are "normal" must be gauged against an objective standard. Therefore, this rule incorporates our policy to rely upon State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture (USDA) as the best source of factual and objective information on recommended planting, cultivation, harvest, and utilization of agricultural crops. These State Extension Specialists make recommendations about agricultural practices that may vary from state-to-state or region-to-region within a state. The recommendations may be site-specific, and may or may not be published. However, the Service will continue to make final determinations about whether the official recommendations were followed.

(5) Manipulating Natural Vegetation

We recognize the value derived from the manipulation of soil, water, and vegetation to enhance migratory bird and other wildlife habitat. Such manipulation, or moist-soil management, often involves the artificial maintenance and restoration of natural vegetation. In response to concerns about various moist-soil management techniques that could result in potential baiting situations, the proposed rule attempted to provide hunters, landowners, land managers, and law enforcement officers with guidance about what constitutes baiting in areas of natural vegetation. We invited the public to comment on the proposed rule to ensure that it could be readily understood and enforced, and was flexible enough to allow habitat managers to perform needed wildlife management practices. The proposed rule would have allowed the hunting of migratory waterfowl and cranes over any natural vegetation that had been manipulated at least 10 days before the opening of any waterfowl season and not during any open waterfowl season. The 10-day limitation was not intended to apply to the hunting of other migratory game birds, such as doves.

We received 215 comments about this issue. Comments supporting unrestricted manipulation of natural vegetation reflected concern that this change, if adopted with the 10-day, open-season requirement, could potentially further restrict current moist-soil management activities rather than provide the needed flexibility for habitat managers. Comments opposing manipulation of natural vegetation reflected concern that this change could potentially liberalize the current regulations, and create situations where a determination about the timing and presence of seeds would be difficult and onerous for all affected parties. The current regulations were never intended to prevent the manipulation of naturally-vegetated areas, or discourage moist-soil management practices that benefit migratory birds. After due consideration of all concerns, we decided to allow the hunting of any migratory game bird over manipulated natural vegetation without any restrictions.

(6) Millet as Natural Vegetation

Millet can be utilized both as an agricultural crop and as a species of natural vegetation for moist-soil management. Because millet can be readily naturalized and serve as an important food source for migrating and wintering waterfowl, the proposed rule invited comments on whether to include millet as a form of natural vegetation and allow its manipulation prior to subsequent hunting. We received 136 comments about this issue. Comments supporting the inclusion of millet expressed concerns that the restrictions on its manipulation were too restrictive, burdensome, and not as effective for moist-soil management as possible. Comments opposing the inclusion of millet reflected concerns that the manipulation of millet before subsequent hunting could potentially conflict with the current regulations that prohibit hunting over manipulated agricultural crops.

After consideration of these comments, we concluded that inclusion of millet as natural vegetation and its manipulation could conflict with current regulations. Therefore, this rule explicitly excludes planted millet from the new term, *natural vegetation.* However, planted millet that grows on its own in subsequent years (naturalized) is considered natural vegetation that can be manipulated at any time without restriction.

(7) Accidental Scattering

The proposed rule included a provision to allow hunting where grains or seeds from agricultural crops or natural vegetation had been scattered as a result of hunters entering or exiting areas, placing decoys, or retrieving downed birds. This provision was included to provide clarity to hunters about concerns that seeds or grains accidentally scattered during lawful hunting activities could create potential baiting situations.

We received 37 comments about this issue. Comments that supported this provision reflected concerns about

application of the strict liability standard to hunting over such seeds or grains. Comments that opposed this provision reflected concerns that it could potentially encourage hunters to bait an area and then claim that accidental scattering had occurred, and result in considerable difficulty for enforcement officers and the courts.

To alleviate the concerns of hunters, we will allow hunting over grains that are inadvertently scattered from standing or flooded standing crops solely as the result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds. Because this final rule also allows hunting over manipulated natural vegetation, no provision is needed for the inadvertent scattering of seeds from standing natural vegetation.

(8) Concealing Blinds With Natural Vegetation

To effectively hunt in areas of natural vegetation, hunters use natural vegetation to conceal themselves. The use of natural vegetation on blinds or places of concealment may result in the scattering of seeds and may create a potential baiting situation. The proposed rule included a provision to allow the hunting of any migratory game birds from a blind or other place of concealment camouflaged with natural vegetation. We received 18 comments about this issue. Although this rule does not restrict the manipulation of natural vegetation, we provide clarity to hunters by including a provision that allows the take of migratory game birds from a blind or other place of concealment camouflaged with natural vegetation. In addition, we include a provision that allows the hunting of migratory game birds from a blind or other place of concealment camouflaged with vegetation from agricultural crops as long as the use of such camouflage does not result in the exposing, depositing, distributing, or scattering of grain or other feed.

(9) Concerns About Potential Impacts on Migratory Bird Habitat and Populations

As we indicated in the March 25, 1998, proposed rule, we believe that one of the most important factors affecting waterfowl and other migratory bird populations is the amount and availability of quality habitat. For waterfowl, we believe the loss and degradation of habitat is the most serious threat facing North America's populations. North America has lost many of its original wetlands. Overall, the lower 48 States have lost about 53% of their original wetlands. In many of the remaining wetlands, large-scale land-use changes have often altered the natural water regime to the point that they are no longer ecologically functional.

One of the primary ways we have attempted to address this loss of wetland habitat is through implementation of the North American Waterfowl Management Plan (Plan). Established in 1986, the Plan identifies key waterfowl habitat areas and through habitat joint ventures implements habitat conservation projects. Habitat joint ventures are regional public/private partnerships composed of individuals, corporations, conservation organizations, and local, state, and federal agencies that work together to protect and restore habitat.

For example, the Central Valley Habitat Joint Venture is comprised of California's San Joaquin and Sacramento valleys. This vitally important migratory bird area provides wintering habitat for 60 percent of the waterfowl in the Pacific Flyway and includes the primary wintering area for cackling Canada geese, the threatened Aleutian Canada goose, and a number of other endangered species. Almost 4 million acres (95 percent) of wetlands in the Central Valley have been lost to drainage and conversion to agricultural land. Only about 300,000 acres remain to support and maintain waterfowl. Central Valley Habitat Joint Venture efforts focus on protecting and enhancing remaining wetlands, restoring or creating additional wetlands, enhancing private agricultural lands, and securing dependable water supplies for wetland areas.

To mitigate for the extensive loss and alteration of wetlands, it is critical that wildlife managers intensively manage many of the remaining wetland areas to maximize their value to wildlife, especially migratory birds, through moist-soil management. Moist-soil management, or the management of man-made, seasonally flooded impoundments, is a technique that uses manipulation of soil, water, and vegetation to enhance habitat for migratory birds. Modern moist-soil management includes water level manipulation, planting, mowing, burning, and other practices to: (1) Encourage production of moist soil plants for use by wildlife, especially migratory birds; (2) promote the production of invertebrate and vertebrate food sources; (3) control undesirable plants; and (4) increase biological diversity. Moist-soil plants provide essential nutritional requirements, consistently produce more pounds and diversity of food per acre than agricultural crops, provide seeds that are more nutritionally complete and resistant to decay when flooded (providing longer and more constant use by waterfowl), and are more economical and efficient to manage than agricultural crops.

To help stem wetland habitat loss, the migratory bird management community realized that it would take the concerted effort of many parties working together toward a common goal. Principal among this concerted effort is the involvement of private landowners, since the vast majority of wetland and other migratory bird habitat will always remain in private ownership. Thus, to actively invite and encourage participation from private landowners in migratory bird habitat conservation efforts, we believe new and innovative approaches to our traditional habitat protection and management programs are required.

We believe that our programs should not discourage private landowners and others in their efforts to conserve, restore, and manage wetland areas for the benefit of migratory birds and other wildlife. Thus, practices such as moist-soil management should not be discouraged, but openly encouraged. However, modern moist-soil management presented us with several issues and potential conflicts regarding moist-soil management practices and baiting. Several commenters throughout this process have pointed out that some of these moist-soil management practices could technically result in the creation of potential baiting situations when seeds from moist-soil management plants become available as a result of a manipulation. In the proposed rule, we acknowledged that the current baiting regulations were not intended to prevent the manipulation of natural vegetation such as that found in moist-soil management areas or to discourage moist-soil management practices benefitting migratory birds.

To address the moist-soil management issues, we made several specific regulatory changes to ensure that this valuable wildlife management practice continues to be encouraged while also clarifying to land managers and hunters what constitutes baiting. By allowing the manipulation of natural vegetation at any time, this rule enables wildlife habitat managers to conduct valuable moist-soil management in wetland areas and promote increased benefits to migratory birds and other wildlife. By encouraging moist-soil management techniques such as manipulation of natural vegetation, waterfowl populations will benefit from additional feeding, roosting, and resting habitat in important migration and wintering areas.

Summary of Changes

1. New Definitions for Section 20.11, Meaning of Terms

We define *Normal agricultural planting, harvesting, or post-harvest manipulation* and use the term in Section 20.21(i) to allow the hunting of any migratory game birds in agricultural areas over seeds and grains that are present solely as the result of a *normal agricultural planting, harvesting, or post-harvest manipulation.*

We define *Normal agricultural operation* and use the term in Section 20.21(i) to allow a hunter to take migratory game birds, except waterfowl, cranes, and coots, in agricultural areas over seeds or grains that are present solely as the result of a *normal agricultural operation.*

We define *Normal soil stabilization practice* and use the term in Section 20.21(i) to allow the hunting of any migratory game bird in agricultural or post-mining land reclamation areas over seeds that are present solely as the result of a *normal soil stabilization practice.*

We define *Manipulation* and use the term in 20.21(i) to explain which hunting activities are permitted over *manipulated* lands. Migratory game birds, except waterfowl, coots, and cranes, may be hunted over a *manipulated* agricultural crop. Any migratory game bird, including waterfowl, coots, and cranes, may be hunted over *manipulated* natural vegetation.

We define *Natural vegetation* and use the term in 20.21(i) to allow the hunting of migratory game birds over manipulated *natural vegetation.*

We define *Baited area* and use the term in 20.21(i) to prohibit the hunting on or over any *baited area* where a person knows or reasonably should know that the area is or has been baited.

We define *Baiting* and use the term in section 20.21(i) to prohibit the hunting by the aid of *baiting* where a person knows or reasonably should know that the area is or has been baited.

2. New Methods of Take, Section 20.21(i)

We revised the current prohibition in the introductory text to this paragraph to incorporate the new standard created by Public Law 105–312.

The introductory text for paragraph 20.21(i) of this rule does not prohibit the following:

The taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas—

Paragraph 20.21(i)1(i) of this rule allows the hunting of any migratory game birds over lands planted by means of top sowing or aerial seeding if seeds are present solely as the result of a *normal agricultural planting* or a *normal soil stabilization practice.* This rule also allows the take of any migratory game birds over areas where natural vegetation has been manipulated by such activities as mowing or burning, and treats all natural vegetation in the same manner.

Paragraph 20.21(i)1(ii) includes a provision to allow the take of migratory game birds from a blind or other place of concealment camouflaged with natural vegetation.

Paragraph 20.21(i)1(iii) includes language to allow the take of migratory game birds from a blind or other place of concealment camouflaged with vegetation from agricultural crops if it does not result in the exposing, depositing, distributing, or scattering of grain or other feed that would constitute a potential baiting situation.

Paragraph 20.21(i)1(iv) of this rule allows the hunting of any migratory game bird over an area of standing or flooded standing agricultural crops where the hunter has inadvertently scattered grains. This provision does not address the scattering of seeds from natural vegetation because this rule allows the manipulation of natural vegetation at the site where grown.

Paragraph 20.21(i)2 of this rule changes the current regulation that allowed the hunting of migratory game birds, except waterfowl, over a *bona fide agricultural operation,* and replaces it with the term *normal agricultural operation.*

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 requiring Office of Management and Budget review.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1502 et seq.)

This rule will not result in a significant annual effect on the economy of $100 million or more. The U.S. Department of Agriculture publishes a directory of State Extension Specialists who provide factual and objective information on recommended plantings, cultivation, harvest, and utilization of agricultural crops. This rule has no foreseen significant adverse effects on the economy. Therefore, we have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on State, local or tribal governments or private entities.

Federalism

As discussed above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Regulatory Planning and Review (Executive Order 12866)

This document has been reviewed by the Office of Management and Budget in accordance with the criteria in Executive Order 12866.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1538 *et seq.*) provides that Federal agencies shall insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat. We found that no Section 7 consultation under the ESA was required for this rule.

Small Business Regulatory Enforcement Fairness Act

As discussed below, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions. Also, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.—based enterprises to compete with foreign-based enterprises.

Regulatory Flexibility Act Determination (5 U.S.C. 601)

This rulemaking will have no significant effect on small entities. This rule is an update to the current regulations governing baiting and migratory game bird hunting. Hunters and other affected parties are not likely to suffer dislocation or other local effects. The changes clarify and modify the ways that migratory game birds may be hunted, and add new definitions for terms used in Part 20. This rule adds our policy to rely upon State Extension Specialists of the Cooperative Extension Service of the U.S. Department of

Agriculture as the best source of factual and objective information on recommended planting, cultivation, harvest, and utilization of agricultural crops. The changes may encourage some landowners to open their land for migratory game bird hunting. This additional land would improve the hunting experience for 2.4 million people who hunt migratory game birds on private land. The estimated value of this benefit is $3.8 to $14.6 million per year. Farmers who lease their land may capture $2.4 million of this benefit. Many of the parties affected are small entities and we believe they will receive minor economic benefits if any.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because migratory birds are a federally managed resource under laws implementing international treaties and are not personal property.

Environmental Effects (National Environmental Policy Act—42 U.S.C. 4321 et seq.)

We have determined that National Environmental Policy Act documentation is not required because this rule qualified as a categorical exclusion under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10. Results of this finding are available to the public by contacting us at the number listed under **ADDRESSES**. This final rule provides added benefits to the migratory bird resource by promoting available habitat through moist-soil management and by changing and clarifying current methods for hunting migratory game birds in agriculture areas, areas of natural vegetation, and over post-mining land reclamation areas.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and Recordkeeping Requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, we amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations as set forth below:

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712, 16 U.S.C. 742a–j.

2. Revise the title of § 20.11 and add new paragraphs (g), (h), (i), (j), (k), (l) and (m) to read as follows:

§ 20.11 What terms do I need to understand?

* * * * *

(g) *Normal agricultural planting, harvesting, or post-harvest manipulation* means a planting or harvesting undertaken for the purpose of producing and gathering a crop, or manipulation after such harvest and removal of grain, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(h) *Normal agricultural operation* means a normal agricultural planting, harvesting, post-harvest manipulation, or agricultural practice, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(i) *Normal soil stabilization practice* means a planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture for agricultural soil erosion control.

(j) *Baited area* means any area on which salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.

(k) *Baiting* means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them.

(l) *Manipulation* means the alteration of natural vegetation or agricultural crops by activities that include but are not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, or herbicide treatments. The term *manipulation* does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.

(m) *Natural vegetation* means any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or other propagules. The term *natural vegetation* does not include planted millet. However, planted millet that grows on its own in subsequent years after the year of planting is considered *natural vegetation*.

3. Amend § 20.21 by revising the section title and paragraph (i) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(i) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited. However, nothing in this paragraph prohibits:

(1) the taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas—

(i) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) From a blind or other place of concealment camouflaged with natural vegetation;

(iii) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(2) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation.

* * * * *

Dated: March 22, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–14039 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.950427117–9149–09;I.D.052799C]

RIN 0648–AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is extending for 1 week its existing closure of all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line bounded by 33° N. lat. and 34° N. lat. within the leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 28, 1999 through 11:59 p.m. (local time) on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570–5312, or Barbara A. Schroeder (301) 713–1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228) 762–4591 or by fax (228) 769–8699.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the leatherback conservation zone, NMFS is required to close an area for 2 weeks all inshore and offshore waters out to 10 nm (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR part 80), when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to 50 CFR 223.206(d)(2)(iv)(A) through (C).

NMFS announced a two-week closure on May 7, 1999 (64 FR 25460, May 12, 1999), affecting the portion of the leatherback conservation zone between 32° N. lat. and 33° N. lat. The boundaries of the closure correspond to those of shrimp fishery statistical zone 32. The closure was based on high concentrations of leatherbacks off the South Carolina coast, observed during aerial surveys conducted on April 27 and May 3. During those surveys, the highest concentrations were noted in waters off the southern half of the state between Hilton Head Island, SC, and at Kiawah Island, SC. After a May 11 aerial survey reconfirmed the continued high abundance of leatherback turtles in that closed zone, NMFS extended the closure for an additional week, through May 28, 1999 (64 FR 27206, May 19, 1999). That survey also showed that the leatherbacks were continuing to move slowly northward, as expected. Concentrations of leatherbacks were noted between Murrells Inlet and Myrtle Beach.

On May 14, 1999, 10 leatherback turtles were signted during an aerial survey over approximately 15 nm (28 km) trackline, beginning at approximately 33°23' N. lat., 079°07' W. long. (offshore Pawleys Island, SC) and ending at approximately 33°35' N. lat., 078°57' W. long. (offshore Surfside Beach, SC). A repeated survey along the same trackline documented 12 leatherbacks on May 18, 1999.

On May 21, 1999, NMFS issued a temporary rule closing inshore and offshore waters from shore out to 10 nm (18.5 km) between 33° N. lat. and 34° N. lat., unless shrimp trawlers use TEDs with escape openings modified to exclude leatherback turtles (64 FR 28761, May 27, 1999). This closed area is generally from Cape Romain, South Carolina, to Wilmington Beach, North Carolina. This closure was to expire at 11:59 a.m. June 4, 1999.

On May 26, 1999, an aerial survey conducted by the South Carolina Department of Natural Resources documented continued concentrations of leatherback sea turtles between Cape Island and Murrells Inlet. A total of 15 leatherback sea turtles were concentrated in a 44 nm (81.4 km) area. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), is closing all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 33° N. lat. and 34° N. lat., within the leatherback conservation zone to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. The boundaries of this closed zone correspond to those of shrimp fishery statistical zone 33.

This action does not affect the current closure in zone 32. High concentrations of leatherback sea turtles were not documented in the May 26 survey, and, therefore, the closure in zone 32 will expire at 11:59 p.m. on May 28, 1999.

NMFS will continue to monitor the presence of leatherback sea turtles along the Georgia and South Carolina coasts through weekly aerial surveys. Continued high abundance of leatherbacks greater than 10 turtles per 50 nm (92.6 km) of trackline will require further agency action, as per 50 CFR 223.206(d)(2)(iv)(B). If leatherback sightings fall to 5 or fewer turtles per 50 nm (92.6 km) of trackline, then the aerial surveys of the closed area will be replicated within 24 hours, or as soon as practicable thereafter. If sighting rates of 5 or fewer leatherbacks per 50 nm (92.6 km) are reconfirmed, the AA may withdraw or modify the closure that is the subject of this rule, as per 50 CFR 223.206(d)(4)(ii). NMFS will consult with the appropriate state natural resource officials in the closed area in making a determination to withdraw or

modify this closure, as per 50 CFR 223.206(d)(4)(iv). Fishermen should monitor NOAA weather radio for announcements.

The regulations at 50 CFR 223.206(d)(2)(iv) state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

The additional closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call Charles Oravetz (see FURTHER INFORMATION CONTACT) for updated area closure information.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore, notice and opportunity to comment on this action was provided through the proposed rule establishing these actions (60 FR 25663, May 12, 1995). For these reasons, good cause exists under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As stated above, the additional closure has been announced on the NOAA weather radio, in newspapers, and other media, allowing time for the shrimp fishery to comply with this rule.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 28, 1999.

William W. Fox, Jr.

National Marine Fisheries Service, Acting Assistant Administrator for Fisheries.

[FR Doc. 99–14056 Filed 5–28–99; 4:31 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 635

[Docket No. 990217050–9147–02; I.D. 010799A]

RIN 0648–AM17

Atlantic Highly Migratory Species (HMS) Fisheries; Atlantic Bluefin Tuna 1999 Quota and Effort Control Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications.

SUMMARY: NMFS announces specifications to set the 1999 Atlantic bluefin tuna (BFT) fishing category quotas and General category effort controls. These specifications are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) required by the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives.

DATES: The final specifications are effective June 1, 1999, through May 31, 2000.

ADDRESSES: Copies of supporting documents, including the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Sarah McLaughlin at 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and ATCA. The authority to issue regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is administered by the HMS Management Division.

ICCAT has identified the western stock of Atlantic BFT as overexploited and has recommended fishing quotas for the contracting parties. Based on the 1998 revised stock assessment, parties at the 1998 meeting of ICCAT adopted a 20-year west Atlantic BFT rebuilding program, beginning in 1999 and continuing through 2018. ICCAT has adopted an annual total allowable catch (TAC) of 2,500 metric tons whole weight (mt ww) of west Atlantic BFT inclusive of dead discards, to be applied annually until such time as the TAC is changed based on advice from the Standing Committee on Research and Statistics. Given the new stock assessment and rebuilding schedule, the annual landing quota allocated to the United States was increased by 43 mt ww to 1,387 mt ww.

Background information and rationale for these specifications were provided in the Bluefin Tuna Addendum to the draft HMS FMP and the final HMS FMP, and are not repeated here. The quota specifications allocate the landings quota among the several established fishing categories. The specifications are issued pursuant to interim provisions of § 635.25(c) of the consolidated HMS regulations (64 FR 29090, May 28, 1999) until June 30, 1999, and thereafter through May 31, 2000, pursuant to § 635.27(a) of the Atlantic HMS regulations. The General category effort controls are issued pursuant to § 285.24 of the Atlantic tunas regulations until June 30, 1999, and thereafter through May 31, 2000, pursuant to § 635.23(a) of the Atlantic HMS regulations.

Changes From the Proposed Specifications

Based on consideration of comments received during the comment period, NMFS has added 1 day per week (Mondays) to the proposed schedule of restricted fishing days (RFDs) in order to extend the General category fishery season.

Fishing Category Quotas

U.S. domestic quota allocations are based on the same percentages as the 1997 allocations, except that the Purse

Seine category is capped at its 1997/1998 quota of 250 mt ww. Based on these percentages, and quota adjustments based on overharvests or underharvests in the Angling, General, and Purse Seine categories in 1998, the adjusted quotas for the 1999 fishing year are as follows: 261 mt ww for the Angling category, including 99 mt ww for the school BFT subquota; 654 mt ww for the General category; 54 mt ww for the Harpoon category; 113 mt ww for the Longline category; 1 mt ww for the Trap category; 252 mt ww for the Purse Seine category; and 43 mt ww for the Reserve.

The Angling category quota is subdivided as follows: School BFT—99 mt ww, with 43 mt ww to the northern area, 38 mt ww to the southern area, and 18 mt ww held in reserve; large school/small medium BFT — 156 mt ww, with 83 mt ww to the northern area and 73 mt ww to the southern area; large medium/giant BFT — 6 mt ww, with 2 mt ww to the northern area and 4 mt ww to the southern area.

The Longline category is subdivided as follows: 89 mt ww to longline vessels operating south of 34° N, and 24 mt ww to longline vessels operating north of 34° N.

For 1999, NMFS implements General category quota subdivisions as established for 1998, as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the carryover quota for the General category (1 mt ww), adjustments are necessary to allocate the carryover across the established subperiods. These percentages are applied only to the coastwide baseline quota for the General category of 644 mt ww, with the remaining 10 mt ww reserved for the New York Bight fishery. Thus, of the 644 mt ww baseline General category quota, 387 mt ww will be available in the period beginning June 1 and ending August 31, 193 mt ww will be available in the period beginning September 1 and ending September 30, and 64 mt ww will be available in the period beginning October 1 and ending December 31.

The New York Bight set-aside area is the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. When the coastwide General category fishery has been closed in any quota period, NMFS may publish notification in the **Federal Register** to make available up to 10 mt ww of the quota set aside for the New York Bight area. The daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period may be carried over for the purpose of renewing the set-aside fishery at a later date.

Attainment of the subquota in any quota period will result in a closure until the beginning of the following quota period. The subquota for the following quota period will be adjusted by any underharvest or overharvest in the previous quota period. Announcements of closures will be filed for publication with the Office of the Federal Register, stating the effective date of closure, and will be disseminated by the Highly Migratory Species (HMS) Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line (978–281-9305 or 888–USA-TUNA) to check the status of the fishery before leaving for a fishing trip.

Restricted-Fishing Days

Persons aboard vessels permitted in the General category are prohibited from fishing (including tag and release fishing) for BFT of all sizes on the following days in 1999: July 7, 11, 12, 14, 18, 19, 21, 25, 26, and 28; August 1, 2, 4, 8, 9, 10, 11, 12, 15, 16, 18, 22, 23, 25, 29, and 30; September 1, 5, 6, 8, 12, 13, 15, 19, 20, 22, 26, 27 and 29; and October 1. Persons aboard vessels permitted in the Atlantic Tunas Charter/Headboat category are prohibited from fishing for large medium and giant BFT under the General category quota on the indicated RFDs. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality.

Comments and Responses

NMFS received numerous comments regarding BFT quota allocation and General category effort controls. NMFS addressed quota allocation comments in the final rule to implement the HMS FMP.

General Category Quota Subdivision

Comment: NMFS received some comments in support of the status quo General category time-period subquotas (three periods), and some suggesting alternate schedules, including: NMFS should implement two General category time-period subquotas (e.g., for June through September and October through December) since prices are higher in August than September, and in order to avoid derby conditions in October.

Response: NMFS has considered these comments and believes that a General category season divided into three time-period subquotas, as proposed, best meets the concerns of the fishing industry, as well as the fishery management objective of maximizing fishing opportunities. A season divided into two time-period subquotas as some suggested (June through September and October through December) could result in the General category fishery being closed for the entire month of September. This would reduce fishing opportunities, as the fishery would be closed during a time when bluefin tuna are available throughout New England. In addition, catch per unit effort (CPUE) information has traditionally been collected from the General category fishery during September, and if the fishery were to be closed during this time period, the continuous time-series of CPUE data could be lost.

Restricted-fishing days

Comment: NMFS received numerous comments regarding RFDs, some of which support the status quo, some of which oppose RFDs altogether, and some suggesting alternate schedules, including: in order to extend the General category season, NMFS should implement more RFDs than proposed, e.g., 3 days or more per week (Sundays, Wednesdays, and Fridays or Sundays, Mondays, and Wednesdays) in addition to the days that correspond to Japanese market closures, and should begin the schedule of RFDs for 1999 in early July.

Response: NMFS has considered these comments and agrees additional General category RFDs may increase the likelihood that fishing would continue throughout the summer and fall, and would further distribute fishing opportunities without increasing bluefin mortality. NMFS has added Mondays to the schedule of RFDs.

Classification

These final specifications are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The AA has determined that these specifications are necessary to implement the recommendations of ICCAT and are necessary for the management of the Atlantic tuna fisheries.

The Chief Counsel for Regulation of the Department of Commerce certified

to the Chief Counsel for Advocacy of the Small Business Administration that the proposed specifications would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this determination. Given the certification, an initial regulatory flexibility analysis was not prepared for the proposed specifications. However, irrespective of the certification, a final regulatory flexibility analysis was prepared for the HMS FMP, which also contains an analysis of General category effort controls. A summary of that analysis may be found in the HMS FMP available from NMFS (see **ADDRESSES**).

These quota and effort control specifications impose no requirements with which fishermen will have to come into compliance, and are necessary to help ensure that the U.S. actions are consistent with its international obligations at ICCAT. Therefore, NMFS has determined that there is good cause to waive partially the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). NMFS will rapidly communicate these final specifications through the FAX network.

These final specifications have been determined to be not significant for purposes of E.O. 12866.

Dated: May 28, 1999.

William W. Fox,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14054 Filed 5–28–99; 4:31 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 981231333–9127–03; I.D. 052799E]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Mothership Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 1999 mothership fishery for whiting at 2100 local time (l.t.) June 2, 1999, because the allocation for the mothership sector is projected to be reached by that time. This action is intended to keep the harvest of whiting at the 1999 allocation levels.

DATES: Effective from 2100 l.t. June 2, 1999, until the start of the 2000 primary season for the mothership sector, unless modified, superseded or rescinded; such action will be published in the **Federal Register**. Comments will be accepted through June 18, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206–526–6145 or Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 8, 1999 (64 FR 1316), regulations were published announcing the 1999 fishing seasons for Pacific whiting. A new whiting stock assessment was completed in early 1999, and an allowable biological catch (ABC) and optimum yield (OY) of 232,000 metric tons (mt) were recommended for all U.S. harvests. On May 24, 1999, (64 FR 27928), NMFS announced the 1999 whiting ABC and OY, the tribal whiting allocation of 32,500 mt, and the commercial OY of 199,500 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial allocation into separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. When each sector's allocation is reached, the primary season for that sector is ended. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships, and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors. The regulations at 50 CFR 600.323 (a)(3)(i) describe the primary season for vessels delivering to motherships as the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector. The 1999 allocations, which are based on the 1999 commercial OY for whiting of 199,500 mt are 67,800 mt (34 percent) for the catcher/processor sector, 47,900 mt (24 percent) for the mothership sector, and 83,800 mt (42 percent) for the shoreside sector.

NMFS Action

This action announces achievement of the allocation for the mothership sector only. The best available information on May 31, 1999, indicated that the 47,900–mt mothership allocation would be reached by 2100 hours, June 2, 1999, at which time the primary season for the mothership sector ends and further at-sea processing and receipt of whiting by a mothership, or taking and retaining, possessing, or landing of whiting by a catcher boat in the mothership sector, are prohibited. For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(B), NMFS herein announces that effective 2100 hours June 2, 1999—(1) further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited, and (2) whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(B) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 28, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14055 Filed 5–28–99; 4:31 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981107312–7021–02; I.D. 052498E]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the Second Half of 1999

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1999. Regulations that implement the vessel incentive program require publication of these bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), July 1, 1999, through 2400 hours, A.l.t., December 31, 1999. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 28, 1999.

ADDRESSES: Comments should be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION:

NMFS manages the domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 1999 fishing months were specified in the **Federal Register** on November 25, 1998 (63 FR 65129).

Halibut and red king crab bycatch rate standards for the first half of 1999 also were published in the **Federal Register** (63 FR 65129, November 25, 1998). As required by § 679.21(f)(3) and (4), the Administrator of the Alaska Region, NMFS (Regional Administrator), has established the bycatch rate standards for the second half of 1999 (July 1 through December 31). These standards were endorsed by the Council at its April 1999 meeting and are set out in Table 1. As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.20 and 679.21;

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

TABLE 1— BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 1999 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

(Halibut bycatch rate standards kilograms (kg) of halibut/metric ton (mt) of groundfish catch)

Fishery	1999 bycatch rate standard
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rate standards (number of crabs/mt of groundfish catch)	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the 1999 trawl fisheries are unchanged from those implemented in 1998. The Regional Administrator based standards for the second half of 1999 on anticipated seasonal fishing effort for groundfish species and on 1994–1998 halibut bycatch rates observed in the trawl fisheries included under the incentive program. In determining these bycatch rate standards, the Regional Administrator considered the annual and seasonal bycatch specifications for the BSAI and GOA trawl fisheries (64 FR 12103, March 11, 1999, and 64 FR 12094, March 11, 1999, respectively). He further recognized that directed fishing for Pacific cod for the inshore

component in the Western and Central Regulatory Areas of the GOA is closed for the remainder of the year. The GOA shallow-water and deep-water trawl fishery species complexes will reopen on July 4 when the third seasonal apportionment of the halibut bycatch limit established for the GOA trawl fisheries becomes available. In the Bering Sea, the rockfish and rock sole/flathead sole/other flatfish fishery categories will open or reopen on July 4 when seasonal apportionments of halibut bycatch allowances specified for these fisheries become available. The BSAI Pacific cod trawl fishery is closed for the remainder of the year. The BSAI yellowfin sole fishery is ongoing, and no closure has yet been projected due to crab or halibut bycatch. The Regional Administrator also considered the August 1 opening date of the 1999 Bering Sea pollock "B" season (§ 679.23(e)(2)) and the Gulf of Alaska third and fourth season pollock fisheries (§ 679.23(d)(2)). The halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" trawl fisheries are each set at 5 kg of halibut per metric ton (mt) of groundfish. These standards approximate the average annual rates observed on trawl vessels participating in these fisheries since 1992. The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg of halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at § 679.21 prohibit directed fishing for pollock by vessels using non-pelagic trawl gear. A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI "other trawl" fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg of halibut/mt of groundfish is established for the GOA "other trawl" fishery, which is unchanged since 1994. The considerations that support these bycatch rate standards for the "other trawl" fisheries are unchanged from previous years and are discussed in the **Federal Register** publications of 1995 bycatch rate standards (60 FR 2905, January 12, 1995, and 60 FR 27425, May 24, 1995). Observer data collected from the 1998 GOA "other trawl" fishery show average third and fourth quarter halibut bycatch rates of 38 and 58 kg of halibut/mt of groundfish, respectively. The first quarter rate from 1999 was lower, at 32 kg of halibut/mt of groundfish. Observer data from the 1998 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 12 kg of halibut/mt of groundfish. The first quarter rate from the 1999 BSAI "other trawl" fishery was 14 kg of halibut/mt of groundfish.

Bycatch Rate Standards for Red King Crab

The red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1999. This standard has remained unchanged since 1992. Through May 8, 1999, the rock sole/flathead sole/other flatfish fishery category had taken 60 percent of its annual red king crab bycatch allowance. The Pacific cod and yellowfin sole fisheries have taken 51 percent and 4 percent, respectively, of their bycatch allowances. The Regional Administrator anticipates that the non-pelagic trawl gear closure of the red king crab savings area in Zone 1 will continue to result in low red king crab bycatch rates for the remainder of the year and is maintaining the 2.5 red king crab/mt of groundfish bycatch rate standard.

The Regional Administrator has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1999, as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator, pending his consideration of the information set forth at § 679.21(f)(4).

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: May 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14044 Filed 5–28–99; 4:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 106
Thursday, June 3, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 850

[Docket No. EH–RM–98–BRYLM]

RIN 1901–AA75

Chronic Beryllium Disease Prevention Program

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Proposed Rule; Notice of limited reopening of the comment period; request for public comment.

SUMMARY: The Department of Energy (DOE) reopens the comment period for 30 days, in order to solicit public comments on options that DOE is considering for criteria to be used for the release or transfer of equipment and other items previously used in DOE beryllium operations, either to other DOE facilities or to the public.

DATES: Written comments on the issues presented in this notice must be received by the Department on or before July 6, 1999.

ADDRESSES: Written comments should be addressed to: Jacqueline D. Rogers, Office of Environment, Safety and Health (EH–51), Docket No. EH–RM–98–BRYLM, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585. Public comments submitted in response to DOE's Notice of Proposed Rulemaking, some of which addressed the subject of this notice, may be read and copied in DOE's Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, Office of Environment, Safety and Health (EH–51), Docket No. EH–98–BRYLM, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585, 301–903–5684.

SUPPLEMENTARY INFORMATION: On December 3, 1998, DOE published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** proposing regulations for a chronic beryllium disease prevention program to reduce the number of DOE Federal and contractor workers exposed to beryllium, minimize the levels of and potential for exposure to beryllium, and establish medical surveillance requirements to ensure early detection and treatment of disease. 63 FR 66940. This rulemaking is conducted pursuant to DOE's authority under section 161 of the Atomic Energy Act of 1954 (AEA) to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, including standards for the protection of health and minimization of danger to life or property. 42 U.S.C. 2201(i)(3) and (p).

I. Background on Release Criteria

DOE included in the NOPR several issues for public comment, including a request for information concerning appropriate criteria for the release or transfer of equipment and other items used in DOE beryllium activities to other DOE facilities for either beryllium or non-beryllium uses, or to the public for non-beryllium uses. 63 FR 66948. Equipment that has been used for beryllium work often retains residual contamination that could present an occupational or public health hazard if the beryllium becomes airborne. Before such equipment is sold or otherwise transferred to the public, or released for other DOE uses, steps must be taken to ensure that there are no potential health hazards to the receiver of the equipment.

DOE solicited views and information concerning whether DOE should develop a consistent approach or uniform criteria for the release of beryllium-related items at DOE facilities. Currently, the criteria vary among those DOE facilities that have established release criteria for equipment and other items used in beryllium work. For example, the Pantex facility in Texas has a surface contamination release criterion of less than or equal to 0.1 μg/100 cm^2; the Mound facility in Ohio uses a criterion of less than or equal to 0.3 μg/100 cm^2; and the Lawrence Livermore National Laboratory uses a criterion of less than or equal to 1 μg/100 cm^2. The Rocky Flats Environmental Technology Site in Colorado uses two levels of allowable surface contamination for items to be released, depending upon the receiver of the equipment. For equipment to be released to the public or to other DOE facilities where the equipment will not be used for beryllium work, the Rocky Flats criterion is less than 0.2 μg/100cm^2. For equipment released to other DOE facilities where the equipment will be used for beryllium work, the criterion is the lesser of the allowable level of the receiving facility, or less than or equal to 2.5 μg/100cm^2. The Rocky Flats process also compares the current value of the equipment to the cost of decontamination and the cost of disposal.

II. Public Comments on the NOPR

The request for comment in the NOPR yielded additional information and views on the subject of appropriate release criteria. The release levels recommended by commenters ranged from zero (The Consortium for Risk Evaluation with Stakeholder Participation) to 1 μg/100 cm^2 (Fluor-Daniel Hanford, Inc.). The Atomic Weapons Establishment (AWE) in the United Kingdom stated that AWE uses a release criterion of 1 μg/ft^2 (or about 0.1 μg/100cm^2). Lockheed M rtin Energy Research Corporatior. commented that DOE should establish release limits to ensure consistency throughout the DOE complex, but did not recommend a specific release criterion.

Two commenters recommended establishing a single regulatory release level. The Navy Environmental Health Center recommended that the level be the same as the housekeeping surface contamination level. Fluor-Daniel Hanford, Inc., recommended that the same release criterion or level apply both to released equipment and to areas of a facility that are released or transferred to non-beryllium work or uses.

The University of California (UC) recommended a graded approach based on the nature of the item being released or the recipient. UC suggested that for "consumer goods," such as desks, machine tools, and cabinets, the surface contamination level should be less than 0.2 μg/100 cm^3, and the items should be released only to a scrap metal or waste disposal company (with a release tag

notification). For items that have internal contamination but are easily cleaned on the outside, UC recommended a release level of 0.2 μg/100 cm^2 for use within DOE, if the items are labeled to warn of the potential for internal contamination. For items released for DOE use that are not easily sampled or are porous, UC recommended using a stabilizing material (e.g., paint) as a sealant, and a warning label to indicate that the equipment was previously used in a beryllium area. UC further recommended that if a graded approach is not included in the rule, then each site should be permitted to specify release criteria in its program.

Brush Wellman, Inc., expressed concern about using only a single surface contamination level to determine the releasability of an item to the public, because the swipe sampling method alone may not adequately characterize the potential exposure risk. For example, a piece of equipment released on the basis of a surface contamination criterion may contain beryllium dust in cracks and crevices that could be released during future maintenance.

The Consortium for Risk Evaluation with Stakeholder Participation (CRESP) commented that allowing the release of equipment or buildings with detectable levels of beryllium would pose a health risk to the recipient.

III. Options Being Considered by DOE

DOE has tentatively concluded that the final rule should contain requirements for the release of beryllium-related items at DOE facilities. Having preliminarily evaluated the comments submitted in response to the NOPR request for information, DOE now is considering specific release criteria within the range of recommendations presented by the comments already received, and would like public comment on the options and issues presented in this notice section.

A. Surface Contamination Release Level

The quantitative limit of detection for beryllium (using the OSHA ICP method) is 0.043 μg. This detection limit makes it possible to determine surface contamination as low as 0.04 μg/100 cm^2. However, surface contamination is only a cleanliness measure, and is not a predictor of health risk from beryllium contamination. Thus, the selection of an appropriate surface contamination release level depends on an assessment of health risk, feasibility, cost, and cleaning technology.

Because of the scientific uncertainty about what is a "safe" level of exposure to beryllium, DOE believes that any surface contamination release level selected should be as low as practicable. Most of the surface contamination levels established by DOE facilities and those recommended by public commenters for release of items used in beryllium areas to the public are in the range of 0.1 μg/100 cm^2 to 0.3 μg/100 cm^2. The comment by the AWE that it reduced the housekeeping surface action level in its Cardiff, Wales facility to 1 μg/ ft^2 (about 0.1 μg/100 cm^2) in 1990 suggests that a public release level as low as 0.1 μg/100 cm^2 is achievable, and therefore, could be a reasonable criterion for release of an item to the public.

DOE is not inclined to agree with the comment that any detectable level of beryllium on the surface of an item should be presumed to present a health risk to the public and, therefore, that no item having a detectable level of beryllium should be released. There is no established correlation between surface beryllium levels and airborne concentrations of beryllium that would pose a health hazard. As OSHA pointed out in the OSHA Technical Manual Section II, Chapter 2 "Sampling for Surface Contamination," "[surface] sampling is not attempting to assess the health risk resulting from the contamination. Rather, it is to ensure that the cleaning and decontamination regimen is being effectively implemented. . . . Establishing an acceptable contamination limit will depend on the purpose of cleaning, and what is feasible for the procedures utilized."

B. Conditions on Release of Items

The University of California (UC) recommended placing certain conditions on release based on the nature of the item or user. For example, "consumer goods" (e.g., desks, machine tools, cabinets) meeting a specified surface contamination level would, under UC's suggested approach, only be released to a scrap metal or waste disposal company. On the other hand, UC suggested allowing items to be released for use within a DOE facility if the item could be easily cleaned on the outside and it was labeled to warn of the potential for internal beryllium contamination.

DOE is considering establishing separate surface contamination levels for release to the public for non-beryllium use, and release to DOE facilities for beryllium or non-beryllium uses. DOE will consider this matter in the light of public comments, and invites suggestions for appropriate conditions on the release of items to the public, or to DOE facilities for non-beryllium uses.

C. Internal Beryllium Dust or Other Contamination

As noted, surface sampling is not an adequate means of characterizing potential exposure risk. For example, a lathe or other piece of equipment released because it is determined to be beryllium-free on the surface may contain internal beryllium dust that could become airborne, and therefore present a health hazard, during future maintenance. On the other hand, other types of equipment may contain internal beryllium that is combined with other substances (e.g., grease) to make it unlikely that the beryllium would ever become airborne. The presence of this type of entrained contamination, even at levels above the otherwise applicable release criteria, would not present a health hazard. DOE invites comment on how the final rule should address such entrained contamination.

DOE's tentative view is that the final rule should permit the release of items to the public for non-beryllium uses, or to DOE facilities for either beryllium or non-beryllium uses, taking all of these factors into consideration. For example, the final rule might specify that items may be released for non-beryllium use if they contain a beryllium contamination level less than or equal to 0.1 μg/100 cm^2 on surfaces accessible through operation or maintenance activities. Under this approach, the item would need to be disassembled as necessary and cleaned to meet the release surface contamination level. If cleaning is not practicable (e.g., too costly), the item would be disposed of as waste under this approach.

D. Release to Another Facility for Beryllium Work

The Rocky Flats Environmental Technology Site has established a surface contamination release level of 0.2 μg/100 cm^2 for release of an item to the public or to a DOE facility for non-beryllium work, and a release level of 2.5 μg/100cm^2 for an item to be transferred to another DOE facility for beryllium work. DOE believes it may be prudent to establish a higher surface contamination release level for items to be transferred to another DOE facility for beryllium work than is allowed for items released to the public or for use in DOE non-beryllium work. DOE also is inclined to adopt in the final rule the release level of 3μg/100 cm^2 as the surface contamination release level for equipment and other items that are

transferred to a DOE facility for beryllium work.[1]

DOE invites public comment on this approach and on other appropriate release criteria for beryllium-contaminated items transferred to a DOE facility for beryllium work.

IV. Public Comment.

DOE invites interested persons to submit written comments on the options presented in Section III above, and issues related to release criteria for items used in DOE beryllium activities.

Issued in Washington, DC on May 27, 1999.

David Michaels,

Assistant Secretary for Environment, Safety and Health, Department of Energy.

[FR Doc. 99–14077 Filed 6–2–99; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Accounting, Auditing, and Bookkeeping Services

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: With the recent consolidations of the largest firms in the accounting, auditing, and bookkeeping services industry and their expansion into providing services of other industries, the Small Business Administration (SBA) has undertaken a review of its small business size standard for this industry. To supplement its review of this industry's size standard, SBA is requesting public comment as to what factors should be considered in establishing a definition of a small accounting, auditing, and bookkeeping services firm, what the public's views on several developments within the accounting industry are, whether the current size standard should be changed, and what the actual definition should be. Should SBA decide that a change is warranted, it would publish a proposed size standard in the **Federal Register** and seek public comment on a specific size standard before any change in the size standard is put into effect.

DATES: Submit comments on or before July 6, 1999.

ADDRESSES: Send comments to: Gary M. Jackson, Assistant Administrator for Size Standards, Small Business Administration, 409 Third St., SW, Mail Code: 6880, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Harvey Bronstein, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: Size standards are numerical indicators to define what is a small business. They have been established to determine eligibility for firms for SBA and other Federal small business programs, such as loan guarantees, Government contracting assistance, minority enterprise development, and small disadvantaged business preferences. Currently, SBA defines a firm in the accounting industry (Standard Industrial Classification (SIC) 8721) as small if it has $6 million or less in average annual receipts, including any affiliates. By comparison, SBA uses $5 million as a size standard for most service industries. Other illustrative size standards in business and professional services include $18 million for computer services, $9 million for security guard services, and $2.5 million for architectural and engineering services. A list of the SBA size standards by industry category is available in 13 CFR 121.201, or on SBA's Internet web site (http://www.sba.gov/regulations/siccodes).

SBA bases its size standards on an analysis of an industry's economic structure and other information describing the relative standing of smaller businesses within an industry. SBA generally looks at factors such as average firm size, start-up costs, degree of competition, distribution of sales by firm size, and the objectives of SBA's programs. Other factors that may have an impact on the position of small businesses in an industry may also be considered, such as technological change, growth trends, and comparison with size standards in similar industries. By examining quantitative indicators for these factors from generally available sources of industry data, SBA is able to identify a small business segment within an industry and maintain a degree of comparability among size standards in different industries.

A review of data on the accounting industry and discussions with industry associations and accounting firms indicates a need for additional information on several issues before SBA can decide whether to propose a change to the current accounting size standard. Several issues are discussed below that have come to our attention that we believe merit a request for comments from the public. Other information the public believes is relevant to the question of an appropriate accounting size standard is also welcomed for our consideration.

One issue we specifically seek comments on concerns the available industry data on the accounting industry. According to data from the U.S. Bureau of the Census' 1992 Economic Census, of the 76,000 businesses in that industry, more than 99 percent are considered small businesses under the present size standard and they cumulatively obtained 60 percent of total industry revenues. Approximately 450 firms exceed the present size standard, and the top four firms with the largest operations in accounting obtain 19 percent of industry revenues. We are concerned that the recent changes in the industry are not fully reflected in the Census Bureau's data and other data sources. Thus, we are interested in the public's view on the changing nature of the industry since the early 1990s, and whether data from 1992 adequately characterizes the industry today. If not, the public should address what changes have occurred to alter the makeup of the industry, what data exists to verify and gauge the extent of these changes, and how these changes should affect the size standard.

Another issue concerns a prominent trend that is affecting the accounting industry—the expansion of services being offered by many of the larger firms. Some firms, especially the largest ones (often referred to as the "Big 5"), which at one time primarily provided accounting services, have been diversifying into other areas of business and professional services such as management and economic consulting, information technology, computer systems integration, public relations, and legal services. Thus, while some of these firms originally offered only accounting services, they now offer a range of other business and professional services while still maintaining a considerable accounting and auditing capability. We are interested to know whether this trend is also occurring for small firms, and how it may affect the current size standard.

The SBA programs and other Federal programs which seem to be most affected by the accounting size standard are those that accord preference for Federal contracts, that is, the small business set-aside, 8(a), and small disadvantaged business programs. Federal contract award data supplied by the General Services Administration's Federal Procurement Data System indicate that small businesses have a substantial share of Federal accounting

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[1] 3 μg/100 cm² is essentially equivalent to the Rocky Flats criteria of 2.5 μg/100 cm², after allowing for the variability of surface sampling.

contracts, capturing close to one-half of about $115 million worth of contracts in both fiscal years 1996 and 1997. We have received information from accounting industry groups concerned about the procurement preference programs and the relationship of these programs to the accounting size standard. Some believe that the $6 million size standard is too limiting in terms of allowing firms they believe to be small accounting firms to access larger Federal contracts. The issue, then, is whether firms above the present size standard should become designated as small businesses because they have difficulty competing against the largest firms in the industry for Federal contracts. Thus, we also seek comments on whether some or all "mid-sized" firms (those larger than SBA's $6 million size standard but smaller than the "Big 5") are at a competitive disadvantage with the largest firms in the industry for Federal contracts. If so, please comment on whether an increase to the size standard to include some mid-sized firms as small businesses would be helpful.

There also has been concern expressed that the largest accounting firms are receiving large-sized Federal contracts to the detriment of small- and mid-sized firms. In particular, we are told, accounting and auditing services are combined or bundled with other types of business, management, or financial services into larger contracts. When contract requirements in more than one industry are grouped together, this is known as contract bundling. These bundled contracts tend to limit opportunities for small businesses since the combined requirements become too large of a contract for a small business to handle. Yet, a small business could capably perform on one or a few requirements if they were separate and smaller contracts. We are interested in finding out the extent that accounting services are being bundled with other business and professional services to form large-sized contracts which are out of the reach of small- and mid-sized businesses. Also, if such practice is extensive, the public should comment on whether it should influence the level of the size standard for accounting.

Note: SBA has issued a proposed rule to define contract bundling (64 FR 2153) and its intent to determine the impact on small business of bundled contracts with expected value of $5 million or more.

In addition to these issues, comments on other issues concerning the accounting industry and the size standard that would be helpful to SBA include:

- Recent changes in the structure of the accounting industry;
- Competitiveness of small accounting businesses versus the largest or "Big 5" accounting firms;
- Growth of accounting firms;
- The role of and problems affecting "mid-sized" firms in the industry and how they may differ from small businesses; and
- Whether firms approaching the $6 million size standard are disadvantaged because of their size and if so, how?

The purpose of this advance notice is to obtain additional information on the accounting, auditing, and bookkeeping services industry to assist us in deciding whether a sufficient basis exists to propose a different size standard or to retain the current size standard. If we decide to propose a change to the size standard, this notice would be followed by a proposed rule published in the **Federal Register** indicating a specific new size standard. After evaluating public comment on a proposed size standard, a final rule would put into effect any new size standard.

Dated: May 17, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–14012 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–72–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A–1 and 205B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205A–1 and 205B helicopters. This proposal would require inspecting the vertical fin spar cap (spar cap) for cracking, corrosion, or disbonding, and modifying the vertical fin and replacing the left-hand spar cap. This proposal is prompted by 5 accidents involving helicopters of similar type design. The actions specified by the proposed AD are intended to detect fatigue cracking or corrosion on the spar cap, which could lead to failure of the vertical fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–72–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Harry Edmiston, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5158, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket No. 98–SW–72–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–72–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to BHTI Model 205A–1 and 205B helicopters. This proposal would require:

—Visually inspecting the spar cap for any crack or disbonding;
—Inspecting the spar cap for any disbonding using a tap hammer;
—Modifying the vertical fin;
—After modifying the vertical fin, inspecting the spar cap for any cracks using a dye-penetrant inspection method; and
—Replacing the left-hand spar cap.

This proposal is prompted by 5 accidents involving helicopters of similar type design. The actions specified by the proposed AD are intended to detect fatigue cracking or corrosion on the spar cap, which could lead to failure of the vertical fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed the following alert service bulletins:

—BHTI Alert Service Bulletin (ASB) 205–98–70, Revision A, dated September 21, 1998, which is applicable to Model 205A–1 helicopters; and
—BHTI ASB 205B–98–26, Revision A, dated September 21, 1998, which is applicable to Model 205B helicopters.

Both describe procedures for inspecting the vertical fin spar for cracks or disbonding, and replacing the vertical fin spar cap if a crack or disbonding is found.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 205A–1 and 205B helicopters of the same type design, the proposed AD would require:

—Visually inspecting the spar cap for any crack or disbonding;
—Inspecting the spar cap for any crack or disbonding using a tap hammer;
—Modifying the vertical fin;
—After modifying the vertical fin, inspecting the spar cap for any cracks using a dye-penetrant inspection method; and
—Replacing the left-hand spar cap.

The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 150 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the initial inspections, 0.5 work hour for the repetitive inspections, and 180 hours to replace the vertical fin spar assembly, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,705,500 to conduct the initial inspection and one repetitive inspection, and replace the vertical fin spar assembly on all the fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, Inc.: Docket No. 98–SW–72–AD.

Applicability: Model 205A–1 helicopters with vertical fin spar cap, part number (P/N) 212–030–447–001 or –101, installed, and Model 205B helicopters with vertical fin spar cap, P/N 212–030–447–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical fin (fin) spar, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 205A–1 helicopters with a fin spar cap (spar cap), P/N 212–030–447–001, installed, accomplish the following:

(1) Within 8 hours time-in-service (TIS), modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 4 of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 205–98–70, Revision A, dated September 21, 1998 (ASB).

(i) If a crack is discovered on the fin spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the area where the paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent compound, over the clear lacquer or equivalent coating.

(iii) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3 of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspecting, accomplish Part I (A2), paragraphs 5 and 6 of the ASB.

(3) Within 25 hours TIS, inspect and modify the fin assembly as follows:

(i) Accomplish Part II (C1), paragraph 1 of the ASB.

(ii) Remove the clip, part number (P/N) 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand skin along the skin "cutline", approximately fin station 66.31 (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part II (C1), paragraphs 3, 4, and 6 in the ASB.

(v) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part II (C1), paragraphs 10 through 14 of the ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part II (C2), paragraphs 1, 2, 3, 4, 5, and 7 of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part II (C2), paragraphs 11 through 14 of the ASB.

(5) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–001. Replace it with an airworthy fin spar cap or spar assembly configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events and is approved by the Manager, Rotorcraft Standards Staff.

(6) Installation of a fin spar cap or assembly that has been approved by the Manager, Rotorcraft Standards Staff, constitutes terminating action for the requirements of this AD.

(b) For Model 205A–1, helicopters with a fin spar cap, P/N 212–030–447–101, installed, accomplish the following:

(1) Within 8 hours TIS, modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part II (A1), paragraphs 1 through 5 of the ASB.

(i) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with an airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2 or equivalent compound, over the clear lacquer or equivalent coating. To facilitate subsequent inspections, do not replace the two lower rivets (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Fasten the forward left-hand fin skin and the retainer, P/N 212–030–121–037, to the spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of the ASB. Reinstall the clip and radius block, if existing, that were removed in accordance with paragraph 2 of Part II (A1) of the ASB.

(v) Refinish the reworked area.

(vi) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part II (A2), paragraphs 1 through 3 of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspecting, accomplish Part II (A2), paragraphs 5 and 6, of the ASB.

(3) Within 25 hours TIS, modify and inspect the vertical fin as follows:

(i) Accomplish Part II (C1), paragraph 1 of the ASB.

(ii) Remove the clip, P/N 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the skin "cutline", approximately fin station 66.31 (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part II (C1), paragraphs 3, 4, and 6 of the ASB.

(v) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part II (C1), paragraphs 10 through 14 of the ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part II (C2), paragraphs 1 through 7 of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part II (C2), paragraphs 11 through 14 of the ASB.

(5) Within 25 hours TIS, and thereafter at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part II (B), paragraphs 1 through 13 of the ASB.

(ii) Repair any disbonding discovered during the inspection before further flight.

(6) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–101. Replace it with an airworthy fin spar cap or spar assembly configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events, and is approved by the Manager, Rotorcraft Standards Staff.

(7) Installation of a fin spar that has been approved by the Manager, Rotorcraft Standards Staff, that satisfies the requirements of paragraph (b)(6) of this AD constitutes terminating action for the requirements of this AD.

(c) For Model 205B helicopters with a fin spar cap, P/N 212–030–447–101, installed, accomplish the following:

(1) Within 8 hours TIS, modify the fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 5 of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 205B–98–26, Revision A, dated September 21, 1998 (205B ASB).

(i) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent compound, over the clear lacquer. To facilitate subsequent inspections, do not replace the two lower rivets (see Figure 2 of the 205B ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Fasten the forward left-hand fin skin and the retainer, P/N 212–030–121–037, to the spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of the 205B ASB. Reinstall the clip and radius block, if existing, removed in paragraph 2 of Part I (A1) of the 205B ASB.

(v) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3 of the 205B ASB.

(ii) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(iii) After inspecting, accomplish Part I (A2), paragraphs 5 and 6 of the 205B ASB.

(3) Within 25 hours TIS, modify and inspect the fin as follows:

(i) Accomplish Part I (C1), paragraph 1 of the 205B ASB.

(ii) Remove the clip, P/N 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the skin "cutline", approximately fin station 66.31 (see Figure 2 of the 205B ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part I (C1), paragraphs 3, 4, and 6 in the 205B ASB.

(v) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(vi) Accomplish Part I (C1), paragraphs 10 through 14 of the 205B ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part I (C2), paragraphs 1, 2, 3, 4, 5, and 7 of the 205B ASB.

(ii) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(iii) Accomplish Part I (C2), paragraphs 11 through 14 of the 205B ASB.

(5) Within 25 hours TIS, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part I (B), paragraphs 1 through 13 of the 205B ASB.

(ii) Any disbonding discovered during the inspection must be repaired before further flight.

(6) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–101. Replace it with an airworthy fin spar cap configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events and is approved by the Manager, Rotorcraft Standards Staff.

(7) Installation of a fin spar that satisfies the above requirements and has been approved by the Manager, Rotorcraft Standards Staff, constitutes a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on May 25, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–13998 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–32]

Proposed Modification of the Legal Description of the Class E Airspace; Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the legal description of the Class E airspace at Cincinnati Municipal Airport Lunken Field, OH. The legal description for this airspace includes a reference to excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. By Airspace Docket 93–AWA–5 this class C airspace designation is being revoked, and effective at 0901 UTC, July 15, 1999, a Class B airspace area for the Cincinnati/Northern Kentucky International Airport will be established. The reference to Class C airspace in the legal description for the Class E airspace at Cincinnati Municipal Airport Lunken Field will be invalid, and this action changes that reference to Class B airspace.

DATES: Comments must be received on or before July 12, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–32, 2300 East Devon Avenue, Des Plaines, Illinois 60018, The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this proposal must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–32." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons

interested in being place on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the legal description of the Class E airspace at Cincinnati, OH, by changing the reference to the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area to Class B. This Class C airspace designation is being revoked and a Class B airspace area will be established for the Cincinnati Northern Kentucky International Airport, KY, effective July 15, 1999. The area would be depicted on appropriate aeronautical charts. Class E airspace designated as a surface are published in paragraph 6002,of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordinly, pursuant to the authority delegated to me, the Federal Aviation administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area.

* * * * *

AGL OH E2 Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH

(Lat. 39° 06′ 12″N., long. 84° 25′ 07″W.)

Within a 4.1-mile radius of the Cincinnati Municipal Airport Lunken field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. the effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on May 12, 1999.

Christopher R. Blum,

Manger, Air Traffic Division.

[FR Doc. 99–13230 Filed 6–2–99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 990521142–9142–01]

RIN 0625–AA54

Proposed Regulation Concerning the Revocation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Commerce (the "Department" or "DOC") is proposing to amend 19 CFR 351.222(b), which governs the revocation of antidumping duty orders, in whole or in part, based upon an absence of dumping. The proposed regulation is intended to conform the existing regulation to the United States' obligations under Article 11 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Antidumping Agreement" or "AD Agreement"). The proposed regulation, if adopted, would allow the Secretary to revoke an antidumping duty order if the Secretary concludes that producers or exporters did not sell subject merchandise at less than normal value for at least three consecutive years and that the continued application of the antidumping duty order as to those producers or exporters is no longer necessary to offset dumping.

DATES: To be assured of consideration, written comments must be received not later than July 6, 1999.

ADDRESSES: A signed original and two copies of each set of comments including reasons for any recommendation, along with a cover letter identifying the commenter's name and address, should be submitted to Robert S. LaRussa, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, U.S. Department of Commerce, at (202) 482–1560, or Myles S. Getlan, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–5052.

SUPPLEMENTARY INFORMATION:

Background:

On July 24, 1997, the Department issued the final results of the third administrative review of the antidumping duty order on Dynamic Random Access Memory Semiconductors (DRAMs) Of One Megabit Or Above From Korea (62 FR 39809)("DRAMs From Korea"), in which the Department considered the respondents" request that the Department revoke the order, in part, under 19 CFR 353.25(a)(1996) (the precursor to 19 CFR 351.222(b)). Pursuant to this regulation, the Department may revoke an order, in whole or in part, if (1) producers and/or exporters have sold subject merchandise at not less than normal value for three consecutive years; and (2) the Secretary concludes that it is not likely that those producers and/or exporters will in the future sell subject merchandise at not less than normal value. Applying this regulation in DRAMs From Korea, the Department did not revoke the order because the second criterion had not been met.

On January 29, 1999, a panel established by the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) determined that the

"not likely" standard contained in 19 CFR 353.25(a)(2) was inconsistent with the United States' obligations under Article 11.2 of the WTO Antidumping Agreement. The panel recommended that the United States "bring section 353.25(a)(2)(ii) of the DOC regulations . . . into conformity with its obligations under Article 11.2 of the AD Agreement." The DSB adopted the panel report on March 19, 1999. On April 15, 1999, the United States announced its intention to implement the recommendations and rulings of the DSB. Consistent with section 123(g) of the Uruguay Round Agreements Act, which governs the Department's implementation of adverse panel reports, the Department is revising 19 CFR 351.222(b).

Explanation of the Proposed Regulation

Pursuant to 19 CFR § 351.222(b)(1998), the Department may revoke an antidumping duty order, in its entirety or with respect to certain exporters or producers, if several criteria are met. In order to revoke an order, the Secretary must conclude that the exporter or producer has not sold subject merchandise at less than normal value for three consecutive years and that "[i]t is not likely that those persons will in the future sell the subject merchandise at less than normal value." See 19 CFR 351.222(b)(1) and (2).

In its report to the DSB, the Panel considered the consistency of the "not likely" standard described above with the obligations contained in Article 11.2 of the Antidumping Agreement. See United States—Anti-Dumping Duty On Dynamic Random Access Memory Semiconductors (DRAMS) Of One Megabit Or Above From Korea, WT/DS99/R (adopted March 19, 1999) ("Panel Report"). Article 11.2 of the Antidumping Agreement provides:

> The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue to recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

As demonstrated by the language of Article 11.2, in reviewing the need for the continued application of an antidumping duty, the Department is obligated to terminate the duty if the Department concludes "that the anti-dumping duty is no longer warranted." In interpreting the obligations contained in Article 11.2, the Panel concluded that an absence of dumping does not, in and of itself, require the revocation of an antidumping duty order. See Panel Report at para. 6.34. Thus, insofar as the Department's regulation requires exporters or producers requesting revocation to have sold subject merchandise at not less than normal value for at least three consecutive years prior to revocation, the Panel concluded that the Department's regulation is consistent with the United States' WTO obligations.

The Panel then considered whether requiring a finding that a recurrence of dumping is "not likely" before revoking an order was consistent with Article 11.2. In this regard, the Panel noted that Article 11.2 requires authorities "to examine whether the continued imposition of the duty is necessary to offset dumping." The Panel described this obligation as follows:

> We note that the necessity of the measure is a function of certain objective conditions being in place, *i.e.* whether circumstances require continued imposition of the anti-dumping duty. That being so, such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced.

Panel Report at para. 6.42.

As noted above, the Panel affirmed the Department's ability to maintain an antidumping duty order in the absence of present dumping, thus validating the Department's prospective analysis in determining the need for the continued application of an order. In addition, the Panel recognized that such a prospective analysis is inherently uncertain. However, while "[m]athematical certainty is not required, ... the conclusions should be demonstrable on the basis of the evidence adduced." Panel Report at para. 6.43. In this regard, the Panel determined that the Department's "not likely" standard does not provide a requisite degree of predictive assurance in performing a prospective analysis nor does it provide "any demonstrable basis on which to reliably conclude that the continued imposition of the duty is necessary to offset dumping." Id. at para. 6.50. Thus, the Panel concluded that the "not likely" criterion contained in 19 CFR 353.25(a)(2)(ii) (currently 19 CFR 351.222(b)) is inconsistent with Article 11.2 of the Antidumping Agreement.

In implementing the Panel's findings with respect to the revocation regulation, we sought to reform the regulation in a manner that will require the Department's determination of whether to revoke an order to be based upon positive evidence. In adopting the Panel Report, we recognize the Panel's conclusion that the "not likely" standard may, on its face, allow the Department in certain cases to maintain an order in the absence of positive evidence suggesting the necessity of maintaining the order to offset dumping. In this regard, we are confident that the revised standard provides the appropriate degree of predictive assurance required in a prospective analysis and provides a demonstrable basis upon which to reliably conclude whether maintaining the antidumping duty order is warranted.

While the Panel interpreted "not likely" on the basis of its common meaning and usage, the Panel's ruling was not based upon the Department's application of the standard in DRAMs from Korea or any other prior case in which the standard was applied. In addition, the Panel affirmed the Department's prospective analysis in considering whether to revoke an antidumping duty order. We took these factors into account in revising the revocation regulation.

The Department's analysis of whether to revoke antidumping duty orders based upon an absence of dumping has always implicitly addressed whether the continued application of an antidumping duty order is necessary to offset dumping. Therefore, since Article 11.2 itself provides a standard by which to measure the continued applicability of an antidumping duty order, promulgating an additional standard is not necessary to fulfill the United States' international obligations. Stated differently, the requirement contained in Article 11.2 that authorities examine the necessity of maintaining an antidumping duty constitutes a transparent, meaningful standard that can be incorporated into the Department's current statutory and regulatory scheme.

In previous cases, the Department has applied 19 CFR 353.25(a)(2), now § 351.222(b), in administrative reviews where an exporter or producer requested revocation and established that it had sold subject merchandise at not less than normal value for at least three consecutive years. The Department has consistently considered that an absence of dumping for three consecutive years was indicative that a

foreign respondent was "not likely" to sell at less than normal value in the future. Thus, the absence of dumping for three consecutive years served as a presumption in favor of revoking the order, which could be rebutted by positive evidence indicating that dumping may recur if the order were revoked. Such evidence reflected the likelihood that respondents would dump in the future. In this regard, we note that the Panel considered that evidence of likelihood of future dumping was relevant to a determination under Article 11.2, and suggested that one way to meet the requirements of the Antidumping Agreement would be to promulgate a standard which required a finding that respondents are likely to dump in the future before maintaining an order. See Panel Report at para. 6.48 n. 494.

It is the Department's view that the Panel's findings with respect to the "not likely" standard does not necessitate a wholesale change in the practice described above. When requested to revoke an antidumping duty order based upon an absence of dumping for three consecutive years, the Department intends to continue its practice of revoking orders in the absence of any other record evidence indicating that the continued application of the order is necessary to offset dumping. When additional evidence is placed on the record, the Department will fully consider all relevant factors as to whether the continued application of the order is necessary to offset dumping. Factors considered in prior cases relating to the likelihood of future dumping would still be deemed relevant under the "necessary" standard derived from Article 11.2 of the Antidumping Agreement. That is, the Department may consider trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case. An analysis of this evidence, we believe, provides a demonstrable basis upon which to reliably conclude whether the continued application of an antidumping duty order is necessary to offset dumping and provides the appropriate degree of predictive assurance required in a prospective analysis.

Effective Date

Pursuant to section 123(g)(2) of the Uruguay Round Agreements Act ("URAA")(19 U.S.C. 3533(g)(2)), the final amended regulation may not become effective until the end of the 60-day period beginning on the date on which the Department and the Office of the U.S. Trade Representative undertake consultations with the appropriate congressional committees concerning the proposed contents of the final rule. Since the date of consultations has not yet been determined, we are unable to determine the effective date at this time. If the proposed regulation is adopted, we will publish the effective date in the notice of final rulemaking based upon the date on which the Office of the U.S. Trade Representative and the Department consults with Congress.

Classification

E.O. 12866

This proposed rule has been determined to be not significant under E.O. 12866.

Paperwork Reduction Act

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

E.O. 12612

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Department's existing regulations provide a procedural and substantive process by which the Secretary considers whether to revoke an antidumping duty order. The proposed rule retains the current procedural process and revises the substantive standard used by the Secretary to make the appropriate revocation determination. As discussed above, the proposed regulation would not significantly change the Department's practice in determining whether to maintain an antidumping duty order. Moreover, as the proposed regulation only changes the standard by which the Department considers whether to revoke an antidumping duty order, this action, in and of itself, will not have a significant economic impact. Therefore, the Chief Counsel concluded that the proposed rule would not have a significant impact on a substantial number of small business entities, and a regulatory flexibility analysis was not prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, it is proposed that 19 CFR § 351.222(b) is amended to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

Subpart B—Antidumping and Countervailing Duty Procedures

2. Section 351.222 is amended by revising paragraph (b) to read as follows:

§ 351.222 Revocation of orders; termination of suspended investigations

* * * * *

(b) *Revocation or termination based on absence of dumping.* (1) The Secretary may revoke an antidumping order or terminate a suspended antidumping investigation if the Secretary concludes that:

(i) All exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(ii) The continued application of the antidumping duty order is no longer necessary to offset dumping.

(2) The Secretary may revoke an antidumping order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

(ii) The continued application of the antidumping duty order as to those persons is no longer necessary to offset dumping; and

(iii) Provided that, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement

in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value.

* * * * *

[FR Doc. 99–14098 Filed 6–2–99; 8:45 am]
BILLING CODE 3510–DS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–0130b; FRL–6331–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revisions: Kern County Air Pollution Control District, Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Northern Sonoma County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Siskiyou County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern various administrative, editorial, and other modifications which do not directly affect emissions. The intended effect of this action is to update and clarify the SIP.

In the Final Rules section of this **Federal Register**, the EPA is approving these SIP submittals as a direct final rule without prior proposal because the Agency views these rules as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 6, 1999

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, California 95812.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370.

Modoc County Air Pollution Control District, 202 West Fourth Street, Alturas, CA 96101–3915.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Ste. 200, Victorville, CA 92392–2383.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, California, 93721, and

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B23, Goleta, CA 93117.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, California, 96097–3036.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns the following rule revisions:

Kern County APCD—Rule 101, Title; Rule 112, Circumvention; Rule 113, Separation and Combination; Rule 114, Severability; and Rule 115, Applicability of Emission Limits. These rules were adopted on May 2, 1996 and submitted to EPA as a SIP revision on July 23, 1996.

Modoc County APCD—Rule 4.1–2, Uncombined Water; Rule 4.6, Circumvention; Rule 4.6–1, Exception to Circumvention; and Rule 4.9, Separation of Emissions. These rules were adopted on January 3, 1989 and submitted to EPA as a SIP revision on December 31, 1990.

Mojave Desert AQMD—Rule 103, Description of the District Boundaries was adopted on June 28, 1995 and submitted to EPA as a SIP revision on August 10, 1995.

Northern Sonoma County APCD—Unnumbered rule, known as Appendix A; Unnumbered rule, known as Appendix B; Unnumbered rule, formerly Appendix C, now known as Appendix A; and Unnumbered rule, formerly Appendix D, now known as Appendix B. These appendices were adopted on February 22, 1984 and submitted to EPA as a SIP revision on October 16, 1985.

San Joaquin Valley Unified APCD—Rule 1010, Title and Rule 1130, Severability were adopted on June 18, 1992 and submitted to EPA as a SIP revision on September 28, 1994.

Santa Barbara County APCD—Rule 105, Applicability adopted on July 30, 1991 and submitted to EPA as a SIP revision on October 25, 1991.

Siskiyou County APCD—Rule 4.10, Reduction of Animal Matter, adopted on January 24, 1989 and submitted to EPA as a revision to the SIP on March 26, 1990.

For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 22, 1999.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 99–13658 Filed 6–2–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–83–1–7340b; FRL–6349–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Harris County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing direct final approval to revisions of the Texas State Implementation Plan (SIP) for Harris County, addressing sulfur dioxide (SO_2) emissions. This action incorporates by reference into the federally approved SIP two amended Agreed Orders modifying the SO_2 allowable emissions at two stationary sources in Harris County, Texas. The Orders concern Simpson Pasadena Paper Company and Lyondel-Citgo Refining Company, both located in Houston, Texas. The intended effect of approving these Agreed Orders is to regulate SO_2 emissions in accordance with the requirements of the Clean Air Act, as amended in 1990.

In the final rules section of this **Federal Register**, we are approving

Texas' SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this action. If we receive adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the Texas SO_2 SIP revision.

DATES: Written comments must be received by July 6, 1999.

ADDRESSES: Written comments must be submitted to Mr. Thomas Diggs, Chief, Air Planning Section, EPA Region 6, 1445 Ross Avenue, Suite 1200 (6PD–L), Dallas, Texas, 75202–2733. Copies of the technical support document are available for public review at the EPA Region 6 office during normal business hours. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Suite 1200, 6PD–L, Dallas, Texas, 75202–2733, telephone (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78753, telephone (512) 239–1461.

FOR FURTHER INFORMATION CONTACT: Ms. Petra Sanchez, Air Planning Section, (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone, (214) 665–6686.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

Lists of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7402 *et seq.*

Dated: April 14, 1999.

Sammuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 99–13801 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SD–001–0003b and SD–001–0004b; FRL–6351–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Dakota; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. South Dakota submitted its original plan to EPA on May 2, 1997 and then submitted revisions to the plan on May 6, 1999. South Dakota submitted this plan to meet section 111(d) of the Clean Air Act (Act) and EPA's Emission Guidelines for existing MSW landfills at 40 CFR part 60, subpart Cc.

In the "Rules and Regulations" section of this **Federal Register**, we approve the State's submittals as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the preamble of the direct final rule. If no adverse comments are submitted, we will not take further action on this proposed rule. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before July 6, 1999.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this proposed rule are available for public inspection at the Department of Environmental and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7642.

Dated: May 21, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–13798 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX–61–1–7350; FRL–6353–6]

Clean Air Act Reclassification or Eligibility for Extension of Attainment Date, Texas; Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening our proposal to find that the Beaumont/Port Arthur moderate ozone nonattainment area has failed to attain the one-hour ozone National Ambient Air Quality Standard, and alternatively proposing to extend the area's attainment date. We have received two requests to extend the comment period two weeks to allow additional time to review the proposal. In addition, these parties requested copies of all information and correspondence regarding the Southeast Texas Regional Planning Commission's 1997 Overwhelming Transport Demonstration. We have provided the requesters with that information and correspondence. In order to ensure that all interested parties have sufficient opportunity to submit comments, we will reopen the comment period for this proposal until July 6, 1999. We published our reasons for proposing a reclassification, and alternatively an extension, for the Beaumont/Port Arthur

area in the **Federal Register** on April 16, 1999 (64 FR 18864).

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Area designations and classifications, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 20, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–14064 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 176

[OPP–181051; FRL–5750–1]

RIN 2070–AD15

Tolerances for Pesticide Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing procedures and criteria under which EPA would establish tolerances for residues of pesticide chemicals resulting from emergency uses of pesticide chemicals authorized by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This regulation is required by the Federal Food, Drug, and Cosmetic Act (FFDCA), which was amended by the Food Quality Protection Act (FQPA) of 1996. FQPA established a new safety standard with special protections for infants and children and extends this new protection to the emergency use of pesticide chemicals. Specifically, FQPA requires EPA to establish time-limited tolerances, or an exemption from the requirement for a time-limited tolerance, for any pesticide uses authorized by EPA under section 18 of FIFRA that may result in residues in or on food (including animal feed). EPA actions under section 18 of FIFRA are taken in response to a petition submitted by a Federal or state agency. These proposed procedures and criteria will ensure that the Agency is able to address more quickly any tolerance related issues in conjunction with any decision made on the petition. EPA believes that the procedures proposed in this document will be protective of public health, while continuing to ensure availability of pesticides in emergency situations.

DATES: Written comments, identified by the docket control number OPP–181051, must be received on or before August 2, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Joseph E. Hogue, Policy and Regulatory Services Branch, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: (703) 308–9072, e-mail address: hogue.joe@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does This Proposed Rule Apply to You?

You may be potentially affected by this proposed rule if you are the Federal Government or a State or territorial government agency charged with pesticide authority. Regulated categories and entities may include, but is not limited to:

Category	Examples
Federal Government	Agencies that petition EPA for section 18 pesticide use authorization.
State and territorial government agencies charged with pesticide authority.	State that petition EPA for section 18 pesticide use authorization.

This table is not all inclusive, but is intended as a guide for entities likely to be regulated by this action. To determine whether this proposed rule applies to you, carefully read the applicability criteria in a proposed § 176.1. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. Electronically. You may obtain electronic copies of this document and various support documents are available from the EPA Home page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. In person. The official record for this proposed rule, as well as the public version, has been established under docket control number OPP–181051, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

C. How and to Whom Do I Submit Comments to?

You may submit comments through the mail, in person, or electronically:

1. By mail. Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460.

2. In person. Deliver written comments to: Public Information and

Records Integrity Branch, in Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. Electronically. Submit your comments and/or data electronically to: "opp-docket@epamail.epa.gov." Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–181051. Electronic comments on this proposed rule may also be filed online at many Federal Depository Libraries.

D. How Should I Handle Information That I Believe Is Confidential?

You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

II. Authority

This action is issued under the authority of the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996.

III. Background

The Food Quality Protection Act of 1996 (FQPA) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 201 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* Among other things, FQPA amends FFDCA to bring all pesticide tolerance-setting activities conducted by EPA under a new section 408 with a new safety standard and new procedures. FQPA also amends FFDCA by directing EPA to establish time-limited tolerances for any pesticide use authorized by EPA under section 18 of FIFRA that may result in residues in or on food (including animal feed). The FQPA amendments went into effect immediately.

EPA is proposing regulations to govern the establishment of time-limited tolerances for pesticide uses authorized by EPA under section 18 of FIFRA. This proposed rule pertains only to regulatory changes resulting from enactment of FQPA.

IV. Emergency Exemptions under Section 18

Section 18 of FIFRA authorizes EPA to exempt any Federal or state agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166. Generally, these regulations allow a Federal or state agency to apply for an exemption to allow a use of a pesticide that is not registered when such use is necessary to alleviate an emergency condition. A state, as defined by FIFRA section 2(aa), means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands and the American Samoa. The regulations set forth information requirements, procedures, and standards for EPA's approval or denial of such exemptions.

Federal and state agencies may petition EPA for a section 18 emergency exemption from FIFRA due to a public health emergency, a quarantine emergency, or a "specific" emergency. Most exemptions from FIFRA petitioned for or granted under section 18 fall under the category of "specific exemptions." Typical justifications for specific exemptions include, but are not limited to, the introduction of a new pest; the expansion of the range of a pest; the cancellation or removal from the market of a previously registered and effective pesticide product; and the development of resistance in pest to a registered product, or loss of efficacy in available products for any other reasons. Additionally, an emergency situation is generally considered to exist when no other viable (chemical or non-chemical) means of control exist, and where the emergency situation will cause significant economic losses to affected individuals if the exemption is not granted.

When a Federal or state agency petitions EPA under section 18, it must submit a request in writing that documents the emergency situation, the chemical(s) proposed for the use, the target pest, the crop, the rate and number of applications to be made, the geographical region where the chemical(s) would be applied, and a discussion of risks which may be posed to human health or to the environment as a result of the pesticide use (40 CFR 166.20). EPA conducts an expedited review of the request, verifying the existence of the emergency, assessing risks posed to human health through dietary exposure, assessing risks posed to farmworkers and other handlers of the pesticide, assessing any adverse effects on non-target organisms (including federally listed endangered species), and assessing the potential for contamination of ground and surface water. If an application for the requested use has been made in previous years, EPA does an assessment of the progress toward registration for the use of the requested chemical on the requested crop, and considers this status in the final determination to grant or deny the exemption. If EPA's review concludes that the situation is an emergency, and that the use of the pesticide under the exemption will not cause unreasonable adverse effects on human health or the environment, then EPA may authorize the pesticide to be used under section 18.

Section 18 pesticide uses for specific and public health exemptions can be authorized for periods not to exceed 1 year; uses under quarantine exemptions can be authorized for up to 3 years. Since actions taken under section 18 are intended to address a time-specific crisis or emergency need for temporary relief, most section 18 exemptions are specific exemptions which are granted for just one growing season. Such actions should not, therefore, be reviewed as an alternative to registering the use(s) needed for longer periods. If the situation addressed with the section 18 exemption persists, or is expected to persist, affected entities must take the proper steps to amend the existing or seek a new registration to address that future need.

In general, EPA attempts to form and communicate decisions on section 18 requests within 50 calendar days of receipt of an exemption application; in fiscal year 1998 (October 1, 1997—September 30, 1998), EPA's average response time was 56 days. During FY98, EPA received requests for 601 exemptions, of which 410 were approved (27 requests were denied, 67 requests were withdrawn by states, and 97 requests were still pending at the end of the fiscal year).

EPA maintains lines of communication with the State Departments of Agriculture (or applicant) during the application review period so they may keep growers informed on the status of the request. The Agency works with the State Departments of Agriculture so that in case a request might be denied, the affected growers may be able to find alternative solutions. In the early stages of the development of this proposed rule, EPA consulted with

representatives from the States of North Carolina and Washington on behalf of the State's FIFRA Issues Research and Evaluation Group (SFIREG). SFIREG identifies, analyzes and provides State comments to the Office of Pesticide Programs on matters relating to pesticide registration, enforcement, training and certification, water quality, disposal and other areas of environmental concern related to pesticide manufacture, use and disposal. In addition, SFIREG provides a mechanism for EPA to keep the states informed and up-to-date on its pesticide regulatory programs.

In September 1997, the Office of Pesticide programs formed a minor use office which focuses on the special needs of growers of minor use crops. EPA has expanded work in this respect with Interregional Research Project No. 4 (IR–4), a U.S. Department of Agriculture (USDA) program which provides national leadership and coordination for information on the clearance of minor use pesticides and generates data to support minor-use registrations. IR–4 will often help support minor use emergency exemptions petitions.

The section 18 program can be an important part of developing reasonable transition approaches for certain crops, especially minor use crops, in moving to safer pest control methods. For example, in certain situations, a pesticide needed for emergency use on minor use crops might be registered for other use sites which have already filled the "risk cup." In order to address the needs of minor use farmers, the Agency might work with pesticide registrants and growers to cap the existing use on registered crops at a level that allows room in the risk cup for use of the pesticide in combating an emergency. Under this offset approach, the Agency could achieve either no risk increase or a risk reduction and at the same time facilitate and permit critical emergency exemptions.

In continuing efforts to implement FQPA, EPA is working together with USDA to ensure that implementation of FQPA is informed by a sound regulatory approach, by appropriate input from affected members of the public, and by due regard for the needs of our Nation's agricultural producers and other pesticide users.

V. Legal Basis of EPA Action

A. Residues in Food Prior to FQPA

Prior to enactment of FQPA, when EPA granted an emergency exemption under section 18 for use of a pesticide that could result in residues in or on food, EPA did not establish a tolerance or exemption from the requirement for a tolerance under FFDCA. rather, EPA advised the Food and Drug Administration (FDA) of the emergency exemption and the level of residues that EPA concluded would be present in or on affected foods as a result of the emergency use, and requested that FDA refrain from enforcing against foods which contained residues of the pesticide due to use under the exemption. Similarly, EPA informed the USDA of pesticide use under an emergency exemption where residues would result in meat, milk, or eggs.

B. FQPA Requirements

New section 408(l)(6) requires EPA to establish a tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in or on food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA, and requires that the tolerances be consistent with sections 408(b)(2) and (c)(2) and FIFRA section 18. Section 408(l)(6) also requires EPA to promulgate regulations governing the establishment of tolerances and exemptions under section 408(l)(6). New FFDCA section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the maximum legal limit) for a pesticide chemical residue in or on a food in accordance with the following:

1. EPA must determine that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." Aggregate exposure includes exposure through food and drinking water, as well as all non-occupational, non-dietary exposure, such as through residential uses.

2. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *"

3. Section 408(b)(2)(D) specifies certain factors EPA is to consider in establishing a tolerance. These factors include the use of reliable data, nature of toxic effects, human risk involved, dietary consumption patterns, cumulative effects of a pesticide residue with other substances that have a common mechanism of toxicity, aggregate exposure levels, variability of the sensitivities of subgroups of consumers, endocrine disrupting effects, and appropriate safety factors.

4. Section 408(b)(3) requires that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food. A tolerance may only be established at a level at or above the limit of detection of the designated method.

5. Section 408(c) governs EPA's establishment of exemptions from the requirement for a tolerance using the same safety standard as section 408(b)(2)(A) and incorporating the provisions of sections 408(b)(2)(C) and (D). In this preamble, EPA will use the terms "tolerance" to refer to exemptions from the requirement for a tolerance as well.

Section 408(l)(6) requires EPA to establish tolerances in connection with EPA's granting of FIFRA section 18 emergency exemptions. When EPA establishes a tolerance under section 408(l)(6), it may do so without providing notice or a period for public comment. Tolerances established under section 408(l)(6) must also be consistent with the safety standards in section 408(b)(2) and (c)(2) that are applicable to all tolerances under section 408, and with FIFRA section 18. Section 408(l)(6) specifies that such tolerances shall have an expiration date, but does not specify the duration of the tolerance.

VI. Interim Section 18 Practices

Since August 3, 1998, EPA has been acting on requests for section 18 exemptions and has been issuing associated tolerances on a case-by-case basis under the new safety standard mandated by FQPA. The Agency sent a letter to Federal and state agencies in September 1996, informing them of the new procedures and issued guidance on interim procedures in Pesticide Regulation Notice 97–1 (January 31, 1997). In establishing section 18-related tolerances during this interim period before issuing the section 408(l)(6) procedural regulation and before making broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance decisions are being made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development.

VII. EPA Proposal

A. Scope

This proposal deals exclusively with procedures for setting time-limited tolerances for pesticide chemical residues associated with FIFRA section 18 emergency exemptions. The proposal does not modify any regulatory policies or procedures associated with the issuance of an emergency exemption itself, nor does it affect tolerance procedures which fall under other sections of FIFRA or FFDCA.

B. Definitions

The terms defined in proposed § 176.3 of the regulatory text have the same meaning as FIFRA section 2, FFDCA section 201, and 40 CFR part 166.

C. Request for a Section 18 Tolerance

Proposed § 176.5 specifies that EPA will review data to establish a time-limited tolerance for a pesticide to be used in an emergency or crisis situation under section 18 only after it has received the emergency exemption request or a crisis situation has been declared.

D. Determining Reasonable Certainty of No Harm

In developing these proposed regulations, EPA considered several approaches for assuring timely access to information adequate to ensure that a section 18 tolerance, taking into account its limited duration and emergency nature, meets the new FFDCA safety standard of reasonable certainty of no harm.

For a number of reasons, EPA proposes to implement the new provisions of FFDCA related to section 18 tolerances in § 176.7 by evaluating each submission on a case-by-case basis to determine if adequate reliable data are available to make the "reasonable certainty of no harm" finding mandated under section 408 of FFDCA. EPA believes that timeliness of review in a manner responsive to the requirements of the situation is of critical importance. EPA must be able to conclude rapidly whether it has enough reliable data readily available to make a safety finding under FFDCA for the requested use. Even if EPA concludes that it is unable to establish a time-limited tolerance for the requested use, the Agency will strive to make that conclusion in sufficient time for the applicant to search for some additional method to control the emergency pest situation. This case-by-case evaluation is consistent with EPA's traditional approach to section 18 exemption requests and with the statutory mandate of FFDCA section 408(l)(6).

In addition to the practical limits on the time available for decision-making, EPA believes it is reasonable to rely on available data for several other reasons, even though those data will generally be less than those required for the establishment of a permanent tolerance. Dietary exposures to pesticide chemical residues from use under a section 18 exemption are generally less than those associated with permanent tolerances because section 18 uses are of limited duration, and because section 18 uses generally do not involve the entire U.S. production of any crop since they are granted on a state-by-state basis. Moreover, substantial hazard and exposure data are usually available. Many section 18 exemption requests are for new use sites of currently registered pesticides or for uses of previously registered pesticides which are no longer in use. Consequently, EPA may already have an extensive data base readily available to make the reasonable certainty of no harm determination to set the tolerance. Using available data is less likely to require significant increases in the resources necessary to support exemption requests. It would not significantly increase the regulatory burden on applicants by creating new data requirements for section 18 exemptions nor significantly increase costs to EPA for evaluating the requests. It is important to limit the resource requirements of the section 18 program so that both the Agency and applicants have sufficient resources to carry out their other responsibilities under FIFRA and FFDCA.

1. Data requirements. Under this approach, EPA will review data that has been submitted as required in 40 CFR part 158 for FIFRA section 18 requests and whatever additional useful data it has available in order to make the safety determination required under FFDCA for establishment of a time-limited tolerance for an emergency exemption. Pesticide Registration (PR) Notice 97–1, issued January 31, 1997, provides additional guidance on what data to submit to the Agency to enable EPA to make a "reasonable certainty of no harm" determination in order to issue a tolerance (for a copy of PR Notice 97–1, please contact the OPP docket, address above, or visit the EPA web site). Because EPA already has in its files much of the data it will review to make a determination on a section 18 tolerance, the Agency does not expect such data to be submitted routinely with an exemption request. EPA will exercise its best scientific judgment and rely on data submitted to support past and pending registration actions for the subject or closely related chemical, or data submitted to EPA as part of the reregistration process. When possible, applicants should cite studies previously reviewed, and found acceptable by EPA, that pertain to the requested use. EPA will not, however, conduct expedited reviews of data submitted for permanent tolerances, or for registration or reregistration actions, solely in order to ascertain the viability of establishing a tolerance for a section 18 exemption request.

In all cases, applicants must include the earliest anticipated harvest date of crops for which the section 18 exemption is being requested. This information is useful for EPA to allocate the necessary resources to establish the time-limited tolerances in time for the harvest, and will also be useful to FDA and USDA in enforcing the tolerances.

2. Agency review under a case-by-case approach. In order to determine whether EPA will be able to establish a time-limited tolerance for a requested section 18 use, EPA will consider available information relevant to the factors listed in FFDCA section 408(b)(2)(D), including:

a. Aggregate exposure to the pesticide chemical residue through:

i. Dietary exposure, including drinking water.

ii. Non-dietary, non-occupational residential exposure [indoor and outdoor].

b. Cumulative effects of the pesticide chemical residue and other substances that have a common mechanism of toxicity.

c. Extra sensitivity of infants and children.

d. Potential to produce endocrine effects.

Because there is a significant scientific uncertainty at this time about how to aggregate non-dietary risk factors with dietary risk, and because generally EPA has limited data with which to evaluate common mechanism of toxicity and endocrine disruption capacities of chemicals, EPA will make its "reasonable certainty of no harm determination" based on available and reliable information coupled with best scientific judgment as necessary. If EPA concludes that establishment of the appropriate tolerance would result in "a reasonable certainty of no harm" as defined in FFDCA section 408(b), then a tolerance may be established for the requested use.

EPA will be unable to establish a time-limited tolerance for the proposed emergency exemption use, and therefore will deny the exemption request, if: (1) The Agency finds that the tolerance

does not meet the safety standard of reasonable certainly of no harm as defined in FFDCA section 408, or (2) the Agency does not have enough reliable data to make a determination that the safety standard is met.

3. Alternative approaches considered. EPA has identified other possible approaches to establishing section 18 tolerances which it could pursue. One approach was to require a full data set to support section 18 tolerances as is required in 40 CFR part 158, subparts D and F, for the establishment of permanent tolerances. However, the Agency recognized that adhering rigidly to all data specified in 40 CFR part 158, as they currently exist and as they may be modified in the future, would effectively remove section 18 as a mechanism to address emergency pest situations. Review and decisions would not be made in a timely or responsive fashion, and the process of data collection, submission and review would be equivalent to that required to establish a permanent tolerance. This would be unduly burdensome to the applicants that request emergency exemptions. They generally do not have resources to develop the data themselves and so would have to rely upon data developed by the producers of pesticide products. In sum, this approach does not consider the emergency nature or short duration of most exemption requests. Therefore, EPA believes that it would be impractical, given the urgent nature of emergency conditions.

EPA also considered a minimum data set approach in which the applicant would be required to provide a specific subset of the data normally required to establish a full tolerance which would be sufficient to support a safety determination given the time-limited nature of section 18 tolerances and the urgent nature of emergency situations. Under this approach, EPA would consider only those defined data requirements in making a safety finding. If EPA chose to implement the new provisions of FFDCA in this fashion, applicants would likely have to provide specific data to EPA to support a section 18 tolerance in addition to data which must already be submitted for emergency exemption requests in general, outlined in 40 CFR 166.20.

EPA believes that both the creation of a new, specific minimum data set to support section 18 time-limited tolerances, and the practical implementation of those requirements, would result in significant disruption to the availability of section 18 as a viable response to emergency situations requiring use of pesticide products. EPA believes that many applicants would have difficulty complying with a minimum data set because these requirements would still represent levels of technical data which most states do not have access to and currently are unable to develop. As EPA's data requirements evolve, a defined minimum data set might also require revision. Because a prescribed data set is not necessary for the Agency to conclude that a tolerance is safe and because it is EPA's belief that the amendments to FFDCA were not intended to eliminate or significantly disrupt the availability of emergency exemptions, EPA is not proposing to establish a minimum data set required for tolerances associated with section 18 requests.

A fourth approach to setting tolerances under section 18 has been suggested to the Agency. This approach was initially presented in a paper developed by a work group of the Pesticide Program Dialogue Committee and subsequently through a petition submitted by the National Food Processor's Association. Under this approach, the Agency would not conduct a full risk assessment under FQPA but would assess the incremental risk of the proposed section 18 use. If the Agency were to find the incremental risk insignificant, it would establish a time limited tolerance and grant the section 18 use without conducting a full aggregate risk assessment for the existing uses of the pesticide chemical. This approach would take into account the limited scope and duration of the emergency use of the pesticide. The NFPA petition assets that limiting the Agency's review of a section 18 tolerance to an incremental risk assessment might decrease the amount of time it takes for the Agency to review the emergency exemption application, thus taking into account the emergency nature and time sensitivity of the use and potentially allowing Agency resources to be used in other areas. In addition, the petitioners believe that the use of an incremental risk assessment may reduce the time needed to establish a tolerance after granting an emergency exemption. Although the Agency is proposing to use a case-by-case approach including aggregate risk assessment based on available data, the Agency is accepting comments on all of these alternative approaches.

E. Publication of Tolerances

Tolerances established to support emergency exemption uses of pesticide products would become effective upon publication of a final rule under proposed § 176.9. Shortly after promulgation of a tolerance, EPA would publish a final rule in the **Federal Register** establishing the tolerance and specifying the duration of the tolerance. Section 408(l)(6) of the FFDCA allows EPA to establish a tolerance without prior public notification or comment period. Additionally, EPA intends to make tolerances established under FFDCA section 408(l)(6) available electronically, so that there can be a record of the most up-to-date tolerances, their expiration dates, and any other information that can be of practical use to growers, states, and other various enforcement agencies.

F. Duration of Tolerances

Section 408(l)(6) of FFDCA provides that tolerances for emergency exemptions shall have an expiration date. Proposed § 176.11 specifies that tolerances would expire and be revoked automatically at such a time as determined by the Administrator. Timing of expiration and revocation of the tolerance would be identified at the time of establishment of the tolerance.

EPA anticipates that, typically, tolerances would not be established for a period longer than 24 months. In its discretion, and at its own initiative or at the request of an applicant, EPA may establish a section 408(l)(6) tolerance for longer periods when conditions merit such an extended time-frame. If an applicant requests a longer time-limited tolerance for a section 18 pesticide use, the applicant must adequately justify the requested duration when making its emergency exemption request, and EPA would have to consider whether the extended tolerance could pose higher risks.

G. Lawful Residues After Expiration of Tolerances

Section 408(l)(5) of FFDCA specifies that, if a tolerance for a pesticide chemical residue in or on a food has been revoked under section 408, food containing the residue is not unsafe if "the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful" under FIFRA and "the residue does not exceed a level that was authorized at the time of the application or use to be present on the food under a tolerance * * * then in effect under [FFDCA]. * * *"

Taking sections 408(l) (5) and (6) together, EPA has concluded that the best way to effect an "expiration date" for a tolerance established in connection with EPA's granting of a FIFRA section 18 emergency exemption is to specify that the tolerance will expire and be revoked automatically, without further

action by EPA, as of a specified date. That date will generally be 24 months or less from the date of issuance of the emergency exemption. After a tolerance is automatically revoked, food that contains residues of a pesticide chemical will still be legally marketable so long as the residues are the result of lawful use of the pesticide under the terms of the section 18 emergency exemption and are at levels within the tolerance established under section 408(l)(6).

Occasionally, use of the pesticide might occur before EPA actually establishes the necessary time-limited tolerance, such as in the case of a crisis exemption. When a time-limited tolerance is established after the time that use of the pesticide product is authorized, the residues on the subject commodity are only legal during the period of time prior to the expiration and revocation of the tolerance. In other words, there would be no "pipeline" provision for treated commodities if use occurred before a tolerance was set. In case of such a gap, EPA will consider setting a longer duration for the time-limited tolerance to ensure that the commodity will leave channels of trade before the tolerance expires.

EPA believes that handling the section 18-related tolerances in this manner will allow EPA to respond promptly to emergency conditions and will ensure that food containing pesticide residues as a result of use under an emergency exemption will not be considered adulterated.

H. Limitations of 408(l)(6) Tolerances

Time-limited tolerances established under the authority of FFDCA section 408(l)(6) apply to pesticide chemical residues resulting from pesticide applications authorized by EPA under provisions of FIFRA section 18. In addition, time-limited tolerances established under this section will cover commodities imported into the United States during the duration of the tolerance.

The previous establishment of a 408(l)(6) tolerance does not alter the requirement for applicants to submit formal emergency exemption requests to EPA for review. Issuing a tolerance does not grant authority to use a pesticide, but rather provides a legal limit on residues of the pesticide on food shipped in interstate commerce. Even if a time-limited tolerance for a pesticide has been established in response to one applicant's (a state, U.S. territory, or Federal agency) emergency exemption, other applicants must obtain an emergency exemption for the use of that pesticide if they experience a pest emergency which requires the use of that pesticide.

VIII. Additional Section 18 Concerns Not Addressed in This Proposed Rule

On November 21 and 22, 1996, EPA hosted a public workshop to discuss a range of issues related to emergency exemptions from FIFRA. The purpose of the meeting was to informally establish a dialogue amongst and solicit the opinions of a variety of individuals and groups affected by section 18 decisions. During this meeting, EPA encouraged discussion of various changes that may be made to regulations governing section 18. Although the meeting had been planned prior to the passage of FQPA because the new law had recently been enacted, some portions of the meeting were devoted to discussions of how implementation of FQPA could or would affect the section 18 process. Based on the November 21–22 meeting, there may be additional concerns regarding the section 18 program aside from the tolerance setting procedures set forth in this proposed rule that are of great interest to many section 18 stakeholders. EPA may, at a later date, prepare a formal proposal to make changes to the section 18 regulations.

Although this proposed rule only addresses procedures for setting tolerances in connection with section 18 exemptions, the following recommendations were presented to EPA by the National Association of State Departments of Agriculture (NASDA) and the Association of American Pesticide Control Officials (AAPCO) in a letter dated February 28, 1997, addressed to Assistant Administrator for Prevention, Pesticides and Toxic Substances, Dr. Lynn R. Goldman, M.D. NASDA and AAPCO prepared this letter to capture the recommendations of their membership following EPA's November 1996 Section 18 Stakeholder Meeting. Specifically, NASDA and AAPCO recommend that EPA implement the following changes to the section 18 emergency exemption process:

1. Seek changes to current regulations which will allow EPA the flexibility to base decisions on crop yield as opposed to crop value (or profit loss) in situations where that is a better indicator of pest damage.
2. Provide states general guidance regarding the appropriate documentation of an "urgent, non-routine situation" and allow states to certify that the "urgent, non-routine situation" exists based on the guidance.
3. Implement a performance audit program to ensure compliance with the guidance and give states justification to resist pressure to certify an "urgent, non-routine situation" when it does not exist.
4. Delegate to the states authority to reissue the section 18 exemption for a second or third year, based on the state's confirmation/certification that the basis for an emergency continues to exist.
5. Actively support and coordinate regional section 18 requests.
6. Enter into discussions with the states to establish reasonable monitoring criteria and approaches for wildlife and endangered species.
7. Support specific exemptions for resistance management where there is documented scientific evidence of resistance to currently registered pesticide or where valid research demonstrates that a dynamic process of resistance is developing.
8. Amend 40 CFR 166.2 to include "reduced risk" as an acceptable basis for granting a section 18 exemption. The definition of "reduced risk," and the requirements for this request should allow states the ability to request a section 18 to allow for a pesticide use that will result in a lower potential for an adverse impact on human health or any other non-target species, including but not limited to, pest predators, pollinators, endangered species, and other organisms of special concern. Requests should be limited to only those situations where the "reduced risk" request will not result in additional risk to any aspect of the environment. Such requests should only be permitted where the proposed use is highly effective so that the potential for an increase in pesticide applications is extremely low.

As stated above, by including the recommendations of NASDA and AAPCO in this document, the Agency is not proposing to alter existing regulations which govern implementation of FIFRA section 18, nor is the Agency prepared to take a position on the propriety of any of the recommendations. EPA will accept comments on the eight recommendations presented by NASDA and AAPCO, should individuals or organizations wish to comment at this time. Comments on these recommendations must be identified by the docket control number, OPP–181052, rather than the docket number for this proposed rule.

EPA does not expect to address any comments resulting from these eight issues in promulgating final rules establishing procedures for setting tolerances under FFDCA section 408(l)(6), nor does the Agency intend to allow these issues to delay implementation of the tolerance setting

regulations. EPA does intend to develop a proposed rule which would make various changes to the regulations governing section 18 exemptions at a later date. At that time, the Agency will describe in much greater detail these recommendations and any other changes it has considered, and comments will be officially solicited and addressed as part of that process.

The Agency is also seeking ideas on how to reduce the time from when the emergency exemption is granted to when the tolerance is established per the request of the NFPA petition.

IX. Regulatory Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), it has been determined that this proposed action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). Applicants for section 18 emergency exemptions are the only parties, other than EPA, directly affected by this proposed action. According to the economic assessment conducted by the Agency, the direct costs of this action are insignificant to the applicants (Federal and state agencies) of section 18 emergency exemptions because additional data are not readily accessible under case-by-case approach of determining a reasonable certainty of no harm. A copy of the economic assessment is available in the public docket for this proposed rule.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency has determined that this regulatory action does not impose any direct adverse economic impact on small entities. Applicants for section 18 emergency exemptions are U.S. states, territories, or Federal agencies which, by definition, are not small entities. Applicants for section 18 emergency exemptions are the only parties, other than EPA, directly affected by this proposed action. Therefore, pursuant to section 605(b), the agency hereby certifies that this action will not have a significant adverse impact on a substantial number of small entities. Information regarding this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration (SBA) upon request. Any comments regarding the impacts that this action may impose on small entities should be submitted to the Agency at the address listed above.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any new information collection requirements that would require additional approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection requirements that are related to this proposed rule have already been approved by OMB under control No. 2070–0032 (EPA ICR No. 596) and control No. 2070–0024 (EPA ICR No. 597). Specifically, EPA regulations at 40 CFR part 166 allow a state, U.S. territory, or Federal agency to apply for an emergency exemption pursuant to section 18 of FIFRA, which would allow for a pesticide to be used for a use for which that pesticide is not registered when such use is necessary to alleviate an emergency condition. The regulations set forth information requirements, procedures, and standards for EPA's approval or denial of such exemptions. OMB has approved the information collection requirements contained in part 166 under OMB control No. 2070–0032 (EPA ICR No. 596). In addition, EPA regulations in 40 CFR part 180 described the process and informational needs for requesting that the Agency establish or provide an exemption for the establishment of a tolerance or maximum residue level for the use of a pesticide on food crops. OMB has approved the information collection requirements contained in part 180 under OMB control No. 2070–0024 (EPA ICR NO. 597).

The public reporting and recordkeeping burden for the collection of information related to a section 18 exemption is estimated to average 103 hours per response annually. This estimation is based on the number of requests for section 18 exemptions that the Agency received in fiscal year 1996 (October 1, 1995–September 30, 1996), and the estimated burden associated with submitting information related to a request for the establishment of a tolerance or an exemption for a tolerance. In FY 1996, EPA received requests for 478 emergency exemptions pursuant to section 18. According to EPA ICR No. 597, the Agency has estimated the annual burden to be 1,442 hours for providing information in support of a full tolerance request under section 3 of FIFRA.

In general, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. The includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to EPA as part of your overall comments on this proposed action at the address provided above, or to the Director, OPPE Regulatory Information Division, Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy of any ICR comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence. In developing the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposal.

D. Environmental Justice Considerations

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled Federal Actions to Address—Environmental Justice in Minority Population and Low-Income Populations, the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency has found that this proposed rule does not directly affect minority populations or low-income groups, but will be more protective of certain subpopulations such as infants and children.

E. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), EPA has determined that this action does not contain a

Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The costs associated with this action are described in the Executive Order 12866 section above. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Enhancing Intergovernmental Partnerships

Under Executive Order 12875, entitled Enhancing Intergovernmental Parnterships (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. Today's proposal would implement requirements specifically set forth by the Congress in FFDCA section 408(l)(6) without the exercise of any discretion by EPA. EPA consulted with various state officials during the development of this proposal, including representatives from the States of North Carolina and Washington, who acted as representatives of SFIREG.

G. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, entitled Consulatation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. Today's proposal would implement requirements specifically set forth by the Congress in FFDCA section 408(l)(6) without the exercise of any discretion by EPA. The proposal does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposal.

H. Children's Health Protection

This proposed rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because that is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit IX.A.). In addition, this proposed rule is procedural in nature and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

I. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

List of Subjects in 40 CFR Part 176

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 24, 1999.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended by adding new part 176 to read as follows:

PART 176—TIME-LIMITED TOLERANCES FOR EMERGENCY EXEMPTIONS

Sec.

176.1 Scope and applicability.
176.3 Definitions.
176.5 Establishment of a time-limited tolerance or exemption.
176.7 Information needed to establish a tolerance.
176.9 Publications of a tolerance.
176.11 Duration of a tolerance.
176.13 Modification of a time-limited tolerance.
176.15 Effect of a tolerance.

Authority. 21 U.S.C. 346a and 371.

§ 176.1 Scope and applicability.

This part describes the procedures and criteria under which EPA will establish time-limited tolerances and exemptions from the requirement of a tolerance for pesticide chemical residues associated with emergency or crisis exemptions under FIFRA section 18. This part applies only to tolerances issued on the initiative of EPA as the result of the issuance of an emergency exemption or the declaration of a crisis exemption. This part does not cover time-limited tolerances in any other circumstances.

§ 176.3 Definitions.

Terms have the same meaning as in the Federal Insecticide, Fungicide, and Rodenticide Act section 2, and in the Federal Food, Drug, and Cosmetic Act section 201 and § 166.3 of this chapter. In addition, the following terms are defined for the purposes of this part.

Agency means the U.S. Environmental Protection Agency.

Applicant means a State, U.S. Territory, or Federal Agency that requests an emergency exemption under §§ 166.20 through 166.35 of this chapter or declares a crisis exemption under §§ 166.40 through 166.53 of this chapter.

Crisis exemption means an exemption authorized under FIFRA section 18, in accordance with §§ 166.40 through 166.53 of this chapter.

Emergency exemption means a specific, quarantine or public health exemption authorized under FIFRA section 18 and the regulations at §§ 166.20 through 166.35 of this chapter.

EPA means the U.S. Environmental Protection Agency.

FFDCA means the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*)

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*)

Tolerance means the maximum amount of a pesticide chemical residue that may lawfully be present in or on a raw agricultural commodity, or processed food, or animal feed, expressed as parts per million by weight of the pesticide chemical residue in the food or feed.

Tolerance exemption means a formal determination by the Agency pursuant to FFDCA section 408(c), 21 U.S.C. 346a(c), that no tolerance is needed for a given pesticide chemical residue in or on a particular food commodity. For purposes of this subpart, the term "tolerance" shall include an exemption from the requirement of a tolerance.

§ 176.5 Establishment of a time-limited tolerance or exemption.

EPA will establish a time-limited tolerance for pesticide chemical residues in or on raw or processed food

or feed resulting from the use of a pesticide chemical when EPA authorizes an emergency exemption or a crisis exemption. EPA will consider establishing such a tolerance only if an applicant under FIFRA section 18 either has requested an emergency exemption, or has stated its intention to declare a crisis exemption under FIFRA section 18 for a use that may result, directly or indirectly, in pesticide chemical residues in food or feed.

§ 176.7 Information needed to establish a tolerance.

(a) EPA will establish a time-limited tolerance only if EPA can determine that the tolerance is safe, that is, there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue. EPA will base its determination upon data submitted by the applicant and other readily available data. If, taking into account the limited duration and emergency nature of a section 18 application, the available data are not adequate to support a reasonable certainty of no harm determination, EPA will not establish a tolerance.

(b) Data and other relevant information to support the establishment of a time-limited tolerance may be submitted by the applicant, or by any other person, in support of the time-limited tolerance. The applicant may also cite relevant data previously submitted to the Agency.

§ 176.9 Publication of a tolerance.

(a) If EPA concludes that the tolerance will be safe, it may issue a regulation establishing the tolerance and publish a notice to that effect in the **Federal Register**.

(b) A tolerance under this part may be established without prior public notification of a proposed tolerance or comment period.

§ 176.11 Duration of a tolerance.

(a) Tolerances under this part become effective upon publication in the **Federal Register**, unless otherwise specified by the Administrator.

(b) Tolerances will automatically expire and be revoked, without further action by EPA, at the time set out in the **Federal Register** notice estabishing the tolerance.

(c) The Administrator may revoke a tolerance at any time if the Administrator determines that the tolerance is no longer safe.

§ 176.13 Modification of a time-limited tolerance.

If additional emergency or crisis exemptions are authorized that would extend use beyond the date of expiration or revocation of a time-limited tolerance, EPA may modify the time-limited tolerance by extending its duration. EPA will use the same criteria and procedures for modification as for establishing tolerances under this part.

§ 176.15 Effect of a tolerance.

The establishment of a tolerance under this part does not alter the requirement that any State, U.S. Territory, or Federal Agency comply with procedures established in part 166 of this chapter for emergency exemptions of FIFRA.

[FR Doc. 99–14070 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 5 and 51c

RIN 0906–AA44

Designation of Medically Underserved Populations and Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Proposed rules; status.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing its intention to issue a second Notice of Proposed Rulemaking (NPRM) on Designation of Medically Underserved Populations (MUPs) and Health Professional Shortage Areas (HPSAs) following a period of evaluation of comments received, analysis of alternative approaches, and impact testing. This will involve a new 60-day public comment period for the revised proposal.

FOR FURTHER INFORMATION CONTACT: Richard Lee, 301–594–4280.

SUPPLEMENTARY INFORMATION: Proposed rules for designation of MUPs and HPSAs were published on September 1, 1998 (63 FR 46538). The original comment period was extended for an additional 60 days (until January 4, 1999) (63 FR 58679, November 2, 1998), and over 800 comments on the proposed rules were received. Given the large volume of thoughtful comments and the high level of concern that has been voiced about the potential impact of the proposal as published, HRSA believes it is imperative to conduct further analyses before proceeding. This will include a thorough, updated analysis of the impact of the proposal as published, applied to current data for all counties and currently designated MUPs and HPSAs, followed by testing of a number of possible revisions to the proposal, based on HRSA's analysis of the comments received. HRSA also plans to have one or more independent outside organizations verify its impact testing. A new NPRM will then be published for public comment, with a goal of publishing the revised proposal by the end of 1999. The decision to publish another NPRM with its associated public comment period means that new final regulations likely will not be implemented prior to the fall of 2000.

(Authority: 42 U.S.C. 254c and 42 U.S.C. 254e).

Dated: March 12, 1999.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: May 25, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 99–13951 Filed 6–2–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[OST Docket No. OST–99–5742; Notice 99–4]

RIN 2105–AC78

Drug and Alcohol Testing Procedures

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This advance notice solicits public comments on a proposed procedure that organizations certifying substance abuse professionals (SAPs) could use to have members included in the Department of Transportation's substance abuse professional (SAP) definition. The Department proposes to require such organizations to obtain a National Commission for Certifying Agencies (NCCA) accreditation as a prerequisite for having the DOT review their petitions for inclusion of their members as SAPs in the Department's drug and alcohol testing program.

DATES: Comments should be submitted on or before August 2, 1999. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written comments should be sent to Docket Clerk, Att: Docket No. OST–99–5742, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC 20590.

For the convenience of persons wishing to review the docket, it is requested that comments be sent in triplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9:00 a.m. through 5:30 p.m. Monday through Friday.

Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: http://dmses.dot.gov/submit/. The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: http://dms.dot.gov/search/.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Policy Advisor, Office of Drug and Alcohol Policy and Compliance, Room 5405, (202) 366–3784; 400 7th Street, SW., Washington DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employees Testing Act of 1991 required that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation (DOT) established the role of "substance abuse professional" (SAP). The DOT rules require an employer to advise a covered employee who engages in conduct prohibited under these rules of the resources available for evaluation and treatment of substance abuse problems. Employers wishing to return an employee to safety-sensitive duties following a rule violation must first ensure that the employee has been evaluated by a SAP.

The SAP plays a pivotal role in the evaluation, referral, and treatment process of a safety sensitive employee who has violated the DOT regulations. The SAP is charged with the responsibility for making a face-to-face initial assessment and evaluation to determine what assistance, if any, is needed to address the employee's substance abuse problem. If assistance is needed, the SAP is responsible for referring the employee to the appropriate education or treatment program.

The SAP is also charged with conducting a face-to-face follow-up evaluation to determine if the employee has demonstrated successful compliance with the initial assessment and treatment recommendations. In addition, the SAP is responsible for providing the employer with a follow-up drug and/or alcohol testing plan for the employee. Based on these responsibilities, a SAP plays a major role within the testing program in managing the therapeutic decisions when the regulations are violated.

Individuals who are currently qualified to act as a SAP in the DOT drug and alcohol testing program are defined in 49 CFR 40.3 as follows:

> Substance abuse professional. A licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

This proposed policy-focuses on considerations related to the certification of addiction counselors to act as a SAP. The National Association of Alcoholism and Drug Abuse Counselors (NAADAC) was named in the February 1994 regulations as the only organization that could certify an addiction counselor to act as a SAP. Subsequent to those rules being published, the International Certification Reciprocity Consortium (ICRC) formally requested to have their certified counselors included in the SAP definition. The review of that petition was performed by the DOT Office of Drug and Alcohol Policy and Compliance (ODAPC).

Since a major objective of the certification process in this program is the protection of the public by ensuring that only competent professionals are permitted to serve as SAPs, the review was conducted in considerable depth. It involved numerous interviews with the principals of ICRC, their technical consultants, and the acquisition of materials that thoroughly documented their certification process. It also involved interviews with the principals of NAADAC and their associated technical professionals. The review process mapped out by the Department has twelve established evaluation standards that are provided to all certification agencies seeking inclusion in the SAP definition. The review includes a detailed assessment of test development and testing processes and an examination of the data derived from the application of their certification test over time. Following this review, the Department added the ICRC certified counselors to the SAP definition on July 17, 1996. However, the review and approval process was seen as being overly long and costly.

Subsequent to the inclusion of ICRC counselors into the SAP definition, other organizations petitioned to have their certified counselors included. This development, along with the anticipation that more organizations would petition for inclusion, caused concern that the broad regulatory oversight function at ODAPC would be disrupted. The experience involving ICRC as well as the subsequent petitioners has shown that not only is the process too protracted and costly but that the ODAPC could not effectively and efficiently examine more than one petitioning organization at a time. Provisions for the conduct of a review and approval process in ODAPC were not included in the initial promulgation of the regulations. Therefore, it was determined that a more efficient solution to the review process should be sought. We believe it is desirable that the process should enable the Department to continue portion of the review process while turning over the review's more costly, time-consuming, and technical expertise-driven elements to another entity.

We believe that an effective framework can be found in the standards used by the National Commission for Certifying Agencies (NCCA). The NCCA was created in 1989 by the National Organization for Competency Assurance (NOCA) as a commission to establish national voluntary standards and recognize compliance with these standards by agencies certifying individuals in a wide range of professions and occupations. The NCCA replaced the National Commission for Health Certifying Agencies (NCHCA), which was established in 1977 to develop criteria and standards for health certifying agencies.

The federal government played a lead role in bringing the NCHCA into being as a voluntary national organization that would serve as a platform for the development of standards of excellence in private certification. The NCCA accredits certification entities that are national in scope using standards developed originally by NCHCA in early 1978 with seed money provided by the U.S. Department of Health and Human Services under the sponsorship of then-Secretary Joseph Califano. NCCA standards were subsequently validated through research conducted by national task forces in 1980, 1981, and 1982. The standards have been updated through a

careful review process, and NCCA has been active in accrediting a variety of certification programs. The NCCA continues the mission and expands the commission's sphere of influence to include a wider range of professions and occupations.

The NOCA is a membership organization open to a variety of organizations that are interested in competency assurance issues. Membership in NOCA does not require or involve any review of certification activity. It should also be noted that NOCA membership does not involve any recognition or a discipline or profession or their certification arrangements. The NCCA is the accreditation body of NOCA. A certifying organization can be accredited by NCCA if it demonstrates compliance with applicable accreditation standards. Only those organizations that achieve NCCA accreditation recognition are allowed to display the NOCA logo on their promotional literature.

NCCA standards for accreditations are standards for voluntary certification organizations. The standards have been developed after years of research and implementation into the operation of certification organizations. They are nationally recognized principles utilized by a variety of certification organizations for certification programs in diverse professions and occupations. Accreditation by the Commission indicates that the certification organization has been evaluated by the Commission and found to meet or exceed all of its established standards.

NCCA accreditation standards are the only national and voluntary standards for certification agencies. The organizationally relevant aspects of the standards are widely respected as the most rigorous and objective benchmark by which certifying entities can gauge the quality and defensibility of their activities. The NCCA psychometric standards are consistent with the requirements set forth by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education, as well as those requirements established by the U.S. Equal Employment Opportunity Commission.

As a voluntary, non-profit commission, NCCA is made up of elected and appointed representatives from certifying agencies and other individuals with expertise pertinent to its activity, including a public member and two psychometricians. The accreditation process includes an intensive review of certification entity documents and examination material (i.e., validation studies, reports, and etc.) used in the agency's certification activity. Once achieved, accreditation is maintained through an annual reporting cycle and reapplication every five years. In addition to its accreditation activity, NCCA has published documents such as Guidelines for Non-Written Examinations to inform certifying entities more completely about quality certification.

In addition to the specific standards which all certification programs must meet in order to be accredited by NCAA, certain eligibility requirements must be met before a certification program can apply for review by NCCA. The program must be non-governmental (unless the certification is for government employees); national in scope; operated by a not-for-profit agency; and must have administered at least two national examinations. The Commission document, "Standards for Accreditation of National Certification Organizations" can be obtained by writing to the following address: National Commission for Certifying Agencies, 1200 19th Street, NW., Suite 300, Washington DC 20036–2422. This document outlines NCCA certification standards.

All applicants undergo a thorough evaluation of written materials submitted describing the structure of the agency and the process used to measure competency. The Commission is interested in many aspects of the applicant's certification program but it does not evaluate the examination's content and no on-site visits are scheduled as part of the review.

The Commission reviews applications for accreditation at any one of its meetings which are usually held three times during the year. When a certification agency is accredited by the NCAA, the organization is placed on an accreditation list and the agency is permitted to include the NCCA logo on its brochures and printed material.

Organizations seeking SAP accreditation with the Department through the NCCA mechanism would have to pay certain fees. All organizations with Commission accreditation must pay an annual accreditation fee of $3000. The $3000 accreditation fee also includes membership in the National Organization for Competency Assurance. Prior to seeking Commission accreditation, all organizations must either pay a $500 non-refundable application fee or be members of NOCA.

Based on experience and the foregoing information about NCCA, DOT seeks comments on requiring NCCA certification as a requisite for addiction counselor certification organizations wishing to have their certified counselors included in the SAP definition. DOT is proposing that the NCCA have the role as the accreditation organization because it has extensive experience in applying the only standards which are relevant in this circumstance.

Moreover, this proposal is pursued because the NCCA has evolved from the organization that developed the standards. It will be recalled that the predecessor organization—NCHCA—was established with help from the federal government to address circumstances such as this. The NCCA is presently fulfilling that role and, as a result, is uniquely qualified to support the Department's process of evaluating certifying organizations wishing to have their certified counselors included in the SAP definition.

The Department asks comment on the following regulatory text language that would implement this proposal.

Certification organizations wishing to have their certified drug and alcohol addiction counselors included in this part's definition of substance abuse professional (SAP, (see 49 CFR § 40.3) must obtain the National Commission for Certifying Agencies (NCCA) accreditation as a prerequisite for having the DOT review their petitions for inclusion into the SAP definition.

Because they have completed a stringent DOT review process, we do not contemplate that the two organizations (i.e., NAADAC and ICRC) whose certified addiction counselors are presently included in Part 40 would be affected by this requirement. We seek comment on whether this approach is appropriate or whether the two organizations should have to go through the NCCA process immediately, or within a few years. However, those organizations currently being reviewed by ODAPC would be required under this proposal to obtain NCCA accreditation. Reviews for those organizations currently in the review process will be placed "on hold" pending their NCCA accreditation.

The Department is currently preparing a comprehensive revision of 49 CFR part 40, its drug and alcohol testing procedures rule. We intend that the proposed rule to revise all of part 40 will address the subject matter of this ANPRM. After we review the comments on the ANPRM, we intend to incorporate the results of our review into the larger part 40 rulemaking project.

Regulatory Analyses and Notices

This advance notice of proposed rulemaking does not propose a significant rule for purposes of

Executive Order 12866 or the Department's regulatory policies and procedures. In terms of the Regulatory Flexibility Act, our preliminary conclusion is that the action on which the ANPRM seeks comment would not have a significant economic impact on a substantial number of small entities. This is because the entities that the proposal would affect are nationwide certifying organizations that are not small entities. The members of these organizations are primarily individuals, rather than entities. Because the proposal would make ODAPC's consideration of SAP certification organizations speedier and more efficient, many of the effects of the proposal would likely be positive. In any event, the Department requests comments on any small entity impacts the proposal might have.

There are no Federalism impacts sufficient to warrant a Federalism assessment. If the Department decides to include this item in the forthcoming overall part 40 NPRM, it may be viewed as involving an information collection requirement under the Paperwork Reduction Act (PRA). If so, consideration of any information collection burdens for this provision will be included in the PRA documentation for the part 40 NPRM. The authority for this ANPRM is the same as for the part 40 rulemaking in general (i.e., 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101, *et seq.*).

List of Subjects in 49 CFR Part 40

Drug testing, alcohol testing, reporting and recordkeeping requirements, safety, transportation.

Issued this 10th day of May 1999, at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–14080 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–98–3783]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of availability of draft environmental assessment.

SUMMARY: This proposed rule would require pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks on pipeline facilities. The intent of the rule is to ensure a qualified workforce and reduce the probability and consequences of incidents caused by human error. A draft environmental assessment of this proposed rule is available in the docket.

DATES: Interested persons may submit written comments on the Draft Environmental Assessment until July 6, 1999.

ADDRESSES: Send comments in duplicate to Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Identify the docket and notice number stated in the heading of this notice. Persons should send the original plus one (1) copy. Comments may be filed electronically by e-mail at ops.comments@rspa.dot.gov. All comments and docketed material will be available for inspection and copying at the Dockets Facility between 8:30 a.m. and 5 p.m. each business day. Comments can also be reviewed over the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Fell at (202)366–6205 or by e-mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: Although no regulatory program is capable of completely eliminating human error, the objective of this proposed rule is to reduce the risk of accidents on pipeline facilities attributable to human error. In a notice of proposed rulemaking (NPRM) published October 27, 1998 (63 FR 57269), RSPA proposed to require pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks. This proposed rule for qualification of individuals is intended to provide additional levels of safety. The proposed rule would require operators of pipelines to develop a qualification program to evaluate an individual's ability to perform covered tasks and to recognize and react to abnormal operating conditions that may occur while performing covered tasks.

We have analyzed the proposed rule for purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). The proposed rule should not significantly impact the environment. It should provide some improvement to the environment by reducing the probability and consequences of incidents on pipelines caused by human error. Therefore, we have determined that the proposed rule would not significantly affect the quality of the human environment. A draft environmental assessment document is available for review in the docket.

Issued in Washington, DC, on May 26, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–14079 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990304061–9150–02; I.D. 051099A]

RIN 0648–AL63

Fisheries off West Coast States and in the Western Pacific; Western Pacific Crustaceans Fisheries; Bank-Specific Harvest Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule that would divide the Northwestern Hawaiian Islands (NWHI) lobster fishery into four fishing grounds and allow the Southwest Regional Administrator, NMFS (Regional Administrator) to allocate the annual NWHI harvest guideline among these grounds for the 1999 season and beyond. The four lobster fishing grounds would be: Necker Island, Maro Reef, Gardner Pinnacles, and the remaining NWHI lobster fishing grounds combined. Also, the proposed rule would allow lobster vessels carrying a NMFS-certified vessel monitoring system (VMS) unit to be within the boundary of a fishing grounds immediately after it is closed, provided the vessels are making steady progress to an open fishing grounds or back to port. This rule is intended to protect the lobster resources at each fishing ground, to provide better data on stocks, and to conserve the resource.

DATES: Written comments must be received on or before June 18, 1999.

ADDRESSES: Written comments should be sent to the Regional Administrator, 2570 Dole Street, Honolulu, Hawaii 96822 (attn: Al Katekaru). Copies of the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) (revised May 1999) and environmental assessment are available

from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. Suite 1400, Honolulu, HI 96814. Comments regarding the collection-of-information requirements contained in this rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kitty Simonds at 808–522–8220 or Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS, at 808–973–2985.

SUPPLEMENTARY INFORMATION: Under the framework procedures of the Fishery Management Plan for the Crustaceans Fisheries of the Western Pacific Region (FMP) and its implementing regulations (50 CFR 660.53), the Council, at its 98th meeting, requested that the Regional Administrator initiate rulemaking to define the above four fishing grounds for the purpose of allocating the annual NWHI lobster harvest guideline among them.

The procedure for determining the annual NWHI lobster harvest guideline, which was also employed during the 1998 lobster season, follows the methodology described in FMP Amendments 7 and 9. NMFS estimates the NWHI exploitable population of lobsters (spiny and slipper lobsters combined) at the beginning of the lobster season, which opens on July 1. The exploitable lobster population is the total number of lobsters, regardless of lobster size or reproductive condition, that are vulnerable to commercial fishing gear. Commercial logbook catch and effort data, provided by fishermen and augmented by NMFS scientific/observer and dealer pack-out information, are used to estimate the exploitable lobster population for the NWHI and the four fishing grounds.

Under procedures established by this proposed rule, the Regional Administrator would be authorized to allocate the annual NWHI lobster harvest guideline between the four fishing grounds by applying the FMP-specified constant harvest rate of 13 percent to the exploitable lobster population estimates for each of the four fishing grounds. The 13-percent harvest rate is associated with a 10-percent risk of overfishing. NMFS would announce the annual total lobster harvest guideline, including the bank-specific harvest allocations, in the **Federal Register** by February 28 of each year (50 CFR 660.50). During the lobster season, NMFS would monitor the amount of lobsters harvested on a daily basis and, when the bank-specific harvest guideline for a lobster fishing ground is taken or projected to be taken, the Regional Administrator would announce, at least 24 hours in advance, closure of that fishing ground via electronic communication to each of the vessels participating in the fishery. The entire NWHI lobster fishery would close when all four fishing grounds are closed or on December 31 of that year, whichever occurs first.

Under the proposed rule, the harvest of lobster and the possession of lobster traps on board a permitted lobster vessel would be prohibited within a lobster fishing ground when the harvest guideline allocation is determined to have been taken, unless the vessel has on board an operational NMFS-certified VMS unit and makes steady progress to another fishing ground that is open, or returns to port. This proposed provision, which was implemented on a trial basis during the 1998 lobster season, is intended to encourage lobster vessels to carry a VMS unit to allow NMFS to monitor their location on a real-time basis. Also, vessels with a VMS unit would not be subject to a specified time by which their lobsters must be landed. Vessels not carrying an operational VMS unit would be required to land their lobsters within a specified time period, determined by the Regional Administrator, following closure of the fishery, as provided by current regulations (50 CFR 660.50).

At its meeting on December 3, 1998, the Council considered a number of alternatives for permanently allocating the NWHI harvest guideline between fishing grounds (or banks). These were: (1) No action (return to a pre-1998, NWHI-wide harvest guideline program); (2) Necker Island, Maro Reef, Gardner Pinnacles, and all other grounds combined (Preferred, Partial and Bank-Specific Alternative), with the option of further defining subareas as new information becomes available; (3) Necker-Maro-Gardner-other grounds, which is similar to alternative 2, but with no option for defining new areas; (4) General area where several banks are combined into broad areas, i.e., combining Nihoa-Necker-French Frigate Shoals-Gardner Pinnacles into one area, and NMFS would allocate a portion of the NWHI harvest guideline to each area; and (5) Full bank, with each of the 16 lobster banks assigned a harvest guideline to the extent data are available to estimate the exploitable lobster population for a bank. The Council concluded that the preferred alternative (Necker-Gardner-Maro-General Area lobster grounds with the option of establishing additional fishing grounds) would best meet the management objectives of the FMP and would enhance lobster resource conservation because it would help prevent local depletion at the Necker Island, Gardner Pinnacles, and Maro Reef fishing grounds and promote a broader distribution of fishing effort in other areas of the NWHI (General Area fishing grounds). Also, this action would provide more information about the lobster resource in the NWHI, because lobster fishing effort would be more widely distributed than it was in the past several years and would allow for the specification of additional fishing grounds as new information becomes available. This information, combined with a NMFS scientific data collection/observer program, should result in more effective management of the fishery. Most important, the proposed allocation system would respond to the concern that, unless lobster harvest at Necker Island, Gardner Pinnacles, and Maro Reef is limited, the lobster populations in those areas may be at risk.

If a final rule is issued after the public comment period, it is NMFS intention to make it effective before or as close as possible to the July 1, 1999, season opening and to announce bank-specific allocations of the 1999 harvest guideline concurrently, or soon thereafter as possible.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has prepared a regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) in compliance with the Regulatory Flexibility Act. This analysis describes the impact this proposed rule would have on small entities. The proposed rule would apply to the 12 permit holders, who own the 15 vessels in this limited entry fishery; however, typically only about half of the permitted vessels are expected to participate in each annual fishery. All participants in the fishery are small entities. No new reporting or record keeping requirements would be imposed by this proposed rule. No Federal rules are known to duplicate, overlap, or conflict with this rule. The reasons for, objectives of, and legal basis for this rule are described elsewhere in this preamble. The five alternative actions the Council considered regarding permanent allocation of the NWHI harvest guideline are discussed previously in the preamble to this rule, and in the RIR/IRFA. The IRFA compares annual revenues and costs per

vessel under the following four scenarios: (1) No allocations among fishing grounds; (2) 1998 allocation of the NWHI-wide harvest guideline among four fishing grounds, i.e., Necker Island, Maro Reef, Gardner Pinnacles, and Other Grounds; (3) 50-percent increase in the 1998 harvest allocation for each of the fishing grounds that have historically produced the majority of the lobster landings from the NWHI (i.e., Necker Island, Maro Reef, and Gardner Pinnacles); and (4) 50-percent decrease in the 1998 harvest allocation for the Necker Island, Maro Reef, and Gardner Pinnacles fishing grounds. The impact of each of the four scenarios in terms of gross revenue, operating costs, return on operations, fixed costs, net revenue, and return on investment is presented in Table 2 to the IRFA.

Based on the experience of the 1998 fishery, which was managed under a nearly identical 1-year rule on a trial basis, participants are expected to fish at the Necker Island, Maro Reef, and Gardner Pinnacles fishing grounds until each closes. Some fishing on the Other Grounds in the NWHI will take place. However, average catch per unit effort rates are expected to be lower than those on the other three fishing grounds, and the entire NWHI harvest guideline may not be taken (22 percent of the total harvest guideline was not taken in 1998). This will lead to lower average gross revenues, as well as to slightly higher travel costs compared to the same harvest guidelines unallocated among banks. However, the proposed action should result in long-term economic benefits to the fishery as the resource increases with improved fisheries management. A copy of the RIR/IRFA is available for public review and comment (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the PRA unless that collection-of-information displays a currently valid OMB control number. This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under OMB Control Number 0648–0307. This rule's collection-of-information burden is only for those persons who wish to voluntarily use a VMS unit in the fishery. The collection is to query through the VMS system a vessel to learn of its location before and after the start of the season or closure of a fishing ground, which is automatic with no action required by the vessel operator, except to verify the VMS unit is operating. The burden associated with this collection is estimated to require a response time of .033 seconds. Permit holders whose vessels are not equipped with VMS would have the option of installing new VMS in order to participate under this regulatory option for the opening and closing of the lobster season and transitting between fishing grounds. Send comments regarding the collection-of-information burden or any other aspect of the information collection to NMFS and OMB (see **ADDRESSES**).

A formal section 7 consultation under the Endangered Species Act was concluded for Amendment 9, which established the harvest guideline system. On February 20, 1999, NMFS initiated an informal section 7 consultation to determine whether the effect on Hawaiian monk seals from the fishery managed under the proposed action is likely to be adverse. During the consultation NMFS will consider the Marine Mammal Commission's recommendation to prohibit lobster fishing at French Frigate Shoals, Kure Atoll, Pearl and Hermes Reef, and Lisianski Island because of their proximity to major Hawaiian monk seal breeding colonies. This consultation is expected to be concluded soon.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and record keeping requirements.

Dated: May 28, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 660.12 is amended by adding the definition of "Lobster grounds", in alphabetical order, to read as follows:

§ 660.12 Definitions.

* * * * *

Lobster grounds refers, singularly or collectively, to the following four areas in Crustaceans Permit Area 1 that shall be used to manage the lobster fishery:

(1) *Necker Island Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24°00′ N. lat., 164°00′ W. long.; 23°00′ N. lat., 164°00′ W. long.; and 23°00′ N. lat., 165°00′ W. long.

(2) *Gardner Pinnacles Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20′ N. lat., 168°20′ W. long.; 25°20′ N. lat., 167°40′ W. long.; 24°20′ N. lat., 167°40′ W. long.; and 24°20′ N. lat., 168°20′ W. long.

(3) *Maro Reef Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40′ N. lat., 171°00′ W. long.; 25°40′ N. lat., 170°20′ W. long.; 25°00′ N. lat., 170°20′ W. long.; and 25°00′ N. lat., 171°00′ W. long.

(4) *General NWHI Lobster Grounds*—all waters within Crustaceans Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

* * * * *

3. Section 660.42 is amended by adding new paragraphs (a)(1)(vi) and (a)(13) to read as follows:

§ 660.42 Prohibitions.

* * * * *

(a) * * *

(1) * * *

(vi) In a lobster grounds after closure of that grounds as specified in § 660.50(b).

* * * * *

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 660.50(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

* * * * *

4. Section 660.48 is amended by revising paragraph (a)(7) to read as follows:

§ 660.48 Gear restrictions.

(a) * * *

(7) A vessel, whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS, may transit Crustaceans Permit Area 1, including Crustaceans Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 660.50, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

* * * * *

5. Section 660.50 is amended by revising paragraph (a) introductory text,

paragraphs (b)(1), (b)(3) and (b)(4), and adding new paragraph (b)(5) to read as follows:

§ 660.50 Harvest limitation program.

(a) *General.* Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

* * * * *

(b) *Harvest guideline.* (1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FMP after consultation with the Council.

* * * * *

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 660.48(a)(7).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the over-all harvest guideline for Crustaceans Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustaceans Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

* * * * *

[FR Doc. 99–14061 Filed 6–2–99; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 106
Thursday, June 3, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of advisory committee field trip.

SUMMARY: The Yakima Provincial Advisory Committee will meet for a field trip on Tuesday, June 15, 1999, at the Cle Elum Ranger District office, 803 West Second Street, Cle Elum, Washington. The meeting will begin at 9 a.m. with a brief orientation and then the group will depart for the field trip; the field trip is expected to end by 3:30 p.m. The main objectives of this meeting/field trip are to explore fish hatchery management as it relates to anadromous fish species recovery and to consider how hazard tree removal in a large camprground may impact spotted owl habitat. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting/field trip to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: May 21, 1999.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 99–14034 Filed 6–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on June 17, 1999, at the Mt. Shasta City Park Lower Lodge, 115 Nixon Road, Mt. Shasta, California. The meeting will begin at 9 a.m. and adjourn at 4 p.m. Agenda items include: (1) Southern Province Pilot/Demonstration Project (Cache Creek); (2) Update Clear Creek Watershed Grant Proposal (CALFED); (3) Watershed Analysis Project in Upper Stoney Creek; (4) Sierra Pacific Industries Land Exchange Presentation; and (5) Public Comment Period. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468; TDD (530) 841–4573; email: chendryx/r5__klamath@fs.fed.us.

Dated: May 24, 1999.

Nancy J. Gibson,

Administrative Officer.

[FR Doc. 99–13987 Filed 6–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052699C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Mackerel Advisory Panel (AP) Monday, June 21, 1999 beginning at 1:00 p.m. eastern daylight time (EDT) and Scientific and Statistical Committee (SSC) Tuesday, June 22, 1999 beginning at 10:00 a.m. EDT via conference call to review Draft Amendment 12 to the Coastal Migratory Pelagics Fishery Management Plan (FMP). The amendment contains provisions for extending the commercial king mackerel permit moratorium from its current expiration date of October 15, 2000, by three or five years in order to provide time for the Gulf and South Atlantic Councils to develop and implement a controlled access system for the king mackerel fishery.

The Reef Fish AP will be convened via conference call at 10:00 a.m. EDT on Monday, June 21, 1999 and will conclude by 2:00 p.m. to review Draft Amendment 17 to the Fishery Management Plan for Reef Fish Resources. The SSC will also review this amendment during their conference call on Tuesday, June 22, 1999. Draft Amendment 17 contains provisions for extending the commercial reef fish permit moratorium from its current expiration date of December 31, 2000 by three, four or five years in order to provide time for the Gulf Council to develop and implement a controlled access system for the reef fish fishery.

ADDRESSES: A listening phone will be located at each of the following locations: NMFS Pascagoula Laboratory, 3209 Fredrick Street, Pascagoula, MS; telephone: 228–762–4591; and NMFS Galveston Laboratory, 4700 Avenue U, Galveston, TX; telephone: 409–766–3500. Persons who visit one of NMFS' laboratories to listen to the Mackerel AP and/or SSC sessions will be allowed to testify on the moratorium issue, when recognized by the meeting Chairman.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

Although other issues not contained in this agenda may come before the Panels for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 14, 1999.

Dated: May 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14073 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052699E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting to receive public input on possible changes to its proposed "Regulatory Amendment to the Reef Fish Fishery Management Plan to Set 1999 Gag/Black Grouper Management Measures."

DATES: This meeting will begin at 8:30 a.m. on Wednesday, June 23, 1999 and continue into the afternoon as necessary.

ADDRESSES: The meeting will be held at the Oakland Terrace Clubhouse, 1900 West 11th Street, Panama City, FL.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: In March 1999, the Council voted to submit the regulatory amendment to NMFS with a proposal to create a 423 nautical square mile area off the Gulf coast of Florida that would be closed year-round to all reef fish fishing. The purpose of this proposal was to protect spawning aggregations of gag and to protect a portion of the male gag population, which stays offshore year-round and has declined in proportion to the female gag population in recent years. The regulatory amendment also proposed to provide increased protection for juvenile gag by raising the minimum size limit for gag and black grouper from the current 20 inches total length (TL) to 24 inches TL, which is the size at 50 percent female maturity for gag. The new minimum size limit for the commercial fishery would take effect immediately upon implementation, while the minimum size limit for the recreational fishery would be increased to 22 inches TL initially, followed by a 1–inch per year increase until the minimum size limit reached 24 inches TL. True black grouper, which mature at an even larger size (33 inches TL), were included in the proposal to avoid confusion that could occur due to the name "black grouper" being used for both species. These proposals received strong criticism from commercial and charterboat fishermen, who were concerned that the measures would severely and unnecessarily restrict their access to the gag and black grouper resource. In addition, a minority report submitted to NMFS by the five Council members who voted against the proposed regulatory amendment expressed the opinion that the amendment violated several of the National Standards in the Magnuson-Stevens Fishery Conservation and Management Act as well as the Regulatory Flexibility Act. As a result of the public reaction and the minority report, the Council voted at its May 10–13, 1999 meeting to reconsider the regulatory amendment during its next meeting in Key West on July 12–15, 1999, and to hold a public workshop prior to the July Council meeting in Panama City to consider management alternatives. All management alternatives in the regulatory amendment will be reconsidered, including those for which the Council originally proposed status quo. Those alternatives include not only the closed area and size limit proposals, but also the total allowable catch (TAC), closed seasons, recreational bag limits, and commercial trip limits.

NMFS, in its "October 1998 Report to Congress on the Status of Fisheries of the United States," identified gag in the Gulf of Mexico as a stock that, while not currently overfished, is approaching an overfished condition. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Council is required to take action to prevent overfishing from occurring for stocks identified by NMFS as approaching an overfished condition. The most recent gag stock assessment concluded that gag are being fished at a rate corresponding to between 18 and 23 percent static spawning potential ratio (SPR), or about at the existing overfishing criteria of 20 percent SPR. However, while this level of SPR is sufficient to maintain the stock, the Sustainable Fisheries Act of 1996 requires that overfishing criteria be set at a level that allows a fishery the capacity to produce the maximum sustainable yield on a continuing basis. Consequently, the Council has proposed a new overfishing criteria of 30 percent static SPR for gag to comply with this requirement. While this new SPR level will eventually produce higher yields, it requires an initial reduction in gag harvest in 1999 to between 1.33 and 2.49 million pounds. This requires a reduction of 32 to 39 percent from the average gag harvest levels from 1990–98, which have ranged from 3.29 to 5.56 million pounds per year.

Copies of the "Regulatory Amendment to The Reef Fish Fishery Management Plan to Set 1999 Gag/Black Grouper Management Measures" and the minority report can be obtained by calling 813-228-2815. They can also be downloaded in Adobe Acrobat format from the Council's web site: http://www.gulfcouncil.org.

Although other issues not on the agenda may come before the workshop for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 16, 1999.

Dated: May 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14074 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052599D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1219); receipt of an application to modify a permit

(1203); and issuance of permits (1198, 1214).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from Mr. Larry Goodman, of US-Environmental Protection Agency (EPA) (1219); NMFS has received an application for modifications to an existing permit from the Washington Department of Fish and Wildlife in Olympia, WA (WDFW) (1203); and NMFS has issued permits to Mr. J. Alan Huff, of the Florida Department of Environmental Protection (FL-DEP) (1198) and Ms. Jane Anne Provancha, of Dynamac Corporation (DYNCo) (1214).

DATES: Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before July 6, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1198, 1214, and 1219: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

For permit 1203: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

FOR FURTHER INFORMATION CONTACT:

For permits 1198, 1214, and 1219: Terri Jordan, Silver Spring, MD (301–713–1401).

For permit 1203: Tom Lichatowich, Portland, OR (503–230–5438).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (Chelonia mydas) (threatened/endangered), Hawksbill turtle (Eretmochelys imbricata) (endangered), Kemp's ridley turtle (Lepidochelys kempii) (endangered), Leatherback turtle (Dermochelys coriacea) (endangered), Loggerhead turtle (Caretta caretta) (threatened).

Fish

Chinook salmon (Oncorhynchus tshawytscha): Upper Columbia River (UCR) spring (endangered).

Steelhead trout (Oncorhynchus mykiss): UCR (endangered).

Shortnose sturgeon (Acipenser brevirostrum) (endangered).

New Application Received

EPA (1219) requests a 1-year permit to take shortnose sturgeon for scientific research in Gulf Breeze, Florida. The purpose of the research is to obtain information on the tolerances of port-larval and early-juvenile shortnose sturgeon, to low dissolved oxygen levels, particularly in relation to temperature and salinity.

Modification Request Received

On March 9, 1999 a notice was published (64 FR 11444) that NMFS had received an application (1203) from WDFW for a 5-year permit that would authorize takes of adult and juvenile UCR spring chinook salmon associated with a broad salmonid monitoring research program in UCR tributaries and the mainstem river. In the juvenile fish migration portion of the proposed research program, migrating smolts are proposed to be captured with screw traps, anesthetized, sampled for biological data and released downstream. NMFS has received a request for modifications to the permit (1203) that would authorize annual takes of juvenile, naturally produced and artificially propagated, UCR steelhead in the proposed juvenile fish migration study. Data from the study will provide managers valuable information that will be used to assess the survival of migrating juvenile salmonids. The modifications are requested for the duration of the permit.

Permits and Modifications Issued

Notice was published on February 4, 1999 (64 FR 5030), that FL-DEP had applied for a 5-year research permit to take up to 700 loggerhead, 250 green, 5 leatherback, 25 hawksbill, and 100 Kemp's ridley sea turtles annually from Florida waters. Turtles captured will include all life history stages from post-hatchling through adult. Of the 700 loggerheads authorized annually, 400 will be hatchlings. This research will further the understanding of life histories, habitat requirements, migratory behaviors, and threats to these five species of sea turtles occurring in Florida waters. The turtles will be captured by tended, straight-set, large-mesh tangle nets; tended, drifting large-mesh tangle nets; tended, encircling (strike) large-meshed nets; dip nets; and hand-capture. Captured turtles will be weighed, measured, photographed, and flipper and PIT tagged. Select turtles will be blood sampled, lavaged and will receive radio, sonic, and/or satellite transmitters. Additionally, laparoscopy and tumor collection will be performed on selected turtles. This work is a continuation of research permitted under scientific research Permit 878, which expired on February 28, 1999. Permit 1198 was issued on May 13, 1999, and expires March 31, 2004.

Notice was published on April 7, 1999 (64 FR 16937), that DYNCo had applied for a 5-year research permit to take listed green and loggerhead sea turtles for scientific research in Mosquito Lagoon, Florida. The purpose of the research is to continue work that began under NMFS Permit 942, granted in 1995; specifically, to: (1) Continue the comparison of current marine turtle population structure and distribution in Mosquito Lagoon to baseline data collected in 1976–1979, (2) evaluate current seasonal distribution and occurrence of sea turtles, (3) evaluate distribution patterns relative to submarine resource distribution, (4) determine regional "importance value" of this lagoon relative to other studied juvenile habitats on the east coast of Florida, and (5) determine the sex ratio of the subadult marine turtles inhabiting Mosquito Lagoon. Permit 1214 was issued on May 25, 1999, and expires May 31, 2004.

Dated: May 27, 1999.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14075 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

RIN 0651–AB02

Official Insignia of Native American Tribes; Statutorily Required Study

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearings.

SUMMARY: Public Law 105–330 requires that the Patent and Trademark Office (PTO) study a variety of issues surrounding trademark protection for the official insignia of federally and/or State recognized Native American Tribes. This notice invites interested members of the public to testify at hearings on any of the topics outlined below.

DATES: Public hearings will be held on the following dates: July 8, 1999; July 12, 1999; and July 15, 1999. The July 8, 1999 hearing will start at 10 a.m. and end no later than 5 p.m. The July 12, 1999 and July 15, 1999 hearings will start at 9 a.m. and end no later than 5 p.m.

Those wishing to present oral testimony at any of the hearings must request an opportunity to do so no later than July 2, 1999.

The transcripts from each public hearing will be available for public inspection on or about August 10, 1999.

ADDRESSES: The July 8, 1999 hearing will be held in the "Silver and Turquoise Room" of the Indian Pueblo Cultural Center, located at 2401 12th NW, Albuquerque, New Mexico. The July 12, 1999 hearing will be held at the San Francisco Public Library, Koret Auditorium, Civic Center, located at 100 Larkin Street, San Francisco, California. The July 15, 1999 hearing will be held in the Commissioner's Conference Room, located in Crystal Park Two, Room 912, 2121 Crystal Drive, Arlington, Virginia.

Those interested in testifying on the topics presented below in the Supplementary Information section, or on any other related topics, should send their requests to the attention of Eleanor K. Meltzer, Attorney-Advisor, Office of Legislative and International Affairs, U.S. Patent and Trademark Office, 2121 Crystal Drive, Suite 902, Arlington, VA 22202.

Public Law 105–330 may be viewed via the Library of Congress website at: www.thomas.loc.gov.

FOR FURTHER INFORMATION CONTACT: Eleanor K. Meltzer by telephone: 703–306-2960; by e-mail: eleanor.meltzer@uspto.gov; or by facsimile transmission: 703–305–8885.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 1998, President Clinton signed Public Law 105–330. Title III of this law requires the PTO to study how official insignia of Native American Tribes may better be protected under trademark law. The new law requires that the PTO complete the study and submit a report to the chairman of the Committee on the Judiciary of the Senate and to the chairman of the Committee on the Judiciary of the House of Representatives not later than September 30, 1999. The final study must address a variety of issues, including the impact of any changes on the international legal obligations of the United States, the definition of "official insignia" of a federally and/or State recognized Native American Tribe, and the administrative feasibility, including the cost, of changing current law or policy in light of any recommendations.

On December 29, 1998, a **Federal Register** notice was published (63 FR 71619) requesting comments on how best to conduct the study, where public hearings should be held, and who should be consulted during the study process. A follow-up **Federal Register** notice was published on March 16, 1999 (64 FR 13004) requesting public comments on the issues identified below.

II. Issues

The PTO is interested in the public's views concerning all aspects of trademark protection for the official insignia of Native American Tribes, including the following issues. These issues should form the basis for testimony at the public hearings.

(1) The Definition of "Official Insignia"

For example, how should the PTO define "official insignia" of a federally or state recognized Native American Tribe?

(2) Establishing and Maintaining a List of Official Insignia

For example, how might the PTO establish a list of the official insignia of federally and/or state recognized Native American Tribes? How might the PTO maintain such a list?

(3) Impact of Changes In Current Law or Policy

For example, how might any change in law or policy with respect to prohibiting the Federal registration of trademarks identical to the official insignia of Native American Tribes, or of prohibiting any new use of the official insignia of Native American Tribes, affect Native American Tribes? How might such changes affect trademark owners? How might such changes affect the Patent and Trademark Office? How would such changes affect any other interested party? What impact might any such changes have on the international legal obligations of the United States?

(4) Impact of Prohibition on Federal Registration and New Uses of Official Insignia

For example, how might prohibiting Federal registration of trademarks identical to the official insignia of Native American Tribes affect any/all of the above-mentioned entities? How might prohibiting any new use of the official insignia of Native American Tribes affect any/all of the above-mentioned entities? What effect might such prohibitions have on the international legal obligations of the United States? What defenses, including fair use, might be raised against any claims of infringement?

(5) Administrative Feasibility

For example, what might be the administrative feasibility, including the cost, of changing the current law or policy to prohibit the registration? What might be the administrative feasibility, including the cost, of prohibiting any new uses of the official insignia of State or federally recognized Native American Tribes? What might be the administrative feasibility, including the cost, of otherwise providing additional protection to the official insignia of federally and State recognized Native American Tribes?

(6) Timing of Changes in Protection

For example, should changes in the scope of protection for official tribal insignia be offered prospectively? Retrospectively? What might be the impact of such protection (e.g., the cost to business and the public if applied retroactively)?

(7) Statutory Changes

What statutory changes might be necessary in order to provide such protection?

(8) Other Relevant Factors

What other factors, not mentioned above, might be relevant to this issue?

III. Guidelines for Oral Testimony

Individuals who wish to testify must adhere to the following guidelines, which will ensure that the PTO is able to contact speakers regarding any schedule changes:

1. Anyone wishing to testify at the hearing(s) must request an opportunity to do so no later than July 2, 1999. Requests to testify may be accepted on the date of each hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.

2. Requests to testify must include: The speaker's name, affiliation and title, mailing address, and telephone number. Facsimile number and Internet mail address, if available, should also be provided. Parties may include in their request an indication as to whether they wish to testify during the morning or afternoon session of the hearing(s).

3. Depending on the number of persons who wish to make presentations, speakers will be given between five and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be set after the final number of parties testifying has been determined.

4. Speakers should provide a written copy of their testimony for inclusion in the record of the proceedings.

5. A schedule providing the approximate starting time for each speaker will be distributed in the morning of the day of each hearing. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearings.

Information that is provided pursuant to this notice will be made part of a public record and may be available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise submit the information in a way that will permit its public disclosure.

Dated: May 28, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–14032 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–16–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

May 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339/638/639 is being increased for recrediting of unused carryforward. The 1999 sublimit for Categories 338–S/339–S/638–S/639–S remains unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 54451, published on October 9, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 2, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 3, 1999, you are directed to increase the limit for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,401,837 dozen of which not more than 1,104,203 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–14047 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Mercantile Exchange for Designation as a Contract Market in Crude Oil Average Price Options, Heating Oil Average Price Options, and Unleaded Gasoline Average Price Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity option contracts.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in crude oil average price options, heating oil average price options, and unleaded gasoline average price options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority designated by

Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before June 18, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the NYMEX average price option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (202) 418–5281. Facsimile number (202) 418–5527. Electronic Mail: *jforkkio@cftc.gov*.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayetts Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on May 27, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–14082 Filed 6–2–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On April 1, 1999, the Secretary of the Air Force, as the Executive Agent for the Secretary of Defense for the administration of Public Law 95–202, determined that the service of the group known as "Vietnamese Citizens Who Served in Vietnam as Commandos Under Contract With the United States Armed Forces" during the period January 1, 1961 to December 31, 1970, also known as The Lost Army Commandos, shall not be considered "active duty" under the provisions of Public Law 95–202 for the purposes of all laws administered by the Department of Veterans Affairs (VA).

For further information contact Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC), 1535 Command Drive, 3rd Floor—EE Wing, Andrews AFB, MD 20762–7002.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–13989 Filed 6–2–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant the University of Cincinnati (hereinafter "University"), a University in Cincinnati, Ohio, an exclusive license in any right, title, and interest the Air Force has in AF Disclosure No. D00362. The invention is a joint invention of University employees Ronald H. Birkhahn, Liang-Chiun Chao, Michael J. Garter, and Andrew J. Steckl, and Air Force employee James D. Scofield. The invention is entitled "Visible Light Emitting Device Formed From Wide Band Gap Semiconductor Doped with a Rare Earth Element."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1740 Air Force Pentagon, Washington DC 20330–1740, telephone number (703) 588–5091.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–13988 Filed 6–2–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Radio Transmitting Facility, Driver, VA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Radio Transmitting Facility, Driver, VA, and the surplus property that is located at that base closure site.

ADDRESSES: BRAC Real Estate Section, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 1000, Washington, DC 20374–5065.

FOR FURTHER INFORMATION CONTACT: For further information, contact Richard A. Engel, Head, BRAC Real Estate Section, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 1000, Washington, DC 20374–5065, telephone (202) 685–9203, or Robert T Renner, Realty Specialist, Real Estate Development Branch (Code 243RR), Real Estate Division, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA 23511–2699, telephone (804) 322–4934.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Radio Transmitting Facility, Driver, VA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, on September 27, 1993 the land and facilities at this installation

were declared excess to the Department of Navy and made available for use by other Federal public agencies. Approximately 215 acres have been requested by another Federal agency. That property is not included in this notice.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On November 18, 1994, the City of Suffolk, VA submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Radio Transmitting Facility, Driver, VA, is published in the **Federal Register**.

Redevelopment Authority

The base closure local redevelopment authority for the Naval Radio Transmitting Facility, Driver, VA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Suffolk, VA. Day-to-day operations of the City of Suffolk, VA base closure local redevelopment authority are handled by a professional staff. For further information contact Mr. Robert Goumas, Department of Planning, City of Suffolk, PO Box 1858, 428 West Washington Street, Suffolk, Virginia, telephone (804) 538–0687 and facsimile (804) 539–7693.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Radio Transmitting Facility, Driver, VA, that are surplus to the federal government.

Land

Approximately 384 acres of improved and unimproved fee simple land at the U.S. Naval Radio Transmitting Facility, Driver, VA, City of Suffolk, Virginia.

Buildings

The following is a summary of the facilities located on the above-described land, which is available. The facility operationally closed on March 31, 1994. Property numbers are available on request.

—Bachelor quarters housing facilities (2 structures). Comments: Approx. 17,338 square feet, including a 3,538 square foot dining facility.
—Administration/Operations facilities (3 structures). Comments: Approx. 63,120 square feet. One building, the former transmitter building, contains 54,260 square feet.
—Maintenance facilities (3 structures). Comments: Approx. 10,833 square feet. Automotive, antenna/electronics, and public works maintenance facilities.
—Storage buildings (5 structures). Comments: Approx. 14,024 square feet.
—Recreational facilities (2 structures). Comments: Approx. 1600 square feet. Outdoor pavilion and latrine.
—Piers and wharves (1 structure). Comments: Approx. 167 square feet wooden fishing pier.
—Utilities. Comments: Measuring systems vary. Telephone, electrical, roads, and water.

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Radio Transmitting Facility, Driver, shall submit to the redevelopment authority (City of Suffolk) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Suffolk, VA, the date by which expressions of interest must be submitted.

Dated: May 24, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–13992 Filed 6–2–99; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Air Station Cecil Field, Duval and Clay Counties, Florida

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(c)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of Naval Air Station (NAS) Cecil Field, which is located in Duval County and Clay County, Florida.

Navy analyzed the impacts of the disposal and reuse of NAS Cecil Field in an Environmental Impact Statement (EIS), as required by NEPA. The EIS analyzed five reuse alternatives and identified the NAS Cecil Field Final Base Reuse Plan dated February 1996 (Reuse Plan) as the Preferred Alternative. The Preferred Alternative proposed to use the base for aviation, industrial, commercial, forestry and conservation activities; to develop public parks and recreational areas; and to establish a natural resource corridor. The City of Jacksonville is the Local Redevelopment Authority (LRA) for NAS Cecil Field. Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR 176.20(a).

Navy intends to dispose of NAS Cecil Field in a manner that is consistent with the Reuse Plan. Navy has determined that the proposed mixed land use will meet the goals of achieving local economic redevelopment and creating new jobs, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entities and the local zoning authorities.

Background: Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), the 1993 Defense Base

Closure and Realignment Commission recommended the closure of Naval Air Station Cecil Field. This recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in 1993. The base is scheduled to close on September 30, 1999.

Most of the property comprising NAS Cecil Field is located in the southwestern part of Duval County, Florida, about 14 miles west of the City of Jacksonville's downtown area. Duval County and the City of Jacksonville have congruent geographic boundaries and a largely consolidated government.

The Cecil Field property covers 40,354 acres and consists of nine parcels that are owned or otherwise controlled by Navy through special use permits and easements. The base's Main Station, located in Duval and Clay Counties, covers about 9,336 acres of Navy-owned property. Navy controls an additional 180 acres near the Main Station by way of easements for air operations. The Yellow Water Weapons Area, located in Duval County just north of the Main Station, covers about 8.118 acres of Navy-owned property.

Outlying Landing Field (OLF) Whitehouse, located in Duval County about seven miles north of the Main Station, covers about 1,907 acres of Navy-owned property. Navy controls an additional 658 acres near OLF Whitehouse by way of easements for air operations. The Pinecastle Target Complex covers about 2,691 acres of Navy-owned property. Navy controls an additional 17,409 acres by way of special use permits for target range operations. Navy controls an additional three acres near the ranges by way of easements that permit travel on access roads. The Palatka Radar Site is located at the Kay Larkin Airport in Putnam County and covers one acre controlled by way of a special use permit. The last parcel, known as the Tactical Aircrew Training System, is located in McIntosh County, Georgia. It covers about 51 acres of Navy-owned property.

The Pinecastle Target Complex is composed of four parcels. The Stevens Lake Range, located in Clay County about 20 miles south of downtown Jacksonville, covers about 2,554 acres and is controlled by way of a special use permit. The Rodman Range, located in Putnam County about 50 miles south of downtown Jacksonville, covers about 2,690 acres of Navy-owned property and two and one half acres that Navy controls through easements. The Lake George Range, located in Putnam County and Volusia County about 65 miles south of downtown Jacksonville, covers about one acre of Navy-owned property, one half acre controlled through easements, and about 8,960 acres that Navy controls by way of a special use permit. The Pinecastle Range, located in Lake County and Marion County about 80 miles south of downtown Jacksonville, covers about 5,895 acres that Navy controls by way of a special use permit.

The 1995 Defense Base Closure and Realignment Commission modified in the 1993 Commission's recommendation by directing Navy to retain certain properties associated with NAS Cecil Field in support of operations at the nearby Naval Air Station Jacksonville. The 1995 Commission's recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress in 1995.

The retained properties consist of 200 units of military family housing situated on 252 acres in the southwest corner of the Yellow Water Weapons Area; OLF Whitehouse; the Pinecastle Target Complex, including the Stevens Lake Range, the Rodman Range, the Lake George Range, and the Pinecastle Range; the Palatka Radar Site; and the Tactical Aircrew Training System site.

This Record Of Decision addresses the disposal and reuse of those parts of NAS Cecil Field that are surplus to the needs of the Federal Government. This property, located on the Main Station and at the Yellow Water Weapons Area, covers about 17,202 acres of Navy-owned property. Navy will transfer its interests in the easements to the acquiring entities. These easements impose restrictions on 180 acres of private property near the northeast corner of the Main Station. The surplus property at the base contains about 175 buildings and structures that provide about 2.9 million square feet of space.

The Main Station is located south of Normandy Boulevard (Duval County Route 228), which separates the Main Station from the Yellow Water Weapons Area. The Main Station contains four runways: two parallel 8,000-foot runways and one 12,500-foot runway with a parallel 8,000-foot runway. There are eight hangars and associated aviation maintenance and fueling facilities. The Main Station has administrative offices, training facilities, personnel support facilities, medical facilities, recreational areas, and 97 family housing units. It also contains large areas of undeveloped forests, clearings, and wetlands.

The Yellow Water Weapons Area is located north of Normandy Boulevard. It contains ordnance storage buildings, maintenance facilities, barracks, personnel support facilities, and recreational areas as well as the 200 family housing units retained by Navy. Most of the Yellow Water Weapons Area consists of undeveloped forests, clearings, and wetlands.

Navy published a Notice of Intent in the **Federal Register** on January 25, 1995, announcing that Navy would prepare an EIS for the disposal and reuse of NAS Cecil Field. On February 9, 1995, Navy held a public scoping meeting at the Post of Snyder, Army National Guard Center in Jacksonville, Florida, and the scoping period concluded on March 11, 1995.

Navy distributed the Draft EIS (DEIS) to Federal, State, and local governmental agencies, elected officials, community groups and associations, and interested persons on April 25, 1997, and commenced a 45-day public review and comment period. During this period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS. On May 27, 1997, Navy held a public hearing at the Army National Guard Center to receive comments on the DEIS.

Navy's responses to the public comments were incorporated in the Final EIS (FEIS), which was distributed to the public on October 16, 1998, for a review period that concluded on November 23, 1998. Navy received three letters commenting on the FEIS.

Alternatives: NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the FEIS, Navy analyzed the environmental impacts of five reuse alternatives. Navy also evaluated a "No Action" alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

On July 19, 1993, the City of Jacksonville, acting as the LRA, established the Base Conversion and Redevelopment Commission. City of Jacksonville Executive Order 93–167. On December 19, 1994, the City of Jacksonville renamed this body the Cecil Field Development Commission. City of Jacksonville Executive Order 94–190. The Commission conducted six public forums, held numerous meetings, and made several public presentations where it solicited comments from the public concerning the proposed reuse of NAS Cecil Field. On February 26, 1996, the Commission completed the NAS Cecil Field Final Base Reuse Plan, and, on April 22, 1997, the Jacksonville City Council approved the Reuse Plan. City Council Resolution No. 97–329–A. On

July 10, 1997, the City of Jacksonville dissolved the Cecil Field Development Commission and assigned responsibility for redevelopment of the base to the Jacksonville Economic Development Commission. City of Jacksonville Executive Order 97–210.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses. The Preferred Alternative would use the runways, hangars, and related maintenance buildings, covering 2,013 acres, as an airport serving civilian general aviation and military helicopter operations. This Alternative would use 3,453 acres for light industrial activities; 1,030 acres for heavy industrial activities; 206 acres for commercial retail activities; 2,944 acres for parks and recreational activities; 2,836 acres for forestry; and 640 acres for conservation purposes. The Preferred Alternative proposed to reserve 4,080 acres for forest land for future expansion of the airport facilities. The Preferred Alternative would also establish a Natural and Recreation Corridor to protect wildlife and habitat. It will be necessary to make extensive utility infrastructure and roadway improvements to support the Reuse Plan's proposed redevelopment of undeveloped property at Cecil Field.

On the Main Station's southern edge, the Preferred Alternative proposed to use 640 acres as a conservation area. North and northeast of this conservation area, the Preferred Alternative would reserve two parcels, comprising about 4,080 acres of forest land, for future expansion of the airport facilities. The four runways, located north of the conservation area and between the two forestry parcels, would be used for air operations. The eight hangars and related maintenance buildings, located north and west of the runways, would be used for aviation operations and support services. Some of the aviation facilities would be used by helicopter units of the Florida National Guard. Some buildings located north and west of the hangars and maintenance buildings would be demolished to build new facilities for use in heavy industries such as manufacturing and as shops for assembling automotive and aviation parts.

The barracks, classrooms, and offices in the area north and west of the hangars would be retained and used as a conference and training center for private entities occupying buildings on the property. West of this conference and training center, the property that presently includes the Cecil Field golf course, Lake Fretwell, and Lake Newman would be maintained as a recreational area. On the western edge of the Main Station, the undeveloped property would be maintained as forest land.

North of the heavy industrial area, on the southern side of Normandy Boulevard, the Preferred Alternative would build commercial facilities such as retail stores, banks and credit unions, and a United States Post Office. East of this commercial area and north of the aviation facilities, the Preferred Alternative would build new light industrial facilities.

At the Yellow Water Weapons Area, north of Normandy Boulevard, property in the eastern half and in the central part would be redeveloped for light and heavy industrial activities. In the northwest corner, the Preferred Alternative would maintain the undeveloped forest land. In the southwest corner, the Preferred Alternative would provide a recreational area. On the southern edge of the Yellow Water Weapons Area, along Normandy Boulevard, the Preferred Alternative would build facilities for commercial activities similar to those proposed for the Main Station.

The property located in the western parts of the Main Station and Yellow Water Weapons Area to be used for forestry, forestry reserve and conservation purposes and about half of the parks and recreational area would also be designated as a Natural and Recreation Corridor (Corridor). This Corridor, covering about 6,306 acres, would connect Carey State Forest north of the Yellow Water Weapons Area with Jennings State Forest south of the Main Station. The Corridor would preserve significant natural resources and enable wildlife to migrate between these two State forests.

To establish and maintain the Corridor, the City of Jacksonville, the Jacksonville Port Authority, Clay County, the Florida Department of Environmental Protection, and the St. Johns River Water Management District entered into a Memorandum Of Understanding (MOU) on March 13, 1998. This MOU recognizes that the western part of the base contains significant natural resources and is more suited for conservation and passive recreational activities. The MOU provides that the Corridor and the two State forests will be managed uniformly as an integrated system of wetlands and upland forests.

Navy analyzed a second "action" alternative, described in the FEIS as Alternative Reuse Scenario (ARS) 1. In ARS 1, the acquiring entity would own the property but would not prepare a redevelopment plan for it. Instead, the acquiring entity would publicize the availability of existing facilities on the Main Station for reuse. This Alternative would not use the base's aviation facilities as a general aviation airport and would dedicate the entire Yellow Water Weapons Area, covering about 7,866 acres, to forestry use.

On the Main Station, ARS 1 proposed to use 158 acres, including some of the aviation facilities in the developed area north and west of the runways, for the Florida National Guard's helicopter operations. This Alternative would use the remaining facilities covering 893 acres at the Main Station for office and light industrial activities. South of Normandy Boulevard and west of the developed area, this Alternative proposed to use 573 acres for parks and recreational activities. These activities would include use of the Cecil Field golf course and the recreational areas at Lake Fretwell and Lake Newman. The remaining 7,712 acres in the western, southern and eastern parts of the Main Station would be dedicated to forestry.

Navy analyzed a third "action" alternative, described in the FEIS as ARS 2. In ARS 2, the acquiring entity would take only moderate action to stimulate redevelopment of the base. Instead, redevelopment would focus on using the existing facilities for civilian general aviation and military helicopter operations and market-driven office and light industrial activities. Most of the property, *i.e.*, 11,737 acres, would be dedicated to forestry uses.

On the Main Station, ARS 2 proposed to use 1,833 acres for civilian general aviation and military helicopter operations like those proposed in the Preferred Alternative. The four runways, eight hangars and related maintenance buildings would be used for aviation operations and support services. North and west of the aviation facilities and runways, ARS 2 proposed to use the remaining buildings on the Main Station for office and light industrial activities. South of Normandy Boulevard and west of the developed area, this Alternative would provide a park and recreational area that would include use of the Cecil Field golf course and the recreational areas at Lake Fretwell and Lake Newman. The remaining Main Station property *i.e.*, the western, southern and eastern parts, would be maintained as undeveloped forest land.

At the Yellow Water Weapons Area, ARS 2 proposed to use the ordnance storage buildings, maintenance facilities, barracks, and personnel support facilities in the center of the property for office and light industrial activities. This Alternative would provide a park and recreational area in

the southwest corner. The remaining property in the Yellow Water Weapons Area, *i.e.*, the eastern, northern, and northwestern parts, would be maintained as undeveloped forest land.

Navy analyzed a fourth "action" alternative, described in the FEIS as ARS 3. In ARS 3, the acquiring entity would direct and market the redevelopment of Cecil Field for non-aviation uses. Thus, all of the aviation facilities would be modified to serve non-aviation purposes or would be demolished. This Alternative proposed to build a 3,250-unit residential community on 3,437 acres in the eastern part of the Main Station where the Preferred Alternative would reserve forest land for future expansion of the airport.

On 786 acres west of this residential area, ARS 3 would use the existing aviation facilities in the developed area for commercial purposes. North of these businesses, ARS 3 proposed to build a 241-acre business park. At the southern end of the Main Station, ARS 3 proposed to maintain 2,291 acres of undeveloped forest land for conservation purposes. North and northwest of this conservation area, ARS 3 proposed to build manufacturing facilities.

South of Normandy Boulevard and west of the developed area, this Alternative would provide a park and recreational area that would include use of the Cecil Field golf course and the recreational areas at Lake Fretwell and Lake Newman. South of Normandy Boulevard and north of the residential area, ARS 3 would build commercial facilities such as retail stores, banks and credit unions, and a United States Post Office to support the residential community.

At the Yellow Water Weapons Area, ARS 3 proposed to build light industrial facilities on 4,184 acres located in the northern and eastern parts of the property. In the center of the property, at the developed ordnance storage area, ARS 3 would use 1,574 acres for open space. On the western side and in the southwest corner of the Yellow Water property, ARS 3 proposed to build manufacturing facilities.

Navy analyzed a fifth "action" alternative, described in the FEIS as ARS 4. This Alternative proposed aggressive redevelopment and marketing of NAS Cecil Field for aviation and other industrial uses similar to the Preferred Alternative. It proposed to use the runways, hangars, and related maintenance buildings, covering 2,011 acres, as an airport serving civilian general aviation and military helicopter operations. This Alternative would use 3,362 acres for light industrial activities; 1,029 acres for heavy industrial activities; 1,565 acres for correctional facilities; 207 acres of commercial retail activities; 2,955 acres for parks and recreational activities; 980 acres for forestry; and 641 acres for conservation purposes. It also proposed to reserve 4,452 acres of forest land for future expansion of the airport facilities.

At the southern end of the Main Station, ARS 4 proposed to use 641 acres as a conservation area. North and northeast of this conservation area, ARS 4 would reserve two parcels, comprising 4,452 acres of forest land, for future expansion of the airport facilities. The four runways, located north of the conservation area and between the two forestry parcels, would be used for air operations. The eight hangars and related maintenance buildings, located north and west of the runways, would be used for aviation operations and support services. Some of the aviation facilities would be used by helicopter units of the Florida National Guard. Some of the existing buildings located north and west of the hangars and maintenance buildings would be demolished to build new facilities for use in heavy industries such as manufacturing and as shops for assembling automotive and aviation parts.

The barracks, classrooms, and offices in the area north and west of the hangars would be retained and used as a conference and training center for private entities occupying buildings on the property. West of this conference and training center, the property that presently includes the Cecil Field golf course, Lake Fretwell, and Lake Newman would be maintained as a recreational area. This Alternative also proposed to build light industrial facilities on property located west of the recreational area that the Preferred Alternative would maintain as forest land.

North of the heavy industrial area, on the southern side of Normandy Boulevard, ARS 4 would build commercial facilities such as retail stores, banks and credit unions, and a United States Post Office. East of this commercial area and north of the aviation facilities, ARS 4 would build new light industrial facilities.

In the center of the Yellow Water Weapons Area, ARS 4 proposed to build a 1,439-acre State Corrections Facility and a 126-acre State Juvenile Justice Facility. In the eastern half of the Yellow Water Weapons Area, ARS 4 proposed to build heavy and light industrial facilities. In the northwest corner, this Alternative would maintain the undeveloped forest land. On the western side and in the southwest corner, it would provide a park and recreational area. On the southern edge of the property, along Normandy Boulevard, ARS 4 would build facilities for commercial activities like those proposed for the Main Station.

Environmental Impacts: Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this surplus Federal property. The EIS addressed the impacts of the Preferred Alternative, ARS 1 through ARS 4, and the "No Action" Alternative for each alternative's effects on land use and aesthetics, topography, geology and soils, terrestrial resources, water quality and hydrology, climate and air quality, noise, socioeconomics and community services, transportation, infrastructure and utilities, cultural resources, and hazardous materials management and environmental contamination. This Record Of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have any significant impact on land use. While many areas at NAS Cecil Field are constrained by features such as wetlands and wildlife habitats, there are also large areas of land that are not restricted and could reasonably support new development. An area of about 29 million square feet could be developed without adversely affecting environmentally sensitive features such as wetlands, wildlife habitat, environmental cleanup sites, the 100-year floodplain, and archaeologically sensitive areas. Thus, the 3.9 million square feet of new development proposed by the Reuse Plan would not have an impact on land use.

The land uses proposed in the Preferred Alternative would be generally compatible with each other. While the proposed heavy industrial areas are not consistent with the adjacent parks and recreational areas, the establishment of buffer zones between these activities would minimize any such impact.

The land uses proposed in the Preferred Alternative would also be generally compatible with adjacent off-base land uses. Although the light industrial area in the eastern half of the Yellow Water property would be adjacent to private property currently zoned for low density residential and commercial land uses, the establishment of buffer zones between these incompatible uses would minimize any such impact.

The Preferred Alternative would not have any significant impact on aesthetic resources because it would not alter the overall aesthetic character of NAS Cecil Field. Indeed, the Reuse Plan calls for the removal of structures and utilities that would not be used and the preservation of existing positive visual features such as the tall pine trees that constitute the dominant aesthetic characteristic of the undeveloped areas.

The Preferred Alternative would not have any significant impact on soils and would not have any impact on local or regional geological resources or topography. Disturbance of soils by compaction, rutting, and erosion would be limited to those areas that would be redeveloped. These impacts would be temporary and can be minimized during construction by the use of standard soil erosion and sedimentation control measures such as the use of the hay bales and silt fences.

The Preferred Alternative would not have any significant impact on upland vegetation and wildlife. Although the proposed construction would result in some loss of vegetation and associated wildlife habitat, these impacts would be limited to the areas under construction. They can be minimized by retaining surrounding native vegetation and maintaining connections between habitats. The Natural and Recreation corridor will provide protection for most of the wildlife habitat.

The Preferred Alternative would not have any significant impact on wetland vegetation and wildlife. The non-wetland areas available for redevelopment can accommodate the proposed new construction without encroaching on existing wetlands. Most of the existing wetlands are located in the northwest corner of the Yellow Water Weapons Area, which would be maintained as forest land and placed in the Natural and Recreation Corridor. Another large area of wetlands located on the Main Station in the forest land east of the runways would be reserved for future airport expansion. Further redevelopment plans that may affect wetlands would be subject to the regulations that implement Section 404 of the Clean Water Act, 33 U.S.C. 1344 (1994). These regulations are set forth at 33 CFR Part 323 and are enforced by the United States Army Corps of Engineers.

The Preferred Alternative would not have any significant impact on endangered, threatened, or other species protected under Federal and State laws. Pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1536 (1994), Navy conducted a biological assessment to determine the presence of Federally-listed endangered and threatened species. Although not required by Section 7 of ESA, Navy also included in this assessment those species that are identified as endangered, threatened, or of concern under Florida law.

No Federally-listed endangered or threatened species were found to be present at NAS Cecil Field. The assessment demonstrated, however, that the base provides suitable habitat for one mammal, three birds, five reptiles and amphibians, and nine plant species that are either endangered, threatened, or otherwise protected under Federal and State laws. The habitats suitable for 13 of these 18 species are located in wetlands that would be avoided during implementation of the Preferred Alternative. As discussed earlier, the impact on habitats would be limited to the particular areas under construction and can be mimized by retaining surrounding native vegetation and maintaining connections between habitats.

Based upon the findings of the biological assessment, Navy determined that the disposal and reuse of Cecil Field would not have any adverse effect on Federally-listed endangered or threatened species. In a letter dated August 20, 1998, the United States Fish And Wildlife Service concurred in Navy's determination.

Additionally, the City of Jacksonville amended the Jacksonville 2010 Comprehensive Plan to require a survey that would ascertain the presence of Federally and State-listed species in all areas proposed for redevelopment. This Plan is the local development plan required by Florida law to ensure that future development is consistent with the long range goals, objectives, and policies guiding social, economic, and physical growth of the State. Fla. Stat. §§ 163.3161–3244 (1997). If the survey reveals the presence of Federally or State-listed species, the City will require the developer to prepare a habitat management plan that describes the manner in which the Federally or State-listed species will be protected from the impacts of the proposed redevelopment.

The Preferred Alternative would not have any significant impact on water quality. The closure of Cecil Field's wastewater treatment plant and replacement by the City of Jacksonville's wastewater system would improve water quality by eliminating the treated discharge that previously flowed into Rowell Creek. However, stormwater discharges from new industrial activities, roadways and parking areas and from routine operations and maintenance in the developed areas (such as the application of herbicides and pesticides) could have adverse impacts on the surface water quality of Rowell Creek, Sal Taylor Creek, Yellow Water Creek, Lake Fretwell, and Lake Newman. In accordance with Federal, State, and local laws and regulations, the acquiring entities will implement stormwater management practices to minimize these potential impacts.

The Preferred Alternative would not have any significant impact on the availability or quality of groundwater. The groundwater under NAS Cecil Field does not contribute to the Floridian Aquifer, which is the main source of drinking water for Duval County.

The Preferred Alternative would not have any significant impact on surface water hydrology. There would be no realignment of streams or physical alternation of wetlands during construction, other than alterations that would enhance the wetlands system in the Corridor.

The Preferred Alternative would not have any significant impact on local or regional climatic conditions. The regional climate would not change as a result of implementing the proposed Reuse Plan.

The Preferred Alternative would not have any significant impact on air quality. The base is located in an ozone maintenance area, which is defined by the Clean Air Act, 42 U.S.C. 7401–7671q (1994), as a transition between non-attainment and attainment status for common air pollutants. The base is in attainment for all other common air pollutants. Ozone, commonly known as smog, is produced when volatile organic compounds and nitrogen oxides react in the atmosphere, and emissions of these pollutants would decrease under the Reuse Plan. However, emissions of two other common air pollutants, carbon monoxide and small particulate matter, may increase under the Reuse Plan.

Carbon monoxide is produced by the burning of fossil fuels. Compared with pre-closure levels, the Reuse Plan projects that annual emissions of carbon monoxide would increase by 407 tons, largely as the result of increased vehicular traffic moving to and from the property. This constitutes an insignificant increase in carbon monoxide emissions (less than 0.2 percent) in the Jacksonville area.

Small particulate matter is caused by activities that generate smoke and dust. Emissions from particulate matter would temporarily increase from 25 to 107 tons per year as the result of construction activities. Developers of future facilities would be responsible for obtaining the required air permits and complying with Federal, State, and local laws and regulations governing air

pollution. These regulations prescribe pre-construction review; impose emission and control technology standards; and require construction and operating permits.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas, such as Jacksonville, that are in maintenance status for one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR 93.153(c)(2)(xiv) and (xix). Therefore, the disposal of NAS Cecil Field will not require Navy to conduct a conformity determination.

The Preferred Alternative would not have any significant impact on noise. Exposure to noise from aircraft operations would be substantially less than when the Air Station was operating. This decrease results from the reduction from 175,168 annual jet aircraft operations before closure of the Air Station to 50,000 annual jet aircraft operations proposed under the Preferred Alternative. In addition, the aircraft that would use the airfield under the Preferred Alternative would make less noise than the Navy aircraft such as the F/A–18 jets that currently operate at NAS Cecil Field.

During reuse, a gradual increase in ambient noise levels from other sources would likely occur. This increase would arise out of industrial operations, traffic, and the operation of heavy equipment during construction. The absence of any nearby concentrations of sensitive noise receptors such as residences, hospitals and churches would minimize the impact of this gradual increase in ambient noise.

The Preferred Alternative would have minor impacts on the population and demographics of Duval County and Clay County. The proposed redevelopment would increase employment opportunities, but recruitment of employees from outside local counties is not likely because the demand for new employees would be gradual. Therefore, it is unlikely that there would be an increase in the local population as a result of implementing the Preferred Alternative.

The Preferred Alternative is projected to create 3,199 direct jobs and 3,528 indirect jobs that would generate about $78 million in direct payroll earnings and $67 million in indirect earnings. The total assessed value of taxable property after the redevelopment of Cecil Field would reach nearly $100 million. As a result, the Preferred Alternative would generate an estimated $2.16 million in annual property tax revenues.

The Preferred Alternative would have no significant impact on local and regional housing markets and would have positive impacts on local school systems. There would be fewer school age children residing in the area than when NAS Cecil Field was an active base, and property tax revenues that support local school systems would increase as property previously owned by the Federal Government became taxable.

The Preferred Alternative could have minor adverse impacts on police, fire, and emergency services in the City of Jacksonville. The conveyance of NAS Cecil Field from Navy ownership would increase the geographic area served by local police, fire, and ambulance units. Consequently, manpower and equipment requirements would increase. The equipment requirements, however, could be offset by conveyance of the base's public safety buildings and equipment such as police stations, firehouses, and certain vehicles to the City of Jacksonville. Additionally, implementation of the Preferred Alternative would increase local government revenues by expanding the property tax base.

The Preferred Alternative would increase the number of recreational facilities in the Jacksonville area. Under the Preferred Alternative, the Cecil Field golf course, Lake Fretwell, Lake Newman, and most of the base's athletic fields and other recreational areas and facilities would be made available to the public. The remaining athletic fields, located in that part of the Main Station proposed for heavy industrial activities, would not be used for recreational purposes.

The Preferred Alternative would not have any significant impact on transportation. By the year 2010, there would be about 24,359 average daily trips. This constitutes an increase of about 10,000 average daily trips over the conditions that prevailed when the base was active. The roadways that would experience traffic increases would be Chaffee Road, Normandy Boulevard, and 103rd Street. These increases would likely occur between the years 1999 and 2010 and would be addressed by improvements to the regional roadway network planned by the City of Jacksonville and the State of Florida.

After NAS Cecil Field closes, the current mass transit service may be canceled or limited because of insufficient ridership. Future mass transit service to the Cecil Field property would likely be based upon the demand for such service.

The Preferred Alternative would have minor adverse impacts on utilities. While the Reuse Plan proposes to make extensive improvements to the existing water and sewer systems, these improvements would likely be made in the course of new construction.

The Preferred Alternative proposed to connect NAS Cecil Field's water distribution and sewage collection systems to the City of Jacksonville's systems. After closure of the base, stormwater management would remain subject to Federal, State, and local laws and regulations. The acquiring entity and/or the developers of the property would be responsible for installing adequate drainage facilities.

The long term demand for natural gas would require expansion of the existing natural gas distribution system to serve the redeveloped areas. The existing 16-inch gas transmission line, located at the entrance to the Air Station, is adequate to accommodate the increased demand likely to occur under the Preferred Alternative.

The long term demand for electrical power would require expansion of the existing electrical distribution system to serve the redeveloped areas. It would be necessary to upgrade the existing distribution system to meet the local electrical authority's standards for electric meters in order properly to charge customers for electric utility service.

Under the Preferred Alternative, the existing centralized steam generation plant and the aboveground steam lines would not be used. Instead, auxiliary boilers served by existing natural gas lines may be used, and other electric or gas heating systems may be installed.

Implementation of the Preferred Alternative would not have any significant impact on the management of solid waste. When fully implemented, the Preferred Alternative would generate about 150,000 tons of solid waste annually. This constitutes a 50 percent reduction in the amount of solid waste compared with the amount generated before closure of the base.

The Preferred Alternative would not have any significant impact on cultural resources. Pursuant to Section 106 of the National Historic Preservation Act of 1988, 16 U.S.C. 470f (1994), Navy

conducted a cultural resource assessment of NAS Cecil Field. Navy evaluated all of the buildings and structures at Cecil Field and determined that none was eligible for listing on the National Register of Historic Places. In a letter dated October 9, 1996, the Florida State Historic Preservation Officer (SHPO) concurred in the Navy's determination.

There are no known archaeological sites at NAS Cecil Field. However, the cultural resource assessment identified 15 archaeologically sensitive areas in certain parts of NAS Cecil Field that are on the surplus Federal property. Thirteen archaeologically sensitive areas are located in parts of the Main Station and the Yellow Water Weapons Area that would be used for conservation, forestry, parks and recreational activities. Two archaeologically sensitive areas are located on that part of the Yellow Water Weapons Area where light industrial facilities would be built. Depending upon the location and design of particular redevelopment projects, these two archaeologically sensitive areas could be adversely affected by construction activities.

Navy has completed consultation pursuant to Section 106 of the National Historic Preservation Act with the Advisory Council on Historic Preservation and the Florida State Historic Preservation Officer. These consultations identified measures that the acquiring entities must take to avoid or mitigate adverse effects on the archaeologically sensitive areas. The measures are set forth in a Programmatic Agreement entered into by Navy, the Advisory Council on Historic Preservation, and the Florida State Historic Preservation Officer, dated January 22, 1997. This Programmatic Agreement requires recipients of the property to obtain written permission from the SHPO before undertaking any activities that would disturb the ground at these 15 archaeologically sensitive areas.

The Preferred Alternative would not have any significant impact on the management of hazardous materials and hazardous waste. The quantity of hazardous materials used, stored, and disposed of, and the quantity of hazardous waste generated on the property would be less under the Preferred Alternative than during Navy's use of the Cecil Field property. Hazardous materials used and hazardous waste generated under the Preferred Alternative will be managed in accordance with Federal and State laws and regulations.

Implementation of the Preferred Alternative would not have any impact on existing environmental contamination at NAS Cecil Field. Navy will inform future property owners about the environmental condition of the property and may, where appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995), requires that Navy determine whether any low-income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low-income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of NAS Cecil Field and subsequent reuse of the property under the various proposed reuse scenarios. Minority and low-income populations residing within the region will not be disproportionately affected.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the recreational areas. The Preferred Alternative would not impose any disproporationate environmental health of safety risks on children.

Mitigation: Implementation of Navy's decision to dispose of NAS Cecil Field does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation.

The FEIS identified and discussed those actions that will be necessary to mitigate impacts associated with the reuse and redevelopment of NAS Cecil Field. The acquiring entitites, under the direction of Federal, State, and local agencies with regulatory authority over protection resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the FEIS: Navy received comments on the FEIS from the United States Environmental Protection Agency, the Federal Aviation Administration, and the Florida Department of Community Affairs. These comments concerned issues already discussed in the FEIS and do not require further clarification.

Regulations Governing the Disposal Decision: Since the proposed action contemplates a disposal under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that disposals of Federal property benefit the Federal Government and constitute the "highest and best use" of the property. Section 101–47.4909 of the FPMR defines the "highest and best use" as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The "highest and best use" determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historic considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the "highest and best use" of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of

base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA, may Navy apply disposal procedures other than those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion: The LRA's proposed reuse of NAS Cecil Field, reflected in the Reuse Plan, is consistent with the requirements of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for several purposes, including aviation, industrial, commercial, forestry, conservation, parks and recreation. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

The Preferred Alternative responds to local economic conditions, promotes rapid economic recovery from the impact of the Air Station's closure, and is consistent with President Clinton's Five-Part Plan for Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities. 32 CFR Parts 174 and 175, 59 FR 16123 (1994).

Although the "No Action" Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the property's location, physical characteristics, and infrastructure or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the Cecil Field property.

The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy will dispose of Naval Air Station Cecil Field in a manner that is consistent with the City of Jacksonville's Reuse Plan for the property.

Dated: May 19, 1999.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion and Redevelopment).

[FR Doc. 99–14005 Filed 6–2–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is meeting to conduct the final briefing of the Homeland Defense Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy involvement in Homeland Defense.

DATES: The meeting will be held on June 23, 1999 from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, telephone number (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 18, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–13990 Filed 6–2–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is meeting to conduct the final briefing of the Space and Information Warfare Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy involvement in Space and Information Warfare.

DATES: The meeting will be held on June 16, 1999 from 9 a.m. to 10 a.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 18, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Office.

[FR Doc. 99–13991 Filed 6–2–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 2, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat—Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 27, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Local Education Agency Component of Study of School Violence and Prevention.
Frequency: Two one time reportings.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAS.
Reporting and Recordkeeping Hour Burden:
Responses: 204.
Burden Hours: 250.
Abstract: The purpose of this study is to increase understanding of how local education agencies plan, implement, and evaluate their alcohol, tobacco and other drugs (ATOD) and violence prevention efforts, especially efforts funded under the Safe and Drug-Free Schools and Communities Act. This study also will assess the implementation of the Principles of Effectiveness, and document obstacles or barriers to implementation of the principles.

[FR Doc. 99–14000 Filed 6–2–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy; Office of Geothermal Technologies

Enhanced Geothermal Systems Project

AGENCY: Department of Energy (DOE).

ACTION: Notice of program interest (NOPI).

SUMMARY: This project will provide for the Enhanced Geothermal Systems (EGS) Program Development and operation of an Enhanced Geothermal System to augment the power production of a current geothermal field. DOE/AL is soliciting comments and expressions of interest in developing a cost-shared, industry-led project to develop an EGS to significantly augment the electric power production of an existing geothermal field.

DATES: Statements of interest are due on or before July 19, 1999.

ADDRESSES: Statements of interest should be sent to the following address: Department of Energy, Attn: D. A. Sanchez, Albuquerque Operations Office/TDD, P. O. Box 5400, Albuquerque, NM 87185–5400.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Grabowski, U.S. Department of Energy, EE–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0478, paul.grabowski@hq.doe.gov. Mr. Lynn McLarty, Princeton Economic Research Inc, Rockville, MD, (301) 468–8442, lmclarty@perihq.com. Mr. Dan Sanchez, DOE/AL, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–4417, dsanchez@doeal.gov.

SUPPLEMENTARY INFORMATION:

Exploitable geothermal energy resources are found in many parts of the U.S., and the world. Often within the boundaries of these known fields, or at the margins of these fields, there often exist regions that contain sufficient heat but lack permeability, fluid content, or both. Research has indicated that it may be possible to utilize these regions to enhance operating geothermal fields, or possibly create new adjacent reservoirs, and thereby increase the power produced from the existing field with an EGS. Also, research at Los Alamos National Laboratory's Fenton Hill site has shown that a stand-alone geothermal reservoir (non-EGS) can be created in low-permeability, hot rock with no resident fluid, although this has not yet proven to be a commercially viable source of electricity. Based on these U.S. research results, and the results of several overseas projects, the U.S. DOE believes a domestic EGS can be co-developed with US industry, and eventually be commercially competitive.

The purpose of this notice is to obtain a preliminary indication of interest by utilities, independent power producers, or industrial concerns in cost-sharing the development and operation of a domestic EGS that significantly augments the electric power production from an existing geothermal field. Comments are solicited from independent power producers, utilities, energy companies, well drilling and well servicing companies, turbine manufacturers and other businesses with an interest in the development of geothermal energy resources. This notice is only intended to: decide whether to proceed with a solicitation; refine the specifications of the solicitation (currently in development); identify potential bidders; promote the formation of partnerships or consortia; and stimulate interactions among potential participants. At some future date, if a solicitation for this project is issued, industry will be invited to specify a site for the project, the size and scope of the EGS, a plan for the construction of the EGS, and the customers to whom the electric power or thermal energy will be sold. DOE expects that the amount of additional power gained from this EGS project will be on the order of 5–10% above the electricity generating capacity of the original existing field. The plant and its revenue will be the property of the successful bidder(s). A portion of the cost-sharing, generally that in excess of 40%, may include an accounting of in-kind cost participation, equipment or services. The federal government's share of any project will be limited to approximately $60 million over a period covering the construction of the facility and up to two years of operations. DOE will exercise appropriate oversight authority, but the day-to-day management of the project will be the responsibility of the offeror.

DOE, through its AL office, requests comments and expressions of interest in order to determine the level of interest by private parties in the proposed project to build and operate an EGS in an existing geothermal field. Moreover, the requested information will help the DOE to decide whether to issue a solicitation, refine the specifications of the solicitation, and identify potential bidders. Comments, suggested modifications, additions, deletions or alternative approaches are encouraged and welcome. Proprietary details of responses should be identified and will be kept in confidence. Failure to respond to this notice will not disqualify any party from responding to any subsequent solicitation, but a response will assure that the party receives the solicitation and notification of related activities. Expressions of interest should not include detailed plans or proposals but should include the following: (1) The name, address, telephone number, Email address, and facsimile number of the primary contact person; (2) The potential participants, their affiliations, their proposed roles, and brief documentation of their interest in the project; and (3) a statement indicating whether or not the respondent wishes to receive a copy of the solicitation. Responses to this notice should not exceed five pages in length exclusive of appendices. Responses shall be sent to the attention of Mr. Dan Sanchez at the address listed above.

Copies of the Geothermex, Inc. "Data Review" and "Peer Review" reports on the Fenton Hill Hot Dry Rock project are available to aid parties in deciding their level of interest. Copies of these reports are available from Princeton Economic Research, Incorporated. Contact Mr. Lynn Mclarty at 301–468–8442. Copies of status reports of the European Hot Dry Rock Project are available from Roy Baria, or Jorg Baumgartner, SOCOMINE Soultz-Sous-Foret, France, 33–8880–5363.

Issued in Albuquerque, N.M. on May 25, 1999.

D.A. Sanchez,

Technology Development Division.

[FR Doc. 99–14076 Filed 6–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2229–000]

California Power Exchange Corp; Issuance of Order

May 28, 1999.

California Power Exchange Corporation (PX), on behalf of a soon-to-be established division, CalPX Trading Services (CTS), filed a proposal to establish a "Block-Forward Market" for the sales and purchases of energy for delivery through the PX Day-Ahead Market, to become effective on the date that CTS operations commence. The filing requests market-based rate treatment for the Block-Forward Market. On behalf of CTS, the PX also requested authorizations and waivers of various Commission regulations, consistent with those granted other various marketers. In particular, the proposal requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by CTS. On May 26, 1999, the Commission issued an Order Accepting For Filing Proposed Block-Forward Market, As Modified (Order), in the above-docketed proceeding.

The Commission's May 26, 1999 Order granted the request for blanket approval under part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (I):

(G) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CTS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure, 18 CFR 385.211 and 385.214.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, CTS is hereby authorized to issue securities and

assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CTS, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(l) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CTS's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 25, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14029 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3045–000]

Cambridge Electric Light Co.; Notice of Filing

May 27, 1999.

Take notice that on May 19, 1999, Cambridge Electric Light Company (Cambridge) tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Strategic Energy Ltd. (Strategic). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Strategic under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14019 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3044–000]

Commonwealth Electric Co.; Filing

May 27, 1999.

Take notice that on May 19, 1999, Commonwealth Electric Company (Commonwealth) tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Strategic Energy Ltd. (Strategic). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Strategic under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14020 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–117–000]

K N Interstate Gas Transmission, Co.; Informal Settlement Conference

May 27, 1999.

Take notice that an informal settlement conference in this proceeding will be convened on Wednesday, June 9, 1999, at 1:30 p.m. and will continue on Thursday, June 10, 1999. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at (202) 208–2058 or Marcia C. Hooks at (202) 208–0993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14013 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER–99–2931–000]

New England Power Pool; Filing

May 27, 1999.

Take notice that on May 14, 1999, New England Power Pool (NEPOOL) Executive Committee submitted Market Rules and Procedures recently approved by the NEPOOL Regional Market Operations Committee. This filing places before the Commission, revisions to NEPOOL's existing set of Market Rules and appendices to those rules. NEPOOL has requested that a limited number of changes to Market Rule 4.3.1, Appendix 5–B and Appendix 12–B–3 be allowed to become effective as of the date of filing.

The NEPOOL Executive Committee states that copies of these materials were sent to all participants in the New England Power Pool and the New England state governors and regulatory commissions.

Any person desiring to be heard or to protest such filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 7, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14018 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2469–000]

Newport Electric Corp.; Filing

May 27, 1999.

Take notice that on May 14, 1999, Newport Electric Corporation filed an amendment to Appendix C which was attached to their Agreement for Support of Certain Transmission Facilities that was field with the Commission on April 13, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 7, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14016 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–310–000]

Southern Natural Gas Co.; Notice of Petition for Waiver

May 27, 1999.

Take notice that on May 24, 1999, Southern Natural Gas Company (Southern) filed a petition for an interim waiver of § 14.1(b)(1) and 14.1(c)(1) of the General Terms and Conditions of its Tariff in order to waive cashout premiums incurred during April 1999.

Southern states that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 3, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14015 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–003]

Stingray Pipeline Co.; Motion To Make Tariff Sheet Effective

May 27, 1999.

Take notice that on May 24, 1999, Stingray Pipeline Company (Stingray) filed a Motion to Make Suspended Tariff Sheet Effective (Motion). Stingray moved to make effective on June 1, 1999, Tenth Revised Sheet No. 5. The rates on Tenth Revised Sheet No. 5 reflect the effect of removing the line pack gas surcharge from the rate levels Stingray originally filed in this proceeding on December 1, 1998.

Stingray requested waiver of any applicable Commission Regulations and orders to the extent necessary to permit Tenth Revised Sheet No. 5 to become effective on June 1, 1999.

Stingray states that copies of the Motion, together with Tenth Revised Sheet No. 5, are being served on Stingray's customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP99–166.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before June 3, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14014 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–739–001 and CP99–90–001]

Tennessee Gas Pipeline Co.; Compliance Filing

May 27, 1999.

Take notice that on May 17, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, a Fifth Revised Sheet No. 181. Tennessee also tendered for filing and acceptance: (1) A Firm Natural Gas Transportation Agreement dated May 1, 1999, between Tennessee and USGen New England, Inc. (USGenNE) for 53,000 Dth/day of transportation service under Rate Schedule NET; and (2) a

Termination Agreement dated May 1, 1999, between Tennessee and New England Power Company (NEPCO) terminating 53,000 Dth/day of transportation service under Rate Schedule NET.

Tennessee states that this filing is in compliance with the Commission's March 11, 1999 order issued in Docket Nos. CP98–739–000 and CP99–90–000. Tennessee explains that, through this filing it seeks to implement the assumption by USGenNE of NEPCO's rights and obligations for 53,000 Dth/day of transportation service under Rate Schedule NET, as authorized in the March 11 order. Tennessee requests an effective date of May 1, 1999.

Any person desiring to be heard or to make any protest with reference to said filing should on or before June 11, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14022 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–531–000]

Tennessee Gas Pipeline Co.; Application for Abandonment

May 27, 1999.

Take notice that on May 21, 1999, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, PO Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP99–531–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the natural gas transportation service which Tennessee provides to Natural Gas Pipeline Company of America (Natural) all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–0400 for assistance).

Tennessee proposes to abandon the natural gas service which Tennessee provides to Natural under Tennessee's Rate Schedule T–159. Tennessee states that Natural no longer requires this transportation service and both parties have mutually agreed to the abandonment of such service.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 17, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14024 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–312–015]

Tennessee Gas Pipeline Co.; Negotiated Rate Filing

May 27, 1999.

Take notice that on May 24, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a Negotiated Rate Arrangement. Tennessee requests that the Commission approve the Negotiated Rate Arrangement effective June 1, 1999.

Tennessee states that the filed Negotiated Rate Arrangement reflects a negotiated rate between Tennessee and Exxon Corporation (Exxon) for transportation under Rate Schedule FT–A beginning the later of June 1, 1999 or the in-service date of the Venice Interconnect (Tennessee's Meter Number 012516) for a twenty-four month period.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before June 3, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14027 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RG99–12–001]

Total Peaking Services, L.L.C.; Filing

May 27, 1999.

Take notice that on May 19, 1999, Total Peaking Services, L.L.C. (Total Peaking) filed revised standards of conduct in response to the Commission's April 19, 1999 Order on Standards of Conduct. 87 FERC ¶ 61,092 (1999).

Total Peaking states that it served copies of the filing on all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 11, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14026 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–534–000]

Transwestern Pipeline Co.; Application

May 27, 1999.

Take notice that on May 21, 1999, Transwestern Pipeline Company (Transwestern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–534–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by removal, Unit #3 and appurtenant facilities, located at its Station 8 compressor station in Lincoln County, New Mexico. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Transwestern states that the Station 8 compressor station consists of 3 compressor units totalling 14,500 horsepower. Northern proposes to abandon, by removal, compressor unit #3 totaling 6,500 horsepower. Transwestern states that Unit #3 is no longer required due to changes in operating conditions which have eliminated the need for this unit. Transwestern further states that as a result of the abandonment, Station 8 will have a lower discharge pressure; however, the compression at Stations 1–4 will be able to meet the firm transportation requirements as a result of 199 miles of 30-inch mainline looping which was installed in 1992 under Docket No. CP90–2294, *et al.* Transwestern maintains that the abandonment of Unit #3 at Station 8 will not result in the abandonment of service to any of Transwestern's existing customers or producers, nor will it adversely affect capacity since the compression is no longer required by Transwestern to meet the firm transportation requirements.

Transwestern states that it will use the removed Unit #3, or parts of the unit, at other locations on its transmission system as needed or salvage the unit as applicable. Transwestern estimates the cost of removal to be $310,000.

Any person desiring to be heard or to make any protests with reference to said application should on or before June 17, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–14025 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–52–031]

Williams Gas Pipelines Central, Inc.; Filing of Refund Report

May 27, 1999.

Take notice that on May 21, 1999, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing its report of activities regarding collection of Kansas *ad valorem* taxes.

Williams states that this filing is being made in compliance with Commission order issued September 10, 1997 in Docket Nos. RP97–369–000, *et al.* The September 10 order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. The Commission also directed that pipelines file a report annually concerning their activities to collect and flow through refunds of the taxes at issue.

Williams states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rule and regulations. All such protests must be filed on or before June 3, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14028 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–242–000]

Williston Basin Interstate Pipeline Co.; Application

May 27, 1999.

Take notice that on March 8, 1999, as supplemented May 19, 1999, Williston Basin Interstate Pipeline Company (Williston) 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to install and operate a leased gas compressor unit at the Billy Creek Compressor Station, Johnson County, Wyoming to enable Williston to transport natural gas to current and potential pipeline interconnection points, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Williston proposes to install and operate a 1,478 horsepower Waukesha Model L7042GSI V–12 engine coupled with an Ariel JGK–4 compressor unit. Williston indicates that the compressor unit lease rental for this compressor unit is $150,000 per year and the compressor unit will be installed, operated, and maintained by Williston personnel. Williston estimates the cost of the project to be $298,321 excluding the $150,000 per year to lease the compressor unit. Williston requests that the Commission grant rolled-in rate treatment for the proposed facilities.

Williston claims that producers in the Powder River Basin have undertaken extensive drilling programs for the production of coal seam gas. Williston states that it believes the installation and operation of the proposed leased compressor will enable Williston Basin's existing pipeline capacity to be more fully utilized through increased throughput, will allow producers and shippers an avenue to move Powder River Basin coal seam gas production to pipelines interconnecting with Williston Basin's system in the most economical and environmentally sensitive manner, and will attract additional supply sources to its isolated Billy Creek-Sheridan system.

Williston indicates that on February 5, 1999, Williston posted a notice on its Electronic Bulletin Board and held an open season from February 8, 1999, through February 22, 1999, to solicit interest from shippers in utilizing the additional transportation capacity on the Billy Creek-Sheridan line section which capacity will become available as a result of the installation of the proposed leased compressor. Williston states that as of the date of the filing of its application, Williston has not consummated any definitive commitments for the additional transportation capacity that will be available as a result of the proposed compressor installation.

By letter filed May 19, 1999, Williston supplemented its application, stating that it has consummated a precedent agreement for some of the transportation capacity that will be available as a result of the proposed compressor installation. Williston's filing included copies of the precedent agreement which Williston requests be given confidential treatment under 18 CFR 388.112 because it is competitively sensitive. Williston marked the precedent agreement "Contains Privileged Information—Do Not Release".

Williston states that while the precedent agreement may not represent a commitment for a substantial amount of the project's capacity and may not meet the Commission's threshold test for project capacity commitment, there are several reasons why the Commission should proceed with its review and processing of Williston's application. Williston's first reason is the minor nature of the project and the fact that it will have little economic or environmental impact. Williston's second reason is the fact that the revenue generated in the first year from the firm transportation contract to be executed based on the precedent agreement is more that 77% of the estimated first year cost of service. Williston next states that it believes that the proposal will produce system benefits by more fully utilizing its existing Bill Creek-Sheridan line section and by increasing system reliability by attracting additional gas supply sources to its pipeline system. Williston cites, as a fourth reason, its belief that the transportation market in Billy Creek-Sheridan area will continue to grow and generate additional firm and interruptible transportation revenues fully recovering the incremental cost of service associated with the project.

Any person desiring to participate in the hearing process or to make any protest with reference to said amendment should on or before June 17, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or

if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14023 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3012–000, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 26, 1999.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER99–3012–000]

Take notice that on May 21, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Public Service Company of Colorado.

Comment date: June 10 , 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER99–3013–000]

Take notice that on May 21, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of January 1, 2001.

Copies of the filing were served upon PECO Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER99–3014–000]

Take notice that on May 21, 1999, Western Resources, Inc., tendered for filing two agreements between Western Resources and Central Illinois Light Company and Reliant Energy Services. Western Resources states that the purpose of the agreements is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreements are proposed to become effective April 23, 1999 and April 26, 1999.

Copies of the filing were served upon Central Illinois Light Company and Reliant Energy Services and the Kansas Corporation Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER99–3015–000]

Take notice that on May 21, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Network Integration Transmission Service Agreement with MidAmerican Energy Company (MidAmerican, as a retail merchant) dated May 1, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of May 1, 1999, for the Network Integration Transmission Service Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER99–3016–000]

Take notice that on May 21, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with The Energy Authority, Inc. (Energy Authority), dated May 11, 1999, and a Non-Firm Transmission Service Agreement with Energy Authority, dated May 11, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of May 11, 1999, for the Agreements with Energy Authority, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Energy Authority, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. ER99–3024–000]

Take notice that on May 21, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Consumers Energy Company and The Detroit Edison Company collectively known as the Michigan Companies (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of May 20, 1999.

Copies of this filing were served upon Customer.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Citizens Utilities Company

[Docket Nos. OA97–520–003 and OA97–610–003]

Take notice that on May 11, 1999, Citizens Utilities Company filed revised standards of conduct.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the

Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14030 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–100–000, et al.]

Panda Guadalupe Power, L.P., et al.; Electric Rate and Corporate Regulation Filings

May 27, 1999.

Take notice that the following filings have been made with the Commission:

1. Panda Guadalupe Power, L.P.

[Docket No. EG99–100–000]

Take notice that on May 21, 1999, Panda Guadalupe Power, L.P. (Panda), 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, tendered for filing an amendment to their original filing of Application for Determination of Exempt Wholesale Generator Status filed on July 23, 1998, with the Federal Energy Regulatory Commission (FERC), pursuant to Part 365 of the Commission's Regulations, specifically amending the name of the applicant, the ownership of the applicant and the size of the Project.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Barton Villages, Inc., et al. v. Citizens Utilities Company

[Docket No. EL92–33–006]

Take notice that on May 18, 1999, Citizens Utilities Company (Citizens) filed an amendment to their compliance filing that was filed on May 5, 1999 in the above-referenced proceeding.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. The United Illuminating Company

[Docket No. ER99–2972–000]

Take notice that on May 17, 1999, The United Illuminating Company (UI), tendered for filing four Service Agreements for Firm Point-to-Point Transmission Service and an Interconnection Agreement between UI and Wisvest-Connecticut LLC executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER99–3008–000]

Take notice that on May 21, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission an executed Firm Point-To-Point Transmission Service Agreement between Niagara Mohawk and Rochester Gas and Electric Corporation (RG&E). This Transmission Service Agreement specifies that RG&E has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and RG&E to enter into separately scheduled transactions under which Niagara Mohawk will provide firm transmission service for RG&E as the parties may mutually agree.

Niagara Mohawk requests an effective date of May 7, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and RG&E.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER99–3009–000]

Take notice that on May 21, 1999, Commonwealth Edison Company (ComEd) submitted for filing an Interconnection Agreement with Rocky Road LLC (Rocky Road).

ComEd requests an effective date of May 22, 1999 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Rocky Road and the Illinois Commerce Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy South Bay, LLC

[Docket No. ER99–3010–000]

Take notice that on May 21, 1999, Duke Energy South Bay, LLC (DESB) tendered for filing a service agreement establishing Duke Energy Trading and Marketing, L.L.C. DETM) as a customer under DESB's Rate Schedule No. 1.

DESB requests an effective date of April 23, 1999.

DESB states that a copy of the filing was served on DETM.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER99–3011–000]

Take notice that on May 21, 1999, Florida Power Corporation (FPC) tendered for filing a Short-Term Service Agreement between Entergy Power Marketing Corp. and FPC for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Volume Number 8, as amended. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000.

The service agreement is proposed to be effective May 21, 1999.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER99–3023–000]

Take notice that on May 21, 1999, Southwestern Electric Power Company (SWEPCO) filed Amendment No. 1 to the Amended and Restated Power Supply Agreement (PSA), dated June 30, 1997, between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC). SWEPCO states that this filing reflects changes in the PSA to accommodate NTEC's decision to exercise its option under the PSA to receive transmission service pursuant to the Open Access Transmission Services Tariff of the Central and South West Companies (CSW OATT) rather than pursuant to the PSA.

SWEPCO requests an effective date of January 1, 1999.

Copies of the filing have been served on NTEC and the Public Utility Commission of Texas.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14031 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–007]

Open Access Same-Time Information System (OASIS) and Standards of Conduct; Filing

May 27, 1999.

Take notice that on May 18, 1999, the North American Electric Reliability Council (NERC) filed, on behalf of the NERC Interim Market Interface Committee (IMIC), a report entitled "Experiment for Processing Requests for Next-Hour Transmission Service on the OASIS." The filing of the report was directed by the Commission in its Order Approving Experiment for Processing Requests for Next-Hour Transmission Service on the OASIS, issued September 29, 1998, in the above-docketed proceeding. The IMIC requests that the Commission permit the experimental next-hour procedures to go into effect on an interim basis, until electronic procedures for next-hour scheduling are developed and ready for implementation.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14021 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Comments

May 27, 1999.

Take notice that the following hydroelectric application has been accepted for filing and the Commission has established a deadline for interventions and protests:

a. *Type of Application:* Subsequent License.

b. *Project No.:* 3090–008.

c. *Date filed:* January 27, 1999.

d. *Applicant:* Village of Lyndonville Electric Department.

e. *Name of Project:* Vail Power Project.

f. *Location:* On Passumpsic River In Calendonia County, Vermont. The project would include no federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth C. Mason, Village of Lyndonville Electric Department, 20 Park Avenue, PO Box 167, Lyndonville, VT 05851, (802) 626–3366.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell, at robert.bell@ferc.fed.us, or 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All document (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Brief Description of the Project:* The existing project consists of: (1) The 96-foot-long ogee-shaped concrete gravity dam varying in height from 8 to 15 feet and topped with 20⅝-inch wooden flashboards; (2) the impoundment having a surface area of 79 acres, with negligible storage and normal water surface elevation of 688.63 feet msl; (3) the intake structure; (4) the powerhouse containing one generating unit with an installed capacity of 350-kW; (5) the tailrace; (6) a 0.8-mile-long, 2.4-kV transmission line; and (7) appurtenant facilities.

The applicant does not propose any modifications to the project features or operation.

The project would have an annual generation of 1,850 MWh and would be used to provide energy to its customers.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of rule of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing

responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20246. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14016 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6353–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS Metallic Mineral Processing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart LL, Metallic Mineral Processing Plants, OMB Control Number 2060–0016, expiration date 06/30/99. The ICR describes the nature of the information collection and its expected burden and cost, and where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E–Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0982.06.

SUPPLEMENTARY INFORMATION: *Title:* NSPS Subpart LL, Metallic Mineral Processing Plants, OMB Control No. 2060–0016, EPA ICR No. 0982.06, expiration date 6/30/99. This is a request for revision of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Metallic Mineral Processing Plants were proposed on August 24, 1982 and promulgated on February 21, 1984. These standards apply to the following facilities in Metallic Mineral Processing Plants: each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading and unloading station at the mill or concentrator, commencing construction, modification or reconstruction after the date of proposal. The NSPS does not apply to facilities located in underground mines, or to facilities performing the beneficiation of uranium ore at uranium ore processing plants.

Particulate matter (PM) is the pollutant regulated under this Subpart. The standards limit the particulate matter emissions from the stack to 0.05 grams per dry standard cubic meter and to 7% opacity. Those sources which are using a wet scrubbing control device are exempted from the 7% opacity requirement. No affected facility may discharge any process fugitive emissions that exhibit greater than 10% opacity.

Response to the collection of information is mandatory under 40 CFR part 60. Owners or operators of the affected facilities described must make initial notifications, including notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the demonstration of the continuous monitoring system (CMS), and notification of the initial performance test. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with emission standards, and note the operating conditions, flow rate and pressure drop, under which compliance was achieved. Owners of affected facilities are required to install, calibrate, maintain, and operate a continuous monitoring system to measure the change in the pressure of the gas stream through the scrubber and the scrubbing liquid flow rate. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Semiannual excess emissions reports and monitoring systems performance reports will include the exceeded findings of any control device operating parameters, (specified in 40 CFR 60.735, Recordkeeping and Reporting), the date and time of the deviance, the nature and cause of the malfunction (if known) and the corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks or typical repairs/adjustments). These notifications, reports and records are required, in general, of all sources subject to NSPS.

This information is being collected to assure compliance with 40 CFR part 60. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, (as specified in part 60.735, Recordkeeping and Reporting). These notifications, reports and records are required, in general, of all sources subject to NSPS.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 4, 1998. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Metallic Mineral Processing Plants.

Estimated Number of Respondents: 22.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 1,760 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $14,300.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses: Please refer to EPA ICR No. 0982.06 and OMB Control No. 2060–0016 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 27, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–14059 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6353–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Wood Preservatives—Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Wood Preservatives—Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants, OMB control number 2070–0081, Expiration date: July 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1289.05.

SUPPLEMENTARY INFORMATION: *Title:* Wood Preservatives—Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants, (OMB Control No. 2070–0081; EPA ICR No. 1289.05.) Expiring 07/31/99. This is a request for an extension of a currently approved collection.

Abstract: This data collection program, in which participation is voluntary, is designed to provide certification and supporting test data to determine whether wood preserving facilities are protecting their workers from unsafe exposure to airborne inorganic arsenic. If air monitoring tests indicate that levels of airborne arsenic are safe and the facility submits the appropriate test data and certification, the facility can voluntarily exempt itself from the requirement to use personal respirators while pressure treating lumber. The requirement to wear respirators is considered the most burdensome requirement of the pesticide labels, which must be followed once a pesticide, in this case a wood treating formulation, is registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Since the submission to EPA does not contain confidential business information it will not be treated as such. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 5, 1999 (64 FR 509). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 5.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Participating facilities are those that use formulations of inorganic arsenic to treat wood.

Estimated Number of Respondents: 250.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 1284.

Estimated Total Annualized Capital and O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1289.05 and OMB Control No. 2070–0081 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 27, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–14060 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6354–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Risk Management Program Requirements and Petitions To Modify the List of Regulated Substances Under Section 112(r) of the Clean Air Act (CAA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA). This ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument. This ICR combines and renews two previously approved ICRs, Registration and Documentation of Risk Management Plans under section 112(r) of the CAA, ICR No. 1656.03 (expires July 31, 1999, OMB Control No. 2050–0144) and Petitions to modify the list of regulated substances under section 112 (r) of the CAA, ICR No. 1606.02 (expired April 30, 1999, OMB Control No. 2050–0127; OMB granted an extension for this ICR to 7/99).

On February 22, 1999, OMB approved an ICR submitted for amendments to RMP regulations to allow for the submission of claims for confidential business information, ICR No. 1656.05, OMB Control No. 2050–0144. In a separate **Federal Register** document, EPA is proposing to modify the rule listing regulated substances and threshold quantities of the RMP issued under section 112(r) of the CAA.

DATES: Comments must be submitted on or before July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260-2740. by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1656.06

SUPPLEMENTARY INFORMATION: *Title:* Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA); EPA ICR No. 1656.06. This is a request for extension of a currently approved collection.

Abstract: The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental releases. Section 112(r) mandates that EPA promulgate a list of "regulated substances," with threshold quantities and establish procedures for the addition and deletion of substances from the list of "regulated substances". Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). These two rules are codified as 40 CFR part 68. Part 68 requires that sources with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program and submit a risk management plan to EPA by June 21, 1999.

This information collection request addresses the following information requirements: (1) Documenting sources' risk management programs and submitting a source risk management plan (RMP) under CAA section 112(r)(7); and (2) Collecting and submitting information to support petitions to modify the list of regulated substances under CAA section 112(r)(3).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 3, 1999 (64 FR 10293). EPA did not receive any comments.

Burden Statement: This combined ICR covers the period from August 1, 1999, through July 31, 2002. The compliance schedule for the Part 68 requirements, established by rule on June 20, 1996, requires the implementation of source risk management programs and the submission of RMPs by June 21, 1999, for sources meeting the rule's applicability criteria. As a result, the burden to facilities for initial rule compliance, including rule familiarization and program implementation, is assumed to have taken place prior to the period covered by this ICR; these costs were accounted for in ICR 1656.03. Therefore, in this ICR, EPA has accounted for only ongoing program implementation costs (as well as rule familiarization and program implementation costs for new facilities that become subject to these regulations after June 1999).

The public reporting burden will depend on the regulatory program tier into which sources are categorized. In this ICR, the public reporting burden for rule familiarization is estimated to range between 12 to 35 hours per source. The public reporting burden to prepare and submit a new RMP is estimated to take 6.0 hours for retailers to 10.0 hours for non-chemical manufacturers. RMP revisions are estimated to require 3 hours for wholesalers to 8.6 hours for chemical manufacturers. The public record keeping burden to maintain on-site documentation is estimated to range from 2.8 hours for retailers to 279 hours for chemical manufacturers. The public reporting burden for CBI claims is estimated to be 9.5 hours for certain chemical manufacturing sources. The public reporting burden for individuals filing petitions to amend the list of regulated substances is estimated to be 138 hours. The total annual public reporting burden to become familiar with the rule, complete and submit (or revise) the risk management plan, maintain on-site documentation, substantiate claims for confidential business information, and prepare and submit petitions to amend the list of regulated substances is estimated to be about 463,000 hours over three years, or an annual burden of 154,000 hours. The burden estimated for 20 states that may be implementing Part 68 program, is 56,000 hours or an annual burden of 19,000 hours. Therefore, the total burden for all sources and states is estimated to be 519,000 hours for three years, or an annual burden of 173,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Chemical manufacturers, Petroleum refineries, Non-chemical manufacturers, Federal facilities, State and local entities, Farms, Retailers, etc.

Estimated Number of Respondents: 69,800.

Frequency of Response: For the period covered by this ICR, new sources and sources required to submit revisions to their Risk Management Plan (RMP) as stated in 40 CFR 68.190.

Estimated Total Annual Hour Burden: Sources: 154,000 hours; States/Local implementing agency 19,000 hours (estimated 20 states may be seeking delegation).

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $8,800.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing

respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1656.06 and OMB Control No. 2050–0144 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 27, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–14065 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–2]

Designation of Dredged Material Disposal Sites in Long Island Sound, Connecticut and New York. Intent To Prepare an Environmental Impact Statement

AGENCIES: U. S. Environmental Protection Agency (EPA)—Region I, New England and Region II, New York in cooperation with the U.S. Army Corps of Engineers (Corps), New England and New York Districts.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) to consider the potential designation of one or more dredged material disposal sites in the waters of Long Island Sound under section 102(c) of the Marine Protection, Research and Sanctuaries Act (MPRSA) and 40 CFR 230.80 of EPA's regulations under section 404 of the Clean Water Act. The EIS will provide an evaluation of the existing historically used sites known as the Western Long Island Sound Disposal Site, the Central Long Island Disposal Site, the Cornfield Shoals Disposal Site and the New London Disposal Site, as well as additional alternatives including other open water disposal sites, other types of dredged material disposal and management, and the no action alternative.

Purpose

In accordance with EPA's Statement of Policy for Voluntary Preparation of National Environmental Policy Act documents for all ocean disposal site designations (**Federal Register** 62(229): 63334–63336, October 29, 1998), EPA issues this Notice of Intent to prepare an EIS for the Designation of Dredged Material Disposal Sites in Long Island Sound, offshore of Connecticut, and New York.

Summary

Dredged material has been disposed of at the existing sites known as the Western Long Island Sound, the Central Long Island Sound, the Cornfield Shoals and the New London Disposal Sites pursuant to programmatic and site designation EISs released by the Corps in 1982 and 1991. This activity has been regulated in different ways at different times depending on the status of applicable law and policy. EPA and the Corps have identified a likely need to continue the marine disposal of dredged material in the Long Island Sound area. Therefore, the two agencies have decided to consider the continued use of the above-listed existing sites and their designation as dredged material disposal sites under section 102(c) of the MPRSA. Other alternatives will also be evaluated, including other open water disposal sites, other disposal and management options, and the no action alternative. Designation of a site does not by itself authorize or result in disposal of any particular material, it only serves to make the designated site a disposal option available for consideration in the alternatives analysis for each individual dredging project in the area.

The EPA and the Corps, have entered an agreement to undertake designation of dredged material disposal sites in Long Island Sound under section 102(c) of the MPRSA. The EPA has the responsibility of designating sites under section 102(c) of the Act and 40 CFR 228.4 of its regulations. EPA and the Corps will also consider making an advanced identification under 40 CFR 230.80 of EPA's Clean Water Act section 404 regulations for any site that may be designated. The Clean Water Act and the MPRSA come into play because the waters of Long Island Sound are inland waters, but section 106(f) of the MPRSA extends certain aspects of the MPRSA into Long Island Sound for certain projects.

An EIS will evaluate the four current sites used in the Sound as well as other sites for, and means of, disposal and management, including the no action alternative. The EIS will support the EPA's final decision on whether one or more dredged material disposal sites will be designated under the MPRSA identified in advance under 40 CFR 230.80. The EIS will include analysis applying the five general and 11 specific site selection criteria for designating ocean disposal sites presented in 40 CFR 228.5 and 228.6, respectively. The Corps, New England District, has prepared a study reviewing existing data for the existing sites relative to these criteria and this study will serve as a starting point for further evaluation of the existing sites in the EIS.

Need for EIS

On May 7, 1974, and as amended in October 29, 1998, the EPA published a Statement of Policy on Environmental Impact Statements (EISs). Section (1) (d) (2) of that policy specifies that EISs will be prepared in connection with ocean disposal site designations under section 102 (c) of the MPRSA. Evaluation of site designation, and advanced identification under 40 CFR 230.80, will serve to clarify the availability of particular sites for consideration as dredged material disposal options over the long term.

Alternatives

In evaluating the alternatives, the EIS will identify and evaluate locations within the Long Island Sound study area that are best suited to receive dredged material suitable for open water marine disposal. At a minimum, the EIS will consider various alternatives including:

- No-action (i.e., no designation of any sites);
- Designation of one or more of the existing open water sites;
- Designation of alternative open water sites identified within the study area that may offer environmental advantages to the existing sites; and
- Identification of other disposal and/or management options, either in or out of the water.

Scoping

The Environmental Protection Agency—New England Region and the Corps of Engineers, New England District, will hold public scoping meetings on June 15, 1999 at the State University of New York, Stony Brook Union Auditorum,100 Nicolls Road, Stony Brook , June 16, 1999 and Groton Inn & Suites, Main Room Left, 99 Goldstar Highway, Route 184, Groton Connecticut; and June 23, 1999 at Westin Stamford Hotel, Commodore Vanderbilt, One First Stamford Place, Stamford, CT. For all meetings, registration will be from 6–7 p.m.; the meetings will be between the hours of 7 and 10 p.m. Details of the history of the project and the alternatives to be considered will be presented. The

public is invited to attend and identify issues that should be addressed in the EIS.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Ann Rodney, U.S. EPA—New England Region, One Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023. (617) 918–1538. *RODNEY.ANN@EPA.GOV*

Please contact Ann Rodney should you have special needs (sign language interpreters, access needs) at the above address or our TDY1 (617) 918–1189.

ESTIMATED DATE OF THE DRAFT EIS RELEASE: Fall 2001.

Responsible Officials:

John P. DeVillars,

Regional Administrator, EPA—New England.

Date: May 28, 1999.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 99–14093 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00271; FRL–6062–1]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held June 14–16, 1999, in Washington, DC. At the meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Hydrogen sulfide, perchloromethyl mercaptan, tetrachloroethylene, and toluene. There will also be a discussion of the review and comment by the National Academy of Sciences/National Research Council Subcommittee on certain interim AEGL values previously published in the **Federal Register** issue of October 30, 1997 (62 FR 58840–58851) (FRL–5737–3). These chemicals include: Aniline, arsine, chlorine, 1,2-dichloroethylene, 1,1- and 1,2-dimethyl hydrazine, fluorine, hydrazine, methyl hydrazine, and phosphine.

DATES: Meetings of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on June 14, 1999; from 8 a.m. to 5 p.m. on June 15, 1999; and from 8 a.m. to 1 p.m. on June 16, 1999.

ADDRESSES: The meetings will be held in the Old Post Office Building, Room M09, 1100 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments, section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00271. The official record consists of any documents that are specifically referenced in this action, any public comments that are received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Meeting Procedures

For additional information on the scheduled meetings, the agendas of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meetings, contact the DFO listed under the "FOR FURTHER INFORMATION CONTACT" section.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meetings as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for September 14–16, 1999. The NAC/AEGL Committee is currently planning to address AEGL values for the following chemicals: Bromine, ethylene oxide, methylene chloride, methylisocyanate, oleum, Otto fuel II (propylene glycol dinitrate major component), sulfuric acid, sulfur trioxide, tetramethyl lead, trichloroethane, and trichloroethylene.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: May 26, 1999.

Joseph A. Carra,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–14042 Filed 5–28–99; 3:16 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34185; FRL–6076–2]

Availability of the Chlorothalonil Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and starts a 60-day public comment period of the Reregistration Eligibility Decision (RED) document for the active ingredient chlorothalonil. The RED for this chemical is the Agency's formal regulatory assessment of the health and environmental database of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the RED decisions must be submitted by August 2, 1999.

ADDRESSES: Three copies of comments identified with the docket control number "OPP–34185" and the case number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to the docket on the first floor (Room 119), Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION" of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection on the first floor (Rm. 119) at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED document should be directed to the appropriate point-of-contact:

Chemical Name	Case No	Point of Contact	Telephone No.	e-mail Address
Chlorothalonil	0097	Jill Bloom	703–308–8019	Bloom.Jill@epamail.epa.gov

To request a copy of the above listed RED document, or the RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, first floor (Rm. 119), at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via EPA's website at: http://www.epa.gov/REDs.

II. Reregistration Eligibility Decision

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticidal active ingredient chlorothalonil. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting a reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of chlorothalonil is substantially complete.

All registrants of products containing the above listed active ingredient have been sent the chlorothalonil RED document and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency.

III. Public Record and Electronic Submission

The official record for this notice, as well as the public version, has been established for this notice under docket control number "OPP–34185" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34185). Electronic comments on this

notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection. Pesticide. Chlorothalonil.

Dated: April 29, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–14068 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–AR/A; FRL–6084–2]

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Arkansas's Authorization Application; Extension of Public Hearing Request Period; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of May 19, 1999 (64 FR 27266) (FRL–6078–1), EPA announced that the State of Arkansas had submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). The notice announced a 45–day public comment period and an opportunity to request a public hearing on this application. The notice incorrectly listed the public hearing date. This notice corrects the date of the public hearing. In FR Doc. 99–12590, on page 27266, in the third column, first full paragraph under the "DATES" caption, the two references to the public hearing date of "May 21, 1999" should read "June 11, 1999". This notice also extends the date for submission of requests for a public hearing to June 4, 1999. If a public hearing is not requested, this meeting time and place will be canceled. Therefore, individuals are advised to verify the status of the public hearing by contacting Jeffrey Robinson (name, telephone number, and address are provided in the "FOR FURTHER INFORMATION CONTACT" section of this notice) after June 4, 1999, and before the June 11, 1999 public hearing date.

FOR FURTHER INFORMATION CONTACT: Jeffrey Robinson, Regional Lead Coordinator, 1445 Ross Avenue, Suite 1200, 6PD-T, Dallas, TX 75202–2733. Telephone: 214–665–7577, e-mail address: robinson.jeffrey@epa.gov.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: May 24, 1999.

Robert E. Hanneschlager,

Acting Division Director, Multimedia Planning and Permitting, Region VI.

[FR Doc. 99–14067 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 7, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14133 Filed 5–28–99; 5:05 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement [99147]]

National Institute for Occupational Safety and Health; A Cooperative Agreement for Research, Prevention Education, and Clinical Services in Occupational Safety and Health Clinics

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)1999 funds for a cooperative agreement program for research, prevention education, and clinical services in occupational safety and health. This program addresses the "Healthy People 2000" priority area(s) for Occupational Safety and Health.

The purpose of the program is to enhance the public health capabilities, and to provide infrastructure support for the development of an academic clinical occupational health network to encourage clinical epidemiology, health services research, and enhanced educational intervention effectiveness research, as well as to develop clinical information relevant to improving medical screening and surveillance for specific occupational hazards and to conduct outreach education.

B. Eligible Applicants

This program is directed only to national organizations of health professionals that provide occupational safety and health services for their defined membership and constituencies.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 1999 to fund one award. It is expected that the award will begin on or about September 29, 1999, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate is subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient

will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and maintain a national clinical database, consisting of exposure and outcome information, for both surveillance purposes and for case identification.

2. Conduct periodic review of the database.

3. Provide Occupational health educational outreach in the health professions and primary care practitioners, with emphasis on those providing care to medically underserved populations.

4. Develop, maintain, and distribute to members a referral listing of full-service occupational clinics at which individual patients or small employers may seek high quality, multi-disciplinary, patient-centered occupational health services practiced by clinicians who are additionally committed to a public health model for prevention.

5. Work to expand into geographically and medically under-served areas. Identify potential sources of occupational health care in these areas and establish mentoring relationships with the nearest "full-service" clinic, to include educational and referral ties, and capacity-building.

6. Develop and enhance an internet listserv that facilitates sharing clinical information without breaching medical confidentiality.

7. Develop and disseminate information regarding clinical practices on occupational safety and health.

8. Develop information (such as documents) that provides needed information for clinicians engaged in the practice of occupational medicine.

B. CDC/NIOSH Activities

1. Provide technical assistance on all aspects of recipient activities.

2. Provide expertise in epidemiology, industrial hygiene, ergonomics and safety engineering for educational and capacity building endeavors.

3. Provide technical advise on identifying topics and targets for the outreach activity or other recipient activities.

E. Application Content

Competing Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8 ½" by 11" paper, with at least 1" margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets.

F. Submission and Deadline

Letter of Intent (LOI)

The letter of intent must be submitted on or before June 16, 1999, to: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99147, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before July 16, 1999, submit the application to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99147, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Background and Need (20 points):

The extent to which the applicant and its membership demonstrates experiences and capability in conducting this program. The extent to which a description of current and previous related experiences in terms of a national occupational clinical network, evaluation capability and coordination activities and demonstrated capacity to conduct the program.

2. Goals and Objectives (20 points):

The extent to which the applicant has included goals which are relevant to the purpose of the project and feasible to be accomplished during the project period, and the extent to which these goals are specific, and measurable. The extent to which the applicant has included objectives which are feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal. The extent to which the objectives are specific, time-phased, and measurable.

3. Staffing (25 points)

The extent to which proposed staffing, organizational structure, staffing qualifications and experience, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate the applicant's ability to carry out the objectives of the program and show demonstrated experience in managing a national clinical database.

4. Methods (20 points)

The extent to which the proposed methods and activities can achieve the proposed objectives, consistent with the purposes of this announcement. The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities.

5. Evaluation (15 points)

The extent to which the applicant includes plans to evaluate the attainment of the proposed objectives. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

6. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and

consistent with the intended use of funds.

7. Human Subjects (Not Scored)

If human subjects will be involved, the extent to which the applicant describes how will they be protected, i.e., describe the review process which will govern their participation.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I (included in the application package).

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–20 Conference Grants

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 20(a) and 22(e) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a) and 671(e) (7)]. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

The application kit for 99147 can also be downloaded via the CDC home page on the Internet: *http://www.cdc.gov*

Please refer to Program Announcement 99147 when you request information. To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888-6874). You will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 99147. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained by contacting: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99147, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, telephone (770) 488–2723, E-mail address: slh3@cdc.gov.

For program technical assistance, contact Gregory Wagner, M.D., National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC) Division of Respiratory Disease Studies, 1095 Willowdale Road, P–B121, Morgantown, West Virginia 26505–2888, Telephone (304) 285–5749, e-mail grw3@cdc.gov.

Dated: May 27, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14002 Filed 6–2–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Prevention Research Initiative—Health Communications Research Grants

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Prevention Research Initiative—Health Communications Research Grants, Program Announcement #99107, meeting.

Times and Dates: 8:30 a.m.–9:15 a.m., July 21, 1999 (Open). 9:15 a.m.–4:30 p.m., July 21, 1999 (Closed). 8:30 a.m.–4:30 p.m., July 22, 1999 (Closed). 8:30 a.m.–4:30 p.m., July 23, 1999 (Closed).

Place: Atlanta Marriott North Central Hotel, 2100 Century Boulevard N.E., Atlanta, Georgia 30345.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Acting Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99107.

Contact person for more information: Alan Janssen, M.S.P.H., Office of Communication, CDC, 1600 Clifton Rd., m/s D24, Atlanta, Georgia 30043. Telephone 404/639–2916, fax 404/639–3942, e-mail axj3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 27, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–14003 Filed 6–2–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Genetics of Congenital Hearing Impairment; Workshop

The Division of Child Development, Disability, and Health (DCDDH) in the National Center for Environmental Health (NCEH) at the Centers for Disease Control and Prevention (CDC) announces the following workshop.

Name: A workshop entitled, The Genetics of Congenital Hearing Impairment, jointly sponsored by the Developmental Disabilities Branch, DCDDH, NCEH, CDC and Gallaudet University.

Time and Date: 8 a.m.–5 p.m., June 7, 1999.

Place: The Centers for Disease Control and Prevention, Chamblee Facility, Room 2201/2202, Building 102, 4770 Buford Highway, NE, Atlanta, Georgia 30341.

Status: Open for participation by anyone with an interest in Genetics of Congenital Hearing Impairment, limited only by the space available. Persons wishing to participate must e-mail their request to *higen@cdc.gov* and indicate if they will attend or if they will participate through a conference call on Eastern time. The conference telephone bridge number for Federal participants is 404/639–4100. The conference telephone bridge number for non-Federal participants is 800/713–1971. The Conference Code number is 486602. For security and confidentially purposes, participants will not be connected to a conference call without a valid conference code number. The conference name is Genetics of Congenital Hearing. If you have a problem during your conference, you may press *0 at anytime to signal the attendant. If you have questions, about the technical operations of the teleconference equipment please call 404/639–7550. Each participant will have the responsibility to call in to connect to the conference call.

Matters To Be Discussed: The objectives for the workshop are: (1) To discuss the public

health role and significance in population-based research of the genetics of congenital hearing impairment, (2) to develop strategies for population-based study of genetics of congenital hearing impairment, (3) to exchange ideas on the ethical and policy implications of public health research in the genetics of congenital hearing impairment, (4) to build partnerships between federal, state, academic, and private organizations to address activities for population genetics in congenital hearing impairment.

The workshop will provide a forum to discuss the strengths and limitations of several very specific study approaches that could be used to document the needed population-based research. We are particularly interested in strategies that involve collaboration with state-based Early Hearing Detection and Intervention (EHDI) programs. We are particularly interested in the perspectives of genetic ethicist; the deaf and hard-of-hearing communities; and state and local participants in universal newborn hearing detection and intervention programs.

Contact Persons for More Information: Kim Van Naarden, M.P.H., telephone 770/488–7184, or Marilyn Deal, telephone 770/488–7695, Division of Child Development, Disability, and Health, NCEH, CDC, 4770 Buford Highway, NE, Mailstop F–15, Atlanta, Georgia 30341. Fax 770/488–7361.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 26, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13981 Filed 6–2–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: State Plan for Foster Care and Adoption Assistance—Title IV–E.

OMB No.: 0980–0141.

Description: A State plan for foster care and adoption assistance is required by section 471 of the Social Security Act from any State wishing to claim Federal financial participation for foster care and adoption assistance. States may use a preprinted format or may develop their own format which meets the requirements of the law. The plan is submitted only once and amended as necessary. Our experience is that a State will amend a plan once every 4 years; approximately 12 per year.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan for Foster Care and Adoption Assistance	12	1	15	180

Estimated Total Annual Burden Hours: 180.

In compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 27, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–13984 Filed 6–2–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99C–1455]

Genzyme Surgical Products Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genzyme Surgical Products Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 as a color additive in absorbable sutures prepared from homopolymers of glycolide for general surgery. The petitioner also proposes that the nomenclature polyglactin 910 (glycolic-lactic acid polyester) be revised to the generic nomenclature-copolymers of 90 percent glycolide and 10 percent L-lactide.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1)), notice is given that a color additive petition (CAP 9C0266) has been filed by Genzyme Surgical Products Corp., 600 Airport Rd., Fall River, MA 02720. The petition proposes to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 as a color additive in absorbable sutures prepared from homopolymers of glycolide for general surgery. The

petitioner also proposes that the nomenclature polyglactin 910 (glycolic-lactic acid polyester) be revised to the generic nomenclature 90 percent glycolide and 10 percent L-lactide.

The agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 5, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13980 Filed 6–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before July 6, 1999.

ADDRESSES: Send your comments on the requirement to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, N.W., Washington, D.C. 20503, and to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703)358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) has submitted a request to OMB to renew its approval of the collection of information for the Mourning Dove Call-Count Survey. We are requesting a 3-year term of approval for this information collection activity. A previous 60-day notice on this information collection requirement was published in the February 16, 1999 (64 FR 7660) **Federal Register** inviting public comment. No comments on the previous notice were received as of April 20, 1999. This notice provides an additional 30 days in which to comment on the following information.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0010.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird populations. The Mourning Dove Call-Count Survey is an essential part of the migratory bird management program. The survey is a cooperative effort between us and State wildlife agencies. It is conducted each spring by State and Service biologists to provide the necessary data to determine the population status of the mourning dove. The survey results are then used to help guide us and the States in the annual promulgation of regulations for hunting mourning doves. Survey data are also used to plan and evaluate dove management programs and provide specific information necessary for dove research. If this survey were not used, there would be no way to determine the population status of mourning doves prior to setting regulations.

Title: Mourning Dove Call-Count Survey.

Approval Number: 1018–0010.

Service Form Number: 3–159.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Burden Hours: The reporting burden is estimated to average 2.5 hours per respondent. The Total Annual Burden hours is 2,655 hours.

Total Annual Responses: About 1,062 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: May 5, 1999.

Daniel M. Ashe,

Assistant Director for Refuges and Wildlife.

[FR Doc. 99–14037 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum

consideration, you must submit comments on or before July 6, 1999.

ADDRESSES: Send your comments on the requirement to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, N.W., Washington, D.C. 20503, and to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703) 358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) has submitted a request to OMB to renew its approval of the collection of information for the North American Woodcock Singing Ground Survey. We are requesting a 3-year term of approval for this information collection activity. A previous 60-day notice on this information collection requirement was published in the February 16, 1999 (64 FR 7660) **Federal Register** inviting public comment. No comments on the previous notice were received as of April 20, 1999. This notice provides an additional 30 days in which to comment on the following information.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0019.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird populations. The North American Woodcock Singing-Ground Survey is an essential part of the migratory bird management program. This survey is conducted annually by State and Federal conservation agencies to provide the necessary data to determine the population status of the woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the woodcock. The information is used primarily by us to develop recommendations for hunting regulations. It is also used by us, State conservation agencies, University associates and other interested parties for various research and management projects. Without information on the population's status, we might promulgate hunting regulations that were too liberal thus causing harm to the woodcock population, or too conservative, thus unduly restricting recreational opportunities afforded by woodcock hunting.

Title: North American Woodcock Singing Ground Survey.

Approval Number: 1018–0019.

Service Form Number: 3–156.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Burden Hours: The reporting burden is estimated to average 0.67 hours per respondent. The Total Annual Burden hours is 500 hours.

Total Annual Responses: About 750 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: May 5, 1999.

Daniel M. Ashe,

Assistant Director for Refuges and Wildlife.

[FR Doc. 99–14038 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Maytag Trail, Douglas County, Colorado

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Douglas County has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zopos hudsonius prebei*), federally listed as threatened, and loss and modification of its habitat associated with construction and use of a pedestrian and equestrian trail in Douglas County, Colorado. The permit would be in effect for 3 years.

We announce the receipt of the County's incidental take permit application that includes a proposed Low-Effect Habitat Conservation Plan for the Peble's meadow jumping mouse for the Maytag trail project. The proposed Habitat Conservation Plan is available for public comment. It fully describes the proposed project and the measures the County would undertake to minimize and mitigate project impacts to the Preble's meadow jumping mouse. We have made a preliminary determination that the County's Plan qualifies as a "low-effect" habitat conservation plan eligible for categorical exclusion under the National Environmental Policy Act. We explain the basis for this determination in an Environmental Action Statement, which is also available for public review. This notice is provided pursuant to section 10 (c) of the Act.

DATES: Written comments on the permit application and Plan should be received on or before July 6, 1999.

ADDRESSES: Comments regarding the permit application or the plan should be addressed to LeRoy Carlson, Field Supervisor, Fish and Wildlife Service, Colorado Field Office, P.O. Box 25486, DFC, Denver, CO 80225–0207. Comments may be sent by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the habitat conservation plan and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of a species listed as endangered or threatened, respectively (take is defined under the Act, in part, as to kill, harm, or harass a federally listed species). However, we may issue permits to authorize "incidental take" (defined by the Act as take that is incidental to, and not the purposed of, the carrying out of an otherwise lawful activity) of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The Maytag Trail would be located on Douglas County open space property. The Maytag Trail is a component of a regional trail system. The proposed trail and associated facilities will consist of:

A main trail 8 feet wide and about 5,820 feet long;

Two trail loops 4 feet wide and about 3,030 feet long;

A trail overlook encompassing about 0.25 acres; and

A trailhead consisting of about 1.4 acres.

The trail surface will be soft (crusher fines or crushed recycled concrete) or native surface as appropriate for the trail segment considering use and drainage.

Only one federally listed species, the threatened Preble's meadow jumping mouse occurs on site and has the potential to be adversely affected by the proposed trail project. To minimize and mitigate impacts that may result from incidental take of the mouse, the Country has agreed to: (1) coordinate with the Colorado Division of Wildlife to design and align the trail to minimize potential impacts to the mouse; (2) plant 20 gambel oaks (south gulch crossing) and 25 coyote willows (north gulch crossing) where the trail crosses mouse habitat to provide additional cover in the vicinity of the trail; (3) provide only in-kind services to the Colorado Division of Wildlife to assist them in determining the effects of the trail on the mouse; (4) manage the riparian areas of the property for mouse conservation; and (5) limit trail use and construction to daylight hours when the mouse is inactive.

We have made a preliminary determination that the County's Plan qualifies as a "low-effect" habitat conservation plan as defined by our Habitat Conservation Planning Handbook (November 1996). Low-effect habitat conservation plans are those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. The Maytag Trail Plan qualifies as a low-effect habitat conservation plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the mouse and its habitat. The County's management of the property as open space will likely have beneficial effects to the mouse. We do not anticipate significant direct or cumulative effects to the mouse resulting from construction or use of the trail.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The Project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or Tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have preliminarily determined that approval of the Plan as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. We will consider public comments in making a final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's meadow jumping mouse in conjunction with the construction and use of the Maytag Trail. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: May 26, 1999.

Terry T. Terrell,

Deputy Regional Director, Region 6.

[FR Doc. 99–14004 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the First Amendment to the Tribal/State Compact for Class III Gaming between the Kalispel Tribe of Indians and the State of Washington, which was executed on March 4, 1999.

DATES: This action is effective on June 3, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 20, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–13999 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of minor changes to a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is updating a system of records managed by the Bureau of Reclamation (Reclamation). The changes are to the

system of records "Lower Colorado River Well Inventory, WBR–48" which is published in its entirety below.

DATES: These actions are effective June 3, 1999.

FOR FURTHER INFORMATION CONTACT: For information regarding "Lower Colorado River Well Inventory, WBR–48" contact Mr. Jeffrey Addiego, Hydraulic Engineer, Boulder Canyon Operations Office at (702) 293–8525. For general information regarding Reclamation's Privacy Act program, contact Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: When originally published in the **Federal Register** this system of records was identified with an organization prefix of "BOR" (e.g., BOR–48). The content of the system of records is the same; the prefix on this system was changed to reflect organizational changes.

This system of records notice was previously published in the **Federal Register** on April 7, 1995 (60 FR 17805). This publication revises the system location, storage, and the system manager and address. All other changes proposed are editorial in nature.

Murlin Coffey,

Manager, Property and Office Services.

INTERIOR/WBR–48

SYSTEM NAME:

Lower Colorado River Well Inventory.

SYSTEM LOCATION:

U.S. Geological Survey, 520 North Park Avenue, Suite 221, Tucson, Arizona 85719 (paper records are temporarily stored, waiting for entry into the U.S. Geological Survey system, at Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, Arizona 85364).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or their lessees who have at least one well on their property that may pump mainstream Colorado River water. Note: This system also contains records pertaining to corporations and other public entities. Only those records relating to individuals are covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, and telephone numbers of covered individuals; Assessor Parcel Numbers; contract numbers; categories of uses to which the water is put; methods of disposal of unconsumed portions of water pumped; volumes of water pumped; physical characteristics and locations of wells; water purveyor, municipal, or other administrative boundaries within which wells are located; and water levels of wells located in hydraulically connected areas adjacent to the flood plain.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of June 17, 1902, (32 Stat. 388, 43 U.S.C. 391), as amended and supplemented; the Colorado River Front Work and Levee System Adjacent to Yuma Project Act of March 3, 1925, (Pub. L. 79–469, 43 Stat. 1186, 1198), as amended and supplemented; the Boulder Canyon Project Act of December 21, 1928, (45 Stat. 1057, 43 U.S.C. 617), as amended and supplemented; the Reclamation Project Act of August 4, 1939, (53 Stat. 1187, 43 U.S.C. 485); the Colorado River Basin Project Act of September 30, 1968, (82 Stat. 885); the Reclamation Reform Act of October 12, 1982, (96 Stat. 1261, 43 U.S.C. 390); and the Supreme Court opinion rendered June 3, 1963, (373 U.S. 546), and Decrees entered March 9, 1964, (376 U.S. 340), January 9, 1979, (439 U.S. 419), and April 16, 1984, (466 U.S. 144), in *Arizona* v. *California et al.*

PURPOSE(S):

The primary purposes of the records are: (a) To assist in the administration and negotiation of water use contracts with individual landowners, lessees, or other classes of water users; and (b) to support the annual compilation and publication of records of consumptive use of mainstream Colorado River water.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure outside the Department of the Interior may be made to: (1) The States of Arizona, California, and Nevada to assist them in administering their apportionments of mainstream Colorado River water; (2) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (3) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (4) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (5) A congressional office in response to an inquiry to that office by the individual to whom the records pertain.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 168a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in automated form on computer databases and in manual form in file folders at the U.S. Geological Survey, and in manual form in file folders at the Bureau of Reclamation.

RETRIEVABILITY:

Records stored in computer databases will be retrievable by any record category. Records stored in manual files will be retrievable by name of property owner or contract holder.

SAFEGUARDS:

Data will be maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and computerized records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules, records will be retained in the Bureau of Reclamation for 10 years, relocated to the Federal Records Center and retained there for an additional 75 years, and then transferred to the National Archives and Records Administration for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Geological Survey (NWIS), 520 North Park Avenue, Suite 221, Tucson, Arizona 85719; and/or Bureau of Reclamation, Yuma Area Office, 7301

Calle Agua Salada, Yuma, Arizona 85364.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, state and county well permits, land ownership and water use records and databases, and the U.S. Geological Survey Ground Water Site Inventory database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–14006 Filed 6–2–99; 8:45 am]
BILLING CODE 4310–64–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of minor changes to 14 systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes minor changes to 14 systems of records managed by the Bureau of Reclamation (Reclamation). These notices are published in their entirety below.

DATES: These actions are effective June 3, 1999.

FOR FURTHER INFORMATION CONTACT: For information regarding these systems of records contact Mr. Stan Seigal, Chief Realty Officer, Policy Office at (303) 445–2915. For general information regarding Reclamation's Privacy Act program, contact Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: Recent Privacy Act Compilations list the following systems of records with a prefix of "Reclamation" (e.g., Reclamation-13). When originally published in the **Federal Register** these systems of records were identified with an organization prefix of "LBR" (e.g., LBR–13). The content of the systems of records is the same; the prefixes on these systems were changed to reflect organizational changes.

The system of records notices being revised and the reason for revision are listed below:

This publication revises the system locations; a "purpose(s)" section has been added which was not included in the original notices; the routine uses, system manager's titles, and addresses have been updated. All other changes are editorial in nature.

"Irrigation Management Service, WBR–13," previously published in the **Federal Register** on April 11, 1977 (42 FR 19098); "Land Exchange, WBR–14," previously published in the **Federal Register** on April 11, 1977 (42 FR 19098); "Land Settlement Entries, WBR–15," previously published in the **Federal Register** on April 11, 1977 (42 FR 19099); "Lands—Leases, Sales, Rentals, and Transfers, WBR–17;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19099); "Mineral Location Entries, WBR–19;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19100); "Oil and Gas Applications, WBR–22;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19101); "Real Property and Right-of-Way Acquisitions, WBR–28;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19103); "Right-of-Way Applications, WBR–29;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19104); "Special Use Applications, Licenses, and Permits, WBR–32;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19105); "Trespass Cases, WBR–37;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19106); "Water Right Applications, WBR–38;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19107); "Water Rights Acquisition, WBR–39;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19107); "Water Sales and Delivery Contracts, WBR–40;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19107); and "Permits, WBR–41;" previously published in the **Federal Register** on April 11, 1977 (42 FR 19108).

Murlin Coffey,

Manager, Property and Office Services.

INTERIOR/WBR–13

SYSTEM NAME:

Irrigation Management Service.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving irrigation waters from Bureau of Reclamation constructed facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer input, storage, and output concerning water usage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 371, et seq.

PURPOSE(S):

The primary use of the record is to assist farmers on Federal projects in the selection of the proper amounts and timing of irrigation deliveries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible

for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On computer media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for computer and manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/WBR–14

SYSTEM NAME:

Land Exchange.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual land exchange for Bureau of Reclamation purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

General subject of exchange of certain unpatented or private land by certain qualified applicant's whose lands have been determined to be insufficient to support a family and to exchange lands for the purpose of relocating acquired or improved Government properties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 14, Reclamation Project Act, 1939 (53 Stat. 1187) and 43 U.S.C. 371, *et seq.*

PURPOSE(S):

The primary uses of the records are to maintain a history of land exchange and to protect individual rights.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders by appropriate file codes.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for computer and manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information comes from the individual as well as the office involved.

INTERIOR/WBR–15

SYSTEM NAME:

Land Settlement Entries.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual applicants who wish to settle on lands on Federal Bureau of Reclamation Projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Applications including information as to character of individual applicant, veteran preference rights,

farming experience, assets (financial), health, appeals, and data concerning homesteading and applicant meeting requirements; (2) Notice to Land Office that homesteader has fulfilled requirements; and (3) Data with Department of Agriculture as to applicability for loan.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Section 4, Fact Finders Act of December 5, 1924, (43 Stat. 702); (2) section 3, The Reclamation Act of June 17, 1902, (1093–32 Stat. 388 and amendments); (3) Patents to Disabled Soldier Entrymen Act of March 1, 1921, (102–41 Stat. 1202); (4) Amend Patents to Disabled Soldier Entrymen Act of April 7, 1921, (125–42 Stat. 492 and amendments); (5) Section 44, The Omnibus Adjustment Act (44 Stat. 636); and (6) Farm Unit Exchange Act of August 13, 1953, (428–67 Stat. 566).

PURPOSE(S):

The primary uses of the records are to administer the settler program and to determine if applicant is qualified to farm unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.63.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/WBR–17

SYSTEM NAME:

Lands—Leases, Sales, Rentals, and Transfers.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who are applicants to lease, purchase, rent, or transfer lands; and (2) Individuals who are successful applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice of Availability of lands (advertising) requests, contracts, renewals, and other supporting data concerning the sale, lease, rental, or transfer of Bureau of Reclamation-owned lands.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Taylor Grazing Act of June 28, 1934; (2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; (3) Sale of Unproductive Public Land Act of May 16, 1930; (4) Section 4 of the Columbia Basin Project Act of March 10, 1943; (5) Disposal of Small Tracts Act of March 31, 1950; (6) Federal Property and Administrative Act of 1949 and amendments; (7) Sale of Surplus Acquired Lands Act of February 2, 1911; (8) Sale of Surplus Improved Public Lands Act of May 20, 1920; (9) Reclamation Project Act of 1939; and (10) Reappraisal of Unsold Town Lots Act of June 11, 1910.

PURPOSE(S):

The primary uses of the records are to (a) make known to interested individuals lands available for lease, sale, or rental; and (b) administer leases, sales, rentals, and transfers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we

become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, county recorder, title companies, surveyors, and appraisers.

INTERIOR/WBR–19

SYSTEM NAME:

Mineral Location Entries.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual who has mineral entry on land Bureau of Reclamation needs for reclamation purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data concerning entry and final disposition of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Vacation of Withdrawals of Public Lands Containing Minerals Act of April 23, 1932, 47 Stat. 136.

PURPOSE(S):

The primary uses of the records are to determine disposition of claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/WBR–22

SYSTEM NAME:

Oil and Gas Applications.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed for oil and gas leases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. 181, *et seq.* Applications are identified by Bureau of Land Management serial numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 181, *et seq.*, and 44 U.S.C. 3101.

PURPOSE(S):

The primary uses of the records are for proof and purpose of applications and land status information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to

respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with safeguards meeting the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

INTERIOR/WBR–28

SYSTEM NAME:

Real Property and Right-of-Way Acquisitions.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individual landowners from whom the Bureau of Reclamation has purchased or condemned land, exercised reserved right-of-way, or received donation deeds; or (2) from whom the Bureau of Reclamation is in the process of acquiring land or interests therein.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains records concerning acquisition of land or right-of-way, including correspondence, appraisal reports, land descriptions, releases of prior liens, contracts to purchase, agreements between landowners and the Bureau of Reclamation, Notice of Exercise of Right-of-Way, payment data, copies of condemnation actions, and other supporting data required in specific transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of 1902, as amended, and acts supplemental thereto; 43 U.S.C. 371, *et seq.*; (2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4651, *et seq.*; and (3) Rights of Way Reserved to United States for Canals and Ditches Act of August 30, 1890, (26 Stat. 391), as amended.

PURPOSE(S):

The primary uses of the records are to maintain record of ownership of lands and rights-of-way acquired for Reclamation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure outside the Department of the Interior may be made (1) to transfer administration of the land for transmission of power, recreation, fish and wildlife activities, and other purposes as required to another Federal agency, State, and local government; (2) to transmit deeds to local County government to record ownership data; (3) to furnish copy of deed to appropriate irrigation district operating the irrigation system to advise right-of-way available in operating the system; (4) to transmit documents to Department of Justice for title opinion; (5) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (6) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (7) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (8) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual landowners, county recorders, and title companies.

INTERIOR/WBR–29

SYSTEM NAME:

Right-of-Way Applications.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for right-of-way may or may not be identified by Bureau of Land Management serial numbers, land description, value, and instrument of ownership.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for right-of-way.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of 1902, as amended, and acts supplementary thereto, 43 U.S.C. 371, et seq.

PURPOSE(S):

The primary uses of the records are to maintain land status information and proof of right-of-way permits for legal purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, county recorders, and title companies.

INTERIOR/WBR–32

SYSTEM NAME:

Special Use Applications, Licenses, and Permits.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who secure licenses and permits concerning Bureau of Reclamation-owned facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, licenses, permits, and miscellaneous supporting data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of 1902, as amended, and acts supplemental thereto, 43 U.S.C. 371, *et seq.*

PURPOSE(S):

The primary uses of the records are (a) to administer Bureau of Reclamation-owned lands and facilities; and (b) to allow individuals, firms, or other Government entities to use Bureau of Reclamation lands for special limited uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative

body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

INTERIOR/WBR–37

SYSTEM NAME:

Trespass Cases.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual who trespasses on Government-owned property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence regarding trespass, interim problems, and final disposition of case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of 1902, as amended, and acts supplementary thereto, 43 U.S.C. 371, *et seq.*

PURPOSE(S):

The primary uses of the records are to document final disposition of trespass cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under the specific exemption authority provided by 5 U.S.C 552a(k)(2), the Department of the Interior has adopted a regulation, 43 CFR 2.79(b), which exempts this system from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I); and (f); and the portions of 43 CFR, part 2, subpart C which implement these provisions. The reasons for adoption of this regulation are set out at 40 FR 37217 (August 26, 1975).

INTERIOR/WBR–38

SYSTEM NAME:

Water Right Applications.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual homesteaders who are eligible to receive water right certificates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual water right applications and supporting papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of 1902, as amended, and acts supplementary thereto, 43 U.S.C. 371, *et seq.*; and (2) Patents and Water-Right Certificates Act of August 9, 1912, (37 Stat. 265), and any acts amendatory or supplementary thereto.

PURPOSE(S):

The primary uses of the records are (a) for administration and negotiation of water right applications with individual landowners; and (b) to entitle purchaser of water right certificate to final water right certificate upon completion of statutory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/WBR–39

SYSTEM NAME:

Water Rights Acquisition.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Material pertaining to acquisition by the Bureau of Reclamation, by purchase or donation, etc., of water rights by others.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual water service and agreements on diversion of water and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of 1902, (Section 8, 43 U.S.C. 372, 383), as amended, and acts supplementary thereto.

PURPOSE(S):

The primary uses of the records are for administration and negotiation of individual water service and agreements on division of water.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

Indexed by name of individual landowner.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual landowners.

INTERIOR/WBR–40

SYSTEM NAME:

Water Sales and Delivery Contracts.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who purchase excess water, water from unassigned reservoir space for irrigation or domestic use.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for water, contracts for individuals to receive water, and pertinent correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of June 17, 1902, (Ch. 1093, 32 Stat. 388), as amended, and acts supplementary thereto, particularly the Reclamation Project Act of August 4, 1939, (Ch. 418, 53 Stat. 1187); (2) Reclamation Extension Act of August 13, 1914; (3) The Omnibus Adjustment Act of May 25, 1926; (4) Section 2 of the Rivers and Harbors Act of August 26, 1937, (Ch. 832, 50 Stat. 844); (5) Reclamation Project Act of 1939; and (6) Flood Control Act of 1944, section 8.

PURPOSE(S):

The primary uses of the records are (a) administration and negotiation of water sales contracts with individual landowner; and (b) to sell water from Corps of Engineers dam and reservoir project.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) State of California Water Resources Control Board for settlement of water rights; (2) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (3) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (4) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (5) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

INTERIOR/WBR–41

SYSTEM NAME:

Permits.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individual who permits Bureau of Reclamation employees to enter on his land, and (2) Individual with permits to enter Bureau of Reclamation land or facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written permission to enter private lands or Bureau of Reclamation lands and facilities; permission to erect and maintain structures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of June 17, 1902, as amended, and supplemental laws, 43 U.S.C. 371, *et seq.*

PURPOSE(S):

(1) To allow Bureau of Reclamation employees to perform required work on private lands; (2) To allow individuals to erect and maintain structures on Reclamation facilities or land; and (3) Land status information, proof of permit, and legal applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained and county recorders.

[FR Doc. 99–14007 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Review)]

Natural Bristle Paint Brushes From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on January 4, 1999 (64 FR 374) and determined on April 8, 1999, that it would conduct an expedited review (64 FR 19197, April 19, 1999).

The Commission is scheduled to transmit its determination in this investigation to the Secretary of Commerce on June 3, 1999. The views of the Commission will be contained in USITC Publication 3199 (June 1999), entitled *Natural Bristle Paint Brushes From China: Investigation No. 731–TA–244 (Review).*

Issued: May 25, 1999.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14084 Filed 6–2–99; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes and Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission

ACTION: Publication of monitoring reports in 1999.

EFFECTIVE DATE: May 25 , 1999.

FOR FURTHER INFORMATION CONTACT: For general information, Timothy McCarty (202–205-3324) or Lowell Grant (202–205–3312), Agricultural and Forest Products Division, Office of Industries, or for information on legal aspects, William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on these studies by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (http://www.ustic. gov).

BACKGROUND: Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act), 19 U.S.C. 3381, directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00) until January 1, 2009. As a result of such monitoring, the domestic industry producing a like or directly competitive perishable agricultural product may request, in a global safeguard petition filed under section 202 of the Trade Act of 1974 or a bilateral safeguard petition filed under section 302 of the NAFTA Implementation Act, that provisional relief be provided pending completion of a full section 202 or 302 investigation. If provisional relief is requested, the Commission has 21 days in which to make its decision and to transmit any provisional relief recommendation to the President. In response to the monitoring directive, the Commission instituted investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 FR 1763) and investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 FR 1762).

Although section 316 of the NAFTA Implementation Act does not require the Commission to publish reports on the results of its monitoring activities, the Commission has published statistical reports in those years in which it was not conducting an investigation under other statutory authority with respect to such products.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with preparation of the 1999 statistical reports. However, interested persons are invited to submit written statements concerning the matters to be addressed in the reports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with § 201.8 of the Commission's rules at the earliest practical date and should be received no later than the close of business on June 30, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

The Commission plans to publish both monitoring reports in September 1999.

Issued: May 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14085 Filed 6–2–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Bestfoods f/k/a CPC International Inc.*, and *Jennifer Granholm, Attorney General of the State of Michigan* v. *Bestfoods f/k/a CPC International Inc.*, Civil Nos. 1:96CV680 and 1:96CV898 (W.D. Mich.), was lodged with United States District Court for the Western District of Michigan on May 17, 1999, pertaining to the Duell and Gardner Landfill Site ("Site"), located in Muskegon Township, Muskegon County, Michigan. The proposed consent decree would resolve the United States' and the State of Michigan's civil claims against Bestfoods in those cost recovery actions brought under CERCLA and part 201 of the [Michigan] Natural Resources and Environmental Protection Act, 1994 P.A., as amended, MCL 324.20126(a)(1)(a); MSA 13A.20126(a)(1)(a).

Under the proposed consent decree, Bestfoods will pay $50,000 towards the governments' past costs (of which the U.S. will receive $40,000 and Michigan will receive $10;000). In addition, Bestfoods will agree not to seek reimbursement of the costs incurred by Bestfoods in complying with an Order issued by the United States Environmental Protection Agency under CERCLA Section 106, 42 U.S.C. 9606, which ordered Bestfoods to design and implement a remedy for the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree.

Comments pertaining to the proposed consent decree should refer to *United States* v. *Bestfoods f/k/a CPC International Inc.*, Civil No. 1:96CV680 (W.D. Mich.) and DOJ Reference No. 90–11–2–1033.

The proposed consent decree may be examine at: (1) The Office of the United States Attorney for the Western District of Michigan, 330 Ionia, NW., Grand Rapids, Michigan 49503 (616) 456–2404; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Thomas Turner (312–886–6613)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC. 20005. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $7.75 for the consent decree only (31 pages at 25 cents per page reproduction costs), or $9.25 for the consent decree and its appendices (37 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–13994 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 12, 1999, a proposed consent decree in *United States* v. *Browning-Ferris Industries of Illinois, Inc.*, Civil Action No. C99–0533R, was lodged with the United States District Court for the Western District of Washington. Under the consent decree defendant Browning-Ferris Industries of Illinois, Inc. will pay $471,732 in reimbursement of costs incurred by the United States in response to releases of hazardous substances at the Tulalip Landfill Superfund Site near Marysville, Washington.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Browning-Ferris Industries of Illinois, Inc.*, DOJ Ref. #90–11–3–1412/4.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104; the Region 10 Office of the U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 2005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.50 for the judgment alone, or $131.75 for the Decree and

appendix. Make the check payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–13993 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 5, 1999, a proposed Partial Consent Decree in *United States* v. *Michael P. Eason, et al.*, Civil Action Number 98–2859 G V, was lodged with the United States District Court for the Western District of Tennessee.

In this action the United States seeks to recover past response costs incurred by the United States at the Memphis Container Site (aka Tri-State Drum Site) ("the Site"), located at 1761 Warford Road, Memphis, Shelby County, Tennessee. The Partial Consent Decree resolves certain claims pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, against defendants Buckman Laboratories, Inc. ("Buckman"), Perma-Fix of Memphis, Inc. ("Perma-Fix"), Croda Inks, Corporation ("Croda Inks"), IBC Manufacturing Company ("IBC"), and Memphis Light, Gas & Water Division ("Memphis Light"). Under the proposed Partial Consent Decree, defendants Buckman, Perma-Fix, Croda Inks, IBC, and Memphis Light will collectively pay $600,000 to the United States for past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Michael P. Eason, et. al.*, D.J. Ref. 90–11–2–1352.

The Partial Consent Decree may be examined at the Office of the United States Attorney, Western District of Tennessee, Suite 800, 167 North Main Street, Memphis, Tennessee 38103, at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–14033 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

Notice is hereby given that on May 3, 1999, a proposed consent decree in *United States* v. *Johnnie Williams, et al.*, Civil Action No. 98–2704 MI BRE, was lodged with the United States District Court for the Western District of Tennessee.

In this action, the United States sought reimbursement of response costs under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607(a). The costs were incurred with respect to the W & R Drum site in Memphis, Tennessee. W & R Drum used the site between 1982 or 1983 and 1994 to recondition drums that originally contained printing inks, paints, solvents, and other hazardous substances. W & R Drum's operations left behind contaminated soil and approximately 27,000 drums. Under the proposed settlement, forty defendants who allegedly sent hazardous substances to the site have agreed to pay a total of $941,000 to settle United States' civil claims against them.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Johnnie Williams, et al.*, Civil Action No. 98–2704 MI BRE, D.J. Ref. 90–11–2–1351.

The consent decree may be examined at the Office of the Untied States Attorney, 167 North Main Street, Suite 800, Memphis, Tennessee 38103; at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $18.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–13995 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Membership of the 1999 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 1999 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314 (c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Joanne W. Simms, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–6788.

Department of Justice, 1999 Senior Executive Service Performance Review Board Members

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[FR Doc. 99–13996 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–35, 942; Rainier West Sportswear, Centralia, WA
TA–W–35, 934; The Torrington Co., Elberton, GA
TA–W–35, 706; Nooter Fabricators, Inc., St. Louis, MO
TA–W–36, 004; Specialty Discharge Lighting and Lighting Resources International, Bellevue, OH
TA–W–36, 015; World Color, Dresden, TN
TA–W–35, 769; Arrow Automotive Industries, Morrilton, AR
TA–W–35, 977; A and M Mfg., Inc., Cosby, MO
TA–W–35, 875; E and H Industrial Supplies, Inc., Williston, ND
TA–W–35, 869; CMS Oil and Gas Co., Traverse City District Office, Traverse City, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35, 969; Smith Foods, Inc., Independence, KS
TA–W–35, 933; Boise Cascade Corp., Paper Engineering Dept, Boise, ID
TA–W–36, 165; Joe T. Smith, Inc., Hawley, TX
TA–W–35, 748; Boone's Bit Service, Williston, ND
TA–W–35, 785; Fleenor Dirt Construction, Inc., Hays, KS
TA–W–35, 962; Wilson Supply, Houston, TX
TA–W–36, 141; Kentucky Apparel, Glasgow, KY

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–35, 762 & A; LSI Logic, Inc., Fort Collins, Co., & Colorado Springs, CO
TA–W–35, 899; Consolidated Coal Co., Humphrey #7 Mine, Osage, WV
TA–W–35, 627; Titan Tire Corp., Des Moines, IA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–36, 107; Standard Register Co., Fulton, KY

Declines in employment at the subject firm is attributed to a shift in production to other domestic affiliated locations.

TA–W–35, 870; Kay Jay Paints Co., A Calvin Klein Co, A Subsidiary of the Warnaco Group, Inc., Nesquehoning, PA

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proporation of the workers did not

become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–36,117; Easton Corp., Golf Grip Div., Laurinburg, NC: August 22, 1998.
TA–W–35,775; The Goodyear Tire and Rubber Co., Gadsden, AL: April 24, 1998.
TA–W–36,152; Roffe Accessories, Long Island City, NY: March 30, 1998.
TA–W–35,506; Paramount Headwear, Inc., Winona, MO: December 19, 1997.
TA–W–35,928; Murata Electronics North America, Inc., State College, PA: March 1, 1998.
TA–W–35,806; Phelps Dodge Corp., Chino Mine, Santa Rita, NM: January 25, 1998.
TA–W–35,782; JPS Converte & Industrial Corp, A Subsidiary of JPS Textile, Inc., Rocky Mount, VA: February 22, 1998.
TA–W–36,126; G.L.R. Corp., Williston, ND: March 31, 1998.
TA–W–35,974; Lou Levy & Sons Fashion, Inc., Sample Room, New York, NY: May 1, 1999.
TA–W–35,941; Master Slack Corp., Bolivar, TN: March 16, 1998.
TA–W–35,895; Guilford of Maine, Newport, ME: April 18, 1999.
TA–W–35,605; Ball Foster Glass Container Co., Millville, NJ: January 27, 1998.
TA–W–36,051; Breed Technologies, Inc., dba Breed Technologies Holdings, Maryville, TN: March 30, 1998.
TA–W–36,088; Petroleum Experience, Wiliston, ND: March 29, 1998.
TA–W–35,708; General Electric Industrial Systems, Jonesboro, AR: February 3, 1998.
TA–W–35,670; SGL Carbon Corp., Morganton, NC: February 8, 1998.
TA–W–35,837; Datiani Fashions LTD, New York, NY: February 18, 1998.
TA–W–36,104; Chamberlain Moore-Matic, Waupaca, WI: March 29, 1998.
TA–W–35,590; Petco Petroleum Corp., St. Elmo, IL: January 18, 1998.
TA–W–35,758; ASARCO, Inc., Amarillo, TX: February 5, 1998.
TA–W–35,801; Continental Sprayers, Inc., El Paso, TX: February 24, 1998.
TA–W–35,878; Vingcard, Inc., Dallas, TX: March 3, 1998.
TA–W–35,894; Revelation Bra Co,. dba Goddess Bra, East Boston, MA: March 3, 1998.
TA–W–35,781; Friday Child Manufacturing, Inc., New York, NY: February 3, 1998.
TA–W–35,665; Triple A Trouser Mfg Co., Scranton, PA: January 22, 1998.
TA–W–35,902; General Electric Co., Morrison, IL: March 3, 1998.
TA–W–35,969; Buster Brown Apparel, Inc., Norton, VA: March 16, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issues during the month of May, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced; by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03042; CMS Oil & Gas Co., Traverse City District Office, Traverse City, MI
NAFTA–TAA–03001; Charles Komar & Sons, McAlester, OK
NAFTA–TAA–02916; KCS Resources, Inc., dbs Mountain Resources, Inc., Worland, WY
NAFTA–TAA–02989; The Torrington Co., Elberton, GA
NAFTA–TAA–02890; Titan Tire Corp., Des Moines, IA
NAFTA–TAA–03014; Master Slack Corp., Bolivar, TN
NAFTA–TAA–03049; Murata Electrics North America, Inc., State College, PA
NAFTA–TAA–02957; Baker Atlas Div. Of Baker Hughes, Houston, TX
NAFTA–TAA–03055; World Color, Dresden, TN
NAFTA–TAA–03073; Graybec Lime, Inc., Formerly Fellefonte Lime Co., Bellefonte, PA
NAFTA–TAA–03081; Siemens Information Communication Networks, Cherry Hill, NJ
NAFTA–TAA–03035; A and M Mfg., Inc., Cosby, MO
NAFTA–TAA–03131; Cole-Haan Manufacturing, Livermore Falls, ME
NAFTA–TAA–03024; Sanchez Oil and Gas Corp., Laredo, TX
NAFTA–TAA–03012; Controlled Recovery, Inc., Hobbs, NM
NAFTA–TAA–03080; Good Lad Co., Philadelphia, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03008; Cashman Equipment Co., Elko, NV
NAFTA–TAA–03009; Canyon Construction, Inc., Elko, NV
NAFTA–TAA–02874; Anchor Drilling Fluids USA, Inc., Sidney, MT
NAFTA–TAA–03037; Jencraft Corp., McAllen, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03167; Oxford Automotive, Oxford Suspension, Inc., Hamilton, IN: April 21, 1998.
NAFTA–TAA–03036; The Stroh Brewery Co., Corp. Headquarters, Detroit, MI: March 12, 1998.
NAFTA–TAA–03130; The Stroh Brewery Co., Winston-Salem Brewery, Winston-Salem, NC: April 22, 1998.
NAFTA–TAA–03071; the Stroh Brewery Co., the Blitz Weinhard Brewing Co., Portland, OR: April 5, 1998.

NAFTA–TAA–03011; The Stroh Brewery Co., Heileman—La Crosse Plant, La Crosse, WI: March 18, 1998.

NAFTA–TAA–03162; The Stroh Brewery Co., The Rainier Brewery Co., Seattle, WA: April 26, 1998.

NAFTA–TAA–03123; The Stroh Brewery Co., Longview Brewery, Longview, TX: April 20, 1998.

NAFTA–TAA–02865; Ball Foster Glass Container Co., Millville, NJ: January 6, 1998.

NAFTA–TAA–03124; Eagle Pitcher Industries, Inc., Construction Equipment Div., Lubbock, TX: April 23, 1998.

NAFTA–TAA–03153; Waterford Irish Stoves, Inc., West Lebanon, NH: April 25, 1998.

NAFTA–TAA–03038; Triple D Services, Inc., Gastonia, NC: March 11, 1998.

NAFTA–TAA–03061; Mark Steel Jewelry, Spring City, UT: March 25, 1998.

NAFTA–TAA–02922; The Goodyear Tire and Rubber Co., Gadsden, AL: April 16, 1999.

NAFTA–TAA–03068; Paris Fashions, Paris, TN: March 29, 1998.

NAFTA–TAA–03142; Gerber Childrenswear, Inc., Ballinger, TX: April 30, 1998.

NAFTA–TAA–03059; International Paper, Printing Papers Div., Hudson River Mill, Corinth, NY: March 16, 1998.

NAFTA–TAA–02991; Exide Electronics, Brunswick Plant Operation, Leland, NC: February 18, 1998.

NAFTA–TAA–03163; Tarkett, Inc., Whitehall, PA: April 29, 1998.

NAFTA–TAA–02968; Russell Corp., Habersham Mills, Habersham Mills, GA: March 1, 1998.

I hereby certify that the aforementioned determinations were issued during the months of May, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 26, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13966 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 434A–TA–W–35, 434F]

Baker Atlas a/k/a Western Atlas Inc. a/k/a Wedge Dia-Log Inc., Operating in the Following States; TA–W–35,434A Texas, TA–W–35,434B Louisiana, TA–W–35,434C California, TA–W–35,434D Pennsylvania, TA–W–35,434E Massachusetts, TA–W–35,434F Colorado; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on February 24, 1999, applicable to workers of Baker Atlas operating at various locations in Texas, Louisiana, California, Pennsylvania, Massachusetts and Colorado. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16753).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the exploration and drilling of crude oil. Findings on review show that some of the workers have had their wages reported to Unemployment Insurance tax accounts under Western Atlas Inc. and Wedge Dia-Log Inc. The company official explained that in August 1998, the subject firm merged with Western Atlas Inc. which owned Wedge Dia-Log Inc. The intent of the Department's certification is to include all workers of Baker Atlas. Accordingly, the Department is amending the worker certification to reflect this matter.

The amended notice applicable to TA–W–35,434A–F is hereby issued as follows:

All workers of Baker Atlas, also known as Western Atlas Inc. and also known as Wedge Dia-Log Inc. in field locations in Texas (TA–W–35,434A), Louisiana (TA–W–35,434B), California (TA–W–35,434C), Pennsylvania (TA–W–35,434D), Massachusetts (TA–W–35,434E), and Colorado (TA–W–35,434F) who became totally or partially separated from employment on or after November 30, 1997 through February 24, 2001, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 24th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13967 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 434]

Baker Atlas, Headquartered in Houston, TX; Negative Determination Regarding Application for Reconsideration

By application bearing the postmark date April 14, 1999, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Baker Atlas, headquartered in Houston, Texas, was signed on February 24, 1999, and published in the **Federal Register** on April 6, 1999 (63 FR 16753).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition was filed on behalf of workers of the subject firm headquarters and oilfield equipment production facility in Houston, Texas. The investigation was expanded to include workers of the subject firm engaged in the exploration and drilling of crude oil in Texas, Louisiana, California, Pennsylvania, Massachusetts and Colorado (TA–W–35, 434A–E). The Baker Atlas workers at the field locations were certified eligible to apply for TAA and are not subject of the application for reconsideration. The investigation applicable to the headquarters and oilfield equipment production workers resulted in a negative determination based on the finding that the workers did not meet the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended. The oilfield equipment produced by workers at Baker Atlas in Houston was used exclusively by the subject firm drilling and exploration operations in Texas and five other States. Other findings of the investigation revealed that the United States is a net exporter of oilfield equipment.

The petitioners contend that the Department based its negative TAA determination for headquarters and oilfield equipment production staff on the mistaken premise that the workers could be certified only if the imports of oilfield equipment have contributed importantly to worker separations. The petitioners maintain that since the oilfield equipment produced in Houston is used predominantly by Baker Atlas at its own exploration and drilling sites, increased imports of crude oil did contribute to closing those exploration and drilling sites.

The 1988 Omnibus Trade and Competitiveness Act amendments to the Trade Act of 1974 extended coverage to service workers engaged in exploration and drilling for crude oil and natural gas. Therefore, the workers at the Baker Atlas field locations met the "contributed importantly" criterion of the group eligibility requirements of the Trade Act. The same consideration cannot be given to those workers producing oilfield equipment for Baker Atlas in Houston, Texas. U.S. imports of crude oil cannot be considered like or directly competitive with imports of oilfield equipment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of May 1999.

Grant D. Beale,

Acting Director Office of Trade Adjustment Assistance.

[FR Doc. 99–13968 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,663]

Baker Hughes Inteq a/k/a Baker Hughes Oilfield Operations Headquartered in Houston, TX and Operating at Various Locations in the States of: Alaska, TA–W–35,663A; California, TA–W–35,663B; Colorado, TA–W–35,663C; Louisiana, TA–W–35,663D; Oklahoma, TA–W–35,663E; Texas, TA–W–35,663F; Wyoming, TA–W–35,663G; West Virginia, TA–W–35,663H; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 25, 1999, applicable to workers of Baker Hughes Inteq, headquartered in Houston, Texas and operating in the States of Alaska, California, Colorado, Louisiana, Oklahoma, Texas and Wyoming. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22648). The certification was amended on April 20, 1999, to include workers separated from employment at the subject firm's West Virginia locations. The notice of amendment was published in the **Federal Register** on May 6, 1999, (64 FR 22417).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. The workers of Baker Hughes Inteq are engaged in employment related to exploration and drilling of crude oil wells for unaffiliated customers. New information provided by the State agency and a company official show that some of the workers at various Baker Hughes Inteq locations have had their wages reported to the Unemployment Insurance (UI) tax account for Baker Hughes Oilfield Operations.

The intent of the Department's certification is to cover all workers of Baker Hughes Inteq who were adversely affected by increased imports of crude oil. Accordingly, the Department is amending the certification to include workers of the subject firm whose wages were reported as Baker Hughes Oilfield Operations.

The amended notice applicable to TA–W–35,663 and TA–W–35,663A–H is hereby issued as follows:

All workers of Baker Hughes Inteq also known as Baker Hughes Oilfield Operations, headquartered in Houston, Texas (TA–W–35,663), and operating at various locations in the States of Alaska (TA–W–35,663A), California (TA–W–35,663B), Colorado (TA–W–35,663C), Louisiana (TA–W–35,663D), Oklahoma (TA–W–35,663F), Texas (TA–W–35,663G) and Wyoming (TA–W–35,663H), who became totally or partially separated from employment on or after February 2, 1998 through March 25, 2001, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13973 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,216]

Camp-Hill Corp., McKeesport, Pennsylvania; Affirmative Determination Regarding Application for Reconsideration

By letter of February 8, 1999 the company sole customer requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,216. The denial notice was signed on January 19, 1999 and was published in the **Federal Register** on January 25, 1999 (64 FR 4711).

The sole customer provided information concerning the ownership of the materials manufactured by the subject firm which requires the Department to conduct a customer survey of the sole customer's customers of electric resistance welded (ERW) carbon and alloy pipe.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC., this 20th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13969 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 783A, Etc.]

TA–W–34, 783A, Clover Trimmings, Inc., Now Known as Tiger Embroidery Works, Inc., New York, New York; TA–W–34, 783C, Clover Trimmings, Inc., Now Known as Tiger Embroidery Works, Inc., West New York, New Jersey; TA–W–34, 783D, Swissloom Embroidery Works, Inc., West New York, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 1998, applicable to workers of Clover Trimmings, Inc., New York, New York. The notice was published in the **Federal Register** on November 10, 1998 (63 FR 63078).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of lace and embroidered trimmings. The company reports that Clover Trimmings, Inc. "became known as Tiger Embroidery Works, Inc." in February, 1998. Information also shows that Swissloom Embroidery Works, Inc., which also produced lace and embroidered trimmings, is a division of Tiger Embroidery Works, Inc. Worker separations occurred at Swissloom Embroidery Works, Inc., West New York, New Jersey when it closed in May, 1999.

Accordingly, the Department is amending the certification determination to correctly identify the new title name to read "Clover Trimmings, Inc., now known as Tiger Embroidery Works, Inc.", New York, New York, and West New York, New Jersey, and Swissloom Embroidery Works, Inc.", West New York, New Jersey.

The intent of the Department's certification is to include all workers of Clover Trimmings, Inc., now known as Tiger Embroidery Works, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–34, 783A is hereby issued as follows:

All workers of Clover Trimmings, Inc., now known as Tiger Embroidery Works, Inc., New York, New York (TA–W–34, 583A), West New York, New Jersey (TA–W–34, 583C) and Swissloom Embroidery Works, West New York, New Jersey (TA–W–34, 783D) who became totally or partially separated from employment on or after July 6, 1997 through October 23, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13970 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,382 and TA–W–35,382A]

Coach Leatherware Corp., TA–W–35,382, Carlstadt, NJ, and TA–W–35,382A, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 8, 1999, applicable to all workers of Coach Leatherware Corp., Carlstadt, New Jersey. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25372).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of handbags and accessories. New information provided by the company shows that worker separations occurred at the subject firm's New York, New York facility. The workers are sewing machine operators and packers for Coach's production facility in Carlstadt, New Jersey. Accordingly, the Department is amending the certification to cover workers of Coach Leatherware Corporation, New York, New York.

The intent of the Department's certification is to include all workers of Coach Leatherware Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–35,382 is hereby issued as follows:

All workers of Coach Leatherware Corporation, Carlstadt, New Jersey (TA–W–35,382) and New York, New York (TA–W–35,382A) who became totally or partially separated from employment on or after November 30, 1997 through February 8, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13978 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,370]

Mademoiselle Knitwear including Modular Sweater, Inc., Brooklyn, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 25, 1999, applicable to all workers of Mademoiselle Knitwear, Brooklyn, New York. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16753).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of men's and women's sweaters. New information shows that worker separations occurred at Modular Sweater, Inc. when it closed in October 1998. The workers provided post knitting operations (washing, cutting, & shipping) to support the production of men's and women's sweaters at Mademoiselle Knitwear, Brooklyn, New York. The workers of Modular Sweater, Inc. were inadvertently omitted from the certification.

Accordingly, the Department is amending the certification to cover the workers of Modular Sweater, Inc., Brooklyn, New York.

The intent of the Department's certification is to include all workers of Mademoiselle Knitwear adversely affect by increased imports.

The amended notice applicable to TA–W–35,370 is hereby issued as follows:

All workers of Mademoiselle Knitwear and Modular Sweater, Inc., Brooklyn, New York who became totally or partially separated from employment on or after December 8, 1997 through February 25, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of May, 1999.

Grand D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13976 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,666]

Mayflower Manufacturing Co., Old Forge, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Notice of Certification Regarding Eligibility to apply for Worker Adjustment Assistance on May 3, 1999, applicable to workers of Mayflower Manufacturing Company located in Old Forge, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's and boy's slacks. Findings show that the Department incorrectly set the worker certification impact date at January 1, 1998. The impact date should be January 22, 1998, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35,666 is hereby issued as follows:

All workers of Mayflower Manufacturing Company, Old Forge, Pennsylvania who became totally or partially separated from employment on or after January 22, 1998 through May 3, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13975 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,135]

Modular Sweater, Inc., Brooklyn, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a worker petition which was filed on behalf of workers at the Modular Sweater, Inc., Brooklyn, New York.

An active certification covering the petitioning group of workers is already in effect (TA–W–35,370). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 10th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance, Office of Trade Adjustment Assistance.

[FR Doc. 99–13977 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,538, etc.]

TA–W–34,538, OXY USA, Inc., Logan, KS; and Andrews, TX, TA–W–34,538V; Carthage, TX, TA–W–34,538W' Longview, TX, TA–W–34,538X; Levelland, TX, TA–W–34,538Y; Midland, TX, TA–W–34,538Z; Odessa, TX, TA–W–34,538AA; Welch, TX, TA–W–34,538AB; Hobbs, NM, TA–W–34,538AC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 8, 1998, applicable to workers of OXY USA, Inc., Logan, Kansas. The notice was published in the **Federal Register** on July 31, 1998 (63 FR 40935).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at OXY USA, Inc. operating at the various locations cited above. The workers are engaged in the production of crude oil and natural gas.

The intent of the Department's certification is to include all workers of OXY USA, Inc. adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of OXY USA, Inc. operating at the various locations cited below.

The amended notice applicable to TA–W–34,538 is hereby issued as follows:

All workers of OXY USA, Inc., Logan Kansas (TA–W–34,538), Andrews, Texas (TA–W–34,538V), Carthage, Texas (TA–W–34,538W), Longview, Texas (TA–W–34,538X), Levelland, Texas (TA–W–34,538Y), Midland, Texas (TA–W–34,538Z), Odessa, Texas (TA–W–34,538AA), Welch, Texas (TA–W–34,538AB) and Hobbs, New Mexico (TA–W–34,538AC) who became totally or partially separated from employment on or after April 29, 1997 through July 8, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13979 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,336]

Washington Veneer (Formerly Known as Omak Wood Products), Omak, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 11, 1998, applicable to workers of Omak Wood Products, Omak, Washington. The notice was published in the **Federal Register** on December 23, 1998. (63 FR 71165).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the manufacture of plywood. The company reports that in July, 1998 Omak Wood Products, Omak, Washington was purchased by Washington Veneer.

Accordingly, the Debarment is amending the certification determination to correctly identify the new title name to read "Washington Veneer'". (formerly known as Omak Wood Products),

The amended notice applicable to TA–W–35,336 is hereby issued as follows:

All workers of Washington Veneer, (formerly known as Omak Wood Products), Omak, Washington (TA–W–35,336) engaged in employment related to the production of plywood who became totally or partially separated from employment on or after November 30, 1997 through January 14, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13974 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,000 and TA–W–35,077C]

TA–W–35,077, William Carter Co. Centreville, MI; TA–W–35,077C, Senatobia, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 18, 1998, applicable to all workers of William Carter Company, Centreville, Mississippi. The notice was published in the **Federal Register** on December 16, 1998 (63 FR 69313).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations will occur at William Carter's Senatobia, Mississippi facility when it closes in June, 1999. The workers are engaged in the production of infants' basic and designer apparel and children's playwear.

Accordingly, the Department is amending the certification to cover workers at William Carter Company, Senatobia, Mississippi.

The intent of the Department's certification is to include all workers of William Carter Company adversely affected by increased imports.

The amended notice applicable to TA–W–35,077 is hereby issued as follows:

All workers of William Carter Company, Centreville, Mississippi (TA–W–35,077) and, Senatobia, Mississippi (TA–W–35,077C) who became totally or partially separated from employment on or after September 22, 1997 through November 18, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 10th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13971 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,198]

William Carter Co., Senatobia, Mississippi; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a worker petition which was filed on behalf of workers at William Carter Company, Senatobia, Mississippi.

An active certification covering the petitioning group of workers is already in effect (TA–W–35,077C). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC., this 10th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13972 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Labor Condition Application for H–1B nonimmigrants. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 2, 1999.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9035, Labor Condition Application for H–1B Nonimmigrants, should be directed to James Norris, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210 ((202) 219–5263 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

The Immigration and Naturalization Act (INA) requires that before any alien may be admitted or otherwise provided status as an H–1B nonimmigrant, the prospective employer must have filed with the Department a labor condition application stating that they will offer prevailing wages and working conditions, that there is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment, and that they have provided notice of such filing to the bargaining representative or, if there is none, by posting notice of filing in conspicuous locations at the place of employment. Further, the employer must make certain documentation available for public examination. Complaints may be filed with the Department alleging a violation of the labor condition application process. If reasonable cause is found to believe a violation has been committed, the Department will conduct an investigation and, if appropriate, assess penalties. The INA places a limit on the number of aliens who can be admitted to the U.S. on H–1B visas (115,000 in FY '99, 107,500 in FY '00, and 65,000 in FY '01). The INA further limits these workers to a maximum of six years duration of stay under H–1B status.

The INA requires that the Department make available for public examination in Washington, DC, a list of employers which have filed labor condition applications.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

On January 5, 1999, the Department published a Notice of Proposed Rulemaking (NPRM) and a request for comments in the **Federal Register** (64 FR 628). The purpose of the NPRM was to implement statutory changes in the H–1B visa program made to the INA by the American Competitiveness and Workforce Improvement Act of 1998. The Department is currently in the process of reviewing comments received in response to the NPRM and preparing a final rule to implement the statutory changes, including changes to the Form ETA 9035. The Department will be requesting OMB approval of the changes to the information collection request at the time that rule is published. However, since the current OMB approval for the Form ETA 9035 expires June 30, 1999, there is a need for an extension of the existing collection of information pertaining to employers' seeking to use H–1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability. This action is necessary in order for the Department to meet its statutory responsibilities under the INA.

Type of Review: Extension of a currently approved collection without change.

Agency: Employment and Training Administration, Labor.

Title: Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models.

OMB Number: 1205–0310.

Affected Public: Businesses or other for-profit; not-for-profit institutions; Federal government; State, Local or Tribal government.

Form: Form ETA 9035.

Total Respondents: 250,000.

Frequency of Response: On occasion.

Total Responses: 250,050.

Average Burden Hours Per Response: 1.25.

Estimated Total Annual Burden Hours: 250,050.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 27 day of May, 1999.

John R. Beverly III,

Director, Employment Service.

[FR Doc. 99–14071 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D09706, et al.]

Proposed Exemptions; RREEF America L.L.C. (RREEF)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

RREEF America L.L.C. (RREEF), Located in San Francisco, California

[Application No. D–9708]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.)

Part I—Exemption for Payment of Certain Fees to RREEF

The restrictions of sections 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply, effective as of (i) May 16, 1994, with respect to a single client, separate account established on behalf of the Shell Pension Trust (the Shell Account), and (ii) the date the final exemption is published in the **Federal Register**, with respect to any single client, separate account (Single Client Account) or any multiple client account (Multiple Client Account) formed on, or after, such a date, to the payment of certain initial investment fees (the Investment Fee), annual management fees based upon net operating income (the Asset Management Fee), and performance fees (the Performance Fee) to RREEF by employee benefit plans for which RREEF provides investment management services (the Client Plans) [1] pursuant to an investment management agreement (the Agreement) entered into between RREEF and the Client Plans either individually, through an establishment (or amendment) of a Single Client Account, or collectively as participants in a newly established Multiple Client Account (collectively, the Accounts), provided that the conditions set forth below in Part III are satisfied.

Part II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(c)(1)(A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by RREEF formed on, or after, the date the final exemption is published in the **Federal Register**, provided that the conditions set forth below in Part III are satisfied.

Part III—General Conditions

(a)(1) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee, Asset Management Fee and Performance Fee (collectively; the Fees), shall be approved in writing by a fiduciary of a Client Plan which is independent of RREEF and its affiliates (the Independent Fiduciary).

(2) For purposes of the Fees, the fair market value of the Accounts' real property assets (other than in the case of actual sales) will be based on appraisals prepared by independent qualified appraisers that are Members of the Appraisal Institute (MAI Appraisers). In this regard, every agreement by which an appraiser is retained will include the appraiser's representation that: (1) Its ultimate client is the Account and its underlying Client Plan (and non-Plan) investors, and (2) it will perform its duties in the interest of such Account (and investors). In addition, following the date this proposed exemption is granted, every agreement shall advise the appraiser that it owes a professional obligation to the Account when making an appraisal for properties held by the Account.

(b) The terms of any investment in an Account and of the Fees, shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established (or amended) and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan in a Single Client Account shall have total net assets with a value in excess of $100 million, and each Client Plan that is an investor in a Multiple Client Account shall have total net assets with a value in excess of $50 million; and provided that seventy-five percent (75%) or more of the units of beneficial interests in a Multiple Client Account are held by Client Plans or other investors having total assets of at least $100 million. In addition, 50 percent (50%) or more of the Client Plans investing in a Multiple Client Account shall have assets of at least $100 million. A group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than $100 million, will be counted as a single Client Plan if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to Client Plan assets in excess of $100 million.

(2) No Client Plan shall invest, in the aggregate, more than 5% of its total assets in any Account or more than 10% of its total assets in all Accounts established by RREEF.

(d) Prior to making an investment in any Account (or amending an existing Account), the Independent Fiduciary of each Client Plan investing in an Account shall have received offering materials from RREEF which disclose all material facts concerning the purpose, structure, and operation of the Account, including any Fee arrangements (provided that, in the case of an amendment to the Fee arrangements, such materials need address only the amended fees and any other material change to the Account's original offering materials).

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from RREEF:

(1) Audited financial statements of the Account prepared by independent public accountants selected by RREEF no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by RREEF relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to RREEF during the period covered by such report;

(3) Periodic appraisals (as agreed upon with the Client Plans) indicating the fair market value of the Account's assets as established by an MAI appraiser independent of RREEF and its affiliates. In the case of any appraisal that will serve as the basis for any "deemed sale" of such property for purposes of calculating the Performance Fee payable to RREEF (as discussed in paragraph (j) below), then:

(i) In the case of any Single Client Account, such MAI appraiser shall be either (A) Selected by the Independent Fiduciary of the Client Plan subject to the affirmative approval of RREEF, or (B) selected by RREEF subject to approval by the Independent Fiduciary of the Client Plan;

(ii) In the case of any Multiple Client Account, such MAI appraiser shall be approved in advance by the Responsible Independent Fiduciaries (as defined in Part IV(e) below) owning a majority of the interests in the Accounts, determined according to the latest

[1] The Client Plans (including employee benefit plans that may become Client Plans in the future) consist of various pension plans as defined in section 3(2) of the Act and other plans as defined in section 4975(e)(1) of the Code with respect to which RREEF serves as a trustee or an investment manager.

valuation of the Account's assets performed no more than 12 months prior to such appraisal, which approval may be by written notice and deemed consent by such Fiduciaries' failure to object to the appraiser within 30 days of such notice; and

(iii) In either case, the selected MAI appraiser shall acknowledge in writing that the Client Plan(s) and other investors (in the case of a Multiple Client Account), rather than RREEF, is (are) its clients, and that in performing its services for the Account it shall act in the sole interest of such Client Plan(s) and other investors. In addition, following the date this proposed exemption is granted, every appraiser selected shall acknowledge that it owes a professional obligation to the Client Plan(s) and other investors in the Account in performing its services as an appraiser for properties in the Account. If an MAI appraiser selected by RREEF, or an appraisal performed by a previously approved appraiser, is rejected by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for the Multiple Client Account, determined according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, the fair market value of the assets for any "deemed sale", relating to the payment of a Performance Fee (as described in paragraphs (i) and (j) below) shall be determined as follows: (A) the Client Plans shall appoint a second appraiser and, if the value established for the property does not deviate by more than 10% (or such lesser amount as may be agreed upon between RREEF and the Client Plan(s)), then the two appraisals shall be averaged; (B) if the values differ by more than 10%, then the two appraisers shall select a third appraiser, that is independent of RREEF and its affiliates, who will attempt to mediate the difference; (C) if the third appraiser can cause the first two to reach an agreement on a value, that figure shall be used; however, (D) if no agreement can be reached, the third appraiser shall determine the value based on procedures set out in the governing agreements of the Account or, if no such procedures are established, shall conduct its own appraisal and the two closest of the three shall be averaged;

(4) In the case of any Multiple Client Account, a list of all other investors in the Account;

(5) Annual operating and capital budgets with respect to the Account, to be distributed to a Client Plan within 60 days prior to the beginning of the fiscal year to which such budgets relate; and

(6) An explanation of any material deviation from the budgets previously provided to such Client Plan for the prior year.

(f) The total fees paid to RREEF shall constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) The Investment Fee shall be equal to a specified percentage of the net value of the Client Plan assets allocated to the Account which shall be payable either:

(1) At the time assets are deposited (or deemed deposited in the case of reinvestment of assets) in the Account; or

(2) In periodic installments, the amount (as a percentage of the aggregate Investment Fee) and timing of which have been specified in advance based on the percentage of the Client Plan's assets invested in real property as of the payment date; provided that (i) The installment period is no less than three months, and (ii) if the percentage of the Client Plan assets which have actually been invested by a payment date is less than the percentage required for the aggregate Investment Fee to be paid in full through that date (both determined on a cumulative basis), the Investment Fee paid on such a date shall be reduced by the amount necessary to cause the percentage of the aggregate Investment Fee paid to equal only the percentage of the Client Plan assets actually invested by that date. The unpaid portion of such Investment Fee shall be deferred to and payable on a cumulative basis on the next scheduled payment date (subject to the percentage limitation described in the preceding sentence).

(h) The Asset Management Fee shall be payable for each quarter from the net operating income (NOI) of the Account. The amount of the Asset Management Fee, expressed as a percentage of the NOI of the Account, shall be established by the Agreement and agreed to by the Independent Fiduciaries of the Client Plans:

(1) The Asset Management Fee for any Account will be calculated as follows. The Asset Management Fee for a specific Account real property will be based solely on items of operating income and expense that are identified as line items on an operating budget for such property disclosed to each Client Plan that participates in the Account. The disclosures have to be made at least 30 days in advance of the fiscal year to which the budget relates, and approved in the manner described in (2) below;

(2) Each Client Plan must provide affirmative approval of the operating budget. Specifically, when the proposed budget (or any material deviation therefrom) is sent to a Client Plan, it will be accompanied by a written notice that the Client Plan may object to the budget or any specific line item therein, for purposes of calculating the Asset Management Fees for the next fiscal year. The written notice will contain a statement that affirmative approval of the budget is required prior to the end of the 30-day period following such disclosure. In the case of a Multiple Client Account, affirmative approval by a majority of investors (by interest) will constitute approval of the proposed budget (or deviation); and

(3) In the event of any subsequent decrease in previously approved budgeted operating expenses for the fiscal year in excess of the limits previously described (15% for any line item, 5% overall), then the resulting increase in NOI (i.e., over and above the allowable deviation) will not be taken into account in calculating RREEF's management fee unless affirmative approval for the payment of such fee is obtained in writing from the Independent Fiduciary for the Client Plan in the Single Client Account or the Responsible Independent Fiduciaries for the Multiple Client Account.

(i) In the case of any Multiple Client Account, the Performance Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount or Hurdle Rate). However, in the case of RREEF's removal or resignation, RREEF shall be entitled to receive a Performance Fee payable either at the time of removal or, in the event of RREEF's resignation, upon sale of the assets to which the Performance Fee is allocable or upon termination of the Account as the case may be, subject to the requirements of paragraph (l) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with independent appraisals), only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of RREEF's removal or resignation. Both the Threshold Amount and the amount of the Performance Fee, expressed as a percentage of the net proceeds from a capital event distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciaries of the Client Plans.

(j) In the case of any Single Client Account, the Performance Fee shall be determined and paid either: (1) In the same manner as in the case of a Multiple Client Account, as described in paragraph (i) above; or (2) at the end of any pre-specified period of not less than one year, provided that such Fee is based upon the sum of all actual distributions from the Account during such period, plus deemed distributions of the assets of the Account based on an assumed sale of all such assets at their fair market value as of the end of such period (in accordance with independent appraisals performed within 12 months of the calculation) which are calculated to be in excess of the Threshold Amount or the Hurdle Rate through the end of such period. For this purpose, the Performance Fee measuring period shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan, provided that such period is not less than one year. In addition, RREEF shall provide notice to the Client Plan within 60 days of each Performance Fee calculation for a Single Client Account that the Independent Fiduciary of the Client Plan has the right to request updated appraisals of the properties held by the Account if such Fiduciary determines that the existing independent appraisals (performed within 12 months of the calculation) are no longer sufficient.

(k) The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the Client Plan, as defined below in Part IV, paragraph (f).

(l) In the event RREEF resigns as investment manager for an Account, the Performance Fee shall be calculated at the time of resignation as described above in paragraph (i) above and allocated among each property, based on the appraised value of such property in relationship to the total appraised value of the Account. Each amount arrived at through this calculation shall be multiplied by a fraction, the numerator of which will be the actual sales price received by the Account on subsequent disposition of the property (or in the case of a property which has not been sold prior to the termination of a Multiple Client Account, the appraised value of the property as of the termination date), and the denominator of which will be the appraised value of the property which was used in connection with determining the Performance Fee at the time of resignation, provided that this fraction shall never exceed 1.0. The resulting amount for each property shall be the Performance Fee payable to RREEF upon the sale of such property or termination of the Multiple Client Account, as the case may be.

(m) In cases where RREEF does have discretion to reinvest proceeds from capital events, the reinvested amount shall not be treated as a new contribution of capital by the Client Plan for purposes of the Investment Fee, as described above in paragraph (g), or having been distributed for purposes of the payment of Performance Fee as described above in paragraphs (i) and (j);

(n) RREEF or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Part III to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of RREEF or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (2) no party in interest, other than RREEF, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in paragraph (o)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (n) of this Part III shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (o)(1)(ii)–(iv) shall be authorized to examine the trade secrets of RREEF and its affiliates or any commercial or financial information which is privileged or confidential.

(p) RREEF shall provide a copy of the proposed exemption and a copy of the final exemption to all Client Plans that invest in any Single Client Account or any Multiple Client Account formed on, or after, the date the final exemption is published in the **Federal Register**.

Part IV—Definitions

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "management services" means:

(1) Development of an investment strategy for the Account and identification of suitable real estate-related investments;

(2) Directing the investments of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions and the performance of all requisite due diligence;

(3) Determination of the timing of, and directing, the disposition of assets of the Account and directing the liquidation of the Account upon termination;

(4) Administration of the overall operation of the investments of the Account, including all applicable leasing, management, financing and capital improvement decisions;

(5) Establishing and maintaining accounting records of the Account and distributing reports to Client Plans as described in Part III; and

(6) Selecting and directing all service providers of ancillary services as defined in this Part IV; provided, however, that some or all of the foregoing management services may be subject to the final discretion of the Independent Fiduciary(ies) for the Client Plan(s).

(d) The term "ancillary services" means:

(1) Legal services;

(2) Services of architects, designers, engineers, construction managers, hazardous materials consultants, contractors, leasing agents, real estate brokers, and others in connection with the acquisition, construction, improvement, management and disposition of investments in real property;

(3) Insurance brokerage and consultation services;

(4) Services of independent auditors and accountants in connection with auditing the books and records of the Accounts and preparing tax returns;

(5) Appraisal and mortgage brokerage services; and

(6) Services for the development of income-producing real property.

(e) The term "Independent Fiduciary" with respect to any Client Plan means a fiduciary (including an in-house fiduciary) independent of RREEF and its affiliates. With respect to a Multiple Client Account, the terms "Independent Fiduciary" or "Responsible Independent Fiduciaries" mean the Independent Fiduciaries of the Client Plans invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of ERISA (such as governmental plans, university endowment funds, etc.) that are independent of RREEF and its affiliates, and that collectively hold more than 50% of the interests in the Account.

(f) The terms "Threshold Amount" or "Hurdle Rate" mean, with respect to any Performance Fee, an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A "floating" or non-fixed rate which is at least equal to the lesser of seven percent, or the rate of change in the consumer price index (CPI), during the period from the deposit of the Client Plan's assets into the Account until the determination date; or

(2) A fixed rate which is at least equal to the lesser of seven percent or the average rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(g) The terms "Net Operating Income" or "NOI" means all operating income of the Account (i.e., rents, interest, and other income from day-to-day investment activities of the Account) less operating expenses, determined on an accrual basis in accordance with generally accepted accounting principles, but without regard to depreciation (or other non-cash) expense and capital expenditures and without regard to payments of interest and principal with respect to any acquisition indebtedness relating to the property.

(h) The term "Net Proceeds of a Capital Event" means all proceeds from capital events of an Account (i.e., sales or non-recourse refinances of real property investments owned by the Account) less repayment of debt with respect to such property, closing expenses paid, and reasonable reserves established in connection therewith, whether such reserves are for repayment of existing or anticipated obligations or for contingent liabilities.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of (i) May 16, 1994, with respect to the Shell Account, and (ii) the date the final exemption is published in the **Federal Register**, with respect to any Single Client Account and any Multiple Client Account formed on, or after, such date.

Summary of Facts and Representations

1. RREEF America L.L.C. and its affiliate, RREEF Management Company, provide investment and property management services to institutional investors, including employee benefit plans and other tax-exempt entities, through various separate accounts and commingled accounts.

On January 27, 1998, RREEF America L.L.C. and its affiliate, RREEF Corporation (collectively, RREEF), were acquired by RoProperty Services, B.V. (RoProperty), a major Dutch investment advisory firm. As a result, the RREEF entities were combined into a newly created Delaware limited liability company which continues to use the name "RREEF America L.L.C." RREEF operates as an autonomous entity which continues to provide investment management services, and its affiliate, RREEF Management Company, continues to provide property management services.

2. RREEF is generally appointed as an investment manager (the Manager) as defined in section 3(38) of the Act with respect to each Client Plan that invests in a Single Client Account or a Multiple Client Account. Although RREEF has discretion with respect to the day-to-day operation of each Account and, in many cases, RREEF has full discretion over Account acquisition and/or disposition decisions, in certain cases final investment authority may remain with the Client Plans.

3. A Client Plan may enter into one or more separate account relationships with RREEF (each, a Single Client Account) pursuant to one or more individually negotiated investment management agreements with RREEF, or by investing in a commingled investment fund (Multiple Client Account, collectively; the Accounts) managed by RREEF.[2] The Accounts to date have been blind investment relationships established for the purpose of identifying and acquiring real property investments that meet certain investment criteria. However, specified-property investment relationships may be established to invest in pre-identified real property investments. The responsibilities of RREEF in a typical blind discretionary Account would include:

(a) Development of an investment strategy for the Account and identification of suitable real estate investments.

(b) Directing the investment of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions, and the performance of requisite due diligence.

(c) Determining the timing of, and directing, the disposition of assets of the Account and directing the liquidation of the Account upon termination.

(d) Administering the overall operation of the investments of the Account, including all applicable leasing, management, financing, and capital improvement decisions.

(e) Establishing and maintaining accounting records of the Account, and distributing reports to Client Plans.

(f) RREEF also has complete discretion in the selection and direction of the ancillary services (Ancillary Services) defined in Part IV, paragraph (d) above.[3]

RREEF's primary investment objective is to acquire income-producing real property which will generate current return through cash distributions and will offer a potential for profit through gain on resale.

Currently, Multiple Client Accounts consist primarily of tax-exempt group trusts organized pursuant to IRS Revenue Ruling 81–100 and limited partnerships. However, other Multiple Client Accounts may be organized in the

[2] The applicant represents that in some instances a Client Plan's investment in a Multiple Client Account that is a common or collective trust fund maintained by a bank would be exempt from the restrictions of section 406(a) of the Act by reason of section 408(b)(8). The Department expresses no opinion herein whether all the conditions of section 408(b)(8) will be satisfied in such transactions.

[3] RREEF or its affiliates may, from time-to-time, provide certain Ancillary Services to the Accounts, such as in connection with the development or redevelopment of real property, preparation of tax returns, environmental consulting, or other services. Occasionally, RREEF has provided construction management and development services with respect to non-ERISA governmental plan accounts. However, upon special request from a client, RREEF may agree to provide ancillary services, such as construction management or development services based upon its knowledge of the Client Plan's investments and its particular expertise. It represented that the Ancillary Services are provided in accordance with section 408(b)(2) and the regulations thereunder (see 29 CFR 2550.408b–2). However, the Department expresses no opinion as to whether the selection of RREEF to provide Ancillary Services or the payment of fees for such Ancillary Services, as described herein, would meet the conditions of section 408(b)(2) of the Act.

future, including, but not limited to, title-holding corporations, real estate investment trusts, or limited liability corporations. In the case of Multiple Client Accounts that are group trusts, individual principals and officers of RREEF generally serve as trustees thereof. Similarly, RREEF principals and officers may serve as directors and/or officers of other vehicles. RREEF currently does not serve as general partner with respect to any of its limited partnership accounts that are subject to ERISA. Typically, the general partner is a corporation owned by one or more of the limited partners. However, in each case, the primary investment discretion is delegated to RREEF pursuant to an investment management agreement between RREEF and the Account (the Agreement).

4. RREEF proposes to have the Client Plans pay for investment management services it renders to the Accounts based upon a multi-fee structure which will be approved in advance by the Independent Fiduciaries of the Client Plans.[4] Each Client Plan in a Single Client Account shall have total net assets with a value in excess of $100 million, and each Client Plan that is an investor in a Multiple Client Account shall have total net assets with a value in excess of $50 million. In addition, seventy-five percent (75%) or more of the units of beneficial interests in a Multiple Client Account must be held by Client Plans or other investors having total assets of at least $100 million, and 50 percent (50%) or more of the Client Plans investing in a Multiple Client Account must have assets of at least $100 million. A group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than $100 million, will be counted as a single Client Plan if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to Client Plan assets in excess of $100 million. No Client Plan shall invest, in the aggregate, more than 5% of its total assets in any Account or more than 10% of its total assets in all Accounts established by RREEF.

The relief provided by this proposed exemption for the multi-fee structures described herein will apply prospectively to any newly formed Multiple Client Account, if such arrangement is approved in advance by the appropriate Independent Fiduciaries of the Client Plans and other investors that invest in the Account. In addition, the relief provided by this proposed exemption will apply retroactively to the Shell Pension Trust for its existing Single Client Account (i.e., the Shell Account), as of May 16, 1994, and prospectively for other Single Client Accounts if the conditions of the exemption are met. Therefore, with regard to any Account, the Independent Fiduciary(ies) of the Client Plan(s) will have final approval as to whether the Agreement between the Client Plan(s) and RREEF will provide for any Investment Fees, Asset Management Fees, or Performance Fees. Similarly, in the case of any Account, the final decision to invest the assets of any Client Plan in such Account will be made by an Independent Fiduciary. RREEF will not exercise its discretion with respect to any Single Client Account to invest those assets in any Multiple Client Account. With respect to the Shell Account, RREEF represents that this Single Client Account has complied with all the applicable conditions contained herein for, among other things, approval by an Independent Fiduciary for investment in such an Account, the payment of any Fees to RREEF, the retention of any appraiser (as discussed further below) for the valuation of properties held in the Account,[5] and the minimum plan asset size required for participation in such Accounts.[6]

5. The multi-fee structure will include: (i) The Investment Fee, a one-time initial fee paid either at the time the Client Plan invests in, or allocates additional assets to, the Account, or in periodic installments while such assets are invested by the Account, as described below; (ii) the Asset Management Fee, an annual fee for asset management charged as a percentage of the net operating income produced by properties held in the Account (defined below), which will be payable to RREEF without regard to the return to the Client Plans of their invested capital; and (iii) the Performance Fee, a fee charged upon actual or deemed distributions of capital proceeds from the Account in excess of a Client Plan's invested capital, plus a negotiated cumulative, compounded annual hurdle rate of return on such invested capital (i.e., the Threshold Amount or Hurdle Rate). In a Single Client Account, an Independent Fiduciary may agree to allow RREEF to receive a periodic Performance Fee based on the Account's performance prior to the Client Plan receiving actual distribution of capital back from the Account in amounts which exceed the prescribed Threshold Amounts. Such Fees will be based on deemed distributions of the assets in such Accounts at periodic intervals, with all property valuations determined by qualified real estate appraisers independent of RREEF and its affiliates. Any property valuation used in the calculation of the Performance Fee will be performed within 12 months of that calculation.

6. RREEF requests an individual exemption for Client Plans that invest in an Account to pay an Investment Fee, Asset Management Fee, and a Performance Fee to RREEF under circumstances described below. RREEF represents that Fee rates and Threshold Amounts will be negotiated on an Account-by-Account basis.

The Investment Fee will be a one-time fee intended to cover the expense of organizing the Account, identifying suitable investments, and completing the initial purchases of real properties for the Account, based on the assets invested by the Client Plan in the Account. The Investment Fee may be paid either (i) At the time the Client

[4] Section 404 of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries. Thus, the Department expects a plan fiduciary, prior to entering into any performance based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with a compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties. The plan fiduciary must consider prior to entering into any such arrangement, whether it is able to provide adequate oversight of the investment manager during the course of the arrangement.

[5] RREEF's Quarterly Report for the Shell Account, dated December 31, 1998, describes a portfolio consisting of the following six properties: (1) the Bellaire Place Apartments, a residential property located in Redmond, Washington, with a fair market value of approximately $18.6 million; (2) the San Diego Business Center, an industrial property located in San Diego, California, with a fair market value of approximately $17.7 million; (3) the West Sacramento Industrial Center, an industrial property located in Sacramento, California, which was sold on December 23, 1998 for $6.4 million; (4) the Broadway Business Park, an industrial property located in Phoenix, Arizona, with a fair market value of $26.5 million; (5) 1627 K Street, N.W., an office building located in Washington, D.C., with a fair market value of approximately $9.4 million; and (6) Wendemere at the Ranch Apartments, a residential property located in Westminster, Colorado, with a fair market value of approximately $16 million. The fair market value of the properties still held in the Shell Account, as of December 31, 1998, was approximately $88,268,000.

[6] The Shell Pension Trust contained approximately $5.7 billion in total assets, of which approximately 2% were invested in real estate, as of January, 1999. These real estate assets are managed by three primary investment managers, one of which is RREEF.

Plan invests assets in the Account, or (ii) in installments at the end of pre-specified periods of not less than three months (over a specified period of years). However, if the pre-specified percentage of the Account's assets has not been invested by the payment date for the Investment Fee, the amount of such fee payable on that date will be reduced to reflect the percentage of assets which have been invested by that date. In such instances, the remainder of the Investment Fee will be deferred until the next pre-specified installment date. At that time, the Investment Fee for the current and past installment dates will be paid (subject to further deferral if the relevant assets in the Account have not been invested at that time). The Investment Fees will generally range from 0% to 2% of the capital committed for investment by the Client Plans. However, the exact percentage for any Investment Fee will be negotiated between RREEF and the relevant Client Plans in the Account.

7. The Asset Management Fee will be paid quarterly throughout the term of the Account. As with the Investment Fee, the exact terms of the Asset Management Fee will be negotiated between RREEF and the Client Plan(s) prior to the initial investment of any Client Plan(s)' assets in the Account. The Asset Management Fee will be calculated with respect to the net operating income (NOI) from properties owned by the Account. In this regard, NOI will not include gains made on properties from capital events. The Asset Management Fee will be paid without regard to the return of the Client Plan's invested capital.

The Asset Management Fee will compensate the Investment Manager for the following services: (i) Selection of properties and other assets for acquisition or disposition in an Account, (ii) day-to-day investment and administrative operations of an Account, (iii) performance of property management and leasing services for the properties held by the Account, (iv) obtaining and maintaining insurance for the properties and other assets in the Account, (v) establishing tax-exempt title-holding corporations under section 501(a) of the Code for the properties, (vi) obtaining independent MAI appraisals of the properties every three years, and performing annual internal valuations of the properties, as necessary; and (vii) preparing quarterly and annual written reports concerning assets, receipts, and disbursements of the Account.

As stated above, the Asset Management Fee will be charged as a percentage of the NOI on the properties held by the Account for each quarter. The Asset Management Fees are determined by negotiation for each Account, but generally will be between 5% to 8% of the NOI per quarterly payment period for properties in the Account. NOI for an Account will be determined on the basis of recurring operating (non-capital) income (i.e., rents, interest, and other income from the day-to-day investments of the Account) less recurring operating expenses (i.e., utilities, taxes, insurance and maintenance) determined on an accrual basis in accordance with generally accepted accounting principles. RREEF states that these recurring revenue items and operating expenses will be set forth in annual budgets that are reviewed and approved in advance by the Client Plans and other investors.

The NOI for an Account will be determined without regard to capital expenditures and non-cash expenditures for the Account, such as depreciation on properties held by the Account or amortization of capital expenditures. In addition, NOI will not be reduced by debt service. Therefore, capital items, such as debt service and non-cash expense items, will have no effect on RREEF's Asset Management Fees. Instead, as discussed more fully below, these items will be reflected in the Performance Fee because any capital expenditure will increase the Threshold Amount for purposes of any subsequent Performance Fee calculation, and any capital distribution will reduce the Threshold Amount.[7]

With respect to each Account, RREEF will prepare annual operating and capital budgets for each of the Account's properties, which will be distributed to each Client Plan invested in the Account, within 60 days prior to the beginning of the fiscal year to which such budgets apply. At the end of each year, RREEF will also distribute to each Client Plan an explanation of any material deviation from the budgets previously provided to the Client Plan for such year.

8. RREEF agrees that in calculating its Asset Management Fee for any Account, the Fee for any individual real property in the Account will be determined solely on the basis of those items of operating income and expense that are identified as line items in the operating budget for such property, which shall be disclosed to each Client Plan that participates in the Account. Such disclosures have to be made at least 30 days in advance of the fiscal year to which the budget relates, and approved by the Client Plans in the manner described below.

If, during such year for any previously disclosed line item of operating expense in the budget for a property, there is any material deviation between such line item and the actual amount of such expense for the current year, such deviation will not be taken into account in calculating the Asset Management Fee unless it is first disclosed to, and approved by, the Client Plan(s) in the same manner as the original budgeted line item. For this purpose, a determination of what is considered a "material" deviation will be established by the investment or property management agreement between RREEF and the Client Plan(s) for any real property held by the Account. Property management agreements used by RREEF permit no more than a 15% variance between any individual line item expense in the operating budget from year to year. In addition, overall budgeted expenses may vary no more than 5% from year to year.

If the requisite percentage of investors in an Account fails to approve the proposed budget or any line item therein, then RREEF will continue to utilize the prior year's budget figures (generally with a permitted deviation of 5%). In the event of any subsequent material deviation from a line item expense in a previously approved budget, or the addition of a new line item, RREEF would use the expense figures as budgeted for purposes of its fee calculation, and the variance would have no effect on its current Asset Management Fee calculation, unless a revised budget reflecting the deviation (or new line item) is approved. Any such variance would be reflected only in the subsequent Performance Fee calculation (by increasing or decreasing the Threshold Amount).[8]

The Client Plan approval for these purposes will be by an affirmative approval in advance by the Independent Fiduciary of a Single Client Account or

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[7] As noted above, the determinations of which items are "operating" and which are "capital" will be determined by generally accepted accounting principles. Such determinations are subject to annual review and confirmation by independent Certified Public Accountants retained to audit RREEF's annual financial statements.

[8] For example, if RREEF were to budget landscaping expenses at $100 for an Account, but the actual figure turns out to be $80, unless RREEF obtains the approval of its Client Plans, the amount it uses for calculating its Asset Management Fee would be limited to $85 (applying the 15% deviation, as described above). Although the additional $5 cost savings directly benefits the Client Plans, it would not be reflected in the Asset Management Fee. Rather, to the extent that this cost savings increases the amount available for distribution to the Client Plans, it would be reflected in the Threshold Amount for purposes of calculating RREEF's future Performance Fee.

the Responsible Independent Fiduciaries for a Multiple Client Account representing at least a majority of the interests in such Account.[9] Specifically, when the proposed budget (or any material deviation therefrom) is sent to a Client Plan, it will be accompanied by a written notice that the Client Plan must approve the budget, and any specific line item therein, for purposes of calculating the Asset Management Fees for the next fiscal year. The written notice will contain a statement that affirmative approval of the current budget is required prior to the end of the 30-day period following such disclosure. In the case of a Multiple Client Account, affirmative approval by a majority of investors (by interest) will constitute approval of the proposed budget (or deviation). In the event of any subsequent decrease in previously approved budgeted operating expenses for the fiscal year in excess of the limits previously described (15% for any line item, 5% overall), then the resulting increase in NOI (i.e., over and above the allowable deviation) will not be taken into account in calculating RREEF's management fee unless affirmative approval for the payment of such fee is obtained in writing from Independent Fiduciary for the Client Plan in the Single Client Account or the Responsible Independent Fiduciaries for the Client Plans and other investors in the Multiple Client Account.

With respect to the Shell Account, RREEF represents that annual budgets have been presented to an Independent Fiduciary for the Shell Pension Trust for review and approval each year since May 16, 1994. In this regard, RREEF states that although the annual budget approvals for properties held in the Shell Account may not have been in writing in all cases, both parties (i.e., RREEF and the Independent Fiduciary for the Shell Account) have made contemporaneous written confirmations of their discussions regarding the annual budgets.

9. The applicant states that in lieu of the Investment Fee and/or the Asset Management Fee, RREEF and the Client Plans may agree to an alternative fee arrangement for an Account (the Alternative Fee) which is based either upon a fixed amount or amounts, or an objective formula to be negotiated (in either case) between RREEF and the Client Plan prior to the initial investment of any Client Plan assets in an Account. RREEF represents that any Alternative Fee will be covered by section 408(b)(2) and the regulations thereunder (29 CFR 2550.408b–2). Accordingly, no exemption is being requested by RREEF for any Alternative Fees.

10. In a Single Client Account, the Performance Fee will be determined and paid either (i) In the same manner as in the case of a Multiple Client Account, or (ii) at the end of any pre-specified period of not less than one-year, provided that the Fee is based upon the sum of all actual distributions from the Account during such period, plus deemed distributions of the assets of the Account based on an assumed sale of all such assets at their fair market value as of the end of such period (in accordance with independent appraisals performed within 12 months of the calculation) which are calculated to be in excess of the Threshold Amount through the end of such period.

In the case of a Multiple Client Account, the Performance Fee will be charged against all distributions of net proceeds from capital events, as defined in Part IV(h), only after the Client Plans and other investors have received distributions (from all sources) from the Account in excess of the Threshold Amount agreed to by the Responsible Independent Fiduciaries.

Most of RREEF's Single Client Accounts are long-term open-ended relationships under which the Client Plans may continue to invest new funds on an ongoing basis. For this reason, RREEF states that certain Client Plans that invest in Single Client Accounts will negotiate for the payment of a Performance Fee that would be calculated and payable periodically, not less frequently than once a year (generally, every three years, commencing on the third anniversary of the first acquisitions of properties made by the Account). As noted above, this periodic Performance Fee would be based on all actual sales of properties by the Account and distributions made back to the investors during such period, as well as deemed or constructive sales of all properties held in the Account at their most recent appraised values, and the deemed distributions of the net proceeds from such constructive sales plus earnings which are considered to be at or above the Threshold Amount.[10] In such instances, the periodic Performance Fee will take into account both realized and unrealized net gains on properties held in a Single Client Account, and would be payable to RREEF for deemed distributions of unrealized net gains on properties held by the Account for a pre-specified period. Therefore, if agreed to by the Independent Fiduciary for the Client Plan, RREEF would earn a Performance Fee based on the Single Client Account's performance which occurs prior to a return to the Client Plan of its invested capital plus earnings at or above the designated Threshold Amount or Hurdle Rate.

11. For purposes of the Fees, the fair market value of the Accounts' real property assets (other than in the case of actual sales) will be based on appraisals prepared by independent MAI appraisers. In this regard, every agreement by which an appraiser is retained will include the appraiser's representation that: (1) Its ultimate client is the Account and its underlying Plan (and non-Plan) investors, and (2) it will perform its duties in the interest of such Account (and investors). The applicant states that in the case of any appraisal that will serve as the basis for any "deemed sale" of such property for purposes of calculating the periodic Performance Fee payable to RREEF, then the following procedure shall be utilized:

(a) In the case of any Single Client Account, such MAI appraiser shall be either (i) Selected by the Independent Fiduciary of the Client Plan subject to the approval of RREEF, or (ii) selected by RREEF subject to the affirmative approval by the Independent Fiduciary of the Client Plan;

(b) In the case of any Multiple Client Account, such MAI appraiser shall be approved in advance by the Responsible Independent Fiduciaries (as defined in Part IV(e) above) owning a majority of the interests in the Account according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, which

[9] In this regard, the Department notes that an Independent Fiduciary for a Single Client Account should closely scrutinize budget estimates for both the NOI of the Account and the Asset Management Fees payable to RREEF each year based on the actual NOI. With respect to a Multiple Client Account, the Responsible Independent Fiduciaries should collectively scrutinize such budgets and NOI-based Fees, and raise appropriate objections to those Fees which result from actual operating expenses that materially deviate from previously approved budgets for such expenses. Thus, the Department emphasizes that an Independent Fiduciary for a Client Plan investing in either a Single or Multiple Client Account must adequately monitor the payment of any Asset Management Fees to RREEF by closely reviewing how the NOI that results from each property held by the Account may be affected by any actions taken by RREEF for such property.

[10] In this regard, RREEF represents that while it anticipates that most Client Plans establishing a Single Client Account will elect to pay a periodic Performance Fee based on deemed distributions, RREEF will not preclude any such Client Plan from paying a Performance Fee only after the Client Plan has received actual distributions from an Account equal to its initial invested capital plus earnings at the Threshold Amount. However, a periodic Performance Fee arrangement will not be available for Multiple Client Accounts.

approval may be by written notice and deemed consent by such Fiduciaries' failure to object to the appraiser within 30 days of such notice; and

(c) In either case, the selected MAI appraiser shall acknowledge in writing that the Client Plan(s) and other investors (in the case of a Multiple Client Account), rather than RREEF, is (are) its clients, and that in performing its services for the Account it shall act in the sole interest of such Client Plan(s) and other investors. In addition, following the date this proposed exemption is granted, every appraiser selected shall acknowledge that it owes a professional obligation to the Client Plans and other investors in the Account in performing its services as an appraiser for properties in the Account.

If an MAI appraiser selected by RREEF, or an appraisal performed by a previously approved appraiser, is rejected by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for the Client Plans owning the majority of the interests in the Multiple Client Account according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, the fair market value of the assets for any "deemed sale" relating to the payment of a Performance Fee will be determined as follows: (i) The Client Plans shall appoint a second appraiser and, if the value established for the property does not deviate by more than 10% (or such lesser amount as may be agreed upon between RREEF and the Client Plan(s)), then the two appraisals shall be averaged; (ii) if the values differ by more than 10%, then the two appraisers shall select a third appraiser, that is independent of RREEF and its affiliates, who will attempt to mediate the difference; (iii) if the third appraiser can cause the first two to reach an agreement on a value, that figure shall be used; however, (iv) if no agreement can be reached, the third appraiser shall determine the value based on procedures set out in the governing agreements of the Account or, if no such procedures are established, shall conduct its own appraisal and the two closest of the three shall be averaged.

In all cases, the Client Plan will retain the right to challenge any appraiser or appraisal. In the case of a Single Client Account, the frequency and timing of the required appraisals will be determined by the Independent Fiduciary of the Client Plan at the time it enters into an Account relationship with RREEF. However, all Performance Fee calculations will be based on contemporaneous appraisals of properties held by the Account, which will be performed within 12 months of the calculation. Thus, for example, RREEF maintains that a three year appraisal cycle will correspond to a three year periodic Performance Fee measuring period for an Account. In addition, RREEF will provide notice to the Client Plan within 60 days of each Performance Fee calculation for a Single Client Account that the Independent Fiduciary of the Client Plan has the right to request updated appraisals of the properties held by the Account if such Fiduciary determines that the existing independent appraisals (performed within 12 months of the calculation) are no longer sufficient.

12. With respect to the calculation of any Threshold Amount for the payment of a Performance Fee, RREEF states that a bookkeeping account will be maintained for each Client Plan which will show at all times the amount that has to be distributed to satisfy the Threshold Amount. When a certain amount is invested in the Account on a particular date, this bookkeeping account will initially equal the invested amount and will thereafter be increased to reflect the hurdle/threshold rate of return for the Account compounded on an annual basis. Whenever a distribution (from any source) is made from the Account to the Client Plan, the amount of this bookkeeping account will be reduced by the full amount of the distribution. Thereafter, the Threshold Amount will be calculated with respect to and added to this reduced amount. Only when the bookkeeping account is reduced to zero will the Threshold Amount be satisfied. With all Multiple Client Accounts, and those Single Client Accounts that elect to have a Performance Fee paid only after actual distributions are paid from the Account, once the Threshold Amount has been satisfied, the Performance Fee will be payable to RREEF with respect to all further distributions of net proceeds from capital events from the Account. With respect to any Single Client Accounts which elect to pay periodic Performance Fees based upon deemed distributions of the proceeds from an assumed sale of the properties by the Account, any such deemed distribution would reduce the Threshold Amount only for purposes of such Fee payment. Thus, immediately after such calculation, the Threshold Amount would be increased by the full amount of the deemed distribution for purposes of determining any later Performance Fee based on either deemed or actual distributions to the Client Plans.

13. The applicant submitted hypothetical examples of how the Performance Fee would work in a Multiple Client Account and a Single Client Account context.

In the first example, RREEF establishes a Multiple Client Account to which the Client Plans contribute $100 million (Initial Contribution) and agree to pay RREEF a Performance Fee equal to 15% of all amounts distributable from the Account after the investors have received distributions equal to their initial invested capital plus a real (CPI-adjusted) annual Threshold Amount of return of 4%. Assuming that CPI remains constant at 4% annually, the nominal annual Threshold Amount is 8% (the Threshold Amount). The Multiple Client Account acquires two real properties at a cost of $90 million (Property I) and $10 million (Property II, collectively; the Properties). Annual cash flow from operations is 7% of the Initial Contribution of $100 million, or 7% million (Annual Cash Flow).

For a Multiple Client Account, the Threshold Amount is calculated as follows: [11]

	Calculation	Threshold amount (in millions of $)
Year 1	100.00+(.08×100.00)−7 =	$101.00
Year 2	101.00+(.08×101.00)−7 =	102.08
Year 3	102.08+(.08×102.08)−7 =	103.25
Year 4	103.25+(.08×103.25)−7 =	104.51
Year 5	104.51+(.08×104.51)−7 =	105.87

[11] This example has been simplified. In reality, distributions would be made periodically throughout the year, reducing the amount on which the hurdle is calculated.

	Calculation	Threshold amount (in millions of $)
Year 6	0	

At the end of year 5, Property I is sold for $110 million, and there is an actual distribution of $110 million. Accordingly, RREEF will receive a Performance Fee of 15% times $110 million less $106 million (i.e., the approximate Threshold Amount at year 5), or $600,000. Numerically, this is as follows: ($110 million − $106 million) × 15% = $600,000. Because the Threshold Amount has been reduced to $0 at year 6, an additional Performance Fee will be payable with respect to any subsequent distribution of cash from a capital event, i.e., any sale or refinancing of the remaining property. Accordingly, if Property II is sold in year 10 for $15 million, RREEF will receive an additional Performance Fee of 15% times $15 million, or $2.25 million. Numerically, as follows: $15 million × 15% = $2.25 million. Therefore, the total Performance Fee received by RREEF in this example is $2,850,000.

In the second example, a large Client Plan establishes a Single Client Account with RREEF to which it contributes $100 million (Initial Contribution), and agrees to pay RREEF a Performance Fee every five years equal to 15% of all amounts distributed or deemed distributed from the Account after the Client Plan has received actual or deemed distributions equal to its invested capital plus a real (CPI-adjusted) annual Threshold Amount of return of 4%. If CPI remains constant at 4% annually, the nominal annual rate is 8% (the Threshold Amount). The Account acquires two real property assets at a cost of $90 million (Property I) and $10 million (Property II). Annual cash flow from operations is 7% of the Initial Contribution of $100 million, or 7% million (Annual Cash Flow).

For a Single Client Account, the Threshold Amount is calculated as follows:

	Calculation	Threshold amount (in millions of $)
Year 1	100.00+(.08 × 100.00) − 7 =	$101.00
Year 2	101.00+(.08 × 101.00) − 7 =	102.08
Year 3	102.08+(.08 × 102.08) − 7 =	103.25
Year 4	103.25+(.08 × 103.25) − 7 =	104.51
Year 5	104.51+(.08 × 104.51) − 7 =	105.87
Year 6	120.00[12] +(.08 × 120.00) − 7 =	122.60
Year 7	122.60+(.08 × 122.60) − 7 =	125.41
Year 8	125.41+(.08 × 125.41) − 7 =	128.44
Year 9	128.44+(.08 × 128.44) − 7 =	131.72
Year 10	131.72+(.08 × 131.72) − 7 =	135.25

After five years, the Threshold Amount will increase to approximately $106 million. At this time, if the two Properties are appraised for $110 million and $10 million, respectively, the deemed distributions are $120 million. Accordingly, at this time RREEF will receive a Performance Fee of: 15% × ($120 million—$106 million) = $2.1 million.

After the first periodic Performance Fee is paid out, the Threshold Amount is calculated as follows: First, the Threshold Amount is restored by the full amount of the deemed distribution, i.e., to $120 million, for purposes of the next five-year Performance Fee calculation. At the end of 10 years, the Threshold Amount will be approximately $135 million, and no additional Performance Fee will be payable unless the combined appraised value of the two Properties exceeds that amount.

14. All proceeds from capital events of an Account (i.e., sales or refinancings of real property investments owned by the Account) will be first applied to pay expenses of the Account. These expenses will include repayment of debt, payment of closing expenses, and establishment of reasonable reserves in connection with the Account's assets, whether such reserves are for repayment of existing or anticipated obligations or for contingent liabilities, other than the Performance Fee. Such proceeds, net of these expenses and reserves, generally will be the distributable net proceeds of capital events upon which the Performance Fee may be payable.

15. With respect to its Single Client Accounts, RREEF generally does not have discretion to reinvest proceeds from capital events, and any such reinvestment will occur at the direction of the Client Plan's Independent Fiduciary. The amount reinvested will be treated as having been recontributed by the Client Plan for purposes of the Investment Fee and the Performance Fee. Thus, RREEF represents that where capital proceeds are reinvested they will be treated as new invested capital for the purpose of the Threshold Amount and the payment of any future Performance Fee. RREEF also states that where it does not have reinvestment discretion, capital proceeds will be distributed to the Client Plan, unless such Client Plan affirmatively consents to the reinvestment. In cases where RREEF does have discretion to reinvest proceeds from capital events, the reinvested amount would not be treated as a new contribution of capital by the Client Plan for purposes of the Investment Fee, or having been distributed for purposes of the payment of Performance Fee. Therefore, such reinvested amounts will not be considered distributions under the bookkeeping account maintained for the Client Plan for purposes of calculating whether the Threshold Amount has been reached.

16. RREEF may be removed as the investment Manager for an Account at any time (generally upon 30 days notice), without cause, upon delivery of a notice of removal to RREEF by the Client Plan in the case of a Single Client

[12] $120.00 is the amount of deemed distributions.

Account, or by the Client Plans owning at least a majority of the interests in a Multiple Client Account. In addition, a Multiple Client Account may terminate upon failure to appoint a replacement investment manager following the removal or resignation of RREEF. The details and mechanics of the removal or resignation process will vary from Account to Account. In the case of an Account procedure for removal for cause (e.g., breach of contract), removal generally will be immediate. In most cases, however, removal will result from a desire to appoint a replacement manager and RREEF may be asked or required to stay on for a period of time (e.g., up to 120 days) until a replacement is in place. Similarly, if RREEF resigns, it may be asked to stay on until a replacement is appointed.

Upon removal of RREEF as investment Manager, RREEF will be entitled to receive the Performance Fee as if: (a) The assets of an Account had been sold at a price which is then-agreed to by RREEF and the Client Plan (or, with respect to a Multiple Client Account, Client Plans and other investors owning at least a majority of the interests in the Multiple Client Account); and (b) the deemed proceeds from the deemed sale were to be distributed from the Account. If RREEF and the Client Plan(s) cannot agree on a price, then the price shall be determined by an independent MAI appraiser mutually agreed to by RREEF and the Client Plan(s). If RREEF and the Client Plan(s) cannot agree on an appraiser, then the governing documents of the Account will provide for a means of selecting one or more appraisers or for seeking binding arbitration, as discussed more fully in paragraph 11 above.

In addition, RREEF may generally resign as investment Manager with respect to any Account at any time, without cause, by providing written notice to the Client Plan(s) with an interest in the Account. In this event, the Performance Fee will be tentatively calculated in the same manner as if RREEF were removed as investment manager, and allocated among each real property investment of the Account in proportion to the respective differences in their appraised values from their original cost (i.e., deemed unrealized appreciation, if any, for each property). The amount of the Performance Fee tentatively allocated to each property will be multiplied by a fraction, the numerator of which will be the actual sales price of the property received by the Account upon the disposition/sale of the property, and the denominator of which will be the appraised value of the property which was used in connection with determining the Performance Fee at the time of resignation, provided that this fraction will never exceed 1.0 (that is, the Performance Fee may be decreased to reflect any subsequent decline in the value of a property, but not increased to reflect any subsequent increase in value).[13] No Performance Fee will be payable until distributions (deemed or actual) from the Account exceed the Threshold Amount.

The Performance Fee will be calculated with respect to each property held by an Account at the time of resignation. However, the Performance Fee will not be paid for any property until the earlier of: (i) The sale of the property from the Account, or (ii) with respect to a Multiple Client Account, the termination of the Account. The Performance Fee will be paid only after the Client Plans have received their initial invested capital plus earnings at the Threshold Amounts. The replacement investment manager of the Account (unrelated to RREEF) will have discretion as to when the property is sold or when the Account is terminated.

17. A Single Client Account generally may be terminated at any time by the Client Plan upon not more than 30 days written notice to RREEF, by RREEF's resignation, or by expiration of the period of years specified in the investment management agreement governing the Account (unless extended at the request of the Client Plan). In the case of a Single Client Account termination, the assets of the Account may be liquidated for cash or distributed in-kind to the Client Plan.

A Multiple Client Account generally may be terminated upon: (a) The affirmative decision of the Client Plans and other investors owning at least a majority of the interests in the Multiple Client Account, or (b) expiration of the period of years specified in the Account's organizational documents. In addition, a Multiple Client Account may terminate upon failure to appoint a replacement investment manager following the removal or resignation of RREEF. Upon termination of a Multiple Client Account, RREEF is generally obligated to dispose of its assets and distribute net sales proceeds in an orderly fashion.

In the case of the Multiple Client or Single Client Account termination, RREEF's Performance Fee would be calculated in the same manner as discussed above with respect to the removal of RREEF.

18. Each Client Plan will receive throughout the term of the Account the following information:

(a) Quarterly and annual reports prepared by RREEF relating to the overall financial position and operating results of the Account (annual reports are audited by independent certified public accountants as required by the terms of the Account's governing documents), a statement regarding the total amount of fees paid by the Account to RREEF for the period, and, in the case of a Multiple Client Account, the value of the Client Plan's interest in the Account;

(b) An annual statement of the current fair market value of all properties owned by the Account based most recent MAI appraisals of such properties;

(c) In the case of a Multiple Client Account, a list of investors in the Account and, when applicable, a notice of any change thereto; and

(d) Operating and capital budgets for the subsequent year, plus (where applicable) an explanation of any material deviation from the prior year's budgets.

Any fiduciary for the Client Plan, as well as other authorized persons described above in paragraph (o)(1) of Part III, will have access during normal business hours to RREEF's records concerning the Accounts in which such persons have an interest, subject to the condition that each such person agree in writing that the information contained in such records shall be kept confidential except to the extent disclosure is authorized in writing by RREEF or is necessary to preserve or protect the assets of an Account or the interests of the Client Plans. The Department and the Internal Revenue Service will have access to all RREEF records concerning the Accounts. The Client Plan(s) having an interest in an Account will also, upon request, be provided with a report of all compensation paid to RREEF by the Account.

19. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee, Asset Management Fee and Performance Fee, shall be approved in writing by an Independent Fiduciary of a Client Plan which is independent of RREEF and its affiliates.

[13] If a Multiple Client Account is terminated prior to the sale of all the Account's assets (i.e., each Client Plan is distributed an undivided interest in each such asset), each remaining asset in the Account at the time of termination will be treated as having been sold at its then-appraised value.

(b) At the time any Account is established (or amended) and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan in a Single Client Account shall have total net assets with a value in excess of $100 million, and each Client Plan that is an investor in a Multiple Client Account shall have total net assets with a value in excess of $50 million, subject to certain additional requirements as stated in paragraph (1) of Part III(c) above; and

(2) No Client Plan shall invest, in the aggregate, more than 5% of its total assets in any Account or more than 10% of its total assets in all Accounts established by RREEF.

(d) Prior to making an investment in any Account (or amending an existing Account), the Independent Fiduciary of each Client Plan investing in an Account shall have received offering materials from RREEF which disclose all material facts concerning the purpose, structure, and operation of the Account, including any Fee arrangements (*provided* that, in the case of an amendment to the Fee arrangements, such materials need address only the amended fees and any other material change to the Account's original offering materials).

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from RREEF:

(1) Audited financial statements of the Account prepared by independent public accountants selected by RREEF no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by RREEF relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of the Fees paid to RREEF during the period covered by such report;

(3) Periodic appraisals (as agreed upon with the Client Plans) indicating the fair market value of the Account's assets as established by an MAI licensed real estate appraiser independent of RREEF and its affiliates, under the procedures described herein;

(4) In the case of any Multiple Client Account, a list of all other investors in the Account;

(5) Annual operating and capital budgets with respect to the Account, to be distributed to a Client Plan within 60 days prior to the beginning of the fiscal year to which such budgets relate; and

(6) An explanation of any material deviation from the budgets previously provided to such Client Plan for the prior year;

(f) The total fees paid to RREEF shall constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) RREEF shall provide a copy of the proposed exemption and a copy of the final exemption to all Client Plans that invest in any Single Client Account or any Multiple Client Account formed, on or after, the date the final exemption is published in the **Federal Register**.

Notice to Interested Persons

Those persons who may be interested in the pendency of this exemption include the independent fiduciaries of each Client Plan that maintains a Single Client Account with RREEF. Thus, RREEF will provide notice of the proposed exemption to each such affected Client Plan, by first class mail, within thirty (30) days following the publication of the proposed exemption in the **Federal Register**. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and as a supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). This supplemental statement will inform such interested persons of their right to comment on the proposed exemption and/or to request a hearing. All written comments and/or requests for a hearing are due within sixty (60) days of the publication of this notice of proposed exemption in the **Federal Register**.

In addition, RREEF shall provide a copy of the proposed exemption and a copy of the final exemption to all Client Plans that invest in any Single Client Account or any Multiple Client Account formed on, or after, the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Premier Funding Group, Inc. Employees Profit Sharing Plan (the P/S Plan) and the Money Purchase Pension Plan for Employees of Premier Funding Group, Inc. (the M/P Plan, collectively; the Plans), Located in Arlington, Texas

[Application Nos. D–10669 and D–10670]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of February 1, 1999, to a lease (the Lease) of certain second-floor space (the Leased Premises) in a building by the Plans to LM Holdings, Inc., a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) All terms and conditions of the Lease are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market rental amount for the Lease has been determined by an independent qualified appraiser;

(c) Each Plan's allocable portion of the fair market value of both the Leased Premises and the building where the Leased Premises are located (the Building) represents no more than 20 percent (20%) of the total assets of each Plan throughout the duration of the Lease;

(d) The interests of the Plans under the Lease are represented by an independent, qualified fiduciary (the Independent Fiduciary);

(e) The fees received by the Independent Fiduciary, combined with any other fees derived from any related parties, will not exceed 1% of that person's annual income for each fiscal year that such person continues to serve in the independent fiduciary capacity with respect to the Lease;

(f) The Independent Fiduciary evaluated the Lease and deemed it to be administratively feasible, protective and in the best interest of the Plans;

(g) The Independent Fiduciary monitors the terms and the conditions of the exemption (if granted) and the Lease throughout its duration, and takes whatever action is necessary to protect the Plans' rights;

(h) At the discretion of the Independent Fiduciary, the Lease can be extended for two additional five-year terms, provided that the Independent Fiduciary requires independent appraisals of the Leased Premises to be performed at the time of each extension of the Lease so as to ensure that LM Holdings continues to pay fair market rent, and such rent is not less that either the initial base rent or the amount paid during the most recent annual term; and

(i) Within 90 days of publication in the **Federal Register** of a notice granting this proposed exemption, LM Holdings files with the Internal Revenue Service (IRS) Form 5330 (Return of Initial Excise

Taxes for Pension and Profit Sharing Plans) and pays all excise taxes applicable under section 4975(a) of the Code that are due by reason of the existence of the Lease as a prohibited transaction prior to February 1, 1999.

EFFECTIVE DATE: This exemption, if granted, will be effective as of February 1, 1999.

Summary of Facts and Representations

1. The Plans are a profit sharing plan and a money purchase plan which were established in February, 1994. As of July 15, 1998, the Plans had two participants, Mr. Michael Leighty and Mr. Patrick McCarty (Mr. Leighty and Mr. McCarty, respectively). Mr. Leighty and Mr. McCarty are also the Plans' trustees. As of December 31, 1997, the P/S Plan and the M/P Plan had $924,350 and $616,234 in total net assets, respectively. Messrs. Leighty and McCarty are the only participants of the Plans, the only trustees of the Plans and the sole employees and shareholders of LM Holdings, Inc. (LM Holdings) and Premier Funding Group, Inc (Premier Funding).

Premier Funding is the sponsor of the Plans. Premier Funding and LM Holdings are both incorporated in the State of Texas and are located in Arlington, Texas. Both corporations are jointly owned on a 50%-50% basis by Messrs. Leighty and McCarty. Premier Funding and LM Holdings are in the business of acquiring financial instruments, real estate and other assets.

2. The Leased Premises and the Building are located at 2400 Garden Park Court, Arlington, Texas. The Building was owned by Ed Thulin (Mr. Thulin), an unrelated third party, until December 16, 1997. LM Holdings had leased approximately 700 square feet in the Building from Mr. Thulin under the terms and conditions of the subject Lease, as originally agreed to by the parties.

However, on December 16, 1997, the Plans purchased the Building from Mr. Thulin, for $210,000. Therefore, as of December 16, 1997, the Lease was between the Plans and LM Holdings, which made the Lease a prohibited transaction under the Act.[14] In this regard, the applicant represents that within 90 days of publication in the **Federal Register** of a notice granting this proposed exemption, LM Holdings will file Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) with the IRS and pay all excise taxes applicable under section 4975(a) of the Code that are due by reason of the existence of the Lease prior to February 1, 1999, the effective date of this exemption.

3. After purchasing the Building, the Plans commissioned an appraisal (the Appraisal) of the Leased Premises by an independent, qualified appraiser (see paragraph 5 below). The Appraisal determined the fair market rental value of the Leased Premises to be approximately $7 per rentable square foot, or $782.25 monthly. The Lease was amended on May 5, 1998, whereby the original terms were modified to reflect the fair market rental amount as determined by the Appraisal.[15]

Furthermore, to comply with the fair market rental amount determined by the Appraisal, LM Holdings has made an additional rental payment of $530 to the Plans. The applicant represents that this amount is equal to the difference between the fair market rental value of the Leased Premises and the actual rent that was paid for the Leased Premises by LM Holdings since the beginning of the Lease. This amount was computed by the applicant's attorney and was based on fair market rental amount set forth in the Appraisal.

4. The applicant is now requesting an individual exemption, effective as of February 1, 1999, which is the date that an independent, qualified fiduciary was appointed to represent the Plans for purposes of the Lease (as discussed further below). The parties to the Lease will be the Plans (doing business as PFGI Realty) and LM Holdings. Under the Lease as it now exists between the parties, the Leased Premises include approximately 1,341 square feet of the total rentable 5,196 square feet in the Building.[16] LM Holdings (i.e., the Tenant) will pay $785 per month during the first year of the Lease. Thereafter, on each annual anniversary of the Lease during the initial term and any subsequent renewal periods (discussed more fully below), the rent will be adjusted by the Independent Fiduciary based on the percent change in the annual Consumer Price Index (CPI) as published in the Wall Street Journal for the previous year. This annual adjustment may not fall below the higher of the base rate of $785 per month or the amount paid on a monthly basis during the most recent annual term.

Under the terms of the Lease, LM Holdings will be responsible for electricity, with all other expenses being paid by the owner of the Building (i.e., the Plans).[17] The initial term of the Lease is scheduled to end on May 5, 2003. At the discretion of the Independent Fiduciary, the Lease can be extended for two additional five year terms. The Independent Fiduciary will require independent appraisals to be performed at the time of each extension of the Lease so as to ensure that LM Holdings continues to pay fair market rent. However, the new rents for the Leased Premises set at the time of any extensions of the Lease will not be less than the rent received by the Plans during the prior leasing period.

Furthermore, the Lease requires that LM Holdings, as the tenant, provide public liability and property damage insurance for its business operations on the Leased Premises in the amount of $500,000. This insurance policy names the Plans as the insured.

5. As stated above, the fair market rent of the Leased Premises was established by the Appraisal dated April 20, 1998. The Appraisal was prepared by Thomas S. Haines, MAI and Wayne Burgdorf, MAI of Hanes, Jorgensen & Burgdorf, Ltd., Diversified Real Estate Services located in Arlington, Texas. The Appraisal relied on eight comparable rentals in the surrounding area to determine the fair market rental value of the Leased Premises. The addendums to the Appraisal (the Addendums), dated May 12, 1998 and May 22, 1998, respectively, state that the fair market rent for the Leased Premises is $7.00/square foot fixed, which equates to $782.25 a month, or $9,387 a year, for a five-year lease.

6. The Lease will be monitored by Gary J. Manny (Mr. Manny), who will serve as the Independent Fiduciary on behalf of the Plans for purposes of the Lease. Mr. Manny was appointed as the Independent Fiduciary on February 1, 1999, and has served in that capacity for the Plans since that date. Mr. Manny represents that he is an attorney who has general knowledge of ERISA, and the regulations thereunder. Mr. Manny also represents that he has acted before in a fiduciary capacity as a executor,

[14] Section 406(a)(1)(A) of the Act prohibits, in pertinent part, a plan fiduciary from causing a plan to engage in a transaction which constitutes a leasing of property between the plan and a party in interest.

[15] However, under the Lease as amended by the parties pursuant to the Appraisal, the Landlord and the Tenant have agreed to round off this number to $785 per month.

[16] There are three other tenants in the Building, who separately lease the remaining rentable space. Thus, the Leased Premises represent approximately 25.8% of the Building's rentable space.

[17] The applicant states that the terms of the Lease are identical to the other current leases in the Building. Furthermore, the applicant maintains that the remaining monthly bills for the Building are gas, water and lawn care. These items are not separately metered and are paid by the owner of the Building. The applicant represents that this is consistent with the comparable buildings analyzed in the Appraisal.

guardian and trustee for various clients. Thus, Mr. Manny states that he has experience in protecting the rights of the parties involved in such transactions. Mr. Manny states that he understands the duties, responsibilities and liabilities of acting in a fiduciary capacity for the Plans.

7. Mr. Manny represents that he is independent of LM Holdings, Premier Funding, Mr. Leighty and Mr. McCarty (the Related Parties), and has no interest in any of their business activities. In this regard, Mr. Manny states that he has done work in the past for the Related Parties. However, Mr. Manny's fees from the Related Parties represented less than one percent (1%) of his total annual billings. Mr. Manny further represents that for each year that he serves as the Independent Fiduciary for the Plans, his fees for serving in this capacity, combined with any other fees from the Related Parties, will not exceed 1% of his annual billings.

8. Mr. Manny states that he has reviewed the Lease and the Plans' investment portfolios. Mr. Manny concludes that the Lease will be protective of the Plans and consistent with the Plans' investment needs and objectives. In this regard, Mr. Manny notes that the fair market value of the Building, and the Leased Premises, represent less than twenty percent (20%) of each Plan's total assets, and also of the combined assets of the Plans.[18]

Mr. Manny states that the Lease will be in the best interest of the Plans and its participants. Mr. Manny believes that the Lease will be an appropriate investment for the Plans with adequate safeguards and protections.

9. Mr. Manny will monitor the terms and conditions of the Lease throughout its initial term and any renewal periods. Mr. Manny represents that he will have access to the books and records of the Plans, and will make sure that rental payments under the Lease are paid on time. Mr. Manny will review the Lease annually to ensure that all annual automatic adjustments to the rent are made based on the percent change in the CPI Index from the previous year. Mr. Manny will ensure that monthly rental payments are adjusted annually, as appropriate. Mr. Manny will also ensure that the adjusted rental payments never fall below the amount paid for the Leased Premises during the most recent annual period. Mr. Manny will monitor the value of the Building to ensure that each Plan's allocable portion of the Building and the Leased Premises represent no more than 20% of the total assets of each Plan throughout duration of the Lease.

Mr. Manny believes that the Lease is administratively feasible, in the best interest and protective of the Plans. As the Independent Fiduciary, Mr. Manny will represent the interests of the Plans at all times. Mr. Manny will monitor compliance by the LM Holdings, as the tenant, with the terms and conditions of the Lease, and will take whatever action is necessary to safeguard the interests of the Plans and its participants.[19]

10. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) All terms and conditions of the Lease are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market rental value of the Leased Premises has been determined by an independent qualified appraiser;

(c) Each Plan's allocable portion of the fair market value of both the Leased Premises and the Building will represent no more than 20% of the total assets of each Plan throughout the duration of the Lease;

(d) The interests of the Plans under the Lease are represented by the Independent Fiduciary;

(e) The fees received by the Independent Fiduciary, combined with any other fees derived from any related parties, will not exceed 1% of that person's annual income for each fiscal year that such person continues to serve in the independent fiduciary capacity with respect to the Lease;

(f) The Independent Fiduciary evaluated the Lease and deemed it to be administratively feasible, protective and in the best interest of the Plans;

(g) The Independent Fiduciary will monitor the terms and the conditions of the exemption (if granted) and the Lease throughout its duration, and will take whatever action is necessary to protect the Plans' rights;

(h) At the discretion of the Independent Fiduciary, the Lease can be extended for two additional five-year terms, provided that the Independent Fiduciary requires independent appraisals of the Leased Premises to be performed at the time of each extension of the Lease so as to ensure that LM Holdings continues to pay fair market rent, and such rent will not be less than the current base rate of $785 per month, or the amount paid on a monthly basis during the most recent annual term; and

(i) Within 90 days of publication in the **Federal Register** of a notice granting this proposed exemption, LM Holdings will file with the IRS Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) and pay all excise taxes applicable under section 4975(a) of the Code that are due by reason of the existence of the Lease as a prohibited transaction prior to February 1, 1999.

Notice to Interested Persons

The applicant represents that, within five (5) business days of the publication of the notice of proposed exemption (the Notice) in the **Federal Register**, all interested persons will receive a copy of the Notice, and a copy of the supplemental statement, as required by 29 CFR 2570.43(b)(2). Comments and hearing requests on the proposed exemption are due thirty-five (35) days after the date of publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The Unaka Company, Incorporated Employees' Profit Sharing Plan and Trust (the Plan) Located in Greenville, Tennessee

[Application No. D–10722]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

If the exemption is granted the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to:[20]

(a) The assignment (the Assignment) by the Plan to the Unaka Company,

[18] The applicant states that the approximate value of the Building is $210,495, which represents 11.5% of the P/S Plan and 11.5% of the M/P Plan. This is because the ownership of the building is allocated, as all other assets in the Plans, 60% to the P/S Plan and 40% to the M/P Plan. The applicants represent that all rents for office space in the Building are allocated in the same manner.

[19] In this regard, the applicant makes a request regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Mr. Manny, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of Mr. Manny.

[20] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Incorporated (Unaka), the sponsoring employer and a party in interest with respect to the Plan, of any and all claims, demands, and/or causes of action which the Plan may have against certain members of the Plan Administrative Committee (the PAC) and other involved parties (collectively, the Responsible Fiduciaries) for breach of fiduciary duty under the Act, during the period from July 1, 1996 to July 31, 1998;

(b) In exchange for the Assignment, described in paragraph (a), above, the interest-free, non-recourse loan (the Loan) by Unaka to the Plan in an amount equal to the difference between $413 and the fair market value per share for the common stock of Unaka (the Stock) held by the Plan, in connection with the sale of such Stock by the Plan to Unaka, pursuant to the statutory exemption, as set forth in section 408(e) of the Act; [21]

(c) The possible repayment of such Loan to Unaka from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(d) The interest-free, non-recourse extension of credit (the Extension of Credit) by Unaka to the Plan of certain expenses arising out of the litigation against the Responsible Fiduciaries, effective as of, May 1, 1999, the date when expenses incurred by the Plan in bringing such litigation were first paid by Unaka; and

(e) The possible receipt by Unaka of reimbursement of such litigation expenses from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries; provided that the following conditions are satisfied:

(1) The Plan will pay no interest in connection with the Loan or the Extension of Credit;

(2) None of the assets of the Plan will be pledged to secure either the amount of the Loan or the amount of the Extension of Credit;

(3) Repayment to Unaka of the amount of the Loan and reimbursement to Unaka of the amount of the Extension of Credit shall be restricted solely to the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(4) To the extent the amount of the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries is equal to or less than the amount due to Unaka as repayment for the Loan and reimbursement of the Extension of Credit, the Plan shall not be liable to Unaka for any amount;

(5) To the extent the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries exceeds the total amount of the Loan, plus the amount of the Extension of Credit, such excess amount will be allocated to the accounts of the participants of the Plan; with the exception that no such allocation will be made to the account of Robert Austin, Jr. in the Plan;

(6) The transactions which are the subject of this exemption do not involve any risk of loss either to the Plan or to any of the participants and beneficiaries of the Plan;

(7) The Plan will not incur any expenses as a result of the transactions which are the subject of this exemption;

(8) Notwithstanding the Assignment by the Plan of its rights against the Responsible Fiduciaries, the Plan does not release any claims, demands, and/or causes of action which it may have against Unaka and/or its affiliates;

(9) All of the terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's-length with unrelated third parties;

(10) The Plan receives no less than the fair market value for the Assignment, as of the date of the closing on the transfer of the Assignment;

(11) Prior to the Plan's entering the transactions, an independent, qualified fiduciary (the I/F), who is acting on behalf of the Plan and who is independent of Unaka and its affiliates, reviews, negotiates, and approves the terms and conditions of the Loan, the Assignment, and the Extension of Credit and determines that such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries of the Plan;

(12) Throughout the duration of the transactions, the I/F monitors the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the proposed transactions, monitors the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that the Plan's interests are served, and monitors the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied;

(13) The I/F, acting on behalf of the Plan, shall have final approval authority over any proposed settlement of any legal proceedings against the Responsible Fiduciaries brought pursuant to the terms of the Assignment; and

(14) In the event the I/F resigns, is removed, or for any reason is unable to serve, including but not limited to the death or disability of such I/F, or if at any time such I/F does not remain independent of Unaka and its affiliates, such I/F will be replaced by a successor: (i) Who is appointed immediately upon the occurrence of such event; (ii) who is independent of Unaka and its affiliates; (iii) who is qualified to serve as the I/F; and (iv) who assumes all the duties and responsibilities of the predecessor I/F.

Summary of Facts and Representations

1. The Plan, established on February 1, 1967, but amended and restated on June 29, 1995, is a defined contribution profit sharing plan which is designed to qualify under section 401(a) of the Code. Contributions to the Plan are made by Unaka and by the participants in the Plan. The Plan is an individual account plan which does not provide for participant-directed investments. All contributions to the Plan are invested by the trustee of the Plan, pursuant to the funding policy and method, as determined by Unaka and by the Plan's investment manager.

Employees of Unaka and/or its subsidiaries are participants in the Plan. As of January 1, 1997, the Plan had approximately 1,142 participants. From January 1, 1997 to February 11, 1999, distributions of account balances were made to 209 participants, and 104 participants were added to the Plan. Accordingly, as of March 1, 1999, there were 1,037 participants in the Plan.

As of June 30, 1998, the Plan had approximately $16.8 million in assets on an unaudited basis, consisting of cash, mutual fund interests, government and corporate bonds, and shares of stock. It is represented that each participant's account shares a *pro-rata* portion of the overall value of the general assets of the Plan.

In the past, Unaka, as Plan administrator, has delegated to certain individuals, including, but not limited to certain officers and employees of Unaka, the responsibilities of administering the Plan. In this regard, until October 1997, the PAC

[21] The Department, herein, expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the sale by the Plan of its Unaka Stock to Unaka or as to whether the conditions set forth in such statutory exemption are satisfied in the execution of such transaction. Further, the Department, herein, is offering no relief for transactions other than those proposed.

administered the Plan. It is represented that from June 1996 to October 1997, the PAC was comprised of Gordon H. Newman, Jerald K. Jaynes, Lonnie F. Thompson, and Gary Landes. From May 1995 to June 1996, the PAC was comprised of Gordon H. Newman, Robert Austin, Jr., and Gordon Chalmers. Prior to that time the PAC members were Gordon H. Newman, Terry O'Donovan, Powell Johnson, Dominick Jackson, and Ray Adams.

As discussed more fully below, in an agreement dated July 31, 1998, as amended March 25, 1999, and April 7, 1999, an independent, qualified individual was hired to serve as the trustee (the Trustee) of the Plan, and an institutional investment manager was engaged to manage the assets of the Plan and to serve as the I/F with respect to the transactions which are the subject of this proposed exemption.

2. Established in 1950 in Greeneville, Tennessee, Unaka is a holding corporation for the diverse industries of its wholly-owned subsidiaries. These subsidiaries consist primarily of the MECO Corporation, a manufacturer of barbecue grills and folding metal furniture, SOPAKCO, a warehouse operator and manufacturer of packaged foods, and Crown Point, an international food supply company specializing in the buying and selling of food commodities.

Unaka is a privately held corporation whose stock is not traded on any registered securities exchange. Another holding company, the Rolich Corporation (Rolich), owns approximately 61 percent (61%) of the 54,000 issued and outstanding shares of the Stock of Unaka which has a $10 par value. The Plan owns an additional 26 percent (26%) of the issued and outstanding shares of Stock of Unaka. Members of the Austin family, as discussed below, and various other individuals own the remaining 13 percent (13%) of the Unaka Stock.

3. In August of 1987, Robert Austin, Sr. purchased, through Rolich, a controlling interest in Unaka. It is represented that at that time, Rolich was owned by the members of the immediate family of Robert Austin, Sr. In connection with Robert Austin, Sr.'s obtaining control of Unaka, the Plan, on December 27 and 28, 1987, acquired 2,500 and 6,500 shares, respectively, of Unaka Stock directly from Unaka at a price of $220 per share. Subsequently, on October 1, 1989, the Plan purchased an additional 5,000 shares of Unaka Stock from Unaka at a price of $250 per share.[22]

With the deaths in 1990, of Robert Austin, and his wife, Mary T. Austin, a struggle for control of Rolich and Unaka ensued among their three children who are the heirs to their parents' estates. In this regard, most of the litigation involves the struggle for control of Unaka and Rolich among, Robert Austin, Jr., Lisa Austin, and Christy Austin. Additional litigation is associated with the members of Unaka's former management and with other shareholder derivative and non-derivative suits. It is anticipated that these various legal disputes may continue in the foreseeable future. However, it is represented that as of April 1997, Robert Austin, Jr. obtained majority ownership of Rolich and is currently serving as Chairman of the Board of Directors of Unaka.

4. In October of 1996, the Plan entered into an agreement to sell its Unaka Stock to Nothung, Inc. (Nothung), an entity owned by Robert Austin, Jr., for a minimum price of $413 per share. It is represented that certain Responsible Fiduciaries who were members of the PAC did not complete the sale of the Plan's Unaka Stock, pursuant to the agreement with Nothung. As a result, the PAC, acting on behalf of the Plan, failed to sell the Plan's Unaka Stock to Nothung in October of 1996. Subsequently, the offer to purchase the Plan's Unaka Stock, pursuant to the agreement with Nothung, lapsed on January 27, 1997.

5. With regard to the $413 per share price offered, pursuant to the agreement with Nothung, it is represented that Mercer Capital Management, Inc. (Mercer), an independent, qualified appraisal, valued the Plan's Unaka Stock, as of May 31, 1996, on a marketable, minority interest basis, at $413 per share. Of the three valuation methodologies, Mercer employed the income approach and the asset-based approach, but did not consider the market approach appropriate, because at the time of the appraisal there had been too few arm's length transactions in the Unaka Stock. Further, the Mercer appraisal did not discount the value of the Plan's Unaka Stock for lack of marketability, because: (1) Mercer believed it reasonable to assume that ongoing negotiations with Unaka would result in an option for Plan participants to put the shares to Unaka or to the Plan at the appraised fair market value; (2) Mercer accepted that the original investment by the Plan in Unaka Stock was based on assurances of reasonable treatment by the remaining shareholders; and (3) Mercer accepted representations from the Plan's legal counsel that there had been an intent and practice not to consider marketability discounts in the valuation estimates used in prior years.

6. The Plan currently holds 14,000 shares of Unaka Stock which Unaka has offered to purchase at a price equal to the fair market value of such Stock on the date the transaction is closed. It is represented that the proposed sale by the Plan to Unaka of the Plan's Unaka Stock will satisfy the criteria of section 408(e) of the Act.[23]

In anticipation of the sale of the Plan's Unaka Stock to Unaka and in anticipation of the transactions which are the subject of this proposed exemption, it is represented that an appraisal, as of June 30, 1998, of the fair market value of the Unaka Stock was prepared by Bernstein, Phalon & Conklin (BP&C), an independent, qualified appraiser, with offices in Dallas, Texas. In determining the value of the Unaka Stock, BP&C considered all three approaches to value, the income approach, the asset-based approach, and the market approach. The results of these valuation techniques applied to a minority interest of the Plan's Unaka Stock on a closely held basis were as follows:

Income approach
$283 per share
Asset-based approach
$334 per share
Market approach
$292 per share.

After giving slightly greater weight to the income approach, because that valuation method took into consideration the current and projected business operations of Unaka, BP&C determined that the fair market value of the equity of Unaka on a closely held, minority basis was $301 per share, as of June 30, 1998. Based on an appraised value of $301 per share, approximately $4.2 million of the Plan's assets are currently invested in Unaka Stock which constitutes approximately 25 percent (25%) of the total assets held by the Plan.

The applicant has represented that an updated appraisal of the Unaka Stock

[22] Unaka represents that the acquisition by the Plan of Unaka Stock both in December 1987, and October 1989, satisfied the criteria of section 408(e) of the Act. The Department, herein, expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the acquisition in 1987 and 1989 of the Unaka Stock by the Plan or as to whether the conditions set forth in such statutory exemption were satisfied in the execution of such transactions. Further, the Department, herein, is offering no relief for transactions other than those proposed.

[23] *See*, footnote number 22, above.

will be obtained at the time of the closing of the sale of the Plan's Unaka Stock. In this regard, in the engagement letter, dated September 11, 1998, BP&C acknowledges its responsibility for providing the fair market value of the Plan's Unaka Stock, as of the date of the sale of such shares, and for issuing a fairness opinion regarding such sale, if appropriate.

7. In addition to the sale to Unaka of the Plan's Unaka Stock, it is represented that the Plan intends to sell, assign, transfer, and convey to Unaka any and all of the Plan's claims, demands, and causes of action (including reimbursement of reasonable legal fees, expenses, and costs) which the Plan may have against the Responsible Fiduciaries for breach of fiduciary duties during the period between July 1, 1996 to July 31, 1998. It is represented that this time span was chosen to cover the period during which the Responsible Fiduciaries were in control of the Plan and its assets and in order to cover any and all potential claims or causes of action that may arise out of any acts on the part of the Responsible Fiduciaries. In this regard, July 1, 1996, is the date Robert Austin, Jr. was removed from the PAC, and July 31, 1998, is the last date before the Trustee, who is the successor to the PAC, was appointed.

Included without limitation in the Assignment are all claims as to: (i) The value of the Unaka Stock held by the Plan, including its purchase, sale, transfer, voting, valuation, and appraisal; (ii) any offers, attempts, or agreements to purchase, transfer, assign, vote, pledge, or hypothecate such Stock, including but not limited to the offer/agreement to purchase the Stock made by Nothung in October 1996; and (iii) any third party claims, demands, and causes of action arising therefrom. Notwithstanding the Assignment by the Plan of its rights against the Responsible Fiduciaries, it is represented that the Trustee, on behalf of the Plan, will not release any claims, demands, and/or causes of action which the Plan may have against Unaka and/or its affiliates.

Due to the uncertainty of the outcome of the litigation between the Plan and the Responsible Fiduciaries, it is represented that it is difficult to calculate a precise value of the rights against the Responsible Fiduciaries which the Plan proposes to assign to Unaka. In this regard at the request of the I/F who is also the Plan's investment manager, BP&C were engaged on March 25, 1999, to express an opinion concerning the approximate fair market value of the Assignment. As part of the analysis, BP&C took into consideration: (i) The likelihood of the Plan prevailing successfully in the lawsuit against the Responsible Fiduciaries; (ii) the likelihood of collecting on any judgment awarded by the court; and (iii) the ability of the Plan to sell the Assignment to a willing buyer. Based on its analysis, BP&C concluded that the fair market value of the Assignment is negligible.

8. In exchange for the Assignment, Unaka proposes to lend to the Plan the difference between the value of $413 per share for the Unaka Stock (as set forth in the agreement with Nothung and as set forth in the 1966 Mercer appraisal) and the fair market value, as of the date the proposed transactions are closed, of the Plan's Unaka Stock, as determined by the I/F after considering the appraised value of such Stock at closing. Because the offer price for the Plan's Unaka Stock evidenced by the agreement with Nothung was based upon the Mercer appraisal which did not consider a discount for lack of marketability, it is the position of the applicant that the $413 per share appraised value of the Plan's Unaka Stock includes a "premium." Although at the time of the agreement with Nothung, the applicant maintains that the Plan could have obtained a control premium for the sale of its Unaka Stock, it is represented that the Plan has no current or foreseeable ability to attract such a premium in the future. Furthermore, in the opinion of the applicant the proposed transaction will restore this "premium," because there is no known market for the minority block of Unaka Stock held by the Plan.

9. In addition to the transactions described above, involving the Assignment and the Loan, relief has been requested for an Extension of Credit between Unaka and the Plan of the expenses arising out of the litigation against the Responsible Fiduciaries. In this regard, Unaka proposes to extend credit to the Plan of an amount equal to the cost incurred in bringing suit against such Responsible Fiduciaries. It is represented that due to constraints imposed by the statute of limitations, it will be necessary for the Plan to begin legal proceedings against the Responsible Fiduciaries, prior to the date when a final exemption can be granted for the proposed transactions. In this regard, Unaka has agreed (in anticipation of the subject transactions) to pay on behalf of the Plan, beginning May 1, 1999, all expenses incurred by the Plan in filing and pursuing the litigation against the Responsible Fiduciaries. Accordingly, relief, if granted, for the Extension of Credit, as described in paragraph (d) above, has been made effective, as of May 1, 1999. In the event a final exemption is issued, it is represented that all amounts paid by Unaka, prior to the Assignment, to cover the expenses incurred by the Plan in filing and pursuing the litigation against the Responsible Fiduciaries shall be added to such additional amounts expended by Unaka after the Assignment in connection with the legal proceedings against the Responsible Fiduciaries. In the event a final exemption is not granted by November 30, 1999, the Plan will have the option of continuing the litigation against the Responsible Fiduciaries, in its own right and at its own expense; but, Unaka shall not have the right to reimbursement for any payments made during the seven (7) months period from May 1, 1999, to November 30, 1999, of the Plan's expenses in connection with the litigation against the Responsible Fiduciaries.

It is represented that both the Loan and the Extension of Credit will be without interest and without recourse against the Plan. In this regard, repayment to Unaka of the amount of the Loan and reimbursement to Unaka of the amount of the Extension of Credit shall be restricted solely to the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries. It is represented that to the extent the cash proceeds of any judgment or settlement of the litigation against the Responsible Fiduciaries exceeds the total amount of the Loan, plus the amount of the Extension of Credit, such amount will be allocated to the accounts of the participants of such Plan, with the exception that no such allocation will be made to the account of Robert Austin, Jr. in the Plan. It is represented that to the extent the cash proceeds of the recovery, if any, from such litigation is equal to or less than the aggregate amount of the Loan and the Extension of Credit, the Plan will not be responsible for any amount. In this regard, it is represented that Unaka will waive the repayment of any outstanding balance on the Loan and any balance on the Extension of Credit.[24]

[24] It is represented that to the extent Unaka waives repayment of the outstanding balance of the Loan and the Extension of Credit, or to the extent that the Plan receives any excess recovery over the aggregate amount of the Loan and the Extension of Credit, Unaka will amend the Plan to specify the allocation of such amounts in a manner so as to ensure that the Plan will not violate either section 401(a)(4) or section 415 of the Code. Further, Unaka represents that it will submit an amendment to the Internal Revenue Service (the IRS) for a favorable determination letter for the Plan, as amended, by such amendment. Unaka represents that it will make any changes required by the IRS regarding such allocations.

Continued

10. As a fiduciary of the Plan and as an employer any of whose employees are covered by the Plan, Unaka is a party in interest with respect to the Plan, pursuant to section 3(14)(A) and 3(14)(C) of the Act. The proposed transactions will violate section 406(a)(1)(B) of the Act, because the execution of the Loan between Unaka and the Plan and the Extension of Credit by Unaka to the Plan each constitutes a lending of money between a plan and party in interest which is prohibited by the Act. In addition, the Assignment between the Plan and Unaka constitutes a transfer to, or use by or for the benefit of a party in interest of the income or assets of the Plan for which relief from section 406(a)(1)(D) of the Act would be necessary.

Further, the applicant has requested relief for violations of section 406(b)(1) and (b)(2) of the Act that may arise from Unaka's status as a sponsor and administrator of the Plan. In this regard, the proposed transactions could involve a fiduciary dealing with the assets of the plan in his own interest and/or acting in his individual capacity on behalf of a party whose interests are adverse to the interests of the plan or it participants and beneficiaries.

11. With respect to the proposed transactions, Unaka notes that a class exemption, Prohibited Transaction Class Exemption 80–26 (PTCE 80–26), provides an exemption for interest-free loans by parties in interest to plans. However, PTCE 80–26 is applicable where loan proceeds are used for payment of ordinary operating expenses of a plan or for a period of no more than three (3) days for a purpose incidental to the ordinary operation of a plan. It is represented that Unaka is uncertain whether the proposed transactions are of the type contemplated by class exemption PTCE 80–26.

However, Unaka points out that individual exemptions have been granted in cases involving an extension of credit from a plan sponsor to a plan and an assignment back from the plan to the plan sponsor of the plan's litigation rights and interests. In the opinion of Unaka, the fact that individual exemptions have been granted in similar circumstances indicates that the proposed transactions are in line with current administrative practices. Accordingly, Unaka believes that the request for an individual exemption is appropriate.

12. Unaka represents that the proposed transactions are administratively feasible in that the nature of the transactions does not require ongoing supervision by the Department. In this regard, the Plan has engaged the Trustee and the I/F, who is also the investment manager of the Plan. In addition, it is represented that all necessary safeguards are incorporated into the documents evidencing the Assignment, the Loan, and the Extension of Credit between the Plan and Unaka.

13. Unaka represents that the proposed transactions will preserve the value of retirement accounts of participants in the Plan and will ensure that such participants do not suffer from the failure by the Responsible Fiduciaries to sell the Unaka Stock, pursuant to the terms of the agreement with Nothung. In this regard, it is represented that denial of the proposed exemption would cause the participants of the Plan to shoulder the decline in the value of the Unaka Stock caused by events wholly outside their control. Further, the Plan would avoid an expensive and time-consuming litigation against the Responsible Fiduciaries the outcome of which is not assured. In addition, it is uncertain whether the Responsible Fiduciaries will have sufficient assets to satisfy a judgment, if one were to be awarded to the Plan.

14. Unaka represents that the proposed transactions are in the interest of the Plan in that such transactions will reinforce the participants' confidence in the security of their retirement funds and allow for diversification of assets. In this regard, the Plan will immediately receive the proceeds from the Loan and can, upon receipt, invest such proceeds in other assets to produce additional earnings for the participants in the Plan. Further, the Plan will benefit in that it will not incur any expenses as a result of the transactions.

15. Unaka represents that the terms of the proposed exemption adequately protect the rights of the participants and beneficiaries of the Plan. Neither the Loan nor the Extension of Credit will bear any interest. The assets of the Plan will not be pledged as collateral to secure the Loan or the Extension of Credit, nor will the assets of the Plan be used to repay the Loan or the Extension of Credit, other than solely from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries. To the extent the amount of the cash proceeds from such recovery, if any, is equal to or less than the amount of the Loan and the amount of the Extension of Credit, it is represented that Unaka will waive the repayment of any outstanding balance on the Loan and any balance on the Extension of Credit. In short, it is represented that as a result of the proposed transactions, neither the Plan nor the participants will experience a risk of loss.

16. As an additional safeguard, pursuant to the terms of an agreement signed, July 31, 1998, as amended March 25, 1999, and April 7, 1999, the Strategic Investment Counsel Corporation (STRINCO) of Dallas, Texas, has agreed to serve as the I/F with respect to the proposed transactions and also to serve as the investment manager with respect to the investment and reinvestment of the assets of the Plan. Pursuant to the same agreement, Colin M. Henderson (Mr. Henderson), the President and chief investment officer of STRINCO, has accepted the appointment to serve, in his individual capacity, as the Trustee of the Plan.

It is represented that STRINCO, as the I/F and the investment manager for the Plan, has agreed to serve throughout the duration of the proposed transactions. The Department notes that the proposed exemption is conditioned upon the I/F, throughout the duration of the transactions, monitoring the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the proposed transactions, monitoring the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that its interests are served, and monitoring the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied. The exemption contains a further condition that specifies that in the event the I/F resigns, is removed, or for any reason is unable to serve, including but not limited to the death or disability of such I/F, or if at any time such I/F does not remain independent of Unaka and its affiliates, such I/F will be replaced by a successor: (i) Who is appointed immediately upon the occurrence of such event; (ii) who is independent of Unaka and its affiliates; (iii) who is qualified to serve as the I/F; and (iv) who assumes all the duties and responsibilities of the predecessor I/F.

STRINCO has represented that it has extensive experience as a service

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To the extent that waiving the outstanding balance of the Loan and the Extension of Credit is deemed to be a contribution to the Plan, Unaka represents that such amounts will not be treated as a contribution prior to the date when such amounts are either repaid or waived. However, Unaka represents that it intends to deduct all such amounts deemed to be contributions to the Plan, as of the date they are so deemed.

provider to employee benefit plans. Further, STRINCO represents that it is independent of all of the parties to the proposed exemption. In this regard, the projected income from Unaka represent a small percentage of the projected revenues of STRINCO. Specifically, it is represented that STRINCO's revenues from fees paid by Unaka will constitute less than 3 percent (3%) of STRINCO's projected total revenues for 1999.

STRINCO has acknowledged its status as an independent fiduciary under the Act, including the responsibilities and duties of a fiduciary involving the assets of the Plan. Specifically, prior to the Plan's entering the transactions, STRINCO is responsible for reviewing, negotiating, and approving the terms and conditions of the Loan, the Assignment, and the Extension of Credit and determining whether such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries of the Plan. It is represented that STRINCO has been involved since its engagement in 1998, in the evaluation, analysis, and design of the proposed transactions. In this regard, STRINCO represents that it has at all times retained complete discretion as to the Plan's participation in the proposed transactions and has been actively involved in the negotiation of the terms of conditions of such transactions. Further, STRINCO represents that throughout the duration of the transactions, it will monitor the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the proposed transactions; monitor the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that its interests are served; and monitor the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied. In addition, STRINCO, the I/F acting on behalf of the Plan, shall have final approval authority over any proposed settlement of any legal proceedings against the Responsible Fiduciaries brought pursuant to the terms of the Assignment. In this regard, it is represented that such final approval authority is not intended to and does not confer upon STRINCO, as I/F to the Plan, any authority to initiate settlement negotiations nor any right to negotiate any specific terms of settlement.

STRINCO has analyzed each of the three proposed transactions and has made independent investigation of the representations made as to each of the transactions, including significant due diligence into the background surrounding the failure of the Responsible Fiduciaries to sell the Plan's Unaka Stock, pursuant to the agreement with Nothung. It is represented that Mr. Henderson, as President of STRINCO, his counsel, and BP&C have visited the Unaka facilities, interviewed its officers and reviewed documentation involving the Plan, including minutes of the PAC meetings and certain minutes of the meetings of the Board of Directors of Unaka.

With respect to its analysis of the Loan, Assignment, and Extension of Credit, STRINCO states that the proposed transactions do not bind any of the Plan's assets as collateral. Furthermore, the proposed transactions, in the worst case, obtain a premium for the Plan in excess of any loss actually suffered by the Plan or its participants and beneficiaries. In this regard, STRINCO affirms that in the event no recovery is made in the suit against the Responsible Fiduciaries, the amount of Loan will be automatically forgiven, and the Plan will have gained a premium (*i.e.* cash equal to the difference between the price of the Plan's Unaka Stock, pursuant to the agreement with Nothung and the current fair market value of such shares). In the event a substantial amount is recovered in the suit against the Responsible Fiduciaries, the Plan will still gain a premium in recovering everything in excess of the amount of the Loan (less the expenses of litigation). In the opinion of STRINCO, regardless of the outcome of the litigation, the Loan puts the Plan and its participants and beneficiaries in the position they would have been in if the Unaka Stock had been sold to Nothung.

In order to receive the Loan, the Plan is required to enter into the Assignment. In the opinion of STRINCO, the Assignment allows a suit to be brought against the Responsible Fiduciaries without the Plan assuming any risks associated with such suit and without having to spend any of its own funds to do so. In light of Unaka's inability to retain any of the proceeds of such suit, other than recoupment of the outstanding balance of the Loan and any expenses of such litigation, in the opinion of STRINCO the Assignment has minimal, if any, value in the hands of the assignee. Based on this reasoning, STRINCO has concluded the proposed transactions are at least as favorable to the Plan as any transaction between the Plan and a third party.

With respect to the Extension of Credit by Unaka of the litigation expenses, STRINCO points out that, if the Plan were not to participate in the proposed transactions and instead bring suit in its own right against the Responsible Fiduciaries, the Plan would be required to pay the litigation expenses prior to any potential recovery and regardless of such recovery. Accordingly, STRINCO has concluded, based upon its analysis described above, that each of the proposed transactions represents a prudent and conservative course of action which is feasible and fair; in the best interests of the participants and beneficiaries; and protective of the assets of the Plan which are held for the exclusive benefit of the participants and beneficiaries.

17. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and 4975(c)(2) of the Code because:

(1) The Plan will pay no interest in connection with the Loan or the Extension of Credit;

(2) None of the assets of the Plan will be pledged to secure either the amount of the Loan or the amount of the Extension of Credit;

(3) Repayment to Unaka of the amount of the Loan and reimbursement to Unaka of the amount of the Extension of Credit shall be restricted solely to the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(4) To the extent the amount of the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries is equal to or less than the amount due to Unaka as repayment for the Loan and reimbursement of the Extension of Credit, the Plan shall not be liable to Unaka for any amount;

(5) To the extent the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries exceeds the total amount of the Loan and the amount of the Extension of Credit, such amount will be allocated to the accounts of the participants of the Plan; with the exception that no such allocation will be made to the account of Robert Austin, Jr. in the Plan;

(6) The transactions which are the subject of this exemption do not involve any risk of loss either to the Plan or to any of the participants and beneficiaries of the Plan;

(7) The Plan will not incur any expenses as a result of the transactions which are the subject of this exemption;

(8) Notwithstanding the Assignment by the Plan of its rights against the Responsible Fiduciaries, the Plan, will not release any claims, demands, and/or causes of action which it may have against Unaka and/or its affiliates;

(9) All of the terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's-length with unrelated third parties;

(10) The Plan receives no less than the fair market value for the Assignment, as of the date of the closing on the transaction;

(11) Prior to the Plan's entering the transactions, STRINCO, who is acting as I/F on behalf of the Plan and who is independent of Unaka and its affiliates, will review, negotiate, and approve the terms and conditions of the Loan, the Assignment, and the Extension of Credit and will determine that such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries;

(12) Throughout the duration of the transactions, STRINCO, as the I/F, will monitor the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the proposed transactions; will monitor the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that its interests are served; and will monitor the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied;

(13) STRINCO, the I/F acting on behalf of the Plan, shall have final approval authority over any proposed settlement of any legal proceedings against the Responsible Fiduciaries brought pursuant to the terms of the Assignment; and

(14) In the event STRINCO resigns, is removed, or for any reason is unable to serve, or if at any time STRINCO does not remain independent of Unaka and its affiliates, STRINCO will be replaced by a successor: (i) Who is appointed immediately upon the occurrence of such event; (ii) who is independent of Unaka and its affiliates; (iii) who is qualified to serve as the I/F; and (iv) who assumes all the duties and responsibilities of STRINCO.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include any person who presently is a participant in the Plan or any other person who is entitled to receive benefits under the Plan. It is represented that these two classes of interested persons will be notified through different methods.

In this regard, it is represented that notification will be provided to all participants of the Plan who are present in the work environment of Unaka or its affiliates, within fifteen (15) calendar days of the date of publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register** by posting on employee bulletin boards at those locations within the principal places of employment of Unaka and its affiliates which are customarily used for notices regarding labor-management matters for review. Such posting will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 C.F.R. § 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

It is represented that notification will be provided to any interested person who is entitled to benefits but who is not present in the work environment of Unaka or its affiliates by mailing first class within fifteen (15) calendar days of the date of publication of the Notice, a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 C.F.R. § 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

All written comments and requests for a hearing must be received by the Department no later than thirty (30) days from the date such interested persons receive, through posting or mailing, a copy of the Notice and the Supplemental Statement.

FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

General Motors Hourly Rate Employes Pension Plan, General Motors Retirement Program for Salaried Employes, Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, Employees' Retirement Plan for GMAC Mortgage Corporation (collectively, the Plans), Located in New York, New York

[Application Nos. D–10473 through D–10476]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Part I—Covered Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply effective December 11, 1998, to a transaction between AEW Industrial, L.L.C. (the LLC), an entity which currently holds "plan assets" of the Plans, or any subsidiary of the LLC (as defined in Part IV(d) below) which may hold "plan assets" of the Plans in the future, as a result of investments made by the Plans in the LLC or any subsidiary through the First Plaza Group Trust (the Trust), and a party in interest with respect to any of the Plans, provided that the Specific Conditions set forth below in Part II and the General Conditions set forth in Part III are met:

Part II—Specific Conditions

(a) In the case of a transaction by the LLC that involves the acquisition, financing, or disposition of any real property asset, the terms of the transaction are negotiated on behalf of the Plan by AEW Capital Management, L.P. or a successor thereto (AEW), under the authority and general direction of General Motors Investment Management Corporation (GMIMCo), a wholly-owned subsidiary of General Motors Corporation (GM), and GMIMCo makes the decision on behalf of the Plan to enter into the transaction.

Notwithstanding the foregoing, a transaction involving an amount of $5 million or more, which has been negotiated on behalf of the Plans by AEW and approved by GMIMCo in the manner described above, will not fail to meet the requirements of this Part II(a) solely because GM or its designee

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retains the right to veto or approve such transaction;

(b) In the case of any transaction by the LLC that does not involve acquisitions, financings or dispositions of real property assets, the terms of the transaction are negotiated on behalf of the Plans by AEW, under the authority and general direction of GMIMCo, and either AEW or a property manager acting in accordance with written guidelines or business plans (including budgets), adopted with the approval of GMIMCo, makes the decision on behalf of the Plans to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of $5 million or more, which has been negotiated on behalf of the Plans in accordance with the foregoing, will not fail to meet the requirements of this Part II(b) solely because GM or its designee retains the right to veto or approve such transaction;

(c) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (46 FR 7527, January 23, 1981), relating to securities lending arrangements,

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983), relating to acquisitions by plans of interests in mortgage pools, or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811; June 30, 1988), relating to certain mortgage financing arrangements;

(d) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest with respect to any of the Plans;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCo, GM, or AEW the terms of the transaction are at least as favorable to the Plans as the terms generally available in arm's-length transactions between unrelated parties;

(f) The party in interest dealing with the LLC: (1) is a party in interest with respect to a Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act; and (2) does not have discretionary authority or control with respect to the investment of the Plan's assets in the Trust or the LLC, and does not render investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the investment of those assets in the Trust or the LLC;

(g) The party in interest dealing with the LLC is neither GMIMCo or AEW nor a person "related" to GMIMCo or AEW within the meaning of Part IV(c) below;

(h) GMIMCo adopts written policies and procedures that are designed to assure compliance with the conditions of this proposed exemption; and

(i) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit, as defined in Part IV(f) below, on an annual basis. Following completion of the exemption audit, the auditor issues a written report to each Plan representing its specific findings regarding the level of compliance with the policies and procedure adopted by GMIMCo in accordance with Part II(h) above.

Part III—General Conditions

(a) At all times during the term of this exemption (if granted), GMIMCo shall be—

(1) A direct or indirect wholly owned subsidiary of GM, and

(2) An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to Plans maintained by GM or its affiliates (as defined in Part IV(a) of this exemption) in excess of $50 million. In addition, Plans maintained by affiliates of GMIMCo must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million;

(b) AEW or any successor, as investment manager for assets held by the LLC, meets the conditions for a "qualified professional asset manager" (QPAM) as set forth in section V(a) of Prohibited Transaction Class Exemption 84–14 (49 FR 9494, March 13, 1984);

(c) AEW and GMIMCo, or their affiliates, shall maintain, for a period of six years from the date of each transaction described above, the records necessary to enable the persons described below in part III(d)(1) to determine whether the conditions of this exemption (if granted) have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of AEW or GMIMCo, or their affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than AEW or GMIMCo, shall be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975 (a) and (b) of the Code, if the records are not available for examination as required by section (d) below; and

(d)(1) Except as provided in subsection (2) of this section (d), and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (c) of this Part III shall be made unconditionally available by GMIMCo or AEW, at the customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(B) The persons described in Part II(i) of this exemption (relating to an independent audit of covered transactions as discussed therein); and

(C) Any fiduciary of the Plans or the Trust;

(2) None of the persons described in subsections (1)(B) and (C) of this section (d) shall be authorized to examine trade secrets of AEW or GMIMCo, or commercial or financial information which is privileged or confidential in nature.

Part IV—Definitions

For purposes of this proposed exemption:

(a) "Affiliate" of GM means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which GM is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which GM is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in Code section 414(b) or 414(c) or the regulations thereunder.

(b) "Party in interest" means a person described in section 3(14) of the Act and includes a "disqualified person" as defined in section 4975(e)(2) of the Code.

(c) GMIMCo or AEW are "related" to a party in interest with respect to a Plan for purposes of this proposed exemption if the party in interest (or a person controlling or controlled by the party in interest) owns a five percent (5%) or more interest in GMIMCo or AEW, or if GMIMCo or AEW (or a person controlling or controlled by GMIMCo or AEW) owns a five percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) "Interest" means with respect to ownership of an entity:

(A) The combined voting power of all classes of stock entitled to vote, or the total value of the shares of all classes of stock of the entity, if the entity is a corporation;

(B) The capital interest, or the profits interest of the entity, if the entity is a partnership; or

(C) The beneficial interest of the entity, if the entity is a trust or unincorporated enterprise;

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) "Subsidiary" means any limited liability company or other entity organized by the LLC, through which it acquires and holds title to its real property investments.

(e) An "exemption audit" of each Plan's interest in the LLC must consist of the following:

(1) A review of the written policies and procedures adopted by GMIMCo pursuant to Part II(h) for consistency with each of the objective requirements of this proposed exemption (as described herein);

(2) A test of a representative sample of the Plan's transactions through investments made by the LLC, as described in Part I, in order to make findings regarding whether GMIMCo is in compliance with both: (i) The written policies and procedures adopted by GMIMCo pursuant to Part II(i) of this proposed exemption; and (ii) the objective requirements of this proposed exemption; and

(3) Issuance of a written report describing the steps performed by the independent auditor during the course of its review and the independent auditor's findings regarding the Plan's interest in the LLC.

(f) For purposes of Part IV(e), the written policies and procedures must describe the following objective requirements of Part II of the proposed exemption and the steps adopted by GMIMCo to assure compliance with each of these requirements:

(1) The requirements of Part III;

(2) The requirements of sections (a) and (b) of Part II regarding the discretionary authority or control of GMIMCo with respect to the Plan assets involved in each transaction, in negotiating the terms of the transaction, and with regard to the decision made on behalf of the Plan, as an investor in the LLC, to enter into the transaction;

(3) The requirements of sections (a) and (b) of Part II with respect to any procedure for approval or veto of the transaction;

(4) That:

(A) The transaction is not entered into with any person who is excluded from relief under sections (f) or (g) of Part II; and

(B) The transaction is not described in any of the class exemptions listed in section (c) of Part II.

(g) "Plan" means an employee benefit plan established and maintained by GM or an Affiliate.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 11, 1998.

Summary of Facts and Representations

1. General Motors Corporation (GM) and its Affiliates currently maintain the following employee benefit plans (i.e., the Plans): The General Motors Hourly-Rate Employees Pension Plan (the GM Hourly Plan); (ii) the General Motors Retirement Program for Salaried Employees (the GM Salaried Plan); (iii) the Saturn Individual Retirement Plan for Represented Team Members; (iv) the Saturn Personal Choices Retirement Plan for Non-Represented Team Members (together, the Saturn Plans); and (v) the Employees' Retirement Plan for GMAC Mortgage Corporation (the GMAC Plan). As of December 31, 1998, the Plans had total assets of approximately $73.2 billion, of which approximately $4.39 million were invested in private real estate assets.

2. For a portion of their assets, the Plans make investments through an entity known as the First Plaza Group Trust (i.e., the Trust), which is a group trust established pursuant to IRS Revenue Ruling 81–100. The trustee of the Trust, which acts as a directed trustee, is Chase Manhattan Bank (the Trustee). All beneficial interests in the Trust are held by two other trusts that hold the assets of the Plans. As of March 31, 1997, the Trust had total assets of approximately $4.1 billion. The General Motors Investment Management Company (i.e., GMIMCo) acts as an investment manager for the assets of the Plans held in the Trust (as discussed further below in paragraphs 9 and 10).

3. On September 13, 1996, CREA Western Investors II, L.L.C. (i.e., CREA II) and the Trust formed Copley West Coast Industrial, L.L.C. (now known as AEW Industrial, L.L.C.), a limited liability company (i.e., the LLC) for the purpose of jointly investing[25] in industrial real properties, under the terms of a Limited Liability Company Agreement (the LLC Agreement). The investment objective of the LLC is to acquire develop, lease, manage and dispose of institutional-grade real properties, including stabilized and opportunistic acquisitions, build-to-suit opportunities, and developments in certain West Coast markets. AEW acts as an investment manager for the assets held by the LLC, including the disposition and sale of LLC properties, subject to the review and approval of GMIMCo (as discussed further below).

4. The LLC was initially structured to qualify as a "real estate operating company" (REOC) pursuant to the Department's regulations at 29 CFR 2510.3–101 (the Plan Asset Regulation).[26] Effective December 11, 1998 (the Effective Date), the Trust acquired CREA II's interest in the LLC. The acquisition of CREA II's interest was negotiated by GMIMCo in reliance upon the Prohibited Transaction Class Exemption (PTCE) 96–23, (61 FR 15975, April 10, 1996).[27] By reason of the Trust's acquisition of CREA II's interest in the LLC, GM represents that the assets of the LLC became "plan assets" (within the meaning of the Plan Asset Regulation) as of the Effective Date, and the LLC and is no longer a REOC. Thus, all transactions engaged in by the LLC with any persons that are parties in interest with respect to any of the Plans invested therein became subject to the prohibited transaction restrictions of the Act. As a result, these transactions and future party in interest transactions require relief under this proposed exemption, pursuant to the terms and conditions described herein, as of the Effective Date.

5. CREA II is an affiliate of AEW Investment Group, Inc., a wholly-owned subsidiary of AEW Capital Management, L.P. (AEW Capital). AEW Capital is an indirect, wholly-owned subsidiary of New England Investment Companies, L.P. (NEIC), and is the successor to the business operations of Aldrich, Eastman & Waltch, L.P. and Copley Real Estate

[25] The Department is expressing no opinion in this proposed exemption as to whether the joint investments by the Trust and CREA II to form the LLC, or the ongoing operation of the LLC during such joint investment, violated any of the fiduciary responsibility provisions under Part 4 of Title I of the Act.

[26] The Department expresses no opinion herein as to whether the LLC met the definition of a REOC under the Plan Asset Regulation at any time.

[27] PTCE 96–23 (a/k/a the INHAM Class Exemption) permits various transactions involving employee benefit plans whose assets are managed by an in-house asset manager, or "INHAM", provided that the conditions of the exemption are met. An INHAM is a registered investment adviser which is either (a) a direct or indirect wholly-owned subsidiary of an employer or parent of an employer, or (b) a membership nonprofit corporation a majority of whose members are officers or directors of such an employer or parent organization.

Advisors. AEW Capital manages in excess of $9 billion in real estate assets. In addition, NEIC is a publicly-traded holding company with approximately $90 million in assets under management through its subsidiaries and affiliates. Pursuant to a 1996 merger between Metropolitan Life Insurance Company (Metropolitan) and the New England Life Insurance Company, NEIC is now owned approximately 50% by Metropolitan.

6. Pursuant to an agreement among AEW Capital, the Trust, and the LLC (the Investment Agreement), AEW Capital is required, during an exclusivity period specified therein, to utilize its reasonable best efforts to identify, for the benefit of the LLC, investments which meet the LLC's investment objectives. For each potential investment which is presented to the LLC for consideration, AEW Capital prepares a preliminary written proposal in accordance with the terms of the Investment Agreement. GMIMCo, on behalf of the Trust, then evaluates the potential investment for the LLC and determines whether the LLC should pursue the investment. If the Trust determines that the investment should be pursued for the benefit of the LLC, AEW Capital initiates a due diligence investigation of the investment. Due diligence and acquisition expenses can be incurred on behalf of the LLC only with the written consent of the Trust. If, after completion of due diligence, AEW Capital decides to present the potential investment to the LLC for acquisition, it prepares a report which includes a budget for all acquisition and development costs.

7. If GMIMCo, on behalf of the Trust, determines to proceed with the investment, AEW Capital has the primary responsibility for negotiating, finalizing and closing the investment, subject to the approved terms and conditions for the investment, including any related financings. However, AEW Capital does not have the authority to bind the LLC to any material definitive terms with respect to any investment, including price, without the prior review and written consent of GMIMCo on behalf of the Trust.

8. The Trust generally is not involved in the day-to-day management, development, or operation of LLC assets. Pursuant to the Advisory Agreement between AEW Capital and the LLC, AEW Capital has been retained by the LLC to provide certain services in connection with the ongoing management of the LLC, and to advise the LLC with respect to, and manage the disposition and sale of, LLC properties. GMIMCo, acting on behalf of the Trust, exercises sole discretion with respect to any final decisions regarding the disposition of LLC assets. Under the Advisory Agreement, AEW Capital is further obligated to provide certain services in connection with the development, operation, management, and leasing of LLC properties. AEW Capital is not responsible for directly providing management and development services but, rather, is responsible for engaging other parties to perform such services pursuant to development and property management agreements approved by the LLC investors.

9. GMIMCo is a separately-incorporated, wholly-owned subsidiary of GM and is a registered investment adviser under the Investment Advisers Act of 1940, as amended. GMIMCo is the named fiduciary, within the meaning of section 402(a)(2) of the Act, for purposes of investment of "Plan assets" for the GM Hourly Plan, the GM Salaried Plan, and the Saturn Plans. The named fiduciary of these four Plans for all other purposes is the Investment Funds Committee of the Board of Directors of GM (the GM I.F. Committee). With respect to the other Plans, GMIMCo currently operates as an investment manager with respect to the Plan assets to be invested in the LLC through the Trust under delegated authority of the named fiduciary of each Plan. The GMAC Mortgage Pension Committee (which is a committee of executives of the plan sponsor, not a board committee) is the named fiduciary of the GMAC Plan.

10. GMIMCo is involved in all aspects of the management of the assets of the Plans. In this regard, GMIMCo is organized into several distinct functions, as follows: North American Equities (U.S. and Canada); North American Fixed Income (U.S. and Canada); International Investments; Real Estate and Alternative Investments; Investment Strategy and Asset Allocation; Motors Insurance Corporation; Investment Research; Business Risk Management; Information Systems; Financial Accounting and Controls; Human Resources; and Legal. As of December 31, 1996, the Real Estate and Alternative Investments group (REAI) has approved aggregate current investments with a total value of approximately $4.1 billion and directly manages investments with a total value of approximately $1.3 billion, all of which are attributable to the Plans. REAI also exercises varying degrees of supervision over assets being managed by third party investment managers or invested in partnerships or other pooled funds. In addition, REAI selects, monitors, reviews and evaluates third party investment managers.

11. On and after the Effective Date, the Advisory Agreement provides for the retention by the Trust, and the exercise by GMIMCo on behalf of the Trust, of certain powers from which AEW is completely excluded. These retained powers (the Retained Powers), include the power:

(a) To determine whether the LLC or any subsidiary entity shall pursue any investment, acquisition or development;

(b) To cause any sale, transfer, assignment, conveyance, exchange or other disposition of all or any substantial part of any assets of the LLC or of any subsidiary entity;

(c) To cause the LLC or any subsidiary entity to borrow money, refinance, recast, extend, compromise or otherwise deal with any loans (including securing such loans) of the LLC or any subsidiary entity;

(d) To approve the annual business plans for the LLC; and

(e) To exercise all the powers that a member may exercise under the terms of the LLC operating agreement.

12. Although GMIMCo qualifies as an in-house asset manager (i.e., an INHAM) for the Plans within the meaning of PTCE 96–23 (the INHAM Class Exemption), that exemption might not apply to transactions engaged in by the LLC. The applicant states that the discussion of the comments relating to the INHAM Class Exemption contained in section A1 of the preamble to PTCE 96–23,[28] suggests that the exemption does not apply to a transaction where an INHAM retains a QPAM (i.e., a qualified professional asset manager)[29] to locate and negotiate the terms of a possible transaction. These comments state that the INHAM Class Exemption does not apply in such instances even though the INHAM performs its own due diligence review of each investment opportunity presented, and evaluates the appropriateness of the investment for the plan's particular investment needs. Thus, GMIMCo represents that there is an immediate need for this proposed exemption to permit transactions by the LLC.

13. GM represents that GMIMCo has not committed at this time a specified amount of Plan assets to be invested in

[28] See PTCE 96–23, 61 FR at 15076.

[29] In this regard, see PTCE 84–14, 49 FR 9497 (March 13, 1984). PTCE 84–14, a/k/a the QPAM Class Exemption, permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are managed by persons, defined for purposes of the exemption as QPAMs, which are independent of the parties in interest (with certain limited exceptions) and which meet specified financial standards.

the LLC. Rather, GM states that each approved investment by the Plans, through the Trust, constitutes a separate "commitment" of funds to the LLC and the fees to AEW Capital will be paid on the basis of each commitment, rather than on the total capital actually invested at any particular time. The applicant states further that all fees payable to AEW Capital will be reasonable and in compliance with section 408(b)(2) of the Act and the regulations thereunder.[30]

14. Investment opportunities in real property assets presented by AEW Capital to the Trust for consideration as possible acquisitions for the LLC are submitted to REAI (the responsible group within GMIMCo) for review and approval. REAI will perform a preliminary review of the investment opportunity for suitability, which includes verification that the proposed investment satisfies the broad investment guidelines relating to the Plans' investments in the Trust and specific investment objectives of the REAI portfolio.

15. Once AEW Capital has completed its initial due diligence review for the suitability of the investment and prepared its report with respect to a proposed acquisition of a property by the LLC, the REAI portfolio manager with responsibility for the LLC's investment portfolio (the Manager), assisted by an investment analyst, will conduct a quantitative and qualitative analysis of the investment opportunity. This analysis will form the basis for a recommendation of the investment to upper level officials within GMIMCo. The Manager and the Managing Director of REAI routinely discuss proposed investments, and any decision to recommend approval or to reject an investment is made jointly. Any rejection of an investment opportunity is recorded, and the reasons for such rejection are kept in a file containing the written materials relating to the investment. If the Manager and the Managing Director of REAI decide to recommend an investment to upper level GMIMCo officials, a written report is prepared summarizing the investment and briefly setting forth the reasons for such recommendation and the financial expectations for the investment.

16. After a proposed investment has been reviewed, analyzed and favorably approved by the Manager and the Managing Director of REAI, the additional levels of approval required in order for the investment to be finally authorized depend directly upon the amount of the investment. If the investment is not in excess of a threshold level, currently $30 million, it need only be approved by the REAI Investment Approval Committee. However, if the investment is greater than that amount, it must be approved by GMIMCo's president upon the recommendation of the REAI Investment Approval Committee. The REAI Investment Approval Committee consists of the Managing Director of REAI (who is Committee chairman) and the four REAI portfolio managers. Approval by the REAI Investment Approval Committee requires the affirmative vote of a majority of a quorum of the Committee members, including the affirmative vote of the Committee chairman. Final approval is based on the written report described above together with oral discussions regarding the proposed investment. Approval may take a variety of forms from a simple approval to an approval conditioned upon the resolution of certain issues. In all cases, a written record is maintained with respect to the action taken at each level of approval. Notwithstanding the procedure for the approval of any investment for the LLC by GMIMCo, GM or its designee may retain the right to veto or approve such transaction if the amount involved exceeds $5 million.

17. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The exemption, if granted, will enable the Plans, through investments made in the LLC by the Trust, to transact business with a greater number of potential parties in interest with respect to such Plans; (b) The Plans will save significant costs relating to due diligence reviews and procedures that otherwise would be necessary for the LLC to avoid party-in-interest transactions; and (c) GMIMCo will be afforded maximum flexibility in overseeing the activities of the LLC, and will exercise sole authority on behalf of the LLC with respect to the Retained Powers to ensure that the Plans' interests are protected.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

[30] The Department is not providing any opinion herein as to whether the fee arrangements involving AEW Capital and the LLC meet the requirements for relief under section 408(b)(2) of the Act.

The Department notes that section 408(b)(2) of the Act does not exempt the payment of fees by a plan fiduciary which would constitute a violation of section 406(b) of the Act, even if such fees would otherwise constitute reasonable compensation for the services performed by the fiduciary (see 29 CFR 2550.408b–2(e)).

Gaetano Lombardo Individual Retirement Account (the IRA), Located in St. Louis, Missouri

[Application No. D–10749]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the IRA of 26,306 shares of stock (the Stock) of Courtesy Manufacturing Company (Courtesy) to Courtesy, a disqualified person with respect to the IRA, provided that the following conditions are satisfied: (1) The sale of Stock by the IRA is a one-time transaction for cash; (2) no commissions or other expenses are paid by the IRA in connection with the sale; and (3) the IRA receives the greater of: (a) the fair market value of the Stock as determined by a qualified independent appraiser as of October 31, 1998, or (b) the fair market value of the Stock as of the time of the sale.[31]

Summary of Facts and Representations

1. The IRA and Dr. Gaetano (Guy) Lombardo (Lombardo) currently own 100% of the outstanding common stock of Courtesy. Courtesy is an Illinois corporation, located at 1300 Pratt Boulevard in Elk Grove, Illinois, of which Lombardo is the sole director. The IRA had total assets of $838,039 as of January 31, 1999. The IRA's custodian is Stifel, Nicolaus & Company, Inc. of St. Louis, Missouri.

With respect to the current ownership of the outstanding shares of Courtesy, the IRA owns 26,306 Class A shares (i.e., the Stock) and Lombardo owns 2,194 Class A shares. Prior to December 29, 1998, the only other shareholders of Courtesy were Citicorp Venture Capital, Ltd. (Citicorp), which owned 12,450 shares of Class B common stock, and Goldman Sachs Credit Partners, LP (Goldman), which owned 7,550 shares of Class B common stock. The Class B shares owned by Citicorp and Goldman were redeemed by Courtesy on December 29, 1998. Citicorp received $900,000 for its shares, and Goldman received $200,000 for its shares.

[31] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

2. Lombardo and his then wife, Nancy (Nancy) were residents of Bloomfield Hills, Michigan in the 1980's. Lombardo was the sole shareholder of two Michigan consulting corporations, the Nelmar Corporation (Nelmar) and the Edens Corporation (Edens). Lombardo and Nancy were the only employees of Nelmar and Edens. Nelmar and Edens established the Nelmar-Edens Employees' Pension Plan (the Plan), a defined benefit pension plan for the employees of the two corporations in 1985. Nelmar and Edens merged in 1986, with Nelmar the surviving corporation. In February, 1988, the Plan acquired 30,000 shares of Class A common stock of Courtesy for $750,000 (i.e., $25 per share). The applicant represents that Courtesy was not a disqualified person with respect to the Plan.[32]

3. In December of 1988, the Plan transferred 1,500 of its Class A shares to Bruce Fisher (Fisher), an officer and employee of Courtesy. The price Fisher paid for the shares was the same price per share (i.e., $25 per share) that the Plan paid for the shares in February, 1988. Fisher subsequently tendered his shares in November, 1996, to Courtesy, for an agreed upon price of $44,723 ($29.82 per share). These shares have been redeemed by Courtesy and are currently held as treasury shares.

4. The Plan became overfunded and was terminated in 1989. Upon termination of the Plan, 2,194 shares of Courtesy reverted to Nelmar because of the overfunding. When distributions to the participants were made pursuant to the termination of the Plan, 7,022 shares of Courtesy were transferred to Nancy, which were rolled over into an individual retirement account established by her (Nancy's IRA), and 19,284 shares of Courtesy were transferred to Lombardo, where were rolled over into the IRA.

5. Nelmar was liquidated in 1991, following Lombardo's move from Bloomfield Hills, Michigan to Concord, Massachusetts in 1989. The 2,194 shares of Courtesy which had been owned by Nelmar were transferred by the corporation upon liquidation to Lombardo. This transfer was independent of the transfer of Courtesy Stock to either the IRA or Nancy's IRA. Lombardo and Nancy subsequently divorced, and the shares of Courtesy in Nancy's IRA were transferred to the IRA pursuant to a Qualified Domestic Relations Order.

[32] The Department is taking no position in this proposed exemption as to whether the Plan's acquisition and holding of Courtesy stock resulted in any violations of Part 4 of Title I of the Act.

6. Lombardo wants to make an election for Courtesy to be taxed as a "Subchapter S" Corporation under section 1362(a) of the Code. However, the IRA cannot be a shareholder of an "S" corporation. Accordingly, the applicant has requested an exemption to permit the IRA to sell all of the Stock (26,306 shares) to Courtesy for the fair market value of the Stock, as determined by an independent, qualified appraiser. This transaction would also permit the IRA to diversify its investment portfolio by reinvesting the proceeds of the sale of the Stock in a wider array of securities. The Stock currently represents approximately 94% of the fair market value of the assets in the IRA.[33]

7. The applicant has obtained an appraisal of the Stock as of October 31, 1998 from Michael A. Dorman (Mr. Dorman) of the firm of Blackman Kallick Bartenstein, LLP (BKB), independent certified public accountants and business consultants located in Chicago, Illinois. Mr. Dorman states that he is a qualified appraiser for the Stock with over 9 years of experience in the valuation of closely-held corporations and other business entities. Mr. Dorman also states that he is independent of Lombardo and Courtesy. While BKB does provide accounting services to Lombardo and Courtesy, BKB derives less than 1% of its annual revenue from the provision of such services. Mr. Dorman represents that as October 31, 1998, the Stock had a fair market value per share of $30. Thus, the total value for all the shares of Stock held by the IRA would be $789,180. Mr. Dorman will update his appraisal as of the date of the proposed sale.

8. The applicant has requested the exemption proposed herein to permit Courtesy to purchase all of the Stock held in the IRA. Courtesy will pay the greater of (i) the fair market value of the Stock as of October 31, 1998, as established by Mr. Dorman's appraisal, or (ii) the fair market value of the Stock, based on an updated independent appraisal as of the date of the sale. The IRA will pay no fees, commissions or other expenses in connection with the transaction.

9. In summary, the applicant represent that the proposed transaction satisfies the criteria contained in section 4975(c)(2) of the Code because: (a) The proposed sale will be a one-time transaction for cash; (b) no commissions or other expenses will be paid by the IRA in connection with the sale; (c) the IRA will be receiving not less than the fair market value of the Stock, as determined by a qualified, independent appraiser; and (d) Guy Lombardo is the only participant in his IRA, and he has determined that the proposed transaction is appropriate for and in the best interest of his IRA and desires that the transaction be consummated with respect to his IRA.

NOTICE TO INTERESTED PERSONS: Because Lombardo is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and

[33] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. *See, e.g.*, Rev. Rul. 73–532, 1973–2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, mandates that the trust be created for the exclusive benefit of an individual or his beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the acquisition and holding of the Stock by the IRA.

In this regard, the acquisition and holding of the Stock by the IRA raises questions under section 4975(c)(1)(D) and (E) depending on the degree of Lombardo's interest in the transaction. That section prohibits the use by a disqualified person of the income or assets of an IRA or dealing by a fiduciary (i.e., Lombardo) with the income or assets of an IRA for his own interest or for his own account. An IRA participant who is the sole director and a shareholder of a company may have interests in the acquisition and holding of stock issued by such company which may affect his best judgment as a fiduciary of his IRA. In such circumstances, the holding of the stock may violate section 4975(c)(1)(D) and (E) of the Code. *See* Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the acquisition and holding of the Stock by the IRA, the Department is extending no relief for those transactions herein.

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 27th day of May, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–13887 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend and Revise a Current Information Collection

AGENCY: National Science Found.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comments on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Writen comments on this notice must be received by August 2, 1999, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x2017; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Graduate Students and Postdoctorates in Science and Engineering.

OMB Approval Number: 3145–0062.

Expiration Date of Approval: November 30, 1999.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project

Graduate students in science, engineering, and health fields in U.S. colleges and universities, by source and mechanism of support and by demographic characteristics. An electronic/mail survey, the Survey of Graduate Students and Postdoctorates in Science and Engineering originated in 1966 and has been conducted annually since 1972. The survey is the academic graduate enrollment component of the NSF statistical program that seeks to "provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government" as mandated in the National Science Foundation Act of 1950.

The proposed project will continue the current survey cycle for three to five years. The annual Fall surveys for 1999 through 2003 will survey the universe of approximately 725 reporting units at approximately 600 institutions offering accredited graduate programs in science, engineering, or health. The survey has provided continuity of statistics on graduate school enrollment and support for graduate students in all science & engineering (S&E) and health fields, with separate data requested on demographic characteristics (race/ethnicity and gender by full-time and part-time enrollment status). Statistics from the survey are published in NSF's annual publication series Graduate Students and Postdoctorates in Science and Engineering, in NSF publications Science and Engineering Indicators, Women, Minorities, and Persons with Disabilities in Science and Engineering, and are available electronically on the World Wide Web.

NSF proposes to revise the questionnaire in 1999 to include the Department of Energy as a source of funding of graduate students and to ask for the number of first-time full-time graduate students by race/ethnicity. These changes are being proposed for purposes of planning, policy formulation, and program evaluation and to provide consistency with other NSF surveys (e.g., on R&D expenditures). Two redundant items will be deleted from the questionnaire: The number of part-time students and the number of women part-time students. In addition, the names of the race/ethnicity categories will be changed to comply with the new OMB guidelines. The new categories will be: Black or African American; American Indian or Alaska Native; Asian; Native Hawaiian or Other Pacific Islander; Hispanic or Latino; and White. These changes are expected to result in minimal change in burden. Overall burden is expected to be reduced from 1999 to 2003 due to expansion of the Web-based data collection.

The survey will be sent primarily to the administrators at the Institutional Research Offices. To minimize burden, NSF instituted a Web-based survey in 1998 through which institutions can enter data directly or upload preformatted files. The Web-based survey includes a complete program for editing and trend checking and allows institutions to receive their previous year's data for comparison. Respondents will be encouraged to participate in this Web-based survey should they so wish. Traditional paper questionnaires will also be available, with editing and trend checking performed as part of the survey processing.

In Fall 1997, the survey achieved a total response rate of 98.5% for institutions and 98.3% for departments.

Estimate of Burden: Burden estimates are as follows:

	Total number of institutions	Departments	Burden hours
FY 1995	722	11,598	1.87
FY 1996	722	11,592	1.95
FY 1997	723	11,597	2.23

Respondents: Individuals.

Estimated Number of Responses: 11,597 (from the 1997 collection).

Estimated Total Annual Burden on Respondents: 23,690.

Frequency of Responses: Annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: May 28, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 99–14035 Filed 6–2–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

BWX Technologies (BWXT), Lynchburg, VA Issuance of Environmental Assessment Regarding the Proposed Exemption From the Requirement in 10 CFR 70.25(e) To Provide a Decommissioning Cost Estimate

The U. S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to BWXT (the applicant) from the requirement of 10 CFR Part 70.25(e) to provide a decommissioning cost estimate (DCE) for the Naval Reactors (NR) work at BWXT. The BWXT facilities and operation are located at Lynchburg, Virginia.

Environmental Assessment

Identification of the Proposed Action: By letter dated April 8, 1999, and supplements dated May 10 and May 13, 1999, BWXT (the applicant) requested Materials License SNM–42 be amended to grant an exemption from the requirement of 10 CFR Part 70.25(e) to provide a decommissioning cost estimate (DCE) for the Naval Reactors (NR) programs at BWXT, located at Lynchburg, Virginia. In a letter dated April 9, 1999, from the U. S. Department of Energy (DOE), Office of NR, NR supported BWXT's request for an exemption.

Need for the Proposed Action: The BWXT operation involves the manufacturing of nuclear fuels for the U. S. Navy program. When BWXT's operations cease, the NRC will require decommissioning of the facilities and land in accordance with the requirements specified in 10 CFR 70.25. As described in the applicant's license amendment request and the NR April 9, 1999, letter, the exemption is requested in order to eliminate the need to prepare a detailed decommissioning cost estimate to be filed together with the Statement of Intent that the Federal government will be responsible for the cost of decommissioning. The following information, as detailed in the applicant's request and NR's letter, provide support for the exemption request: (1) The DOE, through NR, is contractually obligated to pay the expenses eventually incurred by BWXT in decommissioning the BWXT facilities associated with NR work; (2) NR has an adequate understanding of the potential costs of decommissioning the BWXT facilities used in NR work; (3) a detailed DCE prepared now will not be valid when decommissioning occurs many years from now; (4) exempting BWXT at this time from the requirement for a DCE would not endanger life or property or the common defense and security; and (5) the Federal Government will not obtain a benefit commensurate with the expenditure of public funds to prepare a detailed DCE.

Environmental Impact of the Proposed Action: The NRC staff has examined the applicant's proposed exemption request and concluded that the proposed exemption request is procedural and administrative in nature. Since the Federal Government will be responsible for the ultimate financial cost in the decommissioning of the applicant's facilities, exempting BWXT at this time from the requirement for a DCE will not endanger life or property, or the common defense and security, and will not cause any environmental impact.

Alternatives to the Proposed Action: Since there is no environmental impact associated with this proposed action, no alternatives other than the proposed action were evaluated.

Agencies and Persons Consulted: No other agency or persons were consulted for this proposed action since the proposed action is procedural and administrative in nature and the final financial cost for the decommissioning of the applicant's facilities is assured by the Federal Government.

Finding of No Significant Impact

As discussed above, the proposed action is procedural and administrative in nature and there is no environmental impact associated with this action. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

This application for the proposed action was docketed under 10 CFR part 70, Docket No. 70–27. For further details with respect to this action, see the April 8, 1999, exemption request, and other above-mentioned letters which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 27th day of May 1999.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, Office of Material Safety and Safeguards.

[FR Doc. 99–14049 Filed 6–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 110th meeting on June 28–30, 1999, at the Center for Nuclear Waste Regulatory Analyses, Southwest Research Institute, 6220 Culebra Road, Building 189, San Antonio, Texas.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Monday, June 28, 1999—8:30 a.m. until the conclusion of business.

Tuesday, June 29, 1999—8:30 a.m. until the conclusion of business.

Wednesday, June 30, 1999—8:30 a.m. until 4:00 p.m.

The following topics will be discussed:

A. *ACNW Planning and Procedures*—The Committee will hear a briefing from its staff on issues to be covered during this meeting. The Committee will also consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

B. *Review Activities Underway at the Center for Nuclear Waste Regulatory Analyses (CNWRA)*—The Committee will review activities underway at the CNWRA. Discussions will include an overview of the Center, including its historical evolution. Each of the 10 high-level waste key technical issues (KTIs) will be reviewed with special emphasis placed on four KTIs: Igneous Activity, Evolution of the Near-Field, Repository Design and Thermal Mechanical Effects, and Container Life and Source Term.

C. *Laboratory Tours*—The Committee will visit a number of experiments underway at the Center involving: hydrology and thermal-hydrology, geochemistry and radionuclide transport, structural geology modeling, and materials performed.

D. *Yucca Mountain Environmental Impact Statement*—The Committee will review the staff's plans for reviewing the Department of Energy's Draft Environmental Impact Statement for the Yucca Mountain project.

E. *Total-System Performance Assessment (TPA) Code 3.2 Sensitivity Study*—The Committee will review the results of the system level sensitivity and uncertainty analyses to determine the parameters that have the most influence on repository performance.

F. *Defense In-Depth*—The NRC staff and the CNWRA will discuss the current concept of defense in-depth as it applies to a high-level waste repository.

G. *Environmental Protection Agency (EPA) Yucca Mountain Site Specific Standards* (tentative)—The Committee may offer comments to the Nuclear Regulatory Commission on EPA's Yucca Mountain site specific standard 40 CFR part 191 should the proposed standard be made publicly available. The timing for release of the standard remains uncertain.

H. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: a White Paper on Repository Design Issues at Yucca Mountain and other topics discussed during this and previous meetings as the need arises.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51967). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Associate Director for Technical Support, ACNW, Dr. Richard P. Savio, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Associate Director for Technical Support, ACNW, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Savio as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Richard P. Savio, Associate Director for Technical Support, ACNW (Telephone 301/415–7363), between 8:00 a.m. and 5:00 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: May 27, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–14048 Filed 6–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Revision to Standard Review Plan (NUREG–0800), Chapter 13, "Conduct of Operations, Sections 13.1.1, "Management and Technical Support Organization," and 13.1.2–1.3, "Operating Organization"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has prepared a revision to NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition," Chapter 13, "Conduct of Operations," sections 13.1.1, "Management and Technical Support Organization," and 13.1.2–1.3, "Operating Organization." The Standard Review Plan (SRP) contains guidance used by the staff to review safety analysis reports for light water reactor commercial nuclear power plants. The proposed revision incorporates changes that have been made since the sections were last revised in April, 1996, and publically noticed in the **Federal Register**, Vol. 61, No. 162, Tuesday, August 20, 1996. There were no public comments received to these sections. The proposed revision addresses 10 CFR 50.80 requirements for "Transfer of Licenses." Specifically, the staff has revised Chapter 13, "Conduct of Operations," sections 13.1.1, "Management and Technical Support Organization," and 13.1.2–1.3, "Operating Organization" of the SRP as they relate to 10 CFR 50.80 requirements for the applicant's technical qualifications. The April, 1996 revision of these SRP sections did not include guidance for the staff to review the technical qualifications of applicants for license transfer.

The purpose of this notice is to solicit specific public comment on whether the revised text accurately and fully reflects the established NRC staff positions and existing regulations. The SRP is made available to the public as part of the NRC's policy to inform the nuclear industry and the general public of regulatory procedures and policies. The SRP is not a substitute for regulatory guides or NRC regulations. Compliance with the SRP is not required. The published SRP will be revised periodically, as appropriate, to accommodate comments and reflect new information and experience. The NRC encourages comment from all interested parties; however, public

review is not intended to reopen a dialogue on the merits of the requirements themselves but, rather, should be focused on the previously stated purpose.

DATES: The comment period expires July 6, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand delivered to 11545 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

FOR FURTHER INFORMATION CONTACT: James P. Bongarra, Jr., U.S. NRC, Office of Nuclear Reactor Regulation, Mail Stop O9D24, Washington, DC, 20555; telephone (301) 415–1046; e-mail:jxb@nrc.gov.

SUPPLEMENTARY INFORMATION: The proposed revised text to NUREG–0600, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition," is the work of the NRC staff. It has received review by the Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation, and the NRC's Office of General Counsel. A final revision will be published upon resolution of public comments and review by the Director, Office of Nuclear Reactor Regulation, the NRC's Committee to Review Generic Requirements (CRGR), and the Advisory Committee on Reactor Safeguards (ACRS).

The proposed revision to NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition," Chapter 13, "Conduct of Operations," sections 13.1.1, "Management and Technical Support Organization," and 13.1.2–1.3, "Operating Organization," follows:

NUREG–0800—Standard Review Plan, Chapter 13, Conduct of Operations

13.1.1 Management and Technical Support Organization

Review Responsibilities

Primary—Human Performance Branch
Secondary—None

I. Areas of Review

The branch with primary responsibility for reviewing human performance will review the corporate level management and technical organization of the applicant for a construction permit (CP), operating license (OL), combined license (COL), or license transfer. The review will also include the applicant's major contractors including the nuclear steam supply system (NSSS) vendor, and architect/engineer (A/E) for the project. The technical resources to support the nuclear power plant design, construction, testing, and operation are reviewed. The review for a CP or COL will include an examination of the responsibilities, technical staff, interface arrangements, and management controls used to ensure that the design and construction of the facility will be performed in an acceptable manner. The review for an OL or COL will examine the applicant's corporate organization and technical staff that will provide support for safe plant operation. The review for license transfer will examine the acceptability of any changes to the technical organization or personnel qualifications proposed as a result of a license transfer under 10 CFR 50.80.

The objective of this review is to ensure that the corporate management is involved with, informed of, and dedicated to the safe design, construction, test and operation of the nuclear plant. In addition, the review is to ensure that sufficient technical resources have been, are being and will continue to be provided to adequately accomplish these objectives.

A. Reviews of Initial Construction Permit (CP) and Early Stage Combined License (COL) or Reviews of Transfer of Construction Permits (CP) and Early Stage Combined License (COL)

The applicant's past experience in the design and construction of nuclear power plants, and past experience in activities of similar scope and complexity should be described. The applicant's management, engineering, and technical support organization should also be described. The description should include organizational charts for the current headquarters and engineering structure, as well as planned modifications and additions to those organizations to reflect the added functional responsibilities associated with the nuclear plant.

1. Design and Construction Responsibilities

A description of the implementation or delegation of design and construction responsibilities should be included for the following:

a. Principal site-related engineering work such as meteorology, geology, seismology, hydrology, demography, and environmental effects.

b. Design of plant and ancillary systems, including fire protection systems.

c. Review and approval of plant design features, including human factors engineering (HFE) considerations.

d. Site layout with respect to environmental effects and security provisions.

e. Development of safety analysis reports (SARs).

f. Material and components specification review and approval.

g. Procurement of materials and equipment.

h. Management of construction activities.

2. Preoperational Responsibilities

A description of the proposed plans for the management organization related to the initial test program should include the following:

a. Development of plans for the preoperational and startup testing of the facility.

b. Development and implementation of staff recruiting and training programs.

c. Development of plant maintenance programs.

The descriptions of the design and construction and preoperational responsibilities should include the following:

a. How these responsibilities are assigned by the headquarters staff and implemented within the organizational units;

b. Identification of the responsible working or performance level organizational unit;

c. An estimate of the number of persons expected to be assigned to each of the various units with responsibility for the project;

d. The general educational backgrounds and experience requirements for qualification in identified positions or classes of positions;

e. The role of the applicant's management in interfacing with the NSSS and A/E organizations;

f. Specific educational and experience background for assigned management and supervisory positions; and

g. The required review of contractor work by the applicant's staff.

h. For identified positions or classes of positions that have functional responsibilities other than the CP or COL application, the expected proportion of time assigned to the other activities should be described.

i. The early plans for providing technical support for the operation of the facility should be described.

The CP- or COL-stage review of the NSSS and A/E organizations includes an evaluation of the ability of the technical staff of each organization to support or perform the activities specified in the application, as applicable. The information submitted should include a description of the specific activity (including scope) to be engaged in, organizational description and charts reflecting organizational lines of authority and responsibility for the project, the number of persons assigned to the project, and qualification requirements for principal management positions related to the project. For those NSSS and A/E organizations with extensive experience, a detailed description of this experience may be provided in lieu of the details of their organization as evidence of technical capability. However, a specific description should be provided of how this experience will be applied to the particular project.

B. Operating License (OL and COL) Reviews

The SAR should provide the following information:

1. Organizational charts of the applicant showing the corporate level management and technical support;
2. The relationship of the nuclear oriented portions of the structure to the rest of the corporate organization;
3. A description of the specific provisions which have been made for technical support for operations; and
4. The organizational unit and any augmenting organizations, or other personnel who will manage or execute any phase of the test program, including the responsibilities and authorities of principal participants.

Technical services and backup support for the operating organization should become available in advance of the conduct of the preoperational and startup testing program and continue throughout the life of the plant.

The SAR should (1) Describe approximate numbers, educational background, and experience requirements for each identified position or class of positions providing technical support for plant operations, and (2) include specific educational and experience background for individuals holding the management and supervisory positions providing support in the areas identified below.

The special capabilities that should be included in the support for the operation of the plant are:

1. Nuclear, mechanical, structural, electrical, thermal-hydraulic, metallurgical and materials, and instrumentation and controls engineering.
2. Plant chemistry.
3. Health physics.
4. Fueling and refueling operations support.
5. Maintenance support.
6. Operations support.
7. Quality assurance.
8. Training.
9. Safety review.
10. Fire protection.
11. Emergency organization.
12. Outside contractual assistance.

C. Reviews of Transfer of Operating License (OL) and Late Stage Combined License (COL)

An applicant for transfer of an operating license should provide a description of the organization to support plant operations. The description should include:

1. Organizational charts showing the corporate level management and technical support organization and emphasizing the changes to be made as a result of the transfer;
2. The relationship of the nuclear oriented portions of the organization to the rest of the corporate organization; and
3. A description of the specific provisions which have been made for technical support for operations.

D. Review Interfaces

The branch with primary responsibility for human performance reviews performs the following reviews under the SRP sections indicated:

SRP Sections 13.1.1 through 13.1.3—for organizational structure, personnel qualifications and experience
SRP Section 13.2.1—for training for licensed operators
SRP Section 13.4—for organizational provisions for independent reviews and verifications
SRP Section 13.5.2—for procedure adequacy
SRP Section 18.0—for use of human factors engineering principles

The branch with primary responsibility for human performance will coordinate evaluations and reviews by other branches that interface with the overall review of the management and technical support organization as follows:

1. With the branch responsible for Emergency Preparedness and Radiation Protection, as part of its primary review responsibility for SRP section 13.3, for the acceptability of the emergency organization and as part of its primary review responsibilities for SRP section 12.5, for the acceptability of the radiation protection organization.
2. With the branch responsible for Safeguards as part of its primary review responsibility for SRP section 13.6 for the acceptability of the applicant's plans and provisions for security, including the security organization.
3. With the branch responsible for Quality Assurance, as part of its primary review responsibility for SRP chapter 17, for the acceptability of the quality assurance organization and, as part of its primary review responsibilities for SRP section 13.4, for the acceptability of the organization of the independent safety engineering group (ISEG).
4. With the branch responsible for Plant Systems, as part of its primary review responsibility for SRP section 9.5.1, for the acceptability of the organization responsible for fire protection.

For those areas of review identified above as being part of the review under other SRP sections, the acceptance criteria necessary for the review and their methods of application are contained in the referenced SRP sections.

II. Acceptance Criteria

A. General Guidance

The applicant's description of its resources to deal with safety-related problems connected with the proposed addition of nuclear generating capacity should provide contributory evidence as to the technical qualifications of the applicant, as required by 10 CFR 50.40(b) and 10 CFR 50.80, as applicable.

In the review and evaluation of the subject matter of this section of the SAR, the following points should be taken into consideration.

1. The corporate level management and technical support structure, as demonstrated by organizational charts and descriptions of functions and responsibilities, should be free of ambiguous assignments of primary responsibility.
2. A corporate officer should be clearly responsible for nuclear activities, without having ancillary responsibilities that might detract attention to nuclear safety matters.
3. Design and construction responsibilities should be reasonably well defined in both numbers and experience of persons required to implement their responsibilities.
4. Similarly, management and organizational responsibilities should be clearly defined with regard to human factors engineering (HFE) considerations in the management of human-system interface issues. This subject is addressed in more detail in NUREG–

0711 and in SRP Chapter 18 (DRAFT, April 1996).

B. Specific Criteria

Specific criteria which contribute to meeting 10 CFR 50.40(b) with respect to the CP, OL, or COL reviews and 10 CFR 50.80 with respect to license transfer reviews are described below.

For Review of Initial Construction Permit (CP) and Early Stage Combined License (COL) or for Review of Transfer of Construction Permit (CP) and early Stage Combined License (COL)

1. The applicant has identified and functionally described the specific organizational groups responsible for implementing responsibilities for the project.

2. The applicant has described the method of implementing its responsibilities for dealing with the safety-related aspects of the design and construction of the project and the transition to operation of the facility, including control of major contractors.

3. Clear, unambiguous management control and communications exist between the organizational units involved in the design and construction of the project.

4. Substantive breadth and level of experience and availability of manpower exist to implement the responsibility for the project.

5. The applicant has clearly described the role and function of the A/E and NSSS vendor during both design and construction and has demonstrated appropriate control over the project-related activities of the A/E and NSSS vendor.

6. The applicant has designated the responsible organizations that will participate in the test program and early plans indicate reasonable assurance that such designated organizations can collectively provide the necessary level of staffing with suitable skills and experience to develop and conduct the test program.

7. The applicant plans to utilize the plant operating and technical staff in the development and conduct of the test program and in the review of test results.

8. For COL applicants subject to 10 CFR 50.34(f), the applicant has identified plans for the organization and staffing to oversee design and construction of the nuclear facility in accordance with the guidelines of Item II.J.3.1 of NUREG–0718 as related to the requirements of 10 CFR 50.34(f)(3)(vii). As reflected in SRP Section 18.0, (DRAFT, April 1996) the review criteria for the human factors engineering (HFE) design team is provided in NUREG–0711, Chapter 2, "Element 1—HFE Program Management."

Although the requirements of 10 CFR 50.34(f) apply only to the specific applicants listed in that section, OL applicants should include information related to the organizational and management structure responsible for the design and construction of the proposed plant to ensure that the staff has complete and accurate information for its review.

For Review of Operating License (OL) and Later Stage Combined License (COL)

The review and evaluation of management and technical organizational structure for OL and COL applicants is based on the guidelines of TMI Action Plan Item I.B.1.2 originally described in NUREG–0694. Specific criteria are as follows:

1. The applicant has identified and described the organizational groups responsible for implementing the initial test program, and technical support for the operation of the facility.

2. The applicant has described the method of implementing its responsibilities for dealing with the initial test program, technical support, and operation of the facility.

3. The organizational structure provides for the integrated management of activities that support the operation and maintenance of the facility.

4. Clear management control and effective lines of authority and communications exist between the organizational units involved in the management, operation, and technical support for the operation of the facility.

5. Substantive breadth and level of experience and availability of manpower exist to implement the initial test program and technical support for the operation of the facility. The need to supplement the corporate structure with additional experienced personnel for the initial years of operation will be determined on case-by-case basis.

6. Qualifications of members of the technical support organization should meet or exceed those endorsed by Regulatory Guide 1.8.

7. The technical staff will be utilized in the initial test program to the maximum extent practicable. Participants in the test program should receive plant-specific training/indoctrination in the administrative controls for the test program prior to the start of testing. The level of staffing should be adequate based on the reviewer's judgment.

For Review of Transfer of Operating License (OL) and Later Stage Combined License (COL)

The criteria for the review and evaluation of management and technical organizational structure for license transfer applicants are as follows:

1. The applicant has identified and described the organizational groups responsible for the technical support for the operation of the facility.

2. The applicant has described the method for implementing the technical support and operation of the facility.

3. The organizational structure provides for the integrated management of activities that support the operation and maintenance of the facility.

4. Clear management control and effective lines of authority and communications exist between the organizational units involved in the management, operation, and technical support for the operation of the facility.

5. Substantive breadth and level of experience and availability of manpower exist to implement the technical support for the operation of the facility.

6. Qualifications of members of the technical support organization should meet or exceed those endorsed by Regulatory Guide 1.8.

C. Technical Rationale

The technical rationale for application of the above acceptance criteria to the review of the management and technical support organization is discussed in the following paragraphs.

1. Compliance with the relevant requirements of 10 CFR 50.40(b) requires that the applicant be technically qualified to engage in activities associated with the design, construction, and operation of a nuclear power plant in accordance with the regulations in 10 CFR 50. Similarly, 10 CFR 80 requires that the applicant for the transfer of a license be technically qualified to be the holder of the license.

The management and technical support organization established by the applicant to oversee the design and construction of a nuclear power plant provides valuable insight into the corporate management's understanding of its safety role in the design, construction, operation, and maintenance of the facility. This information contributes to the determination that an applicant is technically qualified by ensuring that appropriate considerations were used in the establishment of general qualification requirements and staffing levels for all key positions on which the safety of the facility will depend.

Meeting the requirements of 10 CFR 50.40(b) and 10 CFR 80, as applicable, provides assurance that the applicant is technically qualified to engage in the proposed activities and has established the necessary management and technical support organization to safely operate the proposed facility.

III. Review Procedures

Preparation for reviewing the application should include familiarization with the documents listed as references in this SRP section.

Each element of the application information is to be reviewed against this SRP section. The reviewer's judgment during the review is to be based on an inspection of the material presented, whether items of special safety significance are involved, and the magnitude and uniqueness of the project. Any exceptions or alternatives are to be carefully reviewed to ensure that they are clearly defined and that an adequate basis exists for acceptance.

The applicant should identify the applicable version of references, Regulatory Guides, and Codes and Standards used. The reviewer should identify the applicable version of references, Regulatory Guides, and Codes and Standards used in the review.

In the review and evaluation of the information related to this section of the management and technical support organization, the following points should be taken into consideration:

A. In the early construction stage, the applicant's plans for headquarters staffing to provide technical support when operating may not yet be firm. It is acceptable, therefore, if these plans are not fully specific in terms of numbers of people, provided the commitment made is sufficiently firm to ensure the responsibility can be met.

B. The reviewer must recognize that there are many acceptable ways to define and delegate job responsibilities. Variations in staffing may also be expected between applicants with and without prior experience in nuclear plant design, construction, or operation. The reviewer must be convinced that an applicant has not underestimated the magnitude of the task. The reviewer should be alert to the possibility that excessive workloads may be placed upon too small a number of individuals. Interface arrangements and controls between the applicant and major contractors (NSSS vendors, architect/engineers, constructors) should be examined to ensure that the applicant will be in charge of and responsible for design and construction activities.

If the application involves the addition of more than one unit, the reviewer should ensure that headquarters staffing plans take this fact into account. This is particularly important if additional units are scheduled to come on line at intervals of about one year or less, since the shakedown period for the operation of a new plant can be expected to produce quite heavy workloads. In some of these cases the applicant may plan to bolster the plant staff organization during such periods so that it is necessary to evaluate headquarters staffing plans in conjunction with those for the plant staff organization.

C. The reviewer should assess the degree of participation during the design and construction phases by the headquarters group that typically has plant operating (generating) responsibility. Interfaces between such a group and those with project engineering responsibilities should be examined.

D. At the time of this review, if the applicant has had experience in the operation of a previously licensed nuclear power plant, the reviewer may seek independent information about headquarters staffing and qualifications through the appropriate NRC Regional Office.

The review procedure for this section consists, therefore, of the following:

1. An examination of the information submitted to determine that all areas identified in subsection I, "Areas of Review," above have been addressed.

2. A comparison of the information with the acceptance criteria of subsection II, Review Criteria," above.

3. Review of information provided by the NRC Regional Office position statement on the applicant's organizational and administrative commitments made in the SAR, if applicable.

4. Verification of the implementation of the management structure and technical resources based on visits to corporate headquarters and the site, if applicable.

The reviewer then determines, based on the foregoing, the overall acceptability of the applicant's management and technical support organization and staffing plans.

For OL and late stage COL license transfer under 10 CFR Part 50, the existing organization was found acceptable for operations as part of the initial licensing review. Therefore, the review in support of a license transfer should be focused on the organizational changes proposed as a result of that transfer. The reviewer should ensure that the proposed changes will result in an organization that will continue to meet the relevant review criteria.

For Standard Design Certification under 10 CFR Part 52, the procedures above should be followed, as modified by the procedures in SRP Section 14.3, (DRAFT, April 1996) to verify that the design set forth in the standard safety analysis report, including inspections, tests, analysis, and acceptance criteria (ITAAC), site interface requirements and combined license action items, meet the acceptance criteria given in subsection II. SRP Section 14.3 (DRAFT, April 1996) contains procedures for the review of certified design material (CDM) for the standard design, including the site parameters, interface criteria, and ITAAC.

IV. Evaluation Findings

The reviewer verifies that the information presented supports conclusions of the following type to be used in the staff's safety evaluation report:

The staff concludes that the management and technical support organization is acceptable and meets the requirements of 10 CFR 50.40. This conclusion is based on the following:

A. For a Safety Evaluation Report of an Initial CP or COL or for a Transfer of CP or COL

The applicant has described clear responsibilities and associated resources for the design and construction of the facility and has described its plans for management of the project and for utilization of the NSSS vendor and A/E. These plans have been reviewed and give adequate assurance that an acceptable organization has been established and that sufficient resources are available to satisfy the applicant's commitments for the design and construction of the facility. These findings contribute to the judgment that the applicant complies with the requirements of 10 CFR 50.40(b) and 10 CFR 50.80, as applicable; i.e., that the applicant is technically qualified to engage in design and construction activities.

B. For a Safety Evaluation Report of an Initial OL or Late Stage COL

The applicant has described its organization for the management of, and its means for providing technical support for the plant staff during operation of the facility. These measures have been reviewed and it is concluded that the applicant has an acceptable organization and adequate resources to provide offsite technical support for the operation of the facility under both normal and off-normal conditions.

C. For a Safety Evaluation Report of a Transfer of an OL or Late Stage COL License

The applicant has described its organization for the management of, and its means for providing technical support to the plant staff for operation of the facility after the license transfer. These measures have been reviewed and it is concluded that the applicant has an acceptable organization and adequate resources to provide offsite technical support for the operation of the facility under both normal and off-normal conditions.

D. For Design Certification

For design certification reviews, the findings will also summarize, to the extent that the review is not discussed in other safety evaluation report sections, the staff's evaluation of inspections, tests, analyses, and acceptance criteria (ITAAC), including design acceptance criteria (DAC), site interface requirements, and combined license action items that are relevant to this SRP section.

In addition to the finding based on the type of application, the safety evaluation report should also address the following:

These findings contribute to the judgment that the applicant complies with the requirements of 10 CFR 50.40(b) and 10 CFR 50.80, as applicable (that the applicant is technically qualified to operate a nuclear power plant); that the applicant will have the necessary managerial and technical resources to provide assistance to the plant staff in the event of an emergency; and that the applicant has identified the organizational positions responsible for fire protection matters and the authorities that have been delegated to these positions to implement fire protection requirements.

V. Implementation

The following is intended to provide guidance to applicants and licensees regarding the NRC staff's plans for using this SRP section.

This SRP section will be used by the staff when performing safety evaluations of license applications submitted by applicants pursuant to 10 CFR 50 or 10 CFR 52 and for transfer of a license pursuant to 10 CFR 50.80. Except in those cases in which the applicant proposes an acceptable alternative method for complying with specified portions of the Commission's regulations, the method described herein will be used by the staff in its evaluation of conformance with Commission regulations.

The provisions of this SRP section apply to reviews of applications docketed six months or more after the date of issuance of this SRP section.

Implementation schedules for conformance to parts of the method discussed herein are contained in the referenced regulatory guides and NUREGs.

VI. References

1. 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities."
2. Regulatory Guide 1.8, "Qualification and Training of Personnel for Nuclear Power Plants."
3. Regulatory Guide 1.68, "Initial Test Programs for Water-Cooled Nuclear Power Plants."
4. NUREG–0694, "TMI-Related Requirements for New Operating Licenses."
5. NUREG–0711, Human Factors Engineering Program Review Model.
6. NUREG–0718, "Licensing Requirements for Pending Applications for Construction Permits and Manufacturing License."
7. NUREG–0737, "Clarification of TMI Action Plan Requirements.

NUREG–0800—Standard Review Plan, Chapter 13, Conduct of Operations

13.1.2–13.1.3 Operating Organization

Review Responsibilities

Primary—Human Performance Branch
Secondary—None

I. Areas of Review

The applicant's operating organization, as described in its safety analysis report (SAR), is reviewed. This section of the SAR should describe the structure, functions, and responsibilities of the onsite organization established to operate and maintain the plant.

A. Reviews of Initial Construction Permit (CP) and Early Stage Combined License (COL) or Reviews or Transfer of CP and Early Stage COL

During the early stages of construction or plant design it is recognized that many details of the plant organization and staffing have not been finalized. The organizational information provided at this time should include the following elements:

1. The applicant's commitment to meet the guidelines of Regulatory Guide 1.33 for the Operating Organization.

2. The applicant's commitment to meet the guidelines of Regulatory Guide 1.33 for Onsite Review and Rules of Practice.

3. The applicant's commitment to meet Branch Technical Position SPLB 9.5–1.

4. The applicant's commitment to meet the guidelines of Regulatory Guide 1.8 for the Operating Organization.

5. The applicant's commitment to be consistent with the options in the Commission Policy Statement on Engineering Expertise on Shift.

6. The applicant's commitment to meet TMI Action Plan items I.A.1.1 and I.A.1.3 of NUREG–0737 for Shift Technical Advisor and Shift Manning.

7. A schedule, relative to fuel loading for each unit, for filling all positions.

B. Review of Operating License (OL) and Later Stage Combined License (COL)

During the later stages of construction, plant design, and licensing, the applicant should provide evidence that the initial personnel selections conform to the commitments made in the early stages of licensing.

The organizational information provided by the applicant should include the following elements:

1. An organization chart should have the following elements:

a. The title of each position,

b. The minimum number of persons to be assigned to common or duplicated positions,

c. The number of operating shift crews, and

d. The positions for which reactor operator and senior reactor operator licenses are required.

For multi-unit stations, the organization chart (or additional charts) should clearly reflect changes and additions as new units are added to the station.

2. The personnel resumes for those selected for management and supervisory positions down through the shift supervisor.

3. The functions, responsibilities, and authorities of plant positions corresponding to the following should be described:

a. Overall plant management.
b. Operations supervision.
c. Operating shift crew supervision.
d. Shift technical advisors.
e. Licensed operators.
f. Non-licensed operators.
g. Technical supervision.
h. Radiation protection supervision.
i. Instrumentation and controls maintenance supervision.
j. Equipment maintenance supervision k. Fire protection supervision.
l. Quality assurance supervisor (when part of the plant staff).

For each position, where applicable, required interfaces with offsite personnel or positions identified in SAR Section 13.1.1 should be described. Such interfaces include defined lines of reporting responsibilities, e.g., from the plant manager to the immediate

superior, as well as functional or communication channels.

4. The line of succession of authority and responsibility for overall station operation in the event of unexpected contingencies of a temporary nature, and the delegation of authority that may be granted to operating supervisors and to shift supervisors, including the authority to issue standing or special orders.

5. The extent and nature of the participation of the plant operating and technical staff in the initial test program.

6. If the station contains or is planned to contain power generating facilities other than those relating to the application in question and including fossil-fueled units, this section should also describe interfaces with the organizations operating such other facilities. The description should include any proposed sharing of persons between the units, a description of their duties, and the proportion of their time they will routinely be assigned to non-nuclear units

7. The position titles, applicable operator licensing requirements for each, and the total number of people planned to man each shift should be described for all combinations of units proposed to be at the station in either operating or cold shutdown modes. Shift crew staffing plans unique to refueling operations should be described. The proposed means of assigning shift responsibility for implementing the radiation protection and fire protection programs on a round-the-clock basis should also be described.

8. The education, training, and experience requirements (qualification requirements) established by the applicant for filling each management, operating, technical, and maintenance position category in the operating organization above should be described. This includes those persons who will conduct preoperational and startup tests. Consequently, the information to be reviewed should demonstrate an understanding of and commitment to the acceptance criteria below.

C. Review of a Transfer of Operating License (OL) or Late Stage Combined Operating License (COL)

The initial operating organization was found acceptable as part of the initial licensing review. Subsequent safety-related changes to the operating organization should have been evaluated with an appropriate methodology and, therefore, the existing organization remains acceptable. The review to support a license transfer should focus on evaluating any changes to the operating organization that are being proposed as a result of the transfer.

D. Review Interfaces

The primary Human Performance review branch performs the following reviews under the SRP sections indicated:

SRP Sections 13.1.1 through 13.1.3,—for organizational structure, personnel qualifications and experience
SRP Section 13.2.1—for training for licensed operators
SRP Section 13.4—for organizational provisions for independent reviews and verifications
SRP Section 13.5.2—for procedure adequacy
SRP Section 18.0—for use of human factors engineering principles

The primary Human Performance review branch will coordinate evaluations and reviews by other branches that interface with the overall review of the operating organization as follows:

1. With the branch responsible for Emergency Preparedness and Radiation Protection, as part of its primary review responsibility for SRP Section 13.3, for the acceptability of the emergency organization and as part of its primary review responsibilities for SRP Section 12.5, for the acceptability of the radiation protection organization.

2. With the branch responsible for Safeguards as part of its primary review responsibility for SRP Section 13.6 for the acceptability of the applicant's plans and provisions for security, including the security organization.

3. With the branch responsible for Quality Assurance, as part of its primary review responsibility for SRP Chapter 17, for the acceptability of the quality assurance organization.

For those areas of review identified above as being part of the review under other SRP sections, the acceptance criteria necessary for the review and their methods of application are contained in the referenced SRP sections.

II. Acceptance Criteria

A. General Criteria

This section of the SAR should demonstrate the applicant's commitment to and implementation of plans to staff the onsite operating organization and to define and delegate responsibilities to provide assurance that the plant can be operated safely.

In the review and evaluation of the subject matter in this section of the SAR, the following points should be taken into consideration:

1. Plant staff organizational structures are not rigidly fixed. However, experience has shown that certain components are common to and necessary for all plants. Among these are operational, onsite technical support, and maintenance groups, under the direction and supervision of a plant manager.

2. The operating organization should be free of ambiguous assignments of primary responsibility. Operating responsibilities should be reasonably well defined in both numbers and experience of persons required to implement their responsibilities.

3. The total on-shift manpower available should include a sufficient number of full operating shift crews so that excessive overtime is not routinely scheduled.

The staff acceptance criteria are designed to produce reasonable assurance of applicant compliance with the relevant requirements of the following regulations:

1. 10 CFR 50.40(b) as it relates to demonstrating in conjunction with other reviews that the applicant is technically qualified to engage in nuclear activities licensed under these regulations.

2. 10 CFR 50.54(j), (k), (l), and (m) as they relate to operator requirements during the operation of the facility, the responsibility for directing activities of licensed operators, and the senior operator availability during reactor operations and other specific reactor conditions or modes of operation.

3. 10 CFR 50.80 as it relates to demonstrating in conjunction with other reviews that the applicant for the transfer of a license is technically qualified to be the holder of a license.

B. Specific Criteria

Specific criteria necessary to meet the relevant requirements of 10 CFR 50.40(b), 10 CFR 50.80, and 10 CFR 50.54(j), (k), (l), and (m) as follows:

1. The requirements of ANSI N18.7/ANS–3.2, Section 3.4, "Operating Organization," as endorsed by Regulatory Guide 1.33, should be met. In addition, the following characteristics should be satisfied:

a. The reporting responsibility and authority of the functional areas of radiation protection, quality assurance, and training should ensure independence from operating pressures. In utilities with large commitments to nuclear power plants, overall management and technical direction in these areas may be concentrated at the home office.

b. There should be clear lines of authority to the Plant Manager.

c. Responsibility for all activities important to the safe operation of the facility should be clearly defined.

d. Distinct functional areas should be separately supervised and/or managed.

e. Sufficient managerial depth should be available to provide qualified backup in the event of the absence of the incumbent.

2. Responsibilities and authorities of operating organization personnel should conform to the requirements of ANSI N18.7/ANS–3.2, Section 5.2, "Rules of Practice"; Section 4.4, "Onsite Review," as endorsed by Regulatory Guide 1.33; Branch Technical Position SPLB 9.5–1; and Regulatory Guide 1.8 for the "Operating Organization." In addition, the organization should reflect the staff position in TMI Action Plan Item I.C.3 of NUREG–0694, by having the responsibilities of the shift supervisor clearly establish the command duties of that position and emphasize the primary management responsibility for the safe operation of the plant.

3. Assignments of onsite shift operating crews shall be made in accordance with 10 CFR 50.54(j), (k), (l), and (m). In addition, the staffing should reflect the staff positions of TMI Action Plan items I.A.1.1 and I.A.1.3 of NUREG–0737 as follows:

a. A shift supervisor with a senior reactor operator's license, who is also a member of the station supervisory staff, shall be onsite at all times when at least one unit is loaded with fuel.

b. In addition to the licensed personnel specified in 10 CFR 50.54(m), as a minimum, an auxiliary operator (non-licensed) shall be assigned to each reactor and an additional auxiliary operator shall be assigned for each control room from which a reactor is operating. These operators shall be properly qualified to support the unit to which assigned.

Note: The shift composition described above is shown in tabular form in Table 1.

c. To meet TMI Action Plan item I.A.1.1 of NUREG–0737, engineering expertise shall be onsite at all times a licensed nuclear unit is being operated in Modes 1–4 for a PWR or in Modes 1–3 for a BWR. This engineering expertise should be consistent with the options presented in the Commission Policy Statement on Engineering Expertise on Shift.

d. A health physics technician shall be onsite at all times when there is fuel in a reactor.

e. A rad/chem technician shall be onsite at all times when a licensed nuclear unit is being operated in Modes 1–4 for a PWR or in Modes 1–3 for a BWR.

f. Assignment, stationing, and relief of operators and senior operators within the control room shall be as described in Regulatory Guide 1.114.

4. Total complement of licensed personnel and unlicensed personnel for on-site shift operating crews should be sufficient to avoid the routine heavy use of overtime.

Note: SRP Section 13.5.1 contains guidance on work hour limitations.

To meet this policy, staffing plans should provide for no less than the number required for five shift rotations.

5. The plant operating and technical staff should be used to the maximum extent possible in the facility initial test program.

6. Assignments of persons to implement the fire brigade requirements of the fire protection program should meet the guideline of SRP Section 9.5.1, including the following:

a. The responsibilities of the fire brigade members under normal conditions should not conflict with their responsibilities during a fire emergency.

b. The minimum number of fire brigade members available onsite for each shift operation crew should be consistent with the activities required to combat the most significant fire. The minimum size of the fire brigade shift should be five persons unless a specific site evaluation has been completed and some other number justified.

7. Regulatory Guide 1.8, "Qualification and Training of Personnel for Nuclear Power Plants," sets forth the staff position on plant personnel qualifications and training.

In addition, although the qualification levels of the standards are endorsed as acceptable minimums for each position, it is expected that the collective qualifications of the plant staff will be greater than the sum of the minimum individual requirements described in the standard, particularly in the area of nuclear power plant experience and in supervisory and management positions involved in the operational aspects of the facility. In those cases where the collective qualifications do not exceed the sum of the minimums for individual positions, additional technical support for the plant staff may be required. These will be determined on a case-by-case basis.

TABLE 1

	Shift Staffing**		
	One unit, one control room	Two units, one control room	Two units, two control rooms
One Unit Operating*	1 SS (SRO) 1 SRO 2 RO 2 AO	1 SS (SRO) 1 SRO 3 RO 3 AO	1 SS (SRO) 1 SRO 3 RO 3 AO
Two Units Operating*	NA	1 SS (SRO) 1 SRO 3 RO 3 AO	1SS (SRO) 2 SRO 4 RO 4 AO
All Units Shutdown	1 SS (SRO) 1 RO 1 AO	1 SS (SRO) 2 RO 3 AO	1 SS (SRO) 2 RO 3 AO

SS (SRO)
2 RO
3 AO.

SS—Shift Supervisor.
SRO—Licensed Senior Reactor Operator.
RO—Licensed Reactor Operator.
AO—Auxiliary Operator.

Notes:
1. In order to operate or supervise the operation of more than one unit, an operator (SRO or RO) must hold an appropriate, current license for each such unit.
2. In addition to the staffing requirements indicated in the table, a licensed senior operator will be required to directly supervise any core alteration activity.
* Modes 1 through 4 for PWRs. Modes 1 through 3 for BWRs.
** Shift staffing of unlicensed personnel for special cases such as 3 units, operating from 1 or 2 control rooms, etc. will be determined on a case-by-case basis, based on the principles defined in item II.B.3. of this SRP section. Shift staffing of licensed personnel for special cases including temporary deviations and staffing for 3 units must meet the requirements of 10 CFR 50.54(m), however.

C. Technical Rationale

The technical rationale for application of these acceptance criteria to reviewing the operating organization is discussed in the following paragraphs:

1. Compliance with the relevant requirements of 10 CFR 50.40(b) requires that the applicant be technically qualified to engage in the proposed activities in accordance with the regulations in Chapter 50. Similarly, 10 CFR 50.80 requires that an applicant for the transfer of a license be technically qualified to be the holder of a license.

A review of the operating organization established by the applicant to oversee operation of a nuclear power plant provides valuable insight into corporate management's understanding of its safety role in the operation and maintenance of the facility. This information contributes to the determination that an applicant is technically qualified to engage in the proposed nuclear activities by ensuring that appropriate considerations were used in the establishment of general qualification requirements and staffing levels for all key positions on which the safety of the facility will depend.

Meeting the requirements of 10 CFR 50.40(b) and 10 CFR 50.80, as applicable, provides assurance that the applicant is technically qualified to engage in the proposed activities and has established the necessary management and technical support organization to safely operate the proposed facility.

2. Compliance with 10 CFR 50.54(j), (k), (l), and (m) requires the applicant to demonstrate that its operating organization satisfies minimum requirements for operator supervision and the availability of licensed senior operators and licensed operators during reactor operations and other specific reactor conditions or mode of operation.

These are key positions for ensuring the safe operation of the plant. A staffing review of the operating organization provides valuable insight regarding the determination that an applicant is technically qualified to operate the facility.

III. Review Procedures

Preparation for reviewing the SAR or license transfer applilcation should include familiarization with the documents listed as references to this SRP section.

Each element of the SAR or transfer application information is to be reviewed against this SRP section. The reviewer's judgement during the review is to be based on an inspection of the material presented, whether items of special safety significance are involved, and the uniqueness of the facility. Any exceptions or alternatives are to be carefully reviewed to ensure that they are clearly defined and that adequate basis exists for acceptance.

The applicant should identify the applicable version of references, Regulatory Guides, and Codes and standards used. The reviewer should identify the applicable version of references, regulatory guides, and Codes and standards used in the review.

In the review and evaluation of the information related to the operating organization, the following points should be taken into consideration:

A. During the early stages of construction or plant design, the applicant will generally not have made selections for plant staff positions. The review procedure, therefore, is to examine this section of the SAR for a commitment on the part of the applicant to conform to the stated acceptance criteria.

B. The reviewer must recognize that there are many acceptable ways to define and delegate job responsibilities. Variations in staffing may also be expected between applicants with and without prior experience in nuclear plant operation. It is important that the reviewer verify that applicants lacking in experience do not underestimate the magnitude of the task and that all applicants adequately consider the potential effects of human error. Guidance on human error considerations may be found in NUREG–0711, Chapter 7, "Element 6—Human Reliability Analysis." The reviewer should be alert to the possibility that excessive workloads may be placed upon too small a number of individuals.

The reviewer should also consider that the structure of onsite technical support and maintenance groups may depend somewhat on headquarters staffing and the division of effort between onsite and offsite personnel.

C. During the later stages of construction, plant design, and licensing, the review consists first of the same examination as made for the early stages of construction or plant design, and secondly, of an analysis of each resume. The reviewer should make an explicit comparison of the educational and experience records obtained from each resume with the corresponding endorsed consensus standards requirements and regulatory positions set forth for the applicable position in Regulatory Guide 1.8 or other approved qualifications. "Applicable experience" should be judged in the light of the position responsibility. Credit for experience, which may not be entirely applicable, should be weighed to a degree commensurate with its applicability.

Where a clear comparison cannot be made between the proposed plant staff positions and those defined in the standards endorsed in Regulatory Guide 1.8, the applicant should list each position on its plant staff and designate the corresponding position of these standards, or describe in detail the proposed qualification requirements for each position on its plant staff.

In addition, if the applicant, as of the time the review takes place, has had experience in the operation of previously licensed nuclear power plants, the reviewer may seek independent information relative to plant staffing and qualifications through the appropriate Regional Office, e.g., by discussion with inspection personnel or review of inspection reports.

D. For onshift persons, the total manpower available should be reviewed to ensure that a sufficient number of full operating shift crews are planned so that excessive overtime is not routinely scheduled for these crews. Additional staffing guidance may be found in NUREG–0711, Chapter 6, "Element 5—Staffing." For multi-unit sites, overall site responsibilities should be checked for clarity during those periods of time when senior level supervision is not onsite.

The review procedure for this SRP section consists, therefore, of the following:

1. An examination of the information submitted to determine that all subject

matter identified in subsection I, "Areas of Review," above has been addressed.

2. A comparison of the information with the acceptance criteria of subsection II, "Acceptance Criteria," above.

3. Review of information provided by the NRC Regional Office position statement on the applicant's organizational and administrative commitments made in the SAR, as appropriate.

4. Verification of the implementation of the management structure and technical resources based on visits to corporate headquarters and the site, as appropriate.

The reviewer then determines, based upon the foregoing, the overall acceptability of the applicant's operating organizations and plant staffing plans.

For transfer of an operating license or late stage COL under 10 CFR Part 50.80, the operating organization was found acceptable as part of the initial licensing of the plant. Subsequent changes to the operating organization should have been made in accordance with an appropriate evaluation methodology. Therefore, the existing organization should still be acceptable. The review for license transfer should be focused on the changes that are proposed to the operating organization as a result of the transfer.

For standard design certification reviews under 10 CFR Part 52, the procedures above should be followed, as modified by the procedures in SRP Section 14.3, to verify that the design set forth in the standard safety analysis report, including inspections, tests, analysis, and acceptance criteria (ITAAC), site interface requirements and combined license action items, meet the acceptance criteria given in subsection II, "Acceptance Criteria." SRP Section 14.3 contains procedures for the review of certified design material (CDM) for the standard design, including the site parameters, interface criteria, and ITAAC.

IV. Evaluation Findings

The reviewer verifies that the information presented and its review support conclusions of the following type to be used in the staff's safety evaluation report:

For a Safety Evaluation Report on an Initial CP or early stage COL or for Transfer of a CP or early stage COL

The staff concludes that the applicant's operating organization is acceptable and meets the relevant requirements of 10 CFR 50.40(b), 10 CFR 50.80, as applicable, and 10 CFR 50.54(j) through (m). This conclusion is based on the following:

The applicant has described the assignment of plant operating responsibilities; the reporting chain up through the chief executive office of the applicant; the proposed size of the regular plant staff; the functions and responsibilities of each major plant staff group; and the proposed shift crew complement for single unit or multiple unit operation; the qualification requirements for members of its plant staff; and (personnel resumes for management and principal supervisory and technical positions as submitted during the later stages of construction, plant design, and licensing). This information has been reviewed, and it is the conclusion of the staff that the proposed operating organization is acceptable.

The applicant's operating organization is characterized as follows:

1. The applicant is technically qualified as specified in 10 CFR 50.40(b) and 10 CFR 50.80, as applicable;

2. An adequate number of licensed operators will be available at all required times to satisfy the minimum staffing requirements of 10 CFR 50.54(j) through (m);

3. Onshift personnel are able to provide initial facility response in the event of an emergency;

4. Organizational requirements for the plant manager and radiation protection manager have been satisfied;

5. Qualification requirements and qualifications of plant personnel conform with the guidance of Regulatory Guide 1.8; and

6. Organizational requirements conform with the guidance of Regulatory Guide 1.33.

In addition, the applicant has complied with TMI Action Plan items I.A.1.1 and I.A.1.3.

For a Safety Evaluation Report on a transfer of an OL or Late Stage COL, the findings will summarize the staff's evaluation of the applicant's proposed changes to the operating organization.

For design certification reviews, the findings will also summarize, to the extent that the review is not discussed in other safety evaluation report sections, the staff's evaluation of inspections, tests, analyses, and acceptance criteria (ITAAC), including design acceptance criteria (DAC), site interface requirements, and combined license action items that are relevant to this SRP section.

V. Implementation

The following is intended to provide guidance to applicants and licensees regarding the NRC staff's plans for using this SRP section.

This SRP section will be used by the staff when performing safety evaluations of license applications or license transfer applications submitted by applicants pursuant to 10 CFR parts 50 or 52. Except in those cases in which the applicant proposes an acceptable alternative method for complying with specified portions of the Commission's regulations, the method described herein will be used by the staff in its evaluation of conformance with Commission regulations.

The provisions of this SRP section apply to reviews of applications docketed six months or more after the date of issuance of this SRP section.

Implementation schedules for conformance to parts of the method discussed herein are contained in the referenced guides and NUREGs.

VI. References

1. 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities."
2. Regulatory Guide 1.8, "Qualification and Training of Personnel for Nuclear Power Plants."
3. Regulatory Guide 1.33, "Quality Assurance Program Requirements (Operation)." (endorses ANSI N18.7–1976/ANS–3.2, "Administrative Controls and Quality Assurance for the Operational Phase of Nuclear Power Plants," as supplemented by its regulatory positions)
4. Regulatory Guide 1.114, "Guidance to Operators at the Controls and to Senior Operators in the Control Room of a Nuclear Power Unit."
5. NUREG–0694, "TMI-Related Requirements for Operating Licenses."
6. NUREG–0711, "Human Factors. Engineering Program Review Mode.
7. NUREG–0737, "Clarification of TMI Action Plan Requirements."
8. The Commission Policy Statement on Engineering Expertise on Shift (50 FR 43621).

Dated Rockville, Maryland, this 27th day of May, 1999.

For the Nuclear Regulatory Commission.

Robert M. Gallo,

Chief, Operator Licensing, Human Performance and Plant Support Branch, Division of Inspection Program Management.

[FR Doc. 99–14050 Filed 6–2–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. MC99–1; Order No. 1247]

Mail Classification Case

AGENCY: Postal Rate Commission.

ACTION: Initiation of new mail classification docket.

SUMMARY: The Commission announces a formal mail classification docket to consider expansion of the legal definition of bulk parcel return service (BPRS). It also authorizes settlement negotiations based on a stipulation and agreement, request comments on expedited treatment, and issues other procedural rulings. These actions will allow the proposed expansion of BPRS eligibility to be addressed.

DATES: The deadline for intervention, comments on expedited treatment, and hearing requests is June 21, 1999; the prehearing conference is June 24, 1999. See **SUPPLEMENTARY INFORMATION** for other dates.

ADDRESSES: Address all communications regarding this notice to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

SUPPLEMENTARY INFORMATION: On May 25, 1999, the Postal Service filed a request for a recommended decision approving a classification change expanding the terms on which it offers Bulk Parcel Return Service (BPRS). (Docket No. MC99–4, Bulk Parcel Return Service Expedited Minor Classification Case.) The request invokes expedited review under Commission rules for cases involving minor classification changes. *See* 39 CFR 3001.69–69c. The Service notes that these rules require that notices of intervention, responses to proposed treatment under the expedited rules, and requests for a hearing be submitted within 26 days of the filing, or no later than June 21, 1999 in this proceeding. May 25, 1999 Notice of United States Postal Service of the Filing of a Request for an Expedited Recommended Decision on a Minor Classification Change for BPRS.

Contents of the filing. The request was accompanied by the testimony of two Postal Service witnesses (Adra and Eggleston), proposed amendments to the Domestic Mail Classification Schedule (DMCS), and an explanation of why the proposal is a minor change qualifying for expedited treatment. It also includes a statement regarding compliance with other procedural rules and a proposed stipulation and agreement. The Service says it filed the stipulation and agreement to encourage parties to consider expeditious resolution of this case. May 25, 1999 Notice of United States Postal Service Filing of Proposed Stipulation and Agreement.

Limitations of current legal definition of BPRS. The Service's filing notes that as currently defined, BPRS provides a method for high-volume mailers to have parcels that are undeliverable-as-addressed (UAA)—and therefore unopened—returned to designated postal-facilities at the original mailer's expense. To qualify for this service, UAA parcels must have been initially mailed under the Regular or Nonprofit subclasses of Standard (A) Mail. They must also be machinable (under one pound), carry a designated BPRS endorsement, and meet other Postal Service requirements. The BPRS fee is $1.75 for each returned piece.

Proposed expansion of the definition. The Service's proposal expands the definition of BPRS to include qualifying parcels that are successfully delivered (and therefore not UAA), but then opened, resealed and redeposited in the mailstream by the recipient for return to the original mailer. The expanded definition recognizes two situations. One is when a qualifying parcel is returned using a mailer-supplied BPRS return label. The other is when a qualifying parcel is returned with neither a mailer-supplied BPRS label nor customer-affixed postage, and it is impracticable or inefficient for the Service to return the mail piece to the recipient for payment of applicable postage. In both situations, the Service proposes allowing qualifying parcels to be handled as BPRS, with the original mailer paying the $1.75 BPRS fee for each returned parcel.

In support of its proposal, the Service asserts that the requested change will further the general policies of efficient postal operations and reasonable rates and fees enunciated in the Postal Reorganization Act. Id. at 2 (citing 39 U.S.C. 101(a), 403(a), and 403(b)). It also states that the change conforms to the classification criteria of 39 U.S.C. 3623(c). Request at 2. The Service maintains that the proposed change does not have any rate, fee or measurable total cost change implication. Id., Attachment C–10.

Expedited review. Under rules 69–69c, requests for expedited consideration of a classification change characterized as minor must include a description of the proposed change, along with proposed changes in the DMCS and any pertinent rate schedules; a thorough explanation of the reasons why the Service characterizes the change as minor; and an estimate of the overall impact of the change on postal costs, and revenues, mail users, and competitors. The Service states that witness Adra provides the required description of the proposed classification change, notes that the proposed DMCS changes are provided in Attachment A to its request, and asserts that no rate or fee schedule changes are proposed. It also states that witnesses Adra and Eggleston address the Service's rationale for characterizing the requested change as minor in character. Id. at C–12.

Testimony of witness Adra. Witness Adra provides an overview of the existing BPRS offering and discusses the Service's rationale for proposing the requested changes. He also reviews the proposal's consistency with classification criteria, describes why the case should be considered under the expedited rules, and identifies the proposal's financial impact. His discussion includes this observation about problems encountered under existing circumstances:

> If a customer receives a BPRS-endorsed mailpiece, opens it, then decides to return it, the customer should bring it to a post office and pay single-piece postage for return. If a customer drops an opened parcel in the mail without paying postage, the mailpiece should be returned to the customer and return postage collected. In reality, however, it is often more practicable or efficient for the Postal Service to return it to the original mailer together with the mailer's other BPRS parcels, with the return fee paid by that mailer. This is because: (1) it is inefficient for the Postal Service to incur the expense and difficulty of having the carrier return the parcel to the customer and seek payment of postage; or (2) it is not possible to tell that the parcel was opened; or (3) the fact that the parcel was opened is not discovered until the parcel is at or near the original mailer's delivery office. Another potential problem for customers is that the parcel may not always make it back to the original mailer. Depending on its condition, a parcel could be treated as dead mail and sent to a mail recovery center. Meanwhile, customers assume that their merchandise was returned and their account was credited.

USPS–T–1 at 3.

Testimony of witness Eggleston. Witness Eggleston identifies relevant costing issues, discusses anticipated handling of qualifying parcels in terms of the cost components in a previous BPRS cost study, and concludes that there are no additional costs associated with extending the definition of BPRS to include opened and resealed parcels. USPS–T–2 at 2–6. Moreover, she asserts that when these opened and resealed parcels carry a label, they will be less costly for the Postal Service to process. Id. at 6.

Proposed DMCS changes. The proposed amendments to the DMCS include revisions to existing sections 935.11 (the definition of BPRS) and 935.62 (permit cancellation terms). They also include the addition of a new

section 935.36 describing the mailer-supplied return label option. The amendments are set out in attachments to the Service's request and the proposed stipulation and agreement.

Proposed stipulation and agreement. The Service has submitted a proposed stipulation and agreement to encourage parties to consider expeditious resolution of this case. Part I (Background) provides a brief statement identifying the docket, filing date, and supporting testimony. Part II (Terms and Conditions) consists of 10 numbered paragraphs addressing matters such as the evidentiary record, consistency of the proposed agreement with applicable postal policies and mail classification criteria, and the extent to which signatories are bound by the agreement.

Satisfaction of criteria for treatment as an expedited minor classification case. Witness Adra asserts that the proposal qualifies as an expedited minor classification change under applicable criteria because it does not entail any fee changes for BPRS and does not impose any additional restriction of eligibility. He asserts that the proposal does not significantly change the estimated institutional cost contribution of BPRS. He further states that the proposed change does not entail any measurable financial impact because of the small number of BPRS participants, the lack of any change in the BPRS fee, and the lack of additional costs anticipated from this classification change. Finally, Adra says the Service does not foresee any adverse impact from this proposal on mail users and competitors, and considers it beneficial for both mailers and recipients. In particular, he says the Service does not anticipate any impact on competitors, since the parcels affected have already been entered into the postal system. Id. at 7.

Intervention. Anyone wishing to be heard in this proceeding is directed to file a notice of intervention with Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW, Suite 300, Washington, DC 20268–0001 no later than June 21, 1999. Notices should indicate whether an intervenor will participate on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a.

Comments on proposed expedited treatment and requests for a hearing. Persons wishing to comment on the appropriateness of considering this request under the expedited rules for minor classification cases are directed to file comments no later than June 21, 1999. Requests for a hearing shall also be filed no later than June 21, 1999.

Prehearing conference; appointment of Postal Service as settlement coordinator. A prehearing conference will be held on Thursday, June 24, 1999 at 9:30 a.m. in the Commission's hearing room. The Commission asks that attendees be prepared to discuss not only the request for expedited treatment and their interest in a hearing, but also the status of discussions on the proposed stipulation and agreement the Postal Service has usefully provided with its initial filing. To facilitate discussion of this document, the Commission (on its own motion) authorizes settlement discussions in this proceeding, appoints the Postal Service as settlement coordinator, and requests that the coordinator provide a status report at (or before) the prehearing conference.

Representation of the general public. In conformance with section 3624(a) of title 39, U.S. Code, the Commission designates Ted P. Gerarden, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in both proceedings. Pursuant to this designation, Mr. Gerarden will direct the activities of Commission personnel assigned to assist him and, upon request, supply their names for the record. Neither Mr. Gerarden nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as service on the Commission of the 24 copies required in section 10(c) of the Commission's rules of practice (39 CFR 3001.10(c)).

It is ordered:

1. Docket No. MC99–4 is established to consider the Service's request for a change in Bulk Parcel Return Service.

2. The Commission will sit en banc in this proceeding.

3. Notices of intervention in this case shall be filed no later than June 21, 1999.

4. Ted P. Gerarden, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in this case.

5. Comments on the appropriateness of the considering the Service's Docket No. MC99–4 request under Commission rules 69–69c allowing for expedited treatment of minor classification cases shall be filed no later than June 21, 1999.

6. Requests for a hearing shall be filed no later than June 21, 1999.

7. A prehearing conference is scheduled for 9:30 a.m. on Thursday, June 24, 1999 in the Commission's hearing room.

8. The Commission authorizes settlement discussions in this proceeding, and appoints the Postal Service as settlement coordinator.

9. The settlement coordinator shall present a status report at (or before) the June 24, 1999 prehearing conference.

10. The Secretary of the Commission shall arrange for publication of this order in the **Federal Register** in a manner consistent with applicable requirements.

Authority: 39 U.S.C. 3623.

Dated: May 27, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–14001 Filed 6–2–99; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (SoftNet Systems, Inc., Common Stock, $.01 Par Value Per Share) File No. 1–5270

May 27, 1999.

SoftNet Systems, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Security has been listed for trading on the Amex and on April 14, 1999, became designated for quotation on the Nasdaq National Market ("Nasdaq").

The Company, whose primary business relates to technology, has told the Amex that it believes its shareholders would be better served if the Security was trading exclusively on the Nasdaq, which, in the opinion of the Company, is the preferred marketplace for the securities of growth companies in the technology industry.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Board of Directors of the Company authorizing the withdrawal of the Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Amex has informed the Company of its determination not to interpose any objection to the Company's application

to withdraw its Security from listing and registration on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security on the Amex and shall have no effect upon the continued designation of the Security for quotation on the Nasdaq. By reason of section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under section 13 of the Act with the Commission.

Any interested person may, on or before June 17, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–14051 Filed 6–2–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3186]

State of Iowa

As a result of the President's major disaster declaration on May 21, 1999, I find that Black Hawk, Bremer, Buchanan, Clayton, Delaware, Dubuque, Fayette, Harrison, Jones, and Linn Counties in the State of Iowa constitute a disaster area due to damages caused by severe storms, flooding, and tornadoes beginning on May 16, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 19, 1999, and for loans for economic injury until the close of business on February 22, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allamakee, Benton, Butler, Cedar, Chickasaw, Clinton, Crawford, Floyd, Grundy, Iowa, Jackson, Johnson, Monona, Pottawattamie, Shelby, Tama, and Winneshiek Counties in Iowa; Crawford and Grant Counties in Wisconsin; Jo Daviess County, Illinois; and Burt and Washington Counties in Nebraska.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 318606. For economic injury the numbers are 9C9200 for Iowa, 9C9300 for Wisconsin, 9C9400 for Illinois, and 9C9500 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14011 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3174]

State of Missouri (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated May 19, 1999, the above-numbered Declaration is hereby amended to include Cole County, Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on April 3 and continuing through April 14, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Boone and Moniteau in the State of Missouri may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 18, 1999, and for economic injury the deadline is January 20, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14008 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3183]

State of Tennessee (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated May 19 and 20, 1999, the above-numbered Declaration is hereby amended to include Sumner County, Tennessee as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding. This Declaration is further amended to establish the incident period for this disaster as beginning on May 5 and continuing through May 19, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Macon and Trousdale Counties in Tennessee, and Allen and Simpson Counties in Kentucky.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 10, 1999, and for economic injury the deadline is February 14, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14009 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3182]

State of Texas (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated May 21,

1999, the above-numbered Declaration is hereby amended to include Titus County, Texas as a disaster area as a result of damages caused by severe storms and tornadoes that occurred on May 4, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Camp in the State of Texas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 4, 1999, and for economic injury the deadline is February 7, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14010 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than August 2, 1999.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Foreign Line Crossing Data.

Frequency of Use: On Occasion.

Type of Affected Public: State or local governments, small businesses or organizations, businesses or other for-profit.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 100.

Estimated Total Annual Burden Hours: 1000.

Estimated Average Burden Hours Per Response: 10.

Need For and Use of Information: When a company wishes to build a line over or under a power transmission line owned by TVA, TVA must review certain engineering data to ensure reliability of the power system and to protect the public by ensuring that the crossing meets the National Electrical Safety Code. The information collection provides such engineering data.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 99–13997 Filed 6–2–99; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Haywood County, Tennessee

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) for the proposed construction and operation of natural gas fired generating plants in Haywood County, Tennessee. The plants would supply peaking and/or baseload capacity to the TVA electric generation system to meet growing power demands. The EIS will evaluate the potential environmental impacts of constructing and operating both simple cycle and combined cycle combustion turbine plants. The plants would be built on previously undeveloped, greenfield site. TVA wants to use the EIS process to obtain public involvement on this proposal. Public comment is invited concerning both the scope of the EIS and environmental issues that should be addressed as a part of this EIS.

DATES: Comments on the scope and environmental issues for the EIS must be postmarked or e-mailed no later than July 6, 1999, to ensure consideration. Late comments will receive every consideration possible.

ADDRESSES: Written comments should be sent to Greg Askew, P.E., Senior Specialist, National Environmental Policy Act, Tennessee Valley Authority, Mail stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may be e-mailed to gaskew@tva.gov.

FOR FURTHER INFORMATION CONTACT: Roy V. Carter, P.E., EIS Project Manager, Environmental Research Center, Tennessee Valley Authority, mail stop CEB 4C, Muscle Shoals, Alabama 35662–1010. E-mail may be sent to rvcarter@tva.gov.

SUPPLEMENTARY INFORMATION:

Project Description

TVA proposes to construct and operate one or more electric power plants on a greenfield site as early as June 2001. The proposed plants would be simple cycle or combined cycle natural gas fired combustion turbine plants for peaking or baseload operation respectively. The generation capacity of a single plant would be up to approximately 700 megawatt (MW) for a simple cycle peaking plant, 1,000 MW for a simple cycle plant after conversion to combined cycle technology, and 1,500 MW for a new combined cycle plant. Certain combinations of two plants at a single site would result in a total of 1,400 MW of peaking capacity, or 700 MW peaking and 1,000 MW baseload for a total capacity of 1,700 MW.

Three candidate greenfield sites have been identified in Haywood County, Tennessee. Candidate sites were identified through a detailed screening process that considered: (1) TVA's transmission system capacity at the locale; (2) reliable and economical long-term supply of natural gas; (3) engineering suitability of the site; (4) compatibility with surrounding land use; and (5) environmental factors including wetlands, floodplains, water supply, water quality, air quality, and historic and archaeological resources.

Peaking Plant

A typical peaking plant would consist of several simple cycle combustion turbines such as the General Electric Model GE 7FA with a rated net power output of 170 MW. These turbines would be fired with natural gas as the primary fuel and low sulfur fuel oil as the secondary fuel. These combustion turbines would employ dry low-nitrogen oxides (NOx) combustion chambers and water injection for NOx control when firing fuel oil.

The proposed sites would be located near both TVA power transmission lines (161 kilovolt (kV) or 500 kV) and adequate natural gas service to

minimize the lengths and therefore cost of these interconnections. Each plant would require a site area of approximately 35 to 40 acres.

Other appurtenances and ancillary equipment would include step-up transformers for 161 kV or 500 kV service, transmission line interconnection, natural gas pipeline connection and metering, demineralized water supply for the water injection nitrogen oxides control systems, fuel oil storage tank(s), and control and maintenance support buildings.

Baseload Plant

A typical baseload plant could consist of one or more combustion turbines such as the General Electric Model GE 7FA with a rated net power output of 170 MW. One or more heat recovery steam generators (HRSGs) would be used to generate steam from the turbine exhaust gases waste heat. The HRSGs may also have direct firing of natural gas to supplement the exhaust heat input. The resulting steam flow is then passed through a steam turbine(s) which operates a generator(s) to produce additional electric power. With the addition of these components, a peaking plant may be converted to a combined cycle plant for baseload operation.

Additional ancillary equipment beyond that required for a peaking plant would include cooling towers that supply cooling water for steam condensers. These cooling towers require a consequential source of water to makeup for both evaporative losses and the blowdown necessary to maintain water quality in the cooling tower. As a result, there would be on-site and/or off-site wells developed or an intake pumping station constructed in a large stream to supply the water. In both cases, a water pipeline would be constructed to connect the water supply with the plant. The cooling tower blowdown is a heated wastewater with a high dissolved solids content requiring treatment and/or disposal. Typical practice would be to construct a pipeline to a receiving stream having the capacity to assimilate the wastewater. An alternative would be to treat the blowdown on-site and recycle the water as cooling tower makeup water. This option would require construction of an on-site treatment facility and disposal of resulting sludge. Additionally, a water treatment facility would be required to supply demineralized water for various plant uses.

TVA's Integrated Resource Plan and the Need for Power

This EIS will tier from TVA's *Energy Vision 2020: An Integrated Resource Plan and Final Programmatic Environmental Impact Statement. Energy Vision 2020* was completed in December 1995 and a Record of Decision issued on February 28, 1996 (61 FR 7572). Energy Vision 2020 analyzed a full range of supply-side and demand-side options to meet customer energy needs for the period 1995 to 2020. These options were ranked using several criteria including environmental performance. Favorable options were formulated into strategies. A group of options drawn from several effective strategies was chosen as TVA's preferred alternative. The supply-side options selected to meet peaking and baseload capacity needs through the 2005 period included: (1) Addition of simple cycle or combined cycle combustion turbines to TVA's generation system, (2) purchase of call options for peaking or baseload capacity, and (3) market purchases of peaking or baseload capacity. The short-term action plan of Energy Vision 2020 identified a need for 3,000 MW of baseload and peaking additions through the year 2002. This is in addition to the baseload capacity additions of the successful completion of Watts Bar Nuclear Plant Unit 1 and the return to service of Browns Ferry Nuclear Plant Unit 3.

Each year TVA provides updated projections of supply and demand for the TVA sub-region of the Southeastern Electric Reliability Council. This is for the U.S. Department of Energy's annual report EIA–411. This year's report shows expected peak demands growing at 2.2 percent from 1999 to 2003 and beyond. The net capacity resources needed to meet the growth in demand increases 2,000 megawatts by year 2001, and 3,400 megawatts by year 2003. (See line item 13 on Table—Item 2.1 Projected Capacity and Demand—Summer of the EIA–411 report.) The addition of the combustion turbines is needed by TVA to meet the peaking capacity requirements from both the reliability and cost standpoint. Baseload capacity is not expected to be needed until 2004 or 2005.

Since 1995 additional power needs have been met or will be met in the following ways: (1) Continuing modernization of existing TVA hydroelectric plants (both conventional and pumped storage) will add approximately 388 MW of peaking capacity through 2002; (2) the Red Hills Power Project, a 440 MW lignite coal fired plant will begin commercial baseload operation in 2001 (TVA Record of Decision, 63 FR 44944); (3) 680 MW of simple cycle combustion turbines are proposed for the TVA Johnsonville, Colbert and Gallatin Fossil Plants with commercial operation as early as June 2000 (Final EIS Notice of Availability, 64 FR 27782); (4) various power purchase agreements in effect over this period; (5) demand side customer service programs continue to be implemented through TVA power distributors with an estimated 154 MW of capacity added from 1995 through 1999 and an additional 264 MW from 2000 through 2002; (6) distributed generation initiatives are being pursued by TVA and include operation of the 14 MW emergency diesel generators at the unfinished Bellefonte Nuclear Power Plant site; and (7) a Green Power Program that would begin in 2000 as a market test with several MW of capacity. Technologies for this program may include landfill gas, photovoltiacs, and wind.

Because Energy Vision 2020 identified and evaluated alternative supply-side and demand-side energy resources and technologies for meeting peak and baseload capacity needs, this EIS will not reevaluate those alternatives. This EIS will focus on the site-specific impacts of constructing and operating simple cycle combustion turbines and combined cycle plants at several candidate sites.

Proposed Issues To Be Addressed

The EIS will describe the existing environmental and socioeconomic resources at and in the vicinity of each candidate site that would be affected by construction and operation of a power plant. TVA's evaluation of environmental impacts to these resources will include, but not necessarily be limited to the potential impacts on air quality, water quality, aquatic and terrestrial ecology, endangered and threatened species, wetlands, aesthetics and visual resources, noise, land use, historic and archaeological resources, and socioeconomic resources.

Alternatives

The results of evaluating the potential environmental impacts and other important issues identified in the scoping process together with engineering and economic considerations will be used by TVA in selecting a preferred alternative. At this time, TVA has identified the following alternatives for detailed evaluation: (1) Construct and operate simple cycle combustion turbine peaking plants at

one of the candidate sites as early as June 2001 with and without future conversion to a combined cycle plant, (2) construct and operate a combined cycle baseload plant at the candidate site, (3) construct and operate both peaking and baseload plants at the candidate site, and (4) no action.

Scoping Process

Scoping, which is integral to the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided. TVA's NEPA procedures require that the scoping process commence soon after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in the draft EIS will be determined, in part, from written comments submitted by mail or e-mail, and comments presented orally or in writing at public meetings. The preliminary identification in this notice of reasonable alternatives and environmental issues is not meant to be exhaustive or final.

The scoping process will include both interagency and public scoping. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice.

TVA conducted a public scoping meeting in Brownsville, Tennessee on April 19th. Brownsville is the county seat of Haywood County where the three candidate sites are being considered. At this meeting, using an open house format, TVA management and project staff presented overviews of the EIS process and the proposed power plant project, and answered questions and solicited comments on the issues that the public would like addressed in the EIS. This meeting was publicized through notices in local newspapers, by TVA press release, and in meetings between TVA officials and local elected officials preceding the public meetings. Approximately 25 persons attended this meeting.

The agencies to be included in the interagency scoping are U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Tennessee Department of Environment and Conservation, the Tennessee State Historic Preservation Officer, and other agencies as appropriate.

After consideration of the scoping comments, TVA will further develop alternatives and environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the Environmental Protection Agency in the **Federal Register**. TVA will solicit written comments on the draft EIS, and information about possible public meetings to comment on the draft EIS will be announced. TVA expects to release a draft EIS by December 1999 and a final EIS by June 2000.

Dated: May 25, 1999.

Ruben O. Hernandez,

Vice President, Resource Stewardship.

[FR Doc. 99–13747 Filed 6–2–99; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5635]

Receipt of Petition for Decision That Nonconforming 1993–1998 BMW K1100 and K1200 Motorcycles Are Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to notice of receipt of petition for decision that nonconforming 1993–1998 BMW K1100 and K1200 motorcycles are eligible for importation.

SUMMARY: This document corrects a notice published Monday, April 19, 1999 (64 FR 19212) announcing receipt by NHTSA of a petition for a decision that 1993–1998 BMW K1100 and K1200 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The notice incorrectly identified the docket number for this petition as "Docket No. NHTSA–99–5402." The docket number should have been properly identified as "Docket No. NHTSA–99–5635." Those intending to comment on the petition should ensure that they reference the correct docket number in their comments.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on May 28, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14088 Filed 6–2–99; 8:45 am]

BILLING CODE 8910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5733]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1998 Toyota Avalon Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1998 Toyota Avalon passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1998 Toyota Avalon passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590 (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of

the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1995–1998 Toyota Avalon passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1995–1998 Toyota Avalon passenger cars that were manufactured for sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1998 Toyota Avalon passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1998 Toyota Avalon passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1998 Toyota Avalon passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1995–1998 Toyota Avalon passenger cars comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with the ECE warning symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: Installation of reinforcing beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1995–1998 Toyota Avalon passenger cars near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR Part 565. The petitioner also states that the vehicles will be inspected prior to importation and that markings will be added, if necessary, to meet the requirements of the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 28, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14089 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5734]

Receipt of Petition for Decision that Nonconforming 1994–1998 Land Rover Discovery Multi-Puprose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1998 Land Rover Discovery multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1998 Land Rover Discovery MPVs that were

not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590 (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1994–1998 Land Rover Discovery MPVs are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1994–1998 Land Rover Discovery MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1998 Land Rover Discovery MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1998 Land Rover Discovery MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1998 Land Rover Discovery MPVs are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with the ECE warning symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of U.S.-model high mounted stop lamp.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1994–1998 Land Rover Discovery MPVs near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

VOL 64 ISS 106 JE 3 1999 UMI

Issued on: May 28, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14090 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5735]

Receipt of Petition for Decision that Nonconforming 1993–1995 Volkswagen Eurovan Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993–1995 Volkswagen Eurovan multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993–1995 Volkswagen Eurovan MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1993–1995 Volkswagen Eurovan MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Volkswagen, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, *119 New Pneumatic Tires for Vehicles other than Passenger Cars*, *124 Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, *210 Seat Belt Assembly Anchorages*, *212 Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with the ECE warning symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of U.S.-model high mounted stop lamp.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing

beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 28, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14091 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5736]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1997 Honda Prelude Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1997 Honda Prelude passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1997 Honda Prelude passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1994–1997 Honda Prelude passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1994–1997 Honda Prelude passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1997 Honda Prelude passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1997 Honda Prelude passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1997 Honda Prelude passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1994–1997 Honda Prelude passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with the ECE warning symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1994–1997 Honda Prelude passenger cars near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR part 565. The petitioner also states that the vehicles will be inspected prior to importation and that markings will be added, if necessary, to meet the requirements of the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14092 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33747]

Adrian & Blissfield Rail Road Co.—Acquisition Exemption—Grand Trunk Western Railroad Inc.

Adrian & Blissfield Rail Road Company (ADBF), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) approximately 1.38 miles of rail line owned by Grand Trunk Western Railroad Incorporated (GTW) (known as the Lapeer Spur) between milepost 56.28 and milepost 57.62 on GTW's Flint Subdivision at Lapeer, in Lapeer County. In addition, ADBF will lease approximately .88 miles of rail line (known as the Lapeer Second Main) between milepost 289.90 and milepost 290.78 on the Flint Subdivision at Lapeer, in Lapeer County, MI.[1] ADBF will operate both lines.

The transaction was scheduled to be consummated on or shortly after May 20, 1999.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. FD 33747, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kenneth J. Bisdorf, 2301 West Big Beaver Road, Suite 600, Troy, MI 48084–3329.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 26, 1999.

[1] ADBF certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–14036 Filed 6–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33752]

Greenville County Economic Development Corporation—Acquisition Exemption—South Carolina Central Railroad Company, Inc., Carolina Piedmont Division

Greenville County Economic Development Corporation (Greenville County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire two sections of rail line from the South Carolina Central Railroad Company, Inc., Carolina Piedmont Division (CPDR), in Greenville County, SC, as follows: (1) between milepost AJK 585.34, in East Greenville, and milepost AJK 588.63, in Greenville, a distance of 3.29 miles (Southern Line);[1] and (2) between milepost 0.0, in Greenville, and milepost 11.8, in Traveler's Rest, a distance of 11.8 miles (Northern Line).[2]

The transaction is expected to be consummated on or shortly after May 28, 1999.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33752, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert J. Svets, Counsel for Greenville County Economic Development Corporation, Greenville County Square, 301 University Ridge, Suite 100, Greenville, SC 29601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

[1] Greenville County reports that CPDR will continue to be the operator of the Southern Line.

[2] Greenville County states that it is currently seeking an operator for the Northern Line and that, once it reaches an agreement with the operator of the Northern Line, the operator will file a verified notice of exemption to operate the Northern Line.

Decided: May 26, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–13934 Filed 6–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

May 19, 1999.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

DATES: Submit written comments on or before July 6, 1999.

OMB Number: 1550–0098.

Form Number: Not applicable.

Type of Review: Reinstatement of previously approved information collection without change.

Title: Privacy and Accuracy of Customer Account Information.

Description: Consumer privacy is a growing concern because financial institutions can use new technology to access, compile, and relay account information quickly and easily to the customer, other institution staff, and third parties. New technology also increases the potential for misuse or alteration of customer information. Before a savings association collects any information from a customer, the OTS policy statement indicates that it should describe to that customer how the information will be used.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 1,200.

Estimated Burden Hours Per Recordkeeper: 40 hours.

Frequency of Response: One.

Estimated Total Recordkeeping Burden: 49,200 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Frank Di Gialleonardo,

CIO and Director, Office of Information Systems.

[FR Doc. 99–13965 Filed 6–2–99; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 64, No. 106
Thursday, June 3, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

[Program Announcemenet No. ACF/ACYF 99-06]

Fiscal Year 1999 Discretionary Announcement for Head Start Family Literacy Projects

Correction

In notice document 99– 13425 appearing on page 28500 in the issue of Wednesday, May 26, 1999, make the following correction:

On page 28500, in the second column, in the **DATES:** section, in the third line, after "(Eastern Time Zone)" add "July 26, 1999".

[FR Doc. C9–13425 Filed 6–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-33]

Proposed Modification of Class E Airspace; Minneapolis, MN

Correction

In proposed rule document 99–13229, beginning on page 28122, in the issue of Tuesday, May 25, 1999, make the following correction(s):

§ 71.1 [Corrected]

1.On page 28123, in the first column, in § 71.1, the under heading **AGL MN E5 Minneapolis MN [Revised]**, in the sixth line, "(Lat., 44°08′42″N.," should read "(Lat., 45°08′42″N.,".

2. On page 28123, in the first column, in § 71.1, under the heading **AGL MN E5 Minneapolis MN [Revised]**, in the 15th line, "for" should read "of".

[FR Doc. C9–13229 Filed 6–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-12]

Modification of Class D Airspace and Class E Airspace; Minot, ND

Correction

In rule document 99–13228, beginning on page 28901, in the issue of Tuesday, May 25, 1999, make the following correction:

§ 71.1 [Corrected]

On page 28092, in the second column, in § 71.1, under the heading **AGL ND E4 Minot, ND [Revised]**, in the fourth line, "(Lat. 48°15′34″N.," should read "(Lat. 48°15′37″N.,".

[FR Doc. C9–13228 Filed 6–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-14]

Modification of Class D Airspace and Class E Airspace; Wilmington, OH

Correction

In rule document 99–13237, beginning on page 28093, in the issue of Tuesday, May 25, 1999, make the following correction:

§ 71.1 [Corrected]

On page 28094, in the second column, in § 71.1, in the fourth line from the bottom, "aeras" should read "areas".

[FR Doc. C9–13237 Filed 6–2–99; 8:45 am]

BILLING CODE 1505–01–D

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 1034/P.L. 106–32

To declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States. (June 1, 1999; 113 Stat. 115)

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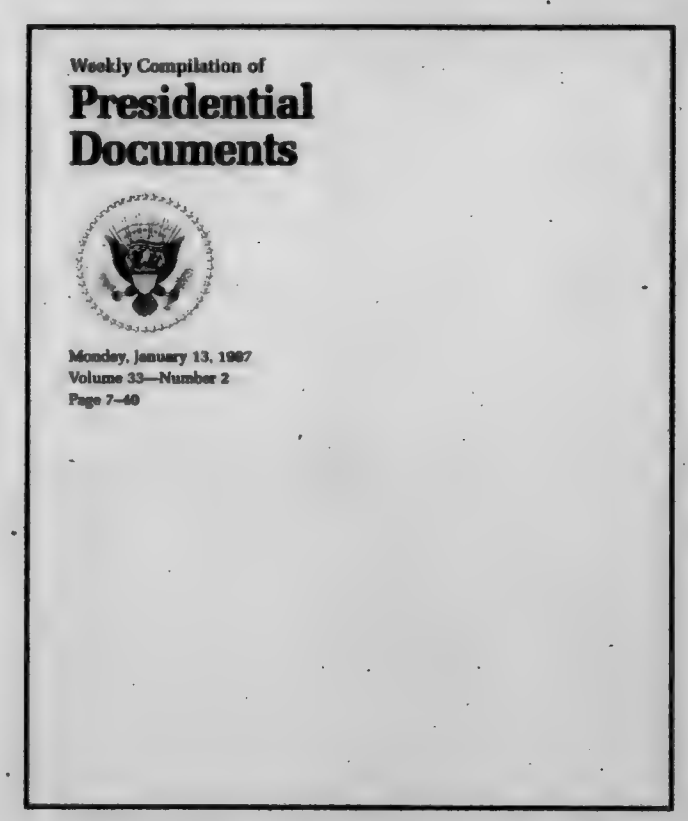

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Rules and Regulations

Federal Register
Vol. 64, No. 107
Friday, June 4, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1780

RIN 0572–AB44

Water and Waste Program Regulations

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) amends the rules used to administer the water and waste loan and grant programs. This action implements provisions of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Act). The Act reduces the amount of funds that a rural or native Alaskan village applicant must contribute from 50 percent to 25 percent of the project development costs. Additionally, it removes the population eligibility requirement that expired September 30, 1998, for certain timber-dependent communities in the Pacific Northwest. This action also includes an increase in the administrative fee that the Appalachian Regional Commission pays to USDA to administer grants for projects in which USDA has provided no funds and makes other technical corrections. The intended effect is to make 7 CFR part 1780 current with statutory authority.

EFFECTIVE DATE: June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, Water and Waste Division, Rural Utilities Service, USDA, South Agriculture Building, Room 2239, STOP 1570, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866, Regulatory Planning and Review. Therefore, the Office of Management and Budget (OMB) has not been reviewed by OMB.

National Environmental Policy Act Certification

This action has been reviewed under 7 CFR Part 1940, Subpart G, Environmental Program. It has been determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment. An Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order.

In accordance with the Executive Order and the rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912).

Information Collection and Recordkeeping Requirements

The Office of Management and Budget (OMB) has approved the reporting and recordkeeping requirements contained in the rule under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). OMB has assigned clearance number 0575–0115.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendments reflect only statutory changes that Congress has mandated and over which the Agency has no discretion. They also involve minimal procedural matters on other agreements already negotiated.

Executive Order 12372

The water and waste loan and grant program is listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Disposal Systems For Rural Communities. The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Consultation will be completed at the time of the action performed.

Background

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment although 5 U.S.C. 553 exempts such rules from publication. Good cause is found for not requiring notice and comment before making this rule effective.

These amendments are not published for proposed rulemaking because they merely reflect changes in statutory authority enacted by the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Act). They also make only minor technical corrections to the regulations, which do not involve matters of agency discretion. The Act leaves no discretion to the agency as to the local share of project costs the rural and native Alaskan village applicants must contribute. Notice and public comment, therefore, are impractical, unnecessary, and contrary to the public interest.

The Act amends section 306D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926d) by inserting "25 percent" instead of "equal" in subsection (b). Section 306D authorizes the Secretary of Agriculture to make grants for the benefit of rural or native villages in the State of Alaska. This amendment reduces the percentage of matching funds that must be provided from non-Federal sources to 25 percent.

This final rule deletes the temporary expansion of eligibility of certain

timber-dependent communities in the Pacific Northwest. Public Law 103–427 expanded the maximum population eligibility for RUS water and waste loans and grants from 10,000 to 25,000 inhabitants if the cities or towns met certain criteria. This change in eligibility expired on September 30, 1998, and is being removed from the regulations.

On August 24, 1998, USDA and the Appalachian Regional Commission (ARC) updated the Memorandum of Agreement (MOA) that establishes a working partnership to serve the needs of Appalachian communities. This MOA increases the fee that ARC pays USDA for administering grants to Appalachian communities on behalf of ARC. The fee increase will better reflect the present cost in administering the grants.

The fee had been calculated as 5 percent of the first $50,000 of an ARC grant and 1 percent of any amount over $50,000. The MOA increases the ARC grant amount on which the percentages are based from $50,000 to $100,000. The fees will increase to 5 percent of the first $100,000 of an ARC grant plus 1 percent of any amount over $100,000.

The final rule also makes some minor technical corrections to the regulations to correct deficiencies that have surfaced since the regulation was published June 19, 1997 (62 FR 33462). The changes are mostly grammatical and eliminate obsolete form references.

List of Subjects in 7 CFR Part 1780

Business and industry, Community development, Community facilities, Grant programs-housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

Therefore, the Rural Utilities Service amends 7 CFR chapter XVII as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

1. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

2. Remove § 1780.7(h).

3. Revise § 1780.10(b)(2) to read as follows:

§ 1780.10 Limitations.

* * * * *

(b) * * *

(2) Pay any costs of a project when the median household income of the service area is more than 100 percent of the nonmetropolitan median household income of the State;

* * * * *

Subpart B—Loan and Grant Application Processing

4. Revise § 1780.35(c) to read as follows:

§ 1780.35 Processing office review.

* * * * *

(c) *User charges.* The user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. The planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance, and, if appropriate, additional revenue for facility replacement of short-lived assets without building a substantial surplus. Ordinarily, the total debt service reserve will be equal to one average annual loan installment which will accumulate at the rate of one-tenth of the total each year.

5. In § 1780.39, paragraphs (e)(2) and (f) introductory text are revised to read as follows:

§ 1780.39 Application processing.

* * * * *

(e) * * *

(2) *Other than general obligation or special assessment bonds.* Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. Borrowers issuing bonds or other evidences of debt pledging facility revenues as security will plan their debt reserve to provide for at least one average annual loan installment. The debt reserve will accumulate at the rate of one-tenth of an average annual loan installment each year unless prohibited by state law.

(f) *Membership authorization.* For organizations other than public bodies, the membership will authorize the project and its financing. Form RD 1942–8, "Resolution of Members or Stockholders," may be used for this authorization. The approval official may accept RUS Bulletin 1780–28, "Loan Resolution Security Agreement," without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

* * * * *

6. Revise § 1780.45(a)(2) to read as follows:

§ 1780.45 Loan and grant closing and delivery of funds.

(a) * * *

(2) RUS Bulletins 1780–27, "Loan Resolution (Public Bodies)," or 1780–28, "Loan Resolution Security Agreement," will be adopted by public and other-than-public bodies. These resolutions supplement other provisions in this part.

* * * * *

7. Revise § 1780.48(b) introductory text to read as follows:

§ 1780.48 Regional commission grants.

* * * * *

(b) When RUS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932 (31 U.C.S. 1535). A fee of 5 percent of the first $100,000 of a regional commission grant and 1 percent of any amount over $100,000 will be paid to RUS by the commission.

* * * * *

8. In § 1780.49, paragraphs (c)(4) and (d) are revised to read as follows:

§ 1780.49 Rural or Native Alaskan villages.

* * * * *

(c) * * *

(4) The applicant must obtain 25 percent of project development costs from State or local contributions. The local contribution can be from loan funds authorized under this part.

(d) *Grant amount.* Grants will be made for up to 75 percent of the project development costs.

* * * * *

Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections

9. Revise § 1780.55 to read as follows:

§ 1780.55 Preliminary engineering reports and Environmental Reports.

Preliminary engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental Reports must meet the policies and intent of the National Environmental Policy Act and RUS procedures. Guidelines for preparing Environmental Reports are available in RUS Bulletin 1794A–602.

10. In § 1780.57, add paragraph (o) to read as follows:

§ 1780.57 Design policies.

* * * * *

(o) *Seismic safety.* All new structures, fully or partially enclosed, used or

intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., p. 269). Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property should incorporate seismic safety provisions to the extent practicable. RUS implementing regulations for seismic safety are in 7 CFR part 1972, subpart C.

Subpart D—Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

11. Revise § 1780.94(j)(3) to read as follows:

§ 1780.94 Minimum bond specifications.

* * * * *

(j) * * *

(3) Provisions that amend covenants contained in RUS Bulletins 1780–27 or 1780–28.

* * * * *

Dated: May 18, 1999.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 99–13931 Filed 6–3–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 98–078–1]

Ports Designated for Exportation of Horses; New Jersey and New York

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by changing the lists of approved ports of embarkation and export inspection facilities for horses in New Jersey and New York. In New Jersey, we are removing Deep Hollow Farm in Woodstown, NJ, as the export inspection facility for horses exported from the ocean port of Salem, NJ, and adding Mannington Meadows Farm in Woodstown, NJ, in its place. We are adding Elizabeth and Newark International Airport, NJ, as ports of embarkation, and Tolleshunt Horse Farm in Whitehouse, NJ, and the U.S. Equestrian Team's headquarters in Gladstone, NJ, as export inspection facilities for horses for those ports. We are also adding Tolleshunt Horse Farm and the U.S. Equestrian Team's headquarters as export inspection facilities for horses for the currently approved port of New York, NY. These actions will update the regulations by adding two ports of embarkation and three export inspection facilities through which horses may be processed for export.

DATES: This rule will be effective on August 3, 1999 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before July 6, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–078–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–078–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8354; or e-mail: michael.j.david@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals being exported by land to Canada or Mexico, must be exported through designated ports of embarkation, unless the exporter could show that the animals would suffer undue hardship.

Section 91.14(a) contains a list of designated ports of embarkation and export inspection facilities. To receive designation as a port of embarkation, a port must have export inspection facilities available for inspecting, holding, feeding, and watering animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must meet specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access and approval of arrangements, testing and treatment, location, disposal of animal wastes, lighting, office and restroom facilities, and walkways.

Deep Hollow Farm, an export inspection facility for horses listed in § 91.14(a) for the ocean port of Salem, NJ, is no longer being used as an export inspection facility. However, we believe that Mannington Meadows Farm, 60 Oechsle Road, Woodstown, NJ 08098, (609) 769–2009, meets the requirements of § 91.14(c) as an export inspection facility for horses. Mannington Meadows Farm is located 6 miles from the ocean port of Salem, NJ. Exporters using Mannington Meadows Farm will be able to transport their horses to the ocean port of Salem, NJ, in approximately 15 minutes. This rule will amend § 91.14(a) in accordance with the procedures explained below under "Dates." The amendments will remove Deep Hollow Farm as an export inspection facility for horses for the port of Salem, NJ, and add Mannington Meadows Farm in its place.

The amendments will also add two new ports, Elizabeth and Newark International Airport, NJ, to the list of designated ports of embarkation in § 91.14(a). Elizabeth, NJ, will be added as an ocean port. Newark International Airport, NJ, will be added as an airport. We believe that Tolleshunt Horse Farm, 10 Island Road, Box 469, Whitehouse, NJ 08888–0469, (908) 534–7738, and the U.S. Equestrian Team's headquarters, Pottersville Road, Gladstone, NJ 07934, (908) 234–1251, meet the requirements of § 91.14(c) as export inspection facilities for horses. Exporters using the Tolleshunt Horse Farm and the U.S. Equestrian Team's headquarters will be able to transport their horses to a port of embarkation in approximately 1 hour. Therefore, we will add Tolleshunt Horse Farm and the U.S. Equestrian Team's

headquarters as export inspection facilities for horses for the ports of Elizabeth and Newark International Airport, NJ.

We will also add Tolleshunt Horse Farm and the U.S. Equestrian Team's headquarters as export inspection facilities for horses for the port of New York, NY, which is already listed in § 91.14(a) as a designated airport and ocean port of embarkation. Tolleshunt Horse Farm is located 1½ hours from the airport of New York, NY, and the U.S. Equestrian Team's headquarters is located 1½ to 2 hours from the airport of New York, NY. Tolleshunt Horse Farm and the U.S. Equestrian Team's headquarters may also be used as export inspection facilities for horses for the ocean port of New York, NY, but we do not expect this to happen frequently because travel by airplane is much faster than by ship. Importers of horses usually like the travel to take less than a day, which can be done by air.

When this rule becomes effective, veterinarians of the Animal and Plant Health Inspection Service will conduct export inspections of horses at the newly approved export inspection facilities by appointment.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In this rule, we are removing Deep Hollow Farm as an export inspection facility for horses for the ocean port of Salem, NJ, because it is no longer being used as an animal export inspection facility. In its place, we are adding Mannington Meadows Farm in Woodstown, NJ. Mannington Meadows Farm is located in southwest New Jersey and is within 6 miles of the ocean port of Salem, NJ, from which many horses are exported to Bermuda. We anticipate that Mannington Meadows Farm will be used as an export inspection facility for approximately 112 horses annually. We do not expect that removing Deep Hollow Farm and adding Mannington Meadows Farm in its place will have any effect on the number of horses that are exported annually through the port of Salem, NJ.

We are also designating Elizabeth and Newark International Airport, NJ, as ports of embarkation and are adding two export inspection facilities for horses for these ports: Tolleshunt Horse Farm in Whitehouse, NJ, and the U.S. Equestrian Team's headquarters in Gladstone, NJ. We are also adding these same export inspection facilities for horses for the already listed port of New York, NY. We project that approximately 36 horses will be exported annually through the port of Elizabeth, and approximately 120 horses will be exported annually through the port of Newark. Adding the U.S. Equestrian Team's headquarters as an export inspection facility will allow the Team to use its own facilities for horse inspections. We estimate that 120 horses will be inspected each year at the U.S. Equestrian Team's headquarters. The addition of Tolleshunt Horse Farm as an export inspection facility will make it logistically easier for other exporters in New Jersey to export their horses from the United States because they will be able to transport their horses from Tolleshunt Horse Farm to a port of embarkation in approximately 1 hour. We estimate that 12 horses will be inspected for export each year at Tolleshunt Horse Farm.

Until now the only designated port of embarkation in New Jersey has been the ocean port of Salem in southwest New Jersey. Once this rule becomes effective, individuals exporting horses from New Jersey will have a choice of using either the northeast (Elizabeth and Newark) or the southwest (Salem) ports and either an airport or an ocean port. Exporters will also have two additional export inspection facilities for horses for the port of New York, NY, in addition to the already approved facility at J. F. Kennedy International Airport.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), APHIS is required to consider the effects of the rule on small entities. APHIS expects a positive economic impact on small businesses, due to the increase in transportation alternatives and the decrease in transportation costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 91.14, paragraphs (a)(11) and (a)(12) are revised to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(11) *New Jersey.*

(i) Elizabeth—ocean port.

(A) Tolleshunt Horse Farm (horses only), 10 Island Road, Box 469, Whitehouse, NJ 08888–0469, (908) 534–7738.

(B) The U.S. Equestrian Team's headquarters (horses only), Pottersville Road, Gladstone, NJ 07934, (908) 234–1251.

(ii) Newark International Airport.

(A) Tolleshunt Horse Farm (horses only), 10 Island Road, Box 469, Whitehouse, NJ 08888–0469, (908) 534–7738.

(B) The U.S. Equestrian Team's headquarters (horses only), Pottersville Road, Gladstone, NJ 07934, (908) 234–1251.

(iii) Salem—ocean port.

(A) Mannington Meadows Farm (horses only), 60 Oechsle Road, Woodstown, NJ 08098, (609) 769–2009.

(12) *New York.*

(i) New York—airport and ocean port.

(A) Tolleshunt Horse Farm (horses only), 10 Island Road, Box 469, Whitehouse, NJ 08888–0469, (908) 534–7738.

(B) The U.S. Equestrian Team's headquarters (horses only), Pottersville Road, Gladstone, NJ 07934, (908) 234–1251.

(C) Vetport, Inc., Bldg. 189, J.F. Kennedy International Airport (Cargo Area), Jamaica, NY 11430, (212) 656–6042.

* * * * *

Done in Washington, DC, this 28th day of May 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–14186 Filed 6–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 91F–0228]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucrose Acetate Isobutyrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sucrose acetate isobutyrate (SAIB) as a stabilizer of emulsions of flavoring oils used in nonalcoholic beverages. This action is in response to a petition filed by Eastman Chemical Co.

DATES: Effective June 4, 1999; written objections and requests for a hearing by July 6, 1999. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 172.833(b) (21 CFR 172.833(b)), effective June 4, 1999.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3106.

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I. Introduction

In a notice published in the **Federal Register** of September 5, 1991 (56 FR 43927), FDA announced that a food additive petition (FAP 1A4266) had been filed by Eastman Chemical Co. (Eastman), P.O. Box 511, Kingsport, TN 37662, proposing that the food additive regulations be amended in part 172 (21 CFR part 172) to provide for the safe use of SAIB as a stabilizer of emulsions of flavoring oils used in nonalcoholic carbonated and noncarbonated beverages.

SAIB is the chemical *alpha*-D-glucopyranoside, O-acetyl-tris-O-(2-methyl-1-oxopropyl)-*beta*-D-fructofuranosyl, acetate tris(2-methyl propanoate). It is also referred to as sucrose diacetate hexaisobutyrate, sugar esters of fatty acids, and sucrose esters of fatty acids.

SAIB is a slightly yellow, clear, viscous liquid, practically odorless, with a bitter taste (not apparent at the levels used in the regulated application). The compound is produced by reaction of food grade sucrose with acetic anhydride and isobutyric anhydride in the presence of a catalyst. The product is purified by molecular distillation.

In support of safety for the proposed use of SAIB, Eastman submitted toxicity studies performed in a variety of species. Those studies included: Absorption, metabolism, and elimination studies (rats, dogs, rabbits, monkeys, and humans); short-term (7 to 56 days) studies (rats, dogs, and monkeys); a palatability study (mice); subchronic (90 days) studies (rats and dogs); chronic studies (rats and monkeys); carcinogenicity studies (rats and mice); reproduction studies (rats); teratology studies (rats and rabbits); genotoxicity tests; liver function studies (rats, dogs, monkeys, and humans); and clinical studies (humans).

The one concern raised by FDA's evaluation of the SAIB data base was some liver effects, which were observed in the short-term and subchronic studies. These effects were observed primarily in SAIB-treated dogs; for example, decreased clearance rates for bromosulfophthalein (BSP) and indocyanine green (ICG) from the blood, and increased serum alkaline phosphatase. To further evaluate these liver effects, the petitioner performed special liver function tests (BSP and ICG clearance tests) in rats, dogs, monkeys, and humans. The BSP clearance test was also performed in monkeys and rats after exposure to SAIB for 1 year in order to demonstrate that the liver effects were not observed in these SAIB-

treated animals after long-term repeated exposure. The results from these studies and results from other studies that were pivotal to the safety decision for the proposed use of SAIB in beverages are discussed in section II.B of this document.

II. Evaluation of Safety

In order to establish, with reasonable certainty, that a new food additive is not harmful under its intended conditions of use, FDA considers the projected human dietary exposure to the additive, the additive's toxicological data base, and other relevant information (such as published literature) available to the agency.

A. Estimated Daily Intake for SAIB

In determining whether the proposed use of an additive is safe, FDA typically compares an individual's estimated daily intake (EDI) of the additive to the acceptable daily intake (ADI) established by the toxicological database. The EDI is determined by projections based on the amount of the additive proposed for use in particular foods and on data regarding the consumption levels of these particular foods.

The proposed levels of use for SAIB in beverages (up to 300 parts per million (ppm)) are supported by functionality and stability data presented in the petition. The agency commonly uses the EDI for the 90th percentile consumer of a food additive as a measure of high chronic exposure. For the requested food use of SAIB, the agency has estimated the lifetime exposure for 90th percentile consumers, 2 years old and older (all ages), to be 0.17 gram per person per day (g/p/d). The corresponding mean intake is 0.082 g/p/d (Ref. 1).

B. Evaluation of Safety Studies on SAIB

The principal studies relevant to the safety evaluation of the petitioned use of SAIB were performed in several animal species as mentioned in section I of this document. The individual studies are identified by an Appendix number in this document, as designated by Eastman in the SAIB petition.

1. Pharmacokinetics and Metabolism Studies (Appendices 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 29, and 31)

The pharmacokinetics and metabolism studies on SAIB were performed with rats, dogs, and humans in order to compare the absorption, metabolism, and excretion of the food additive in animal models to that seen in humans. Results from these studies showed the following similarities and differences in the pharmacokinetics and metabolism of SAIB in the test subjects:

(1) There were quantitative differences in the amounts of administered SAIB that were absorbed by rats, dogs, and humans. Rats and humans absorbed greater amounts of SAIB from the gastrointestinal tract compared to dogs. In rats and humans, the majority of the orally administered SAIB was eliminated in expired air, whereas in dogs, the majority of SAIB was eliminated in the feces;

(2) Dogs excreted a greater proportion of the absorbed SAIB in the bile compared to rats. The excreted materials in the bile of the dog were identified as either unchanged SAIB or higher acylated sucrose molecules. Lower acylated sucroses were identified in the bile of rats; and

(3) The urinary metabolites of SAIB in rats and humans were more similar qualitatively than those between dogs and humans. Higher acylated sucroses were identified as the primary metabolite in the urine of dogs. In the urine of rats and humans, only lower acylated sucroses and free sucrose were identified. Free sucrose was not found in the urine from dogs. These data show that more deacylation of SAIB occurs in rats and humans than in dogs.

The patterns of absorption, metabolism, and elimination are more similar for rats and humans than for dogs and humans. Therefore, the agency concludes that the rat is more appropriate than the dog to model the metabolic disposition and fate of SAIB in humans (Refs. 2, 3, 4, and 5).

2. Genotoxicity Studies (Appendices 88, 89, 90, 91, 92, 93, and 94)

SAIB was subjected to the following battery of studies to evaluate its genotoxic potential in prokaryotic and mammalian species: Ames Test, Chinese Hamster Ovary Cells/HGPRT Forward Mutation Assay, In Vitro Cytogenetic Chromosomal Aberration Assay, Unscheduled DNA Assay, and Dominant Lethal Assay. In the absence of bioassay data, these tests are often used to predict the carcinogenic potential of the test compound. However, in the case of SAIB, carcinogenicity bioassays are also available.

SAIB was shown to be nonmutagenic in the Ames test, with or without metabolic activation (Appendices 88, 89, and 90) (Refs. 6 and 7). The compound did not induce changes in mutation frequency in the Chinese Hamster Ovary Cells/HGPRT Forward Mutation Assay (Appendix 91) (Ref. 8). Chromosomal aberrations were not induced in Chinese hamster ovary cells (Appendix 92), thereby demonstrating that SAIB is not clastogenic (Ref. 9).

Results from the Unscheduled DNA Assay (Appendix 93) were negative regarding any significant increases in nuclear labeling or unscheduled DNA synthesis in rat primary hepatocytes treated/incubated with SAIB (Refs. 9, 10, 11, and 12). The Dominant Lethal Assay (Appendix 94) did not show any significant effects on early fetal deaths per pregnancy in rats.

Based upon the negative mutagenic and clastogenic findings in the genotoxicity studies, the agency concludes that SAIB is not genotoxic under the test conditions of these studies (Refs. 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14).

3. Reproduction and Developmental Toxicity Studies (Appendices 86 and 87)

The objectives of the reproduction and developmental toxicity studies were to evaluate the toxic potential of SAIB on the reproductive system of mature rats (males and females) as well as postnatal maturation of reproductive functions of offspring through three successive generations. Assessment of the potential effects of the food additive on the developing fetus was the objective of the teratology studies.

a. *Three-generation reproduction with teratology phase in rats (Appendix 86).* In this study, groups of Fischer F344 rats (three generations: F_0, F_1, and F_2 males and females) were administered SAIB in the diet at dose levels of 0, 0.5, 1.0, or 2.0 g per kilogram body weight per d (g/kg bw/d). Parental (F_0) males were fed SAIB for 10 weeks prior to mating; F_0 females were fed SAIB for 2 weeks prior to mating, and throughout mating, gestation, and lactation until the time of necropsy. F_1 and F_2 males and females were exposed to SAIB in utero; during their lactation and weaning periods as well as throughout their mating, gestation, and lactation periods for respective F_2 and F_3 litters. The F_1 males and females were bred twice in succession to produce F_{2a} and F_{2b} pups. For each generation, the following reproductive parameters were examined: Mating indices, fertility indices, gestation indices, gestation length, number of corpora lutea, implantation efficiency, and number of early or late resorptions. Litters from the F_1 and F_2 generations were examined for the number of dead pups (day 0), number of live offspring per litter, sex ratios, pup survival percentages, pup weights, and physical abnormalities. Macroscopic examinations of the corpora lutea and implantations were performed on the F_2 dams that were

sacrificed on day 14 of gestation period of the F_3 generation. For the teratology phase of this study, macroscopic examination of the number and distribution of fetuses in the uterine horn and the number of resorptions and corpora lutea were performed on F_1 dams that were sacrificed on day 20 (during gestation) of the F_{2b} generation. The pups from these dams were examined for any soft-tissue or skeletal malformations.

The agency observed no reproductive or developmental toxicities in three successive generations of rats that were exposed to SAIB at levels up to 2.0 g/kg bw/d. There was a trend towards decreased fertility with increasing dose of SAIB in the females of the F_1 generation during the breeding for the F_{2a} litters. The agency does not consider this trend to be treatment-related because there were no significant decreases in fertility observed in the F_0 females during the breeding for the F_1 litters or the F_1 females during the breeding for the F_{2b} litters. The agency has determined that the no observed effect level (NOEL) for this study is 2.0 g/kg bw/d, which was the highest dose of SAIB tested in this study (Ref. 13).

b. *Teratology study in rabbits (Appendix 87).* New Zealand White SPF female rabbits were divided into a control group (32 rabbits) and 3 SAIB treatment groups (16 rabbits per group). Control and treated female groups were induced to superovulate by receiving injections of human chorionic gonadotropin 3 weeks prior to insemination. SAIB was administered by oral gavage, twice daily, to the treatment groups at dose levels of 0.50, 0.85, or 1.20 g/kg bw/d on days 7 through 19 of gestation. The control group received only the vehicle (corn oil).

The agency concludes that in this study there were no developmental toxicities observed in rabbits that were exposed to SAIB by gavage at levels up to 1.20 g/kg bw/d during gestation (days 7 to 19). The agency has determined that the NOEL for this study is 1.20 g/kg bw/d for this study (Ref. 13).

c. *Agency conclusions regarding reproduction and developmental toxicity studies on SAIB.* Based on the data obtained from these reproduction and developmental toxicity studies on SAIB (Appendices 86 and 87), the agency concludes that the oral administration of SAIB does not induce reproductive or developmental effects in rats when tested in the diet at doses up to 2.0 g/kg bw/d or developmental effects in rabbits when tested by gavage at doses up to 1.20 g/kg bw/d. Therefore, a NOEL of 2.0 g/kg bw/d is established for SAIB based upon the highest dose tested in the three-generation rat study (Refs. 5 and 13).

4. Two-Year Carcinogenicity Studies (Appendices 95 and 96)

The objective of the carcinogenicity studies was to study the carcinogenic potential of SAIB when administered to rodents for 104 weeks.

a. *Rat study (Appendix 95).* Fischer F344 (CDF/CrlBR) rats were randomly assigned to 5 groups that were fed a dietary mixture of SAIB at dose levels of 0, 0.50, 1.0, or 2.0 g/kg bw/d for 104 weeks. Two groups of rats served as duplicate controls and were fed an NIH07 diet that had been treated with acetone only. BW data for all of the rats were collected on day 1, at weekly intervals during the study, and on the day of necropsy. Food consumption was recorded weekly. Hematology measurements were performed on all rats prior to the initiation of treatment and at the end of the study at week 104. During necropsy, organ weight data were collected for heart, kidneys, liver, testes, ovaries, and brain of the rats in the two control groups and in each of the SAIB-treated groups. Macroscopic and microscopic examinations were performed at sacrifice (week 104) on representative tissue from a comprehensive selection of organs from all groups of rats.

Survival in the treated rats was not significantly affected by the SAIB treatment for the 2-year exposure duration. The antemortem changes seen in the SAIB-treated groups at termination were similar to those seen in the concurrent control rats and represented typical changes seen in aging rats.

Overall, SAIB did not significantly affect the final mean bw's or food consumption of either the male or female rats during the 104 weeks of the study. The organ weight data showed reduced brain (absolute) weight in the 1.0 g/kg bw/d SAIB-treated females when compared to females in group 1 controls and increased kidney-to-brain ratios in the 1.0 g/kg bw SAIB-treated males when compared to males in group 2 controls. FDA did not consider these weight differences to be treatment-related or toxicologically significant because they occurred sporadically among the treated groups, that is, at only one dose level (1.0 g/kg bw/d dose) or in only one sex. There were tumors or nonneoplastic lesions that occurred in the control and SAIB-treated rats of this study that represented histopathological changes commonly seen in aging rats or represented normal variation of spontaneous tumor incidences (e.g., testicular interstitial cell tumors, mammary gland fibroadenomas, endometrial stromal polyps, and pituitary hyperplasia). Thus, the histopathology data showed no evidence of male or female SAIB-treated rats with increased incidences of tumors or nonneoplastic lesions at any organ site that were related to the feeding of SAIB (Ref. 15).

From this study, the agency concludes that SAIB did not induce any tumors in Fischer 344 rats that were fed diets containing up to 2.0 g/kg bw/d of SAIB for 104 weeks. No SAIB-related histopathological lesions were observed in the SAIB-fed rats. Thus, the NOEL for this study is 2.0 g/kg bw/d (Refs. 5, 14, and 15).

b. *Mouse Study (Appendix 96).* In this study, groups of B6C3F1/Cr1BR mice (50 per sex per group) were fed SAIB at concentrations of 1.25, 2.5, or 5.0 g/kg bw/d in an NIH07 diet for 104 weeks. Two groups of mice served as controls and were fed an NIH07 diet that had been treated with acetone only. BW data were collected on day 1, at weekly intervals during the study, and on the day of necropsy. Food consumption was recorded weekly. Hematology measurements were performed on mice in the control and 5.0 g/kg bw group only; 10 mice per sex prior to the initiation of treatment and 15 mice per sex during weeks 28, 53, 79, and 105. During necropsy, organ weight data were collected for the kidneys, liver, gall bladder, and lungs of all mice. Macroscopic and microscopic examinations were performed at sacrifice (week 104) on representative tissue from a comprehensive selection of organs from all groups of mice.

The study results revealed no treatment-related effects on the survival of SAIB-treated mice in this study. All antemortem observations seen in the SAIB-treated mice were comparable to those seen in the concurrent controls.

Organ-to-bw ratios of the liver and lungs of the SAIB-treated mice were not different from the respective weight ratios in the control mice. There were some differences in the relative kidney weights in the SAIB-treated mice compared to controls; however, these differences were not associated with any treatment-related kidney histopathology.

The histopathology data showed an increased incidence of SAIB-treated male mice with bronchiolar/alveolar adenomas and an increased incidence of SAIB-treated male mice with (combined) bronchiolar/alveolar adenomas or carcinomas when compared to control group males (Refs. 14 and 15). The incidences of SAIB-

treated females with bronchiolar/alveolar adenomas or carcinomas were comparable to incidences in control females. According to historical control incidence data from the National Toxicology Program data base, these incidences are within the range commonly seen in aged B6C3F1 mice. Therefore, FDA concludes that the increased incidences of SAIB-treated mice with this tumor represent expected variations in spontaneous incidences and were not related to the SAIB treatment (Refs. 14 and 15). At the other organ sites, there was no evidence of increased incidences of mice with tumors or nonneoplastic lesions that were related to the feeding of SAIB (Refs. 14 and 15). From this study, the agency concludes that SAIB did not induce tumors at any organ site in B6C3F1 mice that were fed diets containing SAIB up to 5.0 g/kg bw /d for 104 weeks. No SAIB-related nonneoplastic lesions were observed in the SAIB-fed mice, nor was there other evidence of adverse effects in the SAIB-fed mice at any of the tested doses. Thus, the NOEL for this study is 5.0 g/kg bw/d (Refs. 5, 14, and 15).

5. Concerns Regarding Altered Liver Function

During the early reviews of the petition, the agency raised a concern regarding liver effects that were observed in the SAIB-treated animals in short-term toxicity studies (rats, dogs, and monkeys) and in subchronic toxicity studies (rats and dogs), especially in the SAIB-treated dogs. However, the agency could not easily determine whether the liver effects observed in these SAIB-treated rats and monkeys were treatment-related because of certain inadequacies in the studies, their limited experimental designs, and the studies' short exposure durations. These studies are discussed in section II.B.5.a of this document. The agency also raised a concern that there were no chronic (1 year or longer) toxicity studies on SAIB in dogs that further examined the liver function effects.

To address these concerns, the petitioner performed BSP and ICG clearance tests, which are specific liver function tests, with rats, dogs, and monkeys. In addition, to address the concern regarding possible altered liver function in chronically-exposed animals, the petitioner performed a 1-year oral toxicity study on SAIB in monkeys; this study included BSP clearance tests and measurements of clinical chemistry parameters relevant to liver toxicity. The petitioner also performed BSP clearance tests in humans that were administered doses of SAIB up to 0.02 g/kg bw/d for 14 days to evaluate any potential effects of SAIB on liver function in humans. These studies and the agency's conclusions regarding them are discussed in sections II.B.5.b and II.B.5.c of this document.

a. *Liver Effects in the SAIB-treated Animals. i. Short-term Studies (Appendices 60, 66, 71, 72, 73, 74, and 77).* The following short-term studies were designed to provide data on the short-term oral toxicity of SAIB in rats, dogs, and monkeys with regard to potential target organs of SAIB, as well as to determine appropriate doses for the subchronic and chronic studies.

Rat Studies (Appendices 66 and 74). In a short-term study (Appendix 66), SAIB was fed to groups of male and female rats at levels of 1.0, 2.0, or 4.0 percent (equivalent to 1.0, 2.0, or 4.0 g/kg bw/d) in the diet for 28 or 56 days. Levels of serum alkaline phosphatase (SAP), glucose, ornithine carbamyl transferase, triglyceride, cholesterol, and blood urea nitrogen were examined. Organ weight data were collected only on the liver.

The limited clinical chemistry data from this study showed decreases in blood glucose levels in female rats fed SAIB at levels of 2.0 and 4.0 percent in the diet for 56 days. The glucose levels in the treated males were not different from comparable levels in controls for the 56-day duration. SAP levels were not affected in the SAIB-treated rats. There were no effects on bw or bw gain in the SAIB-treated rats. Liver weights in these SAIB-treated rats were similar to control rats. Also, the levels of glucose in the treated groups were not different from controls (Ref. 16).

In another short-term study (Appendix 74), groups of rats (15 per sex per group) were fed diets containing 0, 5,000, or 50,000 ppm (equivalent to 0, 0.50, or 5.0 g/kg bw/d) SAIB for 3 weeks. Organ weight data on livers from the male and female SAIB-treated rats (five per sex per group) revealed no evidence of liver enlargement at either of the doses of SAIB. In addition, SAIB did not affect bw gain or food consumption in this study (Ref. 3).

Dog Study (Appendix 77). In this study (Appendix 77), six male beagle dogs were initially fed a ground chow diet without SAIB (control diet) daily for 3 weeks. For the next 3 to 4 weeks, the six male dogs were fed a ground chow containing 5-percent (equivalent to 1.25 g/kg bw/d) SAIB. ICG clearance tests were performed on four of the six dogs at week 3 of this 5-percent SAIB feeding period. After the 3 or 4 weeks feeding period of SAIB, the dogs were returned to control diet for an additional 8 weeks (91st day). ICG clearance tests were performed on week 3 and 6 of this 8-week control diet feeding period. On the 88th day, 4 of the 6 dogs were returned to a diet containing 5-percent SAIB for 1 day. After this 1-day SAIB feeding, SAP measurements and ICG clearance tests were performed on the six dogs. This study did not have a group of dogs that served as concurrent controls nor were pretest ICG baseline values determined. Instead, the data from this study were compared to previously reported laboratory data for ICG clearance in normal beagle dogs.

The results of this study showed decreased clearance of serum ICG (half-lives ($t_{1/2}$)[1] of 17.0 to 40.0 minutes) in dogs that were fed 5-percent SAIB for 3 weeks compared to ICG clearance in normal dogs ($t_{1/2}$ of 4.2 to 8.1 minutes). ICG clearance in the SAIB-treated dogs had returned to normal by day 84 after these dogs were returned to control diets without SAIB. Five of six dogs had increased SAP levels at the end of the 4-week SAIB feeding period that were four to seven times greater than pretest values.

Blood glucose levels decreased (25- to 57-percent reductions) in all of the dogs at the end of the 4-week SAIB treatment period compared to pretest average values. However, blood glucose levels monitored at the end of the recovery phase of the study were reversed and were comparable to the pretest values. Ornithine carbamyl transferase and blood cholesterol levels also increased during the SAIB exposure period. Other blood parameters measured in these dogs (hemoglobin, hematocrit, white blood cell counts (five out of six dogs), serum protein, and blood urea nitrogen) were not affected by the 5-percent-SAIB treatment. The 5-percent SAIB treatment had no effect on body weight, food consumption, or organ weights (only liver and kidney were measured) in the dogs for the 4-week period (Ref. 3).

Monkey Studies (Appendices 60, 71, 72, and 73). In a short-term study (Appendix 60), SAIB was administered by oral intubation (in an orange juice concentrate) to four monkeys (two per sex) as a single dose that started at a dose of 1.25 g/kg bw, increased by increments of 2-fold (72-hour intervals between doses), and ended at a dose of 20 g/kg bw over a dosing period of 14 days. All of the SAIB-dosed monkeys survived the study. Slight to moderate watery, yellow stools were observed in some of the monkeys administered SAIB at doses of 1.25 g/kg bw (one male, two females), 2.5 g/kg bw (one male, one female), and 5.0 g/kg bw (one female).

[1] Half-life($t_{1/2}$) is the time required for the serum ICG concentrations to be reduced by one half.

Large amounts of watery yellow stools and emesis were observed in a monkey that received a SAIB dose of 5.0 g/kg bw dose. Gross postmortem examinations of the four monkeys after the last dosing of SAIB revealed no effects that were attributable to the SAIB administration (Refs. 2 and 17).

In a two-part range-finding study (Appendices 71 and 72), SAIB was administered by oral intubation to groups of monkeys (one per sex per group) at dose levels of 0, 0.5, 1.0, 2.0, 5.0 or 10.0 g/kg bw/d for 15 days. Incidences of soft, loose stools were observed in the SAIB-dosed groups (1.0, 2.0, and 10.0 g/kg bw/d doses), as well as in the control male and female groups. At the termination of the study, SAP levels in the males of the 10.0 g/kg bw/d dose group and the females of the 5.0 and 10.0 g/kg bw/d dose groups were increased compared to their respective controls. Pretest alkaline phosphatase levels in the SAIB-dosed groups were also higher than pretest levels of the controls. Decreased BSP clearance was observed in 8 out of the 10 treated monkeys. Electron microscopy was performed only on the livers of the control group and the high-dose group in this study. Results from the ultrastructural analyses of the livers from the SAIB-treated monkeys revealed increased glycogen, large glycogen aggregations surrounded by scant smooth endoplasmic reticulum, and decreases in the amounts of smooth endoplasmic reticulum (Refs. 2, 3, and 17). While these effects in the SAIB-dosed monkeys suggest suppressed liver function, the agency could not determine the toxicological significance of these effects because of the small group sizes (Refs. 2, 3, and 17).

In another exploratory study (Appendix 73), groups of monkeys (one per sex per group) were administered SAIB (in corn oil) orally by gavage at doses of 0.50, 1.45, or 2.40 g/kg bw/d for 4 weeks. Control monkeys received only the vehicle (corn oil) by gavage. BW gains were comparable in all of the groups except for the high-dose female monkey, who lost weight (12-percent loss) over the 4-week study duration. Reduced food consumption was reported for this high dose female monkey. SAP levels were increased 8-to 78-percent in the treated groups for both sexes except for the one male in the high-dose (10 g/kg bw dose) group. Values reported for erythrocyte counts, hemoglobin, and hematocrits were low for all of the females in both the treatment groups and the control group. BSP clearance rates in these monkeys were normal. Clinical biochemistry parameters related to liver and kidney functions were also normal in the dosed monkeys (Refs. 3 and 17).

Agency conclusions regarding short-term studies on SAIB. The agency's overall review of the data from the preceding short-term studies (see section II.B.5.a.i of this document) established the following: (1) Decreased glucose levels in rats that were fed SAIB at levels of 2.0 and 4.0 g/kg bw/d for 56 days; (2) decreased ICG clearance rates, increased SAP levels, and decreased blood glucose levels in dogs that were fed 1.25 g/kg bw/d SAIB for 4 weeks; and (3) increased BSP retention and increased SAP levels in monkeys that were administered SAIB by gavage at dose levels of 5 and 10 g/kg bw/d for 15 days. Based on these observed effects, the agency concludes that the liver is a target organ for the toxicity of SAIB. However, because of the short exposure durations and limited experimental designs of these studies, the agency concludes that these studies are inadequate to resolve concerns regarding the observed liver effects (Refs. 3 and 5).

ii. *Subchronic oral toxicity studies on SAIB (Appendices 63, 64, 65, 67, 68, 69, and 70).* The following subchronic oral toxicity studies were performed in rats and dogs to examine the general systemic toxicity of SAIB and to investigate further the liver effects of SAIB that were observed in the short-term SAIB studies.

Rat Studies (Appendices 63, 64, and 65). In a 90-day study (Appendix 63), groups of rats (25 per sex per group) were fed SAIB in the diet at 0, 1, or 5 percent (equivalent to 0, 1.0, or 5.0 g/kg bw/d). This study showed an increase (7.4 percent) in the relative liver weights of the 5-percent SAIB-treated female rats compared to the control females; liver weights in SAIB-treated males were not affected. Kidney weights in the SAIB-treated groups were not different from the kidney weights of the control rats. Final bw's were slightly decreased (3 to 4 percent) in only the males of the 5-percent dose group. No differences were observed in the final bw's of the males in the 1-percent dose group or the females in all of the dose groups when compared to respective controls. BW gain in all of the female treatment groups was comparable to the female control groups. Overall, feed intakes and feed efficiencies appeared to be similar across treatment and control groups for both sexes (Ref. 16).

In another 90-day study (Appendix 64), groups of rats (10 per sex per group) were fed SAIB in the diet at levels of 0, 0.38, 1.88, or 9.38 percent (equivalent to 0, 0.38, 1.88, or 9.40 g/kg bw/d). A slight increase in the mean hemoglobin values and a tendency toward leukocytosis (increased white corpuscle counts) were observed in treated rats relative to control rats. SAP levels and BSP clearance rates were not evaluated in this study. BW gains in the SAIB-treated males were slightly decreased (8 to 11 percent) compared to control males; in treated females, bw gain was not affected. Liver, kidney, lung, gonad, spleen, and heart weights (relative and absolute weights) of the SAIB-treated rats were not significantly different from the respective organ weights of the control rats.

Data from the limited histopathological analyses showed an increased incidence of clear vacuoles (fat vacuoles) in the livers of all of the SAIB-treated rats with the greatest increase being seen in the 1.88-percent SAIB group (Ref. 16).

In a 12-week study (Appendix 65), groups of rats (20 per sex per group) were fed SAIB at doses of 2.5, 5.0, or 10 percent (equivalent to 2.50, 5.0, or 10.0 g/kg bw/d) in the diet. SAIB-treated male rats in this study showed decrements in weight gain at all dose levels compared to controls; weight gains in the SAIB-treated female rats were not affected. There was a significant decrease in SAP levels in females treated with 10-percent SAIB. Urinary ascorbic acid levels were substantially decreased (47 percent in males and 64 percent in females) in the 10-percent SAIB group relative to controls. There were no increases in carboxyl esterase levels in any of the SAIB-treated rats. Neither liver weights nor the ultrastructure of the livers in the SAIB-treated rats were affected during the study. Biochemical analyses performed on the livers of rats in the control and 10-percent SAIB groups showed increases in liver glycogen in the 10-percent SAIB group (in both sexes) as well as significant increases in the water content of the livers in the males of the 10-percent SAIB group (Ref. 16).

Because of inadequacies in data analyses and reporting (e.g., limited statistical analyses and incomplete histopathology data) in the subchronic rat studies, the agency could not reach a conclusion as to whether there were treatment-related liver effects in the SAIB-fed rats of these studies. The results from these studies did show: (1) Significantly increased (relative to controls) relative liver weights in rats (females only) that were fed 5-percent SAIB, and (2) increased glycogen content and increased water content (males only) in the livers of rats (both sexes) fed 10-percent SAIB relative to controls (Ref. 5).

Dog Studies (Appendices 67, 68, 69, and 70). In a 12-week study (Appendix 67), groups of dogs (four per sex per group) were fed diets containing 0, 0.2, 0.6, or 2.0 percent (equivalent to 0, 0.05, 0.15, or 0.5 g/kg bw/d) SAIB. This study showed increases in SAP levels in the SAIB-treated male dogs, with a two-fold increase in the 2.0-percent dose group. At the end of the study, relative liver weights of male and female dogs fed SAIB at the 0.6-percent and 2.0-percent dose levels increased compared to the respective control groups. Relative weights of the other organs that were examined in the study (kidney, spleen, brain, gonads, adrenals, thyroids, and pituitary) did not differ significantly from respective relative organ weights of controls. Survival, hematology parameters, and urine parameters tested in the SAIB-treated dogs were also not significantly different from controls (Ref. 18).

In another subchronic study (Appendices 68 and 69), groups of dogs (six per sex per group) were fed dog chow containing 0-, 0.5-, 1.0-, 2.0-, or 4.0-percent (equivalent to 0, 0.13, 0.25, 0.50, or 1.0 g/kg bw/d) SAIB for 12 weeks followed by a 3-week recovery period, during which the dogs were fed a chow diet that did not contain SAIB. During the 12-week treatment period and the 3-week recovery period of the study, the control group received a basal chow meal without SAIB. During the 12-week exposure period, all of the dogs in this study that were fed SAIB (all doses) exhibited significant increases (3- to 7-fold) in serum BSP concentrations compared to control dogs. BSP retention data collected during the 3-week recovery period without SAIB showed a reduction in BSP plasma levels in the 4-percent SAIB-treated dogs to levels that were similar to pretest values and those seen in control dogs (Appendix 69).

Relative liver weights increased in the male dogs fed SAIB at levels of 1.0 and 2.0 percent in the diet; relative liver weights in the 0.5-percent SAIB-treated males were not different from controls. Relative liver weights in the SAIB-treated female dogs (all groups) were not significantly different from control females. Absolute liver weights were significantly increased in SAIB-treated males at dose levels of 0.5, 1.0, and 2.0 percent. Liver weights of the 4.0-percent male dose group were not analyzed at the time that the 1.0 and 2.0-percent male dose groups were analyzed; instead, this dose group was held for 3 additional weeks for a recovery phase of the study. At the end of the this 3-week period (recovery phase), absolute and relative liver weights of the 4-percent male dose group were also significantly increased when compared to control liver weight values measured at the end of the 12-week treatment phase. This 3-week recovery phase of the study did not include a comparable control group of dogs that was held for the additional 3 weeks after the treatment phase.

Data from liver biochemistry analyses showed significantly increased liver glycogen in all of the SAIB-treated groups, significantly increased liver lipid content in all of the dogs fed 2.0-percent SAIB, and significantly increased liver carboxyl esterase levels in all of the dogs fed 4.0-percent SAIB. Total protein levels in the liver were greatly reduced in all of the SAIB-treated groups compared to controls. Alkaline phosphatase, adenosine triphosphatase, and glucose-6-phosphatase levels in the bile canaliculi of the livers in all of the dose groups increased relative to controls.

Results from the microscopic (light and electron) analysis of liver tissue samples showed dilation of the bile canaliculi, liver hypertrophy and enlargement (males only), increased bile pigment granules, increases in the smooth endoplasmic reticula, and prominent Golgi bodies in the dogs fed 2-percent SAIB in the diet (Appendix 69). In addition, the distribution and arrangement of the smooth and rough endoplasmic reticula were altered in the 2-percent SAIB-treated dogs (Ref. 18).

In a 91-day study (Appendix 70), a group of five dogs were fed dog chow containing 5-percent (equivalent to 1.25 g/kg bw/d) SAIB. A second group of five dogs served as controls and was fed dog chow containing 5-percent corn oil for the study duration. This study demonstrated that SAIB significantly affected liver function in the five SAIB-treated dogs, causing moderate elevations in SAP levels, prolonged ICG clearance, and increases in the absolute and relative liver weights. Hematological or clinical chemistry parameters examined in this study, other than SAP, were not affected by the SAIB treatment (Ref. 3).

Based upon the data in the subchronic studies in dogs, the agency concludes that SAIB affected liver function in SAIB-treated dogs at all of the tested dose levels. As noted, the liver effects observed in the SAIB-treated dogs were: (1) Increased BSP retention at SAIB doses as low as 0.13 g/kg bw/d and up to a dose of 1.0 g/kg bw/d, (2) increased SAP levels at SAIB doses of 0.05 g/kg bw/d and higher, (3) increased liver weights at doses of 0.13 g/kg bw/d and higher, and (4) liver ultrastructural changes in the 0.5 g/kg bw/d dose group (liver enlargement/hypertrophy, increased liver glycogen deposition, increased liver carboxyl esterase activity, and proliferation of smooth endoplasmic reticulum). Because effects were observed at the lowest tested dose, the agency could not establish a NOEL for the observed liver effects in the SAIB-treated dogs in the subchronic studies (Refs. 3, 5, and 18).

Agency Conclusions Regarding Subchronic Studies on SAIB. The agency concludes from the subchronic studies that SAIB affected liver function in dogs when fed SAIB at doses of 0.13 g/kg bw/d up to 1.0 g/kg bw/d.

The subchronic studies in rats also suggested apparent liver effects in rats that were fed SAIB at dose levels of 5.0 g/kg bw/d and higher. However, because of study limitations (e.g., incomplete histopathology data and inadequate statistical analyses), the agency could not determine from the subchronic rat studies whether the liver effects seen in the SAIB-treated rats were caused by the treatment with SAIB (Refs. 3, 5, 16, and 18).

In order to investigate further the effects of SAIB on liver function in different species, the petitioner performed specific liver function tests in rats, dogs, monkeys, and humans. The results from these tests are discussed in sections II.B.5.a.iii. and II.B.5.b.ii of this document.

iii. *Specific liver function tests (Appendices 75, 76, 78, 80, and 81).* BSP and ICG clearance tests were performed by the petitioner in rats, dogs, and monkeys. In these tests, BSP or ICG is administered by injection and the clearance of these dyes from the blood is analyzed spectrophotometrically at various time intervals up to 48 hours. In normal subjects, generally 95 percent of the injected dye is cleared from the blood through the liver within 30 minutes. Retention of BSP in the blood is indicative of some form of liver dysfunction such as hepatic degeneration/inflammatory changes, hepatic fibrosis, hepatic cholestasis, or depressed hepatic blood flow (Refs. 19, 20, 21, 22, 23, and 24).

Rat Tests (Appendices 75 and 76). In a 36-day study (Appendix 75), two groups of rats (17 males per group) were fed a chow diet containing either 4.0-percent (equivalent to 4.0 g/kg bw) SAIB in 5.0-percent corn oil or only 5.0-percent corn oil. On days 1, 3, 5, 8, 10, 22, 26, and 36, after the start of these diets, 2 rats from each group were selected for ICG clearance testing. ICG clearance rates in SAIB-treated rats were not significantly different from control rats at any of the time intervals (Ref. 3).

In a 7-day study (Appendix 76), 15 rats (5 males per group) were fed a rodent diet containing 4-percent

(equivalent to 4.0 g/kg bw/d) SAIB. BSP clearance was measured in these rats at 0, 24, and 48 hours posttreatment with SAIB. SAIB had no effect on BSP clearance from the liver in these rats when fed for 7 days (Ref. 3).

Dog Tests (Appendices 76 and 78). In an intermittent dosing study (Appendix 76), two male and two female dogs were serially provided, on one dose per week, laboratory dog chow ration containing SAIB at increasing concentrations of 0.1, 0.3, and 0.5 percent (equivalent to dose levels of 0.03, 0.08, or 0.13 g/kg bw). The animals were fed dog chow without SAIB on days between each dosing. BSP clearance rates for the 4 dogs were evaluated at 24 and 48 hours following each dosing. BSP clearance rates were also measured in each of the dogs prior to the start of the study to determine pretest baseline values. Results from this study showed increased BSP retention at the 24-hour time interval in the dogs at all treatment levels (Ref. 3).

Results from another study in dogs (Appendix 78) showed that BSP retention increased (up to seven-fold) in both male and female dogs administered SAIB as single (oral gavage) doses ranging from 0.005 g/kg bw to 2.0 g/kg bw. Initial increases of BSP levels were observed within 4 to 6 hours posttreatment with SAIB (Refs. 2 and 3).

Monkey Tests (Appendices 80 and 81). In a study (Appendix 80), a group of monkeys (three males) were administered 1.0 g/kg bw of SAIB in cottonseed oil by gavage as a single dose. A second of group of monkeys (three males) received no treatment and served as controls. After this dosing of SAIB, BSP clearance tests were performed. The three SAIB-treated monkeys were given a second 1.0-g dose of SAIB after a 7-day rest period followed by additional BSP clearance testing. The first SAIB dosings showed an increase in the BSP level in one of the three treated monkeys, while the second SAIB dosing resulted in an increase in the BSP levels in a different treated monkey (Ref. 3). FDA concluded that these results are inconclusive because of the equivocal BSP results and the small group sizes.

In another study (Appendix 81), a group of monkeys (four males) was administered SAIB orally by gavage at a dose of 5 g/kg bw. Another group of four males was gavaged with corn oil and served as a control group. BSP clearance was tested in the control and SAIB-treated monkeys 5 hours after the SAIB dosing. The group mean BSP level in the treated monkeys was comparable to that in the control group (Ref. 3). Based upon the results from this study, which tested a higher dose of SAIB and had a larger group size than the above 1.0 g/kg bw monkey study (Appendix 80), FDA concludes that BSP clearance was not affected in monkeys that were orally gavaged with SAIB as a single dose of 1 or 5 g/kg bw (Ref. 5).

Based upon FDA's reviews of these liver function tests, the agency concludes that liver function in dogs was clearly affected by SAIB regardless of the doses tested (0.005 to 2.0 g/kg bw). From these studies the agency also concludes that liver function was not affected in either rats or monkeys at SAIB doses up to 5 g/kg bw. However, because of the short duration of these studies, the agency was unable to determine whether liver function would be affected in rats or monkeys upon chronic exposure to SAIB.

In response to this concern of FDA, the petitioner conducted two 1-year feeding studies (rats and monkeys), in which test animals were subjected to specific liver function tests following a continuous SAIB exposure for 1 year. Results from these 1-year studies are discussed in section II.B.5.b.i of this document. In addition to the 1-year studies in rats and monkeys, the petitioner conducted three human clinical studies to investigate whether the liver function effect that was consistently demonstrated in SAIB-treated dogs could also occur in humans upon oral ingestion of SAIB. Results from the three human clinical studies are also discussed in section II.B.5.b.ii of this document.

b. *Studies resolving the altered liver function issue.* The petitioner performed two 1-year chronic toxicity studies (rats and monkeys) and the human clinical studies in an effort to resolve the concern regarding liver function. These investigations are discussed in sections II.B.5.b.i. and II.B.5.b.ii. of this document.

i. *One-Year Chronic Toxicity Studies (Appendices 83 and 84).* The 1-year chronic toxicity studies were performed in rats and in monkeys in order to evaluate any general toxicological effects of SAIB in these animals and to investigate whether there were effects on liver function in rats and monkeys chronically-exposed to SAIB.

Rat Study (Appendix 83). Groups of male and female Charles River rats (20 per sex per group) were fed SAIB in the diet at dose levels of 0, 0.5, 1.0, or 2.0 g/kg bw/d for 52 weeks. The control group was fed the diet minus SAIB for the same duration. BSP clearance tests were performed during weeks 23 and 48 on all control and high-dose rats after an overnight fast. Ophthalmic examinations were performed at weeks 0, 26, and 52 of the study. Selected hematology and clinical chemistry tests were performed on 10 animals prior to dosing and on all animals at weeks 27 and 53. Histopathological examinations were performed on tissue from liver, kidneys, lungs, and all lesions from all dose groups. Liver sections were also processed for electron microscopy.

A small bw gain decrement (10.3 percent) was observed in the high-dose (2.0 g/kg bw/d) SAIB-treated females. The mean final bw in the high-dose females was also significantly decreased by 6.4 percent, compared to controls. The decreased bw gain in the high-dose females was mostly accounted for by decreased food intake (4-percent reduction). BW gains in the SAIB-treated females at the mid and low doses were not different from control females. The decreases in bw gain that were sporadically seen in the SAIB-treated males in the short-term studies were not observed in the males during this 1-year chronic study. Because the bw gain decrement observed in the high-dose females was small, and because it was not observed in either the low- or mid- dose females or in treated males, and was partially accounted for by decreased food intake in females, the agency concludes that this effect is not toxicologically significant.

No differences were observed in BSP clearance between the SAIB-treated rats and the control rats at 23 or 48 weeks. Other clinical chemistry parameters measured in the SAIB-treated rats at week 53 were comparable to values in control rats.

An increased incidence of high-dose female rats with hepatocellular adenomas (2 out of 19) was observed in this study but was not seen in the longer-term (2-year) rat carcinogenicity study on SAIB, indicating that this effect was not treatment related (see section II.B.4 of this document). Therefore, the agency concludes that there are no indications of liver toxicity or other toxicologically significant effects seen in rats chronically exposed to SAIB for 1 year. The NOEL for this study is 2.0 g/kg bw/d, the highest dose tested (Refs. 5, 16, and 25).

Monkey Study (Appendix 84). In this study, groups of Cynomolgus monkeys (four per sex per group; young adults, age unknown) were administered SAIB in corn oil by gavage at doses of 0, 0.50, 1.45, or 2.40 g/kg bw/d for 1 year. The control group was administered only corn oil in a similar manner for the same duration. Ophthalmic, hematological, and clinical chemistry examinations were performed at pretest and at months 3, 6, 9, and 12 of the study. BSP clearance tests were performed to assess liver function in all

animals at pretest and at months 3, 6, 9, and 12 of the study. Organ weight data (absolute and relative) were collected on brain, thyroid/parathyroid, heart, kidney, liver, testis, spleen, ovary, pituitary, and adrenals for all monkeys after week 52 of the study. Macroscopic and microscopic examinations were performed at sacrifice (week 52) on representative tissue from a comprehensive selection of organs. Liver sections from the monkeys in the control and high-dose group were processed for electron microscopy.

The survival, bw, ophthalmoscopic, and hematological data showed no findings that were toxicologically significant or SAIB-related. There were some differences noted between the SAIB-treated and control monkeys for some of the clinical chemistry parameters, but these were sporadically expressed and thus were not toxicologically significant.

Data from the clinical chemistry parameters that assessed hepatobiliary function did not reveal any effects that could be attributed to the administration of SAIB. The percentages of BSP excretion seen 30 minutes after BSP dye injection in the SAIB-treated monkeys at 3, 6, and 12 months, were similar to those seen in controls at comparable time intervals. There were no differences between SAIB-treated monkeys and control monkeys with respect to SAP levels, cholesterol, bile acids, bilirubin, and gamma glutamyl transpeptidase. Organ weight data for SAIB-treated monkeys were comparable to control monkeys except for some occasional differences in the combined weights of the thyroid and parathyroid glands (absolute and relative) in the low- and mid-dose male monkeys and in the absolute and relative ovary weights in high-dose female monkeys. The liver weights (absolute or relative weights) of the dosed monkeys were not different from the liver weights in control monkeys. The agency concludes that none of these changes are toxicologically significant.

Electron micrographs of liver tissue from the SAIB-treated monkeys (high-dose group, four per sex) showed no difference from controls in the quantity of smooth endoplasmic reticulum in their livers. Compared to the controls, there were no ultrastructural changes in either the mitochondria or their associated rough and smooth endoplasmic reticula or any evidence of peroxisomal proliferation in the liver of the SAIB-treated monkeys. Based upon these findings, the agency concludes that there was no evidence of abnormalities in the livers of the SAIB-treated monkeys compared to livers from control monkeys that would indicate an SAIB-induced effect on liver function.

Based upon FDA's review of the data in this 1-year chronic study, the agency concludes that SAIB does not affect the function or ultrastructure of the liver in monkeys when orally administered at doses up to 2.40 g/kg bw/d for 1 year. No other SAIB-related histopathological lesions were observed in the SAIB-treated monkeys, nor was there other evidence of adverse effects in the SAIB-gavaged monkeys at any of the administered doses. Therefore, the agency has determined that the NOEL for this study is 2.40 g/kg bw/d (Refs. 5 and 17).

ii. *Human clinical studies (Appendices 97, 98, and 99).* The primary objective of the human clinical studies was to evaluate any potential effects of SAIB on liver function in humans when administered as a single daily dose for 14 days.

In a 14-day study (Appendix 97), SAIB was administered to 20 human subjects (10 per sex) daily as a single dose of 0.01 g/kg bw/d. In a second 14-day study (Appendix 98), groups of human subjects (4 per sex) were administered daily a carbonated beverage containing SAIB at either a dose of 0.007 g/kg bw or 0.20 g/kg bw. A third group (four per sex) served as a control and were administered daily a carbonated beverage without SAIB. In a third 14-day study (Appendix 99), groups of 13 human male and 14 human female human subjects were administered daily orange juice containing SAIB at a dose of 0.02 g/kg bw/d . In each of these clinical studies, hematology and clinical chemistry parameters were measured prior to the SAIB dosing on day 0, during the study on day 7, and at the end of the study on day 14 or 18. BSP clearance tests were performed prior to the SAIB dosing and postdosing on day 15.

None of these studies showed any SAIB-related abnormalities in any of the hematology or clinical chemistry parameters measured in these studies, including those clinical chemistry parameters that assessed hepatobiliary function (i.e., SAP levels, alanine amino transferase, aspartate amino transferase, lactate dehydrogenase, gamma glutamyl transferase, bile acids, and total bilirubin). BSP retention in all of the SAIB-treated human subjects was normal compared to pretest values or control values.

Based upon the data in these studies, the agency concludes that SAIB is not toxic in humans and does not induce liver toxicity at doses up to 0.02 g/kg bw/day for 14 days. The 0.02 g/kg bw SAIB dose is equivalent to exposures resulting from drinking 4 liters per day of a beverage containing SAIB at its assumed maximum allowable use level of 300 milligrams/liter (mg/L) (Refs. 5, 26, 27, and 28).

c. *Agency conclusions regarding altered liver function issue.* During the initial safety review of SAIB, FDA raised a concern that, regardless of the tested dose or study duration, treatment-related liver effects were consistently noted in SAIB-treated dogs. In response to this concern, the petitioner provided a significant amount of pharmacokinetics and metabolism data on SAIB in various species, including humans. Based on these data, FDA finds that there appear to be greater quantitative differences in the absorption and metabolism of SAIB between dogs and humans than between the other tested species and humans. To evaluate further the significance of the liver effects to the overall safety of SAIB for human consumption, the agency carefully considered the test results with monkeys, a nonhuman primate species that is phylogenetically closest to humans, as well as liver function data collected directly from human subjects in the three clinical studies.

Unlike the liver effects seen in SAIB-treated dogs, there was no evidence of liver effects in the specific liver function tests with monkeys that received acute oral doses of SAIB as high as 5 g/kg bw (Appendix 84). Data also demonstrate a lack of treatment-related liver effects in monkeys that were exposed continuously to SAIB at dose levels up to 2.4 g/kg bw/d over a 1-year treatment period. Importantly, this dose level of 2.4 g/kg bw/d is nearly one thousand fold the anticipated 90th percentile human exposure of SAIB in the daily diet.

FDA's review of the human clinical studies (Appendices 97, 98, and 99) further support the agency's conclusion regarding the significance of the liver effects. In all three clinical studies, no SAIB-induced effects on liver function were observed in either male or female subjects. While the duration of the human studies was relatively short (14 days), the highest dose used (0.02 g/kg bw/d) provided reasonable assurance, in conjunction with the chronic monkey study data (Appendix 84), that the liver effects seen in SAIB-treated dogs will not occur in humans that ingest SAIB. The highest dose tested in the human clinical studies is equivalent to an exposure resulting from the drinking 4 L/d of a beverage containing SAIB at its proposed maximum allowable use level of 300 mg/L.

Based upon FDA's reviews of the nonhuman primate data and the direct human data provided in the SAIB data base, the agency concludes that the liver function effect seen in SAIB-treated dogs is not determinative of the overall safety evaluation of SAIB for human consumption. The agency further concludes that there is reasonable certainty that the adverse liver effects seen in the SAIB-treated dogs will not occur in humans that consume SAIB at the anticipated levels of dietary intake.

C. Acceptable Daily Intake for SAIB

As discussed in section II.B.5.c of this document, FDA has relied on the monkey and human data to resolve questions concerning the altered liver function observed in SAIB-treated dogs. To support the overall safety of SAIB for human consumption and to establish an ADI, FDA has relied on data from rat studies of SAIB because the most complete toxicological profile of SAIB was established in this rodent species. The rat studies in the SAIB data base assess both the potential carcinogenicity and the reproductive/developmental toxicity of SAIB. In addition, because of their duration and size, the chronic rat studies had greater sensitivity and thus, were more likely to manifest treatment-related chronic effects. Furthermore, the available absorption and metabolism data demonstrated substantial similarities, both qualitative and quantitative, between rats and humans in the metabolic handling of SAIB following oral ingestion.

Based on the 1- and 2-year rat studies, FDA determined that the highest dose tested in both studies (2.0 g/kg bw/d) was the NOEL for SAIB. Based on this NOEL and the use of a safety factor of 100, FDA calculated an ADI of 0.02 g/kg bw/d or 1.20 g/p/d for SAIB (Ref. 5). The EDI exposure for SAIB is 0.17 g/p/d (90th percentile, all ages) which is 14 percent of the ADI calculated for the additive.

III. Conclusion

Based on all the SAIB data reviewed by the agency, FDA concludes that there is a reasonable certainty that no harm will result from the use of SAIB as an emulsion stabilizer for flavoring oils in nonalcoholic beverages, and thus, SAIB is safe for its proposed use. Therefore, the agency concludes that the food additive regulations should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Effects

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. **Note**: References with an asterisk are not on display; they are available generally because they are published articles or books.

1. Memorandum, from DiNovi, Division of Product Manufacture and Use, to Anderson, Direct Additives Branch, FDA, July 31, 1991.
2. Memorandum from Taylor, Additives Evaluation Branch, to McLaughlin, Direct Additives Branch, FDA, November 4, 1985.
3. Memorandum from Pellicore, Additives Evaluation Branch, to Anderson, Direct Additives Branch, FDA, September 29, 1992.
4. Memorandum from Pellicore, Additives Evaluation Branch, to Anderson, Novel Ingredients Branch, FDA, February 5, 1993.
5. Memorandum from Whiteside, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, FDA, August 27, 1998.
6. Memorandum from Donnely, Genetic Toxicity Branch, to Dunkel, Genetic Toxicity Branch, FDA, September 23, 1985.
7. Memorandum from Prival, Additives Evaluation Branch #1, to Whiteside, Additives Evaluations Branch #2, FDA, March 14, 1996.
8. Memorandum from Moreland, Genetic Toxicity Branch, FDA, August 12, 1985.
9. Memorandum from Lavappa, Genetic Toxicity Branch, to Chief, Genetic Toxicity Branch, FDA, September 9, 1985.
10. Memorandum from Bradlaw, Genetic Toxicity Branch, to Dunkel, Genetic Toxicity Branch, FDA, May 24, 1985.
11. Memorandum from Bradlaw, Genetic Toxicity Branch, to Dunkel, Genetic Toxicity Branch, FDA, August 15, 1985.
12. Memorandum from Bradlaw, Genetic Toxicity Branch, to Lin, Additives Evaluation Branch, FDA, September 6, 1989.
13. Memorandum from Welsh, Additives Evaluation Branch #2, to Whiteside, Additives Evaluations Branch #2, FDA, August 28, 1995.
14. Memorandum from Whiteside, Division of Health Effects Evaluation, to Lorentzen, Cancer Assessment Committee, FDA, March 18, 1997.
15. Memorandum of Conference, Cancer Assessment Committee Meeting, FDA, October 28, 1996.
16. Memorandum from Raffaele, Additives Evaluations Branch #2, to Whiteside, Additives Evaluations Branch #2, FDA, June 23, 1994.
17. Memorandum from Whiteside, Additives Evaluation Branch #2, to Anderson, Direct Additives Branch, FDA, March 23, 1994.
18. Memorandum from Whiteside, Additives Evaluation Branch #2, to Anderson, Direct Additives Branch, FDA, August 20, 1993.
*19. Cornelius, C. E., "Liver Function," *Clinical Biochemistry of Domestic Animals*, C. E. Cornelius and J. J. Kaneko, eds. Academic Press, pp. 251–264, 1963.
*20. Cornelius, C. E., et al., "An assessment of hepatic function in rhesus and squirrel monkeys," *Veterinary Medicine/Small Animal Clinicals*, 78: 1885–1888, 1983.
*21. Cornelius, C. E., "Liver Function," *Clinical Biochemistry of Domestic Animals*, 4th ed. Jiro J. Kaneko, Ed., Academic Press, Inc., pp. 375–379, 391–397,1989.
*22. Poutsiaka, et al., "Simultaneous Determination in Dogs of Liver and Kidney Functions with Bromosulfalein and Phenolsulfonephthalein," *Toxicology and Applied Pharmacology*, 4:55, 1962.
*23. Krasavage, et al., "Indocyanine Green Testing," *Proceedings Society for Experimental Biology of Medicine, 119: 215, 1965.*
*24. Bonasch, H. and C. E. Cornelius, "Indocyanine Green: A Liver Function Test for the Dog," *American Journal of Veterinary Research*, 25: 254–59, 1964.
25. Memorandum from Alam, Pathology Branch, to Anderson, Novel Ingredients Branch, FDA, July 10, 1997.
26. Memorandum from Hotta, Clinical Nutrition Branch, to Blendermann, Division of Nutrition, FDA, December 31, 1986.
27. Memorandum from Calvert, Clinical Nutrition Branch, to Anderson, Novel Ingredients Branch, FDA, January 21, 1992.
28. Memorandum from Calvert, Clinical Nutrition Branch, to Anderson, Novel Ingredients Branch, FDA, September 2, 1993.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 6, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state.

Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.833 is added to subpart I to read as follows:

§ 172.833 Sucrose acetate isobutyrate (SAIB).

Sucrose acetate isobutyrate may be safely used in foods in accordance with the following prescribed conditions:

(a) Sucrose acetate isobutyrate (CAS Reg. No. 27216–37–1), or SAIB, is the chemical *alpha*-D-glucopyranoside, O-acetyl-tris-O-(2-methyl-1-oxopropyl)-*beta*-D-fructofuranosyl, acetate tris(2-methyl propanoate).

(b) SAIB, a pale, straw-colored liquid, meets the following specifications:

(1) Assay: Not less than 98.8 percent and not more than 101.9 percent, based on the following formula:

Assay = ((SV 0.10586) + 56.1) x 100

Where SV = Saponification value

(2) Saponification value: 524–540 determined using 1 gram of sample by the "Guide to Specifications for General Notices, General Analytical Techniques, Identification Tests, Test Solutions, and Other Reference Materials," in the "Compendium of Food Additive Specifications, Addendum 4, Food and Agriculture Organization of the United Nations (FAO), Food and Nutrition Paper 5, Revision 2" (1991), pp. 203 and 204, which is incorporated by reference, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Office of Premarket Approval, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(3) Acid value: Not to exceed 0.20 determined using 50 grams of sample by the "Guide to Specifications for General Notices, General Analytical Techniques, Identification Tests, Test Solutions, and Other Reference Materials," in the "Compendium of Food Additive Specifications, Addendum 4, FAO Food and Nutrition Paper 5, Revision 2," p. 189 (1991), which is incorporated by reference; see paragraph (b)(2) of this section for availability of the incorporation by reference.

(4) Lead: Not to exceed 1.0 milligrams/kilogram determined by the "Atomic Absorption Spectrophotometric Graphite Furnace Method, Method I," in the "Food Chemicals Codex," 4th ed. (1996), pp. 763 and 764, with an attached modification to the sample digestion section in Appendix III.B (July 1996), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Box 285, Washington, DC 20055 (Internet "http://www.nap.edu"), or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(5) Triacetin: Not to exceed 0.10 percent determined by gas chromatography as described in the "Guide to Specifications for General Notices, General Analytical Techniques, Identification Tests, Test Solutions, and Other Reference Materials," in the "Compendium of Food Additive Specifications, Addendum 4, FAO Food and Nutrition Paper 5, Revision 2" (1991), pp. 13–26, which is incorporated by reference; see paragraph (b)(2) of this section for availability of the incorporation by reference.

(c) The food additive is used as a stabilizer (as defined in § 170.3(o)(8) of this chapter) of emulsions of flavoring oils in nonalcoholic beverages.

(d) The total SAIB content of a beverage containing the additive does not exceed 300 milligrams/kilogram of the finished beverage.

Dated: May 27, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14147 Filed 6–3–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–40–2–9909a; FRL–6352–5]

Approval and Promulgation of Implementation Plans; Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision for the State of Alabama. This revision consists of the 1990 base year ozone emission inventory for the Birmingham marginal ozone nonattainment area. The inventory was submitted to satisfy a Clean Air Act (CAA) requirement that states containing ozone nonattainment areas submit inventories of actual ozone precursor emissions in accordance with guidance from the EPA.

DATES: This direct final rule is effective August 3, 1999 without further notice, unless EPA receives adverse comment by July 6, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file AL–40–2–9909. The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW, Atlanta, Georgia 30303–3104.

Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 or E-mail (levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: Alabama submitted its 1990 base year emission inventory of ozone precursors to the EPA on November 13, 1992.

I. Background Information

Under the CAA as amended in 1990, states have the responsibility to inventory emissions contributing to nonattainment of a National Ambient Air Quality Standard (NAAQS), to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for nonattainment areas. The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of title I of the 1990 amendments to the CAA (title I). The EPA has issued a General Preamble describing the EPA's preliminary views on how the Agency intends to review SIP revisions submitted under title I, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). In this action, EPA will rely on the General Preamble's interpretation of the CAA, and the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's rule and the supporting rationale.

Those states containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compounds (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during the ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as mobile sources within the nonattainment area, are to be included in the compilation. Guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498 (April 16, 1992)).

II. Analysis of State Submission

A. Procedural Background

The CAA requires states to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the CAA provides that each emission inventory submitted by a state must be adopted after reasonable notice and public hearing. Also section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

On November 13, 1992, the State of Alabama submitted to the EPA as a SIP revision the 1990 base year inventory for the Birmingham marginal ozone nonattainment area.

B. Emission Inventory Review

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 182(a)(1) (see 57 FR 13565–13566 (April 16, 1992)). This section outlines the review procedures performed to determine if the base year emission inventories are acceptable. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria.

1. The state provided an approved Inventory Preparation Plan (IPP) and performed the Quality Assurance program contained in the IPP and documented its implementation.

2. The state provided adequate documentation that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

3. The point source inventory must be complete.

4. The state must have prepared or calculated the point source emissions according to the current EPA guidance.

5. The area source inventory must be complete.

6. The state must have prepared or calculated the area source emissions according to the current EPA guidance.

7. The state must have prepared the biogenic emissions according to the current EPA guidance or another approved technique.

8. The method (e.g., Highway Performance Modeling System or a network transportation planning model) used to develop vehicle miles traveled (VMT) estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources," U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992.

9. The state correctly used The MOBILE model to produce emission factors for each of the vehicle classes.

10. The state prepared the Non-road mobile emissions according to current EPA guidance for all of the source categories.

The emission inventory prepared by Alabama meets the ten criteria. Documentation of the EPA's evaluation, including details of the review procedure, is contained within the technical support document prepared for the Alabama 1990 base year inventory, which is available to the public as part of the docket supporting this action.

Alabama has submitted a complete inventory containing point, area, mobile and biogenic source data, and accompanying documentation. Emissions from these sources are presented in the following table.

EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	VOC	NO_X	CO
Point	61.83	408.98	179.87
Area	59.16	54.38	42.57
Mobile ...	94.23	60.34	585.11
Biogenic	200.29	NA	NA
Total	415.53	523.70	807.55

Alabama has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual ozone precursor emissions in the Birmingham marginal ozone nonattainment area. The

inventory is complete and approvable according to the criteria set out in the November 12, 1992, memorandum from J. David Mobley, Chief Emission Inventory Branch, TSD to G.T. Helms, Chief Ozone Carbon Monoxide Programs Branch, AQMD. In today's final action, the EPA is approving the SIP 1990 base year ozone emission inventory submitted by the State for the Birmingham area as meeting the requirements of section 182(a)(1) of the CAA.

Final Action

EPA is approving the aforementioned emissions inventory into the Alabama SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 3, 1999 without further notice unless the Agency receives adverse comments by July 6, 1999.

If the EPA receives such comments, EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 3, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 3, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 30, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7641q.

Subpart B—Alabama

2. Section 52.50 is amended by revising the word "Delaware" in paragraph (a) to read "Alabama" and by adding a new paragraph (e) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) EPA-approved Alabama non-regulatory provisions.

Provision	State effective date	EPA approval date	Federal Register notice	Comments
Birmingham 1990 Baseline Emissions Inventory	November 13, 1992 ..	June 4, 1999	[Insert cite of publication].	

[FR Doc. 99–13944 Filed 6–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–79–9918a; FRL–6352–7]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Florida Department of Environmental Protection (DEP) for the State of Florida on October 28, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills. *See* 40 CFR part 60, subpart Cc.

DATES: This final rule is effective on August 3, 1999 unless significant, material, and adverse comments are received by July 6, 1999. If such adverse comments are received, timely notice of the withdrawal will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Copies of materials submitted to EPA may be examined during normal business hours at the following locations:

EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at (404) 562–9035 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA has established procedures whereby states submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which states must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a state, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (*See* 61 FR 9905–9944.) The pollutants regulated by the NSPS and EG are MSW landfill emissions, which

contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the state within nine months after publication of the EG (by December 12, 1996).

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et.al*, No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. *See* 62 FR 60898. It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the proposed settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA is amending 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. *See* 63 FR 32743–32753, 32783–32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a state has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. The State of Florida has amended their rules for MSW landfills in Chapter 62–204 of the Florida Administrative Code (FAC), Rule 62–204.800(8)(c) and Rule 62-204.800(7)(b)72 (effective dates of October 19, 1998), to reflect the June 16, 1998, amendments to subparts Cc and WWW. Accordingly, the MSW landfill EG published on March 12, 1996, and amended on June 16, 1998, was used as the basis by EPA for review of this section 111(d) Plan submittal.

This action approves the section 111(d) Plan submitted by the Florida DEP for the State of Florida to implement and enforce subpart Cc.

II. Discussion

The Florida DEP submitted to EPA on October 28, 1998, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in the State of Florida: Legal Authority; Enforceable Mechanisms; MSW Landfill Source and Emission Inventory; Emission Limits; Review and Approval Process for Collection and Control System Design Plans; Compliance Schedules; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration That the Public Had Adequate Notice and Public Hearing Record; Submittal of Progress Reports to EPA; and applicable State of Florida statutes and rules of the FAC.

The approval of the Florida State Plan is based on finding that: (1) The Florida DEP provided adequate public notice of public hearings for the proposed rulemaking which allows the Florida DEP to implement and enforce the EG for MSW landfills; and (2) the Florida DEP also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In section 1.0 and Appendix B of the Plan, the Florida DEP cites the following references for the legal authority: Florida Statutes (FS) section 403.061; section 403.8055; section 403.061(6), (7), (8), (12), and (13); section 403.121; section 403.131; section 403.141; section 403.161; and section 119.07. These statutes are approved as being at least as protective as the Federal requirements for existing MSW landfills.

In section 2.0 of the Plan, the Florida DEP cites the enforceable mechanisms for implementing the EG for existing MSW landfills. The enforceable mechanisms are the State regulations adopted by the State of Florida in Rule 62–204.800(8)(c) and Rule 62–204.800(7)(b)72 of the FAC. Florida's regulations meet the Federal requirements for an enforceable mechanism and are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In section 2.0 of the Plan, the Florida DEP cites all emission limitations for the major pollutant categories related to the designated sites and facilities. These limitations in Rule 62-204.800(8)(c) are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In section 3.0 and 4.0 of the Plan, the Florida DEP submitted a source and emission inventory of all designated pollutants for each MSW landfill in the State of Florida. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing MSW landfills.

Section 5.0 of the Florida State Plan describes the process that Florida DEP will utilize for the review of site-specific design plans for gas collection and control systems. The process outlined in the Plan meets the Federal requirements contained in subpart Cc for existing MSW landfills.

In section 5.0 of the Plan, the Florida DEP cites the compliance schedules adopted in Rule 62–204.800(8)(c) for each existing MSW landfill to be in compliance within 30 months of the designated date of December 31, 1996, in their implementing regulation. These compliance times for affected MSW landfills will be no later than June 30, 1999, and address the required compliance time lines of the EG. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

Section 6.0 of the Florida State Plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to their agency the nature and amount of emissions and any other information that may be necessary to enable their agency to judge the compliance status of the facilities. The Florida DEP also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. Rule 62–204.800(8)(c) and Rule 62–204.800(7)(b)72 of the FAC support the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These Florida rules have been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

Section 7.0 of the Plan outlines how the Florida DEP will provide progress

reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for Plan reporting.

Consequently, EPA finds that the Florida State Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The Florida DEP did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this Plan as it relates to those sources.

Final Action

Based on the rationale discussed above, EPA is approving the State of Florida section 111(d) Plan, as submitted on October 28, 1998, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to the Florida State Plan or associated regulations will not be considered part of the applicable plan until submitted by the Florida DEP in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the revision should significant, material, and adverse comments be filed. This action will be effective August 3, 1999 unless by July 6, 1999, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 3, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any section 111(d) plan. Each request for revision to the section 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation

of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 3, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: April 21, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart K—Florida

2. Section 62.2350 is amended by adding paragraphs (b)(6) and (c)(4) to read as follows:

§ 62.2350 Identification of plan.

* * * * *

(b) * * *

(6) State of Florida Department of Environmental Protection Section 111(d) State Plan For Municipal Solid Waste Landfills, submitted on October 28, 1998, by the Florida Department of Environmental Protection.

(c) * * *

(4) Existing municipal solid waste landfills.

Subpart K—[Amended]

3. Subpart K is amended by adding a new § 62.2360 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.2360 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 99–13942 Filed 6–3–99; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 64, No. 107
Friday, June 4, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney JT9D–7R4 series turbofan engines. This proposal would require initial and repetitive inspections of certain High Pressure Turbine (HPT) stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disks are exposed during a shop visit, and if a subsurface anomaly is found, removal from service and replacement with a serviceable part. This proposal is prompted by the results of a stage 1 HPT disk fracture investigation which has identified a population of HPT stage 1 and 2 disks that may have subsurface anomalies formed during the forging process. The actions specified by the proposed AD are intended to prevent HPT disk fracture, which could result in an uncontained engine failure, damage to the aircraft, and an in-flight engine shutdown.

DATES: Comments must be received by July 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–06–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received a report of an uncontained high pressure turbine (HPT) disk failure on an International Aero Engines (IAE) V2500–A1 series turbofan engine. The investigation into the cause of that failure revealed that certain HPT stage 1 and stage 2 disks were manufactured using a process that resulted in a subsurface defect in the disk material. The subsurface defect, called a "clean linear" anomaly, was formed during a specific forging process also used for HPT stage 1 and stage 2 disks for the JT9D–7R4 series engines. The anomaly may not have been detected during ultrasonic inspection during manufacture due to its orientation and shape. The disk failure occurred as a result of a crack that initiated at the anomaly site. An improved ultrasonic inspection has been developed which is more capable of detecting anomalies, or cracks that originate from the sites of anomalies, prior to disk failure. V2500–A1, PW2000 and JT9D–7R4 1st and 2nd stage HPT disks manufactured using this same material and forging process are affected. There are approximately 131 JT9D–7R4 HPT stage 1 and stage 2 disks that were manufactured using this material and forging process, and those disks have been identified by serial number in Pratt & Whitney (PW) Service Bulletin JT9D–7R4–72–553, Revision 1, dated February 17, 1999. This condition, if not corrected, could result in an HPT disk fracture, which could result in an uncontained engine failure, damage to the aircraft, and an in-flight engine shutdown.

The FAA has reviewed and approved the technical contents of PW Service Bulletin (SB) JT9D–7R4–72–553, Revision 1, dated February 17, 1999, that describes inspection procedures and criteria for certain stage 1 and 2 HPT disks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same

type design, the proposed AD would require initial and repetitive inspections of certain stage 1 and stage 2 HPT disks using an improved ultrasonic method whenever the disk is exposed during a shop visit. If a subsurface anomaly is found, the disk must be removed from service and replaced with a serviceable part. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 131 affected disks installed in engines in the worldwide fleet. The FAA estimates that 25 engines on aircraft of U.S. registry would be affected by this proposed AD. The FAA estimates that the shipping cost per disk to the facility which will inspect the disk and its return will be approximately $250 per disk, that no engines will require an unplanned HPT module disassembly/assembly, that the inspection would take approximately 8 work hours per disk to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Some disks will require multiple inspections during their service life. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $88,000. The manufacturer has advised the FAA that the all costs relative to the inspection will be reimbursed to the operator.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–XX–XX Pratt & Whitney: Docket No. 99–NE–06–AD.

Applicability: Pratt & Whitney JT9D–7R4 Series Turbofan Engines, installed on but not limited to Boeing 747, Airbus A300 and Airbus A310 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) disk fracture, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For engines with a HPT stage 1 or Stage 2 disk installed that has a serial number listed in the Accomplishment Instructions section of PW SB JT9D–7R4–72–553, Revision 1, dated February 17, 1999, perform initial and repetitive ultrasonic inspections in accordance with the Accomplishment Instructions section of PW SB JT9D–7R4–72–553, Revision 1, dated February 17, 1999, as follows:

(1) Perform an initial ultrasonic inspection at the next HPT disk piece part accessibility after the effective date of this AD.

(2) Thereafter, perform an ultrasonic inspection at each HPT disk piece part accessibility after the initial inspection performed in accordance with paragraph (a)(1) of this AD.

(3) For the purpose of this AD, piece part accessibility is defined as removal of the blades from the disk.

(b) Remove from service those HPT disks found with a crack indicating a subsurface anomaly and replace with a serviceable part.

(c) For engines that do not have a HPT stage 1 or Stage 2 disk installed that has a serial number listed in the Accomplishment Instructions section of PW SB JT9D–7R4–72–553, Revision 1, dated February 17, 1999, no inspections are required.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 27, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–14128 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 and 900 Series Airplanes, Falcon 900EX Series Airplanes, and Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dassault Model Mystere-Falcon 50 and 900 series airplanes, Falcon 900EX series airplanes, and Falcon 2000 series airplanes. This proposal would require revising the Airplane Flight Manual to provide the flight crew with certain instructions associated with the onset of stall warning. This proposal also would require repetitive inspections to detect discrepancies of the hinge pin assemblies of the rear horizontal stabilizer, and corrective actions, if necessary. For certain airplanes, this proposal also would require

replacement of the hinge pin assemblies with new, improved parts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent excessive movement and consequent deformation of the hinge pin assemblies of the rear horizontal stabilizer, which could result in flutter and possible failure of the rear horizontal stabilizer.

DATES: Comments must be received by July 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–266–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Dassault Model Mystere-Falcon 50 and 900 series airplanes, Falcon 900EX series airplanes, and Falcon 2000 series airplanes. The DGAC advises that, during a flight test, excessive clearance was found between the hinge bushings and the hinge pin that attaches the rear horizontal stabilizer to the fuselage structure. Investigation revealed that the excessive clearance was caused by deformation of the hinge bushings due to high dynamic (forceful) loads encountered during flight test stall maneuvers. Although the amount of deformation detected did not represent an immediate hazard to the airplane during the flight test, repeated stall conditions could cause the deformation of the hinge bushings to increase. This condition, if not corrected, could result in flutter and possible failure of the rear horizontal stabilizer.

Explanation of Relevant Service Information

Dassault has issued Airplane Maintenance Manual (AMM) Temporary Revision 704.0/1, dated November 1997 (for Model Mystere-Falcon 50 series airplanes); AMM Procedure 55–501, dated March 1998 (for Model Mystere-Falcon 900 series airplanes); AMM Temporary Revision 55–501, dated November 1997 (for Model Falcon 900EX series airplanes); and AMM Procedure 55–501, dated November 1997 (for Model Falcon 2000 series airplanes). These procedures provide instructions for repetitive dimensional inspections to detect discrepancies (damage, deformation, and excessive movement) of the hinge pin assemblies of the rear horizontal stabilizer.

Additionally, Dassault has issued Service Bulletins F50–274 (F50–55–4), F900–203 (F900–55–3), F900EX–37 (F900EX–55–1), and F2000–118 (F2000–55–1); all dated December 17, 1997. These service bulletins describe, among other things, procedures for replacement of the hinge pin assemblies of the rear horizontal stabilizer with new, improved parts.

The DGAC classified these service documents as mandatory and issued French airworthiness directives 97–370–020(B)R1, dated December 17, 1997 (for Models Mystere-Falcon 50 and 900 series airplanes, and Falcon 900EX series airplanes), and 97–369–004(B), dated December 3, 1997 (for Model Falcon 2000 series airplanes), in order to assure the continued airworthiness of these airplanes in France.

Accomplishment of the actions specified in the applicable service documents is intended to adequately address the identified unsafe condition.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service documents described previously, except as discussed below.

Differences Between Proposed Rule and Related Service Information

Operators should note that, although the Dassault service bulletins and Dassault airplane maintenance manual procedures recommend that the manufacturer be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its

delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

This proposed AD would differ from the parallel French airworthiness directives in that this proposed AD would require performing an initial inspection to detect discrepancies (damage, deformation, and excessive movement) of the hinge pin assemblies of the rear horizontal stabilizer within 300 flight hours or 6 months after the effective date of this AD. The French airworthiness directives require the initial inspection within 6 years, or prior to the accumulation of 3,750 total flight cycles. In developing the appropriate compliance time, the FAA considered the manufacturer's recommendation and the degree of urgency associated with addressing the subject unsafe condition. In light of these factors, the FAA finds that an initial inspection within 300 flight hours or 6 months after the effective date of this AD to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 269 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes, it would take approximately 1 work hour per airplane to accomplish the proposed Airplane Flight Manual (AFM) revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $16,140, or $60 per airplane.

Additionally, for all airplanes, it would take approximately 8 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $129,120, or $480 per airplane, per inspection cycle.

For 49 airplanes of U.S. registry it would take approximately 10 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $6,000 per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $323,400, or $6,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 98–NM–266–AD.

Applicability: All Model Mystere-Falcon 50 and 900 series airplanes, Falcon 900EX series airplanes, and Falcon 2000 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive movement and consequent deformation of the hinge pin assemblies of the rear horizontal stabilizer, which could result in flutter and possible failure of the rear horizontal stabilizer, accomplish the following:

Dassault Airplane Flight Manual (AFM) Revision

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"DO NOT INTENTIONALLY FLY THE AIRPLANE SLOWER THAN INITIAL STALL WARNING ONSET"

Note 2: The AFM revision required by paragraph (a) of this AD also may be accomplished by inserting a copy of the applicable Temporary Change into the applicable AFM, as specified below. When these Temporary Changes have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the Temporary Changes.

- For Model Mystere-Falcon 50 series airplanes: Dassault Mystere-Falcon 50 AFM Temporary Change No. 46 (DTM813); and Dassault Mystere-Falcon 50 AFM Temporary Change No. 12 (M813EX).
- For Model Mystere-Falcon 900 series airplanes: Dassault Mystere-Falcon 900 AFM Temporary Change No. 69 (DTM20103).
- For Model Falcon 900EX series airplanes: Dassault Falcon 900EX AFM Temporary Change No. 14 (DTM561).
- For Model Falcon 2000 series airplanes: Dassault Falcon 2000 AFM Temporary Change No. 44 (DTM537).

Initial and Repetitive Inspections

(b) Within 300 flight hours or 6 months after the effective date of this AD, whichever occurs first: Perform a dimensional inspection to detect discrepancies (damage, deformation, and excessive movement) of the hinge pin assemblies of the rear horizontal stabilizer in accordance with paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable.

(1) For Model Mystere-Falcon 50 series airplanes: Inspect in accordance with

Dassault Airplane Maintenance Manual, Temporary Revision, 704.0/1, dated November 1997.

(2) For Model Mystere-Falcon 900 series airplanes: Inspect in accordance with Dassault Airplane Maintenance Manual, Procedure 55–501, dated March 1998.

(3) For Model Falcon 900EX series airplanes: Inspect in accordance with Dassault Airplane Maintenance Manual, Temporary Revision, 55–501, dated November 1997.

(4) For Model Falcon 2000 series airplanes: Inspect in accordance with Dassault Airplane Maintenance Manual, Procedure 55–501, dated November 1997.

(c) If any stall event occurs after the effective date of this AD, perform a dimensional inspection as required by paragraph (b) within 300 flight hours or 6 months after the occurance of the stall event, whichever occurs first. For the purposes of this AD, a stall event is considered to be any event as defined by Federal Aviation Administration [14 CFR 25.201(d)].

(d) If no discrepancy is detected during any inspection required by this AD, repeat at 3,750 flight cycles or 6 years, whichever occurs first.

(e) If any discrepancy is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). Thereafter, repeat the inspections at the times specified in paragraph (b) of this AD.

Replacement

(f) For airplanes listed in Dassault Service Bulletins F50–274 (F50–55–4), F900–203 (F900–55–3), F900EX–37 (F900EX–55–1), and F2000–118 (F2000–55–1), all dated December 17, 1997: Replace the hinge pin assemblies of the rear horizontal stabilizer with new, improved parts in accordance with Part 2, paragraph B.(2) of the Accomplishment Instructions of the applicable service bulletin at the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Accomplish the replacement within 6 years since date of manufacture, or prior to the accumulation of 3,750 total flight cycles, whichever occurs first.

(2) Accomplish the replacement within 300 flight hours or 6 months after the effective date of this AD, whichever occurs first.

Spares

(g) As of the effective date of this AD, no person shall install a rear horizontal stabilizer hinge pin having part number MY2033175 on any airplane.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 97–370–020(B)R1, dated December 17, 1997, and 97–369–004(B), dated December 3, 1997.

Issued in Renton, Washington, on May 26, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14129 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–79–AD]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corporation 7, 8, and 11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all American Champion Aircraft Corporation (ACAC) 7, 8, and 11 series airplanes, excluding Model 8GCBC airplanes. The proposed AD would have required installing inspection holes on the top and bottom wing surfaces, repetitively inspecting the front and rear wood spars for damage, repairing or replacing any damaged wood spar, and installing inspection covers. Damage is defined as cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; or loose or missing rib nails. The proposed AD results from a review of the service history of the affected airplanes that incorporate wood wing spars. The review was prompted by in-flight wing structural failures on ACAC Model 8GCBC airplanes, and revealed several incidents where damage was found on the front and rear wood spars on the affected airplanes. The FAA received comments on the NPRM that recommended alternative methods of complying with the proposed AD and recommended combining the proposed AD with the actions of the current AD required for the ACAC Model 8GCBC airplanes. The FAA has determined that the ideas in the above-referenced comments have merit and should be implemented, and is therefore withdrawing the NPRM and proposing these actions in a new AD that would supersede the current AD required for ACAC Model 8GCBC airplanes.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7697; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all ACAC 7, 8, and 11 series airplanes (excluding the Model 8GCBC airplanes) was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 3, 1997 (62 FR 59310). The NPRM proposed to require installing inspection holes on the top and bottom wing surfaces, repetitively inspecting the front and rear wood spars for damage, repairing or replacing any damaged wood spar, and installing surface covers. Accomplishment of the proposed actions as specified in the NPRM would be required as follows:

—Installations: in accordance with ACAC Service Letter 417, Revision A, dated October 2, 1997;

—Inspections: in accordance with ACAC Service Letter 406, dated March 28, 1994; and

—Spar Repair and Replacement, as applicable: in accordance with Advisory Circular (AC) 43.13–1A, Acceptable Methods, Techniques and Practices; or other data that the FAA has approved for spar repair and replacement.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comment Issue No. 1: Combine the Actions of the Proposed AD With Those of AD 98–05–04

Two commenters recommend that the FAA combine the actions of the proposed AD with those currently required by AD 98–05–04, which applies to the Model 8GCBC airplanes. These commenters feel that this would

provide a successful and consistent inspection program for all airplanes in the production line.

The FAA concurs that combining the actions of the proposed AD and AD 98–05–04 would provide a consistent inspection program for all ACAC airplanes in the production line. As discussed in this document, the FAA is withdrawing the NPRM (Docket No. 97–CE–79–AD) and will propose to supersede AD 98–05–04 with a new AD (will be initiated as an NPRM) that would affect all 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions.

Comment Issue No. 2: Allow an Alternative Spar Inspection Method

Three commenters state that inspecting the spar through the utilization of inspection holes on the bottom of the spar using mirrors and a small high intensity light source is an effective method of inspection. The commenters believe that allowing this inspection method will save the owners thousands of dollars in inspection costs. Also, because the additional inspection covers would not be needed, the aesthetics of the aircraft would be preserved.

The FAA concurs that inspecting the spar through the utilization of inspection holes in the bottom of the spar using mirrors and a small high intensity light is a valid inspection method provided an inspector with wood spar compression failure experience accomplishes the inspection. For example, the inspection method was useful in detecting spar failure on one of the commenter's airplanes, and a member of the FAA's Chicago Aircraft Certification Office staff detected a compression failure in the rear spar of a Model 7AC airplane using this method.

ACAC has incorporated procedures to accomplish this inspection method into Service Letter 406, Revision A, dated May 6, 1998, and the FAA has approved this inspection method as an alternative method of compliance to AD 98–05–04, which applies to the Model 8GCBC airplanes. The owners of the Model 8GCBC have been informed of this inspection alternative through a special airworthiness information bulletin (SAIB).

As discussed in this document, the FAA is withdrawing the NPRM (Docket No. 97–CE–79–AD) and will propose to supersede AD 98–05–04 with a new AD (will be initiated as an NPRM) that would affect all 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions. The FAA will incorporate the inspection method discussed above into the combined proposed AD.

Comment Issue No. 3: Exclude Certain Airplanes From the Proposed AD

Numerous commenters request that the FAA exclude certain airplanes, such as the Model 7AC. The commenters state that the light-weight and low-horsepower airplanes manufactured by Aeronca and Champion Aircraft are not certificated for aerobatic flight and induce lower stresses in the spars. The commenters feel there is no justification for including them in this AD action.

The FAA does not concur that these light-weight and low-horsepower airplanes should be removed from the proposed AD. Section 39.1 of the Federal Aviation Regulations (14 CFR 39.1) specifies that the FAA should issue an airworthiness directive against aircraft of the same type design where the unsafe condition exists or is likely to develop. Since there have been compression failures and spar damage reports on the light-weight and low-horsepower airplane models (i.e., Model 7AC), the AD should address these models.

No changes have been made to the AD as a result of these comments. However, as discussed in this document, the proposal is being withdrawn and the actions revised and combined with the actions of the current AD required for the ACAC Model 8GCBC airplanes.

Comment Issue No. 4: The Proposed AD Should Only Apply to Airplanes With Previous Wing Damage or Evidence of Compression Failures

Several commenters request that the proposed AD only apply to those airplanes that have a history of wing damage. The commenters state that spar compression failures and spar damage are a direct result of the airplane flipping, ground looping, or other similar type of activity that causes wing damage.

The FAA does not concur that the proposed AD should only apply to those airplanes that have a history of wing damage. The FAA agrees that incidents involving wing damage are a major cause of compression failures and other spar damage; however, the FAA has received reports of compression failures in airplanes without previous wing damage.

However, to better understand all causes of spar damage of the affected airplanes, the FAA has determined that all findings of aircraft wing damage should be submitted on a Malfunction or Defect Report (M or D), FAA Form 8010–4, describing the damage and a copy of the report sent to the Chicago Aircraft Certification Office. The FAA could then initiate further rulemaking action that increases or reduces the burden upon the owners/operators of the ACAC 7, 8, and 11 series airplanes, as justified.

As discussed in this document, the FAA is withdrawing the NPRM (Docket No. 97–CE–79–AD) and will propose to supersede AD 98–05–04 with a new AD (will be initiated as an NPRM) that would affect all 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions. The FAA will incorporate this reporting requirement into the combined proposed AD.

Comment Issue No. 5: The Proposed AD Should Not Apply to the 7 and 11 Series Airplanes

One commenter objects to an AD against the ACAC 7 and 11 series airplanes because the market value of these airplanes will decrease by several thousand dollars. The commenter believes that simply mailing the manufacturer's service instructions to the owners of the 7 and 11 series airplanes will result in the desired effect.

The FAA does not concur. The FAA's duty to public safety must outweigh considerations of an aircraft's market value. The FAA has worked with associations and type clubs that are interested in the safety and market value of these airplanes in order to decrease the economic impact of the proposed AD's inspection requirements. Service history of all models of the ACAC 7, 8, and 11 series airplanes reveals susceptibility to wing spar cracking and compression failures. The FAA has no reason to believe that compliance will be guaranteed on a voluntary basis alone.

No changes have been made to the proposed AD as a result of these comments.

Comment Issue No. 6: The Proposed AD Should Not Address Loose and Missing Nails

Four commenters feel that the proposed AD should not include procedures for inspecting for and replacing loose or missing nails in the wing spars of the ACAC 7, 8, and 11 series airplanes. The commenters state that the nails are only used during manufacture of the wing to hold the ribs in place.

The FAA does not concur. Rib nails are required to transfer the load from the ribs to the spar. If the rib nails are loose or missing, damage to the wing spar could result from the ribs chafing

against the spar. For this reason, the FAA has determined the procedures for inspecting for and replacing loose or missing nails are justified.

No changes have been made to the proposed AD as a result of these comments.

Comment Issue No. 7: Properly Performed Annual Inspections Eliminate the Need for the Proposed AD

Several commenters object to the proposed AD because they feel that a properly performed annual inspection is adequate to detect spar damage. These commenters state that the maintenance manual specifies regular inspections of the wing spars for cracks.

The FAA concurs that the maintenance manual for the ACAC 7, 8, and 11 series airplanes specifies inspecting the wing spars for cracks during annual and 100-hour inspections, particularly at the butt and strut attach points. However, sufficient guidance is not given on accessing the spar or identifying compression failures. These compression failures appear as hardly visible, minute, and jagged series of lines that run across the grain on the top or bottom of the spar. If not viewed with detailed instruction and the right equipment, they may be overlooked. For these reasons, the FAA does not concur that the inspections specified in the maintenance manual are adequate to detect all wing spar cracks and compression failures.

No changes have been made to the proposed AD as a result of these comments.

Comment Issue No. 8: Compliance Extension for Airplanes With Wings That Have Been Rebuilt

Several commenters request an extension to the compliance time for those airplanes where the wing has been rebuilt. The commenters state that the wing spar was inspected during the rebuild.

The FAA does not concur. In order to adequately inspect the wing spars for cracks and compression failures, the detailed inspection procedures detailed in ACAC Service Letter 406, Revision A, dated May 6, 1998 (or procedures approved to be acceptable by the FAA), must be utilized to adequately perform the inspection. The FAA has determined that cracks and compression failures have been overlooked because these procedures were not followed.

No changes have been made to the proposed AD as a result of these comments.

Comment Issue No. 9: Reopen and Extend the Comment Period for the NPRM

Two commenters request that the FAA reopen the comment period and allow more time for the public to comment on the NPRM. These commenters cite the large public interest as the reason for this request.

The FAA will establish a new comment period. As discussed in this document, the FAA is withdrawing the NPRM (Docket No. 97-CE-79-AD) and will propose to supersede AD 98-05-04 with a new AD (will be initiated as an NPRM) that would affect all ACAC 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions. The FAA will utilize an NPRM with a 45-day comment period to propose this new AD to combine the actions.

Comment Issue No. 10: Eliminate, Minimize, or Provide Alternatives to Installing Inspection Covers

Numerous commenters express some opposition to the proposed requirement of installing inspection covers on the wings of the ACAC 7, 8, and 11 series airplanes. These comments include the following:

—Top wing inspection covers could leak, causing water damage to the spar and resulting in a reduction of wing structural integrity;
—Top wing inspection covers could come off during flight due to the negative pressure on the top surface, which could result in wing damage;
—Top wing inspection covers will cause aerodynamic and performance concerns; and
—The FAA should allow fabric patches in place of top wing inspection covers.

The FAA does not concur that water damage to the wing spar, resulting in wing structural integrity reduction, or aerodynamic and performance concerns, will occur when inspection covers are installed on the wings of the affected airplanes. To address the concern of water damage, ACAC added a water-tight seal to the wing inspection cover installation, which the FAA approved. As for aerodynamic and performance concerns, the top inspection covers were designed as low-profile covers and FAA flight test pilots have evaluated and approved them. Also, out of the over 200 sets of top inspection covers delivered to the field, the FAA has not received any reports of decreased performance.

The FAA does not concur that the top inspection covers would cause wing damage if they came off the airplane while in flight. The covers are designed not to damage the reinforced cutout if the eight screws that attach the covers were inadvertently left off or not tightened and the cover came off the airplane.

The FAA concurs with the request of allowing fabric patches in place of the top wing inspection covers, as an acceptable standard practice. ACAC Service Letter 417, Revision C, dated May 6, 1998, includes procedures for installing fabric patches.

As discussed in this document, the FAA is withdrawing the NPRM (Docket No. 97-CE-79-AD) and will propose to supersede AD 98-05-04 with a new AD (will be initiated as an NPRM) that would affect all 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions. One of these alternative methods will include the installation of these fabric patches.

Comment Issue No. 11: FAA Underestimated the Cost Impact of the Proposed AD

Numerous commenters believe that the cost of installing the inspection covers will be significantly greater than the FAA estimated in the NPRM.

The FAA does not concur and believes that the cost impact specified in the NPRM was indicative of the initial inspection and inspection cover installation costs associated with the proposed action. The cost reflected an 11-inspection hole installation on each wing (a total of 22). Utilizing the alternative inspection method referenced in ACAC Service Letter 406, Revision A, dated May 6, 1998, would reduce the number of inspection holes required and consequently would reduce the cost impact upon the public.

The FAA is incorporating this service information into a new AD (will be initiated as an NPRM) that would combine both the actions in the NPRM (Docket No. 97-CE-79-AD) and AD 98-05-04.

Comment Issue No. 12: Require Additional Training for Inspectors

Three commenters state that compression failures are extremely difficult to detect and are easily overlooked. For these reasons, the commenters believe that the inspectors should obtain additional training in the detection of compression failures on ACAC 7, 8, and 11 series airplanes.

The FAA concurs that the compression failures are difficult to detect and could be easily overlooked by inspectors who are untrained in this area. ACAC Service Letter 406, Revision A, dated May 6, 1998, contains a more

detailed description of compression failures than the original issue of this service letter, and also includes a recommendation that inspectors should have previous compression failure detection experience. The FAA has determined that this more detailed description, combined with the inspection procedures included in the service letter, should give the inspectors adequate information to detect compression failures in the wing spars of ACAC 7, 8, and 11 series airplanes.

The FAA is incorporating this service information into a new AD (will be initiated as an NPRM) that would combine both the actions in the NPRM (Docket No. 97–CE–79–AD) and AD 98–05–04.

Comment Issue No. 13: Delete the Proposed Requirement To Install Additional Bottom Inspection Covers

Several commenters state additional inspection covers over that which already exist may not be required for some aircraft. These commenters suggest that the FAA delete the specific proposed requirement in the NPRM of installing additional bottom inspection covers.

The FAA concurs. The inspection-authorized mechanic who is performing the inspection is in the best position to determine the number of bottom inspection covers needed to accomplish the intent of the AD. The selected inspection method and the location of previously installed inspection covers will determine the number and location of the additional inspection covers required to perform a thorough inspection. The service information referenced in the NPRM has been revised and clarifies that additional inspection covers need only be installed in order to accomplish a thorough spar inspection.

The FAA is incorporating this service information into a new AD (will be initiated as an NPRM) that would combine both the actions in the NPRM (Docket No. 97–CE–79–AD) and AD 98–05–04.

Comment Issue No. 14: The FAA Proposed This AD Only for the Manufacturer's Benefit

Numerous commenters object to the proposal and believe that the only reason the FAA issued an NPRM is because ACAC requested an AD to dodge a liability issue or make a profit.

The FAA does not concur. The FAA has an obligation to implement AD action when an unsafe condition is found in a product and that unsafe condition could develop in other products of the same type design. The service history of all the affected airplane models indicates that cracks and compression failures in the wing spars are unsafe conditions that need to be addressed through AD action.

No changes to the proposal have been made as a result of these comments.

Comment Issue No. 15: Prohibit Aerobatic Flight Instead of Requiring Repetitive Inspections

Five commenters state that spar damage is a direct result of aerobatic flight. Because of this, the commenters suggest that the FAA change the proposal to include a placard that specifies prohibiting aerobatic flight instead of the repetitive inspection requirement currently proposed.

The FAA does not concur. Not all of the affected airplanes are certificated for aerobatic flight. However, spar damage has been found on many of the affected airplane model designs, regardless of whether they have been certificated for aerobatic flight.

No changes to the proposal have been made as a result of these comments.

Comment Issue No. 16: Install a "G" Meter Instead of Requiring Repetitive Inspections

Three commenters state that installing a "G" meter in the airplane will help limit the peak accelerations. The commenters request that the FAA propose the "G" meter installation instead of repetitive inspections.

The FAA does not concur. While the FAA believes that installing a "G" meter may aid in limiting peak accelerations, this will not account for all wing loading conditions or detect existing spar damage before structural failure of the wing.

No changes to the proposal have been made as a result of these comments.

Comment Issue No. 17: Allow the Use of a Borescope as an Alternative Method of Compliance to the Proposed Inspections

Several commenters request that the FAA allow the use of a borescope as an alternative method of compliance to the inspections proposed in the NPRM.

The FAA concurs that a borescope, when available, is an acceptable alternative inspection method. Therefore, this inspection method is being incorporated into a new AD (will be initiated as an NPRM) that would combine both the actions in the NPRM (Docket No. 97–CE–79–AD) and AD 98–05–04. This inspection method is referenced in ACAC Service Letter 406, Revision A, dated May 6, 1998.

The FAA's Determination

After careful review of all available information related to the subject presented above, including the comments submitted to the NPRM (Docket No. 97-CE–79–AD), the FAA has determined that:

—The proposed rule should be withdrawn; and

—A new NPRM should be issued in a different action that would supersede AD 98–05–04 with a new AD (will be initiated as an NPRM) that would affect all 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing future rulemaking on this issue, nor does it commit the agency to any course of action in the future. Combining the proposed actions of this NPRM and AD 98–05–04 will be initiated in a different AD action.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 97–CE–79–AD, published in the **Federal Register** on November 3, 1997 (62 FR 59310), is withdrawn.

Issued in Kansas City, Missouri, on May 26, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14130 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–121–AD]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corporation 7, 8, and 11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–05–04, which currently requires repetitively inspecting the front and rear wood spars for damage, including installing any necessary inspection holes, on certain American Champion Aircraft Corporation (ACAC) Model 8GCBC airplanes; and repairing or replacing any damaged wood spar. Damage is defined as cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; or loose or missing nails. The proposed AD would retain the actions of AD 98–05–04; would extend these actions to ACAC 7, 8, and 11 series airplanes; and would incorporate alternative methods of accomplishing the actions. The proposed AD is the result of a review of the service history of the affected airplanes that incorporate wood wing spars. The review was prompted by in-flight wing structural failures on ACAC Model 8GCBC airplanes, and revealed several incidents where damage was found on the front and rear wood spars on the affected airplanes. The actions specified by the proposed AD are intended to prevent possible compression cracks and other damage in the wood spar wing, which, if not detected and corrected, could eventually result in in-flight structural failure of the wing with consequent loss of the airplane.

DATES: Comments must be received on or before July 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: "www.amerchampionaircraft.com". This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7697; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 98–05–04, Amendment 39–10365 (63 FR 10297, March 3, 1998), currently requires repetitively inspecting the front and rear wood spars for damage, including installing any necessary inspection holes; and repairing or replacing any damaged wood spar on certain ACAC Model 8GCBC airplanes. Damage is defined as cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; or loose or missing nails.

The FAA issued AD 98–05–04 as a result of a review of the service history of the affected airplanes that incorporate wood wing spars. The review was prompted by in-flight wing structural failures on ACAC Model 8GCBC airplanes, and revealed several incidents where damage was found on the front and rear wood spars on the affected airplanes.

In addition, the FAA issued a notice of proposed rulemaking (NPRM) (Docket No. 97–CE–79–AD) on October 27, 1997, that, if followed by a final rule, would have required the same actions as AD 98–05–04 on all ACAC 7, 8, and 11 series airplanes (excluding the Model 8GCBC airplanes). This NPRM was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 3, 1997 (62 FR 59310).

Numerous comments were received on the NPRM (Docket No. 97–CE–79–AD). Many of these comments proposed that the FAA combine the actions of the NPRM and AD 98–05–04 into one AD that would affect all ACAC 7, 8, and 11 series airplanes and incorporate recommended alternative methods for complying with the actions.

Relevant Service Information

ACAC Service Letter C–139, dated January 28, 1980, includes procedures for inspecting the wing rib/spar attachment and leading edge support block nails of the ACAC 7, 8, and 11 series airplanes.

In addition, ACAC has issued other service information, as follows:

—Service Letter 406, Revision A, dated May 6, 1998, which includes alternative methods of compliance to the actions required by AD 98–05–04 and proposed in Docket No. 97–CE–79–AD; and

—Service Letter 417, Revision C, dated May 6, 1998, which includes procedures for installing fabric patches instead of inspection hole covers.

The FAA's Determination

After examining all information related to the NPRM (Docket No. 97–CE–79–AD) and AD 98–05–04, the FAA has determined that:

—The NPRM (Docket No. 97–CE–79–AD) should be withdrawn;

—AD 98–05–04 should be superseded with a new AD that would combine the actions of that AD and Docket No. 97–CE–79–AD, and incorporate recommended alternative methods for complying with those actions; and

—AD action should be taken on all ACAC 7, 8, and 11 series airplanes to prevent possible compression cracks and other damage in the wood spar wing, which, if not detected and corrected, could eventually result in in-flight structural failure of the wing with consequent loss of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other ACAC 7, 8, and 11 series airplanes of the same type design, the FAA is proposing AD action to supersede AD 98–05–04. The proposed AD would retain the actions of AD 98–05–04; would extend these actions to all ACAC 7, 8, and 11 series airplanes; and would incorporate alternative methods of accomplishing the actions. The inspections specified by the proposed AD would be accomplished in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998.

The FAA is withdrawing the NPRM (Docket No. 97–CE–79–AD) in a separate action. A full disposition of the comments on the NPRM may be found in that document.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in calendar time and hours time-in-service (TIS). Although the unsafe condition specified in the proposed AD is a result of airplane operation, operators of the affected airplanes utilize their airplanes in different ways.

For example, an operator may utilize his/her airplane 50 hours TIS in a year while utilizing the aircraft in no or very little crop dusting operations, banner or glider tow operations, or rough field or float operations. This airplane would obviously have a lower crack propagation rate than an airplane operated 300 hours TIS a year in frequent crop dusting operations, banner or glider tow operations, or rough field or float operations. However, either airplane could have pre-existing and undetected wood spar damage that occurred during previous operations. In this situation, the damage to the wood spar would propagate at a rate that depends on the operational exposure of the airplane and severity of the initial wood spar damage.

The FAA is proposing repetitive inspection compliance times that would coincide with the owner's/operator's annual inspection program. This should have the least impact upon operators because the costs of having the airplane out of service can be absorbed with regularly scheduled down-time.

To assure that compression cracks do not go undetected in the wood spars of the affected airplanes, the FAA has determined that the following compliance times should be used:

1. The proposed initial inspection at the first annual inspection that occurs 30 calendar days or more after the effective date of the AD or within 13 calendar months after the effective date of the AD, whichever occurs first; and

2. The proposed repetitive inspections thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first.

Cost Impact

Though the proposed AD would not require installing additional inspection holes/covers, the following cost analysis is based on the presumption that 11 additional inspection holes/covers per wing would be required to complete a thorough inspection in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998. These inspection holes/covers may not be required, which would reduce the proposed cost impact upon U.S. operators of the affected airplanes.

The FAA estimates that 6,701 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours (Installations: 5 workhours; Initial Inspection: 1 workhour) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $292 per airplane, provided that each airplane would only need 11 additional standard inspection hole covers per wing bottom surface (total of 22 new covers per airplane). If the airplane would require the installation of more inspection covers (i.e., a result of previous non-factory wing recover work), the cost could be slightly higher.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,369,052, or $652 per airplane.

These cost figures are based on the presumption that no affected Model 8GCBC airplane owner/operator has accomplished the installations or the initial inspection as currently required by AD 98–05–04, and do not account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur over the life of his/her airplane. However, each proposed repetitive inspection would cost substantially less than the initial inspection because the cost of the initial proposed inspection hole and cover installations would not be repetitive. The inspection covers allow easy access for the inspection of the wood spars, and the proposed compliance time would enable the owners/operators of the affected airplanes to accomplish the repetitive inspections at regularly scheduled annual inspections.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–05–04, Amendment 39–10365 (63 FR 10297, March 3, 1998), and by adding a new AD to read as follows:

American Champion Aircraft Company:
Docket No. 98–CE–121–AD; Supersedes AD 98–05–04, Amendment 39–10365.

Applicability: The following airplane models, all serial numbers, certificated in any category, that are equipped with wood wing spars:

7AC
7BCM (L–16A)
7DC
S7EC
7GC

7GCB
7HC
7KCAB
11AC
S11BC
7ACA
7CCM (L–16B)
S7DC
7ECA
7GCA
7GCBA
7JC
8GCBC
S11AC
11CC
S7AC
S7CCM
7EC
7FC
7GCAA
7GCBC
7KC
8KCAB
11BC
S11CC

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, repaired, or reconfigured in the area subject to the requirements of this AD. For airplanes that have been modified, altered, repaired, or reconfigured so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent possible compression cracks and other damage in the wood spar wing, which, if not detected and corrected, could eventually result in in-flight structural failure of the wing with consequent loss of the airplane, accomplish the following:

(a) *Initial Inspection With Possible Repair or Replacement:* Inspect and repair or replace the wood wing spars, as follows:

(1) At the first annual inspection that occurs 30 calendar days or more after the effective date of this AD or within the next 13 calendar months after the effective date of this AD, whichever occurs first, inspect (detailed visual) both the front and rear wood wing spars for cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; and loose or missing rib nails (referred to as damage hereafter). Accomplish these inspections in accordance with American Champion Aircraft Corporation (ACAC), Service Letter 406, Revision A, dated May 6, 1998. This service bulletin specifies using a high intensity flexible light (for example a "Bend-A-Light"). A regular flashlight and mirrors may not be used for this inspection.

(2) If any spar damage is found, prior to further flight, repair or replace the wood wing spar in accordance with Advisory Circular (AC) 43.13–1B, Acceptable Methods, Techniques and Practices; or other data that is approved by the FAA for wing spar repair or replacement.

(b) *Repetitive Inspections:* Accomplish the inspection, repair, replacement, and installation required by paragraphs (a)(1) and (a)(2) of this AD within 12 calendar months or 500 hours TIS (whichever occurs first) after these initial actions, and thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first.

(c) *Additional Inspection Requirements After Accident/Incident:* If, after the effective date of this AD, any of the affected airplanes are involved in an incident/accident that involves wing damage (e.g., surface deformations such as abrasions, gouges, scratches, or dents, etc.), prior to further flight after that incident/accident, accomplish the inspection and repair or replacement required by paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(d) *Reporting Requirements:* Within 30 days after any wing damage is found per the requirements of this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, which describes the damage; and send a copy of this report to the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon Avenue, Des Plaines, Illinois 60018; facsimile: (847) 294–7834. Include the airplane model and serial number, the extent of the damage (location and type), and the number of total hours TIS on the damaged wing. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(e) *Alternatives to the AD:* ACAC Service Letter 406, Revision A, and ACAC Service Letter 417, Revision C, both dated May 6, 1998, specify additional inspection and installation alternatives over that included in the original issue of these service letters. All inspection and installation alternatives presented in these service letters are acceptable for accomplishing the applicable actions of this AD.

(f) *Special Flight Permits:* Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) *Alternative Methods of Compliance:* An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago ACO, 2300 E. Devon Avenue, Des Plaines, Illinois 60018.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–05–04 are considered approved for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(h) *Availability of Service Information:* All persons affected by this directive may obtain copies of the documents referred to herein upon request to the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: "www.amerchampionaircraft.com"; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) *Other AD's Affected:* This amendment supersedes AD 98–05–04, Amendment 39–10365.

Issued in Kansas City, Missouri, on May 26, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14131 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PARTS 4 AND 159

RIN 1515–AC30

Foreign Repairs to American Vessels

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document provides an additional 30 days for interested members of the public to submit comments on proposed amendments to the Customs Regulations concerning foreign repairs to American vessels. The proposed amendments would revise the regulations regarding the declaration, entry, assessment of duty and processing of petitions for relief from duty for vessels of the United States that undergo foreign shipyard operations. The proposed amendments to the vessel repair regulations are intended to accurately reflect current statutory law, as well as legal and policy determinations made as a result of judicial decisions and administrative enforcement experience.

DATES: Comments must be received on or before July 21, 1999.

ADDRESSES: Comments may be addressed to the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington D.C. 20229. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19

CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days at the above address.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Office of Regulations and Rulings, 202–927–1287.

SUPPLEMENTARY INFORMATION:

Background

Customs published a document in the **Federal Register** (64 FR 19508) on April 21, 1999, inviting the public to comment on proposed amendments to its regulations concerning foreign repairs to American vessels. Specifically, the proposed amendments would revise the Customs Regulations regarding the declaration, entry, assessment of duty and processing of petitions for relief from duty for vessels of the United States that undergo foreign shipyard operations. The proposed amendments to the vessel repair regulations are intended to accurately reflect current statutory law, as well as legal and policy determinations made as a result of judicial decisions and administrative enforcement experience.

Comments on the proposed rule were due on or before June 21, 1999. However, a request has been made on behalf of a large shipping concern to extend the period of time for comments on the proposed rule for an additional 30 days (until July 21, 1999). The additional time is requested so that a thorough and meaningful comment may be prepared, in light of the fact that the proposal involves a major revision of the vessel repair regulations.

Customs has concluded under the circumstances that this request has merit. Accordingly, the period of time for the submission of public comments on the proposed rule is being extended as requested.

Dated: June 1, 1999.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 99–14167 Filed 6–3–99; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–40–2–9909b; FRL–6352–4]

Approval and Promulgation of Implementation Plans; Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Alabama through the Alabama Department of Environmental Management (ADEM) on November 13, 1992. This revision consists of the 1990 base year ozone emission inventory for the Birmingham marginal ozone nonattainment area.

In the final rules section of this **Federal Register**, the EPA is approving Alabama's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 6, 1999.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file AL–40–2–9909. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: March 30, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–13945 Filed 6–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–79–9918b; FRL–6352–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d) Plan submitted by the Florida Department of Environmental Protection (DEP) for the State of Florida on October 28, 1998, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Solid Waste Landfills. The Plan was submitted by the Florida DEP to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of this **Federal Register**, EPA is approving the Florida State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated herein. If no significant, material, and adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by July 6, 1999.

ADDRESSES: Written comments should be addressed to Joey Levasseur at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office

at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey Levasseur at (404) 562–9035 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register** and incorporated herein.

Dated: April 21, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–13943 Filed 6–3–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–190, RM–9631]

Radio Broadcasting Services; Colony, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Suelou, Inc., seeking the allotment of Channel 286A to Colony, OK, as its first local aural service. Channel 286A can be allotted to Colony in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) northwest, at coordinates 35–22–15 NL; 98–41–23 WL, to avoid a short-spacing to Station KBLP, Channel 286A, Lindsay, OK. Petitioner is requested to provide further information to demonstrate that Colony is a "community" for allotment purposes.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey D. Southmayd, Southmayd & Miller, 1220 19th Street, NW, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–190, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14104 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–191, RM–9632]

Radio Broadcasting Services; Tularosa, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 274C3 to Tularosa, NM, as the community's first local aural service. Channel 274C3 can be allotted to Tularosa in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 33–04–30 NL; 106–01–06 WL. Mexican concurrence in the allotment is required since Tularosa is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–191, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14105 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–192, RM–9633]

Radio Broadcasting Services; Ravenna, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting seeking the allotment of Channel 276C2 to Ravenna, NE, as the community's first local aural service. Channel 276C2 can be allotted to Ravenna in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–01–36 NL; 98–54–48 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–192, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14106 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–193; RM–9561]

Radio Broadcasting Services; Moville, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 246A at Moville, Iowa, as the community's first local aural transmission service. Channel 246A can be allotted to Moville in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) east to avoid a short-spacing to the licensed site of Station KMXC(FM), Channel 247C1, Sioux Falls, Iowa. The coordinates for Channel 246A at Moville are 42–29–11 North Latitude and 96–00–36 West Longitude.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr. President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–193, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14107 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–194; RM–9562]

Radio Broadcasting Services; Rockford, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 225A at Rockford, Iowa, as the community's first local aural transmission service. Channel 225A can be allotted to Rockford in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) southwest to avoid short-spacings to the licensed sites of Station KATF(FM), Channel 225C1, Dubuque, Iowa, and Station KFSI(FM), Channel 225A, Rochester, Minnesota. The coordinates for Channel 225A at Rockford are 43–01–55 North Latitude and 92–57–53 West Longitude.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr. President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–194, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14108 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–195; RM–9563]

Radio Broadcasting Services; Wheatland, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 293C1 at Wheatland, Wyoming, as the community's second local FM transmission service. Channel 293C1 can be allotted to Wheatland in compliance with the Commission's minimum distance separation requirements with a site restriction 41 kilometers (25.5 miles) north to avoid a short-spacing to the allotment site for Channel 292C3, Cheyenne, Wyoming. The coordinates for Channel 293C1 at Wheatland are 42–25–32 North Latitude and 104–57–21 West Longitude.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr. President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–195, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–257), 445 12th Street, SW.,Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14109 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–196; RM–9619]

Radio Broadcasting Services; Bethel Springs, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sherry A. Brown proposing the allotment of Channel 249A at Bethel Springs, Tennessee, as the community's first local aural transmission service. Channel 249A can be allotted to Bethel Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.9 kilometers (3.6 miles) north to avoid short-spacings to the licensed sites of Station WWMS(FM), Channel 248C1, Oxford, Mississippi, and Station WKGL(FM), Channel 249A at Russellville, Alabama. The coordinates for Channel 249A at Bethel Springs are 35–17–02 North Latitude and 88–37–36 West Longitude

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Jimmy D. Brown, 3668 Kimball Avenue, Memphis, Tennessee 38111 (Consultant for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–196, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, S.W, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service,

Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14110 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–190 RM–9317]

Radio Broadcasting Services; Cross City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a proposal filed by Tony Downes requesting the allotment of Channel 249A at Cross City, Florida, as the community's second FM broadcast service. *See* 63 FR 59928, November 6, 1998. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. Since there has been no interest expressed for the allotment of a channel at Cross City, the *Report and Order* dismisses the proposal.

DATES: The proposal is dismissed as of June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–190, adopted May 12, 1999, and released May 21,1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14111 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–197, RM–9573]

Digital Television Broadcast Service; Salt Lake City, Ogden and Provo, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by eight television stations in the Utah market that include: Brigham Young University, licensee of NCE station KBYU–TV, Provo; Larry H. Miller Communications Corporation, licensee of station KJZZ–TV, Salt Lake City; Bonneville Holding Company, licensee of station KSL–TV, Salt Lake City; United Television, Inc., licensee of station KTVX, Salt Lake City; University of Utah, licensee of NCE stations KUED, Salt Lake City and KULC, Ogden; KUTV Associates, licensee of station KUTV, Salt Lake City; and ACME Television Licenses of Utah, LLC, proposed licensee of station KUWB, Ogden. *See* supplementary information, *infra.*

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jonathan D. Blake and Jennifer A. Johnson, Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, DC 20044–7566 (Counsel)

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: Channels *36, *44, 46 and 48 can be substituted and allotted to Ogden, Provo, Salt Lake City, and Ogden, Utah, as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates (40–39–33 N and 112–12–07 W). In addition, we find that these channel changes are acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623.

State and city	DTV channel	DTV power (kW)	Antenna HAAT (m)	DTV service pop. (thous.)
UT Provo	*44	403.0	1257	1389
UT Ogden	*36	304.0	1257	1393
UT Ogden	48	200.0	1257	1374
UT Salt Lake City	46	200.0	1267	1384

This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–197, adopted May 19, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–14103 Filed 6–3–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 808, 812, 813, 852 and 853

RIN 2900–AJ16

VA Acquisition Regulation: Simplified Acquisition Procedures

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs Acquisition Regulation (VAAR) concerning simplified acquisition procedures. It proposes to amend VAAR provisions to conform to the Federal Acquisition Regulation, to update references and section titles, and to remove obsolete material.

DATES: Comments must be received on or before August 3, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AJ16." All written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, telephone number (202) 273–8819.

SUPPLEMENTARY INFORMATION: Part 13 of the Federal Acquisition Regulation (FAR) was recently reorganized. This document proposes to amend part 813 of the Department of Veterans Affairs Acquisition Regulation (VAAR) to correspond to the newly reorganized FAR. Part, subpart, and section titles and/or numbers are proposed to be revised as necessary to correspond to FAR changes.

This document proposes to add, at appropriate locations in the VAAR, references to Office of Management and Budget approved forms used by VA in its Integrated Funds Distribution, Control Point Activity, Accounting, and Procurement (IFCAP) system, a computerized purchasing and accounting system. In addition, it is proposed to delete an obsolete reference to VAAR section 801.670–15 that previously was removed from the VAAR.

It is proposed to redesignate 813.507 as 813.302–5 to correspond to the FAR and to revise the advice to contracting officers provided therein. Currently, the VAAR advises contracting officers to attach a copy of the clause found at 852.237–70, Contractor responsibilities, to a purchase order for services performed on Government property. It is proposed to revise this section to advise contracting officers to incorporate the referenced clause in the purchase order rather than to just attach a copy of the clause to the order. This change is necessary to ensure that the purchase order clearly shows that the clause is part of the order.

It is proposed to delete sections 808.404–1 and 808.404–3. These sections address various requirements regarding the mandatory use of FSS contracts. FSS contracts no longer provide for mandatory use, making these sections obsolete.

It is proposed to amend part 812 by adding the provision at section 852.252–1, Provisions and clauses requiring completion by the offeror or prospective contractor, to the list of provisions and clauses at section 812.301(c) for use in commercial item solicitations. The provision is set forth in full in section 852.252–1 of this proposed rule. This is necessary to inform bidders and offerors on commercial item solicitations of FAR requirements.

Instead of including the full text of provisions and clauses, the FAR at 52.102(c) allows agencies to incorporate agency approved provisions and clauses by reference, provided the contracting officer: (1) identifies all provisions and clauses that require completion by the offeror or prospective contractor; (2) specifies that the provisions and clauses must be completed by the offeror or prospective contractor and must be submitted with the quotation or offer; and (3) identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed. This rule proposes to add section 852.102, paragraph (a), and section 852.252–1, Provisions or clauses requiring completion by the offeror or prospective contractor, to allow VA to meet the requirements of FAR 52.102(c)(1) and (c)(2) for incorporating approved provisions and clauses by reference.

Some FAR and VAAR provisions and clauses require the contracting officer to fill in needed information. If these provisions or clauses are incorporated by reference, that information would be missing from the solicitation or contract. This rule proposes to add paragraph 852.102(b) to require contracting officers to include in full text the title and the paragraph of any provision or clause that requires the contracting officer to provide information. The balance of the provision or clause may be included by reference. This will ensure that the information required by these provisions or clauses will be included in solicitations or contracts.

The FAR at 52.102(c) and 52.102(c)(3) allows agencies to incorporate agency approved provisions and clauses by reference, provided the contracting officer identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed. The FAR, at 52.252–1 and 52.252–2, provides a "fill in the blank" provision and clause, respectively, for use by contracting officers in meeting this requirement, but the FAR does not provide an electronic address where the full texts of referenced provisions and clauses may be accessed. This rule proposes to add paragraphs (c), (d), (e), and (f) of section 852.102 to ensure compliance with FAR 52.102(c) and 52.102(c)(3). Paragraphs (c) and (d) advise contracting officers to include the applicable FAR provision or clause in solicitations and contracts when 48 CFR Chapter 8 (VAAR) provisions or clauses are incorporated by reference. In addition, paragraphs (e) and (f) provide the electronic addresses where full texts of both FAR and VAAR referenced provisions and clauses may be accessed. These proposed changes are necessary to comply with FAR 52.102(c) and 52.102(c)(3).

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule would revise the VAAR to correspond to the FAR and would have a minuscule effect, if any, on small businesses.

Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects

48 CFR Part 808

Government procurement, Utilities.

48 CFR Parts 812, 813 and 853

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Approved: May 21, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is proposed to be amended as follows:

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for part 808 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

808.404–1 [Removed]

2. Section 808.404–1 is removed.

808.404–3 [Removed]

3. Section 808.404–3 is removed.

PART 812—ACQUISITION OF COMMERCIAL ITEMS

4. The authority citation for part 812 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

* * * * *

5. In section 812.301, paragraphs (c)(13), (c)(14), and (c)(15) are redesignated as paragraphs (c)(14), (c)(15), and (c)(16), respectively; newly designated paragraph (c)(16) is revised and a new paragraph (c)(13) is added to read as follows:

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(c) * * *

(13) 852.252–1, Provisions or clauses requiring completion by the offeror or prospective contractor.

* * * * *

(16) 852.270–3, Purchase of shellfish.

* * * * *

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

6. The part heading for part 813 is revised to read as set forth above.

7. The authority citation for part 813 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

7a. Subpart 813.1 is added to read as follows:

Subpart 813.1—Procedures

Subpart 813.5—[Redesignated as Subpart 813.3]

8. Subpart 813.5 is redesignated as subpart 813.3; and the subpart heading is revised to read as follows:

Subpart 813.3—Simplified Acquisition Methods

9. Section 813.302 and heading are added to read as follows:

813.302 Purchase orders.

§ 813.505–2 [Redesignated as 813.307]

10. Section 813.505–2 is redesignated as 813.307 and is transferred to subpart 813.3; the section heading and paragraphs (a) and (e) are revised to read as follows:

813.307 Forms.

(a) VA Form 90–2138, Order for Supplies or Services, VA Form 90–2139, Order for Supplies or Services (Continuation), VA Form 90–2138–ADP, Purchase Order for Supplies or Services, and VA Form 2139–ADP, Order for Supplies and Services (Continuation), provide in one set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of and in the same manner as Optional Form 347, Order for Supplies or Services, Optional Form 348, Order for Supplies or Services Schedule—Continuation, and Standard Form 1449, Solicitation/Contract/Order for Commercial Items.

* * * * *

(e) VA Form 10–2421, Prosthetics Authorization and Invoice, will be used for indicated services not in excess of $300.

813.506–70 [Redesignated as 813.106–70]

11. Section 813.506–70 is redesignated as 813.106–70 and is transferred to the beginning of subpart 813.1; and is amended by removing "13.106c" and adding, in its place, "13.106–3".

§ 813.507 [Redesignated as 813.302–5]

12. Section 813.507 is redesignated as 813.302–5 and is transferred to subpart 813.3 following section 813.302; and is revised to read as follows:

813.302–5 Clauses.

When using VA Forms 90–2138 or 90–2138–ADP for maintenance contracts involving services performed on Government property which have the potential for property damage and liability claims, the contracting officer shall incorporate in the purchase order the Contractor's Responsibilities clause found at 852.237–70. Applicable maintenance contracts include but are not limited to window washing, pest control and elevator maintenance.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

14. Section 852.102 is added to read as follows:

§ 852.102 Incorporating provisions and clauses by reference.

(a) As authorized by FAR 52.102(c), any 48 CFR Chapter 8 (VAAR) provision and clause may be included in a solicitation or contract by reference, provided the contracting officer complies with the requirements stated in FAR 52.102(c)(1), (c)(2), and (c)(3). To ensure compliance with FAR 52.102(c)(1) and (c)(2), contracting officers shall include the provision at 852.252–1, Provisions or clauses requiring completion by the offeror or prospective contractor, in full text in a quotation, solicitation, or contract whenever a FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer is included by reference.

(b) For any FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the contracting officer, the contracting officer shall, as a minimum, include the title of the provision or clause and the paragraph that requires completion in full text in the solicitation and contract. The balance of the provision or clause may be included by reference.

(c) When one or more FAR or 48 CFR Chapter 8 (VAAR) provisions, or portions thereof, are included in a solicitation by reference, the solicitation shall include the provision found at FAR 52.252–1, Solicitation Provisions Incorporated by Reference.

(d) When one or more FAR or 48 CFR Chapter 8 (VAAR) clauses, or portions thereof, are included in a contract by reference, the contract shall include the clause found at FAR 52.252–2, Clauses Incorporated by Reference.

(e) When one or more FAR provisions or clauses, or portions thereof, are incorporated in a solicitation or contract

by reference, the FAR provision or clause required by paragraph (c) or (d) of this section shall include the following Internet address:
http://www.arnet.gov/far/

(f) When one or more 48 CFR Chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a solicitation or contract by reference, the FAR provision or clause required by paragraph (c) or (d) of this section shall include the following Internet address:
http://www.va.gov/oa&mm/vaar/

15. Section 852.252–1 is added to read as follows:

852.252–1 Provisions or clauses requiring completion by the offeror or prospective contractor.

As prescribed by 852.102(a), the following provision shall be included in full text in all quotations, solicitations, or contracts that incorporate by reference any FAR or 48 CFR Chapter 8 (VAAR) provision or clause that requires completion by the offeror or prospective contractor and submittal with the quotation or offer.

Provisions or Clauses That Require Completion by the Offeror or Prospective Contractor (Date)

The following provisions or clauses incorporated by reference in this solicitation must be completed by the offeror or prospective contractor and submitted with the quotation or offer. Copies of these provisions or clauses are available on the Internet at the web sites provided in provision 52.252–1 or clause 52.252–2. Copies may also be obtained from the contracting officer.

[*Contracting officer shall list all FAR and 48 CFR Chapter 8 (VAAR) provisions and clauses incorporated by reference that must be completed by the offeror or prospective contractor and submitted with the quotation or offer*]

(End of provision)

PART 853—FORMS

16. The authority citation for part 853 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

Subpart 853.2—Prescription of Forms

17. Section 853.213 is revised to read as follows:

853.213 Simplified acquisition procedures.

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, orders from required sources of supplies and services, and orders for other supplies or services as stated in this section:

(a) VA Forms 90–2138, Order for Supplies or Services, or 90–2138–ADP, Purchase Order for Supplies or Services, shall be used as indicated in 813.307. They will be used in lieu of but similar to OF 347, Order of Supplies and Services, or SF 1449, Solicitation/Contract/Order for Commercial Items.

(b) The following forms are for use for obtaining indicated medical and dental services within the limitations prescribed in 813.307:

(1) VA Form 10–7078, Authorization and Invoice for Medical and Hospital Services.

(2) VA Form 10–7079, Request for Outpatient Medical Services.

(3) VA Form 10–2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) VA Form 10–2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as prescribed in 813.307.

(d) VA Form 10–2421, Prosthetics Authorization and Invoice, will be used for indicated procurements not to exceed $300 as prescribed in 813.307.

[FR Doc. 99–13886 Filed 6–3–99; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Reopening of Comment Period on 90-day Finding and Commencement of Status Review for a Petition To List the Black-tailed Prairie Dog as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening comment period on 90-day petition finding.

SUMMARY: The Fish and Wildlife Service provides notice of the reopening of the comment period on the 90-day finding for a petition to list the black-tailed prairie dog (*Cynomys ludovicianus)* as a threatened species under the Endangered Species Act of 1973. As amended. The initial comment period opened on March 15, 1999 (64 FR 14424), and closed on May 24, 1999. To accommodate several requests for extensions, we are reopening the comment period for an additional 45 days.

DATES: To be considered in the 12-month finding for this petition, written comments and materials should be received on or before July 19, 1999.

ADDRESSES: Information, data, or comments concerning this petition should be submitted to the Field Supervisor., South Dakota Ecological Services Field Office, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Pierre, South Dakota 57501. The petition, finding, support data, and comments are available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Pete Gober, at the above address, or telephone (605) 224–8693.

SUPPLEMENTARY INFORMATION:

Background

The black-tailed prairie dog is a colonial ground squirrel and one of five species in the genus *Cynomys*, all of which occur in western North America. the black-tailed prairie dog (*C. ludovicianus)*, is found in Montana, Wyoming, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, northern Texas, and Canada.

On July 31, 1998, we received a petition to list the black-tailed prairie dog as a threatened species throughout its range pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). On March 25, 1999 (64 FR 14424), we published a 90-day notice on this petition, finding that it presented substantial information indicating that listing this species may be warranted, and initiating a status review of the species.

Public Comments Solicited

We are soliciting information primarily on (1) population status and trends, (2) management policies and conservation plans affecting black-tailed prairie dogs, and (3) threats to the species, including those identified in the petition. The original comment period for this action expired May 24, 1999. With this notice, we reopen the comment period for an additional 45 days.

Author: The author of this notice is Pete Gober (see **ADDRESSES** section).

Authority: Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.)*.

Dated: May 27, 1999.

Terry Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–14163 Filed 6–3–99; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 990528152-9152-01; I.D. 051199A]

RIN 0648–AM27

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Fishery; Regulatory Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic highly migratory species (HMS) fisheries to prohibit fishing vessel operators from using spotter aircraft to assist in the location and capture of Atlantic bluefin tuna (BFT) for all vessels other than Purse Seine category vessels. The proposed regulatory amendments are necessary to achieve domestic management objectives for HMS fisheries. NMFS has received extensive comment on this issue during the comment period for the rule to implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and during previous related comment periods. However, NMFS will hold two public hearings to receive additional comments from fishery participants and other members of the public regarding these proposed amendments.

DATES: Comments are invited and must be received on or before June 22, 1999. The public hearings dates are:

1. Monday, June 14, 1999, 2–5 p.m. in Silver Spring, MD.

2. Tuesday, June 15, 1999, 7–10 p.m. in Gloucester, MA.

ADDRESSES: Comments on the proposed rule should be sent to, Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Copies of supporting documents, including a Draft Environmental Assessment (EA), which includes a Draft Regulatory Impact Review and an Initial Regulatory Flexibility Analysis (IRFA), are available from Brad McHale, Highly Migratory Species Management Division, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

The public hearing locations are:

1. Silver Spring (Monday June 14, 1999), NMFS, 1315 East-West Highway, Room 4527, Silver Spring, MD 20910.

2. Gloucester, MA (Tuesday June 15, 1999), Milton Fuller School, 4 School House Road, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is carried out by the HMS Management Division.

NMFS proposes this action under the framework provisions described in the HMS FMP. NMFS believes that the prohibition on the use of spotter aircraft assistance by fishing vessel operators (other than those in the Purse Seine category) in the location and capture of Atlantic BFT is a necessary regulatory action in order to meet the goals and objectives of the FMP.

After reviewing public comments and additional information or data that may be available, NMFS will, if appropriate, make final determinations regarding the consistency of this proposed measure with the objectives of the FMP, the national standards of the Magnuson-Stevens Act, and other applicable law. Within 30 days of the close of the public comment period, NMFS will take final action.

Background

Background information on the use of spotter aircraft in the BFT fishery was provided in the HMS FMP, released in April 1999, and is provided in greater detail in the Draft EA.

Relation to Previous Rulemaking

NMFS has, on four prior occasions (in 1988, 1989, 1996, and 1997), requested specific comments on the impacts of spotter aircraft use in the BFT fishery. NMFS has proposed prohibiting the use of spotter aircraft by all but Purse Seine category vessels twice, and, in 1997, published a final rule to prohibit the use of spotter aircraft by all but Purse Seine and Harpoon category vessels. Prior to 1997, NMFS did not take final action due to concerns about the enforceability of spotter aircraft regulations. Additionally, in 1996, the majority of active tuna spotters signed a voluntary agreement limiting their activity to assisting vessels using harpoon gear. NMFS recognized that the voluntary agreement warranted a trial period, but also indicated that the agency would continue to monitor the situation and would take appropriate action if necessary. Public comment indicated that some rod-and-reel vessels in the General category were using spotter aircraft contrary to the terms of the agreement.

On March 4, 1997 (62 FR 9726), NMFS proposed to prohibit the use of spotter aircraft except in the Purse Seine category fishery. NMFS indicated that it had considered combining the Harpoon and General categories as a means of resolving catch rate and safety issues (since a daily catch limit of one BFT per vessel for all handgear fishermen would decrease the incentive for spotter aircraft use), but was concerned that the harpoon fishery, as it had traditionally existed, might not be able to continue under such restriction. NMFS requested comment on suggestions from constituents that self-policing would assist with enforcement of a spotter aircraft prohibition, and on alternative measures to address the fishery management and safety issues raised by use of spotter aircraft in the BFT fishery. In response, NMFS received nearly 2,000 comments on the proposed prohibition on the use of spotter aircraft. On July 18, 1997 (62 FR 38487), NMFS published a final rule prohibiting the use of spotter aircraft to assist vessels in all but the Purse Seine and Harpoon categories.

In response to a lawsuit filed by the Atlantic Fish Spotters Association, the United States District Court for Massachusetts, on June 10, 1998, overturned the prohibition on the use of spotter aircraft in assisting BFT vessels in other than the Harpoon and Purse Seine categories, as codified in 50 CFR 285.31(a)(40); the prohibition is now void. NMFS decided not to appeal the Court's decision, but rather, to gather more facts and relevant data in order to reach a satisfactory resolution.

At the August 1998 meeting of the HMS Advisory Panel (AP) in Warwick, Rhode Island, apart from three abstentions, all members of the AP requested and advised that NMFS prohibit the use of spotter aircraft in the BFT fishery. In the draft HMS FMP published in October 1998, NMFS once again presented alternatives on

regulating the use of spotter aircraft in the BFT fishery. NMFS did not propose any changes at that time, pending further deliberation and analysis, but the agency did indicate that it would address the issue in a separate rulemaking before the start of the 1999 General and Harpoon category seasons (June 1, 1999).

In April 1999, NMFS adopted the final HMS FMP. This FMP establishes a rebuilding program for west Atlantic BFT and brings the management of Atlantic tuna under the dual authority of the Magnuson-Stevens Act and ATCA. The Magnuson-Stevens Act and the FMP bring new considerations to regulating the use of spotter aircraft. In the time since the prohibition on the use of spotter aircraft in assisting BFT vessels in other than the Harpoon and Purse Seine categories was overturned (July 1998), NMFS has obtained further information, conducted additional analyses, and contracted for an independent study regarding the use of spotter aircraft in the BFT fishery.

NMFS remains concerned that the use of spotter aircraft to locate BFT accelerates the catch rates and closures in the General and Harpoon categories. This undermines NMFS' regulations designed to control effort in the General category, alters the distribution of optimum yield, and impedes the collection of important scientific information in the fishery. In addition, the use of spotter aircraft is inconsistent with the reasoning behind the initial establishment of the Harpoon category (in which multiple daily landings are allowed) and the Harpoon category quota in 1980, i.e., dependency on optimal weather and sea conditions, negatively impacts traditional fisheries and has adverse impacts on communities. The issue of spotter aircraft use in the BFT fishery is a source of great conflict in the fishery. Conflicts in the fishery are exacerbated by the fact that the BFT fishery is a derby fishery (with the exception of the Purse Seine category), in which vessels are concentrated on the fishing grounds over short periods of time. Some commenters have indicated that potential for accidents at sea is increased by the use, whether direct or indirect, of spotter aircraft as vessels may congregate under the aircraft. NMFS has received extensive comment from the public and guidance from the HMS AP urging NMFS to prohibit the use of spotter aircraft by all vessels in the BFT fishery other than those in the Purse Seine category.

After a review of all the information on record regarding this issue, NMFS has determined that the status quo is unacceptable and that the proposed action would best address the management concerns regarding spotter aircraft use in the BFT fishery, while ensuring that the objectives of the FMP are met, consistent with the Magnuson-Stevens Act and that Act's national standards.

Spotter Aircraft

This proposed rule would prohibit the use of spotter aircraft to assist fishing vessels in the location and capture of BFT, with the exception of Purse Seine category vessels.

Permit Category Deadline Change

Within 1 week, NMFS will announce, in the **Federal Register**, the deadline to change Atlantic tuna permit categories for calendar year 1999. Previously, NMFS suspended this deadline to allow vessel owners to weigh the impacts of various rulemakings on each permit category (64 FR 27207, May 19, 1999).

Public Hearings and Special Accommodations

The public hearing sites are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Murray-Brown (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol in the hearing room is prohibited, attendees will be called to give their comments in the order in which they registered to speak, each attendee will have an equal amount of time to speak, and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public are able to comment, if they so choose, regardless of the controversiality of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the hearing.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* Preliminarily, the AA has determined that the regulations contained in this proposed rule are consistent with the FMP, the Magnuson-Stevens Act, and the 1998 ICCAT recommendation (ICCAT Rebuilding Program).

NMFS has prepared a draft EA for this proposed rule and has concluded that, depending on the universe of potentially impacted small business entities involved in the BFT fishery chosen for analysis, this action may or may not result in a significant impact on small entities in the fishery as a whole. Therefore, NMFS has prepared an IRFA to accompany the proposed rule. The reasons this action is being considered and the objectives of, and legal basis for, the proposed rule are as stated in the preamble above. The IRFA indicates that if the proposed regulations are implemented, there may be a negative impact on a significant number of small business entities, including fishing vessels and spotter aircraft, involved in the BFT fishery. NMFS estimates that less than 70 small entities, including fishing vessels and spotter aircraft, would be significantly affected by the proposed rule. This is less than 1 percent of the small entities participating in the bluefin tuna fishery in terms of the total number of spotter aircraft/pilots and commercially-permitted vessels. The impact is significant for a greater percentage of small entities in the fishery if one considers only those vessels which land fish as those which are potentially affected. In addition, these regulations may also impact related parties and communities such as marinas, gear suppliers, and aviation-related businesses. There are no relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. There are no proposed reporting, recordkeeping or compliance requirements in the proposed rule. Although the preferred alternative may have a significant impact on small business entities, NMFS believes that these impacts are unavoidable if the management concerns regarding spotter aircraft are to be addressed. NMFS considered several alternatives to the preferred alternative, including: No action, prohibition of the use of spotter aircraft for vessels in the General category only, and requiring registration and reporting for fishing vessels or spotter aircraft. NMFS has preliminarily determined that none of these alternatives meet the objectives of, and basis for, this proposed action.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS initiated formal consultation on the HMS and billfish fisheries on May 12, 1998. The consultation request concerned the possible effects of management measures in the HMS FMP

and Billfish Amendment. On April 23, 1999, NMFS issued a Biological Opinion (BO) under section 7 of the Endangered Species Act. The BO applies to the Atlantic pelagic fisheries for tunas, sharks, swordfish, and billfish.

The harpoon/handline/rod-and-reel gear fisheries are listed as category III fisheries under the Marine Mammal Authorization Program due to their remote likelihood of interaction with marine mammals. Although a few reports of entanglement in handline and harpoon gear exist, these were likely non-injurious entanglements from which the whales could easily disentangle themselves or be disentangled. Increased development of the Disentanglement Network under the Atlantic Large Whale Take Reduction Plan should provide adequate mitigation for these infrequent (and thus far, non-lethal) entanglements.

The B.O. states that after reviewing the current status of the subject species, the environmental baseline for the action area, the cumulative effects of the continued operation of the Atlantic HMS fisheries and associated management actions, it is NMFS' biological opinion that the continued operation of the harpoon/handline/rod-and-reel gear fisheries is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS jurisdiction.

Because the proposed action addresses only the Atlantic BFT harpoon/handline/rod-and-reel gear fisheries, NMFS has determined that proceeding with this proposed rule would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. This proposed rule would prohibit of fishing vessel operators from using spotter aircraft to assist in the location and capture of BFT for all vessels other than Purse Seine category vessels. Therefore, the proposed rule is not expected to increase endangered species or marine mammal interaction rates.

The area in which this proposed action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council and the Highly Migratory Species Division of NMFS. It is not anticipated that this action will have any adverse impacts to EFH and therefore no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: May 28, 1999.

Andrew A. Rosenberg

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

2. In § 635.2, the definition for "aircraft" is added to read as follows:

§ 635.2 Definitions.

* * * * *

Aircraft means any contrivance used for flight in air.

* * * * *

3. In § 635.21, paragraph (e) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(e) *Aircraft.* Other than for a vessel holding a valid permit in the Purse Seine category under § 635.4, locating, fishing for, catching, taking, retaining or possessing, or attempting to locate, fish for, catch, retain, or possess, bluefin tuna by means, aid, or use of any aircraft is prohibited.

4. In § 635.71, paragraph (b)(28) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(28) Locate, fish for, catch, possess or retain, or attempt to locate fish for, catch, possess or retain any bluefin tuna by means, aid, or use of any aircraft, unless holding a valid permit in the Purse Seine category under § 635.4.

* * * * *

[FR Doc. 99–14138 Filed 6-1-99; 10:51 am]

BILLING CODE 3510-22-F

Notices

Federal Register
Vol. 64, No. 107
Friday, June 4, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Bylaws of Corporation

The Bylaws of the Commodity Credit Corporation, revised May 17, 1999, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia (D.C.), and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. The seal may be used by causing it or its facsimile to be impressed, affixed, or reproduced.

Meetings of the Board

3. Meetings of the Board of Directors (Board) shall be held, whenever necessary, at the U.S. Department of Agriculture in the City of Washington, D.C. All meetings of the Board shall be held in accordance with provisions of the Government in the SunshineAct (5 U.S.C. 552b). Meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or the President. The Executive Vice President may call a meeting at the written request of any five Members. Notice of meetings shall be given either orally or in writing. Any Member may waive in writing any notice of a meeting, whether before or after the time of the meeting, and the presence of a Member at any meeting shall constitute a waiver of notice of such meeting. Any and all business may be transacted at any meeting unless otherwise indicated in the notice thereof.

4. The Secretary of Agriculture shall serve as Chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman, the Vice Chairman, and the President, the Members present at the meeting shall designate a Presiding Officer.

5. At any meeting of the Board, a quorum shall consist of five Members. The act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

6. The General Counsel of the U.S. Department of Agriculture, whose office shall perform all legal work of the Corporation, and the Associate General Counsel for International Affairs, Commodity Programs and Food Assistance Programs, shall serve as General Counsel and Associate General Counsel of the Corporation, respectively.

Compensation of Board Members

7. The compensation of each Member shall be prescribed by the Secretary of Agriculture. Any Member who holds another office or position within the Federal Government shall receive compensation at the rate provided for such other office or position in lieu of compensation as a Member.

Officers

8. The officers of the Corporation shall be: a President; an Executive Vice President; Vice Presidents; Deputy Vice Presidents; a Secretary; a Deputy Secretary; an Assistant Secretary; a Controller; a Treasurer; a Chief Accountant; and such additional officers as the Secretary of Agriculture may appoint.

9. The Under Secretary of Agriculture for Farm and Foreign Agricultural Services shall be the *ex officio* President of the Corporation.

10. The following officials of the Farm Service Agency (FSA), the Foreign Agricultural Service (FAS), the Food and Nutrition Service (FNS), the Natural Resources Conservation Service (NRCS), and the Agricultural Marketing Service (AMS) shall be *ex officio* officers of the Corporation:

Administrator, FSA	Executive Vice President.
Administrator, AMS	Vice President.
Administrator, FAS	Vice President.
Administrator, FNS	Vice President.
Chief, NRCS	Vice President.
General Sales Manager, FAS	Vice President.
Associate Administrator, Programs, FSA	Vice President.
Associate Administrator, Operations and Management, FSA	Vice President.
Deputy Administrator, Commodity Operations, FSA	Deputy Vice President.
Deputy Administrator, Management, FSA	Deputy Vice President.
Deputy Administrator, Farm Programs, FSA	Deputy Vice President.
Director, Economic and Policy Analysis Staff, FSA	Deputy Vice President.
Associate Chief, NRCS	Deputy Vice President.
Deputy Chief, Programs, NRCS	Deputy Vice President.
Deputy Chief, Management, NRCS	Deputy Vice President.
Executive Assistant to the Administrator, FSA	Secretary.

Director, Strategic Management & Corporate Operations Staff, FSA	Deputy Secretary.
Staff Assistant, Strategic Management & Corporate Operations Staff, FSA	Assistant Secretary.
Director, Financial Management Division, FSA	Controller.
Deputy Director, Financial Management Division, FSA	Treasurer.
Chief, Financial Accounting and Reporting Branch, Financial Management Division, FSA	Chief Accountant.

The person occupying, in an acting capacity, any position listed in this paragraph shall, during occupancy of such position, act as the corresponding officer of the Corporation.

11. Officers who do not hold *office ex officio* shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

12. The President shall have general supervision and direction of the Corporation, its officers and employees.

The Vice Presidents

13. (a) The Executive Vice President shall be the chief executive officer of the Corporation. Except as provided in paragraphs (b), (c), (d), (e), and (f) below, the Executive Vice President shall have general supervision and direction of: the preparation of policies and programs for submission to the Board; the administration of the policies and programs approved by the Board; and the day-to-day conduct of the business of the Corporation and its officers and employees.

(b) The Vice President who is the Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. This Vice President shall have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FAS, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is the Administrator, AMS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of AMS. This Vice President shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(d) The Vice President who is the General Sales Manager, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. This Vice President shall also have responsibility for the administration of those operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of FAS, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, FNS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FNS. This Vice President shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(f) The Vice President who is the Chief, NRCS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of NRCS. This Vice President shall have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of NRCS, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

14. The Vice Presidents who are the Associate Administrators, FSA, and the Deputy Vice Presidents shall assist the Executive Vice President to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

15. The Secretary shall: attend and keep the minutes of all meetings of the Board; serve all required notices of meetings of the Board; sign all papers and instruments that require the Secretary's signature; attest to the authenticity of and affix the seal of the Corporation upon any instrument requiring such action; and perform such other duties and exercise such other powers as are commonly incidental to the office of Secretary, as well as such other duties as may be prescribed, from time-to-time, by the President or the Executive Vice President.

The Controller

16. The Controller shall: have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements and claims activities, and perform such other duties as may be prescribed, from time-to-time, by the President or the Executive Vice President.

The Treasurer

17. (a) The Treasurer shall: assist the Controller in the administration of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements and claims activities, and perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time-to-time, by the Controller, the President, or the Executive Vice President.

(b) The Treasurer, under the general supervision and direction of the Controller, shall: supervise the receipt and disbursement of all funds of the Corporation; designate qualified persons to authorize disbursement of corporate funds; be responsible for documents relating to the general financing operations of the Corporation; and supervise the claims activities of the Corporation.

The Chief Accountant

18. The Chief Accountant, under the general supervision and direction of the Controller, shall: have charge of the general accounting books and accounts of the Corporation and the preparation of financial statements and reports; be responsible for the issuance of policies and practices related to accounting

matters and procedures, including those dealing with official inventories and records; and perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time-to-time, by the Controller.

Other Officials

19. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of FSA, FAS, FNS, AMS, and NRCS in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within the respective agency or office, by the Administrator of FSA, FAS, FNS, or AMS, the Chief NRCS, or the General Sales Manager, FAS, as applicable.

20. The Directors of the divisions of FSA and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA shall be Contracting Officers of the Corporation and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices in accordance with these Bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

21. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Treasurer, the Directors of the divisions of FSA, and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

22. The Executive Vice President and, subject to the written approval by the Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, the Directors of the divisions of FSA, and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA may appoint, by written instrument, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary of the Corporation.

23. Appointments of Contracting Officers may be revoked by written instruction or instrument by the Executive Vice President or the official who made the appointment. A copy of each instrument shall be filed with the Secretary of the Corporation.

24. Employees of FSA, FAS, FNS, AMS and NRCS may execute contracts on behalf of the Corporation as delegated to them in accordance with applicable dockets of the Corporation, program regulations, or delegations approved by the President or Vice Presidents of the Corporation.

Annual Report

25. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

Amendments

26. These Bylaws may be altered, amended, or repealed by the Secretary of Agriculture or the Board.

Approval of Board Action

27. The actions of the Board shall be subject to the approval of the Secretary of Agriculture.

I, Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the Bylaws of Commodity Credit Corporation. As revised May 17, 1999.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be fixed this 17th day of May, 1999.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 99–14185 Filed 6–3–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Front Minerals Withdrawal EIS—Lewis and Clark and Helena National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to withdraw from locatable mineral entry, 429,000 acres of National Forest System lands along Montana's Rocky Mountain Front in Glacier, Pondera, Teton and Lewis and Clark Counties, Montana. Specific land descriptions were provided in the **Federal Register** (64 FR 5311–5312, Feb. 3, 1999) under the Bureau of Land Management Notice of Proposed withdrawal. The purpose of the proposal is to preserve the area for traditional cultural purposes by Native Americans, protect threatened and endangered species, and preserve the outstanding scenic values and roadless character. If approved, the withdrawal would remove National Forest System lands along the Rocky Mountain Front from new mining claims for up to 20 years. The EIS will be designed to satisfy the requirements of the Federal Land Policy and Management Act of 1976 and implementing regulations (43 CFR 2310.1).

DATES: Comments concerning the scope of the analysis should be received on or before July 6, 1999. See **SUPPLEMENTARY INFORMATION** section for public meeting dates.

ADDRESSES. Send written comments to Rick Prausa, Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Box 869, Great Falls, MT 59403. Electronic mail may be sent to comment/rl—lewisclark@fs.fed.us. See **SUPPLEMENTARY INFORMATION** section for additional information about electronic filing and public meeting addresses.

FOR FURTHER INFORMATION CONTACT: David Whittekiend, EIS Team Leader, (406) 466–5341 or (406) 791–7700.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw from locatable mineral entry, National Forest System lands along the Rocky Mountain Front. The proposed mineral withdrawal is 429,000 acres of federal lands, subject to valid existing rights associated with the existing unpatented mining claims in the study area. The withdrawal would have an immediate effect on 426,800 acres of currently unclaimed federal land, which would be withdrawn for up to 20 years. The mineral withdrawal may or may not affect the remaining acreage (approximately 2,200 acres of unpatented mining claims), depending upon whether the 104 unpatented mining claims constitute valid existing rights. If these unpatented mining claims were abandoned or determined to be invalid, the mineral withdrawal would prohibit the relocation of new mining claims. The mineral withdrawal would be subject to review at the end of 20 years according to federal regulations. The primary purpose of the proposed mineral withdrawal is to preserve the area for tradition cultural uses by Native Americans, to protect threatened and endangered species and protect outstanding scenic values and roadless character. Many individuals and groups have expressed concern

about the potential of minerals development along the Rocky Mountain Front after the staking of 104 claims in the Blackleaf/Muddy Creek area.

The study area includes areas considered sacred to several Indian tribes. Traditional cultural uses that take place in the study area include religious ceremonies and gathering of traditional herbs. The study area provides habitat for several threatened and endangered species including grizzly bear, gray wolf, peregrine falcon, and bald eagle. The risks of mining development to these species include increased roading, habitat destruction and increased human presence. The scenic qualities of the study area are believed by many to be among the best in the nation. These qualities could be degraded by the development of mineral resources. Withdrawal of these lands would ensure that the cultural, biological and scenic resources of these lands would be maintained and the impacts of mining related activities would be reduced.

Decisions To Be Made

The U.S. Department of Agriculture, Forest Service, has filed an application with the Department of the Interior, Bureau of Land Management to withdraw 429,000 acres of National Forest System lands from locatable mineral entry under the United States mining laws. The Forest Service will prepare an EIS. The Chief of the Forest Service will have two decisions to make: he will decide whether or not to recommend that the Secretary of the Interior withdraw this area. If the Secretary of The Interior withdraws the area, the Chief of the Forest Service will also amend the Lewis and Clark and Helena National Forest Plans to reflect the change in management of locatable hardrock minerals. The Chief's Forest Plan amendments decisions will be contingent on the Secretary of the Interior's withdrawal decision.

The Chief of the Forest Service will submit his decision and the EIS to the Montana State Director, Bureau of Land Management who will submit a recommendation to the Director of the Bureau of Land Management. The recommendation and supporting documentation will then be forwarded to the Secretary of the Interior for a decision. The authority to withdraw lands from mineral entry lies with the Secretary of the Interior. The Secretary will decide which lands, if any, to withdraw, and for how long. The Secretary is limited to a maximum withdrawal period of 20 years. If a withdrawal of over 5,000 acres is approved, the Secretary of the Interior would advise Congress of the withdrawal action being taken. No action is required by Congress to implement a mineral withdrawal. Congress can terminate a withdrawal with a concurrent resolution from the House and Senate within 90 days of the approval of the Public Land Order. At the end of the 20 year period, the withdrawal decision would be reviewed to determine if it is appropriate to extend it. If the Secretary chooses to implement a withdrawal, the withdrawal would become effective on the date the Public Land Order is published in the **Federal Register**.

Responsible Official

Mike Dombeck, Chief, USDA Forest Service, Auditors Building, 201 14th Street, SW at Independence Ave., SW., Washington, DC 20250 is the Responsible Official for making the withdrawal recommendation to the Secretary of the Interior. The Chief of the Forest Service is also responsible for any decision to amend the Forest Plans to reflect any change in management of locatable hardrock minerals. He will document his decisions and rationale in a Record of Decision.

Preliminary Issues

Two preliminary issues have been identified: Approval of the withdrawal would result in the loss of opportunity to extract minerals from the area and withdrawal would limit the economic base of rural communities along the Rocky Mountain Front.

Public Involvement, Rationale, and Public Meetings

In February, 1999, a notice of proposed withdrawal was published in the **Federal Register** (64 FR 5311–5312, Feb. 3, 1999). This notice invited public comment for a period of 90 days. Comments received will be included in the documentation for the EIS. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. Public meetings associated with the project will be held to gain a better understanding of public issues and concerns. These meetings will be held in Choteau, Montana at the Stagestop Inn on June 22, 1999 from 3–8 p.m. and in Lincoln, Montana at the Lincoln Community Hall on June 24, 1999 from 3–7 p.m.

Information from the meetings will be used in preparation of the draft and final EIS. The scoping process will include identifying: potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Electronic Access and Filing Addresses

Comments may be sent by electronic mail (e-mail) to comment/rl_lewisclark@fs.fed.us. Please reference the Rocky Mountain Front Minerals Withdrawal on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection agency (EPA) and to be available for public review by January, 2000. At the time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EIS publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by August, 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewers Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alters an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts.

Wisconsin Heritages, Inc. v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: June 1, 1999.

Paul Brouha,

Associate Deputy Chief, National Forest System.

[FR Doc. 99–14223 Filed 6–3–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee (PAC) Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on June 16 and 17, 1999, at the Six Rivers National Forest Supervisor's Office in Eureka, California. The meeting will be held from 9 a.m. to 5 p.m. on June 16. A field trip to the Mad River Ranger District will be held from 7:30 a.m. to 5 p.m. on June 17. The Forest Supervisor's Office is located at 1330 Bay Shore Way in Eureka. Agenda items to be covered include: (1) Designation of a chairperson for the Public/Private/Tribal Partnership Opportunities Subcommittee; (2) Regional Ecosystem Office (REO)/IAC Update (to include IAC/PAC Summit); (3) Status of FERC/Potter Valley Project; (4) Aquatic Conservation Subcommittee resolution concerning herbicide use by CalTrans; (5) Implementation of the Northwest Forest Plan on the ground in the California Coast Province; and (6) Open public comment. All California Coast Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–3316.

Dated: May 26, 1999.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 99–14189 Filed 6–3–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of a Finding of No Significant Impact for the Sergeant Major Creek Watershed in Roger Mills County, Oklahoma

AGENCY: Natural Resources Conservation Service (NRCS) in Oklahoma. U.S. Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Sergeant Major Creek Watershed, Roger Mills County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Ronnie L. Clark, State Conservationist, Natural Resources Conservation Service, 100 USDA, Suite 206, Stillwater, Oklahoma 74074, (405) 742–1206.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronnie L. Clark, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are flood control and watershed protection. The planned works of improvement include the rehabilitation of two aging floodwater retarding structures and associated land treatment for sediment control.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ronnie L. Clark. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: May 27, 1999.

Ronnie L. Clark,

State Conservationist, Oklahoma.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

[FR Doc. 99–14102 Filed 6–3–99; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 6, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41

U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Skin Protectant, Plus
9999–00–NSH–0001
NPA: ACT, Corp., Daytona Beach, Florida

Services

Janitorial/Custodial, Veterans Administration Outpatient Clinic, 2900 Veterans Way, Melbourne, Florida
NPA: Brevard Achievement Center, Inc., Rockledge, Florida

Janitorial/Custodial, USDA Building 255E, Sanford Airport, Sanford, Florida
NPA: ACT, Corp., Daytona Beach, Florida

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–14204 Filed 6–3–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: July 6, 1999

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 26, March 5, April 16 and 23, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 9470, 10620, 18877 and 19976) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center
Fort Riley, Kansas

Base Supply Center
Naval Air Station
Kingsville, Texas

Janitorial/Custodial
Naval and Marine Corps Reserve Center
30 Woodward Avenue
New Haven, Connecticut

Janitorial/Custodial
Three Child Care Centers
Buildings 113, 4819/4820 and 52024
Headquarters III Corps and Fort Hood
Fort Hood, Texas

Janitorial/Custodial
Curlew Conservation Center
Colville National Forest
Curlew, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Gloves, Cloth, Cotton
8415–00–964–4615
8415–00–964–4925
8415–00–964–4760

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–14205 Filed 6–3–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–98]

Foreign-Trade Zone 143—Sacramento, California, Withdrawal of Request for Manufacturing Authority on Behalf of Artesyn Solutions, Inc., Within FTZ 143

Notice is hereby given of the withdrawal of the application submitted by Artesyn Solutions, Inc. (Artesyn), operator of FTZ 143, requesting authority on Behalf of Artesyn (formerly Zytec Services and Logistics) to manufacture and assemble computers and related electronic products and subassemblies. The application was originally filed on August 19, 1997, as A(32b1)–3–97 (62 FR 45394, 8/27/97). On January 21, 1998, the request was formally docketed as FTZ Doc. 5–98.

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: May 21, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–14095 Filed 6–3–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–99]

Proposed Foreign-Trade Zone—Boundary County, Idaho, Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Boundary, Idaho, to establish a general-purpose foreign-trade zone in Boundary County, Idaho, adjacent to the Eastport Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 24, 1999. The applicant is authorized to make the proposal under section 67–4703A, Idaho Code.

The proposed zone consists of a 55-acre site located at the Reload Center (Eastport Industries, Inc.), end of County Road #95E (also known as Railroad Avenue), Eastport. The site includes a truck/rail intermodal reloading facility, as well as a warehouse yard. Eastport Industries, Inc., will be the operator of the zone.

The application indicates a need for foreign-trade zone services in the Eastport area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of lumber/forest products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on July 1, 1999, 1 p.m., at the Boundary County Co-operative Extension Service (meeting room), 6447 Kootenai Street, Bonners Ferry, Idaho 83805.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 3, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 18, 1999.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Boundary County Library, 6370 Kootenai Street, Bonners Ferry, Idaho 83805

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230

Dated: May 26, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–14096 Filed 6–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–99]

Foreign-Trade Zone 216—Olympia, Washington Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Port of Olympia, Washington, grantee of Foreign-Trade Zone 216, requesting authority to expand its zone in the Olympia, Washington, area, adjacent to the Port of Olympia Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 26, 1999.

FTZ 216 was approved on August 16, 1996 (Board Order 836, 61 FR 45400, 8/29/96). The general-purpose zone project currently consists of 13 sites (3,244 acres) in four counties (Thurston, Lewis, Mason and Kitsap) in the South Puget Sound area: *Site 1* (283 acres)—Port of Olympia port terminal facility, Thurston County; *Site 2* (800 acres)—Olympia Airport/Industrial Park complex, Thurston County; *Site 3* (389 acres)—Marvin Road/Hawks Prairie industrial/business park, Thurston County; *Site 4* (109 acres)—Yelm Industrial Park, Thurston County; *Site 5* (165 acres)—Port of Centralia Industrial Park, Lewis County; *Site 6* (87 acres)—Chehalis Industrial Area, Lewis County; *Site 7* (269 acres)— Port of Chehalis Industrial Park, Lewis County; *Site 8* (39 acres)—Klein/South Prairie Industrial Park, Lewis County; *Site 9* (420 acres)—Sanderson Field within the Port of Shelton complex, Mason County; *Site 10* (130 acres)—Johns Prairie Industrial Park within the Port of Shelton complex, Mason County; *Site 11* (217 acres)—Port of Bremerton/Bremerton Airport South, Kitsap County; *Site 12* (312 acres)—Port of Bremerton/Olympic View Industrial Park, Kitsap County; and *Site 13* (24 acres)—warehouse facility (includes Darigold, Inc.), Lewis County.

The applicant is now requesting authority to expand one of its existing sites (Site 3) to include all of Commerce Place, a business park development within the 1,153-acre Meridian Campus Planned Community in the City of Lacey. The proposed area is contiguous to existing Site 3. The Business Park contains a total of 99 acres of which 23 acres are currently included in Site 3. Commerce Place also contains 108 acres of light industrial sites. The 184-acre expansion would increase the size of Site 3 to a total of 573 acres. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 3, 1999. Rebuttal

comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 18, 1999.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port of Olympia, 915 Washington Street NE, Olympia, WA 98501

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: May 27, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–14097 Filed 6–3–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 85–8A018]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to U.S. Shippers Association ("USSA") on June 3, 1986. Notice of issuance of the original Certificate was published in the **Federal Register** on June 9, 1986 (51 FR 20873).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1999).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 85–00018, was originally issued to U.S. Shippers Association on June 3, 1986 (51 FR 20873, June 9, 1986), and subsequently amended on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); September 22, 1993 (58 FR 51061, September 30, 1993); June 28, 1994 (59 FR 34411, July 5, 1994); April 10, 1997 (62 FR 18586, April 16, 1997); and November 23, 1998 (63 FR 65752, November 30, 1998).

USSA's Export Trade Certificate of Review has been amended to:

1. Add the following entities as new "Members" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Lyondell Chemical Worldwide, Inc., Newtown Square, PA (Controlling Entity: Lyondell Petrochemical Company, Houston, Texas); and Arch Chemicals, Inc., Norwalk, CT (Controlling Entity: None); and

2. Delete ARCO Chemical Company, Newtown Square, PA; and Olin Corporation, Norwalk, CT as "Members" of the Certificate.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230.

Dated: May 28, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–14184 Filed 6–3–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052699D]

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Bering Sea and Aleutian Islands Management Area; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an exempted fishing permit.

SUMMARY: NMFS announces the issuance of an exempted fishing permit (EFP) 99–02 to the Washington Sea Grant Program (WSGP). The EFP authorizes the WSGP to conduct an experiment in the Bering Sea and Aleutian Islands Management Area (BSAI) that would test the effectiveness of seabird avoidance measures. NMFS could use results from the EFP to establish more effective regulatory measures to reduce incidental take of seabirds in these fisheries. This EFP is necessary to provide information not otherwise available through research or commercial fishing operations. The intended effect of this action is to promote the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act.

ADDRESSES: Copies of the EFP and the Environmental Assessment (EA) prepared for the EFP are available from Lori Gravel, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7424.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area authorizes the issuance of EFPs for fishing for groundfish in a manner that would otherwise be prohibited under existing regulations. The procedures for issuing EFPs are set out at 50 CFR 679.6 and 600.745.

On February 23, 1999, NMFS received an EFP application from WSGP to conduct an experiment to assess alternative seabird avoidance measures for hook-and-line gear fisheries off Alaska. NMFS published an announcement of receipt of the EFP application in the **Federal Register** on March 29, 1999 (64 FR 14885), describing the proposed experiment and its use in both the groundfish and Individual Fishing Quota (IFQ) fisheries. On March 22, 1999, NMFS received a second EFP application from WSGP. The second application would augment the first related EFP recently issued to WSGP and requests authorization for WSGP to test the effectiveness of seabird avoidance measures in the Bering Sea Pacific cod fishery outside of the open access and Community Development Quota (CDQ) fisheries. During its meeting in April 1999, the North Pacific Fishery Management Council recommended approval of both EFP applications submitted by the WSGP. NMFS announced the approval of the first EFP May 12, 1999, in the **Federal Register** (64 FR 25478).

WSGP will conduct the experiment under the second EFP as a part of its research project jointly funded by the U.S. Fish & Wildlife Service (USFWS)

and NMFS. WSGP will compare two seabird avoidance measures to a control (no measures) in the BSAI Pacific cod fishery. A second EFP is necessary because the WSGP's research project calls for testing seabird avoidance measures in different fisheries and different fishery operations. The first part of the research project is being conducted on smaller-sized vessels [less than 124 ft (37.8 m) length overall (LOA)] using hook-and-line gear in the IFQ Pacific halibut and sablefish fisheries. The second part of the research project will be conducted on larger catcher-processor vessels [longer than 124 ft LOA (37.8 m)] in the BSAI Pacific cod fishery. The first EFP authorizes the control treatments (no seabird avoidance measures) for both parts of the research project.

Owner/operators of vessels for the second part of the project were concerned that experimental operations would interfere with the highly competitive open access fishery, resulting in potential economic loss. Additionally, the CDQ fisheries are often conducted after the fall open access BSAI Pacific cod fishery, when some seabirds have left the area. Because two observers already are required on CDQ operations, a third observer would have been necessary to carry out the seabird experiment adequately. Many vessels could not have accommodated this additional observer. Therefore, WSGP submitted a second EFP application requesting that the second part of the experiment be allowed to occur at a time when fishing for BSAI Pacific cod is closed to directed fishing.

The purpose of this experiment is to assess the effectiveness of alternative seabird avoidance measures for hook-and-line fisheries off Alaska. The objectives of the WSGP experiment are to: (1) Work cooperatively with the fishing industry, NMFS, and the USFWS to select and then test the effectiveness of seabird avoidance measures in hook-and-line fisheries off Alaska; (2) characterize the species-specific behavioral interactions of seabirds with hook-and-line gear on actively fishing vessels, with and without seabird avoidance measures; (3) work cooperatively with the fishing industry, NMFS, and the USFWS to develop recommendations for revisions to existing seabird avoidance regulations and performance standards based on the results of this research; and (4) recommend future research and research protocols. Issuance of this EFP will provide information not otherwise available through research or commercial fishing operations.

WSGP designed, and NMFS reviewed, the experimental protocol for testing on larger-sized catcher-processor vessels (longer than 124 ft (37.8 m) LOA) in the BSAI. The protocol requires a minimum of 3 million deployed hooks and 150 observer days over 2 years to adequately address the efficacy of seabird avoidance measures relative to a control of no measure(s). To achieve this sample size objective, two vessels per year in the Pacific cod fishery will be required, with seabird observer coverage for a total of 40 days per year (approximately 2 trips). Two observers will work on each vessel and will sample between 65 to 80 percent of all hooks on each of the hauls, assuming a total hook retrieval observation rate of 40 percent. Two observers will sample 65 to 80 percent of all hooks on each of the hauls. To fully complete the experiment, WSGP estimates that a total of 1,652 metric tons (mt) of groundfish may be taken by the two vessels participating in the experiment. The experiment is scheduled to take place in the BSAI for approximately 40 to 50 days during July 1999 through October 1999, and for approximately 40 to 50 days during July 2000 through October 2000.

WSGP established an industry advisory committee in consultation with NMFS and the USFWS. This committee selected the participating vessels and the seabird avoidance measures to be tested. The participating vessels were selected in collaboration with the North Pacific Longline Association based on fishing experience, demonstrated leadership in the seabird bycatch issue, and willingness to cooperate in the experiment. The performance of seabird avoidance gear will be tested against a standard control gear. The control gear will be identical hook-and-line gear, although configured without the seabird avoidance gear. Fishing with experimental and control gear will be conducted with procedures and at sites similar to those used during the commercial fishery for Pacific cod in the BSAI.

The Regional Administrator approved the EFP application and has issued EFP 99–02 to the WSGP. The EFP authorizes the participation of two vessels per year in the experimental BSAI Pacific cod fishery. The EFP authorizes the harvest of 1,652 mt of groundfish during approximately 40 to 50 days in July 1999 through October 1999. The effective period for the EFP may be revised for other months in 1999 and 2000, pending agreement between the permit holder and the Administrator, Alaska Region, NMFS (Regional Administrator). No more than 1,306 mt of the authorized amount may be Pacific cod. The EFP also authorizes, as prohibited species catch, no more than 17.2 mt of Pacific halibut bycatch mortality. NMFS will review the experimental work and, pending successful completion of the first year of the experiment in 1999, the same amount of groundfish harvest would be authorized during the same time period in 2000 for the second year of the experiment. Groundfish and halibut bycatch mortality associated with this experiment will not be deducted from total allowable catch and halibut bycatch allowances specified for the 1999 groundfish fisheries. This will not cause a conservation problem for groundfish species because estimated total removals under the EFP are very small compared to the overall TACs for these species and would not contribute in a meaningful way to approaching overfishing levels already considered in the EA for 1999 specifications.

Failure of the permit holder to comply with the terms and conditions of the EFP may be grounds for revocation, suspension, or modification of the EFP under 15 CFR part 904 with respect to any or all persons and vessels conducting activities under the EFP. Failure to comply with applicable laws also may result in sanctions imposed under those laws.

Classification

The Regional Administrator determined that fishing activities conducted under this action would not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on the groundfish fisheries. The USFWS has issued a section 10 permit to WSGP under the Endangered Species Act. Such a permit authorizes the incidental take of one short-tailed albatross in the unlikely event that one were taken during the course of the experiment.

This notice is exempt from review under E.O. 12866 and the Regulatory Flexibility Act (RFA) because prior notice and opportunity for public comment are not required for this notice. Therefore, the analytical requirements of the RFA are inapplicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 28, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14206 Filed 6–3–99; 8:45 am]

BILLING CODE 3510–33–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its request for approval of a survey form to collect data on project characteristics and accomplishments from AmeriCorps*VISTA projects that are managed by the Corporation. This information will be used by the Corporation to evaluate the nature and effectiveness of the program.

Copies of the proposed information collection request may be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by August 3, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Carol Hafford, Office of Evaluation, 1201 New York Avenue, NW., 9th floor, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Carol Hafford, (202) 606–5000, ext. 232.

SUPPLEMENTARY INFORMATION:

Background

One of the missions of the Corporation is to "provide opportunities to engage in service that addresses the nation's unmet human, educational, environmental, and public safety needs" (42 U.S.C. 12501(b)). Through the AmeriCorps*VISTA (Volunteers in Service to America) program, the Corporation supports VISTA's 34 year mission to engage Americans in community service activities and build the capacity of low-income communities. AmeriCorps*VISTA activities address issues of poverty and poverty-related problems by generating private sector resources, encouraging volunteer service at the local level, and strengthening the capacity of local organizations and agencies to meet the needs of low-income communities.

VISTA is a full-time, full-year service program for men and women ages 18 and older. AmeriCorps*VISTA places federally funded national service participants in ongoing programs managed by public agencies or private, nonprofit organizations. AmeriCorps*VISTA members work within these agencies or organizations to help them expand services to people in economically disadvantaged communities. Members are involved in a wide variety of community-oriented efforts, such as developing literacy programs, organizing outreach programs in health care, training low-income people in business management, and establishing transitional housing programs for the homeless.

Since 1996, the Corporation has conducted an annual survey and collected data from AmeriCorps*VISTA projects to describe program accomplishments. These responses assist the Corporation in addressing policy and programming issues about AmeriCorps*VISTA and the projects it supports throughout the country.

Current Action

The Corporation seeks approval of a survey form to collect data from a sample of AmeriCorps*VISTA projects. The 1999 AmeriCorps*VISTA Project Accomplishments Survey will be administered by mail and also through a computerized data tracking system. The survey will cover VISTA project activities and accomplishments during the 12-month period of October 1, 1998, through September 30, 1999. Approximately 1,250 projects will be surveyed, of which we expect 950 respondents. The survey will collect data on project characteristics and on specific AmeriCorps*VISTA activities and accomplishments in each of seven program emphasis areas and in organizational capacity building. Accomplishment data from the FY 1999 survey will be used to provide a report on AmeriCorps*VISTA accomplishments to the Congress in FY 2000 and to satisfy the Government and Performance and Results Act of 1993 requirements.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA 1999 Project Accomplishments Survey.

OMB Number: None.

Agency Number: None.

Affected Public: AmeriCorps*VISTA projects that have been active for at least nine months prior to September 30, 1999.

Total Respondents: Approximately 950.

Frequency: Annually.

Average Time Per Response: One hour.

Estimated Total Burden Hours: 950 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 1, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–14203 Filed 6–3–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review, Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Application for Uniformed Services Identification Card—DEERS Enrollment; DD Form 1172; OMB Number 0704–0020

Type of Request: Revision.

Number of Respondents: 1,683,183.

Responses per Respondent: 1.

Annual Responses: 1,683,183.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 280,531.

Needs and Uses: This information collection requirement is necessary to authorize members of the Uniformed Services, their spouses and dependents, and other authorized individuals certain benefits and privileges. These privileges include health care, use of commissary, base exchange, and morale welfare, and recreation facilities. This information collection is needed to obtain the necessary data to determine eligibility to benefits and privileges, to provide eligible individuals with an authorization card (identification card) for benefits and privileges administered by the Uniformed Services, and to maintain a centralized database of eligible individuals. The information may also be used by the Uniformed Services, Military Departments, and the Defense Agencies to issue their non-benefit identification cards.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHD/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14181 Filed 6–3–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting to Discuss Gulf War Illness Research

AGENCY: Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, Department of Defense.

ACTION: Notice.

SUMMARY: The Board will conduct a four to six hour public meeting to receive a presentation on government-sponsored research dealing with possible neurological damage to Gulf War veterans that may have resulted from their service in Southwest Asia.

DATES: June 22, 1999.

ADDRESSES: Dynasty Room, Best Western Key Bridge Hotel, 1850 North Fort Myer Drive, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Roger Kaplan, Deputy Executive Director, Special Oversight Board, 1401 Wilson Blvd, Suite 401, Arlington, VA 22209, phone (703) 696–9470, fax (703) 696–4062, or via Email at *Gulfsyn@osd.pentagon.mil.*

SUPPLEMENTARY INFORMATION: The hearing is scheduled from 9:00 a.m. until no later than 4:00 p.m. EDT. Seating is limited and will be available on a first-come, first-served basis beginning at 8:45 a.m. CDT.

Dated: May 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14182 Filed 6–3–99; 8:45 am]

BILLING CODE 1001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/086,541 entitled "Onion Routing Network For Securely Moving Data Through Communication Networks," Navy Case No. 78,415.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 3008.2, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 21, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–14190 Filed 6–3–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive License; John Crane Marine USA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to John Crane Marine USA a revocable, nonassignable, exclusive license in the United States to practice these Government-Owned inventions in the field of use of shipboard mechanical seals, rudder stock seals, fin stabilizer seals, bulkhead seals, bow thruster seals, and pump seals, as described in: U.S. Patent Number 5,025,849 entitled *Centrifugal Casting of Composites.*

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 3, 1999.

ADDRESSES: Written objections are to be filed with the Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director, Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, telephone (301) 227–4299.

Dated: May 21, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–14191 Filed 6–3–99; 8:45 am]

BILLING CODE 3810–FF–P

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DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 3, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 28, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.
Title: Application to Participate in Federal Student Financial Aid Programs.
Frequency: On occasion.
Reporting and Recordkeeping Hour Burden:
Responses: 2,915.
Burden Hours: 20,245.
Abstract: The Higher Education Act (HEA) of 1965, as amended requires postsecondary institutions to complete and submit this application as a condition of eligibility for any of the Title IV student financial assistance programs and for the other postsecondary programs authorized by the HEA. An institution must submit the form (1) initially when it first seeks to become eligible for the Title IV programs; (2) when its program participation agreement expires (recertification); (3) when it changes ownership, merges, or changes from a "profit" to a "non-profit" institution; (4) to be reinstated to participate in the Title IV programs, (5) to notify the Department when it makes certain changes, e.g. name or address and (5) it wishes to have a new program (outside its current scope) or new location approved for Title IV purposes.

[FR Doc. 99–14127 Filed 6–3–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 28, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Integrated Postsecondary Education Data System (IPEDS), including Web-Based Collection on Pricing of Postsecondary Education.
Frequency: On occasion.
Affected Public: Business or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 10,000.
Burden Hours: 277,809.
Abstract: IPEDS is a system of surveys designed to collect basic data from approximately 10,000 postsecondary institutions in the United States. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, and staff employed at postsecondary institutions. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, require the National Center for Education Statistics to provide cost and pricing information from postsecondary institutions. As a consequence in 1999 the IPEDS is proposing piloting a web-based data collection for this information in addition to the paper forms previously cleared.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: NCES Quick Response Information System.
Frequency: On occasion.
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 10,161.
Burden Hours: 7,621.
Abstract: The Quick Response Information System (QRIS) is comprised of two types of surveys, one oriented towards elementary and secondary school and library issues, the Fast Response Surveys (FRSS) and the second intended to address issues in postsecondary education, the Postsecondary Education Quick Information System Surveys (PEQIS). All the surveys conducted under the QRIS are required to inform for current policy issues for which there are no other timely and/or appropriate data available. In recent years surveys have been conducted on topics as diverse as distance education in postsecondary education, services for students with disabilities in postsecondary education, advanced telecommunications in the elementary and secondary schools, summer programs for migrant students, and teacher quality.

[FR Doc. 99–14126 Filed 6–3–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–536–000]

Jupiter Energy Corporation; Notice of Application for Blanket Certificate

May 28, 1999.

Take notice that on may 26, 1999, Jupiter Energy Corporation (Jupiter), 14141 Southwest Freeway, Sugarland, Texas 77478, filed in Docket No. CP99–536–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity and permission and approval to abandon, authorizing Jupiter to engage in any of the activities specified in Subpart F of Part 157 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

It is stated that Jupiter is an interstate pipeline as determined by the Commission in name Docket 35 FPC 1091 (1962). Jupiter states that it is engaged in the business of transporting natural gas form federal waters offshore Louisiana, Vermillion Block No. 39, approximately 11 miles to an interconnection with facilities owned by Tennessee Gas Pipeline Company. Jupiter asserts that it has a transportation tariff on file with the Commission and that it has no outstanding blanket certificate nor a budget-type certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 18, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate actions to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Jupiter to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14171 Filed 6–3–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2322–000, ER99–2341–000, ER99–2337–000, ER99–2311–000, ER99–2324–000, ER99–2330–000, ER99–2342–000, ER99–2354–000, ER99–2369–000, ER99–2387–000, ER99–2506–000, (Not consolidated)]

MEP Investments, L.L.C. et al.; Notice of Issuance of Order

May 28, 1999.

MEP Investments, L.L.C., Hardee Power Partners Limited, FPL Energy Services, Inc., Carolina Power & Light Company, Monroe Power Company, FirstEnergy, Corp., Tampa Electric Company, Florida Keys Electric Cooperative Association, Inc., Alliance for Cooperative Energy Services Power Marketing LLC, KeySpan-Ravenwood,

Inc., and Deseret Generation & Transmission Cooperative (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On May 27, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's May 27, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' Issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 28, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14118 Filed 6–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–535–000]

Natural Gas Pipeline Company of America; Notice of Application

May 28, 1999.

Take notice that on May 25, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148 filed an application with the Commission in Docket No. CP99–535–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to MidCon Texas Pipeline Operator, Inc. (MidCon Texas), an affiliated intrastate pipeline, various laterals, meters, and tap facilities located in Brazoria, Galveston, Matagorda, and Wharton Counties, Texas, and authorized in various dockets, all as more fully set forth in the application which is open to the public for inspection. This filing may be viewed on the web at http:www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Cumulatively, Natural proposes to abandon a total of approximately 147 miles of pipeline laterals (South Texas Laterals) and appurtenant tap and measurement facilities. The primary facilities are the 12-inch diameter Chocolate Bayou and the 24-inch Old Ocean laterals. Natural states that it proposes to transfer these facilities to MidCon Texas for their cumulative net book value as of the closing date specified in its assets sale agreement with MidCon Texas.

Natural states that these facilities were originally constructed as a means of receiving gas purchased from various producers for Natural's system supply to support Natural's merchant function. Natural's merchant function terminated effective December 1, 1993. Consequently, Natural states that it no longer needs the said facilities to receive its own gas supply and no longer has any gas purchase obligations regarding these facilities. Moreover, Natural states that the transportation value to Natural of the above facilities has been greatly reduced.

Natural states that it has contacted the only two shippers with active firm transportation contracts under Rate Schedule FTS of Natural's FERC Gas Tariff with primary points on the facilities to be abandoned, and that neither shipper has expressed any opposition to the proposed transfer. Natural further states that shippers with interruptible transportation agreements under Natural's Rate Schedule ITS of its FERC Gas Tariff are entitled to use all points in Natural's Electronic Catalog of Receipt and Delivery Points (Catalog of Points). Upon transfer of the facilities at issue here, Natural states that it would simply delete the existing receipt points from its Catalog of Points and add the new point of interconnection between MidCon Texas' newly acquired facilities and Natural's mainline system.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 18, 1999, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Natural to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14175 Filed 6–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2326–000 and EL99–68–000]

Pacific Gas and Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

May 28, 1999.

Take notice that on May 27, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–68–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–68–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14119 Filed 6–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2659–011]

PacifiCorp; Notice of Site Visit

May 28, 1999.

Take notice that Commission staff will visit the site of the Powerdale Hydroelectric Project (FERC Project No. 2659) located on the Hood River in the town of Hood River, Oregon from 9:00 a.m. to 1:00 p.m. on Thursday, June 17, 1999, to view the project area and facilities. All interested individuals, organizations, and agencies are invited to accompany Commission staff on this site visit. Participants will meet at the parking lot near the project powerhouse.

For further information contact Bob Easton at (202) 219–2782.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14172 Filed 6–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–15–000]

PG&E Gas Transmission-Northwest; Notice of Filing

May 28, 1999.

Take notice that PG&E Gas Transmission-Northwest (PG&E–NW) filed revised standards of conduct on April 1, 1999. PG&E–NW states that it is incorporating Standard L (to be codified at 18 CFR 161.3(l) which was adopted by the Commission in Order No. 599.[1]

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14174 Filed 6–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER16–2573–001, et al.]

Southern Company Services, Inc.; et al.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

Southern Company Services, Inc.
Docket Nos. ER96–2573–001]

Independent Power Marketers[2]

Abacus Group Ltd.
Docket No. ER98–4240–000
AC Power Corp.
Docket No. ER97–2867–000
ACN Power Inc.
Docket No. ER98–4685–000
Advantage Energy
Docket No. ER97–4186–000
AIE Energy Services, Inc.
Docket No. ER98–3164–000
Alliance Energy Services Partnership
Docket No. ER99–1945–000
Alliance Power Marketing, Inc.
Docket No. ER96–1818–000
Alliance Strategies
Docket No. ER95–1381–000
A'Lones Group, Inc.
Docket No. ER97–512–000
Alpha Energy Corporation
Docket No. ER97–4730–000
Alternate Power Source Inc.
Docket No. ER96–1145–000
Amerada Hess Corporation
Docket No. ER97–2153–000
American Energy Trading, Inc.
Docket No. ER97–360–000
American Home Energy Corp.
Docket No. ER98–1903–000
American Power Exchange, Inc.
Docket No. ER94–1578–000
American Power Reserve Marketing Company
Docket No. ER97–1428–000
American Premier Energy Corp.
Docket No. ER98–3451–000
Amoco Energy Trading Corporation
Docket No. ER95–1359–000
AMVEST Coal Sales, Inc.
Docket No. ER97–464–000
AMVEST Power, Inc.
Docket No. ER97–2045–000
Apra Energy Group Inc.
Docket No. ER97–1643–000
Anker Power Services, Inc.
Docket No. ER97–3788–000
Applied Resources Integrated Services, Inc.
Docket No. ER97–2604–000
Ashton Energy Corporation
Docket No. ER94–1246–000
Astra Power, LLC
Docket No. ER98–3378–000
Atlanta Gas Light Services, Inc.
Docket No. ER97–542–000
Atlantic Energy Technologies, Inc.
Docket No. ER97–2132–000
Audit Pro Incorporated
Docket No. ER95–878–000
Aurora Power Resources, Inc.
Docket No. ER98–573–000
Black Brook Energy Company
Docket No. ER97–1676–000
Bollinger Energy Corp.
Docket No. ER98–1821–000
Bonneville Fuels Management Corp.
Docket No. ER96–659–000
Boyd Rosene and Associates, Inc.

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[1] Order No. 599, Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, 84 FERC ¶61, 108 (1998).

[2] The Commission's Office of Electric Power Regulation maintains a list of companies with market-based rates on the Commission's Internet site (www.ferc.fed.us/electric/PwrMkt/pwrmkt.htm). The list of companies in the caption, and the breakdown of the companies by category ("Independent Power Marketers," "Affiliated Power Marketers," etc.) in the caption, are based on this list. The breakdown of the companies by category in the caption is solely for the convenience of the reader, and the category titles are not intended to be substantive determination of the appropriate categorization of the companies. *Also see infra* n.3.

Docket No. ER95–1572–000
Brennan Power Inc.
Docket No. ER97–1630–000
Btu Power Corporation
Docket No. ER96–1283–000
Burlington Resources Trading, Inc.
Docket No. ER96–3112–000
Business Discount Plan, Inc.
Docket No. ER99–581–000
California Polar Power Brokers, LLC
Docket No. ER98–701–000
California Power Services
Docket No. ER97–3525–000
Calpine Power Services Company
Docket No. ER94–1545–000
C.C. Pace Energy Services
Docket No. ER94–1181–000
CHI Power Marketing, Inc.
Docket No. ER96–2640–000
Chicago Electric Trading, L.L.C
Docket No. ER90–225–000
Cielo Power Market, L.P.
Docket No. ER99–964–000
Citizens Power Sales
Docket No. ER94–1685–000
Citizens Power & Light Corporation
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CL Power Sales (1–5), L.L.C
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CL Power Sales (6–10), L.L.C
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CL Power Sales 11, L.L.C
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CL Power Sales 12, L.L.C
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CL Power Sales 13, L.L.C
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CL Power Sales 14, L.L.C
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CL Power Sales 15, L.L.C
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CNG Retail Services Corporation
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CoEnergy Trading Company
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Colonial Energy, Inc.
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Columbia Energy Power Marketing Corp.
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Commodore Gas & Electric, Inc.
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Commonwealth Energy Corporation
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Community Electric Power Corporation
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Direct Electric Inc.
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Eagle Gas Marketing Company
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Eastern Pacific Energy
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Eclipse Energy, Inc.
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Electech, Inc.
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EMC Gas Transmission Company
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Texican Energy Ventures, Inc.
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TexPar Energy, Inc.
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Thicksten Grimm Burgum, Inc.
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Torco Energy Marketing, Inc.
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Tosco Power, Inc.
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Total Gas & Electric, Inc.
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Total Gas & Electricity (PA), Inc.
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TransCanada Energy Ltd.
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TransCanada Power Marketing, Ltd.
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TransCurrent, L.L.C.
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Trident Energy Marketing, Inc.
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Turner Energy, L.L.C.
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United American Energy Corp.
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United Regional Energy LLC
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Unocal Corporation
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US Energy, Inc.
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U.S. Power & Light, Inc.
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UTIL. Power Marketing, Inc.
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UtiliSys Corporation
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Vanpower, Inc.
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VTEC Energy, Inc.
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Wasatch Energy Corporation.
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Washington Gas Energy Services, Inc.
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Watt Works
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Westcoast Power Marketing, Inc.
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Western Energy Marketers, Inc.
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Western Power Providers, Inc.
Docket No. ER95–1459–000
Wickford Energy Marketing, L.C.
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Wicor Energy Services, Inc.
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Williams Energy Marketing & Trading Co.
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Wilson Power & Gas Smart, Inc.
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Woodruff Energy
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Zapco Power Marketers, Inc.
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AEP Power Marketing, Inc
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AllEnergy Marketing Company
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Alliant Energy Industrial Services, Inc.
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Alpena Power Marketing, L.L.C.
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Aquila Energy Marketing Corp.
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Avista Energy, Inc.
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Bangor Energy Resale, Inc.
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British Columbia Power Exchange Corp.
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Cargill-Alliant, L.L.C.
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Central Hudson Enterprise Corporation
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CET Marketing L.P.
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CinCap IV, LLC
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CinCap V, LLC

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Cinergy Capital & Trading, Inc.
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CLECO Energy, L.L.C.
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Clinton Energy Management Services, Inc.
Docket No. ER98–3934–000
CMS Marketing, Services and Trading Co.
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COM/Energy Marketing, Inc.
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Consolidated Edison Energy, Inc.
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Consolidated Edison Solutions, Inc.
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Constellation Energy Source, Inc.
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Constellation Power Sources, Inc.
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CSW Energy Services, Inc.
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DTE Edison America, Inc.
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DTE Energy Trading, Inc.
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Enron Energy Services, Inc.
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Inventory Management & Distribution Co., Inc.
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InterCoast Power Marketing Company
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LG&E Energy Marketing Inc.
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Montana Power Trading & Marketing Company
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NEV East, L.L.C.
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NEV California, L.L.C.
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NEV Midwest, L.L.C.
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New Energy Partners, LLC
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New Energy Ventures, Inc.
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Niagara Mohawk Energy Marketing, Inc.
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Northern/AES Energy LLC
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NRG Power Marketing Inc.
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NYSEG Solutions, Inc.
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OGE Energy Resources, Inc.
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PacifiCorp Power Marketing, Inc.
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PEC Energy Marketing Inc.
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Pepco Services, Inc.
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PG&E Energy Trading Power, L.P.
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PPM Three LLC
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PPM Four LLC
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PPM Five LLC
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PPM Six LLC
Docket No. ER97–3931–000
Primary Power Marketing, LLC
Docket No. ER98–4333–000
Progress Power Marketing, Inc.
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PSEG Energy Technologies Inc.
Docket No. ER97–2176–000
QST Energy Trading Inc.
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R. Hadler and Company, Inc.
Docket No. ER97–3056–000
Reliant Energy Services, Inc.
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SCANNA Energy Marketing, Inc.
Docket No. ER96–1086–000
Select Energy, Inc.
Docket No. ER99–14–000
Sempra Energy Trading Corp.
Docket No. ER94–1691–000
SIGCORP Energy Services, L.L.C.
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Southern Company Energy Marketing L.P.
Docket No. ER97–4166–000
Southern Energy California
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Southern Energy New England, LLC
Docket No. ER98–4118–000
Southern Energy Retail Trading & Marketing, Inc.
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Southern Energy Trading & Marketing, Inc.
Docket No. ER95–976–000
Spokane Energy, LLC
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TECO EnergySource, Inc.
Docket No. ER96–1563–000
TransAlta Energy Marketing Corp.
Docket No. ER96–1316–000
TransAlta Energy Marketing (US) Inc.
Docket No. ER98–3184–000
UGI Power Supply, Inc.
Docket No. ER96–2715–000
Unicom Power Marketing, Inc.
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Union Electric Development Corporation
Docket No. ER97–3663–000
Unitil Resources, Inc.
Docket No. ER97–2462–000
WPS Energy Services, Inc. and WPA Power Development, Inc.
Docket No. ER96–1088–000
XENERGY
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Affiliated Power Producers

AES Alamitos, L.L.C.
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AES Creative Resources, L.P. and AES Eastern Energy, L.P.
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AES Huntington Beach, L.L.C.
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AES Redondo Beach, L.L.C.
Docket No. ER98–2186–000
AmerGen Energy Company, L.L.C.
Docket No. ER99–754–000
Arthur Kill Power, L.L.C.
Docket No. ER99–2161–000
Astoria Power, L.L.C.
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AYP Energy, Inc.
Docket No. ER99–954–000
Bridgeport Energy LLC
Docket No. ER98–2783–000
Cabrillo Power I, L.L.C.
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Cabrillo Power II, L.L.C.
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CH Resources, Inc.
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CinCac VI, L.L.C.
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Commonwealth Chesapeake Company, L.L.C.
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Cordova Energy Company, L.L.C.

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Duke Energy Morro Bay, L.L.C.
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Duke Energy Moss Landing, L.L.C.
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Duke Energy New Smyrna Beach Power Co. Ltd., LLP
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Duke Energy Oakland, L.L.C.
Docket No. ER98–2682–000
Duke Energy South Bay, L.L.C.
Docket No. ER99–1785–000
Dunkiek Power, L.L.C.
Docket No. ER99–2168–000
El Dorado Energy, LLC
Docket No. ER98–4109–000
El Segundo Power, L.L.C.
Docket No. ER98–1127–000
Elwood Energy, L.L.C.
Docket No. ER99–1695–000
EME Homer City Generation, L.P.
Docket No. ER99–666–000
Energy East South Glens Falls, LLC
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Entergy Nuclear Generating Company
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ESI Vansycle Partners, L.P.
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FPL Energy AVEC LLC
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FPL Energy Mason LLC
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FPL Energy Wyman LLC
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FPL Energy Wyman IV LLC
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Genesee Power Station, L.P.
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Grayling Generation Station, L.P.
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Harbor Cogeneration Company
Docket No. ER99–1248–000
Hawkeye Power Partners, L.L.C.
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Huntley Power, L.L.C.
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Kincaid Generation LLC
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Koch Power Louisiana, L.L.C.
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Lake Benton Power Partners, LLC
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Lake Benton Power Partners II, LLC
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Lakewood Cogeneration L.P.
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LG&E Capital Corp.
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LG&E Westmoreland Renssalaer
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Long Beach Generation, L.L.C.
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Medical Area Total Energy Plant, Inc.
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Millenium Power Partners, LP
Docket No. ER98–830–000
Minnesota Agri-Power, LLC
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Mobile Energy Services Company, L.L.C.
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Monmouth Energy, Inc.
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NGE Generation, Inc.
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PanEnergy Lake Charles Generation, Inc.
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PDI Canada, Inc.
Docket No. ER99–1936–000
PDI New England, Inc.
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Penobscot Hydro, LLC
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Pittsfield Generating Company. L.P.
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Reliant Energy Coolwater, L.L.C.
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Reliant Energy Mandalay, L.L.C.
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Somerset Power L.L.C.
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Southern Energy Bowline, L.L.C.
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Southern Energy Canal, L.L.C.
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Southern Energy Delta, L.L.C.
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Southern Energy Kendall, L.L.C.
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Southern Energy Lovett, L.L.C.
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Southern Energy NY–GEN, L.L.C.
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Southern Energy Wisconsin, L.L.C.
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State Line Energy, Inc.
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Storm Lake Power Partners I, L.L.C.
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Other Utilities With Market-Based Rates

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Cadillac Renewable Energy
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Canadian Niagara Power Company
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Choctaw Generation Limited Partnership
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Cogen America Parlin Inc.
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Dighton Power Associates L.P.
Docket No. ER99–616–000
Edgar Electric Cooperative Association
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GEN–SYS Energy
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Geysers Power Company
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Golden Spread Electric Cooperative
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Great Bay Power Corporation
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GS Electric Generating Cooperative, Inc.
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Indeck Pepperell Power Associates, Inc.
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Logan Generating Company, L.P.
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Oxbow Power Marketing, Inc.
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Pacific Northwest Generating Cooperative
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Sunlaw Cogeneration Partners, L.P.
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UAE Lowell Power, L.L.C.
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Westchester Resco Company, L.P.
Docket No. ER98–3030–000
Williams Generating Company—Hazelton
Docket No. ER97–4587–000
Wolverine Power Supply Cooperative, Inc.
Docket No. ER98–411–000

Order Denying Rehearing, Revising Reporting Requirements for Power Marketers and Power Producers with Market-Based Rate Authorization, Staying Effect of the Revised Reporting Requirements, and Establishing Procedures

Issued May 27, 1999.

On October 25, 1996, in Docket No. EL96–2573–001, Southern Company Services, Inc. (Southern) filed a request for rehearing of the Commission's letter order issued on September 25, 1996.[2] Southern requests the Commission to revise the requirement that traditional public utilities with market-based rate authority must file service agreements for long-term (longer than one year in duration) transactions within 30 days after commencement of service. Southern asks the Commission to allow such public utilities instead to report all transactions, long-term as well as short-term, in quarterly transaction summaries, as power marketers (non-traditional public utilities, without ownership, operation or control of generation or transmission facilities) currently are permitted to do.[3]

As discussed below, we will deny Southern's request for rehearing. We agree with Southern, however, that the Commission's goal of ensuring a competitive marketplace will be furthered by ending the current disparity between the reporting requirements for long-term contracts applicable to traditional public utilities selling at market-based rates and the reporting requirements applicable to power marketers. Accordingly, we are revising the reporting requirements for long-term contracts applicable to power marketers to be consistent with the reporting requirements applicable to traditional public utilities with market-based rates. Specifically, with respect to any long-term transaction agreed to by a power marketer after 30 days from the date of issuance of a final order in this proceeding, the power marketer must file a service agreement with the Commission within 30 days after service commences, rather than merely reporting transactions thereunder in its quarterly transaction summaries. We are also eliminating the requirement that power marketers file informational reports on their purchases.

We will also grant party status to all of the companies listed in the caption, and will entertain late motions to intervene filed by any other interested persons, so that they have the opportunity to seek rehearing regarding the change in policy announced herein. Further, we will delay the effectiveness of our new policy until 30 days after the issuance of a final order in this proceeding, when we will have acted upon any requests for rehearing. In the event no party requests rehearing of this order, then this order would be the final order in this proceeding. Power marketers will *not* be required to file long-term transactions that were agreed to or consummated prior to the effective date of this policy change.

Discussion

In an earlier proceeding involving Southern, we instituted, at Southern's behest, the practice of permitting traditional public utilities transacting under market-based rate authority to employ abbreviated reporting requirements for short-term (one year or less in duration) transactions.[4] Specifically, we stated that all such traditional public utilities would thereafter be allowed to report short-term transactions on a summary, quarterly basis.[5] Southern in that proceeding—requested the abbreviated filing requirements only with respect to short-term transactions. For long-term transactions, it proposed to file separate service agreements, under umbrella agreements already on file, within 30 days after commencement of service. Southern asserted, and we agreed, that short-term transactions should be treated differently, because they frequently are not the subject of separate written agreements and may be negotiated orally and documented only by log entries.[6]

Now, on rehearing of the September 25 Order, Southern challenges the filing requirements for long-term market-based rate transactions that Southern itself proposed in *Southern I* for traditional public utilities. Southern now argues that continuing the disparity between filing requirements for long-term marked-based rate transactions applicable to traditional public utilities and those applicable to power marketers is inconsistent with the Commission's goal of ensuring a level playing field in a competitive marketplace. We agree.

We do not agree, however, that the appropriate remedy is to relax the reporting requirements applicable to traditional public utilities for long-term market-based rate transactions. Rather, we believe that, as Southern argued in the *Southern I* proceeding, different reporting requirements are appropriate for short-term and long-term transactions. Therefore, just as power marketers and traditional public utilities currently have the same reporting requirements for short-term transactions (*i.e.*, quarterly summaries), we conclude that they also should have the same reporting requirements for long-term transactions (*i.e.*, filing of service agreements within 30 days after commencement of service). We discuss below our rationale for adopting reporting requirements based not on the type of seller involved, but rather on the type of transaction involved.

We initially emphasize that we are not imposing new filing requirements on power marketers. The policy change

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[2] Southern Company Services, Inc., 76 FERC ¶61,321 (1996) (September 25 Order). The September 25 Order denied confidential treatment of a rate schedule attached to a service agreement filed by Southern as agent for Georgia Power Company. While commenting (at 3) that it "continue to believe that the Commission should allow rate schedules to be filed on a confidential basis," Southern does not request rehearing of the September 25 Order's denial of confidential treatment.

[3] For purposes of this order, "traditional public utilities" means public utilities that own, operate or control generation and/or transmission facilities. The Commission consistently has required such public utilities seeking blanket, open-ended market-based rate authorization—even those without a franchised service territory or captive ratepayers—to file service agreements for long-term transactions within 30 days after the date of commencement of service. *See, e.g.*, Cataula Generating Company, L.P., 79 FERC ¶61,261 at 62,134 (1997); Kincaid Generation, L.L.C., 78 FERC ¶61,082 at 61,300–01 (1997). Any reference in this order to "power marketers" means public utilities without ownership, operation or control over generation and/or transmission facilities, *i.e.*, independent power marketers and affiliated power marketers.

In addition to the categories of "Independent Power Marketers" and "Affiliated Power Marketers," the caption of this order also lists companies under the categories of "Affiliated Power Producers" and "Other Utilities with Market-Based Rates" based on the list on the Commission's Internet site. Because these two categories may include utilities that may be, for some period of time, only power marketers, we have included them in the caption as well.

[4] *See* Southern Company Services, Inc., 75 FERC ¶61,130, *clarified on other grounds*, 75 FERC ¶61,353 (1996) (*Southern I*).

[5] Southern proposed semi-annual transaction summaries, but we required the summaries to be filed quarterly, to accord with the requirements applicable to power marketers. *See id.*, 75 FERC at 61,444.

[6] *See id.*

we announce herein reflects our decision to rescind, on a prospective basis, the waiver that we have generally granted to power marketers of the requirement to file long-term transaction agreements.[7] To provide those power marketers and their customers with appropriate notice of this policy change, we have included in the caption of this order the docket numbers for those power—marketers for whom we previously granted waiver of the requirement to file long-term transaction agreements. We also emphasize that this policy will apply only on a prospective basis, 30 days after the issuance of a final order in this proceeding.

The current general practice of sellers in the industry, both traditional public utilities and power marketers, is to engage in short-term transactions that frequently are not the subject of separate written agreements. To require traditional utilities and power marketers to prepare, negotiate and file a written agreement for every short-term transaction would seriously diminish the flexibility and efficiency of the short-term market and burden the resources of both the reporting parties and the Commission. We continue to believe, therefore, that our policy of allowing all short-term market-based rate transactions to be reported in quarterly summaries correctly balances the goal of an efficient and competitive marketplace with the Commission's responsibility to ensure that such transactions comply with the requirements of the Federal Power Act (FPA).[8]

For long-term transactions, on the other hand, a different balance is appropriate. Long-term transactions are almost always the subject of separate written agreements and do not normally involve the same time-sensitive pressures as short-term competitive markets. Thus, to require all entities engaging in long-term transactions to file written agreements for such transactions, within 30 days of the date service commences, in our judgment will neither impede flexibility and efficiency in the long-term market nor unduly burden the resources of the reporting parties and the Commission. Moreover, we see no reason to continue allowing power marketers a more relaxed reporting requirement for long-term transactions than that applicable to traditional utilities. Power marketers, like any other public utility, are subject to the requirement under section 205(c) of the FPA to file with the Commission for public inspection all rates, charges, classifications and practices, as well as any contracts that affect or relate thereto.[9] As noted above, we continue to believe that quarterly transactional summaries are, on balance, appropriate under section 205(c) for short-term transactions—which, in our experience, constitute the bulk of power marketers' jurisdictional activities. To the extent, however, that power marketers are engaged in long-term transactions, we will require them, like other public utilities selling at market-based rates, to file the actual long-term agreements with the Commission rather than merely report the transactions in quarterly summaries.

Accordingly, with respect to any long-term transaction (*i.e.*, longer than one year) agreed to or consummated by a power marketer after 30 days from the date of issuance of a final order in this proceeding, a service agreement must be filed within 30 days after commencement of service. To ensure clear identification of filings, and in order to facilitate the orderly maintenance of the Commission's files and public access to the documents, long-term transaction service agreements should not be filed together with short-term transaction summaries.[10] We will rescind, on a prospective basis, the waiver previously granted to power marketers of the requirement to file long-term transaction agreements with the Commission.

Our new policy will apply prospectively, but it will apply to existing, as well as new, power marketers. In view of the fact that we are announcing a new policy at the rehearing stage of this proceeding, we have listed the affected power marketers, and the dockets in which they were granted market-based rate authorization, in the caption of this order, and we are directing the Secretary to publish this order in the **Federal Register**. Further, as a matter of administrative convenience, all of the companies listed in the caption are hereby made parties to this proceeding. With respect to other interested persons, we believe that it is appropriate to make an exception to our practice of not permitting late interventions for the purpose of filings requests for rehearing. Accordingly, we will entertain late motions to intervene in this proceeding for the purpose of filing requests for rehearing of this order.[11] Further, we will delay the effectiveness of the new reporting requirements announced herein pending Commission action on the requests for rehearing of this order and the issuance of a final order in this proceeding.

As noted, the affected companies are listed in the caption of this order for purposes of providing appropriate notice. While the Commission has made a diligent effort to ensure that all affected power marketers are included in the caption of this order, it is possible that some affected power marketers are not listed. However, this policy change will apply to all power marketers, regardless of their inclusion in the caption.[12]

It is not necessary for entities moving to intervene and/or requesting rehearing to list all of the dockets listed in the caption. Instead, in order to facilitate the processing of pleadings, for any person filing a late motion to intervene and/or a request for rehearing of this order, the caption of its pleading should refer only to "Southern Company Services, Inc., Docket No. ER96–2573–001" and the case-specific market-based rate docket number(s) with which it is concerned, if any. Further, as previously noted, it is possible that not all affected power marketers are included in the caption of this order. Any power marketer with market-based rate authorization not listed in the caption (or its customers) may also file a late motion to intervene and request for rehearing of this order.

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[7] *See* 28 CFR 35.1(a) (1998), which, in pertinent part, requires every public utility to file rate schedules "setting forth all rates and charges for any transmission or sale of electric energy subject to the jurisdiction of this Commission, the classifications, practices, rules and regulations affecting such rates and charges and all contracts which in any manner affect or relate to such rates, charges, classifications, services, rules, regulations or practices, as required by section 205(c) of the Federal Power Act * * *."

[8] *See, e.g.*, LG&E Power Marketing Inc., 68 FERC ¶ 61,247 at 62,124 (explaining that the quarterly filing requirement for marketers is necessary to ensure compliance with the FPA, to allow the Commission to evaluate the reasonableness of the rates and to provide for ongoing monitoring of the marketer's ability to exercise market power), *modified on other grounds*, 69 FERC ¶ 61,153 (1994); Enron Power Marketing, Inc., 66 FERC ¶ 61,244 at 61,598 (1994) (noting that the quarterly filings allow the Commission to monitor the marketer's adherence to the standards that allow it to sell at market-based rates).

[9] Enron Power Marketing, Inc., 65 FERC ¶ 61,305 at 62,406 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994); National Electric Associates Limited Partnership, 50 FERC ¶ 61,378 at 62,157 n.15 (1990).

[10] *See* Consolidated Edison of New York, Inc., 78 FERC ¶ 61,298 at 62,286; *Southern I*, 75 FERC at 61,444–45.

[11] We strongly encourage those parties with common interests to file joint requests for rehearing, to the degree possible.

[12] In the event that a power marketer that is affected by this order is not listed in the caption of this order, it should inform the Commission of that fact, including the docket number in which it was granted market-based rate authority.

The Commission Orders

(A) Southern's request for rehearing of the September 25 Order is hereby denied.

(B) Previously-granted waivers of the requirement to file long-term (longer than one year in duration) transaction agreements are hereby rescinded on a prospective basis, effective 30 days after the issuance of a final order in this proceeding, as discussed in the body of this order.

(C) Pursuant to Ordering Paragraph (B), the reporting requirements applicable to power marketers for long-term (longer than one year in duration) transactions are hereby revised to match those applicable to traditional public utilities, effective 30 days after the issuance of a final order in this proceeding, as discussed in the body of this order.

(D) The entities listed in the caption of this order are hereby made parties to this proceeding.

(E) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission. Commissioner Bailey concurred with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

Bailey, Commissioner, *concurring*

I strongly support this order to the extent it equalizes the reporting requirements for both marketers and traditional utilities which have Commission authorization to sell power at market-based rates.

I have previously questioned the rationale, if any, for different reporting requirements for different types of sellers with market-based power sales authority.[1] I can see no reason, in a post-Order No. 888 world of increased competition and nondiscriminatory access to transmission service, to treat marketers any differently than traditional utilities for purposes of reporting their power sales transactions. I have been concerned that the disparity in reporting requirements could somehow confer a competitive advantage on those power sellers with a lesser reporting obligation and, perhaps, without the same obligation to disclose commercially sensitive information. Today's order removes that disparity.

I am less certain as to the desirability of the Commission's means to remove the disparity in reporting requirements. The Commission chooses to *increase* the reporting requirements applicable to power marketers by obligating them to file for Commission review all long-term power sales agreements (which now need only be reflected in quarterly transaction summaries). In my opinion, the better approach might be to *decrease* the reporting requirements applicable to traditional utilities by allowing them to reflect their long-term transactions in the quarterly reports they currently are allowed to file for all short-term transactions.

Today's order explains why power marketers should not be particularly burdened by the new filing requirement, since long-term agreements typically are reduced to writing anyway. Today's order does not explain, however, how the filing (as opposed to the quarterly reporting) of long-term agreements by marketers and traditional utilities alike will materially help the Commission in its monitoring of competitive markets and in its responsibility to ensure that all wholesale power rates are just and reasonable.

I suspect the benefit, from the Commission's perspective, in the filing of long-term power sales agreements lies in the belief that the such filing will convey more and better information (on price, terms and conditions) than that reflected in the quarterly reports the Commission receives. If, so, I question whether the better approach is not to add to the filing requirements of power marketers, but rather to standardize and improve the quantity and quality of information reflected in the quarterly reports they submit.

Even if there is no general obligation to file long-term agreements, the Commission presumably would continue to require their filing to the extent they reflect a transaction among affiliates.[2] Moreover, since, as the order explains, the quarterly reporting requirement for short-term transactions is based on a discretionary waiver of the section 205 notice and filing requirement, the Commission could rescind that waiver, and require the filing of any agreement, at any time—such as upon the filing of a customer complaint. (This is analogous to the Commission's commitment to rescind any waiver of the Order No. 888 (open access tariff) and 889 (OASIS and separation of functions) requirements upon the filing of a customer complaint[3]).

It may be useful to consider this issue in a more global context. The Commission might want to consider that type of information it (and the public) needs from the sellers of power at market-based rates at the same time it considers other reporting and filing improvements—for example, at the time it considers revisions to the FERC Form 1 reporting requirements applicable to all public utilities.

And I am reluctant to insist upon generic improvements to Commission reporting and filing requirements in the context of our action on a single request for rehearing filed almost three years ago by a single utility in a particular adjudication. Today's order, recognizing the Commission's adoption of new policy, grants party status to power marketers, which might otherwise be caught off-guard, for the purpose of seeking rehearing of this rehearing order. I welcome any comment as to whether the Commission should employ a different method for equalizing the reporting and filing requirements applicable to power marketers and traditional utilities.

Vicky A. Bailey,

Commissioner.

[FR Doc 99–14120 Filed 6–3–99; 8:45 am]

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[1] *See* Clarksdale Public Utilities Commission v. Energy Services, Inc., 85 FERC ¶ 61,268 at 62,079–80 ((1998) concurring statement).

[2] The Commission has long required power marketers with market-based rate authorization to commit in their tariffs not to sell power to or purchase power from an affiliated traditional utility, and vice versa, unless the Commission first approves such a transaction in a separate rate filing under section 205 of the FPA. *Cf., e.g.,* Detroit Edison Company, 80 FERC ¶ 61,348 (1997); GPU Advanced Resources, Inc., 81 FERC ¶ 61,335 (1997).

[3] *See* Central Minnesota Municipal Power Agency, 79 FERC ¶ 61,260 at 61,127 (1997); Easton Utilities Commission, *et al.*, 83 FERC ¶ 61,334 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–645–000]

Trunkline Gas Company; Notice of Informal Technical Conference

May 28, 1999.

The Federal Energy Regulatory Commission (Commission) will convene an informal staff technical conference on June 28, 1999, at 2:00 p.m., in Room 3M3, of the Commission's offices at 888 First Street, N.E., Washington, D.C., to discuss Trunkline's answers to staff's data requests in the above-captioned proceeding. The conference is open to all interested persons.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14176 Filed 6–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–102–000]

Wyoming Interstate Company, Ltd.; Notice of Availability of the Environmental Assessment for the Proposed Medicine Bow Lateral Project

May 28, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) that discusses the environmental impacts of the Medicine Bow Lateral Project proposed in the above-referenced docket. The proposed project would include the construction and operation of approximately 149 miles of 24-inch-diameter pipeline and 7,170 horsepower (hp) of compression.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Wyoming Interstate Company Ltd. (WIC) proposes to build new pipeline and compression facilities to increase the transportation capacity of its current system in Colorado and Wyoming. The new facilities would enable WIC to transport an additional 269 million cubic feet of natural gas per day from the Powder River Basin. Specifically, WIC seeks Commission authority to construct and operate the following facilities:

- 149 miles of 24-inch-diameter pipeline extending from WIC's existing mainline in Weld County, Colorado, to Converse County, Wyoming, where it would interconnect with nonjurisdictional gathering facilities;
- A new compressor station in Converse County, Wyoming, which would consist of one turbine-driven, centrifugal compressor unit rated at 7,170 hp;
- Two new meter stations in Converse County, Wyoming; and
- A new check meter and side valve at the interconnection with WIC's mainline in Weld County, Colorado.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, landowners, local newspapers and libraries, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow the instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C. 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR11.1;
- Reference Docket No. CP99–102–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1999.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 395.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14173 Filed 6–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–203–007]

CNG Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed CNG Tioga Expansion Project and Request for Comments on Environmental Issues

May 28, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of CNG Transmission Corporation's (CNG) proposal to modify the active storage field boundary, to authorize a protective boundary, and to convert certain observation wells to storage wells at CNG's Tioga Storage Complex in Tioga County, Pennsylvania.

CNG requests authority to operate four storage wells which were previously drilled as observation wells and converted to storage wells. In addition, CNG requests authorization to convert and operate two additional observation wells to storage wells. CNG would also construct 0.1 mile of 6-inch-diameter and 0.2 mile of 4-inch-diameter pipeline to connect these two wells to existing storage field pipeline facilities. CNG states that neither the certificated capacity nor the certified deliverability of the Tioga Storage Complex would be increased by the conversion of these wells. This EA on the CNG Tioga Expansion Project [1] will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to abandon, construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

CNG seeks authorization for the following:

- Operate four storage wells (well Nos. TW–209, TW–707, TW–708, and TW–800) which were previously drilled as observation wells and converted to storage wells.

[1] CNG Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

• Convert and operate observation well Nos. TW–605 and TW–403 as storage wells.

• Construction of 536 feet of 6-inch-diameter (LN–2465–S) and 1,117 feet of 4-inch-diameter pipeline (LN–2464–S) to connect well Nos. TW–605 and TW–403 to existing gas storage pipeline facilities.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 66.2 acres of land. Following construction, about 18.8 acres would be maintained as permanent pipeline right-of-way and about 20.0 acres would be required for new well sites and aboveground facilities. The remaining 27.4 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

• Geology and soils.

• Water resources, fisheries, and wetlands.

• Vegetation and wildlife.

• Endangered and threatened species.

• Public safety.

• Land use.

• Cultural resources.

• Air quality and noise.

• Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 4 and 5 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CNG. This preliminary list of issues may be changed based on your comments and our analysis.

• A total of about 18.9 acres of forest would be disturbed.

• The project may affect 2 wetlands.

• Blasting may be required in some areas.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;

• Reference Docket No. CP87–203–007; and

• Mail your comments so that they will be received in Washington, DC on or before June 28, 1999.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14177 Filed 6–3–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6354–2]

Agency Information Collection Activities: Comment Request; See List of ICRs Planned To Be Submitted in Section A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following 19 continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for

review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before August 3, 1999.

ADDRESSES: US Environmental Protection Agency, 401 M Street SW, Office of Compliance, Mail Code 2223A, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in section B of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following 19 continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) NSPS subpart D, Fossil Fuel Fired Steam Generators; EPA ICR Number 1052, and OMB Control Number 2060–0026, expires September 30, 1999.

(2) NSPS subpart Da, Electric Utility Steam Generating Units; EPA ICR Number 1053, and OMB Control Number 2060–0023, expires September 30, 1999.

(3) NSPS subpart Db, Industrial-Commercial-Institutional Steam Generating Units; EPA ICR Number 1068, and OMB Control Number 2060–0072, expires August 31, 1999.

(4) NSPS subpart I, Hot Mix Asphalt; EPA ICR Number 1127, and OMB Control Number 2060–0083, expires September 30, 1999.

(5) NSPS subpart BB, Kraft Pulp Mills; EPA ICR Number 1055, and OMB Control Number 2060–0021, expires September 30, 1999.

(6) NSPS subpart DD, Grain Elevators; EPA ICR Number 1130, and OMB Control Number 2060–0082, expires November 30, 1999.

(7) NSPS subpart HH, Lime Manufacturing; EPA ICR Number 1167, and OMB Control Number 2060–0063, expires August 31, 1999.

(8) NSPS subpart RR, Pressure Sensitive Tape and Label; EPA ICR Number 0658, and OMB Control Number 2060–0004, expires September 30, 1999.

(9) NSPS subpart SS, Surface Coating of Large Appliances; EPA ICR Number 0659, and OMB Control Number 2060–0108, expires October 31, 1999.

(10) NSPS subpart TT, Metal Coil Surface Coating; EPA ICR Number 0660, and OMB Control Number 2060–0107, expires October 31, 1999.

(11) NSPS subpart WW, Beverage Can Surface Coating; EPA ICR Number 0663, and OMB Control Number 2060–0001, expires September 30, 1999.

(12) NSPS subpart DDD, VOC Emissions from the Polymer Manufacturing Industry, EPA ICR Number 1150, and OMB Control Number 2060–0145, expires November 30, 1999.

(13) NSPS subpart GGG, Petroleum Refineries; EPA ICR Number 0983, and OMB Control Number 2060–0067, expires August 31, 1999.

(14) NSPS subpart HHH, Synthetic Fiber Production; EPA ICR Number 1156, and OMB Control Number 2060–0059, expires October 31, 1999.

(15) NSPS subparts III and NNN, SOCMI Air Oxidation & Distillation; EPA ICR Number 0998, and OMB Control Number 2060–0197, expires August 31, 1999.

(16) NSPS subpart JJJ, Petroleum Dry Cleaners; EPA ICR Number 0997, and OMB Control Number 2060–0079, expires November 30, 1999.

(17) NSPS subpart RRR, SOCMI Reactor Processes; EPA ICR Number 1178, and OMB Control Number 2060–0269, expires September 30, 1999.

(18) NESHAP subpart FF, Benzene Waste; EPA ICR Number 1541, and OMB Control Number 2060–0183, expires September 30, 1999.

(19) NESHAP subpart M, Asbestos; EPA ICR Number 0111, and OMB Control Number 2060–0101, expires September 30, 1999.

B. Contact Individuals for ICRs

(1) NSPS subpart D, Fossil Fuel Fired Steam Generators; Jordan Spooner, (202) 564–7058, *spooner.jordan@epamail.epa.gov*, EPA ICR Number 1052, and OMB Control Number 2060–0026, expires September 30, 1999.

(2) NSPS subpart Da, Electric Utility Steam Generating Units; Jordan Spooner, (202) 564–7058, *spooner.jordan@epamail.epa.gov* EPA ICR Number 1053, and OMB Control Number 2060–0023, expires September 30, 1999.

(3) NSPS subpart Db, Industrial-Commercial-Institutional Steam Generating Units; Jordan Spooner, (202) 564–7058, *spooner.jordan@epamail.epa.gov*, EPA ICR Number 1068, and OMB Control Number 2060–0072, expires August 31, 1999.

(4) NSPS subpart I, Hot Mix Asphalt; Belinda Breidenbach, (202) 564–7022, *breidenbach.belinda@epamail.epa.gov*, EPA ICR Number 1127, and OMB Control Number 2060–0083, expires September 30, 1999.

(5) NSPS subpart BB, Kraft Pulp Mills; Seth Heminway, (202) 5564–7017, *heminway.seth@epamail.epa.gov*, EPA ICR Number 1055, and OMB Control Number 2060–0021, expires September 30, 1999.

(6) NSPS subpart DD, Grain Elevators; Ken Harmon, (202) 564–7049, *harmon.kenneth@epamail.epa.gov*, EPA ICR Number 1130, and OMB Control Number 2060–0082, expires November 30, 1999.

(7) NSPS subpart HH, Lime Manufacturing; Belinda Breidenbach, (202) 564–7022, *breidenbach.belinda@epamail.epa.gov*, EPA ICR Number 1167, and OMB

Control Number 2060–0063, expires August 31, 1999.

(8) NSPS subpart RR, Pressure Sensitive Tape and Label; Seth Heminway, (202) 5564–7017, *heminway.seth@epamail.epa.gov*, EPA ICR Number 0658, and OMB Control Number 2060–0004, expires September 30, 1999.

(9) NSPS subpart SS, Surface Coating of Large Appliances; Belinda Breidenbach, (202) 564–7022, *breidenbach.belinda@epamail.epa.gov*, EPA ICR Number 0659, and OMB Control Number 2060–0108, expires October 31, 1999.

(10) NSPS subpart TT, Metal Coil Surface Coating; Belinda Breidenbach, (202) 564–7022, *breidenbach.belinda@epamail.epa.gov*, EPA ICR Number 0660, and OMB Control Number 2060–0107, expires October 31, 1999.

(11) NSPS subpart WW, Beverage Can Surface Coating; Belinda Breidenbach, (202) 564–7022, *breidenbach.belinda@epamail.epa.gov*, EPA ICR Number 0663, and OMB Control Number 2060–0001, expires September 30, 1999.

(12) NSPS subpart DDD, VOC Emissions from the Polymer Manufacturing Industry, Sally Sasnett, (202) 564–7074 *sasnett.sally@epamail.epa.gov* EPA ICR Number 1150, and OMB Control Number 2060–0145, expires November 30, 1999.

(13) NSPS subpart GGG, Petroleum Refineries; Tom Ripp, (202) 564–7003, *ripp.tom@epamail.epa.gov*, EPA ICR Number 0983, and OMB Control Number 2060–0067, expires August 31, 1999.

(14) NSPS subpart HHH, Synthetic Fiber Production; Belinda Breidenbach, (202) 564–7022, *breidenbach.belinda@epamail.epa.gov*, EPA ICR Number 1156, and OMB Control Number 2060–0059, expires October 31, 1999.

(15) NSPS subparts III and NNN, SOCMI Air Oxidation & Distillation; Marcia Mia, (202) 564–7042, *mia.marcia@epamail.epa.gov*, EPA ICR Number 0998, and OMB Control Number 2060–0197, expires August 31, 1999.

(16) NSPS subpart JJJ, Petroleum Dry Cleaners; Joyce Chandler, (202) 564–7073, *chandler.joyce@epamail.epa.gov*, EPA ICR Number 0997, and OMB Control Number 2060–0079, expires November 30, 1999.

(17) NSPS subpart RRR, SOCMI Reactor Processes; Darlene Williams, (202) 564–7031, *williams.darlene@epamail.epa.gov*, EPA ICR Number 1178, and OMB Control Number 2060–0269, expires September 30, 1999.

(18) NESHAP subpart FF, Benzene Waste; Rafael Sanchez, (202) 564–7028, *sanchez.rafael@epamail.epa.gov*, EPA ICR Number 1541, and OMB Control Number 2060–0183, expires September 30, 1999.

(19) NESHAP subpart M, Asbestos; Tom Ripp, (202) 564–7003, *ripp.tom@epamail.epa.gov*, EPA ICR Number 0111, and OMB Control Number 2060–0101, expires September 30, 1999.

C. Individual ICRs

(1) NSPS Subpart D, Fossil Fuel Fired Steam Generators; EPA ICR Number 1052, and OMB Control Number 2060–0026, Expires September 30, 1999

This standard applies to each fossil-fuel-fired steam generating unit of more than 73 MW heat input rate (250 million Btu per hour), that were constructed after August 17, 1971 and before September 18, 1978. Owners or operators must provide EPA or the delegated State regulatory authority with the following one-time-only reports (specified in 40 CFR 60.7): Notifications of the anticipated and actual date of start up, notification of the date of construction or reconstruction, notification of any physical or operational changes to an existing facility which may increase the emission rate of any regulated air pollutant, notification of the date upon which demonstration of the continuous monitoring system performance commences, notification of the date of the initial performance test, and results of the performance test. Owners and operators are also required to maintain records of the occurrence and duration of any start up, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. Records shall be retained for at least two years.

In addition to reporting and recordkeeping requirements, facilities subject to this subpart must install, calibrate, maintain, and operate a continuous monitoring system (CMS) to monitor SO_2, NO_X and opacity (specified in 40 CFR 60.45), and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS commences. Owners or operators must submit quarterly reports indicating whether compliance was achieved, and their assessment of monitoring system performance (specified in 40 CFR 60.7).

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. The estimates were based on the assumption that there would be no new affected facilities, because new utility boilers constructed after September 18, 1978 are subject to subpart Da, and boilers constructed after June 19, 1986 are subject to subpart Db. Therefore, the requirements for initial notifications and the performance test are not included. Approximately 660 sources are currently subject to the standard. It was also assumed each source operates 365 days per year.

For recordkeeping, it was estimated that for each source it would take 91.25 person-hours per year to check, maintain, and operate the continuous emission monitors. For reporting, it was estimated that for each source it would take 4 person-hours per year for the quarterly reports of excess emissions and monitoring system performance.

(2) NSPS Subpart Da, Electric Utility Steam Generating Units; EPA ICR Number 1053, and OMB Control Number 2060–0023, Expires September 30, 1999

This standard applies to each electric utility steam generating unit which is capable of combusting more than 73 MW (250 million Btu/hr) heat input of fossil fuel, and for which construction or modification is commenced after September 18, 1978. Owners or operators must provide EPA, or the delegated State regulatory authority with the following one-time-only reports: Notifications of the anticipated and actual date of start up, notification of the date of construction or reconstruction, notification of any physical or operational changes to an existing facility which may increase the emission rate of any regulated air pollutant, notification of the date upon which demonstration of the continuous monitoring system commences, notification of the date of the initial performance test, and results of the performance test. Owners and operators are also required to maintain records of the occurrence and duration of any start up, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. Records shall be retained for at least two years.

In addition to reporting and recordkeeping requirements specified in 40 CFR 60.7, facilities subject to this subpart must install, calibrate, maintain, and operate a continuous monitoring system (CMS) to monitor SO_2, NO_X and opacity (specified in 40 CFR 60.7 and 40 CFR 60.47a), and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences (specified in 40 CFR 60.47a). Owners or operators must submit quarterly reports indicating whether compliance was achieved, and their assessment of monitoring system performance (specified in 40 CFR 60.49a).

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry. The estimates were based on the assumption that there would be seven new affected facilities each year, and there were an average of 103 sources in existence for the three years covered by the ICR. It was also assumed each source operates 365 days per year.

For each new source, it was estimated that it would take: One person-hour to read the instructions; 10.4 person-hours to write the initial notifications; and 290.8 person-hours to conduct the initial performance test and reference method 9 test (assuming that 20% of the tests must be repeated). For each source, it was estimated that it would take: 32 person-hours to write quarterly reports of excess emissions and monitoring system performance; and 182.5 person-hours to check, maintain, and operate continuous emission monitors.

(3) NSPS Subpart Db, Industrial-Commercial-Institutional Steam Generating Units; EPA ICR Number 1088, and OMB Control Number 2060–0072, Expires August 31, 1999

Affected facilities are each steam generating unit that commences construction, modification or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hour). Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. The estimate was based on the assumption that there would be 58 new affected facilities each year, and that there were approximately 785 sources in existence for the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to subpart Db are summarized by the following information.

The reporting requirements are as follows: Read instructions (1 person-hour); initial performance test (330 person-hours); 24-hour test for gas units (250 person-hours); repeat of initial performance test (330 person-hours); repeat of 24-hour test for gas units (250 person-hours) (Assume 20% of tests are repeated); demonstration of CEMS: For SO_2 (150 person-hours), for PM (100 person-hours), for NO_X (350 person-hours); repeat demonstration of CEMS (Assume 20% repeat rate); annual compliance tests for NO_X (250 person-hours); Appendix F annual accuracy test: For SO_2 (146 person-hours), for NO_X (146 person-hours); Appendix F quarterly audit, SO_2: For in-situ (125 person-hours), for extractive (36 person-hours); Appendix F quarterly audit, NO_X: For in-situ (125 person-hours), for extractive (36 person-hours) (Assume that 25% of units have an in-situ CEMS).

Sources are required to write reports on: Notification of construction/reconstruction (2 person-hours), notification of anticipated startup (2 person-hours), notification of actual startup (2 person-hours), monitoring plan (4 person-hours), notification of initial performance test: For SO_2 (2 person-hours), for PM (2 person-hours), for NO_X (2 person-hours); report of initial performance test: For SO_2 (16 person-hours), for NO_X (16 person-hours); notification of CMS demonstration: For SO_2 (2 person-hours), for PM (2 person-hours), for NO_X (2 person-hours). Quarterly reports for SO_2 (16 person-hours); quarterly reports for PM: Excess (16 person-hours), no excess (8 person-hours); quarterly reports for NO_X: CEMS compliance (16 person-hours), excess (16 person-hours), no excess (8 person-hours); Appendix F quarterly reports: For SO_2 (11 person-hours), for NO_X (11 person-hours). Recordkeeping requirements include the following: Maintaining records of startups, shutdowns, and malfunctions (1.5 person-hours); maintaining records of all measurements (1.5 person-hours).

(4) NSPS Subpart I, Hot Mix Asphalt; EPA ICR Number 1127, and OMB Control Number 2060–0083, Expires September 30, 1999

The New Source Performance Standards (NSPS) for hot mix asphalt facilities were proposed on June 11, 1973 and promulgated on July 25, 1977. These standards apply to each hot mix asphalt plant commencing construction, modification, or reconstruction after the date of proposal. The affected facility is each hot mix asphalt facility comprised only of any combination of the following: Dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler, systems for mixing hot asphalt; and the loading, transfer and storage systems associated with emission control systems.

Approximately 1280 sources are currently subject to the standard and it is estimated that an additional 60 sources per year will become subject to the standard in the next three years. Particulate matter is the pollutant regulated under this Subpart.

Owners or operators of the affected facilities described must make the following one-time only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual date of a start up; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and results of the initial performance test including information necessary to determine the conditions of the performance test measurements and results, including particulate matter concentration and opacity. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility as well as the nature and cause of the malfunction (if known) and corrective measures taken.

Any owner or operator subject to the provisions of NSPS subpart I, shall maintain a file for a minimum of two

years following the date of such measurements, maintenance reports and records.

Burden Statement: The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 4611 person-hours. Initial performance test require approximately 24 person-hours. From experience with the regulations we assume 20% of the initial performance test will be repeated due to failure. The written notifications of construction, modification and notification of initial performance test require 2.0 hours each. Reference Method 9 tests require 4 hours each. It is estimated to take 1.5 hours per year per plant to record start-ups, shut-downs, and malfunctions.

(5) NSPS Subpart BB, Kraft Pulp Mills; EPA ICR Number 1055, and OMB Control Number 2060–0021, Expires September 30, 1999

This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with subpart BB, New Source Performance Standards for Kraft Pulp Mills. In the Administrator's judgement, particulate matter and Total Reduced Sulfur (TRS) from kraft pulp mills cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111 of the Clean Air-Act.

The control of emissions of particulate matter and TRS requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. These standards rely on the capture of pollutants vented to a control device. Owners or operators of kraft pulp mills subject to NSPS subpart BB are required to make initial notifications for construction, startup, and performance testing. They must also report the results of a performance test, and demonstration of a continuous monitoring system if applicable. After the initial recordkeeping and reporting requirements, semiannual excess emission reports are required. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports and records are required in general, of all sources subject to NSPS.

Burden Statement: There are 74 sources subject to the standards. It is estimated that 2 additional sources per year will become subject to the standard. The current ICR estimates average annual burden to the industry to be 16,237 person hours. The following is a breakdown of burden used in the ICR. Burden is calculated as two hours for respondents to write the reports for; notification of construction or reconstruction, notification of physical or operational changes, notification of anticipated startup, notification of actual startup, notification of initial performance test, notification of demonstration of CMS. Initial performance tests are allocated 370 burden hours. It is assumed that 20% of all affected facilities will have to repeat performance tests. The ICR allocates four hours for Method 9.

The recordkeeping burden is estimated to be 30 minutes to enter records of operating parameters. It is assumed that the plant will operate 350 days a year, therefore, this information will be recorded 350 times a year. Sources which have excess emissions are required to submit excess emission reports. These reports are allocated 16 burden hours with an average of 2 reports per year. There is no additional third party burden relevant to this ICR.

(6) NSPS Subpart DD, Grain Elevators; EPA ICR Number 1130, and OMB Control Number 2060–0082, Expires November 30, 1999

Grain terminal elevators and grain storage elevators as defined at 40 CFR 60.301(c) and (f). Potentially affected facilities include each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar unloading station, railcar loading station, grain dryer, and all grain handling operations at any grain terminal elevator or any grain storage elevator. There are 66 sources subject to the standard. EPA expects the industry to grow at the rate of one additional source each year. The regulated pollutant is particulate matter.

The NSPS general provisions require owners or operators of the affected facilities subject to NSPS subpart DD to make the following one-time-only reports: Notification of the date of construction or reconstruction 40 CFR 60.7(a)(1), notification of the anticipated date of startup 40 CFR 60.7(a)(2), notification of actual date of startup 40 CFR 60.7(a)(3), notification of any physical or operational change to an existing facility that may increase the rate of emission of the regulated pollutant 40 CFR 60.7(a)(4), notification of the date of the initial performance test 40 CFR 60.8(d). The results of the initial performance test, 40 CFR 60.8(a), including information necessary to determine the conditions of the performance test and performance test measurements and results, including particulate matter concentration and opacity must be reported. Records must be maintained of performance test results 40 CFR 60.7(c) for at least two years after the date of measurements 40 CFR 60.7(f), including performance test measurements, and all other information required by the general provisions in a form suitable for inspection. Records must be maintained of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, as well as the nature and cause of the malfunction (if known) and corrective measures taken, 40 CFR 60.7(b).

Subpart DD does not specify a retention time. In the general provisions, section 60.7(f) requires owners and operators to retain facility records for at least two years after the date of measurement.

Burden Statement: The estimated annual burden is calculated as one hour for the newly subject respondent to read the reporting requirements; 24 hours for the new respondent to perform the initial performance test, 4.8 hours annually to account for the estimated 20 percent of performance tests that must be repeated, 4 hours for the new respondent to perform the Method 9 tests, 0.8 hours annually to account for the estimated 20 percent of Method 9 tests that must be repeated, two hours to prepare and send the notification of construction/reconstruction of the newly-subject source, two hours to prepare and send notification of anticipated startup, two hours to prepare and send notification of actual startup, and two hours to prepare and send notification of the initial performance test. Together, these information collection activities required of the anticipated one new source annually amount to and average of 42.6 person hours. Additionally, EPA estimates that established sources will spend an average of an hour annually entering information regarding startups, shutdowns, and malfunctions.

(7) NSPS Subpart HH, Lime Manufacturing; EPA ICR Number 1167, and OMB Control Number 2060–0063, Expires August 31, 1999

The New Source Performance Standards (NSPS) for lime manufacturing plants were proposed on May 3, 1977 and promulgated on April 26, 1984. These standards apply to each rotary lime kiln used in lime

manufacturing, which commenced construction, modification or reconstruction after May 3, 1977. These standards do not apply to facilities used in the manufacture of lime at kraft pulp mills. Approximately 38 sources are currently subject to NSPS, subpart HH. It is estimated that an additional two sources per year will become subject to the standard in the next three years.

Particulate matter is the pollutant regulated under this subpart. The standards limit particulate emissions to 0.03 kilogram per megagram (0.60 lb/ton) of stone feed, and limit opacity to 15% when exiting from a dry emission control device.

Owners or operators of the affected facilities described must make the following one-time only reports: Notification of the date of construction and reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Owners or operators of the rotary kilns using a control device with a multiple stack exhaust or roof monitor may instead monitor visible emissions at least once a day by a certified observer using Method 9. Owners or operators of affected facilities using a wet scrubber emission control device shall install, calibrate, maintain, and operate a continuous monitoring device which monitors the pressure loss of the gas stream through the scrubber, and a continuous monitoring device which monitors the scrubbing liquid supply pressure to the control device.

Semiannual excess emissions reports and monitoring system performance reports shall include all 6-minute periods during which the average opacity of the visible emissions from any lime kiln is greater than 15% or for wet scrubbers, any period in which the scrubber pressure drop is greater than 30% below the rate established during the performance test, and reports of visible emissions; the date and time of the exceedance or deviance; the nature and cause of the malfunction (if known) and corrective measures taken; and identification of the time period during which the CMS was inoperative. This does not include zero and span checks nor typical repairs or adjustments.

Any owner or operator subject to the provisions of this part shall maintain a file for a minimum of two years following the date of such measurements, maintenance reports and records.

Burden Statement: The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 3,363.6 person-hours. The initial performance test requires approximately 280 person-hours. (Assuming 20% of the initial performance test will be repeated due to failure.) The Reference Method 9 test requires 4.0 hours. The written notifications of construction, modification, notification of initial performance test and demonstration of CMS require 2.0 person-hours each. Records of startups, shutdown and malfunctions also require 2.0 hours to enter information. Excess emission reports require 8.0 person-hours.

(8) NSPS Subpart RR, Pressure Sensitive Tape and Label; EPA ICR Number 0658, and OMB Control Number 2060–0004, Expires September 30, 1999

This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with subpart RR, New Source Performance Standards for facilities that manufacture pressure sensitive tape and labels. In the Administrator's judgement volatile organic compounds (VOC's) from this industry contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. Therefore, this NSPS was promulgated under Clean Air Act (CAA) section 111 for this source category. EPA is granted the authority to require facilities to provide information concerning their air emissions under CAA sections 111(a) and 114(a).

Owners and operators of the affected facilities must make the following one time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of initial start-up; notification of any physical change to an existing facility that may increase the regulated pollutant emission rate; notification of initial performance test and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shut-down or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Monitoring requirements specific to these coating operations consist of maintaining a calendar month record of all coatings used and their VOC content, the amount of solvent applied and recovered when a solvent recovery device is used, temperature of exhaust gases if thermal incineration is used, temperature of exhaust gases both upstream and downstream of the catalyst bed if catalytic incineration is used and an indication that a hood or enclosure device to capture fugitive emissions is operational. Any affected facility that inputs to the coating process 45 Mg of VOC or less per 12 month period is not subject to the emission limits of 40 CFR 60.442. However, the affected facility shall maintain a 12 month record of the amount of solvent applied in the coating at the facility. When thermal or catalytic incineration is performed, the owner or operator shall keep records of each three-hour period during which the incinerator temperature averaged more than 38 degrees Celsius below the temperature of the most recent performance test. Records of this information shall be kept at the source for a period of two years. The recordkeeping requirements for the surface coating industry of pressure sensitive tape and labels consist of the occurrence and duration of any start-up and malfunctions as described. They include the initial performance test results including information necessary to determine conditions of the performance test, and performance test measurements and results including, for affected facilities complying with the standard without the use of add-on controls, a weighted average of the mass of solvent used per mass of coating solids applied; the weighted average mass of VOC per mass of coating solids applied at facilities controlled by a solvent recovery device; and the weighted average mass of VOC per mass of coating solids applied being used at a facility controlled by a solvent destruction device; and the results of the monthly performance and records of operating parameters. Records of start-ups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements and records. The reporting requirements for this industry currently include the

initial notifications listed, the initial performance test results, quarterly reports of excess VOC emissions, and semiannual reports when no excess emissions are recorded. Semiannual monitoring system results shall include temperature variances of the control device, the date and time of the deviance, the nature and cause of the malfunction (if known) and corrective measures taken, and identification of the time period during which the continuous monitoring system was inoperative. Notifications inform the Agency or delegated authority about when a source becomes subject to the standard. The reviewing authority can then inspect the source to check if the pollution control devices are properly installed and operated. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emissions standard. The semiannual reports are used for problem identification, and a check on source operation and maintenance, and for compliance determinations. This collected information is used by the Agency to efficiently monitor industry compliance with NSPS. In the absence of collecting such information, continuous monitoring of compliance with the standards could be ensured only through continuous on-site inspections.

Burden Statement: The reporting requirements for this information collection consist of performance testing, notifications and VOC emission reporting. EPA estimates that each initial performance test will take 60 hours to complete and that 45 new or modified facilities will be required to conduct the tests each year and that about 20 percent will fail and have to re-test. In addition, there are monthly performance tests which take approximately 1 hour to conduct, for a total of 12 hours per year per facility. These are conducted to ensure that the pollution control systems are working. In terms of the notification requirements, EPA estimates that on average it takes two hours a piece to prepare the four different notifications for a new plant, notification of construction, anticipated start-up, actual start-up, initial performance test, and submission of the initial performance test. Each facility is required to report on a semiannual basis the amount of emissions that the facility emitted in excess of the emission standard. Assuming that a facility would submit one report a year for excess emissions in addition to the required semiannual emission report a facility would spend about 5 hours preparing each report for a total of 10 hours per year. For those facilities using incineration (assume 80 percent of all facilities) to control emissions, exhaust gas temperature reports would be submitted semiannually and would take approximately 4 hours to prepare for a total of 8 hours per facility. The emissions recordkeeping takes approximately 15 minutes per day and assuming that the facility is operational for 250 days a year the time expended on this activity would be 62 hours and 30 minutes. An existing facility that is in compliance will spend about 92 hours and 30 minutes complying with the standard. A facility that is new or that has been modified will spend an additional 68 hours complying with the performance test and notifications for new facilities. EPA estimates that there were 350 affected facilities at the time of the previous ICR renewal. The total industry annual burden according to EPA's estimate is 54,921 hours.

(9) NSPS Subpart SS, Surface Coating of Large Appliances; EPA ICR Number 0659, and OMB Control Number 2060–0108, Expires October 31, 1999

The New Source Performance Standard (NSPS) for Large Appliance Surface Coating was proposed on December 24, 1980 and promulgated on October 27, 1982. The standards apply to each surface coating operation in a large appliance surface coating line commencing construction; modification or reconstruction after December 24, 1980. Approximately 294 sources are currently subject to the standard. It is estimated that an additional 26 sources per year will become subject to the standard in the next three years. Volatile organic compounds (VOCs) are the pollutants regulated under NSPS Subpart SS.

Owners or operators of the affected facilities described must make the following one-time only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of a start up; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping and reporting requirements include the performance test results including the type of coating used, and the VOC content. Subpart SS requires daily records of temperature if thermal incineration is used. For catalytic incineration daily records of gas stream temperature both upstream and downstream are required, or a daily record of the quantity of solvent recovered if a solvent recovery device is used. Monthly averages are calculated, and any affected facility shall report quarterly excess emissions or semiannual reports if no excess emissions occur.

Any owner or operator subject to the provisions of NSPS subpart SS, shall maintain at the source, for a period of at least two years, records of all data calculations used to determine monthly VOC emissions from each affected facility and to determine the monthly emissions limit, where applicable.

Burden Statement: There are currently 294 facilities currently subject to the standard. It is estimated that an additional 26 sources per year will become subject to the standard over the next three years of the ICR. It is assumed that there is no net growth in the number of facilities. New sources will replace existing sources. Initial performance and repeat performance tests require approximately 60 person-hours each. (Assuming 20% of the initial performance test will be repeated due to failure.) The initial notifications require 2 hours. Semiannual emissions reporting will require 5 hours. Temperature variance reports require 4 person-hours. Eighty percent of sources use incineration. Recordkeeping requirements of monthly performance test require one hour and 0.25 hours is needed to record operating parameters.

(10) NSPS Subpart TT, Metal Coil Surface Coating; EPA ICR Number 0660, and OMB Control Number 2060–0107, Expires October 31, 1999

The New Source Performance Standards (NSPS) for Metal Coil Surface Coating were proposed on January 5, 1981 and promulgated on November 1, 1982. The standards apply to the following facilities in Metal Coil Surface Coating operation: Each prime coat operation, each finish coat operation, and each prime and finish coat operation cured simultaneously where the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously. These standards apply to metal coil surface coating facilities commencing construction, modification or reconstruction after January 5, 1981.

Approximately 143 sources are currently subject to the standard. It is estimated that an additional 6 sources per year will become subject to the standard in the next three years. Volatile organic compounds (VOCs) are the pollutants regulated under NSPS subpart TT.

Owners or operators of the affected facilities described must make the following one-time only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of a start up; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Monitoring requirements specific to Metal Coil Surface Coating Operations requires the owner or operator to compute and record the average VOC content of coating applied during each calendar month for each affected facility. Initial compliance reports are required. There are specific recordkeeping requirements in section 60.465 depending on whether low VOC content coatings are used or higher VOC content coatings are used in conjunction with an emission control device. Where compliance is achieved through the use of low VOC-content coating without emission control devices or through the use of higher VOC-content coating in conjunction with emission control devices, each owner or operator shall include in the initial compliance report the weighted average of the VOC content of coatings used during the period of one calender month for each affected facility. Values must be separated if the control device was used intermittently. Where compliance is achieved using an emission control device that destroys VOCs, each owner or operator shall include in the initial compliance report the overall VOC destruction rate used to attain compliance and the combustion temperature of the thermal incinerator or the gas temperature both upstream and downstream of the incinerator catalyst bed. Subpart TT also requires reports of incinerator temperature drop. Affected facilities shall report quarterly excess emissions or semiannual reports if no emissions occur. Any owner or operator subject to the provisions of NSPS subpart TT, shall maintain at the source, for a period of at least two years, records of all data and calculations.

Burden Statement: There are 143 existing sources, and it is estimated that an additional 6 sources per year will become subject to the requirements. The initial performance test requires approximately 60 person-hours. It is assumed that 20% of the initial performance tests will be repeated due to failure. The initial notifications each require 2 hours. Semiannual emissions reporting will require about 5 hours and temperature variance reports require 4 person-hours. Recordkeeping requirements of monthly performance tests require one hour. To record the operating parameters requires 0.25 hours and it is assumed the plant operates 250 days a year.

(11) NSPS Subpart WW, Beverage Can Surface Coating; EPA ICR Number 0663, and OMB Control Number 2060–0001, Expires September 30, 1999

The New Source Performance Standards (NSPS) for Beverage Can Surface Coating were proposed on November 26, 1980 and promulgated on August 25, 1983. These standards apply to following affected facilities in the beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation. These standards apply to coating facilities commencing construction, modification or reconstruction after the November 26, 1980.

Approximately 24 sources are currently subject to the standard. It is estimated that an additional 2 sources per year will become subject to the standard in the next three years. Volatile organic compounds (VOCs) are the pollutants regulated under NSPS subpart WW.

Owners or operators of the affected facilities described must make the following one-time only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of a start up; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Monitoring requirements specific to Beverage Can Surface Coating Operations include monthly performance tests to assure compliance with the performance standard for mass of VOCs per volume of coating solids. Additional monitoring is required only if a capture system and incineration are used. It is assumed 80% of sources use incineration. Owners or operators of the affected facilities using incineration are also required to install, calibrate, and maintain temperature measurement devices. If thermal incineration is used, the device shall be installed in the firebox. If catalytic incineration is used the devices shall be placed both upstream and downstream of the catalyst bed. The temperature must be continuously monitored and recorded.

Records must be maintained if the VOC content of coatings is below the specified limits. If one or more coatings used the volume weighted average of the total mass of VOC per volume of coating solids must be recorded. When thermal or catalytic incineration is performed, the owner shall keep records of each three-hour period during which the incinerator temperature averaged more than 28 degrees Celsius below the temperature of the most recent performance test at which destruction efficiency was determined. The owners or operators shall identify, record and submit quarterly reports of each instance in which the volume-weighted average of the total mass of VOCs per volume of coating solids exceeded the standard. If there are no exceedances reports shall be submitted semiannually.

Owners or operators are required to maintain a file of all measurements including the monitoring device, and performance testing measurements; all monitoring device calibration check adjustments and maintenance performed on these systems recorded in a permanent file, suitable for inspection and retained at the facility for a minimum period of two years.

Burden Statement: The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 3,092 person-hours. Initial performance test requires approximately 60 person-hours. Assume 20% of the initial performance tests will be repeated due to failure. The initial notifications each require 2.0 hours. Semiannual emissions reports require 5.0 hours and temperature variance reports 4.0 person-hours. Recordkeeping requirements of monthly performance tests require one hour. To record the operating parameters requires 0.25 hours and it is assumed the plant operates 365 days a year.

(12) NSPS Subpart DDD, VOC Emissions From the Polymer Manufacturing Industry, EPA ICR Number 1150, and OMB Control Number 2060–0145, Expires November 30, 1999

The standards apply to affected facilities involved in the manufacture of polypropylene, polystyrene, or poly (ethylene terephthalate) commencing construction, modification or reconstruction after January 10, 1989, depending on the process section.

Approximately 75 sources are currently subject to the standard and it is estimated that an additional 10 sources per year will become subject to the standard in the next three years. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart.

Owners or operators of the affected facilities must make the following one-time only reports: Notification of the date of construction or reconstruction; notification of the anticipated actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and results of the initial performance test. Owners and operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of the affected facility, or any period during which the monitoring system is inoperative.

In addition, owners/operators of the affected facilities are required to record periods of operation during which the performance standards are exceeded, results of flare pilot flame monitoring, all periods of operation of a boiler or process heater, and to continuously record the indication of any emission stream diverted away from the control device. In general, these records are required to be maintained for at least two years following the dates of such measurements or records.

Approximately one facility per year will conduct the initial performance test and it takes approximately 360 hours to conduct. It is estimated that approximately 20 percent of performance tests are repeated due to failure. Report writing including notifications of construction/ modification, anticipated startup, and initial performance test takes approximately two hours per occurrence once a year for up to 10 respondents. Notification of actual startup takes approximately one hour once per year for up to 10 respondents. (Assumes a growth rate of 10 facilities per year.) Semi-annual reports take approximately 3 hours twice per year for 75 respondents. Recordkeeping for operating parameters and exceedances take approximately 8 hours once per year and records of startup, shutdown or malfunction take 1.5 hours per occurrence per year for 75 respondents.

(13) NSPS Subpart GGG, Petroleum Refineries; EPA ICR Number 0983, and OMB Control Number 2060–0067, Expires August 31, 1999

Entities potentially affected by this action are process units at petroleum refineries that commenced construction, modification, or reconstruction after January 4, 1983. Affected process units include each group of equipment assembled to produce intermediate or final products from petroleum, unfinished petroleum derivatives, or other intermediates. Owners or operators of the affected facilities described must make the following one-time-only reports: notifications of the anticipated and actual date of startup, notification of the date of construction or reconstruction, notification of any physical or operational change to an existing facility which may increase the emission rate of any regulated air pollutant, notification of the date of the initial performance test, and results of the performance tests. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required in general, of all sources subject to NSPS.

NSPS GGG directs sources to comply with the requirements of NSPS VV. Semiannual reports are required to measure compliance with the standards of NSPS subpart VV. Monthly monitoring of equipment in VOC service shall take place as specified in subpart, VV section 60.485(b). If no leaks are detected for two successive months, monitoring may be performed once per quarter. If a leak is detected, the equipment shall be monitored monthly until a leak is not detected for two successive months. Also, leak location shall be recorded in a log, and this information shall be kept available for at least two years. Leaks shall be repaired within 15 days and the date of successful repair shall be recorded in the log.

Semiannual reports shall be submitted itemizing information for each month. All reports are to be sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional office. Notifications are used to inform the agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the standard is being met. Performance test results are needed as these are the Agency's record of a sources initial capacity to meet the standard. The semiannual reports are used for problem identification, as a check on source operations and maintenance, and for compliance determinations.

In the Administrator's judgement, VOC emissions from process units cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111 of the Clean Air Act.

The control of emissions of VOC from process units requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment so that emissions can be minimized. VOC emissions from process units are the result of equipment leaks. These standards rely on the maintenance of the equipment and adequate monitoring. To ensure compliance with these standards, adequate recordkeeping and reporting is necessary. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act and in accordance with any applicable permit.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry. Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Work Reduction Act.

The estimate was based on the assumption that there would be three new affected facilities each year and that there was an average of 34 sources in existence at the start of the three years covered by the ICR. For the new sources, it was estimated that it would take: one hour to read the instructions, 8 person-hours to gather the information to write the initial reports and 28 person-hours to conduct the initial performance tests (assuming that 60% of the tests must be repeated). For all sources, it was estimated that it would take approximately 19 person-hours to fill out the excess emission reports, and

approximately 129 person-hours to enter information for records of operating parameters (assuming a source operates 365 days per year and that it takes 0.3 hours per occurrence).

(14) NSPS Subpart HHH, Synthetic Fiber Production; EPA ICR Number 1156, and OMB Control Number 2060–0059, Expires October 31, 1999

The New Source Performance Standards (NSPS) for subpart, HHH-Synthetic Fiber Production Facilities were proposed on November 23, 1982 and promulgated on April 5,1984. These standards apply to each solvent spun synthetic fiber process that produces more than 500 megagrams of fiber per year that commenced construction after November 23, 1982. The provisions of this subpart do not apply to facilities that use the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber, nor to facilities that commence modification but not reconstruction after November 23, 1982. Twenty eight sources are currently subject to the standard. It is estimated that an additional one source per year will become subject to the standard in the next three years. VOCs are the pollutants regulated under NSPS subpart HHH.

Owners or operators of the affected facilities must make the following one-time only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual date of a start up; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Any owner or operator subject to the provisions of this part shall maintain a file for a minimum of two years following the date of such measurements, maintenance reports and records.

Burden Statement: The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 2448.65 person-hours. The initial performance test done by new sources requires approximately 72 person-hours per test. It is assumed that 20% of the initial performance test will be repeated due to failure. Written notifications of construction, modification, notification of initial performance test and demonstration of CMS require 2.0 person-hours each test. Records of anticipated and actual startups, shutdowns and malfunctions require 2.0 hours each test to enter information. VOC emission reports require 8.0 person-hours. It is assumed that each affected facility must submit one quarterly report every other year, in addition to semiannual reports.

(15) NSPS Subparts III and NNN, SOCMI Air Oxidation and Distillation; EPA ICR Number 0998, and OMB Control Number 2060–0197, Expires August 31, 1999

This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 60.610, Subpart III, Standards of Performance for VOC Emissions from SOCMI Air Oxidation Unit Processes and 40 CFR 60.660, Subpart NNN, Standards of Performance for VOC from SOCMI Distillation Operations. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved.

In the Administrator's judgment, VOC emissions from SOCMI air oxidation unit processes and distillation operations cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

In addition, owners/operators of affected facilities are required to record periods of operation during which the performance boundaries are exceeded, results of flare pilot flame monitoring, all periods of operation of a boiler or process heater, and to continuously record the indication of vent stream flow to the control device. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of all of these records, and retain the file for at least two years following the date of such measurements and records.

The reporting requirements for this industry currently include the initial notifications listed, the initial performance test results, and semiannual reports. Semiannual reports shall include the following: All exceedances of parameter boundaries; all periods during which the vent stream is diverted from the control device or has no flow rate; all periods when the boiler or process heater was not operated; all periods in which the pilot flame of the flare was absent; and any recalculation of the TRE index value. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICR. Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act.

The burden estimates for NSPS subpart III: The estimate was based on the assumption that there would be 10 new affected facilities each year and that there would be an annual average of 75 affected facilities over each of the three years covered by the ICR. For new

sources, it was estimated that it would take: 1 person hour to read the instructions, 60 person hours to conduct the initial performance tests (assuming that 20% of the tests must be repeated), and 7 person hours to gather the information and write the initial reports. For all sources, it was estimated that it would take: 6 person hours to fill out semiannual reports and 84 person hours to enter information for records of operating parameters.

The burden estimates for NSPS subpart NNN: The estimate was based on the assumption that there would be 236 new affected facilities each year and that there would be an annual average of 1770 affected facilities over each of the three years covered by the ICR. For new sources, it was estimated that it would take: 1 person hour to read the instructions, 72 person hours to conduct the initial performance tests (assuming that 20% of the tests must be repeated), and approximately 7 person hours to gather the information and write the initial reports. For all sources, it was estimated that it would take: 6 person hours each to fill out semiannual reports and 84 person hours each to enter information for records of operating parameters.

(16) NSPS Subpart JJJ, Petroleum Dry Cleaners; EPA ICR Number 0997, and OMB Control Number 2060–0079, Expires November 30, 1999

The information collected is needed to determine which sources are subject to the regulation and whether these sources are in compliance with the standards. EPA is required to under section 111 of the Clean Air Act, as amended, to establish standard of performance for new stationary sources. Volatile organic compounds (VOC) are the pollutants regulated under this Subpart. The standards require that any affected petroleum dry cleaning dryer be a solvent recovery dryer.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of the affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test records are needed as these are the Agency's record of a source's initial capability to comply with the emission standards.

Recordkeeping requirements specific to petroleum dry cleaners include only the performance test required under section 60.624. There are no reporting requirements specific to subpart JJJ. Under the General Provisions for NSPS under section 60.7, the owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These records are required of all sources subject to NSPS.

Burden Statement: The estimate was based on the assumption that there are approximately 270 sources currently subject to the standard, and it is estimated that an additional 18 sources per year will become subject to the standard in the next three years. For new sources it is estimated that it takes a respondent 82.4 person hours for recordkeeping and reporting. This is based upon 69 person-hours for reporting, which includes 61 hours for the initial performance test, reading instructions, and planning activities; two hours each for the notification reports (construction/modification, anticipated startup, actual startup, and initial performance test); and 1 person-hour for recording the performance test recordkeeping. It also assumes that 20% of the performance tests will required repeat tests. The frequency of these reports is once. The annual burden to industry is 1,483 person hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

(17) NSPS Subpart RRR, SOCMI Reactor Processes; EPA ICR Number 1178, and OMB Control Number 2060–0269, Expires September 30, 1999

Entities potentially affected by this action are those which are subject to the Standards of Performance of Volatile Organic Compound (VOC) emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, subpart RRR with the exceptions listed in 40 CFR 60.760 (c). This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 60.700, subpart RRR, Standards of Performance for VOC Emissions from SOCMI Reactor Processes. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved.

In the Administrator's judgment, VOC emissions from SOCMI reactor processes cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS. In addition, owners/operators of affected facilities are required to record periods of operation during which the performance boundaries are exceeded, results of flare pilot flame monitoring, all periods of operation of a boiler or process heater, and to continuously record the indication of vent stream flow to the control device. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of all of these records, and retain the file for at least two years following the date of such measurements and records.

The reporting requirements for this industry currently include the initial notifications listed, the initial performance test results, and semiannual reports. Semiannual reports shall include the following: All exceedances of parameter boundaries; all periods during which the vent stream is diverted from the control device or has no flowrate; all periods when the boiler or process heater was not operated; all periods in which the pilot flame of the flare was absent; and

any recalculation of the TRE index value.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICR. Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act.

The existing ICR (1996) burden estimates for NSPS Subpart RRR was based on the assumption that there would be 27 new affected facilities each year and that there would be an annual average of 203 affected facilities over each of the three years covered by the ICR. For new sources, it was estimated that it would take each affected facility: 1 hour to read the instructions, 426 person-hours to conduct the initial performance tests (assuming that 20% of the tests must be repeated), and 16 person-hours to gather the information and write the initial reports. For all sources, it was estimated that it would take each: 4-person hours to fill out semiannual reports and approximately 18 person-hours to enter information for records of operating parameters.

(18) NESHAP Subpart FF, Benzene Waste; EPA ICR Number 1541, and OMB Control Number 2060–0183, Expires September 30, 1999

The provisions of this subpart apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. In addition, this subpart applies to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated from the above facilities.

The calculation of total annual benzene (TAB) quantity in all aqueous waste streams determines whether a facility is subject to control requirements of the rule. A facility at or above the TAB threshold in the rule of 10 megagram per year (Mg/yr) is required to control each benzene waste stream at the facility or demonstrate that the waste stream meets a criterion in the rule for exemption from control. A facility with a TAB below 10 Mg/yr is only subject to the rule's reporting and recordkeeping provisions, unless the facility receives a waste from offsite that must be controlled to meet subpart FF in which case that waste must be controlled. A facility with a TAB less than 1 Mg/yr is only subject to maintain documentation of the quantity of benzene in the waste.

Owners or operators of the affected facilities described above must make the following one-time-only notices or reports: Notifications of anticipated and actual startup; notification of emission test, report following an emission test; notification of any physical/operational changes (i.e., modification) that could increase emissions, a monitoring system performance test; and a report following a monitoring system performance test. These notifications and reports are general provisions and required of all sources subject to any NESHAP.

Reporting requirements specific to benzene waste operations include submission, within 90 days after January 7,1993 or by the initial startup for a new source, of an initial report that summarizes the regulatory status of each waste stream containing benzene. Each owner or operator who has no benzene onsite in wastes, products, byproducts, or intermediary shall submit an initial report that is a statement to this effect.

If the TAB quantity from facility waste is less tan 1 Mg/yr, then the owner and operator shall submit a report that updates its regulatory status whenever there is a change in the process that may cause the TAB to increase. If the TAB is less than 10 Mg/yr but equal to or greater than 1 Mg/yr, then the owner or operator shall submit to a report that updates the regulatory status of each waste stream containing benzene. The report shall be submitted annually and whenever there is a change in the process generating the waste stream that could cause the total annual benzene quantity from facility waste to increase to 10 Mg/yr or more. If the information in the annual report is not changed in the following year, the owner or operator may submit a statement to that effect.

If the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr, then the owner or operator shall submit to the following reports:

(1) Within 90 days after January 7, 1993, or by the date of initial startup for a new source with an initial startup after the effective date, a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests have been carried out in accordance with this subpart.

(2) Beginning on the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit annually a report that updates the regulatory status of each stream.

(3) Beginning three months after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit quarterly a certification that all of the required inspections have been carried out in accordance with the requirements of this subpart.

(4) Beginning three months after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit a report quarterly that summarizes all the monitoring of operations.

(5) Beginning one year after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit annually a report that summarizes all inspections during which detectable emissions are measured or a problem (such as a broken seal, gap or other problem) that could result in benzene emissions is identified, including information about the repairs or corrective action taken.

Monitoring and record keeping requirements specific to benzene waste operations includes maintaining records that identify each waste stream at the facility subject to this subpart, and indicate whether the waste stream is controlled for benzene emissions in accordance with this subpart. In addition the owner or operator shall maintain the following records:

(1) For each waste stream not controlled for benzene emissions in accordance with this subpart, the records shall include all test results, measurements, calculations, and other documentation used to determine the following information for the waste stream: Waste stream identification, water content, whether or not the waste stream is a process wastewater stream, annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity.

(2) For each process wastewater stream not controlled for benzene emissions, the records shall include all measurements, calculations, and other documentation used to determine that the continuous flow of process wastewater is less than 0.02 liters per minute or the annual waste quantity of process wastewater is less than 10 Mg/yr.

(3) For each facility where process wastewater streams are controlled for

benzene emissions, the records shall include for each treated process wastewater stream all measurements, calculations, and other documentation used to determine the annual benzene quantity in the process wastewater stream exiting the treatment process.

(4) For each facility where wastewater streams are controlled for benzene emissions, the records shall include all measurements, calculations, and other documentation used to determine the annual benzene quantity in the wastewater streams exiting wastewater treatment systems at the facility.

(5) Owners or operators transferring waste off-site to another facility for treatment shall maintain documentation for each offsite waste shipment that includes the following information: date waste is shipped offsite, quantity of waste shipped offsite, name and address of the facility receiving the waste, and a copy of the notice sent with the waste shipment.

(6) An owner or operator of control equipment, shall maintain engineering design documentation for all control equipment installed on the waste management unit. The documentation shall be retained for the life of the control equipment.

Burden Statement: Most of the industry costs associated with the information collection activity in the standards are labor. The current average annual burden to industry from these record keeping and reporting requirements is estimated at 17,028 person-hours.

Based upon available information, it has been estimated that 395 facilities are subject to the standards and 140 of those are estimated to have more than 10 Mg/yr of benzene in the waste. In addition, the EPA estimates that these 140 facilities have a total of 2,819 waste streams per facility for which initial benzene concentration determination could be made. A total of 57 facilities are estimated to have more than 50 Mg/yr of benzene in their wastes and are expected to apply controls without applying for exceptions.

(19) NESHAP Subpart M, Asbestos; EPA ICR Number 0111, and OMB Control Number 2060–0101, Expires September 30, 1999

Owners or operators of the affected milling, manufacturing, fabricating, waste disposal, and waste conversion facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Therefore, the recordkeeping requirements for the facilities mentioned above consist of the occurrence and duration of any startup and malfunction as described. They include the initial performance test results including information necessary to determine the conditions of the performance test, the performance test measurements and results, including monitoring each potential source of asbestos emissions for visible emissions to the outside air and inspecting air cleaning devices to ensure proper operation. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this subpart shall maintain a file of these measurements for at least two years following the date of such measurements, maintenance reports, and records. The reporting requirements for this industry currently include the initial notifications listed, the initial performance test results, and quarterly reports of instances when visible emissions are observed at any time during the quarter.

Owners or operators of demolitions and renovations must notify EPA in advance of the initiation of any asbestos removal work. The notice provides information on the dates of operation, the nature of the removal operation, the quantity of asbestos, and controls to be used. The reviewing authority may then inspect the source to ensure compliance with the standard. Demolitions and renovations tend to be short projects, and it is difficult at best to determine compliance with the standard once the project has been completed. Therefore, it is important that the delegated authority be renotified as necessary when information in the original notification changes. Additionally, without renotification, the Agency or delegated authority may needlessly inspect a demolition or renovation site where the project has been delayed. The demolition and renovation standard requires that a representative (such as a foreman or management-level person) trained in the provisions of the standard be present at the facility. Evidence that the required training has been completed is required in order to ensure compliance with the provisions of the standard. The regulation requires asbestos removal contractors that claim exemption from the wetting provisions because of freezing temperatures to take temperature readings throughout the day and record the information. The provisions require that all containers of asbestos waste be labeled including the name of the waste generator and the location of where the waste was generated. Owners or operators of demolitions and renovations are required to prepare and maintain, for at least two years, records of waste shipment as to its destination, the quantity of waste, the date of shipment, and to furnish a copy of the record to disposal site owners or operators. The regulation also requires that generators of asbestos waste attempt to reconcile instances in which a signed copy of the waste shipment record is not received from the disposal site and that the generator notify EPA if delivery to the disposal site cannot be confirmed.

Owners or operators of waste disposal sites are required to document all asbestos waste shipments that are received and send a copy of each record back to the generator. A record of the location and quantity of asbestos in the landfill is required as well as noting the presence and location of asbestos in the landfill property deed. Disposal site owners or operators have to report to EPA any discrepancies between the amount of waste designated on the waste shipment record and the amount actually received, as well as instances of improperly contained waste. Disposal sites are required to maintain records for at least two years. An owner or operator of an operation in which asbestos-containing materials are spray-applied must notify EPA in advance of the spraying operation. The notice provides information on the name and address of the owner or operator, location of the spraying operation, and procedure to be followed.

In the Administrator's judgement, asbestos emissions from the demolition or renovation of asbestos-containing structures; the disposal of asbestos waste; asbestos milling, manufacturing, and fabricating; the use of asbestos on roadways; the use of asbestos insulation and spray materials; and the conversion of asbestos-containing waste material into nonasbestos material cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, a NESHAP was promulgated under section 112 of the Clean Air Act for this source category. The control of emissions of asbestos from the regulated sources requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment and following specified work practices. These standards rely on the capture and reduction of asbestos emissions by air cleaning equipment and specified work

practices. Effective enforcement of the standard is particularly necessary in light of the hazardous nature of asbestos. In order to ensure compliance with the standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry. Where appropriate the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Work Reduction Act.

The estimate was based on the assumption that there was an average of 70,380 sources of demolitions or renovations per year (completed by approximately 6,900 contractors), and that 3,447 sources for milling, manufacturing, fabricating and waste disposal were subject to the standard. For demolitions and renovations, it was estimated that it would take 1 hour for each of the 6,900 respondents to read the instructions, 164,565 person-hours to write notifications (assuming that there are 12,420 renotifications at 0.25 person-hours per renotification) and excepted waste shipment record reports, 6.7 person-hours per respondent to record information and mark vehicles, and 12 person-hours per respondent to train supervisors. For milling, manufacturing, and fabricating, it was estimated that there was 430 respondents, and that it would take 1 person-hour each to read the instructions, 106.3 hours per respondent to record the information and mark vehicles, 3 person-hours per respondent to write the reports and develop the record system. For waste disposal, it was estimated that there were 3,017 respondents, and that it would take each respondent 1 hour to read the instructions, approximately 23 person-hours per respondent to create and gather the information, and 3.5 person-hours per respondent to write the reports.

Dated: May 27, 1999.

Bruce R. Weddle,

Acting Director, Office of Compliance.

[FR Doc. 99–14221 Filed 6–3–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed May 24, 1999 Through May 28, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990171, FINAL EIS, RUS, MN, SD, Lincoln-Pipestone Rural Water (LPRW), Development and Expansion of Existing System North/Lyon County Phase and Northeast Phase Expansion Project, Yellow Medicine, Lincoln and Lyon Counties, MN and Deuel County, SD, Due: July 06, 1999, Contact: Mark S. Plank (202) 720–1649.

The above RUS EIS should have appeared in the 06/04/99 **Federal Register**. The 30-day Comment Period is Calculated from 06/04/99.

EIS No. 990173, DRAFT SUPPLEMENT, NRC, Generic EIS—License Renewal of Nuclear Plants for the Oconee Nuclear Station, Units 1, 2 and 3, Implementation, Oconee County, SC, Due: August 16, 1999, Contact: James H. Wilson (301) 415–1108.

The above NRC EIS should have appeared in the 05/28/99 **Federal Register**. The 45-day Comment Period is Calculated from 05/28/99.

EIS No. 990174, FINAL EIS, AFS, CA, Rock Creek Recreational Trails Management Plan, Implementation, Eldorado National Forest, Georgetown Ranger District, Eldorado County, CA, Due: July 06, 1999, Contact: Joe Krueger (530) 333–4312.

EIS No. 990175, FINAL EIS, EDA, PA, Lackawanna County New Business Park, Development and Operation, Funding Support from Economic Development Administration (EDA) under Title I, Site Lies Within Moosic Mountain Range, Straddling Jessup and Olyphant Boroughs, Lackawanna County, PA, Due: July 06, 1999, Contact: Edward Hummel (215) 597–6767.

EIS No. 990176, DRAFT EIS, AFS, ID, Long Prong Project, Timber Harvesting, Road Construction and Reconstruction, Boise National Forest, Cascade Ranger District, Valley County, ID, Due: July 19, 1999, Contact: David D. Rittenhouse (208) 373–4100.

EIS No. 990177, DRAFT EIS, NPS, NB, Homestead National Monument of America, General Management Plan, Implementation, Gage County, NB, Due: July 19, 1999, Contact: Michael Madell (608) 264–5257.

EIS No. 990178, LEGISLATIVE FINAL EIS, AFS, CA, Tahoe National Forest and Portion of Plumas and EL Dorado National Forests, Implementation, Twenty-Two Westside Rivers for Suitability and inclusion in the National Wild and Scenic Rivers System, Wild and Scenic River Study, Placer, Nevada, Sierra, Plumas, EL Dorado and Yuba Counties, CA, Due: July 06, 1999, Contact: Phil Horning (530) 498–6210.

The U.S. Department of Agriculture's Forest Service and the U.S. Department of Interior's Bureau of Land Management are Joint Lead Agencies for this Project.

EIS No. 990179, FINAL EIS, NOA, MN, Minnesota's Lake Superior Coastal Program, Approval and Implementation, St. Louis and Cook Counties, MN, Due: July 06, 1999, Contact: Joseph A. Uravitch (301) 713–3155 ext. 195.

EIS No. 990180, FINAL EIS, NPS, LA, New Orleans Jazz National Historical Park, General Management Plan, Implementation, City of New Orleans, Parish of Orleans, LA, Due: July 06, 1999, Contact: Gayle Hazelwood (504) 589–4806 ext. 22.

EIS No. 990181, DRAFT EIS, FHW, MI, Boardman River Crossing Mobility Study, Improve the East-West Mobility across the Boardman River, COE Permit, Traverse City and Grand Traverse County, MI, Due: July 30, 1999, Contact: James A. Kirschensteiner (517) 377–1880.

EIS No. 990182, DRAFT EIS, JUS, AL, Center for Domestic Preparedness (CDP), Expand Training for State and Local Emergency First Responders, Located at Fort McClellan, Calhoun, Cleburne, Randolph, Clay, Talladega, St. Clair, Etowah and Cherokee Counties, AL, Due: July 19, 1999, Contact: LZ Johnson (256) 848–7043.

Dated: June 1, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–14224 Filed 6–3–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–6243–4)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 10, 1999 through May 14, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (64 FR 17362).

Draft EISs

ERP No. D–FHW–E50292–FL Rating EC1, St. Augustine Bridge of Lions (SR AIA Rehabilitating or Replacing the Existing Two Lane Bridge, Crossing of the Matanzas River/Intracoastal Waterway, US Coast Guard Permit, NPDES and COE Nationwide Permits, St. Augustine, St. John County, FL.

Summary: EPA's review found that impacts were adequately described. Concern was raised over water quality degradation during the construction phase of the project.

ERP No. D–FHW–F40382–MN Rating EC2, Ayd Mill Road Corridor, Improvements from I–35 E to St. Anthony Avenue (I–94) 2.6 kilometer (1.6 miles), Funding, Ramsey County, City of Saint Paul, MN.

Summary: EPA expressed environmental concerns regarding (1) purpose and need statement, (2) contaminated sites remediation, and (3) treatment of storm water runoff. EPA requested that additional information be provided in the final document to address these concerns.

ERP No. D–FHW–K40235–CA Rating EC2, California Forest Highway 137, Improvements to Wentworth Springs Road and the Stumpy Meadows Reservoir Dam eastward (14.4 miles) to Ice House Road, Eldorado National Forest, El Dorado County, CA.

Summary: EPA expressed environmental concerns because the document did not reflect the consideration of pollution prevention measures. EPA recommended that the FEIS include such pollution prevention measures for the project's design, construction and maintenance, and that these measures be included in the record of decision.

Final EISs

ERP No. F–DOE–A09829–00 Spallation Neutron Source (SNS) Facility Construction and Operation, Implementation and Site Selection, Oak Ridge National Laboratory, Oak Ridge, TN; Argonne National Laboratory, Argonne, IL; Brookhaven National Laboratory, Upton, NY; and Los Alamos National Laboratory, Los Alamos, NM.

Summary: EPA's previous concerns have been resolved therefore EPA does not object to proceeding with detailed design work and site evaluation for this project. Should these studies produce significant new information or adverse environmental impacts, EPA will review DOE's supplemental EIS.

ERP No. F–FHW–K40227–CA I–880 Interchange at Dixon Landing Road Reconstruction Improvements, Funding and COE Section 404 Permit, Fremont, Milpitas, Alameda and Santa Clara Counties, CA.

Summary: EPA expressed continuing concerns with potential impacts to nearly 17 acres of wetlands and salt marsh harvest mouse habitat. EPA asked that FHWA's Record of Decision discuss whether opportunities may still exist to avoid and reduce adverse impacts to wetlands as project development proceeds, in keeping with Clean Water Act Section 404 requirements.

EPA recommended that several issues regarding mitigation for wetland impacts be included in the Record of Decision, including a 2:1 mitigation ratio for wetlands loss rather than the 1:1 ratio proposed in the EIS.

ERP No. F–FHW–L40197–OR Mount Hood Corridor Study, US 26 Rhododendron to OR–35 Junction, Improvements, Funding, Clackamas County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–USA–F11034–IN Camp Atterbury Training Areas and Facilities Upgrading, Implementation, Bartholomew, Brown, Johnson, Marion and Shelby Counties, IN.

Summary: EPA has no objection to the proposed action but did encourage ongoing management of resources in the Integrated Natural Resource Management Plan (INRMP) and other resource management plans for Camp Atterbury.

Other

ERP No. LF–UAF–K11095–AZ Barry M. Goldwater Ranger (BMGR), Renewal of the Military Land Withdrawal, Yuma, Pima and Maricopa Counties, AZ.

Summary: EPA continues to object to the length of the withdrawal time period. EPA recommended a new 10 year alternative be provided.

ERP No. LF–UAF–K11096–NV Nellis Air Force Range (NAFR), Renewal of the Land Withdrawal to Provide a Safe and Secure Location to Test Equipment and Train Military Personnel, Clark, Lincoln and Nye Counties, NV.

Summary: EPA continues to object to the excessively long proposed periods between public reviews of the land withdrawal (i.e. indefinitely or 25 years) of the roughly 3 million acre area. EPA recommended a new 10 year alternative be provided.

Dated: June 1, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–14225 Filed 6–3–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6354–2]

Transport One Acid Spill Superfund Site, Mt. Vernon, Rockcastle County, KY, Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Transport One Acid Spill Superfund Site (the "Site") located in Mt. Vernon, Rockcastle County, Kentucky with Chemtech Products, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: May 6, 1999.

Franklin E. Hill,

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–14219 Filed 6–3–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 26, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0515.

Title: Section 43.21(c), Miscellaneous Common Carrier Annual Letter Filing Requirement.

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit.

Number of Respondents: 32.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 32 hours.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to 47 CFR 43.21(c), each miscellaneous common carrier with operating revenues in excess of the indexed threshold as defined in 47 CFR 32.9000 must file a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. The letter must contain information pertaining to the carrier's revenues, expenses, net income, assets, liabilities and owners' equity. These letters must be filed by no later than April of the following year. Those miscellaneous common carriers with annual operating revenues that equal or surpass the indexed revenue threshold for the first time may file the letter up to one month after publication of the adjusted revenue threshold in the **Federal Register**, but in no event shall such carriers be required to file the letter prior to April 1.

The information is used by FCC staff members to regulate and monitor the telephone industry and by the public to analyze the industry. The information on revenue and total plant is compiled and published in the Commission's annual common carrier statistical publication and long distance market share report.

OMB Control No.: 3060–0636.

Title: Amendment of Parts 2 and 15, Equipment Authorization, Declaration of Compliance.

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit.

Number of Respondents: 4,000.

Estimated Time Per Response: 19 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 76,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Data collection will be used to investigate complaints of harmful interference to radio communications and to verify manufacturer's or supplier's compliance with the rules. The information collected is essential to controlling potential interference to radio communications.

OMB Control No.: 3060–0655.

Title: Requests for Waiver of Regulatory Fees Predicated on Allegations of Financial Hardship (MD Docket No. 94–19).

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Individuals or households, businesses or other-for-profit.

Number of Respondents: 40.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement.

Total Annual Burden: 40 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC implemented provisions contained in section 6003(a) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 and 103–121, which adds section 9 to the Communications Act. Section 9 authorizes the FCC to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement, policy and rulemaking activities and its user information services. Licensees and permittees may request a waiver of those fees. A number of requests for waiver are based on grounds of financial hardship but lack sufficient documentation to support a finding that a waiver should be granted. As a result, the FCC in ruling on Petitions for Reconsideration in the FY 1994 fee proceeding, the FCC set forth the types of documentation it will rely on to determine if waivers should be granted because of financial hardship, in order to give guidance to parties requesting waivers. Where parties have filed insufficient information with their FY 194 waiver requests, the FCC will afford them an opportunity to perfect their waiver requests by making the showing. The information will be used by FCC staff to determine if a party is entitled to a waiver of its obligation to pay the annual regulatory fee. It will be filed annually, but only by those parties who request waivers of their obligations to pay the fee because of financial hardship.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–14169 Filed 6–3–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0386.

Title: Section 73.1635, Special Temporary Authorizations (STA).

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,645.

Estimated Time per Response: 1 to 4 hours.

Total annual burden: 2,245 hours.

Total annual costs: $946,450.

Needs and Uses: Section 73.1635 allows licensees/permittees of broadcast stations to file for special temporary authority to operate broadcast stations at specified variances from station authorization, not to exceed 180 days. Data are used by FCC staff to ensure that such operation will not cause interference to other stations.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–14168 Filed 6–3–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0867.

Title: Request for Waiver of Section 20.18(c) of the Commission's Rules Regarding Compatibility with Enhanced 911 Emergency Calling Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimate Time Per Response: 20 hours (450 responses/yr.).

Frequency of Response: Recordkeeping.

Total Annual Burden: 9,000 hours.

Total Annual Costs: None.

Needs and Uses: The various coordination, certification, and consent requirements will ensure licensee compliance with FCC rules and regulations, and ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. The requirements will also help to ensure that individuals who use TTY devices will be able to utilize such devices to make emergency 911 calls on digital wireless systems.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–14170 Filed 6–3–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1010]

Sunshine Act Meeting

May 28, 1999.

AGENCY: Federal Communications Commission.

EXTENSION OF DATE FOR CLOSING OF COMMENT FILING PERIOD FOR SUNSHINE ACT

HEARING: Notice of Extension from May 28, 1999 until June 28, 1999 of the Closing Date for Filing Comments pursuant to the Second Hearing In A Series of Hearings about Telephone Service For Indians On Reservations (64 FR 12809, March 15, 1999).

TIME AND DATE: The Hearing was held from 8:00 a.m. to 12:30 p.m. on March 23, 1999.

PLACE: The Hearing was held at the Gila River Indian Community at the Sprung facility, 5550 West Wild Horse Path, Chandler, Arizona.

STATUS: Chairman William Kennard, Commissioner Susan Ness, and Commissioner Harold Furchtgott-Roth presided over the hearing. Commissioner Gloria Tristani submitted a written statement.

MATTERS CONSIDERED AT THE MARCH 23, 1999 HEARING: Representatives of Indian tribes and of Indian-owned telephone companies operating on reservations, representatives of non-Indian telephone companies, executives from telecommunications service providers, representatives of the State of Arizona, and technology experts testified about the level of telephone service currently available on reservations. In addition, testimony addressed measures that tribes, telephone companies, telecommunications service providers, the FCC, and states can take to improve access to affordable telephone service on reservations. Specific issues included the cost of telephone service to remote, low-population areas; the availability of advanced services including E911 and Internet access on reservations; implementation of alternative technologies; right-of-way issues; and governmental and sovereignty issues. The hearing was open to the general public.

REASONS FOR EXTENSION OF CLOSING DATE OF PERIOD FOR FILING COMMENTS: First, members of the Native American community requested the extension. Second, the extension will facilitate the development of as extensive a record as possible.

FOR FURTHER INFORMATION CONTACT: Eric Jensen, at (202) 418–0990, e-mail ejensen@fcc.gov, of the Office of Communications Business Opportunities; Belford Lawson, at (202) 418–7264, e-mail blawson@fcc.gov, in that Office; and William Kehoe, at (202) 418–7122, e-mail bkehoe@fcc.gov, in the Common Carrier Bureau.

Federal Communications Commission.

Eric Jensen,

Deputy Director, Office of Communications Business Opportunities.

[FR Doc. 99–14251 Filed 6–2–99; 9:34 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. on Thursday, June 3, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, insurance and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 2, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–14292 Filed 6–2–99; 11:22 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, June 9, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, June 10, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–14378 Filed 6–2–99; 3:29 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 21, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. KSB Bancorp, Inc. Employee Stock Ownership Plan, Kingfield, Maine; to acquire additional voting shares of KSB Bancorp, Inc., Kingfield, Maine.

Board of Governors of the Federal Reserve System, May 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14136 Filed 6–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-13088) published on page 27990 of the issue for Monday, May 24, 1999.

Under the Federal Reserve Bank of Boston heading, the entry for Fleet Financial Group, Inc., Boston, Massachusetts, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Fleet Financial Group, Inc., Boston, Massachusetts; to acquire 100 percent of the voting shares of BankBoston Corporation, Boston, Massachusetts, and thereby indirectly acquire BankBoston, National Association, Boston, Massachusetts; BankBoston Maine, National Association, South Portland, Maine; and Bank of Boston - Florida, National Association, Boca Raton, Florida.

In connection with this application, Applicant also has applied to acquire all of BankBoston's direct and indirect nonbank subsidiaries, including BancBoston Robertson Stephens, Inc., Boston, Massachusetts, and thereby engage in underwriting bank ineligible securities, including equity securities and high yield debt, both through public offerings and private placements; providing advice in connection with mergers and acquisitions; brokerage activities; providing equity research to institutional and high net worth customers, pursuant to §§ 225.28(b)(1), (2), (6), (7) and (8) of Regulation Y, *see Bank of Boston Corp.*, 74 Fed. Res. Bull. 699 (1988); *Bank of Boston Corp.*, 83 Fed. Res. Bull. 42 (1997); *BankBoston Corp.*, 84 Fed. Res. Bull. 850 (1998); RIHT Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsuring credit life and health insurance for borrowers of BankBoston, N.A. or its subsidiaries in connection with extensions of credit to such borrowers, pursuant to § 225.28(b)(11) of Regulation Y; BancBoston Leasing Investments, Inc., Boston, Massachusetts, and thereby engage in leasing personal and real property, pursuant to §§ 225.28(b)(3) and (12) of Regulation Y; BancBoston Investments, Inc., Boston, Massachusetts, and thereby engage in venture capital investments, including secured and unsecured lending and voting and nonvoting equity investments, pursuant to § 225.28(b)(1) of Regulation Y; Back Bay Capital Funding LLC, Wilmington, Delaware, and thereby engage in asset-based lending, pursuant to § 225.28(b)(1) of Regulation Y; BankBoston (NH), N.A., Nashua, New Hampshire, and thereby engage in certain credit card activities, pursuant to § 225.28(b)(1) of Regulation Y; Partners First Holdings LLC, Linthicum, Maryland, and thereby engage in credit card activities, pursuant to § 225.28(b)(1) of Regulation Y; Partners First Receivables LLC, Linthicum, Maryland, and thereby engage in credit card activities, pursuant to § 225.28(b)(1) of Regulation Y; Partners First Funding LLC, Linthicum, Maryland, and thereby engage in credit card activities, pursuant to § 225.28(b)(1) of Regulation Y; and BancBoston Real Estate Capital Corporation, Boston, Massachusetts, and thereby engage in real estate lending and collateralized commercial lending, pursuant to § 225.28(b)(1) of Regulation Y.

Comments on this application must be received by June 23, 1999.

Board of Governors of the Federal Reserve System, May 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14134 Filed 6–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. James River Bankshares, Inc., Suffolk, Virginia; to acquire 100 percent of the voting shares of State Bank of Remington, Inc., Remington, Virginia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Commerce Bancshares, Inc., Waukee, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Waukee State Bank, Waukee, Iowa.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Peoples Bancorp, Inc., Lubbock, Texas, and Peoples Bancorp of Delaware, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Lorenzo Bancshares, Inc., Lorenzo, Texas, and thereby indirectly acquire Lorenzo State Bank at Lorenzo, Lorenzo, Texas.

Board of Governors of the Federal Reserve System, May 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14135 Filed 6–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, June 9, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14293 Filed 6–6–99; 11:24 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT), June 14, 1999.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 10, 1999, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 2, 1999.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–14379 Filed 6–2–99; 3:47 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION, 03/29/99–04/22/99

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Terminstion, 03/29/99			
19991819	J.H. Whitney III, L.P.	MedSource Technologies, Inc	MedSource Technologies, Inc.
19991844	Terex Corporation	Amida Industries, Inc.	Amida Industries, Inc., a South Carolina corporation.
19991860	Stroh Companies, Inc., (The)	Minott Wessinger	McKenzie River Corporation.
19991875	Olivetti S.p.A.	Telecom Italia S.p.A.	Telecom Italia S.p.A.
19991877	Olivetti S.p.A.	Concentric Network Corporation	Concentric Network Corporation.
19991951	American Business Products, Inc	Tekkote Corp.	Tekkote Corp.
19991955	Cyrus A. Ansary	National City Corporation	National Processing Company.
19991967	Textron Inc.	First Union Corporation	LCI Corporation International, Inc.
19991968	Swiss Reinsurance Company	Royal & Sun Alliance Insurance Group plc.	Royal Maccabees Life Insurance Company.
19991973	RCBA Strategic Partners, L.P	HWH Capital Partners, L.P	SMC Holdings Corp.
19991974	Dycom Industries, Inc.	Ervin Cable Construction, Inc	Ervin Cable Construction, Inc.
19991978	Michael Foods, Inc.	John Kaneb	H.P. Hood Inc.
19991980	Kent Electronics Corporation	Vol H. Montgomery	SabreData, Inc.
19991987	AGCO Corporation	Roy E. and Donice E. Applequist, husband and wife.	Great Plains Manufacturing, Inc.
19991991	The Manitowoc Company, Inc	Kyees Aluminum, Inc.	Kyees Aluminum, Inc.
19991992	Danisco A/S	Cultor Corporation	Cultor Corporation.
19991993	Heritage Fund II, L.P.	Avista Corp.	Creative Solutions Group, Inc.
19991995	Aon Corporation	Presidium Holdings, Inc	Presidium Holdings, Inc.
19991996	Southcorp Limited	John C. Cushman III & Jeanine S. Cushman (husband and wife).	Cushman Winery Corporation.
19991998	Electra Investment Trust PLC	Allflex USA, Inc.	Allflex USA, Inc.
19992001	Amgen Inc.	Praecis Pharmaceuticals Incorporated.	Praecis Pharmaceuticals Incorporated.
19992002	AlliedSignal Inc.	Johnnie Lou LaRoche	LaRoche Industries Inc.
19992003	Union Carbide Corporation	Johnnie Lou LaRoche	LaRoche Industries Inc.
19992005	United American Energy Corp	National Power PLC	ANP Mecklenburg Cogeneration Company. TEVCO Cogeneration Company.
19992007	Philip J. D'Elia	Johnson Service Group PLC	Johnson Group, Inc.
19992008	Maverik Country Stores, Inc	Tosco Corporation	Circle K Stores, Inc.
19992011	Naomi C. Dempsey	Robert H. Dorst	Great Lakes Corrugated Corp.
19992013	Kasper A.S.L. Ltd.	Tomio Taki	Anne Klein Company LLC.
19992026	Francois Pinault	Brylane Inc., a Delaware corporation	Brylane Inc., a Delaware corporation.
19992029	PCMC Holdings, L.P.	Plum Creek Timber Company, Inc.	Plum Creek Timber Company, Inc
19992039	Burmah Castrol plc	James R. Pyne	REMET Corporation.
19992047	Summit Ventures V, L.P	Paul C. Steinwachs	EMED Co., Inc.
19992048	Summit Ventures V, L.P	Donald E. Steinwachs	EMED Co., Inc.
19992054	Bessemer Securities LLC	The Beacon Group III—Focus Value Fund, L.P.	Identify Group, Inc.
19992056	Whole Foods Market, Inc	Leo Kahn	Nature's Heartland, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION, 03/29/99–04/22/99—Continued

Transaction No.	Acquiring person	Acquired person	Acquired entities
19992070	Arkansas Best Corporation	Treadco, Inc.	Treadco, Inc.
Transactions Granted Early Termination, 03/30/99			
19991797	Charles M. Lillis	MediaOne Group, Inc.	MediaOne Group, Inc.
19991849	BellSouth Corporation	TDS Voting Trust	United States Cellular Operating Corporation.
19991873	Baker Communications Fund, L.P	Ascend Communications, Inc.	S2 Systems, Inc.
19991906	Sempra Energy	KN Energy, Inc	KN Energy, Inc.
19991942	Stewart Enterprises, Inc	F. Peter Newcomer	D.W. Newcomer's Sons, Inc. and DWN Properties, Inc.
19991960	St. Luke's Episcopal Health System	MedPartners, Inc.	Caremark Inc., Caremark Resources Corporation.
19991961	Methodist Health Care System	MedPartners, Inc.	Caremark Inc., Caremark Resources Corporation.
19991969	Bell Atlantic Corporation	Bell Atlantic Corporation	Columbia Cellular Telephone Company.
19991994	National Computer Systems, Inc	Don H. Barden	NovaNet Learning, Inc.
19991997	General Electric Company	iVillage, Inc.	iVillage, Inc.
19992012	News Corporation Limited	David E. Shaw	Juno Online Services, Inc.
19992016	Deutsche Lufthansa AG	Gerald W. Schwartz	Onex Food Services, Inc.Vereniging AEGON
19992019	Vereniging AEGON	Transamerica Corporation	Transamerica Corporation.
19992027	Larry Van Tyl	Boomershine Automotive Group, Inc.	Boomershine Collision Centers of Gwinnett, Inc. Boomershine Ford, Inc. Bommershine Isuzu, Inc.
19992032	Heating Oil Partners, L.P	Alliance Energy Corp.	Alliance Energy Corp.
19992040	Stiching Administratiekantoor van aandelen Konilijke.	Hagemeyer N.V.	MBC Foods, Inc., Fine Distributing, Inc., Direct Specialty.
19992055	Paul G. Allen	Go2Net, Inc.	Go2Net, Inc.
19992079	Sabratek Corporation	Rain Medical, Inc.	LifeWatch, Inc.
19992080	Rain Medical, Inc.	Sabratek Corporation	Sabratek Corporation.
Transactions Granted Early Termination, 03/31/99			
19991793	World Color Press, Inc	Legg Mason Capital Partners, L.P	UP/Graphics, Inc.
19991833	Health Management Associates, Inc	The Lower Florida Keys Health System, Inc.	dePoo Hospital, Florida Keys Memorial Hospital.
19991896	Cendant Corporation	Apollo Investment Fund III, L.P	NRT Incorporated.
Transactions Granted Early Termination, 04/01/99			
19991785	Wilh. Werhahn	Nalco Chemical Company	Nalco Chemical Company.
19992060	American Plumbing & Mechanical, Inc.	David A. Croson	Franklin Fire Sprinkler Company. J.A. Croson Company.
19992077	Allianz Aktiengesellschaft	Orion Capital Corporation	Wm. H. McGee & Co., Inc.
Transactions Granted Early Termination, 04/02/99			
19991331	Reilly Industries, Inc.	AlliedSignal Inc.	AlliedSignal Inc.
19991850	Sisters of St. Francis Health Services, Inc.	MedPartners, Inc.	MedPartners Physician Management, L.P.
19991894	Galaxy Telecom Investment, L.L.C.	Tele-Communications Inc. or AT&T Corporation.	Mississippi Cablevision, Inc.
19991927	Regis Corporation	Florence F. Francis	The Barbers, Hairstyling for Men & Women, Inc.
19991935	Aalberts Industries, N.V	Taprite-Fassco Mfg., Inc	Taprite-Fassco Mfg., Inc.
19991945	General Electric Company	Sumitomo Corporation	Phoenixcor, Inc.
19991946	Paul G. Allen	Morgan Stanley Capital Partners III, L.P.	Renaissance Media Group LLC.
19991970	GAMBRO AB	ZENECA Group PLC	Century Dialsis Corporation. Salick Health Care, Inc. USHAWL, Inc.
19991977	Marshalls Finance Limited	Arthur Hughes	Fulton Prebon Group Limited.
19991999	Textron Inc.	Andrew K. Rayburn	Flexalloy Inc.
19992000	Activated Communications Limited Partnership.	E. Burke Ross, Jr., Family Trust 1	New Jersey Broadcasting Partners, L.P. II.
19992009	Fenway Partners Capital Fund, L.P	Joseph F. Umoselle	Patriot Manufacturing, Inc.
19992010	Siemens Aktiengesellschaft (a German company).	Castle Networks, Inc.	Castle Networks, Inc.
19992030	Palace Sports & Entertainment, Inc	Arthur L. Williams, Jr.	ALW Sports Management, Inc. Tampa Bay Lightning, Limited Liability Company.
19992041	ABRY Broadcast Partners II, L.P	David S. Smith	Mission Broadcasting of Wichita Falls, Inc.
19992049	General Motors Corporation	John B.T. Campbell III and Anne Catherine Campbell.	Campbell Automotive Group, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION, 03/29/99–04/22/99—Continued

Transaction No.	Acquiring person	Acquired person	Acquired entities
19992051	VS&A Communications Partners II, L.P.	William A. Patterson, Jr	International Travel Service, Inc.
19992071	Dover Corporation	Summit Ventures IV, L.P	Somero Enterprises, Inc.
19992075	Stewart Enterprises, Inc	Froedtert Memorial Lutheran Hospital Trust.	Wisconsin Memorial Park, Inc.
19992078	Gilead Sciences, Inc.	NeXstar Pharmaceuticals, Inc	NeXstar Pharmaceuticals, Inc.
19992084	Hooperston Foods, Inc	Pro-Fac Cooperative, Inc	Agrilink Foods, Inc.
19992085	Navigant International, Inc	Vincent E. Vitti	VTS Travel Enterprises, Inc.
19992086	Marketing Services Group, Inc	CMGI, Inc	CMG Direct Corporation.
19992094	CoreComm Limited	USN Communications, Inc. (Debtor-in-Possession).	USN Communications, Inc. (Debtor-in-Possession).
19992098	Activision, Inc.	Expert Software, Inc.	Expert Software, Inc.
19992099	ING Groep N.V.	PennCorp Financial Group, Inc.	CyberLink Development, Inc. Marketing One, Inc. UC Mortgage Corp. United Life & Annuity Insurance Company. United Variable Services, Inc.
19992101	Hughes Supply, Inc	Flori Corporation	Flori Corporation.
19992103	ACME Television Holdings, LLC	Lowell W. Paxson	Paxson Communications Corporation.
19992120	EMP Group, L.L.C	American Media, Inc.	American Media, Inc.
19992121	Cornerstone Equity Investors IV, LP	Equitrac Corporation	Equitrac Corporation
19992123	Sisters of Providence, Scared Heart Province.	Hood River Memorial Hosptial	Hood River Memorial Hosptial
19992127	Associated Food Store, Inc	Kenneth W. Macey and Robin A. Macey, husband and wife.	Macey's Inc., Macey's-Provo, LLC, Macey's-Clearfield, LLC.
19992131	Vestar Capital Partners III, L.P	Sheridan Healthcare, Inc	Sheridan Healthcare, Inc.
19992134	Cablevision Systems Corporation	Cablevision Systems Corporation	Madison Square Garden, L.P.
19992137	Catherine L. Hughes	Sinclair Telecable, Inc.	WCDX–FM, Mechanicsville, Virginia. WGCV–AM Petersburg, Virginia. WJRV–FM Richmond, Virginia. WPLZ–FM Petersburg, Virginia.

Transactions Granted Early Termination, 04/04/99

19992050	Paul G. Allen	Go2Net, Inc.	Go2Net, Inc.

Transactions Granted Early Termination, 04/05/99

19991957	UGI Corporation	Unisource Worldwide, Inc	Unisource Worldwide, Inc.
19992042	General Electric Company	Value Vision International, Inc	Value Vision International, Inc.
19992052	ITT Industries, an Indiana corporation.	Earth Watch Incorporated	Earth Watch Incorporated, a Delaware corporation.
19992063	Compagnie Financiere Rupert	Caroline Arpels Daumen	Van Cleef & Arpels, Inc.
19992064	Compagnie Financiere Rupert	Eric Arpels	Van Cleef & Arpels, Inc.
19992092	EMCOR Group, Inc	Monumental Investment Corporation	Monumental Investment Corporation.
19992106	L. Ross Love	Clear Channel Communications, Inc	Clear Channel Broadcasting, Inc. Jacor Broadcasting of Louisville, Inc.
19992122	Andersen Corporation	Morgan Products Ltd	Morgan Products Ltd.
19992145	Sovereign Specialty Chemical, L.P	The Valspar Corporation	Valspar Flexible Packaging Coatings Business.
19992148	The ServiceMaster Company	American Residential Services, Inc	American Residential Services, Inc.

Transactions Granted Early Termination, 04/07/99

19992014	PP&L Resources, Inc	Bangor Hydro-Electric Company	Bangor Hydro-Electric Company.
19992067	A.M. Todd Group, Inc	William H. and Margaret E. Brevoort	East Earth Herb, Inc.
19992144	Kerr-McGee Corporation	Kerr-McGee Corporation	Sun Energy Partners, L.P.

Transactions Granted Early Termination, 04/08/99

19991072	Reed International P.L.C	Benjamin and Ann Lewin	Cell Press, Inc.
19991073	Elsevier NV	Benjamin and Ann Lewin	Cell Press, Inc.

Transactions Granted Early Termination, 04/09/99

19990666	Allied Waste Industries, Inc	Browning Ferris Industries, Inc	BFI Waste Systems of North America, Inc.
19990667	Browning Ferris Industries, Inc	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
19991644	Chart Industries, Inc	MVE Investors, LLC	MVE Investors, LLC.
19991964	Reed International P.L.C	Benjamin and Ann Lewin	Cell Press, Inc.
19991965	Elsevier NV	Benjamin and Ann Lewin	Cell Press, Inc.
19991964	First Union Corporation	Fred Thomas Tattersall	Tattersall Advisory Group, Inc.
19992017	British Telecommunications plc	Corporation Impsa S.A	IMPSAT Corporation.
19992036	TRW Inc	Safeguard Scientifics, Inc	ClientLink, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION, 03/29/99–04/22/99—Continued

Transaction No.	Acquiring person	Acquired person	Acquired entities
19992045	Chase Manhattan Corporation (The)	Mark Eric and Patricia A. Benjamin (husband and wife).	Benjamin Metals Company.
19992081	Western Wireless Corporation	Century Telephone Enterprises, Inc	Brownsville Cellular Telephone Company, Inc. McAllen Cellular Telephone Co., Inc.
19992093	Windward Capital Partners II, L.P	Bayer AG	Bayer Inc., a Canadian corporation.
19992130	Vincent Camuto	Jones Apparel Group, Inc	Jones Apparel Group, Inc.
19992141	Wind Point Partners III, L.P	MascoTech, Inc	BLD Products, Ltd. Hebco Products, Inc. International Brake Industries, Inc. Longman Enterprises, Inc. McGuane Industries, Inc. Mr. Bracket, Inc. Novo Products, Inc. Pylon Manufacturing Corp.
19992142	MCN Energy Group Inc	SEMCO Energy, Inc	SEMCO Energy Services, Inc.
19992147	Foster & Gallagher, Inc	Donald L. Krumi	Gurney Seed & Nursery Corp.
19992149	Mistral International Finance A.G	Wangner Finckh GmbH	Wangner Systems Corporation.
19992150	Enron Corp	Philip Services Corp	Philip Utilities Management Corporation.
19992155	Cowles Publishing Company	Raycom Media, Inc	Federal Broadcasting Company.
19992156	Public Service Enterprise Group Inc	The Frank A. McBride Company	The Frank A. McBride Company.
19992164	WD–40 Company	Block Drug Company, Inc	Block Drug Company, Inc.
19992165	ZENECA Group PLC	Cima Labs, Inc	Cima Labs, Inc.
19992170	Alain Merieux	Silliker bioMerieux, Inc	Silliker bioMerieux, Inc.
19992172	Martin Water Trust	Philip Services Corp	Philip Utilities Management Corporation.
19992174	Rollins, Inc	H.F. Johnson Distributing Trust f/b/o Samuel C. Johnson.	PRISM Integrated Sanitation Management, Inc. S.C. Johnson Commercial Markets, Inc.
19992178	MEDIQ Incorporated	HTD Corporation	HTD Corporation.
19992181	Group 1 Automotive, Inc	Frederick A. Nagher	Rodeo Chrysler-Plymouth, Inc.
19992183	Apollo Investment Fund IV, L.P	Building One Services Corporation	Building One Services Corporation.
19992186	KPMG LLP	Softline Consulting & Integrators, Inc	Softline Consulting & Integrators, Inc.
19992192	Gerald W. Schwartz	Windward Capital Associates, L.P	J.L. French Automotive Castings, Inc.
19992195	The National Grid Group plc	New England Electric System	New England Electric System.
19992206	SCI Systems, Inc	Hewlett-Packard Company	VeriFone Electronics Co. Ltd.
19992207	Swedish Match AB (publ)	General Cigar Holdings, Inc	General Cigar Co., Inc.
19992222	NORPAC Foods, Inc	Agripac, Inc	Agripac, Inc.
19992223	Ogden Corporation	Dawson Consolidated Holdings Limited.	Southbrook Corporation.
19992244	IXC Communications, Inc	Riva Burston 1994 Trust u/a/d/ September 19, 1994.	Coastal Telecom Limited Company. Coastal Telecom Limited Liability Company (Tennessee). Coastal Telecom Limited Liability Company (Wisconsin). Coastal Telephone Services Limited Company.
19992245	IXC Communications, Inc	Andrew M. Burston 1994 Trust u/a/d September 19, 1994.	Coastal Telecom Limited Company. Coastal Telecom Limited Liability Company (Tennessee). Coastal Telecom Limited Liability Company (Wisconsin). Costal Telephone Services Limited Company.
19992253	Gerald F. Bean	Republic Industries, Inc	Kendall Imports, LLC and G.F.B. Enterprises, LLC.

Transactions Granted Early Termination, 04/12/99

19991471	Lucent Technologies Inc	Ascend Communications, Inc.	Ascend Communications, Inc.

Transactions Granted Early Termination, 04/13/99

19992061	Plains Resources Inc.	USX Corporation	Scurlock Permian LLC.
19992074	Alcan Aluminum Limited	Atlantic Richfield Company	ARCO Aluminum, Inc.
19992097	Gerald W. Schwartz	Cabletron Systems, Inc.	Cabletron Systems, Inc.
19992161	Johnstown America Industries, Inc.	Fred D. Culbreath	Imperial Fabrication Company of Tennessee, Inc. Imperial Group, Inc., Fleet Design, inc.
19992190	Apollo Investment Fund IV, L.P	Eos Partners, L.P.	Pacer International, Inc.
19992232	Triumph Partners III, L.P	C. Philip Rainwater	Benchmark Media, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION, 03/29/99–04/22/99—Continued

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination, 04/14/99			
19984336	Safeway, Inc.	Carr-Gottstein Foods Co.	Carr-Gottstein Foods Co.
19992119	CBC Companies, Inc.	First Data Corporation	Innovis Data Solutions, Inc.
19992129	Jones Apparel Group, Inc.	Nine West Group Inc.	Nine West Group Inc.
19992138	PixTech, Inc.	Micron Technology, Inc.	Micron Technology, Inc.
19992139	Micron Technology, Inc.	PixTech, Inc.	PixTech, Inc.
19992159	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	Edward R. Price	PAGG Corporation.
19992189	Citigroup Inc.	Fund American Enterprises Holdings, Inc.	Source One Mortgage Services Corporation.
19992208	General Motors Corporation	J. Paul Reddam	DiTech Escrow Corporation.
19992210	Hilb, Rogal and Hamilton Company	Phoenix Home Life Mutual Insurance Company.	DiTech Funding Corporation. American Phoenix Corporation.
19992214	Complete Business Solutions, Inc.	Medaphis Corporation	Impact Innovations Group, Inc.
Transactions Granted Early Termination, 04/15/99			
19991986	Cottingham Trust (1996)	Billy Bert Meridith	Precision Machining, Inc., a Kansas corporation.
19992108	Tyco International Ltd.	Dexide, Inc.	Dexide, Inc.
19992118	Ontario Teachers' Pension Plan Board.	John Wiley & Sons, Inc.	John Wiley & Sons, Inc.
19992160	AMETEK, Inc.	Mark IV Industries, Inc.	Gulton-Statham Transducers, Inc.
19992191	Havas Advertising S.A	Patrick J. McGrath	Jordan McGrath Case & Partners Inc.
19992203	DLJ Merchant Banking Partner II, L.P.	PPI Holdings, Inc	PPI Holdings, Inc.
19992226	Gretag Imaging Holding AG	Didier Primat	Cymbolic Sciences, Inc.
19992237	George L. Argyros	Alan R. Trent	Chiuminatta Concrete Concepts, Inc.
19992238	George L. Argyros	Edward Chiuminatta	Chiuminatta Concrete Concepts, Inc.
Transactions Granted Early Termination, 04/16/99			
19992204	John P. Barclay, Jr	Amsted Industries Inc	Amsted Industries Inc.
19992018	Verio Inc	America Online, Inc	CompServe Interactive Service, Inc.
19992211	The SKM Equity Fund II, L.P	V. Kirt Fiegel	AK Rubber Products Company, Inc.
19992212	Apollo Investment Fund IV, L.P	Neptune Orient Lines Limited	APL Land Transport Services, Inc.
19992217	Thomas R. Galloway, Sr	Ralph C. Wison, Jr	WEVV, Inc.
19992224	Paul G. Allen	Broadband Solutions, LLC	High Speed Access Corp.
19992239	Linsalata Capital Partners Fund III, L.P.	Ronald Berg	Alpha Shirt Co., Inc.
19992246	General Parts, Inc	The Parts Source, Inc., d/b/a Ace Auto Parts.	The Parts Source, Inc., d/b/a Ace Auto Parts.
19992255	BP Amoco p.l.c	Enron Corporation	Amoco/Enron Solar.
19992256	Heinz Durr and Heide Durr	ServiceMaster Company (The)	Premier Manufacturing Support Services Limited Partnership.
19992263	Fleming Companies, Inc	REBCO Foods, Inc	REBCO Foods, Inc.
19992264	Fleming Companies, Inc	Rebmart, d/b/a Food 4 Less	Rebmart, d/b/a Food 4 Less.
19992265	Duke Energy Corporation	Fox Paine Capital Fund, L.P	United American Energy Corp.
19992269	ACE Limited	Capital Re Corporation	Capital Re Corporation.
19992270	AHL Services, Inc	Lisa A. Smith	PIMMS Corporation.
19992271	SOFTBANK Corp	Lowes Corporation	PIMMS LLC.
19992272	Sun Microsystems, Inc	Naspers Limited	InsWeb Corporation.
19992274	Nortek, Inc	Caradon plc	OpenTV, Inc.
			Caradon Doors and Windows Inc., Caradon Limited.
Transactions Granted Early Termination, 04/19/99			
19992162	IWKA Aktiengesellschaft	Savair Products Co	Savair, Inc.
19992275	Providence Equity Partners III, LP	MGC Communications, Inc	MGC Communications, Inc.
19992277	Frederick J. Iseman	Analysis & Technology, Inc	Analysis & Technology, Inc.
19992278	The Fourth Viscount Rothermere	e data resources, Inc	e data resources, Inc.
19992282	ACE Limited	Rain and Hail Insurance Service, Inc	Rain and Hail Insurance Service, Inc.
19992287	The Allstate Corporation	Marc A. Chary	Kuranoff & Chary, Inc. d/b/a/ Southeastern Tape Distributors.
19992288	The Allstate Corporation	Steve Kuranoff	Kuranoff & Chary, Inc. d/b/a/ Southeastern Tape Distributors.
19992294	ABRY Broadcast Partners, II, L.P	Diane Sutter	Shooting Star Broadcasting/KTAB, L.P.
19992295	Pilgrim America Capital Corporation	Arthur E. Nicholas	Nicholas-Applegate Capital Management.
19992303	Enron Corp.	Sierra Well Service, Inc	Sierra Well Service, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION, 03/29/99–04/22/99—Continued

Transaction No.	Acquiring person	Acquired person	Acquired entities
19992307	CBS Corporation	King World Productions, Inc	King World Productions, Inc.
Transaction Granted Early Termination, 04/20/99			
19991626	Electronic Data Systems Corporation	MCI WorldCom, Inc.	MCI Systemhouse Corp. SHL Systemhouse Co.
19991627	MCI WorldCom, Inc.	Electronic Data Systems Corporation	Electronic Data Systems Corporation.
19992053	Paul G. Allen	Peter A. Bordes	Greater Media Cablevision, Inc., Greater Media, Inc.
19992069	Novartis AG	Leslie L. Dan	Novopharm Ltd.
19992113	Leonard Tow	John J. Rigas	Adelphia Communications Corporation.
19992114	Trust created by Claire Tow, as Grantor.	John J. Rigas	Adelphia Communications Corporation.
19992115	Trust created by Leonard Tow, as Grantor.	John J. Rigas	Adelphia Communications Corporation.
19992116	John J. Rigas	Century Communications Corp.	Century Communications Corp. Citizens-Century Cable Television Venture.
19992128	The Allstate Corporation	Cambridge Communications Limited Partnership.	Cambridge Communications Limited Partnership.
19992153	The Charles River Partnership VIII, L.P.	CIENA Corporation	CIENA Corporation.
19992281	Morgan Stanley Dean Witter & Co	EarthWatch Incorporated	EarthWatch Incorporated.
19992306	MST Offshore Partners C.V	Letitia Corporation	High Voltage Engineering Corporation.
19992311	GKN plc	Fairview Sintered Metals, Inc	Fairview Sintered Metals, Inc.
Transaction Granted Early Termination, 04/21/99			
19991631	Rohm and Haas Company	Morton International Inc., an Indiana corporation.	Morton International Inc., an Indiana corporation.
19992107	Addus Healthcare, Inc. an Illinois Corporation.	Integrated Health Services, Inc.	Arcadia Services, Inc.
19992132	The Allstate Corporation	Pfingsten Executive Fund, L.P	Barjan Products, L.P.
19992158	PROVANT, Inc	Ralf Leszinski	Petrus 1961, Inc.
19992169	DBXYZ Cooperative, Inc	Danish Creamery Association	Danish Creamery Association.
19992261	ConAgra, Inc	William F. Morris III	Holly Ridge Foods, Inc.
19992289	Res-Care, Inc.	Vincent D. Pettinelli	PeopleServe, Inc.
19992290	Vincent D. Pettinelli	ResCare, Inc.	Res-Care, Inc.
Transactions Granted Early Termination, 04/22/99			
19990366	Clear Channel Communications, Inc	Jacor Communications, Inc	Jacor Communications, Inc.
19992083	Sterling Software, Inc	Interlink Computer Sciences, Inc	Interlink Computer Sciences, Inc.
19992143	Tomah Partners, L.P.	Royal Dutch Petroleum Company	Shell Chemical Company
19992146	AT&T Corp	Cable TV Fund 14–A, Ltd	Cable TV Fund 14–A, Ltd.
19992175	DBXYZ Cooperative, Inc	San Joaquin Valley Dairymen	San Joaquin Valley Dairymen.
19992180	J.W. Childs Equity Partners, II, L.P	Baptist Healthcare System, Inc	Alabama Dialysis Services, an Alabama general partnership.
19992218	Allied Waste Industries, Inc	Toby DeMicco, Jr	Mount Pleasant Sanitation, Inc., Mid Hudson Equipment, Inc. Valley Carting Corp., Hudson Waste Haulage, Inc.
19992219	Allied Waste Industries, Inc	James Hickey	Hudson Waste Haulage, Inc., Mount Pleasant Sanitation, Inc. Mid-Hudson Equipment, Inc.
19992268	Orbital Sciences Corporation	Spar Aerospace Limited	Spar Aerospace Limited.
19992280	The Chase Manhattan Corporation	Clayton, Dubilier & Rice Fund V Limited Partnership.	Kinko's Inc.
19992308	Cox Enterprises Inc	Clear Channel Communications, Inc	Clear Channel Broadcasting Licenses, Inc. Clear Channel Broadcasting, Inc.
19992309	Clear Channel Communications, Inc	Cox Enterprises, Inc	Cox Radio, Inc.
19992312	James Mersfelder	Automatic Data Processing, Inc	Automatic Data Processing, Inc.
19992313	John Slapp	Automatic Data Processing, Inc	Automatic Data Processing, Inc.
19992315	Veritas DGC Inc	Enertec Resources Services, Inc	Enertec Resources Services, Inc.
19992317	John C. Hampton	Charles Spence	Pacific Lumber & Shipping Co.
19992329	General Motors Corporation	Mellon Bank Corporation	Mellon Mortgage Company.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 99–14188 Filed 6–3–99; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times And Dates: 9:00 a.m.—5:30 p.m., June 23, 1999; 9:00 a.m.—5:00 p.m., June 24, 1999.

Place: Conference Room 505A, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201.

Status: Open.

Purpose: The meeting will focus on a variety of health data policy and privacy issues. Department officials will update the Committee on recent activities of the HHS Data Council and the status of HHS activities in implementing the administrative simplification provision of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Committee also will be briefed on data issues in the Health Care Financing Administration and the Centers for Disease Control, a recent HHS-supported report from the National Academy of Sciences dealing with data and measurement issues in health performance measurement in the public sector, and Healthy People 2010 data issues.

Panel discussions are planned on data for measuring the quality of care, the role of demographic data in HIPAA administrative transactions, and developments in smart care technology in the health sector. In addition, Subcommittee breakout sessions and reports to the full Committee are planned.

All topics are tentative and subject to change. Please check the NCVHS web site, where a detailed agenda will be posted, prior to the meeting.

Contact person for more information: Substantive information as well as summaries of NCHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCHVS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: May 28, 1999.
James Scanlon,
Director, Division of Data Policy.
[FR Doc. 99–14180 Filed 6–3–99; 8:45 am]
BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration, Title XIX, Part B, of the Public Health Service Act, as Amended Hereafter; Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Substance Abuse and Mental Health Services Administration, all of the authorities (except as provided below) vested in the Secretary of Health and Human Services under Title XIX, Part B, of the Public Health Service Act, as amended hereafter. This delegation includes the authority to make determinations that States have materially complied with the maintenance of effort requirements of sections 1915(b) and 1930 of the Act, but only when the State expenditure shortfall is 3% or less of the amounts required by law and the Administrator has considered all relevant factors in determining material compliance, such as (for example) whether the State has maintained service levels, the State's expenditure history, and the State's future funding commitment. This delegation excludes the authority to promulgate regulations, to submit reports to Congress, to take final action to withhold funds from States, to make determinations that the State has not materially complied with the maintenance of effort requirements whether or not the shortfall is 3% or less, and to act under the nondiscrimination provisions of the Act.

This delegation is effective upon date of signature. This delegation supersedes all previous delegations of these authorities. In addition, I hereby affirm and ratify any actions taken by the Administrator or the Administrator's subordinates which involved the exercise of the authority delegated prior to the effective date of the delegation.

Dated: May 25, 1999.
Donna E. Shalala,
Secretary.
[FR Doc. 99–14179 Filed 6–3–99; 8:45 am]
BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Safety and Health Interventions in the Construction Industry

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Safety and Health Interventions in the Construction Industry, Program Announcement #99062, meeting.

Times and date: 8 a.m.–9 a.m., July 28, 1999 (Open). 9 a.m.–4:30 p.m., July 28, 1999 (Closed).

Place: Centers for Disease Control and Prevention, 1600 Clifton Rd., Atlanta, Ga., Building 2 Room B46.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99062.

Contact person for more information: Price Connor, Ph.D., National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, m/s D30 Atlanta, Georgia 30333. Telephone 404/639–2383, e-mail spc3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 28, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–14143 Filed 6–3–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research on Young Worker Safety and Health Risks in Construction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research on Young Worker Safety and Health Risks in Construction, Program Announcement #99065, meeting.

Times and date: 8 a.m.–9 a.m., August 10, 1999 (Open). 9 a.m.–4:30 p.m., August 10, 1999 Closed).

Place: Centers for Disease Control and Prevention, 1600 Clifton Rd., Atlanta, Ga., Building 16, Room 1107A.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99065.

Contact person for more information: Price Connor, Ph.D., National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, m/s D30 Atlanta, Georgia 30333. Telephone 404/639–2383, e-mail spc3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 28, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–14144 Filed 6–3–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1383]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Petitions for Exemption from Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing State petitions for exemption from preemption.

DATES: Submit written comments on the collection of information by August 3, 1990.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

State Petitions for Exemption From Preemption (21 CFR 100.1(d)) (OMB Control Number 0910–0277—Extension)

Under section 403A(b) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard of identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard of identity requirement comports with the statutory criteria for exemption from Federal preemption. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.1(d)	1	1	1	40	40

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.1(d) is insignificant because petitions for exemption from preemption are seldom submitted by States requesting the agency grant an exemption from preemption by labeling requirements based upon certain sections of the act. Over the last 3 years, FDA has not received any preemption petitions. Since the enactment of section 403A(b) of the act as part of the Nutrition Labeling and Education Act of 1990, FDA has received only eight petitions for seeking exemption from preemption. Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 403A(b) of the act.

Dated: May 22, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14145 Filed 6–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 99F–1581]

Witco Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Witco Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of imidazolium compounds, 2-(C17 and C_{17}-unsaturated alkyl)-[2-(C_{18} and C_{18}-unsaturated amido)ethyl]-4,5-dihydro-1-methyl, methyl sulfates as a debonding agent in the manufacture of paper intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4669) has been filed by Witco Corp., One American Lane, Greenwich, CT 06831–2559. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) and § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to provide for the safe use of imidazolium compounds, 2-(C_{17} and C_{17}-unsaturated alkyl)-[2-(C_{18} and C_{18}-unsaturated amido)ethyl]-4,5-dihydro-1-methyl, methyl sulfates as a debonding agent in the manufacture of paper intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 20, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–14148 Filed 6–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–8003]

Agreed Minutes; Meeting Between the Food and Drug Administration and the Health Authorities of Switzerland

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of agreed minutes between FDA and health authorities of Switzerland. The purpose of the agreed minutes is to continue and enhance cooperation in the fields of drugs, medical devices, and biological products consistent with FDA's framework for achieving mutual recognition of good manufacturing practices inspections.

DATES: The agreement became effective August 7, 1998.

FOR FURTHER INFORMATION CONTACT: Patrick Wilson, Office of International Affairs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108 (c), which states that all written agreements and understandings between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of these agreed minutes.

Dated: May 27, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

BILLING CODE 4160–01–F

225-98-8003

MEETING BETWEEN SWISS AND UNITED STATES DELEGATIONS ON REGULATORY COOPERATION

Agreed minutes

Delegations of officials of the United States and Switzerland met in Washington, D.C., on July 9, 1998, to discuss strengthening regulatory cooperation between the health authorities of both countries in the fields of drugs, medical devices, and biological products. The discussions were held in a very open and constructive atmosphere and led to the following common understanding.

Both countries are committed to safeguarding the public health, enhancing public health protection, and reducing the regulatory burden in commerce in safe, effective and good quality drugs, medical devices, and biological products. Switzerland and the U.S. agreed to continue and enhance cooperation in the fields of drugs, medical devices, and biological products between the U.S. Food and Drug Administration (FDA) and the Swiss health authorities (Intercantonal Office for the Control of Medicines and Federal Office of Public Health), consistent with FDA's framework for achieving mutual recognition of good manufacturing practices inspections. (This framework was made public on May 10, 1998, and is available on the internet on FDA's home page.)

In order to achieve the goal of enhanced regulatory cooperation, a working program should be established between both countries and should contain as a first step the following elements, subject to the availability of resources and with maximum use of information already available on the Internet home pages of the participating regulatory authorities:

- intensifying/formalizing information exchange, in particular in the field of adverse reactions, quality defects and product recalls;

- provide Swiss authorities with access to COMSTAT (FDA's Compliance Status Information System) and provide for FDA's access to any similar electronic information system maintained by Swiss authorities;

- consider ways to build confidence in the other country's regulatory program as a first step toward more reliance on each other's activities; the following projects will be pursued:

  exchange of inspection findings (for instance form FDA-483) and inspection reports upon request;

use of joint inspections (for the purpose of observing each other's activities) and inspectional history, and

joint training of inspectors;

- promote the harmonization of technical requirements and auditing techniques;
- designation of contact points and definition of their respective tasks.

The plan is for a work plan to be agreed upon by the end of December 1998. Switzerland plans to forward a first proposal by the end of October.

Oscar Zosso, Ambassador
Head of Swiss Delegation

for Sharon Smith Holston
FDA Deputy Commissioner
for External Affairs

Washington, D.C.
August 7, 1998

[FR Doc. 99–14146 Filed 6–3–99; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1540]

Draft Guidance for Reviewers on Evaluation of Human Pregnancy Outcome Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for reviewers entitled "Evaluation of Human Pregnancy Outcome Data." The draft guidance is intended to provide the FDA clinical reviewer with factors to consider when systematically evaluating pregnancy outcome data related to maternal drug exposure. The draft guidance will be discussed during the June 3, 1999, meeting of the Subcommittee of the Advisory Committee for Reproductive Health Drugs.

DATES: Written comments on the draft guidance document may be submitted by September 2, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for reviewers are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; "http://www.fda.gov/cber/guidelines.htm" ; FAX: 1–888–CBERFAX or 301–827–3844; Mail: the Voice Information System at 800–835–4709 or 301–827–1800.

FOR FURTHER INFORMATION CONTACT:

Rose E. Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5468; or
Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or via e-mail at "stifano@cber.fda.gov".

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for reviewers entitled "Evaluation of Human Pregnancy Outcome Data."

As part of its evaluation of pregnancy labeling, in September 1997 the agency held a 21 CFR part 15 hearing on the current category requirements for pregnancy labeling (see 62 FR 41061, July 31, 1997). The agency sought comment on the practical utility, effects, and limitations of the pregnancy categories. The agency sought input on ways to address problems, including possible alternatives to the categories for communicating information on reproductive and developmental toxicity.

Subsequently, the agency has been working on the development of various

draft guidance documents, including the draft guidance for reviewers on "Evaluation of Human Pregnancy Outcome Data." This draft guidance document will be discussed during the June 3, 1999, meeting of the Subcommittee of the Advisory Committee for Reproductive Health Drugs (64 FR 23340, April 30, 1999).

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the evaluation of human pregnancy outcome data. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Managements Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 28, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–14149 Filed 6-3-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1541]

Draft Guidance for Industry on Establishing Pregnancy Registries; Availability

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing the availability of a draft guidance for industry entitled "Establishing Pregnancy Registries." Pregnancy registries are recognized as one method of obtaining meaningful information on the risks associated with exposure to drugs or biologics during pregnancy. The draft guidance is intended to provide sponsors with guidance on establishing pregnancy registries that help ensure the quality and integrity of registry data and adequately document registry research methods. The draft guidance will be discussed during the June 3, 1999, meeting of the Subcommittee of the Advisory Committee for Reproductive Health Drugs.

DATES: Written comments may be submitted on the draft guidance document by September 2, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; or Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; http://www.fda.gov/cber/guidelines.htm; Fax: 1–888–CBERFAX or 301–827–3844, Mail: the Voice Information System at 800–835–4709 or 301–827–1800.

FOR FURTHER INFORMATION CONTACT: Rose E. Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5468; or Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or via e-mail at "stifano@cber.fda.gov".

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Establishing Pregnancy Registries."

As part of its evaluation of pregnancy labeling, in September 1997 the agency held a part 15 (21 CFR part 15) hearing on the current category requirements for pregnancy labeling (see 62 FR 41061, July 31, 1997). The agency sought comment on the practical utility, effects, and limitations of the pregnancy categories. The agency also sought input on ways to address problems, including possible alternatives to the categories for communicating information on reproductive and developmental toxicity.

Subsequently, the agency has been working on the development of various draft guidance documents, including the draft guidance for industry entitled "Establishing Pregnancy Registries." At the time of marketing approval, FDA may request sponsors to conduct certain post-marketing studies (phase 4) to provide data on the potential risks of the product in human pregnancy. Pregnancy registries are recognized as one method of obtaining information on risks associated with exposure to drugs or biologics during pregnancy.

The draft guidance is intended to provide sponsors with guidance on establishing pregnancy registries that help ensure the quality and integrity of registry data and adequately document registry research methods. The draft guidance focuses on registries designed to assess products for suspected or unknown risks to pregnancy outcomes. The registry design is not appropriate for products (e.g., tretinoin or thalidomide) where the goal is to monitor and evaluate programs intended to prevent pregnancy exposures.

The draft guidance will be discussed during the June 3, 1999, meeting of the Subcommittee of the Advisory Committee for Reproductive Health Drugs (64 FR 23340, April 30, 1999).

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on establishing pregnancy registries. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 28, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–14151 Filed 6–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–137]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Internal Revenue Service/Social Security Administration/Health Care Financing Administration Data Match and Supporting Regulations in 42 CFR Section 411.20–411.206.

Form No.: HCFA–R–137 (OMB# 0938–0565).

Use: The purpose of this collection is to save the Medicare program, money. MSP is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare assumes a secondary payer role (private insurance being the primary payer) for covered services provided to a Medicare beneficiary. It is HCFA's responsibility to implement the various Medicare Secondary Payer (MSP) provisions.

Frequency: Annually.

Affected Public: Federal Government, Business or other for-profit, Not-for-profit institutions, Farms, State, and Local or Tribal Government.

Number of Respondents: 276,251.

Total Annual Responses: 276,251.

Total Annual Hours: 1,051,722.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 26, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–14122 Filed 6–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1075–N]

Medicare Program; June 25, 1999 Public Meeting To Discuss the Payment Classification for Respiratory Assist Devices

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting regarding the appropriate durable medical equipment (DME) fee schedule payment category for respiratory assist devices (RADs) with bi-level pressure capability and with a backup rate feature. The meeting will provide an opportunity for physicians, suppliers, beneficiary advocates, and other interested parties to furnish information and raise issues about the payment classification for RADs. The meeting will address the following topics:

- Characteristics of the equipment.
- Whether the equipment needs frequent and substantial servicing in order to avoid risk to the patient's health.

DATES: The meeting is scheduled for June 25, 1999 from 9:30 a.m. until 3:30 p.m., eastern daylight time.

ADDRESSES: The meeting will be held at the Health Care Financing Administration headquarters, in the auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Joel Kaiser, (410) 786–4499, or Gloria Knight, (410) 786–4598.

SUPPLEMENTARY INFORMATION:

Background

We are announcing a public meeting to provide an opportunity for physicians, suppliers, beneficiary advocates and other interested parties to furnish information and raise issues regarding the appropriate DME payment category for RADs with bi-level pressure capability and with a backup rate feature. The public meeting provides an open forum for addressing these issues. We anticipate participation by physicians, manufacturers, suppliers, national associations representing manufacturers and suppliers, the press, and other members of the public with an interest in issues relating to Medicare payment for RADs. We intend to discuss the information we have gathered and the general direction that we are moving concerning these topics. The format of the meeting will include an overview on RAD payment and coding topics.

For more detailed information regarding the pending HCFA coding decision on RADs, you may access one of the following Durable Medical Equipment Regional Carrier websites for the June bulletin:

REGION A: www.medicare-link.com
REGION B: www.astar-federal.com
REGION C: www.pgba.com
REGION D: www.cignamedicare.com

We will allow short (10–20 minutes) presentations by the public and our staff on these topics. The meeting will conclude with an open dialog during which the public may raise issues related to the topics discussed.

Individuals interested in making a presentation at the meeting must contact Joel Kaiser at (410) 786–4499 or via e-mail at JKaiser@hcfa.gov or Gloria Knight at (410) 786–4598 or via e-mail at GKnight@hcfa.gov no later than June 18, 1999. Individuals must identify which of the two topics they want to discuss during their presentation. Only a limited number of individuals will be able to make presentations because of time constraints. In an effort to assure that all viewpoints are represented, we will notify participants who are selected to make a presentation. We will not assign presentation times until after June 18, 1999.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

Registration

The Office of Professional Relations will handle registration for the meeting. Individuals may register by sending a fax to the attention of Martha Dixon at (202) 401–7438. At the time of registration, please provide your name, address, telephone number, and fax number.

Confirmation of receipt of your fax will constitute confirmation of your registration. Meeting materials will be provided at the time of the meeting.

If you have questions regarding registration, please contact Martha Dixon at (202) 358–1420.

We will accept written comments, questions, or other materials specifically dealing with the issue of the appropriateness of the DME payment category for RADs with bi-level pressure capability and with a backup rate feature that are received no later than 5 p.m. on June 15, 1999. Written submissions must be sent to: Health Care Financing Administration, ATTN: Joel Kaiser, Room C5–06–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 28, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–14230 Filed 6–3–99; 8:45 am]

BILLING CODE 4160–15–U

Dated: May 27, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–14140 Filed 6–3–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Application for Certification and Recertification as a Federally Qualified Health Center (FQHC) Look Alike, OMB No. 0915–0142—Revision

The Health Resources and Services Administration (HRSA) proposed to revise the application guide used by organizations applying for certification, or recertification as a Federally Qualified Health Center (FQHC) Look-Alike for purposes of cost-based reimbursement under the Medicaid and Medicare programs. The guide will be revised to reflect legislative, policy, and technical changes since May, 1997, the issuance date of the last guidance. Revisions will include reference to the Balanced Budget Act of 1997 which amended the statutory language pertaining to FQHC Look-Alikes to include the requirement that "an entity may not be owned, controlled, or operated by another entity", and the interpretation and implementation policy documents issued by the HRSA.

Estimates of Burden are as follows:

Form	Number of respondents	Responses per respondent	Hours per respondent	Total hour burden
Application	26	1	100	2,600
Recertification	148	1	20	2,960
Total	174	.....	.....	5,560

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, PAR 99–019—Non-Mammalian Organisms as Models for Anti-Cancer Drug Discovery.

Date: June 22–23, 1999.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wilna A. Woods, PHD, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

Name of Committee: National Cancer Institute Special Emphasis Panel, Non-Mammalian Organisms as Models for Anti-Cancer Drug Discovery.

Date: June 23, 1999.

Time: 3:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Wilna A. Woods, PHD, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14152 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Radiation Dosimetry for Epidemiologic Studies.

Date: June 7, 1999.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6130 Executive Blvd., 6th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Wilna A. Woods, PHD, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14153 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, The Sleep Heart Health Study—Data Coordinating Center.

Date: June 18, 1999.

Time: 3:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn–Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Valerie L. Prenger, PHD, Health Science Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14157 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Research Subcommittee.

Date: June 15, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.

Contact Person: Jon M. Ranhand, PhD, Health Scientist Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14155 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Maternal and Child Health Research Subcommittee.

Date: June 15, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Gopal M. Bhatnagar, Phd, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14156 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Autoimmunity Centers of Excellence.

Date: June 28–29, 1999.

Time: 8:00 a.m. to 5:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Mirage I Room, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Edward W. Schroder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 27, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–14158 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDR Special Grants Review Committee, Special Grants Review Committee.

Date: June 17–18, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, National Institutes of Dental & Craniofacial Res., National Institutes of Health, PHS, DHHS, 45 Center Drive, Natcher Building, RM. 4AN44F, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 28, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–14159 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, New Imaging Technologies for Autoimmune Diseases.

Date: July 16, 1999.
Time: 8:00 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, Maryland Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Anna Ramsey-Ewing, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 28, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–14160 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Compound Identification and Operations Support".
Date: June 24, 1999.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate contract proposals.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158. MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Administrative Coordinating Center for Clinical Trials Network".
Date: June 29, 1999.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate contract proposals.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158. MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientists Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 28, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–14161 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.
Date: June 29, 1999.
Time: 9:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Khursheed Asghar, Chief, Basic Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 29089–2954, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Medication Development.
Date: June 29, 1999.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 28, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–14162 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C.Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 4, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Bethesda, MD 20814.
Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 6, 1999.

Time: 8:00 am to 10:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 7–8, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Reproductive Biology Study Section.

Date: June 7–8, 1999.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Reproductive Endocrinology Study Section.

Date: June 7–8, 1999.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Abubakar A. Shaikh, DVM, Phd, Scientific Review Administrator, Center for Scientific Review, national Institutes of health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, General Medicine A Subcommittee 2.

Date: June 7–8, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Mushtaq A. Khan, DVM, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 7, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Lamontage, PhD, Scientific Review Adminstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–W (21).

Date: June 7, 1999.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 7–9, 1999.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Tarrytown Hilton, 455 South Broadway, New York, NY 10591.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 1.

Date: June 7–8, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Laurie L. Foudin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7818, Bethesda, MD 20892, (301) 435–1779.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Initial Review Group, Visual Sciences C Study Section.

Date: June 8–9, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Doyle Hotel, 1500 New Hampshire Avenue, N.W., Washington, DC 20036.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Pathology A Study Section.

Date: June 8–9, 1999.

Time: 8:30 am to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 8, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–4.

Date: June 9–10, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: The Doyle Hotel, 1500 New Hampshire Avenue, N.W., Washington, DC 20036.
Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1PTHA 01S.
Date: June 9, 1999.
Time: 3:00 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037 (Telephone Conference Call).
Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MCS 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: May 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14154 Filed 6–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Meeting; SAMHSA Special Emphasis Panel II

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in June 1999.

A summary of the meeting and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (6) and 5 U.S.C. App.2, section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP I).
Meeting Dates: June 10, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: June 10, 1999, 2:00 p.m.–adjournment.
Panel: FEMA—California.
Contact: Raquel Crider, Ph.D., Room 17–89, Parklawn Building, Telephone: 301–443–5063 and FAX: 301–443–3437.

Dated: May 26, 1999.

Coral Sweeney,

GTA, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–14229 Filed 6–3–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–22]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutllized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and under utilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.C.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for sue as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, U.S. Army Center for Public Works, Installation Support Center, Facilities Management, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 26, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 6/4/99

Suitable/Available Properties

Buildings (by State)

Arizona

Bldg. 90201
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199920182
Status: Unutilized
Comment: 25,503 sq. ft., presence of asbestos/lead paint, most recent use—laundry, off-site use only

Bldgs. 12521, 13572
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199920183
Status: Unutilized
Comment: 448 sq. ft. & 54 sq. ft., off-site use only

Illinois

Bldg. HP068
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920184
Status: Unutilized
Comment: 735 sq. ft., most recent use—storage, off-site use only

Bldgs. HP109, 110, 111
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920185
Status: Unutilized
Comment: 2210 sq. ft. each, most recent use—admin., off-site use only

Bldgs. HP113, 114
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920186
Status: Unutilized
Comment: 2864 sq. ft. and 3458 sq. ft., most recent use—admin., off-site use only

Bldg. HP132
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920187
Status: Unutilized
Comment: 2033 sq. ft., most recent use—admin., off-site use only

Bldg. HP133
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920188
Status: Unutilized
Comment: 6299 sq. ft., most recent use—storage, off-site use only

Bldgs. HP432–439
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920189
Status: Unutilized
Comment: 4845 sq. ft. each, presence of asbestos, most recent use—admin/storage, off-site use only

Bldgs. HP444, 448
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920190
Status: Unutilized
Comment: 1742 sq. ft. and 2366 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldgs. HP459, 460
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920191
Status: Unutilized
Comment: 4848 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Bldg. HP544
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920192
Status: Unutilized
Comment: 3148 sq. ft., most recent use—admin., off-site use only

Bldgs. HP528, 538
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920193
Status: Unutilized
Comment: 2269 sq. ft. and 3212 sq. ft., most recent use—office/garage, off-site use only

Bldg. HP553
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920194
Status: Unutilized
Comment: 2793 sq. ft., most recent use—storage, off-site use only

Bldg. HP563
Sheridan Army Reserve
Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920195
Status: Unutilized
Comment: 3712 sq. ft., presence of asbestos, most recent use—office, off-site use only

Kansas

Bldg. P–218
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21199920196
Status: Unutilized
Comment: 1992 sq. ft., most recent use—gas station

Bldg. P–220
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21199920197
Status: Unutilized
Comment: 774 sq. ft., most recent use—warehouse

Bldg. P–146
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920198
Status: Unutilized
Comment: 196 sq. ft., most recent use—utility, off-site use only

Bldg. P–149
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920199
Status: Unutilized
Comment: 76 sq. ft., most recent use—utility, off-site use only

Bldg. P–150
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920200

Status: Unutilized
Comment: 96 sq. ft., most recent use—utility, off-site use only

Bldg. P–162
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920201
Status: Unutilized
Comment: 81 sq. ft., most recent use—utility, off-site use only

Bldg. P–242
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920202
Status: Unutilized
Comment: 4680 sq. ft., most recent use—storage, off-site use only

New York

Bldg. P–87
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199920203
Status: Unutilized
Comment: 360 sq. ft., needs rehab, most recent use—admin., off-site use only

Texas

Bldg. 36
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920204
Status: Unutilized
Comment: 2250 sq. ft., needs repair, most recent use—ACS center, off-site use only

Bldg. 37
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920205
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. 38
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920206
Status: Unutilized
Comment: 2700 sq. ft., needs repair, most recent use—gen. inst., off-site use only

Bldg. 39
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920207
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. 41
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920208
Status: Unutilized
Comment: 1750 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 43–44
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920209
Status: Unutilized
Comment: 2750 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 209–212
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920210
Status: Unutilized
Comment: 8043 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 213
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920211
Status: Unutilized
Comment: 7670 sq. ft., needs repair, most recent use—operations, off-site use only

Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only

Bldg. 923
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920213
Status: Unutilized
Comment: 4440 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 924
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920214
Status: Unutilized
Comment: 3500 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 2304
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920215
Status: Unutilized
Comment: 8043 sq. ft., needs repair, most recent use—Avn. Unit Ops., off-site use only

Bldgs. 2306–2307
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920216
Status: Unutilized
Comment: 8043 sq. ft., needs repair, most recent use—health clinic, off-site use only

Bldg. 3203
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920217
Status: Unutilized
Comment: 1680 sq. ft., needs repair, most recent use—car wash, off-site use only

Bldgs. 3204–3205
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920218
Status: Unutilized
Comment: 64 sq. ft., needs repair, most recent use—storage, off-site use only

Bldgs. 3949–3950
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920219
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—Bn. Hq. Bldg., off-site use only

Bldg. 3951
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920220
Status: Unutilized
Comment: 2500 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3952–3953
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920221
Status: Unutilized
Comment: 3100 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3954–3957
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920222
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 3958
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920223
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 3959
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920224
Status: Unutilized
Comment: 3373 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3960–3962
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920225
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3964–3965
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920226
Status: Unutilized
Comment: 3100 sq. ft., needs repair, most recent use—Bn. Hq. Bldg., off-site use only

Bldg. 3966
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920227
Status: Unutilized

Comment: 2741 sq. ft., needs repair, most recent use—Co. Hq. Bldg., off-site use only

Bldgs. 3967–3969
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920228
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3970–3971
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920229
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only

Washington

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U015I, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldgs. U006A, U024A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920243
Status: Excess
Comment: 1440 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldgs. U007A, U021A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920244
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—shelter, ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024B
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920249
Status: Unutilized
Comment: 168 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U024D
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldgs. U028A–U032A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920252
Status: Unutilized
Comment: 72 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presance of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U058A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101,C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U102B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920270
Status: Excess
Comment: 1058 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U108A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920271
Status: Excess
Comment: 31,320 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use-shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U516B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920277
Status: Excess
Comment: 5000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: F0002, F0004, F0003, F0005, F0006, F0008, F0009
Landholding Agency: Army
Property Number: 21199920278
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. F0022A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920279
Status: Excess
Comment: 4373 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gen. inst., off-site use only

Bldg. F0022B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920280
Status: Excess
Comment: 3100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. A0220
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920282
Status: Excess
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—club facility, off-site use only

18 Bldgs.

Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0337, A0617, B0820, B0821, C0319, C0833, C0310, C0311, C0318, C1019, D0712, D0713, D0720, D0721, D1108, D1153, C1011, C1018
Landholding Agency: Army
Property Number: 21199920283
Status: Excess
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C0302, C0303, C0306, C0322, C0323, C0326, C0327
Landholding Agency: Army
Property Number: 21199920285
Status: Excess
Comment: 2340 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only

5 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0518, A0530, B0811, B0822, B0911
Landholding Agency: Army
Property Number: 21199920286
Status: Excess
Comment: 397 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—Hq. Bldg., off-site use only

12 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C1002, C1003, C1006, C1007, C1022, C1023, C1026, C1027, C1207, C1301, C1333, C1334
Landholding Agency: Army
Property Number: 21199920287
Status: Excess
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. E1010
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920288
Status: Excess
Comment: 148 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. D1154
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920289
Status: Excess
Comment: 1165 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01286
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. B1410
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920293
Status: Excess
Comment: 3108 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—motor repair, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldg. 02082
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920295
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldgs. 03100, 3101
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920297
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldgs. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only

Bldgs. 6118
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920302
Status: Excess
Comment: 2263 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gen. inst., off-site use only

Bldgs. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldgs. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess

Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldg. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. 9627
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920312
Status: Excess
Comment: 2249 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 9939
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920313
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—recreation, off-site use only

Bldg. E0324
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920314
Status: Excess
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Wisconsin

Bldg. 1532
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21199920230
Status: Unutilized
Comment: 2750 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 1535
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21199920231
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 1536
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21199920232
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 1539
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21199920233
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 1540
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21199920234
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 1544
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21199920235
Status: Unutilized
Comment: 3250 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 6038
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21199920236
Status: Unutilized
Comment: 1400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—airfield operations, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 6–2
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920095
Status: Unutilized
Reason: Extensive deterioration

Bldg. 83
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920096
Status: Unutilized
Reason: Extensive deterioration

Bldg. 619
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920097
Status: Unutilized
Reason: Extensive deterioration

Bldg. 707
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920098
Status: Unutilized
Reason: Extensive deterioration

Bldg. 713
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920099
Status: Unutilized
Reason: Extensive deterioration

Bldg. 714
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920100
Status: Unutilized
Reason: Extensive deterioration

Bldg. 742
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920101
Status: Unutilized
Reason: Extensive deterioration

Bldg. 772
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920102
Status: Unutilized
Reason: Extensive deterioration

Bldg. 813
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920103
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7–818
Naval Air Weapons Station
Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920104
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00003
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199920105
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 52, 989, 1021, 1022, 1025, 1029, 1032, 1033, 1040, 1042
Landholding Agency: Navy
Property Number: 77199920106
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 1178, 2242, 2334, 2335, 2339, 3262, 15816, 15952, 20007, 20055
Landholding Agency: Navy
Property Number: 77199920107
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 20185, 20192, 20209, 20263, 30140, 30855, 30888, 30929, 30954
Landholding Agency: Navy
Property Number: 77199920108
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 30957, 30964, 30968, 31180, 31559, 31567, 31618, 32538, 50127, 91063
Landholding Agency: Navy
Property Number: 77199920109
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 455, 935, 1097, 1363, 2315, 2316, 2317, 2325, 2612, 2614
Landholding Agency: Navy
Property Number: 77199920110
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 10636, 10637, 10976, 11161, 11693, 15818, 15819, 15953, 16014, 16015
Landholding Agency: Navy
Property Number: 77199920111
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 16082, 20004, 20008, 20032, 20033, 20065, 20066, 20107, 20117, 20120
Landholding Agency: Navy
Property Number: 77199920112
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 20150, 20159, 20162, 20164, 20165, 20200, 20203, 20204, 20205, 20208
Landholding Agency: Navy
Property Number: 77199920113
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 25001, 30710, 30840, 30863, 30879, 30885, 30886, 30902, 30918, 30955
Landholding Agency: Navy
Property Number: 77199920114
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 30960, 30965, 30966, 30976, 30983, 31039, 31059, 31124, 31190, 31191
Landholding Agency: Navy
Property Number: 77199920115
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 31417, 31427, 31483, 31503, 31505, 31511, 31514, 31515, 31518, 31579
Landholding Agency: Navy
Property Number: 77199920116
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 31594, 31595, 31604, 31609, 32022, 32026, 32546, 32555, 32608, 70009
Landholding Agency: Navy
Property Number: 77199920117
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 70020, 70024, 70025, 70026, 70038, 70039, 70045, 70047, 70050, 70051
Landholding Agency: Navy
Property Number: 77199920118
Status: Excess
Reason: Extensive deterioration

9 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 70052, 70053, 70060, 70061, 70139, 91040, 91041, 91053, 91054
Landholding Agency: Navy
Property Number: 77199920119
Status: Excess
Reason: Extensive deterioration.

Bldg. 529
Naval Warfare Assessment Station
Corona Co: CA 91718–
Landholding Agency: Navy
Property Number: 77199920133
Status: Excess
Reason: Extensive deterioration

Bldg. 535
Naval Warfare Assessment Station
Corona Co: CA 91718–
Landholding Agency: Navy
Property Number: 77199920134
Status: Excess
Reason: Extensive deterioration

Bldg. 540
Naval Warfare Assessment Station
Corona Co: CA 91718–
Landholding Agency: Navy
Property Number: 77199920135
Status: Excess
Reason: Extensive deterioration

Bldg. 545
Naval Warfare Assessment Station
Corona Co: CA 91718–
Landholding Agency: Navy
Property Number: 77199920136
Status: Excess
Reason: Extensive deterioration

Guam

Bldg. 294
Communications Annex
Dededo Co: GU 96537–
Landholding Agency: Navy
Property Number: 77199920131
Status: Unutilized
Reason: Secured Area

Bldg. 296
Communications Annex
Dededo Co: GU 96537–
Landholding Agency: Navy
Property Number: 77199920132
Status: Unutilized
Reason: Secured Area

Massachusetts

Frederick Murphy Federal Ctr
424 Trapelo Road
Waltham Co: MA 00000–
Landholding Agency: GSA
Property Number: 54199920005
Status: Surplus
Reason: Extensive deterioration
GSA Number: 1–G–MA–0848

Puerto Rico

4 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 440, 441, 442, 443
Landholding Agency: Navy
Property Number: 77199920120
Status: Underutilized
Reason: Secured Area

Bldgs. 444
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920121
Status: Underutilized
Reason: Secured Area

Bldgs. 445–447
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920122
Status: Underutilized
Reason: Secured Area

6 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 448, 449, 450, 451, 452, 455
Landholding Agency: Navy
Property Number: 77199920123
Status: Underutilized
Reason: Secured Area

Bldg. 458
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920124

Status: Unutilized
Reason: Extensive deterioration

Bldgs. 461, 2157
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920125
Status: Underutilized
Reason: Secured Area

Bldgs. 28–29
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920126
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 30–31
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920127
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920128
Status: Unutilized
Reason: Extensive deterioration

Bldg. 459
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920129
Status: Unutilized
Reason: Extensive deterioration

Structure 460
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920130
Status: Underutilized
Reason: Secured Area

Land (by State)

California

Excess Land at Eureka Housing
Eureka Co: Humboldt CA 95501–
Landholding Agency: GSA
Property Number: 87199540001
Status: Excess
Reason: Inaccessible
GSA Number: 9UCA1527

[FR Doc. 99–13881 Filed 6–3–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ballast Water and Shipping Committee of the Aquatic Nuisance Species Task Force. Meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Ballast Water and Shipping Committee will meet from 9:30 a.m. to 4:30 p.m. on Wednesday, June 23, 1999.

ADDRESSES: The Ballast Water and Shipping Committee Meeting will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LT Mary Pat McKeown, Chair, Ballast Water and Shipping Committee, at 202–267–0500 or mmckeown@comdt.uscg.mil or Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), we announce a meeting of the Ballast Water and Shipping Committee on the Aquatic Nuisance Species Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741).

Topics to be addressed include an update on efforts to compile a directory of ballast water research and technologies, factors to be considered in evaluating treatment technologies and management practices, and the nature and process for developing strategic national priorities for ballast water management research and development. Time permitting, presentations will be made describing specific ballast water management technologies and practices.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622 and the Chair of the Ballast Water and Shipping Committee at Environmental Standards Division, Office of Operations and Environmental Standards, U.S. Coast Guard (G–MSO–4), 2100 Second Street, SW, Room 1309, Washington, DC 20593–0001. Minutes for the meetings will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: June 1, 1999.

Rowan W. Gould,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 99–14183 Filed 6–3–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–2800 24 1A]

OMB Approval Number 1004–0175: Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

The proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* on March 1, 1999, BLM published a notice in the **Federal Register** (64 FR 10011) requesting comments on this proposed collection. The comment period ended on April 30, 1999. BLM received no comments for the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days to the Office of Management and Budget, Interior Desk Officer (1004–0175), Office of Information and Regulatory Affairs, Washington, DC 20503 (telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Identification of Communications Site Tenants and Tenant Uses.

OMB Approval Number: 1004–0175.

Abstract: BLM collects information from holders of rights-of-way for communication sites on public lands. This information concerns the identity and type of use of tenants. This information enables BLM to meet its statutory obligation to collect annually from communication site grant holders the fair market value of the right-of-way. BLM uses the information to calculate the annual rent for the facility, based on the highest value use in the facility.

Bureau Form: None.

Frequency: Annually.

Description of Respondents: Respondents are holders of communication site right-of-way grants.

Annual Responses: 1,500.

Annual Burden Hours: 1,500.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: May 12, 1999.

Carole J. Smith,

BLM Information Clearance Officer.

[FR Doc. 99–14195 Filed 6–3–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–99–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will hold a special meeting via conference call.

DATES: The conference call will be held on Thursday, June 10, 1999.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335, TDD 970–240–5366; e-mail Roger_Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The June 10, 1999, conference call will begin at 11:30 a.m. and end no later than 12:30 p.m. The agenda will be limited to the selection of a Southwest RAC subgroup to conduct a public input process to obtain concerns and comments on the future management of the Anasazi Culture Multiple Use Area of Critical Environmental Concern. The conference phone at BLM's Southwest Center in Montrose will be available for any member of the public wishing to participate in the conference call.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo_sw_rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: June 1, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–14282 Filed 6–3–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

[NM–050–1430–00]

Notice of Reopening of Public Land, Socorro County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Reopening order.

SUMMARY: Notice is hereby given that the temporary emergency closure of public land in Socorro County, New Mexico, which was announced in the **Federal Register** on Thursday, May 20, 1999, Vol. 64, No. 97, page 27600, is no longer in effect. The lands described in the temporary closure notice are reopened to public use and access.

DATES: The reopening of the subject public land is effective as of May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kate Padilla, Socorro Field Manager, or Jon Hertz, Assistant Field Manager, 198 Neel Avenue, NW, Socorro, NM 87801, telephone (505) 835–0412.

Dated: May 26, 1999.

Kate Padilla,

Field Manager.

[FR Doc. 99–14192 Filed 6–3–99; 8:45 am]

BILLING CODE 4310–GW–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–99–1030–00–MTM–89252]

Notice of Realty Action, Proposal To Lease Public Land in Lewis and Clark County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management proposes to issue a noncompetitive lease on the following described public land to resolve an unintentional occupancy trespass:

Principal Meridian, Montana

T. 10 N., R 4 W.,

Sec. 36, a Metes and Bounds tract within Lot 41; comprising 0.023 acres.

The public land is located within the city limits of Helena, MT. The lease would be issued under Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1732, and subsequent regulations found at 43 CFR Part 2920. The lease would be issued for a term of 30 years with the right of renewal. Fair market rental will be collected at 5-year intervals subject to reappraisal at the beginning of each period. A final determination on the lease of the public land will be made after completion of an environmental assessment. The City of Helena has applied for a Recreation and Public Purpose patent on Lot 41, which totals 17.03 acres. The patent would be issued subject to the proposed lease.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Butte Field Office, P.O. Box 3388, Butte, MT 59702–3388.

FOR FURTHER INFORMATION CONTACT: Elizabeth Williams at the above address or at 406–494–5059.

Dated: May 20, 1999.

Merle Good,

Field Manager.

[FR Doc. 99–14123 Filed 6–3–99; 8:45 am]

BILLING CODE 4310–ON–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–060–1910–4595] ES–50412, Group 200, Florida

Notice of Filing of Plat of Survey; Florida

The plat of the dependent resurvey of fractional sections 20 and 29, and the survey of lots 8 and 9 in fractional section 20, Township 9 South, Range 11 West, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, VA at 7:30 a.m., on July 9, 1999.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land

Management 7450 Boston Boulevard, Springfield, VA 22153, prior to 7:30 a.m., July 9, 1999.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: May 25, 1999.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 99–14194 Filed 6–3–99; 8:45 am]

BILLING CODE 4310–JG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 89170]

Proposed Withdrawal and Opportunity for Public Meeting; Montana; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects an error in the land description published as FR Doc. 99–13531 in the **Federal Register**, 64 FR 28833–4, May 27, 1999, for a proposed Bureau of Land Management withdrawal.

On page 28834, column 1, line 4 from the bottom of the column, which reads "W½NE¼SW¼SE¼, W½SW½SE¼," is hereby corrected to read "W½NE¼SW¼SE¼, W½SW¼SE¼."

Dated: May 28, 1999.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 99–14197 Filed 6–3–99; 8:45 am]

BILLING CODE 4310–DP–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–050–1150–00; NMNM 95118]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction notice.

SUMMARY: In **Federal Register** Volume 64, Pages 26438–26439, Number 93 of Friday, May 14, 1999, Notices, under **SUPPLEMENTARY INFORMATION**, third paragraph, delete second sentence; "Until an application is filed, no further action will be taken on this proposal."

Dated: May 27, 1999.

Kate Padilla,

Field Manager.

[FR Doc. 99–14193 Filed 6–3–99; 8:45 am]

BILLING CODE 4310–MW–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–420]

In the Matter of Certain Beer Products; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 3, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Anheuser-Busch Incorporated, One Busch Place, St. Louis, MO 63118–1852. A supplement to the complaint was filed on May 28, 1999. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain beer products by reason of infringement of U.S. Trademark Registration Nos. 922,481, 952,277, and 666,367. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's rules of practice and procedure, 19 C.F.R. 210.10 (1998).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 27, 1999, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain beer products, by reason of infringement of U.S. Trademark Registration Nos. 922,481, 952,277, or 666,367. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Anheuser-Busch Incorporated, One Busch Place, St. Louis, MO 63118–1852.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Budejovicky Budvar, N.P., Karoliny Svetle 4, 370 21 Ceske Budejovice, Czech Republic

Argen-Wine Imports, Ltd., 1303 Liriope Ct., Belcamp, MD 21017–1376

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of

investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 28, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14201 Filed 6–3–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–827 (Preliminary)]

Nitrile Rubber From Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–827 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of acrylonitrile-butadiene rubber (nitrile rubber), provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 12, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 19, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 27, 1999, by Zeon Chemicals, L.P., Louisville, KY, and Uniroyal Chemical Company, Inc., Middlebury, CT.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 17, 1999, at the U.S. International Trade Commission Building, 500 E Street S.W., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202–205–3183) not later than June 15, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 22, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the

public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 28, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14202 Filed 6–3–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–10]

Lawrence C. Hill, M.D.; Conditional Grant of Restricted Registration

On January 2, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lawrence C. Hill, M.D. (Respondent) of Monroe, Louisiana, notifying him if an opportunity to show cause as to why DEA should deny his pending application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated January 30, 1998, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Monroe, Louisiana on May 6 and 7, 1998, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument.

On October 30, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted. Neither party filed exceptions to the Administrative Law Judge's recommended decision, and on December 2, 1998, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of he Administrative Law Judge, except as specifically noted below. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent graduated from medical school in 1976 and entered private practice as a general practitioner in 1977. In 1976, Respondent was issued DEA Certificate of Registration AH7179725, which he allowed to expire on October 31, 1980. According to Respondent, he moved office locations without advising DEA of his new address, and as a result he did not receive the renewal application for his registration.

In July 1987, Respondent called DEA's New Orleans Field Division and requested that he be issued DEA order forms to enable him to purchase Schedule II controlled substances. Respondent was informed that his DEA registration had expired and that he would need to apply for and receive a new registration before he could again handle controlled substances. On July 16, 1987, Respondent executed an application for a new DEA registration. on that same day a DEA investigator visited Respondent at his office and reiterated that his previous DEA registration had expired and that he could no handle controlled substances until he received a new DEA registration. On July 20, 1987, Respondent contacted the investigator's supervisor to verify what he had been told. Respondent was again advised that he could not handle controlled substances until he received a new DEA registration.

On August 13, 1987, the investigator visited the pharmacy located across the street from Respondent's office. The investigator discovered that Respondent had issued 44 controlled substance prescriptions since July 17, 1987, when she had advised him that he was not authorized to handle controlled substances. A subsequent review of another pharmacy's records revealed that Respondent issued an addition 54 controlled substance prescriptions between July 17 and August 13, 1987.

The investigator questioned Respondent about these prescriptions. Respondent indicated that another physician had agreed to "cover" his prescriptions. Respondent was again advised that he could not handle controlled substances until he received a new DEA registration. After the investigator left his office, Respondent telephoned DEA's New Orleans Field Division to confirm that he was not permitted to handle controlled substances.

On August 21, 1987, the owner of the pharmacy located cross the street from Respondent's office called the DEA investigator and informed her that a friend of his had recently visited Respondent and was given a medication bottle filled with Lorcet, a Schedule III controlled substance, and Valium, a Schedule IV controlled substance, in exchange for $5.00. During a subsequent interview, the individual confirmed this information and also indicated that Respondent had dispensed Vicodin, a Schedule III controlled substance, to the individual's wife on August 27, 1987.

As a result of this information, the DEA investigator contacted several pharmaceutical companies to determine whether Respondent had ordered any controlled substances since July 16, 1987. One company indicated that on September 16, 1987, Respondent had requested 100 dosage units of Lorcet and 100 dosage units of Lorcet Plus misrepresenting that his expired DEA registration AH7179725 would expire on October 31, 1987. A second company advised that since July 17, 1987, Respondent had requested and received controlled substances such as Valium, Dalmane and Limbitrol, all Schedule IV controlled substances. Finally, the records of a third company showed that Respondent used his expired DEA registration on July 28, 1987 to request 100 dosage units of Vicodin.

Based upon this information, several undercover visits were made to Respondent's office in an attempt to determine whether Respondent would prescribe, dispense or administer controlled substances to the undercover officers. No controlled substances were obtained by the undercover officers.

On December 9, 1987, a search warrant was executed at Respondent's office and investigators found, among other things, a small amount of controlled substances. Respondent told the investigators that he did not realize that there were still controlled substances in his office and that he thought that he had disposed of all of them. During execution of the warrant, records of patients who had received controlled substances from Respondent were seized. These records were then turned over to the Louisiana State Board of Medical Examiners (Medical Board) for its review.

In November 1988, Respondent withdrew his pending application for registration with DEA after he received

an Order to Show Cause proposing to deny the application.

Based upon its review of information received from DEA, the Medical Board filed an Administrative Complaint against Respondent alleging that Respondent prescribed, administered or dispensed controlled substances to 11 patients, "in amount, frequency, and duration, in excess of any legitimate justification." Rather than have these charges adjudicated at a hearing, Respondent entered into a Consent Order with the Medical Board on June 12, 1989, however he did not admit the accuracy of the allegations. Pursuant to the Consent Order Respondent's medical license was suspended for six months, and then placed on probation until June 1, 1999. Respondent was prohibited from handling controlled substances for the duration of his medical career; fined $5,000; and ordered to attend at least 50 credit hours per year of continuing medical education.

The United States Attorney's Office contemplated criminally prosecuting Respondent for using an expired DEA registration to prescribe and order controlled substances. However, criminal prosecution was declined in light of Respondent's agreement to a lifetime suspension of his controlled substance authority as contained in the Consent Order with the Medical Board. For the same reasons, the United States Attorney's Office declined to pursue a civil complaint against Respondent.

However, on August 10, 1994, the Medical Board issued a letter to Respondent, notifying him that "the Board voted to grant your request for release from your probation and allow you to apply for your DEA privileges." As a result, Respondent submitted the application that is the subject of these proceedings.

At the hearing in this matter, the Government introduced a letter to DEA dated July 28, 1995, from the United States Attorney for the Western District of Louisiana objecting to Respondent being granted a DEA registration. According to the United States Attorney a "key factor" in the decision not to criminally prosecute Respondent in 1989 was his agreement to forfeit, for life, his privilege to handle controlled substances. He further stated that "had this office known [Respondent] would not live up to his word, this office would have vigorously prosecuted him."

Respondent testified at the hearing that as a result of the suspension of his medical license he closed his medical practice. He further testified that after the investigation, he "went through a tremendous amount of self-directed anger for having been so wrong-headed and you might say willful, and anger was translated at one point into depression, and I became very depressed."

In 1989, Respondent entered the residency program at E.A. Conway Hospital, Louisiana State University Monroe Medical Center in Monroe, Louisiana (LSU Monroe Medical Center). Respondent was considered an impaired physician because according to the hospital's medical director, "he just frankly didn't believe that the rules applied to himself * * *." As a result, Respondent was closely monitored during his residency. During the final year of his residency, Respondent was elected chief resident.

After graduating from the residency program in 1992, Respondent was offered a position at the emergency room at LSU Monroe Medical Center, where he was still working as of the date of the hearing. Respondent administers and dispenses controlled substances using the hospital's DEA registration, however, he does not issue controlled substance prescriptions.

At the hearing, Respondent testified that following the lifting of his probation, he applied for and received his Louisiana controlled substance license, however he let it lapse since he did not have a DEA registration. Following the hearing, on July 7, 1998, Respondent introduced into evidence a copy of his Louisiana Controlled Dangerous Substance License with an expiration date of March 1, 1998.

After the Medical Board lifted his probation, Respondent became Board certified in family practice. To maintain his certification, he is required to attend at least 50 hours of continuing medical education each year.

A number of Respondent's supervisors and colleagues testified on his behalf at the hearing and/or wrote letters of recommendation for Respondent. Essentially it was the position of these physicians that Respondent does not pose a threat to the public health and safety; that he is a competent, hard working physician; that he is well respected by his peers; and that they have no hesitation in recommending that Respondent be issued a DEA registration.

Respondent testified that with respect to his handling of controlled substances in the 1980s he felt that he was "under-trained" and that he would do things differently now in light of all of his subsequent training. He further testified that he had learned from his mistakes and that although he has gone through difficult times because of those mistakes, he feels that "it's been to (his) benefit." He stated that DEA "can take assurances that I will not break the rules again if I were to receive my DEA license again."

The Government contends that Respondent's application for registration should be denied because he continued to handle controlled substances after being told several times that he was not authorized to do so. Respondent contends that he made mistakes in his past, but he has been rehabilitated. He further asserts that he needs a DEA registration in order to better care for his patients.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

Regarding factor one, there is no dispute that in June 1989, the Medical Board issued a Consent Order that suspended Respondent's medical license for six months, placed him on probation for nine and one-half years, and prohibited him from handling controlled substances for life. It is also undisputed that in 1994, the Medical Board removed all restrictions from Respondent's medical license and permitted him to apply for a DEA Certificate of Registration.

However, what is in dispute is whether Respondent is currently authorized to handle controlled substances in Louisiana. Judge Bittner concluded that "Respondent also

received his Louisiana controlled substance license. Thus, Respondent is now fully licensed in Louisiana." The Deputy Administrator does not believe that such a conclusion can be drawn from the evidence in the record. At the hearing, Respondent testified that he allowed his state controlled substance permit to lapse since he was not registered with DEA. Judge Bittner kept the record open following the conclusion of the hearing to allow Respondent to present evidence that he is currently authorized to handle controlled substances in Louisiana, a prerequisite to DEA registration in that state. By letter dated July 7, 1998, counsel for Respondent forwarded a copy of Respondent's Louisiana controlled dangerous substance license. However, review of this license indicates that it expired on March 1, 1998. Therefore, there is a question as to whether Respondent is in fact currently authorized to handle controlled substances in Louisiana. This is significant because DEA does not have the statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the state to handle controlled substances. *See* 21 U.S.C. 802(21) and 823(f).

As to factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable laws relating to controlled substances, the evidence is clear that Respondent handled controlled substances, the evidence is clear that respondent handled controlled substances in 1987 knowing that he was not authorized to do so. He used his expired DEA Certificate of Registration to prescribe, dispense, administer, and order controlled substances in violation of 21 U.S.C. 843(a)(2).

While there is some indication that Respondent may have excessively prescribed diet pills to 11 patients, the only evidence presented regarding this allegation is the Administrative Complaint filed by the Medical Board. As Judge Bittner noted, "[a]n Administrative complaint alone, however, fails to prove by a preponderance of the evidence that Respondent's DEA registration is not in the public interest." Like Judge Bittner, the Deputy Administrator does not rely on the allegations in the Medical Board's Administrative Complaint in rendering his decision regarding Respondent's application for registration.

There is also evidence in the record regarding Respondent's experience in handling controlled substances since 1987. Respondent has undergone extensive training in among other things, how to properly handle controlled substances. He has been working at LSU Monroe Medical Center since 1992 and has been administering and dispensing controlled substances under the hospital's DEA registration. There are no allegations that he has improperly handled controlled substances or failed to comply with controlled substance laws since 1987. In fact, Respondent's supervisors and colleagues are of the opinion that Respondent is a hard working, dedicated professional and that he is not a threat to the public health and safety.

Regarding factor three, there is no evidence that Respondent has ever been convicted under State or Federal laws relating to controlled substances.

Under factor five, the Government asserted that the only reason Respondent was not prosecuted for his use of his expired DEA registration to handle controlled substances was because he agreed with the Medical Board to the lifetime suspension of his ability to handle controlled substances. In his July 28, 1995 letter, the United States Attorney stated, "(Respondent) received the benefit of his agreement and now, when the statute of limitations prohibits (the United States Attorney's Office) from taking further action, he wants to 'renege' on the agreement." But as Judge Bittner noted "the only formal agreement that Respondent would not seek to handle controlled substances was between Respondent and the Medical Board, and neither the United States Attorney nor DEA has standing to assert any rights with regard to that agreement or to claim detrimental reliance on it."

Judge Bittner concluded that the Government presented a *prima facie* case for denying Respondent's application for registration based upon Respondent's use of his expired DEA registration to continue to handle controlled substances in the 1980s and the Medical Board's action against his medical license. Nonetheless, Judge Bittner concluded that Respondent's application should be granted. Respondent has admitted his mistakes, is remorseful, and has taken great steps to rehabilitate himself. He has the support of his supervisors and colleagues and has been handling controlled substances since at least 1992 using the hospital's DEA registration with no indication of any problems. Judge Bittner stated that "I am satisfied that Respondent now understands that the rules do apply to him and that there is little likelihood that his misconduct will recur."

The Deputy Administrator appreciates the concerns of the United States Attorney's Office. Respondent agreed with the Medical Board not to handle controlled substances for the duration of his medical career. In light of this agreement, the United States Attorney's Office declined to criminally or civilly prosecute Respondent for his wrongdoing. While it is true that there was no formal agreement with the United States Attorney's Office or DEA, Respondent clearly was aware that his agreement with the Medical Board was the reason that he was not criminally prosecuted. Then in 1994, Respondent sought to be released from his agreement with the Medical Board, and as a result, he is no longer prohibited from handling controlled substances.

However, the Deputy Administrator must look at the record as a whole to determine whether Respondent's registration is currently in the public interest. In light of Respondent's admission of wrongdoing and expressions of remorse; his training since 1989; and his handling of controlled substances since at least 1992 using the hospital's DEA registration with no problems, the Deputy Administrator agrees with Judge Bittner that it is in the public interest to issue Respondent a DEA Certificate of Registration.

But, given the egregious nature of Respondent's conduct in the 1980s and that he has not had his own DEA registration since 1980, the Deputy Administrator concludes that a restricted registration is appropriate. Respondent needs to demonstrate his ability to effectively and responsibly handle controlled substances with his own DEA registration. Imposing strict controls upon Respondent's registration "will allow Respondent to demonstrate that he can responsibly handle controlled substances in his medical practice, yet simultaneously protect the public by providing a mechanism for rapid detection of any improper activity related to controlled substances." *Steven M. Gardner, M.D.*, 51 FR 12,576 (1986), as cited in *Michael J. Septer, D.O.*, 61 FR 53,762 (1996).

Therefore, for one year from the issuance of the DEA Certificate of Registration:

(1) Respondent shall maintain a log of all controlled substances that he prescribes. This log shall include at a minimum the name of the patient, the date of the prescription, and the name, strength and quantity of the controlled substance prescribed. This log shall be made available for inspection by DEA personnel.

(2) Respondent shall notify the Special Agent in Charge of the DEA New Orleans Field Division, or his designee, if he ceases to be employed at LSU Monroe Medical Center.

(3) If Respondent goes into private practice, he shall permit DEA personnel to conduct inspections of his registered location and of his controlled substance records without an Administrative Inspection Warrant.

However, having said that it is in the public interest to issue Respondent a restricted registration, DEA cannot issue him such a registration unless he is authorized to handle controlled substances by the state in which he practices. As discussed above, it is unclear whether Respondent possesses a current valid state controlled substance license. Therefore, the Deputy Administrator concludes that Respondent should be issued a DEA Certificate of Registration subject to the above described conditions once he provides evidence to DEA that he is authorized to handle controlled substances in Louisiana.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Lawrence C. Hill, M.D., be, and it hereby is granted subject to the above described conditions, upon receipt by the DEA New Orleans office of evidence of his state authorization to handle controlled substances. This order is effective June 4, 1999.

Dated: May 25, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–14100 Filed 6–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Pablo E. Melgarejo, M.D.; Revocation of Registration

On November 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Pablo E. Melgarejo, M.D., of Orlando, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AM2026284 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Florida. The order also notified Dr. Melgarejo that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to Dr. Melgarejo by registered mail to his DEA registered address, but was returned with the notation "not deliverable as addressed, unable to forward." The Order to Show Cause was then sent to Dr. Melgarejo at another address in Florida. This time the order was returned to DEA with the notation that delivery had been refused. Information in the investigative file indicates that the records of the Florida State Attorney's Office in Orange County and the Florida Medical Board show that Dr. Melgarejo failed to appear at a criminal proceeding and has fled the United States.

The Deputy Administrator finds that DEA has made numerous attempts to locate Dr. Melgarejo and has determined that his whereabouts are unknown. It is evident that Dr. Melgarejo is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Deputy Administrator concludes that considerable effort has been made to serve Dr. Melgarejo with the Order to Show Cause without success. Dr. Melgarejo is therefore deemed to have waived his opportunity for a hearing. The Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on July 15, 1998, the Florida Board of Medicine issued an Order revoking Dr. Melgarejo's license to practice medicine effective July 21, 1998, based upon his sexual misconduct with patients.

The Deputy Administrator finds that Dr. Melgarejo is not currently authorized to practice medicine in Florida. It is reasonable to infer that he is also not authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Melgarejo is not currently licensed to practice medicine or authorized to handle controlled substances in the State of Florida. Therefore, Dr. Melgarejo is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administration of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AM2026284, previously issued to Pablo E. Melgarejo, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 6, 1999.

Dated: May 25, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–14101 Filed 6–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Neil Laboratories, Inc.; Suspension of Shipment

On August 7, 1998, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DEA), issued an Order to Suspend Shipment to Neil Laboratories, Inc. of East Windsor, New Jersey, notifying it that a proposed shipment of 240 kilograms of pseudoephedrine to Oscar Barajas Gomez/Comercializadora Del Noroeste (Comercializadora) of Mexico was suspended pursuant to 21 U.S.C. 971 and 21 CFR 1313.41. The Order to Suspend Shipment stated that DEA believed that the listed chemical may be diverted. Specifically, the order provided Neil Laboratories, Inc: (1) With the factual and legal basis for the suspension of the shipment; (2) with an opportunity to file a written request for a hearing within 30 days pursuant to 21 CFR 1313.51 through 1313.57; (3) with notice that, should it fail to request a hearing, it would be deemed to have waived the hearing; and (4) with notice that upon the expiration of the 30 day time frame, the Deputy Administrator may then enter his final order in this matter without a hearing.

The order was received by Neil Laboratories, Inc. on August 21, 1998. No request for a hearing has been received by DEA from Neil Laboratories, Inc., or anyone purporting to represent the company in this matter. Subsequently, the investigative file was transmitted to the Deputy Administrator for final agency action.

Therefore, the Deputy Administrator, finding that: (1) 30 days have passed since the issuance of the Order to Suspend Shipment; and (2) no request for a hearing has been received, concludes that Neil Laboratories, Inc. is deemed to have waived its hearing right. After considering relevant material from the file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1313.57.

The Deputy Administrator finds that on December 12, 1997, Neil Laboratories, Inc. submitted a DEA Form 486 to DEA which indicated that it proposed to export 2,992,000 pseudoephedrine 60 mg. tablets to Comercializadora. A check with Mexican authorities revealed that Comercializadora never requested an import permit from the Mexican Department of Health. This shipment was exported to Mexico before DEA could discuss this matter with Neil Laboratories, Inc.

On February 3, 1998, DEA was notified that Comercializadora was not authorized by the Department of Health to import pseudoephedrine into Mexico.

On February 6, 1998, Neil Laboratories, Inc. submitted another DEA Form 486 which indicated that it proposed to export 4,000,000 pseudoephedrine 60 mg. tablets to Comercializadora. Neil Laboratories, Inc. also forwarded to DEA a copy of a Mexican import permit for this shipment. Upon receipt of the documents, DEA asked the Mexican Department of Health to verify the legitimacy of the customer. Thereafter, the Mexican authorities informed DEA that the Mexican import document submitted by Comercializadora to Neil Laboratories, Inc. was fraudulent. On February 20, 1998, Neil Laboratories, Inc. voluntarily canceled the shipment.

DEA personnel went to the address used by Comercializadora which was the same address as that listed in the Tijuana, Mexico telephone book for its owner, Oscar Barajas Gomez. The address was discovered to be an empty store front.

On April 2, 1998, Neil Laboratories, Inc. submitted a third DEA Form 486 which indicated that it proposed to export 4,000,000 pseudoephedrine 60 mg. tablets to Comercializadora. DEA requested that the Mexican Department of Health verify the import license submitted for this shipment. It was determined that the import license provided to Neil Laboratories, Inc. was fraudulent, in that one of the Mexican officials' signature was a forgery and two other Mexican officials listed on the permit were fictitious names. In addition, the company number provided by Comercializadora on the import license belonged to another company in Mexico.

On June 4, 1998, Neil Laboratories, Inc. forwarded another import license from Comercializadora, which Mexican authorities verified was also fraudulent. On June 15, 1998, Neil Laboratories, Inc. withdrew the previous DEA Form 486 and submitted a new, duplicate request. The Mexican port of entry for the shipment listed on the form is not authorized to receive shipments of pseudoephedrine.

Pursuant to 21 U.S.C. 971(c), and the delegation of authority found in 28 CFR 0.100(b) and 0.104, the Deputy Administrator may "order the suspension of any importation or exportation of a listed chemical * * * on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance." The Deputy Administrator concludes that there is substantial evidence to support the conclusion that this shipment of pseudoephedrine may be diverted to the clandestine manufacture of a controlled substance. The address noted for the customer was an empty store front and the customer provided fraudulent import documents. Further, the Deputy Administrator notes that no contrary evidence has been presented.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 971 and 28 CFR 0.100(b) and 0.104, hereby orders that the proposed shipment described above, be, and it hereby is, suspended, and that these proceedings are hereby concluded. This final order is effective immediately.

Dated: May 25, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–14099 Filed 6–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT990001 (Mar. 12, 1999)
- CT990003 (Mar. 12, 1999)
- CT990004 (Mar. 12, 1999)
- CT990005 (Mar. 12, 1999)
- CT990006 (Mar. 12, 1999)

Massachusetts:
- MA990001 (Mar. 12, 1999)
- MA990002 (Mar. 12, 1999)
- MA990007 (Mar. 12, 1999)
- MA990018 (Mar. 12, 1999)

Maine:
- ME990005 (Mar. 12, 1999)
- ME990010 (Mar. 12, 1999)
- ME990019 (Mar. 12, 1999)
- ME990022 (Mar. 12, 1999)
- ME990026 (Mar. 12, 1999)
- ME990037 (Mar. 12, 1999)

New Hampshire:
- NH990001 (Mar. 12, 1999)
- NH990002 (Mar. 12, 1999)
- NH990003 (Mar. 12, 1999)
- NH990005 (Mar. 12, 1999)
- NH990007 (Mar. 12, 1999)
- NH990008 (Mar. 12, 1999)

New Jersey:
- NJ990002 (Mar. 12, 1999)
- NJ990003 (Mar. 12, 1999)
- NJ990004 (Mar. 12, 1999)
- NJ990005 (Mar. 12, 1999)
- NJ990007 (Mar. 12, 1999)

New York:
- NY990002 (Mar. 12, 1999)
- NY990003 (Mar. 12, 1999)
- NY990004 (Mar. 12, 1999)
- NY990005 (Mar. 12, 1999)
- NY990006 (Mar. 12, 1999)
- NY990007 (Mar. 12, 1999)
- NY990008 (Mar. 12, 1999)
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- NY990022 (Mar. 12, 1999)
- NY990025 (Mar. 12, 1999)
- NY990026 (Mar. 12, 1999)
- NY990031 (Mar. 12, 1999)
- NY990032 (Mar. 12, 1999)
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- PA990025 (Mar. 12, 1999)
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- PA990031 (Mar. 12, 1999)

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- VA990013 (Mar. 12, 1999)
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Mississippi:
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Louisiana:
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Texas:
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Idaho:
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North Dakota:
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Oregon:
OR990001 (Mar. 12, 1999)
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South Dakota:
SD990002 (Mar. 12, 1999)
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Washington:
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California:
CA990001 (Mar. 12, 1999)
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Nevada:
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and

related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 28th day of May, 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–14072 Filed 6–3–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision and combination of the "Manual for Developing Local Area Unemployment Statisics" (OMB Number 1220–0017) and the "Local Area Unemployment Statistics Reports" (OMB Number 1220–0043). The two collections are being revised and combined into a single information collection titled the Local Area Unemployment Statistics (LAUS) Program, retaining OMB Number 1220–0017.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 3, 1999. The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Labor Statistics has been charged by Congress (29 USC Chapters 1 and 2) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency-based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available in State Employment Security Agencies (SESAs).

The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Workforce Investment Act and the Public Works and Economic Development Act, among others.

The estimates also are used in economic analysis by public agencies and private industry, and for State and area funding allocations and eligibility determinations according to legal and administrative requirements. Implementation of current policy and legislative authorities could not be accomplished without collection of the data.

The reports and manual covered by this request are integral parts of the Local Area Unemployment Statistics (LAUS) program insofar as they insure and/or measure the timeliness, quality, consistency, and adherence to program directions of the LAUS estimates and related research.

II. Current Actions

The BLS is revising and combining two previously-separate information collection requests which make up the LAUS program: the Manual for Developing Local Area Unemployment Statistics (OMB Number 1220–0017) and the Local Area Unemployment Statistics Reports (OMB Number 1220–0043).

All aspects of the program now are automated. Exportable software eliminated the need for the Monthly Report on Continued Claimants by Place of Residence (LAUS 6). Electronic transmittals of any corrections to regularly submitted data have eliminated the need to use Monthly and Area Correction Forms (LAUS 13 and 14). The paper forms previously approved, BLS 3040, LAUS 2 and LAUS 3, also have been eliminated. All data are entered directly into BLS-provided systems.

BLS, as part of its responsibility to develop concepts and methods by which SESAs prepare estimates under the LAUS program, developed a manual for use by the SESAs. The manual explains the conceptual framework for the State and area estimates of employment and unemployment, specifies the procedures to be used, and discusses the theoretical and empirical basis for each procedure.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Program.

OMB Number: 1220–0017.

Affected Public: State government.

Total Respondents: 52.

Frequency: Monthly and Annually.

Total Responses: 82,718.

Average Time Per Response: 1.60 hours.

Estimated Total Burden Hours: 131,600 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C. this 1st day of June 1999.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 99–14178 Filed 6–3–99; 8:45 am]

BILLING CODE 4510–24–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Proposed New System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Privacy Act of 1974; Notice of new system of records.

SUMMARY: As required by The Privacy Act of 1974, 5 U.S.C. 552a, the Merit Systems Protection Board (Board) is publishing a notice proposing establishment of a new system of records. This new records system is the Administrative Data System. These records will be used as an internal catalog of organizations, positions, and employees, and to track the status of personnel-related actions.

DATES: Comments must be received on or before July 6, 1999. This system of records becomes effective as proposed, without further notice, on August 3, 1999, unless comments are received which would result in a contrary determination. Comments may be mailed to the Merit Systems Protection Board, Office of the Clerk of the Board, 1120 Vermont Avenue, NW, Washington, DC 20419, or faxed to the same address on 202–653–7130. Electronic mail comments may be sent via the Internet to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT:

Michael H. Hoxie, Office of the Clerk of the Board, 202–653–7200.

Dated: May 28, 1999.

Robert E. Taylor,

Clerk of the Board.

MSPB/INTERNAL–7

SYSTEM NAME:

Administrative Data System.

SYSTEM LOCATION:

Information Resources Management Division, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW, Washington, DC 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the MSPB.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of information about employees of the Board, including: Name, social security number, date of birth, position title, grade, and series, organizational unit, photograph, work telephone number, flexiplace telephone number and work schedule for flexiplace employees. The system will also contain information about certain personnel requests such as: training requests and authorization, awards, and leave requests and authorization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1204.

PURPOSE(S):

These records are used by Board officials to prepare requests for personnel actions and related requests such as training or awards. The information in this system will also be used by Board officials to track the status of personnel actions, prepare listings of Board personnel by organization, position and location, and to contact flexiplace employees working away from Board offices regarding Board mission related matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court, or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigation, prosecution, enforcement, or implementation of a statute, rule, regulation, or order, where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a database on a local area network server with standard password access security.

RETRIEVABILITY:

These records are retrieved by the names of the individuals or whom they are maintained.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Records in this system are maintained as long as the individual is an employee of the Board. Expired records will be destroyed by deleting.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial and Administrative Management Division, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board. Such requests should be addressed to the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of records should write the Clerk of the Board. Requests must follow the MSPB

Privacy Act regulations at 5 CFR 1205.21.

RECORD SOURCE CATEGORIES:

The individual to whom the information applies; the records maintained in the Board's Financial and Administrative Management Division; and records maintained by the U.S. Department of Agriculture, Animal Plant Health Inspection Service.

[FR Doc. 99–14121 Filed 6–3–99; 8:45 am]

BILLING CODE 7400–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rule 17f–2(d); SEC File No. 270–36; OMB Control No. 3235–0028]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(d) was adopted on March 16, 1976, and was last amended on November 18, 1982. Paragraph (d) of the rule (i) requires that records produced pursuant to the fingerprinting requirements of Section 17(f)(2) of the Securities Exchange Act of 1934 ("Exchange Act") be maintained, (ii) permits the designating examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and to maintain records required to be kept by this rule, and (iii) permits the required records to be maintained on microfilm.

The general purposes for Rule 17f–2 are: (i) to identify security risk personnel; (ii) to provide criminal record information so that employers can make fully informed employment decisions; and (iii) to deter persons with criminal records from seeking employment or association with covered entities.

Retention of fingerprint records, as required under paragraph (d) of the Rule, enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprint are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 9,614 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 32 new records per year, which take approximately 2 minutes per record for the respondent to maintain, for an annual burden of 64 minutes per respondent. All records subject to the rule must be retained for the term of employment plus 3 years. The Commission estimates that the total annual cost to submitting entities is approximately $196,850. This figure reflects estimated costs of labor and storage of records.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: May 26, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14212 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23855; File No. 812–11176]

Mentor Variable Insurance Portfolios, et al.; Notice of Application

May 28, 1999.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 ("Act") granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of Mentor Variable Investment Portfolios (the "Current Trust") and any other investment company that is designed to fund insurance products and for which Mentor Investment Advisors, LLC, Mentor Perpetual Advisors, LLC or their affiliates may serve as investment manager, investment advisers, investment sub-adviser, administrator, manager, principal underwriter or sponsor ("Future Trusts," together with the Trust, "Trust(s)") to be sold to and held by: (i) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plans ("Qualified Plans" or "Plans") outside of the separate account context; and (iii) the Trusts' investment adviser (representing seed money investments in the Trusts).

APPLICANTS: Mentor Variable Investment Portfolios, Mentor Advisors, LLC ("Mentor Advisors") and Mentor Perpetual Advisors, LLC ("Mentor Perpetual," together with Mentor Advisors, the "Advisors").

FILING DATE: The application was originally filed on June 17, 1998, and amended and restated on December 14, 1998, and April 27, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 22, 1999, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Paul F. Costello, Managing Direcdtor, Mentor Investment Advisors, LLC, 901 E. Byrd

Street, 6th Floor, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, D.C. (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end, management investment company. The Trust currently consists of five investment portfolios (the "Funds").

2. Mentor Advisors and Mentor Perpetual serve as the investment advisors to the Funds. The Advisors are registered with the Commission as investment advisers under the Investment Advisers Act of 1940.

3. The Trust currently offers shares of certain of its Funds to Hartford Life Insurance Company ("Hartford") to serve as the investment vehicle for certain variable annuity contracts. In the future, the Trust may offer shares of the Funds to separate accounts ("Participating Separate Accounts") registered under the Act as unit investment trusts ("UITs") of various life insurance companies including Hartford ("Participating Insurance Companies") and to Plans qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"). Certain Participating Separate Accounts ("VLI Accounts") support variable life insurance contracts ("VLI Contracts"). Other Participating Separate Accounts ("VA Accounts") support variable annuity contracts ("VA Contracts," together with VLI Contracts, "Variable Contracts").

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be offered and sold to, and held by: (a) VA Accounts and VLI Accounts of the same life insurance company or of any affiliated life insurance company ("mixed funding"); (b) VA Accounts and VLI Accounts of unaffiliated life insurance companies ("shared funding"); (c) trustees of Qualified Plans; and (d) the Trusts' investment adviser (representing seed money investments in the Trust or Future Trust).

2. Rule 6e–2(b)(15) under the Act provides partial exemptions from: (a) Section 9(a), which makes it unlawful for certain individuals and companies to act in certain capacities with respect to registered investment companies; and (b) Sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require "pass-through" voting with respect to the shares of a registered management investment company underlying a UIT (an "underlying fund") to VLI Accounts supporting scheduled premium VLI Contracts and to their life insurance company depositors, investment advisers, and principal underwriters. The exemptions granted by the Rule are available, however, only if an underlying fund offers its shares exclusively to VLI Accounts of a single Participating Insurance Company or an affiliated insurance company, and then, only if scheduled premium VLI Contracts are issued through such VLI Accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI Account that owns shares of an underlying fund that engages in mixed funding by also offering its shares to a VA Account or to a flexible premium VLI Account of the same company or of an affiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the underlying fund engages in shared funding by offering its shares to VA Accounts or VLI Accounts of unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

3. Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors, investment advisers and principal underwriters. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusively to separate accounts of the Participating Insurance Company, or of any affiliated insurance company, offering either scheduled premium contracts or flexible premium contracts, or both, or which also offer their shares to VA Accounts of the Participating Insurance Company or of an affiliated life insurance company. Therefore, Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium VLI Account, subject to certain conditions. However, Rule 6e–3(T)(b)(15) does not permit shared funding because the relief granted is not available with respect to a VLI Account that owns shares of an underlying fund that also offers its shares to separate accounts (including VA Accounts and flexible premium and scheduled premium VLI Accounts) of unaffiliated Participating Insurance Companies. Also, Rule 6e–3(T)(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. Applicants state that current tax law permits the Trust to sell its shares directly to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Trust. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not adequately diversified in accordance with regulations issued by the Treasury Department. On March 1, 1989, the Treasury Department adopted regulations (Treas. Reg. 1.817–5) (the "Regulations") which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations. Thus, the sale of shares of the same investment company to both Participating Separate Accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), and, therefore, Applicants assert that the restrictions of such Rules do not evidence an intent of the Commission to prevent extended mixed funding.

6. Section 9(a)(3) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) limited the application of the eligibility restrictions of section 9(a) to affiliated persons of a life insurance company that directly participate in the management of the underlying registered management investment company under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rule 6e–2(b)(15)(i) and Rule 6e–3(T)(b)(15)(i) permits persons who are affiliated persons of a life insurance company or its affiliates who otherwise would be disqualified under section 9(a) to serve as an officer, director, or employee of an underlying fund, so long as any such person does not participate directly in the management or administration of such underlying fund. In addition, Rule 6e–2(b)(15)(ii) and Rule 6e–3(T)(b)(15)(ii) permit a Participating Insurance Company to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurance company's personnel who are ineligible pursuant to section 9(a) of the Act participate in the management or administration of thee underlying fund.

7. Applicants assert that the partial relief provided by Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) from the requirements of section 9 limits the amount of monitoring of a Participating Insurance Company's personnel that is necessary to ensure compliance with section 9(to that which is appropriate in light of the policy and purposes of section 9. Applicants state that Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) recognize that applying the provisions of section 9 to the many individuals in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Participating Separate Accounts, is not necessary or appropriate in the public interest nor is it necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act. Moreover, applicants assert that disallowing the relief permitted by Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) because the Trusts will sell their shares to Qualified Plans would serve no regulatory purpose. Applicants assert that the sale of shares of an underlying fund to Qualified Plans does not change the fact that the purposes of the Act are not advanced by applying the prohibitions of section 9(a) to individuals who may be involved in a life insurance complex but have no involvement in the underlying fund.

8. Rule 6e–2(b)(15)(iii) and Rule 6e–3(T)(b)(15)(iii) provide partial exemptions from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require "pass-through" voting with respect to the shares of an underlying fund, by allowing an insurance company to disregard the voting instructions of contract owners with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rule 6e–2(b)(15)(iii)(A) and Rule 6e–3(T)(b)(15)(iii)(A) permit a Participating Insurance Company to disregard the voting instructions of its contract owners if such instructions would require an underlying fund's shares to be voted to cause such underlying fund to make (or to refrain from making) certain investments which would result in changes in the subclassification or investment objectives of such underlying fund or to approve or disapprove any contract between such underlying fund and an investment adviser when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rule 6e–2(b)(15)(iii)(B) and Rule 6e–3(T)(b)(15)(iii)(A) (*2*) permit a Participating Insurance Company to disregard contract owners' voting instructions if the contract owners initiate any change in the underlying fund's investment objectives, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules). Applicants assert that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts.

9. Applicants assert that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that Commission concern is not warranted in the context of permitting shared funding or permitting Qualified Plans to invest in the Trust and that the addition of owners of Variable Contracts supported by separate accounts of unaffiliated life insurance companies and Qualified Plans as eligible shareholders will not increase the risk of material irreconcilable conflicts among shareholders.

10. Voting rights of shares sold to Qualified Plans are expressly reserved to certain specified persons and are not required to be passed through to Qualified Plan participants. Under Section 403(a) of the Employee Retirement Income Security Act ("ERISA"), shares of an underlying fund sold to a Qualified Plan must be held by the trustee(s) of the Qualified Plan, and such trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, the exclusive authority and responsibility for voting shares of an underlying fund is vested in the plan trustees. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

11. If a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

12. If a Qualified Plan does not provide participants with the right to give voting instructions, the Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among owners of Variable Contracts and participants in Qualified Plans with respect to voting of an underlying fund's shares. Accordingly, unlike the case with Participating Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to

voting is not present with respect to such Qualified Plans because the Qualified Plans are not entitled to pass-through voting privileges.

13. Applicants further note that there is no reason to believe that participants in Qualified Plans which provide participants with the right to give voting instructions generally, or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract owners. Applicants, therefore, submit that the purchase of shares of the Trusts by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants state that the presence of both VLI Accounts and VA Accounts as shareowners of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. Similarly, shared funding does not present any issues that do not already exist where an underlying fund sells its shares to a single insurance company which sells contracts in several states. A state insurance regulatory body in one state could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that unaffiliated insurers may be domiciled in different states does not create a significantly different or enlarged problem.

15. Applicants asset that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–2(T)(b)(15) under the Act permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions summarized below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer may be required to withdraw its Participating Separate Account's investment in the Trusts. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Trust.

16. Rules 6e–2(b)(15) and 6e–2(T)(b)(15) under the Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–2(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Requiring that only affiliated insurance companies invest in the Trust does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal under writer, or investment adviser initiated by contract owners. Moreover, the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

17. A particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. if the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Fund, to withdraw its Participating Separate Account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Trust.

18. Applicants asset that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if they funded only VA Contracts or VLI Contracts. Each type of insurance product is designed as a long-term investment program. The Funds will be managed in the same manner as any other mutual funds and there is no incentive for a Fund's investment advisor to invest to benefit a particular class of shareholders. In addition, the Board of Trustees has a fiduciary duty to oversee the Trusts' investment advisers and ensure that the Trusts are managed in a way that does not discriminate against any Trust shareholders.

19. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of VA and VLI Contract owner is composed of individuals of diverse financial status, age, insurance, and investment goals. A Fund supporting even one type of insurance product must accommodate these diverse factors in order to attracted and retain purchasers. Permitting mixed and shared funding as well as permitting sales to Qualified Plans will provide benefits to the Trusts' shareholders. Among other things, Participating Insurance Companies, and Variable Contract owners will benefit from a greater variety of investment options with lower costs.

20. Applicants do not believe that the sale of the shares of the Trusts to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants assert that there are either no conflicts of interest or that three exists the ability by the affected parties to resolve the issues without harm to the contract owners in the Participating Separate Accounts or to the participants under the Qualified Plans.

21. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with the Regulations, adequately diversified.

22. The Regulations provided that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a Qualified Plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.871–5(f)(3)(iii)). Thus, the Regulations specifically permit Qualified Plans and separate accounts to invest in the same

portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interests.

23. Applicants note that while there are differences in the manner in which distribution from Variable Contracts and Qualified Plans are taxed, the differing tax consequences do not raise any conflicts of interest. If the Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Qualified Plan will redeem shares of the Fund at their net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract. Therefore, distributions and dividends will be declared and paid by the Fund without regard to the character of the shareholder.

24. Applicants state that it is possible to provide an equitable means of giving voting rights to Variable Contract owners and to the trustees of Qualified Plans. The transfer agent for the Fund will inform each Participating Insurance Company of its share ownership in each Participating Separate Account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Trusts will be no different from the voting rights that are provided to Qualified Plan with respect to shares of funds sold to the general public.

25. Applicants submit that the ability of the Trusts to sell their shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of Variable Contract owners or participants under the Qualified Plans, the Qualified Plans and the Participating Separate Accounts have rights only with respect to their respective shares of the trusts. They can only redeem such shares at their net asset value. No shareholder of the Trusts will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants assert that the veto power of state insurance commissioners over an underlying fund's investment objectives does not create any inherent conflicts of interest between the contract owners of the Participating Separate Accounts and Qualified Plan participants. Applicants note that the basis premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts our of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

27. In contrast, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as in the case with most Qualified Plans, even hold cash pending suitable investment.

28. Applicants also assert that the investment of seed capital in a Trust presents no potential for irreconcilable conflicts of interest. Seed capital for a Trust will be provided by the Trust's investment adviser or by Participating Insurance Companies.

29. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Trust as a common investment medium for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Trusts' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Fund, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new funds more feasible. Applicants assert that the sale of shares of the Trusts to Qualified Plans in addition to the Participating Separate Accounts will result in an increased amount of assets available for investment by such Trusts. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Funds more feasible.

30. Applicants assert that granting the exemptions requested by Applicants will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a) and 15(b) of the Act or Rules 6e–2(b)(15) or 6e–3(T)(b)(15) thereunder.

Applicants' Conditions

1. Applicants have consented to the following conditions:

a. A majority of the Board of Trustees ("Board") of each Trust will consist of persons who are not "interested persons" of such Trust, as defined by Section 2(a)(19) of the Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (i) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

b. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) an action by any state insurance regulatory authority; (ii) a change in applicable Federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any

similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of Trust are being managed; (v) a difference in voting instructions given by VA contract owners, VLI contract owners, and Plan investors or the trustees of a Qualified Plan that does not provide voting rights to its investors; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

c. Each Trust will disclose in its prospectus that: (i) Shares of such Trust may be offered to insurance company separate accounts that support both variable annuity and variable life insurance contracts and to Qualified Plans; (ii) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict; and (iii) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. Each trust shall also notify the Qualified Plan trustees and Participating Insurance Companies that similar prospectus disclosure may be appropriate in Participating Separate Account prospectuses or any Plan prospectuses or other Plan disclosure documents.

d. Each Trust will comply with all provisions of the Act requiring voting by shareholders, including Sections 16(a), 16(b) (when applicable) and 16(c) (even though the Trust is not a trust of the type described therein).

e. Mentor Advisors and Mentor Perpetual will report any material irreconcilable conflicts or any potential material irreconcilable conflicts between or among the interests of VLI Contract owners, VA Contract owners and Plan participants to the Trust's Board of Trustees and will assist the Board in carrying out the Board's responsibilities under these conditions. Such assistance will include, but not be limited to, providing the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts.

f. All reports sent by Participating Insurance Companies or Qualified Plans to the Board of Trustees of a Trust or notices sent by the Board of Trustees to Participating Insurance Companies or Qualified Plans notifying the recipient of the existence of or potential for a material irreconcilable conflict between the interests of VA Contract owners, VLI Contract owners and Plan participants as well as Board deliberations regarding such conflicts or such potential conflicts shall be recorded in the board meeting minutes of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

2. In addition to the foregoing conditions, Applicants consent to the following conditions and represent and agree that if the exemptions requested are granted, a Trust will not sell shares to any VLI Account unless such Account's Participating Insurance Company enters into a participation agreement with the Trust containing provisions that require the following:

a. A majority vote of the disinterested trustees of a Trust shall represent a conclusive determination as to the existence of a material irreconcilable conflict between or among the interests of VLI Contract owners, VA Contract owners and Qualified Plan investors. For the purpose of subparagraph (e) below, a majority vote of the disinterested trustees of that Trust shall represent a conclusive determination as to whether any proposed action adequately remedies any material irreconcilable conflict between or among the interests of VLI Contract owners, VA Contract owners and Qualified Plan investors. The Trust shall notify each Participating Insurance Company and Qualified Plan in writing of any determination of the foregoing type.

b. Each Participating Insurance Company will monitor its operations and those of the Trusts for the purpose of identifying any material irreconcilable conflicts or potential material or irreconcilable conflicts between or among the interests of Qualified Plan investors, VA Contract Owners and VLI Contract Owners.

c. Each Participating Insurance Company will report any such conflicts or potential conflicts to a Trust's Board of Trustees and will provide the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts or by these conditions. Each Participating Insurance Company will also assist the Board in carrying out its responsibilities under these conditions including, but not limited to: (i) Informing the Board whenever it disregards VLI Contract owner or VA Contract owner voting instructions; and (ii) providing, at least annually, such other information and reports as the Board may reasonably request. Each Participating Insurance Company will carry out these obligations with a view only to the interests of owners of its VLI Contracts and VA Contracts.

d. Each Participating Insurance Company will provide "pass-through" voting privileges to owners of registered VA Contracts and registered VLI Contracts as long as the Act requires such privileges in such cases. Accordingly, such Participating Insurance Companies, where applicable, will vote Trust shares held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from owners of such VLI and VA Contracts. Each Participating Insurance Company will vote Trust shares owned by itself (*i.e.*, that are not attributable to VA Contract or VLI Contract reserves) in the same proportion as instructions received in a timely fashion from VA Contract owners and VLI Contract owners and shall be responsible for ensuring that it and other Participating Insurance Companies calculate "pass-through" votes for VLI Accounts and VA Accounts in a consistent manner. Each Participating Insurance Company also will vote Trust shares held in any registered VLI Account or registered VA Account for which it has not received timely voting instructions in the same proportion as instructions received in a timely fashion from VA Contract owners and VLI Contract owners.

e. In the event that a material irreconcilable conflict of interest arises between VA Contract owners or VLI Contract owners and Qualified Plan participants, each Participating Insurance Company will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects owners of its VA Contracts or VLI Contracts up to and including: (i) establishing a new registered management investment company; and (ii) withdrawing assets attributable to reserves for the VA Contracts or VLI Contracts subject to the conflict from the Trust and reinvesting such assets in a different investment medium (including another Fund of the Trust) or submitting the question of whether such withdrawal should be implemented to a vote of all affected VA Contract owners or VLI Contract owners, and, as appropriate, segregating the assets supporting the contracts of any group of such owners that votes in favor of such withdrawal, or offering to such owners the option of making such a change. Each Participating Insurance Company will carry out the responsibility to take the foregoing

action with a view only to the interests of owners of its VA Contracts and VLI Contracts. Notwithstanding the foregoing, each Participating Insurance Company will not be obligated to establish a new funding medium for any group of VA Contracts or VLI Contracts if an offer to do so has been declined by a vote of a majority of the VA Contract owners or VLI Contract owners adversely affected by the conflict.

f. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard the voting instructions of VLI Contract owners or VA Contract owners and that decision represents a minority position or would preclude a majority vote at any Fund shareholder meeting, then, at the request of the Trust's Board of Trustees, the Participating Insurance Company will redeem the shares of the Trust to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

g. Each Participating Insurance Company and VLI Account will continue to rely on Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15), as appropriate, and to comply with all of the appropriate Rule's conditions. In the event that Rule 6e–2 and/or Rule 6e–3(T) is amended, or any successor rule is adopted, each Participating Insurance Company and VLI Account will instead comply with such amended or successor rule.

h. Each Participating Insurance Company will maintain at its home office available to the Commission a list of its officers, directors and employees who participate directly in the management and administration of any separate account organized as a UIT or of any Fund. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

3. In addition to the foregoing conditions, Applicants consent to the following conditions and represent and agree that if the exemptions requested are granted, the Trust will not sell shares of any Fund to a Qualified Plan if such sale would result in the Qualified Plan owning 10% or more of that Fund's outstanding shares unless the Qualified Plan first enters into a participation agreement with the Trust containing provisions that require the following:

a. The trustees or plan committees of the Qualified Plan will: (i) monitor the Qualified Plan's operations and those of the Trusts for the purpose of identifying any material irreconcilable conflicts or potential material irreconcilable conflicts between or among the interests of Qualified Plan participants, VA Contract owners and VLI Contract owners; (ii) report any such conflicts or potential conflicts to a Trust's Board of Trustees; (iii) provide the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts and any other information and reports that the Board may reasonably request; (iv) inform the Board whenever it (or another fiduciary) disregards the voting instructions of Qualified Plan participants (of a Qualified Plan that provides voting rights to its participants); and (v) ensure that the Qualified Plan votes Trust shares as required by applicable law and governing Qualified Plan documents. The trustees or plan committees of the Qualified Plan will carry out these obligations with a view only to the interests of Qualified Plan participants in its Qualified Plan.

b. In the event that a material irreconcilable conflict of interest arises between Qualified Plan investors and VA Contract owners, VLI Contract owners or other investors in the Trust, each Qualified Plan will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects that Qualified Plan or participants in that Qualified Plan up to and including: (i) Establishing a new registered management investment company; and (ii) withdrawing Qualified Plan assets subject to the conflict from the Trusts and reinvesting such assets in a different investment medium (including another Fund of the Trusts) or submitting the question of whether such withdrawal should be implemented to a vote of all affected Qualified Plan investors, and, as appropriate, segregating the assets of any group of such participants that votes in favor of such withdrawal, or offering to such participants the option of making such a change. Each Qualified Plan will carry out the responsibility to take the foregoing action with a view only to the interests of Qualified Plan investors in its Qualified Plan. Notwithstanding the foregoing, no Qualified Plan will be obligated to establish a new funding medium for any group of participants or Qualified Plan investors if an offer to do so has been declined by a vote of a majority of the Qualified Plan's participants or Qualified Plan investors adversely affected by the conflict.

c. If a material irreconcilable conflict arises because of a Qualified Plan trustee's (or other fiduciary's) decision to disregard the voting instructions of Qualified Plan participants (of a Qualified Plan that provides voting rights to its participants) and that decision represents a minority position or would preclude a majority vote at any shareholder meeting, then, at the request of the Trust's Board of Trustees, the Qualified Plan will redeem the shares of that Trust to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

4. Applicants also represent and agree that if the exemptions requested are granted, a Trust will not sell shares of any Fund to a Qualified Plan until the Qualified Plan executes an application containing an acknowledgment of the condition that the Trust cannot sell shares of any Fund to such Qualified Plan if such sale would result in that Qualified Plan owning 10% or more of that Fund's outstanding shares unless that Qualified Plan first enters into a participation agreement as described above.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14207 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27033]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 28, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the

application(s) and/or declaration(s) should submit their views in writing by June 22, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 22, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Conectiv, et al. (70–9499)

Conectiv, a registered public utility holding company, Atlantic City Electric Company ("ACE"), and Delmarva Power & Light Company ("Delmarva"), both utility subsidiaries of Conectiv ("Applicants"), all located at 800 King Street, Wilmington, Delaware 19899, have filed a declaration under section 12(c) of the Act and rules 46(a) and 54 under the Act.

Applicants note that each of the states in which ACE and Delmarva operate, i.e., New Jersey, Delaware, Maryland and Virginia, has enacted restructuring legislation that is intended to result in competition for the supply component of the price ACE and Delmarva charge to their retail customers. Applicants state that because of this legislation, certain costs that ACE and Delmarva have incurred to serve their customers ("stranded costs") may not be recoverable from these customers. Applicants expect that the utility commissions in Delaware, Maryland and Virginia will issue orders in the second and third quarters ("Restructuring Orders") that will allow applicants to quantify the amount of stranded costs that ACE and Delmarva will have to charge to their retained earnings.

Applicants state that these charges may have an effect on Applicants' abilities to pay dividends out of retained earnings. For this reason, each Applicant seeks authority to pay dividends out of capital or unearned surplus should the charges to retained earnings exceed its level of retained earnings at the time of the charge.

Specifically, Conectiv requests authority to pay dividends with respect to its common stock and Class A common stock for up to six quarters in amounts that would aggregate up to approximately $144 million.[1] ACE requests authority to pay dividends out of capital or unearned surplus to preferred stockholders and to Conectiv as the holder of ACE common stock for up to four quarters in amounts that would aggregate up to approximately $52 million.[2] Delmarva requests authority to pay dividends out of capital or unearned surplus to preferred stockholders and to Conectiv as the holder of Delmarva common stock for up to four quarters in amounts that would aggregate up to approximately $52.4 million.[3]

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14208 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23856]

Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 28, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 22, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, N.W., Washington, DC 20549–0506.

Alameda-Contra Costa Medical Association Collective Investment Trust For Retirement Plans [File No. 811–5887]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Between November 18, 1998, and January 5, 1999, a pro rata distribution was made to each securityholder of each of applicant's portfolios based on net asset value. Expenses of approximately $35,000 were incurred in connection with the liquidation and were paid by applicant's sponsor and administrator, the Alameda-Contra Costa Medical Association.

Filing Dates: The application was filed on April 21, 1999, and amended on May 21, 1999.

Applicant's Address: 6230 Claremont Avenue, Oakland, California 94618.

Bascom Hill Balanced Fund, Inc. [File No. 811–4825]

Bascom Hill Investors, Inc. [File No. 811–2825]

Madison Bond Fund, Inc. [File No. 811–5952]

Summary: EAch applicant seeks an order declaring that it has ceased to be an investment company. On June 13, 1997, Bascom Hill Balanced Fund, Inc. and Bascom Hill Investors, Inc. transferred their assets and liabilities to a corresponding series of Mosaic Equity Trust based on net asset value. On June 13, 1997, Madison Bond Fund, Inc. transferred its assets and liabilities to Mosaic Income Trust based on net asset value. Expenses of approximately $12,000, $10,000, and $8,000, respectively, were incurred in connection with the reorganizations and were paid by Madison Investment Advisors, Inc., investment adviser of each applicant.

Filing Dates: Each application was filed on February 17, 1999, and amended on May 12, 1999.

Applicants' Address: 6411 Mineral Point Road, Madison, Wisconsin 53705.

The Highland Family of Funds [File No. 811–7867]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 13, 1998, applicant made its final liquidating distribution to its remaining securityholders at net asset value per

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[1] This represents approximately ten percent of Conectiv's capital surplus as of March 31, 1999.

[2] This represents eleven percent of the ACE capital surplus as of March 31, 1999.

[3] This represents approximately ten percent of Delmarva's capital surplus as of March 31, 1999.

share. Expenses of approximately $33,815 incurred in connection with the liquidation were paid by Robert Lamb III, applicant's President and Trustee, and co-founder of Highland Investment Group, L.P., applicant's investment adviser.

Filing Dates: The application was filed on November 5, 1998 and amended on May 11, 1999.

Applicant's Address: 1248 Post Road, Fairfield, Connecticut 06430.

Marquis Funds [File No. 811–7830]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 10, 1998, applicant transferred all of its assets and liabilities to corresponding series of The One Group® in exchange for shares of the corresponding series of The One Group® based on net asset value. Expense of approximately $270,000 were incurred in connection with the reorganization and were paid by Banc One Investment Advisors, investment adviser to the The One Group®.

Filing Dates: The application was filed on March 26, 1999, and amended on May 26, 1999.

Applicant's Address: 2 Oliver Street, Boston, Massachusetts 02109.

Oppenheimer Mortgage Income Fund [File No. 811–4712]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 1995, applicant transferred all of its assets to Oppenheimer U.S. Government Trust ("U.S. Government Trust"), in exchange for shares of U.S. Government Trust, based on the relative net asset values per share. Applicant and U.S. Government Trust paid $37,107 and $23,207, respectively, in expenses related to the reorganization.

Filing Dates: The application was filed on March 3, 1999, and amended on May 12, 1999.

Applicant's Address: Two World Trade Center, New York, New York 10048–0203.

Principal Tax-Exempt Cash Management Fund, Inc. [File No. 811–5548]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 8, 1999, applicant transferred its assets and liabilities to Principal Cash Management Fund, Inc. in exchange for shares of that fund based on the net asset value per share. Expenses of approximately $70,000 were incurred in connection with the reorganization, and were paid by Principal Management Corporation, applicant's investment adviser.

Filing Dates: The application was filed on April 28, 1999, and amended on May 20, 1999.

Applicant's Address: The Principal Financial Group, Des Moines, Iowa 50392.

Stonebridge Growth Fund, Inc. [File No. 811–916]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 2, 1998, applicant transferred all of its assets to the Stonebridge Growth Fund, a series of the Stonebridge Funds Trust, at net asset value. Expenses of approximately $41,000 incurred in connection with the reorganization were borne by applicant.

Filing Dates: The application was filed on January 8, 1999, and amended on April 15, 1999 and May 26, 1999.

Applicant's Address: 370 17th Street, Suite 3100, Denver, Colorado 80202–5631.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14209 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41486; File No. SR–DTC–99–12]

Self-Regulatory Organizations; The Depository Trust Company; Filing and Order Granting Accelerated, Temporary Approval of a Proposed Rule Change Relating to the Admission of Non-U.S. Entities as Direct Depository Participants

May 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 19, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated, temporary approval of the proposed rule change through May 31, 2000.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for entities that are organized in a country other than the United States ("non-U.S. entities").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for non-U.S. entities as direct DTC participants. The Commission originally granted temporary approval on May 9, 1997.[3] The admission criteria permit well-qualified, non-U.S. entities to obtain direct access to DTC's services without requiring the non-U.S. entities to obtain financial guarantees from another DTC participant. According to DTC, DTC established the program for admission of non-U.S. entities in response to requests it received from certain participants. These participants requested that DTC consider changes in its admissions policy that would allow non-U.S. affiliates to become direct participants without having to obtain financial guarantees from a DTC participant that was a U.S. entity.

As of May 10, 1999, one non-U.S. entity has been approved for DTC membership under the standards for admission of non-U.S. entities. DTC is currently reviewing an application from another non-U.S. entity and has received numerous inquiries from other non-U.S. entities. In 1999, DTC expects

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a complete discussion of the admission criteria, refer to Securities Exchange Act Release No, 38600, International Release No. 1078 (May 9, 1997), 62 FR 27086–01 [File No. SR–DTC–96–13] (order temporarily approving a proposed rule change relating to the admission of non-U.S. entities as direct depository participants).

to admit, several non-U.S. entities. DTC is seeking an extension of the temporary approval so it can complete the admission of these non-U.S. entities and gain further experience with the admission standards of non-U.S. entities and the unique risks posed by the activities of non-U.S. entities as direct DTC participants.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations promulgated because the admission criteria takes into account the unique risks to DTC raised by the admission of non-U.S. entities while not unfairly discriminating against non-U.S. entities seeking admission as participants.

(b) Self-Regulatory Organization's Statement on Burden on Competition

While DTC acknowledges that the proposed additional admissions criteria applicable to non-U.S. entities may impose some additional burden, for the reasons stated above, we believe that any such burden is necessary and appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The Commission finds that the rule change is consistent with this obligation because DTC's admission criteria has been designed in a manner which takes into account jurisdiction differences in regulatory structure and in business operations of non-U.S. entities with respect to risk control and management. Furthermore, DTC admission criteria should bind non-U.S. entities to DTC's rules and procedures in a manner similar to domestic participants and should lesson or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights against non-U.S. entities. Therefore, the Commission finds that the admissions criteria will assist DTC in assuring the safeguarding of securities and funds which are in its custody, control, or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because accelerated approval will permit DTC to continue to use and study the effectiveness of its admission criteria without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–99–12 and should be submitted by June 25, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–12), be, and hereby is, temporarily approved on an accelerated basis through May 31, 2000.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14211 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41457; File No. SR–MSRB–99–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

May 26, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–99–03). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The MSRB has designated this proposal as one constituting a stated policy, practice or interpretation with respect to the enforcement of an existing rule under Section 19(b)(3)(A)[3] of the Act which renders the proposal effective upon receipt of the filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing a proposed rule change concerning the Board's Transaction Reporting Program. The proposed rule change states the Board's intention to publish for comments a sample Daily Transaction Report which covers a five day period and contains information on individual transactions in frequently-traded municipal securities, as reported by dealers under Rule G–14.

The proposed rule change is as follows in *italics:*

Notice—Sample Transparency Reports With Data on Individual Transactions in Frequently-Traded Securities Available for Review

A long standing goal of the Municipal Securities Rulemaking Board is providing market participants with more information about the value of securities.[4] Toward this end, the Board

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See "From the Chairman," MSRB Reports, Vol. 8, No. 5 (December 1988) at 2.*

established its Transaction Reporting Program, which has provided increasing levels of information during the past five years. The Board has consistently stated that its ultimate goal for the Program is to collect and make available transaction information in a comprehensive and contemporaneous manner.[5]

The Board is now publishing for comment sample Daily Transaction Reports with individual transaction information for issues that trade four or more times on an give day. The sample Daily Transaction Reports represents the next step in making transaction price information more readily available to investors and other market participants. Release of the sample reports builds upon tow earlier phases of transparency—the Board's Inter-Dealer Daily Report and the Combined Daily Report.

Background

The Inter-Daily Report

The Board began disseminating price and volume information on municipal securities on January 1995 with the production of the Inter-Dealer Daily Report. Each business day since its inauguration, this report has provided statistics on total inter-dealer market activity the previous day and information about price and volume for each frequently traded issue—i.e., each issue that was traded between dealers four or more times during the day. The report includes the total par value traded in each frequently traded issue, the high and low prices, and average prices of representative trades.[6]

The initial design of the Inter-Dealer Daily Report was based upon the distinctive aspects of the municipal securities market that distinguish it from the exchange-listed and NASDAQ markets, where transaction price transparency is the norm. A primary distinguishing characteristic of the municipal securities market is the large number of outstanding issues. There are approximately 1.3 million municipal securities that are distinct, non-fungible entities for purposes of trading and reporting, compared to a much smaller number of equity issues, and their frequency of trading also differs substantially from patterns in the exchange and NASDAQ markets. While, on any given day, a certain number of municipal securities are traded frequently, the identity of these frequently traded issues is continually changing over time. Another distinguishing characteristic is that, in the municipal securities market, most issues are purchased by "buy and hold" investors relatively quickly after initial issuance. When frequent trading does occur in an issue, it generally occurs in connection with issuance and then subsides.

The Board identified a reporting threshold of four trades a day in 1994, based upon its belief that reporting an isolated transaction in a security does not necessarily provide a reliable indicator of "market price" and might be misleading to an observer not familiar with the market. At the same time, the Board made a commitment to review the use of the Inter-Dealer Daily Report as experience was obtained and to consider expanding the information included.[7] In its approval order for the Inter-Dealer Daily Report, the Commission noted that the MSRB, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading."[8]

The Combined Daily Report

The Board proposed in August 1996 to expand the transparency program by adding to the daily public report information about transactions between dealers and their customers.[9] The Commission approved the expansion in November 1996.[10] Dealers have been required to report customer transaction information to the Board since March 1, 1998, and the Board began production of a Combined Daily Report which incorporated both inter-dealer and customer transaction information on August 24, 1998.[11] This report, which is made available on T+1 prior to the beginning of the trading day, is used by market participants to help gauge the value of municipal securities.

The Board currently has nine subscribers to the Combined Daily Report. Most of these are information vendors that redistribute to their own subscribers and/or use the information in various securities valuation products that they market. The Board has used the customer transaction information to create a surveillance database of all trade data which is has made available to the Commission, the National Association of Securities Dealers (NASD) and the bank regulatory agencies for market surveillance and enforcement purposes.

Proposed New Daily Transaction Report

As a step to increase transparency beyond the market summary information provided in Combined Daily Reports, the Board now is proposing to make data available on individual transactions in securities that were traded four or more times on the previous day and is publishing samples of a new Daily Transaction Report for comments. The new Daily Transaction Report, once it receives Commission approval and becomes operational, would substantially increase the amount of available information compared to that provided in the Combined Daily Report. Currently, the Combined Daily Report provides a one-line summary of trading in each of approximately 1,072 frequently-traded issues. In comparison, for each transaction in a frequently-traded security,[12] the sample Daily Transaction Reports display the CUSIP number and a short description of the traded issue, the time of trade execution, the par value traded, and the dollar price of the trade.[13] As part of the format of the sample Reports, prices of sales to customers, which represent the

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[5] See, e.g., "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," MSRB Reports, Vol. 14, No. 1 (January 1994) at 13; "Reporting Inter-Dealer Transactions to the Board: Rule G–14," MSRB Reports, Vol. 14, No. 5 (December 1994) at 3–6; and "Transaction Reporting Program for Municipal Securities," MSRB Reports, Vol. 15, No. 1 (April 1995) at 11–15.

[6] The average price of all trades with par value between $100,000 and $1 million is displayed in the report.

[7] See Securities Exchange Act Release No. 34458 (July 28, 1994).

[8] See Securities Exchange Act Release No. 34955 (November 9, 1994).

[9] See "Board to Proceed with Customer Transaction Reporting Program," MSRB Reports, Vol. 16, No. 3 (September 1996) at 3–10.

[10] See Securities Exchange Act Release No. 37998 (November 29, 1996).

[11] See "Availability of Information on Transactions in Municipal Securities: Rule G–14," MSRB Reports, Vol. 19, No. 1 (February 1999) at 23.

[12] In determining whether a reported transactions will be included for purposes of the Daily Report eligibility, certain transaction records are eliminated from consideration if they contain what appear to be obvious errors (e.g., invalid or unknown CUSIP number, missing dollar price). The Board continually monitors the data it receives for errors and informs the dealer or its agent of each error that would eliminate a transaction from the Report. The Board is working continually with dealers and enforcement agencies such as the NASD to improve the quality of reported data and dealer compliance with rule G–14 reporting requirements.

[13] An attempt is made to calculate a dollar price on when-issued transactions submitted with a yield but no dollar price. In such a case, if there is sufficient securities data available to calculate dollar price from yield (e.g., if coupon or dated date are not known) or if the dollar price cannot be calculated using a standard semiannual compounding formula and a 30/360 day-count, the transaction is not included in the Daily Transaction Report. See "Public Reporting of Transactions in Municipal Securities: Rule G–14," MSRB Reports, Vol. 18, No. 2 (August 1998) at 25–27.

prices that customers can expect to pay when purchasing securities, are in a column separate from prices of all other trades (i.e., purchases from a customer or inter-dealer trades), which represent wholesale market activity. Issues are ordered by frequency of trading, and, within an issue, trades are displayed in order of time of trade, from the earliest reported time of trade to the latest.[14] Trade data now being received by the Board indicates that the new Daily Transaction Reports on average would provide detailed information daily on approximately 9,000 individual transactions in the 1,000 frequently-traded issues. As these statistics illustrate, the detailed transaction data in the new Reports would increase greatly the amount of available municipal securities price information and would display a more complete picture of the market than any existing public records.

Five sample Daily Transaction Reports will be available beginning April 29, 1999. The Reports will include information on transactions reported to the Board by midnight on trade date between March 22 and March 26, 1999. The sample Daily Transaction Reports will be available on the Board's Web site at WWW.MSRB.ORG. Subscribers to the current Inter-Dealer Daily Report also will be able to access the sample Reports through the computer bulletin board that they normally use to access Daily Reports. Printed copies will be available for inspection at the Board's offices.

The Board intends to disseminate the Daily Transaction Report by a service similar to that now used for the Inter-Dealer and Combined Daily Reports. In this service, electronic files are made available via the Transaction Reporting System's Bulletin Board. Electronic versions of the reports will be made available by approximately 7:00 am each business day to subscribers. The Board will continue to make the surveillance database of all trade data, including dealer identities, available to the Commission, the NASD and the bank regulatory agencies.

Comments Requested

The Board invites comment on the format of Daily Transaction Reports so that the Board can make the new Reports as useful as possible. Is the organization of the proposed Report appropriate for effective use? When operational, should the proposed reports be made available electronically by the same means and in the same computerized formats as the Inter-Dealer and Combined Daily Reports? Is there value in continuing to produce the Combined Daily Report, which summarizes the price and volume data of the Daily Transaction Report? The Board requests that comment on the sample Daily Transaction Report be made in writing prior to July 1, 1999.

[14] *Where trades were reported with invalid or no time of trade, the report shows the time of trade as "0" and these trades are listed first within the issue.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As a step to increase transparency beyond the market summary information provided in Combined Daily Reports, the Board intends to publish a sample Daily Transaction Report covering a five day period containing information on individual transactions in frequently-traded municipal securities, as reported by dealers under Rule G–14. The sample Daily Transaction Report represents the next step in disseminating meaningful and comprehensive transaction information. The Board is inviting comments from market participants and the public on the format to be used in disseminating large quantities of information about individual transactions.

The new Daily Transaction Report, once it receives Commission approval and becomes operational, would substantially increase the amount of information available compared to that currently provided in the Combined Daily Report. Currently, the Combined Daily Report provides a one-line summary of trading in each of approximately 1,072 frequently-traded issues. In comparison, for each transaction in a frequently-traded security, the sample Daily Transaction Report will display the CUSIP number and a short description of the traded issue, the time of trade execution, the par value traded, and the dollar price of the trade. In addition, the sample Daily Transaction Report shows prices of sales to customers, which represent the prices that customers can expect to pay when purchasing securities, in a column separate from prices of all other trades (*i.e.*, purchases from a customer or inter-dealer trades), which represent wholesale market activity. Issues will be ordered by frequency of trading and within an issue trades will be displayed in order of time of trade, from the earliest reported time of trade to the latest. Trade data now being received by the Board indicates that the new Daily Transaction Reports on average would provide detailed information daily on approximately 9,000 individual transactions in the 1,000 frequently-traded issues. As these statistics illustrate, the detailed transaction data in the new Reports should increase greatly the amount of available municipal securities price information and should display a more complete picture of the market than any existing public records.

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:
be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments have been solicited. However, none have been received to date.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposed rule change as constituting a

stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under section 19(b)(3)(A)[15] of the Act, and rule 19b–4(f)(1) thereunder,[16] which renders the proposed rule change effective upon receipt of this filing by the Commission. The proposed rule change describes the plan for the Board to provide sample data from the Board's Transaction Reporting System so that the Board can obtain comment on the format of a new Daily Transaction Report and move expeditiously forward with its previously announced plan to make public transaction data more useful and comprehensive. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–99–03 and should be submitted by June 25. 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14113 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 U.S.C. 240.19b–4(f)(1).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41461; File No. SR–NASD–99–03]

Self-Regulatory Organizations; filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities dealers, Inc. Relating to the Arbitration Process for Claims of Employment Discrimination

May 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 1999, the National Association of Securities Dealers, Inc., ("NASD") or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by NASD Regulation. On May 10, 1999, NASD Regulation amended its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rules 10201 and 10202, and to add new Rule 3080 and new Rule Series 10210 of the NASD. The proposed rule change is intended to enhance the dispute resolution process for the handling of employment discrimination disputes, and to expand disclosure to employees concerning the arbitration of all disputes. The text of the proposed rule change follows. Proposed new rule language is in italics; proposed deletions are in brackets.

* * * * *

RULES OF THE ASSOCIATION

* * * * *

3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYEES, AND OTHERS' EMPLOYEES

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 10, 1999 ("Amendment No. 1"). Amendment No. 1 made substantive changes to the proposed rule language, including the provisions for arbitrator qualifications and coordination of claims filed in court and arbitration.

3080. Disclosure to Associated Persons When Signing Form U–4

A member shall provide an associated person with the following written statement whenever the associated person is asked to sign a new or amended Form U–4.

The Form U–4 contains a predispute arbitration clause. It is in item 5 on page 4 of the Form U–4. You should read that clause now. Before signing the Form U–4, you should understand the following:

(1) You are agreeing to arbitrate any dispute, claim or controversy that may arise between you and your firm, or a customer, or any other person, that is required to be arbitrated under the rules of the self-regulatory organizations with which you are registering. This means you are giving up the right to sue a member, customer, or another associated person in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(2) A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under NASD rules. Such a claim may be arbitrated at the NASD only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

(3) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(4) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(5) The arbitrators do not have to explain the reason(s) for their award.

(6) The panel of arbitrators may include arbitrators who were or are affiliated with the securities industry, or public arbitrators, as provided by the rules of the arbitration forum in which a claim is filed.

(7) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

* * * * *

1000. CODE OF ARBITRATION PROCEDURE

* * * * *

10200. INDUSTRY AND CLEARING CONTROVERSIES

10210. Required Submission

(a) Except as provided in paragraph (b) *or Rule 10216,* a dispute, claim, or

controversy eligible for submission under the Rule 10100 Series between or among members and/or associated persons, and/or certain others, arising in connection with the business of such member(s) or in connection with the activities of such associated person(s), or arising out of the employment or termination of employment of such associated person(s) with such member, shall be arbitrated under this Code, at the instance of:

(1) a member against another member;

(2) a member against a person associated with a member or a person associated with a member against a member; and

(3) a person associated with a member against a person associated with a member.

* * * * *

10202. Composition of Panels

(a) In disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes or receipt of commission, the panel of arbitrators shall be appointed as provided by paragraph (b)(1) or (2) or Rule 10203, whichever is applicable. In all other disputes arising out of the employment or termination of employment of an associated person, the panel of arbitrators shall be appointed as provided by rule *10212*, 10302 or [Rule] 10308, whichever is applicable.

10210. Statutory Employment Discrimination Claims

The Rule 10210 Series shall apply only to disputes that include a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute. The Rule 10210 Series shall supersede any inconsistent Rules contained in this Code.

10211. Special Arbitrator Qualifications for Employment Discrimination Disputes (a) Minimum Qualifications for All Arbitrators

Only arbitrators classified as public arbitrators as provided in Rule 10308 shall be selected to consider disputes involving a claim of employment discrimination, including a sexual harassment claim, in violation of a statute.

(b) Single Arbitrators or Chairs of Three-Person Panels

(1) Arbitrators who are selected to serve as single arbitrators or as chairs of three-person panels should have the following additional qualifications:

(A) law degree (Juris Doctor or equivalent);

(B) membership in the Bar of any jurisdiction;

(C) substantial familiarity with employment law; and

(D) ten or more years of legal experience, of which at least five years must be in either:

(i) law practice;

(ii) law school teaching;

(iii) government enforcement of equal employment opportunity statutes;

(iv) experience as a judge, arbitrator, or mediator, or

(v) experience as an equal employment opportunity officer or in-house counsel of a corporation.

(2) In addition, a chair or single arbitrator with the above experience may not have represented primarily the views of employers or of employees within the last five years. For purposes of this Rule, the term "primarily" shall be interpreted to mean 50% or more of the arbitrator's business or professional activities within the last five years.

(c) Waiver of Special Qualifications

If all parties agree, after a dispute arises, they may waive any of the qualifications set forth in paragraph (a) or (b) above.

10212. Composition of panels

For disputes involving a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute:

(a) Each panel shall consist of either a single public arbitrator or three public arbitrators qualified under Rule 10211, unless the parties agree to a different panel composition.

(b) A single arbitrator shall be appointed to hear claims for $100,00 or less.

(c) A panel of three arbitrators shall be appointed to hear claims for more than $100,000, unless the parties agree to have their case determined by a single arbitrator.

10213. Discovery

(a) Necessary pre-hearing depositions consistent with the expedited nature of arbitration shall be available.

(b) The provisions of Rule 10321 shall apply to proceedings under this Rule 10210 Series.

10214. Awards

The arbitrator(s) shall be empowered to award any relief that would be available in court under the law. The arbitrator(s) shall issue an award setting forth a summary of the issues, including the type(s) of dispute(s), the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).

10215. Attorneys' Fees

The arbitrator(s) shall have the authority to provide for reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law.

10216. Coordination of Claims Filed in Court and in Arbitration

(a) Option To Combine Related Claims in Court

(1)(A) If a current or former associated person of a member files a statutory discrimination claim in court against a member or its associated persons, and asserts related claims in arbitration at the Association against some or all of the same parties, a respondent who is named in both proceedings shall have the option to move to compel the claimant to bring the related arbitration claims in the same court proceeding In which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.

(B) The respondent shall notify the claimant in writing, before the time to answer Rule 10314 has expired, that it is exercising this option and shall file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right to move to compel the claimant to assert related claims in court, except as provided in paragraph (b).

(2)(A) If a member or current or former associated person of a member ("party") has a pending claim in arbitration against a current or former associated person of a member and the current or former associated person thereafter asserts a related statutory employment discrimination claim in court against the party, the party shall have the option to assert its pending arbitration claims and any counterclaims in court.

(B) The party shall notify the current or former associated person in writing, before filing an answer to the complaint in court, that it is exercising this option and shall file a copy of such notification with the Director. If the party files an answer in court without having exercised this option, it shall have waived its right to assert the pending arbitration claim in court.

(C) The party may not exercise this option after the first hearing has begun on the arbitration claim.

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(b) Option Extended When Claim Is Amended

(1) If the claimant files an amended Statement of Claim adding new claims not asserted in the original Statement of Claim, a respondent named in the amended Statement of Claim shall have the right to move to compel the claimant to assert all related claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent that the court will accept jurisdiction over the related claims, even if those related claims were asserted in the original Statement of Claim.

(2) The respondent shall notify the claimant in writing, before the time to answer the amended Statement of Claim under Rule 10314 has expired, that it is exercising this option and shall file a copy of such notification with the Director. If the respondent files an answer to the amended Statement of Claim without having exercised this option, it shall have waived its right to move to compel the claimant to assert related claims in court.

(c) Requirement to Combine All Related Claims

If a party elects to require a current or former associated person to assert all related claims in court, the party shall assert in the same court proceeding all related claims that it has against the associated person to the full extent to which the court will accept jurisdiction over the related claims.

(d) Right of Respondent to Remain in Arbitration

(1) If there are multiple respondents and a respondent has exercised an option under paragraph (a) or (b), but another respondent wishes to have the claims against it remain in arbitration, then any remaining party may apply for a stay of the arbitration proceeding.

(2) The arbitration shall be stayed unless the arbitration panel determines that the stay will result in substantial prejudice to one or more of the parties. If a panel has not been appointed, the Director shall appoint a single arbitrator to consider the application for a stay. Such single arbitrator shall be selected using the Neutral List Selection System (as defined in Rule 10308) and is not required to have the special employment arbitrator qualifications described in Rule 10211.

(e) Pre-Filing Certification

(1) Prior to or concurrently with filing a Statement of Claim, a claimant may file with the Director a certification that it had communicated unsuccessfully with the respondent concerning the consolidation of all claims in court prior to filing a Statement of Claim, in an effort to save the expense of arbitration fees. A copy of such certification shall be sent to the respondent at the same time and in the same manner as the filing with the Director.

(2) If, after a certification has been filed, all the respondents later exercise the option to consolidate all claims in court, the Director will return the claimant's filing fee and any hearing session deposits for hearings that have not been held, but will retain the member surcharge and any accrued member process fees. If there are any remaining respondents, the filing fee and any hearing deposits will be adjusted to correspond to the claims against the remaining respondents.

(f) Motions to Compel Arbitration

If a member or a current or former associated person of a member files in court a claim against a member or a current or former associated person of a member that includes matters that are subject to mandatory arbitration, either by the rules of the Association or by private agreement, the defending party may move to compel arbitration of the claims that are subject to mandatory arbitration.

(g) Definitions

For purposes of this Rule:

(1) The term "related claim" shall mean any claim that arises out of the employment or termination of employment of an associated person.

(2) The term "statutory discrimination claim" means a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statutes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The proposed rule change is intended to enhance the dispute resolution process for the handling of employment discrimination disputes, and to expand disclosure to employees concerning the arbitration of all disputes.

Background. In August 1997, NASD Regulation and the NASD Boards decided to remove from the NASD Code of Arbitration Procedure the requirement for registered persons to arbitrate claims of statutory employment discrimination. That rule change was approved by the Commission and became effective January 1, 1999.[4] In conjunction with this rule change, the Boards recommended certain enhancements to the arbitration process for discrimination claims. To carry out the Boards' mandate, NASD Regulation staff assembled a working group, including attorneys representing employees, general counsels of member firms, and arbitrators with expertise in employment matters to advise on issues relating to the arbitration of employment discrimination claims. This working group met numerous times during 1997 and 1998 to assist the staff in preparing recommendations to the Board.

In addition to several issues that were presented to them by NASD Regulation staff, the working group considered recommendations contained in a document known as "A Due Process Protocol for Mediation and Arbitration of Statutory Disputes arising out of the Employment Relationship" ("the Protocol"). The Protocol was created in 1995 by a task force made up of individuals from diverse organizations involved in labor and employment law to examine questions of due process arising out of the use of mediation and

[4] *See* Securities Exchange Act Release No. 40109 (June 22, 1998), 63 FR 35299 (June 29, 1998). The NASD Code of Arbitration Procedure applies not only to NASD members and their associated persons, but also to members and associated persons of the Municipal Securities rulemaking Board ("MSRB") (for claims filed after Jan. 1, 1998), the Philadelphia Stock Exchange ("Phlx") (for claims filed after Oct. 1, 1998), and the American Stock Exchange ("Amex") (for claims filed following the closing of the merger), pursuant to agreements under which members of those self-regulatory organizations for whom the NASD administers the arbitration process will be treated as "members" of the NASD for purposes of the NASD Code of Arbitration Procedure. *See* Securities Exchange Act Release Nos. 39378 (December 1, 1997), 62 FR 64417 (December 5, 1997) (MSRB); 40517 (October 1, 1998), 63 FR 54177 (October 8, 1998) (Phlx); and 40622 (October 30, 1998), 63 FR 59819 (November 5, 1998) (Amex).

arbitration for resolving employment disputes. The Protocol has been adopted by several dispute resolution forums, and the Boards recommended that due process procedures similar to those in the Protocol be considered for use in the dispute resolution process at the NASD for claims of employment discrimination. The working group and the staff considered the provisions of the Protocol, and made recommendations to the Board as to how they could be applied to the arbitration process in the NASD forum. Those recommendations were considered and adopted by the Boards in October 1998. In this rule filing, NASD Regulation proposes adoption of a new Rule 10210 Series which will contain special rules applicable to the arbitration of statutory employment discrimination claims, and proposes related changes to other NASD rules. These rule changes deal with the qualifications of arbitrators hearing claims of employment discrimination; the number of arbitrators to hear such claims; special rules for discovery, awards, and attorneys' fees; coordination of claims filed in court and arbitration; and disclosure to associated persons of the effects of the arbitration clause found in the Forum U–4. These proposed changes are described in detail below.

Description of Proposed Amendments. The proposed Rule 10210 Series contains certain special rules applicable to statutory employment discrimination claims. These rules supplement and, in some instances, supersede the provisions of the Code that currently apply to the arbitration of employment disputes. The proposed special rules do not attempt to set forth all procedures applicable to the arbitration of statutory employment discrimination claims, but only those procedures that relate specifically to such claims and may be different from procedures that apply to other intra-industry claims.

Qualifications for Neutrals Who Hear Employment Discrimination Cases. With regard to membership on the roster of arbitrators qualified to hear claims of employment discrimination, the Protocol provides as follows:

> Mediators and arbitrators selected for such cases should have skill in the conduct of hearings, knowledge of the statutory issues at stake in the dispute, and familiarity with the workplace and employment environment. The roster of available mediators and arbitrators should be established on a non-discriminatory basis, diverse by gender, ethnicity, background, experience, etc. to satisfy the parties that their interest and objectives will be respected and fully considered.

Our recommendation is for selection of impartial arbitrators and mediators, We recognize the right of employers and employees to jointly select as mediator and/or arbitrators one in whom both parties have requisite trust, even though not possessing the qualifications here recommended, as most promising to bring finality and to withstand judicial scrutiny. The existing cadre of labor and employment mediators and arbitrators, some lawyers, some not, although skilled in conducting hearings and familiar with the employment milieu is unlikely, without special training, to consistently possess knowledge of the statutory environment in which these disputes arise and of the characteristics of the non-union workplace.

NASD Regulation currently has on its arbitration roster many arbitrators who have indicated that they have experience or training in employment law. In addition, NASD Regulation currently offers employment law training to arbitrators; such training is conducted by attorneys experienced in the field of employment law. In accordance with the Protocol provisions, however, NASD Regulation proposes the use of a more specialized roster of available arbitrators for intra-industry cases in which statutory discrimination is alleged. In its discretion, and depending in part on the number of statutory employment discrimination claims filed in its forum, NASD Regulation may choose to create its own specialized employment roster or may work with other dispute resolution providers to utilize their rosters of qualified employment arbitrators.

Proposed Rule 10211(a) provides that only arbitrators classified as public (non-industry) arbitrators will be selected to consider disputes involving a claim of employment discrimination, including a sexual harassment claim, in violation of a statute. Proposed Rule 10211(a) incorporates by reference the definition of "public arbitrator" in the newly revised list selection rule, Rule 10308, which applies both to customer disputes and to intra-industry disputes except where superseded by more specific industry arbitration rules. The definition of "public arbitrator" in Rule 10308 excludes not only securities industry employees and their immediate family members, but also attorneys, accountants, and other professionals who have devoted 20% or more of their professional work in the last two years to clients who are engaged in the securities business (as described in Rule 10308). Use of the same definition of public arbitrators throughout the Code provides for more efficient administration of the list selection system.

For chairpersons and single arbitrators, NASD Regulation proposes additional qualifications in proposed Rule 10211(b). These qualifications include a law degree, membership in the Bar of any jurisdiction, substantial familiarity with employment law, and ten or more years of legal experience that included at least five years of one of the following: law practice; law school teaching; government enforcement of equal employment opportunity (EEO) statutes; experience as a judge, arbitrator, or mediator; or experience as an EEO officer or in-house counsel of a corporation. In addition, the chair or single arbitrator may not have represented primarily the views of employees or employers within the past five years. For this purpose, "primarily" is defined to mean 50% or more of the arbitrator's business or professional activities within the last five years. NASD Regulation believes that it is important to the credibility of the forum for the single arbitrator or chair not only to be neutral, but to avoid even the appearance of bias toward either employees or employers.

Rule 10211(c) provides that parties may agree, after a dispute arises, to waive any of the special qualifications contained in either paragraph (a) or paragraph (b). Such a waiver is not valid if it is contained in a predispute arbitration agreement.

Composition of Panels. The current arbitration panel composition for statutory discrimination claims and certain other employment claims is identical to the panel used for customer disputes and consists of either one public (non-industry) arbitrator for single arbitrator cases, or two public arbitrators and one non-public (industry) arbitrator for three arbitrator cases. An all-industry panel is used solely for employment disputes that relate exclusively to claims involving employment contracts, promissory notes or receipt of commissions.

As described above, NASD Regulation proposes to change this practice so that, for cases involving claims of employment discrimination, whether or not other issues are also involved, all arbitrators must be classified as public. Therefore, proposed Rule 10212(a) provides for a special panel composition of all public arbitrators to hear claims of statutory employment discrimination. Rule 10212 provides, however, that parties may agree to a different panel composition in a particular case.

Proposed Rule 10212(b) provides a higher threshold for single arbitrator cases than is found elsewhere in the

Code: a single arbitrator will hear claims of $100,000 or less. This higher threshold reduces the hearing costs for the parties and results in more efficient allocation of qualified employment arbitrators. Proposed Rule 10212(c) provides that the claims for more than $100,000 will be assigned to a three-person panel unless the parties agree to have their case determined by a single arbitrator. NASD Regulation also proposes a conforming amendment to Rule 10202, the general intra-industry panel composition rule, to include a reference to the above special panel composition rule.

Discovery. The Protocol provides as follows with respect to discovery:

> One of the advantages of arbitration is that there is usually less time and money spent in pre-trial discovery. Adequate but limited pre-trial discovery is to be encouraged and employees should have access to all information reasonably relevant to mediation and/or arbitration of their claims. The employees' representative should also have reasonable pre-hearing and hearing access to all such information and documentation.
>
> Necessary pre-hearing depositions consistent with the expedited nature of arbitration should be available.

NASD Regulation has determined to adopt the Protocol provision on discovery. Although the Protocol focuses on the employee's access to information, there also could be situations in which the employee has documents that the employer requires to prepare its case, such as records of the employee's outside business activities or prior employment. Therefore, NASD Regulation believes the term "employees" in the quoted provision should be interpreted to include all parties to the employment dispute. In any event, the NASD's current rule on pre-hearing procedures, including discovery, Rule 10321, already meets the Protocol standard regarding access to information and is not proposed to be amended at this time. Rule 10321 is cross-referenced in proposed Rule 10213(b) to make clear that its provisions apply to employment discrimination disputes.

On the issue of depositions in employment discrimination cases, NASD Regulation proposes that the Protocol should be the standard for depositions. NASD Regulation proposes that, in considering the need for depositions, arbitrators should consider the relevancy of the information sought from the persons to be deposed and the issues of time and expense. Such considerations are already provided for in Rule 10321, paragraphs (d) and (e), which set forth procedures for deciding unresolved issues either at the pre-hearing conference or by appointment of a selected arbitrator. NASD Regulation has incorporated the proposed discovery provision relating to depositions in proposed Rule 10313.

Attorney's Fees. The Protocol provides as follows:

> The amount and method of payment for representation should be determined between the claimant and the representative. We recommend, however, a number of existing systems which provide employer reimbursement of at least a portion of the employee's attorney fees, especially for lower paid employees. The arbitrator should have the authority to provide for fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law or in the interests of justice.

Although the Code of Arbitration Procedure is silent with respect to attorneys' fees, such fees may be awarded under current practice. Normally, parties will brief the arbitrators on applicable law providing for the award of attorneys' fees in their cases. In view of provisions in the federal civil rights laws that specifically provide for the award of attorneys' fee, NASD Regulation proposes that the Protocol provision be adopted as amended below (additions in italics; deletions in brackets):

> The arbitrator should have the authority to provide for *reasonable attorneys'* fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law [or in the interests of justice].

Proposed Rule 10215 incorporates the amended provision. It provides that the arbitrator has authority to provide for reasonable attorney's fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law. This accords with Title VII of the Civil Rights Act of 1964, which authorizes a court, in its discretion, to allow the prevailing party "a reasonable attorney's fee" as part of the costs.[5] NASD Regulation believes that the language of proposed rule 10215 is more precise if the Protocol phrase "or in the interests of justice" is omitted, as that phrase may mislead parties into thinking that no statutory basis is necessary for the award of attorneys fees.[6] Rather, the intent of proposed rule 10215 is to allow the award of attorney's fees if applicable law permits such an award.

Awards. The Protocol provides as follows with regard to awards and the authority of the arbitrator:

> The arbitrator should be bound by applicable agreements, statutes, regulations and rules of procedure of the designating agency, including the authority to determine the time and place of the hearing, permit reasonable discovery, issue subpoenas, decide arbitrability issues, preserve order and privacy in the hearings, rule on evidentiary matters, determine the close of the hearing and procedures for post-hearing submissions, and issue an award resolving the submitted dispute.
>
> The arbitrator should be empowered to award whatever relief would be available in court under the law. The arbitrator should issue an opinion and award setting forth a summary of the issues, including the type(s) of dispute(s), the damages and/or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).

NASD Regulation proposes that the Protocol language be adopted with one language change described below. The Code already provides arbitrators with authority similar to the Protocol provisions, although it does not specifically require a statement regarding the disposition of any statutory claims. In order to add the requirement for a statement regarding the disposition of any statutory claims, and to have all related provisions in the same Rule Series, NASD Regulation has drafted proposed Rule 10214. Proposed Rule 10214 provides that arbitrators will be empowered to award any relief that would be available in court under the law, and sets forth the information that must be contained in the arbitrator's award. Such information includes a summary of the issues, including the types of disputes, the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claims.

NASD Regulation has not used the Protocol's phase "opinion and award" in proposed Rule 10214, but instead has used only the term "award," which is consistent with terminology used elsewhere in the Code. This avoids confusion that might result from use of the term "opinion," which could mislead parties into expecting a judicial type of decision, rather than the customary type of arbitration award that contains the specific elements listed in the proposed rule, but not a detailed

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[5] 42 U.S.C. 2000e–5(k) (1998).

[6] A guide for arbitrators drafted by the Securities Industry Conference on Arbitration (SICA) provides as follows: "Generally, parties to an arbitration are responsible for their personal costs associated with bringing or defending an arbitration action. Exceptions to the rule do exist. Parties should be prepared to argue the statutory or contractual basis that permits an award of attorneys' fees. The arbitrators should consider referring to the authority relied upon if attorneys' fees are awarded." *The Arbitrator's Manual* (October 1996). SICA is a group composed of representatives of the self-regulatory organizations that provide arbitration forums; public investors; and the securities industry.

explanation. Under current NASD Regulation practice, however, parties may request that the arbitrators provide reasons for their decision, and the arbitrators have discretion to grant or deny the request.[7]

Other Protocol Provisions. NASD Regulation believes that the other applicable provisions of the Protocol are already addressed sufficiently in existing Rules within the Code of Arbitration Procedure. For example, NASD Regulation already gives parties the right to representation by counsel and refers claimants to state and local bar associations for legal referrals in several major cities; parties receive information on arbitration awards issued by arbitrators who may hear their cases; arbitrators are required to disclose possible conflicts of interest; arbitrators have the authority to make necessary rulings and to allocate fees among the parties; and recent rule changes approved by the Commission [8] provide a list selection method for both customer and intra-industry arbitration proceedings that meets the Protocol standard.

Coordination of Claims Filed in Court and in Arbitration. Several individuals who commented on the recent rule change to allow statutory discrimination claims to be filed in court predicted that the change could lead to splitting or bifurcation of cases: the discrimination claims would proceed in court, while other employment claims that are subject to mandatory arbitration would proceed in arbitration. As the Commission noted in its approval order for that rule change, some commenters argued that such bifurcation could result in the separation of claims that are often joined together and based on the same alleged facts.[9] Some commenters believed bifurcation of statutory and common law claims could create a financial burden on employees and members, delay the resolution of claims, and cause scheduling and discovery disputes.[10] Therefore, NASD Regulation proposes adoption of a new rule on coordination of claims that may be filed in court and those that are normally required to be arbitrated under NASD rules.

Proposed Rule 10216 would provide that, if the parties agree to resolve all related matters in court, then the matter need not be submitted to arbitration. Moreover, if a discrimination claim is filed in court and related claims subject to mandatory arbitration are filed in arbitration, a respondent in the arbitration would have the option to move to combine all claims in court. As described more fully below, the rule provides several other opportunities for a party to move to compel that a claim be consolidated with other claims in court. Any claims not accepted by the court under any of these methods, however, would continue to be arbitrable.

The proposed rule would include a pre-filing procedure in which the claimant may certify to the Director of Arbitration that he or she communicated with the respondent about the possibility of filing all claims in court initially, in order to save the expense of arbitration fees and attorneys' fees to draft arbitration claim papers. If the respondent does not agree to consolidate all claims in court, and an arbitration claim is then filed, proposed Rule 10216 provides several methods for coordinating claims filed in court and in arbitration.

Paragraph (a)(1)(A) deals with the situation in which an associated person files a statutory discrimination claim in court and files related claims in arbitration against some or all of the same parties. In that case, any respondent who is named in both proceedings may move to compel the associated person to bring the related arbitration claims in the same court proceeding, to the full extent to which the court will accept jurisdiction over those claims. As noted above, any claims not accepted by the court would remain in arbitration.

Paragraph (a)(1)(B) requires the respondent that wishes to exercise this option to notify the claimant in writing, before the time to answer under Rule 10314 has expired, that it is exercising this option and to file a copy of such notification with the Director of Arbitration, or be deemed to have waived its right to exercise the option, except as provided in paragraph (b), described below. This notice is intended to motivate parties to discuss their options and consider consolidating all claims in one forum before further expenses are incurred by either party.

Paragraph (a)(2)(A) provides that if a party has a pending claim in arbitration against an associated person who thereafter asserts as related statutory employment discrimination claim in court against the party, that party has the option to assert all arbitration claims and counterclaims in court. This is intended to cover the situation in which an arbitration claim was filed before the statutory discrimination claim was filed in court. For purposes of paragraph (a)(2), the term "party" means a member or a current or former associated person of a member. Paragraph (a)(2)(B) provides notice and time requirements for the exercise of the option similar to those in paragraph (a)(1)(B), described above. Paragraph (a)(2)(C) provides that a party may not exercise this option after the first hearing has begun on the arbitration claim. This is intended to avoid disruption to the arbitration proceeding when it is farther along in the process.

Paragraph (b) of proposed Rule 10216 provides that the time for consolidating claims in court is extended if the claimant files an amended statement of claim adding new claims not asserted in the original statement of claim. In that case, a respondent has an opportunity to move to compel the claimant to assert all related claims in the same court proceeding, even if those claims were asserted in the original statement of claim. As above, the respondent wishing to exercise this option must notify the claimant in writing before filing an answer to the amended statement of claim or be deemed to have waived the right to do so, and must file a copy of such notification with the Director.

Paragraph (c) of proposed Rule 10216 provides that if a party elects to require a current or former associated person to assert all related claims in court, the party also must asserts in the same court proceeding all related claims the party has against the associated person, to the full extent to which the court will accept jurisdiction over the related claims.

Paragraph (d) of proposed Rule 10216 provides that a respondent named in both court and arbitration proceedings may choose to remain in arbitration, even if another respondent has exercised its option to consolidate the proceedings against it in court. Any remaining party may seek a stay of the arbitration proceeding, and the proceeding will be stayed unless the arbitration panel determines that the stay will result in substantial prejudice

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[7] A booklet prepared by SICA and provided to all claimants explains this industry-wide practice as follows: "Arbitrators are not required to write opinions or provide reasons for the award. A party, however, may request an opinion. This request should be made no later than the hearing date." *Arbitration Procedures* (October 1996) (also available via the Internet under the title, *Arbitration Procedures for Investors*, on the Arbitration page at *www.nasdr.com*). In a 1989 Order approving arbitration rule changes by several self-regulatory organizations, the Commission decided not to require written opinions in awards, but express the view that arbitrators could voluntarily prepare written opinions. *See* Securities Exchange Act Rel. No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989).

[8] *See* Securities Exchange Act Rel. Nos. 40555 (October 14, 1998), 63 FR 56670 (October 22, 1998) and 40556 (October 14, 1998), 63 FR 56957 (October 23, 1998).

[9] *See* Securities Exchange Act Rel. Nos. 40109 (June 22, 1998), 63 FR 35299 (June 29, 1998).

[10] *Id.*

to one or more of the parties. The presumption in favor of a stay of the arbitration proceeding is designed to avoid the situation in which parties must proceed in two forums at the same time. Nevertheless, a party may object to the stay and have the matter considered by an arbitrator.

If no panel has been appointed yet, the Director will appoint a single arbitrator to consider the application for a stay, using the Neutral List Selection System to select the arbitrator. That arbitrator is not required to have the special employment arbitrator qualifications described in Rule 10211, since there would be no statutory employment discrimination claims in arbitration at this point; rather, the provisions of Rule 10202 would determine whether the single arbitrator should be an industry arbitrator or a public arbitrator. This means that if the claims that are the subject of the arbitration proceeding "relate exclusively to disputes involving employment contracts, promissory notes or receipt of commissions," as provided in the first sentence of Rule 10202(a), then the single arbitrator would be an industry arbitrator. In "all other disputes arising out of the employment or termination of employment of an associated person," as provided in the second sentence of rule 10202(a), a public arbitrator would be appointed. The single public arbitrator may later appear on a list of arbitrators to be chosen for any hearing on the merits in the same arbitration.

Paragraph (e) of proposed rule 10216 provides a procedure for certifying that the claimant has communicated unsuccessfully with the respondent(s) concerning the consolidation of all claims in court prior to filing a Statement of Claim, in an effort to save the expense of arbitration fees, rather than filing the statutory discrimination claims in court and the other claims in arbitration. If such a certification has been filed, and all the respondents later exercise the option to consolidate all claims in court, the Director will return the claimant's filing fee and any hearing session deposits for hearings that have not been held, but will retain the member surcharge and any accrued member process fees to cover the cost of docketing and otherwise processing the claim. If there are remaining respondents, however, the filing fee and any hearing deposits will be adjusted to correspond to the claims against the remaining respondents.

Paragraph (f) of proposed rule 10216 clarifies that, if an associated person files a claim in court that includes matters that are subject to mandatory arbitration, either by the rules of the NASD or by private agreement, the defending party may move to compel arbitration of the claims that are subject to mandatory arbitration. This is a statement of current practice and is intended to apply where the defending party has not exercised an option under other provisions of proposed Rule 10216 to combine all claims in court.

Paragraph (g) of proposed rule 10216 provides that, for purposes of Rule 10216, the term "related claim" means any claim that arises out of the employment or termination of employment of an associated person and the term "statutory discrimination claim" means a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute.

In conjunction with the proposed bifurcation rule, a change is proposed to Rule 10201 to add a reference to proposed Rule 10216. This exception is necessary because, under Rule 10216, some claims that might otherwise be required to be arbitrated may be brought in court, at the respondent's option.

Disclosure Issues. NASD Regulation proposes adoption of a model disclosure statement that would be given to persons who are signing the Form U–4 to apply for registration. This disclosure statement would explain the nature and effect of the arbitration clause contained in the Form U–4. It would not address any private arbitration agreement that the applicant might enter into with the member firm. Rather, the firm would be responsible for either making proper disclosure to its employees about its private arbitration agreement, or risking an adverse decision in later litigation concerning any inadequacy in the disclosure.

Proposed Rule 3080, entitled "Disclosure to Associated Persons When Signing a Form U–4," was modeled on the disclosure given to customs when signing predispute arbitration agreements with member firms, as contained in current Rule 3110(f) and proposed amendments thereto contained in File No. SR–NASD–98–74. Because the proposed rule relates to associated persons, it has been placed in the portion of the Rules that deal with the responsibilities of members relating to associated persons, employees and others' employees. The introductory language of the proposed rule requires members to provide each associated person, whenever the associated person is asked to sign a new or amended Form U–4, with certain specified disclosure language. This means that the disclosure may be given by the same member to the same associated person on more than one occasion during that person's employment, if the associated person has reason to re-sign the Form U–4. The specified disclosure language explains that the Form U–4 contains a predispute arbitration clause, and indicates in which Item of the Form U–4 the clause is located.[11] The disclosure language then advises the associated person to read the predispute arbitration clause.

Subparagraph (1) of proposed Rule 3080 paraphrases the arbitration clause in the Form U–4 and then provides disclosure that the associated person is giving up the right to sue in court, except as provided by the rules of the arbitration forum in which a claim may be filed. Subparagraph (2) incorporates the language of Rule 1021 regarding an exception to the arbitration requirement for claims of statutory employment discrimination. Subparagraph (2) also indicates that the rules of other arbitration forums may be different. Subparagraphs (3) through (7) track the language of the proposed amendments to Rule 3110(f)(1), which sets forth similar disclosures to customers. Those subparagraphs inform the associated person that arbitration awards are generally final and binding, that discovery is generally more limited in arbitration than in court, that arbitrators do not have to explain the reasons for their awards, that the panel of arbitrators may include either public or industry (non-public) arbitrators,[12] and that the rules of some arbitration forums may impose time limits for bringing a claim in arbitration.

2. Statutory Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Association believes that the proposed rule change will protect the public interest by improving the arbitration process for claims of statutory employment discrimination, and result in increased satisfaction with that process by both associated persons and members.

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[11] The member will be responsible for updating this item number on new disclosure statements if it changes in later versions of the Form U–4.

[12] The language of subparagraph (6) differs slightly from that of proposed Rule 3110(f)(1)(E) because, following adoption of the present proposed rule change, the panel composition for statutory employment discrimination claims will differ from the panel composition for customer claims.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participation, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. In particular, the Commission solicits comments on the following issues:

Proposed Rule 10216 provides procedures for administering disputes that involve both statutory employment discrimination claims that are filed in court and other claims that are filed at the NASD Regulation's arbitration forum. Cases affected by proposed Rule 10216 would generally involve firms that have not entered into agreements with their employees to arbitrate statutory employment discrimination claims.

(1) The proposed rule permits respondents to choose when to bifurcate claims in these disputes. Does this strike a fair balance?

(2) Is this aspect of the proposal (permitting respondents to choose when to bifurcate claims) necessary to encourage firms to give their employees the option of bringing statutory employment discrimination claims in court? Without this provision, would firms be more likely to require employees to sign predispute arbitration clauses governing these claims?

(3) Does the proposal place an unreasonable burden on individual claimants because they are unable to determine the forum in which they will assert claims related to their stautory employment discrimination claims, or does the ability to bring their dominant, statutory employment discrimination claims in court provide for the appropriate balance?

(4) Does the presumption in favor of a stay of proceedings for those parties who remain in arbitration while other claims are being litigated unduly infringe on the parties bargain to arbitrate?

The Commission welcomes suggestions as to how objectionable procedures could be changed without imposing undue litigation costs in either party to a dispute.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–08 and should be submitted by June 25, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14210 Filed 6–3–99; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41459; File No. SR–NYSE–99–17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Relating to Original Listing Standards

May 27, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change relating to the exchange's original listing standards. The Exchange submitted Amendment No. 1 to its proposal on May 19, 1999.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant partial accelerated approval to the portion of the proposal instituting a Pilot relating to the listing eligibility criteria for companies satisfying the Capitalization Standard. The Pilot will expire on September 3, 1999, or at such earlier time as the Commission grants the Exchange's request for permanent approval of the program.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In amendment No. 1, the Exchange (i) requested that the Commission approve on an accelerated basis a 90-day pilot program ("Pilot") for the portion of the proposal adding a new original listing standard applicable to both domestic and non-U.S. companies with a $1 billion market capitalization and $250 million in revenues in the most recent fiscal year ("Capitalization Standard"), (ii) clarified that companies satisfying the Capitalization Standard are subject to the Exchange's other original listing criteria (other than the financial criteria), (iii) revised the text of the proposed rule language to show changes against the current *Listed Company Manual* ("Manual") rather than the language proposed for adoption in the pending filing, (iv) incorporated procedures for reconciliation with U.S. GAAP in the third year in the Exchange's proposed rule language and (v) removed the cash flow standard from the text of the proposed rule language. *See* Letter from James Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 18, 1999 ("Amendment No. 1").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a Pilot amendment sections 102.01 and 103.01 of the Manual to implement an alternative listing eligibility criteria for companies satisfying the Capitalization Standard.[4] The proposed Pilot would expire on September 3, 1999, or such earlier time as the Commission grants the Exchange's request for permanent approval of the program.[5] In addition, the Exchange proposes to modify its pre-tax earnings standard applicable to non-U.S. issuers. The text of the proposed rule change follows. New text is italicized and deleted text is bracketed.

NYSE Listed Company Manual

Section 1

The Listing Process

* * * * *

102.01 Minimum Numerical Standards

—Domestic Companies

—Equity Listing

* * * * *

For companies with not less than $500,000,000 market capitalization and $200,000,000 revenues in the most recent fiscal year:

* * * * *

OR

For companies with not less than $1 billion in total worldwide market capitalization and with not less than $250 million revenues in the most recent fiscal year, there are no additional financial requirements. For such companies listing in connection with an IPO, the market capitalization valuation must be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker or other financial advisor) of the total market capitalization of the company upon completion of the offering (or distribution). For all other such companies, the market capitalization valuation will be determined over a six-month average.

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103.01 *Alternative* Minimum Numerical Standards [—] *for* Non-U.S. Companies—Equity Listings

* * * * *

Pre-tax income

$100 million cumulative for latest 3 years[6] with $25 million minimum *in each of the most recent two* [for any one of the 3] years. *Reconciliation to U.S. GAAP of the third year back would only be required if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100,000 threshold is satisfied.*

OR

For companies with not less than $1 billion in total worldwide market capitalization and with not less than $250 million revenues in the most recent fiscal year, there are no additional financial requirements. For such companies listing in connection with an IPO, the market capitalization valuation must be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker, other financial advisor, or transfer agent) of the total market capitalization of the company upon completion of the offering (or distribution). For all other such companies, the market capitalization valuation will be determined over a six-month average.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to add a new original listing standard to the Exchange's domestic and non-U.S. numerical listing criteria and to modify its current original listing criteria applicable to non-U.S. issuers.

The Exchange's numerical listing criteria currently include requirements regarding size, earnings and share distribution of a company. The Exchange believes there are numerous companies that would benefit from trading in its auction-agency market, but which are excluded under the NYSE's current evaluative criteria. Therefore, the Exchange is proposing to add a new alternative standard that focuses on global market capitalization and revenues for large, global companies.

In addition, the Exchange believes that both its current numerical original listing criteria and its current continued listing criteria place too much emphasis on a company's earnings to the exclusion of other relevant factors. The Exchange believes that the size and trading price of the company, the depth of its shareholder base and the size of the company's stockholders' equity are also important gauges when evaluating both the original and continued listing status of a company.[7]

The specific proposed amendments to the Exchange's original listing criteria are:

1. The Exchange is proposing, on a 90-day Pilot basis pending Commission approval on a permanent basis, a Capitalization Standard alternative to its other financial listing eligibility criteria.[8] Under the proposed amendment to Paragraphs 102.01 and 103.01 of the NYSE's Manual, a company with a total global market capitalization of $1 billion and revenues of $250 million in its most recent fiscal year would be eligible for listing on the Exchange without satisfying any additional financial eligibility requirements. However, the company would have to meet the Exchange's other original listing criteria.[9] The Exchange believes that companies of this magnitude would be appropriate for listing and trading on the NYSE even if, for example, the company's stage of development, or the transitional nature

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[4] *See* Amendment No. 1, *supra* note 3.

[5] Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Terri Evans, Attorney, Division, Commission, on May 19, 1999.

[6] Prior to the Commission's grant of permanent approval of the Pilot, the NYSE plans to modify its pre-tax income standard to insert the word "fiscal" into its reference to three years and two years, respectively. Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Richard Strasser, Assistant Director, Division, Commission, on May 27, 1999.

[7] The Exchange intends to file in the near future a proposed rule change with the Commission to address its continued listing criteria.

[8] *See* Amendment No. 1, *supra* note 3.

[9] *Id.*

of its home economy, preclude earnings, or if is undergoing short-term variations in profitability. This listing standard is proposed for both domestic and non-U.S. companies.

For companies listing in connection with an initial public offering ("IPO"), the valuation of the company's market capitalization would need to be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by the parent company's investment banker, other financial advisor, or transfer agent, if applicable) of the size of the offering as it pertains to the total market capitalization of the company upon completion of the offering (or distribution). For all other companies, the average over the preceding six months would be used to determine the market capitalization of the company. In computing the six month average, the Exchange proposes to take the average of the daily figures over the preceding six months.

2. The Exchange currently has alternative numerical listing criteria for non-U.S. companies with limited U.S. distribution.[10] The Exchange proposes to amend its pre-tax earnings standard for these companies by requiring $25 million in pre-tax income in each of the two most recent fiscal years. Currently, the company need only have pre-tax earnings of $25 million in any one of the three most recent years. Thus, to qualify under the proposed criteria, a non-U.S. issuer would need to demonstrate pre-tax income of $100 million in the aggregate for the last three fiscal years together with a minimum of $25 million of pre-tax income in each of the two most recent fiscal years.

The Exchange notes that its past experience indicates that non-U.S. companies tend to follow U.S. GAAP/SEC disclosure guidelines, which only require a U.S. GAAP reconciliation for the most recent two years and any relevant interim period. Thus, the third year back is generally reported only in local GAAP and, therefore, is of little quantitative value to the Exchange without reconciliation to U.S. GAAP. As a result, the proposed rule change would obviate the need to reconcile the third year back to U.S. GAAP except where the Exchange determines that that information is necessary to assure the Exchange that the aggregate $100 million threshold has been satisfied.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under section 6(b)(5)[11] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received any written comments form members or other interested parties.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approved such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. In particular, the Commission is seeking comment on whether the Exchange should be required to list only those companies that can show positive earnings in recent years notwithstanding their market capitalization or revenues.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SRNYSE9917 and should be submitted by June 25, 1999.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change relating to the establishment of the Pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the section 6(b)(5)[12] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public.[13] The Commission believes that the Exchange's alternative financial listing standard for companies with $1 billion in market capitalization and $250 million in revenues in the most recent fiscal year permits the Exchange to list very large companies that the Exchange believes will prove to be successful moving forward although they may not have been profitable in recent years. The Commission further believes that the proposed Pilot is consistent with the Exchange's obligation to remove impediments to and perfect the

[10] The Exchange applies the general financial listing standards in Paragraph 102.01 of its Manual both to domestic companies and to non-U.S. companies that have the required distribution and trading volume in the United States (or North America, for North American companies). However, the section and paragraph headings in the Manual suggest that those standards apply only to U.S. companies. The Exchange is proposing to change the non-U.S. heading to remove the implication by incorporating the word "alternative."

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

mechanism of a free and open market. The Commission notes that there is no guarantee that a company that satisfies the market capitalization and revenue standard in the Pilot will achieve positive earnings in the future. However, the Commission preliminarily does not believe it is inconsistent with the Act for the NYSE to permit companies to list on the Exchange that have not established positive earnings in recent years.

The Commission finds good cause for approving the Pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that accelerated approval of the Pilot will enable the Commission and the Exchange to gain experience with the application of the Capitalization Standard before the Commission considers permanent approval of the Pilot.[14] Accordingly, the Commission believes that granting accelerated approval of the Pilot is appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act.[15]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the portion of the proposed rule change (File No. SR–NYSE–99–17) relating to the Pilot program is approved until September 3, 1999, or until the Commission grants permanent approval to the proposal.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14116 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41455; File No. SR–OCC–98–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding Supplementary Exercise Notices

May 26, 1999.

On September 10, 1998, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–98–10) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 2, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Rule 805 governs the submission of expiration date exercise instructions. The rule states that if a clearing member tenders an exercise notice in response to an expiration exercise report after OCC's submission deadline ("supplemental exercise notice"), the tender is in violation of OCC's procedures. Rule 805 further provides that the clearing member shall be subject to disciplinary procedures unless the exercise notice was tendered for the account of a customer and the clearing member was prevented from submitting timely exercise instructions due to one of the circumstances specified in the rule.

Supplementary exercise notices require special processing that is manual labor intensive. As a result of OCC's ongoing review of the effectiveness of its rules and procedures relating to expiration date exercise processing, OCC is amending its expiration date exercise procedures to impose filing fees for expiration date exercise notices that are tendered after OCC's prescribed deadlines. The rule change modifies Rule 805 so that OCC's treatment of supplementary exercise notices is more in line with its treatment under Rule 801 of late exercise notices that are submitted on other dates.

Rule 801 imposes a graduated schedule of filing fees for any request to file, revoke, or modify an exercise notice after the applicable deadline. Rule 801 fees increase at specified times depending on when the filing is made in relation to OCC's nightly processing cycle.

The rule change institutes a similar schedule of fees in rule 805 for the submission of supplementary exercise notices. These fees also increase depending n when the request was made in relation to the expiration processing cycle. Under the rule change, OCC will impose a filing fee of $2,000 per clearing member for any supplementary exercise notice tendered after OCC's filing deadline, but before the start of OCC's critical expiration processing. OCC will charge a filing fee of $10,000 per line item per clearing member for any supplementary exercise notice tendered after the start of critical expiration processing. OCC's board of directors is authorized to remit any filing fee, in whole or in part, if it finds that the circumstances that caused the member to submit the supplementary exercise notice were beyond the clearing member's or its customer's control or that remission would be equitable under the circumstances. The rule change further modifies rule 805 so that the unexcused tender of a supplementary exercise notice may be deemed (as opposed to the current language of shall be deemed) a violation of OCC's procedures and so that the required institution of disciplinary action is permissive (as opposed to being mandatory). These changes also conform rule 805 to rule 801.

Finally, the rule change amends rule 805 to add a provision that requires that the tender of supplementary exercise notices be in accordance with the procedures prescribed by OCC from time to time. Under the rule change, failure to follow the procedures prescribed by OCC will result in the supplemental exercise notice being deemed null and void. This requirement is intended to ensure that among other things supplemental exercise notices are received by the appropriate OCC personnel who can act on them in a timely fashion in order to prevent undue delays in providing assignment information to clearing members.

II. Discussion

Section 17A(b)(3)(D) of the Act[3] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission believes that the rule change is consistent with OCC's obligations under Section 17A(b)(3)(D) because supplementary exercise notices require special manual labor processing. The Commission believes that the fees imposed by the proposed rule change are reflective of the effort required by OCC to process the supplentary exercise notices and that it is appropriate to allocate the expense of processing supplementary notices to the clearing member that submits such exercise notices.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in

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[14] Approval of the 90-day Pilot period should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[15] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41088 (February 22, 1999), 64 FR 10172.

[3] 15 U.S.C. 78q–1(b)(3)(D).

particular with Section 17A of the Act[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–98–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14114 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41456; File No. SR–OCC–99–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding Joint Back Office Participants

May 26, 1999.

On March 3, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–99–05) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 23, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends OCC's rules and by-laws to allow clearing members to maintain joint back office accounts ("JBO accounts") for the broker-dealers with whom the clearing members have joint back office arrangements ("JBO participants") in which long positions can be used to offset short positions in options.

Under the rule change, a broker-dealer registered with the Commission is considered a JBO participant if it: (1) Maintains a joint back office arrangement that satisfies the requirements of Regulation T[3] with an OCC clearing member, (2) meets the applicable requirements as specified in the applicable exchange rules, and (3) consents to having its exchange transactions cleared and its positions carried in a JBO participant account.

OCC will treat JBO participants like market makers and specialists and will treat JBO participants' accounts like market maker's accounts and specialist's accounts. For example, long positions in a JBO participant' account will be treated as unsegregated long positions. The exception to this treatment relates to Chapter IV of OCC's Rules, which pertains to the submission of matched trade reports from exchanges to OCC. OCC does not anticipate that its participant exchanges will report JBO transactions as market maker or specialist transactions for purposes of reporting matched trades. Accordingly, JBO participants will be not be included within the term "market maker" or "specialist" for the purposes of the rules in Chapter IV.

In addition, the rule change amends Article I, section 1 of OCC's By-laws to add definitions for "JBO participant" and "JBO participants' account" and amends the definition of "unsegregated long position" to include long positions in JBO participants' accounts. The rule change also amends Interpretation .03 to Article V, section 1 of the By-laws, which provides that applicants for clearing membership must agree to seek approval from the membership/margin committee to clear types of transactions for which approval was not initially sought in the membership application, by adding JBO participant transactions to the list of transactions. Finally, the rule change amends Article VI, section 3 of the By-laws to add a JBO participants' account to the list of permissible accounts clearing members may maintain with OCC.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the rule change is consistent with OCC's obligations under section 17A(b)(3)(F) because while it should result in OCC collecting less margin for positions which will be carried in JBO accounts, it has been designed to not impair OCC's protection against member default.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with section 17A of the Act[5] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–99–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14115 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Shoreline Management Initiative (SMI), Reservoirs in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. On April 21, 1999, the TVA Board of Directors decided to adopt the preferred alternative (Blended Alternative) identified in its Final Environmental Impact Statement (EIS), Shoreline Management Initiative: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley. The Board's decision modified the Blended Alternative by increasing the shoreline management zone (SMZ) from 25 to 50 feet. The Final EIS was made available to the public in November 1998. A Notice of Availability of the Final EIS was published in the **Federal Register** on December 11, 1998. Under the Blended Alternative, TVA seeks to balance residential shoreline development, recreation use, and resource conservation needs in a way that maintains the quality of life and other important values provided by its reservoir system. TVA has decided to adopt a strategy of "maintaining and gaining" public shoreline, continue to allow docks and other alterations along shorelines now available for residential

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[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41298 (April 16, 1999), 64 FR 20043.

[3] Joint back office arrangements are authorized under Section 220.7 of Regulation T of the Board of Governors of the Federal Reserve System and permit non-clearing broker-dealers to be deemed self-clearing for credit extension purposes if the non-clearing broker-dealer has an ownership interest in the clearing firm.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

access and establish uniform standards for these alterations, and ensure that sensitive natural and cultural resources are conserved for future generations.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C; Knoxville, Tennessee 37902–1499; telephone (423) 632–6889 or e-mail hmdraper@tva.gov.

SUPPLEMENTARY INFORMATION:

Residential shoreline development along TVA reservoirs continues to increase. Currently, the amount of residential shoreline development on individual TVA reservoirs ranges from none to 51 percent of the shoreline length. Of the 11,000 miles of total shoreline, 13 percent have been developed for residential uses. From 1988 to 1997, TVA approved almost 19,000 applications for residential shoreline alterations, such as docks, piers, boathouses, retaining walls, and vegetation management. Residential shoreline use requests substantially dominate all requests for other uses (*e.g.*, commercial, industrial) combined. During this period, the number of permits increased at a rate of six percent per year. If these trends and current shoreline management practices continue, TVA estimates that over half the shoreline could be developed within the next 25 years. This level of shoreline development could have unacceptable adverse impacts on shoreline and aquatic ecology, water quality, scenic beauty, and other valuable resources. TVA initiated the SMI project to review existing permitting practices and establish a policy to better protect shoreline and aquatic resources, while allowing adjacent residents reasonable access to the water.

On May 27, 1994, TVA issued a Notice of Intent to prepare an EIS on alternatives for management of TVA shoreline residential uses. Public scoping meetings were held in 13 locations throughout the Tennessee River Watershed in June and July of 1994. The Notice of Availability for the Draft EIS was published on June 28, 1996. TVA subsequently held 16 public meetings throughout the Tennessee River Watershed and in nearby major cities (Nashville and Memphis) in July, August, and September 1996 to receive comments. Almost 10,000 written and oral comments were recorded. The Notice of Availability for the Final EIS was published on December 11, 1998.

Alternatives Considered

TVA initially considered six alternatives to respond to continuing residential shoreline development along TVA shorelines. In response to public comments on the Draft EIS, TVA developed a seventh alternative, designated the Blended Alternative because it included features of several of the previous alternatives. The alternatives were designed to vary in the standards envisioned for residential shoreline alterations. In addition, the alternatives varied in whether additional shoreline could be opened for residential access.

Under *Alternative A: Limited TVA Role Along Open Shoreline and Additional Areas,* there would be no predefined standards for facility design or appearance, vegetation removal, or other shoreline alterations. TVA would, however, review permit applications for compliance with federal laws.

Under *Alternative B1: Existing Guidelines Along Open Shoreline and Additional Areas,* TVA would continue approving docks and other shoreline alterations using existing guidelines. These guidelines limit the amount and type of vegetation that can be removed, limit the size of boat dock construction and riprap, and open additional shoreline for residential access on a case-by-case basis. These guidelines do not define parameters for channel excavation and do not define a maximum land/water surface area per lot. This is the No Action alternative.

Under *Alternative B2: Existing Guidelines Along Open Shoreline Only,* residential shoreline alterations would be subject to the same standards as with Alternative B1. However, TVA would limit consideration of new applications for residential shoreline alterations to the 38 percent of the shoreline where private access rights currently exist.

Under *Alternative C1: Managed Development Along Open Shoreline and Additional Areas,* TVA would enhance land management plans that are prepared for each reservoir with a shoreline inventory and categorization system and replace existing permitting guidelines with new standards. In these plans, TVA would identify additional areas to make available for residential access. The standards would maintain a 100-foot deep vegetative shoreline management zone on TVA property and define the maximum land/water surface area that could be disturbed per lot. Individual boat channels involving less than 150 cubic yards of dredging would be considered. It was estimated that up to 48 percent of the shoreline could be developed under this alternative. This was identified as TVA's preferred alternative in the Draft EIS.

Under *Alternative C2: Managed Development Along Open Shoreline Only,* residential shoreline alterations would be subject to the same standards as with Alternative C1. However, TVA would limit considerations of new applications to the 38 percent of the shoreline where private access rights currently exist.

Under *Alternative D: Minimum Disturbance Along Open Shoreline Only,* TVA would limit consideration of applications for residential shoreline alterations to the 38 percent of the shoreline where access rights currently exist. In addition, a shoreline categorization system would be added to the reservoir land management plans prepared for individual reservoirs. A comprehensive set of shoreline development standards would be implemented, including a minimal access path, minimal vegetation clearing within a 100-foot shoreline management zone, and a low profile dock covering less than 300 square feet of surface area. Channel excavation would be prohibited.

Under the *Blended Alternative,* TVA would adopt a shoreline management policy that allows environmentally responsible development of shorelands where residential access rights exist and preserves public benefits along shorelines where residential access rights do not exist. In addition, TVA would encourage voluntary conservation commitments across some areas with outstanding residential access rights. Standards under the Blended Alternative would include a 25-foot-deep shoreline vegetation management (protection) zone with a 20-foot access/visual corridor, limited vegetation disturbance outside of the SMZ, and boat channels with 150 cubic yards of dredging or less. For TVA residential access shoreland further than 25 feet from the reservoir, TVA would only permit limited cutting of small trees and selective removal of certain plants like poison ivy and invasive exotic plants such as honeysuckle. Existing development and uses established prior to the implementation date of the new alternative would be grandfathered. Also, waivers could be requested by owners of property within preexisting developments.

Response to Comments on Final EIS

Volume II of the Final EIS contains summaries of and responses to the comments TVA received during the Draft EIS process. TVA received almost 9,500 separate comments. Although not required, TVA gave the public the opportunity to provide comments about the Final EIS and the Blended Alternative. To facilitate this, TVA held 15 public information sessions about the

Final EIS and the Blended Alternative and met with and briefed numerous stakeholders including elected officials, lake associations, and conservation and environmental groups.

A total of 215 comment forms and 27 letters were received on the Final EIS. Most of these comments were similar to the comments that TVA received on the Draft EIS, except for those that commented specifically on the Blended Alternative. In general, the public supported the Blended Alternative and viewed it as a substantial improvement over TVA's earlier preferred alternative, Alternative C1. A number of commenters suggested modifications to some of the Blended Alternative standards (*e.g.*, increasing the width of the SMZ), but these were within the range of alternatives previously considered.

Decision

The TVA Board decided to modify the Blended Alternative to include a 50-foot SMZ (an increase from 25 feet in the Final EIS). Other components of the Blended Alternative were adopted. The Blended Alternative appropriately balances residential shoreline development, recreation use, and resource conservation needs in a way that maintains the quality of life and other important values provided by the reservoir system. It recognizes the reality that previous decisions have already opened up 38 percent of TVA's shorelands to access, but commits to holding the line at this level and possibly "gaining" back some of the already opened lands in a way that would heighten their protection. The Blended Alternative also responds well to the public comments TVA received during the EIS process because it combines features from other alternatives that were generally supported, while not incorporating features that were controversial and highly objectionable to some segments of the public. During the period following publication of the Final EIS, a number of organizations questioned the adequacy of the 25-foot SMZ. These included the Department of the Interior, Kentucky Department for Fish and Wildlife Resources, Tennessee Wildlife Resources Agency, Tennessee Conservation League, and Tennessee Citizens for Wilderness Planning. In response to these comments, the Board decided to increase the size of the SMZ to 50 feet in order to further protect the Tennessee River system.

TVA will include the Blended Alternative standards in its permitting regulations. The standards and policies identified in the Blended Alternative, as modified by the April 21, 1999, Board of Directors decision, apply to all TVA reservoirs and become effective November 1, 1999.

Environmentally Preferable Alternative

TVA has concluded that Alternative D, which seeks minimum disturbance along shoreline available for residential access and does not allow additional shoreland to be opened, is the environmentally preferable alternative. However, the purpose of SMI is to better protect the environment while allowing reasonable access to the shoreline by adjacent residents who hold outstanding access rights. The Blended Alternative better addresses the broader objectives of SMI and is also substantially better environmentally than current practices.

Environmental Consequences and Commitments

The Blended Alternative advances TVA's commitment to resource stewardship and habitat protection through strong conservation approaches, including a shoreline inventory and categorization system designed to protect certain significant habitats. By limiting future residential access to shorelines where private access rights already exist and emphasizing the need to "maintain and gain" public shoreline, TVA is offering a much higher degree of protection to public shorelines than it has offered in the past. The Blended Alternative was formulated using environmentally protective measures. These measures include:

- Protection of sensitive natural and cultural resources through a shoreline inventory and categorization system designating residential access shorelines into protection, mitigation, and managed categories.
- Promotion of conservation easements across shorelands to protect scenic landscapes, encourage clustered development, or to provide other public benefits.
- Promotion of best management practices for the construction of docks, management of vegetation, stabilization of shoreline erosion, and other shoreline alterations.
- Emphasis on education activities and incentives as important components of shoreline management.

With the implementation of the above environmental protection measures, TVA has determined that adverse environmental impacts of future residential shoreline uses would be substantially reduced. These protective measures represent all of the practicable measures to avoid or minimize environmental harm that are associated with this alternative. Alternative D has associated with it additional protective measures such as a lower dock profile, less vegetation clearing, and a prohibition on channel excavation. This alternative was rejected for the reasons given above.

As the components of TVA's new shoreline management policy are implemented, TVA will continue to work with all affected interests to promote environmentally sound stewardship of public shorelands. TVA will also monitor shoreline development trends in order to identify any actions that may become necessary in the future.

Dated: May 24, 1999.

Ruben O. Hernandez,

Vice President, Resource Stewardship.

[FR Doc. 99–14199 Filed 6–3–99; 8:45 am]

BILLING CODE 8120–08–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance by Germany With Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3107), the Office of the United States Trade Representative (USTR) is reviewing, and requests comments on, compliance by Germany with its commitments under the World Trade Organization (WTO) Basic Telecommunications Agreement.

DATES: Comments are due by noon on Wednesday, June 16, 1999.

ADDRESSES: Comments must be submitted to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: Section 1377 Comments, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William Corbett, Office of Industry, (202) 395–9586; or Demetrios Marantis, Office of the General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires the USTR to review annually, by March 31, the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services of the United States that are in

force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into a telecommunications trade agreement is not in compliance with the terms of such agreement, or otherwise denies to U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities.

Beginning in the second quarter of 1998 and after concluding a number of satisfactory interconnection agreements with early new entrants to the German telecommunications market, Deutsche Telekom (DT) appears to have slowed the pace of interconnection negotiations and imposed tougher rates, terms and conditions for subsequent prospective entrants. All new entrants have no option but to interconnect with the DT network to access the German market, and Germany committed to assure non-discriminatory and cost-oriented interconnection rates, terms and conditions by adopting the WTO Reference Paper as part of its obligations under the WTO Basic Telecommunications Agreement.

The 1999 review under section 1377, completed on March 30, 1999, established that the delay in assuring non-discriminatory and cost-oriented interconnection rates, terms, and conditions raises serious doubts about Germany's compliance with its WTO commitments. The USTR noted that regulatory proceedings in Germany during April-May 1999 were expected to set important precedents in determining interconnection rates, terms, and conditions for all competitors to Deutsche Telekom. These proceedings related to (1) a complaint by a U.S. carrier, Econophone and, (2) a proposal for new tariff surcharges by Deutsche Telekom. The USTR announced it would monitor the outcome of these proceedings, which have now concluded to determine whether Germany is acting in accordance with its WTO obligations, and to determine whether to pursue WTO dispute settlement action thereafter if the outcome of the proceedings was not consistent with those obligations.

Therefore, the USTR seeks comments on Germany's compliance with its specific commitments under the WTO Basic Telecommunications Agreement or with other WTO obligations, *e.g.*, the WTO General Agreement on Trade in Services (GATS), including the Annex on Telecommunications, that affect market opportunities for U.S. telecommunications products and services.

WTO Basic Telecommunications Agreement

The GATS contains general obligations that apply to all Members and services whether or not listed in WTO Members' schedules and specific obligations that apply only to services scheduled by a Member. The Fourth Protocol to the GATS is the legal instrument embodying seventy WTO members' basic telecommunications services commitments under the GATS. The Fourth Protocol is generally referred to as the WTO Basic Telecommunications Agreement. The agreement entered into force on February 6, 1998.

The WTO Basic Telecommunications Agreement encompasses commitments in three areas: market access, national treatment, and pro-competitive regulatory principles (contained in the WTO Reference Paper). Germany committed to provide open market access for local, long-distance and international service and service suppliers of any other Member under the terms, limitations and conditions agreed and specified in its WTO services schedule. With respect to national treatment, Germany committed to ensure treatment no less favorable to U.S. services or service suppliers than the treatment provided to services or service suppliers of Germany. Finally, the pro-competitive regulatory principles, set forth in the WTO Reference Paper and incorporated in Germany's (and other members') schedule, committed it to establish an independent regulatory body, ensure interconnection at non-discriminatory and cost-oriented rates, maintain measures to prevent anti-competitive practices such as cross-subsidization, and mandate transparency of government regulations and licensing.

The USTR seeks comment on whether Germany has made the necessary legislative or regulatory changes to implement its commitments, or permits acts, policies, or practices in its markets that do not appear to be in compliance with these commitments. In addition, the USTR seeks comments on whether Germany permits acts, policies, or practices that do not appear to be in compliance with other WTO obligations, e.g., the GATS, that affect market opportunities for telecommunications products and services of the United States.

Public Comment: Requirements for Submissions

The USTR requests comments on the operation and effectiveness of the WTO Basic Telecommunications Agreement with respect to Germany. All comments must be in English, identify on the first page of the comments the telecommunications trade agreement(s) discussed therein, be addressed to Gloria Blue, Executive Secretary, TPSC, ATTN: Section 1377 Comments, Trade Policy Staff Committee, Office of the U.S. Trade Representative, and be submitted in 15 copies by noon on Wednesday, June 16, 1999.

All comments will be placed in the USTR Reading Room for inspection shortly after the filing deadline, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential information submitted in accordance with 15 CFR 2003.6, must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of the 15 copies, and must be accompanied by 15 copies of a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the USTR Public Reading Room.

An appointment to review the comments may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 101.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–14132 Filed 6–3–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Announcement of Public Forum on Risk Assessment

AGENCY: Office of the Secretary, DOT.

ACTION: Announcement of Public Forum on Risk Assessment.

TIME AND DATE: 1:00 p.m.–4:00 p.m., June 16, 1999.

PLACE: Room 10234, Nassif Building, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

STATUS: Open to public with attendance limited to space available.

PURPOSE: The purpose of the forum is to have an exchange of ideas and to start a dialogue that will better enable the Department to analyze its rules. We do not want comments on specific rules or proposals, although it would be appropriate to use an existing rule to illustrate a point.

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SUMMARY: The Department of Transportation will be hosting a public forum on risk assessment in rulemaking. Expert panelists for this forum will include representatives from business, labor and government. The moderator of the forum will present a series of issues to the panel for discussion; the audience will also be encouraged to ask questions or make comments. The forum will address various issues such as problems with adequately describing the hazard or risk a regulation is trying to avoid; properly using and describing the evidence of the risk, the uncertainties involved; and the value and cost of peer review. This forum is the second of three planned public forums this year. In May, the Department hosted a forum on economic analysis, and later on this year we are planning a forum on small entities.

REGISTRATION: Participants are requested to register their intent to attend this forum meeting by sending e-mail to bob.klothe@ost.dot.gov. Put the words "Risk Assessment Registration" in the Subject line and the participant's name, address, phone number, and affiliation in the body of the message. If you do not have Internet access, you can register by calling 202–366–4723 or by writing to the contact person below. Please include your name, address, and phone number in your letter/postcard. Also, remember that space is limited and registration is on a first-come-first-served basis.

FOR FURTHER INFORMATION CONTACT: Robert Klothe, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW, Washington, DC 20590. Phone: (202) 366–4723 (voice), (202) 755–7687 (TDD); Email: *bob.klothe@ost.dot.gov.*

Issued in Washington, DC, this 28th day of May, 1999.

Neil Eisner,

Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 99–14164 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Chemung County, New York

AGENCY: Federal Highway Administration, Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The action to be evaluated by this Environmental Impact Statement is the reconstruction of the U.S. Route 17 through the Town and Village of Horseheads (the Southern Tier Expressway) in Chemung County, New York. This proposed action would improve capacity of Route 17 by bringing it up to Interstate highway design standards and provide for the separation of local and regional traffic .

FOR FURTHER INFORMATION CONTACT: Peter White, Regional Director, New York State Department of Transportation, Region 6, 107 Broadway, Hornell, New York 14843, (607) 324–8404 or Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, (518) 431–4127.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the New York State Department of Transportation (NYSDOT) will evaluate various alternatives which will consider the upgrading of U.S. Route 17 from Exit 52 to Exit 54 in the Town and Village of Horseheads, Chemung County, New York to Interstate standards. Each build option would include the reconfiguration/reconstruction of the existing roadway to meet Interstate standards while accommodating local high volume traffic flows and local access. Additionally, there would be new expressway and ramp construction, pavement rehabilitation/reconstruction, bridge and culvert rehabilitation/replacement, drainage, lighting and signalization. The proposed project limits extend along NYS Route 17 from Exit 52 (NYS Route 14) easterly to Exit 54 (NYS Route 13) approximately one mile.

The Proposed Action is anticipated to result in a balanced transportation system that will supply sufficient capacity, improved mobility and access, meet current/future traffic demand, eliminate current bridge deficiencies, reduce or eliminate vehicular conflicts/accidents, separate local and regional traffic flows, as well as provide improved local service through the Town and Village of Horseheads.

Alternatives under consideration include:

- No build or the null alternative;
- Separation of local and expressway traffic through the Village of Horseheads and the upgrade of Route 17 to a limited access expressway;
- Development of a half or full diamond interchange at Route 13, and
- The development of collector-distributor roads along Route 17 between Exit 52 and Exit 54.

The environmental, socio-economic, and engineering viability implications of each alternative will be examined. The NO Action alternative will also be analyzed as a base line for gauging the impacts of the build alternates.

Input from Federal, State and local Governments, local agencies, private organizations, and the community will be solicited during the development of the Environmental Impact Statement (EIS). A public Environmental Scoping meeting and a formal public hearing will be scheduled. The Environmental Scoping, meeting will be held on June 30, 1999 at the Horseheads High School from 5 p.m. to 9 p.m. with a presentation at 7 p.m. Public notice will be given to identify the time and place for the public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments, questions and suggestions pertaining to the proposed action are invited from interested parties to ensure that all significant issues are identified and addressed. Comments should be directed to the FHWA or the NYSDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on May 24, 1999.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 99–14124 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–99–5750]

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

Rail Fixed Guideway Systems; State Safety Oversight.

DATES: Comments must be submitted before August 2, 1999.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Rail Fixed Guideway Systems; State Safety Oversight—Mr. Roy Field, Office of Program Management, (202) 366–0197.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Rail Fixed Guideway Systems; State Safety Oversight (*OMB Number: 2132–0558*).

Background: 49 U.S.C. Section 5330 requires each State that to designate a State Safety Oversight agency to oversee the safety and security operations of "a rail fixed guideway system" within the State's jurisdiction. To comply with Section 5330, State oversight agencies must require System Safety Program Plans (SSPPs) from rail fixed guideway systems; review and approve these SSPPs; require notification of unacceptable hazardous conditions according to the American Public Transit Association (APTA) Hazard Classification Matrix; require and review corrective action plans from rail fixed guideway systems to eliminate such conditions; require an ongoing safety audit process at the rail fixed guideway systems; and submit both an annual certification to FTA that the State is in compliance with the requirements of Section 5330 and an annual report documenting safety activities. Collection of this information will enable the State oversight agency to monitor effectively the safety of the rail fixed guideway system. Without certification from the State oversight agency, FTA would be unable to determine each State's compliance with Section 5330.

If a State fails to comply with the requirements of Section 5330, FTA may withhold up to five percent of funds apportioned under section 5307 to a State, or urbanized area within a State, beginning in Fiscal Year 1997.

Estimated Annual Burden on Respondents: Approximately 663.50 hours for each of the 56 respondents.

Estimated Total Annual Burden: 37,158 hours.

Frequency: Annual.

Issued: June 1, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–14166 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5732]

Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments that conform to the Model Specifications for Evidential Breath Testing Devices (58 FR 48705).

EFFECTIVE DATE: June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Traffic Injury Control Programs, Impaired Driving Division (NTS–11), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice (49 FR 48864).

On September 17, 1993, NHTSA published a notice (58 FR 48705) to amend the Model Specifications. The notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC; added a test for the presence of acetone; and expanded the definition of alcohol to include other low molecular weight alcohols including methyl or isopropyl. On February 27, 1998, the most recent amendment to the Conforming Products List (CPL) was published (63 FR 10066), identifying those instruments found to conform with the Model Specifications.

Since the last publication of the CPL, three (3) instruments have been evaluated and found to meet the model specifications, as amended on September 17, 1993, for mobile and non-mobile use. They are: (1) Seres Alcopro, which is listed twice on the CPL, once under Sound-Off, Inc., of Hudsonville, Michigan, which sells this device in the United States, and also under Seres, of Paris, France, the manufacturer. This device is the first infra-red handheld breath tester on the CPL; (2) Phoenix, manufactured by Lifeloc Technologies, Inc. of Wheat Ridge, Colorado; and (3) Alco-Sensor AZ and the RBT-AZ, manufactured by Intoximeters, Inc. of St. Louis, Missouri, two versions of the same handheld fuel cell device, the first sold without a printer, and the latter with a printer.

The CPL has been amended to add these three instruments to the list. The CPL has also been amended to reflect the following changes:

(1) Lifeloc, Inc. has changed its name to Lifeloc Technologies, Inc. Hence, all devices listed under Lifeloc, Inc. are now listed under Lifeloc Technologies, Inc.(formerly Lifeloc, Inc.), Wheat Ridge, Colorado;

(2) Two items listed under Intoximeters, Inc. had typographical errors that needed correction. The item listed as the Intoximeter Model 03000 D* has been changed to read: Intoximeter Model 3000D*. The items listed as the Intox EC–IR and the Portable Intox EC–IR have been changed to read: Intox EC/IR and Portable Intox EC/IR.

(3) The National Draeger, Inc. added the "Alcotest 7410 Plus" to the last CPL on February 27, 1998. However, it was listed on the CPL as the "Breathalyzer 7410 Plus" when it should have been listed as the "Alcotest 7410 Plus". The CPL has been corrected to reflect this more appropriate listing.

(4) In addition, "National Draeger, Inc." of Durango, Colorado changed its name to "Draeger Safety, Inc." All devices under "National Draeger" will remain on the list. However, a new listing for "Draeger Safety, Inc." will also be created with the same devices also listed. Future additions of Draeger Safety, Inc. equipment will only be added to the "Draeger Safety, Inc." listing.

(5) A sentence has been added to the footnote to the CPL indicating that any devices on this CPL that meet the model specifications for evidential breath testing devices that was published in the **Federal Register** on September 17, 1993 (58 FR 48705), also meet the requirements of the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids that was published on August 2, 1994 (59 FR 39382).

(6) The typographical error under the Smith and Wesson listing, where the location of the company was listed as "pringfield" has been corrected to read "Springfield'.

In accordance with the foregoing, the CPL is therefore amended, as set forth below.

Conforming Products List of Evidential Breath Measurement Devices

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp. Mississauga, Ontario, Canada:		
Alert J3AD*	X	X
PBA3000C	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer*	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, KY:		
Intoxilyzer Model:		
200	X	X
200D	X	X
300	X	X
400	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/⅜" ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
PAC 1200*	X	X
S–D2	X	X
Decator Electronics, Decator, IL:		
Alco-Tector model 500*		X
Draeger Safety, Inc., Durango, CO:		
Alcotest Model:		
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
Breathalyzer Model:		
900*	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
Gall's Inc., Lexington, KY:		
Alcohol Detection System-A.D.S. 500	X	X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter*		X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000*	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X

Manufacturer and model	Mobile	Nonmobile
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor		X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor IV	X	X
Alco-Sensor AZ	X	X
RBT–AZ	X	X
RBT III	X	X
RBT III–A	X	X
RBT IV	X	X
RBT IV with CEM (cell enhancement module)	X	X
Intox EC/IR	X	X
Portable Intox EC/IR	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA–2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, CO:		
PBA 3000B	X	X
PBA 3000–P*	X	X
PBA 3000C	X	X
Alcohol Data Sensor	X	X
Phoenix	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model:		
300	X	X
400	X	X
AE–D1*	X	X
SD–2*	X	X
EBA*	X	X
Auto-Alcolmeter*		X
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model:		
1000*		X
2000*		X
National Draeger, Inc., Durango, CO:		
Alcotest Model:		
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
Breathalyzer Model:		
900*	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
National Patent Analytical Systems, Inc., Mansfield, OH:		
BAC DataMaster (with or without the Delta-1 accessory)	X	X
BAC Verifier Datamaster (with or without the Delta-1 accessory)	X	X
DataMaster cdm (with or without the Delta-1 accessory)	X	X
Omicron Systems, Palo Alto, CA:		
Intoxilyzer Model:		
4011*	X	X
4011AW*	X	X
Plus 4 Engineering, Mintum, CO:		
5000 Plus4*	X	X
Seres, Paris, France:		
Alco Master	X	X
Alcopro	X	X
Siemans-Allis, Cherry Hill, NJ:		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, Springfield, MA:		

Manufacturer and model	Mobile	Nonmobile
Breathalyzer Model:		
900*	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Sound-Off, Inc., Hudsonville, MI:		
AlcoData	X	X
Seres Alco Master	X	X
Seres Alcopro	X	X
Stephenson Corp.:		
Breathalyzer 900*	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, NY:		
BAC Verifier*	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II*	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC.) Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.1)

Issued on: May 28, 1999.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–14165 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[DP99–003]

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety. The petition is hereinafter identified as DP99–003.

FOR FURTHER INFORMATION CONTACT: Dr. George Chiang, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5206.

SUPPLEMENTARY INFORMATION: Dr. Mary Halas of Alexandria, Virginia, submitted a petition to NHTSA by letter dated April 15, 1999, requesting that an investigation be initiated to determine whether to issue an order concerning the notification and remedy of a defect in model year 1992 Acura Legend vehicles (subject vehicles) manufactured by Honda Motor Company (Honda) because of concerns related to their brake deficiency. The Petitioner alleges that the brake pedal on her vehicle stuck while driving, resulting in a crash. The Petitioner further alleges that she had no warning of any brake problem prior to the crash. In addition, the Petitioner alleges that there have been a number of complaints and service bulletins in NHTSA's database concerning the braking system on the subject vehicles. The Petitioner, however, did not identify a specific vehicle subsystem or component that might have been involved in or caused the brake failure.

During our review, we discovered that Honda had issued Technical Service Bulletin (TSB) 91–031 on August 18, 1992, for the model year 1991–1992 Acura Legend to correct a condition identified as "ABS Problem Code 1–8." The TSB states that when the ABS indicator light activates and the system is checked, problem code 1–8 appears. The light is activated inappropriately due to an overly sensitive sensor. To eliminate this inappropriate warning light, Honda implemented the TSB directing technicians to install a new pressure switch which ensures that the ABS light only comes on when appropriate. Thus, the issue addressed by this TSB has no effect on the vehicle's braking performance, and it is not related to the complaint filed by Dr. Halas.

A review of agency data files, including information reported to the Auto Safety Hotline by consumers, indicates that there are six complaints about the brake system on the subject vehicles. Five of the six complaints were received prior to May 1996. The most recent complaint, received in March 1999, concerns illumination of the anti-lock brake warning light which is discussed in the TSB referenced in the above paragraph. None of these six complaints indicated that the complainants experienced difficulty in depressing the brake pedal. In addition, the number of complaints compared to the vehicle population (complaint rate) is lower for the model year 1992 Acura Legend than for five peer vehicles. Furthermore, there have been no safety recalls concerning the braking systems on the Acura Legend vehicles, regardless of the model year. On April 29, 1999, an ODI staff engineer inspected the Petitioner's vehicle at a local body shop. The staff was unable to test the operation of the vehicle's braking system vacuum booster because the crash rendered the engine inoperable. Visual inspection showed that the vacuum hose remains connected to the vacuum booster and to the engine, and that the brake pedal linkages appear to be free of obstruction or binding.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: June 1, 1999.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 99–14213 Filed 6–3–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33750]

Wisconsin Central Ltd.—Trackage Rights Exemption—Grand Trunk Western Railroad Incorporated

Grand Trunk Western Railroad Incorporated (GTW) has agreed to grant limited, non-exclusive overhead trackage rights to Wisconsin Central Ltd. (WC), over a segment of GTW's South Bend Division between GTW's connection to the Belt Railway of Chicago at GTW milepost 12.8 at Hayford, IL, and GTW milepost 25.1 at Harvey, IL, including the connections to the Illinois Central Railroad Company at Harvey, a total distance of approximately 12.3 miles.[1] The purpose of the trackage rights is to allow WC to move traffic in Canadian National Railway Company's (CN) account as part of WC's haulage of CN traffic between Superior, WI and Chicago, IL. The transaction is scheduled to be consummated on or after May 28, 1999, the effective date of the exemption (7 days after the exemption was filed.)

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease & Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33750, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Janet H. Gilbert, Wisconsin Central Ltd., 6250 N. River Road, Suite 9000, Rosemont, IL 60018.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 28, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–14187 Filed 6–3–99; 8:45 am]

BILLING CODE 4915–00–P

[1] A redacted version of the draft trackage rights agreement between WC and GTW was filed with the notice of exemption. The full version of the agreement was concurrently filed under seal along with a motion for a protective order, which will be addressed in a separate decision. A copy of the executed trackage rights agreement will be filed in accordance with 49 CFR 1180.6(a)(7)(ii).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–H

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–H, U.S. Income Tax Return for Homeowners Associations.

DATES: Written comments should be received on or before August 3, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Homeowners Associations.

OMB Number: 1545–0127.

Form Number: 1120–H.

Abstract: Homeowners associations file Form 1120–H to report income, deductions, and credits. The form is also used to report the income tax liability of the homeowners association. The IRS uses Form 1120–H to determine if the income, deductions, and credits have been correctly computed. The form is also used for statistical purposes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 112,311.

Estimated Time Per Respondent: 32 hours, 10 minutes.

Estimated Total Annual Burden Hours: 3,611,922.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 28, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14226 Filed 6–3–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040X, Amended U.S. Individual Income Tax Return.

DATES: Written comments should be received on or before August 3, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amended U.S. Individual Income Tax Return.

OMB Number: 1545–0091.

Form Number: 1040X.

Abstract: Form 1040X is used by individuals to amend an original tax return to claim a refund of income taxes, pay additional income taxes, or designate $3 to the Presidential Election Campaign Fund. The information provided on the form is needed to help verify that taxpayers have correctly figured their income tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 2,929,311.

Estimated Time Per Respondent: 3 hours, 30 minutes.

Estimated Total Annual Burden Hours: 10,252,589.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 27, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14227 Filed 6–3–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 64, No. 107
Friday, June 4, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990416098–9098–01]

RIN 0694–AB87

Implementation of the Chemical Weapons Convention; Revisions to the Export Administration Regulations

Correction

In rule document 99–12281 beginning on page 27138 in the issue of Tuesday, May 18, 1999, make the following correction(s):

PART 774–[CORRECTED]

1. On page 27148, in the second column, in the second line, "a.28.(C.A.S. #667–83–5)" should read "a.28.(C.A.S. #676–83–5)".

2. On the same page, in the same column, in the eighth line, "a.30.(C.A.S. #767–97–1)" should read "a.30.(C.A.S. #676–97–1)".

[FR Doc. C9–12281 Filed 6–3–99; 8:45 am]

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Representations and Disclosures Required by Certain IBs, CPOs and CTAs

Correction

In notice document 99–13573 beginning on page 28910 in the issue of Friday, May 28, 1999, make the following correction:

On page 28913, in the third column, under the second "Average burden hours per response:" entry, "100." should read "1.0".

[FR Doc. C9–13573 Filed 6–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 97–11; FAR Case 96–013; Item I]

RIN 9000–AH97

Federal Acquisition Regulation; Review of FAR Representations

Correction

In rule document 99–5203 beginning on page 10531, in the issue of Thursday, March 4, 1999, make the following correction:

52.204–5 [Corrected]

On page 10533, in the second column, in the second line, "☐ is not" should be removed.

[FR Doc. C9–5203 Filed 6–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Notice of Members

Correction

In notice document 99–13553 beginning on page 28810 in the issue of Thursday, May 27, 1999, make the following correction(s):

On page 28810, in the third column, in the last line, "[insert 45 days from date of publication]" should read "July 12, 1999".

[FR Doc. C9–13553 Filed 6–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–000]

TransColorado Gas Transmission Company; Notice of Informal Settlement Conference

Correction

In notice document 99–13508 appearing on page 28816, in the issue of Thursday, May 27, 1999, the docket number should read as set forth above.

[FR Doc. C9–13508 Filed 6–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1881–97]

RIN 1115–AE96

Adjustment of Status; Continued Validity of Nonimmigrant Status, Unexpired Employment Authorization, and Travel Authorization for Certain Applicants Maintaining Nonimmigrant H or L Status

Correction

In rule document 99–13759 beginning on page 29208 in the issue of Tuesday, June 1, 1999, make the following correction(s):

§ 214.2 [Corrected]

On page 29211, in the second column, in § 214.2(h)(16)(i), the existing paragraph (C) should be removed and paragraphs (C) and (D) should be added to read as follows:

* * * * *

(h) * * *

(16) * * *

(i) * * *

(C) The H–1 alien's application (and that of their dependent family members) for admission,

(D) The H–1 alien's application (and that of their dependent family members) for change of status to a different H–1 or L classification, or a dependent of an H–1 or L nonimmigrant, or

* * * * *

[FR Doc. C9–13759 Filed 6–3–99; 8:45 am]

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1999

Federal Register

Friday
June 4, 1999

Part II

Department of Education

Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Systems of Records

AGENCY: Department of Education.

ACTION: Notice of new, amended, altered and deleted systems of records.

SUMMARY: The Acting Chief Information Officer for the Department of Education publishes this notice of New, Amended, Altered and Deleted Systems of Records. On May 14, 1998, the President directed executive departments and agencies to, among other things, review all systems for accuracy, completeness and to ensure that all routine uses are needed and consistent with the purposes for which the records were collected in each system. This document is a result of that review.

DATES: Comments on the proposed routine uses for the systems of records included in this notice must be received by the Department on or before July 6, 1999. The Department filed a report describing the new and altered systems of records covered by this notice with the Chair of the Committee on Governmental Affairs of the Senate, the Chair of the Committee on Government Reform and Oversight of the House, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 14, 1999. The changes made in this notice will become effective after the 30-day period for OMB review of the systems expires on June 14, 1999; unless OMB gives specific notice within the 30 days that the changes are not approved for implementation or requests an additional 10 days for its review. The routine uses become effective 30 days after publication unless they need to be changed as a result of public comment or OMB review. The Department will publish any changes to the routine uses.

ADDRESSES: All comments on the proposed routine uses should be addressed to Bill Burrow, Office of Chief Information Officer, Acting Information Management Group Leader, U.S. Department of Education, Room 5624 Regional Office Building, 400 Maryland Avenue, SW., Washington, DC 20202–4580. Telephone: 202–401–0250. Comments may also be sent through the Internet to:

Comments@ed.gov

You must include the term "System of Records" in the subject line of the electronic comment.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5624 Regional Office Building, 7th and D Streets, S.W., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for this notice. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–9265 or (202) 260–0250. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bill Burrow, Office of Chief Information Officer, Acting Information Management Group Leader, U.S. Department of Education, Room 5624 Regional Office Building, 400 Maryland Avenue, SW., Washington, DC 20202–4580. Telephone: 202–401–0250. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Portable Document Format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Introduction

In a memorandum dated May 14, 1998, President Clinton directed executive departments and agencies (agencies) to conduct a thorough review for accuracy and completeness of all agency systems of records. The President specifically directed agencies to consider changes in technology, function and organization that may have made the systems out of date and to review the routine uses published in the system notices to make sure that they continue to be necessary and compatible with the purposes for which they were collected. He also directed agencies to identify systems that may not have been described in a notice published in the **Federal Register** and to publish notices for any changes to the agency systems of records and report to the Office of Management and Budget within one year regarding the results of their efforts.

The Act (5 U.S.C. 552a)(e)(4) requires the Department to publish in the **Federal Register** this notice of changes to systems of records managed by the Department. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, applies to information about individuals that contain individually identifiable information and that may be retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record" and the system, whether manual or computer-driven, is called a "system of records." The Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the Office of Management and Budget (OMB) whenever the agency publishes a new or "altered" system of records. A system is considered altered whenever certain fundamental changes are made to the system such as changing from a manual to automated system of records or whenever certain disclosures, called "routine uses," are changed in the system of records.

Most of the changes made by this notice are technical in nature, reflecting the current name and address of the office responsible for each system. Every effort has been made to update the notices to make them more "reader friendly," dispensing with traditional bureaucratic language. As part of that process, all the routine uses have been updated and, where the Department

intends to apply the same routine use to more than one system, the same language is used for all systems that use the routine use. The intent is not to substantively change any of the routine uses but to make them clearer and consistent. However, because the Department is applying these revisions to all of its systems of records, the Chief Information Officer decided to treat all systems included in this notice as altered systems of records.

Many of the system notices included in this **Federal Register** notice have not been updated since they were published in a **Federal Register** compilation of Department system notices on April 20, 1982. As a result, revisions are needed to accurately describe the current systems of records.

Deleted Systems

The Department identified 22 systems to be deleted after finding that they are either no longer needed to administer the Department's programs or activities or that they duplicate other systems maintained by the Department or other agencies such as the Office of Personnel Management. The numbers for these systems are based on the identification system used by the Department up to this date.

18–07–0002 Congressional Correspondence.
18–11–0005 Safety Management Information System (Department of Education Accident, Injury and Illness Reporting System).
18–11–0007 Applicants for Employment Records.
18–11–0010 Employee Alcoholism, Drug Abuse and Emotional Problem Counseling and Referral Records.
18–11–0011 Employee Appraisal Program Records.
18–11–0012 Executive Development Records System.
18–11–0018 Personnel Records in Operating Offices.
18–11–0019 Special Employment Programs.
18–11–0020 Suitability for Employment Records.
18–11–0025 Employee Suggestion Program Records.
18–20–0001 Fund for the Improvement of Postsecondary Education; FIPSE Field Readers to Review Proposals for the Department.
18–40–0002 Registry of Deaf-Blind Children/Regional-National.
18–40–0003 Students Participation in Deaf-Blind Programs Under Centers and Services for Deaf-Blind Children.
18–40–0004 Parent Participants in Deaf-Blind Programs Provided by Regional Centers for Deaf-Blind Children.
18–40–0005 Participant Waiting List for Projects Serving Severely Handicapped Children and Youth.
18–40–0006 Participants of Projects Serving Severely Handicapped Children and Youth.
18–40–0007 Participants in Workshops Concerning Severely Handicapped Children and Youth.
18–40–0009 Selective Service Registration Compliance File.
18–40–0021 Student Financial Assistance—Compliance Files.
18–40–0032 Record of Advances of Funds for Employees Traveling for the Department of Education.
18–40–0038 National Science Scholars Program.
18–42–0065 NIE Outside Experts.

New Numbering System

The Department establishes a new numbering system for its systems of records. The following list identifies each system notice published in this document based on the new numbering system.

18–01–01 Secretary's Communication Control System.
18–01–02 Education Senior Management Biographies.
18–02–01 Even Start Performance Information Reporting System and Experimental Design Study.
18–03–01 Debarment and Suspension Proceedings Under Executive Order 12549, the Drug-Free Workplace Act, and the Federal Acquisition Regulations.
18–03–02 Education's Central Automated Processing System (EDCAPS).
18–03–03 Receivables Management System.
18–03–04 Files and Lists of Potential and Current Consultants, Grant Application Reviewers, Peer Reviewers, and Site Visitors.
18–04–01 Freedom of Information, Correspondence and Case Files.
18–04–02 Freedom of Information Act and Privacy Act Tracking System.
18–05–01 Departmental Parking Control Policy.
18–05–02 Family Educational Rights and Privacy Act (FERPA) and Protection of Pupil Rights Amendment (PPRA) Record Systems.
18–05–03 Federal Personnel Payroll System.
18–05–04 Discrimination Complaints Records System.
18–05–05 Grievances Filed Formally Under the Administrative Grievance Procedures.
18–05–06 Grievance Records Filed Under Procedures Established by Labor-Management Negotiations.
18–05–07 Unfair Labor Practice Records.
18–05–08 Official Time Records of Union Officials and Bargaining Unit Employees at the Department of Education.
18–05–09 Voluntary Leave Transfer Program.
18–05–10 General Performance Appraisal System (GPAS).
18–05–11 Training Registration and Information System (TRAINS).
18–05–12 Grievances Filed Informally through the Informal Dispute Resolution Center (IDR).
18–06–01 Federal Advisory Committee Membership Files.
18–06–02 Telephone Directory/Locator System.
18–06–03 Presidential Scholars Files of Selected Participants.
18–07–01 Congressional Members' Biographies.
18–07–02 Congressional Grant Notification Control System.
18–08–01 Case Information System.
18–08–02 Complaint Files and Log.
18–09–01 Administrative Claims.
18–09–02 OGC-Attorney Applicant Files.
18–09–03 Employee Conduct—Government Ethics.
18–09–04 Litigation Files, Administrative Complaints, and Adverse Personnel Actions.
18–10–01 Investigative Files of the Inspector General.
18–10–02 Investigatory Material Complied for Personnel Security and Suitability Purposes.
18–10–03 OIG Non-Federal Auditor Referral, Suspension, and Debarment File.
18–10–04 Hotline Complaint Files of the Inspector General.
18–11–01 Federal Student Aid Application File.
18–11–02 Recipient Financial Management System.
18–11–03 Student Financial Assistance Validation File.
18–11–04 Student Financial Assistance—Student Complaint Files.
18–11–05 Title IV Program Files.
18–11–06 National Student Loan Data System.
18–11–07 Student Financial Assistance Collection Files.
18–11–08 Student Account Management System. (Previously published in the **Federal Register** of June 1, 1999).
18–11–09 Postsecondary Education Participants System (PEPS).
18–12–01 Title IV Foreign Language and Area Studies Program.
18–12–02 Fulbright-Hays Doctoral Dissertation Research Abroad, Fulbright-Hays Faculty Research Abroad, and Fulbright-Hays Seminars Abroad.
18–12–03 Jacob K. Javits Fellows System.
18–12–04 Title VI International Research and Studies Program.
18–13–01 National Center for Education Statistics Longitudinal Studies and the School and Staffing Surveys.
18–13–02 National Center for Education Statistics Affidavits of Nondisclosure.
18–13–03 National Center for Education Statistics' National Assessment of Educational Progress.
18–13–04 Outcomes of Diversity in Higher Education Surveys.
18–14–01 Educationally Disadvantaged Students Attending Private Schools Served Through Bypass Contracts.
18–14–02 Fellowships for Indian Students—Applications and Awards.
18–15–01 Bilingual Education Graduate Fellowship Program.

New Systems of Records

Of the systems identified in the preceding list, the following systems of records have been identified as new:

18–02–01 Even Start Performance Information Reporting System and Experimental Design Study.
18–04–02 Freedom of Information Act and Privacy Act Tracking System.
18–05–09 Official Time Records of Union Officials and Bargaining Unit Employees at the Department of Education.
18–05–10 Voluntary Leave Transfer Program.
18–05–11 General Performance Appraisal System (GPAS).
18–05–12 Training Registration and Information System (TRAINS).
18–07–01 Congressional Members' Biographies.
18–07–01 Congressional Grant Notification Control System.
18–11–07 Student Account Manager.
18–11–08 Postsecondary Education Participants System (PEPS).
18–12–03 Title VI International Research and Studies Program.
18–13–04 Outcomes of Diversity in Higher Education Surveys.
18–15–01 Bilingual Education Graduate Fellowship Program.

The following systems of records are in the current compilation of systems of records and continue to be necessary for operation of Department programs or activities. However, technical issues delayed their inclusion in this publication. The Department will publish revised notices for these systems as soon as the technical issues can be resolved.

18–05–03 Federal Personnel Payroll System.
18–06–03 Presidential Scholars Files of Selected Participants.
18–11–04 Student Financial Assistance—Student Complaint Files.
18–11–06 National Student Loan Data System.

Dated: May 14, 1999.

Thomas P. Skelly,

Acting Chief Information Officer.

The Chief Information Officer of the U.S. Department of Education publishes notice of the following systems of records managed by the Department:

18–01–01

SYSTEM NAME:

Secretary's Communications Control System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Executive Secretariat, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7C114, Washington, DC 20202. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records about individuals who have contacted the Secretary, Deputy Secretary, Senior Officers or other officials of the Department for whom the Department controls responses.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the following types of records: (1) The official correspondence files of each principal office within the Department, and where applicable, a principal office's component office, specifically the hard copies of official documents and electronic images of certain incoming and outgoing documents; (2) control information from the Secretary's, Deputy Secretary's, Senior Officers' and other officials' correspondence that include a subject narrative, the name of the organization drafting the response and the type of action required from the Department; and (3) records of responses to some telephone inquiries where officials determine that a written response should be controlled.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

This system of records is maintained to account for the correspondence received by the Department, including correspondence regarding individual concerns and complaints regarding programs administered by the Secretary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Government and Privacy Organization Disclosure.* The Department may disclose records to governmental entities and private organizations as necessary to resolve complaints, provide guidance, respond to requests for documents and information, and address concerns regarding those entities and organizations.

(2) *Congressional Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) or (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her official capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in litigation or an administrative proceeding in which the Department has an interest is relevant and necessary to the litigation or proceeding, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b) (12): The Department may disclose to a consumer reporting agency

information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hard copy filed in standard file cabinets; those stored electronically are located on computer disks and on backup media.

RETRIEVABILITY:

Files are indexed and retrievable by subject, name of the individual or by the document's control number that is assigned at the time the correspondence is logged into the Department.

SAFEGUARDS:

All physical access to the Department of Education sites are controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. During working hours, direct access to the file cabinets is limited to authorized staff. During non-working hours, the rooms in which the file cabinets are located are locked and only those individuals with access to those rooms can access the hard copies of records.

The computer systems employed by the Department of Education offer a high degree of resistance to tampering and circumvention.

RETENTION AND DISPOSAL:

Hard copy records are transferred to the Washington National Records Center one year after cutoff then transferred to the National Archives and Records Administration 10 years after cutoff. Control records on computer are stored indefinitely. Electronic images are retained based on regular records disposal or retention policies identical to hard copies.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Secretariat, Office of the Secretary, 400 Maryland Avenue, SW., Room 7C114, Washington, DC 20202. See Appendix the end of this system notice for additional system managers.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, contact the system manager at the address listed in the Appendix at the end of this system notice. You should indicate your name, the date of the subject documents and reasonable description of the subject matter of the issue involved. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

To gain access to records regarding you in this system of records, follow the Notification Procedure described above. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in this system of records, contact the system manager at the address listed in the Appendix at the end of this system notice, and reasonably identify the record and specify the information to be contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Records are derived from documents addressed to or by the Secretary, the Deputy Secretary, Senior Officials or other officials of the Department.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–01–01

Additional System Locations and System Managers

Director, Correspondence & Communication Control Unit, Office of the Executive Secretariat, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7C114, Washington, DC 20202.
Management Analyst, Office of Chief Financial and Chief Information Office, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4E213, Washington, DC 20202.
Supervisor, Management and Program Analyst, Office for Civil Rights, U.S. Department of Education, 330 C Street, SW., Room 5026, Washington, DC 20202.
Staff Assistant, Office of the Deputy Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7W210, Washington, DC 20202.
Program Management Analyst, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NE., Room 602, Washington, DC 20202.
Policy Coordinator Analyst, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W337, Washington, DC 20202.
Operations Officer, Office of General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E353, Washington, DC 20202.
Staff Assistant, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5E317, Washington, DC 20202.
Director, Congressional Affairs, Office of Legislation and Congressional Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E301, Washington, DC 20202.
Director, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W300, Washington, DC 20202.
Deputy Director, Office of Public Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E231, Washington, DC 20202.
Management and Program Analyst, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4082, Washington, DC 20202.
Customer Service Specialist, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3113, Washington, DC 20202.
Executive Secretariat Liaison, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4090, Washington, DC 20202.

18–01–02

SYSTEM NAME:

Education Senior Management Biographies.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Secretary, Office of Public Affairs (OPA), U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E200, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on Department of Education (Department)senior management officials, including the Secretary, Deputy Secretary, Under Secretary, General Counsel, and Assistant Secretaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a short biography and a standard portrait photograph, both of which the senior Department official may elect to provide. The biography includes the official's name, title, office, and a brief overview of the duties performed at the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSES(S):

The information contained in this system is made available to the public and staff of the Department who have an interest in seeing the photographs or reading the background information on senior Department officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *General Interest Disclosure.* The records in this system may be released to the public who have an interest in the background or photographs or both of Department senior officials.

(2) *Media Disclosure.* The Department may disclose records in this system for use by the news media and education organizations when preparing articles, interviews or presentations at meetings with senior Department officials.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The biographies and photographs are available in electronic format on the Department's Internet website (*http://www.ed.gov*). Hard copies of the biographies and photographs are kept in file cabinets in OPA and in the individual offices of the respective Department senior officials.

RETRIEVABILITY:

The biographies and photographs are indexed by the officials' last names in alphabetical order. The general public is encouraged to access this information via the Department's website (*http://www.ed.gov*). Hard copies are retrieved by the last name of the senior Department official.

SAFEGUARDS:

No safeguards are in place since the Department senior management officials agree to the release of this information to the general public.

RETENTION AND DISPOSAL:

Paper copies of biographical information of senior level officials are transferred to the National Archives and Records Administration for permanent preservation at the end of each calendar year. Electronic copies of biographical information are periodically updated as circumstances warrant due to promotions, reassignments, resignations and death.

SYSTEM MANAGER AND ADDRESS:

Deputy Director, Office of Public Affairs (OPA), U.S. Department of Education, 400 Maryland Avenue, SW., 7E200, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, provide the system manager with your name, title and office at the time your biographical information was submitted. Requests for notification about an individual must meet the requirements of the regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager and provide the information described above in the Notification Procedure.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record, contact the system manager. Any requests to amend a record must meet the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the Offices of the Secretary, the Deputy Secretary, the Under Secretary, the General Counsel and the Assistant Secretaries.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18-02-01

SYSTEM NAME:

Even Start Performance Information Reporting System and Experimental Design Study.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Division of the Planning and Evaluation Service, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6W231, Washington, DC 20202.

Fu Associates, Ltd., 2300 Clarendon Boulevard, Suite 1400, Arlington, VA 22201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on the families and individuals (parents and children) who are participants in the study.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of the names and addresses of the program participants as well as their responses to interview questions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 6369.

PURPOSE(S):

The information in this system is used for the following purposes: (1) To fulfill the requirement in the Even Start legislation for evaluation of the effectiveness of the Even Start program; (2) To respond to the requirements of the Government Performance and Results Act (GPRA) to report out annually on indicators of program performance; (3) To meet the evaluation requirements of the Education Department's General Administrative Regulations (EDGAR) which stipulate that all grantees conduct annual evaluations; (4) To provide performance data useful to local, State, and Federal administrators, legislators, and policy-makers for program improvement and policy development; (5) To improve on performance indicators that can be used to review the program's implementation and impact; (6) To add to the knowledge base on the effects of family literacy programs by investigating the relationships between program processes and outcomes; (7) To provide evaluation data that can serve as a base on which additional evaluation studies that might be funded separately could build; and (8) To provide an analysis of changes over time in areas such as the types of families served by Even Start, the nature of Even Start projects, and the estimated gains made by adults and children while in the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(2) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(3) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(4) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(5) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(6) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(7) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(8) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintained records on CD–ROM and the contractor maintains data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed by a number assigned to each individual which is cross referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department of Education site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.The computer system employed by the Department

offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department of Education's Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of the Planning and Evaluation Service, Office of the Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6W231, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Responses from program participants.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–03–01

SYSTEM NAME:

Debarment and Suspension Proceedings under Executive Order (E.O.) 12549, the Drug-Free Workplace Act, and the Federal Acquisition Regulation.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

For records regarding actions under E.O. 12549 against individuals who are involved in nonprocurement transactions related to Department of Education programs, actions under the Drug-Free Workplace Act, and actions under the FAR 9.4: Contracts & Purchasing Office, Office of the Chief Financial Officer, U.S. Department of Education, Seventh and D Streets, SW., Room 3600, ROB-3, Washington, DC 20202–4249.

For records regarding actions under E.O. 12549 against an individual certified public accountant or principals of a CPA firm: Planning, Analysis, and Management Services, Office of Inspector General, U.S. Department of Education, 330 C Street, SW., Room 4022, Switzer Building, Washington, DC 20202–1510.

For records regarding actions under E.O. 12549 against principals of institutions of higher education, principals of lenders, or principals of guarantee agencies: Administrative Actions and Appeals Division, Institutional Participation and Oversight Service, Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh & D Streets, SW., Room 3082, ROB–3, Washington, DC 20202–5267.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals undergoing debarment or suspension proceedings and principals that have been debarred or suspended. Principals are officers, directors, owners, partners, key employees, or other persons who have a critical influence on or substantive control over a covered transaction, whether or not employed by a participant. A participant is any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. A covered transaction is described in the Department's regulations at 34 CFR 85.110(a)(1). Individuals receiving grants subject to requirements under the Drug-Free Workplace Act. Individual contractors undergoing debarment or suspension proceedings and contractors that have been debarred or suspended. Contractors covered by this system of records are individuals that directly or indirectly submit offers for or are awarded, or may reasonably be expected to submit offers for or be awarded, a government contract, or who conduct business, or may reasonably be expected to conduct business with the Department as an agent or representative of another contractor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains documents including written referrals, communications between the Department and the respondent, intra-agency and inter-agency communications regarding proposed or completed debarments or suspensions, and a record of any findings from debarment or suspension proceedings against individuals under E.O. 12549, the Drug-Free Workplace Act, and the FAR 9.4.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12549, Debarment and Suspension; secs. 5151–5160 of the Drug-Free Workplace Act; and the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4, Debarment, Suspension, and Ineligibility; Pub. L. 103–355, sec. 2455.

PURPOSE(S):

Information contained in this system of records is used to protect the Federal Government from the actions prohibited under the Department of Education (Department) debarment and suspension regulations, Drug-Free Workplace regulations, and the FAR; make decisions regarding debarments and suspensions; and ensure that other Federal agencies give effect to debarment or suspension decisions rendered by the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Litigation Disclosure.* In the event that one of the parties listed below is involved in litigation, or has an interest in litigation, the Department may disclose certain records to the parties described in paragraphs (2), (3), and (4) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any employee of Department in his or her individual capacity where the Department of Justice has agreed to provide or arrange for representation for the employee; or

(iv) Any employee of Department in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where Department determines that the litigation is likely to affect the Department or any of its components.

(2) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice or attorneys engaged by the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the Department of Justice.

(3) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, individual or entity designated by the Department or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation and is compatible with the purposes for which the records were collected, the Department may disclose those records as a routine use to the adjudicative body, individual or entity.

(4) *Opposing counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to an opposing counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the counsel, representative or witness.

(5) *Disclosure to the General Services Administration.* The Department makes information contained in this system of records available to the General Services Administration for inclusion in the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(6) *Disclosure to the Public.* The Department provides information to persons inquiring about individuals who have been debarred or suspended by the Department as necessary to enforce debarment and suspension actions.

(7) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(8) *FOIA Advice Disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(9) *Contract disclosure.* If the Department contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records as a routine use to those employees. Before entering such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* Where the appropriate official of the Department determines that an individual or organization is qualified to carry out specific research, that official may disclose information from this system of records to that researcher solely for the purpose of carrying out that research. The researcher shall be required to maintain Privacy Act safeguards with respect to such records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders in locked file cabinets.

RETRIEVABILITY:

The records are indexed by the names of the individuals.

SAFEGUARDS:

All physical access to the site where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee badge. Files are kept in locked file cabinets. Immediate access to these records is restricted to authorized staff.

RETENTION AND DISPOSAL:

Pending disposal, Debarment and Suspension records are retained at the system location. The Department will retain and dispose of the records in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Grants Policy & Oversight Staff, Contracts & Purchasing Office, Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3652, ROB–3, Washington, DC 20202–0498.

Assistant Inspector General for Planning, Analysis, and Management Services, Office of Inspector General, U.S. Department of Education, Maryland Avenue, SW., Room 4022, Mary E. Switzer Building, Washington, DC 20202–1510.

Director, Administrative Actions and Appeals Division, Institutional Participation and Oversight Service, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3082, ROB–3, Washington, DC 20202–5267.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual must provide the system manager his or her name, date of birth and social security number. Requests for notification about an individual record must meet the requirements of the regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If an individual wishes to gain access to a record in this system, he or she must contact the system manager and provide information as described in the notification procedure. Requests for access to an individual's record must meet the requirements of the regulations at 34 CFR 5b.5. Consistent with 5 U.S.C. 552a(e)(5), the Department retains the discretion not to disclose records to an individual during the course of a debarment or suspension proceeding against the individual.

CONTESTING RECORD PROCEDURES:

If an individual wishes to change the content of a record in the system of records, he or she must contact the system manager with the information described in the notification procedure, identify the specific item(s) to be changed, and provide a written justification for the change, including

any supporting documentation. Requests to amend a record must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Department employees involved in the management of grants and contracts, and other organizations or persons that may have relevant information regarding participants and their principals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–03–02

SYSTEM NAME:

Education's Central Automated Processing System (EDCAPS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Recipient System (RS), Payment Management Service & Reporting Unit, Financial Payments & Cash Management Operations, Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W202, Washington, DC 20202.

Financial Management Software System (FMSS), General Ledger Systems Group, Financial Reporting and Systems Operations, Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W202, Washington, DC 20202.

Contracts and Purchasing Support System, Support Services Group, Contracts and Purchasing Operations, Office of the Chief Financial Officer, U.S. Department of Education, Seventh & D Streets, SW., Room 3616, ROB–3, Washington, DC 20202–4651. Contracts and Purchasing Support System (CPSS) National Finance Center, Department of Agriculture, New Orleans, Louisiana.

Grants Administration and Payments System (GAPS) Grants and Contract Management System (GCMS) and the Payment Management System (PMS). The grant application portion of GAPS will be managed by the Grants Policy & Oversight Staff, Office of the Chief Financial Officer, GSA Regional Office Building 3, Seventh & D Streets, SW, Room 3652, Washington, DC 20202–4651. The GAPS payment process will be managed by Payment Management Service & Reporting Unit, Financial Payments & Cash Management Operations, Office of the Chief Financial Officer, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals include employees of the Department, consultants, contractors, grantees, advisory committee members, and other individuals receiving funds from the department for performing services for the Department. Although EDCAPS contains information about institutions associated with individuals, the purpose for which the Department collects and maintains information under this system of records, and its usage of this information, pertains only to individuals protected under the Privacy Act of 1974 (5 U.S.C. 552a).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain the individual's name, address, Social Security number, eligibility codes, detailed and summary obligation data, reports of expenditures, and grant management data, including application and close out information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 301.

PURPOSE(S):

The purpose of EDCAPS is to maintain financial and management records associated with the normal operations of the Department. Records are used for managing grant and contract awards, making payments, accounting for goods and services provided and received, enforcing eligibility requirements, conditions in awards and U.S. law relating to transactions covered by the system, and defending the Department in actions relating to those transactions. EDCAPS consists of four subsystems, as follows:

RS (Recipient System)

RS serves as the recipient database for EDCAPS land the central repository of recipients having a relationship with the Department (e.g., receiving grantees.) It maintains core information about a recipient and tracks reference data to support information on recipients (e.g., countries, states, and congressional districts).

FMSS (Financial Management Software System)

The purpose of FMSS is to serve as the official general ledger for the Department. It also performs all funds control checks for all EDCAPS obligations, either by the GAPS or by a contractor of the Department. FMSS maintains detailed information about obligations paid to the contractor and maintains general ledger level balance information for obligations paid directly by the Department through GAPS.

GAPS (Grants Administration and Payment System)

The purpose of GAPS is to administer the grants award processing from planning through closeout including disbursing funds to grants recipients for certain Department programs. Summary payment data are returned to FMSS for processing. GAPS maintains a record of grant awards by the Department, including management information collected during the award process. Payment information is retrievable in GAPS by Taxpayer Identification Number (TIN). The TIN for an individual is the social security number. The name, mailing address and other characteristic data related to federal grants or institutional loans are also maintained.

CPSS (Contract and Purchasing Support System)

The purpose of CPSS is to administer the contracts award process from planning to closeout. CPSS shares information with FMSS. CPSS maintains a record of contact awards by the Department, including management information collected during the award process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching agreement.

(a) *Litigation disclosure.*

(1) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the Department of Justice. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in such litigation:

(i) The Department or any component of the Department; or

(ii) Any employee of the Department in his or her official capacity; or

(iii) Any employee of the Department in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(iv) Any employee of the Department in his or her individual capacity where the agency has agreed to represent the employer; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(2) *Other litigation disclosures.* If the Department determine that disclosure of certain records to a court, adjudicative body before which the Department is authorized to appear, individual or entity designated by the Department or otherwise empowered to resolve disputes, counsel or other representative, or potential witness is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the court, adjudicative body individual or entity, counsel or other representative, or witness. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation;

(i) The Department or any component of the Department; or

(ii) Any employee of the Department in his or her official capacity; or

(iii) Any employee of the Department in his or her individual capacity where the Department has agreed to represent the employee; or

(iv) The United States where the Department determines that litigation is likely to affect the Department or any of its components.

(b) *FOIA advice of disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act or other authority permitting disclosure of records, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(c) *Contract disclosure.* The Department may disclose information from this system of records as a routine use to the private firm or contractor with which the Department contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an investigation, audit, inspection, or other inquiry. Such contract or private firm shall be required to maintain Privacy Act safeguards with respect to such information.

(d) *Enforcement disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation or any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(e) *Congressional member disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO A CONSUMER REPORTING AGENCY:

Disclosures pursuant to 5 U.S.C. 552(a)(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(e)(4) and the procedures contained in subsection 31 U.S.C. 3711(f). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Records are maintained on microfilm, microfiche, disk packs and magnetic tapes and stored in a retrievable file system.

RETRIEVABILITY:

Records are indexed by name, or other individual identifier, and TIN. The records are retrieved by a manual or computer search by indices.

SAFEGUARDS:

Direct access is restricted to authorized Department staff performing official duties. Authorized staff are assigned passwords which must be used for access to computerized data. Also, an additional password is necessary to gain access to the system. The system-access password is changed frequently. The data is maintained in a secured-access area.

RETENTION AND DISPOSAL:

Files are regularly updated. Records are maintained for ten years. Inactive records are purged from the automated file every five years.

SYSTEM MANAGER(S) AND ADDRESS:

The Registry System is managed by the Payment Management Service & Reporting Unit, Financial Payments & Cash Management Operations, Office of the Chief Financial Officer, U.S. Department of Education, Washington, DC 20202.

The Financial Management Software System is managed by the General Ledger Systems Group, Financial Reporting and Systems Operations, Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

The Contracts and Purchasing Support System is managed by the Support Services Group, Contracts and Purchasing Operations, Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3616, ROB–3, Washington, DC 20202–4651.

The grant application portion of the Grants Administration and Payments System will be managed by the Grants Policy & Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Room 3652, ROB–3, Washington, DC 20202–4651. The GAPS payment process will be managed by Payment Management Service & Reporting Unit, Financial Payments & Cash Management Operations, Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record pertaining to him or herself is the system of records, the individual should provide his or her name and Social Security number to the appropriate system manager. Such request must meet the requirements in the regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If an individual wishes to gain access to a record in this system, he or she should contact the appropriate system manager and provide information as described in the notification procedure. Requests by an individual for access to a record must meet the requirements in the regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If an individual wishes to change the content of a record pertaining to himself or herself that is contained in the system or records, he or she should contact the appropriate system manager with the information described in the notification procedure, identify the specific items requested to be changed, and provide a justification for such change. A request to amend a record must meet the requirements in the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system will be obtained from applicants applying for a Department contract, grant, or loan at the time of application. Information will also be obtained from Department program offices, employees, consultants, and others performing personnel services for the Department.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–03–03

SYSTEM NAME:

Receivables Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Office of the Chief Financial Officer, Financial Improvement and Receivables Group, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–4330.

Office of the Chief Information Officer, U.S. Department of Education, Seventh and D Streets, SW., Washington, DC 20202.

Nationwide Credit, Inc., Credit Claims and Collection, 2253 Northwest Parkway, Marietta, GA 30067.

Payco American Corporation, 180 N. Executive Drive, Brookfield, WI 53005–6011.

CSC Credit Services, Inc., 7909 Parkwood Circle, Suite 200, Houston, TX 77036–6565.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include: Persons billed by the Department of Education (Department) for materials and services such as Freedom of Information Act requests and computer tapes of statistical data, persons ordered by a court of law to pay restitutions to the Department, individuals who received grants under the Bilingual Education Fellowship Program and who have not provided evidence to the Department of fulfilling their work requirements as described in the Bilingual Education Fellowship Program Contract, individuals who have received funds through the Rehabilitation Services Administration (RSA) Scholarship program and who have not provided evidence of fulfilling their obligations under that program, current and former Department employees who received overpayments on travel allowances or who received salary overpayments and the overpayments have not been waived by the Department, individuals who were overpaid or inappropriately paid under grant programs administered by the Department other than Title IV of the Higher Education Act of 1965, as amended (HEA) and claims against individuals, including orders by a court or other authority to make restitution for the misuse of Federal funds in connection with any program administered by the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents maintained in the system include: activity logs, copies of checks, contracts, court orders, letters of notice, promissory notes, telephone logs, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966; Debt Collection Act of 1982; and the Debt Collection Improvement Act of 1996.

PURPOSE(S):

The Receivables Management System is a database system that is kept for servicing general consumer debts owed to the Department and issuing reports of operations and the status of accounts to the U.S. Department of Treasury (Treasury) and the Office of Management and Budget. The receivables are generated from bills to individuals for materials and services from the Department, claims arising from court-ordered restitutions for any program administered by the Department, loans and overpayments to individuals under programs other than the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended.

Records will be used by debt servicing staff to bill debtors to the Department and collect the debts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. Disclosures under the following routine uses may be made on a case-by-case basis or, in appropriate circumstances under computer matching agreements authorized under the Privacy Act of 1974 (5 U.S.C. 552a). Records may be disclosed for the following debt servicing program purposes:

(a) *Program purposes:* (1) To verify the identity and location of the debtor, disclosures may be made to credit agencies and Federal agencies. (2) To enforce the terms of a loan or where disclosure is required by Federal law, disclosure may be made to credit agencies, educational and financial institutions, and Federal, State, or local agencies.

(b) *Debt servicing.* Records under routine use may be disclosed to the United States Department of the Treasury and privately contracted collection companies for debt servicing.

(c) *Litigation disclosure.* (1) In the event that one of the parties listed below is involved in litigation, or has an interest in litigation, the Department may disclose certain records to the parties described in paragraphs (2), (3) and (4) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department;

(ii) Any Department employee in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity where the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any employee of the Department in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(2) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the DOJ.

(3) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve disputes is relevant and necessary to the

administrative litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the adjudicative body, individual or entity.

(4) *Opposing counsel, representatives and witnesses.* If the Department determines that disclosure of certain records to an opposing counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the counsel, representative or witness.

(5) *Enforcement disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting this violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(6) *Contract disclosure.* If the Department contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records as a routine use to those employees. Before entering into a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(7) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose individually identifiable information to OMB as necessary to fulfill CRA requirements.

(8) *Employee grievance, complaint or conduct disclosure.* Records may be disclosed if a record maintained in this system of records is relevant to present or former employee grievance, complaint, discipline or competence determination proceedings of another agency of the Federal Government. In this case, the Department may disclose the record as a routine use in the course of the proceedings if the disclosure is compatible with the purposes for this system of records.

(9) *Labor organization disclosure.* Records under this routine use may be disclosed whenever a contract between a component of the Department and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(10) *Research disclosure.* Records under this routine use may be disclosed whenever an appropriate official of the Department determines that an individual or organization is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher is required to maintain Privacy Act safeguards with respect to these records.

(11) *Freedom of Information Act (FOIA) Advice Disclosure.* Records under this routine use may be disclosed to the DOJ and the OMB in the event that the Department deems it desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(12) *Disclosure to the Department of Justice.* Records may be disclosed under this routine use to the DOJ from this system of records as a routine use to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(13) *Congressional member disclosure.* The Department may disclose information from this system of records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Members' right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records under this system will be kept on paper files in metal file cabinets and in data files in computers. They are stored in desk top and mainframe computers with records backed up on magnetic media.

RETRIEVABILITY:

The data will be retrieved by name, loan or case number, or Social Security number.

SAFEGUARDS:

All physical access to the sites of the Department of Education and the contractors where this system of records is maintained, are controlled and monitored by security personnel who check each individual entering the building for an employee's or visitor's badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department of Education and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system are given a unique user ID. All interactions by individual users with the system are recorded.

At contractor sites, access to all automated data processing facilities are restricted by photo identification, sign-in and out logs, CYPHER locks, or ID card readers. Smoke and fire detection devices are installed and maintained operational on all facilities including tape and disk library areas. Physical security of the building involves restricted access as well as 24-hour security guard at the ground-floor entrance to the building. Access to building is obtained through the use of key entry doors. The system permits entry to an individual only with an access code.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the National Archives and Records Administration's General Records Schedule (GRS) 6, items 1a, 10b, and 10c; and GRS 7.

SYSTEM MANAGERS AND ADDRESS:

Director, Financial Improvement and Receivables Group, Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3117, Washington, DC 20202–4330.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual should provide the system manager his or her name, Social Security number, case or loan number, or other debt identifying number. Requests for notification about an individual must meet the requirements in the regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If an individual wishes to gain access to a record in this system, he or she should contact the system manager and

provide information described in the notification procedure. Requests by an individual for access to a record must meet the requirements in the regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If an individual wishes to change the content of a record in the system of records, he or she should contact the system manager with the information described in the notification procedure, identify the specific item(s) to be changed, and provide a written justification for the change. Requests to amend a record must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from Department program offices, debtors, court orders, and probation officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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SYSTEM NAME:

Files and Lists of Potential and Current Consultants, Grant Application Reviewers Peer Reviewers, and Site Visitors.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See the Appendix attached to this system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been or may be used by the Department as consultants, field readers, grant application reviewers, peer reviewers or site visitors, to review and evaluate various program activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, title, institutional or agency affiliation, resume, social security number or other individual identifier, compensation and/or reimbursement information (if any), and area(s) of individual expertise of each individual serving as a consultant, field reader, grant application reviewer or site visitor. Records of past performance of individuals covered by this notice. Disability (if special arrangement need to be made).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1221e–3(a)(1), (b), 1232, and 3474.

PURPOSE(S):

The Department uses the information in this system of records to determine qualification and fitness of individuals the Department may use to review and evaluate documents, programs, and projects of the Department of Education, its grantees and contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose personally identifiable information from this record system for the following purposes:

(1) *Congressional member disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(2) *Enforcement disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, The Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, The Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If The Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(4) *Employment, benefit, and contracting disclosure.*

(5) *For decisions by the Department.* A record from this system of records may be disclosed as a "routine use" to a Federal, state, or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(6) *For decisions by other Federal agencies.* A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

(7) *Employee conduct disclosure.* If a record maintained by The Department is relevant to an employee discipline or competence determination proceeding of another agency of the Federal Government, The Department may disclose the record in the course of the proceeding.

(8) *Labor organization disclosure.* Where a contract between a component of the Department and a labor organization recognized under Chapter 71, U.S.C. Title V provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such an organization.

(9) *FOIA advice disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(10) *Contract disclosure.* When the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(11) *Research disclosure.* The Department may, if the disclosure of a record is compatible with the purpose for which the record was collected, disclose a record from this system of records as a routine use to individuals and organizations deemed qualified by the Secretary to carry out specific research solely for the purpose of carrying out such research.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file cabinets or card files and (in limited locations) computer tapes and disks.

RETRIEVABILITY:

By name, title, area(s) of individual expertise, dates served, institutional or agency affiliation, or social security number of potential, current or past consultant, field reader, grant application reviewer, or site visitor.

SAFEGUARDS:

Direct access is restricted to persons designated by system managers to be responsible for maintenance of file(s) or decisions regarding selection of consultants, field readers, grant application reviewers, or site visitors. Automated locations are protected by requiring a password as well as ID users' code.

RETENTION AND DISPOSAL:

Records regarding an individual are destroyed 5 years after the last time the Department makes use of the individual's services.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Office, Office of Chief Financial and Chief Information Office, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4E213, Washington, DC 20202. See the Appendix to this system notice for additional system managers.

NOTIFICATION PROCEDURE:

Contact system manager of pertinent organizational component(s) and provide identification information required under 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

Information provided voluntarily by individuals interested in serving as consultants, field readers, grant application reviewers, or site visitors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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Additional System Managers and System Locations

Supervisor, Management and Program Analyst, Office for Civil Rights, U.S. Department of Education, 330 C Street, SW., Room 5026, Washington, DC 20202.
Supervisor, Management and Program Analyst, Office for Civil Rights, U.S. Department of Education, 330 C Street, SW., Room 5026, Washington, DC 20202.
Policy Coordinator Analyst, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W337, Washington, DC 20202.
Director, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W300, Washington, DC 20202.
Management and Program Analyst, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4082, Washington, DC 20202.
Customer Service Specialist, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3113, Washington, DC 20202.
Executive Secretariat Liaison, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4090, Washington, DC 20202.
Director, International Education and Graduate Programs Service, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5247.
Director, Office of Indian Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Room 4300, Portal Building, Washington, DC 20202–6335.

18–04–02

SYSTEM NAME:

Freedom of Information Act and Privacy Act Tracking System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Information Management Group, Office of the Chief Information Officer, U.S. Department of Education, Seventh and D Streets, Room 5624, ROB–3, Washington, DC 20202–4651. See the Appendix at the end of this notice for additional system locations at Headquarters and Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who have submitted or were the subjects of requests made under the provisions of the Freedom of Information Act and under the Privacy Act of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of names, addresses, dates of request and responses, descriptions or identifications of records requested, amount of fees paid, if any; payment delinquencies, if any; final determinations of appeals or denials and summary of log. Copies of requested records are not maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552a).

PURPOSE(S):

This system is used to document and track the status of requests made under both the Freedom of Information Act and the Privacy Act. This system is also used to generate the annual report to the Department of Justice (DOJ) as required by the Freedom of Information Act and the biennial report to the Office of Management and Budget (OMB) and Congress as required by the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(2) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(3) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(4) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(5) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(6) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in machine-readable media.

RETRIEVABILITY:

Records are retrieved by the name of the individual, the date of the request, the control tracking number and the associated principal office.

SAFEGUARDS:

Access to the tracking system requires a user-ID and is strictly limited to authorized individuals.

RETENTION AND DISPOSAL:

Information in the system is erased after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Officer and Privacy Act Officer, Information Management Group, Office of the Chief Information Officer, 400 Maryland Avenue, SW., Room 5624, ROB–3, Washington, DC 20202–2651. See the Appendix at the end of this notice for a list of FOIA Coordinators.

NOTIFICATION PROCEDURE:

If you wish to inquire whether a record exists regarding you in this system, you should contact the appropriate system manager. Inquiries must provide your name, date of the request, name of organization, and subject matter. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

The Department systems of records that are exempt from certain Privacy Act requirements may be included in this system as part of a FOIA/PA case record. Such material retains its exemption if it is included in this system of records. The section of this notice titled, "Systems Exempted from Certain Provisions of the Act," explains the exemptions for this system. Individuals wishing to request access to their records should contact the system manager at the appropriate office or region where their original Privacy Act and/or Freedom of Information Act request was sent or from which they received responses to such requests. Individuals requesting access must comply with the Department's Privacy Act regulations regarding verification of identity and access to records 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

The Department systems of records that are exempt from certain Privacy Act requirements may be included in this system as part of a FOIA/PA case record. Such material retains its exemption if it is included in this system of records. The section of this notice titled, "Systems Exempted from Certain Provisions of the Act," explains the exemptions for this system. Individuals wishing to request amendment to their records should contact the system manager at the appropriate office or region where their original Freedom of Information and/or Privacy Act requests were sent or from which they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual to whom the information applies, officials of the Department, official Department documents.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Department has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7). During the course of a FOIA/PA action, exempt materials from those other systems may become part of the case records in this system. To the extent that copies of exempt records from those other systems are entered into these FOIA/PA case records, the office has claimed the same exemptions for the records as they have in the original primary systems of records of which they are a part.

Appendix to 18–04–02

FOIA Coordinators

Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., 400 Maryland Avenue, SW., Room 7C122, FOB–6, Washington, DC 20202.

Office of the Chief Financial Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4E223, Washington, DC 20202.

Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 602E, Capitol Place, Washington, DC 20208.

Office of Special Education and Rehabilitative Services, U.S. Department of Education, 330 C Street, SW., Room 3613, Switzer Building, Washington, DC 20202.

Office of Vocational and Adult Education, U.S. Department of Education, 330 C Street, SW., Room 4064, Switzer Building, Washington, DC 20202.

Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6C142, FOB–6, Washington, DC 20202.

Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W211, FOB–6, Washington, DC 20202.

Office of Special Education and Rehabilitative Services, U.S. Department of Education, 330 C Street, SW., Room 3112, Switzer Building, Washington, DC 20202.

Office of Inspector General, U.S. Department of Education, 330 C Street, SW., Room 4200, Switzer Building, Washington, DC 20202.

Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W341, FOB–6, Washington, DC 20202.
Office of Public Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E201, FOB–6, Washington, DC 20202.
Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh and D Streets, SW., Room 4913, ROB–3, Washington, DC 20202.
Office for Civil Rights, U.S. Department of Education, 330 C Street, SW., Room 5424, Switzer Building, Washington, DC 20202.
Office of Bilingual Education and Minority Affairs, U.S. Department of Education, 330 C Street, SW., Room 5616, Switzer Building, Washington, DC 20202.
Office of Educational Research and Improvement, , U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W332, FOB–6, Washington, DC 20202.

Regional FOIA Review Officers

Region I: Deputy Regional Director, OCR, John W. McCormack P.O. and Courthouse, Room 540, Post Office Square, Boston, MA 02105–4557.
Region II: Regional Director, OCR, 75 Park Place, 12th Floor, New York NY 10278–0043.
Region III: Assistant to the Secretary's Regional Representative, 3535 Market Street, Room 16350, Philadelphia 19104–3398.
Region IV: Regional Director, OCR, 61 Forsyth Street, SW, Suite 19T40, Atlanta, GA 30303.
Region V: Education Program Specialist, Division of Dissemination, OSFAP, 111 N. Canal Street, Suite 1094, Chicago, IL 60606.
Region VI: Education Program Specialist, 1200 Main Tower Building, #2260, Dallas, TX 75202–4309.
Region VII: Education Program Specialist, OSFAP, 10220 N. Executive Hills Blvd., 8th Floor, Kansas City, MO 64153–1367.
Region VIII: Public Information Specialist, Federal Office Building, 1244 Speer Blvd., Room 300, Denver, CO 80204–3582.
Region IX: Education Program Specialist, OSFAP, 50 United Nations Plaza, San Francisco, CA 94102
Region X: Education Program Specialist, OSFAP, Room 3362, Mail Code 10–9060, 915 2nd Avenue, Seattle, WA 98174–1099.
Metro Region: Program Specialist, Office for Civil Rights, U.S. Department of Education, 1100 Pennsylvania Avenue, NW, Washington, DC 20044.

18–04–02

SYSTEM NAME:

Freedom of Information Act and Privacy Act Tracking System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Chief Information Officer, Information Management Group, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, ROB–3, Washington, DC 20202–4651. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have submitted: Requests for information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials. Requests under the provisions of the Privacy Act (5 U.S.C. 552a) for records about themselves, including: Requests for notification of the existence of records about them. Requests for access to these records. Requests for amendment of these records. Requests for review of initial denials of such requests for notification, access, and amendment. Requests for an accounting of disclosure of records about them.

Note: Since these FOIA/PA case records contain inquiries and requests regarding any of the Department's other systems of records subject to the Privacy Act, information about individuals from any of these other systems may become part of this Freedom of Information Act and Privacy Act System.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests by individuals to the Department for: Information under the provisions of the Privacy Act (5 U.S.C. 552), including requests for review of initial denials of such requests. Information under the provisions of the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under the Department's Privacy Act regulations, including requests for: Notification of the existence of records about them. Access to records about them. Amendment of records about them. Review of initial denials of such requests for notification, access, or amendment. Requests for an accounting of disclosure of records about them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments: The Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and the Department's Public Information Regulation (34 CFR part 5).

PURPOSE(S):

These records are maintained to process an individual's request made under the provisions of the Freedom of Information and Privacy Acts. The records are also used by the Department to prepare its reports to OMB and Congress required by the Freedom of Information and Privacy Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information will be released for the purposes cited in Appendix B of the Department's Privacy Act regulations (34 CFR part 5b). Disclosure may be made to a Congressional office from the record of an individual in response to an Inquiry from the Congressional office made at the request of that individual. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to affect directly the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee. The Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not Applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on machine-readable media and/or as paper copies in file folders or binders.

RETRIEVABILITY:

For the most part, records are retrieved by the name of the individual on whom they are maintained, the year of the request, and the control tracking number. Records are available to FOIA staff involved in correspondence and investigative processes, including appeals officials and staff members of the OGC.

SAFEGUARDS:

Records are maintained in Conserva-File cabinets in the Office of the Department's FOIA Officer and the Privacy Act Officer, and in the offices of Department personnel whose duties require access. Access to the FOIAS System, and to the associated paper

records is strictly limited to these individuals.

RETENTION AND DISPOSAL:

These records will be disposed of 5 years after the date of final Department action on the case. Records are destroyed by shredding, burning magnetic erasure, or the equivalent.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Officer and Privacy Act Officer, Room 5624, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202, are responsible for Departmental records, including both FOIAS and paper records. The appropriate Assistant Secretary, the General Counsel, the Office of the Inspector General, and the Secretary's Regional Representatives are the system managers for the Freedom of Information and Privacy Act records maintained in their offices.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from

—The individual to whom the information applies. Officials of the Department. Official Department documents.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Department has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7). During the course of a FOIA/PA action, exempt materials from those other systems may become a part of the case records in this system. To the extent that copies of exempt records from those other systems are entered into these FOIA/PA case records, the office has claimed the same exemptions for the records as they have in the original primary systems of records of which they are a part.

Appendix to 18–04–02

Additional System Locations and System Managers

Region I: Deputy Regional Director, OCR, John W. McCormack PO and Courthouse, Room 540, Post Office Square, Boston, MA 02105–4557.

Region II: Regional Director, OCR, 75 Park Place, 12th Floor, New York NY 10278–0043.

Region III: Assistant to the Secretary's Regional Representative, 3535 Market Street, Room 16350, Philadelphia 19104–3398.

Region IV: Regional Director, OCR, 61 Forsyth Street, SW., Suite 19T40, Atlanta, GA 30303.

Region V: Education Program Specialist, Division of Dissemination, OSFAP, 111 N. Canal Street, Suite 1094, Chicago, IL 60606.

Region VI: Education Program Specialist, 1200 Main Tower Building, #2260, Dallas, TX 75202–4309.

Region VII: Education Program Specialist, OSFAP, 10220 N. Executive Hills Blvd., 8th Floor, Kansas City, MO 64153–1367.

Region VIII: Public Information Specialist, Federal Office Building, 1244 Speer Blvd., Room 300, Denver, CO 80204–3582.

Region IX: Education Program Specialist, OSFAP, 50 United Nations Plaza, San Francisco, CA 94102.

Region X: Education Program Specialist, OSFAP, Room 3362, Mail Code 10–9060, 915 2nd Avenue, Seattle, WA 98174–1099.

Metro Region: Program Specialist, Office for Civil Rights, U.S. Department of Education, 1100 Pennsylvania Avenue, NW, Washington, DC 20044.

18–05–01

SYSTEM NAME:

Departmental Parking Control Policy.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Director, Quality Workplace Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2E315, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department employees and non-Department carpool members utilizing parking facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the following information on all persons applying for a parking permit: Name, office room number, office phone number, agency, home address, and automobile license number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

63 Stat. 377;41 CFR 101–20.111.

PURPOSE(S):

The information contained in this system is used to: (1) Provide standards for apportionment and assignment of parking spaces on Department-managed and Department-controlled property and on property assigned to the Department by the General Services Administration or any other Agency, and (2) allocate and check parking spaces assigned to government vehicles, visitors, handicapped personnel, executive personnel, carpool and van pools and others.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS NO THE PURPOSES OF SUCH USE:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Congressional Member Disclosure.* The Department may disclosure records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(2) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(3) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(4) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in binders in file cabinets.

RETRIEVABILITY:

Records are filed alphabetically by location.

SAFEGUARDS:

All physical access to the Department of Education site where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

RETENTION AND DISPOSAL:

Superseded policy materials are maintained by the Director, Quality Workplace Group for historical purposes. Records at other Department locations are maintained until the Parking Control purpose has been met, and the records are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Quality Work Group (QWG), Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2E315, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, provide the system manager with your name, social security number, agency and office and the location where Department parking is provided. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure. Requesters should also reasonably specify the record contents sought. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

Contact the system manager at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system are obtained from reports submitted by Department Staff, Principal Offices and Regional Offices, GSA–Federal Management circulars and Federal Property Management Regulations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–05–02

SYSTEM NAME:

Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) Record Systems.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Family Policy Compliance Office, Office of Management, U.S. Department of Education, Room 2W100, Washington, DC 20202–4506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have made inquiries or who have filed complaints alleging violations of provisions in FERPA and PPRA; and those who have commented to the Department on its proposed rules and practices.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of correspondence alleging violations of FERPA and PPRA as well as comments submitted to the Department on its proposed rules and practices.

AUTHORITY OF MAINTENANCE OF SYSTEM:

Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and Protection of Pupil Rights Amendment (20 U.S.C. 1232h).

PURPOSE(S):

Information contained in this system is used to resolve disputes regarding violations of FERPA and PPRA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Member of Congress Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested.

(2) *Educational Agency or Institution.* The Department may disclosure records from this system of records to an educational agency or institution against which a complaint has been made.

(3) *State Educational Agency.* The Department may disclose records to a State educational agency relative to an educational agency or institution in that State against which a complaint has been filed.

(4) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(5) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to FERPA or PPRA investigations or other enforcement responsibilities under FERPA or PPRA;

(6) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(9) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hard-copy form filed in standard lockable file cabinets, or on electronic files in which case document disks are kept in lockable file cabinets.

RETRIEVABILITY:

Records are indexed under the names of institutions against which individuals are alleging violations of FERPA.

SAFEGUARDS:

Direct access is restricted to FPCO staff; main files are left in locked file cabinets when not in use.

RETENTION AND DISPOSAL:

Inquiry records are maintained a minimum of three years; complaint and investigative records are maintained a minimum of five years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W100, Washington, DC 20202-4056.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from incoming correspondence, responses and material obtained during the course of any investigation.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18-05-04

SYSTEM NAME:

Discrimination Complaints Records System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Equal Employment Opportunity Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue SW, Room 2W228, Washington, DC 20202–4550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals—employees as well as applicants for employment—or groups of individuals who have filed Equal Employment Opportunity (EEO) complaints of discrimination on the basis of race, color, religion, sex (including sexual harassment or sexual orientation), national origin, age, disability, or reprisal for having engaged in a prior EEO activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of records concerning the Department's formal complaints of discrimination processes, including counselor' reports, the initial allegations and efforts at resolution, letters or notices to the individual or class agent, materials placed into the record to support or refute the decision or determination, statements to witnesses, investigative reports, instructions about action to be taken to comply with decisions, and related correspondence, opinions and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e; 29 U.S.C. 633a; Executive Order 11478; 29 CFR 1614.

PURPOSE(S):

The Equal Employment Opportunity Group uses the information contained in this system to adjudicate complaints or appeals, to provide a basis for a corrective action related to the discrimination situation and as a data source for management information for production of descriptive statistics and analytical studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure to OMB, MSPB and EEOC.* The Department may disclose records to the Office of Personnel Management, Merit Systems Protection Board (including its Office of the Special Counsel), or the Equal

Employment Opportunity Commission for the purpose of carrying out their functions.

(2) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event of litigation where one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to directly affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders and binders inside a file room centrally situated within the EEOG office.

RETRIEVABILITY:

The records are indexed by formal complaint case numbers, and cross-referenced by a separate log identifying the names of the individuals or class agents on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require access. Physical security of the file room and entire office area involves lockable entry doors with off-the-master keys.

RETENTION AND DISPOSAL:

The complaint cases of discrimination may be retired to the Federal Records Center three years after their final disposition through the administrative (and judicial, as applicable) processes.

SYSTEM MANAGERS AND ADDRESS:

Director, Equal Employment Opportunity Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-4550.

NOTIFICATION PROCEDURE:

If you wish to determine if a record exists regarding you in this system of records, contact the system manager at the address listed above. You should include your name, date of birth, Departmental principal office in which the situation arose, the approximate date, and the type of action taken. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records regarding you in this system of records, follow the procedures described above under Notification Procedure. You should also reasonably specify the record contents being sought. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest information contained in this system of records, you should contact the system manager at the address listed above. You should reasonably identify the record and specify the information to be contested. Your request should satisfy the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals to whom the record pertains, Department officials or other officials, statements from employees or other witnesses, official documents pertinent to the complaint and correspondence from specific organizations or persons.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–05–05

SYSTEM NAME:

Grievances Filed Formally Under the Administrative Grievance Procedure.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Human Resources Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2E200, Washington, DC 20202. See the Appendix at the end of this system notice for additional locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on non-bargaining unit employees of the Department regardless of type of appointment, who individually or as a group, request personal relief in a matter of concern or dissatisfaction which is subject to the control of Department management. This includes former employees of the Department for whom a remedy can be provided as well as applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information or documents relating to the grievance and personal relief sought, materials used in consideration of the grievance, and correspondence related to disposition of the grievance, including but not limited to the formal grievance, fact finder's report, final decision, and all other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302.

PURPOSE(S):

The information contained in this system is to consider and settle matters of dissatisfaction or concern of covered individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written

request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy stored in file folders, on computers and in handwritten logs for Human Resources. Summary data of records are also maintained in a computerized tracking system.

RETRIEVABILITY:

Records are indexed alphabetically by organization and year.

SAFEGUARDS:

Access to and use of these records are limited to those persons with a "need-to-know" and whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Computers are password protected for individuals with access. All data bases are designed with stringent security measures to control individual users' ability to access and alter records within the system.

RETENTION AND DISPOSAL:

Records are retained for three (3) years after the grievance case is closed, and are then destroyed, as set forth in the General Records Schedule 1, Civilian Personnel Records, Item 30(a).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor Relations Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W300, Washington, DC 20202. See the Appendix at the end of this system notice for additional system managers.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records regarding you in this system of records, contact the system manager at the address listed above and follow the steps outlined in the Notification Procedure. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record in this system of records, contact the system manager at the address listed above. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information in this system of records is supplied from the following sources: Directly by the individual filing the grievance, from information supplied by the individual, by testimony of witnesses, employee representatives, Department employees or officials.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–05–05

Additional System Locations and System Managers

Director, Human Resources Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.
Employee Relations Team, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2E233, Washington, DC 20202–4737.
U.S. Department of Education, Regional Personnel Office O'Neill Federal Building, 10 Causeway Street, Room 1095 Boston, MA 02222.
U.S. Department of Education, Regional Personnel Office 75 Park Place, 12th Floor, New York, NY 10007.
U.S. Department of Education, Regional Personnel Office 3535 Market Street, Room 16300, Philadelphia, PA 19104.
U.S. Department of Education, Regional Personnel Office 61 Forsyth Street, SW, Suite 18T55, Atlanta, GA 30303.
U.S. Department of Education, Regional Personnel Office 111 N. Canal Street, Room 1084, Chicago, IL 60606.
U.S. Department of Education, Regional Personnel Office 1999 Bryan Street, Suite 2710, Dallas, TX 75201–6817.
U.S. Department of Education, Regional Personnel Office 10220 North Executive Hills Boulevard, 9th Floor, Kansas City, MO 64153.
U.S. Department of Education, Regional Personnel Office 1244 Speer Boulevard, Room 353, Denver, CO 80204–3582.
U.S. Department of Education, Regional Personnel Office 50 United Nations Plaza, Room 207, San Francisco, CA 94102–4987.
U.S. Department of Education, Regional Personnel Office 915 Second Avenue, Room 3388, Seattle, WA 98174–1099.

18–05–06

SYSTEM NAME:

Grievance Records Filed under Procedures Established By Labor-Management Negotiations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Labor Relations Group, Office of Management, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C136, Washington, DC 20202–4754.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on present and past bargaining unit employees of the Department covered by the Collective Bargaining Agreement between the Department and American Federation of Government Employees Council 252.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of a variety of records relating to an employee's grievance filed under procedures established by labor-management negotiations including employee's name, Social Security number, grade, job title, testimony of witnesses, material placed into the record to support the decision, the arbitrator's decision, the arbitrator's report, and a record of an appeal to the Federal Labor Relations Authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7101.

PURPOSE(S):

The information in this system is used to make determinations and to document a decision made on a grievance filed by an employee under the negotiated grievance procedures. Information from this system may be used by Department officials for preparing statistical summary or management reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the

Act, under a computer matching agreement.

(1) *Agency Disclosure.* The Department may disclose information from this system to the Office of Personnel Management, Merit Systems Protection Board (including its Office of Special Counsel), Equal Employment Opportunity Commission, and the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Systems Impasses Panel) to facilitate their administrative or enforcement functions.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(4) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(7) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

(8) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components;

(vi) The arbitrator that the Department and AFGE Council 252 contracts to hear arbitration hearings as the result of invocation of arbitration under the collective bargaining agreement between them.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, The Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy and a list of individual names is maintained in electronic media.

RETRIEVABILITY:

Records are retrievable by file number which are cross-referenced by individual names.

SAFEGUARDS:

When not in use by authorized persons, these records are stored in metal file cabinets stored within the secured suite of the Labor Relations Group. Access to and use of these records are limited to personnel who have a need for the records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed 5 years after final resolution of case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor Relations Group, Office of Management, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C136, Washington, DC 20202–4754.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, approximate date of grievance, and management

component and/or individual against whom the grievance was filed. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager at the above address. Your request must meet the requirements of the at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of records regarding you in this system, contact the system manager at the above address and reasonably identify the record and specify the information contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained directly from information supplied by the individual; testimony of witnesses, union officials, or by Department officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–05–07

SYSTEM NAME:

Unfair Labor Practice Records.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Labor Relations Group, Office of Management, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C136, Washington, DC 20202–4754.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on present and past Department employees and union officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of a variety of records relating to an unfair labor practice charge including the employee's name, Social Security number, grade, job title, employment history and a variety of work and personnel records associated with the charges and required under proceedings established by 5 U.S.C. 7101 and Department of Labor Regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7101.

PURPOSES:

The information in this system is used in the processing, investigation and litigation of unfair labor practice charges that may be filed by the AFGE Council 252, any of the AFGE Local offices located at Department Headquarters and each of 10 regional offices and by bargaining unit employees of the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Agency Disclosure.* The Department may disclose information from this system to the Office of Personnel Management, Merit Systems Protection Board (including its Office of Special Counsel), Equal Employment Opportunity Commission, and the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Systems Impasses Panel) to facilitate their administrative or enforcement functions.

(2) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

1(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components;

(vi) The arbitrator that the Department and AFGE Council 252 contracts to hear arbitration hearings as the result of invocation of arbitration under the collective bargaining agreement between them.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy and a list of individual names are kept on electronic media.

RETRIEVABILITY:

Records are retrievable by file number which are cross-referenced by individual names.

SAFEGUARDS:

When not in use by authorized persons, these records are stored in metal file cabinets stored within the secured suite of the Labor Relations Group. Access to and use of these records are limited to personnel who have a need for the records in the performance of official duties.

RETENTION AND DISPOSAL:

According to the Records Retention Schedule of the NARA, records are maintained for 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor Relations Group, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C136, Washington, DC 20202-4754.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, approximate date of record, the unfair labor practice charges as specified by the complainant, and management component against which the charge was filed. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager at the above address. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of records regarding you in this system, contact the system manager at the above address and reasonably identify the record and specify the information contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATAGORIES:

Information in this system of records is:

(1) Supplied directly by the individual; or

(2) Derived from information supplied by the individual; or

(3) Supplied by testimony of witnesses; or

(4) Supplied by Department officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISISIONS OF THE ACT:

None.

18-05-08

SYSTEM NAME:

Official Time Records of Union Officials and Bargaining Unit Employees at the Department of Education.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Labor Relations Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-4754. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current and former Department professional and nonprofessional employees who are non-temporary, non-schedule C, non-supervisory and non-managerial employees and union officials who report use of official time as defined under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of the individual employees' Department Flexible Schedule Certification Form and the electronic transcript of the number of hours attributable for each pay period into an active accounting of total hours used by each individual employee to be reported to authorized Executive Branch agencies and to the Congress as requested.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

Federal Service Labor Management Relations Statute (FSLMRS), 5 U.S.C. 7101.

PURPOSES:

The information contained in this system is used to determine compliance with the collective bargaining agreement between the U.S. Department of Education and the American Federation of Government Employees' Council of Education Locals, No. 252 under the FSLMRS and to produce reports as may be required by the Congress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATAGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Agency Disclosure.* The Department may disclose information from this system to the Office of Personnel Management, Merit Systems Protection Board (including its Office of Special Counsel), Equal Employment Opportunity Commission, and the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Systems Impasses Panel) to facilitate their administrative or enforcement functions.

(2) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components;

(vi) The arbitrator that the Department and AFGE Council 252 contracts to hear arbitration hearings as the result of invocation of arbitration under the collective bargaining agreement between them.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department

determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Records are maintained in hard copy and electronic media after transcription from hard copy.

RETRIEVABILITY:

Records are retrievable by name.

SAFEGUARDS:

Records are stored in electronic databases stored in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

According to the National Archives and Records Administration's General Records Schedules, records are maintained for 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor Relations Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2C136, Washington, DC 20202-4754.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, approximate date of grievance, and management component or individual or both against whom the grievance was filed. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager at the above address. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of records regarding you in this system, contact the system manager at the above address and reasonably identify the record and specify the information contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is:

(1) Supplied directly by the individual, or

(2) Supplied by union officials, or

(3) Supplied by Department officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18-05-08

Additional system Locations

Employee Relations Team, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2E233, Washington, DC 20202-4737.

Informal Dispute Resolution Center, Office of Hearings and Appeals, U.S. Department of Education, L'Enfant Plaza, Room 2100A, Washington, DC 20202.

Regional Personnel Office, U.S. Department of Education, O'Neill Federal Building, 10 Causeway Street, Room 1095, Boston, MA 02222.

Regional Personnel Office, U.S. Department of Education, 75 Park Place, 12th Floor, New York, NY 10007.

Regional Personnel Office, U.S. Department of Education, Wanamaker Building, 100 Penn Square East, Suite 503, Philadelphia, PA 10107.

Regional Personnel Office, U.S. Department of Education, 61 Forsyth Street, SW, Suite 8T55, Atlanta, GA 30303.

Regional Personnel Office, U.S. Department of Education, 111 N. Canal Street, Room 1084, Chicago, IL 60606.

Regional Personnel Office, U.S. Department of Education, 1999 Bryan Street, Suite 2710, Dallas, TX 75201-6817.

Regional Personnel Office, U.S. Department of Education, 10220 North Executive Hills Boulevard, 9th Floor, Kansas City, MO 64153.

Regional Personnel Office, U.S. Department of Education, 1244 Speer Boulevard, Room 353, Denver, CO 80204-3582.

Regional Personnel Office, U.S. Department of Education, 50 United Nations Plaza, Room 207, San Francisco, CA 94102-4987.

Regional Personnel Office, U.S. Department of Education, 915 Second Avenue, Room 3388, Seattle, WA 98174-1099.

18-05-09

SYSTEM NAME:

Voluntary Leave Transfer (VLT) Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Director, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W300, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on Department of Education employees seeking voluntary donations of annual leave from other federal employees in order to cover leave shortfalls brought about by documented medical emergencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of written applications of employees seeking assistance from the program, medical statements certifying need, agency approvals or denials, leave donation records, leave transfer records, supervisor/timekeeper approvals, payroll notification records, leave program termination records, and other related documents. Most of these records contain individual Social Security numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100–566; 5 CFR 630.913.1.

PURPOSE(S):

The information contained in this system is used for the purposes of determining program eligibility and for documenting voluntary transfers of leave to program recipients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records to (1) the Office for Personnel Management in order to respond to requests for information or other official inquiries;

and (2) the staff of the Department of Interior responsible for preparation of payroll documents,

(2) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(3) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(4) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(5) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(6) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to the Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(7) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER PROTECTION AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders in a manual filing system.

RETRIEVABILITY:

Records are retrievable by name of program recipient.

SAFEGUARDS:

Access to and use of these records are limited to personnel whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are retained for one year after the end of the year in which the file is closed and are then destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W300, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, approximate date of grievance, and management component and/or individual against whom the grievance was filed. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system

manager at the above address. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of records regarding you in this system, contact the system manager at the above address and reasonably identify the record and specify the information contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual to whom it applies, is derived from information he or she supplied or is obtained from information supplied by others.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THIS ACT:

None.

18–05–10

SYSTEM NAME:

General Performance Appraisal System (GPAS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Human Resources Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2E300, Washington, DC 20202–4737. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The U.S. Department of Education (Department), General Performance Appraisal System (GPAS) contains the performance appraisal of all Department employees in General Schedule (GS), General Merit (GM), Administratively Determined (AD), and prevailing rate plans.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Department GPAS software holds two categories of data on employees participating in Department's performance appraisal process. These records include:

(1) Personnel data, such as name, social security number, organizational entity, supervisor, position title, series and grade; and

(2) Performance appraisal data: GPAS Employee Performance Agreement, evaluation standards, list of evaluators, scores and comments.

Hard copies of an employee's GPAS Employee Performance Agreement, Rating of Record, and any required comments are maintained in an Employee Performance File (EPF). These files are located in cabinets in a locked secure room with Department employees' Official Personnel Folders.

Hard copies of the "Summary Evaluation and Comments Reports", are generated by the GPAS System/Group Administrator. These reports are treated with utmost confidentiality. They are provided to the employee's supervisor and shared with the employee, approving official and with other appropriate management employees on a "need-to-know" basis. The GPAS System/Group Administrator retains a hard copy of the Summary and Comments Reports for each employee for one year.

The GPAS System/Group Administrator maintains hard copies of the feedback and comments reports for one year.

Hard copies of the GPAS Employee Performance Agreement, Rating of Record, and any required comments are maintained in the employee's Employee Performance File for four years.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 43; Title 5, Code of Federal Regulations (CFR), part 430, Performance Management, subparts A and B.

PURPOSE(S):

The information in this system is used to generate feedback reports on employees which are taken into consideration when the employee's supervisor provides the summary rating incorporated in the "Rating of Record," which is the official rating document placed in an employee's Employee Performance File (EPF).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Employment-Related Disclosures.* The Department may disclose records to Department supervisors and other management personnel on a "need-to-know" basis. The records may be used as a basis for, or in conjunction with, Reduction-in-Force, performance-based actions, within-grade actions, adverse actions, decisions regarding retention of employees during probationary period, recognition, promotions, reassignments and other appropriate personnel actions. When the Official Personnel Folder (OPF) and EPF of a GPAS employee are sent to another agency or to the National Personnel Records Center, the Servicing Personnel Office shall include all Ratings of Record that are four years old or less, any required comments, and the associated GPAS Employee Performance Agreements in the EPF.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecute responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the

litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to an arbitrator or another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(7) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(12) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(13) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department GPAS electronic records reside on a single dedicated computer that is housed in a secure area. The GPAS System Administrator retains for one year a hard copy of each employee's "Summary Appraisal Report," "Summary Evaluation Report," and any Comments Reports. These are housed in locked file cabinets in the GPAS unit at the Department. Hard copies of Ratings of Records, GPAS Employee Performance Agreements and any related required comments are stored in an employee's EPF in a locked room.

RETRIEVABILITY:

The GPAS records may be retrieved by an employee's name or social security number.

SAFEGUARDS:

All physical records are maintained in locked file cabinets. Employees have access to the GPAS software at their workstations, controlled by passwords that the employees designate. If individuals walk into employees' work area while employees are using the GPAS software, the software includes a Hide key so that the evaluations will not be compromised. System and group administrators maintain the GPAS software. These individuals are the only individuals who have access to the entire database. They do not have employees' passwords, but have the ability to change the passwords upon request.

The database is protected by stringent security mechanisms that include a combination of hardware, operating system, application software, database software, and procedures. All physical access to the Department site, and the sites of Department contractors where this system of records are maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

RETENTION AND DISPOSAL:

An employee's records remain in the GPAS database until employment with the Department is terminated. Some data is housed temporarily in the GPAS database during each of the Department's annual and midpoint reviews or surveys during which new data is entered directly into the GPAS system by the employee and their evaluation team members and accumulates over the course of the review process. An employee's GPAS Employee Performance Agreement, which identifies their performance elements and standards, and the "Rating of Record," Department's official performance review document, are kept in the employee's EPF for four years. If the employee leaves the Department prior to the end of the 4 years, the GPAS records are forwarded to either the National Personnel Records Center or the agency to which the employee transferred.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Group, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., FB–6, Room 2E300, Washington, DC 20202–4737. See the Appendix at the end of this system notice for additional system managers.

NOTIFICATION PROCEDURE:

If an employee wishes to determine whether a record exists regarding them in the system of records, the employee should provide the system manager with his name (including all names used) and social security number. The request must meet the requirements of the regulations at Title 5, Code of Federal Regulations, part 34 § 5b.5, including proof of identity. The employee may present a request in person at any of the locations identified for this system of records or address it to the appropriate system manager.

RECORD ACCESS PROCEDURES:

If you wish to gain access to the records regarding you in this system of records, you should contact the system manager at the above address. Your request must meet the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record, you should contact the system manager at the above address. Your request must meet the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The information in this system comes from the Department's integrated personnel/payroll system, the employees, supervisors, and evaluation team members.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–05–10

Additional System Locations and System Managers

Regional Personnel Officer, Human Resources Group, U.S. Department of Education, 61 Forsyth Street, SW., Suite 18T55, Atlanta, GA 30303.

Regional Personnel Officer, Human Resources Group, U.S. Department of Education, 111 N. Canal Street, Room 1084, Chicago, IL 60606.

Regional Personnel Officer, Human Resources Group, U.S. Department of Education, 50 United Nations Plaza, Room 207, San Francisco, CA 94102–4087.

18–05–11

SYSTEM NAME:

Training Registration and Information System (TRAINS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Training and Development Center, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W210, Washington, DC 20202. See Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TRAINS contains records of employees who register to attend training classes within the Department or who request training with an outside vendor for which approval and payment is required.

CATEGORIES OF RECORDS IN THE SYSTEM:

TRAINS consists of records relating to an employee's applications for, and participation in, Department training classes (internal training) and training courses, conferences, or other training-related activities offered by vendors or government agencies outside the Department (external training). In addition to the employee's name, the system contains the employee's Social Security Account Number, position level, pay plan, grade, series, organization in which employed, building/room/telephone number, service completion date, supervisor's name, training requests, record of whether the employee attended or did not attend the internal class, and record of approval by principal office and cost of the external training, conference or training-related activity. For internal training use, TRAINS has tables of course names and categories required to set up internal training classes and report the statistics on training offerings (numbers of attendees for specific courses during specific date parameters, for example). TRAINS also contains tables of users' identification information, building addresses, room locations, and vendor names and addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4103 (1994).

PURPOSE(S):

TRAINS is used for the following purposes: (1) To track course enrollments; (2) provide course rosters; (3) to produce attendance records for employees who attend internal training classes; (4) to produce reports on individual employees' training activities; (5) to produce reports on training activities conducted by individual organizations within the Department; and (6) by employees to request approval to attend training activities conducted outside the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency,

whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on a networked computer server with backup procedures standard to all Department servers. Individual offices may maintain a hard copy of the training requests. Since entries are made and stored electronically, any hard copy records are kept following the procedures and/or requirements of the individual principal office. The Training and Development Center maintains hard copies of data such as signed class rosters only until the TRAINS database is updated.

RETRIEVABILITY:

The system is indexed by Social Security number. The Training and Development Center staff, designated

employees, and contractors who support the staff can access data in the system by employee name. Data for reports are retrievable by information from tables such as organization code and identifying codes for course names.

SAFEGUARDS:

All physical access to the Department of Education site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. The computer system employed by the Department of Education offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department of Education and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. At a program/server level all interactions by individual users with the system are recorded. Utilities within the program can identify users' last logon and record changes made in registrations. There are four categories of individuals who have some access to this system: training coordinators, executive officers, TDC staff and designated employees and contractors who support TDC activities and system administrators.

RETENTION AND DISPOSAL:

Records of individuals are in the system indefinitely. Employees whose names are no longer in the personnel database are marked for archiving within the system. A utility is available to reactivate the records of an employee who returns to the Department.

SYSTEM MANAGER(S) AND ADDRESS:

Training and Development Group Director, Training and Development Center, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W210, Washington, DC 20202-4614.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the training coordinator for your principal office and provide the training coordinator with your name and social security number. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity. You may also present your request in person at any of the locations identified for this system of records which include your specific organization or address your request to the system manager at the address listed above.

RECORD ACCESS PROCEDURES:

You may request a copy of your student transcript from TRAINS through the training coordinator for that organization. Managers may request reports that may include the names of employees in that organization from the training coordinator or principal office for that organization. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the information in this system pertaining to you, you should contact the system manager at the above address. You will need to provide specific information concerning any errors or omissions. It should be noted that not all employee training is entered into TRAINS and therefore cannot be tracked on the student transcript. Questions about external training for which there is no record must be addressed to the appropriate principal office.

RECORD SOURCE CATEGORIES:

The employee database is a subset of information from the Department's employee payroll database. This provides the employee Social Security number, name, grade, job series, and service completion date. Locator information (building/room/phone number) is updated manually from employee-provided information. Supervisor's name is updated manually from employee-provided information. All information regarding external training requests are provided by the employee requesting the training.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–05–11

Additional System Locations

Capital Place, 555 New Jersey Avenue, NW., Washington, DC 20208.
Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202.
L'Enfant Plaza, 2100 Corridor, Washington, DC 20202.
ROB–3, 7th and D Streets, SW., Washington, DC 20202.
Portals Building, 1250 Maryland Avenue, SW., Washington, DC 20202.
Region I, McCormack Post Office & Courthouse, Boston, MA 02109.
Region II, 75 Park Place, New York, NY 10007.
Region III, The Wanamaker Building, 100 Penn Square East, Room 502, Philadelphia, PA 19107.
Region IV, 61 Forsyth Street, SW, Atlanta, GA 30303.
Region V, 111 North Canal Street, Chicago, IL 60600.
Region VI, 1999 Bryan Street, Dallas, TX 75201.
Region VII, 10220 North Executive Hills Blvd., Kansas City, MO 64153.
Region VII, 7505 Tiffany Springs Parkway, Kansas City, MO 64153.
Region VIII, 1244 Speer Boulevard, Denver, CO 80204.
Region VIII, 1391 N. Speer Boulevard, Denver, CO 80204.
Region IX, 50 United Nations Plaza, San Francisco, CA 94102.
Region X, 915 Second Avenue, Seattle, WA 98174.
Region X, 1000 Second Avenue, Seattle, WA 98174.

18–05–12

SYSTEM NAME:

Grievances Filed Informally Through the Informal Dispute Resolution Center (IDR Center).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Informal Dispute Resolution Center, Office of Hearings and Appeals, Office of Management, U.S. Department of Education, L'Enfant Plaza, Room 2100 A, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on non-bargaining unit employees of the Department regardless of type of appointment, who individually or as a group, request personal relief in a matter of concern or dissatisfaction which is subject to the control of Department management. This includes former employees of the Department for whom a remedy can be provided, as well as applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of IDR Center files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302.

PURPOSE(S):

The information contained in this system is to consider and settle matters of dissatisfaction or concern of covered individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the

consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The

Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy. Summary data of records are also maintained in a computerized tracking system.

RETRIEVABILITY:

IDR Center records are indexed by docket number.

SAFEGUARDS:

Access to and use of these records are limited to those persons with a "need-to-know" and whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Computers are password protected for individuals with access. All data bases are designed with stringent security measures to control individual users' ability to access and alter records within the system.

RETENTION AND DISPOSAL:

The IDR Center records are retained for 4 years after resolution of the case, as set forth in the General Records Schedule 1, Civilian Personnel Records, Item 25(a), 30(a).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Informal Dispute Resolution Center, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 2100 A, L'Enfant Plaza, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records regarding you in this system of records, contact the system manager at the address listed above and follow the steps outlined in the Notification Procedure. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record in this system of records, contact the system manager at the address listed above. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information in this system of records is supplied from the following sources: Directly by the individual filing the grievance, from information supplied by the individual, by testimony of witnesses, employee representatives and/or Department employees/officials.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–06–01

SYSTEM NAME:

Federal Advisory Committee Membership Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Committee Management, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5E330, Washington, DC 20202–3571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been or are presently members of or are being considered for membership on advisory committees or other committees within the jurisdiction of the Department of Education.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system consists of one or more of the following: Name, title, sex, place and date of birth, home address, business address, organizational affiliation, phone numbers, fax numbers, e-mail addresses, degrees held, general educational background, ethnic background, resume, curriculum vitae, dates of term on advisory committee, status on advisory committee, reason for leaving advisory committee, previous or current membership on other advisory committee, special qualifications of the individual for the advisory committee or other membership, source who recommended the individual for membership on advisory and miscellaneous correspondence. Additionally, memoranda justifying the individual's selection are included in the file in cases in which the individual has served repetitively on advisory committees, has not had a one-year break in service on advisory, or where various statutory or other requirements for advisory committee membership cannot be met.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Advisory Committee Act, as amended, (U.S.C.A. Appendix 2).

PURPOSE(S):

The information in this system is used to evaluate and select individuals for membership on advisory committees or other committees within the jurisdiction of the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Reporting Disclosures.* The Department may disclose a record to the President, the Office of Management and Budget, the General Services Administration or to the General Accounting Office in order to complete its reporting requirements under 41 CFR part 101–6.

(2) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant

and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(3) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard-copy filed in file cabinets and/or index cards.

RETRIEVABILITY:

For the most part records are maintained in an alphabetical index by name of the committees. Records from the system are available to the staffs of the respective Advisory Committees and other Department staff on a "need-to-know" basis. Uses include special administrative reports; quarterly alphabetical listings of past, present and recommended members of Advisory Committees; and other administrative needs.

SAFEGUARDS:

Direct access to records is restricted to authorized personnel through locked files, rooms, and buildings, as well as building pass and security guard sign-in systems.

RETENTION AND DISPOSAL:

Retention is variable from one year to permanent retention depending upon the type of record, e.g., names of former members of advisory committees are retained permanently. Certain records are disposed of by referral to the Federal Records Center. Others are disposed of as trash by the system manager or office of security depending upon the confidentiality of the information contained on the record.

SYSTEM MANAGER(S) AND ADDRESS:

Committee Management Officer, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5E330, Washington, DC 20202–3571.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonable specify the record contents, being sought. These access procedures are in accordance with Department Regulations (34 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The vast majority of information contained in records on individuals is obtained directly from the individual. Other information in the form of references and recommendations is obtained from other private individuals, program personnel, biographical reference books, private organizations, former employees, regional office of the Department, Members of Congress, and other government sources.

Additionally the system of records contains information about members of the public who have requested that they receive various publications through the inclusion of their names and addresses on various mailing lists.

Information maintained on those individuals who have requested participation on mailing lists is limited to name and mailing address, information maintained on individuals who are past, present, or recommended

18–06–02

SYSTEM NAME:

Telephone Directory/Locator System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Information Resource Center, Intergovernmental and Interagency Affairs, U.S. Department of Education, Room 5E233, 400 Maryland Avenue, SW., Washington, DC 20202-0498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current employees of the Department, vendors or other Federal employees located in Department operating offices and facility complexes.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records such as first and last names, titles, agency office addresses, program and principal office agency mailing addresses, telephone numbers, fax numbers, e-mail addresses, and standard administrative codes for departmental employees and other individuals with access rights to the Department's Intranet. Names, phone numbers, principal and program offices, office addresses (building name, address, room number, region), and e-mail addresses are available via the Department's website.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 40 U.S.C. 486(c).

PURPOSE(S):

Records are used to develop and maintain current employee locator and directory listings. The locator listings are used by the Department information centers, employees, mail rooms, and others specifically for the purpose of locating employees and for routing mail. The directory listings are used to produce departmental telephone directories on an as needed basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(2) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on hard drives, computer printouts, and in hard copy.

RETRIEVABILITY:

Records are retrievable by first and last name, principal office name, telephone number, and a keyword search field.

SAFEGUARDS:

Only authorized personnel have access to master lists and the ability to make permanent changes.

RETENTION AND DISPOSAL:

Data is edited by each employee online in real time. Therefore data can change or be deleted each day. Once the employee leaves the Department, all data is deleted from the database as the database only houses the most current Departmental employee location data.

SYSTEM MANAGER(S) AND ADDRESS:

Locator Administrator(s), Information Resource Center, Intergovernmental and Interagency Affairs, U.S. Department of Education, Room 5E233, 400 Maryland Avenue, SW., Washington, DC 20202–0498.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record regarding you exists in this system, contact the system manager at the address provided above. Your request must meet the requirements of the regulations at 34 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records regarding you in this system, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you, contact the system managers. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individual employee, the Information Resource Center and the Chief Information Office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–07–01

SYSTEM NAME:

Congressional Members' Biographies System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Legislative Affairs Office, Office of the Assistant Secretary for Legislation and Congressional Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E301, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records about all members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains biographical files on congressional members consisting of the Member's name, title, state and district he or she represents, date of appointment to Congress, date of birth, place of birth, educational background, previous employment including political offices, House or Senate committee assignments, political support scores, how he or she voted on key education legislation, brief personal background and education interests pertaining to the Department of Education, names of universities and colleges located in each House member's district, and a brief description of the district or state in which the Member of Congress represents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 3412(e).

PURPOSE(S):

The information in this system is used by the Secretary of Education and any departmental staff who need background information of a Member of Congress while preparing for hearings and meetings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was

collected. The member's right to the information is no greater than the right of the individual who requested it.

(1) *Contact Disclosures.* The Department may disclose records contained in this system to individuals and entities (including educational institutions) that the Department contacts while formulating and enforcing education policies.

(2) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy individual files stored in standard four-drawer file cabinets and also in electronic format on a hard drive accessible by staff of the Office for Legislation and Congressional Affairs.

RETRIEVABILITY:

Records are indexed alphabetically by last name.

SAFEGUARDS:

Files are maintained in the Office of Legislation and Congressional Affairs and requests are honored on a "need-to-know" basis only. All physical access to the Department of Education site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department of Education offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department of Education and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records are constantly updated as circumstances warrant relative to the activities of Congress.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Legislation and Congressional Affairs, Legislative Affairs Office, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E301, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from Congressional Quarterly, Inc., The Almanac of American Politics, Roll Call Newspapers, on-line biographies and press releases of Members of Congress, and the Office of Postsecondary Education at the U.S. Department of Education.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–07–02

SYSTEM NAME:

Congressional Grant Notification Control System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Congressional Outreach, Office of Legislation and Congressional Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E301, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Congressional Grant Notification Control System contains records about members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of direct inquiries and letters of support concerning discretionary grants from Members of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

The information in this system is used to provide responses to inquiries from Members of Congress regarding discretionary grant notification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected and only as needed to perform one or more of the following routine uses:

(1) *Inter-Agency Disclosure.* Inquiries that do not pertain to the Department, but fall under the jurisdiction of another Federal agency, are transferred to that Agency with a request that a direct response be provided to the correspondent.

(2) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Litigation and Alternative Dispute Resolution.*

(a) In the event of litigation where one of the parties listed below is involved in litigation or ADR, the Department may disclose such records as it deems desirable or necessary to the Department of Justice (DOJ) to enable DOJ to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(iv) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine used to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose records as a routine use to the party, counsel, representative or witness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hard copy filed in standard file cabinets.

RETRIEVABILITY:

Records are indexed alphabetically by grant title.

SAFEGUARDS:

Records are kept in the responsible grant notification team member's office. All physical access to the Department's site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records are maintained for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Congressional Outreach, Office of Legislation and Congressional Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E301, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, provide the system manager at the above address with the name of the Member of Congress who corresponded with the Department, the name of the referenced constituent, the grant title, and the date of the correspondence. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identification.

RECORD ACCESS PROCEDURES:

Same as the Notification Procedure.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record pertaining to you, contact the system manager at the address noted above, and reasonably identify the record and specify the information to be contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The information in this system is provided by the correspondent and by the agency that prepares the final response.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–06–01

SYSTEM NAME:

Case Information System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office for Civil Rights, U.S. Department of Education, Mary E. Switzer Building, 330 C Street, SW., Room 5074, Washington, DC 20202. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals or groups of individuals who have made civil rights complaints to the Office for Civil Rights (OCR).

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system lists the names of cases, characteristics of individual civil rights complaints, and critical events in the OCR's processing of civil rights complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq.; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq.; sec. 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, et seq.; Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq.; and Title II of the Americans With Disabilities Act, 42 U.S.C. 12131, et seq.

PURPOSE(S):

The Office for Civil Rights uses this system for the following purposes:

(1) To report the status of individual complaints to OCR managers and staff for tracking the progress of individual cases and provide information used to prepare summaries of case processing activities; and

(2) To report to Congress, other agencies, or to the public to explain or document the work it has accomplished.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure to Congress, Other Agencies, or the Public.* The Department may disclose summary information derived from this system of records to Congress, other agencies, and the public to describe the kinds of work OCR has done, or to document the work it has accomplished.

(2) *Disclosure to Recipients of Federal Financial Assistance, Witnesses, or Consultants.* The Department may disclose information from this system of records to recipients of federal financial assistance, witnesses, or consultants when it determines that such release would assist OCR in resolving a civil rights complaint or in obtaining additional information or expert advice relevant to the investigation.

(3) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation of information that is relevant to any

enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(4) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department or one of its components determines that disclosure of certain records to an adjudicative body before which the Department or one of its components is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body individual, or entity.

(d) *Parties, Counsels, Representatives, and Witnesses.* If the Department or one of its components determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department or its component may disclose those records as a routine use to the party, counsel, representative or witness.

(6) *Freedom of Information Act Advice Disclosure.* The Department may disclose records to the Department of Justice if the Department determines that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose individual records to a member of Congress from the record of an individual in response to an inquiry from the member made the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records in this system are kept in magnetic media.

RETRIEVABILITY:

Records are indexed by case or complaint number, by the name or address of a complainant, the name of the entity against which the complaint was made, its subject matter, or by the stage to which investigation or other case processing has proceeded.

SAFEGUARDS:

The system is maintained on personal computers located in OCR offices. Information in the system is transmitted between its offices on OCR's internal communication network. Access to OCR offices is controlled, and available only to OCR staff and authorized visitors. OCR staff authorized to access the system receive individual user identification and passwords. The system additionally limits data access by type of user and limits users' ability to alter records within the system.

Similar records made before December, 1993 were entered in a different format, no longer in use. These historic records are stored on magnetic tape. A single employee assigned to OCR headquarters can access them.

RETENTION AND DISPOSAL:

Records are retained indefinitely. Disposal is by electronic erasure when no longer needed for Department use.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Policy, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW., Room , Switzer Building, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, contact the system manager at the address indicated above. You must provide the name of the institution and complainant to which the case pertains and the case number, if known. Requests must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records pertaining to you, follow the notification procedure described above. You must also reasonably specify the record contents sought.

Request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest any records regarding you, contact the official at the address specified under notification procedures, reasonably identify the record and specify the information to be contested. Requests to amend a record must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Records are derived from information in complaint investigation files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–08–01

Additional System Locations

OCR, Boston Office, J.W. McCormack Post Office and Court House Building, Room 222, Boston, MA 02109–4557.
OCR, New York Office, 75 Park Place, 14th Floor, New York, NY 10007.
OCR, Philadelphia Office, 100 Penn Square East, Suite 515, Philadelphia, PA 19107.
OCR, Chicago Office, 111 North Canal Street, Room 1053, Chicago, IL 60606–7204.
OCR, Cleveland Office, Bank One Center, 600 Superior Avenue, East, Suite 750, Cleveland, OH 44114–2611.
OCR, Atlanta Office, Sam Nunn Federal Office Building, 61 Forsyth Street SW, Suite 19T70, Atlanta, GA 30303.
OCR, Dallas Office, 1999 Bryan Street, Suite 2600, Dallas, TX 75201.
OCR, Kansas City Office, 10220 N. Executive Hills Boulevard, Kansas City, MO 64153–1367.
OCR, Denver Office, Colonnade Building, 1244 Speer Boulevard, Suite 300, Denver, CO 80204–3582.
OCR, San Francisco Office, Old Federal Building, 50 United Nations Plaza, Room 239, San Francisco, CA 94102.
OCR, Seattle Office, Henry M. Jackson Federal Building, 915 Second Avenue, Room 3310, Seattle, WA 98174–1099.
OCR, District of Columbia Office, PO Box 14620, Washington, DC 20004–4620.

18–08–02

SYSTEM NAME:

Complaint Files and Log.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office for Civil Rights, U.S. Department of Education, Mary E. Switzer Building, 330 C Street, SW., Room 5074, Washington, DC 20202. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on individuals or groups of individuals who have made civil rights complaints to the Office for Civil Rights (OCR).

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system consists of records relating to complaints to the Office for Civil Rights including:

(1) Names, addresses, and telephone numbers of complainants, complaint allegations, results of investigations;

(2) Correspondence related to the complaint. The material may include copies of correspondence sent by OCR to others, correspondence received by OCR, records of telephone conversations, copies of e-mail or other written communications;

(3) Investigator and attorney memoranda;

(4) Interview notes or transcriptions, and witness statements;

(5) Documents gathered during an investigation, including photographs of persons or things, portions of a recipient institution's records, and a complainant's or other individuals' scholastic, medical, or employment records; and

(6) Charts, prepared exhibits, or other analytical materials prepared by OCR staff or by consultants retained by OCR.

AUTHORITY FOR MAINTENACE OF THE SYSTEM:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*; sec. 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*; and Title II of the Americans With Disabilities Act, 42 U.S.C. 12131, *et seq.*

PURPOSE(S):

The Office for Civil Rights uses this system for the following purposes:

(1) To determine and to document whether there was discrimination against the complainant or others;

(2) To record the steps taken to resolve a case;

(3) To store materials gathered, developed, or received during the processing of a case; and

(4) To document the steps taken to resolve a case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure to Congress, other Agencies, or the Public.* The Department may disclose summary information derived from this system of records to Congress, other agencies, and the public to describe the kinds of work OCR has done, or to document the work it has accomplished.

(2) *Disclosure to Recipients of Federal Financial Assistance, Witnesses, or Consultants.* The Department will release information contained in this system of records to recipients of federal financial assistance, witnesses, or consultants when it determines that such release would assist OCR in resolving a civil rights complaint or in obtaining additional information or expert advice relevant to the investigation.

(3) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation of information that is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(4) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department or one of its components determines that disclosure of certain records to an adjudicative body before which the Department or one of its components is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body individual, or entity.

(d) *Parties, counsels, representatives, and witnesses.* If the Department or one of its components determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department or its component may disclose those records as a routine use to the party, counsel, representative or witness.

(6) *Freedom of Information Act Advice Disclosure.* The Department may disclose records to the Department of Justice if the Department determines that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose individual records to a member of Congress from the record of an individual in response to an inquiry from the member made the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records in this system are contained in file folders.

RETRIEVABILITY:

The records in this system are indexed by and retrievable by the name of the case or the complaint number.

SAFEGUARDS:

OCR keeps case files in lockable cabinets located in lockable storage rooms. Access to offices in which storage rooms are located is restricted to OCR staff and authorized visitors.

RETENTION AND DISPOSAL:

Pursuant to the Department's Record Disposition Schedules, files at the Headquarters Office will be transferred to the Federal Records Center (FRC) after the case has been inactive for five years. Files at the regional offices are transferred to the FRC after the file has been inactive for two years. All files are destroyed fifteen years after the end of the fiscal year in which the case is resolved.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., Room , Switzer Building, Washington, DC 20202.

RECORD SOURCE CATEGORIES:

Records are derived from information in complaint investigation files.

NOTIFICATION PROCEDURES:

This system is exempted from 5 U.S.C. 552a (e)(4)(G) pursuant to 34 CFR 5b.11(c)(2)(iii).

RECORD ACCESS PROCEDURES:

This system is exempted from 5 U.S.C. 552a(e)(4)(H) pursuant to 34 CFR 5b.11(c)(2)(iii).

CONTESTING RECORD PROCEDURES:

This system is exempted from 5 U.S.C. 552a(e)(4)(H) pursuant to 34 CFR 5b.11(c)(2)(iii).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has by regulations exempted the Complaint Files and Log, Office for Civil Rights from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552(k)(2) (civil enforcement):

(1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of records.

(2) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification of and access to records and correction or amendment of records.

(3) 5 U.S.C. 552a(e)(1), regarding the requirement to maintain only relevant and necessary information.

(4) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records. These exemptions are stated in 34 CFR 5b.11. As indicated in 34 CFR 5b.11(c)(2), individuals will be provided information from this record system except when in accordance with the provisions of 5 U.S.C. 552a(k)(2), unless:

(1) Disclosure of such information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or

(2) If the information was obtained prior to September 28, 1975, disclosure of such information would reveal the identity of the source under an implied promise that the identity of the source would be held in confidence.

Appendix to 18–08–02

Additional System Locations and System Managers

OCR, Boston Office, J.W. McCormack Post Office and Court House Building, Room 222, Boston, MA 02109-4557.
OCR, New York Office, 75 Park Place, 14th Floor, New York, NY 10007.
OCR, Philadelphia Office, 100 Penn Square East, Suite 515, Philadelphia, PA 19107.
OCR, Chicago Office, 111 North Canal Street, Room 1053, Chicago, IL 60606–7204.
OCR, Cleveland Office, Bank One Center, 600 Superior Avenue, East, Suite 750, Cleveland, OH 44114–2611.
OCR, Atlanta Office, Sam Nunn Federal Office Building, 61 Forsyth Street SW, Suite 19T70, Atlanta, GA 30303.
OCR, Dallas Office, 1999 Bryan Street, Suite 2600, Dallas, TX 75201.
OCR, Kansas City Office, 10220 N. Executive Hills Boulevard, Kansas City, MO 64153–1367.
OCR, Denver Office, Colonnade Building, 1244 Speer Boulevard, Suite 300, Denver, CO 80204–3582.
OCR, San Francisco Office, Old Federal Building, 50 United Nations Plaza, Room 239, San Francisco, CA 94102.
OCR, Seattle Office, Henry M. Jackson Federal Building, 915 Second Avenue, Room 3310, Seattle, WA 98174–1099.
OCR, District of Columbia Office, PO Box 14620, Washington, DC 20004–4620.

18–09–01

SYSTEM NAME:

Administrative Claims.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW, Room 6E301, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records about Department employees, recipients of Federal assistance under Department funded programs, and members of the public who have a claim against the Department or against whom the Department has a claim under the Federal Torts Claims Act, Military Personnel and Civilian Employees Claims Act, Federal Claims Collection Act or Act for Waiver of Overpayment of Pay.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information that is pertinent to the particular claim being asserted, including accident reports, hospital records, charges for medical service; certifications of overpayments, audits of payroll accounts during period of overpayments, earning and leave statements; claims officers memorandum, final determinations made on claims, identity of debtors and information pertaining to how debts arose.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Torts Claims Act (28 U.S.C. 2671–2680, 1346(b); Waiver of Overpayment of Pay Act (5 U.S.C. 5584; Military Personnel and Civilian Employees Claims Act, 31 U.S.C. 240 et seq.; Federal Claims Collection Act, 31 U.S.C. 951–953.

PURPOSE(S):

The information in this system is used to adjudicate claims between the U.S. and private parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program Disclosure.* The Department may disclose information to Federal, State, and local law enforcement agencies, private individuals, private and public hospitals, allegedly negligent parties, private attorneys, insurance companies, the United States Attorney and other Federal officials and agencies, individual law enforcement officers, and tribal officials for the purpose of investigating, settling, or litigating claims.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(6) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(7) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the

written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in legal size files in filing cabinets.

RETRIEVABILITY:

Records can be retrieved by the name of the non-Government party, whether claimant, plaintiff, or alleged debtor. In some instances, these records are retrievable by cross reference to index cards, containing name of the party involved and the subject matter.

SAFEGUARDS:

Office buildings in which files are kept are locked after the close of the business day. These files are only accessible to General Counsel staff.

RETENTION AND DISPOSAL:

The records are maintained in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

The General Counsel, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E301, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The information in this system comes from a number of sources including private individuals, private and public hospitals, doctors, law enforcement agencies and officials, private attorneys, accident reports, third parties, claimants for beneficiaries and their relatives, other Federal agencies, State and local governments, agencies and instrumentalities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–09–02

SYSTEM NAME:

OGC Attorney Applicant Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E301, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current Attorney Applicants for positions in the Office of the General Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Attorney Applicant system consists of a variety of records relating to persons applying for attorney positions. These records contain information about an individual's birth date; home address; telephone number; Social Security number; educational background (e.g., law schools attended and grades); past work experience; writing samples furnished on request; recommendations from past employers and academic officials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 et seq.

PURPOSE(S):

The information in this system is used to evaluate the qualifications of those individuals who apply for attorney positions in the Office of the General Counsel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(2) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, alphabetized by name, and in some cases the records are separated by individual law school affiliation and by the date the application is received. In some instances records are located in lockable conserva-file cabinets and in a locked secured room with access limited to those officials whose duties require access. In other instances records are maintained in file rooms or with other Office of General Counsel files.

RETRIEVABILITY:

These records are retrievable by name.

SAFEGUARDS:

Access is limited to those Department officials whose duties require access.

RETENTION AND DISPOSAL:

These records are retained in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

The General Counsel, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW., Room 6E301, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, law school officials and past employers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18-09-03

SYSTEM NAME:

Employee Conduct—Government Ethics.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Ethics Counsel Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E231, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information about current and past Department employees who have requested or received advice or guidance in subject matter areas relating to employee conduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information relating to acceptance or offer of gifts, entertainment and favors, outside employment; financial interests; use of government funds, property or official information; partisan political activity; or other matters relating to employee conduct.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 202, 203, 205, 207, 208, 209; Executive Order 11222; and 5 CFR parts 735, 104; 34 CFR Part 73.

PURPOSE(S):

The information in this system is used in providing advice or guidance in subject matter areas relating to employee conduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* May disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed

to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(6) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are kept in legal size files in filing cabinets.

RETRIEVABILITY:

These records are retrievable by name in most cases. In some instances, these records are retrievable by cross-reference to index cards containing the name of the party involved and the subject matter.

SAFEGUARDS:

These records are only accessible to General Counsel staff. Office buildings in which these records are maintained are locked after the close of the business day.

RETENTION AND DISPOSAL:

The records are maintained for an indefinite duration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel, Ethics Counsel Division, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW, Room 6E231, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department of Education's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18-09-04

SYSTEM NAME:

Litigation Files, Administrative Complaints, and Adverse Personnel Actions.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E301, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in this system are individuals who are involved in litigation with the Department or the United States (regarding matters within the jurisdiction of the Department) either as plaintiffs or as defendants in both civil and criminal matters, and individuals who either file administrative complaints initiated by the Department, except claims which are the subjects of records maintained in the Administrative Claims System.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information pertaining to the subject matter of the litigation, administrative complaint, or adverse personnel action. Such records would include complaints, litigation reports, administrative transcripts, various litigation documents, investigative materials, correspondence, briefs, court orders and judgments, and in cases where personal injury is involved, evaluations by physician specialists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintaining this system are the various statutes, regulations, rules or orders pertaining to the subject matter of the litigation, administrative complaint or adverse personnel action, (e.g., Civil Rights Act, Federal Torts Claim Act).

PURPOSE(S):

The information in this system is used for litigating civil cases, criminal cases and administrative complaints to which the Department or the United States is a party.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(6) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records consist of legal size files stored in file cabinets.

RETRIEVABILITY:

These records are retrievable by name of the plaintiff or the first plaintiff if there is more than one, or by the name of the first defendant if the plaintiff is the United States. In the case of adverse personnel actions, records are retrievable by name of the individual involved.

SAFEGUARDS:

Office buildings in which these records are maintained are locked after the close of the business day. These records are only accessible by General Counsel staff.

RETENTION AND DISPOSAL:

These records are maintained in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

The General Counsel, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E301, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The information for this system is obtained through a number of sources including the exchange of legal pleadings, documents, formal and informal discovery, program offices and component agencies, private attorneys, State and local governments, their agencies and instrumentalities, and officers of other Federal agencies and the individuals involved.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–10–01

SYSTEM NAME:

Investigative Files of the Inspector General.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Education, 330 C Street,

SW., Room 4004, Switzer Building, Washington, DC 20202-1500. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories include current and former Department of Education employees and individuals who have any relationship to financial assistance or other educational programs administered by the Department of Education, or to management concerns of the Department, including but not limited to: grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees or agents of institutional recipients or program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigation files pertaining to violations of criminal laws, fraud, waste, and abuse with respect to administration of Department programs and operations, and violations of employee Standards of Conduct as set out in 34 CFR part 73.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended (5 U.S.C. Appendix 3) and 5 U.S.C. 301.

PURPOSE(S):

Pursuant to the Inspector General Act, the system is maintained for the purposes of: (1) Conducting and documenting investigations by the OIG or other investigative agencies regarding Department of Education programs and operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other Department of Education components for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; and (5) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act, 5 U.S.C. Appendix 3, 5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected, under the following routine uses:

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information from this system of records as a routine use to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation where that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(2) *Disclosure to Public and Private Entities to Obtain Information Relevant to Department of Education Functions and Duties.* The Department may disclose information from this system of records as a routine use to public or private sources to the extent necessary to obtain information from those sources relevant to a Department investigation, audit, inspection or other inquiry.

(3) *Disclosure for Use in Employment, Employee Benefit, Security Clearance, and Contracting Decisions.*

(4) *For Decisions by the Department.* The Department may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency maintaining civil, criminal or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit.

(5) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance or retention of a license, grant or other benefit.

(6) *Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as Amended ("HEA").* The Department may disclose information from this system of records as a routine use to any accrediting agency which is or was recognized by the Secretary of Education pursuant to the HEA; to any guaranty agency which is or was a party to an agreement with the Secretary of Education pursuant to the HEA; or to any agency which is or was charged with licensing or legally authorizing the operation of any educational institution or school which was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(7) *Litigation Disclosure.*

(a) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the Department of Justice. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) The Department, or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(iv) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(8) *Other Disclosure.* If the Department determines that disclosure of certain records to a court, adjudicative body before which the Department is authorized to appear, individual or entity designated by the Department or otherwise empowered to resolve disputes, counsel or other representative, or potential witness is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the court, adjudicative body, individual or entity, counsel or other representative, or witness. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) The Department, or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity where the Department has agreed to represent the employee; or

(iv) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(9) *Disclosure to Contractors and Consultants.* The Department may disclose information from this system of records as a routine use to a private firm with which the Department contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information.

(10) *Debarment and Suspension Disclosure.* The Department may disclose information from this system of records as a routine use to another Federal agency considering suspension or debarment action where the information is relevant to the suspension or debarment action.

(11) *Disclosure to the Department of Justice.* The Department may disclose information from this system of records as a routine use to the Department of Justice, to the extent necessary for obtaining its advice on any matter relevant to Department of Education operations.

(12) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(13) *Computer Matching Disclosure.* The Department may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on index cards, investigative reports, microcomputer disks, computer mainframe files and computer-printed listings.

RETRIEVABILITY:

The records are retrieved by manual or computer search of alphabetical indices or cross-indices. Indices list names of individuals, companies and organizations.

SAFEGUARDS:

Written documents and computer disks are maintained in secure rooms, in security-type safes or in bar-lock file cabinets with manipulation-proof combination locks. Computer mainframe files are on-line in guarded, combination-locked computer rooms.

RETENTION AND DISPOSAL:

Investigative files are retained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS, Part 16). The ED/RDS may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigation Services, Office of the Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4200, Switzer Building, Washington, DC 20202–1510.

NOTIFICATION PROCEDURE:

See "system exempted," below. As provided in 34 CFR 5b.11(b)(2) and (c)(1), the notification procedure is not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that this procedure may apply to criminal investigative files, it is governed by 34 CFR 5b.5. The notification procedure is applicable to non-criminal investigative files under the conditions defined by 34 CFR 5b.11(c). Under those conditions it is governed by 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

See "system exempted," below. As provided in 34 CFR 5b.11(b)(2) and (c)(1), the record access procedure is not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that this procedure may apply to criminal investigative files, it is governed by 34 CFR 5b.5. The record access procedure is applicable to non-criminal investigative files under the conditions defined by 34 CFR 5b.11(c). Under those conditions it is governed by 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Not applicable. See "system exempted," below.

RECORD SOURCE CATEGORIES:

Departmental and other Federal, State and local government records; interviews of witnesses; documents and other material furnished by non-governmental sources. Sources may include confidential sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to the general authority in the Privacy Act in 5 U.S.C. 552a(j)(2), the Secretary has by regulation exempted the Investigative Files of the Inspector General from the following subsections of the Privacy Act:

5 U.S.C. 552a(c)(3)—access to accounting of disclosure;

5 U.S.C. 552a(d)(1)–(4) and (f)—procedures for notification of, access to, and correction or amendment of records;

5 U.S.C. 552(e)(3)—notice to an individual who is required to provide information to the Department;

5 U.S.C. 552a(e)(4)(G), (H)—inclusion of information on Department procedures on notification of, access to, correction or amendment of records, in the system of records notice.

These exemptions are stated in 34 CFR 5b.11.

Appendix to 18–10–01

Additional System Locations

Office of Inspector General, U.S. Department of Education, Room 512, P.O. Box 2142, Boston, MA 02106.

Office of Inspector General, U.S. Department of Education, 75 Park Place, 12th Floor, New York, NY 10007.

Office of Inspector General, U.S. Department of Education, The Wanamaker Building, 100 Penn Square East, Suite 502, Philadelphia, PA 19107.

Office of Inspector General, U.S. Department of Education, Atlanta Federal Center, 61 Forsyth Street, Room 18T71, Atlanta, GA 30303.

Office of Inspector General, U.S. Department of Education, 111 N. Canal Street, Suite 940, Chicago, IL 60606–7204.

Office of Inspector General, U.S. Department of Education, 1999 Bryan Street, Suite 2630, Dallas, TX 75201–6817.

Office of Inspector General, U.S. Department of Education, 2nd Floor, 10220 North Executive Hills Blvd., Kansas City, MO 64153–1367.

Office of Inspector General, U.S. Department of Education, 501 W. Ocean Blvd. #1200, Long Beach, CA 90802.

18–10–02

SYSTEM NAME:

Investigatory Material Compiled for Personnel Security and Suitability Purposes.

SECURITY CLASSIFICATION:

None.

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SYSTEM LOCATION:

Security Program Staff, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–1510.

U.S. Office of Personnel Management, Investigations Group, P.O. Box 886, Washington, DC 20044–0886.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants seeking employment with the Department of Education (Department), former and current employees of, and other persons and entities doing business with, the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information pertaining to current and former Department employees, current and former contractor personnel, and current employees of entities making offers to the Department for purposes of doing business. This information regards individuals' character, conduct, and loyalty to the United States as relevant to their association with the Department. These records may, as appropriate to the individual being investigated, include the following types of information: (1) Documentation as to his or her arrests and convictions for violations of the law. (2) Reporting as to interviews held with the individual, his or her present and former supervisors, co-workers, associates, neighbors, educators, etc. (3) Correspondence relating to adjudication matters involving the individual. (4) Reports of inquiries made of law enforcement agencies for information about the individual contained in the agencies records. (5) Information provided by organizations having association with the individual, such as employers, educational institutions attended, professional or fraternal or social organizations to which the individual is or was a member, etc. (6) Reports of action following an Office of Personnel Management (OPM) investigation or a Federal Bureau of Investigation Section 8(d) full field investigation. (7) Other information developed from the previous sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450, 10577, and 12968; as amended.

PURPOSE(S):

Records in this system are maintained to provide the Inspector General and other responsible Department officials with information to assist them in making individual personnel determinations concerning suitability for Federal employment, security clearances, access to classified information or restricted areas, and evaluations as to suitability for performance under Federal contracts or other agreements with the Federal Government. Incidental to this purpose, for those investigations conducted by the OIG, these records may also be disclosed to other Federal and non-Federal investigatory agencies to protect the public or Federal interest, or both.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching agreement.

(1) *Program Purpose:* To public or private sources to the extent necessary to obtain information to be included in this system of records.

(2) To officials and employees of a Federal, State, or local governmental entity in response to its request in connection with the issuance of security clearances or the conduct of security or suitability investigations of individuals seeking employment, licensure, other benefits, or to perform contractual services, or to otherwise associate with the governmental entity.

(3) To a Federal, State, local, or foreign entity or other public authority responsible for the investigation, prosecution, enforcement, or implementation of a statute, rule, regulation, or order, when a record on its face or in combination with any other information indicates a violation or potential violation of law (whether civil, criminal, or regulatory in nature) if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity. It is OIG policy not to disclose records under this routine use that pertain to those questions for which the OIG has promised confidentiality under Standard Form 85P, Questionnaire for Public Trust Positions.

(4) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(5) *Litigation Disclosure.* To parties pertaining to litigation disclosure as follows:

(a) In the event that one of the following parties is involved in litigation, or has an interest in litigation, the Department may disclose certain records to the parties described in the following paragraphs b, c, and d of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components.

(ii) Any Department employee in his or her official capacity.

(iii) Any employee of the Department in his or her official capacity where the Department of Justice (Justice) has agreed to provide or arrange for representation of the employee.

(iv) Any employee of the Department in his or her individual capacity where the Department has agreed to represent the employee.

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the Department of Justice (DOJ).* If the Department determines that disclosure of certain records to the DOJ or attorneys engaged by DOJ is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to DOJ.

(c) If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, individual, or entity designated by the Department or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) If the Department determines that disclosure of certain records to an opposing counsel, representative, or witness in an administrative proceeding is relevant and necessary to the litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the counsel, representative, or witness.

(6) *Freedom of Information Act (FOIA) Advice Disclosure.* To the Department of Justice for the purpose of obtaining advice regarding the releasability of records maintained in

this system of records under the FOIA and the Privacy Act of 1974.

(7) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of the individual. The member's right to the information is no greater than the right of the individual who requested it.

(8) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence or investigation activities.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders secured in fire resistant safes with manipulation proof combination locks, or in metal lock-bar file cabinets with three position combination locks, and in a computer database.

RETRIEVABILITY:

Records are alphabetically indexed by name of the individual subject of the file. Retrieval is made by the name, date of birth, and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Folders are maintained and secured in fire resistant safes with manipulation proof combination locks, or in metal file cabinets secured by three position combination locks. All records, including those records that are maintained on the computer database, are in limited access rooms with keyless cipher locks. All employees are required to have an appropriate security clearance before they are allowed access, on a "need-to-know" basis, to the records. Computer databases are kept on a local area network that is not connected to any outside network including the Internet. Database accessibility is restricted to hard wire network connection from within the office or via modem. Authorized log-on codes and passwords prevent unauthorized users from gaining access to data and system resources. All users have unique log-on codes and passwords. The password scheme requires that users must change passwords every 90 days and may not repeat the old password. Any individual attempting to log on who fails is locked out of the system after three attempts. Access after that time requires intervention by the system manager.

RETENTION AND DISPOSAL:

Most background investigative records are maintained for five years after the individual separates from his or her departmental association if subject to Executive Orders 12968 and 10450, as amended. Reports of background investigations conducted by the Office of Inspector General are retained for 15 years, plus the current year of the most recent investigative activity, in accordance with OPM guidance. The records are disposed of by electronic erasure, shredding, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202–1510.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual must provide the system manager with his or her name, date of birth, social security number, signature, and the address to which the record information should be sent. Requests for notification about an individual must meet the requirements of the regulations in 34 CFR 5b.5.

RECORD ACCESS PROCEDURE:

If an individual wishes to gain access to a record in this system, he or she must contact the system manager and provide information as described in the notification procedure.

CONTESTING RECORD PROCEDURE:

If an individual wishes to change the content of a record in the system of records, he or she must contact the system manager with the information described in the notification procedure, identify the specific item or items to be changed, and provide a written justification for the change, including any supporting documentation. Requests to amend a record must meet the requirements of the regulations in 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from:

(a) Investigative and other record material furnished by other Federal entities, other departmental components, State, local, and foreign governments;

(b) Applications and other personnel and security forms;

(c) Personal investigation, written inquiry, interview, or the electronic accessing of computer databases of sources, such as the OPM system of records known as Personnel Investigations Records (OPM/Central-9), employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications; and

(d) Confidential sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

As indicated in 34 CFR 5b.11, individuals will be provided information from this record system unless, in accordance with the provisions of 5 U.S.C. 552a(k)(5)—(1) Disclosure of that information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence; or (2) The information was obtained prior to September 27, 1975 and disclosure of that information would reveal the identity of a source who provided information under an implied promise that the identity of the source would be held in confidence.

18–10–03

SYSTEM NAME:

Non-Federal Auditor Referral, Suspension, and Debarment File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Audit Services, Office of Inspector General, U.S. Department of Education, 330 C Street, SW., Room 4200, Switzer Building, Washington, DC 20202–1510.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Auditors and audit firms not employed by the Federal government whom the Office of Inspector General has referred to State boards of accountancy or professional associations and/or suspended or debarred for violations of generally accepted auditing standards or generally accepted government auditing standards in connection with audits of federally assisted education programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to the audit activity which led to the referral, suspension or debarment action, including the referral, suspension or debarment documents; and records on the status of each referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended (5 U.S.C. Appendix 3, 4(a)(1) and 4(b)(1)(C)) and 34 CFR part 85, the Nonprocurement Debarment and Suspension Regulations.

PURPOSE(S):

This system of records is maintained for the general purpose of enabling the OIG to fulfill the requirements of section (4)(b)(1)(C) of the Inspector General Act of 1978, 5 U.S.C. Appendix 3, 4(b)(1)(C) which requires Federal Inspectors General, including the Department Inspector General, to take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General. Records are used to document OIG actions with regard to open and closed referrals, suspensions or debarments by the OIG; to produce statistical data; and to share information with Federal, State and professional organizations which are also responsible for maintaining or monitoring adherence to audit standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As provided in the Education Department's Privacy Act regulations (34 CFR 5b.1(j)), the following routine uses are authorized without the consent of the individual, but only for a purpose which is compatible with the purpose for which the record was collected:

(1) *Audit oversight and referral disclosure.* A record from this system of records may be disclosed to other Federal agencies, the General Accounting Office, State agencies responsible for audit oversight, and the American Institute of Certified Public Accountants to make referrals regarding inadequate audits performed by independent auditors, to track the result of proceedings against those auditors, and to inform these agencies if prior referrals have been made under this routine use.

(2) *Suspension and debarment disclosure.* A record from this system of records may be disclosed, as authorized under section 3 of Executive Order 12549 for purposes of suspending and debarring an auditor pursuant to 34 CFR part 85.

(3) *Disclosure to auditee.* A record from this system of records may be disclosed to the auditee which was the subject of audit oversight by the Department OIG.

(4) *Engagement disclosure.* A record from this system of records may be disclosed to a contractor or grantee of the Department or other participant in Department programs which may be contemplating engaging the firm or individual named in the record to perform auditing or related services pertaining to federally assisted education programs, unless the entities to which the Assistant Inspector General for Audit Services has made a referral under routine use number 1, decline to take action against the auditor or act to exonerate the auditor.

(5) *Disclosure to Public and Private Entities To Obtain Information.* A record from this system of records may be disclosed to public or private sources to the extent necessary to obtain information from those sources relevant to an OIG audit oversight activity, referral action, suspension and debarment action, investigation, audit, inspection, or other activity.

(6) *Enforcement disclosure.* In the event that any records from this system of records, either alone or in combination with any other information, indicate a violation or potential violation of criminal or civil law or regulation, the Department may disclose information from this system of records as a routine use to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(7) *Disclosure to the Department of Justice.* A record may be disclosed from this system of records to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

(8) *Hiring/contracting disclosure.*

(a) *The Department.* A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee to perform audit services, the issuance of a security clearance, or the letting or continuation of a contract to perform audit services by the Department or by any recipient of Federal funds administered by the Department or its agent.

(b) *Other Federal agencies.* A record from this system of records may be disclosed to a Federal agency, in connection with the hiring or retention of an employee to perform audit services, the issuance of a security clearance, the letting or continuation of a contract to perform audit services by the agency or by any recipient of Federal funds, or the issuance of a license, grant, or other benefit by the recipient agency.

(9) *Litigation disclosure.*

(a) *Disclosure to the Department of Justice.* A record from this system of records may be disclosed to the Department of Justice if the record is relevant and necessary to litigation. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) The Department or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee; or

(iv) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Other litigation disclosure.* A record from this system of records may be disclosed to a court or adjudicative body, to a party, counsel or witnesses, in the course of the litigation or related settlement proceedings. Such disclosure may be made in the event that a person or entity listed below is a party to the litigation, or has an interest in the litigation:

(i) The Department or any component of the Department;

(ii) Any employee of the agency in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity where the agency has agreed to represent the employee; or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components.

(9) *Congressional member disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(10) *Employee grievance, complaint or conduct disclosure.* The Department may disclose a record in this system of records to another agency of the Federal government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence

determination proceedings. The disclosure may only be made during the course of the proceeding.

(11) *Contract disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and/or microcomputer disk.

RETRIEVABILITY:

Records are indexed and retrieved by name of individuals, firms or other professional associations.

SAFEGUARDS:

Records are secured in file cabinets and are locked in offices after office hours.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with the Department's Records Disposition Schedule (ED/RDS, Part 16). A copy of the ED/RDS can be obtained from the system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESSES:

Assistant Inspector General for Audit Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Washington, DC 20202–1510.

NOTIFICATION PROCEDURE:

Individuals wishing to know if they are named in this system of records must submit a written request to the system manager. Requests must reasonably specify the system of records containing the information and the particular record contents being sought. For a complete statement of notification procedures, see the regulations, 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to a record in this system of records must submit a written request to the system manager. Requests must reasonably specify the system of records containing the information, the particular record contents being sought, and the reason for the request. For a complete statement of notification procedures, see the regulations, 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest information contained in a record in this system of records should contact the system manager. Requests must be made either in writing or in person, and must specify: (1) The system of records from which the record is to be retrieved; (2) the particular record which the requestor is seeking to amend; (3) whether a deletion, an addition, or a substitution is being sought; and (4) the reason(s) for the requested change(s). Requestors may wish to include in their requests any appropriate documentation supporting the requested change(s). For a complete statement of contesting record procedures, see the regulations, 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information contained in the system will be obtained principally from OIG employees. Information regarding the status of referral actions will be obtained from the appropriate State licensing board and professional organizations to which the referral was made.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–10–04

SYSTEM NAME:

Hotline Complaint Files of the Inspector General.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Education, 330 C Street, SW., Room 4116, Switzer Building, Washington, DC 20202–1510.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories include individuals who are sources of information or have made complaints to the OIG Hotline, individuals who allegedly have knowledge regarding wrongdoing affecting the programs and operations of the Department, and individuals about whom complaints and allegations have been made concerning wrongdoing involving the programs and operations of the Department of Education. These individuals may include, but are not limited to, current and former Department employees, grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees, or agents of institutional recipients or program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain information obtained from complainants who report allegations of wrongdoing relating to Department of Education programs and operations. Specific data may include name and address (if available) of the complainant, the date the complaint was received, the affected program area, the nature and subject of the complaint, and any additional contacts and specific comments provided by the complainant. In addition, information on the OIG disposition of the complaint is included in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended (IG Act), 5 U.S.C. app. 3.

PURPOSES:

Pursuant to the Inspector General Act, the system is maintained for the purposes of maintaining a record of complaints and allegations received concerning Department of Education programs and operations and concerning the disposition of those complaints and allegations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses:

(1) *Disclosure for Use by Other Law Enforcement Agencies.* In the event that any records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of criminal or civil law or regulation, the Department may disclose information from this system of records as a routine use to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(2) *Litigation Disclosure.*

(a) *Introduction.* In the event that one of the following parties is involved in litigation, or has an interest in litigation, the Department may disclose certain records to the parties described in paragraphs (2), (3), and (4) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any employee of the Department in his or her individual capacity if the Department of Justice has agreed to provide or arrange for representation for the employee; or

(iv) Any employee of the Department in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice or attorneys engaged by the Department of Justice is relevant and necessary to litigation, the Department may disclose those records as a routine use to the Department of Justice.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or an entity designated by the Department or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Opposing Counsels, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to an opposing counsel, representative, or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the counsel, representative, or witness.

(3) *Disclosure to Public and Private Entities to Obtain Information Relevant to the Department's OIG Functions and Duties.* The Department may disclose information from this system of records as a routine use to public or private sources to the extent necessary to obtain information from those sources relevant to a Department of Education/OIG investigation, audit, inspection, or other inquiry.

(4) *Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as amended (HEA).* The Department may disclose information from this system of records as a routine use to any accrediting agency that is or was recognized by the Secretary of Education pursuant to the HEA, to any guarantee agency that is or was a party to an agreement with the Secretary of Education pursuant to the HEA, or to any agency that is or was charged with licensing or legally authorizing the operation of any educational institution or school that was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(5) *Disclosure to the Department of Justice.* The Department may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

(6) *Congressional Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in complaint files, computer mainframe files, and computer-printed listings.

RETRIEVABILITY:

Hard copy records are organized by and retrievable by the assigned Hotline number. The computer files are indexed and retrievable by Hotline number, name of complainant, and the name of the subject or subjects.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises to which access is limited to those persons whose official duties require access. Computer terminals are secured in controlled areas that are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Hotline records not resulting in investigations are destroyed when five years old, in accordance with the Department's Records Disposition Schedules (ED/RDS, part 16). Investigative case files are destroyed 10 years after close-out in accordance with the Department's Records Disposition Schedules (ED/RDS, Part 16).

SYSTEM MANAGER AND ADDRESS:

Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4106, Switzer Building, Washington, DC 20202-1510.

NOTIFICATION PROCEDURE:

See Systems Exempted. As provided in 34 CFR 5b.11(f), the notification procedures are not applicable to Hotline files except at the discretion of the Inspector General. The notification procedures are applicable to non-criminal files only under the conditions in 34 CFR 5b.11(f)(2). To the extent these procedures apply to the Department of Education Hotline Complaint Files, they are governed by 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

See Notification Procedure.

CONTESTING RECORD PROCEDURES:

Not applicable. See Systems Exempted.

RECORD SOURCE CATEGORIES:

Complainants who include, but are not limited to, current and former employees of the Department, employees of other Federal agencies, employees of State and local agencies, private individuals, and officers and employees of non-governmental organizations that are involved with Department programs, contracts, or funds or have knowledge about Department programs, contracts, or funds.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has by regulations exempted the Hotline Complaint Files of the Inspector General from the following provisions of the Privacy Act:

(1) Pursuant to 5 U.S.C. 552a(j)(2):

(a) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of a record.

(b) 5 U.S.C. 552a(c)(4), regarding notification to outside parties and agencies of correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

(c) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification or access to

records and correction or amendment of records.

(d) 5 U.S.C. 552a(e)(1), regarding maintaining only relevant and necessary information.

(e) 5 U.S.C. 552a(e)(2), regarding collection of information from the subject individual.

(f) 5 U.S.C. 552a(e)(3), regarding notice to individuals asked to provide a record to the Department.

(g) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(h) 5 U.S.C. 552a(e)(5), regarding maintaining records with requisite accuracy, relevance, timeliness, and completeness.

(i) 5 U.S.C. 552a(e)(8), regarding service of notice on subject individual if a record is made available under compulsory legal process if that process becomes a matter of public record.

(j) 5 U.S.C. 552a(g), regarding civil remedies for violation of the Privacy Act.

(2) Pursuant to 5 U.S.C. 552a(k)(2):

(a) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of records.

(b) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification of and access to records and correction or amendment of records.

(c) 5 U.S.C. 552a(e)(1), regarding the requirement to maintain only relevant and necessary information.

(d) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

These exemptions are stated in 34 CFR 5b.11.

18–11–01

SYSTEM NAME:

Federal Student Aid Application File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Application & Pell Processing Systems Division, Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh and D Streets, SW., Room 4621, ROB–3, Washington, DC 20202–5459.

Federal Student Aid Application Processing Center, Iowa City, IA 52240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on students applying for Federal student financial assistance under Title IV of the Higher Education Act of 1965 (HEA).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of the name, address, birth date, Social Security number, and financial data necessary to identify applicants, verify applicant data, and calculate their expected family contributions for Federal student financial assistance. In addition, information on the student's prior Pell Grant awards and student loan status from the National Student Loan Data System (NSLDS) database is maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Higher Education Act of 1965, as amended.

PURPOSE(S):

Information contained in this system is maintained for the purposes of: (1) Determining an applicant's eligibility for the Federal student financial assistance programs authorized by title IV of the HEA; (2) Maintaining a record of the data supplied by those requesting assistance; (3) Documenting the results of an applicant's need analysis and Pell Grant eligibility; (4) Reporting the results of the need analysis and Pell Grant eligibility determination to applicants, postsecondary institutions, and State agencies designated by the applicant, and to other Departmental and investigative components for use in operating and evaluating the title IV, HEA programs and in the imposition of criminal, civil or administrative sanctions; and (5) Acting as a repository and source for information necessary to fulfill the requirements of title IV of the HEA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure to institutions of postsecondary education.* The Department may disclose identifying information, financial data, and expected family contributions of applicants to those institutions of postsecondary education (or their designated agents) in which the applicants plan to enroll or are enrolled. Disclosure of such information is made only to postsecondary institutions that are listed by the applicant on the Federal Student Aid Application file.

(2) *Disclosure to State agencies.* The Department may disclose the data described in paragraph (1) to State agencies having agreements with the Secretary for purposes of coordinating student aid.

(3) *Disclosure to parents and spouses.* The Department, upon request, may disclose information that is provided by parents or spouses on the application form to those individuals.

(4) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(5) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(6) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the

litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(9) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original applications are maintained in standard Federal Records Center boxes in locked storage rooms within the facility of the Application for Federal Student Aid Processor. Computerized applicant records are maintained on magnetic tape reels, cartridges and hard disks in the computer facility and locked storage rooms within the Federal Student Aid Application Central Processing Center. Microfiche records maintained in the Washington, DC office are locked in standard file cabinets.

RETRIEVABILITY:

Records are indexed by Social Security number and the first two letters of the applicant's last name.

SAFEGUARDS:

Records are available to staff of the Student Financial Assistance Programs (including appropriate contract support staff). The Department will mail an Electronic Access Code (EAC) directly to certain students who have used the World Wide Web to electronically file a Free Application for Federal Student Aid (FAFSA). The student uses the EAC to complete their renewal Free Application for Federal Student Aid (FAFSA) via the Internet. Physical access to the data systems housed within the facility is controlled by a computerized badge reading system, and the entire complex is patrolled by security personnel during nonbusiness hours. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. Multiple levels of security are maintained within the computer system control program. This security system limits data access to Department and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Original records are maintained and stored in a Federal Records Center. Grant aid records are kept for a period not to exceed fifteen years after payment or audit of the grantee, whichever comes sooner; and loan records are kept three years after cancellation or repayment of a loan, in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Application & Pell Processing Systems Division, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4621, ROB–3, Washington, DC 20202–5459.

NOTIFICATION PROCEDURE:

A copy of the applicant's record, known as the Student Aid Report, is mailed to the applicant's home address after the application information has been processed. If you wish to determine whether a record exists regarding you in the system of records, contact the system manager and provide you name, date of birth, and Social Security number or call 1–800–4–FED–AID (1–800–433–3243) and give the same information. Requests for notification about whether the system of records contains information about an individual must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager and provide information as described in the Notification Procedure. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to change the content of a record in the system of records (for the current Free Application for Federal Student Aid (FAFSA)), contact the system manager with the information described in the Notification Procedure, identify the specific items to be changed, and provide a justification for the change. Requests to amend a record must meet the requirements of regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Applicants for Federal student financial aid provide the information

used in this system by filing a Free Application for Federal Student Aid (FAFSA) with the Department of Education. (For students who have access to the Internet, the Free Application for Federal Student Aid (FAFSA) is available on the world wide web (located at www.fafsa.ed.gov). Although students using the web site are required to send in a paper signature page and students must update their information each year, applying electronically using the Internet is less burdensome than applying on paper.)

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–11–02

SYSTEM NAME:

Recipient Financial Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Central Computer Facility, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on all Pell Grant Recipients.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of the names, addresses, birth dates, Social Security numbers, financial data, and status of award for Pell Grant recipients.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV–A of the Higher Education Act of 1965.

PURPOSE(S):

The information in this system is used to prepare processed student payment data for submission to schools or their agents in order to verify payments made to students.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program Disclosures.* Any information from this system of records, including personal information obtained from other agencies through computer matching programs, may be disclosed to any third party through a computer matching program in connection with an individual's application or qparticipation in any grant or loan program administered by the Department. Purposes of these disclosures may be to determine program eligibility and benefits, enforce the conditions and terms of the loan or grant, permit the servicing and collecting of the loan or grant, counsel the individual in repayment efforts, investigate possible fraud and verify compliance with program regulations, locate a delinquent or defaulted debtor, and initiate legal action against an individual involved in program fraud or abuse.

(2) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(f). A consumer-reporting agency to which these disclosures may be made is defined at 31 U.S.C.3701 (a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Origination and disbursement reports are now stored electronically. Decrease award and audit reports are maintained in hard copy.

RETRIEVABILITY:

Records are indexed by institution and by recipient name and Social Security number within school.

SAFEGUARDS:

Direct access is restricted to authorized staff. A computerized badge reading system controls physical access to the records housed within the facility.

RETENTION AND DISPOSAL:

Original copies are maintained until fiscal year funds are closed out and then are stored at the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Student Aid Origination Team, Programs Systems Service, 400 Maryland Avenue, SW., Washington, DC 20202.

NOTIFICATION PROCEDURE:

A student who has received a Federal Pell Grant, should presume that a record exists. If you wish to determine whether a record exists regarding you in the system of records, contact the system manager and provide your name, social security number and date of birth. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, you should contact the system manager and provide information as described in the Notification Procedure. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to change the content of a record in the system of records, you should contact the system manager with the information described in the Notification Procedure, identify the specific items to be changed and provide a written justification for the change. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from origination and disbursement records provided by the school or its agent to the Department of Education.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–11–03

SYSTEM NAME:

Student Financial Assistance Validation File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Debt Collection, Division of Certification and Program Review, Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh and D Streets, SW., Room 4520, ROB–3, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on applicants and recipients of student financial assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of student financial assistance application, award and servicing forms and documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Higher Education Act of 1965.

PURPOSE(S):

The information in this system is used to determine program eligibility and benefits, enforce the conditions and terms of the loan or grant, permit the servicing and collecting of the loan or grant, counsel the individual in repayment efforts, investigate possible fraud and verify compliance with program regulations, locate a delinquent or defaulted debtor, and initiate legal action against an individual involved in program fraud or abuse.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(2) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Program Disclosures.* Any information from this system of records, including personal information obtained from other agencies through computer matching programs, may be disclosed to any third party through a computer matching program in connection with an individual's application or participation in any grant or loan program administered by the Department of Education. Purposes of these disclosures may be to determine program eligibility and benefits, enforce the conditions and terms of the loan or grant, permit the servicing and collecting of the loan or grant, counsel the individual in repayment efforts, investigate possible fraud and verify compliance with program regulations, locate a delinquent or defaulted debtor, and initiate legal action against an individual involved in program fraud or abuse.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim which is

determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(f). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C.3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in standard file cabinets.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access is restricted to authorized staff only and files are maintained in locked cabinets.

RETENTION AND DISPOSAL:

Records are maintained until resolved and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Certification and Program Review, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4520, ROB–3, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from application data, incoming correspondence and related material, obtained during course of investigation; Program System Service (PSS), National Student Loan Data Systems Division (NSLDS).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–11–05

SYSTEM NAME:

Title IV Program Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Program System Service, Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh and D Streets, SW., Room 4640, ROB–3, Washington, DC 20202–5258.

Computer Sciences Corporation, Meridan, Connecticut.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on the following individuals:

(1) Individuals who apply for Federal financial student aid;

(2) Recipients of Pell Grants;

(3) Recipients of Federal Direct Student Loans; and

(4) Borrowers whose loan defaulted or borrower died, became disabled or had a loan discharged in bankruptcy under the Federal Direct Student Loan Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records regarding the amount of Pell Grant applicant receives; applicant's demographic background, loan, and educational status; family income; Social Security number; address and telephone number; and employment information on borrowers and co-signers; default claim number; amount of claim; information pertaining to locating a borrower; collection and repayment history; information pertaining to the amount of the loan and repayment obligation; forbearance; cancellation; disability; and deferment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Higher Education Act of 1965, Titles IV–A, IV–B, IV–D, and IV–E, as amended (20 U.S.C. 1070–1070a–6, 1070b–1070b–3, 1071–1087–2, 1087a, 1087aa–hh).

PURPOSE(S):

The information maintained in this system is used for the purposes of determining program eligibility and benefits, verifying the identity of the individual, enforcing the conditions and terms of the loan or grant, permitting the servicing and collecting of the loan or grant, counseling the individual in repayment efforts, investigating possible fraud and verifying compliance with program regulations, locating a delinquent or defaulted debtor or locating a recipient owing an overpayment on a grant, initiating legal action against an individual involved in program fraud, abuse, or noncompliance, and enforcing Title IV requirements against schools, lenders, and guaranty agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

(1) *Program Disclosures.* ED may disclose records for the following program purposes:

(a) To verify the identity of the applicant, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, contractors, business and personal associates and consumer reporting agencies.

(b) To determine program eligibility and benefits, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, contractors, business and personal associates and consumer reporting agencies.

(c) To facilitate default reduction efforts by program participants, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, consumer reporting agencies, contractors and hearing officials.

(d) To enforce the conditions or terms of the loan, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and

former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(e) To enforce the conditions or terms of the grant, disclosures may be made to educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(f) To permit servicing, collecting or accepting the loan, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(g) To permit collecting overpayment on grants, disclosures may be made to, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(h) To counsel the borrower in repayment efforts, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, contractors and Federal, State or local agencies.

(i) To investigate possible fraud and verify compliance with loan program regulations, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(j) To investigate possible fraud and verify compliance with grant program regulations, disclosures may be made to educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(k) To locate a delinquent or defaulted borrower, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(l) To locate an individual who owes a refund on a grant, disclosures may be made to educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(m) To issue collection letters to defaulted borrowers, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(n) To issue collection letters to an individual who owes a refund on a grant, disclosures may be made to educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(o) To locate a missing borrower, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(p) To locate a missing individual who owes a refund on a grant, disclosures may be made to educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(q) To collect in-file history information and to determine assets and ability to pay a loan debt, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(r) To collect in-file history information and to determine assets and ability to refund an overpayment, disclosures may be made to educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(s) To determine last known address, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(t) To conduct a salary offset hearing under 34 CFR Part 31, disclosures may be made to Federal agencies, contractors and hearing officials.

(u) To prepare for litigation or to litigate collection service and audit, disclosures may be made to guaranty agencies, Federal, State or local agencies, contractors and hearing officials.

(v) To initiate a limitation, suspension and termination (LS&T) or debarment or suspension action, disclosures may be made to guaranty agencies, educational and financial agencies or institutions and hearing officials.

(w) To ensure Title IV requirements are met by schools, lenders and guaranty agencies, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, and hearing officials.

(x) To verify death, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and Federal, State or local agencies.

(y) To conduct credit checks, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and Federal, State or local agencies.

(z) To investigate complaints, update files, and correct errors, disclosures may be made to guaranty agencies, educational and financial agencies or institutions, Federal, State or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, consumer reporting agencies, contractors and hearing officials.

(2) *Feasibility Study Disclosure.* Any information from this system of records may be disclosed to other Federal agencies and to guaranty agencies to determine whether computer matching programs should be conducted by the Department regarding an individual's

application for or participation in any grant or loan program administered by the Department. Purposes of these disclosures may be to determine program eligibility and benefits, facilitate default reduction efforts, enforce the conditions and terms of a loan or grant, permit the servicing and collecting of the loan or grant, enforce debarment, suspension, and exclusionary actions, counsel the individual in repayment efforts, investigate possible fraud and verify compliance with program regulations, locate a delinquent or defaulted debtor, and initiate legal action against an individual involved in program fraud or abuse.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto if the information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record from this system of records as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, such as current licenses, if the disclosure is necessary to obtain a record the Department believes may be relevant to a Department decision concerning the hiring, retention of, or any personnel action concerning an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Licensing Organizations.* The Department may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency or other public authority or professional licensing organization, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit.

(6) *Employee Grievance, Complaint or Conduct Disclosure.* If a record maintained in this system of records is relevant to an employee grievance or complaint or employee discipline or competence determination proceedings of another party of the Federal Government, the Department may disclose the record as a routine use in the course of the proceedings.

(7) *Labor Organization Disclosure.* Where a contract between a component of the Department and a labor organization recognized under Chapter 71, U.S.C. Title V provides that the Department will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed as a routine use to such an organization.

(8) *Contract Disclosure.* When the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records or performing any other function with respect to the records in this system, relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act Safeguards with respect to such records.

(9) *Disclosure to the Department of Justice.* The Department may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an audit, inspection, or other inquiry related to the Department's responsibilities under Title IV of the Higher Education Act of 1965.

(10) *Research Disclosure.* When the appropriate official of the Department determines that an individual or organization is qualified to carry out specific research, that official may disclose information from this system of records to that researcher solely for the purpose of carrying out that research. The researcher shall be required to maintain Privacy Act Safeguards with respect to such records.

(11) *Computer Matching Disclosure.* Any information from this system of records, including personal information obtained from other agencies through computer matching programs, may be disclosed to any third party through a computer matching program in connection with an individual's application for, or participation in, any grant or loan program administered by the Department. The purposes of these disclosures may be to determine program eligibility and benefits, enforce the condition and terms of a loan or grant, permit the servicing and collecting of the loan or grant, prosecute or enforce debarment, suspension, and exclusionary actions, counsel the individual in repayment efforts, investigate possible fraud and verify compliance with program regulations, locate a delinquent or defaulted debtor, and initiate legal action against an individual involved in program fraud or abuse.

Among other disclosures, this routine use authorizes disclosure to any other Federal agency, including the Defense Manpower Data Center, Department of

Defense, for the purposes of identifying and locating individuals who are delinquent in their repayment of debts owed to the U.S. Government under Title IV, HEA programs of the Department, in order to collect the debts under the provisions of the Debt Collection Act of 1982 (including 31 U.S.C. Chapter 37 and 5 U.S.C. 5514) and 31 CFR Part 31 by voluntary repayment or by administrative or salary offset.

(13) *Freedom of Information Act (FOIA) Advice Disclosure.* In the event that the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice or the Office of Management and Budget for the purpose of obtaining their advice.

(14) *Congressional Member Disclosure.* The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for the which the record was collected. The member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim which is determined to be valid and overdue as follows: (1) The name, address, social security number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(f). A consumer reporting agency to which these disclosures may be made is defined at 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in either hard copy, microfilm, magnetic tape, or other electronic media.

RETRIEVABILITY:

The file is indexed by Social Security number or name. Data for loans made under the Federal Direct Student Loan Program, FISL Program, Federal Perkins Loan (formerly National Direct Student Loan) Program, Federal Pell Grant Program, and some FFELs are retrievable by Social Security number.

SAFEGUARDS:

All physical access to the Department of Education site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department of Education offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department of Education and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records of individual loans may be destroyed five years after cancellation, forgiveness or final repayment of the loan. Records of Federal Supplemental Educational Opportunity Grant recipients may be destroyed five years after the fiscal operations report is filed. Records of Federal Pell Grant recipients may be destroyed five years after the initial award year has ended, as set forth in appropriate record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Systems Service, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4640, ROB–3, Washington, DC 20202–5258.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, you should provide to the system manager your name, date of birth, Social Security number, and the name of the school or lender from which the loan or grant was obtained. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, you should contact the system manager and provide information as described in the Notification Procedure. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to change the content of a record in the system of records, contact the system manager with the information described in the Notification Procedure, identify the specific items to be changed, and provide a written justification for the change. Requests to amend a record must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from reports from borrowers and their families, lenders, schools, examining or treating physicians, employers, credit agencies, Federal and State governmental agencies, and State or private nonprofit guaranty agencies. However, lenders and guaranty agencies are not a source of information for participants in the Federal Direct Student Loan Program, since the Department maintains individual records of borrowers for this program.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–11–07

SYSTEM NAME:

Student Financial Assistance Collection Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Program Systems Support, Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh and D Streets, SW., Room 4640, ROB-3, Washington, DC 20202–5258. See the Appendix to this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on those individuals who have student loans made under the Federal Family Education Loan (FFEL) Program: Stafford Loans (formerly the Guaranteed Student Loan Program (GSL), including Federally Insured Student Loans (FISL)), Supplemental Loans for Students (SLS), PLUS Loans (formerly Parental Loans for Undergraduate Students), and Consolidation Loans; the William D. Ford Federal Direct Student Loan (Direct Loan) Program (formerly known as the Stafford/Ford Loan

Program (SFLP), Federal Direct Unsubsidized Stafford/Ford Loan Program, Federal Direct Consolidation Loan, and Federal Direct Plus Loans; and Federal Perkins Loans (formerly National Direct/Defense Student Loans (NDSL)) and those who are awarded grants under the Pell Grant Program and the Supplemental Education Opportunity Grant Program (SEOG).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records regarding an applicant's demographic background; loan, repayment history; and educational status; family income; social security number; address and telephone numbers; employment information on borrowers and co-signers; collection activity on accounts; default claim number; amount of claim; information pertaining to locating a borrower; collection and repayment obligation; forbearance; cancellation; disability; deferment; administrative wage garnishment; bankruptcy, death; close school discharge; hearings; photocopy of all promissory notes; account collection records; and administrative resolutions and litigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Higher Education Act of 1965, Titles IV–A, IV–B, IV–D, and IV–E, as amended, (20 U.S.C. 1070–1070a–6, 1070b–1070b–3, 1071–1087–2, 1087a, and 1087aa–hh).

PURPOSE(S):

The information contained in the records maintained in this system is used for the purposes of determining program eligibility and benefits, verifying the identity of the individual, enforcing the conditions and terms of the loan or grant, permitting the servicing and collecting of the loan or grant, counseling the individual in repayment efforts, investigating possible fraud and verifying compliance with program regulations, locating a delinquent or defaulted debtor or locating a recipient owing an overpayment on a grant, initiating legal action against an individual involved in program fraud, abuse, or noncompliance, and enforcing Title IV requirements against schools, lenders, and guaranty agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose information from this system to Federal, State, or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, guaranty agencies, educational and financial agencies or institutions, consumer reporting agencies, contractors and hearing officials for the following purposes: (1) To verify the identity of the applicant; (2) to determine program eligibility and benefits; (3) to facilitate default reduction efforts by program participants; (4) to enforce the conditions or terms of the loan; (5) to permit servicing, collecting, or accepting the loan; (6) to counsel the borrower in repayment efforts; (7) to investigate possible fraud and verify compliance with program regulations; (8) to locate a delinquent or defaulted borrower; (9) to issue collection letters; (10) to locate a missing borrower; (11) to collect in-file history information to determine assets and ability to pay; (12) to determine last known address; (13) to conduct a salary offset hearing under 34 CFR part 31; (14) to prepare for litigation or to litigate collection service and audit; (15) to initiate a limitation, suspension, and termination (LS&T) or debarment or suspension action; (16) to ensure Title IV requirements are met by schools, lenders, and guaranty agencies; (17) to verify death; (18) to conduct credit checks; and (19) to investigate complaints, update files, and correct errors.

(2) *Feasibility Study Disclosure.* The Department may disclose information from this system of records to other Federal agencies and to guaranty agencies to determine whether computer matching programs should be conducted by the Department regarding an individual's application for or participation in any grant or loan program administered by the Department. Purposes of these disclosures may be to determine program eligibility and benefits, facilitate default reduction efforts, enforce the conditions and terms of a loan or grant, permit the servicing and collecting of the loan or grant, enforce debarment, suspension, and exclusionary actions, counsel the individual in repayment efforts, investigate possible fraud and verify compliance with program regulations, locate a delinquent or defaulted debtor, and initiate legal action against an individual involved in program fraud or abuse.

(3) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(4) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative

body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(6) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(7) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(8) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(9) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(10) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(12) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(13) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in either hardcopy, microfilm, magnetic tape, or other electronic media.

RETRIEVABILITY:

Records are retrievable by Social Security number.

SAFEGUARDS:

All physical access to the Department's site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system utilized by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to the Department and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records of individual loans may be destroyed five (5) years after cancellation, forgiveness or final repayment of the loan. Records of Federal Supplemental Educational Opportunity Grant (SEOG) recipients may be destroyed five (5) years after the fiscal operations report is filed. Records of Federal Pell Grant recipients may be destroyed five (5) years after the initial award year has ended, as set forth in appropriate record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Systems Support, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW.,

Room 4640, ROB–3, Washington, DC 20202–5258. See the Appendix at the end of this system notice for additional system managers.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, date of birth and Social Security number. Requests must meet the requirements of the regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager and provide information as described in the notification procedure. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If you wish to change the content of a record in the system of records, contact the system manager with the information described in the notification procedure, identify the specific items to be changed, and provide a written justification for the change. Requests to amend a record must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from reports from borrowers and their families, lenders, schools, examining or treating physicians, employers, credit agencies, Federal and State governmental agencies, and State or private nonprofit guaranty agencies. However, lenders and guaranty agencies are not a source of information for participants in the Federal Direct Student Loan Program, since the Department maintains individual records of borrowers for this program.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18-11-07

Additional System Managers and System Locations

Raytheon/E-Systems, 6201 I-30, Greenville, TX 75402. Assistant Regional Administrator, U.S. Department of Education, Region IV, Division of Claims and Collections, Office of Student Financial Assistance, 61 Forsyth Street, SW., Rm. 19T89, Atlanta, GA 30303.

Assistant Regional Administrator, U.S. Department of Education, Region V, Division of Claims and Collections, Office of Student Financial Assistance, 111 North Canal Street, Suite 1009, Chicago, Illinois 60605.

Assistant Regional Administrator, U.S. Department of Education, Region IX, Division of Claims and Collections, Office of Student Financial Assistance, 50 United Nations Plaza, Room 250, San Francisco, California 94102.

18–11–08

SYSTEM NAME:

Student Account Manager System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Program Systems Service, Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh and D Streets, SW., Room 4640, ROB–3, Washington, DC 20202. National Computer Systems, 2510 North Dodge Street, Iowa City, Iowa 52240.

Total Systems Services, Inc, 6101 Stone Mill Drive, Columbus, GA; Golden Retriever System, 8 N. Roosevelt Avenue, Chandler, AZ 85221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Student Account Manager System contains student financial assistance records about students and/or borrowers both who have applied for loans under any Title IV Federal loan program and students who have applied for grants under any Title IV Federal grant program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Student Account Manager System contains records relating to a student and/or borrower's originated awards and disbursements of Title IV financial assistance. The system contains three data element types as outlined below: demographic information, such as student and/or borrower name, mailing and permanent address, e-mail address, current and original Social Security number, phone number, date of birth, student account number; loan and grant funding and award information, including the Title IV code for the school(s) for which students and/or borrowers have requested determinations of Federal financial assistance eligibility, the origination date and I.D., the funding source I.D., loan holder, credit limit or award amount; loan and grant transaction information, including the transaction date, posting date, disbursement amount, acceptance/rejection field, batch number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Higher Education Act of 1965, Title IV–A through IV–H, as amended, (20 U.S.C. 1092b).

PURPOSE(S):

This system of records is provided for the purposes of:

(1) Giving students a single point of contact for information, statements, and customer service concerning their Federal student financial assistance (loans and grants) from various programs and sources;

(2) Providing eligible institutions of higher education with a standardized method for the receipt of Title IV student financial assistance; and

(3) Creating summary reports for Federal loan and grant funding sources and program offices for loans and grants delivered through the Student Account Manager.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program purposes.* Records may be disclosed for the following program purposes:

(a) To report disbursement activity, disclosures may be made to appropriate guaranty agencies, educational and financial institutions, and Federal agencies.

(b) To deliver Federal student assistance funds to the educational institution at which the student is enrolled, disclosures may be made to that educational institution.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(3) Enforcement disclosures. In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating

or prosecuting that violation or charged with enforcing or implementing the statute, or executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation disclosure and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ

(c) *Administrative disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(7) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(12) *Congressional member disclosure.* The Department may disclose information to a member of congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(13) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISCLOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records at the National Computer Systems (NCS) are maintained on the

mainframe at the NCS data center in Iowa City, IA and archived onto magnetic tape. Total System records are maintained on a mainframe database in Columbus, GA and backed up onto magnetic tapes. Golden Retriever System records are maintained on a sequel server database in Chandler, AZ and backed up onto CD–ROM.

RETRIEVABILITY:

Each student and/or borrower's file is indexed by social security number and the first two characters of their last name.

SAFEGUARDS:

All users of this system are given a unique user ID with a personal identifier. Student and parent users are assigned an Electronic Access Code (EAC) through the Federal Student Aid Application Files Privacy Act system of records number 18–11–01 by which they can access their accounts. All physical access to the Department's site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to the Department, agents of the Department (including schools and funding sources), and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with passwords.

RETENTION AND DISPOSAL:

Federal Loan Records: The Department will retain and dispose of loan records in accordance with the Department's Records Disposition Schedules (ED/RDS), Part 10, Item 16. Individual records (applications, certifications, disbursements, correspondence, and related records) for Federal loans may be destroyed three years after cancellation, forgiveness or final repayment of the Loan (ED/RDS, Part 10, Item 16). Electronic Federal loan records will be kept online and easily available for 24 months after reconciliation with the funding source, then retained in accordance with ED/RDS, Part 10, Item 16.

Federal Pell Grant Records: The Department will retain and dispose of Pell Grant records in accordance with ED/RDS, Part 10, Item 17. Records of Federal Pell Grant recipients (applications, payment, correspondence, and related records) will be transferred to a Federal Records Center after final payment to grantee. Individual Pell Grant records may be destroyed 15 years after final payment to grantee (ED/RDS, Part 10, Item 17). Individual records for unapproved Federal Pell Grant applications will be transferred to a Federal Records Center 120 days after a rejection or withdrawal, and may be destroyed three years after date of rejection or withdrawal (ED/RDS, Part 10, Item 17(d)). Electronic Federal Pell Grant records will be kept online and easily available for 24 months after reconciliation with the funding source, then retained in accordance with ED/RDS, Part 10, Item 17.

SYSTEM MANAGER(S) AND ADDRESS:

Service Director, Program Systems Service, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4640, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists regarding him or her in this system of records, the individual may gain access to the system via the Internet or by contacting the system administrator through the Student Account Manager's customer service e-mail address or toll-free telephone number. (To obtain access to records by telephone, the student must first authorize telephone access through the Student Account Manager's website using his or her Electronic Access Code.) The student must provide the system manager with his or her name, date of birth, Social Security number, and Electronic Access Code (EAC). Requests for notification about an individual must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity. Individuals may also present their requests in person at any of the locations identified for this system of records or address their requests to the system manager at the following address: Program Systems Service, Office of Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4640, Washington, DC 20202.

RECORD ACCESS PROCEDURES:

If an individual wishes to gain access to a record in this system, he or she may do so via the Internet, by calling the toll free customer service phone number using a touch-tone telephone, or by contacting the system manager through the Student Account Manager's customer service e-mail address or toll-free telephone number. (To obtain access to records by telephone, the student must first authorize telephone access through the Student Account Manager's website using his or her Electronic Access Code.)

CONTESTING RECORD PROCEDURES:

If an individual wishes to change the contents of a record in the system of records, he or she may challenge a transaction by contacting the system manager by telephone or sending written notice to the Student Account Manager's customer assistance area and providing the information described in the notification procedure, identifying the specific item(s) to be changed, and providing a written justification for the change, including any supporting documentation.

RECORD SOURCE CATEGORIES:

Information is obtained from schools, lenders, guaranty agencies, students, borrowers, the Title IV Program Files (Privacy Act system of records number 18-11-05), the Federal Student Aid Application Files Privacy Act system of records number 18-11-001), the Direct Loan Origination Center, and the Recipient Funds Management System (RFMS).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18-11-09

SYSTEM NAME:

Postsecondary Education Participants System (PEPS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Computer Sciences Corporation, 71 Deerfield Lane, Meriden, CT 06450.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The PEPS contains records about owners (individuals, either solely or as partners, and corporate entities), officials, and authorized agents of postsecondary institutions; members of boards of directors or trustees of such institutions; employees of foreign entities that evaluate the quality of education; third-party servicers, including contact persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

The PEPS contains information regarding the eligibility, administrative capability, and financial responsibility of postsecondary schools that participate in the student financial aid

programs, including the names, taxpayer identification numbers (Social Security numbers), business addresses, and phone numbers of the individuals with substantial ownership interests in, or control over, those institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Higher Education Act of 1965, Title IV, as amended, (20 U.S.C. 1088, 1094, 1099c); the Debt Collection Improvement Act of 1996 (31 U.S.C. 7701).

PURPOSE(S):

The information contained in the PEPS is used for the purposes of determining initial and continuing eligibility, administrative capability and financial responsibility of postsecondary schools that participate in the student financial assistance programs, tracking school changes and maintaining history of this information regarding schools that have ever applied to participate or participated in these programs and documenting any need for any protective or corrective action against a school or individual associated with the school.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected and only as needed to achieve a program objective under the following routine uses:

(1) *Program Purposes.* The Department may disclose information contained in the PEPS to appropriate guaranty agencies, educational and financial institutions, accrediting agencies, State agencies, and appropriate Federal, State, or local agencies, in order to verify and assist with the determination of eligibility, administrative capability, and financial responsibility of postsecondary institutions that have applied to participate in the student financial assistance programs.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records in the PEPS, as a routine use, to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or alternative dispute resolution (ADR), or has an interest in litigation or ADR, the Department may disclose PEPS records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any employee of the Department in his or her individual capacity where the Department of Justice has agreed to provide or arrange for representation for the employee; or

(iv) Any employee of the Department in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation, the Department may disclose those records as a routine use to the Department of Justice.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes, is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to that adjudicative body, entity or individual.

(d) *Opposing counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to an opposing counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the counsel, representative or witness.

(4) *Employment, Benefit and Contracting Disclosure.*

(a) *For decisions by the Department.* The Department may disclose records to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For decisions by Other Public Agencies and Professional Organizations.* The Department may disclose records to a Federal, State, local or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in PEPS to another agency of the Federal government if the record is relevant to a complaint, grievance, discipline or competence determination proceeding regarding a present or former employee of the Department. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* The Department may disclose records to a labor organization if a contract between the Department and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purpose of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the

Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (a) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (b) the amount, status, and history of the claim; and (c) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on electronic data files on a server.

RETRIEVABILITY:

The records are indexed by the name of the institution or organization, and may be retrieved by the OPEID of school, EIN (Entity Identification Number) of the school or entity; or the name or TIN (Tax Identification Number or social security number) of the individual.

SAFEGUARDS:

All physical access to the Department of Education site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. The computer system employed by the Department of Education offers a high degree of resistance to tampering and circumvention. This security system limits data access to staff of the Department of Education, guarantors,. accrediting agencies, State agencies, and Department contractors on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

History records are kept in PEPS indefinitely, or archived. Records are maintained and destroyed in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Postsecondary Education Participants System, Office of Student Financial Assistance Programs, U.S. Department of Education, Seventh and D Streets, SW., Room 4629, ROB–3, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the PEPS, provide the system manager with your name and social security number. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity. You may address your request, or present that request in person, to the system manager at the address above.

RECORD ACCESS PROCEDURES:

You may gain access to any record in the PEPS that pertain to you by contacting the system manager and following the procedures for notification listed above and must meet the requirements of 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

You may contest the content of a record in PEPS pertaining to you by presenting to the system manager, either in writing or in person, a request to amend or correct that information. The request to amend, or for an appointment to present an oral request, must be made in writing mailed to the system manager at the address provided above. The request must identify the particular record within the PEPS that you wish to have changed, state whether you wish to have the record amended, corrected or deleted, and explain the reasons why you wish to have the record changed.

RECORD SOURCE CATEGORIES:

Information is obtained from applications submitted by institutions and entities that seek to participate in the student financial assistance programs and from components of the Department, from other Federal, State and non-governmental agencies and organizations that acquire information relevant to the purposes of the PEPS.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–12–01

SYSTEM NAME:

Title VI Foreign Language and Area Studies Fellowships (FLAS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

International Education and Graduate Programs Service, Office of Postsecondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW, Room 600, Portals Building, Washington, DC 20202–5331.

AppNet, 103 W. Broad Street, Fifth Floor, Falls Church, VA 22046.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Graduate Students, who have been nominated for FLAS fellowships by grantee institutions of higher education.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Title VI FLAS Records System consists of a variety of records relating to an individual's applications for, and participation in, the FLAS program. In addition to the individual's name, the system contains the participant's grantee institution, degree status, award period, amount of the award, language of the award, title of language course taken, major discipline, career goal, foreign language proficiency self-

evaluation, and a brief description and evaluation of the study program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Higher Education Act of 1965, as amended, Part A, Title VI, Section 602(b).

PURPOSE(S):

The information contained in this system is used to determine the eligibility of nominees for FLAS fellowships; to monitor compliance and accomplishments; and to use the data to demonstrate program effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

Department of Education personnel, field readers, and grantee institutions use the information to determine the eligibility of nominees and to monitor the progress of foreign language and area studies training. Department of Education personnel and AppNet use some of the data to demonstrate program effectiveness. Disclosure may be made to the following entities as well:

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor

to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hardcopy, filed in standard filing cabinets and in an electronic data warehouse maintained by AppNet and accessible by AppNet, individual participants, participants' institutions and US Department of Education personnel.

RETRIEVABILITY:

Hardcopy files are retrieved by individual names and educational institution. Electronic files can be accessed through all data elements.

SAFEGUARDS:

All physical access to the Department of Education site, and the site of Department contractors where this system of records is maintained, is controlled and monitored by personnel who check each individual entering the building.

The computer system employed by AppNet offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department of Education and contract staff grantees on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Hardcopy records are maintained for five years and then destroyed. Data stored in the electronic data warehouse are maintained until the need for longitudinal studies to demonstrate program effectiveness is no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, International Education and Graduate Programs Service, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 600B, Portals Building, Washington, DC 20202–5247.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, the year of the award, the name of the grantee institution, and language of the award. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

Contact the system manager.

CONTESTING RECORD PROCEDURES:

Contact the system managers.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual and grantee institutions on approved forms in hardcopy or electronic format.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–12–02

SYSTEM NAME:

Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA), Faculty Research Abroad (FRA), Seminars Abroad (SA), Fellows.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

International Education and Graduate Programs Service, Office of Postsecondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW., Room 600, Portals Building, Washington, DC 20202–5331.

AppNet, 103 W. Broad Street, Fifth Floor, Falls Church, VA 22046.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on teachers or prospective teachers who have been selected to be recipients for Fulbright-Hays awards to enable them to engage in foreign language and area studies projects overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Fulbright-Hays Records System consists of a variety of records relating to an individual's applications for, and participation in, the Fulbright-Hays DDRA, FRA or SA programs. In addition to the individual's name, the system contains the participant's address, telephone number, educational institution, date and place of birth, citizenship, social security number, veteran's status, names of accompanying dependents, previous overseas travel, educational and employment background, student loan default status, a health statement, transcripts, references, project description and project cost based on either the cost-of-living in the host country or the annualized salary of a faculty member, field reader and US Embassy comments, award documents, and final project reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451–2458).

PURPOSE(S):

The information contained in this system is used for the following purposes: (1) To determine the

applicants' qualifications, eligibility, suitability and feasibility; (2) to award benefits for overseas research; (3) to monitor the progress of the project including its accomplishments; and (4) to demonstrate the program's effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program Disclosure.* The Department may disclose information to field readers, the U.S. Department of State, U.S. Embassies, binational commissions, the J. William Fulbright Foreign Scholarship Board, foreign educators and officials so that the information can be used to determine the qualifications, eligibility, suitability, feasibility, and award benefits for overseas research.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(7) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the

disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(12) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(13) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hardcopy, filed in standard filing cabinets and in an electronic data warehouse maintained by AppNet and accessible by AppNet, individual participants, participants' institutions and U.S. Department of Education personnel.

RETRIEVABILITY:

Hardcopy files are retrieved by individual names and educational institution. Electronic files can be accessed through all data elements.

SAFEGUARDS:

All physical access to the Department of Education site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by personnel who check each individual entering the building.

The computer system employed by AppNet offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department of Education and contract staff grantees on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Hardcopy records are maintained for five years and then destroyed. Data stored in the electronic data warehouse are maintained until the need for longitudinal studies to demonstrate program effectiveness is no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, International Education and Graduate Programs Service, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 600B, Portals Building, Washington, DC 20202–5247.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, date of birth, social security number, the year of the award, the name of the grantee institution, major country in which you conducted your educational activity. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records regarding you in this system of records, contact the system manager at the address listed above and follow the steps outlined in the Notification Procedures. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record in this system of records, contact the system manager at the address listed above. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual on approved application forms and from field readers, and may be secured from the U.S. Department of State, U.S. Embassies, binational commissions, the J. William Fulbright Foreign Scholarship Board, and foreign educators and officials.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–12–04

SYSTEM NAME:

Jacob K. Javits Fellowship System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

International Education and Graduate Programs Service, Office of Postsecondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW., Room 600, Portals Building, Washington, DC 20202–5247.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who apply for fellowships under the Jacob K. Javits Fellowship Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Jacob K. Javits Fellowship System consists of a variety of records relating to a student's application for, and participation in, the Javits Fellowship Program. In addition to the student's name, the system contains the student's social security number, or nine digit identification number, address, scholastic accomplishments, rating scores, and reference letters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII, Part A, Subpart 1 of the Higher Education Act of 1965, as amended (20 U.S.C. 1134–1134d). The program regulations are found in 34 CFR part 650.

PURPOSE(S):

The information contained in this system is used to determine the qualifications, eligibility, and suitability in the selection of fellows; to maintain the progress of fellows; to ensure compliance with program requirements; and to use the data to demonstrate program effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis, or if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written

request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hard copy, filed in standard filing cabinets; on access-controlled personal computers; and on removable personal computer diskettes that are stored in filing cabinets.

RETRIEVABILITY:

Hardcopy files are retrieved by individual names and educational institutions. Electronic files are accessed using an individual's Social Security number, or other nine digit identification number.

SAFEGUARDS:

All physical access to the Department's site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Hardcopy records are maintained for five years and then destroyed. Data stored electronically is maintained until the need for longitudinal data to demonstrate program effectiveness is no longer needed.

SYSTEM MANAGERS AND ADDRESS:

Director, International Education and Graduate Programs Service, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 600, Portals Building, Washington, DC 20202–5247.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, date of birth and Social Security number. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to a record regarding you in the system of records, provide the system manager with your name, date of birth, and Social Security number. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained principally from individual applicants, references, and schools attended by the applicant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18-12-04

SYSTEM NAME:

Title VI International Research and Studies Program (IRS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

International Education and Graduate Programs Service, Office of Postsecondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW., Suite 600, Portals Building, Washington, DC 20202–5331.

AppNet, 103 W. Broad Street, Fifth Floor, Falls Church, VA 22046.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individual researchers who have been selected to be recipients of International Research and Studies (IRS) awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Title VI IRS Records System consists of a variety of records relating to an individual's applications for, and participation in, the IRS program. In addition to the individual's name, the system contains the participant's address, telephone number, educational institution, citizenship, social security number, institutional or individual DUNS number, educational and employment background, salary, research or instructional materials project description, project costs, field reader comments, award documents, and final project reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Higher Education Act of 1965, as amended, Part A, Title VI, section 605(a).

PURPOSE(S):

The information contained in this system is used for the following purposes: (1) To determine the qualifications and eligibility of the project director, competitiveness of and need for the project, and award benefits; (2) to monitor the progress of the project including its accomplishments; and (3) to demonstrate the program's effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Field Reader Disclosures.* The Department may disclose information to field readers in order to determine the qualifications and eligibility of the project director, competitiveness of and need for the project, and award benefits.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(7) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(12) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(13) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be

valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hardcopy, filed in standard filing cabinets and in an electronic data warehouse maintained by AppNet and accessible by AppNet, individual participants, participants' institutions and Department personnel.

RETRIEVABILITY:

Hard copy files are retrieved by individual names and educational institution. Electronic files can be accessed through all data elements.

SAFEGUARDS:

All physical access to the Department's site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by personnel who check each individual entering the building.

The computer system employed by AppNet offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff grantees on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Hard copy records are maintained for five years and then destroyed. Data stored in the electronic data warehouse are maintained until the need for longitudinal to demonstrate program effectiveness is no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, International Education and Graduate Programs Service, Office of Postsecondary Education, US Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-5247.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, date of birth, social security number, the year of the award, the name of the grantee institution, major country in which you conducted your educational activity. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records regarding you in this system of records, contact the system manager at the address listed above and follow the steps outlined in the Notification Procedure. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record in this system of records, contact the system manager at the address listed above. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals and institutions on approved application forms and from field readers.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–13–01

SYSTEM NAME:

National Center for Education Statistics Longitudinal Studies and the School and Staffing Surveys.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Center for Education Statistics, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 400, Washington, DC 20202–5574. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on the following groups:

(1) High school seniors who participated in the National Longitudinal Study of the High School Class of 1972;

(2) Approximately 26,820 high school seniors and sophomores from 1,015 U.S. high schools who participated in the High School and Beyond Survey in 1980;

(3) Approximately 26,000 eighth grade students in 1,050 U.S. schools who participated in the National Education Longitudinal Study of 1988;

(4) Approximately 60,000 students enrolled in U.S. postsecondary institutions who participate in each cycle of the National Postsecondary Student Aid Study, the Baccalaureate and Beyond Study, or the Beginning Postsecondary Students Longitudinal Study;

(5) Approximately 21,000 kindergartners, their parents, and 6,000 teachers who are participating in the Early Childhood Longitudinal Study, Kindergarten Cohort in 1998;

(6) 14,000 children and their families as well as 4,500 childcare providers that will participate in the Early Childhood Longitudinal Study, Birth Cohort 2000;

(7) Approximately 78,000 teachers, administrators, and librarians who participate in each administration of the School and Staffing Surveys of NCES;

(8) Approximately 11,000 faculty and administrators who participated in the 1987–88 National Study of Postsecondary Faculty;

(9) Approximately 30,000 faculty, instructional staff, and administrators who participate in subsequent administrations of the National Study of Postsecondary Faculty;

(10) Approximately 33,000 U.S. students who participated in the Third International Mathematics and Science Study and the 15,000 U.S. students who will participate in the subsequent administration of the Third International Mathematics and Science Study;

(11) Approximately 5,000 U.S. students who will participate in an international Civics Education Study;

(12) 9,000 U.S. students who will participate in the Program of International Student Assessment;

(13) 8,000 U.S. adults who will participate in the International Life Skills Survey.

CATEGORIES OF RECORDS IN THIS SYSTEM:

This system consists of responses to survey instruments which contain background and demographic data, questions concerning educational experiences, employment experiences, finances, aspirations, plans and goals, family formation variables, and attitudes. Cognitive test scores, financial aid records, and high school and college

transcripts are appended to the records as well.

The records for schools and local education agencies contain information on numbers and characteristics of teaching staff, administrators, financial and demographic data, and data related to student performance.The records related to teachers and administrators contain, in addition to the above, information on training and experience, salary history, and attitudes and opinions on educational and operational questions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1221e–1.

PURPOSE(S):

This system is used to describe the critical influences, contexts, and transitions of students in elementary, secondary, and postsecondary education and into employment and adult experience.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Contract Disclosure.* When the National Center for Education Statistics intends to contract with a private firm for the purpose of collating, analyzing, aggregating, maintaining, appending, or otherwise refining records in this system, the Commissioner of Education Statistics may release relevant records to the contractor. The contractor will be required to maintain safeguards under the Privacy Act of 1974 and under section 406(d)(4) of GEPA (20 U.S.C. 1221e–1(d)(4)) with respect to such records.

(2) *Research Disclosure.* Where the Commissioner of Education Statistics determines that an individual or organization is qualified to carry out specific research, the Commissioner may disclose information from these systems of records to that researcher solely for the purpose of carrying out that research. The researcher shall be required to maintain under the Privacy Act of 1974 and 20 U.S.C. 1221–e1(d)(4) safeguards with respect to such records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The research files will be stored on computer tapes and diskettes. The location files will be kept on computer tapes.

RETRIEVABILITY:

The records are retrievable by title of survey and name of person.

SAFEGUARDS:

The research files and location files are not directly mergeable in the form maintained and stored. The identification codes on each file are different. They can be related by use of an encryption algorithm known to only a few authorized staff. Copies of the computer tapes and discs containing the location files are stored with three levels of password protection. Hence, immediate access to the location files is possible only by authorized staff. When in active use for editing, tabulation and analysis, files of information and identifiers will not be kept together unless necessary for processing the data. The files will be accessed only through approved identification of the user and the use of passwords. Passwords will be changed at the conclusion of each period of use and returned to storage. Tapes, discs and questionnaires will be kept in locked files in locked rooms.

RETENTION AND DISPOSAL:

The records will be kept for five years after the final survey administration, including the base year survey and any following surveys and then transferred to the Federal Records Center, where, after 15 years, they will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commissioner, National Center for Education Statistics, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 400, Washington, DC 20208–5574.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. Your request must meet the requirements in the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to a record regarding you, contact system manager. Your requests must meet the requirements in the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORDS PROCEDURE:

If you wish to contest the content of a record regarding you, contact the system manager. Your request must meet the requirements in the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in the records comes form responses to survey instruments.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–13–01

Additional System Locations

U.S. Bureau of the Census, Federal Office Building 3, Washington, DC 20233.
WESTAT, 1650 Research Boulevard, Rockville, Maryland 20850.
Research Triangle Institute, P.O. Box 12194, Research Triangle Park, North Carolina 27709.
National Opinion Research Center, 1155 E. 60th Street, Chicago, Illinois 60637–2790.
Educational Testing Service, 1825 Eye Street, NW, Suite 475, Washington, DC 20006.
The Gallup Organization, One Church Street, Suite 900, Rockville, MD 20850.
MPR Associates, 1995 University Avenue, Suite 225, Berkeley, California 94704.
Abt Associates, 55 Wheeler Street, Cambridge, Massachusetts 02138.
Pelavin Research Institute, 1,000 Thomas Jefferson Street, Suite 400, Washington, DC 20007.
Institute for Social Research, Survey Research Associates, University of Michigan, 426 Thompson, Ann Arbor, MI 48106.
School of Education, University of Michigan, 610 E. University, Ann Arbor, MI 48109.

18–13–02

SYSTEM NAME:

National Center for Education Statistics Affidavits of Nondisclosure.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See the Appendix to this system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on employees of the National Center for Education Statistics (NCES) or other persons who assist NCES in the performance of its work, who have access to any record, response form, completed survey or aggregation thereof from which information about individual students, teachers,

administrators, or other individual persons may be revealed, and who have signed a pledge not to disclose such information. Other persons who may assist NCES include employees of companies, profit or nonprofit organizations, State agencies, local agencies or instrumentalities having a contract, task order, interagency agreement, or some other formal agreement with NCES and who have access to individually identifiable information.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information:

(1) The affidavit of nondisclosure that includes the individual's name, place of work (company, agency, etc.), signature, and date signed; and

(2) the name of the project or survey in which the entity employing the individual was involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 406(d)(4) of the General Education Provisions Act, as amended by Title III, Part A, Section 3001, of Public Law 100–297, April 28, 1988 (20 U.S.C. 1221e–1(d)(4)).

PURPOSE(S):

This system of records is used for the following purposes: (1) To maintain information necessary for internal control and monitoring of those having access to individually identifiable information; (2) to provide evidence in disciplinary actions or prosecution of individuals who disclose individually identifiable information protected from disclosure under Section 406(d)(4) of the General Education Provisions Act, as amended; and (3) to ensure that individuals utilized by the Commissioner of NCES protect the individually identifiable data of NCES.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF THOSE USERS:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Contractor Disclosure.* A record may be disclosed from this system of records to employees of entities having a contract or other agreement with the Commissioner to assist in the collection of data on behalf of NCES to ensure that these entities maintain an accurate file of individuals who have access to individually identifiable information in performance of their duties under the contract or other agreement.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(4) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation and ADR, the Department may disclose those records as a routine use to the DOJ.

(5) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(6) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(7) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards under 5 U.S.C. 552a(m) with respect to such records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information will be kept in file folders and on computer diskettes or computer tapes.

RETRIEVABILITY:

The records will be retrievable by name, date, and place of work of the individual.

SAFEGUARDS:

The records will be kept in locked files. The computer tapes and diskettes will be accessible by authorized personnel through identification number and password.

RETENTION AND DISPOSAL:

Each affidavit will be kept for 5 years after the individual access to NCES confidential data has ceased and then will be transferred to the Federal Records Center, where it can remain up to 15 years before it is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Statistician & Individual Survey Project Officers, National Center for Education Statistics, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208-5574.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, contact the system manager at the address listed above and provide your name, place of work (i.e. company, agency, etc.), and the dates of employment. Your request must meet the requirements in the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURESS:

If you wish to gain access to records regarding you in this system of records, contact the system manager and provide your name, place of work (i.e. company, agency, etc.), and the dates of employment. Your request must meet the requirements in the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you, contact the system manager. Your request to amend a record must meet the requirements of 43 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in the records comes from individuals who have signed the affidavits of nondisclosure.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–13–02

Additional System Locations

National Center for Education Statistics, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20202–5574.
U.S. Bureau of the Census, Federal Office Building 3, Washington, DC 20233.
WESTAT, 1650 Research Boulevard, Rockville, Maryland 20850.
Research Triangle Institute, P.O. Box 12194, Research Triangle Park, North Carolina 27709.
National Opinion Research Center, 1155 E. 60th Street, Chicago, Illinois 60637–2799.
Educational Testing Service, 1825 Eye Street, NW, Suite 475, Washington, DC 20006.
The Gallup Organization, One Church Street, Suite 900, Rockville, MD 20850.
MPR Associates, 1995 University Avenue, Suite 225, Berkeley, CA 94704.
Abt Associates, 55 Wheeler Street, Cambridge, MA 02138.
Pelavin Research Institute, 1,000 Thomas Jefferson Street, Suite 400, Washington, DC 20007.
Institute for Social Research, Survey Research Associates, University of Michigan, 426 Thompson, Ann Arbor, MI 48106.
School of Education, University of Michigan, 610 E. University, Ann Arbor, MI 48109.

18–13–03

SYSTEM NAME:

National Center for Education Statistics' National Assessment of Educational Progress.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

WESTAT, 1650 Research Boulevard, Rockville, MD 20850.

Educational Testing Service, Rosedale Road, Princeton, NJ 08541.

National Computer Systems, 2510 N. Dodge Street, Iowa City, IA 52245.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on the following individuals: (1) Individuals who leave school early as early graduates or as drop-outs (defined as 17-year-olds who are no longer in school) and are covered during a six month data verification period; (2) young adults in the study who are covered during a six month data verification period; and (3) individual schools which are covered under the National Assessment of Educational Progress (NAEP) statute (20 U.S.C. 9010 (c)(2)(A)).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain responses to assessment and survey instruments. The contents of these instruments are of two types: (1) Cognitive test items to assess the educational achievement of students and young adults in various subject areas taught in school; and (2) questions about student demographic and background variables as well as the characteristics of teachers and schools.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 9010.

PURPOSE(S):

The purpose of the National Assessment of Educational Progress (NAEP), funded by the Department of Education, is to provide information on the educational achievement of young Americans over time.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

During a six-month verification period, individually identifiable information about individuals who leave school early or are young adults is subject to the Privacy Act, and may be disclosed under routine uses that are consistent with the Commissioner's authority under section 406(d)(4) of GEPA (20 U.S.C. 1221e-1(d)(4)). The routine uses that apply to this period permit disclosures to individuals who:

(1) Take the oath and sign an affidavit of nondisclosure required under 20 U.S.C. 9007;

(2) Work for a contractor, grantee, or party to a cooperative agreement or other entity that has an agreement with the Commissioner to conduct research for National Center for Education Statistics (NCES), or

(3) Work under a research contract, grant, or cooperative agreement with a Federal, State, or local agency that requires the use of individually identifiable information, and the research is compatible with the purpose for which NCES collected the data, or

(4) Work under an agreement in writing to:

(i) Use the information for statistical purposes only,

(ii) Maintain the data in accordance with applicable Federal laws,

(iii) Prohibit redisclosure in identifiable form, and

(iv) Permit NCES' periodic inspection to determine adherence to the contract or agreement.

Regarding the records of individual schools, which, under 20 U.S.C. 9010(c)(2)(A), must be treated as individuals subject to the Privacy Act, NCES may make routine use disclosures, consistent with the statistical purposes for which a record was supplied, as follows:

(1) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose

the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(2) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(3) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(4) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, ED may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If ED determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

POLICIES AND PRACTICES FOR RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on magnetic tape and computer disk media.

RETRIEVABILITY:

Records are retrievable by assessment year, subject area, age or grade at the school or individual respondent level.

SAFEGUARDS:

Access to the restricted-use data files and completed test booklets and forms is severely limited to key contractor and NCES staff. User access to the restricted-use data files has three levels of data access protection. Access to the files is restricted to authorized NAEP staff who have a valid need for immediate access to NAEP data. This access is controlled and monitored by the use of secure "log-on" identification and password protection schemes. Access to individual restricted-use data files is controlled by an access control facility that restricts users to only those files that are necessary and approved for their perusal. In addition, the restricted-use data files are backed-up to an off-site secure location that will protect NAEP data in the event of a computer center disaster. This off-site storage is in a secure vault that is physically protected from unauthorized entry. The open-ended responses are stored in a secure warehouse with access limited to NAEP project staff.

RETENTION AND DISPOSAL:

The NAEP restricted-use data files are stored in a secure computer facility. The security mechanism includes physical security, data security, and disaster recovery capability. The computer facility is housed within a fire-resistant masonry and steel door structure. Physical access to the facility is electronically controlled through magnetically imprinted identification badges and is limited to authorized staff who have functional responsibilities within the secured areas. Open-ended responses are kept indefinitely. However, data that could be used to identify individuals are destroyed six months after collection.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Educational Assessment Division, National Center for Education Statistics, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 308C, Washington, DC 20208–5653.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record regarding you exists in this system of records, you should contact the system manager at the address listed above and provide your name, date of birth and social security number. Your requests must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system of records, you should contact the system manager and provide the information described in the Notification Procedures. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest information contained in this system of records, you should contact the system manager. You should specify the particular record you are seeking to amend, whether a deletion, an addition, or a substitution is being sought and the reason(s) for the requested change(s). Your request should meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The information in this system comes from the data collected from the subject individuals and individual schools.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–13–04

SYSTEM NAME:

Outcomes of Diversity in Higher Education Surveys.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute on Postsecondary Education, Libraries, and Lifelong Learning, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 627, Washington, DC 20208–5531. See the Appendix at the end of this system notice for additional system locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains data on the following individuals: (1) Approximately 5500 students who were first-time freshmen in Fall 1998 at 9 four-year institutions of higher education; (2) approximately 300 faculty who teach freshmen at those institutions; and (3) approximately 45 administrators of those institutions. There will be follow-up data for spring of 1999 and spring of 2000 on the initial set of freshmen respondents.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of responses to survey instruments and interview protocols. In addition to background and demographic data, the survey instruments include sets of items concerning perception of institutional commitment to diversity, attitudes, campus climate, knowledge of multiple cultures and pedagogy. The opinions of students, faculty and administrators concerning diversity and multiculturalism are also represented.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 6031 (h) (Supp. 1998).

PURPOSE(S):

The information contained in the system is used for the following purposes: (1) To increase understanding of the effects of diversity in higher education on all students by examining incoming attitudes of first-time freshmen and changes in attitudes and cognitive development concerning issues of diversity and multiculturalism; and (2) to assess pedagogy and student participation, attainment, development, attitudes and knowledge.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected and only as needed to perform one or more of the following routine uses:

(1) *Contract Disclosure.* When OERI intends to contract with a private firm for the purpose of collating, analyzing, aggregating, maintaining, appending, or otherwise refining records in this system, the Director may release relevant records to the contractor. The contractor will be required to maintain safeguards under the Privacy Act of 1974 and under section 406(d)(4) of GEPA (20U.S.C. 1221e–1(d)(4)) with respect to such records.

(2) *Research Disclosure.* Where the Director determines that an individual or organization is qualified to carry out specific research, the Director may disclose information from these systems of records to that researcher solely for the purpose of carrying out that research. The researcher shall be required to maintain Privacy Act of 1974 and 20 U.S.C. 1221e–1(d)(4) safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The research and location files will be stored on separate computer diskettes.

RETRIEVABILITY:

Aggregate files may be retrieved by title of survey. The location files will be destroyed upon completion of this project as there will be no future need to retrieve an individual record. Only the completed interview protocols will be retained in hard copy by title of individual interviewed at each of the nine institutions.

SAFEGUARDS:

The research files and location files cannot be merged in the form maintained and stored since the identification codes on each file are different. They can be related by use of an encryption algorithm known only to a few staff authorized to work with the data files. When in active use for editing, tabulation and analysis, files of information and identifiers will not be kept together unless necessary for data processing. Tapes, discs and questionnaires will be kept in locked files.

RETENTION AND DISPOSAL:

The records will be kept for five years after the final survey administration, in spring of 2000. In the spring of 2005, the records will be transferred to the Federal Records Center, where, after 15 years, they will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Institute on Postsecondary Education, Libraries and Lifelong Learning, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 627, Washington, DC 20208–5531.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you, contact the system manager at the address listed above. Your requests must meet the requirements in the regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record, contact the system manager. Any requests to amend a record must meet the requirements of 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in the records comes from the responses to survey instruments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–13–04

Additional System Locations

Mathtech, Inc., 6402 Arlington Blvd., Suite 1200, Falls Church, VA 22042–2356.
Mathtech, Inc., 202 Carnegie Center, Suite 111, Princeton, NJ 08540–6239.
Mathtech, Inc., 180 Pembrooke Circle, Phoenixville, PA 19460.

18–14–01

SYSTEM NAME:

Educationally Disadvantaged Students Attending Private Schools Served Through Bypass Contracts.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Contractor serving the State of Virginia: Nonpublic Educational Services, Inc., 14416 Jefferson Davis Highway, Suite 11, Woodbridge, VA 22191.

Contractor serving the State of Missouri: Blue Hills Homes Corporation, 1020 East 63rd Street, Kansas City, MO 64110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on selected elementary and secondary school students whom:

(1) Attend private schools;

(2) Reside in target areas of bypassed local educational agencies; and

(3) Participate in the program for students who are failing or most at risk of failing under Title I of the Elementary and Secondary Education Act of 1965 as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains student documents such as test scores, report cards, individual instructional records and reports from teachers to other teachers and parents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Elementary and Secondary Education Act of 1965 1120(d), 20 U.S.C. 6321.

PURPOSE(S):

The information contained in this system is used for a variety of purposes. The standardized test scores obtained at the beginning of a year are used to determine the eligibility of students for participation in the Title I program. The report cards and reports of Title I teachers to regular classroom teachers and to parents are used to report the progress students are making during the school year. The scores on the achievement tests given at the end of a school year are used to measure the progress students have made during the year and the degree to which the objectives of the Title I progress have been met. The purpose of the individual instructional record is to provide a plan for meeting the students' instructional needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record on this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Educational Disclosures.* Title I teachers make information contained in this system of records available to regular classroom teachers and to the parents of those students to explain the eligibility of students and their progress in the Title I program. Supervisors of the Title I teachers also use the information contained in this system of records as a part of the monitoring process to measure progress being made toward achieving program objectives.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(6) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(7) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(8) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings

regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each student's records are kept in a separate file folder. All folders are filed in a locked filing cabinet in the Title I classroom. After a student no longer participates in the program, his or her records are transferred to the contractor's office or storage facility where they are stored in locked filing cabinets.

RETRIEVABILITY:

The records are indexed by student names, school attended and year of attendance at that school.

SAFEGUARDS:

The records are secured in a locked filing cabinet. The key is kept by the Title I teacher. After a student no longer participates in the program, the records are transferred to the contractor's office or storage facility where they are stored in a locked filing cabinet. Direct access is restricted to the Title I teacher and aide during the day-to-day program operation. The instructional supervisor, representatives of the contractor, and Department of Education staff have access during monitoring visits.

RETENTION AND DISPOSAL:

Records are maintained in the contractor's office or storage facility for at least three years after final payment on the contract. Disposal of records are in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W230, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If a student or his or her parent or guardian wishes to determine whether a record exists regarding them in this system of records, he or she must notify the appropriate contractor for the State served by the bypass contract. The name and address of the appropriate contractor is listed under the system location of this notice. For identification, the authorized individual seeking information should provide the name, home address, and school of the student for whom information is being requested. The request must meet the requirements in the regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

In order to gain access to a record in this system, you should contact the contractor listed in the system location or the system manager. You should provide the contractor with the information listed in the Notification Procedure of this notice and reasonably specify the record contents being sought. The request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of the record of a participating Title I student, you should contact the contractor for the State served by the bypass contract. You should identify yourself and state, in writing, which portion of the record you desire to be changed and provide a justification and authorization for the change. The contractor will forward the request to the system manager. The request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The information in this system comes from test scores on achievement tests for program eligibility administered at private schools and class performance information from the regular class teachers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–14–02

SYSTEM NAME:

Fellowships for Indian Students—Applications and Awards.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Indian Education, Office of Elementary and Secondary Education, 1250 Maryland Avenue, SW., Room 4300, Portal Building, Washington, DC 20202–6335.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

American Indians who are citizens of the United States or residents of the United States for other than a temporary purpose, who have been accepted by institutions of higher education in a program leading to an undergraduate or graduate degree in the fields of Business Administration, Engineering and Natural Resources or related fields, and graduate degree in the fields of education, law and medicine or related fields, and who have applied to Department's Office of Indian Education for a fellowship.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, phone number, date and place of birth, tribal affiliation, tribal roll number, social security number, sex, marital status, citizenship, names of dependents, educational background, employment background, educational transcripts, references, income information, admission test scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Indian Education Act of 1972, as amended, Pub. L. 92–318, Part B, section 423.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected. These disclosures may be made on a case-by-case basis or, if the

Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Advisory Council Disclosure.* Information may be released to members of the National Advisory Council on Indian Education.

(2) *Field Readers Disclosure.* Field Readers for the purpose of determining eligibility and recommending awardees; selected data for developing brochures describing the Fellows and their career goals for public information purposes.

(3) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) or (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee; or

(iv) Any Department employee in his or her official capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hard copy, filed in locked standard file cabinets.

RETRIEVABILITY:

Records are accessed by individual names only by authorized Department staff and Field Readers for the purposes of determining eligibility; selecting Fellows: Establishing allowances for stipends, dependents, tuition, and other expenses; determining continued eligibility; and developing profile information regarding recipients of fellowships for program evaluation, planning, reporting and publicity purposes.

RETENTION AND DISPOSAL:

Records on fellowship holders are maintained and disposed of in accordance with the Department of Education Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Indian Education, Office of Elementary and Secondary Education, ATTN: Education Program Specialist for Fellowships, U.S. Department of Education, 400 Maryland Avenue SW., Room 4300, Washington, DC 20202–6335.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, provide the system manager with your name, the year of the award, the name of the grantee institution, and type of award. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

To gain access to records regarding you in this system of records, follow the Notification Procedure described above. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in this system of records, contact the system manager at the address listed above and reasonably identify the record and specify the information to be contested. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual applicant and from references submitted by the applicant on approved forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

18–15–01

SYSTEM NAME:

Bilingual Education Graduate Fellowship Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, 330 C Street, SW., Room 5618, Washington, DC 20202–6642.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records about individuals who apply for acceptance in the program, and if approved, who participate in the fellowship program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to a student's application for, and participation in, the fellowship program. In addition to the student's name, the system contains the student's address, telephone number, social security number, name of the institution attended, amount of award, obligation status, degree sought, field of study, and the name and address of the employer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII, Part A of the Bilingual Education Act of 1994, as amended (Pub. L. 103–382) (20 U.S.C. 7475 (1994)). The program regulations are found in 34 CFR part 535.

PURPOSE(S):

The information contained in this system is used for the purposes of administering the Bilingual Education Graduate Fellowship Program, including enforcing the terms and conditions of the contracts signed by the fellows, permitting the collections on loans, and locating delinquent or defaulted debtors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual, if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, ED may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(5) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(6) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(7) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(9) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

The records are maintained in hard copy and on an access-controlled personal computer.

RETRIEVABILITY:

The file is indexed by Social Security number or name. Data for awards made under the Bilingual Education Graduate Fellowship Program are retrieved by social security number or name.

SAFEGUARDS:

All physical access to the Department's site where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need-to-know" basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

Records of individual awards are destroyed five years after cancellation, forgiveness, final payment to grantee, or audit, of the loan, whichever is sooner. Records relating to those individuals who are not approved to participate in the fellowship program are transferred to the Federal Records Center and destroyed three years after the date of rejection or withdrawal.

SYSTEM MANAGER AND ADDRESS:

Education Program Specialist, Bilingual Education Graduate Fellowship Program, Office of Bilingual

Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5618, Switzer Building, Washington, DC 20202–6642.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, provide the system manager with your name, date of birth, social security number, and the name of the school through which the award was obtained. You may present your request in person at the system manager's address indicated above. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in this system of records, you should contact the system manager and provide the information as described in the Notification Procedure. In order to avoid excessive delays and exchanges of correspondence, you are encouraged to request both notification and access at the same time. Requests for access to a record should reasonably specify the particular record content being sought. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest information contained in a record in this system of records, you should contact the system manager. Requests for amendment of records may be made either in writing or in person, and should specify: (1) The system of records from which the record is to be retrieved; (2) the particular record requested for amendment; (3) whether a deletion, an addition, or a substitution is being sought; and (4) the reason(s) for the requested change(s). You should include in your requests any appropriate documentation supporting the requested change(s). Your request must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from fellowship recipients, institutions of higher education, and employers.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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June 4, 1999

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6345–8]

RIN 2060–AE97

National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing primary lead smelters pursuant to section 112 of the Clean Air Act (Act) as amended in November 1990. Primary lead smelters have been identified by the EPA as significant emitters of lead compounds, and other metal hazardous air pollutants (HAP) including arsenic, antimony, and cadmium. Exposure to lead compounds may result in adverse effects on the blood, central nervous system and kidneys. Chronic exposure to arsenic is associated with skin, bladder, liver and lung cancer and other developmental and reproductive effects. This NESHAP provides protection to the public by requiring all primary lead smelters to meet emission standards that reflect the application of maximum achievable control technology (MACT).

EFFECTIVE DATE: June 4, 1999.

ADDRESSES: *Docket.* Docket No. A–97–33 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 12:00 p.m. and 1:00 to 3:00 p.m., Monday through Friday. The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning these standards and technical aspects of primary lead smelting emissions and control, contact Mr. Kevin Cavender, Environmental Protection Agency, MD–13, Research Triangle Park, NC 27711, telephone number (919) 541–2364, facsimile number (919) 541–5600, electronic mail address "cavender.kevin@epa.gov.".

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated category and entities affected by this action include primary lead smelters (SIC 3339). This action will affect three existing primary lead smelting facilities and any new primary lead smelting facilities built in the future.

Technology Transfer Network. The text of today's notice will also be available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 BPS modem. The TTN also is accessible through the Internet at "http://www.epa.gov/ttn". If more information on the TTN is needed, call the HELP line at (919) 541–5348. The HELP desk is staffed from 11 a.m. to 5 p.m.; a voice menu system is available at other times.

Outline.

The information presented in this preamble is organized as follows:

I. Background
II. Summary
  A. Summary of the Promulgated Standards
  B. Summary of Major Changes Since Proposal
  C. Summary of Environmental, Energy, and Economic Impacts
III. Public Participation
IV. Summary of Comments and Responses
  A. Comments on April 1998 Proposal
  B. Comments on February 1999 Supplemental Proposal
V. Administrative Requirements
  A. Docket
  B. Executive Order 12866
  C. Executive Order 12875
  D. Executive Order 13084
  E. Unfunded Mandates Reform Act
  F. Regulatory Flexibility Act
  G. Paperwork Reduction Act
  H. Submission to Congress and the General Accounting Office
  I. National Technology Transfer and Advancement Act
  J. Pollution Prevention Considerations
  K. Protection of Children from Environmental Health Risks and Safety Risk Under Executive Order 13045
  L. Judicial Review

I. Background

Section 112 of the Act requires that the EPA promulgate regulations requiring the control of HAP emissions from major and certain area sources. The control of HAP's is achieved through promulgation of emission standards under sections 112(d) and (f) and, in appropriate circumstances, work practice standards under section 112(h).

An initial list of categories of major and area sources of HAP's selected for regulation in accordance with section 112(c) of the Act was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Primary lead smelting is one of the 174 categories of sources listed. The category consists of smelters that process lead bearing ore concentrates into lead metal. The listing was based on the Administrator's determination that primary lead smelters may reasonably be anticipated to emit several of the 188 listed HAP's in quantities sufficient to designate them as major sources. Information subsequently collected by the EPA as part of this rulemaking confirms that all three operating primary lead smelters have the potential to emit greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of a single HAP or greater than 22.7 Mg/yr (25 tpy) of a combination of HAP's (Docket ID No. II–B–4). Therefore, all three primary lead smelters are major sources.

This NESHAP was proposed in the **Federal Register** on April 17, 1998 (63 FR 19200). The EPA received 2 letters commenting on the proposed rule. The EPA received no requests for a public hearing.

A supplemental proposal was published in the **Federal Register** on February 12, 1999 (64 FR 7149). This notice proposed an operating limit that would require owners and operators of a primary lead smelter (referred to as operators in the remainder of this preamble) to operate and maintain each affected baghouse such that the required bag leak detection system would not sound more than five percent of the operating time. The EPA received three letters commenting on the supplemental proposal. The EPA received no requests for a public hearing on the supplemental proposal.

II. Summary

A. Summary of the Promulgated Standards

Standards are being promulgated to limit metal HAP emissions from: (1) process sources, (2) process fugitive sources, and (3) fugitive dust sources at primary lead smelters. Process source emissions are discharged as the main exhaust of a sinter machine or smelting furnace through a chimney, flue, or ductwork. Process sources that are regulated include sinter machines, blast furnaces, and dross furnaces.

Process fugitive emission sources that are regulated include sinter machine charging and discharging, sinter crushing and sizing, blast furnace tapping, and dross furnace charging and tapping.

Fugitive dust sources that are regulated include plant yards and roadways subject to wind and vehicle traffic, process areas, and materials handling and storage areas.

1. Process and Process Fugitive Sources

A "plant wide" emission limit is being promulgated for lead compounds from process and process fugitive emission sources. The lead compound emission limit is a surrogate for all metal HAP's and will apply to both existing and new sources. The aggregated lead emissions from the following process and process fugitive sources are limited to 500 g/Mg of lead produced (1.0 lb/ton of lead produced):

(1) Sinter machine;
(2) Blast furnace;
(3) Dross furnace;
(4) Dross furnace charging location;
(5) Blast and dross furnace tapping locations;
(6) Sinter machine charging location;
(7) Sinter machine discharge end;
(8) Sinter crushing and sizing equipment; and
(9) Sinter machine area.

In addition to the emission limit, work practice standards are required for the above listed fugitive sources (items 4 through 9). The charging, tapping, and sinter handling sources identified above (items 4 through 8) shall be equipped with a hood ventilated to an air pollution control device. The hood design and ventilation rate shall be consistent with the American Conference of Governmental Industrial Hygienists (ACGIH) recommended practices. In addition, the sinter machine and sinter crushing and sizing equipment shall be located in a building ventilated to a baghouse or equivalent device at a rate that maintains in-draft through any doorway opening.

The operator must install a bag leak detection system for each baghouse used on a process or process fugitive source. The bag leak detection system shall be equipped with an audible alarm that automatically sounds when an increase in particulate matter (PM) emissions above a predetermined level is detected. Operators are further required to maintain and operate each affected baghouse such that the bag leak detection device does not sound more than five percent of the total operating time in any 6-month period. Alarms caused by startups, shutdowns, or malfunctions are not included in the alarm time calculation if the condition is described in the startup, shutdown, and malfunction plan and the operator follows all the procedures in the plan prescribed for the subject condition. Alarms caused by a malfunction of the bag leak detection system are also excluded from the alarm time calculation.

2. Standards for Fugitive Dust Sources

The standards for fugitive dust sources are in the form of work practice and operating standards. The EPA is setting work practice and operating standards based on the determination in accordance with section 112 (h)(2)(A) that the HAPs controlled by those standards cannot be emitted through a conveyance designed and constructed to emit or capture those HAP. Again, the standards apply to fugitive dust sources at both new and existing smelters. Each primary lead smelter shall develop a Standard Operating Procedures (SOP) manual for fugitive dust sources that details procedures to limit fugitive dust emissions. Each smelter's SOP manual shall be reviewed and subject to approval by the Administrator. Existing manuals developed as part of a control strategy to meet a facility's State implementation plan (SIP) may be used to meet this requirement if the existing manuals address the identified fugitive dust sources.

3. Compliance Dates

Compliance with the standards must be achieved by June 4, 2001 for existing primary lead smelters, and upon startup for new and reconstructed smelters.

4. Compliance Test Methods

The following EPA test methods will be used to measure the lead emissions from the process and process fugitive sources included in the plant wide emission limit. Testing of lead compound emissions from process and process fugitive emission control devices shall be conducted according to EPA reference method 12 (40 CFR part 60, appendix A). Sampling locations for all compliance tests shall be determined by EPA reference method 1. Stack gas velocity and volumetric flow rate shall be determined by EPA reference method 2. Gas analysis shall be conducted according to EPA reference method 3 for carbon dioxide, oxygen, excess air, and molecular weight on a dry basis.

The plant wide emission rate will be calculated as follows. The previous 12 calender months production data shall be used to calculate lead production based on the mass produced, and the lead content of lead products, copper speiss, and copper matte. Plant records will be used to determine the facility operating hours for the previous 12 calender months. The plant wide emission rate is calculated by dividing the sum of lead emission rates, determined through stack testing, for the process and process fugitive sources by the average hourly lead production rate for the previous 12 calender months.

Operators are required to perform an initial compliance demonstration for the sinter machine building in-draft requirement. Operators are required to demonstrate in-draft at all doorway openings using an anemometer or equivalent device. The demonstration is to be conducted when wind speed is less than two meters per second (five miles per hour.)

5. Monitoring Requirements

Each operator subject to the NESHAP shall be required to develop and operate according to a SOP manual for operation and maintenance of the control devices used to comply with the emission limits. Each smelter's SOP manual shall be reviewed and subject to approval by the Administrator. The minimum SOP requirements identified in the rule shall serve as the criteria by which the Administrator would decide whether to approve a smelter's SOP.

Minimum requirements for the bag leak detection system required in the process and process fugitive standards section are detailed. The bag leak detection system shall be equipped with an audible alarm that automatically sounds when an increase in particulate emissions above a predetermined level is detected. The system shall be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.004 grains per actual cubic foot) and provide an output of relative PM emissions. Operators shall continuously record the bag leak detection system output. Such a device shall serve as an indicator of the performance of the baghouse and shall provide an indication of when maintenance of the baghouse is needed. An alarm by itself will not necessarily indicate noncompliance with the lead limit, but would indicate an increase in PM emissions and trigger an inspection of the baghouse to determine the cause of the alarm. The operator would initiate corrective actions according to the procedures in their operation, maintenance, and monitoring plan. The operator would be considered out of compliance upon failure to initiate within one hour the procedures to determine the cause of the alarm, as specified in the baghouse operation and maintenance SOP manual.

Operators are given three options for the monitoring of sinter building in-draft. Under the first option, operators may elect to perform daily checks for in-draft at all doorway openings using an anemometer or equivalent device. Checks are only to be conducted when ambient wind speed is less than two meters per second (five miles per hour).

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Under the second option, operators are required to establish and maintain the ventilation exhaust rate and damper positions at settings that result in an in-draft at each open doorway. Operators are required to install and operate a flow monitor device on the ventilation system that would continuously record the ventilation exhaust rate. Operators are required to conduct an initial demonstration of in-draft at all doorway openings using an anemometer or equivalent device while simultaneously recording the ventilation system exhaust rate and damper positions. Operators are then required to maintain the ventilation rate at or above the average rate recorded during the in-draft demonstration, and check and record daily the damper positions to ensure that they are maintained in the position they were in when the in-draft demonstration was performed.

As a third option, operators may petition the administrator or delegated authority for an alternative monitoring method by following the procedures and requirements in § 63.8(f) of the General Provisions.

6. Notification Requirements

The operator of a primary lead smelter is required to submit the notifications described in § 63.9 of the General Provisions to part 63, (40 CFR part 63, subpart A). These will include the initial notification, notifications of performance tests, and the notification of compliance status. In addition, each operator will be required to submit the baghouse operation and maintenance SOP manual and the fugitive dust control SOP manual along with a notification to the Administrator requesting review and approval of the smelter's SOP manuals.

7. Recordkeeping and Reporting Requirements

The operator of a primary lead smelter will be required to comply with the recordkeeping and reporting requirements described in § 63.10 of the General Provisions to part 63, (40 CFR part 63, subpart A). In addition, the operator of a primary lead smelter will be required to retain for 5 years records of: (1) production data of the weight and lead content of lead products, copper matte, and copper speiss; (2) records of bag leak detection system output; (3) an identification of the date and time of all bag leak detection system alarms, the time procedures to determine the cause of the alarm were initiated, their cause, and an explanation of the corrective actions taken; (4) records of daily in-draft checks (if applicable); (5) records of the output from the flow monitoring system (if applicable); (6) records of the daily damper position checks (if applicable); (7) records demonstrating implementation of the baghouse SOP; and (8) records demonstrating implementation of the fugitive dust controls contained in the smelter's SOP manual.

In addition to the information required by the General Provisions to part 63, (40 CFR part 63, subpart A), the operator of a primary lead smelter will be required to submit semi-annual reports containing: (1) records of all alarms from the bag leak detection system including a description of the procedures taken following each bag leak detection system alarm; (2) the percent of operating time the bag leak detection alarmed; (3) a summary of the records maintained as part of the practices described in the baghouse SOP, including an explanation of the periods when the procedures were not followed and the corrective actions taken; (4) an identification of the periods when the in-draft was 0.0 meters per second or less, and an explanation of the corrective actions taken (if applicable); (5) an identification of the periods when the 15-minute volumetric flow rate(s) dropped below the minimum established during the most recent in-draft determination (if applicable); (6) an identification of the days that the damper positions were not in the positions established during the most recent in-draft determination, and an explanation of the corrective actions taken (if applicable); and (7) a summary of the fugitive dust control measures performed during the required reporting period, including when procedures outlined in the fugitive dust control SOP were not followed and the corrective actions taken.

B. Summary of Major Changes Since Proposal

Based on public comments received in response to both the initial notice of proposal and the supplemental notice, the EPA has made several changes to the proposed rule. A summary of the major changes is presented below.

1. Definitions

A definition of bag leak detection system has been added to the final rule. Based on the definition, a "bag leak detection system means a system that is capable of monitoring particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to monitor relative particulate matter loadings."

The definition of total enclosure has been replaced with a definition of a building. For the purpose of this subpart, a "building means a roofed and walled structure with limited openings to allow access and egress for people and vehicles."

The definition of malfunction included in the General Provisions has been added to the subpart for clarity. A "malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions."

A definition of operating time has been added. For the purpose of this subpart, "operating time means the period of time in hours that an affected source is in operation beginning at a startup and ending at the next shutdown."

A definition of plant operating time has been added. For the purpose of this subpart, "plant operating time means the period of time in hours that either a sinter machine or blast furnace is in operation."

The definition of shutdown in the General Provisions has been added to the subpart for clarity. A "shutdown means the cessation of operation of an affected source for any purpose."

The definition of startup in the General Provisions has been added to the subpart for clarity. A "startup means the setting in operation of an affected source for any purpose."

2. Standards for Process and Process Fugitive Sources

The requirements for annual compliance tests have been changed. Upon demonstrating compliance for 3 consecutive years, operators will be allowed up to 24 months between compliance tests. Operators will retain the 24 month compliance test schedule as long as each subsequent test demonstrates that the facility is in compliance with the plant wide emission limit.

An operating limit has been added that requires operators to maintain and operate each affected baghouse such that the bag leak detection system does not alarm more than five percent of the time in any 6-month period. Alarms caused by startups, shutdowns, or malfunctions are not included if the condition is described in the startup, shutdown, malfunction plan and the operators follow all the procedures in the plan prescribed for the subject

condition. Alarms caused by a malfunction of the bag leak detection system are also excluded from the alarm time calculation.

3. Monitoring Requirements

The monitoring requirements for baghouses have been modified. Operators will be required to identify, and monitor against, the normal pressure drop range across each baghouse cell. Also, the requirement for a quarterly check of bag tension has been changed to a quarterly visual check of bag tension.

The requirements for demonstrating compliance with the sinter machine building in-draft requirements have been changed. Operators are given three options for the continuous monitoring of in-draft. Under the first option, operators may elect to perform daily checks for in-draft at all doorway openings using an anemometer or equivalent device.

Under the second option, operators are required to establish and maintain the ventilation exhaust rate and damper positions at settings that result in an in-draft at each open doorway. Operators are required to install and operate a flow monitor device on the ventilation system that would continuously record the ventilation exhaust rate. Operators are required to conduct an initial demonstration of in-draft at all doorway openings using an anemometer or equivalent device while simultaneously recording the ventilation system exhaust rate and damper positions. Operators are then required to maintain the ventilation rate at or above the average rate recorded during the in-draft demonstration, and check and record daily the damper positions to ensure that they are maintained in the position they were in when the in-draft demonstration was performed.

As a third option, operators may petition the Administrator or delegated authority for an alternative monitoring method by following the procedures and requirements in § 63.8(f) of the General Provisions.

C. Summary of Environmental, Energy, and Economic Impacts

There are only three existing primary lead smelters that will be subject to the standards, and no new facilities are anticipated to be constructed in the next 5 years. The required levels of control are based on existing SIP emission limits for lead. No additional emission controls will be required to comply with the standards. Therefore, no quantifiable emission reduction or other environmental impacts are anticipated to result from this rulemaking. However, it is anticipated that improved baghouse operation and maintenance procedures coupled with continuous bag leak detection will result in unquantifiable reductions in emissions of lead compounds and other metal HAP.

Similarly, cost and economic impacts are expected to be minimal. The only costs associated with the standards are those required to perform compliance assurance activities such as performance testing, monitoring, reporting, and recordkeeping. These costs are minimal, and will not result in any significant economic impact.

III. Public Participation

Prior to proposal of the standards, the EPA met with representatives from the only operators of primary lead smelters. The EPA discussed the standards being evaluated for proposal. Comments submitted following this meeting were incorporated into the proposed rule as appropriate.

The standards were proposed and published in the **Federal Register** on April 17, 1998 (63 FR 19200). The preamble to the proposed standards described the technical basis, purpose, and impacts of the proposed standards. Public comments were solicited at the time of proposal.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, the opportunity for a public hearing was offered at proposal; however, no requests for a hearing were received. The public comment period was from April 17, 1998 to June 16, 1998. Two comment letters were received. The comments were carefully considered in formulating the final rule.

A supplemental proposal was published in the **Federal Register** on February 12, 1999 (64 FR 7149). That notice proposed an operating limit that would require owners and operators of a primary lead smelter (referred to as operators in the remainder of this preamble) to operate and maintain each affected baghouse such that the required bag leak detection system would not sound more than five percent of the operating time. Again the opportunity for a public hearing was offered at proposal; however, no requests for a hearing were received. The public comment period was from February 12, 1999 to March 15, 1999. Three comment letters were received. Again, the comments were carefully considered in formulating the final rule.

IV. Summary of Comments and Responses

The EPA received two comment letters (one letter contained joint comments from two commenters) on the initial proposal, and three letters commenting on the supplemental proposal (again, one letter contained joint comments from two commenters). Comment summaries and EPA responses are presented below.

A. Comments on April 1998 Proposal

The comments contain both favorable and adverse comments. Topics and requirements which received favorable and supportive comments include the following:

—The use of lead as a surrogate pollutant for all metal HAP,

—The conclusion that organic HAP emissions from blast furnaces are not significant enough to warrant regulation,

—The use of a plant-wide emission limit,

—The requirement that sinter plants be enclosed and ventilated to a baghouse or equivalent control device,

—The requirement that certain process fugitive emission sources be equipped with a hood and ventilated to a baghouse or equivalent control device,

—Allowing 2 years to achieve compliance, and

—The requirement for an approved plan for the control of fugitive dust emissions.

Topics and provisions of the proposed rule which received adverse comments are summarized below with the EPA's responses.

Comment. One commenter stated that it is not possible to maintain a sinter machine building "at a lower than ambient pressure to ensure in-draft through any doorway opening" at all times. They argue that static pressure measured at any one point in a building is the sum of the pressures caused by the combination of several effects including mechanical or forced ventilation, stack effects, wind influences and local effects. A ventilation system that is designed and operated for a specific building can effectively control the escape of most fugitive emissions. However, the variable influence of stack draft, wind, and local effects will cause the actual building static pressure to vary over space and time, thereby making it impossible to comply with a standard that requires maintaining a building at lower than ambient pressure at all times.

The commenter suggested that the EPA give operators the following three

alternatives. First, require operators to submit to the Administrator or delegated authority a statement from a professional engineer certifying that the design of the ventilation system in the sinter buildings is sufficient to attain in-draft with all doorways in their customary position during normal operation. Each operator would be required to design and operate its ventilation system to meet a minimum exhaust flow rate, and would have to restrict the total surface area of doorways open during normal operation to some maximum.

Second, allow for more flexible performance tests (i.e., use of anemometers) to account for wind effects. The commenter suggested that the performance demonstrations be limited to periods when the wind speed is less than five miles per hour.

The third suggestion was to allow operators flexibility in developing site-specific methods to demonstrate compliance with the in-draft requirement. All site specific alternatives would be subject to approval of the Administrator or delegated authority.

Response. The EPA has considered the comment, and agrees to modify the requirements for sinter building in-draft. The EPA believes that with some modification, the alternatives suggested by the commenter are better than the negative pressure requirements contained in the proposal. As such, the EPA is making the following changes to the proposed rule.

Operators are required to perform an initial compliance demonstration for the sinter machine building in-draft requirement. Operators are required to demonstrate in-draft at all doorway openings using an anemometer or equivalent device. The demonstration is to be conducted when wind speed is less than two meters per second (five miles per hour.)

Operators are given three options for the continued monitoring of in-draft. Under the first option, operators may elect to perform daily checks for in-draft at all doorway openings using an anemometer or equivalent device. This option is similar to the option given in the proposed rule, however, the checks for in-draft are limited to days when the ambient wind speed is less than two meters per second (five miles per hour.)

Under the second option, operators are required to establish and maintain the ventilation exhaust rate and damper positions at settings that result in an in-draft at each open doorway. Operators are required to install and operate a flow monitor device on the ventilation system that would continuously record the ventilation exhaust rate. Operators are required to conduct an initial demonstration of in-draft at all doorway openings using an anemometer or equivalent device while simultaneously recording the ventilation system exhaust rate and damper positions. Again, the demonstration is not to be conducted when wind speeds are greater than two meters per second (five miles per hour.) Operators are then required to maintain the ventilation rate at or above the average rate recorded during the in-draft demonstration, and check and record daily the damper positions to ensure that they are maintained in the position they were in when the in-draft demonstration was performed.

As a third option, the EPA is adding a reference to the section of the General Provisions which describes the procedures for requesting an alternative monitoring method, 40 CFR 63.8(f). This reference is being added to highlight the availability of this option.

Comment. One commenter identified an error in the proposed rule. Section 63.1546(b) states "Operators shall determine compliance with the doorway in-draft requirements for buildings in 63.1543(b) and 63.1544(c) * * *" However, building in-draft requirements are contained in § 63.1543(c).

Response. This error is corrected in the final rule.

Comment. One commenter stated that they are required to test for particulate matter and lead as part of their SIP requirements. The commenter requests that operators be given the flexibility to use the "hybrid Method 5–12" to test for particulate matter and lead simultaneously.

Response. The rule specifies that EPA Method 12 be used to measure lead emission rates. There is no EPA Method 5–12. However, section 8.1 of EPA Method 12 allows for the simultaneous measurement of both lead and particulate matter. As such, no change is being made to address this comment.

Comment. The proposed rule requires quarterly checks of bag tension on certain types of baghouses. One commenter stated that none of their facilities are currently required to check bag tension under existing SIPs. They claim that measuring bag tension would be a time-consuming process resulting in extended periods of worker exposure to high temperatures and potentially lead. They recommend that the requirement for bag tension testing be eliminated, or at a minimum modified to an annual visual check to make certain bags are not kinked (kneed or bent) or lying on their sides.

Response. The EPA agrees with the commenter that measuring bag tension is a time-consuming process that can create increased risks of worker exposures to lead. The EPA also agrees that a visual check is sufficient to determine adequate bag tension. As such, the EPA is amending § 63.1547(c)(6) to require quarterly visual inspections of bag tension to make certain bags are not kinked or lying on their sides.

Comment. One commenter stated that the proposed requirement for bag leak detection devices does not provide for alternative/equivalent methods, such as opacity monitors, which are already in use at some facilities. As such, the regulation would impose unnecessary additional costs by not including other compliance methods.

Response. The EPA is adding a definition of bag leak detection system in the final rule. This definition was inadvertently left out of the proposal. Based on the definition, a "bag leak detection system means a system that is capable of monitoring particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to monitor relative particulate matter loadings." This is the same definition that appears in the final rule for secondary lead smelters (40 CFR part 63, subpart X) and several other currently proposed rules which include bag leak detection requirements.

Based on the definition and the requirements of § 63.1547(e)(1), an opacity monitor can be used as a bag leak detection system if the manufacturer of the opacity monitor certifies that it is capable of detecting particulate matter emissions at concentrations of 10 milligram per actual cubic meter or less. However, due to the poor correlation between opacity and particulate matter at low grain loadings, it is doubtful that any conventional opacity monitors have the sensitivity necessary to meet this requirement. Bag leak detection systems based on triboelectric or light scattering effects are capable of detecting particulate matter emissions well below the level of visible emissions, and are believed to be more reliable, accurate, and cost effective than opacity monitors for detecting broken bags in baghouses.

Comment. One commenter stated that the condition of the fan has little, if any, direct effect on baghouse performance. They suggested that this requirement be on an annual basis rather than a quarterly basis.

Response. The EPA concurs that fan condition may have little effect on

baghouse performance. However, fan condition can greatly affect hood capture efficiency and consequently fugitive emissions. The rule allows for the use of vibration detectors to conduct the inspection, which does not require the operator to shutdown the fan or remove it from service. As such, the EPA believes that requiring quarterly inspection of fan condition does not place an undue burden on the industry. No change to the final rule is being made to address this comment.

Comment. One commenter stated that the benefits associated with the suite of monitoring requirements are unclear and at best very low. They suggest that the proposed bag leak detection system requirements alone should be adequate to ensure proper baghouse functioning.

Response. The EPA's proposed operating procedures requirements for baghouses represent a two-pronged approach to baghouse operation—preventative maintenance and baghouse failure monitoring, coupled with timely corrective action. The inspection and maintenance requirements in the proposed rule are intended to ensure the proper operation of the baghouse and to reduce the number of baghouse upsets through prevention. The bag leak detection requirements are intended to assist in early detection of baghouse failures allowing for timely corrective action.

The proposed inspection and maintenance requirements represent a minimal, yet practical, strategy for ensuring proper baghouse operation. The EPA believes that good inspection and maintenance practices are critical to achieving and maintaining the high level of control that baghouses are capable of. Furthermore, these requirements do not result in significant costs or burden.

Comment. One commenter stated that the time limits for initiating corrective action may be impossible to fulfill. With regard to the bag leak detection alarm, the preamble to the proposed rule states, "An alarm by itself does not indicate noncompliance with the lead limit, but would indicate an increase in emissions and trigger an inspection of the baghouse to determine the cause of the alarm." The preamble goes on to state, "The owner or operator would be considered out of compliance upon failure to initiate corrective actions within 1 hour of the alarm." They also point out that the rule states in section 63.1547(f)(1) that "the procedures used to determine the cause of the alarm must be initiated within 30 minutes of the alarm." They comment that reading these provisions together suggests that facilities must always initiate procedures to determine the cause of the alarm within 30 minutes, and to identify the needed repair or response and begin corrective action within 1 hour.

Response. The 30-minute reference in the preamble to the proposed rule is an error. Both the preamble and the rule were intended to refer to the same time period, i.e., the period of time allowed between the time an alarm occurs and the time when procedures to determine the cause of the alarm are initiated. The rule requires facilities to initiate the procedures outlined in their corrective action plan within 1 hour of the alarm and correct the problem as soon as practicable.

Comment. One commenter stated that compliance testing should be required on a less than annual basis. Proposed section 63.1543(d) requires facilities to conduct compliance tests for lead compounds on an annual basis. The commenter suggests that the EPA should permit a reduction in the frequency of testing on a site-by-site basis, based upon the results of annual testing. For example, if 3 years of testing shows the standard is consistently being met, they suggest that a facility be able to reduce the frequency of its testing.

Response. The EPA agrees that less frequent testing should be allowed when facilities are able to demonstrate compliance consistently. As such, the final rule allows operators up to 24 months between compliance tests if the results of the three most recent compliance tests demonstrate compliance.

Comment. One commenter stated that the recordkeeping requirements for the bag leak detection system are inconsistent with recordkeeping requirements for fugitive dust and baghouse inspection and maintenance. Proposed section 63.1549(b)(3) and (4), which refers to control of fugitive dust emissions and baghouse inspection and maintenance procedures, requires recordkeeping if it is part of the practices described in the respective SOP manual. The commenter also stated that the recordkeeping requirements proposed in section 63.1549(b)(2) for the bag leak detection system are not contingent on such requirements being part of the SOP manual, and are thus inconsistent with section 63.1549(b)(3) and (4).

Response. The rule requires facilities to develop site specific SOP manuals for baghouse inspection and maintenance procedures. Since these SOP manuals are site-specific, the EPA has left it up to the operator to work with the Administrator or delegated authority to develop appropriate site specific recordkeeping and reporting requirements. However, the EPA has specified recordkeeping and reporting requirements for bag leak detector system alarms since these records are necessary to demonstrate compliance with the operating standards for bag leak detection (section 63.1543(f) and (g)). No change is being made to the rule to address this comment.

Comment. One commenter stated that a minimum differential pressure should be specified and continuously monitored to ensure the baghouse or equivalent control device is maintained at a pressure that is lower than ambient pressure.

Response. The rule requires daily monitoring of the pressure drop across each baghouse cell. The EPA agrees that a minimum pressure drop should be identified and monitored against. However, several factors affect the pressure drop across a baghouse cell including filter material, cell geometry, cleaning cycles, and air-to-cloth ratio. As such, the minimum pressure drop across the cell is baghouse specific, if not cell specific. Furthermore, there is little or no correlation between baghouse pressure drop and emissions. Therefore, it would be inappropriate for the rule to identify a minimum pressure drop. However, the EPA has amended the rule to require operators to monitor the pressure drop across each cell to ensure that it is within the normal operating range for that cell. Operators will be required to identify the normal operating range for each baghouse cell in the baghouse operation and maintenance SOP.

Comment. One commenter stated that the lead production rate should be calculated on data from the previous 12 months of operation. The commenter adds that the requirement does not consider plant shutdown, when lead production is zero; hence, artificially low emissions could result from the recommended calculation.

Response. Based on the proposed rule, lead production is calculated based on production data for the 12 months prior to conducting the test, including periods when the facility is shut down. The EPA believes that this is in agreement with this statement.

As noted, plant shutdowns would result in lower lead production. However, the result of lower lead production would be to increase the calculated, production-based, lead compound emission rate, not reduce it as suggested by the commenter. In fact, if a facility were to experience a prolonged shutdown, it may be impossible to meet the emission limit based on the proposed calculation.

Upon further review, the EPA has decided to amend the procedure for calculation of the production-based, lead compound emission rate to account for periods when the facility is shut down. As amended, the production-based, lead compound emission rate will be calculated by multiplying the sum of lead emission rates (determined through stack testing, in units of grams per hour) from the nine listed sources by the plant operating hours (in units of hours/year) and dividing by the lead production rate (in units of megagrams per year). Plant operating hours are defined as the period of time in hours that either a sinter machine or blast furnace is in operation.

Comment. One commenter suggested that the bag leak detection system alarms should be set at 75 percent or 80 percent of the previous 12-month average. Alternatively the commenter suggests that the system be equipped with two alarms: a high level set at 75 percent to 80 percent of scale, and a high-high alarm that sounds when the maximum value is reached. The commenter also commented that a requirement for time averaging of the emissions should be added. The commenter suggested the use of 1-minute time averages for monitoring the particulate emissions.

Response. The EPA has developed guidance on the use of bag leak detectors based on information provided by bag leak detection system vendors, industry representatives with bag leak detection experience, and an EPA-sponsored field study. The EPA believes that this guidance provides the most appropriate methods for selecting, installing, initializing, and operating bag leak detection systems. No changes to the rule are being made to address this comment.

Comment. One commenter stated that the differential pressure across baghouses equipped with high efficiency particulate arrestor (HEPA) filters should be monitored once per operating shift and at least 8 hours apart or every 24 hours ± 4 hours. The commenter states that monitoring once a day allows operators to take readings at 0100 hours one day, and at 2300 hours the next day, allowing up to 46 hours to pass between readings.

Response. An exemption to the bag leak detection system requirements is provided in the rule if a baghouse is equipped with a secondary HEPA filter. The exemption is not given if the HEPA filter is the only filter in the system.

Under this configuration, the primary filter collects the bulk of the particulates, while the secondary HEPA filter acts as a finishing filter. Based on discussions with personnel at a secondary lead smelter using secondary HEPA filters, HEPA filters last several months when used as a secondary filter. As such, the EPA believes that daily checks of the differential pressure across the HEPA filter is adequate. No changes to the rule are being made to address this comment.

Comment. One commenter stated that the rule should specify the building ventilation requirements in a definitive way, e.g., by requiring an exhaust system capable of a given number of air changes per hour.

Response. While air changes per hour may be an important consideration in addressing indoor air quality and worker exposure, it has little meaning when assessing the capture effectiveness of a building. The EPA believes that the requirement that the sinter machine building be ventilated at a rate that ensures in-draft through all open doors provides the best assurance that emissions escaping the building are minimized. No changes to the rule are being made to address this comment.

Comment. One commenter stated that for total enclosures there should be a monitoring device on the exhaust fan (e.g., motor current) to verify continuously that the ventilation system is in operation, and added that failure of the ventilation system should be recorded and included in the reporting requirements.

Response. As discussed above, the EPA has amended the rule to require that operators either (1) install, calibrate, and operate a flow monitor to continuously measure and record total exhaust rate out of the enclosure; or (2) perform daily checks for in-draft, with a vane anemometer or equivalent device, at each doorway normally open.

Failure of the ventilation system would be considered a malfunction of the air pollution control equipment. The rule requires that operators develop a start-up, shut-down, and malfunction plan for all air pollution control equipment. In addition, the rule requires operators to record the occurrence and duration of each malfunction of the source or air pollution control equipment. No additional changes are being made to address this comment.

Comment. One commenter stated that there should be some specified limits on the number of allowable violations (alarms) during a given time period.

Response. On February 12, 1999 (64 FR 7149), the EPA proposed an operating limit that would require operators of primary lead smelters to operate and maintain their baghouses such that the bag leak detection system did not alarm more than five percent of the time over a 6-month period. The EPA also added the requirement that operators continuously record the output of the bag leak detection system. The EPA added these requirements to help ensure that baghouses are properly operated and maintained, and that enforcement officials will have adequate data to assess compliance with the bag leak detection system requirements.

B. Comments on February 1999 Supplemental Proposal

Comment. One commenter stated that the term "initiate corrective actions" as used in section 63.1547(e)(9) was somewhat ambiguous, and requested that the EPA clarify what constitutes the initiation of corrective action. Furthermore, they noted that, as required in section 63.1547(f), the first steps in the corrective action process is to acknowledge the alarm and determine its cause. It was suggested that the term "initiate corrective action" be changed to "initiate procedures to acknowledge the alarm and determine its cause, as specified in the corrective actions plan."

Response. The EPA is concerned that the term "initiate corrective action" could be misinterpreted to mean the beginning of a physical repair. As pointed out by the commenter, the first step in the corrective action process is to acknowledge (or record) the alarm and to begin procedures for determining the cause of the alarm. As such, the EPA is changing the proposed rule language to capture more accurately what is intended. The new language requires facilities to "record the date and time of the alarm and initiate procedures to determine the cause of a bag leak detection system alarm" within 1 hour.

Comment. The commenters stated that they believe the addition of section 63.1547(e)(9) makes the provision in section 63.1547(f)(1) redundant. They suggest that section 63.1547(f)(1) be removed.

Response. The EPA does not believe that the requirements of section 63.1547(e)(9) and section 63.1547(f)(1) are redundant. The purpose of the operating limit in section 63.1547(e)(9) is to require operators to operate and maintain an affected baghouse such that upset events are limited to a level that the EPA considers acceptable both in terms of number of occurrences and duration. The intent of the requirement that operators record and initiate procedures to determine the cause of the alarm within 1 hour (section 63.1547(f)(1)) is to ensure that operators acknowledge and respond to each alarm in a timely manner.

Please note that the requirements contained in section 63.1547(e)(9) of the supplemental proposal have been revised in the final rule. The requirement to maintain and operate each baghouse such that the alarm on a bag leak detection system does not sound for more than five percent of the total operating time in a 6-month reporting period has been moved to section 63.1543(f) in the final rule. The methodology to be used in calculating the percent of the total operating time that the alarm sounds has been clarified and moved to section 63.1547(g) in the final rule. In addition, the requirements contained in section 63.1547(f)(1) of the original proposal have been moved to section 63.1543(g) in the final rule.

Comment. One commenter stated that it appears that the EPA is proposing to penalize operators for a rapid response to initiate corrective actions by setting 1 hour as a minimum time counted for each alarm while using the actual time for periods which exceed 1 hour. The commenter proposes that the EPA simplify the requirement such that the alarm time should be counted as the actual amount of time taken by the owner or operator to initiate corrective actions for all cases.

Response. As discussed above, the intent of the operating limit on bag leak detection system alarm time is to limit not only the duration, but also the number of alarm-causing events. By rounding the amount of alarm time counted up to 1 hour for any alarm where the operator responds within 1 hour, the total number of potential alarm-causing events is limited to roughly 220 alarms in a 6-month reporting period. Counting fractions of an hour per event could allow for an unlimited number of events. For example, at 10 minutes per event, the total number of alarm-causing events could be as high as 1,300 in a 6-month reporting period.

Comment. One commenter suggested that the operating limit on bag leak detection system alarm time be reviewed and considered for application to other MACT standards using common add-on emissions control technologies (i.e., baghouses).

Response. The EPA intends to incorporate the operating limit on bag leak detection system alarm time in the rules that EPA is currently developing and any future rules where baghouses are used to control HAP emissions. In addition, the EPA is considering amending existing NESHAP where baghouses are used to control HAP emissions to include the operating limit on bag leak detection system alarm time.

Comment. One commenter stated that by limiting the cumulative time that a source may operate before initiating corrective action, rather than before completing corrective action, the proposed changes would provide an incentive for the operator to indefinitely delay completion of corrective action.

Response. The commenter is mistaken. Section 63.6(e)(1)(ii) of the General Provisions requires that malfunctions be corrected as soon as practicable after their occurrence. As such, an operator cannot delay completion of corrective action without being in violation of the General Provisions. However, the EPA has changed section 63.1543(g) of the final rule to require that "The cause of the alarm shall be corrected as soon as practicable." No other changes are being made to the rule to address this comment.

Comment. One commenter stated that the MACT technology should be reanalyzed to account for the particulate HAP control which is achievable during a one-time performance test conducted on a newly constructed or reconstructed baghouse. The commenter continues to state that while some operators might choose to maintain and promptly repair their air pollution control devices, the rules could not be enforced to require this level of control.

Response. The EPA believes that the commenter has misinterpreted the rule. The commenter infers that the lead emission limits should be based on the level of control that a brand new baghouse can achieve since only a one-time test is required. However, the rule requires annual compliance testing, not a one-time compliance test. Furthermore, the rule contains federally enforceable requirements for the operation and maintenance of each affected baghouse. No change is being made to the rule to address this comment.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

C. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of

regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. None of these entities own or operate an affected source. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate an affected source. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this rule for any year has been estimated to be less than $250,000. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act

As amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, as well as take other actions intended to minimize the rule's potential impact on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

The EPA has determined that none of the existing primary lead smelters are small entities, and has concluded that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1856.02) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the Act (42 U.S.C. § 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the rule) is estimated to be 2,002 labor hours per year at a total annual cost of $114,900. This estimate includes a one-time performance test and report (with repeat tests where needed); one-time purchase and

installation of bag leak detection systems; one-time submission of a startup, shutdown, and malfunction plan with semiannual reports for any event when the procedures in the plan were not followed; semiannual excess emission reports; maintenance inspections; notifications; and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $107,500, with operation and maintenance costs of $5,500/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2).

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

During this rulemaking the Agency searched for voluntary consensus standards that might be applicable. The search has identified no applicable voluntary standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to this rule.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis, with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially-applicable voluntary consensus standards which can then be evaluated for equivalency and applicability in determining compliance with future regulations.

J. Pollution Prevention Considerations

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990) establishes the national policy of the United States for pollution prevention. This act declares that: (1) pollution should be prevented or reduced whenever feasible, (2) pollution that cannot be prevented or reduced should be recycled or reused in an environmentally-safe manner wherever feasible, (3) pollution that cannot be recycled or reused should be treated, and (4) disposal or release into the atmosphere should be chosen only if none of the other options is available.

The plant wide emission limit approach in this final rule promotes the use of pollution prevention alternatives by giving facilities full credit for source reduction in determining compliance with the emission limit. Furthermore, the focus of the fugitive dust requirements is on work practice and operating standards that reduce emission potential, rather than capture and treatment options.

K. Protection of Children From Environmental Health Risks and Safety Risk Under Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order (E.O.) 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Furthermore, this rule has been determined not to be "economically significant" as defined under E.O. 12866.

L. Judicial Review

Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Primary lead smelters.

Dated: May 13, 1999.

Carol M. Browner,

Administrator.

BILLING CODE 6560-50-P

For reasons set out in the preamble, 40 CFR part 63 is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart TTT, to read as follows:

Subpart TTT—National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

Sec.

63.1541 Applicability.
63.1542 Definitions.
63.1543 Standards for process and process fugitive sources.
63.1544 Standards for fugitive dust sources.
63.1545 Compliance dates.
63.1546 Test methods.
63.1547 Monitoring requirements.
63.1548 Notification requirements.
63.1549 Recordkeeping and reporting requirements.
63.1550 Delegation of authority.

Subpart TTT—National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

§ 63.1541 Applicability.

(a) The provisions of this subpart apply to the following affected sources at primary lead smelters: sinter machine, blast furnace, dross furnace, process fugitive sources, and fugitive dust sources. The provisions of this subpart do not apply to secondary lead smelters, lead refiners, or lead remelters.

(b) Table 1 of this subpart specifies the provisions of subpart A that apply and those that do not apply to owners and operators of primary lead smelters. The following sections of part 63 apply to this subpart as stated in subpart A and Table 1: § 63.1 (Applicability), § 63.2 (Definitions), § 63.3 (Units and abbreviations), § 63.4 (Prohibited activities and circumvention), § 63.5 (Construction and reconstruction), § 63.7 (Performance testing requirements), § 63.8 (Monitoring requirements), § 63.12 (State authority and delegations), § 63.13 (Addresses of State air pollution control agencies and EPA Regional Offices), § 63.14 (Incorporations by reference), and § 63.15 (Availability of information confidentiality). The following sections of part 63 apply to the extent specified in this subpart and Table 1: § 63.6 (Compliance with standards and maintenance requirements), § 63.9 (Notification requirements), and § 63.10 (Recordkeeping and reporting requirements). Section § 63.11 (Control device requirements) does not apply to this subpart.

§ 63.1542 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Blast furnace means any reduction furnace to which sinter is charged and which forms separate layers of molten slag and lead bullion.

Building means a roofed and walled structure with limited openings to allow access and egress for people and vehicles.

Charging location means the physical opening through which raw materials are introduced into a sinter machine, blast furnace, or dross furnace.

Dross furnace means any smelting furnace to which drosses are charged and which chemically and physically separates lead from other impurities.

Drossing and refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of drossing, refining, or alloying lead. Included are pot furnaces, receiving kettles, and holding kettles.

Fugitive dust source means a stationary source of hazardous air pollutant emissions at a primary lead smelter resulting from the handling, storage, transfer, or other management of lead-bearing materials where the source is not associated with a specific process, process vent, or stack. Fugitive dust sources include roadways, storage piles, materials handling transfer points, and materials transport areas.

Furnace area means any area of a primary lead smelter in which a blast furnace or dross furnace is located.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Materials storage and handling area means any area of a primary lead smelter in which lead-bearing materials (including ore concentrate, sinter, granulated lead, dross, slag, and flue dust) are stored or handled between process steps, including areas in which materials are stored in piles, bins, or tubs, and areas in which material is prepared for charging to a sinter machine or smelting furnace.

Operating time means the period of time in hours that an affected source is in operation beginning at a startup and ending at the next shutdown.

Plant operating time means the period of time in hours that either a sinter machine or blast furnace is in operation.

Plant roadway means any area of a primary lead smelter that is subject to vehicle traffic, including traffic by fork lifts, front-end loaders, or vehicles carrying ore concentrates or cast lead ingots. Excluded from this definition are employee and visitor parking areas, provided they are not subject to traffic by vehicles carrying lead-bearing materials.

Primary lead smelter means any facility engaged in the production of lead metal from lead sulfide ore concentrates through the use of pyrometallurgical techniques.

Process fugitive source means a source of hazardous air pollutant emissions at a primary lead smelter that is associated with lead smelting or refining but is not the primary exhaust stream and is not a fugitive dust source. Process fugitive sources include sinter machine charging locations, sinter machine discharge locations, sinter crushing and sizing equipment, furnace charging locations, furnace taps, drossing kettles, and refining kettles.

Refining and casting area means any area of a primary lead smelter in which drossing or refining operations occur, or casting operations occur.

Shutdown means the cessation of operation of an affected source for any purpose.

Sinter machine means any device in which a lead sulfide ore concentrate charge is heated in the presence of air to eliminate sulfur contained in the charge and to agglomerate the charge into a hard porous mass called sinter.

Sinter machine area means any area of a primary lead smelter where a sinter machine, or sinter crushing and sizing equipment is located.

Sinter machine discharge end means the physical opening at the end of a sinter machine where the sinter exits the sinter machine.

Startup means the setting in operation of an affected source for any purpose.

Tapping location means the opening thru which lead and slag are removed from the furnace.

§ 63.1543 Standards for process and process fugitive sources.

(a) No owner or operator of any existing, new, or reconstructed primary lead smelter shall discharge or cause to be discharged into the atmosphere lead compounds in excess of 500 grams of lead per megagram of lead metal produced (1.0 pounds of lead per ton of lead metal produced) from the aggregation of emissions discharged from the air pollution control devices used to control emissions from the sources listed in paragraphs (a)(1) through (a)(9) of this section.

(1) Sinter machine;

(2) Blast furnace;

(3) Dross furnace;

(4) Dross furnace charging location;

(5) Blast furnace and dross furnace tapping location;

(6) Sinter machine charging location;

(7) Sinter machine discharge end;

(8) Sinter crushing and sizing equipment; and

(9) Sinter machine area.

(b) The process fugitive sources listed in paragraphs (a)(4) through (a)(8) of this section shall be equipped with a hood and shall be ventilated to a baghouse or equivalent control device. The hood design and ventilation rate shall be consistent with American Conference of Governmental Industrial Hygienists recommended practices.

(c) The sinter machine area shall be enclosed in a building that is ventilated to a baghouse or equivalent control device at a rate that maintains a positive in-draft through any doorway opening.

(d) Except as provided in paragraph (e) of this section, following the initial test to demonstrate compliance with paragraph (a) of this section, the owner or operator of a primary lead smelter shall conduct a compliance test for lead compounds on an annual basis (no later than 12 calendar months following any previous compliance test).

(e) If the three most recent compliance tests demonstrate compliance with the emission limit specified in paragraph (a) of this section, the owner or operator of a primary lead smelter shall be allowed up to 24 calendar months from the last compliance test to conduct the next compliance test for lead compounds.

(f) The owner or operator of a primary lead smelter shall maintain and operate each baghouse used to control emissions from the sources listed in paragraphs (a)(1) through (a)(9) of this section such that the alarm on a bag leak detection system required under § 63.1547(c)(9) does not sound for more than five percent of the total operating time in a 6-month reporting period.

(g) The owner or operator of a primary lead smelter shall record the date and time of a bag leak detection system alarm and initiate procedures to determine the cause of the alarm according to the corrective action plan required under § 63.1547(c)(9) within 1 hour of the alarm. The cause of the alarm shall be corrected as soon as practicable.

§ 63.1544 Standards for fugitive dust sources.

(a) Each owner or operator of a primary lead smelter shall prepare, and at all times operate according to, a standard operating procedures manual that describes in detail the measures that will be put in place to control fugitive dust emissions from the sources listed in paragraphs (a)(1) through (a)(5) of this section:

(1) Plant roadways;

(2) Material storage and handling area(s);

(3) Sinter machine area(s);

(4) Furnace area(s); and

(5) Refining and casting area(s).

(b) Not withstanding paragraph (c) of this section, the standard operating procedures manual shall be submitted to the Administrator or delegated authority for review and approval.

(c) Existing manuals that describe the measures in place to control fugitive dust sources required as part of a State implementation plan for lead shall satisfy the requirements of paragraph (a) of this section provided they address the sources listed in paragraphs (a)(1) through (a)(5) of this section.

§ 63.1545 Compliance dates.

(a) Each owner or operator of an existing primary lead smelter shall achieve compliance with the requirements of this subpart no later than May 4, 2001.

(b) Each owner or operator of a primary lead smelter that commences construction or reconstruction after April 17, 1998, shall achieve compliance with the requirements of this subpart by June 4, 1999 or upon startup of operations, whichever is later.

§ 63.1546 Test methods.

(a) The following procedure shall be used to determine compliance with the emissions standard for lead compounds under § 63.1543(a):

(1) The lead compound emission rate, in units of grams of lead per hour, for each source listed in § 63.1543(a)(1) through § 63.1543(a)(9) shall be determined according to the following test methods in appendix A of part 60 of this chapter:

(i) Method 1 shall be used to select the sampling port location and the number of traverse points.

(ii) Method 2 shall be used to measure volumetric flow rate.

(iii) Method 3 shall be used for gas analysis.

(iv) Method 4 shall be used to determine moisture content of the stack gas

(v) Method 12 shall be used to measure the lead emission rate of the stack gas. The minimum sample volume shall be 0.85 dry standard cubic meters (30 dry standard cubic feet) and the minimum sampling time shall be 60 minutes for each run. Three runs shall be performed and the average of the three runs shall be used to determine compliance.

(2) The lead production rate, in units of megagrams per hour, shall be determined based on production data for the previous 12 calendar months according to the procedures detailed in paragraphs (a)(2)(i) through (a)(2)(v) of this section:

(i) Total lead products production multiplied by the fractional lead content shall be determined in units of megragrams.

(ii) Total copper matte production multiplied by the fractional lead content shall be determined in units of megragrams.

(iii) Total copper speiss production multiplied by the fractional lead content shall be determined in units of megragrams.

(iv) Total lead production shall be determined by summing the values obtained in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

(v) The lead production rate, in units of megragrams per hours, shall be calculated based on the total lead production, as determined in accordance with paragraph (a)(2)(iv) of this section, divided by the total plant operating time, in hours, for the previous 12 months.

(3) The sum of lead compound emission rates for the sources in § 63.1543(a)((1) through (a)(9), as determined in accordance with paragraph (a)(1) of this section, shall be divided by the lead production rate, as determined in accordance with paragraph (a)(2)(v) of this section, to obtain a production-based, lead compound emission rate in units of grams of lead per megagram of lead metal produced. The production-based, lead compound emission rate shall be used to determine compliance with the

emissions standard for lead compounds under § 63.1543(a).

(b) Owner and operators shall perform an initial compliance test to demonstrate compliance with the sinter building in-draft requirements of § 63.1543(c) at each doorway opening in accordance with paragraphs (b)(1) through (b)(4) of this section.

(1) Use a propeller anemometer or equivalent device.

(2) Determine doorway in-draft by placing the anemometer in the plane of the doorway opening near its center.

(3) Determine doorway in-draft for each doorway that is open during normal operation with all remaining doorways in their customary position during normal operation.

(4) Do not determine doorway in-draft when ambient wind speed exceeds 2 meters per second.

§ 63.1547 Monitoring requirements.

(a) Owners and operators of primary lead smelters shall prepare, and at all times operate according to, a standard operating procedures manual that describes in detail the procedures for inspection, maintenance, and bag leak detection and corrective action for all baghouses that are used to control process, process fugitive, or fugitive dust emissions from any source subject to the lead emission standards in §§ 63.1543 and 63.1544, including those used to control emissions from general ventilation systems.

(b) The standard operating procedures manual for baghouses required by paragraph (a) of this section shall be submitted to the Administrator or delegated authority for review and approval.

(c) The procedures specified in the standard operating procedures manual for inspections and routine maintenance shall, at a minimum, include the requirements of paragraphs (c)(1) through (c)(9) of this section.

(1) Daily monitoring of pressure drop across each baghouse cell to ensure pressure drop is within the normal operating range identified in the standard operating procedures manual.

(2) Weekly confirmation that dust is being removed from hoppers through visual inspection or equivalent means of ensuring the proper functioning of removal mechanisms.

(3) Daily check of compressed air supply for pulse-jet baghouses.

(4) An appropriate methodology for monitoring cleaning cycles to ensure proper operation.

(5) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means.

(6) Quarterly visual check of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices.

(7) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks.

(8) Quarterly inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means.

(9) Except as provided in paragraph (h) of this section, continuous operation of a bag leak detection system.

(d) The procedures specified in the standard operating procedures manual for maintenance shall, at a minimum, include a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(e) The bag leak detection system required by paragraph (c)(9) of this section shall meet the specifications and requirements of (e)(1) through (e)(8) of this section.

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligram per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings, and the owner or operator shall continuously record the output from the bag leak detection system.

(3) The bag leak detection system must be equipped with an alarm system that will sound when an increase in relative particulate loading is detected over a preset level, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(4) Each bag leak detection system that works based on the triboelectric effect shall be installed, calibrated, and maintained in a manner consistent with guidance provided in the U.S. Environmental Protection Agency guidance document "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015). Other bag leak detection systems shall be installed, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time.

(6) Following initial adjustment, the owner or operator shall not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the approved SOP required under paragraph (a) of this section. In no event shall the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless a responsible official certifies that the baghouse has been inspected and found to be in good operating condition.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector must be installed downstream of the baghouse and upstream of any wet acid gas scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(f) The standard operating procedures manual required by paragraph (a) of this section shall include a corrective action plan that specifies the procedures to be followed in the event of a bag leak detection system alarm. The corrective action plan shall include, at a minimum, procedures to be used to determine the cause of an alarm, as well as actions to be taken to minimize emissions, which may include, but are not limited to, the following.

(1) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(2) Sealing off defective bags or filter media.

(3) Replacing defective bags or filter media, or otherwise repairing the control device.

(4) Sealing off a defective baghouse compartment.

(5) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(6) Shutting down the process producing the particulate emissions.

(g) The percentage of total operating time the alarm on the bag leak detection system sounds in a 6-month reporting period shall be calculated in order to determine compliance with the five percent operating limit in § 63.1543(f). The percentage of time the alarm on the bag leak detection system sounds shall be determined according to paragraphs (g)(1) through (g)(5) of this section.

(1) Alarms that occur due solely to a malfunction of the bag leak detection system shall not be included in the calculation.

(2) Alarms that occur during startup, shutdown, or malfunction shall not be included in the calculation if the

condition is described in the startup, shutdown, and malfunction plan and the owner or operator follows all the procedures in the plan defined for this condition.

(3) For each alarm where the owner or operator initiates procedures to determine the cause of an alarm within 1 hour of the alarm, 1 hour of alarm time shall be counted.

(4) For each alarm where the owner or operator does not initiate procedures to determine the cause of the alarm within 1 hour of the alarm, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate procedures to determine the cause of the alarm.

(5) The percentage of time the alarm on the bag leak detection system sounds shall be calculated as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(h) Baghouses equipped with HEPA filters as a secondary filter used to control process or process fugitive sources subject to the lead emission standards in § 63.1543 are exempt from the requirement in § 63.1543(c)(9) to be equipped with a bag leak detector. The owner or operator of an affected source that uses a HEPA filter shall monitor and record the pressure drop across the HEPA filter system daily. If the pressure drop is outside the limit(s) specified by the filter manufacturer, the owner or operator must take appropriate corrective measures, which may include, but not be limited to, the following:

(1) Inspecting the filter and filter housing for air leaks and torn or broken filters.

(2) Replacing defective filter media, or otherwise repairing the control device.

(3) Sealing off a defective control device by routing air to other control devices.

(4) Shutting down the process producing the particulate emissions.

(i) Owners and operators shall monitor sinter machine building in-draft to demonstrate continued compliance with the operating standard specified in § 63.1543(c) in accordance with either paragraph (i)(1), (i)(2), or (i)(3) of this section.

(1) Owners and operators shall check and record on a daily basis doorway in-draft at each doorway in accordance with the methodology specified in § 63.1546(b).

(2) Owners and operators shall establish and maintain baseline ventilation parameters which result in a positive in-draft according to paragraphs (i)(2)(i) through (i)(2)(iv) of this section.

(i) Owners and operators shall install, calibrate, maintain, and operate a monitoring device that continuously records the actual volumetric flow rate through each separately ducted hood; or install, calibrate, maintain, and operate a monitoring device that continuously records the volumetric flow rate at the control device inlet of each exhaust system ventilating the building. The flow rate monitoring device(s) can be installed in any location in the exhaust duct such that reproducible flow rate monitoring will result. The flow rate monitoring device(s) shall have an accuracy of plus or minus 10 percent over its normal operating range and shall be calibrated according to manufacturer's instructions.

(ii) During the initial demonstration of sinter building in-draft, and at any time the owner or operator wishes to re-establish the baseline ventilation parameters, the owner or operator shall continuously record the volumetric flow rate through each separately ducted hood, or continuously record the volumetric flow rate at the control device inlet of each exhaust system ventilating the building and record exhaust system damper positions. The owner or operator shall determine the average volumetric flow rate(s) corresponding to the period of time the in-draft compliance determinations are being conducted.

(iii) The owner or operator shall maintain the volumetric flow rate(s) at or above the value(s) established during the most recent in-draft determination at all times the sinter machine is in operation. Volumetric flow rate(s) shall be calculated as a 15-minute average.

(iv) If the volumetric flow rate is monitored at the control device inlet, the owner or operator shall check and record damper positions daily to ensure they are in the positions they were in during the most recent in-draft determination.

(3) An owner or operator may request an alternative monitoring method by following the procedures and requirements in § 63.8(f) of the General Provisions.

§ 63.1548 Notification requirements.

(a) The owner or operator of a primary lead smelter shall comply with all of the notification requirements of § 63.9 of subpart A, General Provisions.

(b) The owner or operator of a primary lead smelter shall submit the fugitive dust control standard operating procedures manual required under § 63.1544(a) and the standard operating procedures manual for baghouses required under § 63.1547(a) to the Administrator or delegated authority along with a notification that the smelter is seeking review and approval of these plans and procedures. Owners or operators of existing primary lead smelters shall submit this notification no later than November 6, 2000. The owner or operator of a primary lead smelter that commences construction or reconstruction after April 17, 1998, shall submit this notification no later than 180 days before startup of the constructed or reconstructed primary lead smelter, but no sooner than September 2, 1999.

§ 63.1549 Recordkeeping and reporting requirements.

(a) The owner or operator of a primary lead smelter shall comply with all of the recordkeeping requirements of § 63.10 of subpart A, General Provisions.

(b) In addition to the general records required by paragraph (a) of this section, each owner or operator of a primary lead smelter shall maintain for a period of 5 years, records of the information listed in paragraphs (b)(1) through (b)(8) of this section.

(1) Production records of the weight and lead content of lead products, copper matte, and copper speiss.

(2) Records of the bag leak detection system output.

(3) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, and the date and time the cause of the alarm was corrected.

(4) Any recordkeeping required as part of the practices described in the standard operating procedures manual required under § 63.1544(a) for the control of fugitive dust emissions.

(5) Any recorkeeping required as part of the practices described in the standard operating procedures manual for baghouses required under § 63.1547(a).

(6) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(c) by employing the method allowed in § 63.1546(i)(1), the records of the daily doorway in-draft checks, an identification of the periods when there was not a positive in-draft, and an explanation of the corrective actions taken.

(7) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(c) by employing the method allowed in § 63.1546(i)(2), the records of the output from the continuous volumetric flow monitor(s), an identification of the periods when the 15-minute volumetric

flow rate dropped below the minimum established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(8) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(c) by employing the method allowed in § 63.1546(i)(2), and volumetric flow rate is monitored at the baghouse inlet, records of the daily checks of damper positions, an identification of the days that the damper positions were not in the positions established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(c) Records for the most recent 2 years of operation must be maintained on site. Records for the previous 3 years may be maintained off site.

(d) The owner or operator of a primary lead smelter shall comply with all of the reporting requirements of § 63.10 of subpart A, General Provisions.

(e) In addition to the information required under § 63.10 of the General Provisions, the owner or operator shall provide semi-annual reports containing the information specified in paragraphs (e)(1) through (e)(7) of this section to the Administrator or designated authority.

(1) The reports shall include records of all alarms from the bag leak detection system specified in § 63.1547(e).

(2) The reports shall include a description of the actions taken following each bag leak detection system alarm pursuant to § 63.1547(f).

(3) The reports shall include a calculation of the percentage of time the alarm on the bag leak detection system sounded during the reporting period pursuant to § 63.1547(g).

(4) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(c) by employing the method allowed in § 63.1546(i)(1), the reports shall contain an identification of the periods when there was not a positive in-draft, and an explanation of the corrective actions taken.

(5) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(c) by employing the method allowed in § 63.1546(i)(2), the reports shall contain an identification of the periods when the 15-minute volumetric flow rate(s) dropped below the minimum established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(6) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(c) by employing the method allowed in § 63.1546(i)(2), and volumetric flow rate is monitored at the baghouse inlet, the reports shall contain an identification of the days that the damper positions were not in the positions established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(7) The reports shall contain a summary of the records maintained as part of the practices described in the standard operating procedures manual for baghouses required under § 63.1547(a), including an explanation of the periods when the procedures were not followed and the corrective actions taken.

(8) The reports shall contain a summary of the fugitive dust control measures performed during the required reporting period, including an explanation of any periods when the procedures outlined in the standard operating procedures manual required by § 63.1544(a) were not followed and the corrective actions taken. The reports shall not contain copies of the daily records required to demonstrate compliance with the requirements of the standard operating procedures manuals required under §§ 63.1544(a) and § 63.1547(a).

§ 63.1550 Delegation of authority

(a) In delegating implementation and enforcement authority to a State under section 112(1) of the act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: no restrictions.

TABLE 1 OF SUBPART TTT—GENERAL PROVISIONS APPLICABILITY TO SUBPART TTT

Reference	Applies to subpart TTT	Comment
§ 63.1	Yes	
§ 63.2	Yes	
§ 63.3	Yes	
§ 63.4	Yes	
§ 63.5	Yes	
§ 63.6(a), (b), (c), (e), (f), (g), (i) and (j)	Yes	
§ 63.6(d) and (h)	No	No opacity limits in rule.
§ 63.7	Yes	
§ 63.8	Yes	
§ 63.9 (a), (b), (c), (d), (e), (g), (h)(1) through (3), (h)(5) and (6), (i) and (j).	Yes	
§ 63.9(f) and (h)(4)	No	No opacity or visible emission limits in rule.
§ 63.10	Yes	
§ 63.11	No	Flares will not be used to comply with the emission limits.
§ 63.12 through 63.15	Yes	

[FR Doc. 99–12757 Filed 6–3–99; 8:45 am]
BILLING CODE 6560–50–M

Federal Register

Friday
June 4, 1999

Part IV

Department of Education

Office of Postsecondary Education; Underground Railroad Educational and Cultural Program: Inviting Applications for Grants Under the Underground Railroad Educational and Cultural Program for Fiscal Year (FY) 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.345]

Office of Postsecondary Education; Underground Railroad Educational and Cultural Program: Notice Inviting Applications for Grants Under the Underground Railroad Educational and Cultural Program for Fiscal Year (FY) 1999

Purpose of program: To provide grants to nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Eligible applicants: Nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Deadline for transmittal of applications: July 6, 1999.

Deadline for intergovernmental review: September 7, 1999.

Available funds: $1,750,000.

Estimated range of awards: $100,000 to $1,750,000.

Estimated Average Size of Awards: $500,000.

Estimated number of awards: 1–3.

Note: The Department is not bound by any estimates in this notice.

Applicable statute and regualtions: (a) Section 841 of the Higher Education Amendments of 1998, Public Law 105–244, 20 U.S.C. section 1153; and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Other Requirements

Authorized Activities

As required by statute, each nonprofit educational organization awarded a grant under this program must enter into an agreement with the Department. Each agreement must require the organization—

(1) To establish a facility to house, display, and interpret the artifacts related to the history of the Underground Railroad, and to make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree;

(2) To demonstrate substantial private support for the facility through the implementation of a public-private partnership between a State or local public entity and a private entity for the support of the facility. The private entity must provide matching funds for the support of the facility in an amount equal to 4 times the amount of the contribution of the State or local public entity, except that not more than 20 percent of the matching funds may be provided by the Federal Government;

(3) To create an endowment to fund any and all shortfalls in the costs of the on-going operations of the facility;

(4) To establish a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad throughout the United States, if these satellite centers raise 80 percent of the funds required to establish the satellite centers from non-Federal public and private sources;

(5) To establish the capability to electronically link the facility with other local and regional facilities that have collections and programs that interpret the history of the Underground Railroad; and

(6) To submit, for each fiscal year for which the organization receives funding under this program, a report to the Department that contains—

(a) A description of the programs and activities supported by the funding;

(b) The audited financial statement of the organization for the preceding fiscal year;

(c) A plan for the programs and activities to be supported by the funding as the Secretary may require; and

(d) An evaluation of the programs and activities supported by the funding as the Secretary may require.

Selection Criteria

Applications for Underground Railroad Educational and Cultural Program grants will be evaluated using the following weighted selection criteria from section 841 of the Higher Education Amendments of 1998 and 34 CFR 75.210. The maximum score for each criterion is indicated in parentheses. The maximum overall score is 100 points. Your grant application must carefully address each of the selection criteria and describe your efforts in these areas in detail.

(1) *Overall Concept* (20 points). How well the facility supported by the proposed grant would effectively house, display, and interpret artifacts related to the history of the Underground Railroad and make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree.

(2) *Public-Private Support* (20 points). How well the applicant organization demonstrates substantial private support for the facility through the implementation of a public-private partnership between a State or local public entity and a private entity for the support of the facility. The private entity must provide matching funds for the support of the facility in an amount equal to 4 times the amount of the contribution of the State or local public entity, except that not more than 20 percent of the matching funds may be provided by the Federal Government.

(3) *Endowment* (5 points). How well the applicant organization addresses the requirement to create an endowment to fund any and all shortfalls in the costs of the on-going operations of the facility.

(4) *Satellite Center* (10 points). How well the applicant organization addresses the requirement to establish a network of satellite centers throughout the United States to disseminate information regarding the Underground Railroad and demonstrates the ability to raise 80 percent of the funds required from non-Federal public and private sources.

(5) *Electronic Link* (10 points). How well the applicant organization addresses the requirement to establish the capability to electronically link the facility with other local and regional facilities that have collections and programs which interpret the history of the Underground Railroad.

(6) *Quality of Program Personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed program. In determining the quality of project personnel, the Secretary considers the following:

(a) The qualifications including relevant training and experience of key personnel. (5 points)

(b) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(7) *Quality of Management Plan* (15 points). The Secretary considers the quality of the management plan for the proposed grant program. In determining the quality of the management plan for the proposed project, the Secretary considers the following:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(b) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

(c) How the applicant will ensure that a diversity of perspectives are brought to

bear in the operation of the proposed project. (5 points)

(8) *Quality of Project Evaluation* (10 points). The Secretary considers the quality of the evaluation to be conducted of the proposed program. In determining the quality of the evaluation, the Secretary considers the following:

(a) The extent to which the methods of evolution are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (7 points)

(b) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (3 points)

Application Requirements

An application submitted for funding under this program must include—

(1) The name, address, and web site address, if any, of the nonprofit educational organization seeking to participate, and the name, title, mailing and e-mail address, and telephone number of a contact person for the organization.

(2) A description of the facility that will be used to house, display, and interpret the artifacts related to the history of the Underground Railroad and to make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree.

(3) A description of the substantial private support for the facility through the implementation of a public-private partnership between a State or local public entity and a private entity for the support of the facility and documentation that these entities will provide matching funds as required in section 841(b)(2) of the Higher Education Amendments of 1998.

(4) A description of how the endowment will be created to fund any and all shortfalls in the costs of the on-going operations of the facility and expected sources of these funds.

(5) A statement as to whether the applicant organization intends to establish a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad throughout the United States. If the applicant's organization does intend to establish a network, the applicant must describe the network and document how the satellite centers will raise 80 percent of the funds required from non-Federal public and private sources.

(6) A detailed description of how the applicant intends to electronically link the facility with other local and regional facilities that have collections and programs which interpret the history of the Underground Railroad, including a listing of the facilities the applicant intends to include.

Instructions for Submitting an Application

Applicants should submit a narrative that addresses the elements described in this notice under "Application Requirements." There is no prescribed application form for the program. All applications should clearly designate a contact person, telephone number, and the e-mail address of the contact person. Applicants need only submit one original application. No copies are necessary. Applications must be postmarked on or before the deadline date.

Mail the application on or before the deadline date to Linda Kleckner, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4050, ROB–3, Washington, DC 20202, or hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to Linda Kleckner, U.S. Department of Education, Seventh & D Streets, SW., Room 4050, ROB–3, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda Kleckner at the address in the previous paragraph, by e-mail at Linda__Kleckner@ed.gov, or by telephone at (202) 708–9086. Information concerning the program can also be found on the Web site of the Department (http://ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Program Authority: Section 841 of the Higher Education Amendments of 1998, Pub. L. 105–244, 20 U.S.C. 1153.

Dated: May 28, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–14117 Filed 6–3–99; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1034/P.L. 106–32
To declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States. (June 1, 1999; 113 Stat. 115)
Last List May 26, 1999

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–083–4]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in San Diego County, CA, from the list of quarantined areas. The quarantine was necessary to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: This interim rule is effective as of June 1, 1999. We invite you to comment on this docket. We will consider all comments that we receive by August 6, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–083–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–083–4.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly infestation in a portion of San Diego County, CA, in August 1998, the quarantined areas in California have included portions of Orange, Riverside, and San Diego Counties.

In an interim rule effective August 13, 1998, and published in the **Federal Register** on August 20, 1998 (63 FR 44539–44541, Docket No. 98–083–1), we added a portion of San Diego County, CA, to the list of quarantined areas. In a second interim rule effective August 14, 1998, and published in the **Federal Register** on August 21, 1998 (63 FR 44774–44776, Docket No. 98–083–2), we added a portion of Orange County, CA, to the list of quarantined areas. In a third interim rule effective November 24, 1998, and published in the **Federal Register** on December 1, 1998 (63 FR 65999–66001, Docket No. 98–083–3), we added an area in Riverside and Orange Counties, CA, to the list of quarantined areas.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county agency inspectors, that the Medfly has been eradicated from the quarantined area in San Diego County, CA. The last finding of Medfly thought to be associated with the infestation in that portion of San Diego County, CA, was August 3, 1998. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of San Diego County, CA, from the list of areas in § 301.78–3(c) quarantined because of the Medfly. Portions of Orange and Riverside Counties remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The portion of San Diego County, CA, affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of that portion of San Diego County, CA, would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective June 1, 1999. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget

has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing a portion of San Diego County, CA, from quarantine for Medfly. This action affects the interstate movement of regulated articles from this area. We estimate that there are 26 entities in the quarantined area of San Diego County, CA, that sell, process, handle, or move regulated articles; this estimate includes 18 fruit sellers and 8 nurseries. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 26 entities are small in size, since the overwhelming majority of businesses in California, as well as the rest of the United States, are small entities by SBA standards.

The effect of this action on small entities should be minimally positive, as they will no longer be required to treat articles to be moved interstate for Medfly.

Therefore, termination of the quarantine of that portion of San Diego County, CA, should have a minimal economic effect on the small entities operating in this area. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.78–3 [Amended]

2. In § 301.78–3, paragraph (c), the entry for California is amended by removing the entry for San Diego County.

Done in Washington, DC, this 1st day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–14304 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 407

RIN 0563–AB06

Group Risk Plan of Insurance

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Group Risk Plan of Insurance Common Policy Basic Provisions and Crop Provisions for Barley, Corn, Cotton, Forage, Sorghum, Peanuts, Soybeans, and Wheat, to add regulations to provide for the operation of an alternative risk management tool to be known as the Group Risk Plan of Insurance (GRP). This plan will insure against the widespread loss of production of certain crops in a county. It is intended primarily for use by those producers whose yields tend to follow the county average yield. GRP pays only when the average yield of the entire county drops below the expected county yield for the insured crop as set by FCIC. Payment is based on the percentage of decline in a county or area wide yield below the insured's trigger yield. The insured need not have a loss to collect an indemnity. Alternately, the insured may have a loss and not collect an indemnity.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: William Klein, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected benefits of this action outweighs the costs. Clarification of the provisions and administrative changes that simplify program operations will benefit producers, FCIC, and insurance providers.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have previously been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001. This rule will replace the pilot Group Risk Plan of Insurance Common Policy Basic Provisions and the crop provisions for Barley, Corn, Cotton, Forage, Sorghum, Peanuts, Soybeans, and Wheat. Therefore, the amendment set forth in this rule does not revise the content or alter the frequency of the information collection cleared under the above referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for

State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on larger entities. Under the GRP program, an insured is required to complete an application and an acreage report. Neither a notice of loss nor a claim for indemnity are required, since a loss is based on the county average yield falling below the expected county yield.

The amount of work required of the insurance companies and representatives of FCIC delivering and servicing these policies will not increase from the amount of work currently required to deliver previous policies to which this regulation applies. In fact, this action reduces the paperwork burden and there is a lessor impact on the insured and the reinsured company because the yield is based on National Agricultural Statistics Service (NASS) yields rather than individual insured's yields. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule had been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Tuesday, October 8, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 52717–52727 to add a new part 407 to chapter IV of title 7 of the Code of Federal Regulations, Group Risk Plan of Insurance Common Policy Basic Provisions and Crop Provisions for Barley, Corn, Cotton, Forage, Sorghum, Peanuts, Soybeans, and Wheat. The new provisions will be effective for the 2000 and succeeding crop years for the Group Risk Plan of Insurance Common Policy Basic Provisions and Crop Provisions for Barley, Corn, Cotton, Forage, Sorghum, Peanuts, Soybeans, and Wheat Crop Provisions. These provisions will replace the pilot program provisions currently in effect for the 1999 crop year.

Following publication of the proposed rule, the public was afforded 45 days to submit written comments and opinions. A total of 45 comments were received from reinsured companies, an insurance service organization, and a producer. The comments received and FCIC's responses are as follows:

Comment: One commenter from a reinsured company recommended that GRP either remain a pilot program for further evaluation "since it has not yet shown itself to be a success" or that it be eliminated. The commenter cited no participation for GRP barley, minimal participation for GRP cotton, sorghum, peanuts, and wheat, and moderate interest in corn and soybeans, particularly in the Midwestern states of Iowa, Indiana, Minnesota, and Wisconsin. The commenter further noted that participation had decreased for both corn and soybeans between 1995 and 1996, but did acknowledge that participation in forage production had increased.

Response: While participation may be low for specific GRP programs in some areas, net acres insured grew by 32 percent and total premium grew 40 percent between 1995 and 1996. Wheat acreage, for example, increased by 300 percent and total wheat premium increased 370 percent. These statistics indicate a growing GRP program rather than one in decline. FCIC believes that participation can be significantly increased by additional changes. First, if CAT coverage is extended to all GRP crops, significant increases in participation, similar to what occurred with GRP forage in 1997, could occur. Secondly, there is evidence that agents have received limited information about the product. At recent meetings sponsored by the National Association of Professional Agents in Iowa and Minnesota, and attended by FCIC personnel, numerous agents stated that they had not been informed of the benefits of the GRP program. FCIC expects increased participation in GRP insurance programs in the future due to increased publicity, increased agent and producer awareness of the product, and perhaps expansion of CAT coverage. Therefore, FCIC will proceed with GRP as a risk management tool.

Comment: A reinsured company commented that CAT coverage and expansion of the Crop Revenue Coverage (CRC) and Income Protection (IP) programs may attract producers that might otherwise be interested in GRP. Secondly, expanding GRP only adds to the confusion introduced by several plans of coverage and adds expenses at a time when it is imperative to simplify and reduce expenses.

Response: New crop insurance programs, which includes Revenue Insurance, are providing necessary new risk management protection for producers, since no single insurance product meets the needs of all producers. Further, offering a variety of insurance products should significantly increase participation. Also, expanding GRP should not add to the confusion, add more expenses, or increase complexity. In fact, of all the insurance products available, GRP is the simplest, least costly to administer, and provides potentially greater protection for producers at a significantly reduced premium.

Comment: An insurance service organization questioned the need for the language in § 407.2 (b) which states that the contract "* * * may be offered directly to producers through agents of the Farm Service Agency (FSA)."

Response: The provision actually states that the contract may be offered "directly to producers through agents of the United States Department of Agriculture." This language is required as a fall back position if coverage in some areas is not available through the private sector.

Comment: An insurance service organization questioned language in § 407.2(c) that prohibits more than one insurance policy for a person on the same crop, county and crop year, unless approved in writing by FCIC. The commenter asks whether "insurance policy" refers to GRP, or to other multiple peril crop insurance policies (MPCI) as well, and if so, under what circumstances would multiple policies be acceptable.

Response: This provision applies to all federally approved crop insurance policies including MPCI and GRP. Since both the MPCI policy and the GRP policy require that all acreage of the insured crop in the county be insured under the same policy (except high risk land) the producer is prohibited from obtaining both MPCI coverage and GRP coverage on the same crop in the county.

Comment: An insurance service organization asked if a reinsured company representative is included in the language in §§ 407.6(a)(1) and (a)(2)(i) "an agent or employee of the Corporation."

Response: This provision was intended to distinguish between agents and employees of FCIC and agents and employees of the reinsured company. For clarification, FCIC has amended the language in the sections cited above from "agent or employee of the Corporation" to "a representative of a reinsured company or FCIC."

Comment: One commenter from an insurance service organization recommended moving the last phrase of § 407.6(a)(2)(iii), "* * * such insured shall be granted relief the same as if otherwise entitled thereto," to a separate finishing paragraph (a)(3) and moving "whenever" from § 407.6(a) to the beginning of § 407.6(a)(1).

Response: FCIC agrees that the above cited phrase is clearer as a separate paragraph and has accordingly redesignated it as § 407.6(a)(3). The word "whenever" applies to all the conditions and, therefore, must remain at § 407.6(a).

Comment: One commenter from an insurance service organization expressed concern that the language in § 407.6 (b) and (c) does not appear to provide a level playing field since reinsured companies are held liable for unauthorized acts of their agents, but apparently no one pays for FCIC agent errors except the taxpayers.

Response: Under the terms of the Standard Reinsurance Agreement, reinsured companies are responsible for any error or omission on the part of their agents, loss adjusters, or other contractors. This provision simply ensures that such responsibility is not waived by this rule. The Government's oversight bodies ensure that FCIC's employees or agents are held accountable for their acts of omission.

Comment: One commenter from an insurance service organization expressed concern over the apparent contradiction between §§ 407.6 and 407.7. Section 407.6(c) indicates that companies may grant relief based on arbitration, but § 407.7 states that any exceptions under § 407.6 will be "at the sole discretion of the Corporation."

Response: The language in § 407.7 is not intended to involve FCIC in the arbitration process between the company and insureds. However, arbitration may not change the terms of the contract. Therefore the language, "at the sole discretion of the Corporation," remains in § 407.7.

Comment: An insurance service organization commented that using the term "person" in § 407.8 (a), instead of "entity" to include more than individuals can lead to confusion. They believe the term could suggest that no group entities may be insured.

Response: The term "person" is defined in the Common Crop Insurance Policy, Group Risk Plan of Insurance Common Policy, and other policies insured by or approved by the Corporation. It appropriately encompasses an individual, a partnership, an association, a corporation, an estate, a trust, or other legal entity. Therefore, no change has been made in the term or its use.

Comment: An insurance service organization recommended simplifying the language in the last sentence in § 407.8(a) as follows: "The application must be submitted to the insurance provider on or before the applicable sales closing date on file in the insurance provider's local office."

Response: FCIC agrees with the recommendation and has modified the language accordingly.

Comment: One comment from an insurance service organization addressed extension of sales closing dates and cessation of sales due to adverse conditions. The commenter expressed concern over the timeliness of such notification and the vehicle by which it would be made.

Response: The Manager of FCIC has the authority to extend fall sales closing dates, and suspend sales under § 407.8 (b). Once a decision is made, electronic notification will be made to companies as soon as possible. In addition, FCIC will place a notice of the extended date in the **Federal Register**. Therefore, the provisions in § 407.8(b) will remain.

Comment: Several comments were received from insurance service organizations questioning the name, inclusion, and use of the GRP Disclaimer. One commenter suggested renaming the form, "Acknowledgment of Differences" because "disclaimer" suggested the need to bring flaws to the policyholder's attention. Another suggested removing the disclaimer or using one generic form. This commenter explained that § 407.8(c) was too detailed, that the disclaimer was not part of the application, and that GRP will no longer be a pilot program or "new and different." Another commenter questioned why the disclaimer was not listed as part of the policy in § 407.9.

Response: FCIC agrees that the name, "Acknowledgment of Differences," is more positive and has changed the form name accordingly. FCIC disagrees, however, that the form reference should be removed from § 407.8(c). A single generic disclaimer, as suggested, is provided as an exhibit in the revised crop year GRP procedure. The form is needed for clarity. GRP is different from other insurance programs in that an indemnity is triggered by a loss in the county and not by an individual's loss. It is imperative that insureds understand that they can sustain a loss on their crop and still not be indemnified if the county loss does not trigger an indemnity. This acknowledgment is not part of the policy as described in § 407.9. It does not add to or vary the terms of the policy. It merely highlights for the insured how the GRP risk management tool differs from traditional crop insurance. Therefore, the suggestion to list the disclaimer as part of the policy has not been adopted.

Comment: An insurance service organization asked whether the Proposed Rule for 1998 GRP Barley and Wheat crop provisions contains the same language as those currently in effect for the 1997 crop year. If the language is the same, they questioned whether the 1997 crop provisions would remain in effect for the 1998 crop year, or would new 1998 provisions be issued.

Response: On October 8, 1996, when GRP was published as a proposed rule, these crop provisions contained the same language as the 1997 GRP Barley and Wheat pilot program crop

provisions sent out prior to June 30, 1997. The 1997 GRP Barley and Wheat pilot program crop provisions remain in effect for the 1998 and 1999 crop years because the June 30 contract change date passed prior to final rule publication. Consequently, these Crop Provisions, set out in this final rule, will be effective for the 2000 crop year and will be issued following final rule publication. These Crop Provisions include language changes from the 1999 crop provisions under the pilot program.

Comment: An insurance service organization noted that the opening reference in § 407.9 incorrectly cites Provision 16 as containing continuous policy language rather than Provision 19.

Response: FCIC acknowledges the reference error. Based on additional edits to these provisions, the reference now correctly cites section 18.

Comment: An insurance service organization commented that the language in § 407.9 in the 3rd paragraph under "both policies" which states, "You may select any dollar amount * * * by the acreage reporting date," could be misunderstood by insureds to mean that this choice may be made at acreage reporting time. They noted that this information is more clearly provided in the sixth paragraph and asked whether it is necessary that the language be included in both places.

Response: FCIC believes that both references to acreage planted by the acreage reporting date are necessary. FCIC has clarified paragraph 3 to specify that the selection of the dollar amount of protection must occur by the sales closing date and that this protection will be provided for each acre of the crop planted on or before the acreage reporting date and shown on the acreage report.

Comment: An insurance service organization recommended that FCIC modify the definition for the term "Cancellation date" from "prior to that date" to "on or before that date" since it is possible to cancel a policy on the cancellation date.

Response: FCIC agrees with the recommendation and has modified the definition accordingly.

Comment: An insurance service organization recommended that the term "insurance provider" be expanded to include FSA. This makes the policy language clearer and less wordy by eliminating the need to keep referring to "companies or FSA offices".

Response: In the future FSA is not expected to deliver crop insurance, and will only be used as a fall back if the private sector cannot deliver the program in an area. Based on this contingency "FSA" has been added to the definition of "insurance provider."

Comment: An insurance service organization expressed concern about language in section 3(b) of the GRP Basic Provisions which specifies that only acreage planted to the insured crop on or before the acreage reporting date will be insured. They are concerned about how insurance providers will verify the acreage.

Response: Companies are required to use the same procedures currently used to verify acreage planted on or before the final planting date under other insurance plans.

Comment: An insurance service organization commented that the language in section 3(d) of the GRP Basic Provisions, "* * * we will not insure acreage where the insured failed to follow good farming practices" is not necessary. They pointed out that good farming practices are not a "moral hazard" for GRP since losses are determined from the county average rather than an individual yield.

Response: Section 508(a)(3)(c) of the Federal Crop Insurance Act, as amended (Act), provides that failure to follow good farming practices will result in the acreage not being insurable. This provision applies to all policies insured or reinsured by FCIC. No change will be made in this provision.

Comment: An insurance service organization asked whether the CAT level of coverage referenced in section 4 of the GRP Basic Provisions and elsewhere, and currently available only for GRP forage, would be made available on all GRP crops..

Response: There are no plans to expand CAT coverage to other GRP crop programs for the 1999 crop year. However, the Manager of FCIC has the authority to expand CAT coverage for any or all of the other seven GRP crops.

Comment: An insurance service organization recommended modifying the language in section 7(a) of the GRP Basic Provisions to refer to "net acreage" instead of "all acreage" in which you have a share, or rearrange the various factors so it does not seem to refer to your share in the application.

Response: The insured is required to report all acreage of each insured crop in the county, both insurable and not insured, on or before the acreage reporting date shown in the Special Provisions. Therefore, FCIC has not modified this language. To prevent possible confusion of "share in the application," FCIC has moved the phrase "in which you have a share" to after "for each insured crop."

Comment: One commenter from an insurance service organization questioned whether it mattered if acreage was planted by the acreage reporting date, as required in section 7(a), since a GRP loss is triggered by the county yield.

Response: The crop must be planted before acreage can be accurately reported. Therefore, to protect the integrity of the program, this provision has not been changed.

Comment: An insurance service organization noted that section 8 of the GRP Basic Provisions, items (a)–(c), address the administrative fees and when they are due. They asked whether this provision should state that CAT and limited fees are due the first year even if zero acres are reported.

Response: The Agricultural Research, Extension, and Education Reform Act of 1998 was passed subsequent to the comment,. This Act provided that the administrative fee will be due on the billing date. Payment of an administrative fee will not be required if a bona fide zero acreage report is filed on or before the acreage reporting date for the crop, as specified in paragraph 8(e).

Comment: An insurance service organization noted that section 8(d) of the GRP Basic Provisions addresses premium for limited and additional coverage levels, and asked whether there should be some reference to the subsidy equaling the imputed premium for CAT policies.

Response: FCIC does not believe adding imputed premium language is necessary and may in fact add detail that would only serve to confuse GRP policyholders.

Comment: An insurance service organization pointed out that sections 8(f) and (g) of the GRP Basic Provisions address delinquency and termination for non-payment of premium and asks whether there should also be some reference in this section to the consequences of failure to pay the administrative fees timely.

Response: FCIC agrees with the recommended change and has added new provisions in sections 8(g) and (h).

Comment: An insurance service organization expressed concern that the language in the proposed GRP Corn Crop Provisions provided that sweet corn, popcorn, and hybrid seed corn may be insured through a "written agreement" rather than through an "agreement in writing." Written agreements, referenced in section 9, have more rules and regulations and generally must be submitted to the RSO for approval. Companies would object to no longer having the authority to

approve the insuring of different kinds of corn. Response: FCIC disagrees with the recommendation of replacing the language "written agreement" with "agreement in writing" in the GRP Corn Crop Provisions because an "agreement in writing" alters the contract, but does not have the contractual structure and guidelines of a formal "written agreement." FCIC does agree that the written agreement requirement in both the GRP Corn and Sorghum Crop Provisions need not require Regional Service Office (RSO) approval. Therefore, while FCIC will leave the "written agreement" language in the crop provisions, it will provide in procedure that a written agreement for adding other types of GRP corn or sorghum to the contract be pre-approved by FCIC so that companies will be able to approve these written agreements without RSO approval.

Comment: An insurance service organization asked what GRP policy provisions would be subject to change by written agreement. For example, the current GRP handbook states that only land physically located in the insured county is insurable. The commenter questioned whether it will now be possible to insure land across the county line in the same manner as MPCI (APH) policies. The commenter also asks whether such agreements require RSO approval.

Response: All requirements that may be revised by written agreement will specifically be provided in the provision for such requirement in the Group Risk Plan Common Policy or the Crop Provision. Section 3 of the proposed GRP Basic Provisions provides that, "Crops grown on acreage located in another county must be reported and insured separately." There are no plans at this time to alter that requirement by written agreement. Delegation of authority for approving written agreements is set out in FCIC procedure.

Comment: An insurance service organization commented that underwriting details do not belong in the policy but need to be resolved before the new policies are approved and issued. They expressed concern that the written agreement provisions may add to the administrative paperwork and that new GRP procedures should allow written agreements to be approved by the companies to the extent possible.

Response: FCIC's goal is to address underwriting details in procedure. The program must remain clean and relatively simple to administer. Written agreements are only used to temporarily deviate from the terms of the policy and should not pose any greater burden than for any other policy. Section 9 of the GRP Basic Provisions, therefore, has not been amended to allow reinsured companies to approve written agreements.

Comment: An insurance service organization recommended that language be added to section 13 of the GRP Basic Provisions to make it similar to the MPCI (APH) Basic Provisions which require that all policies be voided when more than one policy that insures the same interest is discovered, unless the duplication is determined to be inadvertent.

Response: FCIC agrees with the recommendations and has modified section 13 to make it more consistent with the provisions in the MPCI (APH) Basic Provisions. A provision has also been added to provide the insurance provider with recourse in the event that an insured obtained the multiple policies intentionally.

Comment: One commenter from an insurance service organization questioned why section 15 of the GRP Basic Provisions still refers to the Food Security Act of 1985 since producers are no longer required to be in compliance with the Sodbuster/Swampbuster provisions of the Act.

Response: While producers are no longer required to be in compliance with the Sodbuster/Swampbuster provisions of the Food Security Act, the Controlled Substance provisions still apply. Therefore, no change will be made.

Comment: An insurance service organization questioned the wisdom of listing specific legislation in section 15 of the GRP Basic Provisions because the references become outdated when the legislation is revised or repealed.

Response: If one or more of the cited Acts were to be modified or repealed, the insured person may no longer be in violation. Therefore, FCIC does not believe that references to specific legislation poses any problem and has not deleted the references.

Comment: An insurance service organization questioned the reasons for minor differences in the first three and last two paragraphs of section 15 of the GRP Basic Provisions. The commenter also questioned whether they could be made to match exactly, with the exception of "up to 30 percent" in FCIC item (b).

Response: FCIC agrees with comment and has eliminated the minor differences in these paragraphs.

Comment: An insurance service organization noted that the title of section 17 "Determinations" of the GRP Basic Provisions is appropriate for the FCIC policy, but recommended that FCIC change the title to "Arbitration" for reinsured policies, consistent with the 1995–NCIS 700B Basic Provisions.

Response: FCIC believes that the section title "Determinations" is appropriate for both FCIC and reinsured policies. FCIC has clarified that all determinations under reinsured policies will be made by the companies, and that disputes are resolved by means of arbitration. Accordingly, FCIC will not change the title of this section but has redesignated it section 16.

Comment: Two recommendations from an insurance service organization involved modification of provisions in § 407.12(2)(d) of the GRP Cotton crop provisions. Because of lack of punctuation, it appeared to read that only colored lint cotton planted into an established grass or legume is uninsurable rather than all cotton planted in this manner. The industry believes that the provisions would be clearer if formatted like the MPCI (APH) cotton policies. They also asked that colored lint cotton, for example, be made insurable by written agreement.

Response: FCIC agrees and has reformatted section 2(d) based on the MPCI cotton policies and has provided for insurability of colored lint cotton and other types by written agreement or when authorized by the Special Provisions.

Comment: One commenter from an insurance service organization expressed concern that cotton payment yields are determined substantially later than other crops.

Response: The cotton payment yields are determined later than a number of other GRP crops because final yields cannot be determined until the cotton is ginned. While an earlier announcement of the cotton payment yields is desirable, the logistics of the cotton industry preclude it.

Comment: An insurance service organization recommended modifying the definition of harvest in the Group Risk Plan for Forage to read, "Removal of the forage from the field, and/or rotational grazing," rather than simply, "and rotational grazing," to allow for those who do one or the other but not both.

Response: FCIC disagrees with the recommendation. The present language "Removal of the forage from the field and rotational grazing" already allows for an insured who does one or the other but not both. Therefore, no change has been made.

Comment: An insurance service organization recommended that the Program Dates table in the Group Risk Plan for Peanuts be modified by changing the phrase, "and all other states," in the second group of counties

and states to read, "and all other states except New Mexico and Oklahoma." This change is necessary because these two states have a March 15 cancellation and termination date and, therefore, belong in the third grouping.

Response: FCIC agrees with the comment and has revised the table accordingly.

Comment: An individual who is both an agriculture lender and producer commented that he did not favor the Group Risk Plan of Insurance because of weather variability, the many differences among producers within a county, the fact that all producers could obtain the same amount of insurance, and that the county had to trigger before a loss was due. CRC, on the other hand, allows a good proven producer to insure a crop for more than a poor producer and cover both price and yield risk.

Response: FCIC recognizes that some insurance products fit some individual's needs better than other products. The per acre premium for CRC insurance is considerably greater than for GRP coverage. While CRC works well for the commenter, neighboring producers whose yields trend with the county may find that GRP meets their insuring needs and is a better buy for the coverage provided.

In addition to the changes described above, FCIC has moved the contract change date for the Forage Group Risk Plan forward from June 30 to August 31. This change was based on the availability of NASS yield data. The term "Actuarial Table" was replaced with "actuarial documents," for clarity and for consistency with the MPCI Common Policy. The term "Protection per acre" was replaced with "Maximum protection per acre" for clarity. FCIC added the following definitions: "additional coverage," "agreement in writing," "catastrophic risk protection," "dollar amount of protection per acre," "good farming practices," "limited coverage," and "MPCI," to section 1 for clarification.

In addition, FCIC has made the following editorial changes to the Group Risk Plan of Insurance Basic Provisions:

1. *Section 407.8(c)(4)(ii)*—Modified to recognize that an MPCI policy may or may not be available to a producer for certain crops and counties in their region.

2. *Section 407.9*—Added Risk Management Agency (RMA) to the last sentence in the first paragraph of § 407.9. The additional language recognizes establishment of the Risk Management Agency on October 1, 1996.

List of Subjects in 7 CFR Part 407

Crop Insurance, Group Risk Plan, Barley, Corn, Cotton, Forage, Peanuts, Sorghum, Soybean, Wheat.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation adds 7 CFR part 407 to read as follows:

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2000 AND SUCCEEDING CROP YEARS

Sec.

407.1 Applicability.
407.2 Availability of Federal crop insurance.
407.3 Premium rates, amounts of protection, and coverage levels.
407.4 OMB control numbers.
407.5 Creditors.
407.6 Good faith reliance on misrepresentation.
407.7 The contract.
407.8 The application and policy.
407.9 Group risk plan common policy.
407.10 Group risk plan for barley.
407.11 Group risk plan for corn.
407.12 Group risk plan for cotton.
407.13 Group risk plan for forage.
407.14 Group risk plan for peanuts.
407.15 Group risk plan for sorghum.
407.16 Group risk plan for soybean.
407.17 Group risk plan for wheat.

Authority: 7 U.S.C. 1506(1), 1506(p).

§ 407.1 Applicability.

The provisions of this part are applicable only to those crops and crop years for which a Crop Provision is contained in this part.

§ 407.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this part on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*) (the Act). The crops and counties shall be designated by the Manager of the Federal Crop Insurance Corporation (FCIC) from those approved by the Board of Directors of FCIC.

(b) The insurance will be offered through companies reinsured by FCIC under the same terms and conditions as the contract contained in this part. These contracts are clearly identified as being reinsured by FCIC. Additionally, the contract contained in this part may be offered directly to producers through agents of the United States Department of Agriculture. Those contracts are specifically identified as being offered by FCIC.

(c) No person may have in force more than one insurance policy issued or reinsured by FCIC on the same crop for the same crop year, in the same county, unless specifically approved in writing by FCIC.

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, in the same county, that have not been properly approved by FCIC, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of FCIC that the multiple contracts of insurance were inadvertent and without the fault of the person.

(e) If the unapproved multiple contracts of insurance are shown to be inadvertent, and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop in the county for that crop year will be canceled. No liability for indemnity or premium will attach to the contracts so canceled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract (see § 407.8, paragraph 21).

(g) A person whose contract with FCIC or with a company reinsured by FCIC under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain crop insurance under the Act with FCIC or with a company reinsured by FCIC unless the person can show that the termination was improper and should not result in subsequent ineligibility.

(h) All applicants for insurance under the Act must advise the insurance provider, in writing at the time of application, of any previous applications for insurance or contracts of insurance under the Act within the last 5 years and the present status of any such applications or insurance.

§ 407.3 Premium rates, amounts of protection, and coverage levels.

(a) The Manager of FCIC shall establish premium rates, amounts of protection, and coverage levels for the insured crop that will be included in the actuarial documents on file in the insurance provider's office. Premium rates, amounts of protection, and coverage levels may be changed from year to year.

(b) At the time the application for insurance is made, the person must elect an amount of protection and a coverage level from among those contained in the actuarial documents for the crop year.

§ 407.4 OMB control numbers.

The information collection activity associated with this rule has been

previously approved by the Office of Management and Budget (OMB) under control number 0563–0053.

§ 407.5 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 407.6 Good faith reliance on misrepresentation.

(a) Notwithstanding any other provision of the crop insurance contract, an insured shall be granted relief to the extent of the insured's detrimental reliance or the extent of the policy benefits, whichever is less, under the following conditions:

(1) The person has entered into a contract of crop insurance under this part;

(2) A representative of FCIC made a misrepresentation or other erroneous action or advice;

(3) Such error concerned provisions of the insurance contract not contained in the Group Risk Plan of Insurance Basic Provisions, the Crop Provisions, the Federal Crop Insurance Act, or the regulations contained in this chapter;

(4) As a result of the error, the insured:

(i) Is indebted for additional premiums; or

(ii) Has suffered a loss to a crop which is not insured or for which the person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(5) The Manager finds that:

(i) A representative of FCIC made such misrepresentation or took other erroneous action or gave erroneous advice;

(ii) The person reasonably and in good faith relied on such misrepresentation, erroneous action or advice to the person's detriment; and

(iii) To require the payment of the additional premiums or to deny such person's entitlement to the indemnity would not be fair and equitable.

(b) For FCIC Policies only, requests for relief under this section must be submitted to FCIC in writing. FCIC's reviewing officers must refer such application for relief to the Manager of FCIC for determination as to whether to grant relief. FCIC's reviewing officers do not have authority to grant relief under this section.

(c) For Reinsured Policies only, requests for relief under this section must be submitted to the reinsured company in writing. The reinsured companies shall use arbitration, in accordance with the rules of the American Arbitration Association, under contracts for insurance issued by them under the Act to grant relief under the same terms and conditions as contained in this section or may establish procedures to administratively handle relief in accordance with this section. Granting relief under this section does not absolve the reinsured company from liability to FCIC for unauthorized acts of its agents.

§ 407.7 The contract.

The insurance contract shall become effective upon the acceptance by FCIC or the reinsured company of a complete, duly executed application for insurance on a form prescribed or approved by FCIC. The contract shall consist of the accepted application, Group Risk Plan of Insurance Basic Provisions, Crop Provisions, Special Provisions, Actuarial Table, and any amendments, endorsements, or options thereto. Changes made in the contract shall not affect its continuity from year to year. Except as may be allowed under § 407.6, and at the sole discretion of the Corporation, no indemnity shall be paid unless the person complies with all terms and conditions of the contract. The forms required under this part and by the contract are available at the office of the insurance provider, or the local FSA office, if applicable.

§ 407.8 The application and policy.

(a) Application for insurance, on a form prescribed or approved by FCIC, must be made by any person who wishes to participate in the program in order to cover such person's share in the insured crop as landlord, owner-operator, tenant, or other crop ownership interest. No other person's interest in the crop may be insured under the application. The application must be submitted to the insurance provider on or before the applicable sales closing date on file in the insurance provider's local office.

(b) FCIC or the reinsured company may reject or no longer accept applications upon the FCIC's determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications for fall planted crops, unless prohibited by law, upon determining that the probability and severity of claims will not increase because of the extension, by placing the extended date on file in the insurance provider's office and publishing a notice in the **Federal Register**. If adverse conditions should develop during the extended period, the Corporation will require the insurance provider to immediately discontinue acceptance of applications.

(c) Since this Group Risk Plan differs significantly from traditional Multiple Peril Crop Insurance, persons who purchase the Group Risk Plan and their crop insurance agents will be required to execute an "Acknowledgment of Differences" that explains that the terms and conditions of the Group Risk Plan are different from traditional crop insurance in that:

(1) The Group Risk Plan indemnity payment, if any, will be made after the Group Risk Plan premium is received;

(2) A person may have a low yield on his or her individual farm and not receive a payment under Group Risk Plan; and

(3) A person may not have any loss of production and still collect under the policy if a loss of production is general in the area.

(4) By executing the "Acknowledgment of Differences," the insured certifies that:

(i) He or she understands the terms of the Group Risk Plan;

(ii) An MPCI policy may be available in the county; and

(iii) Both a Group Risk Plan and a MPCI Plan cannot be purchased on the same crop by the same insured in the same county.

§ 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2000 and succeeding crop years are as follows:

[FCIC policies]

Department of Agriculture

Federal Crop Insurance Corporation

Group Risk Plan Common Policy

[Reinsured policies]

(Appropriate title for insurance provider)

(This is a continuous policy. Refer to Section 18.)

[FCIC policies]

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C. 1501 *et seq.*). All terms of the policy and rights and responsibilities of the parties hereto are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or varied in any way by the crop insurance representative, or any other representative or employee of FCIC, the Risk

Management Agency (RMA) or the Farm Service Agency (FSA). In the event that the company cannot pay a loss, the claim will be settled in accordance with the provisions of the policy and paid by FCIC. No state guarantee fund will be liable to pay the loss.

Throughout this policy, "you" and "your" refer to the person shown on the accepted application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, the use of the plural form of a word includes the singular use and the singular form of the word includes the plural.

[Reinsured policies]

This insurance policy establishes a risk management program created by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U. S. C. 1501 *et seq.*).

This insurance policy is reinsured by FCIC under the provisions of the Act. All terms of the policy and rights and responsibilities of the parties are subject to the Act and all regulations under the Act published in 7 CFR chapter IV, and may not be waived or varied in any way by the crop insurance representative, any other representative or employee of the company, any representative or employee of FCIC, the Risk Management Agency, or the Farm Service Agency (FSA). All provisions of State and local law in conflict with the provisions of this policy as published in 7 CFR part 407 are preempted and the provisions of such part will control.

Throughout this policy, "you" and "your" refer to the person shown on the accepted application and "we," "us," and "our" refer to the reinsured company issuing this policy. Unless the context indicates otherwise, the use of the plural form of a word includes the singular use and the singular form of the word includes the plural.

[Both policies]

The Group Risk Plan of Insurance (GRP) is designed as a risk management tool to insure against widespread loss of production of the insured crop in a county. It is primarily intended for use by those producers whose farm yields tend to follow the average county yield. It is possible for you to have a low yield on the acreage that you insure and still not receive a payment under this plan.

For limited or additional coverage you may select any percent coverage level shown on the actuarial documents. Multiplying your coverage level percent by the expected county yield shown on the actuarial documents gives your trigger yield. If the payment yield that FCIC publishes for the insured crop year falls below your trigger yield, you will receive a payment.

On or before the sales closing date, you may select any dollar amount of protection between 60 and 100 percent (except for Catastrophic Risk Protection (CAT) which is 55 percent) of the maximum protection per acre shown on the actuarial documents. This protection will be provided for each acre of the crop planted by the acreage reporting date and shown on your acreage report (unless otherwise provided in the crop provisions) in which you have a share.

In accordance with the Act, FCIC will pay a portion of your premium, as published in the actuarial documents. The premium rates, practices, types, maximum protection per acre, and maximum subsidy per acre are also shown on the actuarial documents.

FCIC will issue the payment yield in the calendar year following the crop year insured. This yield will be the official estimated yield published by the National Agricultural Statistics Service (NASS). You will be paid if the payment yield falls below your trigger yield. The amount of your payment per net insured acre will be calculated by subtracting the payment yield from the trigger yield, dividing that quantity by the trigger yield, and multiplying that result by your protection per acre for each net acre that you have insured.

To be eligible to participate in the Group Risk Plan of Insurance for any crop in any county, and to receive an indemnity thereunder, you must have an insurable interest in an insured crop that is planted in the county shown on the approved application. The crop must be planted for harvest and be reported to us by the acreage reporting date. You may only purchase coverage under the Group Risk Plan of Insurance on your net acres of the insured crop.

The insurance contract shall become effective upon the acceptance by us of a duly executed application for insurance on our form. Acceptance occurs when we issue a Summary of Protection to you. The policy shall consist of the accepted application, Group Risk Plan of Insurance Common Policy Basic Provisions, Crop Provisions, Special Provisions, actuarial documents, and any amendments, endorsements, or options.

Agreement To Insure

In return for your payment of the premium and your compliance with all applicable provisions, we agree to provide risk protection as stated in this policy. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) the Group Risk Plan Basic Provisions, with (1) controlling (2), etc.

Terms and Conditions

Group Risk Plan of Insurance Basic Provisions

1. Definitions

Acreage report. A report required by section 7 of these Basic Provisions that contains, in addition to other information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions by which you must submit your acreage report in order to be eligible for Group Risk Insurance.

Act. Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*).

Actuarial documents. The material for the crop year which is available for public inspection in your insurance provider's local office, and which shows the maximum protection per acre, expected county yield, coverage levels, premium rates, practices, program dates, and other related information regarding crop insurance in the county.

Additional coverage. For GRP, an amount of protection greater than or equal to: 80 percent of the expected county yield indemnified at 95 percent of the maximum amount of protection (80/95); or 85 percent of the expected county yield indemnified at 90 percent of the maximum amount of protection (85/90); or 90 percent of the expected county yield indemnified at 85 percent of the of the maximum amount of protection (90/85). The protection is on a per acre basis as specified in the actuarial documents for the crop, practice, and type.

Billing date. The date, contained in the actuarial documents, by which we will bill you for the premium and administrative fee on the insured crop.

Cancellation date. The calendar date specified in the Crop Provisions on which insurance for the next crop year will automatically renew unless the policy is canceled in writing by either you or us or terminated in accordance with policy terms.

Catastrophic risk protection. The minimum level of coverage offered by FCIC. For GRP, an amount of protection equal to 65 percent of the expected county yield indemnified at 55 percent of the maximum protection per acre specified in the actuarial documents for the crop, practice, and type.

County. Any county, parish, or other political subdivision of a state shown on your accepted application.

Crop practice. The combination of inputs such as fertilizer, herbicide, and pesticide, and operations such as planting, cultivation, and irrigation, used to produce the insured crop. The insurable practices are contained in the actuarial documents.

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period of time within which the insured crop is normally grown and designated by the calendar year in which the crop is normally harvested.

Dollar amount of protection per acre. The percentage of coverage selected by you multiplied by the maximum protection per acre specified in the actuarial documents for the crop, practice, and type. The dollar amount of protection per acre is shown on your Summary of Protection.

Expected county yield. The yield contained in the actuarial documents, on which your coverage for the crop year is based. This yield is determined using historical NASS county average yields, as adjusted by FCIC.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within USDA.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

GRP. Group Risk Plan of Insurance.

Insurance provider. The FSA or a private insurance company approved by FCIC which

provides crop insurance coverage to producers participating in any Federal crop insurance program administered under the Act.

Limited coverage. For GRP an amount of protection greater than or equal to 70 percent of the expected county yield indemnified at 60 percent of the maximum amount of protection (70/60) and less than 80/95, 85/90, and 90/85.

Maximum protection per acre. The highest amount of protection specified in the actuarial documents.

MPCI. Multiple peril crop insurance, an insurance product based on an individual yield or amount of insurance.

NASS. National Agricultural Statistics Service, an agency within USDA, or its successor, that publishes the official United States Government yield estimates.

Net acres. The planted acreage of the insured crop multiplied by your share.

Payment yield. The yield determined by FCIC based on NASS yields for each insurable crop's type and practice, as adjusted by FCIC, and used to determine whether an indemnity will be due.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a state or a political subdivision or agency of a state.

Sales closing date. The date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Share. Your percentage of interest in the insured crop, as an owner, operator, or tenant at the time insurance attaches. Premium will be determined on your share as of the acreage reporting date. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the acreage reporting date or on the date of harvest, whichever is less.

Special provisions. The part of the policy that contains specific provisions of insurance for each crop that may vary by geographic area.

Subsidy. The portion of your premium, shown on the actuarial documents as limited and maximum amounts per acre, that FCIC will pay in accordance with the Act.

Summary of protection. Our statement to you of the crop insured, dollar amount of protection per acre, premiums, and other information obtained from your accepted application, acreage report, and the actuarial documents.

Termination date. The calendar date contained in the Crop Provisions upon which insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium and administrative fees.

Trigger yield. The result of multiplying the expected county yield by the coverage level percentage chosen by you. When the payment yield falls below the trigger yield, an indemnity is due.

Type. Plants of the insured crop having common traits or characteristics that distinguish them as a group or class, and which are designated in the actuarial documents.

USDA. United States Department of Agriculture.

2. Insured Crop

The insured crop will be the crop shown on your accepted application, as specified in the applicable Crop Provisions, and must be grown on insurable acres.

3. Insured and Insurable Acreage

(a) The insurable acreage is all of the acreage of the insured crop for which premium rates are provided by the actuarial documents and in which you have a share and which is in the county listed in your accepted application. The dollar amount of protection per acre, amount of premium, and indemnity will be calculated separately for each county, type, and practice.

(b) Only the acreage seeded to the insured crop on or before the acreage reporting date (unless otherwise provided in the Crop Provisions) and physically located in the county listed on your accepted application will be insured. Crops grown on acreage physically located in another county must be reported and insured separately.

(c) We will not insure any crop grown on any acreage where the crop was destroyed or put to another use during the insurance period for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA.

(d) We will not insure any acreage where you have failed to follow good farming practices for the insured crop.

4. Policy Protection

(a) For catastrophic risk protection GRP policies, the dollar amount of protection per acre will be 55 percent of the maximum protection per acre specified on the actuarial documents for each insured crop, practice, and type. For limited and additional coverage GRP policies, you may select any dollar amount of protection from 60 percent through 100 percent of the maximum protection per acre shown on the actuarial documents for the crop, practice, and type.

(b) The dollar amount of protection per acre, multiplied by your net insured acreage, is your policy protection for each insured crop, practice, and type specified in the actuarial documents.

(c) All yields are based on NASS determinations, and such determinations for the county will be conclusively presumed to be accurate.

5. Coverage Levels

(a) For catastrophic risk protection GRP policies, the coverage level is shown on the actuarial documents for each insured crop, practice, and type. For limited and additional coverage GRP policies, you may select any percentage of coverage shown on the actuarial documents for the crop, practice, and type.

(b) Your coverage level multiplied by the expected county yield shown on the actuarial documents is your trigger yield. If the payment yield published by FCIC for the insured crop, practice, and type for the insured crop year falls below your trigger yield, you will receive an indemnity payment.

(c) You may change the coverage level or amount of protection for each insured crop on or before the sales closing date. Changes must be in writing and received by us by the sales closing date.

6. Payment Calculation Factor

Your payment calculation factor will be ((your trigger yield − payment yield) ÷ your trigger yield) for the purposes of calculating an indemnity payment.

7. Report of Acreage and Share

(a) You must report on our form all acreage for each insured crop in which you have a share (insurable and not insured) by practice and type specified in the actuarial documents in each county listed on your accepted application. This report must be submitted each year on or before the acreage reporting date for the insured crop contained in the actuarial documents. If you do not submit an acreage report by the acreage reporting date, we will determine your acreage and share or deny liability on the policy.

(b) We will not insure any acreage of the insured crop planted after the acreage reporting date, unless otherwise provided in the Crop Provisions.

(c) Your premium will be based on the greater of the acreage reported on the acreage report or the acreage determined by us to be accurate.

(d) The payment of an indemnity will be based on your insurable acreage on the acreage reporting date.

(e) If you misrepresent or omit any information, we will revise the premium or liability or both for each insured crop in the county, by type and practice, to the amount we determine to be correct.

(f) You may insure only your share of the crop, which includes any share of your spouse and dependent children unless it is demonstrated to our satisfaction, prior to the sales closing date, that you and your spouse maintain completely separate farming operations and that each spouse is the operator of his or her own separate operation. Any commingling of any part of the operations will cause shares of you and your spouse to be combined.

8. Administrative Fees and Annual Premium

(a) If you obtain a catastrophic risk protection GRP policy you will pay an administrative fee:

(1) Of $60 per crop per county;

(2) Payable to the insurance provider on the billing date for the crop.

(b) If you obtain a limited coverage GRP policy, you will pay an administrative fee under the same terms and conditions as the premium for the policy:

(1) Of $50 per crop per county;

(2) Not to exceed $200 per county;

(3) Up to a maximum of $600 per producer.

(4) Limited resource farmers as defined at 7 CFR 457.8 may apply for a waiver of administrative fees for the limited coverage policy.

(c) If you obtain an additional coverage GRP policy, you will pay an administrative fee:

(1) Of $20 per crop per county;

(2) Payable under the same terms and conditions as the premium for the policy.

(d) For limited and additional coverage GRP policies, your premium is determined by multiplying your policy protection by the premium rate per hundred dollars of protection for your coverage level contained

in the actuarial documents, by 0.01, and subtracting the applicable subsidy.

(e) For catastrophic risk protection, limited, and additional coverage GRP policies, payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop (if you falsely file a zero acreage report you may be subject to criminal and administrative sanctions).

(f) The annual premium is earned and payable at the time the insured crop is planted. For each insured crop, you will be billed for premium and the administrative fee by the billing date specified in the Special Provisions. Premium, administrative fee, and any other amount owed us is due on the billing date and interest will accrue if the premium, administrative fee, or any other amount owed is not received by us before the first day of the month following the premium billing date.

(g) The premium, administrative fee, and any other amount due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions. This may affect your eligibility for benefits under other USDA programs. A debt for any crop insured with us under the authority of the Act will be deducted from any indemnity due you for this or any other crop insured with us.

(h) Failure to pay the premium and any administrative fee due, plus any accrued interest and penalties, by the termination date will make you ineligible for any crop insurance under the Act for subsequent crop years until the sales closing date after the date the debt, including interest and penalties, is paid or satisfactory arrangements acceptable to us for such payment are made.

9. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date;

(b) The application for written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved by us, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the protection per acre, premium rate, and price election; and

(d) Each written agreement will only be valid for one year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

10. Access to Insured Crop and Record Retention

We may examine the insured crop and any records relating to the crop and this insurance at any location where such crop or such records may be found or maintained, as often as we reasonably require. Records relating to the planting of the insured crop and your net acres must be retained for three years after the end of the crop year or three years after the date of payment of the final indemnity, whichever is later. We may extend the record retention period beyond three years by notifying you of such extension in writing. Failure to maintain such records will, at our option, result in cancellation of the policy or a determination that no indemnity is due.

11. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

12. Assignment of Indemnity

You may assign to another person your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us.

13. Other Insurance

You may not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

14. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date of denial of a claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

[FCIC policy]

15. Restrictions, Limitations, and Amounts Due Us

(a) We may restrict the amount of acreage we will insure to the amount allowed under any acreage limitation program established by USDA.

(b) Violation of Federal statutes including, but not limited to, the Act; the controlled substance provisions of the Food Security Act of 1985; the Food, Agriculture, Conservation, and Trade Act of 1990; and the Omnibus Budget Reconciliation Act of 1993, and any regulation promulgated thereunder, will result in cancellation, termination, or voidance of your crop insurance contract. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less an amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

(c) Our maximum liability under this policy will be limited to the policy protection specified in section 4 of this policy. Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such indemnity.

(d) We will pay simple interest computed on the net indemnity ultimately found to be due by us or determined by a final judgment of a court of competent jurisdiction or a final administrative determination from, and including, the 61st day after the date we receive the NASS county yield estimates for the insured crop year. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611 *et seq.*), and published in the **Federal Register**.

(e) Any amount illegally or erroneously paid to you or that is owed to us but is delinquent may be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action.

(f) Interest will accrue at the rate not to exceed 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium or administrative fee balance. For the purpose of premium and administrative fee amounts due us, interest will begin to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(g) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned:

(1) Interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount;

(2) Amounts found due under this paragraph will not be charged interest if payment is made in full within 30 days of issuance of the notice by us;

(3) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us;

(4) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR part 102; and

(5) The penalty for accounts more than 90 days delinquent is an additional 6 percent per annum.

(h) Interest on any amount due us found to have been received by you because of fraud, misrepresentation, or presentation by you of a false claim will start on the date you received the amount with the additional 6 percent penalty beginning on the 31st day after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other Federal criminal or civil statute.

(i) If we determine that it is necessary to contract with a collection agency, refer the debt to governmental collection centers, the Department of Treasury Offset Program, or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(j) All amounts paid by you will be applied first to expenses of collection if any, second to reduction of any penalties which may have been assessed, then to reduction of accrued interest, and finally, to reduction of the principal balance.

[Reinsured policy]

15. Restrictions, Limitations, and Amounts Due Us

(a) We may restrict the amount of acreage we will insure to the amount allowed under any acreage limitation program established by USDA.

(b) Violation of Federal statutes including, but not limited to, the Act; the controlled substance provisions of the Food Security Act of 1985; the Food, Agriculture, Conservation, and Trade Act of 1990; and the Omnibus Budget Reconciliation Act of 1993, and any regulation promulgated thereunder, will result in cancellation, termination, or voidance of your crop insurance contract. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

(c) Our maximum liability under this policy will be limited to the policy protection specified in section 4 of this policy. Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such indemnity.

(d) Interest will accrue at the rate not to exceed 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium or administrative fee balance. For the purpose of premium and administrative fee amounts due us, interest will begin to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(e) For the purpose of any amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment in full is made within 30 days of issuance of notice by us. The amount will be considered delinquent if not paid in full within 30 days of the date the notice is issued by us.

(f) All amounts paid will be applied first to expenses of collection (see subsection (g) of this section) if any, second to reduction of accrued interest, and then to reduction of the principal balance.

(g) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(h) A portion of the amount paid to you to which you were not entitled may be collected through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

[FCIC policy]

16. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration or you may appeal our determinations in accordance with 7 CFR part 11.

[Reinsured policy]

16. Determinations

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under this policy.

[Both policies]

17. Holidays and Weekends

If any date specified in this program falls on Saturday, Sunday, or a legal Federal holiday, that date will be extended to the next business day.

18. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable (except as stated herein), coverage level, price election, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) If any amount due, including premium, is not paid on or before the termination date for the crop on which an amount is due:

(1) For a policy with the unpaid premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate;

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply on or before the sales closing date for the crop (since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1997, and crop B, with a termination date of March 15, 1998, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 1997, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 1998. If you enter an agreement to repay the debt on April 25, 1998, you can apply for insurance for crop A by the October 31, 1998, sales closing date and crop B by the March 15, 1999, sales closing date. If you fail to make a scheduled payment on November 1, 1998, you will be ineligible for crop insurance effective on November 1, 1998, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the

date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

19. Contract Changes

(a) We may change any terms and conditions of this policy from year to year.

(b) Any changes in policy provisions, expected county yields, maximum amounts of protection, premium rates, and program dates will be provided by us to your local crop insurance provider not later than the contract change date contained in the Crop Provisions. You may view the documents or request copies from your local crop insurance provider.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop Provisions, and Special Provisions of this policy not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

20. Eligibility for Other Farm Program Benefits

To remain eligible for benefits under the Agriculture Marketing Transition Act, the conservation reserve program, or certain farm loans, you are required to obtain at least the catastrophic level of coverage for either GRP or any other plan of insurance that is available in the county, for all crops of economic significance, or execute a waiver of your rights to any emergency crop assistance on or before the sales closing date for the crop.

An Example To Demonstrate How GRP Works

Producer A buys 90 percent coverage and selects $160 protection per acre. Producer B buys 75 percent coverage and selects $185 protection per acre. Both producers have 100 percent share and both plant 200 acres of a crop in the county. The expected county yield is 45 bushels per acre. The premium rate for 90 percent coverage is $6.14 per hundred dollars of protection and the premium rate for 75 percent coverage is $3.30 per hundred dollars of protection. The maximum subsidy amount per acre is $3.07 and the limited subsidy amount is $2.21 per acre.

A's trigger yield is 40.5 bushels per acre (90% × 45), and the total premium due is $1,965 ($160 × $6.14 × 200 acres × 0.01). Of that amount, FCIC pays $614 (200 acres × the maximum subsidy of $3.07 per acre). A's policy protection is $32,000 ($160 × 200 acres).

B's trigger yield is 33.8 bushels per acre (75% of 45), and the total premium due is $1,221 ($185 × $3.30 × 200 acres × 0.01). Of that amount, FCIC pays $442 (200 acres × the limited subsidy amount of $2.21 per acre). B's policy protection is $37,000 ($185 × 200 acres).

Scenario 1 (likely)

FCIC issues a payment yield of 46 bushels per acre. This is above both producers' trigger yields, so no indemnity payment is made, even if one or both have individual yields that are below the trigger yield.

Scenario 2 (less likely)

FCIC issues a payment yield of 38 bushels per acre. A's payment calculation factor is 0.062 ((40.5 − 38)÷40.5). This number multiplied by the policy protection yields an indemnity payment of $1,984 (.062 × $32,000). B's trigger yield is less than the payment yield, so no indemnity payment is made.

Scenario 3 (least likely)

FCIC issues a payment yield of 22 bushels per acre. A's payment calculation factor is 0.457 ((40.5 − 22)÷40.5). The payment is $14,624 (0.457 × $32,000). B's payment calculation factor is 0.349 ((33.8 − 22) ÷33.8), and the final indemnity payment is $12,913 (0.349 × $37,000).

§ 407.10 Group risk plan for barley.

The provisions of the Group Risk Plan for Barley for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the barley for grain.

NASS yield. The yield calculated by dividing the NASS estimate of the barley production in the county, by the NASS estimate of the acres of barley in the county, as specified in the actuarial documents. The actuarial documents will specify whether harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the barley seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Crop Insured

The insured crop will be all barley:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as grain; and

(d) Not planted into an established grass or legume, interplanted with another crop, or planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to the April 1 following the crop year.

(c) We will issue any payment to you prior to the May 1 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; all New Mexico counties except Taos County; Kansas; Missouri; Illinois; Indiana; Ohio; Pennsylvania; New York; Massachusetts; and all states south and east thereof.	September 30	June 30.
Arizona; California; and Clark and Nye Counties, Nevada	October 31	June 30.
All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo, and Las Animas Counties and all Colorado counties south and east thereof; all Nevada counties except Clark and Nye Counties; Taos County, New Mexico; and all other states except: Arizona, California, and (except) Kansas, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New York, and Massachusetts and all States south and east thereof.	March 15	November 30.

§ 407.11 Group risk plan for corn.

The provisions of the Group Risk Plan for Corn for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or picking corn for grain, or severing the stalk from the land and chopping the stalk and ear for the purpose of livestock feed.

NASS yield. The yield calculated by dividing the NASS estimate of the corn for grain production in the county, by the NASS estimate of the acres of corn for grain in the county, as specified in the actuarial documents. The actuarial documents will specify whether harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the corn seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Broadcast and subsequent mechanical incorporation of the corn seed is not allowed.

2. Crop Insured

(a) The insured crop will be all field corn:
(1) Grown on insurable acreage in the county listed in the accepted application;
(2) Properly planted and reported by the acreage reporting date;
(3) Planted with the intent to be harvested as grain, silage, or green chop; and
(4) Not planted into an established grass or legume or interplanted with another crop.
(b) Hybrid seed corn, popcorn, sweet corn, and other specialty corn may only be insured if a written agreement exists between you and us. Your request to insure such crop must be in writing and submitted to your agent not later than the sales closing date.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.
(b) Payment yields will be determined prior to April 16 following the crop year.
(c) We will issue any payment to you prior to the May 16 immediately following our determination of the payment yield.
(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.
(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas Counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.12 Group risk plan for cotton.

The provisions of the Group Risk Plan for Cotton for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Removal of the seed cotton from the stalk.

NASS yield. The yield calculated by dividing the NASS estimate of upland cotton production in the county, by the NASS estimate of the acres of upland cotton in the county, as specified in the actuarial documents. The actuarial documents will specify whether harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the cotton seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Broadcast and subsequent mechanical incorporation of the cotton seed is not allowed.

2. Crop Insured

The insured crop will be all upland cotton:
(a) Grown on insurable acreage in the county or counties listed in the accepted application;
(b) Properly planted and reported by the acreage reporting date;
(c) Planted with the intent to be harvested; and
(d) That is not (unless allowed by the Special Provisions or by written agreement):
(1) Colored cotton lint;
(2) Planted into an established grass or legume;
(3) Interplanted with another spring planted crop;
(4) Grown on acreage in which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or
(5) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than 50 percent of the small grain plants reach the heading stage.

3. Payment.

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.
(b) Payment yields will be determined prior to July 16 following the crop year.
(c) We will issue any payment to you prior to the August 16 immediately following our determination of the payment yield.
(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.
(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28	November 30.
All other Texas counties and all other States	March 15	November 30.

§ 407.13 Group risk plan for forage.

The provisions of the Group Risk Plan for Forage for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Removal of the forage from the field, and rotational grazing.

NASS yield. The yield calculated by dividing the NASS estimate of the production of hay in the county by the NASS estimate of the acres of hay in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land seeded to forage, by a planting method appropriate for forage, into a properly prepared seedbed.

Rotational grazing. The defoliation of the insured forage by livestock, within a pasturing system whereby the forage field is subdivided into smaller parcels and livestock are moved from one area to another, allowing a period of grazing followed by a period for forage regrowth.

2. Crop Insured

The insured crop will be the forage types shown on the Special Provisions:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Intended for harvest; and

(d) Not grown with another crop.

3. Insurable Acreage

In addition to section 3 of the Basic Provisions of the Group Risk Plan Common Policy, acreage seeded to forage after July 1 of the previous crop year will not be insurable. Acreage physically located in another county not listed on the accepted application is not insured under this policy.

4. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to May 1 following the crop year.

(c) We will issue any payment to you prior to the May 31 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

5. Program Dates

November 30 is the Cancellation and Termination Date for all states. The Contract Change Date is August 31 for all states.

6. Annual Premium

In lieu of section 8(g) of the Basic Provisions of the Group Risk Plan Common Policy, the annual premium is earned and payable on the acreage reporting date. You will be billed for premium due on the date shown in the Special Provisions. The premium will be determined based on the rate shown on the actuarial documents.

§ 407.14 Group risk plan for peanuts.

The provisions of the Group Risk Plan for Peanuts for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the peanuts.

NASS yield. The yield calculated by dividing the NASS estimate of peanut production in the county, by the NASS estimate of the acres of peanuts in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the peanut seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

2. Crop Insured

The insured crop will be all peanuts:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as peanuts; and

(d) Not interplanted with an established grass or legume or interplanted with another crop.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to June 16 following the crop year.

(c) We will issue any payment to you prior to the July 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas Counties lying south thereof.	January 15	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof; and all other states except New Mexico, Oklahoma, and Virginia.	February 28	November 30.
New Mexico; Oklahoma; Virginia; and all other Texas Counties	March 15	November 30.

§ 407.15 Group risk plan for sorghum.

The provisions of the Group Risk Plan for Sorghum for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the sorghum for grain, or severing the stalk from the land and chopping the stalk and head for the purpose of livestock feed.

NASS yield. The yield calculated by dividing the NASS estimate of sorghum for grain production in the county, by the NASS estimate of the acres of sorghum for grain in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the sorghum seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Broadcast and subsequent mechanical incorporation of the sorghum seed is not allowed.

2. Crop Insured

(a) The insured crop will be all sorghum:

(1) Grown on insurable acreage in the county or counties listed in the accepted application;

(2) Properly planted and reported by the acreage reporting date;

(3) Planted with the intent to be harvested as grain or silage; and

(4) Not interplanted with an established grass or legume or interplanted with another crop.

(b) Hybrid sorghum seed may only be insured if a written agreement exists between you and us. Your request to insure such crop must be in writing and submitted to your agent not later than the sales closing date.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to April 16 following the crop year.

(c) We will issue any payment to you prior to the May 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, -Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.16 Group risk plan for soybean.

The provisions of the Group Risk Plan for Soybeans for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the soybeans.

NASS yield. The yield calculated by dividing the NASS estimate of soybean production in the county, by the NASS estimate of the acres of soybeans in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the soybean seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Crop Insured

The insured crop will be all soybeans:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as soybeans; and

(d) Not planted into an established grass or legume or interplanted with another crop.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to April 16 following the crop year.

(c) We will issue any payment to you prior to the May 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified on the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28	November 30.
All other Texas counties and all other States	March 15	November.

§ 407.17 Group risk plan for wheat.

The provisions of the Group Risk Plan for Wheat for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the wheat for grain.

NASS yield. The yield calculated by dividing the NASS estimate of the wheat production in the county, by the NASS estimate of the acres of wheat in the county, as specified in the actuarial documents. The actuarial documents will specify whether the harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the wheat seed has been planted by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Crop Insured

The insured crop will be all wheat:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as grain; and

(d) Not planted into an established grass or legume, interplanted with another crop, or planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.

(b) Payment yields will be determined prior to April 1 following the crop year.

(c) We will issue any payment to you prior to the May 1 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the actuarial documents.

(e) The payment will not be recalculated even though the NASS yield may be subsequently revised.

State and county	Cancellation and termination dates	Contract change date
All Colorado counties except Alamosa, Conejos, Costilla, Rio Grande, and Saguache; all Montana counties except Daniels and Sheridan Counties; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties and all South Dakota counties east thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties; and all other states except Alaska, Arizona, California, Maine, Minnesota, Nevada, New Hampshire, North Dakota, Utah, and Vermont..	September 30	June 30.
Arizona; California; Nevada; and Utah	October 31	June 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties South Dakota, and all South Dakota counties east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming..	March 15	November 30.

Signed in Washington, DC, on May 26, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–13983 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV99–930–2 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Revision of the Sampling Techniques for Whole Block and Partial Block Diversions and Increasing the Number of Partial Block Diversions Per Season for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the sampling techniques for whole and partial block diversions and increases the number of allowable partial block diversions under the Federal marketing order for tart cherries. These changes are intended to make the voluntary grower diversion program more flexible for grower participants. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Cherry Industry Administrative Board (Board). The Board unanimously recommended this action.

DATES: Effective June 8, 1999; comments received by August 6, 1999, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698; or E-mail: moabdocket.clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department or USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the sampling techniques used in determining the amount of production diverted from whole blocks and partial blocks of cherry trees, and increases the number of allowable partial block diversions per season under the order. Whole block diversion results when an entire orchard block is left unharvested. Partial block diversion occurs when a contiguous portion of a definable block is diverted. An orchard block is defined as a group of cherry trees of similar age, with rows aligned in the same direction, and

having definable boundaries (e.g., roads, ditches, or other permanent landmarks).

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would be subject to volume regulation. One of the ways handlers can satisfy their restricted percentage obligations is by redeeming grower diversion certificates. After the Board confirms that the grower diverted his/her crop, the Board issues a diversion certificate to the grower stating the weight of cherries diverted. The grower can present the certificate to a handler in lieu of actual cherries. The handler, in turn, can present the certificate to the Board. The Board then applies the weight of cherries represented by the certificate against the handler's restricted percentage obligation, which reduces the handler's restricted obligation.

Section 930.158 provides rules and regulations for grower diversion. Included in this section are procedures and deadline dates for applying for diversion and choosing the type of diversion available to growers. There are four types of diversion-random row, whole block, partial block, and in-orchard tank. This rule only makes changes to the whole and partial block diversions.

Grower applications for diversion must be filed by April 15 and growers must inform the Board by July 1 whether they elect to whole or partial block divert their tart cherries. If whole block or partial block diversion is not selected by July 1, the grower would have to choose the random row method or the in-orchard tank methods of diversion.

In whole and partial block diversion, the quantity of the fruit diverted is determined by application of a statistical sampling protocol. Currently, § 930.158 specifies that, if a block has 5 rows or less, 3 rows are randomly chosen to be sampled. If a block has 6 to 15 rows, 4 rows are randomly chosen to be sampled. If a block has 16 or more rows, 5 rows are randomly chosen to be sampled. Ten contiguous tree sites would be sampled from each row.

During its review of the grower diversion program, the Board concluded that the current sampling procedure, which is based solely on the number of rows in a block, requires more trees to be sampled on smaller blocks or on blocks that had short rows than is necessary to accurately determine the amount of tart cherries diverted. The Board determined that a sample size of approximately 10 to 15 percent which had been taken on larger orchard blocks with more trees in a row, was adequate to accurately calculate the quantity of fruit diverted from such orchard blocks. That sample size could easily be twice as large in small orchards having fewer trees per row. Therefore, the Board recommended that the regulations be amended so that the sample taken from both large and small orchard blocks would be about 10 to 15 percent.

To achieve this goal, the Board recommended that the sampling procedure be revised by taking into account the number of rows and number of tree sites in each particular block. The sampling method used would be the one requiring the smaller number of trees. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. The recommended sampling procedure is as follows: If a block has 5 rows or less, or 200 or less tree sites, 3 rows would be randomly chosen to be sampled. If a block has 6 to 15 rows or 201–400 tree sites, 4 rows would be randomly chosen to be sampled. If a block has 16 or more rows and greater than 400 tree sites, 5 rows would be randomly chosen to be sampled. This procedure is expected to result in a sample size of about 12 to 15 percent whether the orchard block has long rows or short rows.

For example, under the current sampling criteria, if a grower has 10 rows with 20 tree sites per row (10 × 20 equals 200 tree sites), 4 rows would have to be sampled. Under these rules, only 3 rows would have to be sampled since there are 200 tree sites.

As is currently required, prior to sampling, the grower must notify the Board to allow observation of the sampling process by a compliance officer. The sampling method used would be the one requiring the smaller number of trees to be sampled. The compliance officer will use an orchard map in determining how many trees to sample.

To determine the yield for whole block diversion when five rows are to be sampled, 10 contiguous tree sites in each of the five rows are sampled. A total of 50 tree sites would be sampled ((10 original tree sites) X (5 rows)= 50 tree sites). If, for example, a total of 4,600 pounds is harvested from the sample tree sites and this is divided by 50 tree sites, a yield of 92 pounds per tree site will be obtained. The yield for the block is found by multiplying the calculated 92 pounds per tree site yield by the 880 tree sites that were mapped in the block to yield 80,960 pounds for that block.

For partial block diversion, the yield for the partial block is found by multiplying the calculated pounds per tree site yield by the number of trees in the rows mapped in the partial block. Partial blocks shall consist of contiguous rows.

After harvest, the compliance officer could again visit the grower's orchard to verify that diversion actually took place. A diversion certificate would be issued for an amount equal to the volume of cherries diverted. The grower could then present the certificate to a handler to be redeemed.

The second change to the regulations increases the number of partial blocks that growers may divert each season. Partial block diversion is when a contiguous portion of a definable block is diverted. Using this method of diversion, a grower having a block with 35 rows could divert contiguous rows 1 through 22 and harvest rows 23 through 35. Currently, section 930.158(b)(3) limits the number of partial block diversions to one partial block diversion for each grower per year. This limitation was intended to reduce the time that compliance officers needed to spend observing sampling and diversion activities at growers' orchards and the administrative costs involved.

After one year of diversion under these rules, the Board reevaluated the program and determined that the number of partial block diversions per grower per year could be increased from one to five, or 50 percent of a producer's total number of blocks. For example, if a grower has 12 separate orchard blocks mapped by the Board, such grower would now be able to divert up to 6 partial blocks. After reviewing last year's operations, the Board believes that its administrative costs will not increase materially by making this change. Because this method of diversion allows growers to divert cherries based on quality, the Board further believes that the ability to take advantage of partial block diversion on a larger scale will foster increased participation in the voluntary program.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any

rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. The number of reported tart cherry producers in the regulated area is lower this crop year than in previous years (down from 1,220 producers) due to the Board receiving more accurate producer information. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced and pureed. During the period 1993/94 through 1997/98, approximately 89 percent of the U.S. tart cherry crop, or 281.1 million pounds, was processed annually. Of the 281.1 million pounds of tart cherries processed, 63 percent was frozen, 25 percent canned and 4 percent utilized for juice. The remaining 8 percent was dried or assembled into juice packs.

In 1998, 37.7 million pounds of cherries were diverted in the orchard. Of that total, 16.3 million pounds were whole block diversions and 8.4 million were partial block diversions. The balance of the grower diversions were random row and in-orchard tank diversions.

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would be subject to volume regulation. One of the ways handlers can satisfy their restricted percentage obligations is by redeeming grower diversion certificates. After the Board confirms that the grower diverted his/her crop, the Board issues the grower a diversion certificate stating the weight of cherries diverted. The grower can present the certificate to a handler in lieu of actual cherries. The handler, in turn, can present the certificate to the Board. The Board then applies the weight of cherries represented by the certificate against the handler's restricted percentage obligation, which reduces the handler's restricted obligation.

Section 930.158 provides rules and regulations for grower diversion. Included in this section are procedures and dates for applying for diversion. There are four types of diversion. However, this action only makes changes to the rules and regulations for whole and partial block diversions.

Grower applications for diversion must be filed by April 15 and growers must inform the Board by July 1 whether they elect to whole or partial block divert their tart cherries. If whole block or partial block diversion is not selected by July 1, the grower would have to choose the random row method or the in-orchard tank methods of diversion.

In whole and partial block diversions, the quantity of the fruit diverted is determined by application of a statistical sampling protocol. Currently, § 930.158 specifies that, if a block has 5 rows or less, 3 rows are randomly chosen to be sampled. If a block has 6 to 15 rows, 4 rows are randomly chosen to be sampled. If a block has 16 or more rows, 5 rows are randomly chosen to be sampled. Ten contiguous tree sites would be sampled from each row.

During its review of the grower diversion program, the Board concluded that the current sampling procedure which is based solely on the number of rows in a block, requires more trees to be sampled on smaller blocks or on blocks that had short rows than is necessary to accurately determine the amount of tart cherries diverted. The Board determined that a sample size of approximately 10 to 15 percent which had been taken on larger orchard blocks with more trees in a row, was adequate to accurately calculate the quantity of fruit diverted from such orchard blocks. That sample size could easily be twice as large in small orchards having fewer trees per row. Therefore, the Board recommended that the regulations be amended so that the sample taken from both large and small orchard blocks would be about 10 to 15 percent.

To achieve this goal, the Board recommended that the sampling procedure be revised by taking into account the number of rows and number of tree sites in each particular block. The sampling method used would be the one requiring the smaller number of trees. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. The recommended sampling procedure is as follows: If a block has 5 rows or less, or 200 or less tree sites, 3 rows would be randomly chosen to be sampled. If a block has 6 to 15 rows or 201–400 tree sites, 4 rows would be randomly chosen to be sampled. If a block has 16 or more rows and greater than 400 tree sites, 5 rows would be randomly chosen to be sampled. This procedure is expected to result in a sample size of about 12 to 15 percent whether the orchard block has long rows or short rows.

The second change to the regulations increases the number of partial blocks that growers may divert each season. Partial block diversion is when a contiguous portion of a definable block is diverted. Using this method of diversion, a grower having a block with 35 rows could divert contiguous rows 1 through 22 and harvest rows 23 through 35. Currently, section 930.158(b)(3) limits the number of partial block diversions to one partial block diversion for each grower per year. This limitation was intended to reduce the time that compliance officers needed to spend observing sampling and diversion activities at growers' orchards and the administrative costs involved.

After one year of diversion under these rules, the Board reevaluated the program and determined that the number of partial block diversions per grower per year could be increased from one to five, or 50 percent of a producer's total number of blocks, without materially increasing administrative costs. Because this method of diversion allows growers to divert cherries based on quality, the Board further believes that the ability to take advantage of partial block diversion on a larger scale will foster increased participation in the voluntary program.

The Board considered not changing the partial block diversion limitation as well as allowing an unlimited number of diversions. However, after much discussion, the Board decided that the diversion program could best be improved by increasing the opportunities for grower diversion, but believed a reasonable limit was needed to keep Board administrative costs as low as possible. Last year's experience showed that partial block diversion is the most flexible diversion option

available to the grower because it allows growers to divert tart cherries based on quality. For example, if a grower observes that part of a block of tart cherries is of low quality, the problem rows can be diverted allowing the grower to deliver high quality fruit to a handler. The ability to choose in this manner benefits both growers, handlers, and the industry as a whole.

At the end of the upcoming season, the Board plans to review the number of partial block diversions approved and decide if the number of such diversions is appropriate for upcoming crop years.

This rule does not require any new forms and will not impose any additional recordkeeping requirements on either small or large tart cherry diversion participants. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend them and participate in Board deliberations. Like all Board meetings, the December 11–12, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review program issues and make recommendations.

This rule invites comments on revising the sampling techniques for whole and partial block diversions and for increasing the number of allowable partial block diversions under the Federal marketing order for tart cherries. All comments received will be considered in making a final decision on this action. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements by allowing growers the opportunity to divert more partial blocks and changes the sampling techniques for partial and whole block diversions to assure similar sample sizes regardless of orchard size; (2) this rule should be effective as soon as possible so growers can take advantage of these changes; (3) the Board unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 930.158, paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 930.158 Grower diversion and grower diversion certificates.

* * * * *

(b) * * *

(2) *Whole block diversion.* Based on maps supplied by the grower, a sampling procedure will be used to determine the amount of cherries in the orchard to be diverted. A block is defined as rows that run in the same direction, are similar in age, and have definable boundaries. The Board will require a number of tree sites to be sampled depending on the size of the block. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. If a block has 5 rows or less, or 200 or less tree sites, 3 rows would be randomly chosen to be sampled, if a block has 6 to 15 rows, or 201–400 tree sites, 4 rows would be randomly chosen to be sampled, and if a block has 16 or more rows and greater than 400 tree sites, 5 rows would be randomly chosen to be sampled. The Board's compliance officer will apply the sampling procedure (based on the number of rows or the number of tree sites) which results in the fewest number of tree sites required to be sampled. From each of the rows to be sampled, ten contiguous tree sites will be sampled. Only trees more than five years old will be harvested for the sample. For example, if it is determined that five rows are to be sampled, 10 contiguous tree sites in each of the five rows will be subject to harvest. Trees within the 10 sites which are more than five years old will be harvested. The harvested tonnage will be converted to a volume that represents the entire block of cherries. If, for example, a total of 4,600 pounds is harvested from the sample tree sites and this total is divided by 50 tree sites a yield of 92 pounds per tree site is obtained. To find the total yield for the block, the 92 pounds per tree site yield is multiplied by the 880 tree sites that were mapped in the block and that equals 80,960 pounds for that block. The compliance officer would be allowed access to the block to oversee the sampling process and to confirm that the block has been diverted.

(3) *Partial block diversion.* Partial block diversion will also be accomplished using maps supplied by the grower. Sampling will be done as in whole block diversion except that only partial blocks would be selected and sampled. Growers may divert up to five partial blocks, or 50 percent of a grower's total number of blocks per year. Such block(s) must be mapped and will be sampled as described under whole block diversion. Rows used in partial block diversion must be contiguous.

* * * * *

Dated: June 1, 1999.

Bernadine M. Baker,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–14310 Filed 6–4–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV99–989–3 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 1998–99 Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule without change, the provisions of an interim final rule which established final volume regulation percentages for 1998–99 Zante Currant raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). The volume regulation percentages are 85 percent free and 15 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. The volume regulation percentages are intended to help the industry manage its supply of Zante Currant raisins and strengthen market conditions.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues to establish final free and reserve percentages for Zante Currant raisins for the 1998–99 crop year, which began August 1, 1998, and ends July 31, 1999. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to establish final volume regulation percentages for 1998–99 crop Zante Currant raisins covered under the order. The volume regulation percentages are 85 percent free and 15 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. The volume regulation percentages are intended to help the industry manage its supply of Zante Currant raisins and strengthen market conditions. Final percentages were recommended by the Committee at a meeting on February 11, 1999.

Section 989.54 of the order prescribes the procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 13, 1998, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carrying on August 1 of the current crop year and by adding the desirable carryout at the end of that crop year. As specified in § 989.154, the desirable carryout for each varietal type is equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one-half of October. In accordance with these provisions, the Committee computed and announced a 1998–99 trade demand for Zante Currant raisins at 3,215 tons as shown below.

COMPUTED TRADE DEMAND

[Natural condition tons]

	Zante currant raisins
Prior year's shipments	4,121
Multiplied by 90 percent	0.90
Equals adjusted base	3,709
Minus carryin inventory	1,188
Plus desirable carryout	694
Equals computed trade demand	3,215

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date

up to 5 business days if warranted by a late crop.

The 1998–99 crop was unusually late because of the combined effect of adverse crop conditions during the spring of 1998 created by the weather phenomenon known as El Nino, scattered rain during the fall harvest, and a shortage of labor once the grapes were ready for harvest. The crop is normally harvested during late August and early September; this season's crop was harvested about 3–4 weeks later.

Because of the late crop, the Committee met on October 8, 1998, and announced preliminary crop estimates for all nine varietal types of raisins covered under the order. To guard against an underestimation of the crop, the Committee computed preliminary volume regulation percentages for five of the nine varietal types of raisins covered under the order—Dipped Seedless, Natural (sun-dried) Seedless (Naturals), Oleate and Related Seedless, Other Seedless, and Zante Currant raisins. The total crop was initially estimated at 321,486 tons.

As more information became available during the following months, the Committee determined that volume regulation was only warranted for Zante Currant raisins. The other varietal types of raisins for which preliminary percentages were computed are produced from grapes that mature later than Zante Currants, and thus the crop sizes for these varietal types were more adversely affected by the poor weather conditions and labor problems. The Committee ultimately determined that the supplies of these other varietal types would be less than or close to their computed trade demands, and that volume regulation percentages were not needed. Based on the most recent information available, the total crop estimate was reduced from 321,486 to 276,510 tons. This is the first time in 16 years that volume regulation was not implemented for Naturals, the major varietal type of California raisin (crop estimate reduced from 280,092 to 235,000 tons, about 35 percent lower than the 10-year average of 360,183 tons). As in past seasons, the Committee submitted its marketing policy to the Department for review.

Regarding Zante Currant raisins, the Committee announced its preliminary crop estimate at its October 1998 meeting at 3,684 tons. As indicated in the preceding paragraph, Zante Currants mature earlier than the other varietal types of raisins covered under the order. Thus, producers were able to harvest their Zante Currants before it rained in the production area and before labor was in short supply. With the preliminary crop estimate (3,684 tons), 1997–98 carryin inventory (1,188 tons), and reserve raisins released for free use through an export program (483 tons) totaling to a supply of 5,355 tons, about 66 percent higher than trade demand (3,215 tons), and the 1997–98 carryin inventory (1,188 tons) about 71 percent higher than the desirable inventory (694 tons), the Committee determined that volume regulation for Zante Currant raisins was warranted.

At the October meeting, the Committee also computed preliminary free and reserve percentages for Zante Currants which released 65 percent of the computed trade demand since the field price had not been established. The preliminary percentages were 57 percent free and 43 percent reserve. These percentages were modified to release 85 percent of the trade demand on October 16, 1998, when the Zante Currant field price was established. The Zante Currant preliminary percentages were thus modified to 74 percent free and 26 percent reserve. The Committee met on November 13, 1998, and announced interim percentages for Zante Currant raisins at 85 percent free and 15 percent reserve which, based on the 3,684 ton crop estimate, released less than the computed trade demand. On January 15, 1999, the Committee revised its crop estimate for Zante Currants from 3,684 to 3,801 tons.

Various programs to utilize reserve Zante Currant raisins were implemented when volume regulation was in effect during the 1994–95, 1995–96, and 1997–98 seasons to help reduce inventories, and help strengthen total producer prices (which includes proceeds from both free tonnage plus reserve pool Zante Currants) from $412.56 per ton in 1994–95 to an estimated high of $730 per ton in 1997–98. The Committee is implementing a reserve program this year which is expected to help the industry export more Zante Currants, thereby reducing the industry's oversupply, helping to build export markets, and ultimately improving producer returns.

Without such programs, the Committee estimates that its export shipments would be reduced, thereby reducing overall Zante Currant shipments for the crop year. Reduced shipments for the current year would create a high carryin inventory which would result in a lower computed trade demand for next year, a lower free tonnage percentage, should volume regulation be implemented, and likely reduced returns to 1999–2000 crop raisin producers. The implementation of volume regulation for 1998–99 Zante Currant raisins is expected to help manage supply and strengthen market conditions.

As required under § 989.54(d) of the order, the Committee recommended to the Secretary at its meeting on February 11, 1999, final free and reserve percentages for Zante Currant raisins which, when applied to the final production estimate, will tend to release the full trade demand for Zante Currants. With the increased crop estimate of 3,801 tons, final percentages computed to the same figures as the interim percentages—85 percent free and 15 percent reserve. The Committee's calculations to arrive at final percentages are shown in the table below.

FINAL VOLUME REGULATION PERCENTAGES

[Tonnage as natural condition weight]

	Zante currant raisins
Trade demand	3,215
Divided by crop estimate	3,801
Equals free percentage	85
100 minus free percentage equals reserve percentage	15

In addition, the Department's "Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal has been met for Zante Currants by the establishment of final percentages which released 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. Handlers may sell their 10 plus 10 raisins to any market. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use.

About 824 tons of raisins were made available in the 10 plus 10 offers (which included 423 tons of remaining 1997 reserve Zante Currants), or 412 tons per offer. Both offers were held simultaneously in March 1999. Adding the 824 tons of 10 plus 10 raisins to the 3,215 ton trade demand figure, plus 1,188 tons of 1997–98 carryin inventory equates to about 5,227 tons natural condition raisins or 4,645 tons packed raisins that were made available for free use, or to the primary market. This is 127 percent of the quantity of Zante Currants shipped in 1997 (4,121 tons

natural condition tons or 3,662 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. These additional offers of reserve raisins would thus make even more raisins available to primary markets which is consistent with the Department's Guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Almost all of the 20 handlers handled, and about 130 of the 4,500 raisin producers produced Zante Currants during the 1998–99 crop year. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources.

Pursuant to § 989.54(d) of the order, this rule continues to establish final volume regulation percentages for 1998–99 crop Zante Currant raisins. The volume regulation percentages are 85 percent free and 15 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order. Volume regulation is warranted for Zante Currants this season because the crop estimate of 3,801 tons combined with the 1997–98 carryin inventory of 1,188 tons, plus 483 tons of reserve raisins released for free use through an export program, results in a supply of 5,472 tons which exceeds the trade demand of 3,215 tons by about 70 percent. The volume regulation percentages are intended to help the industry manage its supply of Zante Currant raisins and strengthen market conditions.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

The free and reserve percentages established by this rule release the full trade demand and apply uniformly to all handlers in the industry, regardless of size. With the exception of the 1996–97 season, small and large Zante Currant raisin producers and handlers have been operating under volume regulation percentages every year since 1994–95. There are no known additional costs incurred by small handlers that are not incurred by large handlers. All handlers are regulated based on the quantity of raisins which they acquire from producers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of volume regulation impact both small and large handlers positively by helping them maintain orderly marketing conditions by managing supply.

Various programs to utilize reserve Zante Currant raisins were implemented when volume regulation was in effect during the 1994–95, 1995–96, and 1997–98 seasons. As shown in the table following this paragraph, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (which includes proceeds from both free tonnage plus reserve pool Zante Currants) from $412.56 per ton in 1994–95 to an estimated high of $730 per ton in 1997–98. The Committee is implementing a reserve program this year which is expected to help the industry export more Zante Currants, thereby reducing the industry's oversupply, helping to build export markets, and ultimately improving producer returns.

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[*Natural condition tons]

Crop year	Production*	Inventory*		Total season average producer prices (per ton)
		Desirable	Physical	
1994–95	5,377	837	4,364	$412.56
1995–96	3,294	782	2,890	711.32
1996–97	4,491	987	549	[1] 1,150.00
1997–98	4,826	694	1,188	730.00

[1] No volume regulation.

Free and reserve percentages are established by variety, and only in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended that volume regulation was only warranted for Zante Currant raisins this season. Preliminary volume regulation percentages were computed and announced in October 1998 for four other varietal types of California raisins. As more information became available in the following months, the Committee

determined that the supplies of these other varietal types would be less than or close to their computed trade demands; thus, the Committee determined that volume regulation was not warranted.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied last season. Thus, this action imposes no additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

An interim final rule concerning this action was published in the **Federal Register** on March 8, 1999. Copies of the rule were mailed to all Committee members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended May 7, 1999 (64 FR 10919). No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 64 FR 10919 on March 8, 1999, is adopted as a final rule without change.

Dated: June 1, 1999.

Bernadine M. Baker,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–14311 Filed 6–4–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–99–002]

1999 Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This action is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 16,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule will affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule will lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment will be lowered, the decrease is small and will not significantly affect small businesses.

The current assessment on imported cotton is $0,011850 per kilogram of imported cotton. The amended assessment is $0.011397, a decrease of $0.000453 or a 3.8 percent decrease from the current assessment. From January through December 1998 approximately $20.9 million was collected at the $0.011850 per kilogram rate. Should the volume of cotton

products imported into the U.S. remain at the same level in 1999, one could expect the decreased assessment to generate $20.1 million or a 3.8 percent decrease from 1998.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991 and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This rule will decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510 (b) (2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (63 FR 27818) on May 21, 1998, for the purpose of calculating supplemental assessments on imported cotton is $1.4881 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 1997 which was $0.675 per pound and multiplying by the conversation factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 1998, which is $0.634 per pound, the new value of imported cotton is $1.3977 per kilogram. The amended value is $0.0904 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500 × .453597).

$1 per bale assessment equals $0.002000 per pound (1 ÷ 500) or $0.004409 per kg. (1 ÷ 226.8).

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms.

The 1998 calendar year weigthed average price received by producers for Upland cotton is $0.634 per pound or $1.3977 per kg. (0.634 × 2.2046) = 1.3977.

Five tenths of one percent of the average price in kg. equals $0.006988 per kg. (1.3977 × .005).

Total Assessment

The total assessment per kilogram of raw cotton in obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.006988 per kg. which equals $0.011397 per kg.

The current assessment on imported cotton is $0.011850 per kilogram of imported cotton. The amended assessment is $0.011397, a decrease of $0.000453 per kilogram. This decrease reflects the decrease in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 1998.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510 (b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

One HTS number subject to assessment pursuant to this regulation and found in the assessment table has been changed. In order to maintain consistency between the HTS and the assessment table, the changes to this one number have been incorporated into the assessment table. The last two digits of this number were changed to provide for statistical reporting purposes and involve no physical change to the products they represent. Therefore, the assessment rate is not affected by the change. The assessment rate for the one number has been applied to each of the new replacement numbers in the assessment table. The following table represents the changes:

Old No.	New No.	Conversion factor	Assessment cents/kg.
6302100010	6302100005	1.1689	1.3322
	6302100008	1.1689	1.3322
	6302100015	1.1689	1.3322

A proposed rule with a request for comments was published in the **Federal Register** (64 FR 19072) on April 19, 1999. No comments were received during the comment period (April 19 through May 19, 1999).

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(1) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.3977 per kilogram.

(3) * * *

(i) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500 ..	0	1.1397
5201001200 ..	0	1.1397
5201001400 ..	0	1.1397
5201001800 ..	0	1.1397
5201002200 ..	0	1.1397
5201002400 ..	0	1.1397
5201002800 ..	0	1.1397
5201003400 ..	0	1.1397
5201003800 ..	0	1.1397
5204110000 ..	1.1111	1.2663
5204200000 ..	1.1111	1.2663
5205111000 ..	1.1111	1.2663
5205112000 ..	1.1111	1.2663
5205121000 ..	1.1111	1.2663
5205122000 ..	1.1111	1.2663
5205131000 ..	1.1111	1.2663
5205132000 ..	1.1111	1.2663
5205141000 ..	1.1111	1.2663
5205210020 ..	1.1111	1.2663
5205210090 ..	1.1111	1.2663
5205220020 ..	1.1111	1.2663

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5205220090 ..	1.1111	1.2663
5205230020 ..	1.1111	1.2663
5205230090 ..	1.1111	1.2663
5205240020 ..	1.1111	1.2663
5205240090 ..	1.1111	1.2663
5205310000 ..	1.1111	1.2663
5205320000 ..	1.1111	1.2663
5205330000 ..	1.1111	1.2663
5205340000 ..	1.1111	1.2663
5205410020 ..	1.1111	1.2663
5205410090 ..	1.1111	1.2663
5205420020 ..	1.1111	1.2663
5205420090 ..	1.1111	1.2663
5205440020 ..	1.1111	1.2663
5205440090 ..	1.1111	1.2663
5206120000 ..	0.5556	0.6332
5206130000 ..	0.5556	0.6332
5206140000 ..	0.5556	0.6332
5206220000 ..	0.5556	0.6332
5206230000 ..	0.5556	0.6332
5206240000 ..	0.5556	0.6332
5206310000 ..	0.5556	0.6332
5207100000 ..	1.1111	1.2663
5207900000 ..	0.5556	0.6332
5208112020 ..	1.1455	1.3055
5208112040 ..	1.1455	1.3055
5208112090 ..	1.1455	1.3055
5208114020 ..	1.1455	1.3055
5208114060 ..	1.1455	1.3055
5208114090 ..	1.1455	1.3055
5208118090 ..	1.1455	1.3055
5208124020 ..	1.1455	1.3055
5208124040 ..	1.1455	1.3055
5208124090 ..	1.1455	1.3055
5208126020 ..	1.1455	1.3055
5208126040 ..	1.1455	1.3055
5208126060 ..	1.1455	1.3055
5208126090 ..	1.1455	1.3055
5208128020 ..	1.1455	1.3055
5208128090 ..	1.1455	1.3055
5208130000 ..	1.1455	1.3055
5208192020 ..	1.1455	1.3055
5208192090 ..	1.1455	1.3055
5208194020 ..	1.1455	1.3055
5208194090 ..	1.1455	1.3055
5208196020 ..	1.1455	1.3055
5208196090 ..	1.1455	1.3055
5208224040 ..	1.1455	1.3055
5208224090 ..	1.1455	1.3055
5208226020 ..	1.1455	1.3055
5208226060 ..	1.1455	1.3055
5208228020 ..	1.1455	1.3055
5208230000 ..	1.1455	1.3055
5208292020 ..	1.1455	1.3055
5208292090 ..	1.1455	1.3055
5208294090 ..	1.1455	1.3055
5208296090 ..	1.1455	1.3055
5208298020 ..	1.1455	1.3055
5208312000 ..	1.1455	1.3055
5208321000 ..	1.1455	1.3055
5208323020 ..	1.1455	1.3055
5208323040 ..	1.1455	1.3055
5208323090 ..	1.1455	1.3055
5208324020 ..	1.1455	1.3055
5208324040 ..	1.1455	1.3055
5208325020 ..	1.1455	1.3055
5208330000 ..	1.1455	1.3055
5208392020 ..	1.1455	1.3055
5208392090 ..	1.1455	1.3055

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5208394090 ..	1.1455	1.3055
5208396090 ..	1.1455	1.3055
5208398020 ..	1.1455	1.3055
5208412000 ..	1.1455	1.3055
5208416000 ..	1.1455	1.3055
5208418000 ..	1.1455	1.3055
5208421000 ..	1.1455	1.3055
5208423000 ..	1.1455	1.3055
5208424000 ..	1.1455	1.3055
5208425000 ..	1.1455	1.3055
5208430000 ..	1.1455	1.3055
5208492000 ..	1.1455	1.3055
5208494020 ..	1.1455	1.3055
5208494090 ..	1.1455	1.3055
5208496010 ..	1.1455	1.3055
5208496090 ..	1.1455	1.3055
5208498090 ..	1.1455	1.3055
5208512000 ..	1.1455	1.3055
5208516060 ..	1.1455	1.3055
5208518090 ..	1.1455	1.3055
5208523020 ..	1.1455	1.3055
5208523045 ..	1.1455	1.3055
5208523090 ..	1.1455	1.3055
5208524020 ..	1.1455	1.3055
5208524045 ..	1.1455	1.3055
5208524065 ..	1.1455	1.3055
5208525020 ..	1.1455	1.3055
5208530000 ..	1.1455	1.3055
5208592025 ..	1.1455	1.3055
5208592095 ..	1.1455	1.3055
5208594090 ..	1.1455	1.3055
5208596090 ..	1.1455	1.3055
5209110020 ..	1.1455	1.3055
5209110035 ..	1.1455	1.3055
5209110090 ..	1.1455	1.3055
5209120020 ..	1.1455	1.3055
5209120040 ..	1.1455	1.3055
5209190020 ..	1.1455	1.3055
5209190040 ..	1.1455	1.3055
5209190060 ..	1.1455	1.3055
5209190090 ..	1.1455	1.3055
5209210090 ..	1.1455	1.3055
5209220020 ..	1.1455	1.3055
5209220040 ..	1.1455	1.3055
5209290040 ..	1.1455	1.3055
5209290090 ..	1.1455	1.3055
5209313000 ..	1.1455	1.3055
5209316020 ..	1.1455	1.3055
5209316035 ..	1.1455	1.3055
5209316050 ..	1.1455	1.3055
5209316090 ..	1.1455	1.3055
5209320020 ..	1.1455	1.3055
5209320040 ..	1.1455	1.3055
5209390020 ..	1.1455	1.3055
5209390040 ..	1.1455	1.3055
5209390060 ..	1.1455	1.3055
5209390080 ..	1.1455	1.3055
5209390090 ..	1.1455	1.3055
5209413000 ..	1.1455	1.3055
5209416020 ..	1.1455	1.3055
5209416040 ..	1.1455	1.3055
5209420020 ..	1.0309	1.1749
5209420040 ..	1.0309	1.1749
5209430030 ..	1.1455	1.3055
5209430050 ..	1.1455	1.3055
5209490020 ..	1.1455	1.3055
5209490090 ..	1.1455	1.3055
5209516035 ..	1.1455	1.3055
5209516050 ..	1.1455	1.3055

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5209520020 ..	1.1455	1.3055
5209590025 ..	1.1455	1.3055
5209590040 ..	1.1455	1.3055
5209590090 ..	1.1455	1.3055
5210114020 ..	0.6873	0.7833
5210114040 ..	0.6873	0.7833
5210116020 ..	0.6873	0.7833
5210116040 ..	0.6873	0.7833
5210116060 ..	0.6873	0.7833
5210118020 ..	0.6873	0.7833
5210120000 ..	0.6873	0.7833
5210192090 ..	0.6873	0.7833
5210214040 ..	0.6873	0.7833
5210216020 ..	0.6873	0.7833
5210216060 ..	0.6873	0.7833
5210218020 ..	0.6873	0.7833
5210314020 ..	0.6873	0.7833
5210314040 ..	0.6873	0.7833
5210316020 ..	0.6873	0.7833
5210318020 ..	0.6873	0.7833
5210414000 ..	0.6873	0.7833
5210416000 ..	0.6873	0.7833
5210418000 ..	0.6873	0.7833
5210498090 ..	0.6873	0.7833
5210514040 ..	0.6873	0.7833
5210516020 ..	0.6873	0.7833
5210516040 ..	0.6873	0.7833
5210516060 ..	0.6873	0.7833
5211110090 ..	0.6873	0.7833
5211120020 ..	0.6873	0.7833
5211190020 ..	0.6873	0.7833
5211190060 ..	0.6873	0.7833
5211210025 ..	0.6873	0.7833
5211210035 ..	0.4165	0.4747
5211210050 ..	0.6873	0.7833
5211290090 ..	0.6873	0.7833
5211320020 ..	0.6873	0.7833
5211390040 ..	0.6873	0.7833
5211390060 ..	0.6873	0.7833
5211490020 ..	0.6873	0.7833
5211490090 ..	0.6873	0.7833
5211590025 ..	0.6873	0.7833
5212146090 ..	0.9164	1.0444
5212156020 ..	0.9164	1.0444
5212216090 ..	0.9164	1.0444
5509530030 ..	0.5556	0.6332
5509530060 ..	0.5556	0.6332
5513110020 ..	0.4009	0.4569
5513110040 ..	0.4009	0.4569
5513110060 ..	0.4009	0.4569
5513110090 ..	0.4009	0.4569
5513120000 ..	0.4009	0.4569
5513130020 ..	0.4009	0.4569
5513210020 ..	0.4009	0.4569
5513310000 ..	0.4009	0.4569
5514120020 ..	0.4009	0.4569
5516420060 ..	0.4009	0.4569
5516910060 ..	0.4009	0.4569
5516930090 ..	0.4009	0.4569
5601210010 ..	1.1455	1.3055
5601210090 ..	1.1455	1.3055
5601300000 ..	1.1455	1.3055
5602109090 ..	0.5727	0.6527
5602290000 ..	1.1455	1.3055
5602906000 ..	0.526	0.5995
5604900000 ..	0.5556	0.6332
5607902000 ..	0.8889	1.0131
5608901000 ..	1.1111	1.2663
5608902300 ..	1.1111	1.2663

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5609001000 ..	1.1111	1.2663
5609004000 ..	0.5556	0.6332
5701104000 ..	0.0556	0.0634
5701109000 ..	0.1111	0.1266
5701901010 ..	1.0444	1.1903
5702109020 ..	1.1	1.2537
5702312000 ..	0.0778	0.0887
5702411000 ..	0.0722	0.0823
5702412000 ..	0.0778	0.0887
5702421000 ..	0.0778	0.0887
5702913000 ..	0.0889	0.1013
5702991010 ..	1.1111	1.2663
5702991090 ..	1.1111	1.2663
5703900000 ..	0.4489	0.5116
5801210000 ..	1.1455	1.3055
5801230000 ..	1.1455	1.3055
5801250010 ..	1.1455	1.3055
5801250020 ..	1.1455	1.3055
5801260020 ..	1.1455	1.3055
5802190000 ..	1.1455	1.3055
5802300030 ..	0.5727	0.6527
5804291000 ..	1.1455	1.3055
5806200010 ..	0.3534	0.4028
5806200090 ..	0.3534	0.4028
5806310000 ..	1.1455	1.3055
5806400000 ..	0.4296	0.4896
5808107000 ..	0.5727	0.6527
5808900010 ..	0.5727	0.6527
5811002000 ..	1.1455	1.3055
6001106000 ..	1.1455	1.3055
6001210000 ..	0.8591	0.9791
6001220000 ..	0.2864	0.3264
6001910010 ..	0.8591	0.9791
6001910020 ..	0.8591	0.9791
6001920020 ..	0.2864	0.3264
6001920030 ..	0.2864	0.3264
6001920040 ..	0.2864	0.3264
6002203000 ..	0.8681	0.9894
6002206000 ..	0.2894	0.3298
6002420000 ..	0.8681	0.9894
6002430010 ..	0.2894	0.3298
6002430080 ..	0.2894	0.3298
6002921000 ..	1.1574	1.3191
6002930040 ..	0.1157	0.1319
6002930080 ..	0.1157	0.1319
6101200010 ..	1.0094	1.1504
6101200020 ..	1.0094	1.1504
6102200010 ..	1.0094	1.1504
6102200020 ..	1.0094	1.1504
6103421020 ..	0.8806	1.0036
6103421040 ..	0.8806	1.0036
6103421050 ..	0.8806	1.0036
6103421070 ..	0.8806	1.0036
6103431520 ..	0.2516	0.2867
6103431540 ..	0.2516	0.2867
6103431550 ..	0.2516	0.2867
6103431570 ..	0.2516	0.2867
6104220040 ..	0.9002	1.026
6104220060 ..	0.9002	1.026
6104320000 ..	0.9207	1.0493
6104420010 ..	0.9002	1.026
6104420020 ..	0.9002	1.026
6104520010 ..	0.9312	1.0613
6104520020 ..	0.9312	1.0613
6104622006 ..	0.8806	1.0036
6104622011 ..	0.8806	1.0036
6104622016 ..	0.8806	1.0036
6104622021 ..	0.8806	1.0036
6104622026 ..	0.8806	1.0036

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6104622028 ..	0.8806	1.0036
6104622030 ..	0.8806	1.0036
6104622060 ..	0.8806	1.0036
6104632006 ..	0.3774	0.4301
6104632011 ..	0.3774	0.4301
6104632026 ..	0.3774	0.4301
6104632028 ..	0.3774	0.4301
6104632030 ..	0.3774	0.4301
6104632060 ..	0.3774	0.4301
6104692030 ..	0.3858	0.4397
6105100010 ..	0.985	1.1226
6105100020 ..	0.985	1.1226
6105100030 ..	0.985	1.1226
6105202010 ..	0.3078	0.3508
6105202030 ..	0.3078	0.3508
6106100010 ..	0.985	1.1226
6106100020 ..	0.985	1.1226
6106100030 ..	0.985	1.1226
6106202010 ..	0.3078	0.3508
6106202030 ..	0.3078	0.3508
6107110010 ..	1.1322	1.2904
6107110020 ..	1.1322	1.2904
6107120010 ..	0.5032	0.5735
6107210010 ..	0.8806	1.0036
6107220015 ..	0.3774	0.4301
6107220025 ..	0.3774	0.4301
6107910040 ..	1.2581	1.4339
6108210010 ..	1.2445	1.4184
6108210020 ..	1.2445	1.4184
6108310010 ..	1.1201	1.2766
6108310020 ..	1.1201	1.2766
6108320010 ..	0.2469	0.2837
6108320015 ..	0.2469	0.2837
6108320025 ..	0.2469	0.2837
6108910005 ..	1.2445	1.4184
6108910015 ..	1.2445	1.4184
6108910025 ..	1.2445	1.4184
6108910030 ..	1.2445	1.4184
6108920030 ..	0.2469	0.2837
6109100005 ..	0.9956	1.1347
6109100007 ..	0.9956	1.1347
6109100009 ..	0.9956	1.1347
6109100012 ..	0.9956	1.1347
6109100014 ..	0.9956	1.1347
6109100018 ..	0.9956	1.1347
6109100023 ..	0.9956	1.1347
6109100027 ..	0.9956	1.1347
6109100037 ..	0.9956	1.1347
6109100040 ..	0.9956	1.1347
6109100045 ..	0.9956	1.1347
6109100060 ..	0.9956	1.1347
6109100065 ..	0.9956	1.1347
6109100070 ..	0.9956	1.1347
6109901007 ..	0.3111	0.3546
6109901009 ..	0.3111	0.3546
6109901049 ..	0.3111	0.3546
6109901050 ..	0.3111	0.3546
6109901060 ..	0.3111	0.3546
6109901065 ..	0.3111	0.3546
6109901090 ..	0.3111	0.3546
6110202005 ..	1.1837	1.3491
6110202010 ..	1.1837	1.3491
6110202015 ..	1.1837	1.3491
6110202020 ..	1.1837	1.3491
6110202025 ..	1.1837	1.3491
6110202030 ..	1.1837	1.3491
6110202035 ..	1.1837	1.3491
6110202040 ..	1.1574	1.3191
6110202045 ..	1.1574	1.3191

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6110202065 ..	1.1574	1.3191
6110202075 ..	1.1574	1.3191
6110909022 ..	0.263	0.2997
6110909024 ..	0.263	0.2997
6110909030 ..	0.3946	0.4497
6110909040 ..	0.263	0.2997
6110909042 ..	0.263	0.2997
6111201000 ..	1.2581	1.4339
6111202000 ..	1.2581	1.4339
6111203000 ..	1.0064	1.147
6111205000 ..	1.0064	1.147
6111206010 ..	1.0064	1.147
6111206020 ..	1.0064	1.147
6111206030 ..	1.0064	1.147
6111206040 ..	1.0064	1.147
6111305020 ..	0.2516	0.2867
6111305040 ..	0.2516	0.2867
6112110050 ..	0.7548	0.8602
6112120010 ..	0.2516	0.2867
6112120030 ..	0.2516	0.2867
6112120040 ..	0.2516	0.2867
6112120050 ..	0.2516	0.2867
6112120060 ..	0.2516	0.2867
6112390010 ..	1.1322	1.2904
6112490010 ..	0.9435	1.0753
6114200005 ..	0.9002	1.026
6114200010 ..	0.9002	1.026
6114200015 ..	0.9002	1.026
6114200020 ..	1.286	1.4657
6114200040 ..	0.9002	1.026
6114200046 ..	0.9002	1.026
6114200052 ..	0.9002	1.026
6114200060 ..	0.9002	1.026
6114301010 ..	0.2572	0.2931
6114301020 ..	0.2572	0.2931
6114303030 ..	0.2572	0.2931
6115198010 ..	1.0417	1.1872
6115929000 ..	1.0417	1.1872
6115936020 ..	0.2315	0.2638
6116101300 ..	0.3655	0.4166
6116101720 ..	0.8528	0.9719
6116926420 ..	1.0965	1.2497
6116926430 ..	1.2183	1.3885
6116926440 ..	1.0965	1.2497
6116928800 ..	1.0965	1.2497
6117809510 ..	0.9747	1.1109
6117809540 ..	0.3655	0.4166
6201121000 ..	0.948	1.0804
6201122010 ..	0.8953	1.0204
6201122050 ..	0.6847	0.7804
6201122060 ..	0.6847	0.7804
6201134030 ..	0.2633	0.3001
6201921000 ..	0.9267	1.0562
6201921500 ..	1.1583	1.3201
6201922010 ..	1.0296	1.1734
6201922021 ..	1.2871	1.4669
6201922031 ..	1.2871	1.4669
6201922041 ..	1.2871	1.4669
6201922051 ..	1.0296	1.1734
6201922061 ..	1.0296	1.1734
6201931000 ..	0.3089	0.3521
6201933511 ..	0.2574	0.2934
6201933521 ..	0.2574	0.2934
6201999060 ..	0.2574	0.2934
6202121000 ..	0.9372	1.0681
6202122010 ..	1.1064	1.261
6202122025 ..	1.3017	1.4835
6202122050 ..	0.8461	0.9643
6202122060 ..	0.8461	0.9643

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6202134005 ..	0.2664	0.3036
6202134020 ..	0.333	0.3795
6202921000 ..	1.0413	1.1868
6202921500 ..	1.0413	1.1868
6202922026 ..	1.3017	1.4835
6202922061 ..	1.0413	1.1868
6202922071 ..	1.0413	1.1868
6202931000 ..	0.3124	0.356
6202935011 ..	0.2603	0.2967
6202935021 ..	0.2603	0.2967
6203122010 ..	0.1302	0.1484
6203221000 ..	1.3017	1.4835
6203322010 ..	1.2366	1.4094
6203322040 ..	1.2366	1.4094
6203332010 ..	0.1302	0.1484
6203392010 ..	1.1715	1.3352
6203399060 ..	0.2603	0.2967
6203422010 ..	0.9961	1.1353
6203422025 ..	0.9961	1.1353
6203422050 ..	0.9961	1.1353
6203422090 ..	0.9961	1.1353
6203424005 ..	1.2451	1.419
6203424010 ..	1.2451	1.419
6203424015 ..	0.9961	1.1353
6203424020 ..	1.2451	1.419
6203424025 ..	1.2451	1.419
6203424030 ..	1.2451	1.419
6203424035 ..	1.2451	1.419
6203424040 ..	0.9961	1.1353
6203424045 ..	0.9961	1.1353
6203424050 ..	0.9238	1.0529
6203424055 ..	0.9238	1.0529
6203424060 ..	0.9238	1.0529
6203431500 ..	0.1245	0.1419
6203434010 ..	0.1232	0.1404
6203434020 ..	0.1232	0.1404
6203434030 ..	0.1232	0.1404
6203434040 ..	0.1232	0.1404
6203498045 ..	0.249	0.2838
6204132010 ..	0.1302	0.1484
6204192000 ..	0.1302	0.1484
6204198090 ..	0.2603	0.2967
6204221000 ..	1.3017	1.4835
6204223030 ..	1.0413	1.1868
6204223040 ..	1.0413	1.1868
6204223050 ..	1.0413	1.1868
6204223060 ..	1.0413	1.1868
6204223065 ..	1.0413	1.1868
6204292040 ..	0.3254	0.3709
6204322010 ..	1.2366	1.4094
6204322030 ..	1.0413	1.1868
6204322040 ..	1.0413	1.1868
6204423010 ..	1.2728	1.4506
6204423030 ..	0.9546	1.088
6204423040 ..	0.9546	1.088
6204423050 ..	0.9546	1.088
6204423060 ..	0.9546	1.088
6204522010 ..	1.2654	1.4422
6204522030 ..	1.2654	1.4422
6204522040 ..	1.2654	1.4422
6204522070 ..	1.0656	1.2145
6204522080 ..	1.0656	1.2145
6204533010 ..	0.2664	0.3036
6204594060 ..	0.2664	0.3036
6204622010 ..	0.9961	1.1353
6204622025 ..	0.9961	1.1353
6204622050 ..	0.9961	1.1353
6204624005 ..	1.2451	1.419
6204624010 ..	1.2451	1.419

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6204624020 ..	0.9961	1.1353
6204624025 ..	1.2451	1.419
6204624030 ..	1.2451	1.419
6204624035 ..	1.2451	1.419
6204624040 ..	1.2451	1.419
6204624045 ..	0.9961	1.1353
6204624050 ..	0.9961	1.1353
6204624055 ..	0.9854	1.1231
6204624060 ..	0.9854	1.1231
6204624065 ..	0.9854	1.1231
6204633510 ..	0.2546	0.2902
6204633530 ..	0.2546	0.2902
6204633532 ..	0.2437	0.2777
6204633540 ..	0.2437	0.2777
6204692510 ..	0.249	0.2838
6204692540 ..	0.2437	0.2777
6204699044 ..	0.249	0.2838
6204699046 ..	0.249	0.2838
6204699050 ..	0.249	0.2838
6205202015 ..	0.9961	1.1353
6205202020 ..	0.9961	1.1353
6205202025 ..	0.9961	1.1353
6205202030 ..	0.9961	1.1353
6205202035 ..	1.1206	1.2771
6205202046 ..	0.9961	1.1353
6205202050 ..	0.9961	1.1353
6205202060 ..	0.9961	1.1353
6205202065 ..	0.9961	1.1353
6205202070 ..	0.9961	1.1353
6205202075 ..	0.9961	1.1353
6205302010 ..	0.3113	0.3548
6205302030 ..	0.3113	0.3548
6205302040 ..	0.3113	0.3548
6205302050 ..	0.3113	0.3548
6205302070 ..	0.3113	0.3548
6205302080 ..	0.3113	0.3548
6206100040 ..	0.1245	0.1419
6206303010 ..	0.9961	1.1353
6206303020 ..	0.9961	1.1353
6206303030 ..	0.9961	1.1353
6206303040 ..	0.9961	1.1353
6206303050 ..	0.9961	1.1353
6206303060 ..	0.9961	1.1353
6206403010 ..	0.3113	0.3548
6206403030 ..	0.3113	0.3548
6206900040 ..	0.249	0.2838
6207110000 ..	1.0852	1.2365
6207199010 ..	0.3617	0.4122
6207210010 ..	1.1085	1.2634
6207210030 ..	1.1085	1.2634
6207220000 ..	0.3695	0.4211
6207911000 ..	1.1455	1.3055
6207913010 ..	1.1455	1.3055
6207913020 ..	1.1455	1.3055
6208210010 ..	1.0583	1.2061
6208210020 ..	1.0583	1.2061
6208220000 ..	0.1245	0.1419
6208911010 ..	1.1455	1.3055
6208911020 ..	1.1455	1.3055
6208913010 ..	1.1455	1.3055
6209201000 ..	1.1577	1.3194
6209203000 ..	0.9749	1.1111
6209205030 ..	0.9749	1.1111
6209205035 ..	0.9749	1.1111
6209205040 ..	1.2186	1.3885
6209205045 ..	0.9749	1.1111
6209205050 ..	0.9749	1.1111
6209303020 ..	0.2463	0.2807
6209303040 ..	0.2463	0.2807

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6210109010 ..	0.2291	0.2611
6210403000 ..	0.0391	0.0446
6210405020 ..	0.4556	0.5192
6211111010 ..	0.1273	0.1451
6211111020 ..	0.1273	0.1451
6211118010 ..	1.1455	1.3055
6211118020 ..	1.1455	1.3055
6211320007 ..	0.8461	0.9643
6211320010 ..	1.0413	1.1868
6211320015 ..	1.0413	1.1868
6211320030 ..	0.9763	1.1127
6211320060 ..	0.9763	1.1127
6211320070 ..	0.9763	1.1127
6211330010 ..	0.3254	0.3709
6211330030 ..	0.3905	0.4451
6211330035 ..	0.3905	0.4451
6211330040 ..	0.3905	0.4451
6211420010 ..	1.0413	1.1868
6211420020 ..	1.0413	1.1868
6211420025 ..	1.1715	1.3352
6211420060 ..	1.0413	1.1868
6211420070 ..	1.1715	1.3352
6211430010 ..	0.2603	0.2967
6211430030 ..	0.2603	0.2967
6211430040 ..	0.2603	0.2967
6211430050 ..	0.2603	0.2967
6211430060 ..	0.2603	0.2967
6211430066 ..	0.2603	0.2967
6212105020 ..	0.2412	0.2749
6212109010 ..	0.9646	1.0994
6212109020 ..	0.2412	0.2749
6212200020 ..	0.3014	0.3435
6212900030 ..	0.1929	0.2198
6213201000 ..	1.1809	1.3459
6213202000 ..	1.0628	1.2113
6213901000 ..	0.4724	0.5384
6214900010 ..	0.9043	1.0306
6216000800 ..	0.2351	0.2679
6216001720 ..	0.6752	0.7695
6216003900 ..	1.2058	1.3743
6216004100 ..	1.2058	1.3743
6217109510 ..	1.0182	1.1604
6217109530 ..	0.2546	0.2902
6301300010 ..	0.8766	0.9991
6301300020 ..	0.8766	0.9991
6302100005 ..	1.1689	1.3322
6302100008 ..	1.1689	1.3322
6302100015 ..	1.1689	1.3322
6302215010 ..	0.8182	0.9325
6302215020 ..	0.8182	0.9325
6302217010 ..	1.1689	1.3322
6302217020 ..	1.1689	1.3322
6302217050 ..	1.1689	1.3322
6302219010 ..	0.8182	0.9325
6302219020 ..	0.8182	0.9325
6302219050 ..	0.8182	0.9325
6302222010 ..	0.4091	0.4663
6302222020 ..	0.4091	0.4663
6302313010 ..	0.8182	0.9325
6302313050 ..	1.1689	1.3322
6302315050 ..	0.8182	0.9325
6302317010 ..	1.1689	1.3322
6302317020 ..	1.1689	1.3322
6302317040 ..	1.1689	1.3322
6302317050 ..	1.1689	1.3322
6302319010 ..	0.8182	0.9325
6302319040 ..	0.8182	0.9325
6302319050 ..	0.8182	0.9325
6302322020 ..	0.4091	0.4663

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6302322040 ..	0.4091	0.4663
6302402010 ..	0.9935	1.1323
6302511000 ..	0.5844	0.666
6302512000 ..	0.8766	0.9991
6302513000 ..	0.5844	0.666
6302514000 ..	0.8182	0.9325
6302600010 ..	1.1689	1.3322
6302600020 ..	1.052	1.199
6302600030 ..	1.052	1.199
6302910005 ..	1.052	1.199
6302910015 ..	1.1689	1.3322
6302910025 ..	1.052	1.199
6302910035 ..	1.052	1.199
6302910045 ..	1.052	1.199
6302910050 ..	1.052	1.199
6302910060 ..	1.052	1.199
6303110000 ..	0.9448	1.0768
6303910000 ..	0.6429	0.7327
6304111000 ..	1.0629	1.2114
6304190500 ..	1.052	1.199
6304191000 ..	1.1689	1.3322
6304191500 ..	0.4091	0.4663
6304192000 ..	0.4091	0.4663
6304910020 ..	0.9351	1.0657
6304920000 ..	0.9351	1.0657
6505901540 ..	1.181	1.346
6505902060 ..	0.9935	1.1323
6505902545 ..	0.5844	0.666

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Dated: May 27, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–14309 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–3]

Modification of Class E Airspace; Santa Rosa, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Santa Rosa, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 14 and GPS RWY 32 at Sonoma County Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 14 and GPS RWY 32 SIAP to Sonoma County Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Sonoma County Airport, Santa Rosa, CA.

EFFECTIVE DATE: 0901 UTC July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On April 5, 1999, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Santa Rosa, CA (64 FR 16369). Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 14 and GPS RWY 32 SIAP at Sonoma County Airport. This action will provide adequate controlled airspace for IFR operations at Sonoma County Airport, Santa Rosa, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Santa Rosa, CA. Controlled airspace extending upward from 700 feet above the surface is required for aircraft executing the GPS RWY 14 and GPS RWY 32 SIAP at Sonoma County Airport. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 14 and GPS RWY 32 SIAP at Sonoma County Airport, Santa Rosa, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Santa Rosa, CA [Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 38°56′00″N, long. 123°02′04″W; to lat. 39°15′00″N, long. 123°02′04″W; to lat. 39°15′00″N, long. 122°49′04″W; to lat. 38°47′30″N, long. 122°49′04″W; to lat. 38°23′00″N, long. 122°38′04″W; to lat. 38°18′00″N, long. 122°48′04″W; to lat. 38°56′00″N, long. 123°16′30″W., thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on May 20, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–14215 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–055]

RIN 2115–AA97

Safety Zone: Hospitalized Veterans Cruise, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard will establish a moving safety zone around vessels participating in the Hospitalized Veterans Cruise and in the main navigation channel for the event. As the vessels approach Boston Inner Harbor, a one hundred (100) yard safety zone will surround each flotilla as the vessels involved transit into Boston Harbor, turn around in the vicinity of the mooring of the USS Constitution, and then depart the harbor. The safety zone is needed to ensure the safety of the maritime public during this marine event. No vessel may enter this safety zone without the permission of the COTP.

EFFECTIVE DATE: This rule is effective from 11:00 a.m. until 1:30 p.m. local time on June 27, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Marine Safety Office Boston, 455 Commercial Street, Boston, Massachusetts 02109, between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–3000.

FOR FURTHER INFORMATION CONTACT: ENS Montleon, Waterways Management and Planning Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Details for the marine event were not provided to the Coast Guard until April 13, 1999 making it impossible to publish a NPRM or a final rule 30 days in advance. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury and damage to persons and vessels involved.

Background and Purpose

On April 13, 1999 the sponsors of the event, Old Colony Yacht Club, requested that the Coast Guard create a safety zone to protect the vessels participating in the Hospitalized Veterans Cruise in Boston Harbor. This safety zone is necessary in order to protect the boating public and participating vessels from the danger of collision. The safety zone extends one hundred (100) yards in all directions around the participating vessels and assisting tugs from the time event participants enter Boston Harbor, until all participating vessels have safely departed Boston Harbor.

Regulatory Evaluation

This rule is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Deep draft vessel traffic, fishing vessels and tour boats may experience minor delays in departures or arrivals due to the safety zone. Costs to the shipping industry from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators. Due to the limited duration and scope of the event, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*),

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking

is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under Figures 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–055 to read as follows:

§ 165.T01–055 Safety Zone; Hospitalized Veterans Cruise, Boston Harbor, Boston, MA.

(a) *Location.* The following is a safety zone:

(1) One hundred (100) yards in all directions around vessels participating in the Hospitalized Veterans Cruise as they approach Boston Inner Harbor, turn around in the vicinity of the mooring of the USS Constitution, and then depart the harbor. No vessel may enter this safety zone without the permission of the COTP.

(b) *Effective Date.* This section is effective from 11:00 a.m. until 1:30 p.m. on June 27, 1999.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: May 21, 1999.

J.L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–14285 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–062]

RIN 2115–AA97

Safety Zone; Marblehead, MA to Halifax, Nova Scotia Ocean Race

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the start area for the Marblehead, MA to Halifax, Nova Scotia Ocean Race. The safety zone will be in effect Sunday, July 11, 1999, from 12:00 p.m. to 3:30 p.m. The safety zone is needed to protect the vessels participating in the race, spectator craft, and others in the maritime community from the safety hazards associated with the start of a major ocean sailing race in extremely congested waters. Entry into the safety zone is prohibited unless authorized by the Captain of the Port Boston.

DATES: This rule is effective from 12:00 p.m. to 3:30 p.m. Sunday, July 11, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Marine Safety Office Boston, 455 Commercial Street, Boston, Massachusetts 02109, between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–3000.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, U.S. Coast Guard Marine Safety Office, Boston, MA, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation. Due to the complex planning and coordination involved, details for the race were not finalized until May 6, 1999, making it impossible to publish a NPRM in advance. Any delay encountered in this regulation's effective date would be contrary to public interest, since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with the limited maneuverability of vessels participating in the event.

Background and Purpose

This regulation establishes a safety zone encompassing the area bounded by a line beginning at coordinates 42–29.066N 70–48.361W, then running south to the southeast corner located at 42–28.594N 70–48.665W, then running west to the southwest corner located at 42–28.446N 70–49.535W, then running north to the northwest corner located at 42–28.852N 70–49.206W, then running east back to the northeast corner located at 42–29.066N 70–48.361W. All coordinates are NAD 1983. The safety zone is effective on July 11, 1999, from 12:00 p.m. to 3:30 p.m.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that the safety zone is limited in duration and will not restrict the entire harbor, allowing traffic to continue without obstruction, and advance marine advisories will be made of the safety zone to minimize the effect on recreational and commercial vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and, (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed in the regulatory evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary section 165.T01–062 to read as follows:

§ 165.T01–062 Safety Zone; Marblehead, MA to Halifax, Nova Scotia Ocean Race.

(a) *Location.* This safety zone includes the area delineated by the following coordinates: beginning at the northeast corner located at 42–29.066N 70–48.361 W, then to the southeast corner located at 42–28.594N 70–48.665W, then to the southwest corner located at 42–28.446N 70–49.535W, and then to the northwest corner located at 42–28.852N 70–49.206W. All coordinates are NAD 1983.

(b) *Effective date.* This safety zone is effective from 12:00 p.m. to 3:30 p.m. on Sunday, July 11, 1999.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) The general regulations contained in section 33 CFR 165.23 apply.

Dated: May 25, 1999.

J.L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–14289 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Chapter I

RIN 2900–AJ79

National Cemetery Administration; Title Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: Public Law 105–368 changed the name of the National Cemetery System to the National Cemetery Administration and changed the title of the Director, National Cemetery System to the Under Secretary for Memorial Affairs. This document amends 38 CFR chapter I to reflect these changes.

DATES: Effective Date: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Sonja McCombs, Program Analyst, Communications and Regulatory Division (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: 202–273–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document makes only nonsubstantive changes. Accordingly, under 5 U.S.C. 553, there is a basis for dispensing with prior notice-and-comment provisions and delayed effective date provisions.

The Secretary of Veterans Affairs hereby certifies that the adoption of this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This document makes only nonsubstantive changes. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the regulatory flexibility analysis requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers for programs affected by this final rule are 64.201, 64.202, and 64.203.

Approved: May 27, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Under the authority of Public Law 105–368 as explained in the preamble, 38 CFR chapter I is amended as follows:

CHAPTER I—DEPARTMENT OF VETERANS AFFAIRS

1. In chapter I, revise all references to "Director, National Cemetery System" to read "Under Secretary for Memorial Affairs".

2. In chapter I, revise all references to "National Cemetery System" to read "National Cemetery Administration".

3. In chapter I, revise all references to "Director, National Cemetery System" to read "Under Secretary for Memorial Affairs".

4. In chapter I, revise all references to "Director, National Cemetery Service" to read "Under Secretary for Memorial Affairs".

[FR Doc. 99–14372 Filed 6–4–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ53

Reinstatement of Benefits Eligibility Based Upon Terminated Marital Relationships

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to state that the remarried surviving spouse of a veteran is not barred from receiving dependency and indemnity compensation if the remarriage is terminated by death, divorce, or annulment, unless the divorce or annulment was secured through fraud or collusion. This document further amends the regulations to permit the receipt of dependency and indemnity compensation by a surviving spouse who has lived with another person and held himself or herself out openly to the public as that other person's spouse, if the surviving spouse ceases living with that other person and holding himself or herself out openly to the public as that other person's spouse. This amendment is necessary to conform the regulations to a recent statutory change.

DATES: Effective Date: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Warren Jones, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7167.

SUPPLEMENTARY INFORMATION: A surviving spouse of a veteran must be unmarried to receive VA benefits. The law regarding the eligibility for benefits of a surviving spouse of a veteran who remarries after the veteran's death and whose remarriage later terminates has changed several times in recent years.

Prior to January 1, 1971, remarriage of a surviving spouse of a deceased veteran was a bar to benefits unless that remarriage was void or annulled. Pub. L. 91–376 amended 38 U.S.C. 103(d) by adding subsections 103(d)(2) and (d)(3) to permit the payment or resumption of payment of benefits to a surviving spouse whose remarriage was terminated by death or divorce, or who ceased living with another person and holding himself or herself out openly to the public as that person's spouse.

The Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, deleted 38 U.S.C. 103(d)(2) and (d)(3). The effect of this change was to eliminate VA's authority, effective November 1, 1990, to reinstate entitlement to death benefits for a surviving spouse who had remarried after the veteran's death unless the marriage was void or annulled, or to reinstate entitlement to death benefits for a surviving spouse who ceased living with another person and holding himself or herself out openly to the public as that person's spouse.

Section 8207 of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, amended 38 U.S.C. 1311, effective October 1, 1998, to reinstate eligibility for only dependency and indemnity compensation to a surviving spouse of a veteran whose remarriage is terminated by death, divorce, or annulment unless VA determines that the divorce or annulment was secured through fraud or collusion. Additionally, Pub. L. 105–178 reinstates eligibility for dependency and indemnity compensation to a surviving spouse of a veteran who ceases living with another person and holding himself or herself out openly to the public as that person's spouse. This document amends 38 CFR 3.55 accordingly.

This final rule reflects statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: April 14, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.55, paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(4) and (a)(6), respectively, and new paragraphs (a)(3) and (a)(5) are added to read as follows:

§ 3.55 Reinstatement of benefits eligibility based upon terminated marital relationships.

* * * * *

(a) * * *

(3) On or after October 1, 1998, remarriage of a surviving spouse terminated by death, divorce, or annulment, will not bar the furnishing of dependency and indemnity compensation, unless the Secretary determines that the divorce or annulment was secured through fraud or collusion.

(Authority: 38 U.S.C. 1311(e))

* * * * *

(5) On or after October 1, 1998, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person will not bar the furnishing of dependency and indemnity compensation to the surviving spouse if he or she ceases living with such other person and holding himself or herself out openly to the public as such other person's spouse.

(Authority: 38 U.S.C. 1311(e))

* * * * *

[FR Doc. 99–14252 Filed 6–4–99; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 551

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is requiring U.S. and Japanese ocean common carriers in the U.S.-Japan trade to provide reports addressing the status of efforts to reform conditions unfavorable to shipping in the U.S.-Japan trade. Areas for reporting include reform of the "prior consultation" system for pre-approving carriers' service changes in Japan; entry of non-Japanese carriers into Japan's harbor services market; and Government of Japan proposals for broader harbor services deregulation. As marketplace developments have overtaken the findings in the currently suspended final rule in this proceeding in certain respects, the Commission has determined to remove that final rule.

DATES: The removal of § 551.2 is effective June 7, 1999. Reports are due August 26, 1999, and every 180 days thereafter.

ADDRESSES: Reports and requests for publicly available information should be addressed to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

After an extensive investigation regarding potentially unfavorable conditions facing U.S. ocean shipping interests in Japanese ports, the Commission on February 26, 1997, issued a final rule finding such conditions to exist and imposing $100,000 per voyage sanctions against Japanese carriers entering United States ports. The rule was originally scheduled to take effect on April 14, 1997; however, the Commission postponed the effective date of the final rule until September 4, 1997, in recognition of assurances by the Japan Ministry of Transport ("MOT") that it and other involved parties would undertake reforms to correct the conditions at issue. On September 4, 1997, the Commission, having not been presented with any evidence of corrective measures, allowed the rule to go into effect, and sanctions began to accrue against the Japanese carriers. The rule was again suspended by the Commission on November 13, 1997, after the signing of comprehensive government-to-government and industry-government accords to substantially reform Japanese port practices; at that time, accrued fees of $1.5 million were paid by the Japanese carriers.

The Commission took the above-described actions in this proceeding after a comprehensive inquiry into restrictions and requirements affecting U.S. carriers and U.S. commerce in Japanese ports. The fees assessed in the final rule were deemed necessary in light of the Commission's identification of a number of conditions unfavorable to shipping warranting action under section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876:

- Shipping lines in the Japan-U.S. trades were not allowed to make operational changes, major or minor, without the permission of the Japan Harbor Transportation Association ("JHTA"), an association of Japanese waterfront employers operating with the permission of, and under the regulatory authority and ministerial guidance of MOT.
- JHTA had absolute and unappealable discretion to withhold permission for proposed operational changes by refusing to accept such proposals for "prior consultation," a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions.
- There were no written criteria for JHTA's decisions whether to permit or disallow carrier requests for operational changes, nor were there written explanations given for the decisions.
- JHTA used and threatened to use its prior consultation authority to punish and disrupt the business operations of its detractors.
- JHTA used its authority over carrier operations through prior consultation as leverage to extract fees and impose operational restrictions, such as Sunday work limits.
- JHTA used its prior consultation authority to allocate work among its member companies, by barring carriers and consortia from freely choosing operators and by compelling shipping lines to hire additional, unneeded stevedore companies or contractors.
- MOT administered a licensing standard which blocks new entrants from the stevedoring industry in Japan, protecting JHTA's dominant position, and ensuring that the stevedoring market remains entirely Japanese.
- Because of the restrictive licensing requirement, U.S. carriers could not perform stevedoring or terminal operating services for themselves or third parties in Japan, as Japanese carriers do in the United States.

On November 10, 1997, U.S. and Japanese officials and relevant industry groups (i.e., JHTA, the Japan Shipowners' Port Council ("JSPC") and the Japan Foreign Steamship Association ("JFSA")) came to terms on a number of points for remedying conditions in Japanese ports, including:

- A reaffirmance by the Government of Japan ("GOJ") that it would approve foreign shipping companies' applications for licenses for port transportation business operations;
- An agreement to simplify the prior consultation system, increase transparency through the use of written decisions, and provide for dispute settlement procedures in which MOT or an MOT-chaired committee would resolve questions and disputes, and MOT would arbitrate and issue judgments;
- An agreement among the GOJ and carrier groups to establish an alternative to the prior consultation system and to implement the alternative system, whereby carriers intending to implement operational changes would confer with their terminal operators (who would, to the extent required by applicable collective bargaining agreements, consult with labor unions either directly or through a collective bargaining agent);
- Commitments that prior consultation not be used as a means to approve carriers' business plans and strategies, allocate business among port transportation business operators, restrict competition or infringe on carriers' freedom to select port transport business operators;
- Commitments that the GOJ will use its authority to prevent the unjustifiable denial of services essential to the conduct of licensed activities, to ensure the smooth operation of the port transportation business and the improvement of port efficiency, and to ensure that operation of the alternative prior consultation process will be free from outside interference, harassment, or retaliation.

Discussion

In the period since the Government of Japan made its commitments to market opening and increased accountability, the pace of progress and reform in Japan's port transportation sector has been slow. It has been reported that no foreign shipping lines have applied for or received licenses to operate their own terminals. No carrier appears to have invoked or tested the prior consultation dispute settlement procedures or other procedural safeguards that were agreed to, and no alternative to JHTA's prior consultation system for reconciling carrier service issues with the concerns of Japanese labor has been developed. Moreover, proposals for broader reform under consideration by Japan's Government fall well short of full deregulation.

There appear to be several reasons for these shortcomings. While the Government of Japan has committed to provide licenses to foreign carriers to operate port transportation businesses in their own berths, it has been reported that Japanese labor unions have communicated strong opposition to foreign lines establishing terminal operations, including threats of work stoppages or other labor actions. Other factors have made foreign entry into this sector more difficult as well. The Government of Japan maintains regulatory requirements, including "close ties" (through equity exchange or long term contracts) with subcontractors, that make launching a terminal venture more difficult. Furthermore, it appears that recent

economic factors in Japan, including currency and trade shifts, have made carrier investment in Japan's high-cost ports even less attractive than before. As a result, some lines have curtailed services in Japan, restructured existing arrangements, and shifted other operations to more rapidly growing, lower-cost modern maritime centers in the region.

The reasons for the lack of progress regarding alternatives to prior consultation may be similarly complex, potentially involving labor concerns or resistance, lack of governmental leadership, and the scaling back of some carriers' operations in Japan. Also, while the 1997 agreements provide for dispute resolution processes, these procedures are as yet untested. The reasons for and effects of this remain unclear, requiring further information and clarification.

Given these evolving circumstances, it is necessary for the Commission to continue its review of this matter, and to update its record in this proceeding. The existing record and the resulting findings in the final rule are no longer current, having been overtaken in a number of respects by changes in both market conditions and governmental policies. The Commission needs to collect further information, both now and on an ongoing basis, to effectively evaluate whether the unfavorable conditions identified in the rule continue to exist, and if so, the extent to which their continued existence arises out of or results from foreign laws, rules, or regulations. Such oversight is necessary to ensure that U.S. carriers do not face restrictions in their operations in Japan that Japanese carriers do not face in this country.

As some of the findings in the Commission's suspended final rule—for example, findings regarding official refusals to grant licenses—appear to have been overtaken in part by evolving circumstances and are not supported by the current record, the Commission has determined to withdraw the suspended rule while it reevaluates the current conditions facing U.S. shipping in Japan.

Removal of the final rule in no way reflects the satisfaction of the Commission with the current status of this matter, however, or a conclusion of the Commission's interest in the reform of port conditions facing Japan-U.S. trade. U.S. carriers and U.S. trade continue to bear the high costs of inefficient Japanese waterfront practices. There are a number of further steps that the Government of Japan appropriately could take to ensure that its market opening commitments can become effective. With regard to licensing, the Government of Japan could move swiftly to eliminate or liberalize regulatory requirements that make entry more difficult, such as the close-ties test and regulatory minimum manning requirements. For any new entrants to succeed, Japanese authorities must also ensure that there will be no illegal boycotts of new entrants to the market, and must take action to prevent unlawful threats or harassment. Japanese authorities could certainly take further steps as well, including providing guidance and leadership in dialogue with interested parties to address Japanese labor's concerns with, and resistance to, the entry of foreign carriers into Japan's port transportation business.

Japanese authorities also could appropriately take an active role to oversee the prior consultation process and ensure that all parties are conforming with the procedures and obligations set forth in agreements among MOT, shipowners, and JHTA. Of particular importance is the need to enforce the principle that prior consultation should not be used to allocate carrier business among operators. Active oversight by MOT could ensure that disputes regarding these provisions could be addressed and resolved before any conflicts become so severe that a formal request for dispute settlement becomes necessary.

Japanese authorities could also do more to facilitate the creation of alternative processes to prior consultation. For such an alternative to be possible, the Government of Japan will have to work actively with interested parties to provide assistance and advice, including aiding in resolving concerns of port labor.

The Commission will also continue to look closely at regulatory changes under consideration by the Government of Japan. In December 1998, Japan's Transport Policy Council Harbor Transport Subcommittee issued an interim report, laying out proposals for potential regulatory changes in this sector. These proposals included elimination of the supply/demand test for licensing port business operators, which has been an issue of serious concern in this proceeding, and ending the system of regulatory approval of harbor companies' fees and charges. While these could be positive steps, the draft plan as a whole appears to fall short of what is needed to remedy current inefficiencies and obstacles in Japan's ports, and to ensure an open and competitive market for harbor services. As the United States Government pointed out to MOT earlier this year, the deregulatory plan retains economically burdensome and seemingly unnecessary requirements, including required commercial relationships (i.e., terminal operators are required to perform at least 70% of their services themselves) and close-tie requirements for subcontractors. Most troublesome are regulatory minimum manning requirements, which are increased, rather than eliminated, in the proposal.

The Commission will continue to watch these matters closely, to ensure that the laws and regulations of the Government of Japan do not give rise to unfavorable conditions for U.S. maritime companies or trade.

Therefore, *it is ordered*, That 46 CFR 551.2, is removed;

It is further ordered, That the following parties are ordered to file reports with the Commission 90 days from the date of service of this order, and every 180 days thereafter: American President Lines, Ltd.; Sea-Land Service, Inc.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha. These reports should address the following:

1. Has your company [1] submitted any major matters (as defined in "the Revised Prior Consultation System of 1997") for prior consultation in the past 180 days? (Responses may be limited to prior consultation regarding services in U.S.-Japan trades). If so, for each major matter presented, describe the request, the process followed by the carrier, and how the matter was handled and disposed of by JHTA. Indicate specifically whether the procedures outlined in paragraph II of "The Revised Prior Consultation System of 1997" were adhered to by JHTA and your company. If any dispute between your company and JHTA under the prior consultation system has arisen, has MOT been notified or requested to serve as arbitrator? If so, describe in detail what actions, if any, have been taken by MOT.

2. Describe what attempts or inquiries your company has made with other shipping lines, port transportation business operators, MOT, or any waterfront organizations to create an alternative to the prior consultation system as described in the "Agreement on the Improvement of the Prior Consultation System of 1997" paragraph 3(2), and describe the responses received.

3. Describe in detail the status of any legislative or regulatory proposals to deregulate or change the laws or standards for the provision of marine terminal or stevedoring services in Japanese ports, and the likely effects of such changes on your business operations.

4. (For response by APL and Sea-Land only.) Does your company have plans to begin performing or offering port harbor transportation services in Japan in the forseeable future? If so, describe: the planned

[1] References to "your company" include parent companies, subsidiaries, and corporate affiliates with whom common ownership is shared.

operations in detail; any attempts to obtain a license to operate a harbor services business, including any communications your company has had with any MOT officials regarding the issuance of licenses; and any communications your company has had in Japan with JHTA, other steamship or harbor services companies, and any other waterfront organization, regarding your company's plans to offer harbor transportation services in Japan or efforts to obtain licenses to do so.

5. Describe any new or further restrictions or requirements placed on your company regarding the use or operation of terminals or harbor services.

List of Subjects in 46 CFR Part 551

Maritime Carriers.

For the reasons set out in the preamble, the Commission amends 46 CFR part 551 as follows:

PART 551—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

1. The authority citation for part 551 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR part 550; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

§ 551.2 [Removed]

2. Remove § 551.2.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–14257 Filed 6–4–99; 8:45 am]

BILLING CODE 6730–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 052499C]

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal Shark Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing season notification.

SUMMARY: NMFS notifies eligible participants of the length of the second semiannual fishing season for the commercial fishery for large coastal sharks (LCS) in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea. Both the ridgeback and non-ridgeback sectors of the LCS fishery will open July 1, 1999. The non-ridgeback LCS sector will close July 12, 1999, 11:30 p.m. local time. The ridgeback LCS sector will close August 8, 1999, 11:30 p.m. local time. This action is necessary to ensure that the semiannual quotas for ridgeback LCS of 310 metric tons (mt) dressed weight (dw) and non-ridgeback LCS of 98 mt dw for the period July 1 through December 31, 1999, are not exceeded.

DATES: The fishery opening for ridgeback and non-ridgeback LCS is effective July 1, 1999; the non-ridgeback LCS closure is effective from 11:30 p.m. local time July 12, 1999, through December 31, 1999; and the ridgeback LCS closure is effective from 11:30 p.m. local time August 8, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Section 635.27(b) of the regulations provides for the annual commercial quota of LCS to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters to be apportioned between two equal semiannual fishing seasons. The second semiannual quotas for ridgeback LCS of 310 mt dw and for non-ridgeback LCS of 98 mt dw are available for harvest for the semiannual period beginning July 1, 1999.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 635.27(b) to determine, based on projected catch rates, available quota, and other relevant factors, the length of each semiannual fishing season for LCS. When shark harvests are projected to reach the available quota established under § 635.27(b), the AA is further required under § 635.28(b) to close the fishery until additional quota is available.

Catch rate data from the second fishing season from 1997 and 1998 for ridgeback and non-ridgeback LCS species (see Table 1(a) of Appendix A to Part 635) indicate that the ridgeback LCS quota of 310 mt dw will be attained within 39 days and the non-ridgeback LCS quota of 98 mt dw will be attained within 13 days of the fishery opening. Accordingly, the AA has determined, based on these projected catch rates and the available quotas, that the quotas for the 1999 second semiannual season for LCS in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained as of July 12, 1999, for non-ridgeback LCS and, as of August 8, 1999, for ridgeback LCS.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under § 635.4. After July 12, 1999, and August 8, 1999, for non-ridgeback and ridgeback LCS, respectively, the sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under § 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Sharks that are discarded dead and are landed from state waters are counted against the applicable fishery quota, as established under § 635.27(b)(1)(iv)(C).

Commercial fishing for pelagic and small coastal sharks may continue until further notice. When quotas are projected to be reached, the AA will file notice of closure at the Office of the Federal Register. Those vessels that have not been issued a limited access permit under § 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at §§ 635.22(c) and 635.20(d). The recreational fishery is not affected by this closure.

NMFS is considering issuing exempted fishing permits (EFPs) for those permitted vessels that will conduct charter or headboat operations after closures, which would exempt such operations from the prohibition on possession of LCS but would restrict such operations to the recreational retention limits and size limits with a no-sale restriction. NMFS is considering issuing EFPs in such instances because the final rule implementing the HMS FMP has delayed issuance of an HMS charter/headboat permit. NMFS intends to implement the HMS charter/headboat permit and reporting requirement following Paperwork Reduction Act clearance. Because previous regulations allowed vessels operating as a charter or headboat to retain sharks under the recreational retention limits during fishery closures and the HMS FMP stipulates that vessels for which limited access permits have been issued may not retain sharks during fishery closures, issuance of EFPs will help NMFS ascertain the magnitude of the number of vessels that operate commercially as well as charter/headboats under recreational limits. This information will help NMFS

estimate the burden associated with the HMS charter/headboat permit and logbook programs.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 1, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14239 Filed 6–1–99; 4:45 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 108
Monday, June 7, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–027–1]

Imported Fire Ant; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the imported fire ant regulations by adding the insecticide pyriproxyfen (Distance®) to the list of chemicals authorized for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas. This action would give the regulated community another choice with which to meet certification requirements. We are also proposing to update the imported fire ant regulations by amending dosages and formulations for currently authorized insecticides in order to be consistent with product labeling and availability; by alphabetizing, for organizational purposes, the list of authorized chemicals; and by adding a brand name to the list of authorized chemicals, for consistency.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by August 6, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–027–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–027–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255; or e-mail: ron.p.milberg@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery.

The regulations in "Subpart—Imported Fire Ant" (7 CFR 301.81 through 301.81–10, referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of certain articles from those quarantined States or areas to prevent the artificial spread of the imported fire ant.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the Appendix to the subpart, which sets forth the treatment provisions of the "Imported Fire Ant Program Manual."

Recent trials conducted by the Animal and Plant Health Inspection Service (APHIS) Imported Fire Ant Methods Development Station in Gulfport, MS, have shown that the insecticide pyriproxyfen (Distance®) is effective as a bait at a dosage rate of 1.0–1.5 lbs (0.45–0.68 kg) bait/acre for the treatment of field grown woody ornamentals and for controlling the imported fire ant in containerized nursery plants. As with the currently authorized bait insecticides, fenoxycarb (AWARD®) and hydramethylnon (AMDRO®), pyriproxyfen (Distance®) provides no residual barrier against infestation by new queens and must be followed by the application of a contact insecticide to eliminate all colonies and to prevent reinfestation.

In 1998, the United States Environmental Protection Agency approved pyriproxyfen (Distance®) for the treatment of grass sod, soil, and mulch against the imported fire ant at a dosage rate of 1.0–1.5 lbs (0.45–0.68 kg) bait/acre. We are proposing: (1) to amend the Appendix to the subpart, paragraph III.B., under the heading "Insecticide," by adding pyriproxyfen (Distance®) to the list of authorized chemicals for the treatment of regulated articles; (2) to amend paragraph III.C.4. of the Appendix, under the heading "Control," to allow pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) for the treatment of containerized nursery plants to eliminate the imported fire ant; and (3) to amend paragraph III.C.5. of the Appendix to allow pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) for the treatment of field-grown woody ornamentals to eliminate active imported fire ant colonies.

In addition, in order to update the Appendix to the subpart, we are proposing to amend paragraph III.C.4. by adding the "flowable" formulation of bifenthrin to the regulations and paragraph III.C.3. by announcing that the "wettable powder" formulation of bifenthrin has been discontinued by the manufacturer in favor of the new flowable formulation. We are also proposing to amend paragraph III.C.5. by changing the dosage rate for fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) from 1.5 lbs (0.68 kg) bait/acre to 1.0–1.5 lbs (0.45–0.68 kg) bait/acre, in order to be consistent with product labeling.

Finally, we are proposing to amend the Appendix to the subpart, paragraph III.B., under the heading "Insecticides," by adding the brand name (Talstar®) to the entry for bifenthrin, in order to be both consistent and fair, and by alphabetizing the list for the sake of organization.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, we are inviting comments concerning potential economic effects. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

This proposed rule would amend the imported fire ant regulations to allow the use of the bait insecticide pyriproxyfen (Distance®) for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas.

Currently, in order to be certified, containerized nursery plants and field-grown woody ornamentals must be treated with a bait insecticide, either fenoxycarb (AWARD®) or hydramethylnon (AMDRO®), in conjunction with a contact insecticide, bifenthrin (Talstar®). We are proposing to allow pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) in order to give nurseries more options by which they can certify their products. All three bait insecticides fall within the same price range, $8–$10/lb, but competition between imported fire ant insecticide producers, which would be stimulated by the inclusion of pyriproxyfen (Distance®), could result in decreased prices, benefiting many nurseries.

The only significant alternative to this proposed rule that we considered was to not add pyriproxyfen (Distance®) to the list of authorized chemicals for the treatment of regulated materials. We have rejected this alternative because it would deny nurseries the benefit of having another authorized bait insecticide to chose from.

This proposed rule contains no reporting or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In part 301, Subpart—Imported Fire Ant (§§ 301.81—301.81–10), the Appendix to the subpart would be amended as follows:

a. In paragraph III.B., under the heading "INSECTICIDES," the list would be revised to read as set forth below.

b. In paragraph III.C.3.d., under the heading "Method C—Topical Application," a fourth paragraph would be added to read as set forth below.

c. In paragraph III.C.4., under the heading "Control," immediately following the word "(AMDRO®)", the word "or" would be removed and a comma would be added in its place, and immediately following the word "(AWARD®)", the words ", or pyriproxyfen (Distance®)" would be added.

d. In paragraph III.C.4., under the heading "Exclusion," under "Bifenthrin," first sentence, immediately following the word "granular", the word ", flowable," would be added.

e. In paragraph III.C.4., under the heading "Exclusion," under "Bifenthrin," first paragraph, the last sentence would be revised to read as set forth below.

f. In paragraph III.C.4., under the heading "Exclusion," under "Tefluthrin," first sentence, immediately following the word "granular", the word ", flowable," would be added.

g. In paragraph III.C.5., the "Material" and "Dosage" paragraphs would be revised to read as set forth below.

h. In paragraph III.C.5., in the "Method" paragraph, the phrase "1.5 lb (0.68 kg)" would be removed and the phrase "1.0–1.5 lb (0.45–0.68 kg)" would be added in its place.

i. In paragraph III.C.5., in the "Method" and "Special Information" paragraphs, the words "fenoxycarb (AWARD®) or hydramethylnon (AMDRO®)" would be removed and the words "fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®)" would be added in their place each time they appear.

Appendix to Subpart "Imported Fire Ant"—Portion of "Imported Fire Ant Program Manual"[8]

III. Regulatory Procedures

* * * * *

B. * * *

Insecticides

Bifenthrin (Talstar®)
Chlorpyrifos (Dursban®)
Diazinon
Fenoxycarb (AWARD®)
Hydramethylnon (AMDRO®)
Pyriproxyfen (Distance®)
Tefluthrin (FIREBAN®)

C. * * *

3. * * *

d. * * *

Method C—Topical Application

* * * * *

Manufacture of the 10WP (wettable powder) formulation was discontinued in 1998; however, the EPA will allow this product to be utilized until supplies are exhausted.

* * * * *

[8] A copy of the entire "Imported Fire Ant Program Manual" may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

4. * * *

Exclusion

Bifenthrin

* * * The dosage rate for granular bifenthrin is variable and is determined by the certification period selected; for flowable bifenthrin it is 25 ppm; for wettable powder bifenthrin it is 50 ppm.

* * * * *

5. Field-Grown Woody Ornamentals (In-Field Treatment Prior to Harvest)

Material: Chlorpyrifos used in combination with fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) fire ant bait.

Dosage: Fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) at 1.0–1.5 lb (0.45–0.68 kg) bait/acre. Chlorpyrifos at 6.0 lb (2.7 kg) a.i./acre.

* * * * *

Done in Washington, DC, this 1st day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–14306 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99–916–3 PR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches; Request for Revision to Currently Approved Information Collections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed revisions to the rules and regulations of the marketing orders (orders) for fresh nectarines and peaches grown in California pertaining to reporting requirements. This rule also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the orders. The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). Under the orders, authority is provided for the committees to require handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. This rule would require handlers to file such destination reports. Additional and timely information would thus be available to the committees and industry, facilitating improved decisionmaking and program administration with regard to marketing research and development, and promotional activities.

DATES: Comments must be received by August 6, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–5698; or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the orders' rules and regulations pertaining to reporting requirements under the orders. This rule would establish procedures in the orders' rules and regulations for handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. Under the orders the term "handler" is synonymous with the term "shipper." This proposal was unanimously recommended by the committees at their meetings on December 2, 1998.

In §§ 916.60 and 917.50 of the orders, authority is provided for the committees to require handlers to file reports with the committees. The information authorized includes, but is not limited to: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the number and type of containers in the shipment; (5) the quantities shipped, showing separately the variety, grade, and size of the fruit; (6) the destination; and (7) the identification of the inspection certificate or waiver pursuant to which the fruit was handled. Handlers have not been required to

report the destinations of their shipments of fresh nectarines and peaches.

The Nectarine Administrative Committee's (NAC) and the Peach Commodity Committee's (PCC) discussions on destination reports were prompted by recommendations of two subcommittees which met prior to the December 2, 1998, committee meetings. At a Domestic Promotion Subcommittee meeting, the merits of destination reports were discussed, among other issues. The subcommittee unanimously recommended adding a requirement to the orders' rules and regulations for destination reports. The subcommittee believed that having information about markets to which nectarines and peaches are shipped would be a valuable marketing tool. The members believed that such information would allow the subcommittee to target markets more effectively for promotion, and permit a more effective analysis of the effectiveness of industry funded media and promotional campaigns. At an International Programs Subcommittee meeting, the merits of destination reports also were discussed. The members of this subcommittee also believed that such reports would provide invaluable information to assist the NAC and PCC in targeting their promotional activities in the most-promising markets for these two fruits.

The NAC and PCC discussed the subcommittees' recommendations and the merits of destination reporting. Both the NAC and PCC agreed that the establishment of such a report requiring each handler to list the destination of his/her shipments of nectarines and peaches in both domestic and international markets would provide invaluable information and greatly benefit the industries.

With destination information from handlers, the committees would be able to make better-informed decisions about marketing research and development projects conducted, and gauge the success of such activities knowing the volume of fruit shipped to various markets. With this information, the committees also could direct their marketing research and development activities and funds to the most-promising markets, and tailor the activities to meet the needs of the particular markets, focus on the more successful promotional activities, and target markets based on consumption.

Current market analysis tools, such as consumer and retail surveys, provide useful information based on a small group of respondents, but specific shipment and destination information will enable the committees to direct their activities to the most successful markets, and perform a more thorough analysis of the benefits of their promotional activities.

Without exact destination information, the committees do not know precisely the quantities of nectarines and peaches shipped to various markets, and, therefore, may be spending funds on promotional activities not appropriate for the particular market. Experience has shown that certain types of promotion are appropriate for developing markets and other activities are more appropriate when trying to expand markets. With the ability to determine the markets to which nectarines and peaches are not shipped, the committees would have the ability to direct their marketing research and promotion funds to open those markets for future shipments. In addition, such information would permit the committees to constructively evaluate the effectiveness of their marketing promotion and research programs by helping them get a better handle on promotions that have been working and those that have not, and determine the reason(s) for the lack of success. The industries have long recognized the importance of this information in making their promotion activities more effective and in helping sell more nectarines and peaches. They have tried voluntary reporting, but this has not worked.

The shipping season for nectarines begins April 1 and ends on October 31 of each year, and the shipping season for peaches begins on April 1 and ends on November 23 of each year. The destination report would be required from all handlers by the fifteenth of the month following the month in which the shipments were made. Handlers would be required to report the number of packages of peaches and nectarines, both yellow and white-fleshed, by variety, grade, and size shipped to each destination. Destination information for domestic market shipments would include the city, state, and zip code. Destination information for international market shipments would include the country to which shipped.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The committees' staff have estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. If the average handler price received were $9.00 per box or box equivalent of nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of $5,000,000. Small handlers would, therefore, represent approximately 94 percent of the handlers within the industry. In addition, the staff estimates that there are approximately 400 producers who could be defined as other than small entities. If the average producer price received were $6.00 per box or box equivalent for nectarines and $5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of $500,000. Therefore, small producer entities would represent approximately 78 percent of the producers within the industry. For these reasons, a majority of the handlers and producers may be classified as small entities.

This proposal would revise §§ 916.160 and 917.178 of the orders' administrative rules and regulations to require handlers to file destination reports on a monthly basis during the shipping season by adding a new paragraph (c) to each section. The information obtained from such reports would improve decision making and program administration with regard to marketing research and development activities undertaken to expand shipments of fresh nectarines and peaches domestically and in foreign markets.

Requiring handlers to file this report on a monthly basis would impose an

additional reporting burden on both small and large handlers. The report is estimated to take one hour to complete. It is further estimated that handlers would file an average of four destination reports per year, creating an estimated total annual burden of 4 hours per handler. The estimated total industry annual burden is, therefore, estimated at approximately 1,200 hours per year for nectarine and peach shipments each.

Although this action would create an additional burden on handlers of fresh nectarines and peaches, the benefits of collecting additional and timely information regarding destinations are anticipated to outweigh the estimated increased reporting burden. The committees would have detailed information about markets to which fruit is sent; and, therefore, would be able to make better-informed decisions about marketing research and promotion fund expenditures and activities undertaken. Such reports and forms would be filed by all handlers, regardless of size; and thus, the increased burden would be equitably distributed to all handlers. Finally, as with all Federal marketing orders programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule are being submitted to the Office of Management and Budget (OMB) for approval. This rule would not become effective until this additional information collection is approved by the OMB. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

An alternative to this proposed action would be to continue operations without required destination reporting. Most committee members agreed that the value of having destination information outweighed the burden on handlers of filing such reports in terms of targeting marketing and promotion funds and activities. In recent years, the committees have decided to keep their marketing and promotion expenses relatively constant. Because of this, the members felt that greater emphasis should be placed on using the funds to their greatest advantage.

All members agreed that continuing to spend promotion funds, without the information to be provided by destination reports, was not in the best interest of the industries. It was agreed, that as the percentage of promotion funds either decreases or remains constant in relationship to total committee funds, and as shipments of nectarines and peaches increase over time, detailed information on the destinations of nectarine and peach shipments would be invaluable in targeting promising markets. The committee members also noted that voluntary destination reports have been requested in the past, but very few handlers provided the information. The committees, therefore, voted unanimously at all the meetings to require destination reports from nectarine and peach handlers.

During the deliberations, some committee members indicated their concern that destination information would not be kept confidential by committee staff. The Act states, in part, in section 608d(2), that "all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information * * * shall be kept confidential by all officers and employees of the Department of Agriculture." In addition, §§ 916.60(d) and 917.50(d) also require committee employees to maintain confidentiality of all reports and records submitted by handlers. Therefore, each handler is generally protected against disclosure of any confidential information the handler furnishes to the committees. Persons found guilty of the unauthorized disclosure of confidential information could be subject to a fine, imprisonment, or both, or could be removed from office.

The committee meetings were widely publicized throughout the tree fruit industry and all interested persons were invited to express their views and participate in committee deliberations. Like all committee meetings, the December 2, 1998, meetings were public meetings, and all entities, large and small, were able to express their views on this issue. The subcommittees meetings were also public meetings at which large and small entities were invited to express their views and participate in deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act (Nectarines)

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request a revision to a currently approved information collection for Nectarines Grown in California, Marketing Order No. 916.

Title: Nectarines Grown in California, Marketing Order 916.

OMB Number: 0581–0072.

Expiration Date of Approval: May 31, 2000.

Type of Request: Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The California nectarine marketing order program, which has been operating since 1958, authorizes the issuance of grade, size, maturity regulations, inspection requirements, and marketing and production research, including paid advertising. Regulatory provisions apply to nectarines shipped within and out of the area of production to any market, except those specifically exempted by the marketing order.

The order and its rules and regulations authorize the Nectarine Administrative Committee (committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in the aggregate and provided to the industry to assist in marketing decisions. The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California nectarine marketing order program.

The Committee has developed forms as a convenience to persons who are required to file information with the Committee that is needed to carry out the purposes of the Act and the order. These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Program regional and headquarters staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

This proposed collection consists of a new requirement for handlers to provide information about the destination(s) of nectarine shipments. With shipment destination information from handlers, the committee would be able to make better-informed decisions about the marketing research and development projects conducted. The committee could direct its marketing research and development funds to the most-promising markets. The committee might determine that it is spending funds for promotional activities in markets with limited expansion opportunities. The committee might also find that it is spending too much money in a market where promotion is no longer needed, or only needed to a limited extent. Having information about markets to which nectarines are shipped would be a valuable marketing tool. Not only would such information permit the committee to target markets more effectively for promotion, it would also permit effective measurement of media use and promotional campaigns.

Section 501(c) of the Federal Agriculture Improvement and Reform Act of 1996 requires each advertising program under the oversight of the Department to fund an independent analysis of the effectiveness of the program at least every five years, unless otherwise provided by law. Information on shipment destinations would be useful in performing these analyses for California nectarines.

The proposed revision to the currently approved information requirements issued under the order is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.0 hour per response.

Respondents: Handlers of fresh nectarines produced in California.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 1,200 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the California nectarine marketing order program and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–0072 and the California Nectarine Marketing Order No. 916, and be sent to the USDA in care of the docket clerk at the address referenced above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Paperwork Reduction Act (Peaches)

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request a revision to a currently approved information collection for Peaches Grown in California, Marketing Order No. 917.

Title: Peaches Grown in California, Marketing Order 917.

OMB Number: 0581–0080.

Expiration Date of Approval: July 31, 2000.

Type of Request: Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The California peach marketing order program, which has been operating since 1939, authorizes the issuance of grade, size, maturity regulations, inspection requirements, and marketing and production research, including paid advertising. Regulatory provisions apply to peaches shipped within and out of the area of production to any market, except those specifically exempted by the marketing order.

The order and its rules and regulations authorize the Peach Commodity Committee (committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in the aggregate and provided to the industry to assist in marketing decisions. The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California peach marketing order program.

The Committee has developed forms as a convenience to persons who are required to file information with the Committee that is needed to carry out the purposes of the Act and the order. These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Program regional and headquarters staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

This proposed collection consists of a new requirement for handlers to provide information about the destination(s) of peach shipments. With shipment destination information from handlers, the committee would have the ability to make better-informed decisions about the marketing research and development projects conducted. The committee would be able to direct its marketing research and development funds to the most-promising markets. The committee might also determine that it is spending funds in markets with limited expansion potential, or that it is spending too much money in a market where promotion is no longer needed, or only needed to a limited extent. Having information about markets to which peaches are shipped would be a valuable marketing tool. Not only would such information permit the subcommittee to target markets more effectively for promotion, it would also permit effective measurement of media use and promotional campaigns.

Section 501(c) of the Federal Agriculture Improvement and Reform Act of 1996 requires that each advertising program under the oversight of the Department fund an independent analysis of the effectiveness of the

program at least every five years, unless otherwise provided by law. Information on shipment destinations would be useful in performing these analyses for California peaches.

The proposed revision to the currently approved information requirements issued under the order is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.0 hour per response.

Respondents: Handlers of fresh peaches produced in California.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 4

Estimated Total Annual Burden on Respondents: 1,200 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the California peach marketing order program and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–0080 and the California Peach Marketing Order No. 916, and be sent to the USDA in care of the docket clerk at the address referenced above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. In § 916.160, paragraph (c) is added to read as follows:

§ 916.160 Reporting procedure.

* * * * *

(c) *Destination report.* Each shipper who ships nectarines shall furnish to the manager of the Nectarine Administrative Committee a report of the number of packages of nectarines, both yellow-fleshed and white-fleshed, by variety, grade, and size shipped to each destination. The destination is defined as nectarine shipments to any domestic or international market. Destination information for domestic market shipments shall include city, state, and zip code. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which nectarine shipments were made.

PART 917—PEACHES GROWN IN CALIFORNIA

3. In § 917.178, paragraph (c) is added to read as follows:

§ 917.178 Peaches.

* * * * *

(c) *Destination report.* Each shipper who ships peaches shall furnish to the manager of the Control Committee a report of the number of packages of peaches, both yellow-fleshed and white-fleshed, by variety, grade, and size shipped to each destination. The destination is defined as peach shipments to any domestic or international market. Destination information for domestic market shipments shall include the city, state, and zip code. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which peach shipments were made.

Dated: June 1, 1999.

Bernadine M. Baker,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–14313 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

[DA–99–01]

Milk in the Nebraska-Western Iowa Marketing Area; Termination of Proceeding on Proposed Suspension

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of Proceeding.

SUMMARY: This document terminates the proceeding that was initiated to consider a proposal to suspend portions of the supply plant shipping requirements for the Nebraska-Western Iowa order for the months of March through September 1999.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address: connie_m_brenner@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension of Rule: Issued March 11, 1999; published March 17, 1999 (64 FR 13125).

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service considered the economic impact of this rulemaking action on small entities and has certified that this termination of proceeding will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of January 1999, 1,248 dairy farmers were producers under the Nebraska-Western Iowa order. Of these producers, 1,176 producers (i.e., 94 percent) were considered small businesses having monthly milk production under 326,000 pounds. A further breakdown of the monthly milk production of the producers on the order during January 1999 is as follows: 753 produced less than 100,000 pounds of milk; 322 produced between 100,000 and 200,000; 101 produced between 200,000 and 326,000; and 72 produced over 326,000 pounds. During the same month, 5 handlers were pooled under the order. None are considered small businesses.

Because this termination of the proceedings concerning the proposed suspension results in no change in regulation it does not change reporting, record keeping or other compliance requirements. Based on comments received from an organization representing producers who supply the Order 65 market with over 40 percent of the monthly average volume of milk pooled under the order, and on our analysis of other relevant information connected with this rulemaking, we have determined that the suspension request should not be granted. While suspension of the supply plant shipping requirements may have served the economic interests of one sector of the producers supplying Order 65, it would have most likely resulted in a significant loss of blend price income to a substantial number of other producers under the Order.

Preliminary Statement

This termination of proceedings is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area.

Notice was published in the **Federal Register** on March 17, 1999 (64 FR 13125) concerning a proposed suspension of certain sections of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon.

One comment opposing the proposed termination was received.

Statement of Consideration

This document terminates the proceeding initiated to suspend portions of the supply plant shipping requirements for the Nebraska-Western Iowa order (Order 65) for the months of March through September 1999. The proposed suspension was requested by North Central Associated Milk Producers, Inc. (AMPI), a cooperative association that supplies milk for the market's fluid needs. AMPI requested that language be suspended from the Order 65 pool supply plant definition for the purpose of allowing producers who had historically supplied the fluid needs of Order 65 distributing plants to maintain their pool status. AMPI contended that because a fluid milk plant operator reduced its purchase of fluid milk from AMPI by more than half, AMPI would not be able to pool milk historically associated with Order 65 for March 1999, and thus would not qualify its supply plant for the automatic pooling qualification months of April through August.

AMPI maintained that through discussions with other handlers in the order, it was certain that no additional milk was needed at that time. Thus, AMPI contended that it was appropriate to suspend the supply plant shipping standards for the months of March through September 1999.

Dairy Farmers of America (DFA) filed a comment opposing the proposal to suspend portions of the supply plant shipping requirements for Order 65. DFA reported that its members produce and market over 40 percent of the monthly average volume of milk pooled under the order.

DFA contended that the suspension would enhance AMPI's ability to pool additional supplies on the market, and DFA members would be disadvantaged because the blend price would be lower. In addition, DFA asserted that Federal order language is routinely suspended to accommodate the pooling of milk as a result of general production increases relative to Class I milk sales, natural disasters, or plant closures. DFA stated that the reasons for these types of suspensions are generally beyond the control of any of the handlers regulated by the order and argued that changes in supplier relationships do not fall into the category of "beyond control of the party." DFA therefore opposed the request.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that the proposed suspension action be terminated. AMPI's loss of 50 percent of its customary sales to a pool distributing plant will not preclude AMPI from pooling its supply plant and some of its members' milk on Order 65. While AMPI may not be able to pool as much milk under Order 65 during March 1999 as it has in prior periods, its supply plant and associated milk may be pooled under the order as long as some milk is sold by the supply plant to pool distributing plants.

Furthermore, the sole requirement for gaining automatic supply plant pooling status (with no percentage shipping standards for pool supply plants) for the months of April through August is for the supply plant to qualify as a pool plant for the months of September through March. If AMPI is able to pool its supply plant, even with a lesser volume of milk than it desires, the supply plant still would qualify for automatic pooling status for the period April through August.

Suspension of the order's pool supply plant shipping standard for the month of March 1999 would allow AMPI to pool a much greater volume of milk under the order than that associated with its sales to the fluid market and most likely would result in a significant loss of blend price income to all other producers whose milk is pooled under the order.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: June 1, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–14312 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 99–014–1]

Animal Welfare; Acclimation Certificates for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations regarding transportation of dogs and cats by removing the requirement that a veterinarian certify that a dog or cat is acclimated to temperatures lower than the minimum temperature requirements in the regulations and requiring instead that the owner of the dog or cat make this certification. We are proposing this action because a veterinarian cannot always know if the dog or cat has been acclimated to a specific temperature. The owner of the dog or cat can best verify that the animal has been

acclimated to the temperature that is recorded on the certificate. This proposed action would give responsibility for certifying an animal's tolerance for a specific temperature to the person who is most likely to know.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by August 6, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–014–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–014–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry D. DePoyster, Staff Animal Health Technician, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586; or e-mail: jerry.d.depoyster@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated the responsibility for enforcing the AWA to the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Parts 1 and 2 contain definitions and general requirements, and part 3 contains specific standards for the care of animals. Subpart A of 9 CFR part 3 contains requirements specifically pertaining to dogs and cats.

Section 3.18 of subpart A contains minimum requirements for terminal facilities used in the transportation of dogs and cats. Among other things, § 3.18 requires that the ambient temperature in an animal holding area containing dogs and cats must not fall below 45 °F (7.2 °C) for more than four consecutive hours at any time dogs or cats are present. Section 3.19 of subpart A contains minimum requirements for handling dogs and cats when they are moved within, to, or from an animal holding area of a terminal facility or a primary conveyance when being transported. Among other things, § 3.19 requires that dogs or cats must not be exposed to an ambient temperature below 45 °F (7.2 °C) for a period of more than 45 minutes.

Section 3.13, paragraph (e), of subpart A requires that carriers and intermediate handlers must not accept a dog or cat for transport in commerce unless their animal holding area meets the minimum temperature requirements provided in §§ 3.18 and 3.19, or unless the consigner provides them with a certificate signed by a veterinarian certifying that the animal is acclimated to temperatures lower than those required in §§ 3.18 and 3.19.

Veterinarians are often asked to sign certificates of acclimation for dogs and cats that they have seen only for routine examinations or if the animals are ill. A veterinarian cannot determine if a dog or cat has been acclimated to a specific temperature based on a veterinary examination. Therefore, it is inappropriate to place responsibility for such certification on veterinarians. The owner of the dog or cat is normally the person who would know if the dog or cat has been acclimated to a specific temperature.

Therefore, we are proposing to amend § 3.13(e) to require that the owner of the dog or cat sign the certificate stating that his or her animal is acclimated to temperatures lower than those required in §§ 3.18 and 3.19. This revision would give responsibility for certifying an animal's tolerance for a specific temperature to the person who is most likely to know to what temperature the animal is acclimated.

We are also proposing to correct a typographical error in § 3.13(e). In paragraph (e), the Celsius equivalent of 45 °F is incorrectly listed as 2.2 °C. The correct Celsius equivalent is 7.2 °C.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The Animal Welfare Act regulations in 9 CFR part 3, subpart A, provide specifications for the humane transportation of dogs and cats. Among other things under those specifications, carriers and intermediate handlers may not accept a dog or cat for transport in commerce unless their animal holding area meets certain minimum temperature requirements or unless they are provided with a certificate, signed by a veterinarian, certifying that the animal has been acclimated to temperatures lower than those required.

This proposed rule would require instead that the owner of the dog or cat must sign the certification that the animal has been acclimated to temperatures lower than those required by the regulations. The proposal stems from concern that veterinarians are not always the ones who are best able to make such a certification, since they may have minimal knowledge of an animal's history, care, and environment. Licensed dealers are the animal owners who would be primarily affected by the proposal because licensed dealers transport animals more often than other dog and cat owners.

The entities most affected by this proposed rule would be dealers of dogs and cats and the animal's attending veterinarian. Affected dealers and veterinarians would benefit, but the economic effect is not likely to be significant.

Practicing veterinarians would benefit because they would no longer be put in the position of having to deny certifications when they have little or no knowledge of the animal's history, care, and environment. Veterinarians would also benefit because they would avoid any potential liability stemming from the certifications. Veterinarians would no longer receive fees that they might otherwise charge animal owners for signing certifications. However, any such fees are likely to be insignificant when judged against the veterinarian's overall revenues from all sources.

The owners of the dogs and cats would benefit from the proposed rule because it would make the process of obtaining certification easier. They would be able to make the certification themselves without having to rely on veterinarians who may not always be readily available. Another potential benefit for animal owners is that they may avoid having to pay fees to veterinarians to obtain their signatures, although any such savings are not likely to be significant.

Finally, the animals themselves would benefit in that a more accurate representation of the temperature to which the dog or cat has been acclimated would have a positive effect on the animal's health and welfare.

The Regulatory Flexibility Act requires that agencies consider the economic effect of rules on small entities, i.e., small businesses, organizations, and governmental jurisdictions. In FY 1996, there were 4,075 animal dealers licensed by the Animal and Plant Health Inspection Service, including dealers of dogs and cats. The American Veterinary Medical Association estimates that, as of January 1, 1998, there were 30,255 veterinarians in private practice in the United States who deal either exclusively or predominately with small animals, including dogs and cats.

It is reasonable to assume that most of the affected entities are small in size, based on composite data for providers of the same and similar services in the United States. In 1992, the per firm average annual gross receipts for all 6,804 firms in animal specialty services, except veterinary, which include dog and cat dealers, were $115,290. This amount is well below the U.S. Small Business Administration's (SBA) small entity threshold of $5.0 million annually for firms in that category. Similarly, the per practice average annual gross receipts for all 15,880 U.S. veterinary practices, which include practices having more than one veterinarian on staff, that deal exclusively in small animals were $421,000 in 1995. This is well below the SBA's small entity threshold of $5.0 million annually for firms in veterinary services for animal specialties, which include dog and cat veterinarians. It is very likely, therefore, that small entities would be those most affected by the proposed rule change. As stated previously, we believe any economic effects of this proposed rule would not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we propose to amend 9 CFR part 3 as follows:

PART 3—STANDARDS

1. The authority citation for part 3 would continue to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(d).

§ 3.13 [Amended]

2. In § 3.13, paragraphs (e) introductory text, (e)(3), and (e)(4) would be amended as follows:

a. In paragraph (e), the introductory text, by removing the phrase "signed by a veterinarian" and replacing it with the phrase "signed by the dog or cat owner"; and by removing "2.2 °C" both times it appears and replacing it with "7.2 °C".

b. In paragraph (e)(3), by removing the phrase "a veterinarian" and replacing it with the phrase "the dog or cat owner".

c. In paragraph (e)(4), by removing the word "veterinarian" and replacing it with the phrase "dog or cat owner".

Done in Washington, DC, this 1st day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–14305 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–07]

Proposed Establishment of Class D Airspace; Salisbury, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace area at Salisbury, MD. The Commissioning of a new Air Traffic Control Tower (ATCT) at the Salisbury-Ocean City; Wicomico Regional Airport. (SBY), Salisbury, MD has made this proposal necessary. Controlled airspace extending upward from the surface to 2,500 feet Above Ground Level (AGL) is needed to accommodate Instrument Flight Rules (IFR) operations to the airport.

DATES: Comments must be received on or before July 7, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 99–AEA–07, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental,

and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AEA–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Class D airspace area at Salisbury, MD. A new ATCT has been opened at the Salisbury-Ocean City; Wicomico County Regional Airport and Class D controlled airspace is needed to accommodate IFR operations to the airport. Class D airspace designations for airspace areas extending upward from surface to 2,500 feet or more above the surface are published in Paragraph 5000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11934; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only effect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1059–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface to 2,500 feet or more above the surface of the earth.

* * * * *

AEA MD D [New]

Salisbury-Ocean City; Wicomico County Regional Airport, MD,
(Lat. 382043N/Long. 753062W.)
Salisbury, VORTAC
(Lat. 382070N/long. 763064W.)

That airspace extending upward from the surface to and including 2500 feet above the surface within a 4.1 mile radius of the Salisbury-Wicomico County Regional Airport and within 3.1 miles each side of the Salisbury. VORTAC 209 degree radial extending from the 4.1 mile radius to 9.2 miles southwest of the VORTAC and within 3.1 miles each side of the Salisbury VORTAC 0-52 radial extending from the 4.1 mile radius to 8.3 miles northeast of the VORTAC and within 1 mile each side of the Salisbury-Wicomico County Regional Airport localizer northwest course extending from the 4.1 mile radius to 4.8 miles northwest of the localizer and within 3.1 miles each side of the Salisbury VORTAC 132 degree radial extending from the 4.1 mile radius to 9.2 miles southeast of the VORTAC. This Class D airspace areas is effective during the specific dates and items established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Issued in Jamaica, New York, on May 27, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–14218 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–21]

Proposed Modification of Class E Airspace; Kingman, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace at Kingman, AZ. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 3 and GPS RWY 21 at Kingman Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 3 SIAP to Kingman Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Kingman Airport, Kingman, AZ.

DATES: Comments must be received on or before July 19, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 97–AWP–21, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520,

Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AWP–21." The postcard will be date/time stamped and returned to the commenters. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Kingman, AZ. The establishment of a GPS RWY 3 and GPS RWY 21 SIAP at Kingman Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 3 SIAP at Kingman Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 3 SIAP at Kingman Airport, Kingman, AZ. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP AZ E5 Kingman, AZ [Revised]

Kingman Airport, AZ
(Lat. 35°15′34″N, long. 113°56′17″W)
Kingman VOR/DME
(Lat. 35°15′38″N, long. 113°56′03″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Kingman Airport and that airspace within 4.3 miles each side of the Kingman VOR 025°radial, extending from the 4.3-mile radius to 16.5 miles northeast of the Kingman VOR and that airspace 1.7 miles each side of the Kingman VOR 226° radial, extending from the 4.3-mile radius to 9 miles southwest of the Kingman VOR. That airspace extending 1,200 feet above the surface within 4.3 miles southeast and 7.8 northwest of the Kingman VOR 025° and 205° radii, extending from 11.3 miles southwest to 33 miles northeast of the Kingman VOR and that airspace bounded by a line beginning at lat. 35°24′50″N, long. 114°01′20″W; to lat. 35°08′40″N, long. 114°10′29″W; to lat. 35°21′15″N, long. 114°13′28″W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on May 20, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–14216 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–1]

Proposed Modification of the San Juan Low Offshore Airspace Area, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the San Juan Low Offshore Airspace Area by extending it to include the airspace northwest of San Juan, PR, between the 100-mile radius of the Fernando Luis Ribas Dominicci Airport and the San Juan Control Area/Flight Information Region (CTA/FIR) and

Miami CTA/FIR boundary. The FAA is proposing this action to increase the airspace managed by domestic air traffic control (ATC). Extension of this Class E airspace area would enhance the management of air traffic operations and result in more efficient use of that airspace.

DATES: Comments must be received on or before July 19, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 99–ASO–1, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, ASO–500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments providing supporting facts for the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking also will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the **Federal Register**'s web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice or docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 2, 1993, the FAA published a final rule (58 FR 12128) which, in part, designated the San Juan Low Offshore Airspace Area. This designation was necessary to comply with the Airspace Reclassification final rule (56 FR 65638; December 17, 1991). The San Juan Low Offshore Airspace Area consists of Class E airspace from 5,500 feet mean sea level up to, but not including, Fight Level 180 within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport, San Juan, PR. This airspace, however, is inadequate to support the Caribbean Special Area Navigation (RNAV) Routes currently being evaluated in the Bahamas/Caribbean area due to the rapid growth of air traffic activity in the area. Therefore, there is a need to designate additional airspace wherein domestic ATC procedures would be used to provide more efficient control of aircraft operations.

The Proposal

The FAA is proposing to amend 14 CFR part 71 to extend the San Juan Low Offshore Airspace Area. The proposed extension area would consist of that portion of Offshore airspace northwest of San Juan, PR, between the 100-mile radius of the Fernando Luis Ribas Dominicci Airport and the San Juan CTA/FIR and Miami CTA/FIR boundary.

This modification would support the implementation of the Caribbean Special RNAV Routes for aircraft equipped with advanced navigation systems by creating a seamless environment of controlled airspace between Florida and Puerto Rico. Increasing the airspace managed by domestic ATC procedures, would enhance safety, increase system capacity, reduce the cost of aircraft operations, and decrease controller workload.

Offshore Airspace Area designations are published in paragraph 6007 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic

Airspace Management, in areas outside U.S. domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention.

Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6007—Offshore Airspace Areas

* * * * *

San Juan Low, PR [Revised]

That airspace extending upward from 5,500 feet MSL from the point of intersection of the San Juan Oceanic CTA/FIR and Miami Oceanic CTA/FIR boundary at lat. 21°08′00″ N., long. 67°45′00″ W., thence from that point southeast via a straight line to intersect a 100-mile radius of the Fernando Luis Ribas Dominicci Airport at lat. 19°47′28″ N., long. 67°09′37″ W., thence clockwise via a 100-mile radius of the Fernando Luis Ribas Dominicci Airport to lat. 18°53′05″ N., long. 67°47′43″ W., thence from that point northwest via a straight line to interest the point where the Santo Domingo FIR turns northwest at lat. 19°39′00″ N., long. 69°09′00″ W., thence from that point northeast along the San Juan CTA/FIR and Miami CTA/FIR boundary to the point of beginning.

* * * * *

Issued in Washington, DC, on May 28, 1999.

Paul Gallant,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–14214 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

[FHWA Docket No. FHWA–97–3105]

RIN 2125–AE27

Emergency Relief Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulation on the emergency relief (ER) program to revise the threshold used in determining eligibility for a disaster from $500,000 to $700,000. The threshold is used to distinguish between heavy maintenance or routine emergency repairs and serious damage eligible under the ER program. An advance notice of proposed rulemaking (ANPRM) on the disaster eligibility threshold was published in the **Federal Register** on February 19, 1998, seeking comments on the need to revise the threshold and various options to accomplish this.

In addition, the FHWA proposes to amend the regulation to include recent clarifying guidance on administering the ER program. The amendments include clarification of ER funding eligibility for betterment/replacement facilities, for projects and project features resulting from the National Environmental Policy Act (NEPA) process, and for traffic damage caused by response vehicles. In addition, changes made in the ER application process are included, as well as minor revisions to guidance for eligible uses of ER funding.

DATES: Written comments are due on or before August 6, 1999. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Signed written comments should refer to the docket number that appears at the top of this document and should be submitted to the Docket Clerk, U.S. DOT Dockets Room PL–401, 400 Seventh Street, SW., Washington, D.C 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mohan P. Pillay, Office of Engineering, 202–366–4655, or Wilbert Baccus, Office of the Chief Counsel, 202–366–0780, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resources locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/fedreg and at the Government Printing Office's databases at http://www.access.gpo.gov/nara.

Background

The current FHWA regulations implementing the emergency relief program are found primarily in 23 CFR 668. Subpart A of part 668 sets forth the procedures for the administration of ER funds for the repair or reconstruction of Federal-aid highways caused by natural disasters or catastrophic failures. For the purposes of this NPRM, the term disaster referred to throughout this document means a natural disaster or catastrophic failure. The FHWA proposes to amend these regulations in the following manner and for reasons indicated below.

In response to the ANPRM published in the **Federal Register** on February 19, 1998, 63 FR 8377, the FHWA received comments from a total of 24 entities. The commenters include 17 State Departments of Transportation (DOT), 3 county governments, 2 State Associations of County Engineers, 1 State County Highway Association, and the American Road and Transportation Builders Association (ARTBA).

The ANPRM solicited comments basically on two options and also requested commenters suggest additional options and concepts. The two options were: (1) continue to have a single ER threshold applied to all States, but increase the threshold to a higher value—for example $1,000,000; or (2) formulate more than one disaster eligibility threshold using a tiered approach based on the size of a State's highway program. Under the second option the States would be grouped into tiers based on the size of their Federal-aid program—i.e., Federal-aid apportionments a State received in the previous fiscal year. A minimum disaster eligibility threshold would be formulated for each tier beginning from a base threshold. For example, a $500,000 threshold for Federal-aid highway apportionments under $100 million; a $1,000,000 threshold for apportionments over $100 million and below $500 million; and a $2,000,000 threshold for apportionments at or above $500 million.

Discussion of Comments

Most commenters to the ANPRM are opposed to the revision of the $500,000 threshold, with only two commenters favoring the proposal to increase the threshold: one to $1,000,000, and the other to $750,000 adjusted to inflation every five years. The commenters' argument against revising the existing threshold is that they allege it would create extreme hardship on local units of government, whose resources are very limited. Commenters assert that they do not have the flexibility to shift resources from other areas to cover the cost of road damage due to a natural disaster. The commenters provided no explanation or evidence why it was appropriate or feasible for the Federal government, rather than the State governments, to pay these costs from its very limited resources.

All commenters, except 4 State DOTs, oppose the tier concept which involves formulating more than one minimum disaster eligibility threshold based on the funding size of a State's Federal-aid highway program. It should be noted that a substantial portion of the ER program funds in most of the eligible disasters goes to repair damages on Federal-aid highways owned and administered by the counties and other local jurisdictions. The tier concept is opposed mainly because commenting entities indicated that the counties and other local agencies would not be treated equally from State to State.

Two commenters suggested applying a flat rate percentage to the State's Federal-aid highway program to come up with a threshold value. One State DOT recommended that the threshold level be set at 0.4 percent of total Federal-aid apportionments for all States. Another State DOT stated that, in lieu of a tiered system, the threshold for a qualifying disaster be set at ½ of 1 percent of the amount "allocated to a State by Congress."

One State DOT recommended adjusting the minimum threshold to $750,000 with an inflationary adjustment every five years based on the road construction cost index.

ER Threshold

After considering all comments received, the FHWA has decided not to further pursue the tier option concept and the proposed fixed percentage concept. Both approaches would have the same adverse impact on county and local governments. Upon further evaluation, we believe that it would not be advisable to pursue either the tier option or the fixed percentage option because the counties and other local agencies would not be treated equally from State to State. For example, a county whose Federal-aid highways have sustained $1.5 million of eligible ER repair costs, but is located in a State where the ER eligibility threshold is set at $2 million, would not receive any benefits from FHWA ER program funds. On the other hand, another county with the same amount of damage, but located in a State with a $1 million threshold, would be eligible to receive ER assistance. Also, we are concerned that under either the tier or fixed percentage approach, the States with larger highway programs could lose some ER funding, as the higher disaster eligibility threshold in these States might eliminate some disasters which would have qualified for funding under the current threshold.

The FHWA believes that a revision of the current threshold is reasonable and prudent. It should be noted that 23 CFR 668, subpart A, was revised in 1987 to establish, for the first time, dollar guidelines for consideration of whether a disaster would be categorized as "serious " from the perspective of 23 U.S.C. 125. The $500,000 threshold was established to distinguish between heavy maintenance or routine emergency repairs and serious damage eligible under the ER program. This threshold at a minimum, must be elevated to reflect the change in the current purchasing power of the dollar.

The FHWA, therefore, proposes to use the increase in the composite index for the Federal-aid highway construction from 1987 to 1997. Section 668.105(j) would be amended to increase the minimum disaster eligibility threshold to $700,000. The FHWA would plan to periodically review the threshold and adjust as appropriate, through future rulemakings. In exceptional circumstances, such as in the case of Territories and in States with small highway programs, a disaster under the $700,000 threshold could be considered eligible for ER funding as is now the case with damage in the range of $500,000 or slightly less under the existing ER threshold.

ER Program Administration

In addition, the FHWA proposes to amend the part 668 regulation as follows to include recent clarifying guidance on administering the ER program:

Section 668.103 would be amended to include the following definition for betterments: "Betterments.—Added protective features, such as rebuilding of roadways at a higher elevation or the lengthening of bridges, or changes which modify the function or character of a highway facility from what existed prior to the disaster or catastrophic failure, such as additional lanes or added access control." This amendment would clarify betterment guidance since there has been wide interpretation of the term "betterments" for determining ER funding eligibility. This definition of betterments would clearly establish the meaning of this term for the purposes of the FHWA's ER program.

Section 668.103 would also be amended to modify the definition of emergency repairs by replacing the

word "travel" with the word "traffic" to be consistent with other use of this phrase in title 23 United States Code, and in this regulation concerning the ER program. This revision would make item (3) under the definition read "restoring essential traffic" instead of "restoring essential travel."

Section 668.109(b)(6) would be amended to eliminate from the first sentence, "such as relocation, replacement, upgrading or other added features not existing prior to the disaster." This would make this section consistent with the modified definition of betterments proposed to be included in Section 668.103. This revision would eliminate confusion in interpreting the term "betterments" for ER funding eligibility determination and would make it clear that relocation or replacement of a highway facility is not always a betterment under the ER program.

Section 668.109(c)(2)(i) would be amended by inserting the term to any public road" after the word "damage" to further clarify the meaning of the sentence.

Section 668.109(c)(2)(iii) would be revised to expand the eligibility of ER funds to repair damages to Federal-aid highways caused by, not only vehicles making repairs to other transportation facilities, but also vehicles, such as fire engines or trucks removing debris, which are responding to a disaster.

Section 668.109(c)(8) would be amended by adding the term "including snow and ice removal" after the word "system." This would clarify that snow and ice removal are part of the other normal maintenance activities and are not eligible for ER funding.

Section 668.109 (d) would be amended by replacing the phrase "highway facilities" with the phrase "of a highway facility at its existing location" in the first sentence after the term "replacement;" and by adding the following sentence after the last sentence: "Where it is neither practical nor feasible to replace a damaged highway facility in kind at its existing location, an alternate facility selected through the National Environmental Policy Act (NEPA) process, if of comparable function and character to the destroyed facility, is eligible for ER reimbursement." This would further clarify the guidance on eligibility of replacement highway facilities, particularly in those special cases where replacement of a damaged highway is not practical or feasible at its existing location, and an alternative is developed through the NEPA process.

Section 668.111(b) on application procedures and the need for the field report would be modified to acknowledge the quick release process. The "Quick Release" process is used to very quickly deliver ER assistance to large disasters where damage is obvious and evident and there is an immediate need to make ER funds available to States within a very short time frame.

Section 668.111(c)(2) would be amended to add the term "as appropriate" after the term "field report." This would allow enough flexibility in those instances where the quick release process is used as outlined in the added new section 668.111(b)(3). This would clarify section 668.111(c)(2) that an ER application need not include a field report if the application is to be processed under the "Quick Release" method.

Section 668.113(b)(1) would be revised to reflect the current project procedures. The reference to "the certification acceptance procedures found in 23 U.S.C. 117" would be eliminated because the method using certification acceptance procedures in administering Federal-aid projects has been eliminated from Title 23, U.S.C. by Transportation Equity Act for the 21st Century, TEA–21, P.L. 105–178.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking proposes to amend current regulations implementing the emergency relief program to revise the ER eligibility threshold established 10 years ago, as well as to incorporate changes made to clarify the guidance on the ER program. It is not anticipated that these proposed changes would affect the total Federal funding available under the ER program. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

The economic impact on States and local jurisdictions would be minimal because the increase in threshold value is kept at a minimum level only to account for inflation based on the increase in the composite index for Federal-aid highway construction from 1987 to 1997. These amendments would clarify and simplify procedures used for providing emergency relief assistance to States in accordance with the existing laws, regulations and guidance. The ER funds received by the States would not be significantly affected by these proposed amendments. In any event, States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. Therefore, this proposed action would not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the FHWA must prepare a budgetary impact statement on any proposal or final rule that includes a Federal mandate that may result in estimated annual costs to State, local or tribal government of $100 million or more. The Congressional Budget Office has also concluded that Pub. L. 105–117 would impose no Federal mandates, as defined in the Unfunded Mandates Reform Act, and would impose no significant costs on State, local, or tribal government. The FHWA concurs in that conclusion, and does not intend to impose any duties upon State, local, or tribal governments beyond those prescribed by Pub. L. 105–117.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. These proposed amendments would not preempt any State law or State regulation, and no significant additional costs or burdens would be imposed on the States thereby. In addition, this proposed rule would not affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 668

Disaster assistance, Emergency Relief Program, Grant programs-transportation, Highways and roads.

Issued on: May 25, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 668 as set forth below.

PART 668— EMERGENCY RELIEF PROGRAM

1. The authority citation for part 668 continues to read as follows:

Authority: 23 U.S.C. 101, 120(e), 125, and 315; 49 CFR 1.48(b).

2. Section 668.103 is amended by adding the term "Betterments" in alphabetical order, and by revising paragraph (3) of the term "Emergency repairs" to read as follows:

§ 668.103 Definitions.

* * * * *

Betterments. Added protective features, such as rebuilding of roadways at a higher elevation or the lengthening of bridges, or changes which modify the function or character of a highway facility from what existed prior to the disaster or catastrophic failure, such as additional lanes or added access control.

* * * * *

Emergency repairs. * * *

(3) Restoring essential traffic.

* * * * *

3. Section 668.105(j), is amended by removing the figure "$500,000" and inserting in its stead the figure "$700,000".

4. Section 668.109 is amended by revising paragraphs (b)(6), (c)(2)(i) and (iii), (c)(8), and (d) to read as follows:

§ 668.109 Eligibility.

* * * * *

(b) * * *

(6) Betterments, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of betterment against the risk of eligible recurring damage and the cost of future repair;

* * * * *

(c) * * *

(2) * * *

(i) Repair of surface damage to any public road caused by traffic making repairs to Federal-aid highways.

* * * * *

(iii) Repair of surface damage to Federal-aid highways caused by vehicles responding to a disaster; provided the surface damage has occurred during the first 60 days after a disaster occurrence, unless otherwise approved by the FHWA Division Administrator.

* * * * *

(8) Other normal maintenance and operation functions on the highway system including snow and ice removal; and

* * * * *

(d) Replacement of a highway facility at its existing location is appropriate when it is not technically and economically feasible to repair or restore a seriously damaged element to its predisaster condition and is limited in ER reimbursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life. Where it is neither practical nor feasible to replace a damaged highway facility in kind at its existing location, an alternative selected through the National Environmental Policy Act (NEPA) process, if of comparable function and character to the destroyed facility, is eligible for ER reimbursement.

* * * * *

5. Section 668.111 is amended by adding paragraph (b)(3); and revising paragraph (c)(2) to read as follows:

§ 668.111 Application procedures.

* * * * *

(b) * * *

(3) For large disasters where extensive damage to Federal-aid highways is readily evident, the FHWA Administrator may approve an application under paragraph (d) of this section prior to preparation of the field report. In these cases, an abbreviated field report, summarizing eligible repair costs by jurisdiction, is to be prepared and submitted to FHWA Headquarters after the damage inspections have been completed.

(c) * * *

(2) A copy of the field report as appropriate.

* * * * *

6. Section 668.113 is amended by revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 668.113 Program and project procedures.

* * * * *

(b) *Project procedures.* (1) Projects for permanent repairs shall be processed in accordance with regular Federal-aid procedures. In those cases where a regular Federal-aid project in a State similar to the ER project would be handled under the project oversight exceptions found in title 23 of the United States Code, the ER project can be handled in a similar fashion subject to the following two conditions:

(i) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval; and

(ii) The FHWA reserves the right to conduct final inspections on all ER projects. The Division Administrator has the discretion to undertake final inspections on ER projects as deemed appropriate.

(2) * * *

(3) Emergency repair meets the criteria for categorical exclusions pursuant to 23 CFR 771.117 and normally does not require any further NEPA approvals.

[FR Doc. 99–14290 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Review of Existing Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Review of regulations; request for comment.

SUMMARY: MMS has been performing annual reviews of its significant regulations and asking the public to participate in these reviews since 1994. The purpose of the reviews is to identify and eliminate regulations that are obsolete, ineffective, or burdensome. In addition, the reviews are meant to identify essential regulations that should be revised because they are either unclear, inefficient, or interfere with normal market conditions. As MMS moves towards performance based regulations, we are looking at ways to offer regulatory relief to industry for exceptional performance. We request your comments and suggestions with respect to which regulations could be more performance based and less prescriptive.

The purpose of this document is twofold. First, we want to provide the public an opportunity to comment on MMS regulations that should be eliminated or revised, or could be more performance based. Second, we are providing a status update of the actions MMS has taken on comments previously received from the public in response to documents published March 1, 1994, March 28, 1995, May 20, 1996, April 24, 1997, and June 12, 1998. We will only include in this document status updates on comments which have not been closed or implemented in the five previous status update documents listed above.

DATES: Written comments must be received by August 6, 1999.

ADDRESSES: Mail written comments to Department of the Interior; Minerals Management Service; Mail Stop 4230; 1849 C Street NW; Washington, DC 20240; Attention: Bettine Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

FOR FURTHER INFORMATION CONTACT: Bettine Montgomery, Policy and Management Improvement, telephone: (202) 208–3976; Fax: (202) 208–4891; and E-Mail: Elizabeth.Montgomery@mms.gov.

SUPPLEMENTARY INFORMATION: MMS began a review of its regulations in early 1994 under the directives contained in the President's Executive Order 12866. The Executive Order calls for periodic regulatory reviews to ensure that all significant regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the agency's objectives and Presidential priorities.

We invited the public to participate in the regulatory review. The invitation was sent out via different media, namely a **Federal Register** document dated March 1, 1994 (59 FR 9718); MMS and independent publications; and public speeches by MMS officials during that time.

MMS received approximately 40 public comments which were almost equally divided between its Royalty Management and Offshore Minerals Management Programs. We acknowledged the comments in a July 15, 1994 (59 FR 36108), document and set forth our planned actions to address the comments, along with an estimated timetable for these actions.

In the **Federal Register** notices published March 28, 1995 (60 FR 15888); May 20, 1996 (61 FR 25160); April 24, 1997 (62 FR 19961); and June 12, 1998 (63 FR 32166), MMS: (a) asked for further public comments on its regulations, and (b) provided a status update of actions it had taken on the major public comments received to date. We received 10 responses from the 1995 document, 5 responses from the 1996 document, 2 responses from the 1997 document, and 3 responses from the 1998 document. A number of the commentators expressed appreciation for our streamlining efforts and responsiveness to suggestions from our regulated customers.

This document updates our planned actions and related timetables on the major comments received to date. It also solicits additional comments from the public concerning regulations that should be either eliminated or revised, or could be more performance based. Since some of the public responses received in response to prior documents contained comments on very specific and detailed parts of the regulations, this document does not address every one received. For information on any comment submitted which is not addressed in this document, please contact Mrs. Montgomery at the number and location stated in the forward sections of this document.

MMS regulations are found at Title 30 in the Code of Federal Regulations. Parts 201 through 243 contain regulations applicable to MMS's Royalty Management Program; Parts 250 through 282 are applicable to MMS's Offshore Minerals Management; and Part 290 is applicable to Administrative Appeals.

Status Report

The following is a status report by program area on the comments MMS has received, to date, on its regulations.

A. Offshore Minerals Management (OMM) Program

OMM is currently reviewing the following 10 sections of OMM regulations:

1. Regulations Governing Conservation of Resources and Diligence (30 CFR 250, Subpart A)

Comments Received—(a) "Revise Determination of Well Producibility to make wireline testing and/or mud logging analysis optional * * *." (b) "* * * consider comments from the 11/30/95 MMS sponsored workshop to formulate policy for granting SOP (suspension of production) approvals based on host capacity delays, non-contiguous unitization, and market conditions/economic viability."

Action Taken or Planned—For (a) above, a proposed rule, "Postlease Operations," revising Subpart A was published on February 13, 1998 (63 FR 7335). This revision addressed the determination of well producibility, and the public was invited to comment on this and all areas of the proposed rule. The comment period closed on July 17, 1998. For (b) above, MMS did consider the comments from the November 30, 1995, workshop on granting suspensions of production when preparing the proposed rule. A final rule is being prepared for publication.

Timetable—We plan to publish the final rule by mid-summer of 1999.

2. Regulations Applicable to Directional Surveys (30 CFR 250.401, Subpart D)

Comments Received—"Revise directional survey requirements to allow a composite measurement-while-drilling

directional survey to be acceptable * * *."

Action Taken or Planned—We are rewriting the regulations governing Oil and Gas Drilling Operations, found in 30 CFR Part 250, Subpart D, in plain English. During this rewrite, we are making appropriate revisions to the regulations. Updating the requirements for directional survey requirements is one of the revisions planned for this rewrite.

Timetable—We plan to publish a Notice of Proposed Rulemaking in the fall of 1999.

3. Approval and Reporting Processes for Well-Completion Operations (30 CFR 250.513)

Comments Received—"* * * a recompletion operation requires that a Well Summary Report MMS–125 be filed within 30 days. Much of this data is repetitious of data previously submitted on the Sundry Notice MMS–124. The process could be changed to provide only data that has changed."

Action Taken or Planned—We don't plan to change these reporting requirements at this time. We're working on plans to implement electronic reporting, which will streamline the process and increase reporting efficiency.

Timetable—No plans to change reporting requirements.

4. Safety System Design and Installation (30 CFR 250.122)

Comments Received—"We believe that the (Safety and Environmental Management Program) SEMP/RP 75 Performance Measure process of alternative compliance for operators who voluntarily implement RP 75 and have "good" performance should allow those operators to periodically update drawings and other documents of production safety system installations and routine modifications instead of receiving required MMS approval of these documents before any modifications are performed (Comment #14 of our July 17, 1996 letter). This is one example of the alternative compliance process that we suggest."

Action Taken or Planned—This comment expresses an interest for regulatory relief in exchange for "compliance" with API RP75. This industry standard captures the essence of SEMP. On August 13, 1997, MMS published a **Federal Register** notice on SEMP (62 FR 43345). This notice publicly relayed our intent to continue collaborative efforts with the U.S. offshore oil and gas industry to promote the non-regulatory (i.e., voluntary) adoption of SEMP; it simultaneously relayed our intent to increasingly focus on operator performance in the field. We made this decision after extensive review of the industry's actions to adopt RP75. We have seen important strides made in the development of SEMP programs by the majority of OCS operators. We have, however, still not seen widespread implementation of these programs on offshore installations. In the most recent SEMP notice, we asked senior company officers to notify MMS when they had "fully" implemented SEMP at the field level. In our view, "fully" means that an operator has developed their SEMP plan and has implemented it at enough of their offshore installations to commence continuous improvement efforts (e.g., SEMP audits). At the end of April 1999, we had received such notifications from only eight OCS operators. This fact leads us to conclude that SEMP is not yet broadly implemented at the field level. Therefore, any requests for regulatory relief in exchange for SEMP implementation will need to be made to MMS on an ad hoc basis by operators who are prepared to demonstrate, and have us verify, both the extent of their SEMP implementation and their field-level performance.

We have begun the process of revising 30 CFR Part 250, Subpart H. The process changes suggested will be considered internally during preparation of the Notice of Proposed Rulemaking.

Timetable—We expect to publish for comment the Notice of Proposed Rulemaking for a revised 30 CFR Part 250, Subpart H, at the end of 1999.

5. Regulations Applicable to Production on the Outer Continental Shelf (30 CFR Part 250, Subpart H)

Comments Received—Production Safety System Testing and Records (30 CFR 250.124)—"OOC (Offshore Operators Committee) is very much interested in working with MMS on a research project beginning in 1997 to consider appropriate leak rate tolerances for critical safety devices (Comment #11 of our July 17, 1996 letter) as well as testing frequencies of accurate and reliable new generation safety devices (Comment #13 of our July 17, 1996 letter)."

Action Taken or Planned—MMS initiated a research project in September 1997 with Southwest Research Institute which investigated the question of leak rate tolerances for critical safety devices. Final results from the study should become available to the public in June 1999. We have also initiated the rulemaking process to revise all of Subpart H. As part of this process, we will discuss internally testing frequencies for safety devices. Any proposed changes to testing frequencies will appear in the Notice of Proposed Rulemaking for Subpart H.

Timetable—We expect the Notice of Proposed Rulemaking for a revised Subpart H to appear in the **Federal Register** for comment at the end of 1999.

6. Regulations Governing Safety and Pollution Prevention Equipment (SPPE) (30 CFR Part 250.126, Subpart H)

Comments Received—"Revise regulations governing Safety Valves to increase time between test and allowable leakage rates."

Action Taken or Planned—As discussed under Item No. 5, MMS contracted with Southwest Research Institute in September 1997 to study leakage rates for surface and subsurface safety valves.

Timetable—As noted previously, the final results of the Southwest Research Institute Study will be made available this June. Any changes to our regulations as a result of this study will be incorporated into the Notice of Proposed Rulemaking for 30 CFR 250, Subpart H, projected to be published for comment by the end of 1999.

7. Regulations Regarding Construction and Removal of Platforms and Structures (30 CFR 250, Subpart I)

Comments Received—(a) "Modify platform design wave return period calculation by placing a cap of 100 years on the field life calculation * * *." (b) "Adopt API RP2A (20th edition) Section 14, Surveys, in its entirety * * *." (c) "Revise site clearance requirements * * *." (d) "Revise requirements for placing protective domes over well stubs * * *," etc.

Action Taken or Planned—For (a), (c), and (d) above, the proceedings for the International Workshop on Offshore Lease Abandonment and Platform Disposal held in April 1996 were published in 1997. We will be considering the comments we received from the proceedings in drafting a proposed rule on decommissioning. For (b) above, Notice to Lessees (NTL 98–4N) was issued on March 4, 1998. It contains interim guidance for applying "Simplified Fatigue Analysis" Procedure from American Petroleum Institute (API) Recommended Practice 2A (RP2A), Planning, Designing, and Constructing Fixed Offshore Platforms, Nineteenth Edition (August 1, 1991), and Twentieth Edition (July 1, 1993), and its supplement 1 (February 1, 1997). When the Twenty-First Edition is published, we will be reviewing it to decide whether or not MMS will adopt it.

Timetable—For (a), (c), and (d) above, we plan to publish for comment a Notice of Proposed Rulemaking on decommissioning by December 1999. For (b) above, COMPLETED.

8. Regulations Applicable to Pipelines and Pipeline Rights-of-Way (30 CFR 250, Subpart J)

Comments Received—Revise regulations to avoid duplication of requirements between the Department of the Interior (DOI) and the Department of Transportation (DOT). The following comments were submitted on the proposed rule on regulating pipelines which was published October 2, 1997 (62 FR 51614): Commentators raised concerns about the Notice of Proposed Rulemaking involving technical issues affecting the applicability of the rule to producer-operated pipelines. The pipelines were either previously subject to DOT regulation under terms of the former 1976 Memorandum of Understanding between DOI and DOT, or cross into State waters without first connecting to a transporting operator's pipeline on the Outer Continental Shelf as described in the 1996 Memorandum of Understanding.

Action Taken or Planned—As stated in our previous Notice, "Reviewing Existing Regulations" (June 12, 1998), a Memorandum of Understanding on the pipeline issue between DOI and DOT became effective December 10, 1996, and was published in the **Federal Register** on February 14, 1997 (62 FR 7037). Since then, we have published a final rule on August 17, 1998 (63 FR 43876) clarifying regulatory jurisdiction of producer-operated pipelines that connect to transportation pipelines on the Outer Continental Shelf. We are now proceeding with a proposed rule that will clarify and resolve the technical issues concerning producer-operated pipelines that cross into State waters without first connecting to transportation pipelines on the Outer Continental Shelf.

Timetable—We plan to publish the Notice of Proposed Rulemaking incorporating comments on the earlier proposed rule by mid-summer 1999.

9. Shallow Hazards Requirements (NTL No. 83–3)

Comments Received—"* * * revise (Notice to Lessees) NTL No. 83–3 which relates to shallow hazards requirements. Industry has requested that MMS allow use of navigational positioning equipment in lieu of buoying pipelines."

Action Taken or Planned—Notice to Lessees (NTL) No. 83–3 has been superseded by NTL No. 98–20. In NTL No. 98–20, however, we did not address this comment on navigational positioning equipment. We are planning to revise NTL No. 98–20, and are in the process of developing guidance for navigational positioning equipment technology. In the planned revision of NTL No. 98–20, industry may still use buoying, but if they choose not to use buoying, the NTL will require the use of state-of-the-art navigational systems. This will assure the accuracy and safety of anchoring operations in the vicinity of pipelines.

Timetable—Ongoing.

10. Regulations Applicable to Production Safety System Training (30 CFR 250.214, Subpart O)

Comments Received—In response to a June 10, 1997, workshop on the development of a performance based training rule, MMS received a variety of comments from the oil and gas industry and MMS accredited training schools. These comments include: (a) "Continue to implement the current Subpart O training system." (b) "Develop a dual training system incorporating elements from both a performance based program and MMS's current system." (c) "Companies may neglect training under a performance based system." (d) "MMS should use caution when changing from the current prescriptive training system * * *." (e) "* * * use of a written MMS test may cause employees stress that would lead to poor performance on the exams." (f) "* * * hands-on simulator testing is an excellent and realistic means of gauging performance. * * * MMS may not have the expertise or equipment to properly conduct simulator tests." (g) "Hands-on testing should only be conducted onshore, not offshore." (h) "How will MMS react to a company that does not train its employees but has a good safety record * * *." (I) "This may not be the right time to move towards a performance system because of the increase in OCS activity and the shortage of trained and experienced workers."

Activity Taken or Planned—On April 20, 1999, we published for comment a proposed rule on a performance based training program which relies on industry to design its training programs (64 FR 19318). In this proposed rule, "Training of Lessee and Contractor Employees Engaged in Oil and Gas and Sulphur Operations in the Outer Continental Shelf," we propose to monitor the program through tests and audits. The comment period ends July 17, 1999. We have scheduled a public workshop on this proposed rule in Houston on June 10, 1999 (64 FR 23029).

Timetable—We plan to publish the final rule in the spring of the year 2000.

Overview of MMS/Offshore Minerals Management Regulatory Actions

The Offshore Minerals Management Program has scheduled an ambitious program in the coming year for rewriting current rules into Plain English and updating them to reflect changing conditions in the energy industry. We want to summarize some of the highlights of this rule rewriting effort.

- *Postlease Operations Safety* (30 CFR 250, Subpart A)—Final rule to be published by mid-summer of 1999. The rule includes various interrelated topics all dealing with postlease operations.
- *Coastal Zone Consistency Review of Exploration Plans and Development and Production Plans* (30 CFR Parts 250 and 204)—Final rule to be published by the end of 1999.
- *Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf—Bonus Payments with Bids* (30 CFR Part 256)—Final rule to be published by the fall of 1999. This rule allows MMS to require a specific payment method for 1/5 of the bonus payment due when we hold a sale to lease Federal offshore Outer Continental Shelf lands.
- *Producer-Operated Outer Continental Shelf Pipelines that Cross Directly into State Waters* (30 CFR 250)—Proposed rule to be published by summer of 1999. This rule proposes to implement a provision of the December 10, 1996, Memorandum of Understanding between the Departments of the Interior and Transportation regarding Outer Continental Shelf Pipelines.
- *Prospecting for Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf* (30 CFR Part 280)—Proposed rule to be published in the summer of 1999. This rule proposes to specify how to conduct Geological and Geophysical prospecting and research for minerals other than oil, gas, and sulphur in the Outer Continental Shelf under a permit.
- *End of Life Royalty Relief for Oil and Gas Leases on the Outer Continental Shelf* (30 CFR Part 203)—Proposed rule to be published by the end of 1999. This rule avoids continuance of royalty relief in the presence of noticeable improvement in lease economics and market conditions. The rule applies only to new applications and approvals, not to existing arrangements.
- *Exploration and Development and Production Plans* (30 CFR Part 250 Subpart B)—Proposed rule to be published by the end of 1999. The

rewrite for this proposed rule will include other plans such as Deep Water Operations Plan, Development Operations Coordination Document, and Conservation Information Documents.

• *Oil and Gas and Drilling Operations* (30 CFR Part 250 Subpart D)—Proposed rule to be published by the end of 1999. This rule proposes to restructure the requirements for oil and gas drilling operations on the Outer Continental Shelf, remove overly prescriptive requirements, and update requirements to reflect changes in drilling technology.

• *Abandonment of Wells* (30 CFR Part 250 Subpart G)—Proposed rule to be published by the end of 1999. This proposed rule on decommissioning platforms will consider the comments received on the proceedings from the International Workshop on Offshore Lease Abandonment and Platform disposal held in April 1996.

• *Oil and Gas Production Safety Systems* (30 CFR Part 250 Subpart H)—Proposed rule to be published by the spring of the year 2000. We will write this proposed rule in Plain English and update the requirements to reflect current practice in the offshore energy industry.

B. Royalty Management Program (RMP)

RMP is reviewing regulations in the following 14 subject areas:

1. Statute of Limitations and Record Retention

Comments Received—(a) "Statute of limitations is unclear." (b) "Establish a reciprocal 5-year statute of limitations from the date an obligation becomes due." (c) "Absence of a record retention program creates some confusion. Regulations should require record retention to coincide with the 5-year statute of limitations." (d) "the MMS is changing processes, developing implementation plans, and preparing regulatory changes," in doing so, the congressional intent of FOGRSFA should be followed to provide certainty and simplicity to lessees.

Action Taken or Planned—The Federal Oil and Gas Royalty Simplification and Fairness Act (FOGRSFA) was signed into law on August 13, 1996. FOGRSFA contains language to implement a 7-year statute of limitations for MMS processes. We are changing processes, developing implementation plans, and preparing regulatory changes to comply with the requirements of FOGRSFA.

Timetable—Ongoing.

2. Interest on Overpayments

Comment received—(a) "Interest accrual should be equitable between the agency and industry." (b) "the MMS should be mindful of the congressional intent of simplicity and certainty in promulgating any regulations to implement these provisions of FOGRSFA."

Action Taken or Planned—FOGRSFA provides for the payment of interest on overpayments for oil and gas leases on Federal lands. On March 31, 1997, we issued a Dear Payor letter about FOGRSFA's provisions involving interest issues. We issued another Dear Payor letter on October 1, 1997, explaining interest calculations and interest reporting requirements. MMS is designing system changes to implement the requirements of FOGRSFA and preparing regulations to be published.

Timetable—We will publish for comment in late 1999, or early next year, a Notice of Proposed Rulemaking providing for interest on overpayments and underpayments.

3. Interest Assessments

Comments Received—(a) "A de minimis provision should be established for the assessment of interest." (b) "* * * MMS should enhance their existing interest assessment system to allow for the offsetting of prior period adjustments made on the MMS Form 2014 before calculating applicable interest."

Action Taken or Planned—FOGRSFA not only provides for the payment of interest on overpayments for oil and gas leases on Federal lands, but allows industry to calculate the correct interest assessment. Also, FOGRSFA allows interest that has accrued on overpayments to be applied to reduce underpayments. We have included billing thresholds in our interest system to prevent bills for de minimis amounts. In May 1997, we started sending interest statements instead of interest bills, and the statements contain totals for interest that MMS owes and for interest owed to MMS. MMS is implementing system changes to conform with the requirements of FOGRSFA and preparing regulations.

Timetable—As noted under Item 2, Timetable, we plan to publish a Notice of Proposed Rulemaking for comment on payment of interest late in 1999 or early next year.

4. Gas Valuation

Comments received—(a) "Define gross proceeds more equitably and clearly in this ever changing gas marketing environment." (b) "It is important that the Federal Gas Valuation Rule final rule not discriminate against producers which are affiliated with marketing companies and are party to non-arms-length contracts." (c) "* * * commends the MMS on their use of negotiated rulemaking process to address the valuation of gas. Rule should result in administrative cost savings for all parties." (d) "If the Takes vs. Entitlements policy stays in effect, MMS should strictly enforce reporting on actual quantities taken for all industry participants." (e) "Eliminate Transportation and Processing Allowance Forms for Indians." (f) "MMS, States, and industry * * * devoted considerable time and expense during the REGNEG process and * * * is disappointed that the strong commitment of all the respective parties did not result in a valuation methodology that MMS can endorse."

Action Taken or Planned—For (a) above, on December 16, 1997, MMS published a final rule clarifying what deductions may be taken from gross proceeds for the costs of transportation under Federal Energy Regulatory Commission (FERC) Order No. 636. The rule was effective February 1, 1998 (63 FR 65753). For (a), (b), (c) and (f) above, the Federal Gas Valuation proposed rule was published in the **Federal Register** on November 6, 1995 (60 FR 56007), and the comment period closed on February 5, 1996. In light of the comments received from 44 entities, on May 21, 1996, MMS reopened the public comment period and asked for public comment on five options for proceeding with further rulemaking (61 FR 25241). The reopened public comment period closed August 19, 1996. MMS reconvened the Federal Gas Valuation Negotiated Rulemaking Committee on June 12–14, 1996, and asked the Committee to provide input into the five options.

MMS performed a cost benefit analysis on three viable options for proceeding with gas valuation regulations. Given the results of the cost benefit analysis ($20 million annual loss in royalties) and changes occurring in the gas market, MMS withdrew the proposed rulemaking on April 22, 1997 (62 FR 19536).

For (d) above, FOGRSFA contains language requiring "takes" reporting for stand alone leases and agreements containing 100 percent Federal leases. FOGRSFA also requires "entitlements" reporting for so-called mixed agreements (agreements containing Federal, State, Indian, and/or fee leases) with an exception to use "takes" reporting for marginal properties. We are changing processes, developing implementation plans, and preparing regulatory changes to comply with the requirements of FOGRSFA.

For (e) above, a proposed rule developed by the Indian Gas Valuation Negotiated Rulemaking Committee was published on September 23, 1996 (61 FR 49894). The Indian Valuation Negotiated Rulemaking Committee was reconvened on March 26, 1997. This rule addressed the valuation for royalty purposes of natural gas produced from Indian leases. The rule proposes to reduce substantially the transportation and allowance reporting forms for gas from Indian leases. The proposed rule would add a methodology to calculate the major portion value and an alternative methodology for dual accounting as required by Indian lease terms. The proposed rulemaking would simplify and add certainty to the valuation of production from Indian leases.

Timetable—We plan to publish for comment a Notice of Proposed Rulemaking on takes vs. entitlements in 1999. Also in 1999, we plan to publish a final rule on Valuation of Gas From Indian Leases.

5. Reporting Procedures and Threshold

Comments Received—(a) "Eliminate or streamline MMS Form 2014 reporting."

(b) "Report prior period adjustments on a "net" basis."

(c) "Change estimated payment from lease level to payor level."

(d) "Assess interest at the payor level—for the Indian leases on the basis of each Indian Tribe."

(e) "Eliminate Payor Information Form (PIF) Filings. This is an unnecessary and costly reporting requirement."

(f) "MMS should modify the regulations and system tolerances/ thresholds so that only those exceptions that are cost beneficial for MMS to pursue are generated."

(g) "Set thresholds or tolerances for regulations to save costs to both MMS and industry. (Example: Invoices are sent for less than $1.00.)"

(h) "MMS should not implement regulations until its systems are programmed to handle the new regulations."

(i) "* * * the prompt implementation of the recommendations of the Royalty Policy Committee Audit and Royalty Reporting and Production Accounting Subcommittees will achieve those simplification and streamlining goals * * *."

(j) The RMP Reengineering Team has recommended 32 reporting changes to reduce and simplify reporting and reduce administrative costs for both MMS and lessees. MMS should proceed diligently to implement these changes.

(k) We recommend that MMS immediately implement at least a one dollar threshold or higher thresholds which would alleviate tremendous burden and cost to the government and lessees.

Action Taken or Planned—Building upon the Royalty Policy Committee's earlier study, the RMP Reengineering Team (Team) analyzed current information reporting requirements to determine the data necessary for future RMP processes. The Team identified opportunities for easing reporting burden, avoiding data duplication, decreasing error rates, and increasing processing efficiency. The Team developed 32 reporting changes that are in their report titled "Preliminary Design Concepts of the RMP Reengineering Team." If these changes are implemented, they will significantly reduce the volume of lines reported and processed, minimize errors and related error correction workload, simplify reporting, and lower costs for both reporters and RMP. The Team's changes generally incorporate or exceed the Royalty Policy Committee's recommendations.

On February 23, 1999 (64 FR 8844), we published a notice of information collection solicitation and public meetings for changes to the royalty and production accounting reports. At the public meetings, which were held in March, we consulted with industry representatives on the proposed reporting changes.

In addition to our reengineering work, we continue to pursue shorter range reporting improvements not requiring significant system changes. For example, the Payor Information Form MMS–4025 is being streamlined to eliminate numerous data fields. Also, many production reporting changes are being implemented where redundant or unnecessary data collection is identified. We have revised our billing thresholds to $100 for bills due on Federal leases and $25 for bills due on Indian leases.

On April 14, 1998 (63 FR 17133), we published a proposed rule requesting that all reports be submitted electronically by December 31, 1998. Electronic submission significantly reduces the amount of time necessary for a company to complete the monthly reports and MMS processing time, since no manual entry is required.

Timetable—Ongoing.

6. Refunds Due to Industry Which Are Controlled by Section 10 of the Outer Continental Shelf Lands Act

Comments Received—(a) "Section 10 refund requirements should be eliminated. The refund process used for onshore properties should be established for offshore properties." (b) * * * we would urge the MMS to facilitate elimination of the Section 10 recoupment procedures in its entirety. The current practice is administratively burdensome and not cost effective for the industry or MMS." (c) "Eliminate documentation requirements for refund requests over $250M (million); and/or increase this threshold to $500M; raise the refund request limit to $5M. Exempt pure accounting adjustments for items such as production date adjustments and incorrect AID (Accounting Identification) numbers; exempt unit revisions because these revisions are often made more than 2 years after the date of production; establish a time limit on MMS for review of a refund request to expedite the process; and overpayments on OCS properties should be allowed to be offset against any OCS underpayment."

Action Taken or Planned—FOGRSFA repeals the Section 10 refund procedures of the OCS Lands Act. On November 25, 1996, we mailed a Dear Payor letter with guidelines on refund procedures. We are presently developing a proposed rule implementing the new refund procedures.

Timetable—Ongoing.

7. Electronic Data Exchange

Comments Received—(a) "* * * MMS (should) continue their ongoing effort to exchange data by electronic means rather than hard copy thereby enabling the industry to adjust the data elements to integrate with each company's systems." (b) "* * * is looking forward to working with MMS to develop an electronic reporting and funds transfer system that is both cost effective and efficient for all parties."

Action Taken or Planned—We continue to encourage the exchange of data electronically. Our Reporter and Payor Training sessions stress the benefits of electronic reporting and provide reporters and payors with options for reporting by electronic data interchange, diskette, or magnetic tape. On April 22, 1997 (62 FR 19497), we published a final rule specifying how payments are made for mineral royalties, rentals, and bonuses that requires all payments to be made electronically to the extent it is cost effective and practical. We also published on April 8, 1998 (63 FR 17133), a proposed rule to require reporters to submit royalty and production reports electronically. Another way we publicize electronic

reporting is on the MMS/Royalty Management Program Internet website.

Timetable—Reporter and Payor Training sessions are planned for the summer of 1999. We plan to publish a final rule on Electronic Reporting in 1999.

8. Parameters for Identifying Improper MMS Form 2014 Adjustments

Comments Received—"The MMS currently inquires as to any variances between any Form 2014 adjustments and its original Form 2014 entry that exceed $1.00, which is an insignificant amount. It is suggested that the MMS's review should be relevant to the amount of the adjustment such as a given percentage."

Action Taken or Planned—At this time, MMS does not plan to make changes in this procedure. We need to ensure accuracy and integrity in the accounting systems, and retain precise records for the auditors. In our reengineering effort, we are looking at streamlined reporting for short- and long-term benefits for MMS and industry.

Timetable—Ongoing.

9. Publish Final Rules Expeditiously

Comments Received—"* * * primary recommendation is the expeditious completion and publication of pending final rules, for example, the proposed rules on administrative offset and limitations on credit adjustments, and the proposed rule on payor liability. * * * Certainly, publication of the final federal (and Indian) gas valuation rule should be facilitated to the maximum extent possible."

Action Taken or Planned—We are in the process of finalizing the Indian gas valuation rule. As for the final Federal gas valuation rule, on April 22, 1997, we published a Notice in the **Federal Register** (62 FR 19536) that withdrew the proposed rule because of changes occurring in the gas market.

New language in FOGRSFA will cause a number of changes in the Payor Liability rule and the Administrative Offset and Limitations on Credit Adjustments rule. We are working to incorporate the effects of FOGRSFA in these rules.

Timetable—Ongoing.

10. The Appeals Process

Comments Received—"Current appeals process is too long."

Action Taken or Planned—FOGRSFA imposed a 33-month time frame for the Department of the Interior to decide appeals involving royalties on Federal oil and gas leases. This deadline does not apply to appeals on royalties involving Indian leases and Federal leases for minerals other than oil and gas.

On October 28, 1996 (61 FR 55607), MMS published a proposed rule establishing a 16-month deadline for MMS to decide all appeals to the Director, including Indian leases and appeals for royalties on minerals other than oil and gas. After MMS' decision, the appellants can further appeal to the Interior Board of Land Appeals. The comment period for this proposed rule ended on March 27, 1997.

The Royalty Policy Committee, a Federal Advisory Committee reporting to the Secretary, established a subcommittee of State, Indian, and industry representatives to study the appeals process. The Royalty Policy Committee reported its recommendations to the Secretary in March 1997, and the Secretary accepted the recommendations, with minor changes, in September 1997. The Department published a proposed rule on January 12, 1999 (64 FR 1930), to implement these recommendations.

Timetable—We published a final rule on May 13, 1999 (64 FR 26240), to implement the provisions of FOGRSFA related to the 33-month time limit to decide oil and gas appeals on Federal leases. We are currently reviewing comments on other parts of the proposed rule.

11. Valuation of Coal From Federal Leases

Comments Received—(a) "* * * amending this section to allow the use of the lessee's arm's length contracts to support the value for a nonarm's-length contract would make this section more effective and also eliminate the need to use third-party proprietary information in many instances." (b) "* * * the use of the lessee's arm's-length contracts is the best evidence of the comparable value of any nonarm's-length sales by the lessee."

Action Taken or Planned—The Royalty Policy Committee's Coal Subcommittee is reviewing issues related to coal valuation, and we will use the Royalty Policy Committee's recommendations to make improvements to the coal royalty valuation and reporting procedures and associated regulations.

Timetable—Ongoing.

12. Royalty-in-Kind Alternative

Comments Received—"urges the MMS to pursue implementation of a RIK program as a cost effective alternative."

Action Taken or Planned—In 1997 MMS conducted a Feasibility Study which examined a series of Royalty-in-Kind (RIK) options, both offshore and onshore. Under RIK, the government accepts its royalty share in the form of production rather than in value (cash). Based on the Study's recommendations, we are presently conducting three pilot projects to study the concept.

Two of the pilot projects are underway. Pilot I is in the State of Wyoming where Federal and State crude oil is being taken in kind and sold on the open market. Pilot II uses Federal leases in the Gulf of Mexico, Texas 8(g) zone (Federal offshore leases adjacent to State waters), where natural gas is being taken in kind and part of it sold to the General Services Administration (GSA) under an interagency agreement for use by Federal agencies. The rest of the gas is being marketed in partnership with the Texas General Land office through a Cooperative Agreement with the State of Texas. Both these pilots will last a minimum of 2 years. Pilot III is scheduled to begin this fall and will take RIK gas from offshore Federal leases in the Gulf of Mexico. This Pilot will involve the largest volume of the three pilots. We expect to sell up to 800 million cubic feet of gas per day, or one third of the Federal royalty share of production in the Gulf. As in Pilot II, a portion of this gas will be transferred to GSA, and the rest sold competitively on the open market.

We will analyze the results of these three pilots to determine if, and under what circumstances, the RIK option can reduce administrative costs for government and industry while producing at least as much revenue as our current method of collecting royalties in value.

Timetable—Ongoing.

13. Lessee/Designee

Comments Received—MMS published an interim final rule on August 5, 1997 (62 FR 42062), to implement the designation of royalty payment responsibility provision of FOGRSFA. Generally, we support the need for lessees to submit designations pursuant to FOGRSFA, however they take issue with MMS's overall approach to implementing these very important provisions of FOGRSFA. Specifically, they object to the need for MMS to collect some of the information sought, the level of detailed information required by this rule, the burdensomeness of information required, and the ability of MMS and the Bureau of Land Management (BLM) to utilize information that these bureaus already have and maintain. Also, they take issue with MMS's authority to collect the information required under the rule from designees (payors).

Action Taken or Planned—When the payor remits royalties on behalf of the lessee, FOGRSFA requires that the lessee designate the paying party as their designee for each lease. The interim final rule published on August 5, 1997, implements the requirements of FOGRSFA. We have worked with BLM to set up a process to identify operating rights owners and changes to operating rights ownership.

Timetable—Ongoing.

14. Other MMS/Royalty Management Program Regulatory Actions

Comments Received—(a) "In order to craft a reasonable, fair, and proper (oil valuation) rule, it is imperative that MMS publicly address all critical issues prior to the issuance of any final rule so that affected persons can participate meaningfully in the rulemaking process."

(b) "Congress pushed for delegation of royalty management functions to states as a means of streamlining and simplifying the process of collection and payment of federal royalties. Despite Congress' clear intent however, the final regulations published on August 12, 1997 and the standards for delegation published on September 8, 1997 in no way attempt to achieve that purpose."

Action Taken or Planned—The regulations for the Delegation of Royalty Management Functions to States were developed in consultation with State government representatives and industry. The final rule was published on August 12, 1997 (62 FR 43076), and included responses to comments we received on the proposed rule. On February 10, 1999 (64 FR 6586), we published a proposed rule that would allow States which choose to assume duties to do so for less than all of the Federal mineral leases within the State or leases offshore of the State, subject to section 8(g), of the Outer Continental Shelf Lands Act. We plan to issue a final rule in 1999.

On January 24, 1997, we published a proposed rule on Valuation of Oil From Federal Leases (62 FR 3742), and on February 12, 1998, we published a proposed rule on Valuation of Oil From Indian Leases (63 FR 7089). We've held numerous public meetings regarding the proposed oil valuation rules, and in response to the many comments received in the meetings and through the mail, we published the following in the **Federal Register** on the proposed rule, Valuation of Oil on Federal Leases:

- Supplementary Proposed Rule (July 3, 1997–62 FR 36030);
- Reopened Public Comment Period and Offered Alternatives (September 22, 1997–62 FR 49460);
- Supplementary Proposed Rule (February 6, 1998–63 FR 6113);
- Supplementary Proposed Rule (July 16, 1998–63 FR 38355); and
- Reopened Comment Period and Offered Three Workshops in Houston, TX; Albuquerque, NM; and Washington, DC (March 12, 1999–64 FR 12267).

We are also preparing a Supplementary Proposed Rule for the Valuation of Oil From Indian Leases, and plan to publish it in 1999.

Conclusion

We invite you to comment on our existing regulations and also the actions we have taken in response to comments and enacted legislation. And, we invite you to stay further informed on many of the topics discussed in this status report by visiting the MMS Internet Website at www.mms.gov.

Dated: May 28, 1999.

Lucy Querques Denett,

Director, Minerals Management Service.

[FR Doc. 99–14346 Filed 6–4–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–99–019]

RIN 2115–AE46

Special Local Regulations; Charleston Harbor Grand Prix, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard amends its earlier notice that proposed to establish temporary special local regulations in the coastal waters off Isle of Palms, SC, for the Charleston Harbor Grand Prix. The Coast Guard recently received an amended permit application that moves the regulated area an additional mile offshore. The two day race will occur on August 14 and 15, 1999, between the hours of 12 p.m. and 3 p.m. each day, Eastern Daylight Time (EDT), in an offshore area northeast of Breach Inlet. The regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before July 9, 1999.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to the Operations Office at the same address between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (843) 724–7628.

FOR FURTHER INFORMATION CONTACT: LTJG S. S. Brisco, (843) 734–7628, Project Manager, Coast Guard Group Charleston, SC.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 10, 1999, the Coast Guard published a Notice of Proposed Rulemaking (64 FR 24980) to establish temporary special local regulations for the Charleston Harbor Grand Prix to be held on August 14 and 15, 1999. This NPRM had a 60-day comment period. As of May 26, 1999, the Coast Guard received eight (08) comments on the NPRM. The Coast Guard also forwarded several letters it received from the public about the notice of proposed rulemaking to the sponsor. In response to these letters and comments, the event sponsor amended the marine permit application to move the event further offshore.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD07–99–019) and the specific section of this proposal to which each comment applies, and give a reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in the view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at the time and place announced by a notice in the **Federal Register**.

Background and Purpose

As a result of comments received on the initial NPRM, the sponsor of the race amended the marine event permit application to move the race course, and therefore this regulated area, one mile further offshore. The proposed amended regulations are needed to provide for the safety of life during the Charleston Harbor Grand Prix by promoting safe

navigation in the offshore area northeast of Breach Inlet immediately before, during, and after the races by controlling the traffic entering, exiting, and transiting within the regulated area. The anticipated concentration of spectator vessels and participating vessels associated with the race poses a safety concern, which is addressed in these proposed special local regulations.

The amended regulations will encompass an area to the northeast of Breach Inlet with four (4) conspicuous markers indicating the corners of the regulated area. These proposed regulations would prohibit the entry or movement of spectator vessels and other non-participating vessel traffic within the regulated area on August 14 and 15, 1999, between 11 a.m. and 4 p.m. each day or at the discretion of the Coast Guard Patrol Commander.

Discussion of Comments and Changes

The Coast Guard received eight comments in response to the initial NPRM. Four comments objected to the temporary regulations because of the potential traffic congestion, noise pollution, possible disturbance of habitat nestings and the endangerment of marine life in the area. Three comments identified potential environmental concerns in the initial race area. One comment supported the race. In response to these comments, the sponsor moved the race area an additional mile offshore to alleviate any negative impacts.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation will only be in effect for four hours each day in a limited area off Charleston Harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant effect upon a substantial number of small entities because this regulation will only be in effect in a limited area off Charleston Harbor for five (5) hours on two separate days.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard is considering the environmental impact of this proposed rule and has determined that these regulations may be exempted from further environmental documentation under Figure 2–1, paragraph 34(h) of COMDTINST M16475.1C. An Environmental Analysis Checklist and Categorical Exclusion Determination will be completed during the comment period.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.35T–07–019 is added to read as follows:

§ 100.35T–07–019 Charleston Harbor Grand Prix; Charleston, SC.

(a) *Regulated area.* The regulated area includes all waters in the Atlantic Ocean north of Charleston Harbor entrance lighted buoy 7 (LLNR 2405) bounded by the following 4 points:
(1) 32–46.129N, 079–48.282W;
(2) 32–44.972N, 079–47.335W;
(3) 32–46.886N, 079–41.991W;
(4) 32–48.003N, 079–42.994W;
All coordinates reference Datum NAD: 83. Four (4) conspicuous markers will indicate the corners of the regulated area.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Charleston, South Carolina.

(c) *Special local regulations:* (1) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard Patrol Commander may delay, modify, or cancel the race as conditions or circumstances require.

(3) Spectator and other non-participating vessels may watch the participants on the seaward side of the racecourse maintaining a minimum distance of 500 yards behind the markers. Upon the completion of the last race all vessels may resume normal operations.

(d) *Dates.* These regulations become effective at 11 a.m. and terminate at 3 p.m. EDT each day on August 14 and 15, 1999.

Dated: May 28, 1999.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 99–14288 Filed 6–4–99; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–060]

RIN 2115–AA97

Safety Zone: Perth Amboy Fireworks, Raritan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the

Raritan River for the Perth Amboy, NJ fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Raritan River.

DATES: Comments must be received on or before July 7, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–060), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–060) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a fireworks display in the Raritan River. This proposed regulation establishes a temporary safety zone in all waters of the Raritan River within a 360-yard radius of the fireworks barge in approximate position 40°29′49″N 074°16′25″W (NAD 1983), approximately 575 yards northwest of Raritan River Cutoff Channel Buoy 6 (LLNR 36605). The proposed safety zone is effective from 8:50 p.m. until 10:20 p.m. on July 10, 1999. If the event is cancelled due to inclement weather, then this event will be held from 8:50 p.m. until 10:20 p.m. on July 11, 1999. The proposed safety zone prevents vessels from transiting a portion of Federal Anchorage 45–A and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will be able to anchor in the unaffected portions of Federal Anchorage 45–A surrounding the barge site. Federal Anchorages 44 and 45, to the east, and Federal Anchorage 47, to the south, are also available for vessel use. Marine traffic will still be able to transit through South Amboy Reach and Raritan River Cutoff during the event as the safety zone does not extend into these navigable waters. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. The Coast Guard expects to receive no comments on this NPRM due to the limited duration of the event and the fact that it should not interfere with vessel transits.

Discussion of Proposed Rule

The proposed safety zone is for the Perth Amboy, NJ fireworks display held in the Raritan River. This event will be held on July 10, 1999. If the event is cancelled due to inclement weather, then the event will be held on July 11, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may safely anchor to the east, south, and west of the zone, that vessels may still transit through South Amboy Reach and the Raritan River Cutoff during the event, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule bill have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient

implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any state, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal Government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–060 to read as follows:

§ 165.T01–060 Safety Zone: Perth Amboy Fireworks, Raritan River, New Jersey.

(a) *Location.* The following area is a safety zone: All waters of the Raritan River within a 360-yard radius of the fireworks barge in approximate position 40°29′49″N 074°16′25″W (NAD 1983), approximately 575 yards northwest of Raritan River Cutoff Channel Buoy 6 (LLNR) 36605).

(b) *Effective period.* This section is effective from 8:50 p.m. until 10:20 p.m. on July 10, 1999. If the event is cancelled due to inclement weather, then this section is effective from 8:50 p.m. until 10:20 p.m. on July 11, 1999.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 21, 1999.

R. E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–14286 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–15–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AA81

Agency Records Centers; public meeting and extension of comment period.

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule; notice of public meeting; extension of comment period.

SUMMARY: NARA published a notice of proposed rulemaking to update the standards that records center storage facilities must meet to store Federal records in the April 30, 1999, **Federal Register** beginning at page 23504. We will hold a public meeting for all interested parties on June 18, 1999, to answer questions about the proposed rule. We will take notes of the discussion, and place the notes in the record for this rule making.

We are also extending the comment period by one week to ensure that parties attending the meeting have sufficient time after the meeting to submit their comments.

DATES: The public meeting will be held on June 18, 1999, from 10 a.m. to noon.

Comments must be received by July 7, 1999.

ADDRESSES: The public meeting will be held in the Auditorium of the National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

Comments must be sent to Regulation Comment Desk (NPOL), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Comments may be faxed to 301–713–7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at (301) 713–7360, ext. 226.

Dated: June 2, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–14381 Filed 6–4–99; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–227–151; FRL–6355–9]

Approval and Promulgation of State Implementation Plans; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is concluding the Public Consultative Process (PCP) on mobile source emission reductions needed for attainment of the 1-hour ozone national ambient air quality standard (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is proposing to approve the State's update to the state implementation plan (SIP) for ozone in the South Coast to reflect the outcome of this process and the implementation status of some of the control measures. EPA is also proposing to approve the State's joint commitment with EPA to issue regulations to eliminate the remaining SIP shortfall as determined appropriate for each agency. EPA is proposing these actions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for NAAQS, and plan requirements for nonattainment areas.

DATES: Written comments must be received by June 21, 1999. On June 9, 1999, from 1 pm to 4 pm, EPA will hold a public meeting in Los Angeles to discuss the Public Consultative Process, continuing Federal and State mobile source responsibilities and commitments, and future revisions to the ozone SIP.

ADDRESSES: Comments should be sent to Dave Jesson, Air Planning Office (AIR–2), Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or jesson.david@epa.gov.

The public meeting to discuss this proposed action will be held in the Roybal Conference Room (Room 286) of the Roybal Federal Building, 255 East Temple Street, Los Angeles, CA.

The rulemaking docket for this notice is available for public inspection at EPA's Region IX office during normal business hours. A reasonable fee may be charged for copying parts of the docket.

Electronic availability: This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09.

Copies of related materials are also available for inspection at the following location: California Air Resources Board, 2020 L Street, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Dave Jesson (415) 744–1288 or jesson.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1994 Ozone SIP

This proposed action relates to the 1994 ozone SIP for the South Coast Air Basin ("South Coast") in California.[1] In 1998, the South Coast recorded 1-hour levels at or above the NAAQS for ozone on 62 days, with a peak concentration of 0.244 parts per million (ppm), twice the NAAQS.[2] The area continues to have by far the worst smog problem in the country.[3]

EPA approved the 1994 ozone SIP for the South Coast on January 8, 1997 (62 FR 1150–1187).[4] In addition to aggressive State and local control measures, the State's plan included seven "Federal measures," which the State believed EPA should adopt to control national mobile sources. The State attributed to these measures the following emission reductions in the South Coast in the year 2010: 109 tons per day (tpd) of NO_X and 47 tpd of VOC.[5] CARB calculated very much smaller emission reductions from the "Federal measures" in other ozone nonattainment areas of the State (Ventura, Sacramento, Southeast Desert, San Joaquin, and San Diego).

EPA did not agree that states have the authority to make these SIP assignments, but the Agency agreed that the Federal government should voluntarily help achieve emission reductions from sources beyond the regulatory authority of the State, in view of the unique reduction needs of the South Coast, the only ozone nonattainment area classified as "extreme" under the 1990 CAA Amendments. With the assistance of the State, EPA established a Public Consultative Process (PCP) to identify future mobile source strategies to provide the remaining reductions needed for attainment.

Both EPA and the California Air Resources Board (CARB) made enforceable commitments to adopt additional controls to achieve emission reductions determined to be appropriate at the end of the PCP. 40 CFR 52.238 and 40 CFR 52.220(c)(235)(I)(A)(*1*). EPA's final approval of the 1994 ozone SIP for the South Coast included a projected schedule for the PCP, with an initial meeting in July 1996 and a final meeting in June 1997 (62 FR 1186).

B. Accomplishments in Reducing Emissions From Mobile Sources

1. Benefits of More Stringent Mobile Source Controls

After California adopted and submitted the South Coast 1994 ozone SIP, CARB and EPA have undertaken stringent new controls for most mobile source categories. It is important to note that these new mobile source measures will bring multiple benefits not only to the South Coast, but also to other areas of California and the nation.

First, the controls contribute emission reductions needed for attainment of the Federal health-based NAAQS for ozone. Despite significant progress over the past four decades, the South Coast continues to have by far the worst ozone problem in the country. South Coast's challenge in attaining the ozone NAAQS derives from the area's meteorology and topography, on the one hand, and the area's large population and industrial/commercial activity, on the other. As a result, attainment of the ozone NAAQS in the South Coast requires stringent

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[1] For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[2] The 1-hour NAAQS for ozone is 0.12 ppm. Ground-level ozone is formed when nitrogen oxides (NO_X), volatile organic compounds (VOCs), and oxygen react in the presence of sunlight, generally at elevated temperatures. Strategies for reducing smog typically require reductions in both VOC and NO_X emissions.

Ozone causes serious health problems by damaging lung tissue and sensitizing the lungs to other irritants. When inhaled, even at very low levels, ozone can cause acute respiratory problems; aggravate asthma; cause temporary decreases in lung capacity of 15 to 20 percent in healthy adults, cause inflammation of lung tissue; lead to hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses, including bronchitis and pneumonia. Children are most at risk from exposure to ozone because they breathe more air per pound of body weight than adults; their respiratory systems are still developing and thus more susceptible to environmental threats; and children exercise outdoors more than adults in the high-ozone months of summer.

Direct exposure to NO_X and VOCs also has adverse public health consequences. Exposure to elevated NO_X concentrations can reduce breathing efficiency, increase lung and airway irritation, and exacerbate symptoms of respiratory illness, lung congestion, wheeze, and increased bronchitis in children. VOCs include many toxic compounds (such as (]benzene), which can cause respiratory, immunological, neurological, reproductive, developmental, and mutagenic problems. Some VOCs have been identified as probable or known human carcinogens.

[3] According to preliminary information from EPA's AIRS database, the areas with the highest peak 1-hour ozone concentration for 1998 are: South Coast .244 ppm, Houston .230 ppm, Southeast Desert (the area immediately to the east of the South Coast) .202 ppm, Ventura County .174 ppm, San Joaquin Valley .169 ppm, San Diego County .164 ppm.

[4] The 1994 ozone SIP for the South Coast consists of two plans: *California's 1994 State Implementation Plan for Ozone*, which deals with the State's control measures, and the South Coast Air Quality Management District's *1994 Air Quality Management Plan*, which includes all of the local control measures and other plan elements. The State's plan is available electronically at the California Air Resources Board's web site at *www.arb.ca.gov/sip/sip.htm*.

[5] The South Coast plan sometimes substitutes the term Reactive Organic Gases (ROG) for VOC. These terms are essentially synonymous and are used interchangeably throughout this document.

emissions reductions from every pollution source.

Second, the new mobile source standards also contribute reductions of particulate matter (PM, or soot), both by reducing (in many cases) emissions of primary particulate and by reducing gaseous PM precursors. In the South Coast, NO_X is one of the largest sources of PM, and emissions of VOC and sulfur oxides also contribute to formation of PM. The South Coast has one of the worst PM problems of urban areas in the country.

Third, mobile sources are a contributor to urban air toxics levels. For example, a number of adverse health effects have been associated with exposure to diesel exhaust levels found in the ambient air.

Fourth, the new mobile source controls discussed below help achieve parity of control, since many of the mobile source categories were previously uncontrolled or undercontrolled compared to requirements imposed on stationary industrial and commercial sources of pollution.

2. Overview of Federal Measures

The discussion below gives a brief overview of the State's "assignments" to EPA, followed by a description of promulgated or pending Federal controls.[6] Additional information on EPA's national controls may be found at EPA's mobile source homepage (www.epa.gov/omswww). More details on California's own mobile source programs may be found in section I.E.1, and at CARB's homepage (www.arb.ca.gov/msprog).

a. Heavy-Duty Onroad Vehicles. Measure M6 of California's 1994 ozone SIP calls for adoption by EPA of a national standard for heavy-duty diesel vehicles. CARB assumed that the NO_X standard would be 2.0 grams per brake horsepower-hour (g/bhp-hr) and would be implemented starting in 2004.

Both EPA and CARB have issued a 2.4 g/bhp–hr combined emission standard for NO_X and nonmethane hydrocarbons (NMHC) for model year 2004 and later heavy-duty diesel engines used in trucks and buses.[7] The new standards represent a 50 percent reduction in NO_X from the 1998 and later model year NO_X standard. EPA and CARB settlement agreements with manufacturers of heavy-duty vehicles and engines require early introduction of the 2004 engines beginning in October 2002. This settlement is discussed in section I.B.2.h, below. Finally, for the remaining heavy-duty on-road categories (i.e., the otto-cycle engines), EPA currently intends to propose within the next 60 days a stringent NO_X plus NMHC emission standard effective in the 2004 model year. EPA expects to take final action on this proposal by the end of 1999.

b. Diesel Nonroad Engines. California's Measure M10 calls for adoption by EPA of a national standard for off-road diesel equipment. CARB proposed that the NO_X emission standard would be 2.5 g/bhp-hr and would be implemented starting in 2005.

From 1994 through 1998, EPA has issued standards for most categories of nonroad diesel engines, covering diverse equipment applications including farm tractors, bulldozers, road graders, excavators, forklifts, logging equipment, and portable generators. The standards are progressively phased in over the period 1996 through 2008, depending on engine type and size and the stringency of the standard. The new controls will reduce emissions by as much as two-thirds.

c. Industrial Equipment. Measure M12 provides for adoption by EPA of a national standard for off-road equipment rated between 25 and 175 horsepower (hp), and fueled with gasoline or liquid petroleum gas (LPG). CARB proposed that the standard would reduce NO_X emissions by at least 50 percent and hydrocarbon (HC) emissions by 75 percent.

In October 1998, CARB adopted new emission standards for spark-ignition engines above 25 hp. These engines are used in forklifts, airport ground service equipment, sweepers, generators, compressors, and other industrial applications, as well as recreational equipment, such as go-carts, all-terrain vehicles, and snowmobiles. The CARB controls will reduce NO_X and HC emissions by over 65 percent from all spark-ignition engines in 2010.

On February 8, 1999, EPA issued a proposed finding under CAA section 213(a) that large spark-ignition engines cause or contribute to air pollution. If EPA finalizes this determination, EPA must propose regulations for such engines by September 28, 2000, and EPA must issue final regulations by September 28, 2001, in order to comply with a consent decree.[8] While it is not possible to estimate with precision the emission reduction benefits from this rulemaking, the standards might be comparable to CARB's, although the compliance schedules may be different.

d. Marine Vessels. Measure M13 assumes adoption of national and international standards that will reduce NO_X emissions from new ocean-going marine engines by 30 percent. CARB assumed some ambient air quality contributions from movement of the shipping channel further from shore. Finally, M13 also assigns to EPA responsibility for issuing standards for new marine diesel engines used in vessels operating primarily in domestic waters, to reduce NO_X emissions by at least 65 percent.

On October 23, 1998, EPA issued final regulations for marine diesel engines rated less than 37 kilowatts (50 hp). EPA issued proposed regulations for new compression ignition (CI) marine engines rated at or above 37 kilowatts on December 11, 1998. Under the terms of a consent decree, EPA must issue the final regulations by November 23, 1999.[9] These regulations will apply to new engines used for propulsion and auxiliary power on commercial vessels in a variety of marine applications, including fishing boats, tug and towboats, dredgers, coastal cargo vessels, and ocean-going vessels. The proposed regulations, if finalized, would apply NO_X limits that will reduce emissions nationally by approximately one-third.[10]

In addition, the International Maritime Organization (IMO) has adopted emission limits for all marine diesel engines rated above 130 kilowatts (kw) ocean-going vessels. These limits are contained in Regulation 13 of Annex VI of the International Convention on the Prevention of Pollution from Ships (MARPOL), which was adopted at Diplomatic Conference on September 26, 1997. The Annex will enter into

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[6] Although EPA determined that the Federal assignments were not an approvable portion of the 1994 ozone SIP, EPA has nevertheless taken action to regulate most of these sources under the authority provided in the CAA.

[7] The standard also allows manufacturers the option of certifying to a 2.5 g/bhp-hr NO_X plus NMHC standard, with a limit of 0.5 g/bhp-hr on NMHC.

[8] Under a June 9, 1998 modification to the September 23, 1993 Partial Consent Decree in *Sierra Club* v. *Browner* (D.D.C., No. 93-0124 (NHJ)), EPA has until September 29, 2000 to make a final determination that large gasoline engines do cause or contribute to air pollution within the meaning of CAA section 213(a)(3).

[9] Under an October 6, 1997 modification to the September 23, 1993 Partial Consent Decree in *Sierra Club* v. *Browner* (D.D.C., No. 93–0124 (NHJ)), EPA has until November 23, 1999, to take final action on the EPA's marine vessel regulations, proposed in August 29, 1997 and supplemented with a December 11, 1998 proposal. Under a November 30, 1998 modification to the same consent decree, EPA has until November 23, 1999 to issue a supplemental proposal for recreational diesel-fueled marine engines and until October 31, 2000 to take final action on this supplemental proposal.

[10] The long life span of these engines delays the full benefits of the regulations. EPA's estimate of national emission inventory impacts is a 10 percent decrease in 2010, 28 percent in 2020, and 34 percent in 2030.

force, and the NO_X limits will be enforceable, twelve months after fifteen countries, the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant shipping, have ratified it. Because this may take several years, Regulation 13 was designed to ensure that benefits associated with the NO_X limits begin to accrue as early as possible. Specifically, the Annex VI NO_X limits will apply to any new marine diesel engines installed on a ship constructed on or after January 1, 2000, and to any marine diesel engine that undergoes a major conversion [11] on or after January 1, 2000. By ensuring that the NO_X limits will be enforceable back to these engines and vessels once the Annex goes into force, ship owners and engine manufacturers are expected to comply with the requirements beginning January 1, 2000. Nevertheless, due to the very long lives of these engines, the full benefits of the MARPOL standards may not be realized until 2030. For this reason, and because many vessels serving the Ports of Long Beach and Los Angeles already meet the Annex VI standards, EPA and CARB expect that the MARPOL Annex VI NO_X limits will only contribute minimal SIP reductions in the South Coast by 2010. More meaningful reductions would be achieved by a further strengthening of the MARPOL NO_X limits, and the 1997 Conference adopted a resolution that would permit review of those limits at five year intervals after the entry into force of the Annex. This may not happen for several years, however, and it may be necessary to find a way to encourage the IMO to review these important emission limits before that time.

Under the PCP, EPA has held a series of stakeholder meetings to discuss strategies to reduce pollution associated with the marine vessel sector. Three workgroups were formed to focus on deep sea vessels, harborcraft, and port infrastructure.

Because of questions regarding the costs and the benefits of moving the shipping channel, members of the deep sea vessel workgroup signed an MOA to fund a $400,000 tracer study in 1997 to compare onshore emissions under the current and proposed alternative shipping channel. Participants include EPA, CARB, SCAQMD, Navy, the shipping industry, and the ports. This complex study has not yet been finalized. The working group is also reviewing draft results from a study contracted by EPA to assess the benefits of future emission standards and alternative strategies, including strategies to reduce ship speed and, as a consequence, NO_X emissions from the vessels. Finally, CARB is leading a technical workgroup tasked with evaluating technical issues associated with two alternative operational strategies for ocean-going vessels, and issuing a report by the end of 1999.

The harborcraft workgroup has explored the possibility of an MOU, under which the major tug operators might agree to a voluntary 20 percent reduction in NO_X emissions. In 1997 EPA provided $350,000 to the SCAQMD to help fund a tug retrofit demonstration project. The project demonstrated the feasibility of a low-NO_X diesel engine capable of emitting at or below 5.5 g/bhp-hr. Retrofits such as this may be subsidized under the Carl Moyer Memorial Air Quality Standards Attainment Program, a $25 million clean air measure enacted by the State of California in 1998. The State also will receive $20 million in fines as a result of the settlement with heavy-duty engine manufacturers for excess (off-cycle) emissions; some of these funds may also be directed toward subsidies for cleaner engines.

The Ports of Los Angeles and Long Beach have recently completed a draft MOU on emission reductions from transportation infrastructure improvements at the ports. These improvements have been accomplished in recent years or will be completed over the next several years, and they were generally not assumed in the 1994 ozone SIP. The port modernizations will typically reduce truck emissions following extension of the rail lines to the docks. Other infrastructure improvements include road/rail grade separation projects, improved navigational channels, and the Alameda Transportation Corridor Project.

e. Locomotives. Measure M14 assumes a two-thirds reduction in locomotive NO_X emissions by 2010 from the combination of national locomotive standards and a clean locomotive fleet program in the South Coast.

On April 16, 1998, EPA issued regulations for new and remanufactured locomotives originally manufactured after 1972. The regulations take effect in 2000 and will be fully phased in by 2005. When full benefits from the standards are realized, the new standards are expected to reduce NO_X emissions by two-thirds and HC and PM emissions by 50 percent. In order to accelerate benefits and thereby achieve the SIP's 2010 emission reduction targets, California and Class I freight railroads operating in the South Coast (i.e., Union Pacific and Burlington Northern/Santa Fe) entered into an agreement for a railroad fleet average emissions program (Memorandum of Mutual Understandings and Agreements, South Coast Locomotive Fleet Average Emissions Program, July 1998). In a Statement of Principles jointly signed with CARB and the Class I railroads on May 14, 1997, EPA has reserved its authority, in the event that the agreement fails to attain its identified emission reductions, to assure that the reductions called for in the agreement are achieved from the railroad sector and/or, if necessary, from other national transportation sources.

f. Aircraft. Measure M15 calls for EPA to adopt commercial aircraft engine standards that are 30 percent more stringent than existing standards for VOC and NO_X emissions.

(1) Emission Standards

Due to the international nature of the aviation industry, the International Civil Aviation Organization (ICAO) has been the forum for establishing international commercial aircraft engine standards. On May 8, 1997, EPA issued regulations reflecting the most recent standards adopted by the ICAO's Committee on Aviation Environmental Protection (CAEP). While these standards represent a 20 percent reduction from the previous ICAO limits for NO_X issued in 1981, no additional emission reductions are anticipated, since virtually all new commercial aircraft already are equipped with engines meeting the ICAO standards. ICAO is not expected to issue new standards until early 2001.

(2) Voluntary Agreement To Reduce Emissions From Ground Service Equipment (GSE)

EPA, CARB, SCAQMD, the Air Transport Association (ATA) and its member airlines, the Federal Aviation Administration (FAA), local commercial airports, environmental groups, and other stakeholders have met during the Public Consultative Process to identify ways to achieve additional reductions from the commercial aviation community. ATA is drafting an MOU to achieve these reductions at the five major commercial airports in the South Coast through use of cleaner GSE than otherwise required by applicable emission standards. When implemented, the MOU would yield small but important emission reductions through options including increased fleet turnover, greater use of engines employing alternative fuels, and electrification.

[11] "Major conversion" is defined in Regulation 13 of Annex VI as meaning an engine that is replaced by a new engine built on or after January 1, 2000; is substantially modified; or whose maximum continuous rating is increased by more than 10%.

(3) Other Voluntary Initiatives

On March 24, 1998, EPA and FAA signed an agreement to coordinate environmental matters regarding aviation. Among other measures, EPA and FAA agreed to develop a voluntary engine emission kit retrofit program and encourage the adoption of the voluntary program by the aviation community. Since the execution of the agreement, the focus of the voluntary process has broadened to consider a wider range of possible options for emission reductions from aircraft and at airports. The EPA-FAA agreement includes the following provision: "If the voluntary program is not successful, the parties agree to consider other mechanisms within the authorities of the respective agencies to achieve implementation of retrofit technologies in its fleet."

ICAO's CAEP has also established an Emissions Technical Issues Working Group with subgroups to develop: (1) best operating practices to reduce emissions from aircraft, GSE, and auxiliary power units (APUs); (2) market-based options (caps, charges, etc.) to provide incentives for further reductions; and (3) approaches to secure air quality benefits from improved air traffic management and airport planning.

Beginning in 1998, EPA, FAA, and Department of Defense have been working with industry and environmental groups in this country to reduce pollution levels by means of advanced air traffic management systems and related technologies.

EPA, SCAQMD, and the City of Los Angeles have worked with the Budget rental car agency to establish at LAX in December 1998 the first electric vehicle rental options in the country. Through cooperative efforts with the SCAQMD and clean-fuel stakeholders, LAX and other airports in the area have established other important programs for use of clean alternative fuels in shuttles and delivery vehicles.

EPA has provided grants to support the Clean Airport Partnership. Among other activities, the partnership holds national airport summit meetings to find ways to reconcile airport growth and environmental progress.

(4) Research to Develop Cleaner Aircraft Engines

In the fall of 1998, EPA and the National Aeronautics and Space Administration (NASA) signed an MOA to formalize working agreements on aeronautical research and technology. NASA is continuing to explore the potential for additional emission reductions that could be achieved from technological improvements in the design of new and rebuilt commercial aircraft engines.

g. Marine Pleasurecraft. Measure M16 assumes that EPA will issue national standards to reduce HC emissions from marine pleasurecraft by 75 percent.

EPA has issued standards for recreational marine 2-stroke outboard engines and personal watercraft (such as jet skis), effective July 1996. The standards are phased in over a 9-year period to achieve a 75 percent reduction in HC. EPA has begun rulemaking to set emission limits for recreational 4-stroke sterndrive and inboard engines. These rules, if finalized, would establish standards for both gasoline and diesel recreational marine engines. However, the final implementation schedule for any such standards may not allow for rapid enough fleet turnover to accomplish all of the remaining 2 tpd of ROG emission reductions targeted by M16.

h. Additional Reductions beyond the Federal Assignments.

(1) Heavy-Duty Diesel Off-Cycle Settlement

In late 1998, EPA and CARB announced settlements of enforcement cases against manufacturers of heavy-duty diesel engines.[12] Among the settlement provisions were agreements by the manufacturers to introduce nationwide in October 2002, rather than 2004, engines meeting the 2.4 g/bhp-hr combined NO_X and NMHC standard, discussed in section I.B.2.a., above. CARB assumes that 25 percent of vehicle miles traveled (VMT) by heavy-duty diesel vehicles in the South Coast in 2010 will be from out-of-state vehicles. As a result, the early introduction of trucks meeting the new national standard will contribute emission reductions toward attainment of the ozone standard.

(2) National Tier 2 Motor Vehicle Standards

In November 1998, CARB adopted more stringent standards for light-duty cars and trucks and medium-duty vehicles up to 14,000 lbs. gross vehicle weight, as part of California's Low-Emission Vehicle (LEV) regulations. These standards, known as LEV II, were primarily intended to reduce NO_X emissions, especially from sport utility vehicles and light trucks. EPA is initiating rulemaking to promulgate new "Tier 2" national vehicle standards that are comparable to California's LEV II program. If finalized, EPA's standards would provide benefits in the South Coast not anticipated in the 1994 ozone SIP, by reducing the emissions of vehicles that have migrated into the area from out of the state.[13] The ozone SIP assumes that 230,000 vehicles in the categories affected by the Tier 2 standards will travel 7.8 million miles in the South Coast in 2010.

C. Remaining Shortfall

As shown in Table 1 below, CARB and EPA currently estimate that final or pending Federal measures will achieve approximately the following emission reductions in the South Coast in 2010: 94 tpd NO_X and 39 tpd VOC. This leaves a projected shortfall of approximately 15 tpd NO_X and 8 tpd VOC in the attainment demonstration for the South Coast, based on emission factors, models, and inventories consistent with those used in the 1994 ozone SIP.

STATUS OF FEDERAL MEASURES

[Tons per Day in the South Coast in 2010]

Measure	Assignment		Achieved/pending	
	NO_X	ROG	NO_X	ROG
M6—HD Diesel Onroad Vehicles	16	2	16	2

[12] On October 22, 1998, EPA and CARB announced settlement of enforcement cases brought against Caterpillar, Cummins, Detroit Diesel, Volvo, Mack Trucks/Renault and Navistar. These manufacturers had equipped their engines with defeat devices that advanced the fuel injection timing when vehicles were driven at steady highway speeds, thereby improving fuel economy at the expense of increased NO_X emissions. The settlement also involves civil penalties and agreements by the manufacturers to provide over $100 million in funding for environmental projects either identified in the consent decrees or awarded to project applicants. California will receive 25 percent of the penalty funds and 20 percent of the project funds collected in the joint enforcement actions.

[13] Some additional benefits may be associated with future EPA regulations restricting sulfur in gasoline, since the cleaner gasoline would increase the durability of catalytic converters.

STATUS OF FEDERAL MEASURES—Continued
[Tons per Day in the South Coast in 2010]

Measure	Assignment		Achieved/pending	
	NO_X	ROG	NO_X	ROG
M10—Diesel Nonroad	44	5	41	9
M12—Industrial Equipment [1]	13	25	6	18
M13—Marine Vessels	9	.....	2	.....
M14—Locomotives	23	.....	23	.....
M15—Aircraft	4	3	.....	.....
M16—Pleasure Craft	.....	12	.....	10
Total	109	47	88	39
National Tier 2 Standards [1]	.....	.....	4	.....
Heavy-Duty Settlement	.....	.....	2	.....
Grand Total	109	47	94	39
Shortfall	.....	.....	15	8

[1] The rulemakings for these standards have not been completed and, therefore, the reduction numbers are projections.

Much of the shortfall is due to the State's expectation that EPA would issue stringent standards for commercial aircraft engines and ocean-going vessels, and that turnover in these engines would be rapid enough to achieve substantial reductions by 2010. As noted above, emissions standards for these categories have been established internationally through organizations within the United Nations. Unfortunately, the existing standards set by ICAO and the IMO will not achieve significant reductions by 2010 from commercial aircraft and ocean-going vessels, particularly due to the long lifespan of these engines.

There are also small shortfalls associated with M10 (Diesel Nonroad) and M16 (Pleasurecraft), and expected from forthcoming EPA regulations for M12 (Industrial Equipment). This would result if the national regulations establish standards or compliance schedules less aggressive than CARB had assumed.

D. EPA Proposed Consent Decree and Settlement Agreement

When EPA took final action to approve the 1994 ozone SIP, EPA expected to complete the PCP in June 1997. In lieu of approving the Federal measure assignments, the final action approving the SIP included commitments by EPA to undertake rulemaking at the PCP conclusion to issue any controls that were determined to be appropriate for EPA. EPA approved California's commitment to take the following actions as appropriate after the PCP: (1) to revise the South Coast attainment demonstration by December 31, 1997, to reflect the results of the PCP; and (2) to issue regulations by December 31, 1999, to accomplish those emission reductions determined to be appropriate for CARB.

Difficult issues associated with aviation and shipping strategies have required more time to resolve than EPA initially anticipated, and EPA has not yet concluded the PCP. In 1998, the Coalition for Clean Air, Natural Resources Defense Council, and Communities for a Better Environment amended a complaint against EPA originally filed in 1997 (*Coalition for Clean Air, et al.* vs. *SCAQMD, CARB, and USEPA*, No. CV 97–6916 HLH (C.D. CA.)). The amended complaint sought relief against EPA for failing to adopt Measure M13 (Marine Vessels) and Measure M15 (Aircraft) or substitutes with greater or equivalent emissions, failing to conclude the PCP in June 1997, and failing to determine the respective obligations of EPA and the State as to the additional emission reductions needed.

Under a proposed consent decree with the environmental plaintiffs, EPA has now committed to conclude the PCP. The proposed settlement was signed by all parties and lodged with the Court on November 13, 1998, in the form of a stipulation, consent decree, and settlement agreement. EPA issued a notice of the pending settlement on December 9, 1998 (63 FR 67879), consistent with CAA section 113(g). Parties filed a motion to enter the agreement on May 10, 1999.

1. Consent Decree

The proposed consent decree includes the following EPA commitments:

1. EPA shall, pursuant to the Clean Air Act and 40 CFR 52.238, conclude the South Coast mobile source public consultative process by determining by July 1, 1999:

a. What, if any, Volatile Organic Compounds ("VOC") and Nitrogen Oxides ("NO_X") mobile source controls, including associated emissions reductions, are needed to attain the 1-hour ozone National Ambient Air Quality Standard ("NAAQS") in the South Coast Air Basin by no later than November 15, 2010 and are appropriate for EPA to promulgate;

b. EPA's rulemaking schedule for the controls identified in subparagraph 1(a). In determining such schedule, EPA will attempt to propose as many such measures as feasible by no later than December 31, 2000 and to promulgate final measures by no later than December 31, 2001;

c. What, if any, VOC and NO_X mobile source emission reductions are needed to attain the 1-hour ozone NAAQS in the South Coast Air Basin by no later than November 15, 2010 and are appropriate for the State of California to achieve through enforceable measures; and

d. The schedule for the State to submit to EPA a revised demonstration to attain the 1-hour NAAQS in the South Coast Air Basin by no later than November 15, 2010.

2. 40 CFR 52.220(c)(235)(I)(A)(1) contains a State commitment to submit control measures to achieve emission reductions determined to be appropriate, if any, by December 31, 1999. However, prior to July 1, 1999, EPA will discuss with the State whether the deadline in such commitment is still appropriate.

EPA is proposing to take the actions described in Section II of this document to comply with these provisions in the pending consent decree.

2. Settlement Agreement

Accompanying the consent decree is a proposed settlement agreement, in which EPA agrees to undertake various additional activities as part of its efforts to ensure that the Federal government does its share in helping to solve the ozone problem in the South Coast. The proposed settlement agreement commits EPA to the following specific actions. The terms of the settlement agreement are reproduced for informational purposes and are not proposed for public comment, although EPA does invite suggestions from the public on the best ways for the Agency to implement its commitments.

a. Federal Agencies. EPA Region 9 will, in consultation with the General Services Administration (GSA) and the Department of Energy (DOE), promote the purchase and use of low-emitting motor vehicles and other emission reduction and pollution prevention activities by Federal agencies located in the South Coast. With respect to the purchase of low-emitting motor vehicles, EPA will, in consultation and coordination with GSA and DOE, promote efforts of Federal agencies located in the South Coast to meet or exceed the alternative-fuel vehicle purchase requirements contained in the Energy Policy and Conservation Act and Executive Order 13031, including the requirements that, starting on July 1, 1999 and thereafter, at least 75 percent of the new vehicle purchases by the Federal agencies for use in the South Coast be alternative-fueled vehicles and that all Federal agencies located in the South Coast take steps to maximize the emission reductions achieved under this program.

b. Aircraft, Airport, Ocean-Going Vessels, and Ports. EPA will continue to provide forums and staff and management support for negotiating agreements to achieve feasible reductions in the South Coast from these categories, through operational strategies. EPA will also continue to work with lead Federal agencies negotiating international controls on aircraft engines and ocean-going vessels to achieve the greatest feasible emissions reduction benefits. Whenever possible, EPA will involve CARB, SCAQMD, and the environmental groups in these activities. EPA will provide to the public information on actions taken by the airline industry pursuant to the FAA–EPA agreement, and the emissions reductions achieved by these actions, and will involve the public, as feasible and appropriate, in the development and implementation of future agreements on voluntary retrofit programs and other voluntary programs. Within 90 days of issuing the final rulemaking on marine vessel engines, EPA will complete an assessment of the feasibility of establishing incentive programs designed to increase the number of lower emitting engines in fleets which operate exclusively in the South Coast.

c. National Standards for Onroad Heavy-Duty Diesel-Cycle Engines. During the public comment period following issuance of the proposed 1999 review to reassess the appropriateness of the year 2004 HDDV standards, EPA will hold a public meeting in the Los Angeles area to present information on the impacts of the HDDV standards on the South Coast and any measures available and consistent with the Clean Air Act to assure the maximum emission reductions from the HDDV rule in the South Coast. Information from this meeting and other outreach efforts relating to the South Coast will be considered in the final determination made pursuant to the 1999 review.

d. Retrofit requirements for onroad and nonroad vehicles and engines in the South Coast Air Basin. EPA will provide technical assistance to CARB to use the State's authority to require retrofitting of used nonroad engines. If CARB decides to provide incentives to stimulate retrofit rather than to require it, EPA will provide assistance in the State's efforts to comply with applicable Clean Air Act requirements for approval and credit of such measures.

e. Concentration of Cleaner Preempted Engines (Farm and Construction Equipment <175hp) in the South Coast. EPA will undertake a study of the benefits and costs and legality of a Federal program, perhaps particularly in areas classified as extreme and severe for ozone, that would provide incentives for manufacturers to increase sales and use of equipment powered by engines certified and produced to meet the most stringent exhaust emission standards then applicable, e.g., through increased fleet turnover. EPA intends to complete the study by September 1, 1999. The study will estimate as precisely as possible the emission reduction benefits, anticipated compliance costs and other impacts (including energy and safety considerations) on vehicle/engine manufacturers and owners, and emissions and air quality impacts both within and outside the area(s) of concentration, including a specific analysis for the South Coast. If EPA finds that the incentive approach is feasible, needed, and does not impede progress in other parts of the country, EPA intends to undertake expeditious actions to implement the program, with the goal of ensuring emission reduction benefits at the earliest feasible date.

E. State Update to the 1994 Ozone SIP for the South Coast

On May 20, 1999, CARB submitted a SIP update consisting of the following documents:

(1) An update to the South Coast ozone SIP, reporting on implementation of CARB and EPA control measures, which California assumed in the 1994 ozone SIP for the South Coast; and

(2) Executive Order G–99–037 committing the State: (a) to continue working with EPA to achieve the emission reduction commitments in the SIP for federal measures; (b) to adopt by December 31, 2000, and submit as a SIP revision, a revised attainment demonstration for the Federal 1-hour ozone standard in the South Coast; and (c) to adopt by December 31, 2001, control measures sufficient to achieve any additional emission reductions which are determined to be appropriate for CARB.

EPA found the submittal to be complete on May 20, 1999.[14]

1. Report on the Status of CARB Adoption of Control Measures in the 1994 Ozone SIP Submittal

CARB's report reviews the CARB and EPA accomplishments over the past four years in adopting controls which CARB committed to adopt or "assigned" to the Federal government. The report also provides references to adopted CARB regulations and associated emission reductions which fulfill the majority of CARB's near-term obligations under the 1994 ozone plan. The report uses the 1994 ozone SIP's currency, i.e., the emissions factors and emissions inventories consistent with those used in the 1994 ozone SIP, rather than improved inventories. The report also uses the term Reactive Organic Gases (ROG) in lieu of the Federal terminology, VOC.

The CARB update includes a table showing the status of CARB measures in the 1994 ozone SIP ("CARB Progress toward 1994 SIP Commitments").

[14] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

CARB PROGRESS TOWARD 1994 SIP COMMITMENTS

[Tons per day in South Coast in 2010]

Source category and CARB measure	1994 SIP commitment		Adopted or planned rule		(Shortfall)	
	ROG	NO_x	ROG	NO_x	ROG	NO_x
Passenger Cars and Light-Duty Trucks:						
M1: Car Scrappage	14	11	0	0	(14)	(11)
M2: Advanced Technology	10	15	7	25	(3)	10
Medium- and Heavy-Duty Gasoline Trucks:						
M3: Accelerated emission standard	3	33	3	27	0	(6)
M8: Emission standard	0	3	0	3	0	0
Heavy-Duty Diesel Trucks & Buses:						
M4: Cleaner engine incentives	0	1	0	1	0	0
M5: 2004 std plus early reductions	5	56	5	51	0	(5)
New: Off-cycle diesel settlement	.....	.....	0	5	0	5
Off-Road Diesel Equipment:						
M9: Emission standard—adopt 1999	3	34	3	34	0	0
Off-Road Gasoline and LPG Equipment:						
M11: Emission standard	23	12	25	7	2	(5)
Off-Road Motorcycles:						
New: Emission standard	.....	.....	0.8	0.3	0.8	0.3
Marine Pleasurecraft						
New: Emission standard beyond M16	.....	.....	4	0	4	0
Cleaner-Burning Gasoline:						
New: Combustion chamber deposits	.....	.....	0	10	0	10
Small Off-Road Engines:						
Baseline: Changes to emission std	.....	.....	(2)	0	(2)	0
Consumer Products:						
CP2: Mid-term measures	35	0	9	0	(27)	0
Aerosol Paints:						
CP3: Aerosol paints standards	7	0	5	0	(2)	0
CARB Settlement Commitments:						
New: Measures adopted by 12/99	.....	.....	12	0	12	0
New: Measures adopted by 12/00	.....	.....	14	2	14	2
New: Measures adopted by 12/01	.....	.....	16	0	16	0
Total for Measures due by 12/01	101	165	101.8	165.3	0	0

The following discussion summarizes the State's update with respect to each CARB and EPA control measure identified in the State's 1994 submittal.

a. *Light- and Medium-Duty Vehicles (State Measure M1—Accelerated Retirement of Light-Duty Vehicles, and State Measure M2—Improved Control Technology for Light-Duty Vehicles)* Measure M1 called for accelerated retirement of cars and light trucks. CARB expects to need to pursue alternatives to the scrap program because of the lack of a funding mechanism. Measure M2 provided for additional emission reductions from cars and light trucks through more stringent emission standards beginning in 2004. The Low-Emission Vehicle II (LEV II) regulations implementing M–2 were adopted in November 1998 and achieved 52 tpd of emission reductions: 7 tpd of ROG and 45 tpd of NO_x. LEV II will provide 30 tpd of NO_x reductions beyond the M–2 commitment, and the State is applying 20 tpd toward the long-term mobile source measure for advanced control technologies or techniques (known as the "Black Box").[15] LEV II also left a 3 tpd ROG shortfall which must be made up through new measures.

In 1998, CARB adopted a new measure calling for tighter emission standards for on-road motorcycles to take effect beginning in 2000. The emission reductions associated with this measure were not included in the SIP, and provide additional reductions toward the CARB's overall commitments.

b. *Medium- and Heavy-Duty Gasoline Trucks (State Measure M3—Accelerated Ultra-Low Emitting Vehicle Requirement for Medium-Duty Vehicles; State Measure M8—Heavy-Duty Gasoline Vehicles; Lower Emission Standards in California).* Measure M3 was adopted in 1995, but a calculation error in the 1994 SIP resulted in a shortfall in the associated emission reductions even though the regulation achieved the performance standard specified in the SIP. Measure M8 for heavy-duty gasoline trucks was also adopted in 1995, and achieved the performance standard in the SIP.

c. *Heavy-Duty Trucks and Buses (State Measure M4—Heavy-Duty Diesel Vehicles; Early Introduction of 2.0 g/*

[15] CAA section 182(e)(5) authorizes EPA to approve long-term, conceptual measures that rely on new technologies as part of the attainment demonstration for the South Coast, the only ozone nonattainment area classified as "extreme" under the CAA.

bhp-hr NO_X Engines in Fleets through Incentives; State Measure M5—Heavy-Duty Diesel Vehicles; additional NO_X Reductions in California; State Measure M7—Accelerated Retirement of Heavy-Duty Vehicles). CARB is currently implementing M4 through the Carl Moyer program and the State is also working to secure continuing funding for the Carl Moyer program. Measure M5 required a California emission standard for heavy-duty diesel trucks and buses that would parallel national standards to be implemented in 2004. California adopted the national standard in 1998, achieving over 90 percent of the M5 commitment. This measure also assumed that California would implement the new national standard for diesel trucks and buses two years early (in 2002). However, based upon further analysis, CARB concluded that a California-only standard could harm the state's economy without providing any emission benefits if truck operators simply based their operations out of state. The 5 tpd of emission benefits associated with an early California-only standard will be achieved through the diesel off-cycle settlement, discussed above in section I.B.2.h.

Measure M7 in the original 1994 SIP was replaced with measure M–17 in 1998. Measure M–17 is a long-term commitment to reduce emissions from heavy-duty diesel engines through in-use compliance programs and possibly further incentives.

d. *Off-Road Equipment (State Measure M9—Off-Road Diesel Equipment—2.5 g/bhp-hr NO_X Standard; State Measure M11—Industrial Equipment, Gas & LPG).* CARB is currently developing a regulation to implement measure M9 to reduce emissions from off-road diesel equipment. Under the terms of a 1996 agreement between CARB, EPA, and the engine manufacturers, emission standards for off-road diesel engines will phase-in beginning in 2001—four years earlier than expected in the SIP. This measure is in development and will be considered by the Board in 1999.

Under measure M11, CARB adopted new emission standards for off-road equipment (like forklifts) powered by spark-ignition engines. The adopted regulation provides 2 additional tpd of ROG emissions, but falls 5 tpd short of the NO_X commitment.

In 1998, CARB modified existing emission standards for small off-road engines, such as those used in lawn and garden equipment, to address technical feasibility concerns and higher than expected deterioration in emission performance. The modified regulations focus on reducing deterioration. However, because deterioration emissions were not included in the 1994 SIP inventory, there is no credit in 1994 SIP currency for these reductions. The 2 tpd shortfall resulting from the regulatory changes must be made up through other strategies.

In 1998, CARB also adopted new emission standards for marine pleasurecraft, such as outboard motors, personal watercraft, and small jet boats. In the process of improving the emission inventory, CARB found that emissions from marine pleasurecraft were much higher than assumed in the 1994 SIP. The new emission standards will achieve significant real emission reductions. However, because the marine pleasurecraft inventory in the 1994 SIP is modest, the emission reductions in SIP currency are relatively small. Nevertheless, the new marine pleasurecraft standards provide additional reductions in 2010. When the statewide SIP strategy is revised in 2000, CARB will update the marine pleasurecraft inventory and take full credit for the benefits of the new regulation.

e. *Mobile Source Fuels.* With the introduction of cleaner-burning gasoline in 1996, gasoline refiners also introduced additives to reduce combustion chamber deposits. The decrease in combustion chamber deposits led to an unexpected additional decrease in NO_X emissions. In 1998, CARB adopted regulations to require the use of such additives to "lock in" the NO_X benefits already realized. The emission benefits of this regulation will decrease over time, providing 10 tpd of additional NO_X reductions in the South Coast in 2010.

f. *Consumer Products and Aerosol Paints.* The 1994 SIP called for 43 tpd of ROG reductions from consumer products and aerosol paints measures to be adopted by 1997. Adopted measures thus far have achieved 14 tpd of emission reductions, leaving a shortfall of 29 tpd. The State believes that additional reductions from consumer products are achievable, but at a lower level of effectiveness than called for in the SIP. As a result, CARB expects to look to other source categories to provide supplemental emission reductions in the near-term, and re-evaluate the appropriate level for long-term commitments for consumer products in the next comprehensive SIP update in 2000.

g. *State Actions to Eliminate Near-Term Emissions Reduction Shortfall.* The State's SIP update acknowledges that the total near-term reductions achieved fall short of CARB's SIP goal. In SIP currency, CARB has a near-term shortfall of 42 tpd of ROG and 2 tpd of NO_X. The State presents the following description of its activities in the future to address this shortfall:

> We recognize our responsibility to eliminate these deficits so that the ozone standard can be attained by the statutory deadline. Over the next three years, ARB has agreed to adopt and implement measures to eliminate the near-term shortfall. Toward that end, we are planning to develop and propose a number of new regulatory measures in 1999 and 2000, and to take further steps to address the deficit.
>
> ARB staff has pledged to consider, develop, and propose regulations to reduce emissions associated with gasoline refueling, revisit medium- and heavy-duty gasoline truck standards, reduce the emission standard for heavy-duty buses, require the use of clean diesel fuel in locomotives, adopt a suggested control measure for architectural coatings, and pursue additional emission reductions from consumer products. Additional or alternate measures may be added or substituted so long as the aggregate emission reductions are achieved.

EPA agrees with the State that this commitment reflects expeditious action to achieve the reductions required in the 1994 ozone SIP.

h. *Long-Term Measures.* As discussed earlier, the SIP also commits CARB to achieve 102 tpd of ROG and 30 tpd of NO_X in the long-term. The remaining long-term NO_X commitment has been reduced to 10 TPD because 20 TPD of the additional NO_X reductions from LEV II have been applied to the mobile source "Black Box."

Among the long-term commitments is measure M17, a replacement measure submitted to EPA in 1998 to substitute for measure M7, accelerated retirement program for heavy-duty trucks. M17 relies on an expanded in-use compliance program, which may include in-use NO_X testing plus supplementary incentives. The SIP submittal identifies an adoption date of 2004, with implementation beginning in 2005. Under the terms of the State's settlement with the Natural Resources Defense Council, Coalition for Clean Air, and Communities for a Better Environment (Coalition for Clean Air, et al. vs. SCAQMD, CARB, and USEPA, No. CV 97–6916 HLH (C.D. CA.)), CARB agreed to accelerate the adoption of M17 to 2003, if technically feasible.

The remaining long-term commitments were not specifically addressed in the lawsuit settlement. However, CARB will host a New Technologies Symposium in October 1999 to explore technologies capable of achieving zero and near-zero emissions, assess the feasibility of developing new regulations based on the technologies, and preview CARB's latest approaches

to making up the remaining SIP shortfalls.

2. CARB Review of Federal Actions That Contribute Emission Reductions

The State's report notes that EPA has made significant progress toward reducing emissions from federal sources. The following section summarizes the State's review of progress toward the Federal measures for each source category.

a. *Heavy-Duty Diesel Trucks and Buses.* The State notes that EPA's adoption of new national standards in 1997 achieved the Federal emission reductions from heavy-duty diesel vehicles in Measure M6 of the 1994 ozone SIP submittal. In addition, the State calculates an additional 2 tpd of NO_X emission reductions from the settlement of the off-cycle enforcement action against diesel engine manufacturers.

b. *Off-Road Equipment.* CARB states that EPA's 1998 national standards for diesel engines used in off-road equipment implements Measure M10 in the 1994 ozone SIP submittal. Under the terms of a 1996 agreement between CARB, EPA, and the engine manufacturers, emission standards for off-road diesel engines will phase in beginning in 2001—four years earlier than expected in the SIP. The adopted regulation provides 4 tpd of ROG beyond the reductions assumed in the 1994 ozone SIP submittal, but falls 3 tpd short in NO_X reductions.

c. *Marine Pleasurecraft.* The State's report indicates that the 1994 ozone SIP submittal reflected EPA's original intent to control stern drive engines, but EPA's 1995 emissions standards did not do so, resulting in a shortfall of 2 tpd of ROG reductions compared to Measure M16.

d. *Locomotives.* CARB concludes that EPA's stringent emission standards for new and re-built locomotives, coupled with CARB's Memorandum of Agreement with rail operators in the South Coast, are together expected to achieve the full emission reductions from Measure M14 in the 1994 ozone SIP submittal.

e. *Marine Vessels.* The State observes that marine vessels are among the most challenging categories from which to obtain emission reductions because emission standards are established through an international process. CARB's report estimates that new IMO emission standards that take effect in 2000 will provide 1.1 tpd of NO_X reductions. EPA's own emission standards for the captive fleet of diesel marine engines provide an additional 0.5 TPD of NO_X reductions. Additional reductions of 7 TPD of NO_X would still need to be achieved to meet the target in M13.

f. *Aircraft.* Regarding Measure M15, aircraft emission standards have traditionally been set by ICAO. CARB states that, because EPA preferred to work through the ICAO process to pursue aircraft engine emission standards, the consultative process has focused on voluntary strategies to reduce emissions from airport ground access transportation and ground support equipment. EPA and FAA have also convened a stakeholder process with state air agencies, airlines, engine manufacturers, and other interested parties to try to develop a national voluntary agreement for emission reductions from aircraft and related sources. Since none of these approaches have been finalized, there are no creditable emission reductions from aircraft or airports yet.

3. CARB Recommendations for Near-Term Federal Initiatives

Based on EPA's completed rulemakings and initiatives that CARB expects EPA to complete shortly, CARB concludes that the total reductions fall short of the emission reductions called for from Federal measures in the 1994 ozone SIP submittal by 8 tpd of ROG and 15 tpd of NO_X. The State expresses its belief that new measures under development or consideration by EPA, plus longer-term strategies, offer the opportunity for significant additional emission reductions from Federal sources to decrease or eliminate the remaining shortfall.

CARB observes that, in the near-term, EPA could develop various strategies, which have the potential to help make up shortfalls. The State identified the following possible Federal initiatives as under development.

a. *Light- and Medium-Duty Vehicles.* CARB discusses potential Tier 2 standards for passenger cars and light trucks nationwide, which were not anticipated in the 1994 SIP. The State already credits EPA with 4 tpd of NO_X reduction in its shortfall analysis, and notes that additional reductions might be achieved if the heavier sport-utility vehicles are subject to an interim NO_X standard in the national program. In commenting on EPA's accompanying proposal to limit sulfur in gasoline to levels currently required in California, CARB notes that the sale of lower sulfur gasoline nationwide will contribute to the success of the State's LEV II program by allowing Californians to travel out of state without fear that dirtier gasoline will poison the catalytic converter or degrade the emission control system in their vehicles.

b. *Heavy-Duty Gas Trucks.* CARB notes that new national emission standards for heavy-duty gasoline trucks might be issued in the near future, providing additional benefits beyond CARB's M8 commitment for reducing emissions from heavy-duty gasoline trucks.

c. *Off-Road Spark-Ignition Equipment.* The State discusses reduction estimates from potential EPA regulations for off-road spark-ignition engines. CARB estimates an emission reduction shortfall of 7 tpd ROG and 7 tpd NO_X, assuming that the regulations will be based on California's standards but would be implemented in 2004 instead of 2001, due to EPA resource limitations.

d. Marine Pleasurecraft. CARB references national emission standards for inboard engines used in marine pleasurecraft engines in 1999, with implementation beginning in 2004. CARB discusses the possibility that in this rulemaking EPA may issue emissions standards for recreational diesel marine engines, in the same timeframe as the gasoline engines. The State believes that these sets of standards could remedy the 2 tpd shortfall in ROG reductions that resulted from the changes EPA made in its proposed marine pleasurecraft regulations when the rules were finalized in 1995.

e. *Marine Vessels.* The State's update reports on the prospect of final national emission standards for marine diesel engines. The State discusses a technical workgroup that is evaluating technical issues associated with potential operational strategies for deep sea marine vessels (i.e., moving the shipping channel and/or speed reduction). The working group expects to complete its technical assessment of the two alternatives by the end of 1999. Assuming that an appropriate operational strategy is selected in 2000, the State estimates that implementation could begin in the 2000–2003 time frame depending on which strategy is chosen. Additional time may be needed depending on the level of coordination and involvement of other organizations such as the U.S. Navy, U.S. Coast Guard, and IMO. CARB also encourages EPA to work with the U.S. Coast Guard to encourage IMO to adopt more stringent second tier standards earlier than currently scheduled.

f. *Clean Diesel Fuel.* CARB notes that EPA is beginning a process that may lead to new nationwide specifications in 2000 for fuel used in on-road vehicles and potentially off-road equipment as well. If promulgated, the State assumed that the Federal requirements for low-

sulfur diesel fuel would result in lower emissions from vehicles, trucks and locomotives that cross into California from other states.

g. *Federal Incentives.* The State indicates that Federal financial incentives could support cost-effective programs that directly reduce emissions by accelerating the move to cleaner engines in school and transit buses, as well as mobile sources under federal control like locomotives, farm and construction equipment, harborcraft, ships, and aircraft. CARB believes that California's Carl Moyer program for heavy-duty diesel engines provides a successful model. In partnership with CARB and local districts, EPA could target incentives to accelerate the replacement of the dirty engines that run for decades (20 to 40 years or more in some cases) with much cleaner models that reduce ozone-forming emissions (plus air toxics) at a relatively low cost. The State believes that these types of incentives would be an ideal use for the proposed $200 million Clean Air Partnership Fund. According to the State, the Federal government could also take a stronger leadership role in accelerating the turnover of its own vehicle fleet to cleaner models, including expanded use of alternative-fueled vehicles.

4. CARB Recommendations for Longer-Term EPA Actions

CARB encourages EPA to evaluate the strategies described below for technical feasibility, air quality benefits, and cost-effectiveness.

a. *Heavy-Duty Diesel Vehicle Emission Standards.* As part of the 1995 Statement of Principles, EPA, CARB, and engine manufacturers agreed to evaluate whether emission standards for heavy-duty diesel vehicles can be tightened beginning in 2008. Further lowering the NO_X and particulate matter emission standards from heavy-duty diesel vehicle in concert with cleaner diesel fuel would reduce emissions and significantly reduce public exposure to particulate diesel exhaust.

b. *In-Use Compliance Program for Heavy-Duty Diesel Vehicles.* California's report encourages EPA to rely on CARB's ongoing work (SIP measure M17) to develop an in-use compliance program for NO_X emissions from heavy-duty diesel vehicles as the basis for a national program.

c. *Aircraft Engines.* As part of the effort to pursue all possible approaches to reducing airport and aircraft-related emissions, the State urged EPA to: work with engine manufacturers to encourage the development and commercialization of aircraft engines that emit less NO_X; work with airlines on voluntary programs to achieve an increasingly cleaner aircraft fleet; work with FAA to pursue ICAO aircraft engine emission standards that, at a minimum, reflect the lowest emitting currently available aircraft engines; and pursue where necessary regulations to ensure emission reductions from aircraft operations.

II. Proposed EPA Action

A. Commitment To Eliminate Remaining Shortfall

EPA, CARB, and affected stakeholders, including the South Coast Air Quality Management District (SCAQMD) and the environmental plaintiffs, have met during the PCP and have identified various approaches, particularly for the aviation and marine vessel categories, that have the potential to contribute additional reductions that could reduce or eliminate the remaining shortfall. The PCP participants generally agree, however, that it is not possible to identify specific emission reduction measures for these difficult source categories by the July 1, 1999 deadline for concluding the PCP, since more time will be required to resolve technical issues relating to the benefits and feasibility of control options.

Therefore, EPA and CARB intend to continue a focused cooperative effort to review these remaining questions and agree upon the best approach for achieving the relatively small balance of reductions still unaccomplished. CARB has committed to continue working with EPA and affected parties to achieve the emission reduction commitments in the SIP for Federal measures, and to adopt by December 31, 2001, control measures needed to achieve any additional emission reductions which are determined to be appropriate for CARB. EPA proposes to assume responsibility for identifying appropriate Federal measures, which would be adopted as expeditiously as possible but no later than December 31, 2001. Whenever feasible, any Federal measures would be proposed by December 31, 2000.

EPA proposes to complete any actions identified as appropriate for EPA rulemaking under the Agency's enforceable commitment, promulgated at the time of the 1994 ozone SIP approval, "to undertake rulemaking, after the South Coast mobile source public consultative process, to promulgate any VOC and NO_X mobile source controls which are determined to be appropriate for EPA and needed for ozone attainment in the Los Angeles-South Coast Air Basin Area." 40 CFR 52.238. EPA believes that this approach is consistent with the EPA commitments under sections I.1(a) and I.1.(b) of the proposed consent decree, quoted above, although EPA notes that actions taken to reduce emissions might not be limited to controls on mobile sources and fuels.

EPA is currently considering various options including the projects discussed in the overview of Federal Measures in section I.B.2, and CARB's suggested list of Federal initiatives in sections I.E.3 and I.E.4, that may achieve all or portions of the remaining reductions. Once EPA decides which options to pursue, the Agency will undertake formal rulemaking, with public notice and comment opportunities. EPA will inform and involve State and local stakeholders in this process.

Finally, EPA intends to set expeditious implementation dates for any resulting national regulations consistent with the Agency's CAA authority, to help South Coast achieve, at a minimum reductions needed to reach attainment by 2010.

B. Approval of SIP Update

EPA is also proposing to approve the update to the South Coast ozone SIP submitted by CARB on May 20, 1999. As noted above, the update consists of a report on the status of implementation of CARB's committal measures in the 1994 ozone SIP, along with a report on emission reductions from EPA national mobile source regulations, in the context of the South Coast ozone SIP attainment demonstration.

As discussed above, EPA and CARB have agreed that controls will be identified and adopted by the appropriate agencies by December 31, 2001 to eliminate the shortfall, currently estimated to be 8 tpd VOC and 15 tpd NO_X. CARB has made such an enforceable commitment as a replacement for the existing State commitment (40 CFR 52.220(c)(235)). CARB also committed to revise the South Coast ozone attainment demonstration by December 31, 2000. EPA proposes to approve Executive Order G–99–037, dated May 20, 1999, and submitted on May 20, 1999, which updates the timelines in Executive Order G–96–031. EPA believes that this approach is consistent with sections I.1.(c) and I.1.(d) of the proposed consent decree.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in

relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 26, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–14317 Filed 6–4–99; 8:45 am]

BILLING CODE 6560–40–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 26, 27, 73, 74, 80, 87, 90, 95, 97, and 101

[WT Docket No. 99–87, RM–9332, RM–9405; DA 99–950]

Revised Competitive Bidding Authority

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making; extension of comment period.

SUMMARY: This document extends the time to file comments and reply comments on the *Notice of Proposed Rule Making* released on March 25, 1999, which deals with the Commission's revised competitive bidding authority under the Balanced Budget Act of 1997. Comments were due on or before July 2, 1999, and reply comments were due on or before August 2, 1999. On May 19, 1999, the Commission released an order (DA 99–950) that grants the Land Mobile Communications Council's "Request for Extension of Time to File Comments." The new deadlines will be August 2, 1999 for comments and September 16, 1999 for reply comments.

DATES: Comments must be filed on or before August 2, 1999 and reply comments must be filed on or before September 16, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gary D. Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660, or Scot Stone, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in WT Docket No. 99–87, DA 99–950, adopted and released on May 19, 1999. The full text of the *Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554, and may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The *Order* is also available on the Internet at the Commission's web site: http://www.fcc.gov/wtb/documents.html.

1. On March 25, 1999, the Commission released a *Notice of Proposed Rule Making* ("*NPRM*"), WT Docket No. 99–87, RM–9332, RM–9405, FCC 99–52, 64 FR 23571, May 3, 1999. Comments on the *NPRM* were due on or before July 2, 1999, and reply comments were due on or before August 2, 1999.

2. On May 12, 1999, the Land Mobile Communications Council ("LMCC") filed a "Request for Extension of Time to File Comments" to extend the deadlines for filing comments and reply comments to August 2, 1999 and September 16, 1999, respectively. LMCC contends that an extension is warranted due to the number of questions raised in the *NPRM* and the impact the answers to these questions will have on the private wireless industry.

3. Although the Commission does not routinely grant extensions of time in rule making proceedings, we agree that an extension will afford parties the necessary time to coordinate and file comments that will facilitate the compilation of a more complete record in this proceeding, without causing undue delay of the Commission's consideration of the issues. Accordingly, *it is ordered* that the "Request for Extension of Time to File Comments" filed by the Land Mobile Communications Council is granted. Interested parties may file comments on or before August 2, 1999, and reply comments on or before September 16, 1999.

4. This action is taken pursuant to the authority provided in 47 CFR 1.46 and under delegated authority pursuant to 47 CFR 0.131, 0.331.

Federal Communications Commission.

Mark R. Bollinger,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 99–14112 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–176; RM–9579]

Radio Broadcasting Services; Holualoa, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 221C2 to Holualoa, Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 19–37–06 NL and 155–57–00 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–176, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14277 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–175; RM–9578]

Radio Broadcasting Services; Hanapepe, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 232C1 to Hanapepe, Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 21–54–43 NL and 159–35–43 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–175, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14276 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–174; RM–9577]

Radio Broadcasting Services; Hanamaulu, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 266C1 to Hanamaulu, Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 21–59–51 NL and 159–21–26 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–174, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14275 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–173; RM–9576]

Radio Broadcasting Services; Wahiawa, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 278A to Wahiawa, Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 21–30–00 NL and 158–02–00 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–173, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room

CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14274 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–172; RM–9575]

Radio Broadcasting Services; Nanakuli HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 295A to Nanakuli, Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 21–23–30 NL and 158–08–30 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–172, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14273 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–171; RM–9574]

Radio Broadcasting Services; Carmel Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 290A to Carmel Valley, California as that community's first local aural transmission service. Coordinates used for this proposal are 36–20–28 NL and 121–42–51 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–171, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036; (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14272 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–181; RM–9584]

Radio Broadcasting Services; Easton, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 300A to Easton, California as that community's first local aural transmission service. Coordinates used for this proposal are 36–45–28 NL and 119–51–55 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–181, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14271 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–180; RM–9583]

Radio Broadcasting Services; Cloverdale, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 274A to Cloverdale, California as that community's first local aural transmission service. Coordinates used for this proposal are 38–44–22 NL and 123–00–32 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–180, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14270 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–179; RM–9582]

Radio Broadcasting Services; Kurtistown, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 271A to Kurtistown, Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 19–35–36 NL and 155–03–36 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–179, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14269 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–178; RM–9581]

Radio Broadcasting Services; Kihei, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 298C2 to Kihei Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 20–47–00 NL and 156–27–48 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–178, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14268 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–177; RM–9580]

Radio Broadcasting Services; Honokaa, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 275C2 to Honokaa, Hawaii, as that community's first local aural transmission service. Coordinates used for this proposal are 20–04–54 NL and 155–28–00 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–177, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14267 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–180; RM–9582]

Radio Broadcasting Services; Golden Meadow, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 289C2 to Golden Meadow, Louisiana, as that community's first local aural transmission service. Coordinates used for this proposal are 29–14–00 NL and 90–15–00 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–189, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14266 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–188; RM–9591]

Radio Broadcasting Services; Bruneau, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 273C1 to Bruneau, Idaho, as that locality's first local aural transmission service. Information is also requested regarding the attributes of Bruneau, Idaho, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 42–49–57 NL and 115–48–57 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–188, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14265 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–187; RM–9590]

Radio Broadcasting Services; Summit City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 221A to Summit City, California, as that locality's first local aural transmission service. Information is requested regarding the attributes of Summit City, California, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 40–39–19 NL and 122–24–10 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–187, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14264 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–199, RM–9564]

Radio Broadcasting Services; Cordele, Hawkinsville, Montezuma, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by Metro Com Corp., licensee of Station WKKN(FM), Cordele, GA, Broadcast Equities Corp., permittee of a new station at Montezuma, GA, and Tri-County Broadcasting Company, licensee of Station WQSY, Hawkinsville, GA. Petitioners request the substitution of Channel 236C3 for Channel 252A at Cordele, the modification of Station WKKN's license to specify the higher class channel, the substitution of Channel 280C3 for Channel 236A at Montezuma, the modification of Broadcast Equities construction permit to specify the higher class channel and the substitution of Channel 252C3 for Channel 280C3 at Hawkinsville and the modification of Station WQSY's license to specify the alternate Class C3 channel. Channel 236C3 can be allotted to Cordele in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.6 kilometers (12.8 miles) northwest, at coordinates 32–06–24 NL; 83–55–39 WL. Channel 252C3 can be allotted to Hawkinsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) east, at coordinates 32–16–51 NL; 83–27–02 WL. Channel 280C3 can be allotted to Montezuma in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.1 kilometers (13.1 miles) east, at coordinates 32–14–46 NL; 8349–01 WL. Each of the site restrictions is required to accommodate the desired transmitter site of the petitioners. In accordance with Section 1.420(g)(3) of the Commission's Rules, we will not accept competing expressions of interest in the proposed channel allotments or require the petitioners to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before July 19, 1999, and reply comments on or before August 3, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan J. Alpert, 2120 21st Road, Arlington, VA 22201 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–199, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14263 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–186; RM–9529]

Radio Broadcasting Services; Mettler, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 255A to Mettler, California, as that locality's first local aural transmission service. Information is requested regarding the attributes of Mettler, California, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 35–02–00 NL and 118–57–26 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–186, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW.,

Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14262 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–185; RM–9586]

Radio Broadcasting Services; Maricopa, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 235A to Maricopa, California, as that community's first local aural transmission service. Coordinates used for this proposal are 35–05–01 NL and 119–26–00 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–185, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14261 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–184; RM–9587]

Radio Broadcasting Services; Lost Hills, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 289A to Lost Hills, California as that community's first local aural transmission service. Coordinates used for this proposal are 35–38–19 NL and 119–48–26 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–184, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14260 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–183; RM–9586]

Radio Broadcasting Services; Herlong, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 281C2 to Herlong, California as that locality's first local aural transmission service. Information is requested regarding the attributes of Herlong, California, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 40–14–05 NL and 120–09–31 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–183, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14259 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–182; RM–9585]

Radio Broadcasting Services; Hamilton City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 269A to Hamilton City, California as that community's first local aural transmission service. Coordinates used for this proposal are 39–49–52 NL and 122–02–31 WL.

DATES: Comments must be filed on or before July 12, 1999, and reply comments on or before July 27, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–182, adopted May 12, 1999, and released May 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

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For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14258 Filed 6–4–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 108
Monday, June 7, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Advisory Committee on Agricultural Biotechnology

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of intent to establish the Advisory Committee on Agricultural Biotechnology

SUMMARY: The U.S. Department of Agriculture proposes to establish the Advisory Committee on Agricultural Biotechnology (ACAB). The Secretary of Agriculture is requesting nominations for qualified persons to serve as members of the ACAB.

DATES: Written nominations must be received on or before July 7, 1999.

ADDRESSES: Nominations should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, telephone (202) 720–3817; fax (202) 690–4265; email *michael.g.schechtman@usda.gov*. To obtain form AD–755 ONLY please contact Dianne Harmon, Office of Pest Management Policy, telephone (202) 720–4074, fax (202) 720–3191; email *dharmon@ars.usda.gov*.

SUPPLEMENTARY INFORMATION:

Advisory Committee Purpose

The Secretary of Agriculture is establishing the Advisory Committee on Agricultural Biotechnology (ACAB) to advise the Secretary of Agriculture on the broad array of issues related to the expanding dimensions and importance of agricultural biotechnology. USDA has complex and crucial roles in protecting public health and safety, the natural environment, and a competitive, vibrant, and diverse farm economy; ensuring the quality and availability of our food and fiber supply; and maintaining the competitive position of American agricultural products in the international marketplace. These topics are of critical concern in the conduct of agricultural biotechnology research, regulation, and commercialization. Some of the topics that the Secretary of Agriculture has identified for the ACAB's initial consideration include: effects of industry concentration and consolidation on farmers; intellectual property rights and grower autonomy; effects of biotechnology on small farmers; ways to maximize or encourage potential benefits of biotechnology in different agricultural sectors; and USDA's role in assuring that farmers have an array of choices for future agricultural technology and practices. The ACAB will meet in Washington, DC, up to four (4) times per year.

Task Force Membership

The ACAB will consist of 25 members of whom no more than five (5) will be federal employees. Members of ACAB should have recognized expertise in one or more of the following areas: Recombinant-DNA (rDNA) research and applications using plants; rDNA research and applications using animals; rDNA research and applications using microbes; food science; silviculture and related forest science; fisheries science; ecology; veterinary medicine; the broad range of farming or agricultural practices; weed science; plant pathology; small farm advocacy; biodiversity issues; applicable laws and regulations relevant to agricultural biotechnology policy; risk assessment; consumer advocacy and public attitudes; public health/epidemiology; occupational health; ethics, including bioethics; human medicine; biotechnology industry activities and structure; intellectual property rights systems; and international trade. Members will be selected by the Secretary of Agriculture in order to achieve a balanced representation of viewpoints to address effectively USDA biotechnology policy issues under consideration.

Nominations for ACAB membership must be in writing and provide the appropriate background documents required by USDA policy, including background disclosure form AD–755. Neither the form nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C.552a).

No member may serve on the ACAB for more than three (3) consecutive terms. Nominees will initially serve for terms of 1 or 2 years for purposes of continuity.

Members of the ACAB and its subcommittees shall serve without pay, but with reimbursement of travel expenses and per diem for attendance at ACAB and subcommittee functions for those ACAB members who require assistance in order to attend the meetings. While away from home or their regular place of business, those members will be eligible for travel expenses paid by REE, USDA, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service is allowed under section 5703 of Title 5, United States Code.

Submitting Nominations

Nominations should be typed and include the following:

1. A brief summary of no more than two (2) pages explaining the nominees suitability to serve on the ACAB.

2. A resume or curriculum vitae.

3. A completed copy of form AD–755.

Nominations should be sent to Michael Schechtman at the address listed above, and be post marked no later than July 7, 1999.

USDA is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations through outreach to minority-focused media outlets, Historically Black Colleges and Universities, including Clark Atlanta University, the Hispanic Association of Colleges and Universities, the National Congress of Native American Indians, the Intertribal Agriculture Council, Gallaudet and Purdue Universities, and the Rural Coalition. To ensure that recommendations of the ACAB take into account the needs of underserved and diverse communities served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent

minorities, women, and persons with disabilities.

I.M. Gonzalez,

Under Secretary for Research, Education, and Economics.

[FR Doc. 99–14308 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Request to Extend a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Research Service's intent to request an extension of a currently approved information collection, the Continuing Survey of Food Intakes by Individuals (CSFII) 1999–2002.

DATES: Comments on this notice must be received August 11, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Alanna J. Moshfegh, Research Leader, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, U.S. Department of Agriculture, 4700 River Road, Unit 83, Riverdale, MD 29737, (301) 734–8457.

SUPPLEMENTARY INFORMATION:

Title: Continuing Survey of Food Intakes by Individuals (CSFII) 1999–2002.

OMB Control Number: 0518–0023.

Expiration Date of Approval: October 31, 1999.

Type of Request: Extension of a currently approved information collection, the Continuing Survey of Food Intakes by Individuals (CSFII).

Abstract: USDA has been conducting nationwide food surveys since the 1930's as one means of fulfilling its responsibility to ensure the health and well-being of Americans through improved nutrition. USDA food consumption surveys measure the levels and shifts in the food and nutrient content and the nutritional adequacy of U.S. diets over time, and provide other information pertinent to understanding diets and their determinants.

The Continuing Survey of Food Intakes by Individuals (CSFII) is a major component of the National Nutrition Monitoring and Related Research Program (NNMRRP), established by the National Nutrition Monitoring and Related Research Act of 1990 (P.L. 101–445). The CSFII addresses the requirement of the 1990 Act for continuous monitoring of the dietary and nutritional status of the U.S. population and trends with respect to such status by obtaining information on food intakes by individuals. Another component of the NNMRRP, the Diet and Health Knowledge Survey (DHKS), is included in the CSFII. The DHKS is the first national survey designed so that data on individuals' attitudes and knowledge about nutrition and health can be linked directly to data on their food and nutrient intakes.

The primary public policy applications of USDA's food consumption survey data include evaluating the adequacy of American diets in relationship to scientific and Federal dietary recommendations and goals. Applications include monitoring the dietary status of at-risk population subgroups including children, the elderly, low-income, etc; assessing the nutritional impact of Federal food assistance programs; estimating exposure to pesticide residues, food additives, and contaminants; and monitoring and evaluating food use across the population specifically as it relates to food safety issues. Under the Food Quality Protection Act of 1996, the CSFII provides food consumption data for use in improving the accuracy and quality of EPA dietary risk assessments. Other applications include developing food fortification, enrichment, and labeling policies and assessing the nutritional impact of those policies; and assessing demand for agricultural products.

Accurate and timely food consumption data in an electronic, user-friendly format is a goal essential for meeting the information needs of these applications. The CSFII 1999–2002 interviews will use a computer-assisted telephone mode of collection. A newly developed USDA multiple-pass 24-hour recall method will be used to collect the dietary information. The sample will be drawn through a list-assisted random-digit dialing approach with the full U.S. population covered each year. Future plans include integrating the CSFII with the DHHS' National Health and Nutrition Examination Survey, allowing for a significant increase in sample size and coverage of population subgroups and use of a common dietary methodology and nutrient data base.

For the past two years extensive methodologic research has been conducted to develop an improved USDA multiple-pass 24-hour recall method to collect the dietary information by telephone. Both cognitive research and field tests have been conducted as components of this research. Activities also have been ongoing to automate the recall method and other survey questionnaires for administration by telephone. During the next year, development and testing of the computer-assisted recall method and other questionnaires will continue. The computer-assisted telephone interviews will be tested and evaluated in two nationwide pilot studies. Data collection for the main CSFII will begin January 2001.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 90 minutes per response.

Respondents: Non-institutionalized individuals of all ages residing in private households in the U.S.

Estimated Number of Respondents: 5,000 over 1 year.

Estimated Total Annual Burden on Respondents: 7,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Lori G. Borrud, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, U.S. Department of Agriculture, 4700 River Road, Unit 83, Riverdale, MD 20737, (301) 734–8457.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Alanna J. Moshfegh, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, U.S. Department of Agriculture, 4700 River Road, Unit 83, Riverdale, MD 20737, (301) 734–8457.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Beltsville, MD, May 27, 1999.
Phyllis E. Johnson,
Director, Beltsville Area, Agricultural Research Service.
[FR Doc. 99–14307 Filed 6–4–99; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–026N]

Australia's Meat Safety Enhancement Program (MSEP)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of equivalence decision.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing its decision that the Australian Quarantine and Inspection Service's (AQIS) Meat Safety Enhancement Program (MSEP) for slaughter inspection in establishments that slaughter meat for export to the United States: (1) Meets all requirements of U.S. law for the import of product to the United States; (2) provides the same level of public health protection as U.S. domestic slaughter inspection; and, (3) is therefore equivalent. The Agency will review its equivalence decision when AQIS completes the MSEP field trials and prepares a report for FSIS review. In the interim, Australian establishments that participate in the MSEP field trials may ship product to the United States.

ADDRESSES: Copies of the MSEP document are available from the FSIS Docket Clerk, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. A copy may also be obtained from the Australian Quarantine and Inspection Service homepage at *http://www.dpie.gov.au/aqis/homepage.*

A transcript of the public meeting is available for review by the public in the FSIS Docket Room.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Manis, Director, International Policy Division; Office of Policy, Program Development, and Evaluation; (202) 720–6400; or by electronic mail to *mark.manis@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

FSIS published a notice in the **Federal Register** on January 15, 1999 (64 FR 2621) announcing the availability of a document prepared by AQIS that sets forth AQIS's plan to conduct field trials of the MSEP—a new slaughter inspection system. Australia sought the concurrence of the United States in order to continue meat exports to this country from plants that participate in a pilot test of MSEP. FSIS requested comments on the document that the public could submit in writing or at a public meeting.

Public Comments

FSIS held a public meeting on February 3, 1999, to discuss the MSEP program and hear public comments. At this meeting, AQIS presented its program and responded to concerns raised by attendees.

Most of the written comments expressed opposition to MSEP equivalence.

Those in favor pointed out that the MSEP proposal resolves issues raised in November 1997 when FSIS informed AQIS that Project 2 (an earlier version of MSEP) was not equivalent because it did not provide an adequate form or intensity of Federal oversight. Favorable comments also cited the AQIS commitment to station a Government inspector on each slaughter line at a point between carcass trimming and final rinse for 100% verification that zero-fecal and other defect requirements have been met.

Those opposed to MSEP equivalence raised various issues that are discussed in the following sections. Responses provided by AQIS are included in this discussion.

1. Several comments expressed concerns about an increase in cases of Salmonellosis reported in Australia during 1996 and 1997. These cases were said to reflect problems in the Australian domestic meat inspection system, which is similar to MSEP. AQIS responds to this issue as follows:

A Communicable Infectious Diseases report of the Australian Department of Health and Aged Care on *Salmonella* cases in Victoria showed that the main recent outbreaks were attributable to Italian-style ice cream, peanut butter, mayonnaise and processed meat products. There was no data indicating an association of cases with raw meat coming from abattoirs. Conclusions from the report indicate that 'gross errors in food handling and mishandling by consumers' were the principal contributing factors.

It was indicated that the 'high success rate in tracking the sources of outbreaks, and the associated publicity, probably led to more testing and more reporting of outbreaks which may previously have gone unreported.'

A recent baseline study conducted on Australian export beef (1996) demonstrated that the incidence of *Salmonella* on carcases was 0.4%. Approximately 17 years ago a similar survey demonstrated that the incidence was 2.0%. The results of the 1996 baseline survey suggests that there has been a five-fold improvement in the reduction of *Salmonella* on Australian beef. The general prevalence of Salmonellosis world wide has increased, as it has in Australia, but it can be attributed to better testing and reporting in general, and in the case of Australia, to items such as peanuts, coleslaw, eggs, etc. Testing so far for *Salmonella* in the context of Pathogen Reduction/HACCP implementation in the Australian export meat plants has revealed a 0.05% positive isolation rate from beef carcases.

FSIS notes that comments about domestic foodborne illness rates in Australia do not relate directly to MSEP equivalence or the equivalence of Australian plants certified for export to the United States. AQIS has implemented the same or equivalent Pathogen Reduction/Hazard Analysis Critical Control Point (HACCP) final rule microbial testing programs in all U.S.-certified Australian plants. Additionally, AQIS has collected baseline *Salmonella* data and other microbial data which indicate that the one plant presently proposed for MSEP pilot testing produces very clean product under traditional inspection. These data will be applied as performance standards during subsequent field trials while the trial plant operates under MSEP. AQIS will hold this plant responsible for attaining the same or better microbiological results under MSEP than it achieved under traditional inspection. As other Australian export plants qualify for MSEP, AQIS and FSIS will review their baseline to ensure that appropriate microbial performance standards are applied.

2. Some commenters expressed concerns about what activities constitute Government inspection under MSEP. AQIS responds as follows:

Government inspection under MSEP comprises all of the following activities and responsibilities outlined in the appropriate Australian Federal Government legislation (The Export Control Act and associated Export Meat Orders). These activities and responsibilities include: Facilities and site standards of construction, hygiene etc, fit and proper person clearance of company principals, operational process control, ante and post mortem verification and oversight, disposition and control, full time government veterinary officer oversight, 100% verification for zero fecal contamination by a government meat inspector stationed at the end of the slaughter line, microbiological verification (ESAM program), macroscopic verification (Meat Hygiene Assessment), government approved HACCP/QA system and, government certification.

FSIS notes that the AQIS proposal details qualification requirements for establishments that apply for MSEP participation and delineates activities

that AQIS will perform to ensure product wholesomeness and safety. The AQIS mark of inspection will be applied in MSEP plants to product that is handled, processed and stored in a manner that fully complies with AQIS Export Meat Orders and import requirements of the United States. AQIS will provide additional MSEP inspection controls as follows: (1) The AQIS meat inspector will be stationed on the line in cattle slaughter plants at a point before final wash; (2) final trimming will be under the supervision of the AQIS meat inspector; (3) the AQIS inspector will perform a verification for zero-fecal and other carcass defects on *each* carcass before final wash; (4) carcass defect data will be collected at this point on the line under the Meat Hygiene Assessment (MHA) program; and (5) the in-plant veterinarian will perform ante-mortem sampling, some verification activities, and oversight functions on the entire slaughter line.

Thus, AQIS inspection under MSEP will combine direct oversight of company employee functions combined with carcass-by-carcass verification that plant HACCP/Quality Assurance (QA) systems provide safe and wholesome product.

3. Several commenters questioned why AQIS has not provided baseline data for other plants that will participate in MSEP field trials. AQIS responds as follows:

In 1996/97 five plants were selected for inclusion in the proposed Project 2 pilot trial. Over the course of the collaborative development and evolution of the Project 2 model to the MSEP model, the number of eligible plants has been reduced now to one. This plant is a beef processing plant at Rockdale, NSW. One of the original selected plants dropped out due to the untimely death of the plant's QA manager. Two others wished to retain their EU listing so therefore do not qualify for inclusion in MSEP at this point of time. The other plant does not presently meet the AQIS pre-requisite requirements.

AQIS intends to bring this and other plants into the trial, once all pre-requisite conditions have been met, including collection of baseline data and prior consultation with FSIS.

Initial 'before' data as outlined in the original Project 2 plan has been collected from these plants. But because only one of the plants progressed to the MSEP stage—benchmark or performance standard MSEP data is not available from any other Australian plant.

4. Some commenters suggest that MSEP cannot be found equivalent because AQIS presented no data proving it provides results equal to or better than traditional inspection. AQIS responds as follows:

MSEP has not yet been implemented. One plant has been selected for initial inclusion in MSEP. Performance standard data has been collected from this plant. This has included both macroscopic and microbiological data for product along with an objective measure of process conformance and individual government meat inspection effectiveness.

FSIS notes that AQIS cannot implement MSEP until FSIS agrees to accept meat from trial establishments. One purpose of MSEP field trials is to establish whether company employees achieve the same or better results under AQIS oversight and verification as were achieved by Government inspectors under traditional inspection. Nonetheless, FSIS concludes that MSEP is equivalent because it meets all requirements of U.S. law for the import of product to the United States and provides the same level of public health protection as U.S. domestic slaughter inspection.

5. Several commenters cited the 1998 European Union (EU) audit of Australia's export meat inspection system as evidence that AQIS controls are not fully effective. AQIS responds as follows:

The EU review of Australian meat export meat establishments, which took place in March and April 1998, raised some concerns in the minds of the EU reviewers. These concerns did not relate to food safety or sanitation but highlighted operational and interpretational differences between European requirements and the Australian system, which have been operating for many years with EU concurrence.

Following high level consultations between senior Australian and EU officials in Brussels in October 1998, the EU has accepted assurances provided by Australia. The conclusions of the October 1998 meeting were viewed positively by both the EU and Australian officials.

FSIS notes that in the February 3 public meeting, AQIS fielded similar comments and explained that Australia and the EU had reached an agreement that preserved Australia's export listing. AQIS made it clear that it did not concur with some EU findings and had presented a vigorous defense of its program that resulted in an agreement of equivalence. In order to allay any lingering EU concerns, AQIS invited the EU to conduct a follow-up audit in 1999 for verification that all aspects of the equivalence agreement have been implemented. In May 1999, FSIS will also visit Australia to conduct a full audit of the Australian export meat inspection system. The Agency will make the results of that audit public.

6. Several commenters, including the Community and Public Sector Union (CPSU) that represents Australian Government meat inspectors, allege that AQIS has misrepresented union support for MSEP. They contend that CPSU has made its opposition to MSEP clear. AQIS responds as follows:

The Australian Council of Trade Unions (ACTU), the national peak body representing Australian workers, has formally endorsed the introduction of Quality Assurance systems into the Australian meat industry, along with systems to further enhance the safety of Australian meat. It further endorses the technical and structural reform processes currently under way in Australia.

The Community and Public Sector Union (CPSU) representing meat inspectors was originally invited to participate in a Steering Committee oversighting the MSEP, but withdrew because of the potential impact upon government meat inspector numbers.

FSIS notes that the MSEP proposal does not contain a claim that CPSU or its union inspectors are MSEP supporters. Under the section titled Australia's "Commitment to Food Safety," AQIS states in paragraphs 2 and 3:

To further enhance this commitment the Prime Minister of Australia established a comprehensive Food Regulation Review in 1997. This review is examining ways to enhance the effectiveness and efficiency of food regulatory arrangements. Further to this review, the Australian Food Council has established a National Safe Food System in association with the Australia New Zealand Food Authority (ANZFA) to develop a coordinated, practical and effective food hygiene system centred on the Food Hygiene Standard and complementary AQIS regulations.

The union movement in Australia is firmly behind these initiatives. The Australian food industry has formalised an agreement with the Australian Council of Trade Unions (ACTU)—the Australian peak union body, on ways to introduce HACCP to Australian food enterprises.

The statement about union support in paragraph 3 relates to Australian government initiatives enumerated in paragraph 2. In Attachment A to the MSEP proposal, AQIS provides a joint statement between the Australian Food Council and the Australian Council of Trade Unions pledging support for food safety reforms. MSEP is not a component of those reforms.

7. Some concern was expressed about the role of the AQIS inspector who will be doing 100% carcass-by-carcass verification inspection at a point in the slaughter line between carcass trimming and final rinse. One concern was how this inspector could perform that function as well as oversee company employees, especially in multi-line plants. AQIS responds as follows:

Government MSEP verification inspection in multi-line plants under MSEP will involve

carcase by carcase inspection by a government meat inspector; one AQIS inspector per slaughter line. Australia does not have any single species, multi-line plants but has 27 plants listed for the US which process different species. For example, a slaughter plant operating under MSEP and processing cattle and sheep for the US market would have one inspector stationed at the end of the beef slaughter line and another inspector stationed at the end of the lamb/mutton slaughter line, each inspector carrying out verification inspection of every carcase.

FSIS notes that the amended AQIS proposal indicates that the verification inspector will operate at a fixed point on the slaughter line, while the AQIS veterinarian will conduct oversight of company employees.

8. An additional comment was submitted by the Government Accountability Project (GAP) on March 31, 1999. This comment listed ten allegations GAP has received from what it termed "Australian whistleblowers." Although this letter was received after the comment period closed, FSIS considered it in the spirit of transparency that underlies each equivalence decision that the Agency makes. The allegations are summarized as follows:

(1) Lots sampled were not representative of the day's production.

(2) Sample sizes were not consistent.

(3) Corrective action on failures discovered in the morning sample was delayed until collection of afternoon data and averaging of both results, which meant that violations discovered at the beginning of production continued unabated.

(4) Sample collection times were not consistent, and were manipulated to avoid exposure of defects. In particular, the timing was tailored as a handicap for afternoon "improvements" that would neutralize particular morning failures prior to averaging the day's final results.

(5) AQIS was not expanding the scope of sampling after discovery of excessive violations, because industry promises to conduct carcass specific corrective action changed results from "fail" to "pass."

(6) Due to a shortage of government personnel, controls through "Check the Checker" AQIS sampling did not begin until mid day to verify the accuracy of industry data. This essentially left the industry on an honor system for morning results.

(7) For data which AQIS personnel could check in a timely manner, government inspectors and vets found over twice as many defects as reflected in industry records.

(8) Data underlying the MHA report was not statistically significant, because collection was not genuinely random and there were only two collections daily—inadequate due to inconsistencies in number of samples per lot and number of lots per day that were monitored.

(9) MSEP will mean the functional elimination of government process monitoring.

(10) The commitment to a final fecal inspection outpost is only an interim measure that AQIS already has announced may be withdrawn if approved by "overseas authorities."

FSIS interprets allegations one through eight as pertaining to AQIS baseline data collections that were conducted in the one Australian establishment presently participating in MSEP field trials. Mr. Brian Macdonald, Director, Meat Inspection Division, responded for AQIS to these eight allegations as follows:

From the construction of Questions 1–8 it would appear that the GAP's information relates to the implementation of the Meat Hygiene Assessment (MHA) program at the Rockdale Plant in a general sense. This has led to a questioning of the validity of the six-month data set presented at the public meeting on February 3.

While some of the wording suggests the information received relates to activity on a specific day the following comments assume their concerns relate to on-going performances.

Question 1. The MHA system requires lots to be determined by the carcase identification system, that is, a lot is a group of animals with the same tailtag (a property of origin alphanumeric identifier tag). A lot may represent the entire production for a shift, or any part thereof. It is recommended that wherever possible the selection of samples be randomised. The Veterinary Officers in Charge (VOIC) at the plant have indicated that the correct procedure is followed at Rockdale. The official AQIS policy for MHA operation across the export meat inspection program is random selection of carcases where possible.

Question 2. MHA sampling rates are appropriate and have been determined from the statistically validated Australian Standards 1199–1988, Sampling Procedures and Tables for Inspection by Attributes. The sampling rate is based on the number of animals in a lot and it has been confirmed with the AQIS VOICs that the sampling rate is consistent with the MHA document.

Question 3. Under MHA the sampling frequency and corrective action are clearly stated. Rockdale sources the majority of animals from an adjacent feedlot. For MHA purposes an entire day's production may be treated as a single lot. Thus animals slaughtered early in the day and late in the day may form a single lot for monitoring purposes. There is therefore, nothing of a sinister nature in the information that may have been passed to GAP.

This is not to say that appropriate corrective action was not taken immediately upon finding there had been a violation. Defects on product are required to be removed at the time they are identified by trimming. Also, assessment of procedures may require a delay in implementation of a definitive corrective action to assess if the issue is related to human error or procedural error. AQIS staff on the establishment concerned have been and will continue to exercise their regulatory responsibilities in this regard.

Question 4. As you can appreciate it is very difficult to respond to this allegation without further supporting evidence. Sampling times are supposed to vary as it is desirable that they do so to remove predictability from the system—employees would quickly learn when they are being monitored or are scheduled to be monitored, which would negate the value of the monitoring.

Monitoring is primarily a company responsibility and is thus one of a number of tasks that company employees carry out during their day. It is recommended in the MHA that "the selection of samples be as random as possible" therefore if sample selection times were consistent AQIS would be concerned that manipulation was at risk of taking place. In addition, independent monitoring is carried out by AQIS and any significant deviation in results between company and AQIS monitoring is followed up by AQIS as the regulatory authority. The AQIS VOICs have indicated there is no evidence of manipulation.

The point of afternoon improvements used to neutralise morning failures is also opposite to all practical findings on the issue of production line manufacturing efficiencies. Most process workers will perform well in the morning when they are fresh and will deteriorate over time due to mental and physical fatigue. There are many studies that substantiate that defects are more likely to occur toward the end of a shift than in the beginning of the shift, unless the operators are dealing with new procedures.

Question 5. Under the MHA there is a defined protocol for the changing of sampling intensity depending on the number of consecutive unacceptable or marginal defects identified by the company at monitoring, and AQIS on-plant staff have the responsibility to ensure the company complies with the MHA sampling parameters.

The VOICs have confirmed that where consecutive unacceptable or marginal defects are identified the intensity of monitoring as required in the MHA documentation is being implemented.

However, where a company has an MSQA in place and is monitoring a CCP on the processing floor, a violation of the CCP will not be subject to the MHA requirements. Such a violation will be subject to the specific corrective actions identified in the HACCP plan, and must be immediate since a CCP relates specifically to food safety issues. AQIS on-plant staff again are responsible for ensuring the company complies with its HACCP plan.

Question 6. The MHA system requires AQIS to perform check the checker monitoring on a twice weekly basis. It is not correct to conclude that at all other times industry is left to its own devices. Full-time AQIS inspection presence is provided at every US-listed abattoir, otherwise the establishment simply does not operate for the day.

Randomised AQIS monitoring may well mean that a check was not conducted in the morning. The aim of the AQIS process is to ensure that the company is not likely to know when check the checker process will occur during a shift or during the week. However there is an equal likelihood that any

part of a production shift will be subjected to an AQIS verification check consistent with well established quality management principles.

Question 7. It is possible that government officials may have found twice the number of defects as recorded by industry. Such isolated instances might occur, for example where the company was training new personnel. The important point to recognise is that such differences are not systemically or persistently tolerated. Where differences are found in MHA recording results, AQIS requires the company to institute an appropriate corrective plan to bring the monitoring into conformity with standards. This is the purpose of having the AQIS verification checks.

The AQIS VOICs have confirmed that where their monitoring finds differential recording of defects action is being taken by bringing the matter to the attention of management and implementing a documented corrective action plan.

AQIS plant records and other reviews and checks indicate that not only is the MHA system working satisfactorily at Rockdale but that the cleanliness and health of the product is consistently of a very high order.

Question 8. These comments have been addressed already and are summarised as follows:

- Samples are required to be selected at random wherever possible
- A lot is determined by animals carrying the same tailtag
- Sampling rates will be determined by the size of the lot and are based on the Australian Standard 1199–1988
- Lots monitored may represent the entire production of the shift or part thereof.

Specifically for the Rockdale plant, FSIS's experience of imported product does not bear out the allegations made in GAP's letter alleging "exposure to food poisoning threats." The U.S. rejection data for the establishment from which the empirical data was presented at the public meeting confirms the programs AQIS has implemented are working and sustained. In the last 12 months Rockdale Beef has presented more than 1.5 million pounds of product to US port-of-entry inspection with no rejections for contamination or pathology.

The response outlined above is specific to the Rockdale plant. If GAP has specific allegations relating to the inappropriate operation of MHA at other Australian plants, AQIS would welcome receiving that advice so that the necessary action can be taken.

Allegations nine and ten presented by GAP concern AQIS' intentions for government oversight of establishments that participate in the MSEP pilot program. AQIS responded as follows:

Question 9. GAP has cited a meeting summary prepared by the meat inspectors union of discussions to explain progress with the MSEP proposal. The context of these discussions was negotiations for a new labour agreement involving an increase in meat inspector remuneration. The discussion on MSEP was an adjunct to this main purpose. Nevertheless it is not an unreasonable reflection of what was conveyed to the union. But, it in no way contradicts my statements and undertakings given at the public hearing on 3 February.

Australia has sought an equivalency decision from the United States on the basis of retaining an inspector at the end of the slaughter line who will undertake carcase by carcase inspection of all product. This was made clear at the public hearing and remains the proposal for which Australia is seeking equivalence. No other arrangement is contemplated for US listed plants.

GAP suggests that this is breaking a prior commitment for a government slaughter floor inspector to monitor process controls and respond to breaking problems. This was not part of the proposal presented at the public hearing on 3 February. In my [Mr. Macdonald's] presentation I indicated AQIS's slaughter floor presence would be in two parts. First, the AQIS VOIC would undertake oversight and verification activities at a range of designated points in the production process. In the material presented, these points were identified and the verification frequencies quantified. Secondly, an AQIS meat inspector would undertake carcase by carcase inspection of all production after the final trim and before the final wash. Qualified company employees would perform sorting activities within the confines of this arrangement. This was all made very clear in my presentation and will be implemented precisely at trial plants.

Question 10. The reference in the AQIS/union meeting record to the removal of the final AQIS inspection point needs to be put in context. At that point in the meeting, the discussions were comparing AQIS's presence in MSEP trials at non-US listed plants and US listed plants. AQIS was asked if at some time in the future MSEP could be modified to reflect the current arrangements in non-US listed plants where there is no final carcase by carcase AQIS inspection. This outcome was recognised as a possibility. You might note that AQIS officials modified the union prepared draft to clearly indicate that this was not something which Australia would do unilaterally and would be subject to further approval from US authorities.

However, the comment is irrelevant. The commitment to carcase by carcase inspection is a fundamental feature of Australia's request for an equivalency determination from the United States. It will remain part of the Australian system for US listed plants.

FSIS notes that AQIS clearly presented the details of their MSEP proposal in the February 3 public meeting and has in no way modified them since that meeting. AQIS responded to the other issues raised in the GAP letter, as follows:

The GAP also raised two other issues. The first concerned reduction in the number of inspection staff in the Australian meat inspection program. It was suggested that this was being driven by the Australian Government's policy of full cost recovery for meat inspection services.

Inspectors have only been removed where there has been no impact on mandatory import country requirements and on food safety, which remains the fundamental imperative of the Australian meat inspection program. Due to historical reasons the AQIS meat inspection program was grossly over staffed, work practices delivered extremely poor productivity and there was institutionalised manipulation of working arrangements to maximise payments such as travel allowance, overtime and penalty payments. It is these elements that have been eliminated. All elements related to public health requirements have been continued and, indeed, reinforced where necessary. It is interesting to note that the reduction in inspector numbers has coincided with an improvement in the Australian performance at US port of entry testing. You may recall that I provided this data in my presentation at the public hearing on 3 February.

AQIS does not regard the additional costs imposed on industry by MSEP as a negative factor. MSEP requires a significant commitment by industry to quality systems and good manufacturing practice. Australian industry knows that such commitments are necessary to maintain markets in a world concerned with food safety and quality products. They are prepared to pay the price.

The extra costs are not a reason why only one plant is ready to proceed on the trial at this point in time. As I explained at the public hearing, one plant, which is not US listed, did not continue with the development of the necessary systems due to the untimely death of a young woman who was implementing MSEP at that plant. The establishment was a small family business and the young woman was an intimate family relative. Her death had far reaching implications for that company in the circumstances.

Two other plants could join the trial immediately but are also listed for the European Union where Australia has yet to achieve an equivalency determination for MSEP. Both plants remain highly committed to all of the quality systems developed for MSEP which are in place and operating except for company sorting.

The final plant delayed implementation of MSEP in the light of the delays occurring in securing an equivalency decision from the United States. Company management has informed me they will now join the trial when an equivalency decision is announced.

Finally, GAP raised the findings of a review by the European Commission of Australian export meat plants in March 1998. Australia does not accept many of the findings of the European Commission review, which did not look at food safety issues. Rather it examined Australia's conformance with European Union legislation and where this did not occur in detail drew conclusions about confidence in the Australian system. In our view there is a very large gap between the strict letter of European Union law and food safety outcomes. The former does not guarantee the latter.

At the public hearing on 3 February I invited US consumers to calibrate the judgements of the European Commission reviewer against the food safety outcomes being secured by Australia at US port-of-entry testing. I would ask you to continue to do so in any further consideration of the Australian request for equivalency.

In conclusion, there has been no manipulation of the data presented at the public hearing in Washington on 3 February. Implementation of the trial will proceed precisely as explained at that public hearing should the United States grant equivalence to our proposal.

In subsequent communications, AQIS further clarified MHA random sampling as the "recommended" procedure but acknowledged that "random" often means "unpredictable" rather than statistically random. It emphasized that MHA sampling is conducted by quality control personnel, and that production personnel have no prior knowledge or influence over when or how sampling occurs.

AQIS also clarified two additional issues. One is the U.S. reinspection record of the Rockdale establishment. It stated that during the period from April 1998 to March 1999, Rockdale exported 91 lots to the United States. Eighteen of these lots were identified for further reinspection while seventy-three were checked only for container integrity and labeling. As noted earlier in this notice, AQIS reports that Rockdale had no product rejected for contamination or pathology for the last 12 months.

The second additional issue concerns Australian exports to the European Union. AQIS reported that no interruptions of trade have occurred as a result of its disagreement with the EU over the March 1998 audit results. For example, AQIS reported that from January 1999 through April 1999, Australian establishments have shipped to EU countries 4,220 tonnes of beef, 7,608 tonnes of sheep and lamb, 1,177 tonnes of horse meat, and 51 tonnes of goat meat.

FSIS notes that AQIS has consistently provided immediate, comprehensive and credible responses to all questions that FSIS has raised about MSEP and to issues raised in public comments.

Finding of Equivalence

The World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary measures (commonly referred to as the "SPS Agreement") obliges the United States to respond to requests by other contracting parties to establish the equivalence of specified meat and poultry processing measures with those of the United States.

The Australian Government formally requested that the United States make an equivalence determination regarding its Meat Safety Enhancement Program to pilot-test a revised slaughter inspection system. FSIS has reviewed the MSEP with particular emphasis on two criteria:

(1) Does the MSEP meet all USDA requirements for the import of meat and meat products to the United States?

(2) Does the MSEP afford American consumers the same level of public health protection provided by USDA domestic slaughter inspection?

In summary, FSIS finds that the MSEP meets these criteria because MSEP will provide direct Federal oversight of Australian export establishment slaughter operations and verification that all U.S. safety and wholesomeness requirements have been met. FSIS further finds that AQIS has satisfactorily addressed the comments and concerns raised in the February 3, 1999 public meeting, the written comments presented in response to the **Federal Register** notice of January 15, 1999, and all subsequent comments.

Consequently, FSIS has determined that the AQIS MSEP program (1) meets all USDA requirements for import of meat and meat products to the United States, (2) will afford American consumers the same level of public health protection provided by USDA domestic slaughter inspection, and (3) is therefore equivalent. Accordingly, AQIS-certified establishments that participate in the MSEP field trials may ship meat and meat products to the United States.

AQIS has advised FSIS that it will soon begin MSEP implementation testing in one beef slaughter establishment and will initiate baseline data collections in others as they qualify. AQIS has pledged to share its baseline data with FSIS before the second and any subsequent establishment begins implementation testing. FSIS will provide periodic MSEP progress summaries through the *Constituent Alert*.

FSIS will review this equivalence determination when AQIS completes its MSEP field trials and prepares a report for FSIS review. FSIS will announce the results of that review in the **Federal Register**. FSIS will monitor MSEP field trials in the interim through discussions with AQIS personnel, review of establishment baseline and implementation data, periodic on-site audits, and continuous port of entry reinspection of products shipped to the United States. A copy of the FSIS monitoring plan may be obtained from Mr. Mark Manis at the address shown in **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice.

Done at Washington, DC, on June 1, 1999.

Thomas Billy,

Administrator.

[FR Doc. 99–14253 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Little Boulder Harvest and Fire Restoration Project; Butte and Jefferson Ranger Districts; Little Boulder Harvest and Fire Restoration Project; Butte Field Office; Jefferson County, MT

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service and Bureau of Land Management (BLM) will prepare an environmental impact statement (EIS) to disclose the environmental impacts of a proposed action to manipulate forest and range vegetation on about 12,950 acres. The manipulation includes timber harvest and prescribed burning. The Forest Service will be lead agency for this EIS (40 CFR 1501.5). The purpose is to restore and maintain aspen, open Douglas-fir forests, and shrub/grass cover. The proposed action includes approximately 58 acres of regeneration harvest, 4,815 acres of commercial tree thinning (some followed by burning and some not), 7,303 acres of prescribed burning without timber harvest, and 775 acres of conifer removal around aspen clones.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than July 9, 1999.

ADDRESSES: Send written comments to Mike Paterni, Acting Forest Supervisor, Beaverhead-Deerlodge National Forest, 1820 Meadowlark, Butte, MT 59701.

FOR FURTHER INFORMATION CONTACT: Lee Harry, Environmental Analysis Team Leader, Butte Ranger District, 1820 Meadowlark, Butte, MT 59701, or phone: (406) 494–2147.

SUPPLEMENTARY INFORMATION: The Forest Service and BLM goals are to restore aspen, open-grown Douglas-fir forests, and shrub/grass vegetation. Prescribed burning would be applied on a total of 10,173 acres, both as a single treatment (7,303 acres), and following timber harvest (2,870 acres). Of the total of 4,870 acres of harvest, 2,000 acres of harvest would not be followed by underburning. Commercial thinning in lodgepole, Douglas-fir and around aspen clones would be the primary harvest technique. A small part of the harvest would be for regeneration of lodgepole pine, and one proposed unit of

regeneration harvest would exceed 40 acres.

The analysis area lies between Butte, Boulder, and Whitehall, Montana. It includes several tributaries to Boulder River. Some included tributaries are: Bison Creek; Kleinsmith Gulch; Galena Gulch; Little Galena Gulch; North Fork Little Boulder River; and Little Boulder Creek. (T4N,R5W; T5N,R4W; T5N,R5W; T5N,R6W; T6N,R4W; T6N,R5W; T6N,R6W). The project area encompasses approximately 69,000 acres.

Potential issues identified are the effects of the proposal on watershed function, visual quality, fish and wildlife, noxious weeds, and roadless character.

Public participation is important to the analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues identified above. People may visit with Forest Service and BLM officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS comment period.

During the scoping process, the Forest Service and BLM are seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The agencies invite written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

Analysis of this proposed action began in an environmental assessment (EA). Public involvement for the EA started in October 1998 with a scoping letter to interested parties and legal notice in the Montana Standard. Since then, the public has participated in formulating issues and developing alternatives through responding to large mailings and attending periodic public meetings and field trips.

The Forest Service and BLM will continue to jointly involve the public and will inform interested and affected parties as to how they may participate and contribute to the final decision. Another formal opportunity for response will be provided following completion of a draft EIS.

The draft EIS should be available for the review in December, 1999. The final EIS is scheduled for completion in March, 1999.

The comment period on the draft EIS will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is very important that those interested in this proposed action participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service and BLM in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Beaverhead-Deerlodge Forest Supervisor and the Butte Field Manager are the responsible officials who will make the decision. They will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: June 1, 1999.

Mike Paterni,

Acting Forest Supervisor, Beaverhead-Deerlodge National Forest.

Dated: June 1, 1999.

Merle Good,

Field Manager, BLM Butte Field Office.

[FR Doc. 99–14296 Filed 6–4–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held June 23, 1999, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Update on Administration export control initiatives.

4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Export Administration, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522 (c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: June 1, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–14315 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

May 1999 Sunset Reviews: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset review and revocation of countervailing duty order: welded carbon steel line pipe from turkey (C–489–502).

SUMMARY: On May 3, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on welded carbon steel line pipe from Turkey. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking this order.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jason M. Appelbaum or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a countervailing duty order on welded carbon steel line pipe from Turkey (51 FR 7984, March 7, 1986). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated a sunset review of this order by publishing notice of the initiation in the **Federal Register** (64 FR 23596, May 3, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review on this order.

No domestic interested parties in the sunset review of this order responded to the notice of initiation by the May 18, 1999, deadline (see section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, May 18, 1999, we are revoking this countervailing duty order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and countervailing duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14342 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506, A–583–508, A–580–601, C–580–602, A–583–603, C–583–604, A–337–602, C–337–601, A–201–601, A–331–602, A–351–603, C–351–604, A–580–603, A–427–602, C–427–603, A–428–602, A–475–601, A–401–601, A–588–704, C–333–601]

Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD & CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of five-year ("Sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the sunset reviews on the antidumping duty orders on porcelain-on-steel cooking ware from the People's Republic of China, porcelain-on-steel cooking ware from Taiwan, top-of-the-stove stainless steel cooking ware from Korea (South), top-of-the-stove stainless steel cooking ware from Taiwan, standard carnations from Chile, fresh cut flowers from Mexico, fresh cut flowers from Ecuador, brass sheet and strip from Brazil, brass sheet and strip from Korea (South), brass sheet and strip from France, brass sheet and strip from Germany, brass sheet and strip from Italy, brass sheet and strip from Sweden, and brass sheet and strip from Japan, and the countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea (South), top-of-the-stove stainless steel cooking ware from Taiwan, standard carnations from Chile, brass sheet and strip from Brazil, brass sheet and strip from France, and pompon chrysanthemums from Peru. Based on adequate responses from

domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy. As a result of this extension, the Department intends to issue its final results not later than August 30, 1999.

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith, Martha V. Douthit or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–6397, (202) 482–3207 or (202) 482–1560 respectively.

Extension of Final Results

The Department has determined that the sunset reviews of the antidumping duty orders on porcelain-on-steel cooking ware from the People's Republic of China, porcelain-on-steel cooking ware from Taiwan, top-of-the-stove stainless steel cooking ware from Korea (South), top-of-the-stove stainless steel cooking ware from Taiwan, standard carnations from Chile, fresh cut flowers from Mexico, fresh cut flowers from Ecuador, brass sheet and strip from Brazil, brass sheet and strip from Korea (South), brass sheet and strip from France, brass sheet and strip from Germany, brass sheet and strip from Italy, brass sheet and strip from Sweden, and brass sheet and strip from Japan, and the countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea (South), top-of-the-stove stainless steel cooking ware from Taiwan, standard carnations from Chile, brass sheet and strip from Brazil, brass sheet and strip from France, and pompon chrysanthemums from Peru are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). See section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the final results of these reviews until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14339 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–810]

Chrome-Plated Lug Nuts from Taiwan; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for preliminary results of antidumping duty administrative review of chrome-plated lug nuts from Taiwan.

SUMMARY: The Department of Commerce (the Department) is extending by 120 days the time limit for the preliminary results of the seventh antidumping duty administrative review of the antidumping order on chrome-plated lug nuts from Taiwan, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1675 (a)(3)(A)). This review covers 17 producers and exporters of chrome-plated lug nuts from Taiwan and the period of review is September 1, 1997 through August 31, 1998.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Futtner or Nova Daly, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3814 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to the current regulations as codified at 19 CFR 351 (1998).

Background

On October 29, 1998 (63 FR 58009), the Department initiated an administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan, covering the period September 1, 1997 through August 31, 1998. In our notice of initiation, we stated our intention to issue the final results of these reviews no later than September 30, 1999. Due to the complexity and novelty of certain issues in this case, the Department has determined that it is not practicable to complete this review within the statutory time limit mandated by the Act.

Postponement of Preliminary Results of Review

Section 751 (a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act and § 351.213(h)(2) of the Department's regulations allows the Department to extend this time period to a maximum of 365 days and 180 days, respectively. Due to the 120 day extension, the Department, therefore, is extending the time limit for the preliminary results of the aforementioned review from June 2, 1999 to September 30, 1999. The deadline for issuing the final results of this review will be not later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: May 25, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–14233 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–006]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded steel pipes and tubes

from Taiwan. The review covers four manufacturers/exporters of the subject merchandise to the United States and the period May 1, 1997 through April 30, 1998. We preliminarily determine that Yun Din Steel Co. Ltd., Yieh Loong Co., Ltd., Kao Hsing Chang Iron & Steel Corporation , and Yieh Hsing Enterprise Co. Ltd. sold subject merchandise below normal value during the period of review. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Odenyo or Thomas Killiam, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5254/3019.

Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1998, the petitioners, Allied Tube & Conduit Corp., Wheatland Tube Company, Sawhill Tubular Division of Armco Inc., and Laclede Steel Co., filed a request for review of seven Taiwanese companies: Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), Kao Hsing Chang Iron & Steel Corporation (KHC), Yun Din Steel Co. Ltd. (Yun Din), Yieh Loong Co., Ltd. (Yieh Loong), Far East Machinery Co., Ltd. (FEMCO), Sheng Yu Steel Co., Ltd. (Sheng Yu, formerly An Mau Steel Co., Ltd.), and Tai Feng Industries. We initiated the review on June 29, 1998 (63 FR 35188).

In response to our requests for information, FEMCO and Sheng Yu reported that they had no sales or shipments of subject merchandise during the period of review (POR). On inquiry by the Department, Customs did not report any shipments by either company during the POR. Accordingly, we are rescinding the review with respect to FEMCO and Sheng Yu. Tai Feng Industries ceased operations in November 1983. *See* Circular Welded Carbon Steel Pipes and Tubes from Taiwan; Final Results of Administrative Review of Antidumping Duty Order (51 FR 234, December 5, 1986). Accordingly, we are rescinding the review with respect to Tai Feng. Yun Din and Yieh Loong did not respond to our requests for information and are discussed below in "Facts Available."

On September 23, 1998, the petitioners alleged that Yieh Hsing and KHC made home market sales below the cost of production (COP) during the POR. The Department found that the petitioners' allegation constituted a reasonable basis to believe or suspect that KHC and Yieh Hsing made sales in the home market below COP. Accordingly, in accordance with section 773(b) of the Act, on October 6, 1998, the Department initiated an investigation of sales below cost.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On December 30, 1998, the Department extended the time limit for the preliminary results to May 28, 1999. *See* Extension of Time Limits for Antidumping Duty Administrative Review (64 FR 860, January 6, 1999).

Scope of the Review

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in outside diameter. These products are commonly referred to in the industry as "standard pipe" and are produced to various American Society for Testing Materials specifications, most notably A–53, A–120, or A–135. Standard pipe is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

The review covers the period May 1, 1997 through April 30, 1998. The Department is conducting this review in accordance with section 751 of the Act.

Facts Available

In accordance with section 776(a)(2)(A) of the Act, we determine that the use of facts available is the appropriate basis for dumping margins for Yun Din and Yieh Loong. The Department issued questionnaires to Yun Din and Yieh Loong on June 10, 1998. Our questionnaires established the Section A deadline as July 28, 1998, and the Sections B through E deadline as August 21, 1998. On September 16, 1998, after receiving no response from Yun Din and Yieh Loong, we forwarded an additional letter to both companies, indicating that if we did not receive a complete response to our questionnaire by October 1, 1998, we would proceed with appraisements based upon facts available. To date, we have not received a response from Yieh Loong. On March 2, 1999, we received a letter from Yu Din, in which the company expressed its intent to submit a response to our questionnaire. On March 3, 1999, we responded to the letter by informing Yu Din that the Department's administrative reviews are controlled by statutory deadlines which prevent the Department from accepting a response to our questionnaire at such an extreme date past our established deadlines.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). The failure of Yun Din and Yieh Loong to reply to the Department's questionnaire in a timely manner demonstrates that they failed to act to the best of their ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Yun Din and Yieh Loong, we have used the highest rate for any respondent in any segment of this proceeding. This is an appropriate adverse rate because, but for the application of the highest rate in this case, uncooperative respondents would have no incentive to cooperate in future proceedings. Thus, we are applying the rate of 14.08 percent, the highest rate for any respondent in this review.

Fair Value Comparisons

To determine whether sales of subject merchandise in the United States were made at less than fair value, we compared export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value"

sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

The Department treated Yieh Hsing's and KHC's sales to the United States as EP sales, as defined in section 772(a) of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the constructed export price methodology was not warranted by the facts of the record. We based EP on the delivered, packed prices to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, foreign brokerage charges, and ocean freight in accordance with section 772(c) of the Act.

Normal Value

In order to determine whether there were sufficient sales of certain circular welded carbon steel pipes and tubes in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of subject merchandise to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Yieh Hsing's and KHC's respective aggregate volumes of HM sales of the foreign like product were greater than five percent of their respective aggregate volumes of U.S. sales of the subject merchandise. Therefore, we have based NV on HM sales. In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also made deductions from NV for HM inland freight, warranty expenses, early payment discounts, and other discounts. Finally, we made an adjustment to NV for differences in credit expenses, pursuant to section 773(a)(6)(C) of the Act.

Sales Below Cost Investigation

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time. Because KHC failed to provide any costs for certain models, as facts available we used the highest average cost for the same category of product.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. We found that, for certain models, 20 percent or more of the home market sales were sold at below-cost prices. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made (1) in substantial quantities within an extended period of time and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act) (*i.e.*, the sales were made at prices below the weighted-average per unit COP for the POR). We used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1).

Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, and general expenses. In accordance with section 773(e)(2)(A) of the Act, we based selling, general, and administrative (SG&A) expenses and profit on the amounts incurred and realized by KHC or Yieh Hsing in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing. Because KHC failed to provide any constructed value data for certain models, as facts available we used the highest average cost for the same category of product.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transactions. The NV LOT is that of the starting price sale in the comparison market or, when NV is based on CV, that of the sale from which we derive SG&A expenses and profit. For EP the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transactions, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (*See, e.g.*, Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).)

In implementing these principles in this review, we asked the respondents to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States.

Yieh Hsing provided information with respect to its selling activities associated with home market sales. Yieh Hsing offers each of its three classes of customers (distributors, retailers, and end-users) the same degree of nominal sales support, such as the opportunity to either purchase merchandise out of inventory or have it made to order. Yieh Hsing did not conduct advertising or inventory maintenance in the home market; however, it provided general technical advice and sale-specific warranty services to all its home market customers. We determine that there is no difference in selling functions between Yieh Hsing's three classes of HM customers. We therefore determine that Yieh Hsing sells to one level of trade in the home market.

Yieh Hsing similarly provided information with respect to the selling functions associated with its U.S. sales. Yieh Hsing's customers in the U.S. market consisted only of distributors, to whom it provided freight and delivery arrangements. Yieh Hsing provided no other services, such as inventory maintenance, technical advice, warranty services, or advertising, to its U.S. customers.

For home market sales, but not U.S. sales, Yieh Hsing provided general technical advice and sale-specific warranty services. Otherwise, the levels of customer assistance and sales support which Yieh Hsing provided its home

market and U.S. customers were not significantly different, and Yieh Hsing did not claim a LOT adjustment. Based upon the foregoing, we determine that Yieh Hsing sold at the same LOT in the U.S. market as it did in the home market, and consequently no LOT adjustment is warranted.

KHC provided information with respect to the selling activities associated with its home market sales. We determine that there is no significant difference in selling functions between KHC's two classes of HM customers (distributor and end-users). KHC generally provided distributors with more services (such as sales allowance discounts, quantity and early payment discounts, technical service and warranty expenses); however the degree to which it provided such services for distributors but not for end-users was not sufficiently documented for us to distinguish different levels of trade.

KHC similarly provided information with respect to selling functions associated with its U.S. sales. KHC had only one customer (a trading company) in the U.S. market during the POR, and its selling functions for that customer did not vary. Therefore, we determine that KHC sold at one level of trade in the U.S. market.

The levels of customer assistance and sales support provided by KHC for its home market and U.S. sales were not significantly different. KHC did not claim a LOT adjustment for U.S. sales, and the LOT information provided by KHC indicates that there was one LOT in the U.S. and home markets.

Sales Comparisons

To determine whether sales of certain circular welded carbon steel pipes and tubes in the United States were made at less than NV, we compared EP to the NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777(A) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the information provided by Yieh Hsing and KHC in response to our antidumping questionnaire.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period May 1, 1997 through April 31, 1998:

Manufacturer/exporter	Period	Margin (percent)
Yieh Hsing	5/1/97—4/30/98	6.42
KHC	5/1/97—4/30/98	14.08
Yun Din	5/1/97—4/30/98	14.08
Yieh Loong	5/1/97—4/30/98	14.08

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–009 of the main Department of Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the quantity of those same sales. This Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of certain circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of this administrative review, except that no cash deposit will be required if the rate is *de minimis*, *i.e.*, less than 0.50 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 9.7%, the "all others" rate established in the LTFV inve tigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.401(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: May 28, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–14337 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–503][A–122–603][A–570–502]

Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada and The People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce

ACTION: Notice of Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings from Brazil, Canada, and The People's Republic of China.

SUMMARY: On November 2, 1998, the U.S. Department of Commerce ("the Department") initiated a sunset review of the antidumping duty orders on certain iron construction castings from Brazil, Canada and the People's Republic of China ("the PRC") (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the bases of notices of intent to participate and substantive responses filed on behalf of the domestic industry, and inadequate responses (in these cases, no responses) from respondent interested parties, the Department determined to conduct an expedited review. As a result of these reviews, the Department finds that revocation of the antidumping orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: June 7, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Brazil—merchandise covered by the order on Brazil consists of certain iron construction castings. Heavy castings are limited to manhole covers, rings, and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems. Light castings are limited to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. "Heavy" castings are classifiable under Harmonized Tariff Schedule ("HTS") item number 7325.10.0010, and "light" castings are classified under HTS item number 7325.10.0050. On April 28, 1995, the Department determined, in response to a request from Southland Marketing, Inc., that the Polycast 700 Series frame, part number DG0700, and grate, part number DG0641, are not within the scope of the antidumping duty order on iron construction castings from Brazil (*see Notice of Scope Rulings*, 60 FR 36782, (July 18, 1995).

Canada—merchandise covered by the order on Canada consists of certain iron construction castings. Heavy castings are limited to manhole covers, rings, and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems. "Heavy" castings are classifiable under Harmonized Tariff Schedule ("HTS") item number 7325.10.0010. These articles must be of cast iron, not alloyed, and not malleable. On September 23, 1998, the Department issued the final results of a changed circumstance review, in which the Department revoked the order with respect to "light" castings.[1]

PRC—merchandise covered by the order on the PRC consists of certain iron construction castings. Heavy castings are limited to manhole covers, rings, and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems. Light castings are limited to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. "Heavy" castings are classifiable under Harmonized Tariff Schedule ("HTS") item number 7325.10.0010, and "light" castings are classified under HTS item number 7325.10.0050. In response to a request from Jack's International Trading Associates, Ltd., on August 28, 1995, the Department determined that certain cast iron, floor area drains are outside the scope of the order. *See Notice of Scope Rulings*, 60 FR 54213 (October 20, 1995). Further, in response to a request from The Metraflex Company, on August 13, 1997, the Department determined that "Y" pipe strainers are outside the scope of the of the order (*see Notice of Scope Rulings*, 62 FR 62288 (November 21, 1997)).

The HTS item numbers are provided for convenience and Customs purposes. The written product description remains dispositive.

These reviews cover all manufacturers and exporters of certain iron construction castings from Brazil, Canada and the PRC.

Background

On November 2, 1998, the Department initiated sunset reviews of the antidumping orders on certain iron construction castings from Brazil, Canada and the PRC (63 FR 58709) pursuant to section 751(c) of the Act. On November 17, 1998, we received Notices of Intent to Participate on behalf of the Municipal Castings Fair Trade Council ("MCFTC") and its individual members[2] (collectively, the "domestic parties"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received complete substantive responses on behalf of the domestic parties on December 2, 1998, within the 30-day deadline specified in section 351.218(d)(3)(i) of the *Sunset Regulations*. The individual members of the MCFTC claimed interested party status pursuant to section 771(9)(C) of the Act, as U.S. domestic producers of certain iron construction castings. MCFTC claimed interested party status as a trade association representing the domestic industry pursuant to section 771(9)(E) of the Act.

[1] *See Iron Construction Castings From Canada: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order: Correction*, 63 FR 50891 (September 23, 1998).

[2] The MCFTC is comprised of Allegheny Foundry Company, Bingham & Taylor, Dester Foundry Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe, and U.S. Foundry & Manufacturing Co. Bingham & Taylor and Tyler Pipe are manufacturers only of so-called "light castings" and, thus, are not interested parties in the review of the Canada order which covers only "heavy castings."

We did not receive a substantive response from any respondent interested party in any of these reviews. Therefore, pursuant to section 19 C.F.R § 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, we determined to conduct expedited sunset reviews of these orders.

The Department determined that the sunset reviews of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and the PRC are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. Therefore, on March 2, 1999, the Department extended the time limit for completion of the final results of these reviews until not later than June 1, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping orders would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the orders are revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, the domestic parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2. of the *Sunset Policy Bulletin*). Furthermore, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping when (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood determinations cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping when a respondent interested party waives its participation in the sunset review. In these reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The Department issued antidumping duty orders on certain iron construction castings from Brazil,[4] Canada,[5] and the PRC[6] in 1986. Since that time the Department has conducted several administrative reviews of each of these orders.[7] The antidumping duty orders remain in effect for all producers/exporters of certain iron construction castings from Brazil, Canada and the PRC.

In their substantive responses, the domestic parties argue that the respondents have reduced their sales to the United States dramatically and, thus, if the orders were revoked, it is likely that dumping would continue because the evidence demonstrates that the foreign producers/exporters need to dump to sell in any significant quantities in the United States. Specifically, the domestic parties argue that volume and value data on imports of heavy castings demonstrates that once the orders were imposed, imports began to decline. The domestic parties note that imports of heavy castings from Brazil fell from over 10 million pounds in 1986 to just over 5 million pounds in 1987, the first full year after the order, and dropped each year thereafter until reaching zero in 1991 and 1992. Although imports subsequently resumed, they have not gone over 294,000 pounds in any year. The domestic parties note that imports from Canada followed a similar, albeit less dramatic pattern, dropping from a pre-order high of over 20 million pounds, down to just over six million pounds in 1992. The domestic parties state that, although imports have since increased, they have not reached their pre-order level. With respect to imports of heavy castings from the PRC, the domestic

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[3] *See Iron Construction Castings From Canada, Brazil and the People's Republic of China: Extension of Time Limit for Final Results of Five-Year Review*, 64 FR 10985 (March 8, 1999).

[4] *See Antidumping Duty Order; Iron Construction Castings From Brazil*, 51 FR 17200 (May 9, 1986).

[5] *See Antidumping Duty Order; Iron Construction Castings From Canada*, 51 FR 7600 (March 5, 1986) and *Iron Construction Castings From Canada; Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order*, 51 FR 34110 (September 25, 1986).

[6] *See Antidumping Duty Order; Iron Construction Castings From the People's Republic of China (the PRC)*, 51 FR 17222 (May 9, 1986).

[7] *See Certain Iron Construction Castings from Brazil; Final Determination of Sales at Less Than Fair Value*, 51 FR 9477, (March 19, 1986); *Certain Iron Construction Castings from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 26238, (June 27, 1990) corrected, 55 FR 41262 (October 10, 1990) and *Certain Iron Construction Castings from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 43019 (October 25, 1990). See *Certain Iron Construction Castings from Canada: Final Determination of Sales at Less Than Fair Value*, 51 FR 2412 (January 16, 1986); *Certain Iron Construction Castings from Canada: Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order*, 51 FR 34110 (September 25, 1986); *Certain Iron Construction Castings from Canada; Final Results of Antidumping Duty Administrative Review*; 55 FR 460 (January 5, 1990); *Certain Iron Construction Castings from Canada; Final Results of Antidumping Duty Administrative Review*, 56 FR 23274 (May 21, 1991); *Certain Iron Construction Castings from Canada; Final Results of Antidumping Administrative Review*, 59 FR 25603 (May 17, 1994); *Certain Iron Construction Castings from Canada; Final Results of Antidumping Administrative Review*, 60 FR 9009 (February 16, 1995); *Certain Iron Construction Castings from Canada; Intent to revoke antidumping duty order*, 62 FR 9735 (March 4, 1997), *Certain Iron Construction Castings from Canada; Determination Not to Revoke Antidumping Duty Order*, 62 FR 23432 (April 30, 1997); *Certain Iron Construction Castings from Canada; Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 45797 (August 27, 1998); *Certain Iron Construction Castings from Canada: Notice of Sales at Less Than Fair Value*, 51 FR 9483 (March 19, 1986). *See Certain Iron Construction Castings from the People's Republic of China*, 56 FR 2742 (January 24, 1991). *See Certain Iron Construction Castings from The People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 57 FR 10644 (March 27, 1992; and *Certain Iron Construction Castings from The People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 60 FR 51454 (October 2, 1995).

parties state that imports did not decrease immediately after the issuance of the order. The domestic parties argue that this is presumably because the 11.66 percent rate from the original investigation was an insufficient deterrent to importers. The statistics provided by the domestic parties demonstrate that imports of heavy castings from the PRC increased each year through 1989, and did not begin to decrease significantly until 1991. The domestic parties point out that the higher margins from the final results of the 87–88 and 88–89 administrative reviews were issued in January 1991.

With respect to imports of light castings, the domestic parties state that because light castings enter the United States under a so-called "basket" category, they do not have firm data on import for this merchandise. They assert, however, based on day-to-day observation of conditions of competition in the marketplace, that imports have dwindled and there is little evidence of either Brazilian or Chinese import offerings of these items and a much-reduced presence of imports from Canada.

With respect to whether dumping continued at any levels above *de minimis* after the issuance of these orders, the domestic parties note that dumping margins above *de minimis* were found in the original investigations and in each subsequent administrative review conducted by the Department.

Citing to the SAA, the domestic parties argue that the declining import volumes from all three countries, in addition to reflecting the existence of dumping margins after the orders went into effect, is highly probative of the likelihood of continuation or recurrence of dumping if these orders were revoked. The domestic parties conclude that the Department should assume that exporters of the subject castings from Brazil, Canada and the PRC cannot sell their goods in the U.S. market without dumping and, therefore, they would have to continue or resume dumping if they want to reenter the U.S. market at any reasonable commercial volumes.

As discussed in section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, "[E]xistence of dumping margins after the order, or cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed." As the domestic parties noted, dumping margins above *de minimis* were found to exist in each of the administrative reviews conducted by the Department of these orders. Further, deposit rates above *de minimis* continue in effect for imports of castings from Brazil, Canada, and the PRC. Therefore, given that dumping margins above *de minimis* were found to exist and continue in effect, respondent interested parties waived their right to participate in these reviews, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy permit the use of a more recently calculated margin, when appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

With respect to the magnitude of the margin likely to prevail if the antidumping duty orders were revoked, the domestic parties argue that application of the principles set forth in the SAA and the *Sunset Policy Bulletin* support the conclusion that the Department should rely on the margins from the original investigations on Brazil and Canada. The domestic parties suggest that with respect to the PRC, the Department should select a more recently calculated margin consistent with section II.B.2. of the *Sunset Policy Bulletin*. The domestic parties base this assertion on the fact that, as a result of final results of administrative reviews issued in 1991, the antidumping duty rates increased to almost 25 percent and 46 percent. Further, it was in 1991 that imports from the PRC began to decrease. In conclusion, the domestic parties state that the rate of 24.21 percent may be most appropriate to provide to the Commission, as that is the rate likely to be closest to the rate that ultimately may be applied to castings from the PRC at the conclusion of the pending litigation concerning the 1998–89 and 1989–90 review periods.

The Department agrees with the domestic parties as to the magnitude of the margin likely to prevail were the orders on Brazil and Canada revoked. An examination of the margin history of the orders as well as an examination of the import statistics provided by the domestic parties confirms that dumping continued after the issuance of the orders and imports of the subject merchandise continue. Therefore, in accordance with the *Sunset Policy Bulletin* and absent an argument that a more recently calculated margin is more indicative of the margin likely to prevail if the orders on Brazil and Canada were revoked, we determine that the margins calculated in the Department's original investigation are probative of the behavior of Brazilian and Canadian producers and exporters of certain iron construction castings.

We agree with the domestic parties with regard to the use of a more recently calculated rate with respect to the PRC. According to the *Sunset Policy Bulletin*, "a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order" (*see* section II.B.2 of the *Sunset Policy Bulletin*). In addition, the *Sunset Policy Bulletin* notes that the Department will normally consider market share; however, absent information on relative market share, and absent argument or evidence to the contrary, we have relied on import volumes in the review on certain iron construction castings from the PRC. The import statistics related to imports of heavy castings provided by the domestic parties demonstrate that imports (on a volume basis) from the PRC increased every year between 1986 and 1989. The import level in 1990 decreased slightly from imports in 1989. After the issuance in January 1991, of the final results of reviews covering May 1, 1987 through April 30, 1988 and May 1, 1988 through April 30, 1989, imports from the PRC declined precipitously. During the periods when imports were increasing, the Department found increasing dumping margins (24.21% in 1987, 45.92% in 1988, and 92.74% in 1989). In light of the correlation between the increase in imports and the increase in the dumping margin, the Department finds that a more recently calculated rate is the most probative of the behavior of Chinese producers/exporters of certain iron construction castings. Because imports continued to increase through calendar year 1989, and there was only a minor decrease in imports in the following year, we determine that the dumping margin applicable to the review of imports during the period May 1, 1989 through April 30, 1990, is

probative of the behavior of Chinese producers and exporters of castings absent the discipline of the order.

Pursuant to Section 752(c) of the Act, the Department will report to the Commission the company-specific and "all others" rates at the levels indicated in the Final Results of Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturers/exporters	Margin (percent)
Brazil:	
Fundicao Aldebara, Ltda. (ALDEBARA)	58.74
Sociedade de Metalurgia E Processos, Ltda. (SOMEP)	16.61
Companhia Siderurgica da Guanabara (COSIGUA) formerly Usina Siderurgica Paraense, S.A. (USIPA)	5.95
All others	26.16
Canada:	
Bibby Ste. Croix Foundries, Inc	0.60
LaPerle Foundry, Ltd	4.40
Mueller Canada, Inc	9.80
All Others	7.50
China:	
All manufacturers/exporters	92.74

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14338 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–504]

Final Results of Expedited Sunset Review: Heavy Iron Construction Castings From Brazil.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Heavy Iron Construction Castings from Brazil.

SUMMARY: On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on heavy iron construction castings from Brazil (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry, as well as inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this review, the Department finds that termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the "Final Results of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Jason M. Appelbaum or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: June 7, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise covered by this review are shipments of certain heavy iron construction castings from Brazil. This merchandise is defined as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames. The DGO700 frame and the DG0641 grate from Southland Marketing are outside the scope of the order. This merchandise is currently classifiable under item number 7325.10.00 of the Harmonized Tariff Schedule ("HTS") of the United States. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

On March 19, 1986, the Department issued a final affirmative countervailing duty determination with respect to imports of certain heavy iron construction castings from Brazil.[1] The countervailing duty order on heavy iron construction castings from Brazil was published in the **Federal Register** on May 15, 1986 (51 FR 17786). In the final determination the Department found an estimated net subsidy of 5.77 percent *ad valorem* during the review period based on three programs: 2.85 percent under the preferential working-capital financing for exports program; 1.86

[1] *See Final Affirmative Countervailing Duty Determination; Certain Heavy Iron Construction Castings From Brazil*, 51 FR 9491 (March 19, 1986).

percent under the income tax exemption for export earnings program; and 1.06 percent under the FINEX export financing program. However, the cash deposit rate was adjusted to take into account program-wide changes in the preferential working capital financing for exports program, which reduced the program-specific subsidy from 2.85 percent to 0.48 percent. On May 15, 1986, the Department issued a countervailing duty order establishing the cash deposit rate at 3.40 percent *ad valorem*.[2]

Since the issuance of the order, the Department has conducted one administrative review covering the period January 1, 1990 through December 31, 1990, six programs, and the three companies that produced and exported the subject merchandise to the United States.[3] In the final results of administrative review, the Department determined the benefit from the income tax reduction for export earnings program was 0.33 percent. However, the Department also found that Decree Law 8034 of April 12, 1990 eliminated this tax reduction and, therefore, for purposes of cash deposits of estimated countervailing duties, the Department determined the benefit from this program to be zero. The Department also found that the CACEX preferential working capital financing for exports program has been terminated effective August 30, 1990, by Central Bank Resolution 1744. Finally, the Department found that the FINEX export financing program was not used by respondents during the period of review. The three other programs reviewed by the Department were either not used or eliminated.

This review covers all producers and exporters of heavy iron construction castings from Brazil.

Background

On November 2, 1998, the Department initiated a sunset review of the countervailing duty order on heavy iron construction castings from Brazil (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Municipal Castings Fair Trade Council ("MCFTC") and its individual members[4] (collectively "the domestic parties"), on November 17, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response on behalf of the domestic parties on December 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The individual members of the MCFTC claimed interested party status as manufacturers of domestic like products and MCFTC claimed interested party status as a trade association representing the domestic industry.

The Department did not receive a substantive response from any respondent interested party, including the Government of Brazil. Therefore, pursuant to the regulations, the Department determined to conduct an expedited review.

The Department determined that the sunset review of the countervailing duty order on heavy iron construction castings from Brazil is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act.) Therefore, on March 2, 1999, the Department extended the time limit for completion of the final results of this review until not later than June 1, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the domestic parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review

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[2] *See Countervailing Duty Order; Certain Heavy Iron Construction Castings From Brazil*, 51 FR 17786 (May 15, 1986).

[3] *See Certain Heavy Iron Construction Castings From Brazil; Final Results of Countervailing Duty Administrative Review and Determination Not To Revoke the Countervailing Duty Order*, 57 FR 2252 (January 21, 1992) and *Certain Heavy Iron Construction Castings From Brazil; Preliminary Results of Countervailing Duty Administrative Review*, 56 FR 58879 (November 22, 1991).

[4] The MCFTC is comprised of Allegheny Foundry Company, Bingham & Taylor, Deeter Foundry Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe, and U.S. Foundry & Manufacturing Co. Bingham & Taylor and Tyler Pipe are manufacturers only of so-called "light castings" and thus are not interested parties in the review of this order, which covers only so-called heavy castings.

[5] *See Heavy Iron Construction Castings From Brazil: Extension of Time Limit for Final Results of Five-Year Review*, 64 FR 10992 (March 8, 1999).

of a countervailing duty order where the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.[6] In the instant review, the Department did not receive a substantive response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, the domestic parties argue that it is likely that a countervailable subsidy would continue to be provided to manufacturers and exporters of the subject merchandise if the countervailing duty order were revoked. (*See* December 2, 1998 Substantive Response of the domestic parties at 42.) The domestic parties argue that, even though the Department, in the lone administrative review of this order, found a *de minimis* net countervailable subsidy, this alone is not sufficient grounds to conclude that there is no likelihood of continuation or recurrence of a countervailable subsidy. Citing to the SAA at 888, the domestic parties assert that the Department must carefully examine the legal method by which the Government of Brazil terminated any of its subsidy programs. (*See* Substantive Response of the domestic parties at 49–50.)

The domestic parties argue that, with respect to at least one program (preferential working capital financing for exports), termination was accomplished through administrative action rather than a legislative measure. The domestic parties argue that this is precisely the type of circumstance recognized by the SAA as one in which a program may more likely be reinstated.

The *Sunset Policy Bulletin*, at section III.A.3.a, states that, consistent with the SAA at 888, continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary. Additionally, the *Sunset Policy Bulletin* provides that, where a program has been officially terminated by the foreign government, this will be probative of the fact that the program will not continue or recur if the order is revoked. (*See Sunset Policy Bulletin* at section III.A.5.)

As noted above, the Department, in its final affirmative determination, determined that Brazilian producers of castings were benefitting from three countervailable subsidy programs. In the lone administrative review of the order, the Department found that two of the original three programs had since been terminated. Additionally, the Department also found two other programs that had not previously been used by producers of castings to be terminated. Finally, the Department found that the third of the original three programs was not used during the review period.

As noted in the *Sunset Policy Bulletin*, where a foreign government has eliminated a subsidy program, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. With respect to the income tax exemption for export earnings program, the program was eliminated by Decree Law 8034. Therefore, since this program was terminated through legislative action we find that this program was eliminated and cannot easily be reinstated. With respect to the preferential working capital financing for exports program, we agree with the domestic parties that the program was terminated by Central Bank resolution. Loans made under this program were authorized by resolution of the Central Bank. Therefore, we determine that termination of this program by Central Bank resolution is sufficient for us to consider this program terminated and that it cannot be easily reinstated. Further, we note that, although the domestic parties requested that we consider whether the preferential working capital financing for exports program may be easily reinstated, they offered no reason to believe that the program has, or will be reinstated. Therefore, for purposes of this review, we determine that both of these programs have been eliminated.

On the basis of information submitted during this sunset review, however, we have no reason to believe that the FINEX export financing program has been eliminated. The SAA, at 888, states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Additionally, as noted above, according to the *Sunset Regulations*, where the foreign government has waived participation in the review, the Department will normally determine that revocation of the countervailing duty order will likely lead to continuation or recurrence of a countervailable subsidy. Therefore, absent significant evidence to the contrary, and because the foreign government has waived participation in this review, we find that revocation of the countervailing duty order would likely result in the continuation or recurrence of countervailable subsidies.

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, "the Department normally will select a rate 'from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place.'" The Department went on to clarify that this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review (*see* section III.B.3).

Citing to the SAA at 890 and the *Sunset Policy Bulletin*, the domestic parties suggested that the Department select the 5.77 percent subsidy rate from the original investigation because it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of the order in place. We disagree with the domestic parties. Rather, consistent with the *Sunset Policy Bulletin* and SAA, we have taken the termination of programs into account. Because the income tax reduction for export earnings and the CACEX preferential working capital financing programs were found to be terminated, we have adjusted the original countervailing duty rate to reflect these terminations. Further, Brazilian exporters/producers of castings have not been found to have benefitted from any additional countervailable programs. Therefore, the Department determines that the net countervailable subsidy likely to prevail if the order were revoked is the rate attributed to the FINEX export financing program as determined in the original investigation. The net countervailable subsidy that will be reported to the Commission is contained in the *Final Results of Review* section of this notice.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether the subsidy

[6] *See also* 19 CFR 351.218(d)(2)(iv).

is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The domestic parties did not specifically address this issue.

Because receipt of benefits provided under the FINEX Export Financing by the Fundo de Financiamento a Exportacao program are contingent upon exports, this program falls within the definition of an export subsidy under Article 3.1(A) of the Subsidies Agreement.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/exporters	Margin (percent)
All producers/manufacturers/exporters	1.06

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14341 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Final Results of Expedited Sunset Review: Iron Metal Castings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Iron Metal Castings from India.

SUMMARY: On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on iron metal castings from India (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic parties, as well as inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this review, the Department finds that termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the "Final Results of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Jason M. Appelbaum or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: June 7, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this countervailing duty order are shipments of manhole covers and frames, clean-out covers and frames, and catch basin grates and frames from India. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. These articles must be of cast iron, not alloyed, and not malleable. This merchandise is currently classifiable under item numbers 7325.10.0010 and 7325.10.0050 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS item numbers are provided for convenience and U.S. Customs purposes. We note that, in their substantive response, the domestic parties limit their description of the subject merchandise to HTSUS item number 7325.10.0010, which refers specifically to so-called "heavy" castings. The written description remains dispositive.

History of the Order

On August 20, 1980, the Department issued a final affirmative countervailing duty determination with respect to imports of certain iron construction castings from India.[1] In the final determination the Department found an "all others" estimated net subsidy of 13.33 percent *ad valorem* during the review period based on four programs: 12.5 percent under the Cash Compensatory System program, 0.4 percent under the preferential export financing program, 0.4 percent under the tax deductions under the export marketing allowance program, and 0.3 percent under the market development assistance program. Receipt of benefits under each of these programs was contingent upon exports. The Department also found the following net countervailable subsidy rates for the following five companies: Uma Iron & Steel—16.8 percent, RB Agarwalla—14.9 percent, Basant Udyog—13.8 percent, Kejriwal Iron & Steel Works—13.1 percent, and Kajaria Exports—12.9 percent. Additionally, the Department determined an "all others" rate of 13.3 percent.

On October 16, 1980, the Department issued a countervailing duty order which confirmed the subsidy rates found in the original investigation.[2] The cash deposit rate was subsequently revised by the Department to take into account program-wide changes in the Cash Compensatory Support program, which reduced the program-specific subsidy from 12.5 percent to 5.0 percent.[3]

Since the issuance of the order, the Department has conducted 14 administrative reviews covering the four countervailable programs from the original investigation and 10 other

[1] *See Countervailing Duties—Certain Iron Metal Castings From India; Final Countervailing Duty Determination*, 45 FR 55502 (August 20, 1980).

[2] *See Certain Iron Metal Castings From India; Countervailing Duty Order*, 45 FR 68650 (October 16, 1980).

[3] *See Certain Iron Metal Castings From India; Adjustment of Countervailing Duty Deposit Rate*, 46 FR 38398 (July 27, 1981).

programs which were found to be countervailable.[4] Over the course of these 14 administrative reviews, the Department has also reviewed 22 additional companies.

In the third administrative review, covering the period January 1, 1984 to December 31, 1984, the Department found that two new countervailable programs existed and were conferring benefits.[5] The first program, the International Price Reimbursement Scheme ("IPRS") was determined to be a direct export subsidy conferring benefits of 6.54 percent. The second new countervailable program, tax deduction for exporters under section 80HHC, was determined to confer benefits of 0.02 percent.

In the next administrative review, the Department found another countervailable export subsidy under a post-shipment export financing program operated by the Reserve Bank of India. The Department determined, in the final results of this administrative review, that countervailable benefits of 0.98 percent were being given under this program.[6]

In the administrative review covering the period January 1, 1987 to December 31, 1987, the Department found the sale of replenishment licenses to provide a countervailable subsidy because exporters receive the licenses based on their status as exporters. This program, benefits through the sale of import licenses, was determined to provide a countervailable subsidy of 0.01 percent.[7]

In the next administrative review, covering the period January 1, 1988 to December 31, 1988, the Department found that producers of castings were receiving benefits through the sale of additional licenses and that these benefits were 0.35 percent.[8]

In the administrative review covering the period January 1, 1993 to December 31, 1993, the Department determined that three new countervailable programs existed. Benefits were being provided under post-shipment export financing denominated in foreign currency at a rate of 1.25 percent, under an exemption of export credit for interest taxes at a rate of 0.06 percent, and under an advanced license through the Liberalized Exchange Rate Management System ("LERMS") at a rate of 0.33 percent.[9]

Lastly, the Department, in the administrative review for the period January 1, 1994 to December 31, 1994, found two new countervailable programs: pre-shipment credit in foreign currency and payment of premium against advance license. Because receipt of benefits under both of these programs were contingent upon export performance, the Department found both programs were export subsidies. However, the Department determined that the benefits under both programs were zero percent.[10]

In addition to the Department's findings of new countervailable programs over the life of the order, the Department has also found that five programs have been terminated since the issuance of the order. Of the programs from the original investigation, two programs, the Cash Compensatory Support program and the income tax deductions under the export market development allowance, were both found to be terminated. The Cash Compensatory Support program was determined to have been terminated by the GOI on July 3, 1991.[11] The Department stated in the final results of the reviews covering 1990 and 1991, that India's Ministry of Commerce terminated the Cash Compensatory Support program as of July 3, 1991. In our position in responses to Comment 2 in final determination notice related to 1991, we explained that we disagreed with the petitioners assertion that the program was merely suspended. Rather, we noted that the India Ministry of Commerce announcement concluded that the program was terminated.

In the final results of the 1982 administrative review, the Department stated that the Income Tax Deduction Under the Export Markets Development Allowance program was terminated.[12] Specifically, the Department noted that on May 13, 1983, the Indian government published in the Gazette of India the Finance Act of 1983, which included an amendment to Article 35B. Effective April 1, 1983, no income tax benefits

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[4] *See Certain Iron Metal Castings From India; Final Results of Administrative Review of Countervailing Duty Order*, 48 FR 56092 (December 19, 1983); *Certain Iron Metal Castings From India; Final Results of Administrative Review of Countervailing Duty Order*, 49 FR 40943 (October 18, 1984); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 51 FR 45788 (December 22, 1986); *Certain Iron Metal Castings From India; Amendment to Final Results of Countervailing Administrative Review in Accordance With Decision Upon Remand*, 53 FR 37014 (September 23, 1988); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 55 FR 50747 (December 10, 1990); *Final Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India*, 56 FR 1976 (January 18, 1991); *Final Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India*, 56 FR 41658 (August 22, 1991); *Final Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India*, 56 FR 52515 (October 21, 1991); *Final Results of Countervailing Duty Administrative Review; Certain Iron Metal Casting From India*, 56 FR 52521 (October 21, 1991); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 60 FR 44849 (August 29, 1995); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 60 FR 44843 (August 29, 1995); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 61 FR 64687 (December 6, 1996); *Certain Iron Metal Castings From India; Amended Final Results of Countervailing Duty Administrative Review*, 62 FR 590 (January 3, 1997); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 61 FR 64676 (December 6, 1996); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 62 FR 32297 (June 13, 1997); *Certain Iron Metal Castings From India; Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand*, 63 FR 67858 (December 9, 1998); and *Certain Iron Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 63 FR 64050 (November 18, 1998).

[5] *See Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 51 FR 35676 (October 7, 1986); *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 51 FR 45788 (December 22, 1986); and *Certain Iron-Metal Castings From India; Amendment to Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand*, 53 FR 37014 (September 23, 1988).

[6] *See Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 55 FR 12702 (April 5, 1990); *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 55 FR 50747 (December 10, 1990); and *Certain Iron-Metal Castings From India; Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand*, 63 FR 67858 (December 9, 1998).

[7] *See Preliminary Results of Countervailing Duty Administrative Review; Certain Iron-Metal Castings From India*, 56 FR 41654 (August 22, 1991) and *Final Results of Countervailing Duty Administrative Review; Certain Iron-Metal Castings From India*, 56 FR 52515 (October 21, 1991).

[8] *See Preliminary Results of Countervailing Duty Administrative Review; Certain Iron-Metal Castings From India*, 56 FR 41650 (August 22, 1991) and *Final Results of Countervailing Duty Administrative Review; Certain Iron-Metal Castings From India*, 56 FR 52521 (October 21, 1991).

[9] *See Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 25623 (May 22, 1996) and *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 61 FR 64676 (December 6, 1996).

[10] *See Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 64669 (December 6, 1996) and *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 62 FR 32297 (June 13, 1997).

[11] *See Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 60 FR 44843 (August 29, 1995).

[12] *See Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 49 FR 32279 (August 16, 1984) and *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 49 FR 40943 (October 18, 1984).

were available for expenditures incurred after March 1, 1983.

Three other programs that were instituted after the completion of the original investigation were also found to subsequently be terminated. The IPRS program was found to have been terminated as of June 30, 1987.[13] The Department verified this termination by examining a circular from the Indian Ministry of Commerce which stated that claims were not to be made on exports of castings to the United States and, as such, the Department determined that this constituted termination of the program. Additionally, the Department determined that benefits under the LERMS program were terminated as of February 28, 1993 and that benefits under the program of post-shipment export financing denominated in foreign currency were terminated effective February 8, 1996 by the GOI.[14]

This review covers all producers and exporters of iron metal castings from India.

Background

On November 2, 1998, the Department initiated a sunset review of the countervailing duty order on iron metal castings from India (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Municipal Castings Fair Trade Council ("MCFTC") and its individual members [15] (collectively "the domestic parties"), on November 17, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response on behalf of the domestic parties on December 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The individual members of the MCFTC claimed interested party status as manufacturers of domestic like products and MCFTC claimed interested party status as a trade association representing the domestic parties.

The Department also received a statement of waiver from the Engineering Export Promotion Council ("EEPC") of India on December 1, 1998. We did not receive a response from the Government of India ("GOI"). Therefore, since the Department did not receive a substantive response from any respondent interested party and pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the countervailing duty order on iron metal castings from India is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on March 2, 1999, the Department extended the time limit for completion of the final results of this review until not later than June 1, 1999, in accordance with section 751(c)(5)(B) of the Act.[16]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the domestic parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. According to the *Sunset Regulations* and the SAA at 881, in a review of a countervailing duty order where the foreign government has waived participation, the Department shall conclude that respondent interested parties have provided inadequate response to the notice of initiation and will normally determine that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy.[17] In the instant review, the Department did not receive a substantive response from the GOI.

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[13] *See Final Results of Countervailing Duty Administrative Review; Certain Iron-Metal Castings From India*, 56 FR 41658 (August 22, 1991).

[14] *See Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 61 FR 64676 (December 6, 1996) and *Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 63 FR 64050 (November 18, 1998).

[15] The MCFTC is comprised of Allegheny Foundry Company, Bingham & Taylor, Deeter Foundry Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe, and U.S. Foundry & Manufacturing Co. The domestic parties stated that only so-called "heavy" castings are subject to the order. Since Bingham & Taylor and Tyler Pipe are manufacturers of so-called "light" castings only, they would not be interested parties in this review. However, since the order does cover both heavy and light castings, these two companies would be interested parties in this review.

[16] *See Iron Metal Castings From India: Extension of Time Limit for Final Results of Five-Year Review*, 64 FR 10992 (March 8, 1999).

[17] *See* 19 CFR 351.218(d)(2)(iv).

Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation. Further, the EEPC submitted a statement of waiver.

In their substantive response, the domestic parties argue that it is likely that a countervailable subsidy would continue to be provided to manufacturers and exporters of the subject merchandise if the countervailing duty order were revoked. (*See* December 2, 1998 Substantive Response of the domestic parties at 42.) The domestic parties state that the record demonstrates that, since the imposition of the countervailing duty order, the GOI has continued to provide subsidies to producers/exporters of castings. Further, the domestic parties argue that the manner in which the GOI ended certain key subsidies could result in easy reinstatement. Finally, the domestic parties state that when some subsidy programs are found to be countervailable, other subsidy programs are introduced in their place.

The domestic parties discuss two specific subsidy programs of the Government of India: the International Price Reimbursement Scheme (IPRS) and the Cash Compensatory Support Program (CCS). According to the domestic parties, the GOI's handling of these two programs is indicative of the way in which the GOI responds to a determination by the Department that a program is countervailable. First, in regards to the IPRS program, the domestic parties argue that, after the Department determined that the program provided a countervailable subsidy the EEPC (a quasi-governmental entity or trade association representing exporters of the subject castings) implemented a plan whereby producers/exporters of heavy castings were asked not to make further claims against exports of heavy castings to the United States as of July 1, 1987. (*See* December 2, 1998 Substantive Response of the domestic parties at 45–46.) The domestic parties argue that this cessation of claims against the IPRS program was only for heavy castings and, since it was not brought about by government legislation, regulation, or decree, the program can be resumed at any time.

Additionally, the domestic parties argue that the CCS program may also be easily reinstated should the order be revoked. According to the domestic parties, the CCS program was not terminated by an official act. Therefore, it can be restarted rather easily in the event that this order were revoked. Finally, the domestic parties argue that the Department, in its most recent administrative review, found 12 programs that were currently not in use, but that have not been terminated, thus leaving open the possibility that these programs may be resumed should the order be revoked.

In conclusion, the domestic parties argue that the Department should find that there is a likelihood that a countervailable subsidy would continue if the order were revoked.

The *Sunset Policy Bulletin*, at section III.A.3.a, states that, consistent with the SAA at 888, continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary. Additionally, the *Sunset Policy Bulletin* provides that, where a program has been officially terminated by the foreign government, this will be probative of the fact that the program will not continue or recur if the order is revoked. (*See Sunset Policy Bulletin* at section III.A.5.)

We agree with the domestic parties that Indian producers/exporters continue to benefit from several countervailable subsidy programs. The Department, in its most recent administrative review, determined that there are six countervailable programs currently in use and also listed 13 programs that were found not to be used.[18] As stated above, the continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. Additionally, the presence of programs that have not been used, but have also not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Therefore, because there are countervailable programs that are currently being used and others that remain in existence, the foreign government and other respondent interested parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that it is likely that a countervailable subsidy will continue if the order were revoked.

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department went on to clarify that this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review. Additionally, where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission company-specific rates from the original investigation or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or "all others" rate. (*See Sunset Policy Bulletin* at section III.B.2.)

The domestic parties, citing the *Sunset Policy Bulletin*, state that the Department should select, as the net countervailable subsidy likely to prevail, the company-specific and "all others" rates from the original investigation.

The Department disagrees with the domestic parties' argument concerning the net countervailable subsidy rate that is likely to prevail. As stated above, the *Sunset Policy Bulletin* does state that the Department will normally choose the rate from the investigation, since this is the only rate that reflects how a foreign government and exporters will act without the discipline of an order in place. However, the *Sunset Policy Bulletin* also provides that adjustments may be made to the net countervailable subsidy likely to prevail where programs have either been terminated or where new programs have been added. As the domestic parties noted in their substantive response, new programs have been added and some programs have been terminated over the life of the order. Specifically, the Department, through the process of administrative reviews, has determined that four programs have been terminated. These programs—" the Cash Compensatory Support program (CCS), the International Price Reimbursement Scheme (IPRS), the Income Tax Deductions Under the Export Market Development Allowance program, the Imports Made Under an Advance License Through the Liberalized Exchange Rate Management System (LERMS) program, and the Post Shipment Export Financing Denominated in Foreign Currency

[18] *See Certain Iron Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 63 FR 64050 (November 18, 1998).

(PSCFC) program—" have all been found to be terminated, with no residual benefits.[19] Therefore, pursuant to the *Sunset Policy Bulletin* the net countervailable subsidy likely to prevail has been adjusted to reflect the termination of these programs. The net countervailable subsidy has also been adjusted to account for new programs identified during administrative reviews.[20]

As a result of changes in programs since the imposition of the countervailing duty order, the Department has determined that using the net countervailable subsidy rates, as determined in the original investigation, is no longer appropriate. Rather, we have adjusted the company-specific and "all others" countervailing duty rates from the original investigation by adding in the rates from the first time a new program was used and subtracting out the subsidy rates from programs that have been terminated. (*See* Memorandum to File regarding calculation of the net countervailable subsidy.) As a result, the Department will report to the Commission the rates as contained in the Final Results of Review section of this notice.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The domestic parties did not specifically address this issue.

Because receipt of benefits provided by the GOI's countervailable programs are contingent upon exports, these programs fall within the definition of export subsidies under Article 3.1(A) of the Subsidies Agreement.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/exporters	Margin (percent)
Uma Iron & Steel	1.76
R.B. Agarwalla & Co.	0.84
Basant Udyog	1.82
Kejriwal Iron & Steel Works	1.82
Kajaria Exports	0.84
All others	1.82

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14340 Filed 6–4–99; 8:45 am]

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[19] For information concerning program terminations *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 60 FR 44843 (August 29, 1995); *Final Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India*, 56 FR 41658 (August 22, 1991); *Certain Iron Metal Castings From India; Preliminary Results of Administrative Review of Countervailing Duty Order*, 49 FR 32779 (August 16, 1984); *Certain Iron Metal Castings From India; Final Results of Administrative Review of Countervailing Duty Order*, 49 FR 40943 (October 18, 1984); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 61 FR 64676 (December 6, 1996); and *Certain Iron Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 63 FR 64050 (November 18, 1998) respectively. For the case of the income tax deductions (the preliminary and final results published in 1984) the comment by the Department regarding the termination of this program is found in the preliminary results and is reaffirmed in the final results.

[20] For new programs *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 51 FR 45788 (December 22, 1986); *Certain Iron Metal Castings From India; Amendment to Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand*, 53 FR 37014 (September 23, 1988); *Certain Iron Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 51 FR 35676 (October 7, 1986); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 51 FR 45788 (December 22, 1986); *Certain Iron Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 55 FR 12702 (April 5, 1990); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 55 FR 50747 (December 10, 1990); *Preliminary Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India*, 56 FR 29626 (June 28, 1991); *Final Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India*, 56 FR 41658 (August 22, 1991); *Preliminary Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India*, 56 FR 41654 (August 22, 1991); *Final Results of Countervailing Duty Administrative Review; Certain Iron Metal Castings From India*, 56 FR 52515 (October 21, 1991); *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 61 FR 64676 (December 6, 1996); *Certain Iron Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 64669 (December 6, 1996); and *Certain Iron Metal Castings From India; Final Results of Countervailing Duty Administrative Review*, 62 FR 32297 (June 13, 1997).

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On May 18, 1999 Cinsa, S.A. de C.V. ("Cinsa") and Esmaltaciones de Norte America, S.A. de C.V. ("ENASA") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping administrative review made by the International Trade Administration, respecting Porcelain-on-Steel Cookware from Mexico. This determination was published in the **Federal Register**, 64, 26,934 on May 18, 1999. The NAFTA Secretariat has assigned Case Number USA–CDA–99–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, Acting United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the

Federal Register on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 18, 1999, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 17, 1999);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 2, 1999); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 25, 1999.

Caratina L. Alston,

Acting United States Secretary, NAFTA Secretariat.

[FR Doc. 99–14248 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052599B]

ICCAT Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) in conjunction with the Highly Migratory Species (HMS) Management Division of NMFS announces the schedule of regional public meetings to be held this fall.

DATES: The meetings are scheduled in September 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

ADDRESSES: The meetings will be held in Florida, North Carolina, New Jersey, and Massachusetts. See **SUPPLEMENTARY INFORMATION** for specific addresses of the meetings.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran (international issues) 301–713-2276 or Rachel Husted (domestic issues) 301–713–2347.

SUPPLEMENTARY INFORMATION: The meetings are scheduled as follows:

Wednesday, September 1, 1999, 7 p.m. to 10 p.m.- Ramada Inn Clearwater Beach Gulfview, 521 South Gulfview Boulevard, Clearwater, Florida 33767;

Thursday, September 2, 1999, 7 p.m. to 10 p.m.- Pompano Beach Civic Center, 1801 NE 6th street, Pompano Beach, Florida 33060;

Thursday, September 23, 1999, 7 p.m. to 10 p.m.- Nags Head Town Board Room, 5401 South Croatan Highway, Nags Head, North Carolina 27959;

Wednesday, September 29, 1999, 7 p.m. to 10 p.m.- Barnegat Light Fire Department, West 10th, Barnegat Light, New Jersey 08006;

Thursday, September 30, 1999, 7 p.m. to 10 p.m.- Sheraton Hyannis Resort, West End Circle, Hyannis, Massachusetts 02601.

Additionally, the annual fall meeting of the Advisory Committee will be held in Silver Spring, Maryland, October 31 through November 2, 1999. There will be opportunity for public comment on international issues at this meeting. Domestic issues will not be discussed at this meeting. Information on the timing and location of the annual fall meeting will be provided at a later date.

The following topics may be presented to the public for discussion at the regional meetings:

International Issues

(1) Background on ICCAT

(2) Information on the Advisory Committee and Commissioners

(3) Status of Highly Migratory Species Managed by ICCAT

(4) Topics for the 1999 ICCAT Annual Meeting

Domestic Issues

(1) Implementation of ICCAT Recommendations

(2) Other HMS management actions

Representatives from the Advisory Committee to the U.S. Section to ICCAT and NMFS will be in attendance at the regional meetings. There will be an opportunity for public comment on each issue. The length of the meetings may be adjusted based on the progress of the discussions.

Special Accommodation

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patrick E. Moran at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: June 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14314 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, National Sea Grant Review Panel

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, national strategic investments, education and extension, organizational changes and other matters as described below.

DATES: The announced meeting is scheduled for Thursday, June 24, 1999, 9:30 a.m. to 6 p.m.

ADDRESSES: Portland Marriott Downtown, 1401 Southwest Naito Parkway, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic and Atmosphere Administration, 1315 East-West Highway, Room 11716, Silver Spring, MD 20910, (301) 713–2448 extension 163.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the

Panel for review and advice. The agenda for the meeting is as follows:

Thursday, June 24, 1999

9:30 a.m.–9:45 a.m. Opening of Meeting
9:45 a.m.–10 a.m. Sea Grant Leadership Retreat Report
10 a.m.–10:30 a.m. Sea Grant Association Report
10:30 a.m.–11 a.m. Office of Oceanic and Atmospheric Research Reorganization
11 a.m.–11:30 a.m. Budget Presentation
11:30 a.m.–12 noon Executive Committee Report
12 noon–1 p.m. Working Lunch
1 p.m.–2 p.m. National Office Update
2 p.m.–3 p.m. Panel Committee Reports
3 p.m.–4 p.m. National Strategic Investments
4 p.m.–4:30 p.m. Break
4:30 p.m.–5:30 p.m. New Program Assessments and Topical Assessments
5:30 p.m.–6 p.m. Wrap-Up (Next Meeting Discussion)

This meeting will be open to the public.

Dated: May 26, 1999.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 99–14200 Filed 6–4–99; 8:45 am]

BILLING CODE 3510–KA–M

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership change of Performance Review Board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is given that the following employees will serve as members of the Commission's Performance Review Board.

Chairman: I. Michael Greenberger, Director, Division of Trading and Markets. *Members:* Donald L. Tendick, Acting Executive Director, Office of the Executive Director, Daniel Waldman, General Counsel, Office of the General Counsel; John Mielke, Acting Director, Division of Economic Analysis; Phyllis Cela, Acting Director, Division of Enforcement.

DATES: This action will be effective on May 28, 1999.

ADDRESSES: Commodity Futures Trading Commission, office of Human Resources, Three Lafayette Centre, Suite 4100, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Marsha Scialdo, Director, Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, Suite 4100, Washington, DC 20581, (202) 418–5003.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, March 15, 1999.

Issued in Washington, DC on May 28, 1999.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 99–14235 Filed 6–4–99; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Notification Requirements Under Safety Regulations for Coal and Woodburning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the March 26, 1999 **Federal Register** (64 FR 14708), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through June 30, 2002, of information collection requirements in the safety regulations for coal and woodburning appliances (16 CFR Part 1406). The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations require manufacturers and importers of certain coal and woodburning appliances to provide safety information to consumers on labels and instructions and an explanation of how certain clearance distances in those labels and instructions were determined. The requirements to provide copies of labels and instructions to the Commission have been in effect since May 16, 1984. For this reason, the information burden imposed by this rule is limited to manufacturers and importers introducing new products or models, or making changes to labels, instructions, or information previously provided to the Commission. The purposes of the reporting requirements in part 1406 are to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances that are subject to the rule, and to assist the Commission in determining the extent to which manufacturers and importers comply with the requirements in part 1406.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Notification Requirements for Coal and Woodburning Appliances, 16 CFR Part 1406.

Type of request: Extension of approval.

Frequency of collection: Labeling, plus one-time requirement for reporting of new models or changes.

General description of respondents: Manufacturers and importers of coal and woodburning appliances.

Estimated Number of respondents: 5.

Estimated average number of responses per respondent: 1 per year.

Estimated number of responses for all respondents: 5 per year.

Estimated number of hours per response: 3.

Estimated number of hours for all respondents: 15 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 7, 1999 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for an extension of an information collection requirement are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2226.

Dated: June 1, 1999.
Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.
[FR Doc. 99–14232 Filed 6–4–99; 8:45 am]
BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting a Ban of Steel Electricians' "Fish Tapes" or a Regulation Requiring Warnings and Instructions for These Products

AGENCY: Consumer Product Safety Commission.
ACTION: Notice.

SUMMARY: John C. Stein has petitioned the Commission to ban, or require strict warnings and instructions for, steel electricians' fish tapes. The Commission has docketed this request as Petition CP 99–1. Consumers and electricians use fish tapes to pull electrical wiring through spaces such as the interior of walls. Steel fish tapes can cause electric shock if they contact an electrically-energized component. The Commission solicits written comments concerning the petition from all interested parties.
DATES: Comments on the petition should be received in the Office of the Secretary by August 6, 1999.
ADDRESSES: Comments on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition CP 99–1—Steel Fish Tapes." Copies of the petition are available by writing or calling the Office of the Secretary.
FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Docket Control and Communications Specialist, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1502.
SUPPLEMENTARY INFORMATION: The Commission has docketed correspondence from John C. Stein as a petition for rulemaking (Petition CP 99–1). Mr. Stein requests that the Commission ban, or require strict warnings and instructions for, steel electricians' fish tapes. Consumers and electricians use fish tapes to pull electrical wiring through spaces such as the interior of walls. Steel fish tapes can cause electric shock if the tape contacts an electrically-energized component.

The Commission solicits comments on the petition, particularly regarding the potential costs and benefits of the requested rule.

Comments to CPSC should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition CP 99–1—Steel Fish Tapes."

Interested parties may obtain a copy of the petition from the CPSC's website at http://www.cpsc.gov or by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 501, 4330 East-West Highway, Bethesda, Maryland 20814.

Dated: June 1, 1999.
Sadye E. Dunn,
Secretary of the Commission.
[FR Doc. 99–14231 Filed 6–4–99; 8:45 am]
BILLING CODE 6355–01–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142]

Submission for OMB Review; Comment Request Entitled Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).
ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Past Performance Information. A request for public comments was published at 64 FR 14887, March 29, 1999. No comments were received.
DATES: Comments may be submitted on or before July 7, 1999.
ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.
FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.
SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the FAR states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2 hours* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents *150,000;* responses per respondent, *4;* total annual responses, *600,000;* preparation hours per response, *2;* and total response burden hours, *1,200,000.*

Obtaining Copies of Justifications

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: June 1, 1999.
Edward C. Loeb,
Director, Federal Acquisition Policy Division.
[FR Doc. 99–14303 Filed 6–4–99; 8:45 am]
BILLING CODE 6820–34–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 7, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 1, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Study of State Agency Activities Under Title I, Part D of Elementary and Secondary Education Act, as Amended.

Frequency: One-time only.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 100.

Abstract: ED requires nationally representative information on the Title I, Part D, Subpart 1 program, as reauthorized by the Improving America's Schools Act of 1994, to develop a descriptive profile useful in ongoing program improvement efforts and in updating performance indicators for the program in compliance with the Government Performance and Results Act of 1993. ED will collect data from the universe of state agencies with administrative responsibility for the program through a mail survey. Respondent agencies will include State Educational Agencies, Departments of Corrections, Youth Services Agencies, Correctional School Districts, and other state agencies.

[FR Doc. 99–14254 Filed 6–4–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–49–000]

New England Power Company; Massachusetts Electric Company; The Narragansett Electric Company; New England Electric Transmission Corporation; New England Hydro-Transmission Corporation; New England Hydro-Transmission Electric Company, Inc., AllEnergy Marketing Company, L.L.C.; NGG Holdings LLC; Notice of Filing

June 1, 1999.

Take notice that on May 27, 1999, New England Power, *et al.*, tendered for filing a motion to Lodge Shareholder and other Approvals in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14249 Filed 6–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC99–75–000 and ER99–3060–000]

Western Massachusetts Electric Company; Northeast Utilities Service Company; Consolidated Edison Energy, Inc.; Consolidated Edison Energy, Massachusetts Inc.; Notice of Filing

June 1, 1999.

Take notice that on May 26, 1999, Western Massachusetts Electric Co.

(WMECO), Northeast Utilities Service Company (NUSCO), Consolidated Edison Energy, Inc., and Consolidated Edison Energy, Massachusetts, Inc. (CEEMI), tendered for filing executed signature pages to the Tariff No. 9, service agreement filed on May 25, 1999, in the above-referenced dockets.

Any person desiring to be heard or to protest such filing should file a motion to protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Interent at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14301 Filed 6–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–7–000]

Technical Conference on Year 2000 Issues for the Oil and Natural Gas Sector; Notice of Technical Conference

June 1, 1999.

Take notice that the Federal Energy Regulatory Commission (FERC) is sponsoring a technical conference to be held on Tuesday, June 29, at 10:00 a.m., in the Commission Meeting Room at 888 First Street, NE, Washington, DC 20426. This conference is being held as an outreach for the President's Council on Year 2000 Conversion (Council), which designated FERC as the lead agency for the Oil and Gas Sector of its Energy Working Group. The conference will be hosted by the Natural Gas Council (NGC) and the American Petroleum Institute (API). All interested persons are invited to attend.

The third report in a series of quarterly assessments of Y2K readiness efforts will be presented by the industry associations that are part of the Council's Oil and Gas Sector Working Group, from the April survey which was distributed by the industry associations to individual companies. Survey results will be compiled and aggregated by industry associations so that individual company responses remain anonymous. This conference will focus on promoting awareness of Year 2000 issues and coordinating information sharing on testing and solutions among companies in the oil and natural gas industries rather than internal solutions of individual companies.

The proposed agenda for the conference is as follows:

Opening Remarks

Introduction to Technical Conference

Industry Progress and Survey Results

Inter-Industry Efforts, Interdependencies Workshop

A Municipal Perspective

International Supply Chain Dependencies

Customer Communications Efforts

Overview of Industry/Company Drills

Industry Audits

Questions and Answers

The Oil and Gas Sector has developed a Website (www.ferc.fed.us) that is linked to the Council's Website (www.y2k.gov), where the results and other related information will be posed and made available to the public.

The public may participate during question and answer periods, but no witness panels will be established. Written comments are welcome at any time and should reference Docket No. PL98–7–000. For additional information, please contact Donna La May at (202) 501–2341 or by electronic mail at "donna.lamay@ferc.fed.us."

The Capitol Connection offers all Open and special FERC meetings *live* over the Internet as well as, via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's live internet, phone bridge or satellite coverage contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) or visit our website (www.capitolconnection.gmu.edu). The Capitol Connection also offers FERC Open Meetings through its Washington, D.C. area television service.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14300 Filed 6–4–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6355–7]

Notice of Stakeholder Meeting on the Revision to Federal Underground Injection Control (UIC) Requirements for Class I—Municipal Wells in Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting to gather information and collect opinions from parties who will be affected by or are otherwise interested in the Federal Underground Injection Control Requirements for Class I—Municipal Wells in Florida. EPA will consider comments and views expressed at this meeting in developing the final proposed regulation. EPA encourages the full participation of all stakeholders throughout this process.

DATES AND LOCATION: The stakeholder meeting will be held on Wednesday, July 7, 1999, 9:30 a.m. to 4:00 p.m. EDT.

ADDRESSES: The July 7, 1999 stakeholder meeting will be held in the Public Room of the Florida Department of Environmental Protection, Southeast District, 400 North Congress Ave., West Palm Beach, FL 33401.

To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Nancy H. Marsh, EPA Region 4, Ground Water & UIC Section at (404) 562–9450. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines are limited and will be allocated on the basis of first-reserved, first served.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to this meeting, contact: Nancy H. Marsh, U.S. EPA Region 4 at (404) 562–9450 or e-mail marsh.nancy@epa.gov or Howard Beard, U.S. EPA at (202) 260–8796 or e-mail at beard.howard@epa.gov.

SUPPLEMENTARY INFORMATION: EPA developed underground injection control regulations for Class I wells to protect underground sources of drinking water (USDWs). These regulations, found in 40 CFR parts 144 and 146, set technical standards which would *not*

allow for the movement of *any fluids* into a USDW. Subsequent to the initial permitting of several Class I Municipal Wells in Florida, some facilities have exhibited movement of fluids into the USDW as determined through monitoring of the injection activity. The movement of fluid is thought to occur because of the unique geology in Florida. EPA is proposing a change in the regulations for Class I Municipal Wells in certain portions of Florida only. One proposed alternative to existing regulations would allow for the migration of fluids if the facilities meet certain requirements prior to injection. In the alternative, injected fluids must meet primary drinking water standards and other health based standards prior to injection or the facility must demonstrate through an engineering study that these limits would be met prior to any fluids reaching the base of the USDW. The agency is interested in soliciting ideas regarding this alternative as well as any other alternatives.

Dated: May 28, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–14355 Filed 6–4–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Deregistration from Registered Transfer Agents.

OMB Number: 3064–0027.

Annual Burden

Estimated annual number of respondents: 29.

Estimated time per response: 0.42 hours.

Average annual burden hours: 12 hours.

Expiration Date of OMB Clearance: July 31, 1999

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before July 7, 1999 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: An insured nonmember bank that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC as provided by 12 CFR 341.5.

Dated: June 1, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–14343 Filed 6–4–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Prompt Corrective Action.

OMB Number: 3064–0115.

Annual Burden:

Estimated annual number of respondents: 10.

Estimated time per response: 4 hours.

Average annual burden hours: 40 hours.

Expiration Date of OMB Clearance: July 31, 1999.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before July 7, 1999 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The prompt corrective action provisions of FDICIA require or permit the FDIC and other federal financial regulators to take certain supervisory actions when FDIC-insured institutions fall within one of five categories. The collection consists of applications required to obtain FDIC exceptions to otherwise restricted activities.

Dated: June 1, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–14344 Filed 6–4–99; 8:45 am]

BILLING CODE 5714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

Form Number: MSD–4; MSD–5.

OMB Number: 3064–0022.

Annual Burden:

Estimated annual number of respondents: 75.

Estimated time per response: 1 hour.

Average annual burden hours: 75 hours.

Expiration Date of OMB Clearance: July 31, 1999.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before July 7, 1999 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: An insured state nonmember bank which serves as a municipal securities dealer must file Form MSD–4 or Form MSD–5, as applicable, to permit an employee to become associated or to terminate the association with the municipal securities dealer. FDIC uses the form to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board.

Dated: June 1, 1999.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–14345 Filed 6–4–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:17 a.m. on Thursday, June 3, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, insurance, and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than June 2, 1999, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: June 3, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–14519 Filed 6–3–99; 3:28 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA–REP–10–WA–4]

Washington State Integrated Fixed Facility Radiological and Chemical Protection Plan

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Region X Office of FEMA gives notice that it has received radiological emergency response plans from the State of Washington. These plans support the State of Washington and include the plans of local governments near Washington Nuclear Power Plant No. 2 (WNP–2) located in Benton County, Washington. The submitted Washington State Integrated Fixed Facility Radiological and Chemical Protection Plan will be used by the State and affected counties in case of an emergency at WNP–2.

DATE PLANS RECEIVED: May 12, 1999.

ADDRESSES: Please send any comments on the plan on or before July 7, 1999 to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*, and to David L. de Courcy, Regional Director, FEMA Region X, 130 228th Street SW, Bothell, Washington 98021–9796, (facsimile) (425) 487–4622, or (email) *David.deCourcy@fema.gov*. Please refer to Docket File No. FEMA–REP–10–WA–4.

FOR FURTHER INFORMATION CONTACT: David L. de Courcy, Regional, FEMA Region X, 130 228th Street SW, Bothell, Washington 98021–9796, (facsimile) (425) 487–4622. Please refer to Docket File No. FEMA–REP–10–WA–4.

SUPPLEMENTARY INFORMATION: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local government's radiological emergency response plans. In support of the Federal requirement for emergency response plans, our rule, "Review and Approval of State and Local Radiological Emergency Plans and Preparedness," (44 CFR 350) describes our procedures for review and approval of State and local government's radiological emergency response plans. Under 44 CFR 350.7, "Application by State for Review and Approval," the State of Washington submitted its Radiological Emergency Plan for the State of Washington and affected counties to the FEMA Region X Office for review and approval under 44 CFR Part 350.

Included are radiological emergency response plans and procedures of the Washington State Departments of Agriculture, Emergency Management, and Health, as well as for local governments that are wholly or partially within the emergency planning zones of WNP–2.

Copies of the plans are available for review and copying at the FEMA Region X Office, or we will make available upon request under the fee schedule for FEMA Freedom of Information Act requests. The fee schedule is set out in Subpart C of 44 CFR Part 5. There are 221 pages in the Washington State Plan, including 174 pages of annexes and appendices.

Our rule, 44 CFR 350, also calls for a public meeting before our approval of the plans. This meeting will be held in accordance with 44 CFR 350.10 in Richland, Washington, before our approval.

Dated: May 21, 1999.

David L. de Courcy,

Regional Director.

[FR Doc. 99–14327 Filed 6–4–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL HOUSING FINANCE BOARD

[No. 99N–5]

RIN 3069–AA04

Federal Home Loan Bank Financial Management and Mission Achievement Requirements—Staff Framework Document

AGENCY: Federal Housing Finance Board.

ACTION: Notice of availability.

SUMMARY: Staff of the Federal Housing Finance Board (Finance Board) currently is in the process of developing proposals regarding the establishment of new financial management and mission achievement requirements for the Federal Home Loan Banks (FHLBanks). These proposals will address, among other things: The responsibilities of FHLBank boards of directors and senior management for risk management, mission achievement and internal controls; FHLBank authorized investments and use of hedging instruments; risk management and capital standards for the FHLBanks; and mission achievement requirements for the FHLBanks. A broad outline of the current status of these staff proposals is set forth in a Staff Framework Document, which the Finance Board is making available through its internet website (*http://www.fhfb.gov*) in the "What's New" section.

The Staff Framework Document is being provided to the public for informational purposes and does not itself constitute a rulemaking or other official agency action. During the third quarter of 1999, staff intends to present a proposed rule on these issues to the Board of Directors of the Finance Board to be approved for publication for public comment. The anticipated proposed rule, if and when it is ultimately approved for publication by the Board of Directors of the Finance Board, may reflect an approach to these issues that is different from that set forth in the Staff Framework Document.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director and Chief Economist, (202) 408–2821, Scott L. Smith, Deputy Director, (202) 408–2991, Ellen E. Hancock, Associate Director, (202) 408–2906, or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

Dated: May 28, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–14241 Filed 6–4–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

[File No. 9823525]

Federated Department Stores, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 6, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159,600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Randall Brook, Seattle Regional Office, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Wa. 98174, (206) (220–4487.

SUPPLEMENTARY INFORMATION: Purusant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comments describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 28th, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159,600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Federated Department Stores, Inc. ("Federated"). Proposed respondent Federated conducts relevant business through, among other affiliates or subsidiaries, FDS National Bank, The Bon, Inc., Bloomingdales, Inc., Burdines, Inc., Rich's Department Stores, Inc., Macy's East, Inc., Macy's West, Inc., and Stern's Department Stores, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint alleges several unfair or deceptive acts or practices related to Federated's policy of inducing consumers who have filed for bankruptcy protection to sign agreements reaffirming debts owed to Federated prior to the filing of the bankruptcy petition. The complaint charges that Federated: falsely represented to consumers that signed reaffirmation agreements would be filed with the bankruptcy courts, as required by the United States Bankruptcy Code; falsely represented to consumers that debts associated with unfiled reaffirmation agreements, or agreements that were filed but not approved by the bankruptcy courts, were legally binding on the consumers; and unfairly collected debts that it was not permitted by law to collect.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Federated from engaging in similar acts in the future. The proposed consent order preserves the Commission's right

to seek consumer redress if the Commission determines that redress to consumers provided through related legal actions by state attorneys general and private parties is not adequate.

Part I of the proposed order prohibits Federated from misrepresenting to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that (A) reaffirmation agreements will be filed in bankruptcy court; or (B) any reaffirmation agreement is legally binding on the consumer. Part I.C of the proposed order prohibits Federated from collecting any debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that Federated is not permitted by law to collect. Part II of the proposed order prohibits Federated from making any misrepresentation in the collection of any debt subject to a pending bankruptcy proceeding.

Part III of the proposed order contains record keeping requirements for materials that demonstrate the compliance of Federated with the proposed order. Part IV requires distribution of a copy of the consent decree to certain current and future personnel who have responsibilities related to collecting debts subject to bankruptcy proceedings.

Part V provides for notification to the Commission of any change in the respondent affecting compliance obligations arising under the order. Part VI requires the filing of compliance report(s). Finally, Part VII provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–14247 Filed 6–4–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File NO. 9910024]

Kroger Co. et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 6, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Jill Frumin, FTC/S–2105, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2758.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 27th, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comments is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)6)(ii).

Analysis of the Proposed Consent Order and the Draft Complaint To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from The Kroger Co. ("Kroger") and Fred Meyer Stores, Inc. ("Fred Meyer") (collectively "the Proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). The Proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from the merger of Jobsite Holdings, Inc. ("Jobsite"), a wholly-owned subsidiary of Kroger, with and into Fred Meyer (the "Merger"), through which Fred Meyer will become a wholly-owned subsidiary of Kroger.

II. Description of the Parties and the Proposed Acquisition

Kroger, an Ohio corporation headquartered in Cincinnati, Ohio, operates over 1,400 supermarkets in 23 states. Kroger's supermarkets operate under the "Kroger," "Fry's," "Dillons," "King Soopers," "City Markets," and "Gerbes" trade names. In the states where Kroger competes with Fred Meyer, Kroger operates supermarkets in Arizona under the "Fry's" trade name and in Utah and Wyoming under the "City Market" and "King Sooper" trade names. Kroger has plans to open a supermarket in Cheyenne, Wyoming, under the "King Sooper" trade name. Kroger had $26.57 billion in United States revenues for the fiscal year that ended on December 27, 1997. Following the merger, Kroger will remain the largest supermarket firm in the United States.

Fred Meyer, a Delaware corporation headquartered in Portland, Oregon, operates approximately 800 supermarkets in 12 western states. Fred Meyer's supermarkets operate under the "Smith Food & Drug Center" trade name in Arizona, Utah, and Wyoming, as well as the "Fred Meyer" trade name in Arizona and Utah, and the "Price Rite" trade name in Arizona. Fred Meyer had $14.88 billion in total sales for the fiscal year that ended on January 31, 1999.

Pursuant to the Merger proposed by Kroger and Fred Meyer, Jobsite will merge with and into Fred Meyer and Fred Meyer will become a wholly-owned subsidiary of Kroger. As a result of the Merger, Fred Meyer's outstanding shares of common stock will be extinguished and the holder of each such share will be entitled to receive

one newly-issued share of common stock of Kroger in exchange for each extinguished share of Fred Meyer common stock. The total equity value of the proposed merger is approximately $15 billion.

III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")), as well as a deep inventory of those SKUs. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices on the prices of food and grocery products sold at other nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores, and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. These other stores operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

According to the draft complaint, the relevant sections of the country (i.e., the geographic markets) in which to analyze the acquisition are the areas in and near the following cities and towns: (a) Prescott, Arizona; (b) Sierra Vista, Arizona; (c) Yuma, Arizona; (d) Cheyenne, Wyoming; (e) Green River, Wyoming; (f) Rock Springs, Wyoming; and (g) Price, Utah.

Kroger and Fred Meyer are actual and direct competitors in and near Prescott, Sierra Vista, Yuma, Green River, Rock Springs, and Price. Kroger is an actual potential competitor against Fred Meyer in and near the Cheyenne relevant market. But for the acquisition, Kroger and Fred Meyer would become direct competitors in the Cheyenne relevant market. The acquisition will eliminate that competition.

According to the draft complaint, the Prescott, Sierra Vista, Yuma, Arizona; Green River, Rock Springs, Wyoming; and Price, Utah, relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI")[1] or by two-firm and four-firm concentration ratios. The acquisition would substantially increase concentration in each market. Kroger and Fred Meyer would have a combined market share of near or greater than 35% in each geographic market. The post-acquisition HHIs in the geographic markets range from 2,793 to 10,000.

The draft complaint further alleges that the Cheyenne, Wyoming, relevant market is also highly concentrated. The market will remain highly concentrated as a result of this acquisition, and will be significantly more concentrated than it would have been but for the acquisition.

According to the draft complaint, entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

According to the draft complaint, the Agreement and Plan of Merger between Kroger and Fred Meyer, pursuant to which Jobsite will merge with and into Fred Meyer and Fred Meyer will become a wholly-owned subsidiary of Kroger, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supermarkets owned or controlled by Kroger and supermarkets owned or controlled by Fred Meyer; by eliminating actual potential competition between supermarkets owned or controlled by Kroger and supermarkets owned or controlled by Fred Meyer; by increasing the likelihood that Kroger will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects increases the likelihood that the prices of food, groceries, or services will increase, and the quality and selection of food, groceries, or services will decrease, in the relevant sections of the country.

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

IV. Terms of the Proposed Consent Order

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, the Proposed Respondents must divest eight specific supermarkets in the relevant markets. Five of the supermarkets that the Proposed Respondents must divest are currently owned and operated by Kroger (of which two operate under the "Fry's" banner and three operate under the "City Market" banner), and three of the supermarkets are currently owned and operated by Fred Meyer (all of which operate under the "Smith's" banner). The Proposed Respondents must divest: (1) Two Fred Meyer "Smith's" in Cheyenne, Wyoming, to Nash-Finch Company ("Nash-Finch"), one of the largest food wholesalers in the United States and an operator of many company-owned supermarkets; (2) one Kroger "City Market" in Price, Utah, to Albertson's, Inc., one of the largest retail food and drug chains operating in the United States; and (3) two Kroger "Fry's," two Kroger "City Markets," and one Fred Meyer "Smith's" in various locations to Fleming Companies, Inc. ("Fleming"), the second-largest supermarket wholesaler in the United States and an operator of many company-owned supermarket. These divestitures include every Kroger supermarket or every Fred Meyer supermarket in each relevant market. Each upfront buyer owns no supermarkets in the same market where it is acquiring one or more divested supermarkets from the Proposed Respondents. The specific supermarkets that the Proposed Respondents must divest to Nash-Finch, Albertson's, and Fleming are listed below.

The two supermarkets that the Proposed Respondents must divest to Nash-Finch in accordance with the agreement between Kroger and Nash-Finch dated March 31, 1999, are:

1. Smith's store no. 175 operating under the "Smith's Food & Drug Centers" trade name, located at 1600 E. Pershing Blvd., Cheyenne, Wyoming 82001 (Laramie County); and

2. Smith's store no. 176 operating under the "Smith's Food & Drug Centers" trade name, located at 3745

East Lincoln Way, Cheyenne, Wyoming 82001 (Laramie County).

The one supermarket that the Proposed Respondents must divest to Albertson's in accordance with the agreement between Kroger and Albertson's dated March 31, 1999, is:

1. Kroger store no. 27 operating under the "City Market" trade name, located at 760 Price River Dr., Price, Utah 84501 (Carbon County).

The five supermarkets that the Proposed Respondents must divest to Fleming in accordance with the agreements between Kroger and Fleming dated March 31, 1999, and April 7, 1999, are:

1. Kroger store no. 24 operating under the "City Market" trade name, located at 401 N. Center, Rock Springs, Wyoming 82901 (Sweetwater County);

2. Kroger store no. 23 operating under the "City Market" trade name, located at 400 Uinta Drive, Green River, Wyoming 82935 (Sweetwater County);

3. Kroger store no. 9 operating under the "Fry's" trade name, located at 1519 W. Gurley Street, Prescott, Arizona 86305 (Yavapai County);

4. Smith's store no. 305 operating under the "Smith's Food & Drug Centers" trade name, located at #85 South Hwy. 92, Sierra Vista, Arizona 85635 (Cochise County); and

5. Kroger store no. 47 operating under the "Fry's" trade name, located at 2600 W. 16th Street, Yuma, Arizona 85364 (Yuma County).

From the time Jobsite merges with and into Fred Meyer until the divestitures have been completed, the Proposed Respondents are required to maintain the viability, competitiveness, and marketability of the assets to be divested, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability.

The proposed consent order specifically requires that the divestitures occur no later than twenty days after Jobsite merges with and into Fred Meyer and Fred Meyer becomes a wholly-owned subsidiary of Kroger or four months after the Proposed Respondents signed the proposed consent order (April 29, 1999), whichever is earlier. The proposed consent agreement also requires Kroger to include rescission provisions in its upfront buyer agreements that allow it to rescind the transaction(s) if the Commission, after the comment period, decides to reject any of the upfront buyers. If Kroger divests the supermarkets to be divested prior to the date the proposed consent order becomes final, and if, at the time the Commission decides to make the proposed consent order final, the Commission notifies Kroger that any of the upfront buyers is not an acceptable acquirer or that any of the upfront buyer agreements is not an acceptable manner of divestiture, then Kroger must immediately rescind the transaction in question and divest those assets within three months after the proposed consent order becomes final. At that time, Kroger must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture, a trustee that the Commission may appoint has the power to divest any of the supermarkets or properties in the markets alleged in Paragraph 13 of the complaint that the Proposed Respondents own to remedy the anticompetitive effects alleged in the complaint.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. When divestiture is an appropriate remedy for a supermarket merger, the Commission requires the merging parties to find a buyer for the divested stores. A proposed buyer must not itself present competitive problems. For example, the Commission is less likely to approve a buyer that already has a large retail presence in the relevant geographic area than a buyer without such a presence. The Commission is satisfied that the purchasers presented by the parties are well qualified to run the divested stores and that divestiture to these purchasers poses no separate competitive issues.

For a period of ten years from the date the proposed consent order becomes final, Kroger is required to provide notice to the Commission prior to acquiring supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, Cochise, Yavapai, or Yuma counties, Arizona; Laramie or Sweetwater counties, Wyoming; or Carbon County, Utah. Kroger may not complete such an acquisition until it has provided information requested by the Commission. This provision does not restrict Kroger from constructing new supermarket facilities on its own; or does it restrict Kroger from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the proposed consent order also prohibits Kroger from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after January 1, 1998, to operate a supermarket at that site if such supermarket was formerly owned or operated by Kroger in Cochise, Yavapai, or Yuma counties, Arizona; Laramie or Sweetwater counties, Wyoming; or Carbon County, Utah. In addition, Kroger may not remove fixtures or equipment from a store or property owned or leased in Cochise, Yavapai, or Yuma counties, Arizona; Laramie or Sweetwater counties, Wyoming; or Carbon County, Utah, that is no longer in operation as a supermarket, except (1) prior to a sale, sublease, assignment, or change in occupancy or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by Kroger.

The Proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within thirty days following the date on which they signed the proposed consent and every thirty days thereafter until the divestitures are completed. Kroger is required to provide to the Commission a report of compliance annually for a period of ten years. The obligations of Jobsite under the proposed consent order will terminate upon consummation of the proposed acquisition.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Nash-Finch, Alberton's, and Fleming, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it

intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–14246 Filed 6–4–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99089]

Notice of Availability of Funds; Technology Translation and Transfer of Effective HIV Behavioral Interventions; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for the technology translation and transfer of effective HIV prevention behavioral interventions. This program addresses the "Healthy People 2000" priority area for Human Immunodeficiency Virus (HIV) Infection.

HIV/AIDS researchers have developed and tested prevention interventions that aim to reduce sex-related and drug-related risk behaviors. A number of these interventions have credible evidence of effectiveness, defined as reporting positive and significant results on an HIV-relevant behavioral or health outcome. The purposes of this project are to:

(1) Translate effective HIV prevention interventions whose original research was conducted with methodological rigor, preferably at multiple sites with multiple populations at risk;

(2) Develop packages of materials in collaboration with health departments, community-based organizations, and/or other prevention providers and consumers, that prevention providers can use to replicate the interventions in non-research field situations; and

(3) Study the process of technology transfer, using the prevention packages in at least one field setting supported by training, quality assurance, and technical assistance.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $350,000 is available in FY 1999 to fund approximately two awards. The average award will be $175,000 and the range will be $150,000 to $200,000. It is expected that the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change based on availability of funds. An application requesting greater than $200,000 (including indirect costs) will not be considered for review and will be returned to the applicant.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Continued funding for year two will be dependent on the completion of required activities for year one.

Use of Funds

Collection of new or supplemental intervention research data, data entry and analysis, purchase of furniture or computers, and rental of facilities will not be funded under this program.

D. Program Requirements

In conducting activities to achieve the purpose of this announcement, the recipient will be responsible for the activities under 1, Recipient Activities, and CDC will be responsible for the activities listed under 2, CDC Activities.

1. Recipient Activities

The program requirements for the first year of activity are:

a. Develop the (1) intervention portion of the prevention package and (2) preliminary versions of the training materials and technical assistance protocols to guide the field site implementation and produce a limited number of prevention packages.

b. Identify at least one organization or field-setting for the case study.

c. Develop a process evaluation plan.

Recipient activities for the second year of activity include: Initiate and complete the field site case study, initiate and complete the process evaluation, and revise training materials based upon the case study results. The program requirements for the second year include publishing and distributing results.

2. CDC Activities

a. Host a meeting with the successful applicants within 60 days of the notice of grant award to discuss implementation of the project.

b. Provide technical assistance in the general operation of this HIV prevention project.

c. Consult on the choice of user for a case study with the prevention package.

d. Monitor and evaluate scientific and operational accomplishments of this project through frequent telephone contact and review of technical reports and interim data analyses.

e. Conduct site visits to assess program progress and mutually solve problems, as needed.

E. Application Content

Develop applications in accordance with PHS Form 5161–1 (OMB Number 0937–0189) and the instructions and format provided below.

Submit the original and two copies of PHS Form 5161–1 (OMB Number 0937–0189) and the original and two copies of the application. The application may not exceed 20 double-spaced pages, excluding abstract, table of contents, and appendices. Submit the original and each copy of the application *Unstapled Unbound*. Print all material double-spaced, in a 12-point or larger font size on 8 ½″ by 11″ paper, with at least 1″ margins, and printed on one side only. Provide a one-page abstract of the proposal and a complete table of contents to the application and its appendices. Beginning with the first page of text, number all pages clearly and sequentially. Number each page of the appendices also, e.g., for Appendix #1, the pages should be numbered: A1–1, A1–2, A1–3. Replace double-sided article reprints with a one-sided copy.

Include a general introduction, followed by one narrative subsection for each of the numbered content elements per application, in the order in which the elements appear below. Label each narrative subsection with the element title and include all the information needed to evaluate that element of the application (except for curriculum vitae, references, and letters of support, which are appropriate for the appendices). The application content elements are:

1. Effective Behavioral Intervention

a. Identify the principal investigator(s) and name and location of the agency(ies) that originally developed, conducted, and evaluated the intervention research. Indicate whether the study was part of a multi-site project with multiple populations at risk.

b. Provide letters of support from original developers of the intervention other than the applicant (e.g., PIs at the other sites) indicating their intent to collaborate on a section of the intervention materials that will discuss generalizability of the intervention to other target populations or settings.

c. Where the applicant is not an original developer of the intervention, provide written permission from the intervention's original developers to develop and market materials for the prevention package.

d. Describe the study's positive results on behavioral or health outcomes, including how these results are both statistically and practically significant.

e. Include in the appendix a copy of any reports, that have been submitted for publication or published in peer reviewed journals, describing the study design and the positive behavioral or health outcomes of the intervention. This portion of the appendix should be labeled as "Intervention Study Design and Results."

f. Substantiate the need for a prevention package in terms of risk of target population and potential for generalizability to other target groups.

g. Describe the feasibility of implementation by other organizations, particularly those with limited resources.

2. Prevention Package

a. Describe the prevention package. Include descriptions of:

(1) The overall concept, format, and objectives, e.g., appropriateness for intended audience, description of intervention and the science behind it, target populations for whom the intervention would be appropriate;

(2) Pre-implementation phase, e.g., core elements related to this phase, time line of necessary steps, collaborators, training materials, material resources, facilities, staff (numbers, time, and skills), and cost categories for conducting the intervention;

(3) Implementation phase, e.g., core elements related to this phase, protocols for implementing the intervention and ensuring quality and consistency and providing technical assistance, identification of barriers to implementation and how they may be overcome, and process evaluation methods; and

(4) Maintenance phase, e.g., core elements related to this phase, how to deal with issues of staff turnover and retraining.

b. Explain how staff from HIV prevention programs (e.g., health departments and CBOs, and consumers) will be involved in the development of the package. Describe the planned procedures for how these collaborators will be identified.

c. Present a time line for developing the prevention package.

3. Plan To Identify Field Site(s) To Implement the Package in Year Two

a. Discuss a plan to identify and recruit potential users within your state (i.e., where the training and implementation and evaluation will be feasible within the budget constraints) and indicate any which already have shown interest in or may be interested in implementing this intervention.

b. Elaborate on the criteria and mechanism for selecting the user(s) who will implement the package.

Note: The agency that originally conducted the intervention is excluded from consideration as a potential user, as is any agency that currently or previously implemented the intervention.

4. Strategy to Assist Implementation

a. Describe the strategy to facilitate implementation of the package, including provision of training and direct technical assistance from the recipient to the selected user(s) and plans for assisting selected user(s) find additional funds, if relevant.

b. Discuss procedures to assist user(s) to implement the package, drawing upon the user's existing staff and resources, and to identify barriers to implementation and how to overcome them.

5. Plan To Evaluate the Implementation Process

a. Describe methods and measures to be used in assessing (1) Maintenance of the core elements during the intervention phases as specified in the prevention package, (2) quality of intervention delivery according to the methods described in the package, (3) quality of recipient's technical assistance and its delivery, (4) the impact of barriers to implementation on the case study (e.g., accuracy of record keeping, user's employee recruitment and retention, participant recruitment), (5) effectiveness of solutions to barriers, (6) costs of intervention delivery and cost containment strategies, and (7) maintenance of collaborative relationships. No behavioral or health outcomes are to be evaluated.

b. Describe plan to use the process evaluation results in finalizing the prevention package.

6. Capacity, and the Degree to Which the Applicant has met the CDC Policy Requirements Regarding the Inclusion of Women, Ethnic, and Racial Groups in the Proposed Research.

a. Demonstrate capacity to conduct the proposed activities including the process evaluation.

b. Clearly describe the proposed staffing, e.g., show percentages of each staff member's commitment to this and other projects, the division of duties and responsibilities for this project, brief position descriptions for existing and proposed personnel, and any partnerships with HIV prevention programs.

c. Demonstrate that the staff have the expertise to complete this project, including ability to produce the intervention package, e.g., include examples of previously developed fact sheets, web sites, or samples from other intervention packages.

d. Name the staff members who are key to the completion of the project. Provide a brief description of the strengths each brings to this project. Include their curriculum vitae in the appendix.

e. Describe access to graphics expertise for production and editing of the intervention package.

f. Describe equipment and facilities to be used for the proposed activities.

g. Briefly describe compliance regarding the inclusion of women, ethnic, and racial groups in the proposed activities.

7. Budget

Provide a detailed, line-item budget for the project; justify each line-item. Plan for at least two trips to Atlanta to meet with CDC representatives.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before July 20, submit the application to: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 98089, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, NE, Room 3000, Atlanta, Georgia 30341–4146.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial

carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Effective Behavioral Intervention (20 Percent)

Clear demonstration of the effectiveness of the proposed intervention in a report that has been submitted for publication or has been published in a peer-reviewed journal. This is an absolute criterion. To be considered effective the intervention must have been tested using a control or comparison group with participants assigned randomly or without bias to study conditions, the data collection and analyses are completed, and the findings show significant positive results for changing HIV risk behavior or health outcomes. If this evidence is present, also consider:

a. The original research with this intervention was conducted and completed preferably with multiple target populations at multiple sites, especially with persons at increased risk of HIV infection.

b. The applicant addresses the feasibility of implementing the prevention package by organizations with limited resources.

2. Prevention Package (15 Percent)

Level of detail in the outline of the proposed package, for pre-implementation, implementation, and maintenance phases, e.g., for materials for the package itself, for training, and for technical assistance protocols. Clarity of described format, concepts, intended audiences, and objectives. Justification of the appropriateness of the package's objectives, format, and concepts to the intended users' needs and capabilities. Adequacy of planned input from HIV prevention programs into the development of the package. Adequacy of planned materials' review, pretesting, and revision. Adequacy of time scheduled for completing the proposed steps of the package's development.

3. Plan To Identify Field Site(s) To Implement the Package (10 Percent)

Recognition of which agencies are not eligible to implement the package. Quality of plan to identify eligible potential users which target populations for whom the intervention is appropriate and interest them in adopting the package during year two of the project. Selection of active methods to identify and solicit potential users. Adequacy of criteria and mechanism for selecting the users to implement the package in year two.

4. Strategy To Assist Implementation (15 Percent)

Clarity of the strategy to assist selected users in adopting and implementing the behavioral intervention, e.g., training plan. Understanding of barriers to implementation and how to overcome them. Plan to assist selected users in implementing the intervention by using their existing resources and staff, e.g., provision of on-call technical assistance. Plan to help selected users find additional funds for implementing the package, if relevant.

5. Plan To Evaluate Implementation Process (15 Percent)

Feasibility and appropriateness of the applicant's plan to evaluate the selected user's implementation of the intervention as specified in the replication package. Thorough and realistic selection of process measures to evaluate.

6. Demonstrated Capacity, and the Degree to Which the Applicant Has Met the CDC Policy Requirements Regarding the Inclusion of Women, Ethnic, and Racial Groups in the Proposed Research (25 Points)

a. Demonstrated Capacity.

Overall ability of the applicant to perform the proposed activities as reflected in their staff's and consultants' qualifications and availability. The extent to which the applicant demonstrates that proposed staff have experience with materials development and demonstrated familiarity with HIV behavioral interventions, particularly the intervention to be packaged. The nature of any partnership between researchers and HIV prevention programs. Adequacy of existing support staff, equipment, and facilities.

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research includes:

1. The proposed plan for the inclusion of both women and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

7. Does the Application Adequately Address the Requirements of Title 45 CFR Part 46 for the Protection of Human Subjects?

____Yes ____No

Comments: _____

8. Budget (Not Scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of the funds. Extent to which the budget includes itemizations, justifications, scope, and deliverables for consultants or contractors.

H. Other Requirements

1. Technical Reporting Requirements

An original and two copies of semi-annual progress reports are required. Timelines for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, CDC.

At the completion of two years of funding, recipients will be expected to share prevention packages with representatives of the original agencies that conducted the interventions on which the products are based, if different from those of the recipient.

The following additional requirements are applicable to this program. For a complete description of each, see Attachments in the application kit.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women, Racial and Ethnic Minorities in Research
AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317(k), of the Public Health Service Act [42 U.S.C. 241 and

247b(k)], as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888-Grants4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. Please refer to Program Announcement 99089 when you request information. See also the CDC home page on the Internet: http://www.cdc.gov. You may view or download this and other Program Announcements, and download application forms at this site.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 98089, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, NE, Room 3000, Atlanta, GA 30341, telephone (770) 488–2720, Email: bkh4@cdc.gov.

For program technical assistance, contact: Robert Kohmescher, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop E–37, Atlanta, GA 30333, telephone (404) 639–1914, Email: rnk1@cdc.gov.

Please refer to Announcement number 99089 when requesting information and submitting an application.

Dated: June 1, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14280 Filed 6–4–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99089]

Strengthening HIV/AIDS and STD Prevention Through Use of Behavioral Data in Programmatic Decision Making; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for competitive cooperative agreement awards to (1) Better understand state and local decision-making processes that involve the use of HIV- and STD-related behavioral data, and (2) enhance the availability and utilization of high-quality HIV/STD behavioral data for meeting the needs of HIV/AIDS and STD prevention program planners. Use of scientifically credible behavioral data is expected to strengthen HIV/AIDS/STD prevention by enhancing decision makers' ability to target priority populations, precisely design programs that address local HIV risk factors, and respond quickly to changing prevention needs within their jurisdictions. This Program Announcement addresses the Healthy People 2000 priority areas of (18) HIV infection, (19) Sexually Transmitted Diseases, and (22) Surveillance and Data Systems.

Effective HIV/AIDS and STD prevention programs include the development, implementation, and evaluation of HIV behavioral risk-reduction interventions that address the specific needs of at-risk populations within their communities. To help achieve these objectives, public health decision makers need accurate, timely, and relevant data about HIV/STD risk behaviors and their determinants for groups within their jurisdictions. However, in some jurisdictions, HIV/STD behavioral risk data may be incomplete, unavailable, of poor quality, or out of date. In other areas, useful data are available but may not be effectively used in HIV and STD prevention program planning.

This process is intended to support research to answer several overarching questions: (1) How are HIV/AIDS/STD prevention decisions made? (2) How do behavioral data currently inform these decisions? (3) What gaps currently exist with respect to the match between available behavioral data and current decision-making needs? (4) What data and analyses can address key program decisions for setting community HIV/STD prevention priorities? (5) How can decision makers make better use of existing data? (6) In what measurable ways can HIV/STD prevention programs be improved by enhancements in the capacity of local decision makers to use behavioral data?

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In consultation with States, assistance may be provided to political subdivisions of States.

C. Availability of Funds

Approximately $600,000 is available in FY 1999 to make up to 3 awards. CDC anticipates that the average award amount will range from $180,000 to $220,000 for the first year of the project. An application requesting more than $220,000 (including indirect costs) will not be considered for review and will be returned to the applicant. Awards are expected to begin on or about September 30, 1999. Initial awards will be made for a 12-month budget period, with support anticipated for a project period of up to 4 years. Limited funds are anticipated to be available for the fourth year to support dissemination. These estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may not be used to support laboratory testing; salary for medical personnel to perform clinical services; pharmaceuticals; or facility rental.

D. Program Requirements

In conducting activities to achieve the purpose of this Program Announcement, recipients will be responsible for activities under "Recipient Activities," and CDC will be responsible for the activities under "CDC Activities" listed below.

1. Recipient Activities

a. Phase I: Baseline Study Phase: Design and conduct a baseline study that systematically describes current HIV and STD prevention program decision-making processes in your jurisdiction, with specific attention to behavioral data. Focus should be on decision making by health departments and associated community planning groups and on the data used to support these purposes. Include evaluation of the data for decision making purposes in terms of its availability, scientific quality, and utility. Note gaps in data quality, availability, or interpretability that constrain decision making.

b. Meetings and Collaboration: Meet and collaborate with other recipients and CDC staff in the design, revision, and implementation of all aspects of the

project. Meetings will occur twice yearly.

c. Phase II: Intervention Activities: Design and implement activities to address the quality, availability, interpretation, or application of behavioral data with respect to the jurisdiction's HIV/STD prevention needs. Activities should address data gaps or barriers to data utilization identified in the baseline study.

d. Evaluation: Evaluate the effects of intervention activities on jurisdictional HIV/STD program decision making and associated outcomes, including changes in policy, service delivery, resource allocation, or risk behavior monitoring.

e. Dissemination of Findings: Disseminate findings of the baseline and intervention studies in peer-reviewed scientific journals and at professional and community meetings.

f. Obtain Permissions and Consent: Obtain all needed permissions, consent, and reviews for carrying out project activities, including Institutional Review Board (IRB) clearances at the local level and provide documentation and materials necessary for review and approval by CDC IRB.

2. CDC Activities

a. Assist recipients in the design, revision, and implementation of all project protocols:

(1) Host an initial meeting to review and coordinate proposals and conduct subsequent follow up meetings.

(2) Conduct site visits, as needed, for each recipient. Monitor site activities and progress toward meeting project objectives.

(3) Work with recipient staff, as needed, to resolve research and implementation issues related to project protocols. This includes the provision of technical assistance during the baseline study and the intervention phase.

b. Provide general project oversight:

(1) Review and assist with or provide guidance on behavioral surveys, sampling, questionnaire design, rapid assessment methodologies, data analysis techniques, and ethnographic methodologies, as well as other elements of protocol design or methods.

(2) Participate in analysis of data gathered from program activities; assist in reporting and disseminating results.

(3) Conduct site visits, as needed, to assess program progress and evaluate progress reports to ensure that objectives are being accomplished and terms and conditions of the award are being met.

(4) Assist in development of research protocols resulting from this project that are subject to Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on an annual basis until the research project is completed.

E. Application Content

Submit a proposal that includes plans for addressing all activities outlined in the program requirements section. The application may not exceed 30 double-spaced pages, excluding table of contents, abstract, and appendices (appendices are the appropriate location for references, publications, resumes, MOA, sample reports, and other supportive documents). Print all materials double-spaced, in a 12 point or larger font size, on one side of 8½" by 11" paper with at least 1" margins. Number each page. Submit your application unbound and unstapled. Applications that exceed the 30-page limit, excluding attachments, will not be reviewed and will be returned to the applicant.

Achieving the main objectives of this project will require participation from HIV community planning groups and may benefit from the participation of academic researchers, particularly in areas such as decision making models, development of new data systems, and specialized data management or analysis functions. Therefore, applicants should demonstrate evidence of strong collaborative partnerships among these parties. Memoranda of agreement (MOA) showing existence of, or intent to collaborate with the applicant must accompany the proposal for funding. MOA should delineate the specific roles and activities to be performed by the collaborating partners.

Use the following outline to organize their proposals:

1. *Title and Abstract:* The title and abstract should be a clear 1-page summary of the applicant's proposal.

2. *Background:* Describe the HIV/AIDS epidemic in your jurisdiction, recent STD epidemiology, and the programmatic responses, i.e., funding priorities and prevention efforts. Whenever possible, cite specific data and sources referenced, e.g., epidemiologic characteristics, behavioral risk factors, or documented community conditions that place groups at elevated HIV/STD risk within the jurisdiction. Note changes in HIV/STD prevalence and incidence rates, with special attention to populations that have recently emerged as a major focus of programmatic intervention. Finally, describe the characteristics of HIV and STD prevention programs developed over the past 5 to 10 years within the jurisdiction.

3. *Assessment of Existing Data:* Describe current content, utility, adequacy, and scientific merit (e.g., reliability, validity, sampling methodology) of behavioral data available to the applicant. Also describe uses of these data in HIV program decision making. Provide similar descriptions for relevant sources of biomedical or other epidemiological data for use in local HIV and STD prevention decision making. Relevant CDC-sponsored data sources, as well as data from academic sources, vital statistics registries, census data, or case data from other public agencies should be included, as appropriate.

4. *Phase I: Baseline Study Phase: Describe:*

a. The proposed baseline study to examine HIV and STD prevention program decision making, with particular attention given to the current use of behavioral data, as well as other data types. For the purposes of this study, "decision making" is defined as those activities that involve program planning, development, monitoring, and evaluation, as well as allocation of financial, personnel, and material resources. Similarly, "decision makers" include those individuals or groups within the jurisdiction who have authority for determining how these actions are carried out in HIV and STD prevention programs. Describe who the key decision makers are in the locality and provide a summary of their responsibilities within their respective groups or organizations.

b. Key decision making factors and how they will be measured.

c. The overall research design to be used for the baseline study.

d. Approaches for identifying the role behavioral data currently have in decision making, as well as ways to identify potential gaps or needs related to behavioral data and HIV prevention in the jurisdiction. If formal or theoretical models of decision making are proposed, describe them and cite appropriate literature in the list of references.

e. Evaluate existing sources of data, particularly behavioral data, in terms of availability, scientific quality, timeliness, ease of analysis and interpretation, as well as utility for prevention program decision making.

f. Plans for using baseline study results to develop a descriptive or empirical decision-making model for the jurisdiction that incorporates better utilization of behavioral data.

g. All data collection methods and instruments to be used.

h. Anticipated approaches to data management, specific analysis techniques, and software tools.

5. *Phase II: Intervention Phase:* Describe:

a. The anticipated study design for addressing potential gaps or needs identified during the baseline study, - e.g., pre and post-intervention comparison, quasi-experimental, experimental.

b. The anticipated features of the intervention activities, i.e., what steps are anticipated for enhancing the availability, quality, or use of behavioral data in decision making.

c. How intervention activities are to be carried out.

d. Key decision makers.

e. Anticipated barriers and facilitators of data use.

f. All assessment or evaluation methods and instruments to be used to assess the effects of these intervention activities on HIV and STD prevention program decision making, e.g., sampling, procedures for review of archival documents, key informant interviews, ethnographic observation, surveys, or other methods.

g. How changes in key-decision making variables will be measured in relation to anticipated changes in the quality, availability, or use of behavioral data.

h. Plans for data management, specific analysis techniques, and software tools.

i. How the methods, variables, and instruments used during the intervention (including evaluation) will provide comparability with methods, variables, and instruments used in the baseline study.

6. *Staffing Plan and Organizational Commitment:* The application should:

a. Explain the proposed staffing plan and organizational commitment for the baseline and the intervention phases, including the percentage of time each staff member will commit to the project.

b. Provide evidence that the proposed staff have the capacity and experience to conduct all the proposed activities.

c. Include copies of curriculum vitae for the staff in the appendix of the proposal.

d. Include copies of previous staff publications in the appendix, if relevant.

e. Provide evidence of strong collaborative partnerships between HIV prevention program decision makers, community planning groups, and academic researchers. Describe collaborations in detail, and provide signed and dated copies of MOA and letters of support between participating partners.

7. *Dissemination Plan:* Describe plans for disseminating findings from the baseline study and the intervention through peer-reviewed scientific journals and presentation to appropriate professional and community audiences. Meetings such as the CDC-sponsored HIV Prevention Summit, as well as more academic meetings, should be considered.

8. *Time Line:* Provide a detailed time line for completion of all the proposed activities, including anticipated meetings with other recipients and CDC staff. It is expected that the baseline study will require 9–12 months, while implementation, evaluation, and dissemination of the intervention activities and associated findings will require the remainder of the 4-year project period.

9. *Permissions and Human Subjects:* Describe plans for obtaining all formal permissions and reviews needed for carrying out project activities, including human subjects protection (Institutional Review Board) plans, as well as procedures for safeguarding data collected during the project. Application adequately addresses the requirements of 45 CFR part 46 for the protection of human subjects. Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research are met. Documentation of study design adequacy measure group differences is present. Documentation of recruitment and outreach plans for study participants includes the process of establishing partnerships with community(ies) and recognition of mutual benefits.

10. *Budget:* Provide a detailed, line-item budget for carrying out all proposed activities, including travel expenses for meetings with other recipients and CDC staff and a budget narrative that justifies each line item.

F. Submission and Deadline

Submit the original and two copies of the complete application along with Form PHS 5161–1 (OMB Number 0937–0189). On or before July 20, 1999, submit the application to: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Mail Stop E–15, Atlanta, GA 30341–4146.

Applications shall be considered as meeting the deadline if they are either received on or before the deadline date or sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications that do not meet these criteria are considered to be late, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background (10 Points)

a. Quality, completeness, and specificity of the description of HIV/AIDS and STD epidemiology within the applicant's jurisdiction.

b. Quality, completeness, and specificity of the description of programmatic response to prevention needs over the past 5 to 10 years.

c. Adequacy of appropriate supporting data and reference citations.

2. Assessment of Existing Data (10 Points)

Quality, completeness, and specificity of the description of the content, utility, and adequacy of existing behavioral data for the applicant's jurisdiction, along with known uses of these data in current HIV program decision making. Similar descriptions of other data, such as biomedical or epidemiological information used in HIV and STD program decision making. Appropriate sources should be cited in the references.

3. Phase I: Baseline Study Plans (25 Points)

a. Clarity, completeness, and scientific quality of the plans to conduct a baseline study on how behavioral and other types of data are used in local HIV and STD prevention program decision making.

b. Clarity, scientific credibility, and feasibility of plans for all baseline study components including overall research design; sampling plan; methods and data collection protocols and instruments; description and measurement of key variables related to decision making, as well as potential barriers and facilitators that may contribute to the quality, availability, and use of data in HIV and STD prevention programs; data management and analysis plans; and appropriate software tools.

c. Quality of the explanation of how results will be used to develop a model of decision making for the jurisdiction; the model will delineate the role of behavioral data relative to other factors

that might influence HIV and STD program decision making.

d. Quality of plans to identify specific needs and gaps related to behavioral data important for HIV and STD program decision making, including the extent to which needs and gaps related to women and racial and ethnic minority populations are addressed.

4. Phase II: Intervention Plans (30 Points)

a. Clarity, completeness, and scientific quality of the plans to conduct and evaluate an intervention to address the gaps identified in the baseline study. Intervention activities should focus on enhancing data quality, availability, or utilization as they relate to HIV and STD prevention decision making.

b. Clarity, scientific credibility, and feasibility of plans for all intervention components, including overall intervention design; anticipated types of intervention activities; methods and data collection protocols, variables, and instruments needed for evaluating the intervention; sampling, data management and analysis plans; and appropriate software tools.

c. Comparability of evaluation methods and data used during intervention phase with those used during the baseline study.

d. Likelihood that the intervention will improve the quality and availability of behavioral data, promote their use in decision-making and improve the overall quality and effectiveness of the local HIV prevention programs.

e. Likelihood that the evaluation plans and methods can accurately document these improvements in a scientifically credible manner.

5. Staffing Plan and Organizational Commitment (10 Points)

Clarity of proposed staffing plan. Participating staff and organizations are qualified, committed, and available for carrying out the proposed activities. Strong evidence is provided that documents relevant staff experience and capabilities. Copies of curriculum vitae or resumes are included in an appendix. Roles of participating individuals and organizations are clearly described and are adequate for completing the proposed work. Detailed and dated memoranda of agreement or letters of support, written on appropriate institutional letterhead, are provided in an appendix. Evidence is included of past collaboration between the participating organizations or individual staff. Applicant describes a strong commitment to collaborate with other recipients and CDC staff involved with the project.

6. Dissemination Plans (5 Points)

Quality, completeness, and specificity of plans for disseminating findings from the baseline and intervention phases of the project. Include plans for written publications in peer-reviewed scientific journals and presentation to appropriate professional and community audiences.

7. Time Line (5 Points)

A detailed, clear, complete, and feasible time line is provided. Time line includes plans for participating in meetings with other recipients and CDC staff, as described in the Recipient Activities section of this Program Announcement.

8. Permissions and Human Subjects (5 Points)

Includes plans for human subject review (Institutional Review Board [IRB]) as well as procedures for safeguarding data and other information or records gathered during the project.

Clear and appropriate plans are provided for obtaining all formal permissions and reviews needed for the project at all levels (i.e, applicable local IRBs; provide necessary documentation for review by CDC IRB).

Does the application adequately address the requirements of 45 CRF part 46 for the protection of human subjects?

____ Yes ____No

Comments: _____

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits

9. Budget (Not Scored)

A detailed line item budget is provided. Budget expenditures are well-justified and appropriate. Budget includes line-items for attending project meetings described in the Recipient Activities section of this Program Announcement. Travel for these meetings should be budgeted with Atlanta as the destination for all meetings, although the location may rotate among sites.

H. Other Requirements

1. Technical Reporting Requirements.

Provide CDC with original plus two copies of semiannual progress reports, 30 days after the end of each reporting period. The progress reports must include the following for each program, function, or activity involved:

a. Progress in achieving stated goals.

b. Reasons that any goals were not met.

c. A description of steps taken to overcome barriers to accomplishing the goals for the period.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

4. The following additional requirements are applicable to this program. For a complete description of each, see Attachments.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–7 Executive Order 12372 Review
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 301 and 317 (k) (2) of the Public Health Service Act (42 U.S.C. 241 and 247b(k) (2) as amended. The catalog of Federal Domestic Assistance Number is 93.941.

J. Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest (99098). You may view or download this and other CDC/ATSDR Program Announcements, and download application forms, at the following web site: HTTP://WWW.CDC.GOV

If you have questions after reviewing the contents of all the documents, business management technical

assistance may be obtained from: Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2720, Email: bkh4@cdc.gov.

Programmatic technical assistance can be obtained from: Robert Kohmescher, Behavioral Intervention Research Branch, Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop E–37, Atlanta, GA 30333, Telephone: 404–639–1900, Fax: 404–639–1950, Email: rnk1@cdc.gov.

See also the CDC home page on the Internet: HTTP://WWW.CDC.GOV.

Dated: June 1, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14281 Filed 6–4–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Adoption and Foster Care Analysis and Reporting System for Title IV–B and Title IV–E.

OMB No.: 0980–0267.

Description: Section 479 of title IV–E of the Social Security Act directs States to establish and implement an adoption and foster care reporting system. The purpose of the data collected is to inform State/Federal policy decisions, program management, and to respond to Congressional and Departmental inquiries. Specifically, the data is used for short/long-term budget projections, trend analysis, and to target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption. The AFCARS data set is being modified in order to collect data on multi-racial individuals in accordance with OMB Directive #15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting."

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Adoption and Foster Care Analysis and Reporting Systems	51	2	3,251	331,602
Estimated Total Annual Burden Hours:				331,602

In Compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 1, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–14295 Filed 6–4–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting may be closed to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 16, 1999, 10 a.m. to 5 p.m.

Location: Hilton Hotel, Salons C, D, and E, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12519. Please call the Information Line or access the Internet (http://www.fda.gov/cdrh/upadvmtg) for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on premarket approval application for computer-guided surgical instruments for use in endoscopic surgery.

Procedure: On June 16, 1999, from 10 a.m. to 1:30 p.m., and from 2 p.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 11,

1999. Oral presentations from the public will be scheduled between approximately 10:15 a.m. and 10:45 a.m. and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 9, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 16, 1999, from 1:30 p.m. to 2 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this information.

FDA regrets that it was unable to publish this notice 15 days prior to the June 16, 1999, General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 99–14297 Filed 6–3–99; 11:59 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–65]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in Final Peer Review Organization Sanction Regulations 42 CFR 1004.40, 1004.50, 1004.60, and 1004.70;

Form No.: HCFA–R–65 (OMB# 0938–0444);

Use: The Peer Review Improvement Act of 1982 amended Title XI of the Social Security Act to create the Utilization and Quality Control Peer Review Organization (PRO) program. The PRO program replaced the existing Professional Standards Review Organization (PSRO) program and streamlined peer review activities. PROs will ensure that care provided to Medicare patients is reasonable, medically necessary, appropriate, of a quality that meets professionally recognized standards of care, and that inpatient services could not be more appropriately provided on an outpatient basis or in a different type facility;

Frequency: On occasion;

Affected Public: Not-for-profit institutions, and Business or other for-profit;

Number of Respondents: 53;

Total Annual Responses: 1,060;

Total Annual Hours: 22,684.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 6, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–14318 Filed 6–4–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1771]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Attending Physicians Statement and Documentation of Medicare Emergency and Supporting Regulations in 42 CFR Sections 424.101 and 424.103;

Form No.: HCFA–1771 (OMB# 0938–0023);

Use: Payment, by Medicare, may be made for certain Part A inpatient hospital services and Part B outpatient services provided in a nonparticipating U.S. or foreign hospital, when services are necessary to prevent the death or serious impairment to the health of an individual. This form is used to document the attending physician's statement that the hospitalization was required due to an emergency and give clinical support for the claim;

Frequency: On occasion;

Affected Public: Business or other for profit;

Number of Respondents: 2,000;
Total Annual Responses: 2,000;
Total Annual Hours: 500.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 19, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–14319 Filed 6–4–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Opportunity for Cooperative Research and Development Agreements (CRADAs) in Conjunction With a Major Multicenter Clinical Trial—the Study of Health Outcomes of Weight Loss (SHOW)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) seeks capability statements from parties interested in entering into a potential Cooperative Research and Development Agreement (CRADA) to provide anti-obesity agents for treating subjects in the Study of Health Outcomes of Weight Loss (SHOW).

Collaborator applicants developing capability statements may also include proposals to provide funding for assessment of outcomes of interest to the Collaborator. The availability of provide sector support may increase the feasibility of particular aspects of the final SHOW design, but the primary criterion for selecting potential collaborator(s) is the scientific merit of proposals for use of anti-obesity agents.

The control of the SHOW clinical trial shall reside entirely with the Institute and the scientific participants of the trial. In the event that any adverse effects are encountered which, for legal or ethical reasons, may require communications with the FDA, the relevant collaborating institutions will be notified. Neither the conduct of the trial nor the results should be represented as an NIDDK endorsement of the drug under study.

DATES: Only written CRADA capability statements received by the NIDDK on or before September 1, 1999 will be considered during the initial design phase, confidential information must be clearly labeled. Potential collaborators may be invited to meet with the Selection Committee at the Collaborator's expense to provide additional information. The Institute may issue an additional notice of CRADA opportunity during the design of the trial if circumstances change or if the trial design alters substantially.

FOR FURTHER INFORMATION AND QUESTIONS: Capability statements should be submitted to Dr. Michael W. Edwards, Office of Technology Development, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, BSA Building, Suite 350 MSC 2690, 9190 Rockville Pike, Bethesda, MD 20814–3800; Tel: 301/496–7778, Fax: 301/402–0535; Email: mels@nih.gov.

SUPPLEMENTARY INFORMATION: SHOW will be conducted as a cooperative agreement among the SHOW Clinical Centers (approximately fifteen centers), a Data Coordinating Center, and the NIH. SHOW will address two primary research questions: (1) Do interventions designed to produce sustained weight loss in obese individuals with type 2 diabetes improve health? (2) How do the benefits and risks of interventions designed to produce weight loss compare with the benefits and risks related to treatment of obesity-related comorbid conditions in the absence of weight loss intervention?

SHOW is expected to recruit approximately 6000 obese diabetic patients over a three-year period with four additional years of treatment and follow-up (average treatment duration 5.5 years). It is anticipated that two-thirds of the patients recruited to the study will be randomly assigned to enrollment in weight loss interventions and one-third to community care. The SHOW trial is likely to have three arms, as follows:

(1) Community Care—Patients will receive medical care for their obesity and obesity-related comorbid conditions (e.g., diabetes, hypertension, dyslipidemia) from their primary care physician. The primary care physician will be given standard of care recommendations for treatment of obesity and comorbid conditions (e.g., guidelines from the American Diabetes Association) and will be provided with results of diagnostic tests carried out at study sites.

(2) Intensive Lifestyle Intevention—Patients will under go a long-term behavioral treatment program that includes dietary modification, increased physical activity, and behavioral therapies designed to enhance weight loss and weight maintenance. This intervention is anticipated to be conducted in groups. Obesity-related comorbid conditions will be treated by the primary care physician as in Group 1.

(3) Intensive Lifestyle Intervention plus Weight-Loss Medication—Medication will be added to the intensive lifestyle intervention in an attempt to enhance long-term weight maintenance. Comorbid conditions will be treated by the primary care physician as in Group 1.

The SHOW RFAs may be accessed at: *http://www.nih.gov/grants/guide/rfa-files/RFA-DK-98-019.html* for Clinical Centers RFA *http://www.nih.gov/grants/guide/rfa-files/RFA-DK-98-020.html* for the Data Coordinating Center RFA

Capability Statements

The design concept described above is not final. The final design will be developed over the course of the first year of the trial by the SHOW Steering Committee (which will include the Principal Investigators of the Clinical Centers, the Principal Investigator of the Data Coordinating Center, and the NIDDK Project Coordinator). It is possible that the final design for SHOW may include no anti-obesity agents, or may include more than one anti-obesity agent.

A Selection Committee will utilize the information provided in the "Collaborator Capability Statements" received in response to this announcement to help in its deliberations. The Selection Committee will interact with the Steering Committee to develop the most appropriate design, based on a thorough understanding of the efficacy and side effects associated with all agents proposed.

It is the intention of the NIDDK that all qualified collaborators have the

opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following selection criteria:

(1) The statement should provide specific details regarding the safety and efficacy of the proposed anti-obesity agency for long-term use in obese diabetic patients with a description how it might be utilized in SHOW.

(2) The statement should include a detailed plan demonstrating the ability of the Collaborator to provide sufficient quantities of the agent in a timely manner for the duration of the study.

(3) The statement should outline outcome measures proposed by the Collaborator which support the aims of SHOW. The specifies of the proposed outcome measures and the proposed support could include, but not be limited to the following: Specific funding commitment to support the advancement of scientific research, personnel, services, facilities, equipment, or other resources that would contribute to the conduct of the trail.

(4) The statement must address willingness to promptly publish research results and ability to be bound by PHS intellectual property policies (see CRADA: http://www.nih.gov/od/ott/crada198.htm).

Dated: May 26, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–14245 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Acylated Oligopeptide Derivatives Having Cell Signal Inhibiting Activity

Terrence R. Burke, Jr. (NCI)

Serial No. 09/236,160 filed 22 Jan 99

Licensing Contact: Richard Rodriguez; 301/496–7056, ext. 287; e-mail: rr154z@nih.gov

The invention is directed to pharmaceutically active compounds comprising an N-oxalyl peptide structure. These compounds have the ability to disrupt the interaction between SH2 domain (e.g., Grb2) containing proteins, and proteins with phosphorylated moieties, especially phosphorylated tyrosine moieties on protein tyrosine kinase (PTK) receptors. The effect of inhibiting the association of SH2 domain-containing proteins with PTKs is to inhibit downstream signaling through one or more specifically targeted effector proteins. Examples of these SH2-containing proteins include, but are not limited to, Src, Lck, Fps, ras-GTPase activating protein, Fyn, Lyk, Fgr, Fes, Zap-70, Bcr-Abl, JAK1 and JAK2. These compounds could prove highly useful for the treatment of some cancers. In particular, Grb2 SH2 domains afford an ideal target because they provide a critical link between growth factor receptor PTKs and downstream signaling events involving ras-proteins which have been directly implicated with oncogenic processes. Examples of this include: members of the epidermal growth factor receptor PTK family (ErbB-2) which are found in many breast cancers; the hepatocytes growth factor/scatter factor (Met) PTK which is overexpressed in many human tumors; and the Bcr-Abl PTK which is necessary for Philadelphia chromosome positive leukemia. The development of this technology could therefore provide for the design and use of powerful therapeutics for disease states where signal transduction becomes deregulated.

Water-Insoluble Drug Delivery System

E Tabibi, E Ezennia, BR Vishnuvajjala, S Gupta (NCI)

Serial No. 60/113,423 filed 22 Dec 98

Licensing Contact: Girish Barua; 301/496–7056, ext. 263; e-mail: gb18t@nih.gov

This technology describes an improved, stable drug delivery system for water-soluble drugs, in particular 17-allylaminogeldanamycin (17–AAG) and a pharmaceutical composition comprising such a drug delivery system, as well as methods for preparing the drug delivery system. The water-insoluble drug is dissolved in a water miscible organic solvent that forms a continuous phase with water and a surface active agent. The application of this technology enables the more effective delivery of drugs such as geldanamycin and 17–AAG, with preparation of the system requiring less complex processing steps.

Nucleosides for Imaging and Treatment Applications

Jerry M. Collins, Raymond W. Klecker, Aspandiar G. Katki, Lawrence Anderson (FDA).

DHHS Reference No. E–058–97/1 filed 30 Oct 98; PCT/US98/23109

Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; e-mail: jf36z@nih. gov

The present application describes recently developed nucleosides that provide for (1) external imaging of tumor cell proliferation, (2) noninvasive determination of which tumors would be sensitive to drug therapy, and (3) potential utility as a novel antitumor treatment approach. No comparable procedures are available to determine, prior to treatment, which tumors are likely to respond to a given therapeutic approach. This invention also has the ability to rapidly evaluate the success or failure of treatment, during the course of therapy. As imaging agents, these nucleosides are directly targeted towards specific events, rather than broad measures of effect such as fluorodeoxyglucose. There is no currently available treatment for tumors with high levels of drug resistance, specifically due to overexpression of the key enzyme, thymidylate synthase. The utility of these inventions has been demonstrated in cultured human tumor cells, and preclinical toxicology studies have been conducted which permit entry into initial human testing.

Virally Mediated Gene Therapy for the Control of Chronic or Persistent Pain

MJ Iadarola, RM Caudle, AA Finegold, AJ Mannes (NIDCR)

DHHS Reference No. E–044–98/0 filed 23 Sep 98 Licensing Contact: Kai Chen; 301/496–7056 ext. 247; e-mail: kc169a@nih.gov

Current treatments for pain, especially chronic pain, are only partially effective and can eventually involve procedures that are invasive or associated with unacceptable side effects. In vivo gene transfer could be used to directly modulate pain and provide a long-term pain control. This invention describes a method of using an adenovirus or an adeno-associated virus that are genetically engineered to deliver DNA encoded peptides or proteins to neurons involved in the transmission of pain. The invention provides for a novel means to treat chronic pain by administering a beta-endorphin-expressing recombinant adenovirus into the subarachnoid space. The recombinant virus infects the pia mater connective tissue cells and the infected cells express the fusion protein, wherein the fusion protein is cleaved and the neuroactive product is secreted into spinal cord parenchymal tissue in an amount effective to treat the chronic pain but not significantly affecting basal nociceptive responses. The invention demonstrates a gene transfer approach to treatment of chronic pain disorders or cancer pain, and may be generalized to spinal cord injury or neurodegenerative disorders.

O^2-Arylated or O^2-Glycosylated 1-Substituted Diazen-1-ium-1,2-diolates and O^2-Substituted 1-[(2-Carboxylato) Pyrolidin-1-yl] Diazen-1-ium-1,2-diolates

JE Saavedra, LK Keefer, A Srinivasan, C Bogdan, WG Rice, X Ji, (NCI)

DHHS Reference No. E–093–96/3 filed 26 Sep 97 (U.S. Patent Application Serial No. 09/254,301 filed 03 Mar 99, based on Provisional U.S. Patent Applications No. 60/026,816 filed 27 Sep 96, No. 60/045,917 filed 07 May 97, and No. 60/051,696 filed 03 Jul 97)

Licensing Contact: Kai Chen; 301/496–7056 ext. 247; e-mail: kc169a@nih.gov

Diazeniumdiolates are compounds that contain, an N_2O_2 functional group. These compounds are potentially useful as prodrugs because they generate nitric oxide upon degradation. Nitric oxide (NO) plays a role in regulation of blood pressure, inflammation, neurotransmission, macrophage-induced cytostasis, and cytotoxicity. NO is also important in the protection of the gastric mucosa, relaxation of smooth muscle, and control of the aggregation state of blood cells. Derivatives of diazeniumdiolates have been produced that degrade under differing environmental conditions, allowing for selective delivery of nitric oxide in a manner dependent on environment. A new series of diazeniumdiolate derivatives has been synthesized that are stable in neutral to acidic environments and generate nitric oxide in basic or nucleophilic environments. These derivatives are potentially suited to the delivery of nitric oxide to basic or nucleophilic compartments within the body. They may be useful for inactivating proteins to prevent detoxification of chemotherapeutic agents or disruption of proteins active in tumor formation, infection, or regulatory activities. The compounds are stable in an aqueous environment but can be activated by enzymatic action to release nitric oxide that is believed to be useful in treating fulminant liver failure, respiratory problems, impotence, and a variety of cardiovascular/hematologic disorders. The diazeniumdiolates have also been derivatized by their incorporation into polymers. These compounds may allow for site specific delivery of nitric oxide. Overall, these compounds appear to be applicable toward the wide variety of processes involving nitric oxide.

Immunologically Active Peptides From the HIV Envelope Protein Eliciting Both Antibody and T Cell Responses

William R. Kenealy, Stephen R. Petteway and Paul J. Durda

U.S. Patent No. 5,562,905 issued 08 Oct 96

Licensing Contact: Robert Benson; 301/496–7056 ext. 267; e-mail rb20m@nih.gov

This invention is a series of chemically synthesized peptides of about 15 amino acids in length from the gp160 envelope protein of various isolates of HIV–1. Antibodies raised against the peptides block proliferation of HIV and block HIV-induced cell fusion in cell culture. The peptides are potential vaccines against HIV infection and monoclonal antibodies raised against the peptides are potentially useful as therapeutics. Foreign equivalent cases to USSN 07/148,692 (Berzofsky et al., PCT/US89/00712) are also available for licensing.

The NIH has many other patents and pending patent applications, most foreign filed, claiming various peptides from the HIV envelope protein that are T helper epitopes, CTL epitopes and neutralizing antibody epitopes discovered in the laboratory of Dr. Jay Berzofsky. Dr. Berzofsky has designed synthetic chimeric peptides (called "multideterminant" peptides) that combine a peptide containing several T helper epitopes which can activate many human HLA types (called a "multicluster" peptide, and claimed in USSN 08/455,685) with a peptide combining a CTL and neutralizing B cell epitope (called a "p18" peptide, and claimed in USSN 07/847,311 and U.S. patents 5,820,865 and 5,562,905). These multideterminant peptides contain only epitopes that lead to protection without containing epitopes that are detrimental to protection. Two of the multicluster chimeric peptides are in clinical trials. Multideterminant peptides are claimed in USSN 08/060,988 and 08/407,252.

Computational Analysis of Nucleic Acid Information Defines Binding Sites

Thomas D. Schneider (NCI), Peter K. Rogan

Serial No. 08/494,115 filed 23 Jun 95; U.S. Patent 5,867,402 issued 02 Feb 99

Licensing Contact: John Fahner-Vihtelic, 301/496–7735, ext. 270; e-mail: jf36z@nih.gov

Current approaches to determine whether a nucleotide change is a benign polymorphism or is associated with a genetic disease rely on sequence comparisons of a substantial number of individuals. This invention embodies a computational method that is able to predict whether a nucleotide change will have a deleterious effect. The claims of this invention relate to a computer program which has the novel feature in that it is designed to calculate the relative importance of a given nucleotide change. This program is unique in that it is capable of predicting the effect that a given nucleotide change would have on a particular sequence such as a known binding site. The method has been successfully applied to predicting the effects of changes at human splice junctions. Further information is available at "http://www.lecb.ncifcrf.gov/~toms/walker/index.html".

Dated: May 26, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–14244 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Cyanovirin-based Topical Microbicides for Prevention of Sexual Transmission of HIV

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The U.S. National Institutes of Health seeks exclusive or non-exclusive licensee(s) for certain aspects of technology encompassed within the following U.S. (and corresponding international) patent and patent application: 5,843,882 issued December 1, 1998, entitled "Antiviral Proteins and Peptides", and Serial No. 08/969,378 filed November 13, 1997, entitled "Methods of Using Cyanovirins to Inhibit Viral Infectivity" (in accordance with 35 U.S.C. 207 and 37 CFR Part 404).

More specifically, licensee(s)is (are) sought to develop and commercialize microbicidal compositions, formulations, devices and/or methods directly incorporating the unique, HIV-inactivating protein, cyanovirin-N (CV–N), for topical use to prevent sexual transmission of HIV infection and disease.

ADDRESSES: Inquiries concerning this licensing opportunity should be directed to Dr. Carol Salata, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: 301–496–7735 ext. 232; fax: 301–402–0220; e-mail: salatac@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The development of an effective anti-Hiv topical microbicide, especially a female-controlled, vaginal microbicide, has been deemed an urgent global priority by numerous international agencies, incuding the World Health Organization, the U.S. Department of Health and Human Services, the National Institute of Allergy and Infectious Diseases, and others.

Cyanovirin-N (CV–N) is a unique, 101 amino acid protein discovered,[1] by U.S. government scientists, as a constituent of a cultured cyanobacterium, *Nostoc ellipsosporum*. *CV–N has* subsequently been produced recombinantly in *E. coli*.[3] Both the sequence [1] and the 3–D solution structure [2] of CV–N are unprecedented.

CV–N potently and irreversibly inactivates diverse primary strains of HIV–1, including M-tropic forms involved in sexual transmission of HIV, as well as T-tropic and dual-tropic forms; CV–N also blocks cell-to-cell transmission of HIV infection.[1] CV–N is directly virucidal, interacting in an unusual manner with the viral envelope, apparently binding with extremely high affinity to poorly immunogenic epitopes on gp120.[1, 3]

CV–N was benign in *vivo* when tested in the rabbit vaginal toxicity/irritancy model, and was not cytotoxic *in vitro* against human immune cells and lactobacilli (unpublished). CV–N is readily soluble in aqueous media, is remarkably resistant to physicochemical degradation,[1] and, is amendable to very large-scale production by a variety of genetic engineering approaches.

Selected References

1. Boyd, M.R., Gustafson, K.R., McMahon, J.B., Shoemaker, R.H., O'Keefe, B.R., Mori, T., Gulakowski, R.J., Wu, L., Rivera, M., Laurencot, C.M., Cardellina, J.H. II, Buckheit, R.W. Jr., Nara, P.L., Pannel, L.K., Sowder, R.C. II, Henderson, L.E.: Discovery of cyanovirin-N, a novel human immunodeficiency virus-inactivating protein that binds viral surface envelope glycoprotein gp120; potential applications to microbicide development. *Antimicrob. Agents Chemother.* 41: 1521–1530, 1997.
2. Bewley, C.A., Gustafson, K.R., Boyd, M.R., Covell, D.G., Bax, A., Clore, G.M., Gronenborn, A.M.: Solution structure of cyanovirin-N, a potent HIV-inactivating protein. *Nature Struct. Biol.* 5: 571–578, 1998.
3. Mori, T., Gustafson, K.R., Pannell, L.K., Shoemaker, R.H., Wu, L., McMahon, J.B., Boyd, M.R.: Recombinant production of cyanovirin-N, a potent HIV (human immunodeficiency virus)-inactivating protein derived from a cultured cyanobacterium. *Protein Expr. Purif.* 12: 151–158, 1998.
4. Esser, M.T., Mori, T., Mondor, I., Sattentau, Q., Dey, B., Berger, E.A., Boyd, M.R., Lifson, J.D.: Cyanovirin-N binds to gp120 to interfere with CD4-dependent HIV-1 virion binding, infectivity, and fusion, but does not affect the CD4 binding site on gp120 or soluble CD4 induced conformational changes in gp120. *J. Virol.* 73:4360–4371, 1999.

Dated: May 28, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–14375 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Girish C. Barua, Ph.D. at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 263; fax: 301/402–0220; e-mail: gb18t@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Modulation of N-Acetyl-Transferase To Improve Therapy and Prevent Cancer

Jerry M. Collins, Raymond W. Klecker, Aspandiar G. Katki (FDA)

DHHS Reference No. E–268–98/0 filed 16 Apr 99

This technology describes a method in which an inhibitor of an arylamine N-acetyl transferase (NAT), a member of a common enzyme family, is administered to a human to inhibit acetylation reactions resulting in production of cytotoxic or carcinogenic compounds in the treated individual. Nearly all drugs are metabolized in the human body by enzymes. Although metabolism generally lowers the toxicity of drugs, the opposite effect is often encountered with NAT. With NAT, the resulting metabolite is more toxic than the parent drug. Administering an inhibitor of NAT with such drugs is believed to result in decreased toxicity to the patient because of reduced exposure to the metabolite. Reduced exposure to the metabolite is believed to be beneficial to patients because the reduction in toxicity results in the maximization of the benefits of the parent drug. Accordingly, this method could be utilized in many therapeutic areas, since drugs which are metabolized by NAT are used in most medical disciplines, including heart disease, infectious diseases, and oncology. The technology also describes the acetylation capacity of NAT's link to human tumors. The acetylation capacity can be reduced by an enzyme inhibitor which may lead to a decrease in human cancer. This concept identifies NAT as a novel target, to expand and improve a general strategy which is currently-emerging, known as "chemoprevention". Finally, the technology describes specific inhibitors

of NAT in human hepatocytes, e.g., para-amino salicylate (PAS) for NAT1 and dichlorphenamide for NAT2, which can be used either in chemoprevention of cancer or in conjunction with a chemotherapeutic which metabolizes NAT, potentially resulting in reduced toxicity to the patient. Since these inhibitors are currently-marketed drugs, clinical development can be accelerated, and pilot studies are already underway.

Methods for Inhibiting Chaperone Proteins

Monica G. Marcu, Leonard M. Neckers, Theodor W. Schulte (NCI)
Serial No. 60/124,135 filed 12 Mar 99

This technology describes the use of an antibiotic, Novobiocin, that has been used clinically in people for many years. This compound and structural analogues such as chlorobiocin and coumermycin A1, which are coumarins, have been discovered to bind to Heat Shock Protein 90 (Hsp90), resulting in the destabilization and proteolytic degradation of a number of proteins whose function and stability depend on their association with Hsp90. These proteins include oncogenic kinases such as Raf, Her2/neu(erbB2), and Src, and transcription factors such as mutant p53. Novobiocin has demonstrated an ability to deplete Raf from the spleens of mice, suggesting that it may have anti-Hsp90 biologic properties in humans. Novobiocin and its analogues are an improvement on currently known chemotherapeutics such as geldanamycin because these compounds lack both a quinone and a macrocycle in their chemical structure and are thus better tolerated and less toxic to humans at high dosages.

Identification of The Geldanamycins as Inhibitors of The HGF/SF–Met–uPA Proteolytic Network

Craig Webb, Curtis Hose, Anne P. Monks, George F. Vande Woude, Edward A. Sausville (NCI)
Serial No. 60/119,114 filed 08 Feb 99

This technology describes a class of compounds (Geldanamycins) as important inhibitors to the HGF–SF–Met–uPA–plasmin signaling pathway. Considerable evidence demonstrates that the HGF–SF–Met pathway plays a significant role in the etiology of human cancers and the formation of secondary metastases. These compounds have the ability to revert certain transformed phenotypes through down regulation of the expression of the Met receptor at subnanomolar concentrations. Thus, these compounds could have utility in the treatment and therapy of invasive human cancers where the HGF–SF–Met pathway is implicated.

Food Quality Indicator Device

Dwight W. Miller, Jon G. Wilkes, Eric D. Conte (FDA)
DHHS Reference No. E–093–97/1 filed 16 Jul 98

The invention is a device which indicates the quality of frozen food by colorimetrically detecting bases generated by decomposition. The food quality indicator consists of a paper strip or other insert support treated with proprietary compounds for detection at temperatures below zero degree C of Bacteriological and/or enzymatic food decomposition. It operates without thawing frozen foods, and for excellent application for seafoods such as shrimp, fish as well as red meat.

Sensitive Assay for Measuring Gallium Levels in Body Tissues and Fluids

Edward Reed, Kang B. Lee (NCI)
Serial No. 08/355,153 filed 08 Dec 94; U.S. Patent 5,650,627 issued 22 Jul 97

A sensitive assay method for measuring the quantity of elemental gallium present in a test sample comprising a body tissue or body fluid. The method involves a test sample after diluting with nitric acid to be introduced into atomic absorption spectrometer having a Zeeman-effect background correction capability. Sample absorption to be determined at a desired wavelength while subjecting the test sample to an atomization and a burning in an atomic spectrometer. A correction of Zeeman effect to be made on the said determined absorption and comparing corrected absorption for the test sample with a standard curve.

Dated: May 28, 1999.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–14376 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

N-Acylphosphoramidites and Their Use in Oligonucleotide Synthesis

Serge Beaucage et al. (FDA)
DHHS Reference No. E–031–98/0 filed 24 Mar 99
Licensing Contact: Charles Maynard; 301/496–7735 ext. 243; e-mail: cm251n@nih.gov

This technology relates to the synthesis of oligonucleotides, and intermediates useful in its synthesis. The therapeutic application of oligonucleotides is based on the selective formation of hybrids between antisense oligonucleotides and complimentary nucleic acids, such as messenger RNAs. Such hybrids inhibit gene expression by blocking protein translation. Successful inhibition of gene expression requires the antisense oligonucleotide to be nuclease resistant so that it can be successfully transported through biological membranes and can hybridize selectively to a target complementary nucleic acid, thereby actively blocking protein translation.

This present invention of synthesizing polymers has tremendous synthetic advantages that are unprecedented with respect to the synthesis of oligonucleotides in that it enables the facile production of P-chiral oligomeric or polymeric products, with complete control of stereochemistry with respect to the phosphorous atom.

Identification and Use of High Efficacy Vaccine Antigens

Ronald N. Germain (NIAID), Irena Stefanova (NIAID), Roland Martin (NINDS), Marco Vergelli (NINDS), Bernhard Hemmer (NINDS)
Serial No. 60/124,064 filed 12 Mar 99
Licensing Contact: Richard U. Rodriguez; 301/496–7056 ext. 287; e-mail: rr154z@nih.gov

The invention relates to the identification and use of high efficacy

antigens or immunogens. Antigen-specific or adaptive immunity in higher vertebrates is mediated by limphoid effector cells, T and B-lymphocytes. T-lymphocytes have αβ-receptors (TCR) that recognize ligands comprised of cell-surface molecules encoded in the major histocompatibility complex (MHC) bound to short peptide fragments of protein antigens. These antigen-specific effector T-lymphocytes are involved in resistance to infections, in anti-tumor immunity and in autoimmune-diseases. Studies have shown that activation of the TCR by a peptide-MHC complex triggers an intracellular biochemical signaling cascade. These studies have also shown that different peptide-MHC complexes can yield different levels of responses, thus affecting the effectiveness of an immune response to various disease states. The inventors provide methods to efficiently identify optimized or heteroclitic-ligands (superagonists) which would have utility in the formation of anti-cancer and anti-pathogen vaccines with enhanced potency compared to the natural self- or foreign peptide ligand. This is achieved by a "biochemical fingerprinting" process that involves the analysis of various phosphorylation patterns elicited in specific T-cells by TCR activation using peptide-MHC complexes. These patterns enable direct identification of how optimal a given ligand is for the test T-cells. When the initial ligand proves suboptimal by this technique, improved ligands can be identified by making variants of the original peptide, and then analyzing the phosphorylation patterns elicited by these variants until an optimal pattern is achieved. In this manner, specific peptides can be tested until a "superagonist" is isolated and development of this "superagonist" as a potential vaccine can proceed. These methods provide a direct evaluation of the immunologic "quality" of an initial vaccine candidate. Their use should greatly reduce the number of potential antigen-candidates that need to be researched and focus important resources on antigen-candidates with superior potential to succeed.

Polymorphic Human $GABA_A$ Receptor Alpha-6 Subunit

Drs. Nakao Iwata, David Goldman, and Mark Shuckit (NIAAA)
DHHS Reference Number E–061–98/0 filed 19 Fed 99
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: ms482m@nih.gov

Human heritability studies using twins and adoptees have indicated that alcoholism is a complex disorder having a genetic component. Studies of Children of Alcoholics (COA) have determined that there is a differential decrease in sensitivity to benzodiazepine drugs (BZD) and ethanol within this specific population.

G-Aminobutryric Acid (GABA) receptors are implicated in various neurological and psychiatric disorders. There are two major types of GABA receptors: A, which is associated with a Cl^- Channel; and B, which is associated with K^+ and Ca^{2+} channels. Differential expression of individual subunits of the multimeric protein appears to provide a mechanism for the body to convey different physiological functions. the α subunit displays benzodiazepine activity and the α_6 subunit has been associated with alcohol related activity. A proline to serine substitution at amino acid position 385 in the α_6 subunit of the $GABA_A$ receptor within the COA population has displayed a statistical correlation to the average smooth pursuit eye movement after diazepam administration.

The point mutation can be used as a genetic marker to investigate susceptibility to alcoholism as well as the biochemical and physiological responses to both pre- and post-treatment with benzodiazepines. It is also useful in the investigation of psychiatric disorders such as schizophrenia, affective disorder, or anxiety disorders in which abnormal function of the GABAergic neuronal system is implicated.

A Method of Immunizing Humans Against Salmonella Typhi Using a Vi-rEPA Conjugate Vaccine

Zuzana Kossaczka, Shousun C. Szu and John B. Robbins (NICHD) DHHS Reference No. E–020–99/0 filed 04 Dec 98 (PCT/US98/25746)
Licensing Contact: Robert Benson; 301/496–7056 ext. 267; e-mail: rb20m@nih.gov

This invention is a method of immunizing against typhoid fever using a conjugate vaccine comprising the capsular polysaccharide of *Salmonella typhi*, VI, conjugated through an adipic dihydrazide linker to nontoxic recombinant exoprotein A (rEPA) from *Pseudomonas aeruginosa*. The three licensed vaccines against typhoid fever, attenuated *S. typhi* Ty21a, killed whole cell vaccines and Vi polysaccharide, have limited efficacy, in particular for children under 5 years of age, which make an improved vaccine desirable.

It is generally recognized that an effective vaccine against *Salmonella typhi* is one that increases serum anti-Vi IgG eight-fold six weeks after immunization. The conjugate vaccine of the invention increases anti-Vi IgG, 48-fold, 252-fold and 400-fold in adults, in 5–14 years-old and 2–4 years-old children, respectively. Thus this is a highly effective vaccine suitable for children and should find utility in endemic regions and as a traveler's vaccine. The route of administration can also be combined with routine immunization. The synthesis of the conjugates, not including the superior clinical results, is described in Infection & Immunity 65(7), pp. 2088–2093, June 1997.

Antagonists Of The αEβ7 Integrin As Therapeutic Agents For Inflammatory Diseases

Bjorn R. Ludviksson, Warren Strober, Rolf Ehrhardt (NIAID) Serial No. 60/019,957 filed 25 Nov 98
Licensing Contact: Richard U. Rodriguez; 301/496–7056 ext. 287; e-mail: rr154z@nih.gov

The disclosed invention relates to a method of treating and/or preventing the inflammatory response of an autoimmune disease, an allergic disease, a graft-versus-host disease and a transplantation rejection. In particular, this treatment or prevention is accomplished by administering antagonists of the $\alpha^E\beta7$ integrin. $\alpha^E\beta7$ is expressed on intra-epithelial lymphocytes (IELs) and on lamina propria (LP) lymphocytes. $\alpha^E\beta7$ can be upregulated by TGF–β, and it is speculated to have regulatory functions such as homing or retention. The pathogensis of chronic intestinal inflammation may depend on the traffic of lymphocytes from sites of induction to sites of inflammation. The inventors have shown that chronic intestinal inflammation can be prevented and reversed in an IL–2 −/− murine model. Administration of anti-$\alpha^E\beta7$ prevents colonic inflammation and reverses pre-existing inflammation. Therefore, this technology can be used to treat, prevent or reverse inflammatory conditions as well as providing a method of screening for substances effective in reducing the inflammatory effects of $\alpha^E\beta7$.

Methods And Compositions for HDL Holoparticle Uptake Receptor Insertion

B Brewer Jr., AT Remaley, S Argraves (NHLBI) DHHS Reference No. E–204–98/0 filed 15 May 98
Licensing Contact: Charles Maynard; 301/496–7735 ext. 243; e-mail: cm251n@nih.gov

This technology relates to compositions and methods for a high density lipoprotein (HDL) holoparticle uptake receptor. This receptor is used in the identification and development of substances (therapeutic agents) which modulate the activity and/or expression

of the receptor, thereby modulating the uptake of HDL by cells expressing the receptor on the cell surface.

HDL has anti-atherogenic properties and is known to inhibit oxidation of low density kiporprotein (LDL). Transgenic animals having elevated levels of HDL are resistant to high cholesterol dieto-induced atherosclerosis. Therefore, understanding factors which influence plasma levels of HDL, such as mechanisms of HDL metabolism, is of major importance.

The present invention makes a significant contribution to the art by providing an HDL holoparticle uptake receptor comprising a complex of proteins and screening methods for identifying substances that modulate the activity and/or expression of the receptor.

Modified HCV Peptide Vaccine

Jay A. Berzofsky (NCI), Pablo Sarobe (NCI), CD Pendleton (NCI), Stephen M. Feinstone (FDA)
Serila No. 60/-97,446 filed 21 Aug 98
Licensing Contact: J. Peter Kim; 301/496–7056 ext. 264; e-mail: jk141n@nih.gov

Hepatitis C virus (HCV) is a single stranded RNA virus responsible for the majority of non-A non-B hepatitis. Hepatitis C virus (HCV) has a worldwide distribution and is a major cause of liver cirrhosis and hepatocellular carcinoma in the U.S., Europe, and Japan. For this reason, development of a vaccine against hepatitis C is of great importance.

The present invention provides immunogenic peptides of HCV core protein which elicit an enhanced immune response, methods for making these pepetides, and methods for using these peotides for a variety of therapeutic, diagnostic, and prognostic applications, including a vaccine. More specifically, the present invention provides an isolated peptide, and isolated HCV core polypeptide, a fragment of an HCV core polypeptide and nucleic acids which encode the peptides and polypeptides of this invention. The invention provides a modified HCV core peptide that is more immunogenic than the corresponding natural core peptide for eliciting human cytotoxic T lymphocytes.

Conformationally Locked Nucleoside Analogues

Inventors: Victor E. Marquez, Juan B. Rodriguez, Marc C. Nicklaus, Joseph J. Barchi, Jr., Maqbool A. Siddiqui (NCI)
U.S. Patent Numbers: 5,869,666 (filed March 14, 1997); 5,629,454 (filed September 23, 1994, with priority back to September 24, 1993)
Foreign Filing: PCT/US94/10794 (issued as European Patent Number 0720604 and Australian Patent Number 677441)

Conformationally Locked Nucleoside Analogs As Antiherpetic Agents

Inventors: Victor E. Marquez, Juan B. Rodriguez, Marc C. Nicklaus, Joseph J. Barchi, Jr., Maqbool A. Siddiqui (NCI)
U.S. Patent Number: 5,840,728 (filed August 7, 1997, with priority back to August 7, 1996)
Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: ps193c@nih.gove

The compounds of the present invention represent the first examples of carbocyclic dedeoxynucleosides that in solution exist locked in a defined N-geometry (C3′-endo) conformation typical of conventional nucleosides. These analogues exhibit increased stability due to the substitution of carbon for oxygen in the ribose ring. The invention includes 4′-6′-cyclopropane fused carbocyclic dideoxynucleosides, 2′-deoxynucleosides and ribonucleosides as well as oligonucleotides derived from these analogues; the preferred embodiment of the invention is carbocyclic-4′-6′-cyclopropane-fused analogues of dideoxypurines, dideoxypyrimidines, deoxypurines, deoxypyrimidines, purine ribonucleosides and pyrimidine ribonucleosides. In addition, oligonucleotides derived from one or more of the nucleosides in combination with the naturally occurring nucleosides are within the scope of the present invention.

The second invention discloses a method for the treatment of herpes virus infections by the administration of cyclopropanated carbocyclic 2′-deoxynucleosides to an affected individual. This invention is a method of administration of the compounds described above. The compounds of this invention are particularly efficacious against herpes simplex viruses 1 and 2 (HSV–1 and HSV–2), Epstein-Barr Virus (EBV) and human cytomegalovirus (CMV), although the nucleoside analogues of the invention may be used to treat any condition caused by a herpes virus. Specifically, the N-methanocarba-T (Thymidine) analogue has been shown to exhibit strong activity against HSV–1 and HSV–2, and moderate to strong activity against EBV. Significantly, the anti-HSV activity of the Thymidine analogue is stronger than that of Acyclovir (shown in a plaque reduction assay), a widely used anti-HSV therapeutic. Furthermore, the Thymidine analogue is also non-toxic against stationary cells and is potent against rapidly dividing cells. Dosage amounts for the compounds are similar to those of Acyclovir.

Descriptions of the inventions may be found in Rodriguez et al., J. Medicinal Chemistry 37:3389 3399 (1994) and Marquez et al., J. Medicinal Chemistry 39:3739–3747 (1996).

Dated: May 28, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–14377 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2). The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: June 8, 1999.

Open: June 8, 1999, 8:30 a.m. to 4:00 p.m.

Agenda: Report of the Director, NCI; Reports and Presentations Related to NCI Administrative and Program Developments; Presentations and Discussions Related to Special Populations and Quality of Care Issues; NCI Clinical Research Opportunities; NCAB Subcommittee Meeting and NCAB Working Group Report; Legislative and National Cancer Statistic Updates.

Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Closed: June 8, 1999, 4:15 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.
Contact Person: Dr. Marvin R. Kalt, Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, Suite 600, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–5147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14374 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: June 21–22, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Madison Hotel, Fifteenth & M Streets NW, Washington, DC 20005.
Contact Person: Alan Willard, PHD, PHD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14373 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Drug and Method for the Therapeutic Treatment of Lymphomas and Leukemias

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to U.S. Patents and Patent Applications USPA SN: 60/041,437, entitled: "Recombinant Antibodies and Immunoconjugates Targeted to CD–22 Bearing Cells and Tumors"; USPN 4,892,827, entitled, "Recombinant *Pseudomonas* Exotoxin: Construction of an Active Immunotoxin with Low Side Effects"—excluding any foreign equivalents corresponding to 4,892,927 (= USSN 06/911,227); USPN 5,747,654, entitled, "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity"; USPA SN: 09/002,753, entitled: "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity"; USPA SN: 07/865,722; entitled: "Recombinant Antibody-Toxin Fusion Protein"; USPN 5,863,745, entitled: "Recombinant Antibody-Toxin Fusion Protein"; USPN 5,696,237, entitled: "Recombinant Antibody-Toxin Fusion Protein"; and USPA SN: 06/005,388, entitled: "Immunotoxin Containing a Disulfide-Stabilized Antibody Fragment Joined to a *Pseudomonas* Exotoxin that does not Require Proteolytic Activation" and corresponding foreign patent applications to AlbaPharm, Inc. having an address in Ann Arbor, Michigan. The United States of America is an assignee of the patent rights in these inventions and the contemplated exclusive license may be limited to the use of RFB4 (dsFv)—PE38 [also known as BL22] immunotoxin and relevant patents and patent applications for the therapeutic treatment of Lymphomas and Leukemias which express the CD22 surface antigen.

DATES: Only written comments and/or applications for a license which are received by NIH on or before August 6, 1999 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to this contemplated exclusive license should be directed to: J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 206; Facsimile: (301) 402–0220, E-Mail: DixonJ@OD.NIH.GOV. A signed Confidentiality Agreement will be required to receive copies of any patent applications.

SUPPLEMENTARY INFORMATION: The technology is directed to a RFB4 (dsFv)–PE38 (also known as: BL22) immunotoxin and to methods and DNA sequences to produce disulfide-stabilized (ds) recombinant polypeptide fragments to construct the aforementioned immunotoxin. RFB4 is a disulfide-linked recombinant immunotoxin fused to PE38, a mutant form of *Pseudomonas* Exotoxin, that binds to CD22—a 135kDa phosphoglycoprotein adhesion molecule present on the surface of B-cells. RFB4 is a mouse monoclonal antibody that recognizes an external epitope on the CD22 cell surface antigen and has no detectable cross-reactivity with any other normal cell types. CD22 is a lineage-restricted B-cell antigen that belongs to the Ig superfamily and is displayed on chronic B-Lymphocytic Leukemia cells and B-cell Non-Hodgkins Lymphoma cells. To kill CD22-positive cells, the RFB4 antibody was used to make a recombinant immunotoxin. To construct the recombinant PE immunotoxin, the variable portions of the heavy and light chains of RFB4 were cloned and the Fv fragments linked together by a disulfide bond to form a disulfide stabilized (ds) construct. The construct was combined by gene fusion with PE38, a truncated version of PE, to form RFB4 (dsFv)–PE38, or BL22.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective

exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the exclusive license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license [i.e., completed "Application for License to Public Health Service Inventions"] in the field of use of the RFB4 (dsFv)–PE38 immunotoxin and the relevant Patents and Patent Applications for the therapeutic treatment of Lymphomas and Leukemias which express the CD22 surface antigen filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 26, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–14242 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Drug and Method for the Therapeutic Treatment of Leukemia, Lymphoma, Hair Cell Leukemia, Hodgkin's Disease and Other Hematologic Malignancies Plus to Prevent and Treat Graft-versus-Host Disease and Allograft Rejection

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to U.S. Patents and Patent Applications USPN 4,892,827, entitled, "Recombinant *Pseudomonas* Exotoxin: Construction of an Active Immunotoxin with Low Side Effects"—excluding any foreign equivalents corresponding to 4,892,827 (= USSN 06/911,227); USPN 5,747,654, entitled, "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity"; USPA SN: 09/002,753, entitled: "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity"; USPA SN: 07/865,722, entitled: "Recombinant Antibody-Toxin Fusion Protein"; USPN 5,863,745, entitled: "Recombinant Antibody-Toxin Fusion Protein"; USPN 5,696,237, entitled: "Recombinant Antibody-Toxin Fusion Protein"; and USPA SN: 60/005,388, entitled: "Immunotoxin Containing a Disulfide-Stabilized Antibody Fragment Joined to a *Pseudomonas* Exotoxin that does not Require Proteolytic Activation" and corresponding foreign patent applications to AlbaPharm, Inc. of Ann Arbor, Michigan. The United States of America is an assignee of the patent rights in these inventions and the contemplated exclusive license may be limited to the use of an anti-Tac(dsFv)—PE38 based immunotoxin and/or anti-Tac(Fc)—PE38 immunotoxin and relevant patents and patent applications for the therapeutic treatment of refractory Leukemia, Lymphoma, Hairy Cell Leukemia, Hodgkin's disease and other hematologic malignancies and for the treatment of Graft-versus-Host Disease and Allograft Rejection.

DATES: Only written comments and/or applications for a license which are received by NIH on or before August 6, 1999, will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735, ext. 206; Facsimile: (301) 402–0220, E-Mail: DixonJ@OD.NIH.GOV. A signed Confidentiality Agreement will be required to receive copies of any of the patent applications.

SUPPLEMENTARY INFORMATION: The technology is directed to an anti-Tac (dsFv)–PE38 and/or anti-Tac(Fv)–PE38 immunotoxin for the therapeutic treatment of refractory Leukemia, Lymphoma, Hairy Cell Leukemia, Hodgkin's disease and other hematologic malignancies. Ani-Tac(dsFv)–PE38 and anti-Tac(scFv)–PE38 are recombinant immunotoxins composed of a disulfide-stabilized (ds) or a single chain Fv form of the anti-Tac (anti-CD25) monoclonal antibody which binds to the α subunit of the IL2 receptor (also called P55, Tac, or CD25), fused to PE38, a mutant form of *Pseudomonas* Exotoxin A which has ADP ribosylating activity and the ability to translocate across a cell membrane. Anti-Tac-(dsFv)PE38 or anti-Tac(scFv)–PE38 immunotoxins are very cytotoxic to normal or malignant cells expressing this IL2 receptor. The technology is also directed to methods and DNA sequences to produce disulfide-stabilized (ds) or single-chain (sc) recombinant polypeptide fragments to construct the aforementioned immunotoxins. Anti-Tac is a monoclonal antibody fused to PE38, a mutant form of *Pseudomonas* Exotoxin, that binds to the CD25 surface antigen. To kill CD25-positive cells, the anti-Tac antibody was used to make a recombinant immunotoxin. To construct the recombinant PE immunotoxin, the variable portions of the heavy and light chains of anti-Tac could be cloned and the Fv fragments linked together by a disulfide bond to form a disulfide stabilized (ds) construct. The construct was combined by gene fusion with PE38, a truncated version of PE, to form an anti-Tac(dsFv)–PE38 or anti-Tac(scFv)–PE38 immunotoxin.

The technology is also directed to an anti-Tac(dsFv)–PE38 and anti-Tac(scFv)–PE38 immunotoxin for: (1) the prevention of Graft-versus Host Disease ("GVHD") by purging bone marrow of potentially recipient-reactive donor T-cells, (2) the treatment of Graft-versus Host Disease by i.v. administration, and (3) the treatment or prevention of allograft rejection.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the exclusive license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license [i.e., completed Application for License to Public Health Service Inventions] in the field of use of the anti-Tac(dsFv)–PE38 and/or anti-Tac(scFv)–PE38 immunotoxin and the relevant Patent Applications for the therapeutic treatment of refractory Leukemia, Lymphoma, Hairy Cell Leukemia, Hodgkin's disease and other hematologic malignancies and for the treatment of Graft-versus-Host Disease and Allograft Rejection filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 26, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–14243 Filed 6–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Center for Substance Abuse Treatment; Fiscal Year 1999 Funding Opportunity

AGENCIES: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services (CMHS), Center for Substance Abuse Treatment (CSAT).

ACTION: Notice of Availability of Funds for Cooperative Agreements for CMHS/CSAT Collaborative Program on Homeless Families: Women with Psychiatric, Substance Use, or Co-occurring Disorders and Their Dependent Children.

SUMMARY: The U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) and Center for Substance Abuse Treatment (CSAT), announce the availability of FY 1999 funds for cooperative agreements for the following activity. This activity is discussed in more detail under section 4 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application. Note: SAMHSA also published notices of available funding opportunities for FY 1999 in previous issues of the **Federal Register**.

Activity	Application deadline	Estimated funds available	Estimated number of awards	Project period
Homeless Families Program (Study Sites)	08/11/99	$3.8 Million	16	Up to 2 yrs.
Homeless Families Program (Coordinating Center)	08/11/99	$1 Million	1	Up to 5 yrs.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 1999 funds for the activity discussed in this announcement were appropriated by the Congress under Pub. L. 105–277. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001-00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity (i.e., the GFA) described in section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.* (*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadline for receipt of applications is listed in the table above.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

For Further Information Contact: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate

knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1999 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1999 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activity in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process.

Other funding criteria may include:

- Availability of funds.

4. Special FY 1999 SAMHSA Activity

4.1. Cooperative Agreements for CMHS/CSAT Collaborative Program on Homeless Families: Women with Psychiatric, Substance Use, or Co-Occurring Disorders and Their Dependent Children (Short Title: Homeless Families Program, GFA No. SM 99–011)

- Application Deadline: August 11, 1999.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) and Center for Substance Abuse Treatment (CSAT) announce the availability of cooperative agreements for projects that will document time-limited, multi-faceted intervention models (where the intensive intervention is generally provided within a 9-month period) targeted to homeless mothers with psychiatric, substance use, or co-occurring disorders who are caring for their dependent children. This program is designed to document and evaluate interventions that will result in movement out of homelessness, stability in housing placement, family preservation or reunification, decreased alcohol and drug use, and improvement in mental health and social functioning.

The Homeless Families Program will be divided into two phases:

- Phase 1 (2 years): program documentation, individual- and cross-site evaluation design, and OMB clearance.
- Phase 2 (3 years): individual and cross-site evaluations.

This Guidance for Applicants (GFA) solicits applications for two types of cooperative agreements: Project (study site) Grants and a Coordinating Center.

- Priorities: None.
- Eligible Applicants:

Study Sites. Applications may be submitted by public organizations, such as units of State, county or local government, and by private non-profit and for-profit organizations, such as community-based organizations, universities, colleges, hospitals, and family and/or consumer operated organizations.

In order to assure the evaluation of a stable and ongoing intervention, documentation must be included in the application that the applicant has provided homeless family services, targeted to women with psychiatric and/or substance use disorders who are caring for their children, for a minimum of 2 years prior to the date of application.

Eligibility to apply for Phase 2 awards will be limited to Phase 1 grantees. Eligibility is limited to assure selection of the most promising homelessness families interventions and continuation of established collaborations between the Centers and projects. Continuation of the grants from Phase 1 to Phase 2 will be competitive, and not all Phase 1 grantees will necessarily move to Phase 2.

Coordinating Center. Applications may be submitted by organizations such as units of State or local governments and by domestic private non-profit and for-profit organizations such as

community-based organizations, universities, colleges, and hospitals.

• Grants/Amounts:

Study Sites. It is estimated that approximately $3.8 million will be available to support approximately 16 awards under this GFA in FY 1999. The average award is expected to range from $200,000 to $250,00 in total costs (direct+indirect). Actual funding levels will depend upon the availability of appropriated funds.

Coordinating Center. It is estimated that approximately $1 million will be available to support one award under this GFA in FY 1999. Actual funding level will depend upon the scope of application and the availability of appropriated funds.

• Period of Support:

Study Site: Support for Phase 1 should be requested for a period of up to 2 years. Annual awards will be made subject to continued availability of funds and progress achieved.

Coordinating Center: Support should be requested for a period of up to 5 years. Annual awards will be made subject to continued availability of funds and progress achieved.

• Catalog of Domestic Federal Assistance: 93.230

• For Programmatic or Technical Assistance (Not for application kits), contact:

Lawrence D. Rickards, Ph.D. or Frances Randolph, Dr.P.H., Homeless Programs Branch, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 11C–05, Rockville, MD 20857, (301) 443–3706.

Cheryl Gallagher, M.A. or Tom Edwards, Organization of Services Branch, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6534.

• For Grants Management Assistance, contact: Stephen J. Hudak, Grants Management Specialist, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 15C–05, Rockville, Maryland 20857, (301) 443–4456.

• For Application Kits, contact: Homeless Programs Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 11C–05, Rockville, MD 20857, (301) 443–3706.

All the required components of the application kit, including the PHS 5161–1 and the Standard Form 424, are also available for electronic downloading through the "Funding Opportunities" option on SAMHSA's World Wide Web Home Page at <http://www.samhsa.gov>.

5. Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 1999 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities, Policy and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 31, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–14228 Filed 6–4–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4442–N–10]

Notice of Proposed Information Collection for Public Comment; Community Outreach Partnership Centers Program

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: August 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Department of Housing and Urban Development, Office of Policy Development and Research, Office of University Partnerships, 451 7th Street, Washington, DC, 202–708–1537, ext. 5861 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected entities concerning the proposed information collection to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of information to be collected; and (4) Minimize the burden of collection of information on those who are to respond; including through the use of appropriate technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of the Proposal: Notice of Funding Availability and Application Kit for the Community Outreach Partnership Centers Program (COPC).

Description of the need for the information and proposed use: The information is being collected to select grantees in this statutorily-created competitive grant program. The information is also being used to monitor the performance of grantees to ensure that they meet statutory and program goals and requirements.

Members of the affected public: Institutions of higher education undertaking outreach and applied research in their local communities:

160 applicants and 22 grantees.

Estimation of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: Information pursuant to submitting applications will be submitted once. Information pursuant to grantee monitoring requirements will be semi-annually and at the completion of the grant.

The following chart details the respondent burden on an annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Application	160	160	80	12,800
Annual Reports	22	44	16	704
Final Reports	22	22	16	352
Recordkeeping	22	22	16	352
Total				14,208

Status of proposed information collection: OMB approved an paperwork clearance for this information collection and assigned it OMB Control No. 2528–0180, expiration date January 31, 2000.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 26, 1999.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 99–14255 Filed 6–4–99; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30: HAG99–0195]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) on Projects Proposed in the Whiskey Creek, Bunker Creek, and Kelsey Creek Watersheds, Josephine and Curry Counties, Oregon

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS) on projects in the Whiskey Creek, Bunker Creek, and Kelsey Creek Watersheds in Josephine and Curry Counties, Oregon and Notice of Scoping Meetings.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Medford District, Glendale Resource Area, will be preparing an EIS on the impacts of potential timber sales, opportunities for watershed restoration, wildlife habitat enhancement projects, recreational development and other projects in the Whiskey Creek, Bunker Creek and Kelsey Creek watersheds, tributaries of the Wild and Scenic section of the Rogue River. The area is located in Josephine and Curry Counties in southwest Oregon.

DATES: Written comments on the initial scoping process will be accepted until August 3, 1999. Public scoping meetings will be held from 3:00 to 7:30 p.m. on June 22, 1999 at the Grants Pass City Council Chambers, 101 NW A Street, Grants Pass, Oregon, and from 4:00 to 7:30 p.m. on July 20, 1999 at the Galice Community Hall, 10821 Galice Road, Galice, Oregon. Additional meetings will be considered as appropriate.

SUPPLEMENTARY INFORMATION: The project area includes the drainages of Whiskey, Bunker, Kelsey, Meadow, Russian, Dutch, and Quail Creeks, tributaries of the Rogue National Wild and Scenic River. The area consists of approximately 42,000 acres of generally solid-block BLM ownership with four isolated private inholdings. The northeast portion of the project area is designated a General Forest Management Area in the Medford District Resource Management Plan (RMP). The remainder is within a Late Successional Reserve (LSR). (LSR's are identified in the Northwest Forest Plan and Medford District RMP as areas to protect and enhance conditions of late-successional and old-growth forest ecosystems.) The eastern and northern boundary is the Grave Creek to Marial National Back Country Byway. The southern boundary is the Rogue River, a National Wild and Scenic River. The project area contains five relatively large unroaded areas totaling approximately 24,000 acres.

The Glendale Resource Area will be examining this area and analyzing the potential for projects. Projects may include, but are not limited to, forest health enhancement, timber sales, watershed restoration, wildlife habitat enhancement, recreation, and other projects. The no action alternative will also be analyzed in this document.

The tentative project schedule is as follows:

File Draft Environmental Impact Statement—September 2000

File Final Environmental Impact Statement—February 2001

Record of Decision—March 2001

The Bureau of Land Management's scoping process for the EIS will include: (1) Identification of issues to be addressed, (2) Identification of viable alternatives, (3) Notifying interested groups, individuals, and agencies to determine level of participation and obtain additional information concerning issues to be addressed in the EIS.

ADDRESSES: Comments should be sent to Lynda Boody, Glendale Field Manager, Medford District Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504.

FOR FURTHER INFORMATION CONTACT: Roger Schnoes, (541) 770–2296 or e-mail at or110mb@or.blm.gov.

Dated: May 26, 1999.

Lynda Boody,

Field Manager, Glendale Resource Area.

[FR Doc. 99–14321 Filed 6–4–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–09–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

T. 2 S., R. 24 E., P.M.M.

The plat, representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 22 and 23, Tract 1, Certificate of Survey No. 1750, and portions of the adjusted original meanders of the left bank of the Clark's Fork of the Yellowstone River and the right bank of the Yellowstone River, and the survey of certain meanders of the present left bank of the Clark's Fork of the Yellowstone River and the present right bank of the Yellowstone River, a certain partition line and the medial line of the abandoned channel of the Clark's Fork of the Yellowstone River, the lines between lots 5a and 5aa, and lots 5c and 5d, section 23, and an informative traverse through a portion of lot 6, section 23, Township 2 South, Range 24 East, Principal Meridian, Montana, was accepted May 21, 1999.

This survey was requested by the Miles City District Office and was necessary to identify and establish boundaries for land acquired the by U.S. Government.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: May 25, 1999.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–14320 Filed 6–4–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations of the following properties being considered for listing in the National Register were received by the National Park Service before May 22, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by June 22, 1999.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Maricopa County

Evergreen Historic District, Roughly between Country Club and Macdonald, N. of University Dr. to 8th St., Mesa, 99000706
West Second Street Historic District, Roughly between Robson St. and Center St., from 1st St. to 3rd St., Mesa, 99000707
Wilbur Street Historic District, Roughly between Pasadena St. and Pomeroy St., 1st St. to 3rd St., Mesa, 99000708

ARKANSAS

Johnson County

Clarksville Confederate Monument (Civil War Commemorative Sculpture MPS), Oakland Memorial Cemetery, W. of Montgomery Ave., Clarksville, 99000709

COLORADO

Douglas County

Louviers Village, Louviers Blvd., Hillcrest Dr., Triangle Dr., Main St., Valley View St, 1st, 2nd, 3rd and 4th Sts., Louviers, 99000710

FLORIDA

Brevard County

Jorgensen's General Store, 5390 US 1, Grant, 99000711

Leon County

Blackwood–Harwood Plantations Cemetery, NE of Jct. FL 263 and I–10, Tallahassee, 99000712

MISSOURI

Greene County

Campbell Avenue Historic District (Springfield MPS), 200 and 300 blocks of S. Campbell Ave. and 300 Block of Park Central West, Springfield, 99000714
South Avenue Commercial Historic District (Springfield MPS), Walnut and Pershing Sts., South and Robberson Aves., Springfield, 99000713
Springfield Warehouse and Industrial Historic District (Springfield MPS), E. Water, W. Mill and W. Phelps Sts. and Boonville Ave., Springfield, 99000715
Walnut Street Commercial Historic District (Springfield MPS), Walnut St., Springfield, 99000717

NORTH CAROLINA

Perquimans County

Mitchell—Ward House, Jct. NC 1119 and NC 1002, Belvedere vicinity, 99000716

TENNESSEE

Obion County

Caldwell Lustron House (Union City, Tennessee MPS), 1020 E. Church St., Union City, 99000718

Union County

Booker Farm, Corryton-Luttrell Rd., Luttrell vicinity, 99000721

TEXAS

Bexar County

Monastery of Our Lady of Charity, 1900 Montana, San Antonio, 99000719

Bowie County

Earl—Rochelle House, 1920 Magnolia St., Texarkana, 99000720

Brown County

Hardin, R.F., High School, 1009 Hall St., Brownwood, 99000722

Tarrant County

Botts—Fowler House, 115 N. Fourth Ave., Mansfield, 99000723

Young County

Graham Post Office, 429 Third St., Graham, 99000724

VIRGINIA

Fauquier County

North Wales, 7392 Ironwood Ln., Warrenton vicinity, 99000726

Madison County

Woodbourne, VA 657, 1.5 miles W. of Jct. US Alt. 29 and VA 657, Madison vicinity, 99000727

Rockbridge County

Moore, John, House, 183 Big Hill Rd., Lexington vicinity, 99000728

Charlottesville Independent City

Marshall-Rucker-Smith House, 620 Park St., Charlottesville, 99000725

[FR Doc. 99–14278 Filed 6–4–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of Bandelier National Monument, National Park Service, Los Alamos, NM; Correction

AGENCY: National Park Service

ACTION: Notice; correction.

SUMMARY: The National Park Service published a document in the **Federal Register** of April 23, 1999 concerning an intent to repatriate cultural items from Bandelier National Park. The document omitted a number of culturally affiliated Indian tribes.

Correction

In the **Federal Register** of April 23, 1999, in FR Doc. 99-10209, on page 20021 in the first column, correct the paragraph beginning "Based on the above-mentioned information" and the following paragraph beginning "This notice has been sent to" to read:

Based on the above-mentioned information, and the recommendations of the NAGPRA Review Committee, officials of the National Park Service have agreed that, pursuant to 42 CFR 10.2(d)(3), these 53 projectile points are needed by traditional Native American religious leaders for the practice of traditional Native American religion by present-day adherents. Officials of the National Park Service have also determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian Tribe that believes itself to be culturally affiliated with these objects should contact Roy W. Weaver, Superintendent, Bandelier National Monument, National Park Service, HCR 1, Box 1, Suite 15, Los Alamos, NM 87544; telephone: (505) 672-3861, ext. 501 before July 7, 1999. Repatriation of these cultural items to the Pueblo of Cochiti, New Mexico, may begin after that date if no additional claimants come forward.

Dated: May 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–14279 Filed 6–4–99; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

Trinity River Basin Fish and Wildlife Task Force; Meeting

AGENCY: Bureau of Reclamation (Reclamation), Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Thursday, June 17, 1999, 10:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be at the Doubletree, 1929 4th Street, Eureka, California 95501. Telephone: 707/445–0844.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice A. Sullivan, Trinity-Klamath Program Coordinator, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825. Telephone: 916/978–5113 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: The Trinity River Basin Fish and Wildlife Task Force will meet to formulate and implement the ongoing Trinity River watershed ecosystem management program for fish and wildlife. This program considers the needs of multiple species and their interactions with physical habitats in restoring the natural function, structure, and species composition of the ecosystem, recognizing that all components are interrelated.

Dated: June 1, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–14283 Filed 6–4–99; 8:45 am]

BILLING CODE 4310-94-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–828 (Preliminary)]

Bulk Acetylsalicylic Acid (Aspirin) From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–828 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of bulk acetylsalicylic acid,[1] provided for in subheadings 2918.22.10 and 3003.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 12, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 19, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and

[1] The product subject to this investigation is acetylsalicylic acid (aspirin), whether or not in pharmaceutical or compound form, but not put up in measured doses, capsules or tablets for direct human consumption. Bulk aspirin consists of pure orthoacetylsalicylic acid in crystal form, or granulated into a fine powder (pharmaceutical form), or mixed with small amounts of inactive materials, such as excipients (starch, lactose, cellulose, or coloring materials). Pure aspirin, or acetylsalicylic acid, has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia (USP) 23.

Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 28, 1999, by Rhodia, Inc., Cranbury, NJ.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 18, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202–205–3188) not later than June 15, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 23, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14368 Filed 6–4–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

In the Matter of Certain Enhanced DRAM Devices Containing Embedded Cache Memory Registers, Components Thereof, and Products Containing Same; Notice of Investigation

[Inv. No. 337–TA–421]

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and motion for temporary relief were filed with the U.S. International Trade Commission on April 29, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Enhanced Memory Systems, Inc., 1850 Ramtron Drive, Colorado Springs, Colorado 80921. An amended complaint and a supplementary letter were filed on May 25, 1999. The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain enhanced DRAM devices containing embedded cache memory registers, components thereof, and products containing same by reason of infringement of claims 26 and 27 of U.S. Letters Patent 5,721,862, and claims 2, 6, 17, 18 and 27–31 of U.S. Letters Patent 5,887,272. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary limited exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain enhanced DRAM devices containing embedded cache memory registers, components thereof, and products containing same that infringe claim 26 of U.S. Letters Patent 5,721,862, and claim 27 of U.S. Letters Patent 5,887,272, during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the

Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10. The authority for provisional acceptance of the motion for temporary relief is contained in section 210.58, 19 C.F.R. § 210.58.

Scope of Investigation

Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on June 2, 1999, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain enhanced DRAM devices containing embedded cache memory registers, components thereof, or products containing same by reason of infringement of claims 26 or 27 of U.S. Letters Patent 5,721,862, or claims 2, 6, 17, 18, 27, 28, 29, 30 or 31 of U.S. Letters Patent 5,887,272, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to section 210.58 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, is provisionally accepted and referred to the presiding Administrative Law Judge for investigation.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Enhanced Memory Systems, Inc., 1850 Ramtron Drive, Colorado Springs, Colorado 80921.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

NEC Corporation, 7–1, Shiba 5-chome Minato-ku, Tokyo 108–8001, Japan
NEC Electronics, Inc., 2880 Scott Blvd., Santa Clara, California 95050–8062
NEC USA, Inc., 8 Corporate Center Drive, Melville, New York 11747

(c) James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–L, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, the Honorable Sidney Harris is designated as the presiding Administrative Law Judge.

Responses to the complaint, the motion for temporary relief and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 and 210.59 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.13 and 210.59. Pursuant to sections 201.16(d), 210.13(a), and 210.59 of the Commission's Rules, 19 C.F.R. §§ 201.16(d), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: June 3, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14526 Filed 6–4–99; 8:45 am]

BILLING CODE 7020–20–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–374 (Review)]

Potassium Chloride (Potash) From Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in April 1999 to determine whether termination of the existing suspension agreement on potassium chloride from Canada would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On May 28, 1999, the Department of Commerce published notice that it was terminating the suspended investigation and revoking the order because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 28974, May 28, 1999). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR 207.69), the subject review is terminated.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

By order of the Commission.

Issued: June 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14366 Filed 6–4–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Solid Urea From Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Latvia, and Moldova; Industrial Phosphoric Acid From Israel

[Investigation No. 731–TA–340 (Review); Investigation No. 731–TA–366 (Review)]

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in March 1999 to determine whether revocation of the existing antidumping duty orders would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On May 5 and May 28, 1999, the Department of Commerce published notice that it was revoking the orders because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 24137, May 5, 1999 and 64 FR 28974, May 28, 1999). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: May 5 and 28, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

By order of the Commission.

Issued: June 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14367 Filed 6–4–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–278, 731–TA–329, and 731–TA–332 (Review)]

Standard Chrysanthemums From the Netherlands, Fresh Cut Flowers From Colombia, and Standard Carnations From Kenya

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in February 1999 to determine whether revocation of the existing countervailing/antidumping duty orders would be likely to lead to continuation or recurrence of subsidization/dumping and of material injury to a domestic industry. On May 7 and 28, 1999, the Department of Commerce published notice that it was revoking the orders because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 24572, May 7, 1999) or, with respect to fresh cut flowers from Colombia, because the domestic interested parties have withdrawn, in full, their participation in the review (64 FR 28975, May 28, 1999). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: May 7 and 28, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

By order of the Commission.

Issued: June 1, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14365 Filed 6–4–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Registration

By Notice dated May 17, 1998, and published in the **Federal Register** on May 19, 1998 (63 FR 27587), Arenol Corporation, which has changed its address to 2820 North Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

The firm plans to import the listed controlled substances to manufacture pharmaceutical products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Arenol Corporation to import methamphetamine and phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Arenol Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: May 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14237 Filed 6–4–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 23, 1998, (63 FR 71155), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

The firm plans to import the phenylacetone to manufacture methamphetamine and to import racemic methamphetamine for resolution into the d- and l-stereoisomers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Chattem Chemicals, Inc. to import methamphetamine and phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substance listed above.

Dated: May 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14238 Filed 6–4–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 23, 1999, Radian International LLC, 14050 Summit Drive, Suite 121, P.O. Box 201088, Austin, Texas 78720–1088, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylene-dioxy-meth-amphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allyprodine (9602)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydromorphinol (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidino-cyclohexane-carbonitrile (8603)	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hyromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 6, 1999.

Dated: May 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14236 Filed 6–4–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10747]

Proposed Exemption; Bankers Trust Company, BT Alex Brown Incorporated, and Deutsche Bank AG

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Request

All interested persons are invited to submit written comments or request for a hearing on the pending exemption, within 33 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. *D–10747*. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 3 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing.

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in an application filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Bankers Trust Company, New York, New York; BT Alex. Brown Incorporated; Deutsche Bank AG

[Application No. D–10747]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Bankers Trust Company

If the exemption is granted, Bankers Trust Company shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (49 FR 9494, March 13, 1984) (PTE 84–14) for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending five years [1] from the date of publication of the final exemption in the **Federal Register**, solely because of a failure to satisfy section I(g) of PTE 84–14 as a result of the conviction of Bankers Trust Company for felonies described in the March 11, 1999 felony information (the Information) entered in the U.S. District Court for the Southern District of New York, provided that:

(a) this exemption is not applicable if Bankers Trust Company becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTE 84–14; and

(b) this exemption is not applicable if Bankers Trust Company is convicted of any of the crimes described in section I(g) of PTE 84–14, other than those felonies discussed in the Information;

(c) the custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information, and which have subsequently been reorganized as part of Global Institutional Services (GIS), are subject to an annual examination of its abandoned property and escheatment policies, procedures and practices by an independent public accounting firm. The examination required by this condition shall determine whether the written procedures adopted by Bankers Trust Company are properly designed to assure compliance with the requirements of ERISA. The annual examination shall specifically require a determination by the auditor as to whether the Bank has developed and adopted internal policies and procedures that achieve appropriate control objectives and shall include a test of a representative sample of transactions, fifty percent of which must involve ERISA covered plans, to determine operational compliance with such policies and procedures. The auditor shall issue a written report describing the steps performed by the auditor during the course of its examination. The report shall include the auditor's specific findings and recommendations. This requirement shall continue to be applicable to the custody operations that were part of Bankers Trust Company as of March 11, 1999, notwithstanding any subsequent reorganization of the custody operation function during the term of the exemption.

(d) With respect to the independent audit report described in section I(c) above:

(1) Bankers Trust Company shall provide notice to the Department of any instances of the Bank's noncompliance with the written policies and procedures reviewed by the auditor within 10 business days after such noncompliance is determined by the auditor notwithstanding the fact that the examination may not have been

[1] If granted, this exemption will extend for a period of approximately five years. However, Bankers Trust Company may, prior to its expiration, apply for an extension of the exemption.

completed as of that date. Upon request, the auditor shall provide the Department with all of the relevant workpapers reflecting the instances of noncompliance. The workpapers should identify whether and to what extent the assets of ERISA plans were involved in the instances of noncompliance, and

(2) Any information relating to the Bank's noncompliance with the written policies and procedures that is required by Federal and/or state banking authorities to be reported to the state and/or Federal banking agencies shall also be reported by Bankers Trust Company to the Department within the same time frames that such information is otherwise required to be reported to those agencies.

(e) the annual examination described in section I(c) above will be provided to the Department not later than 90 days following the 12 month period to which it relates, and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, Securities and Exchange Commission or Department of Justice or other relevant regulators and any fiduciary of a plan for which Bankers Trust Company performs services.

Section II

If the exemption is granted, BT Alex. Brown Incorporated and its subsidiaries and Deutsche Bank AG shall not be precluded from functioning as a "qualified professional asset manager" pursuant to PTE 84–14 for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending ten years from the date of publication of the final exemption in the **Federal Register**, solely because of a failure to satisfy section I(g) of PTE 84–14 as a result of an affiliation with Bankers Trust Company, provided that:

(a) this exemption is not applicable if BT Alex. Brown Incorporated, its subsidiaries or Deutsche Bank AG becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTE 84–14; and

(b) this exemption is not applicable if BT Alex. Brown Incorporated, its subsidiaries or Deutsche Bank AG is convicted of any of the crimes described in section I(g) of PTE 84–14.

Section III. Definitions

(a) For purposes of this exemption, the term "Bankers Trust Company" includes Bankers Trust Company and any entity that was affiliated with Bankers Trust Company prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, other than BT Alex. Brown Incorporated and its subsidiaries.

(b) For purposes of this exemption, "Deutsche Bank AG" includes Deutsche Bank AG and any entity that was affiliated with Deutsche Bank AG prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, and any future affiliates, other than Bankers Trust Company, as defined in subsection (a).

(c) The term "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and,

(4) Any employee or officer of the person who—

(A) is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person) or,

(B) has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Summary of Facts and Representations

1. Bankers Trust Company is a New York banking corporation and a commercial bank which provides a wide range of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. Bankers Trust Company is wholly owned by Bankers Trust Corporation, a bank holding company established in 1965 under the laws of the State of New York. As of December 31, 1997, Bankers Trust Corporation and its affiliates had consolidated assets of $140,102,000,000 and total stockholders' equity of $5,708,000,000.

2. The corporate entity known as BT Alex. Brown Incorporated resulted from the September 1, 1997 merger of Alex. Brown Incorporated with a Bankers Trust Corporation subsidiary (the new entity was renamed BT Alex. Brown Holdings Incorporated). Alex. Brown & Sons Incorporated, a U.S. registered broker-dealer subsidiary of Alex. Brown Incorporated, was merged into BT Securities Corporation (the new entity was renamed BT Alex. Brown Incorporated). The merged broker-dealer, BT Alex. Brown Incorporated, is a wholly-owned subsidiary of Bankers Trust Corporation. Its predecessor, Alex. Brown & Sons Incorporated was not affiliated with Bankers Trust Corporation when the conduct which resulted in the Plea Agreement took place. BT Securities Corporation has never been a subsidiary of Bankers Trust Company.

3. In the second quarter of 1999, Bankers Trust Company expects that Bankers Trust Corporation will be acquired by Deutsche Bank AG, a bank organized under the laws of Germany.

4. On March 11, 1999, the United States Attorney for the Southern District of New York filed a three-count felony information (the "Information") in the United States District Court for the Southern District of New York (the "Court") alleging violations of 18 U.S.C. § 1005. The Information charges Bankers Trust Company with making false entries on its books and records as a result of the conduct of certain employees in 1994–6 in Bankers Trust's processing services businesses. The conduct involved the transfer to reserve accounts and to income of aged credit items that should have been paid to customers or other third parties, or paid to state abandoned property authorities. Some of these aged credit items represented assets of ERISA covered employee benefit plans. On the same day, Bankers Trust Company entered a plea of guilty to the charges in the Information pursuant to a written plea agreement (the "Plea Agreement"). In the Plea Agreement, Bankers Trust Company agreed to pay a fine of $60 million and placed that amount in escrow pending sentencing. The Plea Agreement provides that sentencing will be postponed to a date on or before June 21, 1999. Bankers Trust Company has cooperated with the appropriate authorities in the investigation.

5. Bankers Trust Company represents that although none of the unlawful conduct involved its (or its affiliates) investment management activities, the criminal conduct described above would preclude each component of Bankers Trust Company, BT Alex. Brown, Bankers Trust Australia Funds Limited, and other affiliated investment managers from serving as a "qualified professional asset manager" (QPAM) pursuant to PTE 84–14. PTE 84–14 provides broad relief from the prohibited transaction provisions of ERISA and the Code for transactions

between parties in interest with respect to a plan and an investment fund in which the plan has an interest when such fund is managed by a QPAM, the QPAM makes the decision to enter into the transaction, and the other conditions of the exemption are met. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate[2] thereof has, within the ten years immediately preceding the transaction been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity.

6. Bankers Trust Company represents that the clientele it serves includes large employee benefit plans subject to the Act. They maintain that, given the size and number of the plans which Bankers Trust Company represents, the large number of financial service providers engaged by such plans, the breadth of the definition of party in interest under the Act, and the array of services offered by Bankers Trust Company, it would not be uncommon for a plan for which Bankers Trust Company currently serves as a QPAM to engage in a transaction which may involve a party in interest.

7. Bankers Trust Company states that other statutory and class exemptions exist which cover purchases and sales of securities from U.S. banks or broker-dealers; securities lending to U.S. banks or broker-dealers; mortgage pool investment trusts; investment in short-term instruments such as repurchase agreements (with a bank supervised by a State or by the United States or a broker-dealer registered under the Securities Exchange Act of 1934 or a dealer in government securities who reports daily to the Federal Reserve Bank of New York), bankers' acceptances in banks supervised by a State or by the United States, commercial paper or deposits of a bank supervised by a State or by the United States. Bankers Trust notes, however, that without the relief provided by PTE 84–14, a plan advised by Bankers Trust Company or its affiliates would be unable to invest in real estate, mortgages, or commodities, to engage in purchases and sales of securities from and to foreign banks or broker-dealers, to lend securities to foreign banks and broker-dealers, or to invest in deposits of foreign banks, if such transactions involve a party in interest.

8. Bankers Trust Company requests an exemption to enable it and its current and future affiliates, to function as QPAMs despite their failure to satisfy section I(g) of PTE 84–14 as a result of the judgment of conviction to be entered against Bankers Trust Company.[3] The proposed exemption is requested on behalf of Bankers Trust Company and its affiliates. The proposed exemption is also requested on behalf of such entities that may become affiliated with Bankers Trust Company or its corporate successor(s), including but not limited to Deutsche Bank AG and its affiliates. The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTE 84–14 and satisfy the conditions contained therein. Deutsche Bank AG represents that, subsequent to the acquisition of Bankers Trust Corporation, it will assume responsibility on behalf of Bankers Trust Company for compliance with all of the conditions of the proposed exemption and all of the commitments contained in the Bankers Trust Company exemption application, notwithstanding any subsequent reorganization of Bankers Trust Company or Bankers Trust Corporation. Thus, for example, Deutsche Bank AG has agreed to ongoing responsibility for the annual examination of the custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information and for any reporting to the Department in connection with that examination.

9. According to Bankers Trust Company, the conduct relating to the Plea Agreement was discovered by the Bank itself and brought to the attention of the U.S. Attorney and the banking regulators. Bankers Trust Company, on its own initiative, engaged Arthur Andersen & Co., one of the largest independent accounting firms in the world, with substantial experience and expertise with banking and financial institutions, to undertake a review of the Client Processing Services unit, which has been now reorganized as part of Global Institutional Services ("GIS"). Arthur Andersen spent over 100,000 hours on the investigation. Arthur Andersen identified transactions which had been recorded to income. These transactions have since been reversed. Bankers Trust has substantially completed the process of compensating any clients or third parties affected by these transactions or escheating unidentified funds to the appropriate state as abandoned property.

10. In addition, Bankers Trust Company represents that the law firm of Sullivan & Cromwell was engaged to aid in the investigation. The Senior Control Officer Group (SCOG)[4] in consultation with Sullivan & Cromwell determined the individuals that would be evaluated for potential discipline. This determination was made as a result of a review of hundreds of thousands of e-mail messages and transaction records and interviews of dozens of Bankers Trust Company employees. SCOG and Sullivan and Cromwell met to discuss the issues raised by the interviews and documents for each employee and jointly reached a recommendation regarding the appropriate discipline for each employee.

11. Bankers Trust Company represents that by the end of the investigation, 13 employees who were in various ways related to the events that were the subject of the Information had resigned and 27 other employees received other forms of disciplinary action. None of the individuals responsible for the action upon which the Information is based are currently employed by Bankers Trust Company. In addition to asking employees to resign, the disciplinary actions taken were, reassignment out of the fiduciary business, compensation penalties, reprimand or mandatory retraining. Bankers Trust Company determined the level of discipline that was appropriate based on the following criteria: the employee's position during the relevant conduct; the employee's relevant educational and professional background; the employee's degree of involvement with the transaction, and the nature of the transaction. Bankers Trust Company believes that it has identified and considered all individuals who should have been disciplined in this matter.

Bankers Trust Company represents that it has undertaken to appropriately identify and discipline all individuals involved in the conduct which gave rise

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[2] For purposes of section I(g) of PTE 84–14, an "affiliate" of a person is defined, in relevant part, as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person . . ." (PTE 84–14, section V(d)). Bankers Trust Corporation, Bankers Trust Company, its sister companies, and its subsidiaries would be treated as affiliates under this definition. Deutsche Bank AG, and its affiliates, will be treated as affiliates under this definition as of the effective date of its acquisition of Bankers Trust Corporation, the parent of Bankers Trust Company.

[3] Section I(g) provides that for purposes of that subsection, "a person shall be deemed to have been 'convicted' from the date of the judgement of the trial court, regardless of whether that judgement remains under appeal." Until an appealable order is entered, there is no judgement of conviction under section I(g). Bankers Trust represents that an appealable order will be entered at sentencing, which is scheduled for June 21, 1999.

[4] Bankers Trust Company states that SCOG is comprised of individuals who operate completely independent of any business line, including CPS, and had no involvement with the transactions under investigation.

to the guilty plea by Bankers Trust Company, and similar conduct not covered by the plea, all of which was investigated by Bankers Trust Company in 1996 and 1997. This conduct was found by Bankers Trust Company to involve taking unclaimed funds into income of Bankers Trust Company without adequate documentation that such funds belonged to Bankers Trust Company, as well as other accounting practices designed to misstate revenue or expenses of Bankers Trust Company for a particular time period. In addition to steps already taken, Bankers Trust Company agrees that it will, upon request of the Pension and Welfare Benefits Administration (PWBA), appoint and compensate a Special Master acceptable to PWBA to review the behavior of those individuals (and any discipline which has already been imposed on them) who remain at the Bankers Trust Company (its successors or assigns), when the proceeding by the Special Master commences who fall into any of the following categories:

(1) Persons with respect to whom a presentation was made to a disciplinary review committee of Bankers Trust Company based on any allegation that an individual was, directly or indirectly, involved in claiming funds for Bankers Trust Company without adequate documentation that such funds belonged to Bankers Trust Company;

(2) Persons selected by PWBA who were involved, directly or indirectly, in any of the above described misconduct, whether or not specifically investigated by Bankers Trust Company;

(3) Persons selected by PWBA who were involved in conducting, implementing, supervising, or overseeing the investigative and disciplinary process on behalf of Bankers Trust Company designed: (a) to assure that all improper accounting was appropriately corrected; and (b) to discipline individuals involved in claiming funds for Bankers Trust Company without adequate documentation that such funds belonged to Bankers Trust Company or misstating income or expenses of Bankers Trust Company; and

(4) Persons selected by PWBA who were involved in responding to inquiries from any governmental agency regarding allegations that Bankers Trust Company claimed funds without adequate documentation that such funds belonged to Bankers Trust Company, failed to appropriately escheat abandoned funds, or misstated income or expenses of Bankers Trust Company.

If a Special Master is requested by PWBA, the Bankers Trust Company will submit to PWBA for its approval a proposed engagement letter relating to the scope of the review which shall include, at a minimum, the following requirements:

(a) The Special Master shall determine conclusively on behalf of Bankers Trust Company, what discipline for each such individual would be appropriate, up to and including dismissal to assure that their discipline was adequate to deter future misconduct by the individual and others in similar positions, and to assure that no such individual, found by the Special Master to be untrustworthy, would be involved, directly or indirectly, in handling assets subject to the Employee Retirement Income Security Act;

(b) The Special Master shall report to PWBA regarding any information that comes to the attention of the Special Master, in the course of performing his other duties, which suggests that the continued presence of any person as an employee or contractor of Bankers Trust Company might imperil the safekeeping or appropriate investment of employee benefit plan assets covered by the Act, or any other such information which the Special Master, in his discretion, believes would be useful to PWBA in performing its mission;

(c) The Special Master shall, in addition, provide to PWBA, upon request, any materials submitted by or on behalf of Bankers Trust Company to the Special Master or by the Special Master to Bankers Trust Company;

(d) To the extent permitted by law, Bankers Trust Company shall provide the Special Master with all documents concerning the behavior of such individuals as the Special Master, in his sole discretion, shall deem relevant, and shall require all employees and contractors to respond fully and completely to all inquiries by the Special Master as a condition of their employment by Bankers Trust Company;

(e) Bankers Trust Company further will promptly impose any discipline found appropriate by the Special Master; and

(f) The Special Master will use best efforts to complete his assignment within a specified period of time, but his failure to do so may not be grounds for dismissal or failure by Bankers Trust Company to honor all terms of the engagement letter, unless PWBA agrees in writing to such dismissal or failure to comply. Bankers Trust Company further agrees that any individual who has resigned, been dismissed, or transferred following involvement in claiming funds for Bankers Trust Company without adequate documentation that such funds belonged to Bankers Trust Company or misstating income or expenses of Bankers Trust Company, so that they are not presently involved in the handling of ERISA covered employee benefit plan assets on behalf of Bankers Trust Company, will not in the future be permitted by Bankers Trust Company to handle such assets on its behalf as an employee or contractor. Similarly, Bankers Trust Company agrees that any individual who was disciplined in connection with the conduct described above, but who was not, at the time of their discipline, involved in handling employee benefit plan assets subject to the Act, will not in the future be permitted to handle such assets on behalf of Bankers Trust Company. Notwithstanding the agreements in this paragraph, Bankers Trust Company may, within 60 days of retaining the Special Master, with notice to PWBA, request that the Special Master review the conduct of any individual whose involvement with employee benefit plan assets is proscribed by this paragraph. Upon request for such review, the Special Master shall determine whether the limitations imposed by this paragraph should be modified, using the same standards which he would use in determining appropriate discipline for an individual described in numbered paragraphs (1)–(4). In performing this duty, the Special Master shall be given the same cooperation as he would receive in reviewing the discipline of an individual described in numbered paragraphs (1)–(4).

12. Bankers Trust Company further represents that substantial training has been provided to 2000 employees thus far. The training is in the process of being provided to the remainder of GIS employees and will be given monthly thereafter for new employees. As part of its enhanced process to establish and maintain a proper control environment, Bankers Trust represents that it developed a training plan to ensure that employees are aware of the important responsibilities for the proper handling of client funds. The "Business Practices" course was developed with Arthur Andersen and taught jointly with them. The full day's course presents the legal and regulatory issues and responsible business practices for everyday operations, including fiduciary requirements of ERISA and the appropriate method for dealing with suspected misconduct.

13. Bankers Trust Company represents that various corrective measures have been taken by it to help ensure that conduct such as that

involved in the Plea Agreement will not recur. New controls have been implemented, and a risk management infrastructure has been developed with risk managers assigned to each business area reporting directly to the Corporate Controller.

14. Arthur Andersen provided recommendations to the Bank for its consideration in augmenting the controls applicable to its processing business. In the area of organization, Arthur Andersen recommended that controllers for each product line in GIS report to a corporate controller, who reports directly to the Chief Financial Officer of the Bank. In Arthur Andersen's view, segregation of the accounting control function from operations is paramount to a strong control environment. Bankers Trust Company agreed, creating controllers for each business in GIS, who report to the CFO.

15. Arthur Andersen also recommended that the Bank adopt a centralized escheatment process. In response to this recommendation, a separate unit of Arthur Andersen with expertise in abandoned property was engaged to assist in assessing the existing control processes affecting abandoned property and escheatment. Bankers Trust Company represents that as a result of this assessment, controls over aged credit items and escheatment procedures have been enhanced. Specifically, Bankers Trust Company has created an Abandoned Property Officer, who is responsible for the Bank's escheatment filings. The Abandoned Property Officer coordinates with the Legal and Compliance Department of the Bank to provide guidance to the business lines and to provide clear guidelines for administering the escheatment process. Arthur Andersen also recommended that each business unit assign an individual to be responsible for the escheatment process in their respective areas and detail their responsibilities and reporting lines with formal procedures established for escheating aged items. Arthur Andersen further recommended that enhanced standards be established for documenting escheated items and that managers and operations employees be trained on internal policy and procedures. Finally, in the area of organization, Arthur Andersen recommended that procedures providing for proper accounting and disposition of credits be established and that training be provided in the accounting for those items. Bankers Trust Company represents that it has created an entire manual on escheatment policies and procedures, and all employees responsible for making decisions on accounting and escheatment have been trained in these procedures and will continue to be trained periodically in these areas.

16. In the area of internal audit, Arthur Andersen recommended that audit procedures be revised to ensure that aged items will be formally tracked and followed until any of the issues concerning the items are resolved properly. Arthur Andersen recommended that internal audit employees be formally trained regarding escheatment laws and regulations and that internal audit personnel focus on the operational controls and proper procedures relating to abandoned property. Bankers Trust Company represents that it has created new audit procedures for internal audit staff in these areas. Internal audit staff have received Certified Trust Audit training from an outside organization and will be trained in Bankers Trust Company's abandoned property procedures.

17. In the area of in-house legal services, Arthur Andersen recommended that there be a corporate policy for the escheatment of abandoned property which is approved by business operations, corporate controllers and the Legal Department before adoption, with procedures to provide clear guidance on referral of issues to the Legal Department respecting proper treatment and escheatment of aged items. Since these recommendations were made, an official "Abandoned Property Policy" has been adopted, and procedures have been developed on escheatment which focus on proper referrals to the Legal Department.

18. Arthur Andersen also made recommendations regarding the function of the controllers group, including the development of a reporting mechanism for the aging of debits and credits; the prompt return of property to the rightful owners, once identified; and the development of more formal procedures for researching debits and credits. Bankers Trust Company represents that management information systems have been developed in response to these recommendations, which allow both the controllers and the business line operations management to track the research and identification of debits and credits and evaluate the process in terms of age, size and other relevant factors. Also in the controllers' area, Arthur Andersen recommended that the level of suspense items be reduced and procedures developed to research outstanding items. In this connection, Arthur Andersen recommended that the Bank improve its tracking and promptness of reconciling items, with better descriptions of such items and clear responsibility for reconciling these items. In response to this recommendation, Bankers Trust Company represents that it has significantly upgraded the level and review of operational control indicators. Specifically, key control indicators have been defined and developed across all business areas. Monthly control management information systems (MIS) packages have been developed in each business unit which are reviewed at a monthly control meeting chaired by the GIS Business head and attended by business unit heads, controllers, compliance and legal personnel and internal audit staff.

19. With respect to ERISA plans, Arthur Andersen recommended that procedures and policies be developed concerning checks paid to plan participants that have not been cashed by the participant and that an independent group, such as compliance, be established to monitor all customer complaints on a centralized basis, with a follow-up audit to determine whether various aspects of client agreements in connection with billing, return of excess funds, etc. are being complied with. Bankers Trust Company represents that it has instituted policies to insure that assets belonging to employee benefit plans do not reach the point of being treated as abandoned property to be escheated. In this connection, Bankers Trust Company has promulgated policies and procedures for the Retirement Services Group within GIS which, among other things, require that plan sponsors receive a monthly list of uncashed checks older than 45 days; that plan sponsors are reminded that it is the plan sponsor's obligation and responsibility to find missing participants, and that plan sponsors are specifically requested to provide directions on amounts outstanding for more than one year. Check ledgers and class action records are retained by the Bank for 15 years. Plans which terminate their relationship with Bankers Trust Company will have any amounts still outstanding after six months forwarded to their successor trustees. With respect to terminated plans, Bankers Trust Company will forward any amounts still outstanding after six months to the responsible plan fiduciary. In addition, Bankers Trust Company represents that it has established policies which require complaints to be brought to the attention of a supervisor immediately and tracked in an MIS system so that

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management can evaluate the aging and resolution of complaints. The policies further require that, if not resolved promptly, the complaint must be elevated to a more senior manager, or to Compliance and the Legal Department if the issue is out of the ordinary course of daily operations.

20. In the area of ownership and accountability of customer accounts, Arthur Andersen recommended that each business area develop a chart of accounts, identifying the responsible officer, the proof schedule, approval levels for account openings, closings and changes, with procedures for maintenance of proper documentation for customer and beneficiary amounts and controls on unclaimed amounts. Bankers Trust Company represents that it has undergone a comprehensive account review. Over 25,000 general ledger accounts have been closed, and new procedures and control reports were developed to identify inactive, obsolete and erroneous accounts. In addition, a chart of accounts was established through the use of a centralized account database. All accounts have clear ownership, purpose, and account descriptions. With respect to each account, an administrator is responsible for verifying on a monthly basis that the account is being used according to its official purpose, is being reconciled on a regular basis and is still active. On a going-forward basis, senior management receives regular MIS reports regarding account activity. In addition, Bankers Trust Company represents that procedures are in place to close inactive or dormant accounts on a regular basis.

21. Arthur Andersen recommended better procedures for handling class actions and tax refunds, and Bankers Trust Company represents that it is enhancing its current policies to establish additional procedures for preservation of the names of beneficial holders of securities that may result in class action payments, both for existing plans and for terminated plan relationships. In addition, Bankers Trust Company has revised its procedures to maintain canceled check reports and ledgers for 15 years. Bankers Trust Company further represents that escheatment records are kept indefinitely.

22. In addition to the review conducted by Arthur Anderson, Bankers Trust Company engaged KPMG, an international accounting firm, who are the Bank's auditors, to perform an independent risk assessment and controls review across GIS. Bankers Trust Company represents that this review had several objectives: (1) to provide an examination of the various control enhancement initiatives that were underway (e.g. account usage); (2) to provide an assessment of the risk identification and control mechanisms across GIS business with, as necessary, control improvement recommendations; and to evaluate the control environment and risk management strategies including recommendations on risk management, legal and compliance structure.

23. Following this review, several control improvements were recommended throughout the various business units. Bankers Trust Company represents that detailed plans were established to implement the improvements with critical/mandatory improvements implemented by year-end 1998. In addition, recommendations to establish a GIS risk management function were implemented by the appointment of a GIS risk manager. In order to provide for an ongoing self-assessment of the control environment, Bankers Trust Company notes that a GIS-wide risk database was created. This database houses all key GIS operational processes and control points and is maintained and updated by the business unit risk managers as operational processes and control points are altered or changed.

24. KPMG has confirmed that based on its involvement over the past two years with respect to the GIS business, Bankers Trust Company has implemented policies and procedures to address the mandatory gaps identified in the risk assessment review performed by KPMG, as well as the recommendations made by Arthur Anderson at the conclusion of their forensic investigation. KPMG also represents that Bankers Trust Company continues to make substantial progress working toward a "best practices" control environment and that progress regarding remaining control enhancement initiatives continues to be closely monitored at the monthly control review meetings conducted since October, 1997 which all senior management in the GIS business.

25. Bankers Trust Company is subject to the continuing supervision of both the New York State Banking Department and the Federal Reserve Bank of New York. The Federal Reserve Bank of New York (FRBNY) and the New York Banking Department conduct joint annual examinations of the Bank, including its fiduciary operations. As part of its supervision, the New York State Department of Banking entered into a settlement agreement with Bankers Trust Company, pursuant to which Banker Trust Company agreed to pay $3.5 million to the State of New York. It reached this agreement based on the fact that Bankers Trust Company had retained outside counsel and an independent accounting firm to assist the Bank in performing a comprehensive forensic and diagnostic review of the activities of its custody and processing businesses during the relevant period and based on that review, had taken the following remedial steps: (1) the Bank adopted improved policies and procedures relating to accounting practices, risk assessment, compliance and internal control procedures, and management information reporting; (2) the Bank adopted new training programs for its personnel in this area with respect to business practices and responsible decision making; (3) the Bank replaced and supplemented personnel in this area, including the replacement of the head of the business group and the head of the areas specifically involved in the offending behavior; (4) the Bank created an independent risk management and control function that reports outside the business line to the senior management in charge of corporate risk management and control; (5) the Bank enhanced its internal audit functions including expansion of the audit scope and increasing the size of the audit staff; (6) the annual external audit of the business was extended to include a review of the improved policies and procedures detailed in paragraph one above; and (7) the Bank commenced and substantially completed appropriate restitution of the amounts involved. In addition to the payment to the State of New York, Bankers Trust Company committed to maintaining the new policies, procedures and internal audit scope and frequency described above and to make no material changes therein without the prior approval of the New York State Banking Superintendent and to provide such periodic reports to the Superintendent and to the Bank's Board of Directors as they may request regarding compliance with the new policies and procedures. The New York State Banking Department concluded, in a letter dated March 11, 1999 to Frank Newman, Chairman of Board of Bankers Trust Company, that based on the actions taken by the Bank to date, "Bankers Trust has put into place the appropriate controls with respect to the management of the affected businesses".

26. The Federal Reserve Bank of New York also provided information in a written submission to assist the Department in its review of Bankers Trust Company exemption application. The FRBNY has a statutory obligation to

inspect the books and records of Bankers Trust Company and monitor its internal controls to ensure that adequate policies and procedures are in place with respect to fiduciary obligations. See 12 U.S.C. 248(a), 325 and 1831m. The FRBNY carries out its responsibility to examine Bankers Trust Company pursuant to delegated authority from the Board, and shall continue to do so. Under the Plea Agreement entered in the matter of *United States* v. *Bankers Trust Company*, 99 Cr. 250 (S.D.N.Y Mar 11, 1999), the Bank has submitted to the FRBNY for review and approval "the written internal compliance procedures which the Bank has already implemented for the strengthening and maintenance of its records, systems and internal audit and controls, in order to ensure that such misconduct will not recur in the future."

27. As a condition of the proposed exemption, Bankers Trust Company has agreed to an annual examination of its custody operations as it relates to abandoned property and escheatment matters. The examination is to be undertaken by an independent public accounting firm[5] and will be designed to assist in determining whether the written procedures adopted by the Bank are properly designed to assure compliance with the requirements of ERISA. The examination will specifically require a determination by the auditor as to whether or not the Bank has developed adequate internal policies and procedures relating to abandoned property and escheatment matters and would include a test of a representative sample of transactions to determine operational compliance with such policies and procedures, with a written report describing the steps performed by the auditor during the course of its examination and the auditor's specific findings and recommendations. The auditor's report will be delivered to the Department within 90 days of the close of the 12 month period to which it relates and will be unconditionally available to other government regulators and the plan fiduciaries upon request.[6] KPMG, an international accounting firm, who is the Banks auditor, or other successor independent auditors, will perform this annual audit.

28. Bankers Trust Company asserts that failure to grant the requested exemption will prohibit employee benefit plans for which Bankers Trust Company affiliates act as investment managers from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84–14, and will cause the plans to forego attractive investment opportunities. Bankers Trust Company notes that many of its current and future affiliates, as well as the Bank itself, would be deprived of their abilities to offer and render the full panoply of specialized investment advisory services demanded by employee benefit plans covered by the Act. Bankers Trust Company represents that the conduct referenced in the Plea Agreement did not involve the investment management functions of the Bank or its investment management affiliates. Bankers Trust Company further represents that sufficient changes have been made in the Bank's custody and processing business management, procedures and supervision to prevent in the future the conduct which gave rise to the Plea Agreement, supporting the inclusion of Bankers Trust Company as an entity permitted to function as a QPAM.

29. In summary, Bankers Trust Company represents that the proposed exemption satisfies the criteria of section 408(a) of the Act for the following reasons: (A) Bankers Trust Company has undertaken substantial reforms and adopted procedures designed to prevent any recurrence of the criminal activity and escheatment of ERISA funds.; (B) an independent audit requirement will further protect plans and help assure plan participants that the conduct that was the subject of the Plea Agreement will not recur; (C) instances of noncompliance discovered during the audit will be reported by Bankers Trust Corporation to the Department within ten days of determination by the independent auditor; (D) the investment management units that oversee the transactions covered by QPAM were not the subject of the Plea Agreement; and (E) the other conditions of PTE 84–14, combined with the procedures adopted by Bankers Trust Company, afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

Section 411 Proceeding

The Department notes that, as a result of Bankers Trust Company's conviction for violating 18 U.S.C. § 1005, the Pension and Welfare Benefits Administration's (PWBA) Office of Enforcement has undertaken an inquiry to determine whether, pursuant to ERISA § 411(a), 29 U.S.C. § 1111(a), a judicial proceeding should be instituted to bar Bankers Trust Company from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or from acting as a consultant to any employee benefit plan. Information obtained in this inquiry will not be used by the Department in its consideration of Bankers Trust Company's exemption request unless the Director of the Office of Enforcement submits such information, or any portion thereof, in writing, to PWBA's Office of Exemption Determinations for inclusion in the public record. Neither the Department's consideration of Bankers Trust Company's exemption request nor any final decision on such request shall foreclose completion of the Department's ERISA § 411 inquiry nor preclude any proceeding which may result therefrom seeking to bar Bankers Trust Company from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or from acting as a consultant to any employee benefit plan.

Notice to Interested Persons

With respect to notification of interested persons, the applicant will distribute this notice of proposed exemption by first class mail to an independent plan fiduciary for all ERISA pension plans for which Bankers Trust Company and its subsidiaries provide fiduciary services, including trustee services and/or the provision of investment advice and the owner of all IRA accounts to which Bankers Trust Company and its subsidiaries provide investment advisory services. The applicant will distribute the notice to all participants in its own ERISA pension plans, either by return receipt electronic mail or by first class mail. All notification will be mailed or electronically mailed within three business days after publication of the proposed exemption in the **Federal Register**. The applicant will also use its best efforts to notify an independent fiduciary for each former ERISA pension plan client of Bankers Trust Company

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[5] In the Department's view, whether an auditor is independent for purposes of the proposed exemption would depend on the particular facts and circumstances of each case. However, the Department would not view an auditor as independent under circumstances where the auditor has a financial interest, including an ownership interest, in Bankers Trust Company or Deutsche Bank, or any affiliates thereof, or otherwise receives more than a de minimis amount of its compensation from any of those persons.

[6] Bankers Trust Company represents that because its future affiliates will have had no affiliation with Bankers Trust Company during the period that the conduct that was the subject of the Plea Agreement took place, the audit will focus solely on the operations that are currently part of the custody operations of Bankers Trust Company. Similarly, Alex. Brown Incorporated was not affiliated with Banker's Trust Corporation when the conduct identified in the Plea Agreement occurred and thus will not be subject to the annual audit examination.

and its subsidiaries that has received or may receive additional funds stemming from either the CPS inquiry or the Bank's additional efforts to find participants with uncashed benefit checks.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams LaVigne or James S. Frazier of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of June, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–14369 Filed 6–4–99; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on June 12, 1999. The meeting will begin at 1:00 p.m. and continue until conclusion of the Board's agenda.

LOCATION: The Westin Hotel, 1672 Lawrence Street, Denver, CO 80202–2010.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Public Speakers:
   a. Hon. Gregory J. Hobbes, Associate Justice, Supreme Court of Colorado
   b. Bennett S. Aisenberg, President of The Colorado Bar Association
3. Approval of minutes of the Board's meeting of February 22, 1999.
4. Approval of minutes of the executive session of the Board's meeting of February 22, 1999.
5. Approval of minutes of the Board's meeting of April 17, 1999.
6. Approval of minutes of the executive session of the Board's meeting of April 17, 1999.
7. Chairman's Report.
8. Members' Report.
9. President's Report
10. Inspector General's Report.
11. Consider and act on the Board's meeting schedule, including designation of locations, for year 2000.
12. Consider and act on the report of the Board's Operations and Regulations Committee.
    - Consider and act on the Committee's recommendation regarding proposed final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
    - Consider and act on the Committee's recommendation regarding final rule, 45 CFR Part 1628, Recipient Fund Balances.
    - Consider and act on the Committee's recommendation regarding proposed amendment(s) to the Corporation's 403(b) Thrift Plan that are intended to increase the Corporation's employer contribution level to match the Civil Service Retirement System.
13. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
14. Report on the status of the work of the special panel established to study and report to the board on issues relating to LSC grantees' representation of legal alien workers and the requirement that they be "present in the United States."
15. Appointment of Acting Vice President of Programs.
16. Consider and act on proposed resolution adopting new corporate logo for LSC's 25th Anniversary.

Closed Session

16. Briefing [1] by the Inspector General on the activities of the OIG.
17. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

18. Consider and act on other business.
19. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 C.F.R. § 1622.2 & 1622.3.

Dated: June 2, 1999.
Victor M. Fortuno,
General Counsel.
[FR Doc. 99–14435 Filed 6–2–99; 5:07 pm]
BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on June 11, 1999. The meeting will begin at 8:45 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Westin Hotel, 1672 Lawrence Street, Denver, CO 80202–2010.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:
1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of February 20, 1999.
3. Review projection of expenses for the remainder of FY '99, including internal budgetary adjustments, and act ón the President's and Inspector General's recommendations for consolidated operating budget re-allocations.
4. Testimony regarding budgetary needs for FY 2001.
5. Consider and act on other business.
6. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: June 2, 1999.
Victor M. Fortuno,
General Counsel.
[FR Doc. 99–14436 Filed 6–2–99; 5:07 pm]
BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on June 11, 1999. The meeting will begin at 10:00 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Westin Hotel, 1672 Lawrence Street, Denver, CO 80202–2010.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:
1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of February 21, 1999.
3. Approval of minutes of the Committee's meeting of April 16, 1999.
4. Consider public comment and consider and act on final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
5. Consider public comment and consider and act on final rule, 45 CFR Part 1628, Recipient Fund Balances.
6. Consider and act on proposed amendment(s) to the Corporation's 403(b) Thrift Plan that are intended to increase the Corporation's employer contribution level to match the Civil Service Retirement System.
7. Consider and act on other business.
8. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: June 2, 1999.
Victor M. Fortuno,
General Counsel.
[FR Doc. 99–14437 Filed 6–2–99; 5:07 pm]
BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on June 12, 1999. The meeting will begin at 9:15 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Westin Hotel, 1672 Lawrence Street, Denver, CO 80202–2010.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:
1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of February 21, 1999.
3. Approval of minutes of the Committee's meeting of April 16, 1999.
4. Field presentation on developments in LSC-funded legal services in Colorado.
5. Staff report on state planning and competition.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: June 2, 1999.
Victor M. Fortuno,
General Counsel.
[FR Doc. 99–14438 Filed 6–2–99; 5:07 pm]
BILLING CODE 7050–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, DC 20416. Phone Number: 202–205–7030.

SUPPLEMENTARY INFORMATION:
Title: "BIC Customer Satisfaction Survey."
Form No: 1916.
Description of Respondents: New, established and prospective Small Business Owners using the services and programs offered by the Business Information Center Program.
Annual Responses: 22,500.
Annual Burden: 105.
Comments: Send all comments regarding this information collection to

Janet Moorman, Business Development Specialist, Office of Business Initiatives, Small Business Administration, 409 3rd Street S.W., Suite 6100, Washington, D.C. 20416. Phone No: 202–205–7419.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: June 2, 1999.

Vanessa Piccioni,

Acting Chief, Administrative Information Branch.

[FR Doc. 99–14299 Filed 6–4–99; 8:45 am]

BILLING CODE 8025–01–P

U.S. SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3185]

State of Colorado; (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated May 19 and 26, 1999, the above-numbered Declaration is hereby amended to include Pueblo County, Colorado as a disaster area as a result of damages caused by severe storms and flooding. This Declaration is further amended to establish the incident period for this disaster as beginning on April 29 and continuing through May 19, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Custer and Huerfano in the State of Colorado may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 15, 1999, and for economic injury the deadline is February 17, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 28, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14298 Filed 6–4–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S4 covers the Deputy Commissioner for Systems. Notice is given that Subchapter S4K, the Office of Information Management (OIM), is being amended to reflect a realignment of functions. Functions are being moved from existing OIM Divisions to create two new Divisions in OIM. The revised chapter reads as follows:

Section S4K.10 *The Office of Information Management*—

(Organization):

Establish:

H. The Division of Planning, Requirements and Validation (S4KJ).

I. The Division of Appeals and Disability Systems (S4KK).

Section S4K.20 *The Office of Information Management*—

(Functions):

D. Division of Information Resource Management (S4KB).

Delete:

8. In its entirety

Renumber:

"9" to "8"

Delete:

10. In its entirety.

E. Division of Administrative Systems Development (S4KE).

Delete:

1. In its entirety.

Renumber:

"2" to "1"

Establish:

H. Division of Planning, Requirements and Validation (S4KJ).

1. Manages the planning, validation and implementation of the broad range of systems, methods and procedures necessary to support the administrative and programmatic MI systems processes.

2. Performs user needs analyses and develops detailed functional requirements for SSA's mainframe and client server programmatic and administrative systems.

3. Designs, develops and maintains automated validation test methods for SSA's mainframe and client server programmatic and administrative systems and certifies validated products for release into the production environment.

4. Manages OIM's project management process; provides standards, procedures, training and technical assistance to project managers.

I. Division of Appeals and Disability Systems (S4KK).

1. Provides automated solutions to support SSA's appeals processes and for management information (MI) systems supporting the Agency's Disability Insurance program. Designs, develops and deploys systems that improve the collection, processing and distribution of disability MI.

2. Develops and maintains SSA-wide systems that provide for processing, monitoring and reporting on the Agency's various appeals workloads.

Dated: May 25, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99–14234 Filed 6–4–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–99–030]

Lower Mississippi River Waterway Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for application.

SUMMARY: The U.S. Coast Guard seeks applications for membership on the Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). LMRWSAC provides advice and makes recommendations to the Coast Guard on matters relating to transit of vessels and products to and from the ports on the Lower Mississippi River .

DATES: Applications must reach the Coast Guard on or before July 31, 1999.

ADDRESSES: You may request an application form by writing to Mr. M. M. Ledet, Committee Administrator, c/o Commander, Eighth Coast Guard District (m), 501 Magazine Street, New Orleans, LA 70130–3396; by calling (504) 589–4686; or by faxing (504) 589–4999. Submit application forms to the same.

FOR FURTHER INFORMATION CONTACT: Contact Mr. M. M. Ledet, Committee Administrator, telephone (504) 589–4686, Fax (504) 589–4999.

SUPPLEMENTARY INFORMATION: LMRWSAC is a Federal advisory committee constituted under 5 U.S.C. App. 2. This committee provides local expertise on communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigational safety

on the Lower Mississippi River. The committee normally meets twice a year at the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of the membership will be for two years. The committee consists of 24 members who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and navigate vessels on the Lower Mississippi River and its connecting navigable waterways, including the Gulf of Mexico. Vacancies to be filled are for:

(1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the Head of Passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

(2) Two members representing vessel owners or ship owners domiciled in the State of Louisiana.

(3) Two members representing organizations that operate harbor tugs or barge fleets in the geographical area covered by the committee.

(4) Two members representing companies that transport cargo or passengers on the navigable waterways in the geographical area covered by the committee.

(5) Three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, the Crescent River Port Pilots Association, and the Associated Branch Pilots Association.

(6) Two at-large members who utilize water transportation facilities located in the geographical area of the committee.

(7) Three members representing consumers, shippers, or importer/exporters that utilize vessels that utilize the navigable waterways covered by the committee.

(8) Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on vessels that utilize the navigable waterways covered by the committee.

(9) One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

(10) One member representing an environmental organization.

(11) One member representing the general public.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report or the information it contains may be released to the public, except under order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: May 24, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist. Acting.

[FR Doc. 99–14287 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 120–XX]

Proposed Advisory Circular on Initial Air Carrier Operational Approval for Use of Digital Communication Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed Advisory Circular (AC) for Initial Air Carrier Operational Approval for Use of Digital Communication Systems.

SUMMARY: The proposed AC is intended to provide an acceptable means, but not the only means, for operational approval to use digital communications systems, including data link and voice communication (e.g., via satellite), for air traffic service and related capabilities for operators conducting operations under Title 14 of the Code of Federal Regulations (14 CFR), parts 121, 125, 129, and 135.

DATES: Comments must be received on or before August 6, 1999.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, Flight Technologies and Procedures Division (Attention AFS–410), 800 Independence Avenue, SW., Washington, DC 20591. This draft AC may also be accessed on the Internet at www.faa.gov/AVR/afs/afs410/afs410.htm.

FOR FURTHER INFORMATION CONTACT: Don Streeter, AFS–410, at the above address, telephone (202) 267–9093 (8 a.m. to 5 p.m. EST).

Issued in Washington, DC on June 1, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–14332 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–16]

Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 18, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 2, 1999.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29396.

Petitioner: Department of the Air Force.

Sections of the FAR Affected: 14 CFR 91.209.

Description of Relief Sought: To permit the USAF to conduct certain night flight military training operations without lighted external aircraft position and anticollision lights.

Docket No.: 29540.

Petitioner: Mesaba Airlines.

Section of the FAR Affected: 14 CFR 121.344(b)(3).

Description of Relief Sought: To permit Mesaba Airlines to operate five Saab SF 340A Model aircraft without installing the required, approved digital flight data recorder until the next heavy maintenance check conducted after October 31, 1999.

Dispositions of Petitions

Docket No.: 26326.

Petitioner: T.B.M., Inc. and Butler Aircraft Co.

Sections of the FAR Affected: 14 CFR 91.611.

Description of Relief Sought/ Disposition: To permit TBM and Butler to conduct ferry flights in their Lockheed C–130A aircraft with one engine inoperative without obtaining a special flight permit for each flight. *Grant, 5/19/99, Exemption No. 6667A.*

Docket No.: 29466.

Petitioner: Bombardier Aerospace.

Sections of the FAR Affected: 14 CFR 25.1435(b)(1).

Description of Relief Sought/ Disposition: To permit Bombardier to conduct a range of motion test at 3750 psig (the system relief pressure) for the hydraulic system on the Bombardier Regional Jet Series 700, Model CL–600–2C10 airplane. *Grant, 5/7/99, Exemption No. 6893.*

Docket No.: 29517.

Petitioner: United Parcel Service Co.

Sections of the FAR Affected: 14 CFR 121.343(e).

Description of Relief Sought/ Disposition: To allow UPS to operate its Boeing B767–300F aircraft with an approved flight data recorder without the digital data bus complying with the flight recorder altitude parameters of appendix B to part 121 until the affected aircraft are in compliance with the digital flight data recorder requirments of § 121.344. *Grant, 5/12/99, Exemption No. 6894.*

[FR Doc. 99–14329 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–15]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 18, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 2, 1999.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29515.

Petitioner: Peninsula Airways, Inc. (PenAir)

Section of the FAR Affected: 14 CFR 91.323(b)(4).

Description of Relief Sought: To permit PenAir to operate its Grumman Goose G–21A amphibian aircraft at a weight that is in excess of the airplane's maximum certified weight.

[FR Doc. 99–14330 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–14]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Purusant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 18, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on June 2, 1999.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29515.

Petitioner: Peninsula Airways, Inc. (PenAir)

Section of the FAR Affected: 14 CFR 91.323(b)(4).

Description of Relief Sought: To permit PenAir to operate its Grumman Goose G–21A amphibian aircraft at a weight that is in excess of the airplane's maximum certified weight.

[FR Doc. 99–14331 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/Eurocae Working Group 44; Terrain and Airport Databases

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held June 28–July 2, 1999, starting at 9:00 a.m. The meeting will be held at National Soaring Museum, 51 Soaring Hill Drive, Elmira, NY (Harris Hill, Expressway 17, Exit 51).

The agenda will be as follows: Monday, June 28, Opening Plenary Session: (1) Chairman's Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Review of Summary of the Previous Meeting. (4) Subgroup 2, Terrain and Obstacle Databases: (a) Review of Summary of the Previous Meeting; (b) Review of Actions Taken during the Previous Meeting; (c) Presentations; (d) Review of the Draft Document. Tuesday, June 29: (5) Subgroup 2, continuation of previous day's discussions. Wednesday, June 30: (6) Subgroup 3, Airport Databases: (a) Review of Summary of the Previous Meeting; (b) Review of Actions Taken During the Previous Meeting; (c) Presentations; (d) Review of the Draft Document. Thursday, July 1: (7) Subgroup 3, continuation of previous day's discussions. Friday, July 2: Closing Plenary Session; (8) Summary of Subgroups 2 and 3 Meetings; (9) Assign Tasks; (10) Other Business; (11) Dates and Locations of Next Meetings; (12) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 1, 1999.

Jane P. Caldwell,

Designated Official.

[FR Doc. 99–14333 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53; Air Traffic Services Safety and Interoperability Requirements

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint Special Committee (SC)–189/EUROCAE Working Group (WG)–53 meeting to be held June 21–25, 1999, starting at 9:00 a.m. on June 21. The meeting will be held at National Convention Centre, 31 Constitution Avenue, Canberra ACT 2601.

The agenda will be as follows: Monday, June 21: Opening Plenary Session Convenes at 9:00 a.m.: (1) Introductory Remarks; (2) Review and Approval of the Agenda (Monday); (3) Review and Approval of Summary of the Previous Meeting; (4) Sub-Group and Related Reports; (5) Position Papers Planned for Plenary Agreement; (6) SC–189/WG–53 Co-chair Progress Report. Tuesday, June 22–Thursday, June 24: (7) Sub-group Meetings. Friday, June 25: Closing Plenary Session: (8) Introductory Remarks; (9) Review and Approval of Agenda (Friday); (10) Review of Preliminary Meeting Minutes; (11) Sub-group and Related Reports; (12) Position Papers Planned for Plenary Agreement (13) SC–189/WG–53 Co-chair Progress Report and Wrap-up.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, by phone at (202) 833–9339, by fax at (202) 833–9434, or by e-mail at hmoses@rtca.org. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 1, 1999.

Jane P. Caldwell,

Designated Official.

[FR Doc. 99–14334 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Pierce County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Additional Studies.

SUMMARY: The FHWA, Washington State Department of Transportation (WSDOT), and Pierce County are issuing this notice to advise the public that additional studies have been completed related to the Draft Environmental Impact Statement (DEIS) (FHWA–WA–EIS–98–3D) prepared for a proposed new roadway project in Pierce County, Washington between Interstate 5 and State Route 7 (Pacific Avenue).

FOR FURTHER INFORMATION CONTACT: Jim Leonard, PE, Transportation/ Environmental Engineer FHWA, Olympia, Washington 98501. Phone Number (360) 753–9408.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with WSDOT and Pierce County, issued a DEIS in May 1998 on a proposal to build a new roadway between Interstate 5 at the Thome Lane interchange and State Route 7 (Pacific Avenue) at 176th Street South. The proposed roadway corridor passes through a residential area in the City of Lakewood known as American Lake Gardens and portions of the Fort

Lewis Military Reservation and McChord Air Force Base. The DEIS includes a Major Investment Study (NUS) that examines the overall need for the project and alternative means of reducing or meeting the demand for additional transportation capacity and a Draft 4(f) Evaluation.

The new roadway would compound existing barriers to wildlife movement for many species and would isolate the habitat north of the roadway. This habitat has been used by the western gray squirrel, which is listed as threatened by the Washington Department of Fish and Wildlife. The DEIS evaluated impacts to western gray squirrel and Garry oak (also known as Oregon white oak) woodland habitat from the proposed roadway based on available information and field reconnaissance. Oak woodlands are important because this type of habitat has been greatly reduced in western Washington and because it is important habitat for the western gray squirrel. The DEIS committed to a genetic analysis of western gray squirrels and a detailed mapping and evaluation of oak woodlands as part of the EIS process. Both additional studies are now available for public review as part of the environmental documentation of the proposed roadway. These additional studies do not change the purpose and need for the project, the range of alternatives considered, the overall impacts or the range of potential mitigation measures described in the DEIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 1, 1999.

James A. Leonard,

Transportation and Environmental Engineer.

[FR Doc. 99–14284 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–01–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Northstar Corridor Project Located Between Minneapolis and the St. Cloud Area, Minnesota

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration is issuing this notice to advise interested agencies and the public that a Draft Environmental Impact Statement (DEIS) is being prepared for transit elements of the Northstar Corridor project located in the Trunk Highway 10/47 (TH 10/47) corridor between Minneapolis and the St. Cloud area, Minnesota.

DATES: Interagency and public scoping and information meetings will be held on Thursday, July 29, 1999 from 1:00 p.m. to 3:00 p.m., and from 4:00 p.m. to 7:00 p.m. on July 27, 28 and 29, respectively.

Interagency Scoping Meeting

Thursday, July 29, 1999 from 1:00 p.m. to 3:00 p.m., Fridley City Hall, 6431 University Avenue Northeast, Fridley, MN 55432

Public Scoping Meetings

Tuesday, July 27, 1999 from 4:00 p.m. to 7:00 p.m., Whitney Senior Community Center, 1527 Northway Drive, St. Cloud, MN 56303

Wednesday, July 28, 1999, from 4:00 p.m. to 7:00 p.m, Sherburne County Courthouse, 13880 Highway 10, Elk River, MN 55330

Thursday, July 29, 1999 from 4:00 p.m. to 7:00 p.m., Fridley City Hall, 6431 University Avenue Northeast, Fridley, MN 55432

ADDRESSES: Written comments on the scope of analysis and impacts to be considered should be sent by August 20, 1999 to: Mr. Tim Yantos, Project Director, Northstar Corridor Development Authority, 2100 Third Avenue, Anoka, MN 55303

FOR FURTHER INFORMATION CONTACT: Mr. Joel P. Ettinger, FTA Region 5, 200 West Adams Street, Suite 2410, Chicago, IL 60606, Telephone: (312) 353–2789.

SUPPLEMENTARY INFORMATION: The Federal Transit Administration (FTA) (the federal lead agency) in cooperation with the Northstar Corridor Development Authority (NCDA), a joint powers board (local lead agency), will prepare an Environmental Impact Statement (EIS) for the Northstar Corridor project.

I. Scoping

The FTA and the NCDA invite interested individuals, organizations and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS; in identifying social, economic or environmental impacts to be evaluated; and suggesting alternatives that are less costly or have fewer environmental impacts while achieving similar transportation objectives. An information packet, referred to as the Scoping Booklet, will be circulated to all federal, state or local agencies having jurisdiction in the project, and all interested parties currently on the NCDA mailing list.

Others may request this Scoping Booklet by contacting:

Stephanie Eiler, Anoka County, 1440 Bunker Lake Boulevard, Andover, MN 55304, Phone: 612/862–4230, Fax: 612/862–4201, E-Mail: sceiler@pubserv.co.anoka.mn.us

Four public scoping meetings will be held in the study area. An interagency scoping meeting will be held on July 29, 1999 from 1:00 p.m. to 3:00 p.m. at the Fridley City Hall, and three public scoping meetings will be held on July 27, 28 and 29, 1999 from 4:00 to 7:00 p.m. at the Whitney Senior Community Center, the Sherburne County Courthouse and the Fridley City Hall, respectively. People with special needs should call Stephanie Eiler at 612–862–4230. The buildings are accessible to people with disabilities.

Scoping comments may be made at the Public Scoping Meetings or in writing by August 20, 1999. Comments or questions should be directed to Mr. Tim Yantos at the address provided above.

II. Description of the Study Area and Transportation Needs

The Northstar Corridor study area can be described as a long, narrow 70-mile transportation corridor that extends from downtown Minneapolis to the St. Cloud area along TH 10/47 and the Burlington Northern Santa Fe (BNSF) railroad. The study area is bordered by the Mississippi River on the west and extends approximately 3 to 5 miles to the east of TH 10/47. The proposed Corridor would connect to the Hiawatha Light Rail Transit (LRT) in downtown Minneapolis. The Hiawatha LRT line would continue to the Minneapolis/St. Paul Airport and the Mall of America.

The NCDA initiated a Major Investment Study (MIS) in May of 1998, pursuant to federal regulations, and conducted a feasibility study of commuter rail in the Corridor. Phase I of this process focused on identifying the purpose and need for transportation improvements in the Corridor, identifying and screening the alternative transportation solutions, and evaluating the feasibility of commuter rail service in the Corridor.

During Phase I of the Study, the issues identified in the Northstar Corridor that relate to transportation include: a lack of coordination between transportation investments and land use development; a high accident rate along the TH 10/47 corridor; decreasing mobility on TH 10/

47; a lack of corridor-wide transit service; and the lack of alternative transportation modes.

A public involvement program was conducted during Phase I of the project to receive input from the public and stakeholders in the Corridor. Public outreach presentations were given to over 30 community groups. Communications to the public were via a newsletter and a monthly Project Update to the NCDA distribution list of approximately 1000 names/addresses, a Web Site, and a series of three public information open houses.

III. Alternatives

Phase I of the MIS process defined and evaluated eight transit technologies for the Northstar Corridor: bus, commuter rail, light rail transit (LRT), diesel multiple unit (DMU), heavy rail, monorail, automated guideway transit (AGT), and personal rapid transit (PRT). Each of these transit technologies was reviewed based on the following evaluation parameters: capital cost, proven technology, operating environment, ability to accommodate at-grade station access, optimal station spacing distance, environmental impacts, and other considerations such as ridership potential and implementation. Based on this transit technology screening analysis, the following transit technologies have been recommended for further analysis: Bus, LRT and Commuter Rail. The scoping process will review the full range of modal technologies considered and the evaluation process followed.

The alternatives proposed for consideration in the Northstar Corridor DEIS include:

1. *No-Build Alternative*—No change to transportation services or facilities in the Corridor beyond already committed projects. This includes only those roadway and transit improvements defined in the appropriate agencies' Long Range Transportation Plans and Transit Development Plans for which funding has been committed.

2. *Transportation Systems Management Alternative*—Low cost infrastructure and bus transit improvements, Intelligent Transportation Systems (ITS), Travel Demand Management, bus operations, and Transportation Systems Management improvements will be included in this alternative.

3. *Commuter Rail Alternative*—A commuter rail line on the existing BNSF rail line to include all facilities associated with the construction and operations of the commuter rail line, including right-of-way, structures, track, stations, park-and-ride lots, storage and maintenance facilities as well as the respective rail and bus operating plans will be elements of the alternative. The extension of the Hiawatha Corridor LRT service to the commuter rail line will be included in this alternative. The Commuter Rail Alternative will also incorporate the elements of the No-Build Alternative and will include feeder bus improvements to provide access from local and regional land uses to the commuter rail connection.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and the NCDA will evaluate significant environmental, social and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: land use, historic and archeological resources, traffic and parking, noise and vibration, neighborhoods and environmental justice, floodplain encroachment, coordination with ongoing related transportation and economic development projects, and construction impacts. Other issues the EIS will address include natural areas, rare and endangered species, air and water quality, groundwater, energy, potentially contaminated sites, displacements and relocations, ecosystems, water resources, hazardous waste, parklands, and energy impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. In addition, cumulative effects of the proposed project and any irreversible or irretrievable commitment of resources will be identified. Measures to avoid or mitigate any significant adverse impacts will be developed.

V. Procedures

In accordance with the regulations and guidance established by the Council on Environmental Quality (CEQ), as well as 23 CFR 450 and 23 CFR 771 of the FHWA/FTA planning and environmental regulations and policies, the DEIS will include an evaluation of the social, economic and environmental impact of the alternatives. The EIS will also comply with the requirements of the Clean Air Act Amendments of 1990 (CAAA) and with the Executive Order 12898 on Environmental Justice. The EIS will also meet the requirements of the US Environmental Protection Agency's transportation conformity regulations (40 CFR 93 and 23 CFR 450.322(b)(8)). After its publication, the DEIS will be available for public and agency review and comment. Public hearings will be held on the DEIS.

The Final Environmental Impact Statement (FEIS) will consider the public and agency comments received during the public and agency circulation of the DEIS and the NCDA will select the preferred alternative. Then the NCDA, with FTA as federal lead agency, will continue with the preparation of the FEIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: June 1, 1999.

Donald Gismondi,

Deputy Regional Administrator.

[FR Doc. 99–14325 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–99–5761]

Information Collection Available for Public Comments and Recommendations; Notice and Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 6, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey McMahon, Office of Sealift Support, MAR–630, Maritime Administration, 400 Seventh St., S.W., Room 7307, Washington, D.C. 20590. Telephone: 202–366–2323, or FAX 202–366–3889.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application and Reporting Elements for Participation in the Maritime Security Program.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0525.

Form Numbers: None.

Expiration Date of Approval: February 28, 2000.

Summary of Collection of Information: The Maritime Security Act of 1996 established the Maritime Security Program which supports the operations of U.S.-flag vessels in the foreign commerce of the United States through assistance payments. Participating vessel operators receive assistance payments and are required to make their ships and other commercial transportation resources available to the Government during times of war or

national emergency. The vessel operators who are interested in participating in the Maritime Security Fleet are required to submit an application to MARAD for its review and approval.

Need and Use of the Information: The collected information is necessary for MARAD to determine if selected vessels are qualified to participate in the Maritime Security Program.

Description of Respondents: Operators of U.S.-flag vessels who are interested in participating in the Maritime Security Fleet.

Annual Responses: Approximately 10–15.

Annual Burden: Approximately four to six hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit/. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., ET., Monday through Friday, except Federal Holidays. An electronic version of this document and filings in this docket are available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: June 2, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–14328 Filed 6–4–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33753]

South Plains Switching, Ltd. Co.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

South Plains Switching, Ltd. Co. (South Plains), a Class III rail common carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 67,784 feet of rail lines from The Burlington Northern and Santa Fe Railway Company (BNSF)[1] in Lubbock, TX, as follows: (1) former ATSF side tracks 0310–0313, 032, 0330–0332, 0340–0341, 0370, 0372–0373, 0380–0382, 0385, 0387, and 0390; and (2) former BN side tracks 9201–9204, 9208, 9220, 9298, 9310, 9320, 9322, 9330, Orchard Lead, 9304, 9311–9312, 9321, 9323–9326, 9331, 9333, 9401–9406, 9409–9412, 9415, and 9420–9424. In conjunction with the acquisition of these rail lines, South Plains will acquire approximately 18 miles of incidental trackage rights over BNSF's tracks 0340, 9200, 9205 and 9208 and BNSF's mainline between track 9298 and BNSF's Lower Yard at Lubbock.

The transaction is expected to be consummated on or shortly after June 4, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33753, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William R. Power, Esq., 260 Cordovan Park, 5840 West Interstate Twenty, Arlington, TX 76017.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

[1] On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company (ATSF) merged with and into Burlington Northern Railroad Company (BN). The name of the surviving corporation of the merger is The Burlington Northern and Santa Fe Railway Company.

Decided: May 28, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–14324 Filed 6–4–99; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations: "Discovering the Secrets of Soft Paste Porcelain in the Saint Cloud Manufactory, 1690–1766"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Discovering the Secrets of Soft Paste Porcelain in the Saint Cloud Manufactory, 1690–1766," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Bard Graduate Center, New York, NY, from on or about July 14, 1999, to on or about October 24, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Carol Epstein, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6981, or USIA, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: June 2, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–14294 Filed 6–4–99; 8:45 am]

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federal register

Monday
June 7, 1999

Part II

Office of Personnel Management

Laboratory Personnel Management Demonstration Projects; Army Department; U.S. Army Medical Research and Materiel Command, Fort Detrick, Frederick, MD; Notice

OFFICE OF PERSONNEL MANAGEMENT

Laboratory Personnel Management Demonstration Project; Department of the Army, U.S. Army Medical Research and Materiel Command (MRMC), Fort Detrick, Frederick, Maryland

AGENCY: Office of Personnel Management.

ACTION: Notice to make a change to the MRMC **Federal Register** notice, Part III, Vol. 63, No. 41, published on March 3, 1998, specifically page 10454, Section V, Conversion, paragraph e, the prorated buyout of the within-grade increase.

SUMMARY: 5 U.S.C. 4703 authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

The National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103–337, 108 STAT. 2663, authorizes the Department of Defense (DoD), with the approval of OPM, to carry out personnel demonstration projects at DoD Science and Technology (S&T) Reinvention Laboratories. This notice makes a change to the MRMC Personnel Management Demonstration Project pursuant to 5 C.F.R. 470.315.

DATES: This notice may be implemented beginning on the date of publication.

FOR FURTHER INFORMATION CONTACT: MRMC: Carol Dick, U. S. Army Medical Research and Materiel Command, Attn: MCHD–CP 810 Schreider Street, Suite 120, Fort Detrick, Maryland 21702–5000, phone 301–619–2247.

OPM: Gail W. Redd, U. S. Office of Personnel Management, 1900 E Street NW, Room 7458, Washington, DC 20415, phone 202–606–1521.

SUPPLEMENTARY INFORMATION:

1. Background

OPM approves S&T Laboratory Personnel Management Demonstration Projects and published the MRMC final plan in the **Federal Register** on Tuesday, March 3, 1998, Vol. 63, No. 41. The MRMC demonstration project involves simplified job classification, paybanding, a performance-based compensation system, employee development provisions, and modified reduction-in-force procedures.

2. Overview

The MRMC published its final project plan on March 3, 1998. The final plan incorporated changes made as a result of specific comments received during the public comment period and hearings. Those comments also brought new and different perspectives to the attention of those responsible for implementing, overseeing, and evaluating the project.

One comment referred to the negative impact that the receipt of a lump sum payment instead of an increase to basic rates of pay has on an employee. The lump sum payment for the prorated within-grade increase buyout is described in the conversion procedures in the project plan. Upon closer examination, it was decided that adding the buyout amounts to base pay instead of paying it in a lump sum is more beneficial to employees and will contribute to their "high three" years for retirement purposes. A change in the manner of payment from lump sum to base pay increase, therefore, is appropriate.

Office of Personnel Management.

Janice R. Lachance,

Director.

I. Executive Summary

This project was designed by the Department of the Army with participation of and review by the Department of Defense (DoD) and the Office of Personnel Management (OPM). The purpose of the project is to achieve the best workforce for the Army MRMC mission, adjust the workforce for change, and improve workforce quality.

The foundations of the project are based on the concepts of linking performance to pay for all covered positions; simplifying paperwork and the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and unions representing covered employees; and delegating classification and other authorities to line managers.

II. Introduction

A. Purpose

The purpose of this notice is to amend the way the within-grade increase buyouts will be paid to employees. Changes are hereby made to the **Federal Register**, Part III, Laboratory Personnel Management Demonstration Project, Department of the Army, U. S. Army Medical Research and Materiel Command, Fort Detrick, Frederick, Maryland; Notice, Vol. 63, No. 41, Tuesday, March 3, 1998; page 10454, Section V, Conversion, replace paragraph e in its entirety as follows:

e. Under the current pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step based upon the portion of the waiting period they have completed prior to the date of implementation. The prorated payment will be added to base pay and paid on the first day of the first pay period on or after the 1-year anniversary of the date of implementation of the demonstration project. The payment will be an increase to base pay commensurate with the number of full weeks accrued toward the next higher step prior to the conversion effective date. Employees will not be eligible for this base pay increase if their performance is below Fully Successful at the time of conversion. There will be no prorated payment for employees who were at step 10 or receiving a retained rate at the time of conversion into the demonstration project. The prorated payment may be provided only to the extent that it does not cause the employee's base pay to exceed the maximum rate of the employee's band. Rules governing within-grade increases under the current Army performance plan will continue in effect until the implementation date.

Those employees added to MRMC by involuntary actions such as transfer of function, BRAC, etc., after initial implementation, will be awarded that portion of the next higher step based upon the portion of the waiting period they have completed at the time they convert into the demonstration project (but no earlier than one year after the implementation of the project.) Employees at step 10, or receiving retained rates, will not be eligible for an increase to base pay since they are already at or above the top of the step scale. Also, employees will not be eligible for this base pay increase if their performance is below Fully Successful at the time of conversion.

All other provisions of the approved MRMC Personnel Management Demonstration Project will apply. Employee notification will be made by delivery of copies of the amendment to union officials and MRMC employees included in the project, and by posting on the Internet.

[FR Doc. 99–14444 Filed 6–3–99; 10:32 am]

BILLING CODE 6325–01–P

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LIST OF PUBLIC LAWS

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H.R. 1034/P.L. 106–32

To declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States. (June 1, 1999; 113 Stat. 115)

Last List May 26, 1999

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1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[8] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
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700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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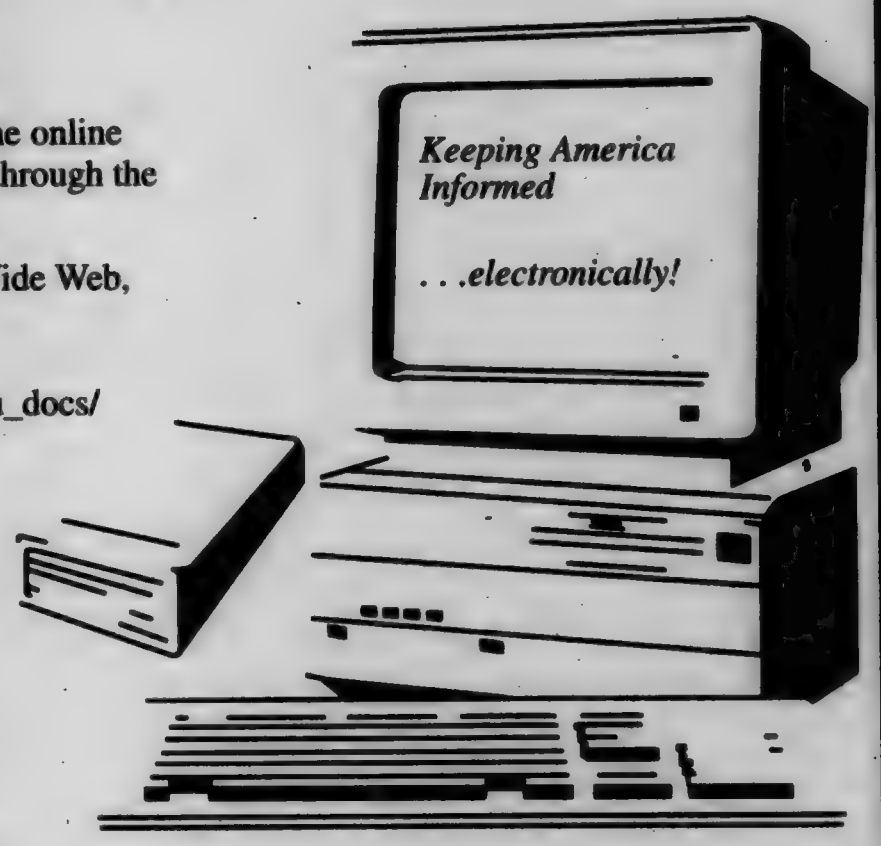

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–43–AD; Amendment 39–11187; AD 99–12–03]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines, that requires revisions to the engine manufacturer's Time Limits Section (TLS) of the JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines Manual to include enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend pat 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines was published in the **Federal Register** on July 28, 1998 (64 FR 40226). That action proposed to require, within the next 30 days after the effective date of this AD, revisions to the Time Limits Section (TLS) of the JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines Manual, and, for air carriers, the approved continuous airworthiness maintenance program. The manufacturer of JT8D series turbofan engines has provided the Federal Aviation Administration (FAA) with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined in this AD, rather than specific inspection intervals.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the measures outlined in the proposed rule.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. Two commenters believe that paragraph (e) of the proposed rule is unclear and suggests that certain preamble language be added to it for clarity and that it be revised by eliminating the word "or" from the first sentence and beginning a second sentence with "In lieu of the record. * * *" Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not concur that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

Several commenters suggested that the tables used to specify those parts requiring mandatory inspections be given standardized formats and that the parts be identified by "all" rather than by specific part number. The FAA does not concur. The FAA intentionally allowed each manufacturer to choose a format that fits their products manual. Identification of parts requiring mandatory inspections has been accomplished by either part number identification or use of the word "all". Part number identification was chosen by some manufacturers since the processes and procedures needed to conduct new inspections were not yet developed for all parts of a certain type, i.e., fan disks/hubs. The FAA wants the manufacturers to have flexibility in managing how their manuals are structured within Air Transport Association code requirement.

One commenter requests that the FAA link the conduct of mandatory inspections on whether the subject part was removed from an engine while the engine was installed on the airplane or while the engine was removed and in an overhaul shop. The commenter wishes to exempt those parts that are removed

from installed engines from the focused inspections. The FAA does not concur. The mandatory inspections are based on a single trigger. The trigger is a part being completely disassembled using the engine manual instructions (piece-part opportunity), and is not dependent on whether an engine is installed on the airplane. This final rule mandates that the definition of piece-part opportunity appears in the mandatory section of each affected engine manual. This final rule further mandates that an operator's continuous airworthiness maintenance program be modified to capture those engine manual changes.

Several commenters suggest that the 100 cycle in service inspection waiver provided in the piece-part opportunity definition was too low and could not be justified from a crack growth standpoint or that language be added to the requirements adding a minimum cycles in service threshold after which mandatory inspections would be applicable. The FAA does not concur. The 100 cycle waiver is intended to allow short term alleviation from mandatory inspections for a part recently inspected in accordance with the engine manual requirements. It was specifically aimed at disassembled parts removed from an engine following a test cell reject or some other occurrence that caused the parts removal shortly after successful completion of mandatory inspections. Waiver of mandatory inspections in this instance also requires that the part was not damaged or related to the cause for its removal from the engine. Mandatory inspections are also required on fully disassembled parts regardless of time-since-new (TSN). The FAA is aware that cracks can be missed during part inspections and that each time a part is processed through an inspection line, the probability of detecting a crack is increased. Commonly used on-condition maintenance plans make it likely that a given part could be returned to service for thousands of cycles without the need for additional focused inspection. Recognizing two opposing aspects of part removal and inspection, i.e., a need for a brief exemption period following conduct of mandatory inspections and the benefits of increased frequency of inspection, the FAA established the 100 cycle threshold. No consideration for crack growth time was given in the choice of this number nor was TSN considered as a possible reason for exempting parts from focused inspection. It is based strictly on keeping the frequency of mandatory inspection as high as practical and therefore increasing the probability of crack detection while providing a brief window of exemption from mandatory inspection if certain conditions are met. Therefore, the 100 cycle limit will remain in the compliance section of the AD and no exemption will be allowed for low TSN parts.

One commenter states that the mandatory manual chapters were modified to require new inspection requirements prior to issuance of the final rule AD and that the FAA should provide written notification to Flight Standards Offices that the inspections proposed in the proposed rule are not mandatory until the establishment of an effectivity date in a published final rule AD. Some confusion between Operators, Manufacturers and Principal Maintenance Inspectors was created when the mandatory manual sections were modified prior to the release of a final rule AD. The FAA concurs in part. The manuals were modified prior to issuance of the final rule to minimize implementation delays from lengthy original equipment manufacturer EM revision cycles. FAA will attempt a higher level of coordination of timing the manual revisions so that the revisions follow final rule ADs in the future. Such a notice, however, is beyond the scope of this AD and may well cause additional confusion rather than clarify the present situation.

One commenter states that the proposed rule should be revised to allow use of Foerster Defectometer eddy current instrument for Insp–02, as it is currently approved for use in Insp–03. 72–33–31 Insp–02 currently only requires that a certain probe and sensitivity standard be used to accomplish the inspection. The eddy current instrument to be used for 72–33–31 Insp–02 is specified in the PW Standard Practices manual, 70–37–02. The requirement for the Eddy Current signal instrument is that it be equivalent in performance to a Foerster Defectometer Model H 2.835. An eddy current signal instrument needs to be deemed equivalent to the Defectometer Model H 2.835 in order to be acceptable for 72–33–31 Insp–02. Therefore no changes are necessary to the AD.

One commenter states that AD 95–10–10 compliance requirements relative to the JT8D Engine Manual, P/N 481672, 72–33–31 Insp-03, as specified in the proposed rule should be clarified. The FAA does not concur that a change needs to be made to the AD, but offers the following explanation for clarification purposes. AD 95–10–10 is applicable to certain serial number fan hubs installed on JT8D engines. While the inspections required are similar to this AD, 95–10–10 also contains other overhaul requirements and very specific inspection intervals. This AD is intended to inspect all JT8D first and second stage compressor disks at every piece-part opportunity. The requirements of both ADs must be met regardless of the overlapping requirements.

One commenter states that "XX" in the inspection column of the Table in the Compliance Section under paragraph B needs clarification. The FAA concurs. At the time the proposed rule was published Insp-04 was not available. Chapter 5 of the Engine Manual was revised August 1, 1998, to include Insp-04. Inspection –XX has been changed to inspection number –04 for first stage compressor disks.

One commenter states that stage 2 compressor disks in the Table should be repositioned for clarity and Insp-02 should be included. The FAA concurs. Inspection number –XX has been replaced with inspection number –02 for second stage compressor disks.

One commenter states that the reference to Chapter 05–11–00 in Note 3 of the Compliance Section is incorrect. The FAA concurs. This final rule has been revised to reference Chapter 05–10–00.

No comments were received on the economic analysis contained in the proposed rule. Based on that analysis, the FAA has determined that the annual per engine cost of $420 does not create a significant economic impact on small entities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive.

99–12–03 Pratt & Whitney: Amendment 39–11187, Docket 98–ANE–48–AD.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines, installed on but not limited to Boeing 727 and 737 series and McDonnell Douglas DC–9 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines Engine Manual (EM), part number 481672, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"5. Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section has the definitions for individual engine piece parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece parts in paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(3) The inspections specified in this paragraph do not replace or make not necessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection

Note: Piece part is defined as any of the listed parts with all the blades removed.

Engine manual description	Section	Inspection
Hub (Disk), 1st Stage Compressor:		
491201	72–33–31	–04,–02,–03
496501	72–33–31	–04,–02,–03
504101	72–33–31	–04,–02,–03
515201	72–33–31	–04,–02,–03
594301	72–33–31	–04,–02,–03
640501	72–33–31	–04,–02,–03
640601	72–33–31	–04,–02,–03
743301	72–33–31	–04,–02,–03
749701	72–33–31	–04,–02,–03
749801	72–33–31	–04,–02,–03
750001	72–33–31	–04,–02,–03
750101	72–33–31	–04,–02,–03
778901	72–33–31	–04,–02,–03
791401	72–33–31	–04,–02,–03
791501	72–33–31	–04,–02,–03
791601	72–33–31	–04,–02,–03
791701	72–33–31	–04,–02,–03
791801	72–33–31	–04,–02,–03
806001	72–33–31	–04,–02,–03
806101	72–33–31	–04,–02,–03
817401	72–33–31	–04,–02,–03
844401	72–33–31	–04,–02,–03
845401	72–33–31	–04,–02,–03
848001	72–33–31	–04,–02,–03
848101	72–33–31	–04,–02,–03
Disk, 2nd Stage Compressor:		
482502	72–33–33	–02
502502	72–33–33	–02
520602	72–33–33	–02
570302	72–33–33	–02
570402	72–33–33	–02
678202	72–33–33	–02
730202	72–33–33	–02
730302	72–33–33	–02
730402	72–33–33	–02
740502	72–33–33	–02
745702	72–33–33	–02
745902	72–33–33	–02
746002	72–33–33	–02
746802	72–33–33	–02
760402	72–33–33	–02
760502	72–33–33	–02
807502	72–33–33	–02
5002402–01	72–33–33	–02
790832 (Disk assembly).	72–33–33	–02

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits section in the EM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be used in accordance with § 21.197 and § 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirement of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternative method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternative system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans

to reflect the requirements in the engine manuals.

(f) This amendment becomes effective on July 8, 1999.

Issued in Burlington, Massachusetts, on June 1, 1999.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–14446 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 98–ANE–43–AD; Amendment 39–11188; Ad 99–12–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that requires revisions to the engine manufacturer's Time Limits Section (TLS) of the JT8D–200 Turbofan Engine Manual to include enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines was published in the **Federal Register** on July 28, 1998 (63 FR 40216). That action proposed to require, within the next 30 days after the effective date of this AD, revisions to the Time Limits Section (TLS) of the PW JT8D–200 Turbofan Engine Manual, and, for air carriers, the approved continuous airworthiness maintenance program. The manufacturer of JT8D–200 series turbofan engines has provided the Federal Aviation Administration (FAA) with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined in this AD, rather than specific inspection intervals.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the measures outlined in the proposed rule.

Several commenters ask that the FAA clarify the record keeping aspects of the mandatory inspections resulting from the required changes to the Original Equipment Manufacturer's manual and operator's continuous airworthiness maintenance program. Two commenters believe that paragraph (e) of the proposed rule is unclear and suggests that certain preamble language be added to it for clarity and that it be revised by eliminating the word "or" from the first sentence and beginning a second sentence with "In lieu of the record * * *" Two commenters state that the AD should be revised to clearly specify which types of maintenance records must be retained (i.e., inspection results, defect reporting requirements, date of performed maintenance, signature of the person performing the maintenance). These commenters believe that these revisions are necessary in order to avoid potential differences in interpretation between the air carriers and the FAA. And, one commenter states that the AD should clarify that there is no need for a special form to comply with the AD record keeping requirements. The FAA concurs in part. Generally, record keeping requirements are addressed in other regulations and this AD does not change those requirements. In order to allow flexibility from operator to operator, the FAA does not concur that the AD itself specify the precise nature of the records that will result from the required changes to the manufacturer's manual and operator's maintenance program. The FAA has, however, revised Paragraph (e) of this AD to clarify record keeping aspects of the new mandatory inspections.

One commenter requests that the FAA link the conduct of mandatory inspections on whether the subject part was removed from an engine while the engine was installed on the airplane or while the engine was removed and in an overhaul shop. The commenter wishes to exempt those parts that are removed from installed engines from the focused inspections. The FAA does not concur. The mandatory inspections are based on a single trigger. The trigger is a part being completely disassembled using the engine manual instructions (piece-part opportunity), and is not dependent on whether an engine is installed on the airplane. This final rule mandates that the definition of piece-part opportunity appears in the mandatory section of each affected engine manual. This final rule further mandates that an operator's continuous airworthiness maintenance program be modified to capture those engine manual changes.

One commenter suggests that language be added to the requirements adding a minimum cycles in service threshold after which mandatory inspections would be applicable. The FAA does not concur. The FAA is aware that cracks can be missed during part inspections and that each time a part is processed through an inspection line, the probability of detecting a crack is increased. Commonly used on-condition maintenance plans make it likely that a given part could be returned to service for thousands of cycles without the need for additional focused inspection. Recognizing two opposing aspects of part removal and inspection, i.e., a need for a brief exemption period following conduct of mandatory inspections and the benefits of increased frequency of inspection, FAA established the 100 cycle threshold. No consideration for crack growth time was given in the choice of this number nor was time-since-new (TSN) considered as a possible reason for exempting parts from focused inspection. It is based strictly on keeping the frequency of mandatory inspection as high as practical and therefore increasing the probability of crack detection while providing a brief window of exemption from mandatory inspection if certain conditions are met. Therefore, the 100 cycle limit will remain in the compliance section of the AD and no

exemption will be allowed for low TSN parts.

One commenter states that the mandatory manual chapters were modified to require new inspection requirements prior to issuance of the final rule AD and that FAA should provide written notification to Flight Standards Offices that the inspections proposed in the proposed rule are not mandatory until the establishment of an effectivity date in a published final rule AD. Some confusion between Operators, Manufacturers and Principal Maintenance Inspectors was created when the mandatory manual sections were modified prior to the release of a final rule AD. The FAA concurs in part. The manuals were modified prior to issuance of the final rule to minimize implementation delays from lengthy original equipment manufacturer EM revision cycles. FAA will attempt a higher level of coordination of timing the manual revisions so that the revisions follow final rule ADs in the future. Such a notice, however, is beyond the scope of this AD and may well cause additional confusion rather than clarify the present situation.

One commenter suggested that the parts requiring focused inspection be identified by "all" rather than by specific part number. The FAA does not concur. The FAA intentionally allowed each manufacturer to choose a format that fits their products manual. Identification of parts requiring mandatory inspections has been accomplished by either part number identification or use of the word "all". Part number identification was chosen by some manufacturers since the processes and procedures needed to conduct new inspections were not yet developed for all parts of a certain type, i.e., fan disks/hubs. The FAA wants the manufacturers to have flexibility in managing how their manuals are structured within Air Transport Association code requirement.

One commenter states that a "spot focused" fluorescent-penetrant inspection (FPI) should be performed in the rivet area of the fan hub instead of removing rivets, the air seal, and the compressor duct to inspect the fan hub. The commenter believes that rivet removal and replacement may induce stresses and cause cracks. The FAA does not concur. Inspection of the entire fan hub (i.e., bore, all holes, fillet radii, rim slot bottom, upper lug surface, pressure face of dovetail slots) is needed to detect all possible crack indications. Although few cracks have been detected thus far, there is concern that other high stress areas (e.g. dovetail slots) may be affected. Furthermore, removal of the assembled parts (air seal and compressor duct) will provide assurance that liquids for inspection and cleaning will not become entrapped in the titanium hub.

One commenter states that the phrase "by or related to the cause of its removal from the engine" should be added for clarification to paragraph (2)(b) of Inspection Requirements, paragraph A, in the Compliance Section. The FAA concurs and the phrase has been added.

One commenter states that the affected assembly part number (P/N) in the Compliance Section, paragraph B, Parts Requiring Inspection Table, is in error and should be 5000421–01. The FAA concurs and the P/N has been revised.

One commenter states that AD 97–17–04 compliance requirements relative to the JT8D Engine Manual, P/N 773128, 72–33–31 Insp–02, as specified in the proposed rule should be clarified. The FAA does not concur that a change needs to be made to the AD, but offers the following explanation for clarification purposes. The inspection requirements of AD 97–17–04 remain intact and are not affected by this AD. While the inspection techniques are similar, this AD will require inspections at every piece-part opportunity without having to remove bushings. AD 97–17–04 requires inspections with bushings removed at fixed inspection intervals depending on part serial number.

One commenter states that an existing alternative method of compliance (AMOC) for removal of C1 hub bushings prior to eddy current inspection should be allowed for this AD. The FAA does not concur. Because this AD does not require the removal of bushings at every piece-part opportunity, no AMOC for an alternate bushing removal procedure is required.

One commenter states that the PW JT8D–200 Turbofan Engine Manual section reference in the Parts Requiring Inspection table is in error and should read 72–33–31. The FAA concurs and the table has been revised.

No comments were received on the economic analysis contained in the proposed rule. Based on the analysis, the FAA has determined that the annual per engine cost of $240 does not create a significant economic impact on small entities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–12–04 Pratt & Whitney: Amendment 39–11188. Docket 98–ANE–43–AD.

Applicability Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must

request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alternation, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Time Limit Section (TLS) of the PW JT8D–200 Engine Manual (EM), Part Number 773128, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"3. Critical Life Limited Part Inspection

A. Inspection Requirements

(1) This section has the definitions for individual engine piece-parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Section	Inspection
Hub (Disk), 1st Stage Compressor:		
5000501–01 (Hub detail).	72–33–31	–02,–03
5000421–01 (Hub assembly).	72–33–31	–02,–03"

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the TLS of the PW JT8D–200 EM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

(b) This amendment becomes effective on July 8, 1999.

Issued in Burlington, Massachusetts, on June 1, 1999.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–14447 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Fees for Applications for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final reduction of certain designation applications fees.

SUMMARY: The staff reviews periodically the Commission's actual costs of processing applications for contract market designation (17 CFR Part 5, Appendix B) and adjusts its schedule of fees accordingly. As a result of the most recent review, the Commission, as proposed on April 22, 1999 (64 FR 19730), is establishing reduced fees for a limited class of simultaneously submitted multiple contract designation application filings.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, (201) 418–5275, Three Lafayette Centre, 1155 21st, Street, NW., Washington, DC 20581. E-mail [Rshilts@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. History

On August 23, 1983, the Commission established a fee for contract market designation (48 FR 38214). The fee was based upon a three-year moving average of the actual costs and the number of contracts reviewed by the Commission during that period of time. The formula for determining the fee was revised in 1985. At that time, most of the designation applications were for futures contracts rather than option contracts, and the same fee was applied to both futures and option designation applications.

In 1992, the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an option contract designation. It also determined that, when designation applications for both a futures contract and an option on that futures contract was submitted simultaneously, the cost for reviewing both together was lower than for reviewing the contracts separately. Based on that finding, three separate fees were established—one for futures alone, one for options alone, and one for combined futures and option contract applications. 57 FR 1372 (January 14, 1992). The combined futures/option designation application fee is set at a level that is less than the aggregate fee for separate futures and option applications to reflect the fact that the cost for review of an option is lower when submitted simultaneously with the underlying future and to create an incentive for contract markets to

submit simultaneously applications for futures and options on that future.

A. Proposed Further Modifications to Fee Structure

In a **Federal Register** notice dated April 22, 1999 (64 FR 19730), the Commission proposed to establish reduced fees for certain types of simultaneously submitted multiple contract designation applications. The Commission did not receive any comments in response to that notice.

II. Final Fee Structure

The Commission has determined to modify, as proposed, its fee structure for the limited class of multiple designation applications submitted simultaneously relating to contracts: (i) which are cash settled based on an index representing measurements of physical properties or financial characteristics which are not traded per se in the cash market; (ii) which use the same procedures for determining the cash-settlement values for all contracts in the filing; (iii) as to which the procedure for determining the values which vary for the individual cash settlement prices is objective and the individual contract values represent a spatial or other variant of that procedure or a larger or smaller multiplier; and (iv) as to which all other times and conditions are the same.[1] Commission fees for simultaneous submission of such multiple cash-settled contracts would be equal to the prevailing applicable fee for the first contract plus 10 percent of that fee for each additional contract in the filing. This fee structure represents an extension of the policy adopted by the Commission in 1992 when it established reduced fees for option applications and for combined futures and option applications and would be consistent with the Commission's responsibility under the Independent Offices Appropriations Act (31 U.S.C. 9107 (1982)) to base fees on the costs to the Government.

The Commission believes that a 10 percent marginal fee for additional contracts in a filing is appropriate for applications submitted simultaneously that are eligible for the multiple-contract filing fee. Because the multiple-contract filing fee applies only to cash-settled contracts based on objectively determined index values such that each separate contract represents only a spatial or other variant of that process and because the index is a measurement of a physical property or a financial characteristic which is not traded per se in the cash market, the Commission's review likely will not require a separate detailed analysis of each of the contracts in the filing. Moreover, for contracts meeting the standard for the multiple contract filing fee, the Commission's review of the cash settlement mechanism would involve a single analysis of the nature of the index and the process by which the underlying index values are determined. Separate comprehensive evaluations for each individual index would not be required since the same calculations apply to each. Since the underlying instruments are not traded in the cash market, the Commission need not conduct separate reviews of the underlying cash markets or the reliability or transparency of prices for the individual commodities. Because each contract must use an identical cash-settlement procedure and all other material terms and conditions must be the same (except for the differentiated term or the specified contract multiplier), the analysis of the cash settlement procedure for one contract would apply in large part to each of the additional contracts. Finally, because each contract in a filing must be differentiated only with respect to a single term or contract size feature that is not likely to affect the integrity of the cash settlement mechanism, each separate contract would not require a separate comprehensive analysis to ascertain its compliance with the requirements for designation.

The Commission notes that, regardless of the fee assessed for designation applications, the Commission will continue to conduct the same comprehensive review to ensure that each proposed contract meets all requirements for designation set forth in the Commission's Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR Part 5, Appendix A ("Guideline No. 1").[2] However, as explained above, for the types of applications covered by the multiple contract filing fee, the Commission's analysis of the case settlement procedure in general and its review of the other material terms and conditions likely would be applicable to each contract in the filing. Only a limited incremental analysis would be required to assess whether each additional contract in such a filing meets the designation requirements of Guideline No. 1, resulting in a much higher degree of efficiency in reviewing the applications and substantially reducing the marginal cost for reviewing and processing the additional contracts. The Commission's extensive experience in reviewing new contract designation applications indicates that, for simultaneously submitted multiple contract filings meeting the specified standards, a fee for each additional contract equal to 10 percent of the single contract application fee would reflect the Commission's expected review costs for these types of applications. To the extent the Commission finds otherwise, this fee will be adjusted in subsequent years.

The Commission wishes to make clear that the reduced option fee for the limited class of multiple-designation applications applies only to options on futures applications and not to options on physicals applications.

Under the new procedures noted above, the Commission's multiple contract designation application fees for filings meeting the standard discussed above are as follows: For filings involving multiple cash-settled futures—$6,800 for the first contract, plus $680 for each additional contract; for filings involving multiple options on cash-settled futures—$1,200 for the first contract, plus $140 for each additional contract; and for filings involving multiple combined cash-settled futures and options on those futures—$7,500 for the first futures and option contract, plus $750 for each additional futures and option contract. To be eligible for the reduced fees, contract markets must label the submission as a multiple contract filing and identify the cash settlement procedure to be used and the nature of the differentiated term or the different contract size specifications and justify why the application qualifies for this reduced fee.

[1] In this regard, contracts having differentiated spatial features include contracts that are identical in all respects including the cash settlement mechanism but which may be based on the application of differing objectively determined values for different geographical areas. These may include contracts on weather-related data or vacancy rates for rental properties, where each individual contract is based on the value—temperature, local vacancy rate, etc.—for a specific city. To be eligible for the multiple contract filing fee, each contract must be cash-settled based on the same underlying data source and derived under identical calculation procedures such that the integrity of the cash settlement mechanism is not dependent on the individual contract specifications and that values which vary are derived objectively using the same source or type of data. Thus, for example, applications containing a number of similar cash-settled contracts based on indexes of government debt of different foreign countries would not be eligible for the reduced fee since the manipulation potential of each contract would be related to the liquidity of the underlying instruments and the individual trading practices and governmental oversight in each specific country, requiring separate analyses.

[2] Guideline No. 1 details the information that an applicant for contract market designation should include in order to demonstrate that the contract market meets the economic requirements for designation.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies in proposing rules, to consider the impact of those rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and a registered futures association. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Therefore, the Chairperson, on behalf of the Commission, certifies, pursuant to 5 U.S.C. 605(b), that the fees herein will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on June 2, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–14390 Filed 6–7–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 97F–0421]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a final rule that appeared in the **Federal Register** of January 19, 1999 (64 FR 2854). The document amended the food additive regulations to provide for the safe use of di-*tert*-butyl-*m*-cresyl phosphonite condensation product with biphenyl for use as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food. The document was published with an error. This document corrects that error.

DATES: This regulation is effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 1999 (64 FR 2854), FDA amended the food additive regulations to provide for the safe use of di-*tert*-butyl-*m*-cresyl phosphonite condensation product with biphenyl for use as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food. The nomenclature of the additive was modified to include the term "meta" (*m*). This term was placed between "butyl" and "cresyl" in the name of the subject additive and between "butyl" and "cresol" in the name of one of the starting materials to provide more accurate and descriptive names.

In the preferred chemical nomenclature, the addition of "*m*" necessitates the use of a different numbering convention in the name of the starting material than is used in the absence of "*m*". In the final rule, the agency inadvertently omitted this renumbering in the name of the starting material. Therefore, the agency is amending 21 CFR 178.2010 to correct the error.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 178.2010 [Amended]

2. Section 178.2010 *Antioxidants and/or stabilizers for polymers* is amended in the table in paragraph (b) in the entry for "di-*tert*-butyl-*m*-cresyl phosphonite * * *" by removing "2,4-di-*tert*-butyl-*m*-cresol" and by adding in its place "4,6-di-*tert*-butyl-*m*-cresol".

Dated: June 1, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–14518 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Decoquinate; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a final rule that provided for adding a dry powder containing decoquinate to whole milk to be fed to calves for prevention of coccidiosis. The document incorrectly referred to those calves as replacement calves in the heading of § 520.534(d) (21 CFR 520.534(d)) for conditions of use. This document amends the regulation to state that decoquinate is for use in calves.

EFFECTIVE DATE: March 2, 1999.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 2, 1999 (64 FR 10103), FDA added § 520.534 to reflect approval of Alpharma Inc.'s new animal drug application (NADA 141–060) for use of 0.8 percent decoquinate powder in whole milk for ruminating and nonruminating calves including veal calves. In the heading for § 520.534(d), the document incorrectly stated that decoquinate medicated milk was for use in replacement calves. This document amends the heading for § 520.534(d) to state that decoquinate is for use in calves by removing the word "replacement".

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.534 [Amended]

2. Section 520.534 *Decoquinate* is amended in the heading for paragraph

(d) by removing the phrase "Replacement calves" and adding the word "*Calves*".

Dated: May 25, 1999.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–14517 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–125–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects and explains an OSM decision on provisions of a proposed amendment to the Pennsylvania regulatory program (hereinafter referred to as the Pennsylvania Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq., as amended. OSM published it decision on the amendment in the March 26, 1999, **Federal Register** (64 FR 14610). On May 5, 1999, Pennsylvania submitted a letter requesting that OSM reconsider portions of this decision. Specifically, Pennsylvania requested that OSM rescind its disapprovals of Pennsylvania's definition of "no-cost reclamation contract," a portion of the definition of "government-financed construction contract," a portion of Section 4.8(e)(52 P.S. 1396.4h(e)) and all of Section 4.8(g)(52 P.S. 1396.4h(g)), as they pertain to no-cost contracts. Pennsylvania also requested that OSM rescind its requirements that Pennsylvania amend PA SMCRA to delete the specified provisions.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C Harrisburg Transportation Center (Amtrack), 415 Market Street, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION: By letter dated November 21, 1997 (Administrative Record N0. PA–855.00), the Pennsylvania Department of Environmental Protection (PADEP) submitted proposed program amendment No. 2 to the Pennsylvania Abandoned Mine Land Reclamation (AMLR) Plan. By letters dated October 8 and October 13, 1998, PADEP submitted portions of its state law which it believed provided specific authorization for the proposed changes to the AMLR Plan. (Administrative Record No. PA 855.12). On March 26, 1999, OSM approved portions of the amendment, but disapproved sections referencing no-cost reclamation contracts. (64 FR 14610). By letter dated May 6, 1999 (Administrative Record No. PA–855.17), the PADEP submitted a letter to OSM, requesting that OSM rescind its disapprovals of the portions of the statutory amendment pertaining to no-cost reclamation contracts. This document revises and explains OSM's decisions with respect to no-cost reclamation contracts. In March 26, 1999, **Federal Register**, Notice, OSM determined that:

> Any expenses incurred directly or indirectly by the AML agency, including the costs of project design, solicitation, management and oversight, qualify as government financing. However, Pennsylvania defines no-cost contracts as those contracts that do not involve the expenditure of any government funding, either as direct payments or as indirect expenses such as those listed above. Therefore, Pennsylvania's definition of "government financed reclamation contract" is less effective than the Federal definition of "government-financed construction," at 30 CFR 707.5, to the extent that it would allow incidental coal extraction or coal refuse removal, without a permit, pursuant to no-cost contracts.

64 FR at 14616.

As a result of this determination, OSM disapproved the definition of the term "no-cost reclamation contract," and also disapproved other portions of the statutory amendment which contained the term "no-cost contract" or "no-cost reclamation contract." Finally, OSM required PADEP to amend its program to delete all statutory language in the amendment pertaining to "no-cost reclamation contracts." 30 CFR 938.16 (cccc), (dddd), (eeee), and (ffff).

In discussions with OSM after publication of the March 26, 1999, decision, PADEP provided additional information pertaining to its definition of "no-cost reclamation contracts." OSM requested that this information be provided in writing for further consideration. PADEP's letter dated May 6, 1999 (Administrative Record No. PA–855.17), explained that its definition of "no-cost reclamation contract" clearly envisions PADEP incurring indirect costs in reviewing information provided by a contractor, and in determining whether a contractor is eligible for a contract. PADEP also explained that the prohibition on the expenditure of Commonwealth funds, contained in the definition of "no-cost reclamation contract" refers only to "what OSM considers direct expenditures. In Pennsylvania, 'expenditures of Commonwealth Funds' would be a direct payment of money to the contractor from the Commonwealth to perform the reclamation." Therefore, PADEP contended, only direct payments to contractors are prohibited, but indirect project costs can, and indeed must, be allowed. Since the definition of "no-cost reclamation contract" does not prohibit indirect costs, PADEP stated that the definition is no less effective than and in accordance with the federal definition of "government financed construction " at 30 CFR 707.5. Finally, the PADEP argued that if the definition of "no-cost reclamation contract" can be approved, then all of the statutory sections of the amendment which contain references to "no-cost reclamation contracts" should also be approved.

Upon further consideration, and in view of the May 5, 1999, clarification provided by the PADEP, OSM hereby rescinds the following disapprovals:

52 P.S. 1396.3, the definition of "government-financed reclamation contract," paragraph (1)(i), the phrase "including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract"; and, paragraph (1)(ii), the phrase "including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area."

52 P.S. 1396.3, the definition of "no-cost reclamation contract."

52 P.S. 1396.4h(e), the following language: For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

52 P.S. 1396.4h(g), in its entirety.

In addition, OSM is removing the required amendments at 30 CFR

938.16(cccc), (dddd), (eeee) and (ffff). The effect of these actions is that OSM is now approving the concept of "no-cost reclamation contracts," and is also approving the statutory amendments referenced above, insofar as such contracts include indirect government financing. However, OSM's approval of these provisions is effective only to the extent that "no-cost reclamation contracts" which provide for the incidental extraction of coal, and which are less than 50% government financed, through indirect project financing, are treated in the same manner as Federally funded Title IV AML projects. Specifically, the projects must comply with the requirements of Subchapter R, Chapter VII of the Federal regulations, even where the projects receive state financing, but do not receive Federal financing.

The Federal regulations at 30 CFR part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this revised finding.

Section 938.15 Approval of Pennsylvania Regulatory Program Amendments is being amended in the table (third column, 64 FR at 14619) to show both the March 26, 1999, final publication of this amendment, and the date of the revision discussed in this notice.

Section 938.16 Required Regulatory Program Amendments is being amended to remove the required amendments at 30 CFR 938.16 (cccc), (dddd), (eeee) and (ffff).

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 19, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by revising the entry having the original amendment submission date of October 8, 1998, to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
October 8, 1998	March 26, 1999 and June 8, 1999	52 P.S. 1396.3, 1396.4h.

§ 938.16 [Amended]

3. Section 938.16 is amended by removing and reserving paragraphs (cccc), (dddd), (eeee), and (ffff).

[FR Doc. 99–14291 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–038]

RIN 2115–AE46

Speical Local Regulations for Marine Events; Hampton Offshore Challenge, Chesapeake Bay, Hampton, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Hampton Offshore Challenge, to be held on the waters of the Chesapeake Bay near Buckroe Beach, Hampton, Virginia. These regulations are needed to protect spectator craft and other vessels transiting the event area from the dangers associated with the event. This action is intended to enhance the safety of life and property during the event.

DATES: This temporary final rule is effective from 11:30 a.m. EDT (Eastern Daylight Time) to 4 p.m. EDT on June 11, 12 and 13, 1999.

ADDRESSES: Documents are indicated in this preamble are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer D. Merrill, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, (757) 483–8568.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Following normal rulemaking procedures would have been impractical because there is not sufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date. Immediate action is needed to protect vessel traffic from the potential hazards associated with this event.

Background and Purpose

U.S. Offshore Racing Association will sponsor the Hampton Offshore Challenge on June 11 and 12, 1999. The event will consist of 60 offshore powerboats conducting a high speed competitive race on the waters of the Chesapeake Bay near Buckroe Beach, Hampton, Virginia. A fleet of spectator vessels is anticipated for the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Chesapeake Bay. The temporary special local regulations will be in effect from 11:30 a.m. EDT to 4 p.m., EDT on June 11 and 12, 1999 and will restrict general navigation in the regulated area during the event. In the event of inclement weather, the regulations will be in effect the next day. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review of the Office of Management and Budget under that Order. It is not significant under the

regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because this temporary rule will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, the Coast Guard expects the impact of this temporary rule to be minimal.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this temporary final rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this temporary rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If you believe your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please submit a comment (see **ADDRESSES**) explaining your concerns.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this temporary final rule on State, local and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1531) because it will not result in the expenditure of $100,000,000 in any one year by State, local and tribal governments, in the aggregate, or the private sector.

Collection of Information

This temporary rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a marine event are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T05–038 is added to read as follows:

§ 100.35–T05–038 Hampton Offshore Challenge, Chesapeake Bay, Hampton, Virginia

(a) *Definitions:* (1) *Regulated area.* The waters of the Chesapeake Bay adjacent to Buckroe Beach commencing at a point on the shoreline at latitude 37°03′40″ North, longitude 76°16′55″ West, thence east southeast to latitude 37°03′13″ North, longitude 76°15′40″ West, thence south southwest parallel to the shoreline to longitude 37°00′04″ North, longitude 76°17′20″ West, thence west northwest to the shoreline at latitude 37°00′15″ North, longitude 76°18′13″ West. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special local regulations:* (1) All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates.* This section is effective from 11:30 a.m. EDT. (Eastern Daylight Time) to 4 p.m. EDT on June 11 and 12, 1999. In the event of inclement weather, this section will be effective on June 13, 1999 at the same time and place.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–14516 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–039]

Special Local Regulations for Marine Events; Patapsco River, Baltimore, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.515 during a fireworks display to be held June 14, 1999, on the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.515 is effective from 6 p.m. EDT (Eastern Daylight Time) to 11 p.m. EDT on June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The National Flag Day Foundation will sponsor a fireworks display on June 14, 1999 on the Patapsco River, Baltimore Maryland. The fireworks display will be launched from a barge positioned within the regulated area. In order to ensure the safety of participants and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–14515 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–036]

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations at 33 CFR 100.507 for the Great Chesapeake Bay Swim Event to be held on June 13, 1999. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATE: 33 CFR 100.507 is effective from 7 a.m. EDT (Eastern Daylight Time) until 2 p.m. EDT, on June 13, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Rd., Baltimore, MD 21226–1797, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The March of Dimes will sponsor the Great Chesapeake Bay Swim Event on the waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge. Approximately 600 swimmers will start from Sandy Point State Park and swim between the spans of the William P. Lane Jr. Memorial Bridge to the Eastern Shore. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of the participants and support vessels, 33 CFR 100.507 will be in effect for the duration of the event. Under provisions of 33 CFR 100.507, no vessels may enter the regulated area without permission of the Coast Guard patrol commander. Vessel traffic will be permitted to transit the regulated area as the swim progresses when the Patrol Commander determines it is safe to do so. As a result, maritime traffic should not be significantly disrupted.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–14514 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–048]

RIN 2115–AE47

Drawbridge Regulations; Grand Canal, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Tortoise Island drawbridge across the Grand Canal at Brevard County, Florida. The current regulations require the bridge to open on signal on Friday and Saturday evenings and on evenings immediately preceding Federal holidays. However, the bridge owner has documented a very low volume of traffic on these evenings. This rule will change the opening requirement for the bridge on these evenings from on signal to giving 30 minutes notice. This change in opening requirements will reasonably meet the needs of vessel traffic.

DATES: This rule becomes effective July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Miss Evelyn Smart, Project Manager, Bridge Section, (305) 536–6546.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 28, 1998, the Coast Guard published a Notice of Proposed Rulemaking entitled Drawbridge Operation Regulations, Grand Canal, Florida, in the **Federal Register** (63 FR 45978). On February 9, 1999, the Coast Guard published a Supplemental Notice of Proposed Rulemaking entitled Drawbridge Operation Regulations; Grand Canal, Florida, in the **Federal Register** (64 FR 6290). The Coast Guard received two letters commenting on the supplemental proposal. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard completed an analysis of drawbridge openings after reviewing bridge logs provided by the Tortoise Island Homeowners Association in July, 1998. The analysis indicated that a low volume of boat traffic was experienced over an extended period of time. From January 1977 through December 1997, only 7 boats required an opening on weekends and on evenings preceding Federal holidays between the hours of 10 p.m. and 6 a.m.

The Coast Guard originally proposed changing the opening requirements for weekend evenings and evenings preceding Federal holidays to require 2 hour notice prior to opening. The Coast Guard continues to believe that low vessel traffic during the evening hours on weekends justifies a change in opening requirements for this bridge. However, to minimize the impact on navigation, the Coast Guard decreased its original proposed 2 hour notice requirement to 30 minutes advance notice for a bridge opening on Friday

and Saturday nights and evenings preceding Federal holidays.

Discussion of Comments and Changes

Two letters were received in response to the public notice. The State of Florida, Department of Community Affairs stated in their letter that the proposal is consistent with the Florida Coastal Management Program. The National Marine Fisheries Service concluded in their letter that any adverse affects that might occur to living marine resources would be minimal and offered no objection. No objections were received from the marine public regarding the revised weekend evening restriction.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation. (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We concluded this because of a lack of demand for openings between 10 p.m. and 6 a.m. on weekends and on evenings preceding Federal holidays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because of the exemption for tugs with tows.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and has determined pursuant to Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A categorical exclusion determination for this rulemaking is available in the public docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard amends 33 CFR part 117, as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.285(b) to read as follows:

§ 117.285 Grand Canal.

* * * * *

(b) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that from 10 p.m. to 6 a.m. from Sunday evening through Friday morning, the draw shall open on signal if at least 2 hours advance notice is given. From 10 p.m. to 6 a.m. on Friday and Saturday and on evenings immediately preceding Federal holidays, the draw shall open on signal if at least 30 minutes advance notice is given.

Dated: May 20, 1999.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–14510 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ64

Surviving Spouse's Benefit for Month of Veteran's Death

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulation governing payment of death benefits to an eligible surviving spouse for the month of the veteran's death. This amendment allows payment of such benefits at the rate that would have been paid to the veteran had he or she not died where the monthly amount of dependency and indemnity compensation or pension payable to the veteran's spouse is equal to the amount of benefits the veteran would have otherwise received for the month of his or her death. This amendment is required by statute.

DATES: *Effective Date:* June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 5111(a) of title 38, United States Code, prohibits payment of compensation, pension, or dependency and indemnity compensation (DIC) benefits for any period before the first day of the month following the month in which an award or increased award of benefits was effective. In effect, VA generally may not pay first-time or increased benefits for any part of the first calendar month of entitlement. (See also 38 CFR 3.31).

Section 5111(c) provides certain exceptions to the general prohibition in section 5111(a), including the following:

> (Section 5111) shall apply to payments made pursuant to section 5310 of this title only if the monthly amount of [DIC] or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received, but for such veteran's death, for the month in which such veteran's death occurred.

38 U.S.C. 5111(c)(1).

Section 5310 of title 38, United States Code, provides authority under which VA may pay to a surviving spouse the amount of benefits which the veteran would otherwise have received for the month of his or her death. (When a veteran receiving compensation or pension dies, VA terminates his or her benefit payments effective the last day

of the month prior to the month of death. See 38 U.S.C. 5112(b)(1).) Under section 5310(a), if a surviving spouse is entitled to certain death benefits for the month of the veteran's death, the amount of benefits payable for that month "shall be not less" than the amount of compensation or pension the veteran would have received if he or she had not died.

VA has implemented the provisions of section 5111(c)(1) at 38 CFR 3.20(b) and 3.31(c)(1). In a recent opinion (VAOPGCPREC 10–98), VA's General Counsel pointed out that language in 38 CFR 3.20(b) is inconsistent with 38 U.S.C. 5111(c)(1). Section 5111(c)(1) provides, with respect to payments under section 5310, that payment for the first calendar month of entitlement is prohibited only if the amount of DIC or death pension payable exceeds the amount of compensation or pension that would have been payable to the veteran. Section 3.20(b), however, provides that payment for the first calendar month is permitted only if the amount of compensation or pension that would have been payable to the veteran exceeds the amount of DIC or death pension payable. These two provisions give different results if the amount of DIC or death pension payable equals the amount of compensation or pension that would have been payable to the veteran. In this situation, the statute would allow payment for the month of death, but the regulation would not. To that extent, 38 CFR 3.20(b) is inconsistent with section 5111(c)(1) of the statute.

Accordingly, we are amending § 3.20(b) to make it consistent with the statute. It now provides that a surviving spouse may receive payment for the month of the veteran's death if the veteran's rate of benefits is equal to or greater than the rate of death pension or DIC payable to the surviving spouse.

This final rule simply corrects VA regulations to reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.105 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 21, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.20 [Amended]

2. In § 3.20, the first sentence of paragraph (b) is amended by adding "equal to or" immediately after "if such rate is".

[FR Doc. 99–14141 Filed 6–7–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AH41

Service Connection Of Dental Conditions For Treatment Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs adjudication regulations for determining whether dental conditions are service-connected for purposes of eligibility for outpatient dental treatment. This amendment clarifies requirements for service connection of dental conditions and provides that VA will consider certain dental conditions service-connected for treatment purposes if they are shown in service after a period of 180 days.

DATES: *Effective Date:* June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Lorna Fox, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7223.

SUPPLEMENTARY INFORMATION: On February 24, 1997, VA published in the **Federal Register** (62 FR 8201), a proposal to amend those sections of 38 CFR part 3 and part 4 that govern whether dental conditions are service-connected for purposes of eligibility for outpatient dental treatment under 38 U.S.C. 1712 (implemented by 38 CFR 17.161). Interested persons were invited to submit written comments, suggestions or objections. We received comments from Paralyzed Veterans of America and one individual.

Section 1712 of 38 U.S.C. states that veterans with noncompensable service-connected dental conditions are entitled to a one-time correction of the dental conditions by VA under certain circumstances. VA regulations at 38 CFR 3.381 and 3.382 previously stated that for purposes of outpatient dental treatment, service connection for certain noncompensable dental conditions is warranted only if the conditions are shown after a 'reasonable period of service.' We proposed to replace the subjective term "reasonable period of service" with the objective requirement of 180 days or more of active service.

One commenter stated that a 180 day requirement "seems to clash significantly" with both 38 U.S.C. 1111, which requires VA to consider every veteran to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at the time, and § 1153, which requires VA to consider preexisting injury or disease to have been aggravated by active military service where there is an increase in disability during such service that was not due to the natural progress of the disease. Section 1111 states that "[f]or the purposes of section 1110 of this title," the presumption of soundness shall apply. Section 1110 of title 38, United States Code, applies to payment of compensation for disability. Section 1111 is therefore not applicable to determining eligibility to outpatient dental treatment under 38 U.S.C. 1712. In addition, section 1153 of title 38, United States Code, applies only to disabilities. Because noncompensable dental conditions are not considered to be disabilities (see former 38 CFR 4.149) section 1153 is also not applicable to 38 U.S.C. 1712 determinations. Therefore, we make no change based on this comment. We acknowledge that in the notice of proposed rulemaking, we stated that, for purposes of consistency with 38 CFR 3.304(b), VA was proposing to delete 38 CFR 3.381(d), which stated that the presumption of soundness does not apply to noncompensable dental conditions. 62 FR 8201, 8202 (1997). Notwithstanding this statement, as explained above,

based upon the plain language of 38 U.S.C. 1110 and 1111, we do not believe that the presumption of soundness is applicable to determinations of service connection under § 3.381.

The commenter also states that VA has extended "even further the 'reasonable period of service' requirement established in the (Court of Veterans Appeals) *Manio* decision which held, in essence, that 120 days, not 180 days as proposed, was sufficient to meet that requirement." As explained in the notice of proposed rulemaking, the Court of Veterans Appeals held in *Manio* v. *Derwinski*, 1 Vet. App. 140 (1991), that four months satisfied the reasonable-period-of-service requirement "under the facts of that case." 62 FR 8202. In our view, 180 days better defines the former reasonable-period-of-service requirement than 120 days. In fact, we possibly could have further lengthened the period since, as stated in the proposal "[d]ental caries and other dental pathology take time to develop, often a year or two in permanent teeth" (62 FR 8202). Even so, we believe the 180 days is reasonable. This also is consistent with the fact that the Academy of General Dentistry recommends that a patient visit a dentist at least every six months so that the dentist can monitor the patient's oral health and help prevent problems from arising. Under these circumstances, it is more likely than not that caries or pathology which become apparent within the first 180 days of service pre-existed that service.

Another commenter stated that VA should amend the eligibility rules to allow outpatient dental care for veterans with wartime service who are receiving long-term nursing home care without regard to other eligibility requirements. While we sympathize with the health care needs of veterans receiving nursing care, the eligibility criteria for outpatient dental care are specified in 38 U.S.C 1712, which contains no provision regarding eligibility based on nursing home care. Since we are not free to create by regulation eligibility that is not authorized by statute, we make no change based on this comment.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted without change.

The Secretary hereby certifies that this proposed amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability Benefits, Health care, Pensions, Veterans.

38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: April 21, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.381 is revised to read as follows:

§ 3.381 Service connection of dental conditions for treatment purposes.

(a) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease will be considered service-connected solely for the purpose of establishing eligibility for outpatient dental treatment as provided in § 17.161 of this chapter.

(b) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service. When applicable, the rating activity will determine whether the condition is due to combat or other in-service trauma, or whether the veteran was interned as a prisoner of war.

(c) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.

(d) The following principles apply to dental conditions noted at entry and treated during service:

(1) Teeth noted as normal at entry will be service-connected if they were filled or extracted after 180 days or more of active service.

(2) Teeth noted as filled at entry will be service-connected if they were extracted, or if the existing filling was replaced, after 180 days or more of active service.

(3) Teeth noted as carious but restorable at entry will not be service-connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service-connected.

(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service-connected if extraction was required after 180 days or more of active service.

(5) Teeth noted at entry as non-restorable will not be service-connected, regardless of treatment during service.

(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.

(e) The following will not be considered service-connected for treatment purposes:

(1) Calculus;

(2) Acute periodontal disease;

(3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and

(4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.

(f) Teeth extracted because of chronic periodontal disease will be service-connected only if they were extracted after 180 days or more of active service.

(Authority: 38 U.S.C. 1712)

§ 3.382 [Removed and Reserved]

3. Section 3.382 is removed and reserved.

PART 4—SCHEDULE FOR RATING DISABILITIES

4. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

§ 4.149 [Removed and Reserved]

5. Section 4.149 is removed and reserved.

[FR Doc. 99–14250 Filed 6–7–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–1a; FRL–6353–2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: We, the United States Environmental Protection Agency (EPA), are approving the Ohio Environmental Protection Agency's (OEPA) September 16, 1998 and December 29, 1998, requests for revisions to the Ohio State Implementation Plan (SIP). These requests include an exemption for de minimis sources from the requirement to obtain a permit to operate (OAC 3745–15–05) and revises the permit to operate rule (OAC 3745–35–02). Revisions to OAC 3745–35–02 establish exemptions from the rule, revise the application filing deadline, and allow applicants the ability to demonstrate that their sources are in compliance through a compliance schedule when they are not in compliance at the time of permit issuance. These revisions will not inhibit OEPA from ensuring compliance with the national ambient air quality standards.

DATES: This rule is effective on August 9, 1999, unless EPA receives adverse written comments by July 8, 1999. If we receive adverse comment, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Steve Gorg or Genevieve Damico, Environmental Engineers, at 312–353–8641 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steve Gorg or Genevieve Damico, Environmental Engineers, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, 312–353-8641.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

A. What action are we taking today?
B. Who is affected by this rulemaking action?
C. What are the revisions to OAC rule 3745–35–02?
D. What recordkeeping and reporting requirements are required of my facility to be exempted from the requirement to obtain a permit to operate?
E. Why can we approve this request?
F. What is the background of this rulemaking?

A. What Action Are We Taking Today?

We are approving OEPA's September 16, 1998 and December 29, 1998, requests for revisions to the Ohio SIP. These requests include an exemption for de minimis sources from the requirement to obtain a permit to operate (OAC 3745–15–05) and revision to the permit to operate requirement (OAC 3745–35–02).

B. Who Is Affected by This Rulemaking Action?

OAC 3745–35–02 applies to all new and existing sources, including those sources which are subject to EPA's New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). Generally, this rule requires an owner of an air contaminant source (referred to in this notice as "you"), to apply for and obtain a permit to operate from the OEPA.

Under OAC 3745–15–05, you are not required to get a permit to operate if your facility has potential emissions less than ten pounds per day, except when the Clean Air Act requirements limit or restrict your facility's emissions. This exemption does not apply if your facility:

(1) Is subject to a requirement of the SIP;
(2) Emits radionuclides;
(3) Has potential emissions of any air pollutant in excess of twenty-five tons per year, alone or in combination with a similar source at the same facility; or,
(4) Emits more than one ton per year of any one or a combination of hazardous air pollutants.

C. What Are The Revisions To OAC Rule 3745–35–02?

The revisions to OAC rule 3745–35–02 establish:

(1) Exemptions from the rule if you are:

(a) a source that is exempted under OAC 3745–31–03 (A)(1) or (A)(2);

(b) required to obtain a Title V permit as defined in Chapter 3745–77 of the OAC; or,

(c) a source that is exempt from getting a permit to operate under OAC 3745–15–05;

(2) An application filing date no later than thirty days after commencement of operation; and,

(3) The requirement to demonstrate that your facility will be in compliance with all applicable air pollution control laws through a compliance schedule that is at least as stringent as those laws, if you are not complying at the time of permit issuance.

D. What Recordkeeping and Reporting Requirements Are Required of My Facility To Be Exempted From The Requirement To Obtain a Permit To Operate?

If your facility meets the exemption criteria in OAC 3745–15–05, then you must:

(1) Keep records that prove actual emissions of any air contaminant from your facility did not exceed the de minimis level,

(2) Maintain records for two years; and

(3) Submit an exceedence report and an application for a permit to install if your facility exceeds the de minimis level.

E. Why Can We Approve This Request?

These revisions are approvable because:

(1) The revisions to OAC 3745–35–02 affect the Ohio state operating permit program and do not affect the requirements established by Title V of the Clean Air Act. If you are required to obtain a Title V permit, you must apply for such a permit under OAC 3745–77.

(2) OAC 3745–15–05 establishes exemptions for small sources of air pollution that have little or no adverse impact on air quality. This rule does not apply if your facility is subject to a requirement of the SIP.

F. What Is the Background of This Rulemaking?

OAC 3745–35–02 and 3745–15–05 became effective as a matter of Ohio State law on April 20, 1994. OEPA's original OAC 3745–35–02 was approved on June 10, 1982 (47 FR 25144).

EPA Action

In this rulemaking action, EPA approves OEPA's September 21, 1998 and January 8, 1999 request for revisions to OAC rule 3745–35–02 and OAC rule 3475–15–05, respectively. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, should adverse written

comments be filed, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision. This action will be effective August 9, 1999 without further notice unless EPA receives relevant adverse written comment by July 8, 1999. Should the Agency receive such comments, we will publish a withdrawal document informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 9, 1999.

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that may have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70–3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action

taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio Clean Air Act program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, and part 81 subpart c of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 52.1870 is amended by adding (c)(119) and (c)(120) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(119) On September 21, 1998, Ohio submitted revisions to its Permit to Operate rules as a revision to the State implementation plan.

(i) Incorporation by reference

(A) Ohio Administrative Code 3745–35–02, adopted April 4, 1994, effective April 20, 1994.

(120) On January 3, 1999, Ohio submitted, as a State implementation plan revision, de minimus exemption provisions for its permitting rules.

(i) Incorporation by reference

(A) Ohio Administrative Code 3745–15–05, adopted April 4, 1994, effective April 20, 1994.

[FR Doc. 99–14052 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 011–0146; FRL–6353–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District, and Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approvals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 18, 1999. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of sulfur dioxide (SO_2) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control the sulfur content of fuels within the South Coast Air Quality Management District and the Siskiyou County Air Pollution Control District, emissions of sulfuric acid mist within the San Joaquin Valley Unified Air Pollution Control District and emissions of sulfur dioxide in the Bay Area Air Quality Management District. Thus, EPA is finalizing a limited approval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions. There will be no sanctions clock as South Coast Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District, and Bay Area Air Quality Management District are in attainment for SO_2.

EFFECTIVE DATE: This action is effective on July 8, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7714.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726.

Siskiyou County Air Pollution Control District, 525 South Foothill Dr., Yreka, CA 96097

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 431.2, Sulfur Content of Liquid Fuels, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4802, Sulfuric Acid Mist, Siskiyou County Air Pollution Control District (SCAPCD) Rule 4.14, Sulfur Content of Fuels and Bay Area Air Quality Management District (BAAQMD) Regulation 9 Rule 1, Sulfur Dioxide. SCAQMD Rule 431.2 and SCAPCD Rule 4.14 were submitted by the California Air Resources Board (CARB) to EPA on December 31, 1990, BAAQMD Regulation 9 Rule 1 was submitted by CARB to EPA on September 14, 1992, and SJVUAPCD Rule 4802 was submitted by CARB to EPA on November 18, 1993.

II. Background

On March 18, 1999 in 64 FR 13379, EPA proposed granting limited approval of the following rules into the California SIP: SCAQMD Rule 431.2, SJVUAPCD Rule 4802, SCAPCD Rule 4.14, and BAAQMD Regulation 9 Rule 1. SCAQMD Rule 431.2 was adopted by SCAQMD on May 4, 1990 and SCAPCD Rule 4.14 was adopted by SCAPCD on July 11, 1989. These rules were submitted by the CARB to EPA on December 31, 1990. SJVUAPCD Rule 4802 was adopted by SJVUAPCD on December 17, 1992 and was submitted by the CARB to EPA on November 18, 1993. BAAQMD Regulation 9 Rule 1 was adopted on May 20, 1992 and was submitted by the CARB to EPA on September 14, 1992. A detailed discussion of the proposed action for each of the above rules is provided in the proposed rule [1] (PR).

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of these rules in order to strengthen the SIP. The PR identified the following rule deficiencies which should be corrected.

SCAQMD's Rule 431.2 should be corrected to remove Executive Officer discretion in approving alternate test methods. EPA also recommends that a reference to a CARB specification for motor vehicle diesel fuel be updated.

SJVUAPCD's Rule 4802 should be corrected to incorporate recordkeeping requirements. EPA also recommends correction of a typographical error found in the rule.

SCAPCD's Rule 4.14 should be corrected to incorporate recordkeeping requirements and test methods to determine compliance.

BAAQMD's Regulation 9 Rule 1 should be corrected to incorporate recordkeeping requirements, update the ground level sulfur dioxide limits and to update a cited test method which has been deleted.

SCAQMD, SJVUAPCD and SCAPCD should also include information on the length of time records are to be retained. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in technical support documents (TSDs) available at EPA's Region IX office (TSD dated 2/12/99 for SCAQMD Rule 431.2 and TSD dated 2/19/99 for SJVUAPCD Rule 4802, SCAPCD Rule 4.14 and BAAQMD Regulation 9 Rule 1.)

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 13379. EPA received one comment letter on the PR from the South Coast Air Quality Management District. The comment has been evaluated by EPA and EPA's response is set forth below.

Comment: SCAQMD indicated that staff will address EPA's comments and consider the suggestions for strengthening the rule.

Response: EPA will work with SCAQMD in response to EPA's comments.

IV. EPA Action

EPA is finalizing a limited approval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the PR. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

As stated in the proposed rule, there is no sanctions clock as SCAQMD, SJVUAPCD, SCAPCD, and BAAQMD are in attainment for SO_2. It should be noted that the rules covered by this FR have been adopted by the SCAQMD, SJVUAPCD, SCAPCD, and BAAQMD and are currently in effect in those districts. EPA's limited approval action will not prevent SCAQMD, SJVUAPCD, SCAPCD, BAAQMD or EPA from enforcing these rules.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives

[1] The proposed rule was published on March 18, 1999 in 64 FR 13379.

considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(182)(i)(A)(*5*) and (c)(182)(i)(G), (c)(189)(i)(C)(*2*), and (c)(194)(i)(C)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(A) * * *

(*5*) Rule 431.2, amended on May 4, 1990.

* * * * *

(G) Siskiyou County Air Pollution Control District.

(*1*) Rule 4.14, adopted on July 11, 1989.

* * * * *

(189) * * *

(i) * * *

(C) * * *

(*2*) Regulation 9 Rule 1, amended on May 20, 1992.

* * * * *

(194) * * *

(i) * * *

(C) * * *

(*3*) Rule 4802, adopted on May 21, 1992, and amended on December 17, 1992.

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[FR Doc. 99–14222 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0127c; FRL–6356–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action redesignates the number of a paragraph in Title 40 of the Code of Federal Regulations that appeared in a direct final rule published in the **Federal Register** on March 30, 1999.

EFFECTIVE DATE: This action is effective on June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: On March 30, 1999 at 64 FR 15129, EPA published a direct final rulemaking action approving El Dorado County Air Pollution Control District (EDCAPCD), Rule 239 of the California State Implementation Plan (SIP). This action contained amendments to 40 CFR part 52, subpart F. The amendments which incorporated material by reference into § 52.220, Identification of plan, paragraph (c)(256)(i)(D) are being redesignated as (c)(256)(i)(E) in this action.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 25, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by redesignating paragraph (c)(256)(i)(D) as (c)(256)(i)(E).

[FR Doc. 99–14352 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 122–4066; FRL–6355–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Enhanced Inspection and Maintenance Program Network Effectiveness Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision supplement submitted by the Commonwealth of Pennsylvania on August 21, 1998. This supplement consists of a demonstration of the effectiveness of the Pennsylvania SIP's enhanced motor vehicle emissions inspection and maintenance (I/M) program.

It includes a demonstration of the effectiveness of Pennsylvania's I/M testing network to satisfy the requirements of the National Highway Systems Designation Act of 1995 (NHSDA). The effect of this action is to approve the Commonwealth's demonstration of the effectiveness of its I/M program testing network, and to remove all *de minimus* conditions related to EPA's approval of Pennsylvania's program under the NHSDA. There is one remaining major condition of EPA's January 28, 1997 approval of Pennsylvania's I/M program related to the methodology for conducting on-going evaluation of the enhanced I/M program. Pennsylvania addressed that condition in a separate SIP submittal made to EPA on November 26, 1998. EPA will take separate action upon that submittal.

EFFECTIVE DATE: This final rule is effective on July 8, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or via e-mail at Rehn.Brian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 16, 1998, EPA published a notice of direct final rulemaking (DFR) to approve the Commonwealth of Pennsylvania's August 21, 1998 I/M program SIP supplement (see 63 FR 49436). Pennsylvania's August 21, 1998 SIP supplement included the Commonwealth's enhanced I/M program network effectiveness demonstration, as required by the NHSDA. It also addressed seven *de minimus* I/M program deficiencies EPA identified in its January 28, 1997 interim conditional approval of Pennsylvania's I/M program SIP (see 62 FR 4004).

Opportunity for comment was provided, however, as EPA also published a proposed rule (63 FR 49517) in the same volume of the **Federal Register** in which the DFR appeared, proposing to approve the Commonwealth's August 21, 1998 SIP submission. The preamble of the DFR

stated that in the event EPA received adverse comments, the DFR would be withdrawn and public comments would be considered pursuant to the proposed rule. Because EPA received four letters of adverse comment, it withdrew the DFR on October 21, 1998 (53 FR 56086). The public comments submitted relevant to the September 16, 1998 proposed rule (63 FR 49517) are addressed in the "Summary of Public Comments/Response to Public Comments" section of this document.

The rationale and the specifics of EPA's proposed action were explained in the September 16, 1998 DFR referenced in the accompanying notice of proposed rulemaking (NPR) and will not be restated.

II. Summary of the Public Comments/ Response to the Public Comments

This section discusses and summarizes the comments submitted during the comment period for the NPR published in the September 16, 1998 **Federal Register**. This section also contains EPA's formal response to those comments. Comments were submitted by the Clean Air Council, Gordon-Darby, Inc., the New Jersey Department of Environmental Protection (DEP), and by Francis W. Jackson (a private citizen of Pennsylvania). Only those comments relevant to EPA's September 16, 1998 proposed action to approve the Commonwealth's August 21, 1998 SIP supplement are addressed in today's rulemaking. Copies of the comment letters are available at the EPA Regional Office listed in the **ADDRESSES** section of this final rule. Comments have been summarized and grouped by commenter, and EPA's response directly follows each summarized comment.

New Jersey Department of Environmental Protection

Comment: The commenter states that any action by EPA to approve Pennsylvania's submittal weakens efforts by other states to implement cost-effective and environmentally defensible programs.

Response: EPA granted states flexibility to develop their respective enhanced I/M programs through its 1992 I/M Rule. This flexibility was further expanded in 1995 with passage of the NHSDA. This flexibility was intended to allow states to tailor programs unique to their needs, and to provide for cost-effective programs, while still achieving the desired emissions reduction benefits. EPA does not believe that approval of Pennsylvania's August 1998 SIP supplement jeopardizes efforts by other states to implement their chosen programs. EPA believes that the data submitted by Pennsylvania adequately supports the network effectiveness demonstration for the Commonwealth's chosen network. Other states are free to submit whatever data they believe is appropriate to support a network effectiveness demonstration for their chosen network.

Comment: The commenter states that given the national implications of EPA's approval action, it is incumbent upon EPA to seek all information supporting its action and to allow interested parties sufficient time to comment on Pennsylvania's program.

Response: At the request of a commenter, EPA extended the comment period on its proposed action to approve Pennsylvania's NHSDA demonstration SIP submittal to November 16, 1998, a full 30 days beyond the original deadline of October 16, 1998 specified in the September, 16 1998 NPR. EPA believes that this extended comment period was adequate to allow all interested parties to review the relevant materials and to submit their comments. EPA has taken into consideration all comments received during the extended comment period in its decisions related to this final rule.

Comment: The commenter states that Pennsylvania's NHSDA demonstration provides no qualitative or quantitative, incremental assessment of the program subsequent to implementation. The commenter further states that Pennsylvania's decision not to submit a program evaluation per the guidelines developed by the Environmental Council of States (or ECOS) would establish a precedent allowing other NHSDA states to follow suit and not to submit specific qualitative assessment information to either the participating ECOS or to EPA. The commenter further states that approval of Pennsylvania's demonstration would make it difficult for other states to retain the resources and support necessary to develop and submit meaningful, qualitative program evaluation information. Finally, the commenter states that EPA's approval of Pennsylvania's demonstration will not result in a meaningful quantitative ongoing program evaluation, as required by 40 CFR 51.353(c) and amended in 63 FR 1362.

Response: The Conference Report to the NHSDA directed EPA to approve, on an interim basis, any state program utilizing a decentralized test network, if the emissions reductions claimed by the state were based upon available information about actual effectiveness. Final approval of the proposed credit estimates would then be granted if the interim program demonstrated that the credits were appropriate.

The NHSDA does not require Pennsylvania to provide an incremental assessment of its program since the inception of the enhanced program. What is provided by the Commonwealth's program effectiveness demonstration is a description of the steps taken to implement the commitments contained in its "Good Faith Estimate"—submitted in 1996 as a basis for interim approval of its program under the NHSDA. That "Good Faith Estimate" served as Pennsylvania's justification of its credit claims for its decentralized program. The August 1998 "NHSDA Description of Program Effectiveness" document describes Pennsylvania's efforts to ensure its program is operating as effectively as intended and supplies enhanced program operating data to substantiate Pennsylvania's claims for emission reduction credits from its program. The data program summary is based upon data gathered during the first year of operation, and includes: an overview of participating test stations, information on individual emissions inspectors, a summary of overt and covert audit efforts, a summary of remedial activities triggered by audits, and examples of the computerized record audit process.

EPA has not mandated the use of the guidelines developed by ECOS for NHSDA demonstrations. EPA made clear during the development of those guidelines that it could not bind states to comply with such voluntary guidelines. The Commonwealth has made it known to the participants of the ECOS process from the outset that it would not be bound by ECOS's guidelines. EPA believes that the Commonwealth's "NHSDA Description of Program Effectiveness" provides a reasonable assessment of its program to serve as the basis for EPA to determine that it demonstrates equivalency with a centralized program, per the requirements for such demonstrations in Section 348 of the NHSDA. The data is credible in that it provides actual data from the operation of the enhanced program. EPA believes this data supports approval of the Commonwealth's demonstration under section 348(c)(3) of the NHSDA.

With regard to the comment that Pennsylvania's approach to a NHSDA demonstration sets a precedent for future demonstrations, by this point in time most states with decentralized I/M programs developed pursuant to the NHSDA have already selected the methods for evaluation of their programs, and in most cases should have already submitted their

demonstrations to EPA. EPA finds that the Commonwealth's demonstration provides actual data on the program elements found in its 1996 Good Faith Estimate. Moreover, EPA will review each affected state's NHSDA demonstration, individually, and render an objective finding based upon each state's submittal. Contrary to the notion that this demonstration allows other states to submit demonstrations that do not quantitatively evaluate incremental program benefits, EPA believes the statute does not expressly require or prohibit that type of demonstration in all cases.

Finally, EPA does not agree that approval of the Commonwealth's NHSDA demonstration will undermine efforts by Pennsylvania and other states to conduct meaningful ongoing evaluations of I/M programs and their benefits as required by 40 CFR 51.351(c). EPA revised those requirements on January 9, 1998 (see 63 FR 1362), and on October 30, 1998, EPA published guidance to provide options for states in choosing scientifically sound ongoing program evaluation methodologies. EPA fully expects states to comply with the revised requirements by selecting an approved methodology for conducting the ongoing program evaluations. On November 26, 1998, Pennsylvania submitted a SIP revision supplement consisting of its chosen methodology from the list of options published by EPA to comply with the ongoing I/M program evaluation requirements of 40 CFR 51.351(c). EPA will take separate action, in the near future, upon that submittal.

Comment: The commenter believes that states should not be allowed to avoid submitting meaningful information to demonstrate the effectiveness of their I/M programs—even in light of recent flexibility granted to states in designing and implementing I/M programs.

Response: EPA believes that the ongoing program evaluation, required by 40 CFR 51.351(c), in conjunction with the data analysis and reporting requirements of 40 CFR 51.366, will provide meaningful information about enhanced I/M program effectiveness. By approving Pennsylvania's NHSDA demonstration, EPA has in no way reduced or eliminated the Commonwealth's obligation to conduct ongoing enhanced I/M program evaluations under 40 CFR 51.351. Neither does the fact that EPA has provided states with flexibility in adopting and implementing enhanced I/M programs reduce those states' obligation to conduct ongoing enhanced I/M program evaluations under 40 CFR 51.351.

Clean Air Council

Comment: The commenter believes EPA should wait to approve Pennsylvania's I/M program because there is insufficient data to support finding that Pennsylvania's program should receive full credit. The Council recommends EPA withhold final rulemaking on the adequacy of Pennsylvania's program for at least six months, until the program can be better evaluated.

Response: The NHSDA established timeframes for the development and implementation of I/M programs by states, and the Clean Air Act establishes timeframes for EPA to take rulemaking action upon such programs. Pennsylvania submitted a redesigned I/M program SIP on March 22, 1996, under the authority granted by the NHSDA. EPA's January 28, 1998 rulemaking action to grant conditional interim approval of that SIP revision started an eighteen month interim approval period, under the authority of the NHSDA. During that period, the Commonwealth was to adopt final regulations, to commence operation of the enhanced I/M program, and to submit a demonstration of actual network effectiveness based upon data collected during the interim approval period.

Pennsylvania's interim approval period expired on August 28, 1998. The NHSDA provides for no extension of this interim approval period. Under the timeframes set forth by the NHSDA, EPA was therefore compelled to take expeditious action upon the Commonwealth's August 21, 1998 SIP amendment to prevent the lapsing of the interim approval under the NHSDA, which could result in the imposition of sanctions. EPA believes that it has enough information in the data submitted by Pennsylvania to determine the effectiveness of the Pennsylvania program.

Comment: Clean Air Council expresses concern that Pennsylvania is overemphasizing compliance assistance at the expense of program enforcement, thus jeopardizing the integrity of the program. The Clean Air Council is also concerned that Pennsylvania had not yet selected its methodology for performing the required ongoing program evaluations.

Response: EPA's I/M rule (40 CFR part 51, subpart S) requires the establishment of minimum penalties for violations of program rules and procedures that can be imposed against stations, contractors, and inspectors. Pennsylvania's regulation includes a penalty schedule which provides for minimum penalties against both enhanced I/M stations and inspectors. This schedule meets the minimum limits set forth in EPA's I/M rule, at 40 CFR 51.364. Pennsylvania also has the authority to temporarily suspend station and inspector licenses immediately upon discovery of program rule violations.

Use of auditing and follow-up enforcement serve to further ensure the integrity of the I/M program. Pennsylvania, through its oversight contractor MCI, uses professionals to conduct both overt and covert audits. Pennsylvania's "NHSDA Description of Program Effectiveness" document indicates that the Commonwealth conducted over 2,000 overt and covert audits between October, 1997 and August, 1998. Pennsylvania routinely conducts computerized record audits. Through these audits, Pennsylvania has uncovered violations stemming from activities classified as fraudulent, improper, and careless. While the Commonwealth has focused heavily on compliance assistance during the early stage of implementation, EPA finds that Pennsylvania has sufficient enforcement resources to oversee its decentralized network of testing stations and inspectors in a capable manner. The Commonwealth has acknowledged that it has been judicious in its use of its punitive enforcement authority during this early stage of enhanced program implementation. While a long-term strategy that relied too heavily upon compliance assistance versus more the punitive enforcement mechanisms available to the Commonwealth could jeopardize its program's integrity, there is no basis to find that Pennsylvania intends to so implement the enforcement of its enhanced I/M program once the program is fully established. Moreover, EPA does not agree with the commenter that Pennsylvania's enforcement history for the first year of program operation limits that program's network effectiveness with respect to requirements for the NHSDA demonstration. EPA believes the state should provide technical/remedial training assistance in the early stages to ensure smooth operation of the new program.

The commenter stated that Pennsylvania had not selected a methodology for its ongoing program effectiveness evaluation at the time of its August 1998 submittal, and that such information would be useful in evaluating network effectiveness. EPA's conditional interim approval of Pennsylvania's SIP did not require the

submission of an ongoing program evaluation methodology until November 30, 1998, as codified at 40 CFR 52.2026(a)(2). At the time Pennsylvania submitted its network effectiveness demonstration, EPA had not yet issued guidance on alternative methods to conduct an ongoing program evaluation. Therefore, EPA cannot base its approval of Pennsylvania's NHSDA demonstration upon a lack of data from the Commonwealth's ongoing program evaluation. On October 30, 1998, EPA did publish guidance to provide options for states in choosing scientifically sound ongoing program evaluation methodologies. Pennsylvania submitted its choice of evaluation methodology to EPA on November 25, 1998. EPA will take separate action, in the near future, upon that submittal.

Gordon Darby

Comment: The Environmental Council of States (ECOS) has developed a program evaluation process that includes both qualitative and quantitative measures. State participation in this process is voluntary. The purpose of the ECOS process was to provide a framework to ensure consistent, technically credible state submittals. Pennsylvania participated in the ECOS group and helped develop the process, but decided it was not bound by the process. The commenter fears this decision may undermine other NHSDA states' efforts to submit qualitative, and subsequently, quantitative demonstrations of program effectiveness pursuant to the ECOS recommendations.

Response: This comment is similar to a comment submitted by the New Jersey DEP. See EPA's response to that comment for further information. Pennsylvania's participation in the ECOS process to develop demonstration guidelines does not mean that the Commonwealth was bound to follow the resulting ECOS guidelines. EPA does not support the commenter's position that failure by a state to abide by the non-binding peer criteria jeopardizes the credibility of that state's NHSDA demonstration. EPA cannot disapprove a state's SIP submission on the basis that it failed to meet voluntary procedures developed by a group of peer states. EPA's approval decision is based upon the merits of the Commonwealth's demonstration. EPA believes that the Commonwealth's submittal is adequate to serve as its program effectiveness demonstration.

Comment: The commenter states that, in the past, EPA has attempted to assist states in determining program effectiveness through audits and other technical assistance. The commenter then states that since passage of the NHSDA in 1995, EPA has largely allowed states to implement whatever type of program they want, with the provision that each state would need to later demonstrate the projected effectiveness. The commenter then states that EPA's proposal to approve Pennsylvania's NHSDA demonstration instead appears to allow Pennsylvania to avoid having to submit meaningful information regarding program effectiveness.

Response: Since the passage of the revised Clean Air Act in 1990 and the NHSDA in 1995, EPA has provided considerable assistance to states in order to secure the adoption and implementation of effective enhanced I/M programs in accordance with federal law. EPA does not find that applicable federal law mandates a "one size fits all" approach to the design of states' enhanced I/M programs. EPA does not interpret the NHSDA to require states to determine overall program effectiveness, since EPA has already determined the effectiveness of the model program supporting the performance standard. Rather, states must merely demonstrate that the unique flexibility options they have selected, with particular emphasis on test network type, have not adversely impacted the credits claimed for their programs in relation to the model program.

Comment: The commenter states that Pennsylvania's "Good Faith Estimate" ignores the repair side of the I/M equation, and that all of the data in its demonstration focuses on vehicle inspection results, with no data presented on even basic repair results. The commenter asserts, therefore, that it is not possible to verify that the "enhanced" Pennsylvania program is significantly reducing vehicle emissions beyond its previously enacted basic I/M program.

Response: Pennsylvania chose to study repair effectiveness indirectly, through comparison of initial and retest data on the number of vehicles that passed and failed. That analysis indicates that approximately 35% of vehicles that failed initial testing passed their first retest within 30 days of initial testing. This data seemingly indicates the percentage of vehicles getting effective repairs prior to their first retest. EPA does not interpret the NHSDA to specifically require states to directly study repair effectiveness, and to include such data in their NHSDA demonstrations.

Comment: The commenter takes exception to Pennsylvania's approach to evaluation of the program based upon MOBILE5 modeling because Pennsylvania has stated, in the past, that the current version of the MOBILE emissions estimation model does not reflect reality, particularly with relation to the model's 50% credit discount for test-and-repair programs. The commenter also states that the use of the MOBILE5 model to evaluate the program overlooks substantial recent data which suggests that MOBILE5 overpredicts I/M benefits, and that EPA is consequently working on major I/M credit changes for use in a future version of the model—MOBILE6. The commenter, therefore, believes that it does not make sense to evaluate any state's I/M program at this time using MOBILE5.

Response: Although EPA is in the process of updating the MOBILE emissions model, until EPA completes that process MOBILE5 remains an accepted program evaluation tool in its current version for use in determining compliance with the I/M performance standard, per the requirements of 40 CFR 51.351. States must correctly evaluate their programs under the NHSDA and cannot wait for EPA to complete its revision of the MOBILE model to begin program evaluation. Further, EPA believes that the commenter took Pennsylvania's statement in its "NHSDA Description of Program Effectiveness" out of context. EPA believes that Pennsylvania meant to state, as background information, that MOBILE5 was the tool used to determine Pennsylvania's credit presumptions for the program, prior to implementation of the program. EPA did not take the modeling of the performance standard into consideration in its deliberation upon Pennsylvania's NHSDA network effectiveness demonstration. EPA expects the ongoing program demonstration, required by 40 CFR 51.353, to serve as an additional program effectiveness evaluation tool. Additionally, information from the data analysis to be conducted and submitted to EPA under the requirements of 40 CFR 51.366 may also help to serve that role.

Comment: The commenter states that in the program effectiveness demonstration, Pennsylvania asserted that its program was unique and was still being phased-in, and therefore could not be compared to another state's test-only program. The commenter goes on to state that all inspection programs are different in various ways, but regardless of program design, states can be held to the same ultimate criterion—the degree of reduction achieved in average emissions. The commenter

believes the [ECOS] concept of analyzing average emissions levels of vehicles having gone through the inspection program is fundamentally sound. The commenter states that Pennsylvania either does not understand or has misinterpreted the ECOS approach.

Response: Neither the statutes nor EPA's regulations mandate the use of ECOS's approach in conducting the demonstration required by the NHSDA. Pennsylvania chose not to utilize the ECOS model for such a demonstration, and whether or not the ECOS criteria is a sound approach is not an issue for decision under this rulemaking. Thus, whether all programs could be evaluated through an analysis of average emission reductions is not relevant to this rulemaking. The only issue is whether the data submitted supports Pennsylvania's program effectiveness claims. EPA has concluded that it does.

Comment: The commenter alleges that the Commonwealth's submittal cannot be justified on technical grounds, and takes exception to EPA's comment in the direct final rule that "the variety of data supplied encompasses those implementation issues that most significantly impact program effectiveness." Moreover, the commenter feels that since no emissions data was included, it is impossible to determine to what degree vehicles are being repaired.

Response: EPA has analyzed the program data submitted as part of the Commonwealth's "NHSDA Program Effectiveness Demonstration". The data is set forth in detailed summaries of emissions test and retest results, and stratified by model year and test type. The data is separated by vehicles that undergo a retest, those that passed a retest, and those that failed a retest. Given that Pennsylvania's enhanced program had been implemented for less than one year at the time it was required to submit this demonstration under the NHSDA, EPA believes the Commonwealth has made a reasonable showing of data towards meeting NHSDA demonstration requirements, and that approval of Pennsylvania's program is warranted.

Comment: The commenter asserts that Pennsylvania's phase-in hydrocarbon (HC) and carbon monoxide (CO) standards for the Acceleration Simulation Mode (ASM) test are less stringent than the standards used in the previous basic idle test program, and that this is demonstrated by comparing the initial HC/CO fail rates of the two-speed idle (TSI) and ASM tests; the TSI rate is 6.0% while the ASM rate is 3.4%. The commenter goes on to state that while phase-in standards for nitrogen oxides, and final standards for all three pollutants represent increased test stringency, given other problems identified in the submittal, it appears that an increased failure rate is no guarantee of a more effective program.

Response: The initial phase-in ASM standards being used during the first phase of implementation of the Commonwealth's I/M program are based upon EPA's recommendation, to allow states time to phase in repair technician training and better overall repair effectiveness during the first cycle of program operation. EPA expected the use of these standards to result in relatively low failure rates. EPA agrees that pass/fail results do not, in and of themselves, guarantee an effective program. However, the purpose of the demonstration required under the NHSDA was not to compare the failure rates of the new enhanced I/M program to that of Pennsylvania's previously existing "basic" program. EPA approved Pennsylvania's use of phase-in standards in a separate rulemaking and those standards are not the subject of a today's rulemaking. Given all the differences between the design and implementation of the Philadelphia five-county area's previous idle program and its current phase-in ASM testing program, there is little value in comparing direct failure rates between the two. EPA believes it is too early in the life cycle of Pennsylvania's enhanced I/M program to make a judgement on the impacts of low failure rates.

Comment: The commenter states that no data are presented on whether the new test produces larger HC and CO emission reductions, on average, for vehicles that are repaired compared to repairs that occurred under the previous basic program. The commenter feels that failure rate data provides no insight into the degree of emissions reductions being achieved.

Response: While this type of evaluation would be beneficial in determining the quantitative benefits from an enhanced I/M program, the Agency does not believe such an analysis is required to satisfy the requirements of the NHSDA. While Pennsylvania's 1996 "Good Faith Estimate" is based upon specific improvements to Pennsylvania's existing basic I/M program, EPA did not evaluate the Commonwealth's "NHSDA Program Demonstration" on the basis of the level of improvement over the existing basic program. EPA believes that the enhanced program data submitted by the Commonwealth stands on its own for purposes of this demonstration, and supports the credit claims requested by the state.

Comment: Pennsylvania's test summary data indicate extremely low visual failure rates. Out of 1.6 million tests performed for the demonstration, only 0.1% failed for one of the five visual checks performed. Low failure rates are often an indication of poor or fraudulent inspector performance.

Response: EPA agrees that the visual inspection failure rates cited in the Commonwealth's "NHSDA Description of Program Effectiveness" are low. Pennsylvania's own NHSDA demonstration confirms, through state audit summaries, that visual inspections were often not done or not done properly. Pennsylvania is addressing this program implementation issue (versus NHSDA demonstration approval issue) of low visual failure rates through use of covert and overt audits, and stronger enforcement.

Comment: The commenter states that the data shows high retest failure rates, with roughly 38% of vehicles failing the post-repair retest. The commenter goes on to state that a high retest failure rate may indicate ineffective repairs. It is unknown how many of these vehicles received repair waivers, continued to try to pass the test, or "disappeared" from the program.

Response: The Commonwealth is still in the process of ramping up the program. EPA expects relatively low repair effectiveness for a newly enacted enhanced I/M program that employs a different test method. The Agency will further evaluate first and subsequent retest results, along with waiver issuance results, when it reviews the Commonwealth's ongoing program evaluation reports, per the requirements of 40 CFR 51.366.

Comment: The commenter states that Pennsylvania's data shows that a high number of vehicles "disappear" after failing an initial test (i.e., roughly 45% of all initially failing vehicles), and that it is unclear if this data might have been influenced by the improper categorization of initially tested vehicles versus retested vehicles, or vehicles that were waived (but not counted as such) prior to retest. Notwithstanding, the commenter asserts, the data suggests the program is not causing repair of nearly as many vehicles as the initial failure rates suggest. The commenter then states that Pennsylvania's submittal indicates that roughly 36% of vehicles that failed were repaired and retested within 30 days, which seems contrary to the expectation that the majority of vehicles in a test-and-repair program would receive repairs at the same station soon after the initial test.

Response: According to Pennsylvania's I/M regulations, if a vehicle does not have a valid emissions sticker, it cannot be operated within the I/M program area. It is expected that during the first year of implementation of an enhanced I/M program some vehicles will "disappear" because there is a culling out of the gross polluters from the fleet. Eventually, the road-side testing could assist in identifying legally registered vehicles operating in the area without valid emissions credentials.

Comment: The commenter expressed concern that EPA has accepted Pennsylvania's conclusions regarding the program summary data at face value without performing an independent analysis of the summary or raw test data. Also the commenter is troubled that EPA did not perceive issues with the Commonwealth's demonstration that could be garnered through a simple analysis of the presented summary data. The commenter believes there is a fundamental problem in trying to perform such a program evaluation in the total absence of vehicle-specific emissions data.

Response: EPA does not agree with the commenter that vehicle-specific emissions data is necessary to perform the demonstration required under section 348 of the National Highway Systems Designation Act. Summary data showing the results, on average, of the entire tested fleet can be used to perform such an analysis. We have reviewed the Commonwealth's demonstration and have determined that the program has met the spirit of the law in proving its program effectiveness. While we do not dispute the commenter's assertions that vehicle specific data is necessary to analyze the benefits of the program, such an analysis is not necessary to satisfy the requirements of the NHSDA for demonstration of the effectiveness of a decentralized testing network.

Francis W. Jackson

Comment: Mr. Jackson submitted comments relevant to the effectiveness of Pennsylvania's program in helping to attain the ozone standard, the cost-effectiveness of an ASM compared to 2-speed idle testing, as well as the cost-effectiveness of decentralized I/M to centralized I/M. Additionally, the commenter reflects upon Pennsylvania's selection of a method to conduct an ongoing program evaluation, to quantify the actual emissions benefits of the program, as required under 40 CFR 51.353(c). Finally, Mr. Jackson criticizes the choice of a decentralized I/M program, in light of other available control measures and based upon the contribution of highway mobile sources to total future ozone precursor emission inventories.

Response: Many of the comments submitted by Mr. Jackson were not the subject of EPA's September 16, 1998 proposed approval of Pennsylvania's SIP supplement to satisfy the program effectiveness requirements of the NHSDA. Many of his comments deal with issues associated with approval of Pennsylvania's enhanced I/M SIP, which was granted conditional interim approval on January 28, 1997 (see 62 FR 4004) and was not subject to further comment in this rulemaking. That previous conditional interim approval action was not subject to further comment in this rulemaking.

The NHSDA does not require states to demonstrate the absolute performance of their program, but instead requires a state to demonstrate that its decentralized program would achieve all or some of the benefits achieved by a model, centralized program, which Pennsylvania has done. The cost and the cost-effectiveness of Pennsylvania's program are not the subject of this rulemaking action. As previously noted, Pennsylvania has selected a methodology to conduct the required ongoing program evaluation to quantify the program's benefits. Pennsylvania submitted its choice of evaluation methodology to EPA on November 25, 1998. EPA will take separate action, in the near future, upon that submittal.

Comment: The commenter contends that Pennsylvania's demonstration supports effectiveness of program implementation, not program effectiveness. He goes on to state that program effectiveness is a measure of how well it cleans the air, the most important of which is how ASM contributes to Philadelphia's attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by 2005—and at what cost.

Response: The Commonwealth's "NHSDA Description of Program Effectiveness" focuses upon Pennsylvania's implementation of those measures contained in its 1996 "Good Faith Estimate" which was submitted to and granted interim approval by EPA on January 28, 1997 (see 62 FR 4004) under the authority of the NHSDA. The Commonwealth's summaries of program data and program oversight data were submitted to show the results of the operation of the program during that interim approval period. In terms of the programs's effectiveness in continuing to achieve the expected emission reductions, that analysis must be analyzed in the biennial program evaluations required to be performed by 40 CFR 51.353. However, it is important to remember that the enhanced I/M program is only one of many control measures implemented to reduce ozone precursors, and it is not possible to monitor directly the benefits of any single emissions control strategy such as the I/M program in reducing ambient ozone levels.

Comment: The commenter cites Pennsylvania's "Program Effectiveness Description" (p. 1, para. 2) which states that its program achieves reductions equal to EPA's model program. He comments that Pennsylvania has not proved this assertion. The commenter further contends that the big issue is proving Pennsylvania has overcome the decentralized test-and-repair credit reductions that past (non-PA) decentralized and /or test-and-repair programs have demonstrated. The commenter also cites Pennsylvania's "Program Effectiveness Description" (p.1, para. 3) which indicates that captured program data clearly demonstrates that the program is achieving Pennsylvania's claimed benefits, and asserts that Pennsylvania's collected data is inadequate to directly compute achieved emissions reductions.

Response: EPA agrees with the commenter that the purpose of the NHSDA demonstration is to show that a State's decentralized program is as effective in achieving the emissions reduction benefits associated with a centralized or test-only program. However, the NHSDA did not set forth binding guidelines for how such a demonstration should be performed. Pennsylvania chose an approach to demonstrate the credibility of its program's design through implementation of measures in their "Good Faith Estimate" and through submission of data gathered from the first year of operation of the program. EPA believes it satisfies the statutory requirements for such demonstrations, as required by section 348(c)(3) of the NHSDA.

Comment: The commenter contends that ASM testing does little toward achieving the ozone standard for the Philadelphia area. Pennsylvania's demonstration indicates a failure rate of 11%, including gas cap and visual inspection failures. Very few cars fail the expensive ASM test.

Response: The period of evaluation took place during the start-up period of the program, and the results are based upon the use of phase-in standards for the ASM test. It is not unexpected for the failure rates to be low during such a period. EPA expects the ongoing program evaluation to show increased failure rates upon implementation of

final tailpipe and evaporative testing standards. Again, the enhanced I/M program is only one of many control measures implemented to reduce ozone precursors, and it is not possible to monitor directly the benefits of the I/M program alone in reducing ambient ozone levels.

III. Final Action

EPA is approving Pennsylvania's August 21, 1998 SIP supplement as a revision to the Pennsylvania SIP. By doing so, EPA is approving the demonstration of the effectiveness of its decentralized program testing format submitted by Pennsylvania, entitled "National-Highway Systems Designation Act Good Faith Estimate Description of Program Effectiveness". EPA's approval of this mandated demonstration, is being done pursuant to section 348 of the NHSDA and section 110(k) of the Clean Air Act. This approval removes the interim status of EPA's conditional interim approval of the Pennsylvania enhanced I/M SIP promulgated on January 28, 1997 (see 62 FR 4004). EPA's approval also serves to approve contractual materials and state documents that were submitted by Pennsylvania as part of its August 21, 1998 SIP supplement, for the purpose of remedying seven *de minimus* deficiencies identified by EPA in its January 28, 1997 interim conditional approval of Pennsylvania's I/M program SIP. For a detailed description of these submitted materials, see EPA's September 16, 1998 direct final rule (63 FR 49436). EPA received no adverse comments related to approval of these materials to remedy the related *de minimus* SIP deficiencies.

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this Pennsylvania I/M approval action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2026 is amended by revising the introductory paragraph to read as follows:

§ 52.2026 Conditional approval.

The Commonwealth of Pennsylvania's March 27, 1996 submittal of its enhanced motor vehicle emissions inspection and maintenance (I/M) program; as amended on June 27, 1996, July 29, 1996, November 1, 1996, November 13, 1997, February 24, 1998, and August 21, 1998; is conditionally approved pending satisfaction of paragraph (a)(2) of this subsection.

* * * * *

(a) * * *

3. Section 52.2026 is further amended by removing and reserving paragraphs (b) (1), (5), (7), (8), (9), (10), and (14).

[FR Doc. 99–14357 Filed 6–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6355–5]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; extension of compliance.

SUMMARY: The EPA is taking direct final action to extend certain compliance dates contained in National Emissions Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins. The revisions concern extending the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for polyethylene terephthalate (PET) affected sources. We are approving these compliance extensions pursuant to Clean Air Act section 301(a)(1) to complete reconsideration of equipment leaks provisions and any necessary revision to the rule.

DATES: The direct final rule is effective on August 9, 1999, without further notice, unless the EPA receives adverse comment by July 8, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Docket. The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5605.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the

EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: http://www.epa.gov/ttn/oarpg.

Regulated entities.

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities that produce PET.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this direct final rule. If you have questions regarding the applicability of the NESHAP addressed in this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rule" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the extension of the compliance dates specified in 40 CFR 63.1311 (b) and (d)(6) for polyethylene terephthalate (PET) affected sources if adverse comments are filed. This rule will be effective on August 9, 1999, without further notice, unless we receive adverse comment by July 8, 1999. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The information presented in this preamble is organized as follows:

I. Background and Rationale
II. Authority for Extension of the Compliance Date and Reconsideration
III. Impacts
IV. Administrative Requirements

I. Background and Rationale

On September 12, 1996, the EPA promulgated 40 CFR part 63, subpart JJJ—Group IV Polymers and Resins NESHAP (61 FR 48208). 40 CFR 63.1331 establishes standards for equipment leaks based on the equipment leaks provisions from the Hazardous Organic NESHAP (HON), 40 CFR part 63, subpart H. The final rule required existing sources to comply with 40 CFR 63.1331 beginning March 12, 1997 (*see* 40 CFR 63.1311(d)).

Subsequent to the promulgation of the Group IV Polymers and Resins rule, the EPA promulgated changes to the equipment leak provisions of the HON. In addition, a petition was submitted to the EPA requesting reconsideration of the equipment leak provisions of the rule affecting PET facilities. As a result, the compliance date for 40 CFR 63.1331 for existing PET facilities has twice been extended and is currently September 12, 1999, which is three years after promulgation of the rule. After the last compliance extension, the effective date of the Group IV Polymers and Resins rule was changed to February 27, 1998 to comply with sections 801 and 802 of the Congressional Review Act.

The petition was submitted to the EPA by two PET manufacturers requesting reconsideration of the technical basis for estimates of emissions, emission reduction, and costs for equipment leaks emission control at PET affected sources. A second petition was subsequently filed by a third PET manufacturer requesting the same relief. The petitions summarize new information claimed by the petitioners to "confirm the petitioners' comments made during the public comment period questioning the validity of the EPA's predictions of the costs and cost effectiveness of the leak detection and repair program." This new information, which the EPA did not have prior to promulgation of the final rule, includes data related to emissions and costs. The EPA elected to act upon the petitioners' requests to reconsider the equipment leak provisions of the 1996 rule, as it applies to PET affected sources.

The EPA's reconsideration has created uncertainty with regard to compliance requirements for the PET equipment leak provisions. Furthermore, the EPA's reconsideration has led the Agency to publish in the "Proposed Rules" section of today's **Federal Register** publication a proposal to deny the petitions. The EPA will consider public comments on this proposed denial and publish a final action on the petitions. Therefore, this period of uncertainty will continue until the EPA publishes a final decision on the petitions. For these reasons, the EPA is providing an extension of the compliance dates associated with the provisions of 40 CFR 63.1331, which regulate equipment leaks for PET affected sources, until such time as the EPA is able to take final action on the petitions for reconsideration. This extension applies to affected sources in the following regulated subcategories: (1) PET using a batch dimethyl terephthalate process; (2) PET using a continuous dimethyl terephthalate process; (3) PET using a batch terephthalic acid process; and (4) PET using a continuous terephthalic acid process. It does not affect any other provisions of the Polymers and Resins Group IV rule, or any other source categories or subcategories.

By this action the EPA is providing, pursuant to Clean Air Act section 301(a)(1), an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6), only as necessary to complete reconsideration and potential revision of the rule. The EPA intends to complete its reconsideration of the rule and, following the notice and comment procedures of Clean Air Act section 307(d), take appropriate action as expeditiously as possible. The EPA does not believe this extension will, as a practical matter, impact the overall effectiveness of the rule. The EPA will seek to ensure that the affected parties are not unduly prejudiced by the EPA's reconsideration. The compliance date will be extended until February 27, 2001 which is the latest compliance date permitted by section 112 of the Clean Air Act (in the absence of a one year extension).

II. Authority for Extension of the Compliance Date and Reconsideration

The extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources is being undertaken pursuant to Clean Air Act section 301(a)(1). Reconsideration is being undertaken pursuant to Clean Air Act section 307(d)(7)(B). Reconsideration is appropriate if the grounds for an objection arose after the period for public comment and if the objection is of central relevance to the outcome of the rule.

The grounds for reconsideration of this rule arose after the public comment period. The emissions and cost data which serve as the bases for the summary of data provided by the petitioners became available after the close of the comment period on the rule. Therefore, the EPA is extending the

compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources in order to allow time to reconsider the provisions of 40 CFR 63.1331 as these provisions pertain to PET affected sources.

III. Impacts

The extension of the compliance date for equipment leaks at PET affected sources will not affect the eventual annual estimated emissions reduction or the control cost for the rule.

IV. Administrative

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

This action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, the direct final rule will provide an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources. The direct final rule does not add any additional control requirements. Therefore, this direct final rule was classified "non-significant" under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant impact on a substantial number of small entities because the compliance extension would not impose any economic burden on any regulated entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objects of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. Instead, this rule provides additional time to comply with some requirements of the Group IV Polymers and Resins NESHAP. In any event, the EPA has determined that this rule does not contain a Federal mandate that may result in expenditure of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year. Thus today's direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We also have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final action is not subject to the Executive Order 13045 because it is not an economically significant regulatory action as defined in E.O. 12866, and it

is based on technology performance and not on health or safety risks.

F. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires federal agencies to evaluate existing technical standards when developing new regulations. To comply with the NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that the use of VCS in this direct final rule is impractical. The compliance extension of the Group IV Polymers and Resins NESHAP is merely a procedural action that does not require sources to take substantive steps that lend themselves to VCS.

G. Executive Order 12875—Enhancing Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's direct final rule does not create a mandate on State, local or tribal governments. The direct final rule does not impose any enforceable duties on these entities. Rather, the rule extends certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. This direct final rule imposes no enforceable duties on these entities. Rather, the rule extends certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule will be effective on August 9, 1999.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of Chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et. seq.

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

2. Section 63.1311 is amended by revising paragraphs (b) and (d)(6) to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or September 12, 1996, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 upon initial start-up or February 27, 2001, whichever is later.

* * * * *

(d) * * *

(6) Notwithstanding paragraphs (d)(1) through (d)(4) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 no later than February 27, 2001.

* * * * *

[FR Doc. 99–14349 Filed 6–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6355–8]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: June 8, 1999.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Kelly Davis at (202) 564–2303 or fax (202) 565–2096, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296–1996; EPA World Wide Web Site (http://www.epa.gov/ozone/title6/snap).

SUPPLEMENTARY INFORMATION:

I. Section 612 Program
A. Statutory Requirements
B. Regulatory History
II. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Foam Blowing
C. Solvents Cleaning
D. Aerosols
E. Adhesives, Coatings, and Inks
III. Additional Information
Appendix A—Summary of Acceptable Decisions

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

• *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the original rule for the SNAP program (59 FR 13044; March 18, 1994), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this document EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that Notice-and-Comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published documents listing acceptable alternatives on August 26, 1994 (59 FR 44240), January 13, 1995 (60 FR 3318), July 28, 1995 (60 FR 38729), February 8, 1996 (61 FR 4736), September 5, 1996 (61 FR 47012), March 10, 1997 (62 FR 10700), June 3, 1997 (62 FR 30275), February 24, 1998 (63 FR 9151), and May 22, 1998 (63 FR 28251), and published Final Rulemakings restricting or prohibiting the use of certain substitutes on March 18, 1994 (59 FR 13044), June 13, 1995 (60 FR 31092), May 22, 1996 (61 FR 25585), October 16, 1996 (61 FR 54029), January 26, 1999 (64 FR 3861), January 26, 1999 (64 FR 3865), and March 3, 1999 (64 FR 10374), April 28, 1999 (64 FR 22981).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I and class II substances in the refrigeration and air conditioning; foam blowing; solvents cleaning; aerosols; and adhesives, coatings, and inks sectors. For copies of

the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

Parts A through E below present a detailed discussion of the substitute listing determinations by major use sector. The table summarizing today's listing decisions is in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but for listings of acceptable substitutes, they are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments is not mandatory for use of a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Acceptable Substitutes

Under section 612 of the Clean Air Act, EPA is authorized to review substitutes for class I (CFC) and class II (HCFC) chemicals. The decisions set forth in this section A expand the acceptable listing for refrigerants.

In listing these refrigerants as acceptable, EPA anticipates that these refrigerants will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. EPA also anticipates that manufacturers, installers, servicers, building owners and other parties responsible for construction and maintenance of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards established by voluntary consensus standards organizations such as the American National Standards Institute (ANSI). The Agency also expects that refrigerating systems will conform to all relevant provisions of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards, including Standard 15, Safety Code for Mechanical Refrigeration, which provides guidelines for the safety of persons and property on or near premises where refrigeration facilities are located. Finally, the Agency anticipates that any exposures by installers or servicers to refrigerants will conform to all applicable standards set by the U.S. Occupational Safety and Health Administration (OSHA) and will not exceed any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshhold limit values (TLVs) or the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limits (WEELs).

(a) THR–04. The chemical blend submitted to EPA with the unregistered tradename THR–04 is acceptable as a substitute for R–502 in all end-uses. Tsinghua University of Beijing and the Beijing Inoue Qinghua Refrigeration Technology Company, the joint submitters of THR–04, claim that its composition is confidential business information. Fractionation and flammability testing have determined that although one constituent of the blend is flammable, THR–04 as blended is not, and further testing has shown that it does not become flammable after leakage. This blend contains an HCFC and for this reason is an ozone depleter. However, the HCFC is a class II ozone depleter and is an acceptable substitute for the class I ozone depleter, R–502. THR–04 contains a constituent with a high global warming potential (GWP). However, the potential of this constituent for contributing to global warming will be mitigated in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act.

(b) HFC–236fa. HFC–236fa, when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step, is acceptable as a substitute for CFC–114 in non-mechanical heat transfer. HFC–236fa does not harm the ozone layer because it does not contain chlorine. Although HFC–236fa has an extremely high 100-year GWP of 6,300,[1] its lifetime is at least an order of magnitude shorter than that of perfluorocarbons (PFCs), which have comparable 100-year GWPs. For some specialized non-mechanical heat transfer end-uses, HFC–236fa is the only CFC–114 alternative that is safe for the ozone layer and is low in toxicity. HFC–236fa may not be vented when used as a refrigerant, in accordance with section 608(c)(2) of the Act. EPA has proposed new recycling regulations for non-ozone-depleting refrigerants (63 FR 32044; June 11, 1998). This proposal would extend to HFC and PFC refrigerants the requirements currently in place for class I (CFC) and class II (HCFC) refrigerants, including required service practices, certification programs for recovery/recycling equipment, reclaimers, and technicians, a prohibition on the sale of refrigerant to anyone but certified technicians, leak repair requirements, and safe disposal requirements. A fact sheet on the proposal is available from the EPA Ozone Hotline at (800) 296–1996 or on the world wide web at http://www.epa.gov/ozone/title6/608/subrecsm.html.

(c) HFE–7100. Hydrofluoroether (HFE–7100) ($C_4F_9OCH_3$; methoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 in non-mechanical heat transfer. HFE–7100 does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1 year atmospheric lifetime and a GWP of 500 over a 100-year time horizon. The GWP and lifetime for this HFE are lower than the GWP and lifetime for CFC–113, and this HFE exhibits low toxicity, with a WEEL of 750 ppm.

(d) HFC–23. HFC–23 is acceptable as a substitute for CFC–12 in very low-temperature refrigeration. (Readers of this section should also note the clarification of the definition of very-low-temperature refrigeration set forth in section 2 below.) HFC–23 has already been listed as an acceptable substitute for CFC–13, R–13B1, and R–503 in very-low-temperature refrigeration and industrial process refrigeration. It is non-flammable and does not deplete stratospheric ozone. However, HFC–23 has an extremely high 100-year GWP of 11,700 relative to CO_2 and an atmospheric lifetime of 264 years. Its GWP is the highest among the HFCs, and its lifetime is exceeded only by the PFCs. Consequently, EPA believes HFC–23 could contribute significantly to global warming. In addition, the long lifetime of HFC–23 means any global warming or other effects would be essentially irreversible. It is illegal to vent HFC–23 at any time when used as a refrigerant. The current regulations issued under section 608 of the CAA (58 FR 28660; May 14, 1993) do not require recycling and recovery of HFC–23, or

[1] GWPs and atmospheric lifetimes cited in this document are from the Intergovernmental Panel on Climate Change (IPCC) report entitled *Climate Change 1995—The Science of Climate Change*, IPCC Second Assessment Report. More recent values for GWPs and atmospheric lifetimes published in the *Scientific Assessment of Ozone Depletion: 1998*, World Meteorological Organization Global Ozone Research and Monitoring Project—Report No. 44, may be somewhat different than the values cited here but do not alter any of the technical or policy determinations by EPA in this rule.

leak repair for systems using HFC–23. In particular, EPA urges users to reduce leakage and recover and recycle HFC–23 during equipment servicing and upon the retirement of equipment and adhere to the amended leak repair provisions established in 60 FR 40419; August 8, 1995. EPA has proposed new recycling regulations for non-ozone-depleting refrigerants (63 FR 32044; June 11, 1998). This proposal would extend to HFC and PFC refrigerants the requirements currently in place for class I (CFC) and class II (HCFC) refrigerants, including required service practices, certification programs for recovery/recycling equipment, reclaimers, and technicians, a prohibition on the sale of refrigerant to anyone but certified technicians, leak repair requirements, and safe disposal requirements. A fact sheet on the proposal is available from the EPA Ozone Hotline at (800) 296–1996 or on the world wide web at http://www.epa.gov/ozone/title6/608/subrecsm.html.

(e) Motor Vehicle Air-Conditioning: thermal storage systems used in tractor trailers in conjunction with passenger compartment climate control systems that use a SNAP-accepted refrigerant. Thermal storage systems used in a tractor trailer in conjunction with a conventional motor vehicle air-conditioning system that already uses an acceptable substitute refrigerant, are acceptable as substitutes for CFC–12 in motor vehicle air conditioners. These systems have been developed for use in heavy duty trucks that contain sleeper compartments. Currently these trucks must continually idle while the vehicle is parked and the driver is resting in the sleeper compartment, to power a conventional air-conditioner or heater when cooling or heating comfort is needed. These thermal storage systems will allow the provision of cooling/heating comfort while the engine is off.

The thermal storage system uses water blended with small amounts of one or more of the SNAP acceptable HFC-based refrigerants such as HFC–134a. The blend is contained in a sealed storage device. The system consists of a packaged cool storage reservoir and a fuel-fired heater that generates cooling or heating capacity during the normal operation of the vehicle. This cooling or heating capacity becomes available for use in the passenger compartment at a desired time. The cooling capacity is generated by chilling a circulating coolant with air from the air conditioner, while the heating capacity is achieved by heating this same coolant with a fuel-fired heater. The coolant functions as a secondary fluid in a secondary-loop refrigeration system similar to chilled water in building chillers.

After reviewing the technology of the thermal storage system submitted in the SNAP application, EPA found no safety or environmental concerns associated with its use in trucks. EPA acknowledges the existence of such a system and recognizes the potential merits. This type of technology promises to significantly lower fuel consumption and reduce pollutant emissions, including nitrous oxides, carbon monoxide, carbon dioxide, sulfuric oxides, and particulate emissions.

2. Clarification

(a) Very-low-temperature refrigeration. In a previous rule (60 FR 31092; June 13, 1995), EPA stated in its definition of very-low-temperature refrigeration that "[m]edical freezers, freeze-dryers, and other small appliances require extremely reliable refrigeration cycles. These systems must meet stringent technical standards that do not normally apply to refrigeration systems." EPA does not intend to limit the very-low-temperature refrigeration application to medical freezers, freeze-dryers and other small appliances. Larger systems may also fall within the definition of very-low-temperature refrigeration, as long as the systems or portions of the systems require very low temperatures in the vicinity of -80 degrees F or lower. Submitters to the SNAP program who believe that particular systems may qualify as very-low-temperature refrigeration and/or industrial process refrigeration should contact EPA for a determination prior to submitting substitute refrigerants for review under the SNAP program.

B. Foam Blowing

1. Acceptable Substitutes

(a) HFC–134a. HFC–134a is an acceptable substitute for HCFCs in all foam blowing end-uses. For end-uses other than rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams, blends of HFC–134a with other acceptable substitutes are also acceptable substitutes for HCFCs. See the original SNAP rule (53 FR 13044) for a detailed explanation of the distinction among end-uses for which blends are acceptable without further review. HFC–134a has zero ODP, has a 100-year GWP of 1300, and is nonflammable. HFC–134a has low toxicity, with a WEEL of 1000 ppm.

(b) HFC–152a. HFC–152a is an acceptable substitute for HCFCs in all foam blowing end-uses. For end-uses other than rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams, blends of HFC–152a with other acceptable substitutes are also acceptable substitutes for HCFCs. See the original SNAP rule (53 FR 13044) for a detailed explanation of the distinction among end-uses for which blends are acceptable without further review. HFC–152a is flammable; foams blown with HFC–152a will need to conform to building code requirements that relate to flammable materials. HFC–152a has zero ODP, a 100-year GWP of 140, and low toxicity. The WEEL for HFC–152a is 1000 ppm.

(c) Carbon Dioxide. Carbon Dioxide (CO_2) is an acceptable substitute for HCFCs in all foam blowing end-uses. For end-uses other than rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams, blends of CO_2 with other acceptable substitutes are also acceptable substitutes for HCFCs. See the original SNAP rule (53 FR 13044) for a detailed explanation of the distinction among end-uses for which blends are acceptable without further review. CO_2 has zero ODP, a GWP of 1, low toxicity, and is nonflammable.

(d) Water. Water is an acceptable substitute for HCFCs in all foam blowing end-uses. For end-uses other than rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams, blends of water with other acceptable substitutes are also acceptable substitutes for HCFCs. See the original SNAP rule (53 FR 13044) for a detailed explanation of the distinction among end-uses for which blends are acceptable without further review. Water has zero ODP and GWP, is not toxic, and is nonflammable.

2. Clarification

On September 5, 1996 (61 FR 47012), EPA listed proprietary blend 1 (PBA 1) as an acceptable substitute for CFCs and HCFCs in rigid polyurethane and polyisocyanurate laminated boardstock foam; rigid polyurethane appliance; rigid polyurethane slabstock and other; and rigid polyurethane spray and commercial refrigeration, and sandwich panels. At the time PBA 1 was submitted, the submitter's identification and the composition of PBA 1 were claimed as confidential business information. The confidentiality of the composition has been withdrawn, and

EPA now discloses that PBA 1 is formic acid. On February 28, 1998 (63 FR 9151), EPA listed formic acid as an acceptable substitute for CFC and HCFCs in polyurethane integral skin foam. In future lists of acceptable substitutes, EPA will combine these listings.

C. Solvents Cleaning

1. Acceptable Substitutes

(a) HFC–4310mee. HFC–4310mee is acceptable as a substitute for HCFC–141b in all solvents cleaning end-uses. HFC–4310mee is listed as acceptable subject to use conditions in the metals cleaning and aerosol solvent sectors (64 FR 22981, April 28, 1999) as a substitute for CFC–113 and methyl chloroform. It is already acceptable in electronics and precision cleaning subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling (61 FR 54029; October 16, 1996).

This document clarifies that HFC–4310mee is also acceptable as a substitute for HCFC–141b. HCFC–141b is scheduled for complete phaseout in 2003 and is currently unacceptable for use in all sectors except for very specific aerosol uses. The exemptions to the ban under Clean Air Act section 610 include use for specific medical devices, aircraft maintenance, mold release agents, spinnerettes, document preservation sprays, photographic equipment, and wasp and hornet sprays used near high-tension wires (58 FR 69638; December 30, 1993). Note that the ban under section 610 is for all class II substances.

2. Clarification

(a) All Solvents Cleaning End-uses. (1) Benzotrifluoride (CAS# 98–08–8). This notice of clarification serves to list benzotrifluoride ($C_7H_5F_3$) as acceptable with an acceptable exposure limit (AEL) of 100 ppm. Monochlorotoluenes/ benzotrifluorides are acceptable subject to use conditions as substitutes for CFC–113 and MCF in all solvent end-uses. The category of monochlorotoluenes/ benzotrifluoride has been listed with a company-established acceptable exposure limit of 50 ppm workplace standard for monochlorotoluenes and a 25 ppm standard for benzotrifluoride (61 FR 25585; May 22, 1996). Of all the structures of commercial interest, the only chemical with an Occupational Safety and Health Administration (OSHA) standard is orthochlorotoluene, one of the monochlorotoluenes. This substance has an OSHA Permissible Exposure Level (PEL) of 50 ppm. Using this standard as a proxy, the Agency set a workplace standard of 50 ppm for monochlorotoluenes as a group. Benzotrifluoride does not have a PEL. Further testing has demonstrated that benzotrifluoride is one of the least toxic chemicals in the category of monochlorotoluenes/ benzotrifluoride. As such, the company-set acceptable exposure limit for benzotrifluoride is 100 ppm.

D. Aerosols

1. Acceptable Substitutes

(a) Aerosol solvents. (1) HFC–4310mee. HFC–4310mee is acceptable as a substitute for HCFC–141b in all aerosol solvent end-uses. For a complete discussion, please refer to the solvents cleaning section above.

2. Clarification

(a) Aerosol Solvents. (1) Benzotrifluoride (CAS# 98–08–8). This notice of clarification serves to list benzotrifluoride ($C_7H_5F_3$) as acceptable with an acceptable exposure limit (AEL) of 100 ppm. For a complete discussion, please refer to the solvent section above.

E. Adhesives, Coatings, and Inks

1. Clarification

(a) Benzotrifluoride (CAS# 98–08–8). This notice of clarification serves to list benzotrifluoride ($C_7H_5F_3$) as acceptable with an acceptable exposure limit (AEL) of 100 ppm. For a complete discussion, please refer to the solvent section above.

III. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time). For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as all EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at "http://www.epa.gov/ozone/title6/snap/" and from the Stratospheric Protection Hotline whose number is listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

Appendix A—Summary of Acceptable Decisions

End-Use	Substitute	Decision	Comments
REFRIGERATION and AIR CONDITIONING SECTOR			
All R–502 end-uses	THR–04	Acceptable	EPA anticipates that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
Non-mechanical heat transfer	HFC–236fa	Acceptable as a substitute for CFC-114 in non-mechanical heat transfer when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step.	EPA anticipates that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.

APPENDIX A—SUMMARY OF ACCEPTABLE DECISIONS—Continued

End-Use	Substitute	Decision	Comments
Non-mechanical heat transfer	HFE–7100	Acceptable	EPA anticipates that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
Very-low-temperature refrigeration	HFC–23	Acceptable	This determination applies where the ozone-depleting substance being replaced is CFC–12. EPA anticipates that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
Motor vehicle air conditioning	Thermal storage systems used in tractor trailers in conjunction with passenger compartment climate control systems that use SNAP-accepted refrigerants.	Acceptable	EPA anticipates that installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
FOAMS SECTOR			
HCFCs used in all end-uses but rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams.	HFC–134a, HFC–152a, CO_2, water (and blends of any of these with other fully acceptable substitutes).	Acceptable.	
HCFCs used in rigid polyurethane and polyisocyanurate laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams.	HFC–134a, HFC–152a, CO_2, water.	Acceptable.	
SOLVENTS SECTOR			
All end-uses	HFC–4310mee	Acceptable subject to a 200 ppm time-weighted average workplace exposure standard and 400 ppm workplace exposure ceiling.	
All end-uses	Benzotrifluoride	Acceptable with an acceptable exposure limit (AEL) of 100 ppm.	
AEROSOLS SECTOR			
Aerosol Solvents	HFC–4310mee	Acceptable subject to a 200 ppm time-weighted average workplace exposure standard and 400 ppm workplace exposure ceiling.	
Aerosol Solvents	Benzotrifluoride	Acceptable with an acceptable exposure limit (AEL) of 100 ppm.	
ADHESIVES, COATINGS, and INKS SECTOR			
All end-uses	Benzotrifluoride	Acceptable with an acceptable exposure limit (AEL) of 100 ppm.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL–6352–1]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Status of Equipment Certified and Emissions Levels to be Used by Operators Using Compliance Option 2

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: In an amendment (63 FR 14626, March 26, 1998) to the rule regarding retrofit/rebuild requirements for 1993 and earlier model year urban buses, EPA stated that it would review retrofit/rebuild equipment that was certified by July 1, 1998 and publish the post-rebuild particulate matter (PM) emission levels for urban bus engines affected by the program. Post-rebuild levels are used by operators for calculating target emission levels of their fleets under compliance Option 2. Today's **Federal Register** document fulfills EPA's obligation to review equipment certified by July 1, 1998, and to publish the post-rebuild PM levels.

DATES: This document is effective as of June 8, 1999.

ADDRESSES: This document, as well as other materials relevant to the final rule, is contained in Public Docket A–91–28. This docket is located in room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 "M" Street, SW, Washington, DC 20460.

Dockets may be inspected from 8:00 am until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Telephone: (202) 564–9297. Email: RUTLEDGE.WILLIAM@EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

Section 219(d) of the Clean Air Act requires EPA to promulgate regulations that require certain 1993 and earlier model year urban buses having engines replaced or rebuilt after January 1, 1995, to comply with an emission standard or control technology reflecting the best retrofit technology and maintenance practices reasonably achievable. On April 21, 1993, EPA published the final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359).

The Urban Bus Retrofit/Rebuild Program requires affected operators of urban buses to choose between two compliance options. Option 1 establishes particulate matter (PM) emissions requirements for each urban bus in an operator's fleet whose engine is rebuilt or replaced. These requirements are to be met by the use of certified PM-reducing equipment. Option 2 is a fleet averaging program that specifies annual target levels for average PM emissions from all the pre-1994 model year urban buses in an operator's fleet. The April 1993 final rule states that EPA will determine post-rebuild levels to be used by operators for calculating their target fleet emission levels under the Option 2 averaging program. These emission levels are to be linked to equipment that is certified for use under compliance Option 1 and that meets an appropriate maximum life cycle cost requirement. The linkage of Option 2's post-rebuild levels to equipment certified under Option 1 assures that the two compliance options will produce equivalent emissions reductions.

The final rule divided Option 2 into two phases, the first applicable to the calculations of target fleet emission levels for calendar years 1996 and 1997, and the second applicable to the calculations for 1998 and thereafter. In the preamble to the final rule, EPA stated that it would review the retrofit/rebuild equipment that was certified by July 1, 1994 and again by July 1, 1996, and publish the respective post-rebuild emission levels for urban bus engines affected by the program. These reviews and updates of post-rebuild levels were necessary because EPA expected increasing numbers of kits to be certified as the program progressed, but as stated in the preamble to the final rule, EPA believed that all equipment likely to be available under the program would be certified by July 1, 1996. EPA first published post-rebuild levels based on equipment certified by July 1, 1994 in a **Federal Register** document dated September 2, 1994 (59 FR 45626). EPA subsequently updated the post-rebuild levels, based on equipment certified by July 1, 1996, in a **Federal Register** document dated August 16, 1996 (61 FR 42764).

In an amendment to the rule (63 FR 14626; March 26, 1998), EPA provided for the review of equipment certified by July 1, 1998, and the corresponding revision of the post-rebuild levels as necessary. This amendment was necessary because certification of equipment was not proceeding at the pace originally expected, and EPA had certified several kits to the 0.10 g/bhp-hr standard after July 1996 that could not influence the post-rebuild levels revised in the August 16, 1996 **Federal Register** document. Today's corresponding post-rebuild level revision is necessary to assure that the two program compliance options remain equivalent in terms of emissions reductions. No further updates of the post-rebuild levels are contemplated, because most of the affected buses are expected to be retired from the fleet roughly by year 2008.

Today's **Federal Register** document fulfills EPA's obligation to review equipment certified by July 1, 1998, and to update the post-rebuild PM levels accordingly. The emission levels contained in today's document must be used by transit operators using Option 2 for determining their Target Level for the Fleet (TLF) for calendar years 2000 and thereafter, in accordance with 40 CFR 85.1403(c)(1)(iv). Operators using Option 2 are expected to take fleet actions no later than calendar year 1999 to ensure compliance with their TLF beginning in calendar year 2000.

Publication of today's document was delayed pending outcome of an Agency investigation concerning electronically-controlled engines equipped by the original manufacturers with strategies designed to decrease fuel consumption during certain driving modes that are not substantially included in the federal test procedure. The effect of such strategies is to substantially increase NOx emissions during these modes. Such electronic control strategies are considered by the Agency to be "defeat devices" as defined at 40 CFR 86.094–22, and thus would violate 40 CFR 85.1406 and 85.1408 if included in an urban bus retrofit application.

As a result of our concern about the harmful effect of these defeat devices, certification of kits designed to meet the 0.10 g/bhp-hr standard which happened to include these defeat devices, was made conditional. The conditions have been removed following the implementation of revisions to the fuel injection timing strategy of the kits to deal with the NOx emissions issue.

II. Review of Certified Equipment and Program Requirements

As of July 1, 1998, several equipment kits have been certified for 6V92TA engine models (both MUI and DDEC II) to meet the 0.10 g/bhp-hr standard for less than the applicable life cycle cost

requirement ($7,940 in 1992 dollars). Other equipment has been certified for one engine model to meet the 25 percent reduction standard for less than the applicable life cycle cost requirement ($2,000 in 1992 dollars). The following briefly describes these equipment kits. The reader is directed to the referenced **Federal Register** cites for more information regarding the individual kits. In general, the following describes equipment certified between July 1, 1996 and July 1, 1998 to comply with either the 25 percent reduction or 0.10 g/bhp-hr standard, and to meet the appropriate life cycle cost requirements. A list of other equipment certified for the urban bus rebuild program is available from the contact listed above.

A. Engelhard Corporation's ETX™ Rebuild Kit for MUI Engines

Engelhard Corporation's ETX™ rebuild kit is the first kit certified to comply with both the 0.10 g/bhp-hr PM standard and the life cycle cost requirements. It applies to 1979 through 1989 model year Detroit Diesel Corporations 6V92TA MUI (mechanical unit injector) engines. Certification of the kit is described in a **Federal Register** document dated March 14, 1997 (62 FR 12166). The technology consists of an engine rebuild "upgrade" kit, a catalytic converter-muffler, and a proprietary coating (referred to as the GPX–5m) applied to piston crowns and cylinder head combustion chambers. The engine upgrade portion of the kit includes cylinder kits, cylinder heads, camshafts, turbocharger, blower and drive gear, fuel injectors, and gasket kit. This equipment triggered program requirements for the applicable engines under compliance Option 1.

Since certification of the ETX kit, competing kits, provided by both Johnson Matthey, Incorporated (JMI) and Detroit Diesel Corporation (DDC), have been certified to the 0.10 g/bhp-hr standard for these engines. The Johnson Matthey kit is described in a **Federal Register** document dated November 6, 1997 (62 FR 60079) and the Detroit Diesel kit is described in a document dated May 14, 1998 (63 FR 26798). An application submitted by Turbo-Dyne Incorporated has been summarized in the **Federal Register** (64 FR 19151; April 19, 1999) and is available for a 45-day public review period.

B. Engelhard Corporation's ETX Rebuild Kit for DDEC Engines

The Engelhard ETX rebuild kit for DDEC engines has similarities to the above-noted ETX kit for MUI engines, and is applicable to 1988 through 1993 model year, federal and California 6V92TA engines equipped with Detroit Diesel Electronic Control (DDEC). The kit is designed to update all DDEC engines to either 253 or 277 horsepower. The ETX kit uses many of the components of the DDC 6V92TA DDECII engine upgrade kit, along with an exhaust catalytic muffler, proprietary engine coatings on the cylinder head fire deck and piston crown, and an improved turbocharger. The kit is certified to comply with the 0.10 g/bhp-hr PM standard and is available for less than the life cycle cost limit of $7,940 (in 1992 dollars).

Certification of the DDEC ETX kit is described in a **Federal Register** document published on September 21, 1998 (63 FR 50225). This equipment triggered program requirements for operators using Option 1 to use equipment certified to the 0.10 g/bhp-hr standard when rebuilding or replacing the applicable engines on or after March 21, 1999.

EPA has also certified other kits to the 0.10 g/bhp-hr standard for the 6V92TA DDECII engines. Certification of a JMI CCT upgrade kit was announced in the **Federal Register** on December 3, 1998 (63 FR 66798), and certification of a DDC kit was announced on February 26, 1999 (64 FR 9500).

C. Engelhard Corporation's CMX Catalytic Muffler for Cummins' L10 EC

EPA certified the Engelhard CMX catalytic muffler to reduce PM emissions by 25 percent for 1992—1993 model year Cummins L10 EC (electronically controlled) engines. This certification was announced in a **Federal Register** document dated March 20, 1998 (63 FR 13660). This equipment triggers the 25 percent reduction standard for these engines under option 1 when rebuilt or replaced on or after September 21, 1998.

Currently, no other equipment has been certified under the urban bus program for these Cummins engines.

EPA has reviewed all equipment certified as of July 1, 1998. Table 1 lists the post-rebuild PM emission level for engine models affected by program regulations. In accordance with section 85.1403(c)(1)(iii), EPA selected 0.10 g/bhp-hr for the post-rebuild level if those engine models had equipment certified by July 1, 1998 to meet both the 0.10 g/bhp-hr standard and life cycle cost requirements. For those engine models for which no equipment was certified to the 0.10 g/bhp-hr standard as having complied with the applicable life cycle cost requirements by July 1, 1998, but for which equipment was certified by July 1, 1998 to meet the 25 percent reduction standard and to meet those applicable life cycle cost requirements, EPA selected as the lowest post-rebuild emission level (greater than 0.10 g/bhp-hr) certified for such equipment. For those engine models for which no equipment was certified by July 1, 1998, as meeting either the 25 percent or 0.10 g/bhp-hr emissions standards and life cycle cost requirements, the post-rebuild level has been selected to be equal to the pre-rebuild level as listed in 40 CFR 85.1403(c)(1)(iii). For engine models with a pre-rebuild level below 0.10 g/bhp-hr, the post-rebuild level has been selected to be equal to the pre-rebuild level listed in 40 CFR 85.1403(c)(1)(iii)(A).

Transit operators complying with Option 2 must use the applicable post-rebuild PM levels shown in Table 1 to calculate their TLF for calendar year 2000 and thereafter. The determination of which emission level (pre-rebuild or post-rebuild level) to use in the calculations must be made in accordance with 40 CFR 85.1403(c)(1)(iv), as amended on March 26, 1998. EPA will revise the instructions for the spreadsheet to reflect the new post-rebuild levels discussed in today's document. The instructions are available upon request from the contact listed above.

TABLE 1.—PM POST-REBUILD LEVELS (G/BHP-HR) FOR CALCULATING TLFS FOR CALENDAR YEAR 2000 AND THEREAFTERK [1]

Engine model	Model year	Pre-rebuild level	Post-rebuild level [2]	Engine code	Engine family
DDC 6V92TA MUI	1979–87	0.50	0.10	All ≤ 293 Hp	All.
	1988–1989	0.30	0.10	All ≤ 293 Hp	All.
DDC 6V92TA DDEC I	1986–89	0.30	0.23	All	All.
DDC 6V92TA DDEC II	1988–91 (w/out trap)	0.31	0.10	253 & 277 Hp	All.
	1992–93 (w/out trap)	0.25	0.10	253 & 277 Hp	All.
	1993 (w/ PM trap)	0.07	0.07	All	All.
DDC Series 50	1993	0.16	0.16	All	All.

TABLE 1.—PM POST-REBUILD LEVELS (G/BHP-HR) FOR CALCULATING TLFS FOR CALENDAR YEAR 2000 AND THEREAFTER[1]—Continued

Engine model	Model year	Pre-rebuild level	Post-Rebuild level[2]	Engine code	Engine family
DDC 6V71N	1973–87	0.50	0.38	All	All.
DDC 6V71N	1988–89	0.50	0.38	All	All.
DDC 6V71T	1985–86	0.50	0.38	All	All.
DDC 8V71N	1973–84	0.50	0.38	All	All.
DDC 6L71TA	1990	0.59	0.59	All	All.
DDC 6L71TA	1988–89	0.31	0.23	All	All.
DDC 6V71TA DDEC	1990–91	0.30	0.23	All	All.
DDC 8V92TA	1979–87	0.50	0.38	All	8V92TA.
	1988	0.39	0.29	All	5V92TA.
DDC 8V92TA DDEC	1988	0.41	0.31	All	8V92TA–DDEC II.
DDC 8V92TA	1989	0.47	0.35	9E70	KDD0736FW89.
DDC 8V92TA	1989	0.39	0.29	9A90	KDD0736FW89.
DDC 8V92TA	1989	0.34	0.26	9G85	KDD0736FW89.
DDC 8V92TA DDEC	1989	0.41	0.31	1A	KDD0736FZH4.
DDC 8V92TA	1990	0.47	0.35	9E70	LDD0736FAH9.
DDC 8V92TA DDEC	1990	0.49	0.37	1A	LDD0736FZH3.
DDC 8V92TA DDEC	1991	0.25	0.19	1A or 5A	MDD0736FZH2.
DDC 8V92TA DDEC	1992–93	0.21	0.16	1D	NDD0736FZH1 & PDD0736FZH X.
DDC 8V92TA DDEC	1992–93	0.29	0.22	6A	NDD0736FZH 1 & PDD0736FZH X.
DDC 8V92TA DDEC	1992–93	0.20	0.15	5A	NDD0736FZH 1 & PDD0736FZHX.
DDC 8V92TA DDEC	1992–93	0.25	0.19	1A	NDD0736FZH 1 & PDD0736FZHX.
CUMMINS L–10	1985–1987	0.65	0.34	All	All.
	1988–1989	0.55	0.34	All	All.
	1990–1992	0.46	0.34	All	All.
L–10EC	1992	0.25	0.19	All	All.
Cummins L–10 EC w/trap.	1993	0.05	0.05	All	All.
Alternatively-Fueled Engines.	pre–1994	0.10	0.10	All	All.
Other Engines	pre–1988	0.50	0.50	All	All.
	1988–1993	Cert'n Level[3]	Cert'n Level[3]	All	All.

[1] In accordance with 40 CFR 85.1403(c)(1)(iv).
[2] The instructions for the spreadsheet list these levels as post-rebuild-3 levels. The instructions are available upon request from the contact listed above.
[3] Use the certification level determined under EPA's new engine certification program.

An urban bus operator choosing to comply with Option 2 must be able to demonstrate at all times in a specified year that its fleet level attained (FLA) is equal to or less than its TLF for that year. Using the formulas in 40 CFR 85.1403(c)(1) and the PM emissions levels (including the above post-rebuild levels) in accordance with section 85.1403(a)(1)(iv), operators choosing Option 2 must calculate their TLF for calendar year 2000 and thereafter. The FLA is calculated using the formula of 40 CFR 85.1403(c)(2) and the certification level of the specific equipment installed on each bus. In order to ensure it is in compliance with its TLF at the start of calendar year 2000 and thereafter, transit operators choosing to comply with Option 2 are expected to begin taking appropriate actions (such as installing certified equipment and/or retiring buses) no later than calendar year 1999.

Dated: May 21, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–13802 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–6354–3]

RIN 2040–AD07

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Measurement of Mercury in Water (EPA Method 1631, Revision B); Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final regulation amends the "Guidelines Establishing Test Procedures for the Analysis of Pollutants" under section 304(h) of the Clean Water Act by adding EPA *Method 1631, Revision B: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry*. EPA Method 1631 measures mercury at the low levels associated with ambient water quality criteria (WQC). EPA has promulgated WQC for mercury at 12 parts-per-trillion (ppt) in the National Toxics Rule, and published a criterion for mercury at 1.3 ppt in the Water Quality Guidance for the Great Lakes System. The version of Method 1631 promulgated today includes changes to the method based on public comments at proposal (63 FR 28867, May 26, 1998). These changes increase measurement reliability at WQC levels. EPA recommends the use of clean sampling and laboratory techniques in conjunction with EPA Method 1631 to preclude contamination

at the low ppt levels necessary for mercury determinations. EPA has published guidance documents on sampling and clean rooms for trace metals, including mercury.

EFFECTIVE DATE: This regulation is effective July 8, 1999. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Standard Time on June 22, 1999 in accordance with 40 CFR 23.7.

The incorporation by reference of EPA Method 1631 is approved by the Director of the Federal Register July 8, 1999.

ADDRESSES: Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this notice) are available for review at the U.S. Environmental Protection Agency, Water Docket, 401 M Street SW, Washington, DC 20460. For access to docket materials, call 202/260–3027 on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Standard Time for an appointment.

Copies of EPA Method 1631 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847. The NTIS publication number is PB99–131989.

An electronic version of EPA Method 1631 also is available via the Internet at http://www.epa.gov/OST/Methods.

FOR FURTHER INFORMATION CONTACT: For information regarding EPA Method 1631 contact Maria Gomez-Taylor, Ph.D., Engineering and Analysis Division (4303), USEPA Office of Science and Technology, 401 M Street, SW, Washington, DC 20460; or call 202/260–1639.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authority, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has "approved" standardized testing procedures (i.e., promulgated through rulemaking) for a given pollutant, the NPDES permit must include one of the approved testing procedures or an approved alternate test procedure. Regulatory entities may, at their discretion, require use of this method in their permits. Therefore, entities with NPDES permits could be affected by the standardization of testing procedures in this rulemaking, because NPDES permits may incorporate the testing procedures in today's rulemaking. In addition, when a State, Territory, or authorized Tribe provides certification of federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the standardized testing procedures. Categories and entities that may ultimately be affected include:

Category	Examples of potentially regulated entities
Regional, State and Territorial Governments and Indian Tribes	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401; Governmental NPDES permittees.
Industry	Industrial NPDES permittees.
Municipalities	Publicly-owned treatment works with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Authority

Today's regulation is being promulgated pursuant to the authority of sections 301, 304(h), and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1314(h), 1361(a) (the "Act"). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to

"prescribe such regulations as are necessary to carry out his function under this Act." EPA publishes CWA analytical method regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 402.12).

II. Background

The details of EPA Method 1631 and its use in mercury determinations were given at proposal on May 26, 1998 (63 FR 28867). On March 5, 1999, EPA published a notice of data availability (NODA) with results from additional studies of municipal and industrial effluents using EPA Method 1631 (64 FR 10596). EPA conducted the additional studies in order to better respond to comments received on the May 26, 1998 proposal.

III. Summary of Final Rule

A. Introduction

Today's action makes available at 40 CFR part 136 an additional test procedure for measurement of mercury in aqueous samples. This rulemaking does not repeal any of the currently approved methods that measure mercury. For an NPDES permit, the permitting authority should decide the appropriate method based on the circumstances of the particular water sample measured. Use of EPA Method 1631 may be specified by the permitting authority when a permit is modified or reissued.

EPA does not intend for Method 1631 to be a *de facto* replacement for Method 245.1 or any of the other existing EPA-approved methods for measurement of mercury. EPA intends that permit writers specify the use of Method 1631 when measurement at very low levels is required, for example, to determine compliance with water quality-based effluent limitations duly established at very low levels.

B. Summary of EPA Method 1631

EPA Method 1631 has four procedural components: sample pretreatment; purge and trap; desorption; and detection by atomic fluorescence. In the sample pretreatment step, bromine monochloride (BrCl) is added to the sample to oxidize all forms of mercury to Hg(II). After oxidation, the sample is sequentially prereduced with $NH_2OH{\cdot}HCl$ to destroy free halogens, then reduced with $SnCl_2$ to convert Hg(II) to volatile Hg(0). The Hg(0) is purged from the aqueous solution with nitrogen onto a gold-coated sand trap. The trapped mercury is thermally desorbed from the gold trap into a flowing gas stream into the cell of a cold-vapor atomic fluorescence spectrometer. Quality is assured through calibration and testing of the oxidation, purging, and detection systems.

C. Sample Contamination

Trace levels of metals are ubiquitous in the environment. Therefore, the determination of trace metals at the levels of interest for water quality criteria necessitates the use of clean sample handling techniques to avoid "false positive" test results due to contamination in the course of sample collection, handling, or analysis. EPA has distributed several guidance documents that are designed to ensure that data results from the measurement of metals in aqueous test samples accurately reflect actual environmental levels. The guidance documents include: *Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels* (Sampling Guidance), EPA–821–R–96–001, July, 1996; *Guidance on Establishing Trace Metals Clean Rooms in Existing Facilities*, EPA–821–B–96–001, January 1996; and *Guidance on Documentation and Evaluation of Trace Metals Data Collected for Clean Water Act Compliance Monitoring*, EPA–821–B–96–004, July 1996. The most serious problem faced by laboratories conducting metals analyses at these very low levels is the potential for sample contamination during sample collection and handling. Sample contamination with mercury is particularly difficult to control because of its ubiquity in the environment. For example, commonly used polyethylene sample containers are unacceptable for sample storage because atmospheric mercury may diffuse through the walls of the container causing sample contamination. The Sampling Guidance details rigorous sample handling and quality control (QC) procedures to assure that reliable data are obtained for mercury at the levels of interest for water quality criteria. EPA recommends that the procedures described in the Sampling Guidance be followed when performing low level, trace metals analyses and has incorporated certain essential elements of the Guidance in the method.

D. Quality Control

EPA Method 1631 contains all of the standardized QC tests proposed in EPA's streamlining initiative (62 FR 14976, March 28, 1997) and used in test procedures in 40 CFR part 136, appendix A. Today's rule requires an initial demonstration of laboratory capability which consists of: (1) A method detection limit (MDL) study to demonstrate that the laboratory is able to achieve the MDL and minimum level of quantification (ML) specified in EPA Method 1631; and (2) an initial precision and recovery (IPR) test, consisting of analyses of four reagent water samples spiked with mercury, to demonstrate the laboratory's ability to generate acceptable precision and recovery.

Today's rule also requires ongoing QC tests for each analytical batch, (i.e., a set of 20 samples or less pretreated at the same time):

- Verification of calibration of the purge and trap and atomic fluorescence systems to assure that instrument response has not deviated significantly from the instrument response obtained during calibration.
- Analysis of a matrix spike (MS) and matrix spike duplicate (MSD) to demonstrate method accuracy and precision and to monitor matrix interferences.
- Analysis of reagent and bubbler blanks to demonstrate freedom from contamination.
- Analysis of a quality control sample (QCS) and ongoing precision and recovery (OPR) samples to demonstrate that the method remains under control.

EPA Method 1631 contains QC acceptance criteria for all QC tests. Compliance with these criteria will allow a data user to evaluate the quality of the results. These QC acceptance criteria will increase the reliability of results and provide a means for laboratories and data users to monitor analytical performance, thereby providing a basis for sound, defensible data.

E. Performance Based Measurement System

On March 28, 1997, EPA proposed a rule (62 FR 14976) to streamline approval procedures and use of analytic methods in water programs through implementation of a performance-based approach to environmental measurements. On October 7, 1997, EPA published a document of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all media programs to the extent feasible (62 FR 52098). EPA's water program offices are developing plans to implement PBMS. EPA anticipates that the final rule to implement PBMS in water programs will be published in 1999 based on the March 28, 1997

proposed rule. Consistent with Agency PBMS implementation plans, EPA Method 1631 incorporates QA and QC acceptance criteria to serve as a basis for assessment of method performance. When PBMS is in place, EPA Method 1631 would serve as a reference method for demonstrating equivalency when modifications are made.

EPA Method 1631 also employs a performance-based approach to the sample preparation and trapping systems. Analysts are allowed to modify the sample preparation and trapping aspects of the method provided all the specified performance criteria are demonstrated and documented. The method also allows the use of alternate reagents and hardware provided that the analyst demonstrates equivalent or superior performance and meets all QC acceptance criteria.

Demonstrating equivalency involves two sets of tests, one set with reference standards and the other with the sample matrix. The equivalency procedures include performance of the IPR test using reference standards to demonstrate that the results produced with the modified procedure would meet or exceed the QC acceptance criteria in EPA Method 1631. In addition, if the detection limit would be affected by a modification, performance of an MDL study is required to demonstrate that the modified procedure could achieve an MDL less than or equal to the MDL in EPA Method 1631 or, for those instances in which the regulatory compliance limit is greater than the ML in the method, one-third the regulatory compliance limit. For a discussion of these levels, see EPA Method 1631 or the March 28, 1997 proposed rule at 62 FR 14976.

IV. Changes to EPA Method 1631 Since Proposal

The Agency has revised EPA Method 1631, Revision A based on comments received on the proposal (63 FR 28868, May 26, 1998) and the NODA (64 FR 10596; March 5, 1999). The significant modifications in EPA Method 1631, Revision B are the change of the sample holding time (from 6 months to 28 days), the change of the MS/MSD performance criteria (for recovery from 75–125 percent to 71–125 percent recovery), and a change in reporting requirements.

A. Holding Time Change

EPA proposed the 6 month holding time for preserved aqueous samples to be analyzed by EPA Method 1631. Because the 6 month holding time was not evaluated in the method validation study supporting the proposal, EPA requested data that would support the 6 month holding time. Data were not available. Therefore, in the version of EPA Method 1631 being approved for use today, EPA has set the holding time to 28 days, the prescribed holding time listed in Table II at 40 CFR part 136.

B. Performance Criteria Change

The MS/MSD recovery limits in the proposed version of EPA Method 1631 were 75–125 percent. The interlaboratory method validation study produced MS/MSD limits of 71–119 percent. In response to comments on the proposal, EPA acknowledges that the lower limit produced in the interlaboratory study is more appropriate and has changed this limit to 71 percent in the version of EPA Method 1631 approved for use today.

C. Reporting Requirements Change

1. Reporting of Data That Failed To Meet QC Acceptance Criteria

In order to clarify the Agency's intent regarding data that do not meet the method QC acceptance criteria or that indicate the analytical system is not in control, EPA has adopted suggestions from commenters that these data should not be reported or otherwise used for permitting or regulatory compliance purposes. This modification addresses concerns that regulated entities could be adversely affected by data not meeting performance criteria, for example, via compliance monitoring. EPA also has added a statement to section 13.2 of the method that any decision not to report data from an analytical system that is out of control does not provide relief from a permit's underlying requirement to submit timely reports.

2. Reporting of Blank Results

In today's rule, EPA has expanded reporting of blank results to include reagent blanks and field blanks so that a regulatory authority may consider field blank contamination in any compliance determination. To facilitate assessment of the presence and extent of contamination, the Agency has revised EPA Method 1631 to require reporting of the mercury concentration in field blanks as well as in reagent blanks. Today's rule, however, does not require blank subtraction. Regulatory authorities or other data users may subtract the concentration of mercury in field blanks or reagent blanks if subtraction is warranted on a case-by-case basis. Today's rule does nothing, however, to preclude the reporting of blank-subtracted results in addition to the separate reporting of results from samples and from blanks.

3. Reporting Laboratory-Specific MDLS and MLS

EPA has removed the option for laboratories to calculate their own lower MDLs and MLs in the version of EPA Method 1631 being approved for use today. EPA believes this will avoid confusion and preclude lower MDLs and MLs from being used for NPDES permitting or regulatory compliance determinations.

D. Other Changes and Improvements

1. Changes To Method Implementation

Minor technical improvements were made to EPA Method 1631 to clarify method implementation. Changes and improvements include:

- Revision to sections 7.9, 7.10 and 10.1.1.2 to include two working standards (0.10 ng/mL and 10.0 ng/mL) in order to correct inaccurate standard concentration levels.
- Language changes in sections 4.4.1 and 9.3.4.1 to address iodide interferences that have been identified and assessed since proposal. This modification required the addition of a reference supporting the handling of iodide interferences. The additional reference has been added to EPA Method 1631 as Reference 10.
- Revisions to sections 9.4.2.2 and 11.1.1.2 to include a requirement that a reagent blank include the same amount of reagent as the sample being analyzed.
- Revisions to section 11.1.1.2 to include recommendations to assure that complete oxidation has occurred.
- Where appropriate, the word "analyst" was changed to "laboratory" to acknowledge that various sections of EPA Method 1631 may be performed by different analysts in the same laboratory.

2. Corrections To Method

Minor changes were made to correct typographical and information errors. Nearly all of the corrections are the result of comments and include:

- In section 9.1.2.1, "less than" was changed to "less than or equal to." A method modification must achieve an MDL "less than or equal to" one-third the compliance limit or the MDL.
- In section 12.4.1, > 0.2 ng/L has been corrected to < 0.2 ng/L.
- In Table 2, (s) has been corrected to RSD for precision.
- In Table 1, the lowest ambient water quality criterion has been corrected from 1.8 ng/L (human health criterion) to 1.3 ng/L (wildlife criterion).

The lowest WQC for the Great Lakes is 1.3 ng/L, the criterion for wildlife protection (see Table 4 to 40 CFR part 132).

- In section 4.2, Reference 5 has been changed to Reference 9, which is a paper discussing contamination of samples by dental work containing mercury amalgam fittings.
- References 10 through 20 in the proposed version of EPA Method 1631 have been changed to References 11 through 21 in the final version to include the addition of a new Reference 10 addressing handling of samples containing iodide interferences.

3. Clarifying Statements

As a result of comments:

- In section 4.3.8.5, a statement was added to clarify that reagents can be a source of contamination.
- Sections 4.3.8.2 and 5.3 were modified to clarify the meaning of "high" concentration of mercury and to caution that samples containing mercury concentrations greater than 100 ng/L should be diluted prior to bringing them into the clean room or laboratory dedicated to processing trace metals samples and that samples containing µ g/L concentrations of mercury should be treated as hazardous.

4. Additions To Health and Safety Monitoring and Waste Management

Today's version of EPA Method 1631 includes two additions made to address and clarify health and safety monitoring and waste management.

- In section 5.2, EPA added a recommendation that personal hygiene monitoring should be performed using Occupational Safety and Health Administration (OSHA) or National Institute of Occupational Safety and Health (NIOSH) approved personal hygiene monitoring methods.
- In section 15.1, a reference was added to address waste management techniques: *Environmental Management Guide for Small Laboratories* (EPA 233–B–98–001). None of the changes or improvements to the Method discussed above warrant re-proposal because these changes merely respond to public comment to clarify, correct minor errors, or otherwise improve the Method. None of these changes impair method performance or reliability.

V. Public Participation and Response to Comments

The Agency proposed EPA Method 1631 ("Method 1631"; or "the Method") on May 26, 1998 (63 FR 28867). The comment period closed on July 27, 1998. In addition to providing notice of the Method, the proposal also solicited information and data that might be relevant to the Agency's decisionmaking. EPA both received information and data and developed additional data confirming the proposal. EPA issued a notice of data availability (NODA) and request for comment on these data (64 FR 10596; March 5, 1999). The NODA comment period closed on April 5, 1999. During the NODA comment period, EPA again solicited additional data and information on EPA Method 1631.

EPA received more than 500 detailed comments from approximately 30 commenters. Comments ranged from praise and support for EPA Method 1631 to concern about the possible setting of compliance limits at the MDL or ML and suggestions for improving the technical details of the method. EPA appreciates the constructive comments and suggestions and believes that today's version of EPA Method 1631 will provide reliable data for compliance monitoring. A summary of the significant comments is presented below, followed by EPA's response. See the Docket for a complete summary of the detailed comments and more extensive responses.

A significant report received during the comment period was provided by the Department of Environmental Protection (DEP) in the State of Maine titled: "Mercury in Wastewater: Discharges to the Waters of the State" (the "Maine Report"). The Maine Report gives details and results of analysis of 104 ambient water samples and more than 150 wastewater samples (primarily effluents) using the proposed version of EPA Method 1631. The Maine Report is exemplary in that it allowed Maine's DEP to assess the presence and concentration of mercury Statewide, and will allow the State of Maine to focus its resources on problem areas within the State. The Maine Report is also significant because it provided a comprehensive "real world" assessment of the measurement capability of EPA Method 1631. The Maine Report demonstrates that EPA Method 1631 can be applied successfully to determination of mercury in a wide variety of effluents and ambient waters. Of particular interest is that, of 104 ambient water samples tested, no sample contained mercury at a concentration greater than 7 ng/L. Of the more than 100 effluent samples tested, only one contained mercury above the 200 ng/L level that previously approved methods for mercury could have measured. EPA has placed a copy of the Maine Report in the Docket for today's final rule. EPA recommends that all persons interested in making reliable mercury measurements in ambient water and discharges read the Maine Report. EPA publicly thanks the State of Maine and particularly the Department of Environmental Protection for its contribution. Comments and responses are organized and presented by subject area.

1. Support for EPA Method 1631

Comment: Commenters strongly support the need to reliably measure mercury levels in ambient waters. The method is technically sound and the chemistry behind the method is superb. The Agency should move aggressively to implement this method. Permitting authorities and others should take the necessary steps to see its adoption and use. EPA Method 1631 will: (1) Allow gathering of the type of information crucial to understanding mercury in the environment; (2) allow better analytical information on the levels of mercury in various waters to help decide if and where source reduction efforts would be most effective; (3) allow facilities to better assess actual discharges and progress in reducing mercury in effluents; (4) allow permitting authorities to establish appropriate limits based on ecological or human health endpoints, rather than being limited by the less-sensitive analytical techniques routinely utilized; (5) allow agencies to better monitor response of ambient waters to mercury reduction initiatives; (6) be useful for situations in which an authority or facility believes that results obtained with currently approved methods do not reflect actual levels because of contamination during sample collection, handling, and analysis; and (7) allow the State of Wisconsin to meet the recommendations of the "Wisconsin Strategy for Regulating Mercury in Wastewater." The Wisconsin strategy recommends development of better analytical capability to adequately quantify the level of mercury at effluent levels that have the potential to cause environmental degradation.

Response: EPA appreciates the support and, in particular, the recognition that a method for measuring mercury at ambient water quality criteria levels is overdue, that the method is based on sound science, and that EPA Method 1631 will protect dischargers from false reports that mercury is present in an effluent when, in fact, inadequate sampling and laboratory procedures accounted for the mercury measured in the sample.

2. Practicality and Cost

Impractical and Costly

Comment: The required use of EPA Method 1631 would impose an economic burden on industry, would force purchase of expensive new equipment, and would require a significant increase in operating expenses. The cost of a Class 100 clean room is $50,000–$200,000. The analytical equipment will cost $10,000–$45,000. Fluoropolymer bottles will cost an estimated $7,200. The bottle cleaning protocol would require dedicated laboratory space and staff. Additional cost will be incurred for training.

Response: Not every facility will need to create a clean room and bottle cleaning capacity, because commercial laboratories are available and can supply clean bottles. In a study conducted by Ford Motor Company, the cost per sample analysis was in the range of $50–$80. EPA's experience is that costs per sample typically range between $50 to $110. EPA does not believe that this cost is unreasonable. If a facility desires to establish a laboratory for analysis using EPA Method 1631, however, EPA has provided guidance for establishment of "clean spaces" that will minimize costs in establishing a "clean" facility (see References 6 and 7 in Method 1631).

Lack of Laboratory Capability

Comment: Relatively few laboratories nationwide currently have the expertise and infrastructure to conduct analysis using this Method.

Response: Not every laboratory will need to establish the capability to conduct EPA Method 1631. Analytical costs are likely to decrease as demand for and use of the Method increases. Today more than ever, laboratories and other businesses respond rapidly to new business opportunities. Therefore, the Agency anticipates that capacity will develop rapidly as the demand increases for analyses by EPA Method 1631.

Sampling With EPA Method 1669

Comment: Required use of the radical field sampling procedures in EPA Sampling Method 1669 to support EPA Method 1631 would significantly increase cost and staff necessary to sample for mercury analysis alone. One additional sampling person (for clean hands/dirty hands) and ultraclean sampling protocols will cost approximately $34,000.

Response: Once sampling personnel become familiar with the "clean hands/dirty hands" technique and procedures recommended in EPA Methods 1631 and 1669, sampling for mercury can proceed quickly and efficiently. EPA does not believe that full-time sampling personnel will be needed. EPA anticipates that samples may need to be collected monthly, quarterly, or yearly, depending on the facility and whether mercury is measured at levels of concern. Therefore, the actual incremental cost for collection of samples using the techniques suggested in EPA Method 1669 will be small.

3. EPA Method 1631 Represents a Significant Regulatory Action

Significant Regulatory Action Under Executive Order 12866

Comment: The proposed rule is a "Significant Regulatory Action" under Executive Order 12866 (58 FR 51735, Oct. 4, 1993).

Response: It has been determined that this rule is a significant regulatory action and was, therefore, reviewed by the Office of Management and Budget (OMB).

Cost Increase Stated in Great Lakes Guidance

Comment: EPA acknowledged in Table 5–13 of *Assessment of Compliance Costs Resulting from Implementation of the Final Great Lakes Water Quality Guidance* (the "Assessment Document") that the annual cost could increase by $569.8 million if future MDLs became 10 times lower and could increase by $882.5 million if future MDLs became 100 times lower. EPA Method 1631 lists an MDL 1000 times lower. This rule should be subject to OMB review.

Response: The estimated compliance cost increases in the Assessment Document referred to future MDLs for all toxic pollutants (not just mercury) assuming MDLs might be used as compliance limits (and the MDL used for compliance evaluation). The Assessment Document states that the minimum level (ML), not the MDL, should be used for compliance evaluation when the WQBEL is below the detection or quantitation limit of the most sensitive analytical method. Today's rule implicates neither of these limits (MDL nor ML) because EPA Method 1631 allows reliable measurements below the lowest ambient water quality criterion (1.3 ng/L) in the final Great Lakes Water Quality Guidance. The Assessment Document presumed that costs would increase if dischargers were required to meet discharge requirements at the lower MDLs, not that it would cost these amounts if EPA allowed use of another method for the measurement of mercury. In any event, EPA evaluated compliance costs in the Great Lakes rulemaking because it would result in establishment of standards of compliance. Today's rule does not set standards of compliance, only standards of measurement and analysis. This rule is considered a significant regulatory action and was, therefore, reviewed by OMB.

Unfunded Mandates Reform Act

Comment: The Unfunded Mandates Reform Act (UMRA; 25 U.S.C. 1531, Subchapter II), requires assessment of the effects of regulatory actions on the private sector and preparation of a statement containing qualitative/quantitative cost-benefit analysis if costs are expected to exceed $100 million. EPA should perform the cost and benefit assessments because existing permits require the use of the most sensitive test procedure.

Response: EPA acknowledges that some permits may require the permittee to use the most sensitive test procedure available at the time of permit issuance, for example, when the limit is below detection of approved methods. Today's rulemaking does not automatically change permits issued prior to today. The only costs associated with today's rule are analytical costs, not compliance costs. Today's rule is not subject to the requirements of sections 202 and 205 of UMRA because it does not contain a Federal mandate that could result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA estimates the incremental analytical costs associated with the use of EPA Method 1631 instead of another approved method for mercury to be less than $2.6 million per year. EPA believes that this rule does not impose any regulatory requirements that might significantly or uniquely affect small governments because the rule approves an additional test procedure for the measurement of mercury that might be regulated by some other action (e.g., a permit that implements a State-adopted water quality standard).

Regulatory Flexibility Analysis

Comment: The Regulatory Flexibility Act (RFA) requires description of impact of regulatory actions on small entities. EPA is incorrect in stating that the rule will not have a significant economic impact on small facilities. Commenters request that the rule be subject to OMB review and a regulatory flexibility analysis.

Response: In section VI.C. of the proposal, pursuant to section 605(b) of

the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certified that this rule will not have a significant economic impact on a substantial number of small entities. This regulation approves an additional test procedure (analytical method) for the measurement of mercury which may be required in the implementation of the CWA (e.g., issuance of permits and/or establishment of WQS). EPA Method 1631 is not a *de facto* replacement for EPA Method 245.1 or any of the other existing EPA-approved methods. EPA anticipates that permit writers will only require the use of EPA Method 1631 if there is a need to assess effluents or ambient water at the low levels EPA Method 1631 can measure or after a determination that a discharge causes, has a reasonable potential to cause, or contribute to an excursion from a water quality criterion for mercury. EPA further anticipates that the incremental analytical costs that may potentially be incurred by any small entity with low mercury limits will be at most $600 per year, assuming monthly monitoring.

4. Regulatory implications

Support for Use in Permitting

Comment: EPA should require immediate implementation of the new method and should require States to begin requiring it for NPDES compliance as soon as possible.

Response: Today's rule authorizes use of EPA Method 1631 but does not require its use for compliance monitoring or any other uses. The Agency developed EPA Method 1631 to enable reliable measurement of water samples at the levels established in water quality criteria. Consequently, EPA expects that when the measurement sensitivity of EPA Method 1631 is necessary to assess and implement water quality controls (including compliance monitoring), EPA Method 1631 will be used. If and when other methods for measuring mercury at these low levels are promulgated in 40 CFR part 136 or are approved under the procedures at 40 CFR 136.4 and 136.5, the permitting authority would have discretion to determine which method is most appropriate under the circumstances.

States that are authorized to administer the NPDES program must require use of 40 CFR part 136 methods. EPA recognizes that States may need to follow State procedures to adopt changes to 40 CFR part 136 before they can require use of a newly promulgated method and allows States a reasonable time to accomplish this. See 40 CFR 123.62(e). EPA regulations do not require that permits be reopened to include a new analytical method. Instead, the permitting authority may have the opportunity to reopen the permit or to wait until the permit is reissued to include a new or more sensitive analytical method. See 40 CFR 122.62(a)(2).

Best Available Sensitivity

Comment: EPA failed to acknowledge that many existing permits require the permittee to use the test method with the lowest detection level.

Response: EPA recommends that EPA Method 1631 be used only for situations in which mercury may be known or thought to be the cause of an environmental or human health problem, or for investigations directed at determining whether a problem exists, in the same way that EPA recommends that other test methods be used. EPA Method 1631 is being made available for use when it is necessary to measure mercury concentrations at low levels. As previously explained, existing permit requirements to use the most sensitive method available may only incorporate the most sensitive method at the time the requirement was imposed, not methods adopted in the future.

Reporting vs. Use of Data

Comment: EPA Method 1631 states that results need not be reported for regulatory compliance purposes if the results do not satisfy QC acceptance criteria. The Inter-Industry Analytical Group (IIAG) suggests that EPA change the phrase to read: ". . . may not be reported or otherwise used for permitting or regulatory compliance purposes." IIAG also requests that EPA clarify that results from tests performed with an analytical system that is not in control also should not be reported or otherwise used for permitting or regulatory compliance purposes.

Response: EPA has adopted IIAG's suggested wording, and changed relevant text in EPA Method 1631 accordingly. The wording changes clarify the Agency's intent that data that fail to meet the Method's QC acceptance criteria are not reliable measurements of mercury.

Iodide Interference

Comment: The Inter-Industry Analytical Group (IIAG) comments that EPA fails to give adequate consideration to interferences and cites, as an example, an iodide interference problem encountered by GPU Nuclear Co. (GPU) using EPA Method 245.1. GPU attributes this interference to formation of a stable complex of iodide and mercury that prevents reduction of mercury to its elemental form with the stannous chloride ($SnCl_2$) reductant. ($SnCl_2$ also is used in EPA Method 1631). GPU has overcome the problem by addition of a small amount of sodium tetrahydroborate to aid in reduction of mercury.

Response: EPA did not claim that EPA Method 245.1 was free from test interference. The claim was made concerning EPA Method 1631. EPA Method 1631 uses different chemistry than EPA Method 245.1. In EPA Method 1631, mercury is oxidized to Hg(II) with bromine monochloride, pre-reduced with ammonium hydroxide hydrochloride ($NH_2OH{\cdot}HCl$) to destroy free halogens, then reduced with $SnCl_2$. The $NH_2OH{\cdot}HCl$ likely plays the same role as the sodium tetrahydroborate in GPU's procedure. EPA has now received a report that high concentrations of iodide (>40 mg/L) can interfere in the determination of mercury using EPA Method 1631. These high concentrations can occur in in-process streams and influents, but normally would not be encountered in treated effluents. To allow for the possibility that high concentrations of iodide, however, and the possibility that other substances could interfere in the determination of mercury using EPA Method 1631, today's version of EPA Method 1631 acknowledges that test interference remain a slight possibility.

Variability and Regulatory Decisions

Comment: The Inter-Industry Analytical Group (IIAG) comments that EPA's QC acceptance criteria and other variability must be taken into account in regulatory decisions. IIAG cites the QC acceptance criteria for the matrix spike and matrix spike duplicate (MS/MSD) in EPA Method 1631 and questions EPA's rationale for determining that such a wide range of performance is acceptable, given the harsh regulatory consequences associated with excursion of permit limitations. IIAG states that EPA must explain why such variability is acceptable and how regulators are required to account for that variability in their permitting and/or compliance decisions.

Response: EPA disagrees that QC acceptance criteria are "wide." These criteria are consistent with, or narrower than, other methods for measuring pollutants at these levels (see for example the QC acceptance criteria for EPA Methods 608 and 1613 at 40 CFR part 136, appendix A). The QC acceptance criteria recognize the variability expected to occur among laboratories. The EPA developed the criteria from multiple, single-laboratory

data and verified the data in the interlaboratory study. The Agency used the laboratory data to develop the QC acceptance criteria in today's rule.

Regarding accounting for variability in permitting and compliance decisions, EPA's technology-based rules do account for analytical variability because measurement variability is a component of the overall variability encountered to develop the rule (including field measurement). Therefore, no additional allowance for analytical variability is appropriate. For water quality uses, accommodation for the effect of analytical variability is less routinized. In the Technical Support Document (TSD) for Water Quality-based Toxics Control (EPA/505/2–90-001), EPA noted that accounting for analytical variability in establishing permitting requirements can result on the one hand, in failure to be adequately protective of the wasteload allocation or, on the other hand, to be overly conservative. Therefore, EPA recommended against any additional allowance for analytical variability. However, EPA currently is developing guidance on accounting for analytical variability in permitting in the context of the whole effluent toxicity program. When finalized, that guidance may provide the basis for revising the position taken in the TSD with respect to accounting for analytical variability in general.

5. Retention of Approved Methods and Approval of Additional Methods

Support as Additional Method, With Qualification

Comment: Commenters support approval of EPA Method 1631 if it is an addition to the list of approved methods and not a replacement for existing methods, especially if a laboratory can demonstrate that it can achieve low ng/L detection limits (including needed sensitivity) with one of the presently approved methods.

Response: Today's rule approves EPA Method 1631 as an additional method that can be used when measurement of mercury at water quality criteria levels is needed. EPA doubts that a laboratory can achieve the low levels (including needed sensitivity) with one of the presently approved methods. Typically, the MDL of a method should be an order of magnitude (factor of 10) below the level desired for measurement (e.g., a regulatory compliance limit, or any water quality criterion) so that contamination can be detected and the effects of contamination evaluated. If the detection limit is at or near the level desired for measurement, it would be difficult to determine if the presence of the substance is real or is attributable to contamination. The capabilities of EPA Method 1631 enable such an evaluation.

Support Continued Use of Approved Methods

Comment: EPA should continue to allow the use of other approved methods. Withdrawal of existing methods (EPA 245.1, 245.5, Standard Method 3112B, ASTM D3223–91, USGS I–3462–85, and AOAC-International 977.2) would be disastrous. There would be serious adverse economic ramifications if EPA Methods 245.1 and 245.2 are withdrawn. EPA Method 1631 should not be imposed on the private sector as the sole method. The option of using less sensitive methods should remain where EPA Method 1631 sensitivity is not needed.

Response: Based on comments received and the points made in those comments, today's rule allows continued use of the presently approved methods for determination of mercury when those methods achieve the desired measurement objective.

Performance-Based Measurement System

Comment: The performance-based measurement system (PBMS) as applied in proposal allows for sample preparation and trapping modifications, but does not allow for use of atomic absorption. EPA should accept application of PBMS for a different absorbance technique when it can achieve needed sensitivity.

Response: EPA proposed to implement PBMS in its water measurement programs (62 FR 14975, March 28, 1997) but has not yet promulgated a final PBMS rule. EPA anticipates that the final rule will allow use of alternate determinative techniques such as atomic absorption. Until a final rule is promulgated, however, methods approved at 40 CFR part 136 must be used according to their terms. Approval of the use of alternate procedures, such as alternate determinative techniques, can be requested through the alternate test procedure provisions described at 40 CFR 136.4 and 136.5.

6. Application to Wastewater Matrices

Inapplicable to Effluent

Comment: EPA Method 1631 is not applicable to the determination of mercury in effluents. The Method should contain a statement that it is not intended for the determination of concentrations normally found in industrial discharges. Language in an earlier version of EPA Method 1631 (January 1996) stated that "this method is not intended for determination of metals at concentrations normally found in treated and untreated discharges from industrial facilities."

Response: When the Agency first began development of EPA Method 1631, the method description contained the statement that it was applicable to ambient monitoring but that it was not intended for application to industrial discharges. Since then, however, in studies of POTWs along the Great Lakes, in the interlaboratory validation study, and in other recent studies (Results of Method 1631 Application to Effluent Matrices (March 1999) and Application of Method 1631 to Industrial and Municipal Effluents (December 1998)), EPA has found that mercury could be reliably measured at low levels in municipal and industrial discharges. For this reason, and because some States requested EPA support to develop the method for measurement of municipal and industrial discharges, the Agency expanded EPA Method 1631 to cover wastewaters. The statement regarding restricted use of EPA Method 1631 was deleted from the January 1996 version.

Testing One Effluent Is Inadequate

Comment: Testing one effluent at one level by a few laboratories is not an appropriate inter-laboratory study for general NPDES application.

Response: The Agency validated EPA Method 1631 on one filtered and one unfiltered wastewater matrix in the interlaboratory validation study. Subsequently the Agency gathered additional effluent data in response to comments regarding the method's applicability to wastewaters generally. EPA made these data available in a notice of data availability on March 5, 1999 (64 FR 10596). These data demonstrate that EPA Method 1631 is applicable for measurement of municipal and industrial effluents.

7. Detection and Quantitation

MDL Is Flawed

Comment: Several commenters state that Agency estimates of detection and quantitation in-EPA Method 1631 are flawed. The estimates cannot be achieved in real world use. The estimates are scientifically unsound. The estimates are neither realistic nor reproducible. The estimates use an inappropriate multiplication factor. They overestimate the certainty associated with measurements. The estimates are not representative of expected performance by qualified laboratories. They are not a valid statistical basis for predicting laboratory

performance. The estimates were based on spikes into reagent water instead of wastewaters. The estimates do not consider effluent characteristics. The estimates are based on a protocol that has never been subjected to peer review and public comment. The estimates do not reflect the performance capability of laboratories that will be performing compliance monitoring.

Response: EPA disagrees that the MDLs and MLs in EPA Method 1631 were developed inappropriately. EPA Method 1631 employs the method detection limit (MDL) (see 40 CFR part 136, appendix B). The MDL is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte. The MDL procedure is not designed to control "false positives" or "false negatives," allow for repetitive testing, or predict laboratory performance. However, since the variability of the blank is expected to be approximately equal to the variability at the MDL, measurement results greater than the MDL are unlikely to be obtained when measuring samples that do not contain the substance of interest. In effect, the MDL can be used to control the rate of "false positives." Reagent water is the matrix used for determining the MDL performance measure of a method because (1) reagent water is available to all laboratories, (2) reagent water allows determination of the lowest concentration of a substance that can be detected absent matrix interferences, and (3) there is no matrix that represents all wastewater matrices. Application of the MDL procedure to particular methods has been subject to peer review and public comment with every MDL that EPA publishes in nearly every chemical-specific method proposed in the **Federal Register** since 1984. The MDL procedure has widespread acceptance and use throughout the analytical community. No other detection or quantitation limit procedure or concept has achieved this level of acceptance and use.

EPA Method 1631 incorporates the concept of a minimum level of quantitation (ML), which is the lowest level at which an analytical system is expected to give a recognizable signal and acceptable calibration point. In 1994, EPA revised its use of the ML concept to 10 times the standard deviation associated with the MDL in order to be more consistent with the limit of quantitation (LOQ) of the American Chemical Society (ACS). The LOQ is based on a standard deviation of replicate measurements on a blank, which is expected to be approximately equal to the standard deviation of replicate measurements at the MDL. Therefore, EPA expects the ML to be approximately equal to the LOQ. Because the MDL is established at 3.14 times the standard deviation associated with the MDL and the ML is 10 time the standard deviation associated with the MDL, the multiplier between the MDL and ML is 3.18. EPA believes that this multiplier is consistent with other multipliers selected for the purpose of quantitation and that this multiplier is therefore appropriate. Readers are referred to the response to comments document in the Docket for today's rulemaking for a more detailed response.

EPA plans to continue to examine the issues of detection and quantitation. The Agency initiated a study recently to examine the effects of error from various analytical systems on detection and quantitation, and plans to involve the public in the application of the data being gathered to develop an improved approach, if such an approach is found to exist.

Use of the MDL/ML Concepts Violate Administrative Procedure Act

Comment: Commenters opposed EPA's proposed detection and quantitation levels because EPA did not provide the opportunity for review and comment on the basis for the proposed decisions. EPA's proposal neither describes the origin of the MDL nor explains why the Agency believes that it is an acceptable basis for developing detection levels for use in compliance determinations.

Response: The MDL concept origin is an article published in the peer-reviewed scientific literature in 1981 (*Environmental Science and Technology* 15 1426–1435). The MDL procedure has been used in EPA's various environmental programs since it was published at 40 CFR Part 136, Appendix B in 1984. The MDL procedure is accepted and used by nearly all organizations making environmental measurements. Recently, EPA has undertaken data gathering that should allow re-examination of detection and quantitation limits. When this study is complete, EPA will decide if the MDL and ML continue to be appropriate or if other concepts are appropriate for EPA's scientific and regulatory purposes. EPA has involved, and will continue to involve, stakeholders in this process and in EPA's final decision. Until other detection and quantitation limit concepts are shown to be more appropriate, EPA will continue to use the MDL and ML for the reasons stated at the beginning of this response, in other responses, and in other rules.

MDL Violates A 1985 Judicial Settlement

Comment: A commenter noted that, in a judicial settlement in 1985, EPA agreed that the MDL procedure published at 40 CFR part 136, appendix B, was intended to apply exclusively to the subset of the test methods that the Agency published at 40 CFR part 136, appendix A, in 1984. Thus, the commenter argues that, if EPA uses the MDL procedure for the purpose of deriving a detection level for EPA Method 1631, the Agency must provide the public an opportunity to review and comment on that decision. As justification for use of the MDL, EPA gave the reasons that (1) laboratories that participated in the EPA Method 1631 study were able to calculate an MDL at least as low as that achieved in an earlier study, and (2) the MDL is well below the lowest water quality criterion (WQC) in the National Toxics Rule and listed in the final water quality guidance for the Great Lakes System. The commenter argues that these reasons may be desirable but that they are irrelevant for determining an appropriate detection level. The commenter argues that EPA must first confirm that good laboratories can achieve that level.

Response: The commenter is correct that, in 1985, EPA agreed in a settlement that the MDL procedure at 40 CFR part 136, appendix B, was applicable to the 40 CFR part 136, appendix A methods only. The settlement, however, did not restrict future application of the MDL procedure, nor did it restrict any person's right to challenge the Agency's reliance on the MDL procedure in any future rulemaking. EPA provided the opportunity for comment on use of the MDL in EPA Method 1631. EPA believes that the interlaboratory validation study of EPA Method 1631 confirms that good laboratories can achieve the detection and quantitation levels that EPA established for EPA Method 1631.

Effluent Study Offers No Support for the MDL Performance Measure in EPA Method 1631

Comment: If the intent of EPA's effluent study was to determine whether MDL calculations are influenced by the sample matrix, EPA should have used a matrix more representative of real world samples rather than the City of Eugene's POTW effluent. The mercury level in the City's effluent was lower than in any

of the other effluents used in EPA's study.

Response: Step 3(b) of the MDL procedure at 40 CFR part 136, appendix B requires that the measured level of analyte be less than five times the MDL. The MDL in EPA Method 1631 is 0.2 ng/L. Five times the MDL is 1.0 ng/L and therefore the concentration of mercury in the MDL study needed to be in the range of 0.2 to 1.0 ng/L. The measured level of mercury in the City of Eugene's POTW effluent was 0.56 and 0.72 ng/L, based on data collected prior to the MDL study. Therefore, the mercury concentration of the City's sample was in the appropriate range for the MDL study.

8. Clean techniques

Clean Techniques Should Be Required

Comment: The rule should require clean sampling, handling, and analysis when EPA Method 1631 is used and the Agency should develop a comprehensive database on the level of contamination that may arise. A commenter provided a list of sections in EPA Method 1631 that allow discretion but that the commenter believes must be made mandatory to assure reliable and reproducible results, for example, if government inspectors measure the same sample effluents. The commenter argues that EPA must explain its rationale for deciding that certain clean techniques are mandatory and to justify its decision that other techniques are not mandatory and, therefore, can be left to the discretion of enforcement officials. The only exception to required use of clean techniques should be that permittees should have complete discretion as to the use of such techniques because the failure to use such techniques can only result in mercury results higher than the level actually present in an effluent.

Response: During the development of EPA Method 1631, the Agency found some researchers using very extensive measures for clean sampling, including the wearing of clean room caps, suits, booties, and shoulder-length gloves in addition to hand-length gloves. On the other hand, EPA found other researchers wearing shorts, tee shirts, and hand-length gloves only. Because the Agency sought to maximize the flexibility of capable personnel, EPA provided the Sampling Guidance (EPA Method 1669) to indicate measures to prevent and preclude contamination. The sampling guidance is not mandatory for use with EPA Method 1631 because some permittees and sampling teams are capable of reliable sample collection without the measures detailed in the guidance. The rigor of clean sample collection techniques is determined by the required measurement objective or regulatory level (i.e., the lower the desired level, the more critical is the adherence to rigorous clean sampling protocols). Those elements of clean sampling, handling, and analysis that the Agency believes are necessary to assure reliable and reproducible results have been incorporated into EPA Method 1631. For example, the use of clean gloves by all sampling personnel and the use of metal-free apparatus are requirements specified in the method. In addition, the QC requirements in the method are designed to detect potential contamination that may arise in the field, during transport, or in the laboratory.

Regarding development of a comprehensive database, the Agency does not see the need to develop a database on the level of contamination that may arise. In both EPA Method 1631 and the Sampling Guidance (EPA Method 1669), EPA is very explicit that contamination is a concern and, consequently, the Agency provided appropriate measures to minimize contamination.

EPA includes a number of mandatory steps in a method when it believes those steps are necessary to provide reliable analytical results. If EPA were to justify every discretionary aspect of a method (indicated by the words "should," or "may," and other words denoting suggestions) for every method or guidance document that the Agency develops, method and document development would grind to a halt. Parametric studies of every variable that could possibly influence the outcome of a method or use of a document would become cost-prohibitive. The list of discretionary techniques in EPA Method 1631 that the commenter suggests should be evaluated would require 20 parametric studies.

Clean Techniques Should Not Be Required

Comment: Clean techniques should not be required. There is no documentation in the record that clean field blanks and clean samples can be collected. This casts doubt on the ability of laboratories and permittees to use this method in day-to-day activities designed to meet Clean Water Act requirements. Clean techniques are an unnecessary expense because detection levels this low are not needed for personal or environmental protection. EPA Method 1631 is able to detect such low levels that sample collection and analysis must occur in pristine environments to prevent false positives.

Response: Clean techniques are not required but are recommended for low level mercury measurements associated with WQ criteria. EPA cautions, however, that contamination has been identified as a potential problem in collecting samples for mercury prior to the advent of clean techniques. Use of these techniques, as detailed in the sampling guidance (EPA Method 1669) and in the technical literature (see references 2–9 of EPA Method 1631), has allowed collection of samples free of contamination at ng/L levels. EPA urges use of clean techniques, as appropriate, to preclude contamination. As stated earlier, those elements of clean sampling, handling, and analysis that the Agency believes are necessary to assure reliable and reproducible results have been incorporated into EPA Method 1631.

Although EPA agrees that clean techniques should not be (and are not) required, EPA disagrees with the commenters assertion that the record contains no documentation that clean field blanks and clean samples can be collected. The EPA Method 1631 Interlaboratory Study included the collection of field samples for use in the study, and results from background and QC analyses demonstrated the ability to collect clean field blanks and samples. Following proposal of the method, EPA also collected additional effluent data and made those data, including QC results, available in the Docket and through a notice of data availability (64 FR 10596). These data provide further demonstration that clean field blanks and clean samples can be collected.

9. Corrections to statements in proposal

Holding Time

Comment: Proposed EPA Method 1631 lists a holding time of 6 months. EPA used a period of only one month, however, to evaluate the stability of the samples. Please provide the basis for the large variation in holding times between EPA Method 1631 (6 months), EPA Method 245.1 (28 days), and draft EPA Method 245.7 (72 hours). EPA must have data to support the specified maximum holding time and will need to change holding time in CFR if EPA Method 1631 is approved.

Response: EPA specified the maximum holding time at 6 months in the proposed version of EPA Method 1631 based on statements by a number of laboratories involved in development of EPA Method 1631 that samples could be held for this period. EPA requested data that would support the 6 month holding time. Data were not forthcoming. Therefore, in today's

version of Method 1631, EPA has specified a maximum holding time of 28 days, consistent with Table II at 40 CFR part 136.

Lowest Water Quality Criterion

Comment: The lowest water quality criterion (WQC) for the Great Lakes Water Quality Guidance is not 1.8 ng/L. It is 1.3 ng/L, the criterion for wildlife protection (see Table 4 to 40 CFR part 132). Waters of the United States frequently exceed these levels even where there is no direct industrial or municipal discharge.

Response: EPA stands corrected. EPA recognizes that waters of the United States can exceed Great Lakes WQC levels, even where there is no industrial or municipal discharge. That possibility, however, does not affect the substance of today's rule.

10. Quality Control

Excessive quality ControL

Comment: The quality control (QC) in EPA Method 1631 is excessive, unreasonable, far more rigorous than in currently approved methods, and demonstrates the inappropriateness of this method for general application.

Response: The QC in EPA Method 1631 is consistent with the other 40 CFR part 136, appendix A methods and consistent with requirements for other environmental analytical chemistry methods. EPA believes that the QC requirements are necessary to ensure the reliability of data results and that these requirements are not onerous.

Insufficient Quality Control

Comment: Without addition of more comprehensive QC for background, mercury determinations at low ppt levels are subject to unknown and unacceptable bias and imprecision. Additional validation and modification to the QA/QC are necessary for the method to realize its potential of being a rugged method capable of providing reliable quantification of mercury at sub-ng/L concentrations.

Response: Bubbler blanks, reagent blanks, and method blanks serve as checks on contamination. The MDL performance capacity of Method 1631 is 0.2 ng/L. This MDL enables detection of contamination at sub-ng/L concentrations, should such contamination occur. A discharger or laboratory is not precluded from performing additional QC if it desires.

Method Performance

Comment: A commenter argues that EPA must assure that the irreducible performance limitations inherent in all methods will not act to penalize persons for lawful conduct. EPA cannot provide such assurances absent adequate performance data, which can only be derived from properly conducted method validation studies. If EPA determines that a test method has been adequately validated, EPA must publish performance characteristics along with the method.

Response: EPA conducted a validation study on EPA Method 1631. Published method performance characteristics associated with the Method include: (1) A method detection limit (MDL) and minimum level of quantitation (ML) in Table 1, (2) quality control (QC) acceptance criteria in Table 2, and (3) precision and recovery data for six sample types in Table 3. These data more than adequately support the adequacy of the Agency's validation of EPA Method 1631.

11. Blanks and Contamination

Reagent Blanks

Comment: Reagent blanks also should be subtracted from sampling results. Otherwise, inaccurate, high results will be reported.

Response: Section 12.4 in EPA Method 1631 asks for separate reporting of results for samples and blanks, unless otherwise requested or required by a regulatory authority or in a permit. The reason for separate reporting is so that a regulatory authority can assess if results for samples are attributable to contamination and the extent to which contamination is affecting the measurement. There is no prohibition in EPA Method 1631 against reporting blank-subtracted results, provided, of course that results for blanks and samples are reported separately.

Bubbler and Reagent Blanks Inadequate

Comment: Bubbler blanks and reagent blanks only demonstrate that the analytical system is uncontaminated. Analysis of field or equipment blanks should not be used to demonstrate laboratory capabilities.

Response: EPA agrees that bubbler blanks and reagent blanks are used to demonstrate that the analytical system is uncontaminated. EPA disagrees that field blanks or equipment blanks should not be used to demonstrate laboratory capabilities. The laboratory is responsible for determining and reporting field contamination and for demonstrating that equipment blanks are free from contamination. Section 9.4 of EPA Method 1631 also contains a statement "it is suggested that additional blanks be analyzed as necessary to pinpoint sources of contamination in, and external to, the laboratory." Both field and laboratory contamination sources may affect the analytical results.

Blank Subtraction

Comment: It should be acceptable to subtract field blank results in addition to reagent and bubbler blanks. EPA must require correction for reagent blanks.

Response: EPA has revised section 12.4 of the method to ask for reporting the concentration of mercury in field blanks but has not required blank subtraction so that a regulatory authority can assess if results for samples are attributable to contamination and the extent to which contamination is affecting the measurement. A regulatory authority or other data user may subtract the concentration of mercury in field blanks or reagent blanks if it believes this subtraction is appropriate. Today's rule does not preclude the reporting of blank-subtracted results provided that results for samples and blanks are reported separately.

Sample-Specific Reagent Concentrations

Comment: The reagent blank does not address sample-specific variation in reagent concentrations. Section 11.1.1.2 states that sewage effluent will require high levels of bromine monochloride (BrCl). The increased requirement for BrCl for samples high in organic materials could increase the background contribution if the BrCl contains trace amounts of mercury. This could lead to a high bias for mercury in samples that require high levels of BrCl. EPA Method 1631 states that BrCl cannot be purified (section 9.4.2.3).

Response: EPA agrees and has added the requirement that whatever concentration or amount of reagent that is added to the sample must also be added to the reagent blank in order to identify the reagent as a potential source of contamination. Regarding the statement in EPA Method 1631 that BrCl cannot be purified, EPA believes that this statement is true. BrCl, however, is made in the laboratory from several reagents that can be obtained in highly purified form. The resulting BrCl will then be very pure.

12. Validation Study

Insufficient Validation

Comment: Insufficient method validation has been provided to justify method use for routine NPDES purposes.

Response: The validation steps performed with EPA Method 1631 are

the same as EPA has performed with many other methods. The Agency validated EPA Method 1631 first in multiple single-laboratory studies and then further validated the method in an interlaboratory study. EPA followed ASTM Practice D 2777 in the interlaboratory validation study design. Some members of the ASTM Committee D–19 on water reviewed the interlaboratory study plan and contributed to the study. In response to commenters concerned about the application of EPA Method 1631 to NPDES effluents, EPA gathered data on application of EPA Method 1631 to effluents and made these data available to commenters for review prior to today's final rule (64 FR 10596).

Validation Under Routine Conditions

Comment: Validation data results were not obtained under normal, routine analytical operations. EPA Method 1631 should not be promulgated until it is validated using commercial laboratories able to sample and analyze waste streams using ultra-clean techniques. The fact that EPA Method 1631 has been subjected to the required validation studies alone does not ensure that it is ready for widespread application.

Response: Commercial laboratories were included in the interlaboratory method validation study and all laboratories involved in the study perform mercury analyses routinely using the techniques in EPA Method 1631. It is not necessary for commercial laboratories involved in the analysis of samples for mercury to be able to sample waste streams, although some do. All laboratories involved in the interlaboratory study analyze waste streams and all of the laboratories involved in the study determined their respective detection limits. EPA believes that the fact that EPA Method 1631 has been subjected to the required validation ensures that it is ready for widespread application. Over time, commercial laboratories will develop capacity to conduct EPA Method 1631 just as they have for other, previously approved test methods.

Additional Interlaboratory Studies

Comment: EPA's intralaboratory (i.e., within laboratory) studies reported in the Docket with the NODA failed to evaluate the matrix issue in a "real-world" interlaboratory context. EPA did not assess interlaboratory precision and bias in studies included with the NODA. EPA's data are insufficient to characterize precision and bias of mercury measurements in industrial effluents. Although the study included analysis of mercury samples by multiple laboratories, none of the samples was split between laboratories. The studies should have been designed to determine interlaboratory and multi-matrix precision, accuracy, and sensitivity of EPA Method 1631.

Response: Assessing interlaboratory precision and bias was not an objective of the additional studies. EPA assessed interlaboratory precision in the interlaboratory validation study and published performance data for the interlaboratory validation study in the report that was included in the Docket at proposal. In comments on EPA's proposal of EPA Method 1631 on May 26, 1998 (63 FR 28867), commenters expressed concern that only one municipal secondary effluent had been analyzed to determine precision and bias and that no industrial wastewater samples were analyzed. They argued that it was unreasonable for EPA to adopt a method with no data on the applicability to a wide variety of wastewater matrices. In response to those concerns, the Agency applied EPA Method 1631 to a wide variety of wastewater matrices, including industrial wastewater samples. EPA gathered data generated from the analyses of several different types of effluent samples in order to determine whether the results from that study meet the quality control (QC) acceptance criteria from the proposed method. EPA developed the QC acceptance criteria as a means of assuring the appropriate levels of precision and bias. Re-evaluation of precision and bias would be unnecessary if the QC acceptance criteria remained appropriate.

The commenters claim that EPA Method 1631 was validated inadequately because EPA did not conduct interlaboratory method validation studies on a wide variety of wastewater matrices containing naturally occurring mercury levels near the ML of EPA Method 1631. EPA disagrees. The ASTM guidelines recommend the use of reagent water as a reference matrix in at least one environmental sample matrix other than the reference matrix. EPA included a municipal effluent in the interlaboratory validation study. It would be impractical to use a wide variety of wastewater matrices with natural concentration near the ML of EPA Method 1631 because the levels in the sample are unknown prior to analysis. EPA followed ASTM and AOAC guidelines for the interlaboratory method validation study conducted prior to proposal. EPA believes that the Agency has fully addressed commenters' requests for additional data on the application of EPA Method 1631 to wastewaters. Commenters that have requested that EPA conduct extensive interlaboratory studies were involved in, and had the opportunity to contribute to, EPA's interlaboratory method validation study at the time it was conducted. These commenters chose not to contribute to a more extensive study or conduct studies on their own.

EPA reiterates that the main objective in conducting the additional studies was to demonstrate that effluent samples containing mercury at or near the ambient water quality criteria levels given in the National Toxics Rule (40 CFR 131.36) and in the Water Quality Guidance for the Great Lakes System (40 CFR part 132) could be analyzed with little or no difficulty. Data included in the Docket with the NODA and data provided by the State of Maine demonstrate that these measurements can be made reliably, claims from commenters about interlaboratory variability, precision, accuracy, and sensitivity notwithstanding.

Insufficient Concentrations

Comment: A commenter argued that EPA failed to validate EPA Method 1631 at a sufficient number of concentrations. The commenter cites a report prepared by the Electric Power Research Institute (EPRI) in which consultants to EPRI cite ASTM Practice D 2777–96 as the need to validate the method using samples spiked at multiple levels.

Response: EPRI and EPA collaborated on the study design for the EPA Method 1631 interlaboratory validation study. EPA shared data from the study with EPRI's consultants immediately after these data were verified and validated. The consultants acknowledge the collaboration in the attachment to the comment. At the outset of the study, EPA and EPRI agreed on the limitations of the study, including that there were insufficient resources to test every matrix at multiple levels. In the study, EPA validated EPA Method 1631 at multiple levels in reagent water and in freshwater collected near Port Washington, Wisconsin. To support today's final rule, EPA has gathered additional data on a variety of complex effluents using EPA Method 1631 and evaluated them at the low concentration levels of interest (i.e., low parts per trillion). These data represent the application of the Method to "real world" effluent samples. The data results demonstrate that Method 1631 can be successfully applied to effluents because all of the matrix spike and

matrix spike duplicate (MS/MSD) recoveries were within the QC acceptance criteria in EPA Method 1631, with the exception of two samples that were spiked at inappropriate levels.

EPA Did Not Follow Voluntary Consensus Standards Bodies (VCSB) Procedures

Comment: A commenter claims that EPA failed to use available standards and practices from VCSBs to design its method validation study as required by the National Technology Transfer and Advancement Act (NTTAA) and Office of Management and Budget (OMB) Circular A–119. The commenter asserts that NTTAA makes no distinction between technical standards that are themselves scientific tests (i.e., analytical methods) and standards used in the evaluation of the effectiveness and reliability (i.e., validation) of those tests. The commenter states that EPA claims to have complied with NTTAA by developing a new mercury method that had not yet been developed by a VCSB and that EPA incorrectly claims to have followed VCSB standards for the design and conduct of its validation study.

Response: EPA agrees that NTTAA and OMB Circular A–119 require federal agencies to consider available VCSB standards and practices. NTTAA requires federal agencies to consult with VCSBs and other organizations when such participation is in the public interest and is compatible with agency missions, authorities, priorities, and budget resources. If compliance with the requirement to use VCSB standards and practices is inconsistent with applicable law or otherwise impractical, a federal agency may elect to develop technical standards not developed or adopted by VCSBs if the head of the agency or department transmits to OMB an explanation of the reasons for using other standards.

EPA disagrees with the commenter's statement that we failed to use available standards and practices from VCSBs to design its method validation study. EPA designed the interlaboratory study with participation by the Electric Power Research Institute (EPRI) and its consultants. Individuals in EPRI are members of ASTM Committee D–19 on water. Committee D–19 developed Practice D 2777. The Agency followed Practice D 2777 in the study design. Practice D 2777 requires the use of at least one representative ("reference") sample matrix which is the same for all laboratories and recommends the use of at least one environmental sample matrix. Reagent water is recommended as the reference sample matrix. In a memorandum attached to the comment, the only statement suggesting that EPA did not follow Practice D 2777 in the study design is a statement that Practice D 2777 requires Youden pairs at a minimum of three concentrations per matrix. EPA included four concentration pairs in reagent water (and an unspiked pair), four concentration pairs for freshwater, and one concentration pair each for marine (one pair filtered and one pair unfiltered) and for a municipal effluent (one pair filtered and one pair unfiltered). EPA believes that the design of its validation study follows ASTM Practice 2777–96. EPRI members were aware of the resource limitations of the study and agreed that the design's limited number of Youden pairs and blind duplicate samples would not negate the usefulness of study results.

Performance Data Are Inadequate and Misleading

Comment: A commenter argues that EPA's performance information is inadequate and misleading because it fails to include regression equations. Stakeholders need a means to predict how EPA Method 1631 will perform at any particular level within its working range. EPA has provided regression equations in other methods. EPA inexplicably departed from this practice. The commenter further argues that EPA's performance information is inadequate and misleading because the EPA Method 1631 acceptance criteria are inconsistent with study results. For example, test data can be used if the initial precision and recovery falls within the range of 79–121 percent which is broader than the capability (86–113 percent) demonstrated by the EPA Method 1631 interlaboratory study. EPA must explain the difference in the final rule, if only to avoid confusion in the interpretation of EPA Method 1631 data.

Response: EPA disagrees that the performance information is inadequate and misleading. As EPA has stated elsewhere in these responses, EPA has no knowledge of use of regression equations in the interpretation of data by dischargers or others. Regression equations are redundant with QC acceptance criteria. Regression equations can be used to calculate expected method performance at a given concentration. The expected performance can, in turn, be used to determine if a laboratory's performance is equivalent to the performance of laboratories in the interlaboratory study. On the other hand, laboratories that practice a method that contains QC acceptance criteria recognize these criteria as absolute standards of performance within which the method must operate. Calculating another standard of performance, as the commenter suggests, would be redundant. Further, because the QC acceptance criteria are an absolute standard, laboratories can be held accountable. If they fail to meet this standard, corrective action would be required followed by reanalysis of samples after the QC acceptance criteria are met. Standards of performance derived from regression equations do not ensure this result.

The difference between the QC acceptance criteria listed in proposed EPA Method 1631 and in Table 11 of the interlaboratory study report are attributable to EPA's decision to not tighten the acceptance criteria from the draft method published in 1995 (EPA 821–R–96–027). EPA is concerned that any method that is iteratively tested may result in ever tightening QC acceptance criteria because succeeding data gathered with the method will likely fall within these criteria. EPA therefore retained the QC acceptance criteria from the draft method in the version of EPA Method 1631 proposed. In contrast, EPA has widened the QC acceptance criteria for the matrix spike and matrix spike duplicate (MS/MSD) between the proposed version and today's version. The reason for this widening is that the data gathered in the interlaboratory study demonstrated that the QC acceptance criteria for the MS/MSD were too restrictive. Making certain QC acceptance criteria unreasonably restrictive is onerous upon laboratories, especially new laboratories beginning to practice a method. Therefore, for EPA Method 1631, the Agency decided not to tighten the QC acceptance criteria for the IPR and OPR, and loosened the QC acceptance criteria for the MS/MSD.

Mercury Forms and Species

Comment: Mercury exists in many forms and states. The interlaboratory validation study failed to consider molecular diversity of mercury.

Response: EPA Method 1631 determines total mercury. The oxidation step in EPA Method 1631 oxidizes all commonly occurring forms and species to Hg(II) which is subsequently reduced to volatile Hg(0) so that it can be purged from solution and determined.

13. Technical details of EPA Method 1631

UV Oxidation

Comment: EPA must study and validate EPA Method 1631 with UV

oxidation on a range of industrial effluents and sewage samples, including "microbially-rich" samples. Results of the commenters' studies suggest that UV photo-oxidation can increase recoveries in some effluents. The use of UV oxidation makes measurement of mercury method-defined.

Response: In section 3.1 of EPA Method 1631, the Agency suggests use of UV oxidation for microbially-rich samples. EPA has added recommendations for determining complete oxidation. These recommendations should aid in recovery of mercury from some samples, as the commenter suggests. Regarding all interferences not being oxidizable, the commenter provided no example of a non-oxidizable interference that could occur in wastewaters.

Regarding the use of UV oxidation making mercury a "method-defined analyte," mercury could become method-defined in EPA Method 1631 only if it were not recovered reliably from a large number of samples. For the few number of samples in which incomplete oxidation can occur to make consideration of mercury as "method-defined," the additional recommendations should now assure complete oxidation so that mercury does not need to be considered "method-defined." Total mercury can be determined reliably.

Safety

Comment: There are safety hazards inherent in the practice of EPA Method 1631. The preparation of bromine monochloride (BrCl) is more hazardous than preparation of potassium permanganate (KmnO4). A significant amount of hot acid is involved in cleaning bottles/glassware. Laboratory ovens will be destroyed or serve as a source of contamination as a result of cleaning bottles that need to sit overnight at 60–70 °C with HCl. Further clarification and explanation is requested on what is required for laboratory personal hygiene monitoring.

Response: Section 5 of EPA Method 1631 is dedicated to safety issues, and the sampling guidance (EPA Method 1669) contains additional information on safety. Section 7.6 of EPA Method 1631 explicitly states that BrCl must be prepared under a hood because copious quantities of free halogens are generated. The sampling guidance contains detailed procedures for bottle cleaning including suggestions for a heated acid vat in which bottles may be cleaned. Use of metal ovens for heating acids is not suggested for the reason that the commenter states. EPA Method 1631 is performance-based, however, and allows laboratories to modify the cleaning protocols so long as the modified protocols are capable of yielding uncontaminated equipment blanks.

Regarding personal hygiene monitoring, EPA has added the statement to EPA Method 1631 to recommend that the personal hygiene monitoring be performed using Occupational Safety and Health Administration (OSHA) or National Institute of Occupational Safety and Health (NIOSH) approved personal hygiene monitoring methods.

14. Miscellaneous

Toxicity Limit

Comment: The fact that EPA has established toxicity limits at extremely low levels by a means not based on laboratory analyses does not mean that analytical technology can be developed.

Response: EPA believes that ambient water quality criteria and health effects-based limits can best be supported by gathering of data at levels represented by these criteria and limits, the means for establishing these limits notwithstanding. EPA will continue to strive to develop the analytical technology that will allow reliable measurements at these levels.

Dissolved Mercury Only

Comment: EPA should clarify that EPA Method 1631 applies to dissolved mercury only. If the total digestion is performed, naturally occurring sediments may contribute significant analyte concentrations to a result.

Response: Today's rule approves use of EPA Method 1631 for determination of dissolved and total mercury. If a sample contains suspended material such as sediment, it is intended that the mercury attached to or contained in the sediment be included in the measurement.

Ambient Criterion Based on Methyl Mercury

Comment: The ambient water quality criterion of 12 ng/L for mercury is based on methyl mercury. EPA incorrectly implied in the proposal that EPA Method 1631 should be used to show compliance with the methyl mercury-based 12 ng/L standard, and should remove reference to this standard if the method is finalized.

Response: The criterion continuous concentration (CCC) of 12 ng/L is for total recoverable mercury in water (40 CFR 131.36(b)(1)). Today's rule approves EPA Method 1631 so that reliable measurements of mercury can be made at this level, the basis for the standard notwithstanding. Both "total" and "dissolved" mercury measurements can be made with this method.

Grab Samples

Comment: The commenter requests that EPA provide a note in 40 CFR Part 136 that requires only grab samples should be collected when using EPA Method 1631 because of potential contamination with compositing sampling procedures.

Response: EPA has not mandated use of grab samples because EPA does not wish to discourage use of automated compositing equipment or sampling by other means, although EPA cautions that precluding contamination using these methods is more difficult than with collection of grab samples.

Implementation

Comment: A commenter argues that the rulemaking for EPA Method 1631 also must provide an objective and clear description regarding how the Method is to be implemented in practice.

Response: The meaning of the comment is unclear. If the commenter means that the details of EPA Method 1631 are inadequate and the procedures in EPA Method 1631 need to be developed further, EPA believes that the validation study demonstrates that the procedures in EPA Method 1631 are more than adequate for implementation of EPA Method 1631 in practice.

If the commenter means that EPA must examine the impact of the measurements made by the method on the regulatory process, EPA believes that this activity is outside the scope of method development, validation, and approval. EPA's regulations for water pollution control are based on wastewater treatment and water quality considerations as required by the Clean Water Act. EPA Method 1631 is simply a tool to measure total mercury in aqueous samples.

Personnel Qualifications

Comment: A commenter argues that EPA should specify the minimum qualifications for persons performing EPA Method 1631. Section 4.3.2 of EPA Method 1631 states that it is imperative that the procedures be carried out by well-trained, experienced personnel.

Response: Section 1.10 states that EPA Method 1631 "should be used only by analysts who are experienced in the use of CVAFS techniques and who are trained thoroughly in the sample handling and instrumental techniques described in this Method. Each analyst who uses this Method must demonstrate the ability to generate acceptable results using the procedure in section 9.2."

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. OMB made no suggestions or recommendations on this rule.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that significantly or uniquely may affect small governments, including tribal governments, it must have developed under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule does not contain a federal mandate (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more in any one year. EPA has determined that this rule contains no regulatory requirements that significantly or uniquely might affect small governments. As discussed below under the Regulatory Flexibility Act, the economic impact on small entities is anticipated to be small. This rule makes available a testing procedure which would be used at the discretion of the permitting authority when compliance with State-adopted water quality standards necessitates a more sensitive method than those previously approved. This rule would impose no enforceable duty on any state, local or tribal governments or the private sector, nor would it significantly or uniquely affect them. It would not significantly affect them because any incremental costs incurred are small and it would not uniquely affect them because it would affect all size entities based on whether testing for mercury is otherwise required by a regulatory authority. Further, monitoring for small entities is generally expected to be less frequent than monitoring for larger entities. Therefore, today's rule is not subject to the requirements of sections 202, 203 and 205 of UMRA.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This regulation approves a testing procedure for the measurement of mercury which EPA anticipates will be used by regulatory authorities when a permit limit has been set below the level of detection of previously approved methods. In developing this regulation, EPA considered the effects on small entities. Section 601(6) of the RFA defines small entity as small business, small governmental jurisdiction, and small organization. The small entities that might be affected by this rule include small governmental jurisdictions (that own POTWs) and small businesses with discharge permits for mercury at or below 200 ng/L. Of the 477 entities that we have identified with mercury limits at or below 200 ng/L, 143 are businesses, 38 are drinking water treatment plants in Puerto Rico, and 296 are POTWs.

To evaluate the potential impact on small businesses, EPA first assumed that all of the 143 businesses were small. EPA assigned to each identified facility the approximate average revenue for a small business in the SIC code to which that facility belongs. If the facility is classified as a "major" discharger in the Permit Compliance System (PCS), EPA assumed incremental analytical monitoring costs of $5,200 per year. This assumption is based upon weekly monitoring for mercury at two sample locations using Method 1631, and assumes each facility will incur an incremental cost of $50 per sample (the high end of the range of incremental costs). If the facility is classified as a "minor" discharger in PCS, EPA assumed incremental analytical monitoring costs of $600 per year. This assumption is based upon monthly monitoring for mercury at one sample location using Method 1631, and again assumes each facility will incur the high end incremental cost of $50 per sample. EPA then calculated the ratio of costs (using these upper-bound assumptions) to the assigned revenue to derive an upper-bound estimate of the impacts. The ratio is above 0.5 percent for only three facilities—"major" facilities, which may not be small businesses—and in all cases is below 4 percent. On average, the impacts were much lower. Specifically, the mean ratio for all of the facilities is 0.17 percent and the median ratio is 0.06 percent. Although PCS contains limitations data for over 20

percent of the "minor" dischargers, EPA believes that "minor" dischargers without limitations data in PCS would have a similarly low level of impact. No "minor" discharger is expected to experience an impact of more than 0.5 percent of revenues.

Small governments are those representing jurisdictions of less than 50,000 people. The 38 drinking water plants in Puerto Rico are state-owned and thus are not small governments. To evaluate the impact on small POTWs, EPA looked at the potential impacts on two sizes of POTWs to represent both "major" and "minor" dischargers potentially affected by the regulation. Based on national estimates from the Census of Governments, local governments collect $79.31 per person in sewerage charges, which EPA assumed to be the average per capita revenue for POTWs from the population that they serve. On average, a POTW has a flow of 100 gallons per day for each person that it serves. EPA assumed that a POTW serving 1,000 people (having a flow of 100,000 gallons per day) would have revenues of $79,310 and incur costs of $600 (using the same assumptions as for "minor" businesses), which is 0.76 percent of its revenue. Similarly, EPA estimated that a POTW serving 10,000 people (having a flow of 1 million gallons per day, and thus being a major discharger) would have revenue of $793,100 and incur costs of $5,200 (using the same assumptions as for "major" businesses), which is only 0.66 percent of revenue.

Based upon these estimates, EPA concludes that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, no information collection request has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 8, 1999.

F. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. EPA's search of the technical literature revealed that there are no consensus methods for determination of mercury at these trace levels, although the American Society of Testing and Materials (ASTM) potentially is in the process of developing an analytical method for the determination of trace levels of mercury. If ASTM or another voluntary consensus standard body approves such a method and EPA believes that the method is suitable for compliance monitoring and other purposes, EPA will promulgate the method in a subsequent rule. As mentioned earlier, the Agency followed ASTM's Practice D 2777 (a voluntary consensus standard) in the design of EPA's interlaboratory method validation study for EPA Method 1631.

G. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. Although it has been determined that this rule is a "significant regulatory action" under E.O. 12866, it is not economically significant and, therefore, E.O. 13045 does not apply. In addition, this rule does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 12875

Under Executive Order 12875, "Enhancing the Intergovernmental Partnership," EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. States have been particularly supportive of EPA's efforts to approve a more sensitive test method for mercury. The rule does not impose any enforceable duties on these entities. This rule makes available a testing procedure for use when testing is otherwise required by a regulatory agency. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084

Under Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," EPA may

not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

As described under the Regulatory Flexibility Analysis, today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Further, this rule does not impose substantial direct compliance costs on Tribal governments. This rule makes available a testing procedure which would be used when testing is otherwise required by a regulatory agency to demonstrate compliance with water quality-based permit limits for mercury. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Monitoring, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

In consideration of the preceding, USEPA amends 40 Code of Federal Regulations part 136 as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation of 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3, paragraph (a), Table IB.—List of Approved Inorganic Test Procedures, is amended by revising entry 35 to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

* * * * * * *

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1,35]	STD methods 18th ed.	ASTM	USGS [2]	Other
* *	*	*	*	*	*
35. Mercury—Total,[4] mg/L:					
Cold vapor, manual, or	245.1	3112 B	D3223–91	I–3462–85	[3] 977.22
Automated	245.2				
Oxidation, purge and trap, and cold vapor atomic fluorescence spectrometry (ng/L).	[43] 1631				
* *	*	*	*	*	*

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al. "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments", U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983." One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all sample types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

Note to Table IB Note 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used. Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20),

b. is visibly transparent with a turbidity measurement of 1 NTU or less,

c. is colorless with no perceptible odor, and

d. is of one liquid phase and free of particulate or suspended matter following acidification.

* * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals."

* * * * *

[43] The application of clean techniques described in EPA's draft Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels* (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

3. Section 136.3 is amended by adding new paragraph (40) to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *
(b) * * *

* * * * *

(40) USEPA. 1999. Method 1631, Revision B, "Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry." May 1999. Office of Water, U.S. Environmental Protection Agency (EPA 821–R–99–005). Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Publication No. PB99–131989. Cost: $25.50. Table IB, Note 43.

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[FR Doc. 99–14220 Filed 6–7–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 239

[FRL–6354–7]

Adequacy of State Permit Programs Under RCRA Subtitle D

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to streamline the approval process for specified States permit programs for solid waste disposal facilities other than municipal solid waste landfills (MSWLFs) that receive conditionally exempt small quantity generator (CESQG) hazardous waste. States whose subtitle D MSWLF permit programs or subtitle C hazardous waste management programs have been reviewed and approved or authorized by the Agency are eligible for this streamlined approval process if their State programs require the disposal of CESQG hazardous waste in suitable facilities. EPA is issuing an adequacy determination to the following State programs: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Elsewhere in the proposed rule section of today's **Federal Register**, EPA is proposing the program adequacy of these States and soliciting comment on this decision. If relevant adverse comments are received, EPA will withdraw this direct final rule of program adequacy and address the comments in a subsequent final rule document. EPA will not give additional opportunity for comment. If EPA receives relevant adverse comment concerning the adequacy of only certain State programs, the Agency's withdrawal of the direct final rule will only apply to those State programs. Comments on the inclusion or exclusion of one State permit program will not affect the timing of the decision on the other State permit programs.

DATES: This final rule will become effective September 7, 1999, unless EPA receives relevant adverse comment by July 8, 1999. Should the Agency receive such relevant adverse comments, EPA will withdraw this direct final rule and give timely notice in the **Federal Register**.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–SAPF–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–SAPF–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

Supporting materials for the final determination for Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont are available for viewing by contacting Cynthia Greene, US EPA Region 1, 90 Canal Street, Boston, MA 02203, phone 617/565–3165.

Supporting materials for the final determination for New York are available for viewing by contacting John Filippelli, US EPA Region 2, 290 Broadway, New York, NY 10007–1866, phone 212/637–4125.

Supporting materials for the final determination for Pennsylvania, West Virginia, and Virginia are available for viewing by contacting Mike Giuranna, US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, phone 215/814–3298.

Supporting materials for the final determination for Florida, Georgia, Kentucky, North Carolina, and Tennessee are available for viewing by contacting Patricia Herbert, US EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104, phone: 404/562–8449.

Supporting materials for the final determination for Illinois, Michigan, Minnesota, Ohio, and Wisconsin are available for viewing by contacting Mary Setnicar, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3590, phone 312/886–0976.

Supporting materials for the final determination for Louisiana and Oklahoma are available for viewing by contacting Willie Kelley, US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, phone: 214/665–6760.

Supporting materials for the final determination for Colorado, North Dakota, South Dakota, Utah, and Wyoming are available for viewing by contacting Gerald Allen, Region 8, US EPA 999 18th Street, Suite 500, Denver, CO 80202–2466, phone 303/312–7008.

Supporting materials for the final determination for Arizona and California are available for viewing by contacting Steve Wall, US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, phone 415/744–2123.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800/553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703/412–9810 or TDD 703/412–3323.

For information on specific aspects of this direct final rule, contact Allen Geswein, Municipal and Industrial Solid Waste Division of the Office of

Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, D.C. 20460; 703/308–7261, [GESWEIN.ALLEN@EPAMAIL.EPA.GOV].

SUPPLEMENTARY INFORMATION: The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** as outlined in **DATES** above or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

A. Background

Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) requires the U.S. Environmental Protection Agency (EPA) to revise the criteria for facilities that accept household hazardous waste and conditionally exempt small quantity generator (CESQG) hazardous waste or both. On October 9, 1991, EPA issued revised Criteria for Municipal Solid Waste Landfills (MSWLFs) (40 CFR part 258). MSWLFs typically receive both household hazardous waste and CESQG hazardous waste. On July 1, 1996, EPA issued the revised Criteria for Classification of Solid Waste Disposal Facilities and Practices to address solid waste disposal facilities other than MSWLFs that facilities receive CESQG waste (40 CFR part 257, subpart B).

RCRA section 4005, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop permitting programs or other systems of prior approvals and conditions to ensure that solid waste disposal units that receive household hazardous waste and CESQG hazardous waste or both comply with the revised Federal criteria under part 257, subpart B. Section 4005 also requires EPA to determine the adequacy of State permit programs. To fulfill this need, the Agency issued the State Implementation Rule (SIR) on October 23, 1998 (63 FR 57026) to give a process for approving State municipal solid waste permit programs. The SIR specifies the needs that State MSWLF permit programs must satisfy to be determined adequate. The SIR also addresses the processes that should be used for approving State programs for non-MSWLFs that receive CESQG hazardous waste.

Throughout this document, the term "approved State" refers only to a State that has received approval for its MSWLF permit program under subtitle D (40 CFR part 258) and the term "authorized State" refers only to a State that has an authorized hazardous waste landfill permit program under subtitle C (40 CFR part 264). Today's final adequacy determination is intended to give a streamlined approval process to address, as a group, those State programs that require the disposal of CESQG hazardous waste in suitable facilities and whose subtitle D MSWLF permit programs or subtitle C hazardous waste management programs have been reviewed and approved or authorized by the Agency. Today's direct final rule notice applies to the following State programs: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Programs developed by these States for permitting either hazardous waste facilities or MSWLFs have been reviewed and approved or authorized by the Agency. The regulatory programs are more comprehensive and are equal to or more stringent than the part 257, subpart B criteria.

The Agency has determined that the above States have submitted the documentation that would have been needed for the determination of permit program adequacy under 40 CFR part 257, subpart B. Further, the Agency has determined that the technical review conducted for either "approval" of MSWLF permitting programs or "authorization" of hazardous waste permitting programs can substitute for the technical review of the standards for 40 CFR part 257, subpart B and their implementation by the States.

The States that are today receiving a final determination of adequacy had previously submitted documentation of State statutory authorities and requirements that regulate solid waste disposal units that may receive CESQG waste. Each State has sent a letter requesting EPA's determination of permit program adequacy under subtitle C or subtitle D, as appropriate. Each State has submitted a written statement from the State Attorney General certifying that the laws, regulations, and guidance cited in the State's submission would be fully enacted and fully effective when the "authorization" or "approval" of the permit program became effective. The State legal certification served as the foundation for ensuring that the State permit program or other system of prior approvals and conditions had adequate authority to ensure compliance with the hazardous waste or MSWLF regulations, as appropriate. This certification could have been signed by the independent legal counsel for the State, rather than the Attorney General, provided that such counsel had the full authority to represent independently the lead State Agency in court on all matters pertaining to the State program.

The technical requirements for part 257, subpart B are location restrictions, ground-water monitoring, corrective action, and recordkeeping requirements. These requirements have been met by the State programs listed in today's final determination.

Today's determination includes "authorized" States that have laws, regulations, or guidance in place requiring that CESQG hazardous waste be managed in a RCRA subtitle C facility (see 61 FR 34264). These "authorized" States are California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. Arizona, Virginia, and New York are "approved" States that require CESQG waste to be disposed of in a MSWLF meeting or exceeding the requirements of 40 CFR part 258 (see 61 FR 34264). For all cases, the State regulations have been reviewed by EPA, found to be equal to or more stringent than 40 CFR part 257, subpart B and approved. Most State program regulations contain additional requirements and are more stringent.

The States covered by today's approval have permit programs or other systems of prior approval for all waste disposal units that may receive CESQG hazardous waste in their jurisdictions. These States provide for public participation in permit issuance and enforcement as specified in the SIR rule. Finally, EPA believes that these States have sufficient compliance monitoring and enforcement authorities to take action against any owner or operator that fails to comply with regulations applicable to waste disposal units that may receive CESQG hazardous waste.

B. Decision

After reviewing the States' previous submissions for approval under subtitle D (40 CFR part 258) and authorization under subtitle C (40 CFR part 264), the Agency concludes that the above States meet all of the statutory and regulatory requirements established by RCRA. Accordingly, the above States are granted a final determination of adequacy for all portions of their permit program for solid waste disposal units that may receive CESQG hazardous waste.

RCRA section 4005(a) provides that citizens may use the citizen suit provisions of RCRA section 7002 to enforce the Federal Criteria for Classification of Solid Waste Disposal Facilities and Practices in 40 CFR part 257, subpart B independent of any State enforcement program. As explained in the preamble to 40 CFR part 257, subpart B, EPA expects that any owner or operator complying with the provisions of a State program approved by EPA that requires that CESQG hazardous waste be disposed of in either a subtitle C facility or a subtitle D MSWLF would be in compliance with the Federal Criteria. See 61 FR 34264 (July 1, 1996).

In the future, approval for State permit programs for non-MSWLF units that accept CESQG hazardous waste and meet the 40 CFR part 257, subpart B requirements, will follow the procedures outlined in the SIR and will be done on an individual State basis.

Today's action will become effective ninety (90) days from the date of publication if no adverse comments are received.

Related Acts of Congress and Executive Orders

We have evaluated these streamlined approvals in relation to a number of statutory provisions and executive orders which apply to rules. These evaluations are summarized below, and further analysis and explanation can be found in the proposed rule published elsewhere in todays **Federal Register**.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination. This rule does not impose any new burdens on small entities. It merely confirms existing needs for the disposal of CESQG waste under state law. This proposal does not impose any new cost burdens. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not need a regulatory flexibility analysis.

C. The Paperwork Reduction Act

Today's final rule is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We found that no information is being collected from the States for this direct final rule, so we do not need to prepare an Information Collection Request (ICR).

D. The Unfunded Mandates Reform Act

The Agency's analysis of compliance with UMRA found that today's direct final rule imposes no enforceable duty on any State, local or tribal governments or the private sector; thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13045

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

F. National Technology Transfer and Advancement Act

This direct final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

G. Executive Order 12875

Today's direct final rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

Today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of the State plan approvals. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency does not believe that today's direct final rule granting State permit program approval will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

J. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 7, 1999.

Authority: This document is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6945.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–14347 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 8, 31, 71, 91, and 107

[USCG–1999–5004]

RIN 2115–AF74

Alternate Compliance Program; Incorporations by Reference

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard is amending part 8 of Title 46, Code of Federal Regulations, to add recently approved incorporations by reference. We also insert the address and telephone numbers of the Coast Guard office identified in several parts as the source for additional information to facilitate our Alternate Compliance Program. This rule makes no substantive changes to current regulations. It enables continuation of the Alternate Compliance Program (ACP), which was developed to reduce redundant vessel inspections without jeopardizing safety. The final rule on the ACP was published in the **Federal Register** (62 FR 67526) on December 24, 1997.

DATES: This rule is effective on September 7, 1999, unless a written adverse comment, or written notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before August 9, 1999. If an adverse comment, or notice of intent to submit an adverse comment, is received, the Coast Guard will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1999–5004), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Jaideep Sirkar, Naval Architecture Division (G–MSE–2), via: E-mail jsirkar@comdt.uscg.mil; telephone (202) 267–6925; or fax (202) 267–4816. For questions on viewing, or submitting material to, the docket, contact Carol Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (USCG–1999–5004) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comment is anticipated. If no adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives a written adverse comment or written notice of intent to submit an adverse comment, the Coast Guard will publish a document in the **Federal Register** announcing withdrawal of all or part of this direct final rule. If an adverse comment applies to an amendment, paragraph, or section of this rule and it is possible to remove that provision without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comment was received. The provision of this rule that was the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, the Coast Guard will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment. A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

Under regulations in 46 CFR parts 8, 31, 71, 91, and 107, owners and operators may submit their vessels for inspection by a recognized classification society. The classification society surveys such vessels and documents compliance with applicable international requirements, class rules, and its U.S. supplement. The cognizant U.S. Coast Guard Officer in Charge, Marine Inspection, may then issue certificates of inspection based upon classification society reports documenting vessels are classed and that they comply with all applicable requirements.

Discussion of Rule

This rule does not change any substantive requirements of existing regulations. The purpose of this

rulemaking is to add several recently approved sets of classification society rules and the supplements for these rules to the ACP regulations. Adding these rules and supplements through incorporation by reference is essential for the continued viability and validity of the ACP regulations.

Incorporation by Reference

The Director of the Federal Register has approved the material in 46 CFR 8.110(b) for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. You may inspect all material at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Office of Design and Engineering Standards (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001. You may obtain copies from either the American Bureau of Shipping (ABS)-Two World Trade Center, 106th Floor, New York, NY 10048, or Lloyd's Register of Shipping (LR)-100 Leadenhall Street, London EC3A 3BP.

STATUTES AND ORDERS ON THE REGULATORY PROCESS

Statute or order	Does the statute or order require an analysis or statement for this rulemaking?	If so, where do we discuss the analysis or statement?
Regulatory Planning and Review (Analysis of costs and benefits)—E.O. 12866; DOT Order 2100.5.	Yes	See "Regulatory Evaluation" in this preamble.
Civil Justice Reform—E.O. 12988	No. This rule meets the applicable standards in E.O. 12988, sections 3(a) and (b)(2), to minimize litigation, eliminate ambiguity, and reduce burden.	
Regulatory Flexibility Act—5 U.S.C. 604(a) and 605(b)	Yes	See "Small Entities" in this preamble.
Paperwork Reduction Act of 1995—44 U.S.C. 3501–3520.	No. This rule contains no new collection-of-information requirements.	
Federalism—E.O. 12612	No. This rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.	
Unfunded Mandates Reform Act of 1995, sec. 202—2 U.S.C. 1532.	No. No written statement is necessary because this rule does not impose an unfunded mandate that may result in the expenditure of $100M or more in any one year.	
Enhancing the Intergovernmental Partnership (unfunded mandates for State, local, or tribal governments)—E.O. 12875.	No. This rule does not impose on any State, local, or tribal government a mandate that is not required by statute and that is not funded by the Federal government.	
Interference with Constitutionally Protected Property Rights (taking of private property)—E.O. 12630.	No. This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630.	
Protection of Children from Environmental Health Risks and Safety Risks—E.O. 13045.	No. This rule is not an economically significant rule and does not concern an environmental risk to health or a risk to safety disproportionately affecting children.	
National Environmental Policy Act—42 U.S.C. 4321–4347.	Yes	See "Environment" in this preamble.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. It will not impose any costs on the public, because it enables a voluntary alternative to another prescribed method of inspection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not change any requirements in the regulations. It is simply updating information to facilitate continuation of the Coast Guard's existing Alternate Compliance Program. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of this preamble.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs (34) (d) and (e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with section 2.B.2. and figure 2–1 concerning regulations that are based on vessel inspection and equipment aspects. A "Categorical Exclusion Determination" is available in the docket for inspection

or copying where indicated under ADDRESSES.

List of Subjects

46 CFR Part 8

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 31

Marine safety, Reporting and recordkeeping requirements, Tank vessels.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, under the authority of 46 U.S.C. 3306, the Coast Guard amends 46 CFR parts 8, 31, 71, 91, and 107 as follows:

PART 8—VESSEL INSPECTION ALTERNATIVES

1. The authority citation for part 8 continues to read as follows:

Authority: 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703; 49 CFR 1.45, 1.46.

2. Revise § 8.110(b) to read as follows:

§ 8.110 Incorporation by reference.

(a) * * *

(b) The material incorporated by reference in this subchapter and the sections affected are as follows:

American Bureau of Shipping (ABS)—Two World Trade Center, 106th Floor, New York, NY 10048.
- Rules for Building and Classing Steel Vessels, 1996—31.01–3(b), 71.15–5(b), 91.15–5(b)
- Rules for Building and Classing Steel Vessels, 1997—31.01–3(b), 71.15–5(b), 91.15–5(b)
- Rules for Building and Classing Steel Vessels, 1998—31.01–3(b), 71.15–5(b), 91.15–5(b)
- Rules for Building and Classing Mobile Offshore Drilling Units, 1998—107.205(b)
- U. S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 21 October 1996—31.01–3(b), 71.15–5(b), 91.15–5(b)
- U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 1 August 1997—31.01–3(b), 71.15–5(b), 91.15–5(b)
- U.S. Supplement to ABS Rules for Mobile Offshore Drilling Units, 1 June 1998—107.205(b)

American National Standards Institute (ANSI)—11 West 42nd St., New York, NY 10036.
- ANSI/ASQC Q9001—1994, Quality Assurance in Design, Development, Production and Servicing, 1994—8.230

Lloyd's Register of Shipping (LR)—100 Leadenhall Street, London EC3A 3BP.
- Rules and Regulations for the Classification of Ships, 1998—31.01–3(b), 71.15–5(b), 91.15–5(b)
- Lloyd's Register of Shipping Supplemental Requirements, 19 September 1998—31.01–3(b), 71.15–5(b), 91.15–5(b)

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR 1971—1975 Comp. P. 793; 49 CFR 1.46.

4. Revise § 31.01–3(b) to read as follows:

§ 31.01–3 Alternate compliance.

(a) * * *

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202)267–6925; or fax (202)267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

PART 71—INSPECTION AND CERTIFICATION

5. The authority citation for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp. 351; 49 CFR 1.46.

6. Revise § 71.15–5(b) to read as follows:

§ 71.15–5 Alternate compliance.

(a) * * *

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202)267–6925; or fax (202)267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

PART 91—INSPECTION AND CERTIFICATION

7. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR 1971—1975 Comp., P. 793; 49 CFR 1.46.

8. Revise § 91.15–5(b) to read as follows:

§ 91.15–5 Alternate compliance.

(a) * * *

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202)267–6925; or fax (202)267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

PART 107—INSPECTION AND CERTIFICATION

9. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub L. 104–324, 110 Stat. 3901; 46 U.S.C. 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under authority of 44 U.S.C. 3507.

10. Revise § 107.205(b) to read as follows:

§ 107.205 Alternate compliance.

(a) * * *

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202)267–6925; or fax

(202)267–4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated:May 21, 1999.

J.P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–14087 Filed 6–7–99; 8:45 am]

BILLING CODE 4190–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 99–121]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we reconsider, on our own motion, the Commission's decision governing the amount of money that may be collected during the second six months of 1999 and the first six months of 2000 to fund the second year of the federal universal service support mechanisms for schools, libraries, and rural health care providers. In this Order, we direct the Universal Service Administrative Company (USAC or the Administrator) to collect no more than $562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism, and to limit collections to no more than $3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the rural health care universal service support mechanism.

DATES: Effective June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew Vitale, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room, CY–A257, 445 Twelfth Street, SW, Washington, DC 20554.

I. Introduction

1. In this Order, we reconsider, on our own motion, the Commission's decision governing the amount of money that may be collected during the second six months of 1999 and the first six months of 2000 to fund the second year of the federal universal service support mechanisms for schools, libraries, and rural health care providers. We find that we should set the collection rate for the schools and libraries support mechanism at the $2.25 billion cap adopted in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), and that we should modify the collection rate for the rural health care support mechanism by setting a collection level of $12 million. Although we modify the collection rate for the rural health care support mechanism, we do not revise the annual $400 million cap for the rural health care support mechanism adopted in the *Universal Service Order*. In addition, we do not revise the rules of priority adopted in the *Fifth Order on Reconsideration*, 63 FR 43088 (August 12, 1998), and the *Eleventh Order on Reconsideration* to govern the schools and libraries support mechanism.

2. In this Order, we direct the Universal Service Administrative Company (USAC or the Administrator) to collect no more than $562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism, and to limit collections to no more than $3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the rural health care universal service support mechanism. Furthermore, we direct USAC neither to commit nor disburse more than $2.25 billion for the schools and libraries support mechanism during the third and fourth quarters of 1999 and the first two quarters of 2000 or more than $12 million for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care support mechanism.

II. Collections During the Second Funding Year

9. The Commission is committed to setting collection levels for the second funding year at an amount that will ensure that the Administrator is able to allocate support to schools and libraries at a level that is equal to or greater than the level of support that was allocated in the first funding year. Accordingly, given this commitment and estimated demand at $2.435 billion, we believe that the collection level should be set at the $2.25 billion cap recommended by the Joint Board on Universal Service in the *First Recommended Decision*, 61 FR 63778 (December 2, 1996), and adopted by the Commission in the *Universal Service Order*. Consistent with the Commission's conclusion in the *Universal Service Order*, we believe that setting the collection level at $2.25 billion reasonably balances the desire to provide support to eligible schools and libraries against the costs associated with establishing larger support mechanisms. While we recognize that some applicants' needs will not be met in full (i.e., for funding of all internal connection requests), a collection rate of $2.25 billion will be sufficient to fund fully all requests for priority one services (telecommunications services and Internet access) and to fund fully requests by the neediest schools and libraries for internal connections to the same level of discount as was funded in the first program year. This approach is consistent with the Commission's commitment to ensuring that support will be directed toward the most economically disadvantaged schools and libraries, as well as those located in rural areas. Accordingly, we direct USAC to collect only as much as required by demand, but in no event more than $562.5 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. We also direct the Administrator to commit to applicants no more than $2.25 billion for disbursement during the second half of 1999 and the first half of 2000 to support the schools and libraries support mechanism.

10. We have determined that demand for funding will not increase significantly during the second funding year of the rural health care support mechanism. As projected by USAC, we anticipate that demand is not likely to exceed $12 million total annual support for the second funding year. We conclude therefore that we should establish a maximum collection level at $12 million for the third and fourth quarters of 1999 and the first and second quarters of 2000. This collection level is consistent with projected demand, and there is no evidence that eligible health care providers will require funding beyond this level for the second funding year. Accordingly, we direct USAC to limit collections to no more than $3 million per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. We also direct USAC to commit to applicants no more than $12 million for disbursement during the second half of 1999 and the

first half of 2000 to support the rural health care support mechanism.

III. Regulatory Flexibility Analysis

A. Final Regulatory Analysis

13. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, and the Supplemental Final Regulatory Flexibility Analyses in the *Fifth Reconsideration Order* and the *Eighth Order on Reconsideration*, 63 FR 70564 (December 21, 1998), only to the extent that changes to the Order adopted here on reconsideration require changes in the conclusions reached in the FRFA and the two previous Supplemental FRFAs. In the previous analyses, we sought written public comment on the potential economic impact on small entities.

1. Need for and Objectives of This Order

14. The Commission is required by section 254 of the Act to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principal goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. We reconsider, on our own motion, the amounts that will be collected during the second six months of 1999 and the first six months of 2000 for the schools and libraries and rural health care support mechanisms.

2. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Order Will Apply

15. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

16. In the FRFA of the *Universal Service Order*, we estimated and described in detail the number of small entities that might be affected by the new universal service rules. The rules adopted in this Order, however, would affect primarily schools, libraries, and rural health care providers. Moreover, the adopted rules will allow schools, libraries, and rural health care providers to benefit more fully from the schools and libraries and rural health care universal service support mechanisms, constituting a positive economic impact on these small entities.

17. As noted, small entities includes "small businesses," "small organizations," and "small governmental jurisdictions." All three types of small entities may also constitute schools, libraries, or rural health care providers for the purpose of this analysis. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. As for "small organizations," as of 1992, there were approximately 275,801.

18. Also, as the Commission specifically noted in the *Universal Service Order*, the SBA defined small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. The Commission has further estimated that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in the Universal Service Order. We believe that these same small entities may be affected potentially by the rules adopted in this Order.

19. In addition, the Commission noted in the *Universal Service Order* that neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support. We estimated that there are fewer than 12,296 health care providers potentially affected by the rules in the *Universal Service Order*. We note that these small entities may potentially be affected by the rules adopted in this Order.

3. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The modifications to the Commission's rules that are set forth in this Order relate only to actions that need to be taken by the Administrator of the universal service support mechanisms. As a result, we do not anticipate any additional burdens or costs associated with these proposed rules on any entities, including on small entities.

4. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. In the FRFA to the *Universal Service Order*, the Commission described the steps taken to minimize the significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Schools and Libraries section, the Rural Health Care Provider section, and the Administration section of the *Universal Service Order*. As described, our current action to amend our rules will benefit schools, libraries, and rural health care providers, by ensuring that funds are allocated first to the neediest schools and libraries and that schools, libraries, and rural health care providers will be able to receive any support approved by the Administrator that is not the subject of an appeal. We believe that these amended rules fulfill the statutory mandate to enhance access to telecommunications services for schools, libraries, and rural health care providers, and fulfill the statutory principle of providing quality services at "just, reasonable, and affordable rates," without imposing unnecessary burdens on schools, libraries, rural health care providers, or service providers, including small entities.

22. *Report to Congress.* The Commission will send a copy of the Twelfth Order on Reconsideration in CC Docket No. 96–45, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Twelfth Order on Reconsideration in CC Docket No. 96–45, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Twelfth Order on

Reconsideration in CC Docket No. 96–45, and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Ordering Clauses

23. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, 47 CFR 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR Part 54, are revised as set forth, effective upon publication in the **Federal Register**.

24. *It is furthered ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Twelfth Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Revise § 54.507(a)(1) to read as follows:

§ 54.507 Cap.

(a) * * *

(1) No more than $562.5 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. No more than $2.25 billion shall be collected or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

* * * * *

3. Revise § 54.623(a) to read as follows:

§ 54.623 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for health care providers shall be $400 million per funding year, with the following exceptions. No more than $3 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. No more than $12 million shall be committed or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

* * * * *

[FR Doc. 99–14488 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 803 and 852

RIN 2900–AJ06

VA Acquisition Regulations; Improper Business Practices and Personal Conflicts of Interest; Solicitation Provisions and Contract Clauses

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulations (VAAR) concerning the requirement to include an Ethics in Government Act certification in solicitations. This amendment is necessary to delete this requirement due to the Clinger-Cohen Act, Section 4301, which stipulates that all certification requirements not required by law be eliminated from agency supplemental acquisition regulations. The implementing regulations of the procurement integrity provisions of the Act have eliminated any requirement for such certifications in solicitations. Therefore, since the certification is not required by law, it must be removed from the VAAR.

DATES: *Effective Date:* June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rita Williams, Office of Acquisition and Materiel Management, Acquisition Policy Team (95A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8774.

SUPPLEMENTARY INFORMATION: On April 7, 1998, we published in the **Federal Register** (63 FR 16955) a proposal to eliminate the Ethics in Government Act certification requirement from solicitations in accordance with the Clinger-Cohen Act, 41 U.S.C. 425. Comments were solicited concerning the proposal for 60 days, ending June 7, 1998. We did not receive any comments. The information presented in the proposed rule document still provides the basis for this final rule. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for nonsubstantive changes to reflect the date of this final rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, since it does not contain any substantive provisions. This final rule would not cause a significant effect on any entities. This final rule deletes a requirement for contracting officers to include a particular provision in solicitations, internal guidance which does not impact the public. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

OMB Review

This document has been reviewed by OMB pursuant to Executive Order 12866.

List of Subjects

48 CFR Part 803

Antitrust, Conflict of Interests, Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Approved: March 17, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 803 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

803.101–3 [Amended]

2. In section 803.101–3, paragraph (c) is removed.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

852.203–70 [Removed]

4. Section 852.203–70 is removed.

[FR Doc. 99–14142 Filed 6–7–99; 8:45 am]
BILLING CODE 6320–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1537 and 1552

[FRL–6353–9]

Acquisition Regulation: Service Contracting—Avoiding Improper Personal Services Relationships

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to emphasize the proper relationship between the Government and its contractors in its non-personal services contracts. The Agency recognizes that regardless of the express terms of its contracts, if a contract is administered improperly, an improper personal services relationship can be the result. This rule is designed to ensure that the manner in which contracts are administered will not create an improper employer-employee relationship.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Jean A. Rellins, U.S. EPA, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4434.

SUPPLEMENTARY INFORMATION:

A. Background.

Recent Agency audits have indicated a vulnerability in the manner in which Agency contracts have been administered which could create the existence of improper personal services relationships. This rule amends the EPAAR to emphasize the proper relationship between the Government and its contractors in the Government's non-personal services contracts. The Agency recognizes that regardless of the express terms of its contracts, if a contract is administered improperly, improper personal services relationship can be the result. Accordingly, the Agency is trying to highlight the nature of the proper relationship to ensure that the manner in which contracts are administered will not create an improper employer-employee relationship. No public comments were received.

B. Executive Order 12866

This rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the impact of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior

consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 8, 1999.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390.

List of Subjects in 48 CFR Parts 1537 and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for Parts 1537 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended.

PART 1537—[AMENDED]

2. Section 1537.110 is amended to add paragraph (g) to read as follows:

1537.110 Solicitation provisions and contract clauses.

* * * * *

(g) To ensure that Agency contracts are administered so as to avoid creating an improper employer-employee relationship, contracting officers shall insert the contract clause at 48 CFR 1552.237–76, "Government-Contractor Relations", in all solicitations and contracts for non-personal services that exceed the simplified acquisition threshold.

PART 1552—[AMENDED]

3. Add 1552.237–76 to read as follows:

1552.237–76 Government-Contractor Relations.

As prescribed in 1537.110(g), insert the following clause:

Government-Contractor Relations (June 1999)

(a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the contractor to the Government are non-personal services and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties a full understanding of their respective obligations.

(b) Contractor personnel under this contract shall not:

(1) Be placed in a position where they are under the supervision, direction, or evaluation of a Government employee.

(2) Be placed in a position of command, supervision, administration or control over Government personnel, or over personnel of other Contractors under other EPA contracts, or become a part of the Government organization.

(3) Be used in administration or supervision of Government procurement activities.

(c) Employee relationship. (1) The services to be performed under this contract do not require the Contractor or his/her personnel to exercise personal judgment and discretion on behalf of the Government. Rather the Contractor's personnel will act and exercise personal judgment and discretion on behalf of the Contractor.

(2) Rules, regulations, directives, and requirements that are issued by the U.S. Environmental Protection Agency under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

(d) Inapplicability of employee benefits. This contract does not create an employer-employee relationship. Accordingly, entitlements and benefits applicable to such relationships do not apply.

(1) Payments by the Government under this contract are not subject to Federal income tax withholdings.

(2) Payments by the Government under this contract are not subject to the Federal Insurance Contributions Act.

(3) The Contractor is not entitled to unemployment compensation benefits under the Social Security Act, as amended, by virtue of performance of this contract.

(4) The Contractor is not entitled to workman's compensation benefits by virtue of this contract.

(5) The entire consideration and benefits to the Contractor for performance of this contract is contained in the provisions for payment under this contract.

(e) Notice. It is the Contractor's, as well as, the Government's responsibility to monitor contract activities and notify the Contracting Officer if the Contractor believes that the intent of this clause has been or may be violated.

(1) The Contractor should notify the Contracting Officer in writing promptly, within _____ (to be negotiated and inserted into the basic contract at contract award) calendar days from the date of any incident that the Contractor considers to constitute a violation of this clause. The notice should include the date, nature and circumstance of the conduct, the name, function and activity of each Government employee or Contractor official or employee involved or knowledgeable about such conduct, identify any documents or substance of any oral communication involved in the conduct, and the estimate in time by which the Government must respond to this notice to minimize cost, delay or disruption of performance.

(2) The Contracting Officer will promptly, within _____ (to be negotiated and inserted into the basic contract at contract award) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer will either:

(i) Confirm that the conduct is in violation and when necessary direct the mode of further performance,

(ii) Countermand any communication regarded as a violation,

(iii) Deny that the conduct constitutes a violation and when necessary direct the mode of further performance; or

(iv) In the event the notice is inadequate to make a decision, advise the Contractor what additional information is required, and establish the date by which it should be furnished by the Contractor and the date thereafter by which the Government will respond.

(End of Clause)

Dated: May 14, 1999,

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 99–14066 Filed 6–7–99; 8:45 am]

BILLING CODE 6550–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990527145–9145–01; I.D. 052199B]

RIN 0648–AM71

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Minimum Size Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments and a notice of closure.

SUMMARY: NMFS issues an emergency interim rule to increase the minimum size limit for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit, as requested by the Gulf of Mexico Fishery Management Council (Council). In addition, NMFS closes the recreational red snapper fishery in the EEZ of the Gulf of Mexico effective 12:01 a.m., local time, August 29, 1999. The intended effect of the increase in the minimum size limit is to reduce the rate of harvest, and, thereby, extend the season for the recreational red snapper fishery. NMFS believes that an extended season will increase social and economic benefits from the red snapper fishery.

DATES: This rule is effective June 4, 1999 through 12:01 a.m., local time, August 29, 1999. The closure of the recreational fishery for red snapper in the EEZ of the Gulf of Mexico is effective 12:01 a.m., local time, August 29, 1999, through December 31, 1999.

ADDRESSES: Comments on this emergency interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, 727-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The 1996 revisions of the Magnuson-Stevens Act require NMFS to close the Gulf of Mexico recreational red snapper fishery when the recreational quota (currently 4.47 million lb)(2.03 million kg) is caught. The recreational fishery was closed on November 27 in 1997 and on September 29 in 1998. Under the existing 4–fish bag limit and 15–inch (38.1–cm) minimum size limit, NMFS, using the length-based simulation model (LSIM), projects that the 1999 quota will be caught on August 4, 1999. Consequently, under the existing bag and minimum size limits, the fishery would close at 12:01 a.m. on August 5, 1999. The Council has requested an emergency increase in the minimum size limit to reduce catch rates and extend the recreational season. The Council's request is based on testimony by representatives of the for-hire industry who believe that an extension of the season would benefit the industry. The industry, using the LSIM, specifically requested that the season be extended through August 28 by increasing the minimum size limit to 18 inches. Further, the industry specifically requested no decrease in the bag limit or increase in the minimum size limit beyond 18 inches due to a belief that such measures would significantly reduce the number of recreational fishing trips on for-hire vessels.

The Council considered several options for extending the season, including various reductions in the bag limit and various increases in the minimum size limit. However, after reviewing the LSIM analysis, the Council ultimately recommended an 18–inch (45.7–cm) size limit as the best alternative for extending the season, the means most acceptable to industry for extending the season through August 28, and a measure supported by many red snapper recreational fishermen who have agreed to comply voluntarily with an 18 inch size limit starting on June 1 until an emergency rule can be implemented.

Using the LSIM, NMFS projects that with implementation of an 18–inch (45.7–cm) minimum size limit in early June, implementation of the proposed specifications currently under review that would establish a zero-fish bag limit for captain and crew, and voluntary compliance by many fishermen starting on June 1, the quota will be caught on or about August 28, 1999. This action will have negligible biological effects on the Gulf red snapper stock and will not adversely affect the current rebuilding schedule for this overfished stock.

Accordingly, NMFS is increasing the minimum size limit to 18–inches (45.7 cm) effective on June 4, 1999 through 12:01 a.m., local time, on August 29, 1999. The Gulf of Mexico recreational red snapper fishery will close at 12:01 a.m., local time, on August 29, 1999, and remain closed through December 31, 1999.

Criteria for Issuing an Emergency Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recent, unforeseen events, or recently discovered circumstances. Also, it realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The Council, at its May 10–13, 1999, meeting, learned that if no action was taken, the projected closing date for the 1999 recreational red snapper season is August 5. This closure would result in roughly a 5-month closed season for the remainder of 1999. When combined with the proposed January-February closure from the red snapper regulatory amendment, the recreational red snapper fishery has the potential to be closed for nearly 7 consecutive months. For this action to be effective in reducing the rate of harvest, extending the fishing season, and preventing some of the potential economic hardships and disruptions to the recreational red snapper fishery, it should be implemented in early June. To be effective by then, an emergency interim rule is needed.

Immediate Benefits

A closure of the recreational fishing season for 5, or possibly 7 months, is a

substantial foregone economic opportunity. This closure could conceivably disrupt not only charter and headboat operators, but the entire coastal tourist industry, as well as recreational fishermen who arrange fishing vacations months in advance. Such a lengthy closure could cause some charter and tourist-related businesses to cease operations permanently. The shortened season has the potential for adverse social impacts on communities dependent on recreational for-hire vessels. The loss of recreational fishing-related employment opportunities during the closure affects not only the vessel operators, but also deckhands, marinas, and such tourist-related businesses as hotels and restaurants. Due to the uncertainty over whether the recreational red snapper season will be open, potential fishers may decide not to plan a fishing vacation along the Gulf coast. Thus, the minimum size limit increase, and the resulting extended season, has immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under the normal rulemaking process.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to minimize significant adverse social and economic impacts that would occur with an earlier closure of the recreational fishery for red snapper. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be significant for purposes of E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule, which is summarized as follows.

Assuming that anglers do not cancel their fishing trips in response to the increase to an 18–inch (45.7–cm) minimum size limit and that anglers are not able to replace previously legal smaller fish with fish 18 inches (45.7 cm) or longer, and compatible regulations are in effect in state waters by July 15, 1999, this emergency interim rule will allow approximately 24 additional fishing days in August, producing a projected closure at 12:01 a.m., local time, August 29, 1999. These additional fishing days will allow an additional 56,000 angler trips to harvest red snapper, of which 29,000 (53 percent) are for-hire angler trips. These additional trips equal a 14–percent increase in red snapper angler effort over the status quo level of effort.

The regulatory changes proposed by this rule would be applicable to angling activities in the EEZ. Typically, regulations in state jurisdictional waters are adjusted to match those of the EEZ in order to simplify the regulatory environment and to achieve the maximum benefit of the measures. Due to the differing procedural requirements each state must undertake in order to implement new fishery management regulations, however, it may not be possible for all states to adopt compatible regulations under the time frame established by this rule. Thus, it is possible that the red snapper recreational fishery could continue to operate in some areas under a 15–inch (38.1–cm) minimum size limit for some portion of June through the remaining open season.

The legal minimum size limit for red snapper has been 15 inches (38.1 cm), total length, since the beginning of the 1995 fishing season. From 1995 through 1998, approximately 80 percent of the red snapper harvested by charter and private/rental boats combined were under 18 inches (45.7 cm) (individually, 82 percent for charter boats and 70 percent for private/rental boats), while 66 percent of headboat red snapper have been under 18 inches (45.7 cm). These rates are likely influenced to some degree by responsible angling through cessation of effort once the bag limit has been achieved, i.e., no highgrading. However, 75 percent of charter and private/rental anglers who caught red snapper, landed fewer than the 5–fish bag limit during 1995–97, while 56 percent landed fewer than the 4–fish bag limit in 1998. This strongly suggests that the 15–inch (38.1–cm) minimum size limit is effective in restricting harvest and that increasing the minimum size limit to 18 inches (45.7 cm) will further restrict it.

With a 15–inch (38.1 cm) minimum size limit, approximately 165,000 red snapper angler trips would be expected to occur from June 1 through August 4. It is likely that some anglers will cancel their trips because of the minimum size increase given their inability to catch the bag limit under the less restrictive 15–inch (38.1 cm) size limit. However, what portion of the trips will be canceled is unknown. Given that some trips will be canceled, the full benefits in terms of additional trips of extending the season are not likely to materialize. Further, the inability to monitor precisely the in-season harvest, to determine the reductions in harvest rate due to trip cancellation, means that the season cannot be further lengthened in response to any reduced harvest rate.

Further loss in fishing benefits will accrue as a result of this rule to those anglers who, while continuing to fish for red snapper, are no longer able to harvest previously legal fish and thus have lower quality or less successful fishing trips. Additionally, anglers who continue to fish but switch their efforts to other species will also experience a loss in fishing benefits since it can be assumed that their previous choice of red snapper was due to higher perceived benefits associated with that species.

Insufficient data exist at this time with which to estimate the rates of trip cancellation or target substitution, the changes in value associated with additional or reduced quality red snapper trips, or the changes in value associated with substitute target trips. To the degree that the number of trips gained exceeds the number canceled, however, the for-hire businesses will experience an increase in producer surplus (profits). With respect to the recreational angler, however, while it is assumed that the value gained associated with any additional trip taken, regardless of the fishing quality received, exceeds the loss in value associated with a reduced quality or substitute target fishing trip, it is not possible to determine whether total trips gained will exceed the total trips canceled or whether the combined value (consumer surplus) of trips gained will exceed that lost across all lower quality trips. Thus, fishery-wide, considering total economic value in the form of both consumer and producer surplus, it is not possible to estimate the net economic effect of this rule. However, based on testimony by for-hire industry representatives requesting the minimum size increase to 18 inches to extend the season through August 28, the Council and NMFS assume that the net economic impact will be positive.

This emergency interim rule does not create additional reporting, recordkeeping or other compliance requirements. Accordingly, there are no cost increases that can be ascribed to compliance requirements.

Copies of the economic evaluation are available (see **ADDRESSES**).

If action were not taken to increase the red snapper minimum size limit from 15 inches (38.1 cm) to 18 inches (45.7 cm) for persons subject to the bag limit, the recreational fishery would be expected to close earlier in the fishing season and at a time that would forfeit some of the prime red snapper recreational fishing opportunities. This would result in unnecessary adverse impacts on those entities dependent on

the red snapper recreational fishery, including the associated fishing communities. An increase in the minimum size limit is expected to slow the rate of harvest, extend the fishing season, and allow recreational fishers to harvest the available quota during the period, which should increase social and economic benefits for the year. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest. For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. NMFS will advise the affected public of the effective date of this rule through timely distribution of news releases and immediate broadcasts over NOAA weather radio.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 3, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.37, paragraph (d)(3) is suspended and paragraph (d)(7) is added to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(d) * * *

(7) Red snapper—18 inches (45.7 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (b)(1)(vi) and 15 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

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[FR Doc. 99–14473 Filed 6–3–99; 12:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 109
Tuesday, June 8, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Jewelry, Precious Metals and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; request for public comments.

SUMMARY: In response to a petition from the Jewelers Vigilance Committee and the Diamond Manufacturers and Importers Association of America, jewelry trade associations, the Federal Trade Commission (Commission) is requesting public comments on proposed revisions to two sections of the Guides for the Jewelry, Precious Metals and Pewter Industries (Jewelry Guides or Guides) to provide for the disclosure to consumers of laser-drilling of diamonds. One section addresses disclosure of treatments to diamond jewelry products. The other section addresses disclosure of treatments to gemstone jewelry products.

DATES: Written comments will be accepted until July 8, 1999.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H–159, Washington, DC 20580. Comments about these proposed changes to the Guides should be identified as "Guides for the Jewelry, Precious Metals and Pewter Industries—16 CFR Part 23—Comment."

FOR FURTHER INFORMATION CONTACT: Robin Rosen Spector, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–3740, <jewelry@ftc.gov>.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Guides for the Jewelry, Precious Metals and Pewter Industries, 16 CFR Part 23, address claims made about precious metals, diamonds, gemstones and pearl products. The Guides also provide guidance as to when certain disclosures should be made about certain products if the failure to make such disclosure would be an unfair or deceptive trade practice.[1] On May 30, 1996 (61 FR 27212), the Commission announced comprehensive revisions to the Jewelry Guides. These revisions included new sections providing for the disclosure of certain treatments to diamond jewelry products (§ 23.13) and the disclosure of certain treatments to gemstone jewelry products (§ 23.22).[2]

On December 9, 1998, the Jewelers Vigilance Committee (JVC), a jewelry trade association, in conjunction with the Diamond Manufacturers and Importers Association of America (DMIA), petitioned the Commission to revise § 23.13 to provide for the additional disclosure of a diamond treatment called laser-drilling.[3] The Guides currently state that it is not unfair or deceptive to fail to disclose this treatment. The Commission solicits comment on proposed changes to this provision of the Guides. The Commission also solicits comment on proposed changes to § 23.22 of the Guides that addresses gemstone treatments.

II. Proposed Changes to § 23.13

The JVC petition requests an amendment to § 23.13 of the Guides to provide for disclosure of laser-drilling of diamonds. Laser-drilling involves the use of a laser beam to improve the appearance of diamonds having black inclusions. The laser beam is directed at the black inclusion and then acid is forced through the tunnel made by the laser beam to remove the inclusion or alter it so it is not visible to the naked eye. The Commission determined, based on the record before it in 1996, that the failure to disclose laser-drilling was not unfair or deceptive. Therefore, § 23.13 of the Guides, which discusses diamond treatments, does not provide for disclosure of laser-drilling.

The JVC petition asserts that the Guides should be amended to provide for disclosure of laser-drilling for several reasons. Although previously various segments of the industry held different views regarding the appropriateness of disclosure, there is now industry consensus in favor of disclosure. Sixteen trade associations joined the JVC in endorsing mandatory disclosure.[4] In addition, according to the petition, the jewelry industry has adopted policies requiring the disclosure of laser-drilling at all levels of the transaction up to the point of sale to the consumer. Because of these policies, disclosure of laser-drilling to consumers would not be costly for retailers and would not inhibit advertising or result in additional costs passed on to consumers. Although industry self-regulation could also address consumer disclosure, the petition asserts that providing for disclosure in the Guides is important because, due to industry reliance on the guides, it would promote greater industry compliance.

The JVC petition explains that laser-drilling technology has improved in recent years making it increasingly difficult for consumers to detect the process, especially when diamonds are mounted in jewelry.[5] In addition, according to the petition, the majority of diamonds sold are smaller stones, from .35 to .75 carats, and laser-drilling is especially difficult to detect in such stones. Further, smaller stones such as these are typically sold without grading reports that might otherwise reveal any laser drilling.

According to the petition, consumers may suffer economic injury from the

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[1] The Federal Trade Commission issues industry guides to provide guidance for the public to conform with legal requirements. Industry guides are administrative interpretations of the laws the FTC administers. Industry guides explain how to describe products truthfully and non-deceptively and identify practices the Commission considers unfair or deceptive.

[2] Diamond and gemstone jewelry products are often treated or enhanced to improve their beauty or durability.

[3] This petition is on the public record and copies are available by contacting the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580. A copy of the petition also has been posted on the Commission's website at <www.ftc.gov>.

[4] The trade associations that joined the petition are: World Federation of Diamond courses; Diamond Manufacturers and Importers Association of America; International Diamond Manufacturers Association; Diamond Promotion Services; Diamond Dealers Club of New York; Gemological Institute of America; International Society of Appraisers; Jewelers of America; American Gemstone Society; American Gem Society; United States Carat Club; International Confederation of Jewelry, Silverware, Diamonds, Pearls and Stones; American Gemstone Trade Association; Manufacturing Jewelers and Suppliers of America; International Standards Organization; and Diamond High Council.

[5] New technology results in smaller, shorter, thinner tunnels that are far harder to detect under a loupe, which a consumer might use to examine a stone.

purchase of laser-drilled stones. The petition explains that laser-drilling affects the diamond's value, and a laser-drilled stone is worth less than a non-treated stone of the same clarity rating. The petition explains that because laser-drilling is not being disclosed, some consumers may falsely believe that a laser-drilled stone is as valuable as a non-treated stone of the same clarity rating.

Finally, the petiton notes that the Guides provide for disclosure of other permanent process because they are non-natural, artificial procedures that affect the value of the product. For example, the Guides provide that cultured pearls be identified as such. A cultured pearl is created by a mollusk, but with human intervention. As a result of this human intervention, cultured pearls are worth less than natural pearls and the fact that the pearl is cultured must be disclosed. The petition asserts that the Guides should recognize the same distinction between untreated and laser-drilled diamonds.

The Commission has tentatively concluded that the petition demonstrates, contrary to the record before the Commission in 1996, that the failure to disclose laser-drilling is an unfair or deceptive trade practice. The Commission therefore proposes revising § 23.13 of the Jewelry Guides to provide that it is unfair or deceptive to fail to disclose laser-drilling. The Commission also proposes adding a phrase to § 23.13 regarding the permanence of the treatments enumerated in the section that should be disclosed. Currently, § 23.13 provides that certain treatments should be disclosed and the fact that the treatment "is or may not be permanent" also should be disclosed. The Commission therefore proposes adding the phrase "if such is the case" after "permanent" in this section. If this phrase is not added the Guides would provide for disclosure that laser-drilling is not permanent, when in fact it is permanent.

III. Proposed Changes to § 23.22

Section 23.22 of the Guides provides that it is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements and to fail to disclose that the treatment is not permanent, if such is the case. In light of the petition's evidence about laser-drilling, the Commission is seeking public comment on whether consumers may be injured by non-disclosure of permanent gemstone treatments that do not create special care requirements in the same manner that they may be injured by nondisclosure of laser-drilling. The Commission is seeking comment on whether there are treatments that create a disparity in the value of treated stones as compared to non-treated stones, and, whether consumers, acting reasonably under the circumstances, can detect such treatments.

The Commission seeks comment on whether § 23.22 of the Jewelry Guides should be revised to advise that permanent treatments that do not require special care should be disclosed if the treatment has a significant effect on the stone's value, and if a consumer, acting reasonably under the circumstances, could not ascertain that the stone has been treated.

IV. Request for Comment

The Commission seeks public comment on the proposed changes to §§ 23.13 and 23.22 of the Guides discussed above. The Commission also requests comment on the following specific questions:

1. Is it a prevalent practice in the jewelry industry to require disclosure of laser-drilling at all levels of the transaction up to the point of sale to the consumer?

2. Would a provision in the Jewelry Guides to disclose laser-drilling to consumers inhibit advertising or create additional costs for retailers that could be passed on to consumers in the form of significantly higher prices?

3. Is there a disparity in value between a laser-drilled diamond and a non-treated diamond of the same clarity rating?

4. Should the Jewelry Guides provide guidance as to how laser-drilling should be disclosed to consumers? If so, what guidance should be provided?

5. Gemstone treatments that are permanent and do not create special care requirements currently do not have to be disclosed under the Jewelry Guides. Is there a disparity in value between a gemstone treated in a manner that is permanent and does not require special care and one that is not treated? How many different gemstones and gemstone treatments fall into this category?

6. Does industry policy provide for disclosure of permanent gemstone treatments that do not create special care requirements?

7. Would guidance in the Jewelry Guides calling for disclosure of permanent gemstone treatments that do not require special care inhibits advertising or create additional costs for retailers that could be passed on to consumers in the form of significantly higher prices? Would this guidance adversely impact competition in the jewelry industry in any way?

List of Subject in 16 CFR Part 23

Advertising, Labeling, Trade practices, Watches and jewelry.

The Commission proposes to amend Chapter I of Title 16 of the Code of Federal Regulations as follows:

PART 23—GUIDES FOR THE JEWELRY, PRECIOUS METALS, AND PEWTER INDUSTRIES

1. The authority citation for part 23 continues to read as follows:

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

2. Revise § 23.13 to read as follows:

§ 21.13 Disclosing existence of artificial coloring, infusing, etc.

If a diamond has been treated by artificial coloring, tinting, coating, irradiating, heating, by the use of nuclear bombardment, by the introduciton or infusion of any foreign substance, or by laser-drilling, it is unfair or deceptive not to disclose that the diamond has been treated and that the treatment is not or may not be permanent, if such is the case.

3. Revise § 23.22 to read as follows:

§ 23.22 Deception as to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements, and to fail to disclose that the treatment is not permanent, if such is the case. The following are examples of treatments that should be disclosed because they are usually not permanent or create special care requirements: coating, impregnation, irradiating, heating, use of nuclear bombardment, application of colored or colorless oil or epoxy-like resins, wax, plastic, or glass, surface diffusion, or dyeing. This disclosure may be made at the point of sale, except that disclosure should be made in any solicitation where the product can be purchased without viewing (e.g., direct mail catalogs, on-line services), and in the case of televised shopping programs, on the air. If special care requirements for a gemstone arise because the gemstone has been treated, it is recommended that the seller disclose the special care requirements to the purchaser. Permanent treatments that do not create special care requirements should be disclosed if the treatment has a significant effect on the stone's value, and if a consumer, acting reasonably under the circumstances, could not ascertain that the stone has been treated.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–14505 Filed 6–7–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–4423–N–04]

Negotiated Rulemaking Committee on Capital Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This document announces the fourth, fifth, and sixth meetings of the Negotiated Rulemaking Committee on Capital Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of capital funds to public housing agencies (PHAs).

DATES: The fourth committee meeting will be held on June 17 and June 18, 1999. The fifth committee meeting will be held on June 23 and June 24, 1999. The sixth committee meeting will be held on July 8 and July 9, 1999.

On the first day of each meeting, the meeting will begin at approximately 9:30 am and run until completion. On the second day of each meeting, the meeting will begin at approximately 9:00 am and run until approximately 5:00 pm.

ADDRESSES: The fourth and fifth committee meetings will take place at the Channel Inn Hotel, 650 Water Street, SW., Washington, DC 20024; telephone 1–800–368–5668 or (202) 554–2400.

The sixth committee meeting will take place at the Hyatt Dulles Hotel, 2300 Dulles Corner Boulevard, Herndon, VA 22071.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 26, 1999 (64 FR 20234), HUD announced in the **Federal Register** the establishment of the Negotiated Rulemaking Advisory Committee on Capital Fund Allocation. The purpose of the committee is to discuss and negotiate a proposed rule that would change the current method of determining the allocation of capital funds to public housing agencies (PHAs).

The fourth, fifth, and sixth meetings of the negotiated rulemaking committee will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meetings includes: (1) Discussion of issues related to the development of a Capital Fund formula; (2) development of draft regulatory language; (3) development of agenda for future meetings; and (4) the scheduling of future meetings.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting announcement at least 15 calendar days before the date of an advisory committee meeting). The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting announcement. (See 41 CFR 10–6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area during June, 1999, it has not been possible for HUD to announce the date and location of the fourth committee meeting before today. Given the October 1, 1999 statutory deadline for implementation of the Capital Fund formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Capital Fund final rule on a timely basis will delay the provision of capital subsidies to PHAs. Accordingly, rather than defer the negotiations, HUD has decided to proceed with the fourth committee meeting on June 17 and June 18, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: June 2, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–14455 Filed 6–7–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–4459–N–05]

Negotiated Rulemaking Committee on Section 8 Housing Certificate Fund Rule; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: On May 18, 1999, HUD announced in the **Federal Register** the second, third, fourth, and fifth meetings of the Negotiated Rulemaking Committee on Section 8 Tenant-based Contract Renewal Allocation. At that time, HUD was not yet able to provide the locations for the third, fourth and fifth committee meetings. The purpose of this document is to announce the location of these meetings.

DATES: The meeting dates announced in the May 18, 1999 document remain unchanged. The third committee meeting will be held on June 21 and June 22, 1999. The fourth committee meeting will be held on July 19 and July 20, 1999. The fifth committee meeting will be held on August 19 and 20, 1999. All meetings will begin at approximately 9:00 am and conclude at approximately 5:00 pm.

ADDRESSES: The third, fourth, and fifth committee meeting will take place at the Hilton Washington Dulles Airport Hotel, 13869 Park Center Road, Herndon, VA 20171; telephone (703) 478–2900 (this is not a toll-free telephone number).

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Senior Program Advisor, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4204, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1380 (this is not a toll-free telephone number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal

Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 26, 1999 (64 FR 20232), HUD announced in the **Federal Register** the establishment of the Negotiated Rulemaking Advisory Committee on Section 8 Tenant-Based Contract Renewal. The purpose of the committee is to discuss and negotiate a rule that would change the current method of distributing funds to public housing agencies (PHAs) for purposes of renewing assistance contracts in the tenant-based Section 8 program.

On May 18, 1999 (64 FR 26923), HUD announced in the **Federal Register** the second, third, fourth, and fifth meetings of the negotiated rulemaking committee. At that time, HUD was not yet able to provide the locations for the third, fourth and fifth committee meetings. The purpose of this document is to announce the location of these meetings. The third, fourth, and fifth meetings of the negotiated rulemaking committee will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the meetings includes: (1) Discussion of issues relating to the development of the proposed rule; (2) development of draft regulatory language; (3) development of agenda for future meetings; and (4) the scheduling of future meetings.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: June 2, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–14457 Filed 6–7–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–04]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee meetings.

SUMMARY: This document announces the fourth, fifth, and sixth meetings of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). This document also announces two changes to the membership of the negotiated rulemaking committee.

DATES: The fourth committee meeting will be held on June 15 and June 16, 1999. The fifth committee meeting will be held on July 7 and July 8, 1999. The sixth committee meeting will be held on August 11 and August 12, 1999.

On the first day of each meeting, the meeting will begin at approximately 9:30 am and run until completion. On the second day of each meeting, the meeting will begin at approximately 8:30 am and run until approximately 4:00 pm.

ADDRESSES: The fourth, fifth, and sixth committee meetings will take place at the Hyatt Dulles Hotel (Concorde Ballroom), 2300 Dulles Corner Boulevard, Herndon, VA 22071.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of HUD has established the Negotiated Rulemaking Committee on Operating Fund Allocation to negotiate and develop a proposed rule that would change the current method of determining the payment of operating subsidies to PHAs. The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1996 (Pub.L. 105–276, approved October 21, 1998; 112 Stat. 2461) (the "Public Housing Reform Act"). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures. The general effective date for the formula (the beginning date of the fiscal year for which PHAs will determine their subsidy eligibility using the new formula) is October 1, 1999.

On March 16, 1999 (64 FR 12920), HUD announced in the **Federal Register** the establishment of HUD's Negotiated Rulemaking Committee on Operating Fund Allocation. The March 16, 1999 document also announced the membership list of the negotiated rulemaking committee.

II. Changes in Committee Membership

The following changes have been made to the membership of the negotiated rulemaking committee:

1. The Wilmington, DE Housing Authority is no longer a member of the committee. The Executive Director of the Housing Authority has been suspended from his position by the Authority's Board of Commissioners. Further, the Board's need to focus on internal administrative affairs prevents it from devoting the necessary time to fully participate on the negotiated rulemaking committee. Given the committee's need to develop an operating fund formula by the statutory deadline of October 1, 1999, HUD determined that it was necessary to remove the Housing Authority from the committee membership.

2. The National Organization of African-Americans in Housing (NOAAH) has been added to the committee membership. HUD invited NOAAH to be a member following the membership withdrawal of the Wilmington, DE Housing Authority. NOAAH had advised HUD of its interest in membership prior to final selection of members and had been placed on a list of potential alternates. HUD determined that NOAAH's unique purpose and subject matter competencies merited an invitation for committee membership.

III. Upcoming Meetings of the Negotiated Rulemaking Committee

To date there have been three meetings of the negotiated rulemaking committee. The fourth, fifth, and sixth committee meetings will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meetings includes: (1) Workgroup sessions to discuss various issues related to the implementation of an operating fund formula; (2) full committee discussions of the work-products developed by the workgroups; (3) development of draft regulatory language; and (4) the scheduling of future meetings, if necessary.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting announcement at least 15 calendar days before the date of an advisory committee meeting). The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting notice. (See 41 CFR 10–6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area, it has not been possible for HUD to announce the date and location of the fourth committee meeting before today. Given the strict statutory deadline for implementation of the Operating Fund formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Operating Fund final rule on a timely basis will delay the provision of operating subsidies to PHAs. Accordingly, rather than defer the negotiations, HUD has decided to proceed with the committee meeting scheduled for June 15 and June 16, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: June 2, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–14456 Filed 6–7–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Negotiated rulemaking committee notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are "multiple employer welfare arrangements" (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 am to approximately 5:00 pm on each day on Wednesday, July 7, 1999, and Thursday, July 8, 1999.

ADDRESSES: This Committee meeting will be held at the offices of the Federal Mediation and Conciliation Service (FMCS), 2100 K Street, NW, Room 200, Washington, DC 20427. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend who need special accommodations should contact, at least 4 business days in advance of the meeting. Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

AGENDA: The Committee will continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA, (29 U.S.C. 1002(40)). Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Tuesday, June 29, 1999, to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor,

Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Goodwin or telephone (202) 219–4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Goodwin at the address above. Papers will be accepted and included in the record of the meeting if received on or before June 29, 1999.

Signed at Washington, DC, this 1st day of June, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–14466 Filed 6–7–99; 8:45 am]

BILLING CODE 4510–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 118–1b; FRL–6353–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Ohio State Implementation Plan (SIP) for rules 3745–15–05 (De Minimis exemption) and 3745–35–02 (Permits to Operate) of the Ohio Administrative Code (OAC).

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless EPA receives relevant adverse written comment. Should EPA receive such comment, we will publish a timely withdrawal informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document, and no further action will be taken. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 8, 1999.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Ohio Environmental Protection Agency may be examined during normal business hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steve Gorg or Genevieve Damico, Environmental Engineers, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, 312–353–8641.

SUPPLEMENTARY INFORMATION:

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: May 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–14053 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6355–4]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of compliance.

SUMMARY: The EPA is proposing to extend certain compliance dates contained in National Emissions Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins. The revisions concern an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for polyethylene terephthalate (PET) affected sources. We are proposing these compliance extensions pursuant to Clean Air Act section 301(a)(1) to complete reconsideration of equipment leak provisions and any necessary revision to the rule.

In the "Rules and Regulations" section of the **Federal Register**, we are approving the extension of compliance dates as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we received adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received by July 8, 1999, unless a hearing is requested by June 18, 1999. If a hearing is requested, written comments must be received by July 23, 1999.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than June 18, 1999. If a hearing is held, it will take place on June 23, 1999, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the SUPPLEMENTARY INFORMATION section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Maria Noell, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, N.C. 27711, telephone (919) 541–5607.

Docket. The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A

public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5605, fax number (919) 541–3470, and electronic mail: barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: http://www.epa.gov/ttn/oarpg.

Regulated Entities

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities that produce PET.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this notice. If you have questions regarding the applicability of the NESHAP addressed in this notice to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Administrative

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

This action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, the proposed rule will provide an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources. The proposed rule does not add any additional control requirements. Therefore, this proposed rule was classified "non-significant" under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because rather than imposing additional requirements, this proposed rule provides additional time for compliance while the EPA completes reconsideration and any necessary revision to parts of the Group IV Polymers and Resins NESHAP. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable

number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objects of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. Instead, this proposed rule provides additional time to comply with some requirements of the Polymers and Resins IV NESHAP. In any event, the EPA has determined that this rule does not contain a Federal mandate that may result in expenditure of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year. This rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We also have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to the Executive Order 13045 because it is not an economically significant regulatory action as defined in E.O. 12866, and it is based on technology performance and not on health or safety risks.

F. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires federal agencies to evaluate existing technical standards when developing new regulations. To comply with the NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that the use of VCS in this proposed rule is impractical. The compliance extension of the Group IV Polymers and Resins NESHAP is merely a procedural action that does not require sources to take substantive steps that lend themselves to VCS.

G. Executive Order 12875—Enhancing Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Rather, the proposed rule extends certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed rule imposes no enforceable duties on these entities. Rather, the proposed rule extends certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 28, 1999.
Carol M. Browner,
Administrator.
[FR Doc. 99–14350 Filed 6–7–99; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6355–6]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed denial of petition for reconsideration and notice of public hearing.

SUMMARY: Promulgated standards for the Group IV Polymers and Resins were published in the **Federal Register** on September 12, 1996. Two sets of petitioners have petitioned the EPA to reconsider the equipment leak standards contained in the promulgated rule as they pertain to polyethylene terephthalate (PET) facilities. After consideration of the petitioners' comments and data, and a reanalysis of the equipment leak program, the EPA has determined to retain without modification the equipment leak provisions of the promulgated rule.

Today's notice provides the opportunity to provide public comment on the new equipment leak analysis, which was conducted based on comments and additional data provided by the petitioners.

DATES: Comments. Comments must be received on or before August 9, 1999. For information on submitting electronic comments see the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the EPA's decision to retain the equipment leak standards based on the comments and data provided by the petitioners and on the reanalysis incorporating those comments and data. If anyone contacts the EPA requesting to speak at a public hearing by July 1, 1999, a public hearing will be held on July 8, 1999, beginning at 9:30 a.m. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Maria Noell at (919) 541–5607, Organic Chemicals Group (MD–13). If held, the public hearing will take place at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102) Attention: Docket No. A–92–45, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to Mr. Keith Barnett, US EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–5605, fax (919) 541–3470, and electronic mail: barnett.keith@epa.gov. Comments and data may also be submitted electronically by following the instructions listed in **SUPPLEMENTARY INFORMATION.** No confidential business information (CBI) should be submitted through electronic mail.

Technical Memoranda. The "Summary of Responses to Petitioners' Comments" memo may be obtained electronically from the EPA's Technology Transfer Network (TTN) (see **SUPPLEMENTARY INFORMATION** for access information.)

Docket. A docket, No. A–92–45, containing information considered by the EPA in the development of the standards for the Group IV Polymers and Resins, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday at the EPA's, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, D.C. 20460. The proposed and promulgated regulations, the Basis and Purpose Document for the promulgated rule, Summary of Responses to Petitioners' Comments, (Docket Item VI–B–19), Equipment Leak Analysis for PET Facilities Subject to the Group IV Polymers and Resins NESHAP (Docket Item VI–B–20), and other supporting information are available for inspection and copying. Alternatively, a docket index, as well as individual items contained with the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying. The docket index is also available electronically on the Virtual Air Toxics Website at http://www.epa.gov/ttn/uatw/pr4/pr4pg.html.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, US EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–5605, fax (919) 541–3470, and electronic mail: barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities manufacturing polyethylene terephthalate (PET) using a batch dimethyl terephthalate (DMT) process, PET facilities using a continuous DMT process, PET facilities using a batch terephthalic acid (TPA) process, and PET facilities using a continuous TPA process.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the Group IV Polymers and Resins standard. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated, you should carefully examine the applicability criteria in § 63.1310 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Filing

Electronic comments and data can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Wordperfect 5.1 or 6.1, or ASCII file formats. All comments and data in electronic form must be identified by the docket number A–92–45. No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Activity

This notice is available through the Technology Transfer Network (TTN) web site at http://www.epa.gov/ttn/oarpg. The TTN Web site is a collection of related web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The telephone number to access the OAQPS TTN via modem is (919) 541–5742. The TTN operates 24 hours a day, except on Mondays, when it is inaccessible from 8:00 a.m. to noon, East Coast Time. For further information and general questions regarding the TTN, call the TTN help line (919) 541–5384 or Mr. Hersch Rorex (919) 541–5637. This notice is also available in Docket No. A–92–45 (see **ADDRESSES**).

The following outline is provided to aid in reading this notice. The information presented in this notice is organized as follows:

I. Background
A. 1995 Proposed Rule
B. Public Comments on 1995 Proposed Rule
C. 1996 Promulgated Rule
II. Petitions for Reconsideration
A. Emission Estimation
B. Cost Estimation
C. Heavy Liquid Components
III. Reanalysis of Equipment Leak Program
IV. Results and Conclusion
V. Solicitation of Comments
VI. Administrative Requirements
A. Paperwork Reduction Act
B. Executive Order 12866
C. Executive Order 13045
D. Regulatory Flexibility
E. Unfunded Mandates Reform Act
F. Executive Order 12875
G. National Technology Transfer and Advancement Act
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I. Background

A. 1995 Proposed Rule

National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group IV Polymers and Resins were proposed in the **Federal Register** (FR) on March 29, 1995 (60 FR 16090). The proposed standards included requirements for the control of emissions from equipment leaks. Under the proposed standards for equipment leaks, both existing and new PET facilities would be required to implement a leak detection and repair (LDAR) program. With a few exceptions, the LDAR program proposed was the same as that specified in the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (40 CFR part 63, subpart H; referred to hereafter as the HON) and the National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I). Under the proposed standards, work practice requirements to reduce emissions from equipment that is in organic hazardous air pollutants (HAP) service for 300 or more hours per year were specified. The proposed standards defined "in organic HAP service" as being in contact with or containing process fluid that contains a total of 5 percent or more total HAP. The proposed standards applied to valves, pumps, compressors, connectors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, agitators, surge control vessels, bottoms receivers, and closed-vent systems and control devices.

B. Public Comments on 1995 Proposed Rule

Comments were received on the 1995 proposed rule, including comments on the equipment leak program. A summary of comments and responses to those comments can be found in "Hazardous Air Pollutant Emissions from Process Units in Thermoplastics Manufacturing Industry—Basis and Purpose Document for Final Standards, Summary of Public Comments and Responses," (EPA–453/R–96–001b, May 1996).

Overall, commenters had several objections concerning the proposed provisions as applied to PET affected sources. Commenters stated that emissions and emission reductions were overestimated; that little environmental benefit could be expected as a result of implementing an equipment leak program; that the proposed provisions were not cost effective (largely due to the overestimation of emissions and emission reductions); and that the recordkeeping and reporting requirements were excessive.

In response to these comments, the EPA reevaluated the emission estimates, costs, and cost effectiveness of the proposed equipment leak standards for each PET subcategory. Based on the comments and reanalysis, the EPA made changes to the proposed rule, which are summarized in the following section.

C. 1996 Promulgated Rule

On September 12, 1996, the final rule for the Group IV Polymers and Resins source category was published in the **Federal Register** (61 FR 48208). In general, with regard to equipment leaks, subject facilities were required to comply with the HON. A few differences from the HON were included in the final rule. These differences, most of which were in response to comments received during the public comment period, included:

1. For PET affected sources using a continuous TPA high viscosity process with multiple end finishers, the final rule does not require an equipment leak program.

2. The final rule exempts from the equipment leak standards any PET Thermoplastic Product Production Unit (TPPU) in which all of the components are either in vacuum service or in heavy liquid service (or some combination of vacuum service and heavy liquid service).

3. Indications of liquids dripping from bleed ports on pumps and agitators at facilities producing polystyrene resins are excluded from the definition of a leak.

4. A submittal of an Initial Notification is not required.

5. 150 days (rather than 90 days) are allowed to submit the Notification of Compliance Status.

6. PET facilities are not required to provide a list of identification numbers for components in heavy liquid service, pressure relief devices in liquid service, and instrumentation systems.

7. The final rule clarifies that, for the components identified above under Item 6, leaks are to be determined exclusively through the use of visual, audible, olfactory, or any other detection methods, but that Method 21 is not to be used.

8. Bottoms receivers and surge control vessels are not regulated under the equipment leak provisions, but instead are regulated as storage vessels.

II. Petitions for Reconsideration

Following promulgation of this rule, the EPA received two petitions for reconsideration regarding the LDAR provision of the rule.[1] The petitioners also supplied additional data to the EPA in support of their petitions. The EPA held meetings with both sets of petitioners to discuss their petitions.

The two primary concerns expressed by these petitioners were:

1. Light liquid LDAR program is more costly than estimated, is not cost effective, and thus should not be required.

2. No substantive cost effectiveness analysis was performed on the heavy liquid LDAR program, which was added between proposal and promulgation; thus, EPA failed to meet its obligation under section 112(d)(2) of the Clean Air Act.

The petitioners requested that the EPA redo its analysis and believes that

[1] The EPA also received petitions regarding other sections of the rule and is responding to these separately.

such reanalysis would result in action to delete the equipment leak provisions from the Group IV Polymers and Resins rule.

A summary of the reanalysis conducted in the response to the petitions is presented below in Section III, Reanalysis of Equipment Leak Program. The following paragraphs summarize the major comments made by the petitioners and the EPA's response to those comments. For more comments and responses, please see the "Summary of Responses to Petitioners' Comments" memo in Docket A–92–45.

A. Emission Estimation

Comment: Two petitioners claim that the EPA's average SOCMI emission factors significantly overestimate equipment leak emissions and that baseline emissions would be more accurately predicted using the average emission factors identified in the 1993 Protocol document for components located at ethylene oxide/butadiene (EO/BD) process units (Protocol for Equipment Leak Emission Estimates, EPA–453/R–93–026, June 1993, page B–53).

Response: This comment is essentially identical to comments presented during the public comment period on the proposed rule. However, these petitioners provide for the first time equipment leak rate data compiled from several of their non-PET facilities that they believe are representative of leak rates at their PET facilities. The petitioners then calculate average leak rates based on these leak frequencies and compare them to several average leak rates reported in the 1993 Protocol document, including those based on the EO/BD data, on the EPA 24-unit study, and the combined EO/BD and EPA 24-unit study data (which makes up the SOCMI data set). A comparison of the average leak rates appears to show that the petitioners' non-PET facilities are emitting at a rate lower than the average SOCMI factors.

When developing the rule, the EPA provided each company, including the petitioners, with the opportunity to comment on the estimated emissions from equipment leaks, which were based on the average SOCMI emission factors. Most of the companies disagreed with the estimates, either stating they were too high or providing their own estimates. Two companies found no reason to dispute the EPA estimate. Two petitioners responded by providing emission estimates and detailed component counts for some of their facilities. However, for two of their facilities they used EPA SOCMI emission factors to estimate their equipment leak emissions. A third petitioner, in contrast, provided no comments on the procedure for calculating uncontrolled emissions from equipment leaks and stated the information on the component counts and their stream composition was unavailable at that time.

In responding to the petitioners' comments, the EPA performed the equipment leak reanalysis using revised emission factors for the petitioners' facilities based on the equipment leak frequency rates presented by the petitioners. In addition to the petitioners, only one other company submitted data from which facility-specific leak frequencies could be derived. The EPA used these data to calculate facility-specific emission factors for the reanalysis for that facility. The leak frequency rates and the resulting facility-specific emission factors were not extended to analyses of other companies' facilities for several reasons: (1) The other companies either have not questioned the EPA emission estimates or have concurred with them, (2) the equipment leak programs to control emissions employed by the petitioners at their facilities may not represent programs practiced by other companies, and (3) several companies stated that they do not have any equipment leak programs.

It is important to note that the EPA is using the petitioners' leak frequency rates for analysis purposes only in responding to the petitioners' comments, and is not accepting them as valid. The level of detail associated with the leak frequency rates and inconsistencies in the presentation of the data (as discussed in the following paragraph) make it impossible to verify the accuracy of the leak rate data. In addition, there is no certainty that these leak frequency rates are applicable to the petitioners' PET facilities, because the monitoring and repair program in place for the submitted data at the time of the reported initial measurements may not reflect the uncontrolled leak frequency from the PET facility.

Two petitioners submitted information on the equipment leak frequencies for a number of non-PET facilities. Upon request, they also provided data to support those reported leak frequencies. In reviewing the supporting data, there appear to be a number of inconsistencies, some of which would affect the estimated leak frequency. For example, in the information submitted by one petitioner these inconsistencies include: (1) The number of leaking components reported in the summarization table do not match the monitoring results in the audit report; (2) start dates do not match between the summarization table and the audit report; (3) total number of components in the summarization table do not always match the number tested in the audit report; and (4) it is unclear what "net" readings refer to and it is possible that this is an incorrect accounting of leakers. In another petitioner's data, concerns are: (1) the data sheets do not match the numbers in the screening results table; and (2) it is unclear what "adjusted" readings, which are presented for many of the process units and their leaking components, refer to and it is possible that this is an incorrect accounting of leakers. Notwithstanding these technical uncertainties, the EPA has used the petitioners' leak frequency rates in the reanalysis.

Comment: Two petitioners state that one reason their baseline emissions are so much lower than predicted by the SOCMI emission factors is that since the 1970s a greater emphasis has been placed on repairing leaking equipment identified through sensory means, and that this is part of the normal practice at their facilities.

Response: This comment is essentially identical to one submitted by one of the petitioners in response to the proposed rule. While these two petitioners state that they currently have in place a program that repairs leaks through coordination with their maintenance staff, they do not provide any information documenting the effectiveness of a sensory program relative to a monitoring program for components in gas/vapor or light liquid service. But whatever their effectiveness, the EPA has used their data in the reanalysis.

Comment: One petitioner claims that the EPA had information that industry-run LDAR programs were practiced in PET facilities and that by ignoring these programs the EPA over-estimated the number of leaking components.

Response: In response to an EPA request to identify equipment leak programs prior to the 1995 proposal, most PET companies (including the petitioners for all of their facilities) indicated that they did not have an equipment leak program or did not respond. Two companies stated that they repair leaks on a visual-detection basis. None of the companies provided any data to quantify the impact on emissions as a result of these visual-detection programs. In addition, none of the companies described such programs in any detail. Therefore, prior to the public comment period, there was insufficient information for the EPA either to describe these visual-based

equipment leak programs or to quantify their effectiveness. During the public comment period, the EPA received additional statements (but no data or descriptions) from several commenters (including the petitioners) that there were industry-run LDAR programs. In fact, one of the petitioners stated during the public comment period that the MACT floor determination was flawed because the proposed equipment leak standards only require what PET TPA facilities are currently doing for components in heavy liquid service. Notwithstanding such statements, industry did not provide the EPA with information or data to describe the programs or to quantify the emission reduction associated with industry-run LDAR programs. In the absence of such information or data, the EPA could not incorporate these programs in its estimate of baseline emissions.

Comment: One petitioner states that the EPA did not use emission estimates provided by the industry, that the EPA assumed all vapor components to be methanol, and that the EPA failed to revise the emission factor for vapor ethylene glycol, resulting in an overestimation of emissions from these components.

Response: The petitioner correctly states that the EPA did not use emission estimates provided by the industry for equipment leaks. As the EPA explained in supporting technical documentation:

Emissions data provided by industry for equipment leaks were not used. Instead, emissions were estimated by determining the equipment component counts at each facility (e.g. valves in gas service, pumps in light liquid service) and applying the appropriate emission factors for each component category. Emission factors reported in the EPA's protocol document for equipment leaks were used. This approach to estimating emissions for equipment leaks was taken to provide a consistent baseline for estimating the impacts of various leak detection and repair (LDAR) programs in use for various subcategories and to compensate for the fact that equipment leaks data provided by industry was not complete. For the several facilities that provided specific and clear information, the estimate of emissions was adjusted to account for low organic HAP concentrations and reduced hours of operations.

The supporting technical documentation lays out the procedures for the design and costing of condensers to control styrene and methanol emissions from polystyrene and PET process vents. These systems are not applied to equipment leak emissions. At proposal and promulgation, the EPA assumed all vapor service components at PET DMT facilities were in methanol service, and applied a recovery credit to these components based on the value of methanol. The EPA did not make any assumptions at proposal and promulgation as to what compound was contacting the gas/vapor service components at PET TPA facilities. The EPA did use the same emission factors to estimate emissions from gas/vapor service components at both DMT and TPA facilities.

Based on comments received during the public comment period, the EPA responded by revising the emission factors for components in heavy liquid service. No data have been provided to indicate that it is inappropriate to use the emission factor for components in vapor service where the contact compound is ethylene glycol in the vapor phase.

Based on the available data, the EPA believes the approach used by the Agency to estimate emissions is reasonable.

Comment: One petitioner claims that the EPA has stated that LDAR programs for heavy liquid components have no measurable effect on heavy liquid component emissions. The petitioner then states that they must use zero for heavy liquid component emission reductions.

Response: The EPA believes that there will be an emissions reduction for heavy liquid components as a result of the Group IV Polymers and Resins NESHAP, and that the petitioner misinterpreted the information. The requirements of the rule for heavy liquid components specify that if an operator sees, smells, or hears a leak, they are required to tag the component and complete repairs within 15 days. The current industry practice is to identify leaks through the same methods as specified in the rule, but they have no specific time limit for repairs. The EPA believes it is reasonable to conclude that imposing specific time limits for repairs will result in repairs being completed in a more timely fashion, thereby reducing emissions.

The comments provided by this petitioner indicate that they do not currently keep records on repairs of heavy liquid components. Therefore, it is not possible based on currently available data to determine the average repair times under current industry practice. If data were available, then it would be possible to quantify an emissions reduction.

In the case of open-ended lines and sampling connections in heavy liquid service, the emission reductions have been quantified. The equipment leak program requires all open-ended lines regardless of type of service to be capped, etc., and all sampling connections to be controlled to a "zero HAP emissions" level.

Comment: One petitioner states that the number of gas/vapor components at continuous TPA facilities is very small (11 at the petitioner's facility) and, therefore, the benefits derived from a LDAR program for these components are negligible.

Response: The EPA agrees that the emission reduction benefit may vary depending on the number of components subject to a LDAR program and that the amount of emission reduction will vary from facility to facility. However, in determining the benefits to be derived from an equipment leak program, the EPA looks at all of the facilities in the category or subcategory and all of the components from which emission reduction may be achieved. This type of approach has been consistently applied in the MACT program (i.e., impacts and cost effectiveness has been determined across a category or subcategory, not on an individual facility basis). Based on this analysis, the EPA has determined that the amount of emission reduction and the cost to achieve that emission reduction is reasonable.

B. Cost Estimation

Comment: Two petitioners claim that the EPA has underestimated the costs of implementing an equipment leak program based on Method 21 screening. Specifically, the petitioners claim that the EPA did not reflect fixed costs or costs associated with including heavy liquid components in the equipment leak program and that the EPA underestimated the costs associated with performing Method 21 monitoring.

Response: The EPA acknowledges that specific cost elements were left out of the costing performed at proposal and promulgation. Revised costing was conducted and includes additional elements. Responses to specific cost items identified by these two petitioners are found in Tables 2 and 3 to the "Summary of Responses to Petitioners' Comments" memo.

Comment: Two petitioners claim that the cost analysis contains fundamental technical errors that result in the EPA's grossly underestimating the cost of compliance with the LDAR program for PET facilities.

Response: These two petitioners identify a number of errors that did occur in the regulatory cost analysis. These errors are corrected in the revised costing. Table 4 in the "Summary of Responses to Petitioners' Comments"

memo presents each item claimed by the petitioners as to being in error or insufficiently explained and EPA's response to these items.

Comment: According to two petitioners two significant errors occur in the EPA's cost effectiveness analysis. First, they assert that a valve monitoring frequency of 12 times per year could be required to maintain a leak frequency of 1 percent, versus the 4 times a year used in EPA's analysis. Second, they state that the EPA used an incorrect value for the leak frequency used to calculate repair costs. The petitioners claim that, by themselves, these errors underestimate the costs of the equipment leak program based on Method 21 screening by 100%.

Response: The EPA believes that the petitioners misstated the requirements of the rule. The comment implies that a facility must maintain a leak frequency of one percent. This is incorrect. A facility is not required to maintain a specified leak frequency for valves. The rule states that the required monitoring frequency varies from annual to monthly depending on the actual leak frequency found when monitoring is performed. Also, in order for a facility to be allowed to monitor on a quarterly basis, they must have a measured leak frequency of less than 2 percent, not the 1 percent value stated in the comment. The leak frequency is calculated as a rolling average of the last two consecutive monitoring periods.

The value quoted by the petitioners to support their contention that monthly monitoring of valves would be required, 2.42 percent, was taken from information developed only for the purpose of estimating emissions from equipment leak programs currently in place. It does not reflect the percentage of valves we anticipate will leak when this rule is in place.

Finally, these petitioners estimated the initial leak frequency for valves in their facilities under their current practices to be 3.02 and 1.48 percent, respectively, using a leak definition of 500 ppmv. The EPA believes it is reasonable to assume based on these current leak frequencies that once the LDAR program is implemented the leak frequencies the facilities can expect to measure will be well below 2 percent.

The EPA agrees that the wrong subsequent leak frequencies were used to calculate repair costs and has revised them in the new cost analysis. The effect of this single change increases costs minimally.

Comment: Two petitioners claim that the EPA failed to conduct a cost analysis for heavy liquid components. The petitioners state that no cost estimates are included for LDAR monitoring, maintenance, repair, or administrative costs. The petitioners also state that, in assuming these costs are zero (or impose no additional costs) without performing any type of analysis, the EPA has failed to meet its obligation under section 112(d)(2) of the CAA. According to the petitioners, the costs associated with a heavy liquid LDAR program are significant, and do not result in cost effective emission reduction.

Response: The EPA agrees that the costing conducted at proposal and promulgation did not include costs for the implementation of the heavy liquid portion of the rule for valves, pumps, and connectors. In the new analysis, costing for these heavy liquid components is now explicitly included. Please refer to the "Equipment Leak Analysis for PET Facilities Subject to the Group IV Polymers and Resins NESHAP" memo in the docket.

Also, specific cost items identified by the petitioners are addressed in Table 3 in the "Summary of Responses to Petitioners' Comments" memo.

Comment: One petitioner states that emissions reductions at its facility would be approximately 0.29 Mg per year at a cost of approximately $26,000 per Mg of emission reduction and that this cost figure ($26,000 per Mg) is "many times the amount found by EPA to be unacceptably costly."

Response: The EPA has re-estimated emission reductions and costs for this petitioner's facility as well as for all of the other facilities. The EPA used the information provided by the petitioner in estimating the components that would be affected by the equipment leak program and for which emission reductions could be quantified. The EPA also reanalyzed costs at this facility.

Based on this reanalysis, the cost effectiveness value of the LDAR program for this facility estimated by the EPA is much lower than that estimated by the petitioner. More details on the differences in the EPA and petitioner analyses may be found in the memo "Summary of Responses to Petitioners' Comments" in Docket A–92–45.

C. Heavy Liquid Components

Comment: Two petitioners claim that the EPA promulgated LDAR requirements for heavy liquid service components that are different from the proposed rule without providing affected parties the opportunity to provide input. These two petitioners also claim that the EPA has violated the legal requirements for rulemaking by making a change that "is not a logical outgrowth of the proposed rules." Thus, EPA must provide opportunity for public comment on this "new substantive" requirement for components in heavy liquid service.

Response: It is not necessary to address this comment because the new analysis (as presented in the "Equipment Leak Analysis for PET Facilities Subject to the Group IV Polymers and Resins NESHAP" memo) and this **Federal Register** notice provide public notice and opportunity for comment. The EPA also notes that one of these petitioners, in its comments on the 1995 proposed rule, specifically suggested that the EPA allow the use of a leak detection and repair approach that would utilize visual inspection of process lines, and later informed the EPA that visual inspection would be acceptable to them.

Comment: Two petitioners asked the EPA to consider two alternative programs for heavy liquid components—a "minimal" program and a "more conservative" program—and determine which would be sufficient to meet the requirements for heavy liquid components.

Response: Although not required to do so, the EPA reviewed the two programs and has determined that the minimal program as laid out by the petitioners is sufficient to meet the requirements set forth in the rule for components in heavy liquid service. (See Table 3 in the "Summary of Responses to Petitioners' Comments" memo for more details.)

Comment: One petitioner states the major cost for the LDAR program will be ensuring compliance with recordkeeping and repair scheduling requirements for heavy liquid ethylene glycol components. The petitioner also states that they already maintain all of the equipment components listed in the standard, but do not keep records or track repair deadlines. According to the petitioner, one employee on a full-time basis will be required to ensure compliance with recordkeeping and scheduling to log and track monitoring and perform repairs. They claim that a current employee cannot be used, during periods of maintenance turn around or upsets, because he would not be available to perform the regulatory requirements. They also assume one full-time employee would be required because of the number of heavy liquid components at the facility (close to 80,000). Furthermore, maintenance employees would have to be trained on procedures for complying with the MACT equipment leak program, which requires that repairs be documented and

components tagged for tracking purposes.

Response: As noted earlier, the EPA agrees that a number of cost components associated with the heavy liquid portion of the equipment leak program were left out of the costing done at proposal and promulgation. The EPA has addressed the petitioner's concerns in the revised costing and believes that the costs associated with the heavy liquid component program have been adequately addressed.

Comment: One petitioner claims that the EPA has stated that the MACT equipment leak program will have no measurable effect on emissions from heavy liquid components, but has insisted that the petitioner implement a heavy liquid program that will cost more than the gas/vapor portion of the program. They noted a compliance cost of $2.50 per heavy liquid component for initial identification in the spreadsheet used for costing at proposal, but the EPA assumed no components in heavy liquid service, and a pre-existing LDAR program in place. Therefore, no costs incur as a result of the rule. This petitioner states that they have over 80,000 components in heavy liquid service. Using a compliance cost of $2.50 per component results in an annual cost of $200,000 for their facility, which is more than the estimated cost for the Method 21 monitoring program, and no emission reduction is obtained for this cost.

Response: The EPA agrees that a one-time, initial cost to identity components affected by the rule should be attributed to the heavy liquid portion of the rule as it affects valves, pumps, and connectors in heavy liquid service. In the revised costing, the EPA is using other petitioners' suggested cost of $1.13 per heavy liquid component (see Table 3 in the "Summary of Responses to Petitioners' Comments" memo). This cost covers identifying all equipment in heavy liquid service, including redoing or developing P&ID drawings at least to the extent that equipment in heavy liquid service with greater than 5% HAP would be differentiated. Although the rule does not require redoing or developing P&ID drawings, the EPA is using the petitioners' estimate to provide a conservative estimate of this cost item. Based on the component counts provided by the petitioner for this facility, the estimated one-time cost for this facility is $86,000 (76,047 components x $1.13 per component). This is equivalent to an annualized cost of approximately $12,000 per year, which is approximately 35% of the estimated annualized cost for the rest of the equipment leak program (before emission reduction credits) at the petitioner's facility.

The EPA disagrees that there will be no emissions reduction for heavy liquid components as a result of the Group IV Polymers and Resins NESHAP. The current programs have no specific time limit for repairs. The program in the rule has specific time limits for repairs. The EPA believes it is reasonable to conclude that repairs will be accomplished in a more timely fashion, thereby reducing emissions. However, it is not possible to quantify the reduction based on currently available information because the petitioners do not keep records and track repair times in their current programs. If these data were available, then an emissions reduction could be estimated.

Based on this reanalysis, which is based on costs suggested by the petitioners, the EPA concludes that the costs of the heavy liquid component program implementation will not be more expensive than the gas vapor portion of the program, and that there will be an emissions reduction that occurs as a result of the heavy liquid component requirements in the LDAR program.

III. Reanalysis of Equipment Leak Program

The petitioners claimed that a number of errors exist in the analyses conducted by the EPA to support the proposed and promulgated rule. The EPA carefully reviewed each claimed error and where found to be accurate, the EPA has corrected the errors identified by the petitioners in the reanalysis. The EPA also carefully evaluated and considered all of the comments and data provided by the petitioners. Many of the comments were found to have merit and, in such instances, the EPA incorporated the comment or data or portions thereof directly into the reanalysis. The major changes made to the analysis as a result of the petitioners' comments and data are as follows:

1. Corrected several errors identified by the petitioners including:

- The estimate of the number of leakers at a facility that must be repaired after each periodic monitoring with a LDAR program in place is based on the number of components and the subsequent leak frequency for the components. The subsequent leak frequency is that leak frequency experienced immediately prior to LDAR monitoring. In the previous analyses, the EPA used the average leak frequencies to determine the number of components repaired instead of the subsequent leak frequencies. In the reanalysis, the subsequent leak frequencies have been used.
- The cost estimate for the annual monitoring of components is based, in part, on the number of times per year the components are monitored. Under the HON LDAR program, connectors are to be monitored once per year. In the costing spreadsheets used for DMT-based facilities at promulgation, the monitoring frequency was incorrectly set at zero (0). In the reanalysis, the correct monitoring frequency of once per year (1) has been used.
- Part of the costs of an equipment leak program are contained in a "miscellaneous" category. The costing algorithms used for the PET facilities originated with the HON equipment leak costs. In the HON costing, the miscellaneous costs associated with pumps is calculated using a factor of 0.8. In the PET costing algorithms used at promulgation, a miscellaneous cost factor for pumps of 0.4 was used. In the reanalysis, the correct miscellaneous cost factor of 0.8 has been used.
- Part of the equipment leak costing program is an estimate of the costs to cap open-ended lines. This cost is estimated by multiplying the number of open-ended lines by the cost for a cap for each line. For several facilities, the equation for calculating this cost was missing in the costing spreadsheets used at promulgation. This error has been corrected in the reanalysis.

2. For the petitioners' facilities and for one other, revised emission factors were used based on the leak frequency data provided by these companies. The revised emission factors result in lower emission and emission reduction estimates than would be estimated using the average SOCMI emission factors for the same components.

3. The costing spreadsheets used at promulgation did not estimate costs for valves, pumps, and connectors in heavy liquid service. The costing spreadsheets used in the reanalysis include several cost items for these heavy liquid components including: (1) A location and identification cost, (2) tagging cost, (3) planning and training cost, and (4) data entry cost.

4. At proposal and promulgation, recordkeeping and reporting costs were reported in Part A to the Supporting Statement and were not included in the costing spreadsheets. Under the reanalysis, recordkeeping and reporting costs are included in the costing spreadsheets. The estimated costs used were based on data supplied by two petitioners for facilities with 500 or more components subject to Method 21 monitoring. A lower estimate was used

for facilities with fewer than 500 components subject to Method 21.

5. At proposal and promulgation, no costs were estimated for the use of a database system (computer, software) to record and track the information required by the equipment leak program. In the reanalysis, facilities with 500 or more components subject to Method 21 monitoring were assumed to purchase a computer and the software necessary to record and track the information required by the equipment leak program. For facilities with fewer than 500 components, the reanalysis assumes a facility will use log sheets and have assigned costs for such data logging.

In addition, the EPA has made several changes to the analysis that are not identified by the petitioners or are a variation on the comments provided by the petitioners. These include:

1. A recovery credit for ethylene glycol was incorporated for PET facilities using the terephthalic acid process. Previously, only a credit was included for methanol, which is a primary HAP emitted from facilities using the dimethyl terephthalate process in producing PET.

2. Database systems costs, trip charges, administration and reports, planning and training, and trips by subcontractors were shared amongst multiple subcategories at the same facility. The number of pumps, valves, and connectors in gas/vapor and light liquid service were used to ratio these costs.

3. No costs were determined attributable to the actual repair of leaking heavy liquid components because these would normally be repaired already by the facility when found leaking.

4. Facilities with fewer than 500 components subject to Method 21 monitoring were judged to use in-house personnel to conduct the equipment leak program, while those with more than 500 components subject to Method 21 monitoring were judged to use subcontractor personnel to conduct the equipment leak program.

5. An algorithm was used to determine whether it was less expensive for a facility to purchase or rent a monitoring instrument. The EPA found that is was less expensive for the facilities in this category to rent a monitoring instrument. This is consistent with the petitioners' costs in which they indicate the rental of an instrument when using a subcontractor to conduct the equipment leak program.

Finally, in conducting the reanalysis, the EPA continued to evaluate the equipment leak program on a subcategory basis rather than a facility-wide basis. Some costs were shared (as noted above) across a facility, but the cost effectiveness of the equipment leak program was evaluated on a subcategory basis.

IV. Results and Conclusion

The following table compares the cost effectiveness estimates for the four PET subcategories at proposal and promulgation and as a result of the reanalysis. As can be seen in the table, the cost effectiveness value of the equipment leak program has increased for all four PET subcategories from the analysis conducted in support of the promulgation package. For DMT facilities, the cost effectiveness value increased between 3 and 4 times. For TPA continuous facilities, the cost effectiveness value increased less than 10 percent, while the cost effectiveness value for TPA batch facilities doubled. The primary reason for the smaller increase in cost effectiveness values for the TPA facilities is due to the recovery credit offsetting the increased cost due to the explicit incorporation of costs for heavy liquid components.

SUMMARY OF COST EFFECTIVENESS VALUES OF EQUIPMENT LEAK PROGRAM FOR GROUP IV RESINS

[$/Mg of Emission Reduction]

Process subcategory	Petition reanalysis	Promulgation	Proposal
DMT-Batch	2,350	687	1,057
DMT-Continuous	1,400	357	803
TPA-Continuous	1,800	1,630	1,203
TPA-Batch	1,600	806	2,430

Based on the results of the new analysis, the EPA still judges the equipment leak program as promulgated to be cost effective for PET facilities. Therefore, the EPA has determined that there is no need to remove the equipment leak standards from the promulgated rule for Group IV Polymers and Resins and no need to modify any provisions within the equipment leak program of 40 CFR part 63, subpart H.

V. Solicitation of Comments

The EPA solicits comments from interested persons on any aspect of the revised cost analysis for equipment leak programs at PET facilities and the EPA's proposed decision to retain without modification the equipment leak provisions of the rule for PET facilities. The EPA is specifically requesting factual information that may support either the approach taken in the revised equipment leak analysis or an alternate approach. In order to receive proper consideration, documentation or data should be provided.

VI. Administrative Requirements

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

Today's action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, it proposes to deny a request to change an existing rule. The proposed action does not add any additional control requirements. Therefore, this is not a "significant regulatory actien" within the meaning of Executive Order 12866 and was not required to be reviewed by OMB.

C. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to the Executive Order 13045 because it is not an economically significant regulatory action as defined in E.O. 12866, and it is based on technology performance and not on health or safety risks.

D. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's action will not impact any facilities defined as small entities under the Regulatory Flexibility Act. Therefore, I certify this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objects of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action does not impose any enforceable duties on State, local, or tribal governments, i.e., they own or operate no sources subject to the Group IV Polymers and Resins NESHAP and therefore are not required to purchase control systems to meet the requirements of this NESHAP. Regarding the private sector, today's action will affect only 23 existing facilities nationwide. The EPA projects that annual economic effects will be far less than $100 million. Thus, today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA).

We also have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local or tribal governments. This action does not impose any enforceable duties on State, local or tribal governments, because they do not own or operate any sources subject to the Group IV Polymers and Resins NESHAP and therefore are not required to purchase control systems to

meet the requirements of this NESHAP. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to today's action.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Group IV Polymers and Resins NESHAP includes technical standards. Therefore, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods potentially equivalent to the methods required by the Group IV Polymers and Resins NESHAP, all of which are methods previously promulgated by the EPA. The NESHAP includes methods that measure: (1) Determination of excess air correction factor ($\%O_2$)(EPA Method 3B); (2) sampling site location (EPA Method 1 or 1A); (3) volumetric flow rate (EPA Methods 2, 2A, 2C, or 2D); (4) gas analysis (EPA Method 3); (5) stack gas moisture (EPA Method 4); (6) concentration of organic HAP (EPA Method 18 or 25A); and (7) organic compound equipment leaks (EPA Method 21). These EPA methods are found in appendix A to part 60.

No potentially equivalent methods for the methods in the rule were found in the NSSN database search. Therefore, the EPA proposed to use the methods listed above. The EPA welcomes comment on this aspect of the rule and specifically invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in the Group IV Polymers and Resins NESHAP. Methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A was used).

H. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action imposes no enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–14351 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6354–8]

Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the proposed rule published in the **Federal Register** on April 30, 1999, at 64 FR 23398 regarding Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems. This correction indicates the proper paragraph references in the proposal at § 141.40(a)(4) and (5).

DATES: The proposed rule being corrected today is open to public comment until June 14, 1999.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–98–02, U.S. Environmental Protection Agency, Water Docket (MC 4101), 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–98–02. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. Electronic comments on the proposal being corrected today may be filed online at many Federal Depository Libraries.

The full record for the proposal has been established under docket number W–98–02 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, USEPA, 401 M Street, SW, Washington DC. For access to docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m, Eastern Time, Monday through Friday, to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Charles Job, Standards and Risk

Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, (202) 260–7084. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

Correction

In the proposed rule FR Doc. 99–10001, beginning on page 23398 in the issue of April 30, 1999, make the following corrections on page 23454:

§ 141.40 [Corrected]

1. In column one, in § 141.40(a)(4)(i)(A), the reference "paragraph (e)" is corrected to read "paragraph (a)(5)".

2. In column one, in § 141.40(a)(4)(ii), the reference "paragraph (d)(1)" is corrected to read "paragraph (a)(4)(i)".

3. In column one, in § 141.40(a)(4)(iii) introductory text, the reference "paragraph (d)(1)" is corrected to read "paragraph (a)(4)(i)".

4. In column three, in § 141.40(a)(5)(ii) introductory text, the reference "paragraph (e)(1)" is corrected to read "paragraph (a)(5)(i)".

Dated: May 28, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–14353 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 239

[FRL–6354–6]

Adequacy of State Permit Programs Under RCRA Subtitle D

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to streamline the approval process for specified States permit programs for solid waste disposal facilities, other than municipal solid waste landfills (MSWLFs), that receive conditionally exempt small quantity generator (CESQG) hazardous waste. States whose subtitle D MSWLF permit programs or subtitle C hazardous waste management programs have been reviewed and approved, or authorized by the Agency, are eligible for this streamlined approval process, if their State programs require the disposal of CESQG hazardous waste in suitable facilities. EPA is issuing an adequacy determination to the following State programs: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Elsewhere in the Final Rule section of today's **Federal Register**, EPA is issuing a direct final rule that sets forth the Agency's determination of program adequacy which will be effective in ninety (90) days. EPA views this as a noncontroversial action that declares that specific State programs for disposal of CESQG waste meet all of the statutory and regulatory needs set up under RCRA. Thus, we expect no adverse comments. A detailed rationale for this decision is in the preamble to the final rule notice of program adequacy. If no relevant adverse comments are received in response to the direct final rule, no further action is needed on this document. If EPA receives relevant adverse comments, EPA will withdraw the direct final rule and discuss the comments in a later final rule. This is your only chance to comment. If EPA receives relevant adverse comment concerning the adequacy of only certain State programs, the Agency's withdrawal of the direct final rule will only apply to those State programs. Comments on the inclusion or exclusion of one State permit program will not affect the timing of the decision on the other State permit programs.

DATES: Comments on today's proposed rule must be submitted on or before July 8, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–SAPF–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–SAPF–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. More copies cost $0.15/page. For information on accessing paper and electronic copies of the document or both, see the Supplementary Information section.

Supporting materials for the proposed rule relating to the programs for Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont are available for viewing by contacting Cynthia Greene, US EPA Region 1, 90 Canal Street, Boston, MA 02203, phone 617/565–3165.

Supporting materials for the proposed rule relating to the program for New York are available for viewing by contacting John Filippelli, US EPA Region 2, 290 Broadway, New York, NY 10007–1866, phone 212/637–4125.

Supporting materials for the proposed rule relating to the program for Pennsylvania, Virginia and West Virginia are available for viewing by contacting Mike Giuranna, US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, phone 215/814–3298.

Supporting materials for the proposed rule relating to the programs for Florida, Georgia, Kentucky, North Carolina, and Tennessee are available for viewing by contacting Patricia Herbert, US EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104, phone: 404/562–8449.

Supporting materials for the proposed rule relating to the programs for Illinois, Michigan, Minnesota, Ohio, and Wisconsin are available for viewing by contacting Mary Setnicar, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3590, phone 312/886–0976.

Supporting materials for the proposed rule relating to the programs for Louisiana and Oklahoma are available for viewing by contacting Willie Kelley, US EPA Region 6, 1445 Ross Avenue,

Dallas, TX 75202–2733, phone: 214/665–6760.

Supporting materials for the proposed rule relating to the programs for Colorado, North Dakota, South Dakota, Utah, and Wyoming are available for viewing by contacting Gerald Allen, US EPA 999, Region 8, 18th Street, Suite 500, Denver, CO 80202–2466, phone 303/312–7008.

Supporting materials for the proposed rule relating to the programs for Arizona and California are available for viewing by contacting Steve Wall, US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, phone 415/744–2123.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For information on specific aspects of this proposed rule, contact Allen Geswein, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, D.C. 20460; 703/308–7261, [*GESWEIN.ALLEN@EPAMAIL.EPA.GOV*].

SUPPLEMENTARY INFORMATION: The official record for this action will be kept in paper form. So, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record kept at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** as outlined in **DATES** above or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Background

As set out in detail in the related direct final rule, EPA has decided that specific State permit programs for facilities receiving CESQG waste meet the needs for program approval under RCRA section 4005(c)(1)(C). Today's notice applies to the following State programs: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Programs developed by these States for permitting either hazardous waste facilities or MSWLFs have been reviewed and approved or authorized by the Agency. The regulatory programs are more comprehensive and are equal to or more stringent than the part 257, subpart B revised criteria for facilities receiving CESQG hazardous waste. The Agency has found that the above States have already submitted the documentation that would have been needed for the determination of permit program adequacy under RCRA section 4005(c)(1)(C). Further, the Agency has found that the technical review conducted for either "approval" or "authorization" can substitute for the technical review of the standards for 40 CFR part 257, subpart B.

Additional Information

For more information, see the corresponding direct final rule published elsewhere in the rule section of this **Federal Register**. If you wish to comment, you should review the preamble discussion in that section of today's **Federal Register**.

Related Acts of Congress and Executive Orders

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination. This rule does not impose any new burdens on small entities. It merely confirms existing needs for the disposal of CESQG waste under state law. This proposal does not impose any new cost burdens. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not need a regulatory flexibility analysis.

C. The Paperwork Reduction Act

Today's proposal is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We found that no information is being collected from the States for this proposed rule, so we do not need to prepare an Information Collection Request (ICR).

D. The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with UMRA found that today's proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector; thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13045

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

G. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of the State plan approvals. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency does not believe that today's proposed rule granting State permit program approval will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

Authority: This proposed rule is issued under the authority of sections 2002 and 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912 and 6945.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–14348 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1815

NASA Structured Approach for Profit or Fee Objective

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed NASA FAR Supplement (NFS) revision modifies the agency's structured approach for developing a profit or fee objective. This change eliminates the element of cost approach currently prescribed for establishing profit and fee objectives and focuses on performance risk analysis which requires the evaluation of specific technical, management and cost risk factors; provides a new method for determining contract type risk and introduces a working capital adjustment provision; and retains with modification the Other Considerations factor contained in the structured approach currently prescribed. The new form for developing the profit/fee objectives, NASA Form 634, is provided for information at the end of the proposed rule as an attachment to the preamble. An electronic version is also available at http://ec.msfc.nasa.gov/hq/library/NF634-2.xlc.

DATES: Comments should be submitted on or before August 9, 1999.

ADDRESSES: Interested parties should submit written comments to Donna Fortunat, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20546. Comments may also be submitted by e-mail to donna.fortunat@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Donna Fortunat, NASA Headquarters, Code HC, Washington, DC 20546, telephone: (202) 358–0426; email: donna.fortunat@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

FAR 15.404–4(b)(1)(i) requires agencies to use a structured approach for determining profit or fee prenegotiation objectives. This proposed revision to the NASA structured approach method uses a performance risk method for calculating profit and fee objectives instead of the currently used cost element approach. The revised approach is expected to provide more appropriate emphasis on the nature of the goods and services being acquired and on the risks inherent in delivering those goods and services and thereby prove to be more effective in motivating and rewarding contractor performance. In addition, the revised policy provides a common framework for NASA and industry to evaluate potential risk and profitability in a way that is relevant to both parties. FAR 15.404–4(b)(2) permits agencies to use another agency's structured approach and the changes in this revised policy represent an Agency adaptation of DoD's alternate structured approach.

Impact

Regulatory Flexibility Act

An initial Regulatory Flexibility Analysis has not been prepared because the proposed change is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Most small entities receive contracts based on competition and are not subject to the structured fee process.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in CFR Part 1815

Government Procurement

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1815 is proposed to be amended as follows:

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 1815 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Sections 1815.404–4, 1815.404–470, and 1815.404–471 are revised and sections 1815.404–471–1, 1815.404–471–2, 1815.404–471–3, 1815.404–471–4, and 1815.404–471–5 are added to read as follows:

1815.404–4 Profit. (NASA supplements paragraphs (b) and (c))

(b)(1)(i)*(a)* The NASA structured approach for determining profit or fee objectives, described in 1815.404–471 shall be used to determine profit or fee objectives in the negotiation of contracts greater than or equal to $100,000 that use cost analysis and are:

(1) Awarded on the basis of other than full and open competition (see FAR 6.3);

(2) Awarded under NASA Research Announcements (NRAs) and Announcements of Opportunity (AO's); or

(3) Awarded under the Small Business Innovative Research (SBIR) or the Small Business Technology Transfer Research (STTR) programs.

(b) The rate calculated for the basic contract may be used on all actions under the contract, provided that conditions affecting profit or fee do not change.

(c) Although specific agreement on the applied weights or values for individual profit or fee factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the structured approach format or similar structured approach; and

(2) Use the structured approach method in developing profit or fee objectives for negotiated subcontracts.

(ii) The use of the NASA structured approach for profit or fee is not required for:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of materials supplied by subcontractors;

(e) Termination settlements; and

(f) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

(c)(2) Contracting officers shall document the profit or fee analysis in the contract file.

1815.404–470 NASA Form 634.

NASA Form (NF) 634 shall be used in performing the analysis necessary to develop profit or fee objectives.

1815.404–471 NASA structured approach for profit or fee objective.

1815.404–471–1 General.

(a) The structured approach for determining profit or fee objectives (NF 634) focuses on three profit factors:

(1) Performance risk;

(2) Contract type risk including working capital investment; and

(3) Other Considerations which may be considered by the contracting officer to account for special circumstances

that are not adequately addressed in the performance risk and contract type risk factors.

(b) The contracting officer assigns values to each profit or fee factor; the value multiplied by the base results in the profit/fee objective for that factor. Each factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by NASA. The designated range provides values based on above normal or below normal conditions. In the negotiation documentation, the contracting officer need not explain assignment of the normal value, but must address conditions that justify assignment of other than the normal value.

1815.404–471–2 Performance Risk

(a) *Risk Factors.* Performance risk addresses the contractor's degree of risk in fulfilling the contract requirements. It consists of three risk factors:

(1) Technical—the technical uncertainties of performance;

(2) Management—the degree of management effort necessary to ensure that contract requirements are met; and

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Risk factor weighting, values and calculations.* A weighting and value is assigned to each of the risk factors to determine a profit/fee objective.

(c) *Values.* The normal value is 6 percent and the designated range is 4 percent to 8 percent.

(d) *Evaluation criteria for technical risk factor.*

(1) In determining the appropriate value for the technical risk factor, the contracting officer shall review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Contracting officers shall consider the—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions indicating substantial technical risk.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk, such as when—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(D) The services or analytical efforts are extremely important to the government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to meet the Government's requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) The contracting officer may assign a value significantly above normal. A maximum value may be assigned when the effort involves—

(A) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials;

(B) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(C) A high degree of development or production concurrency.

(3) *Below normal conditions indicating lower than normal technical risk.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low, such as when the—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine; or

(F) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal. A minimum value may be justified when the effort involves—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management risk factor.*

(1) In determining the appropriate value for the management risk factor, the contracting officer shall review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Contracting officers shall—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by contract administration offices;

(ii) Assess the management involvement expected on the prospective contract action; and

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value added by the contractor.

(2) *Above normal conditions indicating substantial management risk.*

(i) The contracting officer may assign a higher than normal value when the management effort is intense, such as when—

(A) The contractor's value added is both considerable and reasonably difficult; or

(B) The effort involves a high degree of integration and coordination.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large-scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination; or

(C) Has critically important milestones.

(3) *Below normal conditions indicating lower than normal management risk.*

(i) The contracting officer may assign a lower than normal value when the management effort is minimal, such as when—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor fails to provide an adequate analysis of subcontractor costs; or

(E) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The contracting officer may assign a value significantly below normal. A minimum value may be assigned when—

(A) Reviews performed by the field administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control risk factor.*

(1) In determining the appropriate value for the cost control risk factor, the contracting officer shall—

(i) Evaluate the expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) Evaluate the contractor's cost reduction initiatives (e.g., competition advocacy programs);

(iii) Assess the adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Evaluate any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

(2) *Above normal conditions indicating substantial cost control risk.*

(i) The contracting officer may assign a value higher than normal value if the contractor can demonstrate a highly effective cost control program, such as when—

(A) The contractor provides fully documented and reliable cost estimates;

(B) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(C) The contractor uses a high degree of subcontract competition; or

(D) The contractor has a proven record of cost tracking and control.

(3) *Below normal conditions indicating lower than normal cost control risk.*

(i) The contracting officer may assign a lower than normal value in those cases where the contractor demonstrates minimal concern for cost control, such as when—

(A) The contractor's cost estimating system is marginal;

(B) The contractor has made minimal effort to initiate cost reduction programs;

(C) The contractor's cost proposal is inadequate; or

(D) The contractor has a record of cost overruns or the indication of unreliable cost estimates and lack of cost control.

1815.404–471–3 Contract type risk and working capital adjustment.

(a) *Risk factors.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It applies to fixed-price type contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment. This adjustment is limited to 4 percent.

(b) *Risk factor values and calculations.* A risk value is assigned to calculate the profit or fee objective for contract type. A contract length factor is assigned and applied to costs financed when a working capital adjustment is appropriate. This calculation is only performed when the prospective contract is a fixed-price contract containing provisions for progress payments.

(c) *Values: Normal and designated ranges.*

Contract type	Note	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	5	4 to 6.
Firm-fixed-price with performance-based payments	(6)	4	2.5 to 5.5.
Firm-fixed-price with progress payments	(2)	4	3 to 5.
Fixed-price-incentive, no financing	(1)	3	2 to 4.
Fixed-price-incentive, with performance-based payments	(6)	2	.5 to 3.5.
Fixed-price, redeterminable	(3)	0	0.
Fixed-price-incentive, with progress payments	(2)	2	1 to 3.
Cost-plus-incentive-fee	(4)	1	0 to 2.
Cost-plus-award fee	(4)	.75	.5 to 1.5.
Cost-plus-fixed fee	(4)	.5	0 to 1.
Time-and-materials	(5)	.5	0 to 1.
Labor-hour	(5)	.5	0 to 1.
Firm-fixed-price, level-of-effort, term	(5)	.5	0 to 1.

(1) "No financing," means that the contract either does not provide progress or performance based payments, or provides them only on a limited basis. Do not compute a working capital adjustment.

(2) When progress payments are present, compute a working capital adjustment.

(3) For purposes of assigning profit values, treat a fixed-price redeterminable contract as if it were a fixed-price-incentive contract with below normal provisions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. Do not compute the working capital adjustment. However, higher than normal values may be assigned within the designated range to the extent that portions of cost are fixed.

(6) When performance-based payments are used, do not compute a working capital adjustment.

(d) *Evaluation criteria. (1) General.* The contracting officer shall consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost projection data;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in the incentive provisions; and

(vii) The rate, frequency, and risk to the contractor of performance-based payments, if provided.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Conditions indicating higher than normal contract type risk are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions that place a high degree of risk on the contractor;

(iv) Performance-based payments totaling less than the maximum

allowable amount(s) specified at FAR 32.1004(b)(2); or

(v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Conditions indicating lower than normal contract type risk are:

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk, e.g. economic price adjustment provisions;

(iv) Incentive provisions that place a low amount of risk on the contractor; and

(v) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.* (1) Costs financed equal the total costs multiplied by the percent of costs financed by the contractor.

(2) Total costs may be reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments are liquidated late in the period of performance); or

(ii) Some costs are covered by special funding arrangements, such as advance payments.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payments rate. (For example, if a contractor receives progress payments at 75 percent, the portion financed by the contractor is 25 percent. On contracts that provide progress payments to small business, use the customary progress payment rate for large businesses.)

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery, as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions when calculating the objective for the base period; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial year's requirements.

(2) The contracting officer—

(i) Should use the following to select the contract length factor:

Period to perform substantive portion (in months)	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

1815.404–471–4 Other Considerations.

(a) Other Considerations may be included by the contracting officer to account for special circumstances, such as contractor efficiencies or unusual acceptance of contractual or program risks that are not adequately addressed in the structured approach calculations described in 1815.404–471–2 or 1815.404–4713. The total adjustment resulting from Other Considerations may be positive or negative but in no case should the total adjustment exceed +/−5 percent.

(b) The contracting officer shall analyze and verify information provided by the contractor that demonstrates that the special circumstances being recognized under this section—

(1) Provide substantial benefits to the Government under the contract and/or overall program;

(2) Have not been recognized in the structured approach calculations; and

(3) Represent unusual and innovative actions or acceptance of risk by the contractor.

(c) Examples of special circumstances include, but are not limited to the following:

(1) Consistent demonstration by the contractor of excellent past performance within the last three years, with a special emphasis on excellence in safety, may merit an upward adjustment of as much as 1 percent. Similarly, an assessment of poor past performance, especially in the area of safety, may merit a downward adjustment of as much −1 percent. This consideration is especially important when negotiating modifications or changes to an ongoing contract.

(2) Extraordinary steps to achieve the Government's socio-economic goals, environmental goals, and public policy goals established by law or regulation that are sufficiently unique or unusual may merit an upward adjustment of as much as .5 percent. Similarly, for non-participation in or violation of Federal programs, the contracting officer may adjust the objective by as much as −.5 percent. However, this consideration does not apply to the utilization of small disadvantaged businesses. Incentives for use of these firms may only be structured according to FAR 19.1203 and 19.1204(c).

(3) Consideration of up to 2 percent should be given when contract performance requires the expenditure of significant corporate capital resources. Conversely, unusual requests for use of government facilities and property may merit a downward adjustment of as much as −2 percent.

(4) Cost efficiencies arising from innovative product design, process improvements, or integration of a life cycle cost approach for the design and development of systems that minimize maintenance and operations costs, that have not been recognized in Performance Risk or Contract Type Risk, may merit an upward adjustment. This factor is intended to recognize and reward improvements resulting from better ideas and management that will benefit the Government in the contract and/or program.

(5) A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract, for example, products with commercial application.

1815.404–471–5 Facilities capital cost of money.

(a) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2).

(b) CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

BILLING CODE 7510–01–P

Attachment: NASA FORM 634

Note: This form will not appear in the CFR, but is provided for information as an attachment to the preamble.

File: 634Fortunat.xls | **Structured Approach** | Printed (date): 24-May-99
Version:030299 win97 | **Profit/Fee Objective** | Printed (time): 04:12:20 PM

1. CONTRACTOR	4. RFP/CONTRACT NUMBER
2. BUSINESS UNIT	5. CONTRACT TYPE
3. ADDRESS	

COST CATEGORY	OBJECTIVE
6. MATERIAL	$ -
7. SUBCONTRACTS	-
8. DIRECT LABOR	-
9. INDIRECT EXPENSES	-
10. OTHER DIRECT CHARGES	-
11. SUBTOTAL COSTS	$ -
12. GENERAL AND ADMINISTRATIVE	$ -
13. SUBTOTAL: (BASE USED TO CALCULATE PROFIT/FEE)	$ -
14. COST OF MONEY	$ -
15. TOTAL COST OBJECTIVE	$ -

WEIGHTED GUIDELINE PROFIT FACTORS					
CONTRACTOR RISK FACTOR	ASSIGNED WEIGHTING (a)	ASSIGNED VALUE (Range = 4% to 8% normal = 6%) (b)	CALCULATED % (c)	Base (from block 13) (d)	PROFIT/FEE OBJECTIVE (e)
16. TECHNICAL	0.0%	-	0.0%		
17. MANAGEMENT	0.0%	-	0.0%		
18. COST CONTROL	0.0%	-	0.0%		
Total assigned weight (100%)	0.0%				
19. COMPOSITE PERFORMANCE RISK			0.0%	$ -	$ -
			ASSIGNED VALUE		
20. CONTRACT TYPE RISK			0.0%	$ -	$ -
	COSTS FINANCED	LENGTH FACTOR		INTEREST FACTOR	
21. WORKING CAPITAL	$ -	0.00		0.0%	$ -

OTHER CONSIDERATIONS	Weight Range max of 6% total	WEIGHT DESIGNATED	Base	
22. Past Performance (within last 3 years)	-1% to +1%	0.0%		
23. Socio-economic, Environmental, Public Policy Implementation	- .5% to + .5%	0.0%		
24. Facility and Property Investment	-2% to +2%	0.0%		
25. Other Innovations & Efficiencies	Discretionary	0.0%		
Subtotal Other Considerations	Max Total = 5%!	0.0%	$ -	$ -
	For weight designations above, use decimals inputs. Example: .005 = .5%.		26. Subtotal Profit Obj:	$ -
			Cost of Money Offset	$ -
			27. Total Profit Objective	$ -

Composite Comparisons	
24. FEE % OF TOTAL COST (without COM offset -- cost of money is not subtracted from fee)	0.00%
25. (FEE less COM) % OF TOTAL COST OBJECTIVE (cost of money IS subtracted from fee)	0.00%

NASA FORM 634 XXX 1999; PREVIOUS EDITIONS ARE OBSOLETE

[FR Doc. 99-14452 Filed 6-7-99; 8:45 am]
BILLING CODE 7510-01-C

Notices

Federal Register
Vol. 64, No. 109
Tuesday, June 8, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Research, Education, and Economics; Notice of Strategic Planning Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

SUPPLEMENTARY INFORMATION: The Strategic Planning Task Force on Research Facilities, currently consisting of 14 members, is scheduled to meet for the eighth of eight planned meetings. The meeting is scheduled to be held at the Hyatt Regency, Washington, D.C. The meeting will be a review of the data collected by the Task Force and will continue discussion of the draft report.

TIMES AND DATES: June 24, 1999, beginning at 8:00 a.m., and June 25, 1999, beginning at 8:00 a.m.

PLACE: Hyatt Regency, 400 New Jersey Avenue, NW., Washington, D.C. 20001.

TYPE OF MEETING: Open to the public.

COMMENTS: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 344–A Jamie L. Whitten Building, USDA, 1400 Independence Avenue, SW., Washington, D.C. 20250–0113. Telephone 202–720–3803.

Done at Washington, D.C., this 1st day of June.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–14410 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on June 24, 1999 at the Imnaha Church at Imnaha, Oregon and June 25, 1999 at the Joseph United Methodist Church at the corner of Third and Lake Streets in Joseph, Oregon. On June 24, 1999, the meeting will begin at 9:00 a.m. and continue until 5:00 p.m. On June 25, 1999, the meeting will begin at 7:30 a.m. and will continue until 12:00 p.m. Agenda items to be covered include: (1) Presentations and discussions by the three topic groups, Recreation, Healthy, Sustainable Ecological Ecosystem and Heritage Resources. (2) Open public forum. All meetings are open to the public. Public comments will be received at 1:00 p.m. on June 24, 1999 at the Imnaha Church.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: May 28, 1999.

Kendall Clark,

Area Ranger.

[FR Doc. 99–14434 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

GA–224 Dixie Livestock Market, Inc., Oak Park, Georgia

NC–174 Taylorsville Auction Service, Taylorsville, North Carolina

NC–175 Benson Horse Auction, Benson, North Carolina

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Office of Policy/Litigation Support, Grain Inspection, Packers and Stockyards Administration, Room 3418–South Building, U. S. Department of Agriculture, Washington, D.C. 20250, by June 23, 1999.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Office of Policy/Litigation Support during normal business hours.

Done at Washington, D.C. this 12th day of May 1999.

Michael J. Caughlin, Jr.,

Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 99–14408 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Aquaculture Survey.

DATES: Comments on this notice must be received by August 12, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Aquaculture Survey.

OMB Number: 0535–0150.

Expiration Date of Approval: May 31, 2000.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Aquaculture Survey collects information on trout sales, catfish processed, inventory, acreage, and sales. The Aquaculture Survey is being revised to obtain 99 percent coverage of sales and decrease overall frequency of data collection.

Eighteen states are currently in the trout program representing approximately 90 percent of sales. Eight states are being added to the program to increase sales coverage to approximately 99 percent. The trout questionnaire is being revised to collect distributed fish as a separate item. The trout inventory and sales data will be published on a calendar basis instead of a fiscal year basis.

The catfish program is also being revised to represent 99 percent of sales. Currently, the four major catfish producing states are surveyed quarterly and 11 are surveyed annually. Under the revised program the four major states will be surveyed semiannually and 12 states will be surveyed annually. Data collection in the four major states will be discontinued for April and October.

Survey results are used by government agencies in planning farm programs. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 2,125.

Estimated Total Annual Burden on Respondents: 825 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, May 19, 1999.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 99–14409 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State NRCS Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a new conservation practice standard in its National Handbook of Conservation Practices. This new standard is: Agricultural Fuel Storage Facility (NY701).

DATES: Comments will be received on or before July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Richard D. Swenson, State Conservationist, Natural Resources Conservation Service, (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York, 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: May 25, 1999.

Joseph R. DelVecchio,

Assistant State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 99–14413 Filed 6–7–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Census Bureau

Annual Retail Trade Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 9, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument(s) and instructions should be directed to Ronald L. Piencykoski, Bureau of the Census, Room 2626–FOB 3, Washington, D.C. 20233–6500, (301) 457–2660.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Retail Trade Survey (ARTS) provides a sound statistical basis for the formation of policy by other government agencies. It provides continuing and timely national statistics on retail trade augmenting the period between economic censuses and is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). The data collected—annual sales, purchases, end-of-year inventories, and accounts receivables—are applicable to a variety of public and business needs. The estimates of purchased merchandise are used by the Bureau of Economic Analysis (BEA) to estimate trade margins on commodities sold in calculating the personal consumption portion of the Gross Domestic Product (GDP). Accounts receivable balances are used by the Federal Reserve Board in measuring consumer credit. Businesses use these data to determine market share and to compare results.

The ARTS sample consists of all firms operating retail establishments within the U.S. whose probability of selection is determined by sales size, as reported in the Monthly Retail Trade Survey (MRTS). An additional panel of cases who report only in the annual survey are also canvassed. Estimates developed in the ARTS are used to benchmark the monthly sales and inventories series.

We currently publish retail sales and inventory estimates on the Standard Industrial Classification (SIC) basis. Starting in the spring of 2001, we will publish on the North American Industry Classification System (NAICS). The SIC definition of retail trade and the NAICS definition of retail trade are substantially different. The SIC defines retailers as establishments engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of the goods, NAICS distinguishes retailers from wholesalers based on what the establishment does rather than to whom the establishment sells. Retailers are defined as those establishments that sell merchandise and attract customers using methods such as advertising, point-of-sale location, and display of merchandise. A store retailer has a selling place open to the public, merchandise on display or available through sales clerks, facilities for making cash or credit card transactions, and service provided to retail customers. NAICS will change the information that is currently available with reclassifications, definitional changes, and movement of activities in or out of retail trade.

Conversion from the SIC to NAICS will significantly affect selected industries within the retail trade.

—A new sector called Accommodation and Food Services is created and will be canvassed in the ARTS. Restaurants move from retail trade into this new sector. We will continue to collect monthly sales from restaurants and publish a separate Food Services Total. Accommodations will move from the Service Annual Survey into the ARTS and will be collected and published under this new sector

—The redefinition of the boundary between the retail and wholesale sectors, as described above, will move establishments from the wholesale sector to the retail sector. Preliminary results from the 1997 Economic Census indicate about 15 percent of establishments classified under SIC in the wholesale sector will move to the retail sector under NAICS. We expect the most movement in Automotive parts, accessories, and tire stores; computer and software stores; Farm supplies dealers; Office supplies and stationery stores; and Fuel oil dealers

—Retail Bakeries (without seating) will move to the manufacturing sector

—Pawn Shops will move to the finance sector

—Mobile Home Dealers, which are currently included in Building Materials, will be included in Miscellaneous Store Retailers

—Computer and Software Stores will be recognized as separate industries under NAICS because of growing interest among public and private data users

—The Durable and Nondurable aggregate totals will be eliminated from publication under NAICS

—Under NAICS, we will discontinue collecting inventories from the food service subsector. We will collect and publish inventories only for the Retail Sector

—Under NAICS, all auxiliary facilities such as warehouses are classified based on the primary activity. Under SIC, warehouses are classified based on the industry classification of the establishments they primarily serve. We will continue to publish the warehouse inventory of retailers in its respective kind-of-business

In addition to the change to NAICS, the Census Bureau will begin collecting Internet sales separately starting in 2000 for data years 1998 and 1999. Currently, online sales are included with catalog sales in our overall retail estimates. With the dramatic growth of sales on the Internet, and the impact of those sales on retail activity, we propose to add several new questions to our survey instruments. We plan to ask all firms if and when they began selling through an Internet site and to separately report the value of their Internet sales included in total sales for data years 1998 and 1999. The ARTS will ensure that sales transactions ordered and paid for online are captured and published separately and made available to the public in early 2001. We are also proposing more detailed questions of our non-store retailers, one asking for a dollar volume breakout along major merchandise lines for both total and Internet sales, and another concerning the amount of Internet sales destined for shipment outside the United States. In addition to these Internet questions, we also plan to ask computer stores and non-store retailers to provide a percentage breakout of their total sales by class of customer. We will of course test all proposed questions with a sample of respondents to determine the feasibility and to estimate any additional reporting burden.

II. Method of Collection

We will collect this information by mail, FAX and telephone follow-up.

III. Data

OMB Number: 0607–0013.

Form Number: SA–44, SA–44A, SA–45, SA–44C, SA–45C, and SA–721 under NAICS. B–151, B–151A, B–151D, B–153, and B–153D under SIC.

Type of Review: Regular Submission.

Affected Public: Retail Businesses.

Estimated Number of Respondents: 20,960 under NAICS. 23,700 under SIC.

Estimated Time Per Response: .4333 hrs (26 minutes) under NAICS .4142 hrs (25 minutes) under SIC.

Estimated Total Annual Burden Hours: 9,082 hours under NAICS 9,817 hours under SIC.

Estimated Total Annual Cost: The cost to the respondent is estimated to be $160,388, based on an annual response burden of 9,082 hours and a rate of $17.66 per hour to complete the form.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–14479 Filed 6–7–99; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by producers/exporters of subject merchandise and by a group of U.S. importers, the Department of Commerce is conducting an administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers five producers/exporters of the subject merchandise. The period of review is July 1, 1997, through June 30, 1998.

We preliminarily determine that sales have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and the normal value.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0650 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations provided in 19 CFR part 351 (1998).

Background

On July 18, 1995, we published in the **Federal Register** the antidumping duty order on canned pineapple fruit from Thailand (60 FR 36775). On July 1, 1998, we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order, covering the period July 1, 1997, through June 30, 1998 (63 FR 35909).

The following producers/exporters of canned pineapple fruit requested a review in accordance with 19 CFR 351.213(b)(2): Vita Food Factory (1989) Co. Ltd. (Vita); Kuiburi Fruit Canning Co. Ltd. (KFC); Siam Fruit Canning (1988) Co. Ltd. (SIFCO); Siam Food Products Co. Ltd. (SFP); The Thai Pineapple Public Co. Ltd. (TIPCO); Malee Sampran Public Co. Ltd. (Malee); and Dole Food Company Inc., Dole Packaged Foods Company and Dole Thailand Ltd. (collectively, Dole).

In addition, on July 29, 1998, U.S. importers Heartland Foods Inc., J.A. Kirsch Corp., Kompass Food Trading International, Mandi Foods, Inc., North East Marketing Co., Port Royal Sales, Ltd., Rykoff-Sexton, Inc., and Summit Import Corp., requested a review of Vita in accordance with 19 CFR 351.213(b)(3). We did not receive a request for a review from the petitioners. [1]

On August 27, 1998, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1997, through June 30, 1998 (63 FR 45796).

[1] Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

Partial Rescission of Antidumping Duty Administrative Review

On August 27 and October 30, 1998, Malee and Dole, respectively, withdrew their requests for review. Because there was no other request for a review of Malee or of Dole, and because both their letters withdrawing their requests for a review were timely filed, we are rescinding the review with respect to both Malee and Dole in accordance with 19 CFR 351.213(d)(1).

Scope of the Review

The product covered by this review is canned pineapple fruit (CPF). For purposes of the review, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by Vita and KFC. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification reports placed in the case file in Room B–099 of the Main Commerce Building.

Comparisons

We compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales [2] in the U.S. and comparison markets of products that were identical with respect to the following characteristics: Weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order

[2] For all companies, we matched U.S. and comparison market sales using invoice date as the date of sale for both markets.

of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773 (a)(4) of the Act.

Export Price

For the price to the United States, we used EP as defined in section 772(a) of the Act. We determined the EP for each company as follows.

TIPCO

We calculated an EP for all of TIPCO's sales because the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation, and constructed export price (CEP) was not otherwise warranted based on the facts of record. Sales through TMC involved direct shipment from TIPCO to the unaffiliated customer, without any merchandise entering TMC's physical inventory. Further, TMC's involvement in the sales process for indirect sales was limited to that of a processor of sales documentation. *See, e.g., Certain Corrosion Resistant Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 63 FR 12725, 12738 (March 16, 1998). We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling.

SFP

We calculated an EP for all of SFP's sales because the merchandise was sold directly by SFP to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. SFP has one employee located in the United States who acts only as a processor of sales-related documentation and as a communication link with U.S. customers regarding SFP's U.S. sales. The merchandise was shipped directly to the unaffiliated customer in the United States. The information on the record indicates that SFP's Bangkok office is responsible for confirming orders and for issuing the invoice direct to the customer.

We calculated EP based on the packed FOB price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland movement expenses and international freight in accordance with section 772(c)(2)(A) of the Act.

Vita

We calculated an EP for all of Vita's sales because the merchandise was sold directly by Vita to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (inland freight to the port of exportation) and international freight.

KFC

We calculated an EP for all of KFC's sales because the merchandise was sold directly by KFC to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including inland freight, terminal and handling charges, container freight station charges, and port documentation charges) and international freight.

SIFCO

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign inland freight.

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that the quantity of foreign like product each respondent sold in the exporting country did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than 5 percent of the quantity of its sales to the U.S. market. *See* section 773(a)(1) of the Act. Therefore, for each respondent, in accordance with section 773(a)(1)(B)(ii) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest third-country market, *i.e.*, Germany for Vita and SIFCO, the United Kingdom for SFP, and Canada for TIPCO and KFC.

B. Cost of Production Analysis

Pursuant to section 773(b)(1) of the Act, we initiated a cost of production (COP) investigation of sales by Vita, TIPCO and SFP in the comparison market. Because we disregarded sales that failed the cost test in the last completed review of TIPCO and SFP, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act.

In the 1996–97 administrative review, the first segment of the proceeding in which Vita was involved, we initiated a below-cost inquiry on Vita pursuant to an adequate below-cost allegation submitted by the petitioners. While Vita submitted a response to the sales portions of the questionnaire (sections A–C), it did not respond to our requests for COP data (section D), nor did it respond to any of our supplemental questionnaires. As a result, we determined Vita's antidumping rate for the 1996–97 period based on adverse facts available, using the highest calculated rate from the less-than-fair-value (LTFV) investigation. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661, 43663—66 (August 14, 1998). The Department's determination in the previous review, including the fact that we had initiated a below-cost inquiry on Vita, and that we applied total adverse facts available to Vita for, *inter alia*, failing to respond to the Department's cost questionnaire, provides the Department with a basis to infer that sales at prices below COP would have been disregarded in that review. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, we also have reasonable grounds to believe or suspect that sales by Vita of the foreign like product under consideration for the determination of NV in this review may

have been made at prices below the COP.

We conducted the COP analysis as described below.

1. Calculation of COP/Fruit Cost Allocation

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the costs of materials, fabrication, selling, general and administrative expenses (SG&A), and packing costs. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. *See* section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (i.e., pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553, 29561 (June 5, 1995)), and *Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7392, 7398 (February 13, 1998).[3] For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology. Several respondents that revised their fruit cost allocation methodologies during the 1995–96 POR changed to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on a net realizable value (NRV) methodology. Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We made this request of all companies in this review except for KFC. Because KFC already allocates fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products in its normal accounting records, we have not required KFC to recalculate its reported costs using the NRV methodology.

We made the following company-specific adjustments to the cost data submitted in this review.

KFC

While KFC provided its historical NRV data as requested, it demonstrated at verification that its normal methodology is to allocate fruit costs on a revenue basis. Therefore, we have valued KFC's fruit costs using the company's historical allocation methodology.

SIFCO

Because in the last completed review of SIFCO we did not disregard any below-cost sales, we did not require SIFCO to respond to Section D of our questionnaire. However, as part of its variable manufacturing cost, SIFCO reported that it calculates fruit costs based on a weight-based methodology. Therefore, we have recalculated SIFCO's fruit costs using the historical five-year NRV data.

SFP

SFP's reported fruit costs are based on NRV data for the 1990–1994 period used in previous reviews. However, in calculating its cost allocation using the historic NRV data, SFP altered the Department's methodology by incorporating volume-based weighting factors. Since the SFP approach is not based solely on value ratios and thus introduces the distortions that the Department has found inherent in weight-based cost allocations, we have recalculated SFP's reported fruit costs using the same 1990–1994 NRV cost allocation employed in the previous review, which is based on value ratios alone.

2. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

Unlike in past segments of the proceeding, we have not deducted from the COP the value of certain tax certificate revenues. Based on a letter we reviewed from the Thai government and statements made by Vita officials at verification,[4] the value of these tax certificates appears to be determined by the Thai government based simply on a percentage of a company's export revenue. Vita officials stated that this revenue is not related in any way to cost of production, and we found no evidence that it is tied to any duty drawback scheme. Instead, we found that this revenue is paid to companies upon the export of domestically-produced merchandise. Therefore, no adjustment was made to our dumping calculation for this payment.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because: (1) Such sales were found to be made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on comparisons of price to weighted-average COPs for the POR, we

[3] The Court of International Trade (CIT) ruled in favor of the respondents who challenged the Department's position that joint production costs cannot be reasonably allocated to canned pineapple on the basis of weight. *The Thai Pineapple Public Co. Ltd., et al. v. United States*, 946 F. Supp. 11 (CIT 1996). That decision is currently being reviewed by the Court of Appeals for the Federal Circuit.

[4] See Memorandum to office director from case analysts: *Verification of the Sales and Cost Information in the Response of Vita Food Factory (1989) Co., Ltd. (Vita) in the 1997–98 Administrative Review of Canned Pineapple Fruit from Thailand*, June 1, 1999.

determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain CPF products, TIPCO, SFP, and Vita made comparison market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to normal value for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to normal value following the same methodology. Company-specific adjustments are described below.

TIPCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Canada. We adjusted for the following movement expenses: brokerage and handling, port charges, stuffing expenses and foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses and bank charges) and adding U.S. direct selling expenses (credit expenses and bank charges).

SFP

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in the United Kingdom. We adjusted for the following movement expenses: foreign inland freight, port charges and ocean freight, where applicable. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, warranties and commissions) and adding U.S. direct selling expenses (credit expenses and bank charges).

Vita

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: foreign inland freight and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

SIFCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: foreign inland freight and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

KFC

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Canada. We adjusted for the following movement expenses: foreign inland freight, terminal and handling charges, container freight station charges, and port documentation charges. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

D. Calculation of Normal Value Based on Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing of the product sold in the United States, plus amounts for SG&A expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the "*Calculation of COP*" section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and comparison market profit.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP transaction. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of*

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997).

In implementing these principles in this review, we obtained information from each respondent about the marketing stages involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and third-country market sales, we considered the selling functions reflected in the starting price before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In this review, all respondents claimed that all of their sales were made through a similar channel of distribution (direct sales to customers in export markets) and involved identical selling functions, irrespective of market. In examining these selling functions, we found that sales activities were limited to negotiating sales prices, processing of purchase orders/contracts, invoicing, and collecting payment; there was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market. Therefore, for all respondents we have preliminarily found that there is a single (and identical) level of trade in each market, and no level-of-trade adjustment is required for comparison of U.S. sales to third-country sales.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).

Our preliminary analysis of Federal Reserve dollar-baht exchange rate data shows that the value of the Thai baht in relation to the U.S. dollar fell on July 2, 1997, by more than 18 percent from the previous day and did not rebound significantly in a short time. This decline was many times more severe than any single-day decline during several years prior to that date. Had the baht rebounded quickly enough to recover all or almost all of the loss, we might have considered this decline as nothing more than a momentary drop, despite the magnitude of that drop. However, because there was no significant rebound, we have preliminarily determined that the decline in the baht from July 1, 1997, to July 2, 1997, was of such a magnitude that the dollar-baht exchange rate cannot reasonably be viewed as having simply fluctuated at this time, i.e., as having experienced only a momentary drop in value, relative to the normal benchmark. Therefore, for exchange rates between July 2 and August 27, 1997, we relied on the standard exchange rate model, but used as the benchmark rate a stationary average of the daily rates over this period. In this manner we used a post-precipitous drop benchmark, but at the same time avoided undue daily fluctuations in exchange rates. For the period after August 27, 1997, we used the standard (rolling 40-day average) benchmark.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period July 1, 1997, through June 30, 1998:

Manufacturer/Exporter	Margin (percent)
Siam Food Products Company Ltd.	3.26
The Thai Pineapple Public Company, Ltd.	9.93
Kuiburi Fruit Canning Co. Ltd.	3.57
Siam Fruit Canning (1988) Co. Ltd.	3.35
Vita Food Factory (1989) Co. Ltd.	16.63

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments, within 120 days from publication of this notice.

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CPF from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, de minimis, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 24.64 percent, the "All Others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14520 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order in part.

SUMMARY: In response to requests from one manufacturer/exporter and one U.S. producer, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above (DRAMs) from the Republic of Korea (Korea). The review covers two manufacturers/exporters and one exporter of subject merchandise to the United States during the period of review (POR), May 1, 1997 through April 30, 1998. Based upon our analysis, the Department has preliminarily determined that dumping margins exist for both manufacturers/exporters and the exporter during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service (Customs) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or John Conniff, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–5346 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR part 351 (1998).

Background

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on DRAMs from Korea. On May 12, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period May 1, 1997 through April 30, 1998 (63 FR 26143). We received timely requests for review from one manufacturer/exporter of subject merchandise to the United States; LG Semicon Co., Ltd. (LG). The petitioner, Micron Technology Inc., requested an administrative review of LG and Hyundai Electronics Industries, Co., Ltd. (Hyundai), also a Korean manufacturer of DRAMs, and The G5 Corporation (G5), a Korean exporter of DRAMs. Moreover, the petitioner requested a cost investigation of LG and Hyundai pursuant to section 773(b) of the Act. On June 29, 1998, the Department initiated a review of LG, Hyundai, and G5, including cost investigations of Hyundai and LG (63 FR 35188). The POR for all respondents is May 1, 1997 through April 30, 1998. The Department is conducting this review in accordance with section 751 of the Act.

On January 20, 1999, the Department published in the **Federal Register** (64 FR 3065) a notice extending the time for the preliminary results from January 30, 1999, until May 31, 1999.

Scope of the Review

Imports covered by the review are shipments of DRAMs from Korea. Included in the scope are assembled and unassembled DRAMs of one megabit and above. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea, are not included in the scope. The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs. The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with Customs that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement. The DRAMs subject to this review are currently classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this review remains dispositive.

Intent Not To Revoke

LG submitted a request to revoke it from the order covering DRAMs from Korea pursuant to 19 CFR 351.222(b)(2). Under the Department's regulations, the Department may revoke an order, in part, if the Secretary concludes that, among other things: (1) "[O]ne or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years"; (2) "[i]t is not likely that those persons will in the future sell the merchandise at less than normal value"; and (3) "the producers or resellers agree in writing to the immediate reinstatement of the order, as long as any producer or reseller is subject to the order, if the

Secretary concludes that the producer or reseller, subsequent to the revocation, sold the merchandise at less than (normal) value." *See* 19 CFR 351.222(a)(2). In this case, LG does not meet the first criterion for revocation. In the previous segment of this proceeding the Department found that LG sold subject merchandise at less than normal value. *See Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from the Republic of Korea*, 63 FR 50867, September 23, 1998) (*Final Results 1998*). Since LG has not met the first criterion for revocation, *i.e.*, zero or *de minimis* margins for three consecutive reviews, the Department need not reach a conclusion with respect to the second and third criteria. Therefore, on this basis, we have preliminarily determined not to revoke the Korean DRAM antidumping duty order with regard to LG.

Verification

As provided in section 782(i) of the Act, we verified information provided by LG and Hyundai. We used standard verification procedures, including on-site inspection of the respondents' facilities, examination of relevant sales, financial, and/or cost records, and selection of original documentation containing relevant information. G5 was not verified because the company refused to permit verification to take place.

Facts Available

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in making its determination.

Based on information obtained from Customs, we have determined that a number of sales that LG reported as third-country sales were actually sales to the United States. Moreover, the Department has determined that at the time LG made these sales, it knew, or should have known, that the DRAMs were destined for consumption in the United States. This is the same issue the Department addressed in the prior review period. *See* the May 27, 1999 Memorandum regarding " Dynamic Random Access Memory Semiconductors of One Megabit or Above (DRAMs) from the Republic of Korea—Total Unreported Sales". Thus, we have determined that LG withheld information we requested and significantly impeded the antidumping proceeding.

On July 15, 1998, the Department sent G5 a Section A questionnaire requesting that G5 provide information regarding any sales that it made to the United States during the POR. On August 10, 1998, G5 stated that it had not sold any of the subject merchandise to the United States during the POR. On December 1, 1998, the Department issued a supplemental questionnaire to G5 again requesting information regarding any sales that were made to the United States during the POR. Specifically, the Department requested that G5 examine the scope of the review and state whether it had any shipments, or knowledge, directly or indirectly, of sales to the United States of the subject merchandise during the POR. The Department also requested that G5 state whether they had any knowledge, directly or indirectly, of sales to business entities in third countries in which the final destination of the sale of the subject merchandise was the United States. In a December 17, 1998, letter, G5 stated that it has not sold or delivered DRAMs to the United States during the POR.

On January 20, 1999, the Department obtained information from Customs indicating that there were entries for consumption into the United States of Korean DRAMs shipped from G5 during the POR. In a March 3, 1999, letter, G5 acknowledged that it did have sales of LG DRAMs to the United States during the POR. Thus, we have determined that G5 withheld information we requested and significantly impeded the antidumping proceeding.

Because LG and G5 failed to respond in full to our questionnaire, pursuant to section 776(a) of the Act, we have applied facts otherwise available to calculate their dumping margins. Moreover, while we have preliminarily determined that certain sales should have been reported as sales to the United States, we will continue to examine Customs data as well as other data sources to determine whether there are any additional sales that have not been properly reported.

2. Selection of Adverse Facts Available

Section 776(b) of the Act provides that, in selecting from the facts available, adverse inferences may be used against a party that failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994).

Section 776(b) states further that an adverse inference may include reliance on information derived from the petition, the final determination, the final results of prior reviews, or any other information placed on the record. *See also Id.* at 868.

LG's decision to report as third-country sales a substantial number of U.S. sales that it knew, or should have known, were U.S. sales, indicates that LG failed to cooperate to the best of its ability. Similarly, G5's failure to provide information on its U.S. sales or permit verification demonstrates that G5 has failed to cooperate to the best of its ability in this review. Therefore, the Department has determined that an adverse inference is warranted in selecting among the facts otherwise available for LG and G5, in accordance with section 776(b) of the Act. Consequently, we have based the margin for G5 on total adverse facts available and for LG on partial adverse facts available.

As partial adverse facts available for LG, we have calculated a dumping margin based on both LG's reported and unreported sales to the United States, the latter of which we were able to identify from Customs data. While LG disagrees with the Department's position, LG provided the selling expenses for the sales transactions obtained from Customs. However, because LG did not report these transactions as U.S. sales, we are not using the expenses. Furthermore, the Department did not verify these expenses as they related to unreported sales. Therefore, since LG did not report these as U.S. sales, we are using as adverse facts available the highest U.S. selling expenses from LG's reported transactions involving identical products. Where there were no reported transactions involving identical merchandise, we used the highest U.S. selling expenses from LG's reported transactions involving similar merchandise.

As total adverse facts available for G5, we have assigned the highest company-specific margin in the history of this proceeding, which is the rate calculated for Hyundai in the instant review.

Per Megabit Cash Deposit Rates for Certain Memory Modules

On February 4, 1999, Compaq requested that the Department establish per megabit cash deposit rates for imports of certain memory modules

containing DRAMs from Korea. Consistent with the practice established in the LFTV investigation of DRAMs from Korea, the Department is establishing per megabit cash deposit rates to be applied to memory modules containing subject and non-subject merchandise. For a detailed discussion, *see* memorandum regarding Calculation of Per Megabit Rate, May 28, 1999.

Duty Absorption

On July 27, 1998, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, both Hyundai and LG sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (i.e., orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, we will make a duty absorption determination in this segment of the proceeding.

On January 26, 1999, the Department requested evidence that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. Neither Hyundai nor LG provided any evidence in response to the Department's request. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will ultimately pay the assessed duty. Therefore, we find that antidumping duties have been absorbed by the producer or exporter during the POR.

Fair Value Comparisons

To determine whether sales of DRAMs from Korea to the United States were made at less than fair value (LTFV), we compared the constructed export price (CEP) to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. When making comparisons in accordance with section 771(16) of the Act, we considered all products as described in the "Scope of Review" section of this notice, above, that were sold in the home market in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of the identical or the most similar merchandise in the home market that were suitable for comparison, we compared U.S. sales to sales of the next most similar foreign like product, based on the characteristics listed in Section B and C of our antidumping questionnaire.

CEP

For LG and Hyundai, in calculating United States price, the Department used CEP, as defined in section 772(b) of the Act, because the merchandise was first sold to an unaffiliated U.S. purchaser after importation. We calculated CEP based on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with sections 772(c)(2) and 772(d)(1) of the Act. These included credit expenses, commissions, as applicable, and inventory carrying costs incurred by the respondents' U.S. subsidiaries. We added duty drawback paid on imported materials in the home market, where applicable, pursuant to section 772(c)(1)(B) of the Act.

For Hyundai DRAMs that were further manufactured into memory modules after importation, we deducted all costs of further manufacturing in the United States, pursuant to section 772(b)(2) of the Act. These costs consisted of the costs of the materials, fabrication, and general expenses associated with further manufacturing in the United States. Pursuant to section 772(d)(3) of the Act, we also reduced the CEP by the amount of profit allocated to the expenses deducted under section 772(d)(1) and (2).

For Hyundai modules that were imported by U.S. affiliates of Hyundai and then further processed into computer workstations before being sold to unaffiliated parties in the United States, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold in the United States if there is a sufficient quantity of sales to provide a reasonable basis for comparison. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States by Hyundai's U.S. affiliates accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. *See* 19 CFR 351.402 for an explanation of our practice on this issue. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. We also determined that there was a sufficient quantity of sales available to provide a reasonable basis for comparison and that the use of such sales is appropriate in accordance with 772(e). Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons in the United States. For further discussion, *see* Memorandum on Whether to Determine the Constructed Export Price for Certain Further-Manufactured Sales Sold by Hyundai Electronics Industries Co., Ltd. in the United States During the Period of Review Under Section 772(e) of the Act dated June 1, 1999.

Level of Trade

In accordance with section 773(a)(1(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same level of trade as the CEP sales. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than the CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We reviewed the questionnaire responses of Hyundai and LG to establish whether there were sales at different levels of trade based on the distribution system, selling activities, and services offered to each customer or customer category. For both respondents, we identified one level of trade in the home market with direct sales by the parent corporation to the domestic customer. These direct sales were made by both respondents to original equipment manufacturers (OEMs) and to distributors. In addition, all sales, whether made to OEM customers or to distributors, included the same selling functions. For the U.S. market, all sales for both respondents were reported as CEP sales. The level of trade of the U.S. sales is determined for the sale to the affiliated importer rather than the resale to the unaffiliated customer. We examined the selling functions performed by the Korean companies for U.S. CEP sales (as adjusted) and preliminarily determine that they are at a different level of trade from the Korean companies' home market sales because the companies' CEP transactions were at a less advanced stage of marketing. For instance, at the CEP level, the Korean companies did not engage in any general promotion activities, marketing functions, or price negotiations for U.S. sales. Because we compared CEP sales to home market sales at a more advanced level of trade, we examined whether a level of trade adjustment may be appropriate. In this case, both respondents only sold at one level of trade in the home market. Therefore, there is no basis upon which either respondent can demonstrate a pattern of consistent price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns based on the respondents' sales of other products and there is no other record information on which such an analysis could be based. Because the data available do not provide an appropriate basis for making a level of trade adjustment and the level of trade in the home market is at a more advanced stage of distribution than the level of trade of the CEP sales, a CEP offset is appropriate. Both respondents claimed a CEP offset. We applied the CEP offset to adjusted home market prices or CV, as appropriate. The CEP offset consisted of an amount equal to the lesser of the weighted-average U.S. indirect selling expenses and U.S. commissions or home market indirect selling expenses. *See* the Memorandum on Level of Trade for LG, dated May 27, 1999 and Memorandum on Level of Trade for Hyundai, dated May 28, 1999.

NV

Home Market Viability

In order to determine whether there were a sufficient sales of DRAMs in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like products for both Hyundai and LG was greater than five percent of the respective aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for all respondents.

Cost of Production (COP)

We disregarded Hyundai's and LG's sales found to have been made below the COP in the *Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from the Republic of Korea*, 62 FR 39809, July 24, 1997), the most recent segment of this proceeding for which final results were available at the time of the initiation of this review. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated COP investigations of both respondents for purposes of this administrative review.

We calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, SG&A expenses, and the cost of all expenses incidental to placing the foreign like product in condition, packed, ready for shipment, in accordance with section 773(b)(3) of the Act. We compared weighted-average quarterly COP figures for each respondent, adjusted where appropriate (see below), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of home market sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in "substantial quantities". Where 20 percent or more of home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made in "substantial quantities" and at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that for both respondents, more than 20 percent of their home market sales for certain products were made at prices that were less than the COP. Furthermore, the prices did not permit the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those sales for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV pursuant to section 773(a)(4) of the Act.

Adjustments to COP

Research & Development (R&D)

Consistent with our past practice in this case, the R&D element of COP was based on R&D expenses related to all

semiconductor products, not product-specific expenditures. *See* Memorandum Regarding Cross Fertilization of Research and Development in the Semiconductor Industry, dated May 29, 1999.

In addition, Hyundai and LG both changed their accounting methodologies for R&D expenses during this POR. Specifically, in 1997, both Hyundai and LG changed their accounting methodology from recognizing the R&D costs as expenses when incurred, to deferring such costs and amortizing them over five years using the straight-line method. Furthermore, in 1997, LG also began to completely defer certain R&D costs for long-term R&D projects until the relevant revenue is realized. While the Department did not become aware of this fact until the current POR, Hyundai began to completely defer certain R&D costs in the same manner in 1996. Both Hyundai and LG based the R&D expenses that they reported to the Department for this POR on the amount of R&D costs that they expensed in 1997.

Hyundai and LG have repeatedly changed their accounting methodologies for R&D expenses throughout the course of this proceeding. In their 1991 financial statements (which the Department used, in part, in the original investigation to calculate R&D expenses), both Hyundai and LG amortized R&D expenses. *See Final Determination of Sales at Less Than Fair Value: DRAMs from Korea*, 58 FR 15467 (March 23, 1993) ("*Final Determination*"); and *Micron Technology* v. *United States*, 893 F. Supp. 21, 28 (CIT 1995) ("*Micron I*"). In their 1993 financial statements, LG changed its accounting methodology for R&D expenses, and expensed R&D expenses in the year incurred. *See Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea*, 61 FR 20216 (May 6, 1996); and *Micron Technology* v. *United States and LG Semicon Co., Ltd., and LG Semicon America, Inc.* (Slip Op. 99–12, January 28, 1999) (*Micron II*). Hyundai changed its R&D accounting methodology, and also began to expense R&D expenses in the year incurred, sometime between 1991 and 1996. In 1997, as explained above, Hyundai and LG changed their accounting methodologies a second time, switching back to the amortizing methodology they previously used in 1991. Furthermore, in 1996 and 1997, Hyundai and LG, respectively, began to use a third type of accounting methodology by completely deferring certain R&D expenses until revenue is realized from the R&D project.

Section 773(f)(1)(A) of the Act states that costs "shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the merchandise." The SAA states that, in determining whether a company's records reasonably reflect costs, Commerce will consider U.S. GAAP employed by the industry in question. *See* SAA at 834. Further, as explained in the SAA, "[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs." *See Id. See* also *Final Results 1998*, 63 FR at 50871.

The Department has preliminarily determined that Hyundai's and LG's revised accounting methodologies for R&D expenses do not reasonably reflect the costs associated with the production of DRAMs. These revisions in accounting methodologies result in distortions in the costs attributed to the POR and are not consistent with U.S. GAAP. Furthermore, there is no information on the record to justify this change in accounting methodologies. Therefore, the Department has preliminary determined, consistent with Hyundai's and LG's historical R&D accounting methodology and U.S. GAAP, to expense all R&D expenses that Hyundai and LG incurred in 1997, and, consistent with *Micron II Remand*, to expense any R&D expenses that Hyundai expensed in 1997, which Hyundai had previously incurred but not previously expensed. For further discussion of this issue, *see* Memorandum on Whether to Accept the Reported Research & Development Expenses of Hyundai Electronics Industries Co., Ltd. and LG Semicon, Ltd., dated June 1, 1999.

We also note that a number of the projects that LG classified as R&D expenses apply to products which were being commercially produced in 1997. The Department will examine these projects further to determine whether they are more appropriately classified as part of COM.

Company-Specific Adjustments

Hyundai

1. We excluded certain non-operating expenses from Hyundai's R&D expenses.
2. We adjusted Hyundai's depreciation expenses to reflect the net effect of increasing depreciation, consistent with *Final Results 1998*, for special depreciation that would have been taken had the respondent continued to take special depreciation on certain equipment for the period of 1997 and the first half of 1998 and decreasing depreciation expenses to reflect the amount of special depreciation which the Department expensed in *Final Results 1998*, but which Hyundai expensed in its own books and records, and reported in its response, for the current POR.
3. We adjusted Hyundai's general and administrative ("G&A") expense rate by excluding foreign currency transaction gains and losses related to account receivables.
4. We adjusted Hyundai's interest expense rate by excluding offsets of long-term interest income.

See Memorandum on Hyundai Electronics Industries Co., Ltd.: Calculations for the Preliminary Results, dated June 1, 1999.

LG

1. We included in COP certain costs for an operational new fabrication facility which LG excluded from its COM by recording them in a construction-in-progress account.
2. We adjusted LG's G&A expense rate by excluding foreign currency transaction gains and losses related to account receivables.
3. We adjusted LG's interest expense rate by including translation gains and losses and the amortized amounts of deferred foreign currency translation gains and losses, consistent with the Department's practice (*see Final Results 1998*, 63 FR at 50872). *See* Memorandum on LG Semicon Co., Ltd.,: Preliminary Results of Review Analysis Memorandum, dated June 1, 1999.

CV

In accordance with section 773(e) of the Act, we calculated CV based on the respondents' cost of materials and fabrication employed in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the cost of materials, fabrication, and SG&A expenses as reported in the CV portion of the questionnaire response, adjusted as discussed in the COP section above.

We used the U.S. packing costs as reported in the U.S. sales portion of the respondents' questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that survived the cost test, weighted by the total quantity of those sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Price Comparisons

For price-to-price comparisons, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and to the extent practicable, at the same level of trade, in accordance with section 773(a)(1)(B)(i) of the Act. We compared the U.S. prices of individual transactions to the monthly weighted-average price of sales of the foreign like product. In the case of LG, we calculated NV based on delivered prices to unaffiliated customers and, where appropriate, to affiliated customers in the home market.

With respect to LG, we tested those sales that LG made in the home market to affiliated customers to determine whether they were made at arm's length and could be used in our analysis. *See* 19 CFR 351.102(b). To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, prices of sales to affiliated and unaffiliated customers, net of discounts, all movement charges, direct selling expenses, and packing. For tested models of the subject merchandise, prices to an affiliated party were on average 99.5 percent or more of the price to unaffiliated parties and we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and Preamble to the Department's regulations, 62 FR at 27355.

With respect to both CV and home market prices, we made adjustments, where appropriate, for inland freight, inland insurance, and discounts. We also reduced CV and home market prices by packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased CV and home market prices for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We made further adjustments to home market prices, when applicable, to account for differences in physical characteristics of the merchandise in accordance with section 773(a)(6)(c)(ii) of the Act. Finally, pursuant to section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in circumstances of sale by deducting home market direct selling expenses (credit expenses and bank charges) and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act. For Hyundai and LG, we recalculated the credit expense on home market sales using the interest rate of the currency in which the sales were made.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for May 1, 1997 through April 30, 1998:

Manufacturer/exporter	Percent margin
The G5 Corporation	13.11
Hyundai Electronic Industries, Inc	13.11
LG Semicon Co., Ltd	10.67

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. We have calculated importer-specific STD valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales made during POR to the entered value of sales used to calculate those duties. These rates will be assessed uniformly on all entries of each particular importer made during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *STD valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 3.85 percent, the "all-others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14511 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke order.

SUMMARY: In response to a request from Timothy Haley, the Floral Trade Council, and the FTC's Committees on Standard Carnations, Miniature Carnations, Standard Chrysanthemums, and Pompom Chrysanthemums (collectively "the FTC and its Committees"), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty review and is issuing this notice of intent to revoke the antidumping duty order on certain fresh cut flowers from Colombia. The FTC and its Committees requested that the Department revoke the order on certain fresh cut flowers from Colombia retroactive to March 1, 1997, because they no longer have an interest in maintaining the order. The FTC represents a domestic interested party and was the petitioner in the less-than-fair-value (LTFV) investigation. We are initiating this changed circumstances administrative review and issuing this notice of our preliminary determination to revoke the order retroactive to March 1, 1997.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong or Marian Wells, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3853 or (202) 482–6309, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Background

On May 21, 1999, the FTC and its Committees requested that the Department conduct a changed circumstances administrative review to revoke the antidumping duty order on certain fresh cut flowers from Colombia retroactive to March 1, 1997. The FTC and its Committees stated that circumstances have changed such that the FTC and its Committees no longer have an interest in maintaining the antidumping duty order.

The FTC and its Committees also requested that, due to the pendency of the ongoing administrative reviews of the order, the Department initiate and complete the changed circumstances review on an expedited basis.

Scope of Review

The products covered by this changed circumstances review are certain fresh cut flowers from Colombia including standard carnations, miniature (spray) carnations, standard chrysanthemums, and pompon chrysanthemums. These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope remains dispositive.

This changed circumstances review covers all producers and exporters of certain fresh cut flowers from Colombia.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances administrative review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and § 351.222(g)(1)(i) of the Department's regulations provide further that the Department may revoke an order, in whole or in part, if it concludes that the order under review is no longer of interest to domestic interested parties. In addition, in the event that the Department concludes that expedited action is warranted, § 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

The FTC is a domestic interested party as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and was the petitioner in the LTFV investigation of this proceeding. Therefore, based on the affirmative statement by the FTC and its Committees of no interest in the continued application of the antidumping duty order on certain fresh cut flowers from Colombia, we are initiating this changed circumstances review. Further, based on the request by the FTC and its Committees and their affirmative statement of no interest, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant revocation of the order in whole. We are hereby notifying the public of our intent to revoke in whole the antidumping duty order on certain fresh cut flowers from Colombia retroactive to March 1, 1997.

In the event this revocation is made final, the Department will terminate the administrative reviews covering the following periods: March 1, 1997, through February 28, 1998 (initiated on April 21, 1998 (63 FR 19709)); March 1, 1998, through February 28, 1999 (initiated on April 30, 1999 (64 FR 23269)).

If final revocation of the order occurs, we intend to instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of certain fresh cut flowers from Colombia on or after March 1, 1997, in accordance with 19 CFR 351.222(g)(4). We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until

publication of the final results of this changed circumstances review.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice. Written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal comments to written comments, limited to issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14523 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–041]

Notice of Final Court Decision and Amended Final Results of Expedited Sunset Review on Synthetic Methionine from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of expedited sunset review on synthetic methionine from Japan.

SUMMARY: On April 22, 1999, the Court of International Trade (the Court) affirmed the Department of Commerce's (the Department) remand determination arising out of the expedited sunset review of the antidumping finding on synthetic methionine from Japan. *See NOVUS International, et. al.* v. *United States*, Slip Op. 99–38 (CIT April 22, 1999). As there is now a final and conclusive court decision in this action, we are amending the final results of review in this matter and will notify the U.S. International Trade Commission ("the Commission") that the magnitude of the margin likely to prevail were the finding to be revoked is 48 percent.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1999, the Court issued an order remanding to the Department the final results of the expedited sunset review on synthetic methionine from Japan.[1] On April 21, 1999, in accordance with the Court's remand order, the Department filed its final results of redetermination. See Final Results of Redetermination Pursuant to Court Remand, April 21, 1999, *NOVUS International, et. al.* v. *United States,* Court No. 99–01–00007 (Remand Results). In this determination, the Department reconsidered the 48 percent rate from the Treasury Department's less-than-fair-value investigation of synthetic methionine from Japan as a possible appropriate indicator of the magnitude of dumping that would prevail were the dumping finding on synthetic methionine from Japan to be revoked. The Department determined that a reliable source that contains a Treasury fair-value rate can be used as a basis for reporting margins to the Commission. *See* Remand Results at 6. Further, the Department determined that, regardless of whether the investigation rate was published in the Treasury finding, the Department did ascertain and rely on a rate from the original investigation for purposes of the final results of the first administrative review. Therefore, we determined that, "consistent with our policy of selecting a margin "from the investigation, because that is the only calculated rate that reflects the behavior of the exporters * * * without the discipline of an order in place (footnote omitted)," we should report the 48 percent rate to the Commission. *See* Remand Results at 7.

On April 22, 1999, the Court upheld the Department's redetermination pursuant to Court remand. *NOVUS International, et. al.* v. *United States,* Slip Op. 99–38 (CIT April 22, 1999). The period to appeal has expired and no appeal was filed. Therefore, as there is now a final and conclusive court decision in this action, we are amending our final results of the expedited sunset review.

Amended Final Results of Review

Pursuant to section 516A(e) of the the Tariff Act of 1930, as amended (the Act), we are now amending the final results of the expedited sunset review on synthetic methionine from Japan and determining that the magnitude of dumping that is likely to prevail if the finding on synthetic methionine from Japan were revoked is 48 percent.

Dated: June 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–14513 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] *NOVUS International, Inc., Degussa Corporation, and Rhone-Poulenc Animal Nutrition* v. *United States*, Slip Op. 99–14 (CIT January 27, 1999).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052499B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an exempted fishing permit application.

SUMMARY: NMFS announces receipt of an application from the Alaska Fisheries Development Foundation (AFDF) for an Exempted Fishing Permit (EFP) to test artificial longline bait fabricated from seafood wastes in the Gulf of Alaska. It is intended to promote the objectives of the North Pacific Fishery Management Council (Council).

ADDRESSES: Copies of the EFP application are available by writing to Steven Pennoyer, Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and its implementing regulations at 50 CFR part 679.6 authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing

regulations. NMFS received an application for an EFP from the AFDF on April 19, 1999. If approved, the EFP would be used to test artificial longline bait fabricated from seafood wastes in the Gulf of Alaska. The AFDF reports that the potential benefits of using artificial bait for longline fisheries include higher catches, enhanced species and size selectivity, consistent product quality and size, enhanced safety, and lower bait loss.

In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has initiated consultation by forwarding the application to the Council. The Council will consider the EFP application during its June 9–14, 1999, meeting which will be held at the Best Western Kodiak Inn, Kodiak, Alaska, and public comment on the application will be requested at this meeting. The applicant has been invited to appear in support of the application if the applicant desires.

A copy of the application is available for review from the NMFS Regional Administrator (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 3, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14474 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association With Respect to Those Foreign Firms Acting in the Capacity of a Futures Commission Merchant

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing National Futures Association ("NFA") to revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to comply with the terms and conditions on which relief was confirmed. In addition, the Commission is authorizing NFA to withdraw the confirmation of Rule 30.10 relief from any firm that notifies NFA of its decision to forfeit such relief.

EFFECTIVE DATE: July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Andrew Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

United States of America

Before the Commodity Futures Trading Commission

Order Authorizing the Performance of Certain Functions by National Futures Association With Respect to Firms That Have Received Confirmation of Rule 30.10 Relief

I. Authority and Background

Section 8a(10) of the Commodity Exchange Act[1] ("Act") provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act[2] and subject to the provisions of the Act applicable to registrations granted by the Commission. NFA has confirmed its willingness to perform certain functions now performed by the Commission.[3]

Upon consideration, the Commission has determined to authorize NFA, effective July 8, 1999, to revoke or withdraw exemptive relief granted to firms acting in the capacity of futures commission merchants ("FCMs") that are members of regulatory or self-regulatory bodies to which an order under Commission Rule 30.10[4] has been issued and that have received confirmation of relief.

Rule 30.10 allows the Commission to exempt a foreign firm acting in the capacity of an FCM from compliance with certain Commission rules and regulations based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator. The Commission has established a process whereby a foreign regulator or self regulatory organization ("SRO") can petition on behalf of its regulatees or members, respectively, for such an exemption based upon the comparability of the regulatory structure in the foreign jurisdiction to that under the Act. Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight,[5] the Commission may issue an Order granting general relief subject to certain conditions.[6] Firms seeking confirmation of relief must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country.[7]

On September 11, 1997, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order, and to grant exemptive relief from registration to qualifying firms pursuant to Rule 30.10.[8] The Commission stated that, once it had examined the foreign jurisdiction's regulatory structure and issued an Order under Rule 30.10 granting general relief based upon the comparability of that structure to the structure under the Act, the steps

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[1] 7 U.S.C. 12a(10)(1998).

[2] 7 U.S.C. 21(j)(1998).

[3] Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated August 27, 1997.

[4] Commission rules referred to herein can be found at 17 CFR Ch. I (1999).

[5] The specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Commission Rule 30.10 are set forth in Appendix A to Part 30. *See* 52 FR 28990, 29001 (August 5, 1987).

[6] These conditions require the regulator or SRO responsible for monitoring the compliance of the firm with the regulatory requirements described in the Rule 30.10 petition to make certain representations regarding the fitness of each firm seeking to receive confirmation of Rule 30.10 relief, the protections to be afforded to U.S. customers, and the exchange of information with the Commission. *See* 62 FR 47792, 47793, n.7 (September 11, 1997).

[7] A firm seeking confirmation of Rule 30.10 relief is generally required to:

(1) consent to jurisdiction in the United States and designate an agent for service of process in the United States in accordance with the requirements set forth in Rule 30.5;

(2) agree to make its books and records available upon the request of any representative of the Commission or the U.S. Department of Justice;

(3) agree that all futures or regulated option transactions with respect to U.S. customers will be made on or subject to the rules of the applicable exchanges and will be undertaken consistent with rules and codes under which such firm operates;

(4) represent that no principal of the firm would be disqualified under Section 8a(2) of the Act from registering to do business in the U.S. and notify the Commission promptly of any change in that representation;

(5) disclose the identity of each U.S. affiliate or subsidiary;

(6) agree to be subject to NFA arbitration;

(7) consent to the release of certain financial information;

(8) segregate customer funds from the firm's proprietary funds, even if that option is not generally available under local law;

(9) consent to report the value of funds required to be segregated on behalf of U.S. customers; and

(10) undertake to comply with the provisions of law and rules which form the basis for granting the exemption. 62 FR 47792, 47793, n.8. The terms and conditions vary from order to order depending upon the regulatory structure of the firm's home country. *Id.*

[8] 62 FR 47792–47793. The Commission also authorized NFA to serve as the official custodian for all filings, acknowledgments and records produced pursuant to this undertaking. *Id.*

needed to determine if relief is appropriate for particular firms are similar to those undertaken in the course of fitness checks performed by NFA with respect to applicants under the Act.[9] For example, the Commission previously delegated to NFA the authority to deny, condition, suspend, restrict or revoke the registration of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and associated persons of these registrants,[10] and floor brokers and floor traders.[11]

Upon consideration, the Commission believes that NFA can revoke or withdraw a firm's confirmation of Rule 30.10 relief in an efficient and cost-effective manner. As the custodian of all Rule 30.10 filings, NFA has developed an extensive database from which it may identify those firms that no longer maintain valid agency agreements.[12] Accordingly, the Commission directs NFA to identify on an ongoing basis those firms that no longer maintain a valid agreement with a U.S. agent for service of process and to notify those firms and their regulators in writing that their failure to maintain a valid agency agreement will result in the termination of the firms' confirmation of Rule 30.10 relief unless such deficiency is cured within thirty days. Further, the Commission authorizes NFA to revoke, after this thirty days written notice, the confirmation of Rule 30.10 relief for any firm that does not maintain a valid agreement with a U.S. agent for service of process in compliance with Rule 30.5. In addition, any firm seeking to withdraw voluntarily its confirmation of Rule 30.10 relief (or any foreign regulator providing notice that a member or regulatee has ceased business operations) currently sends that information to NFA. The Commission authorizes NFA to withdraw the confirmation of Rule 30.10 relief for any firm that notifies NFA, either directly or through its regulatory authority, of its decision to forfeit such relief and/or to cease business operations.

The Commission is also delegating to NFA the power to revoke confirmation of a firm's Rule 30.10 relief if the firm fails to comply with any of the representations and obligations on which the relief is based. While the Commission is not imposing on NFA the duty to monitor activities of Rule 30.10 firms, NFA should note any non-compliance of which it becomes aware. For example, NFA will know if a Rule 30.10 firm has failed to comply with a representation that it will submit to NFA arbitration. If NFA becomes aware of a firm's failure to comply with a representation or consent contained in its Rule 30.10 petition, other than the failure to maintain a valid U.S. agent for the service of process, NFA should consult with the Commission's Division of Trading and Markets ("Division") to determine if it is appropriate to modify or terminate the firm's Rule 30.10 relief. After such consultation and the consent of the Division, NFA is authorized to revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to comply with any of the terms and conditions of such relief outlined in the appropriate Rule 30.10 Order.

II. Conclusion and Order

The Commission has determined, in accordance with Section 8a(10) of the Act, to authorize NFA to perform the following functions:

(1) To revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that does not maintain a valid agreement with a U.S. agent for service of process in accordance with Rule 30.5;

(2) To revoke, after consultation with and consent from the Commission's Division of Trading and Markets and after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to any of the other terms or conditions outlined in the appropriate Rule 30.10 Order; and

(3) To withdraw the confirmation of Rule 30.10 relief for any firm that notifies NFA either directly or through its regulatory authority of its decision to forfeit such relief and/or to cease business operations.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and Commission orders issued thereunder and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for the effective oversight of this program.

These determinations are based upon the Congressional intent expressed in Section 8a(10) of the Act that the Commission have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order shall affect the Commission's authority to review NFA's performance of the Commission functions listed above.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of previous orders issued by the Commission under Parts 4 and 30.

Issued in Washington, DC, on June 1, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–14371 Filed 6–7–99; 8:45 am]

BILLING CODE 6351–01–M

[9] *Id.* at 47793.

[10] 50 FR 34885 (August 28, 1985).

[11] 59 FR 38957 (August 1, 1994).

[12] All firms seeking confirmation of Rule 30.10 relief must designate an agent for service of process in accordance with Rule 30.5.

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of expansion of cancer treatment clinical trials demonstration project.

SUMMARY: This notice is to advise interested parties of an expansion of a demonstration project in which the DoD provides CHAMPUS reimbursement for eligible beneficiaries who receive cancer treatment under approved National Cancer Institute (NCI) clinical trials to include NCI sponsored cancer prevention clinical trials. Participation in these clinical trials will improve TRICARE/CHAMPUS eligible beneficiary access to emerging new therapies that have significant promise for the prevention and successful treatment of cancers. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the prevention and treatment of cancer. At this time, there is insufficient demonstration data for a full evaluation of costs associated with enrollment in clinical trials. Expanding the current

demonstration to provide reimbursement for costs associated with NCI sponsored clinical trials for cancer prevention will augment current patient accruals to clinical trials and allow for data collection in order to perform a comprehensive economic analysis. This demonstration also affects TRICARE, the managed health care program that includes CHAMPUS. This demonstration project, which is under the authority of 10 U.S.C., section 1092, will expire December 31, 1999.

EFFECTIVE DATE: June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Larkin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–3628.

SUPPLEMENTARY INFORMATION:

A. Background

On January 24, 1996, the Department provided notice in the **Federal Register** (61 FR 1899) of an expansion of an existing demonstration for breast cancer treatment clinical trials to include all cancer treatment clinical trials under approved National Cancer Institute (NCI) clinical trials. The demonstration purpose is to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial goals, and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. The January 24, 1996, notice anticipated the possibility of extending the demonstration.

The NCI trials program is the principal means by which the oncology community has developed clinical evidence for the efficacy of various treatment approaches in cancer therapy. Participating institutions include NCI's network of comprehensive and clinical cancer centers, university and community hospitals and practices, and military treatment facilities. Despite this extensive network which includes the nation's premier medical centers, cure rates for most types of cancer remain disappointing, highlighting the significant effort still required for improvement. The principal means by which advances in therapy will be realized is through application of research to victims of cancer. In support of NCI's efforts to further the science of cancer treatment, the Department expanded its breast cancer demonstration to include all NCI-sponsored phase II and phase III clinical trials. This expanded demonstration will enhance current NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities.

In recognition of the successful partnership with the NCI, the current demonstration is being expanded to allow DoD beneficiaries to participate in NCI sponsored clinical trials in cancer prevention in addition to caner treatment. This expansion of the current demonstration will enhance continued NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities.

While this demonstration provides an exception to current CHAMPUS benefit limitations, the Department hypothesizes that this increased access to innovative cancer prevention therapies will occur at a cost comparable to that which Department has experienced in paying for conventional therapies under the standard CHAMPUS program. Results of this demonstration will provide a framework for determining the scope of DoD's continued participation in the NCI's research efforts.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14391 Filed 6–7–99; 8:45 am]

BILLING CODE 1001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the first meeting of the Advisory Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II (1982)], it has been determined that this Advisory Panel meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1988); accordingly, the bulk of the meeting will be closed to the public. A small portion of the meeting will be open, however, to facilitate public comment.

DATE: June 9, 1999.

ADDRESSES: Room 802, RAND, Suite 800, 1333 H Street, NW, Washington, DC 20005.

PROPOSED SCHEDULE AND AGENDA: The Advisory Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet in closed session from 10:00 a.m. until 4:45 p.m. and from 5:00 p.m. until 5:30 p.m. on June 9, 1999. The meeting will be open to the public from 4:45 p.m. until 5:00 p.m. This meeting will include classified briefings on the threat of domestic WMD terrorist attacks. Time will be allocated as noted above for public comments by individuals or organizations. Due to unexpected requirements to amend the meeting's agenda with classified briefings, the posting of this meeting in the **Federal Register** falls within the normal 15 day notice period.

FOR FURTHER INFORMATION: RAND provides information about this Panel on its web site at http://www.rand.org/organization/nsrd/terrpanel; it can also be reached at (202) 296–5000 extension 5282. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Priscilla Schlegel, RAND, 1333 H Street, NW, Washington, DC 20005. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: June 2, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14393 Filed 6–7–99; 8:45 am]

BILLING CODE 5001–10–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on July 8, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force

Communications and Information Center/INC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rolling at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: May June 2, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F065 SAFAA A

SYSTEM NAME:

Accounts Receivable *(June 11, 1997, 62 FR 31793).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F065 AFEDF A'.

SYSTEM NAME:

Delete entry and replace with 'Executive Dining Facility'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Replace 'Mess Number One' with 'Executive Dining Facility'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'End of month reports detailing name, items purchased, amount, date, unit address, and duty phone.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Access restricted to authorized personnel. Computer records are password protected and paper records are stored in locked rooms secured by alarm systems (motion detectors).'

RETENTION AND DISPOSAL:

Delete entry and replace with 'These records are destroyed after 4 years after the end of the fiscal year in which account was closed. Computer records are deleted then purged from the system. Paper records are destroyed through shredding, macerating, or burning.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Daily tickets and directories for general officers and SES civilians.'

* * * * *

F065 AFEDF A

SYSTEM NAME:

Executive Dining Facility.

SYSTEM LOCATION:

Office of the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force employees authorized to use the Air Force Executive Dining Facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

End of month reports detailing name, items purchased, amount, date, unit address, and duty phone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used to bill members authorized use of the Air Force Executive Dining Facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in folders/binders as well as computer storage.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Access restricted to authorized personnel. Computer records are password protected and paper records are stored in locked rooms secured by alarm systems (motion detectors).

RETENTION AND DISPOSAL:

These records are destroyed after 4 years after the end of the fiscal year in which account was closed. Computer records are deleted then purged from the system. Paper records are destroyed through shredding, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant to the Secretary of the Air Force, (SAF/AA), 1720 Air Force Pentagon, Washington, DC 20330-1720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Daily tickets and directories for general officers and SES civilians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F090 AF IG B

SYSTEM NAME:

Inspector General Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Maintained in file folders and in Automated Complaints Tracking System (ACTS) database.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by Complainant's name, subject of investigation's name and case number.'

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by custodian of the system of records and by person(s) responsible for maintaining the system of records in the performance of their official duties. These personnel are properly screened and cleared for need-to-know. Records are stored in a locked room protected by cipher lock. Information maintained in ACTS database are protected by computer system software and password.'

* * * * *

F090 AF IG B

SYSTEM NAME:

Inspector General Records.

SYSTEM LOCATION:

Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140. Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All those who have registered a complaint, allegation or query with the Inspector General or Base Inspector on matters related to the Department of the Air Force. All senior officials who are subjects of reviews, inquiries, or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by, 10 U.S.C. 8020, Inspector General, and E.O. 9397 (SSN).

PURPOSE(S):

Used to insure just, thorough, and timely resolution and response to complaints, allegations or queries, and a means of improving morale, welfare, and efficiency of organizations, units, and personnel by providing an outlet for redress. Used by the Inspector General and Base Inspectors in the resolution of complaints and allegations and responding to queries involving matters concerning the Department of the Air Force and in some instances the Department of Defense. Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in Automated Complaints Tracking System (ACTS) database.

RETRIEVABILITY:

Retrieved by Complainant's name, subject of investigation's name and case number.

SAFEGUARDS:

Records are accessed by custodian of the system of records and by person(s) responsible for maintaining the system of records in the performance of their official duties. These personnel are properly screened and cleared for need-to-know. Records are stored in a locked room protected by cipher lock. Information maintained in ACTS database are protected by computer system software and password.

RETENTION AND DISPOSAL:

Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires, whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants, inspectors, members of Congress, witnesses and subjects of investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 99–14392 Filed 6–7–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.
ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.
DATES: The amendments will be effective on July 8, 1999, unless comments are received that would result in a contrary determination.
ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.
FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.
SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend four systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record systems being amended are set forth below, as amended, published in their entirety.

Dated: June June 2, 1999.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

S161.60 DLA-I

SYSTEM NAME:

Seizure and Disposition of Property Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S500.42 CAAS'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any person on property controlled by DLA identified as being in possession of contraband or physical evidence connected with a criminal offense.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The file includes name, Social Security Number, addresses, telephone numbers and data pertaining to the asset. The file also includes documents pertaining to acquisition, storage and disposition of contraband and physical evidence to include receipts, chain of custody documents, release, and disposition or destruction certificates.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, et seq.); DoD Directives 5200.8 and 5105.22; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete 'DLA security personnel' and replace with 'security and police force personnel.'

Delete second paragraph and replace with 'Information is also used to maintain chain of custody on evidence for presentation in court in cases requiring criminal prosecution.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by property log number and last name if person has been identified in the particular case; by incident number if property was found on the premises or recovered from a crime scene.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Record subject; security personnel; and Federal, state, and local law enforcement agencies.'

* * * * *

S500.42 CAAS

SYSTEM NAME:

Seizure and Disposition of Property Records *(February 22, 1993, 58 FR 10854).*

SYSTEM LOCATION:

Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person on property controlled by DLA identified as being in possession of contraband or physical evidence connected with a criminal offense.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file includes name, Social Security Number, addresses, telephone numbers and data pertaining to the asset. The file also includes documents pertaining to acquisition, storage and disposition of contraband and physical evidence to include receipts, chain of custody documents, release, and disposition or destruction certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, et seq.); DoD Directives 5200.8 and 5105.22; and E.O. 9397 (SSN).

PURPOSE(S):

Information is maintained and used by security and police force personnel to provide accountability for confiscated contraband and acquired physical evidence.

Information is also used to maintain chain of custody on evidence for presentation in court in cases requiring criminal prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Retrieved by property log number and last name if person has been identified in the particular case; by incident number if property was found on the premises or recovered from a crime scene.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Destroy 3 years after final action on or disposition of the property and responsibility therefore has been appropriately terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Head of PLFAs who are responsible for investigating suspected criminal acts. Official mailing addresses are published as an appendix to the DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to the DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to the DLA's compilation of systems of records notices.

Individuals should provide full name, Social Security Number, current address, and telephone numbers.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that could be verified from his file.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject; security personnel; and Federal, state, and local law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S161.70 DLA-I

SYSTEM NAME:

Firearms Registration Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S500.43 CAAS'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals required to register personal or Government issue firearms with DLA.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The file includes name, addresses, social security number, and telephone numbers. The file also includes firearm registration forms, and other documents relating to registration of privately owned firearms.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, et seq.); DoD Directives 5200.8 and 5105.22; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'Information is used by security officers and police force personnel to ensure proper maintenance and safekeeping of privately owned firearms by personnel residing on DLA controlled premises or who are required to register firearms with DLA. Records may also be used to identify the owner of a particular firearm.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph.

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name or Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

S500.43 CAAS

SYSTEM NAME:

Firearms Registration Records.

SYSTEM LOCATION:

Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals required to register personal or Government issue firearms with the Defense Logistics Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file includes name, addresses, Social Security Number, and telephone numbers. The file also includes firearm registration forms, and other documents relating to registration of privately owned firearms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act 1950 (50 U.S.C. 797, et seq.); DoD Directives 5200.8 and 5105.22; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used by security officers and police force personnel to ensure proper maintenance and safekeeping of privately owned firearms by personnel residing on DLA controlled premises or who are required to register firearms with DLA. Records may also be used to identify the owner of a particular firearm.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Destroy 6 months after cancellation of registration or departure of the registrant from the jurisdiction of the registering activity.

SYSTEM MANAGER(S) AND ADDRESS:

Security officers of the DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name, social security number, home address, and location of DLA installation where firearm was registered.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals should provide information that contains the full name, current address and telephone numbers of the individual. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that can be verified from his file.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject and security and police force personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–14394 Filed 6–7–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Supplemental Environmental Impact Statement (EIS) for the San Luis Rey River Reauthorization Study; City of Oceanside, San Diego County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to prepare a Supplemental EIS to research the proposed reauthorization study of the on-going flood control project on the San Luis Rey River. The study area is located in the City of Oceanside, in the Northwest portion of San Diego County, California. The study area is comprised of the lower 7.2 miles of the river, from the Pacific Ocean to the College Boulevard Bridge. The Final Environmental Impact Statement (FEIS) was dated September 25, 1970.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. David Compas, U.S. Army Corps of Engineers, Attn.: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California, 90053–2325; phone (213) 452–3850; E-mail: dcompas@spl.usace.army.mil.

SUPPLEMENTARY INFORMATION: To prepare for the preparation of the EIS, the Corps will be conducting a public scoping meeting on 16 June 1999, from 6:30 to 8:30 P.M., in the Civic Center Community Rooms located at 330 North Coast Highway, Oceanside, California. This scoping meeting will be held to solicit public input on significant environmental issues associated with the proposed reauthorization. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the Scoping Meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, and alternatives that should be addressed in the analysis. Individuals and agencies may offer information or data relevant to the proposed study and provide comments by attending the public scoping meeting, or by mailing the information within thirty (30) days to Mr. David Compas. Requests to be placed on the mailing list for announcements and the Draft EIS also should be sent to Mr. Compas.

Alternatives

A full array of alternatives to the proposed action will be developed for analyses. A survey of the existing flood control project is being conducted to determine the present level of protection. The proposed reauthorization could include the determined protection level; or 100 year, or 150 year, or 200 year protection; and the no action plan for detailed analysis in the National Environmental Policy Act document.

John P. Carroll,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 99–14487 Filed 6–7–99; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on July 8, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a),

as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record system being amended is set forth below, as amended, published in its entirety.

Dated: June 2, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01301–1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire *(February 22, 1993, 58 FR 10712).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 61), Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.'

* * * * *

N01301–1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers reporting for duty in the Office of the Judge Advocate General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, branch of service, date of rank, date reported, previous duty station, date detached, Social Security Number, designator, division assignment, room number, office phone, spouse's name, number of dependents, spouse's employment, dependents' names and ages, home telephone number, home address, name of officer relieving, billet sequence code, unit identification code, place of birth, date of birth, security clearance, basis, completed by and date of completion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806 and E.O. 9397 (SSN).

PURPOSE(S):

To assist the Judge Advocate General in assignment of officers within the Office of the Judge Advocate General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in a folder alphabetically and are stored in a file cabinet.

RETRIEVABILITY:

Retrieved by officer's name.

SAFEGUARDS:

Records are maintained in a file cabinet under the control of authorized personnel during working hours; and the office space in which the cabinet is located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are destroyed when the officer is transferred from the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information submitted by the officer upon his/her reporting for duty in the Office of the Judge Advocate General.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05810–3

SYSTEM NAME:

Appellate Case Tracking System (ACTS) *(February 22, 1993, 58 FR 10774).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05814–6'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Administrative Support Division, Navy

and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who have their appellate case reviewed by the Navy-Marine Corps Court of Criminal Appeals and/or the Court of Appeals for the Armed Forces.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To track the status of courts-martial cases appealed to the Navy-Marine Corps Court of Criminal Appeals for the Armed Forces. The system will also be used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.'

* * * * *

N05814–5

SYSTEM NAME:

Appellate Case Tracking System (ACTS).

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have their appellate case reviewed by the Navy-Marine Corps Court of Criminal Appeals and/or the Court of Appeals for the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy appellate case records; additional Navy appellate case information records; and historical Navy appellate case records from 1986 to present. Files contain personal information such as name, rank, Social Security Number, etc., and specific information with regard to the Navy appellate cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 866, 867; and E.O. 9397 (SSN).

PURPOSE(S):

To track the status of courts-martial cases appealed to the Navy-Marine Corps Court of Criminal Appeals for the Armed Forces. The system will also be used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, computers, and on hard copy forms.

RETRIEVABILITY:

ACTS users obtain information by means of a query or a request for a standard report. Data may be indexed by any data item although the primary search keys are the name, Social Security Number, or the Navy-Marine Corps Court of Criminal Appeals docket number.

SAFEGUARDS:

Access to building is protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features: User account number and password sign-on, data base access authority, data set authority for add and delete, and data item authority for list and update.

RETENTION AND DISPOSAL:

An individual's record is retained on disk and will be available for on-line access for twenty-five years after the close of the individual's case. The record will be purged to magnetic tape after twenty-five years and will be utilized in a batch processing mode.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain full name, Social Security Number, and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' I.D. card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain full name, Social Security Number, and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' I.D. card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and

appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual's record of trial and supporting documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05815–1

SYSTEM NAME:

Record of Trial of Special Courts-Martial Resulting in Bad Conduct Discharges or Concerning Officers *(February 22, 1993, 58 FR 10778).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "N05813–5".

SYSTEM LOCATION:

Delete entry and replace with "Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 865; and 10 U.S.C. 866(b).'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047."

* * * * *

N05813–5

SYSTEM NAME:

Record of Trial of Special Courts-Martial Resulting in Bad Conduct Discharges or Concerning Officers.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel tried by special courts-martial and awarded a bad conduct discharge, and all Navy and Marine Corps commissioned officers tried by special courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special courts-martial which resulted in a bad conduct discharge, or involving commissioned officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 865; and 10 U.S.C. 866(b).

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 866(b) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept by Navy courts-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Special courts-martial proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05814–1

SYSTEM NAME:

Summary and Non-BCD Courts/ Martial Records (February 22, 1993, 58 FR 10777).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "N05813–6".

SYSTEM NAME:

Delete entry and replace with "Summary and Non-BCD Special Courts-Martial Records of Trial."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047 or appropriate officer having supervisory authority over the naval activity which convened the court-martial."

* * * * *

N05813–6

SYSTEM NAME:

Summary and Non-BCD Special Courts-Martial Records of Trial.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy, Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps enlisted personnel tried by summary courts-martial or by special courts-martial which did not result in a bad conduct discharge (BCD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary court-martial and non-BCD special court-martial records of trail.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 865.

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 864(a) and provide repositories accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Type of courts-martial, date, command which convened the courts-martial, name of individual defendant, and command which completed the supervisory authority's action.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the storage devices in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are retained for two years after final action by officers having supervisory authority over sore activities, and for three months by officers having supervisory authority over fleet activities. At the termination of the appropriate retention period, records are forwarded for storage to the National Personnel Records Center (Military Personnel Records), GSA, 9700 Page Avenue, St. Louis, MO 63132–5100. Records are destroyed 15 years after final action has been taken.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047 or appropriate officer having supervisory authority over the naval activity which convened the court-martial.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity. Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047.

The request should include the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Division Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047.

The request should include the full name of the individual concerned, the type of courts-martial (summary or special), the name of the command which held the courts-martial, and the date of the courts-martial proceedings. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Proceedings of summary courts-martial and special courts-martial which did not result in a bad conduct discharge.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05819–2

SYSTEM NAME:

Artile 73 Petitions for New Trial (February 22, 1993, 58 FR 10780).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "NO5814–5".

SYSTEM LOCATION:

Delete entry and replace with "Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, 716

Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their courts-martial sentence by the convening authority but after their case had been reviewed by the Navy-Marine Corps Court of Criminal Appeals or the Court of Appeals for the Armed Forces, if appropriate."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are maintained in the office for four years and then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047."

* * * * *

N05814–5

SYSTEM NAME:

Article 73 Petitions for New Trial.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their courts-martial sentence by the convening authority but after their case had been reviewed by the Navy-Marine Corps Court of Criminal Appeals or the Court of Appeals for the Armed Forces, if appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

The petition for new trial, the forwarding endorsements if the petition was submitted via the chain of command, and the action of the Judge Advocate General on the petition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 73, Uniform Code of Military Justice, (10 U.S.C. 873).

PURPOSE(S):

To provide a record of individual petitions in order to answer inquiries from the individual concerned and to provide additional advice to commands involved when and if such petitions are granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in the office for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records are comprised of the following source materials: (1) Petitions for new trial; (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of courts-martial (above information is omitted if petitioner is former service member); and (3) action of the Judge Advocate General on petitions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N11101–2

SYSTEM NAME:

Family Housing Requirements Survey Record System (May 7, 1999, 64 FR 24619).

CHANGE:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace first sentence with 'Naval Facilities Engineering Command, 1322 Patterson Avenue SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5056.'

* * * * *

N11101–2

SYSTEM NAME:

Family Housing Requirements Survey Record System.

SYSTEM LOCATION:

Military installations with family housing offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Office and enlisted personnel and only key and essential civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Non-individual oriented input documents that reflect local housing assets; family housing survey questionnaires indicating family size,

individual preference for housing, housing cost, and indication as to suitability of housing for need for individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To determine the housing requirement for the location to support proposed family housing construction, leasing, mobile home spaces and other military construction programs submitted for OSD support and Congressional approval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Housing files used solely within housing office; tape files used solely within data processing system; and protected by the military installation's security measures. Automated files are password protected.

RETENTION AND DISPOSAL:

Held three years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Facilities Engineering Command, 1322 Patterson Avenue SE, Suite 100, Washington Navy Yard, Washington, DC 20374–5065. Subordinate record holders of questionnaires: Family housing office at military installation.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the family housing office at the military installation that services them.

Request should contain full name, Social Security Number and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–14395 Filed 6–7–99; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J, Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 3, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Program Evaluation of the European Community/United States of America (EC/US) Joint Consortia for Cooperation in Higher Education and Vocational Education.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 680.

Burden Hours: 340.

Abstract: Program evaluation of the 1996, 1997, and 1998 fiscal year projects in the EC/US Joint Consortia Program. The evaluation will gauge the educational quality and cost effectiveness of the student exchanges

and curriculum development programs and inform future grant competitions.

[FR Doc. 99–14478 Filed 6–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat—Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 2, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary:

Type of Review: New.

Title: Evaluation of the Public Charter Schools Program: Year 1 Data Collection Instruments.

Frequency: Annually.

Affected Public: Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 358
Burden Hours: 229

Abstract: The evaluation of the Public Charter Schools Program (PCSP) is the first national study of federal support for charter schools. The contractor, SRI International, will gather data on charter school policies and practices at the state, chartering agency, and charter school levels. The study examines the use of PCSP funds at these levels, assesses the impact of flexibility provisions in states' charter school legislation, and assesses the effect of charter schools on student performance. Respondents include federal PCSP staff, state charter school coordinators, representatives of chartering agencies and charter schools, and parents.

[FR Doc. 99–14443 Filed 6–7–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Monticello. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Wednesday, June 16, 1999, 7:00 p.m.–9:00 p.m.

ADDRESSES: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, (303) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. The Board will receive updates on the repository status.
2. The Board will discuss the Monticello surface and groundwater.
3. The Committee will receive updates and reports from subcommittees on local training and hiring, health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC, on June 2, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–14450 Filed 6–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 99–9 and C&E 99–10—Certification Notice—173]

Notice of Filings of Coal Capability of Sumas Energy 2, Inc. and Green Country Energy Project, L.L.C., Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Sumas Energy 2, Inc. and Green Country Energy, L.L.C. submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in accordance with section 201(d).

Owner: Sumas Energy 2, Inc. (C&E 99–9).

Operator: Sumas Energy 2, Inc.

Location: Sumas, Washington.

Plant Configuration: Combined-cycle.

Capacity: 720 megawatts.

Fuel: Natural gas.

Purchasing Entities: Canadian wholesale purchasers.

In-Service Date: On or before December, 2001.

Owner: Green Country Energy Project, L.L.C. (C&E 99–10).

Operator: Subsidiary of Cogentrix Energy, Inc.

Location: Jenks, Oklahoma.

Plant Configuration: Combined-cycle.

Capacity: 800 megawatts.

Fuel: Natural gas.

Purchasing Entities: Power marketer.

In-Service Date: June 1, 2001.

Issued in Washington, D.C., June 1, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–14476 Filed 6–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–312–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1999.

Take notice that on May 26, 1999, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to be effective July 1, 1999:

Sixth Revised Sheet No. 600

Original Sheet No. 716
Sheet Nos. 717–798

Algonquin states that the purpose of this filing is to set forth in its tariff, the specific types of discounts that Algonquin may agree to enter into with its shippers.

Algonquin states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14418 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6759–016]

Aquenergy Systems, Inc.; Notice of Site Visit to Apalache Hydroelectric Project

June 2, 1999.

Take notice that Commission staff will hold a site visit with Aquenergy Systems, Inc., licensee for the constructed Apalache Hydroelectric Project, FERC No. 6759–016. The project is located on the South Tyger River off Highway 357 in Greer, South Carolina 29651. The site visit will be held on Wednesday, June 16, 1999, from 11:30 a.m. to approximately 2:00 p.m.

The purpose of this visit is to enable Commission staff responsible for preparing the environmental assessment (EA) of the proposed surrender of license to view the existing dam, reservoir, and nearby areas. All interested individuals, organizations, and agencies are invited to attend the site visit.

Participants will meet at the parking lot adjacent to the project powerhouse, near the old Apalache Mill. Participants should provide their transportation to and from the site.

If you have any questions concerning this matter, please contact Jim Haimes, EA Coordinator for the Commission, at (202) 219–2780 or Beth Harris, Project Engineer for the licensee, in Greenville, South Caroline, at (864) 281–9630.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14420 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2674]

Green Mountain Power Corporation; Notice of Authorization for Continued Project Operation

June 2, 1999.

On May 30, 1997, Green Mountain Power Corporation, licensee for the Vergennes Project No. 2674, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2674 is located on Otter Creek in Addison County, Vermont.

The license for Project No. 2674 was issued for a period ending May 31, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2674 is issued to Green Mountain Power Corporation for a period effective June 1, 1999, through May 31, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Green Mountain Power Corporation is authorized to continue operation of the Vergennes Project No. 2674 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14422 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2778]

Idaho Power Company; Notice of Authorization for Continued Project Operation

June 2, 1999.

On May 29, 1997, Idaho Power Company, licensee for the Shoshone Falls Project No. 2778, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2778 is located on the Snake River in Jerome and Twin Falls Counties, Idaho.

The license for Project No. 2778 was issued for a period ending May 31, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part licensee expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent licensee, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2778 is issued to Idaho Power Company for a period effective June 1, 1999, through May 31, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Idaho Power Company is authorized to continue operation of the Shoshone Falls Project No. 2778 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14421 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–314–000]

Northern Border Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

June 2, 1999.

Take notice that on May 27, 1999, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 1999:

Fifteenth Revised Sheet Number 156
Fourteenth Revised Sheet Number 157

Northern Border proposes to decrease the Maximum Rate from 3.716 cents per 100 Dekatherm-Miles to 3.643 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 1.463 cents per 100 Dekatherm-Miles to 1.527 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

The proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border Copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14416 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–313–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

June 2, 1999.

Take notice that on May 28, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of July 1, 1999:

Forty-Seventh Revised Sheet No. 14
Thirty-Third Revised Sheet No. 14a
Sixty-Eighth Revised Sheet No. 15
Thirty-Ninth Revised Sheet No. 15a
Forty-Seventh Revised Sheet No. 16
Thirty-Third Revised Sheet No. 16a
Sixty-Eighth Revised Sheet No. 17
Thirty-Ninth Revised Sheet No. 17a

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period February 1, 1999 through April 30, 1999. These costs have arisen as a direct result of restructuring under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 99–14417 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–311–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1999.

Take notice that on May 26, 1999, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective July 1, 1999:

Third Revised Sheet No. 430
Original Sheet No. 682
Sheet Nos. 683–699

Texas Eastern states that the purpose of this filing is to set forth in its tariff the specific types of discounts that Texas Eastern may agree to enter into with its shippers.

Texas Eastern states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14419 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1969–001, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 28, 1999.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER99–1969–001]

Take notice that on May 24, 1999, Entergy Services, Inc., as agent and on behalf of the Entergy Operating Companies, filed a compliance filing adopting NERC's revised interim procedures accepted for filing in TLR Order II. This was pursuant to North American Electric Reliability Council, et al., 87 FERC ¶ 61,160 (1999) (TLR Order II).

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company, et al. and Montaup Electric Company, et al.

[Docket No. EC99–70–000]

Take notice that on May 26, 1999, New England Power Company, *et al.* and Montaup Electric Company, *et al.* filed a Rate Plan Filing in Support of Merger submitted to the Rhode Island Public Utilities Commission on May 20, 1999. The Rate Plan Filing in Support of Merger should be made part of Exhibit G to the Joint Application filed with the Federal Energy Regulatory Commission on May 5, 1999 in the above-referenced proceeding.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket Nos. ER89–627–003 and ER91–252–003]

Take notice that on May 24, 1999, Florida Power Corporation tendered a refund report related to Rate Limitation Refunds for Calendar Year 1998 to four of its full requirements customers.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER99–1986–001]

Take notice that on May 24, 1999, Virginia Electric and Power Company filed a compliance filing pursuant to the Commission's order issued May 12, 1999 in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ER99–1998–001]

Take notice that on May 24, 1999, Western Resources, Inc. filed a compliance filing pursuant to the Commission's May 12, 1999 order in Docket No. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER99–2000–001]

Take notice that on May 24, 1999, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies) submitted, under protest, a filing in compliance with the Commission's order issued May 12, 1999 in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation, Florida Power & Light Company, Tampa Electric Company

[Docket No. ER99–2003–001]

Take notice that on May 24, 1999, Florida Power Corporation, Florida Power & Light Company and Tampa Electric Company (together, the "Florida Utilities") tendered for filing a compliance filing pursuant to the Commission's May 12, 1999 order issued in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER99–2010–001]

Take notice that on May 24, 1999, PJM Interconnection, L.L.C. (PJM) tendered for filing a compliance filing pursuant to the Commission's May 12, 1999 order issued in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Corporation

[Docket No. ER99–2011–001]

Take notice that on May 24, 1999, Duke Energy Corporation (Duke) tendered for filing a compliance filing in the above-referenced proceeding pursuant to the Commission's May 12, 1999 order issued in Docket No. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–2035–001]

Take notice that on May 24, 1999, the Public Service Company of Oklahoma and Southwestern Electric Power Company submitted a filing in compliance with the Commission's May 12, 1999 order issued in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool, Inc.

[Docket No. ER99–2038–001]

Take notice that on May 24, 1999, Southwest Power Pool, Inc. (SPP) tendered for filing a compliance filing pursuant to the Commission's May 12, 1999 order issued in Docket Nos. EL98–52–000, *et al.*

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. The United Illuminating Company

[Docket No. ER99–2040–000]

Take notice that on May 24, 1999, The United Illuminating Company tendered for filing its response to the Commission's May 12, 1999 order in FERC Docket Nos. EL98–52–000, *et al.*, North American Reliability Council.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Alliant Energy Corporate Services, Inc

[Docket No. ER99–2797–000]

Take notice that on May 24, 1999, Alliant Energy Corporate Services, Inc., tendered for filing an amendment in Docket No. ER99–2797–000. Alliant Energy Corporate Services, Inc., is amending that filing to provide notice that two executed Service Agreements for point-to-point transmission service were filed in that Docket. One agreement was for short-term firm point-to-point transmission service. The other agreement was for non-firm point-to-point transmission service. Both agreements were executed by The Energy Authority, Inc., and Alliant Energy Corporate Services, Inc.

Alliant Energy Corporate Services, Inc., requests an effective date of April 26, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER99–3017–000]

Take notice that on May 24, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed a form Service Agreement between NMPC and Duke Solutions, Inc., (Purchaser). The Service Agreement specifies that the Purchaser has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for the Purchaser.

NMPC is (a) generally requesting an effective date of April 21, 1999, for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service

Commission, and the companies included in a Service List enclosed with the filing.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER99–3018–000]

Take notice that on May 24, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed a form Service Agreement between NMPC and Enserch Energy Services, Inc., (Purchaser). The Service Agreement specifies that the Purchaser has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

NMPC is (a) generally requesting an effective date of May 1, 1999, for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER99–3019–000]

Take notice that on May 24, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed form Service Agreements between NMPC and multiple parties (Purchasers). The Service Agreements specify that the Purchasers have signed on to and have agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and the Purchasers to enter into separately scheduled transactions under which NMPC will sell to the Purchasers capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for each Purchaser.

NMPC is (a) generally requesting an effective date of May 1, 1999, for the agreements, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission, and the companies included in a Service List enclosed with the filing.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Avista Corporation

[Docket No. ER99–3020–000]

Take notice that on May 24, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 of the Commission Rules and Regulations, an executed Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 9, with PacifiCorp Power Marketing, Inc.

Avista Corporation requests waiver of the prior notice requirement and that the Service Agreement be accepted for filing effective May 1, 1999.

Copies of this filing have been served upon the PacifiCorp Power Marketing, Inc.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER99–3021–000]

Take notice that on May 24, 1999, Western Resources, Inc., tendered for filing two long-term firm transmission agreements between Western Resources and the Cities of Fredonia and Neodesha, Kansas. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission.

The agreements are proposed to become effective June 1, 1999.

Copies of the filing were served upon the Cities of Fredonia and Neodesha, Kansas, and the Kansas Corporation Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Indeck Pepperell Power Associates Inc.

[Docket No. ER99–3022–000]

Take notice that on May 24, 1999, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement (Service Agreement) between Indeck Pepperell and New Energy Ventures, Inc. (NEV) dated May 14, 1999, for service under Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of May 21, 1999.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Company of Colorado

[Docket No. ER99–3025–000]

Take notice that on May 21, 1999, Public Service Company of Colorado (PSCo), tendered for filing a Rate Schedule, Temporary Purchases of Electricity from Non-QF Small Independent Power Producers, under which PSCo may purchase energy or capacity and energy from small independent power producers meeting certain specified requirements.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Western Resources, Inc.

[Docket No. ER99–3026–000]

Take notice that on May 24, 1999, Western Resources, Inc. (Western Resources), tendered for filing a proposed change in its Rate Schedule FERC No. 264 and to Kansas Gas and Electric's (KGE) Rate Schedule FERC No. 183. Western Resources states that the change is in accordance with its Electric Power, Transmission and Service Contract with Kansas Electric Power Cooperative (KEPCo) and further that the proposed change for KGE is in accordance with the Electric Power, Transmission and Service contract between KGE and KEPCo. Revised Exhibits B set forth Nominated Capacities for transmission, distribution and dispatch service for the contract year beginning June 1, 1999 and for the four subsequent contract years, pursuant to Article IV, Section 4.1 of Rate Schedule FERC Nos. 264 and 183. Revised Exhibits C set forth KEPCO's Nominated Capacities for the Points of Interconnection, pursuant to Article IV, Section 4.1 of Rate Schedule FERC Nos. 264 and 183. Revised Exhibits D set forth KEPCo's load forecast and KEPCo's Capacity Resources intended to provide

power and energy to meet the forecast requirements for ten years into the future, pursuant to Article V, Section 5.1 of Rate Schedule FERC Nos. 264 and 183.

Copies of the filing were served upon Kansas Electric Power Cooperative, Inc., and the Kansas Corporation Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3027–000]

Take notice that on May 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 56 to add Florida Power & Light Company and FPL Energy Power Marketing, Inc., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is May 21, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Company

[Docket No. ER99–3028–000]

Take notice that on May 24, 1999, Arizona Public Service Company (APS), tendered for filing a revised Contract Demand Exhibit for the Bureau of Indian Affairs (BIA) on behalf of San Carlos Indian Irrigation Project (SCIP) applicable under the APS–FERC Rate Schedule No. 201.

Current rate levels are unaffected, and revenue levels will decrease from those currently being assessed, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the BIA and the Arizona Corporation Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Central Hudson Gas and Electric Corporation

[Docket No. ER99–3029–000]

Take notice that on May 24, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and TransAlta Energy Marketing (U.S.) Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Energy Corporation

[Docket No. ER99–3030–000]

Take notice that on May 24, 1999, Duke Energy Corporation (Duke), tendered for filing a compliance filing in the above-referenced docket involving transmission loading relief procedures.

Duke states that a copy has been served on the Service List in this proceeding.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Duke Energy Corporation

[Docket No. ER99–3031–000]

Take notice that on May 24, 1999, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with West Penn Power d/b/a Allegheny Energy, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective upon acceptance by the Commission.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Duquesne Light Company

[Docket No. ER99–3032–000]

Take notice that on May 24, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Enron Power Marketing, Inc. (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 24, 1998.

Copies of this filing were served upon Customer.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Complete Energy Services, Inc.

[Docket No. ER99–3033–000]

Take notice that on May 24, 1999, Complete Energy Services, Inc. (Complete), petitioned the Commission for acceptance of Complete Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Complete intends to engage in wholesale electric power and energy purchases and sales as a marketer. Complete is not in the business of generating or transmitting electric power.

Comment date: June 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14471 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2028–000, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

June 1, 1999.

Take notice that the following filings have been made with the Commission:

1. PJM Interconnection, L.L.C.

[Docket No. ER99–2028–000]

Take notice that on May 25, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., in compliance with the Commission's order in PJM Interconnection, L.L.C., 87 FERC ¶61,054 (1999), concerning Fixed Transmission Rights auctions.

PJM requests an effective date of April 13, 1999, for the amendment.

Copies of this filing were served upon each entity on the official service list compiled by the Secretary in Docket No. ER99–2028–000, all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket Nos. ER99–237–003 and ER96–58–004]

Take notice that on May 26, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company tendered for filing a compliance filing regarding Amendment No. 2, to the Allegheny Power Pro Forma Open Access Transmission Tariff. This filing was intended to comply with the Commission's order issued on April 6, 1999 in Docket Nos. ER99–58–002 and ER99–237–001. Allegheny Power Service Corporation submitted an Amended Filing, which fills in certain information about effective dates of Transmission Service Customers' contracts, omitted from the Compliance Filing.

Copies of the amended filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Cleco Corporation

[Docket No. ER99–2033–001]

Take notice that on May 25, 1999, Cleco Corporation (Cleco), tendered for filing a notice that it intends to comply with the NERC interim TLR procedures which the Commission accepted on May 12, 1999 in EL98–52–000.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Astoria Gas Turbine Power LLC, Arthur Kill Power LLC, Huntley Power LLC, and Dunkirk Power LLC

[Docket Nos. ER99–2160–002, ER99–2161–001, ER99–2162–001, ER99–2168–001]

Take notice that on May 25, 1999, Astoria Gas Turbine Power LLC, Arthur Kill Power LLC, Huntley Power LLC, and Dunkirk Power LLC made compliance filings in accordance with the order conditionally accepting their rate filings in Rocky Road Power, LLC et al., 87 FERC ¶61,163 (1999).

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER99–3034–000]

Take notice that on May 25, 1999, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/close-out agreement between PNM and El Paso Power Services Company. PNM requested waiver of the Commission's notice requirement so that service under the PNM/El Paso netting agreement may be effective as of May 1, 1999.

Copies of the filing were served on El Paso and the New Mexico Public Regulation Commission.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER99–3035–000]

Take notice that on May 25, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with PP&L Energy Plus (Energy Plus) under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Energy Plus.

NUSCO requests that the Service Agreement become effective June 1, 1999.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3036–000]

Take notice that on May 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3037–000]

Take notice that on May 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Indianapolis Power & Light Company

[Docket No. ER99–3038–000]

Take notice that on May 25, 1999, Indianapolis Power & Light Company (IPL), tendered for filing an interchange agreement between IPL and Dayton Power & Light Company (Dayton P&L).

Copies of this filing were served on Dayton P&L, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER99–3039–000]

Take notice that on May 25, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of May 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Indiana Michigan Power Company

[Docket No. ER99–3040–000]

Take notice that on May 25, 1999, Indiana Michigan Power Company (I&M Power), will terminate the service that it currently provides to the City of Sturgis, Michigan (Sturgis) under the Municipal Resale Service Agreement dated May 8, 1968 with an effective date of July 24, 1968. Sturgis is served under Indiana Michigan Power Company's FERC Electric Tariff MRS, Original Volume No. 1, and the Municipal Resale Service Agreement.

I&M Power is terminating the Municipal Resale Service Agreement at Sturgis' request. Sturgis has notified I&M Power that it intends to terminate the Municipal Resale Service Agreement effective July 24, 1999.

This notice of termination has been served upon City Manager for Sturgis and the Michigan Public Service Commission.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER99–3041–000]

Take notice that on May 25, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of May 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER99–3042–000]

Take notice that on May 25, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of May 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER99–3043–000]

Take notice that on May 25, 1999, Entergy Services, Inc. (Entergy Services), citing as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (the Entergy Operating Companies), tendered for filing six copies of a revised form of Network Integration Transmission Service Agreement between Entergy Services and Entergy Services acting as agent for the Entergy Operating Companies.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Reliant Energy HL&P

[Docket Nos. ER99–3046–000 and ER97–2524–000]

Take notice that on May 25, 1999, Reliant Energy HL&P (Reliant), tendered for filing a notice of succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16. As a result of a name change, Reliant is succeeding to the FERC Electric Tariff Third Revised Volume No. 1, of Houston Lighting & Power Company, effective May 7, 1999.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER99–3047–000]

Take notice that on May 20, 1999, South Carolina Electric & Gas Company (SCE&G), tendered a service agreement establishing Koch Energy Trading, Inc., as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Koch Energy Trading, Inc., and the South Carolina Public Service Commission.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3048–000]

Take notice that on May 26, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to FPL Energy Power Marketing, Inc., (FPL).

Con Edison states that a copy of this filing has been served by mail upon FPL.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3049–000]

Take notice that on May 26, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Florida Power & Light Company (FP&L).

Con Edison states that a copy of this filing has been served by mail upon FP&L.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Little Bay Power Corporation

[Docket No. ER99–3050–000]

Take notice that on May 26, 1999, Little Bay Power Corporation (Little Bay), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting Little Bay's FERC Electric Rate Schedule No. 1, to be effective on June 26, 1999.

Little Bay intends to engage in electric power and energy transactions as a marketer and a broker. In addition, Little Bay seeks authority to sell certain ancillary services into the New England Power Pool. In transactions where Little Bay sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Georgia Power Company

[Docket No. ER99–3051–000]

Take notice that on May 26, 1999, Georgia Power Company tendered for filing a Memorandum of Understanding, regarding application of the New Southern Companies open access transmission tariff rates to the Pseudo Scheduling and Services Agreement by and among itself and the Municipal Electric Authority of Georgia.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corporation

[Docket No. ER99–3052–000]

Take notice that on May 26, 1999, Central Vermont Public Service Corporation (CVPS), tendered for filing the Actual 1998 Cost Report required under Article 2.4 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of Central Vermont under which Central Vermont provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department
Rochester Electric Light and Power Company
Woodsville Fire District Water and Light Department

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER99–3053–000]

Take notice that on May 26, 1999, Central Vermont Public Service Corporation (CVPS), tendered for filing the Actual 1998 Cost Report required under Paragraph Q–1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc., (Customer). The Company states that the Cost Report reflects changes to the RS–2 Rate Schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Maine Electric Power Company

[Docket No. ER99–3054–000]

Take notice that on May 26, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point transmission service entered into with FPL Energy Power Marketing, Inc., (FPLP). Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO–FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Maine Electric Power Company

[Docket No. ER99–3055–000]

Take notice that on May 26, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with Great Bay Power Corporation. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO–FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Maine Electric Power Company

[Docket No. ER99–3056–000]

Take notice that on May 26, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with Florida Power & Light Company (FPLP). Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO–FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–3057–000]

Take notice that on May 26, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Merchant Energy Group of the Americas, Inc. (Merchant Energy), dated May 24, 1999. This Service Agreement specifies that Merchant Energy has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and Merchant Energy to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 24, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Illinois Power Company

[Docket No. ER99–3058–000]

Take notice that on May 26, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which PP&L Energy Plus will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1999.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Carolina Power & Light Company

[Docket No. ER99–3059–000]

Take notice that on May 26, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with UtiliCorp United Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Otter Tail Power Company

[Docket No. ER99–3061–000]

Take notice that on May 26, 1999, Otter Tail Power Company (OTP), tendered for filing a Service Agreement between OTP and Illinois Power Company. The Service Agreement allows Illinois Power to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: June 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14472 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 2, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license for the nonproject use of project lands and waters.

b. *Project No.:* 2512–043.

c. *Date Filed:* May 13, 1999.

d. *Applicant:* Elkem Metals Company.

e. *Name of Project:* Hawks Nest-Glen Ferris.

f. *Location:* Fayette County, West Virginia. The water withdrawal site does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) to 825(r).

h. *Applicant Contacts:* J.L. Simpson, Elkem Metals Company, P.O. Box 613, Alloy, WV 25002, Telephone 304–779–3200; Amy S. Koch, Counsel to Elkem Metals Company, Cameron McKenna LLP, 2175 K Street, N.W., Fifth Floor, Washington, DC 20037, Telephone 202–366–0060.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haimes@ferc.fed.us.

j. *Deadline for filing comments and or motions:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2512–043) on any comments or motions filed.

k. *Description of Proposal:* Elkem Metals Company, licensee, requests Commission authorization to grant an easement to the West Virginia-American Water Company for the construction and operation of a raw water intake and pump station with a capacity to withdraw 4 million gallons per day from Hawks Nest Lake (New River). Proposed facilities would include: two 24-inch-diameter, buried, ductile iron, raw water intake lines, equipped with traveling screens designed to minimize fish impingement and entrainment; a vertical turbine pump station; and a 24-inch-diameter, discharge transmission main, which would deliver water to the new Fayette Plateau water purification plant to be constructed near Fayetteville, West Virginia.

l. *Locations of the application:* Copies of the application are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h above.

m. *Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—All filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulation to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative

of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14423 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Reservoir Drawdown and Soliciting Comments, Motions To Intervene, and Protests

June 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to Amend Article 401 of the License.

b. *Project No.:* 2689–021.

c. *Date Filed:* May 25, 1999.

d. *Applicant:* N.E.W. Hydro, Incorporated.

e. *Name of Project:* Oconto Falls Project.

f. *Location:* The project is located on the Oconto River, in Oconto Falls, Oconto County, Wisconsin. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Loyal Gake, N.E.W. Hydro Inc., P.O. Box 167, Neshkoro, WI 54960, (920) 293–4628.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon at (202) 208–7774, or e-mail address diana.shannon@ferc.fed.us.

j. *Deadline for filing comments and or motions:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (2689–021) on any comments or motions filed.

k. *Description of Amendment:* Article 401 requires the licensee to operate the project in a run-of-river mode with a reservoir operating range of 701.92 ±0.3 feet NGVD. The licensee requests that article 401 only require a minimum reservoir operating level. The licensee states the current operating range does not allow the fixed crest spillway to be used to spill flow in excess of the project's hydraulic capacity and the existing spillway gate has only limited utility.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the website at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14424 Filed 6–7–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–6]

Agency Information Collection Activities; Health and Safety Data Reporting; Submission of ICR No. 1031.06 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c) Health and Safety Data Reporting Rule)," (EPA ICR No. 1031.06; OMB Control No. 2070–0017) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on July 31, 1999. A FEDERAL REGISTER document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 14, 1999 (64 FR 2488). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download a copy of the ICR off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1031.06.

ADDRESSES: Send comments, referencing EPA ICR No. 1031.06 and OMB Control No. 2070–0017, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, S.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1031.06; OMB Control No. 2070–0017.

Current Expiration Date: Current OMB approval expires on July 31, 1999.

Title: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c) Health and Safety Data Reporting Rule).

Abstract: Section 8(c) of the Toxic Substances Control Act (TSCA) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company.

Responses to the collection of information are mandatory (see 40 CFR part 717). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between 0.25 hours and 8.0 hours per response, depending upon the requirements that the collection places on each respondent, for an estimated 7,397 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated No. of Respondents: 7,397.

Estimated Total Annual Burden on Respondents: 30,279 hours.

Frequency of Collection: On occasion.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: June 3, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–14497 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–5]

Agency Information Collection Activities; Significant New Use Rules for Existing Chemicals; Submission of ICR No. 1188.06 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals," [EPA ICR No. 1188.06; OMB Control No. 2070–0038] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on July 31, 1999. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 14, 1999 (64 FR 2488). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before July 8, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download a copy of the ICR off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1188.06.

ADDRESSES: Send comments, referencing EPA ICR No. 1188.06 and OMB Control No. 2070–0038, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, SW., Washington, DC 20460;

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1188.06; OMB Control No. 2070–0038.

Current Expiration Date: Current OMB approval expires on July 31, 1999.

Title: TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) and regulations at 40 CFR part 721 provide EPA with a regulatory mechanism to monitor and, if necessary, control significant new uses of chemical substances. Section 5 authorizes EPA to determine by rule (a significant new use rule or SNUR), after considering all relevant factors, that a use of a chemical substance represents a significant new use. If EPA determines that a use of a chemical substance is a significant new use, section 5 requires persons to submit a notice to EPA at least 90 days before

they manufacture, import, or process the substance for that use.

EPA uses the information obtained through this collection to evaluate the health and environmental effects of the significant new use. EPA may take regulatory actions under TSCA section 5, 6 or 7 to control the activities for which it has received a SNUR notice. These actions include orders to limit or prohibit the manufacture, importation, processing, distribution in commerce, use or disposal of chemical substances. If EPA does not take action, section 5 also requires EPA to publish a **Federal Register** document explaining the reasons for not taking action.

Responses to the collection of information are mandatory (see 40 CFR part 721). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between approximately 1 hour and 119 hours per response, depending upon the requirements that the collection places on each respondent, for an estimated 3 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated No. of Respondents: 3.

Estimated Total Annual Burden on Respondents: 1,032 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is an increase (from 237 hours to 1,032 hours) in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB. This increase reflects the inclusion, overlooked in previous requests for renewal of this information collection, of the customer notification burden, plus updating estimates based on historical information on the numbers of significant new use rules promulgated by EPA.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: June 3, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–14498 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–2]

Science Advisory Board; Emergency Federal Register Notice of Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Advisory Council on Clean Air Compliance Analysis of the Science Advisory Board (SAB) will hold a public teleconference on Tuesday, June 22, 1999, from 1:00–2:30 pm Eastern time.

At this teleconference the Council will review two draft Advisories prepared by subcommittees of the Council. The first Advisory was developed by the Air Quality Modeling Subcommittee (AQMS) of the Council after the AQMS public meeting on May 4 & 5, 1999. The draft is entitled The Clean Air Act Amendments (CAAA) Section 812 Prospective Study of Costs and Benefits (1999): Advisory by the Air Quality Models Subcommittee on Modeling and Emissions. The second Advisory was developed by the Health and Ecological Effects Subcommittee (HEES) of the Council after its public meeting on April 21 & 22, 1999. The draft is entitled The Clean Air Act Amendments (CAAA) Section 812 Prospective Study of Costs and Benefits (1999): Advisory by the Health and Ecological Effects Subcommittee on Initial Assessments of Health and Ecological Effects; Part 1. Both the AQMS Meeting and the HEES meeting were announced in the **Federal Register** [See 64 15160 March 30, 1999]. For further information concerning the teleconference described in this section, please contact the individuals listed below. This Teleconference will be hosted out of the Science Advisory Board Conference Room (Room M3709), U.S. Environmental Protection Agency, Washington DC 20460.

FOR FURTHER INFORMATION CONTACT:

(a) *Contacting Program Office Staff and Obtaining Review Materials*—To obtain copies of the draft documents pertaining to the CAA Section 812 Prospective Study that had been submitted to the AQMS or the HEES for their review, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–5580; FAX (202) 260–9766, or via e-mail at <jefferson.catrice@epa.gov>. To discuss technical aspects of the draft document pertaining to the CAAA–90 Section 812 Prospective Study: Report to Congress, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via e-mail at: <democker.jim@epa.gov>.

(b) *Contacting SAB Staff and Obtaining Meeting Information*—To obtain copies of the meeting agenda, rosters of participants, or copies of the draft Advisories, please contact Ms. Diana L. Pozun, Management Assistant to the Council, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; at Tel. (202) 260–8432; FAX (202) 260–7118; or via e-mail: <pozun.diana@epa.gov>. The draft Advisories will also be posted on the SAB website at HTTP://WWW.EPA.GOV/SAB. To discuss technical or logistical aspects of the Council and its subcommittee review process or to submit written comments, please contact Dr. Angela Nugent, Designated Federal Officer (DFO) to the Council, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, (Tel. (202) 260–4126; FAX (202) 260–7118; or via e-mail: <nugent.angela@epa.gov>), or Mr. Sam Rondberg, DFO, at: Tel. (301) 812–2560; or via e-mail: <samuelr717@aol.com> (Mr. Rondberg will be the DFO during the teleconference). To obtain information concerning the teleconference and how to participate in the SAB Conference Room or to call in, please contact Ms. Pozun.

(c) *Providing Public Comments to the SAB*—To request time to provide brief oral comments at the meeting, please contact Ms. Pozun *in writing* by mail, FAX or e-mail at the address given above no later than 12 noon on Thursday, June 16, 1999. Please be sure to provide a summary of the issue you intend to present, your name and address (incl. phone, fax and e-mail) and the organization (if any) you will represent.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board (SAB) expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment at face-to-face meetings will be usually limited to ten minutes per speaker. At teleconference meetings, speakers will be usually limited to three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting), may be mailed to the committees or its respective subcommittees prior to its meeting; comments received too close to the meeting date will normally be provided to the Council and its subcommittees at the meeting. Written comments may be provided up until the time of the meeting.

Dated: June 2, 1999.

John R Fowle. III,

Acting Director, Science Advisory Board.

[FR Doc. 99–14354 Filed 6–7–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; comments requested

June 1, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0550.

Title: FCC Form 328 Local Franchising Authority Certification.

Form Number: FCC Form 328.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal governments.

Number of Respondents: 40.

Estimated Time Per Response: 30 minutes.

Frequency of Response: On occasion filing requirement.

Total Annual Burden: 20 hours.

Total Annual Cost: $80.

Needs and Uses: On May 3, 1993, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking,* MM Docket No. 92–266, FCC 93–177; In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation. Among other things, the *Report and Order* implemented Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 wherein a local franchise authority ("LFA") must file with the Commission a written certification when it seeks to regulate basic service cable rates. Subsequently, the Commission developed FCC Form 328 to provide a standardized, simple form for LFAs to use when requesting certification. The data derived from Form 328 filings are used by Commission staff to ensure that an LFA has met the criteria specified in Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 for regulating basic service rates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14490 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) being Reviewed by the Federal Communications Commission.

June 1, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0309.

Title: Section 74.1281 Station Records.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 3,150 FM translator and FM booster stations.

Estimated Time Per Response: 1 hour per station.

Frequency of Response: Recordkeeping.

Total Annual Burden: 3,150.

Needs and Uses: Section 74.1281 requires that licensees of FM translator/booster stations maintain adequate records. These records include the current instrument of authorization, official correspondence with FCC, maintenance records, contracts, permission for rebroadcasts and other pertinent documents. They also include entries concerning any extinguishment or improper operation of tower lights. The data is used by FCC staff in investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14491 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) being Reviewed by the Federal Communications Commission.

June 1, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0053.

Title: Application for Consent to Transfer of Control of Corporation Holding Station License.

Form Number: FCC 703.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other For-Profit.

Number of Respondents: 2,000.

Estimated Time Per Response: 36 minutes.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 1200 hours.

Needs and Uses: This collection of information is used to determine eligibility for licenses. Without this information, violations of ownership regulations could occur. FCC Rules require that applicants in the Private Land Mobile (Part 90), General Mobile (Part 95), Marine (Part 80), Aviation (Part 87) and Experimental (Part 5) Radio Services submit FCC 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station.

The form is required by the Communications Act of 1934, as amended; International Radio Regulations, General Secretariat of International Telecommunications Union and FCC Rules—47 CFR 1.922, 1.924, 5.55, 80.19, 87.21, 87.31, 90.119, and 95.111.

The form is being revised to delete the collection of payment type information. This information is submitted on FCC Form 159 (Remittance Advice) now required with any payment to the FCC. The instructions, privacy act and public burden statements are being updated as well. The number of respondents and total annual burden have increased as the result of a re-evaluation of receipts. Total burden per response remains at 36 minutes. Total respondent costs are being adjusted to $90,000 as the result of increase in respondents.

Federal Communications Commission.

Magalie Roman Salas

Secretary

[FR Doc. 99–14494 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission MeetingThursday, June 10, 1999

June 3, 1999.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 10, 1999, which is scheduled to commence at 9:30 a.m. in Room TW-C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	WIRELESS TELE-COMMUNICATIONS.	TITLE: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services.

Item No.	Bureau	Subject
		SUMMARY: The Commission will consider a Fourth Report fulfilling the requirement of 47 U.S.C. Section 332(c)(1)(c) (the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI, Section 6002(b)), which directs the Commission to annually report on the state of competition with respect to commercial mobile radio services.
2	WIRELESS TELE-COMMUNICATIONS.	TITLE: Calling Party Pays Service Option in the Commercial Mobile Radio Service (WT Docket No. 97–207). SUMMARY: The Commission will consider further action relating to the calling party pays option provided by CMRS providers.
3	WIRELESS TELE-COMMUNICATIONS.	TITLE: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services (PR Docket No. 92–235). SUMMARY: The Commission will consider a Third Memorandum Opinion and Order that addresses petitions for reconsideration regarding centralized trunking of private land mobile channels below 512 MHz.
4	WIRELESS TELE-COMMUNICATIONS.	TITLE: Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services (WT Docket No. 98–20); Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States (WT Docket No. 96–188, RM–8677); and Amendment of Part 95 of the Commission's Rules to Allow Organizational Licensing in the GMRS (RM–9107). SUMMARY: The Commission will consider a Memorandum Opinion and Order on Reconsideration that addresses petitions for reconsideration pertaining to the operation of the Uuniversal Licensing System.
5	WIRELESS TELE-COMMUNICATIONS.	TITLE: Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services (WT Docket No. 98–20); and Assessment and Collection of Charges for FCC Proprietary Remote Software Packages, On-Line Communications Service Charges, and Bidder's Information Packages in Connection with Auctionable Services (WT Docket No. 95–59). SUMMARY: The Commission will consider a Second Report and Order concerning Internet access to ULS and auctions database information.
6	WIRELESS TELE-COMMUNICATIONS.	TITLE: Promotion of Competitive Networks in Local Telecommunications Markets; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; and Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules to Preempt State and Local Imposition of Discriminatory and/or Excessive Taxes and Assessments (CC Docket No. 96–98). SUMMARY: The Commission will consider further action relating to the promotion of facilities-based competition in the local tele-communications marketplace.
7	COMMON CARRIER	TITLE: Low-Volume Long-Distance Users. SUMMARY: The Commission will consider an inquiry into proposals to ameliorate the impact on low-volume long-distance consumers of flat-rated charges assessed by interexchange carriers.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857-3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966-1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14646 Filed 6–4–99; 3:27 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2339]

Petitions for Reconsideration of Action in Rulemaking Proceedings

May 26, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 23, 1999. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Defining Primary Lines (CC Docket No. 97–181).

Number of Petitions Filed: 4.

Subject: Communications Assistance for Law Enforcement Act (CC Docket No. 97–213).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14492 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2332]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

Dated: June 1, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 23, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 (CC Docket No. 94–129); Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers.

Number of Petitions Filed: 12.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14493 Filed 6–7–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–201076.

Title: Joint Ports & Terminals Association.

Parties: Gulf Seaports Marine Terminal Conference, South Atlantic Marine Terminal Conference, Elizabeth River Terminals, Lambert Point Docks, Virginia Port Authority, Virginia International Terminals, Hampton Roads Shipping.

Synopsis: The proposed agreement updates the authority and membership of the current agreement.

Agreement No.: 224–201078.

Title: San Francisco—Trans-Pacific Terminal Use Agreement.

Parties: The City and County of San Francisco: The San Francisco Port Commission, Trans-Pacific Lines Ltd.

Synopsis: The proposed agreement between the parties provides for the non-exclusive use of certain marine facilities. The agreement runs through May 31, 2004.

Dated: June 3, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–14489 Filed 6–7–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 22, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Kirk E. Boatright; Anthony R. and Ruth Ann Stockton; Gary D. and V. Sue Chapman; Harvey L. and Paula K. Chaffin, all of Tahlequah, Oklahoma; Charles R. and L. Darlene Bynum; and Loyal T. and Susan Chapman Plumb, all of Park Hill, Oklahoma; to acquire voting shares of Fort Gibson Bancshares, Inc., Fort Gibson, Oklahoma, and thereby indirectly acquire voting shares of Fort Gibson State Bank, Fort Gibson, Oklahoma.

Board of Governors of the Federal Reserve System, June 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14396 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Lloyd A. Amundson Qualified Annuity Trust, Sioux Falls, South Dakota; to acquire voting shares of First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire voting shares of First Security Bank, Sleepy Eye, Minnesota, and Capital Bank, St. Paul, Minnesota.

2. Lloyd A. Amundson Qualified Annuity Trust, Sioux Falls, South Dakota; to acquire voting shares of Lake Benton Bancorporation, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire voting shares of First Security Bank Lake Benton, Lake Benton, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Stockmens Limited Partnership, Rushville, Nebraska; to acquire voting shares of Stockmens Financial Corporation, Rushville, Nebraska, and thereby indirectly acquire voting shares of The Security Bank, Sidney, Nebraska, and The Stockmens National Bank of Rushville, Rushville, Nebraska.

Board of Governors of the Federal Reserve System, June 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14486 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *Union Bankshares, Inc.*, Morrisville, Vermont; to acquire 100 percent of the voting shares of Citizens Savings Bank & Trust Company, St. Johnsbury, Vermont.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *Community First Bankshares, Inc.*, Fargo, North Dakota; to acquire 100 percent of the voting shares of Valley National Corporation, El Cajon, California, and thereby indirectly acquire Valle de Oro National Association, Spring Valley, California.

2. *Mille Lacs Bancorporation, Inc.*, Onamia, Minnesota; to acquire 100 percent of the voting Rural American Bank Hinckley, Hinckley, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Texas Unites Bancshares, Inc.*, La Grange, Texas; to acquire 100 percent of the voting shares of First State Bank, Dime Box, Texas.

Board of Governors of the Federal Reserve System, June 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14397 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *BB&T Corporation*, Winston-Salem, North Carolina; to merge with Matewan Bancshares, Inc., Williamson, West Virginia, and thereby indirectly acquire Matewan National Bank, Williamson, West Virginia.

In connection with this application, Applicant also has applied to acquire Matewan Bank, FSB, Pikeville, Kentucky, and thereby engage in traditional thrift activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and thereby indirectly acquire Matewan Venture Fund, Inc., Williamson, West Virginia, and thereby engage in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, June 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14485 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 23, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Banque Nationale de Paris*, Paris, France; to acquire Charter Atlantic Corporation, New York, New York, and thereby engage in acting as investment advisor to any person, pursuant to § 225.28(b)(6) of Regulation Y; in providing securities brokerage services and incidental activities, as agent for the account of customers, pursuant to § 225.28(b)(7)(i) of Regulation Y; in buying and selling in the secondary market all types of securities on the order of customers as a riskless principal, pursuant to § 225.28(b)(7)(ii) of Regulation Y; in acting as agent in the private placement of all types of securities, including providing related advisory services, pursuant to § 225.28(b)(7)(iii) of Regulation Y; in providing to customers as agent transactional services, pursuant to § 225.28(b)(7)(v) of Regulation Y; in engaging as principal in (i) underwriting and dealing in governmental obligations and money market instruments, pursuant to § 225.28(b)((8)(i) of Regulation Y, and in investing and trading in: foreign exchange, and forward contracts, options, futures, options on futures, swaps and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset, nonfinancial asset or group of assets, pursuant to § 225.28(b)((8)(ii) of Regulation Y; and in serving as the investment advisor to and the general partner of, and holding and placing equity interests in, certain investment funds which invest only in securities and other instruments which Notificant would be permitted to hold directly under the Bank Holding Company Act, including acting as a commodity pool operator for private investment funds organized as commodity pools, see *USB AG*, 84 Fed. Res. Bull. 684 (1998).

Board of Governors of the Federal Reserve System, June 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14484 Filed 6–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, June 14, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14654 Filed 6–4–99; 3:56 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Workshop: U.S. Perspective on Consumer Protection in the Global Electronic Marketplace

AGENCY: Federal Trade Commission.

ACTION: Notice Announcing Dates and Location of Workshop, and Publishing Workshop Agenda.

SUMMARY: The Federal Trade Commission has: (1) confirmed June 8–9, 1999 from 8:15 a.m. to 6:00 p.m. as the dates and times for its public workshop entitled "U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace," announced in 63 FR 69289 (December 16, 1999); (2) announced the location of the workshop to be the Federal Trade Commission headquarters at 600 Pennsylvania Avenue, N.W., Rooms 432 and 332; (3) published the agenda for the workshop; and (4) announced it will reopen the period for public comments from June 8, 1999 to July 1, 1999.

WORKSHOP INFORMATION: The public workshop will be held at the Federal Trade commission headquarters, 600 Pennsylvania Avenue, N.W., Washington, DC, Rooms 432 and 332 on June 8, and June 9, 1999 form 8:15 a.m. to 6:00 p.m. on both dates. The workshop is open to the public, and there is no formal registration process for those wishing to attend. Seating is limited, but overflow rooms will be available.

Agenda

Tuesday, June 8, 1999

8:15 a.m.—Registration and Breakfast
9:00 a.m.—Introductory Remarks
9:45 a.m.—International Business-to-Consumer Commerce: Four Perspectives
- Technological Perspective (9:45 a.m.–10:15 a.m.)
- Consumers' Perspective (10:15 a.m.–11:15 a.m.)
- Industry Perspective (11:30 a.m.–12:30 p.m.)
- Law Enforcement Perspective 12:30 p.m.–1:15 p.m.)

1:15 p.m.—Lunch
2:15 p.m.—Breakout Sessions
Breakout Session 1: Core Protections for Consumers
- Online Disclosures (2:15 p.m.–4:00 p.m.)
- General Disclosures
- Contract-Related Disclosures
- Fair Business Practices and Contractual Protections (4:00 p.m.–5:00 p.m.)

Breakout Session 2: Consumer Concerns about Authentication in International Transactions
- Technological Solutions Now Available (2:30 p.m.–3:15 p.m.)
- Benefits and Risks Associated with Current Technology (3:30 p.m.–4:15 p.m.)
- International Transactions (4:15 p.m.–5:00 p.m.)

5:00 p.m.—Overview Remarks and Summary of Breakout Sessions

Wednesday, June 9, 1999

8:15 a.m.—Registration and Breakfast
9:00 a.m.—Consumer Protection Frameworks in Global Electronic Commerce: Opening Remarks
10:00 a.m.—Overview of the History and Future of the Internet
10:30 a.m.—Jurisdiction and Choice of Law for Consumer Protection on the Internet: US Perspectives (10:30 a.m.–12:30 p.m.)
12:30 p.m.—Lunch
1:30 p.m.—Breakout Sessions
Breakout Session 1: Alternative Frameworks: Role and Efficacy of Private Sector Initiatives
Breakqut Session 2: Alternative Frameworks: Role and Efficacy of International Bodies and Agreements
3:00 p.m.—Jurisdiction and Choice of Law: International Perspectives
4:40 p.m.—
4:40 p.m.—Report on June 9 Breakout Sessions
5:00 p.m.—Next Steps: What should government, industry, and consumers do now?

REOPENING OF COMMENT PERIOD: Interested parties, including academics,

industry members, consumer advocates, and government representatives, are requested to submit written comments on any issue of fact, law, or policy addressed at the workshop.

DATES: Written comments may be submitted between June 8, 1999 and July 1, 1999.

COMMENT SUBMISSION PROCEDURE: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., N.W., Washington, D.C., 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and accessibility to the public, responses also should be submitted, if possible, in electronic form, on either one 5¼ or one 3½ inch computer disk, with a disk label stating the name of the submitter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII tex format.) Alternatively, the Commission will accept responses submitted to the following e-mail address <EMarketplace@ftc.gov>. All submissions should be captioned: "U.S. Perspectives on Consumer Protection in the Global electronic Marketplace—Comment, P994312."

FOR FURTHER INFORMATION: A complete and current agenda, including the list of participants, and all public comments submitted in connection with the workshop can be found at the Federal Trade Commission Web site at <http://www.ftc.gov/bcp/icpw>. For further questions about the workshop, contact either: Lisa Rosenthal, Legal Advisor for International Consumer Protection, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–2249, e-mail<lrosenthal@ftc.gov>; or Jonathan Smollen, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–3457, e-mail <jsmollen@ftc.gov>.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–14550 Filed 6–4–99; 1:53 pm]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–242, Supplement 1]

Placement of Commercial Antennas on Federal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: This supplement extends the expiration date of GSA Bulletin D–242, Placement of Commercial Antennas on Federal Property, published in the **Federal Register** on June 16, 1997 (62 FR 32611). The expiration date of the bulletin, June 30, 1999, has been extended indefinitely. The bulletin contains information of a continuing nature and will remain in effect until specifically canceled.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, at 202–501–1737.

Dated: May 28, 1999.

David L. Bibb,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–14335 Filed 6–7–99; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–246, Supplement 1]

Assessment of Fees and Recovery of Costs for Antennas of Federal Agencies and Public Service Organizations

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: This supplement extends the expiration date of GSA Bulletin D–246, Assessment of Fees and Recovery of Costs for Antennas of Federal Agencies and Public Service Organizations, published in the **Federal Register** on March 4, 1998 (63 FR 10631). The expiration date of the bulletin, June 30, 1999, has been extended indefinitely. The bulletin contains information of a continuing nature and will remain in effect until specifically canceled.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, at 202–501–1737.

Dated: May 28, 1999.

David L. Bibb,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–14336 Filed 6–7–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of FY 1998 Funds for Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of determination concerning funds available for reallotment.

SUMMARY: Notice is hereby given that a preliminary determination has been made that fiscal year (FY) 1998 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment *to States, territories, and Tribes and tribal organizations receiving FY 1999 direct LIHEAP funding.* No subgrantees or other entities may apply for the funds. Section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 et seq.), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal, an amount in excess of certain levels allotted to a grantee for any fiscal year will not be used by the grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted to LIHEAP grantees during the following fiscal year. If reallotted, the LIHEAP block grant allocation formula will be used to distribute the funds. (No funds may be allotted to entities that are not direct LIHEAP grantees during FY 1999.) It has been determined that $2,381,450.52 may be available for reallotment during FY 1999. This determination is based on revised reports from the State of North Carolina and the Delaware Tribe of Oklahoma, which were submitted to the Office of Community Services as required by 45 CFR 96.82.

The statute allows grantees who have funds unobligated at the end of the fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess

of this amount must be returned to DHHS and are subject to reallotment under section 2607(b)(1) of the Act. The amount described in this notice was reported as unobligated FY 1998 funds in excess of the amount that the State of North Carolina and the Delaware Tribe of Oklahoma could carry over to FY 1999.

The State of North Carolina was notified by certified mail that $2,375,000 of its FY 1998 funds may be reallotted. Additionally, the Delaware Tribe of Oklahoma was notified by certified mail that $6,450.52 of its FY 1998 funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officers of the State of North Carolina and of the Delaware Tribe of Oklahoma have 30 days from the date of the letter to submit comments to: Donald Sykes, Director, Office of Community Services, 3701 L'Enfant Promenade, SW, Washington, DC 20047. The comment period expires July 8, 1999.

After considering any comments submitted, the Chief Executive Officers will be notified of the decision, and the decision also will be published in the **Federal Register**. If funds are reallotted, they will be allocated in accordance with section 2604 of the Act and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 1999. As FY 1999 funds, they will be subject to all requirements of the Act, including section 2607(b)(2), which requires that a grantee obligate at least 90% of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20447; telephone (202) 401–9351.

Dated: May 28, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–14480 Filed 6–7–99; 8:45 am]

BILLING CODE 99–4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1522]

Agency Information Collection Activities: Proposed Collection; Comment Request; Temporary Marketing Permit Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing temporary marketing permit applications.

DATES: Submit written comments on the collection of information by August 9, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Temporary Marketing Permit Applications—21 CFR 130.17(c) and (i) (OMB Control Number 0910–0133—Extension)

Section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341) directs FDA to issue regulations establishing definitions and standards of identity for food "whenever * * * such action will promote honesty and fair dealing in the interest of consumers." Under section 403(g) of the act (21 U.S.C. 343(g)), a food that is subject to a definition and standard of identity prescribed by regulation is misbranded if it does not conform to such definition and standard of identity. Section 130.17 (21 CFR 130.17) provides for the issuance by FDA of temporary marketing permits that enable the food industry to test consumer acceptance and measure the technological and commercial feasibility in interstate commerce of experimental packs of food that deviate from applicable definitions and standards of identity. Section 130.17(c) specifies the information that a firm must submit to FDA to obtain a temporary marketing permit. The information required in a temporary marketing permit application under § 130.17(c) enables the agency to monitor the manufacture, labeling, and distribution of experimental packs of food that deviate from applicable definitions or standards of identity. The information so obtained can be used in support of a petition to establish or amend the applicable definition or standard of identity to provide for the variations. Section 130.17(i) specifies the information that a firm must submit

to FDA to obtain an extension of a temporary marketing permit.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
130.17(c)	3	1	3	25	75
130.17(i)	4	2	8	2	16
Total	7		11		91

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of temporary marketing permit applications and hours per response is an average based on the agency's experience with applications received from October 1, 1995, through September 30, 1998, and information from firms that have submitted recent requests for temporary marketing permits.

Dated: May 28, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14401 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1392]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Enforcement Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing State enforcement notifications.

DATES: Submit written comments on the collection of information by August 9, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

State Enforcement Notification—21 CFR 100.2(d) (OMB Control Number 0910–0275—Extension)

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.2(d)	1	1	1	10	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.2(d) is insignificant because enforcement notifications are seldom submitted by States requesting the agency take enforcement action under the act against a particular food. Over the last 3 years, FDA has not received any enforcement notifications. Since the enactment of section 403A(b) of the act (21 U.S.C. 343–1(b)) as part of the Nutrition Labeling and Education Act of 1990, FDA has received only a few enforcement notifications.

Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 310(b) of the act.

Dated: May 28, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14458 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Open Meeting for Representatives of Health Professional Organizations; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting with representatives of health professional organizations. The public meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. The two primary topics on the agenda for this meeting will be managing risks from medical product use and pediatric clinical studies.

DATES: The public meeting will be held on Tuesday, June 15, 1999, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: The public meeting will be held at the Holiday Inn Bethesda, 8210 Wisconsin Ave., Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6630.

Those persons interested in attending this meeting should call Betty Palsgrove at 301–827–6618 to register. Registration may also be transmitted by FAX 1–800–344–3332 or 301–443–2446. Please include the name and title of the person attending, the name of the organization, address, and telephone number. There is no registration fee, however, space is limited. Persons will be registered in the order in which calls are received.

SUPPLEMENTARY INFORMATION: The purpose of the public meeting is to provide an opportunity for representatives of health professional organizations and other interested persons to be briefed by senior FDA staff. It will also provide an opportunity for informal discussion on these topics of particular interest to health professional organizations.

The scheduled presenters for this meeting will be Janet Woodcock, Director, Center for Drug Evaluation and Research (CDER) and M. Diane Murphy, Director, Office of Drug Evaluation IV, CDER.

Dated: June 2, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14404 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Imaging Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Medical Imaging Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 28 and 29, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12540. Please call the Information Line for up-to-date information on this meeting.

Agenda: Section 121 of FDA's Modernization Act of 1997 directs FDA to establish appropriate procedures for the approval of positron emission tomography (PET) drugs under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 355). At this meeting, FDA will present its findings on the safety and effectiveness of three PET drugs: (1) Fludeoxyglucose F 18 Injection, (2)Ammonia N 13 Injection, and (3) Water 0 15 Injection, for particular indications based on review of published literature. The committee will discuss the safety and effectiveness data on these three drugs. FDA also will discuss its proposed procedures for obtaining marketing approval for these three PET drugs.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 18, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m., June 28, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 18, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 28, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 99–14403 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 12, 1999, 9 a.m. to 6 p.m.

Location: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss problematic issues encountered during the early phases of implementation of the final regulations and continue the discussion of the proposed Mammography Quality Standards Act (MQSA) compliance guidance. This guidance is being updated continually in response to questions that FDA receives from the public. The committee will also receive updates on the issues of States as Certifying Bodies under MQSA and Voluntary Stereotactic Accreditation Programs. The draft MQSA compliance guidance documents, which are in a question and answer format, are available to the public on the Internet at "http://www.fda.gov/cdrh/dmqrp/guidance.html". Additional information regarding guidance updates may be obtained by calling the Information Line.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 14, 1999. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 14, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 28, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–14406 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held July 20, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sandra L. Titus or Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail TITUSS@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 20, 1999, the committees will jointly consider an over-the-counter, new drug application (NDA) 21–070, Flexeril® (cyclobenzaprine HCl, 5 milligrams tablets, three times a day, Merck and Co.), proposed to treat muscle spasms.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 12, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on July 20, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 12, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 28, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 99–14402 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1273]

Medical Devices; Draft Guidance for FDA Staff on Civil Money Penalty Policy; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Guidance for FDA Staff on Civil Money Penalty Policy." The civil money penalty (CMP) policy is intended for use by all FDA Regional and District Directors for the purpose of advising their field personnel when considering potential CMP recommendations under the Safe Medical Devices Act of 1990 (SMDA).

DATES: Written comments concerning this draft guidance must be received by September 7, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Guidance for FDA Staff on Civil Money Penalty Policy" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Written comments concerning this guidance must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be

identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Andrea P. Latish, Center for Devices and Radiological Health (HFZ–330), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4611.

SUPPLEMENTARY INFORMATION:

I. Background

The SMDA amended section 303(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 333(f)) to authorize FDA to impose CMP actions for all violations of the act involving medical devices except for current good manufacturing practice (CGMP) and medical device report violations that do not constitute a significant or knowing departure from such requirements or a risk to public health, filth violations in devices that are not otherwise defective, and minor violations for tracking and reports of corrections and removals. Thus, FDA has considerable latitude when applying CMP to violations involving devices.

FDA has developed a package of three documents that set forth the agency's policy concerning the application of civil money penalties for violations of the act involving medical devices. The three draft guidance documents are: "Application of the Safe Medical Devices Act Civil Money Penalty Policy," "Safe Medical Devices Act Civil Money Penalty Fee Matrix," and "Safe Medical Devices Act Civil Money Penalty Decision Tree."

The "Application of the Safe Medical Devices Act Civil Money Penalty Policy" outlines the use of the CMP for CGMP and premarket notification (510(k)) violations for chronic and repeat violators, and for less significant violations. It also discusses the relationship between CMP and seizure or injunction. The "Safe Medical Devices Act Civil Money Penalty Decision Tree" outlines whether the evidence and information collected justifies pursuing a CMP case. It is not an all-inclusive list of every issue that should be considered, but rather a series of questions to guide FDA's decision. The "Safe Medical Devices Act Civil Money Penalty Fee Matrix" is a procedure for calculating the penalty amount that will be assessed. The schedule set forth in the matrix covers the statutory factors that FDA is required to evaluate under the SMDA in determining the appropriateness of the case. The matrix will help to ensure consistency in the assessment of a CMP.

FDA is making these three draft guidance documents available to all FDA Regional and District Directors for the purposes of advising field personnel. FDA is announcing the availability of these documents to the public in order to advise persons who may be affected by FDA's policy and to obtain comment on whether the policy should be revised.

This guidance package of three documents takes into consideration the Presidential Memorandum, dated April 21, 1995, and the Small Business Regulatory Enforcement Fairness Act of 1996, both of which allow monies spent on corrective actions to be deducted from the fine imposed. CMP action, therefore, can provide noncompliant firms with a financial incentive to come into compliance.

The final CMP rule governing the procedures to be used in CMP matters was published in the **Federal Register** of July 27, 1995 (60 FR 38612), and is codified at 21 CFR part 17.

This draft guidance represents the agency's current thinking on the use of CMP recommendations made under the SMDA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. This draft guidance is issued as a Level 1 draft guidance consistent with good guidance practices.

II. Electronic Access

In order to receive "Guidance for FDA Staff on Civil Money Penalty Policy" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1124) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". "Guidance for FDA Staff on Civil Money Penalty Policy" will be available at "http://www.fda.gov/cdrh/oc".

III. Comments

Interested persons may, on or before September 7, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 25, 1999.

Linda S. Kahan.

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–14405 Filed 6–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 14, 1999, 7:00 PM to June 16, 1999, 5:00 PM, Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on May 20, 1999, 64 FR 27585:

This is not an open meeting. The meeting is closed to the public.

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14502 Filed 6–7–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Rat Gene Catalog and Expressed Sequence Tag (EST) Map.

Date: June 16, 1999.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Teleconference Meeting, 6701 Rockledge Drive, Rm. 9167, Bethesda, MD 20892, (telephone conference call).

Contact Person: Ivan C. Baines, PhD, Scientific Review Administrator, NIH, NHBLI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Suite 7184, Bethesda, MD 20892–7922; 301/435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.383, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14500 Filed 6–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Pediatric Asthma Clinical Research Network.

Date: June 30, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate cooperative agreement applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P. Clark, Phd, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924; (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14501 Filed 6–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 8, 1999.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (telephone conference call).

Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd. Rm. 6138, MSC 9696, Bethesda, MD 20892–9696; 301–443–3936.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Intervention Research Review.

Date: July 7–9, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Lawrence E. Chaitkin, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd. Rm. 6138, MSC 9606, Bethesda, MD 20892–9606; 301–443–5470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, national Institutes of Health, HHS)

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14499 Filed 6–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 10–11, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Clarion Hampshire Hotel, Washington, DC.

Contact Person: Jay Joshi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 5.

Date: June 10–11, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Sherry L. Dupere, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–DMG (4).

Date: June 10–11, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, lrosen@csr/nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Hematology Subcommittee 1.

Date: June 10–11, 1999.

Time: 8:00 am to 7:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Robert Su, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 2.

Date: June 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Tropical Medicine and Parasitology Study Section.

Date: June 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Montgomery Room, Bethesda, MD 20814.

Contact Person: Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Genetics Study Section.

Date: June 10–11, 1999.

Time: 9:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, N.W., Washington, DC 20037.

Contact Person: David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 10, 1999.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Medicinal Chemistry Study Section.

Date: June 11–13, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Best Western Inn on the Park, 22 South Carroll Street, Madison, WI 53703–3372.

Contact Person: Ronald J. Dubois, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 11, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 13, 1999.

Time: 1:00 pm to 5: 00pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Alec S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (17).

Date: June 13–14, 1999.

Time: 7:00 pm to 4:00 pm.

Agenda: To provide concept review of proposed grant applications.

Place: Bethesda Holiday Inn, Bethesda, MD.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–8 (01)

Date: June 14–15, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Capital Holiday Inn, 550 C Street, S.W., Washington, DC 20024.

Contact Person: Samuel Rawlings, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group, Surgery and Bioengineering Study Section.

Date: June 14–15, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Teresa Nesbitt, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN.

Date: June 14–15, 1999.

Time: 8:00 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Hotal, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Jay Cinque, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 14–15, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC.

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, General Medicine A Subcommittee 1.

Date: June 14–15, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Bethesda, MD 20017.

Contact Person: Harold M. Davidson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776,davidsoh@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 2.

Date: June 14–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Priscilla Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Medical Biochemistry Study Section.

Date: June 14–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Alexander S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 14, 1999.

Time: 8:30 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Mammalian Genetics Study Section.

Date: June 14–15, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.

Contact Person: Camilla Day, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037, dayc@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 14–15, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 99–14503 Filed 6–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Changing the Conversation—A National Plan To Improve Substance Abuse Treatment: Call for Public Comment

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Request for public comment on five issues (domains) of concern to the substance abuse treatment field when assessing substance abuse treatment.

SUMMARY: This notice announces that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) is formally inviting public comment on five issues (domains) that are of concern to the substance abuse treatment field and require development and exploration. Via several mechanisms, including public hearings, CSAT intends that findings from the exploration of individual domains will ultimately be synthesized into a coherent national strategy to guide substance abuse treatment program and policy development for the future. Individuals and organizations are encouraged to comment in one of several ways: (1) in writing, by submission through the U.S. Mail or courier service; (2) via the National Treatment Plan web site (http://www.natxplan.org); or (3) in person at one of the four public hearings scheduled at locations across the country. The final cutoff date for comments is December 1, 1999. This notice discusses the public hearings at which interested individuals/organizations may testify regarding the five substance abuse treatment domains discussed below.

DATES/LOCATIONS: CSAT plans to conduct four public hearings in 1999—July in Hartford, Connecticut; September in Chicago, Illinois; October in Portland, Oregon; and November in Tampa/St. Petersburg, Florida. The first hearing will be held at the Connecticut State Capitol, Legislative Office Building, 300 Capitol Avenue, Hartford, Connecticut, 06106, on July 8, 1999, between the hours of 8:30 a.m. and 5 p.m. EDT. Specific details regarding subsequent hearings will be published in the **Federal Register** approximately one month prior to each hearing.

Requests to testify at the Hartford, Connecticut, public hearing must be submitted to one of the addressees indicated below by July 1, 1999. Seating is limited. In the event that interpretive services for the hearing-impaired are required, please indicate these special needs to either of the addressees.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the hearing and/or testimonies, as well as requests to testify must be addressed to:

Peggy Cockrill, [Tele: (301) 443–7024; e-mail: pcockril@samhsa.gov; Fax: (301) 480–6077]

or

Ann Mahony, [Tele: (301) 443–7924; E-mail: amahony@samhsa.gov; Fax: (301) 480–6077], c/o TASCON 1803 Research Boulevard, Suite 305, Rockville, Maryland 20850

Written comments (without a request to personally testify) will also be accepted by either of the above addressees. Written testimonies are limited to five (5) typed pages using 1.5 line spacing and 12 point font.

SUPPLEMENTARY INFORMATION:

Background

Building on recent advances and studies, CSAT has initiated plans to focus on how to apply its extensive knowledge to the practical objective of improving treatment outcomes. The plans include synthesizing current knowledge and recommendations about treatment, service systems, application of best practices, diffusion methods, and organization and financing of substance abuse treatment services. Federal Government and outside experts, as well as the interested public, will explore the current state of the knowledge, resources, needs, and service and organizational capacity. The objective is the culling of priorities for action by the government and by others in the substance abuse treatment field. As noted above, CSAT is inviting the public to comment on five domains as part of the initial step of the plan. The domains, as well as some initial questions for exploration, include:

(1) Closing the Treatment Gap: Where are the gaps? How big are they for different populations? For different types of settings and treatment modalities? How big are gaps in other related systems of care, e.g., welfare, child welfare, housing? What are the policy, organization, and financing issues that must be addressed in the private and public systems, including Medicaid and Medicare, to close the treatment gap?

(2) Reducing Stigma and Changing Attitudes: What are the nature, causes and consequences of addiction stigma? What can CSAT, the treatment field, consumers and families do to address stigma related to addiction, substance abuse treatment and individuals with substance abuse disorders? How do other stigmas impact/compound the stigma of addiction?

(3) Improving and Strengthening Treatment Systems: What are the clinical and organizational challenges facing treatment organizations in the public and private sectors? What can CSAT, the treatment field, consumers and families do to improve and strengthen treatment organizations so that they can adapt to the new imperatives of the changing treatment system, and to improve the relationship between the general health care system and the specialty substance abuse treatment system? What should be done at the State, county and/or local levels to improve and strengthen substance abuse treatment?

(4) Connecting Services and Research: What are the best methods by which CSAT, the treatment field, consumers and families can foster and support evaluation of proven research findings in community-based settings and identification and adoption of best practices?

(5) Addressing Workforce Issues: What are the issues facing clinicians treating addictions? What can CSAT, the treatment field, consumers and families, and professional associations do to foster training, appropriate credentialing, and licensure in all settings in which treatment occurs, and to support treatment organizations in developing appropriate policies for clinical training?

Hearing Format

The hearings will be divided into five segments (i.e., the five domains described above) of approximately 45–60 minutes each. Each individual/organization participant will be limited to three (3) minutes of oral testimony and five (5) pages of typed testimony per domain. Participants who wish to address more than one domain and find it impossible to be in attendance during the scheduled time frame for other domains they also wish to address will, with CSAT staff concurrence, be allowed to address multiple domains at once. In these instances, the participant must clearly indicate the domain being addressed, and again, will be limited to three (3) minutes of oral testimony and five (5) pages of typed testimony per domain. All oral testimonies must be accompanied by a written testimony of no more than five (5) typed pages using 1.5 line spacing and 12 point font. Written testimonies may either be submitted before the hearing to one of the addressees listed above or to the registrar at the hearing. As the hearing schedule allows, unscheduled testimonies will be accommodated.

All testimonies (recorded and written) will become a part of the public domain.

Dated: June 3, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–14522 Filed 6–7–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Warren Parker, Blue Springs, MO, PRT–011656.

The applicant requests a permit to import the sport-hunted trophy of a straight horned markhor (*Capra falconeri jerdoni*) or a Kabul markhor (*C. f. megaceros*) from the Northwest Frontier Province of Pakistan for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of Cincinnati, Cincinnati, OH, PRT–011672.

The applicant requests a permit to import two captive-born Brazilian ocelot (*Leopardus pardalis mitis*) from the Zoologico de Curitiba, Curitiba, Brazil for the purpose of enhancement of the species through captive propagation.

Applicant: William H. Crawford, Frederick, OK, PRT–012455.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Frank R. Daigle, Rogers, MN, PRT–010431.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Luis Rivera, San Juan, PR, PRT–843332.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994 from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Peter Bollinger, Sacramento, CA, PRT–012288.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Glenn J. Rasmussen, Wapato, WA, PRT–012452

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 1, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–14389 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems: Proposed Collection of Water Delivery and Electric Service Data; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Indian Affairs (BIA) invites comments on two information collection requests which will be renewed. The two collections are Electrical Service Application, 1076–0021, and Water Request, 1076–0141.

DATES: Comments must be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Comments should be sent to the Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams, 1849 C Street, NW, Mail Stop 4513–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Ross Mooney, 202–208–5480, facsimile number: 202–219–1255, or E-mail: Ross_Mooney@IOS.DOI.GOV.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams is proceeding with this public comment period as the first step in obtaining a normal information collection clearance from OMB. Each requests contain (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements.

Water Request

Type of review: Extension of a currently approved collection.

Title: Water Request, 25 CFR 171.

Summary: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.7 of 25 CFR part 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery. The information to be

collected includes name, water delivery location, time and date of requested water delivery, duration of water delivery, rate of water flow, number of acres irrigated, crop statistics, and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval by OMB (OMB Control No. 1076–0141). All information is collected at least annually from each water user with a response required each time irrigation water is provided. Annual reporting and record keeping burdens for this collection of information are estimated to average 8 minutes per request. There is a range of one to ten requests from each irrigation water user each season with an average of five responses per respondent. For all five responses, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, the total per respondent is 40 minutes. The total number of respondents is estimated at 10,300 per year. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 6,867 hours.

Frequency of Collection: On occasion.

Description of Respondents: BIA Irrigation Project Water Users.

Total Respondents: 10,300.

Total Annual Responses: 51,500.

Total Annual Burden Hours: 6,867 hours.

Electric Service Application

Type of review: Extension of a currently approved collection.

Title: Electric Service Application, 25 CFR 175.

Summary: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements. Section 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirements. Power consumers must apply for electric service. The information to be collected includes name, electric service location, and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval by OMB (OMB Control No. 1076–0021). All information is collected from each electric power consumer. Annual reporting and record keeping burdens for this collection of information are estimated to average 30 minutes for each response for 3,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 1,500 hours.

Frequency of Collection: On occasion.

Description of Respondents: BIA Electric Power Consumers.

Total Respondents: 3,000.

Total Annual Responses: 3,000.

Total Annual Burden Hours: 1,500 hours.

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and,

(4) Minimize the burden of the collection of information on those who are to respond.

Any public comments will be addressed in the Bureau of Indian Affairs' submission of the information collect request to the Office of Management and Budget.

Dated: May 24, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–14407 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Nevada Temporary Closure of Certain Public Lands Management by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary Closure of Selected Public Lands in Clark County, Nevada, during the Operation of the 1999 SNORE Pahrump Midnight Special Race.

SUMMARY: The Field Office Manager of the Las Vegas Field Office announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1999 SNORE Pahrump Midnight Special and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 am June 25, 1999 through 6:00 am June 27, 1999 Pacific Standard Time.

Closure Area: As described below, an area within T. 20 N. to T. 21 N. R. 56 E. to R. 58 E.

1. The closure is a bound by Toiyabe National Forest on the North, California Line on the South, Clark County Line to the West, Spring Mountains to the East.

Exceptions to the closure are: State Route 160, Sandy Valley Road.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure: Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator area.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable

barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or directions.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restriction do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR part 8340 subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR part 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf Recreation Manager or Ron Crayton or Ken Burger BLM Rangers, BLM Las Vegas Field Office 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647–5000.

Dated: May 27, 1999.

Mark Chatterton,

Acting Field Office Manager.

[FR Doc. 99–14412 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–1210–00; WYW–147234]

Notice of Availability of the Decision Record and Notice of Off-Road Vehicle Designations for the Red Gulch Dinosaur Tracksite, Big Horn County, WY; and Notice of Amendment to the Washakie Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Worland Field Office, Wyoming, announces the availability of the decision record and off-road vehicle designations for management of the Red Gulch Dinosaur Tracksite.

The decision record amends the 1988 Washakie Resource Management Plan (RMP). The amendment, contained in a general management plan for the Red Gulch Dinosaur Tracksite: (1) Designates an area of critical environmental concern (ACEC) on 1,800 acres, (2) expands an existing special recreation management area, (3) calls for the pursuit of a mineral withdrawal to prohibit the staking and development of mining claims, (4) prohibits most other surface-disturbing activities, and (5) modifies off-road vehicle designations for the tracksite area.

FOR FURTHER INFORMATION CONTACT: Bob Ross, field office planning coordinator, Bureau of Land Management, 101 South 23rd Street, P.O. Box 119, Worland, Wyoming 82401–0119, 307–347–5100.

SUPPLEMENTARY INFORMATION: The Red Gulch Dinosaur Tracksite is the largest tracksite in Wyoming, and one of only a few worldwide from the Middle Jurassic Period (160 million to 180 million years old). The tracksite suggests that a large and diverse population of dinosaurs once existed in the area. Scientists believe these rare Middle Jurassic dinosaur tracks shed new light on the past because the formation in which they were found (the Sundance Formation) was previously thought to be at the bottom of a sea.

The management emphasis within the 1,800-acre tracksite ACEC will be for protection of the fossil resources, as well as for scientific research, public education, and recreation. The area has been included in the West Slope of the Bighorn Mountains Special Recreation Management Area. The BLM will also pursue a withdrawal of the public lands from entry under the mining laws to prohibit the staking and development of mining claims where dinosaur tracks are known or anticipated to exist. Most other surface-disturbing activities will be prohibited as well. The area is identified as "limited to designated roads and trails" for motorized vehicle use, representing a change from the former off-road vehicle designation of "limited to existing roads and trails" for motorized vehicle use.

As required, further environmental analyses will be conducted on any future site-specific activity or implementation planning to be done in the Red Gulch Dinosaur Tracksite ACEC. This would include opportunities for public comment.

Any detailed activity planning that may be conducted in the ACEC area will consider needs for site-specific mitigation of surface-disturbing activities for things like locating trails, roads, exhibits, and facilities to enhance public education and recreation.

Dated: June 2, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–14445 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–1150–00]

Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, North Dakota Field Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held July 19 & 20, 1999, at the Feedlot Restaurant, Buffalo, South Dakota. The session will convene at 8:00 a.m. on January 19th and resume at 8:00 a.m. on the 20th. Agenda items will include updates on the South Dakota Land Exchange, and Off-Road Vehicle use on public lands. A field trip to the Moreau Grazing Association is scheduled for the afternoon of July 19th.

The meeting is open to the public and a public comment period is set for 8:00 a.m. on July 20th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: May 27, 1999.

Douglas J. Burger,

Field Office Manager.

[FR Doc. 99–14322 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1430–01: GP–9–0194]

Realty Action: Direct and Competitive Sale of Public Land in Lake County, Oregon

AGENCY: Bureau of Land Management, Lakeview Resource Area.

ACTION: Direct and competitive sale of public land in Lake County, Oregon (OR45221, (OR55119).

The following parcels of public land are suitable for direct and competitive sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale for at least 60 days following the publication of this notice in the **Federal Register**.

Legal description	Acreage	Sale price	Deposit
Parcel Serial No., OR 45221:			
T.40S., R.18E., W.M., Oregon, Sec. 6: Lot 9	3.04	$12,500.00	$2,500.00
Parcel Serial No., OR 55119:			
T.40S., R.18E., W.M., Oregon, Sec. 6: Lot 8	6.60	17,500.00	3,500.00

The above described parcels of land are hereby classified for disposal pursuant to Section 7 of the Taylor Grazing Act, 43 U.S.C. 315f and segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes. The segregation will last for 270 days from the date of publication, until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The land is not considered essential to the public land management base and is unsuitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning for the land involved and will serve important public objectives.

The properties will be offered for sale at 10:00 a.m. PDT, on September 1, 1999, using both direct and competitive sale procedures. The sale procedures are authorized under 43 CFR 2711.3–3.

Sale parcel OR 45221 will offered under direct sale procedures to John McEachern and Gloria Utley. Direct sale procedures are considered appropriate, in this case, as McEachern/Utley own a summer cabin on the offered public land which has been under authorization ORE 0005481 since 1959. Sale would eliminate the current split property rights situation and the need for future authorization. Submission of either the indicated sale price or deposit shall be required on the date of sale and be in the form of a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior—BLM. If a deposit is submitted for this parcel, the total purchase price shall be paid within 180 days of the date of sale or the deposit will be forfeited and the parcel withdrawn from further sale consideration.

Sale parcel OR 55119 will be offered under competitive sale procedures and by written sealed bid only. Sealed written bids must be received by the BLM, Lakeview Resource Area Office at 1300 South G Street, HC 10, Box 337, Lakeview, Oregon 97630, prior to 10:00 am PDT, September 1, 1999, and must be for not less than the appraised sale price indicated. Written sealed bids must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior—BLM for not less than the deposit specified in this notice and shall be enclosed in a sealed envelope clearly marked, in the lower left hand corner, "Bid for Public Land Sale OR 55119, Lake County, Oregon, September 1, 1999." All written sealed bids received will be opened and the high bidder declared at the time of sale. In the event of a tie, the tied bidders will be notified and given an opportunity to modify their original bids. The resulting bid off will determine the high bidder and the high bidder will be notified by certified mail. The high bidder is required to pay the total purchase price within 180 days of the date of sale or the deposit will be forfeited and the parcel reoffered to the public on an over-the-counter competitive sale basis.

The terms, conditions and reservations applicable to the sale are as follows:

(1) Patents to the sale parcels will contain a reservation to the United States for ditches and canals.

(2) The sale parcels will be subject to all valid existing rights of record at the time of patent issuance.

(3) The mineral interests being offered for conveyance with the sale parcels have no known value. A deposit or bid to purchase either of the parcels will also constitute an application for conveyance of the mineral estate with the following reservations;

(a) Oil and gas and geothermal resources will be reserved to the United States.

The above mineral reservations are being made in accordance with Section 209 of the Federal Land Policy and Management Act of 1976. Successful sale participants, must include with their full or final payment a non-refundable $50.00 filing fee for conveyance of the mineral estate.

Federal law requires that the bidder(s) must be a U.S. citizen, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

If sale parcel OR 55119 is not sold on the date of first offering, the parcel will be available on an over-the-counter competitive sale basis and be subject to the above terms and conditions and at no less than the indicated sale price. Sealed bids will be accepted on the unsold parcel at the Lakeview Resource Area Office during regular business hours (7:45 a.m. to 4:30 p.m. Monday through Friday) at the address shown above. All sealed bids will be opened the first Wednesday of each subsequent month until the land is either sold or withdrawn from sale. Prospective buyers should inquire about parcel availability after September 1, 1999.

Detailed information concerning the sale, including the reservations, sale procedures, terms and conditions, planning and environmental documentation, is available at the Lakeview Resource Area Office, 1300 South G Street, HC 10, Box 337, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Area Field Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the

Lakeview District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Scott R. Florence,

Field Manager, Lakeview Resource Area.

[FR Doc. 99–14411 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Environmental Assessment of Proposed Land Exchange, George Washington Memorial Parkway, City of Alexandria and Arlington County, VA

ACTION: Notice of the availability of an environmental assessment (EA) for proposed exchange of land interests between the National Park Service, and Commonwealth Atlantic Properties, Inc., Commonwealth Atlantic Land Company, and Commonwealth Atlantic Land V Inc.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service policy, the National Park Service has completed an EA which evaluated the potential impacts of the proposed exchange of land interests associated with two distinct properties located in the City of Alexandria and in Arlington County, Virginia. The EA examines the environmental and visual impacts of the land exchange on the resources and scenic quality of the George Washington Memorial Parkway. The National Park Service is soliciting comments on this EA. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act.

DATES: There will be a 30-day public review period for comment on this document. Comments on the EA should be received no later than June 30, 1999.

ADDRESSES: Comment on the EA should be submitted to Mr. John G. Parsons, Associate Regional Director, Lands, Resources, and Planning, National Park Service, National Capital Region, 1100 Ohio Drive, SW, Washington, DC 20242. A limited number of copies of the EA are available on request. A public reading copy of the EA will be available at the National Capital Region Headquarters Building, 1100 Ohio Drive, SW, First Floor Lobby, Washington, DC 20242, and at the National Park Service Planning web page at nps.gov/gwmp/landexchange.htm.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Parsons, Associate Regional Director, Lands, Resources, and Planning, National Park Service, National Capital Region, 1100 Ohio Drive, SW, Washington, DC 20242, Telephone: (202) 619–7025.

SUPPLEMENTARY INFORMATION: By virtue of an Indenture land agreement dated February 12, 1938, the Richmond, Fredericksburg and Potomac Railroad Company (RF&P), predecessor in title to Commonwealth, conveyed to the United States certain land use restrictions over 29.1 acres of land in Arlington County, Virginia, currently owned by Commonwealth and hereinafter referenced as "the Indenture Land."

Commonwealth also owns 38.55 acres of land in the City of Alexandria, Virginia, hereinafter referenced as "Potomac Greens." By virtue of a Deed of Easement dated August 13, 1984, and in accordance with the terms of a previous exchange agreement between the United States and RF&P, the United States conveyed to RF&P a perpetual easement on and across a portion of lands of the George Washington Memorial Parkway for access, including ingress and egress from the northbound and southbound lanes of the George Washington Memorial Parkway to and from Potomac Greens in return for RF&P's obligation to construct at no cost to the United States a center-piered bridge and all associated ramps and connections necessary for ingress and egress to and from Potomac Greens to the George Washington Memorial Parkway and other valuable consideration.

Commonwealth is desirous of the United States relinquishing its restrictions on the Indenture Land in order to allow Commonwealth to implement a proposed plan for the mixed use development of the property in exchange for certain restrictions to be conveyed by Commonwealth to the United States relative to building heights and setbacks. Commonwealth has also proposed implementing a plan for the residential development of Potomac Greens, including minimal support retail.

The National Park Service is desirous of acquiring Commonwealth's access rights to the George Washington Memorial Parkway and in return is willing to partially relinquish the United States' interests in restricting the use of the Indenture Land.

The National Park Service published a notice in the **Federal Register** on December 9, 1998 (63 FR 67916), inviting public comment on proposed land exchange. A public meeting was held on December 10, 1998, and as a result received six comments on the proposed exchange.

Dated: June 1, 1999.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 99–14439 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision, General Management Plan and Environmental Impact Statement, Isle Royale National Park, Keweenaw County, Michigan

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final General Management Plan/Final Environmental Impact Statement for Isle Royale National Park, Keweenaw County, Michigan.

DATES: The Regional Director, Midwest Region approved the Record of Decision, on May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Superintendent, Isle Royale National Park, 800 E. Lakeshore Drive, Houghton, MI 49931–1895, telephone 906–482–0986.

SUPPLEMENTAL INFORMATION:

Introduction

The National Park Service has prepared the Final General Management Plan/Environmental Impact Statement (GMP/FEIS) for Isle Royale National Park, Michigan. The GMP/FEIS proposes management direction for the park for the next 15–20 years and documents the anticipated effects of the proposed action and other alternatives on the human environment, including natural and cultural resources. This Record of Decision is a concise statement of the decisions made, other alternatives considered, the basis for the decision, the environmentally preferable alternative, and the mitigating measures developed to avoid or minimize environmental harm.

Decision

After careful consideration of environmental impacts, costs, comments from the public, agencies, and tribes, and engineering evaluations, the National Park Service recommends

for implementation the proposed action evaluated in the final general management plan/environmental impact statement.

Summary of the Selected Action

The goal of the selected alternative, which was identified as the proposed action in the Final Environmental Statement, is to meet the diverse expectations and needs of Isle Royale visitors while emphasizing the natural quiet that is fundamental to wilderness experiences. All park areas will be available to all visitors, so long as users participate in ways that are consistent with the access, facilities, and opportunities provided. Management zones will provide guidance for managing specific areas for desired visitor experience and resource conditions (see p. 30 of the GMP/FEIS).

Campgrounds will be designed and access provided to separate motorized and non-motorized uses in a few areas; certain docks will be removed or relocated, for example, and some new campgrounds will be provided. A variety of uses will be available that will be fairly evenly distributed across the island. Use limits may become necessary in some management zones to prevent overcrowding and maintain quiet and solitude. Quiet/no-wake water zones will be established to reduce noise and wake impacts in numerous areas. Other regulations aimed at reducing sound associated with humans will also be implemented.

Partnerships will be sought to maintain the docks and cultural resources at Barnum and Washington Islands. Potential adaptive public overnight use of these historic sites and former commercial fishing sites at Crystal Cove, Wright Island, and Fisherman's Home will be considered. When the Passage Island, Isle Royale, and Rock of Ages lighthouses are transferred to the NPS, partners will be sought to help stabilize, maintain, and interpret them and their surroundings.

Existing motel units at Rock Harbor will be reconfigured and made more rustic. Existing Housekeeping cabins will be retained; a few new rustic cabins will be added. Utility systems and other concession infrastructure at Rock Harbor will be brought into compliance with State and Federal standards. The dining room, concession laundry, and public laundry at Rock Harbor will be discontinued; most other concession services will remain. Unless the concessioner is subsidized through a new congressional appropriation, prices of services might rise to the point that concessions services may be unviable.

In addition to the actions described above, the following actions are part of the selected alternative and alternatives B, C, and E (described in the next section). Actions related to natural resources: complete baseline inventories of natural resources, expand monitoring, develop fisheries management and water resource management plans, and establish research and wolf management advisory boards. Actions related to cultural resources: complete inventory and documentation of resources, expand monitoring, research specific cultural history gaps, and cooperate with partners to set standards for and carry out shipwreck preservation. Except in alternative C, historic structures would generally be retained if they were eligible for the National Register and a potential use was identified. Actions related to interpretation, information, and education: develop a comprehensive interpretive plan, improve visitor information facilities, strengthen education outreach, and develop interpretive media supportive of park emphasis statements. Other actions: develop a wilderness and backcountry management plan and a commercial services plan, limit charter fishing permits, prohibit personal watercraft, and perform a study to develop and evaluate options for improving the mainland headquarters.

Other Alternatives Considered

Alternative A—Alternative A (the status quo or no-action alternative) would continue current management at Isle Royale National Park. It provides a baseline for evaluating the changes and related environmental effects of the other alternatives. Park managers would continue to provide for visitor use and would respond to natural and cultural resource management concerns according to current policy and legal requirements and as funding allowed. There would be no change in management direction.

Alternative B—Alternative B would separate uses by concentrating facilities and services at the ends of the island and by creating an increasingly primitive wilderness experience toward the middle of the island. Visitors would find a full range of facilities and services and a more structured experience at Rock Harbor and Windigo, the primary access points to the island, which would both require some increased development. A more primitive wilderness experience with quiet and solitude would be found toward the center of the island, where most facilities and amenities would be removed. Limits on the number of visitors there would probably be necessary.

In addition to orientation and interpretation offered at the Houghton headquarters, a broad range of services would be available at both ends of the island. Rock Harbor and Windigo would offer a full range of orientation information and services. No formal interpretation would be offered in the middle of the island.

Some cultural resources in developed and frontcountry zones could be preserved through adaptive use for lodging, interpretation, or operations. Cultural resources toward the middle of the island would be documented and allowed to deteriorate.

Additional staff and housing might be needed at Windigo to operate expanded sewer and water treatment facilities. The Amygdaloid Island ranger station would remain, but the Malone Bay station in the middle of the island would be removed.

Alternative C—Most of the island would be truly primitive. Emphasis would be placed on providing superlative wilderness experiences, solitude, and escape from the intrusions of the modern world. Facilities and development would be scaled back and evidence of management activities would be minimal. Party size would be limited to a maximum of six people for overnight use on the island.

Visitation would be managed through a reservation system. Permits could be issued on a first-come, first-served basis, or a lottery system would be used. Various systems would be carefully evaluated before one was chosen.

Emphasis would be placed on providing orientation and interpretation at the Houghton headquarters and other ferry staging areas. Additional information would be provided in written materials. No interpretive media or formal programs would be offered on the island because they could intrude on the wilderness character.

Ferry service would be provided to Rock Harbor and Windigo only. Water taxi service would be eliminated.

Consistent with the concept of this alternative, all cultural resources would be documented and allowed to decay. No stabilization or preservation of these resources would be attempted. The Coast Guard would continue to maintain navigational aids, and the National Park Service would continue to maintain access to these areas; however, when the lighthouses are turned over to the National Park Service, they would be documented and allowed to decay. Lighthouses could be maintained, however, by the Coast Guard or some other entity.

Alternative E—Most facilities would remain and services would continue, but a few changes would be made to better separate uses and increase interpretation. To provide better quality experiences without restricting activities, visitor numbers would be controlled at substantially lower levels than exist now (10,000 to 13,000 people per year). This would mean that approximately 5,000 to 8,000 fewer visitors per year would be accommodated than in recent years.

Visitation to the island would be managed through a reservation system. A limited number of permits could be issued per year on a first-come, first-served basis, or there could be a lottery system or some other method. Various reservation systems would be carefully evaluated before one was chosen.

Interpreted sites would remain, and historic structures at Wright Island, Crystal Cove, and Fishermans Home could be adaptively used for additional interpretation of park cultural themes. Interpretation and environmental education could be provided at the west end of the park at Washington and Barnum Islands. The Rock Harbor and Windigo areas would remain the primary visitor orientation points.

Historic structures and landscapes would be preserved in priority order according to significance. The historic commercial fishery sites at Wright Island, Crystal Cove, and Fishermans Home would be stabilized and adaptive uses would be sought to provide for their continued preservation and interpretation. When the National Park Service received title to the lighthouses owned by the U.S. Coast Guard, partners interested in preserving the structures would be considered.

Environmentally Preferable Alternative

The environmentally preferable alternative is defined as "the alternative or alternatives that will promote the national environmental policy as expressed in section 101 of the National Environmental Policy Act. Ordinarily, this means the alternative that causes least damage to the biological and physical environment; it also means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources" ("Forty Most Asked Questions Concerning Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations," 1981).

The environmentally preferable alternative is the selected action. This alternative best meets the full range of national environmental policy goals as stated in NEPA's Section 101. The selected action (1) maximizes protection of natural and cultural resources while maintaining a wide range of neutral and beneficial uses of the environment without degradation; (2) maintains an environment that supports diversity and variety of individual choice; (3) achieves a balance between human population and resource use; and (4) improves resource sustainability.

Alternative C, as described in the Final GMP/EIS, could potentially provide additional protection for natural resources beyond that included in the selected action, primarily through scaling back human activities and facilities. Alternative C does not protect historic and cultural resources, however, nor does it provide for a diversity of human choice.

The selected alternative provides the appropriate balance and flexibility necessary to protect the cultural heritage and traditional recreational uses at Isle Royale, as well as natural and cultural resources. This approach is also vital to maintaining relationships between gateway communities and Isle Royale National Park, a critical element in the successful implementation of the proposed action and realization of its beneficial effects on the environment.

Measures To Minimize Harm

All practicable means to avoid or minimize environmental harm that could result from implementation of the selected action have been identified and incorporated into the selected action. They are presented in detail in the GMP/FEIS. They include, but are not limited to, resource monitoring and management; visitor use monitoring and management; commitments for additional resource surveys and consultation prior to Park Service construction, and proposals for additional research and data collection as outlined in the plan. Additional mitigation measures are discussed on pp. 24 and 25, and in the Consultation and Coordination section (pp. 128–134) of the GMP/FEIS.

Due to the programmatic nature of the general management plan, specific development projects will be reviewed as necessary for compliance with the National Environmental Policy Act, National Historic Preservation Act, and other applicable Federal and State laws and regulations prior to project clearance and implementation. Specific measures to minimize environmental harm will be included in implementation plans called for by the GMP/FEIS. These include fisheries management and water resource management plans, a study to develop and evaluate options for improving the mainland headquarters, a comprehensive interpretive plan, a wilderness and backcountry management plan, and a commercial services plan.

Basis For Decision

The selected alternative best supports the park's purpose, significance, and wilderness status, and accomplishes the statutory mission of the National Park Service to provide long-term protection of park resources while allowing for appropriate levels of visitor use and means of visitor enjoyment. The selected alternative also does the best job of addressing issues identified during public scoping while minimizing environmental harm. Other factors considered in the decision were public and resource benefits gained for the cost incurred, and extensive public comment.

Public Involvement

Public involvement for the General Management Plan began with a workshop for representatives of key stakeholders in February 1994. In July 1995 the planning team met on the island to discuss preliminary planning issues. Team members spoke about the planning effort at two public programs on the island. The planning team also met with park staff members (those not on the planning team) to solicit their input. Newsletter #1, published in November 1995, introduced the planning project and process to the public.

In Newsletter #2 the public was asked to review draft purpose and significance statements and a list of preliminary planning issues. Nearly 300 responses were received and 50–60 people attended each public meeting in Duluth, Minnesota, and Houghton and Lansing, Michigan to provide additional comments.

Newsletter #3, published in June 1996, summarized public input to date and presented revised purpose and significance statements, park emphasis statements, revised issue statements, potential management zones, and possible alternative concepts. There were again a large number of responses and the results were reported in November 1996 in Newsletter #4.

Using the public input, the planning team developed the alternative concepts in more detail and presented them with maps in Newsletter #5 in February 1997. Public meetings were held in Ann Arbor and Houghton, Michigan and Duluth, Minnesota, to present the management alternatives for public comment in March 1997. There was significant response to the newsletter and 75 to 150 people attended each meeting. Using

that input the planning team developed a preliminary preferred alternative, which was presented in Newsletter #6 in July 1997.

The Draft General Management Plan/ Environmental Impact Statement was produced and distributed for public review in March 1998. Public meetings were held in April 1998 at St. Paul and Duluth, Minnesota, and Houghton and Ann Arbor, Michigan. Approximately 75–150 people attended each of the meetings. Additionally, nearly 600 responses were received by mail or on the Internet. The preferred alternative was subsequently revised and the Final General Management Plan/ Environmental Impact Statement was distributed in November 1998.

Sixteen (16) letters commenting on the GMP/FEIS were received. There were few new ideas expressed in the letters; similar comments (with NPS responses) were incorporated into the GMP/FEIS. Concerns related to the following general topic areas were expressed: separation of uses (including concerns about non-motorized zones), concessions services at Rock Harbor (including concerns about affordability and accessibility of overnight accommodations), and dock removal and replacement. The National Park Service has heard these concerns, and responded to them in the "Summary of Public Comments" section of the GMP/ FEIS.

Conclusion

A notice of availability for the Final General Management Plan/ Environmental Impact Statement for Isle Royale National Park was published in the **Federal Register** on November 3, 1998, and the 30-day no-action period ended on December 3, 1998.

The above factors and considerations justify the selection of the final plan, as described in the "Proposed Action" section of the Final Environmental Impact Statement. The final general management plan is hereby approved.

Dated: May 21, 1999.

William W. Schenk,

Regional Director.

[FR Doc. 99–14440 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

New Orleans Jazz National Historical Park, New Orleans, Louisiana; Notice of Availability of Final General Management Plan/Environmental Impact Statement for New Orleans Jazz National Historical Park

SUMMARY: This Final General Management Plan/Environmental Impact Statement describes and analyzes three alternatives proposed by the National Park Service for setting park management and direction for New Orleans Jazz National Historical Park over the next 10 to 15 years. The format of the document will be as an abbreviated final environmental impact statement. **Alternative A** is the no-action, or status quo, alternative. This alternative would not allow the park to achieve its mission; however, it does provide a baseline for comparison with the other alternatives. **Alternative B** would emphasize conveying the park's interpretive story through such personal programs as interpreted performances, seminars, and performances. Educational activities would be given maximum emphasis in this alternative. It would allow the park to assist in the adaptive use of structures related to jazz. Interpretive programming would heavily depend on the involvement of local musicians and educators, thus supporting cultural preservation. Under this alternative, the visitor center would be located at the Old U.S. Mint. **Alternative C** would emphasize a strong partnership program between the National Park Service and other entities involved in preserving the New Orleans jazz tradition. In Alternative C, the National Park Service would provide funding for basic park operations and would work intensively with others to develop partnerships and alternative funding sources for interpretation, visitor use and experiences, and other activities focusing on preserving the jazz tradition. The extent and success of this alternative would depend on substantial support from partners, especially the private sector. Interpretation media would be extensively used, and the size and scope of park educational and preservation programs would be guided by the development of partnerships. Under this alternative, the visitor center would be located at a complex in Louis Armstrong Park. Alternative C is the National Park Service's **Proposed Action.**

Environmental impacts that would result from implementation of the alternatives are addressed in the document. Impact topics include cultural and natural resources, interpretation and visitor use, socioeconomic environment, and National Park Service operations. Measures that would be taken to mitigate impacts are also described in the document.

Availability: The Final Environmental Impact Statement is being mailed to agencies, organizations, and individuals on the park's mailing list, and a limited number of copies will be available at park headquarters at the following address: Superintendent, New Orleans Jazz National Historical Park, 365 Canal Street, Suite 2400, New Orleans, LA 70130, Telephone (504) 589–4806.

No sooner than 30 days from the appearance of this notice in the **Federal Register**, a Record of Decision will be signed that will document NPS approval of the general management plan for New Orleans Jazz National Historical Park, and identify the selected action from the alternatives presented in the FEIS.

Dated: May 28, 1999.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 99–14441 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Racial Desegregation of Public Education National Historic Landmark Theme Study

AGENCY: National Park Service.

ACTION: Notice of theme study.

SUMMARY: Notice is hereby given that in October 1998, Congress authorized the National Park Service to prepare a National Historic Landmark (NHL) Theme Study on the history of racial desegregation in public education in the United States. The purpose of this study is to develop a historic context on the story of racial desegregation and to identify and prioritize potential National Historic Landmarks This study will be presented to Congress by the Secretary of the Interior in October 2000.

FOR FURTHER INFORMATION CONTACT: John Sprinkle, National Register, History, and Education (2280), National Park Service, 1849 C Street, NW, Room NC–400, Washington, DC 20240. Telephone (202) 343–8166.

Dated: June 2, 1999.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Park Service, Washington Office.

[FR Doc. 99–14451 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Canyon National Park, Coconino County, AZ

AGENCY: National Park Service, DOI.

ACTION: Notice and request for comment.

SUMMARY: Notice is hereby given that a proposal for a cellular communication site at Grand Canyon National Park has been received. The company proposes installing and operating a wireless telecommunications facility on the existing tower of US WEST at Grand Canyon Village of the park.

DATES: Written comments must be submitted on or before July 5, 1999.

ADDRESSES: Direct all written comments to Superintendent, Attn.: Barbara Nelson, Telecommunications Specialist, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

FOR FURTHER INFORMATION CONTACT: Sandi Perl, Management Assistant, at telephone number 520–638–7885.

Dated: June 1, 1999.

Robert L. Arnberger,

Superintendent.

[FR Doc. 99–14442 Filed 6–7–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–805 (Final)]

Elastic Rubber Tape From India

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury by reason of imports from India of elastic rubber tape,[2] classified in subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 18, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by counsel for Fulflex, Inc., Middletown, RI, and two wholly-owned subsidiaries of M-Tec Corp., Elastomer Technologies Group, Inc., Stuart, VA, and RM Engineered Products, Inc., North Charleston, SC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of elastic rubber tape from India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 10, 1999 (64 FR 6679). The hearing was held in Washington, DC, on April 20, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 1, 1999. The views of the Commission are contained in USITC Publication 3200 (June 1999), entitled Elastic Rubber Tape from India: Investigation No. 731–TA–805 (Final).

By order of the Commission.

Issued: June 2, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14524 Filed 6–7–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports from India, and Commissioner Koplan determines that an industry in the United States is threatened with material injury by reason of the subject imports from India.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-Fitted Film Packages; Notice of Issuance of General Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission determined to reverse-in-part the presiding administrative law judges (ALJ's) initial determination (ID) of February 24, 1999, in the above-captioned investigation and determine that the design patents in issue are infringed by the respondents. The Commission also determined that the correct standard for the burden of proof on the repair/reconstruction issue is a preponderance of the evidence. The Commission also determined to correct certain technical errors in the ID's infringement findings. Having found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Commission issued a general exclusion order and cease and desist orders directed to 20 domestic respondents, and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (Fuji) of Tokyo, Japan. 63 FR 14474. Fuji's complaint alleged unfair acts in violation of section 337 in the importation and sale of certain lens-fitted film packages (i.e., disposable cameras). The complaint alleged that 27 respondents had infringed one or more claims of 15 patents held by complainant Fuji. On October 23, 1998, the Commission determined not to review two IDs finding a total of eight respondents, viz., Boshi Technology Ltd., Fast Shot, Haichi International, Innovative Trading Company, Labelle Time, Inc., Linfa Photographic Ind. Co. Ltd., Forcecam, Inc., and Rino Trading Co. Ltd., in

default for failure to respond to the complaint and notice of investigation. An evidentiary hearing was held November 2–13, 1998. Eight respondents participated in the hearing, viz., Achiever Industries Limited, Argus Industries, China Film Equipment, Dynatec International Inc., Jazz Photo Corp., OptiColor Camera, P.S.I. Industries, and Sakar International, Inc. (the participating respondents). On December 4, 1998, the Commission determined not to review an ID granting complainant's oral motion to withdraw a single claim of one patent from the investigation. 63 FR 67918 (December 9, 1998). Ten respondents that had filed responses to the complaint and notice of investigation failed to appear at the hearing, viz., Ad-Tek Specialties Inc., AmerImage, Inc. d/b/a/ Rainbow Products, Boecks Camera LLC, BPS Marketing, E.T. Trading d/b/a Klikit, Penmax, Inc., PhilmEx Photographic Film, T.D.A. Trading Corp., Vantage Sales, Inc., and Vivitar Corp.

On February 24, 1999, the ALJ issued his final ID, finding a violation of section 337 by 26 of 27 named respondents. (Complainant Fuji admitted at closing argument that one named respondent, Opticam Inc, was not violating section 337). He found that Fuji had not carried its burden of proof in showing infringement of three design patents. The ALJ also issued his recommendations on remedy and bonding. He recommended that the Commission issue a general exclusion order directing that disposable cameras that infringe the claims in controversy of the 12 utility patents at issue be excluded from entry into the United States. He also recommended that cease and desist orders be issued directed to the 21 domestic respondents found in violation of section 337. Finally, he recommended a 100 percent bond during the period of Presidential review.

On March 8, 1999, the participating respondents, complainant Fuji, and the Commission investigative attorney (IA) filed petitions for review of the ID. Upon considering the petitions, the Commission, on April 19, 1999, determined to review the following issues: (1) The standard for the burden of proof applied in the ID for establishing repair versus reconstruction of a patented product, (2) the ID's determination that the design patents asserted in this investigation were not infringed, (3) infringement issues insofar as necessary to correct certain clerical errors brought to the Commission's attention by the IA. 64 FR 20324–25 (April 26, 1999).

The Commission received written submissions from the parties that addressed the form of remedy, if any, that should be ordered, the effect of a remedy on the public interest, and the amount of bond that should be imposed during the 60-day Presidential review period.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission determined (1) to reverse the ALJ's finding that Fuji failed to carry its burden of proof on the issue of design patent infringement; (2) to correct the standard of the burden of proof on the repair/reconstruction issue to be proof by a preponderance of the evidence; and (3) to correct technical errors in the ID's infringement findings. The Commission further determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry for consumption of lens-fitted film packages that infringe the claims in issue of the 15 patents asserted by Fuji in this investigation. The Commission also determined to issue 20 cease and desist orders directed to domestic respondents Fast Shot, Haichi International, Innovative Trading Company, Labelle Time, Inc., Forcecam, Inc., Argus Industries, Dynatec International Inc., Jazz Photo Corp., OptiColor Camera, P.S.I. Industries, Sakar International, Inc., Ad-Tek Specialties Inc., AmerImage, Inc. d/b/a/ Rainbow Products, Boecks Camera LLC, BPS Marketing, E.T. Trading d/b/a Klikit, PhilmEx Photographic Film, T.D.A. Trading Corp., Vantage Sales, Inc., and Vivitar Corp. Respondent Penmax made a credible showing that it has no remaining inventory of infringing products, and the Commission therefore determined not to issue a cease and desist order against Penmax.

The Commission also determined that the public interest factors enumerated in subsections (d) and (f) of section 337 do not preclude the issuance of the aforementioned general exclusion order and cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

Copies of the Commission's orders, the public version of the Commission's opinion in support thereof, the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45-210.51.

By order of the Commission.

Issued: June 2, 1999,

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14525 Filed 6–7–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[IND No. 1986–99; AG Order No. 2227–99]

RIN 1115–AE 26

Extension and Redesignation of the Province of Kosovo in the Republic of Serbia in the State of the Federal Republic of Yugoslavia (Serbia-Montenegro) Under Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On June 9, 1998 the Attorney General designated Kosovo Province in the Republic of Serbia in the State of the Federal Republic of Yugoslavia (Serbia-Montenegro) under the Temporary Protected Status (TPS) program. This designation allowed eligible nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who have continuously resided in the United States since that date to apply for TPS through June 8, 1999. This notice extends the TPS designation for Kosovo Province for 12 months (until June 8, 2000) and provides procedures for nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) with TPS to re-register for the additional 12-month TPS period. This notice also redesignated Kosovo Province under the TPS program, thereby expanding TPS eligibility to include nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who have been "continuously present in the United States") and who have "continuously resided in the United States" since June 18, 1999.

EFFECTIVE DATES:

1. Extension of Designation and Re-Registration

Because the initial grant of TPS expires on June 8, 1999, the extension is effective on June 9, 1999, and lasts until June 8, 2000. Nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who already have TPS must re-register for TPS during the period lasting from June 8, 1999, until July 8, 1999.

2. Redesignation

The redesignation of Kosovo Province for TPS is effective June 8, 1999, until June 8, 2000. The registration period for nationals of Kosovo Province for TPS under the redesignation begins on June 8, 1999, and will remain in effect until June 8, 2000.

FOR FURTHER INFORMATION CONTACT:
Michael Valverde, Program Analyst, Immigration and Naturalization Service, Room 3040, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority To Extend the Designation and Redesignate Kosovo Province Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (the Act) states that at least 60 days before the end of a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). Under section 244(b)(3)(C), the Attorney General may extend the initial TPS period based on a determination that the foreign state continues to meet the conditions for designation. 8 U.S.C. 1254a(b)(3)(C). Through such an extension, however, TPS continues to be available only to aliens who have been continuously physically present in the United States from the effective date of the initial designation, in this case since June 9, 1998.

However, section 244(b)(1) of the Act implicitly permits the Attorney General to make a new TPS designation for a foreign state (or part of a foreign state) that would affect non-covered aliens currently residing in the United States, rather than simply extending a prior TPS designation for previously eligible aliens. 8 U.S.C. 1254a(b)(1). Section 244(c)(1)(A)(i) states that an alien is eligible for TPS if he or she "has been continuously physically present since the effective date of the most recent designation of that state." 8 U.S.C. 1254a(c)(1)(A)(i).

Why Did the Attorney General Decide to Both Extend and Redesignate Kosovo Province Under the TPS Program?

Due to the recent events in Kosovo Province and surrounding areas of the Federal Republic of Yugoslavia, the Attorney General and the Department of State have reexamined conditions in Kosovo Province. A recent Department of State report on conditions in that region found that, "[g]iven the state of open war in Kosovo, the ongoing NATO air strikes in the Federal Republic of Yugoslavia (including Kosovo), and no indication of peaceful resolution, a resident of Kosovo now in the United States could not possibly return to Kosovo without incurring an extremely serious threat to his or her personal safety." Based on these and other findings, the Attorney General has determined that conditions in Kosovo Province have worsened since the initial designation and, as a result, has decided to extend and redesignate Kosovo Province under the TPS program. This will extend availability of TPS to include eligible nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who arrived in the United States after the date of initial designation.

If I Currently Have TPS Through the Kosovo Province TPS Program, Do I Still Need to Re-Register for TPS?

Yes. If you were granted TPS based on the initial designation of Kosovo Province, that status will expire on June 8, 1999. Accordingly, you must re-register for TPS in order to maintain your status through June 8, 2000. With re-registration, you do not need to pay the fifty-dollar ($50) filing fee for the Form I–821.

If you do not have TPS or have TPS but miss the re-registration period, you can still apply for TPS under the redesignation if you have been continuously physically present and have continuously resided in the United States since June 8, 1999. Under the redesignation you must pay the fifty-dollar ($50) fee for the Form I–821. See the two sets of registration instructions below for complete filing instructions.

If I Currently Have TPS, How Do I Register for an Extension?

All applicants previously granted TPS under the Kosovo Province program may apply for an extension by filing a Form I–821 (without the fee) during the re-registration period that begins June 8, 1999 and ends July 8, 1999. Additionally, you must file a form I–765. See the chart below to determine whether or not you must submit the one hundred-dollar ($100) filing fee with the Form I–765.

If	Then
You are applying for employment authorization through June 8, 2000 ...	You must complete and file the Form I–765, Application for Employment Authorization, with the one hundred-dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and an appropriately documented fee waiver request and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″ × 1½″) and supporting evidence, as provided in 8 CFR 244.9 (evidence of identity and nationality, and proof of residence).

If I Do Not Currently Have TPS, How Do I Register?

All applicants filing for TPS under the Kosovo program redesignation must apply by filing Form I–821 accompanied by the fifty-dollar ($50) fee.

Additionally, you must submit a twenty-five dollar ($25) fingerprinting fee, as well as Form I–765. See the chart below to determine if you must also submit the one hundred-dollar ($100) filing fee under Form I–765, and for information on requesting a fee waiver.

If	Then
You are applying for employment authorization through June 8, 2000 ...	You must complete and file the Form I–765. Application for Employment Authorization, with the one hundred-dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are requesting a fee waiver for the $50 fee for the Form I–821, $100 fee for the Form I–765, and $25 fingerprinting fee.	You must complete and file Form I–821 and Form I–765 and an appropriately documented fee waiver request and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20.

To register for TPS, you also must include two identification photographs (1½" × 1½") and supporting evidence, as provided in 8 CFR 244.9 (evidence of identity and nationality, and proof of residence).

When Must I Register for TPS?

Extension of TPS

For nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who already have TPS, the re-registration period begins June 8, 1999 and lasts until July 8, 1999. If you have TPS from the original designation but do not file during the re-registration period, you can still file a new application for TPS under the redesignation, but you will need to follow the instructions for applying under the redesignation.

Registration Period Under the Redesignation

The registration period for nationals of Kosovo Province applying for TPS under the redesignation begins June 8, 1999, and will remain in effect until June 8, 2000.

Where Must I File My Application for TPS Under This Extension and Redesignation?

Applicants seeking to register for TPS or to extend their TPS must submit an application and accompanying materials to the Immigration and Naturalization Service (INS) Service Center that has jurisdiction over the applicant's place of residence.

If you live in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia, or in the U.S. Virgin Islands, mail your application to: Vermont Service Center, ATTN: TPS, 75 Lower Welden Street, St. Albans, VT 05479.

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail your application to: California Service Center, ATTN: TPS, 24000 Avila Road, 2nd Floor, Laguna Niguel, CA 92677–8111.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your application to: Texas Service Center, PO Box 850997, Mesquite, TX 75185–0997.

If you live elsewhere in the United States, please mail your application to: Nebraska Service Center, PO Box 87821, Lincoln, NE 68501–7821.

What Are the Requirements for Nationals of Kosovo Province to Demonstrate That They Have Been "Continuously Physically Present" and Have "Continuously Resided" in the United States?

All initial applicant for TPS under the Kosovo Province redesignation will have to demonstrate "continuous physical presence" and "continuous residence" in the United States since June 8, 1999.

"Continuously physically present" means actual physical presence in the United States for the entire period specified. However, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences.

"Continuously resided" means residing in the United States for the entire period. An alien will not be considered to have failed to maintain continuous residence in the United States by reason by a brief, casual, and innocent absence or absence due merely to a brief trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Notice of Extension of Designation and Redesignation of Kosovo Province Under the TPS Program

By the authority vested in me as Attorney General under section 244 of the Act, and as required by subsections 244(b)(3) (A) and (C), and 244(b)(1) of the Act, I find that there exist extraordinary and temporary conditions that prevent aliens who are nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) from returning Kosovo Province in safety, and that permitting nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) to remain temporarily in the United States is not contrary to the national interest. 8 U.S.C. 1254a(b)(3) (A) and (C); 8 U.S.C. 1254a(b)(1). Accordingly, I hereby order as follows:

(1) The designation of Kosovo Province is extended under section 244(b)(3) (A) and (C) of the Act for the 12-month period spanning from June 9, 1999, to June 8, 2000. 8 U.S.C. 1254a(b)(3) (A) and (C). Nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who received TPS during the initial designation period may apply for an extension of TPS during the registration period lasting from June 8, 1999 until July 8, 1999.

(2) Kosovo Province is redesignated under section 244(b)(1) of the Act for TPS until June 8, 2000. 8 U.S.C. 1254a(b)(1). Nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) who have been "continuously physically present" and have "continuously resided" in the United States since June 8, 1999, may apply for TPS within the registration period, which begins June 8, 1999, and ends June 8, 2000.

(3) I estimate that there are no more than 5,000 nationals of Kovoso Province who have been granted TPS and who are eligible for re-registration and no more than 3,000 nationals of Kosovo Province who do not have TPS and are eligible for TPS under this redesignation.

(4) In order to maintain TPS, a national of Kosovo Province (or an alien having no nationality who last habitually resided in Kosovo Province) who currently has TPS must re-register by filing Form I–821, together with Form I–765, within the period beginning June 8, 1999 and ending on July 8, 1999. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c). There is no fee for a Form I–821 filed as part of the re-registration application. A Form I–765 must be filed with the Form I–821. If the applicant requests employment authorization, he or she must submit

one hundred dollars ($100) or a properly documented fee wavier request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit a fee.

(5) A national of Kosovo Province (or an alien having no nationality who last habitually resided in Kosovo Province) filing for TPS under the redesignation must File Form I–821, together with Form I–765, within the period beginning June 8, 1999, and ending on June 8, 2000. A fifty-dollar ($50) fee must accompany Form I–821. A twenty-five-dollar ($25) fingerprinting fee must also be submitted. If the applicant requests employment authorization, he or she must submit one hundred dollars ($100) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but in such cases no fee will be charged. The applicant can also request a fee waiver for the twenty-five-dollar ($25) fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before June 8, 2000, the designation of Kosovo Province under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TSP will be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the TPS redesignation program for nationals of Kosovo Province (and aliens having no nationality who last habitually resided in Kosovo Province) will be available at local INS offices upon publication of this notice.

Dated: June 2, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–14507 Filed 6–7–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 1, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Rehabilitation Plan and Award.

OMB Number: 1215–0067.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profit.

Number of Respondents: 7,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 3,500 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Rehabilitation Plan and Award is the plan for rehabilitation services submitted to OWCP by the injured worker and the rehabilitation counselor, and OWCP's Award of Payment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–14464 Filed 6–7–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 1, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira MIlls (202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Office for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Report of Changes That May Affect Your Black Lung Benefits.

OMB Number: 1215–0084.

Frequency: Biennially.

Affected Public: Individuals or households.

Number of Respondents: 30,000.

Estimated Time Per Respondent: 5 to 8 minutes.

Total Burden Hours: 2,650 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Once a miner or survivor is found eligible for benefits, the primary beneficiary is requested to report certain changes that may affect benefits. To ensure that there is a review and update of all Trust Fund cases and to help the beneficiary comply with the need to report certain changes, the CM–929 is sent to all Trust Fund primary beneficiaries.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–14465 Filed 6–7–99; 8:45 am]

BILLING CODE 4510–77–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Wednesday, June 16, 1999 at the Cannon House Office Building, room 345. The meeting is tentatively scheduled for 9:30 a.m. to 12 p.m.

The Commission will discuss its research agenda for the coming year

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99–14453 Filed 6–7–99; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 26, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Justice, Civil Division (N1–60–99–5, 1 item, 1 temporary item). Published and unpublished technical and scientific reports and copies of expert witness testimony in non-Federal cases relating to radiation. Records were collected by Civil Division attorneys as background information for litigation. These documents are not associated with

specific cases nor were they entered as evidence in a case.

2. Department of State, Foreign Service Institute (N1–59–99–17, 124 items, 123 temporary items). Files related to training and instruction in the field of foreign affairs and foreign languages, and the provision of assistance in employment searches, retirement planning, and adjusting to life at overseas posts. Included are such records as course schedules and curricula, training evaluations, class rosters, proficiency tests, trip files, budgetary records, and statistical reports. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of policy files of the Office of the Director of the Institute are proposed for permanent retention.

3. Environmental Protection Agency, Office of Air Quality Planning and Standards (N1–412–99–8, 4 items, 2 temporary items). Software programs and input documents associated with an electronic information system that collects and stores data regarding air quality and emissions. The electronic data and related documentation are proposed for permanent retention.

4. Federal Energy Regulatory Commission, Office of Pipeline Regulation (N1–138–98–4, 1 item, 1 temporary item). Electronic copies of documents created using electronic mail and word processing associated with correspondence with gas pipeline companies. Recordkeeping copies of these files were previously approved for disposal.

5. Federal Energy Regulatory Commission, Office of Pipeline Regulation (N1–138–98–13, 1 item, 1 temporary item). Electronic copies of documents created using electronic mail and word processing related to suspension and investigations of rates, fares, charges, and practices of companies. Recordkeeping copies of these files were previously approved for disposal.

6. Federal Energy Regulatory Commission, Office of the Chief Accountant (N1–138–98–14, 1 item, 1 temporary item). Electronic copies of documents created using electronic mail and word processing related to annual financial and statistical reports from electric utilities and other hydro projects and licensees. Recordkeeping copies of these reports were previously approved for disposal.

Dated: June 1, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–14383 Filed 6–7–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before July 23, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@ arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the

Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. National Archives and Records Administration, Agency-wide (N9–64–99–1, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to routine program administration, committee management, and the use of free-lance editorial services. Recordkeeping copies of these files are included in Appendix 1 of the NARA Files Maintenance and Records Disposition Manual and Disposition Job N1–64–96–2. Appendix 1 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

2. National Archives and Records Administration, Agency-wide (N9–64–99–2, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to general administration. Included are electronic copies of records pertaining to space requirements and other housekeeping matters, reproduction fees, the publication of **Federal Register** notices, the development of forms, the protection of security-classified information, and the management of records accumulated by NARA's component offices.

Recordkeeping copies of these files are included in Appendix 2 of the NARA Files Maintenance and Records Disposition Manual and Disposition Job N1–64–96–2. Appendix 2 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

3. National Archives and Records Administration, Agency-wide (N9–64–99–3, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to personnel management. Included are electronic copies of records pertaining to such subjects as the development and implementation of automated personnel and manpower information systems, pay and leave administration, charitable contribution campaigns, and savings bond drives. Recordkeeping copies of these files are included in Appendix 3 of the NARA Files Maintenance and Records Disposition Manual. Appendix 3 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

4. National Archives and Records Administration, Agency-wide (N9–64–99–4, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to budget, accounting, and financial management. Included are electronic copies of records pertaining to such subjects as the preparation of annual budget estimates and justifications, the development of operating budget plans, reimbursable agreements with other agencies, and cash management. Recordkeeping copies of these files are included in Appendix 4 of the NARA Files Maintenance and Records Disposition Manual. Appendix 4 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

5. National Archives and Records Administration, Agency-wide (N9–64–99–5, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to property and procurement. Included are electronic copies of records pertaining to such subjects as general supply and services matters, the control of personal property, the maintenance of office equipment, and procurement policies. Recordkeeping copies of these files are included in Appendix 5 of the NARA Files Maintenance and Records Disposition Manual. Appendix 5 is available on the NARA Web site (htttp://ardor.nara.gov/nara/index.html).

6. National Archives and Records Administration, Agency-wide (N9–64–99–6, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to facilities. Included are electronic copies of records pertaining to such subjects as community activities, the establishment of health units, requisitions for supplies and services, sanitation and snow removal, the operation of concessions,

and the maintenance of mechanical equipment. Recordkeeping copies of these files are included in Appendix 6 of the NARA Files Maintenance and Records Disposition Manual. Appendix 6 is available on the NARA Web site (http://ardor.nara.gov/nara/index.html).

7. National Archives and Records Administration, Agency-wide (N9–64–99–7, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to travel and transportation. Included are electronic copies of records pertaining to the development of agency-wide travel policies, payments for transportation services involving non-routine conditions, and the issuance of official passports. Recordkeeping copies of these files are included in Appendix 7 of the NARA Files Maintenance and Records Disposition Manual.

8. National Archives and Records Administration, Agency-wide (N9–64–99–8, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to automatic data processing and word processing. Included are electronic copies of records pertaining to such subjects as the day-to-day administration of ADP programs, cost and staffing matters, and ADP training. Recordkeeping copies of these files are included in Appendix 8 of the NARA Files Maintenance and Records Disposition Manual.

9. National Archives and Records Administration, Agency-wide (N9–64–99–9, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to legislative and congressional relations. Included are electronic copies of records pertaining to the status of proposed legislation, comments on proposed legislation maintained by offices other than the office responsible for agency-wide legislative liaison, and conversations with Members of Congress and their staffs. Recordkeeping copies of these files are included in Appendix 9 of the NARA Files Maintenance and Records Disposition Manual.

10. National Archives and Records Administration, Agency-wide (N9–64–99–10, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to public information activities. Included are electronic copies of such records as press clippings about NARA, biographies of leading NARA personalities, and letters of commendation or complaint. Recordkeeping copies of these files are included in Appendix 10 of the NARA Files Maintenance and Records Disposition Manual.

11. National Archives and Records Administration, Agency-wide (N9–64–99–11, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to legal matters, such as model copies of contracts and leases, copies of statutes and legal opinions used for reference, and files relating to potential tort claims where a claim is not formally submitted. Recordkeeping copies of these files are included in Disposition Job N1–64–96–3.

12. National Archives and Records Administration, Agency-wide (N9–64–99–12, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to audits and investigations. Included are electronic copies of records pertaining to such subjects as day-to-day administration of the audit function (excluding files on specific cases), guidance provided to auditors, determination of areas for audit, and summaries of audits. Recordkeeping copies of these files are included in Appendix 12 of the NARA Files Maintenance and Records Disposition Manual.

13. National Archives and Records Administration, Agency-wide (N9–64–99–13, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to NARA programs for the management, disposition, and storage of Federal records. Included are electronic copies of records pertaining to such subjects as the operation of agency records centers, records management workshops for staff of Federal agencies, the publication in the **Federal Register** of notices of pending records disposition schedules, and the activities of Federal Records Centers, including accessioning, disposal, and reference. Recordkeeping copies of these files are included in Appendix 13 of the NARA Files Maintenance and Records Disposition Manual.

14. National Archives and Records Administration, Agency-wide (N9–64–99–14, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to archives, presidential materials, and donated materials. Included are electronic copies of records pertaining to such subjects as the preparation and approval of annual work plans, arrangement and description projects, reference and reproduction services, the operation of research rooms, and inspections of regional archival facilities. Recordkeeping copies of these files are included in Appendix 14 of the NARA Files Maintenance and Records Disposition Manual.

15. National Archives and Records Administration, Agency-wide (N9–64–99–15, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the **Federal Register**. Included are electronic copies of records pertaining to such subjects as studies of **Federal Register** operations and policies, relations with Federal agencies concerning the publication of regulations, and the publication of documents, including copies of the published documents. Recordkeeping copies of these files are included in Appendix 15 of the NARA Files Maintenance and Records Disposition Manual.

16. National Archives and Records Administration, Agency-wide (N9–64–99–16, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to public programs. Included are electronic copies of records pertaining to such subjects as interpretive programs at NARA facilities, the National Archives volunteer program, museum shop operations, educational and training programs, and the preparation and sale of publications. Recordkeeping copies of these files are included in Appendix 16 of the NARA Files Maintenance and Records Disposition Manual.

17. National Archives and Records Administration, National Historical Publications and Records Commission (N9–64–99–17, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to the National Historical Publications and Records Commission. Included are electronic copies of records pertaining to such subjects as Commission meetings, annual reports, grants, and training in documentary editing. Recordkeeping copies of these files are included in Appendix 17 of the NARA Files Maintenance and Records Disposition Manual.

18. National Archives and Records Administration, Agency-wide (N9–64–99–18, 2 items, 2 temporary items). Electronic copies created using electronic mail and word processing that relate to the National Archives Trust Fund. Included are electronic copies of records pertaining to such subjects as annual reports of the Trust Fund, service orders, and the deposit of monies received. Recordkeeping copies

of these files are included in Appendix 18 of the NARA Files Maintenance and Records Disposition Manual.

Dated: May 21, 1999.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–14382 Filed 6–7–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel; Notice of Correction

This is to announce a correction to the meeting notice for the Combined Arts Advisory Panel, Design section, published in the **Federal Register** on Friday, May 14, 1999. The open session, previously announced as being from 10:45 a.m. to 4 p.m. on June 25th, will, instead, be held from 12:45 p.m. to 4 p.m. on June 25th.

Dated: May 28, 1999.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. 99–14380 Filed 6–7–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Panel, Music Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. The meetings will be held on July 6–9, 1999 and July 13–16, 1999. The first panel will meet from 9:00 a.m. to 5:30 p.m. on July 6–8, and from 9:00 a.m. to 3:30 p.m. on July 9th. The second panel will meet from 9:00 a.m. to 5:30 p.m. on July 13–15, and from 9:00 a.m. to 4:00 p.m. on July 16th. A portion of each meeting, from 1:30 p.m. to 3:30 p.m. on July 9th and from 2:00 p.m. to 4:00 p.m. on July 16th, will be open to the public for policy discussions.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on July 6–8 and July 13–15, from 9:00 a.m. to 1:30 p.m. on July 9th, and from 9:00 a.m. to 2:00 p.m. on July 16th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: May 26, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–14400 Filed 6–7–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel to the National Council on the Arts will be held on June 21, 1999. The panel will meet from 3:00 p.m. to 4:00 p.m. via teleconference from room 704 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: June 1, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99–14399 Filed 6–7–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for résumés.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking qualified candidates for appointment to its Advisory Committee on Reactor Safeguards (ACRS).

ADDRESSES: Submit résumés to: Ms. Jude Himmelberg, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR APPLICATION MATERIALS, CALL: 1–800–952–9678. Please refer to Announcement Number 9999901.

SUPPLEMENTARY INFORMATION: Congress established the ACRS to provide the NRC with independent expert advice on the safety of existing and proposed reactor facilities and on the adequacy of the proposed reactor safety standards. At present, the ACRS places emphasis on reviewing several matters, including: safety issues associated with the operation of 104 commercial nuclear units in the United States; risk-informed regulatory approach; license renewal applications; risk-informed revisions to 10 CFR part 50; revisions to the NRC Safety Goal Policy Statement; plant-specific application of Safety Goals; and application of revised source term to operating plants.

The ACRS membership includes individuals from national laboratories, academia, and industry who possess specific technical expertise along with a broad perspective in addressing safety concerns. The ACRS members are selected from a variety of engineering

and scientific disciplines, such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, structural engineering, materials science, probabilistic risk assessment, and instrumentation and process control systems.

At this time, candidates are specifically being sought who have 15–20 years of specific experience, including graduate level education in either: Materials science; metallurgical/structural engineering; systems engineering and thermal-hydraulics modeling as applied to nuclear plant systems; or the application of risk methods to nuclear safety issues.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views so that the membership on the Committee will be fairly balanced in terms of the points of view represented and functions to be performed by the Committee.

Because conflict-of-interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be weighed. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities issued by nuclear industry entities, or discontinuance of industry-funded research contracts or grants.

Copies of a résumé describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address and telephone number should be provided. All qualified candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 80–100 days per year to Committee business. Applications will be accepted until July 30, 1999.

Dated: June 2, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–14467 Filed 6–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences, Fiscal Year 1998, Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–66) requires that AOs be reported to Congress on an annual basis. During fiscal-year 1998, six events that occurred at facilities licensed or otherwise regulated by the NRC and the Agreement States were determined to be AOs. These events are discussed below. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Volume 21, "Report to Congress on Abnormal Occurrences, Fiscal Year 1998." This report will be available at NRC's Public Document Room, 2120 L Street N.W. (Lower Level), Washington, D.C., about three weeks after the publication date of this **Federal Register** Notice.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

98–1 Seismic Risk From Liquid Uranium Hexafluoride at the Withdrawal Facilities at the Paducah Gaseous Diffusion Plant, Paducah, KY

One of the AO criteria notes that a major condition or significant event not considered in the license/certificate that requires immediate remedial action will be considered for reporting as an AO.

Date and Place—February 18, 1998; Paducah Gaseous Diffusion Plant, a uranium enrichment plant, operated by Lockheed Martin Utility Services for the United States Enrichment Corporation (USEC) and located about 16 kilometers (10 miles) west of Paducah, Kentucky.

Nature and Probable Consequences—On October 31, 1997, USEC submitted a certificate amendment request that provided an updated Safety Analysis Report, containing a new accident analysis, for Paducah. The seismic accident analysis stated that equipment (piping, condensers, and accumulators) in the withdrawal facilities containing liquid uranium hexafluoride (UF_6) could fail at a 70-year return earthquake (0.05 gravitational acceleration (g) peak ground acceleration (pga)) rather than at the 250-year return design basis earthquake (0.15 g pga). However, the consequences of the accident analysis were noted as minimal because of the assumptions made in the accident analysis. The NRC's request for additional information (RAI) dated February 5, 1998, raised concerns about the conservative nature of assumptions for the seismic accident analysis. In response to the RAI, USEC confirmed that the seismic accident analysis assumption of no liquid UF_6 in the withdrawal facilities' accumulators underestimated the potential source term for the seismic accident analysis.

The accumulators are normally empty and serve only as a reservoir for liquid UF_6 when cylinders are changed after being filled, or during periods of equipment problems or surveillances. However, with no operational restrictions on the amount of liquid UF_6 in the accumulators, a seismic event could occur with the accumulators full. Consequences from a 0.05 g pga earthquake with full accumulators in the withdrawal facilities could involve onsite fatalities and significant offsite injuries from exposure to the released UF_6 and reaction products.

Cause or Causes—The cause of this event was an inadequate seismic design for the facility and an inadequate accident analysis that failed to consider the full range of allowable operations of the withdrawal facilities.

Actions Taken To Prevent Recurrence

Licensee/Certificate Holder—Immediate corrective actions included restricting operations in the withdrawal facilities to limit the amount of liquid UF_6 available for release. Long-term corrective actions were to install seismic modifications that will allow the withdrawal facilities' equipment to withstand a design-basis earthquake. The modifications have been completed as directed by the NRC.

NRC—An immediately effective "confirmatory order modifying certificate" to incorporate the immediate and long-term corrective actions was issued on April 22, 1998.

* * * * *

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

98–2 Multiple Medical Brachytherapy Misadministrations by José N. De León, M.D., in Rio Piedras, PR

One of the AO criteria notes that a medical misadministration that results in a dose that is: (1) Equal to or greater than 1 gray (Gy) (100 rad) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1000 rad) to any other organ and that represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—Between April 27, 1995, and June 26, 1996; private medical office of José N. De León, M.D., Rio Piedras, Puerto Rico.

Nature and Probable Consequences—Nine patients were treated after surgery for non-malignant eye growths with a strontium-90 (Sr-90) eye applicator, at Dr. De León's private medical office. Each of the nine patients received a dose of 4000 centigray (cGy) (4000 rad) instead of the intended dose of 2000 cGy (2000 rad). The NRC staff identified this event during Fiscal Year 1998.

On June 1, 1994, Dr. De León submitted to NRC a Quality Management Program (QMP) indicating that his 4.625 gigabecquerel (125 millicurie) Sr-90 eye applicator device would deliver to a patient a dose of 2000 cGy (2000 rad) in 26 seconds. In April 1995, Dr. De León hired a health physics consultant to calculate a decay correction for the surface dose rate of the Sr-90 eye applicator. In April 1995, Dr. De León submitted a revised QMP to the NRC, incorporating the surface dose rate corrections performed by the consultant, stating that the Sr-90 eye applicator device would deliver a 2000 cGy (2000 rad) dose in 60 seconds.

On December 11, 1997, the NRC conducted a special inspection of Dr. De León's licensed activities. During this inspection, the NRC determined that in April 1995, Dr. De León's consultant had made a calculation error. Without verifying the consultant's calculations, Dr. De León had adjusted the treatment time from 26 seconds to 60 seconds.

When Dr. De León became aware of this error, he indicated that: (1) All patients or next of kin were notified, (2) a free examination was offered to all patients, which was declined, and (3) there were no problems or complications reported by patients associated with the misadministrations. Dr. De León also indicated that it is unlikely for patients to develop any harmful effects as a result of the misadministration.

The NRC hired a medical consultant to review the medical aspects of the misadministration. The NRC's medical consultant reviewed the information obtained from the NRC, Dr. De León, and Ryder Memorial Hospital, and concluded that: (1) The range for a single fraction for eye radiation treatments, recommended by the medical community using a Sr-90 applicator, is about 1800–3000 cGy (1800–3000 rad), (2) the highest single dose, using a Sr-90 applicator, recommended in published medical reports is 3000 cGy (3000 rad), and (3) the patients treated by Dr. De León are at a higher risk for harmful effects because of the high doses given in single fractions.

Cause or Causes—Dr. De León's consultant made a calculation error in correcting the surface dose rate of the Sr-90 applicator for radioactive decay and Dr. De León failed to verify or question the consultant's calculation before using the revised surface dose rate in patient treatments.

Actions Taken To Prevent Recurrence

Licensee—Dr. De León has retired; he has properly transferred the Sr-90 eye applicator to a foreign user and he has obtained from NRC a termination of his license.

NRC—The NRC's Advisory Committee on the Medical Use of Isotopes will be recommending courses of action to the NRC. NRC will perform additional inspections of NRC licensees authorized to possess and use Sr-90 eye applicators to confirm the use of proper decay corrections and source calibrations. In addition, the NRC staff will review this case with the Secretary of Health of the Commonwealth of Puerto Rico for possible action.

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98–3 Multiple Medical Brachytherapy Misadministrations at Ryder Memorial Hospital, in Humacao, PR

One of the AO criteria notes that a medical misadministration that results in a dose that is: (1) Equal to or greater than 1 gray (Gy) (100 rad) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1000 rad) to any other organ and that represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—Between April 22, 1995, and February 21, 1996; at Ryder Memorial Hospital; Humacao, Puerto Rico.

Nature and Probable Consequences—Twelve patients treated with a strontium-90 (Sr-90) eye applicator at the Ryder Memorial Hospital received a dose of 4000 cGy (4000 rad) instead of the intended dose of 2000 cGy (2000 rad). Two patients received a second treatment dose of 4000 cGy (4000 rad) to the same eye. These treatments were performed by Dr. José De León, who, in addition to his private practice in Rio Piedras in Puerto Rico, was authorized by NRC to practice at the Ryder Memorial Hospital in Humacao, Puerto Rico. The NRC staff identified this event during Fiscal Year 1998.

On June 28, 1994, Ryder Memorial Hospital notified the NRC that it had canceled the authorization given to the ophthalmologists named on their license to use Sr-90 at its facility, and a Quality Management Program was not needed for this activity. However, during a routine inspection of Ryder Memorial Hospital, conducted between November 17 and December 11, 1997, the NRC staff learned that Dr. De León had used his Sr-90 eye applicator at the Ryder Memorial Hospital without authorization from the hospital. NRC was unable to determine whether Dr. De León had been told by Ryder Memorial Hospital that his authority was canceled for the use of Sr-90 eye applicator.

On December 11, 1997, the NRC conducted a special inspection of Dr. De León's licensed activities. During this inspection, the NRC determined that in April 1995, Dr. De León's consultant had made a calculation error. Without verifying the consultant's calculations, Dr. De León adjusted the treatment time from 26 seconds to 60 seconds.

Ryder Memorial Hospital representatives and Dr. De León, notified the patients or next of kin of the misadministrations. The information presented by Ryder Memorial Hospital describing the effects on patients from misadministrations was based on the information submitted by Dr. De León. Specifically, Dr. De León indicated that the delivered dose of 4000 cGy (4000 rad) falls within the dose range used by the medical community to prescribe these treatments and no adverse effects were expected.

The NRC medical consultant reviewed the information obtained from the NRC, Dr. De León, and Ryder Memorial Hospital, and concluded that: (1) The range for a single fraction for eye radiation treatments, recommended by the medical community using a Sr-90 applicator, is about 1800–3000 cGy (1800–3000 rad), (2) the highest single dose, using a Sr-90 applicator,

recommended in published medical reports is 3000 cGy (3000 rad), and (3) the patients treated by Dr. De León are at a higher risk for harmful effects because of the high doses given in single fractions.

Cause or Causes—Dr. De León's consultant made an error in calculating the surface dose rate of the Sr-90 applicator, and Dr. De León failed to verify the consultant's calculation before incorporating the revised surface dose rate in patient treatments. In addition, Dr. De León performed ophthalmic brachytherapy using his Sr-90 eye applicator device at Ryder Memorial Hospital under Ryder Memorial Hospital's NRC license, without the hospital's authorization.

Actions Taken To Prevent Recurrence

Licensee—Ryder Memorial Hospital reiterated its withdrawal of Dr. De León's authority to use the Sr-90 eye applicator device at Ryder Memorial Hospital and does not intend to authorize future use of the Sr-90 eye applicator for ophthalmic brachytherapy. In addition, Dr. De León has retired; he has properly transferred the Sr-90 eye applicator to a foreign user and he has obtained from NRC a termination of his license.

NRC—The NRC's Advisory Committee on the Medical Use of Isotopes will be recommending courses of action to the NRC. NRC will perform additional inspections of NRC licensees authorized to possess and use Sr-90 eye applicators to confirm the use of proper decay corrections and source calibrations. In addition, the NRC staff will review this case with the Secretary of Health of the Commonwealth of Puerto Rico for possible action.

* * * * *

98–4 Iodine-131 Medical Misadministration at Virginia Beach General Hospital, in Virginia Beach, VA

One of the AO criteria notes that a medical misadministration that results in a dose that is: (1) Equal to or greater than 1 gray (Gy) (100 rad) to a major portion of the bone marrow, to the lens of the eye, or the gonads, or (2) equal to or greater than 10 Gy (1000 rad) to any other organ and represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—November 21, 1997; Virginia Beach General Hospital; Virginia Beach, Virginia.

Nature and Probable Consequences—A patient was administered a dosage of 199.8 megabecquerel (MBq) (5.4 millicurie (mCi)) of iodine-131 (I–131) for a thyroid procedure instead of an 11.1 MBq (0.300 mCi) dosage of iodine-123 (I–123). As a result, the patient's thyroid received a dose of 4000 centigray (cGy) (4000 rad), instead of the intended dose of 2.0 cGy (2.0 rad).

On November 20, 1997, the referring physician prescribed a thyroid function procedure, which, at Virginia Beach General Hospital, required the administration of about 11.1 MBq (0.300 mCi, of I–123. Due to poor communication between the referring physician and her staff (a staff nurse), the patient was scheduled for a whole-body thyroid scan, which required the administration of approximately 185 MBq (5 mCi) of I–131. On November 21, 1997, the technologist who was to perform the procedure attempted to contact the referring physician to ask questions about the requested procedure. However, the referring physician was not available, and the staff nurse who had originally taken the request from the referring physician and scheduled the procedure confirmed that the physician wanted an I–131 scan. The technologist, without a written directive, decided to proceed with the procedure and administered the dosage of 199.8 MBq (5.4 mCi) of I–131 to the patient. The misadministration was identified on November 24, 1997, when the patient returned for a 72-hour whole-body scan.

The licensee stated that no adverse health effects are expected from the misadministration. The NRC's medical consultant determined that the impact of the misadministration on the patient's health should be negligible, with no expected long-term disability.

Cause or Causes—This event was caused by the licensee's failure to prepare a written directive before the administration of the I–131 dosage and inadequate follow-up by the technologist involved in the I–131 procedure.

Actions Taken To Prevent Recurrence

Licensee—New procedures were initiated that required all I–131 procedures to be scheduled through the Nuclear Medicine Department, and additional quality management measures were implemented. The licensee also initiated changes to the computerized scheduling system and provided retraining of the staff.

NRC—An inspection was conducted to review the circumstances of the misadministration. A Notice of Violation was issued for failure of the licensee to prepare a written directive before the administration of I–131.

* * * * *

98–5 Exposure to a Minor from a Radiopharmaceutical Therapy Event at Western Pennsylvania Hospital in Pittsburgh, PA.

One of the AO criteria notes that any unintended radiation exposure to any minor (an individual less than 18 years of age) resulting in an annual total effective dose equivalent (TEDE) of 50 mSv (5 rem) or more will be considered for reporting as an AO.

Date and Place—July 28, 1998; Western Pennsylvania Hospital; Pittsburgh, Pennsylvania.

Nature and Probable Consequences—A female patient was prescribed a whole-body iodine-131 (I–131) thyroid scan following a thyroidectomy. The technologist asked the patient if she was breast-feeding but she did not reply and was administered a dosage of 111 megabecquerel (3 millicurie) of I–131. Two days later, while the thyroid scan was being performed, the patient said that she had breast-fed her 4-year-old son during the past few evenings. The licensee performed a bioassay on the child on August 3, 1998, and determined that the TEDE for the child based on the International Commission on Radiological Protection calculations was 89.5 millisievert (8.95 rem), and the dose to the thyroid was about 184 centigray (cGy) (184 rad).

The NRC medical consultant evaluated the event and estimated that the dose to the child's thyroid using the Medical Internal Radiation Dose calculations was about 128 to 152 cGy (128 to 152 rad) and presented a discussion of potential clinical consequences.

The hospital was notified of the consultant's findings and was given a copy of the consultant's report. The child has been examined by a pediatric endocrinologist and the hospital continues to monitor the patient and her child.

Cause or Causes—The patient failed to answer the technologist's question regarding breast feeding and the hospital failed to receive an answer to the question before dose administration.

Action Taken To Prevent Recurrence

Licensee—The licensee developed a new response form for women aged between 10 and 50 years for: (1) Asking them if they are nursing, (2) informing them of the harm to a child if they are breast-feeding after I–131 administration, and (3) obtaining a signed statement before administering them radioactive material.

NRC—NRC sent a letter to the licensee requiring it to prepare a plan describing how to prevent similar

events. The licensee responded on October 8 and 12, 1998, listing adequate actions to prevent recurrence of similar events.

* * * * *

Agreement State Licensees

AS 98–1 Medical Brachytherapy Misadministration at Tuomey Regional Medical Center in Sumter, SC

One of the AO criteria notes that any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 millisievert (mSv) (25 rem) or more; or an annual sum of the deep dose equivalent and committed dose equivalent to any individual organ or tissue other than the lens of the eye, bone marrow, and the gonads of 2500 mSv (250 rem) or more will be considered for reporting as an AO.

Date and Place—September 23, 1997; Tuomey Regional Medical Center; Sumter, South Carolina.

Nature and Probable Consequences—On September 23, 1997, a patient was scheduled by a referring physician (urologist) for a palladium-103 (Pd-103) permanent prostate seed implant via transrectal ultrasound guidance. However, the referring physician had two patients with identical names and the wrong individual got the orders for the Pd-103 treatment. The patient was identified at the Medical Center by verbal means (asking the patient's name) and by checking the name on the patient's wristband. In addition, the patient had signed a consent in the chart stating he was at the hospital for seed implant for treatment of prostate cancer. The patient received 67 seeds of Pd-103 at 37 megabecquerel (MBq) (1 millicurie (mCi)) per seed, thus a total implant activity of 2479 MBq (67 mCi). On the basis of pre-implant dosimetry, the periphery of the prostate was to receive a maximum dose of 9000 centigray (cGy) (9000 rad). The posterior wall of the bladder and anterior wall of the rectum would receive approximately 4000 cGy (4000 rad) and the whole-body dose would be less than 1 cGy (1 rad). The procedure was performed without complication.

On September 25, 1997, the referring physician notified Tuomey Regional Medical Center that he had two patients with identical names and that the wrong individual had received the implant. On September 29, 1997, the authorized user met with the individual who had received the Pd-103 treatment and discussed the potential early and late side effects, and all necessary precautions.

The licensee stated that the early consequences from this type of implant usually are dysuria and possible hematuria, which, if they occur, resolve in several days. Late consequences could be an approximately 25 percent chance of impotence. Damage to the bladder and rectum occurs in fewer than 1 percent of patients.

Cause or Causes—The referring physician had two patients with identical names. The wrong individual arrived at Tuomey Regional Medical Center with orders from the referring physician for the Pd-103 seed implant. The patient who should have had these orders had been to Tuomey Regional Medical Center for a pre-operative interview. When the wrong individual presented for treatment at Tuomey Regional Medical Center with orders for the Pd-103 seed implant, the registration process failed to note that he was not the same individual who had undergone the pre-operative interview.

Actions Taken To Prevent Recurrence

Licensee—The licensee performed a comprehensive review of the patient identification process once the incident occurred. As a result, the patient identification system was revised on a hospital-wide basis in order to prevent recurrence of this type of event.

State Agency—The State agency investigated the event and a Notice of Violation and Enforcement Conference was held on February 10, 1998. A Notice of Noncompliance was issued for failure to meet the objective that each administration is done in accordance with a written directive. The licensee responded in writing and no additional actions were required.

* * * * *

Dated at Rockville, Maryland this 2nd day of June, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–14468 Filed 6–7–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on June 15, 1999, at 10:30 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 21st Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 21st Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: May 26, 1999.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99–14323 Filed 6–7–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Form F–6, SEC File No. 270–270, OMB Control No. 3235–0292

Regulation S–T, SEC File No. 270–375, OMB Control No. 3235–0424

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The Commission under Section 19 of the Securities Act of 1933 established Form F–6 for registration of American Depositary Receipts (ADRs) of foreign companies. Form F–6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. Such information is available to the public for inspection. The information is needed to ensure that investors in ADRs have full

disclosure of information concerning the deposit agreement and the foreign company. It has been estimated that there are 339 respondents annually resulting in an estimated annual total burden of 306 hours.

Regulation S–T sets forth the general rules and regulations for electronic filings. Registrants who file electronically are the likely respondents. Regulation S–T is only assigned one burden hour for administrative convenience because it does not directly impose any information collection requirements.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: June 1, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14415 Filed 6–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (e4L, Inc. (Formerly National Media Corporation), Common Stock, Par Value $.01) File No. 1–6715

June 1, 1999.

e4L, Inc., formerly National Media Corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security has been listed for trading on the PHLX and on the New York Stock Exchange, Inc. ("NYSE") The Company's headquarters were recently relocated from Philadelphia, Pennsylvania, to Los Angeles, California, following the consummation of a transaction in which an investor group purchased an aggregate amount of $30 million of the Company's securities and assumed operational control of the Company. In light of the fact that the Company no longer has any geographical ties to the Philadelphia metropolitan area, and having weighed the additional costs incurred by maintaining listing of the Security on both the PHLX and the NYSE against the additional value derived from such dual listings, the Board of Directors of the Company has determined it would be prudent to discontinue listing the Security on the PHLX.

The Company has complied with Rule 809 of the Exchange by filing with the Exchange a certified coy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the PHLX and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The application refers solely to the withdrawal of the Security from listing on the PHLX and shall have no effect upon the continued listing of such Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and with the NYSE.

Any interested person may, on or before June 22, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth street, N.W., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–14414 Filed 6–7–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending May 28, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5738.
Date Filed: May 27, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC2 AFR 0056 dated 1 June 1999, Mail Vote 006—Resolution 010m, TC2 Within Africa Special Passenger Amending Resolution from Mozambique, Intended effective date: 1 June 1999.

Docket Number: OST–99–5741.
Date Filed: May 28, 1999.
Parties: Members of the International Air Transport Association
Subject: PTC31 S/CIRC 0067 dated 25 May 1999, Expedited South Pacific Resolutions r1-r5, Intended effective date: 15 July 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–14506 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special meeting with southeast states and business meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a business meeting of the Council, preceded by a special meeting with southeast state representatives. At the special meeting, the Council will hear from, among others, the representatives of the Commonwealth of Virginia and the states of North Carolina, South Carolina, Georgia and Florida on all aspects of intercity railroad passenger service, including corridor service, in the

southeast states. At its business meeting the Council will consider committee assignments and committee work schedules and action on conflict of interest guidelines for non-government members of the Council. The meeting will also consider matters raised by individual Council members. The Council's business meeting will follow the special meeting with representatives of southeast states.

DATES: The meeting with representatives of southeast states is scheduled from 9:00 a.m. to 1:00 p.m. on Tuesday, June 29, 1999. The Council's business meeting will follow at 2:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting with the southeast states will be held in Room 267, Charlotte Mecklenburg Government Center (City Hall), 600 East 4th St. Charlotte, N.C. 28202. The Council's business meeting will be held in the South Carolina Hall of the Hilton Hotel, 222 East Third Street, Charlotte, N.C. 28202, telephone 704–3777–1500. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM-ARC, 400 Seventh Street, S.W., Washington, D. C. 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Each member is to serve a five year term.

Issued in Washington, DC June 3, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–14521 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5760]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Applications must reach the Coast Guard on or before August 1, 1999.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–0229; or by faxing 202–267–4570. Submit application forms to the same address. This notice and the application form are available on the Internet at hhtp://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection, on merchant marine personnel issues such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, types of marine simulation utilized in lieu of sea service for marine licenses, and regional examination center activities.

MERPCAS meets at least twice a year, once at Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific problems as required.

The Coast Guard will consider applications for five positions that expire or become vacant in January 2000. Applicants with one or more of the following backgrounds are needed to fill the positions:

(a) Licensed Deck Officer.

(b) Shipping Company employed in ship operation management.

(c) Licensed Engineering Officer.

(d) Marine Educator associated with a training institution other than a federal or state maritime academy.

(e) Public.

Each member serves for a term of 3 years. No member may hold more than two consecutive 3-year terms. MERPAC members serve without compensation from the Federal Government; however, travel reimbursement and per diem will be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Howard L. Hime,

Acting Director of Standards Marine Safety and Environmental Protection.

[FR Doc. 99–14509 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–06–U–00–JAC) To Use a Passenger Facility Charge (PFC) at the Jackson Hole Airport, Submitted by the Jackson Hole Airport Board, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use a PFC at the Jackson Hole Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before July 8, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming 83001.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–06–U–00–JAC) to use a PFC at the Jackson Hole Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 28, 1999, the FAA determined that the application to use a PFC submitted by the Jackson Hole Airport Board, Jackson Hole Airport, Jackson, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 28, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: August 1, 1998.

Proposed charge expiration date: January 1, 2003.

Total requested for use approval: $1,850,000.00.

Brief description of proposed project: Runway Overlay and Safety Areas. (Move runway 300 feet north and overlay; Pave portion of safety areas.)

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington on May 28, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–14482 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 21, Notice No. 2]

Northwestern Pacific Railroad; Notice of Partial Relief from Emergency Order No. 21

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of Partial Relief.

SUMMARY: This notice provides partial relief for the Northwestern Pacific Railroad from the limitations of Federal Railroad Administration Emergency Order No. 21. The relief allows the Northwestern Pacific Railroad to re-open to rail traffic approximately 1.5 miles of its line near Willits, California, including trackage between the junction with the California Western Railroad and the Willits Depot, as well as Tracks 20, 24, 25, 26, 27, 709, and 711 in Willits Yard. The purpose of the partial relief is to allow the California Western Railroad to renew its operations over NWP tracks to Willits Depot and turn its trains at Willits. The remainder of the NWP line, from Arcata, California, to mile post 63.4 between Schellville and Napa Junction, California, remains closed pending further relief from the emergency order.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may impose such "restrictions and prohibitions . . . that may be necessary to abate the situation." (Ibid.) Likewise, FRA is authorized to grant relief from an emergency order when the agency deems that the unsafe condition or practice which gave rise to the emergency order no longer exists.

Background

The NWP operates on a 286-mile line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. The North Coast Railroad Authority, a California public agency formed pursuant to California Government Code Section 93000 *et seq.*, owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata. Another portion over which the NWP operates and for which it is responsible for maintenance, Healdsburg to mile post 63.4 near Napa Junction, is owned by the Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and the North Coast Railroad Authority. Railways, Inc. is the operating agent for the North Coast Railroad Authority, doing business as the NWP.

The NWP connects to the California Western Railroad, among other railroads, which operates both freight and passenger trains, to Willits. Prior to the issuance of Emergency Order No. 21, the California Western operated over about one mile of NWP trackage in order to interchange freight operations with the NWP at Willits and to reach its passenger terminal in Willits.

The NWP is subject to the jurisdiction of FRA. In 1997, FRA, in partnership with the California Public Utilities Commission (CPUC), reviewed NWP's compliance with Federal safety statutes and regulations. The review revealed widespread noncompliance, including hundreds of track defects and a general failure to perform periodic tests of locomotive air brake equipment. On June 11, 1997, FRA, CPUC, and the NWP signed a safety compliance agreement which detailed 11 action items for the NWP to perform. On June 28, 1998, upon finding that the NWP had failed to comply with most of the agreement, the Federal Railroad Administrator issued Compliance Order 98–1 directing NWP to perform the corrections listed in the compliance agreement. When FRA later found that the NWP failed to comply with the directives in the compliance order, and the defects on the rail line posed an imminent and unacceptable threat to public safety, the Federal Railroad Administrator issued Emergency Order No. 21 on November 25, 1998. The emergency order closed all railroad operations except the operation of work trains for the specific and sole purpose

of effecting repairs on the railroad. The closure included the trackage near Willits over which the California Western Railroad operated.

Emergency Order No. 21 detailed requirements the NWP must meet in order to gain full relief from the order. The railroad must:

(1) Properly repair and inspect all grade crossing signals and certify to the Federal Railroad Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to FRA.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR part 213.

Note: Emergency Order No. 14 requires the Northwestern Pacific Railroad to repair certain segments of track to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37;

(7) Furnish FRA with a 12-month track maintenance plan.

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7.

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed.

The emergency order also allows for partial relief for designated portions of the NWP's line. The NWP is required to first meet all of the system-wide requirements, as listed in items 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of its line for which all of the requirements of the emergency order are met.

On May 20, 1999, in accordance with the terms of the emergency order, the NWP formally requested that FRA grant it partial relief from the emergency order for the 1.5 miles of track in Willits, California, over which the California Western Railroad needs to operate to Willits Depot and turn its train. At this time, the NWP has been fount to meet all of the systemic requirements of Emergency Order No. 21, namely:

- The NWP adopted a set of grade crossing signal standards and instructions that is acceptable to FRA;
- The NWP has entered into a contract with MEC Rail Systems, a signal maintenance company, for the testing and maintenance of NWP signals. In response to the agreement, MEC Rail Systems purchased proper and adequate test equipment for signal maintainers for use on the NWP;
- The NWP has furnished to FRA a 12-month track maintenance plan that includes all of the necessary information required by Emergency Order No. 21;
- The NWP has established a program of employee training on the Federal Track Safety Standards. Railways, Inc. has adopted for use on the NWP the Railway Educational Bureau's *Track Foreman's Training Program*. Individual testing of roadmaster and office engineer candidates has begun;
- The NWP has certified that the sole employee responsible for track inspections, a chief engineer for Rail-Ways, Inc., has sufficient knowledge, skills and ability to successfully conduct track inspections. Any employees who become responsible for track inspections subsequent to the granting of this partial relief will be certified by the NWP as well.

NWP's compliance at this time with the systemic requirements of the emergency order makes the railroad eligible to request partial relief for the designated segment of track in Willits. However, FRA will monitor the railroad's continuing compliance with these systemic requirements.

On May 25, 1999, FRA inspected the track for which the NWP has requested relief from the emergency order. FRA found the track to meet Class 1 track standards in accordance with 49 CFR part 213. On May 27, 1999, FRA inspected the grade crossing signal systems on the track for which NWP has requested relief from the emergency order and found that all necessary repairs, inspections and tests had been performed.

Relief

In light of the foregoing, I grant NWP partial relief from Emergency Order No. 21. NWP trackage between its junction with the California Western Railroad and the Willits Depot, as well as Tracks 20, 24, 25, 26, 27, 709, and 711 in Willits Yard may open immediately to rail traffic. The issuance of this Notice does not preclude imposition of another emergency order governing the segment of track should conditions of the track or rail operations deteriorate to the extent that I believe they pose an imminent and unacceptable threat to public safety.

Issued in Washington on May 28, 1999.

S. Mark Lindsey,

Acting Administrator.

[FR Doc. 99–14454 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Major Investment Study/Draft Environmental Impact Statement on the Metro-North Hudson Line Extension Project, Dutchess County, NY

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare a major investment study/draft environmental impact statement (MIS/DEIS).

SUMMARY: The Federal Transit Administration (FTA) and Metro-North Commuter Railroad Company (Metro-North) intend to prepare a Major Investment Study/Draft Environmental Impact Statement (MIS/DEIS) for the Metro-North Hudson Line Extension Project in Dutchess County, New York. The MIS/DEIS is being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969 as amended, and as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the Federal Transit Administration/Federal Highway Administration Environmental Impact regulations (23 CFR Parts 771), and the FTA/FHWA Statewide Planning/Metropolitan Planning regulations (23 CFR Part 450, the National Historic Preservation Act of 1966 as amended, Section 4(f) of the Department of Transportation Act of 1966, as amended (49 U.S.C. 303, 23 U.S.C. 138), the requirements of the 1990 Clean Air Act Amendments, the Executive Order 12898 on Environmental Justice, and other applicable rules, regulations,

Executive Orders and guidance documents.

Metro-North is preparing this MIS/DEIS to address the potential social, economic and environmental impacts of extending its Hudson Line from the existing northern terminus at Poughkeepsie to either Rhinecliff or Tivoli (approximately 15 and 25 miles respectively) and constructing three or four stations and parking facilities at Hyde Park, Staatsburg, Rhinecliff and Tivoli, as well as a rail yard and employee base facility. This project would expand regional mobility and accommodate the growing demand for commuter rail service to Northern Dutchess County.

The MIS/DEIS will evaluate the following transportation alternatives: No-Build, Transportation System Management (TSM) and several Build Alternatives. Scoping will be accomplished through correspondence with interested persons and organizations, as well as with federal, state and local agencies, and through a public meeting. See **SUPPLEMENTARY INFORMATION** below for details.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Metro-North by Monday, July 12, 1999. See **ADDRESSES** below.

Scoping Meeting

The public scoping meetings will be held on Tuesday, June 29th at 7 p.m. and Wednesday, June 30th at 7 p.m. Registration to speak at these meetings will commence at 6:30 p.m. and close at 9 p.m. on the date of the meeting. See **ADDRESSES** below. People with special needs should contact Ms. Robyn Hollander at Metro-North at the address below or by calling (212) 672–1242. The building is accessible to people with disabilities. A sign language interpreter will be available upon request in advance of the meeting.

The scoping meeting will begin with an "open house" where attendees will be able to view graphics and discuss the project with project representatives. A presentation on the project will be given, followed by an opportunity for comments. Scoping material will be available at the meeting and in advance of the meeting by contacting Ms. Robyn Hollander at the address and phone number below. In addition to oral and written comments, which may be made at the meeting or as described below, a stenographer will be available at the meeting to record comments.

ADDRESSES: Written comments on the project scope should be sent to Ms. Robyn M. Hollander, Project Manager, Metro-North Railroad, 420 Lexington Avenue, New York, New York 10017, (212) 672–1242. The scoping meetings will be held on Tuesday June 29, 1999 at 7:00 p.m. at Roosevelt High School Auditorium, Hyde Park Central School District, South Cross Road, Hyde Park, New York and on Wednesday, June 30, 1999 at 7:00 p.m. at Rhinebeck Town Hall, 80 East Market Street, Rhinebeck, New York.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Danzig, Community Planner, Federal Transit Administration, Region II, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170. If you wish to be placed on the mailing list to receive further information as the project develops, contact Ms. Hollander at the above address or phone number as described above.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and Metro-North invite interested individuals, organizations, and federal, state and local agencies to participate in developing the alternatives to be evaluated in the MIS/DEIS, and identifying any potential significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made at the public scoping meeting or in writing. See **DATES** and **ADDRESSES** sections above. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives which are more cost effective or have less environmental impacts while achieving similar transit objectives. Scoping materials will be available at the meeting or in advance of the meeting by contacting Robyn Hollander at Metro-North as indicated above.

II. Description of Study and Project Need

The proposed project consists of an extension of the Metro-North Hudson Line from the existing northern terminus at Poughkeepsie, Dutchess County, NY to a new station and terminus to be located at either Rhinecliff in the Town of Rhinebeck, Dutchess County, NY or Tivoli in the Village of Tivoli, Dutchess County, NY, a distance of 15 and 25 miles, respectively, using the existing double-track line (which is owned by CSX and is currently being used by Amtrak to provide inter-city rail service). The project includes the construction of three or four stations with parking facilities and a rail yard and employee base facility.

Historically, the Upper Hudson line segment, including stations at Cortlandt, Peekskill, Garrison, Cold Spring, Beacon, New Hamburg and Poughkeepsie, has been one of Metro-North's fastest growing line segments. From 1984–1997, ridership on this line segment increased from 1.4 million to 3.2 million annual trips, a growth rate of 131% (about 7% annually). This increase in ridership is the result of several factors, including vastly improved service, more trains, new coaches and locomotives, decreased travel times, improved stations and expanded parking. These improvements have attracted commuters to the system who live beyond the current terminus of Poughkeepsie and west of the Hudson River.

Extending the Hudson Line north from its current terminus in Poughkeepsie, and the construction of appropriate facilities, are intended to expand service to residents of northern Dutchess County, benefit those living in the Mid-Hudson Region, and improve regional air quality goals by providing an alternative to the single occupant vehicle.

III. Alternatives

The transportation alternatives proposed for consideration in this project area include: (1) A No-Build Alternative which involves the current infrastructure of highways, parking facilities, train and bus service, and maintenance facilities in addition to all ongoing, committed and funded roadway and transit projects outlined in the State Transportation Improvement Program (STIP). Transit projects include modifications of current train and bus service but propose a minimum level of service expansion. (2) Transportation System Management, which includes all elements of the No-Build Alternative in addition to roadway and traffic improvements and improved transit services reflecting a number of local route modifications in addition to new and express routes. The TSM Alternative provides the baseline against which the cost-effectiveness of major capital transit investments can be evaluated. (3) Build Alternatives which include an extension of the existing Metro-North line from Poughkeepsie northward to either Rhinecliff, in the Town of Rhinebeck or Tivoli, in the Village of Tivoli (including station locations and support facilities), following the existing rail line. The Build Alternatives may be comprised of more than one "Build Alternative" which would differ in the number of stations and terminus location.

IV. Probable Effects

The FTA and Metro-North will evaluate all potential significant environmental, social, and economic impacts of the alternatives analyzed in the MIS/DEIS. Environmental and social impacts proposed for analysis include: land use, secondary development, community disruption, displacements and relocations, traffic and parking, visual, noise and vibration, safety, aesthetics, stormwater management, archaeological, historic, cultural and ecological resources and wildlife corridors. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and potentially contaminated sites will also be studied. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate adverse impacts will be identified.

V. FTA Procedures

The DEIS will be prepared in conjunction with a major transportation investment study and document the results of that study, including an evaluation of the potential social, economic and environmental impacts of the alternatives. Upon completion of the MIS/DEIS, and on the basis of the comments received, Metro-North, in concert with other affected agencies, will select a locally preferred alternative. The MIS/DEIS will be made available for public review and comment and a public hearing will be held during the MIS/DEIS comment period.

On the basis of the MIS/DEIS and comments received, Metro-North and FTA will continue with the preparation of the Final MIS/DEIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: June 3, 1999.

Letitia Thompson,

Regional Administrator, TRO–II, Federal Transit Administration.

[FR Doc. 99–14483 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–99–5792]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled, "46 CFR Part 298—Title XI Obligation Guarantees."

DATES: Comments should be submitted on or before August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, Financial Analyst, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW, Room 8122, Washington, D.C. 20590, telephone number—202–366–5744. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: 46 CFR Part 298—Title XI Obligation Guarantees

Type of Request: Approval of an existing information collection

OMB Control Number: 2133–0018

Form Number: MA–163, MA–163A

Expiration Date of Approval: Three years from the date of approval

Summary of Collection of Information: In accordance with the Merchant Marine Act, 1936 (Act), MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels.

Need and Use of the Information: The information collected is necessary for MARAD officials to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

Description of Respondents: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels satisfying criteria under the Act.

Annual Responses: 25 responses.

Annual Burden: 1750 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments maybe submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web *at http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: June 3, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–14504 Filed 6–7–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–555 (Sub–No. 2X)]

Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA [STB Docket No. AB–555 (Sub–No. 2X)]; The Ohio & Pennsylvania Railroad Company—Adverse Discontinuance of Service Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA

On May 19, 1999, Railroad Ventures, Inc. (RVI), filed a petition under 49 U.S.C. 10502 for an exemption from the provisions of 49 U.S.C. 10903 for RVI to abandon 35.7 miles of railroad line from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile spur near Negley, OH. RVI also petitioned for an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903 for The Ohio & Pennsylvania Railroad Company (OPRC) to receive discontinuance authorization for OPRC's service obligations over the line. OPRC has a lease with RVI to provide service over this line, but has not provided service since shortly after RVI purchased the line in 1996.[1]

RVI's acquisition of the subject line, formerly part of the Youngstown & Southern Railroad Company (Y&S), OPRC's lease to operate over the line, and their subsequent attempts to abandon the line and discontinue service have a long and tortuous history.[2] Most recently, on January 4,

[1] Although the proposed discontinuance is styled as an adverse discontinuance because it was filed by RVI, the owner of the line, instead of by OPRC, the carrier authorized to operate over the line, the interests of the parties are not adverse because OPRC agrees that its lease and service obligations should be discontinued and, in fact, had previously sought on its own behalf a discontinuance exemption, which was rejected.

[2] *See Railroad Ventures, Inc.—Acquisition and Operation Exemption—Youngstown & Southern*

1999, OPRC filed a notice of exemption under 49 CFR 1152.50 to discontinue service over the line, and RVI filed a notice of exemption to abandon the line. RVI stated in its verified notice of exemption that it should be allowed to abandon the line and either salvage it or permit other interested parties to acquire the line through the offer of financial assistance (OFA) procedures under 49 U.S.C. 10904 and 49 CFR 1152.27. Both notices were rejected because use of the out-of-service class exemption was deemed to be inappropriate for this line in that it would deprive the Board of the opportunity to review the merits of the abandonment and discontinuance. *Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, STB Docket No. AB–556 (Sub–No. 1X) *et al.* (STB served Jan. 22, 1999). The rejections were without prejudice to the filing of either a petition for exemption or a formal application, provided that, if a petition for exemption were filed, it must contain sufficient information for the Board to determine what rehabilitation is required to restore service, what the costs of rehabilitation would be, and an accurate estimate of the line's revenue potential.[3] Then, if the Board determines that the abandonment of the line is warranted by its economics, RVI's willingness to sell to the line through the OFA procedures might be an acceptable approach for resolving the service issues surrounding the line.

The line traverses U.S. Postal Service ZIP Codes: 44501, 44512, 44452, 44408, 45042, 44455, 44441, and 16115. The line does not contain federally granted rights-of-way. Any documentation in RVI's and OPRC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting exemption proceedings pursuant to 49 U.S.C. 10502(b). Official notice will be taken of the records developed in Docket Nos. AB–556 (Sub–No. 1X) and AB–555 (Sub–No. 1X).[4] A final decision will be issued by September 3, 1999.[5]

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the exemptions. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested parties should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 28, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–556 (Sub–No. 2X) and AB–555 (Sub–No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Richard R. Wilson, Vuono & Gray, L.L.C., 2310 Grant Street, Pittsburgh, PA 15219. Comments on the proposed abandonment and discontinuance are due June 28, 1999.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 2, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–14508 Filed 6–7–99; 8:45 am]

BILLING CODE 4915–00–P

Railroad Company, STB Finance Docket No. 33385 *et al.* (STB served July 15, 1997), wherein the Board imposed a bi-weekly reporting requirement on RVI in order to monitor the restoration of service and the specific causes of any delays in restoring service.

[3] RVI, with OPRC's cooperation, has filed a petition for exemption in response to this requirement. Publication of this notice, however, does not constitute acceptance of RVI's data. The data submitted for projected revenue, maintenance costs, and net liquidation value appear reasonable (although the value of the land may be overstated). Rehabilitation costs were not stated with any certainty. RVI submitted three estimates ranging from approximately $800,000 to approximately $4.5 million, but did not explain the discrepancies among them. Also, several rehabilitation items appear questionable (e.g., the need for extensive replacement of cross ties and tie plates, a new bridge, and drainage work at an overpass).

[4] RVI has asked that the environmental reports filed in the previous proceedings be used here. Because those reports are still current, this request is acceptable. Additionally, RVI has asked to be exempted from the notice requirements of 49 CFR 1152.20 and 1152.21. Because RVI complied with these notice requirements in its previous abandonment request, has served copies of its petition on the parties of record in the previous proceedings, and has stated that it will serve a copy of its petition on any other interested party requesting it, RVI will not be required to republish notice of the proposed abandonment and discontinuance.

[5] Because the parties and issues in these proceedings are the same, they will be considered on a consolidated basis.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 27, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 8, 1999 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0026.

Form Number: Customs Form 3078.

Type of Review: Extension.

Title: Application for Identification Card.

Description: Customs Form 3078 is used by licenses Cartmen, Lightermen, Warehousemen, brokerage firms, foreign trade zones, container station operators, their employees, and employees requiring access to Customs secure areas to apply for an identification card so that they may legally handle merchandise which is in Customs custody.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,250 hours.

OMB Number: 1515–0051.

Form Number: Customs Form 7523.

Type of Review: Extension.

Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release.

Description: Customs Form 7523 is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions and by Customs to authorize the entry of such merchandise . It is also used by carriers to show that the articles being imported are to be released to the importer or consignee.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 4,950.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,247 hours.

OMB Number: 1515–0052.

Form Number: None.

Type of Review: Extension.

Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred.

Description: Persons whose property is seized or who incur monetary penalties due to violations of the Tariff Act are entitled to seek remission or mitigation by means of an informal appeal.

Respondents: State, Local or Tribal Government, Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 28,000.

Estimated Burden Hours Per Respondent: 19 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 6,500 hours.

OMB Number: 1515–0055.

Form Number: Customs Form 3229.

Type of Review: Extension.

Title: Certificate of Origin.

Description: This certification is required to determine whether an importer is entitled to duty-free entry for goods which are: (1) The growth or product of a U.S. insular possession, or (2) Carribean Basin Initiative imports.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 22 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 113 hours.

Clearance Officer: J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–14426 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Identification Markings Placed on Firearms, 27 CFR 178.92 and 179.102.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nicholas Colucci, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8919.

SUPPLEMENTARY INFORMATION:

Title: Identification Markings Placed on Firearms, 27 CFR 178.92 and 179.102.

OMB Number: 1512–0550.

Abstract: This information collection implements the regulations of Section 923(i) of the Gun Control Act of 1968. In general, these sections require each licensed manufacturer, or licensed importer of firearms to legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered or removed. The regulations also prescribe minimum height and depth requirements for identification markings placed on firearms.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,506.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,665.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14459 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Drawback on Distilled Spirits Exported.

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Drawback on Distilled Spirits Exported.

OMB Number: 1512–0199.

Form Number: ATF F 5110.30.

Abstract: The information collected on ATF F 5110.30 provides a uniform format for determining that taxes have already been paid. The form details specific operations and accounts for taxable commodities. Tax liability is established to prevent jeopardy to the revenue derived from distilled spirits. ATF examines and verifies entries so as to identify unusual activities, errors or omissions.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 10,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14460 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Transportation in Bond, and Notice of Release of Puerto Rican Tobacco Products, Cigarette Papers, or Cigarette Tubes.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Shawn Hart, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8522.

SUPPLEMENTARY INFORMATION:

Title: Transportation in Bond, and Notice of Release of Puerto Rican Tobacco Products, Cigarette Papers, or Cigarette Tubes.

OMB Number: 1512–0167.

Form Number: ATF F 3072 (5210.14).

Abstract: ATF F 3072 (5210.14) is used to document the shipment of taxable tobacco products brought into the United States in bond from Puerto Rico. The form documents certification by ATF to account for the tax liability as well as any adjustments assessed to the bonded licensee. The form also describes the shipment and identification of the licensee who receives the products.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 200.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14461 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joan Kravchak, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes.

OMB Number: 1512–0156.

Form Number: ATF F 5120.8.

Abstract: ATF F 5120.8 is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the U.S. The form identifies the tax payer, cigars or cigarettes by tax class and certification by a U.S. Customs official as to the amount of shipment, and that the shipment has been released to the U.S.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 150.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14462 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joyce A. Drake, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8177.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

OMB Number: 1512–0214.

Form Number: ATF F 5110.74.

Abstract: This form is used by persons who wish to produce alcohol for fuel use and describes the persons(s) applying for the permit, location of the proposed operation, type of material used for production, and the amount of spirits to be produced.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,364.

Estimated Time Per Respondent: 1 hour and 48 minutes.

Estimated Total Annual Burden Hours: 2,455.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of informtion on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 27, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–14463 Filed 6–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Prior Disclosure Regulations

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Prior Disclosure Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Prior Disclosure Regulations.

OMB Number: 1515–0212.

Form Number: N/A.

Abstract: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Annualized Cost to the Public: N/A.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14427 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Automotive Products Trade Act of 1965

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Automotive Products Trade Act of 1965. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Automotive Products Trade Act of 1965.

OMB Number: 1515–0178.

Form Number: N/A.

Abstract: Under APTA, Canadian articles may enter the U.S. so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 10,920.

Estimated Time Per Respondent: 12 hours.

Estimated Total Annual Burden Hours: 23,587.

Estimated Total Annualized Cost on the Public: $290,850.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14428 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Documents Required Aboard Private Aircraft

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1515–0175.

Form Number: N/A.

Abstract: The documents required by Customs regulations for private aircraft arriving from foreign countries pertain only to baggage declarations. Customs also requires that the pilots present documents required by FAA to be on the plane.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 144,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 2,490.

Estimated Total Annualized Cost on the Public: $38,240.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14429 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Foreign Trade Zone Annual Reconciliation Certification and Recordkeeping Requirement

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.

OMB Number: 1515–0151.

Form Number: N/A.

Abstract: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statute and regulations. The operator will furnish Customs an annual certification of their compliance.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 260.

Estimated Time Per Respondent: 70 minutes.

Estimated Total Annual Burden Hours: 199.

Estimated Total Annualized Cost on the Public: $855.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14430 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Disclosure of Information on Inward and Outward Vessel Manifest

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Disclosure of Information on Inward and Outward Vessel Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Printing and Records Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Disclosure of Information on Inward and Outward Vessel Manifest.

OMB Number: 1515–0124.

Form Number: N/A.

Abstract: This information is used to grant a domestic importer's, consignee's, and exporter's request for confidentially of its identity from public disclosure.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 578.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 289.

Estimated Total Annualized Cost on the Public: $1,400.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14431 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry and Immediate Delivery Application

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Immediate Delivery Application. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry and Immediate Delivery Application.

OMB Number: 1515–0069.

Form Number: Customs Form 3461 and 3461 Alternate.

Abstract: Customs Form 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 6,543,405.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 838,158.

Estimated Annualized Cost to the Public: $11,440,860.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14432 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Crew's Effects Declaration

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent

burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew's Effects Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 9, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration.

OMB Number: 1515–0061.

Form Number: Customs Form 1304.

Abstract: Customs Form 1304 contains a list of Crew's effects that are accompanying them on the trip, which are required to be manifested, and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as Crew's effects.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 206,100.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 17,326.

Estimated Total Annualized Cost on the Public: $188,150.

Dated: June 2, 1999.

J. Edgar Nichols,

Team Leader, Information Services Branch.

[FR Doc. 99–14433 Filed 6–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209826–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209826–96, Application of the Grantor Trust Rules to Nonexempt Employees' Trusts (§ 1.671–1(h)(3)(iii).

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application of the Grantor Trust Rules to Nonexempt Employees' Trusts.

OMB Number: 1545–1498.

Regulation Project Number: REG–209826–96.

Abstract: This regulation provides rules for the application of the grantor trust rules to certain nonexempt employees' trusts. Under Section 1.671–1(h)(3)(iii) of the regulation, the overfunded amount for certain foreign employees' trusts will be reduced to the extent the taxpayer demonstrates to the Commissioner, and indicates on a statement attached to a timely filed Form 5471, that the overfunded amount is attributable to a reasonable funding exception. The IRS needs this information to determine accurately the portion of the trust that is properly treated as owned by the employer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 1999.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 99–14384 Filed 6–7–99; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–26

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Revenue

Procedure 99–26, Secured Employee Benefits Settlement Initiative.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Secured Employee Benefits Settlement Initiative.

OMB Number: 1545–1653.

Revenue Procedure Number: Revenue Procedure 99–26.

Abstract: Revenue Procedure 98–26 offers employers alternative 50 percent settlement options to settle cases in which they accelerated deductions for accrued employee benefits secured by letter of credit, bond, or other similar financial instruments. The purpose of this settlement initiative is to provide options for taxpayers and the IRS to expeditiously resolve these cases, thereby avoiding litigation of the cases in the future.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 1999.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 99–14385 Filed 6–7–99; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–REIT

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–REIT, U.S. Income Tax Return for Real Estate Investment Trusts.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Real Estate Investment Trusts.

OMB Number: 1545–1004.

Form Number: 1120–REIT.

Abstract: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a real estate investment trust in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the income, deductions, credits, and tax liability have been correctly reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 363.

Estimated Time Per Respondent: 127 hours, 55 minutes.

Estimated Total Annual Burden Hours: 46,435.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14386 Filed 6–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305A–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305A–SEP, Salary Reduction and Other Elective Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Salary Reduction and Other Elective Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–1012.

Form Number: 5305A–SEP.

Abstract: Form 5305A–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS, but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions made to the SEP.

Current Actions: There are no changes being made to Form 5305A–SEP at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 10 hrs., 10 min.

Estimated Total Annual Burden Hours: 1,016,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14387 Filed 6–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–C, Cancellation of Debt.

DATES: Written comments should be received on or before August 9, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Cancellation of Debt.

OMB Number: 1545–1424.

Form Number: 1099–C.

Abstract: Form 1099–C is used by Federal government agencies, financial institutions, and credit unions to report the cancellation or forgiveness of a debt of $600 or more, as required by section 6050P of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the debtor has included the proper amount of canceled debt in income on his or her income tax return.

Current Actions: There are no changes being made to the form at this time. However, separate specific form instructions are being proposed for payers who wish to order only the information pertaining to Form 1099–C. The specific instructions would be combined with the general instructions to create a booklet similar to the 1999 Instructions for Forms 1099, 1098, 5498, and W–2G.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Responses: 647,993.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 110,159.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14388 Filed 6–7–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

Date/Time: Thursday, June 17, 1999 (4:00 p.m.–9:00 p.m.); Friday, June 18, 1999 (9:00 a.m.–5:00 p.m.).

Location: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

Status: Open Session—Portions may be closed pursuant to subsection (c) of section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: June 1999 Board Meeting; Approval of Minutes of the Eighty-Ninth Meeting (March 18, 1999) of the Board of Directors; Chairman's Report; President's Report; Review and Discussion of Individual Grants and Fellowships; Review Essay Finalists and Select Winners; Committee Reports; Approve Solicited Grant Topics; Other General Issues.

Contact: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: June 1, 1999.

Charles E. Nelson,

Vice President for Management and Finance,

[FR Doc. 99–14539 Filed 6–3–99; 4:49 pm]

BILLING CODE 6820–AR–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Amendment Determinations: "Eva Levine-Rozengolts: Her Life and Work"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Amendment to the **Federal Register** Notice published on May 20, 1999, at page 27621 of the **Federal Register** Vol. 64, No. 97 by the United States Information Agency pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), to Pub. L. 89–249 relating to the exhibit "Eva Levina-Rozengolts: Her Life and Work." Correction: This is to announce that the National Museum of Women In the Arts is located in Washington, DC.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of imported exhibit objects or for further information, contact Jacqueline H. Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: June 2, 1999.

Lee Jin,

General Counsel.

[FR Doc. 99–14512 Filed 6–7–99; 8:45 am]

BILLING CODE 8230–01–M

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June 8, 1993

Part II

Department of Commerce

International Trade Administration

Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan, Taiwan, Germany, etc.; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Letitia Kress or Karla Whalen, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; at telephone: (202) 482–3793.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils ("SSSS") from Japan are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998 (*Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 108 (January 4, 1999)) ("*Preliminary Determination*"), the following events have occurred.

On December 21, 1998, Nippon Steel Corporation ("NSC") requested that the Department extend the deadline for its response to the Section D supplemental questionnaire until January 11, 1998. The Department granted NSC an extension for this response until January 4, 1999. On December 22, 1998, petitioners submitted comments on NSC's Section D response. On January 4, 1999, NSC notified the Department of its inability to respond to the Section D supplemental request on time. On January 11, 1999, Petitioners requested that the Department cancel verification for NSC due to the lack of a response and base its final determination on facts otherwise available. On January 12, 1999, the Department granted NSC an extension to respond to the supplemental cost response until January 25, 1999. On January 19, 1999, NSC notified the Department that it could not respond to the Department's supplemental questionnaire. However, in the same letter, NSC also asked the Department to verify its shipment data for purposes of the Department's final critical circumstances determination.

On December 22, 1998, the Department issued a supplemental cost questionnaire to Kawasaki Steel Corporation ("KSC"). On December 23, 1998, KSC requested an extension of the deadline for its response to supplemental cost questionnaire. On January 4, 1999, KSC submitted a ministerial error allegation on the Department's *Preliminary Determination*. On February 23, 1999, the Department published the amended preliminary determination incorporating the correct scope language. *See Notice of Preliminary Determinations of Sales at Less than Fair Value: Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less than Fair Value, Stainless Steel Sheet and Strip from Taiwan*, 64 FR 8749 (Feb. 23, 1999). On January 25, 1999, KSC submitted its supplemental cost response to the Department as well as its supplemental home market sales information.

On January 15, 1999, Sumitomo Metal Industries ("SMI"), a producer not selected as a respondent in this investigation, requested that the Department reverse its decision that SMI be subject to the "All Others" affirmative critical circumstances cooperative finding since it cooperated with the Department's request for information until being deselected as a respondent (*See Decision Memorandum from Division Directors*, Office VII, to Joseph Spetrini, regarding Selection of Respondents, September 21, 1998). On January 29, 1999, Nippon Metal Industry Co., Ltd. ("NMI"), a mandatory but unresponsive respondent, submitted shipment information in connection with the Department's preliminary critical circumstances finding.

On January 25, 1999 and February 2, 1999, KSC and NSC, respectively, requested that the Department conduct a hearing. On February 2, 1999, petitioners and SMI requested that they too participate in the hearing.

On January 28, 1999, petitioners submitted comments regarding the upcoming KSC sales verification. On March 24, 1999, the Department forwarded the sales verification outline to KSC. The Department conducted the sales verification from February 1 through February 9, 1999. On February 2, 1999 and February 9, 1999, KSC submitted a list of minor corrections reported at the beginning of verification for KSC and Kawasho Corporation ("Kawasho"), its affiliated trading company, respectively. The Department did not conduct a sales verification of NSC or NMI.

On February 12, 1999, the Department issued the cost verification outline to KSC. Petitioners submitted cost verification comments regarding KSC on February 18, 1999. The Department conducted the cost verification in conjunction with the LTFV investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan from February 22 through March 5, 1999. The Department issued its cost verification report on March 23, 1999 and sales verification report on March 24, 1999. (*See Memorandum to James Doyle, Program Manager, AD/CVD Enforcement Group III, Office 7: Verification of the Sales Questionnaire Responses of Kawasaki Steel Corporation* ("*KSC Sales Verification Report*") and *Memorandum to Neal Halper, Acting Director, Office of Accounting: Cost Verification Report-Kawasaki Steel Corporation*) ("*KSC Cost Verification Report*"). On April 13, 1999, KSC submitted a revised sales database which incorporated the minor corrections presented at verification as well as verification findings.

On April 2, 1999, Petitioners, KSC, SMI, Watanabe Trading Co., Ltd. ("Watanabe"), and Printing Developments Inc. submitted case briefs. On April 9, 1999, petitioners, KSC and NSC submitted rebuttal briefs. The Department conducted the hearing on April 14, 1999.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with

or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Period of Investigation

The period of investigation ("POI") is April 1, 1997 through March 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products, covered by the description in the *Scope of Investigation* section above produced by KSC, and sold in Japan during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product (listed in order of significance): grade; hot/cold rolled; gauge; finish; metallic coating; non-metallic coating; width; temper/tensile strength; and edge trim. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire instructions.

Fair Value Comparisons

To determine whether sales of SSSS from Japan to the United States were made at LTFV, we compared export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice below. In accordance with sections 772(a) and (c) of the Act, we calculated EP for all of KSC's sales, since the subject merchandise was first sold in the United States to an unaffiliated purchaser, and constructed export price ("CEP") was not otherwise warranted based on the facts on the record.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We applied the aforementioned criteria in the *Preliminary Determination* and indicated that the information on the record revealed two levels of trade (end-users and trading companies) for KSC in the home market. The Department also found that sales made through trading companies in both the home market and the United States were at the same level of trade. *See Preliminary Determination*, 64 FR at 114–115. As we further explain this issue in response to Comment 3, below, we continue to find that there are two levels of trade: (1) KSC sales to end-users; and (2) KSC sales to affiliated and unaffiliated trading companies. Additionally, we continue to find that no consistent, significant pattern of price differences existed and therefore we did not adjust NV for U.S. sales when compared to home market sales made at a different LOT.

Export Price

We calculated EP based on the packed, delivered price to unaffiliated purchasers in the United States. For KSC, we deducted, where appropriate, foreign inland freight, insurance, rebates, brokerage and handling from the starting price and added duty drawback.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice, below.

1. Home Market Viability

As discussed in the *Preliminary Determination*, we determined that the home market was viable. *See Preliminary Determination*, 64 FR at 113. The parties did not contest the viability of the home market and we have no other reason to reconsider our preliminary determination regarding viability. Consequently, for the final determination, we have based NV on home market sales.

2. Cost of Production ("COP")

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, based on the sum of KSC's cost of materials, fabrication, SG&A expenses, and packing costs. We relied on KSC's submitted COPs, except in the following specific instances where the

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[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

submitted costs were not appropriately quantified or valued.

1. We adjusted KSC's reported cost of manufacturing to remove variances associated with the packing and transportation cost centers.

2. We revised KSC's reported financial expense rate to include a subsidiary's excluded foreign exchange losses.

3. We applied the general and administrative expense rate and financial expense rate to KSC's cost of manufacturing plus packing expenses and loading costs. *See Memorandum of Cost of Production and Constructed Value Calculation Adjustments for the Final Determination from William Jones to Neal Halper*, dated May 19, 1999. (*"Cost Calculation Memo"*)

We conducted the sales-below-cost test in the same manner as described in our *Preliminary Determination*, 64 FR at 113. As with our *Preliminary Determination*, we found that for certain models of SSSS, more than 20 percent of KSC's home market sales were at prices less than the COP within an extended period of time. *See* section 773(b)(1)(A) of the Act. Further, the prices did not provide for the recovery of cost within a reasonable period of time. We, therefore, disregarded the sales that failed the cost test and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Calculation of Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of KSC's cost of materials, fabrication, SG&A expenses, direct and indirect selling expenses, interest expense, research and development expenses incurred in producing the subject merchandise, U.S. packing costs, and profit. We relied on the submitted CVs except for the specific instances noted in the "Cost of Production" section above.

Price-to-Price Comparisons

For those product comparisons for which there were sales that did not fail the cost test, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C) of the Act. Where applicable, we made adjustments for rebates and movement expenses. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by the amounts of direct selling expenses (*i.e.*, warranty and credit expenses) and added U.S. credit expenses. In order to adjust for differences in packing between the two markets, we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, where we were unable to find a home market match of identical or similar merchandise, we based NV on CV. We calculated CV based on KSC's cost of materials, fabrication, SG&A expenses, U.S. packing, direct and indirect expenses, interest expense, research and development expenses employed in producing the subject merchandise, and profit. In accordance with section 773(a)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by KSC in connection with the production and sale of the foreign like product during the ordinary course of trade for consumption in Japan. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made circumstances of sale ("COS") adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain corrections for the final determination. We have corrected certain programming and clerical errors that occurred in the *Preliminary Determination*. Where applicable, these errors are discussed in the relevant comment sections below.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsections 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In this investigation, NSC, NMI, Nisshin Steel Co., Ltd., and Nippon Yakin Kogyo failed to provide requested information. Therefore, use of facts available is warranted.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*See Statement of Administrative Action* ("SAA"), accompanying the URAA, H.R. DOC. No. 103–316 at 870 (1994)). Given that Nisshin Steel Corporation, Nippon Yakin Kogyo and NMI refused to comply with the Department's request for information, we find that these companies have failed to act to the best of their ability to comply with reporting obligations in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to these three mandatory respondents. As in the *Preliminary Determination*, the Department has selected as adverse facts available a margin of 57.87 percent, which is based on the highest margin alleged in the petition for any Japanese producer. As discussed in the *Preliminary Determination*, the Department has, to the extent practicable, corroborated the information used as adverse facts available because information from a petition is considered secondary information. *See* 19 CFR 351.308(c) and (d). For example, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, call reports, and data from business contacts). We have also determined that the adverse facts available petition rate has probative value by comparing this rate to actual sales made by KSC, the only respondent whose information the Department was able to verify and use for margin calculation. After comparing the information in the petition to KSC's verified sales data, we find that the petition data is reliable for use as adverse facts available. (*See Corroboration Memorandum Detailing Application of Total Adverse Facts Available* from James Doyle, Program Manager, to Roland MacDonald, Director Office VII, dated May 19, 1999.) (*"Corroboration Memorandum"*) Furthermore, no record evidence or argument has been submitted that would cause the Department to call into question the accuracy of the data in the petition. Therefore, we determine that the use of this margin as facts available

for these three companies is appropriate. For further discussion regarding the Department's use and selection of facts available for these three companies, see the *Preliminary Determination*, 64 FR at 115.

In addition, in light of NSC's decision not to respond to the Department's December 7, 1998, supplemental cost response despite repeated extensions by the Department, the Department has determined that NSC has failed to act to the best of its ability in this investigation. Furthermore, NSC's failed to provide the requested cost information, including a large number of affiliated input suppliers, a breakdown of NSC costs by production process and explanations and clarifications regarding allocation methodologies used by NSC in arriving at product-specific costs. As a result, the Department was unable to assess whether any input constituted major inputs, whether collapsing certain steel grades is appropriate, as well as the reasonableness of the allocation methodologies used. Thus, the Department has determined that, in selecting from among facts available, an adverse inference is appropriate. Consistent with Department practice in cases where a respondent withdraws its participation in an investigation, as adverse facts available, we have applied the highest margin in the petition. *See* Comment 13 and *Corroboration Memorandum; see also Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan*, 62 FR 45623 (August 28, 1997).

Critical Circumstances

Section 735(a)(3) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed in our preliminary findings of critical circumstances, we are not aware of any antidumping order in any country on stainless steel sheet and strip in coils from Japan, nor has any additional information in this regard been placed on the record for purposes of the final determination. Therefore, we examined whether there was importer knowledge. The statute and the Statement of Administrative Action ("SAA"), which accompany the Uruguay Round Agreements Act, are silent as to how the Department is to make a finding that there was knowledge of less than fair value sales and the likelihood of material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether an importer knew or should have known that the exporter was selling the product at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price ("CEP") sales, and margins of 25 percent or more for export price ("EP") sales. *See Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the PRC*, 62 FR 9160 (February 28, 1997). In this investigation, as discussed above in the Facts Available section, we have determined pursuant to an application of adverse facts available that the petition margin of 57.87 percent is probative of the selling practices of mandatory respondents Nisshin Steel Corporation, Nippon Yakin Kogyo, Nippon Metal Industries, and NSC. This margin indicates dumping over the 15 and 25 percent thresholds for these respondents' sales. In addition, the Department normally considers a preliminary International Trade Commission ("ITC") determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The ITC preliminarily found material injury to the domestic industry due to imports of sheet and strip from Japan and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. *See Preliminary Determination of the ITC of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 33092, (June 17, 1998). Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Moreover, because we are applying adverse facts available to these four companies with respect to our final critical circumstances determination, we also find that imports for each of them have been massive. Consequently, both prongs of our critical circumstances analyses have been met. We further discuss our treatment of Facts Available/Critical Circumstances in Comment 15 below.

We do not find critical circumstances for KSC. KSC was a cooperative mandatory respondent whose verified shipments did not evidence massive imports but, instead, showed an increase of less than the requisite threshold of 15 percent during the relevant comparison periods (January–May 1998 with June–October 1998). Although the Department's regulations at 19 CFR 206(i) require that we examine at least three months in making our determination of whether imports are massive, it is the Department's practice to examine the longest period for which information is available up until the preliminary determination. *See Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From The Netherlands*, 59 FR 23684, (May 6, 1994). In this case, for purposes of the Final Determination, available information permitted us to examine relevant comparison periods covering five months before and after the filing of the petition. Additionally, for purposes of the final determination we included June in the post-petition period, as it was incorrectly included in the pre-petition period for purposes of the Preliminary Determination.

We have reconsidered our *Preliminary Determination's* finding as to the "All Others" category of companies and further discuss our treatment of the "All Others" category in Comment 14 below. For a complete discussion, see Memo from Roland MacDonald to Joe Spetrini regarding Final Critical Circumstances Determination, dated May 19, 1999, ("*Final Critical Circumstances Memo*"). For this final determination, we do not find critical circumstances for the "All Others" category.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by KSC for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by KSC.

Interested Party Comments Regarding Sales Issues

Comment 1: Exclusion of Sales of Foil Products

KSC argues that the Department should have excluded product code R20–5USR grade foil products, which are used for automotive catalytic converter applications, from its

preliminary margin calculation since this product meets the exclusion criteria as outlined in the Scope of Investigation of the *Preliminary Determination*. Further, KSC contends that the Department's verification findings support its claim for exclusion of these foil products. For instance, KSC claims that at verification, the Department reviewed numerous sales transactions of R20–5USR foil products, including production records and mill certificates. KSC argues that these findings prove that the R20–5USR grade foil product, previously included in the sales database, met all of the Department's physical and chemical criteria for exclusion. Thus, KSC argues that the merchandise is outside the scope of the investigation and therefore must be removed from the Department's dumping margin calculations for the final determination.

Alternatively, KSC contends that if the Department decides not to exclude sales of foil used for automotive catalytic converter applications, then the Department should exclude the home market trial sales as being outside the ordinary course of trade. KSC argues that the home market sales of R20–5USR grade foil product, also classified as trials, are outside the "ordinary course of trade," in accordance with the section 773(a)(1) of the Act because: (1) These sales represent a small percentage of the entire volume of home market sales of SSSS during the POI; (2) the price of the trial sales is aberrational; (3) the average quantity of the trial sales is an insignificant percentage of the average quantity of commercial sales of all subject merchandise during the POI; and (4) the trial sales are not used for commercial production by the end-users, but are used only for testing and evaluation purposes. For the aforementioned reasons, KSC contends that if the Department should decide to use R20–5USR grade foil in its margin analysis then the Department should exclude the home market trial sales from its margin analysis, on the basis of the fact that these sales are "outside the ordinary course of trade" and sold in non-commercial quantities.

Petitioners' first contention is that respondent's exclusion request of October 15, 1998, related only to narrowly focused foil product sold only by Emitec, a producer. According to the petitioners, KSC sells a wide range of foil products falling under the R20–5USR designation and the evidence on the record suggests that KSC's home market sales of foil products do not meet the precise exclusion specifications agreed to by petitioners. Petitioners agree that the verified U.S. sales of R20–5USR meet all the "Emitec specifications" and thereby fall within the exclusion. However, petitioners argue that the mill certificates of the home market sales of foil products contain certain chemical elements but not other elements and do not clearly indicate that the product meets "Emitec specifications."

Furthermore, petitioners assert that the cost data for foil products vary significantly between the export products and the domestic products, which they argue indicates that not all foil products have the same cost of production, as discussed in *KSC Cost Verification Report* at S–14. For the aforementioned reasons, petitioners urge the Department to limit exclusion of sales only to those sales of foil products that meet the precise exclusion requirements as defined in its October 15, 1998 submission. As a result, petitioners request that the Department not exclude home market foil products from its margin calculations as the exclusion applies only to a particular producer, and the home market foil products do not appear to meet the specifications set forth in the exclusion language. Petitioners' second contention is that KSC's request that its sales of home market foil products be excluded as being outside the ordinary course of trade should not be granted. Petitioners argue that these sales were made at arm's length regardless of the quantity sold.

Department's Position: We agree with KSC. At verification, KSC was able to demonstrate that its R20–5USR products met all of the Department's exclusion criteria for foil products as defined in the Scope of Investigation of the *Preliminary Determination*. Specifically, KSC provided copies of mill certificates for a randomly selected group of foil sales accompanied by a ladle analysis (indicating chemical contents). This verification documentation demonstrates that the chemical content of all exclusion elements met the narrow exclusion requirements as defined in the Scope of Investigation of the Department's *Preliminary Determination*.

The Department first disagrees with petitioners' application of the scope exclusion on a customer-specific basis. The scope of an antidumping duty order covers merchandise, not companies. Second, the Department has determined that petitioners' argument that home market mill certificates contain certain elements not within the scope exclusion is unjustified given the facts of the record. Contrary to this contention, we find that the evidence on the record (*i.e.*, mill certificates and ladle analysis) demonstrates that each of the elements required by the Department's exclusion criteria, as stated in the *Preliminary Determination*, is disclosed on the home market mill certificates and ladle analysis for the randomly selected and verified foil sales. (*See KSC Sales Verification Report* and verification exhibit 3.) Therefore, those chemical elements referred to by petitioners that were not found in the market mill certificates are not relevant to the question of scope. Since these sales meet the exclusion criteria, they do not fall within the scope as defined in the *Preliminary Determination*. Thus, we have eliminated them from the final determination margin calculations because we determine that these sales meet the exclusion criteria, we do not need to address respondent's ordinary course of trade argument.

Comment 2: Proper Application of the Arm's Length Test

KSC claims that the Department erred in its application of the arm's length test by testing sales on a sales destination basis, rather than on a customer basis. According to KSC, the Department's normal practice is to compare overall weighted average home market net prices for each control number sold to affiliated customers with the overall weighted average home market net prices for each control number sold to unaffiliated customers. KSC argues that the Department performed its arm's length test for sales to affiliated customers for each delivery point, as each delivery point has a unique customer code in KSC's sales database, rather than aggregating the delivery points maintained by one particular customer. KSC claims that the arm's length test should have been performed by customer taking into account the customer's various delivery points in determining the appropriate comparison price. Hence, KSC asserts that the Department should perform this test on an affiliated customer-specific basis, rather than on a destination-specific basis.

In response, petitioners note that KSC failed to indicate that its reported customer codes are "commingled" with customers" delivery locations in its questionnaire response. Further, petitioners contend that the data on the record contradict KSC's assertion that an affiliated customer may have numerous delivery points as reflected in the multiple codes assigned to the customer. First, petitioners claim that not all of the delivery locations for each home market sale were reported. Second, petitioners argue with KSC's contention that each customer code

signifies a particular destination point since a specific customer code is reported to have more than one destination point related to it and certain customer codes share the same destination point as reflected in KSC's home market sales database. In light of the above contradictions to KSC's claim, petitioners argue that the Department should continue to use the existing customer codes in KSC's home market database as in the Department's *Preliminary Determination*.

Department's Position: We agree with KSC. Although KSC could have explained that its individual customer codes may at times reference the same customer at a different location by a different customer code, the necessary factual information has already been presented on the record in the Section B and C responses. Further, the Department did not find any discrepancies with the reporting of customers or delivery locations at verification. Hence, we have no reason to suspect that the information in regard the destination data field (*i.e.*, DESTH) is in error in the sales databases. Finally, the Department attempts to calculate margins as accurately as possible and this inadvertent oversight by KSC and the Department will be corrected by using information on the record. Accordingly, we have corrected our arm's length program and tested the prices on a customer basis rather than an individual customer delivery location basis.

Comment 3: Proper Implementation of Level of Trade Analysis

KSC argues that the Department should recognize that KSC's sales to all end-users are classified as a separate level of trade regardless of whether the end-user is a customer of KSC or Kawasho, an affiliated party of KSC. KSC contends that Kawasho's sales to its end-users exhibit the same differences in selling functions as KSC's sales to its end-users. In addition, KSC claims that the Department found no discrepancies in its review of the framework agreement between KSC and its end-users and the distinct sales functions performed by Kawasho to its end-users. According to KSC, these distinctions in selling functions, as examined during the course of verification, warrant two separate levels of trade. Kawasaki argues that because sales to trading companies were at the same LOT in both markets, the Department should match U.S. sales to trading companies with normal values derived from home market sales to trading companies, citing *Notice of Preliminary Determination of Sales Less than Fair Value: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 6155, 6158 (February 6, 1998) ("We first attempted to compare sales at the U.S. level of trade to sales at the identical home market level of trade. If no match was available at the same level of trade, we attempted to compare sales at the U.S. level of trade to sales at the second home market level of trade."); *Certain Stainless Steel Wire Rods From France Final Results of Antidumping Duty Administrative Review*, 61 FR 47874, 47880 (September 11, 1996) (same). Thus, KSC urges that sales to end users should be segregated from sales to trading companies.

Petitioners did not comment on this issue.

Department's Position: As discussed in the Department's *Preliminary Determination*, 64 FR at 114, 115, we disagree with KSC for the following reasons. To determine whether normal value was established at a different LOT than KSC's EP sales, we examined stages in the marketing process and selling functions along the chain of distribution between KSC and its U.S. customers, and then compared those functions to the two LOTs that we previously identified in the home market ("HM"). In the U.S., we identified a single channel of distribution: sales from KSC to the unaffiliated Japanese trading companies. In the HM, we identified two channels of distribution: (1) Sales from KSC to end-users; and (2) sales from KSC to all trading companies (affiliated and unaffiliated). In examining the LOTs of the HM sales at verification, we verified that KSC conducted price negotiations, communications with customers, payment collection activity, and warranty activity with its end-users. In contrast, KSC did not perform these same sales functions with respect to sales to both affiliated and unaffiliated trading companies. In our comparison of sales function of KSC to affiliated trading companies and then to unaffiliated customers (end-users/distributors), we noted that KSC's affiliated trading companies gathered market intelligence and customer information, made customer contacts, and performed marketing services, price negotiations, warehousing, processing, payment collection activity, and warranty activity. Based on the above-referenced distinctions between the selling functions of KSC to end-users and those of KSC to affiliated trading companies, and then to unaffiliated customers, we consider the respondent's request that the Department treat KSC's sales to all end-users as one level of trade to be unpersuasive. Finally, because the Department found no "consistent price differences between the sales on which NV is based and comparison markets sales at the LOT of the export transaction," we found that no LOT adjustment or offset was necessary for NV in the event that U.S. sales (KSC sales to unaffiliated trading companies) were compared to home market sales made at a different LOT (KSC sales to end-users) as demonstrated in the Preliminary Determination Pattern of Price Program results. For a discussion of the Department's practice concerning level of trade adjustments, see *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15444, 15445 (March 31, 1999) ("If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales in which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment * * *"). Therefore, for this final determination, in accordance with section 773(a)(7)(A) of the Act, we maintain our preliminary position with regard to KSC's level of trade analysis.

Comment 4: Rolled-On or Hard Finish With 2B Finish

Petitioners argue that the Department should collapse the finish codes 7 and 9 into 2B finish as these finish codes are broad and lack profound distinctions to justify separate categories. Citing *Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico*, 64 FR 14872, 14875 (March 29, 1999) ("*Emulsion Styrene-Butadiene*"), petitioners suggest that subtle differences may exist among various finish codes; however, the underlying intention of the model match program is not to recognize each distinction between a product but rather to distinguish the major physical differences in the merchandise.

Petitioners urge the Department to treat finish codes 7 (Rolled-On) and 9 (Hard Finish) as a consolidated finish code 2B (temper rolled or skin passed) in its final determination due to the similarity of the products and the fact that these two codes are not in KSC's product brochure which is used in KSC's normal course of business. Moreover, petitioners cite *Rautaruukki Oy* v. *United States*, Slip Op. 98–112 at 14 arguing that a respondent may not unilaterally alter the physical characteristics of the Department's model match methodology.

KSC responds that it did not "unilaterally" alter the product codes,

since the Department's model match criteria in the questionnaire specifically lists code 7, "Rolled-On," as a distinct finish, and further requested respondent to specify distinct finishes other than those specifically listed in the questionnaire. Instead, KSC notes that the individual specifications of these finishes were demonstrated with support documentation at verification. KSC argues that the products with finish code 7 and finish code 9 undergo separate production processes according to customer specifications on finishes. KSC argues further that there is a lack of evidence on the record to suggest that KSC's rolled-on or hard finishes are identical to 2B finish.

With respect to petitioners' comment that finish codes 7 and 9 were not mentioned in KSC's product brochure, KSC argues that it provides numerous "bona fide" grades and options that are not listed in the main product brochure to its customers. According to KSC, the product brochure features only the most popular grades and options and by no means dictates the types of grades and options that it produces for its customer.

Finally, KSC stresses that if the Department decides to consolidate these finish codes, it would be necessary to recalculate CONNUM-specific costs, imposing burdensome programming calculations and increasing the risk of clerical errors. Therefore, KSC argues that the Department should not deem it appropriate to consolidate these two finishes into 2B, and its statement in the verification report should be read as "most similar" to 2B rather than identical.

Department's Position: We agree with KSC. In accordance with section 771(16)(A) of the Act, the Department's selection of appropriate matching criteria was based on meaningful physical characteristics and the comments of the parties. *See Emulsion Styrene Butadiene.* As part of the criteria selection process, the Department's original antidumping questionnaire in this investigation specifically asked KSC to report "Rolled-On" (code 7) and "Other" (code 9). Pursuant to the questionnaire instructions, KSC reported finish code 7 and code 9 in its sales database and constructed CONNUM-specific costs accordingly. During verification, we noted that KSC offers code 7 and code 9 finish treatments in its ordinary course of business even though these specific finishes are not listed in its finish brochure. (*See KSC Sales Verification Report* at 8 and Exhibit 3 of the verification exhibits.) Despite the overall similarities shared by code 7, code 9 and 2B finish, we examined technical documentation for finish code 7 and internal specifications for code 9, and determined that code 7 and code 9 were distinctly different finishes from 2B. In addition, during verification, we reviewed sales documentation indicating both types of finishes. Accordingly, we have maintained our treatment of code 7 and code 9 as distinct finish codes from code 2B for the final determination.

Comment 5: Advertising and Technical Service Expenses

KSC argues that it classified home market advertising and technical services as direct selling expenses in its questionnaire response; yet the Department inadvertently reclassified these expenses as indirect selling expenses in its *Preliminary Determination* margin calculations. KSC notes that, in response to the Department's questionnaire instructions, it classified only the technical service expense as direct expense.

KSC contends that nothing in the Department's sales verification report contradicts KSC's classification that these expenses are direct. Instead, numerous documents in the verification exhibits demonstrate the nature of these expenses as being direct. *See KSC Sales Verification Report* at 18–19.

Petitioners argue that KSC's reported home market advertising and technical service expenses were not directly related to the subject merchandise, and thus were not direct expenses.

In addition, petitioners maintain that none of the advertisements on the record referred directly to the subject merchandise. Rather, the advertisements referred to stainless steel products in general and covered grades of subject merchandise that were either not subject merchandise or represented an insignificant percentage of KSC's total home market sales during the POI. Further, petitioners argue that KSC's home market advertisements were not directly aimed at the users of the subject merchandise sold during the POI, but to KSC's customers for stainless products in general.

With respect to technical service expenses, petitioners argue that the record suggests that a calculation worksheet from the verification demonstrates that KSC's financial accounting system captures technical service expense for subject and non-subject merchandise under the same cost center, even though KSC used the home market SSSS sales value as the denominator for its technical service expense calculation. Thus, petitioners assert that such expenses are not variable costs. Petitioners cite to the *Notice of Final Results of Antidumping Duty Administrative Review for Certain Internal-Combustion Industrial Forklift Trucks from Japan,* ("*Industrial Forklift Trucks from Japan*") 62 FR 5592, 5607–5608 (February 6, 1997) arguing that the Department considers expenses as direct expenses if these expenses vary with the sale of a subject merchandise.

KSC rebuts petitioners' argument that KSC's direct selling expenses should be treated as indirect on the basis that these expenses are related to the trading company's sale to its customer, rather than KSC's sale to the trading company. According to KSC, the Department has consistently treated manufacturer's expenses made on behalf of end-users as direct, citing the Department's questionnaire at Appendix I at 1–6, *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan* ("*Stainless Steel Wire Rod*"), 63 FR 40434, 40437 (July 29, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from South Africa,* 64 FR 15459, 15469 (Mar. 31, 1999) (disallowing advertising expense as a direct expense, because advertising was directed at respondent's direct customer, rather than at customer's customer); and *Notice of Final Determination of Sales at Less than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France,* 59 FR 14136, 14145 (March 25, 1994). Similarly, KSC contends that its home market advertising and technical service expenses should be considered direct as indicated in the *Sales Verification Report.* Regarding technical service expenses, KSC argues that technical service expenses should be classified as direct expenses since KSC incurred those expenses in connection with particular sales.

Department's Position: We agree, in part, with KSC. Based on the record evidence in this investigation and the information examined at verification, we have determined that KSC's reported advertising expenses apply to all stainless steel products, including subject and non-subject merchandise, and were incurred on behalf of KSC's customer. In accordance with the Department's practice, in determining whether advertising expenses directly tie to particular sales, we applied the two-prong test used in *Final Determination of Sales at Less than Fair Value: Antifriction Bearings Other than Tapered Roller Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* ("*AFB's*"), 62 FR 2102–2104 (January 15, 1997). In AFB's, the

Department stated that "for advertising to be treated as a direct expense, it must be incurred on products under review and assumed on behalf of the respondent's customer; that is, it must be shown to be directed toward the customer's customer." *Id.; See also Stainless Steel Wire Rod from Japan*, 63 FR at 40437 (Department will treat expenses as direct expenses if they can be directly tied to specific sales). As evidenced by documentation gathered at verification in Exhibit 7 of the verification exhibits and *KSC Sales Verification Report*, we examined samples of brochures directed to the end-user's product design needs, invoices for advertisements concerning KSC's environmental safety record, invoices for advertisements for a particular company, as well as brochures directed at construction application uses. At verification, KSC provided sufficient documentation that the advertising expenses in question relate to subject merchandise and target the customer's customer. (*See KSC Sales Verification Report* at 4–11). Accordingly, we have reclassified KSC's advertising expenses as direct selling expenses for the purpose of the final determination. This is consistent with our determination in *Stainless Steel Wire Rod*.

With respect to technical service expenses, there is nothing on the record to support petitioners claims. Furthermore, the case cited by petitioners, *Industrial Forklift Trucks from Japan*, is factually distinguishable from this case as the respondent in that case stated that its technical service "expenses are all expenses and do not relate to specific sales." 62 FR at 5605. Furthermore, there is nothing on the record to support petitioners' position that the technical expense did not vary with the sale of subject merchandise. Accordingly, we reclassified KSC's technical service expenses as direct selling expenses for the final determination.

With regard to petitioners' assertion that KSC used the home market SSSS sales value as the denominator for its technical service expense calculation despite KSC's assignment of technical service expenses to one cost center, we agree with the petitioners and accordingly revised the reported per-unit technical service expense. In order to properly reflect the portion of the total technical service and advertising expense associated with the subject merchandise, we calculated a ratio by dividing the sales of subject merchandise by total sales of stainless steel products, and applied the ratio to the total respective verified technical service and advertising expense amounts for the stainless steel products.

Comment 6: Home Market Advertising Expenses

Petitioners argue that the Department should apply the revised advertising expense ratios to KSC's respective sales databases for its final determination. Additionally, the Department should reject KSC's correction to the advertising expense for a certain home market sale observation because this particular reported advertising expense contradicts other information on the record. Petitioners further claim that KSC may not use an allocation methodology for some sales but choose actual expenses for others.

KSC rebuts petitioners' argument that home market advertising expenses be recalculated on newspapers alone, on the basis that the home market advertising expense comprises not only the newspaper expense but also catalogue and other advertising expenses. KSC adds, as a result, that the home market advertising expense ratio should remain the same, reflecting the total sum of catalogue, newspaper and advertising expense. In addition, KSC urges that the Department deny petitioners' request that HM observation 400 be corrected, pointing to the verified sales data which support KSC's corrected advertising value.

Department's Position: The Department agrees with KSC in that the advertising expenses should be used as reported to the Department since this expense was verified. Additionally, the Department has taken into account the minor corrections presented at verification. At verification, we found no inconsistencies in KSC's reporting of its advertising expense. *See KSC Sales Verification Report* at 18. Further, the Department has determined that the value reported for the particular home market sale in question corresponds to the verified expense ratios. Thus, we have not corrected this observation.

Comment 7: Correction of Errors in KSC's Weighted-Average Cost Calculation for Certain Products

Petitioners argue that in the process of recalculating the value of financial expenses in its preliminary margin analysis, the Department miscalculated the financial expenses for constructed value by applying the financial expenses ratio to KSC's reported financial expenses, rather than to KSC's reported cost of manufacturing for CV. Thus, petitioners claim, the Department should revise KSC's margin calculation program by multiplying the revised total cost of manufacturing for CV by the revised financial expense ratio.

KSC agrees with this change.

Department's Position: We agree with the proposed change and have corrected this inadvertent error in this final determination. (*See Cost Calculation Memo*).

Comment 8: KSC's Sales to Unaffiliated Trading Companies as Separate Transactions

Petitioners assert that the information on the record indicates that the trading company's role is limited to conveying the end-user's order requests and KSC's acceptance or counter-offer to the end-user. Petitioners argue that the trading companies' roles are similar to that of commissioned agents, and thus the Department should not establish the normal value on the sales price between KSC and the trading company. Instead, petitioners urge the Department to rely on the price paid by the end-user or, in the absence of such information, the Department add an amount for the commission to the sales price reported by KSC to calculate normal value for KSC's home market sales.

Petitioners contend that if the Department views the transaction between the trading company and the end-user as a separate transaction, the Department should then recognize the expenses incurred by KSC on its sales to trading companies as indirect selling expenses, rather than direct selling expenses, on the basis that the services associated with these expenses pertain to "downstream" sales and thereby directly benefit the end-user and not the trading company, citing *Notice of Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 62 FR, 54042, 54054 (October 17, 1997); and *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434, 40436 (July 29, 1998). Petitioners request that the Department treat those expenses that are not part of the negotiated deal between KSC and the trading companies as indirect selling expenses in KSC's margin calculation analysis.

KSC argues that the record demonstrates that the unaffiliated trading companies are customers of KSC, rather than "commissioned sales agents. In support, KSC notes that the Department reviewed the framework agreements for its unaffiliated trading companies as well as contracts demonstrating that KSC makes bona fide

sales to the trading companies. (*See KSC Sales Verification Report* and verification exhibit 4.) Furthermore, KSC adds that the sales reviewed by the Department at verification demonstrated that KSC issues an order confirmation and an invoice to its trading company customer and records the invoice amount to the trading company in its financial accounting system. KSC notes that the obligation to pay KSC rests with the trading company and not on the condition that the trading company receive payment from its downstream customer for payment to KSC. KSC further stresses that the trading companies take title to the goods and are solely responsible for the resale transaction, issue order confirmations and invoices to their customers, and bear the full responsibility of a resale profit or loss on their sale. Finally, KSC argues that, because the sales to the trading companies are actual bona fide sales, the Department may not disregard those sales. KSC stresses that the Department practice is to use manufacturers' sales to trading companies, even in instances where the manufacturers ships the goods directly to the customers of the trading companies. *See Stainless Steel Wire Rod from Taiwan*, 63 FR 40461, 40470 (Jul. 29, 1998), and *Stainless Steel Plate in Coils from South Africa*, 64 FR 15459, 15467 (Mar. 31, 1999).

Department's Position: We agree with KSC. At verification, the Department found that the trading company obtains title to goods and has direct responsibility for payment to KSC for merchandise sold to the customer of the trading company even if the customer defaults on its payment. *See KSC Sales Verification Report* at 5. Additionally, our examination of KSC's sales process did not demonstrate that the trading companies assume the role of commissioned agents. At verification, KSC stated that trading companies undertake their own sales negotiations with their customers, issue separate order confirmations and sales invoices and take title of goods purchased from KSC. *See KSC Sales Verification Report* at 3. Thus, we have not changed our treatment of NV sales for the final determination.

Comment 9: Actual vs. Budgeted Brokerage and Handling Expenses for KSC's U.S. Sales

Petitioners contend that the Department should rely on the actual brokerage and handling expenses reported in Verification Exhibit 9 rather than KSC's budgeted brokerage and handling expenses. According to petitioners, a review of KSC's most recent U.S. sales listing demonstrates that the verified brokerage and handling expenses were not reported to the Department. Instead, KSC reported budgeted brokerage and handling costs for its U.S. sales.

KSC finds no basis for the petitioners' assertion that KSC applied budgeted rather than actual brokerage and handling expenses. In fact, KSC argues that the petitioners misconstrued the brokerage and handling expense calculation in Verification Exhibit 9, as the Department found values from this worksheet to be actual and calculated on a bi-annual basis. KSC acknowledges that its original calculation contained errors that needed to be revised; however, it argues that neither the original calculation nor the revised calculation were based on budgeted values. In addition, KSC contends that the Department tested the integrity of the calculation worksheets, during verification and found no inconsistencies in the calculation worksheets, with the exception of a clerical error presented at the beginning of verification. As a result, KSC concludes that the revised and actual brokerage and handling expenses should be used by the Department.

Department's Position: We agree with the respondent. Although KSC reported brokerage and handling expense values in its January 25, 1999 sales listing that were different from those verified, we were able to confirm the accuracy of the per-unit brokerage and handling expenses submitted at the time of verification by obtaining support documentation and reconciling those values to KSC's financial accounting system. (*See KSC Sales Verification Report* at 13–15). We further note that our findings at verification clearly demonstrate that the verified brokerage and handling amounts are actual and not budgeted. Thus, for the purpose of the final determination, we will use KSC's verified brokerage and handling expenses as submitted on April 13, 1999.

Comment 10: Verified Inland Insurance Amounts for KSC's Home Market and U.S. Sales

Petitioners argue that some of KSC's reported inland insurance amount exceeded the maximum amount of verified home market inland insurance expense for home market sales and fell below the minium verified value for certain U.S. sales. Petitioners contend that in instances where KSC reported incorrect inland insurance amounts, the Department should apply adverse facts available to those sales. As facts available, petitioners argue that the Department should assign a zero to those home market sales with reported inland insurance greater than the maximum verified amount, and the maximum amount for those sales that were reported to have an inland insurance expense lower than the minimum verified amount.

KSC explains that the higher and lower per-unit values exist simply as a result of KSC's use of multiple invoices as was verified by the Department. KSC contends that the per-unit values for certain sales would be less where not all invoices issued against a given order had insurance charges, indicating that not all of the quantity for the particular order incurred inland insurance charges. KSC states that, even though insurance charges are incurred on an invoice-specific basis, KSC's allocation of the total insurance charges for a particular order over the total quantity of that order is consistent with its freight calculation methodology. Further, KSC emphasizes the relative insignificance of the alleged inconsistencies, as they only apply to four home market sales and may potentially apply only to twenty eight U.S. sales. KSC suggests that even if the Department views these inconsistencies as errors, the Department should either ignore them or assign the mean of the home market and U.S. insurance expenses to those sales, rather than apply any punitive facts available, citing *Notice of Final Determination of Sales Less than Fair Value: Stainless Steel Plate in Coils from Belgium*, 64 FR 15476 (March 31, 1999).

Department's Position: We agree with the petitioners. As noted by the petitioners, KSC incorrectly reported inland insurance values for certain home market sales with amounts below the minimum value and those exceeding the maximum value for inland insurance. KSC's argument that its inland insurance calculation methodology is consistent with that of inland freight is without merit. We note that our findings are in contrast to KSC's claim that the per-unit insurance expense was derived by allocating total insurance charges to order quantity. As the Department examined at verification, and as KSC demonstrated in its exhibits, the per-unit inland insurance expense is a contract-based amount, with rates that varied on the designated market of the sale (*i.e.*, home market vs. export market) and location (i.e., Nishinomiya plant vs. Chiba Works) in which the merchandise was produced. (*See KSC Sales Verification Report* at 10–11.) Moreover, our comparison of the home market sales database to the inland insurance

expense values submitted at verification confirm these alleged inconsistencies in KSC's sales data. Therefore, as facts available for the final determination, we have accounted for the existing inconsistencies by assigning the average inland insurance rate to those home market and U.S. sales with reported inland insurance greater than the maximum verified amount and to those sales that were reported to have an insurance expense lower than the minimum verified amount.

Comment 11: KSC Misreported Inland Freight Expense for Certain U.S. Sales

Petitioners argue that a comparison of per-unit inland freight expense on a particular sale from the verification exhibit to KSC's January 25, 1999 sales listing reveals that the revised inland freight expense remains incorrect. Petitioners contend that even though the total freight expense for the U.S. sale in question is correct, the verified shipment quantity does not match the reported shipment quantity on this particular sale. Thus, the Department should use the total reported quantity for this particular sale on the sales listing rather than the total shipment quantity that the Department examined during verification. Petitioners point out that the revised allocation base will produce results comparable to inland freight expenses of other U.S. sales while conforming to the overall allocation methodology used to calculate inland freight expenses.

KSC argues that petitioners have misunderstood KSC's order-based freight calculations, explaining that the per-unit expense on sales covered by that specific order is based on the order quantity for each delivery. KSC reiterates that the Department reviewed relevant supporting documentation and was able to tie KSC's reported inland freight expenses to its financial accounting system. For the purposes of the final determination, KSC urges the Department to continue using its verified freight information.

Department's Position: We agree with KSC. At verification, we confirmed that KSC allocates its total inland freight charges on an order-specific basis rather than on an invoice-specific basis. We again reviewed Exhibit 10 in regards to the noted invoice and have confirmed that the per order calculation is correct. It appears that petitioners neglected to include one invoice of the affected order in their calculation. Thus, we are using KSC's submitted information for this invoice.

Comment 12: Duty Drawback

Petitioners argue that KSC's duty drawback calculation is erroneous. According to petitioners, KSC applied the duty rate to the total consumption value without duty to derive a duty-inclusive total consumption value. KSC then used the difference in the unit prices with and without duty as the per-unit value for duty savings. The duty inclusive total consumption value after the application of the duty rate to the total consumption value is different from the value verified by the Department. Petitioners assert that this mathematical error improperly increases the per-unit value of duty drawback. Petitioners request that the Department use KSC's recalculated per-unit duty saving value for chromium to correct this mathematical error.

KSC agrees with the petitioners' recalculation of duty drawback and with their suggested programming language to correct KSC's inadvertent error.

Department's Position: We agree with petitioners and KSC. For the purpose of the final determination, we have continued to rely on KSC's duty drawback calculation methodology while adjusting appropriately for the mathematical error on KSC's part.

Comment 13: Facts Available for NSC

Petitioners contend that the Department should rely on total adverse facts available for NSC in the final determination. Petitioners argue that due to NSC's failure to submit cost information and, as a result, the Department's inability to verify any portion of NSC's response, the Department should rely on facts available. Petitioners note that on prior occasions the Department has found that an inability to utilize cost data results in the inability to use the sales data. NSC contends that to assess an adverse facts available rate would be to ignore its "substantial compliance" with the Department's requests and also the reasons for which NSC was unable to respond to the Supplemental D questionnaire. NSC asserts that it did in fact act to the best of its ability and that the Department should assess a non-punitive facts available rate for NSC, using the average margin calculated in the petition. NSC cites to the preamble to the Department's regulations which state that "the Department will consider whether a failure to respond was due to practical difficulties that made the company unable to respond by the specified deadline." 62 FR 27296, 27340 (May 19, 1997). NSC states that to assess the same punitive margin to it as that assigned to the totally non-responsive companies is unfair and would not be consistent with the meaning of the facts available provision. Furthermore, in one instance, the Department used the weighted average petition rate to calculate the final margin where the company had not responded completely and the Department was not able to verify some of the data. *See Notice of Final Determination of Sales Less than Fair Value: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 53808 (October16, 1997).

Department's Position: We agree with the petitioners that the highest rate alleged in the petition, and corroborated by the Department, is the appropriate facts available rate for NSC in this determination. Although NSC cooperated with the Department until the deadline for the section D supplemental response, NSC has not cooperated with the Department's request for cost of production information, which is essential to our dumping analysis. The supplemental section D questionnaire requested: (1) Detailed information on NSC's large number of affiliated input suppliers; (2) a breakdown of NSC's costs by production process; and (3) explanations and clarification regarding allocation methodologies used by NSC in arriving at product-specific costs from NSC's more aggregated accounting records. Absent the affiliated input data, we are unable to determine whether transfer prices between the affiliates occurred at market prices in accordance with section 773(f)(2) of the Act. Moreover, we are unable to assess whether any of these inputs from affiliated parties constituted major inputs. If major inputs are found by the Department to have been used in the production of subject merchandise, we would need the appropriate affiliated suppliers' actual costs of production in accordance with section 773(f)(3) of the Act. With respect to our request for cost information disaggregated according to the stages of the production process, without this information, we are unable to collapse steel grades where appropriate (as we are doing with other respondents in the other SSSS cases), unable to analyze the validity of the reported product-specific data, and unable to adequately plan for verification. Thus, this data omission rendered NSC's response unusable for the cost of production analysis (*i.e.*, the Department is unable to determine whether home market sales were made at prices at or above production costs) and, as a result, for margin analysis.

The Department's practice has been to reject a respondent's submitted information *in toto* when flawed and

unreliable cost data renders any price-to-price comparison impossible. *See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico*, 63 FR 48181, 48183 (September 9, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Grain Oriented Electrical Steel From Italy*, 59 FR 33952 (July 1, 1994). The rejection of a respondent's questionnaire response is particularly appropriate and consistent with Department practice in instances where a respondent failed completely to provide verifiable COP information. *Id.; see also Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 61 FR 18547, 18559 (April 26, 1996) (use of total BIA warranted where reliable price-to-price comparisons are not possible). Therefore, where a respondent's failure to respond is so substantial as to require analysis based upon total facts available the Department will not then selectively review subsets of data provided by the respondent.

Comment 14: Critical Circumstances for "All Others"

Sumitomo Metal Industries, Ltd. ("SMI") argues that the Department should not find critical circumstances with respect to it in the final determination. SMI argues that the Department chose not to investigate SMI because of the administrative burden to the Department, yet nonetheless applied its preliminary affirmative critical circumstances finding to imports by SMI. Sumitomo argues that, as a cooperative non-selected respondent, it is entitled to a negative final critical circumstances determination. *See Preliminary Determination of Critical Circumstances: Brake Drums and Brake Rotors from The People's Republic of China*, 61 FR 55269, 55270 (Oct. 25, 1996). SMI argues that it is the Department's practice not to issue final affirmative critical circumstances with regard to cooperative non-selected companies. SMI also cites to the Department's decision in *Honey from the People's Republic of China*, 60 FR 29824, 29825 (Jun. 6, 1995) noting that the Department determined that it was not appropriate "to penalize respondents whose individual data have not been analyzed due to the Department's own administrative constraints." In addition, SMI argues that even though the company falls within the "all others" category, the Department must consider its shipment data for purposes of determining whether there were massive imports.

Department's Position: With regard to the "all others" category (*i.e.*, companies that were not analyzed in this investigation, *e.g.*, SMI) we have reconsidered our *Preliminary Determination* finding of critical circumstances. In order to determine whether a finding of critical circumstances is appropriate with respect to uninvestigated exporters, it is the Department's normal practice to conduct its analysis based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, ("*Rebars from Turkey*") 62 FR 9737, 9741 (Mar. 4, 1997). In addition, in the instant case, while we have found affirmative critical circumstances for four of the five respondents, we did not extend our affirmative critical circumstances findings to the "all others" category, because these companies received affirmative critical circumstances based on adverse facts available. In *Rebars from Turkey*, the Department found critical circumstances for the "all others" category because it found critical circumstances for three of the four companies investigated. However, as we most recently determined in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329 (May 6, 1999) ("*Hot-Rolled Steel from Japan*"), we are concerned that literally applying that approach could produce anomalous results in certain cases. We believe it would be inappropriate to extend the Department's application of adverse facts available to "all others" for purposes of making a critical circumstances determination where there is verified data for an investigated company. Instead, we find that it is appropriate in this case to apply the traditional critical circumstances criteria to the "all others" category. For further discussion regarding the criteria considered when determining critical circumstances see Comment 15.

First, in determining knowledge of dumping, we look to the "all others" rate, which is based on the weighted-average rate of all investigated companies. In this case, such a weighted-average rate must, of necessity, be based on the individual rate of KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's rate, applied to the "all others," is 37.13 percent. This rate is high enough to impute knowledge of dumping to the "all others" category. Furthermore, on the basis of the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise.

Second, we also must also evaluate the second prong of the critical circumstances criteria: whether there have been "massive imports" for the "all others" companies. In making this determination, we examined the verified company-specific shipment data provided by KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's data showed an increase of less than 15 percent during the relevant comparison periods, and we therefore found that KSC's data provided no evidence of massive imports. In accordance with our decision in *Hot-Rolled Steel from Japan*, we also considered U.S. Customs data on overall imports from Japan of the products at issue. These statistics, however, cover numerous HTS categories that include merchandise other than subject merchandise. As such, we have not relied on this data in making our "massive imports" determination for "all others." Based on our review of KSC's data on massive imports, we find that imports from uninvestigated exporters, (e.g., "all others") were also not massive during the relevant comparison periods. Given these factors, the Department determines that there are no critical circumstances with regard to "all other" imports of SSSS from Japan. For a complete discussion of the data examined, see the Department's *Final Critical Circumstances Memo*, dated May 19, 1999.

Comment 15: Fact Available/Critical Circumstances

Petitioners argue that the Department should use adverse facts available with respect to critical circumstances for the non-responding exporters. As for NSC, petitioners contend that a non-responsive company should not be able to manipulate or selectively respond to the Department's questionnaire and benefit as a result. *See Carbon Steel Plate from Mexico and Pistachio Group of the Association of Food Industries* v. *United States*, 11 CIT 668, 671 F. Supp. 31 (1987). Petitioners further argue that NSC, Nisshin Steel Co., Nippon Yakin Kogyo, and Nippon Metal Industries chose not to respond to the Department and should not be rewarded for the section that they responded to because they deemed it as beneficial to their company while remaining non-responsive to other aspects of the

investigation. Because none of the shipment data has been verified, petitioners contend that the Department should use facts available when determining critical circumstances.

In its rebuttal, NSC argues that the Department should use non-adverse facts available in its critical circumstance determination and should instead use the submitted data in conjunction with the U.S. Customs data. Further, NSC contends that the record does not show that it "failed to cooperate by not acting to the best of its ability," because it submitted the shipment data in a timely manner and requested that the Department verify the information. Furthermore, NSC argues that the shipment data it submitted clearly demonstrates that its shipments to the United States have not been massive during the relevant period. NSC contends that the Department has used Customs import data where the respondent's data was not verified. *See Sodium Thiosulfate from the Federal Republic of Germany and the United Kingdom*, ("*Sodium Thiosulfate*") 55 FR 51749 (Dec. 17, 1990). In another case, where the exporters were non-responsive, the Department used import statistics for its critical circumstances determination and the petition rates for their margins. *See Sodium Thiosulfate from the PRC*, 56 FR 2904 (Jan. 25, 1991). In sum, NSC states that the Department, in some cases, has used Customs import statistics as facts available for determining critical circumstances.

Department's Position: We agree with petitioners. With respect to critical circumstances, it would not be possible to conduct a critical circumstances analysis without relying on adverse facts available. In accordance with section 735(a)(3) of the Act for the final determination, we determine critical circumstances to exist if: (1) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (2) the importer knew or should have known (imputed knowledge) that the exporter was selling the subject merchandise at less than fair value and that there would be material injury by reason of such sales; and (3) there have been massive imports of the subject merchandise over a relatively short time.

In order to determine whether or not the importer of a product under investigation knew or should have known that the exporter was selling the product at less than fair value, we use the estimated margins in our determination as a guide to "impute knowledge." *See Final Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China*, 60 FR 52155 (Oct. 5, 1995); *Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China*, 60 FR 22359 (May 5, 1995); *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil*, 59 FR 22359 (Jan. 6, 1994). If a particular exporter's sales to an unaffiliated U.S. company (EP transactions) yields a margin of 25 percent or greater, we determine that margin sufficient to impute knowledge to the importer. Similarly, if a particular exporter's sales to an unaffiliated U.S. company through an affiliated company (CEP transactions) yields a margin of 15 percent or greater, we determine that margin sufficient to impute knowledge to the importer.

In this investigation, as discussed above in the Facts Available section, we have determined pursuant to an application of adverse facts available that the petition margin of 57.87 percent is probative of the selling practices of mandatory respondents Nisshin Steel Corporation, Nippon Yakin Kogyo, Nippon Metal Industries, and NSC. This margin indicates dumping over the 15 and 25 percent thresholds for these respondents' sales. In addition, the Department normally considers a preliminary International Trade Commission ("ITC") determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The ITC preliminarily found material injury to the domestic industry due to imports of stainless steel sheet and strip in coils from Japan and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. *See Preliminary Determination of the ITC of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 33092, (June 17, 1998). Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Moreover, because we are applying adverse facts available to these four companies with respect to our final critical circumstances determination, we also find that imports for each of the companies have been massive. Consequently, both prongs of our critical circumstances analyses have been met. *See* Critical Circumstances section above for full discussion.

We disagree with NSC's arguments for the following reasons. First, NSC argues that the Department should use the shipment data it submitted. Although, NSC submitted its shipment data in a timely manner and offered to have this information verified by the Department, the Department decided not to verify any of the information submitted by NSC due to substantial missing information since NSC did not respond to the Department's supplemental cost questionnaire. Thus, because the Department could not rely on NSC's sales and cost information as a whole we must apply total adverse facts available and it is not the Department's practice to verify partial information by a respondent who has not fully cooperated. Second, NSC argues that the Department can rely on Customs data in this case as was done previously in *Sodium Thiosulfate*. The Department is unable to do such an analysis in this case since the HTS numbers in the scope of the investigation are basket categories that include non-subject merchandise, and thus do not permit the Department to make an accurate analysis as discussed above. Further, the Department again has determined that, in this case, such an analysis is not warranted for NSC due to NSC's lack of cooperation in this investigation. Therefore, we have found affirmative critical circumstances for NSC.

Comment 16: Date of Sale

KSC asserts that the Department should use invoice date as the date of sale. KSC contends that the Department proved through numerous tests during the course of verification that the material terms of sales change after the order confirmation date and up until the invoice date. For this reason, KSC believes that the Department's should consider the date of invoice as the date of sale. KSC cites the Department's regulations which state that the Secretary normally will use the date of invoice but, in some cases, will use a date that better reflects the date on which the exporter or producer establishes the material terms of sale. KSC asserts that in this case the invoice date is the only date that reflects the intention of the Department's regulations for date of sale. Furthermore, KSC cites the Department's decision in *Notice of Final Results of Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 63 FR 55578, 55587–88 (October 16, 1998) ("*Pipes and Tubes from Thailand*"), where the Department found the date on which the essential terms of the sale were established as the proper date of sale.

Petitioners did not comment on this issue.

Department's Position: We agree with KSC that invoice/shipment date is the correct date of sale for its home market

and U.S. sales of subject merchandise. Under our current practice, as codified in the Department's regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Pipes and Tubes from Thailand*, 63 FR at 55578–55587. However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Preamble to the Department's Final Regulations*, 62 FR 27296 (May 19, 1997) ("*Preamble*"). Thus, despite the general presumption that the invoice date is the appropriate the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, KSC, in its response to the original questionnaire reported invoice/shipment date as the date of sale in both the U.S. and home markets. However, when requested by the Department, KSC also reported order confirmation date, but maintained that the invoice date would be a more appropriate date of sale. For purposes of our *Preliminary Determination*, we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination*, 64 FR at 112.

At verification, we carefully examined KSC's selling practices. We found that it records sales in its sales and financial records by date of invoice/shipment. For the home market, we reviewed several sales observations for which the price and quantity changed subsequent to the original order (*see KSC Sales Verification Report*, dated March 24, 1999). For the U.S. market, we reviewed several instances in which material terms of sale changed subsequent to the original order. In addition, the Department has examined the time lags between order date and invoice date to determine whether it was appropriate to use order date as the date of sale. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32833, 32835 (June 16, 1998) ("*Steel Pipe from Korea*"). However, it is important to note that, in *Steel Pipe from Korea*, the Department found that "[t]he material terms of sale in the United States are set on the contract date and any subsequent changes are usually immaterial in nature or, if material, rarely occur." *Id.*, 63 FR at 32836. In contrast, KSC reported that there were numerous instances of changes in terms of sale between the initial order date and the shipment/invoice date. Therefore, invoice date is the most appropriate date of sale, notwithstanding some time lag between order confirmation and invoice. As noted above, we observed a significant number of such instances at verification where changes did occur between order confirmation and invoice. Based on KSC's representations, and as a result of our examination of its selling records kept in the ordinary course of business, we are satisfied that the date of invoice/shipment should be used as the date of sale because it best reflects the date on which material terms of sale were established for KSC's U.S. and home market sales.

Comment 17: Scope Exclusion Requests

Since the *Preliminary Determination* we received a number of scope exclusion requests. Printing Developments, Inc. ("PDI") requests that the necessary stainless steel supplies used for the production of printing plates using a stainless steel substrate be excluded from the scope of the investigation. PDI has found only one Japanese manufacturer who produces materials to meet PDI's rigorous specifications. To date, PDI has found no U.S. producer able to produce this specialized product. PDI is presently discussing the requested exclusion with one petitioner who has demonstrated some interest in supplying stainless steel sheet for the production of the printing plates.

SMI argues that the Department should exclude a certain form of ASTM specification 403. SMI contends that it is the only producer in the world of this grade of stainless steel sheet and strip used for production of certain applications. Furthermore, a partner of SMI in developing this material solicited three U.S. steel producers but none were willing or able to produce the material in question.

Watanabe argues that welding strip should be excluded from the scope of the investigation. Watanabe cites the *Preamble* in stating that the Department "intend(s) to avoid * * * situations where products in which the domestic industry has no interest are included in the scope of an order" 62 FR at 27323. Further, Watanabe claims that it solicited quotes from all petitioners but received no response. Therefore, Watanabe urges the Department to exclude welding strip from the scope of the investigation. Because there is no evidence on the record of this investigation that U.S. producers have sold the aforementioned product during the POI and because no U.S. manufacturer was willing to produce the said merchandise, Watanabe argues that welding strip should be excluded from the scope. In addition, Watanabe claims that there are no ASTM and AISI standards for this product.

Petitioners have commented that they are unwilling to consider any further exclusions from the scope of investigation.

Department's Position: Since petitioners have not indicated a lack of interest in these particular products, the Department has not excluded any of these products from the final scope of investigation.

Comment 18: GIN4 and GIN5 Scope Correction

Hitachi Metals America, Ltd. ("HMA") requests that the Department make two corrections to the definition for GIN4 and one correction to the definition of GIN5. First, HMA asserts that the proprietary name "GIN4 HI–C" should be included in the definition of GIN4, because the excluded product is sold under that name as well as GIN4 Mo. Second, HMA contends that the product GIN4 should be compared to AISI 420 as it is "more similar" to that product than ASTM 440F. Finally, HMA argues that the Department should revise the units for carbide density for the product GIN5. HMA asserts that the correct units for carbide density should read "one hundred square microns" as opposed to "square micron."

The petitioners have not commented on these requests.

Department's Position: We agree in part. The Department disagrees with the suggestion that we include an explicit reference to GIN4 HI–C in the scope language. The Department's scope has provided illustrative examples but not an exhaustive list of proprietary names. It is unreasonable to expect the Department to do such for each particular product variety and it is unnecessary for the scope language to include each and every proprietary product meeting the noted exclusion. The Department agrees that the product GIN4 should be compared to AISI 420 and has made the necessary change. Finally, in regard to the GIN5 correction, the Department agrees with the noted correction and has made the necessary change.

Interested Party Comments Regarding Cost

Comment 1: Cost of Second Quality Merchandise

Petitioners argue that the Department should reject KSC's reported costs for non-prime merchandise ("seconds") and the related offset adjustment to prime merchandise costs. Petitioners assert that in its November 18, 1998 Section D response, KSC did not report costs for seconds because it claimed it could not identify the physical characteristics for sales of such products. Petitioners argue that KSC's home market sales database provides information allowing it to identify at least three of the product characteristics for seconds. Petitioners note that KSC offered a proposal in its Section D response that the Department should use the weighted-average cost of all prime merchandise as a proxy for the cost of seconds. Petitioners state that this proposal was rejected by the Department and KSC then submitted costs for seconds in a supplemental response dated January 11, 1999. Petitioners claim that, instead of reporting its actual costs for seconds, KSC provided the average cost of products based on the known physical characteristics. Petitioners argue that KSC should have calculated the actual costs of production for seconds based on its costs for prime merchandise with the same identifiable characteristics. Petitioners assert that the methodology used by KSC to report the costs of seconds in its supplemental response resulted in unreasonable cost allocations. As an example, petitioners claim that nine products with different grades were assigned the same variable cost of manufacturing. Petitioners also argue that KSC assigned unreasonable costs that do not reflect the reported costs of prime merchandise with similar specifications, as demonstrated by four submitted comparisons of nearly identical prime and secondary products with significantly different assigned costs. In addition, petitioners argue that KSC improperly reduced its costs of prime merchandise with an offset adjustment related to the assigned costs of seconds. Petitioners note that KSC claimed this offset was necessary to avoid overstating total costs because it calculated costs for seconds in the same manner as prime merchandise. Petitioners assert, however, that KSC did not assign the same costs for prime merchandise and seconds of the same product specifications. Petitioners also claim that it is unclear from the record what methodology was used by KSC to derive its offset adjustment and that there is no indication that the Department traced this adjustment to KSC's normal books and records. Therefore, petitioners argue that the Department should disallow this reduction to the costs of KSC's prime merchandise.

KSC argues that the Department should use its reported costs for seconds, which were based on data maintained in the ordinary course of business. KSC notes that it has repeatedly explained, and the Department has confirmed, that it does not maintain actual production costs for seconds and therefore it cannot report actual costs for seconds. KSC states that, as confirmed by the Department in its sales verification report, it does not maintain the same product details for seconds as it maintains for prime merchandise. KSC asserts that the extent to which its sales records provide reliable evidence as to the precise characteristics of a secondary product depends on the information needed by sales personnel in order to make the sale. KSC claims that some of the reported physical characteristics in its sales database may be pure estimates and that the only thing known for certain is that the sales of seconds are, in fact, seconds. With regard to the different products that were assigned the same variable cost of manufacturing, KSC asserts that each of those products either had an unknown grade, finish, or metallic coating, and thus these physical characteristics could not be reliably identified. KSC states that seconds are recorded in inventory as a by-product, at their net realizable value, but that it reported costs for seconds as if they were co-products of the prime merchandise, in accordance with *IPSCO, Inc.* v. *United States,* 965 F.2d 1056, 1061 (Fed. Cir. 1992) ("*IPSCO*") and *Notice of Final Determination of Sales at Less than Fair Value of Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444, 15455 (March 31, 1999) ("*SSPC from Korea*"). KSC asserts that by using this reporting methodology, which adjusts the costs of seconds, it is necessary to reduce the costs of prime merchandise to avoid overstating its total costs of production.

Department's Position: We agree with KSC and have not adjusted its reported costs. As petitioners note, we did object to the proposal set forth by KSC in its Section D response for reporting the costs of seconds. Our supplemental questionnaire dated December 22, 1998 stated, "the COP for second-quality products should not be calculated using the methodology suggested at page D–29. The use of a single weighted-average cost of all prime products is not an acceptable method of calculating costs for second-quality merchandise. Evidence presented in the home market sales database indicates that KSC is able to identify sales of second-quality products to a high level of specificity. To the extent possible, KSC should use its production system to calculate the actual production quantities and costs for second-quality products during the POI. If such detailed production information is not available, KSC should derive such production quantities and costs based on its sales records." KSC followed these specific directions in reporting costs for seconds in its supplemental responses, dated January 11, 1999 and January 25, 1999. The only instances in which KSC based its reported costs for seconds on the overall weighted-average of prime merchandise were those in which it was unable to identify the grade, finish, *and* non-metallic coating of the secondary product. The nine secondary products that petitioners submitted as an example of different products with the same reported costs clearly fall into this category. While petitioners claim that the grades of these products are different, the grade, finish and non-metallic coating characteristics were all coded as unknown. As KSC notes, in no case did the Department identify a second that was miscoded as a prime, or a prime that was miscoded as a second. Thus, it is reasonable to expect that the costs of these seconds would be calculated based on the weighted-average of all prime products.

In other instances where only one or two of these three characteristics were unknown, KSC calculated the reported costs of seconds based on the weighted-average costs of prime merchandise with the identical characteristics, aside from the unknown characteristic(s). The four comparisons presented by petitioners clearly reflect this approach, as we recalculated the cost of these secondary products without exception. See, *Memo to The File from William Jones,* dated May 19, 1999. As a result of our analysis, it appears that KSC properly reported its cost of seconds, to the extent it was able, in accordance with the *IPSCO* rule that prime and secondary merchandise be treated as co-products and be assigned equivalent costs.

With regard to the offset adjustment that KSC applied to its prime merchandise, we agree with KSC that this offset was necessary to avoid overstating its total costs. Since KSC does not track the cost of its secondary merchandise in its normal books and records, it was necessary for the company to recalculate costs in the

manner described above. We reviewed a reconciliation of KSC's total reported costs to its audited financial statements, noting an insignificant difference. If the offset adjustment applied to the prime merchandise had been overstated, then the reported costs of prime merchandise and seconds would have been understated, and the reconciliation would have revealed the understatement. Since the offset adjustment appears to have been properly calculated, we will not make any additional adjustments to the reported costs of KSC's prime merchandise.

Comment 2: Application of Cost Variances

KSC allocated its variable cost variances between subject and non-subject merchandise on the basis of total standard costs incurred for subject and non-subject production. In the *KSC Cost Verification Report* at 2, we stated that it may be appropriate to allocate variable cost variances at the packing and transportation cost centers on the basis of production quantities, rather than standard costs, since the costs in these cost centers are more likely to vary in relation to the production quantities. KSC allocated its fixed cost variances between subject and non-subject merchandise on the basis of the total finished production quantities of subject and non-subject merchandise. We also stated in our cost verification report that it may be appropriate to allocate fixed cost variances at KSC's No. 4 refining and No. 4 continuous caster cost centers on the basis of tons processed.

KSC claims that standard cost is the most appropriate basis for allocating packing and internal transportation costs, as these costs vary by value, and therefore no adjustment is necessary. KSC argues that its packing costs vary based on the type of packing rather than the quantity of production. KSC asserts that the subject merchandise requires more costly packing to protect the thinner gauge models and to protect the finish of models with special surfaces. KSC argues that its internal transportation costs are also more likely to vary with value because higher-cost products require extensive downstream processing and are transferred more extensively throughout the mill. KSC claims that if the Department reallocates the variances incurred at the refining and continuous caster cost centers, it should do so in a consistent manner for both variable and fixed variances, based on data from the entire POI. KSC states that it has no objection to such a reallocation, though it would result in a de minimis adjustment which indicates the reasonableness of its submitted methodology.

Petitioners claim that KSC improperly allocated certain variable and fixed overhead variances, as identified in the cost verification report, which understated KSC's reported costs. Petitioners argue that information on the record does not support KSC's assertion that its packing costs tend to be associated more closely with the value of the product than with production quantity. Petitioners argue that there is no consistent correlation between the reported per-unit packing cost and either sales value or the cost of manufacturing. Petitioners provide examples to support its claim that there is no information on the record to affirm KSC's assertion that its internal transportation costs vary by value rather than quantity. Petitioners note that the Department's verifiers focused on the common cost centers that generated the largest variances and that, if the Department had the resources to examine all of KSC's allocations, other errors requiring revisions may have surfaced.

Department's Position: We agree with KSC that any reallocation of variances incurred at the No. 4 refining and No. 4 continuous caster cost centers should be applied to both variable and fixed cost variances, and should be calculated based on the entire POI. The result of such an adjustment would have a de minimis impact and therefore we have not revised the variance allocations.

We have adjusted the reported costs, however, to remove the packing and transportation variances. KSC derived its reported costs by first calculating variable and fixed cost variances, then applying these variances to the standard cost of each product. Since the resulting actual cost includes packing and loading costs, it was necessary for KSC to remove packing and loading which are not part of the cost of manufacturing. KSC only deducted the standard packing and loading costs, however, while retaining the variances associated with packing and transportation cost centers in the reported costs. Since packing costs are classified as an adjustment to the gross selling price, and since the packing costs reported in the sales databases are actual costs (*see KSC Sales Verification Report* at 17), the variances associated with packing and transportation should be removed from the reported cost of manufacturing. We have adjusted the reported costs to remove these variances, rendering the allocation basis (i.e., quantity or standard cost) a moot point. It is irrelevant whether production quantities or standard costs are used to allocate packing and transportation cost variances between subject and non-subject merchandise, as long as the allocated variances for these costs are completely removed in deriving the cost of manufacturing.

Comment 3: G&A Expenses—Losses on Disposal of Fixed Assets

Petitioners argue that KSC erroneously excluded certain losses on the disposal of fixed assets from the calculation of its general and administrative ("G&A") expense rate. Petitioners argue that, although these fixed assets may be unrelated to production of subject merchandise, the Department's normal practice is to calculate G&A expenses based on the producing company as a whole, and not on a divisional or product-specific basis. *See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 FR 17324, 17333 (April 9, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31412, 31433 (June 9, 1998) ("*Fresh Atlantic Salmon from Chile*"). Petitioners claim that it is reasonable to include all cost of sales as well as all G&A expenses incurred by KSC during the POI for the calculation of its G&A expense rate.

KSC argues that the Department should not include its losses on the disposal of fixed assets used for production of non-subject merchandise in calculating the G&A expense rate. KSC claims that the Department has recognized that expenses relating exclusively to the production of non-subject merchandise do not belong in G&A expenses. KSC maintains that the facts in the instant case are similar to the facts in *Fresh Atlantic Salmon from Chile*, in which the Department noted that it would not include the disposal of fixed assets in G&A if the assets in questions were tied to the production of non-subject merchandise. KSC also cites to the following cases as examples of Department practice on this issue: *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 61 FR 46618, 46619–20 (September 4, 1996) ("*Brass Sheet and Strip from Canada*"); *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 60 FR 44009, 44012 (August 24, 1995) ("*Lead and Bismuth from the U.K.*"); *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa*, 60 FR 22550, 22556 (May 8, 1995) ("*Furfuryl Alcohol from South*

Africa"); and *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 197895 (April 10, 1994) ("*Steel Wire Rod from Canada*"). KSC claims that because the assets in question relate to the production of non-subject merchandise, the Department should exclude such expenses from the calculation of KSC's G&A expense rate.

Department's Position: We agree with petitioners and, as in the *Preliminary Determination*, we have included the losses on the disposal of fixed assets in our calculation of KSC's G&A expense rate. We verified that the assets in question relate to the production of non-subject merchandise. However, it is our practice to calculate G&A expenses using the operations of the company as a whole. *See, e.g., Brass Sheet and Strip from Canada*, 61 FR at 46619; and *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 33041, 33050 (June 17, 1998). As we stated in the original questionnaire issued to KSC, "G&A expenses are those period expenses which relate indirectly to the general production operations of the company rather than directly to the production process for the subject merchandise * * *". Therefore, any income or expense incurred through KSC's disposition of fixed assets should be included in the G&A expense rate, regardless of whether they are used purely for the production of subject merchandise or non-subject merchandise. This policy was established in *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21943 (May 26, 1992) ("*Minivans from Japan*"). In that case, the Department stated, "we generally consider disposal of fixed assets to be a normal part of a company's operations and have included, therefore, *any gains or losses generated by these transactions* in the cost of production calculation." (emphasis added). This is consistent with our treatment of miscellaneous income expenses in *U.S. Steel Group et al* v. *United States*, 998 F. Supp 1151 (CIT 1998). We note also that KSC incurred losses on sale of fixed assets related to the production of subject merchandise and these losses were included in G&A expenses and allocated over the cost of all products that KSC produced.

In *Fresh Atlantic Salmon from Chile*, cited by KSC, the issue was whether to treat temporary shutdown costs as period costs or G&A expenses, that would normally be allocated over the cost of all products. The Department determined that the facilities in question were only idle for a brief period of time and therefore the costs associated with the temporary shutdown should not be treated as G&A expenses. Rather, the costs of operating the facility were charged directly to the cost of manufacturing for the non-subject products produced in the facility. The Department did not, as KSC implies, specifically exclude the shutdown costs from the G&A expense calculation because the facility did not produce subject merchandise. KSC's reliance on *Brass Sheet and Strip from Canada* and *Steel Wire Rod from Canada* is similarly misplaced. The issue in these cases was whether to include in a respondent's G&A expenses certain costs that were incurred by a parent company or a subsidiary. The citations are not on point since the instant case involves equipment that was owned by KSC itself and, as noted above, the Department calculates G&A expenses based on the operations of the respondent as a whole. Expenses incurred by a parent company, or any other affiliated company, are only included in the G&A expense calculation where the affiliated company provides services to the respondent company. KSC's citation to *Lead and Bismuth from the U.K.* is also misplaced, since the respondent in that case closed an entire facility that only produced non-subject merchandise and then excluded these closure costs from the G&A expense rate calculation. In the instant case, KSC simply disposed of assets and, as noted above in *Minivans from Japan*, the Department's policy is to include all gains or losses generated by such disposals. The respondent in *Furfuryl Alcohol from South Africa* calculated separate G&A expense rates by division and a company-wide G&A expense rate for G&A expenses that related to the operations of the company as a whole. 60 FR at 22556. Here, KSC submitted a single G&A expense rate for the entire company and only included the losses on the sale of fixed assets related to subject merchandise. It would not be appropriate nor reasonable to allocate these losses over the cost of producing all products, while specifically excluding losses on the sale of fixed assets used for non-subject production. Since the sale of fixed assets is a general activity of the company, and not specifically related to production, we have allocated all losses on the sale of fixed assets over the cost of producing all products.

Comment 4: General Administrative Expenses—Severance Expenses

KSC states that its expenses on special retirement are one-time severance payments to employees who are transferred from the company and are considered an extraordinary expense under Japanese generally accepted accounting principles ("GAAP"). Therefore, KSC claims that the Department should not include these expenses in the G&A expense rate calculation. KSC asserts that the special retirement payments are not normal, as petitioners claim, because these expenses would normally be accrued as pension liability over an employee's career. KSC also claims that these amounts are not related to KSC's current operations since the workers are no longer employed by the company and KSC has no obligation to make continuing payments to these former employees. KSC states that it can incur such expenses in more than one year, to the extent that the downsizing of operations may not be completed in a single year and additional layoffs or transfers may occur in other years.

Petitioners argue that KSC erroneously excluded expenses on special retirement from the calculation of its G&A expense rate. Petitioners claim that these expenses were incurred during the POI and constitute normal costs associated with the operation of KSC's business. Petitioners state that to qualify as "extraordinary" in nature, an expense must be highly unusual and should not reasonably be expected to recur in the foreseeable future. Petitioners assert that it is not unusual for a company to layoff employees when downsizing and it is not unusual for a company to offer severance payments to affected employees. Petitioners also argue that such expenses cannot be considered infrequent because KSC recorded the same expenses during the two prior fiscal years. Petitioners state that it is irrelevant whether the expenses on special retirement may be classified as extraordinary under Japanese GAAP, because the Department's practice is to rely upon a respondent's books and records prepared in accordance with home country GAAP on the condition that those accounting principles reasonably reflect the costs associated with the production of subject merchandise and have been historically used. *See, e.g., Notice of Court Decision: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada*, 63 FR 49078, 49079 (September 14, 1998). Petitioners claim that since the expenses were incurred both prior to and during the

POI, and the expenses were associated with KSC's business operations, the Department should include these expenses in the G&A expense calculation, regardless of whether Japanese GAAP allows KSC to present these amounts as "extraordinary" items on the financial statements.

Department's Position: We agree with petitioners and, as in the *Preliminary Determination*, we have included the expenses on special retirement in our calculation of KSC's G&A expense rate. The expenses for special retirement are severance costs that are recorded as part of KSC's ongoing downsizing operations. The Department's normal practice is to include severance costs in a company's G&A expenses. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 8299, 8305–8306 (February 19, 1999), and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68434 (December 11, 1998). We noted at verification that these downsizing activities have resulted in recurring expenses for KSC. The fact that the process may extend over multiple years does not preclude the use of current period expenses. KSC has recognized in its audited financial statements the expense related to the current fiscal year, and it is this period cost which we have included in KSC's G&A expenses. Also, the classification of these amounts as extraordinary expenses under Japanese GAAP is irrelevant. The Department in some instances will exclude costs considered extraordinary, provided that they are both unusual in nature and infrequent in occurrence. These expenses for special retirement cannot be considered infrequent in occurrence since they have been a recurring cost for KSC and, therefore, are properly included in G&A expenses along with other period costs. *See Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review*, 62 FR 1320, 1322 (January 9, 1997).

Comment 5: G&A Expenses—Bonuses

Petitioners claim that KSC should include bonuses paid to the company's directors and statutory auditors in the calculation of its G&A expense rate. Petitioners refer to a schedule in KSC's consolidated financial statements, which indicates that such bonuses totaled 10,773 million yen during the POI.

KSC points out that the petitioners' claim is based on a misreading of its financial statements and that the bonuses paid to the directors and statutory auditors were actually 42 million yen. In addition, KSC claims that its G&A expense rate calculation includes all relevant bonus expenses.

Department's Position: We agree with KSC and therefore have not adjusted the G&A expense rate calculation for bonuses. As shown in KSC's financial statements in its "Statement of Other Surplus," the total bonuses to directors and statutory auditors during the POI were only 42 million yen, and we verified that the amount of bonuses reported in KSC's G&A expenses were reasonable.

Comment 6: G&A and Financial Expense Rate Application

Petitioners argue that the Department should account for packing costs and loading charges in calculating and applying KSC's G&A and financial expense rates. Petitioners note that packing costs and loading charges are included in the cost of sales denominators used to calculate these rates, but the per-unit cost of manufacturing figures, to which the rates are applied, do not account for these costs. Petitioners argue that the Department should correct this situation by increasing the cost of manufacturing of each product for packing costs and loading charges.

KSC asserts that the Department could address this problem by removing packing costs and loading charges from the cost of sales denominators, as it has in previous cases. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68434 (December 11, 1998). However, KSC argues that it is impossible for large companies (such as KSC) to determine the precise amount of packing costs incurred for all products, in all plants and by all divisions. As an alternative, KSC suggests that the Department reduce the company-wide cost of sales figures using the ratio of packing and loading costs to total costs of manufacturing for the subject merchandise.

Department's Position: We agree with petitioners that an adjustment is necessary in order to apply the G&A and financial expense rates to the per-unit cost of manufacturing on the same basis on which it is calculated. We also agree with KSC that our preferred method of making this adjustment is to remove packing and loading costs from the cost of sales denominator. However, as KSC acknowledges, the company-wide packing and loading costs are not available in the instant case. We have chosen not to use KSC's proposed alternative, which requires the assumption that packing costs for all company products are incurred in the same ratios as the subject merchandise. Instead, we have applied the G&A and financial expense rates to the per-unit cost of manufacturing inclusive of packing and loading costs.

Comment 7: Financial Expenses—Foreign Exchange Losses

Petitioners argue that KSC incorrectly excluded a subsidiary's foreign exchange losses when calculating its reported financial expense rate. Petitioners note that the Department's practice is to use the highest level of consolidation to calculate financial expenses due to the fungibility of financial resources and to include foreign exchange losses on debt in the same calculation. Petitioners claim that the excluded foreign exchange losses were related to debt and thus should be included in the financial expense rate calculation.

KSC acknowledges that an insignificant amount of foreign exchange losses were inadvertently omitted from the calculation of its financial expense rate.

Department's Position: We agree with petitioners and have adjusted KSC's financial expense rate calculation to include the foreign exchange losses related to debt that were incurred by a KSC subsidiary.

Comment 8: Financial Expenses—Affiliated Party

Petitioners argue that the Department should adjust KSC's reported costs to include financing costs associated with the purchase of equipment. Petitioners note that an affiliated company, KSC Enterprises, purchased equipment from unaffiliated companies and then sold the equipment to KSC under an installment contract. Petitioners assert that the cost of financing was not included in the purchase price and therefore was not included in KSC's depreciation basis for the purchased assets. Petitioners further note that the financing cost was not captured since it was eliminated in the preparation of KSC's consolidated financial statements.

KSC contends that the interest expenses captured on its consolidated income statement reflect all of the financing expenses actually incurred by the consolidated entity and that petitioners' claim seeks to supplement these amounts with financing incurred on specific assets. KSC argues that petitioners' claim violates the Department's practice of allocating finance expenses based on the consolidated corporate entity. *See*

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review, 63 FR 37516, 37517 (July 13, 1998); *E.I. DuPont De Nemours & Co.* v. *The United States*, 98–7 (CIT Jan. 29, 1998) ("*DuPont*").

Department's Position: We agree with KSC. As noted, our long-standing practice is to derive the financial expense rate using the respondent's audited consolidated financial statements. *See, e.g., Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 42001, 42005 (August 6, 1998). This practice has been upheld by the CIT as reasonable. *See DuPont.* Petitioners are correct in noting that the depreciable basis of the asset does not include financing costs, and the financing costs associated with this specific transaction between the two affiliated entities are eliminated in the preparation of consolidated financial statements. However, petitioners are incorrect in their assertion that these financing expenses should be included in the depreciable basis of the asset as this would result in the double-counting of costs. Since KSC's reported financial expense rate was properly based on its audited consolidated financial statements, which reflect all borrowing incurred by the consolidated entity, we have not made any adjustments to this rate.

Comment 9: Calculation Error

Petitioners claim that there is an error in KSC's reported cost for one control number, because the reported cost does not agree to supporting documents presented at the cost verification. Petitioners claim that the supporting documents indicate that the reported costs were understated and the Department should adjust the reported cost accordingly.

KSC asserts that the reported cost for the control number is correct. KSC states that the supporting worksheet contains a clerical error and that, after correcting for this error, the weighted-average cost calculation on the worksheet agrees to the reported cost.

Department's Position: We agree with KSC. We reviewed the worksheet that demonstrates the weighted-average cost calculation for this control number, noting that the unit costs of two products comprising the control number were switched in error. When the error is corrected, the resulting weighted-average cost is consistent with the figure reported by KSC. Therefore no adjustment is warranted.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**) for KSC and companies falling under the All Others category. We are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after October 12, 1998, for NSC, Nippon Metal Industries, Nisshin Steel Co., Ltd., and Nippon Yakin Kogyo. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
KSC Steel Corporation	37.13
Nippon Steel Corporation	57.87
Nisshin Steel Co., Ltd.	57.87
Nippon Yakin Kogyo	57.87
Nippon Metal Industries	57.87
All Others	37.13

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and de minimis margins and any margins determined entirely under section 776 of the Act, from the calculation of the "All Others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order and direct Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective dates of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13680 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen (Tung Mung); Joanna Gabryszewski (Chang Mien); Gideon Katz (YUSCO and Yieh Mau); or Michael Panfeld (Ta Chen), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408; (202) 482–0780; (202) 482–5255; and (202) 482–0172, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils ("SSSS") from Taiwan are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice. Additionally, as discussed below, we have determined that the application of total adverse facts available is warranted with respect to YUSCO and Ta Chen.

Case History

Since the amended preliminary determination (*Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from Taiwan, (Amended Preliminary Determination)* (64 FR 4070, January 27, 1999)) the following events have occurred. We conducted a sales verification of Yieh United Steel Corporation's ("YUSCO") questionnaire response on January 18–22, 1999. We conducted a sales and cost verification of Tung Mung Development Co., Ltd's ("Tung Mung") questionnaire response on January 25–29, 1999. We conducted a sales and cost verification of Chang Mien Industries Co., Ltd.'s ("Chang Mien") questionnaire response on February 2–6, 1999. We conducted a sales verification of Yieh Mau Corporation's ("Yieh Mau") questionnaire response on February 8–9, 1999. Finally, we conducted a verification of Ta Chen Stainless Pipe Co., Ltd."s ("Ta Chen Taiwan") and Ta Chen International's ("TCI") (collectively "Ta Chen") middleman dumping questionnaire response on April 5–8,1999 in Los Angeles and on April 12–16, 1999 in Taiwan. On April 12, 1999, respondents YUSCO, Ta Chen, Chang Mien, and Tung Mung provided this monthly shipment data for subject merchandise to the U.S. for 1996, 1997, and 1998.

Petitioners and respondents submitted case briefs on April 20, 1999. On April 22, 1999, petitioners (the only party requesting a public hearing) withdrew their request for the public hearing. Petitioners and respondents submitted rebuttal briefs on April 26, 1999.

On February 5, 1999, Ta Chen submitted a middleman dumping questionnaire response. On February 17 and on March 3, 1999, Ta Chen submitted additional information. On April 7, 1999, the Department requested historical data from respondents regarding exports of subject merchandise during the POI to the U.S. for the years 1996, 1997, and 1998. On April 20, 1999, the Department released a preliminary decision on our middleman dumping investigation of Ta Chen. *See* Memorandum from Michael Panfeld to the File entitled *"Ta Chen Stainless Pipe Co., Ltd.: Preliminary Middleman Dumping Analysis."* In that memorandum, we preliminarily found that Ta Chen did not engage in middleman dumping with respect to purchases from YUSCO. However, we did preliminarily find that Ta Chen engaged in middleman dumping with respect to purchases from Tung Mung.

On May 3, 1999, petitioners and respondents submitted a second round of case briefs, focused on middleman dumping issues. Petitioners and respondents submitted rebuttals for this second case brief on May 7, 1999.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses

of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Period of Investigation

The period of investigation ("POI") is April 1, 1997 through March 31, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from Taiwan to the United States were made at less than fair value, we compared the export price ("EP") to the normal value ("NV"), as described in the "export price" section of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Transactions Investigated

Chang Mien

With respect to home market sales, we have determined that the date of the order confirmation is the appropriate date of sale since it is the date on which the terms are set and is not changed thereafter, *i.e.* the date which "established the material terms of sale." 19 CFR 401(i). For a further discussion of this issue, *see* the date of sale discussion for Chang Mien further in the body of this Final Determination, and in the *Analysis of Chang Mien in the Final Determination of Stainless Steel Sheet and Strip in Coils from Taiwan Memorandum* (*"Analysis Memorandum: Chang Mien"*), May 18, 1999.

For U.S. sales, we have determined that the date of invoice is the appropriate date of sale since it is the date on which the terms of the sale are set and is not changed thereafter. For a further discussion of this issue, *see* the date of sale discussion for Chang Mien, further in the body of this final, and in the *Analysis Memorandum: Chang Mien.*

Tung Mung

For Tung Mung's U.S. sales, we have used contract date as date of sale. With respect to home market sales, we have determined that the date of invoice is the appropriate date of sale since it is the date on which the terms are set and is not changed thereafter, i.e. the date which "established the material terms of sale." 19 CFR 401(i). For a further discussion of this issue, *see Analysis of Tung Mung in the Final Determination of Stainless Steel Sheet and Strip in Coils from Taiwan Memorandum* (*"Analysis Memorandum: Tung Mung"*), May 18, 1999. For U.S. sales, as a result of verification, we have treated Tung

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Mung's sales to Company X as sales through Ta Chen Taiwan in our calculations. *See* Ta Chen Taiwan Verification Report dated April 28, 1999 and *Analysis Memorandum: Tung Mung*.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by respondents, covered by the description in the "Scope of Investigation" section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's August 3, 1998 questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or constructed export price ("CEP") transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses ("SG&A") and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In this investigation, none of the respondents requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Taiwan markets, including the selling functions, classes of customers and selling expenses for each respondent.

Tung Mung

Tung Mung claimed that there was only one LOT in the home market. Tung Mung reported that in the home market it made sales to distributors, service centers, and end-users through one channel of distribution. Tung Mung offered freight and delivery arrangements and warranty services to all customers in the home market. The Department confirmed this information at verification (*see Verification Report: Stainless Steel Plate in Coils from Taiwan, Less than Fair Value Investigation*, p. 8). Based on our analysis, for the final determination, we determine that Tung Mung had one LOT in its home market.

In the U.S. market, Tung Mung reported that it sold at one LOT through two channels of distribution: (1) A foreign distributor, and (2) domestic trading companies. In the U.S. market, Tung Mung reported only one LOT to customers. Tung Mung reported that it performed identical selling functions in the United States and in the home market. These selling functions include freight and delivery arrangements and warranty services. The Department confirmed this information at verification (*see* Tung Mung sales verification report, p. 9). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the home market and the United States. Therefore, a LOT adjustment for Tung Mung is not appropriate.

Chang Mien

Chang Mien reported two LOTs in the home market and two channels of distribution. Within both channels of distribution, the merchandise is either shipped immediately to the customer or stored in Chang Mien's warehouse. In the home market, Chang Mien stated that it performed identical selling activities for both channels of distribution, such as providing inventory maintenance, technical advice, warranty services, delivery arrangements, and advertising. Although the selling activities offered are identical for each of its customers, an additional selling activity is performed for those sales which are stored in inventory. However, we determine that sales on which inventory maintenance is performed do not involve significantly greater resources than sales on which inventory maintenance is not performed and, therefore, do not constitute a separate LOT. The Department confirmed this information at the verification (*see* Memorandum to the File through Rick Johnson from Laurel LaCivita, *Chang Mien Industries Co., Ltd., Home Market Sales, United States Sales Verification Report; Stainless Steel Plate in Coils from Taiwan, Less than Fair Value Investigation* ("*Chang Mien Sales Verification Report*"), pp. 4–5). With respect to the final determination, the Department determines that Chang Mien's two claimed LOTs constitute one LOT. For a further discussion of this issue, *see Analysis Memorandum: Chang Mien*, pp. 7–8.

In the U.S. market, Chang Mien reported that it sold at one LOT, through one channel of distribution, and to one type of customer (trading company). For sales in the U.S. market, Chang Mien performed the following activities: packing, delivery arrangements (*i.e.*, transportation, brokerage and handling, and marine insurance), advertising, and warranty services. Based on a comparison of the selling activities performed in the United States market to the selling activities in the home market, we conclude that there is not a significant difference in the selling functions performed in both markets. The Department confirmed this information at the verification (*see* Chang Mien Sales Verification Report, pp. 4–5). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the home market and the United States. Therefore, a LOT adjustment for Chang Mien is not appropriate.

Export Price

For all respondents (except Ta Chen and YUSCO—*see* "Facts Available" section below), we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. Furthermore, we calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We made company-specific adjustments as follows:

Tung Mung

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight; containerization expenses; brokerage and handling expenses; harbor duty fees, and bank charges. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Chang Mien

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight; brokerage and handling; ocean freight; and marine insurance. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable for YUSCO, Tung Mung, and Chang Mien. No party has contested this decision. For the final determination, we have based NV on home market sales.

2. Cost of Production Analysis

Based on the cost allegation submitted by petitioners in the petition, the Department found reasonable grounds to believe or suspect that respondents had made sales in the home market at prices below the cost of producing ("COP") the merchandise, in accordance with section 773(b)(2)(A) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Initiation of Antidumping Investigation: Stainless Sheet and Strip In Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, ("*Initiation Notice*") 63 FR 37521 (July 13, 1998).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We relied on the COP data submitted by each respondent in its cost questionnaire response. Additionally, we made the following adjustments based on our verification findings: (1) We made an adjustment to Tung Mung's G&A expenses to account for power expenses; and 2) for Chang Mien, we revised costs for three CONNUMs, as discussed further in Comment 8.

B. Test of Home Market Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate (see above), to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities," pursuant to section 773(b)(2)(C)(i), within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test. We disregarded sales to affiliated customers that failed the arm's-length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(c)(ii) of the Act.

Tung Mung

For Tung Mung's home market sales of products that were above COP, we based NV on prices to home market customers. We made a deduction for inland freight and two post-sale price adjustments (these adjustments were reported as a quantity discount and other discounts) pursuant to section 351.401(c) of the Department's regulations. We calculated NV based on prices to unaffiliated home market customers. In addition, we made circumstance-of-sale ("COS") adjustments for differences in direct selling expenses (*i.e.*, credit and warranty expenses), where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Based on the results of verification, we made an adjustment to indirect expenses. *See* Tung Mung Sales Verification Report at p. 14 and *Analysis Memorandum: Tung Mung*, p. 6.

Chang Mien

For Chang Mien's home market sales of products that were above the COP, we based NV on prices to unaffiliated home market customers. We made a deduction for inland freight. In its December 4, 1998 submission, petitioners argued that the Department should deny Chang Mien's reported home market credit expense and reclassify Chang Mien's claimed advertising expenses as indirect selling expenses. For the preliminary determination, the Department accepted Chang Mien's home market credit expenses and classified Chang Mien's advertising expenses in both the U.S. and home market as direct selling

expenses. However, based on findings made at verification, we have reclassified Chang Mien's claimed advertising expenses as indirect selling expenses for the final determination. *See Analysis Memorandum: Chang Mien* at 4. For a further discussion of this issue, *see* Comment 11 "Advertising Expenses" below. Furthermore, based on a pre-verified correction, we have adjusted Chang Mien's reported advertising expenses. Additionally, for the Final Determination, we will only make adjustments for warranty expenses associated with POI sales and have, therefore, excluded one of the two warranty expenses claimed by Chang Mien. *See* Comment 12 "Warranty Expenses" below. We made COS adjustments for direct selling expenses (*i.e.*, credit, warranty and bank charges), where appropriate. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of similar merchandise. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For these EP comparisons, for Tung Mung, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Taiwan. Section 735(a)(3) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine on the basis of the information available to the Department, whether:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers an existing antidumping duty order on SSSS in the United States or elsewhere to be sufficient. Petitioners did not provide any information indicating a history of dumping of SSSS from Taiwan. Furthermore, we investigated the existence of antidumping duty orders on SSSS from Taiwan in the United States or elsewhere, and did not find any. On April 7, 1999, we requested respondents to submit historical data on exports of subject merchandise to the United States for 1996, 1997 and 1998. On April 12, 1999, YUSCO, Chang Mien, Tung Mung, and Ta Chen submitted the historical data on U.S. exports as requested.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers estimated dumping margins of 25 percent or greater for EP sales to impute knowledge of dumping and of resultant material injury. In this regard, we note that the ITC preliminarily determined that the domestic industry is materially injured or threatened with material injury by reason of imports from Taiwan. *See Notice: International Trade Commission*, 63 FR 41864 (August 5, 1999). In this investigation, with the exception of YUSCO, we have not established estimated dumping margins of 25 percent or greater. Based on these facts, we determine that, with the exception of YUSCO, the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we determine that there is no basis to find that critical circumstances exist with respect to exports of SSSS from Taiwan by all respondents except YUSCO (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From Korea*, 62 FR 25895, 25898 (May 12, 1997)). Because the dumping margins for all companies except YUSCO are below the 25 percent threshold, we have not analyzed the shipment data for these respondents to examine whether imports of SSSS have been massive over a relatively short period.

For YUSCO, we compared shipment data for the periods December 1997 through May 1998 and June through November 1998 (the post-petition period), and found that YUSCO did not have massive shipments of SSSS to the United States in the post-petition period. Therefore, we find that critical circumstances do not exist. For a more detailed discussion of this analysis, *see Analysis Memorandum—YUSCO* from Rick Johnson to Edward Yang, May 19, 1999.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by the respondents for use in our final determination. We used standard procedures, including examination of relevant sales, accounting, and production records and original source documents provided by respondents.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

YUSCO

We find, based on the evidence set out below in the "total facts available" section of the notice, that by not reporting a large portion of the home market database, YUSCO withheld information that had been requested by the Department (*i.e.*, all home market sales of the foreign like product) and did not act to the best of its ability in providing the requested information. Accordingly, the Department used facts available with an adverse inference, as provided for in section 776(b) of the Act. Since these sales were not reported to the Department, this information was clearly not provided in a timely manner (*i.e.*, in response to Section B of the Department's questionnaire). Furthermore, YUSCO's withholding of

crucial information which the Department needed to calculate an accurate normal value significantly impeded the Department's investigation. As a result, we must rely on the facts otherwise available.

Ta Chen

We also determine, in accordance with section 776(a) of the Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for Ta Chen because, despite the Department's attempts to verify necessary information provided by Ta Chen, the Department could not verify the information as required under section 782(i) of the Act. Furthermore, section 782(e) of the Act authorizes the Department to decline to consider information that is submitted by an interested party that is necessary to the determination under certain circumstances, such as when such information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination or when such information cannot be verified. As discussed below in Comment 23, we determine that information provided by Ta Chen in this investigation could not be verified.

Total Facts Available

YUSCO

Section 773(a)(1)(B) of the Act requires that, in determining normal value, the Department use all sales of the foreign like product sold for consumption in the exporting country, provided the sales are in the usual commercial quantities, made in the ordinary course of trade and, to the extent practical, at the same level of trade as the export price or constructed export price sale. Our questionnaire requires that where the home market is viable, respondents report all sales of the foreign like product sold in the home market.

The Department's antidumping questionnaire issued to YUSCO, at B–1, notes that Section B of the questionnaire "provides instructions for reporting your sales of the foreign like product in your home market or a third-country market." Foreign like product, in turn, is defined in the glossary to the antidumping questionnaire as referring "to merchandise that is sold in the foreign market and that is identical or similar to the subject merchandise. When used in the questionnaire, foreign like product means all merchandise that is sold in the foreign market and that fits within the description of merchandise provided in Appendix III to the questionnaire (section 771(16) of the Act)." Therefore, it is clear from the instructions in the questionnaire that respondent is required to report all sales of subject merchandise in the foreign market. Furthermore, in explaining how to report customer codes for home market sales, the questionnaire states that, "(i)f known, identify customers that export some or all of their purchases of the foreign like product. Explain how you determined which sales were for consumption in the foreign market." *See* Questionnaire at page B–8. This instruction clearly places an obligation upon a respondent and contemplates, in accordance with section 773(a)(1)(B) of the statute, that sales for consumption in the home market be reported as home market sales. Moreover, the questionnaire specifically asked respondent to identify customers that export and explain how it determined what sales were for home market consumption.

The record establishes that YUSCO failed to report a substantial portion of sales possibly consumed by home market customers. On pages 3 and 4 of its November 16, 1998 supplemental questionnaire response, YUSCO stated that:

> The majority of YUSCO's home market customers are further manufacturers. These further manufacturers produce different types of SSSS and/or non-subject merchandise from YUSCO's SSSS, and sell to their customers in the home market, U.S., and third countries. As stated above, YUSCO states that it does not know which YUSCO's SSSS was further manufactured into different types of SSSS or into non-subject merchandise. Nor does YUSCO claim to know which YUSCO's SSSS was finally destined to either the home market, the United States, or third countries.

We confirmed this during verification by interviewing 12 members of YUSCO's sales department via a written questionnaire. The questions concerned the employees' role, knowledge of its customers, and knowledge of further-processing. *See Facts Available Decision Memorandum—YUSCO* for a full discussion, as well as Exhibit 7 of the YUSCO sales verification report.

Prior to verification YUSCO submitted a list of "UZ sales" which were sales made to home market further manufacturers. These customers informed YUSCO that the processed SSSS would be exported, but did not specify whether the exported product would still be subject merchandise. YUSCO claims that these sales should not be used in calculating YUSCO's dumping margin because YUSCO knew that its SSSS would be finally exported to third countries. Consistent with *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 64 FR 15493 (March 31, 1999), however, these sales must be included in a normal value calculation for YUSCO because YUSCO has not demonstrated that it knew that the SSSS from these sales was not consumed in the home market. YUSCO thus erroneously considered a substantial portion of its sales as third country export sales, even though they were sales to unaffiliated home market customers. Likewise, YUSCO also did not report a large number of indirect export sales, coded "U*." These sales were made to Taiwan customers who possibly further manufactured the SSSS and then exported it to third countries. Although YUSCO reported the total quantity and value of these sales, it did not submit a U* sales listing and it did not provide evidence that this merchandise was exported as subject merchandise.

Although YUSCO has provided information regarding total value and quantity of its home market sales, it has not explained why it did not report a large number of sales to home market customers who possibly further manufactured SSSS into non-subject merchandise before export. Nor has it reported the individual sales transaction data necessary to conduct the dumping analysis.

As noted above, under section 773(a)(1)(B), normal value is based on sales of the like product for consumption in the home market. Thus, sales may be excluded from the home market database only if a respondent knew or had reason to know that merchandise was not sold for home consumption. *See INA Walzlager Schaeffler KG* v. *United States*, 957 F. Supp. 251, 263H (CIT 1997). Therefore, if YUSCO had demonstrated that it knew or had reason to know that its sales of subject merchandise in the home market were not for consumption in the home market, it may have been appropriate for YUSCO to omit these sales from its home market sales. In this case, as described above, YUSCO has admitted that a large portion of its sales are further processed prior to exportation. It is without question that if merchandise sold in the home market, even if ultimately destined for export, was consumed in the home market in producing non-subject merchandise prior to exportation, then it should be reported as part of the home market sales database. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Korea*, 58 FR 37176 (July 9, 1993) (Comment 9); *Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic*

of Korea, 58 FR 15467 (March 23, 1993). Therefore, YUSCO should have reported these sales as home market sales.

Moreover, substantial evidence reveals that YUSCO's reliance on its internal coding system for sales reporting purposes contains an additional flaw: namely, this system is not used in accordance with YUSCO's own stated guidelines. Specifically, the Department found, in *SSPC from Taiwan*, that a product which, according to YUSCO's description, should have been coded as a "UAS" sale to the United States (irrespective of the Department's ultimate determination that, for our purposes, this sale was properly considered to be a home market sale), was in fact coded as a domestic sale (*see* Comment 1 and 2 of *SSPC from Taiwan*). The Department notes that the same system was used for the purposes of reporting sales in the instant investigation (*see* YUSCO sales verification exhibit 3, and pages 4 and 6 from YUSCO's verification report dated January 28, 1999 in *SSPC from Taiwan*, which has been placed on the record of this investigation). Therefore, further doubt is cast upon the reliability of YUSCO's reporting methodology.

Because YUSCO's reliance on this internal classification of home market and third country sales for reporting sales to the Department was inadequate, by relying on it YUSCO failed to comply to the best of its ability with the Department's instructions. Additionally, although YUSCO did submit its UZ sales listing late in our investigation, this information is grossly incomplete and thus unusable for our dumping calculation purposes. Furthermore, because it was submitted on January 11, 1999, we had no opportunity to issue supplemental questionnaires regarding these sales. The UZ sales listing is missing key information, such as product characteristics; CONNUMs, customer codes, relevant dates, and a number of adjustments. This information is thus so incomplete that it cannot serve as a reliable basis for reaching our determination of normal value. Finally, because this UZ sales information was so incomplete and was submitted too late for the Department to seek additional information regarding these sales, we find that the submission of these sales cannot reasonably be construed as evidence that YUSCO was attempting to cooperate to the best of its ability.

Ta Chen

Generally, and in the process of verification, the Department's analysis of the completeness of a respondent's U.S. sales database is essential because the database is used to calculate the anti-dumping duties. An incomplete U.S. sales database is normally sufficient to render a company's response inadequate for the purpose of calculating a dumping margin. *See, e.g., Persico Pizzamiglio, S.A.* v. *United States*, Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

Despite our efforts at verification, we were unable to verify information which is necessary and must be verified in order for us to make a determination under section 731 of the Act. Specifically, we were unable to verify the data Ta Chen provided concerning its purchases and subsequent U.S. sales of subject merchandise produced by YUSCO and Tung Mung. Most significantly, we found that Ta Chen was unprepared to demonstrate that the appropriate universe of purchases and U.S. resales were reported, that further-manufacturing activities in Taiwan were not related to subsequent U.S. sales, and that it had reported all expenses related to its purchases. As we have indicated above, incompleteness of the U.S. sales database is a critical flaw and is a factor which, by itself, forms an adequate basis for our determination to use facts available.

Thus, we have determined that although Ta Chen provided information we requested which was necessary for us to perform our analysis, the information could not be verified as required by section 782(i) of the Act. Thus, in accordance with section 782(e)(2) of the Act, we have declined to consider information submitted by Ta Chen because it could not be verified. Because we were unable to verify necessary information, we were unable to employ our normal middleman dumping analysis. Under section 776(a) of the Act, we are required, in reaching our determination, to use total facts available because we could not verify Ta Chen's data. Thus, for Ta Chen, we have determined that it is appropriate to select from the facts otherwise available to the Department.

Adverse Facts Available

YUSCO

Where the Department determines that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act provides that the Department may use an adverse inference in selecting from the facts available. *See, e.g., Roller Chain, Other Than Bicycle, From Japan; Final Results and Partial Recission of Antidumping Duty Administrative Review*, 63 FR 63671 (November 16, 1998); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). We have determined that YUSCO failed to cooperate to the best of its ability within the meaning of section 776(b) because YUSCO failed to follow the Department's instructions to report all home market sales.

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition. Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870). At the outset of this investigation, the Department examined the accuracy and adequacy of the price to price information in the petition. We determined that the price to price comparisons and price to CV comparisons constituted sufficient evidence of dumping to justify initiation. *See Initiation Notice* at 37527 (estimated margins for Taiwan ranged from 8.23 percent to 77.08 percent).

In order to determine the probative value of the petition margins for use as adverse facts available for the purposes of this determination, we have examined evidence supporting the petition calculations. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the petition margin was based and compared the sources used in the petition to YUSCO's reported sales databases. Based on this analysis, we have successfully corroborated the information in the petition regarding price to price comparisons. *See Facts Available Memorandum—YUSCO.* Therefore, we have chosen the highest petition margin (based on price-to-price comparisons) for Taiwan of 21.10 percent as the basis

for using total adverse facts available. *See* comment 2, below, for a full discussion of the overall facts available margin.

Ta Chen

We examined whether Ta Chen had acted to the best of its ability in responding to our requests for information, such as U.S. sales data. We took into consideration the fact that, as an experienced respondent in other investigations and orders, its ability to comply with our requests for information could be distinguished from, for example, the ability of a less experienced company. Thus, Ta Chen can reasonably be expected to know which types of essential data we request in each investigation or review, and to be conversant with the form and manner in which we require submission of the data.

In addition to taking into account the experience of a respondent, the Department may find it appropriate to examine whether the respondent has control of the data which the Department is unable to verify or rely upon. The record reflects that Ta Chen was in control of the data which was vital to our dumping calculations and which we were unable to verify or rely upon. *See Facts Available Decision Memorandum—Ta Chen* from Rick Johnson to Edward Yang, dated May 19, 1999 ("Facts Available Decision Memorandum-Ta Chen").

An additional factor we have considered is the extent to which Ta Chen might have benefitted from its own lack of cooperation. The SAA states that "where a party has not cooperated, [the Department] may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Id.* at 870. In accordance with our policy, we considered the overall effect of Ta Chen's errors. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for Ta Chen. *See Facts Available Decision Memorandum—Ta Chen.*

In light of Ta Chen's familiarity with the Department's practices, its control of the necessary data, and the potential benefits it may have received, we have determined that Ta Chen failed to act to the best of its ability in providing the data we requested. Therefore, in accordance with section 776(b) of the Act, we have, on the basis of the record in this case, determined that it is appropriate for us to make the adverse inference authorized under that subsection of the statute. Accordingly, for this final determination, we base Ta Chen's margin on adverse facts available.

In selecting a margin which would appropriately reflect our decision to use adverse facts available for Ta Chen, we examined the rates applicable to this case throughout the course of the proceeding. As adverse facts available, we have selected a rate of 15.34 percent for Ta Chen's resales of Tung Mung's and YUSCO's product, which reflects the highest rate in *Stainless Steel Sheet and Strip in Coils from Taiwan: Whether to Initiate a Middleman Dumping Investigation ("Middleman Initiation Memo")* dated December 3, 1998. As we discuss in Comment 2 below, we have used this rate in calculating an overall weighted-average margin for Tung Mung and YUSCO.

As indicated above, section 776(c) of the Act requires the Department to corroborate secondary information used as facts available to the extent practicable. Because the facts available applied to Ta Chen for this investigation is secondary information within the meaning of section 776(c) of the Act, we have, in accordance with section 776(c), corroborated this information with independent sources.

In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the middleman dumping calculations on which the middleman dumping petition was based and compared these sources to Ta Chen's reported data. Based on this analysis, we are satisfied that this information has probative value. *See Facts Available Decision Memorandum—Ta Chen.* Thus, we have determined that information and inferences which we have applied are reasonable to use under the circumstances of this determination, in accordance with the *SAA* at 869. Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available.

Interested Party Comments

General Issues

Comment 1: Currency Fluctuations

Petitioners argue that the Department should calculate final dumping margins for all respondents using three separate averaging periods to account for alleged severe currency fluctuations which occurred during the POI. Petitioners charge that there were sudden and dramatic drops in the value of the New Taiwan dollar relative to the U.S. dollar (from an annualized 9.83 percent drop in the first six months of the period of investigation to an annualized 70.60 percent drop in the last quarter of 1997). Therefore, to account for these sudden currency fluctuations, petitioners urge the Department to calculate three separate weighted-average price comparisons for each product under investigation; one for the first six months of the POI, another for the October 1997 through December 1997 period, and a third for the January 1998 through March 1998 period. Petitioners argue that the failure to account for the "severe" exchange rate fluctuations during the POI through the use of three separate periods will result in the dilution of pre-existing dumping margins resulting solely from exchange rate changes and independent of any pricing changes by respondents.

Petitioners maintain the use of multiple averaging periods to account for exchange rate fluctuations is consistent with what petitioners claim to be the two goals of the antidumping law: (1) to provide relief to domestic industries facing unfair competition, and (2) to make fair comparisons. *See Smith-Corona Group* v. *United States,* 713 F.2d 1568, 1575–76 (Fed. Cir. 1983) and *Koyo Seiko Co.* v. *United States,* 20 F.3d 1156, 1158–59 (Fed. Cir. 1994) (*"Koyo Seiko"*). Petitioners allege that unless the Department calculates separate margins for three periods, the macroeconomic conditions unrelated to each respondent's competitive pricing policies will unfairly and inappropriately mask Taiwan respondents' true margins of dumping. Petitioners assert that in several recent antidumping investigations, the Department recognized that a rapid currency devaluation may mask dumping margins and that multiple averaging periods are appropriate. *See, e.g., Final Determination of Sales at Less Than Fair Value; Stainless Steel Plate in Coils from Korea ("SSPC From Korea"),* 64 FR 15443, 15452 (March 31, 1999) and *Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea ("ESBR from Korea"),* 64 FR 14865, 14868 (March 29, 1999). Petitioners note that the Department has specifically addressed in its regulations the appropriate use of multiple averaging periods to avoid the possibility of distortion in the dumping calculation. *See Preamble to Antidumping and Countervailing Duties; Final Rule,* 62 FR 27296, 27377 (May 19, 1997) (*"Preamble"*) (stating that [Commerce] should address depreciating currencies more fully in its regulations); and 19 CFR 351.414(d)(3) (stating that Commerce may use shorter

averaging periods "when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation..."). Petitioners assert that to achieve "fairness," which is the goal of the dumping law, the Department must consider sudden currency devaluations in calculating dumping margins. Petitioners argue that given the significant degree of devaluation of the Taiwan dollar that occurred in the last quarter of 1997, calculating a single POI weighted-average price for each product is inappropriate.

Petitioners argue that the statute and the *SAA* authorize the Department to rely on modified averaging comparisons where time affects sales comparability. Petitioners assert that the *Notice of Proposed Rulemaking and Requests for Public Comment*, 61 FR 7308, 7349 (February 27, 1996) (*"Notice of Proposed Rulemaking"*), state that the Department will normally calculate an average-to-average comparison by weight-averaging sales during the entire period of investigation. Petitioners argue that the Department may resort to shorter time periods where the normal values, export prices, or constructed export prices for sales included in an averaging group differ significantly over the course of the POI. Petitioners allege that NV differs significantly and dramatically over the course of the POI when exchange rates are taken into account.

Petitioners cite to the Department's reasoning in *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan ("PVA from Taiwan")*, 61 FR 14064, 14069 (March 29, 1996), where the Department acknowledged that time affects price comparability, and relied on two averaging periods to calculate dumping margins. Petitioners note that although *PVA from Taiwan* involved an affirmative change in home market selling practices by respondent, the Department held that the change in selling practices enhanced the effect of time on price comparability "because the respondent entered into long-term contracts that dramatically reduced NV in the last six weeks of the POI." *Id.* Petitioners argue that the need for separate averaging periods is even stronger in this investigation than in *PVA from Taiwan*, because the steep decline in NV results from the Department's calculation methodology, not from some independent action by respondents. *Id.*

Petitioners argue that the "precipitous" drop at the last quarter of 1997 has a strong effect on the dumping calculations since respondents' costs for raw materials would be affected by the New Taiwan dollar's decline. Petitioners contend that if separate costs were available for three periods, it would be almost certain that all post-decline NV's would be below respondents' costs and that dumping would be found based on a comparison of respondents' U.S. prices to their actual "constructed value" for that same period. Petitioners assert that respondents are more likely to be further reducing U.S. prices in response to the Taiwan currency devaluations, whereas under the Department's current methodology, no dumping would be found for this period.

Petitioners argue that the Department often departs from ordinary comparison methodology to account for extraordinary events. Petitioners argue that the courts have recognized that dumping margins should not be "artificially" created simply because of unforeseen changes in the exchange rate, citing, *e.g., Melamine Chem., Inc.* v. *United States*, 732 F.2d 924, 929–932 (Fed. Cir. 1984). In addition, petitioners argue that dumping margins should not be eliminated artificially because of unanticipated changes in the exchange rate, given that the goal of the antidumping law is to protect the domestic industry from unfair trade practices, citing *Koyo Seiko* at 1158. In so arguing, petitioners cite to past Department decisions where the Department made adjustments to cost to account for extraordinary events that occurred during the period of investigation or review (*Floral Trade Council* v. *United States*, 16 CIT 1014, 106–17 (1992); *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Presses and Components Thereof, Whether Assembled or Unassembled from Japan*, 61 FR 38139, 38153 (July 23, 1996); *Final Determination of Sales at Less Than Fair Value: Fresh Kiwi Fruit from New Zealand*, 57 FR 13695, 13697 (April 17, 1992)). Petitioners assert that the Department consistently has recognized and attempted to minimize the effect of severe currency devaluations in dumping calculations, citing *Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil*, 55 FR 23120 (June 6, 1990) (to account for hyperinflation, the Department calculated a separate foreign market value for each price period); *Certain Fresh Cut Flowers from Columbia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53297 (October 14, 1997) (holding that calculations should be revised to account for the "devaluation of the Columbian currency"). Petitioners contend that the *Notice of Proposed Rulemaking* (at 7349) states that the Department may resort to shorter time periods where normal values included in the averaging group differ significantly over the POI.

Petitioners argue that the Department also acknowledges that standard weight-averaging procedures are inappropriate under extraordinary circumstances by adopting special procedures for exchange rate conversions where foreign currencies appreciate vis-a-vis the dollar. Petitioners assert that 19 CFR 351.415 permits respondents time to adjust their pricing practices so that appreciating currencies do not "create" dumping margins. Petitioners argue that likewise, depreciating foreign currencies should not be used to reduce or eliminate margins of dumping. Petitioners argue that if a respondent is dumping at a time of stable inflation and currency valuation, dumping should not be eliminated because of an extraordinary devaluation of the foreign currency that otherwise has no impact on the respondent's pricing practices. Petitioners argue that respondents did not take any affirmative steps in the latter part of the period of investigation to eliminate or minimize its dumping. Petitioners claim that but for the rapid and unexpected devaluation of the Taiwan dollar, respondents' level of dumping would have been the same. Therefore, petitioners argue, the Department has not only the authority, but also the obligation, to rely on an alternative method to calculate the dumping margins to ensure a fair result.

YUSCO argues that the Department should reject petitioners' request to calculate dumping margins using three separate averaging periods. YUSCO argues that petitioners' arguments are based on a "tortured" calculation of the exchange rate and on inapposite determinations in *ESBR from Korea* and *SSPC from Korea*. YUSCO asserts that petitioners grossly exaggerate the New Taiwan dollar fluctuation.

YUSCO argues that contrary to petitioners' findings, the New Taiwan dollar exchange rates in the last three months in 1997 are within normal currency fluctuations addressed by the Department's standard rules for currency conversions. YUSCO asserts that section 351.415(c) of the Department's regulations state that the Department will "ignore fluctuations in exchange rates." YUSCO claims that the New Taiwan dollar fluctuated only 12.6 percent in the last three months of 1997. Respondent argues that petitioners relied on a misleading calculation of a

yearly change in the New Taiwan dollar exchange rate that never occurred. Specifically, YUSCO claims that petitioners' "annualized" change of 70.6 percent is fictitious and alleges that petitioners inflated the denominator of their percentage calculation and "irrationally" extrapolated an inflated one quarter rate change over a year in which no such sustained change occurred.

YUSCO also claims that the Department did not use separate averaging periods when moderate currency fluctuation occurred in prior proceedings. In so arguing, YUSCO cites *Engineered Process Gas Turbo-Compressor Systems, Whether-Assembled or Unassembled and Whether Complete or Incomplete, from Japan* ("*EPGTC from Japan*"), 62 FR 24394 (May 5, 1997), where the Department did not use separate averaging periods even though the Japanese yen fluctuated over 25 percent during the period of investigation. YUSCO argues that the Department's determinations in the South Korean cases petitioners have cited are not applicable to the instant case. YUSCO asserts that in *SSPC from Korea*, the Department determined that normal value, in U.S. dollar terms, in the last two months differed significantly from normal value in the earlier period due to a significant change in the exchange rate. In *SSPC from Korea*, the Department found that "the won's value decreased by more than 40 percent in relation to the dollar in the last two months of 1997." YUSCO argues that, in contrast, the New Taiwan dollar fluctuated only 4.88 percent in the last two months of 1997, and less than 13 percent in the last three months of 1997. Finally, YUSCO argues that neither the New Taiwan dollar nor the Taiwan economy has ever faced the currency crisis similar to the one that South Korea faced in 1998.

Chang Mien also argues that petitioners have exaggerated the exchange rate fluctuations by annualizing their percentage change. Chang Mien assert that on a month-to-month basis, or annually, rather than "annualizing" individual numbers, the exchange rate between the New Taiwan dollar and the U.S. dollar changed approximately 15 percent using the Department's own data. Thus, Chang Mien argues, a change in the exchange rate on a month-to-month basis rather than on an annualized basis reveals that the change was less than "sudden and dramatic." Chang Mien alleges that, with the exception of the two months from November to December 1997, the change in exchange rate was small and not sustained. Chang Mien claims that in the last two months of the POI, the New Taiwan dollar began a recovery, appreciating against the U.S. dollar.

Chang Mien disagrees with petitioners' argument that the instant situation is comparable to the cases of *SSPC from Korea* and *ESBR from Korea*. As noted by YUSCO, Chang Mien also contends that in the above Korean cases, the Department found more than a 40 percent change in the exchange rate in the POI. Moreover, Chang Mien asserts that in *SSPC from Korea*, the Department found not only that there was a precipitous drop in the Korean won/U.S. dollar exchange rate, but also that this drop continued through the end of the POI, without quick rebound. According to Chang Mien, in contrast to the won, the New Taiwan dollar fell only 15 percent in the POI and also rebounded significantly in the last two months of the POI.

Chang Mien asserts that petitioners' reading of the *Preamble* to the Department's regulations is misplaced. Chang Mien argues that the *Preamble* instead reads that "the Department did not change its policy regarding the use of the exchange rates." *Id.* Chang Mien contends that among the areas the Department did not revise includes the use of either the actual exchange rate on a particular day or the use of a rolling eight-week average if the daily exchange rate varies by more than 2.25 percent from the rolling average. Chang Mien claims that this provision of using the rolling average for moderate fluctuations effectively takes care of any exchange rate fluctuations affecting dumping calculations, such as the fluctuations found in this case.

Chang Mien disagrees with petitioners' interpretation that the provision under 19 CFR 351.414(d)(3) allows the use of shorter averaging periods, "when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation * * *" Chang Mien argues that this provision has no relevance to using multiple averaging periods due to rapid currency fluctuations. Chang Mien claims that the provision instead relates solely with averaging all home market sales, for example, and comparing them to an average of all U.S. sales. Further, Chang Mien argues that the Court of Appeals for the Federal Circuit has ruled that a respondent cannot be held responsible for actions beyond its control, citing *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924 (Fed. Cir. 1984).

Chang Mien argues that the Department should disregard petitioners' suggestion to use multiple averaging periods to account for currency fluctuations for the following policy reasons. First, Chang Mien contends that using this methodology would be prejudicial to respondents because it would provide no certainty on how to ensure that future sales comply with the antidumping duty statute with regard to currency fluctuations. Second, Chang Mien argues that multiple averaging periods would result in artificial dumping margins based solely on changes in the exchange rates. Third, Chang Mien claims that neither petitioners nor the Department have established clear guidelines on what constitutes either a severe, abnormal fluctuation or sufficient rebound from a severe currency devaluation. Finally, Chang Mien asserts this treatment of exchange rate fluctuations suggested by petitioners would have a "nightmarish" effect on future cases that would similarly be affected by exchange rate fluctuations.

Chang Mien asserts that it is the exchange rate, not price, which has fluctuated. Chang Mien contends it does not have any control over the exchange rates, nor have petitioners alleged that Chang Mien significantly changed its business practices or pricing policy as a result of the exchange rate fluctuations. Chang Mien objects to petitioners' allegation that the fluctuation of exchange rates in the instant case is an "extraordinary event" sufficient enough to warrant using multiple averaging periods to calculate dumping margin. Chang Mien argues that currency fluctuations in the instant case cannot be equated with the hyperinflation seen in Brazil and in other antidumping cases, citing *Industrial Nitrocellulose from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 23120 (June 6, 1990).

Finally, Chang Mien asserts that if the Department were to use multiple averaging periods, three calculations for the cost of production for each period also must be used in the margin calculation. Chang Mien argues that petitioners raised the issue of exchange rate fluctuations only in their case brief, making it impossible for respondents to submit cost of production data for each period within the time limits of this proceeding.

Similar to YUSCO and Chang Mien, Tung Mung argues that the exchange rate changes during the POI were not significant enough to warrant dividing the period into three periods. Tung Mung argues that petitioners' assertion that Tung Mung's costs for raw materials would have "skyrocketed" as a result of the declining New Taiwan

dollar overlooks the fact that much of Tung Mung's raw materials are obtained from domestic and imported sources. Tung Mung objects to petitioners' argument that Tung Mung failed to take "affirmative steps" during a period when the New Taiwan dollar was declining, given that the decline of a foreign currency in relation to the U.S. dollar reduces any dumping margin that might have existed or increases the safety margin.

Department's Position: We disagree with petitioners and have continued to use POI averages and our exchange rate model in this final determination. While we agree in principle with petitioners that we may use averaging periods of less than the POI when normal value, export price, or constructed export price varies significantly over the POI under 19 CFR 351.414(d)(3), we do not find that normal value or export price varied significantly over the POI due to exchange rate fluctuations for any of the respondents.

In cases where there is a precipitous drop in the foreign currency's value during the POI, we may find it appropriate to use multiple averaging periods to avoid the possibility of a distortion in the dumping calculation caused by exchange rate fluctuations. *See, e.g., SSPC from Korea*, where the Department used two averaging periods to calculate the dumping margin because there was a precipitous drop in the won in relation to the dollar (more than 40 percent in a two month period). However, in the instant case, changes in the exchange rate were moderate. Using exchange rate data from the Federal Reserve, we found that the value of the New Taiwan dollar relative to the U.S. dollar declined steadily over the POI and the overall decline in the value of the New Taiwan dollar relative to the U.S. dollar was less than 20 percent over the POI. Given these facts, we find no basis to conclude that the change in the value of the New Taiwan dollar over the POI was so significant that it warranted the use of multiple price averaging periods.

Comment 2: Independent Rates

Channel-specific dumping rates are inappropriate and without basis, petitioners contend, because the focus of the statute, the Department's regulatory regime, and both administrative and judicial precedent is on obtaining a single, weighted-average dumping rate for each foreign producer or exporter. Petitioners contend that multiple channels through which a foreign producer or exporter chooses to ship sales to the United States do not entitle them to channel-specific dumping rates.

Petitioners contend that there is no statutory basis for assigning a channel-specific rate. Petitioners, citing to sections 777A(c)(1) and 731(1) of the Act, argue that Congress has charged the Department with ascertaining the extent to which subject merchandise is dumped in the United States and assigning a single, weighted-average dumping rate to each producer or exporter under investigation. Petitioners state that there is no language in the statute to the effect that a producer is to receive a channel-specific dumping rate. In contrast, petitioners assert, the statute contemplates what, at best, might be called a "unitary" rate, reflecting all the given producer's sales to the United States regardless of routing and distribution.

Petitioners argue that given the circumstances in the instant case and the Department's discussion of its current regulations, the Department should impose a single, weighted-average dumping rate for each investigated producer. Petitioners cite the Department's discussion in *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27303 (May 19, 1997) ("*Final Rule*") with regard to regulation 351.107:

> The Department also believes it is not appropriate to establish combination rates in an AD investigation or review of a producer; *i.e.*, where a producer sells to an exporter with knowledge of exportation to the United States. In these situations, the establishment of separate rates for a producer in combination with each of the exporters through which it sells to the United States could lead to manipulation by the producer. Furthermore, the Department recognizes that in many industries it is not uncommon for a producer to sell some amount of merchandise purchased from other producers. In such situations, the Department generally intends to establish a single rate for such a respondent based on its status as a producer, although unusual circumstances may warrant the application of a combination rate.

Petitioners state that both YUSCO and Tung Mung have acknowledged that they knew the subject merchandise was to be resold by the middleman or trading company to the United States, citing YUSCO's and Tung Mung's September 8, 1998 responses at A–12 and A–8, respectively. Moreover, petitioners allege that there are no unusual circumstances presented in the instant investigation that would justify recourse to a combination rate alongside a separate rate for YUSCO and Tung Mung.

Petitioners maintain that relevant precedent further reinforces the conclusion that a single, weighted-average dumping rate should be assigned to each producer and exporter of the subject merchandise. Petitioners maintain that the decision of *SSPC from Taiwan* with regard to separate dumping rates for each producer should not be followed, as it is at variance with the Department's express policy and precedent, citing *Ferrovanadium and Nitride Vanadium from the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, ("*Ferrovanadium from Russia*") 62 FR 65656, 65659 (December 15, 1997); *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, ("*CVD SSPC from Korea*") 64 FR 15530, 15532 (March 31, 1999); and *Certain Pasta from Italy: Results of New Shipper Antidumping Duty Administrative Reviews*, ("*Certain Pasta from Italy*") 64 FR 852853 (January 6, 1999) and 63 FR 53641, 53642–43 (October 6, 1998). Petitioners state that the Department's findings in *Certain Pasta from Italy* differ from the instant case only in that Corex, in its role as a trading company, was not involved in a middleman dumping investigation.

Petitioners argue that the Department has recognized the need of assigning producers a single, weighted-average dumping rate, regardless of channels used to sell merchandise to the United States, to prevent margin manipulation and avoidance of antidumping duties, citing the *Final Rule* at 27303. Petitioners contend that the use of channel-specific dumping rates, as requested by respondents, would encourage respondents to resort to middleman dumping. Petitioners maintain that a foreign producer and an unaffiliated middleman could easily engage in price manipulation such that respondents could avoid antidumping duties by having the producer sell to the middleman at non-dumped prices and rely upon the middleman to carry out the dumping in the resale that usually is not analyzed by the Department. Moreover, if the producer is excluded from the order by virtue of its own separate rate, petitioners argue that the producer will be free to accomplish dumping on its own.

Petitioners maintain that it is this reasoning that causes the Department to capture the total amount of dumping through an additional analysis of the middleman's dumping. In keeping with this purpose, petitioners surmise, the Department should assign a single, weighted-average dumping rate because the total dumping by these two parties has benefitted the subject merchandise imported into the United States. Thus,

even absent an affiliation between the producer and the middleman within the meaning of section 771(33) of the Act, petitioners argue that the producer and the middleman are "rightly perceived by the Department as having effectively worked in tandem" in dumping the subject merchandise.

Petitioners also cite *Sweaters Wholly or in Chief Weight of Man-made Fiber from Taiwan: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, ("*Sweaters*") 58 FR 32544, 32645 (June 11, 1993) as punctuating the notion that the Department will assign a single, weighted-average dumping rate to each producer, no matter whether the producer's product has gone through a trading company like Jia Farn or directly to the United States. In *Sweaters*, the Department stated that:

> The CIT agreed with the Department that the subject of antidumping orders is merchandise, not companies, and that only merchandise manufactured by Jia Farn was excluded from the order * * *"

Petitioners argue that *Sweaters* buttresses the Department's authority to act forcefully within the bounds of the statute to preclude circumvention of antidumping duties. Therefore, petitioners submit that the Department should use a single, weighted-average dumping rate on YUSCO and Tung Mung to prevent possible circumvention of antidumping duties.

YUSCO states that the record does not support a middleman dumping finding in this investigation, but in case the Department does find middleman dumping, YUSCO should be assigned an independent dumping margin. YUSCO, in explaining its reasoning for an independent rate, states that the record establishes that YUSCO is an independent producer and exporter of SSSS, as it made direct sales to U.S. customers during the POI, and that according to section 777A of the Act, the Department "shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise" unless such individual rate determination is not "practicable." Therefore, YUSCO contends that it is entitled to an independent deposit rate. Furthermore, since the Department verified YUSCO's sales and cost information, the Department should, according to YUSCO, have no undue difficulties in calculating this margin. According to YUSCO, the Department's decision in *Fuel Ethanol from Brazil* supports this argument since in that case the Department assigned an independent deposit rate to a manufacturer based on its sales to the United States other than through a trading company.

YUSCO argues that the Department should disregard petitioners' arguments and assign an independent rate to YUSCO based only on dumping margins produced from YUSCO's sales other than through Ta Chen.

First, YUSCO argues that petitioners' arguments are contrary to the Department's practice and regulations. YUSCO states that petitioners' "knowledge" standard does not apply to cases when "unusual circumstances may warrant the application of a combination rate," as stated in the preamble. YUSCO argues that since the Department and petitioners have both admitted that middleman dumping is unusual, knowledge of destination should be irrelevant to the determination of a middleman dumping deposit rate.

Second, YUSCO disagrees that combination rates offer respondents a possibility to circumvent antidumping duties, and that, according to the preamble, combination rates are issued in order to prevent circumvention.

Third, YUSCO asserts that petitioners incorrectly state that the Department's knowledge test as stated in the preamble supersedes *Fuel Ethanol from Brazil*. YUSCO states that the Department set a standard regarding middleman dumping as an exception to the knowledge test in *Fuel Ethanol from Brazil* and that *SSPC from Taiwan* changes *Fuel Ethanol* only regarding combination rate methodology. According to YUSCO, all other aspects of *Fuel Ethanol*, including the calculation of a producer's independent rate, are still applicable. YUSCO states that the Department correctly assigned both a combination rate and independent rate to YUSCO in *SSPC from Taiwan*.

Finally, YUSCO states that all four cases that petitioners quote are irrelevant to this investigation. *Ferrovanadium from Russia* does not apply because it is a non-market economy case. *CVD SSPC from Korea* is also irrelevant, argues YUSCO, since the Department stated that combination rates would serve no purpose in that specific case. YUSCO also argues that *Certain Pasta from Italy* is irrelevant, because petitioners incorrectly claim that the Department did not assign a combination rate to a trading company. In fact, YUSCO notes that the trading company was in fact a producer, and the Department specifically noted the importance of assigning a combination rate to a producer and exporter. Finally, YUSCO argues that *Sweaters from Taiwan* is irrelevant because the issue in that case was not, as petitioners state, possible circumvention of antidumping duties by a producer; rather, the issue was over whether a company should be considered a producer, an issue which YUSCO maintains is irrelevant to the case at hand.

YUSCO also argues that petitioners' single rate methodology would unreasonably and unfairly punish YUSCO and its U.S. customers since nothing on the record shows that any of these parties were involved in Ta Chen's selling practices. Furthermore, as in *Fuel Ethanol from Brazil* and *SSPC from Taiwan*, YUSCO claims that the Department should not double-count dumping margins generated from sales to Ta Chen when calculating a separate rate for YUSCO, since the margins for sales to Ta Chen will be incorporated into the YUSCO/Ta Chen combination cash deposit rate. YUSCO claims that not double-counting advances fairness and administrative efficiency in determining importer-specific assessment rates.

Tung Mung argues that, if the Department does affirm its middleman dumping finding, the Department should issue a separate rate for Tung Mung. Tung Mung argues that in middleman dumping cases the Department has consistently issued separate rates to the producers, citing *SSPC from Taiwan* (assigning two cash deposit rates, one to apply to sales made by the producer through the middleman, the other to apply to any sale of subject merchandise by the producer other than through the middleman). Tung Mung argues that assigning a separate rate for Tung Mung is fair and appropriate because the producer should not be penalized in making future sales to the United States as a result of pricing activities by the unaffiliated middleman that are, by definition, completely outside the producer's knowledge or control. Tung Mung argues that it should be able to continue to make direct sales to the United States without the importer being burdened with cash deposits that resulted from Ta Chen's activities. Tung Mung also requests that the Department confirm its decision that direct sales from Tung Mung to TCI, Ta Chen Taiwan's U.S. affiliate, are not subject to the middleman dumping analysis and therefore that such sales in the future would not be subject to any middleman dumping rate that the Department might issue in its final determination.

Tung Mung disagrees with petitioners' proposal to issue a single rate and argues that petitioners' reasoning is "fatally" flawed. Tung Mung asserts that the cases relied upon

by petitioners involved middleman sales but no middleman dumping. Tung Mung agrees with petitioners' request to issue a single rate to a producer, regardless of which channel it is selling to the United States. Tung Mung finds this policy appropriate where the producer alone has been found to be dumping, and not the middleman. However, Tung Mung challenges petitioners' assertions that the Department has changed its policy of giving a separate rate to the producer in middleman dumping cases, and instead now applies a single, weighted average margin, noting that in *SSPC from Taiwan*, the Department gave one rate to the producer—based in its sales to the middleman—and another rate to the producer/middleman combination. Tung Mung asserts that petitioners failed to explain how manipulation by the respondents is possible in the instant case. Tung Mung distinguishes the instant case from *CVD SSPC from Korea*, where the producer in question was selling through five different trading companies. Here, Tung Mung argues, there would only be two rates for each producer—one applying to its sales to the United States through Ta Chen, the other to the remainder of its sales. Thus, Tung Mung argues there would be no opportunity for manipulation.

Tung Mung finds implausible petitioners' claim that the producer and middleman can work in tandem in dumping the subject merchandise in the United States. Tung Mung argues that this assertion made by petitioners has no basis in fact and contradicts the Department's practice of giving separate rates to the producer and the middleman in middleman dumping cases. Tung Mung argues that petitioners even admit the implausibility of price manipulation by the middleman and the respondent producer, because by having the middleman carry out the dumping in the resale, the middleman would incur substantial losses. Thus, Tung Mung argues that the middleman could not engage in such a pricing strategy for any length of time.

In conclusion, Tung Mung submits that the Department should find a separate rate for Tung Mung based on direct sales to the United States. Further, Tung Mung argues that if that rate is *de minimis*, Tung Mung should be excluded from the order with respect to future sales to the United States that do not go through Ta Chen.

Ta Chen argues that, as the Department determined in *SSPC from Taiwan*, any middleman dumping margin should only apply to sales made by Ta Chen Taiwan. According to Ta Chen, TCI, like any other U.S. corporation, should be permitted to purchase directly from a Taiwan manufacturer at that manufacturer's own dumping rate.

Department's Position: We agree with petitioners that separate channel-specific rates are not appropriate in this case. Accordingly, we have determined one rate for Tung Mung merchandise, whether or not exported by Ta Chen, and one rate for YUSCO merchandise, whether or not exported by Ta Chen.

In light of the arguments raised by interested parties in this proceeding, we have reviewed our findings in *SSPC from Taiwan*. In making that final determination, we notified the U.S. Customs Service that, for entries of subject merchandise produced by YUSCO and shipped to the United States through Ta Chen, the cash deposit rate would be 10.20 percent and, for all other entries of subject merchandise produced by YUSCO, the cash deposit rate would be 8.02 percent. However, in that determination, YUSCO sold the subject merchandise to the United States only through Ta Chen and the dumping margin on that channel was above *de minimis*, such that we were not faced with the same factual situation in the instant case.

In the instant case, the factual situation is different. For example, both Tung Mung and YUSCO had a small volume of sales to the United States not subject to our current middleman investigation. Moreover, in the *Preliminary Determination*, we determined that on an overall basis, neither Tung Mung nor YUSCO had estimated dumping margins that exceeded the *de minimis* level such that the possibility of exclusion existed for these firms. However, this preliminary finding did not include an analysis of middleman dumping. Thus, we recognize that, in this final determination, we are examining this issue for the first time since *Fuel Ethanol from Brazil*.

Since our finding in *Fuel Ethanol from Brazil*, the Department has adopted new regulations regarding so-called "combination" or "channel" rates. Specifically, section 351.107 of the Department's regulations was added, codifying our ability to issue channel rates in certain circumstances. The preamble to these regulations, which discusses our position on issuing channel rates in different factual scenarios (see *Preamble* at 27302–3), notes that we do not generally find it appropriate to determine channel rates when investigating producers.

After analyzing all interested party comments, we determine that it is appropriate to consider the full range of dumping when reaching a determination under sections 733(a) or 735(a) of the Act. This is particularly important given the number of sales of subject merchandise produced by YUSCO and Tung Mung which are made through Ta Chen, and given (in the case of Tung Mung) the identity of the customer(s) in the United States to which Tung Mung made its direct sales. *See Analysis Memorandum: Tung Mung*, Attachment 3. and *Facts Available Memorandum—YUSCO* at page 1. Under these circumstances, it is inappropriate to determine an independent margin for purposes of determining whether sales are made at LTFV under section 735(a)(1) or in determining eligibility for exclusion under section 735(a)(4) of the Act. However, we have taken into consideration the dumping margins attributable to both channels in determining the weighted-average dumping margins.

Therefore, for the final determination, we calculated an overall weighted-average margin (taking into account YUSCO's and Tung Mung's sales to Ta Chen and other customers, and the middleman dumping of YUSCO and Tung Mung merchandise attributable to Ta Chen) as provided for under section 735(c)(1)(B)(i) of the Act. We used this overall margin for determining whether SSSS from Taiwan is being sold in the United States at LTFV, as provided in section 735(a)(1) of the Act. We also compared the overall weighted-average margin to our *de minimis* benchmark to determine eligibility for exclusion, as provided in section 735(a)(4) of the Act.

In order to calculate the overall weighted-average margin, we used the following methodology. For YUSCO, we first calculated a rate for those sales made by YUSCO and Yieh Mau to Ta Chen by summing YUSCO's facts available rate and Ta Chen's facts available rate (the sum of which equals 36.44 percent). *See* discussion of these rates in the "Facts Available" section above. We also calculated the total weight of these sales. Similarly, we calculated the weight of sales made by YUSCO and Yieh Mau to all other customers, and we applied the adverse facts available rate of 21.10 percent to these sales. Finally, we weight averaged these two rates by the total sales volume. The overall margin is 34.95 percent. For further detail, *see Analysis Memorandum—YUSCO*.

For Tung Mung, we first calculated a rate for those sales made by Tung Mung to Ta Chen by summing Tung Mung's

rate and Ta Chen's facts available rate (the sum of which equals 15.40 percent). Then, we calculated the margin for other Tung Mung sales, which was zero. Finally, we weight averaged these two rates by the total value. The overall margin is 14.95 percent. For further detail, *see Analysis Memorandum—Tung Mung.*

Comment 3: All-Others Rate

Tang Eng and Chia Far argue that, where the Department makes all exporters mandatory respondents but does not calculate a margin for all respondents, the Department should calculate the "all-others" rate for the non-selected respondents as the average of the calculated dumping margins, including any *de minimis* margins and excluding any margins based entirely on facts otherwise available. Tang Eng and Chia Far assert that this treatment is provided for in the URAA and follows Departmental practice. Respondents cite *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China,* (*"Honey"*) 60 FR 14725, 14729 (March 20, 1995) and *Certain Fresh Cut Flowers From Colombia: Preliminary Results of Antidumping Duty Administrative Review,* (*"Flowers XI"*) 64 FR 8059, 8060–62 (February 18, 1999) as examples of the Department's prior treatment of non-selected respondents.

Petitioners contend that the "all-others" rate assigned to Tang Eng and Chia Far should exclude any *de minimis* margins. Petitioner's contend that the statute's language is unambivalent in its direction to calculate the "all-others" rate exclusive of *de minimis* margins and margins based on facts otherwise available. Petitioners cite *Flowers XI, et al,* as examples of Departmental precedent in keeping with this statutory requirement.

Department's Position: We agree with respondents in part. Section 735(c)(5)(A) of the Act directs us to calculate the "all-others" rate exclusive of *de minimis* margins and those margins determined entirely on facts otherwise available. Moreover, under this section, the "all-others" rate is established during the less-than-fair-value investigation and does not change in subsequent administrative reviews conducted under section 751. However, section 735(c)(5)(B) of the Act provides for an exception in instances where all margins are either *de minimis* or based on facts otherwise available.

In the instant case, all margins are either *de minimis* or based on facts otherwise available. Hence, we are not limited to the methodology prescribed in section 735(c)(5)(A) of the Act. Therefore, for this final determination, we have calculated the "all-others" rate based on a simple average of the corroborated price-to-price comparisons alleged in the petition, as indicated in our *Initiation Notice.*

We disagree with respondents' interpretation of *Honey* and *Flowers XI. Flowers XI* involves a review conducted under section 751 of the Act and did not result in a recalculation of the "all-others" rate. Rather, *Flowers XI* describes how the Department established a margin for those respondents for which a review was initiated, but were not selected for individual review under section 777A(c)(2)(A). *Honey* is not controlling because that investigation was governed by the Act prior to the URAA. Moreover, in that determination we did not include *de minimis* margins in our calculation of the all-others rate.

Company-Specific Issues

YUSCO/Yieh Mau

Comment 4: Affiliated Party Transactions

Petitioners argue that the Department should reclassify YUSCO's sales to Yieh Mau as affiliated home market sales and include them in the Department's arm's-length test of YUSCO's home market sales. Petitioners also state that, in the preliminary determination, the Department did not conduct an arm's-length test on YUSCO's sales to Yieh Mau because it determined that according to the evidence on the record, Yieh Mau was not affiliated with YUSCO. Petitioners claim that, as discovered at verification, this decision is improper.

During verification, petitioners argue, the Department confirmed that an affiliation exists between YUSCO and Yieh Mau within the meaning of section 771(33) of the Tariff Act, since the Department found that the same family owns large percentages of both companies and is involved in their management, thus making the two companies "commonly controlled." In addition, petitioners state that an equity interest exists between these two firms and that YUSCO has consistently referred to Yieh Mau as an affiliated party.

Petitioners continue by citing the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate from Belgium* (*"Plate from Belgium"*) 64 FR 15476 (March 31, 1999), in which, according to petitioners, the Department determined that two companies were affiliated because they were under common control by another company. Petitioners draw a parallel inference with respect to YUSCO's and Yieh Mau's common familial control.

YUSCO states that even if the Department determines that YUSCO and Yieh Mau are affiliated, the Department should use YUSCO's sales to Yieh Mau in calculating YUSCO's dumping margin and not use Yieh Mau's sales, because YUSCO made its sales to Yieh Mau, not through Yieh Mau to other customers.

Department's Position: We agree with petitioners that YUSCO and Yieh Mau are properly considered affiliated parties under the statute. Section 771(33)(A) of the Act states that persons shall be considered affiliated if they are "members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants." Section 351.102(b) of the Department's regulations state that, in considering whether control over another person exists, the Secretary will consider, among other things, corporate or family groupings. At verification we found a significant degree of ownership by the same family. We also found that this same family is involved in the management of both companies. *See* YUSCO SSSS Sales Verification Report, dated April 12, 1999.

Given these circumstances, we determine that YUSCO and Yieh Mau are affiliated persons under section 771(33)(A) of the Act. Therefore, due to our above-described determination to use total adverse facts available for YUSCO, we also determine that Yieh Mau shall be subject to this decision as well.

Comment 5: Verification Corrections

Petitioners argue that the Department should disallow Yieh Mau's claimed adjustment for home market credit expenses and inventory carrying costs since the Department was unable to verify Yieh Mau's short-term interest rate. Petitioners contend that Yieh Mau did not provide the information that was required by the Department, although Yieh Mau possessed documents containing this information and could have retrieved these from storage. Therefore, petitioners argue, Yieh Mau failed to cooperate to the best of its ability and the Department may, according to Section 776(b) of the Tariff Act, use facts available with an adverse inference. Furthermore, petitioners cite the SAA, stating that the Department "* * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."

YUSCO did not comment on this issue.

Department's Position: We agree, in principle, with petitioners, that the use of adverse facts available would be warranted under these circumstances. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Comment 6: Overall Cost Reconciliation

YUSCO argues that the Department should not adjust its reported costs by the difference between total reported COM and the total COM in its accounting system. YUSCO states that the Department verified all of its cost data for the POI and did not find discrepancies between reported COP and CV data and the material cost, direct labor, and overhead cost in its accounting records. Respondent asserts that it provided information necessary to quantify the differences between the amounts in the accounting records and reported TOTCOMs. YUSCO maintains that it quantified the differences between the accounting system and reported COMs for: raw material input costs for affiliated transactions; usage of processing time instead of production quantity as the allocation factor for production costs after the hot rolling stage; and recalculation of YUSCO's average material cost based on cost of goods used during the POI instead of only inputs purchased during the year.

Respondent contends that petitioners did not argue the validity of the difference resulting from reporting costs for the POI verses for the fiscal year. Therefore, YUSCO argues that if the Department adjusts for the other reconciling items, it should exclude this particular difference from the adjustment.

YUSCO argues that the Department's practice is not to adjust reported costs for explained differences between amounts in the accounting system and reported costs. YUSCO notes that the Department has not adjusted differences in the past which were "adequately explained," citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 12725, 12736 (March 16, 1998) (Comment 13).

Petitioners argue that the difference the Department found between YUSCO's reported total cost of manufacturing and the amount in its accounting records is an unreconciled difference and it should be added to the reported costs. Petitioners state that while respondent explained the difference as being generated by the three items noted above, YUSCO did not quantify the amount of each item. Therefore, petitioners conclude that the difference is unreconciled.

As support for the importance of reconciling the costs, petitioners point to *Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, ("*CTL*") 64 FR 77, 78 (January 4, 1999) (Comment 1), where the Department explained the role and significance of the cost reconciliation. Petitioners further point to the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan*, ("*SSPC from Taiwan*") 64 FR 15493, 15498 (March 31, 1999), where the Department determined that the unreconciled difference between amounts in the accounting records and reported costs should be included in reported costs. Petitioners argue that the same determination should be made for this investigation.

Petitioners contend that YUSCO's analysis of the unreconciled difference is flawed. First, petitioners argue that YUSCO's calculated change in the work-in-process ("WIP") account is not only related to subject merchandise but all WIP in the company and therefore could be overstated. Second, petitioners argue that the respondent erred in calculating the difference in costs due to the application of the major input rule for affiliated input purchases. Petitioners note that the difference calculated for the major input rule adjustments should only include slab costs and not overhead costs. Petitioners argued the same for YUSCO's difference in allocation methodology for the adjustment figure: namely, that the difference should only include slab costs. Petitioners conclude that once these errors in YUSCO's analysis are corrected, the original unreconciled difference remains. Therefore, petitioners conclude that the Department should adjust YUSCO's costs to include the total unreconciled difference between its costs in its accounting system and reported costs of manufacturing.

Department's Position: We agree with petitioners that any unreconciled understatement of YUSCO's reported costs should be added to the cost of manufacturing for COP and CV purposes. As articulated in *CTL*, the Department must assess the reasonableness of a respondent's cost allocation methodology according to section 773(f)(1)(A) of the Act. Before this can be done, however, the Department must ensure that the aggregate amount of costs incurred to produce the subject merchandise was properly reflected in the reported costs. In order to accomplish this, a reconciliation of the respondent's submitted COP and CV data to the company's audited financial statements, when such statements are available, is performed. YUSCO did not complete this reconciliation at verification because it did not identify and quantify all differences shown on the reconciliation. As stated in *CTL*, "[i]n situations where the respondent's total reported costs differ from the amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV." As demonstrated in *SSPC from Taiwan*, we found that the reported costs should have been adjusted for the unreconciled portion of the difference between respondent's costs from its accounting system and reported costs of manufacturing. While YUSCO attempted to quantify the reconciliation differences in the brief, based on the verification exhibits, some portions remain unreconciled. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Comment 7: Exchange Gains and Losses

Petitioners argue that YUSCO's net exchange loss related to notes payable for the POI should have been included in the financial expense rate calculation. According to petitioners, net exchange losses for notes payable are costs incurred by the company as a whole for financing purposes. Petitioners point to *SSPC from Taiwan*, where the Department determined that the current portion of the net exchange loss related to debt should be included in the financial expense rate calculation.

YUSCO did not comment on this issue.

Department's Position: We agree in principle with petitioners that the current portion of the net exchange loss related to notes payable should be included in the financial expense rate calculation. As explained in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31430 (June 9, 1998) (Comment 24), the Department includes in the cost of production the amortized portion of foreign exchange losses resulting from loans. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Chang Mien

Comment 8: Conversion Costs

Petitioners state that, at verification, the Department discovered that Chang Mien failed to include any coils that were processed more than once in its rolling mill in Chang Mien's machine time analysis. Therefore, petitioners contend, respondent understated the cost of production for three CONNUMs and a certain number of coils. Petitioners argue that by not providing the Department with data regarding the coils in question, Chang Mien did not provide the information that was required by the Department. Thus, the Department was not able to determine the correct cost of production. Petitioners maintain that, pursuant to section 776(a)(2)(D) of the Act, if a respondent provides information but the information cannot be verified, the Department should resort to the use of fact otherwise available in reaching its final determination. Further, petitioners state that if the Department finds that a party has failed to cooperate by not acting to the best of its ability, the Department "* * * may use an inference that is adverse to the interests of that party in selecting the facts otherwise available," citing section 776, 1677e(b) of the Act. Petitioners also argue that in determining the appropriate measure of adverse facts available, the SAA instructs the Department that it "* * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully," citing the SAA at 870. Petitioners contend that since respondent knew that multiple passes resulted in additional costs for producing these products but failed to report these additional costs, the Department should find that Chang Mien failed to cooperate to the best of its ability and, therefore, use an adverse inference in selecting facts otherwise available for this final determination. Furthermore, petitioners argue that the Department should apply the highest cost of production to the three CONNUMs so that respondent does not benefit from its lack of cooperation.

In its rebuttal, petitioners contend that the Department should not accept any post-facto argument provided by respondent. Petitioners assert that, given that it was the Department which discovered Chang Mien's omission during verification, the Department should find that Chang Mien failed to cooperate to the best of its ability and resort to the use of fact otherwise available in reaching its final determination.

Respondent argues that the Department should not increase the costs of labor and overhead for these coils which were processed through two passes but for which Chang Mien included cost of production data for only one pass. Respondent maintains that it did not fail to cooperate to the best of its ability, as petitioners assert. Instead, respondent continues, not reporting the second pass of the 23 coils was an oversight and for which it subsequently provided documentation during the verification. Respondent further contends that, given that these 23 coils represent a very small percent of all production of subject merchandise during the period of review, the Department can ignore, under section 19 CFR 351.413 of the Department Regulations, any change to the relevant CONNUMs if it believes that there will be no change to the dumping margin. Furthermore, respondent argues, one of the three CONNUMs in question was not sold in the U.S. and was not used by the Department in its calculations for the preliminary determination of this case.

Additionally, respondent asserts that the additional underreported costs for the small quantity of coils in question will not result in it obtaining a more favorable dumping margin in the Department's final determination. Respondent suggests that if, however, the Department concludes that it should account for any labor and overhead costs associated with a second pass on these coils, the Department should use its suggested methodology, which, respondent asserts, the Department verified and is contained in the *Verification of Cost of Production of Chang Mien Report* as Exhibit C–11, page 1, item 1. Respondent contends that the cold-rolling arrangement specified in the report is similar for this particular coil to that mentioned in the *Verification of Cost of Production of Chang Mien Report*, a pass from 3.00 mm to 1.50 mm and then from 1.50 mm to 0.40 mm. Respondent indicates that this exhibit details the "working hours" and "productivity factor" for the two passes for this coil and that by taking the data from the Verification Exhibit C–9, one can calculate the cost for each relevant cost field for one-pass and two-pass operations for all production of this particular CONNUM. Respondent argues that the Department should only add the difference between the two in its calculations. Respondent contends that the Department should apply this factor to all production of this particular CONNUM and all three CONNUMs in question.

Respondent reiterates, in its rebuttal, that the omission of the additional coils for the second pass was an inadvertent mistake on the part of Chang Mien and argues that the verified data should be used to correct it in the final determination. Furthermore, respondent notes that petitioners did not provide a case precedent to support their theory that the Department should treat a minor data problem by disregarding the entire cost data submission for the three CONNUMs at issue and substituting the highest figures for the entire cost of product for these CONNUMs.

Department's Position: Although petitioners are correct in noting that it was the Department which discovered the under-reported costs for the second pass of the 23 coils, we agree with respondent that the Department should simply recalculate the under-reported production costs based on the information gathered at verification. We disagree with petitioners that Chang Mien's COP data failed to be verified, and we believe that the percentage of coils affected by the respondents' omission is insignificant. First, for the three CONNUMs affected by this under-reporting, the 23 coils do not greatly impact the calculated costs, given the relative proportion of the weight of these coils to total weight of all coils used for the COP calculation. *See Analysis Memo: Chang Mien* at page 1. Second, on the issue of COP, we do not believe that Chang Mien has failed to cooperate by not acting to the best of its ability. Chang Mien cooperated fully with the Department verifiers upon the discovery of the under-reported costs during verification by providing the raw data for the coils and an excerpt from the computer sales listing showing the list of observation numbers and CONNUMHs of the coils that received a double pass during the verification. Finally, it is the Department's long-standing practice to accept certain omissions from the record during verifications if the Department believes they are unintentional and minor in magnitude.

For the above reasons, the Department has recalculated respondent's cost of production, without the use of facts available, by including the costs associated with the double pass of the 23 coils. The Department has calculated the costs using the methodology suggested by respondent and using the data which we confirmed at verification. *See Analysis Memo—Chang Mien.*

Comment 9: Date of Sale

Petitioners argue that the Department should use the order date for the home market and U.S. dates of sale, as opposed to the Department's decision in the preliminary determination to use date of invoice as the date of Chang Mien's U.S. sales. Petitioners maintain that based on the Department's verification of Chang Mien, the date of order confirmation is the appropriate date of sale for both home market and U.S. market. Petitioners contend that the Department's regulations state that the Department will defer to the date of invoice as the date of sale unless the record demonstrates that the material terms of sale for home market sales are established at a different date. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27349 (May 19, 1997). Petitioners further contend that in the preliminary determination, the Department correctly decided to depart from its preference of the date of invoice with regard to Chang Mien's home market sales given that Chang Mien usually had no price change or change in quantity for those sales between order confirmation date and shipping. Petitioners submitted that the same factual pattern exists for Chang Mien's U.S. sales and, therefore, petitioners argue, the order of confirmation date should serve as the date of sale for Chang Mien's U.S. sales as well. Therefore, petitioners argue that the order confirmation date most closely reflects commercial reality and the time when the material terms of sale are agreed upon for Chang Mien's sales.

Respondent argues that it routinely produces either too much or too little steel for each U.S. order. Because this occurs in the normal course of trade, respondent asserts that the Department should continue its practice of using the invoice date as the date of sale rather than the order date. Respondent argues that the Department's stated policy regarding date of sale ("* * * the Secretary normally will use the date of invoice" (19 CFR 351.401(i)) is pertinent to the respondent's date of sale scenario and contends that the Department should, therefore, enforce its policy with regard to the respondent. Respondent also cites the Department's decision regarding date of sale in *SSPC from Korea*, in which the Department stated:

> We do not treat an initial agreement as establishing the material terms of sale between buyer and seller when changes to such an agreement are common even if, for a particular sale, the terms did not actually change.

Moreover, respondent asserts that the Department acknowledged in that case that it will uphold its standard of using the invoice date as date of sale as long as the material terms "are subject to change" (*Id.*). Respondent states that it provided the Department with an exhibit (Exhibit 61, November 27, 1998) comparing quantity ordered with quantity actually delivered and asserts that nothing in the verification reports refutes any of the data provided in the exhibit. Respondent points out that the Department did not attempt to verify any of the sales reported in that exhibit to determine whether they were beyond the tolerances called for in the orders. Had the Department verified this exhibit, respondent argues, it would have been clear that changes to the orders were neither infrequent nor abnormal. Had the Department verified all of the information available on the record, respondent asserts the Department would know that the high level of frequency of changes between quantity ordered and quantity actually delivered is a normal business practice for the respondent. Therefore, respondent concludes, the Department should not change its methodology with regard to date of sale in this case and should therefore, use the invoice date as the date of sale, rather than the order date, for sales to the United States.

Department's Position: We agree in part with respondent and petitioners. In the preliminary determination, the Department relied upon the date of the order confirmation as the date of sale for Chang Mien's home market transactions. According to Chang Mien's November 27, 1998 supplemental response regarding home market date of sale, "there usually is no price change or change in quantity between order confirmation date (day 0) and shipping [invoice date] (day 1–3)." *See* Chang Mien's November 27, 1998 supplemental response at 8. This was confirmed at verification. *See* Chang Mien Sales Verification Report at 5 ("We did not find material changes in the quantity and value terms from the order and invoice"). Therefore, with regard to home market sales, we agree with petitioners and will continue to use the date of order confirmation as the date of purchase for this final determination.

With regard to sales to the United States, the Department preliminarily determined that the invoice date was the appropriate date of sale. The Department based its decision in part on Chang Mien's November 27, 1998 supplemental response, in which the Department relied on respondent's assertion that "[in] approximately 94.5 percent of the sales there was a change between the quantity from the date of confirmation and the invoice date." *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Stainless Steel Sheet and Strip in Coils from Taiwan*, 64 FR 101 (January 27, 1999). We disagree with respondent that the Department did not attempt to verify any of the sales reported in that exhibit to determine whether they were beyond the tolerances called for in the orders. During verification, the Department confirmed Chang Mien's basic methodology for reporting date of sale as described in their questionnaire response. The Department examined eight different sales contracts to the United States during the POI. These sales were part of the same universe of the sales contained in Chang Mien's November 27, 1998 supplemental response. No discrepancies were discovered. Given that Chang Mien successfully passed the sales verification, there is no record evidence to conclude that the Department should find the information submitted in response to the Department's request regarding date of sale to be unreliable. The Department does not agree with respondent that, for 94.5 percent of the sales, there was a change between the quantity from the date of confirmation and the invoice date. We have analyzed those sales that changed in quantity from the order of confirmation to the invoice date in excess of the variation of plus or minus 10 percent of the quantities delivered, as stated in Chang Mien's contracts, and found that the number of changes is significant and thus, the date of sale should continue to be the invoice date. *See Chang Mien Sales Verification Report* at 5 and *Analysis Memorandum: Chang Mien*. Additionally, in the Department's decision regarding date of sale in *SSPC from Korea*, the Department determined that the date of sale was the invoice date, or when the final terms of sales were established, in keeping with the Department's regulatory preference for using the invoice date of sale absent evidence "that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." *See* 19 CFR 351.401(i). Therefore, in keeping with previous Department decisions and with the Department's policy, we agree with respondent and have used, for this final determination, the invoice date for sales transactions to the United States.

Comment 10: Surface Finishes

Petitioners argue that Chang Mien's claims that there is a difference between

surface finishes in their product description as defined between surface finish code 9 (hot-rolled, annealed and pickled, grinding) and code 1 (hot-rolled, annealed and pickled) should not be honored. Petitioners contend that, based on Chang Mien's own description of code 1 and code 9, the Department should consolidate codes 1 and 9 into a single finish code, because the grinding in the initial phase of production does not affect the ultimate finish of the merchandise. Furthermore, petitioners argue that the Department should consolidate finish code 10 (cold-rolled, not annealed and pickled) with code 3 (cold-rolled). Petitioners state that Chang Mien's description of the code 10 finish "refers to material which has not completed production because, there were so many defects, that it already has been classified as non-prime material." *See* Supplemental Questionnaire Response of Chang Mien Industries, Co., Ltd., dated November 27, 1998 at 7. This description, petitioners assert, indicates that code 10 is cold-rolled material that Chang Mien has defined as non-prime merchandise, and petitioners argue that the designation of non-prime merchandise is not relevant in the finish characteristic. Therefore, petitioner concludes, the Department should consolidate the finish code 10 with finish code 3 in the final determination.

Respondent indicates that at verification, Chang Mien demonstrated to the Department that finishes 1 and 9 should not be consolidated because there were physical differences between the two. The differences, respondent states, were readily apparent from a visual inspection and explained in detail to the cost verifier. Respondent further contends that for the same reasons, code finishes 3 and 10 should not be combined. In addition, respondent argues, since finish 10 is not a completely produced product, the mechanical properties are different from finish 3 products. Lastly, respondent argues, that it would not make sense to combine a second quality sheet product, which has not completed the production process because they have so many defects, to first quality finished product. For this reason, respondent contends, finish 10 should not be compared to U.S. sales, as it is an unfinished product, and should be ignored.

Department's Position: With regard to Chang Mien's finish codes 1 and 9, we agree with petitioners and are continuing to treat these two codes as one combined group. For the application in the margin calculation of this decision, *see Analysis Memorandum: Chang Mien*. First, we note that finish codes 1 and 9 are nearly identical, as both products are hot-rolled, annealed and pickled. Furthermore, regardless of whether there is some difference in the physical appearance between products which have been subject to grinding (a matter about which there is no determinative record evidence), there is no record evidence to conclude that any alleged difference in physical appearance affects the product's end-use, or that such a difference is reflected in relatively higher production costs or prices. In any event, as we note below in Comment 14, in general, our model match criteria does not consider the number of processing steps undertaken for each coil. Moreover, we note that respondent did not raise this issue on the record when the Department requested public comments on its proposed product concordance.

With regard to finish codes 3 and 10, we find no reason to deviate from the Department's preliminary determination, in which we treated these two categories as separate codes. Unlike in the case of grinding, the Department generally recognizes that annealing and pickling are processing steps which significantly alter the physical appearance of a product, and generally affects product end-use, cost, and sales price. With regard to the definition of the merchandise as prime or non-prime, we note that in this case; this distinction is largely irrelevant to our analysis. That is, if the merchandise were indeed secondary, it would be separated from prime merchandise in our model match analysis, minimizing the impact of any decision to collapse the two codes (given that, as a rule, secondary merchandise, which is sold at reduced prices, fails the Department's cost test). However, in fact we dispute respondent's categorization of code 10 finish products as second quality sheet, as respondent itself has classified many sales of code 10 as prime merchandise. *See Analysis Memorandum: Chang Mien* pp. 6–7. Therefore, the record does not support Chang Mien's assertion that this merchandise is second quality.

Comment 11: Advertising Expenses

Petitioners argue that Chang Mien's claimed direct advertising expenses should be denied as a direct selling expense and reclassified as indirect selling expenses. Petitioners state that during verification, the Department examined various advertising expenses, and petitioners argue that Chang Mien could not demonstrate that it incurred direct advertising expenses on behalf of its customers. Petitioners further argue that the Department's questionnaire specifically states that in order to qualify for direct advertising expenses, respondent must have assumed advertising expenses on behalf of its customer, citing the Department's Questionnaire at p. B–28. Petitioners contend that the verified documents indicate that the claimed advertising expenses were general information on the company or products produced by the company, and hence Chang Mien did not demonstrate that it incurred advertising expenses to advertise to its customer's customers, citing Chang Mien's Questionnaire response to sections B–D at 26. Therefore, petitioners assert, for the final determination, the Department should deny Chang Mien's home market and U.S. market claim for direct advertising expenses and reclassify these expenses as indirect selling expenses.

Respondent states that the primary purpose of the advertising expense in periodicals and via the sample books for distribution to U.S. and home market customers is to assist its customers, who are distributors, to obtain new customers. Respondent further asserts that virtually all U.S. customers are distributors and not end-users and that they already buy from Chang Mien. These forms of advertising, respondent states, assist current customers to obtain new customers and show potential customers, via the sample book, the quality of Chang Mien's products. The same, respondent asserts, is true in the home market. Respondent states that advertising in periodicals also directly discusses the subject merchandise and is directed to the potential customers who would contact a distributor of Chang Mien steel. Given that the Department's verification team found no discrepancies when they inspected the advertising, respondent argues, the claimed advertising expenses should remain as a direct expense in the Department's final determination.

Department's Position: We agree with petitioners. We reviewed Chang Mien's claimed advertising expenses at verification and found that most of these promotional expenses were not incurred in marketing to Chang Mien's customers/end-users. *See Sales Verification Report: Chang Mien* at 11–12. Contrary to Chang Mien's assertion that it incurs advertising expenses on behalf of its customers/end-users, at verification Chang Mien indicated that they did not know whether distributors (Chang Mien's domestic customers) gave the sample book to the distributors' customers. *Id.* The Department examined various advertising documents, including advertising in the

Taiwan Import Export Company List, advertising in the local newspaper, advertising in the *Metal Bulletin Magazine*, brochure advertising, and the Stainless Steel Sample Book. *See* Chang Mien Sales Verification Report at 11, 12. Based on this review, we found that these advertisements were more general in nature and offered a variety of information on the company or products produced by the company. Moreover, Chang Mien did not demonstrate to the Department that the claimed direct advertising expenses were incurred to advertise to its customer's customers. In *Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from South Africa*, 64 FR 15459 at 43 (March 31, 1999), the Department concluded that print advertising expenses which are general in nature and "intended to promote either the benefits of stainless steel generally, or Columbus's image as a reliable supplier of high-quality stainless steel" do not represent expenses incurred by the respondent on behalf of its customers that can be claimed as a COS adjustment. Therefore, we conclude that Chang Mien's print advertising expenses are aimed primarily at its customers. As such, these expenses do not represent expenses assumed by Chang Mien on behalf of its customers, and do not merit treatment as a direct expense.

Comment 12: Home Market Warranty Claims

Petitioners argue that Chang Mien has double counted its claimed warranty expenses by counting (1) claims on subject merchandise where the sale and the warranty claim occurred during the period of investigation and (2) claims that were incurred during the period of investigation for sales prior to the period. *See* Chang Mien Questionnaire response to sections B–D at 27. Petitioners assert that not only has respondent claimed an adjustment for non-POI sales, it also has claimed both types of warranty expenses for some sales. The Department, petitioners argue, should only accept warranty claims incurred on POI sales and deny the warranty claims on non-POI sales.

Respondent states that the Department has a long-standing policy of using all direct, variable warranty expenses incurred in the POI when calculating this cost. It further states that the Department is fully aware that warranty claims may be made for merchandise long after it is sold and, respondent asserts, the Department has consistently used all warranty costs incurred in the POI, regardless of sales dates, in its calculations. Respondent cites the Department's decision in *Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review*, 63 FR 13204, 13205 (March 18, 1998), in which the Department stated:

> As noted in AFBs 1997, the Department has long recognized that warranty expenses cannot be reported on a transaction specific basis and an allocation is necessary * * * Accordingly, for the final results of this review, we have calculated warranty expenses as a separate direct variable expense * * * We allocated the expense to the metric tonnage sold.

Respondent asserts that to be consistent with the above stated decision, and based on the verified findings by the Department, that the Department should deduct all actual, variable warranty expenses incurred in the POI in its final determination of this case.

Department's Position: We agree with petitioners. Chang Mien has provided transaction-specific warranty claims, and thus an allocation of POI warranty expenses to POI sales is not warranted. The allocation of warranty expenses applies to situations where it is not possible to tie POR/POI warranty expense to POR/POI sales. The Department has recognized that in certain situations, warranty expenses cannot be reported on a transaction-specific basis, due to time lags between the warranty expenses incurred and sales associated with the warranty. Therefore, where warranty expenses cannot be reported on a transaction-specific basis, an allocation of POR/POI warranty expenses to POR/POI sales is deemed necessary. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081, 2095 (January 15, 1997). Here, respondent provided transaction-specific warranty expenses, which were revised at verification. We verified documentation supporting that the warranty expense reported in the field WARR2H is associated with a non-POI sale. Therefore, because we have transaction-specific information with regard to warranty expenses, we only made adjustments for POI warranty expenses associated with POI sales.

Comment 13: Financial Expenses

Petitioners state that at verification, the Department found that Chang Mien recalculated its financial expense ratio to "exclude non-financial items," thereby changing its financial expense ratio from its reported ratio in the September 24, 1998 submission. *See Cost Verification Report: Chang Mien*, at 2. Petitioners argue that for the final determination, the Department should recalculate Chang Mien's financial expense ratio to reflect all financial items. Petitioners further assert that the Department should consider interest expenses, losses on foreign exchange rate, loss on inventory valuation, and other losses. *Id.* Additionally, petitioners argue, interest income, investment income, miscellaneous income, rental income, and gains and losses on land value, should be excluded because they are either (1) not short-term interest income or (2) are not related to the production or sale of the merchandise and are more like investments.

In its rebuttal brief, Chang Mien contends that petitioners are incorrect in their arguments regarding the financial expense ratio. Respondent states that at verification, the Department found, in Verification Exhibit C–8, that items 7101 (interest income) and 7102 (investment income) are short-term and related to production. Therefore, Chang Mien argues, they should not be excluded from the calculations. Additionally, respondent asserts, the Department did not find any discrepancies with this reported data. Chang Mien maintains that given that it had already excluded miscellaneous income, rental income, and gains and losses on land value in its revised data, no further changes should be made to these items. Furthermore, respondent argues that if this information were excluded again, it would result in double counting this data. Chang Mien concludes by stating that the changes noted by the Department in its verification report should be used in the Department analysis for the final determination because (1) this information was verified and, (2) the reported figures in the verified information are calculated in accordance with Taiwanese Generally Accepted Accounting Principle (GAAP).

Department's Position: We agree with petitioners. During the cost verification, Chang Mien submitted corrections to its financial expense to exclude non-fianancial items. We have reviewed these items and concluded that most were inappropriately excluded from financial expenses. Therefore, we have revised our calculations to include all financial expenses. To obtain the revised financial expense ratio, we deducted short term income and the loss and sale of fixed assests from total non-operating expenses. *See Final Analysis Memo: Chang Mien*, pp. 4–5.

Tung Mung

Comment 14: Model Match

Tung Mung argues that the Department improperly treated certain types of coil as identical merchandise, by overlooking important distinctions in physical characteristics between the coil types at issue. Tung Mung asserts that the Department's selection of matching criteria to define identical merchandise must be based on "meaningful physical characteristics," and may consider both price differences in the marketplace and cost in order to identify such "meaningful physical characteristics." *Emulsion Styrenene-Butadiene Rubber from Mexico; Final Determination of Sales at Less Than Fair Value,* ("*ESBR from Mexico*"), 64 FR 14872, 14875 (March 28, 1999). Tung Mung maintains that the differences between the two types of coil at issue are "meaningful" enough to warrant treatment as separate products.

Tung Mung argues that the types of coils at issue differ significantly in terms of quality, use and price. First, Tung Mung claims that one type of sheet at issue develops unsightly lines, known as "Luder's Lines," when drawn or stretched, and is therefore not used in applications where the sheet is visible in the final product. Second, Tung Mung argues that this type of coil is less expensive to produce and sold for a lower price. Tung Mung asserts that the difference in cost of producing the two products at issue was verified by the Department and results from the difference in the number of times the sheet goes through the mill, citing the Verification Report at p. 18. In addition, Tung Mung asserts that Tung Mung's sales tape shows that the two products sell for different prices. Therefore, Tung Mung argues that it was improper for the Department to treat the two products as identical and requests that the Department treat these two types of coil as separate products in the final determination.

Petitioners did not comment on this issue.

Department's Position: We disagree with Tung Mung and did not treat the coils at issue separately based on Tung Mung's reported finishes. As stated by respondent, the coils at issue differ by the number of processing steps undertaken for each coil. In general, our model match criteria do not consider the number of processing steps undertaken for each coil. Rather, it focuses on physical differences between products. However, it is important to note that products undergoing different processing steps will generally not match in any event, based on the model matching criteria which the Department has established for this investigation. Indeed, in this case, treating the coils at issue separately has no practical effect since the coils do not match based on other physical characteristics (which, it should be noted, rank higher in the Department's product concordance). *See* Questionnaire, Appendix V. Therefore, for the final determination, we did not treat the products in question separately.

Comment 15: Normal Value

Petitioners argue that the Department should use all six price components in the home market in calculating normal values as the Department did in the preliminary determination. Tung Mung indicated that it uses a combination of up to six tiers of prices to establish the price for a single coil. *See* September 24, 1998 Questionnaire Response at p. B–1. Petitioners note that Tung Mung stated in its response that its home market prices for one coil can consist of up to six price components. Petitioners also note that Tung Mung urged that the Department limit the normal value to only the first three price categories of the coil price and not consider the other three price categories which pertain to tail-end and untrimmed edges. Petitioners object to Tung Mung's suggestion in its Questionnaire Response (*see* September 24, 1998 Questionnaire Response at B–2) to consider only the first three price categories of the coil for determining normal value, by arguing that tail-end and untrimmed edges are integral sections of a home market coil, and therefore prices for these parts of the coil should be considered in calculating normal values to be compared with U.S. sales. In addition, petitioners argue that home market warranty expenses should also be calculated based on the weight of all six price components of the home market coil rather than only the three price components suggested by Tung Mung. We also continue to calculate warranty expenses based on all six price categories of the coils.

Tung Mung did not comment on this issue.

Department's Position: We agree with petitioners and have continued to use the actual selling price of the coils as reflected in the invoice to the customer in calculating normal value. Respondent has indicated that the invoice price represents the weighted-average of all six price categories of the coils. *See* September 24, 1998 Questionnaire Response at p. B–2.

Comment 16: U.S. Warranty Expenses

Petitioners argue that Tung Mung's U.S. warranty expenses should be adjusted to include warranty expenses for U.S. sales which occurred during the POI but pertained to products sold prior to the POI. Petitioners argue that the adjustment is justified under the holding of *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Review and Termination in Part* ("*Tapered Roller Bearings from Japan*"), 62 FR 11825, 11839 (March 13, 1997). Petitioners maintain that the Department has long recognized that there is usually a time lag between the initial sale and any subsequent warranty claim because customers may not discover damaged goods until a later time. *Id.* Petitioners assert that the Department has held that where warranty expenses generally cannot be reported on a transaction-specific basis due to the time lag between the warranty claim and initial sale, an allocation of warranty expenses is necessary. *Id.* Therefore, petitioners argue that warranty expenses for U.S. sales should include warranty expenses occurring during the POI, even if they pertain to products sold outside of the POI.

Tung Mung argues that its single aberrational warranty claim made with respect to 1996 sales to the United States should not be used as a surrogate for warranty expense incurred on 1997 sales. Tung Mung contends that the Department accepts variable warranty expenses incurred during the POI as a "surrogate" for expenses actually incurred on sales during the POI, "provided such expenses reasonably reflect the firm's historical experience with respect to warranty claims," citing *Notice of Final Determination of Sales at Less than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom,* 61 FR 51411, 51418 (October 2, 1996). Tung Mung maintains that the Department does not use this methodology where to do so would produce distorted results, citing *Color Television Receivers from Korea; Final Results of the Antidumping Duty Administrative Review,* 53 FR 24975 (July 1, 1988).

Tung Mung asserts that to base warranty claims paid in 1997 on 1996 sales would distort the calculation of the warranty adjustment. Tung Mung argues that more than ninety percent of the total amount of the warranty

expense at issue was due to a single claim. Tung Mung claims that the total amount of warranty claims paid in 1997 with respect to U.S. sales was aberrational compared to Tung Mung's general warranty experience. According to Tung Mung, the amount on the single claim was three times the amount paid by Tung Mung with respect to all home market warranty claims, despite the fact that home market sales during the POI were ten times as high as U.S. sales. Tung Mung asserts that there is no difference between the products sold to various markets which would account for such a huge swing. In fact, Tung Mung claims that the only difference would be whether or not the coils are trimmed, which Tung Mung claims has no bearing on the size or quantity of warranty claims. In addition, Tung Mung alleges that there is no difference in Tung Mung's warranty policy with respect to different markets. In sum, Tung Mung argues that the aberrational claim is not reflective of Tung Mung's normal experience and should not be used in the calculation of the warranty adjustment.

Tung Mung argues that the Department frequently uses actual warranty experience with respect to sales during the POI in cases involving steel, rather than the surrogate method. Tung Mung claims that in general, because steel is further processed quickly, warranty claims are made within a few months of sale. Tung Mung contends that since generally there is no significant lag in claims for merchandise such as steel, there is no reason for the Department to use the surrogate method. Tung Mung claims that, at verification, Tung Mung demonstrated that no claims had been made with respect to the coils sold to the U.S. market, many months after the close of the period of investigation.

Department's Position: We disagree with petitioners. Tung Mung provided warranty claim information on a transaction-specific basis; thus, an allocation of POI warranty expenses to POI sales is not warranted. The allocation of warranty expenses applies to situations where it is not possible to tie POR/POI warranty expense to POR/POI sales. The Department has recognized that in certain situations, warranty expenses cannot be reported on a transaction-specific basis, due to time lags between the warranty expenses incurred and sales associated with the warranty. Therefore, where warranty expenses cannot be reported on a transaction-specific basis, an allocation of POR/POI warranty expenses to POR/POI sales is deemed necessary. *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081, 2095 (January 15, 1997). Here, respondent stated that it reported warranty claims on a transaction-specific basis and this fact was confirmed at verification. *See* Questionnaire Response at p. B–31; Verification Exhibit 8. We verified documentation supporting the fact that the warranty expense at issue is associated with a non-POI sale. We also examined documentation showing that there were no warranty expenses associated U.S. POI-sales were incurred in 1997 and 1998. *See* Verification Exhibit 8. Therefore, because we have transaction-specific information with regard to warranty expenses, we only made adjustments for POI warranty expenses associated with POI sales.

Comment 17: Duty Drawback

Petitioners argue that Tung Mung failed to provide sufficient evidence demonstrating that it meets the two prong test required for duty drawback adjustments; therefore, the Department should reject Tung Mung's claims for duty drawback adjustments. Petitioners note that it is the Department's practice to allow an upward adjustment to U.S. price for duty drawback only if the respondent meets the following requirements: (1) That there is a link between the import duty and the rebate granted; and (2) that the respondent has sufficient imports of raw materials used in the production of the final exported product to account for the drawback received on the export product, citing *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 61 FR 69077 (December 31, 1996) (*"Pipe and Tube from Turkey"*); *Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review*, 64 FR 13169, 13172 (March 17, 1999). Petitioners assert that the Department has rejected duty drawback adjustment claims in their entirety where respondent failed to satisfy either part of Department's two-part test. Petitioners assert that the Department has denied a duty drawback adjustment to U.S. price where it is found that the respondent's duty drawback was based on the FOB sales prices of its finished goods for export and exceeded substantially the amount of customs duties it paid to import raw materials directly, citing *Stainless Steel Round Wire from India; Final Determination of Sales at Less than Fair Value*, 64 FR 17319, 17320 (April 9, 1999). Petitioners argue that the Department has made it clear that the respondent must document a direct link between duties paid and rebates received and that there are sufficient imports of raw materials to account for the drawback claim, citing *Pipe and Tube from Turkey* at 69078. Petitioners claim that Tung Mung has not sufficiently documented its claimed adjustment for duty drawback and therefore adjustments for duty drawback should be denied.

In both its case and rebuttal briefs, Tung Mung argues that it has satisfied the two-prong test for allowing a duty drawback adjustment, thus the Department should make an adjustment for the entire duty drawback adjustment claimed by Tung Mung. Tung Mung argues that the two-prong test for duty drawback adjustments does not require that each individual drawback payment be physically matched to imported raw materials. Furthermore, Tung Mung maintains that the Department recognizes the fungibility of material, as does U.S. law in the U.S. duty drawback program, citing 19 U.S.C. section 1313(b).

Tung Mung claims that it has fulfilled the requirements of the two-prong test for duty drawback adjustments. Tung Mung asserts that at verification it demonstrated the direct link between the import duty and the drawback, by providing examples of the documentation required to obtain duty drawback, including the drawback application form which is required to list the specific importation(s) with respect to which the drawback is claimed. In addition, Tung Mung claims that the Taiwan Ministry of Finance verifies each duty drawback application to ensure that the amount is not excessive.

Tung Mung argues that if it is determined that Tung Mung is not entitled to a duty drawback adjustment, the Department should treat the duty drawback payment as an offset to cost since as demonstrated at verification, duty drawbacks reduced Tung Mung's cost of production. Tung Mung cites *Solid Urea from Germany; Final Results of Antidumping Duty Administrative Review*, 62 FR 61271 (November 17, 1997), which held that an adjustment cost with respect to government benefits received was appropriate where the benefits are linked to specific costs. Tung Mung argues that the instant case is distinguishable from *Stainless Steel Round Wire from India*, where the government payment at issue was not related to the amount of import duty paid, but instead was based on the selling price of the finished goods. Tung Mung finds that case different from the

instant case in that the Department specifically found that the benefits received by respondent substantially exceeded the amount of import duties paid. Tung Mung asserts that at verification it demonstrated that duty drawback payments are recorded in its cost accounting records, which demonstrates that the duty drawback payments are associated with raw material costs.

Department's Position: We disagree with petitioners' argument that Tung Mung's reported duty drawback adjustment should be disallowed. At verification, Tung Mung provided adequate information to support its claimed duty drawback adjustment. Specifically, at verification, we examined documentation for selected sales showing a direct link between duties paid and rebates received and that there are sufficient imports of raw materials to account for the drawback claim. *See* Verification Exhibit 4. At verification Tung Mung demonstrated that the sales tied to the duty drawback adjustment, and furthermore, that the expenses traced to Tung Mung's accounting ledgers. See Verification Exhibit 4. Moreover, we examined duty drawback applications which showed the quantities imported and quantities on which drawbacks were paid. *Id.* We noted that petitioners have made no specific allegations that the quantities appearing in the verification exhibit are insufficient. Therefore, since Tung Mung has sufficiently demonstrated that it meets the two-prong test for duty drawback adjustments, we will accept the claimed adjustments. *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review,* 61 FR 69077, 69078 (Dec. 31, 1996).

Comment 18: U.S. Price

Petitioners argue that Tung Mung failed to report gross unit price for U.S. sales in the currency in which the transaction was incurred, which petitioners claim is contrary to the Department's longstanding practice. In addition, petitioners allege that the reporting of these sales in New Taiwan dollars causes distortions to the gross unit price and the margin calculation. Petitioners charge that Tung Mung's reporting of gross unit price has an expansive effect, affecting multiple variables such as gross unit price, total value, bank charges, credit expenses, indirect selling expenses, and domestic inventory carrying costs. Petitioners assert that the Department's questionnaire instructs respondents to report all revenues and expenses in the currency in which the transaction was incurred; moreover, petitioners argue that this method of reporting is in accordance with the Department's longstanding practice, citing *Stainless Steel Wire Rod from Korea; Final Determination of Sales at Less than Fair Value* ("*Wire Rod from Korea*"), 63 FR 40404, 40413 (July 29, 1998).

Petitioners argue that Tung Mung has not demonstrated that it meets the exceptions to the requirement of reporting expenses and revenues in the currency in which the transaction was incurred. Petitioners note that in *Steel Wire Rod from Canada; Final Determination of Sales at Less Than Fair Value* ("*Steel Wire Rod from Canada*"), 63 FR 9182, 9185 (February 24, 1998) the Department permitted respondent to report certain freight expenses in Canadian dollars because (1) respondent provided advance notification to the Department that it could not report the currency, in which the freight expense was incurred and (2) the Department verified that respondent used a daily rate when these expenses were recorded in its accounting records. Petitioners assert that Tung Mung has not met either of these requirements. Rather, petitioners assert that Tung Mung stated that it records the sales amount using the customer's exchange rate. Petitioners find Tung Mung's statement confusing, given that U.S. transactions were paid in U.S. dollars because there would be no need to note an exchange rate on its payment. Moreover, petitioners assert that Tung Mung would not have been burdened to report sales in the appropriate currency, since it only involved a few number of transactions.

Petitioners cite *Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel from Canada; Final Results of Antidumping Duty Administrative Review* ("*Certain Corrosion Resistant Carbon Steel from Canada*"), 63 FR 12726, 12727 (March 16, 1998) as another case in which the Department made an exception to the requirement of reporting an expense in which the transaction was incurred. In *Certain Corrosion Resistant Carbon Steel from Canada,* the Department allowed respondent to report expenses in the currency in which the transaction was not incurred because the Department found that the exchange rate has been stable during the period of review. Petitioners argue that the circumstances of *Certain Corrosion Resistant Carbon Steel from Canada* are contrary to that of the instant case because the exchange rate for New Taiwan dollars has been unstable during the POI. Therefore, petitioners assert that Tung Mung failed to cooperate to the best of its ability by not reporting gross unit price in the currency in which it was incurred. Consequently, petitioners submit that the Department should apply partial adverse facts available and apply Tung Mung's highest non-aberrant dumping margin to Tung Mung's U.S. direct sales.

Tung Mung argues that petitioners' claim that the Department should apply facts otherwise available to Tung Mung's U.S. Sales to a certain customer should be rejected. Tung Mung asserts that petitioners are mistaken in their claim that Tung Mung could not have invoiced its U.S. customers in NT dollars. Tung Mung asserts that although Tung Mung received payment in U.S. dollars, for each sale to the certain customer it issued both a commercial invoice expressed in U.S. dollars and also a Government Uniform Invoice in NT dollars, citing the Verification Report at p. 9. Tung Mung claims that it was the NT dollar figure from the Government Uniform Invoice that was entered into Tung Mung's books. Tung Mung further argues that the Department cannot apply adverse facts available because Tung Mung informed the Department that it had received payment for the sales in U.S. dollars and the Department did not ask it to change the information on the sales tape. Tung Mung argues that the Department cannot apply adverse facts available unless a respondent has specifically failed to cooperate with a request for information, citing 19 CFR 351.308(a). Therefore, Tung Mung argues that petitioners' suggestion that the Department use an adverse inference with respect to these sales is misplaced.

Department's Position: We agree with petitioners that the Department's standard questionnaire requires all parties to "report the sale price, discounts, rebates and all other revenues and expense in the currencies in which they were earned or incurred." *See* Questionnaire at B–20. The Department accepted respondent's method of reporting these expenses for the preliminary determination. The Department has in limited circumstances allowed exceptions to this rule. *See Corrosion Resistant Steel from Canada* and *Steel Wire Rod from Canada.* In *Corrosion Resistant Steel,* the Department allowed respondent to report U.S. gross unit price in Canadian dollars based on the reasoning that the Canadian dollar was stable and the Department verified that respondent maintained expenses in Canadian dollars in its accounting records. As discussed earlier in this notice in Comment 1, we determined that the

New Taiwan dollar was relatively stable. Moreover, during our review of U.S. sales traces, we verified that Tung Mung maintains its records in its domestic currency, New Taiwan dollars (as with *Corrosion Resistant Steel from Canada*) and found no discrepancies in Tung Mung's reporting of sales. *See* Verification Report at p. 9 and Exhibit 2. Moreover, a review of the sales traces reveals that the difference between the exchange rate recorded on Tung Mung's GUI invoice and the Department's exchange rate data is negligible. *See Analysis Memorandum: Tung Mung* at p. 6. Therefore, we did not apply facts available to respondent's gross unit price for not reporting the U.S. price in U.S. dollars.

Comment 19: U.S. Packing Expenses

Petitioners argue that the Department should apply partial adverse facts available for variable and fixed overhead packing expenses. Petitioners argue that Tung Mung has provided conflicting statements regarding Tung Mung's inability to report variable and fixed overhead packing expenses. Petitioners argue that Tung Mung was instructed twice by the Department, in the questionnaire and in the supplemental questionnaire, to report the unit cost of packing, including variable and fixed overhead expenses, yet failed to do so, stating that "it would be extremely difficult and time consuming for Tung Mung to segregate packing expenses in the manner requested," citing the Supplemental Questionnaire at 23. However, petitioners note that Tung Mung gave a different statement at verification where Tung Mung said that it did not report packing overhead because "it didn't think that it was required to since packing was sub-contracted labor," citing the Verification Report at p. 10. Petitioners charge that Tung Mung failed to cooperate to the best of its ability since it was aware the Department's requirement to report packing overhead expenses and failed to provide a verifiable reason for its inability to report such expenses. Petitioners therefore argues that Department should apply partial adverse facts available to variable and fixed overhead expenses associated with additional export packing.

Respondent argues that the Department should not add overhead expense to packing costs and should reject petitioners' argument to apply adverse facts available in adjusting Tung Mung's reported export packing costs for overhead. Tung Mung asserts that it does not pay benefits to the individuals who perform packing labor and regards these individuals as independent contractors. For this reason, Tung Mung believed that it was unnecessary to include overhead in packing costs. Tung Mung claims that its statement made in its response that "it would be extremely difficult and time-consuming to separate packing expenses in the manner requested by the Department" did not refer to the breakout of overhead expenses, but rather to the Department's request that Tung Mung provide the basic cost of packing that is used for all coils, whether sold domestically or exported. Tung Mung alleges that any overhead attributable to expenses other than employee benefits would be extremely small, given the fact that the area occupied by the packing operations was "tiny" and the equipment used in packing minimal.

Tung Mung asserts that it has been fully cooperative through the course of this proceeding. Tung Mung argues against petitioners' proposed "facts available" adjustment of applying the highest calculated percentage difference between the reported material cost and total cost of manufacturing, insisting that this would be distortive. Specifically, Tung Mung claims that petitioners' proposed adjustment includes costs that are not incurred in export packing and also double counts certain expenses. Tung Mung claims that Tung Mung claims that the full manufacturing conversion costs include direct labor costs, as well as all personnel benefits for the manufacturing workers. Tung Mung asserts that the full manufacturing conversion costs include depreciation incurred on all of the manufacturing activities performed at Tung Mung. Tung Mung also claims that packing is part of the final production process. Tung Mung alleges that the Department routinely ignores adjustment of small magnitude and that should the Department determine an adjustment is warranted, the Department has all the data on the record necessary to perform an adjustment.

Department's Position: We agree with petitioners and adjusted packing expense to include packing overhead by adopting the adjustment method proposed in petitioners' case brief on April 20, 1999. The Department's Questionnaire requires that respondents include the cost of labor, materials and overhead in packing unit cost. See Questionnaire at p. B–27 and C–31. Although Tung Mung used subcontracted labor for packing, Tung Mung admitted that packing operations were performed at the premises of Tung Mung. Thus, it can be inferred that Tung Mung incurred overhead expenses attributable to packing other than personnel benefits. Tung Mung erroneously assumed that there was no need to provide the overhead expenses. Furthermore, Tung Mung failed to justify the claim that the collection of these expenses is burdensome. Therefore, we agree with the petitioners that the use of partial adverse facts available is appropriate in this case. As to the use of the adjustment proposed by the petitioners, we believe it is a reasonable approximation of the overhead component of the packing cost. Tung Mung did not provide any alternative adjustment method to correct for the unreported overhead expenses. We disagree with Tung Mung that the record contains information that can be used for this adjustment without undue difficulties on the part of the Department. Therefore, for this final determination, we have recalculated Tung Mung's reported U.S. packing expenses. *See Analysis Memorandum: Tung Mung*, p. 5.

Comment 20: Direct Selling Expenses

Petitioners argue that Tung Mung failed to provide direct selling expenses associated with visits to U.S. customer's customers. Petitioners note that at verification, the sales manager for Tung Mung made a statement indicating that he had visited the U.S. customer and met with Tung Mung's customer's U.S. customers to discuss merchandise quality. Petitioners argue that Tung Mung should have reported expenses incurred for its customer's customer in its reported direct selling expenses. Petitioners assert that since Tung Mung knew that it incurred these expenses on behalf if its customer, the Department should find that Tung Mung failed to cooperate to the best of its ability. Therefore, citing section 776(a)(2)(A), petitioners argue that the Department should apply partial adverse facts available and use Tung Mung's Sales Department expenses reported in computer field DINDIRSU as a U.S. direct selling expense.

Tung Mung argues that petitioners' claim that Tung Mung failed to provide direct selling expenses with respect to a sales trip taken by the company's sales manager to visit TCI's U.S. customers is unfounded. Tung Mung argues that record facts do not demonstrate that the sales manager's trip was taken during the period of investigation. Moreover, Tung Mung asserts that total business expenses, which were reported in the September 24, 1998 response and later confirmed at verification, shows that total business expenses are "hardly enough" to support a business trip to the United States. Tung Mung further

contends that the verification report makes no indication that the expense at issue was incurred with respect to specific sales, which would require the travel expenses to be treated as direct selling expenses. Tung Mung asserts that the Department's regulation 351.410(c) defines 'direct selling expenses' as "expenses * * * that result from, and bear a direct relationship to, the particular sale in question." Tung Mung objects to petitioners' suggestion to apply adverse facts available by treating Tung Mung's indirect expenses as direct selling expenses for US sales because the details of Tung Mung's business trip expenses incurred in connection with export are on the record. Tung Mung argues that even if the Department was justified in applying adverse facts available, the business trip expenses for export sales reported on the record should be the maximum amount used.

Department's Position: We disagree with petitioners that there is sufficient record evidence to infer that respondent withheld information regarding direct selling expenses incurred on behalf of its customers. The sales manager's statement (that he had visited the customer at issue and met with Tung Mung's customer's U.S. customers to discuss merchandise quality) at verification was not made in response to questions relating to selling expenses, but related to the verification team's questions regarding Tung Mung's knowledge of the ultimate destination of home market sales. *See* Verification Report at p. 8. There is no evidence to indicate that the sales manager's statement was anything but general in nature or referred specifically to an actual expense directly related to specific sales (whether or not within the POI). As respondent notes, the Department's regulations define 'direct selling expenses' as "expenses * * * that result from, and bear a direct relationship to, the particular sale in question." *See* 19 CFR section 351.410(c). We do not have any evidence showing that the statement made at verification directly relates to a particular sale, and we verified that business trip expenses were adequately accounted for, we will not adjust direct selling expenses alleged travel expenses related to U.S. sales.

Comment 21: Year-End Adjustments

Petitioners argue that the Department should include all year-end adjustments in the calculation of Tung Mung's cost of production and constructed value. Petitioners assert that Tung Mung stated that it had a net year-end adjustment. Petitioners argue that Tung Mung stated that it did not include the year-end adjustment in its reported cost of production, but considered the year-end adjustment in the denominator of the general and administrative and financial expense calculation. Petitioners allege that the result of Tung Mung's reporting is that there is an "apples-to-oranges" comparison. Petitioners claim that the percentages of general and administrative expenses and financial expenses as a percentage of cost of sales have been lowered due to the consideration of the year-end adjustment in the cost of goods sold, and these percentages are being applied to an understated cost of manufacture (due to the lack of consideration of the year-end adjustment). Therefore, petitioners argue that the Department should recalculate reported cost of manufacture to include the net year-end adjustments.

Tung Mung did not comment on this issue.

Department's Position: We disagree with petitioners. At verification, we determined that the year-end accruals and adjustments at issue are minimal, accounting for a small percent increase in Tung Mung's reported costs. *See* Verification Report at p. 13. In addition, the effect of the year-end accruals and adjustments on reported costs is offset by Tung Mung's over-reporting of costs, which was discovered at verification. *See* Verification Report at p. 11. Since the year-end adjustments at issue are minimal, we did not recalculate reported cost of manufacture to include the net year-end adjustments, as proposed by petitioners.

Comment 22: General and Administrative Expenses

Petitioners argue that the Department should recalculate Tung Mung's general and administrative ("G&A") expenses to reflect all of Tung Mung's G&A expenses. Petitioners charge that Tung Mung based its G&A expense ratio only on expenses within the stainless steel division. Petitioners claim that Tung Mung's G&A ratio fails to account for expenses from the parent group. Petitioners argue that the Department twice requested information on how Tung Mung computed its company's G&A expense ratio, and Tung Mung refused to provide the requested data. Petitioners allege that Tung Mung's reported G&A ratio is artificially low as evidenced by the fact that the G&A ratio is lower than the cost of goods sold ratio (without elaborating further). Petitioners argue that Tung Mung's claim that its parent, Tuntex Group did not incur any G&A expenses on behalf of Tung Mung is both undocumented and dubious. Specifically, they point out that it is unlikely that the Tuntex Group did not incur any G&A expenses on behalf of Tung Mung, given that Tuntex Group has a board of directors, a Tuntex Group chairman, the Group Chairman's office, a Project Department, and a Chairman, all of which overlook the Tuntex Group, including Tung Mung. Thus, petitioners urge the Department to recalculate G&A expense to account for expenses incurred on behalf of Tung Mung by the Tuntex Group. Petitioners argue that the Department, at a minimum, should base G&A expenses on the cost of goods sold ratio.

Tung Mung objects to petitioners' claim that Tung Mung's G&A expenses were incorrectly reported. Tung Mung asserts that its "parent" group, Tuntex Group, is not a corporate entity, but rather consists of several companies that are loosely affiliated through cross shareholdings. Tung Mung maintains that the Department verified financial statements and confirmed that Tung Mung is not consolidated with the Tuntex Group. *See* Verification Report at p. 3. Tung Mung also asserts that petitioners overlook the fact that Tung Mung reported that it pays a portion of the salary of the Chairman and his support staff, and that this expense is included in Tung Mung's G&A expenses, citing the November 12, 1998 Supplemental Response at 35, n.36. Tung Mung contends that this expense was confirmed at verification. Tung Mung argues that petitioners' proposed ratio for G&A is incorrect because it represents Tung Mung's reported corporate-wide figure for selling, general and administrative expenses. Tung Mung argues that the divisional G&A expense is more appropriate since Tung Mung's other division is completely unrelated to subject merchandise.

Department's Position: We agree with respondent. At verification, we confirmed that Tung Mung has included G&A expenses incurred with respect to the Tuntex Group in its reported G&A. We reviewed this calculation at verification and found it to be reflective of the actual cost incurred for the types of services that the parent group performed. We also confirmed at verification that the Tuntex Group is not a corporate entity but rather group of loosely affiliated companies with cross-shareholdings. As such, Tung Mung did not have consolidated financial statements. *See* Verification Report at p 3. Therefore, for the final determination, we did not recalculate Tung Mung's G&A to include additional parent group expenses.

Ta Chen

Comment 23: Facts Available

Petitioners state that section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the statute, or (4) provides such information, but the information cannot be verified, the Department shall, subject to sections 782(c)–(e) of the Act, use facts otherwise available in reaching its determination. In this investigation, petitioners argue, Ta Chen has tolled all of these provisions.

Petitioners cite three examples in the record that, petitioners contend, are evidence that Ta Chen withheld information that was requested by the Department. Petitioners first point to Ta Chen's failure to provide requested output from computer programs used to prepare the response and to test the completeness of Ta Chen's universe of U.S. sales. Petitioners assert that, as a result, the Department was unable to perform the completeness test of its reconciliation procedure. Petitioners also point to Ta Chen's inability to prove that, for sales allegedly made directly from a third party to TCI, payment was made directly to that third party by TCI. Rather, petitioners point to record evidence showing that TCI paid Ta Chen Taiwan and did not respond to the Department's request for Ta Chen to prove otherwise. Petitioners suggest that Ta Chen had ample time to respond given that the payment was made a significant period of time before verification. Finally, petitioners cite to Ta Chen's failure to disclose information on so-called "triangle trades" including a description of this sales process, the complete acquisition price, Ta Chen Taiwan's interest and banking fees, and TCI's banking fees.

Petitioners contend that Ta Chen failed to provide information in a timely manner or in the form required. Petitioners cite two instances where the Department suspended verification until Ta Chen was able to produce a general ledger and a subsidiary ledger. Petitioners note that the Department had instructed Ta Chen to prepare these documents in advance of verification. Petitioners also cite Ta Chen's failure to produce a further-manufacturing agreement and its failure to support a reconciliation between its general ledger and its invoice register. Petitioners also note that Ta Chen failed to provide a full translation of its most recent financial statements with regard to two affiliated party transactions.

Petitioners contend that Ta Chen significantly impeded the Department's investigation of middleman dumping. Petitioners cite Ta Chen's multiple requests for extensions, delays by Ta Chen in submitting its data, and the ultimate failure by Ta Chen to provide reliable information as a basis for its conclusion that the Department has been forced to severely limit its analysis period for the final determination. Petitioners assert that the Department has exceeded its normal practice by providing Ta Chen with opportunity after opportunity to cooperate. However, according to petitioners, Ta Chen's behavior has been uncooperative. Petitioners argue that the Department's verifications disclosed that Ta Chen engaged in a pattern of withholding factual information, submitting inaccurate and unverifiable sales and cost data, submitting information in an untimely manner or not in the form requested, and refusing to provide certain information requested at verification. Petitioners contend that Ta Chen further impeded the Department's investigation by submitting unexplained major changes to its data in a March 3, 1999 submission. Petitioners describe unexplained changes in the following fields: marine insurance, U.S. duty expenses, Taiwanese bank charges, Los Angeles and other warehouse expenses, transportation expenses, early payment discounts, supplier invoice dates, customer code, sale terms, gauge, finish, and constructed value information. Petitioners state that these unexplained changes cast doubt on Ta Chen's willingness to cooperate. Petitioners state that, singularly, these actions would warrant the application of total adverse facts available. However, in total, the Department has no other option but to assign a margin to Ta Chen based on total adverse facts available. However, if the Department should attempt to calculate a margin based on submitted data, petitioners argue that the Department should reject Ta Chen's unexplained March 3, 1999 data changes.

Petitioners assert that Ta Chen provided information that could not be verified and provide several examples of this type of information. Petitioners point to the alleged direct sales from a third party to TCI. Petitioners point to proprietary record evidence that, it contends, supports the conclusion that the sale was made through Ta Chen Taiwan and contradicts Ta Chen's claims that these were direct sales. Petitioners also cite record evidence that TCI's invoicing system and auditor's adjustments were not verified by the Department. Other examples cited by petitioners include: Ta Chen's inability to demonstrate that it did not further-manufacture SSSS that was subsequently sold in or to the United States and that it could not because it did not record the further-manufacturing activity in its accounting system; Ta Chen's failure to demonstrate that merchandise involved in a triangle trade was purchased from a vendor other than YUSCO or Tung Mung; Ta Chen's inability to account for yield loss on sales that were further-manufactured in the United States; Ta Chen's failure to report charges incurred upon opening a letter of credit; and Ta Chen's failure to inform the Department that there were additional sales made after its "self-selected" cut-off date. Petitioners also cite other examples of information that the Department "was not able" to verify.

Petitioners state that, by themselves, the deficiencies discovered by the Department at verification would warrant the use of facts available. In combination, they warrant the use of total adverse facts available. Petitioners contend that these deficiencies are so material and have such a significant impact that the Department should determine that Ta Chen failed to act to the best of its ability in this investigation and has been uncooperative. Petitioners argue that it is not practicable to provide Ta Chen "with an opportunity to remedy or explain the deficiencies" discovered at verification as called for under section 782(d) of the Act because the deficiencies cut at the basic core of Ta Chen's data. Therefore, the Department should disregard Ta Chen's response and assign Ta Chen a margin based on facts available under section 776(a) of the Act.

Petitioners argue that meeting any one of the provisions under section 776(a) of the Act is, subject to sections 782 (c)–(e) of the Act, grounds for the Department to disregard a respondent's response and assign a margin based on facts available. Petitioners assert that, for the reasons discussed above, the Department should determine that all four provisions of section 776(a) have been met and that Ta Chen has not acted to the best of its ability to cooperate with the Department's investigation.

In this situation, petitioners contend, section 776(b) of the Act authorizes the application of an adverse inference in choosing among facts otherwise available. Petitioners state that the Statement of Administrative Action ("SAA") accompanying the URAA offers the following guidance: the

Department "may employ adverse inferences about the missing information to ensure that the party *does not obtain a more favorable result by failing to cooperate than if it had fully cooperated*" (emphasis added). Petitioners state that, under section 776(b), the Department has a range of options.

Petitioners believe that the most reasonable option is a margin based on the highest estimated dumping margin listed in the *Initiation Notice*, after adjusting for the actual dumping margins of Ta Chen's supplier; such that the combined vendor/middleman margin will equal 77.08 percent. Petitioners do not believe that the Department should choose the highest margins indicated in its middleman dumping allegation if those alleged margins are lower than any calculated margin based on Ta Chen's incomplete reporting, because to do so would reward Ta Chen for failing to cooperate. Therefore, petitioners argue that the Department should assign a margin to Ta Chen of 77.08 percent, less its vendor's individual margin, for the final determination.

Petitioners argue that Ta Chen itself was to blame for its significant failures at verification. Petitioners point to the verification outline's notice to Ta Chen that it should prepare documentation in advance and that if it was not prepared, the Department would move to another topic and might have to consider the item unverified due to time constraints. Petitioners cite the above-mentioned two instances were Ta Chen failed to prepare ledgers in advance at the home market verification. Likewise, petitioners contend, Ta Chen was not prepared to document auditor's adjustments at the U.S. verification. Petitioners assert that this behavior continued and cites several other instances in which Ta Chen was not prepared to support its response at verification.

Petitioners dispute Ta Chen's claim that the so-called "triangle trade" sales are "canceled sales." Petitioners state that the Department examined purchase orders, invoices, payment notices, associated expenses, and supporting ledger entries for these sales. Petitioners argue that the completion of a commercial transaction cannot reasonably be referred to as a "canceled sale." Regardless, petitioners note, Ta Chen failed to disclose the "triangle sales."

Petitioners disagree with Ta Chen in its view that direct sales made through Company X did not go through Ta Chen Taiwan. Petitioners point to record evidence that Ta Chen Taiwan was involved in this transaction. Moreover, petitioners point out that Ta Chen is basing its claim on exhibits that refer to Company Y and not Company X, which petitioners assert is a different company with a similar name.

Petitioners also disagree with Ta Chen's "verification comments." For example, petitioners argue that: Ta Chen's reporting methodology contradicted the Department's instructions in the questionnaire and supplemental questionnaire; Ta Chen was required to report all of its resales and should have provided a more reasonable database; Ta Chen did not disclose or report a yield loss on further-manufactured sales; Ta Chen was unprepared to completely trace merchandise that underwent further-manufacturing in Taiwan; Ta Chen failed to provide proof of payment for marine insurance; Ta Chen failed to report certain bank charges; and Ta Chen failed to report all purchases in its Section D database. In sum, petitioners argue, Ta Chen's behavior can be characterized as (1) withholding information requested by the Department; (2) failing to provide information in a timely manner; (3) impeding the determination; and (4) providing unverifiable information. Therefore, petitioners argue, the Department should apply the highest margin published in the *Initiation Notice* for the final determination.

Ta Chen argues that it was cooperative. Ta Chen states that it advised the Department at the outset that it would have difficulties in answering the questionnaire in a short time period and requested a simplified reporting requirement on December 10, 1998. Ta Chen contends that its February 5, 1999 and February 17, 1999 responses contained the equivalent level of information compared to its reporting in *SSPC from Taiwan*. Ta Chen states that its March 3, 1999 submission was filed to help expedite matters, address petitioners' concerns, and correct errors. In Ta Chen's opinion, it believes that the Department found no unexplained methodological changes between the March 3 and February 5, 1999 submissions at verification.

Ta Chen states that petitioners' claim that its March 3, 1999 submission contains unexplained changes misses the mark. Ta Chen claims that the change to its reported Los Angeles warehousing expenses was *de minimis*. Ta Chen claims that its reported U.S. transportation costs were reported for Los Angeles warehouse sales that underwent further manufacturing in accordance with its February 5, 1999 submission (at pages 2 and 52). Ta Chen also disputes petitioners' claims with regards to: U.S. warehousing charges, early payment discounts, supplier invoice dates, customer codes, terms of sale, gauge, finish, and control number.

Ta Chen argues that the Department's own verification outline and procedure expressly permit a respondent to submit some new factual information. Thus, Ta Chen disagrees with petitioners that the Department lawfully advised Ta Chen that "it would not accept any new factual information from Ta Chen." Ta Chen contends that the information presented at the start of verification was no more than minor corrections/clarifications of its prior submissions. Moreover, Ta Chen argues, given the peculiarities of the middleman investigation, under section 351.301(b)(1) of the Department's regulations, Ta Chen would have had to submit changes/clarifications in December 1998, which was before its original questionnaire response was even due.

Ta Chen takes issue with petitioners' interpretation of the verification results. For example, Ta Chen argues that all of its U.S. sales are made by TCI and thus, completeness is largely an issue for TCI not Ta Chen Taiwan. Ta Chen states that petitioners focus on a particular completeness test, whereas Ta Chen believes that the Department had already reconciled a bridge worksheet to the response via another exercise. Ta Chen also argues that it was not required to report "triangle trade" sales because, Ta Chen contends, "triangle trades" were not sales per se because title never transferred to Company X. Ta Chen argues that the terms of sale were "FOB Los Angeles" and that the merchandise had already been reinvoiced back to TCI before it reached the port. Thus, Ta Chen argues, title was never transferred, citing *Nissho Iwai American Corp. v. U.S.*, 982 F.2d 505 (Fed. Cir. 1992) (*Nissho Iwai*) and "*What Every Member of the Trade Community Should Know About Bona Fide Sales and Sales for Exportation*" U.S. Customs Service, November 1996; *et al.* Moreover, Ta Chen argues that there is a doctrine of transitory transactions in tax law which Ta Chen believes would support the view that, at most, the "triangle trade" represents a canceled sale. Ta Chen disagrees with petitioners" interpretation of record evidence for marine insurance and ocean freight for sales made through Company X. Regardless, Ta Chen argues, even if this evidence proves that Ta Chen Taiwan provided insurance or facilitated shipping, the sale would still occur between Company X and TCI and thus, does not subject it to a middleman

investigation. Ta Chen also comments on numerous other aspects of its verifications, without argument.

Ta Chen argues that petitioners' suggested dumping margin, based on the highest rate alleged in the petition, is unlawful. Ta Chen argues that that rate was for manufacturers and, since middleman dumping methodology is different from the Department's normal dumping analysis, the petition rate is not applicable rendering its use unlawful and contrary to Department precedent. Moreover, if the Department finds that the verified dumping rates of all the manufacturers are below the petition rate, then the petition rate is neither probative nor corroborated. Rather, Ta Chen argues, it has been discredited and its use is unlawful according to court precedent. Ta Chen also argues that petitioners themselves have admitted that its alleged middleman dumping rate is wrong. Ta Chen also notes that the allegation was based on a price quote of a third party which, Ta Chen asserts, indicates that it was a direct sale with no middleman involvement, and that the source of the U.S. price quote for the middleman allegation was not disclosed. Thus, Ta Chen argues, the alleged middleman dumping margin was not probative or corroborated and fails to meet the statutory requirements.

Department's Position: We agree with petitioners in part. In this case, as noted above (*see* "Facts Available"), we have determined to use facts available because we were unable to verify Ta Chen's response. Furthermore, in using facts available, we are employing an inference adverse to the interests of Ta Chen because we have determined that Ta Chen has failed to act to the best of its ability in responding to our requests for necessary information (*see* "Adverse Facts Available" above). Given the circumstances in this case, we disagree with petitioners that rates derived from our *Initiation Memo* would apply to a middleman situation because those estimates are based on our normal dumping methodology, whereas here, Ta Chen would have been subject to our middleman dumping methodology as defined in *SSPC from Taiwan*. Thus, for this final determination, as adverse facts available, we have selected a rate of 15.34 percent for Ta Chen's resales of Tung Mung's and YUSCO's merchandise, which reflects the highest rate from our *Middleman Initiation Memo*.

In this case, the inability to verify the completeness of Ta Chen's databases, particularly the U.S. sales database, is crucial and is a factor which, by itself, forms an adequate basis for our determination to use facts available. However, our attempted verifications yielded additional flaws in Ta Chen's response, providing further bases for our decision to employ facts available. For example, we found that Ta Chen did not report a particular type of sales process called "triangle trading," or report its associated expenses and that Ta Chen could not support its claim that a sale to TCI was not YUSCO's or Tung Mung's merchandise. Ta Chen could not demonstrate that merchandise further-manufactured in Taiwan was not shipped to the United States as subject merchandise. For a complete listing of all flaws, *see Facts Available Decision Memorandum—Ta Chen*. In this regard, we note that Ta Chen's assertions regarding the verification findings are unsupported by record evidence, and as such remain mere assertions. Because of the gravity and the magnitude of the flaws in Ta Chen's response, we have determined that Ta Chen's information is unverifiable, and that there is no record evidence demonstrating that errors in Ta Chen's reporting of certain of its U.S. sales are limited and correctable. Thus, as explained above, we must use facts available in determining a margin for Ta Chen, as required under section 776(a) of the Act.

We also agree with petitioners that an adverse inference is warranted in determining a margin for Ta Chen because, as required under section 776(b), we find that Ta Chen has not acted to the best of its ability in responding to our requests for information. As noted above, Ta Chen has participated in numerous reviews and verifications in other antidumping proceedings and is aware of the type of information we require. However, despite Ta Chen's specific understanding of verification procedures, based not only on information provided in the verification outline, but also through their successful completion of verification in *SSPC from Taiwan* a mere four months prior to these verifications, Ta Chen has failed to substantiate at verification a fundamental element of its response: a complete purchase and sales reconciliation. We also find that, at verification, Ta Chen failed to produce, in a timely manner, documentation that was within its control, such as general and subsidiary ledgers, because this documentation was requested in our verification outlines (*see* Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils from Taiwan; Ta Chen's Sales Verification Outline ("Verification Outline" dated March 30 and April 5, 1999) . Ta Chen's comments regarding "triangle trade" sales and other verification findings are not persuasive that Ta Chen has failed to act to the best of its ability in responding to our requests for necessary information. Ta Chen's argument that "triangle trade" sales are not really "sales" and therefore it need not report them is incorrect. Ta Chen's reliance on tax law and U.S. Customs rulings is misplaced, because we are concerned with determining if Ta Chen sold merchandise at a price below its total acquisition costs. Our determinations are subject to Title VII of the Act rather than the Internal Revenue Code or U.S. Customs Bulletins and thus, Ta Chen should have reported these transactions. Furthermore, we note that Ta Chen made numerous other errors in its response that worked in its favor. *See Facts Available Decision Memorandum—Ta Chen*.

As we have indicated above, in accordance with our policy, we considered the overall effect of the errors to ensure that Ta Chen does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Thus, an additional factor we have considered is the extent to which Ta Chen might have benefitted from failing to cooperate fully if we had not made our determination on the basis of facts available. *See SAA* at 870. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for Ta Chen. *See Facts Available Decision Memorandum—Ta Chen*. Thus, for this final determination, we have applied adverse facts available to Ta Chen in accordance with section 776(b) of the Act.

Comment 24: Indirect Selling Expenses

Petitioners argue that the methodology preliminarily employed by the Department to compute the middleman dumping margin has not captured the full amount of dumping. In the event that the Department does not use total adverse facts available, petitioners request that the Department make several changes to its methodology.

Petitioners believe that the Department's methodology understates the extent of the losses incurred by Ta Chen on its resales. First, petitioners argue that the Department should include TCI's total operating and financing expenses, and not Ta Chen's "incorrectly" reported indirect selling expenses, as part of Ta Chen's net U.S. price. Petitioners claim that Ta Chen's reported indirect selling expenses do not include a number of expenses that are general in nature. Further,

petitioners maintain that verification proved that TCI's reported indirect selling expenses were distortive and understated. Petitioners cite *SSPC from Taiwan*, in which TCI "admitted" that it had erroneously excluded certain expenses from its indirect selling expenses and the Department recalculated TCI's indirect selling expenses based on the overall operating costs of TCI as a percentage of sales. Additionally, petitioners argue that the Department should deny Ta Chen's claimed interest income offset because Ta Chen has not demonstrated that this interest income was short-term in nature.

Petitioners claim that the Department not only asked Ta Chen to allocate total G&A over total cost of sales, but also pointed out severe deficiencies in Ta Chen's response and asked Ta Chen for complete responses. Petitioners also argue that Ta Chen should have revised its G&A figures in accordance with the final determination in *SSPC from Taiwan*. Nevertheless, according to petitioners, the record is clear with respect to Ta Chen Taiwan's sales, accounting, general management, and legal departments' involvement in SSSS sales to TCI, and therefore the Department must recalculate Ta Chen Taiwan's G&A expenses by allocating total G&A over total cost of sales.

Ta Chen argues that the dumping margin calculation should be based on the Ta Chen Taiwan G&A figures for coil only, as reported in Ta Chen's questionnaire response. If the Department does not do so, however, it should at least remove attorney fees for dumping work from Ta Chen's G&A costs. Ta Chen argues that it was not given an opportunity to revise its initial reporting of Ta Chen Taiwan interest costs and G&A. It cites *Ferro Union, Inc. & Asoma Corp.* v. *U.S.*, Slip Op. 99–27 at 41 & 44 (CIT March 23, 1999) in which the court held that the Department cannot expect a respondent to foresee the interpretation of a new term or methodology which is undergoing development, and that before resorting to facts available, the party must have a chance to remedy deficient submissions.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 25: Total Acquisition Cost and U.S. Price

The Department, according to petitioners, must revise its middleman dumping calculations for Ta Chen by comparing a normal value with an appropriately adjusted U.S. resale price as required by the statute. Petitioners claim that the legislative history of section 772 of the Act recognizes the Department's discretion to analyze each middleman resale so that dumping would not be masked. Petitioners further argue that the Trade Agreements Act of 1979 overturned the ruling in *Voss International Corp.* v. *United States* ("*Voss*") in which the court rejected the administering authority's practice of setting purchase price as the producer's price to an unrelated middleman when the producer is aware that the middleman will resell the subject merchandise to the United States. Petitioners continue that Congress, according to H.R. Rep. No. 317, *supra*, at 75; S. Rep. No. 249, *supra*, at 94, ("*Senate Report*") thus did not grant discretion to the Department to equate middleman dumping with the amount by which the middleman's adjusted resale price falls below the middleman's total acquisition cost. Rather, Congress ruled that the price between a producer and an unaffiliated middleman will serve as the basis for purchase price as long as the producer knows that the merchandise is intended for resale in the United States, and that the Department must take into account any middleman dumping along with dumping by the producer. Petitioners claim that the Department confirmed this in *Fuel Ethanol from Brazil*.

Petitioners argue that once the Department confirms that a middleman has made a substantial amount of its resales at prices substantially below its total acquisition costs, the Department must employ a statutorily defined normal value and U.S. price to compute the extent of the middleman's dumping. Petitioners state that Ta Chen's dumping margin must be calculated by comparing Ta Chen's constructed value with its net U.S. price, and that middleman dumping is not equal to the difference between Ta Chen's total acquisition cost and resale price. Petitioners express the need for a foreign referent market to provide a benchmark for a respondent's activity in the U.S. market, as prescribed in section 777A of the Act. Petitioners also argue that the Department's reliance on section 773 of the Act is not justified in measuring the amount of dumping by the middleman, since this section deals with the calculation of the cost of production of a respondent's home market sales, not the respondent's U.S. sales. Moreover, this section defines "normal value" with reference to home market prices or constructed value, and therefore, argue petitioners, a middleman's total acquisition costs for U.S. resales cannot satisfy this definition of normal value.

Furthermore, petitioners claim that the Department failed to calculate a proper U.S. price for Ta Chen based on constructed export price in its preliminary middleman dumping analysis because the Department failed to consider U.S. credit expenses, U.S. inventory carrying costs, in-transit inventory carrying costs, and CEP profit, as prescribed in section 772 of the Act. Petitioners further note that values for most of these expenses are not on the record and that this is another reason for the Department to resort to total adverse facts available.

Petitioners claim that the methodology directed by the statute for computing middleman dumping is essentially the methodology followed by the Department in computing dumping when transshipment is involved, and cite the *Notice of Final Determination of Sales at Less Than Fair Value: Sulphur Dyes, Including Sulphur Vat Dyes, from India* 58 FR 11835 (March 1, 1993) to illustrate their point.

Ta Chen argues that middleman dumping may not be lawfully calculated on the basis of constructed value since, according to legislative history, the Antidumping Manual, and court precedent, middleman dumping is selling below acquisition cost and related selling expenses, citing *SSPC from Taiwan, Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value*, 51 FR 5572, 5573 & 5577 (February 14, 1986); *Steel Wire Strand for Prestressed Concrete from Japan; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 60688 (November 12, 1997); *Certain Forged Steel Crankshafts from Japan; Final Determination of Sales Note Less Than Fair Value*, 52 FR 36984 (October 2, 1987); and *Mitsui* v. *U.S.*, ("*Mitsui*") 18 CIT 185 (CIT March 11, 1994). Moreover, Ta Chen argues that petitioners' arguments contradict one another as petitioners cite authority to that effect that, at most, middleman dumping can only be based on the middleman's actual expenses and whether the middleman is selling below actual cost. *Department's Position:* Based on our decision to apply total adverse facts available, this issue is moot.

Comment 26: Ministerial Errors

Petitioners claim that the Department should correct several ministerial errors in the preliminary determination calculations. First, petitioners argue that the U.S. further manufacturing variable should not be converted to a character variable because, as such, these expenses were not deducted from the

U.S. gross unit price. Secondly, petitioners argue that the Department should format the control number field to ten digits so that the "edge" product characteristic can be considered. Thirdly, petitioners maintain that missing values for L.A. warehousing expenses should be set to zero. Finally, petitioners assert that the Department should base its final determination on the February 5 data file, with the exception of those changes in the March 3 data file that have been explained by Ta Chen.

Ta Chen did not comment on these issues.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 27: Exchange Rate

Ta Chen argues that the focus of a middleman dumping investigation is whether a middleman makes an actual profit or loss on the transactions, and thus, as stated in *Fuel Ethanol from Brazil*, the Department must use a proper exchange rate to make such a conclusion. Ta Chen claims that the Department should use the exchange rate for the date TCI receives payment from the U.S. customer since that rate indicates the actual profit or loss on the transaction from the perspective of a Taiwan trading company. Furthermore, Ta Chen argues that since the Department's regulations do not address the issue of middleman dumping, the Department should not use the rate from TCI's U.S. sale simply because the regulations say to do so.

Petitioners did not comment on this issue.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 28: Bank Charges

Ta Chen claims that there should be no adjustment for bank charges in the CREDIT1U and CREDIT2U data fields since they are associated with internal movement of funds received from customer payments between affiliated Ta Chen entities.

Petitioners did not comment on this issue.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 29: Interest Costs

Ta Chen claims that it would be double counting to include both TCI's and Ta Chen Taiwan's interest costs, since all of Ta Chen Taiwan's interest costs with regard to coil are passed through to TCI and affect TCI's debt burden. If, however, the Department does include Ta Chen Taiwan interest costs, Ta Chen argues that the Department should reduce those costs for short-term interest income.

Petitioners claim that the Department should calculate Ta Chen Taiwan's interest expenses for the constructed value calculation based on Ta Chen's Taiwan's financial statement because Ta Chen Taiwan was intimately involved in the purchase and resale of SSSS. Petitioners claim that the Department's allocation of Ta Chen Taiwan's total interest expenses over Ta Chen Taiwan's total cost of sales would be consistent with *SSPC from Taiwan* and the questionnaire instructions.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 30: Substantial Margins

Ta Chen states that the preliminary decision offers no rationale concerning why a 2.68 percent channel rate should be considered substantially below cost, given that two percent is considered *de minimis* under the current standard for dumping margins. Moreover, as in the *SSPC from Taiwan* decision, any dumping margin should only apply to Ta Chen Taiwan since TCI, a U.S. company, should be permitted to purchase direct from a Taiwan manufacturer at the manufacturer's own dumping rate.

Tung Mung also argues that the rate found by the Department for middleman dumping, 2.61 percent, is not "substantial." Tung Mung argues that it would be inappropriate to find that an entity that is not involved in the substance of the transaction, but is merely acting as a communications channel, is engaged in dumping. Tung Mung asserts that, in any event, a margin of 2.61 percent cannot be considered "substantial" within the meaning of the statute. Tung Mung argues that under the holding of *Fuel Ethanol from Brazil*, the Department must find that a substantial portion of the middleman's sales are at prices "substantially" below its acquisition costs. Tung Mung notes that in the present case, the Department found that Ta Chen's losses on its sales of Tung Mung merchandise amounted to 2.61 percent, which the Department deemed to be "substantial." Tung Mung argues that this margin is only a fraction over the *de minimis* limit of two percent, and thus can hardly be deemed "substantial."

Petitioners argue that the Department should find that Ta Chen sold a substantial portion of its resales in the United States at prices substantially below its total acquisition costs. Petitioners state that the evidence in this case points to Ta Chen's selling a substantial volume of its resales at prices substantially below its total acquisition costs, as was the case in *Mitsui*. Petitioners also state that, as in *SSPC from Taiwan*, there can be no single threshold which constitutes substantial losses with regard to middleman dumping, because each case involves a unique set of circumstances and thus a fixed numerical guideline defining substantial losses should not be created.

Department's Position: We agree with petitioners. There can be no single threshold which constitutes substantial losses with regard to middleman dumping because each case involves a unique set of circumstances. In this case, we find that 15.34 percent for Ta Chen's purchases from Tung Mung and YUSCO, as well as the 2.61 percent calculated for Ta Chen with regard to Tung Mung's merchandise in the *Preliminary Decision*, constitute substantial losses. The Department has stated its general position in *SSPC from Taiwan* at page 15504. Moreover, because we are assigning Ta Chen a significantly higher loss percentage for this final determination, we believe that there can be no question but that such losses must be considered substantial.

Comment 31: Agency

Ta Chen contends that the transactions involving the subject merchandise do not fall within the ambit of any middleman dumping provision for the following reasons: (1) the transactions involve a direct sale between a Taiwanese manufacturer and an unaffiliated U.S. buyer; and (2) the Department cannot determine that middleman dumping is occurring because there is no middleman. Ta Chen explains that Ta Chen is merely a processor of paperwork and a communications link and is acting as an agent of TCI, Ta Chen's U.S. affiliate. Ta Chen claims that TCI initiates all purchase requests from YUSCO and Tung Mung and uses Ta Chen as a facilitator due to language barriers and time zone differences. Ta Chen further claims that there is a straight pass-through of the purchase price from YUSCO to TCI such that TCI incurs both the risk and the profit or loss on the sale.

Ta Chen states that the Department must recognize commercial law principles in its administration of the antidumping laws, citing *NSK* v. *United States*, 115 F. 3d 965 (Fed. Cir. 1997). Ta Chen claims that U.S. commercial law considers the following factors in determining whether an intermediary is

acting as an agent or as a buyer: (1) (W)hether the intermediary could or did provide instructions to the seller; (2) whether the intermediary was free to sell the items at any price it desired; (3) whether the intermediary could or did select its own customers; and (4) whether the intermediary could or did order the merchandise and have it delivered for its own inventory. Ta Chen claims that the Department generally follows this analysis in determining whether sales through a U.S. subsidiary should be treated as EP or CEP transactions, citing *Stainless Steel Wire Rod from Spain*, 63 FR 40391, 40395. Ta Chen maintains that if the intermediary cannot perform these tasks and if there is a simultaneous passage of title and risk of loss from the seller to the intermediary to the buyer, then the intermediary is acting as an agent.

Ta Chen claims that an analysis of the record demonstrates that none of the aforementioned four factors exist in the instant case and thus, Ta Chen is acting as an agent. First, Ta Chen Taiwan claims that in all instances it acts on behalf of TCI with regard to U.S. sales. Second, Ta Chen claims that Ta Chen Taiwan was not permitted to sell the items to other distributors in the United States, and had no control over the U.S. prices of coil. Third, Ta Chen claims that TCI alone selected the U.S. customers to which it would subsequently sell the imported products. Fourth, Ta Chen claims that coil was shipped directly from YUSCO or Tung Mung to TCI for TCI's warehouse inventory, and therefore Ta Chen Taiwan does not maintain inventory for any products for U.S. sale. Finally, Ta Chen claims that title was transferred immediately from Tung Mung or YUSCO to TCI. Ta Chen argues that the above facts prove that TCI is the true buyer from YUSCO or Tung Mung, and Ta Chen Taiwan is merely TCI's buyer's agent. Moreover, TCI argues that the sales are direct sales between YUSCO or Tung Mung and TCI.

Ta Chen argues that the antidumping statute only applies to producers and exporters; therefore, Ta Chen contends, TCI should not be subject to the dumping determination. Ta Chen states that the Act directs the Department to determine the individual weighted average dumping margin of each known exporter and producer of the subject merchandise, and also cites *AK Steel Corp.* v. *U.S.*, Slip Op. 98–159 at 20–23 (CIT November 23, 1998) in support of this position. Ta Chen argues that it is well established under Department precedent that if suppliers sell to a trading company and had knowledge, at the time they sold their merchandise, that those sales were destined for the United States, the Department finds that suppliers are effectively acting as exporters and therefore uses their [suppliers] pricing structure to measure dumping activity, citing *Antifriction Bearings from France*, 57 FR 28360 (1992). Ta Chen argues that the manufacturers, Tung Mung and YUSCO, had knowledge that all sales to TCI were destined for the United States. In this regard, Ta Chen argues, YUSCO and Tung Mung are the exporters under Department practice.

Ta Chen argues that middleman dumping is a narrowly defined exception to the Department's general practice to use the producer's price to the U.S. in the dumping analysis. Ta Chen argues that this exception does not apply in this case. Ta Chen points to the legislative history of the Trade Agreements Act of 1979 as support that middleman dumping is limited to the issues involved in *Voss International* v. *United States*, ("Voss") C.D. 4801 (May 7, 1979), citing *Senate Report*. Ta Chen argues that the legislative history regarding middleman dumping analysis instructs that where a producer knows that the merchandise was intended for sale to an unrelated purchaser in the United States under terms of sale fixed on or before the date of [U.S.] importation, the producer's sale price to an unrelated middleman will be used as the purchase price ("Purchase price" may be used if transactions between related parties indicate that the merchandise has been sold prior to importation to a U.S. buyer unrelated to the producer." *See Senate Report*). Ta Chen argues that the instant case is distinct from *Voss* because YUSCO's and Tung Mung's terms of sale were fixed before exportation. Ta Chen concludes that the middleman dumping exception as delineated in *Voss* does not apply in the instant case, and therefore, the Department does not have the authority to investigate Ta Chen nor does it have the authority to use TCI's U.S. resale prices in the calculation of a dumping margin.

Notwithstanding this conclusion, Ta Chen argues that if the Department wishes to take on a broader view of its ability to investigate middleman dumping, in the instant case there is no sale to a middleman outside the United States who then makes the first sale to the United States. Ta Chen again cites to the *Senate Report* at 93–94:

> Regulations should be issued, consistent with present practice, under which sales from the foreign producer to middlemen and any sales between middleman *before* sale to the first unrelated U.S. purchaser are examined to avoid below cost sales by the middlemen. Emphasis added in Ta Chen brief)

Ta Chen also cites to *Fuel Ethanol* at 5577 as further support. Ta Chen claims that YUSCO and Tung Mung sell directly to TCI, an unaffiliated U.S. customer, and therefore, there is no middleman. Ta Chen argues that Department precedent demonstrates that middleman dumping is found where a foreign manufacturer sells to a trading company located in the foreign manufacturer's home market or third country which in turn is "selling to U.S. purchasers below its acquisition or purchase cost," citing *Fuel Ethanol* at 5573 & 5576–77. Ta Chen asserts that the Department has never found middleman dumping where a foreign manufacturer sells to an unaffiliated U.S. company. Ta Chen argues TCI purchased coil from the Taiwan manufacturer; thus, a "middleman" as defined by *Fuel Ethanol* does not exist.

Ta Chen argues that the Department's decision in *SSPC from Taiwan* is contrary to the Department's own practice, U.S. commercial law principles and commercial reality. Ta Chen contends that the *SSPC from Taiwan* decision implies the finding that invoicing or transfer of title to an entity alone is sufficient to show that a sales transaction occurred. Ta Chen argues that this is contrary to law, citing *FAG (U.K.) Ltd.* v. *U.S.*, Slip Op. 98–133 at 15, n. 5 (CIT September 16, 1998) (finding that "mere passage of title alone does not effect a sale" if one party controls the transaction and the other to whom title passed is only acting as an agent of the controlling party, citing *AK Steel Corp., et. al.* v. *U.S.*, Slip Op. 98–159 at 7–16 (CIT Nov. 23, 1998); *J.C. Penney* v. *U.S.*, 451 F. Supp. 973, 986 (1978); and *Synthetic Methionine from Japan*, 52 FR 10600, 10601 (1987).

Second, Ta Chen charges that the decision in *SSPC from Taiwan* implies that simply because the agent is involved in the sales negotiation or initially incurs costs (which are then passed onto the buyer), it can be found that the sale is made to the agent. Ta Chen argues that this assumption found in *SSPC from Taiwan* also contradicts law and commercial reality. Ta Chen argues that the courts have acknowledged that negotiating sales and incurring expenses on behalf of the buyer are services characteristic of buying agents, citing *Jay-Arr Slimware Inc.* v. *U.S.*, 681 F. Supp. 875, 878 (CIT 1988); *J.C. Penney* v. *U.S.*, 451 F. Supp. 973, 984 (1978); *Monarch Luggage Co.* v. *U.S.*, 715 F. Supp. 1115, 116–7 (CIT 1989); and *Rosenthal-Netter, Inc.* v. *U.S.*, 679 F. Supp. 21, 23 (CIT 1988).

Third, Ta Chen finds that *SSPC from Taiwan* contradicts law by suggesting that middleman dumping can be found where there is a sale from the Taiwan producer to TCI, with Ta Chen Taiwan acting only as an agent. Ta Chen points out that *SSPC from Taiwan* cites to no supporting legal authority except *Voss*, which as argued earlier by Ta Chen, does not apply to the instant case.

Ta Chen argues that based on shipping terms, the transaction between the seller and the intermediary is not a bona fide sale. TCI argues that where the merchandise is shipped directly from the seller to the ultimate consignee, as opposed to being shipped from the seller to the intermediary and then to the ultimate consignee, the terms of sale may indicate that simultaneous passage of title occurred. According to TCI, an intermediary is considered to hold title only momentarily, if ever, and does not bear the risk of loss according to the term of sale. As such, TCI argues that based on the shipping terms, a bona fide sale would not appear to exist between the seller and intermediary, but rather between the seller and the U.S. ultimate consignee, with the intermediary potentially serving as an agent, citing *Nissho Iwai*. In addition, TCI notes that TCI's financial statements indicate that TCI is "engaged in the business of sales of coils * * *", citing March 3, 1999 Questionnaire Response. TCI also notes that Ta Chen Taiwan's financial statement indicate that Ta Chen Taiwan manufactures stainless steel pipe and fitting products and there is no mention that Ta Chen Taiwan sells coil, citing their February 17, 1999 submission at Exhibit 6.

Tung Mung argues that the Department should not find middleman dumping in this case because Ta Chen Stainless Steel Pipe Co., Ltd, is not a middleman. Tung Mung argues that the verifications of Tung Mung and Ta Chen made clear that Tung Mung's true customer is Ta Chen International, Ta Chen's U.S. affiliate. Tung Mung maintains that TCI makes its own decisions on what materials to purchase, based on its assessment of market conditions in the United States, and simply uses Ta Chen Taiwan as a communications link. Tung Mung asserts that verification results of Ta Chen Taiwan show that pricing decisions are being made by TCI, a U.S. corporation, rather than Ta Chen Taiwan. Tung Mung argues that the Department confirmed at verification that TCI uses Ta Chen Taiwan as an intermediary, instead of buying directly from the manufacturer, because of differences in time zones and language barriers, citing *TCI Verification Report* at p. 6.

Petitioners assert that, according to the record, the Taiwanese producers' U.S. sales of subject merchandise were in all instances to Ta Chen Taiwan, not to Ta Chen International. Petitioners point to several verification findings with regard to sales functions and corporate structure which, petitioners claim, demonstrate that Ta Chen Taiwan was intimately involved in each purchase and intra-company resale to TCI of YUSCO's and Tung Mung's products. Petitioners maintain that these verification results prove that Ta Chen Taiwan purchased the subject merchandise from YUSCO and Tung Mung and acted as a middleman in connection with the resale of YUSCO's and Tung Mung's subject merchandise in the United States.

Petitioners find suspect Ta Chen's explanation for those sales where the invoicing did not go through Ta Chen Taiwan. Petitioners note that Ta Chen claims that these sales are "direct sales" to TCI; however, petitioners argue that Ta Chen provides no supporting evidence for this claim. Petitioners point out that the record evidence contradicts Ta Chen's assertions that the sales at issue were direct sales to TCI. Petitioners note that Ta Chen stated that the sales in question were direct sales since a certain party directly invoiced TCI. Petitioners further note that when the Department asked TCI to prove that it directly paid the certain party, TCI could not, citing *TCI Verification Report* at page 17. Petitioners note that the documentation indicated that the party paid was in fact Ta Chen Taiwan. Moreover, petitioners maintain that other documents retrieved at verification support that the payee was in fact Ta Chen Taiwan, despite Ta Chen's claim at verification that Ta Chen Taiwan was indicated as the payee as a result of a typographical error.

Petitioners cite *Industrial Nitrocellulose from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 64 FR 6609, 6622 (February 10, 1999), where the Department found that a U.S. selling agent was substantially involved in the sale process for the foreign company because its duties as the foreign company's agent included sales and solicitation and price negotiation. Likewise in this investigation, petitioners argue, Ta Chen Taiwan negotiated with YUSCO and Tung Mung the terms of sale and performed other sales functions associated with these sales. Thus, petitioners argue, the role of Ta Chen Taiwan was substantial and entailed much more than paper processing and aiding communications between YUSCO and Tung Mung and TCI. Petitioners conclude that the Department should find that TCI therefore acted as a middleman in the resale of the subject merchandise into the U.S. and include in the Department's dumping calculations the full extent of dumping caused by Ta Chen's pricing to its unaffiliated U.S. customers.

Department's Position: We disagree with Ta Chen that it is not the middleman for resales of YUSCO's and Tung Mung's merchandise into the U.S. market. Evidence plainly establishes that for the purposes of conducting a middleman dumping investigation, there were sales of subject merchandise between YUSCO and Ta Chen and between Tung Mung and Ta Chen which, in turn, Ta Chen resold into the United States through its U.S. affiliate, TCI. We find the activity engaged in by Ta Chen as that of a classic middleman and therefore subject to our scrutiny.

Where a producer sells its merchandise to an unaffiliated middleman, it has been the Department's long-standing practice normally to select as the U.S. price the price between the foreign producer and the unaffiliated middleman, provided that the foreign producer knew or had reason to know that its merchandise was destined for export to the United States. *See Antifriction Bearings From France*, 57 FR 28360 (1992)(Comment 18). However, if the middleman is reselling below cost, the sale between the producer and the middleman may not be an appropriate basis for establishing the total margin of any dumping that may have occurred. The legislative history to the 1979 Act makes clear that Congress recognized that middlemen may also be engaged in dumping and acknowledged that the Department had authority to investigate "sales from a foreign producer to middlemen and any sales between middlemen before sale to the first unrelated U.S. purchaser * * * to avoid below cost sales by the middlemen." *See* H.R. Rep. No. 317, 96th Cong., 1st Sess. 75 (1979); and the Senate Report. Therefore, there is no question that the Department has the authority to depart from its normal practice, where circumstances warrant, and investigate whether dumping is being masked or understated by middlemen. *See Fuel Ethanol* (the legislative history of the 1979 Act sustained the Treasury Department's practice of using the price between the manufacturer and unrelated trading company for exports to the U.S. when the manufacturer knew the destination at the time of sale to the exporter, but

was not intended to bar us from looking at all facets of the transaction). Where the Department determines that a substantial portion of the middleman's resales in the United States was made at below the middleman's total acquisition costs and the middleman incurred substantial losses on those resales, middleman dumping has occurred and the margin calculation is adjusted accordingly, *i.e.*, we look to the middleman's first sale to an unaffiliated customer. *See Amended Preliminary Determination; Fuel Ethanol.*

Ta Chen acknowledges that the Department has the authority to conduct middleman dumping investigations but offers various arguments against applying middleman dumping to Ta Chen. Ta Chen mainly argues that if there was not a sale between YUSCO and Ta Chen, but Ta Chen merely acted as a selling agent for its wholly-owned U.S. affiliate, TCI, there can be no middleman and thus no middleman dumping.

Here, the verified evidence establishes that YUSCO and Tung Mung made sales to Ta Chen, not directly to TCI (although Tung Mung did have a small number of direct sales to TCI, we are not considering them to be subject to our middleman investigation). Contrary to Ta Chen's assertions otherwise, Ta Chen did take legal title to the merchandise. Even though YUSCO and Tung Mung shipped the merchandise fob to TCI at a port in Taiwan, a purchaser need not take physical possession of merchandise to have legal title. Here, Ta Chen negotiated the sale with YUSCO and Tung Mung, signs a sales contract with YUSCO and Tung Mung, was invoiced by YUSCO and Tung Mung, paid YUSCO and Tung Mung for the merchandise, entered these sales into Ta Chen's book, and undertook various other activities involved in exporting and transporting the merchandise. *See* Exhibits 6 and 8 of Tung Mung's Verification Report dated April 12, 1999, page A–10 of Tung Mung's questionnaire response dated September 8, 1998. *See* also pages 5, 13 and Exhibit 9 of YUSCO's Sales Verification report dated April 12, 1999. Thus, the evidence is sufficient to establish that Ta Chen was acting as a middleman within the meaning of the antidumping law.

Further, trading companies such as Ta Chen have typically been the focus of the Department's investigation into middleman dumping allegations because most often trading companies engage in the "successive resales from the foreign producer to the first unrelated U.S. buyer," thus prompting our scrutiny. *See, e.g., Electrolytic Manganese Dioxide From Japan*, 58 FR 28551 (May 14, 1993); *Fuel Ethanol; PC Strand From Japan*: Final Results of Redetermination Pursuant to Court Remand, Court. No. 90–12–00633 (August 5, 1994); see also *Consolidated International Automotive, Inc.* v. *United States*, 809 F. Supp. 125, 130 (CIT 1992).

We also disagree that we should examine Ta Chen's role in the transaction chain by applying the criteria we normally use to determine if U.S. sales are EP or CEP sales. For a more complete discussion of this issue, *see SSPC from Taiwan*, Comment 6.

Finally, given that we find that Ta Chen is a middleman, the question Ta Chen raises regarding the geographical location of the middleman is moot, since Ta Chen is located in the exporting country and hence clearly within the ambit of a middleman dumping investigation. *See e.g.*, Antidumping Manual, Chapter 7 at 5 (if the Department receives a documented allegation that the trading company located in the exporting country or a third country is reselling to the United States at prices which do not permit the recovery of its total acquisition costs, we will initiate a middleman dumping investigation).

Suspension of Liquidation

In accordance with section 735(c)(1)(B) Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. The all-others rate reflects an average of the corroborated non-*de minimis* margins alleged in the petition. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Tung Mung/Ta Chen	14.95
Tung Mung	14.95
Chang Mien	0.98
YUSCO/Ta Chen	34.95
YUSCO	34.95
All Others	12.61

Since the final weighted average margin percentage for Chang Mien is *de minimis*, Chang Mien will be excluded from an antidumping order, if issued, on stainless steel sheet and strip in coils from Taiwan as a result of this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13681 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Craig W. Matney, Gregory W. Campbell, or Alysia Wilson, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4087, 482–1778, 482–2239, or 482–0108, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of

stainless steel sheet and strip in coils from Italy. For information on the estimated countervailing duty rates, please see the Suspension of Liquidation section of this notice.

The Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steels, Inc., Lukens Inc., AFL–CIO/CLC (USWA), Butler Armco Independent Union and Zanesville Armco Independent Organization, Washington Steel Division of Bethlehem Steel Corp., United Steel Workers of America (the petitioners).

Case History

Since our preliminary determination on November 9, 1998 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy*, 63 FR 63900 (November 17, 1998) (*Preliminary Determination*)), the following events have occurred:

We conducted verification in Belgium and Italy of the questionnaire responses of the European Commission (EC), Government of Italy (GOI), Acciai Speciali Terni S.p.A.(AST), and Arinox S.r.L. (Arinox) from November 11 through November 27, 1998. The petitioners, AST, and Arinox filed case and rebuttal briefs on February 17 and February 23, 1999. A public hearing was held on February 25, 1999. After the hearing, at the Department's request, additional comments were submitted by petitioners and respondents on March 2, 1999. On March 12, 1999, the EC submitted additional comments. On May 6, 1999, the Department solicited information from the EC clarifying information already on the record. Parties submitted comments on this information on May 11, 1999.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also

excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Injury Test

Because Italy is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On August 5, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (*see Certain Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 5, 1998)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Respondents Investigated

In this investigation there are six respondents, AST and Arinox, producers and exporters of the subject merchandise, and the governments of Italy, Terni, Liguria and the EC.

Of these two, only AST and its predecessors underwent changes in ownership during the period for which we are measuring subsidy benefits.

Corporate History of AST

The corporate history of AST is described fully in *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils form Italy* (*Plate Final*), 64 FR 15508–15509 (March 31, 1999).

Changes in Ownership

Factual information pertaining to AST, parties' comments on our methodology, our responses to those comments and the application of our change-in-ownership methodology we employed in the instant case have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15509–15510).

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: Consistent with our finding in *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR at 40474, 40477 (October 22, 1997) (*Wire Rod from Italy*), we have based our long-term benchmarks and discount rates on the Italian Bankers' Association (ABI) rate. Because the ABI rate represents a long-term interest rate provided to a bank's most preferred customers with established low-risk credit histories, commercial banks typically add a spread ranging from 0.55 percent to 4 percent onto the rate for other customers, depending on their financial health.

In years in which Arinox and AST or its predecessor companies were creditworthy, we added the average of

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

that spread to the ABI rate to calculate a nominal benchmark rate. In years in which AST or its predecessor companies were uncreditworthy (*see* Creditworthiness section below), we calculated the discount rates in accordance with our methodology for constructing a long-term interest-rate benchmark for uncreditworthy companies. (Arinox was not alleged to be uncreditworthy.) Specifically, we added to the ABI rate a spread of four percent in order to reflect the highest commercial interest rate available to companies in Italy. We added to this rate a risk premium equal to 12 percent of the ABI, as described in section 355.44(b)(6)(iv) of our 1989 Proposed Regulations (*see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment*, 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Regulations*)). While the 1989 Proposed Regulations are not controlling, they do represent the Department's practice for purposes of this investigation.

Additionally, information on the record of this case indicates that published ABI rates do not include amounts for fees, commissions and other borrowing expenses. Because such expenses raise the effective interest rate that a company would experience, and because it is our practice to use effective interest rates, where possible, we have included an amount for these expenses in the calculation of our effective benchmark rates (*see* section 355.44(b)(8) of the *1989 Proposed Regulations* and *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30373 (June 14, 1996)). While we do not have information on the expenses that would be applied to long-term commercial loans, the GOI supplied information on the borrowing expenses on overdraft loans as an approximation of expenses on long-term commercial loans. This information shows that expenses on overdraft loans range from 6 to 11 percent of interest charged. Accordingly, we increased the nominal benchmark rate by 8.5 percent, which represents the average reported level of borrowing expenses, to arrive at an effective benchmark rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the General Issues Appendix (GIA), attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37227 (July 9, 1993) (*Certain Steel from Austria*). In *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (CIT) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the CIT's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the court in *British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). In recent countervailing duty investigations, it has been our practice to follow the court's decision in *British Steel II* and to calculate a company-specific allocation period for all countervailable non-recurring subsidies.

After considering parties' comments and based upon our analysis of the data submitted by AST regarding the AUL of its assets, we are using a 12-year AUL for AST. This 12-year AUL is based on information in *Wire Rod from Italy*, 63 FR at 40477, and in the *Preliminary Determination*, 63 FR at 63903, which we find to be a good estimate of the AUL of the Italian stainless steel industry. For an explanation of why we have rejected AST's company-specific AUL, *see* our response to Comment 6. For Arinox, we are using its company-specific AUL, which is also 12 years.

Equityworthiness

In measuring the benefit from a government equity infusion, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. In this case, a market benchmark does not exist. Therefore, we examined whether AST's predecessors were equityworthy in the years they received infusions. *See Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago*, 62 FR 50003, 50004 (October 22, 1997). In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion, based on information available at that time. *See* GIA, 58 FR at 37244. Our review of the record has not led us to change our finding from that in *Wire Rod from Italy*, in which we found AST's predecessors unequityworthy from 1986 through 1988 and from 1991 through 1992 (63 FR 40477). The petitioners did not allege in the petition that Arinox received GOI equity infusions; therefore, we did not examine Arinox's equityworthiness.

Consistent with our equity methodology described in the GIA, 58 FR at 37239, we consider equity infusions into unequityworthy companies as infusions made on terms inconsistent with the usual practice of a private investor and, therefore, we have treated these infusions as grants. This methodology is based on the premise that a finding by the Department that a company is not equityworthy is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the year of the infusion. This determination is based on the information available at the time of the investment.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 21, 1997).

Terni, TAS and ILVA, AST's predecessor companies, were found to be uncreditworthy from 1986 through 1993 in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy*, 59 FR 18357, 18358 (April 18, 1994) (*Electrical Steel from Italy*), and in *Wire Rod from Italy*, 63 FR at 40477. No new information has been presented in this investigation that would lead us to reconsider these findings. (*See* Comment 14 below regarding the issue of AST's creditworthiness in 1993.) Therefore, consistent with our past practice, we continue to find Terni, TAS, and ILVA uncreditworthy from 1986 through 1993. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993). We did not analyze AST's creditworthiness in 1994 through 1997 because AST did not negotiate new loans with the GOI or EC during these years. There was no allegation in the petition that Arinox was uncreditworthy; therefore, we did not analyze its creditworthiness.

I. Programs Determined To Be Countervailable

GOI Programs

A. Equity Infusions to Terni, TAS and ILVA

The facts pertaining to AST and its predecessor companies with respect to these equity infusions and our methodology have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15511–15512). Accordingly, we determine the estimated net benefit to be 0.99 percent *ad valorem* for AST. Arinox did not receive any GOI equity infusions.

B. Benefits From the 1988–90 Restructuring of Finsider[6]

The facts pertaining to AST and its predecessor companies with respect to restructuring benefits and our methodology have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15512). Accordingly, we determine the estimated net benefit to be 2.71 percent *ad valorem* for AST. Arinox did not receive any benefit under this program.

C. Debt Forgiveness: ILVA-to-AST[7]

As of December 31, 1993, the majority of ILVA's viable manufacturing activities had been incorporated separately (or "demerged") into either AST or ILVA Laminati Piani (ILP); ILVA Residua was primarily a shell company with liabilities far exceeding assets, although it did contain some operating assets which it spun off later. In contrast, AST and ILP, now ready for sale, had operating assets and relatively modest debt loads.

We determine that AST (and consequently the subject merchandise) received a countervailable subsidy in 1993 when the bulk of ILVA's debt was placed in ILVA Residua, rather than being proportionately allocated to AST and ILP. The amount of debt that should have been attributable to AST but was instead placed with ILVA Residua was equivalent to debt forgiveness for AST at the time of its demerger. In accordance with our past practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act and provides a benefit in the amount of the debt forgiveness. Because the debt forgiveness was received only by privatized ILVA operations, we determine that it is specific under section 771(5A)(D) of the Act.

In the *Preliminary Determination*, 63 FR at 63904, the amount of liabilities that we attributed to AST was based on the EC's 9th Monitoring Report of the total cost of the liquidation process to the GOI. However, for this final determination, we have re-examined our methodology and determined that it is more appropriate to base our calculation on the gross liabilities left behind in ILVA Residua. *See* our response to Comment 9 and the March 19, 1999, Memorandum to Richard W. Moreland on the 1993 Debt Forgiveness.

In calculating the amount of unattributable liabilities remaining after the demerger of AST, we started with the most recent "total comparable indebtedness" amount from the 10th Monitoring Report, which represents the indebtedness, net of debts transferred in the privatizations of ILVA Residua's operations and residual asset sales, of a theoretically reconstituted, pre-liquidation ILVA. In order to calculate the total amount of unattributed liabilities which amount to countervailable debt forgiveness, we made the following adjustments to this figure: for the residual assets that had not actually been liquidated as of the 10th and final Monitoring Report (*see* Comment 13); for assets that comprised SOFINPAR, a real estate company, because these assets were sold prior to the demergers of AST and ILP; for the liabilities transferred to AST and ILP; income received from the privatizations of ILVA Residua's operations; for the amount of the asset write-downs specifically attributable to AST, ILP, and ILVA Residua companies; and for the amount of debts transferred to Cogne Acciai Speciali (CAS), an ILVA subsidiary that was left behind in ILVA Residua and later spun off, as well as the amount of ILVA debt attributed to CAS and countervailed in *Wire Rod from Italy*, 63 FR at 40478. *See* May 19, 1999, Calculation Memorandum and our responses to Comments 9–15 below for further information on our calculation methodology.

The amount of liabilities remaining represents the pool of liabilities that are not individually attributable to specific ILVA assets. We apportioned this debt to AST, ILP, and operations sold from ILVA Residua based on their relative asset values. We used the total consolidated asset values reported in AST's and ILP's December 31, 1993, financial results and used the sum of purchase price plus debts transferred as a surrogate for the asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod from Italy*, we did not include its assets in the amount of ILVA Residua's privatized assets. Also, consistent with our *Preliminary Determination*, we did not include in ILVA Residua's viable assets the assets of the one ILVA Residua company sold to IRI because this sale does not represent a sale to a non-governmental entity.

We treated the debt forgiveness to AST as a non-recurring grant because it was a one-time, extraordinary event. The discount rate we used in our grant formula included a risk premium based on our determination that ILVA was uncreditworthy in 1993 (*see* Comment 14 below and March 19, 1999, Memorandum on the Appropriate Basis for 1993 Creditworthiness Analysis of AST). We followed the methodology described in the Change in Ownership section above to determine the amount appropriately allocated to AST after its privatization. (The change in the total amount of debt forgiveness attributed to AST from the *Plate Final* changes the total percent of subsidies repaid in the 1994 privatization calculations. The change in this ratio affects the amount of subsidies repaid to the GOI for all programs which pass through this calculation.) We divided this amount by AST's total consolidated sales during the POI. Accordingly, we determine the estimated net benefit to be 6.79 percent *ad valorem* for AST. Arinox did not receive any benefits under this program.

D. Law 796/76: Exchange Rate Guarantees

The facts pertaining to AST with respect to Law 796/76 exchange-rate guarantees and our methodology have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15513). Accordingly, we determine the estimated net benefit to AST for this program to be 0.82 percent *ad valorem*. Arinox did not receive any benefits under this program.

E. Law 675/77

The facts pertaining to AST with respect to Law 675/77 benefits and our methodology have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15513). Accordingly, we determine the estimated net benefit from this program to be 0.07 percent *ad valorem* for AST. Arinox did not receive any benefits under this program.

[6] This program was referred to as Debt Forgiveness: Finsider-to-ILVA Restructuring in *Initiation of Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa*, 63 FR 23272 (April 28, 1998) (*Initiation Notice*).

[7] Includes the following programs from the *Initiation Notice*: Working Capital Grants to ILVA, 1994 Debt Payment Assistance by IRI, and ILVA Restructuring and Liquidation Grant.

F. Law 10/91

The facts pertaining to AST with respect to Law 10/91 benefits and our methodology have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15514). Accordingly, we determine the estimated net benefit in the POI for AST to be 0.00 percent *ad valorem*. Arinox did not receive any benefits under this program.

G. Pre-Privatization Employment Benefits (Law 451/94)

Law 451/94 was created to conform with EC requirements on government assistance related to restructuring and capacity reduction in the Italian steel industry. Law 451/94 was passed in 1994 and enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early. During the 1994–1996 period, Law 451/94 provided for the early retirement of up to 17,100 Italian steel workers. Benefits applied for during the 1994–1996 period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years. Employees at both AST and Arinox received payments under Law 451 during the POI.

In the *Plate Final* and the *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Plate in Coils from Italy*, 63 FR 47246 (September 4, 1998) (*Plate Preliminary*), the Department determined that the early retirement benefits provided under Law 451/94 are a countervailable subsidy under section 771(5) of the Act. Law 451/94 provides a financial contribution, as described in section 771(5)(D)(i) of the Act, because it relieves the company of costs it would have normally incurred. Also, because Law 451/94 was developed for and exclusively used by the steel industry, we determined that Law 451/94 is specific within the meaning of section 771 (5A)(D) of the Act.

In the *Plate Preliminary*, we used the Cassa Integrazione Guadagni—Extraordinario ("CIG–E") program as our benchmark to determine what the obligations of Italian steel producers would have been when laying off workers. We compared the costs the steel companies would incur to lay off workers under the CIG–E program to the costs they incurred in laying off workers under Law 451/94. We found that the steel companies received a benefit by virtue of paying less under Law 451/94 than what they would have paid under CIG–E.

In the preliminary determination of the instant proceeding, 63 FR at 63908, we changed our benchmark because record evidence suggested that the CIG–E program applied in situations where the laid-off workers were expected to return to their jobs after the layoff period. Since the workers retiring early under Law 451/94 were separated permanently from their company, we adopted the so-called "Mobility" provision as our benchmark. Like Law 451/94, the Mobility provision addressed permanent separations from a company.

Since then, we have learned more about the GOI's unemployment programs under Law 223/91 (including CIG–E and Mobility) and the early retirement program under Law 451/94. Based on this information, we do not believe that any of the alternatives described under Law 223/91 provides a benchmark *per se* for the costs that AST and Arinox would incur in the absence of Law 451/94. As noted above, the CIG–E program addresses temporary layoffs. The Mobility provision serves merely to identify the minimum payment the company would incur when laying workers off permanently. Under the Mobility provision, the company is first directed to attempt to negotiate a settlement with the unions prior to laying workers off permanently. Only if the negotiations fail will the company face the minimum payment required under Mobility.

Recognizing that Arinox and AST would be required to enter into negotiations with the unions before laying off workers, the difficult issue for the Department is to determine what the outcome of those negotiations might have been absent Law 451/94. At one extreme, the unions might have succeeded in preventing any layoffs. If so, the benefit to the companies would be the difference between what it would have cost to keep those workers on the payroll and what the companies actually paid under Law 451/94. At the other extreme, the negotiations might have failed and both companies would have incurred only the minimal costs described under Mobility. Then the benefit to AST and Arinox would have been the difference between what they would have paid under Mobility and what they actually paid under Law 451/94:

We have no basis for believing either of these extreme outcomes would have occurred. It is clear that AST and Arinox sought to layoff workers. However, we do not believe that the companies would simply have fired the workers without reaching accommodation with the unions. Statements by GOI officials at verification indicated that failure to negotiate a separation package with the union would lead to labor unrest, strikes, and lawsuits. Therefore, we have proceeded on the basis that AST and Arinox's early retirees would have received some support from the companies.

In attempting to determine the level of post-employment support that AST and Arinox would have negotiated with their unions, we looked to the companies' own experiences. As we learned at verification, by the end of 1993, AST had established a plan for the termination of redundant workers (as part of an overall ILVA plan). Under this plan, the early retirees would first be placed on CIG–E as a temporary measure and then they would receive benefits under Law 451/94. According to AST officials, the temporary measure was needed because "they were waiting for the passage of the early retirement program under Law 451/94, which at the time had not been implemented by the GOI." Similarly, Arinox placed workers on the mobility program while waiting to enroll in the Law 451/94 early retirement program.

The evidence on the record indicates that at the time agreement was reached with the unions on the terms of the layoffs, the companies and their workers were aware that benefits would be made available under Law 451/94. In such situations, *i.e.*, where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's practice is to treat half of the amount paid by the government as benefiting the company. *See* GIA, 58 FR at 37225. In the GIA, the Department stated that when the government's willingness to provide assistance is known at the time the contract is being negotiated, this assistance is likely to have an effect on the outcome of the negotiations. In these situations, the Department will assume that the difference between what the workers would have demanded and what the company would have preferred to have paid would have been split between the parties, with the result that one-half of the government payment goes to relieving the company of an obligation that would exist otherwise. *See* GIA, 58 FR at 37256. This methodology was upheld in *LTV Steel Co.* v. *United States*, 985 F. Supp. 95, 116 (CIT 1997) (*LTV Steel*).

Therefore, with respect to AST, Arinox and their workers, we determine the following: (1) Under Italian Law

223/91, both companies would have been required to negotiate with their unions about the level of benefits that would be made to workers separated permanently from the company, and (2) since AST, Arinox, and their unions were aware at the time of their negotiations that the GOI would be making payments to those workers under Law 451/94, the benefit to AST and Arinox is one half of the amount paid to the workers by the GOI under Law 451/94. *See* Memorandum to Susan H. Kuhbach on Law 451/94—Early Retirement Benefits dated May 19, 1999.

Consistent with practice, we have treated benefits to AST and Arinox under Law 451/94 as recurring grants expensed in the year of receipt. *See* GIA, 58 FR at 37226. To calculate the benefit received by the companies during the POI, we multiplied the number of employees who were receiving early retirement benefits during the POI by the average salary. In the case of AST, the Department had information specifying salary amounts by worker type, so we applied this average instead of a broader salary average. *See Plate Final*, 64 FR at 15515. Since the GOI was making payments to these workers equaling 80 percent of their salary, and one-half of that amount was attributable to AST and Arinox, we multiplied the total wages of the early retirees during the POI by 40 percent. We then divided this total amount by total consolidated sales during the POI. On this basis, we determine the estimated net benefit during the POI to AST to be 0.69 percent and Arinox 0.57 percent *ad valorem*.

H. Law 181/89: Worker Adjustment and Redevelopment Assistance[8]

The facts pertaining to AST with respect to Law 181/89 benefits and our methodology have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15515). Consequently, we determine the estimated net benefit to AST in the POI for this program to be 0.00 percent *ad valorem*. Arinox did not receive any benefits under this program.

I. Law 488/92

Law 488/92 provides grants for industrial projects in depressed regions of Italy. The subsidy amount is based on the location of the investment and the size of the enterprise. The funds used to pay benefits under this program are derived in part from the GOI and in part from the Structural Funds of the European Union (EU). To be eligible for benefits under this program, the enterprise must be located in one of the regions in Italy identified as EU Structural Funds Objective 1, 2 or 5b.

We determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The grants are a financial contribution under section 771(5)(D)(i) of the Act providing a benefit in the amount of the grant. Because assistance is limited to enterprises located in certain regions, we determine that the program is specific under section 771(5A)(D) of the Act.

According to AST officials, although the company has applied for aid under this program, no approval has yet been granted and no funds have yet been disbursed. Accordingly, we determine the estimated net benefit to AST to be 0.00 percent *ad valorem*.

Under this program during the POI, Arinox received one grant, disbursed in two portions. We have treated benefits under this program as non-recurring because each grant requires separate government approval. The benefit to Arinox was calculated as the sum of the two portions provided. Because this sum is greater than 0.5 percent of Arinox's sales, we allocated the benefit over Arinox's AUL. We divided the benefit allocated to the POI by Arinox's total sales during the POI. Accordingly, we determine the estimated net benefit to Arinox to be 0.12 percent *ad valorem*.

EU Programs

A. ECSC Article 54 Loans

The facts pertaining to AST with respect to ECSC Article 54 loan benefits and our methodology have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15515). Accordingly, we determine the estimated net benefit to AST to be 0.11 percent *ad valorem*. Arinox did not have any outstanding Article 54 loans during the POI.

B. European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EU, was established to improve workers' opportunities through training and to raise workers' standards of living throughout the European Community by increasing their employability. There are six different objectives identified by the Structural Funds: Objective 1 covers projects located in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 funds training for employees in companies undergoing restructuring, Objective 5 pertains to agricultural areas, and Objective 6 pertains to regions with very low population (*i.e.*, the far north).

During the POI, AST received ESF assistance for projects falling under Objectives 2 and 4, and Arinox received assistance under Objective 2. In the case of AST, the Objective 2 funding was to retrain production, mechanical, electrical maintenance, and technical workers, and the Objective 4 funding was to train AST's workers to increase their productivity. The grants Arinox received were for worker training.

The Department considers worker-training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 30287, 30294 (June 14, 1996) (*Pasta From Italy*). Since companies normally incur the costs of training to enhance the job-related skills of their own employees, we determine that this ESF funding relieves AST and Arinox of obligations they would have otherwise incurred.

Therefore, we determine that the ESF grants received by AST and Arinox are countervailable within the meaning of section 771(5) of the Act. The ESF grants are a financial contribution as described in section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grants.

Consistent with prior cases, we have examined the specificity of the funding under each Objective separately. *See Wire Rod from Italy*, 63 FR at 40487. In this case, the Objective 2 grants received by AST and Arinox were funded by the EU, the GOI, the regional government of Umbria acting through the provincial government of Terni for AST, and the regional government of Liguria for Arinox. In *Pasta From Italy*, 61 FR at 30291, the Department determined that Objective 2 funds provided by the EU and the GOI were regionally specific because they were limited to areas within Italy which are in industrial decline. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. The provincial government of Terni and regional government of Liguria did not provide information on the distribution of their grants under Objective 2. Therefore, since the regional governments failed to cooperate to the best of their ability by not supplying the requested information on the distribution of grants under Objective 2, we are assuming, as adverse facts

[8] Includes the Decree Law 120/89: Recovery Plan for Steel Industry program contained in *Initiation Notice*.

available under section 776(b) of the Act, that the funds provided by the governments of Terni and Liguria are specific.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion is *de jure* specific because its availability is limited on a regional basis within the EU. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). *See Wire Rod from Italy*, 63 FR at 40487. AST has argued that this decision is not reflective of the fact that ESF Objective 4 projects are funded throughout Italy and all Member States, albeit under the auspices of separate, regionally limited documents (*see* Comment 16). We agree with AST that it may be appropriate for us to revisit our previous decision regarding the *de jure* specificity of assistance distributed under the ESF Objective 4 Single Programming Document (SPD) in Italy. Our decision in *Wire Rod from Italy* was premised upon our determination in the *Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada*, 51 FR 10055 (March 24, 1986) (*Groundfish from Canada*). In that case, respondents argued that benefits provided under the General Development Agreement (GDA) and Economic and Regional Development Agreements (ERDA) were not specific because the federal government had negotiated these agreements with every province. We did not accept this argument because the GDAs and ERDAs "do not establish government programs, nor do they provide for the administration and funding of government programs." Instead, the Department analyzed the specificity of the "subsidiary agreements" negotiated individually under the framework of the GDA and ERDA agreements.

In contrast to *Groundfish from Canada*, 51 FR at 10066, the agreements negotiated between the EU and the Member States (*i.e.*, Single Programming Documents and Community Support Frameworks) both establish government programs and provide for the administration and funding of such programs throughout the entirety of the European Union. Therefore, if we were to consider all the EU-Member State agreements together, we would arguably be unable to determine that the program is *de jure* specific.

Notwithstanding this argument, given the lack of information on the use of Objective 4 funds by either the EC or GOI, we must, as adverse facts available in the instant case, find the aid to be *de facto* specific. Both the EC and GOI stated that they were unable to provide us with the industry and region distribution information for each Objective 4 grant in Italy despite requests in our questionnaires and at verification. While the GOI, at verification, provided a list of grantees that received funds under the multiregional operating programs in non-Objective 1 regions, it declined the opportunity to identify the industry and region of such grantees (*see* February 3, 1999, memorandum on the Results of Verification of the GOI at 16). Furthermore, the regional governments have refused to cooperate to the best of their ability in this investigation despite our requests. Therefore, we continue to find that the aid received by AST is specific.

The Department normally considers the benefits from worker-training programs to be recurring. *See* GIA, 58 FR at 37255. However, consistent with our determination in *Wire Rod from Italy*, 63 FR at 40488, that these grants relate to specific, individual projects, we have treated these grants as non-recurring grants because each required separate government approval.

Because the amount of funding for each of AST's projects was less than 0.5 percent of AST's sales in the year of receipt, we have expensed these grants received in the year of receipt. Two of AST's grants were received during the POI. For these grants, we divided this benefit by AST's total sales during the POI and calculated an estimated net benefit of 0.01 percent *ad valorem* for ESF Objective 2 funds and 0.03 percent *ad valorem* for ESF Objective 4 funds. In the case of Arinox, since the amount of ESF Objective 2 funding was more than 0.5 percent of Arinox's sales in the year of receipt, we have allocated these grants over Arinox's AUL. We divided the benefit allocated to the POI by Arinox's total sales during the POI. Accordingly, we determine the estimated net benefit to Arinox for this program to be 0.34 percent *ad valorem*.

II. Programs Determined To Be Not Countervailable

A. AST's Participation in the THERMIE Program

The facts pertaining to the THERMIE program and our analysis of that program have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15517).

IV. Other Programs Examined

A. Loan to KAI for Purchase of AST

The facts pertaining to the loan to KAI for the purchase of AST have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15517). Using even the most adverse of assumptions, the estimated net benefit to AST for this program would be 0.00 percent *ad valorem*, when rounded. Therefore, we find it unnecessary to analyze this program.

B. Brite-EuRam

The facts pertaining to the Brite-EuRam program have not changed since the *Plate Final*. Please see that notice for a full explanation (64 FR at 15517–15518). Consistent with the *Plate Final*, we are not making a determination on the countervailability of the Brite-EuRam program in this proceeding. Should an order be put in place, however, we will solicit information on the Brite-EuRam program in a future administrative review, if one is requested. *See* 19 CFR 351.311(c)(2).

V. Programs Determined To Be Not Used

GOI Programs

A. Benefits from the 1982 Transfer of Lovere and Trieste to Terni (called "Benefits Associated With the 1988–90 Restructuring" in the *Initiation Notice*)
B. Law 345/92: Benefits for Early Retirement
C. Law 706/85: Grants for Capacity Reduction
D. Law 46/82: Assistance for Capacity Reduction
E. Debt Forgiveness: 1981 Restructuring Plan
F. Law 675/77: Mortgage Loans, Personnel Retraining Aid and VAT Reductions
G. Law 193/84: Interest Payments, Closure Assistance and Early Retirement Benefits
H. Law 394/81: Export Marketing Grants and Loans
I. Law 341/95 and Circolare 50175/95
J. Law 227/77: Export Financing and Remission of Taxes

EU Programs

A. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid
B. European Regional Development Fund
C. Resider II Program and Successors
D. 1993 EU Funds

Interested Party Comments

Comment 1: The Extinguishment v. Pass-Through of Subsidies during Privatization

The facts at hand regarding this issue, parties' arguments, and our response to those arguments have not changed since

the *Plate Final*. Please see that notice for a full explanation (Comment 1, 64 FR at 15518–15519).

Comment 2: Calculation of "Gamma"

The facts at hand, parties" arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 2, 64 FR at 15519).

Comment 3: Calculation of the Purchase Price

AST argues that the Department undervalued the subsidies repaid in the preliminary determination by basing the purchase price only on the cash paid for the company. Instead, AST suggests that the purchase price should also include the debt assumed by the purchasers as part of the sales transaction.

AST maintains that including assumed debt in the purchase price is appropriate because buyers and sellers are indifferent as to the mix of cash paid and debt assumed; a dollar of debt assumed, AST argues, is equivalent to a dollar of cash paid. If the buyers of ILVA's stainless division had offered only the cash portion of their offer and had not agreed to assume the debt, AST contends that their bid would not have been accepted.

To support its argument, AST offers the example of purchasing a house with an assumable mortgage. A person wanting to buy the house, according to AST, has several financing options: (1) Paying cash for the total sales price, (2) paying a down payment for some portion of the sales price and obtaining a new mortgage on the balance, or (3) assuming the existing mortgage and paying cash for the balance. AST states that, in all cases, the purchase price of the home remains the same.

Moreover, AST contends, by not including assumed debt in the purchase price, the Department's privatization methodology for determining the amount of subsidies repaid will render different results depending upon the mix of assumed debt and cash required in a particular purchase.

The petitioners counter by stating that the cash price paid for a company already reflects the liabilities in that the price paid is the valuation by the buyer of the company as a whole, including assumed liabilities. In addition, the petitioners claim that it is the Department's well-established practice not to add assumed liabilities to the purchase price citing *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 55490, 55001 (October 22, 1997) (*Wire Rod from Germany*), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada*, 62 FR 54972, 54986 (October 22, 1997) (*Wire Rod from Canada*), as two cases in which the Department declined expressly to make an upwards adjustment to price to account for assumed liabilities/obligations. In looking at AST's example of a home purchased with an assumable mortgage, the petitioners point out that the value of that home to the buyer is the net equity position-the difference between the value of the home and the mortgage. Additionally, the petitioners point out that the seller of the home only receives the amount of equity in the home and not the full market value.

Department's Position: For purposes of this final determination, we have continued to calculate the purchase price as the amount of cash received and have not included the amount of debt assumed by the purchasers of AST. As noted by petitioners, it has not been the Department's practice to include assumed debt as part of the purchase price in calculating the amount of subsidies that are repaid through a privatization transaction (*see* cases cited by petitioners). Moreover, beyond its mere assertion that buyers and sellers are indifferent as to the mix of cash paid and debt assumed, AST has not provided any information to support its claim that cash paid and debt assumed by the buyer are interchangeable. *See also* our response to Comment 3 in the *Plate Final* (64 FR at 15520).

Comment 4: Repayment in Spin-Off Transactions

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 4, 64 FR at 15520).

Comment 5: Sale of a Unit to a Government Agency

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 5, 64 FR at 15520).

Comment 6: Use of Company-Specific AUL

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 6, 64 FR at 15521).

Comment 7: Revision of AST's Volume and Value Data

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 7, 64 FR at 15521–15522).

Comment 8: Ratio Adjusting the Benefit Stream for the Sale of AST

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 8, 64 FR at 15522).

Comment 9: Use of Gross Versus Net Debt in 1993 Debt Forgiveness Calculation

AST argues that the record of this case establishes a precise amount that represents the "actual cost to the GOI" for the liquidation of ILVA, based on the EC's strict monitoring. Assuming that the Department countervails these costs, AST argues that the Department cannot consider the benefit to the recipients to be larger than the amount calculated by the EC as the actual cost to the GOI.

AST states that, in past cases, such as *Al Tech Specialty Steel Corp.* v. *United States*, 661 F. Supp. 1206, 1213 (CIT 1987), the Department concluded that it would be inappropriate to look behind the action of a tribunal charged with the administration of a liquidation process. AST states that the GOI would have been subject to significant legal penalty had it failed to abide by the requirements of the EC-supervised liquidation. Thus, AST implicitly argues that the Department should accept the amount of remaining debt calculated by the EC, without examining the underlying calculation of this remaining debt figure.

Furthermore, AST asserts that, because buyers should be indifferent to the mix of cash paid and debts assumed in purchasing a company, the Department's methodology inappropriately attributes a greater amount of debt forgiveness to a company whose buyers assume less debt but pay a higher cash price. In fact, claims AST, if the GOI had paid down the same amount of ILVA's liabilities calculated as uncovered in the EC's Monitoring Reports prior to the liquidation process, each of the companies could have been "sold" entirely for a transfer of debt (*i.e.*, no cash transfer) in the amount of transferred assets. In this event, AST argues, there would be no residual debt and the Department's methodology

would lead it to countervail only the grant given prior to the liquidation process.

The petitioners state that the Department, consistent with its practice, should consider the total amount of ILVA's liabilities and losses forgiven on behalf of AST at the time of its spin-off as the benefit to AST. *See, e.g., Electrical Steel from Italy*, 59 FR at 18365, and *Certain Steel from Austria*, 58 FR at 37221. The petitioners assert that the income received as a result of the sales of ILVA's productive units should not be deducted from the gross amount of ILVA's losses and liabilities for three reasons. First, the petitioners argue, the debt forgiveness occurred prior to the actual sales of ILVA's productive units and, thus, should be treated separately. Second, the petitioners contend, the amount of income at the time of the sales was greater than it would have been without the debt reduction. Finally, according to the petitioners, the Department's change-in-ownership methodology accounts separately for repayment of prior subsidies associated with the purchase price of the company sold.

Department's Position: We disagree with AST that we are precluded from "looking behind" the EC's Monitoring Report. While the EC's Monitoring Report is a useful source of information about the liquidation of ILVA, the methodologies the EC uses to measure and report amounts associated with the liquidation may not be appropriate for our purposes, *i.e.*, for identifying and measuring the countervailable benefit to AST from the GOI liquidation activities. For example, we could not rely on calculations based on the cost to the government rather than the benefit to the recipient.

As we understand AST's argument, rather than carry out the liquidation of ILVA and privatization of ILVA's constituent parts as it did, the GOI could simply have forgiven the ILVA Group's debt up to the point where assets equaled liabilities (and the Group's net equity was zero). In turn, each of the constituent parts of ILVA could be "sold" with assets equal to liabilities at a price of zero. Under this scenario, the total countervailable subsidy under the Department's methodology would clearly be the amount of debt forgiven, which corresponds to the amount in the EC's Monitoring Report. However, because the privatization was structured so that ILVA's constituent parts took certain liabilities with them when they were privatized and because the Department does not include debt assumed as part of the purchase price, the amount of the debt forgiveness and, consequently, the amount of the subsidy the Department found was vastly larger that the amount in the EC's Monitoring Report. In AST's view, this anomaly should be addressed by treating the amount of debt forgiveness reported by the EC as a grant to the new companies (and, hence, not passing through the change-in-ownership calculation), while the debt assumed by the purchasers should be included in the purchase price in calculating the amount of old subsidies that are repaid through privatization.

As discussed above in response to Comment 3, the Department's practice is not to include debt assumed by the buyer as part of the purchase price, and AST has not supported its assertion that buyers and sellers would be indifferent as to the mix of cash paid and debt assumed. *See also* our response to Comment 3 in the *Plate Final* (64 FR at 15520). Without support for this premise, we believe that AST's proposed methodology measures the cost to the Government of Italy of liquidating ILVA and not the benefit to AST resulting from the assignment and forgiveness of debt involved in the AST's demerger.

Comment 10: 1993 Debt Forgiveness Apportionment

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 10, 64 FR at 15523).

Comment 11: ILVA Residua Asset Value

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 11, 64 FR at 15523).

Comment 12: Use of Consolidated Asset Values for 1993 Debt Forgiveness Calculation

The facts at hand, parties' arguments regarding this issue and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 12, 64 FR at 15523–15524).

Comment 13: ILVA to AST Debt-Forgiveness Methodology

AST argues that, if the Department maintains the debt-forgiveness methodology it used in the *Plate Final*, it should make certain adjustments to its calculation to improve its accuracy. Specifically, AST asserts that the Department's methodology overstates the amount of liabilities assigned to AST as debt forgiveness by understating both the amount of residual assets liquidated and the amount of liabilities that were transferred in the privatization of ILVA Residua's operations. AST claims that the Department can correct both of these errors by basing its calculation on the "total comparable indebtedness" as calculated in the EC 10th Monitoring Report rather than ILVA Residua's 1993 financial statement.

Although the Department declined to make the requested adjustments as clerical-error corrections in the *Plate Final*, AST asserts that additional information exists on the record of the instant case that would allow the Department to make the requested adjustments in the final determination. Specifically, AST states that the Department's May 6, 1999, Memorandum to File, detailing a telephone conversation between Department personnel and the EC official who was in charge of compiling the Monitoring Reports, provides definitive support to make the requested changes. AST asserts that this telephone conversation confirmed that the Department did not take into account additional, "non-financial" (*e.g.*, accounts payable, accruals), liabilities that were transferred to the companies privatized from ILVA Residua, and that certain other residual assets, other than just liquid assets, were sold in the liquidation process. AST states that the EC official also confirmed that the Monitoring Report methodology accounts for both of these issues. Furthermore, while AST admits that the Department in past cases has only reduced the remaining liability pool by liquid assets, AST states that this was because it was not known whether any other assets had value. However, in this case, AST asserts, the Department has information on the value of all residual assets in the EC's Monitoring Reports. Despite the petitioners' claims in the *Plate Final*, AST submits that the Department did not specifically reject the use of the Monitoring Reports in the *Plate Final* but rather "re-examined" its methodology with regard to a different issue, the use of gross versus net debt (discussed in Comment 9).

The petitioners argue that the Department should not alter its calculation of the 1993 debt forgiveness adopted in the *Plate Final* because the suggested changes are not supported by record evidence, are based on events that happened after the 1993 demerger, and contain other errors. The petitioners contend that the Department found, in its May 4, 1999, Memorandum on Ministerial Errors in the *Plate Final*, that

the Monitoring Reports did not support the changes suggested by AST. Thus, the EC official's "mere references" to this report supporting AST's alleged errors in the May 6 telephone conference does not provide "definitive proof of AST's claim," states the petitioners. Additionally, the petitioners argue that the amount of non-financial debts that were allegedly transferred with the privatized companies may have been influenced by changes in the amounts of such debt after the 1993 demergers. While the petitioners admit that, if actually transferred, it would be appropriate to deduct any of ILVA's non-financial debts, they argue that the record does not establish any such non-financial debts transferred as tied to pre-demerger ILVA. Continuing, the petitioners argue that at the time of AST's demerger, ILVA Residua's liquidators could only be assured that its liquid assets would sell at their stated value. The fact that certain fixed and capital assets were sold later is irrelevant to the Department's intent to calculate the debt forgiveness conferred at the moment of AST's demerger, the petitioners posit. The petitioners also contend that the Department already accounted for fixed-asset sales through its change-in-ownership methodology such that it would be inappropriate to deduct these sales from ILVA's total indebtedness. Last, petitioners argue that AST's proposed calculation methodology uses the 1998 rather than the 1993 "total comparable indebtedness" figure from the Monitoring Reports incorrectly, and that the amount AST subtracted for the pre-demerger sale of assets should be added rather than subtracted.

Department's Position: In contrast to the *Plate Final*, the record of the instant case confirms AST's assertion that a greater amount of liabilities than we accounted for in the *Plate Final* were actually transferred with ILVA Residua's privatized assets and that the "total comparable indebtedness" reported in the Monitoring Reports more accurately reflects the residual assets that were sold in liquidation than the amount of "liquid assets" we used in the *Plate Final*. We agree with AST that we did not reject the use of the Monitoring Reports in the *Plate Final* but rather changed our methodology to capture the debt-forgiveness benefit to AST by starting with the gross rather than the net debt (*see* our response to Comment 9). We also agree with AST that our typical practice of deducting only liquid assets from total liabilities left in a shell company is based on the presumption that the value of other residual assets is unknown and difficult to determine, and is likely to be far less than their book value. However, in this case, the Monitoring Reports provide an actual accounting of the liquidation process through June 1998. We note that 423 billion lire of non-liquid assets remained in ILVA Residua as of June 1998. Because we do not know what the actual value of these assets will be in liquidation, nor will there be any further monitoring of their liquidation by the EC (*see* May 6, 1999, Memorandum to File), we increased the indebtedness we allocated to ILVA's viable assets by this amount. Additionally, while it is possible that the composition of the non-financial debts transferred in the sales of ILVA's viable assets changed somewhat after the demergers of AST and ILP, there is no evidence on the record to indicate that such debts, which arise as a direct result of the operations of the business units privatized, would have changed dramatically over this time period.

We do not agree with the petitioners that our methodology is to calculate the amount of debt forgiveness as of the moment AST was demerged. While we have set the benefit stream to AST to begin with the demerger, we view AST's demerger as only one part of the process of liquidating ILVA. That process involved a series of actions, including the demergers of AST and ILP. If we were to look only at the assets and liabilities that had been disposed of by the time of AST's demerger, we would be ignoring much of the liquidation activity inappropriately. For example, CAS had not been sold as of the time of AST's demerger. Thus, under the petitioners' approach, subsidies which we assigned to CAS in *Wire Rod* would also be assigned to AST just because of the sequence of events.

We also disagree with the petitioners that we had accounted for the residual assets in question already in our change-in-ownership methodology. None of the residual assets at issue constitute "productive units" (*i.e.*, a collection of assets capable of generating sales and operating independently, *see GIA* at 37268). Therefore, application of the change-in-ownership methodology would be inappropriate. Instead, it is appropriate to net the liquidation value of these individual assets against residual liabilities in the same manner as liquid assets. Last, because the 1998 "total comparable indebtedness" provides a more accurate basis than the similar 1993 figure, we have used this as the starting point of our calculation.

While we have not altered our determination with regard to the issue of gross debt versus net debt, we can address both that issue and calculate a more accurate amount of debt forgiveness by using the final "total comparable indebtedness" figure reported in the 10th Monitoring Report as the starting point of our calculation. For an overview of our calculation methodology, *see ILVA to AST Debt Forgiveness* section above.

Comment 14: 1993 Creditworthiness

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 13, 64 FR at 15524).

Comment 15: ILVA Asset Write-Downs

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 14, 64 FR at 15524–15525).

Comment 16: ESF Objective 4 Specificity

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 15, 64 FR at 15525).

Comment 17: ESF Objective 3

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 16, 64 FR at 15525).

Comment 18: Law 10/91

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 17, 64 FR at 15525–15526).

Comment 19: Specificity of THERMIE

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 18, 64 FR at 15526).

Comment 20: Law 675 Bond Issues

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 19, 64 FR at 15526).

Comment 21: 1988 Equity Infusion

The facts at hand, parties' arguments regarding this issue, and our response to

those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 20, 64 FR at 15526–15527).

Comment 22: Law 451/94

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 21, 64 FR at 15527).

Comment 23: Law 675/77—Worker Training Program

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 22, 64 FR at 15527–15528).

Comment 24: Law 796/76 Benefit Calculation

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 23, 64 FR at 15528).

Comment 25: AST's Brite-EuRam Grant

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 24, 64 FR at 15528).

Comment 26: ECSC Article 56 Aid

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 25, 64 FR at 15528).

Comment 27: ECSC Article 54 Loans

The facts at hand, parties' arguments regarding this issue, and our response to those arguments have not changed since the *Plate Final*. Please see that notice for a full explanation (Comment 26, 64 FR at 15528–15529).

Comment 28: Exclusion of Floor Plate from the Scope of the Investigation

AST requests that the Department exclude floor plate from the scope of the instant proceeding. AST argues that floor plate should not be included in the scope of this investigation because floor plate is not manufactured in the United States, it does not compete with any product manufactured in the United States or with imports of other covered products, and it is materially different from the other products subject to this investigation. Furthermore, AST argues that floor plate has only one end-use, which is as flooring material and it cannot be used for any other application that requires a smooth surface, as is a common requirement of end-uses of stainless steel. Lastly, AST argues that the Department has the inherent authority to exclude products from the scope of an investigation that are not included properly therein.

The petitioners object to AST's request to exclude floor plate from the scope of this investigation. The petitioners argue that floor plate falls clearly within the scope of this case. Furthermore, the petitioners cite *Melamine Institutional Dinnerware Products from the People's Republic of China*, 62 FR 1708 (January 13, 1997), as evidence of the Department's clear and consistent practice of examining the interests of the domestic industry in defining the scope of a case. The petitioners point out that numerous requests to exclude certain products from the scope have been considered and, where there was no interest on the part of the domestic industry, the petitioners have excluded such products from the scope as evidenced in the revisions to the initial scope definition set forth in the *Preliminary Determination*. The petitioners object to AST's argument that, in order for a product to remain within the scope, the domestic industry must be producing currently. The petitioners state that often products are included in the scope of an investigation because they are similar to and competitive with the domestic like product.

Department's Position: We disagree with AST. Despite AST's arguments, the scope as set forth in the *Preliminary Determination* covers merchandise described as floor plate if it is less than 4.75 in thickness. The scope specifically describes the subject merchandise as "flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness' and notes further that "[t]he subject sheet and strip may also be further processed (e.g., cold-rolled, polished aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing." *See Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea Notice of Initiation*, 63 FR 37521 (July 13, 1998). Additionally, the petitioners have objected to the exclusion of floor plate from the scope of the investigation. Furthermore, we have addressed this issue earlier. *See* Memorandum to the File regarding Scope Changes in *Stainless Steel Sheet and Strip in Coils from Korea, Italy and France*, dated December 14, 1998. Therefore, the Department has not amended the scope of the investigation to exclude stainless steel floor plate.

Comment 29: Termination of Investigation of Arinox

The petitioners argue that the Department should terminate its investigation of Arinox for failure to comply with the statute and agency regulations and, furthermore, the Department should assign Arinox the "All Others" rate. The petitioners object to the Department's acceptance of Arinox's information, given the company's failure to comply with the Department's instructions for submitting factual information. The petitioners point out that Arinox has consistently neglected to serve its responses on the petitioners and, by not enforcing the statutory requirement to serve interested parties with all information submitted, the Department has deprived the petitioners of the opportunity to submit comments on potential subsidies to Arinox. Moreover, the petitioners assert, by accepting the procedurally defective submissions of Arinox and calculating a *de minimis* subsidy rate in the *Preliminary Determination* based on those submissions, the Department would exclude Arinox from the scope of the countervailing duty order at the outset of this proceeding, thus precluding the petitioners from ever analyzing Arinox's data and the Department from assessing the potential countervailable benefits.

Arinox states that it is a small company and was unfamiliar with the process of serving its submissions on interested parties. Arinox argues that it has cooperated fully with the Department's investigation by providing information as requested. Arinox points out that, at verification, the company welcomed Department personnel and provided information requested in order to verify the information provided. Arinox argues that since it has cooperated fully in the investigation and the Department verified the information provided by the company, it would be inappropriately punitive to apply the "All Others" rate to Arinox. Finally, Arinox maintains that it is a fairly new company which has never been owned by the Italian government and the only programs in which it participated are small social programs which help depressed areas in Italy.

Department's Position: The Department recognizes the petitioners' concerns regarding the failure of Arinox to comply with the statutory requirement to serve all interested

parties with its responses to the Department's questionnaires in a timely fashion. However, the Department believes that Arinox, a *pro se* company, was operating in good faith and to the best of its ability in attempting to respond to the Department's requests for information. Although Arinox's responses to our questionnaires and other information were not served immediately upon the petitioners, it submitted this information in a timely fashion, was sufficiently complete so as to provide a reliable basis for our determination, was capable of being used without undue difficulty, and we provided it to the petitioners shortly before the preliminary determination. We conducted the verification of Arinox approximately three weeks later and verified the accuracy of Arinox's submissions. This three-week period provided the petitioners with a reasonable amount of time to make substantive comments regarding any potential subsidies to Arinox prior to verification. For these reasons and consistent with sections 782(c)(2) and (e) of the Act, the Department has continued to calculate a separate *ad valorem* subsidy rate for Arinox in this final determination.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are detailed in the public versions of the verification reports, which are on file in the Central Records Unit.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy rate is 12.22 percent *ad valorem* for AST and 1.03 percent *ad valorem* for Arinox. The All Others rate is 12.09 percent, which is the weighted average of the rates for both companies.

In accordance with our *Preliminary Determination*, we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from Italy, which were entered or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 2, 1999, but to continue the suspension of liquidation of entries made between November 17, 1998, and January 1, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13683 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Eva Temkin or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of stainless steel sheet and strip in coils from the Republic of Korea. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the petitioners).

Case History

Since the publication of our preliminary determination in this investigation on November 17, 1998 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 63 FR 63884 (Preliminary Determination)), the following events have occurred:

We conducted verification of the countervailing duty questionnaire responses from February 2 through February 12, 1999. In addition, portions of the questionnaire responses were verified from December 3 through December 18, 1998, during our verification of the countervailing duty investigation of Stainless Steel Plate in Coils from Korea. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 63 FR at 63885), and the final antidumping duty determination was postponed (*see* 64 FR 137), the Department on January 13, 1999, extended the final determination of this countervailing duty investigation until no later than May 19, 1999 (*see* 64 FR 2195). On January 27, February 2, 10, and 12, April 12 and 13, 1999, the Department released its verification reports to all interested parties.

The Department issued decision memoranda on the issue of direction of credit by the Government of Korea (GOK) and the operations of the Korean domestic bond market on March 4 and March 9, 1999, respectively, during the countervailing duty investigation of Stainless Steel Plate in Coils from the Republic of Korea. *See Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15533 (March 31, 1999) (*Stainless Steel Plate from Korea*). These memoranda were placed on the record in this investigation on March 31, 1999. Petitioners and respondents filed case briefs on April 21, 1999, and rebuttal briefs were filed on April 28, 1999.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (April 1998).

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than

0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Injury Test

Because the Republic of Korea (Korea) is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC announced its preliminary finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*see Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Use of Facts Available

As discussed in our preliminary determination, both Sammi Steel Co., Ltd. (Sammi) and Taihan Electric Wire Co., Ltd. (Taihan), two producers of subject merchandise, failed to respond to the Department's questionnaire. *See Preliminary Determination.* Since the preliminary determination in this investigation we have not been presented with new information on this issue. Therefore, we have continued to find that Sammi and Taihan each have failed to cooperate to the best of their abilities, and, in accordance with 776(b) of the Act, have continued to apply an adverse facts available (AFA) rate to these two companies. This rate was based on the petition, as well as our findings in the *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993) (*Steel Products from Korea*), and additional findings in this proceeding.

In *Steel Products from Korea*, we determined a country-wide *ad valorem* subsidy rate of 4.64 percent based on many of the same programs alleged in this case. Therefore, we are using the highest published *ad valorem* rate of 4.64 percent that was calculated in *Steel Products from Korea* as representative of the benefits from the industry-wide subsidies alleged in this petition, and received by the other respondents in this investigation. In addition, we are also applying a facts available rate to Sammi and Taihan for a subsidy program newly examined in this investigation, POSCO's two-tiered pricing structure to domestic customers. We found this program to be countervailable, and calculated company-specific program rates for Dai Yang and Inchon; as discussed below, we used Inchon's calculated rate for this program as adverse facts available for Sammi and Taihan. (A detailed discussion of this program can be found in the "Programs Determined to be Countervailable" section of this notice.)

Therefore, in Taihan's case, we used the 4.64 rate from *Steel Products from Korea* because the subsidy programs alleged in this investigation, with the exception of the one new allegation, are

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

virtually identical to the programs for which the 4.64 rate in *Steel Products from Korea* was calculated. In addition, in accordance with section 776(b)(4) of the Act, for the two-tiered pricing program, we are applying the highest calculated company-specific rate for this program to Taihan as adverse facts available, 2.36 percent *ad valorem*, the company-specific program rate for Inchon. We added this 2.36 percent rate to the 4.64 percent rate (representing the program rates of the other subsidy allegations) to arrive at a total *ad valorem* rate of 7.00 percent as adverse facts available for Taihan.

In Sammi's case, in addition to applying the 4.64 rate from *Steel Products from Korea* for most of the programs covered in this investigation and the 2.36 rate for POSCO's two-tiered pricing structure, we calculated a rate for one other program that was not previously investigated: POSCO's purchase of Sammi Specialty Steel. This program is addressed below in the "Programs Determined to be Countervailable" section of this notice. We used information provided in the petition, in the verification reports of POSCO and the Government of Korea, in POSCO's questionnaire responses, and additional information placed on the record of this investigation, for the calculation of the program rate for POSCO's purchase of Sammi Specialty Steel. We then added the rate calculated for this program and the rate representing the subsidy conferred by POSCO's two-tiered pricing structure to the other programs' rate of 4.64 percent *ad valorem* calculated in *Steel Products from Korea*, which is representative of the benefits from the other industry-wide subsidies alleged in the petition and received by the other respondents. We thus arrived at a total *ad valorem* rate of 59.30 percent as adverse facts available for Sammi.

Petitioners also alleged that Sammi benefitted from two other company-specific subsidies: (1) A "national subsidy" and (2) 1992 emergency loans. With respect to the alleged "national subsidy," we have not deviated from the methodology established in the *Preliminary Determination*. We continue to treat this "national subsidy" as a grant bestowed upon Sammi, and employ the Department's grant methodology. *See* the *General Issues Appendix*, which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37225, 37227 (July 9, 1993) (*GIA*). Because the total amount of the national subsidy is less than 0.50 percent of Sammi's 1993 sales, the subsidy was expensed in the year of receipt. Thus, there is no benefit under this program during the POI.

The petitioners also alleged that in 1992 the GOK directed a package of 132 billion won in "emergency loans" to Sammi in order to save the company from bankruptcy. In our preliminary determination we calculated a separate subsidy rate for this allegation. However, we have reconsidered this facts available calculation in this final determination. In *Steel Products from Korea*, we investigated the allegation that the GOK directs banks in Korea to provide loans to the steel industry. This program was determined to be countervailable, and a calculated subsidy rate for this program is included as part of the facts available rate applied in this determination. Because we have already accounted for the subsidy provided by the GOK's direction of credit in our facts available rate taken from *Steel Products from Korea*, we have not calculated an additional subsidy rate for this allegation.

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

With respect to the programs for which we did not receive information from uncooperative respondents, the information was corroborated either through the exhibits attached to the petition or by reviewing determinations in other proceedings in which we found virtually identical programs in the same country to be countervailable. Specifically, with respect to Taihan, the programs alleged in the current investigation were virtually identical to those found to be countervailable in *Steel Products from Korea*. We were unable to corroborate the rate we used for Taihan, because the petition did not contain countervailing duty rate information for these programs. Therefore, it was not practicable to corroborate such a rate. However, we note that the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Further, in Sammi's case (in addition to the programs from *Steel Products from Korea* discussed above), we corroborated the newly-alleged programs with the information provided in the petition, *i.e.*, Sammi's financial statements for years 1993 through 1996, and numerous public press articles. Specifically, Sammi's financial statements show a line item entitled "national subsidy." The financial statements further indicate that Sammi's debt burden was very high and that the company was not making interest payments that reflected the significant debt load. This demonstrates that the GOK may have entrusted or directed government and/or commercial banks to provide the type of emergency loan package to Sammi in 1992 that was alleged in the petition. Moreover, news articles indicate that the GOK was trying to rescue Sammi, and that this effort included both the emergency loans in 1992 and POSCO's purchase of Sammi Specialty Steel.

Additionally, the Department initiated an investigation with respect to a fourth new allegation, "Financial Assistance in Conjunction with the 1997 Sammi Steel Company Bankruptcy." The petitioners alleged that the GOK mitigated the effects of Sammi's bankruptcy with the use of countervailable subsidies. According to petitioners, when Sammi filed for receivership in March 1997, the GOK: (1) Provided grants and other rescue aid which were directed through a consortium of Sammi's rivals, and (2) rescheduled Sammi's debt through a combination of loan forgiveness and reduced interest rate loans.

We requested information concerning this program from the GOK and Sammi. While Sammi chose not to cooperate in this investigation, the GOK responded to the Department's questionnaires, stating that there was no consortium and that no grants were provided to Sammi. The GOK further stressed that Sammi's debt was addressed in the context of normal bankruptcy proceedings. In our preliminary determination we calculated no benefit from this program, but we stated we would continue to seek information that would enable us to make a facts available determination about this program in our final determination. Therefore, during our verification of POSCO, we examined various accounts of POSCO to determine whether POSCO provided any assistance to Sammi

similar to that alleged by petitioners. We did not find a provision of assistance to Sammi or write-off of Sammi's debt by POSCO. In addition, during our verification of the Government of Korea, we examined Sammi's Bankruptcy Reorganization Plan, which included Sammi's 1997 balance sheet and income statement. Our examination of these documents revealed no government assistance to Sammi in the form of grants or write-off of debt. Therefore, we have not calculated a subsidy rate for this allegation. However, because Sammi did not respond to our request for information, we will continue to examine this allegation in any subsequent administrative review.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: During the POI, the respondent companies had both won-denominated and foreign currency-denominated long-term loans outstanding which had been received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. A number of these loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea*, the Department determined that, through 1991, the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans. *See Certain Steel Products from Korea*, 58 FR at 37338, and the "Direction of Credit" section below. In that investigation, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the final determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1991, and still outstanding during the POI. These rates were reported by the GOK in its September 10, 1998, questionnaire response (public version on file in the Department's Central Records Unit, Room B–099).

For years in which the companies under investigation have been deemed uncreditworthy, we calculated the discount rates according to the methodology described in the *GIA*. Specifically, due to the necessary use of adverse facts available with regard to Sammi, we used the highest commercial bank loan interest rates available, and added a risk premium equal to 12 percent of the commercial lending rate, in accordance with the methodology outlined in the *GIA*.

In this investigation, the Department also examined whether the GOK continued to control and/or influence the practices of lending institutions in Korea between 1992 and 1997. Based on our findings, discussed below in the "Direction of Credit" section of this notice, we are using the following benchmarks to calculate the companies' benefit from long-term loans obtained in the years 1992 through 1997: (1) For countervailable, foreign-currency denominated loans, we are using, where available, company-specific, weighted-average U.S. dollar-denominated interest rates on the companies' loans from foreign bank branches in Korea; and (2) for countervailable won-denominated loans, where available, we are using company-specific three-year corporate bond rates. Where unavailable, we continue to use a national average three-year corporate bond rate on the secondary market, consistent with our preliminary determination. We are also using three-year company-specific corporate bond rates, where applicable, as discount rates to determine the benefit from non-recurring subsidies received between 1992 and 1997.

We continue to find that the Korean domestic bond market was not controlled by the GOK during the period 1992 through 1997, and that domestic bonds serve as an appropriate benchmark interest rate. *See Analysis Memorandum on the Korean Domestic Bond Market*, dated March 9, 1999 (public document on file in the Department's Central Records Unit, Room B–099 (CRU)). On February 5, 1999, POSCO, Inchon, and Dai Yang submitted information in response to the Department's request for the companies' average interest rate on corporate bonds for each year 1992 through 1997. *See* POSCO's February 5, 1999 questionnaire response, Inchon's February 5, 1999 questionnaire response, and Dai Yang's February 5, 1999 questionnaire response (public versions on file in the CRU). Dai Yang had no corporate bonds (other than a previously reported convertible bond) issued during the period 1992–1997; therefore, we continue to use the national-average three-year corporate bond rate as a benchmark for this company. Additionally, Inchon had not issued any bonds prior to 1997; thus, we continue to use the national-average three-year corporate bond rates as a benchmark for Inchon between 1992 and 1996. Because POSCO was unable to retrieve data on the bond issuance fees the company paid in the years 1992 through 1996, we have added to the average interest rate for each of those years the bond issuance fees that POSCO paid in 1997.

Dai Yang did not have U.S. dollar loans from foreign bank branches in Korea. Therefore, we had to rely on a dollar loan benchmark that is not company-specific, but provides a reasonable representation of industry practice, to determine whether a benefit was provided to Dai Yang from dollar loans received from government banks and Korean domestic banks. Our first alternative was to use a national-average benchmark, but we were unable to identify a national-average dollar benchmark from foreign bank branches in Korea. Therefore, we used the interest rates on dollar loans from foreign bank branches in Korea received by another respondent in this investigation, Inchon, as a benchmark for Dai Yang's dollar loans from government banks and Korean domestic banks. For a further discussion on our selection of a dollar-loan benchmark for Dai Yang, see Comment 9.

Benchmarks for Short-Term Financing: For those programs which require the application of a short-term interest rate benchmark, we used as our benchmark company-specific weighted-average interest rates for commercial won-denominated loans for the POI. Each respondent provided to the Department its respective company-specific, short-term commercial interest rate.

Allocation Period: In the *Preliminary Determination*, we allocated nonrecurring subsidies received by POSCO and Sammi over 15 years. (No other company received nonrecurring subsidies.) We invited interested parties to comment on this allocation period. We received no objections from the interested parties on the use of a 15 year allocation period. Therefore, for the reasons specified in the *Preliminary Determination* and in the *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999), we continue to determine that the appropriate allocation period is 15 years for this investigation.

Treatment of Subsidies Received by Trading Companies: We required responses from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter of the subject merchandise. Subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if the merchandise is exported to the

United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. During the POI, POSCO and Inchon exported subject merchandise to the United States through trading companies. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation.

We continue to find that one of the trading companies, POSTEEL, is affiliated with POSCO within the meaning of section 771(33)(E) of the Act because POSCO owned 95.3 percent of POSTEEL's shares as of December 31, 1997. The other trading companies are not affiliated with POSCO. Additionally, according to its response, Inchon is affiliated with one of the trading companies, Hyundai. This reported affiliation is based upon cross-shareholdings and common board members within the Hyundai group. The trading company, Hyundai, responded to the Department's questionnaire concerning subsidies that it had received during the POI. In the current proceeding, the status of affiliation does not affect the inclusion of subsidies provided to trading companies in the respondents' calculated subsidy rates. Therefore, we are not making a determination of affiliation of Inchon and Hyundai within the meaning of section 771(33) of the Act.

Under section 351.107 of the Department's regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the "Explanation of the Final Rules" (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27303 (May 19, 1997).

In the *Preliminary Determination* of this investigation, we determined that it was not appropriate to establish combination rates. This determination was based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producers; second, the difference in the levels of subsidies conferred upon individual trading companies with regard to the subject merchandise is insignificant. Combination rates would serve no practicable purpose because the calculated subsidy rate for a producer and a combination of any of the trading companies would effectively be the same rate. As no new information has been presented since the *Preliminary Determination* which would cause us to reconsider this methodology, we are not calculating combination rates in the final determination of this investigation.

Instead, we have continued to calculate rates for the producers of subject merchandise that include the subsidies received by the trading companies. To reflect those subsidies that are received by the exporters of the subject merchandise in the calculated *ad valorem* subsidy rate, we used the following methodology: for each of the seven trading companies, we calculated the benefit attributable to the subject merchandise. We then factored that amount into the calculated subsidy rate for the relevant producer. In each case, we determined the benefit received by the trading companies for each export subsidy, and weighted the average of the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. These calculated *ad valorem* subsidies were then added to the subsidies calculated for the producers of subject merchandise. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes countervailable subsidies received by both the producing and trading companies.

Creditworthiness

As discussed in the *Preliminary Determination*, we initiated an investigation of Inchon's creditworthiness from 1991 through 1997, and of Sammi's creditworthiness from 1990 to 1997, to the extent that nonrecurring grants, long-term loans, or loan guarantees were provided in those years. In the *Preliminary Determination*, we found Inchon to be creditworthy, but we found Sammi to be uncreditworthy for the years 1990 through 1997. We received no comments from the interested parties relating to our analysis of Inchon's and Sammi's creditworthiness. Thus, for the reasons specified in the *Preliminary Determination*, we determine that Inchon is creditworthy and that Sammi is uncreditworthy for the years 1990 through 1997. *See Preliminary Determination*, 63 FR at 63888.

I. Programs Determined To Be Countervailable

A. Direction of Credit

In the 1993 investigation of *Steel Products from Korea*, the Department determined (1) that the GOK influenced the practices of lending institutions in Korea; (2) that the GOK regulated long-term loans provided to the steel industry on a selective basis; and (3) that the selective provision of these regulated loans resulted in a countervailable benefit. Accordingly, all long-term loans received by the producers/exporters of the subject merchandise were treated as countervailable. The determination in that investigation covered all long-term loans bestowed through 1991. *See* 58 FR at 37339.

In this investigation, petitioners allege that the GOK continued to control the practices of lending institutions in Korea through the POI, and that the steel sector received a disproportionate share of low-cost, long-term credit, resulting in the conferral of countervailable benefits on the producers/exporters of the subject merchandise. Petitioners assert, therefore, that the Department should countervail all long-term loans received by the producers/exporters of the subject merchandise that were still outstanding during the POI.

1. *The GOK's Credit Policies Through 1991*

As noted above, we previously found significant GOK control over the practices of lending institutions in Korea through 1991, the period investigated in *Steel Products From Korea*. This finding of control was determined to be sufficient to constitute a government program and government action. *See* 58 FR at 37342. We also determined that (1) the Korean steel sector, as a result of the GOK's credit policies and control over the Korean financial sector, received a disproportionate share of regulated long-term loans, so that the program was, in fact, specific, and (2) that the interest rates on those loans were inconsistent with commercial considerations. *Id.* at 37343. Thus, we countervailed all long-term loans received by the steel sector from all lending sources.

In this investigation, we provided the GOK with the opportunity to present new factual information concerning the government's credit policies prior to 1992, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our

determination in *Steel Products from Korea*. Therefore, we determine that the provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. This finding is in conformance with the SAA, which states that "section 771(5)(B)(iii) encompasses indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable." SAA at 925. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the "Subsidies Valuation" section, above.

We also determine that all regulated long-term loans provided to the producers/exporters of the subject merchandise through 1991 were provided to a specific enterprise or industry, or group thereof, within the meaning of section 771(5A)(D)(iii)(III) of the Act. This finding is consistent with our determination in *Steel Products from Korea*. *See* 58 FR at 37342.

POSCO, Inchon and Dai Yang all received long-term loans prior to 1992 that remained outstanding during the POI. These included loans with both fixed and variable interest rates for all three responding companies. To determine the benefits from the regulated loans with fixed interest rates, we applied the Department's standard long-term loan methodology and calculated the grant equivalent for the loans. For the variable-rate loans, we compared the amount of interest paid during the POI on the regulated loans to the amount of interest that would have been paid at the benchmark rate. We then summed the benefit amounts from all of the loans attributable to the POI and divided the total benefit by each company's total sales. On this basis, we determine the countervailable subsidy rates to be 0.17 percent *ad valorem* for POSCO, 0.06 percent *ad valorem* for Inchon, and 0.04 percent *ad valorem* for Dai Yang.

2. *The GOK's Credit Policies From 1992 Through 1997.*

The Department's preliminary analysis of the GOK's credit policies from 1992 through 1997 is contained in the March 4, 1999, *Memorandum Re: Analysis Concerning Post 1991 Direction of Credit*, on file in the CRU (Credit Memo). As detailed in the Credit Memo, the Department preliminarily determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through the POI. The Department also preliminarily determined that GOK-regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. This credit conferred a benefit on the producer/exporters of the subject merchandise in accordance with section 771(5)(E)(ii) of the Act, because the interest rates on the countervailable loans were less than the interest rates on comparable commercial loans. *See* Credit Memo at 15–17. Finally, we preliminarily found that access to government-regulated foreign sources of credit in Korea did not confer a benefit to the recipient, as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources was found not countervailable. This determination was based on the fact that credit from Korean branches of foreign banks were not subject to the government's control and direction. Thus, respondents' loans from these banks served as an appropriate benchmark to establish whether access to regulated foreign sources of funds conferred a benefit on the respondents. On the basis of that comparison, we found that there was no benefit. *See id.* at 18. The comments we received from the parties have not led us to change the basic findings detailed in the Credit Memo.

In the preliminary determination we examined, as a separate program, loans provided under the Energy Savings Fund, and found that these loans were countervailable. *See Preliminary Determination*, 63 FR at 63890. However, on the basis of our findings detailed in the Credit Memo, we now determine that these loans are countervailable as directed credit, rather than as a separate program. These loans are policy loans provided by banks that are subject to the same GOK influence that is described in the Credit Memo. Accordingly, they are countervailable as directed credit, and we have included these loans in our benefit calculations. Thus, on the basis of our finding in the credit memo, and the modifications to the calculations discussed in the comments section, below, for the GOK's post-1991 credit policies, we determine the countervailable subsidy rates to be less than 0.005 percent *ad valorem* for POSCO, less than 0.005 percent *ad valorem* for Inchon, and 0.08 percent *ad valorem* for Dai Yang.

B. Purchase of Sammi Specialty Steel Division by POSCO

In February 1997, POSCO purchased the specialty steel bar and pipe division of Sammi for 719.4 billion won. This division became POSCO's Changwon facility. Petitioners alleged that POSCO was directed by the government to purchase the Sammi Specialty Steel Division as a matter of national interest as opposed to one of economic merit. Petitioners alleged that the GOK used its ownership in POSCO as a vehicle for the subsidization of Sammi. Thus, petitioners allege that POSCO's purchase of the Sammi Specialty Steel Division provided a countervailable benefit to Sammi.

As noted in the "Use of Facts Available" section of this notice, Sammi did not respond to the Department's questionnaires. POSCO has provided certain documents relevant to this purchase, but Sammi's lack of response to our questionnaires means that significant portions of information required by the Department to analyze this program have not been provided. Thus, in making this determination, we have relied, in part, on both information provided by POSCO and information provided in the petition with respect to this allegation. In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interest of a party when selecting from facts otherwise available when the party has failed to cooperate with a request for information. As discussed in the "Use of Facts Available" section, we determined that Sammi has failed to cooperate by not answering the Department's questionnaire.

Based on the information on the record, we determine that the actions of POSCO should be considered as an action of the GOK because POSCO is a government-controlled company. During the POI, the GOK was the largest shareholder of POSCO. The shareholdings of the GOK are approximately ten times larger than the next largest shareholder. Indeed, the next two largest shareholders of POSCO are domestic banks, the credit of which has been determined to be directed by the GOK (*see* the "Direction of Credit" section of this notice). In order to further maintain its control over POSCO, the GOK has enacted a law, as well as placed into the Articles of Incorporation of POSCO, a requirement that no individual shareholder except the GOK can exercise voting rights in excess of three percent of the company's common stock. According to POSCO, the GOK intends to maintain the individual ownership limit of three percent until the end of 2001.

In addition, the Chairman of POSCO is appointed by the GOK. The Chairman of POSCO during the POI was the former Deputy Prime Minister and the Minister of the GOK's Economic

Planning Board, and was appointed as POSCO's chairman by the Korean president. Half of POSCO's outside directors are appointed by the GOK and the Korean Development Bank (three by the GOK and one by the government-owned KDB.) During the POI, the appointed directors of POSCO included a Minister of Finance, the Vice Minister of the Ministry of Commerce and Industry, the Minister of the Ministry of Science and Technology, and a Member of the Bank of Korea's Monetary Board. POSCO is also one of three companies designated a "Public Company" by the GOK. One of the other "Public Companies" is the state-run utility company, KEPCO.

Over the course of this investigation, we have reviewed numerous documents that relate to this purchase, including the valuation studies and the purchase contract between POSCO and Sammi. The purchase price of 719.4 billion won agreed upon by POSCO and Sammi included money both for the assets that POSCO was purchasing and for the repayment of debt associated with these assets. Ostensibly, Sammi used the proceeds from the sale to pay debts owed by its other divisions.

Because no information was provided by Sammi with respect to this program, as facts available the determination of the countervailability of this program was based upon information gathered from POSCO, the GOK, information provided in the petition, and from public documents regarding POSCO's purchase of Sammi which have been placed on the record of this investigation. This information indicates that POSCO purchased the speciality steel division of Sammi Steel as the result of government pressure. The current Chairman of POSCO has confirmed that the POSCO purchase of Sammi's speciality steel division was the result of outside political pressure. The Chairman characterized POSCO's decision in 1997 to purchase the production facilities from Sammi in an attempt by the government to prevent Sammi's bankruptcy as "a mistake." At the time of the Sammi purchase, the Chairman of POSCO had been appointed by the former president. In addition, at the time of the purchase, a POSCO director stated that the decision to purchase Sammi's speciality steel division "transcends economic merit." Internal proprietary documents of POSCO (which are on the record in this investigation) echo this statement. At the time of the purchase, the company was operating at less than 60 percent of its capacity. In addition, Sammi had shown a profit only once since 1991 and lacked strong future prospects. *See Memorandum to the File Re: Source Documents on Government Control of POSCO, Sammi Purchase by POSCO, and POSCO Pricing* (Source Document Memo).

Internal government auditors also examined POSCO's purchase of the Sammi speciality steel division. A report issued by the Board of Audit and Inspection (BAI) criticized POSCO's purchase of the Sammi plant. The BAI found fault with POSCO's investment decision resulting from poor feasibility studies. The BAI noted that, according to POSCO's own internal business plan, the internal rate of return (IRR) of new investments should be over 10 percent. However, the BAI noted that POSCO did not even examine Sammi's IRR when it decided to purchase the Sammi plant. The BAI concluded that Sammi's IRR is much lower than the minimum required by POSCO's own internal regulations for new investments. The BAI also stated that, in estimating the future profits and losses of an investment, POSCO's own internal regulations state that it should assume an investment's prices would remain constant for 15 years. However, as the BAI noted with respect to the Sammi purchase, POSCO assumed that prices would increase two percent a year. Thus, profit from the purchase was overestimated. POSCO's deviation from its own internal regulations on estimating future profit and loss resulted in calculations that anticipated profits from the Sammi investment within four years of the purchase date. If POSCO had followed its own internal regulations, it would have expected to incur losses on its purchase of Sammi for an additional 14 years.

In addition to noting that POSCO failed to follow its own internal regulations in its purchase of Sammi's speciality steel division, the BAI found other fundamental problems with the purchase of Sammi's Changwon facility. The BAI stated that at the time of the purchase of the Changwon plant, there was both oversupply and overproduction in the speciality steel industry. The BAI noted that, while supply at the time of the purchase was 240 million tons, the demand for speciality steel was only 110 million tons. Therefore, the BAI concluded that there was no reason for POSCO's "hasty" undertaking of Sammi's "old equipment." The BAI also stated that because POSCO contracted to purchase the Sammi facility without clarifying the state of the equipment and labor force, the Changwon Tax Office and Labor Committee may require POSCO to pay an additional 80 billion won for both Sammi employees' retirement, and unforeseen tax consequences and administrative litigation. The BAI report also stated that POSCO paid Sammi 21.4 billion won for steel-making techniques that were already either developed by POSCO or widely used in the steel industry.

The information on the record demonstrates that POSCO is a government-controlled entity; that POSCO's decision to purchase the Sammi speciality steel division was the result of government pressure; that Sammi was in poor financial straits; that POSCO failed to follow its own internal regulations regarding new investments when making the investment decision to purchase Sammi; and that, overall, the purchase of Sammi did not make good economic sense. For these reasons, the Department determines that POSCO's purchase of the Sammi speciality steel division provided a countervailable benefit and a financial contribution to Sammi under section 771(5)(D) of the Act. In accordance with section 771(5A)(D)(i) of the Act, we also find that this program is specific to Sammi.

During verification of POSCO's questionnaire response, POSCO officials stated that Sammi was also trying to sell its specialty steel division to other companies. However, as Sammi has refused to cooperate in this investigation, we have no information as to whether any potential investor expressed an interest in purchasing Sammi's speciality steel division for any price. As adverse facts available, we are assuming that were it not for POSCO's purchase, Sammi's Changwon facility would not have been sold to a commercial investor due to the poor financial condition of the company and the overcapacity in the stainless steel market at the time of the POSCO purchase. In addition, according to POSCO's own internal guidelines regarding new investments, POSCO should not have purchased Sammi's Changwon facility. Further information on the record also demonstrates that the decision to purchase the stainless steel facility from Sammi was based upon political and government influence in order to provide funds to Sammi to forestall its eventual bankruptcy. The information on the record indicates that, absent the GOK's control of POSCO and its influence on POSCO's decision to purchase the Changwon facility, Sammi would not have been able to sell its stainless steel division; therefore, we consider the full amount of the purchase price paid to Sammi by POSCO to constitute a countervailable benefit.

To calculate the benefit to Sammi from this purchase, we treated the amount of the purchase price, 719.4 billion won, as a non-recurring grant

and allocated it over the average useful life of assets in the industry. For a discussion of the AUL, see the "Subsidies Valuation" section of this notice. Based on this methodology, we calculated a countervailable subsidy of 52.30 percent *ad valorem* for Sammi for this program during the POI.

C. GOK Pre-1992 Infrastructure Investments at Kwangyang Bay

In *Steel Products from Korea*, the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. We determined that the GOK's provision of infrastructure at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea*, 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea*, which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

To calculate the benefit conferred during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year period. *See* the allocation period discussion under the "Subsidies Valuation Information" section, above. We used as our discount rate the three-year corporate bond rate on the secondary market, the same rate used in *Steel Products from Korea*. We then summed the benefits received by POSCO during 1997, from each of the GOK's yearly investments over the period 1983–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1997. On this basis, we determine a net countervailable subsidy of 0.29 percent *ad valorem* for the POI.

D. Export Industry Facility Loans

In *Steel Products from Korea*, 58 FR at 37328, the Department determined that export industry facility loans (EIFLs) are contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates. In this investigation, we provided the GOK with the opportunity to present new factual information concerning these EIFLs, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea*. Therefore, we continue to find that EIFLs are provided on the basis of export performance and are export subsidies under section 771(5A)(B) of the Act. We also determine that the provision of loans under this program results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred on the recipient to the extent that the EIFLs are provided at interest rates less than the benchmark rates described under the "Subsidies Valuation" section, above. We note that this program is also countervailable due to the GOK's direction of credit; however, we have separated this program from direction of credit because it is an export subsidy, and therefore requires a different benefit calculation.

Dai Yang was the only respondent with outstanding loans under this program during the POI. To calculate the benefit conferred by this program, we compared the actual interest paid on the loan with the amount of interest that would have been paid at the applicable dollar-denominated long term benchmark interest rate as discussed in the "Subsidies Valuation" section, above. When the interest that would have been paid at the benchmark rate exceeds the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We divided the benefits derived from the loans by total export sales. On this basis, we determine that Dai Yang received from this program during the POI a countervailable subsidy of 0.08 percent *ad valorem*.

E. Short-Term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea* (*see* 58 FR at 37350). During the POI, POSCO and Dai Yang were the only producers or exporters of the subject merchandise that used export financing.

In accordance with section 771(5A)(B) of the Act, this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. A financial contribution is provided under this program within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. To determine whether this export financing program confers a countervailable benefit to POSCO and Dai Yang, we compared the interest rate POSCO and Dai Yang paid on the export financing received under this program during the POI with the interest rate each company would have paid on a comparable short-term commercial loan. See discussion above in the "Subsidies Valuation Information" section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.*, interest is paid up-front at the time the loans are received), the effective rate paid by POSCO and Dai Yang on their export financing is a discounted rate. Therefore, it was necessary to derive a discounted benchmark interest rate from POSCO's and Dai Yang's company-specific weighted-average interest rate for short-term won-denominated commercial loans. We compared this discounted benchmark interest rate to the interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rate. In accordance with section 771(5)(E)(ii) of the Act, we determine that this program confers a countervailable benefit because the interest rates charged on the loans were less than what POSCO and Dai Yang would have had to pay on a comparable short-term commercial loan.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable discounted benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. Because POSCO and Dai Yang were unable to segregate their export financing applicable only to subject merchandise exported to the United States, we divided the benefit derived from the loans by total exports. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO, and 0.04 percent *ad valorem* for Dai Yang.

F. Reserve for Export Loss—Article 16 of the TERCL

Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL), a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. During the POI, Dai Yang, Inchon, Samsun, Samsung, Sunkyong, and Daewoo used this program. Although POSCO did not use this program during the POI, its exports of the subject merchandise were shipped through trading companies which did use this program during the POI (Samsun, Samsung, Sunkyong, and Daewoo). Neither Inchon nor Dai Yang shipped through any trading companies that received benefits from this program, although both Inchon and Dai Yang received benefits as exporters.

We determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program, we calculated the tax savings by multiplying the balance amounts of the reserves as of December 31, 1996, by the corporate tax rate for 1996. We treated the tax savings on these funds as short-term interest-free loans. Accordingly, to determine the benefits, the amounts of tax savings were multiplied by the companies' weighted-average interest rates for short-term won-denominated commercial loans for the POI, described in the "Subsidies Valuation Information" section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we determine a countervailable subsidy of less than 0.005 percent *ad valorem* attributable to POSCO, a subsidy of 0.15 percent *ad valorem* for Inchon, and a countervailable subsidy of 0.01 percent *ad valorem* attributable to Dai Yang.

G. Reserve for Overseas Market Development—Article 17 of the TERCL

Article 17 of the TERCL operates in a manner similar to Article 16, discussed above. This provision allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. The following exporters of the subject merchandise received benefits under this program during the POI: Dai Yang, Hyosung, Hyundai, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Although Inchon and POSCO did not use this program during the POI, these companies' exports of the subject merchandise were shipped through trading companies which did use this program during the POI: Inchon shipped through Hyundai, and POSCO shipped through Hyosung, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Dai Yang did not ship through trading companies during the POI.

We determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. We used as our benchmark interest rate, each company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, described in the "Subsidies Valuation Information" section above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we calculate a countervailable subsidy of 0.01 percent *ad valorem* for this program during the POI for POSCO, 0.01 percent *ad valorem* for Inchon, and 0.01 percent *ad valorem* for Dai Yang.

H. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, the company is authorized to carry them forward for use in later tax years. During the POI, the respondents used various investment tax credits received under the TERCL to reduce their net tax liability. In *Steel Products from Korea*, we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, changes in the statute effective in 1995 have caused us to revisit the countervailability of the investment tax credits.

POSCO claimed or used the following tax credits in its fiscal year 1996 income tax return which was filed during the POI: (1) Tax credits for investments in facilities for research and experimental use and investments in facilities for vocational training or assets for business to commercialize new technology under Article 10; (2) tax credits for vocational training under Article 18; (3) tax credits for investment in productivity improvement facilities under Article 25; (4) tax credits for investment in specific facilities under Article 26; (5) tax credits for temporary investment under Article 27; and (6) tax credits for specific investments under Article 71 of TERCL. Inchon claimed or used: (1) Tax credits for investments in technology and human resources under Article 9; and (2) tax credits for investment in productivity improvement facilities under Article 25. Dai Yang also claimed or used tax credits under Articles 9 and 25.

For these specific tax credits, a company normally calculates its authorized tax credit based upon three or five percent of its investment, *i.e.*, the

company receives either a three or five percent tax credit. However, if a company makes the investment in domestically-produced facilities under these Articles, it receives a 10 percent tax credit. Under section 771(5A)(C) of the Act, which became effective on January 1, 1995, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies receive a higher tax credit for investments made in domestically-produced facilities, we determine that investment tax credits received under Articles 10, 18, 25, 26, 27, and 71 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, we also determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. Therefore, we determine this program to be countervailable.

To calculate the benefit from this tax credit program, we examined the amount of tax credit the companies deducted from their taxes payable for the 1996 fiscal year. In its fiscal year 1996 income tax return filed during the POI, POSCO deducted from its taxes payable credits earned in the years 1992 through 1995, which were carried forward and used in the POI in addition to POSCO's 1996 deduction. We first determined the amount of the tax credits claimed which were based upon the investment in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on investments in domestically-produced facilities rather than the regular three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales for the POI. Neither Inchon nor Dai Yang carried forward any tax credits from previous years. Therefore, to calculate their rates we calculated the additional amount of the tax savings earned on investments in domestically-produced facilities and divided that amount by each company's total sales for the POI. On this basis, we determine a countervailable subsidy of 0.18 percent *ad valorem* to POSCO, 0.06 percent *ad valorem* to Inchon, and 0.41 percent *ad valorem* to Dai Yang from this program during the POI.

I. Electricity Discounts Under the Requested Load Adjustment Program

Petitioners alleged that the respondents are receiving countervailable benefits in the form of utility rate discounts. The GOK reported that during the POI the government-owned electricity provider, KEPCO, provided the respondents with three types of discounts under its tariff schedule. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. *See* the discussion below in "Programs Determined To Be Not Countervailable" with respect to the Power Factor Adjustment and Summer Vacation and Repair Adjustment discount programs.

The GOK introduced the Requested Load Adjustment (RLA) discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO. During the POI, both POSCO and Inchon participated in this program.

The RLA discount is provided based upon a contract of two months, normally July and August when the demand for electricity is greatest. Under this program, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted 44 companies RLA discounts even though KEPCO did not request these companies to reduce their respective loads. The GOK reported that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997. In 1996, KEPCO had entered into RLA contracts with 232 companies.

At the preliminary determination, we found that discounts provided under the RLA were distributed to a limited number of customers, *i.e.*, a total of 44 customers during the POI. Therefore, we determined that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. We also stated in the preliminary determination that, given the information the GOK provided on the record regarding KEPCO's increased capacity to supply electricity and the resulting decrease in KEPCO's need to enter into a large number of RLA contracts during the POI, we would further investigate the *de facto* specificity of this discount program at verification. We stated that it was the GOK's responsibility to demonstrate to the Department on what basis KEPCO chose the 44 customers with which it entered into RLA contracts during the POI.

Based on the information which we obtained at verification, we analyzed whether this electricity discount program is specific in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(iii) of the Act. We find that the GOK failed to demonstrate to the Department a systematic procedure through which KEPCO selects those customers with which it enters into RLA contracts. The GOK simply stated that KEPCO enters into contracts with those companies which volunteer for the discount program. If KEPCO does not reach its targeted adjustment capacity with those companies which volunteered for the program, then KEPCO will solicit the participation of large companies. We note that KEPCO was unable to provide to the Department the percentage of 1997 RLA recipients which volunteered for the program and the percentage of those recipients which were persuaded to cooperate in the program. Therefore, we continue to find that the discounts provided under the RLA were distributed to a limited number of users. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we determine that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The benefit provided under this program is a discount on a company's monthly electricity charge. A financial contribution is provided to POSCO and Inchon under this program within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government.

Because the electricity discounts are not "exceptional" benefits and are received automatically on a regular and predictable basis without further government approval, we determine that these discounts provide a recurring benefit to POSCO and Inchon. Therefore, we have expensed the benefit from this program in the year of receipt. *See GIA*, 58 FR at 37226. To measure the benefit from this program, we summed the electricity discounts which POSCO and Inchon received from KEPCO under the RLA program during the POI. We then divided that amount by POSCO's and Inchon's total sales value for 1997.

On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for both POSCO and Inchon.

J. Loans From the National Agricultural Cooperation Federation

According to Dai Yang's September 10, 1998, questionnaire response, the company received a loan administered by the National Agricultural Cooperation Federation (NACF). The loan was given at an interest rate which is below the benchmark interest rate described in the "Subsidies Valuation" section of the notice. Moreover, under the terms of this loan, the regional government (that of Ansan City) paid a portion of the interest. Although this Ansan City-administered program is only available to small- and medium-sized enterprises, the loan approval criteria indicates that export performance is also an important criterion for approval. Applications for these loans are evaluated on a point system. The applicant receives 10 out of a possible 100 "points" if it is a promising small and medium size business. However, the applicant can also receive 10 points if its exports comprise over twenty percent of its total sales. In addition, an applicant can garner 10 points if it is involved in overseas market development. Therefore, two of the criteria of loan approval are based upon export performance.

Under section 771(5A)(B) of the Act, an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Dai Yang did meet the criteria of having over twenty percent of sales in export markets, and so may have qualified based on these export criteria. Further, pursuant to section 351.514 of the Department's regulations (63 FR at 65381), Dai Yang did not demonstrate that it was approved to receive these benefits solely under non-export criteria. Thus, after examination of this program, we determine that Dai Yang's receipt of this loan to be a *de facto* export subsidy pursuant to section 771(5A)(B) of the Act. In addition, by paying a portion of the interest on the loan, the actions of the Ansan City government confer a benefit in accordance with section 771(5)(E)(ii) of the Act. Therefore, we determine this program to be countervailable.

In the *Preliminary Determination*, we treated this loan as a short-term loan because it is rolled over annually with a revised interest rate. However, record evidence indicates that all of the interest rates for the life of the loan were set at the time the loan was approved. Thus, we believe that it is more reasonable to measure the benefit from this loan using the Department's long-term fixed rate loan methodology. We used as our benchmark the rate described in the "Subsidies Valuation" section of the notice, above. We divided the benefit calculated in the POI by Dai Yang's total exports during 1997. On this basis, we determine the countervailable subsidy attributable to Dai Yang during the POI to be 0.04 percent *ad valorem*.

K. POSCO's Two-Tiered Pricing Structure to Domestic Customers

In our supplemental questionnaire, we requested information from POSCO and the other respondents regarding an allegation that the GOK mandates POSCO to subsidize local manufacturers by selling them steel at 30 percent below the international market price. In response to this allegation, POSCO stated that no such program exists. However, in its response, POSCO provided information regarding its pricing structure in the domestic and export markets.

We verified that POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea; direct export prices in U.S. dollars or Japanese yen; and, local export prices in U.S. dollars. POSCO's local export prices are provided to those domestic customers that purchase steel for further processing into products that are exported. During the POI, POSCO sold hot-rolled stainless steel coil, which is the main input in the subject merchandise, to Dai Yang and Inchon, which used the coil to produce subject merchandise sold both as exports and in the domestic market. POSCO is the only Korean producer of hot-rolled stainless steel coil.

As noted earlier, POSCO is a government-controlled company. (*See* the discussion relating to government control of POSCO in the program "Purchase of Sammi Speciality Steel Division by POSCO".) POSCO sets different prices for the identical product for domestic purchases based upon the purchasers' anticipated export performance. Therefore, when POSCO sells hot-rolled stainless steel coil to Dai Yang and Inchon to be used to manufacture subject merchandise which is exported, POSCO charges a lower price than the price charged on the identical hot-rolled stainless steel coil sold to the companies for manufacturing subject merchandise to be sold in the domestic market. Because POSCO charges a lower price based upon export performance, this pricing policy constitutes an export subsidy under section 771(5A)(B) of the Act. Because exporters are charged a lower price, this program also provides a financial contribution to the exporters under section 771(5)(D).

The benefit from this type of export subsidy is based upon the difference in the price charged to exporters and the price charged for domestic consumption. The only exception is for pricing programs which fall under Item (d) of the Illustrative List of Export Subsidies, which is provided for in Annex I of the Agreement on Subsidies and Countervailing Measures.[6] Item (d) allows governments to maintain a program which provides different prices based upon export or domestic consumption if certain strict criteria are met by the government. However, POSCO's dual pricing policy does not fit within the parameters of the Item (d) exception. Therefore, the benefit from this program is based upon the difference between the prices charged by POSCO for export and the prices charged by POSCO for domestic consumption.

To determine the value of the benefit under this program, we compared the monthly weighted-average price charged by POSCO to Dai Yang and Inchon for domestic production to the monthly weighted-average price charged by POSCO to respondents for export production, by grade of hot-rolled coil. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. On this basis, we determine that Dai Yang received a countervailable subsidy of 0.87 percent *ad valorem* from this program, and that Inchon received a countervailable subsidy of 2.36 percent *ad valorem* from this program during the POI.

II. Programs Determined To Be Not Countervailable

A. Electricity Discounts Under the Power Factor Adjustment and Summer Vacation and Repair Adjustment Programs

KEPCO provided three types of discounts under its tariff schedule during the POI. These three discounts were based on the following rate

[6] A subsidy arises under Item (d) from the provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of export goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters.

adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. *See* the separate discussion above in regard to the countervailability of the "Requested Load Adjustment" program.

With respect to the Power Factor Adjustment (PFA) program, the GOK reported that the goal of the PFA is to improve the energy efficiency of KEPCO's customers which, in turn, provides savings to KEPCO in supplying electricity to its entire customer base. Customers who achieve a higher efficiency than the performance standard (*i.e.*, 90 percent) receive a discount on their base demand charge.

We verified that the PFA is not a special program, but a normal factor used in the calculation of a customer's electricity charge which was introduced in 1989. The PFA is available to all general, educational, industrial, agricultural, midnight power, and temporary customers who meet the eligibility criteria. The eligibility criteria are that a customer must: (1) Have a contract demand of 6 KW or more; (2) have a power factor that exceeds the 90 percent standard power factor; and (3) have proper facilities to measure its power factor. If these criteria are met, a customer automatically receives a PFA discount on its monthly electricity invoice. During the POI, over 600,000 customers were recipients of PFA discounts.

With the aim of curtailing KEPCO's summer load by encouraging customer vacations or the repair of their facilities during the summer months, the GOK introduced the Summer Vacation and Repair Adjustment program (VRA) in 1985. Under this program, a discount of 550 won per KW is given to customers, if they curtail their maximum demand by more than 50 percent, or 3,000 KW, through a load adjustment or maintenance shutdown of their production facilities during the summer months.

The VRA discount program is available to all industrial and commercial customers with a contract demand of 500 KW or more. The VRA is one of several programs that KEPCO operates as part of its broad long-term strategy of demand-side management which includes curtailing peak demand. We verified that over eight hundred customers, from a wide and diverse range of industries, received VRA discounts during the POI.

We analyzed whether these electricity discount programs are specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identify companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the PFA, all general, educational, industrial, agricultural, midnight power, and temporary customers who have the necessary contract demand are eligible to participate in the discount program. The VRA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, based on our analysis of the law, we determine that the PFA and VRA electricity programs are not *de jure* specific under section 771(5A)(D)(i) of the Act.

We also examined evidence regarding the usage of the discount electricity programs and found no predominant use by the steel industry. The information on the record demonstrates that discounts under the PFA and VRA are distributed to a large number of firms in a wide variety of industries. Therefore, after analyzing the data with respect to the large number of companies and diverse number of industries which received electricity discounts under these programs during the POI, we determine that the PFA and VRA programs are not *de facto* specific under section 771(5A)(D)(iii) of the Act. Accordingly, we determine that the PFA and VRA discount programs are not countervailable.

B. GOK Infrastructure Investments at Kwangyang Bay Post-1991

The GOK has made the following infrastructure investments at Kwangyang Bay since 1991: Construction of a road from Kwangyang to Jinwol, construction of a container terminal, and construction of the Jooam Dam. The GOK stated that pursuant to Article 29 of the Industrial Sites and Development Act, it is the national and local governments' responsibility to provide basic infrastructure facilities throughout the country, and the nature of the infrastructure depends on the specific needs of each area and/or the types of industries located in a particular area. The GOK provides services to companies through the use of the infrastructure facilities and charges fees for the services based on published tariff rates applicable to all users.

With respect to the GOK's post-1991 infrastructure investments at Kwangyang Bay, the GOK argues that the construction of the infrastructure was not for the benefit of POSCO. The GOK reported that the purpose of developing the Jooam Dam was to meet the rising demand for water by area businesses and households. The supply capacity of the Sueochon Dam, which was constructed prior to 1991, cannot meet the area's water needs and, therefore, a second dam in the Kwangyang Bay area was built. The GOK further reported that the Jooam Dam does not benefit POSCO because POSCO receives all of its water supply from the Sueochon Dam. At verification, we obtained information which demonstrates that the Jooam Dam's water pipe line connects neither to the Sueochon Dam nor to POSCO's steel mill at Kwangyang Bay. Accordingly, POSCO cannot source any of its water supply from the Jooam Dam and, therefore, the company is not benefiting from the GOK's construction of the Jooam Dam.

The GOK also constructed a container terminal at Kwangyang Bay to relieve congestion at the Pusan Port and to encourage the further commercial development of the region. The GOK stated that, given the nature of the merchandise imported, produced, and exported by POSCO at Kwangyang Bay, this container terminal cannot be used by POSCO's operations. According to the responses of the GOK and POSCO and the information obtained at verification, neither steel inputs nor steel products can be shipped through the container terminal at Kwangyang Bay. Given the nature of steel inputs (*e.g.*, bulk products like scrap) and finished steel products (*e.g.*, bundled bars and plate), products such as these would or could not be loaded or unloaded from a ship through a container terminal and, therefore, the facility is not used by steel producers.

The road from Kwangyang to Jinwol was constructed in 1993. The GOK stated that this is a general service, public access road available for, and used by, all residents and businesses in the area of Kwangyang Bay. According to the GOK, the reason for building the public highway was not to serve POSCO, but to provide general infrastructure to the area as part of the GOK's continuing development of the country and to relieve a transportation bottleneck. At verification, we obtained information on the road and learned that, in fact, it is utilized by both industries in the area to transport goods and by residents living in the Kwangyang Bay area.

Based on the information obtained at verification regarding the GOK's infrastructure investments at

Kwangyang Bay since 1991, we determine that the GOK's investments in the Jooam Dam, the container terminal, and the public highway were not made for the benefit of POSCO. Therefore, we find that these investments are not providing countervailable benefits to POSCO.

C. Port Facility Fees

In the 1993 investigation of *Steel Products from Korea*, the Department found that POSCO, which built port berths at Kwangyang Bay but, by law, was required to deed them to the GOK, was exempt from paying fees for use of the berths. POSCO was the only company entitled to use the berths at the port facility free of charge. The Department determined that because this privilege was limited to POSCO, and because the privilege relieved POSCO of costs it would otherwise have had to pay, POSCO's free use of the berths at Kwangyang Bay constituted a countervailable subsidy. The Department stated that each exemption from payment of the fees, or "reimbursement" to POSCO, creates a countervailable benefit because the GOK is relieving POSCO of an expense which the company would have otherwise incurred. *See Steel Products from Korea*, 58 FR at 37347–348.

With respect to the instant investigation, since 1991, POSCO, at its own expense, has built new port facilities at Kwangyang Bay. Because title to port facilities must be deeded to the GOK in accordance with the Harbor Act, POSCO transferred ownership of the facilities to the GOK. In return, POSCO received the right to use the port facilities free of charge, and the ability to charge other users a usage fee until the company recovers all of its investment costs. At the preliminary determination, we determined that because POSCO is exempt from paying port facility fees, which it otherwise would have to pay, and the government is foregoing revenue that is otherwise due, POSCO's free usage of the port facilities provided a financial contribution to the company within the meaning of section 771(5)(D)(ii) of the Act. We also found that the exemption from paying port facility charges is specific under section 771(5A)(D)(iii) of the Act, because POSCO was the only company exempt from paying these port facility fees during the POI. During verification, we discovered that Inchon also participated in this program.

Since our preliminary determination, we have gathered further information with respect to the Harbor Act and the number and types of companies which have built infrastructure which, as required by law, were subsequently transferred to the government. At verification, we learned that, because the government does not have sufficient funds to construct all of the infrastructure a company may need to operate its business, the GOK allows a company to construct, at its own expense, such infrastructure. However, the Harbor Act prohibits a private company from owning certain types of infrastructure, such as ports. Therefore, the company, upon completion of the project, must deed ownership of the infrastructure to the government pursuant to Article 17–1 of the Harbor Act. Because a company must transfer to the government its infrastructure investment, the GOK, under Articles 17–3 and 17–4 of the Harbor Act, grants the company free usage of the facility and the right to collect fees from other users of the facility until the company recovers its investment cost. Once a company has recovered its cost of constructing the infrastructure, the company must pay the same usage fees as other users of the infrastructure facility.

We verified that under the Harbor Act, any company within any industrial sector is eligible to construct infrastructure necessary for the operation of its business provided that it receives approval by the Administrator of the Maritime and Port Authority to build the facility. We learned that if the ownership of the infrastructure, which the company built, must transfer to the government, then the company, by law, has the right to free usage of that facility and the ability to collect fees from other users of the facility. The right of free usage and the ability to collect user fees are granted to every company which has to deed facilities to the GOK. The free usage and collection of user fees continues only until the company which built the facility recaptures its cost of constructing the facility.

Further, at verification we learned that in permitting a company to build infrastructure subject to the Harbor Act requirements, the GOK has in place a procedure for approving a company's investment costs and for monitoring the company's free usage and collection of user fees. Because the GOK allows a company, for a period of time, to use for free the infrastructure it built, the GOK, through the respective port authority, reviews each infrastructure project to assess the cost. The port authority then approves a certain monetary amount for the infrastructure through a settlement process with the company. A company can only receive free usage of a facility up to the monetary amount approved by the port authority.

At verification, we obtained documentation which indicates that since 1991, a diverse grouping of private sector companies across a broad range of industrial sectors have made a number of investments in infrastructure facilities at various ports in Korea, including at Kwangyang Bay. In each case, the company which built the infrastructure was required to transfer it to the GOK, and received free usage of the infrastructure and the ability to collect user fees from other companies until they recover their respective investment costs. POSCO and Inchon were not the only companies entitled to use a particular port facility infrastructure, which it built, free of charge.

As a result of the information obtained at verification, we have revisited our preliminary determination that POSCO's exemption from paying port facility charges is specific under section 771(5A)(D)(iii) of the Act. As discussed above, we verified that since 1991, a diverse grouping of private sector companies representing a wide cross-section of the economy have made a large number of investments in infrastructure facilities at various ports in Korea, including numerous investments at Kwangyang Bay. Those companies which built infrastructure that was transferred to the GOK, as required by the Harbor Act, received free usage of the infrastructure and the ability to collect user fees from other companies which use the facilities, until they recover their respective investment costs. POSCO and Inchon are only two of a large number of companies from a diverse range of industries to use this program. Accordingly, we determine that this program is not specific under section 771(5A)(D)(iii) of the Act. Therefore, we find that this program is not countervailable.

III. Programs Determined To Be Not Used

Based on the information provided in the responses and the results of verification, we determine that the companies under investigation either did not apply for or receive benefits under the following programs during the POI:

A. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act

B. Reserve for Investment under Article 43–5 of TERCL

C. Export Insurance Rates Provided by the Korean Export Insurance Corporation

D. Special Depreciation of Assets on Foreign Exchange Earnings

E. Excessive Duty Drawback

Petitioners alleged that under the Korean Customs Act, Korean producers/exporters may have received an excessive abatement, exemption, or refund of import duties payable on raw materials used in the production of exported goods. The Department has found that the drawback on imported raw materials is countervailable when the raw materials are not consumed in the production of the exported item and, therefore, the amount of duty drawback is excessive. In *Steel Products from Korea*, we determined that certain Korean steel producers/exporters received excessive duty drawback because they received duty drawback at a rate that exceeded the rate at which imported inputs were actually used. *See Steel Products from Korea*, 58 FR at 37349.

At verification, we learned that the refund of duties only applies to imported raw materials that are physically incorporated into the finished merchandise. Items used to produce a product, but which do not become physically incorporated into the final product, do not qualify for duty drawback. We confirmed that the National Technology Institute (NTI) maintains a materials list for each product, and only materials that are physically incorporated into the final product are eligible for duty drawback.

We verified that the NTI routinely conducts surveys of producers of exported products to obtain their raw material input usage rate for manufacturing one unit of output. With this information, the NTI compiles a standard usage rate table for imported raw material inputs which is used to calculate a producer/exporter's duty drawback eligibility. In determining an input usage rate for a raw material, the NTI factors recoverable scrap into the calculation. In addition, the loss rate for each imported input is reflected in the input usage rate. At verification, the GOK confirmed that the factoring of reusable scrap into usage rates is done routinely for all products under Korea's duty drawback regime.

We also confirmed during our verification that there is no difference in the rate of import duty paid and the rate of drawback received. The rate of import duty is based on the imported materials and the rate of drawback depends on the exported merchandise and the usage rate of the imported materials. The companies pay import duties based on the rate applicable to and the price of the imported raw material. The companies then receive duty drawback based on the amount of that material consumed in the production of the finished product according to the standard input usage rate. Accordingly, the rate at which the respondents receive duty drawback is the amount of import duty paid on the amount of input consumed in producing the finished exported product.

Based on the information on the record, we determine that the respondents have not received duty drawback on imported raw materials that were not physically incorporated in the production of exported merchandise. As in *Steel Products from Korea*, we also determine that the respondents appropriately factored recovered scrap into its calculated usage rates and that the duty drawback rate applicable to the respondents takes into account recoverable scrap. *See Steel Products from Korea*, 58 FR at 37349. Therefore, we determine that the respondents have not received excessive duty drawback.

IV. Programs Determined To Be Terminated

Based on information provided by the GOK, we determine that the following program does not exist:

Unlimited Deduction of Overseas Entertainment Expenses

In *Steel Products from Korea*, 58 FR at 37348–49, the Department determined that this program conferred benefits which constituted countervailable subsidies because the entertainment expense deductions were unlimited only for export business activities. In the present investigation, the GOK reported that Article 18–2(5) of the Corporate Tax Law, which provided that Korean exporters could deduct overseas entertainment expenses without any limits, was repealed by the revisions to the law dated December 29, 1995. According to the GOK, beginning with the 1996 fiscal year, a company's domestic and overseas entertainment expenses are deducted within the same aggregate sum limits as set by the GOK. As a result of the revision to the law, overseas entertainment expenses are now treated in the same fashion as domestic expenses in calculating a company's income tax. Therefore, we determine that this program is no longer in existence.

Interested Party Comments

Comment 1: The GOK's Pre-1992 Credit Policies: New Factual Information Concerning Foreign Currency-Denominated Loans

Respondents assert that the Department ignored new factual information on the record of this proceeding concerning domestic foreign currency loans. Specifically, respondents submitted information indicating that from 1986 through 1988, interest rates on domestic foreign currency loans were only subject to an interest rate ceiling, and that after 1988, banks and other financial institutions were free to set the interest rates on these loans subject only to the ceiling established by the Interest Limitation Act. Respondents claim that the Department ignored this information and incorrectly assumed that the reimposition of interest rate ceilings on Korean won loans after a failed attempt at liberalization in 1988 also applied to domestic foreign currency loans.

Respondents further state that the Department found at verification that the interest rate liberalization program applied solely to lending rates in Korean won. Therefore, for all domestic foreign currency loans received prior to 1992, there is no basis for the Department's determination that interest rates on these loans were regulated and that these loans provided countervailable subsidies.

According to petitioners, the Department's finding that pre-1992 direct foreign loans provided a countervailable subsidy was correct and supported by the evidence on the record. Petitioners contend that the issue at hand is the GOK's control over access to the foreign loans, not control of the interest rate. Petitioners further state that respondents have provided no new evidence to disprove this finding and nothing in the new law is contrary to either the Department's 1993 determination, or the determination in *Stainless Steel Plate from Korea*.

Department's Position: The alleged "new" information cited by respondents in their brief concerning interest rates on domestic foreign currency loans was considered by the Department in *Steel Products From Korea*, and again in *Stainless Steel Plate from Korea*. The discussion addressing the GOK's strict control of interest rates specifically states that "[i]nterest rate ceilings on domestic foreign currency loans were

also maintained until 1988." *See Steel Products From Korea*, 58 FR at 37341. Thus, the Department considered the fact that the *de jure* controls over domestic foreign currency loans were removed after 1988 in reaching its conclusion that these loans continued to be subject to indirect GOK influence. Respondents' contention that "window guidance" (*i.e.*, the GOK's indirect control over interest rates) applied only to domestic won loans is also without merit.

The Department examined this question and reached the opposite conclusion in *Steel Products From Korea*. The Department reiterated this conclusion in *Stainless Steel Plate from Korea*, where it also noted that independent bankers had stated that "interest rates were once again regulated until the early 1990s, through a system of "window guidance."" Under this system commercial banks were effectively directed by the government not to raise interest rates above a certain level. While this statement is contained within the discussion of the failed 1988 liberalization plan, the bankers did not distinguish between domestic and foreign rates of lending by domestic commercial banks. Finally, in calling for the prohibition of "window guidance" over financial institutions" loan rates, the Presidential Commission did not refer only to won-denominated rates. As noted above, the Department's findings in *Steel Products From Korea* took into account respondents' "new" information. This finding has since been upheld by the Court in *British Steel plc* v. *United States*, 941 F. Supp 119 (CIT 1996) (British Steel II), and by the Department in its final determination of *Stainless Steel Plate from Korea*. For these reasons our finding concerning the countervailability of pre-1992 foreign currency denominated loans from domestic sources remains unchanged in this final determination.

Comment 2: Post-1991 GOK Credit Policies: Whether POSCO Received Long-Term Loans From Korean Banks At Favorable Interest Rates

Respondents contend that, according to the Department's own calculations in *Stainless Steel Plate from Korea*, POSCO did not receive a benefit from favorable interest rates from regulated and directed sources of credit during the 1992–1997 period, and hence there is no countervailable subsidy in this time period. Respondents propose that the "minuscule benefits" found are merely a result of rounding errors caused by the use of weighted-average benchmarks during a period of fluctuating interest rates. Alternatively, the insignificant benefit found in the *Stainless Steel Plate from Korea* determination may have resulted from variations in the LIBOR base rate on all of these loans. Respondents do not argue with the Department's use of three-year corporate bonds as representative of the long-term market rate for won loans in Korea.

Petitioners rebuttal argument is twofold. As an initial matter, the calculations from *Stainless Steel Plate from Korea* that are cited by respondents contain an error. When this error is corrected, it becomes apparent that there was a benefit to POSCO from its long-term won-denominated loans. Secondly, even if this benefit is minimal, it falls within the rubric of the GOK's direction of credit, and was therefore properly countervailed.

Department's Position: As detailed in the Credit Memo, we have determined that access to government-regulated foreign sources of credit did not confer a benefit to POSCO, as defined by section 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources was found not countervailable. Petitioners' argument that this decision was based on a calculation error is based on an incorrect characterization of these loans as fixed rate loans. Because these loans have variable interest rates, our methodology is to calculate the benefit at the time the interest on the loan is paid. For these reasons, we find that there was no benefit from direct foreign loans received by POSCO in 1997.

Comment 3: The GOK's Pre-1992 Credit Policies: Whether Direct Foreign Loans Constitute a Financial Contribution Within the Meaning of the Act

According to respondents, the only government regulation of direct foreign loans consisted of an interest rate ceiling. Respondents state that the GOK could not, under its regulations, direct or induce foreign lenders to provide loans to POSCO; nor could it regulate (and reduce) the interest rates these lenders would charge on such loans. Rather, these loans were negotiated directly between foreign banks and POSCO without the GOK's direct or indirect involvement. As such, respondents' state that the Department's preliminary finding that direct foreign loans are countervailable is in conflict with the "financial contribution" standard of section 771(5)(D)(i) of the Act. Respondents assert that direct foreign loans from foreign banks do not constitute countervailable subsidies because there is no government financial contribution. Respondents further claim that the Department did not explain in its preliminary determination how loans from foreign sources could constitute a financial contribution by the GOK.

Moreover, respondents state that these loans do not meet the "entrusts or directs" standard of the Act, because (1) they can not be characterized as a contribution that "would normally be vested in the government," and (2) the requirement that the practice of lending by the foreign entity "does not differ in substance from practices normally followed by the government" is not met in this instance. Furthermore, because access to direct foreign loans was restricted by the GOK on the basis of a borrowers' ability to access the market without a government or bank guarantee, POSCO would have been able to receive direct foreign loans at the interest rates obtained on its own and without government involvement.

Respondents also address the Department's assertion in the new countervailing duty regulations (and the Statement of Administrative Action) that its indirect subsidy standard remains unchanged under the "financial contribution" standard of the Post-Uruguay Round law, specifically referring to the indirect subsidy practices countervailed in *Steel Products from Korea*.[7] Respondents state that to simply subsume direct foreign loans from foreign entities within the broad claim of an unchanged indirect subsidy standard (and the endorsement in the SAA of *Steel Products From Korea*) is "overly simplistic and legally in error."

Petitioners dispute respondents' assertion that the GOK's control over access to direct foreign loans does not constitute a financial contribution, within the meaning of the Act. Petitioners state that this question has been addressed by the SAA, which specifically references the Department's indirect subsidy findings in *Steel Products From Korea* to illustrate that the indirect subsidy standard includes the GOK's control over access to direct foreign loans. Petitioners contend that to accept respondents' argument would be to repudiate the interpretation of the statute in the SAA. Petitioners note, moreover, that the Department preliminarily found in the Credit Memo that the GOK's control over the Korean financial system continued through the POI and included the control of access to direct foreign loans.

Department's Position: As petitioners correctly note, respondents' arguments concerning this issue have been fully

[7] *Countervailing Duties; Final Rule*, 63 FR 65348, 65349 (November 25, 1998) (*CVD Final Rule*); SAA at 926.

addressed by the Congress through its approval of the SAA and the *CVD Final Rule*.[8] In *Steel Products From Korea*, the finding of government control was determined to be sufficient to constitute a government program and government action, as defined by the Act. Moreover, in the preliminary determination, we did not revisit that prior determination, and also found that the subsidy identified meets the standard for a subsidy as defined by the post-URAA Act. *Preliminary Determination*, 63 FR at 63890.

While respondents contend that subsuming GOK-controlled access to direct foreign loans from foreign entities within the SAA's claim of an unchanged indirect subsidy standard is "overly simplistic and legally in error," the clear and unambiguous language of the SAA is that Congress intended the specific types of indirect subsidies found to be countervailable in *Steel Products From Korea* to continue to be covered by the Act, as amended by the URAA. The Department's final countervailing duty regulations are equally clear on this issue: the preamble confirms that the standard for finding indirect subsidies countervailable under the URAA-amended law "is no narrower than the prior U.S. standard for finding an indirect subsidy as described in *Steel Products from Korea*." *See CVD Final Rule*, 63 FR at 65349. For these reasons, we have not changed our preliminary determination concerning the countervailability of pre-1992 direct foreign loans.

Comment 4: The GOK's Pre-1992 Credit Policies: Benchmark Applied to Determine the Benefit From Foreign Currency-Denominated Loans

Respondents challenge the Department's use of a won-denominated benchmark to calculate the countervailable benefit from POSCO's outstanding pre-1992 long-term foreign currency-denominated loans. According to respondents, the Department's long established methodology is to compare countervailable loans with a benchmark in the same currency. Respondents cite the *Final Affirmative Countervailing Duty Determination: Certain Apparel from Thailand*, 50 FR 9818, 9824 (1985), which states that, the "benchmark must be applicable to loans denominated in the same currency as the loans under consideration." Respondents also note that this standard was articulated in the *Final Affirmative Countervailing Duty Determination: Cold-rolled Carbon Steel Flat-rolled Products from Argentina*, 49 FR 18006 (April 26, 1984) (*Cold-Rolled Steel From Argentina*). In that case, the Department stated:

> [f]or loans denominated in a currency other than the currency of the country concerned in an investigation, the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration (where possible, interest rates on loans in that currency in the country where the loan was obtained; otherwise, loans in that currency in other countries, as best evidence). The subsidy for each year is calculated in the foreign currency and converted at an exchange rate applicable for each year. *Id.* at 18019.

Respondents contend that this policy was reiterated in the Department's new regulations, the preamble to which refers to the currency of the loans as one of "the three most important characteristics" in determining the benchmark. *CVD Final Rule*, 63 FR at 65363. Thus, respondents assert that the Department (1) did not consider any other commercially-viable alternatives (such as those rates "in other countries"); (2) ignored any reference to its long-standing policy of comparing loans in the same currency; and (3) provided no explanation for abandoning that policy. Accordingly, respondents state that the Department must revise its calculation of the benefit from foreign currency-denominated loans, using a benchmark that is in conformance with its policy and regulations.

Petitioners dispute respondents' benchmark argument, stating that the Department clearly rejected this argument in *Stainless Steel Plate from Korea*. While petitioners do not dispute that it is the Department's preference to use a benchmark in the same currency, the Department made clear in the final determination of *Stainless Steel Plate from Korea* that such a comparison was not appropriate when it reaffirmed its determination from *Steel Products from Korea*.

Department's Position: Respondents' arguments concerning the Department's methodology for measuring benefits from countervailable foreign currency-denominated long-term loans are partially correct. As stated in the *Stainless Steel Plate from Korea* determination, it is true that in most instances we measure the benefit from countervailable foreign currency loans by comparing such loans with a benchmark denominated in the same currency, provided the borrower would otherwise have had access to such foreign currency loans. However, in the context of the Korean financial system prior to 1992, this methodology is not appropriate. 64 FR at 15540. Specifically, in *Steel Products From Korea*, the Department found that all sources of foreign currency-denominated credit were subject to the government's control and direction, and were countervailable. Therefore, these sources of foreign currency credit, including overseas markets, could not serve as an appropriate benchmark, and the Department had to determine the rate that companies would have had to pay absent government control. That rate was the corporate bond yield on the secondary market. *See Steel Products From Korea*, 58 FR at 37346; and *Stainless Steel Plate from Korea*, 64 FR at 15540.

Respondents assert that the Department did not consider any other commercially viable alternatives. Respondents ignore, however, the fact that the corporate bond yield on the secondary market was the only alternative, unregulated, and commercially viable source of financing in Korea. Accordingly, this was the only viable benchmark with which to measure the benefit from government-regulated sources of credit. None of respondents' arguments in this investigation have led us to change our determination in *Steel Products From Korea*, which was reiterated in *Stainless Steel Plate from Korea*. Therefore, our finding concerning POSCO's pre-1992 foreign currency-denominated long-term loans remains unchanged in this final determination.

Comment 5: The GOK's Pre-1992 Credit Policies: Whether Direct Foreign Loans Are Not Countervailable Pursuant to the Transnational Subsidies Rule

Respondents assert that pursuant to the so-called "transnational subsidies rule," funds provided from sources outside a country under investigation are not countervailable. Specifically, respondents state that section 701(a)(1) of the Act applies only to subsidies provided by the government of the country in question or an institution located in, or controlled by, that country. In support of this contention, respondents cite *North Star Steel* v. *United States*, 824 F. Supp. 1074 (CIT 1993) (*North Star*), in which the Court upheld the Department's determination that an Inter-American Development Bank loan guaranteed by the Government of Argentina on behalf of the recipient was not subject to the countervailing duty law. In particular, the CIT stated that "[t]his determination is consistent with the purpose of the countervailing duty law, which is 'intended to offset the unfair competitive advantage that foreign

[8] Although the *CVD Final Rule* is not controlling in this investigation, it does represent a statement of the Department's practice and interpretations of the Act, as amended by the URAA.

producers would otherwise enjoy from * * * subsidies paid by their government.'" *North Star*, 824 F. Supp. at 1079 (quoting *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 456 (1978)). Respondents also cite a case in which the Department refused to initiate an investigation of private, foreign co-financing of a World Bank project, stating that "[f]or the same reasons [applicable to funds from the World Bank], a loan granted by a group of Japanese banks and insurance companies [in the Philippines] * * * would not be countervailable." *See Initiation of Countervailing Duty Investigation: Certain Textiles and Textile Products from the Philippines*, 49 FR 34381 (August 30, 1984).

Petitioners assert that the Department's determination does not contravene the transnational subsidy rule because the subsidy in this case is based on controlled access to credit, and not on a differential in interest rates. The fact that the payment of the funds comes from a private source outside of Korea is irrelevant. According to petitioners, the case law cited by respondents does not involve situations in which a foreign government conferred countervailable subsidies by controlling access to third country financial sources. In addition, petitioners note that these cases predate the changes in the statute that expressly recognize indirect subsidies provided through private actors.

Department's Position: Respondents' assertion concerning the transnational subsidies rule is incorrect. Respondents made this same argument in *Steel Products From Korea* (*see* 58 FR at 37344) and in *Stainless Steel Plate from Korea* (*see* 64 FR at 15539). In upholding the Department's determination in *Steel Products From Korea*, the Court did not find in any way that the Department's determination with respect to direct foreign loans was in conflict with the transnational subsidies rule, as argued by respondents in that prior investigation. The cases cited by respondents are also not relevant to the facts of this investigation because those cases deal with funds from foreign governments or international lending or development institutions. This investigation, however, concerns the Korean government's control over access to funds from overseas private sources of credit.

More specifically, however, the Department rejected respondents' argument both in *Steel Products From Korea* and in *Stainless Steel Plate from Korea* because the benefit alleged was not the actual funding of direct foreign loans, but rather the "preferential access to loans that are not generally available to Korean borrowers." *Steel Products From Korea*, 58 FR at 37344; *Stainless Steel Plate from Korea*, 64 FR at 15539. The GOK was found to control this access and because the steel industry received a disproportionate share of these low-cost funds, this preferential access was found to confer a countervailable benefit on the steel industry. Nothing argued by respondents in this investigation would lead us to change these prior determinations concerning direct foreign loans. Therefore, our preliminary determination remains unchanged.

Comment 6: Post-1991 GOK Credit Policies: Whether Foreign Currency Loans from Domestic Branches of Foreign Banks are Countervailable

Petitioners argue that, contrary to its decision in *Stainless Steel Plate from Korea*, the Department should find countervailable access to foreign currency loans extended by foreign bank branches located in Korea. Petitioners contend that the same conditions which led the Department to find the existence of direction of credit for domestic bank sources are present in the case of foreign currency loans extended by foreign bank branches in Korea. Moreover, there is no affirmative evidence to justify overturning the 1993 determination of GOK control over domestic branches of foreign banks. Petitioners assert that the Department mistakenly relied on a lack of any substantive discussion in the record concerning the influence of the GOK on foreign banks as affirmative evidence that no such controls exist. According to petitioners, there is little, if any, meaningful discussion about the direct or indirect influence of GOK regulations and policies on the operation of foreign banks in Korea in the record, including the verification reports. Thus, petitioners argue that the Department does not have a basis for its determination in *Stainless Steel Plate from Korea* that foreign currency loans from branches of foreign banks in Korea are not countervailable.

Petitioners argue that pursuant to the Court of International Trade's (CIT) recent ruling in *Al Tech Specialty Steel Corp.* v. *United States*, the Department may not infer the truth of certain facts from lack of any contradictory evidence on the record, and so may not conclude that, absent evidence to the contrary, the GOK did not exert improper controls or influence over foreign commercial banks.[9] Rather, petitioners argue that the Department is required to support or authenticate with record evidence (*i.e.*, verify) any factual assertion on which it relies. Slip Op. 98–136 at 9 (CIT 1998). Petitioners state that, in this case, the Department has violated that principle by failing to gather and verify the necessary facts in support of the conclusion reached.

Moreover, petitioners assert that what little record evidence is available demonstrates that GOK control over foreign banks in Kòrea is equivalent to that over Korean domestic banks. The petitioners argue that, according to record evidence, foreign commercial banks and domestic banks are on an "equal footing," and must therefore be subject to the same controls. In particular, petitioners cite to the General Bank Act, the Bank of Korea Act, and the Foreign Exchange Management Law, noting that foreign banks are also subject to the provisions of these laws. Petitioners also refer to the Department's finding that the BOK and MOFE have equal authority to control and monitor all banks, and acted a manner such that, "[t]o a significant extent, these institutions [BOK and MOFE] continued to intervene directly and indirectly in the lending activities of commercial banks." Directed Credit Memo at 6.

Petitioners assert that because the Department found that foreign banks were controlled indirectly by the GOK in *Steel Products from Korea*, and because the Department did not find any practical changes in the GOK's indirect role on lending rates and appointment of bank officials between 1991 and 1997, there is no evidence to support the conclusion that these controls ceased to exist for foreign banks. Specifically, petitioners argue that the GOK maintained indirect control over foreign banks in two ways: (1) By influencing lending rates; and (2) by influencing the appointment of bank officials. With regard to lending rates, petitioners argue that (as indicated in the *Presidential Report*) foreign commercial banks must be subject to the same "window guidance" as domestic commercial banks to prevent interest rates from increasing. *See Presidential Report* at 29. According to petitioners, risk-averse, profit-motivated foreign commercial banks would only charge such low interest rates in the Korean

[9] Slip Op. 98–136 at 9, 1998 WL 661461 (Ct. Int'l Trade Sept. 24, 1998)("After having failed to uncover evidence to corroborate Isibar's statement on the industry standard, Commerce should then have either concluded that the claim was unverifiable or continued the investigative process until corroborating evidence was obtained").

market if GOK policies restricted either the interest rates or borrowers' access to credit from those banks. Moreover, petitioners maintain instead that there is not sufficient evidence to determine that foreign banks were without GOK influence in the selection of bank officials at Korean branches.

In rebuttal, respondents argue that the petitioners' cite to *Al Tech* is not pertinent. The reasoning of *Al Tech* does not logically extend to this case because there is no evidence to support a conclusion of direction and control over Korean branches of foreign banks. Respondents advance that the record evidence, including meetings with commercial bankers, incontrovertibly indicates that there is no Korean government control of these banks. Rather, petitioners resort to using generalities and speculation about the operation of the Korean banking system and its provisions, which pertain neither to direction of credit to the steel industry, nor to the Department's *de facto* finding of direction of credit. Respondents also reject petitioners argument because petitioners do not present any evidence of the means by which the GOK controlled or directed the lending practices of these foreign bank branches, in contrast to the Department's findings regarding the domestic commercial banks. Rather, foreign banks' most important source of funds is their head offices; this provides them with both greater autonomy from the Korean banking system and a lower cost of funds than that available to Korean commercial banks. Respondents note that petitioners' focus on government controls on the inflow of foreign funds is misplaced, as the GOK is primarily concerned with the domestic money supply, while the inflow of foreign currency is linked to the use of these funds.

Finally, respondents point out that the GOK does not, and does not need to, influence these banks to lend to POSCO. Respondents reiterate that POSCO is one of the best companies in Korea, and, given POSCO's strong credit rating and reputation, most commercial banks would like to lend to the company.

Department's Position: First, we note that petitioners make the statement that because the Department found government control over domestic branches of foreign banks in our 1993 decision in *Steel Products from Korea* that it is incumbent on the Department to rely on affirmative evidence that this control has been repealed. Petitioners argue that the record evidence in this investigation provides no affirmative evidence of any such repeal. Petitioners are incorrect. First, we must make the basic point that the specific GOK control of domestic branches of foreign banks during the period 1992 through 1997, which is at issue here, was not examined in *Steel Products from Korea*. As such, there is no "affirmative evidence" to "repeal." In addition, in *Steel Products from Korea*, our determination of GOK control was based on the entirety of the financial system in Korea as existed pre-1992. In this current investigation, we determined that the more appropriate basis of examination of direction of credit after 1991 is an analysis of GOK control with respect to each aspect of the different types of commercial banks in Korea, including domestic banks and foreign bank branches.

More importantly, with respect to petitioners' argument on this issue, as a matter of law, the countervailability of the GOK's control over domestic branches of foreign banks during the period 1992 through 1997, which was not examined in the 1993 decision in *Steel Products from Korea*, can only be based upon the information on the record in this current investigation. As detailed above and explained in the Credit Memo, the information on the record in this investigation demonstrates that while the GOK controls domestic commercial banks it does not control branches of foreign banks in Korea.

Petitioners' contention that record evidence establishes that the Korean branches of foreign banks were subject to the same GOK controls and direction that applied to domestic commercial banks is not supported by the record. The record evidence cited by petitioners does not amount to GOK control and direction of these institutions' operations and lending practices.

The 1996 and 1998 OECD reports do not support petitioners' arguments. While the 1996 OECD report discusses funding levels by foreign banks in Korea, nowhere does that report state that these banks were subject to the GOK's control or direction. Moreover, the 1998 OECD Report, in discussing the weakness of the Korean banking system, and in attributing responsibility for that weakness partly to the government's direct and indirect intervention in the operations of commercial banks, mentions only domestic commercial banks, not foreign banks. In fact, the report discusses the inability of domestic commercial banks, after their privatization, to "develop the autonomy [from the government] needed in a market economy."

Contrary to their arguments, petitioners' reliance on the reports issued by the Presidential Commission for Financial Reform, quoted by the Department in the Credit Memo, is equally misplaced. The section of the Presidential Report titled "Deregulation of Access to Foreign Capital Markets," cited by petitioners, refers to regulations governing access to foreign capital markets, not regulations governing foreign currency-denominated loans from domestic branches of foreign banks in Korea.[10] Regulations governing access to foreign capital markets are quite separate from those governing domestic branches of foreign banks in Korea. To the extent that the Presidential Commission addressed domestic foreign currency loans, it addressed the lifting of restrictions on the usage of these funds, which is limited mostly to the importation of machinery from abroad. This has nothing to do with any GOK controls over the operations of domestic branches of foreign banks.

Petitioners also support their argument with the contention that foreign banks are subject to some of the same regulatory provisions contained in the General Bank Act that govern domestic commercial banks. However, the Department's analysis in the Credit Memo did not rely on these regulatory provisions but on the record evidence that the GOK continued to influence the lending practices of these domestic commercial banks indirectly, in part because these banks did not develop autonomy from the government. As we explained in the Credit Memo, the weakness of domestic banks vis-a-vis the government was in part an outgrowth of the government's historical role in allocating credit in accordance with policy objectives. Also, the corporate governance structure of Korea's commercial banks (weak ownership structure, lack of autonomy in appointing banking officials) contributed to their weakness vis-a-vis the government. The fact that the GOK's indirect involvement in commercial banking operations continued into the 1990s exacerbated this problem. *See* Credit Memo at 8–9. Foreign banks in Korea, however, were not subject to this same influence. Their sources of funds were their head offices and, as respondents correctly illustrate, appointment of their senior officials was not subject to influence by the GOK. Moreover, there is no evidence that the GOK played a role in the distribution of these funds by the Korean branches. Petitioners proffer no evidence that foreign banks in Korea were

[10] *Financial Reform in Korea: The First Report (Presidential Report I)* at 22 (April 1997), Exhibit MOFE–9 of the MOFE Verification Report, on file in the CRU.

"inescapably influenced by the controls on every other sector of the banking industry." Rather, they speculate that these banks would be no less influenced than their Korean counterparts by the lead of the Korean Development Bank and the Bank of Korea to extend credit to certain government-favored projects. This is not a conclusion reached by any of the commercial bankers at verification, and petitioners do not point to any evidence that would support this contention. We also note that petitioners' view of the GOK's motivation to control foreign sources of money to keep interest rates from falling is not consistent with one of the alleged methods of control, *i.e.*, limits on interest rates through "window guidance."

The fact that foreign banks in Korea did not account for a significant amount of total lending in Korea is not sufficient evidence to lead us to conclude that POSCO would not have been able to raise sufficient funds from this source. Rather, the record shows that loans from foreign banks in Korea were a significant source of POSCO's borrowing, and credit from these banks was not controlled by the GOK.

Petitioners have correctly argued that the Department is required to support or authenticate with record evidence factual assertions relied upon in our final determinations. Indeed, section 782(i) of the Act requires the Department to verify the information used in making a final determination. In this investigation, petitioners alleged that the GOK controlled the allocation of credit in Korea during the years 1992 through 1997. Therefore, once a credible allegation was made, the responsibility of the Department was to solicit and develop factual information to determine whether the GOK was directing credit during those years. In this investigation, the Department properly examined individually the various sources of long-term credit in Korea. This examination included, among other sources, loans from foreign banks with branches in Korea.

Because of the complexity of this issue, a government's control and its allocation of credit within its borders, the Department conducted four days of meetings with commercial and investment banks and with economic and financial research institutes in Korea. During this intensive four-day period with experts in the operation of the commercial credit market in Korea, we focused on all aspects of the alleged GOK control of banks in Korea, including its alleged control of foreign banks. In these meetings we sought information on the aspects and measures used by the government in its control of credit and financial institutions in Korea. Information provided to us by these banking and financial experts on the measures used by the GOK to control banks and allocate credit in the Korean financial market was summarized in our Bankers Report.

Based in large part on the information which was gathered during these meetings, we determined that the actions of the GOK in the Korean financial system support the conclusion that the GOK controls credit through both government-owned banks, such as the Korean Development Bank, and Korean domestic banks; however, no similar control was found for foreign banks operating in Korea. As noted in the facts detailed above, and in the Credit Memo, our determination that the GOK does not control the lending decisions and allocation of credit of foreign banks operating in Korea is supported by the information on the record in this investigation.

Comment 7: Post-1991 GOK Credit Policies: Whether POSCO's Access to Foreign Securities Markets Results in Countervailable Benefits

According to petitioners, extensive record evidence, in particular the Department's findings at verification, shows that access to foreign sources of funds, including foreign securities, was strictly controlled by the GOK through the POI. Petitioners assert that, as recognized by POSCO, the MOFE restricted access to foreign securities markets with the purpose of maintaining low levels of cost of funds for certain companies. Petitioners state that interest rates on foreign credit markets were five to seven percentage points lower than those on domestic foreign currency loans, and petitioners charge that the GOK's goal of preventing inflationary effects necessitated the maintenance of this interest rate differential. In addition, petitioners claim that the GOK's control over access to foreign funds constitutes a financial contribution within the meaning of the Act, in particular, the "entrusts or directs" standard of section 771(5)(B)(iii) of the Act.

Respondents note that in the recent *Stainless Steel Plate from Korea* final determination, the Department determined that POSCO's alleged "preferential access" to regulated foreign sources of funds did not confer a benefit. They state that the record evidence in this case also supports a finding that access to foreign securities did not confer a benefit to POSCO. Respondents also dispute petitioners' claim that access to foreign securities constitutes a financial contribution within the meaning of the Act, stating that petitioners' interpretation of the "entrust or directs" standard is unreasonable. Respondents state that this standard cannot encompass private actions by independent foreign parties that are consistent with market-oriented behavior at market-determined interest rates.

Department's Position: In the Credit Memo, we stated that there are three elements required to find a potential subsidy countervailable: (1) A financial contribution is made by a government or public body; (2) a benefit is conferred on the recipient; and (3) the subsidy is specific. If one of these three elements is not met, the subsidy is not countervailable. In accordance with section 771(5)(E)(ii) of the Act, we examined whether a benefit has been conferred on the recipient, POSCO, from foreign securities issued in overseas markets. We also preliminarily determined that POSCO's access to government-regulated foreign sources of credit did not confer a benefit to the recipient, as defined by section 771(5)(E)(ii) of the Act, and, as such, is not countervailable. *See* Credit Memo at 18. As discussed in *Comment 5*, above, we continue to find that branches of foreign banks are not subject to the GOK's control and direction. Therefore, we continue to find that access to government-regulated foreign sources of credit did not confer a benefit, because the rates obtained on foreign securities, even though access to them was limited, were not less than those on foreign currency loans available to respondent companies in Korea. As such, there is no need to address the additional comments raised by petitioners and respondents above.

Comment 8: Whether Lending From Domestic Branches of Foreign Commercial Banks Is an Appropriate Benchmark for Long-term Financing

Petitioners dispute the Department's decision in *Stainless Steel Plate from Korea* that because the GOK did not control or direct credit provided by the domestic branches of foreign commercial banks, the interest rate on certain such loans is an appropriate benchmark for determining the benefit from (1) foreign currency loans from Korean commercial banks extended post-1991 and (2) foreign securities offerings. Petitioners argue that since record evidence establishes the GOK's control of credit from domestic branches of foreign commercial banks, the Department must use an alternative benchmark from an uncontrolled

domestic source. Petitioners assert that the Department should instead continue to apply the methodology established in *Steel Products from Korea (1993)*, and use the domestic corporate bond rate.

Respondents claim that there is substantial evidence on the record to support the Department's finding that the GOK neither controls nor directs the operations of foreign commercial banks. Therefore, loans from these banks are appropriate as benchmark commercial loans.

Department's Position: We have determined that the GOK does not control credit from domestic branches of foreign banks. *See Comments 5 and 6*, above. Because these uncontrolled foreign banks provided foreign currency loans, interest rates on these loans are the appropriate benchmarks to use in calculating the benefit from foreign currency loans provided to the respondents from government-owned banks and government-controlled domestic banks. For the reasons discussed in *Comment 6*, we disagree with petitioners' arguments that funding from domestic branches of foreign banks cannot serve as an appropriate benchmark to measure any potential benefit from regulated foreign currency-denominated sources of credit, *e.g.*, foreign securities from abroad.

Comment 9: Dai Yang's Long-Term Interest Rate Benchmark for Dollar-Denominated Loans

Respondents argue that, absent loans by Korean branches of foreign banks, the Department should use the average interest rates charged on domestic foreign currency loans from Korean branches of foreign banks to POSCO and Inchon as a benchmark for calculating the benefit from Dai Yang's domestic foreign currency loans. Respondents note that the use of this industry-specific data would be in line with the Department's policy of using industry-specific benchmarks when company-specific benchmarks were not available. Alternatively, respondents assert that the Department may use data solely from Inchon if the Department determines that to be more appropriate.

Petitioners reject the use of an "industry-specific" benchmark, as proposed by Dai Yang. While respondents cite to the Department's *1989 Proposed Regulations* in support of this practice, there is no such standard established in the *1997 Proposed Regulations*, which indicates that the Department will use a national average rate absent company-specific benchmark information. Moreover, petitioners suggest the impracticality of this suggestion, as the stated purpose of a benchmark rate is to reflect the "amount the firm would pay on a comparable commercial loan(s) that *the firm could actually obtain on the market.*" 19 C.F.R. 351.505(a)(1) (emphasis added). Given the varied financial status of firms, there is no reason to believe that one firm's rates are an acceptable surrogate for another firm. Therefore, the Department should use the national average interest rate benchmark to determine the benefit on all long-term financing, loans and bonds.

Department's Position: While petitioners are correct that it is the Department's practice to use a national average interest rate benchmark when company-specific rates are unavailable, we were unable to locate a national average rate for domestic branches of foreign banks, or any other appropriate surrogate national average rate in this case. Additionally, it is the Department's long-standing practice to compare countervailable foreign currency-denominated loans to a benchmark in the same currency, as discussed in *Comment 7* above, making the use of the won-denominated interest rate benchmark, as suggested by petitioners, inappropriate in this circumstance. *See e.g., CVD Final Rule*, 63 FR at 65363; *see also, Certain Apparel from Thailand*, 50 FR at 9824 ("benchmark must be applicable to loans denominated in the same currency as the loans under consideration)," and *Cold-Rolled Steel From Argentina*, 49 FR at 18019 ("the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration").

In the past, where the Department has found that a company-specific factor is a reasonable representation of industry practice, we have used such information as the most appropriate surrogate. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40477 (July 29, 1998). As stated in the Department's *CVD Final Rule*, 63 FR at 65408, section 351.505(a)(2)(i), "* * * the Secretary normally will place primary emphasis on similarities in the structure of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and the currency in which the loans are denominated." Based on the similarities in the circumstances and structure of Inchon's and Dai Yang's lending practices, we find that the rate calculated from Inchon's loans by Korean branches of foreign banks is the most appropriate benchmark.

Comment 10: Inchon's Long-Term Loan Benchmark

Respondents propose that, consistent with the recent *Stainless Steel Plate from Korea* final determination and its regulations, the Department should use the interest rates on Inchon's long-term foreign currency loans from Korean branches of foreign banks to calculate a company-specific weighted-average U.S. dollar-denominated benchmark rate for Inchon. If the Department finds that Inchon's domestic foreign currency loans and direct foreign loans constitute directed credit, it should then use this calculated company-specific benchmark for calculating the benefits conferred upon Inchon.

In rebuttal, petitioners contend that the methodology used to calculate POSCO's company-specific weighted average dollar denominated benchmark interest rate, which Inchon proposes to continue using in this investigation, deviates substantially from the Department's established policy. It is the Department's practice to use a benchmark that is based on the year in which a long-term loan obligation was assumed. However, the methodology used by the Department understated the benefit to producers of subject merchandise by failing to countervail certain loans.

Department's Position: Consistent with the Department's long-term policy, and with the methodology established in the final determination of *Stainless Steel Plate from Korea*, it is appropriate to calculate a company-specific weighted-average U.S. dollar-denominated benchmark based on loans extended by Korean branches of foreign banks to calculate the benefit to Inchon from domestic foreign currency loans and direct foreign loans.

Petitioners argue that this is inconsistent with the Department's practice of using a benchmark based on the year in which a loan was received. While petitioners are correct that this is the Department's standard practice, in this case, annual information was not available. Moreover, it is also the Department's standard practice to compare government-regulated credit to a benchmark denominated in the same currency, if such a benchmark is available, as discussed in *Comment 7*, above. This is in accordance with Department policy and past practice. *See e.g., CVD Final Rule*, 63 FR at 65363; *see also, Certain Apparel from Thailand*, 50 FR at 9824 (quoting, "benchmark must be applicable to loans denominated in the same currency as the loans under consideration)," and *Cold-Rolled Steel From Argentina*, 49

FR at 18019 (quoting, "the benchmark is selected from interest rates applicable to loans denominated in the same currency as the loan under consideration"). Therefore, we believe that the benchmark calculation methodology determined in *Stainless Steel Plate from Korea* is the most reasonable surrogate.

Comment 11: Post-1991 GOK Credit Policies: Whether POSCO Received Disproportionate Benefits From GOK-Regulated Long-Term Loans

Respondents argue the Department erred when it determined that all producers of the subject merchandise received a disproportionate share of long-term loans, in spite of POSCO's demonstration, according to the Department's own GDP test, that it did not. Respondents indicate that it is within the Department's authority to address, on a company-specific basis, those companies that may have received a disproportionate share of long-term loans; however, it is not within the Department's authority to generalize the impact of benefits received by specific companies onto an entire industry, thereby finding disproportionality against a company whose loan shares were demonstrably not disproportionate.

Respondents state that the appropriate legal standard is whether a domestic subsidy "is a specific subsidy, in law or in fact, to an enterprise or industry * * *." (quoting section 771(5A)(D) of the Act). Because POSCO is "an enterprise" as defined by the statue, and constitutes "the industry" for which the Department must make a determination concerning the existence of a domestic subsidy from the purported directed credit, the Department must find that the subsidy is not specific to POSCO.

According to petitioners, respondents' contention that the Department must examine whether disproportionate benefits have been provided to POSCO is a misinterpretation of the law. In particular, petitioners state that the statute dictates that the Department will find *de facto* specificity when either an enterprise or an industry receives disproportionate benefits. The record, petitioners note, shows that the Korean iron and steel industry received a disproportionate amount of a subsidy.

Department's Position: We disagree with respondents' arguments. The fact that POSCO borrowed very little from those sources of credit that were found to be *de facto* specific to the steel industry during the relevant period is irrelevant. The clear language of the statute is that a subsidy is specific when "an enterprise *or* an industry receives a disproportionately large amount of the subsidy." Section 771(5A)(D)(iii)(III) of the Act (emphasis added). Thus, when a subsidy is specific to an industry, even if it is not specific to an enterprise that is part of that industry, the Department will find that subsidy to be countervailable, even if the actual subsidy to the enterprise is very small.

While respondents may characterize this approach as "collective guilt," the Department has in numerous cases found countervailable relatively small subsidies to a respondent firm on the basis of disproportionate use by the industry to which the respondent belongs. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil*, 58 FR 37295, 37299 (July 9, 1993) (*Certain Steel from Brazil*). Indeed, this is not an unusual fact pattern for *de facto* specificity findings under, for example, large research and development programs. As such it is not surprising that under respondents' suggested approach, the Department would rarely find a subsidy to be de facto specific, because subsidies under a program are frequently not received on a disproportionate basis by a single enterprise. Finally, we agree with petitioners that respondents' attempt to link certain methodologies that are conducted on a company-specific basis to the specificity analysis is also without merit. The quantification of the benefit is simply not germane to the Department's analysis concerning specificity.

Comment 12: Countervailability of POSCO's Two-Tiered Pricing System

Respondents argue that POSCO's pricing decisions are not influenced by the GOK, and that the pricing structure in question is consistent with commercial considerations and is widely used by companies in numerous industries in Korea. RespondentsThey state that two-tiered pricing has evolved as a natural response to market competition: because the competing imports are eligible for duty drawback, companies in Korea must set local export prices to compete with duty-exclusive import prices. Otherwise, respondents claim, POSCO would lose business to competing importers. Further, respondents argue that the Department's methodology used in the preliminary determination was based upon the flawed assumption that there are no major differences between different hot-rolled stainless coils, and that the Department failed to consider quality and terms-of-sale differences in its price comparisons as required under section 771(5)(E)(iv) of the Act, which sets forth the standards for determining the adequacy of remuneration.

Petitioners agree with the Department's preliminary determination that POSCO supplied exporters of subject merchandise with preferentially priced hot-rolled stainless steel coil, and that this practice constitutes a countervailable export subsidy. Petitioners state that the Department should continue to use import prices for hot-rolled stainless steel coil as the benchmark for calculating the benefit conferred by this program, consistent with the Department's practice of using the world market price as a benchmark. As an alternative, petitioners propose the use of a weighted-average of the home market prices and import prices as the benchmark price.

Petitioners rebut respondents' argument that POSCO's pricing system is consistent with commercial considerations, and disagree with respondents' claim that this pricing schemeystem is necessary in order for POSCO to compete with foreign competitors. Petitioners maintain that the attribution of commercial benefits to a subsidy program such as this one is irrelevant, as commercial considerations—such as the loss of business—do not mitigate the countervailability of such subsidies. Moreover, the language of the statute states that the adequacy of remuneration will be measured "in relation to prevailing market conditions * * * for goods purchased in the country which is subject to the investigation." Therefore, POSCO's competition with imported material is also immaterial.

Department's Position: Because POSCO, a government-owned entity, charged lower prices to respondent companies for inputs that were used to produce subject merchandise for export, this program constitutes an export subsidy in accordance with section 771(5A)(B) of the Act. We disagree with respondents' claim that there was no GOK control or intervention in POSCO's pricing decisions. As discussed in the "Programs Determined to be Countervailable" section of this notice, we have determined that the actions of POSCO are the actions of the GOK because POSCO is a government-controlled company. Respondents also indicate that POSCO has no incentive to sell to its competitors at subsidized prices. However, as discussed above, POSCO is a government-controlled company, and record evidence indicate that the GOK does influence POSCO's pricing decisions. *See* Source Document Memo.

The parties have put forth numerous arguments explaining how the benefit

from this program should be determined under the guidelines of the adequacy of remuneration standard established in section 771(5)(E)(iv) of the Act. However, the adequacy of remuneration standard is not relevant to the program at issue. The program at issue is one in which POSCO charges different prices to Korean steel manufacturers based upon export performance. This type of dual pricing program is specifically addressed in the Illustrative List of Export Subsidies (the Illustrative List) which is provided as Annex I of the Agreement on Subsidies and Countervailing Measures. Because this type of program is specifically addressed under Item (d) of the Illustrative List, the criteria to be used to determine whether POSCO's dual pricing policy is a countervailable subsidy is the criteria set forth under Item (d), not the criteria used to determine the adequacy of remuneration as argued by the parties. Indeed, the adequacy of remuneration standard used for the provision of goods and services and the criteria used to determine the subsidy based upon price preferences for inputs used in the production of goods for exports are set forth in separate regulations. *See* section 351.511 and section 351.516 of the *CVD Final Rules*.

Additionally, respondents discussed various other market conditions, *e.g.*, quality, as factors which cause differences between POSCO's prices and those of POSCO's foreign competitors. However, as discussed in the "Programs Determined to be Countervailable" section of this notice, we have altered our methodology from the preliminary determination. Therefore, the products and pricing practices of only one supplier, POSCO, is considered in the Department's comparison. The Department is comparing POSCO's "domestic" prices to POSCO's "local export" prices. While factors such as quality may potentially create a price differential between different producers, these variables do not play a role in the different prices at which POSCO sells the same subject merchandise to its customers. Therefore, these arguments are not applicable.

Respondents argued that if the Department mistakenly countervailed POSCO's two-tiered pricing policy, numerous adjustments should be made to the import prices which served as the benchmark in the preliminary determination. Petitioners also put forth numerous arguments with regard to these benchmark prices. However, as discussed in the "Programs Determined to be Countervailable" section of this notice, we have stated the reasons for basing our comparison on prices charged by POSCO to respondents when producing for domestic sale and the prices charged by POSCO to respondents when producing for export. Therefore, the parties' arguments with regard to the use of import prices as a benchmark are not applicable.

The parties argue about the date that should be considered the "date of sale" by the Department. As indicated by both petitioners and respondents, this is not a dumping investigation, and the important question is when the prices being compared were set. Therefore, we based the comparison on the months in which the prices were set, which is the month in which the order was placed. Therefore, we believe that the most reasonable comparison is a monthly one, established by the order dates of the respondent firms.

Finally, respondents argue that this pricing system is not unique to POSCO, but is used by numerous companies in a variety of industries as a market response to Korea's system of duty drawback. First we note POSCO's own statements indicate that POSCO sets local export prices at levels that are below the duty-exclusive price. *See* POSCO's October 21, 1998 questionnaire response at 2. Under the countervailing duty law, a government pricing program which provides a lower price to exporters based upon export performance is a countervailable subsidy under section 771(5A)(B) of the Act. The statute and Item (d) of the Illustrative List provide the standard to be used by the Department to determine whether a countervailable subsidy has been provided by a pricing program of the type under examination in this investigation. Once the pricing program is determined to be an export subsidy under the statute, no further analysis on the countervailability of this program is required.

Comment 13: The GOK's Pre-1992 Investments Constitute Non-Countervailable "General Infrastructure"

Respondents state that in the preliminary determination, the Department relied exclusively upon its decision in *Steel Products from Korea*, to find that the GOK's investments at Kwangyang Bay during the period 1983–1991, provided countervailable subsidies to POSCO. Respondents note that the final determination of *Steel Products from Korea*, however, was made under the Pre-Uruguay Round law and on a different factual record. Therefore, in order to carry out its statutory mandate, the Department must apply the Post-Uruguay Round law to the facts presented in this instant investigation, and revisit its preliminary determination. Under section 771(5)(B) of the Act, there is now a requirement that a financial contribution must be provided by the government in order for a countervailable subsidy to exist. Respondents further argue that under section 771(5)(D)(iii) of the Act, the term "financial contribution" does not include the provision of general infrastructure.

Respondents state that, although the Department's administrative determinations, and the statute itself, are silent as to the definition of "general infrastructure" under the new law, the Department's new CVD regulations are instructive. Respondents note that section 351.511(d) of the new regulations defines "general infrastructure" as "infrastructure that is created for the broad societal welfare of a country, region, state, or municipality." *See CVD Final Rules*. They argue that under the Post-Uruguay Round law and the basic standard for general infrastructure articulated in section 351.511(d) of the new regulations, the GOK's pre-1992 infrastructure investments at Kwangyang Bay constitute non-countervailable "general infrastructure."

Petitioners note that the Department in the past has found that the Kwangyang Bay investments do not constitute general infrastructure, and urge the Department to continue this practice. *See Stainless Steel Plate from Korea*, 64 FR at 15547, and *Steel Products from Korea*, 58 FR at 37346–47.

Department's Position: Respondents are correct when they assert that general infrastructure is not considered to be a financial contribution under 771(5)(D)(iii) of the Act. However, they are incorrect when they state that the infrastructure development at Kwangyang Bay constitutes general infrastructure. As respondents have acknowledged, the statute is silent as to the definition of "general infrastructure;" however, they note that the Department's new CVD regulations are instructive. *See CVD Final Rules*, 63 FR at 65412. While the new CVD regulations are not applicable to this case because this investigation was initiated before the effective date of these regulations, we are referring to them, in part, for guidance as to what constitutes "general infrastructure."

The new CVD regulations define general infrastructure as "infrastructure that is created for the broad societal welfare of a country, region, state or municipality." Thus, any infrastructure that does not satisfy this public welfare

concept is not general infrastructure and is potentially countervailable. Therefore, the type of infrastructure *per se* is not dispositive of whether the government provision constitutes "general infrastructure." Rather, the key issue is whether the infrastructure is developed for the benefit of the society as a whole. For example, interstate highways, schools, health care facilities, sewage systems, or police protection would constitute general infrastructure if we found that they were provided for the good of the public and were available to all citizens and members of the public. Infrastructure, such as industrial parks and ports, special purpose roads, and railroad spur lines that do not benefit society as a whole, does not constitute general infrastructure within the meaning of the new CVD regulations, and is countervailable if the infrastructure is provided to a specific enterprise or industry and confers a benefit.

The infrastructure provided at Kwangyang Bay was not provided for the good of the general public; instead, it was built to support POSCO; therefore, it does not constitute "general infrastructure." It is clear from the record that the infrastructure provided for POSCO's benefit at Kwangyang Bay is *de facto* specific, and that POSCO is the dominant user. *See Steel Products From Korea*, 53 FR at 37346–47. Therefore, the infrastructure at Kwangyang Bay is countervailable. Indeed, the "Explanation of the Final Rules" (the Preamble) to the new CVD regulations, which respondents assert are instructive on this issue, specifically cites to the infrastructure provided at Kwangyang Bay in *Steel Product From Korea* as an example of industrial parks, roads, rail lines, and ports that do not constitute "general infrastructure," and which are countervailable when provided to a specific enterprise or industry. *See CVD Final Rules*, 63 FR at 65378–79.

Comment 14: GOK's Pre-1992 Investments Are Not Countervailable Because They Are "Tied" to Kwangyang Bay

Respondents state that, in the preamble to the new regulations, the Department has adopted the practice of attributing subsidies that can be "tied" to particular products to those products. *See CVD Final Rules*, 63 FR at 65400. With respect to the instant investigation, respondents argue that the alleged subsidies are "tied" to the products that are produced at POSCO's Kwangyang Bay facility. Since the subject merchandise is not produced at the Kwangyang Bay facility, the subject merchandise does not benefit in any way from the allegedly subsidized general infrastructure at Kwangyang Bay. Respondents contend that it would run counter to the Department's practice, and common sense, to attribute countervailable benefits to products that cannot benefit from the alleged subsidies. They also note that under the Department's past practice, where a subsidy is "tied" only to non-subject merchandise, that subsidy is not attributed to the merchandise under investigation. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 62 FR 32297, 32302 (June 13, 1997).

Respondents argue that the Department was faced with a similar factual situation as the instant case in the *Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil*, 51 FR 21961, 21966 (June 17, 1986) (*Iron Ore Pellets from Brazil*). In that case, petitioners argued that infrastructure and regional tax benefits provided to the Carajas mine project should be attributed to the respondent even though respondent did not produce (or intend to produce) subject merchandise at the Carajas mine project. The Department rejected petitioners' argument finding that the infrastructure and tax benefits were, by definition, only for the Carajas mine project. Because the respondent did not produce subject merchandise at the Carajas mine project, the Department did not consider this program countervailable with respect to subject merchandise.

Respondents contend that, rather than directly addressing the fact that the alleged subsidies are tied to Kwangyang Bay, the Department has instead mis-cited to its earlier finding in *Steel Products from Korea*. They note that in the preliminary determination of the instant investigation the Department claims that the alleged subsidy in *Steel Products from Korea* was treated as "untied." However, respondents state that nowhere in *Steel Products from Korea* does it state that the alleged subsidy was being treated as "untied." In fact, respondents state that the issue of whether the subsidies were tied or untied never arose in that investigation because the subject merchandise was produced at both of POSCO's steel facilities and, therefore, it was unnecessary for the Department to characterize the alleged subsidy as either "tied" or "untied." They argue that in mischaracterizing its finding in *Steel Products from Korea*, the Department is attempting to bootstrap that finding into the instant investigation.

In their rebuttal brief, petitioners reject the respondents' argument that the Department is attempting to bootstrap its finding in *Steel Products from Korea* into the instant investigation. In *Steel Products from Korea*, petitioners state that the Department, by dividing the benefit attributable to the POI by POSCO's total sales, clearly treated the grants as untied benefits. *See Steel Products from Korea*, 58 FR at 37347. The Department clearly reiterated this position in *Stainless Steel Plate from Korea*, 64 FR 15549. Therefore, petitioners argue, the Department should continue to find Kwangyang Bay infrastructure investments "untied" in the final determination.

Department's Position: First, we note that the attribution, or "tying," of a subsidy to a particular product or market is a long-standing policy of the Department, not one recently adopted in the new CVD regulations. Also, it has been the practice of the Department to attribute the benefit conferred from an "untied" domestic subsidy to the recipient's total sales. (This is how the subsidy rate was calculated for the Kwangyang Bay subsidy in *Steel Products from Korea*.) By contrast, if the subsidy was, for example, tied to export performance, then the Department would only attribute the benefit of the subsidy to the recipient's export sales.

Respondents' argument that the infrastructure subsidy provided to POSCO is tied to only certain of POSCO's production is flawed. Part of respondents' argument rests upon the premise that a regional subsidy can be tied to only the subsidy recipient's production in that region. If this allocation methodology were adopted and the Department tied regional subsidies to production in a particular region, the Department would essentially be forced to calculate factory-specific subsidy rates. In addition, if such a methodology were applied, then foreign companies could easily escape collection of countervailing duties by selling the production of a subsidized region domestically, while exporting from a facility in an unsubsidized region. This allocation methodology has been clearly rejected by the Department. *See, e.g., Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile*, 63 FR 31437, 31445–46 (June 9, 1998) (stating, "[T]he Department does not tie the benefits of federally provided regional programs to the product produced in the specified regions.") Indeed, the Department has explicitly rejected this argument in the new CVD regulations cited by

respondents in support of their argument on this issue. *See CVD Final Rules*, 63 FR at 65404. The infrastructure development at Kwangyang Bay provided a benefit to POSCO and, as discussed further below, the benefit from the subsidy is untied and is attributed to POSCO's total sales.

Respondents' argument is also flawed because respondents have misinterpreted the attribution methodology. Attribution of the benefit of a subsidy is based upon the information available at the time of bestowal. The concept of "tying" a subsidy at the time of bestowal can be traced back to *Certain Steel Products from Belgium. See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Belgium*, 47 FR 39304, 39317 (September 7, 1982). At the time of bestowal of the subsidy conferred by the Kwangyang Bay infrastructure, the benefit of the subsidy was to POSCO, not to a specific product line. Thus, the benefit cannot be tied to any specific product, but instead, is an untied benefit provided by the GOK to POSCO. Once it is determined that an untied subsidy has been provided to a firm, the Department will attribute that untied subsidy to the firm's total sales, even if the products produced by the firm differ significantly from the time when the subsidy was provided. The Department will not examine whether product lines have been expanded or terminated since the time of the subsidy's bestowal.

Finally, we note that respondents' reliance on *Iron Ore Pellets from Brazil* is misplaced. First, in both *Iron Ore Pellets from Brazil* and in the Kwangyang Bay subsidy at issue in this investigation, the determination of attribution of a subsidy was made at the time of bestowal, which is consistent with Department policy. Thus, in both cases, the Department applied the same standard in determining whether a subsidy was tied or untied. Second, the subsidy alleged in *Iron Ore Pellets from Brazil* was alleged to have been provided to an input into the subject merchandise, an issue distinct from the issue in the instant investigation. We further note that the treatment of input subsidies at issue in *Iron Ore Pellets from Brazil* has changed since 1986. *See e.g.*, section 351.525(b)(6)(iv) of the *CVD Final Rules* and *Final Results of Countervailing Duty Administrative Review: Industrial Phosphoric Acid from Israel*, 63 FR 13626 (March 20, 1998). Thus, if the identical subsidy issue cited in *Iron Ore Pellets from Brazil* were before the Department today, it is uncertain whether the same decision would be made in 1999 as was made in 1986.

Comment 15: The Department Erred in Treating the Alleged Benefit to POSCO as a Grant

Respondents note that, in the preliminary determination, the Department determined that the GOK's costs of constructing the infrastructure at Kwangyang Bay constituted grants to POSCO. In treating these costs as grants to POSCO, respondents argue, the Department has ignored the fact that the GOK owns these facilities and charges POSCO the normal user fees for the services provided. They assert that it is erroneous as a matter of law and contrary to Department precedent to countervail as grants infrastructure that the respondent does not own and where normal user fees are paid to use the infrastructure services. (*Citing*, sections 771(5)(D)(i) and (E)(iv) of the Act, and the *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, 52 FR 25447, 25451 (July 7, 1987) (*IPA from Israel; Final Determination*).)

Respondents contend that rather than treating the infrastructure investments as grants, the Department should have analyzed the issue as one of whether the infrastructure services were provided "for less than adequate remuneration," citing section 771(5)(E)(iv) of the Act. They note that adequacy of remuneration is the new statutory provision for determining whether the government's provision of a good or service constitutes a countervailable subsidy. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service shall be determined in relation to prevailing market conditions (*i.e.*, price, quality, availability, marketability, transportation, and other conditions of purchase or sale) for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review.

Respondents state that the Department addressed a similar issue in *IPA from Israel; Final Determination*. At issue in that case were certain rail lines built (and owned) by the Israeli government for "the almost exclusive use of a few chemical companies. *See IPA from Israel; Final Determination*, 52 FR at 25447. The Department recognized that any benefit to be derived from the infrastructure was related to the use of that infrastructure, and since the respondent in question paid for such use, the question was whether the payments for such use were higher or lower than those paid by other users for similar services. The Department determined that the rates paid were not preferential and, therefore, that no benefit or subsidy existed.

Respondents also state that in *Certain Steel Products from Brazil*, the Department applied a similar analysis. In that case, the Department determined that "The fees charged * * * reflected standard fees applied to all users of port facilities, thus, they are non-specific." *Certain Steel Products from Brazil* at 37300. *See also, Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Trinidad and Tobago*, 49 FR 480, 486 (Jan. 4, 1984) (*Carbon Steel Wire Rod from Trinidad and Tobago*).

Respondents argue, in the alternative, that if the Department continues to treat these benefits as "grants," then these grants must be pro-rated based upon the actual benefit to POSCO. They note that the GOK provided information on the use of these facilities and, where possible, POSCO's portion of the total usage during the POI. Since POSCO is not the only company that benefits from the infrastructure investments at Kwangyang Bay, the Department cannot simply attribute the entire benefit from the GOK's infrastructure investments to POSCO. The benefit found must be allocated proportionate to POSCO's use of these facilities at Kwangyang Bay during the POI.

In their rebuttal brief, petitioners state that respondents are blurring the distinction between the original provision of specific infrastructure investments and the adequacy of remuneration of fees charged for the future use of the infrastructure. In addition, petitioners argue that the investment grants should not be "pro-rated" based on POSCO's use of the facilities, because POSCO is the dominant beneficiary. Petitioners note that in *Steel Products from Korea*, the Department determined that Kwangyang Bay was specifically designed for POSCO. *See Steel Products from Korea*, 58 FR at 37347. Petitioners point out that the Department specifically clarified this point in the recent final determination of *Stainless Steel Plate from Korea. See Stainless Steel Plate from Korea*, 64 FR at 15,550.

Department's Position: The Kwangyang Bay infrastructure subsidy under investigation in *Steel Products from Korea, Stainless Steel Plate from Korea*, and this investigation is not the fee charged by the government for use of rail and port facilities, as was the issue in the cases cited by respondents. Indeed, we found an alleged program

providing "preferential" port charges to the Korean steel industry not to exist in *Steel Products from Korea*. Therefore, the cases cited by respondents are not relevant to the treatment of the Kwangyang Bay subsidy.

The benefit under this subsidy program to POSCO was the creation of Kwangyang Bay to support POSCO's construction of its second integrated steel mill. The building of this infrastructure to support POSCO's expansion, which was planned years before POSCO commenced production at Kwangyang Bay, was the benefit countervailed in *Steel Products from Korea* and in this investigation. Thus, the benefit conferred by this subsidy program to POSCO, and the benefit that must be measured, is the construction of these facilities, rather than the fees charged to POSCO for their use. Therefore, it is reasonable to measure the benefit from this program by treating the costs of constructing the Kwangyang Bay facilities for POSCO as nonrecurring grants.

In addition, we also disagree with respondents' argument that we should pro-rate this subsidy between POSCO and to other companies currently located at Kwangyang Bay. Again, respondents have misinterpreted the nature of the benefit. The infrastructure at Kwangyang Bay was built to support POSCO's expansion and its creation of its second integrated steel mill. Therefore, the program is a subsidy provided to POSCO, and the benefit from the program is properly attributed to POSCO.

Comment 16: The Department Should Exclude Dai Yang's "Merchandise" Sales From its Reported Sales Denominator

Petitioners argue that the Department should exclude the amount of "merchandise sales," or goods resold, from Dai Yang's sales denominator in its final analysis. Petitioners reason that these sales, which were discovered at verification, are sales of goods not produced by Dai Yang, and so should not be included in Dai Yang's sales figures.

Respondents argue that it is hypocritical for petitioners to argue, on one hand, that the "untied" subsidies which POSCO allegedly received from the pre-1992 infrastructure investments at Kwangyang Bay should be attributed to the production of subject merchandise, while on the other hand Dai Yang's "merchandise" sales should be left out of the calculation because they are "untied."

Department's Position: According to the *GIA*, it is the Department's aim to "capture every part of the sales transaction that could benefit from subsidies" in the total sales denominator. *GIA*, 58 FR at 37237. Moreover, it is the Department's long-standing position that production subsidies are tied to a company's domestic production. Following the approach outlined in *Certain Steel from France* (1993), we have applied the Department's "tied" analysis to this situation. *See*, GIA, 58 FR at 37236. The presumption that the subsidies at issue are tied to domestic production has not in any way been rebutted by respondents, and respondents have not attempted to show that Dai Yang's "merchandise" sales should appropriately be included in the sales denominator. We therefore determine that the appropriate sales denominator is the total of Dai Yang's domestically produced merchandise, and we have excluded Dai Yang's "merchandise" sales, as these are not sales of goods produced by the company.

Respondents argue that it is inconsistent to exclude "untied" sales while concurrently countervailing a subsidy which is "untied" to the production of subject merchandise. However, this position is not inconsistent. Subsidies received for infrastructure, for example, indirectly benefit production. Thus, it is reasonable to countervail such a subsidy. However, to include in the sales denominator sales of merchandise that were not produced by the particular respondent would be unreasonable, as this merchandise is clearly not part of the production process.

Comment 17: Countervailability of Long-Term Loans Where Dai Yang Did Not Have Interest Payments Due During the POI

Respondents state that it is the Department's methodology to calculate the benefit from long-term variable rate loans at the time the interest on the loan would be paid; hence no benefit exists on a loan if no interest was due during the POI. Respondents argue that the Department's methodology for measuring the benefit from fixed rate loans requires the same result. Therefore, respondents conclude that there is no benefit from either fixed or variable rate long-term loans if no interest payments were due on those loans in 1997.

Department's Position: We agree with respondents that it has been the Department's long-standing policy to calculate the benefit of a long-term fixed-rate loan assigned to a particular year by calculating the difference in interest payments for that year, *i.e.*, the difference between the interest paid by the firm in that year on the government provided loan and the interest the firm would have paid on a comparable commercial loan. *See* section 771(5)(E)(ii) of the Act. Because our methodology is to calculate the benefit at the time the interest on the loan would be paid on the comparison loan, and because no interest payment would have been made during the POI, we find that there is no benefit to Dai Yang from these loans.

Comment 18: The Loan That Dai Yang Received From the National Agricultural Cooperation Foundation Was Not Specific and Is Thus Not Countervailable

Respondents argue that the Department erred in its preliminary finding that the loan that Dai Yang received from the National Agricultural Cooperation Foundation was countervailable as an export subsidy because Dai Yang had provided the wrong evaluation criteria in its questionnaire response. Respondents assert that the record evidence, in particularly the evidence gathered at verification, indicates that this loan program was generally available to small and medium size enterprises (SMEs), and that companies were not evaluated for these loans based on export performance. Respondents conclude that this loan is not an export subsidy, is non-specific, and, hence is not countervailable.

Petitioners argue that this loan should be countervailed as an export subsidy, or alternatively as a GOK policy loan. According to petitioners, the fact that this loan program was available only to SMEs is not pertinent. The evidence on the record supports the conclusion that export performance is a factor in the availability of NACF loans; that the loans are advertised as "small and medium size company loan" does not negate the fact that export status is a criteria for eligibility.

Respondents disagree with the assertion that Dai Yang's loan from the NACF is countervailable as a GOK-directed policy loan. It is Ansan City, and not the GOK, which funds and administers this loan program. Respondents assert that since the GOK was not involved, this program lies outside the rubric of GOK direction of credit. Rather, respondents reiterate that the correct standard is whether the program was specific within Ansan City which, as discussed above, it was not.

Department's Position: We disagree with respondents' assertion that the criteria for approval of lending under this program is not contingent upon

export performance. While new information was presented at verification which indicated that this program is available only to small- and medium-sized enterprises, the loan approval criteria indicates that export performance is also an important criterion for approval. According to the loan approval criteria, export performance and overseas market development are two of the factors considered in the approval process. As the Department has found this program to be a countervailable export subsidy, petitioners argument that it should be countervailed as direction of credit is moot.

Comment 19: The Department Should Not Include the Subsidy From Dai Yang's Export Industry Facility Loan in the Cash Deposit Rate

Respondents argue that the Export Industry Facility Loan that Dai Yang had outstanding during the POI should not be countervailed because: (1) As verified, the program was terminated in 1994; and (2) Dai Yang's outstanding balance was paid off in early 1998. Hence, there can be no future benefit to Dai Yang. Respondents argue that according to the Department's regulations, such a program-wide change may be taken into account in establishing the estimated countervailing duty cash deposit rate.

In their rebuttal brief, petitioners indicate that, as outlined in the Department's new regulations, the Department's policy is to make such an adjustment if the applicable events occurred during the POI, but before the preliminary determination. In this case, the program-wide change occurred prior to the POI, and thus is inapplicable to the current investigation. Furthermore, since the benefits did not cease until after the POI, the Department should not adjust the cash deposit rate.

Department's Position: Petitioners are correct in their contention that the Department should not adjust the cash deposit rate. Pursuant to section 355.50(d)(1) of the Department's *1989 Proposed Regulations*, and codified in section 351.526 of the *CVD Final Rule* the Secretary will not adjust the cash deposit rate where a program is terminated and, "the Secretary determines that residual benefits may continue to be bestowed under the terminated program." *See CVD Final Rule*, 63 FR at 65417. *See also, e.g., Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 2204. As reported by the GOK and verified by the Department, the Export Industry Facility Loan program was terminated in 1994. However, Dai Yang continued to receive countervailable benefits from this program throughout the POI.

Comment 20: The Department's Use of the Aggregate Rate Found in Steel Products From Korea for Determining a Subsidy Benefit to Sammi

Respondents argue that the country-wide *ad valorem* rate from *Steel Products from Korea* which was used as facts available should be modified to reflect the fact that three of the programs found countervailable in *Steel Products from Korea* were applicable only to POSCO: government equity infusions, infrastructure at Kwangyang Bay, and the exemption from dockyard fees. Petitioners maintain that the Department should exclude these benefits because (1) the petition did not allege these subsidies were provided to Sammi; and (2) the Department recently determined that POSCO's exemption from port fees was not a countervailable subsidy.

Petitioners rebut the suggestion that the facts available rate applied to Sammi be adjusted to account for POSCO-specific programs. Because the Department applied the rate from *Steel Products from Korea* as adverse facts available, the components of this rate are immaterial. None of the components of this rate are specific to Sammi; the Department chose to use this rate as an adequate surrogate for company-specific information. In support of this opinion, petitioners cite *Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789, 792 (CIT 1993) (*Krupp Stahl*), quoting *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 704 F. Supp. 1114,1126 (CIT 1989), *aff'd*, 901 F.2d 1089 (Fed. Cir. 1990), which said that the appropriate facts available information "is not necessarily accurate information, it is information which becomes usable because a respondent has failed to provide accurate information."

Because Sammi did not cooperate in this investigation, there is no evidence that they did not receive benefits from the "POSCO-specific" programs, nor can the Department know what subsidies may have been uncovered had Sammi cooperated in the investigation. The Department may, therefore, make the adverse assumption that unreported subsidies may exist. The Department has broad discretion to define facts available, as stated in *Krupp Stahl* and in *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185,1191 (Fed. Cir. 1993), and should use the discretion to maintain the aggregate facts available rate for Sammi.

Department's Position: Pursuant to section 776(b) of the Act, the Department chose to use the aggregate rate found in *Steel Products from Korea* as an adverse facts available representation of countervailable benefits conferred to Sammi by the GOK. Because this rate was based on many of the same programs alleged in this case, we consider it to be an appropriate basis for a facts available countervailing duty rate calculation.

We disagree with respondents' argument that because some of the program rates incorporated in the aggregate rate were specific to POSCO, the Department should exclude these POSCO-specific benefits. As indicated by petitioners, because Sammi chose not to participate in this investigation, the Department has no basis for concluding that Sammi has not benefitted, at a minimum, from the level of subsidies found applicable to the Korean steel industry in *Steel Products from Korea*. According to section 351.308(c) of the Department's regulations, the Department may use the rates found in a previous countervailing duty investigation in an adverse facts available situation. Therefore, we have relied upon the final determination of *Steel Products from Korea* as an appropriate source for adverse facts available.

Comment 21: POSCO's Purchase of Sammi's Changwon Facility

Respondents argue that the because the preliminary determination was based on a misplaced decimal in the translated version of the purchase contract, the amount of the final payment to Sammi for this facility was vastly overstated. In reality, respondents claim, the amount POSCO paid was based on the lower of the two independent third-party valuation reports. POSCO did not pay more for this facility than this study concluded that it was worth, and there was no countervailable subsidy to Sammi.

In rebuttal, petitioners point to record evidence which indicates that this sale was an attempt by the GOK to prevent Sammi's bankruptcy. Moreover, petitioners argue that the KDB's release of Sammi's collateral which enabled this purchase amounts to a grant and, hence, a financial contribution. Because this contribution was exclusive to Sammi, this subsidy meets the Department's definition of specificity. Therefore, the full purchase price paid by POSCO is countervailable as a grant.

Department's Position: While respondents are correct in their statement that the ad valorem rate determined by the Department in its

preliminary determination was based on a misplaced decimal in POSCO's submission, we disagree with their contention that POSCO's purchase of Sammi's Changwon does not confer a countervailable benefit. Additional evidence acquired since the preliminary determination, however, indicates that POSCO made this purchase at the request of the GOK, and, in doing so, deviated substantially from its own internal regulations on purchasing. Therefore, we determine that POSCO's purchase of this facility provided a countervailable subsidy to Sammi. For a more detailed discussion of this program, please *see* the "Programs Determined To Be Countervailable" of this notice.

Comment 22: Government Financial Assistance as a Result of Sammi's Bankruptcy

Respondents argue that, as verified by the Department, when Sammi declared bankruptcy its debts were restructured and payment schedules were established for each creditor, including the KDB. There is no evidence that Sammi received government assistance in the form of grants or debt write-offs in conjunction with its bankruptcy. Instead, the Department found at verification that the KDB ceased lending to Sammi after 1996, and that once Sammi declared bankruptcy, the KDB notified Sammi that it was closing its accounts. Respondents argue Sammi's bankruptcy was consistent with normal bankruptcy procedures; therefore, the Department should conclude in its final determination that there was no GOK financial assistance provided to Sammi in conjunction with its bankruptcy and, hence, no countervailable subsidy.

Petitioners argue that, as shown by record evidence, the GOK forced POSCO to purchase Sammi's Changwon facility to either prevent or ameliorate the effects of bankruptcy on Sammi. Absent this rescue plan, and the massive equity infusion caused by the Changwon purchase, Sammi would have entered into bankruptcy earlier and have been liquidated. Alternatively, Sammi would have defaulted on loans and had its collateral seized. Petitioners propose that the Department should countervail the full value of the loan extensions to Sammi on its KDB loans.

Department's Position: Petitioners argue that POSCO's purchase of Sammi's Changwon facility, and the KDB's corresponding release of collateral, constitutes emergency assistance in conjunction with Sammi's bankruptcy. While the Department agrees that the Changwon facility was purchased by POSCO at the behest of the GOK, we disagree that the KDB's release of collateral constituted bankruptcy assistance. As verified by the Department, the KDB released the collateral in question as a result of POSCO's agreement to purchase the assets held. The bulk of POSCO's payment for the Changwon facility went to pay off Sammi's outstanding loans with respect to this facility.

While Sammi chose not to cooperate in this investigation, the GOK indicated that there was no consortium, there were no grants, and that Sammi's debt was addressed in the context of normal bankruptcy proceedings. During our verification, we examined the other respondents' accounts and financial records and did not find any provision of assistance to Sammi; nor did we find evidence of such assistance during our verification of the Government of Korea. Because our investigation revealed no government assistance to Sammi in the form of grants or write-off of debt, we have not calculated a subsidy rate for this allegation. However, because Sammi did not respond to our request for information, we will continue to examine this allegation in any subsequent administrative review. For more information regarding this program, please see the "Use of Facts Available" section of this notice.

Comment 23: Calculation of the Benefit From Sammi's 1992 "Emergency Loans"

Respondents argue that the Department made numerous mistakes in its calculation of the countervailable benefit from the "emergency loans" in the preliminary determination. The Department's premise that the entire amount of 132 billion won remained outstanding during the POI, and that these were interest-free loans, is flawed. Further, Sammi's 1997 balance sheet indicates that there must have been little, if any, of these "emergency loan" funds outstanding during the POI, and that Sammi would have been unable to make payments on any loans from March to December 1997, since Sammi was under court receivership at this time. Respondents also argue that according to Sammi's 1996 balance sheet, Sammi had less than 132 billion won in outstanding long-term loans at the end of 1996, before the POI began.

Petitioners claim that the Department should reject this suggestion and reaffirm the methodology used in the preliminary determination, because there is not enough information on the record to justify any other course of action. The Department has no way of knowing whether the loans in question were forgiven between 1992 and 1996, which would account for the 1997 balance sheet statement. Petitioners again cite *Krupp Stahl* (*See Comment 22*) to support the idea that whether Sammi was actually subject to a subsidy of the full amount of the loans is irrelevant because of Sammi's refusal to cooperate. Because Sammi chose not to participate in this investigation, and therefore the record contains insufficient and unverified evidence, the full amount of the emergency loans should be countervailed.

Department's Position: As discussed in the "Programs Determined to be Countervailable" section of this notice, we determined that the aggregate rate from *Steel Products from Korea* which we have applied to Sammi as adverse facts available, includes a calculated subsidy rate for the GOK's direction of credit. Because the aggregate rate from *Steel Products from Korea* includes a calculated subsidy rate for the GOK's direction of credit to the Korean steel industry, we have not calculated an additional subsidy rate for this allegation that the GOK directed banks in Korea to provide loans to Sammi in 1992. Indeed, in the petition, this allegation of the provision of the 1992 loans to Sammi is included as part of petitioners' allegation of directed credit, and references our determination is Steel Products from Korea. Therefore, parties' comments with respect to the quantification of the benefit from the "emergency loan" package are not germane.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU of the Department of Commerce (Room B–099).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each of the companies under investigation. We determine that the total estimated net countervailable subsidy rates are as follows:

Producer/exporter	Net subsidy rate (percent)
POSCO	0.65
Inchon	2.64
Dai Yang	1.58

Producer/exporter	Net subsidy rate (percent)
Sammi	59.30
Taihan	7.00
All Others Rate	1.68

We determine that the total estimated net countervailable subsidy rates for POSCO is 0.65 percent *ad valorem*, which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to POSCO for its production or exportation of stainless steel sheet and strip in coils. In accordance with section 705(c)(5)(A)(i) of the Act, we have calculate the all-others rate by averaging the weighted average countervailable subsidy rates determined for the producers individually investigated. On this basis, we determine that the all-others rate is 1.68 percent *ad valorem*.

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from the Republic of Korea which were entered, or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our preliminary determination in the **Federal Register**. Since the estimated net countervailing duty rates for POSCO and Dai Yang were *de minimis*, these companies were excluded from this suspension of liquidation. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after March 17, 1999, but to continue the suspension of liquidation of entries made between November 17, 1998, and March 16, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. Because the estimated net countervailing duty rate for POSCO is *de minimis*, this company will be excluded from the suspension of liquidation.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13769 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak (POSCO), Brandon Farlander (Inchon) or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5811, (202) 482–1082 or (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils ("SSSS") from the Republic of Korea are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998, (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils ("SSSS") from the Republic of Korea* ("*Preliminary Determination*"), 64 FR 137 (January 4, 1999)), the following events have occurred:

On December 17, 1998, the Department postponed the final determination to 135 days after publication of the preliminary determination (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils ("SSSS") from the Republic of Korea* ("*Preliminary Determination*"), 64 FR 137 (January 4, 1999)). On December 28, 1998, respondent Pohang Iron & Steel Co., Ltd., ("POSCO") alleged "significant ministerial errors" made in the Department's margin calculation for the preliminary determination. After reviewing POSCO's allegations, the Department agreed that it had inadvertently used daily rates instead of a weighted-average exchange rate, that sales made to unaffiliated companies were erroneously excluded from the calculation of normal value, and that deductions for inland freight from plant to warehouse and warehousing expenses were inadvertently excluded from the calculation of normal value. Because these errors taken together constitute a significant ministerial error, as defined in 19 CFR 351.224(g), we amended our preliminary determination. On January 26, 1999 the Department published its amended preliminary determination (*see Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea* (64 FR 3928)), amending

POSCO's cash deposit rate and the All Others rate from 12.59 to 3.92 percent. On February 23, 1999, the Department published a subsequent amended preliminary determination, incorporating corrected scope language. *See Notice of Preliminary Determinations of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip from Taiwan*, 64 FR 8799 (February 23, 1999).

During December 1998, the Department conducted the cost verification of POSCO's responses to the antidumping questionnaire. On January 12, 1999, we issued our cost verification report (*see Memorandum to Neal Halper, Acting Director, Office of Accounting: Cost Verification Report—Pohang Iron and Steel Company, Ltd.* ("*Cost Verification Report*"), dated January 12, 1999). On February 12, 1999, we requested that POSCO provide narrative descriptions of certain home market variables on the first day of the home market sales verification (*see Memorandum to File: Narrative Definitions of Certain Home Market Variables*, dated February 12, 1999). From February 22 through February 26, 1999, and from March 17 through March 18, 1999, we conducted the sales verification of POSCO's responses to the antidumping questionnaire. On April 2, 1999, we issued our sales verification report on the U.S. sales verification of Pohang Steel America ("POSAM") (*see Memorandum to the File: Report on the Verification of U.S. Sales by Pohang Steel America ("POSAM") in the Antidumping Investigation of Stainless Steel Sheet and Strip in Coils from Korea* ("*POSAM Verification Report*")). On April 6, 1999, we issued our sales verification report on the home market and U.S. sales verification in Seoul, Korea (*see Memorandum to the File: Report on the Sales Verification of Pohang Iron & Steel Company, Ltd.* ("*POSCO Verification Report*")). Following verification, POSCO submitted a revised sales database reflecting its pre-verification corrections on March 8, 1999.

On February 3, 1999, we received additional comments from petitioners and, on February 11, 1999, we issued a second supplemental questionnaire to Inchon. On February 22, 1999, we received Inchon's second supplemental questionnaire response. We verified Inchon's sales and cost questionnaire responses in Inchon, South Korea, from March 1–5, 1999. On March 15–16, 1999, we verified Hyundai U.S.A., a wholly-owned U.S. subsidiary of Hyundai Corporation, an affiliated trading company of Inchon. On April 5, 1999, we issued the U.S. sales verification report (*see Memorandum to the File: Report on the Verification of U.S. Sales by Hyundai U.S.A. in the Antidumping Investigation of Stainless Steel Sheet & Strip in Coils from South Korea ("Hyundai U.S.A. Verification Report")*). On April 8, 1999, we issued the home market sales and cost verification report (*see Memorandum to the File: Inchon Iron & Steel Co., Ltd. Home Market Sales, United States Sales, and Cost of Production Verification Report ("Inchon Verification Report")*).

On January 21 and January 28, 1999, respondents and petitioners, respectively, submitted their requests for a public hearing, and asked that the Department extend the procedural schedule so that the hearing might follow the release of all verification reports. On April 15, 1999, respondents and petitioners submitted their case briefs and on April 21, 1999, all parties submitted their rebuttal briefs. A public hearing was held on April 26, 1999, a transcript of which has been placed on the record of this investigation.

Finally, on April 1, 1999, we asked Inchon and POSCO to submit monthly shipment data for 1996, 1997, and 1998, requested by the Department for the purposes of making a final critical circumstances determination. On April 12, 1999, both POSCO and Inchon submitted monthly shipment information as requested by the Department.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing,

by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Period of Investigation

The period of investigation is April 1, 1997 through March 31, 1998.

Transactions Investigated

POSCO

According to section 351.403(d) of the Department's regulations, downstream sales to a home market affiliate accounting for less than 5 percent of total sales are normally excluded from the normal value calculation. In the preliminary determination, since respondent's sales to resellers did not meet the Department's 5 percent threshold, the Department has considered POSCO's sales to the affiliated service centers and, to the extent that these sales pass the arm's length test, has included these sales in our calculation of margin. Additionally, as described in Comment 5, the Department has determined that for POSCO's U.S. and home market sales the date of invoice is the appropriate date of sale as this is the date on which the material terms of sale are set. Therefore, the Department has included POSCO's sales in our margin calculation based on invoice date.

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[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Inchon

For the final determination, the Department determines that, for Inchon's home market sales, the purchase order date is the appropriate date of sale as this is the date on which the material terms of sale are set. For U.S. sales, we determine that Hyundai U.S.A.'s invoice date (or shipment date, when shipment occurs prior to issuing the invoice) is the appropriate date of sale as this is the date on which the material terms of sale are set. *See* Comment 12 for additional information. Additionally, Inchon stated that it erroneously included in its home market sales database sales shipped during the POI but returned after the POI. Inchon provided a list of these returns. *See Inchon Verification Report*, Exhibit 1. Therefore, we have excluded the returns noted above from Inchon's home market sales database.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the *Scope of Investigation* section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the August 3, 1998 reporting instructions.

Fair Value Comparisons

To determine whether sales of SSSS from the Republic of Korea to the United States were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP") to the Normal Value ("NV"), as described below in the "Export Price/ Constructed Export Price" and "Normal Value" sections of this notice.

POSCO

In the preliminary determination, for sales classified as EP by POSCO, we compared EP to NV, and compared CEP to NV for those sales the respondent identified as CEP transactions. However, as discussed in Comment 3, the Department finds that POSCO's U.S. sales through POSAM (U.S. channel 2) constitute CEP sales and has therefore compared CEP to NV for those sales. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted-average NVs.

Inchon

For the final determination, we compared Inchon's U.S. sales through Hyundai U.S.A. (U.S. channel 1), which we classified as CEP sales (*see* Comment 19), to NV for those sales. For Inchon's sales through U.S. channel's 2 and 3, we compared EP to NV. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses ("SG&A") and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT from EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Sheet and Strip from South Africa*, 62 FR 61731 (November 19, 1997).

In the present investigation, neither respondent requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses for each respondent.

POSCO

POSCO did not claim a LOT adjustment. POSCO identified two channels of distribution in the home market: (1) sales made by POSCO directly to its customers; and (2) sales made by POSCO through its selling arm, POSCO Steel Sales & Services Co., Ltd. ("POSTEEL"), to customers. Both POSCO and POSTEEL made sales to domestic trading companies, service centers, and unaffiliated and affiliated end-users. For both channels, POSCO and POSTEEL report that they perform similar selling functions. Either POSCO or POSTEEL contacted customers, managed inventory, arranged for shipment and freight, and invoiced the customer. In addition, POSCO claims that either POSCO or POSTEEL offered, as needed, technical services and warranty processing. At verification, the Department confirmed the selling functions performed by the affiliates. *See POSCO Verification Report* at 10–12. Therefore, we determine that selling functions performed in HM Channel 1 (sales made by POSCO directly to customers) are similar to selling functions performed in HM Channel 2 (sales made by POSCO through POSTEEL to customers): freight and delivery, invoicing, sales negotiation, and limited amounts of market research, warranty services, and technical advice. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we find that the home market constitutes a single LOT.

POSCO reported three channels of distribution in the U.S. market: (1) sales made by POSTEEL directly to a U.S. end-user; (2) sales to U.S. end-users made by POSTEEL through its wholly-owned U.S. subsidiary, POSAM; and (3) sales made by POSTEEL to unaffiliated Korean trading companies for shipment to the United States. POSCO claimed two LOTs in the U.S. market, but requested no LOT adjustment for the U.S. LOT purported to be different from the home market LOT. The Department examined at verification the claimed selling functions performed by POSCO and its subsidiaries, POSTEEL and POSAM, for all U.S. sales. These selling functions included freight and delivery arrangements, invoicing customers, and extending credit. *See POSAM Verification Report*, at 4–6. As discussed in Comment 3 below, we have determined that POSCO's U.S. sales

through POSAM (U.S. channel 2) should be classified as CEP transactions.

In order to determine whether NV was established at a different LOT than EP or CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. We compared the selling functions performed for home market sales with those performed with respect to the EP and CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a more advanced stage of distribution than the EP or CEP level of trade.

We have determined that sales made through U.S. channels 1 or 3 should be classified as EP transactions. Therefore, we have examined the selling functions performed by POSCO and/or POSTEEL, and have found that they are similar to the functions performed for home market sales. As discussed in Comment 3 below, we have determined that POSCO's U.S. sales through POSAM (U.S. channel 2) should be classified as CEP transactions. With regard to POSTEEL's selling activities and services offered to its U.S. affiliate (POSAM) for CEP sales, we note that POSCO failed to provide this information despite the Department's explicit request in its questionnaire (*see* Questionnaire at A–7). In any event, we found at verification that POSTEEL itself performs selling functions for U.S. sales. Specifically, POSTEEL conducted market research for initial customer contacts, sales negotiation, arranged for ocean freight and delivery to the U.S. port, and invoiced POSAM for sales of subject merchandise. *See POSCO Verification Report*, at 11–12. Therefore, we find that the selling activities in the U.S. market are similar to those in the home market.

Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and in the U.S. market, we find that sales to all three channels of distribution are made at the same stage in the marketing process and involve nearly identical selling functions. Therefore, we determine that POSCO and its subsidiaries POSTEEL and POSAM provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we find that there is not a significant difference in the selling functions performed in both markets, and thus, sales in both markets were made at the same LOT. Therefore, a LOT adjustment is not appropriate.

Inchon

In the home market, Inchon reported two sales channels: (1) To unaffiliated distributors; and (2) to affiliated and unaffiliated end-users. We examined record evidence to identify the selling functions performed for both channels. These selling functions included inventory maintenance, freight and delivery arrangements, and credit services. At verification, we confirmed the selling functions noted above. *See Inchon Verification Report*, at 20–21. Because there are no differences between the selling functions on sales made to either unaffiliated distributors or affiliated and unaffiliated end-users in the home market, sales through both channels constitute one LOT. Therefore, for the final determination, we conclude that sales to unaffiliated distributors and affiliated and unaffiliated end-users constitute one LOT in the home market.

For its EP and CEP sales in the U.S. market, Inchon reported three sales channels: (1) Inchon sales through Hyundai Corporation, Inchon's affiliated trading company, to Hyundai U.S.A., a wholly-owned subsidiary of Hyundai Corporation located in the United States and an affiliate of Inchon, and finally, to an unaffiliated customer; (2) Inchon sales through Hyundai Corporation, to an unaffiliated customer; and (3) Inchon sales to an unaffiliated trading customer. For purposes of our LOT analysis, Inchon's U.S. customers for all three sales channels are trading companies and distributors. We examined the selling functions performed for each of the three U.S. sales channels. These selling functions included freight and delivery arrangements, credit services, and post-sale warehousing. With the exception of post-sale warehousing for one sale in channel one, selling functions performed in the three sales channels were identical. At verification, we confirmed the selling functions noted above. *See Hyundai U.S.A. Verification Report*, at 4–6. Therefore, for the final determination, we determine that Inchon provided a sufficiently similar degree of services on sales to all three channels of distribution, and that the sales made to the United States constitute one LOT.

Further, because we determined that the U.S. LOT and the home market LOT included similar selling functions, we conclude that these sales are made at the same LOT. Therefore, a LOT adjustment for Inchon is not appropriate. For a further discussion, *see Analysis Memo: Inchon*.

Export Price/Constructed Export Price

POSCO

POSCO reported three channels of distribution for U.S. sales. In channel 1, POSCO Steel Sales and Service Co., Ltd. ("POSTEEL"), which is POSCO's affiliated trading company, sold directly to a U.S. customer. In channel 3, POSTEEL sold directly to unaffiliated Korean trading companies for resale of subject merchandise to the United States. We classified sales made through these two channels as EP sales, since the U.S. affiliate, POSAM, had no involvement in the selling process. In channel 2, however, POSAM was involved in all the sales made to unaffiliated U.S. customers, and reported that although the majority of sales were EP sales, there were some sales classified as CEP.

For U.S. sales channels one and three, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated.

For U.S. sales made through POSAM, we calculated CEP based on packed prices to unaffiliated customers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. Customs Duty, and U.S. brokerage and wharfage charges. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activity occurring in the United States, including direct selling expenses (credit costs, bank charges, and U.S. commissions) and indirect selling expenses. In addition, we deducted a per unit direct selling expense to account for bad debt losses incurred by POSAM for sales made to a bankrupt customer. For a further discussion of the bad debt expense and an explanation of its calculation, please refer to Comment 1, and *Memorandum to the File: Analysis for Final Determination in the Investigation of Stainless Steel Sheet and Strip in Coils from Korea—Pohang Iron & Steel Co., Ltd.*, ("*Analysis Memo: POSCO*"), dated May 19, 1999. Also, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the

Act. Finally, we added to U.S. price an amount for duty drawback pursuant to section 772(c)(1) (B) of the Act.

Inchon

For U.S. sales channels two and three, which are defined in the Level of Trade section above, we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. sales channel one, which are sales made through Inchon's affiliate, Hyundai U.S.A., we based our calculation on CEP, in accordance with section 772(b) of the Act, because the merchandise was sold by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, and based on our analysis of the facts as discussed in this section.

In the preliminary determination, we found that Hyundai U.S.A., the U.S. affiliate, did more than merely act as a "processor of sales-related documentation and a communication link with the unrelated U.S. buyer." *See Preliminary Determination*, 64 FR at 142. To ensure proper application of statutory definitions, where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The record demonstrates that Hyundai U.S.A.'s role exceeds that of an incidental or ancillary role. For a further discussion of this issue, *see Analysis Memo: Inchon*, and Comment 19 below.

We based EP on the packed, delivered, tax and duty unpaid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, and U.S. brokerage and wharfage. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Analysis Memo: Inchon*.

We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, international freight, marine insurance, domestic inland freight, U.S. brokerage and wharfage, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and bank charges), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Analysis Memo: Inchon*.

We made certain adjustments based on minor discrepancies noted at Inchon's U.S. verification and pre-verification corrections to several CEP transactions. For one sale, we adjusted credit expenses and the quantity and converted quantity, in MT, sold. For several sales, Inchon did not report a handling commission (*see* Comment 14). In addition, for several sales, we adjusted U.S. duty per MT and, for one sale, we adjusted marine insurance. Further, Hyundai U.S.A. had incorrectly invoiced one of its customers; hence, we adjusted multiple fields for several sales. As this information involves proprietary information, *see Analysis Memo: Inchon*.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable and no parties have contested that decision. For the final determination, we have based NV on home market sales.

2. Cost of Production Analysis

POSCO

As discussed in the preliminary determination, we conducted an investigation to determine whether POSCO made sales of the foreign like product in the home market during the POI at prices below their cost of production ("COP"). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of POSCO's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from POSCO's questionnaire responses and the updated sales database (dated March 8, 1999) to calculate COP, except in the following instance.

POSCO purchased a significant amount of elements of value from affiliated parties during the POI. For each affiliated purchase, we reviewed whether the transfer price was at an arm's length price. Where appropriate, we increased POSCO's per unit costs to the market price or the supplier's cost of production, pursuant to 19 CFR 351.407(b). *See Memorandum to Neal Halper, Acting Director, Office of Accounting: Cost of Production ("COP") and Constructed Value ("CV") Calculation Adjustments for the Final Determination of Pohang Iron & Steel Co., Ltd. ("POSCO") ("Cost Analysis Memorandum")*, dated May 19, 1999. *See also*, Comment 11.

Inchon

As discussed in the preliminary determination, we conducted an investigation to determine whether Inchon made sales of the foreign like product in the home market during the POI at prices below their cost of production ("COP"). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Inchon's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from Inchon's questionnaire responses and the sales database to calculate COP, except in the following instance.

Inchon stated that it erroneously used indirect selling expenses during the POI rather than the 1997 fiscal year. *See Inchon Verification Report*, Exhibit 1. We modified Inchon's G&A calculation based on a pre-verification correction.

3. Test of Home Market Sales Prices

As in our preliminary determination, we compared the weighted-average COP, adjusted where appropriate (*see* above), to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether the sales were made (1) within an extended period of time in substantial quantities, and (2) whether such sales were made at prices which

permitted the recovery of all costs within a reasonable period of time.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities," as defined in section 773(b)(2)(C)(i) of the Act, within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI , we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

Calculation of CV

As in our preliminary determination, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses and profit. In calculating CV, we made the same adjustments as those noted above, in the "Calculation of COP" section of the notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

As in our preliminary determination, for those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

POSCO

We calculated NV based on the same methodology used in the preliminary determination, with the following exception. As discussed in Comment 9, we determined at verification that POSCO incorrectly excluded housing expenses from its calculation of POSAM's indirect selling expense ratio. We recalculated POSCO's indirect selling expenses reported for U.S. Channel 2 sales (sales through POSAM), and used this updated expense in deducting from NV the amount of indirect selling expenses, capped by the amount of the U.S. commissions.

Inchon

We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions. In its home market pre-verification corrections, Inchon discovered that it charged interest to certain customers, when Inchon extended the due date of the promissory notes. Inchon argued that because Inchon did not reduce credit expense by the interest income, interest income should be added, as noted in Inchon's Interest Revenue for STS Customer during POI table. *See Inchon Verification Report*, Exhibit 1. We made an adjustment to account for Inchon's interest revenue because we had accepted Inchon's pre-verification correction. Additionally, we adjusted U.S. Other Transportation Expenses for several sales, based on Inchon's February 22, 1999 submission.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. If appropriate, we deducted from CV the amount of indirect selling expenses (adjusted as described in the "Price-to-Price Comparisons" section above) capped by the amount of the U.S. commissions.

Currency Conversion

In the preliminary determination, the Department determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, the Department used daily rates exclusively for currency conversion purposes for HM sales matched to U.S. sales occurring between November 1 and December 31, 1997, and the standard exchange rate model with a modified benchmark for sales occurring between January 1, 1999 and February 28, 1999. *See Preliminary Determination*, 64 FR at 145. As discussed in Comment 2, the Department continues to find that use of daily exchange rates and modified benchmarks are warranted during the periods noted above.

In addition, as discussed in Comment 2 and *Analysis Memo: POSCO*, we have determined that the severe and precipitous drop in the value of the won from November 1997 through February 1998 necessitates the use of two averaging periods, under 19 CFR 351.414(d)(3).

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Korea. In accordance with 19 CFR 351.206(c)(2)(i), we preliminarily determined that critical circumstances did not exist with respect to respondents POSCO and Inchon, which the Department had preliminarily determined not to have margins over 15 percent, the first criterion for ascertaining whether critical circumstances exist. *See Preliminary Determination*, 64 FR at 145–46.

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 735(a)(3) of the Act, the Department considers evidence of an existing antidumping order on SSSS from the country in question in the United States or elsewhere to be sufficient. We are not aware of any antidumping order in any country on SSSS from any of the countries subject to this investigation.

In determining whether an importer knew or should have known that the exporter was selling SSSS at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent for CEP sales and 25 percent for EP sales or more sufficient to impute knowledge of dumping and of resultant material injury. *See Notice of Final Determination of Sales Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 63 FR 61964, 61967 (November 20, 1997); *see also Notice of Final Determination of Sales Less Than Fair Value: Manganese Sulphate from*

People's of Republic of China 60 FR 52155, 52161 (October 5, 1995).

In this investigation, respondents POSCO and Inchon, which the Department has determined have both EP and CEP sales, do not have margins over 15 percent. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we determine that there is no basis to find that critical circumstances exist with respect to imports of SSSS from respondents POSCO or Inchon, pursuant to section 735(a)(3) of the Act. Therefore, we did not analyze the respondent's shipment data to examine whether imports of SSSS have been massive over a relatively short period. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from Korea*, 63 FR 25895, 25898 (May 12, 1997).

However, one respondent, Taihan Electric Wire ("Taihan") has not responded to the Department's questionnaires, and has been assigned a margin based on facts otherwise available (*see* "Facts Available" section, below). As Taihan's margin exceeds 25 percent, the first criterion has been met. Also, as facts available, we consider Taihan to have had massive imports over a relatively short period. Therefore, having met both criteria, critical circumstances exist for imports of subject merchandise from Taihan. *See Preliminary Determination of Sales at Less Than Fair Value: Stainless Sheet and Strip in Coils from Japan*, 64 FR 108, 112 (January 4, 1999).

Regarding all other exporters, an "All Others" rate has been determined (*see* "The All Others Rate," below); because this rate does not exceed 15 percent, we determine that critical circumstances do not exist for companies covered by the "All Others" rate.

Verification

As provided in section 782(i) of the Act, we conducted on-site verification of the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant sales, accounting and production records and original source documents provided by the respondents.

Interested Party Comments

Comment 1: POSCO—Sales to a Bankrupt Customer

Petitioners argue that POSCO's sales to a bankrupt U.S. customer are neither atypical nor insignificant, and that the Department should account for the value of these sales in its final determination. Petitioners contend that the Department should also not exclude the sales based on a "5 percent threshold" for the exclusion of insignificant sales from its analysis. Citing *Gulf States Tube Div.* v. *United States*, 981 F. Supp. 630 (CIT 1997) and *Certain Carbon and Alloy Steel Wire Rod from Canada*, 58 FR 62639, 62641 (November 29, 1993), petitioners argue that these cases stand for the proposition that the exclusion threshold is primarily to limit reporting of sales data that would place a disproportionate burden on the Department. Petitioners contend that no such burden exists in the instant case, as the sales are already on the record.

Petitioners maintain that sales to financially troubled customers are an everyday occurrence, and that the terms of sale usually reflect the increased risk borne by the seller. Petitioners note that the chart of accounts for the Korean parent, POSCO, includes several accounts and reserves relating to bad debt. Petitioners note that the Department's practice in an investigation is to take a "snapshot" of a respondent's selling practices, and that since the Department uses a weighted average of sales in its margin determination, no sales, whether or not they are atypical, should be excluded from the analysis.

Petitioner notes that in *Notice of Final Determination Sales at Less Than Fair Value: Stainless Steel Plate in Coils ("SSPC") from the Republic of Korea ("SSPC from Korea")*, 64 FR 15444 (March 31, 1999), the Department treated the cost of the bankrupt sales as direct selling expenses allocated to all U.S. sales. Petitioners argue that this treatment was correct. Petitioners further argue that under the Department's reasoning in the preliminary determination of this investigation, there would be no consequences when an importer is not paid for subject merchandise if the sales have been classified as EP sales. Petitioners further insist that POSCO must bear fees and production costs associated with the bankrupt sales, and that these must be classified as direct selling expenses since POSCO would not have incurred them but for the customer's bankruptcy. Petitioners contend that the value of these sales is most analogous to a warranty claim, and that the Department reached this same conclusion in *SSPC from Korea and in Color Television Receivers from the Republic of Korea: Final Results of Antidumping Administrative Review ("CTVs from Korea")*, 61 FR 4408 (February 6, 1996). Petitioners note that the Department, citing *AOC Intl.* v. *United States*, 721 F. Supp. 314 (CIT 1989) and *Daewoo Elecs. Co.* v. *United States*, 712 F. Supp. 931 (CIT 1989), concluded in *SSPC from Korea*, 64 FR at 15449, that "a bad debt expense * * * is directly related to sales of the subject merchandise," which petitioners contend requires a direct selling expense adjustment to starting price. Petitioners contend that since the sales were never paid for, and that future payments are highly unlikely, the expense associated with these sales should be treated in the same manner as is the expense associated with merchandise returned for warranty claims, and that there should be no "sale" since the sales had been written off and effectively canceled by POSCO. However, petitioners note that there is a direct selling expense associated with the sale of subject merchandise, similar to a warranty-related refund or forgiveness of payment. Petitioners contend that the loss resulting from the unpaid sales is a "direct and unavoidable consequence of the sale," and that the Department should follow its own precedent in its treatment of these sales.

Petitioners also argue that, according to *Timken Co.* v. *United States*, 852 F. Supp. 1122, 1125 (CIT 1994), all selling expenses are presumed to be direct, unless the respondent can prove otherwise; petitioners further argue that as the respondent failed to meet that burden, the Department must treat these expenses associated with the bankrupt sales as direct selling expenses. In addition, petitioners argue that the expenses should be allocated to total sales of subject merchandise only, citing *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1577 (Fed. Cir.1983), wherein the court stated that the administrating authority must make a fair value comparison, comparing "apples to apples." Petitioners contend that as information regarding unpaid sales of stainless steel plate in coil products is not on the record of this investigation, it would be inappropriate to include sales of these products in the denominator.

Petitioners also argue that the Department should not include the bankrupt sales in its margin determination, comparing these sales to merchandise that was returned or lost in transit, which would not be considered a sale. Petitioners further argue that sales made to a bankrupt customer where there is no reasonable expectation of payment cannot be considered as "sales" and must instead

be considered as a direct selling expense. Petitioners contend, however, that should the Department include the sales in its margin analysis, it must impute a credit period, and should assume that payment was made on the date of the final determination.

Petitioners argue that POSCO has provided no support for its contention that unpaid sales to the bankrupt customer represent indirect selling expenses. They contend that in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea* (*"SSWR from Korea"*), 63 FR 40404, 40406 (July 29, 1998), the Department treated an *accrual* for bad debt as an indirect selling expense, not an actual expense. Petitioners distinguish that treatment with the instant case, wherein POSCO incurred a tangible loss directly related to the sales of subject merchandise. In *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (*"Bicycles from the PRC"*), 61 FR 19026, 19044 (April 30, 1996) , petitioners contend, the Department never addressed the issue of whether the bad debt expense was a direct or an indirect selling expense: "(t)hese expenses (have) been deducted from U.S. price as part of CEP deductions. Because we are not making a corresponding CEP offset * * * the classification of these expenses as direct or indirect is moot." Petitioners argue that in *Bicycles from the PRC*, there was no indication on the record that the expenses in question were accruals or actual expenses, or whether they involved subject merchandise. Petitioners note that there are no such questions in the instant case, and that the expenses are clearly actual and directly related to subject merchandise. Petitioners note that *Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Columbia* (*"Flowers from Columbia"*), 52 FR 6842 (March 5, 1987), cited by POSCO, is also distinguishable from this investigation. In *Flowers from Columbia*, petitioners note, it was not clear from the record whether the bad debt expense was related to subject merchandise, or whether the company had written off the bad debt. In the instant case, petitioners argue, the bad debt expense is directly related to subject merchandise, and the respondent has written off the sale.

However, petitioners do not agree with the Department's statement in *Flowers from Columbia* that it "consider(s) bad debt, by its very nature, to be an indirect selling expense since, under generally accepted accounting principles ("GAAP"), bad debt is recovered over time by future price increases." Instead, they note that GAAP is concerned with the measurement of economic activity at the time when such measurements are recorded. In addition, petitioners argue that basic accounting principles require a finding that such an expense would not have occurred but for the making of a sale. Petitioners argue that the accumulated costs incurred to generate a sale are recognized when the merchandise is sold, and that therefore, the costs associated with the bankrupt sales are directly related to the sales, since absent the sale, they would not have been recognized in POSCO's or POSAM's accounting system.

Petitioners further contend that POSAM's transfer price for the bankrupt sales is not a valid basis for determining the amount of the direct selling expense. Petitioners argue that the transfer price is a meaningless figure for dumping purposes, and that the Department should use, as it did in the *SSPC from Korea*, the more objective benchmark of the constructed value of the sales.

Respondent argues that sales for which it never received payment due to the customer's bankruptcy are atypical, and that inclusion of these sales would distort the margin calculation. POSCO notes that in the preliminary determination of this investigation, the Department did not include the sales in the margin calculation, but did include the cost of those sales (namely, the transfer price between the parent company and the U.S. affiliate) as an indirect selling expense. However, as respondent notes, the Department chose a different treatment of these sales in *SSPC from Korea*, including the sales to the bankrupt customer in the calculation of U.S. price and allocating the actual cost of producing the merchandise (rather than the transfer price) over all U.S. sales of subject merchandise as a per unit direct selling expense. Respondent claims that this treatment increased POSCO's preliminary deposit margin by over 300 percent.

POSCO argues that the Department has ample discretion to exclude U.S. sales in an investigation where it finds that the sales are atypical, not part of the respondent's ordinary business practice, and would undermine the fairness of the comparison, citing *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia* (*"Roses from Colombia"*), 60 FR 6980, 7004 (February 6, 1995), and *Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting and Sanding/Grinding Tools from Japan*, 58 FR 30144, 30146 (May 26, 1993). Respondent notes that the Department has used this discretion in an investigation because the initial deposit rate is intended as an estimate of future behavior, which should not be calculated on extraordinary or unusual circumstances, citing *Koenig* v. *United States*, 15 F. Supp. 2d 834, 841 (CIT 1998), wherein the court distinguished between investigations, which are intended to determine an estimated margin on future sales, and a review, which is intended to assess actual duties. POSCO maintains that the unpaid sales in the instant investigation constitute less than 5 percent of total U.S. sales, while in the companion investigation of stainless steel plate in coils, the quantity was higher. POSCO notes that the Department has traditionally treated 5 percent as its threshold measure for determining significance, citing 19 CFR 351.403(d) (stating that downstream sales to affiliates in the home market accounting for less than 5 percent of total sales are excluded from the normal value calculation); and 19 CFR 351.404(b) (stating that a home market is viable if it accounts for five percent of sales to the United States). Respondent argues that petitioner's suggestion that these sales are not atypical is wrong. POSCO notes that the scenario "devised" by petitioners in which a home market customer receives a discount for high volume sales is in no way analogous with the situation involved in the instant case. POSCO points to the fact that voluntary discounts and terms of sale are negotiated by parties; in the instant case, the customer's bankruptcy was not under POSCO's control.

Respondent argues that its U.S. affiliate, POSAM, has otherwise never sold merchandise to a customer that did not eventually pay, and as the Department verified, POSAM does not have an account for bad debt in its accounting system. Accordingly, POSCO maintains that these sales must be considered atypical and should not be included in the margin calculation. In addition, respondent maintains that the inclusion of these sales would undermine the fairness of the pricing comparison and distort the margin, as they maintain occurred in *SSPC from Korea*.

Respondent contends that the Department further erred in *SSPC from Korea* when it treated sales made to a bankrupt customer as both sales for the purposes of the margin calculation and bad debt in terms of allocating the cost of the sales as a per unit direct selling expense. POSCO maintains that by treating the transactions as both sales

and bad-debt, the Department would render the most distortive outcome possible, violating the United States' obligations under the WTO Antidumping Agreement to make a fair comparison between export price and the normal value, citing *Federal-Mogul Corp.* v. *United States*, 872 F. Supp. 1011 (CIT 1994) and *Melamine Chemicals* v. *United States* ("*Melamine*"), 732 F.2d 924, 933 (Fed. Cir. 1984). Respondent further adds that, contrary to petitioners' contention, the Department has the authority to take into account "extraordinary events" that were "infrequent in occurrence," as cited by petitioners from *Floral Trade Council* v. *United States*, 16 CIT 1014, 1016–17 (1992). POSCO argues that the inclusion of these sales in the margin calculation would constitute an unfair comparison between export price and normal value.

POSCO argues that it reported the transactions as sales rather than bad debt because the transactions coincide with the Department's definition of a sale and because POSCO fully expected to be paid for these sales. Respondent notes that in administrative reviews the Department normally leaves unpaid sales in the database for purposes of the margin calculation, rather than to treat them as a bad debt expense. As support for this contention, respondent cites *Brass Sheet and Strip from Sweden, Final Results of Antidumping Administrative Review*, 60 FR 3617, 3621 (January 18, 1995); *Polythylene Terephthalate Film, Sheet and Strip from Korea: Final Results of Administrative Review*, 60 FR 42835, 42839 (August 17, 1995); and *Certain Internal-Combustion, Industrial Forklift Trucks from Japan: Final Results of Antidumping Administrative Reviews* ("*Forklift Trucks*"), 57 FR 3167, 3173 (January 28, 1992). Respondent maintains that in these cases the Department applied a credit period to the unpaid sales to reflect the credit expense in the final margin. POSCO notes that in *Forklift Trucks*, the Department treated the unpaid sales as subject sales since the merchandise had been sold in the normal course of trade in the period of review.

POSCO argues that the Department also erred in its reliance on *CTVs from Korea*. Respondent argues that *CTVs from Korea* was an administrative review, not an investigation. As such, POSCO contends that the Department is responsible in the instant case for calculating a cash deposit rate that can be relied on as a predictor and reasonable estimate of future duties, whereas in a review, an actual assessment is made and exclusions are not ordinarily allowed. Respondent argues that in *CTVs from Korea*, the bad debt treated as a direct selling expense was associated with sales in a prior period and recorded in the company's bad debt expense account. Therefore, POSCO contends that the Department did not treat the unpaid sales as sales in the database and simultaneously as bad debt, instead allocating the expense amount as a direct expense to the period of review sales that were actually paid.

POSCO further contends that the Department's policy is to treat recognized bad debt as an indirect selling expense rather than a direct selling expense. As support for this contention, respondent cites to several cases: *Flowers from Columbia*, 52 FR at 6850; *SSWR from Korea*, 63 FR at 40406; and *Bicycles from the PRC*, 61 FR at 19041. Respondent further points out that the Department recognized the cost of these sales as an indirect selling expenses, based on the definition of indirect expenses as those which are incurred whether or not a sale is made. POSCO contends that the cost of these sales bear no direct relationship to any other sale on the database, and that the cost, represented by POSAM's payment to POSCO, would have been incurred even if POSAM made no other U.S. sales. POSCO argues that for these reasons, the cost of these sales is not a direct selling expense, and should not be allocated to subject merchandise alone, but to all of POSCO's U.S. sales.

Respondent argues that the Department's purpose for treating bad debt as a direct expense in *CTVs from Korea* was to avoid distortion. POSCO argues that in *Daewoo Electronics* v. *United States*, 712 F. Supp. 931, 938 (CIT 1989), cited in *CTVs from Korea*, the CIT remanded the Department's determination, finding that the Department's practice of disregarding selling expenses for bad debt losses, while granting adjustments for warranty expenses which were not directly related to the sales under review, was arbitrary and likely to result in distorted margin calculations. Respondent maintains that the CIT did not direct the Department to treat bad debt as a direct selling expense in all cases, but to avoid distortion in the margin.

POSCO argues that even if the Department were to treat the cost of sales as a direct selling expense, it should do so based on the transfer price from the parent company to the affiliate, rather than the constructed value of the merchandise. Respondent argues that in *CTVs from Korea*, the bad debt directly expensed was based on the amount recorded as bad debt in the respondent's normal books and records, not on the cost of production. Respondent contends that the Department verified that POSAM records the transfer price between itself and POSTEEL as the cost of its sale, that the expense was captured in POSAM's financial statements, not POSCO's, and that POSAM does not have any accounts for bad debt in its accounting system.

Therefore, respondent argues that the cost reflected in POSAM's accounting records, which POSCO argues is the transfer price, should be the basis for any allocation of bad debt expense.

Respondent further argues that, should the Department include the cost of the bankrupt sales in its margin calculation, the cost should be allocated over all U.S. sales of stainless steel, not just restricted to sales of subject merchandise. POSCO notes that the total amount of stainless steel sales for the POI had been verified and recorded as part of the Department's verification, and that therefore, there is no reason why any recognized expense should not be allocated over sales of all stainless products.

Respondent argues that petitioner's comparison between the bankrupt sales and defective or lost merchandise is incorrect. POSCO contends that defective merchandise is generally returned to the producer and either resold or reincorporated into the production process. Likewise, POSCO argues that lost merchandise is covered by insurance and would not be accounted for in an investigation. Respondent maintains that while a producer can be held responsible for defective merchandise resulting in a warranty claim, a customer's bankruptcy is beyond the producer's control, and that therefore, these transactions should be excluded from the Department's analysis to the extent that they cause distortion to the margin.

Department's Position: We agree with petitioners in part. Although we disregarded the sales in the preliminary determination, we have reconsidered our determination and find that the sales to the bankrupt customer for which payment was not received should be included in the margin analysis. POSCO reported the bankrupt sales as U.S. sales because the material terms of sale were final, as required under the statute. Section 772(a) of the Act. There was nothing atypical about the terms of the sales at the time they were made; we agree with petitioners that there is an inherent risk, when selling to customers on a credit basis, that the customer might not make full or even partial payment. Moreover, the price of the sales themselves is not necessarily distortive because, at the time they were

made, POSCO was not aware that the customer would declare bankruptcy. Therefore, these sales must be included in the database. In addition, respondent's arguments regarding the relative significance of these sales compared to POSAM's total sales is inapposite. Although the Department employs a 5 percent threshold in regard to other issues in investigations (namely, reporting of downstream sales and home market viability), none of the instances described by respondent apply to this case.

As petitioners have noted, the Department uses the 5 percent threshold, for example, in determining whether to require a party to report home market (or U.S.) downstream sales data. Where that data, even if it constitutes less than 5 percent, has already been supplied, there is no basis for the Department to refuse to use such data. Furthermore, the Department has chosen a 5 percent benchmark to ease the administrative burden of an investigation, operating under the general assumption that there is less likelihood of introducing distortions into the margin calculation if fewer than 5 percent of a sales database is excluded. The Department, however, is not persuaded by respondent's argument that the exclusion of reported sales is necessary to eliminate distortions. As noted above, there is nothing atypical or distortive about the price of such sales because, at the time of such sales, POSCO was not aware that the customer would declare bankruptcy.

We also disagree with respondent's claim that the Department "double counted" the sales by including the sales in the margin calculation and treating the cost of the sales as a direct selling expense. As the Department noted in *SSPC from Korea*, and in *CTVs from Korea*, it is our practice to "include sales which incur bad debt in the database and treat the bad debt expense as a direct selling expense when the expense is incurred on sales of subject merchandise." *See SSPC from Korea*, 64 FR at 15448, and *CTVs from Korea*, 61 FR at 4412. In addition, in *Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411, 51417 (October 2, 1996), the Department treated bad debt expenses as direct selling expenses, as they were "incurred with respect to sales of the subject merchandise and to specific customers which went bankrupt during the POI." Consequently, as in *SSPC from Korea*, we have treated the bad debt expense as a direct selling expense. However, we have not imputed a credit period for these sales, due to its distortive effect on the margin. Thus, the Department did not double-count the cost of the unpaid sales.

Furthermore, contrary to respondent's contention, the appellate court ruling in *Melamine* is not relevant to the credit expense issue in the instant case. In *Melamine*, the Court ruled that margins created solely through fluctuations in exchange rates would be unreal, unreasonable, and unfair. Unlike exchange rate fluctuations, companies can control credit expenses through negotiation and contractual agreement. In the instant case, POSAM's decision to sell to this particular customer and extend credit was solely within its control. POSAM could have chosen to insure itself against the risk that this (or any) customer would not pay, as do other companies which sell on a credit basis. Finally, POSAM could also have negotiated different terms of sale, which in fact it did when it sold subject merchandise to the same customer on a cash-on-delivery basis after the customer had declared bankruptcy.

With regard to the classification of the expense related to these sales, at verification, the Department found that POSAM reversed the sales in its books at year-end by issuing negative invoices to the customer for the unpaid merchandise in question. *See POSAM Verification Report* at 6, and Exhibit 6. Although POSAM does not maintain separate bad debt accounts, these sales have been effectively classified as a type of bad debt. As in *SSPC from Korea* and *CTVs from Korea*, this bad debt expense is directly related to sales of the subject merchandise. *See AOC International* v. *US*, 721 F. Supp. 314 (CIT 1989) and *Daewoo Electronics* v. *US*, 712 F. Supp. 931 (CIT 1989). We have determined that the bad debt expense should be treated as a direct selling expense, since but for the sale made to the bankrupt customer, the bad debt expense would not have been incurred. We agree with petitioners that the cases cited by POSCO do not support its contention that the Department has a practice of treating bad debt expense as an indirect selling expense in all instances. In all three cases, *Bicycles from the PRC*, *Flowers from Columbia*, and *SSWR from Korea*, either the bad debt expensed was an accrual versus an actual expense, or the bad debt could not be tied to sales of subject merchandise. In the instant case, there is no dispute that the expense was incurred, since POSAM's own records indicate that the sales had been written off, and that the expense was directly related to sales of subject merchandise.

We also agree with petitioners that it is most appropriate to use an objective measure of the expense incurred for these unpaid sales (namely, the constructed value of the sales), rather than an intra-company transfer price which may not accurately reflect the cost of the merchandise. The constructed value of the sales are determined based on the actual cost of the inputs to the subject merchandise, which have been verified by the Department in its Cost Verification. The transfer price's basis is unknown, and may be based on a percentage of sale price basis, or a fixed amount equally unrelated to the actual cost of the product in question. In addition, we agree with petitioners that the most appropriate allocation of the cost of the sales would be to sales of subject merchandise, as the expenses plainly resulted from subject merchandise sales. As petitioners noted, the Department is required to make a fair value comparison on a fair basis; comparing "apples to apples," citing *Smith-Corona Group* v. *United States*, 713 F.2d. 1568, 157 (Fed. Circ. 1983), and as the bad debt directly relates only to subject merchandise sold to a U.S. customer, the appropriate calculation is to allocate the direct selling expense over the total U.S. sales of subject merchandise. For our calculation of the per unit direct selling expense, *see Analysis Memo: POSCO.*

Comment 2: POSCO—Multiple Averaging Periods

Petitioners argue that the Department should calculate weighted-average prices for multiple averaging periods to account for the devaluation of the Korean won during the POI. Noting that the Department accounted for this devaluation in the preliminary determination by using daily and modified exchange rates during the devaluation period, petitioners contend that this treatment did not adequately account for the decline in the won, because the rates were tied to the date of sale reported by respondents. Petitioners urge the Department to calculate two separate weighted-average price comparisons for each product under investigation to avoid a dilution of pre-existing dumping margins solely as the result of the severe and precipitous drop in the value of the won.

Petitioners argue that in recent investigations involving Korea (*i.e. SSPC from Korea* and *Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea ("Rubber from Korea")*, 64 FR 14865

(March 29, 1999)), the Department has determined that multiple averaging periods are appropriate. In fact, in a review of the Department's preliminary determination, petitioners find that there are virtually no findings of sales at less than fair value during the November 1997—March 1998 period, which coincides with the period of currency devaluation. Petitioners argue that these results were directly related to the Department's failure to adequately account for the decline in the won.

Petitioners also argue that section 777A(d)(1)(A) of the Act allows the Department to employ an average-to-average comparison of U.S. sales to the relevant home market or third country sales, and, according to the Statement of Administrative Action ("SAA"), time is a factor which may affect the comparability of sales. Petitioners contend that the effect of the currency decline on POSCO's costs and prices would be "blended" together with pre-crisis costs. They cite to *Melamine*, noting that dumping margins should not be artificially eliminated because of unanticipated changes in the exchange rate. Petitioners also cite several cases supporting the Department's authority to make special adjustments to take extraordinary circumstances into account, including *Floral Trade Council* v. *United States*, 16 CIT 1014 (1992), and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38153 (July 23, 1996). Petitioners specifically cite to two cases involving adjustments for currency issues, *Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil*, 55 FR 23120 (June 6, 1990); and *Certain Fresh Cut Flowers from Columbia: Final Results and Partial Recission of Antidumping Duty Administrative Review*, 62 FR 53287, 53297 (October 14, 1997), and refer to these cases as illustrative of the Department's authority to use a variety of methods to compare prices in determining whether sales at less than fair value exist. In addition, petitioners note that the Department's regulations allow it to employ special procedures for exchange rate conversion where foreign currencies appreciate vis-a-vis the dollar so that currency fluctuations do not "create" dumping margins. Petitioners urge the Department to adopt similar measures in this case to prevent currency fluctuations from reducing dumping margins, and cite to *Koyo Seiko*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) as indicative of the Department's obligation to rely on alternative methods to calculate dumping margins to ensure a fair result.

Petitioners argue that POSCO's arguments against the use of shorter averaging periods are without merit. Petitioners contend that the fact that different product matches could result from using shorter averaging periods does not outweigh the need to employ multiple periods given the sudden and precipitous drop in the won's value. Petitioners also argue that POSCO's contention that the use of daily exchange rates is sufficient to account for the drop in the currency is invalidated by the Department's use of shorter periods in a significant inflation scenario. Petitioners also maintain that respondent's argument that use of shorter periods in the instant case will result in arguments for multiple periods in all cases involving exchange rate fluctuations is incorrect, and note that the extraordinary two-month 47 percent drop in the won's value cannot equate to a typical currency fluctuation.

Respondent POSCO argues that the Department has no basis for a decision to alter the standard price comparison period. POSCO contends that because the Department has already applied a mechanism to address the exchange rate fluctuations (namely, adjusting the exchange rates used in the calculation of export price/constructed export price and normal value) in the preliminary determination of this investigation, there is no further need to alter the comparison period in the final determination. Citing the Department's policy bulletin on this issue (*Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434 (March 8, 1996)), respondent maintains that the Department's treatment of exchange rates in the preliminary determination ensured that exporters, when setting U.S. prices, would know with certainty the exchange rate the Department would use in a dumping analysis. POSCO contends that the use of averaging periods would eliminate this certainty, and allow for manipulation of the margin. Respondent further argues that the Department's own regulations under the Uruguay Round Agreements Act ("URAA") stipulate that the Department may only use weighted averages for shorter periods "when normal values, export prices or constructed export prices differ significantly over the course of the period of investigation." POSCO contends that it sold subject merchandise based on negotiated prices and whatever "macroeconomic conditions" existed in the market during the POI. POSCO argues that the mere fact that exchange rates fluctuated during the POI does not demonstrate that its prices, pricing practices, and/or costs changed during the POI.

POSCO further argues that in recent cases, the Department has not varied the averaging period due to exchange rate fluctuations alone. Citing *Notice of Final Determination of Sales At Less Than Fair Value: Certain Mushrooms from Indonesia* ("*Mushrooms*"), 63 FR 72268, 72272 (December 31, 1998), respondents contend that the case reflects the Department's decision not to use two averaging periods to account for the effect of currency devaluation. POSCO also cites *Notice of Preliminary Determination of Sales at Less Than Fair Value; Postponement of Final Determination: Certain Preserved Mushrooms from Indonesia*, 63 FR 41783, 41785 (August 5, 1998) ("*Preserved Mushrooms*"). Although POSCO states that the Department noted in both *SSPC from Korea* and *Mushrooms* that it also considers prolonged large changes in exchange rates, respondent maintains that the changes in won during the POI were addressed by the Department's currency conversion policy. Respondent points to another case, *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan ("Polyvinyl Alcohol")*, 61 FR 14064, 14069 (March 29, 1996), which the Department distinguished in *Mushrooms* based on the facts of that case: the respondent (in *Polyvinyl Alcohol*) "changed the way it conducted business with its principal home market customers, including its price structure, while at the same time, U.S. prices and input cost trends moved in tandem (citing *Preserved Mushrooms*, 63 FR at 41785). Respondent argues that, as in *Preserved Mushrooms*, it did not change the way it conducted its business or its pricing structure during the POI.

Respondent also argues that the use of multiple periods has the potential to distort the margin for reasons wholly unrelated to the exchange rate. As an example, POSCO notes that the use of shorter averaging periods may result in U.S. sales being matched to less similar home market sales because of sales patterns wholly unrelated to currency issues. POSCO argues that the purpose of calculating margins based on POI averages is to eliminate the impact of such patterns on the overall margin. Citing *Melamine*, 732 F.2d at 932, POSCO contends that basing a margin on a factor beyond the control of the exporter would be unreal, unreasonable, and unfair.

Department's Position: We agree with petitioners. Given the economic

situation in Korea during the POI, it is most appropriate to use daily and modified exchange rates in this case, for the reasons explained in the preliminary determination, and to employ two averaging periods in calculating the dumping margin. Under section 777A(d)(1)(A) of the Act, the Department has broad authority to use a number of methodologies in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under 19 C.F.R. 351.414(d)(3), the Department may use averaging periods of less than the POI when normal value, export price, or constructed export price varies significantly over the POI. In this investigation, in the last five months of the POI, NV (in dollars) differed significantly from NV earlier in the POI, due primarily to a significant change in the underlying dollar value of the won, evidenced by the precipitous drop in the won's value that began in November 1997 and continued through December 1997. In the span of two months, the won's value decreased by more than 40 percent in relation to the dollar. Consequently, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. Moreover, we disagree with respondent's claim that the use of averaging periods is dependent upon a change in a respondent's selling practices. In the final determination of *Preserved Mushrooms*, the Department stated that "in addition to changes in selling practices, we believe that we should also consider other factors, such as prolonged large changes in exchange rates, in determining whether it is appropriate to use more than one averaging period." *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72268, 72272 (December 31, 1998). Therefore, for both POSCO and Inchon, we have used two averaging periods for the final determination: January through October 1997 and November 1997 through March 1998.

Comment 3: POSCO—CEP vs. EP

Petitioners argue that the Department should classify sales made through POSCO's U.S. affiliate as CEP sales. Petitioners note that the Department has found that where the U.S. subsidiary: (1) was the importer of record and took title to the merchandise; (2) financed the relevant sales transactions; (3) arranged and paid for further processing; and (4) assumed the seller's risk, such sales were classified as CEP sales (citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 51882, 51885 (October 4, 1996); and upheld in *Final Results*, 62 FR 18404 (April 15, 1997). Petitioners argue that POSCO's U.S. affiliate meets the criteria set forth in that case. They contend that POSAM was the importer of record, financed the sales to the U.S. customer, and assumed the risk associated with these sales (as is evident with regard to the bankrupt sales). Although no further processing was reported after importation, petitioners argue that POSAM was responsible for other post-importation services, such as arranging customs clearance, U.S. freight, invoicing customers, and collecting payment.

In addition, petitioners note that in *SSPC from Korea*, the Department determined that POSAM is more than a processor of sales-related documentation, and that all sales through the affiliate were CEP sales. Petitioners contend that POSAM is the only contact for the U.S. customer, follows up initial contacts made by the Korean parent, incurs the cost of unpaid sales, and is responsible for collecting payment from customers. Petitioners also cite to several other cases wherein the Department reclassified sales as CEP transactions when the respondents' U.S. affiliates were found to have significant selling functions in the United States (*e.g.* following up on calls made to U.S. customers; market research for POSTEEL; receiving and preparing orders; and collecting payments from customers).

Petitioners also argue that the Department should infer from POSAM's size, both in terms of its staff and its asset value, that POSAM is involved in setting U.S. prices. Petitioners urge the Department to find as a general proposition that the mere existence of a U.S. subsidiary the size of POSAM is a strong indication that the activity of the staff must be "significant." Petitioners note that the level of sales and expenditures attributed to POSAM indicate that POSAM has a significant involvement in setting prices for the subject merchandise. In addition, petitioners contend that POSAM's selling expenses should be deducted from the starting price, and should be modified to reflect expenses for only those sales made to unaffiliated parties.

Petitioners argue that the Department has found in all recent cases, with the single exception of *SSWR from Korea*, that U.S. sales made through POSCO's affiliate warrant CEP treatment, citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews* ("*Carbon Steel from Korea-3rd Review*"), 63 FR 13170, 13182–183 (March 18, 1998); and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews* ("*Carbon Steel from Korea—4th Review*"), 64 FR 12927, 12937-38 (March 16, 1999).

POSCO argues that its sales through POSAM meet the Department's criteria for classification as EP sales. Citing *Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe from Korea*, 62 FR 55574, 55579 (October 27, 1997), respondent notes that the Department considers whether (1) the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties involved; and (3) the functions of the U.S. affiliates were limited to that of processors of sales-related documentation and communication links with the unaffiliated U.S. buyer. POSCO argues that the Department has classified sales as EP when all three criteria have been met, and has considered the routine functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, citing *Industrial Phosphoric Acid from Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 25830, 25831 (May 11, 1998) and *AK Steel Corporation* v. *United States*, Slip Op. 98–159, 1998 WL 846764 (CIT, November 23, 1998).

Respondent argues that POSAM's role in U.S. sales is that of a processor of sales-related documentation. POSCO argues that POSTEEL, POSAM's Korean-based affiliate, determines the material terms of sale, and performs all sales-related activities, with the exception of arranging freight for certain delivered sales, and arranging credit for certain transactions. POSCO contends that POSAM communicates inquiries, purchase orders, and confirmations between the U.S. customer and POSTEEL, and that it has no negotiating authority, as petitioners suggest. POSCO states that, contrary to petitioners' contention, POSAM is not the first and only point of contact for the U.S. customer, noting that POSCO or POSTEEL originated all of the contacts and relationships with U.S. customers, and that the Korean affiliates maintain direct contact with these customers through marketing trips to the United

States. POSCO acknowledges that POSAM discusses the U.S. market situation and prices with its parent in order to provide insight to POSCO since POSAM is closer to the market. Respondent also contends that petitioners' claim that POSAM's size indicates the level of involvement in sales is inaccurate. POSCO argues that the Department verified that only two employees at POSAM's headquarters are responsible for sales of subject merchandise (as well as other product sales) along with two accounting personnel who are responsible for processing payment information for all customers and all products. Respondent argues that petitioners' suggestion that the extent of POSAM's involvement can be directly linked to the value of merchandise recorded in POSAM's accounting records is totally irrelevant, and points out that processing an invoice takes the same amount of time no matter what its value. POSCO contends that, contrary to petitioners' claim, the "mere existence" of a U.S. subsidiary does not dictate CEP treatment.

Citing *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium*, 56 FR 56359, 56362 (November 4, 1991) and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371 (November 4, 1991), POSCO contends that the Department has held that the fact that an affiliated U.S. company quotes prices to U.S. customers does not lead to CEP designations, nor does a U.S. affiliate's identifying and maintaining contact with customers. POSCO also cites to *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 57 FR 38465, 38469 (August 25, 1992), noting that the Department found that the role of a branch office whose functions include "receiving orders, preparing and executing order confirmations, invoices, packing lists, and other sales-related documentation, and receiving and processing payments from customers' was not sufficient to classify the affiliates' activities as beyond those of a mere processor of documents or communications link.

Respondent further argues that petitioners' suggestion that the Department segregate POSAM's indirect selling expenses by product is wholly without merit. POSCO contends that, at verification in New Jersey, the Department examined the activities of POSAM's employees, and found that the sales and support staff are responsible for all sales. Respondent notes that allocating POSAM's total indirect selling expenses across all of its sales is the method by which the Department has calculated all other reviews and investigations with which POSCO is involved, including *SSPC from Korea*.

Department's Position: We agree with petitioners that sales through POSAM are more appropriately treated as CEP transactions. Although the facts in this investigation are similar to the facts in the stainless steel wire rod determination cited by respondent, there are several significant differences on the record of the present case which lead the Department to change its decision from the preliminary determination and conclude that POSCO's U.S. sales through POSAM warrant classification as CEP sales, as we did in *SSPC from Korea*.

The Department treats sales through an agent in the United States as CEP sales, unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S. based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. As respondents have noted, these factors are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this sale is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States*, Slip Op. 98–82 at 6 (CIT, June 23, 1998).

We note that neither party has disputed that POSCO's U.S. sales through POSAM meet the first two criterion of the Department's standard. Therefore, the determining factor in this case is the degree of involvement by POSAM in the sales process. In the preliminary determination, the Department based its EP classification of sales through POSAM on POSCO's statement that POSTEEL determined price and terms of sale. However, in our preliminary determination, we noted that we would conduct an in-depth examination of the most appropriate classification of POSCO's U.S. sales through POSAM (*i.e.*, CEP versus EP) at verification. *See Preliminary Determination*, 64 FR at 142.

Although POSTEEL performs many selling activities for U.S. sales through POSAM, including meeting with potential U.S. customers of the subject merchandise (*see POSCO Verification Report*, at 11–12 and Exhibit 15), the record does not support POSCO's assertion that POSAM is merely a processor of sales-related documentation. First, POSAM is the primary point of contact for the U.S. unaffiliated customer. POSAM officials explained that because of the time zone difference and the cost of long distance, it would be expensive and inconvenient for the customer to contact POSTEEL directly. *See POSCO Verification Report* at 11. In addition, POSAM also conducts, albeit informally, market research for POSTEEL, in that POSAM officials report market conditions and pricing information to POSTEEL.

Also, as demonstrated by the unpaid sales to the bankrupt customer, POSAM incurs the "seller's risk" for U.S. Channel 2 sales. The record indicates that it was POSAM, not POSTEEL, who incurred the cost of the unpaid sales, as POSAM pre-pays POSTEEL. *See POSAM Verification Report* at 6. Moreover, it is POSAM, not POSTEEL, who is responsible for collecting payment from the customer through bankruptcy proceedings. *See POSAM Verification Report*, Exhibit 9. Bearing such financial risk is indicative of a seller, not a mere facilitator. This selling arrangement between POSAM and POSTEEL differs from the one between POSAM and Changwon, addressed in *SSWR from Korea*, where the "U.S. customers remit payment to POSAM, which *subsequently* transfers the payment to POSTEEL, which, in turn, transfers it to Changwon." *See SSWR from Korea*, 63 FR at 40419 (emphasis added).

Therefore, because of the significant risk incurred by POSAM in addition to its other selling activities, we find that POSAM's activities are more than ancillary to the sales process and have classified POSCO's U.S. sales through POSAM as CEP transactions.

Additionally, we disagree with petitioners that the reported indirect selling expenses for POSAM should be adjusted. Petitioners have not stated that POSCO's calculation was incorrect or is

in any way distortive. We verified POSCO's calculation of POSAM's indirect selling expense at verification and noted no discrepancies. *See POSAM Verification Report* at 11–12. Thus, for CEP sales, we have deducted an amount for indirect selling expenses incurred in the United States using POSCO's reported indirect selling expense for POSAM.

Comment 4: POSCO—Local Letter of Credit Sales

Respondent argues that the Department should calculate normal value for "local" sales made in the home market based on the U.S. dollar price at which those sales were invoiced. Local sales are sales of subject merchandise to home market customers who will further process the merchandise into non-subject products for export. Respondent maintains that although POSCO is paid in Korean won, the amount of payment is based on the U.S. dollar-invoiced price. Respondent contends that because POSCO's local sales are denominated and invoiced in U.S. dollars, the invoiced prices do not require conversion to won for U.S. comparison prices, and that the conversion of the U.S. dollar price to won and then back to dollars is not only unnecessary, but would significantly distort the margin. Respondent cites to *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Columbia ("Roses from Columbia")*, 60 FR 6980, 7006 (February 6, 1995), noting that the Department agreed and accepted the U.S. prices for sales invoiced in U.S. dollars, notwithstanding that the respondent received payment from the customer in the home market currency. Respondent argues that in the final determination in *SSPC from Korea*, the Department's concern was that POSCO's customers paid for local sales in won, the sales amounts were recorded in won in POSCO's accounting records, and that the exchange rates utilized by POSCO to determine the won equivalents were different from those exchange rates used by the Department. Respondent contends that the fact that payment is made in won is irrelevant, since both the contract and the invoice reflect a U.S. dollar price, and that sales are converted to won for the purposes of consistency with POSCO's accounting records, which are maintained in won.

Petitioners claim that the use of the dollar value for local sales in the home market would be inappropriate, given that POSCO receives payment in won. Petitioners distinguish this case from *Roses from Columbia* by noting that in that case, the Department was factoring in the effects of inflation in the cost-of-production analysis, costs were converted into dollars; the payments in local currencies had reflected the prevailing exchange rate, and all home market sales had been invoiced in dollars and paid in pesos. Petitioners further contend that in *Roses from Columbia*, the decision to use U.S. dollar-based prices was presumably made for convenience and consistency, as costs were also dollar-denominated. Petitioners further note that the disparity between the exchange rates reflected in the price conversion and the rates used by the Department is too great to reconcile, and is in contrast to the situation in *Roses from Columbia*. Petitioners argue that the use of a constant index such as the dollar is used by the Department in the face of currency depreciation or significant deflation, and should not be applied selectively to reduce a dumping margin.

Department's Position: We agree with petitioners. First, we believe that respondent's reliance on *Roses from Columbia* is misplaced. In that case, all prices and costs, both in the home market and in the U.S., were dollar denominated, and the exchange rates reflected in the dollar-to-peso conversion coincided with the exchange rates used by the Department. Given these facts, the use of dollar-denominated prices provided consistency throughout the Department's analysis in that case. Neither of these facts are present in the instant case. At verification, we found that local sales are the only sales made in the home market that are expressly linked to a dollar value, but that the sale is ultimately a won-denominated sale. Additionally, the vast majority of the costs incurred for home market and U.S. sales are denominated and paid by POSCO in won. *See POSCO Verification Report at* 14–18. Finally, as we note above, there is a disparity between the exchange rates reflected in POSCO's accounting records and those used by the Department (*see POSCO Verification Report*, Exhibit 17). Although the sales are linked to a dollar value, there is no question that the respondent receives payment in won, and therefore, the use of the dollar-denominated gross unit price for local letter of credit sales in the home market is unwarranted. In addition, in recent cases involving POSCO (*e.g. SSPC from Korea*, and *Carbon Steel from Korea—3rd Review)*, the Department has used the won-denominated price for local letter of credit sales in the home market because we found that, as in the instant case, the local sales were paid in won and recorded in POSCO's accounting records in won, and the exchange rates used by POSCO were dissimilar from those used by the Department. *See SSPC from Korea*, 63 FR at 15456.

Comment 5: POSCO—Date of Sale

Petitioners argue that the Department should use the order confirmation date as the date of sale for both home market and U.S. sales unless the circumstances of a particular sale indicated use of some other date. They contend that the Department "may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of the sale," including price and quantity. *See* 19 CFR 351.401(i). Petitioners contend that the Department has the authority to treat order date as the date of sale, and has done so in the recent past, citing *Final Results of Antidumping Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea ("Pipe from Korea")*, 63 FR 32833, 32835–36 (June 16, 1998)). Petitioners argue that the documents included in the Department's verification exhibits illustrate that, with the exception of special circumstances (involving bankrupt sales) the material terms of sale are set on the order date and do not change prior to shipment and invoice. Petitioners maintain that documentation reviewed at verification indicates that POSCO knew well before actual shipment the order quantity of the invoice. Petitioners note that, with the exception of two sales involving merchandise originally intended for a bankrupt customer, the other seven sales (involving either a home market or a U.S. sale) reviewed at verification did not involve changes in quantity or price from order date to invoice date.

Petitioners argue that for U.S. sales in channel 2, the Department should use as the date of sale the date of POSAM's invoice to the U.S. customer, rather than the date of POSTEEL's invoice to POSAM. Petitioners further contend that this invoice is meaningless because it represents the transfer price on an intra-company transaction.

Respondent does not deny that the Department has the discretion to use a date other than invoice date as date of sale, but noted that in *SSPC from Korea*, the Department chose not to alter its date of sale methodology. POSCO disputes that use of invoice date requires that price and/or quantity change frequently between order date and invoice date, contending that the fact that whether material terms change after the order date does not diminish

the fact that they could and sometimes do change, so that material terms are not firmly established as of the order date. Respondent cites to recent cases as precedent for the Department's decision to use invoice date as date of sale, including *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 64 FR 2173, 2178 (January 13, 1999), wherein the Department found at verification that quantity changed between the order date and the invoice date, and determined that invoice date was the most appropriate date to use in accordance with normal practice. POSCO distinguishes the instant case from *Pipe from Korea*, wherein the material terms had been set in the U.S. contract, and that subsequent changes were immaterial in nature. Contrary to petitioners' contention, POSCO argues that the documents provided at verification support invoice date as the date of sale, rather than order date, as petitioners claim. Respondent further argues that the Department's obligation with regard to date of sale is to determine when price and quantity are normally finalized, and that the reason for a change in terms is irrelevant to the Department's analysis. Therefore, POSCO submits that there is no reason for the Department to deviate from its standard practice of using invoice date as date of sale.

Respondent believes that the Department, in its preliminary determination, properly used the date of POSTEEL's invoice to POSAM as the date of sale since the material terms of sale were finalized upon shipment to the customer from Korea (the point at which POSTEEL issues its invoice to POSAM). Moreover, POSCO maintains that the Department has a well-established rule that the date of sale must precede or be equal to the date of shipment, citing *Carbon Steel from Korea—4th Review*. Respondent further argues that petitioners' contention that the invoice between POSTEEL and POSAM is meaningless is immaterial to the determination of the date of sale. POSCO notes that use of an invoice date between a U.S. affiliate and its unaffiliated customer would only be appropriate with regard to CEP transactions.

Department's Position: We agree with respondents in part. Under the Department's regulations, we normally use date of invoice as the date of sale. 19 CFR 351.401(i). However, we may use another date, such as date of order confirmation, if that date better reflects the date on which the material terms of the sale were established. In adopting this regulation, we explained that the purpose was, whenever possible, to establish a uniform event which could be used as the date of sale. *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27348–49 (May 19, 1997). We further explained that we do not treat an initial agreement as establishing the material terms of sale between the buyer and seller when changes to such an agreement are common, even if, for a particular sale, the terms did not actually change. Consequently, our analysis focuses on whether changes are sufficiently common to allow us to conclude that initial agreements should not be considered to finally establish the material terms of sale. As discussed in detail in the *Analysis Memo: POSCO* (at 1–2), a review of the sales documentation supports POSCO's contention that certain material terms of sale (*i.e.*, price and quantity) are subject to change until the invoice date. Moreover, we find petitioners' contention that the record supports use of order confirmation date as date of sale to be without merit. As the Department noted in *Carbon Steel from Korea—4th Review*, "even if documentation from a few sample U.S. sales suggests that essential terms of sale did not change after initial contract date, this does not demonstrate that essential terms of sale were not subject to change after the initial contract date, or that essential terms of sale did not in fact change after the initial contract date for significant numbers of sales." *See Carbon Steel from Korea—4th Review*, 64 FR at 12935. While we note that, at verification, we discovered that POSCO's methodology in determining the frequency of pricing changes overstated the actual number of occurrences (*see Analysis Memo: POSCO*), based upon our examination of the frequency of pricing changes for home market sales, and for U.S. sales classified as EP transactions, we have determined that invoice date is the appropriate date for date of sale. However, in keeping with the Department's practice, the date of sale cannot occur after the date of shipment. Therefore, when the date of shipment precedes the date of the invoice to the first unaffiliated purchaser in the United States, we have used shipment date as the date of sale, in accordance with recent reviews involving POSCO (*see Carbon Steel from Korea—4th Review, 64 FR at 12935, citing Carbon Steel from Korea—3rd Review*, 63 FR at 13172–73).

Comment 6: POSCO—Sales of Non-Prime Merchandise

POSCO argues that in the final determination, the Department should distinguish between prime and secondary merchandise. POSCO explains that it had submitted control numbers corresponding to each product reported as subject merchandise, and assigned to each control number a suffix of either "P" for prime merchandise or "N" for non-prime merchandise. However, respondent noted that the Department truncated the suffix from the control numbers, collapsing prime and non-prime material for the purposes of the cost test. Respondent argues that the Department's methodology contradicts its practice of distinguishing between prime and secondary merchandise in its analysis. POSCO cites to *Memorandum from Roland L. MacDonald to Joseph A. Spetrini*, dated April 19, 1995 (*"Carbon Steel Memorandum"*), and *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands* (*"Carbon Steel from the Netherlands"*), 61 FR 48465 (September 13, 1996), wherein the Department segregated secondary merchandise from prime merchandise for the purposes of conducting the arm's length test, the cost test, and the margin calculation. POSCO notes that the Department also segregated secondary from prime merchandise in *SSPC from Korea* and should follow the same methodology in the instant case.

Petitioners argue that the Department should not distinguish between prime and secondary merchandise for purposes of its cost test. Petitioners contend that a respondent can selectively label merchandise as "non-prime" in order to avoid having low-priced sales tested with other sales of the same control number, and cause below-cost home market prices to artificially pass the cost test. Petitioners further contend that *Carbon Steel from the Netherlands* stands for the proposition that the Department acknowledges that prime and secondary merchandise incur identical costs. Citing *Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review*, 63 FR 12752 (March 16, 1998), petitioners note that the Department's practice is not to distinguish between first and second quality merchandise in conducting the cost test.

Department's Position: We agree with respondent. As noted in the *Carbon Steel Memorandum*, "separating prime and seconds for the cost test has the benefit of facilitating an untainted analysis of the majority of sales (prime merchandise)." *See Carbon Steel Memorandum* at 4. Consistent with *Carbon Steel from the Netherlands* and *IPSCO*, 965 F.2d 1056 (Fed. Cir. 1992), in this case, POSCO has reported the

same cost of production for sales of prime and non-prime merchandise. However, we do not regard prime and non-prime merchandise as identical for the purposes of our analysis, as prime and secondary products are typically fundamentally different from each other, since the latter normally possess defects resulting from errors in the production process. For this reason, the Department's model matching methodology in fact prevents any matches of prime to non-prime merchandise. In the instant case, POSCO noted that merchandise classified as non-prime does not meet any standard specification (*see* POSCO's November 23, 1998 supplemental response at 15), and at verification we examined POSCO's coding process for prime vis-a-vis non-prime and noted no discrepancies (*see POSCO Verification Report* at 5).

The cost test compares the price and cost of all comparison market sales, by model (identified by control number, or "CONNUM"). Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." If we were to combine prime and non-prime sales for a given CONNUM in the cost test (thereby affecting whether the 20 percent threshold has been met), sales of prime could be disregarded in the calculation of NV or, alternatively, sales of below-cost non-prime could be the basis of NV, solely because the analysis combined prime with secondary merchandise. This result would stem from the fact that it is more likely that non-prime sales are sold below cost.

Further, we note that petitioners reliance upon *Extruded Rubber Thread from Malaysia* is misplaced. In that case, as in the *Carbon Steel Memorandum*, the Department ran separate cost tests for prime and non-prime merchandise in order to avoid distortions. Thus, for the final determination in the instant case, we have distinguished prime from non-prime merchandise using POSCO's reported control numbers for purposes of the cost test and margin analysis.

Comment 7: POSCO—Application of Facts Available for U.S. Sale

Petitioners argue that POSCO failed to report a U.S. sale to the Department and that facts available based on the highest transaction margin calculated for reported sales should be applied to this "unreported" quantity. Petitioners also contend that two invoices excluded from the U.S. sales database based on POSTEEL's invoice date should be included as POSAM's invoice date for these sales is within the POI, and should be similarly factored into the margin calculation with the highest transaction margin.

Respondents argue that the U.S. sale to which petitioners refer had been discovered during the Department's Korean verification, and had been reported as a correction at the New Jersey verification (*see POSAM Verification Report*, at 1 and Exhibit 1). POSCO contends that the other sale to which petitioner refers as having been incorrectly excluded from the database is a sale whose shipment date is before the POI, and that therefore, the sales had been properly excluded from the U.S. sales database.

Department's Position: We agree with respondent. The U.S. sale that respondent inadvertently excluded from the sales database was accepted by the Department as a minor correction at the beginning of the New Jersey sales verification. Information relating to the sale was examined and verified. In addition, the two sales shipped prior to the POI were correctly excluded from the sales database, as the Department recognizes the date of sale as the earlier of POSAM's invoice date to the U.S. customer or the date of shipment from Korea. As such, the use of facts available for these sales is unwarranted.

Comment 8: POSCO—Correction of POSTEEL's Credit Expense for U.S. sales

Petitioners contend that the Department should correct credit for U.S. sales involving POSTEEL to reflect the revision noted in the Department's verification report (*see POSCO Verification Report*, at 2). Respondent argues that it had presented the correction to U.S. credit expense for POSTEEL for all U.S. channel 1 and 3 sales in its pre-verification corrections, that it had presented the Department with an updated sales listing incorporating the correct rate on March 8, 1999, and that no other revisions are necessary.

Department's Position: We agree with respondent. POSCO presented its pre-verification correction to POSTEEL's short-term borrowing rate for U.S. dollars and the corresponding corrections to U.S. credit expenses for sales in channels 1 and 3. In addition, POSCO had presented these corrections in an updated sales listing, and we find that no other revisions are required.

Comment 9: POSCO—POSAM's Indirect Selling Expenses

Petitioners argue that POSAM's indirect selling expenses were understated. Petitioners urge the Department to add to POSAM's indirect selling expense figure the amount of short-term interest incurred by POSAM, claiming that such offsets to indirect selling expenses have been explicitly rejected by the Department (citing *Extruded Rubber Thread from Malaysia*, 63 FR 12578). In addition, petitioners also argue that the amount of housing expenses for POSAM employees incurred in the year of consideration should be added to total indirect selling expenses.

Respondent contends that the Department's policy and practice is to deduct short-term interest expenses from indirect selling expense figures, as these short-term interest expenses relate to financing accounts receivable. Because credit expense is calculated separately, respondent argues that the inclusion of the short-term interest expense would constitute double counting credit expenses in the U.S. market, citing *SSPC from Korea and Carbon Steel from Korea—4th Review* in support of this contention. Respondent further contends that the housing expenses noted by petitioners bear no relation to POSAM's sales during the POI, and therefore, do not require inclusion. However, POSCO does note that once income derived from housing is deducted from the expense, the net expense has a negligible effect on the ratio.

Department's Position: We agree in part with respondents. It is the Department's practice to exclude short-term borrowing expenses in the calculation of indirect selling expenses when credit expense has been otherwise accounted for, and the borrowing expense is clearly related to sales, as in *SSPC from Korea and Carbon Steel from Korea—4th Review*. However, we note that the housing expenses found at verification should be included (less housing income) in the calculation of the indirect selling expense ratio, as the housing expenses related to housing provided for POSAM's employees, and no evidence presented at verification indicated that the expenses bore no relation to POSAM's sales during the POI. *See POSAM Verification Report* at 12. For this calculation, *see Analysis Memo: POSCO*.

Comment 10: POSCO—Offset to Financial Expenses

Petitioners argue that foreign exchange gains and interest income

should not be allowed because the Department's verification revealed that POSCO could not support its reported offsets to financial expenses. Petitioners state that the reported financial expense ratio should be recalculated for the final determination.

Respondent asserts that its financial expenses were correctly reported. POSCO explains that the Department verified the reasonableness of its reported short-term interest income and the foreign exchange gains and losses related to debt for the consolidated company.

Department's Position: We agree with respondent. POSCO calculated consolidated short-term interest income and consolidated foreign exchange gains and losses based on the relative percentage of these items from the unconsolidated financial statements. At verification we examined the figures used in the calculation and traced them to POSCO's unconsolidated financial statements. Since POSCO's unconsolidated financial statements comprise a significant portion of its consolidated financial statements, we consider the allocation based on the unconsolidated percentages to be a reasonable surrogate.

Comment 11: POSCO—Affiliated Party Purchases

Petitioners argue that the Department should amend POSCO's reported costs by valuing raw material inputs purchased from affiliated parties at the highest of transfer price, COP, or market price in accordance with the major input rule. Petitioners argue that the major input rule requires the Department to value purchases from affiliated parties at the highest of transfer price, the affiliate's COP, or market value, as cited in section 773(f)(3) of the Act. Petitioners note that the Department's February 4, 1999 cost verification report indicates that POSCO's weighted-average purchase price for some affiliated party inputs occurred at prices that were less than the related parties' COP. Petitioners state that POSCO failed altogether to report a market price benchmark for an additional alloy, which requires the Department to apply facts available for the alloy.

POSCO asserts that material inputs purchased from affiliated parties do not meet the statutory definition of a major input and represent arm's length transactions based on the relationship of the price paid to the affiliated supplier and the cost incurred by that supplier. POSCO claims that even if the Department were to define one or more of the inputs as a major input, there is no basis on which to adjust the submitted costs.

Department's Position: We agree in part with respondent and in part with petitioners. POSCO obtained three inputs from both affiliated and non-affiliated suppliers. Sections 773(f)(2) and (3) of the Act allow the Department to test whether transactions between affiliated parties are at arm's length. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value are at prices that "fairly reflect * * * the market under consideration." Section 773(f)(3) allows the Department to test whether transactions between affiliated parties involving a major input are above the affiliated supplier's cost of production. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is above the affiliated suppliers' cost. The determination as to whether an input is considered major is made on a case-by-case basis. *See Antidumping Duties; Final Rule*, 62 FR 27296, 27362 (May 19, 1997). In determining whether an input is considered major, among other factors, the Department looks at both the percentage of the input obtained from affiliated suppliers (verses un-affiliated suppliers) and the percentage the individual element represents of the subject merchandise's COM (*i.e.* whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise).

In the instant case, we looked at these percentages for each of the three inputs. For one of the three inputs we found that section 773(f)(3) of the Act does apply to POSCO's purchases from affiliated parties. *See Memorandum to Neal Halper: Cost of Production ("COP") and Constructed Value ("CV") calculation adjustments for the Final Determination of Pohang Iron & Steel Co., Ltd. ("POSCO")*, dated May 19, 1999. For this input, we then compared the transfer price between POSCO and its affiliated supplier to that supplier's actual cost of production. Since the affiliated supplier's actual cost of production exceeded the transfer price, we have increased the COM of the subject merchandise to reflect the cost of the affiliated supplier. However, for the other two inputs we have determined that because of the limited amounts of these inputs obtained from affiliated suppliers and the relatively small percentage that the individual elements represent of the subject merchandise's COM, section 773(f)(3) of the Act does not apply. Furthermore, for these two inputs we found that the transfer price with POSCO's affiliates are reflective of a market price. Therefore, we have accepted the transfer price from POSCO's affiliate as the cost with respect to these inputs and have not adjusted the COM of the subject merchandise, pursuant to section 773(f)(2) of the Act.

Comment 12: Inchon—Date of Sale

Petitioners argue that, based on the verified record, the appropriate date of sale for home market sales is the invoice date. Petitioners argue that Inchon does not accept the basic terms of sale until the shipment request is entered into the warehousing/shipping document which coincides with the issuance of the invoice to the customer. Petitioners cite the Department's verification findings, which state that a "sale representative enters the order into the system and awaits sales approval. Inchon's sales team explained that price and quantity terms had to be approved by sales management; once approval is gained, the sales team enters a shipment request to the warehousing/shipping department." *See Inchon Verification Report*, at 20. Petitioners argue that, based on the above verification findings, Inchon does not accept the material terms of sale until "sometime after the order is received from the customer." Also, petitioners argue that it is the Department's preference to use the invoice date unless the material terms of sale are established at a different date, citing *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27349 (May 19, 1997).

Respondent agrees with petitioners that, for home market sales, the invoice date should be used, instead of the purchase order/order confirmation date. Respondent argues that the use of the purchase order date in the preliminary determination is directly contrary to the Department's date of sale regulations, which state that "[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." *See* 19 CFR 351.401(i). Inchon argues that while the vast majority of home market sales are filled from inventory on hand, and the shipping and invoicing takes place within one or two days of

the order, if Inchon does not have a requested product in inventory, it will (if the order is approved) produce the product. Respondent concludes that if Inchon produces the product, the essential terms of sale often change between the purchase order date and the invoice date; thus, the most appropriate date of sale is the invoice date.

For U.S. sales, petitioners argue that the Department should use the order date/contract date as the date of sale, and not the invoice date, as the Department preliminarily determined. Petitioners note that "once material terms and schedules are set, a firm offer is sent by Inchon to Hyundai Corporation, which sends its firm offer to Hyundai U.S.A., which finally sends a firm offer to the final customer." *See Inchon Verification Report*, at 21. Also, petitioners support their argument by citing to the verification report: "[a]ccording to Inchon, it also sends a sales contract to the final contract [sic], which lists all terms of the sale; this contract is signed by both parties." *Id.*

Petitioners argue that the Department should use the date of contract/order as the U.S. date of sale unless there is record evidence that demonstrates that "the material terms of sale change frequently enough on U.S. sales so as to give both buyers and sellers any expectation that the final terms will differ from those agreed to in the contract", citing *SSPC from Korea* and Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review ("Circular Welded Non-Alloy Steel Pipe From the Republic of Korea"), 63 FR 32833, 32836 (June 16, 1998).

Petitioners argue that respondent's two sales examples (*see* Inchon's November 19, 1998 response, at 21 and Exhibit A–28) do not demonstrate a change in the material terms of sale between the date of contract/order and the invoice date. In the first example, petitioners argue that the U.S. customer asked for a split-shipment of the quantity ordered and it did not cancel the quantity. In the second example, "the customer sent a purchase order requesting multiple products; however, Inchon agreed to supply one of the products from each of the purchase orders." Petitioners argue that this example only illustrates Inchon's sales process, where Inchon only sends a firm contract to the customer after the material terms of sale are established.

Petitioners allege that the sales processes in the home market and in the U.S. market differ because home market sales are usually made from inventory and U.S. sales are made-to-order. Petitioners argue another comparison point between the U.S. and home market sales concerning the terms of payment and invoicing; however, as this subject involves proprietary information, please *see Inchon Analysis Memorandum for the Final Results of the 1997/1998 Investigation for Stainless Steel Sheet and Strip in Coils from Korea ("Analysis Memo: Inchon")* for a more complete discussion of this issue. Petitioners argue that the Department, in a similar factual situation (*Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 63 FR at 32835), noted differences between the U.S. and home market sales process. In the above Korean case, petitioners noted that the Department used the invoice date for home market sales from inventory and the date of contract for U.S. made-to-order sales.

Furthermore, petitioners argue that Inchon's price and quantity change chart is inaccurate. *See* Exhibit C–24 of Inchon's November 19, 1998 response. Petitioners note that respondent claims that this chart illustrates that the price and quantity changed between order date and the invoice date on 17% of U.S. sales, by sales volume. Petitioners argue that an accurate comparison would be to compare any price or quantity changes between Inchon's contract/order date and invoice date, and not between the customer's purchase order date and the invoice date. Petitioners argue that, based on the Hyundai U.S.A. verification exhibits, there were no changes in the material terms of sale (*i.e.*, price or quantity) between Inchon's contract/order date and the invoice date.

Finally, petitioners argue that if the Department disagrees with petitioners' above arguments to use the date of contract/order as the U.S. date of sale, the Department should use the date of invoice from Hyundai U.S.A. to the unaffiliated U.S. customer and not the date of invoice from Inchon to either unaffiliated customers (channel 3) or affiliated customers (channels 1 and 2).

Respondent argues that, for U.S. sales, the Department should continue to use Inchon's invoice date as the date of sale. Respondent argues that petitioners were incorrect in stating that Inchon's specific example of a change in quantity from the contract to the invoice was a split shipment contract. Respondent argues that in this example, the final shipment was canceled by the U.S. customer because of a failure to agree on a price and that this information was verified by the Department. Respondent argues that this is an example of how the material terms of sale (in this case, quantity) can change after the date of contract. Respondent argues that petitioners understand that Inchon uses the terms "PO" and "contract" interchangeably and that the reference to "P/O QTY," in Exhibit C–24 of Inchon's November 19, 1998 response refers to the customer contract quantities, and that the quantities in both the purchase order and customer contract are the same. Also, respondent argues that in similar cases where there are documented changes in material terms of sale, the Department has used the invoice date as the date of sale. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 64 FR 2173, 2178 (January 13, 1999).

Respondent also disagrees with petitioners' argument that if the Department uses invoice date as the date of sale, the Department should use the invoice date from Hyundai U.S.A. to the unaffiliated U.S. customer. Respondent argues that using this invoice date is contrary to the Department's long-standing position that date of sale may not be after the date of shipment to the unaffiliated customer, citing *Carbon Steel from Korea—3rd Review*, 63 FR at 13172–73. Respondent notes that the Department did use the invoice date to the unaffiliated customer for U.S. sales through POSAM, the U.S. affiliate of POSCO in *SSPC from Korea*; however, the U.S. sales through POSAM were classified as CEP sales, and not EP sales. *See SSPC from Korea*, 64 FR at 15456.

Department's Position: We disagree with both parties' assertions that we should use invoice date for home market sales. For our preliminary determination, we used the purchase order/order confirmation date as the home market date of sale because, by respondents' own admission, "there would rarely be significant differences in the sales terms" between order date and invoice date. *See* Inchon's November 19, 1998 supplemental questionnaire response. Finally, at verification, we noted that for the home market sales traces, there were no changes in the material terms of sale between order date and invoice date.

Inchon's case brief states that when Inchon accepts an order for a product which it does not have in inventory, it produces the requested product, and, in these instances, the essential terms of sale can often change. This fact (of which, we note, we were aware at the time of our preliminary determination) does not change the fact that, for the large majority of Inchon's home market sales, the essential terms of sale do not change between order date and invoice date. As we noted in the preamble to the

governing regulations, we have established a "preference for using a single date of sale for each respondent, rather than a different date of sale for each sale." *See* Preamble, 62 FR at 27348. In this case, where the record assertions and evidence support the conclusion that the essential terms of sale for the "vast majority" of sales are established at order date, our preference to utilize a uniform date of sale leads to our conclusion that order date is the more appropriate date. Similarly, we note that petitioners' reference to our verification findings regarding the sales process does not contradict Inchon's statements that "the vast majority" of home market sales are made from inventory and that the terms of sale rarely change between the purchase order date and the invoice date. Hence, we disagree with both petitioners and respondent's arguments and continue to determine that the purchase order date, and not the invoice date, is the most appropriate sale date for home market sales in this case.

For U.S. sales, we disagree with petitioners' arguments to use the purchase order date instead of the invoice date from Inchon to either unaffiliated customers (channel 3) or affiliated customers (channels 1 and 2). While we agree with petitioners' argument that Inchon's home and U.S. sales process differ, it does not automatically follow that we must therefore use invoice date for home market sales and purchase order date for U.S. sales. We note that in the case cited by petitioners, *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea* (63 FR at 32836), the Department considered a factual pattern in which "[t]he material terms of sale in the U.S. [were] set on the contract date and any subsequent changes [were] usually immaterial in nature or, if material, rarely [occurred]." This is not the situation for Inchon's U.S. sales, where Inchon has provided evidence that there were changes to the essential terms of sale for a significant portion of its U.S. sales. For example, we note that the two examples cited by Inchon, as well as its price and quantity change chart (*see* Exhibit C–24 of Inchon's November 19, 1998 response), demonstrate that the material terms of sale can and do change often enough to justify using invoice date. Therefore, for U.S. sales, we determine that Hyundai U.S.A.'s invoice date (or shipment date, if earlier) is the appropriate date of sale for Inchon's U.S. sales.

Moreover, for U.S. sales, we disagree with respondent's arguments that Inchon's invoice date should be used as the date of sale for the final determination. For U.S. sales categorized as either EP or CEP transactions, it is the Department's practice to use the date of the invoice to the first unaffiliated purchaser in the United States. We note that for Inchon's sales made through Hyundai Corporation, respondent has provided the date of Inchon's invoice to Hyundai Corporation as the invoice date rather than the date of Hyundai Corporation's invoice to the first unaffiliated U.S. purchaser. However, as noted above in Comment 5, the date of sale cannot occur after the date of shipment. Therefore, when date of shipment to the first unaffiliated purchaser in the United States precedes the date of the invoice, we will use shipment date as the date of sale (*see Carbon Steel from Korea—4th Review*, 64 FR at 12935, citing Carbon Steel from Korea—3rd Review, 63 FR at 13172–73).

Comment 13: Inchon—Net Price vs. Gross Unit Price

Petitioners argue that the Department should recalculate both home market credit expenses and indirect selling expenses based on the net price (*i.e.*, after accounting for billing adjustments) rather than the gross unit price. Petitioners argue that Inchon used incorrect formulas for its calculation of home market credit expenses and indirect selling expenses, which were listed on pages B–27 and B–31, respectively, of Inchon's September 23, 1998 response.

Respondent rebuts petitioners' argument that the Department should adjust Inchon's home market credit and indirect selling expenses based on the net price because these adjustments would be "insignificant adjustments" within the meaning of 19 CFR 351.413 (1998). Respondent argues that these adjustments do not affect the calculation of Inchon's normal value by more than 1 percent, and would be a waste of the Department's time and resources to implement.

Department's Position: We agree with petitioners and have recalculated both home market credit expenses and indirect selling expenses based upon net price. As noted in the original questionnaire in this case, the Department uses in its margin calculations a price net of adjustments, such as discounts, rebates, and post-sale price adjustments, that are reflected in the purchaser's net outlay. *See* 19 CFR 351.102(b) and 351.401(c). This calculation formula error was noted in petitioners' February 3, 1999 alleged deficiency comments. Respondent's argument for us to use 19 CFR 351.413 to justify not making the calculation formula change is unfounded. As noted in the preamble to the governing regulations, "[section] 351.413 give[s] the Department the flexibility to determine, on a case-by-case basis, whether it should disregard a particular insignificant adjustment." *See* Preamble, 62 FR 27372. It would be more of a burden upon the Department to calculate a margin both with the adjustment and without the adjustment, compare the results, and determine whether the adjustment is "insignificant." Therefore, we have used Inchon's net price to the customer as the basis for credit and indirect selling expenses.

Comment 14: Inchon—U.S. Handling Commission Fee Adjustment

Petitioners argue that the Department should apply the highest per unit handling commission fee to all Hyundai U.S.A. sales with a particular term of payment, as partial facts available, because the Department discovered at verification that Inchon failed to disclose the handling commission fee. Because Inchon did not report the handling commission fee and because the Department discovered the fee at the Hyundai U.S.A. verification, petitioners argue that the Department should apply facts available and use the highest per unit handling commission fee for those U.S. sales with this particular term of payment.

Respondent argues that at Inchon's U.S. verification, Inchon realized that it had inadvertently excluded a handling commission fee for certain of its U.S. sales, and that the Department should apply the actual transaction-specific adjustment, based on the calculations in U.S. Verification Exhibit 12. Respondent argues that the Department should not apply facts available or adverse facts available because the Department has the information on the record to make the transaction-specific adjustments. Also, respondent argues that this is the type of minor correction that the Department normally makes after verification.

Department's Position: We agree with respondent and will apply the U.S. handling commission fee transaction-specific adjustments, where applicable. We discovered, and then calculated, the handling commission fee expenses at verification for all U.S. sales. *See Hyundai U.S.A. Verification Report*, Exhibit 12. We disagree with petitioners' argument to apply partial facts available. First, there is no missing information with respect to these minor adjustments. Second, the Department verified the accuracy of these minor adjustments for all U.S. sales. Thus, the

application of facts available is unwarranted. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administration Review: Certain Pasta from Turkey*, 63 FR 68,429, 68,432 (December 11, 1998) (Department adjusted freight expenses to reflect verification findings, despite an argument that the "adjustment is negligible and may be ignored," citing 19 CFR 351.413.) Therefore, for the final determination, we have adjusted for these expenses on a transaction-specific basis. *See Analysis Memo: Inchon* for a discussion of the calculations.

Comment 15: Inchon—Converted Quantity

Petitioners argue that the Department should use the converted quantity field in the U.S. sales database, with quantities in metric tons, instead of the quantities reported in field QTYU, which, petitioners argue, contains mixed units of measurement, for the purposes of calculating an overall antidumping margin.

Respondent Inchon agrees with petitioners that the Department should use the converted quantity field in the U.S. sales database for the quantity sold.

Department's Position: We agree with both parties that we should use the converted quantity field from the U.S. sale database. Because Inchon had to convert some U.S. sales from short tons into metric tons, using the converted quantity field in the U.S. sales database assures us that the quantities used for the final determination are based upon the same measurement, which is an actual per ton basis, for each transaction.

Comment 16: Inchon—Other Freight Expenses

Petitioners argue that the Department should correct the U.S. sale database based on the discovery, at verification, of an error regarding Inchon's failure to include a standard handling fee as part of other freight expenses for a particular U.S. sales observation.

Respondent agrees with petitioners that the Department should correct the error discovered at verification. However, respondent argues that this handling fee pertains only to merchandise which Inchon exported through the ports of Pusan or Pohang. Thus, respondent argues that, in making the handling fee adjustments, the database should be adjusted only when Inchon shipped through the ports of Pusan or Pohang.

Department's Position: We agree with both parties that, based on our findings at verification, Inchon had not added a standard handling fee for all shipments through the ports of Pohang and Pusan. This error was discovered during verification and the correct figure was calculated for the U.S. sales observation. *See Inchon Verification Report*, at 1. Additionally, we agree with respondent that the error exists only with respect to those sales which were exported through Pusan or Pohang. This conclusion is consistent with the information gathered at verification. *See Inchon Verification Report*, Exhibit 18. Therefore, for the final determination, we will adjust the expenses associated with domestic inland freight to the port of export for all applicable U.S. sales.

Comment 17: Inchon—Scrap Recovery Value

Petitioner's argue that the Department should reject Inchon's new methodology for calculating scrap recovery. Previously, Inchon valued scrap recovery based on net realizable value. However, at the start of verification, Inchon changed the valuation methodology to the actual sales value. Petitioners argue that the Department should accept Inchon's original scrap recovery rate based on net realizable value because that method is based on Inchon's normal books and records. Petitioners cite section 773(f)(1)(A) of the Act, which states that costs shall normally be calculated based on the records of the exporter or producer if those records are prepared in accordance with the home country's generally accepted accounting principles, and reasonably reflect the cost of producing the merchandise.

Petitioners claim that there is no evidence on the record to suggest that Inchon's normal accounting of scrap recovery costs recorded in its normal books and records are not reasonable. Furthermore, petitioners assert that this change in methodology and the submission of new factual information was not a minor correction; thus it was untimely filed and pursuant to section 351.302(d) of the regulations, the Department should not consider or retain in the official record of the proceeding untimely filed information. Petitioners claim that the Department only accepts new information at verification when: (1) The need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record. Petitioners assert that on all points, Inchon's submission of new factual information is not a minor correction.

Inchon states that in the normal course of business it values scrap at its net realizable value. However, to comply with the Department's policy to reduce material costs by the actual revenue received on sales of scrap during the POI, Inchon provided a revised scrap recovery calculation based on actual scrap revenue. Inchon asserts that the information used in the new scrap recovery calculation was placed on the record in its November 19, 1998 supplemental D response in exhibit D–21. Thus, petitioner's argument that the information was submitted untimely are without merit.

Department's Position: We agree with petitioners' assertion that the net realizable value scrap recovery method should be used in for this case. Inchon uses the net realizable method in its normal books and records which reasonably reflects the costs associated with the production and sale of the subject merchandise, pursuant to section 773(f)(1)(A) of the Act. We agree that the actual scrap value, as opposed to a standard or theoretical scrap value, should be used to reduce material costs. However, the costs associated with obtaining the scrap (i.e., transportation and processing costs) should be deducted from the actual sales revenue to arrive at a net value for scrap used as a reduction in material costs. Inchon has not provided sufficient evidence to demonstrate that the net realizable method does not reasonably reflect costs, and therefore, should not be relied upon in the stainless steel sheet and strip case.

Comment 18: Inchon—Depreciation

Petitioners argue that Inchon's change in useful lives and change in depreciation method was not justified nor consistent with the depreciation methodologies that it employed in prior years. Petitioner's cite *Carbon Steel from Korea—3rd Review*, where the Department denied respondent's change in useful life, even though the change was in accordance with Korean GAAP. In that case, the Department found that the respondent failed to sufficiently justify the change, and therefore, the Department calculated the depreciation expense based on the original useful lives of the assets. Petitioners assert that in the instant case, Inchon did not provide sufficient justification for the changes and the depreciation should be recalculated based on the original method and useful lives of the assets.

Inchon argues that its change in depreciation methodology is fully consistent with Korean GAAP. Inchon cites section 773(f)(1)(A) of the Act which requires the Department to base its calculation of costs on GAAP in the country of manufacture unless the result

is distortive. Inchon claims that the petitioners have not demonstrated any such distortion. Furthermore, Inchon asserts that *Carbon Steel from Korea—3rd Review* cited by petitioners is not applicable because it involves an administrative review. Inchon states that in administrative reviews, the Department must be concerned about possible distortions arising from changes in methodology from one review period to another, which could result in some costs never being captured in any review period. Additionally, in a review, the Department may have legitimate concerns about respondents making strategic changes to accounting methodologies in order to affect dumping margins. Inchon argues that in the instant case neither concern is applicable because in this initial investigation, the change in depreciation methods and change in useful lives occurred before the dumping case was filed.

Department's Position: We agree with Inchon. At verification we examined the change in depreciation method and useful lives, noting that the changes were neither unusual nor unreasonable. These changes were reflected in Inchon's December 31, 1997 audited financial statements in accordance with Korean generally accepted accounting principles. In addition, the change in depreciation method and useful lives occurred prior to the initiation of this investigation. We agree that, where changes in accounting principles and costing methodologies occur subsequent to the initiation of an antidumping proceeding, the Department has concerns about the possible distortions which could result. However, since Inchon provided evidence that its change in depreciation methods and useful lives were reasonable, and that the change occurred in a time period prior to the initiation of the investigation, we have relied on the new methodologies and have not made adjustments to Inchon's depreciation expense.

Comment 19: Inchon—CEP vs. EP

Respondent argues that the Department should determine that Inchon's channel one U.S. sales are EP sales, and not CEP sales as preliminarily determined. Respondent stated that "[i]n determining whether U.S. sales made by an affiliated U.S. importer prior to importation should be classified as EP or CEP sales, the Department considers whether: (1) The merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties involved; and (3) the functions of the U.S. sales affiliates were limited to that of processors of sales-related documentation and communications links with the unaffiliated U.S. buyer," citing *Preliminary Results of Antidumping Review: Circular Welded Non-Alloy Steel Pipe from Korea*, 62 FR 55574, 55579 (October 27, 1997). Respondent also argues that when the above three criteria are met, the Department classifies the transactions as EP sales, citing, *e.g., Industrial Phosphoric Acid from Belgium*, 63 FR 25830, 25831 (May 11, 1998); *Independent Radionic Workers of America* v. *United States*, 19 CIT 375 (1995); and *AK Steel Corporation* v. *United States*, Slip Op. 98–159, WL 846764 (CIT, November 23, 1998).

Respondent argues that in this investigation, the first two criteria are met because Inchon's channel one U.S. sales through Hyundai U.S.A. were shipped directly from the manufacturer to the unaffiliated U.S. customer, which is the customary commercial channel of distribution for Inchon's channel one U.S. sales. Respondent notes that for one invoice, which covered four U.S. transactions, at the unaffiliated U.S. customer's request, Hyundai U.S.A. arranged for a brief period of warehousing at a commercial warehouse at the U.S. port of entry. Respondent argues that this post-sale warehousing does not void Inchon's claim for EP treatment because: (i) it was done at the customer's request; (ii) the goods never entered the inventory of Hyundai U.S.A.; and (iii) after warehousing, the goods were shipped directly to the unaffiliated U.S. customer.

Concerning the third criterion, respondent argues that Hyundai U.S.A. acted as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. Respondent argues that Hyundai U.S.A.'s role was therefore that of a classic sales processor and communications link: forwarding orders to Inchon for approval, serving as a contact point for customer inquiries, arranging for importation, freight, and delivery to the customer, and performing invoicing and payment collection functions on behalf of Inchon. More specifically, respondent argues that the Hyundai U.S.A. Verification Report demonstrates Hyundai U.S.A.'s limited role in these transactions. First, respondent argues that Inchon, not Hyundai U.S.A., identified U.S. channel one customers and determined which potential customers should be served through this sales channel. Respondent also argues that Inchon's own sales personnel would travel from Korea to make joint sales calls for important U.S. customers. *See Hyundai U.S.A. Verification Report*, at 4. Second, respondent argues that it does not have a specific department or division for stainless steel sales and the U.S. sales through Hyundai U.S.A. were sold by sales personnel that are primarily responsible for other non-subject products. Third, respondent argues that Hyundai U.S.A. was not responsible for setting prices or other key terms of sale, and that, while Hyundai U.S.A. personnel were familiar with Inchon's prices and did communicate current prices to U.S. customers, Hyundai U.S.A. had no authority to accept or approve sales of subject merchandise. Respondent argues that Inchon approved all sales and Inchon, after receiving a sales inquiry from Hyundai U.S.A., would often change the material terms of sale, which the Department verified.

In addition, respondent argues that none of the following activities justify the Department's preliminary determination that Hyundai U.S.A.'s sales should be CEP sales: (i) that Hyundai U.S.A. sometimes quotes prices to unaffiliated customers, (ii) that Hyundai U.S.A. arranged for post-sale warehousing for one customer, (iii) that Hyundai U.S.A. invoices and collects payment from the U.S. customer, and (iv) that Hyundai U.S.A. extends credit to the U.S. customer.

Citing *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium*, 56 FR 56359, 56362 (November 4, 1991) and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371 (November 4, 1991), respondent contends that the Department has held that the fact that an affiliated U.S. company quotes prices to U.S. customers does not lead to CEP designations, nor does a U.S. affiliate's identifying and maintaining contact with customers. Respondent also cites to *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 57 FR 38465, 38469 (August 25, 1992), noting that the Department found that the role of a branch office whose functions include "receiving orders, preparing and executing order confirmations, invoices, packing lists, and other sales-related documentation, and receiving and processing payments from customers" was not sufficient to classify the affiliate's activities as beyond those of a mere processor of documents or communications link. Respondents also cite *E.I. DuPont de Nemours & Co.* v.

United States, 841 F. Supp. 1237, 1249–50 (CIT 1994) in support of this proposition.

Petitioners argue that the Hyundai U.S.A. sales are CEP because Hyundai U.S.A. solicits sales, negotiates contracts, and finalizes the sale. Petitioners argue that these activities are not ancillary activities in making the U.S. sale. Petitioners note that the Department has stated that, "[w]here the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or provides customer support, we treat the transactions as CEP sales," citing, *e.g.*, *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review* ("*Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*"), 63 FR 12725, 12738 (March 16, 1998).

Petitioners argue that record evidence shows that Hyundai U.S.A. solicits sales. Specifically, petitioners note that the Hyundai U.S.A. Verification Report, at 4–5, states that "Hyundai U.S.A. would contact potential customers" and "(w)hen only Hyundai U.S.A. is making sales calls, company officials stated that they would know Inchon's current steel market prices because they review a publicly available industry publication (with prices) and are in contact with Inchon concerning Inchon's price structure." Also, petitioners argue that the Hyundai U.S.A. Verification Report supports the conclusion that Hyundai U.S.A. negotiates contracts. Specifically, petitioners cite the Hyundai U.S.A. Verification Report, at 5, which states that "negotiations would continue between Inchon, Hyundai U.S.A., and the customer." Petitioners argue that the above record indicates that these are not ancillary activities in making the U.S. sale, and therefore, the Department must consider sales through Hyundai U.S.A. to be CEP transactions.

Department's Position: We agree with petitioners that Inchon's sales through Hyundai U.S.A. should continue to be classified as CEP sales for the final determination. The Department treats sales through an agent in the United States as CEP sales, unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. These factors are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this sale is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 62 FR 18369, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States*, Slip Op. 98–82 at 6 (CIT, June 23, 1998). The Department has stated that, "(w)here the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or provides customer support, we treat the transactions as CEP sales," citing, *e.g.*, *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 63 FR 12725, 12738 (March 16, 1998).

In this case, we note that Hyundai U.S.A.'s level of sales activities cannot be regarded as merely ancillary. While Inchon performs many selling activities for U.S. sales through Hyundai U.S.A., including undertaking business trips to meet with potential U.S. customers of the subject merchandise (*see Hyundai U.S.A. Verification Report*, at 4), the record contradicts respondent's assertion that Hyundai U.S.A. is merely a processor of sales-related documentation.

In this case, the facts on the record, taken together, indicate that Hyundai U.S.A. plays a significant role in the sales process. First, we note that Hyundai U.S.A. "arranged for a brief period of warehousing at a commercial warehouse at the U.S. port of entry." *Id.*

Second, Hyundai U.S.A. solicits sales. The record shows that, as part of the normal course of business, Hyundai U.S.A.'s employees travel with Inchon employees to make U.S. sales calls. Once Inchon had provided its affiliate a list of potential customers, "Hyundai U.S.A. would contact these potential customers." In addition, Hyundai U.S.A. employees would make sales calls without Inchon employees, because Hyundai U.S.A. employees have knowledge of Inchon's prices. *Id.*

Third, Hyundai U.S.A. assumed the credit risk because it invoiced the U.S. customer and was responsible for collecting payment from the U.S. customer. Hyundai U.S.A. was not collecting the payment on behalf of Inchon, as respondent argues, but for itself. Bearing such financial risk is indicative of a seller, not a mere facilitator.

Fourth, Hyundai U.S.A. itself has noted that it also "conducts market research and reports to Inchon on steel market conditions." *Id.*

All of these activities performed by Hyundai U.S.A., taken together, constitute significant selling activities, and therefore, we find that Hyundai U.S.A.'s activities are more than ancillary to the sales process and have classified Inchon's U.S. sales through Hyundai U.S.A. as CEP transactions.

Comment 20: Inchon—Packing Expense

Respondent argues that the Department should base packing expenses on the revised figures provided as a pre-verification correction. Respondent states that the packing expenses submitted by Inchon in its September 23, 1998 response, on pages B–32 and C–40 and Exhibits B–13 and C–22, were based on a certain coil size, which, respondent claims, is the smallest coil size Inchon uses. Respondent argues that using this particular certain coil size overstated packing costs because the same amount of packing cost is incurred for each coil, regardless of coil size. In its pre-verification corrections, Inchon argues that it provided an average coil size for both U.S. and home shipments, and provided revised U.S. and home packing per-unit costs. *See Inchon Verification Report*, Exhibit 1. Hence, respondent argues that the Department should accept the modified packing expense figures.

Petitioners argue that the modified packing expense figures, presented by Inchon as a pre-verification correction, are untimely new factual information that the Department should not consider or retain as part of the official record.

Department's Position: We agree with respondent and have accepted Inchon's pre-verification correction to its packing expenses. We accepted this packing expense data at the beginning of verification because we determined that it was a minor correction to the U.S. and home market sales databases, rather than new factual information. We disagree with petitioners' argument that this packing expense correction is untimely new factual information, since Inchon's packing expense correction was made with regard to the underlying

coil size, which was the basis for its reported per unit packing expense. Therefore, for the final determination, we adjusted packing expenses in both the U.S. and home markets, based on Inchon's submitted pre-verification corrections. *See Analysis Memo: Inchon* for specific packing expense data.

Comment 21: Inchon—Payment Date

Respondent argues that the Inchon Verification Report was incorrect when it reported that for a U.S. sales trace, there was a discrepancy regarding whose payment date was reported on the record. *See Inchon Verification Report*, at 1–2. Respondent argues that the U.S. sales trace package (Home Market Verification Exhibit #18) has documentation which supports respondent's position concerning whose payment date was reported on the record. Petitioners did not comment on this issue.

Department's Position: We agree with respondent. We reviewed the documents included in the U.S. sales trace package in question, (*Inchon Verification Report*, Exhibit #18) and have determined that the report did not reflect the correct information on this issue. Although Inchon officials had reported that the document reflected payment to one affiliate, further examination of the document revealed that payment had been received by the correct affiliate, and that the corresponding payment date reported to the Department was correct.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for the submission of information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information, but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. As discussed in *Preliminary Determination*, Taihan failed to respond to the Department's questionnaire. Accordingly, we find, under section 776(a)(2)(A), that we must base our determination for that company on facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*see* also the Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Rep. No. 103–316 at 870). Given the company's refusal to comply with the Department's request for information, Taihan has failed to cooperate to the best of its ability in this investigation. A respondent's refusal to respond to the Department's request for information, much less provide information, is an extreme example of a party's failure to cooperate to the best of its ability. Therefore, the Department has determined that an adverse inference is warranted with respect to Taihan.

In this proceeding, we used the information from the petition, as adjusted by the Department for the purposes of initiation, to form the basis for a dumping margin for this respondent. Thus, consistent with the Department's practice (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 10847 (March 5, 1998) (*"SSWR from Germany"*)), the Department is assigning to Taihan the highest margin alleged in the petition, as adjusted, for Korean producers, which is 56.79 percent (*see* June 30, 1998, "Import Administration Antidumping Investigation Initiation Checklist (*"Initiation Checklist"*) and *Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998) for a discussion of the margin calculations in the petition).

Section 776(c) of the Act provides that when the Department relies on "secondary information" (*e.g.*, the petition) as the facts available, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The SAA accompanying the URAA clarifies that the petition is "secondary information." *See* SAA at 870. The SAA also clarifies that "corroborate" means to determine whether the information used has probative value. *Id. See also* 19 C.F.R. 351.308(c)(1) and (d).

We reviewed the accuracy and adequacy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, foreign market research reports, and data from U.S. producers). *See Initiation Checklist*. Specifically, in the petition, the petitioners based both EP and NV on foreign market research, affidavits concerning prices and freight costs, official U.S. import statistics, U.S. government sources and International Financial Statistics.

With respect to gross U.S. and home market unit prices used in the margin calculations included in the petition, which were developed based on foreign market research (*see Memorandum to the File—Re: Foreign Market Research*, dated June 20, 1998), we have compared the information provided by Inchon and POSCO with the information provided in the petition. We find that the margins provided in the petition are corroborated by the pricing and cost information provided by POSCO and Inchon. *See Memorandum to the File: Final Determination of the Sales at Less Than Fair Value Investigation of Stainless Steel Sheet and Strip in Coils ("SSSS") from Korea: Application of Total Adverse Facts Available for Taihan Electric Wire Co., Ltd. ("Facts Available Memo")*, dated May 19, 1999. We further note that the Department has, in other cases, for facts available purposes, used margins developed in a petition that are based in part on foreign market research. *See, e.g., SSWR from Germany*, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia*, 61 FR 43333 (August 22, 1996).

In addition, as certain other information included in the petition's margin calculation is from public, independent sources (*e.g.*, international freight and insurance, U.S. harbor maintenance and U.S. merchandise processing fees, SG&A, and profit), we find that this information also has probative value. Finally, we also have examined the reliability of the other information provided in the petition (*see Memorandum to the File—Re: Foreign Market Research*, dated June 20, 1998), and find that it has probative value in light of the information provided on the record by Inchon and POSCO. For example, we determined that the price quotes for EP and NV reported in the petition fell within the range of price information reported in Inchon's and POSCO's responses. Similarly, for COP and CV data reported in the petition, we determined that such data also fell within the range of COP and CV data reported by Inchon and POSCO. *See Facts Available Memo*.

Based upon the above, we have determined that the information reported in the petition is corroborated in this case. Accordingly, the Department has relied on information provided in the petition as the basis of facts available.

The All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776 of the Act. As Inchon's rate has been determined to be zero, and Taihan's rate has been determined under section 776 of the Act (determinations on the basis of the facts available), for this final determination, the all-others rate is simply the calculated rate for POSCO.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the Republic of Korea, except for Inchon, that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Pohang Iron & Steel Co., Ltd. ..	12.12
Inchon Iron & Steel Co., Ltd.	0.00
Taihan Electric Wire Co., Ltd. ..	58.79
All Others	12.12

Since the final weighted average margin percentage for Inchon is zero, Inchon is excluded from an antidumping order on stainless steel sheet and strip in coils from the Republic of Korea as a result of this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13770 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–818]

Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Rast at (202) 482–1324 or Nancy Decker at (202) 482–0196, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (SSSS) from the United Kingdom (U.K.) are being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 4, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Stainless Steel Sheet and Strip in Coils From the United Kingdom, 64 FR 85 (January 4, 1999) (Preliminary Determination). Since the publication of the Preliminary Determination, the following events have occurred:

On February 23, 1999, the Department published a correction to the preliminary determination, incorporating corrected scope language. See Notice of Correction: Preliminary Determinations of Sales at Less than Fair Value, Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip from Taiwan, 64 FR 8799 (February 23, 1999).

The Department verified the responses of the respondent, Avesta Sheffield Ltd. and Avesta Sheffield NAD, Inc. (collectively "Avesta"), as follows: sections A (General Information), B (Home Market Sales), and C (U.S. Sales) of Avesta's responses from January 18–31, 1999, in Sheffield, Stocksbridge, and Oldbury, U.K., and from February 10–12, 1999, in Schaumberg, Illinois; and section D (Cost of Production) questionnaire responses from February 15–22, 1999, in Sheffield, U.K. See Memorandum For the Files; "Sales Verification of Sections A–C Questionnaire Responses Submitted By Avesta," April 1, 1999 (Home Market Sales Verification Report); Memorandum For the Files; "U.S. Sales Verification of Sections A & C Questionnaire Responses Submitted By Avesta," March 23, 1999 (U.S. Sales Verification Report); Memorandum to Richard Weible, Director, Office Eight, Enforcement Group Three; "Verification Report on the Cost of Production and Constructed Value Data," April 2, 1999 (Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

On January 29, 1999, Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville

Armco Independent Organization, Inc. (petitioners), requested a public hearing in this case. On February 4, 1999, Avesta also requested a hearing. However, on April 13, 1999, and on April 16, 1999, Avesta and petitioners, respectively, withdrew their requests for a hearing; therefore, none was held. On April 9, 1999, petitioners and Avesta filed case briefs in this matter; we received rebuttal briefs from petitioners and Avesta on April 16, 1999.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from the United Kingdom to the United States were made at less than fair value, we compared export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Transactions Investigated

For its home market and U.S. sales, Avesta reported the date of invoice as the date of sale, given the Department's stated preference for using the invoice date as the date of sale. As explained in response to Comment 2, below, for this final determination we have continued to rely upon Avesta's invoice dates in the home and U.S. markets as the date of sale. However, should this investigation result in an antidumping duty order, we intend to scrutinize further this issue in any subsequent segment of this proceeding involving Avesta.

We have excluded from our analysis all of Avesta Sheffield Inc.'s (ASI) U.S. resales of rejected merchandise. See Comment 6 below.

Avesta has asserted that hot-rolled merchandise, which is sold only in the home market, should be considered a product of Sweden, and, as such, it should be excluded from the Department's analysis. Avesta has also asserted that a small amount of merchandise reported in the United States and/or home market databases is: (1) hot-rolled and cold-rolled in Sweden, and then further cold-rolled, annealed, and finally processed in the United Kingdom (affecting U.S. and home markets); and (2) hot-rolled and cold-rolled in Sweden and then further processed in the United Kingdom (affecting the home market). We have excluded from our analysis (1) Avesta's hot-rolled sales, and (2) those sales of merchandise that are first cold-rolled in Sweden. See Comment 13 below.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent covered by the description in the "Scope of the Investigation" section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Level of Trade

In our preliminary determination, we found that one level of trade (LOT) existed for Avesta in the home market. Furthermore, we found that Avesta had two LOTs in the United States, one for EP sales and one for CEP sales, and we found that a CEP offset was appropriate in accordance with section 773(a)(7)(B) of the Tariff Act. As explained in Comment 4, below, and the preliminary determination, we find that (1) one LOT existed for Avesta in the home market; (2) two separate LOTs existed for Avesta in the United States; and (3) a CEP offset is appropriate.

Export Price and Constructed Export Price

We calculated EP, in accordance with section 772(a) of the Tariff Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter outside the United States, and where CEP methodology was not otherwise warranted, based on the facts of the record. For further discussion on the classification of EP sales, see Comment 1 below.

We calculated CEP, in accordance with section 772(b) of the Tariff Act, for those sales made by ASI, an affiliated U.S. sales company, to unaffiliated purchasers in the United States.

We calculated EP and CEP based on the same methodology employed in the preliminary determination, except as noted below in "Comments" and in the Final Sales Analysis Memorandum from Charles Rast and Nancy Decker to The File, dated May 19, 1999 (Final Analysis Memorandum).

Normal Value

Home Market Viability

As discussed in the Preliminary Determination, in order to determine whether the home market was viable for purposes of calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Avesta's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, we excluded them from our LTFV analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil, 63 FR 59509 (Nov. 8, 1998), citing to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average cost of production (COP) based on the sum of Avesta's cost of materials, fabrication, general expenses, and packing costs. In addition, on a transaction specific basis, we added to COP tolling costs for slitting work done by an unaffiliated party. We relied on Avesta's submitted COP, except in the following specific instances where the submitted costs were not appropriately quantified or valued:

We revised Avesta's financial expense ratio using British Steel PLC's consolidated financial statements. See Comment 18 below.

We adjusted the calculation of Avesta's general and administrative expense (G&A) ratio to use unconsolidated cost of goods sold of the producing entities. See Final Analysis Memorandum.

We compared the weighted-average COP for Avesta to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities within an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where twenty percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine such sales to have been made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Tariff Act. In addition, pursuant to section 773(b)(2)(D) of the Tariff Act, because we compared prices to POI-average COPs, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregard the below-cost sales.

Our cost test for Avesta revealed that, for certain products, less than twenty percent of Avesta's home market sales of those products were at prices below Avesta's COP. We retained all sales of those products in our analysis. For other products, more than twenty percent of Avesta's sales of those products were at prices below COP. In such cases, we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Final Analysis Memorandum.

Price-to-Price Comparisons

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on Avesta's sales to unaffiliated home market customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for billing adjustments and discounts and rebates. We made deductions, where appropriate, for foreign inland freight, warehousing, and inland insurance, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act. We continued to make circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6)(C)(iii) of the Tariff Act.

Price-to-Constructed Value Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on constructed value (CV) if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the sum of Avesta's costs of materials, fabrication, SG&A expenses, profit, and U.S. packing expenses. See section 773(e) of the Tariff Act. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the United Kingdom. We calculated the cost of materials, fabrication, and general expenses based upon the methodology described in the "Cost of Production Analysis" section, above. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of

the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

Issues Relating to Sales

Comment 1: EP versus CEP sales

Petitioners argue that the Department should reclassify Avesta's reported EP sales as CEP sales based on the evaluation of the activities of ASI, Avesta's U.S. affiliate. Petitioners, also assert that, in fact, the mere existence of the respondent's affiliate in the United States demonstrates that the respondent's sale should be classified as CEP sales.

Petitioners claim that, when sales are made prior to importation, it is the Department's practice to evaluate the following: whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; whether direct shipment to the unaffiliated buyer is the customer channel for sales of the subject merchandise between the parties involved; and whether the selling agent in the United States acts only as a processor of the sales-related documentation and a communication link with the unaffiliated U.S. buyer. Referencing the last criterion, petitioners argue that the Department has amplified its policy on evaluating the level of involvement of U.S. subsidiaries by determining that such sales are appropriately classified as CEP sales in the following instances: the U.S. subsidiary was the importer of record and took title to the merchandise; the U.S. subsidiary financed the relevant sales transactions; the U.S. subsidiary arranged and paid for further processing; and the U.S. subsidiary assumed the seller's risk.

Petitioners assert that there is ample precedent for re-classifying sales as CEP, where the Department determines that a U.S. affiliate's involvement in a sale is significant, but where the merchandise is not entered into a U.S. affiliate's inventory. Citing Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review, 63 FR 12752 (March 16, 1998) (Extruded Rubber Thread), petitioners argue that the Department determined sales to be CEP sales in circumstances where the U.S. sales force contacted the U.S. customer, negotiated sales terms, arranged for production and shipment, and issued final invoices and collected payment. In other instances, according to petitioners, the Department has re-classified the respondents' U.S. sales as CEP because the U.S. companies performed significant selling functions in the United States.

According to petitioners, ASI satisfies the criteria established in Extruded Rubber Thread for reclassifying ASI's EP sales as CEP sales. Petitioners argue that, as in that case, ASI is responsible for all paperwork, invoicing, and transportation. Furthermore, petitioners contend, ASI is responsible for providing quotations to the customer in the U.S. and confirming prices with the U.K. mill. They cite the Department's U.S. Sales Verification Report, noting that ASI arranges shipment logistics for clearance through Customs and shipment to the customer, performs customer credit checks, extends credit, collects payment, maintains accounts receivables, holds inventory, issues order confirmations, inputs orders, sends mill certificates and packing lists, and issues the final invoice. Furthermore, according to petitioners, the Department's pre-selected sales described in the U.S. Sales Verification Report support reclassifying ASI's EP sales as CEP sales.

Petitioners state it is evident from information collected by the Department at verification that ASI is not merely a "paper processor", and that although merchandise is customarily shipped directly to customers from the United Kingdom, ASI handles almost every significant aspect of making U.S. sales. Because ASI must, in general, retain employees to sell the subject merchandise, handle all the paperwork, arrange entry and transportation, administer customer accounts, and deal with late payments, its activities were not limited to that of a "processor of sales-related documentation" and "communication link" with the unaffiliated buyers.

Petitioners assert that the mere existence of ASI demonstrates its involvement in the U.S. sales process, and that its large staff comprising of an active sales force, billing and accounting staff, indicate that its activity must be "significant". According to petitioners, in the absence of ASI, the respondent would simply conduct operations from its home market. A true "paper processing" subsidiary, they state, would have an inexpensive office and small clerical staff with little more than telephone and facsimile equipment to communicate with the home office, and that an adjustment (for indirect selling expenses) to the starting price, while necessary, would be small. On the other hand, according to petitioners, a more extensive export market operation, such as ASI's, would result in a commensurately larger adjustment. Petitioners argue that, given ASI's extensive involvement in the selling process, the Department should deduct the indirect selling and operating costs of ASI from the starting price for all U.S. sales involving ASI.

Avesta argues that the Department correctly classified the U.S. sales referenced by petitioners as EP sales. Avesta contends that petitioners' claim that ASI is responsible for providing quotations to the customer in the United States and confirming prices with the U.K. mill is deceptive. Avesta points to verified evidence demonstrating that the U.K. mill sets the price for EP sales because ASI has much less familiarity with the market price for such specialized products. Also, Avesta asserts that the Department reviewed sales documentation at verification, showing that ASI requested price guidance from the mill, and that the mill quoted prices to ASI for each of the EP customers during the POI. Avesta claims that the fact that ASI does not negotiate the terms of sales distinguishes ASI's role in the sales process from that of the affiliated U.S. sales agents in the cases cited by petitioners. In all of those instances, according to Avesta, the Department's decision to reclassify U.S. sales as CEP transactions was based, at least in part, on a finding that the U.S. sales agent was involved in the negotiation of the sales.

Avesta indicates that record evidence shows that ASI's role in the sales process for certain sales of merchandise meets the Department's requirements for EP sales. According to Avesta, ASI's role for these sales is most similar to that of the U.S. affiliate in Stainless Wire Rod from Korea, in which the Department determined that the extent of the U.S. affiliate's involvement in the sales process was indicative of the involvement normally provided by a processor of sales-related documentation and a communications link. (See Stainless Wire Rod from Korea: Final Determination of Sales at Less Than Fair Value, 63 FR 40404, 40419 (July 29, 1998) (Stainless Wire Rod from Korea). Avesta states that, similarly, the Department has

previously found that a U.S. affiliate whose functions include receiving orders, preparing and executing order confirmation, invoices, packing lists, and other sales-related documentation, as well as receiving and processing payments from customers, was not so substantial to conclude that it was more than a processor of documents or communications link.

Avesta argues that petitioners' assertion that the mere existence of a U.S. affiliate constitutes evidence that the respondent's U.S. sales should be characterized as CEP sales is without basis in law or Departmental practice. Avesta contends that, in Stainless Wire Rod from Korea, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department has recently explained that it examines several factors to determine whether the sales warrant classification as EP sales. Avesta notes that it is not the mere existence of an affiliated U.S. sales agent that determines EP versus CEP treatment of U.S. sales, but the Department's analysis of the factors enunciated in its EP/CEP test.

Avesta states that petitioners' arguments seem to ignore the fact that Avesta has reported only a small number of U.S. sales as EP sales, and that Avesta is not holding the position that all, or even a large number of U.S. sales, should be classified as EP sales. Avesta claims that, because this small quantity of sales clearly involved sales and negotiation by the U.K. mill for certain products, they were correctly classified by the Department as EP sales. Avesta asserts that this small quantity of EP sales, relative to total U.S. sales, demonstrates the inaccuracy of petitioners' characterization of the size and level of ASI, and that the activity of ASI's U.S. sales force must be significant. Avesta argues that petitioners' characterization of ASI's staff as "large" is not supported by record evidence and that petitioners give no indication of why the Department must assume that the activities of ASI's staff are focused on EP sales, which make up only a small percentage of total U.S. sales by ASI.

Department's Position: We disagree with petitioners that Avesta's U.S. sales should be treated as CEP sales, and have continued to treat Avesta's EP-classified U.S. sales as EP sales in the final determination. Specifically, we disagree with petitioners' contention that ASI acts as more than a communications link and processor of sales-related documentation for sales classified by Avesta as EP during the POI.

The statute defines EP price as the price at which the subject merchandise is first sold (or offered for sale) to an unaffiliated purchaser before the date of import by the exporter outside the United States. In contrast, CEP is the price at which the subject merchandise is first sold (or offered for sale), before or after the date of import, in the United States by or for the account of the exporter or by a seller affiliated with the exporter to an unaffiliated purchaser. Thus, sales made prior to import can be either EP or CEP, with the former being sold by the exporter or producer outside the United States and the latter being sold by someone in the United States who is selling for the account of the exporter or is affiliated with the exporter. In cases in which both the exporter and a U.S. affiliate, or a party in the United States acting on the exporter's behalf, are involved in the sales transaction, a case-by-case determination must be made, based on the facts associated with the transactions at issue, to determine whether such sales are properly characterized as EP or CEP sales. Normally, when a party in the United States is involved in the sale to the first unaffiliated customer, the sales are properly treated as CEP sales. However, the Department has a long history of recognizing so-called "indirect EP sales," which are sales made by an exporter, with the party in the United States performing only certain ancillary functions that support the sales process. To determine whether sales are properly classified as EP in such cases the Department examines three criteria: whether (1) the merchandise is not inventoried by the importer, (2) the sale is made through a customary commercial channel for sales of this merchandise, and (3) the affiliated importer acts only as a processor of sales-related documents and as a communications link with the exporter. *See, e.g., Du Pont* v. *United States*, 841 F. Supp.1248–50 (CIT 1993); *AK Steel* v. *United States*, Court No. 97–05–00865, 1998 WL 846764 at *6 (CIT 1998) (AK Steel). Only when all three criteria are met does the Department treat the sales as EP sales. As the Court explained in AK Steel, this test is simply a means to determine whether a sale at issue is in essence between the exporter and the unaffiliated buyer, in which case the EP rules apply, or whether the role of the affiliate has sufficient substance that the CEP rules apply. *Id.*

In the instant investigation, the sales in question were made prior to importation through Avesta's affiliated U.S. sales company, ASI, to an unaffiliated customer in the United States. With respect to the first prong of the indirect EP test, the record in this case indicates that the subject merchandise was shipped directly from the U.K. mill to the unaffiliated U.S. customers. Although, as we found at verification, a small amount of ASI's mill direct sales may be delayed at the customer's request and held by ASI, record evidence during the POI does not support petitioners' contention that ASI therefore "holds inventory." In fact, our sales verification report specifically states that, with respect to ASI's maintaining of inventory, "none is maintained for EP sales." See U.K. Sales Verification Report. With respect to the second prong, we verified that this pattern of direct shipment is a customary commercial channel between the parties involved, and there is no indication that the sales between the parties involved any departure from this pattern.

As for the third prong, whether ASI's role in the sales process was limited to that of a "processor of sales-related documentation" and a "communications link," we found at verification that EP and CEP-classified sales differ at the inquiry stage. Specifically, for EP-classified sales, ASI is not involved in the negotiation of sales but merely contacts the U.K. mill, which sets a price for the sales. The mill quotes the price from the mill to ASI. ASI then adds amounts for duty, brokerage, freight and handling, and a set markup to derive the price charged to the customer. We examined documentation between the U.K. mill and ASI, including price quotes and other customer-related issues. See U.S. Sales Verification Report. As with Avesta's CEP sales, ASI arranges for shipment from the port to the customer, arranges for Customs clearance, invoices the customer, and collects payment.

The facts discussed above show that the extent of ASI's involvement in the sales process, regarding certain customers whose sales were classified as EP, indicates that ASI plays an ancillary role normally played by a "processor of sales-related documentation" and a "communications link." While ASI is involved in document-processing and other secondary activities related to the sales of subject merchandise to the U.S. customer (*e.g.*, clearing Customs, arranging for U.S. transportation, issuing invoices, and collecting payment), ASI had no substantial involvement in the sales process regarding certain customers whose sales were classified as EP, such as sales negotiation. For these EP-classified

sales, the record evidence demonstrates that ASI receives pricing information from the U.K. mill to which ASI adds a set mark-up and standard amounts to cover movement expenses. Therefore, ASI does not negotiate sales terms with U.S. customers for EP-classified sales, but rather relays pricing information between the U.K. mill and the U.S. customer.

We disagree with petitioners that the mere existence of ASI demonstrates its significant involvement in the U.S. sales process. As affirmed by the Court in AK Steel, in determining whether sales should be classified as CEP sales, the Department's analysis focuses on the three requirements under the test, discussed above, all of which must be met in order to classify sales as CEP. If the petitioners' argument held true, the basis or need for such a test would not exist. Moreover, we note that the majority of Avesta's U.S. sales were reported and properly classified as CEP sales. ASI's main role is not for EP sales but rather for CEP sales. The U.S. Sales Verification Report indicates that ASI maintained a sales office for CEP sales, but that the work concerning EP sales, which would include only document processing, was done by the in-place staff.

We disagree with petitioners' argument that ASI satisfies the criteria established in Extruded Rubber Thread for reclassifying ASI's EP sales as CEP. In that case, the Department's decision to reclassify certain U.S. sales as CEP was based, in part, on determining that the U.S. sales agent was involved in the negotiation of sales. The fact that ASI is not involved in the negotiation of the terms of these sales distinguishes ASI's role in the sales process from Extruded Rubber Thread. As noted above, while ASI is involved in document-processing and other secondary activities related to the sales of subject merchandise to the U.S. customer, ASI had no substantial involvement in the sales process, such as sales negotiation, regarding certain customers whose sales were classified as EP.

The nature of the U.K. mill's involvement in the sales process for EP-classified sales, and ASI's ancillary role in the sales process for these sales, lead us to conclude that the EP-classified sales took place before the date of importation by the producer of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. Therefore, for the final determination, we have continued to treat Avesta's EP-classified sales as EP.

Comment 2: Date of Sale

Petitioners argue that order date is the proper date for establishing the date of sale for all sales. They note that, while the Department used the invoice date as the date of sale for both home market and U.S. sales in the preliminary determination, it indicated that it would fully examine the issue at verification and incorporate its findings, as appropriate, in its analysis for the final determination. Petitioners note that the Department stated that, if order confirmation was found to be the appropriate date of sale, it may resort to facts available for the final determination, to the extent the information has not been reported.

Petitioners contend that, although Avesta claims invoice date should be used to establish the date of sale because the regulations state that the Department will "normally" use the date of invoice as the date of sale, Avesta's reliance on certain sections of the regulations and certain cases is selective and misrepresentative. According to petitioners, even in cases where the invoice has been used to establish the date of sale, invoice date is conditionally or provisionally accepted as the date of sale, "* * * unless the record evidence demonstrates that the material terms of sale, i.e., price and quantity are established on a different date." (See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review, 63 FR 55578, 55587–55588 (October 16, 1998) (Pipe and Tubes from Thailand).)

Petitioners indicate that record evidence in this case demonstrates that order date is the proper date for all U.S. and home market sales. They contend that the Department considers date of sale to be a factual issue, decided on a case-by-case basis. According to petitioners, in the Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Administrative Review, 63 FR 32833, 32835 (June 16, 1998) (Circular Pipe from Korea), the Department ruled that the facts of the case indicated a specific sales pattern that justified invoice date as the date of sale, even though the circumstances were not specifically noted as an exception in the regulations. Despite Avesta's attempts to downplay the importance of manufacturing to order, petitioners argue that it is clear from the U.S. and home market sales verification reports and exhibits that the company does manufacture to order, and that the evidence indicates that price and quantity are set on the order date. Petitioners also argue that there is significant evidence of a long lag time across all U.S. sales (except resales and consignment sales), and that in the rare instances where changes in the material terms of sales are made, Avesta issues a revised order acknowledgment.

Petitioners argue that the standard tolerance for the steel industry (including Avesta) is plus or minus ten percent from the quantity specified. (See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 64 FR 11829 (March 10, 1999) (Cold-Rolled Steel from the Netherlands). They contend that Avesta did not provide the Department at verification any documentation in support of its alternative percentage for quantity tolerance. As a result, for the final determination, the petitioners urge the Department to accept the industry standard definition and determine that changes to order quantities of ten percent do not constitute a change in the order. Petitioners argue that the Department's review of Avesta's sales-related documentation presented at verification indicates that, in every instance where Avesta supplied sufficient information, the material terms of sale were set on the order date (or change order date) and did not change prior to shipment and invoice. They contend that this evidence refutes Avesta's claim that price and quantity are not known until invoice date, which, for U.S. sales, is often many months after the order date.

Petitioners also argue that Avesta demonstrated at verification that the prices set to customers in the United States are normally determined many months prior to invoicing, on the order or change order date, while prices set for home market customers are normally determined on the order date several weeks prior to invoicing. As a result, petitioners contend that Avesta's argument that price-setting in the two markets is defined by invoice date is commercially incompatible. Instead, petitioners assert, the degree to which a party sells at less than fair value should be determined by comparing the pricing activity when U.S. sales terms are confirmed and home market sales terms are confirmed. According to petitioners, the Department's regulations state that a date other than invoice date may be used where a different date better reflects the date upon which the material terms of sale were established by the exporter or producer. They note that the nature of Avesta's sales process and its documentation satisfy the Department's policy outlined in the preamble of the new regulations that

"* * * the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." (See Antidumping Duties: Countervailing Duties, 62 FR 27296, 27349 (May 19, 1997). Thus, petitioners request that the Department consider the order date (or change order date, if appropriate) as the date of sale.

Avesta argues that the Department correctly used invoice date as the date of sale in its preliminary determination. It contends that the Department has a regulatory preference for using invoice date as the date of sale in the absence of evidence that a better date reflects the date on which the material terms of sale are established by the exporter or producer. (See Stainless Steel Plate in Coils from South Africa: Final Determination of Sales at Less Than Fair Value, 64 FR 15458, 15463 (March 31, 1999) (citing 19 C.F.R. § 351.401(i)). Avesta asserts that the Department's regulations establish a rebuttable presumption that the invoice date will serve as the date of sale, and that the Department's commentary on the regulations states that this decision reflects the Department's experience with normal business practice. Avesta states that, because petitioners have failed to establish record evidence justifying the use of order date, the Department should confirm in the final determination that invoice date properly establishes Avesta's date of sale.

Avesta contends that its questionnaire responses and verification exhibits demonstrate that the material terms can and often do change between order and invoice date for all the U.K. entities other than Billing, noting that due to the nature of Billing's business, changes between order and invoice date are unlikely. Avesta also argues that the Department should reject petitioners' claim that the standard quantity tolerance in the steel industry is plus/minus 10 percent, and that it has provided several examples on the record in this case of quantity changes made after order date beyond a ten percent tolerance level.

Avesta rejects petitioners' argument that order date is the appropriate date of sale because Avesta's situation is similar to that of the respondent in Circular Pipe from the Korea. Avesta states that in Stainless Steel Plate in Coils from Belgium: Final Determination of Sales at Less Than Fair Value, 64 FR 15476 (March 31, 1999) (Stainless Steel Plate in Coils from Belgium), petitioners similarly argued that the appropriate date of sale for the U.S. market was order date given that there exists a long lag time between order and invoice date across all U.S. sales, and that this lag time is considerably greater, on average, for U.S. sales than for home market sales. In that case, however, the Department distinguished its determination in Circular Pipe from Korea and concluded that the appropriate date of sale was invoice date. Avesta notes that, in Stainless Steel Plate in Coils from Belgium, the Department disagreed with petitioners' reliance on Circular Pipe from Korea to support the argument that the longer lag time between the date of purchase order and the date of invoice for the U.S. market, as compared to the time lag on the home market, justifies the use of order date as the date of sale. First, Avesta notes, in Circular Pipe from Korea, the Department verified that the changes to terms of sale were infrequent and not material in nature. Second, Avesta argues, Circular Pipe from Korea involved an administrative review, where the Department makes monthly (rather than annual) weighted-average comparisons; therefore, the differences in time lags between the markets were significant for comparison purposes. Avesta asserts that, unlike the respondent in Circular Pipe from Korea, Avesta has submitted numerous examples of changes in terms of sale between order date and invoice date.

Department's Position: We agree with Avesta that invoice date is the correct date of sale for all home market and U.S. sales in this investigation. Under our current practice, as codified in the Department's Final Regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 24239 (May 6, 1999) (Steel Products from Japan). In some instances, however, it may not be appropriate to rely on the date of invoice as the date of sale because the evidence may indicate that the material terms of sale were established on some date other than invoice date. See Preamble to the Department's Final Regulations at 62 FR 27296 (1997). Therefore, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In the present case, in response to the Department's original questionnaire, Avesta reported invoice date as the date of sale in both the U.S. and home markets. To determine whether Avesta and ASI accurately reported the date of sale, the Department included in its October 28, 1998, questionnaire a request for additional information regarding changes in the material terms of sale subsequent to order date and asked Avesta to report order date for all U.S. and home market sales. In its November 23, 1998, response, Avesta indicated that invoice date best reflects the date on which the terms of home market sales are established. Avesta also indicated that changes can and do occur in price and quantity between order date and invoice date for a large number of sales, and that the Department's request would be extremely burdensome. Avesta noted that it does not have computerized records across all five reporting U.K. entities that would allow it to obtain order date information. Also, Avesta indicated that invoice date is consistent with its internal accounting practices. Avesta reported order date for the vast majority of its U.S. sales. For purposes of our Preliminary Determination, we accepted the invoice date as the date of sale subject to verification.

At verification, we closely examined Avesta's and ASI's selling practices. We found that each U.K. entity and ASI records sales in its financial records by date of invoice. For the home market, we reviewed several sample sales for which the material terms of sale (price and quantity) changed subsequent to the original order across all the U.K. entities other than Billing (see Home Market Sales Verification Report and Final Analysis Memorandum). Additionally, during our review of sample sales, we noted instances where order information changed for reasons other than changes to price or quantity. For example, we reviewed several sample sales for which the original order was amended because of changes to delivery week and/or delivery address. In these instances, the Avesta entity updated its computer system to reflect the amended order and issued an order re-acknowledgment to the customer noting the change. We found that, because the computer systems differ across all the entities, the effect of these changes on the original order date information maintained in the systems also differs. We observed, for example, that the modified information in the computer systems for several of the entities reflected the date of the latest change,

regardless of the type of change, or number of changes. Because the computer systems and data maintained in these systems regarding order date information (including changes made to orders) differ across all the entities, we found that Avesta could not consistently distinguish between changes made to the material terms of sale from other types of changes. See U.S. Sales Verification Report, Home Market Sales Verification Report, and Final Analysis Memorandum.

Consequently, we disagree with petitioners' claim that the order date (or change order date) is the most appropriate date of sale for Avesta's U.S. and home market sales because the material terms of sale would not change after that date. The fact that terms often changed subsequent to the original order, and even after an initial order confirmation, suggests that these terms remained subject to change (whether or not they did change with respect to individual transactions) until as late as the invoice date. For sales that we reviewed, we found this to be true for material terms of sale such as price and quantity, including quantity changes outside of established tolerances. (See Steel Products from Japan.)

With respect to changes in quantity, we disagree with petitioners' argument that, because Avesta did not provide evidence at verification supporting its alternative percentage quantity tolerance, the Department should accept what petitioners claim to be the industry standard definition and determine that changes to order quantities of up to ten percent do not constitute a change in the order. There is no evidence on the record in this case to suggest that the standard tolerance for the steel industry (including Avesta) is plus or minus ten percent from the quantity specified. We note that the discussion in Cold-Rolled Steel from the Netherlands concerning the industry standard definition, as cited by petitioners, is referenced only in respondent's comments of that determination, not in the Department's positions. Also, Cold-Rolled Steel from the Netherlands involved different merchandise (cold-rolled carbon steel flat products), and not merchandise subject to this investigation. There is no evidence on the record in the present case indicating that the percentage quantity tolerances for both products are the same. In Pipes and Tubes from Thailand, 63 FR at 55578, 55588, the Department indicated that "while we agree with petitioners that changes consistent with the tolerance level established in the contract may establish a binding agreement on quantity at the contract date, our analysis of the sample contract and corresponding invoices reveals that changes frequently were made beyond the agreed upon tolerance levels. Where such changes occurred frequently after the contract date, we have relied upon a later date."

We disagree with petitioners' argument that the Department's determination in Circular Pipe from Korea is applicable to this investigation because Avesta manufactures to order, and because there is a long time lag between the order date and invoice date for Avesta's U.S. sales, as compared to the time lag in the home market. The facts in the present case are distinguishable from those in Circular Pipe from Korea for two reasons. First, in Circular Pipe from Korea, the Department verified that changes to terms of sales were infrequent and not material in nature. As noted above, at verification we reviewed a significant number of instances in both the home market and U.S. where the material terms of sale (price and quantity) changed subsequent to the original order. Second, unlike this case, Circular Pipe from Korea involved an administrative review, where the Department makes monthly, rather than annual, weighted-average comparisons, and consequently, the differences in time lags between the markets were significant for comparison purposes. (See Stainless Steel Plate in Coils from Belgium.)

Based on Avesta's representation, and as a result of our examination at verification of sample sales and each entity's selling records kept in the ordinary course of business, we are satisfied that the invoice date should be used as the date of sale because it best reflects the date on which the material terms of sale were established for Avesta's home market and U.S. sales.

Comment 3: Sales for Consumption

Petitioners argue that the Department should apply facts available to the volume of merchandise sold to Avesta Sheffield Distribution, Ltd. (AVSD), one of the U.K. sales entities, for consumption that could not be linked to AVSD's resales. They note that in its November 2, 1998, supplemental questionnaire response, Avesta did not include in its home market sales database home market sales made to its affiliate AVSD given that there was no practical means available to determine which of those sales were made to AVSD for consumption and which were made to AVSD for resale.

Petitioners indicate that, while AVSD reported all of its sales of subject merchandise from Avesta's U.K. mills (with the exception of those sales identified in the home market sales verification report as "processed sales—supplier id untraceable"), it did not report the coils purchased from the U.K. mills consumed in the production of non-subject merchandise. They note that Avesta reported, on November 23, 1998, in a separate database its home market sales made from Avesta Sheffield, Ltd. (ASL) and Avesta Sheffield Precision Strip, Ltd. (SPS) (U.K. producing mills) to AVSD, and that these sales were not included in the preliminary margin analysis. Petitioners also state that the Department did not address the issue of AVSD's sales for consumption in the home market in the preliminary analysis memorandum or the **Federal Register** notice. They indicate that the preliminary margin analysis did not include the total quantity and value of sales by the mills to AVSD of the subject merchandise because the volume of sales consumed by AVSD to produce non-subject merchandise cannot be linked. Petitioners assert that, for the final determination, the Department should apply adverse facts available to the volume of sales sold by the mills to AVSD for consumption that were not included in AVSD's database. Therefore, the Department should apply the highest reported home market price and lowest reported U.S. price to the volume of sales sold by the mills to AVSD for consumption.

Avesta argues that the Department should reject petitioners' argument and affirm its preliminary decision to exclude from its analysis the sales made by Avesta's mills to AVSD for consumption. Avesta contends that use of facts available is inappropriate because the company, to the best of its ability, fully complied with the Department's reporting requirements. Moreover, despite significant burden, Avesta emphasizes that it reported two home market databases.

Avesta asserts that, none of the situations referenced in section 351.308(a) of Commerce's regulations (19 CFR 351.308(a)) authorizing the Department to use facts available are present in this case. Avesta notes that it explained in its response that it did not have the practical means available to determine which mill sales were made to AVSD for consumption and which mill sales were made to AVSD for resale. Avesta states that the Department's review of the sales process at verification confirmed the accuracy of this claim and the home market sales verification report demonstrates that Avesta correctly reported that AVSD could not link mill sales to its resales.

Department's Position: We agree with Avesta. Based on the verified evidence contained in the record of this proceeding, we disagree with the petitioners that the use of facts available in this instance is warranted. Section 776(a) of the Tariff Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) and (e), facts otherwise available in reaching the applicable determination.

In this case, Avesta reported in its November 23, 1998, supplemental questionnaire response, two home market sales databases: the first database contained sales made by the U.K. entities, while the second one contained all home market sales from ASL and SPS to AVSD (including sales which AVSD consumed for production of non-subject merchandise). We believe that Avesta complied with the Department's reporting requirements for this information to the best of its ability. First, these databases were reported in a timely manner. Second, at verification, Avesta demonstrated, through sample sales traces, as well as during its overview of the sales process, that it cannot reasonably determine which mill sales were made to AVSD for consumption and which mill sales were made to AVSD for resale. As the Department's Home Market Sales Verification Report indicates, no information is provided to mills on material consumed by AVSD. Although the mills know which sales go to AVSD, they do not know which of those sales are further processed by AVSD. We found that, while certain information (i.e., the cast number) can identify the source of the merchandise, it cannot be used to tie back a particular purchase to the mills except by a manual review. Our review of AVSD's computer system and mill sales determined that the company had no practical means of linking incoming merchandise and the processed merchandise sold by AVSD.

In this case, we verified that Avesta is unable to segregate those sales made by the Avesta mills to AVSD for consumption from AVSD's resales of subject merchandise. Therefore, we conclude that the company reported everything that it could reasonably have been expected to report. Rather than "double-counting" the downstream sales by using the sales to AVSD and the sales by AVSD of the same merchandise, we have thus decided to continue to exclude from our analysis the sales made by the Avesta mills to AVSD (including sales for consumption) and use Avesta's reported downstream sales.

Comment 4: CEP Offset: Petitioners argue that the Department should disallow Avesta a CEP offset for the final determination. They contend that record evidence does not support the Department's decision in the preliminary determination that Avesta's home market sales are at a more advanced stage of distribution than its CEP sales. According to petitioners, the Department improperly made deductions from the CEP starting price prior to analyzing the LOT for CEP sales. They assert that the Department's decision to analyze the LOT based on adjusted CEP prices, rather than the CEP starting prices, is inconsistent with the Court of International Trade's (CIT) opinion in *Borden Inc. et al.* v. *United States*, Court No. 96–08–01970, Slip Op. 98–36 (March 26, 1998) (Borden), and with the Department's remand in that case. (See Final Remand Results for *Borden, Inc., et al.* v. *United States*, Consol. Court No. 96–08–01970 (August 28, 1998) (Remand Results). Petitioners claim that, should the Department rely on the CEP starting price and the associated selling functions, it would find: (1) that the CEP starting price and home market sales were made at a single LOT, (2) that the home market LOT was not more remote than the U.S. LOT, and (3) that a CEP offset is not warranted.

Petitioners maintain that the Department's home market and U.S. sales verification reports demonstrate that Avesta engages in the same type of selling activities in its dealings with ASI as it does with home market and EP sales. They state that record evidence indicates that technical services and warranties (which petitioners submit are the most significant activities in terms of defining LOT), are handled by Avesta and are included in the constructed export price between Avesta and ASI, demonstrating that Avesta does not provide warranty and after sale services related to its CEP sales. Also, according to petitioners, record evidence indicates that freight services are provided to ASI's CEP sales, demonstrating that the mill performs the same functions at the home market LOT as it does for the CEP LOT.

Avesta counters that the Borden decision is not final or conclusive because the Department is appealing that decision; therefore, the decision is not binding. (See Certain Pasta from Italy: Final Results and Partial Recission of Antidumping Duty Administrative Review, 64 FR 6615, 6618 (February 10, 1999) (Pasta from Italy).) Second, the Department's preliminary findings that the CEP LOT is the level of the constructed sale from the exporter to the importer is consistent with the statute and longstanding administrative practice. Third, record evidence now verified by the Department shows that Avesta had only one CEP LOT in the U.S. market. According to Avesta, this evidence demonstrates that the CEP LOT differed considerably from the LOT in the home market and was at a less advanced stage of distribution than the home market LOT. Avesta argues that petitioners' focus only on the provision of technical and warranty services ignores the other reported and verified selling functions. Avesta asserts that because the data available do not provide an adequate basis for making a LOT adjustment, but the home market LOT is at a more advanced stage of distribution than the CEP sales, a CEP offset remains appropriate for the final determination.

Department's Position: We agree with Avesta. The CIT has recently held that the Department's practice to base the LOT comparisons of CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Tariff Act. See Borden, Slip Op. 98–36 at 58; see also *Micron Technology Inc.* v. *United States*, Court No. 96–06–01529, Slip Op. 99–02 (January 28, 1999). The Department believes, however, that its practice is in full compliance with the statue, and that the CIT decision does not contain a persuasive statutory analysis. Because Borden is not a final decision, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the regulations at section 351.412. Accordingly, consistent with the Preliminary Determination in this case, we will continue to analyze the LOT based on adjusted CEP prices rather than the CEP starting prices. See Pasta from Italy.

In the Preliminary Determination, the Department made a CEP offset adjustment to NV. Because Avesta's home market sales were found to be at a more advanced stage of distribution than its CEP sales, we determined that these sales were at a different LOT. As the data available did not provide an appropriate basis for making a LOT adjustment, but the home market LOT was found to be at a more advanced stage than the LOT of the CEP sales, we determined that a CEP offset was appropriate in accordance with section 773 (a)(7)(B), as claimed by Avesta (see Preliminary Determination).

We disagree with petitioners' argument that, based on record evidence of Avesta's handling of technical services, warranties, and freight, Avesta engages in the same type of selling activities in its dealings with ASI as it does with home market and EP sales. While we agree with petitioners that Avesta performed these services for CEP sales and that these activities are important, based on our review at verification of all Avesta's selling functions in the United States and home market, we found that Avesta also performed other selling functions (*i.e.*, other than technical services and warranties) related to its home market and EP sales that we believe include important selling activities. For example, services such as sales and marketing support functions, negotiating prices, and maintaining inventory were also provided. (See U.S. Sales Verification Report and Home Market Sales Verification Report.)

Therefore, we believe that record evidence supports our findings in the Preliminary Determination that Avesta had only one CEP LOT in the U.S. market, and this CEP LOT differed from the LOT in the home market. Because the data available do not provide an appropriate basis for making a LOT adjustment, but the home market LOT is at a more advanced stage of distribution than the CEP sales, a CEP offset remains appropriate.

Comment 5: Sales of Proprietary Grade Used To Produce Specialty Steels

Both petitioners and Avesta comment in their case briefs and rebuttal briefs on the Department's inclusion of a proprietary grade of steel used in certain industrial blades and surgical and medical instruments. Petitioners argue that the Department should include sales of this grade in the final margin analysis. They note that Avesta stated in its November 2, 1998, questionnaire response that British Steel provided one of the U.K. mills reporting under this investigation mainly with this grade to produce two specialty steels. While petitioners agree with Avesta that one of these steel products has been excluded from the investigation, they disagree with Avesta's assertion that the second product is also not subject to this investigation. Petitioners state that they agreed to exclude from the scope of these investigations two proprietary grades of stainless steel sheet and strip in coils produced by Hitachi Metals, Ltd. and Hitachi Metals America, Ltd., GIN5 and GIN6. (See Letter from Paul C. Rosenthal to the Secretary of Commerce, September 29, 1998.) Petitioners contend that Avesta never requested an exclusion for its proprietary grade. They maintain that, in agreeing to the exclusion for Hitachi, they in no way agreed to exclude Avesta's proprietary grade.

Petitioners disagree with Avesta's assertion that record evidence demonstrates that this merchandise meets the specifications for the excluded product, as defined by petitioners and the Department. They state that this material is not identical to the specifications outlined by petitioners or the Department. For example, according to petitioners, there are differences in the minimum carbon contents for Avesta's product and the product excluded by the Department. Petitioners state that, although they have no information regarding the correct carbide density (an issue raised by Avesta, see below) of GIN5, Hitachi Metals, Ltd. and Hitachi Metals America, Ltd. identified its carbide density in several letters to the Department. (See Sonnenschein, Nath and Rosenthal Letters to the Department, dated July 29, 1998, September 8, 1998, September 11, 1998, and September 21, 1998.) Petitioners urge the Department to confirm the average density with Hitachi Metals, Ltd. and Hitachi Metals, Ltd. They state, however, that regardless of whether the correct carbide density is an average of 100 carbide particles per square micron or an average of 100 carbide particles per 100 square microns, the Department should continue to include the carbide density in its definition and not expand the range as suggested by Avesta.

Avesta argues that, to the extent the proprietary grade referred to by petitioners meets the definition of the specialty steels used in blades and surgical instruments that are excluded from the scope of the investigation, the Department should eliminate sales of this proprietary grade from its final antidumping analysis. Avesta contends that, in the preliminary determination, the Department identified three speciality steels typically used in certain industrial blades and surgical instruments which are excluded from the scope of the investigation. According to Avesta, the second of these products, an example of which is GIN5 steel, is defined both in terms of chemical content and in terms of average carbide density. However, due to the difficulties in measuring carbide density of a given shipment of scalpel steel, Avesta contends that the Department should amend its definition of this excluded product to eliminate the reference to carbide density. Alternatively, should the Department retain a carbide density measure, Avesta recommends that the Department amend the scope language to refer to a carbide density that is metallurgically feasible.

Avesta contends that, unlike chemical content, the carbide density of scalpel steel may be tested infrequently because it is time-consuming, posing a burden on foreign producers/exporters, and customers do not need to know the carbide density of particular shipment. Also, carbide density cannot be measured on an absolute scale because different magnifications of the steel will result in different measures of carbide density. Therefore, according to Avesta, the Department should amend the scope language to omit the reference to carbide density. Alternatively, should the Department retain the reference, it should at least change the specified density to one which producers may plausibly achieve. Avesta asserts that the Department's current description of the excluded GIN5-like product as having an average of 100 carbide particles per square micron is incorrect, and not feasible from a metallurgical standpoint. Avesta argues that, should the Department retain a carbide density measure, it should amend the scope to refer to particles per 100 square microns.

Also, Avesta contends that, because the carbide density of a particular product varies depending on the magnification level at which it is measured, the Department should refer to a magnification level of 9,000, which is commonly used in the industry. Avesta also urges the Department to replace the current language describing the excluded product which specifies an average carbon density, without indicating how wide or narrow is the acceptable range of carbide density. Avesta argues that the Department should replace the current language of the scope defining the excluded GIN5-like product as having a carbide density on average of 100 carbide particles per square micron with the following: "This steel has a carbide density in the range of 50–100 carbide particles per 100 square microns when measured at a magnification level of × 9,000."

Avesta claims that the reference in the Department's preliminary determination to GIN5 as "an example" of the excluded product confirms that the exclusion is not limited to Hitachi's proprietary grade, and that such a limitation would result in discriminatory treatment by the Department of similarly situated respondents producing products with the same characteristics but with different brand names. Avesta also argues that petitioners' contention that

the proprietary grade referenced does not meet the specified minimum carbon content is incorrect. It asserts that Avesta routinely produces the grade at higher carbon levels than the specified minimum level, and despite petitioners' assertions, Avesta submitted evidence of this minimum carbon content, as well as all specifications for the grade as a home market sales verification exhibit. Avesta states that the specification sheet contained in Home Market Sales Verification Exhibit 15B and sales trace documentation verified by the Department show that the grade meets all the chemical content requirements for the excluded product as defined by the Department.

Department's Position: We agree with petitioners that sales of the referenced Avesta proprietary grade should be included in our final analysis, and that carbide density should remain in the definition of the noted excluded product. First, we note that Avesta's request to include magnification levels in the excluded product description is irrelevant because petitioners have not recognized this requirement as a necessary aspect of its exclusion request. Therefore, magnification is not included as a requirement/characteristic of this excluded merchandise.

Second, while we agree with Avesta that GIN 5 is merely an example of the excluded product and that the exclusion is not limited to Hitachi's proprietary grade, the evidence on the record demonstrates that Avesta's proprietary grade material only meets the chemical requirements of the excluded product. At verification, Avesta noted that, in its opinion, Avesta's proprietary grade fits within the GIN 5 definition that had been excluded from the scope. The company provided a description of its proprietary grade in several supplemental responses and in a verification exhibit (see Home Market Sales Verification Report at 29). In addition, we reviewed documentation for a sale of this merchandise. None of this information on the record provides any information regarding carbide density. Therefore, we are including Avesta's proprietary grade product in our final analysis. Should Avesta adequately demonstrate in the future that its proprietary grade complies with all the requirements of the excluded product, then Avesta's proprietary grade products would not be covered in the scope of this case.

We agree with Avesta that the measure of carbide density referenced in the Preliminary Determination is incorrect. We have revised the scope for the carbide density of the second excluded product to read: "This steel has a carbide density on average of 100 carbide particles per 100 square microns."

Comment 6: Resales of Rejected Merchandise

Both petitioners and Avesta comment in their case briefs and rebuttal briefs upon the Department's exclusion of U.S. resales of rejected merchandise in the preliminary determination. Petitioners argue that the Department should include in its final determination all U.S. sales, including resales of stainless sheet and strip which had been cut to length prior to resale. They disagree with Avesta's claim that U.S. resales of rejected products were not representative of Avesta's sales during the POI and constituted a negligible quantity of its overall U.S. sales. Petitioners note that, while the Department included resales of stainless sheet and strip in coils in the United States in the preliminary determination, it excluded resales of stainless sheet and strip which had been cut to length prior to resale. Petitioners argue that, for the final margin analysis, the Department should include all resales, regardless of whether the merchandise was resold in coil form or cut-to-length form, because all merchandise resold in the United States originated from subject merchandise.

Petitioners disagree with Avesta's claim that its resales in the United States are not representative. They contend that the concept of sales outside the ordinary course of trade does not pertain to U.S. sales. They state that the resales originated from sheet and strip in coils from the United Kingdom—the merchandise under investigation. Petitioners argue that ASI's resales are subject to this investigation regardless of the volume of sales they represent, and furthermore, they are on the record and have been verified by the Department.

Petitioners argue that the Department's normal practice is to include all U.S. sales in its margin calculations. They state that, prior to the URAA changes to the Tariff Act of 1930, the Department considered exclusion requests of insignificant "outlier" sales that make up less than five percent of the U.S. sales database based on whether the respondent established need (*i.e.*, whether the burden of collecting this data outweighed the need for the data) for the exclusion. Petitioners note that the exclusion of such "outlier" sales acknowledged the following: that the Department considered a six-month POI, and it calculated transaction-specific margins for each U.S. sale. Petitioners state that the Department's post-URAA current practice is to investigates a 12-month POI to capture a full snapshot of a respondent's year-long selling practices in each relevant market, and that the Department calculates a weighted-average U.S. selling price for each product, rather than for each sale. Petitioners state that this "significantly reduces" the likelihood that a few sales will drive margin calculations. Petitioners argue that, given this background, the Department should reconsider its policy of excluding bona fide sales of subject merchandise in the United States, and reject Avesta's assertion that these sales are not representative of its U.S. sales.

Petitioners also pose a corollary argument that, if Avesta had resold merchandise in the home market during the POI, and as a result received substantially lower prices, the Department should likewise exclude such sales because they are not representative of the 12-month POI. Petitioners contend that the Department will not exclude those resales because they will be weight-averaged with other sales, and presumably Avesta will continue to resell merchandise after the POI, so the sales are not unrepresentative. According to petitioners, Avesta has no incentive to argue for the exclusion of low-priced home market resales, or low-priced home market sales made for any reason, because such sales tend to lower dumping margins. Petitioners contend that Avesta presumably continues to resell merchandise in the United States, and that nothing about this is unrepresentative about such sales, other than the fact that these are lower-priced U.S. sales.

Avesta argues that the Department properly excluded U.S. resales of rejected merchandise from the preliminary determination. It notes that, in the preliminary determination, the Department concluded that "if the Department determines based on verification that Avesta's claims about the nature of the resales are correct, they will not be used in the final antidumping margin calculations." (See Memorandum from Linda Ludwig to Joseph A. Spetrini, Limited Reporting of U.S. Sales (October 26, 1998) (Limited Reporting Memorandum).) Avesta contends that, because the Department successfully verified the information provided by ASI concerning the U.S. resales, these resales should not be included in the final margin calculations. According to Avesta, the Department examined the unusual nature of the U.S. resales, including the process for handling resales of rejected

merchandise and documentation for three U.S. resales. In each of the resales reviewed, notes Avesta, the Department verified that the customer rejected the merchandise for a variety of reasons, including mechanical properties, scratches, material problems, acid marks, dirt, pits, etc. Also, Avesta states that for two of these resales, the Department verified that the rejected merchandise had been cut to length prior to resale. Accordingly, the Department properly excluded from the preliminary analysis those U.S. resales of rejected merchandise that were cut-to-length by ASI's customers before being returned, as these were not sales of merchandise under investigation. However, Avesta contends, because of the unusual circumstances surrounding ASI's resales, the Department should disregard all U.S. resales in the final determination.

Avesta also argues that the Department should exercise its discretion to exclude resales of rejected merchandise because these resales represent a very small percentage of ASI's U.S. sales during the POI. Avesta notes that, in the Limited Reporting Memorandum regarding limiting reporting of U.S. sales, the Department acknowledged that it may exclude certain U.S. sales in its less than fair value calculations where those sales have an insignificant effect on the margin, or where they are not representative of the respondent's selling practices in the United States. Avesta states that the Department also recognized that it normally considers exclusion requests pertaining to less than five percent of total U.S. sales, and that ASI's resales of rejected merchandise during the POI meet this criteria.

Avesta asserts that the resales are not representative of ASI's sales during the POI. Because ASI orders only prime quality stainless sheet and strip in coils from the United Kingdom, Avesta argues that all merchandise exported from the U.K. mills to ASI is believed to be prime when it comes off the production line. It is only when the U.S. customer receives and uncoils the merchandise, that occasionally, defects in the material may be discovered for the first time. Avesta states that, as recognized by the Department, the nature of these resales is different from typical sales of secondary merchandise, where the producer considers the merchandise to be defective and initially sells it as "seconds." According to Avesta, these resales are not part of ASI's business plan, and that they differ from normal U.S. sales in that resales possess different physical characteristics from prime merchandise (*i.e.*, defects) and the rejected merchandise is resold to a different class of customers than ASI's normal, prime merchandise (*i.e.*, secondary dealers). Thus, because the small volume of ASI's imports of secondary merchandise is unintentional and the resales of this merchandise are unlike the U.S. sales of prime merchandise, these resales cannot be considered representative of ASI's normal U.S. sales activity. Additionally, Avesta argues that petitioners' position that the Department should include in its analysis resales of cut-to-length merchandise is unsupportable, given that petitioners excluded cut-to-length stainless steel sheet and strip from the scope of imported merchandise covered in their petition.

Department's Position: We agree with Avesta. On October 26, 1998, the Department issued a decision memorandum indicating that if it determines, based on verification, that Avesta's claims about the nature of its U.S. resales of rejected merchandise are correct, these sales will not be used in the final antidumping margin calculations. In this memorandum, the Department stated that it may, on occasion, exclude certain U.S. sales in LTFV comparisons, if the sales have an insignificant effect on the margin. See *Bowe Passat Reinigungs* v. *United States*, 926 F. Supp. 1138 (CIT 1996), citing *Ipsco Inc.* v. *United States*, 687 F. Supp. 633 (CIT 1988). (For a detailed analysis of this issue, see Limited Reporting Memorandum.) Based on our findings at verification, we believe that Avesta's claims regarding the volume and nature of these sales is supported by record evidence. At the U.S. verification, we found that these resales indeed represent a small share of total U.S. sales. As we noted in the U.S. Sales Verification Report at 10, these sales constitute a small part of ASI's business. Moreover, although the merchandise purchased from the U.K. mills is assumed to be prime, occasionally, defects can occur, which may not be discovered until the customer uses the merchandise.

During our review of three sample resales of this rejected merchandise, Avesta provided documentation demonstrating, in each case, that the resold merchandise had been returned by the original customer due to a number of reasons, including mechanical properties, scratches, material problems, acid marks, dirt, pits, etc. See U.S. Sales Verification Report. The resold merchandise was subsequently purchased by secondary dealers in the United States. For two of these resales, the rejected merchandise was cut to length prior to resale. Based on our findings at verification, Avesta's previous claims concerning the nature of its U.S. resales of rejected merchandise appear to be accurate.

Excluding these sales will have an insignificant effect on the margin. The sales process for these sales is highly complex, involving an initial sale, the customer's rejection of the merchandise, the subsequent resale, as well as the linking of the resale to the initial sale. These sales also involve difficult model match and programming issues. Rather than fully undertake this time-consuming and burdensome analysis, for a small number of sales which will have an insignificant effect on the margin, we are excluding all of these resales from our analysis in the final determination.

Comment 7: Sales Submitted by SPS and Billing

Petitioners argue that the Department should apply partial facts available to sales made by SPS and Billing. They indicate that Avesta presented at verification, as minor corrections, certain quantities of stainless sheet and strip in coils sold by Billing and by SPS, which should have been included in the home market database, but were omitted until verification.

Petitioners contend that it has been the Department's consistent practice, in cases where sales data are offered for the first time at verification, to accept for the record only enough documentation to establish the actual magnitude of the omission. (See, e.g., Certain Helical Spring Lock Washers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 58 FR 48833, 48835 (September 20, 1993) (Lockwashers).) Petitioners note that, in the case of Lockwashers, the Department returned the sales trace documentation pertaining to the unreported sales that the respondent submitted during verification. Petitioners reference the Department's verification outline in arguing that verification is not the appropriate time to submit new information; rather, the sole purpose of verification is to check the accuracy of questionnaire responses. They also question what facts made Avesta "recognize" the under-reported data during verification preparation, and argue that the company deliberately withheld it until verification. Petitioners state that, as facts available, the Department should apply the highest home market price and lowest U.S. price to the percentage of sales unreported prior to verification.

Avesta argues that the Department should include the reported data for sales by SPS and Billing in the final margin analysis, and that petitioners' suggestion that the Department apply facts available to these sales is unreasonable. Avesta notes that the sales in question are home market sales only and not U.S. sales, which are fully reported. Avesta contends that all six of the Department's conditions used to define clerical errors are met in this case. Avesta notes that these criteria are: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict any information previously determined to be accurate at verification. (See Cold-Rolled Steel from the Netherlands, 64 FR at 11829.) Avesta argues that the omissions resulted from clerical errors, as explained in U.K. Sales Verification Exhibit 1. According to Avesta, the omission of SPS sales resulted from dimensional differences between the suggested definition of excluded flat wire product (the industry standard) and the flat wire definition adopted by the Department in the Preliminary Determination. Avesta notes that, at the time it submitted its home market sales file, it reasonably assumed that merchandise meeting the standards for flat wire, as defined by the industry and as endorsed by the petitioners, was excluded from the scope of the investigation. As a result, the computer program used to compile SPS'' sales file was programmed to identify sales of merchandise with a width greater than 12.7 mm (rather than 9.5 mm).

With respect to the omission of Billing sales, Avesta argues that the source of the merchandise sold was not recorded in the company's computer system, and therefore, these sales were not identified as sales of U.K. merchandise. Moreover, Avesta contends that, in the Department's review at verification of documentation concerning the omitted sales, and as part of its completeness tests, the Department was satisfied that the corrective documentation is reliable. Avesta states that petitioners' contention that the omitted sales were deliberately withheld until verification is false. According to Avesta, as soon as it discovered the omissions, it compiled as much data on the sales as possible, given the time constraints, and reported the missing transactions to the Department at the beginning of the U.K. verification. Avesta also contends that its identification of the clerical errors and submission of corrective documentation was timely as all of this information was submitted to the Department at the beginning of verification, two months prior to the due date for case briefs. Avesta argues that inclusion of the previously omitted sales does not entail a substantial revision of the response, and they represent small percentages of total home market sales during the POI. Furthermore, assuming the Department accepts the minor correction for field EDGEH for Billing's sales as presented at verification, all sales made by Billing during the POI will likely drop out of the Department's analysis for matching purposes. Lastly, Avesta asserts that the corrective documentation concerning the SPS and Billing sales does not contradict information previously determined to be accurate since it was reviewed and verified by the Department.

Department's Position: We agree with Avesta. To ensure accurate determinations, the Department's practice allows respondents to submit information at the beginning of verification to correct errors found during the course of preparing for verification. See Preamble to the Proposed Rules, 61 FR 7308, 7323 (February 27, 1996). In this case, at the outset of the verification, Avesta promptly informed the Department verifiers that it mistakenly omitted a small quantity of sales made by SPS and Billing. The company explained that it did not report these sales because of its initial confusion about the scope language with respect to SPS' sales, and because of Billing's delay to provide its sales information for a small number of sales to be included in the home market database. Given that these corrections were insignificant when compared to Avesta's total home market sales (see Final Analysis Memorandum) and that we found Avesta's explanation for these omissions reasonable, we have accepted and verified these sales in accordance with our practice of allowing respondents to correct minor errors while preparing for verification. Accordingly, we have included SPS' and Billing's sales in our final determination.

Comment 8: U.S. Warehousing

Petitioners argue that the Department should apply facts available to ASI's reported warehousing expense in the final determination. They state that the Department found at verification a discrepancy in the way that ASI recorded storage charges, as well as related charges for movement in and out of storage in its normal course of business. Petitioners contend that, in some instances, all three charges were recorded in the warehouse account, and in other instances, only storage costs were recorded in warehousing expenses. They note that, for one sale, the Department found that ASI reported only trucking charges as freight expenses, and handling in/out charges were not reported. Petitioners argue that, as facts available, the Department should apply the highest reported warehousing expense in the U.S. database to all U.S. sales.

Avesta argues that petitioners' proposed application of facts available to Avesta's warehousing expenses should be rejected and that the inadvertent omission of handling in/out charges from some U.S. sales is simply a clerical error. Avesta contends that, because these omitted charges are so small on a per pound basis, the effect of any adjustment is immaterial. Avesta indicates that the Department found discrepancies in the reported warehousing expense for only five of the 20 sales traces reviewed at verification. It contends that the Department should reject petitioners' suggestion to apply the highest reported warehousing expense to all U.S. sales. Instead, should the Department decide not to accept ASI's warehousing expenses as reported, it should only apply the highest reported value to those sales transactions for which warehousing expenses were actually incurred.

Department's Position: We disagree with petitioners that we should apply facts available to warehousing expenses and determine to accept warehousing expenses as reported. Avesta chose to employ a methodology corresponding to what it believed was its normal recording of these expenses. Six of the 20 sales examined at the U.S. verification involved marine freight invoices featuring handling in and out of storage, freight, and warehousing, while other sales either did not involve marine freight invoices or involved marine freight invoices for freight alone. For sales with marine freight invoices for handling, freight, and storage, Avesta

decided to report freight as inland freight, and it presumed that handling and storage expenses would be encompassed in the warehousing account. Based on the stated methodology, of these six sales examined, two involved incorrect recording of handling, and one involved incorrect recording of warehousing, in the company's normal course of business. While freight was correctly reported to the Department for each sale, the company "incorrectly" recorded, in its normal course of business, freight for four of the sales. In fact, for two of the sales, freight was recorded in the warehousing account: one in the POI and one before the POI. This results in freight being considered in effect twice for one of the sales—once as freight and another time as part of average warehousing reported. Therefore, while some sales may have been under-reported, other sales were, in essence, over-reported.

Avesta reported an average per unit warehousing amount for sales warehoused during the POI. We found at verification that this calculation involved all storage expenses during the POI, including non-merchandise related records storage. While three of the six sales examined had handling and storage recorded in the warehousing account before the POI, it is reasonable to presume that in their place the warehousing account included handling and storage expenses for sales that occurred after the POI. Because, on average, the effect of any mis-recordings should be minimal, we determine to accept Avesta's warehousing expenses as reported.

Comment 9: Inland Freight Expenses

According to petitioners, the Department should apply facts available to Billing's reported inland freight expenses, plant/warehouse to customer. They note that company officials explained to the Department at verification that it would take a large manual effort to tie all invoices to the actual freight invoices, which was the reason why Avesta chose one month at random and calculated an average freight amount by customer using all invoices in that month. Petitioners contend that this methodology is not reasonable because one month is not a representative period of time. In addition, petitioners assert that this methodology fails to reflect freight charges incurred by Billing during the POI. According to petitioners, mere burden is not an excuse for failing to respond fully and accurately to the Department's questionnaire. As partial facts available, petitioners urge the Department to apply the lowest reported freight charge to Billing's home market sales.

Avesta argues that the methodology used by Billing to report inland freight from plant/warehouse to the customer is reasonable and representative of freight charges incurred by the company during the POI, and that it should be accepted by the Department. Avesta notes that the Department recently confirmed that although it prefers actual freight costs, a reasonable allocation methodology that most closely reflects actual costs is acceptable. See Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods From Mexico, 64 FR 13962, 13969 (March 23, 1999) (OCTG from Mexico). Avesta contends that Billing was unable to report its actual freight charges because it does not have a freight system that is able to allocate these expenses directly to customer orders. (Avesta cites its September 29, 1998, and November 23, 1998, Section B Questionnaire Responses and the Home Market Verification Report.) Because of the limitations of this system, Billing's methodology used to calculate an average freight amount by customer, based on shipments during a representative month, was reasonable. Avesta also argues that the Department verified evidence presented by Billing that demonstrated that the overall freight charge for all customers during the POI was in line with the average of freight charges for the year.

Department's Position: We agree with Avesta. While the Department prefers to have actual freight costs, a reasonable allocation that most closely reflects actual costs is acceptable. See OCTG from Mexico, 64 FR at 13969. The Department verified that Billing was unable to report its actual freight charges absent a manual search because its accounting system does not directly link transport charges to customer orders. See Home Market Sales Verification Report. While Billing did choose a month "at random," we found that its methodology nonetheless avoided unrepresentative months. Billing also analyzed the amounts calculated for that month for unusually high values to ensure reasonableness. The Department verified information regarding freight rates, payments for freight, and that the overall freight charge for all customers during the POI was in line with the average freight charges for the total year. Based on our findings at verification, we therefore conclude that Avesta's methodology is reasonable, and have accepted it for the final determination.

Comment 10: Ocean Freight, Inland Freight, and Brokerage Charges

Petitioners argue that the Department should apply facts available to Avesta's reported ocean freight, inland freight, and brokerage charges. They contend that Avesta improperly calculated these expenses using gross tons, rather than net tons, which was the unit of measure of the reported sales quantity. Petitioners state that, at verification, Avesta provided sample calculations of the expenses in a verification exhibit. Petitioners recommend that the Department apply the highest reported expenses for ocean freight, inland freight, and brokerage and handling charges.

Avesta argues that the Department should reject petitioners' proposed application of facts available to ocean freight, inland freight, and brokerage charges. Avesta disagrees with petitioners that it reported these charges on gross tons, rather than net tons, for all Avesta entities. Avesta claims that, contrary to petitioners' claims, only the Sheffield Business Unit calculated its charges using this methodology. Avesta contends that petitioners fail to provide support for their assertion that Sheffield's charges for inland freight, ocean freight, and brokerage and handling should have been divided by net tons. Avesta asserts that the Department's questionnaire does not specify a preference for calculations based on either gross or net tons, and that Sheffield's calculations based on gross tons was reasonable, given that the shipping company applies its per-unit charge to gross weight when determining ocean freight charges to Sheffield. Avesta argues that, should the Department determine Sheffield's methodology is improper, a reasonable alternative to petitioners' suggestion is to apply a multiplier to the values reported for these variables for all Sheffield sales to the United States, in order to approximate a per-unit expense calculated on a net weight basis. Avesta notes that the difference in calculating these expenses using gross weight versus net-weight has a minimal impact.

Department's Position: We agree, in part, with both petitioners and Avesta. Petitioners are correct in noting that, for certain sales reviewed at verification, we found that Avesta calculated the values reported for ocean freight, inland freight, and brokerage and handling expenses in gross tons, rather than net tons. Also, we acknowledge that Avesta provided an exhibit demonstrating this methodology at verification. Our review of this exhibit, however, resulted in a finding that this methodology applies

only to sales by the Sheffield Business Unit. We did not find evidence of this methodology used by the other U.K. entities in calculating ocean freight, inland freight, and brokerage and handling charges. While we agree with Avesta that the Department's questionnaire does not specifically state a preference for the calculations to be based on gross or net weight, sales and expenses should be reported on a similar basis to ensure fair comparisons in the Department's LTFV analysis. For the final determination, we have applied a multiplier to the expenses in question for all Sheffield Business Unit sales to the United States, in order to arrive at an approximation of the expenses on a net weight basis. See Final Analysis Memorandum.

Comment 11: Verification Changes

Petitioners state that many changes (affecting movement expenses, payment date, physical characteristics) were presented to the Department's verifiers at the U.S. verification, home market verification, and the cost verification, and that all of these changes (with the exception of those resulting from new factual information) should be implemented for the final margin analysis. Avesta did not comment on this issue.

Department's Position: We agree with petitioners that numerous changes were presented to the Department at the sales and cost verifications. For the final determination, we have made changes, where appropriate, to Avesta's submitted cost and sales data as discussed in our Final Analysis Memorandum.

Comment 12: Freight Revenue

Petitioners argue that the Department should deduct freight revenue from the calculation of movement expenses in the home market. They contend that the Department's preliminary margin program incorrectly failed to deduct freight charged to the customer in the home market (FREICUSH) from total movement expenses. According to petitioners, Avesta stated in its supplemental questionnaire response that FREICUSH is not included in the gross price for those AVSD (one of the U.K. sales entities) sales for which FREICUSH is shown as a separate charge; otherwise, FREICUSH is either embedded in the gross unit price or not charged.

Petitioners also contend that the Department incorrectly deducted freight charged to customers in the U.S. market (FREICUSU) from gross price in calculating revenue in the United States (REVENU), which in turn is used to calculate CEP profit. Petitioners note that, as in accordance with Avesta's questionnaire response, FREICUSU is included in the gross price. Petitioners argue that FREICUSU is revenue and should not be deducted from gross unit price in the calculation of revenue in the Department's final margin analysis.

Avesta agrees that the Department should subtract freight charged to the customer from the calculation of movement expenses in the home market but only for sales by AVSD. Avesta notes that AVSD is the only one of the five U.K. entities that reported values in the field FREICUSH without also including the FREICUSH value in gross unit price. Specifically, for Avesta observes that, those sales for which AVSD reported a positive value in field FREICUSH, the freight charged to customer is not included in gross unit price. For those sales for which AVSD reported a zero, Avesta notes that, the freight charged to customer is included in gross unit price.

Department's Position: We agree with respondent that we should subtract FREICUSH from the calculation of movement expenses only for sales by AVSD. Comparison of sales documentation obtained at the home market verification and the home market database reveals that, in reporting AVSD's sales to the Department, freight charged to the customer was not added to price of the merchandise, and the gross unit price in the home market database contains only the price of the merchandise. For other U.K. selling entities examined, we found that the gross unit price in the home market database was reported as the sum of the price charged to the customer for the merchandise, plus the price charged to the customer for freight. In order to remove all movement-related charges from the foreign prices, we subtracted movement expenses reported from gross unit price. Reported movement expenses reflect the total cost charged to Avesta for movement of the merchandise. The net movement cost incurred by Avesta would be reported movement expenses less freight revenue received from the customer. When freight charged to the customer is included in reported gross unit price, subtracting only reported movement expenses from gross unit price results in the deduction of net movement costs incurred by the respondent, leaving the price of the merchandise alone. When freight charged to the customer is not included in reported gross unit price, however, and reported movement expenses are subtracted from gross unit price, failure to also subtract freight charged to the customer from movement expenses (the same effect as adding it to gross unit price) results in the deduction from gross unit price of more than the net movement costs incurred by the respondent. Therefore, as a result of our verification findings and our clearer understanding of FREICUSH and reported gross unit price for each of the U.K. reporting entities, we have changed the methodology from our Preliminary Determination to subtract FREICUSH from movement expenses for sales made by AVSD.

We agree with petitioners that FREICUSU should not be deducted from gross unit price in calculating REVENU. We found at verification that reported gross unit price in the United States includes freight charged to customer. Therefore, as discussed above, deducting FREICUSU from REVENU results in more than the net movement costs incurred by the respondent being deducted from gross unit price in the calculation of CEP profit. Therefore, we have changed the methodology from our Preliminary Determination to remove FREICUSU from the calculation of REVENU.

As noted above, reported gross unit price in the United States includes freight charged to the customer. Therefore, when freight charged to the customer is included in reported gross unit price, subtracting only reported movement expenses from gross unit price results in the deduction of net movement costs incurred by the respondent, leaving the price of the merchandise alone. In the Preliminary Determination, we deducted both reported movement expenses and reported FREICUSU from gross unit price in calculating net U.S. price. In this final determination, we are removing FREICUSU from the calculation of net U.S. price. This methodology ensures that the treatment of freight charged to customers on U.S. sales and home market sales is consistent.

Comment 13: Hot-Rolled, Annealed and Pickled Merchandise

Avesta argues that, in the Preliminary Determination, the Department correctly determined that Avesta's sales of hot-rolled annealed and pickled SSSS should be excluded from its analysis, as this merchandise is produced in Sweden and not in the United Kingdom. Avesta explains that it hot-rolls this merchandise in Sweden and not in the United Kingdom.

Avesta maintains that annealing and pickling do not substantially transform the product, in that neither process changes the chemical composition of

the merchandise. Avesta states that it cited in its questionnaire response several rulings by the U.S. Customs Service, which hold that the annealing and pickling in the United Kingdom is not a substantial transformation which confers country of origin. Avesta declares that the Customs decisions address issues of concern to the Department in rendering scope decisions, and as such, they must be given substantial weight in the Department's analysis. Avesta also holds that Stainless Steel Plate from Sweden is a comparable case also involving Avesta Sheffield. Avesta argues that, in that case, the Department rejected arguments that annealing and pickling in addition to hot-rolling is necessary to bring hot band within the definition of stainless steel plate. Avesta cites to Memorandum from Richard Weible to Joseph Spetrini re: Affirmative Scope Ruling—Stainless Steel Plate from Sweden (A–401–040), December 22, 1997 (Stainless Steel Plate from Sweden Scope Memorandum).

Petitioners did not comment on this issue.

Department's Position: We agree with Avesta that its hot-rolled sales during the POI should be excluded from our analysis as this merchandise is produced in Sweden and not in the United Kingdom. In the Stainless Steel Plate from Sweden Scope Memorandum (the public version of which is attached to the Preliminary Determination Analysis Memorandum for this case, dated December 17, 1998), we determined that hot bands rolled in Sweden from British slab are within the scope of that antidumping finding. In that case we explained that, in determining whether substantial transformation has occurred, the Department looks to whether a "new and different article" results from the production process. In addition to whether the production process results in a "new and different article," the Department has considered value-added and process-cost in other cases involving substantial transformation. See Stainless Steel Plate from Sweden Scope Memorandum.

The instant case also involves British slabs that are hot-rolled in Sweden on the same equipment as that analyzed in the Stainless Steel Plate from Sweden Scope Memorandum. As we found in the Stainless Steel Plate from Sweden Scope Memorandum, based upon physical changes that the conversion of slab into hot band produces on the product, we conclude that the rolling of slabs into hot bands results in the production of a "new and different article" and constitutes a substantial transformation within the meaning of the antidumping law. See Certain Carbon Steel Butt-Weld Pipe Fittings from India: Notice of Final Determination of Sales at Less Than Fair Value, 60 FR 10545, 10546 (February 27, 1995). The processing of slabs into hot bands dramatically changes the physical characteristics of the product, drastically reducing the thickness, extending its length, changing the microstructure and significantly increasing its strength characteristics. Therefore, we find that U.K. slabs hot rolled in Sweden do not fall within the scope of this investigation. Accordingly, we are continuing to exclude hot-rolled sales in our final analysis.

Comment 14: Class or Kind

Avesta argues that, in the Preliminary Determination, the Department erred in determining that hot-rolled, annealed and pickled sheet and strip (HRAP SSSS) and cold-rolled sheet and strip (CR SSSS) are the same subject merchandise or class or kind. Avesta contends that the Department has both the authority and the obligation to modify the petition's description of class or kind when it finds that the petition has described more than one class or kind. Avesta asserts that the Department is not bound by the like product determination of the International Trade Commission (ITC), and that the Department and the ITC have separate statutory authority to make class or kind and like product determinations and may make distinct determinations.

Avesta comments that the Department considers class or kind of merchandise to establish the scope of a proceeding. Questions of class or kind most commonly arise, according to Avesta, when the Department is to determine whether particular foreign merchandise falls within the scope of an antidumping investigation.

Avesta asserts that, in determining whether products constitute one or more classes or kinds of merchandise, the Department normally considers several factors, with no single factor being dispositive. According to Avesta, these factors are: (1) Physical characteristics of the merchandise; (2) end uses; (3) interchangeability of products; (4) channels of distribution in which the merchandise moves; (5) the production process; and (6) price. (Avesta refers to High Information Content Flat Panel Displays and Display Glass Therefor From Japan, 56 FR 32376, 32381 (July 16, 1991), in which the Department applied basically the same criteria for class or kind product analysis, and to Diversified Products Corporation v. United States, 572 F. Supp. 883, 889 (CIT 1983) (Diversified Products), in which the following criteria were used: physical characteristics, end use, expectations of customers, channels of trade, and cost.) Avesta contends that analysis of these factors demonstrates that there is more than one category of merchandise under investigation. Avesta analyzed each of the factors as described below.

Regarding physical characteristics, Avesta argues that irrespective of thickness, CR SSSS are distinguished from HRAP SSSS by increased uniformity of surface and smoothness and by closer dimensional tolerances. Avesta asserts that the relative smoothness of the surface layer of the material cross-section differs between HRAP and CR by a factor of 10. Avesta further claims that the enhanced surface characteristics typically available in a cold-rolled product allow for dramatic differences in material performance pertaining to issues such as bacteria retention and ability to perform downstream metal finishing operations to achieve sanitary or aesthetic properties associated with cold-rolled stainless steels. In addition, Avesta states that CR SSSS have a tighter thickness tolerance than HRAP SSSS. Avesta holds that the differences in physical characteristics between HRAP and CR SSSS are reflected in their classification under different headings in the HTSUS and in the codes assigned by the AISI.

Regarding end uses, Avesta contends that the end uses of HRAP and CR SSSS differ substantially. Avesta notes that HRAP SSSS are used in applications that do not require the surface finish of CR SSSS or are used as feed stock for CR SSSS. Avesta maintains that HRAP SSSS are consumed by manufacturers of welded pipe, and by manufacturers of specialized equipment requiring corrosion-resistant steel (such as pulp/paper, chemical/petrochemical, etc. equipment). Avesta notes that purchases of hot-rolled material require the corrosion/heat resistance or strength characteristics of stainless steel, and do not require the surface characteristics, finish and dimensional tolerance of CR SSSS, while for purchasers of CR SSSS, surface characteristics, finish, and/or dimensional tolerance are important.

Regarding interchangeability, Avesta argues that HRAP and CR SSSS are not interchangeable. Avesta claims that CR SSSS are generally sold for applications requiring specific surface conditions or dimensional tolerances, and therefore, HRAP SSSS are generally not substitutable for CR SSSS.

Regarding channels of distribution, Avesta notes that these channels overlap for HRAP and CR SSSS overlap. Avesta further notes that, while end users have distinct requirements for these products, distributors often handle sales of both products and the same purchaser may purchase both HRAP and CR products. Nevertheless, Avesta asserts, producers and purchasers perceive the two products as distinct. Avesta maintains that it is common for steel products regarded as separate products to be handled by the same distributors, and to be purchased by the same end users for different applications. Avesta contends that the Department should not focus disproportionately on the channel of distribution portion of the analysis because sharing of a significant portion of the channels of distribution is not dispositive if the balance of the evidence supports a Department finding of two separate classes or kinds of merchandise (Avesta cites to Certain Brake Drums and Certain Brake Rotors From the People's Republic of China, 61 FR 14740 (April 3, 1996)).

Regarding production process, Avesta argues that the process involved in converting HRAP to CR SSSS is significant. Avesta notes that the U.S. Customs Service has found that such a conversion constitutes a substantial transformation of the merchandise. Also Avesta cites Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable to Imported Merchandise, 60 FR 35878, 35880 (July 12, 1995). Avesta declares that CR SSSS must undergo substantial additional processing using production equipment that is not used to produce HRAP SSSS. Avesta asserts that the process of producing CR SSSS involves significant reductions to the hot-rolled material at an ambient temperature on a reversing or tandem rolling mill and often subsequent annealing and descaling of the material, and temper rolling for coil shape and surface enhancement if deemed necessary. Avesta maintains that cold-rolling is performed in a separate mill than hot-rolling and requires separate equipment, which is reflected in Avesta's production process in which slab is hot-rolled at the Steckel mill in Sweden, followed by cold-rolling in separate facilities using separate equipment.

Regarding price, Avesta notes that the price difference between HRAP and CR SSSS is significant. Avesta argues that CR SSSS command a significant premium over HRAP SSSS, and it has attached to its brief a price comparison, by grade, of its home market sales during the POI. Avesta contends that the additional cost of transforming hot-rolled into cold-rolled material is substantial and results in the difference in their respective selling prices.

Petitioners argue that the Department correctly recognized that HRAP and CR SSSS comprise a single class or kind of merchandise. Petitioners assert that, by focusing on minor physical differences, Avesta's analysis of this issue ignores the major physical attributes and similarities of HRAP and CR SSSS. Petitioners hold that Avesta's analysis ignores all of the relevant determinations on this issue, which have uniformly found that stainless steel sheet and strip, as well as stainless steel plate, each comprise a single class or kind of merchandise, regardless of whether they are hot or cold-rolled. Petitioners specifically refer to the Department and ITC decisions, which confirm that HRAP stainless steel plate and CR stainless steel plate as comprising a single class or kind of merchandise (*i.e.*, Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15444 (March 31, 1999) and Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Inv. Nos. 701–TA–376–379 and 731–TA–788–793 (Prelim.) USITC Pub. No. 3107 (May 1998)). Petitioners go on to assert that, contrary to Avesta's argument, the Department and the ITC have preliminarily determined that HRAP and CR SSSS constitute a single class or kind, and single like product. Petitioners also argue that these cases affirm the Department's findings in the 1980's that HRAP SSSS and CR SSSS comprise a single class or kind of merchandise. Petitioners cite to Final Determinations of Sales at Less Than Fair Value: Certain Stainless Steel Sheet and Strip Products from Federal Republic of Germany; 48 FR 20459, 20460–61 (May 6, 1983)).

Petitioners maintain that a review of Avesta's argument demonstrates Avesta relies on two minor physical differences, surface smoothness and dimensional tolerances, for three of six criteria examined. Petitioners further assert that Avesta's analysis focuses on niche products and minor exceptions. Petitioners analyzed each of the factors also analyzed by Avesta, as summarized below.

Regarding physical characteristics, petitioners note that, while Avesta asserts that surface smoothness and closer dimensional tolerances distinguish CR SSSS from HRAP SSSS, the ITC, in its preliminary determination, found that such physical differences were minimal. Petitioners further argue that Avesta ignores the most salient physical features of SSSS—chemical composition, thickness, and annealed and pickled condition. Petitioners note that the most important physical characteristic identified by the Department in this case is grade. Petitioners assert that every grade of SSSS can be either HRAP or CR, and that there is a substantial overlap in their gauges. Petitioners further note that gauge is a critical physical characteristic and that it separates stainless steel plate in coils from SSSS. Petitioners comment that physical characteristics selected by the Department in its matching hierarchy also overlap between HRAP and CR, such as coating, width, edge, and annealed and pickled condition. The petitioners also note that the ITC confirmed the importance of the overlap in physical characteristics, gauge, and width. While Avesta argues that HTS headings and AISI product codes segregate HRAP and CR products, petitioners maintain that the Department's scope specifically notes HTS headings are not dispositive and that using Avesta's logic would lead to 60 classes or kinds as there are 60 HTS subheadings included in the scope.

Regarding end uses, petitioners argue that, while it is true that the vast majority of HRAP steel is used to produce CR SSSS, this supports a finding of a single class or kind. Petitioners assert that Avesta's only argument for differing end-uses is that manufacturers of welded pipe and specialized equipment relied on HRAP SSSS; however, petitioners note, the ITC found that such end-uses accounted for less than four percent of all SSSS sales. Petitioners assert that the ITC concluded that there is a limited market for HRAP SSSS and the vast majority of HRAP SSSS is produced and captively consumed for CR SSSS production, which supports a single like product (or class or kind) determination. Petitioners contend that Avesta failed to note that the limited number of end uses for HRAP also use CR in the same applications. According to petitioners Avesta's argument is misleading because it does not focus on end uses. Petitioners note that Avesta focuses on intermediate uses for HRAP but on end uses for HR. Finally, petitioners note that the end uses for the vast majority of SSSS are identical because the vast majority of SSSS is CR.

Regarding interchangeability, petitioners assert that while Avesta relies on surface conditions and dimensional tolerance, which are physical characteristics, that argument

ignores the 94 percent of the market where HRAP is dedicated to producing CR SSSS. Petitioners argue that Avesta highlights the limited applications where HRAP is less substitutable for CR, while ignoring that CR is always substitutable for HRAP.

Regarding channels of distributions, petitioners note that Avesta acknowledges that distributors often handle sales of both products and that the same purchaser will purchase both HRAP and CR products. While petitioners agree with Avesta that weakness in one criteria is not dispositive, petitioners note that Avesta's weakness in several criteria here is dispositive.

Regarding production process, petitioners argue that while Avesta cited U.S. Customs Service rulings and NAFTA Rules of Origin, these rulings are not applicable nor controlling in the Department's class or kind inquiries. Petitioners contend that the Department considers the six factors noted with an eye to enforcement of the antidumping and countervailing duty law. Petitioners further assert that Avesta fails to acknowledge the Department's previous class or kind rulings for stainless steel flat products have uniformly concluded HRAP and CR SSSS are a single class or kind. Petitioners argue that it is important to realize that a significant portion of the production process for HRAP and CR are identical, such as melting, refining, casting, hot-rolling, annealing, and pickling. Petitioners maintain that CR SSSS is simply a further processed HRAP product and even then both are followed by similar processes, such as annealing, pickling, recoiling, etc. Petitioners also note that while Avesta states CR is performed in separate mills, this is a consequence of Avesta's operation and not a requirement as some producers make HRAP and CR in the same facility and as companies that produce HRAP also produce CR SSSS.

Regarding price, petitioners argue that while Avesta submitted a comparison of HR and CR prices, this comparison can be misleading and should not be relied on. Petitioners contend that Avesta's pricing analysis is by grade only, ignoring other critical physical characteristics, especially gauge. Also, petitioners note that, Avesta compared prices net of discounts, rebates, billing, and freight. Petitioners contend that, since Avesta claimed and the Department agreed in the Preliminary Determination that some of the HR merchandise is of Swedish origin, inclusion of non-subject merchandise in pricing comparisons is improper, and much of the pricing differences in Avesta's analysis may be caused by freight costs related to shipping merchandise between the United Kingdom and Sweden. Petitioners note that the ITC examined the issue of cost in its like product determinations, and concluded that, on average, cold-rolling represents 38 percent of the cost of finished, cold-rolled SSSS. Petitioners go on to state that the ITC acknowledged that the cost of cold-rolling can vary, depending on the finished product, and noted that a wide range of products with differing specifications are produced. Petitioners further assert that the ITC acknowledged that prices within CR types can vary significantly, yet Avesta has not argued for different classes for different CR products. Finally, petitioners note that while CR clearly adds value which is sometimes significant, the majority of value is added to products through the HRAP stage.

Department's Position: We agree with petitioners. In making class or kind determinations, we analyze the following criteria enunciated in the Diversified Products and Kyowa Gas cases: (1) The general physical characteristics; (2) the end use; (3) the expectations of ultimate customers; (4) the channels of trade; and (5) the manner in which the product is advertised or displayed. Of the criteria mentioned by Avesta, production process, interchangeability of products, and price are not part of this analysis. Indeed, while price is a criterion considered by the ITC in making a like product determination, it is not a factor evaluated by the Department in making its class or kind decisions.

When examining the general physical characteristics of products, the Department does not rely on mere physical differences. There must be a clear dividing line between different product types in order for the Department to find different classes or kinds. See Sulfur Dyes, Including Sulfur Vat Dyes from the United Kingdom: Final Determination of Sales at Less Than Fair Value, 58 FR 7537 (February 8, 1993). Avesta is correct that the cold-rolling will provide SSSS with a product that has closer dimensional tolerances and increased uniformity of surface. In addition, these products have different HTSUS and AISI codes. However, the respondent's focus on the relevance of dimensional tolerances and surface uniformity is misplaced. The most important characteristics of SSSS revolve around the grade of the product, the dimensional characteristics that it possesses, and its resistance to corrosion. These characteristics will dictate the relevant applications of the material. Regarding HRAP and CR SSSS, both products: (1) Are produced in the same stainless steel grades (*i.e.*, specific chemistries such AISI 304 or 316); (2) meet the dimensional characteristics outlined in the scope of this investigation, in many instances overlapping in thicknesses and widths; and (3) provide the same resistance to corrosion if produced to the same grade. The recognition of surface uniformity, close dimensional tolerance, and different classification headings in the HTSUS and AISI alone do not substantiate differences in physical characteristics that merit a separate class or kind. If the Department were to adopt Avesta's logic, there would be multiple classes or kinds of CR SSSS as different products have different levels of surface uniformity, dimensional tolerance, and result in different classification headings in the HTSUS. In addition, numerous other stainless steel orders include cold-finished and hot-finished products within the same class or kind (*e.g.*, stainless steel bar) despite the cold-finished product possessing many of the characteristics Avesta noted for CR SSSS. We did not recognize these products as a separate class or kind precisely for the reasons noted.

Regarding end use, Avesta focuses on the differences between HRAP and CR SSSS on specific applications such as HRAP SSSS being used for welded pipe applications. It also states that CR SSSS uses will be dictated by a demand for improved surface characteristics, finish, and/or dimensional tolerances. Again, Avesta fails to recognize that the relevant uses of SSSS are driven by the need for steel possessing specific dimensional characteristics and providing specific levels of resistance to corrosion. Since both HRAP and CR SSSS are produced in the same grades and overlap in dimensional characteristics, there is overlap in specific uses. Again, if the Department were to determine class or kind distinctions based on products possessing different surface characteristics, finish, or dimensional tolerances, it would be in the untenable position of recognizing hundreds of different grades of CR SSSS as different classes or kinds of merchandise because of the myriad of products produced, each intended for a unique, specific use.

Regarding expectations of customers, both HRAP and CR SSSS will satisfy the same basic requirements/needs of customers. Both products are primarily being sought because they possess the same specific chemical analysis that promote their resistance to the effects of environmental corrosion, and because

they can possess overlapping dimensional characteristics.

Regarding channels of trade, both parties acknowledge that HRAP and CR SSSS are marketed through the same channels of distribution.

Regarding manner in which advertised, neither party addressed this issue in the context of the Diversified Products criteria, and there is insufficient information presented on the record that differentiates the manner in which HRAP and CR SSSS are advertised.

For the reasons stated above, we are continuing to treat HRAP SSSS and CR SSSS as one class or kind.

Comment 15: Flat Wire

Avesta argues that the Department should amend the definition of excluded flat wire to reflect the industry standard. Avesta notes that, in the Notice of Initiation (see Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom, 63 FR 37521, 37522 (July 13, 1998)), the Department invited comments on product coverage in these investigations. Avesta notes that in responding to this invitation on July 20, 1998, it commented that while "flat wire" was excluded from the scope, no definition was provided. Avesta states that it proposed that the Department adopt the industry standard for flat wire, as defined in the AISI Steel Products Manual, which notes a cold-rolled product, with a prepared edge, rectangular in shape, ½ inch or less in width, under ¼ inch in thickness. Avesta asserts that on July 29, 1998, petitioners stated that, with respect to an appropriate definition of the excluded flat wire, they agree with the comments on page 6 of Avesta's July 20 letter.

Avesta complains that despite petitioners' apparent endorsement of the AISI definition of flat wire, the Department rejected that definition in its Preliminary Determination. Avesta argues that, without any apparent discussion or explanation of its decision to adopt a different definition of flat wire than the one used by the industry, the Department amended the language excluding flat wire. Avesta maintains that no evidence appears to exist on the record of these investigations that supports or justifies this departure from the standard industry definition of flat wire. Avesta alleges that, because the Department's alternative flat wire definition is at odds with the product the stainless steel industry normally considers flat wire, it creates the potential for confusion on the part of foreign producers/exporters as to what is properly excluded. To minimize this problem, Avesta urges the Department to modify its flat wire exclusionary language to conform with the industry standard, as set forth in the AISI Steel Products Manual.

Petitioners argue that the Department should not amend the definition of flat wire from the Preliminary Determination. Petitioners emphasize that their July 29, 1998, letter, referenced by Avesta, noted that they agreed with the comments on page 6 of Avesta's July 20 letter, noting in particular, the importance of including in the definition a requirement that the material have a "prepared edge". Petitioners, upon further discussion with the U.S. industry, have determined that the Department's scope language for flat wire outlined in the preliminary determination is accurate and should be retained for the final determination. Petitioners cite The Making, Shaping, and Treating of Steel, 10th Edition (page 1012) as containing a definition of flat wire. Petitioners note that this publication states that "flat wire normally is best produced in sizes up to 9.53 mm (3/8 inch)". Petitioners urge the Department not to amend the scope language used in the Preliminary Determination, namely, flat wire is cold-rolled sections with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm.

Department's Position: We agree with petitioners. The development of the flat wire exclusion language is reflective of the petitioners' intent with respect to the scope language and a recognized industry publication listing the dimensional characteristics of this product and other stainless steel products. In the original petition, petitioners make no mention of the dimensional or physical characteristics of their flat wire exclusion. The Department carefully reviewed various publications, including The Making, Shaping and Treating of Steel and Design Guidelines for the Selection and Use of Stainless Steel. The latter publication notes in a table on page 19 that the width classification of stainless steel wire, including flat wire, is "under 3/8" (9.53 mm)." We established a maximum width for flat wire that is reflective of these publications' dimensional width limitation. Petitioners have not requested that the Department amend the width limitations of the flat wire exclusion. In fact, they have acknowledged the suitability of this dimensional definition of flat wire, and that this maximum width level of the flat wire exclusion is an accurate reflection of the product for which they are not seeking relief. Therefore, based on these publications, and since petitioners are seeking relief for products in the scope as written in the Preliminary Determination, we are not revising the scope language for flat wire.

Issues Relating to Cost of Production

Comment 16: Major Inputs

Petitioners argue that the Department should apply adverse facts available to Avesta's COP given Avesta's failure to properly respond to the Department's cost questionnaires concerning major inputs. Petitioners assert that respondents did not provide market price data for inputs obtained from affiliated parties.

According to petitioners, the Department must apply the major input rule in calculating the cost of Avesta's major inputs, in accordance with section 773(f)(3) of the Tariff Act, which provides that, where transactions between affiliated parties involve a major input, the Department may value the major input based on the COP if the cost is greater than the amount that would be determined under section 773(f)(2) (*i.e.*, the higher of transfer price or market price). Petitioners contend that the Department is required to review purchases from affiliated parties of major inputs in order to determine that they reasonably reflect a fair market value.

Petitioners assert that Avesta failed to properly respond to the Department's questions concerning its major inputs. According to petitioners, Avesta indicated that, as a consolidated entity, it need not comply with the Department's questionnaire. Instead, petitioners note, Avesta stated that all its production facilities involved in producing subject merchandise are either part of the same legal entity, part of legal entities that will be collapsed and assigned one dumping margin, or units in the same operating division within the Avesta Sheffield Group. According to petitioners, Avesta further stated that, because all of its production facilities are affiliated within the Avesta Sheffield Group ("the Group") and their accounts are ultimately consolidated with the Group, Avesta reported the actual costs for all facilities involved in the production of the merchandise under investigation.

Petitioners argue that Avesta's contention that the production facilities affiliated with the Group are "one from an operational standpoint" is irrelevant because several of the affiliated entities are not engaged in the production of the subject merchandise, but rather,

produce the inputs used to make subject merchandise. Petitioners also state that these production facilities are separate legal entities. Petitioners assert that, in Pasta from Italy, the Department determined that the operational reality of the close association between two entities does not outweigh the legal form of the entities.

Petitioners contend that, given the numerous deficiencies and Avesta's "non-responsiveness" to the Department's questionnaires and requests, the use of adverse facts available for COP and CV is warranted for the Department's final analysis. They argue that the use of adverse facts available is appropriate because of Avesta's repeated failure to report the necessary market value for the major inputs (a critical element needed to gauge whether home market sales were made in the ordinary course of trade) and its failure to report the COP and CV data in the requested format by the Department (i.e., costs separated for the major inputs). Petitioners recommend the application of the highest COP and CV reported for each control number as the appropriate basis for facts available. Alternatively, according to petitioners, should the Department determine that Avesta's COP and CV response is acceptable for the final margin analysis, at a minimum the Department should apply the higher of the transfer price or cost of production for each grade of the major inputs involved.

Avesta argues that petitioners' argument is factually and legally unsound, and therefore, it should be rejected. Avesta contends that, with respect to market values for the two major inputs, the Department made no inquiries to which it failed to respond. Avesta indicates that its supplemental questionnaire states that it did not purchase either of the major inputs from unaffiliated suppliers, and that the accuracy of this response was reviewed and confirmed by the Department at verification. Avesta asserts that, because it purchased neither input from unaffiliated suppliers, it had no information as to their market values to provide the Department, and that market values can only be considered when such values are available. Avesta claims that it fully complied with the Department's reporting requirements by providing only the COP and transfer prices for each of the major inputs. For these reasons, asserts Avesta, no adverse inferences reasonably can or should be drawn by the Department in its final determination.

Avesta argues that record evidence reflects that Avesta consulted with the Department on the proper format for submitting the COP/CV information, and the result of those discussions was the company's submission of a chart comparing the costs and transfer prices of the two major inputs as a substitute for the initially requested COP/CV format. Avesta notes that the Department requested no further information, and that the accuracy of the reported information was reviewed and confirmed at verification. Avesta contends that no adverse inferences reasonably can or should be drawn by the Department as to the data provided because Avesta responded to the best of its ability to the request for data in a particular format. Also, Avesta argues that petitioners' recommendation that the Department perform its major input analysis on a grade-specific basis should be rejected. Avesta contends that it reasonably applied one methodology for all grades, and petitioners have not provided any evidence that this methodology materially distorts the reported COPs/CVs.

Department's Position: We disagree with petitioners that we should apply adverse facts available to Avesta's COP information. We find that Avesta has provided all necessary information regarding major inputs. Moreover, given that market price information was not available for the inputs in question, in valuing the major inputs, we have relied on the higher of transfer price or the affiliate's cost of production, in accordance with sections 773(f)(2) and (3) of the Tariff Act.

Sections 773(f)(2) and (3) of the Tariff Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (used in determining both COP and CV) to the Department. Section 773(f)(2) states that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration. Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties. Section 773(f)(3) states that if transactions between affiliated parties involve a major input and the cost of the major input is greater than the amount that would be determined under section 773(f)(2) (*i.e.*, the higher of the transfer or market price), the Department may value the major input on the basis of the information available regarding its COP. Additionally, section 773(f)(3) applies if the Department "has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input." The Department generally finds that such "reasonable grounds" exist where it has initiated a COP investigation of the subject merchandise (see, e.g., Stainless Steel Plate in Coils From South Africa: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 15459, 15474 (March 31, 1999); Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 13217, 13218 (March 18, 1998), and Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37871 (July 15, 1997). In addition,19 CFR 351.407(b) further instructs the Department to determine the value of a major input based on the higher of: (1) The price paid to the affiliated party (*i.e.*, transfer price), (2) the market price, or (3) the cost of the affiliated party to produce such input.

We find that Avesta provided to the Department all the necessary and requested information regarding major inputs. On December 18, 1998, we requested in a supplemental questionnaire that Avesta provide, among other items, COP and CV databases with separate fields for each of the major inputs. On January 4, 1999, Avesta responded that it would not be able to provide these databases by the deadline requested. We consented to this delay under the condition that Avesta answer related questions in the supplemental questionnaire, and include a chart comparing transfer price and cost, by grade, for each of the major inputs. In addition, we asked that Avesta provide an alternative proposal on how to apply any major input adjustments, which may be necessary to the submitted cost database, prior to the cost verification (see Memorandum from Charles Rast and Nancy Decker to The File, January 7, 1999). Avesta provided the requested chart and appropriately answered the related questions. Although the company did not provide the alternative proposal, we found, as a result of verification, that no major input adjustments are necessary, and therefore, the alternative proposal is not needed. See Cost Verification Report at 15–16 and Final Analysis Memorandum.

As noted in the Cost Verification Report at 15, Avesta did not purchase major inputs from unaffiliated companies during the POI. Therefore, in applying 19 CFR 351.407(b)(2), we find that there is no market price available. Accordingly, we have relied upon the higher of the affiliated party's cost of production of the major input or the transfer price of that major input. The Department made a similar decision in

the Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom 62 FR 2081, 2115 (January 15, 1997).

Given that Avesta complied with our request for information by providing necessary COP and transfer prices of major inputs, and based on our verification findings confirming the accuracy of this information, we have relied upon the higher of cost of production or transfer price for the final determination, in accordance with section 773(f) of the Tariff Act and section 351.407(b) of the Department's regulations. See Final Analysis Memorandum.

Comment 17: Estimated Versus Actual COPs

Petitioners maintain that Avesta reported estimated COP for several control numbers in the home market. They argue that the Department should apply the highest reported cost to those control numbers that were reported as estimated costs. Petitioners assert that because Avesta did not provide actual costs for all control numbers, as requested in the Department's questionnaire, adverse facts available should be applied. They state that Avesta should not be rewarded for providing an inaccurate cost response. Petitioners indicate that as facts available, the Department should add to the COM the revised interest expense and highest reported G&A expenses.

Avesta disagrees, contending that it did report actual costs for all control numbers in its questionnaire responses. According to Avesta, each control number represented a product as defined by the physical characteristics identified by the Department in its questionnaire. Avesta maintains that, in preparing for its costs responses, it relied upon its normal accounting system. In this system, Avesta claims, which was verified by the Department, the company does not track costs for products at the same level of detail associated with each and every one of the physical characteristics identified by the Department. (See Cost Verification Report at 22.) Avesta indicated that, in calculating actual costs for the purposes of the responses, it calculated actual costs for the products identified from the actual cost information contained in its accounting system. Avesta notes that these costs were not estimates, but were rather actual costs contained in its accounting system calculated to comply with the Department's reporting requirements. Thus, Avesta urges the Department to reject petitioners' argument and rely upon its reported costs for the final determination.

Department's Position: We agree with Avesta. At verification, we examined Avesta's books and records kept in the ordinary course of business. We confirmed that Avesta does not have standard costs for all products at the same level of detail associated with each physical characteristic identified by the Department. In cases where a control number did not have a standard cost because there were no products with identical physical characteristics, Avesta used the standard cost of the product with the closest possible match containing the most similar physical characteristics. (See Cost Verification Report, at 22–23.) This standard was then adjusted for variances and an actual cost of the control number for the POI was calculated. Based on our verification findings in this case, we find that Avesta's methodology for calculating actual costs of a control number that did not have a standard cost in the normal accounting system is reasonable. For the final determination we have thus relied upon Avesta's costs as reported.

Comment 18: Interest Expense

Both petitioners and Avesta comment in their case briefs and rebuttal briefs on whether it may be appropriate to use British Steel PLC's consolidated profit and loss statement for the calculation of interest expense, given that Avesta is a consolidated subsidiary of British Steel PLC. Petitioners argue that the Department should recalculate interest expense based on British Steel's consolidated profit and loss statement, rather than using Avesta Sheffield AB's (AS AB—ASL's parent company) consolidated profit and lost statement, because Avesta is a consolidated subsidiary of British Steel PLC. They state that it is the Department's normal methodology to calculate interest expense at the highest consolidated level. (See Stainless Steel Round Wire From Canada: Final Determination of Sales at Less Than Fair Value, 64 FR 17324, 17334 (April 9, 1999) (Stainless Steel Round Wire).)

Petitioners also argue that the Department should not adjust British Steel's interest expense for "other interest receivables," as Avesta did not provide any supporting documentation demonstrating its position that these receivables were short-term in nature. Petitioners note that Avesta's treatment of these receivables is based on its assumption as to their short-term nature. Because AS AB is 51 percent owned by British Steel PLC, petitioners discount Avesta's position that AS AB did not have access to the confidential accounting records of British Steel PLC, and that the only information it had was that which was contained in published annual accounts. They state that there is no requirement in the law that a respondent must be able to verify public information issued by its parent company. Petitioners note that presumably British Steel's auditors have certified the accuracy of its financial statements.

Avesta contends that, because British Steel's interest rate is not relevant to Avesta, and because Avesta does not have access to the proprietary information necessary to verify the figures reported in British Steel's profit and loss statement, the Department should use AS AB's consolidated income statement as the basis for calculating the interest expense ratio in the final determination. Avesta states that the Department traced the cost of sales, interest expense, and interest income ratio used in this interest expense ratio to AS AB's consolidated income statement. Avesta notes that it recalculated net interest expense, however, based on British Steel PLC's consolidated profit and loss statement pursuant to the Department's supplemental questionnaire. Avesta observes that this recalculation showed a net interest expense of zero for the POI. Avesta reiterates that it has no access to the confidential records of British Steel PLC; therefore, it based its recalculation on the information contained in British Steel PLC's published annual accounts.

Avesta asserts that the use of British Steel PLC's data is incorrect because AS AB has its own borrowings and does not receive financing from British Steel. A second reason this approach is incorrect, according to Avesta, is because it has no means to confirm the accuracy or source of the data British Steel chose to make public. Avesta concludes that the Department's decision that Avesta should base its interest expense ratio on British Steel's data puts the company at a significant disadvantage.

Department's Position: We agree with petitioners that interest expense should be calculated using British Steel PLC's consolidated profit and loss statement. Both before and after the URAA amendments, the Department has consistently used the financing expenses incurred by a parent company on behalf of a consolidated group of companies to determine a particular company's net interest expense. For example, in Final Determination of Sales at Less Than Fair Value: Certain

Carbon Steel Butt-Weld Pipe Fittings From Thailand, 60 FR 10552 (February 27, 1995), the Department followed its long-standing practice and calculated the interest expense component of COP based upon the interest expense of the parent entity of a consolidated group of companies, rather than the individual company responsible for the production of the product at issue. In so ruling, the Department reasoned that capital was fungible and that the parent company's capital was used to fund all of the operations of the consolidated company and could not be segregated. See also Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review, 62 FR 38059, 38060 (July 16, 1997). The CIT affirmed various aspects of this long-standing practice. *See E.I. Dupont de Nemours* v. *United States*, Court No. 96–11–02509, Slip Op. 98–7 at 6–8 (CIT January 28, 1998) (affirming the Department's use of the parent's consolidated statements, where evidence cited did not overcome the presumption of corporate control); *Gulf States Tube Div.* v. *United States*, Court No. 95–09–01125, Slip Op. 97–124 at 34–43 (CIT August 29, 1997) (the Department's calculation of interest expense derived from borrowing costs incurred by a consolidated group was reasonable where the parent company's majority ownership was *prima facie* evidence of control over the subsidiary); New Minivans from Japan, 57 FR 21946 (May 26, 1992) (Comment 18); Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 55 FR 3141, 31418, (August 2, 1990) (Comment 22). In calculating interest expense, therefore, we have used British Steel PLC's consolidated profit and loss statement.

It is the Department's practice to allow a respondent to offset (*i.e.*, reduce) financial expenses with short-term interest income earned from the general operations of the company. See *e.g.*, Timken v. United States, 852 F. Supp. 1040, 1048 (CIT 1994); see also Static Random Access Memory Semiconductors From Taiwan: Final Determination of Sales at Less Than Fair Value, 63 FR 8909, 8933 (February 23, 1998). In calculating a company's cost of financing, we recognize that, in order to maintain its operations and business activities, a company must maintain a working capital reserve to meet its daily cash requirements (*e.g.*, payroll, suppliers, etc.) The Department further recognizes that companies normally maintain this working capital reserve in interest-bearing accounts. The Department, therefore, allows a company to offset its financial expense with the short-term interest income earned on these working capital accounts. Since British Steel PLC's financial statements do not identify the nature of interest income on its profit and loss statement, we have compared, as facts available, British Steel PLC's liquid assets to its total assets and have assumed that the ratio of liquid assets to total assets represents the ratio of short-term interest income to total interest income because liquid assets by their very nature are short-term assets. Therefore, we have used this percentage of total interest income to offset interest expense. See Final Analysis Memorandum.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the Preliminary Determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Avesta Sheffield	14.84
All Others	14.84

International Trade Commission Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission (the Commission) of our determination. As our final determination is affirmative, the Commission will determine within 45 days after our final determination whether imports of stainless steel sheet and strip in coils are materially injuring, or threaten material injury to, the U.S. industry. If the Commission determines that material injury, or threat thereof, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the Commission determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13675 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Ranado, Stephanie Arthur, or Robert James at (202) 482–3518, (202) 482–6312, or (202) 482–5222, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Final Determination

We determine that stainless steel sheet and strip in coil (stainless sheet in coil) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act. The estimated margins of sales at LTFV are

shown in the "Suspension of Liquidation" section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 4, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 92 (Preliminary Determination). Since the December 18, 1998 disclosure of the Preliminary Determination the following events have occurred:

On December 28, 1998, KTN timely submitted an allegation of significant ministerial errors with respect to the preliminary determination. Petitioners (Allegheney Ludlum Corp., Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corp., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization) also alleged a single significant ministerial error on December 29, 1998. Both interested parties requested that we correct the errors and publish a notice of amended preliminary determination in the **Federal Register**. See 19 CFR 351.224(e). After reviewing both parties' allegations we determined that the errors, considered collectively, were not significant, as defined at 19 CFR 351.224(g) of the Department's regulations. See Memorandum For the File; "Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils From Germany; Analysis of Ministerial Error Allegations," January 15, 1999 (Ministerial Errors Memorandum), on file in room B–099 of the main Commerce building. We have addressed the specific errors under "Facts Available" and Comment 31, below.

KTN submitted supplemental questionnaire responses on January 6, 1999 (sections B and C), January 15, 1999 (section E), January 22, 1999 (section E), and February 17, 1999 (section C).

The Department verified sections A (General Information), B (Home Market Sales) and C (U.S. Sales) of KTN's response January 18 through 22, 1999 at KTN's headquarters in Bochum, Germany. See Memorandum for the File; "Home Market Sales Verification of Krupp Thyssen Nirosta, GmbH (KTN)", March 1, 1999 (KTN Sales Verification Report). Between January 25 and January 29, 1999, we verified KTN's section D (Cost of Production) questionnaire response; see Memorandum to Neal Halper, Acting Director, Office of Accounting; "Verification of the Cost of Production and Constructed Value Submissions of Krupp Thyssen Nirosta GmbH," March 15, 1999 (KTN Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

We also conducted verification of KTN's Section C response at the offices of its wholly-owned U.S. affiliate, Krupp Hoesch Steel Products, Inc. (KHSP) in Atlanta, Georgia from February 8 through 11, 1999. See Memorandum to the File; "U.S. Verification of Krupp Thyssen Nirosta (KTN)," March 5, 1999 (KHSP Verification Report). Finally, we verified the Section C and Section E (Further Manufacturing) information submitted by KTN's affiliated U.S. processor and reseller. As the firm's identity and location have been afforded business proprietary status by the Department, we refer to this entity herein as "U.S. Reseller." See Memorandum to the File; "Verification of the Information Submitted by * * * (Reseller)," March 15, 1999 (Reseller Sales Verification Report), and Memorandum to Neal Halper; "Verification of the Cost of Further Manufacturing performed by [U.S. Reseller]," March 18, 1999 (Reseller Cost Verification Report).

On March 23, 1999, the Department requested historical data on KTN's monthly shipments of subject stainless sheet in coil into the United States to assist in rendering our final determination of critical circumstances (see below). KTN submitted the requested information on April 2, 1999.

KTN and petitioners both requested a public hearing in this case (on January 22, 1999, and February 3, 1999, respectively). On March 23, 1999, petitioners and KTN filed their case briefs in this matter; both parties filed rebuttal briefs on March 30, 1999. The Department conducted a public hearing on April 9, 1999, a transcript of which is on file in the Central Records Unit.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05; 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05; 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades.

See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Critical Circumstances

Section 733(e)(1) of the Tariff Act provides that if a petitioner alleges critical circumstances, the Department will determine, on the basis of the information available to it at the time, whether there is a reasonable basis to believe or suspect that (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

less than its fair value and that there would be material injury by reason of such sales (see 733(e)(1)(A)(i) and (ii), and there have been massive imports of the subject merchandise over a relatively short period (733(e)(1)(B)).

In the Preliminary Determination we found that both criteria, i.e., knowledge of dumping and material injury and massive imports of subject merchandise, had been met by KTN and preliminarily found that critical circumstances exist. We have reconsidered our determination of critical circumstances as set forth in the Preliminary Determination, however. While we still find reasonable grounds to impute knowledge of less-than-fair-value sales to the importer, we have amended our calculation of massive imports from that applied for the Preliminary Determination. As explained in detail below, for purposes of this final determination we are no longer relying upon the publicly-available data on imports of subject merchandise from Germany as a whole supplied by the Census Bureau. Rather, we have relied upon the company-specific shipment data supplied by respondent KTN. Based on this information we find that there were not massive imports and, therefore, that critical circumstances do not exist. See our response to Comment 4, below.

Affiliation

As explained in the Preliminary Determination and immediately below, we find that for purposes of this investigation KTN is affiliated with Thyssen Stahl and Thyssen AG (Thyssen) and, through them, their affiliated sellers and steel service centers in Germany and the United States. The Tariff Act defines "affiliated persons" at section 771(33). Included within that definition are family members, any organization and its officers or directors, partners, and employer and employee. See section 771(33)(A) through (D). The statute also considers as affiliated persons—

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such person.

Id.

"Control" is defined as one person being "legally or operationally in a position to exercise restraint or direction over the other person." The Statement of Administrative Action (SAA) which accompanied the Uruguay Round Agreements Act (see H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994)) explained that including control in an analysis of affiliated parties "permit[s] a more sophisticated analysis which better reflects the realities of the market place." The SAA continues, "[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship." Id. at 838.

Finally, as the Department noted in its "Explanation to the Final Rules" (*i.e.*, its regulations), "section 771(33), which refers to a person being 'in a position to exercise restraint or direction,' properly focuses the Department *on the ability to exercise 'control' rather than the actuality of control* over specific decisions." *Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27348* (May 19, 1997) *(Final Rule)* (emphasis added). Thus, the statute does not require that we find the actual exercise of control by one person over the other in order to find the parties affiliated; rather, the potential to exercise control is sufficient for such a finding.

In this final determination we continue to find that KTN is affiliated with Thyssen Stahl and Thyssen because Thyssen Stahl indirectly owns and controls, through Krupp Thyssen Stahl (KTS), forty percent of KTN's outstanding stock (the remaining sixty percent are controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls forty percent of KTN. See Preliminary Determination, 64 FR at 95 and Memorandum to the File; "Affiliated Party Sales," October 28, 1998 (Affiliation Memorandum).

In addition, we continue to find that KTN is affiliated with Thyssen's home market and U.S. sales affiliates because the nature and quality of corporate contact establish this affiliation by virtue of Thyssen's common control of its affiliates and of KTS. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the Preliminary Determination, "Thyssen's substantial equity ownership in KTN and Thyssen's other affiliates, in conjunction with the 'totality of other evidence of control' requires a finding that these companies are under the common control of Thyssen." Id. For a full discussion of KTN's affiliations see Comment 2, below, the Affiliation Memorandum, and Memorandum For the File; "Antidumping Duty Investigation on Stainless Steel Sheet and Strip in Coils from Germany—Final Determination Analysis for Krupp Thyssen Nirosta, GmbH," May, 19, 1999 (Final Analysis Memorandum).

Facts Available

Section 776(a) of the Tariff Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), the facts otherwise available in reaching the applicable determination. See, e.g., Roller Chain, Other Than Bicycle Chain, From Japan, 63 FR 63671, 63673 (November 16, 1998). In this investigation the Department has determined, for the reasons stated in detail below, that KTN or its affiliates failed to provide necessary information and, in some instances, that the submitted information could not be verified. Therefore, pursuant to section 776(a) of the Tariff Act, we have determined that the use of the facts otherwise available is necessary in these instances.

However, the statute requires that certain conditions be met before the Department may resort properly to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Tariff Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by [the Department]" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department

can use the information without undue difficulties, the statute requires it to do so.

Finally, in selecting from among the facts otherwise available, section 776(b) of the Tariff Act permits the use of an adverse inference if the Department also finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." SAA at 870. Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Final Rule, 62 FR at 27340. The statute continues by noting that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

In accordance with section 776(a) of the Tariff Act, we have continued to use partial facts available in instances where KTN failed to provide the Department with requested sales information concerning certain affiliated resellers in the home market. See Preliminary Determination, 64 FR at 95 and 96. Further, pursuant to section 776(b) we find that KTN failed to cooperate to the best of its ability because it did not supply missing sales data, as demonstrated by its selective submission of Thyssen affiliates' data. Therefore, as adverse facts available for this final determination, as in the Preliminary Determination, we based normal value upon the highest reported gross unit price for each product sold to the affiliated parties, in lieu of the missing prices on downstream sales from the affiliated resellers to unaffiliated customers. We calculated the highest normal value (NV) reported by control number (CONNUM) in KTN's home market database and applied it to KTN's sales to its affiliates for which KTN did not report home market downstream sales. See Memorandum For the File; "KTN Preliminary Analysis Memorandum," December 17, 1998 (Preliminary Analysis Memorandum).

With respect to sales in the United States, we have determined that in accordance with section 776(b) of the Tariff Act the use of adverse facts available is appropriate for five previously unreported U.S. sales KTN disclosed to the Department during the verification of KHSP (see Comment 10, below). As adverse facts available we assigned the highest non-aberrational margin (as explained immediately below) to these transactions.

In addition, as explained in response to Comments 19 and 20, we have determined that we must resort to the facts available with respect to the sales and further-manufacturing data submitted by U.S. Reseller. At verification we discovered numerous and systemic errors, some of which cannot be corrected, in the data used by U.S. Reseller to report its costs of further manufacturing of subject merchandise. These errors included, inter alia, the failure to match properly input coils and output finished products, the allocation of processing costs to sales which had undergone no further processing whatever, and cases where the quantities of output goods exceeded the inputs. The vast majority of the subject merchandise sold through U.S. Reseller was first further processed by this company; therefore, the deficiencies in its data affect a corresponding percentage of U.S. Reseller's submitted sales data. Furthermore, the mis-allocations not only affected U.S. Reseller's reported sales which had been subject to further processing, but through the allocation of processing costs to the non-further-processed sales tainted this portion of its database as well. In addition, U.S. Reseller failed to identify the producer of a significant portion of its sales in the United States, and failed to report physical criteria vital to our model matching for certain other transactions. As the breadth and depth of the discrepancies leave us with no confidence in the underlying further-processing data submitted by the U.S. Reseller, we have determined that these data cannot serve adequately as a basis for calculating KTN's overall weighted-average margin. Further, the information required to correct the flaws in U.S. Reseller's data is not on the record of this proceeding; therefore, the use of total facts available is necessary (see section 782(e)). Finally, the record indicates that U.S. Reseller could readily have discovered and corrected the majority of these errors prior to submitting its data to the Department and, at the latest, prior to verification.

Accordingly, as provided in section 776(b) of the Tariff Act, we find that U.S. Reseller has failed to cooperate by not acting to the best of its ability in responding to the Department's requests for information. Therefore, we have drawn an adverse inference for the entirety of the data submitted by U.S. Reseller. As adverse facts available we have assigned the highest non-aberrational margin calculated for this final determination, to the weighted-average unit value for sales reported by U.S. Reseller. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from KTN's reported data. We found that the margins for nearly 10 percent of KTN's transactions fell within a specific range of percentages (see the Final Analysis Memorandum for the exact figures); we selected the highest of these as reflecting the highest non-aberrational margin. We then multiplied the resulting unit margin by the total quantity of resales of subject merchandise by U.S. Reseller. See the Final Analysis Memorandum. This total quantity includes that material affirmatively verified as being of KTN origin, as well as a portion of the merchandise of unidentified origin allocated to KTN. To apportion the unidentified sales among the investigations of stainless sheet in coil from Germany, Italy and Mexico (see Comment 20, below) we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of U.S. Reseller's merchandise supplied by each of the three respondent mills. We then applied the facts-available margin to these unidentified sales transactions as explained above.

Finally, as we explained in our Ministerial Errors Memorandum, we inadvertently relied upon a home market sales data base which did not include the gross unit prices recalculated as facts available for sales to certain affiliated home market resellers. Thus, the decision to rely on facts available with respect to KTN's home market downstream sales had no effect in the Preliminary Determination. Therefore, we have corrected the programming language to include the gross unit prices adjusted for the application of facts available in our final calculations. See Ministerial Errors Memorandum at 3 and 4.

Fair Value Comparisons

To determine whether KTN's sales from Germany to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Transactions Investigated

In the Preliminary Determination we relied upon KTN's invoice date as the date of sale in both markets, in keeping with the regulatory preference for using the invoice date as the date of sale and because there were no facts in this investigation that would warrant selection of a different date. See 19 CFR 351.401(i). As explained in response to Comment 1, below, for this final determination we have continued to rely upon KTN's invoice dates as the date of sale in both the home and U.S. markets.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, and as explained in the Preliminary Determination, we determine that one level of trade (LOT) exists in the home market for KTN's sales. We also have determined that KTN's U.S. sales take place at two LOTs, one comprising KTN's factory-direct EP sales, and the other KTN's three channels of distribution for its CEP sales (i.e., "back-to-back" sales through KHSP, consignment sales through KHSP, and sales of "secondary quality" merchandise, also through KHSP).

In addition, we continue to find that KTN's EP sales and its home market sales were at the same LOT, while KTN's CEP sales were at a different LOT. Because these CEP sales were at a different LOT than KTN's home market sales, we examined whether a LOT adjustment may be appropriate. However, as KTN sold to a single LOT in the home market, we have no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of KTN's sales of other similar products and there is no other record evidence upon which such an analysis could be based. Therefore, we have continued to allow a CEP offset, in accordance with section 773(a)(7)(B) of the Tariff Act. See Preliminary Determination, 64 FR at 97.

Export Price and Constructed Export Price

KTN reported as EP transactions certain sales of subject merchandise sold to unaffiliated U.S. customers prior to importation without the involvement of its affiliated company, KHSP. KTN reported as CEP transactions its sales of subject merchandise sold to KHSP for its own account. KHSP then resold the subject merchandise after importation to unaffiliated customers in the United States.

Also, because KTN was unable to demonstrate for the record that it was not in the position to collect downstream sales information from its U.S. affiliates, based on record evidence we requested that KTN report its downstream sales made in the United States (see Memorandum to Richard Weible, "Limited Reporting of Home Market and United States Sales," November 13, 1998) (Limited Reporting Memorandum).

We calculated EP in accordance with section 772(a) of the Tariff Act for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and where CEP methodology was not otherwise warranted based on the facts of record. We based EP on the packed, delivered, tax and duty unpaid price to unaffiliated purchasers in the United States. We made deductions for billing adjustments and movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight and foreign inland insurance.

We calculated CEP, in accordance with subsections 772(b) of the Tariff Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses and other direct selling expenses), inventory carrying costs (ICCs), and indirect selling expenses (ISEs). We offset credit expenses by the amount of interest revenue on sales. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

Finally, we made the following changes in our calculation of EP and CEP in the Preliminary Determination based on information discovered at verification or after analysis of comments by the interested parties:

We recalculated marine insurance, foreign inland insurance, other transportation charges, and U.S. duty expenses to reflect corrections presented at the start of verification. See KTN Verification Report at 2 and KHSP Verification Report at 1 and 2. We also adjusted ocean transportation for shipments to specific points by an affiliated carrier to reflect arm's-length freight rates (see Comment 16, below). In addition, we made a number of changes to our calculation of U.S. credit expenses and inventory carrying costs to reflect the verified interest rates, to ensure use of the proper shipment date for certain CEP re-sales, and to correct the time in inventory to capture the time the merchandise was at sea (see Comments 12, 13, and 14). We adjusted indirect selling expenses (ISEs) for certain U.S. sales made through an affiliated reseller located in Germany (see Comment 11). We also adjusted ISEs for CEP sales through KHSP to reflect its correction at verification (see KHSP Verification Report at 2 and Exhibits 1 and 8). Finally, we reclassified specific observations from KTN's CEP and its "non-U.S." sales listings, as appropriate, to include U.S. sales or exclude transshipments. Id.

With respect to subject merchandise to which value was added in the United States by U.S. Reseller prior to sale to unaffiliated customers, as explained above, we have applied the facts available in accordance with section 776(b) of the Tariff Act.

Affiliated-Party Transactions and Arm's-Length Test

We excluded from our analysis any sales to affiliated customers in the home market not made at arm's-length prices because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See, e.g., Certain Cold-Rolled

Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Tariff Act. As KTN's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

We made a number of changes to our calculation of NV from the Preliminary Determination either based upon our findings at verification or in response to comments by the interested parties. At verification we found that KTN had understated its home market early payment discounts; we adjusted the discounts accordingly (see KTN Sales Verification Report at 1. KTN also indicated that it had inadvertently understated home market warranty expenses by a factor of 10 (see id.); we have recalculated these expenses to correct the error. We also corrected KTN's technical service expenses for sales of precision strip sales to apply the expense ratio calculated for precision strip products. In addition, we recalculated rebates for sales by NSC using the corrected percentage supplied at verification (id., see also Comment 9, below). NSC also overstated its average days in inventory in calculating ICCs; we adjusted this calculation appropriately. Furthermore, we corrected the reported sale dates for certain NSC transactions. See KTN Sales Verification Report at 1. Finally, we amended our model-match language to correct a ministerial error in reading KTN's reported finish and gauge codes (see Comment 31).

Cost of Production (COP) Analysis

Based on a cost allegation filed by the petitioners, the Department investigated whether KTN's sales of the foreign like product were made at prices which represent less than the cost of production. In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average COP based on the sum of KTN's cost of materials and fabrication for the foreign like product, plus amounts for selling and general and administrative (G&A) expenses and packing costs. In response to comments of the interested parties, we made the following changes to KTN's COP data:

We adjusted KTN's G&A expense rate by including the costs of international projects, year-end adjustments, and personnel costs of KTN's affiliated home market processor and reseller, Nirosta Service Center (NSC) (see Comment 23). In addition, we based our allocation of G&A expenses on KTN's total cost of manufacture (TCOM), rather than on processing costs alone, as reported by KTN (see Comment 24).

In calculating KTN's financial expenses we included exchange rate losses of Fried. Krupp, while excluding its exchange rate gains; we also included an offset to total interest expenses of Fried. Krupp's short-term interest income less the amount attributable to trade receivables (see Comment 25).

Where KTN's reported transfer prices for purchases of nickel from an affiliated party were not at arm's length, we increased these prices to represent prevailing market prices (see Comment 27).

Finally, we disallowed KTN's claim to treat NSC's processing costs as a direct selling expense, treating these instead as a component of KTN's fully-captured variable cost of manufacture (VCOM); accordingly, the processing costs reported for sales by NSC have been included in KTN's COP, rather than deducted from NV as selling expenses (see Comment 6).

Where possible, we used KTN's reported COP amounts, adjusted as discussed above, to compute weighted-average COPs during the POI. We compared the product-specific weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below COP. We compared the COP to the home market prices, less any applicable movement charges and discounts. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of KTN's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where twenty percent or more of its sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Tariff Act. Because we used POI average costs, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. When there were no home market sales of identical or similar merchandise in the home market available to match to U.S. sales, we compared the CEP to CV in accordance with section 773(a)(4) of the Tariff Act.

Our cost test for KTN revealed that less than twenty percent of KTN's home market sales of certain products were at prices below KTN's COP. Therefore, we retained all such sales in our analysis. For other products, more than twenty percent of KTN's sales were at below-cost prices. In such cases we disregarded the sales that failed the cost test, while retaining the above-cost sales for our analysis. See KTN Final Analysis Memorandum.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by KTN in connection with the production and sale of the foreign like product in the ordinaty course of trade for consumption in the foreign country. We used the CV data KTN supplied in its section D supplemental questionnaire response, except for the adjustments made for COP, described above.

Price-to-Price Comparisons

We calculated NV based on FOB or delivered prices to unaffiliated

customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for price billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

To the extent practicable, we based NV on sales at the same level of trade as the EP or CEP transactions. Finally, because KTN's sales to its home market affiliates represented more than five percent of its total home market sales, for certain of its home market affiliates we requested that KTN report its affiliates' downstream sales (i.e., sales made by the affiliate). See Limited Reporting Memorandum.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

Comment 1: Date of Sale

In the Preliminary Determination the Department relied upon KTN's invoice date as the date of sale in both the home and U.S. markets, in keeping with the Department's regulatory preference for using the invoice date as the sale date absent evidence "that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." 19 CFR 351.401(i). Petitioners and KTN both presented direct arguments in their respective case briefs concerning the proper date of sale for this final determination.

KTN urges the Department to continue using the invoice date as the date of sale. Such a position, KTN submits, would be consistent with the Department's clear policy to rely upon the invoice date, a policy articulated in several cases including Carbon Steel Pipes and Tubes From Thailand, 63 FR 55578, 55587 (October 16, 1998) (Pipes From Thailand). KTN insists that it has provided compelling data in support of using the invoice date as date of sale. According to KTN, these data include precise figures on the frequency of changes to the essential terms of sale (including price and quantity) following the order confirmation date. KTN insists further that it provided supporting documentation of these claims during the Department's home market and U.S. verifications, and asserts that the Department reviewed this documentation at verification noting no discrepancies. "In contrast," KTN concludes, "[p]etitioners have failed to provide any evidence to support their argument that order confirmation date would be a more appropriate date to use for the date of sale." KTN's Case Brief at 40.

Petitioners assert that the proper date of sale is the order confirmation or, if available, the change order date. Petitioners insist that KTN has not established that the invoice date should serve as the date of sale in this proceeding, relying instead upon an "over-simplification" of the Department's regulations on this issue. Petitioners Case Brief at 3. Citing Pipes From Thailand and Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 63 FR 32833 (June 16, 1998) (Korean Steel Pipe), petitioners note that the Department is afforded great latitude in selecting a sale date other than the invoice date if "the record evidence demonstrates that the material terms of sale, i.e., price and quantity, are established on a different date." Id., quoting Pipes From Thailand. In an industry where merchandise is produced to order, petitioners argue, and where significant lag times separate the order date and the subsequent invoice date, the Department's date-of-sale determination can have a critical impact upon the dumping calculations. The vast majority of KTN's sales, petitioners note, were produced to order.

Petitioners dismiss KTN's documentation supporting the use of invoice date as either unsubstantiated or indefensible. Id. at 5. For example, petitioners dismiss as unsupported by record evidence KTN's claims concerning changes in quantity between the original order date and the invoice date. As a preliminary matter, petitioners accuse KTN of concealing its practices with respect to "delivery tolerances" (i.e., pre-determined levels by which the weight of a shipment may fall above or below the ordered quantity and still satisfy the contractual terms of sale) in order to exaggerate the frequency of changes in quantity between the original order date and invoice date. According to petitioners, KTN first denied its use of delivery tolerances altogether, only to acknowledge at the Department's various sales verifications that, in fact, it relies upon an "industry standard" delivery tolerance of plus or minus ten percent of the ordered mass. Petitioners' Case Brief at 7. More to the point, petitioners aver, a standard ten percent tolerance cannot serve as a meaningful benchmark for measuring changes in quantity because common practice in the steel industry allows for negotiated tolerances in excess of the standard ten percent. Petitioners point to a statement by KTN's sister company Mexinox, a respondent in the companion investigation of stainless steel sheet and strip in coils from Mexico (investigation number A–201–822) that customers may agree to accept quantities above or below those called for under the nominal delivery tolerance. Id. at 8, citing Mexinox's October 29, 1998 supplemental questionnaire response at 17. Petitioners suggest that because KTN uses both standard and special negotiated delivery tolerances in its normal course of business, any claims concerning quantity changes which fail to account for the latter are without merit, as such changes were clearly anticipated in the original sales agreement. Petitioners' Case Brief at 10.

That issue aside, petitioners continue, KTN's purported analysis of data from its U.S. sales affiliate KHSP concerning changes in the essential terms of sale does not withstand scrutiny. Petitioners accuse KTN of building its case by means of data riven with a "lack of proven representativeness, internal inconsistencies, citation to changes in items other than essential terms of sale, missing documentation, and a complete lack of discussion regarding the role of change orders." Petitioners' Case Brief at 10. First, petitioners aver, the Department did not select the January

1998 sales used by KTN for its analysis and did not select any other month for comparison. Therefore, the Department cannot accept KTN's sample as representative of the entire POI. Second, claim petitioners, the data include numerous internal discrepancies including conflicting or truncated order and invoice numbers that preclude tying the proffered order documentation to specific reported transactions. Third, petitioners contend, KTN's analysis included changes that, by definition, did not affect the essential terms of sale, i.e., price and quantity, including changes in payment terms. Further, petitioners maintain that other so-called changes included in KTN's analysis do not represent changes to an existing order but, rather, entirely new orders for completely different products. Petitioners Case Brief at 13. Fourth, petitioners suggest that many of KTN's claimed changes lack critical documentation, with conflicting order numbers and invoice numbers. Petitioners accuse KTN of mixing the orders and invoices between and among various sales to build its case that changes, in fact, took place. Id. at 14. More fundamentally, suggest petitioners, KTN's analysis of KHSP's January 1998 transactions inexplicably includes sales which are not included in KTN's CEP sales listing; other January 1998 transactions reported in KTN's CEP sales data are curiously absent from KTN's date-of-sale analysis. Petitioners accuse KTN of submitting an incomplete listing of its U.S. sales, further undermining the credibility of KTN's data. Id. at 15.

Citing a list of KTN's claimed changes in quantities, petitioners assert that the data indicate that these variances stemmed not from changes between order and invoice, as claimed by KTN but, rather, (i) previously-negotiated delivery tolerances in excess of the standard ten percent, (ii) partial shipments made whole by a subsequent shipment of the balance of the order, or (iii) unreported change orders which served to modify and, thus, supercede the original order. Petitioners point to the Department's KHSP Sales Verification Report as demonstrating that KTN often met customer orders by shipping a portion of the order under one invoice number and completing the original order with a subsequent shipment issued under a second invoice. Petitioners suggest that KTN has represented as changes in quantity what, in fact, were merely partial or multiple shipments of the originally-ordered quantity, "a pervasive and industry-wide practice." Petitioners' Case Brief at 19.

Petitioners further insist that without any explanation or quantification of change orders, KTN's statistics concerning the frequency of changes between order and invoice dates are meaningless. Id. at 20, citing Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium, 58 FR 37083, 37090 (July 9, 1993) (Belgian Carbon Steel Flat Products). Despite KTN's efforts to gloss the role of change orders, petitioners continue, the record clearly indicates that KTN relies upon change orders in its normal course of business and that KTN failed to consider these in pressing its case that the invoice date represents the only date when the essential terms of sale are conclusively known. According to petitioners, the Department recently addressed the importance of change orders in Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, 64 FR 12951, 12957 (March 16, 1999) (Flat Products From Japan). In that case, petitioners suggest, the Department relied upon the respondent's order confirmation date as the date of sale, noting that any changes in the essential terms of sale were memorialized through the subsequent issuance of a revised order confirmation.

Even if one accepts KTN's self-selected and incomplete data for January 1998, petitioners aver, for a majority of these transactions the essential terms were, in fact, set at the order date; thus, "the order confirmation date, and not the shipment date, best reflects when material terms of sale usually are established." Id. at 25, quoting Flat Products From Japan, 64 FR at 12958. As in Korean Steel Pipe, petitioners contend, KTN produces merchandise to order in the vast majority of cases; subsequently, there are significant lags between the order date and the eventual invoice date. Reliance upon KTN's reported invoice date, assert petitioners, would result in the Department's "comparing home market sales in any given month to U.S. sales whose material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand." Id., quoting Korean Steel Pipe.

Petitioners point to other perceived problems with KTN's reported sales, accusing KTN of including in its home market sales data transactions with "impossibly old" order dates, some of which preceded the POI by many years. Petitioners insist that such transactions arose from long-term or "periodic requirements" contracts. However, as the record does not include any detail concerning KTN's contractual obligations, petitioners argue, the Department "should resolve the confusion caused by KTN by concluding that order date, not invoice date, should serve as the date of sale * * *". Petitioners blame KTN for sowing this confusion by reporting improperly the date of the original order as its order date, rather than the final order confirmation issued by KTN. Id. at 32 and 33.

Further distorting the Department's sales analysis, petitioners contend, is KTN's basing order dates on disparate events in the home and U.S. markets, relying upon the date of the customer's original purchase order for home market transactions, while using the later confirmation date for purposes of reporting U.S. order dates. This has the effect of further exaggerating the alleged lag between home market order date and confirmation date.

Once aberrant transactions, partial shipments, and changes involving non-essential terms of sale are disregarded, petitioners argue, KTN's own data indicate that changes occur in far fewer transactions than originally claimed by KTN. Given the gaps in the record, petitioners insist, the Department cannot accept KTN's proffered data as bona fide evidence that the invoice date should serve as date of sale. Petitioners' Case Brief at 26. Petitioners list the perceived failures in KTN's date-of-sale arguments, contending that the lack of credibility inherent in KTN's reporting requires the use of total adverse facts available. In the alternative, petitioners suggest, KTN's order confirmation date in both the home and U.S. markets should serve per se as the date of sale for this final determination. Id. at 37 through 40.

In rebuttal, KTN accuses petitioners of relying upon "fabricated theories" and mischaracterizations of KTN's business practices in their effort to undermine the integrity of the data provided by KTN to substantiate the use of invoice date as the date of sale. See "Rebuttal Brief of Krupp Thyssen Nirosta GmbH, Krupp Hoesch Steel Products Inc." (KTN Rebuttal Brief), March 30, 1999, at 7. According to KTN, petitioners' arguments do not hold up in light of the record evidence; even if they did, KTN avers, the record would still support the use of invoice date as the date of sale. KTN insists that it has provided reliable and compelling evidence that the

material terms of sale change frequently prior to the issuance of the invoice.

While stating that the burden of proof on this issue rests with petitioners, KTN nevertheless maintains that its sales data demonstrate that either price or quantity changed in a significant percentage of the U.S. sales included in its analysis of January 1998 transactions. The Department, KTN notes, reviewed these data at the verification of KHSP and noted no discrepancies. In their efforts to attack the credibility of the January 1998 analysis, KTN contends, petitioners cited examples of discrepancies without providing any context and have stretched these "piecemeal arguments" to substantiate spurious conclusions. KTN Rebuttal Brief at 10. As a preliminary matter, KTN insists that throughout this investigation it has not relied upon changes in alloy surcharges or quantities falling within the industry standard plus-or-minus 10 percent in its arguments for using the invoice date, thus rendering petitioners' comments both inaccurate and irrelevant. KTN also defends its use of KHSP's January 1998 sales data as especially suitable, claiming that it provided the largest sample for any month of the POI and because it fell late in the POI, thus allowing analysis of transactions where both the invoice and the order confirmation fell within the POI.

Furthermore, KTN continues, many of the perceived inconsistencies in KHSP's information stem from the latter's installation of a new computer system which became operational on January 1, 1998. Thus, all sales prior to January 1 reflect a customer invoice number identical to the invoice number issued by KTN's German affiliate Krupp Nirosta Export, GmbH (KNE) to KHSP, whereas order confirmation numbers reflected certain product codes. KTN's Rebuttal Brief at 15. Once KHSP's new SAP software was in place, KTN submits, all invoices bore a sequential number unique to KHSP; order confirmations numbers issued prior to January 1, but invoiced after January 1, would have the old numbering protocol overwritten by the new sequential SAP numbering system. KTN argues that "[t]he numbering mechanisms, while different, are internally consistent and permit the tracing of sales transactions." Id. at 16 and 17.

KTN also rejects petitioners' charge that it included partial shipments against a single order in its reporting of changes in quantity. According to KTN, while the weights for individual coils posited by petitioners approximate the weight of coils shipped by KHSP to customers, the input master coil produced by KTN in Germany is twice as heavy. Thus, if available material to fill an order was short by as much as 10,000 pounds, KTN suggests, KHSP would negotiate with the customer to consider the order filled, rather than forcing KTN to roll an entire master coil to make up such a small difference. KTN Rebuttal Brief at 18 and 19.

With respect to KHSP's use of change orders, KTN contends that it has provided a copy of each existing change order applicable to any sale traced at verification or included in the January 1998 transactions (see KHSP Verification Exhibit 23). More importantly, claims KTN, not every change in the material terms of sale is memorialized through issuance of a new order confirmation. In some cases, changes in the terms of sale made after the order confirmation date are simply reflected in the invoice without the issuance of a change order. KTN Rebuttal Brief at 21. According to KTN, the sole case cited by petitioners as addressing the importance of change orders, Belgian Carbon Steel Flat Products, involved a fact pattern that was the polar opposite of KHSP's, where the Department only discovered at verification that where the essential terms of sale were altered after the initial confirmation, the respondent routinely issued change orders firmly establishing the terms of sales. Id. In contrast, argues KTN, at its U.S. verification the Department reviewed KHSP's "compelling evidence" concerning quantity and price changes and noted no discrepancies. Id.

Assuming that each of petitioners' contentions has merit, KTN continues, the remaining percentage of sales exhibiting changes in the material terms of sale would still be more than sufficient to warrant relying on the invoice date as date of sale. In Certain Internal Combustion Industrial Forklift Trucks From Japan, 62 FR 5592, 5611 (February 6, 1997), KTN suggests, the Department found that the invoice date best approximated the point at which material terms of sale were set in light of evidence of changes in only 4.3 to 7.5 percent of the respondent's transactions. KTN argues that even given petitioners' adverse assumptions the essential terms of KTN's sales changed with far greater frequency in the instant investigation. Furthermore, continues KTN, the Department cited the mere potential for changes as militating for the use of the invoice date. Therefore, KTN maintains, even if each of petitioners' arguments are on point, the Department's precedent favors continued reliance on the invoice date.

With respect to home market date of sale, KTN dismisses the allegedly aberrational lag times found in its home market sales listing, noting that for a significant majority of KTN's home market sales less than six months passed between the customer's order and the invoice date. KTN asserts that in a business where a customer places an order for shipments to be made at different times during the year, such lag times should be expected. KTN's Rebuttal Brief at 25.

In addition to its factual arguments, KTN contends that case precedent similarly supports the use of invoice date. For example, continues KTN, in Korean Steel Pipe, a case cited by petitioners, the Department noted the markedly different sales processes for U.S. and home market sales as supporting the use of the-contract date over invoice date. KTN suggests that the instant case is easily distinguishable from Korean Steel Pipe; unlike the latter case, KTN's sales practices in both markets are essentially the same, with most transactions in both markets involving made-to-order merchandise. KTN's Rebuttal Brief at 27. KTN claims that other case precedent similarly supports use of invoice date. In Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 64 FR 2173 (January 13, 1999) (Flat Products From Canada), the Department opted for invoice date in light of quantity changes for a number of sales. The Department reached the same conclusion in Pipes From Thailand, KTN notes, owing once again to quantity changes between order and invoice dates. These precedents, KTN concludes, support the use of KTN's reported invoice date as the date of sale.

Department's Position: After a thorough review of the record we conclude that while petitioners raise a number of cogent arguments for using the order confirmation date as the date of sale, the weight of the record evidence supports using KTN's reported date of invoice as the date of sale for purposes of this final determination. The Department's regulations state that the invoice date will serve as the date of sale unless record evidence demonstrates "that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." 19 CFR 351.401(i). "Our current practice, in a nutshell, is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise." Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13194 (March 16, 1998)

(Flat Products From Korea II). Furthermore, as the Department has noted, "price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced. * * * [a]s a practical matter, customers frequently change their minds and sellers are responsive to those changes." Final Rule, 62 FR at 27348. The Department further recognized that the buyer and seller themselves will often disagree as to when, precisely, the terms of sale were set: "this theoretical date usually has little, if any, relevance. From their perspective, the relevant issue is that the terms be fixed when the seller demands payment (i.e., when the sale is invoiced)." Id. at 27349.

Petitioners note correctly that the respondent is a mill which largely produces the merchandise under investigation to fill specific orders. Therefore, as petitioners see it, once the mill has scheduled the casting of stainless slab for rolling to a given stainless coil, little room remains for altering the essential terms of sale. Furthermore, as detailed below, petitioners point to lacunae in the evidence KTN has introduced to support the use of invoice date.

KTN, in turn, has provided evidence that the material terms of sale are subject to change at any time between the order confirmation and invoice dates and has indicated that not all such changes would be reflected in KTN's order confirmation. This is especially true of home market sales, where KTN's computerized production control system allows for entry of corrections to orders without generating new order confirmations. In addition, KTN has submitted for the record evidence of actual changes in the essential terms of sale between its written order confirmation and the subsequent invoice date.

We conclude that the record evidence in the instant proceeding supports use of the invoice date. First, it is clear that KTN's records and financial statements kept in its normal course of business do not recognize a sale until the invoice is issued and payment is demanded. See, e.g., the quantity and value sections of the KTN Sales Verification Report and KHSP Verification Report. Further, and perhaps more to the point, KTN presented numerous examples during the POI where either quantity or price or both changed after the order confirmation had been issued, but prior to the invoice date. See Home Market Verification Report at 32 and Exhibit 6–IV–A, and KHSP Verification Report at 17 and Exhibit 23. Thus, as we concluded in Flat Products From Korea II, "there is no record evidence indicating that a date other than the invoice date is the date after which the essential terms of sale could not be changed." Id., 63 FR at 13195 (emphasis added).

Although petitioners have raised various concerns about KTN's date-of-sale data (see immediately below), we find, however, that even after considering these issues the totality of record evidence still suggests that KTN's invoice date is the appropriate date of sale, as it best represents the point at which the essential terms of sale "are firmly established and no longer within the control of the parties to alter without penalty." Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38182 (July 23, 1996).

Turning now to the parties' specific comments, we do not subscribe to petitioners' views concerning the alleged "unrepresentativeness" of respondent's data. In our October 9, 1998 section A supplemental questionnaire we asked that KTN "indicate the frequency of price, quantity, material specification, delivery terms and alloy surcharge changes between confirmation and final invoice." [6] When KTN responded it elected to rely upon a sampling of its home market and U.S. sales, describing its sampling methodology in detail. See KTN's October 23, 1998 section A supplemental response at 14. Sampling was necessary, KTN explained, given the burden of tracking each line item of each incoming order to its corresponding final invoice. To this end KTN selected the first quarter of 1998 for both home market and U.S. sales, and presented a further detailed analysis of each specific change involving its U.S. sales during the sample month of January 1998. We reviewed the documentation for both the U.S. and home market sales samples at verification and noted no discrepancies. See, e.g., KHSP Verification Report at 17.

Having raised no objections to the methodology adopted by KTN to address this issue, and having accepted and verified the proffered samples, it would be inappropriate for the Department at this point to reject these data and make assumptions adverse to KTN's interests because the Department failed to request that KTN provide an analysis of a different universe of transactions. Furthermore, and more importantly, we have no reason in this case to suspect that an analysis of a full quarter's sales in the home and U.S. markets, coupled with the line-item-by-line-item analysis of one month's sales in the U.S. market would not capture accurately KTN's experience throughout the POI. There are no factors such as, for example, a period of hyper-inflation during the POI, or an analysis of an industry subject to sharp seasonal fluctuations in sales, which would call into question the representativeness of the samples.

Petitioners assail the reliability of KTN's evidence of claimed quantity changes. In response to our direct question concerning the use of delivery tolerances KTN responded unequivocally that "KTN's sales orders in the United States and KHSP's sales orders in the United States do not include pre-determined weight tolerances." KTN's October 23, 1998 section A supplemental response at 15 (emphasis added). However, record evidence indicates that KTN does, in fact, rely upon specific delivery tolerances which are subject to negotiation. KTN has consistently affirmed, and the Department has verified, that it did not include any quantity deviations falling within the standard plus-or-minus 10 percent range as constituting a change in quantity for purposes of its date-of-sale analysis. Nevertheless, the significance of that fact is attenuated if the negotiated tolerances for KTN's sales exceeded the 10 percent mark.

That said, however, because the record also does not indicate whether any sales analyzed for changes in quantity did involve negotiated tolerances in excess of the 10 percent standard, we have no evidentiary basis to disregard KTN's verified data or to assume that the claimed quantity changes arose, in whole or in part, from specially-negotiated quantity tolerances exceeding the standard plus-or-minus 10 percent threshold.

Petitioners' argument that at least some of the claimed changes in quantity arose from partial shipments against an order, rather than a change in quantity, has merit. KTN's rebuttal brief fails to address this charge head on. KTN points to a specific order-invoice combination drawn from its U.S. sales during the POI and suggests that the customer would agree to accept less than one half of the ordered quantity as fully satisfying the contractual terms of the original sales agreement. However, KTN does not claim that this is what happened with the specific transaction. Rather, KTN concludes that "[t]his is precisely the

[6] Although the Department customarily equates "essential terms of sale" with price and quantity, it should be noted that this questionnaire included within the meaning of "essential terms of sale," *inter alia*, delivery and payment terms.

type of situation where KTN would agree with the customer to view the order as filled." KTN's Rebuttal Brief at 19 (emphasis added). KTN has presented no evidence of any transaction where a customer actually released KTN from its obligation to supply the contractually agreed-upon quantity of merchandise, as stipulated in the original sales agreement. KTN's assertion that a customer would order a large quantity of merchandise, presumably in anticipation of its needs, and then accept less than half that amount as fully satisfying the original sales contract, is unsupported by record evidence. Furthermore, KTN's comments with respect to master coils *versus* slit coils are entirely inapposite with respect to the question of partial shipments by KHSP. The sales subject to our analysis involve the smaller coils cited by petitioners in their case brief, i.e., "the coils that are sent to customers," not the much larger master coils produced by KTN in Germany. See KTN's Rebuttal Brief at 18. Thus, KTN's assertion that KTN in Germany would not roll a new master coil to fill an under-shipment of as much as 8,000 or 10,000 pounds sheds no light at all on whether or not KHSP would make good the shortfall by means of a second shipment of the outstanding quantity. This distinction is critical to KTN's rebuttal argument that the evidence supplied at Exhibit 23 did not include instances wherein KHSP filled an order by means of two or more shipments issued under separate invoices.

With respect to the role of change orders, however, we find petitioners' assertions are not borne out by the record evidence in this case. Petitioners' reliance upon Flat Products From Japan as supporting the use of order confirmation dates is misplaced. In Flat Products From Japan, the petitioners, in supporting the Department's use of respondent NSC's order confirmation date, noted that "the record clearly shows that to the extent NSC and its customer made a significant revision to any material term of sales, there is an established mechanism for accomplishing the revision; specifically, * * * NSC issues a new or revised order confirmation." The Department agreed: "[v]erification results indicate that the material terms of sale were established on the date of the order confirmation. Additionally, among the sales examined, we found no material changes to the order confirmation terms." Flat Products From Japan, 64 FR at 12958.

In contrast, in the instant investigation the Department confirmed at verification that many changes to the terms of KTN's sales, including changes involving price and quantity, are not memorialized through the generation of a new order confirmation or change order; KTN "will not generate a second order confirmation unless (i) the customer requests it, or (ii) the change was "substantial'." KTN Sales Verification Report at 32. Given the fluid nature of KTN's ordering system, which often allows changes to simply over-write the original terms, the record of this investigation does not suggest any discrete event, be it the original order confirmation or some other event prior to invoice date, where the essential terms of sale are conclusively known. Rather, the record indicates that the essential terms of sale can and do change subsequent to KTN's issuance of the original order confirmation, and that KTN employs no systematic means of capturing and documenting changes to its customers' orders. Contrast Belgian Carbon Steel Flat Products, 58 FR at 37090 ("[f]or only two of the 20 selected sales was there no order confirmation, thus calling into question Sidmar's claim that order confirmation records are not maintained"). As the Department has noted, "the negotiation of a sale can be a complex process in which the details often are not committed to writing. In such situations, the Department lacks a firm date on which the terms became final." Final Rule, 62 FR at 27349. A similar situation obtains here where terms of sale are subject to changes which are not necessarily documented through issuance of an amended confirmation order.

Finally, even accepting petitioners' assertions and disregarding all claimed quantity changes as unsupported by the record evidence, the record evidence still supports the use of invoice date as the date of sale. KTN has presented evidence—impeached neither by petitioners nor by the Department's verifications—that price changes can and did occur with some regularity between the order confirmation date and the invoice date. Thus, while we agree with petitioners that not each instance cited by KTN as representing a change in the essential terms of sale is borne out by the record evidence, the Department did verify a significant number of instances of changes in price or quantity between the order confirmation and the invoice date. As we concluded in Flat Products From Korea II "[t]he Department has no basis to conclude that essential terms of sale were set and not subject to change at the initial contract date." Id., 64 FR at 12956. Thus, the totality of the evidence in this case militates against petitioners' suggestion that we abandon the presumptive date of sale identified in the Department's regulations in favor of using KTN's order acceptance date. Rather, the record indicates that the essential terms of sale can and do change subsequent to KTN's issuance of its original order confirmation, and that KTN employs no systematic means of capturing and documenting these changes. For this reason, and because KTN's internal records kept in its normal course of business do not recognize a sale until the invoice is issued, we have continued to rely upon KTN's reported invoice dates in both markets as the dates of sale for this final determination. In the event this investigation should result in the publication of an antidumping duty order we intend to re-examine this issue thoroughly in any subsequent review involving KTN, especially with respect to quantity tolerances and change orders.

Comment 2: Affiliation

KTN contends that the Department incorrectly concluded that it was affiliated with Thyssen and its U.S. and home market affiliates pursuant to section 771(33)(F) of the Tariff Act based on the conclusion that Thyssen is in the position to exercise direction and restraint over both KTN and Thyssen's own affiliates. KTN argues that in order for KTS to be affiliated with Thyssen and its subsidiaries within the meaning of 771(33), both parties must have either a direct relationship with each other (as described in paragraphs 771(33)(A) though (E) and (G)), or an indirect relationship "through which one party, though not directly related, is nevertheless in the position to control the other (as described in paragraph (F))." KTN's Case Brief at 7.

Under the terms of the statute, asserts KTN, Thyssen's subsidiaries and the KTS companies cannot be deemed affiliated on the basis of a direct relationship for they share no family relationships, board members or officers, partnership relations, or hold equity positions in one another. See section 771(33)(A) through (E). KTN also argues that Thyssen's subsidiaries and the KTS companies are not affiliated under 771(33)(G), for Thyssen's subsidiaries are not in the direct bilateral control relationship envisioned in this section. Citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404 (April 15, 1997) (Flat Products From Korea I), KTN contends that POSCO, a respondent in the review, participated with DSM in a

joint-venture firm, POCOS. DSM, in turn, wholly-owned a subsidiary company, Union (also a respondent in the review). KTN notes that in Flat Products From Korea I the Department concluded that POSCO and Union were not affiliated under section 771(33)(G) because the two companies were separate operational entities with no overlapping stock ownership and that nothing in the record indicated that either Union or POSCO was legally or operationally in a position to control the other party. As in Flat Products From Korea I, KTN maintains, Thyssen's subsidiaries and the KTS companies have neither overlapping stock ownership nor operational or legal control over each other. KTN's Case Brief at 9.

In addition, KTN claims that Thyssen's subsidiaries and the KTS companies are not under the common control of Thyssen, and therefore are not indirectly affiliated pursuant to section 771(33)(F) of the Tariff Act. KTN argues that under section 771(33)(F), a determination of control "calls for a comprehensive and multi-factored analysis of the particular facts of each case in the context of the industry at issue, including the history of the parties, and the course of their dealings with one another." KTN's Case Brief at 10. Further, KTN points out that in accordance with 19 CFR 351.102, in order to find affiliation the Department must first determine that one party is in a position to exercise control over the "production, pricing, or cost of the subject merchandise or foreign like product" of the other party. Id., quoting 19 CFR 351.102. KTN contends that the Thyssen subsidiaries, and KTS or the KTS companies, are not in a position to exercise such control over each other.

According to KTN, the reality of the KTS shareholders' agreement is that Thyssen does not control KTS or the KTS companies. The shareholders' agreement, KTN insists, was structured ab initio to place the ability to influence KTS's operational decisions solely with Fried. Krupp, with the intention of consolidating Fried. Krupp's stainless steel operations. KTN asserts that Fried. Krupp's operational control over KTS is further reflected by the provision in the shareholders' agreement for Fried. Krupp to buy out Thyssen's interests in the firm in the event Fried. Krupp's and Thyssen's interests diverge. Therefore, KTN claims, KTS's production, pricing, and cost decisions are controlled by Fried. Krupp, not Thyssen. KTN's Case Brief at 12.

Further, KTN contends that petitioners have cited incorrectly *Mitsubishi Heavy Industries, Ltd.* v. *United States*, 15 F. Supp. 2d 807 (CIT 1998) (Mitsubishi) as supporting the proposition that "when two companies participate in a joint venture, it is 'impossible' that the respective subsidiaries of those two companies are not affiliated." Id., citing petitioners' September 25, 1998 submission on affiliation (KTN's emphasis). Even if petitioners' interpretation of this case is accurate, KTN argues, Mitsubishi does not reach the facts before the Department in this investigation. KTN asserts that in Mitsubishi the Court of International Trade (the Court) did not address whether subsidiaries of companies that participate in a joint venture were in turn affiliated but, rather, held that the two parent companies were affiliated under section 771(33)(F) by virtue of their joint-venture ownership of a third party. KTN notes that the issue in this proceeding is not whether the ultimate parent companies; Fried. Krupp and Thyssen, are affiliated, but whether various Thyssen affiliates in Germany and the United States are affiliated with the KTS companies. "Contrary to petitioners' assertion," contends KTN, "the Department has clearly stated that affiliation between parent companies by virtue of a joint venture is not a 'vehicle' through which the Department will find affiliation between other companies that are controlled by those parent companies." Id. Any affiliation between Fried. Krupp and Thyssen, asserts KTN, would not reach the companies' respective subsidiaries. Id. citing Flat Products From Korea I, 62 FR at 18418. Therefore, KTN concludes that Thyssen's subsidiaries cannot be considers affiliated with the KTS companies controlled by Fried. Krupp merely by virtue of the joint venture between Fried. Krupp and Thyssen.

Petitioners maintain that the Department properly determined that KTN is affiliated with Thyssen and Thyssen Stahl AG, one of KTN's two joint-venture parents, and with the member companies of the Thyssen Corporate Group. In addition, petitioners support the Department's decision to use adverse facts available in those instances where the respondent failed to cooperate fully in providing the sales data requested of these various affiliates by the Department.

Petitioners note that section 351.102(b) of the Department's regulations provides that in finding affiliation based on control, the Department will consider (i) corporate or family groupings, (ii) franchise or joint venture agreements, (iii) debt financing, and (iv) close supplier relationships, among other factors. Petitioners note further that under this same regulatory provision control will not be found to exist using these factors unless "the relationship has the potential to have an impact on decisions concerning production, pricing, or cost of the subject merchandise or foreign like product." Petitioners' Rebuttal Brief at 6 and 7, citing 19 CFR 351.102(b).

Applying each of these factors in turn to this case, petitioners contend that a general pattern of corporate groupings between Fried. Krupp and Thyssen suggest that these persons are affiliates within the meaning of section 771(33). Petitioners assert that the "massive cooperation" between Fried. Krupp and Thyssen is recognized in the parent's respective annual reports. For example, petitioners argue, Thyssen's September 1997 annual report at note 23 states that "[i]n the year under review, the income/loss from associated affiliates is mainly due to the transfer of only a one-digit million DM prorated profit from Krupp Thyssen Stainless." Thus, petitioners contend that Thyssen and its affiliates recognize that the group's consolidated stainless steel flat products activities are centered in KTS and its manufacturing company, KTN. According to petitioners, the establishment of KTS and Thyssen Krupp Stahl (TKS) represents an arrangement whereby the two corporate groups have intertwined their steel production and marketing activities well in advance of the pending merger between Fried. Krupp and Thyssen. Id. at 9.

Petitioners also argue that KTN's advertising and marketing strategies also recognize the interconnections between Fried. Krupp and Thyssen. Petitioners maintain that KTN was conceived with the express intent of both Fried. Krupp and Thyssen to establish one unified speciality steel producer that customers worldwide would perceive as being both a Krupp and Thyssen company. Further, petitioners assert that Thyssen and Krupp opened their respective channels of distribution to KTN's stainless steel products, a fact recognized in the marketplace. Petitioners' Rebuttal Brief at 9.

Second, petitioners allege that KTN, as a joint venture owned by the Krupp and Thyssen groups is both a party controlled by two other parties pursuant to 771(33)(F) and a joint venture per se as defined at 19 CFR 351.102(b). Citing Certain Cut-to-Length Carbon Steel Plate from Brazil, 63 FR 18486, 18490 (April 15, 1997) (Carbon Steel Plate From Brazil), petitioners assert that Thyssen's 40 percent ownership in KTS is more than sufficient to place it in a position of control over KTN. As in that case, petitioners contend, "[e]ven a minority

shareholder interest, examined within the totality of other evidence of control, can be a factor that we [the Department] consider in determining whether one party is in the position to control another." Petitioners' Rebuttal Brief at 11, quoting Carbon Steel Plate From Brazil. Additionally, petitioners argue that contrary to KTN's arguments, evidence of actual control is not required under the statute in order to make a finding of control. Rather, control is defined as merely the ability to control, i.e., the power to restrain or direct a company's activities. Id.

According to petitioners, KTN's reliance upon Flat Products From Korea I is misplaced. Petitioners assert that KTN's argument that the Department found that POSCO and Union were not affiliated in the absence of direct equity ownership or a finding of control, in essence, negates section 771(33)(F), which defines as affiliated persons two or more persons directly or indirectly controlling any person. Petitioners contend that the issue is not whether two parties who control a third party are affiliated to each other, but whether a person jointly controlled by two parties is affiliated with the parent companies' subsidiaries. Instead, petitioners argue that the pattern of affiliations in this case mirrors that found in Stainless Steel Plate in Coils From Belgium, 64 FR 15476 (March 31, 1999) (Belgian Stainless Plate in Coils) in which the Department determined that because ALZ and TrefilARBED were two persons established to be directly or indirectly controlled by ARBED, ALZ's sales through TrefilARBED-were treated as affiliated-party sales. Thus, pursuant to 771(33)(F), petitioners claim that where KTS is under common control by Krupp, and Thyssen Stahl and Thyssen, KTS is affiliated with both Krupp and Thyssen. Also, pursuant to 771(33)(G), petitioners argue that because KTS controls KTN, KTN is affiliated to Thyssen through KTS and that because Thyssen controls its affiliates, then KTN is affiliated to those affiliates through Thyssen. Therefore, petitioners contend that KTS and KTN and the Thyssen subsidiaries are two or more persons directly or indirectly controlled by Thyssen, and so, are affiliated.

Further, petitioners argue that as recognized by the Department in its December 16, 1998 Affiliation Memorandum, the shareholders' agreement between the Krupp and Thyssen groups indicates that Thyssen, through Thyssen Stahl, has the indirect ability to control the activities of KTN through KTS. Petitioners assert that by means of the shareholders' agreement Fried, Krupp, and Thyssen (i) committed their respective families of companies to having all stainless activities reside in KTS and KTN, (ii) set forth the parties' power to amend or supplement the Industrial Concept governing KTS's operations, (iii) recognized the sales and distribution functions of the Thyssen affiliates, (iv) afforded Thyssen the ability to direct KTS through the operation of the Supervisory Board, (v) provided for Thyssen's participation in the activities of KTS and KTN through membership in the KTS Management Board, (vi) afforded Thyssen an additional avenue of direction or restraint of KTS (and thus KTN) through the Shareholder Committee, (vii) established a "super-majority" requirement for votes involving certain business transactions, including appointments to KTS's managerial board, giving Thyssen effective veto power over critical KTS activities, and (viii) established an arbitration committee to mediate any disputes between Fried. Krupp and Thyssen over KTS's activities. Petitioners' Rebuttal Brief at pages 17 through 22. Therefore, petitioners assert, the shareholders' agreement clearly articulates Thyssen's ability to exercise indirect control over KTN via KTS.

Third, petitioners contend that the legal framework established by the shareholders' agreement provides both de jure and *de facto* bases for a close supplier relationship between KTN and a certain Thyssen affiliate. In fact, according to petitioners, KTN is entirely dependant upon this Thyssen entity for the hot-rolling of the stainless steel cast in KTN's melt shop. Similarly, petitioners note, this entity "does not provide stainless steel hot-rolling services to any entity other than KTN." Petitioners' Rebuttal Brief at 24, quoting KTN's December 17, 1998 section D supplemental response at D–3. Petitioners argue that this level of mutual dependency clearly qualifies as a "close supplier relationship" within the meaning of both 19 CFR 351.102(b) and the SAA at 838 which refers to a "close supplier relationship in which the supplier or buyer becomes reliant upon the other." Id.

Therefore, petitioners conclude, these facts leave "no reasonable room for any doubt that KTN is affiliated with Thyssen within the meaning of [section 771(33) of the Tariff Act]." Id. Thus, as Thyssen is affiliated with its subsidiaries and has the ability to control those subsidiaries, KTN is affiliated with the Thyssen subsidiaries as well under the combined provisions of sections 771(33)(F) and (G).

Department's Position: We disagree with KTN. As we stated at length in our *Preliminary Determination* and the accompanying Affiliation Memorandum, we have determined that KTN is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds with the power to vote, five percent or more of the outstanding shares of voting stock of the other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated.

We examined the record evidence to evaluate the nature of KTN's relationship with Thyssen Stahl and Thyssen and have determined that KTN is affiliated with Thyssen and Thyssen Stahl. Thyssen Stahl indirectly owns and controls, through KTS, forty percent of KTN's outstanding stock and Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls a forty percent interest in KTN. KTN's section A questionnaire response acknowledges that KTN is a wholly-owned subsidiary of KTS. KTS formed KTN in 1997 to handle its stainless steel production and sales. The supporting exhibits to this submission further confirm Thyssen Stahl's interest in KTS and KTS's 100-percent interest in KTN. In a submission dated October 20, 1998, petitioners placed on the record publicly available data that confirmed both the foregoing shareholding interests and that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. Consequently, KTN, as the wholly-owned subsidiary of KTS, is affiliated with the joint venture partner Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E) of the Tariff Act. See Stainless Steel Wire Rod From Sweden, 63 FR 40449, 40453 (July 29, 1998).

In addition, we have determined that KTN is affiliated with Thyssen and its U.S. and home market affiliates. Section 771(33)(F) provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. Actual exercise of control is not required by the statute. In this investigation, the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of KTS. See Preliminary Determination, 64 FR at 95 and the Affiliation Memorandum. Such a finding is

consistent with the Department's determinations in Carbon Steel Plate From Brazil, 62 FR at 18490 and Stainless Steel Wire Rod From Sweden, 63 FR at 40452.

We also agree with petitioners that record evidence demonstrates that Thyssen, as the majority equity holder and ultimate parent company of its various affiliates, is in a position to exercise direction and restraint over these affiliates' production and pricing. Thyssen also holds indirectly a substantial equity interest in KTN, plays a significant role in KTS's operations and management and, thus, enjoys several avenues for exercising direction or restraint over KTN's production, pricing and other business activities (see the Affiliation Memorandum). In sum, Thyssen's substantial equity ownership in KTN and Thyssen's other affiliates, in conjunction with the "totality of other evidence of control" requires a finding that these companies are under the common control of Thyssen. Accordingly, for this final determination we continue to find KTN is affiliated with Thyssen, Thyssen Stahl, and Thyssen's U.S. and home market affiliates.

Comment 3: Facts Available for Unreported Downstream Sales

If the Department persists in finding affiliation between the two, KTN avers, the use of adverse facts available is, nevertheless, inappropriate, as was the Department's method of applying adverse facts available for sales involving Thyssen's subsidiaries in the home market. The Department, notes KTN, used the highest normal value reported by control number in KTN's home market database. KTN claims that under section 776(b) prior to relying upon adverse facts available, the Department "must produce substantial evidence that respondents refused to cooperate or significantly impeded its review." KTN's Case Brief at 15, quoting *Queen's Flowers de Columbia* v. *United States*, 981 F. Supp. 617,629 (CIT 1997). KTN contends that it cooperated with the Department to the best of its ability and substantially responded to the Department's request for information, and that any failure to supply data arose not from an unwillingness to cooperate, as suggested in the Preliminary Determination, but from KTN's inability to secure the requested data from the Thyssen affiliates. KTN cites, *inter alia*, *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000 (CIT 1994) (Usinor), in which the Court remanded the Department's final determination applying adverse facts available to certain unreported downstream sales, stating that:

> [i]f Commerce finds that Usinor did not have operational control, Commerce is directed to select the weighted average calculated margin as BIA. If Commerce finds Usinor maintained operational control, Commerce may reapply the highest non-aberrant margin as BIA in a manner consistent with the court's decision in *National Steel Corp.* v. *United States.*

KTN's Case Brief at 17 (original citation omitted).

KTN argues that, as Usinor suggests, KTN's failure to provide information regarding its downstream resellers was not the result of deliberate recalcitrance but, rather, KTN's lack of operational control over those affiliates and its inability to obtain the information. KTN points out that it was able to gain the complete cooperation of three Thyssen affiliates located in the United States despite the absence of any operational control over these companies. KTN submits that while the Department's preliminary determination that KTN was affiliated with Thyssen's resellers because of Thyssen's potential control over both KTN and its own affiliates may be sufficient as a legal standard, it does not support the obverse conclusion that KTN had the ability to control the activities of Thyssen's affiliates and could demand their proprietary sales data. According to KTN, it had to "rely on persuasion, not control, to access the information requested by the Department." KTN's Case Brief at 19.

In addition, KTN objects to the Department's characterization in the Preliminary Determination of KTN's cooperation with the Department during October and early November 1998. KTN claims that the Department's November 17, 1998 request for the reseller sales information "mischaracterizes, and in some cases misstates, the dialog between the Department and KTN." Id. at 20. KTN asserts that the Department acknowledged as much by the significant deletion of the reference to the Department's "three official requests" for the information included in the November 17, 1998 letter's original language as this letter was paraphrased in the Preliminary Determination. KTN complains that the November 17 letter, which included a warning that adverse facts available might be used, preceded the Department's November 18 memorandum which set forth the Department's reporting requirements for downstream sales by Thyssen affiliates. Therefore, KTN argues, while ultimately KTN was unable to provide all of the requested downstream sales data, the Preliminary Determination fails to consider the overall cooperation shown by KTN throughout this proceeding, including its numerous timely responses to questionnaires, and participation in two home market and three U.S. verifications. Accordingly, KTN submits, should the Department determine that Thyssen's affiliates are affiliates of KTN, the Department must use non-adverse facts available for the two Thyssen resellers, rather than adverse facts available, as in the Preliminary Determination. KTN's Case Brief at 21 and 22.

Assuming that the Department proceeds with its use of facts available, KTN recommends that the Department apply facts available for sales to the home market resellers by adjusting these prices upward to reflect arm's length prices. KTN claims that in determining NV the Department's practice is to accept a respondent's home market sales to its affiliates, rather than sales by its affiliates, where the Department determines that the affiliated-party sales were made at arm's-length prices. KTN's Case Brief at 22, citing Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al. (AFBs), 63 FR 33320, 33341 (June 18, 1998). If KTN's prices to its two German resellers had passed the arm's length test, the Department might have accepted those sales in lieu of sales by the affiliates to unaffiliated customers. Id. Therefore, KTN claims that rather than calculating an "arbitrary price," the Department could apply facts available for the missing sales by simply adjusting KTN's prices to its affiliates upward to a level which would satisfy the Department's arm's-length test.

That failing, KTN continues, the Department may not use facts available that are excessively punitive or aberrant and "demonstrably less probative of current conditions." KTN's Case Brief at 23, quoting *National Steel Corp.* v. *United States*, 913 F. Supp. 593, 596 (CIT 1996) (National Steel). While KTN concedes that the Department has not established a bright-line test for identifying and selecting non-aberrant data, KTN insists the Department articulated two guidelines in response to National Steel:

> (1) the data should be sufficiently adverse so as to effectuate the statutory purposes of inducing respondents to provide the Department with complete and accurate information in a timely manner;
>
> (2) the data should be indicative of the respondent's customary selling practices and rationally related to the transactions to which the adverse facts available are being applied.

See National Steel at 913 F. Supp. 596.

KTN believes that in its Preliminary Determination the Department applied aberrant facts available to KTN's sales to the two home market resellers by replacing KTN's prices to these two customers with prices that are not remotely related to a vast majority of these transactions. KTN cites where, in KTN's view, the Department's methodology causes aberrant results by, for example, applying prices that are double the average price and, in some cases, exceed the average price by 500 percent. KTN's Case Brief at 25 through 27. Therefore, KTN argues, if the Department chooses to apply adverse facts available it must alter its approach to exclude the use of aberrant data.

First, KTN proposes adjusting an arm's-length price factor upward by 2.65 percent to account for the potential additional profit earned by the two Thyssen resellers. KTN's Case Brief at 28, basing the profit calculation on Thyssen's 1997–1998 Annual Report. In the alternative, KTN argues, the Department may rely on its own calculation of KTN's profit on home market sales of the foreign like product. By using the CEP profit rate calculated for the Preliminary Determination, KTN claims that the Department can incorporate an additional adverse element into its application of adverse facts available. KTN maintains that either of these two methods is adverse while remaining indicative of profit levels in the German steel industry. If the Department determines that neither of these profit calculations is sufficiently "punitive," the Department could rely upon the profit level calculated in the Preliminary Determination for calculating constructed profit (based on KTN's sales made in the normal course of trade). KTN's Case Brief at 31.

If the Department insists on finding KTN affiliated with the Thyssen affiliates as it did in the Preliminary Determination, KTN argues, it must apply facts available for the missing home market downstream sales by selecting prices for each CONNUM which exclude aberrant prices. KTN believes that this would have the dual effect of employing data that is adverse to KTN while at the same time avoid using aberrant data. According to KTN, this methodology would employ a "well-accepted statistical principle" that for a normal distribution, more than 95 percent of all observations will fall within two standard deviations of the mean. KTN's Case Brief at 32. This "95 percent confidence interval," KTN suggests, would serve to cap the permissible highest price applicable to each CONNUM, thereby foreclosing the application of outlier prices.

Additionally, KTN argues that the Department should not apply adverse facts available to sales by KTN's wholly-owned home market subsidiary, Nirosta Service Center (NSC), to one of Thyssen's resellers (Reseller 2) because those sales pass the arm's-length test. Based on the Department's own results from the preliminary determination arm's-length computer program, KTN maintains that the weighted-average prices for sales from NSC to Reseller 2 was 105.276 percent of the weighted-average prices to unaffiliated customers. KTN asserts that this ratio is well above the Department's threshold of 99.5 percent for finding sales at arm's length; therefore, the Department should use these arm's-length prices rather than facts available. Finally, KTN alleges that the Department calculated adverse facts available prices for certain sales to the two German resellers that were ordered but not invoiced during the POI; assuming the Department uses KTN's reported invoice dates as the date of sale, it should therefore remove these transactions from its margin analysis.

Petitioners agree with the Department's application of adverse facts available for those home market downstream sales unreported by KTN. KTN's suggestion that its participation in this proceeding thus far demonstrates that it cooperated to the best of its ability is not, petitioners insist, persuasive. Petitioners point to KTN's ability to report the its U.S. resellers' downstream sales as evidence that it should and could have reported its home market resellers' downstream sales as well. Petitioners' Rebuttal Brief at 25.

KTN's "second line of defense," continue petitioners, is similarly unavailing. Accepting KTN's suggestion that it should not be subject to facts available because it could not secure requested information from an affiliate, petitioners caution, "is not an axiom that should be embraced by the Department." Petitioners' Rebuttal Brief at 27. Petitioners point to, *inter alia, Helmerich & Payne, Inc.* v. *United States*, in which, petitioners suggest, the Court sustained the Department's application of adverse facts available where requested information was controlled by an uncooperative unrelated company. Furthermore, petitioners suggest that KTN's argument is misplaced, for the question at hand is not KTN's direct control over Thyssen's affiliates but Thyssen's role as a parent company over both its own affiliates and KTN. According to petitioners, KTN's submission of the U.S. resellers' downstream sales is, at the least, evidence of Thyssen's control of these affiliates; otherwise, this represents *prima facie* evidence of KTN's control of these parties. Petitioners suggest that it is obvious that Thyssen chose to direct compliance only of its U.S. affiliates in an attempt to distort the dumping analysis. By capturing U.S. transactions further along the distribution chain, but withholding this same information regarding home market sales, "Thyssen managed to cap normal value while incorporating U.S. transactions that, by their very nature, should incorporate price-markups that increase U.S. price." Petitioners' Rebuttal Brief at 28.

Petitioners also disagree with KTN's suggestion that the Department could effectively apply facts available to the unreported downstream sales by adjusting the prices of KTN's sales to the affiliated resellers upward to prices which would pass the arm's length test. Petitioners contend that this approach might have some merit if the Department were using non-adverse facts available. Rather, petitioners believe that the Department has correctly determined that KTN's failure to report home market downstream sales warrants an adverse assumption; "KTN's suggestion would be a *de facto* concession to its incorrect premise that the arm's-length test makes unnecessary the collection of downstream home-market data." Petitioners Rebuttal Brief at 29. Petitioners argue that KTN's failure to report the downstream sales by two of Thyssen's home market affiliates in response to the Department's repeated requests calls for the application of adverse facts available. These requests, petitioners note, were based on the statutory and regulatory provisions governing the collection of sales data. Id. at 31.

After detailing the history and regulatory backing for the Department's various decisions both to excuse KTN from reporting certain home market sales and to require certain home market and U.S. downstream sales data, petitioners then turn to KTN's comments concerning the application of adverse facts available. Petitioners dismiss KTN's complaint that the preliminary application of adverse facts available used data that are excessively punitive and aberrant as specious. Rather, insist petitioners, the chosen facts available reflect data that are both sufficiently adverse to encourage future cooperation from the respondent, and indicative of that respondent's customary selling practices.

First, petitioners maintain that KTN confuses the necessary level of adverse inference imputed to missing data.

Citing Certain Helical Spring Lock Washers from the People's Republic of China, 58 FR 48833, 48839 (September 20, 1993) (Lock Washers), petitioners note that where a respondent cooperated generally but inadvertently failed to provide a relatively insignificant amount of data, the Department often assigns the highest non-aberrational margin calculated for a single sale to the missing data. However, petitioners insist, in the instant case the failure by KTN was one of cooperation, not an inadvertent failure, and that the data requested were critical due to the magnitude of missing downstream sales data and the importance of comparing U.S. downstream sales to a complete and accurate set of home market downstream sales. Petitioners' Rebuttal Brief at 43.

Second, petitioners allege that KTN's argument fails to consider that adverse facts available in the instant case is not a corrective measure among sales within KTN's and NSC's home market databases, but a surrogate for entirely missing downstream sales. Petitioners concede that KTN's elimination of so-called "outliers" among the reported sales could, potentially, be applicable if the task were simply to correct for missing data within a given universe of sales. However, petitioners contend, KTN fails to recognize that, once appropriate distinctions are made, the general conclusions in National Steel support the Department's current approach in this investigation. According to petitioners, in National Steel the Court addressed the appropriateness of determining "the highest non-aberrational margin" calculated. This ruling, petitioners insist, did not challenge the Department's criteria, nor even its selection of adverse data per se. Rather, the decision questioned the Department's failure to provide reasoned explanation as to how and why the particular adverse data were used. Petitioners' Rebuttal Brief at 44, citing *National Steel* 913 F. Supp. at 596.

Here, petitioners claim, the Department is not using the highest margin calculated to correct for a missing segment of the first-level sales by KTN and NSC but, rather, the highest NVs as surrogates, with appropriate adverse inferences, for the entirely missing downstream sales. Petitioners suggest that it is reasonable to expect that the pricing patterns for these missing transactions would be significantly higher in contrast to the affiliated-party transfer prices between KTN and NSC and the respective affiliated resellers. KTN's failure to report the relevant downstream sales has deprived the Department of the means of testing precisely how much greater the downstream sales prices would be, petitioners continue. Thus, petitioners argue KTN's benchmarks for finding "outliers" pertain to the wrong universe of sales, and the correct set of sales from which potential benchmarks could be determined are missing due to KTN's lack of cooperation in the first place. Petitioners' Rebuttal Brief at 45.

One available alternative benchmark the Department could use, suggest petitioners, is the measurable percentage difference between the transfer prices and downstream prices reported for KTN's downstream U.S. sales. While those sales are in the United States, rather than the comparison market, argue petitioners, they become the best information reasonably available to suggest what the difference should be in the home market, in light of KTN's failure to provide repeatedly requested downstream sales information. Petitioners claim that, based on KTN's own information, KTN exaggerates the magnitude of the markups from average to highest home market prices; KTN's actual experience in the United States indicates the difference would be significantly less. If anything, petitioners continue, the divergence between transfer and downstream prices in the home market would be even higher than in the United States, given Fried, Krupp's and Thyssen's ascendency as the only primary steel manufacturers in Germany and given the history of anticompetitive practices in the domestic stainless steel markets by Fried, Krupp and Thyssen. Petitioners' Rebuttal Brief at 46.

Petitioners also dismiss KTN's claim that so-called aberrational prices arise from sales of relatively smaller quantities. Petitioners note that the nature of downstream sales is such that larger quantities sold to an affiliate typically result in smaller discrete sales made from that reseller to its downstream customers. As evidence of this phenomenon, petitioners point to the transformation of a relatively small set of sales to U.S. resellers that evolved into a much larger set of resales through U.S. resellers to unaffiliated customers. Id.

Finally, petitioners take issue with KTN's contention that transfer prices from NSC to Reseller 2 are at arm's-length and that the Department should therefore not apply adverse facts available to sales made through that reseller. Irrespective of whether a particular subset of sales may or may not be at arm's-length, petitioners aver, KTN's failure to provide requested resale data through affiliated parties caused the Department to apply adverse facts available for the missing downstream sales. Therefore, petitioners insist that the Department acted appropriately in the Preliminary Determination, and that no changes are necessary for the final determination.

Department's Position: We agree with petitioners that our use of adverse facts available was appropriate in the instant case. In accordance with section 776 of the Tariff Act, we have used partial adverse facts available where KTN failed to provide us with certain sales information concerning two of KTN's resellers sales in the home market. In contrast to KTN's attempts to portray itself as a cooperative respondent which was never adequately apprised of the Department's requirements, we offer the following narrative history of this proceeding:

On August 3, 1998, the Department issued to KTN its antidumping questionnaire, which instructed KTN to report affiliates' resales to unaffiliated customers in both the home and U.S. markets. We also directed KTN to contact the agency official in charge if sales to affiliated parties represented a "relatively small part" of its total sales, or if KTN was unable to collect the necessary information. Our October 9, 1998 section A supplemental questionnaire reiterated this instruction (see question 1.c) and further directed KTN to report the sales of subject merchandise in the home and U.S. market by the specific subsidiaries of Thyssen identified in KTN's section A questionnaire response. Finally, on October 27, 1998, Department personnel contacted KTN's counsel and once again requested a detailed explanation of KTN's reporting of sales to affiliated and unaffiliated customers. During that conversation we instructed KTN to report the downstream sales of certain affiliates and, if it was unable to do so, to provide the Department with a detailed explanation as to why it was unable to report such sales (see Memorandum to the File, "Affiliated Party Sales," October 28, 1998).

On October 28, and November 4, 1998, KTN submitted comments and additional information regarding its downstream sales. KTN indicated in both of these submissions that, in accordance with the Department's instructions, it intended to report downstream sales information by certain home market affiliates and U.S. affiliated resellers, but for assorted other reasons, it did not intend to report its remaining affiliates' resales.

After a thorough review of the record the Department notified KTN that it was still required to report downstream and reseller sales by additional home market and U.S. affiliates (see Memorandum to the File, "Downstream Sales," November 6, 1998). In addition, the Department granted in full KTN's request for an extension of time to submit the required data.

KTN's November 16, 1998, section B and C supplemental responses failed to include the requested reseller sales information requested by the Department. On November 17, 1998, we issued a letter to KTN stating the Department would apply adverse facts available to the missing sales information if we did not receive it by November 23, 1998. On that date, KTN submitted additional affiliated reseller sales information, but again failed to provide the Department with a majority of the requested downstream and reseller sales information.

Therefore, as explained in detail in the "Affiliation" portion of the Preliminary Determination, we also agree with petitioners that it is appropriate to make inferences adverse to KTN's interests pursuant to section 776(b) of the Tariff Act because KTN did not cooperate by responding fully to the Department's repeated requests for specific sales information. We have examined whether KTN acted to the best of its ability in responding to our requests for information. As the chronology presented above and the Preliminary Determination suggest, KTN was instructed in the original questionnaire to contact the official in charge immediately if it had downstream sales to affiliated parties. Therefore, KTN's failure to comply with the Department's instructions led it to report one home market database which included sales to NSC instead of sales by NSC. Based on the facts presented above we determine that KTN had sufficient time to prepare the requested information. Both our original August antidumping questionnaire and our subsequent supplemental questionnaires explicitly directed KTN to report its downstream sales by named affiliates in the home market. While we did eventually conclude that KTN was not required to report certain resales by certain affiliates, from the time of our initial questionnaire, KTN was required to gather all affiliated reseller information.

In addition, KTN posits erroneously the standard that because KTN was unable to convince Thyssen's home market resellers to comply with the Department's request for information it is somehow exempt from the application of facts available. However, based on the fact that we have found KTN to be affiliated with Thyssen (as stated above), it is unreasonable to assume that Thyssen was unable to compel its own resellers to provide the Department with the specific information requested. In addition, we note, as do petitioners in their case brief, that Thyssen encountered no apparent difficulty in persuading its U.S. affiliates to comply with these same requests for reseller information. It is reasonable to assume that Thyssen could have prevailed upon its home market resellers to comply in like fashion with the Department's requests for downstream sales information. Thus, KTN's contention that it acted to the best of its ability and, thus, should not be subject to adverse facts available is unconvincing.

Further, we disagree with KTN's proposed alternatives to the Department's application of adverse facts available. We find misplaced KTN's reliance on National Steel to support its claim that the Department's use of adverse facts available in the Preliminary Determination produced aberrant results. Rather, we agree with petitioners that in citing *National Steel* KTN confuses the necessary level of adverse inference imputed to missing data and fails to consider that adverse facts available in the instant case are not applied as a corrective measure among sales within KTN's and NSC's properly-reported home market databases, but represent an adverse surrogate for downstream sales data that are missing in their entirety owing solely to KTN's failure to respond.

In *National Steel* the Department applied adverse facts available to certain sales unreported by the respondent in the case, Hoogovens. The Court sustained the criteria used by the Department in selecting among the facts available, i.e., that the margin be sufficiently adverse to induce future cooperation yet also be indicative of current conditions, but reversed the Department's application of these criteria to Hoogovens absent a more reasoned explanation. While the instant case bears superficial resemblance to *National Steel*, the fact patterns for the two cases are quite different. In *National Steel* Hoogovens failed to report a small number of sales while in the instant case KTN failed to report entire databases for two of its home market affiliates, thereby sharply limiting the record information from which to select among adverse facts available. KTN's failure to report fully the requested downstream sales data serves to undercut whatever merit its argument might carry precisely because this failure precluded an independent analysis which would allow the Department to establish current conditions for either of the resellers in question. The missing data in this case are of greater significance to our analysis than was the case in *National Steel* for they represent a large volume of KTN's home market sales and would allow us to compare home market downstream sales with U.S. reseller sales. Therefore, by failing to report such sales, the respondent has limited the information available to the Department for review in applying adverse facts available. Thus, as articulated in *National Steel*, because KTN should not be rewarded for providing inaccurate or incomplete data when it is to its advantage to do so, we have selected the only reasonable means available in our application of adverse facts available. As in the Preliminary Determination, we have selected the highest NVs per control number located in either the KTN or NSC databases, and have applied these model-specific NVs to the appropriate sales to the two resellers in question. While KTN contends that our application of adverse facts available produces aberrant results, by failing to report the downstream sales requested KTN has precluded the Department's testing the missing downstream sales prices and, possibly, selecting a different benchmark. As petitioners note, given the market realities of advancing through a chain of affiliated resellers, the prices for downstream sales from the affiliates to the first unaffiliated customer would be higher than the reported transfer prices from KTN or NSC to the affiliated parties. Thus, KTN's arguments that our application of adverse facts available produced aberrant results are based on conjecture, given the absence of the requested and relevant downstream sales data. Therefore, for these final results we have continued to apply adverse facts available in the same manner as our Preliminary Determination.

In addition, we also disagree with KTN's assertion that the transfer prices from NSC to Reseller 2 are at arm's length and that the Department should therefore not apply adverse facts available to sales made through that reseller. Our Limited Reporting Memorandum indicated that we would require the requested downstream sales data for the resellers in question since we had determined that they were not at arm's length. We based this decision on our analysis of KTN's home market database which included KTN's sales to

NSC. It was not until KTN's November 16, 1998 supplemental response that it first reported NSC's downstream sales information and, thus, NSC's sales to Reseller 2. However, the question is not whether a specific subset of KTN's sales to NSC are or are not at arm's length; rather, it is KTN's failure to provide requested data on downstream sales through affiliated parties which caused us to apply adverse facts available. Therefore, because our original decision was based on available record evidence and because we do not conduct our arm's-length test on subsets of sales to any specific customer, we have continued to apply adverse facts available for sales by NSC to Reseller 2.

We agree with KTN, however, that as we have determined that the invoice date is the appropriate date of sale for this final determination (see Comment 1), we incorrectly calculated adverse facts available prices for certain sales to two resellers in the home market which were ordered during the POI, but invoiced after the POI. Thus, we have removed from our calculations all sales with invoice dates falling outside the POI.

For this final determination we have continued to calculate the highest NV reported by control number in KTN's and NSC's home market database and have applied these to KTN's and NSC's sales to its affiliates for which KTN did not report home market downstream sales.

Comment 4: Critical Circumstances

According to KTN, the Department erred in concluding in the Preliminary Determination that critical circumstances exist. KTN claims that the Department (i) examined an inappropriate period in finding "massive imports," (ii) based the pre- and post-petition periods on the incorrect months, (iii) relied upon data drawn from an incomplete list of HTS item numbers, thus inappropriately excluding certain imports of subject stainless sheet in coil, and (iv) did not review import trends over a sufficient period of time.

KTN notes that in making its critical circumstance decision the Department compared the volume of imports during the pre-petition period of April through June 1998 to the post-petition period of July through September 1998. KTN contends that, as in Certain Steel Concrete Reinforcing Bars from Turkey 62 FR 9737, 9746 (March 4, 1997) (Re-Bar From Turkey), the date on which the petition is filed determines whether the month of filing will be included in the pre- or post-petition period, and that where the petition is filed during the first half of a month, the month of filing is treated as part of the post-petition period. KTN's Case Brief at 42, citing the Department's Antidumping Manual, Chapter 10 at 4. KTN argues that since the petition was filed on June 10, 1998 (i.e., the first half of the month), June should be included in the post-petition period.

Furthermore, in making a final determination as to whether an increase in imports since the filing of the petition is massive, KTN argues, the Department must utilize all of the data reasonably available. KTN asserts that it is the Department's well-established practice to base its analysis on the longest period for which information is available, beginning at the date the petition was filed and ending with the effective date of the preliminary determination. KTN's Case Brief at 43, citing, e.g., Re-Bar From Turkey, 62 FR at 9746 and Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160, 9165 (February 28, 1997) (Brake Drums II), both of which used comparison periods of seven months. Thus, KTN avers, while the Department's regulations state only that the period of comparison must be at least three months in duration, the Department has frequently utilized a comparison period of up to seven months. Therefore, KTN maintains that the Department must utilize a seven-month comparison period of June through December 1998 (based on the publication of the preliminary determination on January 4, 1999). Using this comparison period, KTN claims that imports of subject merchandise from Germany increased by only 7.85 percent during the post-petition period over a similar seven-month pre-petition period of November 1997 through May 1998. KTN's Case Brief at 44 and Exhibit 6, citing data drawn from the Census Bureau's "Trade Information On-Line Service."

In addition, KTN asserts that in determining whether critical circumstances exist, the Department must examine trends over a period of time to determine whether import volumes are subject to seasonal fluctuations which could taint the results. KTN acknowledges that while there may not be a direct correlation between the volume of stainless steel imports and the season, historical data clearly indicate that the level of imports fluctuates greatly from one month to the next. Therefore, KTN maintains, the Department's findings are likely to be significantly skewed if it considers a brief post-petition period of just three months.

Finally, KTN argues in a footnote to its case brief that the Department failed to review the full range of HTS numbers which include subject merchandise. KTN takes issue with the Department's characterization of this methodological choice as producing conservative estimates, because the so-called clean HTS numbers (those restricted by definition to subject stainless sheet in coil) do not capture all imports of subject merchandise. That the HTS numbers used "are under-inclusive," KTN notes, "provides no indication as to the direction in which the flaw will skew the critical circumstances estimate." KTN's Case Brief at 41, n. 43.

Petitioners argue that in its Preliminary Determination the Department justifiably concluded that there was a reasonable basis to believe or suspect that (i) the importer knew or should have known that the exporter was selling subject merchandise at less than fair value and (ii) there had been massive imports over a relatively short period, thus satisfying both the second and third criteria of section 733(e)(1) of the Tariff Act. Accordingly, petitioners maintain, the Department appropriately made an affirmative preliminary determination of critical circumstances as to KTN.

In analyzing whether imports of subject merchandise had been massive over a relatively short period of time, petitioners aver, the Department correctly calculated that subject imports had increased by 67.74 percent during the post-petition period scrutinized at the time of the Preliminary Determination. Further, and contrary to KTN's assertions, petitioners contend that the Department correctly excluded certain HTS items which might cover some quantity of in-scope merchandise from its calculations of massive imports, and properly included the month of June 1998 in the pre-petition period. Petitioners argue that the Department made a conservative estimate in calculating whether imports were massive by scrutinizing imports falling under HTS categories that only include sheet and strip in coil form, and by excluding those HTS basket categories which do not indicate whether or not the sheet and strip are in coils. In so doing, petitioners claim, the Department acted properly to exclude potentially out-of-scope merchandise, such as cut-to-length stainless sheet and strip, from its analysis. Moreover, petitioners contend that the excluded HTS categories account, on average, for less than 20 percent of total imports in 1998 of all in-scope merchandise. By including the HTS categories in question, argue petitioners, the critical circumstances analysis would be skewed, and would lead to imprecise

results. Petitioners' Rebuttal Brief at 66 and 67.

Petitioners also insist that the Department properly included the month of June in the pre-petition period. Petitioners maintain that June should be included in the pre-petition period since entries of subject merchandise from Germany during June were almost certainly exported from Germany prior to the petition's filing on June 10. Therefore, suggest petitioners, since the entries in June were the result of KTN's commercial behavior before the petition was filed, June should be included as part of the pre-petition period. Petitioners aver that 19 CFR 351.206(h)(2)(i) allows for such an adjustment of the base and comparison periods where the data are available and the commercial realities of the marketplace so dictate. Petitioners' Rebuttal Brief at 68 and n. 5, citing Uranium From Ukraine and Tajikistan, 58 FR 36640, 36645 (July 8, 1993).

Further, petitioners disagree with KTN's assertion that the Department must use data through December 1998 in making its final critical circumstances determination, arguing that each case must be decided according to its own facts, as suggested by the Department's regulations at section 351.206(h)(2) and (i). However, petitioners maintain, if Census Bureau data again serve as the basis for the final determination, consideration of the months through December 1998 as well as the inclusion of June 1998 in the post-petition period, still indicates that imports of subject merchandise during the relevant periods were massive (i.e., an increase of 21.46 percent). Petitioners' Rebuttal Brief at 69. Therefore, petitioners conclude, irrespective of the periods analyzed, the Department must continue to find that critical circumstances exist with respect to KTN.

Department's Position: We agree in part with KTN and find, pursuant to section 735(a)(3) of the Tariff Act, that critical circumstances do not exist with respect to KTN. While we do find that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales (see Preliminary Determination 64 FR at 99), we have determined that imports for KTN have not been massive. Consequently, the second of the two criteria required for a finding of critical circumstances has not been met.

On March 23, 1999, we requested that KTN provide the Department with monthly shipment data for 1996 through 1998. In response KTN submitted monthly shipment data for October 1995 through December 1998. Because it is the Department's practice to use company-specific information where available (see, e.g., Re-bar From Turkey, and Certain Cased Pencils From the People's Republic of China, 59 FR 55625 (November 8, 1994)), we have based our final determination on KTN's monthly shipment data, rather than the Census Bureau data used for the Preliminary Determination.

We also agree with KTN that we incorrectly included June in the pre-petition period. As stated in Re-bar From Turkey, where the petition is filed during the first half of a month, the month of filing is treated as part of the post-petition period. Since the petition in this case was filed on June 10, 1998, we have concluded that June should be included in the post-petition period. Further, we agree with respondent that it is our normal practice to include in our analysis data concerning the respondent's imports of subject merchandise up to the date of the preliminary determination, where such data are available. See, e.g., Aramid Fiber of Poly-Phenylene Terephthalamide From the Netherlands, 59 FR 23684 (May 6, 1994). In the instant investigation the most reliable data available concern KTN's shipments of subject merchandise, rather than imports into the United States, because the former are limited to the respondent KTN and, unlike the Census data, are limited to merchandise subject to this investigation.

However, we disagree with KTN that it would be appropriate to broaden our analysis to include data through December 1998. Although the "effective date" of the Preliminary Determination fell on January 4, 1999, the date of its publication in the **Federal Register**, the actual date of this determination is December 17, 1998. Because the Preliminary Determination fell in the middle of the month of December, we believe it would be inappropriate to include data for the full month of December in our analysis, as this would mean including data on imports after the Preliminary Determination in our analysis of "massive imports." Accordingly, we have determined that for the purpose of our critical circumstances determination it is appropriate to compare KTN's shipment data for a six-month pre-petition period of December 1997 through May 1998 to a six-month post-petition period of June 1998 through November 1998. Based on this comparison we have concluded that imports of subject merchandise decreased by 2.5 percent. Clearly, then, there was no increase in KTN's imports of subject merchandise during the post-petition period.

With respect to all other exporters who were not subject to this investigation, it is the Department's normal practice to conduct its analysis based on the experience of the investigated companies. See, e.g., Re-bar From Turkey. In Re-bar From Turkey the Department found critical circumstances for the "All Others" category because it found critical circumstances for three of the four companies investigated. However, as we recently determined in Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999) (Hot-Rolled Steel From Japan), we are concerned that a literal application of this approach could produce anomalous results given certain circumstances. Therefore, we believe it is appropriate in this case to apply the traditional critical circumstances criteria to the "All Others" category. First, in determining knowledge of dumping, we look to the "All Others" rate, which is based on the weighted-average margins of all investigated companies. In this case such a weighted-average rate must, of needs, be based on the individual rate of KTN, the sole respondent in this investigation. KTN's rate applied to "All Others" is 25.84 percent. In addition, the Department normally considers a preliminary International Trade Commission (Commission) determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The Commission preliminarily found material injury to the domestic industry due to imports of stainless sheet in coil from Germany and, on this basis, the Department may impute knowledge of likelihood of injury to all other exporters. See Preliminary Determination of the Commission of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom, 63 FR 41864 (August 5, 1998). However, while we have sufficient evidence to impute knowledge of dumping and material injury to the "All Others" category, we also must also evaluate the second criterion required by the statute in making a critical circumstances determination: whether there have been "massive imports" for the "All Others" category. In making this determination we examined the company-specific shipment data provided by KTN, which, as noted, indicate a decrease of 2.5 percent during the post-petition period.

We found, accordingly, that KTN's data provide no evidence of massive imports. Based on that finding we likewise determine that imports from uninvestigated exporters were also not massive during the relevant comparison periods. We also examined U.S. Customs data in an attempt to analyze overall imports from Germany of the subject merchandise. Contrary to our approach in the Preliminary Determination, we examined entries classified under the full range of HTS items which are listed in the "Scope of the Investigation" section, above. These data indicate that imports of subject stainless sheet in coil for Germany as a whole increased by 8.9 percent, still well below the 15 percent threshold for an affirmative finding of "massive imports." However, since the full range of HTS items includes both subject and non-subject merchandise, we believe it is inappropriate to base our critical circumstances finding on these data which are overly broad. We are relying, therefore, upon the scope-specific data supplied by KTN. We find, therefore, that imports from all other exporters were not massive during the relevant period. Based on these factors the Department determines that there are no critical circumstances with regard to imports of subject merchandise from all other exporters in Germany.

Adjustments to Normal Value

Comment 5: Proper Application of Facts Available

Petitioners suggest that the series of customer codes the Department used in its preliminary margin program to identify sales through Thyssen and Krupp affiliates is not complete. With respect to sales through NSC, petitioners identify several customer codes used by NSC which, petitioners assert, the Department did not include in its preliminary margin program. In addition, petitioners argue, certain of KTN's customer codes are reported as Thyssen and Krupp affiliates which were not identified by the Department in its preliminary margin program.

KTN counters that petitioners have cited erroneously to the model-match program whereas the customers are coded correctly in the separate arm's-length test program. According to KTN, the program language cited by petitioners applies only to the application of adverse facts available to unreported downstream sales. KTN concludes that, aside from what KTN terms the inadvertent inclusion of affiliated-party sales that passed the arm's-length test, the model match program is correct and need not be changed.

Department's Position: We disagree with petitioners. To apply adverse facts available with respect to two home market resellers for which KTN failed to provide downstream sales data (see Comments 2 and 3), we included language in our model match program that aggregated all customer codes used by KTN or NSC for sales to these two resellers in their respective sales databases. Although petitioners argue that our list is not exhaustive based on an analysis of customer codes identified in the home market sales files as pertaining to "Thyssen" affiliates (i.e., where CUSRELH equals 3), we determined that no additional codes need to be added to the program, as the additional codes cited by petitioners identify Thyssen affiliates for whom we did not request downstream sales information. Thus, no modification is necessary to this programming language for the final determination. See Limited Reporting Memorandum for further information.

Comment 6: Adjusting for NSC's Processing Costs

Petitioners point out that in the KTN Sales Verification Report the Department indicated that it "[was] unable to trace any expenses related to slitting for FY 1997 because NSC stated that it did not produce cost center reports during this period" and that "NSC was unable to provide any supporting documentation for either the slitting cost or total slitting tonnage." Petitioners' Case Brief at 77, quoting the KTN Sales Verification Report at 56 and 57. Petitioners assert that the Department should accordingly deny KTN's claimed direct adjustments for NSC's slitting costs.

KTN responds that the Department should accept as direct selling expenses NSC's reported slitting costs for 1998 for slitting master coils to customers' orders, and adjust home market prices accordingly. According to KTN, the Department was able successfully to verify these expenses.

Department's Position: We disagree with petitioners and KTN. With respect to NSC's slitting operations, we have determined that the claimed expenses represent direct processing costs which are accurately treated as components of KTN's variable cost of manufacture and COP for the finished products sold to the first unaffiliated customers. Accordingly, for this final determination we have increased COP by NSC's 1998 slitting costs as described in our Final Results Analysis Memorandum and have denied KTN's claim that these costs are direct selling expenses. Because we were unable to verify NSC's fiscal 1997 slitting costs, we have used the verified figures for fiscal 1998 for all relevant slitting costs during the POI.

Comment 7: Early Payment Discounts

Petitioners argue that many of KTN's home market sales appear not to have warranted early payment discounts based on the reported terms of sale. According to petitioners, the time between invoicing and payment for many transactions seemingly precludes such discounts. Petitioners suggest that this fact pattern is contrary to the discussion of early payment discounts in the Department's KTN Sales Verification Report, wherein the Department observed that "KTN stated that as a policy it does not allow customers to take early payment discounts where they fail to meet stated terms, but that on rare occasions, early payment discounts will be granted even though a customer pays late." Petitioners' Case Brief at 78, quoting the KTN Sales Verification Report at 33 (petitioners' emphasis). Petitioners assert that the Department should disallow all home market early payment discounts as adverse facts available or, at a minimum, disallow those early payment discounts where reported dates of invoicing and payment did not qualify KTN's customer for such a discount.

KTN responds that the Department successfully verified its calculation of early payment discounts and argues that the application of facts available is not warranted. KTN argues that in each case in which KTN reported early payment discounts in its sales file, the sales documentation confirmed that the customer had in fact taken the discount. KTN asserts that while the customer may not have qualified for the discount for three of the five sales traces which indicated a discount was given, the actual terms of payment were verified in each case. KTN argues that, as verified by the Department, the date of payment was the date that KTN booked the payment into its accounts receivable system. Therefore, argues KTN, it is possible that a customer sent a payment within the time allowed for qualifying for an early payment discount, but that the payment was not booked into KTN's accounting system for several days.

Department's Position: We agree with respondent. During our home market verification of KTN we conducted thorough sales traces which included ensuring the accuracy of KTN's reported payment and invoice dates. We found no discrepancies in any of KTN's reported payment or invoice dates.

Furthermore, while the time lag between the verified invoice and payment dates might not have appeared to warrant an early payment discount for these transactions, we were satisfied that for those transactions reviewed which included early payment discounts, the customer in fact claimed these discounts and KTN granted them. See, e.g., KTN Sales Verification Report at 59. Therefore, we have continued to allow an adjustment to NV for KTN's reported early payment discounts.

Comment 8: Advertising Expenses

In its opening-day correction letter presented at the KTN sales verification KTN noted that it had incorrectly double-counted expenses attributable to advertising by including them in its ISEs and also reporting them as direct expenses. KTN suggested removing advertising expenses from its ISEs to correct this error. Petitioners claim, however, that information on the record establishes that the remedy suggested by KTN is unacceptable. Petitioners point to the discussion of advertising activities in the KTN Sales Verification Report, specifically the description of these expenses:

> [f]or advertising expenses, KTN explained that Informationsstelle Edelstahl Rostfrei (ISER) is the industry association which conducts a variety of activities to study and promote the uses of stainless steel. KTN presented a list of the association's activities in 1997 and 1998, including brochures and publications, seminars, fairs * * *

Petitioners' Case Brief at 80, quoting the KTN Sales Verification Report at 45.

Petitioners argue that ISER's activities are directed at KTN's current and prospective customers of stainless steel products, not at the customer's customers. Accordingly, claim petitioners, any expenses incurred by KTN related to its membership in ISER (i.e., the association dues) are correctly accounted for as part of ISEs, both for the home market and the United States. Petitioners further assert that if the Department instead decides to take the approach suggested by KTN (i.e., to reduce ISEs by the amount of ISER dues), these expenses should also be reported as direct expenses in the United States.

KTN counters that the Department should continue to treat KTN's reported home market advertising expenses as direct selling expenses. ISER, KTN asserts, undertook promotional and advertising campaigns directed at KTN's customers' customers in the German market. KTN argues that, accordingly, home market advertising expenses qualify as direct selling expenses.

Department's Position: We agree with petitioners that KTN's home market advertising expenses are properly classified as ISEs. The Department has articulated its views with respect to the proper treatment of advertising expenses in, e.g., Gray Portland Cement and Clinker from Mexico, 64 FR 13148, 13169 (March 17, 1999) and Fresh Atlantic Salmon from Chile, 63 FR 31411, 31424 (June 9, 1998). The Department normally considers as direct selling expenses those expenses that result from, and bear a direct relationship to, the particular sales in question. In the case of advertising expenses, to qualify as a direct adjustment, these expenses must also be assumed on behalf of a customer and must be associated specifically with sales of subject merchandise. ISER's activities, however, are aimed at promoting the use of stainless steel in general but not subject merchandise specifically. The expenses incurred for KTN's membership in ISER are not directly related to particular sales by KTN of subject merchandise. As indicated in our KTN Sales Verification Report at 45, ISER conducted activities to study and promote the use of stainless steel generally (i.e., the activities were not limited to stainless steel sheet and strip which is the subject of this investigation). Furthermore, there is no record evidence supporting KTN's claim that ISER's activities give rise to expenses assumed by KTN on behalf of its customers. Therefore, for this final determination, we consider KTN's home market advertising expenses to be indirect in nature. We have denied KTN's claim that these are direct selling expenses, but we have included these expenses in KTN's home market ISEs.

Comment 9: Rebates

As indicated in the KTN Sales Verification Report, NSC's rebates to a particular customer were granted at a given percentage even though NSC had initially reported a different figure in its response. Petitioners urge the Department to apply the corrected rebate percentage for 1998 sales (NSC noted that the rebates at issue applied only to sales in 1998) and to allow no rebates for the items invoiced to this customer during 1997.

Department's Position: For this final determination we have applied the corrected rebate percentage to NSC's eligible 1998 sales, as suggested by petitioners.

Adjustments to United States Price

Comment 10: Unreported U.S. Sales

Petitioners urge the Department to apply partial adverse facts available to five previously unreported U.S. sales discovered by the Department during the verification of KHSP. Petitioners argue that KHSP never included these sales in its list of corrections, nor did it provide the total quantity and value of these missing transactions in its opening-day corrections letter. The unreported U.S. sales, petitioners maintain, do not constitute minor corrections but instead new information that should be rejected by the Department and removed from the record of this investigation.

As stated in Lock Washers (58 FR at 48835), aver petitioners, the Department's policy concerning unreported sales discovered at verification is to accept for the record only that information necessary to establish the magnitude of any omissions. In Lock Washers, petitioners point out, the Department returned sales documentation concerning the unreported sales identified at verification. Petitioners also point to the investigation on Belgian Stainless Plate in Coils, in which the Department refused to take or even review complete sales data (other than the invoice) for a single unreported sale.

Petitioners assert that it is the Department's established practice to apply total facts available to missing sales information if the missing data constitute five percent or more of a sales database, or partial facts available when the missing or unreported data make up less than five percent of a given sales database. Petitioners suggest that the Department, in a manner consistent with Lock Washers (in which it resorted to partial facts available for the respondent's unreported sales data), should apply as partial adverse facts available the highest margin from the petition or, at a minimum, the highest margin calculated for a single sale based on the correctly reported CEP transactions. Petitioners contend that judicial precedent further supports the application of facts available with respect to the KHSP sales at issue. Petitioners emphasize that in *Persicio Pizzamiglio, S.A.* v. *United States*, 18 CIT 299 (1994), the Court upheld the Department's use of facts available based on unreported home market and U.S. sales.

KTN responds that the Department's acceptance at verification of the previously unreported U.S. sales was appropriate. KTN argues that petitioners' reliance on Lock Washers is

misplaced. The facts in that case, KTN argues, are not remotely comparable to the facts of this case. Citing a June 7, 1993 letter to respondent's counsel in the Lock Washers proceeding, KTN notes that the Department rejected the sales documentation at issue because it reflected "entirely new contracts covering a significant portion of total U.S. sales quantity and value." KTN's Rebuttal Brief at 29. However, KTN argues, the new KHSP sales identified at verification were neither significant nor entirely new. KTN asserts that KHSP had simply misclassified four of the five previously unreported sales as non-subject merchandise and that only one was entirely new and previously unidentified. Furthermore, argues KTN, the sales at issue can hardly be considered significant given the number of U.S. transactions. KTN also disputes petitioners' claimed parallels between this case and Belgian Stainless Plate in Coils, claiming the Department has yet to issue a final determination; thus, KTN insists, there is no "precedential authority contained in a verification report in a different investigation with different facts." KTN's Rebuttal Brief at 30.[7]

KTN further claims that petitioners have mischaracterized the Department's normal practice with respect to the reporting of new sales at verification. The Department's Antidumping Manual, argues KTN, clearly establishes that the decision whether or not to accept new sales at verification is to be made on a case-by-case basis. KTN cites as an example of this case-specific approach Disposable Pocket Lighters from the People's Republic of China, 60 FR 22539, 22365 (May 5, 1995) (Pocket Lighters from the PRC), where the Department discovered three previously unreported invoices at verification. In that determination, KTN points out, the Department concluded that the omissions "were inadvertent and the corrected information was verified." KTN's Rebuttal Brief at 31, quoting Pocket Lighters from the PRC. The Department further indicated in its determination that "the new sales represent a small percentage of total sales during the POI and, at verification, were not hidden or misrepresented." Id. KTN argues that, as in Pocket Lighters from the PRC, the Department should accept the new sales presented at verification, as they represent a small percentage of total sales and were neither hidden nor misrepresented.

[7] The Department's final determination in Belgian Stainless Plate in Coils was published in the **Federal Register** one day after the filing of KTN's rebuttal brief.

Finally, KTN argues that in the event the Department agrees with petitioners that it cannot accept the new sales, it should still use the documentation provided by KHSP on the record as facts available. KTN suggest this approach would be consistent with Porcelain-on-Steel Cooking Ware from the People's Republic of China, 62 FR 32757 (June 17, 1997) (Porcelain-on-Steel Cookware), in which the Department determined that no adverse inference was warranted with respect to three new invoices discovered at verification. KTN's Rebuttal Brief at 32.

Department's Position: We agree in part with petitioners. In Certain Cut-to-Length Carbon Steel Plate From South Africa, 61 FR 61731 (November 19, 1997) (Steel Plate from South Africa), the Department applied the highest non-aberrational margin to three of respondent Highveld's unreported U.S. sales which were discovered at verification. The Department rejected Highveld's arguments that there was no significant failure to report the U.S. sales and that the effect of these omissions was minor. In fact, in that case the unreported U.S. sales represented an even smaller percentage of total sales than do KHSP's newly-identified transactions. Similarly, in the earlier Lock Washers case the Department took this same approach and applied the highest non-aberrational margin calculated for a single sale. It is also important to note that, as in this case, the respondent in Lock Washers identified the sales at issue at the outset of verification. Accordingly, we are not convinced by KTN's suggestions that disclosure of such sales at verification somehow warrants their acceptance for calculating KTN's weighted-average margin. In addition, by the time the Department conducted its U.S. verification, KHSP submitted three U.S. sales databases (on September 29, 1998, November 16, 1998, and January 6, 1999) reflecting various revisions. Thus, KTN had ample opportunity to review KHSP's submitted data for completeness.

With respect to KTN's reliance on Porcelain-on-Steel Cookware, we note that the facts in that case are distinguishable from those in this investigation. In that case the three unidentified invoices discovered at verification were relevant to the calculation of factors of production for steel inputs and did not constitute unreported sales intended for inclusion in the Department's price-to-price margin calculations.

We do not accept, however, petitioners' characterization of KHSP's omissions as "more egregious" than those in Lock Washers. Although KHSP did not provide the aggregate volume and value of these sales in the opening-day correction letter submitted for the record, Exhibit 1 to the KHSP Verification Report makes clear that KHSP identified these missing sales at the outset of verification. See KHSP Verification Report, Exhibit 1 at 3 and 10 through 16. Furthermore, KHSP provided a complete packet containing copies of each of the relevant invoices which the Department included on the record as a verification exhibit. Nevertheless, for the reasons stated above, we find that KHSP had three opportunities spread over four months to provide the Department with a complete listing of its U.S. sales. In response to its failure to do so, as adverse facts available, we are applying the highest non-aberrational margin calculated based on KTN's correctly reported CEP transactions to the unreported sales and have included these transactions in our calculation of the overall weighted-average margin.

Comment 11: Facts Available for Reseller's Indirect Selling Expenses

KTN contends that the Department should no longer apply facts available for ISEs for each U.S. sale made by one of Thyssen's affiliated resellers based in Germany because after the Preliminary Determination KTN provided this reseller's ISEs which were verified without discrepancy.

Department's Position: We agree with KTN. At the time of our preliminary determination KTN had not submitted information regarding the ISEs incurred by the reseller at issue. However, as part of its January 6, 1999 supplemental response, KTN reported the ISEs for this reseller. During our U.S. sales verification we specifically reviewed the ISEs for the reseller in question and noted no discrepancies. Therefore, for these final results we have used the verified ISEs as reported for this reseller.

Comment 12: U.S. Credit Expenses

KTN maintains that in its Preliminary Determination the Department erroneously rejected KTN's reported credit expense for CEP sales and recalculated the expense using the credit period beginning with the date that KNE shipped the product from the European port (reported as SHIPDAT3U) rather than the date of shipment to the customer from the U.S. port (reported separately as SHIPDAT1U). KTN claims that using the earlier date of shipment from Germany overstates U.S. credit expenses by double-counting the time that

merchandise is in transit between the European and U.S. ports; KTN claims it has included this time in its ICC. KTN argues that upon shipment to KHSP from the European port KNE bills KHSP for the merchandise; at that time KHSP recognizes the products as inventory on its books and records its value in its accounts payable. Similarly, KNE books the item as a sale to KHSP and includes the total in its accounts receivable due from KHSP. Thus, the time between SHIPDAT3U and SHIPDAT1U represents a period of credit being extended by KNE to KHSP, not by KHSP to the unaffiliated customer. KTN asserts that it has properly recognized this period by including the average time at sea as part of its ICCs in Germany. Therefore, under the Department's own practice, KTN contends, the correct date of shipment to use in the calculation of U.S. credit for CEP sales is the date of shipment to the final U.S. customer from the U.S. port. KTN's Case Brief at 56, citing Brake Drums and Brake Rotors From the Peoples Republic of China, 61 FR 53190, 53195 (October 10, 1996) (Brake Drums I).

Petitioners take issue with KTN's attempt to describe these sales as if they were made from KHSP's inventory in the United States. The sales in question, petitioners note, are not of merchandise that enters KHSP's inventory and is then later sold to the unaffiliated customer, but instead are sales that have been ordered by the final U.S. customer with the terms of sale set well before entry into the United States. Petitioners' Rebuttal Brief at 55. Dismissing KTN's references to KHSP's "accounting inventory" as a "clever semantic cover," petitioners point to KTN's own statements for the record that it does not maintain inventory in the United States, but rather, makes direct shipments from Germany to the first unaffiliated customer in the United States through the CEP agent KHSP. Id. at 56. Petitioners accuse KTN of seeking to lower its margin by shifting the ex-factory-to-U.S. port expenses from its U.S. credit (a direct expense) to its foreign ICC (an indirect expense). Thus, petitioners continue, a Deutsche-mark interest rate would apply and the amount would not be deducted from the CEP starting price. However, petitioners maintain that the valuation of merchandise during this period is in U.S. dollars, as demonstrated by the documentation of transactions from KTN through KNE to KHSP. Therefore, petitioners submit, U.S. credit expenses should be calculated based on the time from KNE's shipment from the European port (SHIPDAT3U) using a dollar-denominated interest rate.

Department's Position: We agree in part with petitioners. In response to our section A supplemental questionnaire, KTN reported that "[i]t typically is not KHSP's practice to maintain an inventory of the subject merchandise for its customers. During the POI, KHSP did maintain a small inventory of subject merchandise, but did not sell this merchandise." KTN's October 23, 1998 supplemental response at 6. KTN reiterated this point in a December 1, 1998 submission on critical circumstances: "[a]s stated in prior submissions, KTN does not maintain inventory in the United States." Therefore, we conclude that during the POI KHSP did not have any sales of subject merchandise made out of inventory. This being true, all of KTN's sales during the POI were made-to-order sales that were drop-shipped from KNE in Germany (i.e., direct shipments). Therefore, we disagree with KTN's characterization of these transactions as KHSP's "inventory sales."

Further, we disagree with KTN's conclusion that Brake Drums I articulated a practice of using the date of shipment from the U.S. port to the U.S. customer as the correct date of shipment in calculating the credit period for CEP sales. In fact, in Brake Drums I the Department stated that:

> [i]n CEP cases where the merchandise received is shipped to the U.S. customer from inventory of a U.S. affiliate, the credit period begins from the point of shipment from U.S. inventory. However, in the case of [respondent] Laizhou/Shenyang merchandise is shipped to the U.S. customer directly from the foreign port. Therefore, we have relied on a credit period beginning with the date of the bill of lading at the foreign port.

Brake Drums I, 61 FR at 53195.

Therefore, we have recalculated KTN's credit expense based on the date of shipment from the German port (SHIPDAT3U) rather than shipment from the U.S. port, which is fully consistent with Brake Drums I.

However, we agree with KTN's assertion that it recognized this time period by including the average days at sea as part of its ICCs in Germany. Therefore, in order to avoid double-counting the time in transit by including this period in both KTN's U.S. credit and its foreign ICCs, we have adjusted the latter figure to account for time at sea, as reported in KTN's section C supplemental response.

Comment 13: Proper Shipping Date for U.S. Resales

Assuming, arguendo, that the Department will again recalculate credit expenses for either KTN or KHSP sales and continues to use SHIPDT3U, KTN insists that the Department must ensure that the shipment date field used to calculate the payment days for individual transactions contains a date. KTN claims that a subset of the U.S. sales reported by KHSP represent transactions where the merchandise was directed to a different customer after the product's arrival in the United States (e.g., in the case of a canceled sale), or resales of merchandise initially rejected by the original U.S. customer after delivery. Thus, irrespective of the larger issue of KTN's proper credit period, the appropriate date of shipment for these resales is the date of shipment within the United States (SHIPDT1U). Therefore, KTN argues that should the Department continue to use the date of shipment from the European port for KHSP's other U.S. sales, the Department must still use SHIPDT1U for this subset of sales.

Department's Position: As stated in response to Comment 12, we have continued to use SHIPDT3U in our calculation of U.S. credit expenses. However, we agree with KTN that in those instances where merchandise was resold by KHSP after arrival in the United States, the date of shipment to use in our calculation of imputed credit expenses should be the date KHSP shipped the merchandise to the final U.S. customer (SHIPDT1U), and not the date of the original shipment from KNE in Germany. Therefore, we have revised our program to account for such resales in the United States. See Ministerial Errors Memorandum.

Comment 14: Short-Term Interest Rates

KTN states that as part of its Preliminary Determination the Department applied an interest rate of 9.5 percent, the prime rate plus one percent, to calculate U.S. credit expenses because KTN did not report Fried. Krupp's short-term interest rate, and because the reported U.S. short-term borrowing rate did not represent an arm's-length rate. However, KTN claims that because, as part of the post-preliminary home market and U.S. verifications, both KTN and KHSP provided information on their respective short-term borrowing rates that correct these deficiencies, these verified rates should be used for the final determination.

Petitioners raise a number of issues relevant to both KTN's home market and U.S. interest rates. First, petitioners urge the Department to reject as untimely information the figures KTN provided at verification regarding its home market interest rate. Petitioners suggest that the

Department instead either allow no adjustment whatever for home market credit as adverse facts available, or rely upon a second rate reviewed at the home market verification as non-adverse facts available.

Regarding the U.S. interest rate, petitioners assert that, despite numerous requests, KTN never supplied the necessary supporting data for the interest rates available to Krupp USA Financial Services, Inc. (KFSI). Even accepting the specific reported rate, petitioners claim, the information KHSP did present at verification regarding KFSI demonstrates that the interest rate is not at arm's length. Furthermore, petitioners contend that neither the Krupp nor the KHSP interest rate can be applied to U.S. sales since neither is based on U.S. dollar-denominated lending.

Petitioners suggest as facts available the use of the interest rate KHSP charges its U.S. customers for late payments. Petitioners argue that this rate (i) is not skewed by intra-company affiliated transactions, (ii) accurately reflects the value on receivables based on KHSP's actual commercial practice, (iii) ensures arm's length treatment, (iv) is based on dollar-denominated lending and thus is in keeping with the Department's policy of matching the denomination of the interest rate to that of the transactions to which it applies, and (v) ensures parity with the calculated net interest expenses for U.S. sales.

Petitioners also object to KTN's failure to weight-average the interest rates by the outstanding loan amounts, and chides KTN for failing to even list the amounts of these loans in the relevant exhibit to its supplemental response. For the final determination, petitioners urge the Department to continue to base KTN's U.S. interest rate on the prime rate plus one percent, or 9.5 percent. Petitioners' Case Brief at 57.

In rebuttal, KTN disagrees with petitioners assertions concerning home market interest rates, arguing that they have overlooked the fact that the Department's verification outline explicitly requested that KTN provide Fried. Krupp's short-term interest rate. In response to this request, claims KTN, it included with its opening-day correction letter the short-term interest rate for Fried. Krupp which was subsequently verified by the Department. Furthermore, KTN argues, the Department has the option of accepting new information at verification provided it serves to corroborate, support, or clarify information already on the record.

Further clarifying its position, KTN argues that, contrary to petitioners' assertions, KHSP never claimed that its short-term borrowings were from Fried. Krupp. Rather, KTN contends, KHSP's short-term borrowings were made through a Krupp central cash management system administered by KFSI. KTN argues that it has never claimed that the Fried. Krupp short-term Deutsche-mark-denominated interest rate should be applied to its U.S. sales. KTN asserts that the short-term interest rate that should be examined is KHSP's borrowing rate from the cash management system run by KFSI, which is an entirely separate cash management system from that run by Fried. Krupp. KTN's Rebuttal Brief at 46.

Regarding petitioners' concerns about the arm's-length nature of KHSP's interest rate, KTN argues that the Department examined this information during verification and found no discrepancies. Furthermore, contends KTN, petitioners assume that since KHSP is borrowing from an affiliated party, the interest rate charged by KFSI cannot be at arm's length. However, KTN argues that a given percentage of Krupp USA's capital comes from banks at market rates and the remainder comes from the central Krupp (not Fried. Krupp) cash management system. KTN also cites in support of its argument a passage from the KFSI cash management agreement.

KTN also takes issue with petitioners' questioning the methodology of deriving a rate as a simple average of daily rates during the POI. KTN contends that whether the rates were based on a simple average or a weighted average, the short-term interest rate would be almost identical. KTN's Rebuttal Brief at 47.

Finally, KTN urges the Department to use the Federal Reserve rate at the time of the transaction if KHSP's reported short-term interest rate is not used, and not the rate assessed by KHSP as late-payment interest. KTN suggests that this approach would be consistent with the Department's practice, in the absence of borrowings in the proper currency, to rely upon publicly-available information to establish a short-term interest rate. Id., at 48, citing Flat Products From Canada, 64 FR at 2176.

Department's Position: We agree with KTN. Regarding KTN's home market interest rate, as stated in the KTN Preliminary Analysis Memorandum at 12, KTN failed to provide specific information requested in its November 16, 1998 Section B supplemental response regarding the average short-term interest rate for Fried. Krupp, one of KTN's parent companies. Rather, KTN reported the rate at which it borrowed funds from Fried. Krupp. As a result, in the Preliminary Determination we used this rate as non-adverse facts available on the basis that the average rate of borrowing between KTN and Fried. Krupp would reasonably be lower than the average lending rate between Fried. Krupp and an unaffiliated lender. However, as part of our January 7, 1999 home market verification agenda, we specifically requested this information again. During verification KTN presented the Department with information pertaining to Fried. Krupp's short-term cost of borrowing which was verified without discrepancy. While petitioners note that KTN failed to report this information when originally requested, it did comply with our later requests. Therefore, for these final results we have used the average short-term interest rate between Fried. Krupp and its unaffiliated lender.

In addition, KTN's Section C supplemental response indicated that KHSP's U.S. short-term borrowing rate for loans from Krupp's central cash management system were not at arm's length when compared with publicly-available information placed on the record by KTN. See KTN's September 28, 1998 Section C supplemental response. Because, as indicated above, KTN did not provide the requested information on the specific short-term rates at which Fried. Krupp borrowed, and because the submitted rates were not at arm's length, we preliminarily recalculated KTN's credit expense using the publicly-available prime lending rate of 8.5 percent reported by KTN, increased by one percent to approximate a commercially-available lending rate. However, as part of its January 6, 1999 submission, KTN provided the short-term borrowing rate from the Krupp central cash management system run by KFSI. In addition, our U.S. verification agenda again requested that KTN provide information pertaining to the short-term borrowing rate of Fried. Krupp. See U.S. Verification Agenda, January 23, 1999 at 14. As part of KTN's U.S. verification we examined KHSP's annual cost of borrowing, comparing the short-term borrowing rates between KHSP's affiliated and unaffiliated lenders, and noted no discrepancies. See KHSP Verification Report at 21. Based on this comparison, we have determined that KHSP's affiliated-party lending rate was at arm's length. Therefore, based on information submitted on the record subsequent to our Preliminary Determination, for these final results we have used KHSP's short-

term lending rate from Krupp USA Financial Services.

Comment 15: U.S. Indirect Selling Expenses

To derive its U.S. ISE ratio, KHSP first isolated those expenses it could attribute specifically to its Wayne, New Jersey sales division which handled only sales of subject merchandise. KHSP then allocated a portion of the remaining "unidentifiable" selling expenses (i.e., those attributable to KHSP's selling activities generally) to sales of subject merchandise on the basis of sales value. Finally, KHSP divided the sum of the Wayne office expenses and the allocated general selling expenses by the total value of sales through the Wayne office. Petitioners argue, however, that the use of an ISE ratio applicable to the operations of KHSP as a whole (i.e., total KHSP ISEs divided by total KHSP sales value) is preferable. Petitioners' Case Brief at 45.

Furthermore, petitioners argue that the Department should deny KHSP's proposal to reduce the total ISEs by amounts for foreign exchange gains and losses and interest expenses, as they are applicable specifically to KHSP's CEP sales operations. With respect to interest expenses, petitioners argue, KHSP has failed to provide any evidence demonstrating that the amount of ISEs should be reduced by interest expenses. Petitioners cite Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 64 FR 12927 (March 16, 1999) (Flat Products from Korea III), wherein the Department stated that:

> The Department disagrees with respondents' assertions that the Department's policy is to exclude interest expenses of U.S. sales affiliates from U.S. indirect selling expenses because imputed credit and inventory carrying cost expenses are already deducted from the starting price. . . . [I]nterest expenses incurred by sales affiliates may relate to activity other than the financing of inventory or accounts receivable, and still be associated with sales of subject merchandise.

Petitioners' Case Brief at 46, quoting Flat Products From Korea III, 64 FR at 12931.

Regarding its allocation of U.S. ISEs, KTN argues that the petitioners' suggested methodology for allocating these expenses is at odds with section 772(d) of the Tariff Act, which authorizes the Department to deduct from the CEP starting price only those expenses incurred in selling subject merchandise. Petitioners' methodology, asserts KTN, would serve to overstate ISEs because it would include those expenses incurred by KHSP's Atlanta office which deals primarily with non-subject merchandise. In contrast, argues KTN, its methodology results in a more accurate calculation and is in accordance with section 772(d) of the Tariff Act in that it isolates expenses related to the sale of subject merchandise. KTN's Rebuttal Brief at 33. KTN clarifies that only where it was unable to identify which sales office incurred a given expense did it allocate the expense on the basis of overall sales value. KTN argues that the Department should accept its reported ISE ratio for U.S. sales in light of the Department's successful verification of these expenses.

With respect to the second argument raised by petitioners, KTN responds that it appropriately deducted foreign exchange gains and losses and interest expenses from its total ISEs. As noted, because section 772(d) of the Tariff Act authorizes the Department to deduct from the CEP starting price only those ISEs incurred in the sale of subject merchandise, and because the record indicates that KHSP clearly incurred no foreign exchange gains or losses on the sale or purchase of subject merchandise during the POI, a downward adjustment to exclude these amounts is justified. KTN's Rebuttal Brief at 35.

Similarly, argues KTN, an adjustment for net interest expenses is warranted. KTN disputes petitioners' suggestion that these expenses should be included in both its financial expenses and its ISEs. In fact, KTN claims, in Flat Products from Korea III the Department stated that it would exclude "some portion or all of a U.S. sales affiliate's interest expenses in its calculation of indirect selling expenses. * * * To the extent that a U.S. affiliate's interest expenses are associated with non-subject merchandise, the Department does not deduct them from the CEP starting price." Accordingly, the Department "excluded interest expenses associated with non-subject merchandise" and then "reduced the remaining amount for interest expense for an amount attributable to financing of accounts receivable and inventory, leaving nothing left to include in the calculation of indirect selling expenses." KTN's Rebuttal Brief at 36, quoting Flat Products From Korea III, 64 FR at 12931. KTN argues that the Department, in a manner consistent with Flat Products from Korea III and section 772(d) of the Tariff Act, should allow a downward adjustment to KHSP's reported ISEs for interest expenses, as "there is no portion of KHSP's interest expense remaining to include in the calculation of indirect selling expenses after (1) excluding interest expenses associated with non-subject merchandise, and (2) reducing the remaining interest expense to account for amounts already reported as imputed expenses." *Id.*

Department's Position: We agree in part with petitioners. With regard to the manner in which KHSP allocated its U.S. selling expenses, as noted above, KHSP was able to identify certain ISEs associated with its Wayne, New Jersey sales office. Those expenses which could not be attributed specifically to the Atlanta or Wayne offices were allocated to Wayne on the basis of sales value. KHSP then summed the total expenses attributable to the Wayne operations and those expenses allocated to sales from Wayne and divided by the Wayne sales value to derive its ISE ratio. See KHSP Verification Report at 23 through 26 and Exhibit 8. While petitioners argue for a company-wide approach, we find no evidence that KHSP's allocation methodology is distortive or inaccurate. With respect to the first step in KHSP's allocation of its ISEs (i.e., the isolation of the Wayne office's expenses), we verified fully that the Wayne office dealt in subject merchandise exclusively as well as the manner in which KHSP determined which expenses to include. Regarding the second step in the allocation process (*i.e.*, the allocation of "unidentifiable" expenses on the basis of Wayne office's sales value), we have no reason to believe this approach results in distortions or somehow understates U.S. ISEs.

In a recent administrative review involving Japanese tapered roller bearings the Department employed an approach to recalculate respondent NTN's ISEs similar to the second step in KHSP's allocation. We first summed NTN's total U.S. ISEs, multiplied this amount by the ratio of covered merchandise to total sales and, finally, divided the resulting figure by sales of covered merchandise to derive an ISE ratio. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 63 FR 63860, 63867 (November 17, 1998). For this final determination we have concluded that the manner in which KHSP allocated its U.S. ISEs is neither distortive nor inaccurate and, in fact, reflects accurately KHSP's experience with respect to sales of subject merchandise during the POI. We have, accordingly, accepted KHSP's methodology.

However, we agree with petitioners concerning KHSP's claimed downward adjustments to U.S. ISEs for exchange rate gains and losses and interest expenses. In Belgian Stainless Plate in Coils the Department, over the respondent's objections, included interest expenses in the calculation of ISEs because the record did not demonstrate that these expenses arose from the financing of inventory or accounts receivable and were not associated solely with non-subject merchandise. To the extent that interest expenses are shown to relate to the financing of accounts receivable and inventory, we normally will not include them in the calculation of ISEs. In Belgian Stainless Plate in Coils, however, we concluded that

> * * * the Department has included U.S. affiliate interest expenses in the calculation of U.S. ISEs independent of our calculation of imputed credit expenses, even if the interest expenses in question constituted part of the basis for determining the interest rate used to calculate the imputed credit expenses. * * * [W]e note that the record evidence is not clear these interest expenses reflected short-term debt. More importantly, the short-term or long-term nature of the debt is irrelevant in this context, given that either type may relate to subject merchandise and involve activities other than financing of inventory or receivables.

Id., 64 FR at 15488.

As in Belgian Stainless Plate in Coils, we are unable to determine from the record whether or not KHSP's claimed interest offset to ISEs relates to the financing of inventory or accounts receivable. The only information on the record relating to KHSP's interest expenses is a worksheet prepared for verification identifying the amount of interest expenses recorded under certain account codes. See KHSP Verification Report at Exhibit 8. This itemization does not allow us to determine the nature of the loans for which these interest expenses were incurred, nor has KHSP provided any narrative explanation regarding such expenses. Accordingly, for this final determination we have denied KTN's claimed offset to ISEs for interest expenses. KTN has likewise provided no convincing evidence to support its claimed downward adjustment to U.S. ISEs to account for exchange rate gains and losses. The most we are able to determine from the record is the aggregate amount of POI exchange rate gains and losses reflected in a worksheet which accompanies Exhibit 8 of the KHSP Verification Report. Absent information regarding the circumstances under which these gains and losses were incurred, we have no basis for excluding them from KHSP's ISEs; accordingly, we have denied KHSP's offset to its selling expenses for exchange rate gains and losses.

Comment 16: Charges by Affiliated Freight Carrier

Petitioners argue that, as articulated in a Departmental memorandum in Large Newspaper Printing Presses from Japan, the Department requires evidence from a respondent that charges for goods or services provided by affiliated parties were made at arm's length. However, petitioners claim, KTN has provided no such evidence with respect to charges it incurred for international freight services provided by an affiliated carrier. In fact, maintain petitioners, an analysis which it conducted using KTN's sales data demonstrates that the international freight charges for a substantial portion of those transactions involving KTN's affiliated carrier were not at arm's length. As non-adverse facts available, petitioners argue that the Department should replace those reported international freight expenses charged by an affiliated carrier deemed not to reflect arm's-length prices with port-specific, weighted-average, arm's-length ocean freight charges derived from unaffiliated CEP freight transactions.

KTN responds that freight charges for those U.S. sales shipped by an affiliated carrier, when evaluated in total, were at arm's-length prices and, as such, do not warrant an adjustment. Using the same arm's-length methodology employed by petitioners in their October 15, 1998 deficiency comments, KTN claims to have performed an analysis of the revised data submitted with its January 6, 1999 supplemental response. The results of its analysis, argues KTN, clearly demonstrate that the transactions between KNE and the affiliated carrier were at arm's length for two of the three U.S. ports to which the carrier shipped merchandise. KTN's Rebuttal Brief at 37 and 38.

If the Department determines that an adjustment is necessary, avers KTN, it should disregard petitioners' argument for an adjustment factor which is based on prices to different final destinations. Instead, argues KTN, the Department should conduct an analysis of the correct arm's-length adjustment which uses as its final point of comparison the relative prices for all transactions at issue rather than the prices by port of destination.

Finally, KTN argues, if the Department determines that a port-specific adjustment is appropriate, it should only apply an adjustment factor to those transactions shipped to the specific port for which ocean freight charges were deemed not to be at arm's length.

Department's Position: We agree with petitioners that, for those transactions shipped by KTN's affiliated carrier, the claimed expenses were not at arm's length. After reviewing the data from KTN's January 6, 1999 submission, we have determined that for two of the three ports to which the affiliated carrier shipped merchandise, the affiliated carriers' prices were not at arm's length when compared to non-affiliated carriers' prices to the same port. The results of our analysis are more fully described in the Final Analysis Memorandum. We have not adopted KTN's suggestion to base our arm's-length analysis on the relative prices for all transactions. This approach would compare prices charged by unaffiliated and affiliated carriers shipping to different destinations for which ocean freight charges would presumably vary widely. For this final determination we have applied a port-specific adjustment factor as described in our Final Analysis Memorandum to those sales transactions shipped by KTN's affiliated carrier for which ocean freight charges were deemed not to be at arm's length.

Comment 17: Warranty Expenses

In the home market KTN reported expenses associated with warranty claims on both a transaction-specific and an allocated basis. However, KTN reported only allocated warranty expenses for its U.S. CEP sales. Petitioners argue that KTN was uncooperative by refusing to provide transaction-specific U.S. warranty expenses incurred by KHSP for CEP sales. Given that KTN was able to report transaction-specific warranty claims in the home market, petitioners see no reason why KTN would have been unable to do the same with respect to U.S. CEP sales. Petitioners offer as evidence of KTN's ability to report these expenses on a transaction-specific basis KTN's statement in its September 29, 1998 questionnaire response that "respondents maintain a log of credit and debit memos that includes warranty claims for the subject merchandise." Petitioners' Case Brief at 51, quoting KTN's September 29, 1998 section C response at C–49.

Petitioners suggest that KTN's attempt in its supplemental questionnaire response to justify an allocation in preference to transaction-specific reporting is not adequate. In fact, petitioners contend, the fact patterns regarding U.S. warranty claims bear a similarity to those of the home market for which KTN reported sale-specific

warranty expenses. Petitioners further argue that while the Department found only minor discrepancies in its verification of KTN's home market transaction-specific warranty expenses, such was not the case for its allocated warranty expenses. KTN officials admitted, petitioners claim, that the warranty expense total was calculated incorrectly due to the erroneous inclusion of a billing adjustment category among warranty claims when compiling the response. Petitioners' Case Brief at 52. In light of these alleged discrepancies, petitioners urge the Department to apply the highest single absolute value for reported CEP warranty expenses to all CEP sales of prime merchandise and to use zero for home market warranty expenses. Id. at 53.

As an additional matter, petitioners maintain that the respondent's reliance throughout the course of this investigation on AFBs, 62 FR 2081 (January 15, 1997) is misplaced. Petitioners claim that AFBs did not, as KTN suggests, advance the proposition that average allocated warranty expenses are preferable to transaction-specific expenses. Rather, contend petitioners, the Department stated in AFBs that it would accept allocated warranty expenses provided it was not feasible for the respondent to report the expense on a more specific basis.

Petitioners' argument, KTN asserts, is a misinterpretation of both the law and the facts in this case. KTN argues that while the Department's regulations express a preference for transaction-specific reporting as a whole, the Department has for many years explicitly recognized that warranty expenses may be reported on an allocated basis. KTN argues that the reason for this practice is twofold. First, KTN asserts, warranty obligations arise from the universe of all transactions for which the warranty is offered whereas warranty expenses arise only on the few transactions for which the warranty is invoked. KTN argues that it is wrong to attribute the cost of a general obligation only to those transactions for which a specific expense was incurred. KTN's Rebuttal Brief at 40. Second, claims KTN, the Department has noted in AFBs that "it is not possible to tie [POI] warranty expenses to [POI] sales, since the warranty expenses can be incurred on pre-[POI] sales. Likewise, [the respondent] may not incur warranty expenses on [POI] sales until a future time period." Id., quoting AFBs 62 FR at 2098 (KTN's redactions).

KTN argues that, like the respondent in AFBs, KTN and KHSP have reported warranty expenses in the most feasible manner given each company's circumstances and that its chosen methodology is neither distortive nor inaccurate. KTN asserts that it attempted to assign home market warranty expenses to specific product groups, but discovered that, due to limitations arising from claims where information regarding product type was not recorded or not available, it was not possible to do so. In those instances, KTN notes, its computer system assigned these unattributable expenses to a single product group. As a result, KTN argues, the attempted product group allocations did not properly reflect claims within the group. KTN points out that as soon as it discovered this shortcoming, it prepared a revised worksheet that allocated warranty expenses across all subject merchandise, differentiating them only by market. KTN further asserts that, contrary to petitioners' contention, the Department did in fact verify and accept KTN's allocated warranty expenses during the home market verification. Id. at 41.

With respect to the manner in which KHSP reported warranty expenses, KTN notes that KHSP tabulated the warranty expenses associated with specific transactions and reported those expenses on an allocated basis. KTN asserts that the Department was able to verify that KHSP accurately captured all expenses associated with warranty claims. Moreover, argues KTN, its methodology does not lead to inaccuracies or distortions because in both the home market and the United States warranty expenses incurred on stainless steel merchandise were allocated across sales of stainless steel merchandise on the basis of value. Id. at 42.

Furthermore, KTN argues, even if the Department should reject KTN's argument for allocating warranty expenses, the use of adverse facts available is not appropriate. KTN disagrees with petitioners' characterizations that KTN was "uncooperative" and "steadfastly refused to report invoice-specific warranty expenses" for U.S. sales. In fact, KTN claims, it fully complied with the Department's requests for information regarding warranty expenses and has provided the Department with verified information which would allow it to apply warranty expenses to U.S. sales on a transaction-specific basis, thereby rendering the application of adverse facts available especially unnecessary.

Department's Position: As the Department verified, KTN and KHSP are generally able to tie warranty claims to specific sales even though they initially reported warranty expenses on an allocated basis. With respect to its home market sales, for its January 6, 1999 supplemental response KTN searched its database through September 1998, or six months after the close of the POI, for warranty claims associated with subject merchandise and, where possible, linked these to POI sales in order to report these expenses on a transaction-specific basis. Regarding U.S. warranty expenses incurred by KHSP, we noted during our verification that its debit and credit memos bore references to the original invoices which would have allowed it to track such claims on a sale-specific basis, even though KHSP had reported these expenses using an allocation in its original submissions. As indicated in the KHSP Verification Report, we verified KHSP's allocated warranty expenses and examined the manner in which the company tracked warranty claims.

However, notwithstanding KTN's and KHSP's ability to track these expenses on a transaction-specific basis, we have long recognized that the nature of warranty expenses (*i.e.*, that claims made for specific sales are often made long after the close of a given period of investigation or review) often renders necessary the use of an allocation. While KHSP maintains a log containing, *inter alia*, credit memos relating to claims, there is no guarantee that a review of this log six months after the completion of the POI will accurately capture all warranty expenses relating to POI sales, as the potential remains for claims against POI sales to be presented at yet a later date. This same potential for inaccuracy also affects home market sales because there are likely to have been claims made on subject POI transactions which were processed after the date through which KTN searched its database (i.e., September 1998). As we noted in AFBs, it is not always possible to tie POI warranty expenses to POI sales, since the warranty expenses can be incurred during the POI on sales before the POI; likewise, a respondent may not incur warranty expenses on POI sales until well after it is required to submit those sales to the Department.

Therefore, we agree with KTN and have used the verified information on its allocated warranty expenses for home market and U.S. sales. With respect to home market sales, however, because the Department found minor discrepancies between the reported and verified allocated warranty expenses, in accordance with section 776(a)(D) of the Tariff Act, we have based the warranty adjustment on the facts available. We calculated the lowest reported ratio of warranty expenses using the

transaction-specific warranty expense and applied this ratio to all home market sales. This calculation is further detailed in our Final Analysis Memorandum; see also KTN Sales Verification Report at pages 47 and 48.

Comment 18: Other Corrections at Verification

Petitioners highlight three items from the U.S. and home market verification reports which were specified in the opening-day correction letters. First, in light of KHSP's admission at verification that there were certain sales for which it did not apply the expense ratio calculated for certain brokerage and handling charges, petitioners request that the Department correct the reported CEP sales listing to ensure that all transactions reflect this charge. In addition, petitioners urge the Department to revise KHSP's reported U.S. duty expenses for resales to reflect the corrected ratio KHSP calculated prior to verification. Finally, petitioners request that the Department apply to EP sales marine insurance charges which KTN initially did not report.

KTN does not dispute petitioners' comments with respect to these issues and points out that it brought these items to the attention of the Department during the first day of the home market and U.S. verifications.

Department's Position: For this final determination we have made revisions to our computer programs to correct for these errors.

U.S. Reseller Issues

Comment 19: Facts Available for U.S. Reseller

Petitioners present a number of grounds for disregarding the questionnaire response of KTN's affiliated processor and reseller in toto and basing the margin for this body of U.S. sales transactions on adverse facts available. Petitioners accuse U.S. Reseller of (i) failing to provide requested sales documentation at verification, (ii) misclassifying a significant portion of its sales as being of unknown origin by refusing to trace the original suppliers, (iii) failing to report physical characteristics of its merchandise essential to the Department's sales matching, (iv) classifying sales of prime material as secondary, or non-prime, (v) neglecting to report early payment discounts granted on its sales, and (vi) mis-reporting further-manufacturing costs. Petitioners' Case Brief at 82.

In addition to the alleged shortcomings in U.S. Reseller's sales response, petitioners point to a number of problems with U.S. Reseller's further-manufacturing COP response, as well. For example, petitioners note that U.S. Reseller allocated further-processing costs to products which did not undergo further processing. In certain cases reviewed at the cost verification, continue petitioners, the output weight of the finished goods exceeded the input weight of the original master coil, which is, petitioners note, a physical impossibility. Furthermore, petitioners assert, U.S. Reseller reported incorrectly quantity extras (surcharges for further processing performed on small orders), and failed to account for the costs of finishing operations performed on the underside of sheet products and "re-spinning" single coils into several smaller coils. These failings, petitioners aver, are "systemic in nature and thus universally applicable" as they arise from the underlying computer program used to identify the characteristics of specific products and to assign costs based on these identified characteristics. Id. at 99. Petitioners maintain that the Department cannot be left the task of reconstructing an accurate response; therefore, the only appropriate solution is the application of total adverse facts available to the U.S. Reseller portion of KTN's response. In the alternative, petitioners urge the Department to apply partial adverse facts available for all missing or miscalculated cost data and sales adjustments.

KTN takes issue with petitioners' attempt to portray isolated errors discovered at verification as impeaching the entirety of U.S. Reseller's sales data. For example, the inability to produce the requested surprise sales documentation, KTN avers, stemmed from U.S. Reseller's inability to retrieve the relevant sales documentation from its archives and represented the only instance in which U.S. Reseller was unable to provide documents requested by the Department. KTN suggests that given U.S. Reseller's "questionable" involvement in this investigation through the Department's finding of affiliation, U.S. Reseller cannot be held to the same standard as a respondent in an ongoing administrative review process.

KTN also dismisses the significance of any noted reporting errors, and attributes these to the computer program developed by U.S. Reseller solely to comply with the Department's detailed reporting requirements. As a steel service center, KTN maintains, U.S. Reseller has no need to track each input stainless steel coil to the finished products as re-sold to the ultimate end user. As a result, avers KTN, U.S. Reseller never developed the computer programming necessary to tie each transaction to its input stainless steel. KTN explains that U.S. Reseller attempted to accomplish this first by merging data maintained separately by U.S. Reseller's different warehouses to develop a list of each item sold. U.S. Reseller then had to merge this item list with its invoice history file which, KTN continues, would provide links to the original customer orders. Aside from errors arising from bad data, e.g., data entry errors when originally posting the items, KTN suggests, this merger of data was successful in "the overwhelming majority of transactions * * *". KTN claims that for those invoices sourced from multiple input coils, U.S. Reseller developed a computer algorithm to match input coil and output sheet and strip on the basis of product characteristics and weights consumed versus weights shipped to customers. KTN dismisses the subset of erroneous results as "very small and fully identified," with potential mismatches of input and output material occurring in no more than 4.25 percent of the reported transactions. Id. at 70 and 72 (original emphases). Even this subset is overstated, KTN claims, by the inadvertent inclusion of sales of non-subject merchandise. KTN further claims that it identified each of the "problematic" transactions for the cost verification team, discounting assertions in the U.S. Reseller Cost Verification Report that time constraints precluded any examination of this list.

KTN "freely concedes" that its linking program did not execute perfectly. However, KTN insists, any resulting errors were (i) identified to the Department, (ii) fully explained, and (iii) only affected slightly more than four percent of U.S. Reseller's reported sales. Therefore, KTN concludes, "[t]he accuracy of the remaining 95.95 percent of transactions is simply not at issue." KTN Case Brief at 74.

As for early payment discounts, KTN suggests that the number of transactions affected by this error was minuscule. Exhibit 11 of the U.S. Reseller Sales Verification Report, KTN notes, included the overall value of early payment discounts and their significance expressed as percentages of both total sales value and subject merchandise sales value. Even were the Department to assume that all early payment discounts applied to sales of subject merchandise, submits KTN, these discounts are insignificant.

KTN also disputes the significance of the Department's conclusion in the U.S. Reseller Cost Verification Report that U.S. Reseller failed to allocate finishing costs for products sold with a "pre-

buffed" bottom finish. U.S. Reseller "conceded at verification that this was a programming error that was simply overlooked," KTN asserts. Contrary to the U.S. Reseller Cost Verification Report, KTN maintains, it fully identified each transaction affected by this error; in any event, avers KTN, the quantity of such transactions is trivial, involving just 26 items. KTN Case Brief at 75.

With respect to re-spinning costs, KTN contends that these are common to virtually all products sold by U.S. Reseller; as such, argues KTN, re-spinning costs are not separately identifiable in U.S. Reseller's normal records. KTN claims that as a result U.S. Reseller appropriately included re-spinning costs in its calculation of fully-absorbed factory overhead.

As for the allocation of costs for processing performed by outside vendors, KTN urges the Department to place this matter in perspective by considering that processors of both aluminum and stainless steel accounted for a minority of the total processing charges incurred by U.S. Reseller from outside vendors. U.S. Reseller had no means to identify directly the portion of the processing expenses properly allocable to stainless versus other products, KTN avers; U.S. Reseller acted reasonably, therefore, in allocating these expenses using the proportion of stainless to non-stainless processing based on its own historical experience. For the Department to assume otherwise, KTN objects, is rank speculation. KTN Case Brief at 78. KTN also disputes the significance of any discrepancies between processing costs as recorded in U.S. Reseller's management reports and the actual amounts observed in spot checks conducted by the Department at verification, and challenges the fairness of the methods employed in uncovering these discrepancies. Prior to January 1998, KTN asserts, computer records allowing vendor-specific calculations of outside processing costs were not available. U.S. Reseller, therefore, relied upon its management reports, "the only consistent source of information on processor-specific outside processing costs covering the entire POI." KTN Case Brief at 79. Furthermore, KTN insists, U.S. Reseller fully explained these discrepancies as arising from credit notes or unpaid invoices issued after U.S. Reseller's books for a given month had been closed. Claiming that there is no evidence that the discrepancies introduce bias in any particular direction, KTN suggests that the Department has no grounds for concluding that the charges of outside processors has been either over- or under-stated.

KTN further argues that there is no mystery about the difference between the verified quantity of processed goods used in calculating yield losses and the higher figure included in KTN's section E further-manufacturing response: for its first response U.S. Reseller had assumed erroneously that all of its merchandise had been subject to further processing. KTN insists that U.S. Reseller identified and corrected this error in its January 6, 1999 supplemental section E response. The Department was able to trace the corrected actual amount without discrepancy during the U.S. Reseller cost verification. KTN's Case Brief at 80.

Department's Position: We agree with petitioners that, pursuant to section 776(a) of the Tariff Act, total facts available are warranted with regard to sales through KTN's affiliated further manufacturer. In the instant case the use of total facts available for the U.S. Reseller portion of KTN's section C response is warranted because the methodology and computer programming used by U.S. Reseller to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for U.S. Reseller's database. Reliance upon total facts available is required for all further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 772(d)(2) of the Tariff Act for "the cost of any further manufacture or assembly (including additional material and labor) * * *".

We also find, as explained below, that the use of an adverse inference is appropriate in this case because the record established that U.S. Reseller did not cooperate with the Department by acting to the best of its ability in responding to our requests for information. The manifest and manifold errors in U.S. Reseller's response evidence a failure to conduct even rudimentary checks for the accuracy of the reported further-processing data. Indeed, a reasonable check by company officials could have shown that (i) products that underwent no further processing were being assigned further-processing costs, (ii) further-processed products were not being assigned their appropriate processing costs, (iii) coils passing through certain processes were not being allocated any cost for the process, and (iv) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

The Department may correct reported costs or adjust incorrect data in response to its findings at verification. See, e.g., Extruded Rubber Thread From Malaysia, 64 FR 12967, 12976 (March 16, 1999). In this case, however, correction of the specific flawed data is not a viable option because of the high percentage of errors found through our testing (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's August 3, 1998 antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 782(i) of the Tariff Act, and, further, that pursuant to section 776 the Department may proceed on the basis of the facts otherwise available if all or any portion of the submitted information cannot be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided U.S. Reseller with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. U.S. Reseller had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, U.S. Reseller did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions contained fundamental and significant errors. See U.S. Reseller Cost Verification Report at 14 through 17. When the Department then selected nine additional transactions for review, four of these were also found to reflect significant errors. These included allocating processing costs to non-processed material (id. at 15), mis-allocating quantity surcharges (id.), and, more troubling, reporting finished weights which exceeded the weight of the input material ("[t]his is impossible

and for this reason we could not verify the amount of processing for this observation." Id.).

The first step identified in the Department's verification agendas calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. As we stated above, none of the errors discussed here were presented by U.S. Reseller at the outset of verification; yet many of them were manifestly apparent and U.S. Reseller was obligated to notify the Department prior to the start of verification of these problems.

We disagree with KTN's assertion that the numerous errors identified by the Department affect only a small number of products out of the possible universe of transactions and that the effect of the errors is minuscule. As mentioned above, U.S. Reseller created a computer program to respond to the Department's questionnaire which sought to match an input coil to each output coil sold and to assign a cost for each processing step through which the finished coil supposedly passed. When we tested this computer program at verification to assess its accuracy and reliability, we found that seven of eighteen tested transactions contained errors in either the allocation of processing costs or in the matching of input coils to output coils. In two of these cases U.S. Reseller had assigned processing costs to products which had, in fact, undergone no processing. We note that this discrepancy arose from the input coils and output coils identified by U.S. Reseller's own computer program. In another transaction the combined widths of the finished products were greater than the original width of the input coil as identified by the system, an obvious physical impossibility that should have been identified by U.S. Reseller as an error. The nature of these errors raises serious doubts as to the accuracy of the overall program used to match input master coils to output slit coils as sold. It also serves to undercut KTN's assertions that KTN acted to the best of its ability in compiling this portion of its section C response. Further, several of these errors served to understate the costs of further processing by shifting portions of these costs to non-further-processed merchandise. Since these errors affect the entire population of products sold (i.e., both processed and unprocessed products), it is not possible for the Department to isolate the problems and adjust for the errors accordingly.

The program also failed to assign properly certain finishing costs. Certain coils with a pre-buff finish applied to the underside by the reseller had no finishing costs reported for the additional processing. Finally, other transactions contained errors in the application of surcharges for processing small quantity orders. In the samples tested U.S. Reseller had reported quantity extra charges in excess of what should have been reported. This error led to an understating of the variance between the costs as allocated for purposes of the response and the costs as maintained in the U.S. Reseller's financial accounting system. Once again, both errors reduced the costs allocated to further processed products, thus creating further doubts as to the accuracy of the underlying reporting methodology.

We also find unpersuasive KTN's suggestion that because U.S. Reseller had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. We must stress that every respondent in every antidumping investigation is faced with the question of how best to sort and retrieve the sales and cost data as maintained in its normal course of business to respond to our questionnaire. This necessarily entails the winnowing of its larger universe of sales to capture only that merchandise subject to our investigation, and the further creation of unique data fields to reflect the specific model-match criteria and the applicable expense adjustments set forth in the questionnaire. Finally, the resulting database must be refined to present the transaction-specific information on sales and adjustments in the precise formats required by the Department. That U.S. Reseller, like virtually all respondents in antidumping proceedings, chose to rely upon a computer program as the easiest means to accomplish this end is entirely unremarkable and in no way mitigates the failings found in this case. We note further that KTN and a number of its home market and U.S. affiliates largely succeeded in supplying data relating to sales, expenses, and COP in responding to the same antidumping questionnaire with equally detailed reporting requirements. The surfeit of errors in U.S. Reseller's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from U.S. Reseller's reliance on faulty computer programming and data which U.S. Reseller apparently failed to review prior to verification.

In addition, we disagree with KTN's assertion that it was able to quantify the extent of the cost errors on the final day of verification. First, we note that U.S. Reseller made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More to the point, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. See, e.g., *Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness) and *Monsanto Company* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988) ("[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business"). It has been the Department's long standing practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. Conversely, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted absent satisfactory explanation and quantification on the part of the respondent. See, e.g., *Tatung Company* v. *United States*, 18 CIT 1137 (December 14, 1994). This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of U.S. Reseller's methodology for reporting costs and discovered numerous errors. U.S. Reseller claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. KTN's assertion in its case brief that U.S. Reseller succeeded in identifying all of the errors is an unsubstantiated ipse dixit which could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database to ensure that all erroneous transactions had, in fact, been captured. Moreover, as indicated in the verification outlines presented to KTN and U.S. Reseller, the proper time for U.S. Reseller to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented KTN and its U.S. Reseller

with the cost verification agenda one week in advance precisely to allow them to prepare properly for verification. Had U.S. Reseller reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in Certain Cut-to-Length Carbon Steel Plate from Sweden,

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where "a response to a request for information" does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18401 (April 15, 1997).

Finally, we reject KTN's arguments with respect to the propriety of drawing an adverse inference with respect to a respondent "whose involvement in the proceeding was questionable in the first place." KTN goes to great pains to assert that it never had control over the data submitted by U.S. Reseller; therefore, any lack of cooperation evinced by U.S. Reseller cannot be imputed to KTN. See, e.g., KTN's Rebuttal Brief at 73 and Public Hearing transcript at 46 and 47. KTN presents the issue as one in which KTN was at the mercy of recalcitrant parties, only some of whom could be persuaded to participate in the investigation: "U.S. Reseller's sales and cost data found its way into the record of this investigation only after its release was negotiated and it was confidentially transmitted to KTN's counsel." Id. However, KTN's protestations that its officials in Bochum, Germany did not have the opportunity to review U.S. Reseller's submitted data for accuracy beg the point. The Department has never suggested that KTN was in a position to compel a reluctant U.S. Reseller to provide its sales and cost data to KTN; rather, the thrust of our affiliation determination has consistently been that Thyssen, not KTN, was in a position to direct its German and U.S. affiliates to provide complete and timely responses to the Department. We suggest here that where it was in KTN's interests to do so, Thyssen did precisely that, by instructing selected affiliates to cooperate with the Department's investigation. For reasons beyond the Department's ken, U.S. Reseller chose to submit responses under the guise of a cooperative respondent while withholding crucial information to make its responses usable for purposes of establishing statutory U.S. price.

We note that throughout this investigation KTN has been represented by legal counsel who certified each of KTN's (and U.S. Reseller's) submissions of fact in this case, claiming the counsel had read the submission and had "no reason to believe [it] contains any material misrepresentation or omission of fact." See 19 CFR 351.303(g). Similarly, on January 13, 1999, U.S. Reseller certified that the responsible company official had read its submission and that the information therein was, to the best of the official's knowledge, complete and accurate. See, e.g., KTN's January 15, 1999 section E supplemental response. Finally, throughout the preparation for the U.S. Reseller verifications and the verifications themselves, counsel were present at all times in the conference room. U.S. Reseller was also assisted by economic consultants retained by KTN specifically for purposes of preparing responses in this antidumping investigation. The fact remains that despite its disagreement with the Department's decision on affiliation, Thyssen succeeded in persuading U.S. Reseller to submit a response; from that moment forward, it was incumbent upon U.S. Reseller to submit complete and accurate responses to our questionnaires. It was the further responsibility of KTN's legal representatives, acting throughout this proceeding on KTN's behalf, to ensure that the data it helped prepare were reliable. Finally, the record does not reflect that once KTN was directed to submit U.S. Reseller's sales and cost information it was having trouble securing U.S. Reseller's cooperation (aside from KTN's stated objections for the Department's legal reasoning). Had this been the case of KTN painfully and laboriously extracting each datum from a recalcitrant unaffiliated party, one would expect the record to reflect this in, for example, written pleas of an inability to submit the requested data, or appeals for modifications to reporting requirements in response to limited available data. Instead, there is silence on this point. KTN proceeded throughout the investigation as though U.S. Reseller's full cooperation was a given, once the Department had notified KTN that the further-processed sales would be required for our analysis.

Therefore, the Department concludes that KTN had the resources to secure the necessary level of cooperation from U.S. Reseller. In addition, the Department finds that, for the reasons discussed above, U.S. Reseller failed to cooperate by acting to the best of its ability in compiling its further-manufacturing response. Moreover, because the U.S. Reseller's information is essential to the dumping determination, the use of adverse facts available is appropriate irrespective of KTN's involvement in providing the information. See, e.g., Hot-Rolled Steel From Japan, 64 FR at 24367. Therefore, consistent with section 776(b) of the Tariff Act, we have drawn an adverse inference in selecting among the facts available for use in lieu of U.S. Reseller's unverifiable data. As adverse facts available we have assigned the highest non-aberrational margin calculated on KTN's properly reported U.S. sales.

Comment 20: U.S. Sales of Unidentified Origin

Petitioners accuse KTN of belatedly submitting such vast revisions to U.S. Reseller's sales listings as to constitute an entirely new response. Petitioners note that on January 6, 1999, KTN reported for the first time a significant body of U.S. Reseller's sales transactions. These sales data were not only submitted late, petitioners aver, but also in many cases were missing essential information identifying the manufacturer and the products' physical characteristics.

With respect to unidentified suppliers, petitioners deem unpersuasive KTN's evolving explanations for these discrepancies. The stainless industry requires strict quality control, petitioners insist, including warranty provisions and the routine transmission of quality certifications from the producing mill. Out of necessity, U.S. Reseller would be able to track merchandise back to its suppliers. Petitioners also dismiss as irrelevant KTN's claims that its computer system did not permit a full linking of U.S. Reseller's sales transactions to the supplying mills. Even if true, petitioners argue, KTN's assertions do not obviate its

responsibility to take the steps necessary to supply the Department with complete data including, if necessary, the manual search of paper records. Petitioners aver that had KTN raised this issue, i.e., its difficulty in reporting accurately all sales, when it received the questionnaire in August 1998, "the Department and petitioners could have addressed how best to proceed in a deliberate fashion with KTN." Petitioners' Case Brief at 86. Petitioners accuse KTN of deliberately withholding this information until after the Preliminary Determination so it could present the Department with a *fait accompli* on the eve of the Department's verification.

Petitioners further argue that the Department's verification debunked KTN's claims with respect to U.S. Reseller's ability to report the supplying mill; of a random sampling of seven invoices involving unidentified suppliers, in three cases U.S. Reseller was able readily to identify the manufacturer. Petitioners note that three months elapsed between U.S. Reseller's initial sales listing of November 16, 1998 and its final database submitted on February 17, 1999; U.S. Reseller's failure to use this time to identify its supplying mills demonstrates that it failed to cooperate to the best of its ability. The Department's response, petitioners argue, should be recourse to adverse facts available.

Furthermore, petitioners maintain, much of U.S. Reseller's sales data includes significant discrepancies such as missing gauge or finish information that render the data useless for the Department's analysis. As with the missing supplier information, petitioners argue, even if U.S. Reseller's computer records did not readily permit collation and reporting of this information, a review of U.S. Reseller's sales records would have yielded the required product characteristics. Petitioners point to the Department's finding at verification that the omissions arose from errors such as the inclusion of non-subject merchandise (e.g., stainless steel angles) in U.S. Reseller's sales listings, data entry errors, or missing values generated by the computer program used to merge the various source files used in compiling U.S. Reseller's response. U.S. Reseller had ample time, petitioners suggest, to conduct a manual review of sales documents to remove non-subject merchandise from its response and to supply the missing characteristics for the remaining sales of subject merchandise.

Continuing in their rebuttal brief, petitioners dismiss KTN's request for the Department to make extensive corrections to its reported data and insist upon the use of adverse facts available. Petitioners' Rebuttal Brief at 57. In fact, petitioners suggest, some of the proposed corrections are beyond the Department's capacity. For example, sales of stainless steel angles which U.S. Reseller inadvertently included in its sales listing are not readily discernible from the submitted computer sales file. These corrections, petitioners maintain, should not be the Department's burden; rather, the Department should rely upon adverse facts available for the U.S. Reseller portion of KTN's response.

KTN argues in rebuttal that there is no longer any question that the U.S. Reseller could not trace the origin of these sales. KTN's Rebuttal Brief at 68. According to KTN, the Department's cost and sales verification reports both noted that once U.S. Reseller transfers inventory between its locations, its computerized inventory system issues a new stock number, thereby erasing the original link with the supplying mill. KTN quotes approvingly the Department's conclusion that "* * * the Company is unable to identify [the products'] original source through the system." Id., quoting the Reseller Cost Verification Report at 5.

Rejecting as absurd petitioners' argument that U.S. Reseller could have tracked the source manually, KTN claims that, while physically possible such a trace would require an inordinate amount of effort and would cause extended disruption to U.S. Reseller's business operations. The Department, maintains KTN, "cannot impose such unreasonable burdens on respondents * * *". Id. at 69.

KTN characterizes petitioners' comments as betraying a fundamental misunderstanding of the nature of the additional sales reported on January 6, 1999, and why KTN chose to include them. KTN reiterates its view that the only transactions which properly should be included in the Department's final determination are those which can be established affirmatively as having originated at KTN. Consistent with this view, KTN argues, its initial U.S. Reseller response included only those items sold which could be linked directly through the inventory database to a master coil produced by KTN; any transactions which lacked this direct link were omitted. KTN justifies this approach by suggesting that more likely than not, the unidentified material came from a supplier other than KTN, given the relative proportion of stainless flat products positively identified as having been supplied by KTN.

KTN insists that the purpose of its later decision to report transaction-specific data on the unidentified merchandise was to assist with the Department's verification and not to concede that these sales should properly be subject to our margin calculations. As to the proper treatment of these transactions for the final determination, KTN urges the Department to disregard them entirely. In the alternative, KTN suggests allocating the unidentified transactions across the three concurrent investigations involving stainless sheet in coil (i.e., from Germany, Mexico and Italy) based on the verified share of the identified sales supplied by each of the respondents in these investigations (respectively, KTN, Mexinox, and Acciai Speciali Terni, S.p.A.). For this investigation this could be accomplished by multiplying the weight of each unidentified transaction by the percentage of U.S. Reseller's merchandise purchased from KTN, as reflected in the sales sourced from identified suppliers.

Department's Position: We agree, in part, with petitioners and with KTN. In its January 6, 1999 supplemental response KTN reported a large quantity of sales by U.S. Reseller which lacked any information identifying the supplying manufacturer. As noted, KTN claimed that it had no immediate computer link to trace the origin of coils which had been transferred between U.S. Reseller's different warehouses. Thus, it had included this unidentified mass of sales in each of the sales databases filed on the records of the investigations of stainless sheet in coils from Germany, Mexico, and Italy.

As explained in response to Comment 19, we have determined that the errors affecting U.S. Reseller's reported sales and cost data, including its failure to identify properly the supplier of a major portion of its sales, render this portion of KTN's section C response unreliable in its entirety for purposes of our margin calculations. However, this conclusion does not dispose of the issue of the proper treatment of the unidentified transactions. For a significant portion of U.S. Reseller's U.S. transactions during the POI the manufacturer is simply unknown. The absence of the supplying mill for this body of sales affects not only this investigation, but also those involving stainless steel sheet in coils from Mexico and Italy. Furthermore, the absence of this elementary and critical information forecloses any attempt by the Department to apportion these sales accurately between merchandise which is subject to one of the three ongoing investigations and that which is properly considered non-subject

merchandise because it was obtained from either a domestic or other foreign mill. Thus, this gap in the record is one of overarching importance, impinging upon our ability to calculate accurately the margins in three separate antidumping duty investigations.

We cannot accede to KTN's suggestion that we exclude the unidentified transactions entirely from our calculations. While we are not able to state with precision which of these transactions represent subject stainless sheet in coils from Germany, KTN has conceded that some are properly subject to this investigation (as, indeed, some are subject to the concurrent investigations involving Mexico and Italy). The Tariff Act and the implementing regulation do envision a number of scenarios where the Department may disregard transactions in its analysis (sample transactions or sales of obsolete merchandise, for example, or when sampling transactions pursuant to section 777A of the Tariff Act). However, these exceptions all involve an independent analysis by the Department of the facts surrounding the proposed exclusions and its reasoned explanation on the basis of the record that the transactions at issue are either unnecessary or inappropriate for inclusion in our calculations. There are no provisions allowing the Department simply to ignore a significant portion of U.S. sales based on a reseller's putative inability to identify the affiliated respondent manufacturer.

As for this claimed inability, KTN attempts to present as the Department's own conclusions what were, in fact, its reporting of KTN's claims at verification. Thus, the Reseller Sales Verification Report noted that "Reseller explained that if material from its warehouse is sold to another location * * * the [receiving] warehouse subsequently will enter the merchandise into its own inventory by recording itself as the supplier." U.S. Reseller Sales Verification Report at 6. However, the report also states on the previous page that "Reseller clarified that the original supplier's identification is traceable, but is not vital to its own needs." Id. at 5. Further, we found at verification that, notwithstanding U.S. Reseller's assertions, in many cases it was possible through a rudimentary search of U.S. Reseller's existing computerized records to identify the supplier. As petitioners note, of seven "unidentified supplier" transactions sampled at verification, we were able to trace immediately the outside supplier for three of these using nothing more than a personal computer in U.S. Reseller's offices. See U.S. Reseller Sales Verification Report at 10.

As noted above, we have determined that the use of adverse facts available is appropriate for the sales and further-manufacturing data submitted by U.S. Reseller. As for the unidentified body of sales, the Department also finds that the available computer records would allow U.S. Reseller to trace with facility the supplier for nearly half of the sample transactions selected at verification. Had U.S. Reseller made full use of its readily-available computer data, the effort required to identify the manufacturer for the remaining transactions would have been substantially less, thus largely attenuating the "enormous amount of work" involved in "manual tracing" * * * through several layers of internal paper transactions, inventory records, and sales records." KTN's Rebuttal Brief at 68. Accordingly, we find that U.S. Reseller failed to cooperate by acting to the best of its ability in compiling information essential to our analysis, such as the identity of the supplying mill, and will make an adverse inference in apportioning the unidentified transactions.

In selecting facts available we find that there is no record support for KTN's proposal that we allocate the unknown universe of U.S. Reseller's transactions based on the observable percentages in the known universe; this approach would still result in the Department's disregarding over half of the unidentified U.S. transactions without any justification in the record. First, since by KTN's own admission some portion of the unidentified sales were supplied by KTN, the resulting percentage of merchandise identified as being of German origin is understated. In addition, we have no means of conducting an independent evaluation of this large body of sales to determine whether the patterns found for the identified universe of transactions would hold true for merchandise which, obviously, moved in different channels of distribution (e.g., through its transfer between or among U.S. Reseller's locations). Thus, for purposes of this final determination we have adopted a variant of KTN's proposal. As an adverse inference we are treating all of the unidentified merchandise as having originated with one of the three respondent firms in the concurrent investigations. To apportion the unidentified sales among the three investigations we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of U.S. Reseller's merchandise supplied by each respondent mill. We have then applied a facts-available margin to these transactions, as explained above in response to Comment 19.

Comment 21: Merchandise Imported in Cut-to-Length Form

KTN notes that at the verification of the U.S. Reseller it identified certain transactions involving non-subject merchandise which had inadvertently been included in U.S. Reseller's sales files. These sales involved merchandise originally imported from Germany in cut-to-length form and, thus, not subject to the instant investigation. In addition, U.S. Reseller reported a number of transactions involving stainless steel angles, shaped products likewise not subject to this investigation. KTN suggests that the Department use its reported data, coupled with a list of non-subject transactions provided at the U.S. Reseller verification, to delete these sales from its reported data base.

Petitioners dismiss as without merit KTN's request that the Department correct U.S. Reseller's sales data, noting that not all of the non-subject sales can be identified using the reported data. The burden of compiling an accurate sales listing, petitioners aver, should not rest with the Department.

Department's Position: While KTN claims that it identified the quantity of cut-to-length merchandise at the outset of the U.S. Reseller verification, we compared these figures to the sales data submitted on January 6, 1999. We found the total quantity of stainless sheet which was acquired by U.S. Reseller in cut-to-length form as reflected in U.S. Reseller's sales listing greatly exceeded the quantities for cut-to-length products presented in Exhibit 6. Because we cannot reconcile the various figures we have no evidentiary basis for making the quantity adjustment claimed by KTN. See Final Analysis Memorandum. As a result we have applied the adverse facts available margin to the entire quantity of stainless sheet products included in U.S. Reseller's submitted data.

Comment 22: Other U.S. Reseller Issues

Petitioners and KTN each presented a number of other arguments pertaining to the sales by U.S. Reseller, many addressing points raised in the U.S. Reseller Sales Verification Report. As mentioned in passing under Comment 20, above, petitioners and KTN commented on additional problems discovered at the U.S. reseller verification, including (i) U.S. Reseller's inability to provide documents for the "surprise" sales trace requested at verification, (ii) the discovery by the

Department of unreported early payment discounts on U.S. sales, and (iii) the alleged mis-classification of prime merchandise as non-prime.

Petitioners also faulted KTN on the manner in which U.S. Reseller calculated its ISEs for further-manufactured merchandise, including its omission of its net financial expenses from the ISE calculation. In addition, petitioners suggested that the Department recalculate U.S. Reseller's SG&A to correct "serious discrepancies" discovered by Thyssen, Inc.'s independent auditors. Furthermore, petitioners accused U.S. Reseller of mis-allocating its stainless steel scrap yield ratio by using a numerator and a denominator derived from different universes of transactions. KTN objected in turn to each of petitioners' comments on these issues. For its part, KTN protested the timing of the release of the U.S. Reseller verification reports and the subsequent schedule for filing case and rebuttal briefs; petitioners dismissed KTN's objections as baseless.

Department's Position: Because we have determined to use adverse facts available for U.S. Reseller's sales data, these additional comments are moot and are not addressed further here.

KTN's Cost of Production

Comment 23: General and Administrative Expenses

Petitioners assert that the Department should include expenses relating to KTN's international projects, year-end adjustments, and personnel costs in KTN's revised G&A. Petitioners also argue that revenue from rebate claims, provisions and internal freight do not warrant treatment as offsets to KTN's G&A expenses, suggesting that the Department does not adjust a respondent's COP for offsets unrelated to its production activities.

In petitioners' view the costs associated with KTN's international projects, comprising joint ventures such as Shanghai Krupp (SKS) in the People's Republic of China, "directly affect[ ] the allocation of the entire Nirosta world-wide manufacturing scheme." Petitioners' Case Brief at 64. In addition, petitioners contend that KTS's experiences in building and launching new facilities, such as the joint-venture plant in Shanghai, will benefit the entire Nirosta group. Thus, petitioners argue, international projects expenses should be included in KTN's G&A calculation.

Furthermore, petitioners argue that KTN's year-end adjustments pertain to pension and legal liabilities; as such, petitioners maintain, these adjustments are properly considered part of KTN's general operations and should be included in KTN's total COP. Finally, petitioners argue that adjustments KTN makes in its normal course of business relating to NSC's executive compensation should be included in KTN's G&A total because (i) there is no evidence these expenses pertain solely to NSC's operations and (ii) KTN has not reported these expenses separately under NSC's G&A expenses.

In addition, petitioners argue, expenses arising from the acquisition by KTN's parent KTS of Mexinox, the Mexican re-roller of stainless steel hot bands purchased from KTN, should be included in KTN's G&A expenses because Mexinox is an integral part of KTN's operations. Therefore, petitioners aver, the "extremely interwoven nature" of the Nirosta group shows that the Mexinox acquisition costs are in fact related to the core business of KTN and should be included in KTN's total COP. Petitioners' Case Brief at 63 and 64.

However, petitioners claim that revenues from rebate claims, provisions and internal freight do not warrant treatment as offsets to KTN's G&A expenses, suggesting that the Department does not adjust a respondent's COP for non-production-related offsets. Petitioners Case Brief at 63, citing *U.S. Steel Group* v. *United States*, 998 F. Supp. 1151 (CIT 1998), and Certain Pasta From Italy, 63 FR 42368, 42371 (August 7, 1998).

KTN counters that costs associated with the international projects center are unrelated to the production of subject stainless sheet in coils in Germany, as they are associated with the foreign operations of KTS. Likewise, accruals for severance payments do not represent G&A expenses incurred during the POI. KTN maintains that the downsizing for which the expenses were accrued never took place; thus, no severance payments were actually made. KTN expresses no objection, however, to including the personnel costs associated with NSC's operations in its G&A calculation.

KTN also rejects petitioners' assertion that the costs incurred in the Mexinox acquisition should be included in KTN's G&A. According to KTN, these costs incurred by KTN's parent company, KTS, bear no relationship to costs "pertaining to production and sales of the foreign like product by the exporter in question"—the statutory test for including SG&A expenses for purposes of COP. KTN insists that because these expenses were incurred by KTS, rather than the respondent KTN, and because they are not associated with production and sale of the foreign like product by KTN, they are properly excluded. KTN dismisses as unfounded petitioners' assertion that Mexinox represents an integral part of KTN's operations, noting that the black band supplied by KTN to Mexinox represents a raw material cost to Mexinox which has been captured fully in Mexinox's verified COP.

With respect to rebates, claims, provisions, and internal freight, KTN suggests that petitioners' objections are based upon the incorrect assumption that the adjustments involve revenue received by KTN, an assumption fueled by the Department's Preliminary Cost Calculation Memorandum and KTN's Case Brief, which repeated this erroneous characterization. KTN's Rebuttal Brief at 50. In fact, KTN insists, these items are not revenues but adjustments to revenue, i.e., expenses, which have been reported properly within KTN's sales listing. Treating these items as adjustments to KTN's G&A, argues KTN, would result in double-counting. Petitioners' reliance on U.S. Steel is misplaced, KTN concludes, because that case addressed the proper classification of expenses within a cost response as either G&A or a cost of manufacture (COM), not whether the disputed items should be included in both the cost and the sales files.

Department's Position: We agree with petitioners that the costs associated with international projects as well as those arising from year-end adjustments should be included in KTN's G&A expenses. The costs of international projects are properly included in G&A because they relate primarily to general expenses of the group as a whole. These projects had not developed into stand-alone commercial entities. Thus, as petitioners note, their costs affect directly the allocation of the entire Nirosta world-wide manufacturing scheme.

As for the year-end adjustments, throughout the investigation KTN provided conflicting information as to the true nature of these adjustments. At verification we determined that the majority of these were for severance accruals. *See* KTN Cost Verification Report at 19 and 20. We consider severance costs to be expenses that relate to the general operation of a company as a whole. In setting up a severance accrual, KTN was reasonably certain that it would need to make severance payments for its workers currently employed by the company at some point in the near future. KNT recognized these severance costs during the current year and they directly relate to the company's current employees. Accordingly, we consider it appropriate to include these year-end adjustments in

the respondent's G&A calculation. Finally, as both petitioners and KTN agree, we have included NSC's personnel costs in the G&A expense ratio calculation.

Regarding the Mexinox acquisition costs, we agree with KTN that these expenses should not be included in KTN's G&A expenses. While we agree with petitioners' characterization of Mexinox as an integral part of Fried. Krupp's operations, we do not consider it appropriate to include inter-company finance charges in our calculation of G&A expenses. Financing expenses related to Fried. Krupp's purchase of Mexinox will be captured in Fried. Krupp's consolidated financial statements.

We also agree with KTN regarding the treatment of rebate claims, provisions and internal freight. As noted in Exhibit 23 of the KTN Cost Verification Report, the expenses included in this account are predominantly for commissions and freight which the Department treats as selling expenses. Appropriately, KTN has reported these expenses in its sales listing. Therefore, we have excluded them from the G&A expense calculation.

Comment 24: Allocation of G&A Expenses

KTN takes issue with the Department's suggestion in the KTN Cost Verification Report that G&A expenses should be allocated based on total cost of manufacture (TCOM). Rather, KTN insists, its methodology, which allocates aggregate G&A expenses to products based on processing costs alone, achieves a more accurate result, as it is not skewed by wide variations in material costs. Material costs vary sharply, KTN explains, not only as a result of the differing alloy content of different grades of stainless steel, but also because of fluctuations in alloy prices. Therefore, according to KTN, while G&A activities do not vary according to grades of steel, material costs do vary depending upon the nickel content of the specific steel grade. As a result, KTN avers, inclusion of material costs will result in products which require the same G&A activities having sharply divergent per-ton allocated G&A expenses. KTN's Case Brief at 50. While it is reasonable, KTN suggests, to assign a higher G&A cost to a product which requires more processing activities, as the processing requires active management, it is inherently unreasonable to assign higher G&A costs to a product whose sole distinction is a higher cost for its constituent materials. Therefore, KTN believes that the Department should accept KTN's reported activity-based G&A expenses and not recalculate G&A based on its TCOM.

Petitioners oppose KTN's request for the allocation of its G&A expense ratio based on processing costs alone, calling KTN's suggested approach "a results-oriented attempt to distort fully absorbed costs." Petitioners' Rebuttal Brief at 52. Such an approach, contend petitioners, results in a grade-neutral ratio which assigns the same absolute G&A expense to both low-cost and high-cost products. Petitioners insist that, contrary to KTN's methodology, the proper allocation of G&A over COM always includes the cost of materials. The rationale for a value-based allocation, petitioners argue, is that higher-value products absorb the same proportional amount, but a greater absolute amount, than lower-value products. *Id.* at 53. Petitioners argue that this approach for the allocation of SG&A expenses has been used consistently by the Department in such cases as Pure Magnesium from the People's Republic of China, 63 FR 3085 (January 21, 1998). Petitioners draw further support from Belgian Stainless Plate in Coils where the Department rejected the respondent's "improvements" in attempting to use a quantity-based methodology in allocating its selling expenses. As a result, petitioners note, the Department allocated the respondent's SG&A expenses solely on the basis of value.

Department's Position: We agree with petitioners that G&A expenses should be allocated as a percentage of the total cost of manufacturing the merchandise, as opposed to KTN's assertion that they be allocated as a percentage of processing costs. As set forth in Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38149 (July 23, 1996) and Certain Carbon and Alloy Steel Wire Rod From Canada, 59 FR 18791, 18795 (April 20, 1994), our normal methodology for allocating G&A expenses is to apply these types of costs as a percentage of total manufacturing cost. This approach recognizes that the category termed "G&A expense" comprises a wide range of costs, some of which bear such an indirect relationship to the immediate production process that any allocation based on a single factor, i.e., processing costs, would be purely speculative. The Department's normal method for allocating G&A costs based on total manufacturing cost takes into account all production factors (i.e., materials, labor, and overhead) rather than a single factor chosen arbitrarily. By allocating G&A consistently over total manufacturing costs the Department attempts to minimize discriminatory cost allocations. In addition, G&A expenses represent period costs, not product costs, and as such they should be spread proportionately over all merchandise produced in the period. By computing G&A based on a percentage of total manufacturing costs, each product absorbs the same proportional amount of G&A expenses relative to its total cost, even if the absolute amount might vary. This approach avoids distortions to the price or cost analysis caused by apportioning a higher percentage of processing costs to lower-cost products.

We also disagree with KTN's assertion that activity-based costing and standard accounting practices support the allocation of period costs based on processing costs. As the name suggests, activity-based costing provides that a cost element should be allocated based on the activity which gave rise to that cost element. G&A expenses, however, do not arise from individual processing costs or activities. We also disagree with KTN's unsupported argument that the more processing a product undergoes, the greater the amount of general and administrative activities properly associated with the product. By definition, G&A expenses relate to the general operations of the company as a whole and, as noted, to a period of time, not to specific products or processes. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we allocate such costs based on the total manufacturing cost. Therefore we have calculated KTN's G&A expenses as a percentage of the total manufacturing cost, including material costs.

Comment 25: Exchange Rate Gains and Losses

Petitioners maintain that because KTN was unable to reconcile its reported schedule of exchange gains and losses to the financial statements of Fried. Krupp, the Department should adopt the methodology suggested in the KTN Cost Verification Report by including foreign exchange rate losses, but excluding foreign exchange rate gains, in calculating consolidated financial expenses.

KTN disagrees, asserting that the Department should rely upon the exchange rate gains and losses realized by KTN proper, rather than the overall exchange rate experience of Fried. Krupp as a whole. To the extent the Department does rely upon the exchange rate gains and losses indicated in Fried. Krupp's financial statements, KTN argues, any losses should be offset

by the gains. KTN further avers that the Department found sufficient evidence at verification to distinguish between the short-term and long-term interest reflected in Fried. Krupp's consolidated 1997 financial statements; interest income from long-term investments is shown separately from other interest and similar income drawn from short-term resources.

Department's Position: As a general matter we disagree with KTN that for computing interest expenses the Department should use KTN's company-specific foreign exchange and interest income figures rather than the consolidated figures reflected in Fried. Krupp's financial statements. The Department has a longstanding practice of calculating the respondent's net interest expense rate based on the financing expenses incurred on behalf of the consolidated entity. This practice recognizes the fungible nature of invested capital resources (i.e., debt and equity) within a consolidated group of companies. The Court sustained this approach in *Camargo Correa Meais, S.A.* v. *United States*, 17 C.I.T. 897, 902 (August 13, 1993), where the Court quoted approvingly Certain Small Business Telephone Systems and Subassemblies Thereof From Korea, 54 FR 53141, 53149 (December 27, 1989):

> The Department recognizes the fungible nature of a corporation's invested capital resources including both debt and equity, and does not allocate corporate finances to individual divisions of a corporation * * * Instead, [Commerce] allocates the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation.

Accordingly, we will continue to use the consolidated financial statements of Fried. Krupp in the calculation of KTN's financial expense ratio.

As for the foreign exchange gains and losses, the Department requested in two questionnaires and again at verification that KTN provide information to support the inclusion of Fried. Krupp's foreign exchange gains and exclusion of its foreign exchange losses from the interest expense computation. However, KTN, which has the sole ability and responsibility to support the requested adjustments, failed to provide any supporting information. Thus, we agree with petitioners that since KTN failed to provide evidence to support the inclusion of gains and the exclusion of losses from the financial expense ratio calculation, we have included Fried. Krupp's foreign exchange rate losses while excluding its foreign exchange rate gains from the financial expense ratio calculation.

We agree with KTN, however, that based on our findings at verification, the interest income used as an offset to financial expenses is appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statements distinguish between interest earned from long-term and short-term financial assets. Accordingly, we included the interest income earned from short-term assets, less the amounts relating to trade receivables, as an offset to financial expenses.

Comment 26: Deep-Drawing by Affiliated Processor

Petitioners accuse KTN of failing to report that an affiliated party, Thyssen Umformtechnik, performed deep drawing operations on stainless flat products produced by KTN. The Department, petitioners contend, must apply adverse facts available in accounting for this critical element in KTN's COP.

KTN suggests that petitioners have misunderstood the role of these deep drawing operations. KTN maintains that rather than representing a cost associated with producing the foreign like product, deep drawing actually involves the consumption of the foreign like product in the manufacture of non-subject products ranging from vacuum bottles to automotive parts.

Department's Position: We agree with KTN with respect to the alleged role of deep drawing operations in the production of the foreign like product. The deep drawing at issue, as KTN claims, involves the consumption of the merchandise in the production of non-subject products and is not, as petitioners contend, a "critical element" of KTN's reported COP. As such, we made no adjustment for the deep drawing processes performed by Thyssen Umformtechnik.

Comment 27: Failure To Report Affiliated Supplier

Petitioners note that KTN purchased small quantities of titanium [8] from a company owned by Acciai Speciali Terni S.p.A. (AST), a sister company of KTN. According to petitioners, KTN failed to disclose prior to the Department's cost verification that the titanium was in fact purchased from an affiliated party. KTN's failure to disclose its affiliation with the supplier warrants use of adverse facts available, petitioners insist, because while titanium may represent a small portion of KTN's total raw material purchases, it comprises a major portion of the material costs for those grades of stainless steel which are alloyed with titanium.

KTN rejects as pure conjecture petitioners' arguments concerning purchases of titanium from its affiliate. Petitioners, KTN avers, have provided no information or analysis which could lead the Department to suspect the nature of the transactions between the affiliate and KTN. Furthermore, argues KTN, titanium purchases from the affiliate involved only small quantities of this input.

Department's Position: We disagree with petitioners. KTN disclosed at the outset of verification that it purchased small quantities of titanium from an affiliated company's subsidiary. We discussed the affiliation and these purchases with KTN officials, and noted that KTN's product brochures list titanium as a trace element (i.e., less than one percent) in certain grades of stainless steel. Given the relative insignificance of this input, we deferred further testing of the purchases and instead focused our testing on KTN's purchases of more significant inputs. Thus, contrary to petitioners' assertions, KTN identified the nature of these purchases; at verification the Department exercised its discretion in electing to concentrate on inputs which have a greater affect on KTN's reported COP.

Comment 28: Major Inputs From Affiliated Suppliers

Petitioners insist that KTN did not provide its affiliates' acquisition costs for certain raw materials used in the production of subject stainless steel sheet and strip. Petitioners argue that, as major inputs, the raw materials purchased from affiliates should be valued at the higher of transfer prices, market value, or the affiliates' COP, in accordance with section 773(f)(2) and (3) of the Tariff Act. However, in the instant case, petitioners aver, the transfer prices paid by KTN to its affiliated suppliers for inputs such as nickel and chromium were, on average, below market value. Petitioners' Case Brief at 68, citing Exhibit 23 of the KTN Cost Verification Report. Petitioners disagree with the Department's opinion, voiced in this report, that KTN's transfer prices were greater than both market value and the affiliates' COP (i.e., the affiliates' acquisition costs). Furthermore, evidence of the affiliates' overall profitability does not address whether or not the transfer prices at issue were above the cost of acquisition for these raw materials.

[8] The specific input and the supplier's identity were afforded treatment as business proprietary information, and were so treated in petitioners' case brief. However, KTN identifies the input publicly in its rebuttal brief.

Petitioners suggest increasing the value of KTN's nickel, chromium, and scrap inputs by the difference between KTN's highest unit costs for purchases from unaffiliated suppliers and the average transfer price, using the data in KTN Cost Verification Exhibit 23. If the Department persists in conducting the major inputs test in spite of KTN's refusal to provide its affiliated suppliers' acquisition costs, petitioners continue, the Department as a "corrective measure" should increase the value of these inputs by the difference between the average transfer price and the average market price.

KTN asserts that the Department verified that the transfer prices for raw materials supplied by affiliated parties were greater than both market prices and the affiliates' cost of production; accordingly, KTN argues, the Department should use the transfer prices in calculating COP and CV.

Department's Position: We disagree with petitioners. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value required to be considered in calculating COP (i.e., major or minor inputs) are at prices that "fairly reflect * * * the market under consideration." Section 773(f)(3) allows the Department to further test whether transactions between affiliated parties involving a major input are at prices above the affiliated supplier's cost of production. In other words, if an understatement of the value of a major input would have a significant impact on the reported cost of the subject merchandise, the statute allows the Department to insure that the transfer price or market price is above the affiliated supplier's COP.

The determination as to whether an input is considered major is made on a case-by-case basis. See Final Rule, 62 FR at 27362. In determining whether an input is considered major, among other factors, the Department looks at the percentage of the input obtained from affiliated suppliers (versus un-affiliated suppliers) and the percentage the individual element represents of the product's COM (i.e., whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise. Id. In the instant case we examined both the percentage of the input obtained from affiliated versus unaffiliated suppliers and the percentage of the product's COM represented by the specific elements of value, here, nickel, chromium, and alloyed scrap. The limited amounts of the inputs obtained from affiliated suppliers, combined with the relatively small percentage the individual elements represent of the product's COM, mitigates the effect purchases of these inputs from affiliates would have on KTN's total COP. Accordingly, we determine that in this investigation section 773(f)(3) of the Tariff Act does not apply to the nickel, chromium, and alloyed scrap purchased from affiliated parties. However, we did find that the prices paid to affiliated parties for nickel were below market price; therefore, as provided by section 773(f)(2) of the Tariff Act, we have increased the COM accordingly.

Comment 29: Hot Rolling Costs

Petitioners charge KTN with supplying data on the costs of hot-rolling services provided by an affiliate that are both incomplete and inaccurate. As a result, petitioners maintain, the Department lacks the necessary data to conduct the major input test described at section 773(f)(3) of the Tariff Act. Because KTN failed to provide its affiliate's total actual manufacturing costs, as well as the supporting documentation to calculate the affiliate's SG&A and net financial expenses, argue petitioners, the Department must rely upon adverse facts available to establish the TCOM for all of KTN's products.

According to petitioners, KTN selectively applied variances (to adjust standard costs to actual costs) to only limited portions of its cost build-up. In doing so, petitioners contend, KTN failed to account fully for the affiliate's actual per-unit costs of the hot-rolling services. Petitioners claim that as a result, KTN's reported costs do not cover the actual COM of the affiliated hot-roller.

Petitioners contend KTN has further skewed its reporting of hot-rolling costs by failing to include amounts for the affiliate's variable operating costs and SG&A expenses. Petitioners insist that to capture fully the affiliate's COP, the reported costs must include the SG&A of the affiliate, as well as the interest expenses of its parent firm, Thyssen Stahl AG. Further, petitioners argue that KTN failed to submit for the record data on the affiliate's expenses, such as its financial statements, that would allow a calculation of these additions to COM. Absent the profit and loss statement of the affiliate or, at the least, its parent, petitioners contend, there is no way to establish either the SG&A or financial expense portions of fully-captured COP for this hot rolling.

In light of KTN's failure to report the actual TCOM and the additional data necessary to determine adjustments for SG&A and net financial expenses, petitioners aver, the Department must resort to the facts available to establish KTN's COP. Petitioners suggest as an adverse inference that the Department should apply the single highest TCOM to all of KTN's products. That failing, conclude petitioners, the Department should adjust the reported COM to reflect actual, not standard, costs, and to include surrogates for the missing SG&A and financial expense data for the affiliated hot roller.

KTN takes issue with a number of petitioners' assertions. First, KTN argues, petitioners have not even established that the hot-rolling services at issue constitute a major input for the purposes of section 773(f)(3). Hot-rolling services, submits KTN, account for a small fraction of KTN's costs and are not a major input. That petitioners fail to address a necessary predicate to their entire line of argument, KTN maintains, is grounds for rejecting that argument entirely. While acknowledging that the Department has no bright-line figure for establishing what constitutes a major input, KTN nevertheless suggests that hot rolling adds relatively little value to the foreign like product; stainless steel derives most of its value from metallurgy (*i.e.*, at the liquid steel stage) and through cold rolling, annealing, and other finishing processes. Hot rolling, KTN concludes, is not a major input.

Second, KTN maintains, petitioners' allegations betray a misunderstanding of KTN's reporting methodology; the Department, on the other hand, tested this methodology at verification and found it to be sound. KTN's Rebuttal Brief at 57. KTN claims that petitioners virtually ignored the agreement between KTN and its affiliate setting forth the terms for its purchase of these services, whereas the Department examined this document, tested its formulae, and concluded that the transfer price covered the affiliate's cost of providing hot rolling. Petitioners' assertion that certain of the affiliate's costs were omitted from the transfer price, KTN avers, is drawn from the incorrect document, which merely addresses end-of-year adjustments to these costs. Rather, KTN maintains, the hot-rolling services agreement provides an itemization of costs to be included in the transfer price that is so liberal that "KTN is of the view that it is paying too much for the hot rolling services." KTN's Rebuttal Brief at 61.

KTN concludes that petitioners' objections to its reported hot-rolling costs are misinformed. KTN insists that it has provided all documentation requested by the Department, and these hot-rolling services were discussed at length at verification. Petitioners'

arguments, therefore, should be dismissed.

Department's Position: We agree with KTN that the transfer prices paid to its affiliated hot roller were at arm's length and, therefore, no adjustment is necessary. As mentioned above, when determining whether an input or process is considered major, the Department considers, *inter alia*, the percentage of the input or process obtained from affiliated suppliers and the percentage the individual element represents of the product's COM. In this case because hot-rolling comprises a relatively small percentage of the foreign like product's COM the impact of any misstatement of these costs upon total COP is reduced. As a result, we have determined that the hot-rolling services supplied by the affiliate do not constitute a major input as defined by section 773(f)(3) of the Tariff Act. However, as the hot rolling represents an input supplied by an affiliate, the Department still tests whether or not the transfer prices were at arm's length. In the instant case no market prices for hot-rolling services were available. Therefore, at verification the Department confirmed that the transfer prices, after the year-end adjustments enumerated in the purchase contract, were above the affiliated supplier's cost of production. Further, the Department confirmed at verification that the contract between KTN and its affiliated hot roller establishes prices which cover all fixed and variable manufacturing costs and SG&A as well as a provision for profit to the affiliate. Finally, we verified that the actual prices paid by KTN to the affiliate reflected the terms of the contract.

Ministerial Errors and Miscellaneous Comments

Comment 30: Separate Weighting of Nickel Alloys for Model Matching

KTN argues that the Department should use separate product codes for its 304L low-nickel and 304L high-nickel alloys because there are significant differences in the physical characteristics between the two which have a direct bearing on their respective costs of manufacture. KTN points to the widely divergent nickel content of the low-and high-nickel variants of its 304L stainless steel.

Petitioners contend that the model-matching grade criteria should not undergo selective modification to redefine product bands in the results-oriented exercise suggested by KTN, citing *Ferrosilicon from Venezuela*, 57 FR 61879, 61880 (December 29, 1992) (preliminary determination), and 58 FR 27522 (May 10, 1993) (final determination).

Department's Position: We agree with petitioners. In order to understand the Department's position, it is first helpful to clarify our methodology for assigning weight factors. We assigned individual weighting factors to those reported grades recognized by the AISI nomenclature. We also assigned unique factors to any reported proprietary grades or foreign grade specifications if the chemical content was sufficient to distinguish them from any existing AISI grade already assigned a ranking factor in our matching hierarchy (e.g., DIN specification 1.4462). Where a proprietary or foreign grade specification was similar in chemical composition to an AISI grade, we assigned it the same weight as the comparable AISI grade, rather than assigning a unique weighting factor to that particular grade. We also did not assign unique weights to certain "sub-grades" (e.g., 304DDQ) because the percentage ranges of chromium, carbon, nickel, and molybdenum do not differ from the broader AISI grade.

After deciding which grades to assign unique weighting factors, we established a linear weighting system designed to search for matches within the general classes of stainless steel (e.g., the chromium-nickel series, the straight chromium (hardenable) series, and the straight chromium (non-hardenable) series). In addition to ensuring matches within the general classes or families of stainless steel, our weighting system is designed to match grades in the same family based on chemical composition. For example, within the chromium-nickel series, where an identical match is not possible, our preference is to pair grades containing molybdenum (e.g., grades 316 and 317) with each other before searching for a grade with no molybdenum (e.g., grades 302 and 304).

KTN argues that the Department should use separate product codes for 304L low-nickel and 304L high-nickel alloys, stating that

* * * DIN grade 4306 can be equated to AISI grade 304L. However, KTN sells different versions of DIN grade 4306—4306.00 and 4306.90. DIN grade 4306.00 has a nickel content of 10.0 through 10.2% while DIN grade 4306.90 has a nickel content of 8.05–9.12%. These differences in nickel content result in a large difference in costs and thus in price as well. Therefore, for sales of 4306.00, KTN has reported the information in GRADE2H as "304L H" with an H indicating high nickel content. For sales of 4306.90, KTN has reported the information in GRADE2H as "304L L," with an L indicating low-nickel content. KTN's September 29, 1998 section B questionnaire response at 9.

AISI grade 304L, to which we have assigned a unique weighting factor for purposes of our model match, contains between 8 and 10.5 percent nickel by weight. The nickel ranges specified by KTN for 4306.90 (304L L), 8.05 to 9.12 percent, and 4306.00 (304L H), 10 to 10.2 percent, fall entirely within the broader range specified for AISI grade 304L. Therefore, while the nickel content of the low- and high-nickel variants differs somewhat, both fall within the limits recognized as acceptable for grade 304L stainless steel. Accordingly, for this final determination we have not altered our model match program to distinguish between different variants of the same grade 304L stainless steel.

Comment 31: Errors in Model-Match Program

KTN claims that the programming language included in the Department's model-match program to consider gauge and finish did not execute properly due to a formatting discrepancy between the number of digits used in the Department's program and the number included in KTN's reported sales databases. As a result, KTN notes, two of the nine physical criteria intended for use in the model-match program were not considered, thus skewing the matching and the attendant adjustments for differences in merchandise (difmer).

Department's Position: We examined our model-match program and agree with KTN that the program inadvertently failed to consider the gauge and finish variables when matching home market and U.S. products. KTN reported gauge and finish in a different format than it did the other physical characteristics considered in the model-match program, inserting a leading zero for all values less than ten. As a result, for many models the program read the gauge and finish variables as equal to zero, and generated missing values for those records. Furthermore, in cases where sales of coil in the United States were matched to sales of similar merchandise in the home market (rather than sales of the identical coil) the model-match program did not calculate difmer adjustments as it should but, rather, set the value for these adjustments to zero. Therefore, for this final determination we have amended our program to account for the leading zeros inserted in KTN's reported gauge and finish. See also the Department's Ministerial Errors Memorandum.

Comment 32: Disclosure Under Administrative Protective Order

Petitioners argue that KTN has improperly double-bracketed the identities of its affiliated Thyssen distributors in the United States and Germany, refusing to release this information under administrative protective order (APO), even though this information has been in the public domain. According to petitioners, documentation they submitted on November 12, 1998 and January 11, 1999, clearly shows that the stainless steel distribution role of the various disputed Thyssen distributors "is not only generally known, but in fact advertised, placed on the Internet, briefed in public company announcements, analyzed in the trade press, touted in public annual reports, outlined in Dun and Bradstreet company profiles, reported to the SEC, and highlighted in product brochures." Petitioners' Case Brief at 109. Therefore, petitioners assert that given these circumstances, KTN should not be allowed to succeed in pressing its claim for proprietary treatment for the affiliates' identities and should not only be required to release the names under APO, but should publicly identify these parties for the record.

Department's Position: We disagree with petitioners. From the outset of this investigation KTN has not released the names of its affiliates in the U.S. or home market under APO, instead choosing to double-bracket their names. On September 28, 1998, petitioners wrote the Department requesting that KTN be required to replace double-bracketed affiliated party names with single bracketing or, at a minimum, use a naming convention or coding of affiliates that would permit the consistent and reliable tracking of affiliations throughout the investigation. In a November 5, 1998 letter, KTN argued that in accordance with section 771(c)(1)(A) of the Tariff Act, it should not be required to disclose the names of KTN's customers to counsel for petitioners. Petitioners responded on November 12, 1998, by submitting documentation in support of its assertions that the affiliates' names which KTN was attempting to withhold from disclosure under APO were, in fact, in the public domain. After a thorough review of the record, on December 4, 1998, we notified KTN that "we will permit the double bracketing of all customers in both the home market and U.S. market. We require however, that you code the affiliated customers in both markets." Letter from Ann Sebastian to Hogan & Hartson, December 4, 1998. On December 15, 1998, KTN submitted this coding, as instructed. On January 11, 1999, petitioners again placed information on the record attempting to bolster their original claim that these names deserved treatment as public information.

Section 777(c)(1)(A) of the Tariff Act states that "[c]ustomer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of an investigation or the investigation is suspended or terminated." Further, the Department's regulations hold that "[t]he Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, *except (i) customer names submitted in an investigation.*" 19 CFR 351.304(a)(2) (emphasis added).

Based on the plain language of both the statute and the Department's regulations we have concluded that KTN was entitled to withhold the names of affiliates in the U.S. and home market from release under APO during this investigation. While petitioners provided voluminous documentation that KTN's affiliates' names were publicly available during the POI, we must defer to the statute's sensitivity regarding the improper disclosure of customer names during an antidumping duty investigation. Of all categories of business proprietary information routinely collected by the Department in antidumping duty proceedings, the Tariff Act specifically prohibits only the disclosing of customer names by "the administering authority," i.e., the Department.[9] After thorough review we have determined that petitioners' documentation does not definitively indicate whether or not these parties were indeed customers of KTN. Thus, while these parties' names may be available through public means, the nature and extent of their dealings with one another are not. Requiring KTN to publicly release such information without conclusive public evidence of their roles has the potential for causing competitive harm to KTN. Further, it is important to note that the Department instituted one of the petitioners' proposed compromise solutions by requiring KTN to provide codes for its affiliates which were then released to petitioners. Therefore, for this final determination we will continue to allow KTN to withhold the identities of its affiliated customers in both the home and U.S. markets.

[9] Section 777(c)(1) also protects from disclosure privileged and classified information, which rarely factors into antidumping investigations, and "information of a type for which there is a clear and compelling need to withhold from disclosure."

Comment 33: Erroneous Subtraction of Home Market Billing Adjustments

KTN claims that the Department erred by adding, rather than subtracting, its reported billing adjustments when creating a variable to represent total discounts, rebates and billing adjustments. These billing adjustments, KTN asserts, should be added to the home market gross price, not deducted as in the Preliminary Determination.

Department's Position: We agree with KTN. We inadvertently deducted KTN's home market billing adjustments in our calculation of home market net price. Therefore, for these final results we have subtracted KTN's billing adjustment from our calculation of total discounts and rebates, which has the net effect of adding them to gross unit price, as appropriate.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date of publication of the Preliminary Determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price or constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (in percent)
Krupp Thyssen Nirosta GmbH	25.72
All Others	25.72

International Trade Commission Notification

In accordance with section 735(d) of the Tariff Act, we have notified the Commission of our determination. As our final determination is affirmative, the Commission will determine within 45 days after our final determination

whether imports of stainless steel sheet and strip in coils from Germany are materially injuring, or threaten material injury to, the U.S. industry. If the Commission determines that material injury, or threat thereof, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the Commission finds that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13682 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0199; (202) 482-3818 respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351 (April 1998).

Final Determination

We determine that stainless steel sheet and strip in coils ("SSSS") from Italy are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy* ("*Preliminary Determination*") 64 FR 116 (January 4, 1999)), the following events have occurred:

On December 17, 1998, AST submitted its quantity and value reconciliation and computer programs for its affiliated U.S. reseller ("reseller 001"). On December 28, 1999, Acciai Speciali Terni, S.p.A. ("AST") submitted its response to the Department's December 7, 1998 supplemental questionnaire. On January 8, 1999, the Department requested that AST provide additional information for reseller 001's downstream sales. On January 15, 1999, AST submitted its response to the Department's January 8, 1999 request. On February 16, 1999, we issued a supplemental questionnaire to AST regarding its December 11, 1998 reseller 001 submission. On February 23, 1999, we received AST's response to the Department's supplemental questionnaire.

On February 24, 1999, AST submitted information regarding additional U.S. sales that it had found in preparation of the home market verification. On March 5, 1999, the Department rejected AST's February 24, 1999 submission on the grounds that it was untimely. On March 8, 1999, at the onset of the verification of AST USA, AST submitted the additional U.S. sales. The Department rejected these sales as soon as they were presented to it. On March 10, 1999, petitioners submitted comments and information pertaining to the additional U.S. sales. On March 19, 1999, the Department rejected petitioners' March 10, 1999 submission because it contained untimely new information which was based on U.S. sales data that were previously rejected by the Department. On March 16, 1999, AST once again submitted information regarding the additional U.S. sales. On March 19, 1999, the Department rejected AST's March 16, 1999 submission because it contained untimely new factual information, and because it was submitted in response to petitioners' March 10, 1999 letter, which the Department rejected in its entirety. On March 22, 1999, AST submitted a letter stating that according to section 351.104(a)(2)(ii)(A) of the Department's regulations, the Department must retain a copy of AST's March 16, 1999 response on the official record. On March 30, 1999, the Department responded to AST's March 22, 1999 letter stating that pursuant to section 351.104(a)(2)(iii) of the Department's regulations we would not retain a copy of AST's response to petitioners' rejected March 10, 1999 letter, because it was an untimely submission.

During January, February and March 1999, we conducted sales and cost verifications of AST's and its affiliates' responses to the antidumping questionnaires in Italy and the United States. On March 15, 1999 and March 25, 1999, we issued our cost and sales verification reports for AST, AST USA, and reseller 001. Petitioners and respondents submitted case briefs on April 5, 1999, and April 6, 1999, and rebuttal briefs on April 9, 1999, and April 13, 1999. On April 19, 1999, petitioners and respondents withdrew their requests for a public hearing, dated January 13, 1999 and January 22, 1999, respectively.

On April 1, 1999, the Department requested that AST provide monthly shipment data for 1996, 1997, and 1998 by April 12, 1999. On April 12, 1999, AST submitted this information.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05,

7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Period of Investigation

The period of investigation ("POI") is April 1, 1997 through March 31, 1998.

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Italy. In accordance with 19 CFR 351.206(c)(2)(i), we preliminarily determined that critical circumstances did not exist with respect to respondent AST, because the Department found that the estimated dumping margin was not 15 percent or greater, the threshold for the Department to impute knowledge on the part of the importer that dumping was occurring when the transactions are CEP sales. *See Preliminary Determination* and discussion below.

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 735(a)(3)(A)(i) of the Act, the Department considers evidence of an existing antidumping order on SSSS from the country in question in the United States or elsewhere to be sufficient. We are not aware of any antidumping order in any country on SSSS from Italy.

In determining whether an importer knew or should have known that the exporter was selling SSSS at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent for CEP sales and 25 percent for EP sales sufficient to impute knowledge of dumping and of resultant material injury. *See Notice of Final Determination of Sales Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 63 FR 61964, 61967 (November 20, 1997); *see also Notice of Final Determination of Sales Less Than Fair Value: Manganese Sulphate from People's Republic of China* 60 FR 52155, 52161 (October 5, 1995).

In this investigation, AST, which the Department has determined has CEP sales, does not have a margin over 15 percent. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we determine that critical circumstances do not exist with respect to imports of SSSS from AST. Because the first criterion is not met, we did not analyze the respondent's shipment data to examine whether imports of SSSS have been massive over a relatively short period. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from Korea*, 63 FR 25895, 25898 (May 12, 1997).

Regarding all other exporters, an "All Others" rate has been determined (*see* "The All Others Rate", below); because this rate does not exceed 15 percent, we determine that critical circumstances do not exist for companies covered by the "All Others" rate.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant sales, accounting, and production records and original source documents provided by respondent.

Affiliation

As explained in the *Preliminary Determination*, we find that, for purposes of this investigation, AST is affiliated with Thyssen AG ("Thyssen"). Record evidence established that AST is 75 percent owned by a joint venture company, Krupp Thyssen Stahl ("KTS"). KTS, in turn, is 40 percent owned by Thyssen Stahl AG ("Thyssen Stahl"), itself a wholly-owned subsidiary of Thyssen AG (the remaining sixty percent of KTS is controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Consequently, Thyssen AG, indirectly has a 33.75 percent equity holding in AST and, because this is greater than five percent, Thyssen AG is affiliated with AST within the meaning of section 771(33)(E) of the Act. *See Preliminary Determination* at 64 FR 118 and *Memorandum to the File; "Affiliation of AST and Thyssen AG, and AST and A Thyssen Affiliate (company A),"* December 17, 1998 (*Affiliation Memorandum*).

In addition, we continue to find that AST is affiliated with Thyssen's home market and U.S. sales affiliates. Section 771(33)(F) of the Act authorizes the Department to find companies to be affiliated where two or more companies are under the common control of a third company. Section 771(33) of the statute defines "control" as one person being "legally or operationally in a position to exercise restraint or direction over the other person." The actual exercise of control by one person over the other is not required in order to find the parties affiliated. In this investigation the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of AST. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the *Preliminary Determination*, "Thyssen retained the ability to control the production and pricing decisions of AST through the joint venture of KTS. Because both company A and AST are controlled by Thyssen AG within the meaning of section 771(33)(F), we have found that AST and company A are affiliated." *See* 64 FR 119. For a discussion of AST's affiliated parties,

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

see Comment 3 below, the Affiliated Party Memorandum, and *Memorandum For the File; "Antidumping Duty Investigation on Stainless Steel Sheet and Strip in Coils from Italy—Final Determination Analysis for Acciai Speciali Terni SpA" (Final Analysis Memorandum)* May 19, 1999.

Transactions Investigated

As in the preliminary determination, the Department has determined that for U.S. and home market sales the date of invoice is the appropriate date of sale because this is the date on which the material terms of sale are set. For further discussion see Comment 6.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the "Scope of the Investigation" section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

As discussed in Comment 8, the Department has considered that sales of side-cuts and pup coils to be sales of prime merchandise for the purposes of this final determination. For matching purposes, we have matched AST's sale of prime merchandise in the home market to sales of prime merchandise in the U.S. market. We have also matched sales of non-prime merchandise in the home market to sales of non-prime merchandise in the U.S. market.

Fair Value Comparisons

To determine whether sales of SSSS from Italy to the United States were made at less than fair value, we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "constructed export price" and "normal value" sections of this notice, below. In the preliminary determination, we calculated weighted-average EP for some of AST's U.S. sales. However, as discussed in Comment 5, the Department has found that all of AST's U.S. sales, which were made through AST USA, constitute CEP sales and we have therefore compared CEP to NV for those sales. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting price comparison sales in the home market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative expenses ("SG&A") and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa: Notice of Final Determination of Sales at Less Than Fair Value,* 62 FR 61731 (November 19, 1997).

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between AST and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade.

In this investigation, AST did not request a LOT adjustment. To ensure a LOT adjustment was not necessary and in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer and selling expenses for each respondent.

For its home market sales, AST reported: (1) three customer categories—industrial end-users, white goods manufacturers, and service centers/distributors; and (2) two channels of distribution'direct factory sales (sales of prime merchandise) and warehouse sales (the majority of which are sales of non-prime merchandise). AST claimed two levels of trade in the home market based solely on the quality of subject merchandise, *i.e.*, prime vs. non-prime.

In reviewing AST's LOT in the home market, we asked AST to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing to customers in the home market and the United States. As mentioned above, AST identified two channels of distribution in the home market based entirely on whether the sale to the customer was of prime or non-prime merchandise. For sales of prime merchandise, AST sold to all three of the types of customers mentioned above, and provided the same selling functions to each of the customer types. Specifically, AST provided freight and delivery, credit, technical services, and warranties. For sales of mostly non-prime merchandise sold from AST's warehouse, AST performed the same selling functions (except for providing warranties) as for sales of its prime merchandise, but AST also engaged in the additional selling activities of advertising for its mostly non-prime merchandise and maintaining inventory of this merchandise at AST's warehouse. Because the selling activities engaged in by AST were identical for each customer when selling prime merchandise and were identical for each customer when selling mostly non-prime from inventory, and because the selling activities for both groups of sales were very similar, we continue to determine, as we did in the preliminary determination, that there exists one level of trade for AST's home market sales.

For its U.S. sales, AST reported that its affiliated importer, AST USA, made sales to two customer categories—industrial end-users and service centers, and through three channels of distribution—direct factory sales, warehouse sales, and consignment sales. AST claimed two levels of trade in the U.S. market based solely on the quality of subject merchandise: (1) non-prime; and (2) prime. We examined the claimed selling functions performed by AST and its U.S. affiliate, AST USA, for

all U.S. sales. For back-to-back sales made directly to the unaffiliated U.S. customer, AST performed the following selling functions: it provided technical and warranty services; arranged for freight and delivery; and extended credit. For sales which AST reported as CEP sales, AST engaged in identical selling activities, providing technical and warranty services, freight and delivery and credit.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we conclude that there is not a significant difference in the selling functions performed in both markets. The Department confirmed this information at the verification (*see Verification Of Sales of Acciai Speciali Terni S.p.A.*, dated March 25, 1999 ("*Verification Report of AST*")). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the comparison market and the United States. Therefore, a LOT adjustment for AST is not appropriate.

Additionally, as noted in Comment 5, we have classified all of AST's U.S. sales as CEP sales. Because we determine that there exists only one level of trade for all of AST's sales in both markets, we conclude that no CEP offset is warranted for the final determination.

Constructed Export Price

As discussed in Comment 5, we determine that all of AST's U.S. sales are CEP. We calculated CEP based on the packed, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments to the starting price for price-billing errors, where applicable. In addition, we made adjustments to the starting price by adding alloy surcharges, and skid charges where appropriate. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, freight equalization charges, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also added insurance revenue by allocating it across all U.S. sales of subject merchandise. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Affiliated-Party Transactions and Arm's-Length Test

To test whether sales to affiliated parties were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina* ("*Certain Cold-Rolled Carbon Steel Flat Products from Argentina*"), 58 FR 37062, 37077 (July 9, 1993); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509 (November 8, 1998), citing to *Certain Cold-Rolled Carbon Steel Flat Products from Argentina*. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable and no parties have contested that decision. For the final determination, we based NV on home market sales.

2. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether AST made sales of the foreign like product in the home market during the POI at prices below its cost of production ("COP"). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of AST's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from AST's December 2, 1998 supplemental questionnaire response to calculate COP. As noted in Comment 25, we have reduced AST's financial expenses by Fried. Krupp's short-term income from investments. Additionally, we recalculated AST's G&A rate, adding the "other operating expense" to G&A and removing the expenses that AST had reported in other fields. *See* Comment 26. Lastly, we used the corrected variance in the COP calculation for the final determination. *See* Comment 28.

3. Test of Home Market Prices

As in our preliminary determination, we compared the weighted-average COP for AST, adjusted where appropriate, to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, billing adjustments, alloy surcharges, skid charges, rebates, and direct and indirect selling expenses.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities", pursuant to section 773(b)(2)(c)(i) of the Act, within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, pursuant to section 773(b)(2)(D) of the

Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. For those U.S. sales of SSSS for which there were no comparable home market sales in the ordinary course of trade, we compared the CEP to CV in accordance with section 773(a)(4) of the Act. *See Analysis Memorandum.*

Calculation of Constructed Value

As in our preliminary determination, we calculated CV based on the sum of AST's cost of materials, fabrication, selling, general, and administrative expenses (SG&A), interest expenses, profit, and packing. We calculated the COP included in the calculation of CV as noted above, in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by AST in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For CV, we made the same adjustments described in the COP section above.

Price-to-Price Comparisons

As in our preliminary determination, for AST's home market sales of products that were above COP, we calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made adjustments for price billing errors, discounts, and rebates where appropriate. We made deductions, where appropriate, for foreign inland freight, warehousing, and foreign inland insurance expenses, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, for imputed credit, warranty expenses, and technical expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) (A) and (B) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to CEP, we deducted from CV the average home market direct selling expenses.

Currency Conversion

As in our preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Facts Available

We determine that the use of partial facts available is appropriate for AST in accordance with section 776(a) of the Act, because it failed to report all of its U.S. sales made during the POI, and its U.S. affiliated reseller's (company A) downstream sales are unreliable. *See* Comments 1 and 2 below.

Where necessary information is missing from the record, the Department must use the facts otherwise available, in accordance with section 776 of the Act. Further, where that information is missing because a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent when selecting from the facts available. An adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For AST's unreported U.S. sales, we have chosen the highest non-aberrational margin from the rest of AST's U.S. sales as partial facts available. *See* Comment 1 below. For company A's downstream sales, we have also selected the highest non-aberrational margin from the rest of AST's U.S. sales. *See* Comment 2 below.

The All Others Rate

For this final determination, since AST was the only respondent, the all other's rate is simply the calculated rate for AST.

Interested Party Comments

Comment 1: Application of Facts Available to Additional U.S. Sales

Respondent argues that the Department should ignore additional U.S. sales that AST attempted to report prior to verification. Respondent maintains that, in preparing for verification, it discovered additional U.S. sales that it had previously failed to report to the Department.

Respondent argues that its first attempt to file this new information, on February 24, 1999, effectively allowed the Department eleven days to review the information prior to the beginning of the U.S. sales verification at AST U.S.A. Respondent notes that the verification team for the sales verification at AST U.S.A. was different than the team attending the verification of AST in Italy, and argues that this allowed adequate time to review the new information. Respondent also notes that the Department did not return the February 24, 1999 submission until nine days later. Respondent asserts that during this period of time the Department had the opportunity to review the new information.

Respondent further argues that petitioners would not have been prejudiced by the acceptance of this new information given the timing of the February 24, 1999 submission, the verification of AST U.S.A., and the deadlines for submission of case briefs.

Respondent maintains that the additional U.S. sales would not have materially affected AST's final margin. Respondent argues that the record, as supported through verification, shows that the additional U.S. sales constitute a relatively small percentage of AST's total U.S. sales during the POI. Respondent asserts that this relatively small percentage would have an even more negligible effect if the Department were to accept petitioners' argument that order date should be used to determine date of sale in the U.S. market.

Respondent continues that, under established Department precedent for investigations, the Department should ignore these additional U.S. sales. Respondent points out that the Department's margin calculation in an investigation will be used only to determine an estimated dumping margin for cash deposit purposes, and also notes that the statute requires the Department to use weighted-average U.S. prices rather than individual U.S. prices to determine dumping margins. Therefore, according to respondent, the Department need not consider every U.S. sale in calculating the final dumping margin. Respondent cites several cases in which, respondent argues, the Department has either accepted and verified similar data or has simply excluded additional sales from consideration in determining the margin (citing, *e.g., Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany ("Antifriction Bearings")*, 54 FR 18992, 19030 (May 3, 1989); *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China ("Bicycles")*, 61 FR 19026 (April 30, 1996); and *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Japan ("Gray Portland*

Cement and Clinker from Japan"), 56 FR 12156 (March 22, 1991)).

Respondent argues that if the Department decides not to ignore these additional sales and apply facts available, it would be inappropriate for the Department to apply adverse facts available in this case because respondent argues that it has cooperated fully throughout the proceeding. To support its argument, respondent cites to *Allied-Signal,* 996 F.2d at 1188, and *Final Results of Antidumping Administrative Review: Color Picture Tubes from Japan ("Color Picture Tubes"),* 62 FR 34201, 34209 (June 25, 1997), where the respondent "substantially cooperated" but simply failed to supply some of the information in a timely manner or in the form required.

Moreover, respondent argues that it did not withhold this information, but rather, disclosed this information to the Department as soon as it discovered these additional sales and sought repeatedly to submit this and more detailed information regarding these sales before, during, and after verification. Respondent cites *Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy ("Stainless Steel Bar"),* 59 FR 66921, 66924 (December 28; 1994) as an analogous situation in which the Department in fact was not aware of additional U.S. sales until verification, but, nevertheless, the Department still verified that the gross unit prices for the unreported sales were comparable to those for reported sales of the same products. In that case, respondent notes that the Department determined that "it is reasonable to fill this gap with a neutral surrogate" and "assigned (the respondent's) overall weighted-average calculated margin to these unreported sales."

Petitioners contend that, contrary to respondent's assertions, substantial evidence on the record demonstrates that AST failed to cooperate to the best of its ability to provide information requested by the Department and the use of total facts available is therefore warranted. First, petitioners claim that respondent has relied primarily on "old law" cases to support its contention that the Department should not apply facts available with an adverse inference. However, under the current adverse facts available standard, petitioners argue that the Department "shall" apply facts available when necessary information is not on the record, or a respondent withholds information requested by the Department, fails to provide such information by the deadline for its submission, significantly impedes a proceeding, or provides information that cannot be verified. Petitioners maintain that the record demonstrates that respondent has withheld information that has been requested by the Department.

Petitioners argue that the critical question in this case is whether the reporting failures by respondent surpass the Department's standard for the use of an adverse inference in applying facts otherwise available. Petitioners contend that respondent's failure to provide complete sales information, while stating "without detail" that the reporting failure was "inadvertent", constitutes a failure on the part of respondent to act to the best of its ability to respond to the Department's request for information.

Petitioners assert that the data withheld by respondent is crucial to the Department's investigation. Petitioners cite to *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa ("CTL Steel Plate"),* 62 FR 61731, 61747 (November 19, 1997), *Florex* v. *United States,* 705 F. Supp. 582, 588 (CIT 1988), and *Tatung Co.* v. *United States,* 18 CIT 1137 (1994) in support of the proposition that the Department and the CIT have recognized that the failure to report U.S. sales data is one of the most serious errors, if not the most serious error, a respondent can commit.

Petitioners maintain that although AST attempted to submit new information on the record, the Department properly rejected the new information, citing several cases supporting the rejection of information not submitted within regulatory guidelines, including *NSK, Ltd.* v. *United States,* 798 F.Supp. 721 (CIT 1992). Petitioners take issue with respondent's interpretation of *Allied Signal.* Petitioners point out that, in that case, respondent was unable to provide the requested data. Petitioners note that AST does not argue that it was unable to provide the requested U.S. sales data.

In rebutting respondent's claim that the Department does not need to consider every U.S. sale in calculating the final dumping margin, petitioners argue that, given the Department's calculation methodology in investigations, in which weighted average prices by the U.S. and home market are compared on a control number-specific ("product-specific") basis, there could indeed be a significant effect on the calculated margin for certain control numbers by excluding a "significant" quantity of U.S. sales.

Petitioners take issue with respondent's interpretation of certain cases in which the Department has not applied an adverse inference when information is not submitted. In *Antifriction Bearings* (54 FR 18992, 19039), petitioners note that the Department found that respondent had not reported sales of one tenth of one percent (by volume) of 33 percent of the U.S. sales it was required to report. Moreover, the Department found, in that case, that the unit prices of the unreported sales were nearly three times greater than the unit prices for the same products to other customers which were reported in the sales listing. According to petitioners, this fact pattern is not present in the instant proceeding.

In *Bicycles* (61 FR 19026, 19041), petitioners argue, the Department allowed the exclusion of a "minor" amount of U.S. sales in certain extenuating circumstances not present in this investigation. First, in *Bicycles,* respondent had believed the excluded sales to be of non-subject merchandise. Second, the record in that case permitted the Department to calculate a margin on those excluded sales. Third, the sales in question represented a minor amount of U.S. sales. Finally, the sales at issue in *Bicycles* were of a higher-priced model. Petitioners contend that none of these facts are present in this investigation.

Petitioners state that in *Gray Portland Cement and Clinker from Japan* (56 FR 12156, 12165), the Department determined that respondent's sales of bagged cement represented an insignificant portion of total U.S. sales. Again, according to petitioners, the same is not true in this proceeding.

In *Color Picture Tubes* (62 FR 34201), petitioners note that respondent Mitsubishi stated that a "very small number of U.S. sales were made of models for which COM data was not available." Petitioners argue that this is not tantamount to a decision by the Department that it ignores unreported U.S. sales and does not resort to facts available when U.S. sales data are not reported. In addition, Mitsubishi was unable to provide the COM data because they were not available. Again, according to petitioners, AST has never claimed that this sales data was unavailable.

In *Stainless Steel Bar from Italy* (59 FR 66921), petitioners claim, the Department's decision not to apply adverse BIA turned "entirely" on the unique circumstances noted during verification. Moreover, in that case, the Department determined that the unreported sales were limited in number, and the gross unit prices of the

unreported sales were comparable to those for reported sales of the same products. In contrast, petitioners argue that in this investigation the sales were not limited, and also note that the Department did not verify the gross unit prices of the unreported sales.

Petitioners maintain that the discrepancies in the company's U.S. sales volume found at verification and the company's inability to explain the exclusion of several U.S. sales from its response is sufficient evidence of AST's lack of cooperation. Petitioners argue that both the Department and the courts consider the omission of U.S. sales a serious error (citing *Tatung Co.* v. *United States*, 18 CIT 1137, 1141 (1994)), and that such an omission warrants the use of adverse facts available (citing *CTL Steel Plate*, 62 FR 61731, 61747 (November 19, 1997). Petitioners also cite to *Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299, 304 (1998), noting that the Department used best information available, in large part due to respondent's failure to report U.S. sales accurately.

Department's Position: We agree with petitioners, in part, and have applied partial adverse facts available with respect to the additional U.S. sales that AST omitted from its response.

Although we repeatedly gave AST the opportunity to submit data pertaining to its sales database, AST did not submit its additional U.S. sales until three days prior to the start of the verification of AST in Terni, Italy, well after the deadlines for responding to our questionnaires. Therefore, contrary to respondent's assertion, there can be no reasonable argument that this information was timely submitted. Pursuant to section 351.301(c)(2)(ii) of the Department's regulations, failure to submit requested information in the requested form and manner by the date specified for questionnaire responses may result in the use of facts available under section 776 of the Act and section 351.308 of the Department's regulations.[6]

Nevertheless, respondent argues that we should have accepted the additional U.S. sales information, pursuant to section 782(e) of the Act, which provides that the Department shall not decline to consider such information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. However, section 782(e) is not applicable in this case, because this section only applies to information that is submitted by the established deadline. Indeed, timely submission by the established deadline is the first requirement for this section to apply. As discussed above, AST did not submit this information by the deadline for the questionnaire response, and therefore, section 782(e) is not applicable.

According to section 776(a)(2)(B), if an interested party fails to provide information in a timely manner or in the form or manner requested, the Department shall use facts otherwise available in reaching the applicable determination. As explained above, AST failed to provide the information for the additional U.S. sales in a timely manner. Therefore, pursuant to section 776(a), the Department must use facts otherwise available to assign margins to these additional U.S. sales.

Finally, AST argues that if we rely on facts otherwise available, an adverse inference is not appropriate. Section 776(b) of the Act provides that, if the administering authority "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," then in selecting from the facts available it "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." We find, based on the evidence set out below, AST did not act to the best of its ability in complying with our request for sales data. Because AST submitted these sales only three days prior to verification, this information was not provided by the deadline set for AST's responses to Section C of the Department's questionnaire.

Failure to report significant amounts of import data, such as U.S. sales data, indicates a lack of best efforts, unless there are extenuating circumstances that explain the failure. There is no evidence of such circumstances in this case. As noted in the *Verification Report of AST USA*, AST stated at verification that it did not know the reasons why these sales were excluded. *See Verification Report of AST USA* at 2. Furthermore, we note that AST submitted its sale reconciliation package on November 12, 1998, the deadline for responding to the supplemental questionnaire. If AST had acted to the best of its ability, it is reasonable to assume that it would have discovered these additional U.S. sales when preparing the reconciliation package. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting a margin for the U.S. sales that AST omitted from the response because AST did not act to the best of its ability in providing U.S. sales information to the Department. As adverse facts available for these unreported U.S. sales, we have applied the highest non-aberrational margin calculated from the rest of the U.S. sales. *See* Comment 2 below, and *Analysis Memorandum*.

The cases cited by respondent where the Department either accepted and verified additional sales data or excluded it from consideration in determining the margin are distinguishable from this case. Unlike this investigation, the Department, in *Antifriction Antifriction Bearings, Bicycles* and *Gray Portland Cement and Clinker from Japan*, had sufficient time to analyze the additional data submitted by the respondent, and determined that the additional sales had no effect, or a negligible effect, on the calculated margin. As noted by petitioners, *Color Picture Tubes* concerned a situation where COM data was not available for some U.S. sales, not a situation of unreported U.S. sales. AST's reference to *Stainless Steel Bar* also does not apply to this case because it concerns a unique circumstance in which the Department noted at verification that the gross unit prices of the unreported sales were comparable to those for reported sales of the same products, and that the unreported sales were limited in number. Therefore, respondent's reliance on these cases is misplaced. Moreover, as noted in *CTL Steel Plate*, the Department believes that the failure to report U.S. sales data is one of the most serious errors a respondent can commit.

Comment 2: Application of Facts Available to Downstream Sales of Reseller 001

Petitioners note that at verification of reseller 001, and contrary to AST's claim, the Department found that a portion of its affiliated reseller's sales previously identified as having an untraceable supplier, were in fact traceable. In addition, petitioners note that the number of significant errors found at the reseller's verification, including its failure to report early-

[6] In initially rejecting AST's submission of additional U.S. sales, we erroneously cited section 351.301(b)(1) of the Department's regulations because AST submitted them later than seven days before the date on which the verification of any person is scheduled to begin. The relevant regulation is 351.301(c)(2). We subsequently rejected other attempts that AST made to submit this information, pursuant to section 351.302(d) of the Department's regulations, because it was untimely filed.

payment discounts and the improper application of prime and non-prime designations to its reported sales, warrant the use of adverse facts available. Finally, petitioners note that under section 782(e) of the Act, AST's reporting of the "unidentified supplier" sales by its affiliated reseller should be considered untimely, and that, under section 776(a), the Department should use facts otherwise available in reaching the applicable determination.

Petitioners argue that AST had the burden to create a complete and accurate record and failed to meet this burden, citing *Pistachio Group of the Ass'n of Food Indus.* v. *United States*, 11 CIT 668, 671 F.Supp. 31, 39–40 (1987). Petitioners also maintain that respondent in this case is not just AST: the investigation directly involves AST's affiliates, as well. Thus, contend petitioners, AST's efforts to "absolve itself from any responsibility for its affiliates" reporting efforts' should also be rejected.

Petitioners contend that AST has withheld requested information and failed to cooperate to the best of its ability, and that the Department should apply total adverse facts available. Petitioners argue that this is an investigation of AST and its affiliates as a collective entity selling to the United States, not just an investigation of AST's main plants. Petitioners cite *Koyo Seiko* v. *United States*, 905 F. Supp. 1112, where the CIT stated that, when parties are affiliated, as AST is with reseller 001, the burden of producing information sought by the Department rests with the manufacturer, even if the respondent alleges that the affiliate is unwilling to cooperate. Petitioners assert that AST's affiliate Thyssen, under whose common control AST and reseller 001 operate, was also affiliated with and controlled reseller 001 and could have added its influence to encourage reseller 001 to comply and provide the requested information to the best of its ability, which it did not do.

Respondent refutes petitioners' claim that AST and other parties have been uncooperative and have not fully participated during the investigation, and states that it made every effort to comply with the Department's numerous requests for additional information. Respondent argues that it does not have operational control over reseller 001, and thus, cannot compel, or participate in, the preparation and submission of the requested data over which it exercises no control. With regard to the unattributed sales, respondent claims that it had no direct involvement in the preparation of reseller 001's data and had no knowledge of their contents.

Respondent argues that despite the fact that some errors were identified at verification, reseller 001 did not fail verification because the errors were isolated and do not undermine the basic integrity of the data. Respondent states that the Department should consider that reseller 001 developed the cost allocation program specifically to respond to the Department's highly detailed reporting requirements. Respondent argues that as a service center distributor rather than a steel producer, reseller 001 has no need for, and therefore had never developed, a computer system linking each and every coil or sheet that it sells to a particular input metal product (coil or sheet) purchased from a supplier. Respondent asserts that at verification reseller 001 demonstrated that the programming problems that were encountered were not widespread, but instead were extremely isolated. Respondent notes that Exhibit 18 of reseller 001 Cost Verification Report, including the complete description of the programming errors and a list of the problematic transactions, was presented to the Department at the start of the third day of the cost verification. Respondent states that had the verifiers truly been interested in further testing this listing or learning more about how it was generated, they had adequate time to do so.

Respondent argues that even if, despite evidence to the contrary, the Department were to determine that AST had failed to comply with requests for information, the Court of International Trade's decision in *Ferro Union, Inc.* v. *United States*, Slip Op. 99–27 (CIT March 23, 1999) (*"Ferro Union"*) precludes the application of adverse facts available in this case. Respondent argues that under the standards set by *Ferro Union*, "sufficiently impeding the review" is not a sufficient ground to warrant an application of adverse facts available, but that the Department must also find that a party failed to "comply to the best of its ability." Respondent asserts that if the Department determines that the data submitted by reseller 001 is not complete or verifiable, it was not due to AST's deliberate recalcitrance. Respondent argues that the Department should not use adverse facts available because AST simply lacks the ability to respond any more completely than it already has.

Department's Position: We agree with petitioners and find that adverse facts available is warranted with regard to sales through AST's affiliated U.S. reseller. Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination.

In the instant case the use of facts available is warranted for the sales in question. The computer programming used by reseller 001 to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for further-manufactured sales by reseller 001. Reliance upon facts available is required for these further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 782(d)(2) of the Act for "the cost of any further manufacture or assembly (including additional material and labor) * * *".

Although the Department will correct some errors in reported costs or will adjust incorrect data with facts otherwise available when the errors are relatively minor and easily corrected based on verified data on the record (*see e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan*, 64 FR 17336, 17337 (April 9, 1999), correction of the database is not a viable option in this case because of the high percentage of errors found through our testing at verification (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental and pervasive nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 783(i) of the Act, and, further, that pursuant to section 776 the Department may use the facts otherwise available if

all or any portion of the submitted information could not be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided reseller 001 with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. Reseller 001 had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, reseller 001 did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions were in error. When the Department then selected nine additional transactions for review, four of these were found to contain errors. The first step identified in the Department's verification agenda calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. None of the errors discussed here were presented by reseller 001 at the outset of verification.

We disagree with AST's assertion that the numerous errors identified by the Department affect only a small number of products out of the possible universe of transactions and that the effect of the errors is minuscule. As mentioned above, reseller 001 created a computer program to respond to the Department's questionnaire which sought to match an input coil to each output coil sold and to assign a cost for each processing step through which the finished coil supposedly passed. As noted, at verification we tested this computer program to assess its accuracy and reliability and found that seven of eighteen transactions tested contained errors in either the allocation of processing costs or in the matching of input coils to output coils. In two of these cases reseller 001 had assigned processing costs to products which had, in fact, undergone no processing whatever. We note that this discrepancy arose from the input coils and output coils identified by reseller 001's own computer program. In another transaction the combined widths of the finished products were greater than the original width of the input coil as identified by the system, an obvious physical impossibility that should have been identified by reseller 001 as an error. The nature of these errors raises serious doubts as to the accuracy of the overall program used to match input master coils to output slit coils as sold. Further, several of these errors served to understate the costs of further processing by shifting portions of these costs to non-further-processed merchandise. Since these errors affect the entire population of products sold (i.e., both processed and unprocessed products), it is not possible for the Department to isolate the problems and adjust for the errors accordingly.

The program also failed to assign properly certain finishing costs. Certain coils with a pre-buff finish applied to the underside had no finishing costs reported for the additional processing. Finally, other transactions contained errors in the application of surcharges for processing small quantity orders. In the samples tested reseller 001 had reported quantity extra charges in excess of what should have been reported. This error led to an understating of the variance between the costs as allocated for purposes of the response and the costs as maintained in the reseller 001's financial accounting system. Once again, both errors reduced the costs allocated to further processed products, thus creating further doubts as to the accuracy of the underlying reporting methodology.

We also find unpersuasive AST's suggestion that because reseller 001 had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. The surfeit of errors in reseller 001's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from reseller 001's reliance on faulty computer programming and data which reseller 001 apparently failed to review prior to verification.

Finally, we disagree with AST's assertion that reseller 001 was able to quantify the extent of the cost errors on the final day of verification. First, we note that reseller 001 made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More importantly, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. *See, e.g., Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness.") and *Monsanto Company* v. *United States*, 698 F. Supp. 275, 281 ("[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business."). It has been the Department's long-standing practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. However, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted. This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of reseller 001's methodology for reporting costs and discovered numerous errors. Reseller 001 claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. AST's assertion that reseller 001 succeeded in identifying all of the errors is unsubstantiated, and could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database. Moreover, the proper time for reseller 001 to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented reseller 001 with the cost verification agenda one week in advance precisely to allow it to prepare properly for verification. Had reseller 001 reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in *Certain Cut-to-Length Carbon Steel Plate from Sweden*,

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where "a response

to a request for information" does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18401, April 15, 1997.

In this case a partial correction is not a viable option, because of both the high percentage of errors found through our sample testing and the fact that some of the errors cannot be corrected with information on the record. Therefore, pursuant to section 776(a) of the Act, facts otherwise available are applicable to the downstream sales of reseller 001.

Respondent, in citing *Ferro Union*, argues that if the data submitted by reseller 001 is not complete or verifiable, it was not due to AST's deliberate recalcitrance, and therefore, adverse facts available are not applicable because AST complied to the best of its ability and could not respond any more completely than it already had. However, not only do such fundamental errors as found at verification raise concerns as to the validity of the data not directly tested, but they also demonstrate that the respondent failed to act to the best of its ability to report such information. Indeed, a reasonable check by company officials could have shown that (1) products that underwent no further processing were being assigned further-processing costs, (2) further-processed products were not being assigned further-processing costs, (3) coils passing through certain processes were not being allocated any cost for the process, and (4) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

Where CEP transactions (in this case, the downstream sales) are involved, respondents are required, in accordance with section 772 of the Act, to report sales data for the sales to the first unaffiliated purchaser. As discussed above, we find that AST, as the respondent, did not cooperate by failing to comply to the best of its ability to provide the CEP sales information requested by the Department. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in calculating the margin for reseller 001's downstream sales (*see* below).

With respect to the unattributed downstream sales reported by reseller 001, we determine, pursuant to section 776(a) of the Act, that it is appropriate to apply facts otherwise available to these sales, because these sales were unverifiable. In addition, pursuant to section 776(b) of the Act, where an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, the Department may use an inference that is adverse in selecting from among the facts otherwise available. At verification, we found that reseller 001 could have supplied the Department with the supplier names for these unattributed sales. As discussed above, where CEP transactions, (in this case, the unattributed downstream sales) are involved, respondents are required, in accordance with section 772 of the Act, to report sales data for the sales to the first unaffiliated purchaser. Therefore, we determine that pursuant to section 776(b), the use of adverse facts available is appropriate for the entirety of the data submitted by reseller 001. As adverse facts available, we have assigned the highest non-aberrational margin calculated for this final determination to the weighted-average unit value for sales reported by reseller 001. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from AST's reported data. We found that roughly 28 percent of AST's transactions fell within a reasonably narrow range of 20 to 29 percent; we selected the highest of these as reflecting the highest non-aberrational margin. Further detail on our selection of the facts-available margin is contained in the *Analysis Memorandum*. We then multiplied the resulting unit margin by the total quantity of resales of subject merchandise by reseller 001. This total quantity includes that material affirmatively verified as being of AST origin, as well as a portion of the merchandise of unidentified origin allocated to AST. *See Analysis Memorandum*. Since we are relying on verified data for use as adverse facts available for these unattributed sales, corroboration under 776(c) is not necessary.

Comment 3: Affiliation Between AST and Reseller 001

Respondent argues that the Department should not consider AST to be affiliated with a certain U.S. reseller ("reseller 001") which is indirectly wholly-owned by Thyssen AG, and therefore, reseller 001's downstream sales should not be included in the margin calculation for the purposes of the final determination. Respondent argues that, for the purposes of assessing whether the requisite direct relationship exists, the appropriate inquiry in this case is whether AST and reseller 001 (and not AST and Thyssen) are affiliated under the statute, because during the POI AST did not sell subject merchandise or the foreign like product to Thyssen or any Thyssen affiliate other than reseller 001. In this regard, respondent maintains that neither AST nor reseller 001 directly or indirectly owns, controls, or holds the power to vote 5% or more of the other company's outstanding voting shares, and the two companies do not share a direct bilateral control relationship that allows one company to control the other company. Respondent asserts that the Department did not find affiliation under 19 USC 1677(33)(G) (section 771(33)(G) of the Act) in a case involving what respondent believes to be similar relationships (*see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews ("Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea")*, 62 FR 18404–01 (April 15, 1997).

Respondent asserts that AST and reseller 001 cannot be deemed to be affiliated unless they directly or indirectly control, are controlled by, or are under common control with another party. Respondent argues that the Department improperly concluded, in the preliminary determination, that Thyssen has the ability to control AST. Respondent argues that, in this case, it is Krupp, not Thyssen, which controls the operations of KTS and AST. Thus, according to respondent, Thyssen does not have the potential to impact AST's production, pricing, and cost decisions. Respondent asserts that record evidence supports this "market reality." Specifically, respondent notes that, by its terms, the KTS Shareholders Agreement ensures that Thyssen does not have the ability to control KTS' operational decisions, and that the ability to make such decisions rests solely with Krupp. Moreover, respondent argues that Krupp's industrial control over KTS is also reflected in the financial structure of the company.

Respondent maintains that, similarly, Krupp controls AST, and Thyssen does not have the ability to control AST. Respondent points to the composition of AST's Board of Directors during the POI in support of this argument.

Respondent asserts that the Department, in its affiliation memorandum of December 15, 1998, erred in relying upon the "now-repealed

'related parties' provision" in the pre-URAA statute to posit that "arguably a minority equity interest of over 20 percent would be tantamount to control under the statute." Respondent argues that 19 U.S.C. 1677(33)(F) (section 771(33)(F) of the Act) replaces the "related parties" provision with the "affiliated persons" provision. According to respondent, the fact that Congress might have intended the Department to consider a broader range of relationships under the relevant portion of the new statute does not *ipso facto* mean that Congress intended for the Department to apply the "repealed 'related parties'" provision standards in resolving affiliation issues.

Respondent also asserts that the Department erred in relying on *Queen's Flowers and Asociacion Colombiana de Exportadores de Flores* v. *United States*, because neither of these cases addressed whether two companies' respective subsidiaries were affiliated by virtue of their parent companies' participation in a joint venture.

With regard to the KTS Shareholders Agreement between Krupp and Thyssen Stahl, respondent argues that, in its affiliation memorandum, the Department ignored the provisions in the KTS Shareholders Agreement which, according to the respondent, establish Krupp's control over KTS. For example, AST asserts that there is nothing in the preamble, in which the purpose of the KTS joint venture is defined, to suggest that Thyssen Stahl has the actual or potential ability to control KTS. Respondent also argues that the Department draws an erroneous inference by equating the ability to affect a party with the ability to control that party. Respondent objects to the Department's statement that Thyssen Stahl retains the authority to control KTS operations based on Paragraph 2 of the Shareholders Agreement. In addition, respondent argues that the Department incorrectly focused on the corporate structure of KTS, as opposed to the operational structure, in concluding that "Thyssen Stahl's 40 percent holding in KTS is critical" to certain appointments at KTS. Finally, respondent asserts that the Department fails to note that Paragraph 5 of the Shareholders Agreement allows only for minority representation of Thyssen.

Respondent argues that the KTS joint venture's existence does not, in and of itself, establish affiliation between the joint venture partners' respective subsidiaries. Respondent asserts that petitioners have incorrectly argued that *Mitsubishi Heavy Industries, Ltd.* v. *United States* (15 F. Supp. 2d 807, 831 (CIT 1998)) stands for the proposition that it is "impossible" for the respective subsidiaries of two companies participating in a joint venture not to be affiliated. In fact, respondent maintains that the court did not address the issue presented in this case: namely, whether the two companies' respective subsidiaries were affiliated by virtue of their parent companies' participation in a joint venture. In the instant proceeding, respondent argues that even if Krupp and Thyssen were deemed to be affiliated with each other, such affiliation would not necessarily flow through to the companies' respective subsidiaries "merely" by virtue of the KTS joint venture.

Petitioners argue that the Department has correctly evaluated AST's affiliations in this investigation. First, petitioners assert that because Thyssen owns 100 percent of reseller 001, the Department should find that reseller 001 is essentially an operating arm of Thyssen and that the reseller 001 is affiliated with AST just as Thyssen is affiliated with AST. Therefore, petitioners conclude that, because reseller 001 is an "operating arm" of the Thyssen "family" including Krupp Thyssen Stainless GmbH ("KTS"), which indirectly owns more than 5 percent of AST, AST and reseller 001 are affiliated pursuant to 19 U.S.C. 1677(33)(E) (section 771(33)(E) of the Act).

Second, petitioners contend that respondent has confused the discussion by misusing the terms "direct" and "indirect" ownership. Petitioners argue that the direct relationship referred to by respondent in fact clearly may be achieved through the indirect ownership of 5 percent of another company. Moreover, petitioners argue that the indirect relationship referred to by respondent analogously may involve direct control.

Third, petitioner argues that the fact that AST did not sell stainless steel sheet or strip to Thyssen or any other Thyssen affiliate other than reseller 001 is irrelevant in considering the affiliation relationships at issue here.

Petitioners believe that Thyssen's large ownership share in AST, as well as other factors, demonstrate its potential to impact business decisions. Petitioners assert that the Department properly recognized that Thyssen need not be a majority shareholder in a company for the Department to determine that control exists. Petitioners cite to the *Final Determination of Certain Cut-to-Length Carbon Steel Plate from Brazil*, 62 FR 18486, 18490 (April 15, 1997) as support for the Department's position that "even a minority shareholder interest, examined within the totality of other evidence of control, can be a factor that (the Department) consider(s) in determining whether one party is in a position to control another."

Petitioners also claim that evidence of actual control is not required under the statute: instead, the ability to control is sufficient, where the company has "the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product" (citing 19 CFR 351.102(b)). In this regard, petitioners point to other indicators of Thyssen's control over AST, beyond the "substantial" shareholdings in AST through KTS by Thyssen Stahl AG and Thyssen AG. According to petitioners, another indicator is that AST is publicly described and well-known as a member of both the Krupp and Thyssen "groups." Furthermore, petitioners claim that the record demonstrates that the two industrial groups have had a high and increasing degree of cooperation and coordination.

Petitioners claim that the agreement's nominal structure to give Krupp "operational and industrial control over KTS" is not dispositive. Petitioners argue that the preamble to the regulations makes clear that the proper inquiry is whether one firm is "in a position to exercise restraint or direction," regardless of whether such control is actually exercised. In this regard, petitioners argue that the very nature of a joint venture agreement is to operate a business for mutual benefit, and with a large degree of consensus. It would be unreasonable, according to petitioners, for Thyssen to enter into such a joint venture if it did not expect that venture to be responsive to Thyssen's own commercial interests to some extent. Furthermore, petitioners conclude that it would also be reasonable to expect that Thyssen would be able to insist that KTS would undertake its own operations in a manner consistent with Thyssen's interests. Also, petitioners contend that the recent merger of Krupp and Thyssen confirms the closely allied interests of the two firms.

Petitioners argue that respondent's reliance on *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea* is misplaced. Petitioners assert that the situation in the Korean case shows only that Krupp is not necessarily affiliated with reseller 001.

Department's Position: We disagree with AST. As we discussed in our *Preliminary Determination* and the accompanying Affiliation Memorandum, we have determined that

AST is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) of the Act provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds, with the power to vote, five percent or more of the outstanding shares of voting stock of the other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated. Respondent's reference to *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea* is not applicable in this case because in that case, the Department found no record evidence indicating that either POSCO (supplier) or Union (respondent), directly or indirectly, own or control five percent or more of any of the other party's securities, and are not under the common control of any party.

We examined the record evidence to evaluate the nature of AST's relationship with Thyssen Stahl and Thyssen and have determined that AST is affiliated with Thyssen and Thyssen Stahl. Evidence establishes that AST is 75 percent owned by a joint venture company, Krupp Thyssen Stahl ("KTS"). KTS, in turn, is forty percent owned by Thyssen Stahl AG ("Thyssen Stahl"), itself a wholly-owned subsidiary of Thyssen AG (the remaining sixty percent of KTS is controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Consequently, Thyssen AG has a 33.75 percent equity holding in AST. On December 17, 1998 we placed publicly available data on the record for this investigation that confirmed both the foregoing shareholding interests and that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. This information was submitted on October 20, 1998 by petitioners in the concurrent stainless steel sheet and strip case from Germany. Consequently, AST, as the 75 percent owned subsidiary of KTS, is affiliated Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E). *See Stainless Steel Wire Rod From Sweden*, 63 FR 40449, 40453 (July 29, 1998).

In addition, we have determined that AST is affiliated with reseller 001. Contrary to respondent's claim that the Department relied upon the "now-repealed "related parties" provision," we have found that AST is affiliated with reseller 001 under section 771(33)(F) of the Act. *See Affiliation Memorandum*. Section 771(33)(F) of the Act provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. *See* 771(33) of the Act. Actual exercise of control is not required by the statute. See *ADD, CVD; Final Rule*, 62 FR 27295, 27348 (May 19, 1997). In this investigation, the nature and quality of the relationship between corporations require a finding of affiliation by virtue of Thyssen's common control of reseller 001 and of KTS. Such a finding is consistent with the Department's determinations in *Carbon Steel Plate From Brazil*, 62 FR at 18490, and *Stainless Steel Wire Rod From Sweden*, 63 FR at 40452.

We also agree with petitioners that record evidence demonstrates that Thyssen, as the majority equity holder and ultimate parent company of reseller 001, is in a position to exercise direction and restraint over this affiliate. Thyssen also holds indirectly a substantial equity interest in AST, plays a significant role in AST's operations and management and, thus, enjoys several avenues for exercising direction or restraint over AST's business activities (*see* the *Affiliation Memorandum*).

In sum, Thyssen's substantial equity ownership in AST and reseller 001, along with other reasons based on information which is proprietary (*see Affiliation Memorandum*), supports a finding that AST and reseller 001 are under the common control of Thyssen.

Comment 4: Home Market Selling Expenses

Petitioners argue that if the Department does not resort to facts available for AST's unreported home market downstream sales in the final determination, the Department should not allow the selling expenses that AST has claimed for these sales. Petitioners maintain that AST claimed expenses relating to the downstream sales notwithstanding the fact that AST did not report the prices for those downstream sales. For example, petitioners contend that the technical service expense claimed by AST on it sales to affiliated resellers was most likely incurred as a result of services provided to the reseller's customers rather than the reseller.

Respondent argues that the Department should reject petitioners' request to disallow AST's reported selling expenses for sales to affiliated resellers in the home market. Respondent asserts that this claim is unsupported by fact or law because it implies that the Department should disregard the conclusions drawn from the Department's arm's-length test.

Department's Position: We disagree with petitioners. The Department continues to find that it is appropriate to calculate normal value based on AST's sales to the affiliated resellers rather than the affiliates' resales as long as AST's sales to the home market resellers pass the Department's arm's length test. Section 351.403(d) of the Department's regulations states that, "the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable." Since AST's sales through all of its affiliated resellers except one are made at arm's length (*i.e.*, are "comparable"), and since the circumstances surrounding this lone exception are such that the Department determines it is most appropriate to simply exclude these sales from our margin calculation (*see Final Analysis Memorandum*), we determine that it is appropriate to calculate normal value based on AST's sales to its affiliates. As part of this calculation, the Department reviewed AST's claimed direct selling expenses for its home market sales to the affiliated resellers during the home market verification (*i.e.*, credit, warranty, and technical service expenses) and found that the expenses were properly reported (that is, the expenses "result from, and bear a direct relationship to, the particular sale in question" (section 351.410(c) of the Department's regulations (emphasis added)). *See Verification Report of AST* at pg. 28. Regardless of petitioners' assertion (unsupported by record evidence) that AST's reported technical service expenses were likely incurred as a result of services provided to the resellers' customers, the fact remains that these technical service expenses were directly related to the sales in question. Therefore, based on the Department's verification findings and the fact that petitioners have not cited to any tangible evidence to support their assertion, we have continued to make a circumstance of sale adjustment for AST's claimed direct selling expenses for it sales to home market affiliated resellers.

Comment 5: CEP/EP

Petitioners assert that the Department should determine that all of AST's U.S. sales were constructed export price

transactions. Petitioners state that AST's description of its sales procedures indicates that AST USA is involved in every aspect of the sales process for AST's direct U.S. sales: AST USA is contacted by the U.S. customer; AST USA negotiates orders with the U.S. customers; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA issues the order confirmations to the U.S. customers; AST USA invoices the U.S. customers; and AST USA provides technical and warranty services to the U.S. customers.

Petitioners argue it is the Department's policy that, if the U.S. affiliate had more than an incidental involvement in making sales or performed other selling functions, the sales should be treated as CEP sales. In support of this, petitioners cite *Certain Cold-Rolled and Corrosion Resistant Steel from Korea: Final Results of Antidumping Duty Administrative Review* 63 FR 13170, 13172 (March 18, 1998) (*"Carbon Steel Products from Korea"*), where the Department determined that the respondent's sales were CEP sales because the U.S. affiliate was first contacted by interested customers and because the U.S. affiliate signed the sales contracts and engaged in other sales support functions. Petitioners assert that similar to this case, in *Carbon Steel Products from Korea*, the respondent claimed that the U.S. sales were EP sales because the respondent, not the U.S. affiliate, approved all sales prices. Petitioners point out that the Department determined that this approval process does not make the U.S. affiliate's role in the sales process incidental or ancillary. In addition, petitioners cite *Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review*, 63 FR 12752 (March 16, 1998); *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 47446, 47448 (September 9, 1997); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Brake Drums and Brake Rotors from the People's Republic of China*, 61 FR 53190, 53194 (October 10, 1996); *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 62 FR 18390, 18392 (April 15, 1997); and *Oil Country Tubular Goods from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13962, 13966 (March 23, 1999); and *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 10530, 10532 (March 7, 1997), in which, petitioners claim, the Department reclassified respondents' U.S. sales as CEP transactions because significant selling functions were performed in the United States.

Petitioners argue that information obtained by the Department during verification showed that AST USA, rather than AST, is contacted by the U.S. customers, negotiates the terms of sales to the U.S. customers, sets the prices to these customers, and performs support activities related to the U.S. sales. Additionally, petitioners state that the verification report explains that there is no interaction between AST and the U.S. customers regarding specific sales transactions, and that AST's activities with U.S. customers is limited to participation in a biannual golf outing that is arranged by AST USA.

Respondent claims that petitioners ignore the Department's final determination in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy*, 63 FR 40422 (July 29, 1998), where the respondent (Cogne Acciai Speciali S.r.L, "CAS") produced and sold subject merchandise in the U.S. market through a channel of distribution similar to that of AST's back-to-back (EP) sales. Respondent argues that in this case, the Department determined that CAS's sales through AST USA were EP sales because the sales process for these sales was nearly identical to that of CAS's sales through CAS USA.

Respondent asserts that the determination of classifying sales as EP or CEP depends on more than a U.S. affiliate's involvement in the transactions, and that it additionally depends on the following three criteria: whether (1) the merchandise is shipped directly to the unaffiliated buyer without entering the affiliate's inventory; (2) this procedure is the customary sales channel between the parties; and (3) the affiliate in the United States acts only as a processor of documentation and a communications link between the foreign producer and the unaffiliated buyer. Respondent maintains that AST's back-to-back sales meet all of these criteria, and should therefore be classified as EP sales. Moreover, respondent argues that the Court of International Trade has affirmed the Department's finding of EP (formerly purchase price "PP") classification where the U.S. affiliate engaged in activities that were at least equal to, if not greater than, those undertaken by AST USA in the following cases: *Outokumpu Copper Rolled Products* v. *United States; E.I. DuPont de Nemours & Co.* v. *United States; Zenith Electronics Corp.* v. *United States;* and *Independent Radionic Workers* v. *United States.*

Respondent asserts that, as mentioned in the AST USA verification report, AST gives the final approval of a sale which is outside of the pricing guidelines that AST has approved is done by AST. Citing *Preliminary Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Germany*, 62 FR 47446, 47448 (September 9, 1997), respondent contends that knowledge of and influence over final price terms for U.S. sales has played an important and decisive role in determining whether such U.S. sales are properly treated as EP or CEP sales.

Respondent concludes by stating that the Department should reject petitioners' argument to change AST's EP sales to CEP sales because it would go against the Department's three-part test, mentioned above, and it is not consistent with the distinction between EP and CEP sales set forth in the statute.

Department's Position: We agree with petitioners. Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted." Based on the Department's practice, when an affiliate in the United States is involved in the sales process, as is the case here, the Department presumes the sales to be CEP unless the following three criteria are met: (1) the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties involved; and (3) the function of the U.S. selling agent was limited to that of a "processor of sales-related documentation" and a "communications link" with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales. Where one or more of these conditions are not met, indicating that the U.S. sales agent is substantially involved in

the U.S. sales process, the Department has classified the sales in question as CEP sales (*see, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review*, 63 FR 32820, 32821 (June 16 1998); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170 (March 18, 1998)). In this case, the crucial distinction lies in the last factor, *i.e.*, whether the entity in the United States acted only as a processor of documentation and a communication link. This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate.

Our analysis of the facts indicates that, while AST's U.S. sales meet the first two conditions, they fail to meet the third one. AST USA is substantially involved in the process of selling AST merchandise in the United States. The Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond an ancillary role. *See e.g. Final Determination at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 64 FR 12967–01 (March 16, 1999), and *Final Determination at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15444–01, (March 31, 1999). At verification, we found that AST USA is contacted by the U.S. customer; AST USA negotiates the order with the U.S. customers; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA issues the order confirmations to the U.S. customers; AST USA invoices the U.S. customers; and AST USA provides technical and warranty services to the U.S. customers. Additionally, although CEP treatment may still be appropriate even if AST has final approval authority, we note that AST was unable to provide any evidence at verification that it did anything other than accept purchase orders (without altering the essential terms of sales). *See Verification Report of AST* at 13. Additionally, at verification, we found that there was substantial AST USA involvement in developing clients, for example, through its lead role in organizing the golf tournaments. *See Verification Report of AST* at 14. Therefore, even if the agent's role is not autonomous with respect to the final sales terms as respondent claims, this does not mean that its role in the process is ancillary. (*See Carbon Steel Products from Korea*, 63 FR 13170 (March 18, 1998); and *Final Results of Administrative Review: Industrial Nitrocellulose from the United Kingdom*, 64 FR 6609, 6612, (February 10, 1999).) Because the selling activities of AST USA were more than ancillary to the sales process in the U.S., *i.e.*, the function of AST USA is not limited to that of a "processor of sales-related documentation" and a "communications link" with the unaffiliated U.S. buyer, we determine that in accordance with section 772(b) of the Act, CEP methodology is required.

Comment 6: Order Date/Invoice Date

Petitioners claim that the Department should use the order date as the date of sale for all of AST's U.S. sales. Petitioners state that the facts of this case parallel *Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 63 FR 32833, 32835 (June 16, 1998) ("*Circular WNASP from Korea*") a case in which the Department determined the order date to be the proper date of sale. Petitioners claim that information contained in AST's questionnaire response and from AST's verification reports supports the proposition that the material terms of sale (*i.e.*, price and quantity) are set on the order date for both AST's warehouse sales and back-to-back sales that are made to order and, therefore, that the order date is the proper date of sale for those U.S. sales. Petitioners assert that even if the Department determines that the date of sale for simple CEP sales out of inventory can be determined by invoice date, consistent with the Department's practice, the nature of further-manufactured sales orders and the additional time lag engendered by the sales process requires that the date of sale be determined as the date of the confirmation or change order.

Respondent argues that for the final determination, the Department should use the invoice date for all home market sales and for CEP sales, and the shipment date for EP sales, as it did in the Preliminary Determination. Respondent cites section 351.401(i) of the *Department's Final Antidumping Regulations*, (1998), noting that the Department's stated practice is to "use invoice date as the date of sale unless the record evidence demonstrates that the material terms of sale, *i.e.*, price and quantity, are established on a different date." Respondents argue that if a date other than the invoice date is to be used for the final determination, petitioners bear the burden of demonstrating that another date is more appropriate.

Respondent claims that AST demonstrated that in a large percentage of its home market sales (based on quantity) during the POI, the price and/or quantity changed between order and invoice date. Respondent argues that petitioners have offered no evidence to support their assertions that "an allowance of plus or minus ten percent of the quantity order is common in the industry for sales of stainless steel sheet and strip" and that "adjusting the agreed upon price by an alloy surcharge formula is generally accepted as part of the sales process for sales of stainless steel products." Respondent adds that petitioners have not demonstrated that AST's sales adhere to these industry-wide practices. Respondent contends that at verification, AST demonstrated that large-volume customers will not accept a quantity that is ten percent higher or lower than the ordered quantity. Respondent also argues that AST demonstrated that, irrespective of alloy surcharges, the negotiated price may change between order confirmation date and invoice date.

Respondent argues that petitioners offer no legal authority supporting their position that the Department should ignore post-order confirmation changes because such changes are common in the industry. Respondent argues that the existence of an industry practice to accept changes in price and/or quantity up until the date of invoice establishes that invoice date is the appropriate date of sale. Additionally, respondents contend that at verification, the Department verified that for a certain percentage of its reported POI home market sales (based on quantity), the price changed between order confirmation date and invoice date for reasons unrelated to the alloy surcharge.

Respondent asserts that AST's inability to perform an analysis of the frequency of price and quantity changes between order and invoice date for the U.S. market does not indicate that order date or confirmation date is the appropriate date of sale for AST's U.S. sales. Respondent points out that in all of the U.S. sales that the Department verified, either the quantity invoiced was different from the quantity set forth in both the order and order confirmation, the price changed between order confirmation date and invoice date for reasons unrelated to the alloy surcharge, or both.

Department's Position: We agree with respondent. We found no evidence on the record to indicate that order date is the appropriate date of sale. As noted by

respondent, under the Department's regulations, we normally use date of invoice as the date of sale unless record evidence shows that the material terms of sale are established prior to that date. *See* 19 CFR 351.401(i). However, we may use another date, such as date of order confirmation, if that date better reflects the date on which the material terms of the sale were established. In adopting this regulation, we explained that the purpose was, whenever possible, to establish a uniform event which could be used as the date of sale. Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27348–49 (May 19, 1997). We further explained that we do not automatically treat an initial agreement as establishing the material terms of sale between the buyer and seller when changes to such an agreement are common, even if, for a particular sale, the terms did not actually change. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils ("SSPC") from the Republic of Korea*, 64 FR 15450 (March 31, 1999). Consequently, our analysis focuses on whether changes are sufficiently common to allow us to conclude that initial agreements should not be considered to finally establish the material terms of sale. At verification of AST USA, we found that the price and/or quantity (excluding price changes resulting from changes in the alloy surcharge) changed from the order date to the invoice date for all of the sales traces, thus supporting AST's contention that certain material terms of sale (*e.g.*, price and quantity) are subject to change until the invoice date. *See Verification Report of AST USA*, Exhibits 7–10.

Petitioners' reference to *Circular WNASP from Korea* is misplaced, because in that case, evidence showed that the material terms of sale in the United States were set on the contract date, and subsequent changes rarely occurred. In this case, based on the Department's findings at verification and the record evidence indicating that the material terms of sale often change up to invoice date, the Department is satisfied that the date of invoice is the most appropriate measure of when AST establishes the material terms of sale. Accordingly, we have continued to use invoice date as the date of sale for AST's CEP sales for the final determination. As stated above, the Department has determined that all of AST's U.S. sales are CEP. Therefore, we have used the invoice date for all of AST's home market and U.S. sales (unless invoice date is after shipment date, in which case the Department will use shipment date). *See* section 351.401(i) of the Department's regulations.

Comment 7: CEP Offset

Respondent argues that AST's final margin calculation should include a CEP offset, based on respondent's assertion that the Department failed to consider that AST's sales to its affiliated U.S. distributor, AST USA, are at a less advanced level of trade than the level of trade (LOT) of AST's home market sales.

First, respondent argues that its home market sales are made at a more remote level of trade than its CEP sales. Respondent claims that most home market sales are direct factory sales which AST manufactures to order. Respondent argues that in the home market, AST is responsible for the entire chain of distribution for the foreign like product, from production in the plant through delivery to the local distributor, end-user, or service center. Respondent notes that in this regard, AST S.p.A. has established a large, complex distribution system.

Respondent argues that, by contrast, AST's CEP sales are warehouse sales. Respondent asserts that the LOT for these sales is properly based on the transaction between AST and AST USA, not AST USA and the first unrelated U.S. customer. Respondent continues by asserting that, in order to identify different levels of trade, the Department compares starting prices in the U.S. and home markets. Respondent asserts that, in this case, the requisite comparison reveals that the starting prices in Italy and the United States are vastly different. In support of its argument, respondent notes that AST's U.S. and home market sales to the first unaffiliated customer are at the same level or trade because: (1) AST S.p.A's home market sales and AST USA's CEP sales are at the same point in the chain of distribution; (2) AST S.p.A's Italian customer and AST USA's U.S. customers are in the same customer categories; and (3) AST S.p.A and AST USA provide the same selling services for CEP sales. Respondent argues that the CEP adjustments made under 19 USC 1677a(d) (section 772(d) of the Act) remove all of AST USA's marketing, sales and distribution expenses, thereby altering the LOT of its CEP sales to a less remote link in the chain of distribution.

Finally, respondent argues that, in applying the CEP offset, the Department should deduct AST's indirect selling expenses and technical services expenses from normal value, since available data do not indicate whether the purported difference in LOT affect price comparability.

Petitioners maintain that the Department should reject respondent's request that the Department apply a CEP offset to respondent's final margin calculation, based on the fact that the Department preliminarily concluded that there was no difference in LOT between AST's sales in the U.S. and home markets.

Petitioners argue that respondent did not request a LOT adjustment or a CEP offset prior to the preliminary determination, and that respondent's request for a CEP offset is not supported by substantial evidence, including evidence of differences in selling functions. Petitioners argue that the burden was on respondent to prove its entitlement to a LOT adjustment or CEP offset, and to have provided the Department new evidence to demonstrate the appropriateness of such an adjustment, citing section 773(f)(1)(A) and the *Statement of Administrative Action* accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994), at 829 ("SAA")); *Final Rule*, 62 FR 27370; and *Mitsubishi Heavy Industries, Ltd.* v. *United States*, Slip Op. 98–82 (CIT 1998). Petitioners maintain that AST did not provide such new evidence.

Petitioners argue that the Department examined the LOT that existed following the adjustments specified under 19 U.S.C. 677a(d) (section 772(d) of the Act), and properly determined that those adjustments to the price at which AST USA sold subject merchandise did not alter the channels of trade or selling functions upon which a determination regarding level of trade difference is based in this investigation. Petitioners also argue that the Department's verifications confirmed that essentially the same selling functions were offered by AST for both its home market and U.S. sales.

Petitioners continue that the Department clearly stated in its preliminary determination that it made the adjustments called for by 19 U.S.C. section 1677a(d) prior to examining LOT. Finally, because a difference in LOT must exist prior to granting a CEP offset, petitioners assert that no CEP offset may be granted in this investigation.

Department's Position: We disagree with respondent. For the preliminary determination, the Department thoroughly reviewed the channels of distribution and selling functions performed for sales in the home and U.S. market and determined that all sales were made at one level of trade (including its analysis whether NV was

established at a different LOT than CEP sales). *See Preliminary Determination* (64 FR 120–121), and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea*, 64 FR 17342, 17344 (April 9, 1999), specifically, AST provided freight and delivery, credit, technical services, and warranties for its home market sales of prime merchandise. Also, for sales of mostly non-prime merchandise sold from its warehouse, AST performed essentially the same selling functions. While it did not provide warranties for non-prime merchandise, it did perform other selling functions for those sales (advertising and maintaining inventory of this merchandise at AST's warehouse), which were not performed for sales of prime merchandise. For the preliminary determination (and as upheld in this final determination, see discussion in "Level of Trade" section above), the Department found that there was one LOT for AST's home market sales because the selling activities for both groups of sales were very similar. *See Preliminary Determination* (64 FR 120). For all of its U.S. sales, AST engaged in identical selling activities, providing technical and warranty services, freight and delivery and credit. As explained above, the Department compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we continue to find that both are made at the same stage in the marketing process and involve substantially similar selling functions.

Absent significant differences in selling functions, we do not determine that there are different LOTs, and therefore, we do not even reach the issue of a LOT adjustment or CEP offset. Furthermore, AST has not provided any substantial evidence which would counter the Department's preliminary determination, but rather only stated that the starting prices between home market sales, which are direct factory sales, and AST's CEP sales, which are warehouse sales, are notably different. Because the Department has found there to be just one LOT, the difference in prices is irrelevant to our LOT analysis.

Moreover, in the original questionnaire, the Department requested that respondent "explain why you believe a level of trade adjustment is appropriate and provide worksheets demonstrating the calculation of the adjustment as attachments to your response." *See Questionnaire* at pg. B–23, dated August 3, 1998. AST did not claim any LOT adjustment or CEP offset in its questionnaire response, nor provide any explanation for such a claim.

Comment 8: Side Cuts/Pup Coils

Respondent asserts that side cuts and pup coils are non-prime merchandise, and therefore sales of this merchandise should not be compared with sales of prime merchandise. First, respondent argues that it has submitted record evidence demonstrating that the U.S. steel industry, including petitioners, markets and sells side cuts and pup coils as non-prime merchandise. Therefore, respondent argues that the burden is with petitioners to demonstrate that such products are not legitimately classified as non-prime merchandise.

Second, respondent argues that side cuts and pup coils suffer defects during the production process and at other times prior to delivery to the customer.

Third, respondent states that side cuts and pup coils are not produced to order and do not otherwise meet customers' specifications, such as finish, width and/or weight specifications.

Fourth, respondent argues that side cuts and pup coils are used in applications for which knowledge of certain of the product's characteristics is unimportant. These applications would include such non-prime applications as strappings, bands, brackets and washers for side cuts, and hog feeders, pig pens, fertilizers, spreaders and roofing and siding for pup coils.

Fifth, respondent asserts that the sales process for side cuts and pup coils differs significantly from sales of prime merchandise. For example, respondent notes that its side cut and pup coil sales are all done from inventory (as opposed to its direct factory sales that were produced for a specific customer to that customer's specifications).

Finally, respondent maintains that side cuts and pup coils are sold at a discount, with no warranties.

Petitioners respond that AST has not provided any information to support its claim that all of its sales of pup coils and side cuts were sales of non-prime merchandise. Petitioners argue that the only difference between pup coils and a regular coil is the size of the coil, not the quality of the product. Similarly, petitioners argue that making a coil narrower does not convert that merchandise into secondary material simply because it was separated from the mother coil.

Petitioners argue that respondent did not identify any physical defect in pup coils and side cuts in AST's record description of non-prime merchandise, and furthermore, that the submitted description distinguished pup coils and side cuts from "second quality merchandise."

Petitioners further submit that the Department's investigation of respondent's classification of secondary merchandise at verification does not support a finding that side cuts and pup coils are of secondary quality.

Petitioners also take issue with respondent's claim that pup coils and side cuts are second quality material because they were not produced to order, but instead were inventory sales from the warehouse, given the percentage of respondent's U.S. sales which were warehouse sales. Petitioners also argue that the limited applications of pup coils and side cuts cannot define these products as secondary, given that prime merchandise is also produced within certain weight and size tolerances and therefore is also "limited to certain uses."

Petitioners further argue that the absence of a warranty does not mean that the product is defective. Likewise, petitioners believe that the fact that these sales were made at a discount does not demonstrate that these sales are of secondary merchandise, especially given the fact that, according to petitioners, one would expect discounts on merchandise for which there is no warranty.

Department's Position: We agree with petitioners that AST's sales of pup coils and side-cuts should be considered sales of prime merchandise. As noted in the Department's April 19, 1995 *Memorandum from Roland L. MacDonald to Joseph A. Spetrini*, the Department defines non-prime (or secondary merchandise) as "steel which has suffered some defect during the production process, or at any time before delivery to the customer." In its submissions to the Department, AST identified side-cuts and pup coils as secondary merchandise, but did not identify the physical defect or damage associated with each sale of pup coils and side-cuts, as specifically requested by the Department. *See Supplemental Questionnaires* dated October 23, 1998 and December 7, 1998, in which we requested that AST create a separate computer field that would identify the specific reason why each sale was designated non-prime merchandise. AST submitted its offering list of

secondary merchandise (*see* Exhibit 18, November 12, 1998 response); however, the defects of the merchandise were not identified for many of the coils on this list. At verification, we examined AST USA's invoices to its unaffiliated U.S. customers for sales of pup coils and side-cuts, and noted that there was no indication that the merchandise listed on the invoice was damaged or defective. *See Verification Report of AST USA*, Exhibit 20.

With respect to respondent's argument that side cuts and pup coils are not produced to order and do not otherwise meet customers' specifications, such as finish, width and/or weight specifications, we believe that respondent is confusing the issue. Specifically, as respondent has noted, side cuts and pup coils are not produced to order, and are sold from inventory. Therefore, the customers that respondent is referring to are, in fact, the purchasers of side cuts and pup coils from inventory. Record evidence taken from verification reveals that certain information such as the dimensions of the product, is provided to these customers for the merchandise sold from inventory. *See Verification Report of AST USA*, at pg. 7, and Exhibit 20. There is no evidence on the record which would support a finding that these specifications, *i.e.*, those provided in the inventory list, are inaccurate or otherwise do not meet the specifications of these customers.

Regarding respondent's assertion that it has submitted record evidence demonstrating that the U.S. steel industry, including petitioners, markets and sells side cuts and pup coils as non-prime merchandise, whether side cuts and pup coils are sold in the "seconds market" is in no way dispositive with regard to the Department's ultimate classification of this merchandise. We note that for example, the same exhibit offered by AST is in support of its claim that side cuts and pup coils are secondary merchandise, also shows that "excess prime" is sold by that particular company as a "secondary product." *See* AST's November 12, 1998 submission, Exhibit 10. In this regard, the Department has clearly stated its position that excess prime also known as prime overruns is treated by the Department as prime merchandise. This is precisely because this merchandise contains no defects. (*See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 14049–01 (March 29, 1996)). Therefore, we determine that side-cuts and pup coils be considered prime merchandise for the final determination.

Comment 9: Floor Plate

Respondent argues that floor plate should be excluded from the scope of this investigation. Respondent maintains that, to the best of its knowledge, the U.S. industry does not manufacture this product (and has not done so for at least two years), and furthermore, this product does not compete with any product manufactured in the United States.

Petitioners argue that the Department should reject respondent's request to exclude floor plate from the scope of this investigation. First, petitioners argue that respondent's "apparent belief" that the domestic industry must be currently producing a particular type of product in order for that product to remain within the scope of the case is wrong. Petitioners point out that one possible reason for opposing an exclusion request is that a domestic producer previously manufactured the product and may have ceased production due to the competitive impact of unfairly traded imports, or a domestic producer may be interested in producing the product but is unable to enter the market due to the low prices of the unfairly traded imports. Petitioners argue that one domestic producer was producing floor plate until recently, and assert that another is considering manufacturing floor plate in the future.

Department's Position: We uphold our preliminary determination to include floor plate as part of the scope of subject merchandise. Despite AST's arguments, the plain language of the petition's scope covers merchandise described as floor plate if it is less than 4.75 mm in thickness. The scope specifically describes the subject merchandise as a "flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness." We also note that the Department's model match criteria place significant emphasis on both the rolling process (hot-versus cold-rolled) and surface finish (including "patterns in relief," such as the diamond pattern characteristic of floor plate). *See* page 8 of the *Memorandum to Joseph A. Spetrini from Robert James regarding the Antidumping Duty Investigations on Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom; Scope Issues*, dated December 14, 1998.

In a similar case where a respondent requested an exclusion for a particular type of SSWR from the scope, the Department determined not exclude this merchandise because petitioners did not agree to the exclusion. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Canada*, 63 FR 9182 (February 24, 1998). In the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434–01 (July 29, 1998), the respondent asserted that a particular grade of SSWR should be excluded from the scope because it had not been sold it in the United States during the POI or at any other time, and that this grade of SSWR allegedly was not, and could not be, manufactured in the United States. The Department determined that the fact that a specific grade of SSWR is not currently produced in the United States does not constitute grounds for exclusion from the scope of the investigation, and therefore did not exclude it from the scope. Therefore, consistent with the Department's current practice, we will continue to include floor plate in the scope of this investigation for purposes of the final determination.

Comment 10: REBATE2H

Petitioners state that the adjustments reported in field REBATE2H should be rejected because the expenses included in this field do not qualify as rebates. Petitioners assert that the verification results demonstrate that the Department should disallow AST's claim for REBATE2H for several reasons. First, petitioners state that respondent has used an inappropriate period for calculating REBATE2H, since the period begins two months after the start of the POI and finishes two months after the POI. Second, petitioners state that this field includes credit notes granted for sales of non-subject merchandise and for sales that were outside the POI. Third, petitioners argue that when AST stated that its claimed REBATE2H amounts included expenses for returns and for technical claims for defective merchandise, it did not explain whether these claims involved double counting of its claimed home market warranty expenses or home market technical service expenses as it should have. Fourth, petitioners contend that certain price adjustments, including alloy surcharges, were accounted for in AST's home market sales listing, and therefore, should not be accounted for as part of AST's rebates. Finally, petitioners argue that AST included all credit notes in its calculation of the REBATE2H amounts, and did not evaluate the credit notes to determine whether the credit notes applied to sales during the POI or to sales of SSSS. Therefore, petitioners

claim that AST overstated the rebates that may have been provided for sales of SSSS during the POI instead of excluding credit notes that were not related to such sales. In conclusion, petitioners argue that the Department should, therefore, not allow AST's claimed REBATE2H for its final analysis.

Respondent argues that as explained in AST's Section B Response, the expenses reported in REBATE2H represent post-sale price adjustments other than claims reported in other fields. Although AST states that the expenses reported in REBATE2H may alternatively be classified as billing adjustments rather than rebates, the expenses are appropriately deducted from the home market price.

Citing Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada ("Carbon Steel Flat Products and Carbon Steel Plate from Canada"), 61 FR 13815, 13822, (March 28, 1996), respondent states that the Department recognizes that adjustments such as those included in REBATE2H are not always granted on an invoice-specific basis, and accepts such adjustments if they are tied to a specific group of invoices. AST claims that REBATE2H was calculated on a customer-specific basis, and as such, was calculated and reported on the specific group of invoices associated with AST's stainless steel sheet and strip customers. AST contends that therefore AST properly calculated REBATE2H in accordance with Departmental policy.

Respondent asserts that petitioners' argument that AST double counted technical and warranty claims is factually inaccurate because AST provided the Department with revised REBATE2H calculations at verification (*see Verification Report of AST* at 1–2) which eliminated any potential double counting. Respondent states that exhibit 16 of the verification report was an exhaustive list of different types of credit notes issued by AST, not the credit notes included in the calculation of REBATE2H; therefore, there is no basis for petitioners' argument that credit notes were double counted in the calculation of REBATE2H.

Respondent argues that the Department must reject petitioners' claim that the calculation of REBATE2H was based on an incorrect time period. Respondent maintains that, as explained to the Department at verification, there is a lag period of two months between shipments and the issuance of credit notes. Respondent contends that it was necessary to shift the period forward by two months to ensure that credit notes associated with sales during the POI were captured.

Respondent asserts that for all of the reasons mentioned above, the Department should reaffirm its preliminary determination with respect to REBATE2H and subtract this amount in the calculation of normal value.

Department's Position: We agree with respondents that REBATE2H is more properly considered as price adjustments rather than rebates, and that the expenses are appropriately deducted from the home market price. At verification, we reviewed substantial information to conclude that REBATE2H consisted of after-sale price adjustments. *See Verification Report of AST* pp. 1,2 & 24. Furthermore, we determine that AST's methodology for reporting credit notes for the period beginning two months after the start of the POI, and ending two months after the end of the POI is reasonable, as there is no evidence on the record which contradicts AST's claim regarding a two-month lag period, and there is no reason to believe that respondent's methodology is in any way distortive. The information gathered in Exhibit 39 of the *Verification Report of AST* confirmed the reasonableness of using the two-month period. Furthermore, we determine that AST's reporting methodology by customer groupings is also reasonable. While the Department prefers that discounts, rebates and other price adjustments be reported on a transaction-specific basis, the Department has long recognized that some price adjustments are not granted on that basis. This case is similar to situations in which the Department has permitted as direct adjustments, rebates granted on a customer-specific basis. *See Carbon Steel Flat Products and Carbon Steel Plate from Canada*, 61 FR 13815, 13822. We reviewed the revised calculations at verification and noted no discrepancies. *See Verification Report of AST* at 24. Therefore, for the final determination, we have deducted REBATE2H from the home market price.

Comment 11: Home Market Freight

Petitioners argue that the Department should make corrections for AST's overstatement of freight costs for its sales in Italy. Petitioners state that at verification, the Department compared the freight charges that AST reported in its questionnaire response to the freight charges in AST's freight contracts and discovered that the freight costs in the questionnaire response were higher than the freight rates shown in the freight contracts, and that AST claimed that the costs were higher because of the accruals that AST made at the end of the year. Petitioners maintain that because AST was given the opportunity to prove this claim at verification, and failed to do so, the Department should correct AST's overstatement of its freight costs by reducing the freight costs reported by AST for its home market sales by an amount verified by the Department at verification.

Respondent argues that petitioners' argument reflects a misunderstanding of this expense, and explains that in reporting its home market freight expense, AST first calculated the contract freight charge associated with deliveries to various destinations, then adjusted the contractual freight expense to reflect the difference between the contractual per-kilogram freight expense and the actual per-kilogram freight expense. AST states that for shipments less than 28 tons, it incurs the same fixed freight charge as it would for a shipment weighing 28 tons, and for shipments over 28 tons, it is charged the negotiated rate per-kilogram. AST argues that it adjusted AST's contractual freight expense to account for the incremental freight charge associated with shipment weights that are less than the minimum weight called for in the contract.

Department's Position: We agree with petitioners. At verification, we traced the freight expense reported in AST's response to AST's contractual agreements, and found that the two were different. *See Verification Report of AST* at 26. We do not accept AST's claim that it adjusts its contractual freight expense to account for the incremental freight charge associated with shipment weights that are less than the minimum contract weight called for in the contract, because when we gave AST the opportunity to provide the year-end reconciliation of actual and accrued freight expenses at verification, AST failed to do so. *See Verification Report of AST* at 26 and 28. Therefore, the Department considers these additional amounts unverified, and we have, for the final determination, reduced the freight costs reported by AST for its home market sales by an amount examined by the Department at verification (*see Final Analysis Memorandum*).

Comment 12: Technical Service Expenses

Respondent argues that the Department should not deduct technical service expenses incurred in Italy from CEP. Respondent argues that the technical service expenses reported in its response are indirect selling

expenses associated with its Technical Services Department in Italy, and are therefore not an appropriate adjustment to CEP.

Petitioners argue that the Department should treat respondent's technical service expenses in the home market and in the U.S. market in the same manner (*i.e.*, either both as direct, or both as indirect selling expenses), because respondent calculated these expenses in the same manner. Furthermore, petitioners argue that the verification of AST USA shows that economic activity occurred in the U.S. with regard to technical service expenses, and therefore, the costs for the activities should be deducted from the price for respondent's CEP sales.

Department's Position: Contrary to AST's claim that all technical service expenses reported in its response are associated with its Technical Services Department in Italy, we found at the verification of AST USA that a portion of technical service expenses relate to economic activity in the United States and are, in fact, incurred in the United States by AST USA. Specifically, at verification we found that AST USA partially paid for the salary of an AST USA employee who was responsible for providing customers with technical advice. *See Verification Report of AST USA* at 23. However, there is insufficient data to allocate these additional technical expenses because AST failed to provide it. Therefore, for purposes of the final determination, we are continuing to deduct technical service expenses as reported in AST's December 28, 1998 response from AST's CEP sales.

We note that AST's technical service expenses, as reported for both markets, are more appropriately considered to be indirect selling expenses, because they are fixed expenses that are incurred whether or not a particular sale is made. *See* The Department's AD Manual, page 34, 35. For example, we note that a portion of these reported expenses are payroll expenses, which are typically an indirect selling expense. Therefore, for purposes of the final determination, we have allocated AST's technical service expenses over sales of subject merchandise in the home market as indirect selling expenses.

Comment 13: U.S. Warranty

Respondent argues that the Department, in its preliminary determination, incorrectly double-counted warranty expenses for U.S. sales. Respondent asserts that, by treating expenses reported in two separate fields (BILLADJU and WARRU) as direct selling expenses, the Department double-counted warranty by counting both the amount credited to the customer by AST USA and the amount credited to AST USA by AST.

Petitioners reply that information on the record shows that treatment of billing adjustments and warranty expenses as direct selling expenses does not involve double-counting of warranty expenses. Specifically, petitioners argue that respondent's November 12, 1998 submissions indicate that AST had separated its warranty expenses from the amounts reported in the billing adjustment field of its U.S. sales listing. Petitioners also argue that the verification reports do not substantiate respondent's claim that the Department verified that the expenses reported in the U.S. warranty expense field of its U.S. sales listing represent AST's payments to AST USA for claims made by U.S. customers.

Department's Position: We agree with respondent. As stated in AST's original response, U.S. warranties, if incurred, are included in the billing adjustment field (*see* pg. C–37 of AST's Section C Response, dated September 28, 1998). This is confirmed by the fact that, in comparing AST's original and supplemental U.S. sales databases, we note that the BILLADJU field remained the same after AST reported WARRU in the supplemental questionnaire. Therefore, it is clear that (1) AST reported warranty expenses in the BILLADJU field; and (2) AST did not transfer the expense included in BILLADJU for warranties to the WARRU field. At verification we examined the BILLADJU field for each sales trace and, with the exception of one clerical error, we found no discrepancies. *See Verification Report of AST USA,* Exhibits 7–10. Additionally, at verification, we confirmed that AST reimburses AST USA for the credit issued to AST USA's customers for warranties. Specifically, we examined documentation showing that AST USA issues a credit to its customer, and then deducts the claim amount credited to the customer from its payment to AST. *See* Exhibit 6A of the *Verification Report of AST USA*. Therefore, to ensure that we do not double count warranties, we have only deducted BILLADJU from the U.S. price for purposes of the final determination.

Comment 14: Insurance Revenue

Respondent argues that the Department incorrectly failed to add transaction-specific insurance revenue to U.S. price in its preliminary determination. First, respondent argues that the Department incorrectly characterized insurance claim sales as "merchandise destined for sale as prime material." Respondent claims that, to the contrary, because the merchandise was damaged in transit, the sale reported to the Department was a sale of damaged second quality material. Second, respondent claims that the Department's statement that AST "still incurred a loss on prime merchandise" is incorrect, as respondent claims that any loss associated with these sales is a loss associated with sales of second quality merchandise, given that it was damaged in transit. Respondent adds that any question of whether a loss or profit was incurred is in any event irrelevant to the Department's determination of sales at less than normal value.

Respondent maintains that, conversely, transaction-specific insurance proceeds are directly relevant here. Respondent argues that the insurance proceeds reported in the response relate directly to the specific transactions identified as insurance claim sales. Respondent cites the Department's preliminary results of review in *Ferrosilicon from Brazil* (62 FR 54085, upheld in principle in the final) as a case in which the Department "added the amount of marine insurance revenue which was collected by Minasligas with regard to one U.S. sale" as support for its argument.

Petitioners assert that the Department correctly treated the costs associated with the damaged sales as indirect selling expenses. Petitioners argue that the expenses incurred for the damaged merchandise were associated with the shipment and sale of prime merchandise, as the Department preliminary determined.

Department's Position: We agree with respondent in part. For the claims that AST reported in its original response, we have added the transaction-specific insurance revenue to AST's U.S. sales' price. At verification, we reviewed the actual final settlement amount for an insurance claim that AST reported as "pending" in its responses to the Department. *See Verification Report of AST USA,* pp. 2–3. Since we confirmed this amount, and found no discrepancies, we have used the actual final settlement amount received for this insurance claim to calculate the total insurance revenue applied to these transactions.

Regarding the additional insurance revenue amount that AST presented the Department at the onset of verification, we do not agree with petitioners. We consider this additional insurance revenue to be directly applicable to all sales of subject merchandise, because in the absence of these sales, the claim

would not have been made, and the revenue would not have been received. At verification, we examined the receipts of AST's claim reimbursements and found no discrepancies. We also examined an invoice of subject merchandise for which AST received part of this additional insurance revenue and found no discrepancies. *See Verification Report of AST USA* at 3. Therefore, petitioners' assertion that these insurance proceeds must relate to sales that occurred prior to the POI is unfounded, as there is no record evidence to support this assertion, and the record evidence which does exist supports a different finding. We note that unlike our treatment of insurance revenue as discussed above, we must treat this additional insurance revenue differently based on the verified fact that AST was unable to tie this insurance revenue to specific transactions. Therefore, since this additional claim was received during the POI, and was found to be satisfactory at verification, we determine that it is relevant to use for purposes of calculating total insurance revenue. For purposes of the final determination, we have allocated this additional insurance revenue over all sales of subject merchandise.

Comment 15: Revised Credit Calculations

Petitioners contend that the Department should use the revised shipment dates presented by AST at verification to calculate imputed credit expenses for some of AST's U.S. sales. *Citing Carbon Steel Products from Korea* at 63 FR 13173, petitioners argue that the Department's general practice is that the date of sale should not occur after the date the merchandise was shipped to the customer. Moreover, petitioners state that the Department generally calculates imputed credit expenses based on the period from the date of shipment to the date of payment. Therefore, petitioners maintain that the Department should calculate revised imputed credit expenses for the sales where respondent reported incorrect shipment dates. *See Verification Report of AST USA*, Exhibit 1.

Respondent did not comment on this issue.

Department's Position: As noted in Exhibit 1 of the *Verification Report of AST USA*, AST USA incorrectly reported, as the shipment date, the shipment date from AST USA to its customer, instead of the shipment date from AST to AST USA for certain sales. We reviewed the corrected information for these sales at verification and found it to be accurate. According to Departmental policy, we calculate imputed credit based on the period of date of shipment to the date of payment. *See Policy Bulletin No. 98.2: "Imputed Credit Expenses and Interest Rate,"* dated February 23, 1998. Therefore, for the final determination, we will use the corrected information to calculate imputed credit for the sales where AST incorrectly reported incorrect shipment dates.

Comment 16: Mill Edge Discount

Petitioners argue that the Department should adjust AST's U.S. sales database to include the mill edge discount that was reviewed at the U.S. sales verification of AST USA.

Respondent did not comment on this issue.

Department's Position: We agree with petitioners, and have used the mill edge discount that was reviewed at the U.S. sales verification of AST USA for purposes of the final determination. *See Final Analysis Memorandum.*

Comment 17: U.S. Packing

Petitioners argue that the Department should make an adjustment for AST's failure to report packing costs on a transaction-specific for its U.S. sales. Noting that for its U.S. sales AST calculated a weighted-average packing cost for all U.S. sales, petitioners claim that the Department's verification findings indicate that AST could have reported the actual packing costs for its U.S. sales on a transaction-specific basis as the packing list and the packing code were listed on the confirmation for each U.S. sale. Petitioners state that in its antidumping questionnaire the Department requested that AST provide the unit cost of packing for each packing type and report this unit cost for each U.S. sale. Petitioners claim that because AST maintained this information but failed to report it, the Department should substitute the highest U.S. packing cost reported by AST during verification for the average packing cost reported by AST for its U.S. sales.

Respondent argues that it properly reported a weighted-average packing cost for its U.S. sales. Respondent maintains that the section of the AST U.S. sales verification report cited by petitioners in their case brief does not support petitioners' claim that AST could have reported actual packing costs for U.S. sales. Respondent notes that in its U.S. sales listing it reported the invoiced transaction between AST USA and the customer and that the order confirmation between AST and AST USA contains a transaction-specific packing material code does not *ipso facto* mean that it can track packing expenses related to U.S. sales on a transaction-specific basis. On the contrary, respondent asserts that it cannot track this information.

Respondent claims that U.S. sales made from warehouses may consist of either multiple or partial shipments from AST to AST USA and are not linked to specific order confirmations sent from AST when the material was originally imported. Similarly, respondent contends that its consignment sales in the United States consist of multiple shipments from AST, thereby reflecting multiple order confirmations, and that back-to-back sales in the United States may be dispatched to multiple customers, but are listed on a single confirmation sheet issued by AST to AST USA. Thus, respondent argues that the fact that packing type is specified on the order confirmation issued by AST to AST USA has no bearing on AST USA's ability to report a packing type on a transaction-specific basis. Respondent claims that upon loading the coils for shipments to the United States, coil types are often mixed, which limits its ability to relate individual shipments with the original order confirmation.

Respondent also maintains that the petitioners' argument ignores the fact that in an investigation the Department is required to base U.S. price on average rather than transaction-specific prices, which limits the need for transaction-specific adjustments. Finally, citing *Ferro Union* Slip Op. 99–27 (CIT March 23, 1999), respondent holds that the supplemental information relied upon as facts available must have probative value. In this case, respondent argues that the facts available adjustment proposed by petitioners fails to meet this standard as the proposed packing expense is based on a packing type used by less than three percent of export shipments and must therefore be rejected.

Department's Position: We agree with respondent. At verification, we reviewed AST's calculation methodology and found no discrepancies with what it reported to the Department. *See Verification Report of AST USA* at 3–4. Although we found that AST was able to identify the packing materials code on the confirmation that AST sent back to AST USA for each proposed sale, evidence we gathered at verification does not support a finding that the packing material code appears on the invoice from AST USA to the customer, or that

AST can reasonably track and report the information. Therefore, for purposes of the final determination, we accept AST's reported packing cost for its U.S. sales.

Comment 18: International Freight

Petitioners contend that the Department should use partial facts available for AST's failure to submit correct amounts for ocean freight charges on U.S. sales. Petitioners argue that AST submitted a table showing a range of shipment-by-shipment ocean freight charges, but only reported one international freight charge in its original U.S. sales listing. Petitioners state that AST attempted to justify its failure to submit the detailed portion-by-portion movement expenses requested in the Department's questionnaire (*i.e.*, an amount for factory to port costs, an amount for port charges, an amount for ocean freight, etc.), by stating that its freight broker charged AST a total movement expense that reflects the costs associated with moving the SSSS from the factory to the port, loading the SSSS onto the ship, shipping the merchandise, and insuring the merchandise. Petitioners contend that although AST stated that the broker charged AST a fixed percentage of the expense incurred as a service fee, AST did not identify the fixed percentage or provide an amount for this service fee. Petitioners argue that in its November 12, 1998 submission, AST stated that it revised its reported freight costs for U.S. sales to reflect transaction specific international freight expenses, however, AST reported only one amount to cover all of the international freight costs for its individual U.S. sales in Italian Lira per pound in the U.S. sales database. Additionally, petitioners argue that during verification, the Department discovered that the transaction-specific freight costs in AST's November 12, 1998 U.S. sales listing misstate the actual freight costs because AST failed to include freight costs for transport from the factory to the port, and AST's freight costs contained other errors.

Petitioners state that there are several problems with AST's attempt to resubmit the freight costs reported in AST's initial U.S. sales listing. (1) Because AST failed to provide the detailed freight cost information requested by the Department's antidumping questionnaire (*i.e.*, cost for shipment from factory to port, cost for port charges and handling fees, costs for ocean freight, etc.), it is unclear whether the freight costs reported in AST's September 28, 1998 questionnaire response include costs incurred to transport the SSSS from the factory to the port of export. (2) It is unclear how the cost that AST's freight broker charged AST to transport the SSSS from the factory to the port could have been omitted from its reported freight costs, because AST stated that its freight broker charged AST a total movement expense that reflected all of the movement charges (including freight from the factory to the port), and AST stated that it reported the actual amount charged by the broker to AST.

Citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium ("*SSPC from Belgium*"), 64 FR 15476, 15485 (March 31, 1999), where the Department assigned the highest reported freight costs as partial facts available to calculate international freight expenses for U.S. sales when the respondent failed to provide sufficient information to calculate movement charges for U.S. sales, petitioners claim that the Department should assign the highest non-aberrational freight charge reported by AST as partial facts available to calculate international freight expenses for U.S. sales.

Respondent argues that contrary to petitioners' claim that the Department "discovered" AST's international freight expense was underreported, AST advised the Department that the earlier-reported ocean freight expense had been inadvertently understated and provided a correct weighted-average ocean freight expense at the beginning of verification. Respondent states that AST originally reported a correct weighted-average ocean freight expense to the Department, however, in subsequent submissions, AST inadvertently used an incorrect key to calculate the ocean freight expense.

Respondent claims that petitioners' assertion that AST failed to provide sufficient detail regarding its reported ocean freight expense is unfounded because AST provided individual invoices from its freight forwarder relating to U.S. shipments during the POI, in a supplemental response. In addition, AST states that each bill of lading included in its supplemental response indicated the terms of delivery, which indicates that the prepaid freight expense includes insurance and loading charges associated with the shipped merchandise. AST states that these invoices were the basis for the international freight expenses, and reflect all costs charged by AST's freight forwarder. Therefore, respondent states that petitioners' claim that AST did not "provide any information on the service fee that AST's freight broker charges AST for arranging shipments to the U.S." is meritless.

Department's Position: We agree with respondent. Petitioners' reliance on *SSPC from Belgium* is misplaced. In that case, ALZ (the respondent) withheld information concerning its affiliation with Transaf, a company in charge of various brokerage/handling and international freight services for ALZ's U.S. sales. In addition, ALZ did not provide, in a timely fashion, information regarding the extent of which Transaf handled the brokerage/handling and international freight services. In contrast, AST did not withhold information pertaining to its ocean freight expense. We note that AST originally reported a correct weighted-average ocean freight expense in a timely fashion. *See* Exhibit 5 of AST's Section C Response, dated September 28, 1998. At verification, AST explained that when preparing supplemental responses, it used the wrong key field "chart number" instead of "file number" to determine international freight incurred on sales of subject merchandise. By using this key, AST inappropriately included shipments destined for third countries as well as for the United States. *See Verification Report of AST* at 2. At verification, we verified the revised weighted-average freight expenses, and found no reason to question the accuracy of AST's revisions. Therefore, for purposes of the final determination, we have used the revised weighted-average freight expenses submitted at verification. *See Analysis Memorandum* for further discussion of this issue, as it contains proprietary information.

Comment 19: Verification Corrections

Respondent asserts that the Department's final determination should reflect corrections made at verification. Other than these items addressed in comments 25 and 27 below, these corrections are to: (1) AST's revised "other movement" expenses; and (2) price and quantity data for five U.S. sales. Additionally, respondent argues that the Department should use the actual final settlement amount for an insurance claim in calculating a transaction-specific adjustment for insurance revenue. Finally, respondent argues that the Department should account for an additional amount in insurance revenues associated with merchandise damaged in transit. Respondent suggests that the Department could either allocate these revenues over all other second quality sales reported by AST, or, alternatively, the Department could

treat these proceeds as a reduction to AST's reported selling expenses.

Petitioners argue that the Department should use data examined during verification to calculate costs associated with the two shipments that were damaged in transit to the United States. Because petitioners' argument regarding which data to use involves proprietary data, please see the *Final Analysis Memorandum* for a more complete summary. Furthermore, petitioners argue that the Department should not accept the non-transaction specific insurance proceeds claim that AST presented at verification. Petitioners claim that respondent has claimed these insurance proceeds as non-transaction specific proceeds simply because they related to sales that occurred prior to the period of investigation. Petitioners argue that there is no basis for treating revenues associated with sales outside the POI as an offset to selling expenses incurred for sales during the POI. Furthermore, petitioners claim that respondent failed to submit certain cost information associated with a claim. Finally, petitioners claim that this information was significant new information and a new claim submitted at the beginning of verification. Petitioners argue that the purpose of verification is to confirm information rather than to accept new claims.

Department's Position: Regarding AST's revised other movement expenses, the Department has used the other movement expense factor that was reviewed at verification for the final determination. At verification, we confirmed that AST originally reported the other movement expense factor correctly in its responses to the Department; however, it did not correctly apply this factor to the calculation of the USOTHTRU field in its submissions to the Department. Therefore, we have applied the correct factor to calculate the USOTHTRU field for our final margin calculation.

Regarding the five U.S. sales for which AST presented the Department with revised price and quantity data at verification, the Department has used the corrected information in its calculation of the margin for the final determination.

We have used the actual final settlement amount for the insurance claim reviewed at verification to calculate the total insurance revenue amount. In addition, we have included the other insurance claims that AST presented to us at the onset of verification. Refer to Comment 14 for the discussion of the Department's application of insurance revenue.

Comment 20: Ministerial Error Corrections

Petitioners request that the Department correct the three ministerial errors made in calculating the preliminary dumping margins for AST that Petitioners identified in their December 28, 1998 letter to the Department.

Respondents did not comment on this issue.

Department's Position: As recommended in the *Ministerial Error Memorandum to Edward Yang from Lesley Stagliano*, dated January 6, 1999, the Department has corrected these three ministerial errors regarding general and administrative expenses and interest expenses, indirect selling expenses, and the cost of goods sold.

Cost of Production/Constructed Value

Comment 21: Below Cost Sales and Cost Recovery Test

AST argues that in the preliminary determination, the Department found certain of its home market sales were made below cost without considering whether such sales permitted the recovery of costs. As a result, AST alleges that the Department overstated the number of below-cost sales and inflated AST's preliminary determination margin. Before disregarding any of its home market sales as having been made below cost in the final determination, AST asserts that the Department must assess the degree to which AST was able to recover its costs on a product-specific basis.

AST argues that the Department should not disregard its below cost sales. AST states that the language of section 773(b)(2)(D) of the Act was intended to represent only an example of a situation in which below-cost sales would be considered as providing for the recovery of costs within a reasonable period of time. AST states further that Congress intended that below-cost sales be included in normal value in situations where other sales compensated for the losses incurred. AST asserts that the Department should only disregard below-cost sales in situations where the foreign producer incurs an overall loss. AST suggests that the Department compare average prices to average costs to determine, on a product-specific basis, whether costs of the below-cost sales were recovered.

Petitioners argue that the plain language of section 773(b)(2)(D) of the Act does not support AST's argument. Petitioners argue that, had Congress intended that the Department only disregard below-cost sales where the foreign producer experiences an overall loss, it would have implemented that policy in the language of the statute. Instead, petitioners assert that section 773(b)(2)(D) limits including sales below cost in normal value to situations where prices which were below the per-unit cost of production at the time of sale are above the weighted-average per-unit cost of production for the period of investigation. Petitioners argue that AST's position is in conflict with the language of section 773(b)(2)(D) of the Act.

Department's Position: We agree with petitioners. Section 773(b)(2)(D) is explicit in providing that prices shall be considered to provide for recovery of costs within a reasonable period of time if such prices which are below cost at the time of sale are above the weighted-average per-unit cost of production for the period of investigation. Accordingly, as we stated when we issued the proposed antidumping duty regulations to implement the provisions of the Uruguay Round Agreements Act, ". . . the Department's cost recovery test must consist of an analysis involving individual prices for specific below-cost sales transactions." (*See Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7337 (February 27, 1996).) The cost recovery test relied on in this case conforms with the statute and with the Department's regulations. For the reasons stated above, AST's proposed cost recovery test does not conform with section 773(b)(2)(D) of the Act.

Comment 22: Asset Depreciable Lives

AST asserts that, in the preliminary determination of the companion countervailing duty ("CVD") investigation, the Department rejected AST's reported average asset useful life. In the preliminary antidumping determination, respondent notes that the Department made no such finding. AST argues that the failure to apply a consistent average useful life methodology in both the antidumping and the CVD investigations resulted in higher calculated duties for AST in both investigations.

Petitioners assert that the average useful life methodologies for dumping and subsidy analyses are different because they are used for different purposes. In an antidumping proceeding, the Department examines the average useful life of each asset reported by the foreign producer, confirms that the reported useful lives are those used in preparing the financial statements of the companies, and relies on those amounts in its COP calculations. In CVD, the Department's

focus is the determination of the appropriate allocation period for subsidies. These different purposes are responsible for the Department's relying on different methodologies when analyzing average useful lives of assets in antidumping and CVD proceedings.

Department's Position: We agree with the petitioners. Section 773(f)(1)(A) and the SAA provide that if the records kept by an exporter or producer are in accordance with U.S. Generally Accepted Accounting Principles ("GAAP") of the exporting (or producing) country and reasonably reflect costs, the Department will rely on them for calculating costs (SAA at 834). The SAA also provides that we will consider whether the producer historically used the methods reported to the Department prior to the investigation and in the normal course of its business operation (*Id.*, at 835).

AST's reported depreciation was from the records it used to prepare its financial statements, which were consistent with GAAP. Moreover, those records were consistently used in the course of AST's business and reasonably reflected the company's costs. Therefore, for purposes of the Department's antidumping analysis, relying on AST's records is in conformity with both the Act and the SAA.

Comment 23: Subsidies as a Reduction to Cost

AST argues that the Department should reduce AST's reported COP and CV by the amounts of its grants and subsidies. AST claims that by not reducing its reported costs by the countervailed grants and subsidies, the Department overstates the number of home market sales disregarded as below cost which, in turn, would overstate both the normal value and the dumping margin. AST cites *Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands*, 59 FR 23684, 23689–90 (May 6, 1994) ("*Aramid Fiber*"), as authority for the Department to offset the company's production costs by the amount of grants and other subsidies found to be countervailable.

Petitioners refute AST's reliance on the *Aramid Fiber* determination. That case did not concern companion antidumping and countervailing duty proceedings. The Department only stated that petitioners were free to submit a petition for a CVD investigation alleging that subsidies had been received. The Department stated that it would not self-initiate a CVD investigation.

Department's Position: AST first raised this issue in its case brief. During the course of the antidumping investigation, the company did not proffer any information concerning the subsidies it received or about how these subsidies were used. The record in this investigation does not support a conclusion that the grants and subsidies received by AST contains no details or facts surrounding the subsidies or grants received by AST, nor do we have quantifyable amounts relating to production activities. Accordingly, no offset to production costs for the claimed grants or subsidies is deemed appropriate.

Comment 24: Income Offset to Financial Expenses

AST notes that in calculating its financial expense rate for the preliminary determination, the Department disallowed AST's reported financial income offset on the grounds that AST failed to establish that the offset was generated from short-term sources. AST argues that the Department has since verified the accuracy of the amount reported as an offset to Fried. Krupp's financial expenses at the cost verification of KTN and that we should use this short-term interest income as an offset to AST's financial expenses.

Petitioners state that the public version of the cost verification report for KTN indicated that Fried. Krupp's short-term interest income offset was verified. Petitioners also note that the cost verification report stated that the Department encountered problems verifying the exchange gains which were claimed as offsets to interest expense. Petitioners urge the Department to use the financial expense ratio as recalculated in the cost verification report for the final determination.

Department's Position: We agree with AST and petitioners. Based on our verification findings, the interest income used as an offset to finance expenses was appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statements distinguished between interest earned from long-term sources and short-term sources. Accordingly, we included this interest income earned from short-term assets, less the amounts relating to trade-receivables, as an offset to financial expenses. Additionally, based on our verification findings, Fried. Krupp was unable to substantiate its offset to financial expenses for exchange gains. Therefore, we have not allowed the exchange gains as an offset to interest expense.

Comment 25: G&A Expenses

Petitioners note that the Department's cost verification report states that AST excluded from its reported G&A expenses, those expenses it had recorded as "other operating expenses." Petitioners assert that the Department should revise AST's G&A expenses to include these amounts.

AST requests that the Department remove certain indirect expenses and certain technical expenses from its reported G&A because those expenses were reported in other computer fields, resulting in them being double-counted.

Department's Position: We recalculated AST's G&A rate, adding the "other operating expenses" to G&A and removing the expenses that AST had reported in the other fields.

Comment 26: Double Counting Packing Expenses

AST asserts that in calculating the dumping margin in its preliminary determination, the Department overstated the number of home market sales below cost by not excluding packing costs from the reported home market manufacturing costs while, simultaneously, subtracting packing costs from the home market price.

Petitioners argue that AST did not provide any information or cite to any information on the record that indicated that its reported manufacturing costs included packing costs.

Department's Position: We agree with AST that the standard costs include packing. At the cost verification, we reviewed the 1997 and 1998 standard costs used in the cost build-ups for three different product control numbers. In each case, the standard cost sheets show that the standard cost included packing. *See AST Cost Verification Report* Exhibit B7, B8 and B9. Thus, we did not include packing in our total cost of production figure for the sales below cost test in the final determination.

Comment 27: Variance

At the beginning of the cost verification, AST submitted a correction to its cost variance. AST also asserts that it had incorrectly applied the variance to factory overhead in its previous submissions to the Department.

Petitioners did not comment on this issue.

Department's Position: We agree with AST and used the revised variance in the COP calculation for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing

the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the preliminary determination in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
AST	11.17
All Others	11.17

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated:May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13676 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells, or Annika O'Hara, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3853, 482–6309, or 482–3798, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of stainless steel sheet and strip in coils from France. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

The Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as "the petitioners").

Case History

Since the publication of the preliminary determination (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 63 FR 63876 (November 17, 1998) (*Preliminary Determination*)), the following events have occurred:

We conducted verification in Belgium and France of the questionnaire responses submitted by the European Commission (EC), the Government of France (GOF), and Usinor (the only respondent company in this investigation) from November 11 through November 24, 1998. On November 24 and December 8, 1998, we received allegations of certain clerical errors in the *Preliminary Determination*. We corrected these errors in a January 20, 1999, memorandum to Laurie Parkhill, Acting Deputy Assistant Secretary (*see* "Clerical Error Allegations in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from France" ("Clerical Errors Memo") which is on file in the Central Records Unit of the Department). On February 18, 1999, we postponed the final determination of this investigation until May 19, 1999 (*see Countervailing Duty Investigations of Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea: Notice of Extension of Time Limit for Final Determinations*, 64 FR 9476 (February 26, 1999)). The petitioners and Usinor/GOF filed case and rebuttal briefs on March 3 and March 10, 1999. A public hearing was held on March 12, 1999.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30,

7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Injury Test

Because France is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from France of the subject merchandise (*see Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Corporate History

As stated in the *Preliminary Determination*, the GOF identified the Ugine Division of Usinor as the only producer of the subject merchandise that exported to the United States during the POI.

In the early 1980s, Ugine (then called Ugine Aciers) was one of several producers of stainless steel in France. In 1982, the French steel company Sacilor acquired a controlling interest in Ugine. In the following year, Sacilor bought a majority of the shares in another stainless steel producer, Forges de Gueugnon, which was merged with one part of Ugine and renamed Ugine-Gueugnon. During the same time, Usinor was a separate steel company with one division called Usinor Châtillon producing stainless steel. In 1987, the GOF placed Usinor and Sacilor in a holding company named Usinor Sacilor. At the same time, Ugine-Gueugnon and Usinor Châtillon were combined into one company called Ugine Aciers de Châtillon et Gueugnon (Ugine ACG).

In 1991, Ugine ACG merged with Sacilor and became Ugine S.A., a subsidiary of the Usinor Sacilor holding company. In 1994, Usinor Sacilor sold approximately 40 percent of its equity in Ugine S.A. to the general public. However, in 1995, Usinor Sacilor bought back the shares in Ugine S.A. and obtained total control of the company. In late 1995, Ugine S.A. was converted into a division of Usinor Sacilor and became "the Ugine Division," producing stainless steel and alloys. Finally, in 1997, Usinor Sacilor was renamed Usinor.

The GOF was the majority owner of both Usinor and Sacilor until the mid-1980s. In 1986, the GOF emerged as the sole owner of both companies after a capital restructuring. In 1987, the GOF created the Usinor Sacilor holding company. In 1991, Credit Lyonnais, a government-owned bank, bought 20 percent of the equity in the company.

In July 1995, the privatization of Usinor Sacilor began. At the same time, Usinor Sacilor offered additional shares for sale in the form of a capital increase. All shares were sold through a public offering of shares which consisted of a French public offering, an international public offering, and an employee offering. In accordance with the French privatization law, a certain portion of the shares were also sold to a group of so-called "stable shareholders," some of which were government-owned banks and other entities. The privatization continued throughout the years 1996 and 1997. At the end of the privatization, the stable shareholders held approximately 14 percent of Usinor's total shares, 10 percent of which were held by government-owned or controlled entities.

Usinor purchased shares from the GOF in 1995 to sell to employees on an extended payment plan in 1996. In addition, the GOF sold shares to employees at the time of the 1995 privatization. Monies for these shares were received by the GOF in 1995, 1996, and 1997. In December 1995, Usinor Sacilor repurchased shares of Ugine which had been previously sold to the public, approximately 41 percent of Ugine's shares.

In early 1997, the GOF transferred (without remuneration) a small part of its stake in Usinor to individual French shareholders and company employees who had held their shares for at least 18 months following the July 1995 privatization. In October 1997, the GOF sold most of its remaining shares on the market, leaving it with less than one percent of total Usinor shares. These shares were to be given away without remuneration (for "free") in August 1998.

As noted in the February 19, 1999, Usinor Verification Report (Usinor Report), because the French steel industry was not thriving in the mid-1990's, Usinor made an effort to streamline its holdings and maintain ownership of only steel-producing divisions. This streamlining included the sale of the Richemont power plant in 1994, as well as the sale of assets to FOS-OXY in 1993 and Entreprise Jean LeFebvre in 1994.

Change in Ownership

In the *General Issues Appendix (GIA)*, attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we explained our current methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI (*i.e.*, in this case, 1984 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present

[5] 'GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

value of all remaining benefits at the time of privatization. For further discussion of our privatization methodology, see *Preliminary Determination*, 63 FR at 63878, and the Clerical Errors Memo.

With respect to spin-offs, consistent with our position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sales price of the productive units can be attributable to payment for prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price that can be viewed as payment for prior subsidies in accordance with the privatization methodology outlined above.

Usinor and the GOF have indicated their opposition to the Department's methodology in recalculating the amount of subsidies attributable to Usinor after the spin-off of the Richemont facility. (We did this recalculation to address a clerical error in the *Preliminary Determination*.) The GOF and Usinor do not agree that the subsidies attributable to Richemont should have been reallocated to Usinor as a result of the sale of Richemont. Instead, in their view, at least some of the subsidies originally attributable to Richemont's production should have been assigned to Richemont after its sale.

The petitioners support the corrections described in the Department's Clerical Errors Memo. They argue that, in making the changes, the Department has applied correctly the spin-off methodology upheld by the court in *British Steel plc* v. *United States*, 27 F. Supp. 2d 209 (CIT 1998). The petitioners maintain that there is not an extinguishment of subsidies in a spin-off, citing the Final Determination of Redetermination Pursuant to *Delverde SrL* v. *United States*, 989 F. Supp. 218 (CIT 1997).

We disagree with the GOF and Usinor, and we have continued to apply the methodology described in the Clerical Errors Memo regarding the sale of the Richemont facility. The revised calculation comports with the Department's methodology as described in the *GIA*, 58 FR at 37269. In this instance, application of our methodology leads to the conclusion that all subsidies potentially allocable to Richemont were, in fact, returned to the seller (Usinor) through the price paid for Richemont.

In addition, the petitioners have argued that, because the change in ownership of Ugine in 1994, as well as the privatization of Usinor in 1996 and 1997, did not result in changes in the control of these companies, the change-in-ownership methodology should not be applied. The petitioners cite to *Inland Steel Bar Co.* v. *United States*, 155 F.3d 1370, 1374 (Fed. Cir. 1998) (*Inland Steel*), in which the court stated that a purchaser's valuation of a company "will depend not only on the intrinsic value of the unit, but also on whether the purchaser opts to discharge the liability at purchase time rather than continuing to pay countervailing duties until the obligation expires."

According to the petitioners, the court's reasoning dictates that a purchaser must be able to value a company's assets and liabilities, assume the liabilities and opt to repay or reallocate the countervailing duty liability. In order to do this, the petitioners argue that a purchaser must take control of the company. The petitioners argue that where the purchasing company acquires only a minority share in the subsidized company, the liability remains with the current majority owners while the minority purchaser simply buys into the subsidized company.

In further support of their position, the petitioners cite to the *GIA*, 58 FR at 37273, where the Department stated that "a change in ownership position, whereby a company's percentage of ownership fluctuates over time, is not a *bona fide* spin-off. Therefore, we did not perform the spin-off calculation with regard to change in ownership position." The petitioners warn that application of the change-in-ownership methodology to small-share transactions that do not affect the control of a company would create a loophole in the countervailing duty law whereby each share transaction on the open market would constitute a change-in-ownership. In effect, point out the petitioners, the privatization of a company via stock issuance would result in the extinguishment of subsidies as each trade would result in a reallocation of those subsidies. The petitioners also state that continued application of the change-in-ownership methodology involving minority transfers of ownership could also provide an incentive for majority owners to manipulate share transactions so as to eliminate countervailing duty liability.

The GOF and Usinor contend that the Department has never linked application of its change-in-ownership methodology to a change in control of the company. The GOF and Usinor insist that the methodology should continue to be applied to the sale of shares in Ugine.

We have not adopted the position urged by the petitioners. In the Department's recent decision in the *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, 15510 (March 31, 1999) (*Italian Plate*), regarding the application of the change-in-ownership methodology, the Department stated:

> We were not persuaded by petitioners' argument that a transaction must involve a transfer of control in order for our methodology to be applicable. However, we are deeply concerned that application of our methodology to sales of private minority share interests such as these could lead us toward the application of our methodology to daily transactions on the open market for publicly traded companies—a clearly absurd result that must be prevented.

The specific facts presented in *Italian Plate* led the Department to conclude that it should not apply its methodology to certain changes in the ownership of a respondent, AST. However, the Department has applied its change-in-ownership methodology in other situations where there was no change in control. For example, the Department applied its change-in-ownership methodology to the partial privatizations of a respondent, SSAB, undertaken by the Government of Sweden. *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Sweden*, 58 FR 37385, 37386 (July 9, 1993) (*Certain Steel from Sweden*). Similarly, in *Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13627 (March 20, 1998) (*IPA from Israel 1995 Review*), the Department applied the change-in-ownership methodology to the partial privatization of a respondent, ICL. In that case, 24.9 percent of ICL's shares were sold.

Moreover, the Department has applied its change-in-ownership methodology to transactions involving changing levels of ownership over time. In *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 63 FR 18367, 18368 (April 15, 1998) (*UK Lead Bar 1996 Review*), as well as *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty*

Administrative Review, 61 FR 58377, 58381 (November 14, 1996) (*UK Lead Bar 1994 Review*), the Department examined a situation where British Steel placed its special steel business into a joint venture, UES. In return, British Steel became partial owner of UES (and, consequently, partial owner of the business it formerly owned). The Department recognized this change and applied its change-in-ownership methodology to this "spin-off." Later, when UES was repurchased ("spun-in") by British Steel, the Department found that the subsidies that "traveled" with the UES should be "rejoined" with its parent company's pool of untied subsidies. Thus, the change-in-ownership methodology was also applied to this transaction. The UES spin-off demonstrates, that the Department does not require a change in control before it applies its change-in-ownership methodology. Moreover, where changes in the level of ownership occur over time, as was the case with British Steel and UES, we account for those changes through the change-in-ownership methodology.

There have also been situations where application of the change-in-ownership methodology was not appropriate. In *Italian Plate*, 64 FR at 15510, for example, the transactions at issue involved "the sale of a relatively small amount of shares by minority owners of a holding company two levels removed from the production of the subject merchandise." Also, in *IPA from Israel 1995 Review*, 63 FR at 13627, the Department did not apply the change-in-ownership methodology to the sales by another party, Rotem, of less than 0.05 percent of ICL because the sale of shares had no impact on Rotem's overall net subsidy rate.

In light of these precedents and recognizing the flexibility afforded by the statute in recognizing changes in ownership, we have reexamined the circumstances surrounding the spin-off and spin-in of Ugine, as well as the 1996 and 1997 sales of Usinor's shares by the GOF for this final determination. We have continued to apply the change-in-ownership methodology to the spin-off of Ugine and the post-1995 sale of Usinor's shares by the GOF. Both sets of transactions involved sales by a government or government-owned company (Usinor) and a significant number of shares.

We have not, however, applied the change-in-ownership methodology to the spin-in of Ugine. The repurchase of shares consisted of numerous transactions between a predominately privately owned purchaser (Usinor) and individual minority shareholders. By contrast, when UES was reacquired by British Steel, the transaction involved only two parties, each holding fifty percent of the subsidized company. Reallocation of subsidies was appropriate in that case because the seller was a single company selling a significant interest. Application of the change-in-ownership methodology to the repurchase of Ugine shares in this case would essentially result in an allocation of Ugine's subsidies to individual investors who are trading Ugine shares on the market. As we indicated in *Italian Plate*, the change-in-ownership methodology was never intended to result in such an allocation. Therefore, the subsidies spun off in the 1994 sale of Ugine's shares were returned to Usinor in their entirety when Usinor repurchased Ugine in 1995.

Consequently, in this final determination, we have applied the change-in-ownership methodology to the following transactions: (1) the sale of Ugine shares in 1994; (2) the 1994 sale of Centrale Siderurgique de Richemont (CSR); (3) the privatization of Usinor which spans 1995, 1996, and 1997; (4) the spin-off of assets to Entreprise Jean LeFebvre in 1994; and (5) the spin-off of assets to FOS–OXY in 1993. *See also* our responses to Comment 2 concerning the spin-off of assets to FOS–OXY and Entreprise Jean LeFebvre, and Comment 3 concerning the privatization of Usinor during the years 1995, 1996, and 1997.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rates: To calculate the countervailable benefit from loans and non-recurring grants received, we used Usinor's company-specific cost of long-term, fixed-rate loans where available. For years where a company-specific rate was not available, we used the rates for average yields on long-term private-sector bonds in France as published by the OECD. For years in which Usinor was determined to be uncreditworthy (*i.e.*, 1984 through 1988), we added a risk premium to the benchmark interest rate (*see* our response to Comment 10 below regarding the selection of this rate) in accordance with our practice described in § 355.44(b)(6)(iv) of *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment*, 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Regulations*). While the *1989 Proposed Regulations* are not controlling in this case, they do represent the Department's practice with respect to this investigation.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See GIA*. In *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies for Usinor Sacilor based on the average useful life (AUL) of its non-renewable physical assets of 14 years. This remand determination was affirmed by the Court in *British Steel plc* v. *United States*, 929 F. Supp. 426 (CIT 1996) (*British Steel II*).

As discussed below, the current investigation includes untied, non-recurring subsidies that were found to be countervailable in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) (*Certain Steel from France*), *i.e.*, PACS, FIS, and Shareholders' Advances. Because we have already assigned a company-specific allocation period of 14 years to those previously investigated subsidies, we determine that it is appropriate to continue to allocate those subsidies over 14 years. *See* our response to Comment 1, below.

This investigation includes no other non-recurring subsidies that have been determined to provide countervailable benefits that should be allocated over time. Accordingly, we have not calculated a new company-specific allocation period for subsidies not previously investigated.

Based upon our analysis of the petition, the responses to our questionnaires, and the results of verification, we determine the following:

I. Programs Determined To Be Countervailable GOF Programs

A. Loans With Special Characteristics (PACS)

The steel restructuring plan of 1978 created a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. According to the 1978 plan, bonds issued previously on behalf of the steel companies and pre-1978 loans from Crédit National and Fonds de Développement Économique et Social (FDES) were converted into "loans with

special characteristics" or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but they did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF 8.1 billion of new PACS. PACS in the amount of FF 13.8 billion, FF 12.6 billion, and FF 2.8 billion were converted into common stock in 1981, 1986, and 1991, respectively.

In *Certain Steel from France* and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) (*Lead Bar from France*), the Department determined that the conversion of PACS to common stock in 1981 and 1986 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during the POI of this investigation.

Consistent with our practice in *Certain Steel from France*, we have treated the equity infusion as a non-recurring grant received in 1986. Because Usinor was uncreditworthy in the year of receipt, we used a discount rate that includes a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of each equity infusion appropriately allocated to Usinor during the POI. We divided this amount by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 1.22 percent *ad valorem*.

B. Shareholders' Advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances during the period 1982 through 1986. The purpose of these advances was to finance the revenue-shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *Certain Steel from France* and *Lead Bar from France*, the Department determined that the shareholders' advances constituted countervailable grants at the time the advances were received because no shares were exchanged for them. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, subsidies dating back to 1984 continue to provide countervailable benefits during the POI of this case.

Consistent with our practice in *Certain Steel from France*, we have treated these advances as non-recurring grants. Because Usinor was uncreditworthy in the years of receipt, we used a discount rate that includes a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of each grant appropriately allocated to Usinor during the POI. We divided this amount by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.97 percent *ad valorem*.

C. Steel Intervention Fund (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Sid°rurgique (FIS), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS which, in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In *Certain Steel from France* and *Lead Bar from France*, the Department determined that the conversions of FIS bonds to common stock in 1986 and 1988 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 and 1988 conversions of FIS bonds yield a benefit during our POI.

We have treated the equity infusions as non-recurring grants given in 1986 and 1988. Because Usinor was uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of each equity infusion appropriately allocated to Usinor during the POI. Dividing this amount by Usinor's total sales during the POI, we determine the countervailable subsidy to be 3.09 percent *ad valorem*.

D. Investment and Operating Subsidies

During the period 1987 through 1997, Usinor received a variety of small investment and operating subsidies from various GOF agencies as well as from the European Coal and Steel Community (ECSC). The subsidies were provided for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

At verification, the GOF provided information about the water program subsidies which indicated that Usinor received only a small portion of the total amount of funding provided by the regional water boards (les agences de l'eau) to reduce industrial pollution. For reasons outlined in our response to Comment 8 below, we determine that the water board subsidies are not specific to Usinor.

However, the GOF did not provide any information regarding the distribution of funds under the other investment and operating subsidy programs, citing the "extreme burden" of providing such information and also because, in the GOF's view, the total amount of investment and operating subsidies received by Usinor was "insignificant and would . . . be expensed."

In accordance with section 776(a)(2) of the Act, we have, therefore, decided to use facts available because the GOF did not provide information that had been requested. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." *See Industrial*

Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review, 64 FR 2879, 2885 (January 19, 1999) (*IPA from Israel 1996 Review*). Therefore, the Department determines it appropriate to use an adverse inference in concluding that the investment and operating subsidies (except those provided by the water boards) are specific within the meaning of section 771(5A)(D) of the Act.

We also determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds from the GOF and the ECSC to Usinor, providing a benefit in the amount of the grants.

Because the investment and operating subsidies received in the years prior to the POI were less than 0.5 percent of Usinor's sales during the respective years of receipt, we have expensed these grants in the years of receipt. To calculate the *ad valorem* rate of the subsidy, we divided the subsidies received in 1997 by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.10 percent *ad valorem*.

E. Myosotis Project

Since 1988, Usinor has been developing an innovative continuous thin-strip casting process called "Myosotis" in a joint venture with the German steelmaker Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters thick.

To assist this project, the GOF, through the Ministry of Industry and L'Agence pour la Matrise de L'nergie (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, covered a three-year period and established schedules for the initial and subsequent payments to Usinor. These payments were contingent upon the submission of progress reports including a statement of investment outlays. The final payment was contingent upon the submission of a final program report and a statement of total expenses. The three installments were paid in 1989, 1991, and 1993. The 1991 Agreement between Ugine and AFME covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from AFME in 1991 and 1992. The 1995 agreement with Ugine provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

The GOF has claimed that assistance for the Myosotis project was provided under the Grands Projets Innovants (GPI) program which is available to all industrial sectors in France. The GOF also asserts that the program is a non-countervailable (*i.e.*, "green-light") research subsidy within the meaning of section 771(5B)(B) of the Act. At verification, we confirmed that the reimbursable advances were provided under the GPI program. However, the information provided was not sufficient to establish that the grants provided by the Ministry of Industry and AFME were connected to the GPI program.

Accordingly, we determine that the grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. The amounts transferred are financial contributions in the form of direct transfers of funds from the GOF to Usinor and/or Ugine pursuant to section 771(5)(D)(i) of the Act. The GOF did not provide any information indicating that the grants were provided to other companies in France. Therefore, we determine that the grants provided to the Myosotis project are specific within the meaning of section 771(5A)(D) of the Act because they were provided exclusively to Usinor.

We determine the subsidies provided between 1989 and 1993 to be non-recurring grants based on the analysis set forth in the Allocation section of the *GIA*. Because the amounts received during these years were less than 0.5 percent of Usinor or Ugine's sales during their respective year of receipt, we are expensing these grants in the years of receipt.

With respect to the reimbursable advance received in 1997, we are treating this advance as a long-term interest-free loan. Information provided at verification indicates that Usinor makes all payments of interest on its long-term loans on an annual basis. According to information provided by private banks of France, we found that such a payment schedule would not be considered atypical of general banking practices in France. Accordingly, we have assumed that a payment on a comparable commercial loan taken out by Usinor at the time of the Myosotis advance would not be due until 1998. Because there would be no effect on Usinor's cash flow during the POI (*i.e*, no payment would have been made on a benchmark loan during the POI), we determine that there is no benefit attributable to the POI. *See GIA*, 58 FR at 37228–29. Consequently, we have not addressed whether the reimbursable advance received under the GPI program in 1997 is countervailable. *See* our response to Comment 9 below.

F. Electric Arc Furnace

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts to improve and increase the efficiency of the melting process—the first stage in steel production. The first disbursement of funds occurred on July 17, 1998.

The Department deems benefits to have been received at the time that there is an effect on the recipient's cash flow. *See GIA*, 58 FR at 37228–29. Because Usinor did not receive any payments until 1998, there is no benefit during the POI of this investigation. Consequently, we have not addressed whether this program is countervailable.

G. GOF Conditional Advance

During our verification of Usinor, we learned that Usinor received an interest-free conditional advance from the GOF. This advance was provided through the Ministry of Industry in connection with a project aimed to develop a new type of steel used in the production of catalytic converters. Ugine, Sollac, and two unaffiliated companies participated in the project and each company received a portion of the total project funding provided by the GOF. Ugine received its first payment in 1992 and a second payment in 1995. According to the agreement between the GOF and the participating companies, repayment of the advance was contingent upon sales of the product resulting from this project exceeding a set amount. Because this condition has not been met, the entire amount of the advance received by Ugine remained outstanding during the POI.

We determine that this conditional advance constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. Because assistance was only provided to four companies, two of which are part of the Usinor group, the program is specific pursuant to section 771(5A)(D) of the Act. According to the Department's practice, as reflected in § 355.49(f) of the *1989 Proposed Regulations*, the Department normally treats an interest-free loan, for which the repayment obligation is contingent upon certain subsequent events, as an interest-free, short-term

loan for the purpose of calculating the amount of benefit. *See also* § 351.505(d) of *Countervailing Duties; Final Rule*, 63 FR 65438, 65410 (November 25, 1998) (*Final CVD Regulations*). Accordingly, we have calculated the benefit from the advance by dividing the amount of interest that would be due using the benchmark rate by the value of Ugine's total sales. On this basis, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

H. Related-Party Grants

Usinor's financial statements identify "grants from related parties" in the years 1992 through1995. Information provided by Usinor demonstrates that these grants do not constitute a separate program from the Myosotis project and investment and operating subsidies discussed above. Specifically, a yearly breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis project or investment and operating subsidies. Therefore, we have not treated "Related Party Grants" as a separate program. *See* "Myosotis Project" and "Investment and Operating Subsidies" sections of this notice.

I. 1991 Grant to Ugine

Ugine's 1991 financial statements indicate that Ugine received FF 26,318 thousand in subsidies and also note that FF 16,295 thousand of "share" in subsidies were posted to income. Information provided by Usinor indicates that these amounts reflect the funds received under the Myosotis project as well as investment and operating subsidies. Specifically, a breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis project or investment and operating subsidies. Because we investigated Myosotis and investment and operating subsidies separately in this proceeding, we have not treated the "1991 Grant to Ugine" as a separate program. *See* "Myosotis Project" and "Investment and Operating Subsidies" sections of this notice.

EC Program

European Social Fund. The European Social Fund (ESF), one of the Structural Funds operated by the EC, was established in 1957. The main purpose of the Fund is to improve workers' employment opportunities, raise their living standards, and increase their geographical and occupational mobility within the European Union (EU). It provides support for vocational training, employment, and self-employment.

The member states are responsible for identifying and implementing the individual projects that are selected to receive ESF financing. The member states must also contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below). For Objective 1 projects, the ESF contributes a maximum of 75 percent of the project's total cost.

Like the other Structural Funds, the ESF contributes to the attainment of the five different objectives identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to combating long-term unemployment and creating jobs for young people and people excluded from the labor market, Objective 4 focuses on the adaptation of workers to industrial changes and changes in production systems, and Objective 5 pertains to rural development. Recently, the EC added a sixth objective under which assistance is provided to sparsely populated areas in northern Europe.

Ugine S.A. received an ESF grant for worker readaptation training in 1995. In the same year, the company also received an approximately equivalent amount from the GOF as cofinancing for the project. In 1997, the Ugine Division of Usinor received an ESF grant for training workers in a new production process at its cold-rolling mill in Isbergues. At verification, we found that the Ugine Division had also received a small ESF grant for its plant in Gueugnon in 1997. No GOF cofinancing for the 1997 ESF grants was received during the POI. All the ESF grants were provided under Objective 4.

The Department considers worker-assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288, 30294 (June 14, 1996) (*Pasta From Italy*). While Usinor has stated that the ESF grants did not relieve it of any contractual or legal obligations, neither Usinor nor the GOF has provided any documentation to support this claim. Since companies normally incur the costs of training to enhance the job-related skills of their employees, we determine that the ESF grants relieved Usinor of an obligation it would have otherwise incurred.

Neither the EC nor the GOF has provided any documentation regarding the distribution of ESF grants in France. At verification GOF officials stated that, during the POI, Usinor did not receive a disproportionate amount of ESF assistance, but they did not provide any documentation in support of this statement.

In accordance with section 776(a)(2) of the Act, we have, therefore, decided to use facts available because the GOF did not provide information that we had requested. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." *See IPA from Israel 1996 Review*. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the ESF grants are specific within the meaning of section 771(5A)(D) of the Act.

We also determine that the ESF grants provide a financial contribution, as described in section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds from the EC and the GOF to Usinor, providing a benefit in the amount of the grants.

Normally, the Department considers the benefits from worker-training programs to be recurring. *See GIA*, 58 FR at 37255. However, consistent with our past practice and our understanding that ESF grants relate to specific, individual projects which require separate government approvals, we have treated these as non-recurring grants. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40488 (July 29, 1998) (*Wire Rod from Italy*), and *Pasta from Italy*, 61 FR at 30295. Because the value of the ESF grants and the accompanying GOF contribution were less than 0.5 percent of Ugine's total sales in 1995 and 1997, respectively, we expensed these grants in the years of receipt. We calculated the benefit for the POI by dividing the amount of the ESF grant received in 1997 by Ugine's total sales in that year. In this way, we determine the countervailable subsidy to be less than 0.005 percent *ad valorem* for this program.

II. Programs Determined To Be Not Countervailable

A. Purchase of Power Plant

In 1994, Usinor sold the shares of CSR to Électricité de France (EDF), a government-owned entity. CSR was set up to convert gas generated by steel plants in the Lorraine region into electricity for sale to l'Union Sidérurgique de L'Énergie (USE). USE, in turn, sold the electricity to steel

producers in the region. At the time of the transaction, both CSR and USE were owned by Usinor and Usinor factories purchased their electricity from USE.

In addition to the physical assets of CSR (*i.e.*, land, buildings, plant and equipment), the 1994 transaction also provided EDF the exclusive right to supply electricity to USE for a 15-year period. Prior to the transaction, Usinor and EDF conducted independent valuations of the transaction based on detailed projections of future costs and revenues associated with the operation of CSR and sales of electricity to USE. The projected revenues were calculated using detailed estimates of yearly outputs, consumption, and rates. Similarly, projected costs were based on estimated costs for purchasing gas and operating expenses, as well as costs for developing an electric power system. After negotiations, Usinor and EDF agreed on a purchase price of FF 1 billion, which represented a compromise between the independent valuations of the transaction by Usinor and EDF.

We examined whether Usinor received more than a reasonable market price from the EDF in this transaction. We determine that, while FF 1 billion represented a large gain over the book value of CSR's physical assets, the purchase price was based on independent valuation of the future sales of electricity by EDF to Usinor. These valuations were supported by reasonable estimates of projected costs and revenues. We found no evidence to indicate that the transaction was anything other than an arms-length transaction for full market value. Accordingly, we determine that this program does not constitute a countervailable subsidy within the meaning of section 771(5) of the Act.

B. Related-Party Loans

Usinor's 1992 and 1993 financial statements identify "interest free loans to related parties" in the amounts of FF 622 million in 1993 and FF 455 million in 1992. According to Usinor, these loans consist of interest-free advances *by* Usinor and other Usinor Group entities to non-consolidated entities within the Usinor Group. Information provided by Usinor indicates that the funds for these loans were provided out of Usinor's self-generated cash flow. Because there is no financial contribution as defined under section 771(5)(D) of the Act, we determine that these loans do not constitute a countervailable subsidy.

C. Work/Training Contracts

Employers who hire young people (16–25 years of age) through various government-administered work/training or apprenticeship contracts may receive grants and an exemption from social security contributions. The contracts also impose training requirements for those employees and establish minimum compensation set in proportion to the SMIC (the indexed minimum wage) according to the age of the young person and the duration of the contract. This program is administered by Délégation Générale à l'Emploi et à la Formation Professionnelle of the Ministére de l'Emploi et de la Solidarité at the national level and locally by the Directions Departementales du Travail, de l'Emploi et de la Formation Professionnelle (DDTEFP) (Departmental Labor, Employment and Professional Training Head Offices). The purpose of this program is to encourage the permanent employment of young people.

Usinor has entered into two types of such contracts: (1) apprenticeship contracts and (2) contracts of specific duration (including qualification agreements and adaptation agreements). Any employer can hire an apprentice and enter into an apprenticeship contract providing training for the apprentice. Qualification and adaptation agreements require approval by the DDTEFP. Approval is dependent upon (1) adoption of an agreement with an educational institution or training entity and (2) the company's approval of a standard agreement adopted by the GOF and an occupational organization. Usinor received lump-sum payments and exemptions from social security contributions as a result of these contracts.

We analyzed whether the benefits provided under this program are specific "in law or fact" within the meaning of section 771(5A) of the Act. We determine that the program is not *de jure* specific because the receipt of the benefits, in law, is not contingent on export performance or on the use of domestically-sourced goods over imported goods; nor are the benefits limited to an enterprise, industry or region.

Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others. As explained in the Statement of Administrative Action (SAA) (H.R. Doc. No. 103–316 at 931 (1994)), the fourth criterion normally serves to support the analysis of other *de facto* specificity criteria.

Assistance under this program was distributed to a wide variety of industries in the majority of the regions of France. Therefore, the program is not limited based on the number of users. The evidence also indicates that the steel industry did not receive a predominant or a disproportionate share of the total funding. Given our findings that the number of users is large and that there is no predominant or disproportionate use of the program by the steel industry, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Accordingly, we determine that this program is not specific and has not conferred countervailable subsidies within the meaning of section 771(5) of the Act.

III. Programs Determined To Be Not Used

Based on the information provided in the responses and the results of verification, we determine that Usinor did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. *Export Financing under Natexis Banque Programs*
B. *DATAR Regional Development Grants (PATs)*
C. *DATAR 50 Percent Taxing Scheme*
D. *DATAR Tax Exemption for Industrial Expansion*
E. *DATAR Tax Credit for Companies Located in Special Investment Zone*
F. *DATAR Tax Credits for Research*
G. *GOF Guarantees*
H. *Long-Term Loans from CFDI*

EC Programs

A. *Resider I and II Programs*
B. *Youthstart*
C. *ECSC Article 54 Loans*
D. *ECSC Article 56(2)(b) Redeployment/ Readaptation Aid*
E. *Grants from the European Regional Development Fund (ERDF)*

IV. Program Determined Not To Exist

Forgiveness of Shareholders' Loans

Usinor's 1994 and 1995 financial statements indicate that the balance in the account identified as "loans granted

by the shareholders" or "borrowings granted by the shareholders" was reduced from FF 2.161 billion in 1993 to FF 1.92 billion in 1994 (*i.e.*, a reduction in the amount of FF 241 million). At the end of 1995, the balance in the same account was zero. The petitioners alleged that the reduction in the loan balance represented a debt forgiveness by the GOF in order to make the company more attractive to investors prior to its privatization.

Information provided by Usinor and the GOF indicates that there was no loan forgiveness. Rather, the decreases of the loan balances in the financial statements represent a combination of loan payments by the company and the elimination of the disclosure requirement in accordance with international accounting standards due to a reduction in shareholdings. Specifically, the 1995 reduction reflects the elimination of disclosure requirements applicable to loans from Credit Lyonnais as the result of the reduction in Credit Lyonnais' ownership interest in Usinor from 20 percent to less than 10 percent at the time of Usinor's privatization. There were no disclosed shareholder loans at the end of 1995 because there were no shareholders with an interest of 10 percent or greater. International accounting standards require disclosure of transactions between a business entity and owners of more than 10 percent of shares. For 1994, the reduction is accounted for by repayments of certain outstanding loans during that year. On this basis, we determine that this program does not exist.

Interested Party Comments

Comment 1: Allocation Period

Usinor and the GOF argue that, in the *Preliminary Determination*, the Department applied the 14-year AUL period found in *Certain Steel from France* improperly to allocate the benefits of certain non-recurring subsidies found countervailable in that case. Usinor and the GOF urge the Department to apply instead a company-specific allocation period based on information submitted in the instant investigation.

Usinor and the GOF argue that the Department's use of the allocation period derived from a different proceeding is inconsistent with the applicable court decision and the Department's past practice. The respondents point out that, in *British Steel I*, the court rejected the Department's previous allocation methodology based on the IRS tables because the methodology was not based on substantial evidence on the record. Consequently, the respondents note, the Department formally abandoned the use of IRS tables and instead adopted the practice of determining a company-specific AUL based on record evidence. Usinor and the GOF state that this practice is reflected in the Department's countervailing duty questionnaires, as well as in the *1997 Proposed Regulations*, which direct a firm to calculate its average AUL over a period of ten years. By deviating from that practice, Usinor and the GOF contend that the Department's approach in the *Preliminary Determination* violated its court-ordered mandate to allocate subsidies in a manner supported by evidence on the record of the instant proceeding. Usinor and the GOF add that the Department's practice is tantamount to penalizing the company simply because it happens to have been the subject of a prior investigation. Usinor and the GOF contend that, absent the earlier investigation, the programs at issue—PACS, FIS and Shareholders" Advances—would have been deemed outside the scope of the present investigation.

Usinor and the GOF argue that the 14-year AUL from a different investigation—involving different producers, different subject merchandise, and a different time period—is not a proper measure of benefit for the current investigation. According to the respondents, the AUL merely represents a reasonable period for allocation of benefits in a particular investigation rather than the actual duration of the benefit. Usinor and the GOF state that any given company-specific AUL in an investigation is a snapshot that can vary from year to year because it is based on the company's asset values and depreciation charges that inevitably vary from year to year. Therefore, the respondents contend, a decision not to revisit the allocation period in a subsequent investigation undermines the integrity of the later investigation by failing to allocate all subsidies found in accordance with the record of that investigation. Usinor and the GOF assert, the methodology of focusing on the POI and the preceding nine years is reasonable because it is linked to the time period for which alleged subsidies were received.

Usinor and the GOF point out that, although the Department has applied the same allocation period in different segments of the same proceeding, it has never before applied a previously determined AUL in an entirely separate proceeding. Citing *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549,16550 (April 7, 1997) (*Carbon Steel from Sweden*), Usinor and the GOF recognize the Department's rationale that revising an allocation period in subsequent segments of the same proceeding would create an entirely new benefit stream, thereby resulting in under-countervailing or over-countervailing the benefits in the review period. According to the respondents, however, this rationale does not apply when dealing with an entirely separate proceeding because the allocation period that was determined in one proceeding has no effect on the benefit stream in a separate proceeding. Usinor and the GOF also distinguish the current situation from *UK Lead Bar 1996 Review*, where the Department applied an 18-year company-specific AUL period found in separate proceeding (*see Final Results of Redetermination Pursuant to Court Remand on General Issue of Allocation: British Steel plc* v. *United States*, Consol. Ct. No. 93–09–00550–CVD, Slip Op. 95–17 and Order (CIT Feb. 9, 1995) (*UK Certain Steel*)) instead of the 15-year IRS table-based AUL used in the earlier segment of the same proceeding. In that case, Usinor and the GOF argue, the rejected allocation period—*i.e.*, the IRS tables-based allocation period—was one that was overruled by the *British Steel I* decision.

The petitioners counter that the Department should affirm its decision in the *Preliminary Determination* and continue to apply Usinor's 14-year AUL to the company's previously investigated subsidies. The petitioners argue that the application of Usinor's company-specific AUL is consistent with the Department's established allocation methodology. According to the petitioners, the Department has concluded in past cases, such as *Pasta from Italy* and *Carbon Steel from Sweden*, that previously countervailed subsidies based on an allocation period established in an earlier segment of the proceeding should not be reallocated over a different period of time. The petitioners contend that the principle underlying the Department's decision to use the same AUL across different segments of a single proceeding applies equally in the current investigation. According to the petitioners, the Department followed this reasoning recently in *UK Lead Bar* where it applied a single company-specific AUL to the same subsidies across different proceedings involving the same company to avoid "significant inconsistencies."

Citing to the *GIA*, the petitioners state further that the Department's practice in the *Preliminary Determination* was consistent with the statutory requirement that the amount of the countervailable subsidy, including the allocated subsidy stream, is not to be reevaluated based upon subsequent events. The petitioners contend that, because the 14-year AUL and the benefit stream of the previously investigated subsidies are based on data from the period when those subsidies were received, they represent a more accurate measurement of the duration of the benefit to the company. The petitioners note that, for subsidies that have not been previously investigated, the Department's current approach of requesting data for a time period linked to the POI is a reasonable and administrable method for allocating those subsidies. For previously investigated and allocated subsidies, in contrast, the petitioners contend that the established benefit streams should be maintained consistently in future investigations. The petitioners argue that using the new 11-year AUL would result in effectively revaluing the subsidies that were allocated over a 14-year AUL, thereby ignoring the continuing benefit to the company.

The petitioners contend that the fact that a company's AUL is bound to change from year to year should not affect the Department's prior AUL finding because, at the time Usinor received the subsidies in question, the Department determined that those subsidies benefitted Usinor for 14 years from the point of receipt. The changing value of the company's assets after the appropriate allocation period, according to the petitioners, is a subsequent event which should be considered irrelevant to the allocated subsidy stream. The petitioners emphasize that, despite the respondent's claims to the contrary, the present investigation involves the same untied subsidies, the same producer, and the same product. Specifically, the petitioners point out that, in *Certain Steel from France*, the subsidies in question—FIS, PACS and Shareholders' Advances—were found to benefit *all* products produced by the entire Usinor group.

The petitioners state that the Department routinely applies a determination from one proceeding to a separate proceeding despite the absence of evidence on the record of the new proceeding. The petitioners note that, for example, absent new evidence of changed circumstances, the Department does not revisit its determinations regarding a company's equityworthiness. Consistent with this standard, the petitioners argue that the AUL determination based on the record evidence in the prior proceeding should only be revisited if new information regarding the validity of the previous determination is presented. Because the respondents have not provided any such information, the petitioners maintain that the Department should continue to apply Usinor's 14-year AUL to the previously investigated subsidies.

Department's Position: For this final determination, we have continued to apply Usinor's company-specific AUL of 14 years found in *Certain Steel from France* to allocate the benefits of certain non-recurring subsidies found countervailable in that case.

We disagree with the respondents that our use of the 14-year AUL is inconsistent with the court decision in *British Steel I* and our practice. In *British Steel I*, the court emphasized that by using the IRS table-based allocation methodology, the Department did not allocate the benefits of the non-recurring subsidies in a manner reflecting the actual "commercial and competitive benefits" of the subsidies. *See British Steel I*, 879 F. Supp. at 1298. Following the court's remand order in that case, the Department calculated a Usinor-specific AUL of 14 years based on its company-specific information. The court upheld this methodology in *British Steel II*, stating that "the AUL methodology using company-specific calculations is a reasonable method of allocating the commercial and competitive benefit of subsidy benefits." 929 F. Supp. at 438.

The most important factor in our decision is the fact that we are investigating the same respondent, Usinor, and the same untied subsidies. The AUL of 14 years, based on Usinor's company-specific information, was determined to be a reasonable reflection of the actual "commercial and competitive benefits" for the subsidies in question. As stated in *UK Lead Bar*, "[d]ifferent allocation periods for the same subsidies in two different proceedings involving the same company generate significant inconsistencies." 63 FR at 18369.

Further, we disagree that applying the 14-year AUL amounts to penalizing Usinor for being the subject of an earlier investigation. The respondents were afforded ample opportunity in the earlier proceeding (and in the subsequent remands) to submit any factual information and comments related to the AUL calculation. The calculation, as affirmed by the court, was based on the company-specific facts Usinor submitted. As noted by the petitioners, it is well within the Department's practice to apply a determination from one proceeding to a separate proceeding absent evidence of changed circumstances. In the instant investigation, for example, we have applied the determination of creditworthiness from *Certain Steel from France* for certain years. We also applied our finding in *Certain Steel from France* that certain long-term loans issued by FDES were not countervailable to exclude those loans from the instant investigation. *See Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 63 FR 37539, 37542 (July 13, 1998). A reconsideration of the Department's determination in one proceeding, regardless of the parties involved, would only be warranted if there is new evidence to indicate that the circumstances with respect to the initial decision have changed. Moreover, we find that the decision in *UK Lead Bar* to apply the allocation period determined in a separate proceeding is reflective of our current practice regarding the issue of allocation.

Comment 2: Information on Spin-Offs Presented at Verification

The GOF and Usinor contend that the Department should apply its change-in-ownership methodology as it relates to the spin-off of productive assets to the sale of its oxygen-generating unit to FOS–OXY, the sale of its lime-production division to Entreprise Jean LeFebvre, and its sale of J&L shares. The petitioners oppose the application of the Department's change-in-ownership methodology to these three transactions. Pointing out that the specific information regarding these transactions was provided to the Department at verification, the petitioners argue that verification was not an opportunity for Usinor to submit new information. According to the petitioners, the purpose of verification is to ensure that the information submitted by the respondent is complete and accurate. The petitioners cite *Tianjin Machinery Import and Export* v. *United States*, 806 F. Supp. 1008, 1015 (CIT 1992) (*Tianjin*), and *Heavy Forged Hand Tools, Finished or Unfinished, with or without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 16758, 16761 (April 6, 1998) (*Hand Tools*). The petitioners argue that the Department has stated that it will not allow the submission of new information that constitutes substantive information and not simply a clerical error. The petitioners contend

that, because Usinor did not submit this information within the time requirements imposed by the statute, this information should not be considered for the final determination.

The petitioners also state that under no circumstances should the Department apply its change-in-ownership methodology to the sale of shares in J&L, Ugine's U.S. subsidiary. The petitioners point out that, according to the *GIA*, 58 FR at 37236, the Department found that Usinor's subsidies were "tied to domestic production and, accordingly, . . . allocated the benefits of those subsidies to sales of Usinor Sacilor's domestically produced merchandise and excluded sales of Usinor Sacilor's foreign-produced merchandise." Since Usinor has not shown that any of the subsidies investigated are attributable to merchandise produced by J&L, the petitioners claim that the Department should not attribute any of Usinor's subsidies to J&L after the sale of Usinor's shares in J&L.

Department's Position: Regarding the J&L shares, we agree that no subsidies were attributable to J&L's production in this investigation. Therefore, it would not be appropriate to apply the change-of-ownership methodology to the sale of J&L shares.

With respect to the sale of productive assets to Entreprise Jean LeFebvre and FOS-OXY, we have applied the change-of-ownership methodology. Although we agree with the petitioners that the purpose of verification is to ascertain the accuracy of already-presented information, the special circumstances of this case have led us to use the verified data we have on these transactions. First, we note that we did not request information on spin-offs of productive assets in our questionnaire. Second, because verification followed directly on the issuance of the *Preliminary Determination* and, in fact, the calculations were disclosed to the respondents at verification, Usinor did not have any opportunity to submit data after learning of our methodology in the *Preliminary Determination* and before verification. In light of these circumstances, we believe it is appropriate to use the data obtained at verification and to apply the change-of-ownership methodology to these transactions.

Comment 3: Privatization and Prior Subsidies

The GOF and Usinor comment that the Department should find that Usinor's privatization extinguished prior subsidies. The GOF and Usinor cite section 771(5)(F) of the Act and the SAA at 928, stating that the Department is required to examine the circumstances of the privatization transaction to determine whether and to what extent subsidies pass through to the privatized entity and to what extent the privatization of a government-owned firm eliminated subsidies.

The GOF and Usinor continue their argument citing *Inland Steel*, 155 F.3d at 1378:

> When [a market] price is paid in an arms [sic] length transaction by a new owner, it is difficult to understand why future production by the new owner would carry the burden of prior subsidization.

Usinor and the GOF conclude that the full value of pre-existing subsidies was embodied in the purchase price, such that the purchasers of Usinor shares paid for any residual value added to the company by the subsidies found previously. Usinor and the GOF argue that the Department is required to make an explicit finding of this pass-through of prior subsidies for the final determination.

The petitioners cite to section 771(5)(F) of the Act where it states that a change-in-ownership does not require an automatic finding of no pass-through of subsidies, even if accomplished by an arm's-length transaction. In addition, the petitioners cite to the SAA at 928 which notes that the statutory provision is intended to "correct and prevent such an extreme interpretation" as the idea that subsidies are eliminated automatically in an arm's-length sale. Contrary to the respondents' claim that the Department has never really faced the issue of whether an arms-length sale extinguishes subsidies under the URAA, the petitioners mention *Wire Rod from Italy* in which the Department rejected the assertion that an arm's length privatization at market value extinguished prior subsidies. The petitioners also point out that the Department's repayment calculation has been upheld by the Court of International Trade in *Delverde*.

Department's Position: As we stated in *Italian Plate*, under our existing methodology, we neither presume automatic extinguishment nor automatic pass-through of prior subsidies in an arms-length transaction. Instead, our methodology recognizes that a change-in-ownership has some impact on the allocation of previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies pass through to the buyer. In the instant proceeding, the Department relied upon the pertinent facts of the case in determining whether the countervailable benefits received by Usinor Sacilor pass through to Usinor and Ugine. Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and Usinor's purchase price to a specific, detailed analysis. This analysis resulted in a particular "pass-through ratio" and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that when Usinor was privatized a portion of the benefits received by Usinor Sacilor passed through to Usinor and a portion was repaid to the government. This is consistent with our past practice and has been upheld in *Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*), *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. 1997), and *Delverde*.

The Department rejects Usinor's argument that an arms-length transaction at fair market value extinguishes any previously bestowed subsidies because no benefit was conferred. As explained in the *Final Determination of Redetermination Pursuant to Delverde. SrL* v. *United States*, 989 F. Supp. 218 (CIT 1997) (*Delverde Remand*), the countervailable subsidy amount is fixed at the time that the government bestows the subsidy. The sale of a company, *per se*, does not and cannot eliminate this potential countervailability because the countervailing duty statute "does not permit the amount of the subsidy, including the allocated subsidy stream, to be revalued based upon subsequent events in the market place." *GIA*, 58 FR at 37263. The Court of Appeals for the Federal Circuit, in *Saarstahl II*, addressed the Department's privatization methodology and "specifically stated that the Department does not need to demonstrate competitive benefit."

The Department's methodology requires it to consider and rely upon several facts particular to the change of ownership at issue. In this investigation, these facts included the nature of the previously bestowed subsidies, the amounts of those subsidies, the time when those subsidies were bestowed, the appropriate period for allocating the subsidies, the net worth over time of the company sold, and the amount of the purchase price. Based on these facts, the Department determined the ultimate repayment of the prior subsidies to the GOF. In sum, the Department considered all of the factual evidence presented by Usinor and then followed its existing methodology properly. Furthermore, this methodology was upheld by the Federal Circuit in

Saarstahl II, British Steel, 78 F.3d 1471, and *Delverde.*

Comment 4: Sale of Shares in 1996 and 1997

The petitioners argue that the GOF's sales of its shares in Usinor in 1996 and 1997 did not transfer control of Usinor and the Department should, therefore, not apply the change-in-ownership methodology to the sales of these shares (as discussed in the change-in-ownership section above). The petitioners purport that, because there was not a change in control, these sales of shares do not constitute a "bona-fide change-in-ownership."

The GOF and Usinor state that the Department should apply the change-in-ownership methodology arguing that the sales of these shares were not "post-privatization." The GOF and Usinor contend that the 1996 and 1997 transfer of shares were the last stages of the privatization rather than "post-privatization" transactions. The GOF and Usinor note that the Department has applied its change-in-ownership methodology to partial privatizations in *IPA from Israel 1995 Review,* 63 FR at 13627.

Department's Position: We agree with the GOF and Usinor that the application of the change-of-ownership methodology is appropriate in this situation. As explained above, it is not the Department's practice to require a change in control in order to apply the change-in-ownership methodology. As we noted at verification, the 1995 privatization continued through the years 1996 and 1997. Moreover, the sales of these shares in these years were sufficiently large. *Compare IPA from Israel 1995 Review,* 63 FR at 13627 (where the Department did not apply the change-of-ownership methodology to small sales of shares). Therefore, we have applied the change-in-ownership methodology to the sales of these shares in these years.

Comment 5: Purchase of Power Plant

The petitioners urge the Department to reconsider its preliminary determination that the purchase of CSR by EDF was not a countervailable subsidy. The petitioners note that, in their questionnaire responses and at verification, Usinor and the GOF focused exclusively on the valuation method used to determine the FF 1 billion sales price. According to the petitioners, however, the valuation methodology detailed in the verification reports does not address the decisive question of whether Usinor received a financial benefit from the transaction. The petitioners argue that evidence does not establish that the valuation methodology can serve as a benchmark for an arms-length, negotiated commercial transaction between two entities.

According to the petitioners, the facts demonstrate that the power plant had little, if any, commercial value and as such, could not have been sold on the open market. The petitioners point out that there were no other offers to purchase the plant and the only potential offer—from Générale de Chauffe—refers to a "significantly lower price." The petitioners allege that the two parties recognized that the plant had very little commercial value and, thus, developed the "future revenue stream" approach to value the transaction. The petitioners add that, according to the GOF's description, Usinor was anxious to sell the plant prior to its privatization.

The petitioners argue further that there is no evidence that the valuation methodology used by Usinor and the EDF was one that would be used by a private purchaser of a power plant. The petitioners contend that, while a private investor may evaluate the potential revenue in deciding whether to purchase an asset, it would not form the basis for establishing market value to the private investor. Rather, the petitioners claim, the basis for value would include the book value and the market value of the assets, as well as the cost of building a similar facility. Accordingly, the petitioners conclude that the power plant was purchased for more than its worth, resulting in a countervailable benefit in the amount of the gain over the net book value of the assets.

Usinor and the GOF contend that the relevant issue is not whether Usinor received a financial benefit from the transaction; rather, the issue is whether EDF paid "more than adequate remuneration" for the sale. Usinor and the GOF assert that facts, as verified by the Department, demonstrate that no excess remuneration was paid by EDF and, thus, the transaction was not countervailable. With respect to the potential offer by Générale de Chauffe, Usinor and the GOF argue that Générale de Chauffe never made a formal offer and the terms of the deal contemplated by Générale de Chauffe were different from the terms between Usinor and EDF. According to the respondents, Générale de Chauffe's potential terms contemplated that Usinor was to retain ownership of the plant. In addition, the respondents point out that an independent review of the transaction by the Audit Office (a quasi-judicial tribunal) suggested that the EDF had negotiated a good deal for itself.

Department's Position: We disagree with the petitioners that Usinor received a countervailable benefit from its sale of CSR to the government-owned EDF. Evidence on the record, which we verified, demonstrates that the valuation of the transaction was based on reasonable projections of future costs and revenues associated with the operation of CSR and the sale of electricity produced by CSR. The resulting sales price for CSR represented the amount of money, in net present terms, that would be saved by Usinor if it were to continue producing electricity through its CSR facilities. Additionally, we found no evidence to indicate that the negotiations were not conducted on an arms-length basis.

Because the sales price was based entirely on the value of the right to produce electricity, the amount of gain in excess of the nominal book value of the physical assets of CSR is irrelevant. Both Usinor and EDF indicated that the book value of the assets was, in fact, never considered in the valuation process. The parties were only interested in obtaining the right to produce and sell electricity; the physical facility of CSR was only a means to secure that right. The value of a company is often based on more than its physical assets. Intangible assets, *e.g.,* goodwill, patents, and licenses, which are valued for the future revenue stream that they represent, may constitute an important part of a company's worth. In the present investigation, the exclusive right to produce electricity was the significant intangible asset, if not the only material asset, of CSR.

In addition, given the nature of the transaction, it is not possible to compare the sales price with that of a similar transaction between private parties. As noted by the respondents, the difference in the material terms, as well as its inconclusive nature, renders the potential offer by Générale de Chauffe unsuitable for comparison purposes. We have not found, and the petitioners have not presented, a price from a comparable transaction that demonstrates that the price paid by EDF exceeded the fair value of the transaction.

Comment 6: Capital Increase

The petitioners argue that, by authorizing a capital increase of FF 4,999,999,975 at the time of Usinor's 1995 privatization, the GOF conferred a benefit upon Usinor in the amount of the increased capital. The petitioners claim that, as the sole owner of Usinor

prior to the 1995 privatization, the GOF was entitled to all the revenue from the sale of the company, whether the revenue resulted from the sale of new or existing shares. By transferring the proceeds from the sale of new shares to Usinor, the petitioners argue, the GOF was foregoing revenue otherwise due to it, acting in a non-commercial manner. According to the petitioners, the fact that the report by the Privatization Commission concluded that the issuance of new shares would not alter substantially the value of the shares does not establish that the transaction did not confer a countervailable benefit. The petitioners contend that the respondents have not provided "any objective studies that evaluated the extent to which the new shares diminished the value of the GOF's existing shares."

In the alternative, the petitioners argue that the capital increase is countervailable as an indirect subsidy because the GOF structured the privatization transaction in such a way that the private investors were entrusted to make an equity investment in Usinor. The petitioners state that the transaction was inconsistent with a typical government-equity transaction in that the GOF did not receive any form of remuneration in exchange for its investment. As such, the petitioners argue that the GOF conferred a benefit upon Usinor in the amount of the foregone revenue from the sale of the new shares that the company otherwise would not have received but for the GOF's actions.

Usinor and the GOF rebut that, because the FF 4,999,999,975 that Usinor received through the capital increase was not provided by the GOF, Usinor did not receive a countervailable benefit as defined by section 771(5)(B) of the Act. The respondents argue that, rather than giving up revenue, the GOF benefitted from the capital increase because the private capital infusion resulted in increasing the value of the company being sold by the GOF. The respondents explain:

> It simply cannot be the case that every time a company (whether government-owned or otherwise) raises capital by means of a stock increase, it is the beneficiary of a grant. A shareholder does not in such circumstances give away money to which it otherwise would be entitled. Instead, it participates in the growth in the value of the company attributable to the capital increase.

The respondents add that the findings at verification demonstrate that there was an objective finding by the private investment bankers that the price of the shares would be not affected by the capital increase. This finding, according to the respondents, undercuts the petitioners' argument further that the GOF gave up revenues.

Department's Position: As an initial matter, we note that the arguments set forth by the petitioners may constitute a subsidy allegation made in untimely manner. According to § 351.301(d)(4)(i)(A) of the Department's regulations, a subsidy allegation in an investigation is due no later than 40 days before the scheduled date of the preliminary determination. The record shows that the first instance on which the petitioners presented this particular argument was a submission dated October 29, 1998 ("pre-preliminary comments"), merely ten days before the scheduled date of the preliminary determination (November 9, 1998). Nevertheless, we have opted to address the substantive aspects of the petitioners' comment. In exercising our discretion, we considered the fact that the respondents did not express an objection to the petitioners' allegation with respect to its possible untimeliness.

Substantively, we disagree with the petitioners that Usinor received a subsidy by virtue of the capital increase. The petitioners argue first that revenue otherwise due to the GOF was foregone when the GOF authorized a capital increase in Usinor and the money earned from the sale of shares to effect the capital increase was paid directly to Usinor. According to the petitioners, all revenues received from the sale of Usinor's shares should have accrued to the GOF because the GOF was the sole owner at that time.

We do not agree that, in fact, revenue was foregone by the GOF in this situation. In 1995, the GOF decided to privatize Usinor by selling off the majority of the existing shares in the company. At the same time, the GOF authorized an increase in Usinor's share capital. This increase was funded through the sale of newly issued shares in Usinor. These new shares were sold as part of the privatization but, instead of the proceeds going to the GOF, they went to Usinor. Potential purchasers of shares in Usinor were aware that new shares were being issued and how the proceeds from the sale of those shares would be used.

Had the GOF sold its outstanding shares in Usinor without any capital increase, the GOF would have received an amount reflecting the value of Usinor as it existed without the new capital. With the increase in its capital, the value of Usinor increased. However, since the increase in value did not result from an infusion of GOF funds, the GOF did not have a direct or exclusive claim on the increased value. Instead, the increase in Usinor's value came from the purchasers of the new shares and all shareholders benefitted. Thus, petitioners are incorrect that the GOF should have claimed all the proceeds of the sale of Usinor's shares. The GOF received the return from the sale of its existing shares and did not forego revenue when the proceeds from the sale of new shares went to Usinor.

As a holder and seller of existing shares, the GOF did have an indirect claim on the increased value of Usinor resulting from the capital increase. Specifically, as the value of Usinor increased, the value of shares in Usinor should have increased. At the same time, however, because the capital increase was effected through a sale of new shares, the total number of shares increased. Thus, although the total value of Usinor increased, the concurrent increase in the number of shares would offset the increase in value per share. The Privatization Commission Report to which the petitioners refer makes this very point when it states in reference to the share increase that, "on the basis of experts" reports which have been submitted to it, the Commission believes that this transaction shall not substantially alter the value of shares, in as much as its diluting nature shall be offset by its beneficial effects upon the Group's financial structure." These statements support the conclusion that no value was forgone by the GOF in authorizing the capital increase for Usinor through the sale of new shares.

In the alternative, the petitioners have argued that the capital increase was an indirect subsidy because the GOF structured the privatization such that private investors were entrusted to make a countervailable equity infusion into Usinor. We do not need to reach the issue of whether private investors were "entrusted" to provide a subsidy because we find that there is no subsidy in this equity purchase. Under section 771(5)(E)(i) of the Act, a countervailable subsidy is conferred, in the case of an equity infusion, "if the investment decision is inconsistent with the usual investment practice of private investors * * * in the country in which the equity infusion is made." The focus of the Department's inquiry into this allegation is whether the decision Usinor's investors made was consistent with the private-investor standard. The Department will determine that the equity infusion was inconsistent with usual investment practice of private investors if the company is determined to be unequityworthy or if the terms and the nature of the equity purchased

otherwise indicates that the investment was inconsistent with the usual private investment practice. *See* § 351.507(3) of the *Final CVD Regulations.*

In the instant investigation, we have not found, and the petitioners have failed to provide, any evidence indicating that Usinor was unequityworthy or that the equity purchased by the investors was otherwise inconsistent with the usual investment practice of private investors. See also § 351.507(a)(7) of the *Final CVD Regulations* (stating that the Department will not investigate an equity infusion in a firm absent a specific allegation by the petitioner that the investment decision was inconsistent with the usual investment practice of private investors). Therefore, we determine that Usinor's investors acted in a manner consistent with the investment practices of private investors.

For the reasons discussed above, we determine that the 1995 capital increase in Usinor was not a countervailable subsidy.

Comment 7: European Social Fund Grants

Usinor and the GOF argue that the ESF grant the Ugine Division received in 1997 is not specific and, therefore, not countervailable. The respondents point to two factors in support of their position. First, they claim that the Department found at verification that the Ugine Division did not receive a disproportionate amount of the ESF funds provided to France in 1997. Second, the respondents maintain that the purpose of the grant was to train people at risk of unemployment pursuant to Objective 4. Because Objective 4 projects are funded throughout France, assistance provided to such projects is not regionally specific, the respondents argue.

The petitioners refute the respondents' arguments. First, they say, the verification report merely quotes statements by GOF officials to the effect that Usinor did not get a disproportionate amount of ESF assistance and that Usinor was the only steel company receiving such funds during the POI. The petitioners note that GOF officials did not provide any documentation in support of these statements. Second, they argue that while EU officials stated at verification that Objective 4 projects are funded throughout France, they did not provide any documentation supporting this assertion. The petitioners also point out that, according to the EU verification report, the EU does not maintain any records showing which individual companies receive ESF funding. Thus, there is no documentation to support the notion that ESF grants are not specific, according to the petitioners.

Department's Position: We agree with the petitioners. Because we do not have sufficient information on the record regarding the actual use of Objective 4 funds in France during the POI, we must use facts available (see discussion under the description of the ESF grants in Section I above). On this basis, we have determined that the ESF grants received by the Ugine Division are specific and, therefore, countervailable.

Comment 8: Investment and Operating Subsidies

Usinor and the GOF argue that the investment and operating subsidies Usinor received from the GOF are not specific and, therefore, should not be countervailed. With regard to the funds received from regional water boards for water protection, pollution control, and water rehabilitation projects, Usinor and the GOF contend that the Department verified that these funds were not limited to Usinor or to the steel industry. Based on the information submitted by the GOF at verification, Usinor and the GOF also maintain that the steel industry did not receive a disproportionate amount of the water board subsidies.

The petitioners contend that the Department should continue to treat the investment and operating subsidies as specific and that they, therefore, should be subject to countervailing duties. The petitioners assert that the Department's GOF verification report does not draw any conclusions with respect to the specificity of this program. Furthermore, the petitioners argue that information supporting a respondent's claim of non-specificity should be submitted with the original questionnaire response in order to ensure that the Department and the petitioners have ample time to evaluate and comment upon the factual evidence prior to verification. They state that verification should not be used as an opportunity to submit new, substantive information to supplement the original questionnaire response.

The petitioners finally contend that, even if the information GOF officials provided at verification had been submitted in a timely manner, it would not corroborate the respondents' claim of non-specificity. The petitioners argue that, although GOF officials maintained that this assistance was provided to any type of enterprise or industry, the documentation presented at verification did not demonstrate actual usage by type of industry.

Department's Position: In our *Preliminary Determination*, we found that the investment and operating subsidies, including the assistance from the regional water boards, provided a financial contribution in the form of a direct transfer of funds from the GOF to Usinor pursuant to section 771(5)(D)(i) of the Act. Prior to the *Preliminary Determination*, the GOF argued that the water board grants were not specific but did not provide any information to support this statement. Therefore, as facts available, we determined preliminarily that these subsidies were specific under section 771(5A)(D) of the Act.

However, at verification the GOF presented, and we verified, information showing that assistance under the program provided by the water boards was provided to a wide variety of water-related projects. We also found that the amount received by Usinor constituted a very small percentage of the total amount provided by the water boards to combat industrial pollution. In principle we agree with the petitioners that information supporting a respondent's claim of non-specificity, as well as other factual information, should be submitted with the questionnaire response, but we do not believe that the information presented to us at verification should be classified as entirely "new." We learned about the existence of the water program from Usinor's and the GOF's questionnaire responses in which the GOF also made a claim for non-specificity of this program. The Department has the discretion to accept new information at verification when "the information makes minor revisions to information already on the record or * * * the information corroborates, supports, or clarifies information already on the record." *See Final Results of Antidumping Administrative Review: Titanium Sponge from the Russian Federation*, 61 FR 58525 (November 15, 1996), and *Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review*, 63 FR 32849, 32852 (June 16, 1998). In this instance, we believe that the information presented to us at verification merely clarified information already on the record. Although this information is not sufficient to determine that the water board program is not specific in general, we believe that it is enough to support a finding that the program is not specific to Usinor. Accordingly, we determine that the grants from the regional water boards are not specific to Usinor within the meaning of section 771(5A)(D)(iii) of

the Act and, therefore, not countervailable.

However, due to the lack of information about their usage and distribution, as adverse facts available, we continue to find the other programs included in the category investment and operating subsidies to be countervailable (our reasons for using adverse facts available are explained in section I.D above).

Comment 9: Myosotis Project

Usinor and the GOF urge the Department to grant green-light status to the benefits received by Usinor for the Myosotis project. They argue that this project qualifies as industrial research as defined by section 771(5B)(B)(ii)(I) of the Act because its purpose is to develop "new products, processes, or services" or to bring about "a significant improvement to existing products, processes, or services." The respondents state further that the level of assistance is far below the 75-percent maximum that the statute permits for industrial research and that the EU has found the project to be in concordance with its State Aids Code. Moreover, the respondents argue, the Myosotis project qualifies for green-light treatment because it is a pre-competitive development activity involving the development of a prototype that cannot be put to commercial use as described in section 771(5B)(B)(ii)(II) of the Act. According to the respondents, the level of assistance is well below the 50-percent maximum that the statute allows for pre-competitive development activities.

Usinor and the GOF argue that, if the Department should decide not to grant the Myosotis project green-light status, it should determine that the assistance for this project is not countervailable because it is not specific. The respondents state that the Myosotis assistance came from the GPI program which is administered by the Ministry of Industry. They contend that at verification the Department found that GPI funding is not limited by law to any particular industry and, also, that assistance from this fund is provided to a wide range of industries. Last, the respondents assert that the Department found at verification that the steel industry did not receive a disproportionate share of GPI funds in the years that Usinor received assistance for the Myosotis project.

The petitioners urge the Department to follow its decision in the *Preliminary Determination* and not address the respondents' green-light claim for the Myosotis project. First, the petitioners state, in the preliminary determination, the Department expensed the grants Usinor received between 1989 and 1993 for Myosotis because they were below 0.5 percent of the company's sales in the years of receipt and, with respect to the reimbursable advance received in 1997, the Department preliminarily determined that there was no benefit attributable to the POI. Accordingly, the petitioners observe, the countervailable subsidy rate for the Myosotis program was 0.00 percent *ad valorem* in the *Preliminary Determination*. The petitioners note that the new regulations state specifically that the Department will not consider a green-light claim for a subsidy that does not provide a benefit to the subject merchandise in the period of investigation or review. Therefore, they argue, the Department should not address the green-light claim advanced by Usinor and the GOF.

As a second argument for not making a green-light determination, the petitioners point to administrative efficiency. Citing *Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile*, 63 FR 31437 (June 9, 1998), *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990 (October 22, 1997), and *Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring from Canada*, 62 FR 5201 (February 4, 1997), the petitioners argue that a decision not to address Usinor's green-light claim would be consistent with the Department's practice, as established in these cases, of not analyzing a program that has no impact on the net countervailable subsidy rate.

Third, the petitioners argue that the Department should not make a green-light determination because the administrative record in this proceeding is incomplete. Specifically, the petitioners point to the GOF's refusal to make certain reports on the Myosotis project available to the Department at verification. The petitioners believe that the absence of these documents from the record is particularly relevant in light of the Department's "commitment to interpret [the green-light] provisions strictly as required by the SAA."

The petitioners recommend that the Department to postpone a green-light decision on the Myosotis project until the next administrative review to ensure (1) that a more complete administrative record can be developed, and (2) that there is a benefit to Usinor from the 1997 reimbursable advance.

Department's Position: We agree with the petitioners that there is no need for us to make a determination regarding green-light treatment of the assistance provided under the Myosotis project. As stated in the preamble to the Department's recently issued regulations:

> [W]e will not consider claims for green light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the green light status of a subsidy will be considered only in an investigation or review of a time period where the subject merchandise did benefit from the subsidy.

See Final CVD Regulations, 63 FR at 65388. While these final regulations are not controlling in this case, they do reflect the Department's current practice. Therefore, we will not make a green-light determination when there is no countervailable benefit in the period of investigation or review, in accordance with our existing practice. We also consider a specificity determination to be unwarranted when there is no benefit in the POI. Instead, we intend to make determinations on green-light status and specificity in an administrative review, if this investigation results in a countervailing duty order.

Comment 10: Lending Rates

The petitioners argue that the Department should use the lending rates reported in Table 4.11 of the *Bulletin* of *Banque de France* as the benchmark lending rate for the years in which Usinor was found to be uncreditworthy. The petitioners assert that the statements made by private bank and GOF officials at verification indicate the lending rates in question represent an average cost of credit for companies in France which includes high- and low-risk financing. The petitioners argue that these interest rates provide a better indication of the rate at which Usinor could have actually obtained financing for those years in which Usinor was found to be uncreditworthy because they reflect some degree of greater risk.

Usinor and the GOF point out that the officials of the Banque de France indicated that the rates reported in Table 4.11 include variable rates. Usinor and the GOF argue that, as such, the Table 4.11 rates are inappropriate to use as benchmark rates because the Department's preference, as reflected in the *1989 Proposed Regulations*, is to use the average cost of long-term fixed-rate loans. Moreover, Usinor and the GOF point to the statement made by the GOF officials at verification asserting that the Table 4.11 rates "do not reflect the cost of credit for a company as Usinor because the rates are surveys of rates applicable for companies of all sizes and

types" and that an average interest rate derived from a survey would, thus, not be an accurate indicator of the cost of credit for an individual company.

Department's Position: We agree with the petitioners that the rates reported in Table 4.11 of the *Bulletin* are more appropriate benchmark and discount rates for the years in which Usinor was found to be uncreditworthy and where the other benchmark interest rates are lower than the rates reported in Table 4.11. For this final determination, we have applied the methodology described in the *1989 Proposed Regulations* for calculating the benchmark and discount rates for the years in which Usinor was found uncreditworthy. Specifically, the *1989 Proposed Regulations* state that the long-term fixed benchmark rate for an uncreditworthy firm will be calculated by taking the sum of 12 percent of the prime interest rate in the country in question and, in order of preference: "(1) the *highest* long-term fixed interest rate commonly available to firms in the country in question; (2) the *highest* long-term variable interest rate commonly available to firms in the country in question; or (3) the short-term benchmark interest rate determined in accordance with [the Department's methodology]." § 355.44(b)(6)(iv)(A) of the *1989 Proposed Regulations* (emphasis added). Accordingly, we have applied the rates reported in Table 4.11 in our calculation where those rates represented the *highest* long-term interest rate among the various types of interest rates the respondents provided to us. Contrary to the respondents' assertion, an expressed "preference" for a fixed rate does not preclude us from using a rate that we find more appropriate, even if that rate happens to include variable rate loans. Further, we disagree with the respondents that the Table 4.11 rates are not appropriate because the rates are derived from surveys of rates applicable for companies of all sizes and types. While an average rate which by its very definition is derived from rates applicable to more than one company, may not represent the most *accurate* rate applicable to any single company, it nevertheless provides a reasonable indicator of rates "commonly available to firms in the country in question."

Verification. In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are detailed in the public versions of the verification reports, which are on file in the Central Records Unit.

Suspension of Liquidation. In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for Usinor. Because Usinor is the only respondent in this case, its rate serves as the all-others rate. We determine that the total estimated net countervailable subsidy rate is 5.38 percent *ad valorem* for Usinor and for all others.

In accordance with our *Preliminary Determination,* we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from France, which were entered or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 2, 1999, but to continue the suspension of liquidation of entries made between September 4, 1998, and January 1, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification. In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information. In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13677 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Martin Odenyo, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–5254, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (SSSS) from Mexico are being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 4, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 125 (January 4, 1999) (*Preliminary Determination*). Since publication of the *Preliminary Determination* the following events have occurred:

We received an allegation of ministerial errors from Allegheny Ludlum Corporation, J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, the United Steelworkers of America, and AFL–CIO/CLC (petitioners) on December 28, 1998. We addressed those allegations in a memorandum to the file dated January 28, 1999.

On January 6, 1999, we issued a supplemental questionnaire to Mexinox S.A. de C.V. (Mexinox) regarding its section E (further manufacturing) response. In response Mexinox made two submissions, one on January 15, 1999, and the other on January 22, 1999.

We verified Mexinox's sections A (General Information), B (Home Market Sales), and C (U.S. Sales) responses in San Luis Potosi, Mexico, from February 1 through February 5, 1999. *See* Memorandum to the File; "Verification of the Information Submitted by Mexinox S.A. de C.V.," March 5, 1999 (Mexinox sales verification report). We also verified Mexinox's section D (cost of production) response in San Luis Potosi from February 25 through February 29, 1999. *See* Memorandum to Neal Halper, Acting Director, Office of Accounting; "Verification of the Cost of Production and Constructed Value Data," March 22, 1999 (Mexinox cost verification report). Public versions of these and all other Departmental memoranda referred to herein are on file in room B–099 of the main Commerce building.

From February 24, 1999 through February 26, 1999, we verified the sales response of a U.S. entity we have determined to be affiliated with Mexinox (Reseller). *See* Memorandum to the File; "Verification of the Information Submitted by Reseller;" March 15, 1999 (Reseller sales verification report). We verified the section E (further manufacturing) response of Reseller from March 2, 1999 through March 4, 1999. *See* Memorandum to Neal Halper, Acting Director, Office of Accounting; "Verification of the Cost of Further Manufacturing," March 18, 1999 (Reseller cost verification report).

On January 22, 1999, and February 2, 1999, Mexinox and petitioners, respectively, requested a public hearing on this investigation. We received case briefs from petitioners and Mexinox on March 29, 1999; we received rebuttal briefs from petitioners and Mexinox on April 5, 1999. On April 14 and 15, 1999, petitioners and Mexinox, respectively, withdrew their requests for a hearing.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.60.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs.

Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 HI–C", "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from Mexico to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs or constructed values (CVs).

Transactions Investigated

For its home market and U.S. sales, Mexinox reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. *See* 19 CFR 351.401(i). As explained in response to comment 12 (below), for this final determination we have continued to rely upon Mexinox's invoice dates in the home and U.S. markets as the date of sale. However, should this investigation result in an antidumping duty order, we intend to scrutinize further this issue in any subsequent segment of this proceeding involving Mexinox.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the "Scope of the Investigation" section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in Appendix V of the Department's August 3, 1998 antidumping questionnaire.

Level of Trade

In our *Preliminary Determination*, we agreed with Mexinox that one level of trade (LOT) existed for Mexinox in the home market. Furthermore, we agreed with Mexinox that its U.S. EP and CEP sales constituted two distinct LOTs, and that a CEP offset to NV was warranted when comparing CEP to NV or CV. In their comments on the *Preliminary Determination*, petitioners challenged our LOT determination. However, based on our analysis of petitioners' comments and Mexinox's rebuttal comments, we have not changed our *Preliminary Determination* with respect to LOT. *See* comment 9 (below).

Export Price and Constructed Export Price

In the *Preliminary Determination*, we used Mexinox's reported EP/CEP classification of its U.S. sales. In their comments on the *Preliminary Determination*, petitioners challenged our acceptance of Mexinox's EP/CEP classification. However, based on our analysis of petitioners' comments and Mexinox's rebuttal comments, we have not changed our preliminary determination with respect to EP/CEP classification. *See* comment 8 (below).

We calculated EP and CEP using the same methods employed in the *Preliminary Determination* except as noted below in the "Department's Position" portions of the "Comments," section of this notice and in the Final Determination Analysis Memorandum from Fred Baker to John Kugelman, dated May 19, 1999.

Normal Value

Home Market Viability

As discussed in the *Preliminary Determination*, in order to determine whether the home market was viable for purposes of calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As Mexinox's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Cost of Production Analysis

In response to a timely allegation filed by petitioners, we conducted an investigation to determine whether Mexinox made sales of the foreign like product during the POI at prices below its cost of production (COP). In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of Mexinox's cost of materials, fabrication, general expenses, and packing costs. We relied on respondent's COP and CV amounts except in the following instances:

a. We made adjustments to the cost of inputs received from affiliates in accordance with sections 773(f)(2) and (3) of the Act.

b. We revised the reported general and administrative expense to include the accrued sludge clean-up for 1997 and to exclude expenses incurred on behalf of subsidiaries.

c. We recalculated Mexinox's general and administrative expense ratio based on the total cost of manufacturing.

d. We revised the reported net financing expense ratio to exclude unsubstantiated foreign exchange gains.

We compared the weighted-average COP for Mexinox to home market sales prices of the foreign like product, as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities within an extended period of time and (ii) at prices which permitted recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, early payment and other discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where twenty percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Act. Because we used POI average costs, in such cases, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregard all sales of that product. When there were no home market sales of identical or similar merchandise to match to U.S. sales, we compared the U.S. sales to CV in accordance with section 773(a)(4) of the Act.

Our cost test for Mexinox revealed that for certain products less than twenty percent of Mexinox's home market sales were at prices below Mexinox's COP. Therefore, we retained all sales of those products in our analysis. For other products, more than twenty percent of Mexinox's sales were at prices below COP. In such cases we disregarded the sales that failed the cost test, while retaining the remaining sales for our analysis. *See* Final Determination Analysis Memorandum dated May 19, 1999.

Price-to-Price Comparisons

For those products with home market sales that passed the cost test, we based NV on Mexinox's sales to unaffiliated home market customers and to affiliated home market customers who passed the Department's arms-length test. (For an explanation of the arms-length test, see the *Preliminary Determination*, 64 FR at 129.) We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where appropriate, we deducted from NV the amount of indirect selling expenses capped by the amount of the U.S. commissions. We made a CEP offset due to differences in LOT (see "Level of Trade" section (above) and comment 9 (below)). We continued to make circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6)(c)(iii) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. *See* section 773(e)(1) of the Act. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Mexico. We calculated the cost of materials, fabrication, and general expenses using the method described in the "Cost of Production Analysis" section (above).

For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We also made COS adjustments by deducting home market direct selling expenses from CV and adding U.S. direct selling expenses.

Facts Available

Section 776(a) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), the facts otherwise available in reaching the applicable determination. *See, e.g., Roller Chain, Other Than Bicycle Chain, From Japan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 63671, 63673 (November 16, 1998). In this investigation the Department has determined, for the reasons stated in detail below, that one of Mexinox's U.S. affiliates submitted information that could not be verified. Therefore, pursuant to section 776(a) of the Act, we have determined that the use of the facts otherwise available is necessary in this instance.

However, the statute requires that certain conditions be met before the Department may resort properly to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by [the Department]" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Finally, in selecting from among the facts otherwise available, section 776(b) of the Act permits the use of an adverse inference if the Department also finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the requests for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." The Statement of Administrative Action (SAA) reprinted in H.R. Doc. 103–316 at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Final Rules*). The statute continues by noting that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

As explained in the Department's response to Comment 6 (below), we have determined that we must resort to the facts available with respect to the sales and further-manufacturing data submitted by the Reseller. At verification, we discovered numerous and systemic errors in the data used by the Reseller to report its costs of further manufacturing of subject merchandise. These errors included, inter alia, the failure to match properly input coils and output finished products, the allocation of processing costs to sales which had undergone no further processing whatever, and cases where the quantities of output goods exceeded the inputs. The vast majority of the subject merchandise sold through the Reseller was first further processed by this company; therefore, the deficiencies in its data affect a corresponding percentage of the Reseller's submitted sales data. Furthermore, the mis-allocations not only affected the Reseller's reported sales which had been subject to further processing, but tainted the non-further-processed portion of its database as well. In addition, the Reseller failed to identify the producer of a significant portion of its sales in the United States, and failed to report physical criteria vital to our model matching for certain other transactions. As the breadth and depth of the discrepancies leave us with no confidence in the underlying further-processing data submitted by the Reseller, we have determined that these data cannot serve adequately in the calculation of Mexinox's overall weighted-average margin. Further, the record indicates that the Reseller could readily have discovered and corrected the majority of these errors prior to submitting its data to the Department and, at the latest, prior to verification. *See* comment 6 (below). Accordingly, as provided in section 776(b) of the Act, we find that the Reseller has failed to cooperate by not acting to the best of its ability in responding to the Department's requests for information. Therefore, we have relied upon adverse facts available for the entirety of the data submitted by the Reseller. As facts available we have assigned the highest non-aberrational margin calculated for this final determination to the weighted-average unit value for sales reported by the Reseller. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from Mexinox's reported data. We found that roughly ten percent of Mexinox's transactions fell within a range of 40 to 49 percent; we selected the highest of these as reflecting the highest non-aberrational margin. We then multiplied the resulting unit margin by the total quantity attributed to resales of subject merchandise by the Reseller. See also the Final Determination Analysis Memorandum, dated May 19, 1999. This total quantity includes the material affirmatively verified as being of Mexinox origin, as well as a portion of the merchandise of unidentified origin allocated to Mexinox. To apportion the unidentified sales among the investigations of stainless sheet in coil from Germany, Italy, and Mexico (*see* Comment 7, below) we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of the Reseller's merchandise supplied by each of the three respondent mills. We then applied the facts-available margin to these unidentified sales transactions as explained above.

Affiliation

As explained in the *Preliminary Determination* and immediately below, we find that for purposes of this investigation Mexinox is affiliated with Thyssen Stahl and Thyssen AG (Thyssen) and, through them, their affiliated sellers and steel service centers in the United States. The Act defines "affiliated persons" at section 771(33). Included within that definition

are the following persons: family members, any organization and its officers or directors, partners, and employer and employee. See section 771(33)(A) through (D) of the Act. The statute also considers as affiliated persons:

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such person.

See section 771(33)(E) through (G) of the Act.

"Control" is defined as one person being "legally or operationally in a position to exercise restraint or direction over the other person." The SAA at 870 explained that including control in an analysis of affiliated parties "permit[s] a more sophisticated analysis which better reflects the realities of the market place." The SAA continues, "[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship." Id. at 838.

Finally, as the Department noted in its "Explanation to the Final Rules" (i.e., its regulations), "section 771(33), which refers to a person being 'in a position to exercise restraint or direction,' properly focuses the Department on the ability to exercise 'control' rather than the actuality of control over specific decisions." *Final Rules*, 62 FR at 27348. Thus, the statute does not require that we find the actual exercise of control by one person over the other in order to find the parties affiliated; rather, the potential to exercise control is sufficient for such a finding.

In this final determination, we continue to find that Mexinox is affiliated with Thyssen Stahl and Thyssen because Thyssen Stahl indirectly owns and controls, through Krupp Thyssen Stahl (KTS), thirty-six percent of Mexinox's outstanding stock. Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls thirty-six percent of Mexinox. *See Preliminary Determination*, 64 FR at 126 and Memorandum to Joseph Spetrini, Mexinox Affiliation, December 17, 1998 (Affiliation Memo).

In addition, we continue to find that Mexinox is affiliated with Thyssen's U.S. sales affiliates because the nature and quality of corporate contact establish this affiliation by virtue of Thyssen's common control of its affiliates and of KTS. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the *Preliminary Determination*, "Thyssen's substantial equity ownership in Mexinox and Thyssen's other affiliates, in conjunction with the 'totality of other evidence of control' requires a finding that these companies are under the common control of Thyssen." Id. For a full discussion of Mexinox's affiliations see Comment 2 (below) and the Affiliation Memo.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

Issues Relating to Sales

Comment 1: Affiliation

Mexinox argues that the Department erred in finding that it is affiliated with the Reseller, and in thus including the Mexinox-sourced U.S. sales by the Reseller in the margin calculation. It argues that under section 771(33) of the Act, the Department can find affiliation between Mexinox and the Reseller only if it finds either:

1. A direct relationship between Mexinox and the Reseller whereby one company:

a. Directly or indirectly owns, controls, or holds the power to vote five percent or more of the other company's outstanding voting shares (subsection (E)); or,

b. Otherwise controls the other company (subsection (G)); or

2. An indirect relationship between Mexinox and Reseller whereby the two companies directly or indirectly control, are controlled by, or are under common control with another party (subsection (F)).

Regarding a possible direct relationship between Mexinox and the Reseller, Mexinox argues that the facts do not support such a finding because neither company directly or indirectly owns, controls, or holds the power to vote five percent or more of the other company's outstanding voting shares, and there is no direct bilateral relationship that allows one company to control the other. It states that while the Reseller's parent company, Thyssen AG (Thyssen), does indirectly own more than five percent of Mexinox through its ownership of Thyssen Stahl AG (Thyssen Stahl) (which, jointly with Fried. Krupp AG Hoesch-Krupp (Krupp), owns the entity Krupp Thyssen Stainless (KTS), Mexinox's immediate parent), the relationship that must be examined is that between Mexinox and the Reseller, and not that between Mexinox and Thyssen. The corporate relationships at issue in this investigation, Mexinox argues, are similar to those that existed in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review*, 62 FR 18404 (April 15, 1997) (*Steel from Korea*). There respondent POSCO participated in a joint venture (the entity POCOS) involving DSM, a parent company of respondent Union. The Department concluded that despite the existence of the joint venture, POSCO and Union were not affiliated because (1) the two companies were separate operational entities with no overlapping stock ownership, and (2) nothing in the record indicated that either Union or POSCO was in a position to control, either legally or operationally, the other party. Mexinox argues that for the same reasons the Department must reach a similar conclusion here if it focuses on Mexinox and the Reseller, the entities at issue, rather than on Mexinox and Thyssen.

Given the absence of a direct relationship between the parties at issue, Mexinox argues, Mexinox and the Reseller cannot be deemed affiliated unless, in accordance with subsection (F) of section 771(33) of the Act, they directly or indirectly control a third party, or are themselves controlled by, or under common control with, another party. Since neither Mexinox nor the Reseller control Thyssen, Mexinox states, and the three companies are not under the common control of another party, Mexinox cannot be deemed affiliated with the Reseller unless Thyssen also directly or indirectly controls Mexinox. Mexinox argues that despite the Department's preliminary determination, such is not the case. It cites *Steel from Korea* to demonstrate that the Department has held that the participation of two companies in a joint venture (such as is the case here with Thyssen and Krupp, which jointly own KTS, Mexinox's immediate parent) does not mean that the companies' respective subsidiaries are affiliated with each other. As explained above, in *Steel from Korea*, POSCO and DSM jointly owned the entity POCOS, and

DSM independently owned and controlled a subsidiary, Union, which had no operational or legal connection to POCOS. In response to petitioners' argument that POSCO and Union were affiliated, the Department stated, "POSCO affiliation with DSM (through POCOS) and DSM control over Union do not add up to POSCO control of Union. The affiliation standard set forth in subsection (F) is thus not satisfied." *See Steel from Korea*, 62 FR at 18417. Using the same reasoning, Mexinox argues, the Department cannot find affiliation between Mexinox and the Reseller simply because Krupp and Thyssen jointly own KTS.

Furthermore, Mexinox argues that in making its determination that Thyssen has the ability to control Mexinox and the Reseller (explained in a December 17, 1998 memorandum to Joseph Spetrini, available in the public file (Affiliation Memo)), the Department failed to consider both the applicable law and certain factual data indicating that no such control exists. 19 CFR § 351.102(b)(1998) states that:

> In determining whether control over another person exists, * * * the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product * * *

Furthermore, in the preamble to the final rules adopting this definition the Department stated that "we will consider the full range of criteria identified in the SAA (Statement of Administrative Action), at 838, in determining whether control exists." *See Final Rules*, 62 FR at 27998. Moreover, Mexinox argues, the SAA admonishes that the determination of whether control exists must "reflect the realities of the marketplace." *See SAA* at 838.

Given these legal criteria, Mexinox argues, the Department's determination was flawed because it is Krupp, and not Thyssen, that controls the operations of KTS and Mexinox, including Mexinox's production, pricing, and cost decisions. Thyssen, Mexinox states, does not have the "potential to impact" such decisions. This "marketplace reality" is reflected in both a June 5, 1995 Krupp/Thyssen Stahl shareholders agreement and in the circumstances surrounding KTS's and Mexinox's operations. By its terms, this shareholders agreement, Mexinox argues, ensures that Thyssen does not have the ability to control KTS's operational decisions, and that the ability to make such decisions rests solely with Krupp. In the Affiliation Memo, Mexinox argues, the Department virtually ignored the provisions establishing Krupp's direct control over KTS, and focused instead on certain provisions that in principle allow Thyssen Stahl to exercise a degree of influence over KTS in certain limited circumstances. For example:

- The Department is correct that Thyssen was involved in defining the underlying purpose of the joint venture prior to the establishment of KTS, but the shareholders agreement in no way suggests that Thyssen enjoyed ongoing operational control over KTS *during the POI*. All joint venture partners enjoy freedom to contract at the outset of a project. In this case, Mexinox states, in consideration for giving up control over its stainless steel assets to Krupp through KTS, Thyssen gained Krupp's management expertise and experience in stainless steel manufacturing. From that point forward, Mexinox states, Thyssen by agreement became a passive partner in the management of KTS.
- The Department concluded from the shareholder's agreement that Thyssen Stahl retained "the ability to affect KTS's stainless steel production and sales." However, Mexinox argues, the ability to affect a party is not tantamount to the ability to control the party. A finding of affiliation requires a showing of operational control, and not the ability to affect another.
- The Department, in stating that Thyssen Stahl's 40 percent holding in KTS is "sufficient to block (*i.e.*, restrain) certain KTS activities," shows that it is focusing on issues relating to the corporate structure of KTS (*e.g.*, decision-making powers), rather than the operational matters that should be examined in an affiliation analysis (*e.g.*, the ability of one party to influence the production, sales, or transfer pricing of the other).
- The Department's affiliation memo states that under the shareholders agreement specific powers and authority are accorded directly to Thyssen as part of the agreement. This statement, Mexinox argues, is a broad overstatement. The plain language of the shareholders agreement establishes a dominant role for Krupp in the formation and operation of the KTS management team and sharply limits Thyssen's operational powers and authority as a party to the agreement.

Other examples Mexinox gives are not susceptible to public summary, and are discussed in its March 29, 1999 case brief at pages 16–18.

For these reasons, Mexinox argues that the Department should disregard the Reseller sales data and should instead calculate a margin based on the arm's-length sales *to* the Reseller.

Petitioners argue that the Department correctly determined that Mexinox and the Reseller are affiliated. First, they argue that Thyssen does not need to be a majority shareholder in a company for the Department to determine that control exists. As support for this proposition, they cite *Plate from Brazil* in which the Department stated,

> The legislative history of the URAA make it clear that the statute does not require majority ownership for a finding of control. Even a minority shareholder interest, examined within the totality of other evidence of control, can be a factor that we consider in determining whether one party is in a position to control another.

See Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 18486, 18490 (April 15, 1997) (*Plate from Brazil*).

Furthermore, petitioners argue that contrary to Mexinox's arguments, evidence of actual control is not required under the statute to make a finding of control. Control is defined in terms of the ability to control, that is, having the power to restrain or direct another company's commercial activities. This does not require that the one company be in a position to exert absolute control over the other, either directly or indirectly. It is sufficient if the company merely has "the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." *See* 19 CFR § 351.102(b). Petitioners argue that the substantial shareholdings in Mexinox through KTS by Thyssen Stahl (and, by extension, its parent Thyssen) are only one important indicator of Thyssen's control over Mexinox. Another is that Mexinox is publicly described and well-known as a member of both the Krupp and Thyssen Groups. Still another is that the record clearly demonstrates that the two industrial groups have had a high—and increasing—degree of cooperation and coordination.

Furthermore, petitioners argue that the fact that the shareholder's agreement nominally gives Krupp (rather than Thyssen) "full operational and industrial control over KTS" is not dispositive. The preamble to the Department's regulations makes clear, they argue, that the test is not whether a company has the "enforceable ability to compel or restrain commercial actions," but whether one firm is "in a position to exercise restraint or

direction" (regardless of whether such control is actually exercised). *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27298 (May 19, 1997). Moreover, they state, the terms "restraint and direction" are not synonymous with "absolute control," but rather are more suggestive of substantial "influence" over the other party's commercial decisions.

Moreover, petitioners argue, the question is not which joint venture partner is dominant under the shareholders agreement or how disputes among the KTS directors are to be resolved under the agreement. They argue that the very nature of a joint venture is to operate a business for mutual benefit and with a least a large degree of consensus, whatever the relative equity interests of the parties. Clearly, Thyssen is participating in KTS because it hopes to benefit from the venture. It is extremely unrealistic to believe that Thyssen would take a forty percent stake in KTS and not expect that venture to be responsive to Thyssen's own commercial interests to at least some extent.

Furthermore, petitioners argue that the recent full merger of Krupp and Thyssen confirms the closely allied interests of the two firms. While Krupp and Thyssen formally remained separate companies during the POI, their formal merger agreement in September 1998 only confirmed what was obviously a longstanding strategic alliance between the two firms, reflected most prominently in KTS. Between the KTS joint venture and the ongoing merger discussions between them, petitioners state, Thyssen and Krupp can reasonably be regarded as part of a single corporate grouping during the POI.

Petitioners also argue that Mexinox's reliance on *Steel from Korea* is misplaced. The issue here is not, as in *Steel from Korea*, whether two parties who control a third party are themselves affiliated, but whether a person jointly controlled by two parties is affiliated with those parties' subsidiaries.

Based on the foregoing analysis, petitioners argue that Mexinox is affiliated with Thyssen and that Thyssen has the ability to exercise restraint over Mexinox within the meaning of 19 USC § 1677(33) of the Act. Moreover, given that Thyssen is affiliated with its subsidiaries and thus has the ability to control those subsidiaries, they argue that Mexinox is affiliated as well with the Thyssen subsidiaries under the combined provisions of 19 USC §§ 1677(33)(F) and (G) of the Act.

Department's Position: We disagree with Mexinox. As stated in our *Preliminary Determination* and Affiliation Memo, we have determined that Mexinox is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) of the Act provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds, with the power to vote, five percent or more of the outstanding shares of voting stock or shares of any other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated.

We examined the record evidence to evaluate the nature of Mexinox's relationship with Thyssen Stahl and Thyssen and have determined that Mexinox is affiliated with Thyssen and Thyssen Stahl. Thyssen Stahl indirectly owns and controls, through KTS, thirty-six percent of Mexinox's outstanding stock. Thus, Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls thirty-six percent of Mexinox. Mexinox's Section A questionnaire response (p. A–12) dated September 8, 1998 (section A response), states that Mexinox is ninety-percent owned by KTS. The supporting exhibits to this submission confirm Thyssen Stahl's interest in KTS and KTS's ninety-percent shareholder interest in Mexinox. In a submission dated December 9, 1998, the petitioners placed on the record publicly available data that confirmed not only the foregoing shareholding interests, but also confirmed that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. Consequently, Thyssen, through Thyssen Stahl and KTS, indirectly owns a thirty-six percent interest in Mexinox. Therefore, Mexinox as a subsidiary of the joint venture entity KTS, is affiliated with the joint venturer Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E) of the Act. *See Steel Wire Rod From Sweden; Notice of Final Determination of Sales at Less Than Fair Value*, 63 FR 40449, 40453 (July 29, 1998) (*Rod from Sweden*).

In addition, we have determined that Mexinox is affiliated with Thyssen and its U.S. affiliates. Section 771(33)(F) of the Act provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. Actual exercise of control is not required by the statute. In this investigation the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of KTS. *See Preliminary Determination* 64 FR at 126 and the Affiliation Memo. Such a finding is consistent with the Department's determinations in *Plate from Brazil* (64 FR at 18490) and *Rod from Sweden* (63 FR at 40452).

We also agree with petitioners that record evidence show that Thyssen, as the majority equity holder and ultimate parent company of its various affiliates, is in a position to exercise direction and restraint over the Thyssen affiliates' production and pricing. *See Preliminary Determination* 64 FR at 126 and the Affiliation Memo. Thyssen also holds indirectly a substantial equity interest in Mexinox, plays a significant role in Mexinox's operations and management, and thus enjoys several avenues for exercising direction and restraint over Mexinox's production, pricing and other business activities (*see* Affiliation Memo). In sum, Thyssen's substantial equity ownership in Mexinox and Thyssen's other affiliates, in conjunction with the "totality of other evidence of control," requires a finding that these companies are under the common control of Thyssen. Therefore, as in the *Preliminary Determination*, we continue to find that Mexinox is affiliated with Thyssen and Thyssen's U.S. subsidiaries, including the Reseller.

Comment 2: Overreporting of Sales

Mexinox states that the Reseller over-reported resales of material purchased from Mexinox by including transactions that it subsequently traced to purchases of non-subject cut-to-length sheet. Mexinox argues that since this merchandise is not covered by the scope of the investigation, these non-subject sales should be excluded from the Reseller's sales database.

Additionally, Mexinox separately listed at verification another much smaller number of transactions where the material sold by the Reseller was linked to non-subject cut-to-length metal purchased from Mexinox, but where the U.S. Reseller performed additional processing. Mexinox requests that this data set of non-subject merchandise also be excluded from the margin calculations for the final determination.

Department's Position: We agree with Mexinox that information on the record indicates that the Reseller reported some sales that are not subject to the investigation. *See* the March 15, 1999 Reseller sales verification report, p. 4. In our calculation of facts available for the Reseller's sales in this final

determination, we have excluded the overreported volume of sales from the calculation.

Comment 3: Downstream U.S. Sales

Mexinox argues that the Department erred in the *Preliminary Determination* by including in its calculations a set of sales made by a downstream reseller of the Reseller, and by applying a facts available rate to these sales that was aberrational. The Reseller resold a small amount of merchandise to another reseller of the Thyssen Group of companies in the United States (Reseller II) on the last day of the POI, and the first of this material was resold by U.S. Reseller II after the POI. Mexinox argues that since the first sale to an unaffiliated party occurred outside of the POI, none of these sales should be included in the investigation. The respondent further argues that it put forth its best effort to provide information about the Reseller to the Department, and objects to the Department's decision to resort to *adverse* facts available. Specifically, Mexinox disagrees with the Department's decision to apply a facts available rate derived from a sale of non-prime material. Finally, Mexinox believes that the Department made a clerical error in applying facts available that resulted in an overstatement of the margin for the sales at issue.

Petitioners state that there is no basis for the respondent's objection to the Department's selection of facts available. They argue that it is not appropriate to assume that sales to which facts available are being applied are prime merchandise. They also restate that the respondent's non-prime designations were found to be completely unreliable at verification, and that the Department should continue to apply the highest transaction margin where it determines that facts available is appropriate for a quantity of U.S. sales.

Department's Position: We agree with Mexinox that because the sales were sold to the first unaffiliated buyer in the United States after the end of the POI, they should not be included in the analysis for this determination. In our calculation of facts available for the Reseller's sales in this final determination, we have excluded the downstream volume of sales from the calculation.

Comment 4: Early Payment Discounts

Mexinox contends that the Department should apply neutral, rather than adverse, facts available to the early payment discounts given by the Reseller that the Department discovered (after publication of the *Preliminary Determination*) at the Reseller verification. It states that the discounts were not identified prior to verification as a result of a misunderstanding on the part of company personnel. Furthermore, it argues that its volume of discounts was very small, and the Reseller would have gained no possible advantage by intentionally not reporting them. For these reasons, Mexinox argues, the Department should apply neutral facts available. It suggests applying a rate to all U.S. sales based on the value of early payment discounts as a share of total sales revenue.

Petitioners state that should the Department decide to use the Reseller's sales listings, it would be appropriate for the Department to attribute to each U.S. sale the maximum early payment discount offered. Petitioners argue that because the respondent failed to report these discounts on a sale-specific basis, the impact of this adjustment is not negligible, but rather unknown. They argue further that the respondent's explanation of why the adjustment was unreported is irrelevant, and that the overall volume of omissions throughout the investigation process should compel the Department to apply facts available to the entire quantity of the Reseller's sales listing. However, petitioners argue that if the Department decides to use the Reseller's sales listing, it should attribute to each U.S. sale the maximum early payment discount offered.

Department's Position: Because we have applied facts available to the Reseller's sales, this issue is moot.

Comment 5: Prime Merchandise

Mexinox disputes the Reseller sales verification report's determination that some of the material shipped as non-prime merchandise was prime merchandise. Mexinox claims that of the six non-prime transactions reviewed during verification, three had physical defects, one was mis-reported, and two involved obsolete products which remained in inventory for two years due to unusual product characteristics. Mexinox cites the existence of a Department memorandum which supports the definition of secondary merchandise as "generally steel which has suffered some defect during the production process* * *" (emphasis added). However, Mexinox argues that there are other circumstances, such as sales of obsolete inventory, 'side strands,' 'pup coils,' and the like which also call for non-prime designation of the material. In support of this argument, the respondent emphasizes that these sales were designated non-prime in the ordinary course of business before commencement of antidumping proceedings. Mexinox cites the existence of U.S. steel industry price lists which confirm that non-prime designations are not limited to products with surface damage or chemistries out of tolerance, but rather include products with unusual characteristics which make it impossible for the producer to sell the product as prime grade and at prime grade prices. Therefore, Mexinox argues, the Department should not presume that only products with specific physical damage or chemical irregularities are legitimately classified as secondary.

Petitioners object to Mexinox's method of identifying non-prime merchandise, stating that the method used has one implication when used throughout the industry but a very different (and inappropriate) implication in the context of an antidumping analysis. Petitioners do not dispute the contention that for certain reasons an industry may on occasion designate a non-defective product as non-prime. However, they argue that for antidumping purposes, only verifiably defective merchandise can be considered non-prime. Petitioners state that only through this approach to classifying prime vs. non-prime merchandise can the Department verify the *bona fide* nature of such categories. Petitioners state that at a minimum, the Department should apply adverse facts available to the quantity of Reseller sales reported as non-prime (with the exception, perhaps, of the three sales that were found at verification to be correctly so designated). Petitioners further argue that the Department should state in its final determination that in any administrative review proceedings, only products with objective physical defects will be treated as non-prime.

Department's Position: Because we have applied facts available to the Reseller's sales, this issue is moot.

Comment 6: Use of Facts Available for Reseller Based on Failure of Verification

Mexinox reiterates its position regarding its affiliation with the Reseller, but insists that if the Department uses the Reseller's data in determining the final dumping margin, it use neutral facts available as a result of any unforeseen errors or omissions in the data. Mexinox claims that the use of adverse facts available would be inconsistent with Departmental policy, because (1) Mexinox acted to the best of its ability to respond to the Department's request for information, and (2) any deficiencies in the data provided by the Reseller are due to

circumstances beyond Mexinox's control because it is unaffiliated with the Reseller, and had no operational control over the Reseller. With respect to the latter point, Mexinox argues that the Department has in the past declined to use adverse facts available in cases where the respondent's inability to obtain the requested data is due to its lack of operational control over the reseller. In one instance where it did otherwise, the CIT reversed and remanded the Department's final determination applying adverse facts available to certain unreported downstream sales by secondary steel centers in which the respondent owned a minority interest. *See Usinor Sacilor* v. *United States*, 872 F.Supp. 1000 (Ct. Int'l Trade 1994) (*Usinor*).

Petitioners argue Mexinox has failed to make a case that the use of neutral facts available is appropriate in this case. They argue that particularly in light of Mexinox's affiliation with Thyssen and the Reseller (an indirect subsidiary of Thyssen), the Reseller's lack of cooperation should be imputed to Mexinox, and adverse facts available applied to the Reseller's response. Regarding Mexinox's argument that it cooperated to the best of its ability, petitioners state that the exceptional number and range of instances in which Mexinox has given incomplete and inaccurate data to the Department do not present the picture of a company that was truly intent on assisting the Department in the investigation. Had Mexinox straightforwardly wanted to give its unqualified cooperation to the Department, petitioners argue, Mexinox would have come forth with all of the Reseller's sales and would not have compiled such a spotty and unreliable record. Based on the record, they state, it is not reasonable to say that Mexinox has cooperated to the best of its ability, and adverse facts available are therefore appropriate.

Regarding Mexinox's argument that it had no operational control over Reseller, petitioners argue that allowing a respondent automatically to escape adverse facts available on the ground that the respondent cannot secure information from another party is not an axiom that the Department should embrace. The fact that necessary information lies with even an unrelated third party is not a bar to application of adverse facts available. *See Helmerich & Payne, Inc.* v. *United States*, 24 F.Supp. 2d 304, 308–309 n.6 (Ct. Int'l Trade 1998) (the Department may apply adverse facts available in its discretion even when the requested information is controlled by an uncooperative unrelated company); *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 6 F.Supp. 2d 865, 887–88 (Ct. Int'l Trade 1998); *Transacom, Inc.* v. *United States*, 5 F.Supp. 2d 984, 990–91 (Ct. Int'l Trade 1998). Ultimately, therefore, whether or not the Department should resort to adverse facts available, petitioners argue, is a decision the Department has to make after having scrutinized the particular facts of a given case, including whether the respondent has cooperated to the best of its ability with the Department.

Furthermore, petitioners argue that the holding in *Usinor* has no application here. First, the operative facts of *Usinor* were very different from those here. In the proceeding that gave rise to *Usinor* there was obviously an active discussion of limiting reporting requirements. By contrast, Mexinox did not even attempt to engage in a dialogue about reporting requirements, instead unilaterally conferring permission for limited reporting upon itself. Moreover, the limited reporting in question for *Usinor* dealt with 180,000 invoices that would have had to be manually traced to the supplier—a hundred-fold more than were at stake in Mexinox's situation. Finally, the question in *Usinor*—whether the respondent has operational control over its affiliated reseller—is clearly moot in this case because Mexinox's affiliated reseller did in fact respond to the Department's questionnaire in the instant proceeding (albeit incompletely).

Moreover, petitioners argue that Mexinox's arguments are misplaced. The question at hand, they state, is not Mexinox's direct control over the Reseller, but Thyssen's control over both Mexinox and the Reseller, its indirect wholly-owned subsidiary. Had there been the will by Mexinox to be responsive, the means were at hand for it to secure the data through the intervention of Thyssen.

Further, petitioners argue that the verification uncovered numerous significant errors that degrade the integrity of the sales listing, and that therefore adverse facts available is warranted. First, the Reseller never reported that it had granted early payment discounts on sales to U.S. customers. The Department discovered the existence of these discounts at the verification. (Petitioners also argue that if the Department does not apply facts available to all of the Reseller's U.S. sales, it should at least apply facts available to the early payment discounts.)

Second, petitioners state that the Reseller improperly applied prime and non-prime designations to its reported sales. They state that the record does not support the Reseller's contention that it does not warrant non-prime merchandise. Furthermore, they argue, the verification report indicates that the Reseller acknowledged at the verification that some of the material it sells as non-prime actually has no physical defects. This admission is borne out, petitioners state, by the Department's attempt to verify the non-prime designation reported for specific sales. Of the six reported non-prime merchandise sales the Department examined at verification, only two actually consisted of defective merchandise. *See* Reseller sales verification report at 7. The danger presented by accepting without penalty what is at best a subjective designation by the Reseller is that it invites manipulation. Respondents will be free to label as non-prime any low-priced sales that they would like to have matched to lower priced sales in the home market, thereby limiting the Department's ability to detect and quantify dumping that is actually occurring.

Third, petitioners argue that there were numerous other errors in the sample sales selected for verification. These included:

- Misreported commission amounts;
- Misreported grades;
- Unreported further manufacturing charges;
- Misreported payment dates;
- Overstated gross prices;
- Misreported freight;
- Misreported quantities; and
- Misreported interest rates.

Petitioners argue that none of the four Mexinox observations examined by the Department came up "clean." Even the overall quantity and value of sales reported to the Department could not be reconciled.

Furthermore, petitioners argue that the reported further manufacturing costs were also inaccurate. Based on the cost verification report, they state that:

- The cost allocation method (based on standard "quantity extras") proved to be flawed;
- Data underlying product-specific yield ratios proved to be nonsensical in that output exceeded input;
- The overall reporting of finished goods was grossly overstated;
- costs of certain processes went unallocated; and
- Neither the outside processing costs nor the basis upon which the Reseller allocated these costs to subject merchandise could be substantiated.

Petitioners argue that because of the last-mentioned point, if the Department decides not to use facts available for the

Reseller's entire sales database, it should at least use adverse facts available for the value-added adjustment.

Mexinox argues that the Reseller did not fail verification. Although the Department did identify some errors at verification, they were isolated and did not undermine the basic integrity of the data.

Regarding early payment discounts, Mexinox states that the failure to report this adjustment was caused by a misunderstanding on the part of Reseller officials, and was an isolated and discrete error that had no bearing on the accuracy or completeness of other portions of the reported data. Mexinox acknowledges that some form of partial facts available may be appropriate to fill in the gap in the data, but states it would be inappropriate and unfair to apply punitive adverse facts available.

Regarding the designation of prime and non-prime merchandise, Mexinox admits that the Reseller does sell a small amount of material as second grade that does not have physical or chemical defects, but states that that material does contain other physical features rendering it unfit for sale as a prime product (*e.g.*, unusual sizes, weights, and dimensions). Such non-standard material has lower value and more limited marketability because the material is either unsuitable for normal uses (such as where the coil is too small to be efficiently run through machinery) or must be further worked to become usable (such as where the material must be further slit, or cut to a standard size). Because of its limited commercial value, such material must be sold in the ordinary course of trade as non-prime products. The practice that the Reseller follows in this regard, Mexinox states, is no different from that followed by petitioner J&L Specialty Steel which publishes a price list for "secondary" products including prices for "sidestrands" and "excess prime." Furthermore, Mexinox argues that if the Department were to follow the narrow definition of "non-prime" advocated by petitioners it would be ignoring real physical differences in the material that limit its marketability and justify downgrading the material as non-prime. The Department would err by unjustifiably ignoring an established industry-wide practice followed by petitioners themselves. Finally, Mexinox argues that petitioners' objection that the designation of quality under these circumstances is subjective and therefore not to be trusted makes no sense in the context of this investigation. The Reseller's coding of non-prime products occurred before the filing of the antidumping petition and was carried out in the ordinary course of business. Therefore, Mexinox argues, whatever concerns petitioners may have about "manipulation" of quality designations to affect dumping comparisons in the future do not apply to this investigation.

Regarding the numerous miscellaneous errors that petitioners cite, Mexinox states that though the Department did identify some small errors in the Reseller data during verification, the errors were not nearly as widespread or serious as petitioners would wish them to appear. Mexinox points out as a preliminary matter that the verification report indicates that some of the sales selected for tracing were selected because they had anomalous features. Thus, Mexinox argues, these sales transactions cannot be considered representative of the entire sales database. Furthermore, Mexinox states that the petitioners' summary of the other errors allegedly discovered in the Mexinox sample sales includes inaccuracies and exaggeration. For example:

- The "misreported interest rates" which petitioners cite actually refers to a first-day clerical correction, rather than an error discovered at verification.
- There were no unreported further manufacturing charges. The verification report clearly notes that a further manufacturing cost was reported for the transaction at issue.
- No freight was found to be misreported. The invoice presumably referred to by the petitioners was a transaction where the computer system did not include a standard freight amount. Rather than report zero freight for this transaction, the Reseller conservatively reported an average freight amount.
- The "misreported payment dates" and "misreported commission amounts" actually were not separate errors but instead were one isolated error in the reporting of payment date for a particular invoice which also affected the commission amount for that sale.

Mexinox also disputes petitioners' statement that the "overall quantity and value of sales reported to the Department could not be reconciled." Mexinox, assuming that petitioners are referring to the tiny difference between the quantity and value in the reporting database and the data contained in the company's invoice history file, states that the Reseller fully reconciled these amounts. The Reseller sales verification report states, "Reseller was able to produce a list of all the invoices that account for these differences. It is contained in verification exhibit 16." *See* Reseller sales verification report at 3.

Furthermore, Mexinox disputes petitioners' claims with respect to the cost verification. It disputes petitioners' claim that the cost allocation method used to report further manufacturing costs was found to be flawed. Mexinox acknowledges that a discrete error in the programming logic was identified at the verification, but states that the effect of that error was very limited and Mexinox was able to account for and list all of the transactions affected.

With respect to yield calculations, Mexinox states that there was no discrepancy in the quantity of finished goods used in the calculation as erroneously implied in the Reseller cost verification report. The Department perceived there to be a discrepancy only because the verifiers were comparing an incorrect figure submitted in the initial Section E response to the correct figure timely placed on the record before verification.

Also contrary to petitioners claims, Mexinox argues, there is no finding in the Department's verification reports that "costs for certain processes went unallocated." The closest thing to such a finding is the Department's observation that the computer program did not directly assign a standard cost for re-spinning processing. However, the costs of respinning were fully absorbed in the reported further-manufacturing expenses through the application of the variance. Thus, no processing costs remained unallocated.

Finally, regarding the calculation of outside processing costs, Mexinox argues that it employed the best possible means of allocating outside processing costs for the combined processors given limitations in the available data. Similarly, although there may have been differences due to timing between the figures reported in the management reports used to report outside processing costs and the amounts booked, those differences were small and were not clearly biased in either direction. The Reseller's reporting method therefore, Mexinox states, was both reasonable and accurate.

Based on the above information, Mexinox argues that, contrary to petitioners' claims, the limited errors identified in the Reseller's data do not come close to justifying the rejection of the entire database in favor of facts available. Furthermore, even if the Department deems it necessary to apply partial facts available with respect to sales transactions identified as having errors, the Department may not lawfully

apply an adverse inference with respect to those transactions absent a finding that the Reseller failed to act to the best of its ability. It argues that the conditions for the application of adverse facts available are not present here because it is clear that both Mexinox and the Reseller acted to the best of their abilities. Moreover, Mexinox argues, it is critically important for the Department to remember that the Reseller's data were compiled and presented by the Reseller, and not Mexinox (which, it states, has no operational control over the Reseller). Therefore, applying adverse facts available in this case would not further the Department's goal of encouraging future compliance because Mexinox simply lacks the ability to respond any more completely than it already has.

Department's Position: We agree with petitioners that, pursuant to section 776(a) of the Act, total facts available are warranted with regard to sales through Mexinox's affiliated further manufacturer. In the instant case, the use of total facts available for the Reseller portion of Mexinox's section C response is warranted because the method and computer programming used by the Reseller to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for the Reseller's database. Reliance upon total facts available is required for all further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 772(d)(2) of the Act for "the cost of any further manufacture or assembly (including additional material and labor) * * *".

We also find, as explained below, that the use of an adverse inference is appropriate in this case because the record established that the Reseller failed to cooperate with the Department by not acting to the best of its ability in responding to our requests for information. The manifest and manifold errors in the Reseller's response evidence a failure to conduct even rudimentary checks for the accuracy of the reported further-processing data. Indeed, a reasonable check by company officials could have shown that (i) products that underwent no further processing were being assigned further-processing costs, (ii) further-processed products were not being assigned their appropriate processing costs, (iii) coils passing through certain processes were not being allocated any cost for the process, and (iv) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

While the Department frequently corrects reported costs or adjusts incorrect data with facts otherwise available in order to complete an investigation, it does so only when it is able reasonably to do so using information on the record, and when its knowledge of the company's records and the reasonableness and accuracy of the reporting method serve to establish the integrity of the underlying data. In this case, correction of the specific flawed data is not a viable option because of the high percentage of errors found through our testing (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 782(i) of the Act, and, further, that pursuant to section 776 of the Act the Department may proceed on the basis of the facts otherwise available if all or any portion of the submitted information could not be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided the Reseller with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. The Reseller had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, the Reseller did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions contained fundamental and significant errors. *See* Reseller cost verification report at 14 through 17. When the Department then selected nine additional transactions for review, four of these were also found to reflect significant errors. These included allocating processing costs to non-processed material (id. at 15), mis-allocating quantity surcharges (id.), and, more troubling, reporting finished weights which exceeded the weight of the input material ("[t]his is impossible and for this reason we could not verify the amount of processing for this observation." Id.).

The first step identified in the Department's verification agendas calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. As we stated above, none of the errors discussed here were presented by the Reseller at the outset of verification; many of them were manifestly apparent and the Reseller was obligated to notify the Department of these problems prior to verification.

We disagree with Mexinox's assertion that the numerous errors identified by the Department affect only a small number of products out of the possible universe of transactions and that the effect of the errors is minuscule. As mentioned above, the Reseller created a computer program to respond to the Department's questionnaire which sought to match an input coil to each output coil sold and to assign a cost for each processing step through which the finished coil supposedly passed. When we tested this computer program at verification to assess its accuracy and reliability, we found that seven of eighteen tested transactions contained errors in either the allocation of processing costs or in the matching of input coils to output coils. In two of these cases, the Reseller had assigned processing costs to products which had, in fact, undergone no processing whatever. We note that this discrepancy arose from the input coils and output coils identified by the Reseller's own computer program. In another transaction, the combined widths of the finished products were greater than the original width of the input coil as identified by the system, an obvious physical impossibility that should have been identified by the Reseller as an error. The nature of these errors raises serious doubts as to the accuracy of the overall program used to match input master coils to output slit coils as sold. It also serves to undercut Mexinox's assertions that it acted to the best of its ability in compiling this portion of its section C response. Further, several of these errors served to understate the costs of further processing by shifting portions of these costs to non-further-processed merchandise. Since these errors affect the entire population of products sold (*i.e.*, both processed and

unprocessed products), it is not possible for the Department to isolate the problems and adjust for the errors accordingly.

The program also failed to assign properly certain finishing costs. Certain coils with a pre-buff finish applied to the underside had no finishing costs reported for the additional processing. Finally, other transactions contained errors in the application of surcharges for processing small quantity orders. In the samples tested, the Reseller had reported quantity extra charges in excess of what should have been reported. This error led to an understating of the variance between the costs as allocated for purposes of the response and the costs as maintained in the Reseller's financial accounting system. Once again, both errors reduced the costs allocated to further processed products, thus creating further doubts as to the accuracy of the underlying reporting method.

We also find unpersuasive Mexinox's suggestion that because the Reseller had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. We must stress that every respondent in every antidumping investigation is faced with the question of how best to sort and retrieve the sales and cost data as maintained in its normal course of business to respond to our questionnaire. This necessarily entails the winnowing of its larger universe of sales to capture only that merchandise subject to our investigation, and the further creation of unique data fields to reflect the specific model-match criteria and the applicable expense adjustments set forth in the questionnaire. Finally, the resulting database must be refined to present the transaction-specific information on sales and adjustments in the precise formats required by the Department. That the Reseller, like virtually all respondents in antidumping proceedings, chose to rely upon a computer program as the easiest means to accomplish this end is unremarkable and in no way mitigates the failings found in this case. We note further that Mexinox itself largely succeeded in supplying data relating to sales, expenses, and COP in compliance with equally detailed reporting requirements. The surfeit of errors in the Reseller's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from the Reseller's reliance on faulty computer programming and data which the Reseller apparently failed to review prior to verification.

Finally, we disagree with Mexinox's assertion that it was able to quantify the extent of the cost errors on the final day of verification. First, we note that the Reseller made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More importantly, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. See, e.g., *Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness.") and *Monsanto Company* v. *United States*, 698 F. Supp. 275, 281 ("[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business."). It has been the Department's longstanding practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. However, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted. This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of the Reseller's method for reporting costs and discovered numerous errors. The Reseller claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. However, Mexinox's assertion in its case brief that the Reseller succeeded in identifying all of the errors is an unsubstantiated ipse dixit which could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database. Moreover, the proper time for the Reseller to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented Mexinox and the Reseller with the cost verification agenda one week in advance precisely to allow them to prepare properly for verification. Had the Reseller reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in Certain Cut-to-Length Carbon Steel Plate from Sweden,

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where "a response to a request for information" does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18401 (April 15, 1997).

Finally, we reject Mexinox's arguments with respect to the propriety of drawing an adverse inference with respect to a respondent over whom they allegedly had no operational control. Mexinox goes to great pains to assert that it never had control over the data submitted by the Reseller; therefore, any lack of cooperation evinced by Reseller cannot be imputed to Mexinox. See, e.g., Mexinox's case brief at 5. Mexinox presents the issue as one in which Mexinox was at the mercy of recalcitrant parties, only some of whom could be persuaded to participate in the investigation: "It is critically important in this regard for the Department to remember that the U.S. Reseller's data was compiled and presented *by the U.S. Reseller*—without the involvement of Mexinox or any other respondent in these proceedings. Mexinox has not even seen—let alone reviewed or prepared—the challenged data, and was therefore not in a position to affect what or how that information is compiled or presented." (Emphasis in original). *See* Mexinox's rebuttal brief at 25. However, Mexinox's protestations that its officials did not have the opportunity to review the Reseller's submitted data for accuracy beg the point. The Department has never suggested that Mexinox was

in a position to compel a reluctant Reseller to provide its sales and cost data to Mexinox; rather, the thrust of our affiliation determination has consistently been that *Thyssen*, not Mexinox, was in a position to direct its U.S. affiliates to provide complete and timely responses to the Department. For reasons beyond the Department's ken, the Reseller chose to submit responses under the guise of a cooperative respondent while withholding crucial information to make its responses usable for purposes of establishing statutory U.S. price.

We note that throughout this investigation Mexinox has been represented by legal counsel who certified each of Mexinox's (and the Reseller's) submissions of fact in this case, claiming the counsel had read the submission and had "no reason to believe [it] contains any material misrepresentation or omission of fact." See 19 CFR 351.303(g). Similarly, on January 15, 1999, the Reseller certified that the responsible company official had read its submission and that the information therein was, to the best of the official's knowledge, complete and accurate. See, e.g., Mexinox's January 15, 1999 section E supplemental response. Finally, throughout the preparation for the Reseller verifications and the verifications themselves, counsel were present at all times in the conference room. The Reseller was also assisted by economic consultants retained by Mexinox specifically for purposes of preparing responses in this antidumping investigation. The fact remains that despite its disagreement with the Department's decision on affiliation, Thyssen succeeded in persuading the Reseller to submit a response; from that moment forward, it was incumbent upon the Reseller to submit complete and accurate responses to our questionnaires. It was the further responsibility of Mexinox's legal representatives, acting throughout this proceeding on Mexinox's behalf, to ensure that the data it helped prepare were reliable. Finally, the record does not reflect that after Mexinox was directed to submit the Reseller's sales and cost information it had trouble securing the Reseller's cooperation (aside from Mexinox's stated objections for the Department's legal reasoning). Had it been a case of Mexinox painfully and laboriously extracting each datum from a recalcitrant unaffiliated party, one would expect the record to reflect this in, for example, written pleas of an inability to submit the requested data, or appeals for modifications to reporting requirements in response to limited available data. Instead, there is silence on this point. Mexinox proceeded throughout the investigation as though the Reseller's full cooperation was a given, once the Department had notified Mexinox that the further-processed sales would be required for our analysis.

Therefore, we find the record clearly indicates that Mexinox had the resources to secure the necessary level of cooperation from the Reseller. The record also indicates that the Reseller failed to cooperate by not acting to the best of its ability in compiling its further-manufacturing response. Moreover, because the information possessed by the Reseller is essential to the dumping determination, the use of adverse facts available is appropriate regardless of Mexinox's involvement in providing the information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan*, 64 FR 24329, 24367 (May 6, 1999). Therefore, consistent with section 776(b) of the Act, we have drawn an adverse inference in selecting among the facts available for use in lieu of the Reseller's unverifiable data. As adverse facts available, we have assigned the highest non-aberrational margin calculated on Mexinox's properly reported U.S. sales. *See* the Final Determination Analysis Memorandum, dated May 19, 1999.

Comment 7: U.S. Sales of Unidentified Origin

Petitioners argue that if the Department does not apply facts available to the Reseller's U.S. sales based on the results of verification, it should apply facts available to the Reseller's U.S. sales because Mexinox intentionally withheld until January 7, 1999 (six months after receiving the August 3, 1998 antidumping questionnaire and on the eve of verification) the existence of 2,000 (public version figure) U.S. sales made by the Reseller. These were sales of merchandise for which the Reseller claims it was unable to identify the supplier. Petitioners argue that Mexinox's failure to report these sales earlier than January 7, 1999 clearly demonstrates that Mexinox did not act to the best of its ability to provide information in a timely manner. Mexinox's tardiness in reporting these sales, petitioners argue, is all the more serious in light of the high volume they constitute as a percentage of Mexinox's reported total U.S. sales quantity. The Department should reject Mexinox's attempt to downplay the importance of these sales. Petitioners argue that the Department should reject as implausible Mexinox's claim that it could not identify the supplier of the merchandise. They argue that it is impossible that a supplier of stainless steel sheet and strip products in the United States would be unable to determine the origin of input coils in the event of a product liability claim or a tax audit. Moreover, petitioners argue, the listing was and remains irreparably incomplete in that Mexinox has continued to withhold the identity of the suppliers (despite the fact that the Department found at verification that suppliers could have been identified for several sales reported as "unidentified vendor") and failed to provide important product characteristics for numerous sales. For all of these reasons, petitioners argue, the use of facts available is justified under section 776(a) of the Act which provides that if an interested party withholds information that has been requested, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) and (e), facts otherwise available in reaching the applicable determination. In the alternative, petitioners argue that adverse facts available should at least be applied to the sales of unknown origin.

Mexinox argues that petitioners' insinuation that Mexinox deliberately conspired to withhold information from the Department related to the unattributed sales is nonsense. It states that it could not have engaged in such a conspiracy because it had no direct involvement in the preparation of the Reseller's data, and had absolutely no knowledge of the content of the data.

Mexinox also argues that petitioners are incorrect in characterizing the information as untimely. It states that the Department did not request the information in the August 3, 1998 questionnaire, as petitioners suggest, but in an October 29, 1998 supplemental questionnaire. Furthermore, they argue, under section 351.301(b)(1) of the regulations, a respondent may submit factual information at any time up to seven days before verification. Moreover, Mexinox argues, petitioners cannot credibly claim that they were prejudiced by the timing of the submission, as evidenced by their multiple submissions commenting on the sales.

Mexinox also contests petitioners' claim that it is implausible that the Reseller could not trace the origin of the material. It states that this issue was examined by the verifiers at both the

sales and cost verifications, and that the verification reports conclusively confirm that the Reseller's computer system could only trace the origin of the material as far back as its re-booking into inventory following transfer from another Reseller location. Because the rebooking identified the Reseller itself as the vendor in these circumstances, there was no computerized link available to the original supplier of the material. This, Mexinox argues, is indicated in the clearest terms in the Reseller cost verification report which states, "The system traces vendors from purchase orders ("P.O.s"). Transfers between warehouses have their own P.O.s, therefore, the Company is unable to identify their original source through the system." Given the nature of the Reseller's computer system, Mexinox argues, petitioners' suggestion that the Reseller should have manually traced the origin of all of these transactions is absurd. Such tracing, though physically possible, would have required searching by hand through multiple layers of internal paper transactions, inventory records, and sales records. While the Reseller can, and occasionally does, do this on an ad hoc basis to investigate individual claims, repeating that effort for every invoice and line item in the body of untraceable sales would have imposed an impossible burden.

Finally, Mexinox takes issue with petitioners' charge that Mexinox is attempting to downplay the magnitude of the unattributed transactions. Mexinox states that the petitioners are exaggerating the magnitude of the sales by attributing 100 percent of the unattributed sales to Mexinox.

Department's Position: We agree, in part, with petitioners and with Mexinox. In its January 7, 1999 supplemental response, Mexinox reported a large quantity of sales by the Reseller which lacked any information identifying the supplying manufacturer. As noted, Mexinox claimed that it had no immediate computer link to trace the origin of coils which had been transferred between the Reseller's different warehouses. Thus, it had included this unidentified mass of sales in each of the sales databases filed on the records of the investigations of stainless sheet in coils from Germany, Mexico, and Italy.

As explained in response to comment 6 (above), we have determined that the errors affecting the Reseller's reported sales and cost data, including its failure to identify properly the supplier of a major portion of its sales, render these data unreliable in their entirety for purposes of our margin calculations. However, this conclusion does not dispose of the issue of the proper treatment of these unidentified transactions. For a significant portion of the Reseller's U.S. transactions during the POI the manufacturer is simply unknown. The absence of the supplying mill for this body of sales affects not only this investigation, but also those involving stainless steel sheet in coils from Germany and Italy. Furthermore, the absence of this elementary and critical information forecloses any attempt by the Department to apportion these sales accurately between merchandise which is subject to one of the three ongoing investigations and that which is properly considered non-subject merchandise because it was obtained from either a domestic or other foreign mill. Thus, this gap in the record is one of overarching importance, impinging upon our ability to calculate accurately the margins in three separate antidumping duty investigations.

We cannot accede to Mexinox's suggestion that we exclude the unidentified transactions entirely from our calculations. While we are not able to state with precision which of these transactions represent subject stainless sheet in coils from Mexico, Mexinox has conceded that some are properly subject to this investigation (as, indeed, some are subject to the concurrent investigations involving Germany and Italy). The Act and the implementing regulations do envision a number of scenarios where the Department may disregard transactions in its analysis (sample transactions or sales of obsolete merchandise, for example, or when sampling transactions pursuant to section 777A of the Act). However, these exceptions all involve an independent analysis by the Department of the facts surrounding the proposed exclusions and its reasoned explanation on the basis of the record that the transactions at issue are either unnecessary or inappropriate for inclusion in our calculations. There are no provisions allowing the Department simply to ignore a significant portion of U.S. sales based on a reseller's putative inability to identify the affiliated respondent manufacturer.

As for this claimed inability, Mexinox attempts to present as the Department's own conclusions what were, in fact, its reporting of Reseller explanation claims at verification. Thus, the Reseller sales verification report noted that "Reseller explained that if material from its warehouse is sold to another location * * * the [receiving] warehouse subsequently will enter the merchandise into its own inventory by recording itself as the supplier." *See* Reseller sales verification report at 6. However, as we note on the previous page, "Reseller clarified that the original supplier's identification is traceable, but is not vital to its own needs." Id. at 5. Further, we found at verification that, notwithstanding the Reseller's protestations, in many cases it was possible through a rudimentary search of the Reseller's existing computerized records to identify the supplier. As petitioners note, of seven "unidentified supplier" transactions sampled at verification, we were able to trace immediately the outside supplier for three of these using nothing more than a personal computer in the Reseller's offices. *See* Reseller sales verification report at 10.

Section 776(b) of the Act specifies that if the Department concludes that an interested party failed to act to the best of its ability to comply with a request for information, the Department "may make an inference that is adverse to the interests of that party in selecting among the facts otherwise available." As noted above, we have determined that the use of facts available is appropriate for the sales and further-manufacturing data submitted by the Reseller. As for the unidentified body of sales, the Department also finds that the available computer records would allow the Reseller to trace with facility the supplier for nearly half of the sample transactions selected at verification. Had the Reseller made full use of its readily-available computer data, the effort required to identify the manufacturer for the remaining transactions would have been substantially less, thus largely attenuating the "enormous amount of work" involved in manual tracing "* * * through several layers of internal paper transactions, inventory records, and sales records." Mexinox's Rebuttal Brief at 12. Accordingly, we find that the Reseller did not act to the best of its ability in compiling information essential to our analysis, such as the identity of the supplying mill, and thus the use of adverse facts available is appropriate.

In selecting the appropriate facts available, we find that there is no record support for Mexinox's proposal that we allocate a portion of the unidentified-supplier sales to Mexinox based on the percentage of the Reseller's sales that is known to have been supplied by Mexinox; this approach would still result in the Department's disregarding over half of the unidentified-supplier transactions without any justification in the record. First, since by Mexinox's own admission some portion of the unidentified sales were supplied by Mexinox, the resulting percentage of merchandise identified as being of

Mexican origin is understated. In addition, we have no means of conducting an independent evaluation of this large body of sales to determine whether the patterns found for the identified universe of transactions would hold true for merchandise which, obviously, moved in different channels of distribution (*e.g.*, through its transfer between or among the Reseller's locations). Thus, for purposes of this final determination we have adopted a variant of Mexinox's proposal. As an adverse inference, we are treating all of the unidentified merchandise as having originated with one of the three respondent firms in the concurrent investigations, rather than assuming that some of it may have originated from a producer other than AST, KTN, or Mexinox. To apportion the unidentified sales among the three investigations we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of the Reseller's merchandise supplied by each of the three respondents' mills. We have then applied a facts-available margin to these transactions, as explained above in response to Comment 6.

Comment 8: Classification of U.S. Sales as EP or CEP

Petitioners argue that the Department should consider all of Mexinox's U.S. sales involving Mexinox USA as CEP sales, rather than EP sales. Mexinox reported two types of EP sales: Direct shipments (*i.e.*, sales of merchandise produced to the customer's order and shipped through Mexinox USA's Brownsville, Texas, facility directly to the unaffiliated U.S. customer without remaining in Mexinox USA's warehouse for longer than four days) and San Luis Potosi (SLP) stock sales (*i.e.*, sales of merchandise sold out of finished goods inventory held at the SLP factory and shipped through Mexinox USA's Brownsville, Texas, facility directly to the unaffiliated U.S. customer without remaining in Mexinox USA's warehouse for longer than four days). The record shows, petitioners state, that Mexinox's reported EP sales are virtually indistinguishable from its reported CEP sales.

Petitioners state that in evaluating sales made prior to importation, it is the Department's practice to evaluate:

1. Whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the physical inventory of the selling agent;
2. Whether direct shipment to the unaffiliated buyer is the customary channel for sales of subject merchandise between the parties involved; and
3. Whether the selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

Petitioners argue that Mexinox's reported EP sales clearly meet the first of these criteria because Mexinox freely acknowledges that for direct shipments, the merchandise "must pass through Mexinox USA's distribution facility in Brownsville (Texas) so that it can be transferred from the Mexican carrier to a U.S. carrier for further shipment." *See* Mexinox's section A response at A–16 (n.5). The same is true for Mexinox's sales of stock held in SLP. *See* section A response at A–17 (n.7). Thus, petitioners state, the first criterion is clearly met because the criterion contemplates only whether merchandise enters the affiliates' inventory, and not the length of time in inventory.

Petitioners argue that the second criterion is met inasmuch as there is no reason to conclude that shipment through Mexinox USA's Brownsville warehouse is anything but the customary channel of distribution for Mexinox's reported EP sales.

With respect to the third criterion, petitioners begin by stating that the Department has amplified its policy of evaluating the level of involvement of U.S. subsidiaries by determining that sales are appropriately classified as CEP sales where the U.S. subsidiary: (1) Was the importer of record and took title to the merchandise; (2) financed the relevant sales transactions; (3) arranged and paid for further processing; and (4) assumed the seller's risk. *See Certain Cold Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 51882, 51885 (October 4, 1996) (*Steel from Korea Preliminary Results*). These facts are significant, petitioners state, because for all of Mexinox's reported EP sales Mexinox USA:

- Was the importer of record;
- Took title to the merchandise;
- Warehoused the merchandise after importation;
- Invoiced the U.S. customer; and
- Collected payment.

For direct sales, petitioners state, Mexinox USA also negotiates directly with U.S. customers and takes purchase orders. Furthermore, petitioners argue that even though Mexinox USA did not report any further processing after its importation of the subject merchandise, Mexinox USA was responsible for other post-importation services such as arranging customs clearance and U.S. freight, and it also assumed the financial risk associated with its U.S. sales. For all of these reasons petitioners conclude that it is evident that Mexinox USA is not merely a "paper processor," but that it handles almost every aspect of making U.S. sales, and meets the criteria set forth in *Steel from Korea* with respect to its level of involvement in direct and SLP stock sales.

Moreover, petitioners claim that contrary to Mexinox's statement that price terms are ultimately set by management in Mexico, there is no evidence that Mexinox USA's invoice prices reflect prices initially approved by Mexinox. Even if the Department is convinced that Mexico sets U.S. prices, petitioners argue, the Department must also consider other forms of the affiliate's involvement, such as contact with the U.S. customer, contacting the factory to arrange production and shipment, and issuing the final invoice to, and collecting payment from, the customer.

Petitioners also argue that as a general guideline the Department should take the mere involvement of a U.S.-based subsidiary, particularly one comprised of a large staff that includes an active sales force, and billing and accounting staff, as a strong indication that the activity of the U.S. sales force must be significant. Otherwise a respondent would simply conduct operations from its home market. The degree of significance is determined by the per-unit amount of the indirect selling expenses. For example, a true paper-processing subsidiary would have an inexpensive office and a small, clerical staff with little more than telephone and facsimile equipment in order to communicate with the home office.

Therefore, petitioners argue, because of Mexinox USA's extensive involvement in the selling process, the Department should deduct the indirect selling and operating costs of Mexinox USA from the starting prices for all U.S. sales involving Mexinox USA. In the alternative, petitioners state that if the Department determines that Mexinox USA's role in the direct and SLP sales does not cross the CEP threshold, the Department must recalculate the reported indirect selling expense ratio to allocate it only to CEP sales (and not EP sales) by Mexinox USA.

Mexinox argues that the Department correctly determined that its direct shipment and SLP stock sales were EP sales. It bases this argument on the analysis of the three criteria identified by petitioners (cited above) that the Department uses in evaluating sales made prior to importation. Regarding the first criterion, Mexinox states that petitioners are factually incorrect in

saying that the direct shipment and SLP stock sale material enters Mexinox USA's inventory. It states that the Department verified through sample sales transactions the period of time between shipment to Brownsville and further shipment from Brownsville, and confirmed in each case that the period was less than four days. Mexinox also takes issue with petitioners' reading of the term "whether" as used in conjunction with the inventory prong of the Department's test for EP treatment. Petitioners' interpretation, Mexinox states, would mean that merchandise had been inventoried if it was physically on the premises of an affiliate for any length of time, presumably even for one minute. To be in an entity's inventory, Mexinox states, means the product must not merely be physically present on the premises, but must instead be considered part of the stock of the affiliate. As support for this distinction, Mexinox cites *Steel from Korea*, in which the Department said, "While in some cases certain merchandise sold by [the foreign producer] was entered into [the U.S. affiliate's] inventory, this merchandise was sold prior to the importation of the merchandise, but not from [the U.S. affiliate's] inventory." *See Steel from Korea*, 62 FR at 18439. This same distinction, Mexinox states, can be made with respect to Mexinox's sales at issue, where the material is not being sold out of Mexinox USA's general inventory, but rather directly from Mexinox's factory in SLP.

Mexinox also argues that petitioners' interpretation of what constitutes inventory also ignores the reasons why the material was brought to Mexinox USA's distribution facility in the first place. It cites a portion of its October 28, 1998 supplemental questionnaire response in which it says that it had no choice:

> All shipments from Mexinox's factory in Mexico must stop in Brownsville for at least some period of time to allow for transfer to a US truck. This is because the United States, contrary to its obligations under the North American Free Trade Agreement, refuses to allow Mexican trucks access to US border states. Therefore uninterrupted shipment of the material from Mexico to the US customer is a practical impossibility and an incidental stop-over in Brownsville is unavoidably part of the direct shipment process.

See Mexinox's October 28, 1998 submission at 6–7. Mexinox argues that the brief period (no longer than four days) during which direct shipment or SLP stock material may have been held in the Brownsville distribution facility did not transform the material into inventory as petitioners would have the Department believe.

Regarding the second criterion, Mexinox agrees with petitioners that shipment through Mexinox USA's Brownsville warehouse is the customary channel of distribution for Mexinox's direct and SLP stock sales.

Regarding the third criterion, Mexinox does not dispute that Mexinox USA performs the selling activities that petitioners cite (with the exception of warehousing), but insists that these selling activities are consistent with EP treatment. It states that the Court of International Trade (CIT) has on many occasions upheld EP (formerly purchase price (PP)) classification where the U.S. affiliate engaged in activities that were at least equal to or exceeded those alleged to be conducted by Mexinox USA:

- PP classification was upheld where the U.S. affiliate first shipped merchandise to independent warehouses whose cost was borne by the U.S. affiliate, the U.S. affiliate was the importer of record, the U.S. affiliate paid estimated antidumping duties on the merchandise, the U.S. affiliate retained title prior to sale to the unrelated U.S. party, and the U.S. affiliate received commissions for its role in the transactions. *Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379–80 (Ct. Int'l. Trade 1993), *appeal after remand dismissed*, 850 F. Supp. 16 (Ct. Intl. Trade 1994).
- PP classification was upheld where the U.S. affiliate received purchase orders and invoiced the related customer, the U.S. affiliate was invoiced for and directly paid the shipping company for movement charges, the U.S. affiliate occasionally warehoused, at its own expense, and the U.S. affiliate received a substantial mark-up over the price at which it purchased from the exporter. *E.I. DuPont de Nemours & Co.* v. *United States*, 841 F. Supp. 1237, 1248–50 (Ct. Int'l. Trade 1993).
- PP classification was upheld where the U.S. affiliate invoiced customers, collected payments, acted as the importer of record, paid customs duties, and may have taken title to the goods when they arrived in the United States. *Zenith Electronics Corp.* v. *United States*, 18 CIT 870, 873–74 (Ct. Intl. Trade 1994).
- PP classification was upheld where the U.S. affiliate processed the purchase order, performed invoicing, collected payments, arranged U.S. transportation, and served as the importer of record. *Independent Radionic Workers* v. *United States*, CIT Slip Op. No. 94–45 (Ct. Int'l Trade 1995).

Furthermore, Mexinox argues that while these cases all pre-date the URAA, the SAA states that "no change is intended in the circumstances under which export price versus constructed export price are used." *See SAA* at 152–53.

Mexinox also disagrees with petitioners that Mexinox USA's selling activity in connection with these transactions "meets the criteria set forth in *Steel from Korea*." It argues that the preliminary determination notice in that case classified as CEP only a sub-category of the respondent's sales "where the merchandise was further processed by an outside contractor in the United States." *See Steel from Korea Preliminary Results*, 61 FR at 51885. Furthermore, in the final results in that case, the Department refused to extend CEP treatment to any of the other transactions, even though the U.S. affiliate's activities went beyond what petitioners would presumably deem acceptable for EP treatment. The Department stated:

> "UA's (U.S. affiliate's) role, for example, in extending credit to U.S. customers, processing of certain warranty claims, limited advertising, processing of import documents, and payment of cash deposits on antidumping and countervailing duties, appears to be consistent with purchase-price classification. These selling services as an agent on behalf of the foreign producer are thus a relocation of routine selling functions from Korea to the United States. In other words, we determine that UA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales."

See Steel from Korea, 62 FR at 18439. Mexinox states that with the exception of a set of sales identified on the first day of verification (which Mexinox admits are CEP), no products were further-processed in the United States. Thus, Mexinox argues, Mexinox USA's activities do not meet the criteria laid out in *Steel from Korea*.

Mexinox also disputes petitioners' contention that there is no evidence that price terms for U.S. sales are set by management in Mexico. It cites the sales verification report, which states, "In both markets the final price paid is the "price in effect," at the time of shipment. The "price in effect" is a customer-specific price determined by the commercial director based on prevailing market prices, and is negotiated with each customer." *See* Mexinox sales verification report at 6. Mexinox states that the commercial director referred to is a Mexinox official located in SLP. Mexinox also contests petitioners' attempt to downplay the significance of who sets the price,

stating that it is a very important factor, and in some cases has even been a decisive factor.

Mexinox also urges the Department to reject petitioners' argument that sales should be classified as CEP based on "mere involvement" of a U.S. affiliate in the U.S. sales process. It states that following this very restrictive approach would conflict directly with the Department's three-part test which it has consistently applied, with express judicial sanction, since 1987.

Finally, Mexinox disagrees with petitioners' argument that Mexinox USA's indirect selling expenses should be allocated solely to the reported CEP sales rather than to all U.S. sales handled by Mexinox USA. It states that Mexinox USA's indirect selling expenses relate to the affiliate's overall sales operations, and therefore cover expenses incurred by Mexinox USA in connection with both CEP and EP sales. Mexinox states that by allocating the indirect selling expenses only to CEP sales, as petitioners propose, the Department would overstate indirect selling expenses.

Department's Position: We disagree with petitioners that Mexinox's reported EP sales should be reclassified as CEP sales. We find that Mexinox's reported EP sales pass the Department's three-prong test for evaluating sales made through affiliates prior to importation. Regarding the first criterion, we agree with Mexinox that the circumstances under which the imported merchandise passes through Mexinox USA's facility en route to the ultimate customer justify a determination that the merchandise did not enter Mexinox USA's inventory within the meaning of the Department's three-prong test. As Mexinox points out, the Department in *Steel from Korea* drew a distinction between (1) merchandise sold prior to U.S. entry that subsequently entered the inventory of the U.S. affiliate and (2) merchandise sold from the U.S. affiliate's inventory. We stated, "While in some cases certain merchandise sold by [the foreign producer] was entered into [the U.S. affiliate's] inventory, this merchandise was sold prior to the importation of the merchandise, but not from [the U.S. affiliate's] inventory." *See Steel from Korea*, 62 FR at 18439. Where, as here, the merchandise (sold prior to importation) was situated at Mexinox USA's facility for the period of no more than four days and only for the necessary purpose of transferring to other trucks, we determine that the merchandise was not sold from the inventory of the U.S. affiliate.

Regarding the second criterion, no party has disputed that this channel was Mexinox's customary channel of distribution for its U.S. sales.

Regarding the third criterion, we agree with Mexinox that Mexinox USA's selling activities are comparable to those that have been upheld by the courts as consistent with EP treatment. Therefore, Mexinox USA's performance of these activities do not compel CEP classification for the sales at issue. Furthermore, our verification uncovered no evidence that conflicts with Mexinox's claims that the sales were made in Mexico, and petitioners have cited to none. Moreover, we agree with Mexinox that the facts of *Steel from Korea* differ from those present here in that in *Steel from Korea* the affiliate arranged for further manufacturing, whereas here no further manufacturing is performed for the sales at issue. For these reasons we have not reclassified Mexinox's EP sales in this final determination.

Finally, we disagree with petitioners that all of Mexinox USA's reported indirect selling expenses should be attributed to CEP sales. Although we have determined that the direct sales and SLP stock sales are appropriately classified as EP sales, they do pass through Mexinox USA's facility and Mexinox USA performs some selling activities in connection with them. Therefore, it is appropriate that we allocate a proportionate share of indirect selling expenses to them.

Comment 9: Level of Trade

Petitioners argue that the Department erred in its *Preliminary Determination* with respect to level of trade (LOT). In the *Preliminary Determination*, the Department determined that there was one LOT in the home market, that there were two LOTs in the U.S. market (corresponding to the EP and CEP sales channels), and that Mexinox's sales to its home market customers were at a LOT that was different and at a more advanced stage of distribution than were its sales to its affiliated customers in the United States (*i.e.*, Mexinox USA, the Reseller, and the Krupp affiliate). Based on these determinations, it made a CEP offset for Mexinox's CEP sales in accordance with section 773(a)(7)(B) of the Act. Petitioners argue that there is only one LOT in the United States, and that it is more advanced than the home market LOT. Thus, they argue, no CEP offset is warranted. Furthermore, they argue that the Department should find that the sales to the Reseller and the Krupp affiliate are at the same LOT as Mexinox's EP sales because Mexinox did not even attempt to distinguish them as separate LOTs as it did for its CEP sales to Mexinox USA.

Petitioners argue first that the list of selling activities Mexinox submitted to support its LOT adjustment claim exaggerates and distorts the activities, resulting in the creation of different LOTs where none exist. Specifically, they argue that Mexinox's list of seventeen selling activities should be condensed into a list of only seven activities. They argue:

1. The first four activities on Mexinox's list (pre-sales technical assistance, sample analysis, prototypes and trial lots, and continuous technical assistance) really are only one activity, technical assistance.
2. The next two activities (negotiating prices and processing customer orders) are really not properly included in the analysis because anyone selling a product performs these activities for all customers, regardless of market or affiliation.
3. The next two activities (inventory maintenance and just-in-time delivery) are both essentially the same service.
4. Two other activities (arranging freight services and shipment of small packages) should also be considered the same activity.
5. The next two activities (making sales calls and traveling internationally) are the same activity.
6. The "further processing" activity is a manufacturing activity and thus not properly included as a selling activity. Moreover, to the extent that it entails cutting to length, such activity is not even related to the sale of subject merchandise.
7. The credit and collection activity is an activity that companies selling products routinely engage in with respect to most, if not all, customers and thus is not properly included in an LOT analysis.
8. The last three activities (accepting currency risk, warranting merchandise, and accepting low-volume orders) can be considered distinct selling activities.

Thus, the list of selling activities, as condensed by petitioners, amounts to:

1. Technical service.
2. Inventory maintenance.
3. Freight services.
4. Sales calls.
5. Currency risks.
6. Warranties.
7. Low-volume orders.

With regard to technical service, petitioners argue that although Mexinox purports to provide lower levels of technical service for most U.S. channels, the nature of manufacturing the subject merchandise requires uniformly high quality levels. Furthermore, petitioners state that evidence on the record (not susceptible to public summary) demonstrates that Mexinox affords

technical services directly or indirectly to both domestic and U.S. customers.

With respect to inventory maintenance and freight services, petitioners argue that evidence on the record (not susceptible to public summary) demonstrates that these activities are equally pertinent to both EP sales and Mexinox's CEP sales to Mexinox USA.

With respect to sales calls, petitioners point out that Mexinox has stated that "this selling activity does not apply to the CEP transaction between Mexinox and Mexinox USA." *See* section A response at attachment A–4. Petitioners argue that the Department should not accept a representation that Mexinox does not need to be in contact with Mexinox USA because it is not plausible that Mexinox does not make telephonic and personal sales calls to Mexinox USA as it would with any other large customer.

With respect to currency risks (a selling activity Mexinox associates only with home market sales, and not U.S. sales), petitioners argue that currency risk is normally associated with export sales, and not home market sales. Further more, during the POI the peso was remarkably steady. Thus, petitioners state, if this activity is a factor at all, it should be attributed to EP and CEP sales, but not to home market sales.

Finally, with respect to warranty claims, petitioners argue that there is evidence on the record that Mexinox, not Mexinox USA, handles warranty claims. Furthermore, they argue that examination of Mexinox USA's itemization of selling expenses reflects nothing that would indicate that it handles this activity.

Based on the above analysis, petitioners conclude that Mexinox clearly engages in the same type of selling activities in its dealings with Mexinox USA as it does with home market and U.S. EP customers. The only selling activity that petitioners recognize as being different between the U.S. and home markets is the acceptance of low-volume orders in the home market.

Moreover, petitioners argue that the Department's preliminary determination with respect to this issue yields the implausible conclusion that every transaction between Mexinox and a customer in North America was at the same LOT except for Mexinox's transactions with its affiliated reseller. It is inconsistent for the Department to find that, on the one hand, sales to home market customers and EP sales to U.S. customers are at the same LOT but, on the other hand, that the EP sales that the Department has constructed using its CEP sales method (*i.e.*, the sales between Mexinox and Mexinox USA) are not at the same LOT as the "regular" EP sales. The construction of hypothetical EP prices to Mexinox USA should, petitioners believe, make the CEP and EP transactions comparable and representative of the same LOT.

Finally, petitioners argue that, in the alternative, if the Department continues to grant a CEP offset, it should correct the offset calculation which, they allege, contains three errors. First, petitioners claim that in calculating indirect selling expenses incurred in the United States, the Department incorrectly included expenses that Mexinox incurred in the home market. Second, the CEP offset should be the lesser of either: (1) The sum of home market indirect selling expenses (excluding inventory carrying costs (ICC)) and home market commissions or (2) U.S. ICC and indirect selling expenses. In the Department's calculation, the offset was the lesser of either (1) the sum of home market indirect selling expenses (excluding ICC) and home market commissions or (2) the sum of home market and U.S. ICC and home market and U.S. indirect selling expenses. Finally, petitioners argue, the Department failed to ensure that the combined amount of the deduction for the CEP offset and deductions for the commission offset do not exceed total U.S. incurred indirect selling expenses (including ICC).

Mexinox argues that the Department was correct in its LOT determination and in granting a CEP offset to NV for the CEP LOT. It argues first that the petitioners' arguments are useless to the Department because their analysis focuses on the differences between EP and CEP LOTs, rather than the CEP LOT versus the home market LOT. It argues that it is this difference between the CEP LOT and the home market LOT that ultimately justifies the granting of a CEP offset.

Mexinox next argues that its home market sales are at a more advanced stage in marketing than its U.S. sales. Its argument centers on the central role that service centers play in its U.S. chain of distribution both for EP and CEP sales, as distinguished from its home market chain of distribution in which Mexinox sells to no service centers. The reason service centers are important, Mexinox argues, is that they function by acting as intermediaries between the mills and the larger community of specialized end users. To do so, Mexinox states, service centers tend to purchase large master coils from the mills and then further process the material to make it possible for end users to use them. Service centers also generally provide their customers with a package of individualized selling services (*e.g.*, just-in-time deliveries and other forms of inventory maintenance, technical advice, and flexible credit terms) that the foreign producer would otherwise be required to provide. Thus, selling to U.S. service centers allows Mexinox to concentrate on the production and sale of larger, higher-yield coils in standard grades, surface finishes, and dimensions, while the service center focuses on the next level of distribution to end-users. The sales to service centers encompass a smaller scope and intensity of selling activities precisely because the service center takes over the role of providing the specialized selling services that are requested by end users, such as flexible credit terms, pre-sale and post-sale technical advice, further processing, just-in-time delivery, and other specialized inventory requirements.

Furthermore, Mexinox argues that the Department has in the past recognized that sales to service centers represent a different and less advanced stage in the marketing process than sales to customers further downstream. Thus, in the preliminary determination of SSSS from the United Kingdom the Department explained that, "Normally, stages of marketing focus on whether sales are to service centers or end-users, in some instances taking into account whether or not sales are made through intermediate parties." *See SSSS from United Kingdom, Preliminary Determination of Sales at Less Than Fair Value*, 64 FR 85 (January 4, 1999). Similarly, in *Cold-Rolled Carbon Steel Flat Products from the Netherlands* the Department determined that home market sales to service centers and sales to end users constituted entirely different LOTs. *See Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Administrative Review*, 63 FR 13204 (March 18, 1998). Mexinox acknowledges that the details of these cases may differ from the present investigation, but states that the observations the Department made are all generally consistent with the circumstances relating to Mexinox's sales in the U.S. and Mexican markets. The essential characteristic of Mexinox's sales, it states, is that it sells directly *to* service centers in the U.S. market and *acts as* a service center in the home market.

Next, Mexinox argues that it performs far fewer selling functions in its CEP sales than it does in the home market where it acts as a service center. It states

that petitioners are correct that many of the selling activities that are associated with Mexinox's U.S. sales (whether EP or CEP) are carried out by Mexinox USA. However, to construct the CEP LOT, Mexinox states, all of these selling activities undertaken by Mexinox USA in the United States must be excluded in accordance with section 772(d)(1)(D) of the Act and 19 CFR § 351.412(c)(ii)(1998). When that is done, the CEP transactions between Mexinox and Mexinox USA involve relatively few selling functions at all. Essentially the only selling activities required in connection with the relevant transactions between the related parties is a low level of freight and delivery arrangements (via the same SLP-to-Brownsville trucking route) and order processing.

Next, Mexinox discusses its reported selling functions. Regarding its reported selling activity "small package size and low volume orders," Mexinox argues that this activity is fundamentally different in the home and U.S. markets. Because it sells to service centers in the United States, Mexinox states, it tends to sell larger coils in standard sizes, grades, and surface finishes which the service centers then cut. In the home market, Mexinox itself performs the service center function of cutting and slitting from master coils. Thus, the coils tend to be smaller. It also tends to sell in smaller lots, thus increasing the number of transactions and selling services required to be performed in the home market. Mexinox states that though arguably not a selling activity itself, average coil size is a compelling indicator both of the differences in selling functions performed by Mexinox as a home market service center and the intensity of those selling functions because many routine selling activities must be repeated for each transaction and therefore vary roughly in accordance with the number of transactions involved.

With respect to further processing, Mexinox disagrees with petitioners' argument that further processing is a manufacturing activity and thus not properly included as a selling activity. It states that the Department has recognized the relevance of further processing to the LOT analysis in other cases, including the *Preliminary Determination* of this case. It argues that further processing of this kind must be recognized and taken into account as an integral part of the distinct bundle of selling services offered by Mexinox in the home market but not the U.S. market.

With respect to technical services, Mexinox states that it provides no pre-sale technical analysis, sample analysis, prototypes and trial lots, or continuous technical service in connection with the CEP transactions between itself and Mexinox USA. Moreover, even if the Department were to look further downstream, the level of technical assistance provided in connection with U.S. sales is lower than in the home market. This is because service centers tend to buy large master coils in standard sizes, grades, and surface finishes, often without a specific end user in mind, thus limiting the need for pre- and post-sale technical assistance, sample analysis, prototypes, or continuous technical assistance. Furthermore, when a downstream customer does seek technical assistance, it naturally turns first to the party that sold the material to him, which in this case is the service center and not Mexinox. Mexinox states that the opposite situation exists in the home market because Mexinox itself serves as the service center.

With respect to inventory maintenance and just-in-time deliveries, Mexinox argues that it provides no inventory maintenance or just-in-time delivery services in connection with the CEP transactions between itself and Mexinox USA. However, in keeping with its function as a service center in the home market, it offers a wide variety of inventory maintenance and just-in-time delivery services for home market customers.

With respect to freight and delivery services, Mexinox states that the intensity of this activity is extremely low in connection with the CEP sales between itself and Mexinox USA because freight is exclusively limited to consolidated shipments over a single route between the factory in SLP and the distribution point in Brownsville, Texas. In contrast, freight arrangements in the home market involve smaller volumes and more frequent and varied deliveries from Mexinox's mill in SLP and from the various remote warehouses located throughout Mexico.

With respect to the order processing, credit, and collection, Mexinox states that in connection with the CEP transactions between Mexinox and Mexinox USA, these activities are essentially automatic and risk free. Moreover, such order processing essentially involves a single point of contact for all sales. In contrast, Mexinox argues, the transactions at issue involve handling a full range of unaffiliated customers. Furthermore, because individual transaction volumes are smaller, the level of such activities is much higher on a per-ton basis in the home market than in the United States.

With respect to price negotiation and sales calls, Mexinox states that these activities are logically more frequent in the home market because of the higher number and smaller per-transaction volume of sales in the home market.

With respect to currency risk, Mexinox argues that petitioners have failed to properly evaluate the currency risk which Mexinox faces in selling stainless steel in the United States. All home market sales during the POI were in Mexican pesos. Therefore, because Mexinox extends credit to its home market customers, Mexinox assumes all currency risks associated with the peso during the credit period. Furthermore, Mexinox argues that contrary to the petitioners' comments, the peso was not remarkably stable during the POI, but instead depreciated 7.6 percent against the dollar between April 1, 1997 and March 31, 1998.

Based on the above analysis, Mexinox states that the CEP LOT involves fewer and different selling functions and is less advanced than the home market LOT. Accordingly, the Department is required, if possible, to make a LOT adjustment when matching CEP to NV. Because there is only one LOT in the home market and it is therefore not possible to quantify a LOT adjustment, Mexinox states, the Department should grant a CEP offset.

Finally, Mexinox disagrees with petitioners' contention that the Reseller and the Krupp affiliate should be deemed to be at the same LOT as EP sales. First, if the Department determines to use the resale prices from these entities in its analysis, there is no question that such sales are properly classified as CEP transactions because the relevant sales were made after importation. Second, because these sales are CEP transactions, the Department is required to exclude all selling functions carried out in the United States by both the reseller and Mexinox USA in determining the constructed LOT for these sales. Accordingly, under the Department's standard analysis, Mexinox states, selling functions associated with sales by these resellers and Mexinox USA must be backed out until all that is left is the bare transaction made between Mexinox and Mexinox USA. The LOT and the LOT analysis for these sales is exactly the same as for other CEP transactions, and a CEP adjustment is also justified for these sales.

Department's Position: After careful review of the facts on the record, we have determined not to change our preliminary determination with respect to LOT. We agree with petitioners that some of the seventeen selling activities

that Mexinox reported could legitimately be collapsed, resulting in a shorter list of activities. Furthermore, some of the reported selling activities raise questions, and some more strongly support our determination than others.

Nevertheless, we find that taken collectively the selling activities Mexinox reported and the way it performs these activities in the two markets support a finding that there is one LOT in the home market and two LOTs in the U.S. market. We also find that the EP and home market sales channels represent one stage of marketing and the U.S. CEP channel represents another, and that the home market LOT is more advanced than the CEP LOT. In its section A response, Mexinox provided the information that some activities are not performed or are performed at a low level of intensity with respect to the CEP transactions between itself and Mexinox USA (*e.g.*, technical services, inventory maintenance, just-in-time delivery). *See* Mexinox's section A response, exhibit A–4 and its April 5, 1999 Rebuttal Brief, attachment 1. Petitioners have put no information on the record to rebut Mexinox's representations.

Furthermore, because of the smaller lots sold in the home market, we find that the home market order processing, price negotiation, and payment collection activities would be more expensive on a per-unit basis than for the CEP sales between Mexinox and Mexinox USA, and thus reflect a more advanced stage of marketing. Moreover, we agree with Mexinox that the freight and delivery service activity would likely be more routine in the CEP transactions between Mexinox and Mexinox USA than between Mexinox and its customers throughout Mexico, and thus also reflects a less advanced stage of marketing. Similarly, while petitioners are doubtless correct that Mexinox does make telephone calls to Mexinox USA, such calls between a parent and its foreign subsidiary are likely more routine than calls between a parent and its numerous unaffiliated home market customers. Further, we agree with Mexinox that the peso did decline by approximately 7.6 percent during the POI, and that therefore the peso was not, as petitioners have alleged, "remarkably steady." Thus, Mexinox did incur some currency risk in the home market during the POI. For these reasons, we determine that there is no basis in the record for departing from our LOT determination as set forth in the *Preliminary Determination* and, thus, we have not changed it for this final determination.

Furthermore, we agree with Mexinox that because the sales to the U.S. Krupp affiliate are CEP transactions sold through Mexinox USA, the relevant sales transactions we must examine in determining the correct LOT are those between Mexinox and Mexinox USA. There is therefore no reason to treat these sales differently than any other of Mexinox's CEP transactions. Therefore, in our calculations for the final determination we have continued to make a CEP offset for the sales to the U.S. Krupp affiliate as well as Mexinox's other CEP sales. With respect to the Reseller this question is moot because we have used total facts available.

Finally, we agree with petitioners that the CEP offset calculation in the *Preliminary Determination* should be corrected for the three stated errors. We have done so in this final determination.

Comment 10: Downstream Home Market Sales

Petitioners argue that the Department should never exclude from its analysis sales made through affiliated resellers (downstream sales) in the home market. (In the *Preliminary Determination* the Department did not require Mexinox to report its downstream sales in the home market because the sales to the affiliated resellers all passed the Department's arm's-length test.) Such a practice is bad policy, petitioners argue, because it invites the affiliate to mark up its resale prices and thereby mask true dumping. Furthermore, they argue that since the Department's arm's-length test is only applied to those particular products that were sold to unaffiliated parties, a respondent may wholly exclude high-priced home market sales from the Department's dumping analysis by selling them only through an affiliate. Petitioners stress that even small quantities can have an enormous impact that is completely disproportionate to their relative quantity because they may represent the sales that would be matched to U.S. sales in a LTFV analysis. Additionally, petitioners state that the existence of potential matches (even identical matches) among sales to non-affiliates is not necessarily of use because such sales may prove either unuseable by virtue of being outside the ordinary course of trade (*e.g.*, below cost) and thus not under consideration in the LTFV analysis, or otherwise unrepresentative, particularly if they are below prices that a reseller is charging to its unaffiliated customers. For these reasons, petitioners argue that the Department should state for the record that its policy in the future, particularly for any administrative reviews of any order in this proceeding, will be to require the reporting of all downstream sales by affiliated home market customers.

Mexinox disagrees with the petitioners' argument, but prefaces its counter-argument by stating that the appropriate forum for the petitioners' advisory comment is the rule-making process and not an antidumping investigation. In any event, it argues that for two reasons the petitioners' proposal cannot be sustained. First, it argues that the Department does not have the authority to completely ignore section 351.403(d) of the Department's regulations, as petitioners have recommended, and that even if the Department agreed with the petitioners, it would be obligated to follow lawful administrative procedure to formally amend or repeal this section of its regulations.

Second, Mexinox claims that the Department's downstream sales reporting requirements, and the arm's-length test in particular, already deal effectively with petitioners' concerns. It states that if it were to sell to affiliates at artificially lowered prices in order to manipulate the dumping margins, those sales would fail the arm's-length test. Therefore, it argues, even if the petitioners can contrive an implausible scenario in which the affiliated party purchasing at arm's length could resell the merchandise at an even higher profit in a downstream sale, the fact remains that sales to the affiliates that pass the stringent arm's-length test would be completely reliable for the purpose of determining NV.

Department's Position: We agree with Mexinox that the appropriate context for the petitioners' comment is the rule-making process. Furthermore, we will not use this final determination to promulgate announcements on reporting requirements for possible future segments of this proceeding. Such requirements are determined on a case-by-case basis based on the facts of each administrative review.

In the preliminary determination of this investigation we performed an arm's-length test in accordance with 19 CFR § 351.403(d). We found that all of Mexinox's home market sales to affiliated resellers were made at arm's-length prices. *See* the Department's preliminary determination analysis memorandum, dated December 17, 1998, p. 12, and the *Preliminary Determination* at 129. For this final determination we performed the same arm's-length test, and found the same results. Therefore, we have not required Mexinox to report its downstream home market sales.

Comment 11: Arm's-Length Test

Petitioners argue that for this and future proceedings the Department should permanently revise its arm's-length test by comparing all prices to affiliates against prices charged to unaffiliated customers. The Department's current practice, petitioners state, is to test only prices for which identical products were also sold to unaffiliated customers, and then to apply the result to all sales to the affiliate. This "identicals-only" arms-length test, petitioners state, was developed before the Department began running its own model match concordance program. They argue that in light of the Department's now longstanding practice of itself determining all product matches for the antidumping analysis, there is no technical obstacle or policy reason preventing the Department from applying the same method in the arm's-length test. In other words, the Department should analyze all models sold to affiliates, whether or not matched to identical models sold to unaffiliated parties. Petitioners state that doing so would reduce the risk of a manipulated arm's-length test result that in turn would distort the margin analysis.

Mexinox states that the burden of proof rests with the petitioners to demonstrate to the Department that the arm's-length test has been manipulated or is in some way distorting the margin analysis of this investigation, and that the petitioners have failed in this regard. Respondent states that where petitioners fail to support assertions against the arm's-length test, the Department's practice is to maintain its position and use of the arm's-length test method. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, and *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review and Termination in Part*, 63 FR 20585 (April 27, 1998) (*Tapered Roller Bearings*). Mexinox also states that courts have consistently supported the Department in its defense of the arm's-length test. Thus, in *Tapered Roller Bearings*, when presented with lack of evidence of any distortion of price comparability, the CIT found the application of the Department's arm's-length test reasonable. *See Tapered Roller Bearings*, 63 FR at 20592. Thus, Mexinox argues that the Department should decline to consider modifications to the arm's-length test given that petitioners cannot point to any information on the record to suggest that the arm's-length test is distortive and unreasonable.

Department's Position: We disagree with petitioners. Without a match of an identical product sold to an unaffiliated party, the Department has nothing against which to test the sale to the affiliated party. Thus, to implement the petitioners' suggestion, we would have to conduct the arms'-length test using similar, rather than identical, merchandise. Doing so would result in a less accurate measure of the effect of affiliation on pricing. In the absence of any evidence that the present arms'-length test is distortive, for our purposes of determining comparability within the meaning of 19 CFR § 351.403(d), we would have no reason to implement a new method that could result in a less accurate result.

Comment 12: Date of Sale

Petitioners argue that the Department erred in the *Preliminary Determination* by using the invoice date, rather than the contract or change order date, as the date of sale. They argue that although the regulations state that the Department will normally use the date of invoice as the date of sale (*see* 19 CFR § 351.401(i)), the evidence of record in this case supports the use of the date of order confirmation or change order as the date of sale. They cite the final results of review of circular welded non-alloy steel pipe from the Republic of Korea as support. There, the Department articulated that it evaluates the correct date of sale selection on a case-by-case basis in light of all relevant facts. The Department stated, "* * * while we agree with the respondents that the Department prefers to use invoice date as the date of sale, we are mindful that this preference does not require the use of invoice date if the facts of a case indicate a different date better reflects the time at which the material terms of sale were established." *See Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 63 FR 32833 (June 16, 1998) (*Pipe from Korea*). Based on the facts of that case, the Department used invoice date as the date of sale in the home market and contract date as the date of sale in the U.S. market (except for CEP sales made out of inventory) because:

1. Sales in the home market were typically out of inventory with the purchase order/contract, invoice, and shipment dates all occurring within a relatively short period of time. In contrast, U.S. sales terms were set on the contract date and any subsequent changes were usually immaterial in nature or, if material, rarely occurred.

2. Due to the made-to-order nature of U.S. transactions, there was a very long period of time between the contract date and the subsequent shipment and invoicing of the sale.

3. There was no information on the record indicating that the material terms of sale changed frequently enough between contract date and invoice date on U.S. sales to give both buyers and sellers any expectation that the final terms would differ from those agreed to in the contract.

The Department explained:

> As can be seen from the foregoing, "invoice" dates in both markets, while the same in name, are materially quite different for purposes of determining price discrimination simply because the sales processes for the two markets are quite different. If we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to U.S. sales whose material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand.

See Pipe from Korea, 63 FR at 32836.

Petitioners argue that the facts in the instant investigation parallel the facts in *Pipe from Korea*, particularly for those sales Mexinox reported as EP direct sales, in that sales tend to be on a made-to-order basis, and there can be a long period of time between the contract date and the date of shipment and invoicing. Moreover, some changes in quantity are usually envisioned by the sales contract, and the parties are free to divide orders over more than one shipment; hence, changes in quantity do not necessarily give rise to changes in the agreed price (and a new "sale"). Accordingly, petitioners argue, the Department should use the date of order confirmation (or the date of any subsequent change order) as the date of sale.

Mexinox argues against the use of order date for the date of sale in both markets, and states that the petitioners ignore factual information verified by the Department regarding the frequency of changes in price and quantity between order and invoice date. It cites Department regulations (19 CFR § 351.401(i)) which support the use of invoice date as the presumptive date of sale unless the record evidence demonstrates that the material terms of sale, *i.e.*, price and quantity, are established on a different date. Furthermore, Mexinox argues that petitioners have not provided evidence in support of their position, other than the unsubstantiated claim that the case

parallels the facts in *Pipe from Korea*. Mexinox states that these two antidumping cases differ in the sense that in the present case, the Department extensively verified that in both markets price and quantity were subject to change up until the date of invoice and frequently did change during the POI. Moreover, Mexinox disagrees with petitioners' comment that "changes in quantity do not necessarily give rise to changes in agreed price (and a 'new sale')," stating that if petitioners are suggesting that a material change in quantities exceeding the normal +/−10 percent delivery tolerance does not change the date of sale, they are arguing for new law. Mexinox claims that it has submitted documents on the administrative record in this case pertaining to this issue, and that the minuscule number of sales in which the order date terms of sale remain intact is overwhelmed by the large number of verified instances where the final terms of sale were not established until the invoice date.

Department's Position: We agree with Mexinox that petitioners have not provided a compelling reason to deviate from our practice of using the invoice date as the date of sale, as established by our regulations. *See* 19 CFR § 351.401(i). In this investigation there is evidence on the record that in a significant number of instances there are changes to the material sales terms of price or quantity between the order date and the invoice date. *See* Mexinox's November 17, 1998 submission, p. 5. At the Mexinox sales verification, Mexinox substantiated this evidence and the Department noted no discrepancies. *See* Mexinox sales verification report, p. 6. Thus, in this case, unlike *Pipe from Korea*, there is information on the record indicating that material terms of sale changed frequently enough between contract date and invoice date on U.S. sales to give both buyers and sellers the expectation that the final terms might differ from those agreed to in the contract. For this reason, we will not deviate from the regulatory presumption that the invoice date is the appropriate date of sale.

Comment 13: New Information Given at Verification

Petitioners argue that the Department should apply adverse facts available for a group of U.S. sales Mexinox did not report to the Department until the verification. Petitioners argue that it is the Department's longstanding policy not to accept the submission of new information at verification unless: (1) The need for that information was not evident previously, (2) that information makes minor corrections to information already on the record, or (3) that information corroborates, supports, or clarifies information already on the record. Because, petitioners argue, no party contends that the need to report these sales was not evident previously or that the information was to corroborate information already on the record, the only question is whether the disclosure of these sales constitutes minor correction to information already on the record. In petitioners' view, given the volume of sales at issue, the answer is no.

Furthermore, petitioners argue that the sheer number of transactions made it impossible for the Department to be sure that the information Mexinox provided was complete; thus, including the sales without penalty would be inappropriate because the information had not been verified. Additionally, petitioners state, there is an important principle at stake: Mexinox's failure to include these sales in the questionnaire response precluded the Department and petitioners from being able to engage in pre-verification analysis of a complete sales listing in order to focus efforts on areas of potential concern going into verification. The Department should send a message that withholding such information will not be tolerated no matter what the reason.

Mexinox disagrees with the petitioners' argument that adverse facts available should be applied to the unreported sales identified by Mexinox at verification. Respondent states that there is no basis to the petitioners' claim because: (1) Staff preparing the data submissions did not discover the coils at issue here until shortly before verification; (2) the unreported sales were relatively few and represented an insignificant proportion of Mexinox's overall sales; (3) the sales were voluntarily provided by Mexinox on the first day of verification; (4) the Department has in the past accepted new sales at verification even where the respondent failed to reveal them voluntarily at the start of verification (*see e.g., Disposable Pocket Lighters from the People's Republic of China; Final Determination of Sales at Less Than Fair Value*, 60 FR 22359 (May 5, 1995)) (*Pocket Lighters from China*). In fact, the Department's 1998 Antidumping Manual provides for the acceptance of new sales data on a case-by-case basis (Chapter 13 at 30); and, 5) four of the sales in question were successfully verified by the Department, contrary to petitioners' assertion that the information had not been verified.

Department's Position: We disagree with petitioners that the use of adverse facts available is warranted. We have no reason to believe that Mexinox intentionally withheld from the Department the sales at issue here. Mexinox provided them on the first day of verification and the volume of sales is very small as a percentage of Mexinox's total U.S. sales volume. Furthermore, the Department did verify four of the sales. Moreover, as in *Pocket Lighters from China*, "we are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI." *See Pocket Lighters from China*, 60 FR at 22365. For these reasons, we have determined not to resort to facts available for these sales, but to treat them the same as Mexinox's other reported sales.

Comment 14: Classification of Merchandise as "Non-Prime Merchandise'

Petitioners argue that the Department should treat all Mexinox's merchandise as prime unless it has been clearly shown to be defective. With respect to Mexinox, petitioners argue that Mexinox admitted at verification that its sidestrand designation (which, they state, Mexinox apparently equates with non-prime in some cases) had nothing to do with the physical characteristics of the merchandise, and was a function of whether the product in question had been made to order (in which case it was not labeled sidestrand). With respect to the Reseller, petitioners argue that the Reseller's verification showed that it designated some material as non-prime that it was simply trying to move from inventory. As with sidestrand, designating such material as non-prime is simply, in petitioners' view, a question of semantics rather than a true indicator of defectiveness. There is no physical difference, they state, between "prime merchandise," "seconds," "sidestrand," and "non-sidestrand" (at least the way Mexinox uses those terms). To allow such arbitrary distinctions into the dumping analysis, petitioners argue, would open the door for Mexinox to reduce its duty exposure simply by designating its low-priced U.S. sales as non-prime. Accordingly, petitioners argue that the Department should serve notice in its final determination that henceforth sidestrand with no defects must be considered prime merchandise for matching purposes. They also argue that to the extent the Department uses the sales by the Reseller, it should at a minimum reclassify as prime all of the Reseller's merchandise reported as seconds because verification revealed that most of the merchandise reported

as seconds was actually prime merchandise.

Mexinox disagrees with the petitioners and urges the Department to accept Mexinox's classification of sidestrands as secondary on the same basis as any other non-prime sales made by Mexinox. For the record, Mexinox does not agree that only products with defects in surface finish or chemistry should be classified as non-prime, citing that it is industry practice, based on real physical differences in the material, to classify sidestrands as non-prime material products. However, Mexinox claims that the petitioners' assertion that the Department should treat Mexinox's sidestand sales as prime unless the merchandise has been shown to be defective is a hollow argument since Mexinox in fact only graded sidestrands as second grade if they were defective, and that all other sidestrands were graded and sold as prime grade, as confirmed at verification. Respondent emphasizes that the non-prime merchandise in every transaction examined by the Department at verification was shown to have a physical defect.

Department's Position: With respect to the Reseller, the issue is moot because, as indicated above, we have applied total facts available to the Reseller's sales. With respect to Mexinox, we verified Mexinox's reporting of non-prime merchandise (including some examples of sidestrand non-prime merchandise) at the sales verification in SLP. We found no evidence that it misclassified any of its non-prime merchandise. *See* the Mexinox sales verification report, p. 8. Furthermore, petitioners have cited to no evidence that Mexinox misclassified any of its sidestrand merchandise.

Comment 15: Miscoding of Prime Merchandise

Petitioners argue the Department should correct the miscoding of Mexinox's SLP stock sales by assuming that all SLP stock sales were of prime merchandise.

Mexinox argues that petitioners cannot provide any evidence to illustrate why all SLP stock sales should be re-coded as prime products.

Department's Position: Evidence on the record indicates that some SLP stock sales were incorrectly reported as secondary merchandise rather than prime merchandise. *See* Mexinox sales verification exhibit 1, p. 1. However, we do not agree with petitioners that there is any need to assume that all SLP stock sales were prime merchandise. Instead, we have recoded the SLP stock sales in accordance with information Mexinox gave on its list of corrections on the first day of verification. *See* Mexinox sales verification exhibit 1, p. 1.

Comment 16: Duty Drawback

Petitioners argue that the Department should disallow Mexinox's claimed duty drawback adjustment. They base this argument on 19 USC § 1677a(c)(1)(B) (section 772(c)(1)(B) of the Act) which states that EP shall be increased by "the amount of any *import duties* imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the subject merchandise to the United States' (emphasis added). In its questionnaire response, Mexinox reported that "import duties on hot-rolled stainless steel into Mexico are 0%." *See* Mexinox's November 17, 1998 submission, p. 114. Petitioners state that the fee that Mexinox allegedly pays is not a duty, and thus should not be allowed as a drawback adjustment. They argue that if the Department does grant the adjustment, the reported adjustment should be corrected to reflect the amount that Mexinox's cost verification exhibit 16 demonstrates was the actual fee recorded by Mexinox.

Mexinox disagrees with the petitioners' assertion that the 0.8 percent fee paid by Mexinox is not a duty, and that the fee should thus not be allowed as a drawback adjustment under section 772(c)(1)(B) of the Act. In support of its position, Mexinox states that the U.S. Customs Service regulations define a duty as "Customs duties and any internal revenue taxes which attach upon importation" (19 CFR § 101.1 (1998)). Furthermore, the questionnaire issued in this investigation, in defining what is to be reported as the U.S. customs duty, specifically includes "the unit cost of the U.S. customs processing fee." Thus, Mexinox states, it is clearly the Department's practice to consider ad valorem fees such as these as duties for the purposes of duty drawback. Indeed, respondent states, the Mexican processing fee is analogous to the U.S. merchandise processing fee, which is considered part of U.S. duties. Moreover, Mexinox argues that the Department should allow its claimed duty drawback adjustment because such an adjustment is necessary to ensure a fair price comparison. Because this fee is levied only on home market sales, to include the fee in home market prices without adding a corresponding amount to the U.S. price pursuant to section 772(c)(1)(B) of the Act would violate the underlying objective of fair comparisons between NV and U.S. price.

Finally, Mexinox argues that petitioners erred in insinuating that Mexinox may have incorrectly overstated its adjustment. It states that the cost verification exhibit mentioned by the petitioners as containing an alternate standard processing fee actually relates to private customs brokers' fees, not the processing fees paid to the government.

Department's Position: We agree with Mexinox that the customs processing fees at issue qualify for a duty drawback adjustment. Mexinox claimed this adjustment under article 49 of the Mexican *Federal Law of Rights. See* Mexinox November 17, 1998 submission, p. 25. That statute refers to the customs processing fee at issue here as a "general importation tax." *See* Mexinox sales verification exhibit 36, p. S3032. As an "importation tax" it is an import duty within the meaning of section 772(c)(1)(B) of the Act. Therefore, in this final determination, as in the *Preliminary Determination*, we made a duty drawback adjustment.

Regarding the calculation of the adjustment, article 49 of the *Federal Law of Rights* indicates that the 0.8 percent rate that Mexinox used in its computation of the duty drawback adjustment was the correct rate. *See* Mexinox sales verification exhibit 36, p. S3032 and Mexinox's section C response, p. 73. Further, petitioners have cited to no information on the record to establish that the line item from cost verification exhibit 16 to which they refer can only be a fee paid to the government, and not customs brokers' fees as Mexinox asserts. In the absence of any evidence that Mexinox recorded its customs processing fees differently in its books than how it reported them to us in its duty drawback calculation, we have accepted Mexinox's calculation.

Comment 17: U.S. Brokerage

Petitioners argue that the Department should correct Mexinox's reported U.S. brokerage because, due to a rounding error discovered at verification, Mexinox's reported U.S. brokerage expense is overstated. *See* Mexinox sales verification report at 17.

Department's Position: We agree and have made this correction in this final determination.

Comment 18: Model Match

Petitioners argue that the Department should explain for the record the manner in which grades have been matched (*i.e.*, how the weights were assigned for the model match program). They state that the Department's matching should reflect an objective

selection process that can be applied if different grades become involved in any administrative review.

Mexinox agrees that the Department should disclose the manner in which goods are matched in the model match program.

Department's Position: We assigned individual weighting factors to reported grades provided they were recognized American Iron and Steel Institute (AISI) grades. We also assigned unique factors to reported proprietary grades or foreign grade specifications if the chemical content was sufficient to distinguish them from any AISI grade to which we already had assigned a ranking factor in our matching hierarchy (*e.g.*, DIN specification 1.4462). Where a proprietary or foreign grade specification was similar in chemical composition to an AISI grade, we did not assign a unique weighting factor to that particular grade. Rather, we assigned it the same weight as the comparable AISI grade. We also did not assign unique weights to certain "sub" grades (*e.g.*, 304DDQ) because the percentage ranges of chromium, carbon, nickel, and molybdenum do not differ from the broader AISI grade.

After deciding which grades to assign unique weighting factors, we established a linear weighting system designed to search for matches within the general classes of stainless steel (*e.g.*, the chromium-nickel series, the straight chromium (hardenable) series, and the straight chromium (non-hardenable) series). In addition to ensuring matches within the general classes or families of stainless steel, our weighting system is designed to match grades in the same family based on chemical composition. For example, within the chromium-nickel series, where an identical match is not possible, our preference is to pair grades containing molybdenum (*e.g.*, 316, 317) with each other before searching for a grade with no molybdenum (*e.g.*, 302, 304).

Comment 19: Business Proprietary Information

Petitioners argue that the names of Mexinox's home market and U.S. affiliated customers should be publicly released or at least be released under administrative protective order (APO). In the latter respect, they state, there is no clear and compelling need to withhold the names of these affiliated parties from APO disclosure. They argue that the record in this investigation shows that (1) the parties in question are affiliated distributors and not Mexinox's customers, and (2) the identities of these parties are not even proprietary, but have long been in the public domain.

Petitioners argue that in this investigation Mexinox's home market and U.S. affiliates do not constitute customers in the true sense of the word. Instead, they are affiliated distributors or resellers that form Mexinox's corporate chain of distribution. In contrast, actual customers are those unaffiliated companies that purchase subject merchandise. Petitioners argue that this distinction is especially clear with respect to Mexinox's activities in the United States because a respondent's affiliated U.S. resellers of merchandise are not considered *bona fide* customers of that respondent under the statute. Thus, whereas companies in the home market that purchase and consume foreign like product from an affiliated respondent can be treated as that respondent's customers if the sales are shown to have been at arm's-length, a respondent's affiliated parties in the United States are not treated as a respondent's customers, and sales by a respondent to its U.S. affiliated resellers are not subject to the arm's-length test. Therefore, petitioners argue, these U.S. affiliates are not customers for purposes of the statute whose identities can properly be withheld from disclosure.

Mexinox argues that the Department has already considered this issue and issued its determination in a December 4, 1998 letter in which it asked Mexinox to revise its earlier filings in this proceeding and to provide codes for all double-bracketed U.S. and home market customers that were, or were argued to be, affiliated with Mexinox. Mexinox complied with the Department's request and resubmitted its questionnaire responses on December 15, 1998, with codes that represent the identities of the allegedly affiliated customers. Given that the Act expressly allows respondents to protect customer names under APO (without regard to whether those customer are affiliated), Mexinox argues, the December 15, 1998 coded responses reflect a more detailed response than that to which the petitioners are entitled.

Furthermore, Mexinox argues that the petitioners' request that the Department order Mexinox to release the identification of all affiliated customers is incorrect as a matter of law. Section 777(c)(1)(A) of the Act provides that:

"Customer names obtained during any investigation which requires a determination under section 1671d(b) or 1673d(b) of this title may not be disclosed by the administering authority under protective order until either an order is published under section 1671e(a) or 1673e(a) of this title as a result of this investigation or the investigation is suspended or terminated."

See 19 U.S.C. § 1677f(c)(1)(A). Mexinox argues that there is no ambiguity in the language of this prohibition. There is no qualification, implied or express, of the right to non-disclosure of the word "customer." Any acquiescence in petitioners" request for disclosure of Mexinox's customer names by the Department, Mexinox argues, would therefore be contrary to the statute.

Furthermore, Mexinox argues that petitioners' argument that affiliated distributors are not *bona fide* customers under the statute is patent nonsense. Even if the entities at issue were determined to be affiliated distributors, they are also customers, and as such fall squarely within the protection of section 777(c)(1)(A) of the Act. Mexinox states that there is no definitional provision in either the Act or the Department's regulations that qualifies the common definition of the word "customer" or lends support to petitioners' claims that affiliated companies are not "customers" within the meaning of the statute.

Furthermore, Mexinox dismisses petitioners' circular argument that because the identities of Mexinox's customers are otherwise publicly known their identities as customers of Mexinox are not protected from disclosure. It states that it is not the existence of a company that is a customer that is protected from disclosure under 19 U.S.C. § 1677f(c)(1)(A) of the Act, but rather the fact that the company in question was, or is, a customer of Mexinox.

Finally, Mexinox argues that given the clarity of the law on the protection of customer names from APO disclosure, petitioners' repeated attempts to persuade the Department to violate the protection afforded to Mexinox's customers' identities under the statute approaches an abuse of the Department's processes. The participation of respondents in antidumping investigations, Mexinox states, was never intended as a means for petitioners to gain access to proprietary information to which they are not entitled. Petitioners' repeated demands that the Department require Mexinox to disclose its customer names, arguments that are not accompanied by citations to any legal authority or justified by any need, are not only baseless, but they have also proven to be extremely disruptive to the investigation procedure.

Department's Position: We disagree with petitioners. From the onset of this investigation, Mexinox has not released

the names of its affiliates in the U.S. or home markets under APO and, thus, has double-bracketed the names of its affiliates. On October 13, 1998, petitioners wrote the Department requesting that Mexinox be required to replace double-bracketed affiliated party names with affiliate codes that would permit the consistent and reliable tracking of affiliations throughout the investigation. On November 5, 1998, respondents in the SSSS from Germany, Italy, and Mexico investigations submitted a letter to the Department arguing that in accordance with section 777(c)(1)(A) of the Act, they should not be forced to disclose their customers to counsel for petitioners. In response, on November 12, 1998, petitioners submitted onto the record of the SSSS from Germany investigation documentation which it believed supported its assertions that the respondent had publically released its affiliates' names which it had double-bracketed for the instant proceeding. (Petitioners submitted this same document for the record of the SSSS from Mexico investigation on December 11, 1998.) After a thorough review of the record, on December 4, 1998, the Department issued a letter to Mexinox stating that "* * * we will permit the double bracketing of all customers in both the home market and U.S. market. We require however, that you code the affiliated customers in both markets."[6] On December 15, 1998, Mexinox submitted such coding. Further, on March 17, 1999, petitioners placed information on the record in support of a new argument that the identity of Mexinox's U.S. affiliates should be treated as public information.

Section 777(c)(1)(A) of the Act states that "[c]ustomer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of an investigation or the investigation is suspended or terminated." *See* 19 U.S.C. § 1677f(c)(1)(A). Further, section 351.304(a)(2)(i) of the Department's regulations states that the Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except customer names submitted in an investigation.

[6] See Letter from Ann Sebastian, Senior APO Specialist, to Hogan and Hartson, December 4, 1998.

Based on the statute and our regulations, we have concluded that Mexinox was entitled to withhold from release the names of its customers in the U.S. or home market under APO during this proceeding. We agree with respondent that it is not the company name in the sense of the company's existence that it is protected under the statute and the implementing regulation. Rather, it is the relationship of a respondent to that company as a customer of the respondent that is the protected information. This is the case regardless of whether the company in question is a customer in the U.S. market or in the home market. While petitioners provided voluminous submissions arguing that Mexinox's affiliates' names had been available publicly during the POI, due to the sensitive nature of this issue we have determined that the documentation does not demonstrate that they were indeed customers of Mexinox. Requiring Mexinox to release publicly such information without conclusive evidence could cause potential competitive harm to Mexinox. Further, it is important to note that as stated above, the Department instituted one of the petitioners' proposed methods by requiring Mexinox to provide codes for its affiliates which were then made part of the public record. Therefore, for this final determination we have not altered our treatment of respondents' customers' names.

Comment 20: Customs Classification

Petitioners argue that HTS subheading 9802.00.60 should be listed in the scope of the investigation. They argue that it is the Department's policy that antidumping duties apply to the full value of entries under subchapter 9802 of the HTS, covering U.S. goods exported and returned. To reduce the chance of errors by the U.S. Customs Service in implementing this policy and to ensure that full duties are collected, the Department, petitioners argue, should include in the instructions accompanying any antidumping order in this case clear statements that (1) subject merchandise may enter the United States under HTS subheading 9802.00.60 in addition to its regular HTS subheadings, (2) that such merchandise is covered by the order, and (3) that the antidumping duty deposit rate is to be applied to the full value of the merchandise (*i.e.*, including the U.S. value).

Mexinox opposes petitioners' recommendation for an amendment to the scope description as described above. Respondent acknowledges that it is possible for subject merchandise to enter under HTS 9802.00.60, but argues that such an amendment is more likely to create confusion and increase the likelihood of errors. Since any metal article from pipe to hubcaps that otherwise meets the requirements may be imported from Mexico under HTS 9802.00.60, if the Department includes this designation in the scope description and issues instructions to the U.S. Customs Service which include that tariff category, there is a significant risk that the Customs Service staff will inadvertently suspend liquidation of a whole range of non-subject articles from Mexico and disrupt legitimate trade.

Respondent also questions the need for such instructions when it is already not disputed that (1) any subject material will be entered concurrently under one of the previously listed tariff numbers and therefore will be already appropriately "flagged" by Customs, and (2) the tariff categories in any event are not themselves dispositive—only the written scope description is.

Department's Position: We agree with Mexinox that it is not necessary to amend the scope language on the HTS numbers under which subject merchandise enters. The U.S. Customs Service is aware through the identification system already in place that merchandise subject to antidumping duty orders may be entered under HTS 9802.00.60. It is also already aware through prior practice that the antidumping duty deposit rate is to be applied to the full value of the merchandise, including the U.S. value. As Mexinox has argued, to include petitioners' recommended language in the scope description and instructions to Customs could result in suspension of liquidation of non-subject merchandise. Therefore, we believe it unnecessary to amend the scope.

Issues Related to Cost

Comment 21: Major Inputs

The following comments relate to the cost of production of inputs received from Krupp KTN, Acerinox S.A. (Acerinox), and AST. (Both AST and KTN cost verification exhibits were submitted to the record for SSSS from Mexico on May 13, 1999.) Each of these companies provided black band and white band to Mexinox which is an input used in the production of subject merchandise. Both petitioners and the respondent provided comments on the proper treatment of the cost of these inputs.

(a) Arm's-length transfer prices.

Mexinox maintains that the transfer prices from affiliated parties KTN and

AST represent arm's-length prices and should be accepted by the Department.

Petitioners state that the transfer prices from affiliated parties do not represent arm's-length prices and the Department should apply its major input rule in valuing the inputs from affiliates.

Department's Position: We agree with petitioners that the reported transfer prices for these inputs between Mexinox and its affiliated suppliers were below market prices. Therefore, in accordance with section 773(f)(2) of the Act, we have used the higher of transfer price or market price in valuing these inputs.

(b) Inputs from Acerinox.

Petitioners state that Mexinox failed to report the actual COP data for inputs obtained from its affiliate Acerinox. Therefore, petitioners claim that the Department should resort to facts available to value these inputs and apply an adverse inference.

Mexinox states that it should not be penalized for its inability to obtain COP data from Acerinox.

Department's Position: We agree with the petitioners, in part, that the value of inputs received from Acerinox should be adjusted. While Mexinox was unable to supply the COP of this input, we do not consider purchases from Acerinox to be a major input in accordance with section 773(F)(3) of the Act due to the insignificant quantity obtained from Acerinox. For the final determination we have adjusted Acerinox's transfer price to reflect the higher market price in accordance with section 773(f)(2) of the Act.

(c) Inputs from KTN.

Petitioners argue that the reported COP for inputs obtained from KTN could not be substantiated. In calculating the COP of the inputs obtained from KTN, petitioners argue that the Department should adjust KTN's financial expense factor to include total foreign exchange losses and exclude total foreign exchange gains. Regarding G&A included in the COP of the inputs obtained from KTN, petitioners state that Mexinox has not supported its position that international project expenses and year-end adjustment for pensions and social expenses and accruals for legal liabilities were properly excluded from KTN's G&A expenses. Petitioners argue that these should be included in KTN's G&A ratio because these costs are recognized in KTN's financial statements.

Mexinox argues that the Department should not adjust KTN's financial expense factor to include foreign exchange losses and exclude total foreign exchange gains in calculating the COP of the inputs obtained from KTN. Mexinox states that it was cooperative and acted to the best of its ability to provide the information requested and that the Department should not make an adverse inference and exclude the exchange gains. Regarding G&A included in the COP of the inputs obtained from KTN, Mexinox argues that no adjustment should be made for international project expenses because these expenses are not related to the production and sale of subject merchandise. Mexinox argues that the accrual of severance payments was made for the anticipated downsizing of the company, but that these personnel are still employed and no severance payments have been made. Therefore, it argues, these expenses should also be excluded from KTN's G&A.

Additionally, Mexinox argues that its allocation of KTN's G&A (used in calculating KTN's COP) based on processing costs is correct. It maintains that the Department's regulations authorize discretion regarding allocation methods. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61736 (November 19, 1997). Mexinox argues that allocating G&A expenses based on total cost of manufacturing (COM) would overstate the per-ton G&A of control numbers (CONNUMs) with high COMs. Mexinox argues that the G&A activities performed by KTN for each category of merchandise is the same for each ton of steel and do not vary with the steel grade. However, they argue that it is reasonable to assign a higher G&A cost to a product that undergoes more processing.

Department's Position: We agree with the petitioners that the COP and CV for KTN are incorrect and require adjustment. In calculating the COP of the inputs received from KTN, we adjusted the submitted input cost to reflect KTN's adjustments to G&A. With regard to G&A included in the COP of the major input, we agree with petitioners that the costs associated with international projects and year-end adjustments should be included in the G&A because they relate to the operations of the company as a whole. Since emerging international projects are a normal part of KTN's business, we have included the related costs in KTN's G&A expense ratio calculation. Throughout the investigation we received conflicting reports as to the nature of the year-end adjustments. At verification we determined that the majority of KTN's year-end adjustments were for severance accruals. We consider severance costs to be expenses that relate to the general operation of a company as a whole and they directly affect the KTN world wide manufacturing scheme. By setting up a severance accrual, KTN is reasonably certain that it will make severance payments for workers currently employed by the company in the near future. These costs were recognized during the current year and directly relate to the company's current employees. Accordingly, we consider it appropriate to include these year-end adjustments in KTN's G&A calculation.

We disagree with petitioners' assertion regarding the financial expenses in the COP of the major inputs. Because all three entities are members of the same consolidated group, Fried. Krupp, we did not include the financial expenses in the COP of the inputs. If we included financial expenses in the COP build-up of the input and again in the COP or CV of the subject merchandise, we would double-count the financial expenses.

We agree with petitioners that KTN's G&A expenses should be allocated as a percentage of the total COM, as opposed to KTN's assertion that they should be allocated as a percentage of processing costs. As set forth in the Department's *Final Determination: Certain Carbon and Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994) and *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan* 61 FR 38139, 38149 (July 23, 1996) our normal method for allocating G&A expenses is to apply these types of costs as a percentage of total manufacturing cost (*i.e.*, materials, labor and overhead). We use this method in recognition of the fact that G&A expenses consist of a wide range of costs which are indirectly related to the production process and that any allocation based on a single factor (*e.g.*, processing costs) is purely speculative. The Department's normal method for allocating G&A costs based on the total manufacturing cost takes into account all production factors (i.e., materials, labor, and overhead) rather than a single arbitrarily chosen factor. By consistently allocating G&A over the total manufacturing costs, the Department attempts to minimize discriminatory cost allocations. In addition, G&A expenses are period costs, not product costs, and, as such, they should be spread proportionately over all merchandise produced in the period. By computing G&A based on a percentage of total manufacturing costs, a product absorbs the same proportional amount

of G&A expenses relative to its total cost. Therefore, this method avoids distortions to the price or cost analysis that would result if lower-cost products are overburdened with a higher percentage of processing costs.

(d) Inputs from AST.

Mexinox argues that the Department's claim that there was a discrepancy between the variable COM reported by AST for a particular grade of material (*see* Mexinox cost verification report, p. 22) is incorrect. Additionally, Mexinox states that the Department's claim, that AST's "variable COM percentage of standard" and the "fixed overhead percentage of DirLab and VOH" could not be supported (*see* Mexinox cost verification report, p. 22), is not valid. Mexinox states that it provided the support for the information in materials which, though presented to the Department at the cost verification, were not taken as exhibits.

Petitioners argue that the worksheet Mexinox included in its case brief (which Mexinox claims was presented at the verification) constitutes new, untimely information in violation of the Department's regulations, and it should be removed from the record. Moreover, they argue that the Department must uphold the principle that it, as arbiter, decides what information is to be included in the record and what conclusions are to be made following verification.

Department's Position: We determined that there was no discrepancy between the variable COM reported by AST at verification and the January 7, 1999 data submitted by Mexinox. Furthermore, we determined that the worksheet Mexinox used in support of its position does not constitute new, untimely information because all of the information contained in the worksheet can be linked to page S3883 of verification exhibit 33.

(e) Equalized costs.

Petitioners argue that the Department should reject Mexinox's contention that hot-band prices should be "equalized" to account for alleged differences in market conditions, and should continue to rely on the per-unit material costs recorded in Mexinox's accounting records. Petitioners state that *Certain Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42508 (August 7, 1997), (*POS Cookware from Mexico*), cited by Mexinox in support of its position, involved a comparison of the affiliated supplier's price to the respondents and to unaffiliated customers. Petitioners argue that in this case Mexinox did not provide this analysis for KTN, AST, and Acerinox.

Mexinox argues that if the Department decides to adjust Mexinox's material costs based on the major input rule, the Department should use "equalized" prices. According to Mexinox, using "equalized" prices is consistent with *POS Cookware from Mexico*.

Department's Position: We agree with Mexinox that an equalization adjustment should be applied in order to perform adequately a fair price comparison. That is, in making the comparison of transfer price to market price, we adjusted for differences in the specifics of the transactions between the affiliated and unaffiliated suppliers.

(f) COP for black band.

Petitioners argue that Mexinox failed to report the COP for one grade of black band from KTN.

Mexinox states that it did not withhold relevant cost information for one grade of black band. Mexinox states that it did not report this data because it did not purchase that particular grade of black band from KTN during the POI.

Department's Position: We found that Mexinox did not withhold relevant cost information for one grade of black band as alleged by the petitioners. Mexinox did not report this data because it did not purchase that particular grade of black band from affiliates during the POI.

Comment 22: Consulting Fees

Petitioners argue that Mexinox should increase its G&A expenses to include the administrative, consulting, and technical assistance provided by KTN.

Mexinox states that the KTN consulting fees are already included in Mexinox's reported G&A expenses. Accordingly, Mexinox argues that, if the Department accepts the petitioners' proposal, expenses would be double-counted.

Department's Position: We agree with Mexinox that the consulting fees were included in Mexinox's reported G&A, and as a result no adjustment is necessary.

Comment 23: Depreciation

Petitioners argue that Mexinox understated its depreciation expenses. They state that Mexinox's 1997 financial statement indicates that Mexinox revised its method of valuing assets and the estimated useful lives of assets during 1997. As a result, petitioners contend that the Department should apply the 1996 depreciation amount for the POI depreciation. Additionally, petitioners argue that if the Department excludes depreciation attributable to Tuberias ASPE from the numerator of the depreciation expense rate, the corresponding "transformation expenses" must also be removed from the denominator to ensure that the ratio is correct.

Mexinox argues that it did not under-report depreciation. It states that the petitioners were comparing the accumulated depreciation by year-end 1996 to the depreciation for 1997. Mexinox further argues that its reported depreciation is slightly overstated because it includes the depreciation for equipment located at Tuberias ASPE in its total depreciation amount.

Department's Position: We agree with Mexinox that its depreciation was reported correctly.

Petitioners were comparing the accumulated depreciation amounts, rather than the depreciation expense for 1996, to the depreciation for 1997. We disagree with petitioners' assessment that Mexinox changed the useful lives of assets and its method of valuing the assets. The footnote to the financial statements which petitioners referenced indicated that Mexican generally accepted accounting principles (GAAP) changed with respect to the method required to revalue assets to reflect the effects of inflation. It was not a change in the valuation of the assets. The change was to allow the application of an index rather than to require companies to have all assets appraised. We note that the footnote indicated that the prescribed GAAP method to determine the useful lives of assets changed as well. However, the useful life change is a prospective change and does not affect the useful lives of the assets already in service. Therefore, there is no need to adjust the reported depreciation.

Comment 24: Sludge Clean-up

Petitioners argue that reported costs should be increased by the amount accrued for the clean-up of old sludge. They argue that in its financial statements Mexinox spreads the cost of the sludge clean-up over three years, and the fact that the 1997 expense was accrued to adjust prior years' accruals is no reason to ignore the 1997 expense. Petitioners therefore contend that the increase in the 1997 accrual should be included in Mexinox's reported costs. Petitioners argue that the Department normally includes accrued amounts recognized in the financial statements in general corporate expenses as it did in the *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411, 31425 (June 9, 1998) (*Salmon from Chile*). Petitioners argue that Mexinox did not retroactively charge the sludge clean-up

expenses to periods dating back to 1978 but instead recorded a reserve shown in the 1996 financial statements and subsequent periods. Therefore, according to the petitioners, the increase to the reserve account which was recorded during the POI must be included in the G&A even if Mexinox did not spend the full amount.

Mexinox claims that there is no basis for an adjustment to the reported sludge clean-up costs. According to Mexinox, it properly excluded from the reported costs the increase in the reserve account shown on the income statement because the amount is a provision and not a period expense. Mexinox asserts that all clean-up expenses for current sludge generated were included in the reported costs. It argues that the increase in the reserve for clean-up is not an expense that was incurred during the POI, but instead is an accounting provision booked at the end of 1997 to account for the revised estimate of the clean-up expenses.

Department's Position: We agree with petitioners. These expenses relate to the clean-up of sludge generated from 1978 through the present time. Mexinox set up a reserve in 1996 to account for the sludge clean-up. Reserve accounting dictates that amounts expended for the clean-up are offset to the reserve account but not recognized as an expense during the year. Periodically, the reserve is replenished with any increase recognized as an expense on the income statement during the year. This expense amount is a period cost which is properly included in G&A expenses.

Comment 25: Inventory Reconciliation

Petitioners argue that the COM should be adjusted to reflect the average difference between the reported COM and the value recorded in Mexinox's inventory system.

Mexinox argues that the COM should not be adjusted to reflect this difference. Mexinox argues that comparisons between inventory values and reported cost are not meaningful because its inventory system is less product-specific than the reported costs.

Department's Position: We agree with Mexinox and have not adjusted the COM for the difference between the reported values and the inventory value. Values in Mexinox's inventory are less specific than the amounts reported to the Department. The amounts in the inventory system are for groups of products while the reported values are specific to the product characteristics designated by the Department.

Comment 26: Scrap Revenue

Petitioners state that Mexinox reported material costs net of scrap revenue and that it is the Department's practice to apply scrap revenue as an offset to G&A expenses.

Mexinox states that its scrap revenue was properly applied as an offset to material costs. Mexinox argues that scrap is generated from direct materials, a component of COM. Therefore, the revenue generated should be used to offset COM.

Department's Position: We agree with Mexinox. Mexinox only included the scrap generated from the production of subject merchandise as a reduction of the direct materials costs. This is consistent with the Department's normal practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51431 (October 1, 1997).

Comment 27: Expenses Incurred on Behalf of Subsidiaries

Mexinox argues that the Department should not include expenses it incurred on behalf of its subsidiaries in the G&A expense ratio. According to Mexinox, these expenses are properly classified as selling expenses because they are the salaries and employee benefits for personnel that were employed at Mexinox's sales subsidiaries.

Department's Position: We agree with Mexinox that the expenses incurred on behalf of the selling subsidiaries should not be included in the calculation of the G&A expense ratio. In this final determination we have removed them from the computation of total G&A expenses.

Comment 28: Financial Expense

Mexinox states that the Department should allow exchange gains to offset exchange losses even though it was unable to substantiate the exchange gains. Mexinox states that if the Department disallows its exchange gains because Mexinox could not substantiate the amounts on the submitted schedule, it would amount to the application of adverse facts available when it was cooperative and acted to the best of its ability.

In addition, Mexinox also states that short-term interest income should be allowed as an offset to financial expenses. Mexinox maintains that at verification the Department found sufficient evidence to distinguish between short-term and long-term interest on Fried. Krupp's 1997 consolidated financial statements.

Petitioners state that since the Department was unable to reconcile the schedule of foreign exchange gains and losses to the audited financials of Fried. Krupp it should include total foreign exchange losses and exclude the total foreign exchange gains in calculating the net financial expenses.

Department's Position: We agree with petitioners and Mexinox, in part. The Department requested in two questionnaires and again at verification that Mexinox provide information to support the inclusion of Fried. Krupp's exchange gains and exclusion of its exchange losses from the interest expense computation. Mexinox, however, failed to provide any supporting information. Mexinox has the ability and responsibility to support its claim for the inclusion of these exchange gains or the exclusion of the exchange losses. Thus, we agree with petitioners that since Mexinox failed to provide support to justify the inclusion of Fried. Krupp's exchange rate gains and the exclusion of its exchange rate losses from the financial expense ratio calculation, we should include Fried. Krupp's exchange rate losses but exclude its exchange rate gains from the financial expense ratio calculation. We have done so in this final determination.

We agree with Mexinox that, based on our findings at verification, the interest income used as an offset to financial expenses was appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statement does distinguish between interest earned from long-term financial assets and short-term assets. Accordingly, we included this interest income earned from short-term assets, less the amounts relating to trade receivables, as an offset to financial expenses.

Comment 29: Allocation Base for G&A Expenses

Mexinox argues that it should be allowed to allocate its G&A based on processing costs because the regulations allow the Department some discretion in determining appropriate allocation bases. Mexinox argues that allocating G&A expenses based on total COM would overstate the per-ton G&A of CONNUMs with high COMs. Mexinox argues that the G&A activities performed by Mexinox for each category of merchandise is the same for each ton of steel and do not vary with the steel grade. However, it argues that it was reasonable to assign a higher G&A cost to a product that undergoes more processing.

Petitioners assert that the Department should follow its normal practice of allocating G&A expenses on the basis of cost of sales. They state that while they do not dispute Mexinox's contention

that regulatory discretion exists in this area, such discretion is conferred on the Department rather than a respondent.

Department's Position: We agree with petitioners. The Department's normal method, as set forth in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Final Determination of Sales at Less Than Fair Value*, 61 FR 38139, 38150 (July 23, 1996), allocates G&A expenses based on cost of sales. We use this method in recognition of the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.*, head counts, fixed costs, or transformation costs) is purely speculative. The Department's normal method for allocating G&A costs based on cost of sales takes into account all production factors. Therefore, for this final determination we have allocated G&A based on the total manufacturing costs.

Comment 30: Yield Ratio

Petitioners argue that Mexinox's U.S. Reseller incorrectly calculated its scrap yield ratio. The amount of further processed stainless steel used as the denominator in determining the yield ratio includes both internally processed and externally processed stainless steel. Petitioners assert that the numerator of stainless steel scrap sold appears to relate only to internally processed stainless steel; thus, the denominator should only include internally processed stainless steel. This would result in a higher scrap yield ratio to be applied to internally processed products. Mexinox did not address the inclusion of externally processed stainless steel in the scrap ratio denominator.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales by the Reseller, this issue is moot.

Comment 31: Outside Processing Costs

Petitioners argue that outside processing costs of slitting and finishing applicable to the Reseller could not be verified. Petitioners state that the Reseller failed to show that the percentage used to the allocate costs for processors of all materials reasonably reflects the true amounts of outside processing. Also, petitioners claim that because the Department found that the management reports used to establish the calculated processing costs were understated in comparison to the financial accounting records, and the invoices sampled indicated a further understatement of costs, the management report used for the submission is unreliable and unverifiable.

Mexinox maintains that the information necessary to directly identify the specific portion of charges from combined processors that related to stainless steel alone was not available in the Reseller's computer system; thus, it is simply not possible to specifically identify those costs. Additionally, Mexinox argues that the combined processors at issue represent a small minority of the total outside processing expenses. Mexinox contends that the method used to allocate the combined processors was reasonable because it reflected the Reseller's actual experience with respect to the proportion of stainless and non-stainless materials taken from its stock that required further processing. The Reseller claims the financial accounting system used in the comparison was not available until January 1998; thus, the management reports used for reporting purposes were the only available source of information on processor-specific outside processing costs covering the entire POI. Additionally, the discrepancies noted by the Department were isolated and would average out over the entire POI. Furthermore, a sample of only one month is not reflective of the costs reported for the entire POI.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales to the Reseller, this issue is moot.

Comment 32: Financial Statements

Petitioners assert that the review of the Reseller's financial statements by outside auditors showed serious discrepancies. The outside auditors discovered that cost of sales as recorded by the reseller were overstated, net SG&A expenses were understated, and interest expenses were understated.

Mexinox's affiliate argues that the financial statements prepared by outside auditors were created to put the Reseller's accounts into a pre-determined format conforming to the further manufacturer's parent company for purposes of consolidation. Mexinox states that the reclassifications had nothing to do with correcting information or conforming internal statements to GAAP.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales to the Reseller, this issue is moot.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date of publication of the *Preliminary Determination* in the **Federal Register**.

We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Mexinox	30.86
All Others	30.86

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (the Commission) of our determination. As our final determination is affirmative, the Commission will determine within 45 days after our final determination whether imports of stainless steel sheet and strip from Mexico are materially injuring, or threaten material injury to, the U.S. industry. If the Commission determines that material injury, or threat thereof, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the Commission determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with section 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13678 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Douglas Campau, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3793.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351, adopted at 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel sheet and strip in coils ("SSSS") from France are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998 (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 130 (January 4, 1999) ("*Preliminary Determination*"), the following events have occurred:

On January 12, 1999, we issued a supplemental questionnaire to Usinor for sections A, B, and C of our initial questionnaire. On January 26, 1999, Usinor's submitted its response to the Department's supplemental questionnaire. On January 15, and January 21, 1999, we issued our cost and sales verification outlines, respectively.

On January 8, 1999, petitioners submitted comments on the planned Usinor sales and cost verifications. During February and March 1999, we conducted sales and cost verifications of Usinor and its affiliates' responses to the antidumping questionnaires in France and the United States. Between March 30, and April 7, 1999, we issued our sales and cost verification reports for Usinor and its affiliates (i.e., Ugine, Ugine Service, Bernier, Uginox, Hague, and Edgcomb). On April 15, 1999, respondent submitted revised sales and cost databases. Petitioners and respondent submitted case briefs on April 14, 1999, and rebuttal briefs on April 21, 1999. On April 28, 1999, the Department held a public hearing.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127

microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Period of Investigation

The period of investigation ("POI") is April 1, 1997 through March 31, 1998.

Transactions Investigated

For its home market and U.S. sales, Usinor reported the date of invoice as the date of sale. See 19 CFR § 351.401(i). As explained in response to Comment 10, below, for the final determination, we have continued to rely upon Usinor's invoice dates in the home and U.S. markets as the date of sale.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Usinor covered by the description in the *Scope of Investigation* section, above, and sold in France during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): grade, hot/cold rolled, gauge, finish, metallic coating, non-metallic coating, width, tempered/tensile strength, and edge trim. These characteristics have been weighted by the Department where appropriate. The Department's questionnaire authorized respondent to make distinctions (sub-codes) within some of these characteristics, but not within others. For certain product characteristics (*i.e.*, finish and coating) Usinor reported additional sub-codes which were specifically permitted by the Department's questionnaire. However, Usinor also reported additional sub-codes in its hot/cold rolled, and tempered product characteristic categories. These are characteristics for which the Department's questionnaire did not explicitly permit sub-codes. However, for purposes of the preliminary determination, the Department included these additional codes. *See Analysis Memo from Doug Campau to The File,* dated December 17, 1998. At verification, we reviewed respondent's claims for the additional sub-codes. *See Home Market*

Verification Report of Usinor/Ugine at pages 6–9, dated April 6, 1999. In light of our findings at verification, we conclude that use of these additional codes is appropriate, and have included them in the Department's product matching methodology.

Also, respondent commented on the Department's finish matching methodology. As explained in response to Comment 4, below, for this final determination we have not changed our finish matching methodology.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics discussed above, which were listed in the August 3, 1998 antidumping questionnaire and the reporting instructions.

Changes Since the Preliminary Determination

On February 23, 1999, the Department published the amended preliminary determination, incorporating corrected scope language. *See Notice of Preliminary Determinations of Sales at Less than Fair Value; Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip from Taiwan*, 64 FR 8799 (February 23, 1999).

Based on our analysis of comments received, we have made certain corrections to our preliminary determination. We have corrected certain programming and clerical errors in our preliminary determination, where applicable, and they are discussed in the relevant comment sections below.

Also, the Department corrected the model match and margin programs in calculating packing costs for use in the cost test and constructed value analysis. In the *Preliminary Determination*, the Department inadvertently used a sale-specific packing cost for use in the calculation of interest expenses in both the cost test and constructed value analysis. For the final determination, the Department has revised this section of the program to calculated a weighted-average packing cost per CONNUM for use in these calculations. For a more complete analysis, please see the *Final Determination Analysis Memo*, dated May 19, 1999.

Fair Value Comparisons

To determine whether sales of SSSS from France to the United States were made at LTFV, we compared constructed export price ("CEP") to the Normal Value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEP sales for comparison to weighted-average NV sales or constructed value (CV) sales.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser took place through an affiliated purchaser after the subject merchandise was imported into the United States.

We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. We identified the starting price by accounting for billing adjustments to the invoice price. See 19 CFR § 351.401(c). Where appropriate, we made deductions from the starting price for billing adjustments, credit, warranty expenses, and commissions. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: inland freight from plant to distribution warehouse, inland freight from plant/warehouse to port of exportation, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse to the unaffiliated customer, U.S. inland insurance, U.S. warehouse expenses, and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. We recalculated credit expenses for those sales with missing payment dates. For U.S. sales with missing payment dates, the Department set the date of payment to the final date of the U.S. sales verification. Additionally, for international freight by affiliated freight forwarders, we used the average of the reported rates for unaffiliated freight forwarders. See Comment 6.

For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. We relied on Usinor's submitted further manufacturing costs, except where the Department determined that the submitted further manufacturing costs could not be relied upon.

Specifically, we made the following adjustments:

1. We adjusted Hague's further manufacturing costs by applying the percentage difference between the reported values and the subject merchandise specific value. We address this issue further in our response to comment 30 in the "Interested Party Comments" section of the notice. See Final Cost Analysis Memorandum at 4.

2. Because Edgcomb was unable to report further manufacturing costs in the manner required by the Department, we had to resort to facts otherwise available. Where we did find that Edgcomb's reported costs were reported correctly (i.e., SG&A and financial expense calculations), we used those costs. We also used certain yield loss and processing costs data verified at Edgcomb. However, for all other costs, as facts otherwise available, we have utilized the manufacturing costs reported by Usinor's other affiliated further manufacturer, Hague. Specifically, we developed process string specific costs to adjust Edgcomb's reported single weighted-average material and conversion costs. We address this issue further in our response to comment 25 in the "Interested Party Comments" section of the notice. Also, See Final Cost Analysis Memorandum at 5.

3. We also applied Usinor's adjusted financial expense factor to the further manufacturing costs reported by Hague.

We deducted the profit allocated to expenses deducted under section 772(d)(1) and (2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable. See *Preliminary Determination* at 134. The parties did not contest the viability of the home market. Consequently, for the final determination, we have based NV on home market sales wherever possible.

2. Cost of Production Analysis

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Usinor's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses, interest expenses, and packing costs. We relied on the COP data submitted by Usinor in its original and supplemental cost questionnaire responses, except in the following specific instances:

1. Usinor valued hot-rolling services proved by affiliated parties at the transfer price. In accordance with section 773(f)(2) of the Act, we compared the reported transfer price for this hot-rolling service to a reported market price provided by the affiliate to unaffiliated parties. We found that the transfer price was below the market price. Thus, for the final determination, we have increased Usinor's affiliated hot rolling cost to reflect the market value paid by non-affiliates in accordance with section 773(f)(2). We address this issue further in our response to comment 19 in the "Interested Party Comments" section of the notice. Also, See Final Cost Analysis Memorandum at 1.

2. Usinor did not include profit sharing expense and certain other expenses reported on the company's income statement in the calculation of COP and CV. We included these expenses in the calculation of the revised G&A expense rate. We address these items further in our response to comments 21 and 22 in the "Interested Party Comments" section of the notice. Also, See Final Cost Analysis Memorandum at 2.

3. We increased Usinor's reported net interest expense by the ratio of Usinor Holding's (a member of the Usinor Group generating most of the Group's financial expenses and revenues) gross and net financial expenses. We address these issues further in our response to comments 23 and 32 in the "Interested Party Comments" section of the notice. Also, See Final Cost Analysis Memorandum at 3.

We conducted our sales below cost test in the same manner as that described in our *Preliminary Determination* at 134–135. As with our preliminary determination, we found that for certain models of SSSS, more than 20 percent of Usinor's home market sales were at prices less than the COP within an extended period of time, and were not at prices that would provide for recovery of cost. We therefore disregarded the below-cost sales and used the remaining above cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Usinor's cost of materials, fabrication, general and administrative (G&A), U.S. packing costs, direct and indirect selling expenses, interest expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Usinor in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. We relied on the submitted CVs, except as noted above in the *Cost of Production Analysis* section.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted credit expenses, warranty expenses, inland freight, inland insurance, and warehousing expense. We also adjusted the starting price for price adjustments such as discounts, rebates and freight revenue.

We recalculated credit expenses for those sales with missing payment dates. For home market sales with missing payment dates, the Department set the date of payment as the last day of the home market sales verification.

For reasons discussed below in the *Level of Trade* section, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses and allowed a CEP offset adjustment (see *Level of Trade* section, below).

Arm's-Length Sales

Usinor reported that it made sales in the home market to affiliated end users. Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis under 19 CFR § 351.403(c). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP

sales, if the NV level is more remote from the factory than the CEP level, but the data available do not provide an appropriate basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this investigation, we found that no single selling function was sufficient to warrant a separate LOT in the home market.

We determined that Usinor sold merchandise at two LOTs in the home market during the POI. One level of trade involved sales made through two channels: (1) Sales by Usinor's Ugine division, directly to unaffiliated service centers or end users, as well as arm's-length sales by Usinor's Ugine division, directly to affiliated service center/reseller Ugine Service (Channel 1); and (2) sales made by Usinor's Ugine division, with the assistance of Ugine-Service in its capacity as sales agent, to unaffiliated service centers or end users (Channel 2). The second level of trade involved sales from Ugine to Usinor's affiliate Bernier, together with subsequent resales by Bernier to unaffiliated end users (Channel 3). From our analysis of the marketing process for these sales, we determined that sales through Channel 3 were made at a more remote marketing stage than that for sales through Channels 1 or 2. See *Memorandum from Doug Campau to Roland MacDonald*, dated December 12, 1998, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. We also found significant distinctions in selling activities and associated expenses between the sales through channel 3 and those through channel 1 or 2. Based on these differences, we concluded that two LOTs existed in the home market.

In order to determine whether separate LOTs actually existed between the U.S. and home market, we reviewed the selling activities associated with each channel of distribution. Usinor only reported CEP sales in the U.S. market. Because all of Usinor's CEP sales in the U.S. market were made through Uginox, there was only one level of trade. For these CEP sales, we determined that fewer and different selling functions were performed for CEP sales to Uginox than for sales at either of the home market LOTs. In addition, we found that the home market sales were at a more advanced stage of distribution (to service centers or end-users) compared to the CEP sales (to the affiliated distributor).

We examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that neither of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we did not calculate a LOT adjustment. Instead, a CEP offset was applied to the NV-CEP comparisons. See *Memorandum from Doug Campau to Roland MacDonald*, dated December 12, 1998, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C.

We applied the aforementioned criteria in our preliminary determination. See *Preliminary Determination* at 135. For the final determination, we continue to find that respondent has two levels of trade in the home market and one level of trade in the U.S.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of Usinor's data. For a discussion of our application of facts available, see Comment 25.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Usinor for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Usinor.

Interested Party Comments

Home Market and U.S. Sales

Comment 1: Use of Home Market Downstream Resales in Determining Normal Value

Respondent argues the Department should not utilize the home market downstream resales of Bernier and Ugine Service for comparison purposes in the final determination. According to respondent, in deciding whether downstream resales need to be reported, the Department should consider the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length. See *Preamble*, 62 FR at 27356. Respondent argues that these factors militate against using Bernier's and Ugine Service's downstream resales. According to respondent, Bernier's and Ugine Service's downstream resales of subject merchandise together account for approximately five percent of total home market sales. Respondent argues that Ugine's home market sales are far more representative for margin determination purposes, being at a closer level of trade to Ugine's CEP sales to Uginox. Furthermore, according to respondent, the Department could have readily included Ugine's sales to Ugine Service, rather than downstream resales. According to respondent, Ugine's sales to Ugine Service pass the Department's arm's-length test, and including these sales rather than downstream sales would have captured ninety-nine percent of the total home market sales. Respondent argues that given the significant coverage provided by the Ugine sales, there is no way the Department's margin calculation would be compromised by the absence of Bernier's and Ugine Service's resales. *Preamble*, 62 FR at 27356.

Respondent points out that the Department has determined and verified that all sales of subject merchandise in France were made at different levels of trade than sales in the United States. All sales in the United States were CEP sales made through Ugine's super-distributor Uginox, whereas Ugine's home market sales were made to end users and resellers. Thus, according to respondent, all home market sales were made at levels of distribution more advanced than that of Ugine's sales to Uginox. This difference is all the more

significant for downstream resales by Bernier and Ugine Service, which, according to respondent, involve a significant extra layer of selling activities and expenses, and which are far more remote from the factory than Ugine's CEP sales to Uginox.

Respondent argues that because the average U.S. CEP sale was—according to respondent—more than eleven times the size of the average home market downstream resale, no fair comparison can be made between Ugine's CEP sales to Uginox and downstream home market sales of Bernier and Ugine Service. According to respondent, the law requires that a fair comparison be made between CEP and normal value, and that the Department—to the extent practicable—establish normal value using sales at the same level of trade as the constructed export price. See section 773(a) of the Act. Respondent argues that current law gives the Department ample authority to favor the level of trade proximity of sales by Ugine over the more remote downstream sales by Bernier and Ugine Service in making sales comparisons. In order to make a fair comparison under current law, respondent believes the Department's matching should attempt to find satisfactory product comparisons at the nearest level of trade (i.e., involving sales by Ugine), rather than seeking identical matches at more remote levels of trade. Respondent argues that a comparison of downstream resales of merchandise of Bernier and Ugine Service can not be satisfactorily made because they are at remote, different levels of trade. Thus, respondent believes the Department's comparisons should use Ugine's sales of comparable merchandise. Respondent argues that Ugine's sales are the only sales of merchandise that may be reasonably compared with Ugine's CEP sales to Uginox.

Respondent argues that significant differences between the level of trade of Bernier and Ugine Service sales and the level of trade of sales from Ugine to Uginox are not addressed by the statute's level of trade or CEP offset provisions. Specifically, respondent believes the CEP offset applied in the preliminary determination did not address the higher costs for slitting and processing performed by the downstream resellers, nor the costs of holding coils in inventory prior to such processing. Respondent also believes the CEP offset failed to take into account the pricing/profit structure of the downstream resellers—which reflects the far lower quantities sold, the customers involved, and the risk associated with carrying inventory of finished product.

To conclude, respondent argues that the Department's consideration of downstream home market sales was distortive and did not result in fair comparisons. Consequently, respondent believes the Department should base normal value on Ugine sales, rather than home market downstream sales, for comparison purposes.

According to petitioners, respondent's request that the Department disregard downstream sales of Bernier and Ugine Service has no basis in law, is contrary to the facts of the case, and would result in a less accurate calculation of normal value. Petitioners argue that Ugine provides no argument or evidence to dispute the memoranda prepared during the preliminary phase of this proceeding that detailed the Department's analysis and rejection of Ugine's request when it was initially made.

Petitioners also argue the Department should dismiss respondent's argument that inclusion of the aforementioned downstream sales would distort the margin calculation by matching sales at widely varying levels of trade. According to petitioners, the statute provides for a level of trade adjustment, in appropriate circumstances, and for a CEP offset where a level of trade adjustment can not be calculated. According to petitioners, the very fact that the adjustment and offset exist is testament to the fact that the statute permits matching across levels of trade, contrary to respondent's argument.

Petitioners also argue that the Department captured all of the selling expenses the statute directs it to capture in calculating CEP offset. Petitioners point out that in calculating CEP offset, the Department is required to deduct only the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of foreign like product, but not more than the amount of such expenses for which a deduction is made. Thus, petitioners argue that the costs respondent claims the Department should deduct—namely costs for slitting and processing subject merchandise in very small quantities, costs for holding coils in inventory for such processing, and costs relating to the pricing/profit structure of the downstream resellers—actually have no bearing on the Department's CEP offset calculation because they are not indirect selling expenses.

Department's Position: We agree with respondent that the downstream sales of Ugine Service should be disregarded in the final determination. According to 19 CFR § 351.403(c), if an exporter or producer sells the foreign like product to affiliated parties, the Department may calculate normal value based on such sales if it determines that the net prices for such sales are comparable to the prices at which the exporter or producer sold the foreign like product to persons not affiliated with the seller. It is the Department's normal practice to run an arm's-length analysis on home market sales made by a producer to an affiliated company to determine whether the prices for such sales are comparable to prices charged to unaffiliated parties. If the Department determines that prices for sales to the affiliated company were sufficiently comparable to prices for sales to unaffiliated parties, then the Department need not use downstream sales from the affiliated company in its subsequent calculations.

Prior to making its *Preliminary Determination*, the Department ran an arm's-length analysis on Ugine's home market sales to affiliated resellers Ugine Service and Bernier. This analysis led the Department to conclude that such sales were not made on an arm's-length basis. Consequently, downstream sales from Ugine Service and Bernier to unaffiliated customers were used in all calculations for the *Preliminary Determination*. In preparing to run its analysis for the final determination, the Department discovered that the data tape used to run the arm's-length analysis for the *Preliminary Determination* contained incomplete data on the sales from Ugine to Ugine Service and Bernier. This tape had been submitted to the Department on December 1, 1998. The Department subsequently reran its arm's length analysis using a data tape containing complete data on the sales from Ugine to Ugine Service and Bernier. This tape had been submitted to the Department on November 16, 1999. In rerunning the arm's length analysis with the November tape, the Department found that Ugine's sales to Ugine Service were in fact made on an arm's length basis. Thus, for all affected calculations made for the final determination, the Department used the sales from Ugine to Ugine Service. The Department did not use the downstream sales from Ugine Service to unaffiliated customers. Conversely, the Department has continued to use the downstream sales of Bernier because the sales from Ugine to Bernier failed the arm's length analysis for the final determination.

Section 773(a)(1)(B)(i) states that "to the extent practicable", the comparison will be made at the same level of trade. Thus, where it is not practicable—e.g., where there is no sale at the same LOT—comparing across LOTs is

reasonable and permissible. Also, as Petitioners note, the very existence of the level of trade adjustment and CEP offset is testament to the fact that the statute permits matching across levels of trade, and that comparisons involving downstream resales by Bernier can be fairly and satisfactorily made. As stated in the *Preliminary Determination*, to determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 23760, 23761 (May 1, 1997). For the final margin determination, we again made the appropriate CEP offset. Consequently, we disagree with Usinor that it is inappropriate for comparison purposes because they may be at a different level of trade.

We also agree with petitioners that all appropriate selling expenses were captured in the Department's CEP offset calculation. To the extent Usinor discusses expenses in the Bernier sales not accounted for in the CEP offset, these are accounted for elsewhere in the margin program. For example, any additional slitting and processing performed by Bernier is accounted for in the difference in merchandise adjustment, where appropriate, under section 773(a)(6)(C)(2). The cost of holding coils in inventory prior to further processing is included in inventory carrying cost calculations. Therefore, for the final determination, the Department has continued to use Bernier's downstream sales.

Comment 2: Inclusion of Resales by Edgcomb in Determining CEP

According to respondent's submissions, all of Ugine's U.S. sales of subject merchandise were made via Uginox, a wholly-owned and U.S.-based subsidiary of Usinor. Uginox, in turn, sells subject merchandise to Edgcomb, a downstream processor and reseller. Respondent argues that, although Edgcomb is affiliated with Usinor pursuant to section 771(33) of the Act, Edgcomb should not be regarded as affiliated with Uginox. Respondent states that Uginox and Edgcomb are not under common control within the meaning of section 771(33)(F) of the Act, and that neither Uginox nor Edgcomb controls the other within the meaning of section 771(33)(G) of the Act. Furthermore, respondent argues that neither Usinor nor Uginox exercises sufficient control over Edgcomb to compel Edgcomb to provide timely and accurate responses to the Department's requests for information. In light of this, respondent believes the Department should reverse its finding that Edgcomb is an affiliated person. Respondent also believes the Department should utilize Uginox's sales to Edgcomb for comparison purposes instead of Edgcomb's sales to its downstream customers.

Respondent argues that even though Uginox and Edgcomb are each affiliated with Usinor, such affiliations do not in turn mean that Uginox and Edgcomb are necessarily affiliated with each other under section 771(33)(F) of the Act. According to respondent, to be so affiliated, Uginox and Edgcomb would have to be under common control. Respondent argues that Uginox and Edgcomb are not under common control. Respondent points out that Usinor is limited to three of ten seats on the Board of Directors of Macsteel, Edgcomb's parent company.

Respondent further argues that Uginox and Edgcomb are not affiliated pursuant to section 771(33)(G) of the Act, which provides that any person who controls any other person shall be considered affiliated with that person. According to respondent, the statute describes control as existing where one person is legally or operationally in a position to exercise restraint or direction over another person. Respondent argues that no such control exists between Uginox and Edgcomb. According to Respondent, Uginox and Edgcomb are not part of the same corporate family group, do not have intertwined computer systems, have an insignificant supply-purchase relationship, and negotiate prices on an arm's-length basis. Moreover, according to respondent, Uginox has absolutely no say in Edgcomb's business decisions, including sources of supply, customers to whom Edgcomb sells, and prices which Edgcomb charges. Consequently, respondent believes Edgcomb and Uginox should not be found affiliated under section 771(33)(G) of the Act.

Respondent further argues that exclusion of Edgcomb's resales would not distort the margin calculation because Uginox's sales to Edgcomb were made at arm's-length prices, and because there is nothing else to suggest that Edgcomb's downstream sales were distortive such that they must be included in the Department's analysis. Moreover, according to respondent, Hague's downstream sales accounted for a much larger percentage of Uginox's sales than those of Edgcomb. Respondent also asserts that the sales profiles of Hague and Edgcomb closely resemble one another, such that the absence of Edgcomb statistics would not meaningfully affect the Department's margin calculation—such calculation being based on the weighted average price of each product sold in the U.S. for the entire POI. To conclude, respondent argues the Department should include Uginox's sales to Edgcomb and should exclude Edgcomb's resales to its downstream customers in its margin calculation.

Petitioners cite section 772(b) of the Act, which defines CEP as the price at which subject merchandise is first sold to a purchaser not affiliated with the producer or exporter. Petitioners also point out that Usinor has admitted that Edgcomb and Usinor are affiliated. Thus, petitioners argue, the first purchasers not affiliated with Usinor within this particular sales channel would be Edgcomb's customers.

According to petitioners, the record establishes and the Department has determined that Edgcomb and Uginox are affiliated through the common control of Usinor under section 771(33)(F) of the Act. Petitioners believe respondent's argument that the Department should reverse its determination that Edgcomb and Uginox are affiliated is contrary to the Department's regulations and has no support on the record.

According to petitioners, for purposes of affiliation, control is defined as the quality of being legally or operationally in a position to exercise restraint or control over a person. See section 771(33) of the Act. Petitioners do not believe this definition requires a finding of actual control, but only the capacity to exercise control. *Ferro Union Inc.* v. *United States*, Slip Op. 99–27 at 32 (Ct. Int'l Trade Mar. 23, 1999). According to petitioners, the Department has emphasized that the essence of being legally or operationally in a position to exercise restraint and direction is having the potential to impact decisions concerning production, pricing or cost.

See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27297 (May 19, 1997). Petitioners argue that the application of this standard to the facts of this case demonstrates control within the meaning of the statute. Petitioners point out that for the first half of the POI, Usinor owned 49 percent of Edgcomb through its wholly-owned subsidiary Sollac; that during the second half of the POI, Usinor indirectly owned 28.5 percent of Edgcomb; that Usinor holds three of ten seats on the board of directors during the POI; and that Edgcomb and Usinor (through Uginox) have a customer/supplier relationship. By virtue of these facts, petitioners believe Usinor is in a position to exercise restraint or direction over Edgcomb. Further, Usinor has the potential to impact Edgcomb's decisions concerning production, pricing or cost, and thus Usinor has control over Edgcomb during the POI within the meaning of section 771(33) of the Act.

Petitioner argues that the fact that Usinor's ownership interest was a minority interest and that Usinor did not have majority representation on the board of directors does not prevent the finding of control. According to petitioners, minority and majority owners can control an entity at the same time, singly or as a group. *Ferro Union*, Slip Op. 99–27 at 32. Petitioners also argue that majority stock ownership is not a prerequisite for a finding of control according to the *Uruguay Round Agreement Acts, Statement of Administrative Action*, reprinted in H.R. Doc. No. 316, 103d Cong., 2d Sess. At 838 (1994).

Department's Position: We agree with petitioners that it is appropriate to use resales by Edgcomb in the final margin calculations.

According to section 771(33)(E) of the Act, as amended by the URAA, "any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization" shall be considered affiliated. According to section 771(33)(F) of the Act, as amended by the URAA, "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person" shall be considered affiliated. For purposes of section 771(33), "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

Respondent acknowledges that Edgcomb and Usinor are affiliated pursuant to section 771(33)(E). *See* Usinor Case Brief at p. 8, dated April 14, 1999. We have also determined that Edgcomb and Uginox are affiliated within the meaning of section 771(33)(F) of the Act because they are both controlled by Usinor. The evidence also establishes that Edgcomb was controlled by Usinor during the POI within the meaning of section 771(33)(F) of the Act. As noted in its letter of August 31, 1998, Usinor indirectly owned 49% of Edgcomb, through its wholly-owned affiliate Sollac, for the first half of the POI, and 28% during the second half of the POI. The legislative history makes clear that the statute does not require majority ownership for a finding of control. Rather, the statutory definition of control encompasses both legal and operational control. Indeed, the very purpose of adding the "control" provision to the Act was to establish that parties may be affiliated in the absence of any ownership interest at all. *See* Statement of Administrative Action ("SAA") in H. Doc. 103–316 (vol. 1) 103d Cong., 2d Sess., at. p. 838. A minority ownership interest, examined within the context of the totality of the evidence, is a factor that the Department considers in determining whether one party is operationally in a position to control another. See *Certain Cut-To-Length Carbon Steel Plate From Brazil*, 62 FR 18486, 18490 (April 15, 1997); and 19 CFR 351.102(b). In this case, during the POI, Edgcomb was also a service center, processor, and reseller of subject merchandise produced by Usinor. Furthermore, as confirmed during verification and acknowledged in respondent's case brief, Usinor held at least three of ten seats on Edgcomb's board of directors for the duration of the POI. Finally, at verification we learned that Usinor dictated that Edgcomb use a certain accounting procedure which Edgcomb acknowledged it would not otherwise have used. These facts, juxtaposed with the substantial ownership interest, lead us to conclude that Usinor is "in a position to exercise restraint or direction over" Edgcomb.

Additionally, as noted in its letter of August 31, 1998, Usinor wholly owns its U.S. affiliate Uginox. Because Usinor is the sole owner of Uginox, it is "in a position to exercise restraint or direction over" Uginox within the meaning of section 771(33) of the Act. Usinor thus controls both Edgcomb and Uginox, fulfilling the common control element required for finding affiliation between Edgcomb and Uginox under section 771(33)(F) of the Act.

Because we find that Edgcomb and Uginox are affiliated under section 771(33)(F), and have used the downstream resales of Edgcomb in our calculations for the final determination instead of the sales from Uginox to Edgcomb, it is not necessary to address the petitioners' comment that under section 772(b) we must use the downstream resales of Edgcomb because of Edgcomb's affiliation with Usinor, regardless of Edgcomb's affiliation with Uginox.

Comment 3: Home Market Indirect Selling Expenses and CEP Offset

Respondent argues that the Department incorrectly excluded indirect selling expenses associated with Ugine's Building Products Group ("The Group") in determining the CEP offset in the preliminary determination. Respondent states that the Department made this determination based on its conclusion such costs were "not clearly attributable to scope merchandise." See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 130 (January 4, 1999) ("*Stainless Steel Sheet and Strip from France*"). Respondent notes that this exclusion resulted in an understatement of its indirect selling expenses in the home market. Further, respondent contends that contrary to the Department's preliminary determination, the subject merchandise was in fact sold by the Building Products Group and the Group's mission is to promote the use of stainless steel products (including the subject merchandise) in France. Thus, the Group's costs are properly included in Ugine's indirect selling expenses and in the CEP offset. Furthermore, respondent notes that in its questionnaire response, Ugine allocated the expenses of the building products cost center in a reasonable manner which was pursuant to the Department's questionnaire and prior practice by allocating its home market indirect selling expenses related to sales of all products over company-wide sales. See *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Korea*, 62 FR 51420, 51426 (October 1, 1997). Specifically, respondent noted that these expenses support all sales of stainless steel products in France, not just certain products. Therefore, respondent stated that the Department should include the expenses of Ugine's Building Products Group in its calculation of home market indirect selling expenses and the CEP offset in the final determination.

Petitioners acknowledge respondent's argument that Ugine Sales Verification Exhibit UG–20 (Feb. 26, 1999) contains

proof that Ugine Building Products sold subject merchandise, and that, consequently, total indirect selling expenses should not have been reduced by indirect selling expenses related to Ugine's Building Products Division. However, according to petitioners, the Ugine Sales Verification Report provides no clear evidence or finding to support Usinor's claim. Petitioners also point out that Usinor itself has stated that the Building Products Group's mission is to promote the use of stainless steel "products". According to petitioners, this statement demonstrates that the activities to which the Building Products Group's activities relate are not the promotion of subject merchandise, but rather the promotion of products made from subject merchandise. According to petitioners, such activities are not clearly attributable to the subject merchandise. Thus, petitioners argue, the Department properly excluded these indirect selling expenses from the numerator of its preliminary calculation.

Department's Position: We agree with respondent. The Department has examined the respondents' home market indirect selling expenses, specifically Ugine Building Products (UBI) indirect selling expenses, and found that these expenses have been properly reported. The Department included the indirect selling expenses associated with UBI in its calculation of Ugine's indirect selling expense ratio. We have verified that Ugine has properly included UBI's expenses in its numerator of indirect selling expenses. The Department has verified that UBI was formed to develop new stainless steel products for the French and European building construction industry and UBI's main mission is improve Ugine's stainless steel sales to the building construction industry, including sales of subject merchandise. Additionally, we verified that UBI is in charge of promoting and selling stainless steel products such as the subject merchandise to the different markets as "an attempt at trying to convince end-users (contractors and architects) to try it, switching from their traditional zinc-coated products or other non-steel products" to Ugine's stainless steel products. See *Home Market Verification Report of Usinor/Ugine*, at page 38, April 6, 1999. Furthermore, the Department has determined that the respondent has properly included an allocated portion of UBI's selling expenses in Ugine's indirect selling expense calculation. Therefore, we have determined that the respondent has properly reported its home market indirect selling expenses.

Comment 4: Model Match Methodology/ Group Products According to Finish Overruns

Respondent argues that the Department's product matching methodology with respect to weighting of the finish characteristics is not supported by factual evidence. Respondent noted that the Department never disclosed its rationale for weighting the individual characteristics. Respondent contended that the Department disregards the level of processing required to achieve the designated finish. For example, the Department's methodology for matching finishes matches a bright-annealed finish (i.e., requires no finishing beyond the rolling mill), first to a product with a polish finish, then to a product that requires more finishing. Thus, rather than matching to other products without a finish step beyond rolling, the Department matches a product with no finish steps to products with one or two finish steps. Hence, respondent argued that the Department's weighting of finishes fails to account for the differences in finishes with respect to cost, value and difficulty in finishing. Therefore, respondent argues that the Department should first match products with identical finishes, and if no identical finish match is available, then the Department should match to all other finishes requiring the same number of finish steps, which would be reasonable and proper as well as supported by the record.

Petitioners argued that the Department should reject Usinor's proposed finish groupings because it fails to adequately distinguish between the physical characteristics created by the finishing processes as required by the statute, and consequently fails to retain important cost distinctions among different products. According to petitioners, section 771(16) of the Act requires that products be matched according to identical and similar physical characteristics. For the subject merchandise, petitioners argued that finish is an identifiable and quantifiable difference in merchandise. Petitioners asserted that the subcategories suggested by respondent, which, according to petitioners, are based on a simple count of the number of finishes, do not recognize the differences in the physical characteristics and costs of the subject merchandise that are created by the finishing process. According to petitioners, to treat products with different finishes as identical would be to ignore the strict hierarchy of section 771(16) of the Act, as well as the different costs of production of each product.

Department's Position: We disagree with respondent. In July 1998, the Department solicited comments addressing potential model match criteria. The comments respondent submitted on July 27 and 28, 1999 made no suggestion that the Department consider number of finish processes involved in production of subject merchandise in establishing its matching criteria. In fact, the suggested matching criteria for finish that respondent submitted on July 27, 1998 contained only six possible types of finish (including "[n]one").

In this case, level of processing is not determinative of what constitutes a best match for model match purposes. Thus, whether a product goes through three, two, one or no finishing processes is not reflected in the model match program. This is because section 771(16) requires that products be matched according to physical characteristics rather than according to production processes, as suggested by respondent. We agree with petitioners that the subcategories suggested by respondent (based on number of finish steps) do not adequately distinguish products based on the differences in physical characteristics of subject merchandise produced via the different types of finishing processes.

Finally, it is not possible—utilizing the information gathered at verification or otherwise submitted to the record by Ugine—to consistently determine how many finish processes a particular product has gone through. Exhibit 8 of respondent's case brief indicates that a majority of the finish types assigned model match codes by the Department involve more than one finish process. However, as illustrated in exhibits UG–3(f) and UG–5, the information verified and on record is not detailed enough to allow the Department to conclude that a particular quantity of subject merchandise was produced via a particular number of finish processes. Therefore, even if we wished to follow Ugine's suggestion, Ugine has not provided sufficient information to enable us to utilize the number of finish process steps in our model matching procedures.

Comment 5: Foreign Inland Freight

Petitioners stated that respondent failed to report inland freight expenses between the Gueugnon plant and the Macon containerization facility and did not provide an explanation why these expenses were not reported. Thus, petitioners argued that the Department is required to base this expense on facts

available in accordance with section 776(a) of the Act because respondent made no effort to provide the actual freight information in its pre-verification submission although its records permitted it to report other foreign inland freight for other sales. Also, because respondent did not provide any evidence that it acted to the best of its ability to provide the missing information. Further, petitioners contended that because respondent did not demonstrate that it acted to the best of its ability, the Department should apply adverse facts available. *See* section 776(b) of the Act. Petitioners argued that adverse facts available are warranted because neither the information itself or sufficient justification for its omission was provided, and not applying adverse facts available would allow respondent to selectively provide information and improperly influence the outcome of the margin calculation, which would be contrary to the purpose of the facts available provisions. *See Olympic Adhesives*, 899 F.2d at 1571. Furthermore, petitioners stated that to apply the average transportation cost for all reported sales, as suggested by respondent, would not be appropriate, because it would potentially permit the respondent to manipulate the database. Therefore, the correct facts available rate to apply for these sales, is the highest reported transportation rate paid by Ugine on any such sale. *See Circular Welded Non-Ally Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 33041, 33046–47 (June 17, 1998).

Respondent argues that petitioners' contention that it failed to report inland freight expenses between the Gueugnon plant and the Macon containerization facility is erroneous. According to respondent, it disclosed in its September 28, 1998 section C response that the company was unable to collect the foreign inland freight expense data for certain shipments destined for Hague, and that for such shipments, an average per-unit expense was reported. Respondent further explains that prior to verification, Ugine discovered the average expense had been inadvertently omitted for these sales, and subsequently presented the average freight expense as a minor correction. Respondent also notes that during the Hague verification, it provided the Department with actual freight expenses from the Gueugnon plant to the Macon containerization facility for the sales transactions selected for review, and that such actual freight expenses were approximately equal to the reported average freight expense. Respondent claims it resorted to utilization of average transportation cost only for those sales where transaction-specific data were unavailable.

Respondent further asserts that petitioners' citation to *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review* does not support petitioners' claim that the Department should apply the highest reported transportation rate paid by Ugine to all sales for which no expense was reported. *Id.* According to respondent, the Department applied facts available in the aforementioned case only after having placed the respondent on notice—in prior reviews—that verifiable freight expense information was required and should not be destroyed, and where the respondent continued to destroy its freight records. Respondent asserts that in the present case, Ugine presented verifiable expense information, and average freight expense information only where transaction-specific data were unavailable. According to respondent, Ugine has cooperated fully and to the best of its ability with all of the Department's requests. Thus, respondent believes the Department should deny petitioners' request for use of facts available for foreign inland freight expenses on Hague transactions.

Department's Position: We disagree with petitioners. In this instance, although we verified that respondent was unable to report the freight expense at issue for all transactions, respondent has been fully cooperative and has acted to the best of its ability to provide the Department with all available information as the Department has requested. Moreover, respondent has provided a reasonable estimate of the freight amount for those transactions where respondent could not identify the exact amount. Thus, we do not believe the facts warrant the application of an adverse assumption as facts available in this instance. We note that the Department allows respondents to correct for minor changes in preparation of verification. The verification outline of January 21, 1999 provided for "presentation by Usinor of minor changes, if any, to the response resulting from verification preparation. Identification of the specific observation(s) involved, and corresponding database(s), must also be provided." *See Verification Outline* at page 3, dated January 21, 1999. Respondent provided minor corrections for its freight on U.S. sales/foreign inland freight on Hague sales at the start of Ugine's home market sales verification. *See Home Market Verification Report of Usinor/Ugine* at page 3, April 6, 1999. Furthermore, during Ugine's home market sales verification, we compared several of the reported average freight figures with an the actual freight expense from the Gueugnon plant to the Macon containerization facility, and found that the average figures were reasonable. *See Home Market Verification Report of Usinor/Ugine*, at pages 42–45, April 6, 1999; and Exhibits UG–28, UG–35, UG–36, UG–37 and UG–39.

Moreover, we disagree with petitioners in their citation of *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review* in support of their facts available claim for this issue. 63 FR 33041, 33046–47 (June 17, 1998). In that case, the Department stated that it was justified in applying the use of partial adverse facts available because the respondent did not cooperate to the best of its ability. In this instance, Usinor has cooperated to the best of its ability in supplying the Department with all of the relevant information, including, when necessary, careful estimates of missing information, for the inland freight expenses between the Gueugnon plant and the Macon containerization facility. In sum, for the final determination, we used respondent's information for the inland freight expenses between the Gueugnon plant and the Macon containerization facility.

Comment 6: Affiliated Freight Forwarders

Petitioners state that respondent was unable to demonstrate that rates from its affiliated freight forwarder were arm's-length rates. Petitioners argue that the fact that the affiliated freight forwarder made profit does not necessarily prove the rates it charged to respondent and its affiliates were arm's-length rates. Petitioner believes that respondent should have been able to present information to establish that the affiliate charged arm's-length prices. Because, in petitioners' opinion, respondent did not establish the arm's-length nature of the affiliated freight forwarder's rates, petitioners believe these transactions should be disregarded pursuant to section 773(f)(2) of the Act, and that the Department should base rates for affiliated freight forwarders on the highest reported rate for an unaffiliated freight forwarder.

Respondent argues that petitioners' claim that Usinor is unable to demonstrate that it deals with its affiliated freight forwarder on an arm's-

length basis—and that the Department should therefore base affiliated freight forwarder rates on the highest reported rate for an unaffiliated freight forwarder—is incorrect. According to respondent, the Department verified the fact that the affiliated freight forwarder made a reasonable profit on the services it provided to Ugine. According to respondent, no further evidence of the arm's-length character of these services is needed.

Respondent also claims that the vast majority of charges by the affiliated freight forwarder are what respondent refers to as "pass-throughs of charges" from unaffiliated service providers. Respondent further indicates that any charges to be found on invoices of the affiliated freight forwarder that are not what respondent refers to as "pass-throughs of charges" from unaffiliated entities will represent minuscule percentages of the total amounts for each invoice.

Department's Position: We agree with petitioners in part. It is clear from the record evidence that Usinor was unable to demonstrate that its affiliated freight forwarder rates were at arm's length prices. At verification, respondent stated that "it can not show how the affiliated freight forwarder's rates are generated and charged versus the rates of other, non-affiliated freight forwarders." *See Home Market Verification Report of Usinor/Ugine*, at page 31, April 6, 1999. Consequently, we are unable to conclude that these affiliated party transactions were carried out at arm's length prices.

Further, we disagree with respondent's argument that a profit made on the services of the affiliated freight forwarder provided to Ugine proves that these services were at arm's length. The arm's length test compares prices charged by or paid to affiliated parties with prices which would otherwise be obtained in transactions with unaffiliated parties. *See Circular Welded Non-Alloy Steel Pipe from Korea*, 63 FR 32833, 32838 (June 16, 1998). The level of profit on these sales is not a relevant consideration.

Nevertheless, because Usinor was unable to provide the requested information, it would inappropriate to use the rate proposed by petitioners, because use of such a rate would require an adverse assumption under section 776(b) of the Act. Because we find that Usinor has acted to the best of its ability with respect to this adjustment, as non-adverse facts available, we have used the average of Usinor's reported freight-forwarder rates.

Comment 7: Product Matching

Petitioners noted that Edgcomb sometimes shipped higher quality, higher cost products than that which was ordered by a particular customer. Petitioners argued that where GRADEU (grade) and INGRADU (invoiced grade) differ, the Department should match sales according to INGRADU. According to petitioners, the statute requires the Department to match products according to the similarity of the actual physical characteristics of the products. Therefore, according to petitioners, the actual grade sold and shipped—the IN GRADU—must be the basis for product matching with home market sales in order to determine the actual level of dumping on such sales.

Additionally, petitioners argued the Department should ensure that Usinor has reported constructed value information based on INGRADU and not on GRADEU. According to petitioners, because the products shipped actually have a higher cost of production than the product invoiced, the constructed value reported must reflect the higher actual cost of production. If constructed value is not available on an INGRADU basis for any U.S. sale being compared to constructed value, petitioners believe the margin for that sale should be based on facts available.

Respondent asserted that Ugine accurately reported the physical characteristics of the material actually produced and shipped in fields GRADEH or GRADEU as required by the Department's questionnaire. Respondent stated that where the information contained in fields INGRADH or INGRADU differs from the information in fields GRADEH or GRADEU, it is because the grade invoiced differed from the grade actually produced and shipped to the customer. Respondent further stated that, per the Department's instructions, the grade reported in INGRADH or INGRADU is the grade appearing on the invoice to the customer, even though it does not always reflect the actual physical characteristics of the product in those circumstances. Hence, according to respondent, the information in fields GRADEH and GRADEU should be used for product comparisons, as such information reflects the actual physical characteristics of the material produced and sold.

Department's Position: We disagree with petitioners' contention that product matching must be based on the data reported in field INGRADU. Petitioners appear to misunderstand the reported characteristics: although they correctly argue that matching should be based on the characteristics of the merchandise actually shipped, they mistakenly state that the fields INGRADU and INGRADH are the fields which contain those characteristics. In fact, in response to the Department's initial and supplemental questionnaires, respondent reported the grades of subject merchandise invoiced to customers in fields INGRADU and INGRADH. Respondent reported the grades of subject merchandise actually produced and shipped to customers in fields GRADEU and GRADEH. As Edgcomb explained at verification, for a number of sales, the grades reported in fields GRADEU and INGRADU differ. *See United States Verification Report of Edgcomb*, at page 5, April 7, 1999. According to Edgcomb, when necessary, they would ship higher quality and higher cost product than what was ordered, while invoicing a customer for the lower quality and lower cost grade ordered. *See United States Verification Report of Edgcomb*, at page 5, April 7, 1999. Edgcomb representatives explained that this was sometimes necessary because of shortages in inventory. *See United States Verification Report of Edgcomb*, at page 5, April 7, 1999. Edgcomb would also do this at times to reduce inventory of certain products. Thus, in some cases, the fields INGRADU and INGRADH do not reflect the actual merchandise delivered to the customer. The Department is required to base its calculations on products actually sold for consumption in the U.S. and home markets. In cases where the grades reported in fields GRADEU and INGRADU differ, the Department will base its product comparison on the product actually produced and shipped. Thus, the Department used the data reported in fields GRADEU (or GRADEH, as appropriate) for comparison purposes.

Comment 8: Credit Expenses/Bernier Sales

Petitioners claimed that Bernier was not able to report its actual dates of payment for its home market sales, but instead provided an average delay between invoice and payment. Additionally, petitioners noted that Bernier recalculated the average payment period using only roughly 70 percent of its reported sales value. Thus, petitioners argued the average payment period proposed by respondent should be rejected because the recalculation is not based on the total sales value. Further, petitioners contended that the omitted 30 percent of sales could substantially reduce the average payment period, and the sales chosen

for recalculating the average payment period do not appear to be sampled randomly. Therefore, petitioners argued that Bernier's credit expense for home market sales should be rejected because Bernier has not provided either actual payment dates or accurate average date of payment for all sales.

According to respondent, at the outset of verification, Bernier made a minor correction to revise the reported delay between invoice date and date of payment in order to correct an error in its computer program used to compute the data. Respondent explains that in providing the corrected data, Bernier examined its largest sales—representing over 80 percent of the total quantity and 70 percent of total value of sales of subject merchandise—provided the Department with figures for actual payment delay on such sales, and then calculated average payment delay on its remaining sales based on the actual data. Thus, respondent believes petitioners' demand that Bernier should be denied an adjustment for credit expense should be rejected.

Department's Position: We disagree with petitioners. Respondent's methodology for reporting its credit expenses is acceptable. At the beginning of verification, Bernier presented the Department with a minor correction on its date of receipt of payment which revised the reported delay between invoice date and the receipt of payment dates which had previously been misreported due to a computer programming error. To correct this error, respondent manually researched its largest sales, which represented over 80 percent of the total quantity of their sales of subject merchandise (roughly 70 percent of the total sales value). *See Home Market Verification Report of Bernier*, at page 2, April 6, 1999 and Exhibit BE–1. Once Bernier had completed its research, it provided the Department with revised figures with the actual payment delay on the aforementioned pool of sales. *See* Sales Transactions, Verification Exhibits BE–14 through BE–16. Further, Bernier only used an average payment date for the remaining pool of sales that did not have an actual payment date, and based that average date on the actual payment date data for the largest sales. Moreover, the Department's questionnaire clearly states, "if actual payment dates are not readily accessible in your accounting system, you may base the calculation on the average age of accounts receivable." *See Department's Questionnaire* at page B–28, August 3, 1998. Thus, it is reasonable for respondent to calculate an average payment date for those sales that did not have an actual payment date. Therefore, respondent has been fully cooperative and has acted to the best of its ability to provide the Department with all available information and facts available is warranted in this regard. In sum, for the final determination, the will use respondent's information for credit expense.

Comment 9: Credit Expenses/Ugine Service Sales

Petitioners stated that Ugine Service was not able to report its actual dates of payment for its home market sales, but instead provided an average delay between invoice and payment. Additionally, petitioners noted that Ugine Service recalculated the average payment period using a small portion of its sales database. Thus, petitioners argued the average payment period proposed by respondent should be rejected because the recalculation is not based on the total sales value. Further, petitioners contended that the larger omitted portion of sales could substantially change the average payment period, and Ugine Service did not provide information on how it chose the sales for its sample. Since the Department cannot determine whether the sales chosen are representative of all other sales and cover a representative period in the POI, petitioners state the validity of the sample cannot be determined and thus is not reliable. Therefore, petitioners argued that Ugine Service's credit expense for home market sales should be rejected because Ugine Service has not provided either actual payment dates or demonstrated that it has provided an accurate average date of payment for all sales.

According to respondent, Ugine Service was able to manually identify and report actual date of payment for a significant percentage of its reported home market sales. Where possible, Ugine Service computed the average days payment was outstanding based on customer-specific information. For the rest, respondent claims Ugine Service applied an overall average based on the customer-specific information. According to respondent, such data was reported to the best of Ugine Service's ability. Thus, respondent believes the Department should deny petitioners' request to reject Ugine Service's credit expense adjustment.

Department's Position: We disagree with petitioners. Respondent's methodology for reporting its credit expenses is acceptable. At the beginning of verification, Ugine Service presented the Department with a minor correction on its receipt of payment date. Respondent stated that they had to revised the date of receipt of payment due to double-counting the period from the actual invoice date to the due date. Due to this error, respondent stated that it manually researched its files and reported the actual date of receipt of payment on a transaction-specific basis for a portion of its sales file. *See Home Market Verification Report of Ugine Service* at page 2, April 5, 1999 and Exhibit UGS–1, Attachment 2. For the remaining sales, Ugine Service used an average based on customer specific data, to calculate a number of days outstanding for the credit calculation. That calculated average is very close to the average number of days based on transaction-specific information. *See Home Market Verification Report of Ugine Service*, April 5, 1999 and Exhibit UGS–1, Attachment 3. Thus, Ugine Service's calculated average days was a reasonable surrogate because Ugine Service could not provide the actual payment dates for these sales. Further, the Department's questionnaire clearly states, "if actual payment dates are not readily accessible in your accounting system, you may base the calculation on the average age of accounts receivable." *See Department's Questionnaire* at page B–28, August 3, 1998. Thus, it is reasonable for respondent to calculate an average payment date for those sales that did not have an actual payment date. Therefore, respondent has been fully cooperative and has acted to the best of its ability in providing the Department with all available information and facts available is not warranted in this instance. In sum, for the final determination, we used respondent's information for credit expense.

Comment 10: Date of Sale in the Home Market

According to petitioners, the verification report for Ugine demonstrates that order confirmation date is the appropriate date of sale for home market sales. Specifically, petitioners stress that an order acknowledgment document is generated by Ugine's order entry system for each order and each change of order. Petitioners argued that the Department should conclude that order date—as defined by the order confirmation—is the appropriate date of sale because it is the date of sale on which the terms of sale are set and recorded.

According to respondent, the date of invoice properly reflects date of sale in this case. Respondent claims that Ugine and Uginox maintain their sales records based on invoice date in the normal course of business. Thus, respondent asserted that the companies reported

their sales by invoice date on the basis of the Department's regulations, the Questionnaire instructions, and the applicable facts. According to respondent, the Department verified that order date would not be the appropriate date of sale in this case, as price and quantity are subject to continued negotiation until a sale is invoiced. Thus, respondent argued that the Department should reject petitioners' contention that the home market date of sale should be based on order date.

Department's Position: We agree with respondent that invoice date is the correct date of sale for Usinor's home market sales. Under our current practice, as codified in the Department's Final Regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. See *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (October 16, 1998) ("*Pipes and Tubes from Thailand*"). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, where the evidence indicates that the material terms of sale were established on some date other than invoice date. See *Preamble to the Department's Final Regulations*, 62 FR 27296, 27348–27350 (May 19, 1997). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, in response to the original questionnaire, Usinor reported invoice date as the date of sale in both the U.S. and home markets. On November 2, 1998, Usinor submitted a letter requesting that the Department not require the submission of order confirmation date data because the companies' record keeping systems were not equipped to report order acknowledgments, in some cases because order acknowledgments were not generated, and in some cases because they were routinely purged from the involved databases. Furthermore, Usinor reported that the essential terms of the companies' orders change between the date of order acknowledgment and the invoice date for most, but not all, of its U.S. and home market sales. For purposes of our preliminary determination, we accepted the date of invoice as the date of sale subject to verification. See *Preliminary Determination* at 133–134.

At verification, we carefully examined Usinor and its affiliates selling practices, namely, the manner in which each company records the sales in its financial records by date of invoice. For the home market, we reviewed several sales observations for which the price and quantity changed subsequent to the original order confirmation. See *Home Market Verification Report of Usinor/Ugine* at pages 12, and 39–47, dated April 6, 1999. Additionally, at verification we examined respondent's study of order modifications in 1995 and found that the terms of sale for a large portion of sales in that year were modified multiple times between the initial order date and the invoice date, and that the vast majority of orders were modified at least once. See *Home Market Verification Report of Usinor/Ugine* at pages 12, and 39–47, dated April 6, 1999. Further, we discovered at verification that when an order is changed only the most recent set of information can be retrieved from the database system. Thus, if an order is changed, Usinor would only be able to recover information from the most recent version of the changed order, and is thus not able to recover historical information about that order. In addition, at verification we discovered that Usinor purges its record keeping database system (i.e., CDSTAT) every six months in order to keep computer memory space at a maximum, and only the original order date and other original order data are retained in another (i.e., FACSTAT) database. See *Home Market Verification Report of Usinor/Ugine* at page 11, April 6, 1999. Thus, based on respondent's representations, and as a result of our examination of Usinor and its affiliates records kept in the ordinary course of business, we are satisfied that the date of invoice should be used as the date of sale because it best reflects the date on which material terms of sale were established for Usinor and its affiliates' home market and U.S. sales.

Comment 11: Reimbursement of Antidumping Duties Paid

According to petitioners, the Uginox verification report indicates that Ugine charges Uginox prices net of all export and import-related expenses. Petitioners concluded that this amounts to a discount or rebate to Uginox from Ugine of all the export and import related expenses, plus an amount for profit, on each U.S. sale. In light of this practice, petitioners argued that Ugine will now discount the price to Uginox on U.S. sales by the amount of any antidumping duties collected, contrary to the requirements of 19 C.F.R. § 351.402(f)(1)(i). Petitioners contended that the Department should apply section 353.402(f) of its regulations, find that there is an agreement between Ugine and Uginox that will result in the reimbursement of antidumping duties by Ugine to Uginox, and then add the amount of the duties to be reimbursed into the duty deposit rate for Usinor.

Petitioners asserted that the Department previously applied the reimbursement regulation in a case where duties had yet to be assessed, and that the Department specifically concluded that an agreement to reimburse was sufficient to trigger the regulation. Petitioners further stated that there is no legal or logical reason to wait until the end of the first administrative review to apply the reimbursement regulation, thereby frustrating the remedial effect of the antidumping laws for that additional time. In support of this, petitioners quote cases indicating that the regulation is designed to preserve the statute's remedial purpose by discouraging foreign exporters from assuming the cost of duties, and that the remedial effect must be preserved as soon as an agreement to reimburse duties is apparent.

According to respondent, the Department's reimbursement regulations do not apply at this stage of the proceeding. Respondent asserted that petitioners fail to cite any cases where reimbursement was found or considered in an investigation. Respondent further stated that petitioners only cite administrative reviews—covering periods for which duties had already been imposed—in support of their argument. Respondent argued that there must be a finding of sales at less than fair value before a dumping margin can be imposed, and there must in turn be an established dumping margin prior to any finding that reimbursement is taking place. Respondent contended that in this case the Department has not determined that the subject merchandise is being sold at less than fair value, so there is no basis for an actual assessment of duties. Thus, according to respondent, the Department can not find that reimbursement is taking place.

Respondent claimed that there is no agreement by Ugine to reimburse Uginox for antidumping duties. Respondent further claimed that petitioners have failed to satisfactorily allege the required elements of duty reimbursement. According to respondent, the Department's regulations require that a petitioner

show evidence that an exporter either directly pays antidumping duties for its affiliated importer or has reimbursed the importer for duties already paid. Respondent claimed that no such payments or reimbursements have been or can be made. Respondent also argued that petitioners' claim is legally infirm because the Department's policy and practice related to the treatment of possible discounts or reimbursements of the type discussed above require more and different evidence than has been presented in this case.

Finally, respondent argued the Department should reject petitioners' argument for a rebuttable presumption of reimbursement against Uginox. According to respondent, the Department's regulations state that a rebuttable presumption of reimbursement may be imposed if, at the time duties are being paid, the importer has not filed a pre-liquidation certificate with Customs. Respondent argued that such a presumption is impossible in this case because duties have not been assessed and are not being paid. Thus, respondent stated that the Department should reject petitioners' reimbursement claim.

Department's Position: We disagree with petitioners. First, our reimbursement regulations are not applicable at this stage of the proceeding. For the Department to apply the duty reimbursement provision, there must be a duty to reimburse. During the POI, there was no liability for antidumping duties to be assessed.

Second, petitioners have improperly cited certain cases in support of their argument, e.g., *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Administrative Review*, 61 FR 48465, 48470 (September 13, 1996); *Porcelain-on-Steel Cookware from Mexico: Preliminary Results of Antidumping Administrative Review*, 64 FR 1592, 1593 (January 11, 1999) ("Porcelain Cookware"). Both of these cases involve administrative reviews. In all administrative reviews—unlike in investigations—actual duties are to be assessed on the transactions under review. Therefore, these cases are not applicable.

In light of the stage of the proceeding, we conclude that there is no basis to apply the reimbursement regulation in this case.

Comment 12: CEP Sales and Home Market Level of Trade

Petitioners point out that the Department compared CEP sales to home market sales based on a constructed level of trade for those CEP sales after the adjustments under section 772(d) of the Act were made. According to petitioners, the Court of International Trade has ruled that the Department's interpretation that the adjustments under section 772(d) of the Act must be made prior to level of trade matching contravenes the purpose of the statute. *Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998). Thus, for the final determination of this investigation, petitioners argued that the Department is required to determine level of trade prior to the application of adjustments under section 772(d) of the Act.

Respondent argued the Department should adhere to its current practice of beginning its level of trade analysis after adjusting for U.S. selling expenses and profit. According to respondent, petitioners' reliance on *Borden Inc.* v. *United States* is misguided, as the Department has indicated its disagreement with *Borden*, and because the case is under appeal. 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998). Respondent also asserted that petitioners' claim is fundamentally identical to an argument expressly considered and rejected in *Certain Stainless Steel Wire Rod From France: Final Results of Antidumping Duty Administrative Review*, 63 FR 30185 (June 3, 1998).

Department's Position: We disagree with petitioners. The Department is continuing its practice, articulated in section 351.412(c) of the new regulations (see 62 FR 27296, 27414), of making the level of trade comparisons for CEP sales on the basis of the CEP after adjustments provided for in section 772(d) of the statute.

As we stated in *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, starting price is not the basis for comparison for CEP sales. 62 FR 7206 (February 18, 1997) ("*SSWR II*"). The statutory comparison is based on the CEP, which is defined as starting price net of the CEP deductions (i.e., those deductions provided for in section 772(d) of the Act which are only applicable to CEP sales). See section 772(b) of the Act. The Act requires the Department to make comparisons between NV and EP or CEP to the extent practicable, at the same level of trade. See section 773(a)(1)(B) of the Act. If the starting price is used to determine the level of trade for CEP sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. Similarly, using the unadjusted price to determine the level of trade of both EP and CEP sales would result in a finding of different levels of trade for an EP and a CEP sale when, after adjustment, the selling prices reflect the same selling functions. Moreover, using the adjusted CEP for establishing the level of trade is consistent with the purposes of the CEP adjustment: to determine what the sales price would have been had the transaction between the producer and its U.S. affiliate qualified as an export price sale. Accordingly, we have followed our practice, which specifies that the level of trade analyzed for CEP sales is the level of trade of the price after the deduction of U.S. selling expenses and profit associated with economic activity in the United States pursuant to section 772(d) of the Act. Therefore, for the final determination, the Department has continued to apply the level-of-trade analysis from its preliminary determination.

The U.S. Court of International Trade (CIT) has recently held that the Department's practice to base the LOT comparisons of CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Act. See *Borden Inc., et al.* v. *United States*, Court No. 96–08–01970, Slip Op. 98–36 (March 26, 1998), at 58 (*Borden*); see also *Micron Technology Inc.* v. *United States*, Court No. 96–06–01529, Slip Op. 99–02 (Jan. 28, 1999). The Department believes, however, that its practice is in full compliance with the statute, and that the CIT decision does not contain a persuasive statutory analysis. Because *Borden* is not a final decision, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the regulations at section 351.412.

Comment 13: Hague's Credit Expense

Respondent argued that the Department incorrectly recalculated Hague's credit expenses when it recalculated the credit expenses associated with unpaid invoices. Respondent contended that because Hague's sales do not have specific payment dates, Hague's credit expenses are based on average days outstanding and are not transaction specific. Thus, blank payment dates for Hague sales do not indicate unpaid invoices. Respondent noted that the Department's computer program mistakenly mistook Hague sales with blank payment dates as unpaid invoices and recalculated the credit expenses for these sales. Therefore, respondent argued that for the final determination, this recalculation of credit expense for

Hague sales with blank payment dates should be removed.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., margin calculation program) with respect to Hague's U.S. credit expenses for sales with blank or missing payment dates for the final determination. In the final margin program, the Department added specific computer language to correct this problem. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 14: CEP Profit Calculation

Respondent argued that the Department incorrectly double-counted U.S. and home market freight revenue when it calculated CEP profit in the preliminary determination. Respondent states that on the home market side, the Department added freight revenue (FRTREVH) to the home market revenue (REVENVH), but the Department had already included FRTREVH in the CEP profit calculation as an offset to movement expenses. Thus, the Department should correct the double counting of FRTREVH.

Additionally, respondent argued that on the U.S. side, the Department added freight revenue (FRTREVU) to the U.S. revenue (REVENU), but the Department had already included FRTREVU in the CEP profit calculation as an offset to movement expenses. Thus, the Department should correct the double counting of FRTREVU.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., model match and margin calculation programs) to prevent double-counting home market and United States freight revenue for the final determination. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 15: CEP Profit Calculation/ Currency Conversion of U.S. Packing Expense

Respondent argued that the Department did not correctly convert the currency for U.S. packing cost in its CEP profit calculation. Respondent noted that the Department converted the packing expense variable PACKU to U.S. dollars and saved this result in the variable PACKINGU. However, respondent contended that the Department included the dollar-denominated variable PACKINGU in the calculation of the French franc-denominated variable string (COGS), therefore mixing the currencies. Thus, respondent stated that the Department should correct this currency conversion for the final determination.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., margin calculation program) with respect to the packing costs in the CEP profit calculation. In the final margin program, the Department has corrected the currency conversion problem in the CEP profit calculation. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 16: U.S. Intercompany Sales between Uginox and Edgcomb

Petitioners stated that the Department incorrectly included sales from Uginox to Edgcomb in its preliminary determination. Petitioners noted that in the preliminary determination the Department fully intended to include all downstream sales from Bernier, Ugine Service, Hague and Edgcomb in its dumping calculation but not intercompany sales. Thus, petitioners stated that by including the sales between Uginox and Edgcomb and the downstream sales of Edgcomb, the Department has double-counted these sales and calculated an improper CEP for Edgcomb sales. Petitioners stated that the Department should correct this error for the final determination and only use Edgcomb's downstream sales.

Respondent stated that it agrees with petitioners that the Department should not double-count Edgcomb's resales as well as sales from Uginox to Edgcomb. However, respondent argues that the Department should eliminate Edgcomb's resales for the reasons stated above comment 2.

Department's Position: We agree with petitioners. As stated in comment 2 above, the Department has concluded that Edgcomb should be considered affiliated with both Usinor and Uginox for the purposes of this final determination. See Comment 2. Therefore, for purposes of calculating a final antidumping duty margin for Usinor, the Department included Edgcomb's downstream sales in its margin calculation, and eliminated sales from Uginox to Edgcomb.

Comment 17: Failure to Deduct U.S. Freight Expenses From Port to Warehouse

Petitioners argued that the Department inadvertently failed to include U.S. port to warehouse expenses (i.e., the variable INLFPWU) in its calculation of total U.S. movement expenses. Petitioners stated that the Department should correct this inadvertent error for the final determination.

Respondent did not comment on this issue.

Department's Position: We agree with petitioners. In the preliminary determination, the Department inadvertently failed to include U.S. port to warehouse expenses (INLFPWU) in its calculation of total U.S. movement expenses. In the final determination, we have included INLFPWU in our calculation of U.S. movement expenses. Please see the Department's analysis memorandum and final margin computer program for this change.

Comment 18: Missing Payment Dates

Petitioners stated that in the preliminary determination, the Department recalculated credit expenses for sales with missing payment dates. However, in the Department's revised credit expense calculation, petitioners contend that the revised net price calculation failed to deduct early payment discounts and other discounts in the home market credit expense calculation, and early payment discounts in the U.S. credit expense calculation. Further, petitioners noted that the respondent included other discounts and early payment discounts in its calculations of both the U.S. and home market credit expenses. Therefore, petitioners argue that without considering these additional deductions, the credit expense calculation is not consistent with the respondent's reported data for credit expenses.

Respondent stated that petitioners objection to the Department's calculation of credit expense for sales with missing payment dates has been overtaken by events. Specifically, credit expense on the revised files has been recalculated to account for actual payment dates, where available, or average days outstanding. Therefore, respondent argued that there is no basis for alteration of the Department's program with regards to credit expenses.

Department's Position: We agree with respondent in part. On April 8, 1999, the Department provided respondent an opportunity to revise its sales and cost files with minor corrections found at the

recent sales and cost verifications in France and the United States. See *Memorandum to the File*, dated April 8, 1999. On April 15, 1999, respondent provided the Department with revised sales and cost tapes. The Department has confirmed that Respondent's U.S. credit expenses do not need to be recalculated because the respondent has already recalculated all of its U.S. credit expenses to account for actual payment dates, where available, or average days outstanding. However, in the preliminary determination, we did not deduct early payment discounts and other discounts in the home market credit expense calculation. Additionally, respondent's revised home market sales tape continues to have missing payment dates for certain sales which have not been paid. Therefore, for the final determination, we have recalculated respondent's home market credit expense for sales with missing payment dates by designating the last day of the home market verification as payment date, and have deducted early payment discounts and other discounts in our recalculation of home market credit expense, where appropriate. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Cost of Production/ Constructed Value

Comment 19: Affiliated Party Transactions (Usinor)

Petitioners argue that the Department should adjust Usinor's reported hot rolling costs to reflect a market value in accordance with the major input rule. According to the petitioners, the Department determines the value of a major input purchased from an affiliated party based on the highest of the price paid to the affiliated party, the market price, or the cost of producing the major input (see *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom*, 62 FR 2081, 2115 (January 15, 1997); *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, from Japan*, 61 FR 57629, 57644 (Nov. 7, 1996)). In this instance, the petitioners claim the record shows that the market price is higher than either the reported transfer price or the affiliates cost of production ("COP").

Usinor disagrees with the petitioners' assertion that an adjustment is necessary. According to Usinor, Ugine properly valued affiliated party inputs at the transfer price which exceeded actual cost. As for the comparison to a market price, Usinor claims that the Department cannot make a proper comparison between the reported market price and the reported transfer price because of the differing market conditions. Thus, Usinor states that no adjustment to hot rolling costs is necessary for the final determination.

Department's Position: We agree with petitioners that the hot rolling services Usinor obtained from an affiliate should be adjusted to a market price. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value are at prices that "fairly reflect * * * the market under consideration." Section 773(f)(3) allows the Department to test whether transactions between affiliated parties involving a major input is above the affiliated supplier's cost of production. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is above the affiliated supplier's cost. The determination as to whether an input is considered major is made on a case-by-case basis. *See Final Rule* 62 FR at 27362.

In determining whether an input is considered major, among other factors, the Department looks at both the percentage of the input obtained from affiliated suppliers (verses unaffiliated suppliers) and the percentage the individual element represents of the subject merchandise's COM (*i.e.*, whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise). In the instant case, we looked at these percentages for hot rolling services provided by an affiliate. The cost of these services represent a relatively small percentage of the subject merchandise's COM, which reduces the risk of misstatement of the subject merchandise's costs to such a degree that we have determined that section 773(f)(3) of the Act does not apply to these inputs. However, we found that the weighted-average transfer price of hot rolling services reported by Usinor was below market price and therefore, in accordance with section 773(f)(2) of the Act, we have increased the subject merchandise's COM accordingly.

As for Usinor's concern that the reported market price is not comparable to the reported transfer price, we disagree. For the market price, Ugine reported the arm's length sales price the affiliate charged to non affiliates for performing analogous hot rolling services. Thus, we note that the reported market price does represent the amount usually reflected in sales of the major input in the home market under consideration as required by section 773(f)(3) of the Act.

Comment 20: Depreciation Expense (Usinor)

To calculate COP and CV, petitioners claim that the Department should rely on the depreciation expense recorded in Ugine's cost accounting system rather than the depreciation expense reported on the financial statements. According to petitioners, section 773(f)(1)(A) of the Tariff Act of 1930, as amended, provides that the Department normally relies on data from a respondent's books and records in which its costs are normally kept if those records are prepared in accordance with the home country's generally accepted accounting principles ("GAAP"), and where they reasonably reflect the cost of producing the merchandise. In this instance, the petitioners claim that the cost accounting system is in fact the company's normal books and records. Thus, in order for the Department to reject Ugine's cost accounting system for the valuation of the depreciation expense, the petitioners argue that the Department must find that Ugine's cost accounting system is not in accordance with French GAAP, or that costs recorded in the cost accounting system are not reasonably reflective of the production costs. Moreover, petitioners claim that there is no record evidence to suggest that Ugine's cost accounting system does not reasonably reflect the costs associated with the production of stainless steel sheet and strip in coils. Petitioners assert that the burden is on Usinor to demonstrate on the record that the costs recorded in their normal books and records are not reasonable (*see Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29559 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea*, 57 FR 53693, 53705 (November 12, 1992) and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22550, 22556 (May 8, 1995)). Without

such demonstration on the record by Usinor, the petitioners assert that the Department should, in the final determination, base depreciation on the figures recorded in Ugine's cost accounting records.

Usinor contends that it properly relied on the depreciation expense reported in the company's audited financial statements prepared in the accordance with French GAAP to calculate depreciation expense. According to Usinor, Ugine's cost accounting system does not reflect depreciation in accordance with GAAP and therefore such depreciation cannot properly be used in this investigation. Usinor states that the Department has traditionally preferred to use the figures found on the financial statements (*see Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Romania, Singapore, Sweden, and the United Kingdom*, 62 FR 54043, 54080 (1997)). Moreover, Usinor claims that the Department has traditionally relied on the depreciation expense reported on the financial statements rather than the depreciation expense reported in the respondent's cost accounting system (*see Usinas Siderurgicas de Minas Gerias S.A.* v. *United States*, No. 93–09–00557–AD, 1998 WL 442297, at *9 (CIT 1998); *FAG U.K. LTD* v. *United States*, 945 F.Supp. 260, 271 (CIT 1996); *Cinsa S.A. de C.V.* v. *United States*, 966 F.Supp 1230, 1234 (CIT 1997); *Final Results of Administrative Review: Silicon Metal From Brazil*, 64 FR 6305, 6321 (February 9, 1999); and the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada*, 64 FR 17324, 17335 (April 15, 1999)). Therefore, Usinor requests that the Department reject petitioners' attempt to overturn the Department's longstanding practice in this area and use the depreciation as recorded in Usinor's financial accounting system.

Department's Position: We agree with Usinor that in this case the depreciation expense reported on Usinor's audited financial statements should be used in the calculation of COP and CV. Specifically, Ugine S.A. became a division of Usinor at the end of 1995. As a result of the merger, Usinor revised Ugine's depreciation expense. This revision to Ugine's depreciation expense was made in accordance with French GAAP. Although Usinor revised Ugine's depreciation expense for financial statement purposes, Ugine never revised its internal financial accounting and cost accounting depreciation ledgers to reflect the change. Thus, Ugine's cost accounting system and financial accounting system generate different depreciation results than the amount Usinor officially recognizes for the division. For submission purposes, Usinor adjusted the depreciation expense reported in Ugine's cost accounting system to the amount Usinor reported for the Ugine division in Usinor's financial statements. Contrary to petitioners' claim, we found that the depreciation expense recorded in the cost accounting system conforms to French GAAP only after the company has made adjustments to reflect the amount reported on Usinor's audited financial statements. We note that the independent auditors base their opinion on the final amounts reported on the financial statements and not on the amounts that may be recorded in the internal cost accounting system. Moreover, Ugine demonstrated that its depreciation expense contained in its cost accounting system eventually reconciled to Ugine's divisional financial statement and that the depreciation expense reported on this divisional statement reconciled to the depreciation expense reported on Usinor's financial statements. Since the amount of depreciation expense detailed in Ugine's cost accounting system reconciles to Usinor's audited financial statements, we believe that Ugine's reported depreciation expense does not distort its COP and CV figures. Finally, we note that Usinor's "change" to Ugine's depreciation expense was made prior to the POI.

Additionally, our use of amounts reported on a company's financial statement has been upheld by the Court of International Trade (see, *FAG U.K. LTD* v. *United States*, 945 F.Supp. 260, 271 (CIT 1996) (upholding the Departments reliance on a firm's expense as recorded on the firm's financial statements); *Hercules, Inc.* v. *United States*, 673 F. Supp. 454 (CIT 1987) (upholding the Department's reliance on COP information from the respondent's normal financial statements maintained in conformity with GAAP); See also: *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada*, 64 FR 17324, 17335 (April 9, 1999)) (The Department relied on respondent's expense as recorded on the firm's financial statements). More importantly, the Court of International Trade has consistently sustained our practice of relying on the depreciation expense reported in the company's audited financial statements (see *Cinsa S.A. de C.V.* v. *United States*, 966 F.Supp 1230, 1234 (CIT 1997) (upholding the Department's reliance on depreciation expense reported on the financial statements); *Laclede Steel Co.* v. *United States*, 965 Slip OP 94–160, *24 (CIT 1994) (upholding the Departments reliance on depreciation expense reported on the financial statements); *Final Results of Administrative Review: Silicon Metal From Brazil*, 64 FR 6305, 6321 (1999). For the final determination, we relied on the depreciation expense reported by Usinor.

Comment 21: Including Employee Payments in the Cost of Production (Usinor)

For the final determination, petitioners assert that the Department should recalculate Ugine's COP and CV to include certain employee profit-sharing payments. According to petitioners, the Department has addressed this issue before, and in each case has determined that "profit-sharing" payments are appropriately considered an employee remuneration cost to the company and should be included in the calculation of COP and CV. As examples of such instances, the petitioners cite the *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware From Mexico*, 60 FR 2378 (January 9, 1995); the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33551, 33557 (June 28, 1995); and the *Final Results of Antidumping Administrative Review: Porcelain-on-Steel Cooking Ware from Mexico*, 58 FR 43327, 43331 (August 16, 1993), in which Department included similar profit-sharing costs in the calculation of COP.

Respondent had no comment on this issue.

Department's Position: We agree with the petitioners that Usinor's profit sharing expense should be included in the calculation of COP and CV. Under French law, an employer is required to distribute a portion of its profit to employees. This distribution of profits is reflected on the company's income statement as an expense. With respect to the employees involved in the production and administration of the subject merchandise, the distribution represents a form of compensation. Moreover, our established practice is to include this type of compensation in the calculation of COP and CV, because this profit sharing represents an expense recognized within the POI and should be reflected in the product cost, in accordance with full absorption costing principle (see *Final Results and Partial*

Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey, 63 FR 68429 (December 11, 1998); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Germany*, 61 FR 13834, 13838 (March 28, 1996); and *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware from Mexico;* 60 FR 2378 (January 9, 1995). For the final determination, therefore, we included Usinor's profit-sharing expense in the calculation of COP and CV to reflect the fully absorbed cost of producing the stainless steel sheet and strip.

Comment 22: Including "Exceptional" Expenses and Other Expenses in the General and Administrative Expense Calculation (Usinor)

Petitioners state that the Department should include certain omitted expenses in the calculation of Ugine's general and administrative expense ratio. According to the petitioner, these expenses represent normal general and administrative expenses for the operations. Thus, they should be included in the general and administrative expense calculation for the final determination.

Usinor asserts that it properly excluded the expenses in question because they do not relate to the production of the subject merchandise. According to Usinor, Ugine's exclusion of certain non-operating and extraordinary expenses was entirely justifiable. Moreover, Usinor claims that the Department verified these omitted expenses and only had a concern with donations and football club expenses. Thus, Usinor believes that the items excluded, as verified by the Department, are not production costs. Therefore, consistent with past Department's practice (see *Final Results of Administrative Review: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan*, 56 FR 41508, 41516 (1991); and *Final Results of Administrative Review: Television Receivers, Monochrome and Color, From Japan*, 56 FR 5392 (1991)), Usinor claims that they properly should not be included in Ugine's G&A expenses.

Department's Position: We agree with both petitioners and respondent in part. We agree with petitioners that some of the omitted expenses in question should be included in the calculation of the G&A expense rate. For instance, we agree that contributions (i.e., donation and the football expenses) should be included in the calculation of G&A expense because these expenses are a part of Usinor's overall administrative expenses attributable to all production, including production of subject merchandise. As for the exceptional expenses, we agree with the respondents that these items are related to investing activities and should not be included in the calculation of COP and CV (see, *Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9748 (March 4, 1997); and *Final Results of Administrative Review: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan*, 56 FR 41508, 41516 (1991) (Department included extraordinary expenses).

Comment 23: Disregarding Usinor's Claim for an Offset of Short-Term Interest Income in Its Financial Expense Calculation (Usinor)

Petitioners argue that the Department should deny Usinor's claim for an offset of short-term interest income in its financial expense calculation because the respondent could not distinguish short-term interest income from total interest income. Moreover, the petitioner asserts that Usinor could not support its claim that interest income was generated from short-term sources. Petitioners state that the Department will not allow an offset in such circumstances and cite the *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964, 61970 (November 20, 1997) in which the Department stated that it "* * * will offset interest expense by short-term interest income only where it is clear from the financial statements that the interest income was indeed short-term in nature." In that case, the Department did not offset the interest income in the financial expense calculation. Therefore, the petitioners argue that since Usinor was not able to clearly distinguish short-term interest income from total interest income in the financial statements, the Department should disallow and reverse the offset taken by Usinor in its financial expense calculation.

Usinor claims that the Department should accept Ugine's offset of short-term interest income in calculating its financial expenses—just as the Department has done in other cases involving Usinor (see *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France*, 58 FR 68865, 68872 (December 29, 1993)). According to the respondent, Ugine calculated the offset in the same manner as previously approved by the Department. Thus, Usinor contends that petitioners' request to disallow Ugine's short-term interest income offset is without merit.

Department's Position: We agree with petitioners. Usinor's consolidated financial statements only reported a net interest expense figure. Therefore, in order to calculate a financial expense figure Usinor imputed its gross interest expense, long-term interest income, and the short-term interest expense offset based on an adjustment methodology used by the Department in a previous antidumping investigation involving Usinor (see *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France*, 58 FR 68865, 68872 (December 29, 1993)). In that case, the Department made an adjustment to financial expense because Usinor incorrectly deducted both short-term and long-term interest income, rather than limiting the deduction to short-term income as required by the Department's practice, when calculating its reported financial expense rate. As a result, the Department limited the interest income offset claim to an estimated short-term amount. By contrast, in this proceeding, we have excluded Usinor's short-term interest offset because neither of respondent's audited financial statements reported any breakdown of long- vs. short-term investments or investment income, nor was the respondent able to provide support for its claimed short-term interest income. Therefore, based on the Department's past practice, we have disallowed Usinor's short-term interest income offset in the financial expense calculation (see, e.g., *Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Silicon Metal From Brazil*, 64 FR 1974 (February 9, 1999) (Department disallowed the short-term offset.).

Comment 24: Accepting New Information Presented by Usinor on the Costs of Products Sold but Not Produced (Usinor)

Petitioners claim that the Department should not accept Usinor's minor correction provided on the first day of verification that relates to products sold but not produced during the POI. According to petitioners, this change is not a minor correction because the correction is the submission of new costs for thirteen control numbers. More important, the revision is based on new factual information that was not submitted a week before verification took place. As a result, neither the Department nor the petitioner had time

to review the submitted information before verification.

Petitioners further argue that while they recognize the need to allow respondents an opportunity to correct minor errors at the beginning of the verification, they do not believe that verification is an appropriate venue for the submission of new factual information. According to petitioners, the Department generally only collects and uses information obtained at verification when minor discrepancies are found or when the Department believes that a respondent's methodology may not have been reasonable but can be simply changed (see *Final Results of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 63 FR 16758, 16761 (April 6, 1998)). Verification, claim the petitioners, is used by the Department to clarify and support information already on the record. Thus, the Department will correct errors found at verification as long as those errors are minor and do not exhibit a pattern of systemic misstatement of fact (see *Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil*, 59 FR 732, 736 (Jan. 6, 1994)). Therefore, the petitioners assert that the submission of these new costs cannot be considered minor by any measure and should not be used in the margin calculation.

Usinor disagrees with petitioners position that the presentation of revised cost data for these thirteen control numbers is inappropriate. According to Usinor, the revised cost data does constitute a minor correction because the reported costs of these control numbers were incorrectly submitted due to a computer error. Moreover, Usinor asserts this type of correction is typically accepted by the Department at the commencement of verification. Usinor further states that this minor correction was thoroughly verified by the Department. The Department, therefore, should reject petitioners' attempt to create an issue where none exists.

Department's Position: We agree with Usinor that the revised cost of the thirteen control numbers in question is a minor correction appropriately provided at the beginning of verification. Contrary to the petitioners' argument, this revision is not based on the submission of new information because the change relates to the correction of existing information for these control numbers. Specifically, Usinor presented the Department with revised cost data for 13 control numbers (i.e., models) on the first day of verification. In its original submission, Usinor thought that these thirteen models had been produced outside the POI. To calculate the POI cost of these models in its response, Usinor relied on surrogate values (i.e., the costs of the most similar control number produced during the POI). During the preparation for verification, however, Usinor realized that these models had actually been produced during the POI. As a result, the company did have the actual cost of the model available to make more accurate calculations. During verification, we obtained and reviewed with company officials a list of the actual cost of manufacture for these control numbers (see cost verification exhibit 1). We noted costs had changed but did not find the difference to be significant. As for the collection of the corrected information, we believe the revised calculation of the cost of these models was properly submitted prior to the beginning of verification since the error was found as a result of verification preparation (i.e., reconciliation of costs, as requested in the agenda). Therefore, we have accepted the revised costs for the final determination.

Comment 25: Application of Facts Available to Edgcomb's Further Manufacturing Data (Edgcomb)

Petitioners contend that the dumping margin for U.S. sales further manufactured by Edgcomb should be based on adverse facts available. According to petitioners, it is appropriate for the Department to use adverse facts available pursuant to section 776(b) of the Act in this case because Usinor has failed to cooperate by not acting to the best of its ability to comply with a request for information within the meaning of section 776(b) of the Act. The verification report establishes this non cooperation in several different areas. According to petitioners, in similar cases, the Department has applied the highest margin in the petition, the notice of initiation, or the highest non-aberrant calculated margin in the database (see *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8910 (Feb. 23, 1998)).

Petitioners first argue that Edgcomb did not provide the most product-specific costs available. According to petitioners, Edgcomb has a standard cost system that calculates model-specific costs, but Edgcomb elected not to use it for submission purposes. Petitioners argue that Edgcomb calculated and reported a single weighted-average per-unit further manufacturing cost based on an inappropriate allocation methodology that was found to be inaccurate and distortive by the Department. Specifically, petitioners first point out that Edgcomb's reported costs did not account for the processing steps through which the merchandise actually passed. In addition, the reported costs were an average of all stainless steel products rather than just subject merchandise. Thus, Edgcomb included costs for non subject merchandise like bars and angles. Then, the petitioners note that the respondent allocated costs using sales quantities (which do not accurately represent production quantity, due to product-specific changes in inventory) and sales values (which do not account for differences in product mix). As a result of failing to provide information based on their cost accounting system and of creating an entirely new costing system, the petitioners argue that the information on the record concerning Edgcomb's further manufacturing costs is so incomplete that it cannot serve as the basis for the final determination, and the data cannot be corrected and used without undue difficulty.

Petitioners further allege that Edgcomb deviated from its normal accounting system in reporting its costs without obtaining authorization from the Department for the methodologies used. Thus, the company failed to provide information requested by the Department in the form and manner requested. According to petitioners, the Department's instructions required Usinor to contact the Department before offering an alternative methodology, which respondent failed to do. As a result, petitioners maintain that Edgcomb's unilateral decision to use an average rather than product-specific costs were improper. The burden, according to the petitioners, is on the respondent to create a complete and accurate record (see *Final Results of Administrative Review: Circular Welded Carbon Steel Pipes and Tubes From Thailand*, 62 FR 53808, 53814 (October 16, 1997)). Moreover, respondents cannot be allowed the unilateral discretion to decide which information to provide the Department (see *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565, 1571 (CIT. 1990) and *Mitsubishi Heavy Indus., Ltd.* v. *United States*, 833 F. Supp. 919, 924 (CIT 1993) (It is Commerce, not the respondent, that determines what information is to be provided for an investigation)). Lastly, petitioners contend that

Edgcomb failed to provide verifiable information that significantly impeded the investigation. As a result, Edgcomb has not demonstrated that it has acted to the best of its ability to provide requested information to the Department.

Usinor asserts that no basis exists to apply adverse facts available to Edgcomb's further manufacturing costs. Usinor claims that Edgcomb clearly disclosed in its section E questionnaire response that it was not relying on its cost accounting system to calculate its further manufacturing costs. Moreover, Usinor asserts that the Department never requested revised data from Edgcomb, nor did it even request a further explanation of Edgcomb's methodology. Thus, Usinor asserts that Edgcomb should not be penalized for the Department's failure to give Usinor adequate notice of any perceived deficiencies in Edgcomb's methodology. Respondent also claims that it would be particularly unfair and inappropriate to penalize Usinor for any perceived shortcomings in Edgcomb's cost data. According to Usinor, it fully cooperated with the Department's investigation and provided the Department with further cost of manufacturing data to the best of its ability. Usinor maintains that it does not control Edgcomb, and although Usinor believes that Edgcomb cooperated fully, it was unable to compel Edgcomb to proceed in a particular manner or with specified resources to provide the information pertinent to the investigation.

Moreover, Usinor argues that the further manufacturing data is acceptable and reasonable and should be used in the Department's final determination. Usinor argues that the methodology Edgcomb used was the only feasible method available and that this method accurately represents the cost of further processing. Usinor then asserts that Edgcomb's cost accounting system did not calculate accurate costs during the entire POI because the system was brand new. According to Usinor, Edgcomb installed the system during the POI but was slow to correct the cost inaccuracies the system calculated because further processing cost represents an insignificant portion of the Company's total cost. Since the cost system generated inaccurate results during the POI, Usinor claims that Edgcomb's cost accounting system could not be used. As an alternative, Usinor claims that Edgcomb appropriately used its financial accounting system to calculate the submitted single weighted-average per-unit cost.

If the cost accounting system had been completely implemented and usable, Usinor then argues that Edgcomb would still not be able to use the system to calculate its further manufacturing costs. According to Usinor, the company would have to overcome the problem of linking the sales orders back to the original plant that processed the subject merchandise. Usinor claims that this would involve extensive computer programming as well as an unreasonable amount of manual work on Edgcomb's behalf. In such instances, Usinor claims that the Department does not normally request such extensive undertakings and cites *Usinor Sacilor* v. *United States*, 872 FS 1000, 1007 (CIT 1994) to support its position that such an undertaking is not necessary.

Usinor then contends that calculating a single weighted-average further manufacturing costs for Edgcomb is not distortive. According to Usinor, the single weighted-average cost is appropriate because Edgcomb's slitting and cutting fabrication costs represent approximately the same amount. Usinor maintains that the Department often accepts single weighted-average per-unit costs. To support its position, Usinor cites several cases in which the Department accepted respondent's non-product specific weighted-average production costs when product-specific costs were not available (see *Final Results of Antidumping Review: Certain Porcelain-on-Steel Cookware from Mexico*, 62 FR 42496, 42506 (August 7, 1997) ("Cookware from Mexico"); *Final Results of Antidumping Review: Certain Welded Carbon Steel Pipe From Turkey*, 61 FR 69067, 69072 (December 31, 1996) ("Steel Pipe from Turkey"); *Final Results of Antidumping Review: Certain Cold-Rolled Carbon Steel Flat Products From Germany*, 60 FR 65264, 65266 (December 19, 1995) ("Steel Sheet Flat Products from Germany"). In the same context, Usinor disagrees with the Department's finding discussed in the further manufacturing cost verification report that indicates that the required processing route of a model does have an impact on the model's specific costs. According to Usinor, the verifiers incorrectly compared the fabricating costs associated with the cutting and slitting processes and not the average gross unit prices of the models involved. If the verifiers had compared the gross unit price, Usinor maintains that the total difference in costs would be found to be de minimis. In addition, Usinor asserts that the Department based its findings on a limited sample that is unrepresentative of the total population.

As for using sales quantity and value as an allocation bases, Usinor maintains that the approach is not distortive. According to Usinor, sales quantity is appropriate as an allocation base because it approximates Edgcomb's actual production quantity. In such instances, Usinor claims that the Department normally accepts the sales quantities in lieu of production quantity. To support this claim, Usinor cites several cases in which the Department accepted sales quantities in lieu of production quantities (see *Final Results of Antidumping Duties: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067, 69071 (December 31, 1996); *Final Determination of Sales at Less Than Value: Stainless Steel Round Wire from Canada*, 64 FR 17324, 17330 (April 9, 1999)). As to the use of sales value as an allocation base, respondent notes that this allocation base was used principally because the data for other allocation bases were not available.

Usinor then disagrees with the petitioners' contention that Edgcomb's reported costs were based on incomplete data. Usinor maintains that the only instance of Edgcomb basing its calculations on limited data is its process material yield loss calculations. According to Usinor, Edgcomb had to calculate this cost based on the last three months of the POI because of the deficiencies in its cost accounting system. Specifically, Edgcomb's cost accounting system did not retain all the production data for the POI. Moreover, Usinor claims that the sample used to generate the yield loss is representative because it is based on Edgcomb's experience and there is no reason to believe the yield losses change over time.

Department's Position: We agree with petitioners that the further manufacturing costs cannot be used for the final determination, and therefore the Department must resort to facts otherwise available. While we agree with petitioners that the further manufacturing costs contain errors that are not correctable, we disagree that the application of adverse facts available is warranted in this case. Section 777(b) allows the Department to use an inference that is adverse to the respondent, if it finds that the "interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." However, we were able to verify that, because Edgcomb was in the process of switching accounting systems during the POI, it experienced extraordinary difficulties in reporting to the Department. While we agree with

petitioners that Usinor or Edgcomb should have notified the Department—prior to the submission of the further manufacturing response—that it did not intend to use its normal cost accounting system for reporting purposes, the Department did not direct Edgcomb to resubmit its further manufacturing costs. Therefore they have not failed to cooperate and an adverse inference is not warranted.

However, based on our findings at verification, we conclude that the cost methodology reported by Usinor for Edgcomb's costs is unusable. We disagree with Usinor's argument that the reporting of one single weighted-average per-unit further manufacturing cost does not distort the analysis. Edgcomb's single weighted-average per-unit cost not only obscured all cost differences associated with some of the physical characteristics identified in this investigation as being significant, but also included all cost differences associated with the physical characteristics of non-subject merchandise. At verification, we found that Edgcomb included the fabricating costs of both subject and non-subject merchandise in its submitted weighted-average cost.

We also disagree with Usinor that the use of sales values and quantities is appropriate. While the Department has allowed the use of sales quantities when it is established that they are reflective of production quantities, the use of sales values is seldom appropriate. Sales values are not typically appropriate for purposes of allocating cost because they do not necessarily reflect the actual factors that drive certain costs. The court of appeals has found the use of sales value as an allocation base leads to a circular methodology, in the context to antidumping calculations (see *IPSCO, Inc.* v. *United States,* 965 F. 2d 1056 (Fed. Cir. 1992) (Court determined price-based allocations of costs methodologies circular, and "contradict the express requirements of the statute which set forth the cost of production as an independent standard for fair value.").

Additionally, we disagree with Usinor's interpretation of several cases which Usinor relies upon to support its claim that the Department has normally accepted respondent's non-product specific weighted-average production costs when product-specific costs were not available. For example, in *Cookware from Mexico,* 62 FR at 42506, the Department actually determined that the respondent's reported costs "were allocated to a sufficient level of product specific detail in accordance with the Department's questionnaire instructions." In *Steel Pipe From Turkey,* 61 FR at 69072, the Department determined that, even though respondent's reported cost did provide some level of product specificity, it did not reflect the same level as the costs maintained in its normal course of business. Therefore, the Department made necessary adjustments through application of partial facts available to reflect more product-specific data available on the record. In *Steel Flat Products from Germany,* 60 FR at 65266, the Department determined that the reported costs did have a certain level of product specificity and did reflect the costs as reported in the company's normal cost accounting system.

Finally, Usinor has also argued that the samples the Department obtained of the cost accounting system are not representative of the total population. We disagree. We note that the court has upheld our use of testing the respondent's data through the use of samples. In *Tatung Co.* v. *United States,* Slip Op. 94–195 (CIT 1994), the court opinion stated "verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness, so that Commerce can justifiably rely on that information." Moreover, we note that Usinor itself selected the two samples upon which the Department's conclusions are based prior to verification. See *Memo to the File from Garri Gzirian,* dated March 19, 1999.

Therefore, we have not relied on Edgcomb's reported cost of manufacturing data. Where we did find that Edgcomb's costs were reported correctly, we have used those costs. However, in other instances, as facts otherwise available we have utilized the manufacturing costs of Usinor's other further manufacturer, Hague. We adjusted Hague's reported costs using certain yield loss and processing costs data verified at Edgcomb. We have relied on Edgcomb's SG&A and financial expense calculations.

Comment 26: Combined Financial Statements of Edgcomb and EEHC, and Leasing Arrangement Between the Entities (Edgcomb)

Petitioners assert that Usinor understated Edgcomb's further manufacturing costs by not including the true cost of leasing its plant and equipment ("P&E") from an affiliate. According to petitioners, Usinor relied on the amounts reported in Edgcomb and EEHC's combined financial statements. The combined financial statements collapsed the results of Edgcomb and EEHC (which is a partnership that leases P&E to Edgcomb) into a single reporting entity. However, by relying on amounts reported in the combined financial statements, petitioners assert that Edgcomb only included the depreciation expense associated with this leased P&E rather than the actual lease payments incurred. Petitioners argue that this combination is improper because Edgcomb and EEHC are distinct entities with separate revenues and costs. Thus, petitioners contend that Usinor inappropriately understated Edgcomb's further manufacturing costs.

Usinor disagrees with the petitioners' contention. According to Usinor, Edgcomb manages EEHC's financial records in the normal course of business and normally combines the financial results of the two entities. Moreover, Usinor maintains that EEHC is simply a paper company that was created solely for the purpose of implementing the sale/leaseback financing arrangement. As such, Usinor maintains that there is no actual substance to the separateness of these business entities. In addition, Usinor claims that it is the Department's normal practice to collapse such affiliated entities into a single reporting entity. To support its claim, Usinor cites *Koenig & Bauer Albert AG* v. *United States,* LEXIS 23, at *12 (CIT 1999) and *Asociación Colombiana de Exportadores de Flores* v. *United States,* 6 FS 2d 865, 892–896 (CIT 1998) (Demonstrates the Department's practice of collapsing affiliated parties and treating them as a single entity.). Usinor further notes that Edgcomb's recording of EEHC's actual depreciation expenses instead of the actual rental expense in the combined financial statements is in accordance with U.S. GAAP. Therefore, according to respondent, the Department should continue its practice of adhering to a respondent's accounting practices in accordance with GAAP so long as the practices do not significantly distort the firm's financial position and actual costs. To support this point, respondent cites *Laclede Steel Co.* v. *United States,* 965 LEXIS 186, at *28 (CIT 1994) and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy,* 63 FR 40422, 40429 (July 29, 1998).

Department's Position: We agree with petitioners that Edgcomb understated its reported costs by only reporting the depreciation expense on its leased assets rather than the transfer price. However, we find this issue is moot because we are not relying on Edgcomb's reported fabrication costs for the final determination.

Comment 27: Value of Scrap Sales Used To Offset Further Manufacturing Material Costs (Edgcomb)

Usinor admits that Edgcomb may have slightly understated its material costs by overstating its scrap revenue used as an offset to these costs. However, Usinor claims that revising the value would only increase further manufacturing costs by a de minimis amount.

Petitioners refer to the overstatement of the value of scrap sales offset as another reason for not accepting Edgcomb's reported further manufacturing costs. However, if the Department does not resort to facts available, petitioners claim that the Department should make an adjustment to correct for this understatement of costs.

Department's Position: We agree with petitioners that Edgcomb understated its reported material costs by overstating its scrap revenue offset. However, this issue is moot because we are not relying on Edgcomb's fabrication costs for the final determination.

Comment 28: Including the Consolidation Depreciation Adjustment to Further Manufacturing Costs (Edgcomb)

Usinor argues that the Department should not include the depreciation adjustment reported in Edgcomb's 1997 financial statements in the company's further manufacturing cost. According to Usinor, this depreciation is the result of making a year-end adjustment for financial statement purposes. Specifically, Usinor notes that this adjustment was made in accordance with U.S. GAAP because the new parent (i.e., Samsteel) of Edgcomb changed the useful lives used by Edgcomb previous parent (i.e., Usinor). Moreover, Usinor claims that this adjustment was later eliminated through consolidating entries when Samsteel prepared its 1997 consolidated financial statements. In 1998, Usinor notes that this adjustment wasn't even recorded at Edgcomb's level. If the depreciation adjustment is added to Edgcomb's further manufacturing costs, Usinor notes that the resulting change would have a de minimis impact on the margin calculations.

To capture accurately the expenses incurred, petitioners contend that the Department should include the adjustment in Edgcomb's further manufacturing costs.

Department's Position: We agree with petitioners that this expense should be included in Edgcomb's further manufacturing fabrication costs. However, this issue is moot because we are not relying on Edgcomb's fabrication costs for the final determination.

Comment 29: Applying Facts Available to Hague's Further Manufacturing Costs (Hague)

Petitioners argue that the Department cannot accept the further manufacturing costs reported by Hague, and should base the margin calculations on adverse facts available. Petitioners point out that Hague reported its unit cost of material based on overall figures that include the total cost and quantity of subject and non-subject merchandise. Petitioners claim that information presented on the verification exhibits show that Hague's accounting system is capable of providing a more detailed cost of material. Based on this conclusion, petitioners assert that Hague failed to provide the most product-specific costs allowed by its cost of production records, which creates grounds for application of the adverse facts available under section 776 of the Act.

Usinor argues that petitioners' claims of inaccuracy and demands to apply adverse facts available to Hague's further manufacturing cost should be rejected. Usinor refutes petitioners' conclusion on the capabilities of Hague's accounting system by claiming that it was not feasible to provide more product-specific calculations based on the information generated by the system. According to Usinor, in those cases, where the system keeps track of major grade categories, it does not allow to separate subject from non-subject material within each grade. In other cases, where it does allow identification of the source and process (which is essential for identifying subject merchandise), it does not contain information by grade. Respondent contends that Hague's further manufacturing data is based on a reasonable methodology, consistent with the available records that Hague maintains in its normal course of business.

Department's Position: We disagree with the petitioners' contention that the methodologies used by Hague to calculate its reported cost of further manufacturing warrant the application of adverse facts available. To calculate model specific costs, Hague relied on the most specific and reasonable allocation methods available within its normal record keeping system. Specifically, Hague relied on the costs reported in its financial accounting system to calculate its reported further manufacturing costs because the company does not have a detailed cost accounting system that generates model-specific costs. Using the amounts reported in its financial accounting system and available production reports, Hague was able to calculate a unique further manufacturing cost for each major fabrication process. Where the respondent has provided model specific costs that reasonably reflect the cost of production, our practice is to accept the respondent's reported costs (*see Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 61 FR 69067 (December 31, 1996). In accordance with section 782(e) of the Act, even where information does not meet all of the established requirements, we will use it where it is timely, reliable, and can be used without undue difficulty.

Moreover, our verification revealed nothing to contradict Hague's claim that it does not maintain more product-specific data in its normal course of business. We also verified that Hague was not able to calculate more model specific fabrication costs than those provided. While the accounting records identified by petitioner could in theory be used to calculate more specific costs for each specific order, Hague does not retain all the necessary production records in its normal course of business to make such calculations. As a result, Hague's methodology does provide a reasonable level of product specificity that is consistent with the company's records maintained in the normal course of business. Moreover, we found that the deficiencies we had identified in our further manufacturing cost verification report (e.g., understatement of material costs, additional process strings, etc.) can be adjusted without undue difficulties using data available on the record. Therefore, we find that the application of adverse facts available is not warranted in this instance.

Comment 30: Adjusting the Reported Further Manufacturing Material Costs (Hague)

Usinor maintains that the Department does not need to adjust Hague's reported material costs. Usinor argues that the methodology used by the Department in its further manufacturing cost verification report to show that costs may be understated is inaccurate. Specifically, Usinor points out that the numerator in the verifiers' calculations includes non-subject as well as subject material purchases. In addition, the Department's calculated cost is based on 1997 calendar year figures. In contrast, the denominator includes only subject merchandise sales and is POI based. To make the Department's calculation more accurate and to show that the reported

material cost is not distortive, Usinor provided a revised calculation of Hague's material costs in its case brief. Since the resulting figure is only slightly higher than the reported costs, Usinor believes that Hague's approach was fair and reasonable and should be accepted by the Department.

Petitioners argue that the Department should adjust Hague's cost of material to exclude non-subject materials in accordance with the methodology suggested in the cost verification report.

Department's Position: We have reviewed the information on the record and agree with Usinor that the material cost calculated in Hague's cost verification report was overstated. In addition, we reviewed the methodology suggested by Hague in its case brief and have found it to be reasonable and more product-specific. Therefore, for the final determination, we have adjusted Hague's further manufacturing costs using the method outlined in Usinor's case brief.

Comment 31: Claim Reimbursement Offset Further Manufacturing Costs (Hague)

Usinor argues that the Department should not reverse the adjustment made to Hague's raw material costs to exclude a warranty expense. According to Usinor, Hague appropriately reduced its reported costs for an expense that relates to the resolution of a 1996 warranty claim on a 1995 sale.

Petitioners contend that the Department should reverse the adjustment to include this warranty cost because it was expensed during the POI.

Department's Position: We agree with Usinor that Hague should not include this expense in the calculation of its further manufacturing costs. We note that the adjustment in question ("Claim Reimbursement—95") actually represents a finished goods inventory adjustment. Specifically, information on the record show that a customer rejected a shipped product because of a defect caused by the fabrication process. Regardless of the timing of the events and transactions underlying this adjustment, the adjustment essentially represents a revaluation of finished goods inventory which should not be considered a part of Hague's further manufacturing costs. Therefore, consistent with our normal practice, we have allowed Hague to exclude this cost from its costs calculations (see *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 FR 17324, 17334 (April 9, 1999)).

Comment 32: Adjusting Further Manufacturing Financial Expense Ratio (Hague)

Usinor argues that the Department should not adjust Hague's reported further manufacturing financial expense. According to Usinor, Hague appropriately deducted imputed amounts from the consolidated financial expense figure to avoid double counting. Usinor maintains that imputed credit and inventory carrying costs are already deducted from the sales price in the margin calculations. Therefore, these expenses should not be included in the calculation of the further manufacturing costs which is also a deduction to the sales price. Respondent asserts that it is the Department's standard practice to avoid such double-counting. To support this assertion, respondent cites *Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 64 FR 12927, 12931 (March 16, 1999) ("Carbon Steel Flat Products From Korea"); *Final Determination of Sales at Less Than Fair Value: New Minivans From Japan*, 57 FR 21937, 21956 (May 26, 1992) ("New Minivans From Japan"); and *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 56 FR 31692, 31721 (July 11, 1991) (i.e., "AFB from Germany").

Petitioners, however, argue that in fact *Carbon Steel Flat Products from Korea* undercuts the respondent claim, and demonstrates that, to the contrary, the Department's standard practice is not to accept such adjustments.

Department's Position: We disagree with Usinor. It is not appropriate for Hague to reduce the consolidated financial expense with imputed amounts. In fact, we have always maintained that regular interest expenses represent a legitimate production cost of a U.S. further manufacturing affiliate and therefore should not be reduced by imputed interest (see *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 61 FR 38139, 38165 (July 23, 1996). In that case, the Department disagreed with the respondent that we double counted costs in the further manufacturing interest expense by deducting both interest and imputed credit in our CEP calculation. As for Usinor's citations to support their position, we note that the Department's position is taken out of context. Specifically, our position in *Carbon Steel Flat Products From Korea* (which references *Minivans* and *AFBs From Germany*) addresses the possibility of double-counting of imputed interest in the context of U.S. indirect selling expenses. However, we note that indirect selling expenses are not a component of further manufacturing cost. Furthermore, even in the context of U.S. indirect selling expenses, the Department stated its position that "because activities of U.S. sales affiliates differ considerably across cases, the Department must determine the appropriate universe of CEP deductions on a case-by-case basis." Therefore, we have disallowed the adjustment in question, and applied the financial expense ratio calculated at the consolidated level.

Comment 33: Further Manufacture Financial Expense Ratio Calculation (Edgcomb)

Usinor states that the Department should accept Edgcomb reported further manufacturing financial expense that was calculated using Samsteel, Inc.'s consolidated financial statements. Usinor maintains that Edgcomb's ultimate parent, the Macsteel Group of South Africa, does not prepare a consolidated financial statement. Thus, Edgcomb calculated its financial expense ratio using the consolidated amounts from the highest level financial statement obtainable (i.e., that of Samsteel). Usinor also notes that the financial expense ratio for Samsteel is not significantly different from Usinor's consolidated financial expense ratio.

According to petitioners, Edgcomb is not cooperating in this investigation by refusing to provide the consolidated financial figures of Edgcomb's ultimate parent, Macsteel Group of South Africa. Petitioners refer to the overstatement of the value of scrap sales offset as another reason for not accepting Edgcomb's reported further manufacturing costs. If the Department does not resort to adverse facts available for Edgcomb, petitioners claim that the Department should still adjust respondents financial expense.

Department's Position: We agree with Usinor that Edgcomb appropriately relied on the financial statements of the highest consolidation level available to calculate the company's further manufacturing financial expense ratio. During verification, we confirmed that no higher level of consolidation existed (*see*, Edgcomb's cost verification exhibit 13). Moreover, relying on Samsteel's consolidated statements as being the

highest level available is consistent with our prior practice (see *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada*, 64 FR 17324–17336 (April 9, 1999) (Department relied on the amounts reported on the consolidated financial statements of the highest level available to calculate the financial expense ratio). Likewise, we found that it would be inappropriate to use the Usinor Group's consolidated financial expense ratio as a surrogate. We note that the Usinor Group only held a minority interest in Edgcomb. As a result, Edgcomb's financial results were not consolidated into the Group's financial results. Since Edgcomb's financial expense is not a component of the reported further manufacturing costs which are being based on facts available, as discussed above, we have relied on the company's submitted financial expense ratio for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from France that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Usinor	10.64
All Others	10.64

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13679 Filed 6–7–99; 8:45 am]

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Tuesday
June 8, 1999

Part III

Department of Health and Human Services

Office of Public Health and Science

Announcement of Anticipated Availability of Funds for Family Planning Services Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs announces the anticipated allocation of funds for FY 2000 family planning services grant projects under the authority of Title X of the Public Health Service Act and solicits applications for competing grant awards to serve the areas and/or populations set out below. Only applications which propose to serve the populations and/or areas listed in Table I will be accepted for review and possible funding. In addition, general program information is included to provide potential grantees with information about future funding opportunities.

OMB Catalog of Federal Domestic Assistance 93.217.

DATES: Application due dates vary. See **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Completed applications for DHHS Regions II, III, and IV should be sent to: Office of Grants Management for Family Planning Services, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 5B95, Atlanta, GA 30323–8909.

Completed applications for DHHS Regions, V, VI, VII, IX, and X should be sent to: Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 766, Dallas, TX 75202.

See **SUPPLEMENTARY INFORMATION** section for addresses for additional information.

FOR FURTHER INFORMATION CONTACT:

Program Requirement

Region Program Consultants for Family Planning: Region I, James Sliker, 617/565–1060; Region II, Lucille Katz—212/264–3935; Region III, Louis Belmonte—215/861–4641; Region IV, Christino Rodriquez—404/562–7900; Region V, Janice Ely—312/886–3864; Region VI, Paul Smith—214/767–3060; Region VII, Elizabeth Curtis—816/426–2924; Region VIII, John J. McCarthy, Jr.—303/844–6163; Region IX, Nadine Simons—414/437–8116; Region X, Janet Wildeboor—206/615–2501.

Administrative and Budgetary Requirements

Region II, III and IV: June Faizi (Office of Grants Management for Family Planning Services)—404/562–7902; Regions V, VI, VII, IX and X: Maudeen Pickett (Office of Grants Management for Family Planning Services)—214/767–3401.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants to public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Also, Title X funds may not be used in programs where abortion is a method of family planning. Implementing regulations appear at 42 CFR part 59, subpart A.

On February 5, 1993, HHS published at 58 FR 7462 an interim rule that suspends the 1988 Title X rules, pending the promulgation of new regulations. The principal effect of this action was to suspend the definitions of "family planning," "grantees," "prenatal care," "Title X," "Title X Program," and "Title X Project" presently found at 42 CFR 59.2 and 42 CFR 59.7–59.10. Proposed rules were also published at 58 FR 7464 on the same date. During the pendency of rulemaking, the policies and interpretations relating to the provision of abortion-related services by Title X grantees that were in effect prior to the issuance of the 1988 rule, including those set out in the 1981 Family Planning Guidelines, are being used by the program. Copies of the pre-1988 policies and interpretations are available from the Regional Program Consultants for Regions I, II, III, IV, V, VI, VII, VIII, IX, and X, at the addresses listed below.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): DHHS/PHS Region I, JFK Federal Building, Room 2126, Boston, MA 02203

Region II (New Jersey, New York, Puerto Rico, Virgin Islands): DHHS/PHS Region II, 26 Federal Plaza, Room 3337, New York, NY 10278

Region III (Delaware, Washington, D.C., Maryland, Pennsylvania, Virginia, W. Virginia): DHHS/PHS Region III, 150 S. Independence Mall West, Philadelphia, PA, 19106–3499

Region IV (Kentucky, Mississippi, N. Carolina, Tennessee, Alabama, Florida, Georgia, S. Carolina): DHHS/PHS Region IV, 61 Forsyth Street, Suite 5B95, Atlanta, GA 30303

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): DHHS/PHS Region V, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): DHHS/PHS Region VI, 1301 Young Street, Suite 1124, Dallas, TX 75202

Region VII (Iowa, Kansas, Missouri, Nebraska): DHHS/PHS Region VII, 601 East 12th Street, Room 210, Kansas City, MO 64106

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): DHHS/PHS Region VIII, Federal Building, 4th Floor, 1961 Stout Street, Denver, CO 80294–3538

Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands): DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102

Region X (Alaska, Idaho, Oregon, Washington): DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX–29, Seattle, WA 98121

Incorporating Public Health Initiatives, Program Priorities and Key Issues for Family Planning.

The proposal should reflect the applicant's ability to incorporate into the project plan public health initiatives such as Healthy People 2000 health promotion and disease prevention objectives for family planning, and the U.S. Department of Health and Human Services priorities of assuring a healthy start for every child by increasing the proportion of pregnancies that are intended, promoting personal responsibility for healthy lifestyles, and addressing the elimination of racial and ethnic disparities in health as identified by the President's Initiative on Race.

In addition, the following priorities represent overarching goals for the Title X program and, along with the key issues, should be reflected in the applicant's project plan:

(1) Expansion and enhancement of the quality of clinical reproductive health services through partnerships with entities that have related interests and that work with similar priority populations;

(2) Increased emphasis on services to adolescents, including emphasis on postponement of sexual activity and more accessible provision of contraceptive counseling and services;

(3) Increased services to hard-to-reach populations by partnering with

community-based organizations and others that have a stake in the prevention of unintended pregnancy;

(4) Expansion of comprehensiveness of reproductive health services, including STD and cancer screening and prevention, HIV prevention, education and counseling, and substance abuse screening and referral;

(5) Increased services to males, emphasizing shared responsibility for preventing unintended pregnancy and STD/HIV infection.

Key issues impacting family planning:

Other key issues are impacting the current and future delivery of family planning services. These issues include:

(1) Medicaid waivers and managed care;

(2) Implications of welfare reform and other issues that are affecting family planning services, such as Temporary Assistance to Needy Families (TANF) and the Children's Health Insurance Program (CHIP) as well as other Federal and State initiatives;

(3) Electronic technology;

(4) Research findings;

(5) Legislative mandates, such as counseling teens on involving families and avoiding coercive sexual relationships.

These program priorities and key issues are being pursued to the extent that funding or increases in program efficiency allow.

The proposed FY 2000 budget for the Title X Family Planning program is approximately $240 million. It is anticipated that during FY 2000 approximately 35 percent of the amount that is appropriated for the program will be allocated to competing applications. It is anticipated that the balance will be used to support non-competing grantees in the 10 regions and central office. Because some of the grants expected to be funded with the appropriation for FY 2000 have application due dates in the next few months, this action is being taken now to permit the orderly processing of the applications.

Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in 42 CFR 59.11.

This notice announces the anticipated allocation of funds, if appropriated, for competitive family planning service grants in 22 States, Puerto Rico, Guam, the Republic of Palau, and the Federated States of Micronesia. Subject to enactment of the anticipated appropriation, competing grant applications are invited for the following areas:

TABLE I.

Populations or areas to be served	Number of competing grants to be awarded	FY99 funding	Appl. due date	Grant funding date
Region I: No grants available for competition in FY 2000.				
Region II:				
Univ. of PR/Public Hlth	1	1,735,229	03/01/00	07/01/00
NY State Health Dept.	1	7,703,876	03/01/00	07/01/00
Region III:				
Delaware Dept. of Health	1	690,187	12/01/99	04/01/00
Virginia Dept. of Health	1	3,724,186	12/01/99	04/01/00
Maryland Dept. of Health	1	3,205,729	12/01/99	04/01/00
WV Dept. of Health	1	1,693,832	12/01/99	04/01/00
Family Health Council	1	2,762,425	03/01/00	07/01/00
Family Planning Council of Central PA	1	2,066,193	03/01/00	07/01/00
Family Planning Council	1	3,487,780	03/01/00	07/01/00
Maternal and Family Health Council	1	1,264,753	03/01/00	07/01/00
Region IV:				
Florida Dept. of Health	1	6,578,352	03/01/00	07/01/00
Tennessee Dept. of Health	1	5,503,248	03/01/00	07/01/00
Kentucky Cab. For Human Resources	1	3,864,571	03/01/00	07/01/00
Georgia Dept. of Human Resources	1	5,824,306	03/01/00	07/01/00
North Carolina Dept. of Human Resources	1	4,736,317	03/01/00	07/01/00
Alabama Dept. of Human Resources	1	3,696,168	03/01/00	07/01/00
South Carolina Dept. of Human Resources	1	4,131,705	03/01/00	07/01/00
Mississippi Dept. of Health	1	3,722,603	03/01/00	07/01/00
Region V:				
Ohio Dept. of Health	1	4,133,315	11/01/99	03/01/00
Planned Parenthood of Central Ohio	1	623,535	11/01/99	03/01/00
Planned Parenthood of Summit, Portage and Medina Counties	1	676,843	03/01/00	07/01/00
Region VI:				
New Mexico Department of Health	1	1,995,334	09/01/99	01/01/00
Arkansas Department of Health	1	2,961,564	11/01/99	03/01/00
Oklahoma Department of Health	1	2,891,198	06/01/99	12/01/99
Region VII:				
Kansas State Department of Health and Environment	1	1,786,800	03/01/00	07/01/00
Region VIII: No grants available for competition in FY 2000.				
Region IX:				
Government of Guam	1	168,408	03/01/00	07/01/00
Republic of Palau	1	57,971	03/01/00	07/01/00
Federated States of Micronesia	1	220,564	03/01/00	07/01/00
Gila River Indian Community	1	172,582	03/01/00	07/01/00
Region X:				
Planned Parenthood of the Columbia/Willamette	1	561,485	03/01/00	07/01/00
Idaho Department of Health and Welfare	1	961,979	03/01/00	07/01/00
International Community Health Service	1	123,800	05/30/00	09/30/00
Total	32	83,748,838	.....	.....

Applications must be postmarked or, if not sent by U.S. mail, received at the appropriate Grants Management Office no later than close of business on application due dates listed above. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or, if not sent by U.S. mail, delivered to the appropriate Grants Management Office later than the application due date will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark from the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements at 42 CFR part 59, subpart A will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Applications will be evaluated on the following criteria:

(1) The extent to which family planning services are needed locally;

(2) The capacity of the applicant to address the family planning needs of the area to be served;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations.

Application Requirements

Application kits (including the application form, PHS 5161–1, Revised 5/96) (OMB approval No. 0937–0189) may be obtained by contacting the appropriate Office of Grants Management in Atlanta or Dallas. Limited technical assistance regarding programmatic aspects of proposal preparation is available from the regional offices. For information on administrative and budgetary aspects of proposal preparation, contact the appropriate Office of Grants Management. An application must contain: (1) a narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations; (2) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested; (3) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and (4) such other pertinent information as may be required by the Secretary as specified in the application kit. In preparing an application, applicants should respond to all applicable regulatory requirements. (The information collections contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.)

The Office of Public Health and Science (OPHS) requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

Application Review and Evaluation

Each regional office is responsible for conducting its own competitive application reviews. Applications must be submitted to the appropriate Office of Grants Management at the address listed above. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

Grant Awards

Grant projects are generally approved for 3 to 5 years with an annual non-competitive review of a continuation application to obtain continued support. Non-competing continuation awards are subject to factors such as the project making satisfactory progress and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

applicants under this announcement are subject to the review requirements of Executive Order 12372, Intergovernmental Review of Department of Health and Huamn Services Programs and Activities, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those State not represented on the listing, further inquiries should be made to the Governor's office of the pertinent states for information regarding the review process designed by their state or the State Single Point of Contact (SPOC) for the state in question. SPOC comments must be received by the appropriate Grants Management Office (Atlanta or Dallas) 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

(Authority: 42 U.S.C. 300)

Dated: June 2, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–14425 Filed 6–7–99; 8:45 am]

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Federal Register

Tuesday
June 8, 1999

Part IV

The President

Executive Order 13123—Greening the Government Through Efficient Energy Management

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Federal Register
Vol. 64, No. 109
Tuesday, June 8, 1999

Presidential Documents

Title 3—

The President

Executive Order 13123 of June 3, 1999

Greening the Government Through Efficient Energy Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95–619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102–486, 106 Stat. 2776), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

Section 101. *Federal Leadership.* The Federal Government, as the Nation's largest energy consumer, shall significantly improve its energy management in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change. With more than 500,000 buildings, the Federal Government can lead the Nation in energy efficient building design, construction, and operation. As a major consumer that spends $200 billion annually on products and services, the Federal Government can promote energy efficiency, water conservation, and the use of renewable energy products, and help foster markets for emerging technologies. In encouraging effective energy management in the Federal Government, this order builds on work begun under EPACT and previous Executive orders.

PART 2—GOALS

Sec. 201. *Greenhouse Gases Reduction Goal.* Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by 30 percent by 2010 compared to such emissions levels in 1990. In order to encourage optimal investment in energy improvements, agencies can count greenhouse gas reductions from improvements in nonfacility energy use toward this goal to the extent that these reductions are approved by the Office of Management and Budget (OMB).

Sec. 202. *Energy Efficiency Improvement Goals.* Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding facilities covered in section 203 of this order, by 30 percent by 2005 and 35 percent by 2010 relative to 1985. No facilities will be exempt from these goals unless they meet new criteria for exemptions, to be issued by the Department of Energy (DOE).

Sec. 203. *Industrial and Laboratory Facilities.* Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable by 20 percent by 2005 and 25 percent by 2010 relative to 1990. No facilities will be exempt from these goals unless they meet new criteria for exemptions, as issued by DOE.

Sec. 204. *Renewable Energy.* Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. In support of the Million Solar Roofs initiative, the Federal Government shall strive to install 2,000 solar energy systems at Federal facilities by the end of 2000, and 20,000 solar energy systems at Federal facilities by 2010.

Sec. 205. *Petroleum.* Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum within its facilities. Agencies may accomplish this reduction by switching to a less greenhouse gas-intensive, nonpetroleum energy source, such as natural gas or renewable energy sources; by eliminating unnecessary fuel use; or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

Sec. 206. *Source Energy.* The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

Sec. 207. *Water Conservation.* Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under section 503(f) of this order. Where possible, water cost savings and associated energy cost savings shall be included in Energy-Savings Performance Contracts and other financing mechanisms.

PART 3—ORGANIZATION AND ACCOUNTABILITY

Sec. 301. *Annual Budget Submission.* Each agency's budget submission to OMB shall specifically request funding necessary to achieve the goals of this order. Budget submissions shall include the costs associated with: encouraging the use of, administering, and fulfilling agency responsibilities under Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and other contractual platforms for achieving conservation goals; implementing life-cycle cost-effective measures; procuring life-cycle cost-effective products; and constructing sustainably designed new buildings, among other energy costs. OMB shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products. OMB shall explore the feasibility of establishing a fund that agencies could draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs. Budget requests to OMB in support of this order must be within each agency's planning guidance level.

Sec. 302. *Annual Implementation Plan.* Each agency shall develop an annual implementation plan for fulfilling the requirements of this order. Such plans shall be included in the annual reports to the President under section 303 of this order.

Sec. 303. *Annual Reports to the President.* (a) Each agency shall measure and report its progress in meeting the goals and requirements of this order on an annual basis. Agencies shall follow reporting guidelines as developed under section 306(b) of this order. In order to minimize additional reporting requirements, the guidelines will clarify how the annual report to the President should build on each agency's annual Federal energy reports submitted to DOE and the Congress. Annual reports to the President are due on January 1 of each year beginning in the year 2000.

(b) Each agency's annual report to the President shall describe how the agency is using each of the strategies described in Part 4 of this order to help meet energy and greenhouse gas reduction goals. The annual report to the President shall explain why certain strategies, if any, have not been used. It shall also include a listing and explanation of exempt facilities.

Sec. 304. *Designation of Senior Agency Official.* Each agency shall designate a senior official, at the Assistant Secretary level or above, to be responsible for meeting the goals and requirements of this order, including preparing the annual report to the President. Such designation shall be reported by each Cabinet Secretary or agency head to the Deputy Director for Management of OMB within 30 days of the date of this order. Designated officials shall participate in the Interagency Energy Policy Committee, described in section

306(d) of this order. The Committee shall communicate its activities to all designated officials to assure proper coordination and achievement of the goals and requirements of this order.

Sec. 305. *Designation of Agency Energy Teams.* Within 90 days of the date of this order, each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, Energy-Savings Performance Contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this order. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the Interagency Energy Management Task Force, as described in section 306(e) of this order.

Sec. 306. *Interagency Coordination.* (a) *Office of Management and Budget.* The Deputy Director for Management of OMB, in consultation with DOE, shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the President to report progress.

(1) OMB, in consultation with DOE and other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this order. The scoring criteria shall include the extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, renewable energy technologies, electricity from renewable energy sources, and other strategies and requirements listed in Part 4 of this order, as well as overall efficiency and greenhouse gas metrics and use of other innovative energy efficiency practices. The scorecards shall be based on the annual energy reports submitted to the President under section 303 of this order.

(2) The Deputy Director for Management of OMB shall also select outstanding agency energy management team(s), from among candidates nominated by DOE, for a new annual Presidential award for energy efficiency.

(b) *Federal Energy Management Program.* The DOE's Federal Energy Management Program (FEMP) shall be responsible for working with the agencies to ensure that they meet the goals of this order and report their progress. FEMP, in consultation with OMB, shall develop and issue guidelines for agencies' preparation of their annual reports to the President on energy management, as required in section 303 of this order. FEMP shall also have primary responsibility for collecting and analyzing the data, and shall assist OMB in ensuring that agency reports are received in a timely manner.

(c) *President's Management Council.* The President's Management Council (PMC), chaired by the Deputy Director for Management of OMB and consisting of the Chief Operating Officers (usually the Deputy Secretary) of the largest Federal departments and agencies, will periodically discuss agencies' progress in improving Federal energy management.

(d) *Interagency Energy Policy Committee.* This Committee was established by the Department of Energy Organization Act. It consists of senior agency officials designated in accordance with section 304 of this order. The Committee is responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies designated by DOE are required to participate in the Committee. The Committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this order.

(e) *Interagency Energy Management Task Force.* The Task Force was established by the National Energy Conservation Policy Act. It consists of each agency's chief energy manager. The Committee shall continue to work toward improving agencies' use of energy management tools and sharing information on Federal energy management across agencies.

Sec. 307. *Public/Private Advisory Committee.* The Secretary of Energy will appoint an advisory committee consisting of representatives from Federal agencies, State governments, energy service companies, utility companies, equipment manufacturers, construction and architectural companies, environmental, energy and consumer groups, and other energy-related organizations. The committee will provide input on Federal energy management, including how to improve use of Energy-Savings Performance Contracts and utility energy-efficiency service contracts, improve procurement of ENERGY STAR® and other energy efficient products, improve building design, reduce process energy use, and enhance applications of efficient and renewable energy technologies at Federal facilities.

Sec. 308. *Applicability.* This order applies to all Federal departments and agencies. General Services Administration (GSA) is responsible for working with agencies to meet the requirements of this order for those facilities for which GSA has delegated operations and maintenance authority. The Department of Defense (DOD) is subject to this order to the extent that it does not impair or adversely affect military operations and training (including tactical aircraft, ships, weapons systems, combat training, and border security).

PART 4—PROMOTING FEDERAL LEADERSHIP IN ENERGY MANAGEMENT

Sec. 401. *Life-Cycle Cost Analysis.* Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the Federal Government's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects. Agencies shall also retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures will be recognized in their scorecard evaluations.

Sec. 402. *Facility Energy Audits.* Agencies shall continue to conduct energy and water audits for approximately 10 percent of their facilities each year, either independentlyor through Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

Sec. 403. *Energy Management Strategies and Tools.* Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its scorecard.

(a) *Financing Mechanisms.* Agencies shall maximize their use of available alternative financing contracting mechanisms, including Energy-Savings Performance Contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-Savings Performance Contracts, which are authorized under the National Energy Conservation Policy Act, as modified by the Energy Policy Act of 1992, and utility energy-efficiency service contracts provide significant opportunities for making Federal facilities more energy efficient at no net cost to taxpayers.

(b) *ENERGY STAR® and Other Energy Efficient Products.*

(1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR® and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR® labels are not yet available, agencies shall select products that are in the upper 25 percent of energy efficiency as designated by FEMP. The Environmental Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR® and will merge their current efficiency rating procedures.

(2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these

products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a "second price tag", which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.

(3) Agencies shall incorporate energy efficient criteria consistent with ENERGY STAR® and other FEMP-designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.

(4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months of the date of this order, DOE shall report back to the President's Management Council on the viability of such alternative financing options.

(c) *ENERGY STAR® Buildings.* Agencies shall strive to meet the ENERGY STAR® Building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by the end of 2002. Agencies may use Energy-Savings Performance Contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to buildings in order to meet the criteria. Buildings that rank in the top 25 percent in energy efficiency relative to comparable commercial and Federal buildings will receive the ENERGY STAR® building label. Agencies shall integrate this building rating tool into their general facility audits.

(d) *Sustainable Building Design.* DOD and GSA, in consultation with DOE and EPA, shall develop sustainable design principles. Agencies shall apply such principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using Energy-Savings Performance Contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(e) *Model Lease Provisions.* Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference for buildings having the ENERGY STAR® building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR® building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors' Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

(f) *Industrial Facility Efficiency Improvements.* Agencies shall explore efficiency opportunities in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching, including cogeneration and other efficiency and renewable energy technologies.

(g) *Highly Efficient Systems.* Agencies shall implement district energy systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power when upgrading and assessing facility power needs and shall use combined cooling, heat, and power systems when life-cycle cost-effective. Agencies shall survey local natural resources to optimize use

of available biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(h) *Off-Grid Generation.* Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

Sec. 404. *Electricity Use.* To advance the greenhouse gas and renewable energy goals of this order, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its score card.

(a) *Competitive Power.* Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

(b) *Reduced Greenhouse Gas Intensity of Electric Power.* When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

(c) *Purchasing Electricity from Renewable Energy Sources.*

(1) Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the President. Based on this review, each agency should adopt policies and pursue projects that increase the use of such electricity. Agencies should include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

(2) In evaluating opportunities to comply with this section, agencies should consider: my Administration's goal of tripling nonhydroelectric renewable energy capacity in the United States by 2010; the renewable portfolio standard specified in the restructuring guidelines for the State in which the facility is located; GSA's efforts to make electricity from renewable energy sources available to Federal electricity purchasers; and EPA's guidelines on crediting renewable energy power in implementation of Clean Air Act standards.

Sec. 405. *Mobile Equipment.* Each agency shall seek to improve the design, construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

Sec. 406. *Management and Government Performance.* Agencies shall use the following management strategies in meeting the goals of this order.

(a) *Awards.* Agencies shall use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall include successful implementation of provisions of this order in areas such as Energy-Savings Performance Contracts, sustainable design, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects in the position descriptions and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees.

(c) *Retention of Savings and Rebates.* Agencies granted statutory authority to retain a portion of savings generated from efficient energy and water management are encouraged to permit the retention of the savings at the facility or site where the savings occur to provide greater incentive for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources.

(d) *Training and Education.* Agencies shall ensure that all appropriate personnel receive training for implementing this order.

(1) DOE, DOD, and GSA shall provide relevant training or training materials for those programs that they make available to all Federal agencies relating to the energy management strategies contained in this order.

(2) The Federal Acquisition Institute and the Defense Acquisition University shall incorporate into existing procurement courses information on Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, and life-cycle cost analysis.

(3) All agencies are encouraged to develop outreach programs that include education, training, and promotion of ENERGY STAR® and other energy-efficient products for Federal purchase card users. These programs may include promotions with billing statements, user training, catalogue awareness, and exploration of vendor data collection of purchases.

(e) *Showcase Facilities.* Agencies shall designate exemplary new and existing facilities with significant public access and exposure as showcase facilities to highlight energy or water efficiency and renewable energy improvements.

PART 5—TECHNICAL ASSISTANCE

Sec. 501. Within 120 days of this order, the Director of OMB shall:

(a) develop and issue guidance to agency budget officers on preparation of annual funding requests associated with the implementation of the order for the FY 2001 budget;

(b) in collaboration with the Secretary of Energy, explain to agencies how to retain savings and reinvest in other energy and water management projects; and

(c) in collaboration with the Secretary of Energy through the Office of Federal Procurement Policy, periodically brief agency procurement executives on the use of Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

Sec. 502. Within 180 days of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;

(b) establish criteria for determining which facilities are exempt from the order. In addition, DOE must provide guidance for agencies to report proposed exemptions;

(c) develop guidance to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after 1990 in order to measure progress toward goals;

(d) issue guidance to clarify how agencies determine the life-cycle cost for investments required by the order, including how to compare different energy and fuel options and assess the current tools;

(e) issue guidance for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases; and

(f) provide guidance to assist each agency to determine a baseline of water consumption.

Sec. 503. Within 1 year of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;

(b) develop goals for the amount of energy generated at Federal facilities from renewable energy technologies;

(c) support efforts to develop standards for the certification of low environmental impact hydropower facilities in order to facilitate the Federal purchase of such power;

(d) work with GSA and DLA to develop a plan for purchasing advanced energy products in bulk quantities for use in by multiple agencies;

(e) issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use. These guidelines shall include emissions associated with the production, transportation, and use of energy consumed in Federal facilities; and

(f) establish water conservation goals for Federal agencies.

Sec. 504. Within 120 days of this order, the Secretary of Defense and the Administrator of GSA, in consultation with other agency heads, shall develop and issue sustainable design and development principles for the siting, design, and construction of new facilities.

Sec. 505. Within 180 days of this order, the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, shall:

(a) develop and issue guidance to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs. Incentives for contractors involved in facility design and construction must be structured to encourage the contractors to design and build at the lowest life-cycle cost;

(b) make information available on opportunities to purchase electricity from renewable energy sources as defined by this order. This information should accommodate relevant State regulations and be updated periodically based on technological advances and market changes, at least every 2 years;

(c) develop Internet-based tools for both GSA and DLA customers to assist individual and agency purchasers in identifying and purchasing ENERGY STAR® and other energy efficient products for acquisition; and

(d) develop model lease provisions that incorporate energy efficiency and sustainable design.

PART 6—GENERAL PROVISIONS

Sec. 601. *Compliance by Independent Agencies.* Independent agencies are encouraged to comply with the provisions of this order.

Sec. 602. *Waivers.* If an agency determines that a provision in this order is inconsistent with its mission, the agency may ask DOE for a waiver of the provision. DOE will include a list of any waivers it grants in its Federal Energy Management Programs annual report to the Congress.

Sec. 603. *Scope.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to agency facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam,

American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Agencies with facilities outside of these areas, however, are encouraged to make best efforts to comply with the goals of this order for those facilities. In addition, agencies can report energy improvements made outside the United States in their annual report to the President; these improvements may be considered in agency scorecard evaluations.

Sec. 604. *Revocations.* Executive Order 12902 of March 9, 1994, Executive Order 12759 of April 17, 1991, and Executive Order 12845 of April 21, 1993, are revoked.

Sec. 605. *Amendments to Federal Regulations.* The Federal Acquisition Regulation and other Federal regulations shall be amended to reflect changes made by this order, including an amendment to facilitate agency purchases of electricity from renewable energy sources.

PART 7—DEFINITIONS

For the purposes of this order:

Sec. 701. "Acquisition" means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Sec. 702. "Agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of DOD.

Sec. 703. "Energy-Savings Performance Contract" means a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations. Such contracts shall provide that the contractor must incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract. Payment to the contractor is contingent upon realizing a guaranteed stream of future energy and cost savings. All additional savings will accrue to the Federal Government.

Sec. 704. "Exempt facility" or "Exempt mobile equipment" means a facility or a piece of mobile equipment for which an agency uses DOE-established criteria to determine that compliance with the Energy Policy Act of 1992 or this order is not practical.

Sec. 705. "Facility" means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a purchase option or facilities planned for purchase. In any provision of this order, the term "facility" also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities.

Sec. 706. "Industrial facility" means any fixed equipment, building, or complex for production, manufacturing, or other processes that uses large amounts of capital equipment in connection with, or as part of, any process

or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the water heating energy load requirements of the facility.

Sec. 707. "Life-cycle costs" means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19.

Sec. 708. "Life-cycle cost-effective" means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 C.F.R. 436.18 (a), (b), and (c), 436.20, and 436.21.

Sec. 709. "Mobile equipment" means all Federally owned ships, aircraft, and nonroad vehicles.

Sec. 710. "Renewable energy" means energy produced by solar, wind, geothermal, and biomass power.

Sec. 711. "Renewable energy technology" means technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term also means the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

Sec. 712. "Source energy" means the energy that is used at a site and consumed in producing and in delivering energy to a site, including, but not limited to, power generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

Sec. 713. "Utility" means public agencies and privately owned companies that market, generate, and/or distribute energy or water, including electricity, natural gas, manufactured gas, steam, hot water, and chilled water as commodities for public use and that provide the service under Federal, State, or local regulated authority to all authorized customers. Utilities include: Federally owned nonprofit producers; municipal organizations; and investor or privately owned producers regulated by a State and/or the Federal Government; cooperatives owned by members and providing services mostly to their members; and other nonprofit State and local government agencies serving in this capacity.

Sec. 714. "Utility energy-efficiency service" means demand side management services provided by a utility to improve the efficiency of use of the commodity (electricity, gas, etc.) being distributed. Services can include, but are not limited to, energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

William J. Clinton

THE WHITE HOUSE,
June 3, 1999.

[FR Doc. 99–14633
Filed 6–7–99; 8:45 am]
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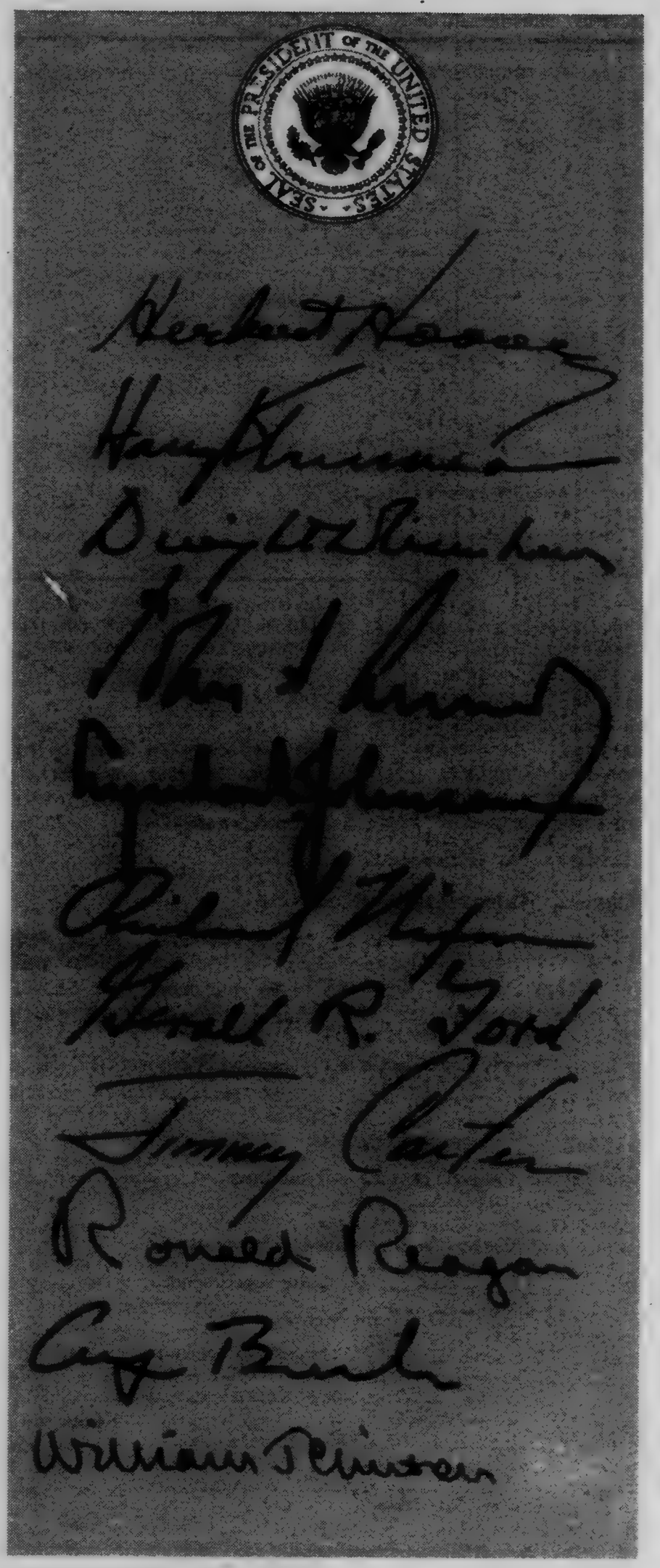

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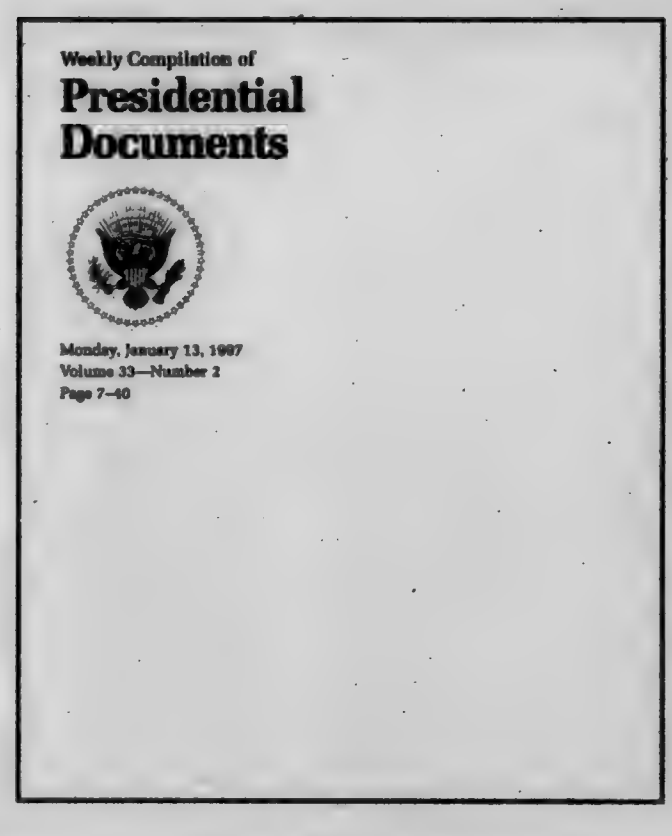

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Rules and Regulations

Federal Register
Vol. 64, No. 110
Wednesday, June 9, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2430

Amendment of Equal Access to Justice Act Attorney Fees Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) amends its regulations implementing the Equal Access to Justice Act (EAJA) to conform to and carry out the intent of the March 29, 1996 amendments to the EAJA. Specifically, as provided in the EAJA's amendments, the amended regulation will permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees not to exceed $125.00 per hour.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW, Room 415, Washington, DC 20424–0001, or by telephone at (202) 482–6540.

SUPPLEMENTARY INFORMATION: The FLRA amends its regulation pertaining to the maximum per hour rate for attorney fees under the EAJA, 5 U.S.C. 504(b)(1)(A) (1994 & Supp. III 1997), in conformance with the amendments to the EAJA adopted as part of the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847.

In conjunction with adversary adjudications commenced on or after March 29, 1996, the EAJA's amendments permit recovery of attorney fees not to exceed $125.00 per hour. The FLRA's revised regulation, as set forth below, simply incorporates this change to the EAJA and makes the change applicable to FLRA proceedings. Because this amendment to the FLRA's regulation merely reiterates the specific terms of the EAJA's amendment in this regard, this regulatory action comes within the "good cause" exemptions of the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d). As a result, the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.

This action was announced by the FLRA in 55 FLRA No. 72 (Apr. 30, 1999). That decision also noted that the FLRA would engage in rulemaking to consider appropriate criteria for increasing the maximum rate based on cost of living and other special factors. The Authority will subsequently promulgate the proposed rule and provide an opportunity for comment.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities. The amendment is procedural in nature and is required to implement amendments to the EAJA.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulation contains no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq.

List of Subjects in 5 CFR Part 2430

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2430 as follows:

PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

1. The authority citation for part 2430 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1).

2. Amend § 2430.4(a) by revising the first sentence to read as follows:

§ 2430.4 Allowable Fees and Expenses.

(a) No award for the fee of an attorney or agent under these rules may exceed $125.00 per hour, or for adversary adjudications commenced prior to March 29, 1996, $75.00 per hour. * * *

Dated: June 4, 1999.

Solly Thomas,

Executive Director.

[FR Doc. 99–14598 Filed 6–8–99; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 37

[Docket Number LS–99–04]

RIN 0581–AB58

Program to Assess Organic Certifying Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes a voluntary, fee-for-service program, under the Agricultural Marketing Agreement Act of 1946, to verify that State and private organic certifying agencies comply with the requirements prescribed under the International Organization for Standardization/

International Electrotechnical Commission Guide 65 "General Requirements for Agencies Operating Product Certification Systems" (ISO Guide 65). Assessments are to be conducted by the Livestock and Seed Program of the Agricultural Marketing Service (AMS).

This assessment program is established to enable organic certifying agencies to comply with European Union (EU) requirements beginning on June 30, 1999. This assessment program will verify that State and private organic certifying agencies are operating third-party certification systems in a consistent and reliable manner thereby, facilitating uninterrupted exports of U.S. organic agricultural commodities to the EU. This action also establishes fees for the services provided and announces that AMS has obtained, on an emergency basis, approval from the Office of Management and Budget (OMB) of the information collection requirements contained in this rule.

DATES: This rule is effective June 10, 1999. Comments must be received by August 9, 1999. The incorporation by reference of the International Organization for Standardization/ International Electrotechnical Commission Guide 65, "General Requirements for Agencies Operating Product Certification Systems", Ref. No. ISO/IEC Guide 65:1996, listed in this rule is approved by the Director of the Federal Register as of June 10, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to Larry R. Meadows, Chief, Meat Grading and Certification Branch, Livestock and Seed Program, AMS, USDA, STOP 0248, 1400 Independence Avenue, SW.; Washington, D.C. 20250–0248. Comments also may be sent by fax to (202) 690–4119. Additionally, comments may be sent via E-mail to larry.meadows@usda.gov. Comments should make reference to the date and page number of this issue of the **Federal Register** and they will be made available for public inspection in the above office during regular business hours.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the merits of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection and recordkeeping under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification (MGC) Branch, (202) 720–1246.

SUPPLEMENTARY INFORMATION:

Background and Discussion

This action establishes a voluntary, user-fee funded program under which AMS would assess State and private agencies in the United States that meet the requirements of ISO Guide 65, which has been incorporated in this rule by reference. This assessment will facilitate uninterrupted imports of U.S. organic products to countries in the EU by enabling organic certifying agencies to comply with EU requirements beginning on June 30, 1999.

This program does not provide for national standards governing the marketing of agricultural commodities or products as organically produced and therefore differs substantially from the proposed National Organic Program (NOP) under the Organic Foods Production Act of 1990. The 1990 Act requires the establishment of national standards governing the marketing of certain agricultural products as organically produced. A proposed rule concerning the NOP was published in the **Federal Register** at 63 FR 65850 on December 16, 1997. The Department is currently drafting a revised proposed rule for publication in the **Federal Register**.

This program is established under the Agricultural Marketing Act of 1946 and provides only for the voluntary assessment of State and private certifying agencies to verify compliance with the requirements of ISO Guide 65. To be assessed under this program, an organic certifying agency would submit an application requesting such assessment from AMS and also submit to AMS for review and evaluation, a manual documenting the organic certifying agency's quality system and associated quality certification procedures used to certify organic producers and handlers of organically produced agricultural commodities (including those involved with wild crop harvesting) in accordance with applicable industry standards.

According to the most complete data available to AMS, there are 11 State and 33 private organic certifying agencies currently providing organic certification for agricultural commodities in the United States. These certifying agencies provide service to approximately 4,000 organic producers and 600 handlers of agricultural commodities in the United States. ISO Guide 65 assessment will ensure that State and private organic certifying agencies operating third-party certification systems are doing so in a consistent and reliable manner; thereby, facilitating their acceptance on an international basis. Assessing organic certifying agencies under ISO Guide 65 would enable U.S. organic producers and handlers of U.S. organically produced agriculture commodities to continue to export to the EU.

In crafting the provisions of a service program to assess State and private organic certifying agencies, we have turned to the comprehensive scheme that appears in ISO Guide 65 and incorporated by reference its provisions in this rule. The ISO, itself, is based in Geneva, Switzerland, and coordinates development and maintenance of numerous international consensus standards and guidelines frequently referenced in trade and international agreements.

As noted in ISO Guide 65, the guide provides for the general requirements that a certifying agency would be required to meet so that the certifying agency is recognized as competent and reliable. ISO Guide 65 includes provisions that address a certification agency's organization and structure; operations; subcontracting; quality system and documentation of that system; conditions and requirements regarding certification; internal audits and management reviews; documentation and records; and confidentiality. Provisions of ISO Guide 65 also include requirements for personnel and their qualifications; the procedures to be followed by a certification agency in providing certifications, including evaluations; and decisions on certification and surveillance.

Because this action establishes a voluntary, user-fee service based upon and similar to the Quality Systems Certification Program (QSCP) established pursuant to 7 CFR Part 54, this program would be administered by the AMS, Livestock and Seed (LS) Program, Meat Grading and Certification (MGC) Branch. The QSCP is an audit-based program administered by AMS which provides meatpackers, processors, producers, and other businesses in the livestock and meat trade with the opportunity to have special processes or documented quality management systems verified. The services provided for in this rule would utilize experienced QSCP auditors to assess organic certifying agencies to ISO Guide 65. AMS has developed, tested,

and implemented QSCP procedures to verify quality systems and this knowledge and experience is readily adaptable to reviewing and assessing quality systems of organic certifying agencies pursuant to the requirements of ISO Guide 65.

Interested State or private organic certifying agencies can apply to be assessed under ISO Guide 65 by completing Form LS–314, Application for Service and submitting the completed and signed Form LS–314 to the address listed on the form. Upon approval of a request for service, an applicant would be required to submit a copy of its quality manual used for conducting certification.

AMS auditors would review the quality manual for conformance with requirements set forth in ISO Guide 65. Upon AMS approval of the quality manual, AMS auditors would schedule and conduct an onsite audit of the certifying agency's operation which would include confirmation that the provisions of the quality manual have been implemented and that the applicant complies with the requirements of ISO Guide 65. Upon verification by AMS of the organic certifying agency's compliance with ISO Guide 65 requirements, AMS would issue a certificate of compliance.

Those organic certifying agencies determined to not meet applicable assessment program requirements would be provided with a written summary of observed program deficiencies. These organic certifying agencies would have the opportunity to implement the required corrective actions needed to receive a certificate of compliance or appeal the determination to the LS Program Deputy Administrator. Once corrective action has been taken, the organic certifying agency may contact the MGC Branch to schedule another audit for assessment.

Each assessed organic certifying agency would be provided official documentation of their compliance with ISO Guide 65 in the form of a certificate of compliance. The names of assessed certifying agencies would be posted for public reference on the LS Program's website at: http://www.ams.usda.gov/lsg/. AMS would conduct periodic reassessment audits to ensure continued compliance with all applicable program requirements.

This section establishes and adds a new Part 37 to Title 7 of the Code of Federal Regulations. In addition to fees, those provisions and procedures that would be the same or similar to the provisions of Part 54 are included in this rule in order to provide a complete voluntary service program under the Agricultural Marketing Act of 1946. Accordingly, the regulations include provisions for appropriate definitions; description of services; the incorporation by reference of the requirements of ISO Guide 65; how to apply for service; when an application may be withdrawn; access to establishments and records; reassessment of approved certification programs; suspension or denial of program assessment; appeals and termination.

Under the Agricultural Marketing Act of 1946, AMS is required to collect hourly fees for providing official services under 7 CFR Part 54, including services provided under the QSCP, to cover as nearly as practicable AMS costs for performing the service including related administrative and supervisory costs. Since the procedures used for assessing State and private organic certifying agencies are similar as those used to certify other types of product or system certification programs under the QSCP, AMS has decided to charge the same hourly fees for assessing organic certifying agencies as are charged for services currently provided under QSCP. QSCP services are based on the hourly rate for applicants who request services on an hourly or daily basis and appear at 7 CFR Part 54 as published in the **Federal Register** at 63 FR 32965 on July 17, 1998. The current base hourly rate for such service is $42.20 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays. The premium hourly rate for all applicants is $47.80 per hour charged to users of the service for the hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m.; for the hours worked between 6 p.m. and 6 a.m., Monday through Friday; and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants is $79.60 per hour charged to users of the service for all hours worked on legal holidays. Travel costs, per diem costs, and other administrative costs are in addition to the hourly charges. The estimated average total cost for assessment would be approximately $2,000 plus associated travel expenses. These fees are currently under review and any changes deemed necessary will be subject to a separate rulemaking action.

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The EU regulatory framework permits assessment to ISO Guide 65 by competent government authorities or by internationally recognized private accreditation agencies such as European Accreditation or the American National Standards Institute. National governments are recognized as competent authorities and in matters pertaining to agriculture USDA is the competent authority for the United States. At this time, USDA believes there are no domestic private official accreditation agencies which perform ISO Guide 65 assessments for agriculture-related third party certification programs. Thus, pending implementation of this rule there is no domestic supply of ISO Guide 65 assessments for organic certifiers.

A U.S. certification agency may obtain assessment to ISO Guide 65 from a private entity sanctioned by a government agency within a individual EU member state. This approach allows products to be imported only into the EU Member State that provides oversight to the private entity. This approach would potentially require each certifier to negotiate 15 separate agreements, one for each member state. Therefore, country-by-country recognition is inefficient. ISO Guide 65 assessments conferred by the competent authority of a third country, USDA for the United States, would be more efficient because under the EU regulatory framework such assessments would be recognized by all EU Member States, enabling direct trade with all 15 Member States.

Alternatively, USDA could establish through rulemaking a process to approve private parties who could then perform ISO Guide 65 assessments acceptable to the EU at large. However, given the small universe of potential clients—11 State programs and 33 private certifying agencies—it is unlikely that economic returns would be sufficient for a competitive system to develop. Also, establishing a program to approve a private party to perform conformity assessments to ISO Guide 65, would take more time than is available before the announced EU deadline for such assessments, and does not ensure these services are available.

This regulatory action directly affects organic certifying agencies and indirectly affects producers and handlers of organic goods. The rule provides a mechanism for certifying agencies to be assessed for conformance to ISO Guide 65 guidelines. The benefit of the assessment to the certifiers is their clients will satisfy the EU requirement that producers and handlers of organic goods exported to

the EU must be operating under a certifying agency that conforms to ISO Guide 65. Certifying agencies will choose to be assessed against ISO Guide 65 if they perceive that it will benefit their clients and if the certifying agency expects to be able to recover the costs of an ISO Guide 65 assessment. This is the case where their clients are or may anticipate exporting to the EU, or the certifier hopes to attract new clients that wish to export to the EU.

Organic producers and handlers in the United States will demand that their certifying agency undertake an ISO Guide 65 assessment if it benefits them. The benefit to organic producers and handlers derives from access to the EU market for organic goods. It is difficult to quantify the value of access to the European market because suitable statistics on organic goods exported to Europe are not available. U.S. exports of organic goods are estimated at a retail value of $300 million. It is not known what share of these exports go to the EU.

The immediate benefit of this rule is that it maintains the access that the U.S. organic industry has to the European market. Without the rule, U.S. producers and handlers would incur economic loses resulting from the sale of their organic goods in less remunerative markets.

If EU markets were no longer available, organic goods would be marketed in the domestic organic market or in other foreign organic markets. This would preserve part of the price premium for organic goods. Returns would fall as product is shifted into other markets, first because producers were presumably selling into their most profitable markets and secondly because increased supplies to other markets will depress prices. Another marketing alternative is to sell organic goods in the conventional market. Unlike organic markets which are relatively thin, little price impact would be expected from shifts to conventional markets. In the longer run, U.S. organic production could decline if producers perceived that the European market were lost.

The difference in net returns between sales to the EU organic market and sales to the conventional market is the maximum loss to the organic industry. There is insufficient data to estimate this difference. Data on the volumes of particular organic goods exported, their value as organic goods in Europe, and their value if sold into conventional markets would be needed. However, it is possible to illustrate the difference in net returns.

Retail price premiums for organic products vary by commodity, region, and season. Case studies suggest a range of premiums from 5 percent to over 200 percent.[1] In the following illustration, a 100 percent premium is assumed. The impact on organic products from shifting sales to the conventional market cannot be directly computed by applying the lost premium to the retail value. The aggregate loss to producers is much smaller because the farm share of value of retail sales is only a fraction of the retail value. In aggregate, the farm share of retail value is about 22 percent, but this could be different for organic goods.[2] The farm share is slightly smaller—18 to 20 percent—for fresh fruits and vegetables which are important organic commodities and much smaller, around 5 percent for highly processed goods like breads and cereals. The highest farm shares are for eggs and meats which can run from 30 to almost 60 percent. Thus, shifting the sales of organic goods from markets where they are valued at $1 million retail to conventional markets would involve a decrease in revenues to organic producers of about $110,000 (a decrease from $220,000 to $110,000). This assumes the average 22 percent farm share of value and an organic price premium of 100 percent that carries through from retail to farm.

Handlers and processors between the producer and retailer would also see lower revenues from shifting sales to conventional markets. However, it is difficult to describe quantitative relationships for intermediary handlers because they engage in a wide range of activities including substantial processing of some commodities.

Certifying agencies that choose to be assessed with regard to ISO Guide 65 will face the direct cost of fees for the assessment service and any ancillary costs to bring their business practices into conformity. Ancillary costs might include costs to create or modify business records and policy documents so that they meet ISO Guide 65 standards. AMS has already provided training regarding ISO Guide 65 to interested organic certifiers and believes industry participants are already in or very nearly in conformity with ISO Guide 65. Thus, ancillary costs are expected to be minor. The cost of providing and obtaining information for AMS review is $590 per certifying agency and discussed in detail under the Paperwork Reduction Act.

Some State organic certifying agencies which subsidize activities associated with providing organic certification services may not pass assessment costs on to users of their organic certification. Likewise, some of the larger organic certifying agencies may absorb the assessment costs because they are able to spread their fixed costs over a larger number of clients. However, given that there are approximately 4,000 organic farmers and 600 handlers in the United States, the Agency anticipates that any increase in fee rates based solely on recovering assessment costs would be minimal.

This rule is not intended to have any effect on consumers. The costs to certifying agencies for ISO Guide 65 assessment would be passed on to their clients. Organic producers and handlers could pass some of these costs on to consumers depending on the elasticity of demand and supply.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionally burdened. Accordingly, we also have prepared an initial regulatory flexibility analysis.

This action establishes, under the authority of the Agricultural Marketing Act of 1946, a voluntary, user-fee funded program under which the AMS would accredit State and private organic certifying agencies in the United States that meet the requirements of ISO Guide 65, which has been incorporated in this rule by reference. This assessment will facilitate uninterrupted imports of U.S. organic products to countries in the EU by enabling organic certifying agencies to comply with EU requirements beginning on June 30, 1999.

To be assessed, an organic certifying agency would submit an application requesting such assessment from AMS and also submit to AMS for review and evaluation, a manual documenting the organic certifying agency's quality system and associated quality certification procedures used to certify organic farms and handlers of organically produced agricultural commodities (including those involved in wild crop harvesting).

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[1] Harris J. Michael, "Consumers Pay a Premium for Organic Baby Foods," Food Review, USDA, Economic Research Service, May–August 1997.

Glazer, Lewrene, et al, "Demand for Frozen Vegetables: A Comparison of Organic and Conventional Products," Vegetables and Specialities, VGS–276, USDA, Economic Research Service, Nov. 1998.

Dobbs, Thomas L. "Price Premiums for Organic Crops," Choices, American Agricultural Economics Association, Second Quarter, 1998.

[2] U.S. Department of Agriculture. Agricultural Outlook, Economic Research Service. Table 8, page 37, May 1998.

According to the Standard Industrial Classifications (SIC) (13 CRF Part 121) which are used by the Small Business Administration (SBA) to identify small businesses, nearly all of the entities affected by this proposed regulation would be considered small businesses. According to the SIC, a small business in the agricultural services sector, such as organic certifying agencies, includes firms with revenues of less than $3.5 million (SIC Division A Major Group 07).

According to the most complete data available to AMS, there are 11 State and 33 private organic certifying agencies currently providing organic certification services in the United States. While they vary in size, they all have fewer than 499 employees and earn annual revenues of less than $3.5 million. These agencies certify approximately 4,000 farmers and 600 handlers in the United States. In crop production, the SIC definition of a small business includes all farms with annual crop sales of under $500,000 (SIC 0111–0191). Most of the farms currently certified have less than $25,000 in gross sales of organic production. However, many farms combine organic and conventional production on the same operation, some with total sales that may exceed $500,000. In handling operations, the SIC defines a small business as having fewer than 500 employees (SIC Division D. Mayor Group 20). In the absence of definitive data on organic handling operations, AMS believes that no handling operation employs more than 499 employees.

Except for an application form, no new forms will be required in connection with requests for assessment service or the assessment audit, review and approval process. Although, ISO Guide 65 requires that certifiers maintain a variety of records and documents, AMS believes many of these records and documents are already being prepared and maintained as a standard operating practice necessary for organic certifying agencies to support certification of organic farms and handling operations. However, it is possible that organic certifiers may need to refine their recordkeeping process and improve their documentation. We estimate that the cost of providing and obtaining the information required in this rule to assess State and private organic certifying agencies is $590 per certifying agency. The paperwork burden that may be imposed on organic certifying agencies is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Interested State or private organic certifying agencies would be able to apply for assessment under ISO Guide 65 in accordance with the provisions of this rule. Accordingly, this rulemaking action establishes and adds a new Part 37 to Title 7 of the Code of Federal Regulations. In addition to fees, those provisions and procedures that are the same or similar to the provisions of Part 54 are included in this rule in order to provide a complete voluntary service program under the Agricultural Marketing Act of 1946. The regulations include provisions for appropriate definitions; description of services; the incorporation by reference of the requirements of ISO Guide 65; how to apply for service; when an application may be withdrawn; access to establishments and records; reassessment of approved certification programs; suspension or denial of program assessment; appeals and termination.

Under the Agricultural Marketing Act of 1946, AMS is required to collect hourly fees for providing official services under 7 CFR Part 54, including services provided under the QSCP, to cover as nearly as practicable AMS costs for performing the service including related administrative and supervisory costs. Since the procedures used for assessing State and private organic certifying agencies are similar as those used to certify other types of product or system certification programs under the QSCP, AMS has decided to charge the same hourly fees for assessing organic certifying agencies as are charged for services currently provided under QSCP. QSCP services are based on the hourly rate for applicants who request services on an hourly or daily basis and appear at 7 CFR Part 54 as published in the **Federal Register** at 63 FR 32965 on July 17, 1998. The current base hourly rate for such service is $42.20 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays. The premium hourly rate for all applicants is $47.80 per hour charged to users of the service for the hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m.; for the hours worked between 6 p.m. and 6 a.m., Monday through Friday; and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants is $79.60 per hour charged to users of the service for all hours worked on legal holidays. Travel costs, per diem costs, and other administrative costs are in addition to the hourly charges.

AMS estimates that the average assessment service would cost $2,000 plus travel costs for the required documentation review and onsite audit required for verifying compliance with ISO Guide 65. These fees are currently under review and any charges deemed necessary will be subject to a separate rulemaking action.

Further, in assessing alternatives to the scheme provided for in Part 37, we believe that the provisions contained in the rule would best accomplish its purpose of this rule and at the same time minimize any burden that might be placed upon affected parties. Nonetheless, we invite comments concerning the potential effects of this rule on affected parties, including more information on the benefits or burdens that small entities may incur as a result of implementation of this rule.

Executive Order 12988 and 12898

This rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familia status. This included those persons who are employees, program beneficiaries, or applicants for employment or program benefits in this voluntary program to assess organic certifying agencies. This rule does not require certifying agencies to relocate or alter their operations in ways that could adversely affect such persons or groups. Nor would it exclude any persons or groups from participation in the voluntary assessment program, deny any persons or groups the benefits of the assessment program, or subject any persons or groups to discrimination.

Paperwork Reduction Act

This interim final rule contains recordkeeping and submission

requirements that are subject to public comment and to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). In accordance with 5 CFR Part 1320, we included the description of the reporting and recordkeeping requirements and an estimate of the annual burden on organic certifying agencies. Because there is insufficient time for a normal clearance procedure, AMS has received temporary approval from OMB for the use of the information collection and recordkeeping requirements that we used to implement the assessment program for organic certifying agencies on an expedited basis.

Title: Program to Assess Organic Certifying Agencies.

OMB Number: New collection.

Expiration Date of Assessment: Three years from date of assessment.

Type of Request: New.

Abstract: The information collection and recordkeeping requirements in this regulation are essential to establishing and implementing a voluntary program which verifies State and private organic certifying agencies compliance with the requirements of the International Organization for Standardization (ISO) Guide 65.

Based on information available, the Agency has determined that there are currently 11 State and 33 private organic certifying agencies. These certifying agencies conduct their certification of organic farms and handling operations in a similar manner and have similar recordkeeping systems and business operation practices. The agency also determined that most of the information required under this rule to conduct the assessment process could be collected from certifying agencies' existing materials without creating new forms, and that the information currently used by certifying agencies to certify organic producers and handlers could be adapted to comply with this rule. The PRA also requires the agency to measure the recordkeeping burden. These organic certifying agencies have documented review and auditing procedures and maintain appropriate records and documents for up to 5 years on each certified organic farm or handler of organic products. The recordkeeping burden is the amount of time needed to store and maintain records. The agency estimated the number of program participants who would be required to either create, submit, or store documents as a result of this rule. The estimated annual cost of providing and obtaining the information needed is estimated to be $25,980 or $590 per each certifying agency. Records are required to be retained for 5 years.

The information collection requirements in this interim final rule include: (1) Submission of an application requesting to be assessed to ISO Guide 65, (2) the preparation and submission of a quality manual documenting the procedures that certifying agencies use to provide certification services, and (3) an on-site audit of certifying agencies certification operation programs to determine whether the certifying agencies have implemented the provisions of the quality manual and are in compliance with the requirements of ISO Guide 65. These information collection requirements have been designed to minimize disruption to the normal business practices of organic certifying agencies.

The application form requires the minimal amount of information necessary including: (1) Firm name, address, telephone number, and other information necessary to identify the certifying agency and its location, and (2) other pertinent information to determine that a firm is eligible to apply and receive services available through the program to assess organic certifying agencies. Such information can be supplied without data processing equipment or outside technical expertise.

Based on available information, AMS has determined that all State and private certifying agencies develop and maintain as a normal business practice the records and documents necessary to prepare the quality manual required by ISO Guide 65.

The onsite audit would consist of a review and evaluation of a certifying agency's process for certifying organic farms and handlers. Verifying implementation of the provisions of a certifying agency's quality manual and compliance with the requirements of ISO Guide 65 would include a review and evaluation of existing records and documents described in the quality manual, interviews of certifiers' employees and customers, and observation of certification activities.

1. Application for Service—Form LS–314.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: State and private organic certifying agencies.

Estimated Number of Respondents: 44.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11 hours.

Total Cost: $220.

2. Quality Manual.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 23.28 hours per response.

Respondents: State and private organic certifying agencies.

Estimated Number of Respondents: 44.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1024 hours.

Total Cost: $20,480.

3. Maintenance of records for on-site audit.

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 6.0 hours per recordkeeper.

Recordkeepers: State and private organic certifying agencies.

Estimated Number of Recordkeepers: 44.

Estimated Total Recordkeeping Hours: 264 hours.

Total Cost: $5,280.

The total average cost of the estimated annual reporting burden per certifying agency would be approximately $590.

We are soliciting comments from the public (as well as affected certifying agencies) concerning the information collection and recordkeeping requirements contained in this interim final rule. Comments are specifically invited on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's burden estimate of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection and recordkeeping requirements contained in this action should reference OMB number 0581–0183 and the Program to Assess Organic Certifying Agencies, Docket Number LS–99–04, together with the date and page number of this issue of the **Federal Register**. Comments should be sent to Larry Meadows, Chief, Meat Grading and Certification Branch,

Livestock and Seed Program, AMS, USDA, STOP 0248, 1400 Independence Avenue, SW., Washington, D.C. 20250–0248; telephone: (202) 720–1246 or Fax: (202) 690–4119. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are best assured of having full effect if they are received within 30 days after publication of the rule in the **Federal Register**.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This action establishes a voluntary, fee for service program, under the Agricultural Marketing Act of 1946, to assess State and private organic certifying agencies as meeting the requirements prescribed under ISO Guide 65. Providing this assessment, which must be conducted by a competent authority, is necessary to comply with EU requirements that organic certifiers must be compliant with the ISO Guide 65 which EU plans to enforce after June 30, 1999. This assessment will ensure uninterrupted imports of U.S. organic products to countries in the EU.

Accordingly, this rule would benefit certifying agencies as well as producers and handlers of organically produced agricultural commodities (including those involved with wild crop harvesting). This program is similar to other audit-based programs in the Department. Given the current need for an ISO Guide 65 based program at the USDA governmental level and the expectations of EU countries, it is necessary to implement these regulations as soon as possible. A 60-day period is provided for interested persons to comment on this rule.

List of Subjects in 7 CFR Part 37

Administrative practice and procedure, Agriculture, Assessment of organic certifying agencies, Incorporation by reference, Organically produced agricultural commodities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7 of Chapter I of the Code of Federal Regulations is amended as follows:

1. Part 37 is added to read as follows:

PART 37—PROGRAM TO ASSESS ORGANIC CERTIFYING AGENCIES

Sec.

37.1 Definitions.
37.2 Services.
37.3 Availability of service.
37.4 How to apply for service.
37.5 Order of furnishing service.
37.6 When application may be withdrawn.
37.7 Authority to request service.
37.8 Financial interest of official.
37.9 Access to establishments or records; record retention.
37.10 Official assessment.
37.11 Publication of program assessment status.
37.12 Reassessment.
37.13 Suspension or denial of program assessment; appeals and termination.
37.14 Fees and other charges.
37.15 Payment of fees.
37.16 OMB assigned numbers.

Authority: 7 U.S.C. 1621–1627.

§ 37.1 Definitions.

Words used in this part in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of such regulations, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Assessment services. The services provided by the Meat Grading and Certification Branch in accordance with the regulations that may result in assessment of an organic certification program that certifies agricultural commodities to established specifications or standards.

Act. The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087, as amended by Pub. L. 272, 84th Cong., 69 Stat. 553, 7 U.S.C. 1621–1627).

Agricultural commodity. Any agricultural commodity or product, raw or processed, that is used for human or animal consumption or use.

Agricultural Marketing Service. The Agricultural Marketing Service of the Department.

Applicant. Any person who applies for service under the regulations.

Audit. A systematic review of the adequacy of program or system documentation, or the review of the completeness of implementation of a documented program or system.

Auditor. Person authorized by the Branch to conduct official assessments of agricultural commodity product certification programs.

Branch. The Meat Grading and Certification Branch.

Branch Chief. The Chief of the Branch, or any officer or employee of the Meat Grading and Certification Branch, Livestock and Seed Program, Agricultural Marketing Service, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

Department. The United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator of the Livestock and Seed Program of the Agricultural Marketing Service or any officer or employee of the Livestock and Seed Program to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his or her stead.

Legal holiday. Those days designated as legal public holidays in Title 5, United States Code, Section 6103(a).

Livestock and Seed Program. The Livestock and Seed Program of the Agricultural Marketing Service.

Part. The program to assess organic certifying agencies in the regulations.

Person. Any individual, partnership, corporation, or other legal entity, or Government agency.

Quality Manual. A manual documenting an organic certifying agency's quality system and associated quality certification procedures used to certify organic producers and handlers of organically produced agricultural commodities in accordance with established specifications or standards.

Regulations. The regulations in this part.

§ 37.2 Services.

Organic certifying agencies requesting assessment services under this Part shall conform to the provisions of the regulations and the requirements of International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 65—General Requirements for Bodies Operating Product Certification Systems, Ref. No. ISO/IEC Guide 65:1996, or other internationally recognized guidelines or requirements. The Director of the Federal Register approves the incorporation by reference of ISO/IEC Guide 65 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036. You may inspect a copy at USDA, AMS, LSP, MGCB; STOP 0248, Room 2628–S; 1400 Independence Ave., SW., Washington, DC 20250–0248 or at the Office of the

Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC 20488.

(a) Assessment services provided under the regulations shall consist of:

(1) Review of the adequacy of an applicant's quality manual against the requirements of ISO Guide 65; and

(2) Onsite auditing of an applicant's organic certification program to ensure implementation of the provisions of the quality manual and the applicant's compliance with the requirements of ISO Guide 65.

(b) Organic certifying agencies also may request assessment services under other international recognized guidelines or requirements. Developmental assistance in the form of training to explain requirements for quality system assessment is available upon request.

§ 37.3 Availability of service.

Service under these regulations is available to State and private organic certifying agencies.

§ 37.4 How to apply for service.

(a) *Application.* Any organic certifying agency may apply to the Branch Chief, Meat Grading and Certification (MGC) Branch, Livestock and Seed (LS) Program, AMS, P.O. Box 96456, Room 2628-South, Washington, D.C., 20090–6456 for assessment service. The application shall be made on Form LS–314, Application for Service. The applicant shall provide the following:

(1) The name and address of the establishment at which service is desired;

(2) The name and post office address of the applicant;

(3) The financial interest of the applicant in the program, except where application is made by an official of a State Government agency in their official capacity;

(4) The type of business and services provided;

(5) The type of commodity certified; and

(6) the signature of the applicant (or the signature and title of his representative). The application shall indicate the status of the applicant as an individual, partnership, corporation, or other form of entity. Any change in such status, at any time while service is being received, shall be promptly reported to the Department by the person receiving the service.

(b) *Notice of eligibility for service.* The applicant will be notified whether its application is approved, and the request for service deemed made under the regulations. Upon approval of a request for service, the applicant shall provide a copy of its quality manual.

(c) Applicants requiring additional assessment audits who have already submitted Form LS–314 are not required to submit an additional Form LS–314: *Provided that,* the required information on the original Form LS–314 remains unchanged.

§ 37.5 Order of furnishing service.

Service under the regulations shall be furnished to applicants in the order in which requests for service therefore are received, insofar as consistent with good management, efficiency, and economy.

§ 37.6 When application may be withdrawn.

An application or a request for service may be withdrawn by the applicant at any time before the application is approved or prior to performance of service: provided that, the applicant shall pay any expenses which have been incurred by the Department in connection with such application.

§ 37.7 Authority to request service.

Proof of the interest of an applicant involved in the request for service, or of the authority of any person applying for the service on behalf of another may be required, at the discretion of the reviewing official.

§ 37.8 Financial interest of official.

No auditor or other Department official shall review any programs or documents concerning a certification program in which the official is directly or indirectly financially interested.

§ 37.9 Access to establishments or records; record retention.

The applicant shall cause records and documents, with respect to which service is requested, to be made easily accessible for examination. Supervisors and other employees of the Department responsible for maintaining uniformity and accuracy of service shall have access to all parts of establishments covered by approved applications for service under the regulations, during normal business hours or during periods of production, for the purpose of evaluating systems or processes associated with an approved certification program. Records and documents shall be retained for at least 5 years beyond the date of the applicant's request for service.

§ 37.10 Official assessment.

Official assessment of an applicant's certification program shall be granted upon successful completion of a two-step review process, as provided for in § 37.2.

(a) *Documentation approval.* Documentation approval will be provided by the Branch Chief regarding the adequacy of an applicant's quality manual with respect to ISO Guide 65 requirements upon completion of an adequacy audit by the auditors.

(b) *Program assessment.* Assessment of a certification program will be issued by the Branch Chief by written memorandum or other approved method of assessment upon successful completion of an onsite audit conducted by the auditors of an applicant's organic certification program ensuring that the provisions of the applicant's quality manual have been implemented and that the applicant's certification program complies with the requirements of ISO Guide 65.

(c) *Disapproval and corrections.* An applicant determined not to meet applicable assessment requirements shall be provided by the Branch Chief with a written summary of observed program deficiencies. The applicant may appeal such a determination in accordance with the provisions of § 37.13 or implement required corrective action. After completion of the corrective action, the applicant may contact the Branch Chief to schedule another audit for assessment.

§ 37.11 Publication of program assessment status.

(a) The names of assessed certifying agencies shall be posted for public reference on the Livestock and Seed Program's website at: http://www.ams.usda.gov/lsg/. Such postings shall include: certifier's name and contact information; referenced specification or standard(s) covered under the scope of assessment; effective date of assessment; and control number(s) of official certificate(s), as applicable.

(b) The names of assessed certifying agencies posted on the Livestock and Seed Program's website may be removed from the website upon suspension or termination of assessment for noncompliance with the regulations pursuant to § 37.13.

§ 37.12 Reassessment.

Approved certification programs shall be subject to periodic reassessment to ensure ongoing compliance with the regulations, including the requirements of ISO Guide 65. The frequency of such reassessment shall be based on the relative risk associated with the certification program's integrity, as determined by the Branch Chief.

§ 37.13 Suspension or denial of program assessment; appeals and termination.

(a) *Suspension or denial of assessment.* When a review of a certification program by auditors finds noncompliance with the regulations, including the requirements of ISO Guide 65, the Branch Chief may suspend or deny assessment until subsequent audits show the noncompliance has been corrected.

(b) *Appeals.* Appeals of adverse decisions by an auditor or the Branch Chief may be made in writing to the Livestock and Seed Program Deputy Administrator at Room 2092-South, 1400 Independence Avenue, SW., Washington, D.C. 20250–0249.

(c) *Termination.* If noncompliance with the regulations remains uncorrected beyond a reasonable amount of time, as determined by the Livestock and Seed Program Deputy Administrator, an application may be rejected or program assessment terminated.

(1) *Procedure.* Actions under this subparagraph concerning rejection of an application or termination of assessment shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title.

(2) [Reserved]

§ 37.14 Fees and other charges.

Fees and other charges equal as nearly as may be to the cost of the assessment services rendered under the regulations, including reassessments, shall be assessed and collected from applicants in accordance with the following provisions.

(a) *Fees for Service.* Except as otherwise provided in this section, fees-for-service shall be based on the time required to render the service provided calculated to the nearest 15-minute period, including auditor's travel, review and approval of quality manual, the conduct of the onsite audit, and time required to prepare reports and any other documents in connection with the performance of service. The base hourly rate for such service is $42.20 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays. The premium hourly rate for all applicants is $47.80 per hour charged to users of the service for the hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m.; for the hours worked between 6 p.m. and 6 a.m., Monday through Friday; and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants is $79.60 charged to users of the service for all hours worked on legal holidays.

(b) *Travel charges.* When service is requested at a place so distant from an auditor's headquarters, or place of prior assignment on circuitous routing, that a total of one-half hour or more is required for the auditor to travel to such place and back to the headquarters, or to the next place of assignment on a circuitous routing, the charge for such service shall include mileage charge administratively determined by the Department, and travel tolls, if applicable, or such travel prorated against all the applicants furnished the service involved on an equitable basis, or where the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. However, the applicant will not be charged a new mileage rate without notification before the service is rendered.

(c) *Per diem charges.* When service is requested at a place away from the auditor's headquarters, the fee for such service shall include a per diem charge if the employee performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants will cover the same period of time for which the auditor receives per diem reimbursement. The per diem rate will be administratively determined by the Department. However, the applicant will not be charged a new per diem rate without notification before the service is rendered.

(d) *Other costs.* When costs, other than costs specified in paragraphs (a), (b), and (c) of this section are associated with providing the services, the applicant will be charged for these costs. The amount of the costs charged will be determined administratively by the Department. However, the applicant will not be charged for such cost without notification before the service is rendered of the charge for such item of expense.

§ 37.15 Payment of fees.

Fees and other charges for service shall be paid by the applicant to the Livestock and Seed Program, AMS, P.O. Box 96456, Room 2628-South, Washington, D.C. 20090–6456, with a check made payable to the Agricultural Marketing Service.

§ 37.16 OMB assigned numbers.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0183.

Dated: June 4, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–14688 Filed 6–7–99; 10:53 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 331

RIN 3064–AC23

Asset and Liability Backup Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for comment.

SUMMARY: The FDIC is adopting an interim final rule to require asset and liability backup programs (ALBPs) for limited deposit account and loan account information in a limited number of institutions to facilitate timely and accurate restoration of key financial records in the event that an FDIC-insured depository institution (insured depository institution) experiences a Year 2000 (Y2K) computer problem and is placed in receivership. Specifically, this rule requires those insured depository institutions receiving Y2K ratings of less than "Satisfactory" on or after July 31, 1999 (affected institutions) to follow specific programs to backup certain information concerning deposit and loan accounts. This information will be retained by each bank or savings and loan (thrift) to which the rule applies and used by the FDIC only if such an institution must be closed. This regulation will automatically sunset on June 30, 2000, and will no longer be applicable after that date. An affected institution will be exempted from the ALBP rule if its primary federal regulator provides a written determination to the Executive Secretary, FDIC, that the ALBP is not needed.

DATES: This interim final rule will be effective July 9, 1999. Comments must be received by July 9, 1999.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand-delivered to the guard station located at the rear of the

17th Street building, on F Street, on business days between 7:00 a.m. and 5:00 p.m. The FAX number is (202) 898–3838 and the Internet address is *comments@fdic.gov*. Comments may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street NW, Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Division of Resolutions and Receiverships: James E. Crum, Manager, Information Systems Section (202) 898–6698; Daniel L. Walker, Manager, Franchise Marketing, Dallas Field Office Branch (972) 761–2215; Herbert J. Held, Assistant Director, Institutional Sales (202) 898–7329. Legal Division: Nancy Schucker Recchia, Counsel (202) 898–8865; David Fisher, Counsel (202) 898–3503, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the FDIC, the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) have provided extensive Y2K-readiness guidance to the banking industry. The banking industry has invested substantial resources to ready itself for the millennium date change. More than 98% of the nation's banks and thrifts have achieved "Satisfactory" Y2K-readiness ratings from their primary federal regulators. As time goes by, more institutions achieve this milestone. As a result of these efforts, the FFIEC agencies expect few, if any, insured depository institutions to close because of the Y2K date change. Despite best efforts to prepare for Y2K, however, there is always the possibility that some institutions may not be Y2K ready and may have to be closed. The FDIC must plan for every conceivable event. The FDIC is proposing this rule to ensure that, if an affected institution experiences a Y2K problem and is closed, the FDIC will be able to make federally insured deposits available to depositors expeditiously. The rule also will facilitate the quick acquisition or transfer of servicing of assets and help maintain public confidence in, and minimize any related disruption to, the United States of America's financial system.

The rule requires affected institutions to create standardized backup programs for their deposit and loan accounts, in addition to their own backup systems. In the unlikely event of an affected institution's placement in receivership due to a Y2K-related problem, these standardized backup programs will provide the FDIC access to essential basic account information and eliminate the need to map and convert information for theY2K closing of an affected institution before account reconciliation and deposit insurance determination can begin. The rule will enable depositers to access their accounts quickly and accurately through a deposit transfer or pay-out. The rule will expedite the transfer or sale of the institution's assets to a purchaser, asset manager or service provider. A Y2K problem could make an institution's systems unusable for potential purchasers, making an alternative conversion process essential for an expeditious transfer of assets and liabilities. The rule will reduce the time needed to convert a closed affected institution's information. The rule is critical to the FDIC's ability to determine quickly and accurately deposit and loan account information to permit timely and accurate access of insured depositors to their accounts and effective management of receivership assets.

B. The Rule's Benefits

1. The Rule Will Maintain Confidence in the Industry

Congress created the FDIC in 1933 to restore public confidence in the nation's banking system at a time of severe financial stress. For over 65 years FDIC deposit insurance has helped ensure the stability of the financial system by providing for the timely and accurate funding of insured deposits and the consequent confidence in the U.S. banking system in times of financial stress. The FDIC's ability to make insured deposits available expeditiously, and resolve failed institutions quickly, was critical during the bank and thrift crisis of the 1980s and early 1990s. Despite the many bank and thrift closings during that period, there were no serious runs on, or credit flow disruptions at, FDIC-insured institutions. Most important, no depositors suffered any loss of their insured deposits. The rule ensures that the FDIC will be able to honor its deposit insurance commitments in a timely and accurate manner if an affected insured depository institution should be closed because of a Y2K problem.

One of the potential challenges the FDIC must prepare for is the possible inability to access the business systems and supporting information of an insured depository institution that must be closed because of a Y2K problem. The ultimate safety net will be FDIC deposit insurance and the FDIC's commitment to provide access to insured funds expeditiously. FDIC deposit insurance is absolute—insured deposits are safe. The number of days that it will take the FDIC to provide access to deposits and transfer assets to private sector purchasers, asset managers or service providers will depend upon its ability to transfer basic account information from one institution to another. The FDIC can assure the public that if an affected institution that maintains ALBPs in compliance with the rule should close because of a Y2K problem, depositors will have expeditious access to their insured deposits and the institution will be resolved as quickly as possible.

2. The Rule Assures That Depositors Will have Expeditious Access to Insured Deposits

As the federal insurer of deposits in more than 10,000 banks and thrifts, the FDIC, through the deposit insurance funds it administers, is statutorily required to pay insured deposits as quickly and accurately as possible when an insured bank or thrift is closed.[1] In the event that an insured depository institution is closed, the FDIC would be responsible for providing depositors access to their insured deposits as quickly and accurately as possible. Public confidence in the financial system will depend upon the FDIC's ability to effect such funding as quickly and accurately as possible. Historically, the FDIC has provided depositors with access to their insured deposits within one to three days of an institution closing.

The rule requires affected institutions to create daily extract files of information, beginning on December 24, 1999, concerning deposit accounts following a standard format specified by the rule. The necessary information will be readily available to the FDIC only if an institution's business systems are unable to accurately receive, process and produce deposit balances and transactions because of a Y2K problem. Because the FDIC will not have to convert the information to fit its systems, potential delay in making insurance determinations and returning insured deposits to depositors will be minimized. The FDIC will rely upon the liability backup program to efficiently determine insured account balances, and quickly and accurately transfer or

[1] 12 U.S.C. 1821(f)(1).

pay out such amounts for the benefit of depositors.

3. The ALBP Constitutes an Essential Component of Y2K Contingency Planning

ALBPs are an essential part of Y2K contingency planning worldwide. The Basle Committee on Banking Supervision, in its recent paper on Y2K contingency planning, stated:

As with existing disaster recovery plans, data integrity procedures are critical to ensuring that adequate and consistent data are available in the event of a technological failure. The procedures may address both mission-critical and other systems. They should address the issue of recovery difficulties associated with institutions of all types and should preserve sufficient historical mission-critical data to enable records to be accurately reconstructed after the century date change in the event that data is corrupted.

While all banks will already have back-up procedures that they consider adequate in normal circumstances, there are special features of the Year 2000 challenge that merit extra attention. Supervisors should issue a mandate that banks within their jurisdiction maintain specified back-up records in electronically retrievable media for certain periods or key dates. These records may be a specification of the minimum data elements and format to capture certain assets, liabilities, and income accounts. It is essential that all processes for creating back-up data files are completed before the millennium date change or other potentially sensitive dates and be thoroughly tested. Whatever happens, it is essential to have back-up which has the certainty to provide a clear audit trail and enable the bank, an acquirer, or a receiver to reconstruct corrupt records. Some supervisors may wish to assure depositors and other bank customers that they will verify the safety of banks' back-up arrangements.

Year 2000 The Supervisory Contingency Planning Process, January 1999, at 4, 5. The ALBP rule is consistent with the Basle Committee's recommendation.

4. The Rule Will Minimize Resolution Costs

The FDIC is statutorily required to resolve closed insured depository institutions in the manner that is least costly to the insurance funds.[2] FDIC experience has shown generally that the more quickly an institution can be resolved, the greater the franchise and asset/liability value to be realized from the sale of that institution. Maximization of the value of the closed institution and its assets and liabilities and minimization of resolution costs result in a greater return to the closed institution's creditors and the FDIC insurance funds.[3]

By facilitating the timely resolution of an affected institution and the prompt servicing of any assets not sold at resolution, the rule will maximize the value of the institution and its assets. The value of an institution will be enhanced by this rule because the information will already be available to the FDIC or a purchaser in a pre-defined, useable format. Fewer FDIC or acquiring institution personnel will be needed to receive, interpret, map, and distribute information, thereby further reducing costs of resolution.

5. The Rule Will Expedite the Return of Assets to the Marketplace and Minimize Customer Disruptions

The FDIC is responsible for the sale or liquidation of all assets of a bank or thrift for which it is appointed receiver. It is generally preferable for bank customers and the financial system to keep bank and thrift assets in the private sector where they can continue to perform without disruption. For these reasons, the FDIC attempts to sell as many assets of a closed institution as possible as part of a closed bank or thrift resolution transaction.

The asset backup program will provide the FDIC with the loan information necessary to expeditiously value and sell an institution and its assets in the event that the institution's systems are unable to receive, process and produce loan balances and transactions. This information will enable purchasers to establish communication with borrowers and maintain important account relationships. Without accurate information related to loans, such as the rule requires, purchasers are unlikely to risk acquiring a bank's assets.

Where there are no immediate purchasers for a closed institution's assets, the FDIC acts as quickly as possible to transfer loans to an asset manager or a service provider or to begin servicing the loans itself. To minimize loss to the assets' value, it is critical that such servicing occur with minimal disruption. Both FDIC and private sector asset managers and servicers require loan information similar to that of a purchaser.

Because the acquisition and servicing of assets requires more information than deposit accounts, the rule requires additional standardized fields of information for loans. The information required by the rule is the minimum number of fields necessary for a purchaser or the FDIC to make timely and accurate determinations of estimated asset values, portfolio compositions and for planning conversions to Y2K-ready purchasers, asset managers or service providers. Similarly, before it is placed in receivership, the ALBP files may help an affected institution transfer its loan accounts to a temporary servicer while it repairs its systems.

6. The Rule Facilitates Addressing Y2K Technical Problems

The FDIC has developed, and is adopting, separate standardized backup programs for deposits and loans. Use of these standardized backup programs will make available a consistent set of information, increasing the possibility that the FDIC or an acquiring institution can readily process a closed institution's deposit or loan information.

When ownership of an insured depository institution changes hands, whether in a commercial transaction or a FDIC-assisted transaction, detailed account information is converted from the electronic data processing (EDP) systems of the acquired institution to the EDP systems of the purchaser. Conversion of information from one system to another normally requires several months to accomplish as the process involves extensive research into the manner that information is provided, processed, reported and used. During this time, the two systems continue to be operated side-by-side until such time as the steps are in place for conversion of the information to a purchaser's systems; detailed information as to the programming language and record layout used by the originating EDP systems to store information is also acquired; programs to translate the coded information readable by one system into coded information recognized by another system are written; and the information is transferred and tested before use in the new electronic data processing systems.

Few depository institutions use the same format for their information. The specific information fields, field lengths, and software differ from institution to institution. The mapping process requires time and information code definitions. As part of the conversion process, the FDIC must map the failing institution's information fields to the

[2] 12 U.S.C. 1823(c)(4).

[3] The FDIC's responsibility as insurer is carried out by the assessment and collection of premiums from insured depository institutions, the administration of the deposit insurance fund resulting from such assessments, and the timely and accurate funding of claims for insured deposits in a closed institution. When the FDIC funds insured deposits, it becomes subrogated to the claims of the insured depositors. Proceeds from the sale of the institution and its assets are returned to the FDIC as subrogee to the depositors.

correct information fields in its own systems. In addition, information may be grouped in one field in one system and separated in multiple fields in another system. The information fields must conform to the new system. Use of the ALBPs will expedite this process as programs can be written in advance to convert the ALBP record layouts into the format needed for the various applications used by the FDIC in the resolution process.

The standard layouts of the ALBP will allow purchasers of closed affected institutions to pre-map the incoming file specifications to their own record layouts, thus avoiding delays that would otherwise be necessary if a purchaser had to input account information manually, or map the closed institution's information to its own system and then write a conversion program. In a non-Y2K closing, an acquiring institution would be able to use the closed institution's systems, but this may not be an option in a Y2K closing. Institutions and service bureaus interested in providing short-term and long-term support to institutions with Y2K-related problems can use the ALBP files to facilitate the transfer of account data to their compliant systems. This may provide extra protection for the continuation of financial services before FDIC resolution action is required.

C. The Rule Places Minimal Burden on the Industry

The rule requires affected institutions to be able to provide electronic files of limited fields of information already maintained by those institutions in a standardized format, for a limited period of time. To minimize burden and recognize the efforts of most financial institutions, only those insured depository institutions that have a higher degree of Y2K risk must comply with the rule. Information will be reorganized, not created. There are no new reports required or transmissions of useable information to the FDIC or any other government agency. No confidential records will be released. The FDIC will use ALBPs only if an affected institution is closed and experiences a Y2K problem and to give depositors timely and accurate access to their insured deposits, help maintain loan customer relationships and facilitate the quick resolution of the institution. Once an institution's computer systems are operating successfully in the new millennium to the satisfaction of the institution's primary federal regulator, the rule will no longer be applicable to that institution. The rule will sunset on June 30, 2000.

There will be minimal costs for the programming and processing associated with creating and maintaining the ALBPs. Production of the information may require creating extract files of standard information from multiple systems (e.g., demand deposit account systems and time deposit account systems). Some institutions may have to adjust their electronic data processing production schedules to accommodate these additional tasks. Based upon the results of the FDIC's survey of the industry discussed below, the FDIC believes that these minor costs represent a prudent investment in Y2K contingency planning.

To minimize the burden of this rule, each affected institution is permitted to extract and retain the required information in the manner that is most cost-effective for that institution. The institution may choose to extract the requisite information as part of its normal nightly processing production runs or from routine nightly backup programs. In either case, the institution must demonstrate to the FDIC that it has segregated and preserved the information so that it may be obtained using hardware and software located separately from the institution's primary system. If the institution chooses to extract the information as part of its normal nightly processing production runs, the institution must store the files each night beginning December 24, 1999 until the "termination date." Alternatively, if the institution chooses to extract the data from routine nightly backup programs, the institution may choose to store the ALBPs each night as set forth above or demonstrate to the FDIC the ability to produce on demand the files for each night from December 24, 1999, through the termination date. The FDIC has limited the duration of this rule to the shortest time period possible. The termination date for the requirements of this regulation for any affected institution is the earlier of (i) the date on which the institution's primary federal regulator changes the institution's Y2K readiness rating to Satisfactory; or (ii) the date on which the institution establishes to the satisfaction of its primary federal regulator that its deposit and loan systems are fully functional and reliable after December 31, 1999; or (iii) June 30, 2000.

The FDIC estimates the average cost to produce the ALBPs to be $17,500 for institutions under $1 billion in asset size and $190,000 for institutions greater than $1 billion in asset size when using in-house programming and processing. Service providers do the programming for most small institutions. For institutions using service providers or licensed software where the vendor provides the programming service, the FDIC estimates the cost of the ALBPs to be approximately $10,500 per service provider or software vendor customer. Overall, the total cost burden to the 205 institutions rated as less than Satisfactory as of May 21, 1999, is estimated to be $3,000,000. The FDIC assumed that on average each service provider or software vendor offered at least two product lines and serviced five customers affected by this regulation per product line, thus allocating their costs across each affected institution. The FDIC believes that the burden of these costs is far outweighed by the benefits to be obtained.

The FDIC surveyed thirteen financial institutions and five major service providers of software and/or processing support to insured depository institutions (Office of Management and Budget Paperwork control number 3064–0130). The survey addressed: (1) current business practices, including number and types of clients, software development practices and backup procedures; (2) programming costs, including estimates of the hours and labor costs to program their EDP systems to produce the ALBP files; and (3) production costs, including estimates of the additional Central Processing Unit time to run the file extract routines, storage media and impacts on overall production schedules. The FDIC also discussed its proposed rule with representatives of two financial industry trade associations, national clearinghouse authorities, a major financial information publisher and representatives of other federal financial institution regulatory agencies.

The FDIC believes that it is appropriate for affected institutions to pay for their own programming costs because the burden of the rule applies only to those demonstrating the highest risk of not being Y2K ready and therefore present a greater risk to the deposit insurance funds. The rule also provides additional incentives for such institutions to improve their preparedness and soundness to avoid requirements imposed by the ALBPs.

It is necessary that the standardized backup programs be in place pre-millennium in order to ensure that the ALBP data will be available as of January 1, 2000. The rule requires affected institutions to complete programming of the ALBP file formats by September 30, 1999. Programming of the ALBP files must begin by early August 1999, to allow establishment of

the system requirements, analysis and design, and internal testing of the file production programs. No later than October 31, 1999, each affected institution will submit to the FDIC a sample of the deposit and loan files created using the backup programs and containing test data meeting the ALBP specifications. This will allow the FDIC sufficient time to test the accuracy of the file formats and coordinate any required modifications to bring the formats into compliance with the rule. A key benefit of the ALBPs is to allow the FDIC to quickly and accurately make insured deposit determinations, estimate asset valuations and facilitate the transfer of information to the electronic data processing systems of the FDIC or a purchaser of a closed institution. Therefore, it is essential that the file formats be certified as compliant with the rule before January 1, 2000.

II. Discussion

A. Affected Institutions

Section 331.1 of the rule sets forth those insured depository institutions to which the rule applies (affected institutions). The rule applies to all insured depository institutions as that term is defined at section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) that have received a rating of less than Satisfactory in Y2K readiness by their primary federal regulator as of July 31, 1999. The rule also applies prospectively to any insured depository institution that had received a Satisfactory rating as of July 31, 1999, and subsequently receives a rating of less than Satisfactory. The rule continues to apply to both categories of institutions until the termination date specified in § 331.3(d). Prior to January 1, 2000, if an affected institution's primary federal regulator changes the institution's Y2K readiness rating to Satisfactory, it will not be required to comply with the rule as of the date of the change. This permits institutions that demonstrate improvement in Y2K readiness after July 31, 1999, to avoid the requirements of the rule. After January 1, 2000, an affected institution will not be required to comply with the rule as of the earlier of the date on which the institution's primary federal regulator verifies that the institution's systems are Y2K ready or June 30, 2000.

B. Exemption

Section 331.2 of the rule provides that an affected institution will, without application, be exempted by the FDIC from the rule upon a written determination by its primary federal regulator that the ALBP is not needed for that institution. For example, the primary federal regulator may find that an institution has ensured its systems' readiness during the testing phase and developed adequate business resumption contingency plans, but for less critical reasons was assessed a less than Satisfactory rating. A primary federal regulator's written determination would be submitted to the Executive Secretary of the FDIC. In the case of an FDIC-regulated institution, the determination would be made by the FDIC's Director of the Division of Supervision, or designee, and submitted to the Executive Secretary of the FDIC.

C. Asset and Liability Backup Program Requirements

Sections 331.3(b) and (c) of the rule require all affected institutions to prepare and retain daily extract files of information concerning deposit accounts and loan accounts. The specifications for the deposit ALBPs are contained in appendix A; the specifications for the loan ALBPs are contained in appendix B. The rule requires the institution to segregate and preserve all daily extract files created in compliance with the rule so that they can be obtained using hardware and software located separately from the institution's primary electronic data processing system. This will ensure that the ALBP data will be accessible if the affected institution experiences a Y2K problem. Affected institutions may choose whether to prepare the daily extract file as part of the institution's normal nightly processing production runs or from routine nightly backup programs. If the institution prepares its daily extract files as part of its normal nightly processing production runs, it must store the files each night beginning December 24, 1999, through the termination date. If the institution chooses to prepare its daily extract files from routine nightly backup programs it must either store the files each night as set out above, or it may demonstrate to the FDIC that it is able to produce to the FDIC, upon demand, the daily extract files for each night from December 24, 1999, through the termination date.

Section 331.3(d) of the rule specifies a "termination date," after which the requirements of the rule do not apply to an affected institution. The termination date is (1) the date on which the institution's primary federal regulator changes the institution's Y2K rating to Satisfactory; (2) the date on which the institution establishes to the satisfaction of its primary federal regulator that its deposit and loan systems are fully functional and reliable after December 31, 1999; or (3) June 30, 2000. The first termination date recognizes that an institution that is rated less than satisfactory on July 31, 1999, or thereafter, may improve its readiness so that it is rated Satisfactory. Such an institution would be required to comply with the regulation as long as it was rated less than Satisfactory; however, once the primary federal regulator changed its rating to Satisfactory, the institution would have no further obligations under the rule. For those institutions that enter the millennium with a less than Satisfactory rating, the second termination date requires them to comply with the rule until they establish that their deposit and loan systems are fully functional and reliable in Y2K. The rule will sunset on June 30, 2000, and its requirements will no longer apply to any affected institution.

These ALBP requirements will ensure that information is available if an affected institution's business systems are unable to receive, process, and produce deposit and loan balances and transactions in a timely and accurate manner due to a Y2K problem. The ALBPs include the minimum number of fields necessary for (1) the FDIC to make timely and accurate determinations of estimated insured deposits, asset values and portfolio compositions, and (2) potential purchasers, asset managers and service providers to move quickly to transfer and set up loan and deposit accounts from the closed institution, convert the closed institution's systems to their own, and implement a timely relationship with the new customers.

D. Programming and Testing

Section 331.4 of the rule requires each affected institution to program and test its ALBPs. In order to provide sufficient time to make necessary corrections to the ALBP, the rule requires each institution to complete its programming and testing by September 30, 1999, and to provide a sample output file composed of at least ten test records containing test data meeting the ALBP criteria to be delivered to the FDIC no later than October 31, 1999. The FDIC will use these test files only to verify that the ALBP complies with this rule. If an institution that had been rated Satisfactory in Y2K readiness as of July 31, 1999, receives a less than Satisfactory rating subsequent to that date, the FDIC will determine the timetable by which the institution must complete the programming, testing and correction of the ALBP.

E. Supporting Documentation

Section 331.5 of the rule requires institutions providing ALBPs to the FDIC to also provide narratives

describing the process by which the ALBPs were produced and a trial balance or other hard copy report summarizing the contents of the electronic files. These documents will allow the FDIC to ensure that it is properly interpreting the information provided in the ALBPs.

F. Sunset Date

Section 331.6 of the rule specifies its sunset date as June 30, 2000. The FDIC believes that any Y2K problem posing significant risk will have been manifested and resolved by that time.

III. Authority for the Regulation

This regulation is authorized by the FDIC's general rulemaking authority and pursuant to its fundamental responsibilities to ensure the safety and soundness of insured depository institutions and act as receiver or conservator of those institutions as required by law.

Specifically, 12 U.S.C. 1819(a) Tenth provides the FDIC with general authority to issue such rules and regulations as it deems necessary to carry out the statutory mandates of the Federal Deposit Insurance Act (FDI Act) and other laws that the FDIC is charged with administering or enforcing. 12 U.S.C. 1819(a) Seventh permits the FDIC to exercise incidental powers related to those granted in the FDI Act. One of the FDIC's fundamental powers is to ensure the safety and soundness of insured depository institutions pursuant to 12 U.S.C. 1818(a) and (b). The FDI Act also empowers the FDIC to act as receiver or conservator for insured depository institutions in the event of insolvency and permits the FDIC to promulgate rules related to the conduct of conservatorships or receiverships and implement certain other requirements set forth in section 11 of the FDI Act. (12 U.S.C. 1821).

IV. The Administrative Procedure Act

The FDIC is adopting this regulation as an interim final rule effective thirty days after publication in the **Federal Register** without the usual notice and comment period as provided in the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*, or the delayed effective date as provided in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), 12 U.S.C. 4802(b). The APA provides that the requirement for such notice and comment periods does not apply "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). Section 302 of CDRI provides that certain new regulations should "take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless—(A) the agency determines, for good cause published with the regulation, that the regulation should become effective before such time." 12 U.S.C. 4802(b)(1)(A).

The FDIC has found that promulgation of this regulation on an expedited basis is required. This rule is necessary to protect the public's interest in the continued stability of the financial system and to ensure timely and accurate access to deposits in insured depository institutions in the event that such institutions experiencing a Y2K problem are closed. All efforts to create ALBPs must be completed and operational by December 24, 1999, to ensure that public confidence in the financial system continues. The changes required by this rule would be impracticable to implement in less than six months. These backup programs must be in place pre-millennium to ensure that all systems will function as of January 1, 2000. Programming of the backup program files must begin by early August 1999, to allow establishment of the system requirements, analysis and design, and internal testing of the file production programs. Subsequently, the FDIC must have sufficient time to test the sample formats for compliance with the rule and to work with the institutions to correct any deficiencies. Delay in the effective date of this rule would be detrimental to the efforts of the regulatory agencies and the banking industry to prepare for potential problems caused by the Y2K date change.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to publish an initial regulatory flexibility analysis, except to the extent provided in 5 U.S.C. 605(b), whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. For good cause discussed above, the FDIC is publishing this rule as an interim final rule, for which publication of a general notice of proposed rulemaking is not necessary. No initial regulatory flexibility analysis is required.

VI. Paperwork Reduction Act

The collection of information contained in this interim final rule has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.* OMB is required to make a decision concerning the collection of information contained in the interim final regulation between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. This does not affect the deadline for the public to comment to the FDIC on the interim final regulation.

Comments are invited on (a) whether the collection of the required information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology. Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, DC 20503, with copies of such comments to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), FDIC, Room F–4062, 550 17th Street, N.W., Washington, DC 20429.

Title of the collection: All comments should refer to "Asset and Liability Backup Program."

Summary of the collection: This new requirement calls for affected FDIC-insured depository institutions to develop and retain extracts of deposit and loan account information maintained by such institutions, stored in electronic form, beginning December 24, 1999, and continuing until the earlier of approval by the institution's primary federal regulator or June 30, 2000 (12 CFR 331.3); to program and test the required ALBP extract files by September 30, 1999, and to submit a test file of sample information for each ALBP format to the FDIC for validation purposes (12 CFR 331.4); and to submit supporting documentation to the FDIC (12 CFR 331.5).

Need and use of the information: The FDIC needs the information to facilitate timely and accurate restoration of key financial records. The FDIC will use the information only in the event of the closure of an affected institution experiencing a Y2K problem.

Respondents: This rule applies those FDIC-insured depository institutions receiving Y2K ratings from their primary federal regulators of less than "Satisfactory" on or after July 31, 1999.

Estimated annual burden resulting from this proposed rulemaking:

Frequency of response: Daily, beginning December 24, 1999 and continuing until released from the rule's requirements or June 30, 2000, whichever occurs first.

Number of respondents: 205.

Average number of hours per respondent: 131.4.

Total annual burden hours: 26,945.

It is noted that the total annual burden includes service bureau and other contractor time, and that the actual burden experienced by individual institutions may range from 70 hours per institution to 2,500 per institution.

VII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that this interim final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 801, *et seq.* As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the interim final rule can be reviewed.

VIII. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this regulation will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L.105–277, 112 Stat. 2681).

By order of the Board of Directors.

Dated at Washington D.C., this 3rd day of June, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

List of Subjects in 12 CFR Part 331

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, a new part 331 is added to chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 331—ASSET AND LIABILITY BACKUP PROGRAM

Sec.

331.1 Affected institutions.
331.2 Exemption.
331.3 ALBP requirements.
331.4 Programming and testing required.
331.5 Supporting documentation required.
331.6 Sunset of program.

Appendix A to Part 331—Asset and Liability Backup Program Technical Instructions and Deposit Extract File Format

Appendix B to Part 331—Asset and Liability Backup Program Technical Instructions and Loan Extract File Format

Authority: 12 U.S.C. 1818(a) and (b), 1819(a) (Seventh and Tenth), 1821.

§ 331.1 Affected institutions.

The provisions of this part 331 apply to all insured depository institutions, as defined in 12 U.S.C. 1813(c)(2), that are rated as less than Satisfactory in Y2K readiness by their primary federal regulator on or after July 31, 1999 (affected institutions), until the termination date specified in § 331.3(d).

§ 331.2 Exemption.

An affected institution will, without application, be exempted by the FDIC from the requirements of this part 331 upon a written determination made by, and in the sole discretion of, its primary federal regulator that the asset and liability backup program (ALBP) is not needed for that institution. Such written determination shall be submitted to the Executive Secretary, FDIC. In the case of an FDIC-regulated affected institution, the Director of the Division of Supervision, or designee, shall have the authority to waive the requirements of this part 331 upon a written determination submitted to the Executive Secretary, FDIC, that the ALBP procedures are not needed for that institution.

§ 331.3 ALBP requirements.

(a) ALBPs required. (1) All affected institutions shall prepare and retain daily extract files of information concerning:

(i) Deposit accounts following the ALBP format specified in appendix A to this part 331; and

(ii) Loan accounts following the ALBP format specified in appendix B to this part 331.

(2) All daily extract files shall be segregated and preserved so that they can be obtained using hardware and software located separately from the institution's primary information processing system.

(b) Preparation of the daily extract files. Each affected institution shall prepare its daily extract files either—

(1) As part of the institution's normal nightly processing production runs; or

(2) From routine nightly backup programs.

(c) Retention of daily extract files. Each daily extract file shall be retained in one of three media meeting the specifications contained in appendices A and B to this part 331, until the termination date.

(1) If the institution prepares its daily extract files as part of its normal nightly processing production runs under § 331.3(b)(1), the institution must store the files each night beginning December 24, 1999, through the termination date specified in § 331.3(d).

(2) If the institution prepares its daily extract files from routine nightly backup programs under § 331.3(b)(2), the institution shall either retain the daily extract files each night as set forth in § 331.3(c)(1), or demonstrate to the FDIC its ability to produce to the FDIC, upon demand, the daily extract files for each night from December 24, 1999, through the termination date specified in § 331.3(d).

(d) Termination date. (1) The termination date of the ALBP requirement for any affected institution is the earlier of:

(i) The date on which the institution's primary federal regulator changes the institution's Y2K rating to Satisfactory;

(ii) The date on which the institution establishes to the satisfaction of its primary federal regulator that its deposit and loan systems are fully functional and reliable after December 31, 1999; or

(iii) June 30, 2000.

(2) An affected institution that wishes to receive verification under paragraph (d)(1)(ii) of this section shall make its request to the primary federal regulator in writing.

§ 331.4 Programming and testing required.

Programming and testing of the required ALBP extract files shall be completed by each affected institution by September 30, 1999. A sample output file with at least ten (10) records containing test information meeting the ALBP criteria shall be delivered to the FDIC no later than October 31, 1999, in accordance with the instructions contained in appendices A and B to this part 331. The FDIC will test the sample output file against the specifications contained in appendices A and B of this part 331. Corrections of any identified errors must be made, and a new sample output file provided to the FDIC, within fifteen (15) days of receipt of notice of such errors from the FDIC. For any institution that receives a less than Satisfactory rating after July 31, 1999,

the FDIC will determine the completion and delivery dates under this section.

§ 331.5 Supporting documentation required.

In addition to the files submitted to the FDIC under § 331.4, the institution shall submit the following supporting documentation:

(a) A narrative describing the process by which the daily extract files were produced; and

(b) A trial balance or other hard copy summary of the contents of the electronic files to permit the FDIC to verify the accurate receipt and interpretation of the information transmitted to the FDIC.

§ 331.6 Sunset of program.

The ALBP procedures contained in this part 331 shall not be required after June 30, 2000.

Appendix A to Part 331—Asset and Liability Backup Program Technical Instructions and Deposit Extract File Format

TECHNICAL INSTRUCTIONS

FDIC Standard Deposit Extract File Format

THE FDIC STANDARD DEPOSIT EXTRACT FILE FORMAT

The attached "Deposit Extract File Format" is a list of fields developed as a tool for requesting information from an institution for the purposes of insurance estimation and other related functions. Please match your institution's deposit information field names to those on the "Deposit Extract File Format." For your convenience, descriptions of each field are provided.

STANDARD DEPOSIT EXTRACT FILE PREFERENCES:

1. Information must be provided in an ASCII-flat, tab delimited file.

(a) The preferred media is diskette, CD, ZIP Disk or fixed length 9-track tape.

(b) All deposit records should be included in one file. Separate files are acceptable in those cases where the information will not fit on the selected media type.

(c) Diskette and CD files zipped with PKZIP or WINZIP are also acceptable.

If information cannot be provided on preferred media, or you cannot provide the information in ASCII format, please contact Mr. James Murphy, at the FDIC's Dallas Field Operations Branch, Telephone No. (972) 761–2226, for possible alternatives.

2. Please provide ALL requested information where possible.

3. Provide a record layout in a printout accompanying the file. The field order and field names are indicated. The field names are under the column heading 'FDIC NAME.' Your record layout must include field order, field name, type (e.g., Character, Numeric), field length and decimal places (precision).

4. Do not duplicate records within the download.

5. Decimal points should be included in the information provided, not implied (i.e., $10,300.75 should be provided as 10300.75, interest rate of 8.45% should be provided as .0845). Please do NOT include packed or zoned decimals.

6. Date formats should be MM/DD/YYYY (e.g., March 14, 2001 should be provided as 03/14/2001).

Deposit Extract File Format

	Information Field	Definition	FDIC Name	Info Type	Info Length	Dec
1	Account Status	Code defining account status (Open, Closed, Dormant, etc)..	STATUS	C	4	
2	Branch Number	Branch Number	BRANCH	C	4	
3	Account Number	Unique account number. Include all fields required to avoid duplicate account numbers..	ACCTNO	C	16	
4	Tax ID Number	Taxpayer identification number of the primary account holder (ex: 428–78–1992 or 58–2345679 Include Hyphens)..	TAXID	C	11	
5	Customer Short Name	Alpha sort key used to create an alpha list of accounts..	SHORTNAME	C	20	
6	Customer Name	Full name line 1 as it appears on deposit account.	NAME1	C	40	
7	Joint Customer Name	Full name line 2 as it appears on deposit account.	NAME2	C	40	
8	Customer Street Address	The street address as it appears on the statement. May also be provided in multiple fields (provide as ADDR1, ADDR2, ADDR3, etc).	ADDR1	C	40	
9	Customer City	Address city as it appears on statement.	CITY	C	25	
10	Customer State	State postal abbreviation as it appears on statement..	STATE	C	2	
11	Customer Zip	Address zip code as it appears on statement—no hyphens..	ZIP	N	9	
12	Financial Institution's Account Type.	The Financial Institution's account types. Use any pertinent codes relevant to identifying the type of account..	FITYPE	C	4	
13	Account Type Description.	Description of the Financial Institution's account types. May also be used to describe class codes..	FIDESC	C	20	
14	FDIC Account Type	FDIC Claim Types (e.g., DDA, SAV, CD, NOW, MMA, IRA, KEO (KEOGH), TRU (TRUST))..	FDICTYPE	C	4	
15	GL Code	Financial Institution's GL code that the account is aggregated to for GL accounting..	GLCODE	C	6	
16	GL Code Description	Description of Financial Institution's GL code that the account is aggregated to for GL accounting..	GLDESC	C	20	
17	Class Code	All codes identifying deposit account products on bank's system (may be the same as FITYPE)..	CLASS	C	4	

Deposit Extract File Format—Continued

	Information Field	Definition	FDIC Name	Info Type	Info Length	Dec
18	Municipality	Indicates account of state, county or municipal entity..	MUNICIPAL	C	4	
19	Current Account Balance	Current principal account balance.	CURRBAL	N	15	2
20	Accrued Interest	Accrued interest earned but not paid on the account. Enter zero if not interest bearing..	ACCRINT	N	15	2
21	Per Diem	Daily accrual amount or per diem. Enter zero if blank or null..	PERDIEM	N	9	5
22	Interest Paid Year-to-Date.	Interest paid year-to-date. Enter zero if not interest bearing..	INTPYTD	N	15	2
23	Interest Rate	Current interest rate applicable to account on cut-off date. Rate is based on the current balance, not base rate. If minimum balance requirements are not met, rate is zero..	RATE	N	8	5
24	Original Date	Date account opened.	ORIGDATE	D	8	
25	Maturity Date	Maturity date for all CDs and IRA accounts.	MATDATE	D	8	
26	Interest Paid Through Date.	Date interest is paid through.	PDTHRUDT	D	8	
27	Collateral Account Number.	Loan account number for which this deposit account is serving as collateral..	LOANACCT	C	16	
28	Overdraft Account Number.	Overdraft Protection account number this account is tied to..	OPDACCT	C	16	
29	Available Overdraft Protection Amount.	Current available Overdraft Protection Balance	AVAILOD	N	15	
30	Average Daily Balance	Average daily balance, maintained for the current statement period (monthly, quarterly)..	DAILYBAL	N	15	
31	Available Balance	Current available balance	AVAILBAL	N	15	
32	Hold Code	Hold code(s)/flag(s) indicating account secures a loan(s)..	HOLDCODE	C	4	
33	Hold Description	Description of hold code(s)/flag(s) indicating account secures a loan(s) etc..	HOLDDESC	C	20	
34	Hold Amount	Amount of hold(s).	HOLDAMT	N	15	2

Appendix B to Part 331—Asset and Liability Backup Program Technical Instructions and Loan Extract File Format

TECHNICAL INSTRUCTIONS

FDIC Standard Loan Extract File Format

THE FDIC STANDARD LOAN EXTRACT FILE FORMAT

The attached "Loan Extract File Format" is a list of fields developed as a tool for requesting information from an institution for the purposes of categorizing, analyzing and transmitting the loan portfolio and other related functions. Please match your institution's loan information field names to those on the "Loan Extract File Format." For your convenience, descriptions of each field are provided.

STANDARD LOAN EXTRACT FILE PREFERENCES:

1. Information must be provided in an ASCII-flat, tab delimited file.

(a) The preferred media is diskette, CD, ZIP Disk or fixed length 9-track tape.

(b) All loan records should be included in one file. Separate files are acceptable in those cases where the information will not fit on the selected media type.

(c) Diskette and CD files zipped with PKZIP or WINZIP are also acceptable.

If information cannot be provided on preferred media, or you cannot provide the information in ASCII format, please contact Mr. James Murphy, at the FDIC's Dallas Field Operations Branch, Telephone No. (972) 761–2226, for possible alternatives.

2. Please provide ALL requested information where possible.

3. Provide a record layout in a printout accompanying the file. The field order and field names are indicated. The field names are under the column heading 'FDIC NAME'. Your record layout must include field order, field name, type (e.g. Character, Numeric), field length and decimal places (precision).

4. Do not duplicate records within the download.

5. Decimal points should be included in the information provided, not implied (i.e., $10,300.75 should be provided as 10300.75, interest rate of 8.45% should be provided as .0845). Please do NOT include packed or zoned decimals.

6. Date formats should be MM/DD/YYYY (e.g., March 14, 2001 should be provided as 03/14/2001).

7. All information for each loan must be contained within one record.

a. Participation sold information should not be provided as a separate record (provide as separate field).

b. Partial charge-off information should not be provided as a separate record (provide as separate field).

c. Completely charged-off loans and paid-off loans should not be included in the download.

d. Loans with partial charge-off should be provided with balances net of partial charge-off.

LOAN EXTRACT FILE FORMAT

	Information Field	Definition	FDIC Name	Info Type	Info Length	Dec
1	Borrower Name	The full legal name (Last Name, First Name, MI) of the borrower (preferred). The information may also be provided in multiple fields (Last Name in field called NAME1, First Name in a field called NAME2, MI in a field called NAME3).	NAME	C	50	
2	Borrower Short Name	Abbreviated name assigned to each borrower	SHORTNAME	C	50	
3	Borrower Street Address	The street address where the borrower's home or head office is located. May also be provided in multiple fields (provide as ADDR1, ADDR2, ADDR3, etc).	ADDR1	C	50	
4	Borrower City	The city where the borrower's home or head office is located.	CITY	C	40	
5	Borrower State	The state where the borrower's home or head office is located.	STATE	C	2	
6	Borrower Zip	The zip code where the borrower's home or head office is located.	ZIP	C	10	
7	CIF Number	Central Information File identifier. The number that links all loan, deposit, and other accounts to the borrower. (This number may be the same as the Borrower ID Number.)	CIF	C	15	
8	Insider	Indicates if the borrower is either an insider of the bank or a related interest of an insider of the bank. If possible, indicate the type of insider (e.g., director, executive officer, principal shareholder, non-executive officer, or employee).	INSIDER	C Y/N	1	
9	Tax ID Number	Taxpayer identification number of the primary account holder (e.g., 428–78–1992 or 58–2345679 Include Hyphens).	TAXID	C	11	
10	Accrued Interest	Total amount of interest accrued and unpaid on a note/credit facility.	ACCRINT	N	14	2
11	Amortizing or Non Amortizing Status.	Indicates if the note/credit facility is amortizing or non-amortizing.	AMORTCD	C Y/N	1	
12	Branch ID	Identifies the branch location where the note/credit facility was originated or is managed. Please indicate in your supporting documentation if this identification number is part of the note/credit facility number.	BRANCH	N	3	
13	Charged-Off Amount	The amount associated with the note/credit facility that has been charged off. If the note/credit facility balances reported elsewhere are not net of charged-off amounts, please indicate this in your supporting documentation.	CHGOFFAMT	N	14	2
14	Co-Maker or Joint Maker	The name of the co-maker(s) or joint maker(s) whose signature(s) appears on the promissory note or loan agreement.	COMAKER	C	50	
15	Current Balance	The portion of the note/credit facility that appears as an asset on the bank's General Ledger. This balance is net of all participations sold, charge-off, and specific reserves.	CURRBAL	N	14	2
16	Number of Days Past Due.	If interest or principal is delinquent, indicate the number of days delinquent. If both are delinquent, indicate the larger of the two numbers.	DAYSLATE	N	4	
17	Dealer Code	The code identifying loans accepted from auto, mobile home, or other sales agents.	DEALERCD	C	5	
18	Dealer Name	Dealer name	DEALNAME	C	50	
19	Dealer Reserve Balance	The amount of the dealer reserve held in conjunction with the applicable account.	DEALERRES	N	14	2
20	Escrow Balance	The amount currently held in escrow for payment to third parties, such as insurance and real estate taxes.	ESCRBAL	N	14	2
21	Guarantor or Endorser Name.	Name of the individual or entity that guarantees, in part or in full, the borrower's note.	GTYNAME	C	50	
22	Index	The specific underlying market index used to calculate the interest rate of an adjustable rate note/credit facility (i.e. LIBOR, Wall Street Prime, Cost of Funds Index, One-Year Treasury Bill).	INDEX	C	10	
23	Interest Rate	The interest rate currently applicable to the note/credit facility. If the interest rate is variable, indicate the current rate (e.g., 7.25%, not Prime + 1).	RATE	N	8	3

LOAN EXTRACT FILE FORMAT—Continued

	Information Field	Definition	FDIC Name	Info Type	Info Length	Dec
24	Interest Paid to Date	Amount of interest collected since origination or other institution-defined time period.	INTPAID	N	14	2
25	Interest Rate Reset Interval.	The time between periodic reset dates for variable or adjustable rate loans.	RTCHGFRQ	N	3	
26	Interest Rate Reset Date	The next periodic reset date for variable or adjustable rate loans.	RESETDTE	D.		
27	Last Payment Date	Date Date the last payment was made	LASTPMT	D.		
28	Last Renewal Date	Date on which the legally binding note/credit facility was extended or renewed, even if principal reductions have been made.	LASTRENEW	D.		
29	Late Charges	Late charges that are currently due	LTCHGBAL	N	14	2
30	Lifetime Interest Rate Cap.	The upper limit on the interest rate that can be charged over the life of the loan.	RTCEIL	N	8	3
31	Lifetime Interest Rate Floor.	The lower limit on the interest rate that can be charged over the life of the loan.	RATEFL	N	8	3
32	Maturity Date	The date on which the legally binding note/credit facility matures.	MATDATE	D.		
33	Mortgage Loan Type	For real estate loans, indicates if the note/credit facility is secured by a first lien on single-family residential real estate.	MTGTYPE	C	15	
34	Next Payment Date	Date the next scheduled payment is due	NXTDUEDT	D.		
35	Non-accrual	Idicates if the note/credit facility is on non-accrual status.	NONACCRCD	C Y/N	1	
36	Note Number or Credit Facility Number.	The number used by the bank to uniquely identify a note/credit facility.	ACCTNO	C	15	
37	Note Type or Credit Facility Type.	A code representing the type of loan May correspond to the FFIEC Report of Condition.	LOANTYPE	C	5	
38	Note Type or Credit Facility Type Description.	A description of the code representing the type of loan.	TYPEDESC	C	15	
39	Number of Payments	The number of payments specified in the loan agreement or note.	PAYNUM	N	3	
40	Number of Extensions	The number of times the loan has been extended beyond original maturity date.	EXTENDS	N	2	
41	Original Balance	The amount of the note or credit facility that has been executed. If a note/credit facility has been renewed one or more times and the original amount is not available, provide the amount most recently executed.	ORIGAMT	N	14	2
42	Original Date	The date your institution extended credit to the borrower. Date should be consistent with the information provided for original balance.	ORIGDATE	D.		
43	Payment Amount	Amount of regularly scheduled payments	PAYAMT	N	14	2
44	P&I Payment	Amourit of regularly scheduled P&I payments	PIAMT	N	14	2
45	Payment Frequency	The frequency payments are due to the bank (i.e. monthly, quarterly, annually).	PAYFREQ	C	15	
46	Periodic Interest Rate Cap.	For variable or adjustable rate loans, the maximum percentage points that the rate may change each reset interval.	PRTCAP	N	8	3
47	Basis Code	Day basis on which interest calculations are made (e.g., 3/360, Actual/360, etc.).	BASIS	C	12	
48	Revolving Line of Credit	Indicates if the loan is a revolving line of credit	REVCODE	C	5	
49	Security Perfection Date	The date that the last security interest, lien, or UCC–1 was perfected.	PERFDATE	D.		
50	Times Past Due 30–59 Days.	Number of times the note/credit facility has been past due 30–59 days during the last 12 months of the loan.	LATE30	N	4	
51	Times Past Due 60–89 Days.	Number of times the note/credit facility has been past due 60–89 days during the last 12 months of the loan.	LATE60	N	4	
52	Times Past Due 90+ Days.	Number of times the note/credit facility has been past due 90 or more days during the last 12 months of the loan.	LATE90	N	4	
53	Total Commitment	The sum of the outstanding balance and the undisbursed amount legally available to be drawn upon.	CREDLMT	N	14	2
54	Troubled Debt Restructured Code.	Code indicating if the note/credit facility is considered to be a troubled debt restructure.	RTDCODE	C Y/N	1	
55	Unfunded or Undisbursed Balance.	The amount legally available under a note/credit facility that has not been disbursed.	UNFUNDED	N	14	2
56	Variable Rate Code	Code indicating adjustable, floating, or variable interest rate.	RATECODE	C	5	

LOAN EXTRACT FILE FORMAT—Continued

	Information Field	Definition	FDIC Name	Info Type	Info Length	Dec
57	Variable Rate Description.	Description of code indicating adjustable, floating or variable interest rate.	RATEDESC	C	15	
58	Collateral Code	The code associated with a unique collateral type (i.e. commercial real estate, 1–4 family real estate, UCC filings, marketable securities).	COLLCODE	C	5	
59	Collateral Description	The narrative description of collateral or a description Referencing a collateral code. The collateral code for each description must be included in a separate table.	COLLDESC	C	50	
60	Collateral State	State in which the collateral is located	COLSTATE	C	2	
61	Collateral Value	The total value assigned to the collateral. If the bank has adjusted this value, please indicate this in your supporting documentation.	APPRLAMT	N	14	2
62	Collateral Valuation or Appraisal Date.	Date collateral was last appraised or valued	APPRDATE	D.		
63	Insurance Code/Flag	Code indicating the status of insurance covering collateral for a note/credit facility.	INSCODE	C	5	
64	Insurance Expiration Date.	The date that the related insurance policy covering bank collateral expires.	INSEXP	D.		
65	Lien Status	The priority lien held by this bank (i.e. 1st lien, 2nd lien).	LIENCODE	C	10	
66	Participating Institution Code.	Code indicating the institution participating in the credit. If the credit is sold to multiple institutions, please indicate this in your supporting documentation.	INVESTOR	C	5	
67	Participating Institution Description.	Description of the code indicating the institution participating in the credit. If the credit is sold to multiple institutions, please indicate this in your supporting documentation.	INVDESC	C	50	
68	Participation Amount	The current outstanding dollar amount of the loan sold to or purchased from another institution.	PARTSOLD	N	14	2
69	Participation Code	A code indicating that the loan/credit facility involves a participation purchased or sold. Please identify the purchased and sold codes.	PARTTYPE	C	5	
70	Participation Code Description.	Description of the code indicating that the loan/credit facility involves a participation purchased or sold.	PARTDESC	C	15	
71	Participation Sold Original Amount.	The original amount of the loan participation sold or purchased.	PARTORG	N	14	2
72	Rebate Flag	Flag indicating there is any kind of rebate associated with the account. (i.e. insurance, interest etc.).	REBATE	C ..... Y/N ...	1	

[FR Doc. 99–14641 Filed 6–9–99; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 902 and 903

[No. 99–34]

RIN 3069–AA86

Procedures

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) has adopted a final rule that establishes procedures governing applications for Approvals or Waivers, requests for No-Action Letters or Regulatory Interpretations, and Petitions for Case-by-Case Determination or Review of Disputed Supervisory Determinations. The Finance Board determined that it was necessary and in the public interest to establish uniform procedural rules to encourage focused presentation of issues, ensure expeditious consideration of submissions, promote clarity and consistency in interpretation and application of the Federal Home Loan Bank Act (Bank Act) and Finance Board rules, regulations, policies, and orders, and minimize the expenditure of staff resources. The rule codifies procedures that currently are in effect.

EFFECTIVE DATE: The final rule will become effective on June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Karen H. Crosby, Director, Office of Strategic Planning, by telephone at 202/408–2983, by electronic mail at crosbyk@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Pursuant to the authority provided by section 2B(a)(1) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1422b(a)(1), to "promulgate such regulations and orders as are necessary from time to time to carry out the provisions of" the Bank Act, the Finance Board in 1998 adopted three sets of procedures governing the submission to and processing by the Finance Board of applications, requests, and petitions. The Finance Board determined that it was necessary and in the public interest to establish uniform procedural rules. The intent of the three sets of procedures is to encourage focused presentation of issues, ensure expeditious consideration of

submissions, promote clarity and consistency in interpretation and application of the Bank Act and Finance Board rules, regulations, policies, and orders, and minimize the expenditure of staff resources. The procedures have functioned effectively since their adoption.

The first set of procedures, adopted on July 10, 1998 and titled *Revised Procedures for Review of Disputed Supervisory Determinations*, governs review by the Board of Directors of the Finance Board of disputes regarding examination findings and other supervisory determinations that cannot be resolved informally. The *Revised Procedures* replaced procedures adopted by the Finance Board on July 30, 1996, and amended on October 24 and December 18, 1996. The second set of procedures, adopted on October 28, 1998 and titled *Procedures for Adjudications by the Finance Board of Issues Other than the Review of Disputed Supervisory Determinations*, establishes a process for the Board of Directors of the Finance Board to reach a decision on matters that in its judgment require a determination, finding, or approval, and for which no controlling statutory, regulatory, or other Finance Board standard previously has been established. The third set of procedures, adopted on October 28, 1998 and titled *Procedures for Requests and Applications*, governs the issuance of Approvals, Waivers, and written interpretations of the Bank Act or Finance Board rules, regulations, policies, or orders issued in the form of No-Action Letters or Regulatory Interpretations.

The final rule codifies the three sets of procedures with minor and technical changes made in the interests of clarity, concision, and consistency. The final rule does not include provisions relating only to internal processes and intended solely for the guidance of Finance Board staff.

II. Analysis of the Final Rule

A. Definitions

Subpart A, § 903.1 of the final rule, sets forth definitions of terms used in the rule. Section 903.1 restates definitions of terms used elsewhere in the Finance Board's regulations and includes definitions of terms used only in part 903. Definitions of terms unique to part 903 are discussed below with the substantive provisions in which the terms are used.

B. Waivers, Approvals, No-Action Letters, and Regulatory Interpretations

Subpart B of the final rule, §§ 903.2–903.7, governs applications for Waivers and Approvals and requests for No-Action Letters and Regulatory Interpretations.

1. Waivers

The term "Waiver" is defined in § 903.1(u) of the final rule as a written statement issued to a Federal Home Loan Bank (Bank), a member of a Bank (Member), or the Office of Finance that waives a provision, restriction, or requirement of a Finance Board rule, regulation, policy, or order, or a required submission of information, not otherwise required by law, in connection with a particular transaction or activity. Section 903.2 authorizes the Board of Directors of the Finance Board to issue a Waiver and provides for filing a Waiver application in accordance with the requirements of § 903.6 of the final rule. Section 903.2 replaces § 902.6 of the Finance Board's regulations. *See* 12 CFR 902.6. Issuance of a Waiver is entirely within the Board of Directors' discretion. Thus, the Board of Directors may deny or decline to consider or respond to an application for a Waiver for any reason or without stating a reason. A Waiver is applicable only to a Bank, a Member, or the Office of Finance and the particular transaction or activity it addresses.

2. Approvals

In § 903.1(a) of the final rule, the term "Approval" is defined as a written statement approving a transaction, activity, or item that requires Finance Board approval under the Bank Act or a Finance Board rule, regulation, policy, or order. Under § 903.3, the Finance Board may issue an Approval only to a Bank or the Office of Finance. Unlike Waivers, Approvals are not discretionary—the Finance Board must grant or deny each application for an Approval, with or without conditions, based on the governing standard in the Bank Act or Finance Board rule, regulation, policy, or order for the particular category of Approval. Section 903.3(a) provides that an application for Approval generally must be filed in accordance with the requirements of § 903.6 of the final rule. However, under § 903.3(b), the Finance Board retains the authority to prescribe additional or alternative application procedures for Approval of any transaction, activity, or item. An Approval may be issued by the Board of Directors of the Finance Board or, by delegation, by the Chairperson of the Board of Directors or Finance Board staff.

3. No-Action Letters and Regulatory Interpretations

Sections 903.4 and 903.5 of the final rule govern issuance by Finance Board staff of two types of written interpretations of the Bank Act or Finance Board rules, regulations, policies, or orders, with respect to a particular transaction or activity. The two types of interpretations are No-Action Letters and Regulatory Interpretations.

In § 903.1(l), the term "No-Action Letter" is defined as a written statement providing that Finance Board staff will not recommend supervisory or other action to the Board of Directors of the Finance Board for failure to comply with a specific provision of the Bank Act or a Finance Board rule, regulation, policy, or order, if the requester undertakes a proposed transaction or activity. Under § 903.4 of the final rule, Finance Board staff may issue a No-Action Letter only to a Bank or the Office of Finance. A No-Action Letter is applicable only to the entity addressed by the letter. Issuance of a No-Action Letter is entirely within the discretion of Finance Board staff, which may deny or decline to consider or respond to a request for a No-Action Letter for any reason or without stating a reason. A No-Action Letter is prospective in nature and must relate to a specific proposed transaction or activity. Finance Board staff will not issue a No-Action Letter based upon a hypothetical situation. A No-Action Letter represents only the position of staff, and may be modified or superseded by the Board of Directors of the Finance Board. All requests for a No-Action Letter must be filed in accordance with the requirements of § 903.6 of the final rule.

In § 903.1(q), the term "Regulatory Interpretation" is defined as written guidance issued by the Finance Board with respect to application of the Bank Act or a Finance Board rule, regulation, policy, or order to a proposed transaction or activity. Section 903.5 of the final rule provides that Finance Board staff may issue a Regulatory Interpretation to any person or entity. Issuance of Regulatory Interpretations is entirely within the discretion of Finance Board staff, which may deny or decline to consider or respond to a request for a Regulatory Interpretation for any reason or without stating a reason. A Regulatory Interpretation must relate to a proposed transaction or activity—Finance Board staff will not issue a Regulatory Interpretation based upon a hypothetical situation. A Regulatory

Interpretation is applicable only to the requester and the specific matter addressed in the Interpretation. Like a No-Action Letter, a Regulatory Interpretation represents only the position of staff, and may be modified or superseded by the Board of Directors of the Finance Board. A request for a Regulatory Interpretation must be filed in accordance with the requirements of § 903.6 of the final rule.

4. Submission Requirements and Issuance

Section 903.6 of the final rule sets forth requirements applicable to applications for Waiver or Approval and requests for a No-Action Letter or Regulatory Interpretation. All submissions must comply with the requirements of § 903.6, except those applications for Approval for which the Finance Board has prescribed alternative or additional procedures. Under § 903.6(d), the Managing Director of the Finance Board may waive any submission requirement for a particular submission, subject to review by the Board of Directors.

Section 903.7 of the final rule concerns issuance of Waivers, Approvals, No-Action Letters, and Regulatory Interpretations. Section 903.7(a) requires the Secretary to the Board of Directors of the Finance Board to provide a copy of all staff interpretations other than Waivers to the Board of Directors for review at least three business days prior to transmission to the requester. A Waiver, Approval, No-Action Letter, or Regulatory Interpretation is not effective until the Secretary to the Board has transmitted it in final form to the requester. Oral indications from Finance Board staff are not binding.

Section 903.7(c) of the rule permits the Finance Board to provide an abbreviated response to an application or request. Examples of an abbreviated response include "Approved;" "Denied;" or "Finance Board staff agrees with the interpretation stated in the request."

C. Case-by-Case Determinations; Review of Disputed Supervisory Determinations

Subpart C, §§ 903–8–903.15, establishes procedures governing two categories of Petitions, Petitions for Case-by-Case Determination and Petitions for Review of Disputed Supervisory Determination.

Under § 903.1(e), the term "Case-by-Case Determination" means a Final Decision concerning any matter that requires a determination, finding, or approval by the Board of Directors under the Bank Act or Finance Board regulations, for which no controlling statutory, regulatory, or other Finance Board standard previously has been established, and that in the judgment of the Board of Directors is best resolved on a case-by-case basis by a ruling applicable only to the Petitioner and any Intervener, and not by adoption of a rule of general applicability. Section 903.1(g) defines the term "Final Decision" as a decision rendered by the Board of Directors on issues raised in a Petition or Request to Intervene that have been accepted for consideration. In order to avoid ambiguity or confusion arising from the use of the term "adjudication" in the Administrative Procedure Act, 5 U.S.C. 551–559, the term "Case-by-Case Determination" replaces the term "Adjudication" as used in the *Procedures for Adjudications by the Finance Board of Issues Other than the Review of Disputed Supervisory Determinations.*

The Finance Board has dealt with most provisions that require a determination, finding, or approval by the Board of Directors in policies or through rulemaking. However, if a matter requiring a determination, finding, or approval affects only a limited number of parties, the Board of Directors may determine that the best way to address the matter is to develop standards on a case-by-case basis prior to or in lieu of promulgating system-wide standards. Case-by-Case Determinations by the Board of Directors are intended to serve as an alternative to rulemaking under these limited circumstances. Under § 903.8(a) of the final rule, a Petition for Case-by-Case Determination must be filed in accordance with the requirements of § 903.10 of the final rule. Decisions as to whether a matter is best addressed through a Case-by-Case Determination, system-wide rulemaking, Approval, Waiver, or some other procedure, lie solely within the discretion of the Board of Directors.

Under § 903.1(t) of the final rule, the term "Supervisory Determination" means a Finance Board finding in a report of examination, order, or directive, or a Finance Board order or directive concerning safety and soundness or compliance matters that requires mandatory action by a Bank or the Office of Finance. Section 903.9(a) requires the Office of Finance or a Bank seeking review of a disputed Supervisory Determination by the Board of Directors, to file a Petition within 60 calendar days of the date of the disputed Supervisory Determination in accordance with the requirements of § 903.10 of the final rule. Notwithstanding this provision, the Finance Board expects most disputes to be resolved through voluntary agreement, and Bank, Office of Finance, and Finance Board staffs are encouraged to maintain cooperative communication to resolve disputes informally and expeditiously. Section 903.9(b) makes clear that a disputed Supervisory Determination remains in effect while a Petition is pending.

All Petitions should comply with the requirements of § 903.10 of the final rule. However, § 903.12(c) requires the Managing Director of the Finance Board to afford a Petitioner a reasonable opportunity to cure any defects and bring a Petition into compliance with the requirements. In addition, § 903.15(a) of the rule authorizes the Managing Director to waive any filing requirements or deadlines, subject to review by the Board of Directors.

Section 903.11 of the final rule sets forth requirements applicable to Requests to Intervene, as provided for by §§ 903.8(b) and 903.9(d). As for Petitions, under § 903.15(a) the Managing Director may waive any filing requirements or deadlines, subject to review by the Board of Directors.

Section 903.12 of the final rule sets forth provisions relating to Finance Board processing of Petitions. Section 903.12(a) requires the Finance Board to publish notice of receipt of a Petition for Case-by-Case Determination in the **Federal Register**. This provision does not apply to Petitions for Review of Disputed Supervisory Determinations.

Pursuant to § 903.12(c), the Managing Director may request additional information from a Petitioner to ensure that the matters presented in the Petition are ripe for review and the record contains all information necessary for consideration of the Petition by the Board of Directors. If a Petition is the subject of such a request, the time periods established for Notice of Board Consideration and Final Decision under §§ 903.12(g) and 903.13(c), respectively, will not begin to run until the Managing Director has determined that the Bank has provided the information necessary for the Board of Directors to consider the Petition.

Section 903.12(g) requires the Managing Director, after consultation with the Board of Directors, to provide all parties with a Notice of Board Consideration through the Secretary to the Board that includes: (1) the issues accepted for consideration; (2) any decision to consolidate or sever pursuant to § 903.12(f); (3) whether the Petition will be considered by the Board of Directors on the written record under § 903.13(a)(1) or at a meeting under § 903.13(a)(2); and (4) if the Petition will

be considered by the Board of Directors at a meeting, the date, time and place of the meeting, and a decision as to any Request to Appear filed pursuant to §§ 903.10(d) or 903.11(a)(4). In preparing this Notice, the Managing Director should consult with the Office of Supervision and other Finance Board offices, as appropriate, in addition to the Board of Directors. Under § 903.15(b), all matters contained in the Notice of Board Consideration are subject to modification by the Board of Directors.

Section 903.13(a) permits the Board of Directors to consider a Petition either solely on the basis of the written record or at a meeting. The meeting may be either a regularly scheduled meeting or a meeting convened specifically for the purpose of considering the Petition. The final rule does not establish any deadline or requirement regarding the date of such meeting. Normally the Finance Board will provide at least 30 calendar days notice for consideration of a Petition at a meeting.

Section 903.13(c) provides that the Board of Directors will normally complete consideration of a Petition and issue a Final Decision within 120 calendar days from the date the Managing Director deems the Petition complete. However, the Board of Directors may extend this time period for any additional period they reasonably require to reach a decision.

Section 903.14 of the final rule sets forth the procedures that govern consideration of a Petition at a meeting. The rule provides for the Chairperson of the Board of Directors, or a member of the Board of Directors designated by the Chairperson, to preside at such a meeting. All references to the Chairperson in § 903.14 are deemed also to apply to the Chairperson's designee.

A Final Decision is effective upon adoption by the Board of Directors. Section 903.13(b) provides that a Final Decision is binding upon all parties and is a Final Decision for purposes of obtaining judicial review. Section 903.15(f) makes clear that following the procedures in subpart C is a prerequisite to obtaining judicial review of any Case-by-Case Determination or Review of a Disputed Supervisory Determination. Section 903.15(i) makes clear that the procedures in subpart C are exclusive with regard to Case-by-Case Determinations by the Board of Directors and Review of Disputed Supervisory Determinations.

Section 903.15(d) permits the parties to enter into a settlement agreement resolving issues raised in a Petition while the Petition is pending. The Finance Board expressly encourages parties to discuss possible settlement agreements.

III. Notice and Public Participation

The notice and publication requirements of the Administrative Procedures Act do not apply to this rule of agency procedure and practice. *See* 5 U.S.C. 553(b)(3)(A). In addition, because it is in the public interest to codify these uniform procedural rules governing the submission to and processing by the Finance Board of applications, requests, and petitions, the Finance Board for good cause finds that notice and public procedure are unnecessary. *See* 5 U.S.C. 553(b)(3)(B).

IV. Effective Date

For the reasons stated in part III above, the Finance Board for good cause finds that the final rule should become effective on June 9, 1999. *See* 5 U.S.C. 553(d)(3).

V. Regulatory Flexibility Act

The Finance Board is adding part 903 in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

VI. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 902

Assessments, Federal home loan banks, Government contracts, Minority businesses, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 903

Administrative practice and procedure, Federal home loan banks.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR chapter IX as follows:

PART 902—OPERATIONS

1. The authority citation for part 902 continues to read as follows:

Authority: 12 U.S.C. 1422b and 1438(b).

§ 902.6 [Removed]

2. Remove § 902.6.

3. Add part 903 to read as follows:

PART 903—PROCEDURES

Subpart A—Definitions

Sec.

903.1 Definitions.

Subpart B—Waivers, Approvals, No-Action Letters, and Regulatory Interpretations

903.2 Waivers.
903.3 Approvals.
903.4 No-Action Letters.
903.5 Regulatory Interpretations.
903.6 Submission requirements.
903.7 Issuance of Waivers, Approvals, No-Action Letters, and Regulatory Interpretations.

Subpart C—Case-by-Case Determinations; Review of Disputed Supervisory Determinations

903.8 Case-by-Case Determinations.
903.9 Review of Disputed Supervisory Determinations.
903.10 Petitions.
903.11 Requests to Intervene.
903.12 Finance Board procedures.
903.13 Consideration and Final Decisions.
903.14 Meetings of the Board of Directors to consider Petitions.
903.15 General provisions.

Authority: 12 U.S.C. 1422b(a)(1).

Subpart A—Definitions

§ 903.1 Definitions.

For purposes of this part:

(a) *Approval* means a written statement issued to a Bank or the Office of Finance approving a transaction, activity, or item that requires Finance Board approval under the Bank Act or a Finance Board rule, regulation, policy, or order.

(b) *Bank* means a Federal Home Loan Bank.

(c) *Bank Act* means the Federal Home Loan Bank Act (12 U.S.C. 1421–1449).

(d) *Board of Directors* means the Board of Directors of the Finance Board.

(e) *Case-by-Case Determination* means a Final Decision concerning any matter that requires a determination, finding, or approval by the Board of Directors under the Bank Act or Finance Board regulations, for which no controlling statutory, regulatory, or other Finance Board standard previously has been established, and that, in the judgment of the Board of Directors, is best resolved on a case-by-case basis by a ruling applicable only to the Petitioner and any Intervener, and not by adoption of a rule of general applicability.

(f) *Chairperson* means the Chairperson of the Board of Directors of the Finance Board.

(g) *Final Decision* means a decision rendered by the Board of Directors on issues raised in a Petition or Request to Intervene that have been accepted for consideration.

(h) *Finance Board* means the agency established as the Federal Housing Finance Board.

(i) *Intervener* means a Bank, Member, or other entity that has been granted leave to intervene in the consideration of a Petition by the Board of Directors.

(j) *Managing Director* means the Managing Director of the Finance Board.

(k) *Member* means an institution admitted to membership and owning capital stock in a Bank.

(l) *No-Action Letter* means a written statement issued to a Bank or the Office of Finance providing that Finance Board staff will not recommend supervisory or other action to the Board of Directors for failure to comply with a specific provision of the Bank Act or a Finance Board rule, regulation, policy, or order, if a requester undertakes a proposed transaction or activity.

(m) *Office of Finance* means the joint office of the Banks established pursuant to 12 CFR part 941.

(n) *Party* means a Petitioner, an Intervener, or the Finance Board.

(o) *Petition* means a Petition for Case-by-Case Determination or a Petition for Review of a Disputed Supervisory Determination.

(p) *Petitioner* means the Office of Finance or a Bank that has filed a Petition.

(q) *Regulatory Interpretation* means written guidance issued by Finance Board staff with respect to application of the Bank Act or a Finance Board rule, regulation, policy, or order to a proposed transaction or activity.

(r) *Requester* means an entity or person that has submitted an application for a Waiver or Approval or a request for a No-Action Letter or Regulatory Interpretation.

(s) *Secretary to the Board* means the Secretary to the Board of Directors of the Finance Board.

(t) *Supervisory determination* means a Finance Board finding in a report of examination, order, or directive, or a Finance Board order or directive concerning safety and soundness or compliance matters that requires mandatory action by a Bank or the Office of Finance.

(u) *Waiver* means a written statement issued to a Bank, a Member, or the Office of Finance that waives a provision, restriction, or requirement of a Finance Board rule, regulation, policy, or order, or a required submission of information, not otherwise required by law, in connection with a particular transaction or activity.

Subpart B—Waivers, Approvals, No-Action Letters, and Regulatory Interpretations

§ 903.2 Waivers.

(a) *Authority.* The Board of Directors reserves the right, in its discretion and in connection with a particular transaction or activity, to waive any provision, restriction, or requirement of this chapter, or any required submission of information, not otherwise required by law, if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Bank Act, or upon a showing of good cause.

(b) *Application.* A Bank, a Member, or the Office of Finance may apply for a Waiver in accordance with § 903.6.

§ 903.3 Approvals.

(a) *Application.* A Bank or the Office of Finance may apply for an Approval of any transaction, activity, or item that requires Finance Board approval under the Bank Act or a Finance Board rule, regulation, policy, or order in accordance with § 903.6, unless alternative application procedures are prescribed by the Bank Act or a Finance Board rule, regulation, policy, or order for the transaction, activity, or item at issue.

(b) *Reservation.* The Finance Board reserves the right, in its discretion, to prescribe additional or alternative procedures for any application for Approval of a transaction, activity, or item.

§ 903.4 No-Action Letters.

(a) *Authority.* Finance Board staff, in its discretion, may issue a No-Action Letter to a Bank or the Office of Finance stating that staff will not recommend supervisory or other action to the Board of Directors for failure to comply with a specific provision of the Bank Act or a Finance Board rule, regulation, policy, or order, if a requester undertakes a proposed transaction or activity. The Board of Directors may modify or supersede a No-Action Letter.

(b) *Requests.* A Bank or the Office of Finance may request a No-Action Letter in accordance with § 903.6.

§ 903.5 Regulatory Interpretations.

(a) *Authority.* Finance Board staff, in its discretion, may issue a Regulatory Interpretation to a Bank, a Member, an official of a Bank or Member, the Office of Finance, or any other entity or person, providing guidance with respect to application of the Bank Act or a Finance Board rule, regulation, policy, or order to a proposed transaction or activity. The Board of Directors may modify or supersede a Regulatory Interpretation.

(b) *Requests.* A Bank, a Member, an official of a Bank or Member, the Office of Finance, or any other entity or person may request a Regulatory Interpretation in accordance with § 903.6.

§ 903.6 Submission requirements.

Applications for a Waiver or Approval and requests for a No-Action Letter or Regulatory Interpretation shall comply with the following requirements:

(a) *Filing.* Each application or request shall be in writing. The original and three copies shall be filed with the Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW, Washington, D.C. 20006.

(b) *Authorization*—(1) *Waivers and Approvals.* Applications for Waivers and Approvals shall be signed by an official with authority to sign such applications on behalf of the requester. Applications for Waivers and Approvals from a Bank or the Office of Finance shall be accompanied by a resolution of the board of directors of the Bank or the Office of Finance concurring in the substance and authorizing the filing of the application.

(2) *Requests for No-Action Letters.* The president of the Bank making a Request for a No-Action Letter shall sign the Request. Requests for a No-Action Letter from the Office of Finance shall be signed by the chairperson of the Board of Directors of the Office of Finance.

(3) *Requests for Regulatory Interpretations.* The requester or an authorized representative of the requester shall sign a request for a Regulatory Interpretation.

(c) *Information requirements.* Each application or request shall contain:

(1) The name of the requester, and the name, title, address, telephone number, and electronic mail address, if any, of the official filing the application or request on its behalf;

(2) The name, address, telephone number, and electronic mail address, if any, of a contact person from whom Finance Board staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the Bank Act or Finance Board rules, regulations, policies, or orders to which the application or request relates;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to the application or request and identifying all relevant legal and factual issues;

(6) References to all relevant authorities, including the Bank Act, Finance Board rules, regulations, policies, and orders, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements;

(7) References to any Waivers, No-Action Letters, Approvals, or Regulatory Interpretations issued to the requester in the past in response to circumstances similar to those surrounding the request or application;

(8) For any application or request involving interpretation of the Bank Act or Finance Board regulations, a reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

(9) Any non-duplicative, relevant supporting documentation; and

(10) A certification by a person with knowledge of the facts that the representations made in the application or request are accurate and complete. The following form of certification is sufficient for this purpose: "I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title]."

(d) *Waiver of requirements.* The Managing Director may waive any requirement of this section for good cause. The Managing Director shall provide prompt notice of any such waiver to the Board of Directors. The Board of Directors may overrule any waiver granted by the Managing Director under this paragraph.

(e) *Withdrawal.* Once filed, an application or request may be withdrawn only upon written request. The Finance Board will not consider a request for withdrawal after transmission by the Secretary to the Board to the requester of a response in final form.

§ 903.7 Issuance of Waivers, Approvals, No-Action Letters, and Regulatory Interpretations.

(a) *Board of Directors review.* At least three business days prior to issuance to the requester, the Secretary to the Board shall transmit each Approval, No-Action Letter, or Regulatory Interpretation issued by the Chairperson or Finance Board staff to the Board of Directors for review.

(b) *Issuance and effectiveness.* A Waiver, Approval, No-Action Letter, or Regulatory Interpretation is not effective until the Secretary to the Board has transmitted it in final form to the requester.

(c) *Abbreviated form.* The Finance Board may respond to an application or request in an abbreviated form, consisting of a concise statement of the nature of the response, without restatement of the underlying facts.

Subpart C—Case-by-Case Determinations; Review of Disputed Supervisory Determinations

§ 903.8 Case-by-Case Determinations.

(a) *Petition for Case-by-Case Determination.* A Bank or the Office of Finance may seek a Case-by-Case Determination concerning any matter that may require a determination, finding or approval under the Bank Act or Finance Board regulations by the Board of Directors, and for which no controlling statutory, regulatory or other Finance Board standard previously has been established. The Office of Finance or a Bank seeking a Case-by-Case Determination shall file a Petition for Case-by-Case Determination in accordance with § 903.10.

(b) *Intervention.* A Member, a Bank, or the Office of Finance may file a Request to Intervene in the consideration of the Petition in accordance with § 903.11 if it believes its rights may be affected.

§ 903.9 Review of Disputed Supervisory Determinations.

(a) *Petition for Review of a Disputed Supervisory Determination.* A Bank or the Office of Finance may seek review by the Board of Directors of a Finance Board finding in a report of examination, order, or directive, or a Finance Board order or directive concerning safety and soundness or compliance matters requiring mandatory action by the Bank or Office of Finance. The Office of Finance or a Bank seeking review of a disputed Supervisory Determination shall file a Petition for Review of a Disputed Supervisory Determination within 60 calendar days from the date of the disputed Supervisory Determination in accordance with § 903.10.

(b) *No stay while Petition is pending.* All Supervisory Determinations directed to a Bank or the Office of Finance shall remain in full force and effect while a Petition is pending. That a Petition is pending shall not operate or be deemed to operate as a suspension of the obligation of a Bank or the Office of Finance to take corrective action as required by a Supervisory Determination, except as the Bank or the Office of Finance may be otherwise directed by order of the Board of Directors.

(c) *Notice to affected entities.* With the approval of the Managing Director, a Petitioner may, pursuant to 12 CFR 960.12(d) or otherwise, provide notice of the issuance of a Supervisory Determination or the filing of a Petition for Review of a Disputed Supervisory Determination, to another Bank, the Office of Finance, or a Member or other entity named in 12 CFR 960.12(d), if the Petitioner believes the entity's rights may be affected by the Supervisory Determination or the Petition.

(d) *Intervention.* A Bank, the Office of Finance, a Member, or other entity named in 12 CFR 960.12(d) may file a Request to Intervene in the consideration of a Petition in accordance with § 903.11 if it believes its rights may be adversely affected by a Final Decision on the Petition.

§ 903.10 Petitions.

Each Petition brought pursuant to this subpart shall comply with the following requirements:

(a) *Filing.* The Petition shall be in writing. The original and three copies shall be filed with the Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW, Washington, D.C. 20006.

(b) *Information requirements.* Each Petition shall contain:

(1) The name of the Petitioner, and the name, title, address, telephone number, and electronic mail address, if any, of the official filing the Petition on its behalf;

(2) The name, address, telephone number, and electronic mail address, if any, of a contact person from whom Finance Board staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the Bank Act or Finance Board rules, regulations, policies, or orders to which the Petition relates, and, if the Petition is for Review of a Disputed Supervisory Determination, identification of the disputed Supervisory Determination;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to the Petition and identifying all relevant legal and factual issues;

(6) A summary of any steps taken to date by the Petitioner to address or resolve the dispute or issue; or, in cases involving safety and soundness or compliance issues, a summary of any actions taken by the Petitioner in the interim to implement corrective action;

(7) The Petitioner's argument in support of its position, including citation to any supporting legal opinions, policy statements, or other relevant precedent and supporting documentation, if any;

(8) References to all relevant authorities, including the Bank Act, Finance Board rules, regulations, policies, and orders, judicial decisions,

administrative decisions, relevant statutory interpretations, and policy statements;

(9) A reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

(10) Any non-duplicative, relevant supporting documentation; and

(11) A certification by a person with knowledge of the facts that the representations made in the Petition are accurate and complete. The following form of certification is sufficient for this purpose: "I hereby certify that the statements contained in the Petition are true and complete to the best of my knowledge. [Name and Title]."

(c) *Authorization.* Each Petition shall be accompanied by a resolution of the Petitioner's board of directors concurring in the substance and authorizing the filing of the Petition.

(d) *Request to Appear.* The Petition may contain a request that staff or an agent of the Petitioner be permitted to make a personal appearance before the Board of Directors at any meeting convened to consider the Petition pursuant to these procedures. A statement of the reasons a written presentation would not suffice shall accompany a Request to Appear. The statement shall specifically:

(1) Identify any questions of fact that are in dispute;

(2) Summarize the evidence that would be presented at the meeting; and

(3) Identify any proposed witnesses, and state the substance of their anticipated testimony.

§ 903.11 Requests to intervene.

(a) *Filing*—(1) *Date.* Any Request to Intervene in consideration of a Petition under this subpart shall be in writing and shall be filed with the Secretary to the Board within 45 days from the date the Petition is filed.

(2) *Information requirements.* A Request to Intervene shall include the information required by § 903.10(b), where applicable, and a concise statement of the position and interest of the Intervener and the grounds for the proposed intervention.

(3) *Authorization.* If the entity requesting intervention is a Bank or the Office of Finance, the Request to Intervene shall be accompanied by a resolution of the Petitioner's board of directors concurring in the substance and authorizing the filing of the Request. If the entity requesting intervention is not a Bank or the Office of Finance, the Request to Intervene shall be signed by an official of the entity with authority to authorize the filing of the Request, and shall include a statement describing such authority.

(4) *Request to Appear.* A Request to Intervene may include a Request to Appear before the Board of Directors in any meeting conducted under these procedures to consider a Petition. A Request to Appear shall be accompanied by a statement containing the information required by § 903.10(d), and, in addition, setting forth the likely impact that intervention will have on the expeditious progress of the meeting. A Request to Appear shall be filed with the Secretary to the Board either with the Request to Intervene or at least 20 days prior to the meeting scheduled to consider the Petition.

(5) *Intervener is bound.* Any Request to Intervene shall include a statement that, if such leave to intervene is granted, the Intervener shall be bound expressly by the Final Decision of the Board of Directors, as described in § 903.13(b), subject only to judicial review or as otherwise provided by law.

(b) *Grounds for approval.* The Managing Director may grant leave to intervene if the entity requesting intervention has complied with paragraph (a) of this section and, in the judgment of Managing Director:

(1) The presence of the entity requesting intervention would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; and

(2) The entity requesting intervention may be adversely affected by a Final Decision on the Petition.

§ 903.12 Finance Board procedures.

(a) *Notice of Receipt of Petition or Request to Intervene.* No later than three business days following receipt of a Petition or Request to Intervene, the Secretary to the Board shall transmit a written Notice of Receipt to the Petitioner or Intervener. In the case of a Petition for Case-by-Case Determination, the Finance Board shall promptly publish a notice of receipt of Petition, including a brief summary of the issue(s) involved, in the **Federal Register**.

(b) *Transmittal of filings.* The Secretary to the Board shall promptly transmit copies of any Petition, Request to Intervene, or other filing under this subpart to the Board of Directors and all other parties to the filing.

(c) *Opportunity to cure defects.* The Managing Director shall afford the Petitioner or Intervener a reasonable opportunity to cure any failure to comply with the requirements of § 903.10.

(d) *Information request.* The Managing Director may request additional information from the Petitioner or Intervener. No later than 20 calendar days after the date of a request under this paragraph, the Petitioner shall provide to the Secretary to the Board all information requested.

(e) *Supplemental information.* Upon good cause shown, the Managing Director may grant permission to a Petitioner or Intervener to submit supplemental written information pertaining to the Petition or Request to Intervene.

(f) *Consolidation and severance*—(1) *Consolidation.* The Managing Director may consolidate any or all matters at issue in two or more meetings on Petitions where:

(i) There exist common parties or common questions of fact or law;

(ii) Consolidation would expedite and simplify consideration of the issues; and

(iii) Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(2) *Severance.* The Managing Director may order any meetings and issues severed with respect to any or all parties or issues.

(g) *Notice of Board Consideration.* Within 30 calendar days of receipt of a Petition deemed by the Managing Director to be in compliance with the requirements of § 903.10, or, if the Petition has been the subject of a request under paragraph (d) of this section, within 30 calendar days of receipt of a response from the Petitioner deemed by the Managing Director to complete the information necessary for the Board of Directors to consider the Petition, the Managing Director, after consultation with the Board of Directors, through the Secretary to the Board, shall provide all parties with a Notice of Board Consideration containing the following information:

(1) Identification of the issues accepted for consideration;

(2) Any decision to consolidate or sever pursuant to paragraph (f) of this section;

(3) Whether the Petition will be considered by the Board of Directors on the written record pursuant to § 903.13(a)(1), or at a meeting pursuant to § 903.13(a)(2); and

(4) If the Petition will be considered by the Board of Directors at a meeting:

(i) The date, time and place of the meeting; and

(ii) A decision as to any Request to Appear filed pursuant to §§ 903.10(d) or 903.11(a)(4).

§ 903.13 Consideration and Final Decisions.

(a) *Consideration by Board of Directors.* The Board of Directors may

consider a Petition and render a decision:

(1) Solely on the basis of the written record; or

(2) At a regularly scheduled meeting or a meeting convened specifically for the purpose of considering the Petition. Consideration of a Petition at a meeting shall be governed by the procedures described in § 903.14.

(b) *Final Decision.* The Board of Directors shall render a Final Decision on the issue(s) presented in a Petition or Request to Intervene that has been accepted for consideration, based upon consideration of the entire record of the proceeding. The terms and conditions of the Final Decision shall bind the parties as to any issue(s) presented in the Petition or Request to Intervene and decided by the Board of Directors. The decision of the Board of Directors is a final decision for purposes of obtaining judicial review or as otherwise provided by law.

(c) *Time periods.* Subject to extension by such additional time as may reasonably be required, the Board of Directors shall render a Final Decision within 120 calendar days of the date the Petition is received in a form deemed by the Managing Director to be in compliance with the requirements of § 903.10 or, if the Petition has been the subject of a request under § 903.12(d), within 120 calendar days of receipt of a response from the Petitioner deemed by the Managing Director to complete the information necessary for the Board of Directors to consider the Petition.

(d) *Transmittal of Final Decision.* The Secretary to the Board shall transmit the Final Decision of the Board of Directors to all parties to the submission.

§ 903.14 Meetings of the Board of Directors to consider Petitions.

(a) *Full and fair opportunity to be heard.* Any meeting of the Board of Directors to consider a Petition shall be conducted in a manner that provides the parties a full and fair opportunity to be heard on the issues accepted for consideration. Any such meeting shall be conducted so as to permit an expeditious presentation of such issues.

(b) *Participation in meeting.* (1) The presence of a quorum of the Board if Directors is required to conduct a meeting under this section. Members of the Board of Directors are deemed present if they appear in person or by telephone.

(2) An act of the Board of Directors requires the vote of a majority of the members of the Board of Directors voting at a meeting at which a quorum of the Board of Directors is present.

(3) A Final Decision may be reached by a vote of the Board of Directors after the meeting at which the Petition has been considered. Only those members of the Board of Directors present at the meeting at which the Petition was considered may vote on issues presented in the Petition and accepted for consideration. A vote of the majority of the members of the Board of Directors eligible to vote and voting shall be an act of the Board of Directors.

(c) *Chairperson*—(1) *Presiding officer.* The Chairperson, or a member of the Board of Directors designated by the Chairperson, shall preside over a meeting of the Board of Directors convened under this section.

(2) *Authority of the Chairperson.* The Chairperson shall have all powers and discretion necessary to conduct the meeting in a fair and impartial manner, to avoid unnecessary delay, to regulate the course of the meeting and the conduct of the parties and their counsel, and to discharge the duties of a presiding officer.

(3) *Board of Directors may overrule the Chairperson.* Any member of the Board of Directors may, by motion, challenge any action, finding, or determination made by the Chairperson in the course of the meeting, and the Board of Directors, by majority vote, may overrule any action, finding or determination of the Chairperson.

(d) *Meeting may be closed.* A party may request that the meeting, or portion thereof, be closed to public observation. A request to close a meeting shall be processed in accordance with the requirements of the Government in the Sunshine Act (5 U.S.C. 552b) and the Finance Board's implementing regulation (12 CFR part 906).

(e) *Location of meeting.* Unless otherwise specified, all meetings of the Board of Directors will be held in the Board Room of the Finance Board at 1777 F Street, N.W., Washington, D.C., at the time specified in the notice of meeting issued pursuant to 12 CFR 906.6.

(f) *Presentation of issues*—(1) *Stipulations.* Subject to the Chairperson's discretion, the parties may agree to stipulations of law or fact, including stipulations as to the admissibility of exhibits, and present such stipulations at the meeting. Stipulations shall be made a part of the record of the proceeding.

(2) *Order of presentation.* The Chairperson shall determine the order of presentation of the issues, testimony of any witnesses, presentation of any other information or document, and all other procedural matters at the meeting.

(g) *Record.* The meeting shall be recorded and transcribed. Transcripts of the proceedings shall be governed by 12 CFR 906.5(c). The Petition and all supporting documentation shall be made a part of the record, unless otherwise determined by the Chairperson. The Chairperson may order the record corrected, upon motion to correct, upon stipulation of the parties, or at the Chairperson's discretion.

(h) *Admissibility of documents and testimony.* (1) The Chairperson has discretion to admit and make a part of the record documents and testimony that are relevant, material, and reliable, and may elect not to admit documents and testimony that are privileged, unduly repetitious, or of little probative value.

(2) The Board of Directors shall give such weight to documents and testimony admitted and made part of the record as it may deem reasonable and appropriate.

(3) The Chairperson may admit and make a part of the record, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the information contained in the statement shall be subject to the same rules as if the testimony were provided orally.

(i) *Official notice.* All matters officially noticed by the Chairperson shall appear on the record.

(j) *Exhibits and documents*—(1) *Copies.* A legible duplicate copy of a document shall be admissible to the same extent as the original.

(2) *Exhibits.* Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic materials to summarize, illustrate, or simplify the presentation of testimony. Subject to the Chairperson's discretion, such materials may be used with or without being admitted into the record.

(3) *Identification.* All exhibits offered into the record shall be numbered sequentially and marked with a designation identifying the sponsor. The original of each exhibit offered into the record or marked for identification shall be retained in the record of the meeting, unless the Chairperson permits substitution of a copy for the original.

(4) *Exchange of Exhibits.* One copy of each exhibit offered into the record shall be furnished to each of the parties and to each member of the Board of Directors. If the Chairperson does not fix a time for the exchange of exhibits, the parties shall exchange copies of proposed exhibits at the earliest practicable time before the commencement of the meeting to

consider the Petition. Parties are not required to exchange exhibits submitted as rebuttal information before the meeting commences if submission of the exhibits is not reasonably certain at that time.

(5) *Authenticity.* The authenticity of all documents submitted or exchanged as proposed exhibits prior to the meeting shall be admitted unless written objection is filed before the commencement of the meeting, or unless good cause is shown for failing to file such a written objection.

(k) *Sanction for obstruction of the proceedings.* The Board of Directors may impose sanctions it deems appropriate for violation of any applicable provision of this subpart or any applicable law, rule, regulation, or order, or any dilatory, frivolous, or obstructionist conduct by any witness or counsel during the course of a meeting.

§ 903.15 General provisions.

(a) *Waiver of requirements.* The Managing Director may waive any filing requirement or deadline in this subpart for good cause shown. The Managing Director shall provide prompt notice of any such waiver to the Board of Directors.

(b) *Actions of the Managing Director subject to the authority of the Board of Directors.* The Board of Directors may overrule any action by the Managing Director under this subpart.

(c) *Withdrawal.* At any time prior to the issuance by the Managing Director of a Notice of Board Consideration pursuant to § 903.12(g), an authorized representative of a Petitioner may withdraw the Petition, or an authorized representative of an Intervener may withdraw the Request to Intervene, by filing a written request to withdraw with the Secretary to the Board. Only the Board of Directors may grant a request to withdraw after issuance by the Managing Director of a Notice of Board Consideration pursuant to § 903.12(g). Unless otherwise agreed, withdrawal of a Petition or Request to Intervene shall not foreclose a Petitioner from resubmitting a Petition, or an Intervener from submitting a Request to Intervene, on the same or similar issues.

(d) *Settlement agreement.* (1) At any time during the course of proceedings pursuant to this subpart, the Finance Board shall give Petitioners and Interveners the opportunity to submit offers of settlement when the nature of the proceedings and the public interest permit. With the approval of the Managing Director, an authorized representative of a Petitioner or Intervener may enter into a proposed settlement agreement with the Finance Board disposing of some or all of the issues presented in a Petition or Request to Intervene.

(2) No proposed settlement agreement shall be final until approved by the Board of Directors. The Board of Directors shall consider any proposed settlement agreement within 30 calendar days of receiving a notice of the proposed settlement agreement. If the Board of Directors disapproves or fails to approve a proposed settlement agreement within 30 days, the proposed settlement agreement shall be null and void and the previously filed Petition or Request to Intervene shall be considered in accordance with this subpart.

(3) A settlement agreement approved by the Board of Directors shall be deemed final and binding on all parties to the agreement. At the time a proposed settlement agreement becomes final, a Petition or Request to Intervene previously filed by a party to the agreement shall be deemed withdrawn as to all issues resolved in the agreement, and the parties to the agreement shall be estopped from raising objection to those issues or to the terms of the settlement agreement.

(e) *No rights created; Finance Board not prohibited.* Nothing in this subpart shall be deemed to create any substantive or discovery right in any party. Nothing in this subpart shall limit in any manner the right of the Finance Board to conduct any examination or inspection of any Bank or the Office of Finance, or to take any action with respect to a Bank or the Office of Finance, or its directors, officers, employees or agents, otherwise authorized by law.

(f) *Exhaustion requirement.* When seeking a Case-by-Case Determination of any matter or review by the Board of Directors of any Supervisory Determination, a Bank or the Office of Finance shall follow the procedures in this subpart as a prerequisite to seeking judicial review. Failure to do so shall be deemed to be a failure to exhaust all available administrative remedies.

(g) *Improper conduct prohibited.* No party shall, by act or omission, unduly burden or frustrate the efforts of the Board of Directors to carry out its duties under the laws and regulations of the Finance Board. A Petitioner or Intervener shall confine its communications with the Board of Directors, or any individual member thereof, concerning issues raised in a pending Petition, to written communications for inclusion in the record of the proceeding, filed with the Secretary to the Board.

(h) *Costs.* Petitioners are encouraged to contain costs associated with the preparation and filing of Petitions and related personal appearances, if any, at any meeting held by the Board of Directors under this subpart. The Petitioner shall be solely responsible for all costs associated with any such Petitions and appearances.

(i) *Procedures are exclusive.* All Case-by-Case Determinations by the Board of Directors and all Reviews of Disputed Supervisory Determinations shall be considered exclusively pursuant to the procedures described in this subpart.

Dated: May 26, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–14240 Filed 6–8–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–21]

RIN 2120–AA66

Establishment of the San Juan High Offshore Airspace Area, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the San Juan High Offshore Airspace Area. This action designates Class A airspace, extending upward from 18,000 feet mean sea level (MSL) to and including flight level (FL) 600, within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport, San Juan, PR. This action provides additional airspace within which domestic air traffic control (ATC) procedures will be used. Establishment of this Class A airspace will enhance the management of air traffic operations and result in more efficient use of that airspace.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1993, the FAA published a final rule (58 FR 12128) which, in part, designated the San Juan Low

Offshore Airspace Area. This designation was necessary to comply with the Airspace Reclassification final rule (56 FR 65638; December 17, 1991). The San Juan Low Offshore Airspace Area consists of Class E airspace from 5,500 feet MSL up to, but not including, FL 180 within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport, San Juan, PR. The rule, however, did not affect the status of airspace at and above FL 180 within the San Juan domestic control area, which remains international airspace and wherein International Civil Aviation Organization (ICAO) oceanic ATC separation procedures in Annex 11 apply.

As a result of the rapid growth of air traffic activity in the Bahamas and Caribbean areas, there is a need to designate additional airspace wherein domestic ATC procedures will be used to provide more efficient control of aircraft operations. On January 25, 1999, the FAA proposed to establish the San Juan High Offshore Airspace Area (64 FR 3666). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the notice, the FAA received one comment from the Air Line Pilots Association supporting this action. This action designates a high-altitude strata that will increase system capacity, enhance safety, and enable more efficient use of the airspace.

Additionally, the number of operational ground-based navigation aids (NAVAIDS) in the region has declined due to the loss of facilities caused by unprecedented storm damage, and the difficulty of replacing aging equipment at remote sites. Establishing the San Juan High Offshore Airspace Area will support the development of additional routes, not dependent on ground-based NAVAIDS, to supplement the current airway system. Except for editorial changes, this rule is the same as that proposed in the notice.

Offshore airspace area designations are published in paragraph 2003 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Offshore airspace area listed in this document will be published subsequently in the Order.

The Rule

This action amends 14 CFR part 71 by establishing the San Juan High Offshore Airspace Area. This area will consist of Class A airspace, extending upward from 18,000 MSL up to and including FL 600, within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport, San Juan, PR. This action will facilitate the application of domestic ATC procedures within that airspace, thereby enhancing the flow of air traffic and increasing system capacity. In addition, this action will enhance safety by providing for the positive control of all aircraft operating in the area. This action will also support the development of a more efficient route system in the Bahamas-Caribbean area and will enable airspace classification and ATC separation procedures to be consistently applied between Florida and Puerto Rico. Finally, this modification will establish the same classification and operating rules that currently apply in adjacent airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. This regulation therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this rule relates to navigable airspace outside the United States, this notice was submitted in accordance with the ICAO International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of the document is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices (SARP) in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International SARP that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Because this amendment involves, in part, the designation of navigable airspace outside of the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS.

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 2003-Offshore Airspace Areas

* * * * *

San Juan High, PR [New]

Fernando Luis Ribas Dominicci Airport, PR
(Lat. 18°27′25″ N., long. 66°05′53″ W.)

That airspace extending upward from 18,000 feet MSL to and including FL 600 within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport.

* * * * *

Issued in Washington, DC, on June 2, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–14601 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29584; Amdt. No. 416]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma city, OK 73125); telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on June 4, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

PART 95—[AMENDED]

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 416, effective July 15, 1999]

From	To	MEA
COLOR ROUTES		
§ 95.4 Green Federal Airway 8 Is Amended To Read in Part		
Saldo, AK NDB	Nosky, AK FIX	*6000
*4500—MOCA		
Nosky, AK FIX	Kachemak, AK NDB	6100
§ 95.2 Red Federal Airway 99 Is Amended To Read in Part		
Iliamna, AK NDB/DME	Nosky, AK FIX	*6000
*5400—MOCA		
Nosky, AK FIX	Kachemak, AK NDB	6100
§ 95.6001 VICTOR ROUTES—U.S.		
§ 95.6013 VOR Federal Airway 13 Is Amended To Read in Part		
Humble, TX VORTAC	Cleep, TX FIX	3000
Cleep, TX FIX	*Legge, TX FIX	2300
*3000—MRA		
Legge, TX FIX	Lufkin, TX VORTAC	2100
Lufkin, TX VORTAC	Carth, TX FIX	*3800

REVISIONS TO IFR ALTITUDE & CHANGEOVER POINTS—Continued

[Amendment 416, effective July 15, 1999]

From	To	MEA
*2400—MOCA		
Carth, TX FIX	Belcher, LA VORTAC	3000
Belcher, LA VORTAC	*Iddas, LA FIX	2000
*3000—MRA		
Iddas, LA FIX	*Dubow, AR FIX	2000
*4000—MRA		
Dubow, AR FIX	Texarkana, AR VORTAC	2000
Texarkana, AR VORTAC	Deens, AR FIX	2300
Deens, AR FIX	Rich Mountain, OK VORTAC	*4600
*4000—MOCA		

§ 95.6045 VOR Federal Airway 45 Is Amended To Read In Part

Charleston, WV VORTAC	Henderson, WV VORTAC	3000
Henderson, WV VORTAC	Bremn, OH FIX	*10000
*2700—MOCA		
Bremn, OH, FIX	Appleton, OH VORTAC	*3000
*2400—MOCA		

§ 95.6140 VOR Federal Airway 140 Is Amended To Read In Part

Goshn, TN FIX	Delha, TN FIX	*7000
*3000—MOCA		
Delha, TX FIX	Nashville, TN VORTAC	3000

§ 95.6196 VOR Federal Airway 196 Is Amended To Read In Part

Utica, NY VORTAC	*Becks, NY FIX	**5000
*10000—MRA		
**4500—MOCA		
Becks, NY FIX	Saranac Lake, NY VOR/DME	5000

§ 95.6273 VOR Federal Airway 273 Is Amended To Read In Part

Faliz, NY FIX	Huguenot, NY VOR/DME	3000
Huguenot, NY VOR/DME	Huguenot, NY VOR/DME	3000
Hancock, NY VOR/DME	Oxfor, NY FIX	4000
Oxfor, NY FIX	Georgetown, NY VORTAC	4000

§ 95.6451 VOR Federal Airway 451 Is Amended To Read In Part

Nessi, CT FIX	Keyed, NY FIX	*2500
*1000—MOCA		
Keyed, NY FIX	Cream, NY FIX	2000
Cream, NY FIX	Groton, CT VOR/DME	*6000
*1500—MOCA		

§ 95.6456 VOR Federal Airway 456 Is Amended To Read In Part

King Salmon, AK VORTAC	Strew, AK FIX	
SW BND		2000
NE BND		9000
Strew, AK FIX	Bitop, AK FIX	
NE BND		*9000
SW BND		*5000
*4500—MOCA		
Bitop, AK FIX	*Nosky, AK FIX	**8000
*12000—MCA Nosky FIX NE BND		
**5400—MOCA		
Nosky, AK FIX	Tucks, AK FIX	*13000
*12000—MOCA		
Tucks, AK FIX	Kenai, AK VOR/DME	*5000
3000—MOCA		

§ 95.6465 VOR Federal Airway 465 Is Amended To Read In Part

Dunoir, WY VOR/DME	Redlo, MT FIX	*17000
*14200—MOCA		

§ 95.6500 VOR Federal Airway 500 Is Amended To Read In Part

Glara, OR FIX	*Harzl, OR FIX	
E BND		**10000
W BND		**7200
*7200—MRA		
**6600—MOCA		
Harzl, OR FIX	Ratzz, OR FIX	
E BND		*10000
W BND		*8000
*7300—MOCA		
Ratzz, OR FIX	Gashe, OR FIX	**10000

REVISIONS TO IFR ALTITUDE & CHANGEOVER POINTS—Continued

[Amendment 416, effective July 15, 1999]

From	To	MEA
*10000—MRA **7700—MOCA Gashe, OR FIX	Kimberly, OR VORTAC	*9200
*8000—MOCA		
§ 95.6595 VOR Federal Airway 595 Is Amended To Read in Part		
Jefsn, OR FIX	*Harzl, OR FIX	
NW BND		8000
SE BND		12600
*9300—MCA Harzl FIX SE BND *7200—MRA		

From	To	MEA	MAA
§ 95.7001 JET ROUTES			
§ 95.7012 Jet Route No. 12 Is Amended To Read In Part			
Twin Falls, ID VORTAC	Salt Lake City, UT VORTAC	22000	45000
§ 95.7015 Jet Route No. 15 Is Amended To Read In Part			
Salt Lake City, UT VORTAC	Twin Falls, ID VORTAC	22000	45000

From	To	Changeover Points	
		Distance	From
§ 95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS AIRWAY SEGMENT			
Is Amended To Modify Changeover Point (V–13)			
Lufkin, TX VORTAC	Belcher, LA VORTAC	64	Lufkin.
Is Amended To Modify Changeover Point (V–15)			
Pulaski, VA VORTAC	Bluefield, WV VORTAC	10	Pulaski.
Is Amended To Modify Changeover Point (V–59)			
Pulaski, VA VORTAC	Beckley, WV VORTAC	10	Pulaski.
Is Amended To Modify Changeover Point (V–214)			
Bellaire, OH VOR/DME	Grantsville, MD VOR/DME	39	Bellaire.
Is Amended To Modify Changeover Point (V–273)			
Hancock, NY VOR/DME	Georgetown NY VORTAC	31	Hancock.
Is Amended To Modify Changeover Point (V–465)			
Dunoir, WY VOR/DME VORTAC	Billings, MT VORTAC	45	Dunoir.
Is Amended To Modify Changeover Point (V–500)			
Newberg, OR VORTAC	Kimberly, OR VORTAC	79	Newberg.
Is Amended To Modify Changeover Point (V–505)			
Gopher, MN VORTAC	Siren, WI VOR/DME	38	Gopher.

[FR Doc. 99–14614 Filed 6–8–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29581; Amdt. No. 1934]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd, Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAP's. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impractical and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 28, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

. . . Effective July 15, 1999

Gambell, AK, Gambell, NDB OR GPS RWY 16, Orig, CANCELLED
Gambell, AK, Gambell, NDB RWY 16, Orig
Gambell, AK, Gambell, NDB/DME OR GPS RWY 34, Amdt 1, CANCELLED
Gambell, AK, Gambell, NDB/DME RWY 34, Orig
Bakersfield, CA, Bakersfield Muni, VOR/DME OR GPS RWY 34, Orig, CANCELLED
Bakersfield, CA, Bakersfield Muni, VOR/DME RWY 34, Orig
Chico, CA, Chico Muni, VOR/DME OR GPS RWY 13L, Amdt 7, CANCELLED
Chico, CA, Chico Muni, VOR/DME RWY 13L, Amdt 7
Chico, CA, Chico Muni, VOR/DME OR GPS RWY 31R, Orig-A, CANCELLED
Chico, CA, Chico Muni, VOR/DME RWY 31R, Orig-A
Marysville, CA, Yuba County, VOR OR GPS RWY 32, Amdt 10C, CANCELLED
Marysville, CA, Yuba County, VOR RWY 32, Amdt 10C
Salinas, CA, Salinas Muni, VOR OR GPS RWY 13, Amdt 11, CANCELLED
Salinas, CA, Salinas Muni, VOR RWY 13, Amdt 11
San Francisco, CA, San Francisco Intl, VOR OR GPS RWY 19L, Amdt 8A, CANCELLED
San Francisco, CA, San Francisco Intl, VOR RWY 19L, Amdt 8A

Santa Rosa, CA, Sonoma County, VOR/DME OR GPS RWY 14, Amdt 2, CANCELLED
Santa Rosa, CA, Sonoma County, VOR/DME RWY 14, Amdt 2
Santa Rosa, CA, Sonoma County, VOR OR GPS RWY 32, Amdt 19, CANCELLED
Santa Rosa, CA, Sonoma County, VOR RWY 32, Amdt 19
Fort Meyers, FL, Page Field, NDB OR GPS RWY 5, Amdt 5B, CANCELLED
Fort Meyers, FL, Page Field, NDB RWY 5, Amdt 5B
Fort Meyers, FL, Page Field, VOR OR GPS RWY 13, Orig-A, CANCELLED
Fort Meyers, FL, Page Field, VOR RWY 13, Orig-A
Toccoa, GA, Toccoa RG Letourneau Field, VOR/DME OR GPS RWY 2, Orig-A, CANCELLED
Toccoa, GA, Toccoa RG Letourneau Field, VOR/DME RWY 2, Orig-A
Marietta, GA, Cobb County–McCollum Field, VOR/DME OR GPS RWY 9, Orig-B, CANCELLED
Marietta, GA, Cobb County–McCollum Field, VOR/DME RWY 9, Orig-B
West Union, IA, George L. Scott Muni, NDB OR GPS RWY 35, Amdt 4, CANCELLED
West Union, IA, George L. Scott Muni, NDB RWY 35, Amdt 4
Auburn, IN, De Kalb County, VOR OR GPS RWY 9, Amdt 7, CANCELLED
Auburn, IN, De Kalb County, VOR RWY 9, Amdt 7
Newton, KS, Newton-City-County, NDB OR GPS RWY 17, Amdt 3A, CANCELLED
Newton, KS, Newton-City-County, NDB RWY 17, Amdt 3A
Lexington, KY, Blue Grass, NDB OR GPS RWY 4, Amdt 20A, CANCELLED
Lexington, KY, Blue Grass, NDB RWY 4, Amdt 20A
Bangor, ME, Bangor Intl, VOR OR GPS-A RWY 15, Amdt 2, CANCELLED
Bangor, ME, Bangor Intl, VOR-A RWY 15, Amdt 2
Bangor, ME, Bangor Intl, NDB OR GPS RWY 33, Amdt 5, CANCELLED
Bangor, ME, Bangor Intl, NDB RWY 33, Amdt 5
Flint/Bishop INTL, Flint, MI, NDB OR GPS RWY 9, Amdt 24, CANCELLED
Flint/Bishop INTL, Flint, MI, NDB RWY 9, Amdt 24
Grand Marais, MN, Grand Marais, Cook County, NDB OR GPS RWY 27, Orig-A, CANCELLED
Grand Marais, MN, Grand Marais, Cook County, NDB RWY 27, Orig-A
Oxford, MS, University-Oxford, VOR/DME RNAV OR GPS RWY 9, Amdt 2, CANCELLED
Oxford, MS, University-Oxford, VOR/DME RNAV RWY 9, Amdt 2
Oxford, MS, University-Oxford, VOR/DME RNAV OR GPS RWY 27, Amdt 2, CANCELLED
Oxford, MS, University-Oxford, VOR/DME RNAV RWY 27, Amdt 2
Yazoo City, MS, Yazoo County, VOR/DME OR GPS RWY 17, Orig, CANCELLED
Yazoo City, MS, Yazoo County, VOR/DME RWY 17, Orig
Yazoo City, MS, Yazoo County, VOR/DME OR GPS RWY 35, Orig-A, CANCELLED
Yazoo City, MS, Yazoo County, VOR/DME RWY 35, Orig-A
Lakewood, NJ, Lakewood, VOR OR GPS RWY 6, Amdt 4, CANCELLED
Lakewood, NJ, Lakewood, VOR RWY 6, Amdt 4
Newark, NJ, Newark Intl, VOR/DME OR GPS RWY 22R, Amdt 3, CANCELLED
Newark, NJ, Newark Intl, VOR/DME RWY 22R, Amdt 3
Sante Fe, NM, Santa Fe Muni, VOR/DME OR GPS RWY 33, Amdt 9, CANCELLED
Sante Fe, NM, Santa Fe Muni, VOR RWY 33, Amdt 9
Lumberton, NC, Lumberton Muni, NDB OR GPS RWY 5, Amdt 1B, CANCELLED
Lumberton, NC, Lumberton Muni, NDB RWY 5, Amdt 1B
Lumberton, NC, Lumberton Muni, VOR OR GPS RWY 13, Amdt 9B, CANCELLED
Lumberton, NC, Lumberton Muni, VOR RWY 13, Amdt 9B
Wadesboro, NC, Anson County, NDB OR GPS RWY 17, Amdt 1D, CANCELLED
Wadesboro, NC, Anson County, NDB RWY 17, Amdt 1D
Washington, NC, Warren Field, NDB OR GPS RWY 5, Orig-A, CANCELLED
Washington, NC, Warren Field, NDB RWY 5, Orig-A
Chickasha, OK, Chickasha Muni, VOR/DME RNAV OR GPS RWY 35, Amdt 1, CANCELLED
Chickasha, OK, Chickasha Muni, VOR/DME RNAV RWY 35, Amdt 1
Guymon, OK, Guymon Muni, NDB OR GPS RWY 18, Amdt 5, CANCELLED
Guymon, OK, Guymon Muni, NDB RWY 18, Amdt 5
Ponca City, OK, Ponca City, NDB OR GPS RWY 17, Amdt 4A, CANCELLED
Ponca City, OK, Ponca City, NDB RWY 17, Amdt 4A
Seminole, OK, Seminole Muni, NDB OR GPS RWY 16, Amdt 2A, CANCELLED
Seminole, OK, Seminole Muni, NDB RWY 16, Amdt 2A
Stillwater, OK, Stillwater Muni, VOR OR GPS RWY 17, Amdt 13A, CANCELLED
Stillwater, OK, Stillwater Muni, VOR RWY 17, Amdt 13A
Stillwater, OK, Stillwater Muni, VOR/DME OR GPS RWY 35, Orig-A, CANCELLED
Stillwater, OK, Stillwater Muni, VOR/DME RWY 35, Orig-A
Fayetteville, TN, Fayetteville Muni, VOR/DME OR GPS RWY 2, Orig-B, CANCELLED
Fayetteville, TN, Fayetteville Muni, VOR/DME RWY 2, Orig-B
Fayetteville, TN, Fayetteville Muni, NDB OR GPS RWY 20, Amdt 3B, CANCELLED
Fayetteville, TN, Fayetteville Muni, NDB RWY 20, Amdt 3B
Gallatin, TN, Sumner County Regional, NDB OR GPS RWY 35, Amdt 1A, CANCELLED
Gallatin, TN, Sumner County Regional, NDB RWY 35, Amdt 1A
Jacksboro, TN, Cambell County, NDB OR GPS RWY 23, Amdt 5, CANCELLED
Jacksboro, TN, Cambell County, NDB RWY 23, Amdt 5
Lawrenceburg, TN, Lawrenceburg-Lawrence-County, NDB OR GPS RWY 17, Amdt 4, CANCELLED
Lawrenceburg, TN, Lawrenceburg-Lawrence-County, NDB RWY 17, Amdt 4
Rogersville, TN, Hawkins County, NDB OR GPS RWY 7, Amdt 2, CANCELLED
Rogersville, TN, Hawkins County, NDB RWY 7, Amdt 2
Galveston, TX, Scholes Field, VOR OR GPS RWY 13, Amdt 2, CANCELLED
Galveston, TX, Scholes Field, VOR RWY 13, Amdt 2
Houston, TX, George Bush Intercontinental Arpt/Houston, VOR/DME OR GPS RWY 33R, Amdt 13C, CANCELLED
Houston, TX, George Bush Intercontinental Arpt/Houston, VOR/DME RWY 33R, Amdt 13C
Houston, TX, William P. Hobby, VOR/DME OR GPS RWY 4, Amdt 17, CANCELLED
Houston, TX, William P. Hobby, VOR/DME RWY 4, Amdt 17
Houston, TX, William P. Hobby, VOR OR GPS RWY 12R, Amdt 18, CANCELLED
Houston, TX, William P. Hobby, VOR RWY 12R, Amdt 18
Houston, TX, William P. Hobby, VOR/DME OR GPS RWY 22, Amdt 24, CANCELLED
Houston, TX, William P. Hobby, VOR/DME RWY 22, Amdt 24
Houston, TX, William P. Hobby, VOR/DME OR GPS RWY 30L, Amdt 16, CANCELLED
Houston, TX, William P. Hobby, VOR/DME RWY 30L, Amdt 16
Houston, TX, William P. Hobby, VOR/DME OR GPS RWY 35, Amdt 2, CANCELLED
Houston, TX, William P. Hobby, VOR/DME RWY 35, Amdt 2

Galix/Twin County, Galax/Hillsville, VA, NDB OR GPS–A, Amdt 6, CANCELLED
Galix/Twin County, Galax/Hillsville, VA, NDB–A, Amdt 6

[FR Doc. 99–14611 Filed 6–8–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29580; Amdt. No. 1933]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 28, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking

Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

FDC Date	State	City	Airport	FDC No.	SIAP
05/01/99	NH	Keene	Dillant-Hopkins	FDC 9/3102	ILS Rwy 2 Amdt 2 this corrects FDC 9/3102 in TL99–12.
05/04/99	IL	Chicago/Aurora	Aurora Muni	FDC 9/2968	VOR/DME RNAV or GPS Rwy 27, Orig.
05/12/99	IA	Dubuque	Dubuque Regional	FDC 9/3147	NDB or GPS Rwy 31, Amdt 8B.
05/12/99	IA	Dubuque	Dubuque Regional	FDC 9/3148	ILS Rwy 31, Amdt 10C.
05/12/99	LA	Hammond	Hammond Muni	FDC 9/3135	ILS Rwy 18, Amdt 2B.
05/12/99	MI	Allegan	Padgham Field	FDC 9/3140	VOR or GPS Rwy 26, Amdt 13.
05/12/99	TX	Brownsville	South Padre Island Intl	FDC 9/3155	ILS Rwy 13R, Amdt 11.
05/12/99	TX	Galveston	Scholes Field	FDC 9/3137	ILS Rwy 13, Amdt 9A.
05/12/99	TX	Harlingen	Valley Intl	FDC 9/3154	ILS Rwy 17R, Amdt 11.
05/12/99	TX	Laredo	Laredo Intl	FDC 9/3136	ILS Rwy 17R, Amdt 8A.
05/12/99	TX	McAllen	McAllen Miller Intl	FDC 9/3159	ILS Rwy 13, Amdt 8.
05/12/99	TX	Waco	TSTC Waco	FDC 9/3157	ILS Rwy 17L, Amdt 11.
05/12/99	TX	Waco	Waco Regional	FDC 9/3158	ILS Rwy 19, Amdt 15.
05/13/99	CA	San Diego	San Diego Intl-Lindbergh Field	FDC 9/3182	LOC Rwy 27 Amdt 2A.
05/13/99	CA	San Diego	San Diego Intl-Lindbergh Field	FDC 9/3188	NDB or GPS Rwy 27 Amdt 1A.
05/13/99	FL	Daytona	Daytona Beach Intl	FDC 9/3172	LOC BC Rwy 25R, Amdt 14A.
05/14/99	MA	Vineyard Haven	Marthas Vineyard	FDC 9/3240	VOR or GPS Rwy 6 Orig-A.
05/14/99	MA	Vineyard Haven	Marthas Vineyard	FDC 9/3241	ILS Rwy 24 Orig-A.
05/14/99	MA	Vineyard Haven	Marthas Vineyard	FDC 9/3242	VOR or GPS Rwy 24 Orig-A.
05/14/99	NM	Hobbs	Lea County/Hobbs	FDC 9/3234	LS Rwy 3, Amdt 5.
05/17/99	DE	Middletown	Summit	FDC 9/3265	VOR/DME RNAV Rwy 35 Amdt 3A.
05/17/99	GA	Dublin	W. H. "Bud" Barron	FDC 9/3280	VOR or GPS–A Amdt 3B.
05/17/99	MO	St. Louis	Lambert-St. Louis Intl	FDC 9/3278	LDA/DME Rwy 30L, Amdt 2A.
05/18/99	OH	Cleveland	Cleveland-Hopkins Intl	FDC 9/3298	ILS Rwy 23L, Amdt 17.
05/20/99	AK	Port Heiden	Port Heiden	FDC 9/3338	NDB/DME Rwy 5, Amdt 2.
05/20/99	CO	Burlington	Burlington/Kit Carson County	FDC 9/3358	Correct U.S. Terminal Publication.
05/20/99	DC	Washington	Ronald Reagan Washington National.	FDC 9/3406	VOR/DME RNAV or GPS Rwy 33 Amdt 5B.
05/20/99	GA	Atlanta	The William B. Hartsfield Atlanta Intl.	FDC 9/3405	ILS Rwy 9L, Amdt 5A.
05/20/99	IN	Indianapolis	Indianapolis Intl	FDC 9/3321	ILS Rwy 5L, Amdt 1.
05/20/99	IN	Terre Haute	Terre Haute Intl-Hulman Field	FDC 9/3322	LOC BC Rwy 23, Amdt 18.
05/20/99	IN	Terre Haute	Terre Haute Intl-Hulman Field	FDC 9/3323	ILS Rwy 5, Amdt 22A.
05/20/99	LA	Lake Charles	Chennault International	FDC 9/3349	VOR or GPS Rwy 33L, Amdt 3.
05/20/99	LA	Lake Charles	Chennault International	FDC 9/3350	ILS Rwy 15R, Amdt 4.
05/20/99	SC	Columbia	Columbia Metropolitan	FDC 9/3359	GPS Rwy 23, Orig.
05/20/99	TX	College Station	Easterwood Field	FDC 9/3344	VOR or TACAN Rwy 10, Amdt 18A.
05/21/99	GA	Sandersville	Kaolin Field	FDC 9/3430	VOR/DME or GPS–A, Amdt. 4.
05/24/99	AL	Birmingham	Birmingham Intl	FDC 9/3481	LOC Rwy 18, Orig.
05/24/99	KS	Topeka	Philip Billard Muni	FDC 9/3478	LOC BC Rwy 31, Amdt 19.
05/24/99	KS	Topeka	Philip Billard Muni	FDC 9/3479	ILS Rwy 13, Amdt 32.
05/24/99	OH	Cleveland	Burke Lakefront	FDC 9/3491	NDB or GPS Rwy 24R, Amdt 1.
12/29/98	SC	Pelion	Pelion Corporate	FDC 8/9076	VOR or GPS–A, Amdt 2A.

[FR Doc. 99–14612 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29579; Amdt. No. 1932]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are

designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 28, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective June 17, 1999

Newark, NJ, Newark Intl, VOR/DME OR GPS RWY 22R, Amdt 3
Newark, NJ, Newark Intl, ILS RWY 22L, Amdt 9
Newark, NJ, Newark Intl, GPS RWY 22L, Orig
Teterboro, NJ, Teterboro, ILS RWY 19, Orig

. . . Effective July 15, 1999

Bakersfield, CA, Bakersfield Muni, GPS RWY 34, Orig
Salinas, CA, Salinas Muni, GPS RWY 13, Orig
Salinas, CA, Salinas Muni, GPS RWY 31, Orig
Atlanta, GA, The William B. Hartsfield Atlanta Intl, ILS RWY 27L, Amdt 13
Cahokia/St. Louis, IL, St. Louis Downtown—Parks, ILS RWY 30L, Amdt 7

Cahokia/St. Louis, IL, St. Louis Downtown—Parks, NDB RWY 30L, Amdt 1
Cahokia/St. Louis, IL, St. Louis Downtown—Parks, GPS RWY 30L, Orig
Bangor, ME, Bangor Intl, GPS RWY 15, Orig
Bangor, ME, Bangor Intl, GPS RWY 33, Orig
Pascagoula, MS, Trent Lott Intl, GPS RWY 35, Orig
Colstrip, MT, Colstrip, GPS RWY 6, Orig
Colstrip, MT, Colstrip, GPS RWY 24, Orig
Lakewood, NJ, Lakewood, GPS RWY 6, Orig
Lakewood, NJ, Lakewood, GPS RWY 24, Orig
Greensboro, NC, Piedmont Triad International, VOR/DME OR GPS RWY 32, Amdt 3A, CANCELLED
Greensboro, NC, Piedmont Triad International, GPS RWY 32, Orig
Washington, NC, Warren Field, GPS RWY 5, Orig
Wilmington, NC, Wilmington Intl, GPS RWY 6, Amdt 1
Wilmington, NC, Wilmington Intl, GPS RWY 24, Amdt 1
Dublin, VA, New River Valley, GPS RWY 24, Orig
Manitowoc, WI, Manitowoc County, VOR OR GPS RWY 35, Amdt 14

[FR Doc. 99–14613 Filed 6–8–99; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 245

Guides for the Watch Industry

AGENCY: Federal Trade Commission.

ACTION: Rescission of the Guides for the Watch Industry.

SUMMARY: On June 18, 1997, the Federal Trade Commission ("Commission") published a **Federal Register** Notice seeking public comment on proposed changes to the Guides for the Watch Industry ("Watch Guides" or "Guides") and on the continuing need for the Guides. The Commission has now completed its review and has decided to rescind the Guides. The Commission has concluded that the Guides are no longer needed to resolve uncertainty among businesses over what claims are likely to be considered deceptive, and that in most instances, international standards provide sufficient guidance to industry regarding watch markings and claims.

EFFECTIVE DATE: June 9, 1999.

ADDRESSES: Requests for copies of this **Federal Register** document should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. This document also is available on the Internet at the Commission's website, <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Laura J. DeMartino, Attorney, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3030, e-mail <Ldemartino@ftc.gov>.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission announces that it is rescinding the Guides for the Watch Industry, 16 CFR part 245. The Watch Guides address claims for the advertising, marking, and sale of watches, watchcases, watch accessories, and watch bands that are permanently attached to watchcases. The Guides specifically address representations and markings regarding a watch's metallic composition, protective and other special features, movement, and country of origin.

In 1992, the Commission solicited public comment on the Watch Guides and the then-Guides for the Jewelry Industry and Guides for the Metallic Watch Band Industry.[1] After review, the Commission tentatively decided to make numerous changes to the Watch Guides that were not discussed in the original **Federal Register** Notice. The Commission, therefore, solicited further comment regarding these proposed changes, as well as its proposal to delete 9 of the 16 sections in their entirety.[2] The Commission also solicited comment on whether there was a continuing need for the Watch Guides. In particular, the Commission requested comment on whether international standards provide sufficient guidance to industry and whether industry self-regulation and "market mechanisms," such as manufacturer reputation or warranties, are sufficient to protect consumers from misrepresentations about watches.[3] The Commission requested this information to determine whether the Watch Guides should be revised and retained or whether they should be rescinded.

The Commission received eleven comments in response to this second **Federal Register** Notice.[4] The comments favored retaining the Watch Guides, albeit with significant changes.[5] After carefully reviewing the comments and the Guides, however, the Commission has concluded that there is no continuing need for the Watch Guides. Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(a)(1), prohibits "unfair or deceptive acts or practices in or affecting commerce." The purpose of guides is to assist industry members in complying with the Act. Guides are particularly useful if they resolve uncertainty among businesses over what claims are likely to be considered deceptive. The current Watch Guides, however, are in many instances out of date, inconsistent with international standards, or unnecessary. Rather than extensively redrafting the Guides, the Commission has decided that international standards provide guidance to sellers regarding certain acceptable claims and markings. For those claims not addressed by international standards, there does not appear to be any demonstrated uncertainty over what the Commission is likely to consider deceptive. Thus, the Commission has determined to rescind the Watch Guides. In the following sections of this Notice, the Commission summarizes the key points raised by the

[1] 57 FR 24996 (June 12, 1992). The Commission revised the Guides for the Jewelry Industry (renamed Guides for the Jewelry, Precious Metals and Pewter Industries) and rescinded the Guides for the Metallic Watch Band Industry. 61 FR 27178 and 27228 (May 30, 1996).

[2] 62 FR 33316 (June 18, 1997). Comments submitted in response to the earlier Notice stated that certain provisions of the Guides, such as those dealing with gold-plated, water-resistant and shock-resistant watches, were outdated or inconsistent with international standards. Some comments also noted that the Guides failed to address quartz watches. In addition to proposing changes to the Guides, the Commission proposed deleting sections that were the subject of broader, non-industry specific guidance (e.g., guidance regarding use of the word "free"), that were covered by other parts of the Guides (e.g., admonishing against misrepresentations of watch accessories), or that were no longer necessary (e.g., advising the disclosure of foreign origin).

[3] *Id.*

[4] In the remainder of this Notice, the comments are cited to by an abbreviation of the comment name, the comment number, and the relevant pages of the comment. The following is a list of the comment name, abbreviation and comment number used to identify each commenter. Japan Clock & Watch Association ("JCWA") #1; European Union Delegation of the Permanent European Horological Committee ("EU") #2; United States Watch Council, Inc. ("USWC") #3; Leon M. Newhouse ("Newhouse") #4; Federation of the Swiss Watch Industry ("Swiss") #5; Seiko Corporation of America ("Seiko") #6; Bell & Ross ("Bell") #7; American Watch Association ("AWA") #8; U.S. Watch Producers in the US Virgin Islands ("USVI") #9; Kenneth E. Mapp, Lieutenant Governor, The United States Virgin Islands ("Mapp") #10; Timex Corporation ("Timex") #11.

[5] JCWA (1) p.3; EU (2) p.1; USWC (3) p.1; Swiss (5) pp.3–4; Seiko (6) p.1; AWA (8) p.1; USVI (9) p.1; Timex (11) p.2. Although Newhouse (4), Bell (7) and Mapp (10) did not expressly state that they favored retention of the Guides, they recommended changes or additions to the Guides and, therefore, also are considered to favor retention. Timex (11) p.2, stated that there is a continuing need for the Guides "only if, to the extent the Guides set standards, those standards will be enforced."

comments and discusses its decision to rescind the Guides.

II. Summary of the Comments

A. Need for the Watch Guides

The comments favored retention of the Guides, stating that they benefit both watch manufacturers and consumers. AWA stated that the Guides "have served a valuable purpose in assisting industry members in understanding the standards for appropriate marking and labeling of watch products and in avoiding practices that could confuse or deceive consumers."[6] This sentiment was echoed in many comments.[7] In addition, the comments indicated that the Guides are a useful source of information for consumers.[8]

B. Adequacy of Self-Regulation and International Standards

The comments stated that industry self-regulation and market mechanisms, such as manufacturer reputation or warranties, were insufficient to protect consumers from misrepresentations about watches.[9] Timex noted that "it often will not be cost effective for industry members to take action against others who make false or misleading claims."[10]

The comments also stated that international standards were not an adequate substitute for the Guides. The international standards applicable to watches are developed by the International Organization for Standardization ("ISO"), "a worldwide federation of national standards bodies from some 130 countries."[11] "The ISO International Standards relating to clocks and watches are discussed and determined by eight positive participant countries (i.e., Germany, China, France, India, Japan, Mexico, Russia and Switzerland) and 20 observer countries including the U.S.A. These International Standards are regularly reviewed every 5 years to prevent their becoming obsolete."[12] ISO has issued standards relating to, among other things, gold alloy coverings on watchcases and accessories,[13] antimagnetic watches,[14] shock-resistant watches,[15] water-resistant watches,[16] divers' watches,[17] chronometers,[18] and functional jewels.[19]

The comments do not consider the ISO standards to be sufficient to protect consumers primarily because the ISO standards are not enforceable in the United States.[20] ISO does not regulate the international watch industry. Instead, each participating member country enforces the ISO standards in accordance with their own laws.[21] Because the United States is not an adherent to the ISO standards, the comments stated that ISO standards are not enforceable in the United States.[22]

Some comments also stated that the guidance provided in the Watch Guides was preferable to the ISO standards. Swiss stated that the Watch Guides are more comprehensive than the ISO standards because the Guides provide definitions of products, and address, among other things, misrepresentations in general, counterfeiting of trademarks, and marking of watches that contain more than one metal.[23] Swiss also noted that the United States is not a participant in ISO, and therefore, is not involved in the formulation of ISO watch standards.[24] In addition, Timex stated that the ISO standards are sometimes inconsistent with existing U.S. practice.[25] For example, an ISO standard states that a watch may be described as a chronometer if it is "certified by a neutral, official authority, which checks the watch, or if necessary the movement, and issues an official certificate of compliance."[26] Timex stated that there is no evidence that consumers believe that chronometers are tested and certified and that current U.S. practices "do not mandate that only "certified" watches be described as chronometers."[27] Thus, the comments argued that the Commission should retain the Watch Guides.[28]

C. Harmonization of the Watch Guides With International Standards

Although not necessarily viewed as a substitute for the Guides, harmonizing the Watch Guides with the ISO standards was supported by many comments.[29] The comments contended that harmonization with ISO standards was appropriate because the ISO standards were adopted "after extensive consideration by technical experts" from the major watch producing countries of the world.[30] In addition, JCWA added that the standards "reflect the actual states and the current technical level of watches . . . (and) fully take into consideration the viewpoint of consumer protection."[31] Further, the comments noted that ISO standards are reviewed every five years, ensuring that the standards do not become obsolete.[32]

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[6] AWA (8) p.1.

[7] *See, e.g.*, JCWA (1) p.3 (providing guidance as to proper markings serves the purpose of preventing unfair or deceptive markings and benefits both manufacturers and consumers); Swiss (5) pp.3, 5 (the Guides "assist watch manufacturers in determining what representations can be made concerning the performance and qualities of watches" and also "supply a common technical benchmark upon which consumers can rely"); USVI (9) p.1 (the Guides "serve a valuable purpose in assisting domestic as well as foreign producers in understanding the applicable standards for marking and labeling watches and in avoiding practices that could result in consumer confusion or deception"); Timex (11) p.4 ("by specifying 'safe harbors' the Guides provide industry members with means to ensure that they will not be charged with unfair or deceptive trade practices as a result of making certain claims—a certainty that is of value to those making such claims").

[8] EU (2) p.1 (stating that the Guides "define terms and technical features that are necessary for the consumer understanding"); USWC (3) p.1 (stating that the Guides "serve as a consistent guide for comparison-shopping"); Swiss (5) p.5 (stating that the Guides "help consumers obtain the information they need to make informed purchasing decisions" and provide definite standards that consumers can cite to when seeking redress for any misrepresentations).

[9] *See, e.g.*, AWA (8) p.1. Swiss also stated that without the Guides, each manufacturer will "interpret for itself what any given attribute for a watch should mean." Swiss (5) p.8. Consumers will not have the ability to distinguish between competing claims or determine which claims are accurate. *Id.*

[10] Timex (11) p.3.

[11] For information about ISO, see <http://www.iso.ch/infoe/intro.htm>. ISO standards are available from: American National Standards Institute, Customer Service, 11 W. 42nd Street, 13th Floor, New York, NY 10036–8002, Telephone (212) 642–4900; FAX (212) 302–1286.

[12] JCWA (1) p.2.

[13] ISO 3160–1:1998; ISO 3160–2:1992; and ISO 3160–3:1993.

[14] ISO 764:1984.

[15] ISO 1413:1984.

[16] ISO 2281:1990.

[17] ISO 6425:1996.

[18] ISO 3159:1976.

[19] ISO 1112:1974.

[20] EU (2) p.1 ("International Standards are a good reference for the manufacturers, but as they are not compulsory, they sometimes are not sufficient to protect the consumer"); Swiss (5) pp.8, 9; AWA (8) p.1.

[21] Swiss (5) p.9.

[22] *Id.* at 4–5, 8, 9.

[23] *Id.* at 6–7.

[24] *Id.* at 7; *see also* USWC (3) p.1 (stating that international standards are "written by the Swiss in their best interest," and thus, do not provide adequate guidance).

[25] Timex (11) p.3.

[26] ISO 3159.

[27] Timex (11) p.3. Timex notes, however, that chronometers are defined as "an instrument for measuring time . . . esp. one intended to keep time with great accuracy." Timex (11) p.3, citing Webster's Seventh New Collegiate Dictionary. Consumers, therefore, may expect watches described as chronometers to have certain features, such as accuracy. *See* Swiss (5) p.23. As is required for all objective claims about products, sellers must have substantiation for a claim that a watch is a "chronometer." Although certification by a neutral, official authority, as required by the ISO standard, may provide such substantiation, it is not necessarily the only means of substantiating such a claim.

[28] Swiss (5) p.4; AWA (8) p.1; Timex (11) p.3.

[29] JCWA (1) pp.2, 4; EU (2) p.2; Swiss (5) pp.10–11; Seiko (6) p.1; AWA (8) Letter, p.1. *But see* Timex (11) pp.3, 8 (stating that the ISO standard for "rolled gold" claims allows watches to have a significantly lesser thickness of gold than currently advised by the Guides and noting the possible need to advise sellers to state the thickness of the gold).

[30] Swiss (5) p.11.

[31] JCWA (1) p.3.

[32] JCWA (1) p.2; Swiss (5) p.11.

The comments further argued that differences between the Watch Guides and the ISO standards would result in undue burdens and costs for watch manufacturers. The cost of complying with two sets of guidelines and producing watches separately for the United States would be passed onto the U.S. consumer, resulting in higher watch prices.[33]

In addition to favoring harmonization generally, some comments recommended that the Guides actually incorporate ISO standards verbatim.[34] The comments noted the difficulty with this suggestion because the ISO standards are reviewed every five years and the Watch Guides would need to be revised if there were any ISO standard changes. Some comments therefore recommended that the Guides include a provision that stated that "it shall not be considered unfair or deceptive if a watch meets the requirements in International Standard xxxx."[35]

In addition to these general matters, the comments also discussed various Guide provisions and proposed changes to the provisions.

III. Reasons for Rescission

After careful consideration, the Commission has determined to rescind the Watch Guides. Sellers must continue to comply with section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices. The Guides, however, are no longer necessary to resolve demonstrated uncertainty regarding what claims are likely to be deceptive. In many instances, ISO standards provide guidance to industry members regarding watch claims. For topics beyond those addressed by the ISO standards, the Guides do not provide substantial guidance regarding deceptive claims, and in certain instances, are outdated. Thus, the Watch Guides are no longer needed.

A. ISO Standards Provide Guidance Regarding Watch Claims

The ISO standards may provide useful guidance to industry members in making watch claims. They provide specifications for many watch attributes, including gold alloy coverings and protective features. For example, the ISO standards specify minimum thicknesses for gold-plated watches and test methods for determining that a watch is "water-resistant," "shock-resistant," and "anti-magnetic." Although the ISO standards are not enforceable in the United States, watch sellers must comply with section 5 of the FTC Act. Thus, objective claims about watches must be truthful and accurate, and substantiated by competent and reliable evidence.

Some of the detailed standards referenced in the existing Guides (such as minimum thicknesses for gold-plated watches and tests to determine water-resistance) may be better established by the ISO or other private standards-setting organizations with expertise in technical issues and industry practices. These organizations also are in a better position to change the standards as technology evolves.[36] As noted by the comments, the ISO standards are developed by technical experts from the major watch producing companies of the world and are reviewed every five years. Thus, it is likely that the ISO standards reflect current technology and industry practice, and, in considering whether marketers have adequately substantiated their claims, the Commission will look to the ISO standards.

As stated in the comments, the Commission recognizes the benefits of harmonizing its guides with international standards and the burdens that would result if the Watch Guides presented differing guidance. The Commission, however, does not believe that it is useful to retain guides that merely reference international standards. Depending on the revision schedule of the ISO standards, the Watch Guides could become quickly outdated and have an unintended effect of burdening technology and watch manufacturers.

B. The Guides Are Not Needed to Address Topics Not Covered by ISO Standards

For those topics not addressed by ISO standards, the Watch Guides (1) provide only limited guidance, (2) do not resolve any demonstrated uncertainty regarding what claims are likely to be deceptive, and (3) provide, in certain instances, outdated, unnecessary guidance.

1. The Guides Provide Limited Guidance to Industry Members

Although Swiss stated that the Watch Guides discuss topics not covered by ISO standards, the Guides provide only limited guidance. For example, the definition of terms in section 245.1 is necessary for the remainder of the Watch Guides, but does not provide essential information to the industry that is not otherwise available.[37] Other sections of the Guides, such as 245.2 and 245.4, merely admonish industry members not to misrepresent various watch features.[38]

The Commission does not believe that it is necessary to retain guides that merely admonish sellers not to misrepresent various items, especially when, as here, there appears to be no lack of understanding that the law forbids such misrepresentations. Instead, guides should assist industry where there is some difficulty in determining compliance.

2. There is No Demonstrated Uncertainty Regarding Deceptive Claims

There do not currently appear to be any particular areas where there is difficulty in determining what is likely to be considered to be deceptive.[39] For

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[33] JCWA (1) pp.3–4; Swiss (5) pp.11, 15.

[34] Swiss (5) p.13, n.5.

[35] JCWA (1) p.4; Swiss (5) p.13.

[36] Certain provisions of the Watch Guides have been technologically outdated for some time. For example, section 245.3(f) advises that gold electroplated products contain a minimum thickness of gold alloy of ¾ 1000ths of an inch (approximately 19 microns). Comments indicated that technology permits a thinner, yet durable layer of gold to be deposited electrolytically and that the specified minimum thickness was obsolete. (In its second **Federal Register** Notice, the Commission proposed changing this provision.) Due to the changes in technology, industry members by necessity have referred to sources other than the Watch Guides for guidance on making gold electroplate claims.

[37] Industry members, for example, do not need to rely on the Watch Guides for definitions of a watch ("a timepiece or time-keeping device for measuring or indicating time which is designed to be worn on or about the person") or watchcase ("any metal case, covering, or housing of any quality or description for a watch . . ."). 16 CFR 245.1(a), 245.1(b).

[38] Section 245.4, for example, advises industry members not to misrepresent a watch's suitability for particular uses, and more specifically, advises that terms such as "skin divers," "navigators," or "railroad" should not be used to describe a watch that does not possess the characteristics required of watches used by persons engaged in such activities.

[39] One comment, however, asked the Commission to establish a test and definition for "waterproof" watches. Bell (7) p.1. The Watch Guides admonish against the use of the term "waterproof," and the Commission solicited comment on whether that admonition was justified. The comments generally supported the admonition against the use of the term. JCWA (1) p.6; EU (2) p.2 ("The use of the terms . . . "waterproof" must be prohibited because they can disclose [sic] the consumer on the right performance of the watch"); USWC (3) p.2 (the word "proof" is too strong a term); Swiss (5) p.24 ("The word "proof" connotes a measure of absolute protection that unfortunately does not exist with respect to watches, especially over prolonged periods of time"); Timex (11) p.12 (Timex is not aware of a watch where "immersion in water should have absolutely no effect on the watch whatsoever, regardless of the depth or duration of immersion," and notes that consumers are unfamiliar with such terms). The Commission does not possess adequate information to formulate a definition or test for "waterproof" claims. Moreover, it is unclear how consumers would interpret the term "waterproof," which has not been used to describe watches. Further, no evidence was submitted indicating appropriate tests that could substantiate such a claim. However, there may be technological advances that would comport with

example, there does not appear to be any lack of understanding that a watch described as having a jeweled movement should contain seven jewels, each of which serves the purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear. (16 CFR 245.6). In addition, sellers should know, without the Watch Guides, that they may need to qualify a mark indicating a watch's metallic composition, when that mark applies to only certain parts of a watch (e.g., when a watch is made of different metals, but is only marked with its precious metal content, and consumers may be misled that the watch is composed entirely of the precious metal). (16 CFR 245.3(k)). Thus, the Watch Guides do not appear to clarify which representations would be considered deceptive under section 5 of the FTC Act.

3. In Certain Instances, The Guides Contain Outdated, Unnecessary Guidance

Two Watch Guide topics, in particular, are not addressed by ISO standards. These two areas involve the marking of a non-precious metal watch and the marking of foreign origin. As discussed below, these two Guide provisions no longer reflect the Commission's interpretation of the law. Therefore, it is unnecessary for the Commission to retain the Watch Guides for these issues.

a. Non-Precious Metal Markings. The Watch Guides currently advise manufacturers to mark all watches of metallic composition. Section 245.3(j) advises that when the watch does not contain precious metals, it should be marked as "Base Metal" or the name of the metal of which it is composed (e.g., "stainless steel"). The Commission has determined that it may not be necessary, to prevent deception, to advise that all non-precious metal watches be affirmatively marked as "base metal."[40]

Although a "base metal" mark may reduce the chance that a seller may misrepresent the watch's metallic composition, the absence of such a mark will not necessarily deceive consumers. A reasonable consumer is unlikely to assume, in the absence of any representation about the watch's metallic composition, that the watch was composed of a precious metal. Instead, it seems likely that consumers would expect that sellers would want to tout the precious metal content of a item and would affirmatively place a quality mark on the piece. In fact, other products made of metals, such as jewelry, are not required to bear a mark indicating their metallic composition. Consumers, therefore, may believe that an unmarked item is composed of non-precious metals.

Any benefits derived from advising the marking of base metal watches do not necessarily outweigh the burdens on manufacturers who need to mark such watches for sale in the United States. Thus, absent specific evidence that consumers are misled that an unmarked watch contains precious metals, the Commission does not believe that it is necessary to advise sellers to mark non-precious metal watches as "base metal." Of course, the Commission encourages manufacturers to provide information to consumers about the products they sell and admonishes sellers against any misrepresentations of a watch's metallic composition that would violate the FTC Act.

b. Foreign Origin Markings. In addition, the Commission does not believe that the current guidance regarding the marking of a watch's country of origin is needed. Section 245.10(a) of the Watch Guides advises that watches containing movements of foreign origin, or movement parts of foreign origin, be marked with the country of origin of the movement. Section 245.10 specifies that the country of origin of the movement depends upon two factors: (1) Where the movement is assembled, and (2) the origin of the parts used in assembling the movement. Using these two factors, the Guides provide specific guidance on how the country of origin is determined. *See* § 245.10(b)(1)–(3).

The Commission proposed deleting this origin marking provision of the Guides in its previous **Federal Register** Notice. The comments received in response to this proposal generally favored deleting the provision entirely, or harmonizing it to be identical to the U.S. Customs Service marking requirements.[41] The comments stated that Customs already has established detailed foreign origin marking requirements and that the Guides do not advise the disclosure of material information beyond these requirements. The comments further advised that in the interests of uniformity, the Watch Guides should not provide for different or inconsistent standards than the Customs requirements.[42] In addition, the comments noted World Trade Organization negotiations to harmonize foreign origin markings internationally.[43]

The Commission recognizes the benefits of harmonizing its guidance with Customs regulations, to the extent possible, and acknowledges the international efforts for harmonization of origin markings. In addition, the Commission has determined that it is no longer necessary to generally advise the marking of foreign origin for watches. The Guides advise the disclosure of foreign origin, in part, because of a presumption that consumers would believe that an unmarked product was manufactured in the United States.[44] However, it is not certain that today a significant minority of consumers would believe that a watch without a country of origin marking is of United States origin. Absent specific evidence regarding consumer perception, the Commission does not believe it is necessary to continue to advise sellers to mark foreign country of origin on watches.[45] Thus, the Watch Guides are not necessary to address these issues.

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consumer understanding of the term, and the Commission would not consider its use deceptive so long as the watch in fact met consumer expectations and the claim was substantiated by competent and reliable scientific evidence.

[40] In the previous **Federal Register** Notice, the Commission solicited comment on its proposal to delete the guidance that sellers mark base metal watches. Three comments stated that this provision should be retained, because the "base metal" marking provides the consumer information about the watch and reduces the chances that the composition of the watch will be misrepresented. EU (2) p.2; Seiko (6) p.2; AWA (8) p.3. Timex stated that the requirement to mark watches should be eliminated for watches costing less than $100 because it is not likely that consumers will believe that watches in this price range contain precious metals "absent representations to the contrary." Timex (11) p.7. JCWA and Swiss stated that the requirement should be eliminated. JCWA stated that without any markings, "consumers ought to guess there is no sales point in the product." JCWA (1) p.5. In addition, Swiss stated that the U.S. is the only country that requires marking of base metal watches and that removing this requirement will reduce manufacturers' burdens. Swiss (5) p.20.

[41] The Watch Guides advised the disclosure of more information (i.e., the origin of movement parts) than the Customs regulations require.

[42] USWC (3) p.2; Swiss (5) pp.28–29; Seiko (6) p.1; AWA (8) p.1; USVI (9) p.2; Timex (11) p.15.

[43] EU (2); Swiss (5) pp.28–29; AWA (8) p.1.

[44] In its review of Made in the USA claims, the Commission determined to cease using the rebuttable presumption that goods not labeled with any country of origin are understood by consumers to be made in the United States. Instead, the Commission stated that it would require disclosure of foreign origin on unmarked goods only if there was some evidence that a significant minority of consumers views country of origin as material and believes that the goods in question, when unlabeled, are made in the United States. 62 FR 63756, 63763 and 63766 (Dec. 2, 1997).

[45] The Commission notes, however, that any misrepresentation of a watch's origin is a violation of section 5 of the FTC Act. Two comments requested that the Commission allow watches produced partially in the United States Virgin Islands to mark their watches as Made in USA. USVI (9) pp.3–4; Mapp (10) p.1. The Commission's Enforcement Policy Statement on Made in the USA claims is of general applicability and should be used as guidance for watch manufacturers. *See* 62 FR 63756 (Dec. 2, 1997).

C. Other Guidance and Law Enforcement Tools

The rescission of the Watch Guides does not remove the consumer protection laws relating to watch claims. The main reason that the comments argued that the ISO standards were not an appropriate substitute for the Watch Guides was that the ISO standards are not enforceable in the United States. However, section 5 of the FTC Act, prohibiting "unfair or deceptive acts or practices," covers the advertising, marking, and sale of watches.[46] Thus, under the FTC Act, the Commission may seek administrative or federal district court orders against companies or individuals who engage in unfair or deceptive practices, prohibiting future violations and, as appropriate, providing other relief such as consumer redress or disgorgement of ill-gotten gains. The rescission of the Guides does not signal an FTC withdrawal from preventing deception in the advertising and marking of watches. If, in the future, deceptive practices prove to be a problem in this industry, FTC investigations and law enforcement actions may be appropriate and necessary.

The rescission of the Guides also does not leave the industry without guidance as to how to comply with the law. The Commission directs the industry's attention to the principles of law articulated in the FTC's Policy Statement on Deception and pertinent Commission and court decisions on deception, both of which are generally applicable to all industries. As articulated in the Policy Statement on Deception, the Commission "will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."[47] In addition, sellers are required to possess substantiation for objective claims made about products. That is, advertisers must have a reasonable basis for claims before they are disseminated.[48]

Therefore, sellers must have competent and reliable evidence to substantiate objective claims about watches, such as claims that a watch is water-resistant. In this respect, ISO standards may provide sellers with useful guidance. Other tests, research, or information (besides international standards) also might be used by sellers to substantiate claims.[49] Sellers bear the responsibility of ensuring that such information constitutes competent and reliable evidence in support of their claims.[50] The Commission will evaluate the adequacy of substantiation on a case-by-case basis.

For all of the foregoing reasons, the Commission has decided to rescind the Watch Guides.

List of Subjects in 16 CFR Part 245

Advertising, Labeling, Trade practices, Watches, Watch bands, Watch cases

PART 245—[REMOVED]

The Commission, under the authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 in the Code of Federal Regulations by removing part 245.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–14551 Filed 6–8–99; 8:45 am]

BILLING CODE 6750–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 10

Rules of Practice; Final Rules; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rules; technical corrections.

SUMMARY: On October 19, 1998, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** (63 FR 55784) final regulations amending its Rules of Practice ("Rules"), 17 CFR Part 10 (1998), which governs most adjudicatory proceedings brought under the Commodity Exchange Act, as amended ("Act"), other than reparations proceedings. Included in the amended Rules was a new Appendix A, which sets out Commission policy relating to the acceptance of settlements from defendants or respondents in Commission enforcement proceedings; specifically, that the Commission will not enter into a settlement if the defendant or respondent wishes to continue to deny the allegations in the complaint. The Commission has determined to make certain technical changes to Appendix A to clarify two points: the Commission will not enter into a settlement if the defendant or respondent wishes to continue to deny the findings of fact and conclusions of law contained in an order settling the matter; and Commission settlement agreements do not affect a defendant's or respondent's subsequent testimonial obligations in any proceeding. In addition, the Commission has made several technical corrections or publication errors in the final Rules.

EFFECTIVE DATE: The effective date is June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Mihans, Office of Chief Counsel, Division of Enforcement, at (202) 418–5399, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: On October 19, 1998, the Commission published its final amended Rules of Practice. This was the first major revision of the Rules in over 20 years. Appendix A was added to the Rules to set out the Commission's policy relating to the acceptance of settlements in Commission enforcement proceedings, specifically, that the Commission will not enter into a settlement if the defendant or respondent wishes to continue to deny the allegations in the complaint. The proposed changes to Appendix A are intended to clarify two points related to this policy. First, in its current form, Appendix A requires an agreement from defendants and respondents as a condition of settlement that they will not deny the allegations in a complaint, but does not address directly a respondent's or defendant's ability to deny the findings of fact or conclusions of law in settlement order entered by the Commission or a court. The proposed changed make clear that settling defendants and respondents cannot continue to deny either the allegations in the complaint or the

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[46] In addition, industry members should note that the National Gold and Stamping Act, 15 U.S.C. 291, et seq., regulates the marking of gold or silver content on all products, including watches.

[47] FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984).

[48] *See* FTC Policy Statement Regarding Advertising Substantiation, 48 FR 10471 (Mar. 11, 1983), *appended to Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984).

[49] Timex, for example, indicated that there may be other equally valid tests, acceptable in the industry, besides those in the ISO standards. Timex (11) p.11.

[50] Sellers also need to ensure that the substantiation supports consumers' interpretations of the claims they make about their products. For example, consumers may have certain expectations regarding a watch claimed to be "gold-plated." If consumers understand such a claim to mean that the gold coating on the watch will last for a certain period of time, sellers would need to ensure that the gold plate is of such thickness and surface coverage to assure that it will be reasonably durable. Although international standards may provide guidance regarding, among other things, the minimum thicknesses of gold to be used, sellers should be sure to take into account United States consumer expectations and understandings of claims.

findings of fact or conclusions of law in a settlement order that is entered by the Commission or a court.

Second, the proposed changes to Appendix A clarify that Commission settlement agreements do not affect defendants' or respondents' testimonial obligations in proceedings to which the Commission is a party or in any other proceeding. In its current form, Appendix A effectively requires an agreement by a settling respondent or defendant not to give testimony in a Commission proceeding that would tend to deny any allegation in the complaint or create an impression that the complaint lacks a factual basis. This restriction has the potential to conflict with the legal obligation of a respondent or defendant to testify truthfully. Accordingly, the Commission is making technical changes to Appendix A to clarify that a Commission settlement agreement does not affect a settling respondent's or defendant's subsequent testimonial obligations in any proceeding in which the Commission is a party or in any other proceeding. This change will not affect the Commission's ability to protect against respondents or defendants making later statements that are inconsistent with statements upon which the Commission relies in entering into a settlement. In such circumstances, the Commission can condition the settlement upon the truthfulness of such statements and can vitiate the settlement in the event that the respondent or defendant subsequently provides testimony that is inconsistent with the statements. Moreover, the Commission will continue to prohibit settling respondents and defendants from taking legal positions in proceedings to which the Commission is a party that would tend to deny the allegations in the complaint or the findings of fact and conclusions of law in the settlement order or would tend to create the impression that the complaint or order is without a factual basis.

Because Appendix A constitutes a statement of agency policy, the Commission finds that there is no need to provide the public with an opportunity to submit comments before implementing the above changes. 5 U.S.C. 553(b)(A). For the same reason the Commission has determined to make the changes to Appendix A effective immediately upon publication. 5 U.S.C. 553(b)(2). All of the remaining changes to the Rules correct publication errors. Accordingly, the Commission also finds good cause to make these corrections effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(b)(B), 553(d)(3).

In consideration of the foregoing, the Commission corrects Chapter I of Title 17 of the Code of Federal Regulations as follows:

List of Subjects in 17 CFR Part 10

Administrative practice and procedure, Commodity futures.

PART 10—RULES OF PRACTICE

1. The authority citation for Part 10 continues to read as follows:

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 4a(j), unless otherwise noted.

2. Section 10.1 is amended by revising paragraph (d) to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(d) The assessment of civil penalties pursuant to sections 6(c) and 6b of the Act, 7 U.S.C. 9 and 15 and 13a;

* * * * *

3. Section 10.68 is amended by revising the second sentence in paragraph (a)(2) to read as follows:

§ 10.68 Subpoenas.

(a) * * *

(2 Application for subpoena duces tecum. * * * All requests for the issuance of a subpoena duces tecum shall be submitted in duplicate and in writing and shall be served upon all other parties to the proceeding, unless the request is made on the record at the hearing or the requesting party can demonstrate why, in the interest of fairness or justice, the requirement of a written submission or service on one or more of the other parties is not appropriate. * * *

* * * * *

4. Section 10.92 is amended by revising paragraph (b)(1) to read as follows:

§ 10.92 Shortened procedure.

* * * * *

(b) Filing of Statements—(1) Opening statement. Within 20 days after receipt of notice that the shortened procedure will be used, the Division of Enforcement shall serve upon all other parties and file with the Proceedings Clerk, in triplicate, an opening statement, in support of the complaint;

* * * * *

5. Section 10.101 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 10.101 Interlocutory appeals.

* * * * *

(a) Scope of review. * * *

(5) * * *

(iii) Subsequent reversal of the ruling would cause unnecessary delay or expense to the parties.

* * * * *

6. Section 10.102 is amended by revising the fifth sentence in paragraph (e)(1) to read as follows:

§ 10.102 Review of initial decisions.

* * * * *

(e) Appendix to briefs—(1) Designation of contents of appendix. * * * In designating parts of the record for inclusion in the appendix, the principal parts of the record relied upon should be designated, but the parties shall have regard to the fact that the entire record is always available to the Commission for reference and examinations and shall not engage in unnecessary designation. * * *

* * * * *

7. Section 10.106 is amended by revising the last sentence in paragraph (b)(3) to read as follows:

§ 10.106 Reconsideration; stay pending judicial review.

* * * * *

(b) Stay pending judicial appeal

* * *

(3) Civil monetary penalties and restitution. * * * In the event the Commission denies the applicant's motion for a stay, the Proceedings Clerk shall return the surety bond to the applicant.

* * * * *

8. Appendix A to Part 10 is revised to read as follows:

Appendix A to Part 10—Commission Policy Relating to the Acceptance of Settlements in Administrative and Civil Proceedings

It is the policy of the Commission not to accept any offer of settlement submitted by any respondent or defendant in an administrative or civil proceeding, if the settling respondent or defendant wishes to continue to deny the allegations of the complaint or the findings of fact or conclusions of law to be made in the settlement order entered by the Commission or a court. In accepting a settlement and entering an order finding violations of the Act and/or regulations promulgated under the Act, the Commission makes uncontested findings of fact and conclusions of law. Similarly, in settling a civil proceeding with a defendant the Commission invites the federal court to make conclusions of law and, in some instances, findings of fact. The Commission does not believe it would be appropriate for it to be making or inviting a court to make such uncontested findings of violations if the party against whom the findings and conclusions are to be entered is continuing to deny the alleged misconduct.

The refusal of a settling respondent or defendant to admit the allegations in a

Commission-instituted complaint or the findings of fact or conclusions of law in the settlement order entered by the Commission or a court shall be treated as a denial, unless the party states that he or she neither admits nor denies the allegations or the findings and conclusions. In that event, the proposed offer of settlement, consent or consent order must include a provision stating that, by neither admitting nor denying the allegations, findings or conclusions, the settling respondent or defendant agrees that neither he or she nor any of his or her agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the complaint or findings or conclusions in the order, or creating, or tending to create, the impression that the complaint or the order is without a factual basis; provided, however, that nothing in this provision shall affect the settling respondent's or defendant's—

i. Testimonial obligation, or

ii. Right to take legal positions in other proceedings to which the Commission is not a party.

Issued in Washington, DC on June 1, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–14370 Filed 6–8–99; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–6354–5]

RIN 2060–AI29

Regulation of Fuel and Fuel Additives: Modification of Compliance Baseline

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: With today's action the U.S. Environmental Protection Agency ("EPA", "the Agency", or "we") will allow the conventional gasoline emissions, from gasoline that a refiner sells in Puerto Rico in excess of its baseline volume of Puerto Rico gasoline, to be evaluated using only the summer version of the Complex Model. Additionally, the reformulated gasoline program's anti-dumping compliance baseline calculation will be modified. This modification will replace the annual average statutory baseline term with a summer statutory baseline term for purposes of evaluating a refiner's excess Puerto Rico gasoline. Finally, the summer Complex Model, which is more climatically appropriate for evaluating Puerto Rico gasoline, will replace the winter Complex Model for all baseline and compliance calculations for Puerto Rico gasoline. These provisions will apply to any refiner that has Puerto Rico gasoline in its individual baseline, has increased production of gasoline for sale in Puerto Rico above its individual baseline volume of Puerto Rico gasoline, and petitions the Agency to apply the modified compliance baseline to its Puerto Rico gasoline. Any refiner submitting such a petition must recalculate its individual baseline using the summer Complex Model for all Puerto Rico gasoline.

DATES: This action will be effective on July 26, 1999 unless notice is received by July 9, 1999 from someone who wishes to submit adverse or critical comments. If such comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Interested parties may submit written comments in paper form and/or by E-mail. To ensure their consideration by EPA, all comments must be submitted to EPA by the date indicated under **DATES** above. Paper copies of written comments should be submitted (in duplicate if possible) to Public Docket No. A–99–16 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket Section, Room M-1500, 401 M Street, S.W., Washington, D.C. 20460. The Agency requests that a separate paper copy also be sent to either person listed below under **FOR FURTHER INFORMATION CONTACT**. EPA also encourages that an electronic copy of comments (in ASCII format) accompany the submission of a paper copy (by E-mail to A-and-R-Docket@epa.gov or on a 3.5 inch diskette). Public comments may also be submitted by E-mail to the docket at the address listed above without the submission of a paper copy. However, to ensure the clarity of the submission, EPA encourages that a paper copy accompany the E-mail submission. If comments are submitted by E-mail alone, EPA requests that a copy of the E-mail message that contains the comments be sent to either person listed below under **FOR FURTHER INFORMATION CONTACT.**

Materials related to this rulemaking are available for review at EPA's Air Docket at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. The telephone number for EPA's Air Docket is (202) 260–7548, and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner or Felicia Seals-Buchanan, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4287 or x4589, FAX (734) 214–4051, E-mail brunner.christine@epa.gov or seals-buchanan.felicia@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include those involved with the production, distribution and sale of gasoline motor fuel. Regulated categories and entities include:

Category	NAICS[1] codes	SIC[2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To decide whether your organization might be affected by this action, you should carefully examine this action and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Access to Rulemaking Documents Through the Internet

Today's document is available electronically on the day of publication from the EPA Internet Web site listed

below. Electronic copies of the preamble, regulatory language and other documents associated with today's proposal are available from the EPA Office of Mobile Sources Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for Internet connectivity.

EPA Web Site:
http://www.epa.gov/docs/fedrgstr/epa-air/
(Either select a desired date or use the Search feature.)

Office of Mobile Sources (OMS) Web Site:
http://www.epa.gov/omswww/
(Look in "what's New" or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

I. Background

A. Anti-Dumping Standards

Section 211(k) of the Clean Air Act requires the U.S. Environmental Protection Agency ("EPA" or "we") to establish standards for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas. In addition, EPA established standards for non-reformulated, or conventional, gasoline used in the rest of the country. These standards are called the anti-dumping standards. EPA adopted the anti-dumping standards to prevent refiners from dumping into conventional gasoline the dirty gasoline components that are removed when RFG is produced. The anti-dumping standards require refiners to produce conventional gasoline each year that is as clean as the gasoline produced by the refiner in 1990.

In order to be in compliance with the anti-dumping standards, the exhaust toxics and nitrogen oxides (NO_X) emissions performance of a refinery's conventional gasoline can be no dirtier than the refinery's 1990 exhaust toxics and NO_X emissions performance, on an annual average basis. EPA requires refiners to calculate the exhaust toxics and NO_X emissions performance of gasoline using the Complex Model [1], based on measured properties, such as sulfur and benzene content, and Reid vapor pressure (RVP). The Complex Model includes both a summer version and a winter version. The anti-dumping requirements at 40 CFR 80.101(g) require refiners to use the summer Complex Model to evaluate conventional gasoline supplied to an area subject to EPA's gasoline volatility standards when these standards are in effect, and requires them to use the winter Complex Model to evaluate all other gasoline. The regulations also require refiners to evaluate the exhaust toxics and NO_X emissions performance of gasoline sold in areas not subject to those volatility standards, such as Puerto Rico, Hawaii, and Alaska, using the winter Complex Model.

B. Compliance Baseline Calculation

In general, a refiner's standard for compliance is its individual 1990 refiner baseline. However, when a refiner's annual gasoline production volume (including RFG, conventional gasoline and reformulated gasoline blendstock for oxygenate blending) exceeds its baseline volume (the volume of gasoline that the refiner produced in 1990), the refiner's conventional gasoline compliance standard for exhaust toxics and NO_X is different from its individual baseline values for these emissions. The standard is different because EPA requires refiners to compare the excess volume to the statutory baseline instead of their individual baseline. Because the statutory baseline was designed to reflect 1990 gasoline generally, the quality of all the excess gasoline produced approximates the 1990 average national quality.

In order to determine a refiner's compliance standard for the averaging period, the anti-dumping provisions at 40 CFR 80.101(f) require the use of a specified compliance baseline equation. This equation establishes a single compliance baseline that compares a refiner's conventional gasoline with that refiner's individual baseline. However, a portion of the compliance baseline equation compares the emissions of a refiner's excess volume of conventional gasoline to the annual average statutory baseline emissions, a combination of the summer and winter statutory baseline emissions. EPA requires refiners to evaluate the emissions of gasoline sold in areas not subject to EPA's volatility requirements using only the winter Complex Model. Refiners must then compare these emissions to a compliance baseline equation that is based in part on the summertime portion of the statutory baseline. Because different assumptions drive the summer and winter versions of the Complex Model, this may force refiners to make quality changes in their gasoline pools resulting in unintended negative effects for refiners and the environment.

C. Seasonal Impacts of the Complex Model

A detailed discussion of the development of the summer and winter versions of the Complex Model was included in the Final Regulatory Impact Analysis (RIA) for Reformulated Gasoline [2]. Both models are based on MOBILE model outputs. MOBILE model outputs for the summer model assume ambient temperatures of 69°F–94°F. MOBILE model outputs for the winter model assume ambient temperatures of 39°F–57°F. Additionally, MOBILE model outputs show significantly greater "winter" emissions due to longer engine and catalyst warm-up times. As a result, for identical fuel compositions (based on those fuel parameters evaluated in the Complex Model), the winter Complex Model results in significantly higher emissions than the summer Complex Model, on a mg/mile basis.

D. July 11, 1997 Proposal

EPA proposed a variety of changes to the reformulated gasoline and anti-dumping regulations on July 11, 1997 (62 FR 37337). Classifying gasoline as summer or winter gasoline was one issue that EPA discussed in that proposal. In that discussion, EPA stated that it would classify all gasoline produced for use outside the continental U.S., where the federal RVP standards do not apply, as winter gasoline year round because:

(1) EPA required refiners to calculate the emissions of all gasoline used outside of the continental U.S. using the winter Complex Model for baseline purposes;

(2) The anti-dumping standards compare the emissions of a refinery's gasoline during an averaging period with the refinery's baseline emissions; and

(3) The comparison of baseline emissions to averaging period emissions is valid only if the refinery uses the same criteria in the baseline and in the averaging period for classifying gasoline as summer or winter.

One commenter, Amerada Hess, stated that it was inappropriate for refiners to use the winter Complex Model to evaluate the gasoline produced for certain areas outside the continental U.S. and not subject to the federal volatility requirements. They offered the following reasons:

(1) In the proposal, "EPA is acknowledging that the classification of gasoline as winter or summer actually depends on the season in which it is sold" (and not just its RVP);

[1] 40 CFR 80.45.

[2] December 13, 1993.

(2) EPA's MOBILE model, upon which EPA based the Complex Model, reflects a temperature range of 39°F–57°F when used to evaluate winter emissions;

(3) It is inappropriate for EPA to assign gasoline for tropical climates such as Puerto Rico and Hawaii, to the winter category from a "seasonal weather gasoline characteristic standpoint';

(4) The RVP of the gasoline sold in these (tropical) areas reflects summertime RVPs rather than wintertime RVPs;

(5) The July 1, 1994 RFG Question and Answer Document states that refiners are to evaluate gasoline which remains seasonably the same throughout the year using the seasonal Complex Model which matches the year round season.

Additionally, when the volume of gasoline sold in such areas increases over baseline levels, under 40 CFR 80.101(f)(4)(ii) EPA requires refiners to calculate the standard for the extra volume using annual exhaust toxics and NOx emissions values which include both summer and winter Complex Model calculations. At the same time, EPA requires calculation of emissions (of gasoline sold in such areas) for compliance purposes using only the winter Complex Model. Consequently, according to the commenter, the refiner is unfairly penalized.

II. Action

A. Summary

With today's action, EPA will allow refiners, upon petition, to replace the winter Complex Model with the summer Complex Model for all anti-dumping baseline and compliance calculations for conventional gasoline sold in Puerto Rico, if the refiner has Puerto Rico gasoline in their individual baseline, and if the refiner currently sells a volume of gasoline in Puerto Rico greater than that refiner's 1990 Puerto Rico baseline volume. We are taking this action in order to address specific circumstances where inconsistencies in the RFG program's anti-dumping provisions have had significant unintended negative impacts.

The anti-dumping regulations currently require conventional gasoline sold in Puerto Rico to be evaluated using the winter Complex Model, for purposes of both compliance calculation and baseline calculation up to a refiner's 1990 baseline volume. However, the current regulations require a refiner to use the statutory baseline for evaluating volumes of Puerto Rico gasoline above that refiner's 1990 baseline volume. The statutory baseline includes both a summer and winter Complex Model component. As a result, for excess gasoline, there is an unintended mismatch between the refiner's baseline calculation (which uses only the winter Complex Model) and the compliance baseline calculation (which uses a combination of the summer and winter Complex Models). This results in the appearance of greater emissions in comparison to an analysis using the same seasonal version of the Complex Model for both of these calculations. For those refiners with Puerto Rico gasoline in their individual baseline, that have increased the volume of gasoline that they sell in Puerto Rico above their 1990 baseline volumes of Puerto Rico gasoline, this incongruence has had a significant adverse economic effect.

To solve this specific problem, EPA is modifying the compliance determination of the gasoline a refiner sells in Puerto Rico above that refiner's 1990 Puerto Rico baseline volume. Refiners will evaluate such gasoline using only a single statutory seasonal term (the summer term) in the compliance baseline determination. Additionally, given Puerto Rico's consistently warm climate, we recognize that the summer Complex Model is the most appropriate model for evaluating emissions in Puerto Rico under the anti-dumping program. Thus, we are also requiring that all of the conventional gasoline sold in Puerto Rico (by a refiner that makes a successful petition under this provision) will be evaluated using the summer Complex Model. The approval of a petition under today's action requires a refiner to recalculate the Puerto Rico component of its individual baseline using the summer Complex Model. As a result, such a refiner will evaluate all of its Puerto Rico gasoline using a single seasonal version of the Complex Model. Today's action applies to each batch of gasoline produced by an eligible refiner and destined for Puerto Rico, even if a small portion of the batch is subsequently sent to other nearby areas with climates similar to Puerto Rico and which are also not subject to EPA's volatility standards.

B. Modified Compliance Baseline Equation

As discussed in section I.B., when refiners sell gasoline in excess of their individual baseline volume in areas such as Puerto Rico, which are not subject to the federal volatility requirements, use of the current compliance baseline equation may have negative economic implications for refiners and unintended negative environmental effects. EPA requires refiners to evaluate such gasoline using the winter Complex Model. However, in the compliance baseline equation, all excess gasoline is compared to the annual average statutory baseline, which is composed of summer and winter components. Because the winter Complex Model predicts higher emissions for exhaust toxics and NO_X than does the summer model, refiners in this situation are forced to meet a more stringent compliance standard in these areas than would be required if the seasonal Complex Models used to evaluate such gasoline were the same. Accordingly, they must divert cleaner gasoline from other areas.

To remedy this situation, EPA is modifying the compliance baseline equation at § 80.101(f)(4)(ii). This modification will ensure that the performance of gasoline sold in Puerto Rico in excess of a refiner's baseline volume of Puerto Rico gasoline is compared to the appropriate corresponding seasonal baseline. We believe that the summer Complex Model is the most appropriate model for evaluating Puerto Rico gasoline.

EPA is including the following equation at 40 CFR 80.101 (f)(4). This equation includes separate terms for evaluating the gasoline subject to the refiner's individual baseline and excess gasoline subject to the summer model-only requirements.

$$CB_i = \left(B_i * \left(\frac{V_{1990} - V_{1990s}}{V_a}\right)\right) + \left(BS_i * \left(\frac{V_{1990s}}{V_a}\right)\right) + \left(DBA_i * \left(1 - \frac{V_{1990}}{V_a}\right) * \left(1 - \frac{V_{as}}{V_a}\right)\right) + \left(DBS_i * \left(1 - \frac{V_{1990}}{V_a}\right) * \left(\frac{V_{as}}{V_a}\right)\right)$$

where:

CB_i = the compliance baseline value for emissions performance i

B_i = the refiner's or importer's individual annual baseline for

emissions performance i under § 80.91 for gasoline supplied to areas subject to volatility standards under § 80.27

BS_i = the refiner's or importer's individual baseline as determined under § 80.91 using the summer Complex Model, for gasoline supplied to Puerto Rico, for emissions performance i

DBA_i=annual anti-dumping statutory baseline value for emissions performance i under § 80.91(c)(5)(iv)

DBS_i=the summer statutory baseline value for emissions performance i under § 80.45(b)(3), table 5

V_a=total volume of RFG, conventional gasoline, RBOB, oxygenates and California gasoline as defined under § 80.81(a)(2) produced or imported during the averaging period

V_{1990}=1990 baseline volume under § 80.91(f)(1)

V_{1990s}=1990 baseline volume of gasoline supplied to Puerto Rico

V_{as}=volume of conventional gasoline supplied during the averaging period to Puerto Rico

i=exhaust toxics or NO_X emissions performance

C. Seasonal Re-designation of Puerto Rico Gasoline

The emissions of Puerto Rico gasoline will be evaluated using only the summer Complex Model for any refiner making a successful petition under this provision. As a result of comments in response to the July 11, 1997 NPRM, EPA evaluated the average annual climatic conditions and gasoline RVP levels for Puerto Rico.[3] We have concluded that Puerto Rico's relatively constant year round ambient temperatures, as well as its gasoline RVPs, are more consistent with the conditions under which EPA intended the summer Complex Model to apply than they are with the conditions under which we intended the winter Complex Model to apply. Additionally, Puerto Rico's ambient temperature is consistent with conditions typical of a high ozone season, when summertime gasoline, and thus the summer Complex Model, is meant to be used. Because this action involves the calculation of compliance baselines for gasoline sold by refiners in Puerto Rico, we are taking this opportunity to address the seasonal appropriateness of the Complex Model that refiners must use to evaluate individual batches of gasoline. Accordingly, we will require refiners to evaluate all of their Puerto Rico gasoline using the summer Complex Model for compliance and baseline purposes. We are, however, expressly limiting the applicability of this change to refiners that petition for, and are granted, compliance baseline corrections under the provisions of this rulemaking.

D. Environmental Impact

We are presently aware of only one refiner for which the current regulations have significant unintended negative economic and environmental impacts. Specifically, the current anti-dumping regulations applicable to Puerto Rico gasoline negatively affect the quality of this refiner's mainland reformulated gasoline by requiring the refiner to shift certain production from RFG to conventional gasoline in order to comply with the requirements for its Puerto Rico conventional gasoline. Thus the emissions in areas which most need clean gasoline—ozone nonattainment areas participating in the RFG program—are unnecessarily elevated. Conversely, Puerto Rico, which is in attainment for ozone, is receiving cleaner conventional gasoline due to the unintended results of the current anti-dumping rules.

Today's action helps to provide the cleanest gasoline where it is needed most. It is possible that the gasoline supplied by this refiner to Puerto Rico, and other conventional gasoline areas, could see increases in the emissions regulated under the anti-dumping requirements. However, this action will allow refiners to use the most seasonally-appropriate Complex Model for gasoline sold in Puerto Rico, and will not result in an increase in emissions from conventional gasoline compared to 1990 levels. Thus, the goals of the anti-dumping program will be preserved. Indeed, this adjustment simply works to restore the proper balance to the distribution of environmental benefits under the RFG program.

These requirements apply to gasoline produced for calendar year 1999 and beyond. EPA will need more information from other refiners before proposing to broadly apply similar provisions throughout Puerto Rico and in other areas not subject to EPA's volatility requirement.

E. Economic Impact

EPA expects today's action to have minimal economic consequences. Most affected refiners are operating satisfactorily under the current requirements and are likely to be unaffected by this rule. EPA believes that refiners satisfying the requirements of this provision will petition to re-evaluate the Puerto Rico gasoline in their baseline using the summer Complex Model only if it is economically beneficial for them to do so. Therefore, EPA anticipates no adverse economic impacts as a result of today's rule.

F. Limited Applicability

The provisions discussed above (i.e., the modified compliance baseline equation and the uniform use of the summer Complex Model) apply only to refiners that have Puerto Rico gasoline in their individual baseline, that have increased the volume of gasoline that they sell in Puerto Rico above their 1990 baseline volumes of Puerto Rico gasoline, and that petition the Agency for such a change. Once such a petition is made and granted, the new method for determining compliance would apply from then on, regardless of any future changes in the refiner's Puerto Rico gasoline production or distribution. To date, only one refiner has notified EPA of potential adverse effects due to the application of the current regulations.

While EPA believes that use of the modified compliance baseline equation and seasonally-appropriate Complex Model may be technically appropriate in all areas not subject to the federal volatility requirements, there are a number of factors that EPA is unable to evaluate at this time. Consequently, we believe it best to limit the applicability of this action to refiners of Puerto Rico gasoline that can fulfill the other requirements of this rule. The following section discusses the implications of a broader application of the principles underlying today's action, and highlights the difficulties inherent in evaluating the appropriateness of such a generally applicable provision.

III. Implications for Broader Future Action

Today's action is limited in applicability to Puerto Rico refiners that meet the criteria enumerated in section II of this document. However, we anticipate that a similar but more generally applicable provision may be appropriate in the future. Such a provision would presumably apply to all areas that are not subject to the federal volatility requirements codified at 40 CFR 80.27.[4] The substance and

[3] 30 year average maximum and minimum temperatures by month, and RVP specifications.

[4] EPA believes that gasoline sent to areas such as Puerto Rico and Hawaii (and perhaps Guam, the U.S. Virgin Islands (USVI), the Northern Marianas and American Samoa) might be most appropriately evaluated using only the summer Complex Model. Similarly, EPA believes that gasoline sold in Alaska might be most appropriately evaluated using only the winter Complex Model, as is currently required.

scope of such a generally applicable provision would depend on many considerations, including environmental and economic impacts, industry practices, and the likely consequences for the RFG program in general. Some of the factors that EPA believes warrant additional consideration prior to the broad application of the provisions in today's action include:

(1) *Environmental impacts.* Many refiners which have Puerto Rico gasoline in their baseline aggregate that baseline with baselines of some or all of their other refineries. Currently, they may not actually produce gasoline for Puerto Rico, or may produce a reduced amount relative to their baseline volume of Puerto Rico gasoline. Thus, they may be taking advantage of Puerto Rico gasoline baseline emissions under the current regulations for the compliance of conventional gasoline produced for other locales. If required to re-evaluate the baseline of the Puerto Rico gasoline and to use the modified compliance baseline equation, the gasoline quality in either Puerto Rico or in the conventional or RFG areas of the continental U.S. may deteriorate relative to the current situation. EPA is also unable to evaluate the impact on the environment of the activities of refiners that have no Puerto Rico gasoline in their baseline but would choose to sell gasoline in Puerto Rico if such gasoline were allowed or required to be evaluated using the summer Complex Model. Since the summer Complex Model gives lower emissions for a given composition of gasoline, it would be advantageous for refiners to produce gasoline for Puerto Rico under such circumstances. However, because EPA is unable to anticipate the actions of such refiners (e.g., future gasoline production plans) it is currently impossible for the Agency to determine the overall environmental impacts that such a regulatory provision might have.

(2) *Economic impacts.* EPA expects today's action to have minimal economic consequences. Nonetheless, because of numerous uncertainties, EPA is unable to determine what economic impacts might result from a more general provision applicable to all areas not subject to the federal volatility standards. Specifically, possible reactions by refiners regarding aggregation and refinery changes would play a critical role in assessing the economic consequence of any such Agency action.

EPA understands that refinery aggregation decisions involve precise and costly evaluations, and that changing such decisions might entail another round of concerted deliberation. Thus, while the direct economic impacts of such a broadly applicable provision might actually be small, a refiner's choice to re-evaluate its aggregation decisions might result in significant additional expense. Re-aggregation could not only be time-consuming and costly for the refiner, but could have anti-competitive effects for those refiners without applicable gasoline in their baseline. Thus, EPA's current lack of information regarding the impact that re-consideration of aggregation decisions might have on the RFG and anti-dumping programs is one reason we are limiting the applicability of today's action.

(3) *Disturbing the system.* With the exception of the problems addressed by today's action, the current system for implementing the RFG anti-dumping standards has been successful. Given the concerns discussed above, EPA is unsure whether it would be appropriate to disturb the current system for what may be minimal environmental benefit at potentially high economic costs.

IV. Public Participation

The Agency is publishing this action both as a proposed rulemaking and as a direct final rule because it views these modifications to the anti-dumping program as non-controversial and anticipates no adverse or critical comments. This action will be effective July 26, 1999 unless the Agency receives notice by July 9, 1999 that adverse or critical comments will be submitted. If such comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. The Agency has determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose any mandatory obligations on the regulated community beyond those specified in the current regulations.

B. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it involves an optional provision intended to promote successful implementation of the RFG anti-dumping requirements and to minimize existing adverse economic impacts. This action may, in fact, reduce the burden of the anti-dumping program on regulated entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Today's action does not involve the collection of information as defined by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Therefore, the provisions of that Act do not apply to this action.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on State, local, and tribal governments and the private

sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgation an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The EPA has determined that today's rule does not include a Federal mandate because it imposes no enforceable duty on any State, local, and tribal governments, or the private sector. Today's rule implements an optional provision for evaluating the emissions of conventional gasoline sold by certain refiners in Puerto Rico. This action may, in fact, reduce the burden of the anti-dumping program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

2. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any mandatory duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

3. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13094 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule applies exclusively to refiners that sell gasoline in Puerto Rico. The rule does not create any mandates or impose any obligations, and thus does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not requiring the use of any voluntary consensus standards.

F. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate

effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Additionally, this rule is not subject to E.O. 13045 because it implements specific standards established by Congress in statutes.

VI. Statutory Provisions and Legal Authority

The statutory authority for today's actions is granted to EPA by sections 114, 211 (c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. A new paragraph (d) is added to Section 80.93 to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(d) Requirements for petition applicable to Puerto Rico gasoline.

(1) Any refiner or importer with Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its individual baseline may petition EPA to use the summer Complex Model to evaluate its Puerto Rico and Virgin Islands gasoline for compliance under § 80.101.

(2) The petition must be sent to: U.S. EPA, Fuels and Energy Division, 2000 Traverwood, Ann Arbor, MI 48105.

(3) The petition must include the following:

(i) Identification of the refinery;

(ii) Identification of contact person;

(iii) A revised individual baseline determination, wherein the baseline Puerto Rico and U.S. Virgin Islands gasoline has been evaluated using the summer Complex Model. The calculations should be clearly and fully described and displayed.

(iv) Baseline auditor agreement with the revised baseline.

(4) EPA reserves the right to request additional information. If such information is not forthcoming in a timely manner, the petition will not be approved.

3. Section 80.101 is amended by revising paragraphs (f)(4) and (g)(1)(ii) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(f) * * *

(4)(i) [Reserved].

(ii) [Reserved].

(iii) Any refiner or importer with Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its individual baseline and which has met the requirements specified in paragraph (g)(1)(ii)(B) of this section, and whose total volume of conventional gasoline, RBOB, reformulated gasoline, and California gasoline, as defined in § 80.81(a)(2), produced or imported by the refiner or importer during the averaging period is greater than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), must calculate the compliance baseline for each parameter or emissions performance according to the following formula:

$$CB_i = \left(B_i * \left(\frac{V_{1990} - V_{1990s}}{V_s}\right)\right) + \left(BS_i * \left(\frac{V_{1990s}}{V_s}\right)\right) + \left(DBA_i * \left(1 - \frac{V_{1990}}{V_s}\right) * \left(1 - \frac{V_{ss}}{V_s}\right)\right) + \left(DBS_i * \left(1 - \frac{V_{1990}}{V_s}\right) * \left(\frac{V_{ss}}{V_s}\right)\right)$$

where:

CB_i = the compliance baseline value for emissions performance i

B_i = the refiner's or importer's individual annual baseline for emissions performance i under § 80.91 for gasoline supplied to areas subject to volatility standards under § 80.27

BS_i = the refiner's or importer's individual baseline as determined under § 80.91 using the summer Complex Model, for gasoline supplied to Puerto Rico and the U.S. Virgin Islands, for emissions performance i

DBA_i = annual anti-dumping statutory baseline value for emissions performance i under § 80.91(c)(5)(iv)

DBS_i = the summer statutory baseline value for emissions performance i under § 80.45(b)(3), table 5

V_s = total volume of RFG, conventional gasoline, RBOB, oxygenates and California gasoline as defined under § 80.81(a)(2) produced or imported during the averaging period

V_{1990} = 1990 baseline volume under § 80.91(f)(1)

V_{1990s} = 1990 baseline volume of gasoline supplied to Puerto Rico and the U.S. Virgin Islands

V_{ss} = volume of conventional gasoline supplied during the averaging period to Puerto Rico and the U.S. Virgin Islands

i = exhaust toxics or NO_X emissions performance

(g) * * *

(1) * * *

(ii) Complex Model calculations.

(A) Exhaust benzene, exhaust toxics, and exhaust NO_X emissions performance for each batch shall be calculated in accordance with the applicable model under § 80.45.

(B) A refiner which has Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its baseline shall use the summer Complex Model to evaluate its averaging period Puerto Rico and U.S. Virgin Islands gasoline provided it has petitioned the Agency, per § 80.93(d), and has received Agency approval on the petition, and has revised its individual baseline, such that the Puerto Rico and U.S. Virgin Islands gasoline in its individual baseline has

been evaluated using the summer Complex Model.

* * * * *

[FR Doc. 99–14475 Filed 6–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–6344–4]

Identification of Additional Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard Is No Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 17, 1998, the EPA published a proposal to identify ten additional ozone areas where the 1-hour standard is no longer applicable. The 30-day comment period ended on January 19, 1999. A total of six comment letters were received in response to the proposal. This final rule summarizes the comments, includes responses, and finalizes the determination that the 1-hour standard no longer applies for ten additional areas identified in this final rule. Furthermore, today's final rule stops any sanctions or Federal implementation plan (FIP) clocks that may have been started in these ten areas and that related to the planning requirements of section 182. With finalization of this rule, the Code of Federal Regulations (CFR) is amended to reflect such changes. On July 18, 1997, EPA provided by rule that the 1-hour ozone standard would no longer apply to an area based on an EPA determination that the area has attained that standard. Since the 1-hour standard no longer applies to these areas, designations for that standard also no longer apply. The 1-hour standard and designations for that standard will continue to apply to areas for which EPA has not made a determination through rulemaking. The EPA has promulgated final rules regarding the applicability of the 1-hour standard for other areas on June 5, 1998 and July 22, 1998. The ten additional areas identified in today's final rule where EPA has determined the 1-hour standard no longer applies, based on the most recent air quality data available from 1996–1998, are: Boston-Lawrence-Worcester (E.MA), Massachusetts-New Hampshire; Memphis, Tennessee; Muskegon, Michigan; Portland, Maine; Portsmouth-Dover-Rochester, New Hampshire; Providence (All RI), Rhode Island; Allegan County, Michigan; Oceana County, Michigan; Mason County, Michigan; Door County, Wisconsin.

EFFECTIVE DATE: This action will be effective June 9, 1999.

ADDRESSES: Copies of the public comments and EPA's responses are available for inspection at the following address: Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–98–48, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning this final rule should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238. In addition, the following Regional contacts may be called for individual information regarding monitoring data and policy matters specific for each Regional Office's geographic area:

Region I—Richard P. Burkhart, (617) 918–1664
Region IV—Kay Prince, (404) 562–9026
Region V—Todd Nettesheim, (312) 353–9153.

SUPPLEMENTARY INFORMATION: *Electronic Availability*—The official record for this final rule, as well as the public version, has been established under docket number A–98–48 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official final rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

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J. Submission to Congress and the General Accounting Office

I. Background

On July 16, 1997, President Clinton issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of the EPA which indicates that within 90 days of promulgation of the new 8-hour standard, the EPA will publish an action identifying ozone areas to which the 1-hour standard will cease to apply. The memorandum states that for areas where the air quality does not currently attain the 1-hour standard, the 1-hour standard will continue in effect. The provisions of subpart 2 of title I of the Clean Air Act (Act) would also apply to currently designated nonattainment areas until such time as each area has air quality meeting the 1-hour standard.

On July 18, 1997 (62 FR 38856), EPA promulgated a regulation replacing the 1-hour ozone standard with an 8-hour standard at a level of 0.08 parts per million (ppm). The form of the 8-hour standard is based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard, which became effective on September 16, 1997, will provide increased protection to the public, especially children and other at-risk populations. On July 18, 1997, EPA also promulgated regulations providing that revocation of the 1-hour ozone national ambient air quality standard (NAAQS) would occur on an area-by-area basis when EPA determined that an area was meeting the 1-hour NAAQS. This was done in order to facilitate continuity in public health protection during the transition to the new NAAQS.

Therefore, on January 16, 1998, in accordance with the President's memorandum and the regulations promulgated on July 18, 1997, the Agency issued a direct final rule (63 FR 2726) which identified ozone areas to which the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply. However, due to the receipt of adverse comments, the direct final action was withdrawn on March 16, 1998 (63 FR

12652) and converted to a proposed rule that had previously been published on January 16, 1998 (63 FR 2804). The Agency summarized and addressed all relevant public comments in a subsequent final rule, published and effective on June 5, 1998 (63 FR 31014). According to the final rule, the Agency intended to publish, in early 1998, a subsequent document which takes similar action to revoke the 1-hour standard in additional areas that have air quality that does not violate the 1-hour standard and to take similar action each year thereafter.

Again, on July 22, 1998, the EPA published a final rule to approve the identification of six additional ozone areas attaining the 1-hour standard and to which the 1-hour standard no longer applies (63 FR 39432).

On December 17, 1998, the EPA published a proposal to approve the identification of ten additional ozone areas attaining the 1-hour standard and to which the 1-hour standard is no longer applicable (63 FR 69598). Comments were received on the proposal during the comment period ending on January 19, 1999.

II. Summary of Today's Action

The purpose of this document is to respond to comments received on the December 17th proposed rule and finalize the identification of the ten additional areas that EPA has determined are not violating the 1-hour standard and, therefore, with respect to which the 1-hour standard no longer applies. The newly identified areas are: Boston-Lawrence-Worcester (E.MA), Massachusetts-New Hampshire; Memphis, Tennessee; Muskegon, Michigan; Portland, Maine; Portsmouth-Dover-Rochester, New Hampshire; Providence (All RI), Rhode Island; Allegan County, Michigan; Oceana County, Michigan; Mason County, Michigan; Door County, Wisconsin.

III. Public Comments and EPA Responses

The following discussion summarizes and responds to the comments received on the proposal published on December 17, 1998 (63 FR 69598).

Comment: The commenter raised concerns that upon finalization of the revocation of the 1-hour standard, the areas would no longer be subject to any sanctions or FIP clocks started pursuant to sections 110 or 179 of the Clean Air Act (CAA) and 40 CFR 52.31 with respect to planning requirements under section 182. Furthermore, the commenter states that finalization of such revocation actions for Massachusetts, New Hampshire, Maine, and Rhode Island pose questions as to the validity of the section 126 petitions that have been filed by these States. Accordingly, the commenter believes that the section 126 petitions should be denied and supports today's final rule to revoke the 1-hour standard in the listed States' areas where the data demonstrate the 1-hour standard has been attained.

Response: Today's final rule is simply a determination by EPA that the 1-hour standard no longer applies in these ten listed areas where attainment of the 1-hour standard has been demonstrated. Therefore, it does not address the issue of whether section 126 petitions filed on behalf of the above States should or should not be granted. Final decisions regarding the section 126 petitions, filed by States affected by today's action, were promulgated on April 30, 1999. The FIP and sanctions obligations under sections 110 and 179 of the CAA are triggered with respect to "required submissions." At the time that EPA revokes the 1-hour standard for an area, the area is no longer designated for that standard and the nonattainment planning requirements of section 182, which are exclusively linked to that standard are no longer "required" for the area. Thus, there is no longer a need for EPA to promulgate a FIP for the area or to impose sanctions for the purpose of encouraging the State to submit a section 182 State implementation plan (SIP). The EPA previously has taken this identical interpretation of the CAA in the redesignation context. *See e.g.*, 62 FR 32204, 32206 (June 13, 1997).

Comment: Several commenters voiced opposition to the determination that the 1-hour standard no longer applies to the ten areas since the areas did not follow the redesignation process under section 107(d)(3)(E) of the CAA, particularly, the requirements for permanent and enforceable reductions in emissions and maintenance plans. In addition, the commenters believe that EPA's action is arbitrary, capricious, an abuse of discretion, and contrary to required procedures. They are fearful that important programs such as reasonably available control technology and enhanced inspection and maintenance may be opposed in certain Ozone Transport Region (OTR) States. Moreover, they are concerned that conformity determinations, as required under section 176, whereby highway and other transportation programs are evaluated based on the area's current and long-term air quality goals would no longer be performed due to the lack of maintenance plans with definite budgets. They advocate that areas should prepare maintenance plans to ensure continued improvement in air quality. The commenters also claim that EPA violated the procedural requirements of section 307 of the CAA and the Administrative Procedure Act. In addition, the commenters assert that this rule is contrary to EPA's proposed interim implementation policy on the new or revised ozone and particulate matter national ambient air quality standards (NAAQS), which was published at the same time as the proposed revision to the ozone NAAQS.

Response: The Agency has previously addressed these concerns in earlier final actions on the determination that the 1-hour standard no longer applies (i.e., 63 FR 31014, June 5, 1998 and 63 FR 39432, July 22, 1998). The EPA's final ozone rule, which was promulgated after the proposed interim policy, provided EPA's final position on the revocation of the 1-hour standard. Therefore, procedurally, EPA is acting consistently with its rule establishing the procedure for revoking the 1-hour standard. In addition, the commenters are incorrect regarding the substance of the proposed interim policy. The commenters contend that the proposed interim policy identified a procedure whereby areas would need to meet the requirements of section 107(d)(3)(E) as a prerequisite to a change in an area's attainment status. In that policy, EPA provided that "designations remain in effect after promulgation of the new NAAQS until new designations are undertaken after promulgation of the new NAAQS." 61 FR 65752, 65754 (Dec. 13, 1996). The EPA also discussed the ability of areas to seek redesignation while the 1-hour standard (and related designations) remain in effect, but did not state that the redesignation criteria of section 107(d)(3)(E) needed to be met for designations to be removed where the 1-hour standard is no longer applicable.

Comment: Several commenters voiced concerns that today's final rule would in effect result in reduction of Federal funds to Massachusetts via the Congestion Mitigation and Air Quality Improvement Program (CMAQ) since the Massachusetts areas would no longer be in nonattainment and would not have a maintenance plan in place. They noted that the Federal Highway Administration's Interim CMAQ Guidance does not provide for continued funding for areas where the standard is revoked, and the Transportation Equity Act for the 21st Century (TEA–21) does not provide for CMAQ funding for areas under the new 8-hour standard. The commenters wish to explore ways to keep CMAQ funding under the current and proposed Federal regulations. They offered a suggestion

for remedying the situation which included allowing the State of Massachusetts to voluntarily submit a maintenance plan. They believe that such a maintenance plan would ensure proper planning for mobile source emissions during the transition from the 1-hour standard to the 8-hour standard.

Response: The purpose of today's final rule is to determine where areas have attained the 1-hour standard. Today's final rule does not address eligibility for funding under CMAQ. The EPA acknowledges that current transportation policies, as well as the recent TEA–21 legislation, do not adequately address the issue of continued funding under CMAQ. However, EPA does not believe the suggestion for voluntary submittal of maintenance plans would resolve the issue. The TEA–21 provides CMAQ monies only for nonattainment and maintenance areas. Maintenance areas are defined as areas which have been redesignated from nonattainment to attainment under 107(d) of the CAA. Having made the determination that these Massachusetts areas have air quality that attains the 1-hour standard and that the 1-hour standard therefore no longer applies to those areas, EPA believes it no longer has the authority to make any designations, either of attainment or nonattainment, with respect to that standard for those areas. Since redesignation is necessary for a former nonattainment area to become an attainment area and subject to requirements for maintenance plans, the voluntary submittal of a maintenance plan in the absence of a redesignation to attainment would not create a maintenance area under TEA–21. The Agency understands the commenters' concerns with respect to loss of CMAQ funding in these areas and we will be working with the Federal Highway Administration to explore options for future funding.

Comment: One commenter supported the Agency's assessment that Door County, Wisconsin, is attaining the 1-hour ozone standard based on data for the period of 1996–1998.

Response: The Agency acknowledges receipt of this letter of support for today's final rule.

Comment: One commenter states that designations must be based on the status of the area with regard to all applicable standards "for the pollutant." The commenter believes that an area is designated nonattainment if either of its multiple NAAQS for a particular pollutant is violated.

Response: EPA has historically designated areas based on the existing health-based standard or standards for a pollutant. Thus, for purposes of PM–10, EPA has typically had one designation though there are two health-based standards—an annual and a 24-hour standard. For ozone, there has historically been one health-based standard and only one designation for the health-based ozone standard. At the time that EPA promulgated a revised health-based standard for ozone—the new 8-hour standard—EPA determined to retain the 1-hour standard to facilitate the transition to the revised standard; however, EPA did not retain the 1-hour standard as a health-based standard. At that time, EPA indicated that it would follow the initial designation process for designating areas for the 8-hour standard, 62 FR 38421, 38424–25 (July 18, 1997) and provided the process for revoking the 1-hour standard and removing the designations for that standard. 62 FR 38856, 38873 (July 18, 1997).

The approach EPA chose in 1997 is supported by the language of the CAA. Section 107(d)(1) of the CAA requires EPA to designate areas "after promulgation of a new or revised national ambient air quality standard for any pollutant." For newly promulgated or revised standards, this provision contemplates new designations rather than redesignations (see 107(d)(3)) or the continuation of an existing designation (see 107(d)(4)). In addition, the provisions in section 107 and elsewhere in the CAA refer to designations for the "national ambient air quality standard for any pollutant." *See e.g.*, CAA section 107(d)(1)(A). The phrase quoted by the commenters, "for the pollutant," modifies the clause requiring designations for NAAQS. Thus it is appropriate for EPA to have designations for the revised health-based NAAQS separate from those for the 1-hour NAAQS, which was retained to facilitate the transition to the 8-hour standard but not as a standard necessary to protect the public health or the environment.

IV. Final Rulemaking Action

The ozone tables codified in today's final rule are significantly different from the tables now included in 40 CFR part 81 for these ten areas. The current 40 CFR part 81 designation listings (revised November 6, 1991; June 5, 1998; and July 22, 1998) include, by State and NAAQS pollutant, a brief description of areas within the State and their respective designations. Today's final rule includes completely new entries for the ten ozone areas covered by today's rule.

V. Other Regulatory Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The OMB has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604), unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This final rule will not have a significant impact on a substantial number of small entities because the determination that the 1-hour standard ceases to apply does not subject any entities to any additional requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least-burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Today's final rule will not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866, and it implements a previously promulgated health or safety-based Federal standard.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute, and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of the affected State, local and tribal governments; the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's final rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The identified areas are not located in tribal lands, and this final rule does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

G. Paperwork Reduction Act

This final rule does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

H. Executive Order 12898: Environmental Justice

Under E.O. 12898 each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's final rule (identifying additional ozone areas where the 1-hour standard is no longer applicable) does not adversely affect minorities and low-income populations because the new, more stringent 8-hour ozone standard is in effect and provides increased protection to the public, especially children and other at-risk populations.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's final rule does not require the public to perform activities conducive to the use of VCS.

J. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Issued in Washington, D.C. on May 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 81.320, the table entitled "Maine—Ozone (1-Hour Standard)" is amended by revising the entry for "Portland Area" and revising footnote 2 to read as follows:

§ 81.320 Maine.

* * * * *

MAINE—OZONE
[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Portland Area:				
Cumberland County	June 9, 1999	1 hr.std.N.A.[2]		
Sagadahoc County	June 9, 1999	1 hr.std.N.A.[2]		
York County	June 9, 1999	1 hr.std.N.A.[2]		
* * * * * * *				

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

3. In § 81.322, the table entitled "Massachusetts-Ozone (1-Hour Standard" is amended by revising the entry for "Boston-Lawrence-Worcester (E.Mass) Area" and adding footnote 2 to read as follows:

MASSACHUSETTS—OZONE
[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Boston-Lawrence-Worcester (E.Mass) Area:				
Barnstable County	June 9, 1999	1 hr.std.N.A.[2]		
Bristol County	June 9, 1999	1 hr.std.N.A.[2]		
Dukes County	June 9, 1999	1 hr.std.N.A.[2]		
Essex County	June 9, 1999	1 hr.std.N.A.[2]		
Middlesex County	June 9, 1999	1 hr.std.N.A.[2]		
Nantucket County	June 9, 1999	1 hr.std.N.A.[2]		
Norfolk County	June 9, 1999	1 hr.std.N.A.[2]		
Plymouth County	June 9, 1999	1 hr.std.N.A.[2]		
Suffolk County	June 9, 1999	1 hr.std.N.A.[2]		
Worcester County	June 9, 1999	1 hr.std.N.A.[2]		
* * * * * * *				

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

§ 81.322 Massachusetts.
* * * * *

* * * * *

4. In § 81.323, the table entitled "Michigan—Ozone (1-Hour Standard)" is amended by revising the entries for "Allegan County Area", "Mason County Area", "Muskegon Area", and "Oceana County Area" to read as follows:

§ 81.323 Michigan.
* * * * *

MICHIGAN—OZONE
[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Allegan County Area:				
Allegan County	June 9, 1999	1 hr.std.N.A.[2]		
* * * * * * *				
Mason County Area:				
Mason County	June 9, 1999	1 hr.std.N.A.[2]		
* * * * * * *				
Muskegon Area:				
Muskegon County	June 9, 1999	1 hr.std.N.A.[2]		
Oceana County Area:				
Oceana County	June 9, 1999	1 hr.std.N.A.[2]		

MICHIGAN—OZONE—Continued
[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * *				

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

5. In § 81.330, the table entitled "New Hampshire—Ozone(1-Hour Standard)" is amended by revising the entry for "Boston-Lawrence-Worcester Area" and "Portsmouth-Dover-Rochester Area" to read as follows:

§ 81.330 New Hampshire.

* * * * *

NEW HAMPSHIRE—OZONE
[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * *				
Boston-Lawrence-Worcester Area:				
Hillsborough County (part)	June 9, 1999	1 hr.std.N.A.[2]		
Pelham Town, Amherst Town, Brookline Town, Hollis Town, Hudson Town, Litchfield Town, Merrimack Town, Milford Town, Mont Vernon Town, Nashua City, Wilton Town.				
Rockingham County (part)	June 9, 1999	1 hr.std.N.A.[2]		
Atkinson Town, Brentwood Town, Danville Town, Derry Town, E Kingston Town, Hampstead Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, Newton Town, Plaistow Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town, Windham Town.				
* * * * *				
Portsmouth-Dover-Rochester Area:				
Rockingham County (part)	June 9, 1999	1 hr.std.N.A.[2]		
Exeter Town, Greenland Town, Hampton Town, New Castle Town, Newfields Town, Newington Town, Newmarket Town, North Hampton Town, Portsmouth City, Rye Town, Stratham Town.				
Strafford County	June 9, 1999	1 hr.std.N.A.[2]		
* * * * *				

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

6. In § 81.340, the table entitled "Rhode Island—Ozone (1-Hour Standard)" is revised to read as follows:

§ 81.340 Rhode Island.

* * * * *

RHODE ISLAND—OZONE
[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Providence (all of RI) Area:				
Bristol County	June 9, 1999	1 hr.std.N.A.[2]		

RHODE ISLAND—OZONE—Continued
[1-Hour Standard]

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Kent County	June 9, 1999	1 hr.std.N.A.[2]		
Newport County	June 9, 1999	1 hr.std.N.A.[2]		
Providence County	June 9, 1999	1 hr.std.N.A.[2]		
Washington County	June 9, 1999	1 hr.std.N.A.[2]		

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

7. In § 81.343, the table entitled "Tennessee—Ozone (1-Hour Standard)" is amended by revising the entry for "Memphis Area" to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—OZONE
[1-Hour Standard]

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
*	*	*	*	*
Memphis Area:				
Shelby County	June 9, 1999	1 hr.std.N.A.[2]		
*	*	*	*	*

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

8. In § 81.350, the table entitled "Wisconsin—Ozone (1-Hour Standard)" is amended by revising the entry for "Door County Area" to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE
[1-Hour Standard]

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Door County Area:				
Door County	June 9, 1999	1 hr.std.N.A.[2]		
*	*	*	*	*

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

[FR Doc. 99–14595 Filed 6–7–99; 10:42 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket Nos. 96–45 and 96–262; FCC 99–119]

Federal-State Joint Board on Universal Service; Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The document Federal-State Joint Board on Universal Services; Access Charge Reform establishes the framework for a new forward-looking high-cost universal service support mechanism. The new mechanism will have a two-part methodology that considers both the relative costs of providing supported services and the states' ability to support those costs using their own resources. In taking these steps, we are moving closer to bringing to fruition the work of the Joint Board and this Commission to render universal service support mechanisms explicit, sufficient, and sustainable as local competition develops. The federal support mechanism would provide support for costs that exceed both the

national benchmark and the individual state's resources to support those costs.

DATES: Effective June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554.

I. Introduction

1. The Telecommunications Act of 1996 (1996 Act) has fostered and accelerated the development of competition in local telecommunications markets across the nation. The 1996 Act also, for the first time, wrote into law the Commission's long-standing policy of supporting universal service. In codifying this federal policy, Congress sought to ensure that universal service remains achievable and sustainable as local competition develops.

2. In this Order, based on recommendations from the Federal-State Joint Board on Universal Service (Joint Board), we take action to achieve this Congressional goal and to ensure that mechanisms exist so that non-rural carriers' rates for services supported by universal service mechanisms remain affordable in all regions of the nation and reasonably comparable to those prevalent in urban areas. In taking these steps, we are moving closer to bringing to fruition the work of the Joint Board and this Commission to render universal service support mechanisms explicit, sufficient, and sustainable as local competition develops.

3. In this Order, we adopt broad revisions to the federal support mechanisms, in light of the Joint Board's most recent recommendations, to permit rates to remain affordable and reasonably comparable across the nation, consistent with the 1996 Act and the competitive environment that it envisions. To accomplish these goals, as recommended by the Joint Board, we establish a methodology for determining non-rural carriers' support amounts, based on forward-looking costs estimated using a single, national model, and a national cost benchmark. We explicitly reconsider and repudiate any suggestion in the *First Report and Order*, 62 FR 32862 (June 17, 1997), that federal support should be limited to 25 percent of the difference between the benchmark and forward-looking cost estimates, in favor of the more nuanced balancing of federal and state responsibilities outlined by the Joint Board. To the extent a state's resources are deemed inadequate to maintain affordable and reasonably comparable rates, the federal mechanism will provide the necessary support. We also adopt today the hold-harmless and portability principles recommended by the Joint Board.

A. The Purpose of Support

4. We agree with the Joint Board that a primary focus in reforming the federal high-cost universal service support mechanism is to enable intrastate rates to remain both affordable and reasonably comparable across high-cost and urban areas. We also agree with the Joint Board that the Commission bears the responsibility to ensure that interstate rate structures comply with the Congressional mandates expressed in the Communications Act of 1934, as amended (the Act). In this section, we adopt the majority of the Joint Board's conclusions and recommendations concerning affordability, reasonable comparability, explicit interstate support, and explicit intrastate support. Pursuant to the Joint Board's recommendation, we are leaving the existing support mechanism in place for non-rural carriers for an additional six months. We anticipate adopting the permanent methodology for calculating and distributing support for non-rural carriers, based on forward-looking economic costs, this fall for implementation on January 1, 2000.

1. Enabling Reasonably Comparable Rates

5. We agree with the Joint Board that a central purpose of federal universal service support mechanisms is to enable rates in rural areas to remain reasonably comparable to rates in urban areas, and we adopt the Joint Board's interpretation of the reasonable comparability standard to refer to "a fair range of urban/rural rates both within a state's borders, and among states nationwide." This does not mean, of course, that rate levels in all states, or in every area of every state, must be the same. In particular, as the local exchange market becomes more competitive, it would be unreasonable to expect rate levels not to vary to reflect the varying costs of serving different areas. The Joint Board and the Commission have concluded that current rate levels are affordable. Therefore, we interpret the goal of maintaining a "fair range" of rates to mean that support levels must be sufficient to prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels. When we use the term "reasonably comparable" throughout this Order, we are referring to this definition of the term.

6. We find that, once we have resolved several implementation issues and further verified the forward-looking cost model, the Joint Board's recommended methodology largely will be an appropriate means for the federal mechanism to ensure that states have the ability to achieve reasonable comparability. Specifically, the Joint Board's proposed methodology will ensure that any state with per-line costs substantially above the nationwide average will receive federal support for those intrastate costs, unless the state has the ability to maintain reasonably comparable rates without such support. States, of course, retain primary responsibility for local rate design policy and, as such, bear the responsibility to marshall state and federal support resources to achieve reasonable comparability of rates.

7. This approach does not consider rates directly. Instead, it uses costs as an indicator of a state's ability to maintain reasonable comparability of rates within the state and relative to other states. We conclude that the underlying assumption in the Joint Board's recommendation—that a relationship exists between high costs and high rates—is a sound one, because rates are generally based on costs. We adopt this approach, in part, because states possess broad discretion in developing local rate designs. State rate designs may reflect a broad array of policy choices that affect actual rates for local service, intrastate access, enhanced services, and other intrastate services. A state facing costs substantially in excess of the national average, however, may be unable through any reasonable combination of local rate design policy choices to achieve rates reasonably comparable to those that prevail nationally. Through an examination of the underlying costs, instead of the resulting rates, we can evaluate the cost levels that must be supported in each state in order to develop reasonably comparable rates. Because responsibility for such support is shared at the federal and state levels, determining the federal portion based on costs rather than rates allows the federal jurisdiction to help accomplish the goal of rate comparability without having to evaluate states' policy choices affecting those rates.

8. By providing support for costs in any state that exceed a benchmark level,

the Joint Board's recommended methodology ensures that the cost levels net of support that must be recovered through intrastate rates—and, by analogy, its assumed rate levels—must substantially exceed the national average. By taking account of the cost levels that must be supported in each state in order to enable reasonable comparability of rates, the Joint Board's methodology ensures that federal support is targeted to areas where it is necessary to achieve its intended purpose—enabling reasonable comparability of rates—and also that overall support levels are no higher than necessary to achieve this goal. We agree with the Joint Board that this methodology will result in federal support levels for each state that are appropriate to achieve the statutory principle of reasonable comparability of rates.

9. In the *First Report and Order*, the Commission concluded that the share of support provided by the federal mechanism should initially be set at 25 percent of the difference between the forward-looking cost of providing the supported services and a national benchmark. In adopting the Joint Board's recommended methodology, we reconsider the Commission's conclusions in the *First Report and Order* regarding the federal share of support. The Joint Board's recommended methodology for enabling reasonable comparability of rates will define the sharing of responsibility between the federal and state jurisdictions for high-cost intrastate universal service support in a way markedly different from the 25 percent federal share methodology adopted in the *First Report and Order*. Instead of allocating responsibility for universal service support based on fixed percentages, the Joint Board's recommended methodology recognizes the states' primary role in enabling reasonable comparability of rates. Under this recommendation, to the extent a state possesses the ability to support its high-cost areas wholly through internal means, the methodology we adopt recognizes that no federal support is required in that state to enable reasonably comparable local rates. Conversely, to the extent that a state faces larger rate comparability challenges than can be addressed internally, our forward-looking methodology places no artificial limits on the amount of federal support that is available, thus resulting in sufficient support as required by the 1996 Act.

10. We find that section 254(b)(3) supports the use of federal support to enable reasonable rate comparability among states. By specifying that "[c]onsumers in all regions of the Nation" should have rates and services reasonably comparable to rates and services in urban areas, we believe that Congress intended national, as opposed to state-by-state, comparisons. Some commenters dispute the Joint Board's interpretation of reasonable comparability. For example, the California Commission asserts that using federal universal service support to enable rate comparability among states would impermissibly expand the scope of section 254(b)(3), and that support should merely seek to enable the reasonable comparability of rates within each state. Similarly, the Maryland Commission claims that the Joint Board's interpretation would lead to the comparison of rural rates in all states to some fictional national urban rate, with the potentially anomalous result that rural rates in a state could be lower than urban rates in that state. The Joint Board's approach for enabling rate comparability relies not on a national urban rate, as the Maryland Commission asserts, but rather on a methodology that ensures that no state will face per-line costs that substantially exceed the costs faced by other states, taking into account the individual state's ability to support its own universal service needs. In this way, the Joint Board sought to ensure that every state has the means at its disposal to achieve reasonable comparability of rates in that state. We agree that the Joint Board's approach is an appropriate way for federal support mechanisms to enable "consumers in all regions of the Nation" to have access to "reasonably comparable" rates. We emphasize again, however, that, because states establish local rates, each state's policies will determine the level of urban rates relative to rural rates in that state.

2. Enabling Affordable Rates

11. We decline to adopt the proposals suggested by the D.C. Commission and Ad Hoc. We continue to believe, consistent with the Joint Board's recommendation, that rates for local service are generally affordable. Indeed, since March 1989, at least 93 percent of all households in the United States have had telephone service, and as of November 1998, the subscribership rate was 94.2 percent. While affordability encompasses more than subscribership, the Joint Board and the Commission agree that the states are better equipped to determine which additional factors can and should be used to measure affordability.

12. The principle of ensuring reasonably comparable rates, set forth in section 254(b)(3), does not specify an income component. To the contrary, although affordability may vary with individual subscriber income, section 254(b)(3)'s statement that consumers in rural and high-cost areas of the country should have access to telecommunications services at rates that are reasonably comparable to rates in urban areas is not qualified. Therefore, we find no congressional mandate for the Commission to implement or to require that states implement means-testing in conjunction with mechanisms designed to provide support to high-cost areas and to enable reasonable comparability of rates nationwide. Affordability problems, as they relate to low-income consumers, raise many issues that are unrelated to the need for support in high-cost areas, and section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates. The specific affordability issues unique to low-income consumers, including all factors that may be relevant to means-testing or other need-based inquiries, are best addressed at the federal level through programs specifically designed for this purpose. Indeed, the Commission already has such programs in place, namely, the Lifeline and Link-Up programs, which provide assistance for low-income consumers to get connected and stay connected to the telecommunications network. As discussed in the *First Report and Order*, we believe that the impact of household income on subscribership is more appropriately addressed through programs designed to help low income households obtain and retain telephone service, rather than as part of the federal high-cost support mechanism.

13. Moreover, forcing states to adopt means testing or limits on rates of return in order to receive federal high-cost support would be contrary to the Joint Board's recommendations. Although it may be within the Commission's jurisdiction to condition federal support on specific state action, the Joint Board recommended against our doing so in the high-cost context. Individual state commissions are in a position to evaluate specific affordability issues facing their respective states, and we believe that individual states should retain the primary responsibility to decide questions of affordability and to weigh the relative importance of factors such as consumer income and local rate design. Therefore, we decline to require means testing for federal high-cost support. An individual state, however,

could voluntarily adopt an explicit support mechanism using means testing or other cost-of-living data, as suggested by the D.C. Commission and Ad Hoc. Although the states retain discretion to adopt such a mechanism, we will continue to monitor the issue of rate affordability, and we will take remedial action, to the extent we have jurisdiction to do so, if it becomes necessary.

3. Making Interstate Support Explicit

14. We agree with the Joint Board that the Commission has the jurisdiction and responsibility to identify support for universal service that is implicit in interstate access charges. Moreover, we agree with the Joint Board that it is part of our statutory mandate that any such support, to the extent possible, be made explicit. In this proceeding and in our pending *Access Charge Reform*, 62 FR 31040 (June 6, 1997), proceeding, we are endeavoring to identify the types of implicit support in interstate access charges and the amount of that support. As we move forward with our efforts to reform interstate access charges, we will develop additional information on the costs of interstate access necessary to evaluate the Joint Board's recommendations in this area and the associated record. The overwhelming majority of commenters addressing the Joint Board's recommendations, however, agree that interstate access rates contain implicit support that should be made explicit. These commenters differ only as to the amount of their estimate of implicit support presently in access rates and the method for making it explicit. We anticipate taking action in the fall of 1999 to resolve the issue of making interstate support explicit, and we will address the Joint Board's recommendations at that time. Although, as explained, the statutory goal of making explicit the support that is currently implicit in interstate access charges is distinct from the statutory goal of ensuring reasonably comparable intrastate rates, we nevertheless recognize the close relationship between the implementation of the permanent revised support mechanism on January 1, 2000 and the *Access Charge Reform* proceeding. We therefore intend to move ahead with access reform in tandem with the implementation of the revised methodology.

4. Making Intrastate Support Explicit

15. Historically, states have ensured universal service principally through implicit support mechanisms, such as geographic rate averaging and above-cost pricing of vertical services, such as call waiting, voice mail, and caller ID. We agree with the Joint Board that the 1996 Act does not require states to adopt explicit universal service support mechanisms. Section 254(e) does not specifically mention state support mechanisms. Section 254(b)(5) declares that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." Section 254(f) provides that states "may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." The permissive language in both of these sections demonstrates that Congress did not require states to establish explicit universal service support mechanisms. Accordingly, our actions today are consistent with the directives of the 1996 Act.

16. As the Joint Board acknowledged, however, the development of competition in local markets is likely to erode states' ability to support universal service through implicit mechanisms. We agree with the Joint Board that the erosion of intrastate implicit support does not mean that federal support must be provided to replace implicit intrastate support that is eroded by competition. Indeed, it would be unfair to expect the federal support mechanism, which by its very nature operates by transferring funds among jurisdictions, to bear the support burden that has historically been borne within a state by intrastate, implicit support mechanisms. The Joint Board stated that states "possess the jurisdiction and responsibility to address these implicit support issues through appropriate rate design and other mechanisms within a state," and it concluded that states "should bear the responsibility for the design of intrastate funding mechanisms." The Joint Board's position is consistent with the methodology that it recommended for determining federal support levels. That methodology does not mandate any particular state action, but assumes that states will take some action, whether through rate design or through an explicit support mechanism, to support universal service within the state, and provides for federal support where such state efforts would be insufficient to achieve reasonable comparability of rates. We will continue to monitor state efforts at eliminating implicit support and will consider additional measures should state efforts be insufficient in this regard.

B. Methodology for Estimating Costs and Computing Support

17. We are adopting the majority of the Joint Board's recommendations for a revised methodology for estimating costs and calculating federal support levels to enable reasonably comparable local rates for non-rural carriers. We are seeking further comment, however, on specific implementation issues in an Further Notice of Proposed Rulemaking (*FNPRM*). We conclude that the revised universal service high-cost support mechanism shall take effect on January 1, 2000. We anticipate that by January 1, 2000, the Commission will have made final determinations on all outstanding issues raised, and all verification of the cost model that will be used to estimate the forward-looking costs of providing supported services will have been completed.

18. Specifically, we adopt the Joint Board's recommendation that forward-looking economic costs should be used to estimate the costs of providing supported services. We also adopt the Joint Board's general recommendation that the methodology should rely primarily on states to achieve reasonably comparable rates within their borders while providing support for above-average costs to the extent that such costs prevent the state from enabling reasonable comparability of rates. We further adopt the Joint Board's recommendations that this explicit federal support mechanism should not be significantly larger than the current explicit federal mechanism.

1. Forward-Looking Economic Costs

19. We adopt the Joint Board's recommendation that support calculations be based on forward-looking costs, and that those costs be estimated using a single national model. As we stated in the *First Report and Order*, a methodology based on forward-looking economic costs will "send the correct signals for entry, investment, and innovation in the long run." Many commenters support the use of forward-looking economic costs as the basis for estimating the costs of providing the supported services, because the use of forward-looking economic costs will encourage efficient entry and investment. The use of a carrier's book costs, by contrast, would not allocate support in a competitively neutral manner among potentially competing carriers. Instead, such a system would tend to distort support payments because current book costs are influenced by a variety of carrier-specific factors, such as the age of the plant, depreciation rates, efficiency of

design, and other factors. Support based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254, particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs.

20. Although we believe that forward-looking costs will set support levels most efficiently, we decline to adopt a suggestion of the Ohio Consumers' Counsel that carriers should receive the lesser of either current amounts of high-cost support or a forward-looking economic cost model-based amount. The hold-harmless provision set forth in of this Order is intended to prevent dislocation and rate shocks as we make the transition to a support system based on forward-looking costs. As noted, we intend for the Joint Board and the Commission to re-evaluate non-rural carriers' support mechanisms, including the hold-harmless provision, three years from the date that the revised mechanism is implemented.

21. Although some commenters have expressed concerns about the accuracy of the outputs of the cost model, we agree with the Joint Board that a national forward-looking model will provide a more consistent approach by which to develop a method for measuring rate comparability than would individual state cost studies. We believe state cost studies could rely on differing forward-looking cost methodologies, including differing assumptions or input data elements that would prevent meaningful comparisons of the resulting forward-looking cost estimates, and thus would provide a less accurate and consistent picture by which we could evaluate the cost levels that must be supported in each state to develop reasonably comparable rates. Therefore, we reject the use of state cost studies for the purpose of developing our method for rate comparability. States, of course, retain the flexibility to design state-level support mechanisms using other indicators of cost.

22. At this time, however, there has not been adequate time to verify the results of the cost model and to verify that certain input data elements are accurate. Thus, we cannot implement immediately a revised high-cost support mechanism based on forward-looking economic costs. We anticipate that the model and the input data will be verified and ready for use by January 1, 2000.

23. The Joint Board recommended that, if the Commission did not implement a forward-looking support mechanism on July 1, 1999 to enable the reasonable comparability of non-rural carriers' rates, the Commission should provide interim relief to high-cost states served primarily by non-rural carriers. In formulating this Order, we have continued to consult with the state Joint Board members, and they recently filed a letter stating that the Commission should not adopt an interim mechanism, given the brevity of the implementation delay that we adopt today. The state Joint Board members state that they have been unable to develop a workable interim solution, and that the administrative complexity of overlaying changes in collection and disbursement onto the existing system for only six months does not appear prudent. In light of the state members' position on this issue, and the reasons they present in their letter, we conclude that we should not adopt an interim support mechanism at this time.

2. Shared Federal-State Responsibility for Reasonably Comparable Rates

24. We agree with the Joint Board that the states share responsibility for universal service, and that states should have "specific, predictable, and sufficient" mechanisms in place to maintain and advance universal service. We further agree with the Joint Board that, because rates are generally affordable, and subscribership is high in most parts of the country, federal involvement may be limited to instances where states face significant obstacles in maintaining reasonably comparable rates. Because affordability is closely tied to local rate levels, established and regulated by the states, we conclude that states are well-positioned to adopt local rate structures and intrastate universal service support mechanisms that maintain affordable and reasonably comparable rates on a statewide basis. Federal mechanisms, in contrast, will assure that these goals are met nationally by providing support to those states where the cost of providing the supported services substantially exceed the national average. We find that the appropriate balance of responsibility for enabling reasonably comparable local rates can be struck through the methodology recommended by the Joint Board. Accordingly, we reconsider and reject the decision in the *First Report and Order* that the federal share of support should be limited to 25 percent of the difference between the forward-looking cost of providing the supported services and a national benchmark, and directed only to the interstate jurisdiction.

3. Determination of Federal Support Amounts

(1) Determining the National Benchmark. 25. We adopt the Joint Board's recommendation that federal high-cost intrastate support should be determined using a cost-based benchmark and should be provided where states are unable to provide sufficient intrastate universal service support to non-rural carriers with costs that exceed a national benchmark. In so doing, we reconsider and reject the determination in the *First Report and Order* that federal support for rate comparability should be determined using a revenue-based benchmark. Given the focus of the *Second Recommended Decision*, 63 FR 67837 (December 9, 1998), on rate comparability, and its recommendation that the Commission should rely on the cost of providing the supported services when determining support amounts, rather than local rates, we believe that a cost-based benchmark is more appropriate. We agree with the Joint Board's re-examination of this issue and its departure in the *Second Recommended Decision* from its original recommendation that a cost-based benchmark should not be used. We have continued to coordinate with the Joint Board in developing specific details of the methodology for determining high-cost support for non-rural carriers.

26. In the first step of the revised support methodology, areas will be identified where the forward-looking cost of providing the supported services exceeds the benchmark amount. We agree with the Joint Board that a cost-based benchmark provides a better gauge with which to identify areas in need of support to enable reasonably comparable rates than would a revenue benchmark. Contrary to the assertions of some commenters, revenues may not accurately reflect the level of need for support to enable reasonably comparable rates because states have varying rate-setting methods and goals.

(2) Determining a State's Ability to Support its High-Cost Areas. 27. We further agree with the Joint Board that federal support should be available to enable local rate comparability if the state cannot do so on its own, and thus that federal support for this purpose should be determined based, in part, on a state's ability to support its universal service needs internally. Given the difficulties in determining a state's ability to support its high-cost areas, and after extensive consultation with the Joint Board, we have concluded that a set dollar amount per line is an

appropriate method by which to ascertain a state's internal ability to achieve rate comparability. We agree with the Maine Commission that a fixed dollar amount per line is a reasonably specific and certain method by which to determine a state's share of responsibility for universal service support. We also believe that using a fixed dollar amount per line is an administratively simple methodology that can be applied in a consistent manner to all states. In this Order, however, we have not set a specific per-line dollar amount.

28. We agree in principle with those commenters that assert that using a fixed percentage of each state's intrastate revenues as the level of the state's responsibility for its universal service needs could unduly burden high-cost states that also have high intrastate revenues because they currently have high rates due to high costs. However a state chooses to bear its universal service burden (*i.e.*, through existing, implicit rate designs or through an explicit support mechanism), the ability to spread the burden over a larger number of lines will make the burden easier for a state to bear. In contrast, using the ratio of high-cost to low-cost lines, one method suggested by the Joint Board, may not be as predictable as using a fixed dollar amount per line, because the number of high-cost to low-cost lines may fluctuate over time. Using the ratio of high-cost to low-cost lines also would be an administratively difficult method of determining a state's internal ability to achieve rate comparability, given the fact that supporting data would need to be obtained from a variety of sources in each state. Finally, the Joint Board's recommendation that intrastate support be calculated as a percentage of intrastate telecommunications revenues was based in part on its judgment that intrastate telecommunications revenues provide a rough measure of the funds available to support intrastate mechanisms. Because we have decided to adopt a cost-based benchmark rather than a benchmark that is based on revenues, we do not believe that a percentage-based cap on intrastate responsibility would in every case provide a meaningful measure of a state's ability to fund intrastate support.

29. We emphasize that states are not, through the adoption of this approach, required to impose a per-line charge to support universal service, nor are carriers necessarily entitled to recover this amount from new or explicit state mechanisms. As the Joint Board explained, this amount reflects a reasonable estimate of the state's ability to achieve reasonably comparable rates on a statewide basis and establishes a level above which federal support, consisting of funds transferred from other jurisdictions, should be provided to assist the state in achieving rates that are reasonably comparable to those in other states. States largely are already making use of this ability by providing carriers with substantial universal service support, often through rate averaging and other rate design methodologies, and states are best positioned to determine how and whether these mechanisms need to be altered to ensure that carriers do not double-recover universal service support. Given the substantial amounts of universal service support already built into state rate designs, we agree with the Joint Board that providing the full amount of support determined by the federal methodology from federal mechanisms, without any estimate of state support, is likely to lead to carrier double-recovery.

30. Thus, in the second step of the revised support methodology, an assessment will be made as to whether the perceived support need, as established in the first step of the methodology, exceeds the state's ability to achieve reasonable comparability of rates. The state's ability will be estimated by multiplying a dollar figure by the number of lines served by non-rural carriers in the state. Any needed support that exceeds this estimate of the state's ability to support its own high-cost areas will be provided by the federal mechanism. In this way, the mechanism will ensure that every state will have adequate resources to ensure reasonably comparable rates.

4. Size of the Federal Support Mechanism and Hold-Harmless

31. In this Order, we adopt the recommendation of the Joint Board that a hold-harmless provision should be implemented to prevent substantial reductions of federal support and potentially significant rate increases. Adoption of a hold-harmless provision will both serve to avoid any potential rate shock when the new federal support mechanism goes into effect, and to prevent undue disruption of state rate designs that may have been constructed upon, and thus are dependent upon, current federal high-cost support flows. We agree with the Joint Board that the hold-harmless amounts should be provided in lieu of the amounts computed by the two-step forward-looking methodology described, whenever the hold-harmless amount exceeds the amount indicated by the forward-looking methodology.

32. In determining the size of the new federal mechanism to enable reasonably comparable local rates, we must fulfill our statutory obligation to assure sufficient, specific, and predictable universal service support without imposing an undue burden on carriers and, potentially, consumers to fund any increases in federal support. Because increased federal support would result in increased contributions and could increase rates for some consumers, we are hesitant to mandate large increases in explicit federal support for local rates in the absence of clear evidence that such increases are necessary either to preserve universal service, or to protect affordable and reasonably comparable rates, consistent with the development of efficient competition. Rather, we agree with the Joint Board that current conditions do not necessitate substantial increases in federal support for local rates. We believe that limiting the amount of new support that each state receives under the new mechanism is consistent with the Joint Board's recommendation that the amount of such federal support should not increase significantly.

33. The Joint Board initially recommended that having the federal mechanism calculate support using study-area average costs would be one way roughly to maintain the current size of the federal mechanism. Indeed, the current system calculates costs using study area-averaged costs. While we agree with the Joint Board that there is no current need for large increases in the size of the federal support mechanism for local rates, we are seeking further comment in an *FNPRM* on whether it is equally important, even at this early stage in the development of local competition, to provide support that is calculated at a more granular level. Given that telephone service currently is largely affordable, and any significant increase in the size of federal support for local rates appears unnecessary, we conclude that we should limit the size of the federal mechanism, as recommended by the Joint Board.

5. Portability of Support

34. In the *Second Recommended Decision*, the Joint Board recommended that the Commission maintain the policy established in the *First Report and Order* of making high-cost support available to all eligible telecommunications carriers, whether they be incumbent LECs, competitive carriers, or wireless carriers. The Joint Board stated that portable support is consistent with the principle of competitive neutrality, and expressed

its continued support for competitive neutrality as a guiding principle of universal service reform. GTE and USTA expressed general support for this recommendation.

35. We conclude, consistent with the Joint Board's recommendation, that the policy the Commission established in the *First Report and Order* of making support available to all eligible telecommunications carriers should continue. All carriers, including commercial mobile radio service (CMRS) carriers, that provide the supported services, regardless of the technology used, are eligible for ETC status under section 214(e)(1). We reiterate that the plain language of section 214(e)(1) prohibits the Commission or the states from adopting additional eligibility criteria beyond those enumerated in section 214(e)(1). We also reaffirm that under section 214(e), a state commission must designate a common carrier, including carriers that use wireless technologies, as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1). We re-emphasize that the limitation on a state's ability to regulate rates and entry by wireless service carriers under section 332(c)(3) does not allow the states to deny wireless carriers ETC status.

36. We agree with the Joint Board that competitive neutrality is a fundamental principle of universal service reform, and that portability of support is necessary to ensure that universal service support is distributed in a competitively neutral manner. We also agree with US West that "portability" of support should not be used to divert federal funds from high-cost areas to other areas. For this very reason, we conclude that all carriers, both incumbent LECs and competitive LECs, must use high-cost support in a manner consistent with section 254.

37. Although we adopt a hold-harmless provision we do not believe that the Joint Board intended incumbent LECs to be held harmless for federal high-cost support amounts that they lose when a customer elects to switch carriers and begins taking service from a competitive LEC. Such a conclusion would contravene the Joint Board's desire that competitive neutrality be a driving force behind universal service reform. Moreover, it would eviscerate the concept of "portable" support if the loss of customers to a competitor did not change the incumbent's support amounts. We conclude, therefore, that incumbent LECs will not be held harmless for reductions in their federal high-cost support amounts that result from competitive LECs capturing that incumbent LEC's customers. In addition, a competitive LEC or other carrier that gains an incumbent LEC's customers, and hence any high-cost support that the incumbent LEC had received for those customers, may only use that support in a manner consistent with section 254.

6. Use of Support

38. We conclude that carriers must apply federal high-cost universal service support in a manner consistent with section 254. Specifically, section 254(e) requires carriers to use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

39. We also conclude that, if we find that a carrier has not applied its universal service high-cost support in a manner consistent with section 254, we have the authority to take appropriate enforcement actions. States or other parties may petition the Commission, pursuant to section 208 of the Act, if such parties believe that a common carrier has misapplied its high-cost universal service support. States or other parties should avail themselves of the Commission's formal complaint procedures if they believe that a common carrier is not using its federal universal service high-cost support in accordance with the directions we have set forth in this Order. Because the Commission's statutory authority under section 208 extends to violations of the Act by all common carriers, we conclude that all potential recipients of high-cost support would be subject to our enforcement jurisdiction. Depending on the nature of the complaint, furthermore, a complaint filed by a party against a common carrier alleging misapplication of universal service high-cost support could qualify for resolution under the Commission's "accelerated docket" procedures.

C. Carrier Recovery of Universal Service Contributions from Consumers

40. Because we have resolved, or are resolving, all of the carrier recovery issues in the *Truth-in-Billing* proceeding, we need not revisit them here. We continue to believe that the ongoing *Truth-in-Billing* proceeding, with the detailed record being developed there, is the correct forum to resolve these issues. We wish to emphasize, however, that prior to the adoption in the *Truth-in-Billing* proceeding of any final standardized label for universal service charges on consumer bills, we will not hesitate to take enforcement action against carriers who engage in unjust or unreasonable practices in violation of section 201(b).

D. Assessing Contributions from Carriers

41. The Fifth Circuit has not yet issued a decision in *Texas Public Utility Counsel* v. *FCC*. While we acknowledge the Joint Board's observation that changing the assessment base to include both interstate and intrastate end-user telecommunications revenues would ease burdens on carriers that would not otherwise have to separate revenues on a jurisdictional basis and that a broader revenue base would result in a lower assessment rate, these recommendations are contingent upon the Fifth Circuit's decision in *Texas Public Utility Counsel* v. *FCC*. Accordingly, pending further resolution of this matter by the Fifth Circuit, the assessment base and the recovery base for contributions to the high-cost and low-income universal service support mechanism that we adopted in the *First Report and Order* shall remain in effect.

E. Unserved Areas

42. During the proceedings that led to the *Second Recommended Decision*, the Arizona Corporation Commission submitted a proposal to use a portion of federal support to address the problem of unserved areas and the inability of low-income residents to obtain telephone service because they cannot afford to pay line extension or construction charges. In the *Second Recommended Decision*, the Joint Board expressed its interest in ensuring that telephone service is provided to unserved areas, and recognized that states other than Arizona may have unserved areas that may need to be examined. Because providing service to unserved areas has historically been addressed by the states, the Joint Board concluded that the states should continue to address unserved area problems, to the extent they are able to do so. The Joint Board recognized, however, that there may be some circumstances that warrant federal universal service support for line extensions to unserved areas. The Joint Board recommended that the Commission investigate the question of unserved areas in a separate proceeding and determine, in consultation with the Joint Board, whether there are unserved areas that warrant any federal universal service consideration.

43. We agree with the Joint Board that, while the states have historically addressed the issue of providing service to unserved areas, there may be unserved areas, or inadequately-served areas characterized by extremely low density, low penetration, and high costs

that warrant additional federal universal service support. Commenters who addressed this issue agree with the Joint Board that the Commission should investigate this issue further. Bringing service to these areas is clearly within the goal of the 1996 Act to accelerate deployment of services to "all Americans." In accordance with the Joint Board's recommendations, therefore, we will initiate a separate proceeding in July of 1999 to more fully develop the record on this issue, and investigate the nature and extent of the "unserved area" issue in the nation. We anticipate that, as a result of this separate proceeding, and in consultation with the Joint Board, we will be better able to determine whether any of these unserved areas should receive federal universal service support.

F. Periodic Review

44. In the *Second Recommended Decision*, the Joint Board noted that the 1996 Act contemplates that the Joint Board may periodically make recommendations to the Commission regarding modifications in the definition of services supported by the federal universal service support mechanism. In addition to recommending that the Commission continue to consult with the Joint Board on matters addressed in the *Second Recommended Decision*, the Joint Board specifically recommended that the Joint Board and the Commission broadly reexamine the high cost universal service mechanism no later than three years from the implementation date of the revised universal service high-cost mechanism.

45. We affirm our commitment to consulting with the Joint Board on an ongoing basis on issues addressed in this Order. We agree with the Joint Board that both ongoing and periodic review is necessary in light of the fact that the telecommunications industry is rapidly changing, and both competition and technological change may affect universal service needs in rural, insular, and high cost areas. We conclude that, in addition to ongoing consultation with the Joint Board, the Commission and the Joint Board shall, on or before January 1, 2003, comprehensively examine the operation of the high cost universal service mechanism implemented in this Order, including the hold-harmless mechanism.

II. Procedural Matters

A. Regulatory Flexibility Act

46. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification. The RFA generally defines "small entity" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. The Small Business Administration (SBA) defines a "small business concern" as an enterprise that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.

47. We conclude that neither an IRFA nor a FRFA are required here because the foregoing *Report and Order* adopts a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations, affiliates of such corporations, or dominant in their field of operations. Therefore, we certify, pursuant to section 605(b) of the RFA, that the final rule adopted in the *Report and Order*, will not have a significant economic impact on a substantial number of small entities. The Office of Public Affairs, Reference Operation Division, will send a copy of this certification, along with this *Report and Order*, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification, *Report and Order* (or summaries thereof) will be published in the **Federal Register**.

B. Effective Date of Final Rules

48. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the **Federal Register**. Pursuant to our rules, our existing high-cost support mechanism is scheduled to be phased out on July 1, 1999. In this Order, however, we conclude that the new forward-looking high-cost support mechanism should be implemented on January 1, 2000, instead of July 1, 1999, as previously planned. The amendments we adopt in this Order extend the present high-cost support mechanism from July 1, 1999, until January 1, 2000, when the new forward-looking high-cost support mechanism will be implemented. Thus, the amendments must become effective before July 1, 1999. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required July 1, 1999 effective date. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

III. Ordering Clauses

49. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 214, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 214, 254, 303(r), 403, and 410, the Report and Order is adopted, June 9, 1999.

50. It is further ordered that part 36 of the Commission's rules, 47 CFR 36, is amended as set forth, effective immediately upon publication of the text thereof in the **Federal Register**.

List of Subjects in 47 CFR Part 36

Reporting and recordkeeping requirements and Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

§ 36.601 [Amended]

2. In 47 CFR 36.601(c) remove the date "July 1, 1999" and add, in its place each place it appears, the date "January 1, 2000."

[FR Doc. 99–14698 Filed 6–8–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 990513131–9153–02; I.D. 051299B]

RIN 0648–AM69

Atlantic Tuna Fisheries; Regulatory Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic bluefin tuna fisheries to establish, for 1999 only, a deadline of 4:00 P.M. on June 11 for requesting Atlantic Tunas permit category changes. NMFS had previously suspended the normally applicable deadline of May 15 to provide vessel owners the opportunity to consider category changes after publication of a final rule to implement the Highly Migratory Species Fishery Management Plan (HMS FMP) and the final 1999 bluefin tuna (BFT) quota specifications and after publication of a proposed rule on the use of spotter aircraft since these actions could affect the allowable operations of several fishing categories. Now that the final rule and quota specifications have been issued and the proposed spotter aircraft rule has been published, vessel owners are able to make an informed choice of fishing category.

DATES: Effective 4:00 p.m. on June 11, 1999.

ADDRESSES: Requests for copies of the final rule and information on obtaining an Atlantic tunas permit should be directed to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to issue such regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations to carry out ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

NMFS previously issued an interim final rule to suspend the deadline for BFT permit category selection for the 1999 fishing season (64 FR 27207, May 19, 1999). The normal deadline for BFT fishing category selection of May 15 was suspended in response to comments received on a proposed rulemaking to implement the HMS FMP (64 FR 3154, January 20, 1999) and proposed BFT quota specifications (64 FR 9298, February 25, 1999), particularly with respect to the use of spotter aircraft in the commercial BFT categories. Certain aspects of the final rule to implement the HMS FMP and final BFT quota specifications, as well as any new regulations governing the use of spotter aircraft, would, in combination, affect catch limits, gear restrictions, and fishing opportunities in several permit categories. NMFS received comment that it would be impossible to make a rational choice of permit category until final rules and quota specifications are issued.

NMFS has since issued a final rule to implement the HMS FMP (64 FR 29090, May 28, 1999) and final BFT quota specifications and effort controls (64 FR 29806, June 3, 1999). Additionally, NMFS has published a proposed rule to address issues related to the use of spotter aircraft in the BFT fisheries (64 FR 29984, June 4, 1999). Given this information, vessel owners and operators are able to make an informed choice of BFT fishing category for the 1999 fishing year.

Comments and Responses

NMFS received several comments regarding a permit category deadline for 1999. Comments were generally in favor of establishing a deadline as early as possible after the start of the General and Harpoon category fisheries on June 1. A number of commenters noted that a prior suspension of the deadline in the 1997 fishing year resulted in a disruption of the fisheries as many vessel operators switched categories after the fisheries opened, especially once the Harpoon category quota was reached. These commenters noted that NMFS must establish the deadline early enough in the 1999 fishing year to avoid the problems associated with switching categories after any one category quota is reached and that fishing category is closed.

NMFS notes that the objective of the deadline continues to be to prevent vessel operators from fishing in more than one category in a single fishing year. NMFS, therefore, agrees that the deadline must be established as soon as possible to achieve consistency with the objective. Although the proposed spotter plane rule has a comment period which extends through June 22, 1999, establishing a deadline after that date would substantially increase the likelihood that the Harpoon category quota will have reached and the category closed prior to the deadline. NMFS agrees that the disruptions in the BFT fisheries caused by category switching in 1997 should be avoided to the extent possible. Given that the final HMS FMP rule and BFT quota specifications have been issued and that the proposed spotter plane rule has been published for public review and comment, NMFS has determined that sufficient information is available to vessel operators to enable a reasoned decision as to what permit category they should select for 1999.

NMFS, therefore, establishes a deadline of 4:00 P.M. on June 11, 1999, for permit category selection. Given the amount of public comment on the deadline during the comment periods associated with the proposed HMS FMP regulations and the proposed 1999 BFT quota specifications and on the interim final rule that suspended the deadline, NMFS has determined that a deadline of June 11 provides sufficient public notice while maintaining consistency with fishery management objectives. NMFS will rapidly communicate the deadline to fishery participants through its FAX network and Atlantic tunas information line.

Vessel operators wishing to change fishing categories should renew permits as soon as possible prior to the deadline by calling NMFS Northeast Region at 978–281–9260. After the deadline, vessel operators may continue to renew permits in the same category or obtain new (first-time) permits through the automated permitting system at 1–888–USA-TUNA or through the internet at *http://www.usatuna.com*.

No requests for changes to Atlantic tunas permit categories will be accepted after 4:00 PM on June 11, 1999, and vessel operators who have not renewed permits for 1999 will be allowed to renew only in the same category as that issued in 1998. Vessel operators who have previously renewed permits for the 1999 fishing year will not be afforded any additional opportunity to request a

change of permit category after 4:00 PM on June 11, and such restriction will apply for the remainder of the calendar year regardless of change in ownership of the vessel.

Please note that regulations require that Atlantic tunas permits be carried on board the vessel and be displayed to dealers purchasing tunas. Therefore, changes in permit category are not effective until the new permit has been issued and is carried on board the vessel. Upon receipt of a new Atlantic tunas permit, any previously-issued Atlantic tunas permit is rendered invalid.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that these regulations are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule involves a collection of information requirement subject to the PRA and approved by OMB under Control Number 0648–0327. The burden associated with Atlantic tunas vessel permits is estimated at 30 minutes per initial permit application and 6 minutes per renewal, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed , and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has determined that, under 5 U.S.C. 553(d)(3), there is good cause to waive partially the requirement for a 30-day delay in effective date as such would be contrary to the public interest. The intent of the permit category selection deadline is to ensure that vessels are used to fish in only one category during a single fishing year. The 1999 BFT fishery is underway and it is possible that the quota for the Harpoon fishing category could be filled prior to the end of a 30-day delay in effective date. Thus, a 30-day delay would likely allow some vessel operators to switch categories after one category has been closed. NMFS has received comment that further postponement of the deadline in 1999 would adversely impact those fishermen in the categories that remain open. As previously stated, NMFS will rapidly communicate the deadline to fishery participants through its FAX network and HMS Information Line.

This final rule follows from an interim final rule for which prior notice and opportunity for public comment was not required by 5 U.S.C. 553 or by any other law. Therefore, under 5 U.S.C. 603 it is not subject to the analytical requirements of the Regulatory Flexibility Act. Accordingly, no regulatory flexibility analysis was prepared.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 4, 1999.

Andrew Kemmerer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.21, paragraph (b)(7) is revised to read as follows:

§ 285.21 Vessel permits.

* * * * *

(b) * * *

(7) Except for purse seine vessels for which a permit has been issued under this section, an owner may change the category of the vessel's Atlantic tunas permit to another category by application on the appropriate form to NMFS or by dialing 1–888–USA-TUNA before the specified deadline. After the deadline, the vessel's permit category may not be changed to another category for the remainder of the calendar year, regardless of any change in the vessel's ownership. In 1999, the deadline for category changes is 4:00 PM on June 11. In years after 1999, the deadline for category changes is 11:59 PM on May 15.

* * * * *

[FR Doc. 99–14655 Filed 6–4–99; 4:31 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 060499A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal apportionment of pollock total allowable catch (TAC) in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 7, 1999, until 1200 hours, A.l.t., September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of pollock TAC is equal to 20 percent of the annual TAC (§ 679.20(a)(5)(ii)(C)). The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that any amount of unharvested first seasonal apportionment of TAC or any amount of TAC harvested in excess of the first seasonal apportionment shall be proportionately added to or subtracted from subsequent seasonal apportionments throughout the remainder of the fishing year, with the provision that no seasonal apportionment shall exceed 30 percent

of the annual TAC (§ 679.20(a)(5)(ii)(C)). This action is consistent with the manner in which underages and/or overages of seasonal apportionments of pollock TAC have been managed in previous years. The pollock TAC in Statistical Area 610 was established by the Final 1999 Harvest Specifications (64 FR 12094, March 11, 1999) as 23,120 metric tons (mt) for the entire 1999 fishing year. In accordance with § 679.20(a)(5)(ii)(C), the second seasonal apportionment of pollock TAC in the Statistical Area 610 is 4,180 mt. This is 444 mt less than the 1999 allocation of 4,624 mt because a 22 percent overage in the previous season's catch has been deducted for this seasonal allowance.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the second seasonal apportionment of pollock TAC in Statistical Area 610 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,980 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the second seasonal TAC limitations and other restrictions on the fisheries established in the final 1999 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the second seasonal apportionment of pollock TAC in Statistical Area 610 of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 4, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14632 Filed 6–4–99; 4:19 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 050499B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal allowance of the 1999 total allowable catch (TAC) of Pacific cod allocated for vessels using hook-and-line and pot gear in this area. Fishing with hook-and-line gear was previously prohibited under halibut mortality bycatch restrictions.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 9, 1999, until 1200 hrs, A.l.t., September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the second seasonal allowance of the TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI during the time period May 1 to August 31 as 8,500 metric tons (mt). See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(A).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal allowance of the TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,400 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the second seasonal allowance of the 1999 TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing second seasonal allowance established for vessels using hook-and-line and pot gear will soon be reached. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient Pacific cod to support bycatch needs in other anticipated groundfish fisheries throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 4, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 99–14631 Filed 6–4–99; 4:19 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 110
Wednesday, June 9, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–06]

Amendment to Class E Airspace; Ossining, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Ossining, NY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 014 helicopter Point in Space approach, has been developed for General Electric Company, Ossining, NY. Controlled airspace extending upward from 700 feet to 1200 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. This action proposes to establish Class E airspace to include the Point in Space approach to General Electric Company. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 9, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 99–AEA–06, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A.Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AEA–06." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Ossining, NY. A GPS Point in Space Approach (SIAP) has been developed for General Electric Company Heliport, Ossining, NY. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F dated

September 10, 1998, and effective September 16, 1998, is proposes to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Ossining NY [New]

General Electric Company, Ossining NY
(Lat. 41°11'16" N., long. 73°35'05" W.)
General Electric Company Heliport
(Lat. 41°11'16" N., long. 73°35'05" W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of General Electric Heliport

* * * * *

Issued in Jamaica, New York on May 27, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–14217 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Regulation of the Operation of Motorized Personal Watercraft in the Gulf of the Farallones National Marine Sanctuary

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Extension of comment period.

SUMMARY: On April 23, 1999, NOAA published a proposed rule and notice of availability of a Draft Environmental Assessment (DEA) restricting the use of motorized personal watercraft in the Gulf of the Farallones National Marine Sanctuary (FR Volume 64, Number 78, pages 19945–19952). On May 20, 1999, NOAA published a notice of public meeting and extension of the comment period. This notice further extends the commend period.

DATES: Comments on the proposed rule or DEA must be received by July 1, 1999.

ADDRESSES: Comments should be sent to Ed Ueber, Sanctuary Manager, Gulf of the Farallones National Marine Sanctuary, Ft. Mason, Building 201, San Francisco, California 94123; fax: (415) 561–6616; email: ed.ueber@noaa.gov. Comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Ueber at (415) 561–6622.

SUPPLEMENTARY INFORMATION: NOAA proposed to amend the regulations governing the Gulf of the Farallones National Marine Sanctuary (Sanctuary) to prohibit the operation of motorized personal watercraft (MPWC) in the nearshore waters of the Sanctuary. Specifically, the operation of MPWC would be prohibited from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile), including seaward of the Farallon Islands. The proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users of the Sanctuary.

The original notice of proposed rule, published on April 23, 1999, had a 30 day comment period, which closed on May 24. On May 16, 1999, NOAA submitted a notice to the **Federal Register**, which was published on May 20, 1999, extending the comment period until June 11, 1999. On May 17, 1999, NOAA received a request to extend the comment period for at least an additional 30 days beyond the original comment period. This extension of comment period until July 1, 1999, is in response to that request.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Ted Lillestolen,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 99–14547 Filed 6–8–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076—AD80

Acquisition of Title to Land in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for the proposed rule published at 64 FR17574–17588, April 12, 1999 on the Acquisition of title to land in trust.

DATES: The comment period is extended from July 12, 1999 to September 12, 1999.

ADDRESSES: You may mail comments to the Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW, MS–4513–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Terry Virden, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, MS–4513, Main Interior Building, 1849 C Street, NW, Washington, DC 20240; by telephone at (202) 208–5831; or by telefax at (202) 219–1065.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1999, the Bureau of Indian Affairs published a proposed rule, 64 FR 17574–17588, concerning the Acquisition of title to land in trust. The deadline for receipt of comments was July 12, 1999. The comment period is extended for sixty days to allow additional time for comment on the proposed rule. Comments must be received on or before September 12, 1999.

Dated: June 3, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–14587 Filed 6–8–99; 8:45 am]

BILLING CODE 4310–02–P

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is changing the prohibition in § 265.6(d)(8) of title 39 of the Code of Federal Regulations (CFR) against disclosure of information contained in PS Form 1583, Application for Delivery of Mail Through Agent, to conform to recent changes in the Domestic Mail Manual. Under the rule change, the recorded business name, address, and telephone number of the addressee using a Commercial Mail Receiving Agency (CMRA) private mailbox (PMB) for the purpose of doing or soliciting business with the public will be furnished to any person upon request without charge.

DATES: Comments must be received on or before July 9, 1999.

ADDRESSES: Written comments should be mailed to Manager, Administration and FOIA, United States Postal Service, 475 L'Enfant Plaza SW, Room 8141, Washington, DC 20260–5202. Copies of all written comments will be available for inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble (202) 268–3197.

SUPPLEMENTARY INFORMATION: The Postal Service has adopted rules amending sections D042.2.5 through D042.2.7 of the Domestic Mail Manual (DMM) to update and clarify procedures for delivery of an addressee's mail to a CMRA.

Section D042.2.6 (b) of the DMM, as recently amended, requires an applicant for delivery of mail through an agent to indicate on PS Form 1583 whether the PMB will be used for the purpose of doing or soliciting business with the public. If so, certain information about the applicant that is contained in PS Form 1583 may be available to the public upon request.

Previous postal policy concerning the disclosure of information from PS Form 1583, as set out in 39 CFR 265.6(d)(8), prohibited disclosure except for the purpose of identifying a particular address as the address of a CMRA. Section 265.6(d)(8) is being changed to permit disclosure of certain information from PS form 1583 upon request, when the PMB is being used for the purpose of doing or soliciting business with the public. This is consistent with disclosure policy applicable to post office boxholders, as set out in 39 CFR 265.6(d)(3), Post office boxholder information. Information from Form 1093, Application for Post Office Box or Caller Number.

List of Subjects in Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees, Release of information.

For the reasons set out in the preamble, the Postal Service proposes to amend 39 CFR part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. In § 265.6 the heading for paragraph (d) is republished and paragraph (d)(8) is revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) Disclosure of names and addresses of customers.

* * * * *

(8) PS Form 1583, Application for Delivery of Mail Through Agent. Information contained in PS Form 1583, Application for Delivery of Mail Through Agent, may not be disclosed to the public, except as follows:

(i) For the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed from PS Form 1583.

(ii) When the delivery address is being used for the purpose of doing or soliciting business with the public, as indicated on PS Form 1583 or by other evidence furnished by the requester (such as an advertising circular). Disclosure will be limited to the recorded business name, street address, and telephone number of the addressee. When the postmaster is unable to determine whether a business use is involved, he shall refer the request to managing counsel of the appropriate field legal office for advice. Only if the addressee's business and home address are the same, will the home address be provided pursuant to this provision.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–13724 Filed 6–8–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–6354–4]

RIN 2060–AI29

Regulation of Fuel and Fuel Additives: Modification of Compliance Baseline

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: With today's action the U.S. Environmental Protection Agency ("EPA", "the Agency", or "we") proposes to evaluate the conventional gasoline emissions, from gasoline that a refiner sells in Puerto Rico in excess of its baseline volume of Puerto Rico gasoline, using only the summer version of the Complex Model. Accordingly, we propose to modify the reformulated gasoline program's anti-dumping compliance baseline calculation. This modification will replace the annual average statutory baseline term with a summer statutory baseline term for purposes of evaluating a refiner's excess Puerto Rico gasoline. We also propose to replace the winter Complex Model with the more climatically appropriate summer Complex Model for all baseline and compliance calculations for Puerto Rico gasoline. The proposed provisions would apply to any refiner that has Puerto Rico gasoline in its individual baseline, has increased production of gasoline for sale in Puerto Rico above its individual baseline volume of Puerto Rico gasoline, and petitions the Agency to apply the proposed modified compliance baseline to its Puerto Rico gasoline. EPA will require any refiner submitting such a petition to recalculate its individual baseline using the summer Complex Model for all Puerto Rico gasoline.

We anticipate that today's action will affect only a single refiner. We have not yet fully evaluated the implications of a general shift toward a climate-sensitive use of the summer and winter Complex Models for other Puerto Rico refiners or gasoline suppliers, or for similarly situated refiners in other regions. However, we request comment from other refiners that produce gasoline for sale in areas not subject to EPA's volatility requirements. Based on the comments we receive, we may or may not proceed with similar future rulemaking action.

DATES: Written comments on this notice must be submitted by July 9, 1999.

ADDRESSES: Interested parties may submit written comments in paper form and/or by E-mail. To ensure their consideration by EPA, all comments must be submitted to EPA by the date indicated under **DATES** above. Paper copies of written comments should be submitted (in duplicate if possible) to Public Docket No. A–99–16 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket Section, Room M–1500, 401 M Street, S.W., Washington, D.C. 20460. The Agency requests that a separate paper copy also be sent to the person listed below under **FOR FURTHER INFORMATION CONTACT.** EPA also encourages that an electronic copy of comments (in ASCII format) accompany the submission of a paper copy (by E-mail to A-and-R-Docket@epa.gov or on a 3.5 inch diskette). Public comments may also be submitted by E-mail to the docket at the address listed above without the submission of a paper copy. However, to ensure the clarity of the submission, EPA encourages that a paper copy accompany the E-mail submission. If comments are submitted by E-mail alone, EPA requests that a copy of the E-mail message that contains the comments be sent to the contact person listed below.

Materials related to this rulemaking are available for review at EPA's Air Docket at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. The telephone number for EPA's Air

Docket is (202) 260–7548, and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner or Felicia Seals-Buchanan, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4287 or x4589, FAX (734) 214–4051, E-mail brunner.christine@epa.gov or seals-buchanan.felicia@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include those involved with the production, distribution and sale of gasoline motor fuel. Regulated categories and entities include:

Category	NAICS[1] codes	SIC[2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To decide whether your organization might be affected by this action, you should carefully examine the proposed and existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Access to Rulemaking Documents Through the Internet

Today's notice is available electronically on the day of publication from the EPA Internet Web site listed below. Electronic copies of the preamble, regulatory language and other documents associated with today's proposal are available from the EPA Office of Mobile Sources Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for Internet connectivity.

EPA Web Site:

http://www.epa.gov/docs/fedrgstr/epa-air/

(Either select a desired date or use the Search feature.)

Office of Mobile Sources (OMS) Web Site:

http://www.epa.gov/omswww/

(Look in "what's New" or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

I. Background

A. Anti-Dumping Standards

Section 211(k) of the Clean Air Act requires the U.S. Environmental Protection Agency ("EPA" or "we") to establish standards for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas. In addition, EPA established standards for non-reformulated, or conventional, gasoline used in the rest of the country. These standards are called the anti-dumping standards. EPA adopted the anti-dumping standards to prevent refiners from dumping into conventional gasoline the dirty gasoline components that are removed when RFG is produced. The anti-dumping standards require refiners to produce conventional gasoline each year that is as clean as the gasoline produced by the refiner in 1990.

In order to be in compliance with the anti-dumping standards, the exhaust toxics and nitrogen oxides (NO_X) emissions performance of a refinery's conventional gasoline can be no dirtier than the refinery's 1990 exhaust toxics and NO_X emissions performance, on an annual average basis. EPA requires refiners to calculate the exhaust toxics and NO_X emissions performance of gasoline using the Complex Model,[1] based on measured properties, such as sulfur and benzene content, and Reid vapor pressure (RVP). The Complex Model includes both a summer version and a winter version. The anti-dumping requirements at 40 CFR 80.101(g) require refiners to use the summer Complex Model to evaluate conventional gasoline supplied to an area subject to EPA's gasoline volatility standards when these standards are in effect, and requires them to use the winter Complex Model to evaluate all other gasoline. The regulations also require refiners to evaluate the exhaust toxics and NO_X emissions performance of gasoline sold in areas not subject to those volatility standards, such as Puerto Rico, Hawaii, and Alaska, using the winter Complex Model.

[1] 40 CFR 80.45.

B. Compliance Baseline Calculation

In general, a refiner's standard for compliance is its individual 1990 refiner baseline. However, when a refiner's annual gasoline production volume (including RFG, conventional gasoline and reformulated gasoline blendstock for oxygenate blending) exceeds its baseline volume (the volume of gasoline that the refiner produced in 1990), the refiner's conventional gasoline compliance standard for exhaust toxics and NO_X is different from its individual baseline values for these emissions. The standard is different because EPA requires refiners to compare the excess volume to the statutory baseline instead of their individual baseline. Because the statutory baseline was designed to reflect 1990 gasoline generally, the quality of all the excess gasoline produced approximates the 1990 average national quality.

In order to determine a refiner's compliance standard for the averaging period, the anti-dumping provisions at 40 CFR 80.101(f) require the use of a specified compliance baseline equation. This equation establishes a single compliance baseline that compares a refiner's conventional gasoline with that refiner's individual baseline. However, a portion of the compliance baseline equation compares the emissions of a refiner's excess volume of conventional gasoline to the annual average statutory baseline emissions, a combination of the summer and winter statutory baseline emissions. EPA requires refiners to evaluate the emissions of gasoline sold in areas not subject to EPA's volatility requirements using only the winter Complex Model. Refiners must then compare these emissions to a compliance baseline equation that is based in part on the summertime

portion of the statutory baseline. Because different assumptions drive the summer and winter versions of the Complex Model, this may force refiners to make quality changes in their gasoline pools, resulting in unintended negative effects for refiners and the environment.

C. Seasonal Impacts of the Complex Model

A detailed discussion of the development of the summer and winter versions of the Complex Model was included in the Final Regulatory Impact Analysis (RIA) for Reformulated Gasoline.[2] Both models are based on MOBILE model outputs. MOBILE model outputs for the summer model assume ambient temperatures of 69 °F–94 °F. MOBILE model outputs for the winter model assume ambient temperatures of 39 °F–57 °F. Additionally, MOBILE model outputs show significantly greater "winter" emissions due to longer engine and catalyst warm-up times. As a result, for identical fuel compositions (based on those fuel parameters evaluated in the Complex Model), the winter Complex Model results in significantly higher emissions than the summer Complex Model, on a mg/mile basis.

D. July 11, 1997 Proposal

EPA proposed a variety of changes to the reformulated gasoline and anti-dumping regulations on July 11, 1997 (62 FR 37337). Classifying gasoline as summer or winter gasoline was one issue that EPA discussed in that proposal. In that discussion, EPA stated that it would classify all gasoline produced for use outside the continental U.S., where the federal RVP standards do not apply, as winter gasoline year round because:

(1) EPA required refiners to calculate the emissions of all gasoline used outside of the continental U.S. using the winter Complex Model for baseline purposes;

(2) The anti-dumping standards compare the emissions of a refinery's gasoline during an averaging period with the refinery's baseline emissions; and

(3) The comparison of baseline emissions to averaging period emissions is valid only if the refinery uses the same criteria in the baseline and in the averaging period for classifying gasoline as summer or winter.

One commenter, Amerada Hess, stated that it was inappropriate for refiners to use the winter Complex Model to evaluate the gasoline produced for certain areas outside the continental U.S. and not subject to the federal volatility requirements. They offered the following reasons:

(1) In the proposal, "EPA is acknowledging that the classification of gasoline as winter or summer actually depends on the season in which it is sold" (and not just its RVP);

(2) EPA's MOBILE model, upon which EPA based the Complex Model, reflects a temperature range of 39° F–57° F when used to evaluate winter emissions;

(3) It is inappropriate for EPA to assign gasoline for tropical climates such as Puerto Rico and Hawaii, to the winter category from a "seasonal weather gasoline characteristic standpoint;"

(4) The RVP of the gasoline sold in these (tropical) areas reflects summertime RVPs rather than wintertime RVPs;

(5) The July 1, 1994 RFG Question and Answer Document states that refiners are to evaluate gasoline which remains seasonably the same throughout the year using the seasonal Complex Model which matches the year round season.

Additionally, when the volume of gasoline sold in such areas increases over baseline levels, under 40 CFR 80.101(f)(4)(ii) EPA requires refiners to calculate the standard for the extra volume using annual exhaust toxics and NO_X emissions values which include both summer and winter Complex Model calculations. At the same time, EPA requires calculation of emissions (of gasoline sold in such areas) for compliance purposes using only the winter Complex Model. Consequently, according to the commenter, the refiner is unfairly penalized.

II. Proposal

A. Summary

With today's action, EPA proposes to allow refiners, upon petition, to replace the winter Complex Model with the summer Complex Model for all anti-dumping baseline and compliance calculations for conventional gasoline sold in Puerto Rico, if the refiner has Puerto Rico gasoline in their individual baseline, and if the refiner currently sells a volume of gasoline in Puerto Rico greater than that refiner's 1990 Puerto Rico baseline volume. We are taking this action in order to address specific circumstances where inconsistencies in the RFG program's anti-dumping provisions have had significant unintended negative impacts.

The anti-dumping regulations currently require conventional gasoline sold in Puerto Rico to be evaluated using the winter Complex Model, for purposes of both compliance calculation and baseline calculation up to a refiner's 1990 baseline volume. However, the current regulations require a refiner to use the statutory baseline for evaluating volumes of Puerto Rico gasoline above that refiner's 1990 baseline volume. The statutory baseline includes both a summer and winter Complex Model component. As a result, for excess gasoline, there is an unintended mismatch between the refiner's baseline calculation (which uses only the winter Complex Model) and the compliance baseline calculation (which uses a combination of the summer and winter Complex Models). This results in the appearance of greater emissions in comparison to an analysis using the same seasonal version of the Complex Model for both of these calculations. For those refiners with Puerto Rico gasoline in their individual baseline, that have increased the volume of gasoline that they sell in Puerto Rico above their 1990 baseline volumes of Puerto Rico gasoline, this incongruence has had a significant adverse economic effect.

To solve this specific problem, EPA is proposing a provision under the anti-dumping regulations that would change the compliance determination of the gasoline a refiner sells in Puerto Rico above that refiner's 1990 Puerto Rico baseline volume. Refiners would evaluate such gasoline using only a single statutory seasonal term (the summer term) in the compliance baseline determination. Additionally, given Puerto Rico's consistently warm climate, we recognize that the summer Complex Model is the most appropriate model for evaluating emissions in Puerto Rico under the anti-dumping program. Thus, we are also proposing to evaluate all of the conventional gasoline sold in Puerto Rico (by a refiner that makes a successful petition under this provision) using the summer Complex Model. The approval of a petition under this proposed provision would require a refiner to recalculate the Puerto Rico component of its individual baseline using the summer Complex Model. As a result, such a refiner will evaluate all of its Puerto Rico gasoline using a single seasonal version of the Complex Model. Today's action applies to each batch of gasoline produced by an eligible refiner and destined for Puerto Rico, even if a small portion of the batch is subsequently sent to other nearby areas with climates similar to Puerto Rico and which are also not subject to EPA's volatility standards.

[2] December 13, 1993.

B. Modified Compliance Baseline Equation

As discussed in Section I.B., when refiners sell gasoline in excess of their individual baseline volume in areas such as Puerto Rico, which are not subject to the federal volatility requirements, use of the current compliance baseline equation may have negative economic implications for refiners and unintended negative environmental effects. EPA requires refiners to evaluate such gasoline using the winter Complex Model. However, in the compliance baseline equation, all excess gasoline is compared to the annual average statutory baseline, which is composed of summertime and wintertime components. Because the winter Complex Model predicts higher emissions for exhaust toxics and NO_X than does the summer Complex Model, refiners in this situation are forced to meet a more stringent compliance standard in these areas than would be required if the seasonal Complex Models used to evaluate such gasoline were the same. Accordingly, they must divert cleaner gasoline from other areas.

To remedy this situation, EPA is proposing to modify the compliance baseline equation at § 80.101(f)(4)(ii). This modification will ensure that the performance of gasoline sold in Puerto Rico in excess of a refiner's baseline volume of Puerto Rico gasoline is compared to the appropriate corresponding seasonal baseline. We believe that the summer Complex Model is the most appropriate model for evaluating Puerto Rico gasoline.

EPA proposes to include the following equation at 40 CFR 80.101 (f)(4). This equation includes separate terms for evaluating the gasoline subject to the refiner's individual baseline and excess gasoline subject to the summer model-only requirements. EPA requests comments on the terms and definitions of this proposed equation.

$$CB_i = \left(B_i * \left(\frac{V_{1990} - V_{1990s}}{V_a}\right)\right) + \left(BS_i * \left(\frac{V_{1990s}}{V_a}\right)\right) + \left(DBA_i * \left(1 - \frac{V_{1990}}{V_a}\right) * \left(1 - \frac{V_{as}}{V_a}\right)\right) + \left(DBS_i * \left(1 - \frac{V_{1990}}{V_a}\right) * \left(\frac{V_{as}}{V_a}\right)\right)$$

where:

CB_i = the compliance baseline value for emissions performance i

B_i = the refiner's or importer's individual annual baseline for emissions performance i under § 80.91 for gasoline supplied to areas subject to volatility standards under § 80.27

BS_i = the refiner's or importer's individual baseline as determined under § 80.91 using the summer Complex Model, for gasoline supplied to Puerto Rico, for emissions performance i

DBA_i = annual anti-dumping statutory baseline value for emissions performance i under § 80.91(c)(5)(iv)

DBS_i = the summer statutory baseline value for emissions performance i under § 80.45(b)(3), table 5

V_a = total volume of RFG, conventional gasoline, RBOB, oxygenates and California gasoline as defined under § 80.81(a)(2) produced or imported during the averaging period

V_{1990} = 1990 baseline volume under § 80.91(f)(1)

V_{1990s}=1990 baseline volume of gasoline supplied to Puerto Rico

V_{as}=volume of conventional gasoline supplied during the averaging period to Puerto Rico

i=exhaust toxics or NO_X emissions performance

C. Seasonal Re-designation of Puerto Rico Gasoline

EPA is proposing to evaluate the emissions of Puerto Rico gasoline using only the summer Complex Model for any refiner making a successful petition under this proposed provision. As a result of comments in response to the July 11, 1997 NPRM, EPA evaluated the average annual climatic conditions and gasoline RVP levels for Puerto Rico.[3] We have concluded that Puerto Rico's relatively constant year round ambient temperatures, as well as its gasoline RVPs, are more consistent with the conditions under which EPA intended the summer Complex Model to apply than they are with the conditions under which we intended the winter Complex Model to apply. Additionally, Puerto Rico's ambient temperature is consistent with conditions typical of a high ozone season, when summertime gasoline, and thus the summer Complex Model, is meant to be used. Because this proposed action involves the calculation of compliance baselines for gasoline sold by refiners in Puerto Rico, we are taking this opportunity to address the seasonal appropriateness of the Complex Model that refiners must use to evaluate individual batches of gasoline. Accordingly, we propose to require refiners to evaluate all of their Puerto Rico gasoline using the summer Complex Model for compliance and baseline purposes. We are, however, expressly limiting the applicability of this change to refiners that petition for, and are granted, compliance baseline corrections under the provisions of this proposed rulemaking.

D. Environmental Impact

We are presently aware of only one refiner for which the current regulations have significant unintended negative economic and environmental impacts. Specifically, the current anti-dumping regulations applicable to Puerto Rico gasoline negatively affect the quality of this refiner's mainland reformulated gasoline by requiring the refiner to shift certain production from RFG to conventional gasoline in order to comply with the requirements for its Puerto Rico conventional gasoline. Thus the emissions in areas which most need clean gasoline—ozone nonattainment areas participating in the RFG program—are unnecessarily elevated. Conversely, Puerto Rico, which is in attainment for ozone, is receiving cleaner conventional gasoline due to the unintended results of the current anti-dumping rules.

The change proposed today helps to provide the cleanest gasoline where it is needed most. It is possible that the gasoline supplied by this refiner to Puerto Rico, and other conventional gasoline areas, could see increases in the emissions regulated under the anti-dumping requirements. However, this proposal will allow refiners to use the most seasonally-appropriate Complex Model for gasoline sold in Puerto Rico, and will not result in an increase in emissions from conventional gasoline compared to 1990 levels. Thus, the goals of the anti-dumping program will be preserved. Indeed, this adjustment simply works to restore the proper balance to the distribution of environmental benefits under the RFG program.

EPA is proposing that these requirements would apply to gasoline produced for calendar year 1999 and beyond. EPA will need more information from other refiners before proposing to broadly apply similar provisions throughout Puerto Rico and

[3] 30 year average maximum and minimum temperatures by month, and RVP specifications.

in other areas not subject to EPA's volatility requirement.

E. Economic Impact

EPA expects today's proposal to have minimal economic consequences. Most affected refiners are operating satisfactorily under the current requirements and are likely to be unaffected by this rule. EPA believes that refiners satisfying the requirements of this provision, will petition to re-evaluate the Puerto Rico gasoline in their baseline using the summer Complex Model only if it is economically beneficial for them to do so. Therefore, EPA anticipates no adverse economic impacts as a result of today's proposal rule.

F. Limited Applicability

EPA is proposing today to apply the provisions discussed above (i.e., the modified compliance baseline equation and the uniform use of the summer Complex Model) to refiners that have Puerto Rico gasoline in their individual baseline, that have increased the volume of gasoline that they sell in Puerto Rico above their 1990 baseline volumes of Puerto Rico gasoline, and that petition the Agency for such a change. Once such a petition is made and granted, the new method for determining compliance would apply from then on, regardless of any future changes in the refiner's Puerto Rico gasoline production or distribution. To date, only one refiner has notified EPA of potential adverse effects due to the application of the current regulations.

While EPA believes that use of the modified compliance baseline equation and seasonally-appropriate Complex Model may be technically appropriate in all areas not subject to the federal volatility requirements, there are a number of factors that EPA is unable to evaluate at this time. Consequently, we believe it best to limit the applicability of this proposal to refiners of Puerto Rico gasoline that can fulfill the other requirements of this proposed rule. The following section discusses the implications of a broader application of the principles underlying today's proposed action, and highlights the difficulties inherent in evaluating the appropriateness of such a generally applicable provision.

III. Implications for Broader Future Action

Today's action is limited in applicability to Puerto Rico refiners that meet the criteria enumerated in Section II of this notice. However, we anticipate that a similar but more generally applicable provision may be appropriate in the future. Such a provision would presumably apply to all areas that are not subject to the federal volatility requirements codified at 40 CFR 80.27.[4] The substance and scope of such a generally applicable provision would depend on many considerations, including environmental and economic impacts, industry practices, and the likely consequences for the RFG program in general. Some of the factors that EPA believes warrant additional consideration prior to the broad application of the provisions in today's proposed action include:

(1) *Environmental impacts.* Many refiners which have Puerto Rico gasoline in their baseline, aggregate that baseline with baselines of some or all of their other refineries. Currently, they may not actually produce gasoline for Puerto Rico, or may produce a reduced amount relative to their baseline volume of Puerto Rico gasoline. Thus, they may be taking advantage of Puerto Rico gasoline baseline emissions under the current regulations for the compliance of conventional gasoline produced for other locales. If required to re-evaluate the baseline of the Puerto Rico gasoline and to use the modified compliance baseline equation, the gasoline quality in either Puerto Rico or in the conventional or RFG areas of the continental U.S. may deteriorate relative to the current situation. EPA is also unable to evaluate the impact on the environment of the activities of refiners that have no Puerto Rico gasoline in their baseline but would choose to sell gasoline in Puerto Rico if such gasoline is allowed or required to be evaluated using the summer Complex Model. Since the summer Complex Model gives lower emissions for a given composition of gasoline, it would be advantageous for refiners to produce gasoline for Puerto Rico under such circumstances. However, because EPA is unable to anticipate the actions of such refiners (e.g., future gasoline production plans) it is currently impossible for the Agency to determine the overall environmental impacts that such a regulatory provision might have.

(2) *Economic impacts.* EPA expects today's proposal to have minimal economic consequences. Nonetheless, because of numerous uncertainties, EPA is unable to determine what economic impacts might result from a more general provision applicable to all areas not subject to the federal volatility standards. Specifically, possible reactions by refiners regarding aggregation and refinery changes would play a critical role in assessing the economic consequence of any such Agency action.

EPA understands that refinery aggregation decisions involve precise and costly evaluations, and that changing such decisions might entail another round of concerted deliberation. Thus, while the direct economic impacts of such a broadly applicable provision might actually be small, a refiner's choice to re-evaluate its aggregation decisions might result in significant additional expense. Re-aggregation could not only be time-consuming and costly for the refiner, but could have anti-competitive effects for those refiners without applicable gasoline in their baseline. Thus, EPA's current lack of information regarding the impact that re-consideration of aggregation decisions might have on the RFG and anti-dumping programs is one reason we are not proposing to broadly apply the provisions proposed today.

(3) *Disturbing the system.* With the exception of the problems addressed by today's proposed action, the current system for implementing the RFG anti-dumping standards has been successful. Given the concerns discussed above, EPA is unsure whether it would be appropriate to disturb the current system for what may be minimal environmental benefit at potentially high economic costs.

EPA requests comment on the proposed provisions from refiners that produce gasoline for sale in any area that is not subject to EPA's volatility requirements. EPA also requests comment from all interested parties regarding the environmental and economic impacts of extending the provisions proposed today to other areas not subject to EPA's volatility requirements. EPA also requests comment on the appropriate seasonal Complex Model for a refiner or refinery that sells conventional gasoline in an area not subject to EPA's volatility requirements but does not have such gasoline in its baseline. Based on comments received, EPA may or may not proceed with future rulemaking action proposing changes similar to those proposed today.

IV. Public Participation

EPA desires full public participation in arriving at its final decisions and solicits comments on all aspects of this proposal. Wherever applicable, full supporting data and detailed analysis

[4] EPA believes that gasoline sent to areas such as Puerto Rico and Hawaii (and perhaps Guam, the U.S. Virgin Islands (USVI), the Northern Marianas and American Samoa) might be most appropriately evaluated using only the summer Complex Model. Similarly, EPA believes that gasoline sold in Alaska might be most appropriately evaluated using only the winter Complex Model, as is currently required.

should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed, by July 9, 1999 to the EPA Air Docket, Docket A–99–16 (See ADDRESSES).

Any proprietary information being submitted for the Agency's consideration should be markedly distinguished from other submittal information and clearly labeled "Confidential Business Information." Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. The Agency has determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose any mandatory obligations on the regulated community beyond those specified in the current regulations.

B. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it involves an optional provision intended to promote successful implementation of the RFG anti-dumping requirements and to minimize existing adverse economic impacts. This proposed action may, in fact, reduce the burden of the anti-dumping program on regulated entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Today's proposal does not involve the collection of information as defined by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Therefore, the provisions of that Act do not apply to this action.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgation an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The EPA has determined that today's rule does not include a Federal mandate because it imposes no enforceable duty on any State, local, and tribal governments, or the private sector. Today's rule proposes an optional provision for evaluating the emissions of conventional gasoline sold by certain refiners in Puerto Rico. This proposed action may, in fact, reduce the burden of the anti-dumping program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed action. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

2. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any mandatory duties on these entities. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to this rule.

3. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13094 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule applies exclusively to refiners that sell gasoline in Puerto Rico. The proposed rule does not create any mandates or impose any obligations, and thus does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Additionally, this rule is not subject to E.O. 13045 because it implements specific standards established by Congress in statutes.

VI. Statutory Provisions and Legal Authority

The statutory authority for the actions proposed today is granted to EPA by sections 114, 211(c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545(c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. A new paragraph (d) is added to Section 80.93 to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(d) Requirements for petition applicable to Puerto Rico gasoline.

(1) Any refiner or importer with Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its individual baseline may petition EPA to use the summer Complex Model to evaluate its Puerto Rico and Virgin Islands gasoline for compliance under § 80.101.

(2) The petition must be sent to: U.S. EPA, Fuels and Energy Division, 2000 Traverwood, Ann Arbor, MI 48105.

(3) The petition must include the following:

(i) Identification of the refinery;

(ii) Identification of contact person;

(iii) A revised individual baseline determination, wherein the baseline Puerto Rico and U.S. Virgin Islands gasoline has been evaluated using the summer Complex Model. The calculations should be clearly and fully described and displayed.

(iv) Baseline auditor agreement with the revised baseline.

(4) EPA reserves the right to request additional information. If such information is not forthcoming in a timely manner, the petition will not be approved.

3. Section 80.101 is amended by revising paragraphs (f)(4) and (g)(1)(ii) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(f) * * *

(4)(i) Reserved.

(ii) Reserved.

(iii) Any refiner or importer with Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its individual baseline and which has met the requirements specified in paragraph (g)(1)(ii)(B) of this section, and whose total volume of conventional gasoline, RBOB, reformulated gasoline, and California gasoline, as defined in § 80.81(a)(2), produced or imported by the refiner or importer during the averaging period is greater than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), must calculate the compliance baseline for each parameter or emissions performance according to the following formula:

$$CB_i = \left(B_i * \left(\frac{V_{1990} - V_{1990s}}{V_a}\right)\right) + \left(BS_i * \left(\frac{V_{1990s}}{V_a}\right)\right) + \left(DBA_i * \left(1 - \frac{V_{1990}}{V_a}\right) * \left(1 - \frac{V_{as}}{V_a}\right)\right) + \left(DBS_i * \left(1 - \frac{V_{1990}}{V_a}\right) * \left(\frac{V_{as}}{V_a}\right)\right)$$

Where:

CB_i = the compliance baseline value for emissions performance i

B_i = the refiner's or importer's individual annual baseline for emissions performance i under § 80.91 for gasoline supplied to areas subject to volatility standards under § 80.27

BS_i = the refiner's or importer's individual baseline as determined under § 80.91 using the summer Complex Model, for gasoline supplied to Puerto Rico and the U.S. Virgin Islands, for emissions performance i

DBA_i = annual anti-dumping statutory baseline value for emissions performance i under § 80.91(c)(5)(iv)

DBS_i = the summer statutory baseline value for emissions performance i under § 80.45(b)(3), table 5

V_a = total volume of RFG, conventional gasoline, RBOB, oxygenates and California gasoline as defined under § 80.81(a)(2) produced or imported during the averaging period

V_{1990}=1990 baseline volume under § 80.91(f)(1)

V_{1990s}=1990 baseline volume of gasoline supplied to Puerto Rico and the U.S. Virgin Islands

V_{as}=volume of conventional gasoline supplied during the averaging period to Puerto Rico and the U.S. Virgin Islands

i=exhaust toxics or NO_X emissions performance

* * * * *

(g) * * *

(1) * * *

(ii) Complex Model calculations.

(A) Exhaust benzene, exhaust toxics, and exhaust NO_X emissions performance for each batch shall be calculated in accordance with the applicable model under § 80.45.

(B) A refiner which has Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its baseline shall use the summer Complex Model to evaluate its averaging period Puerto Rico and U.S. Virgin Islands gasoline provided it has petitioned the Agency, per § 80.93(d), and has received Agency approval on the petition, and has revised its individual baseline, such that the Puerto Rico and U.S. Virgin Islands gasoline in its individual baseline has been evaluated using the summer Complex Model.

* * * * *

[FR Doc. 99–14496 Filed 6–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–6344–6]

Identification of Additional Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard Is No Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to identify seven additional ozone areas where the 1-hour standard no longer applies. Thus, upon finalization of this proposed action, the Code of Federal Regulations (CFR) for ozone will be amended to reflect such changes. On July 18, 1997, EPA provided by rule that the 1-hour ozone standard would no longer apply to an area based on a determination by EPA that the area has attained that standard. The 1-hour standard will continue to apply to areas for which EPA has not made a determination through rulemaking. The EPA has previously taken final action regarding the applicability of the 1-hour standard for other areas on June 5, 1998 and July 22, 1998. The seven additional proposed areas are: Cincinnati-Hamilton, OH–KY; Pittsburgh-Beaver Valley, PA; Lancaster, PA; Sunland Park, NM; LaFourche Parish, LA; Kansas City, MO–KS; and Spalding County, GA.

DATES: Your comments must be submitted on or before July 9, 1999 in order to be considered.

ADDRESSES: You may comment in various ways:

On paper. Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–99–10, U.S. Environmental Protection Agency, 401 M St., SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548.

Electronically. Send electronic comments to EPA at: A-and-R-Docket@epamail.epa.gov. Avoid sending confidential business information. We accept comments as e-mail attachments or on disk. Either way, they must be in WordPerfect 5.1 or 6.0 or ASCII file format. Avoid the use of special characters and any form of encryption. You may file your comments on this proposed rule online at many Federal Depository Libraries. Be sure to identify all comments and data by Docket number A–99–10.

Public inspection. You may read the proposed rule (including paper copies of comments and data submitted electronically, minus anything claimed as confidential business information) at the Docket and Information Center. They are available for public inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. We may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Questions about this notice should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238 or e-mail to nikbakht.annie@epamail.epa.gov or gilbert.barry@epamail.epa.gov. To ask about policy matters or monitoring data for a specific geographic area, call one of these contacts:

Region III—Marcia Spink (215) 814–2104, Region IV—Karla McCorkle (404) 562–9043,

Region V—William Jones (312) 886–6058,
Region VI—Lt. Mick Cote (214) 665–7219,
Region VII—Royan Teter (913) 551–7609.

SUPPLEMENTARY INFORMATION:

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I. What Is the Background for This Proposed Action?

On July 16, 1997 (62 FR 38856, July 18, 1997), we issued a regulation replacing the 1-hour ozone standard with an 8-hour standard at a level of 0.08 parts per million (ppm). The form of the 8-hour standard is based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard, which became effective on September 16, 1997, provides increased protection to the public, especially children and other at-risk populations.

Also, on July 16, 1997, we announced that we were delaying revocation of the 1-hour ozone national ambient air quality standard (NAAQS) until areas attain the 1-hour NAAQS. We did this to provide continuity in public health protection during the transition to the new NAAQS. We provided, by regulation, that the 1-hour standard would no longer apply to an area upon a determination by EPA that the area has attained the 1-hour standard.

On July 16, 1997, President Clinton issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of EPA indicating that within 90 days of our issuing the new 8-hour standard, we would publish an action identifying ozone areas to which the 1-hour standard would no longer apply. The memorandum recognized that for areas where the air quality did not currently attain the 1-hour standard, the 1-hour standard would continue in effect. The provisions of subpart 2 of title I of the Clean Air Act (CAA) would also apply to currently designated nonattainment areas until EPA determines that the area has air quality meeting the 1-hour standard.

On June 5, 1998 (63 FR 31014) and July 22, 1998 (63 FR 39432), we issued final rules for many areas because they had attained the 1-hour standard and so the 1-hour standard no longer applies to these areas.

II. What Action Is EPA Proposing To Take Today?

Today we are proposing to revoke the 1-hour standard in seven more areas that we determined are not violating the 1-hour standard. The newly identified areas are: Cincinnati-Hamilton, OH–KY; Pittsburgh-Beaver Valley, PA; Lancaster, PA; Sunland Park, NM; LaFourche Parish, LA; Kansas City, MO–KS; and Spalding County, GA.

III. What Does the Air Quality Data for the Areas Subject to Today's Proposed Rule Look Like?

Today's proposal, to determine that these areas are attaining the 1-hour standard and thus no longer subject to the 1-hour standard, is based upon analysis of quality-assured, ambient air quality monitoring data showing no violations of the 1-hour ozone standard based on the most recent data available, i.e., 1996–1998 data. Detailed air quality data used for today's proposal are in the Technical Support Document to Docket No. A–99–10. The method for determining attainment of the ozone NAAQS is in 40 CFR 50.9 and appendix H to that section. The level of the 1-hour primary and secondary NAAQS for ozone is 0.12 ppm.

IV. What Is the Effect of the Revocation?

Once we determine that the 1-hour standard no longer applies to an area, the area is no longer subject to the nonattainment area planning requirements of subpart 2 of part D of title I of the CAA (section 182). This is because the nonattainment requirements in subpart 2 apply only for purposes of the 1-hour standard. Therefore, any sanctions or Federal implementation plan clocks started, under sections 110 or 179 of the CAA and 40 CFR 52.31 with respect to planning requirements in section 182 of the CAA, are no longer applicable when we issue a final rule determining the area has attained the 1-hour standard.

Moreover, the conformity requirements of section 176 would no longer apply to areas unless they had a maintenance plan approved under section 175A. With respect to new source review requirements, whether part D new source review requirements or part C prevention of significant deterioration (PSD) requirements applies, will depend on the particular approved SIP provisions applicable to the areas.

Finally, given that the designations of these areas were based upon the 1-hour ozone standard, which will no longer apply, the designation will be replaced in part 81 of the CFR by an indication that the 1-hour ozone standard is no longer applicable.

V. What Administrative Requirements Are Considered in Today's Proposed Rule?

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The OMB is exempting this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604), unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The EPA is proposing to certify that this rule, in its final form, will not have a significant impact on a substantial number of small entities because the determination that the 1-hour standard ceases to apply does not subject any entities to any additional requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least-burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA is proposing that today's action, if finalized, would not include a Federal mandate that may result in

estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866, and it implements a previously promulgated health or safety-based Federal standard.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of the affected State, local and tribal governments; the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The identified areas are not located in tribal lands, and this proposed action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

G. Paperwork Reduction Act

This proposal does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

H. Executive Order 12898: Environmental Justice

Under E.O. 12898, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's proposed action (identifying additional ozone areas where the 1-hour standard is no longer applicable) does not adversely affect minorities and low-income populations because the new, more stringent 8-hour ozone standard is in effect and provides increased protection to the public, especially children and other at-risk populations.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Issued in Washington, D.C. on May 12, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–14596 Filed 6–7–99; 10:42 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300655; FRL–6082–4]

RIN 2070–AB78

Phosphine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tolerances are being revised and consolidated for residues of phosphine in or on certain agricultural commodities and animal feeds. None of these proposed tolerances are new, although this change would facilitate new application methods. The Agency is merely changing the tolerance expression to eliminate references

concerning how the phosphine gas is generated.

DATES: Comments, identified by the docket control number [OPP–300865], must be received on or before July 9, 1999.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Interested persons are invited to submit comments on the proposed regulation. Comments must bear a notation indicating the docket control number [OPP–300865].

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division [7505C], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-6742, e-mail: McNeilly.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 23, 1998, (FRL–6053–6), EPA announced the availability of the Reregistration Eligibility Decision (RED) for aluminum and magnesium phosphide, which was signed on September 30, 1998. This document discusses in detail the Agency's risk assessment for these two very similar pesticides.

Current tolerances established for aluminum and magnesium phosphide are expressed in terms of residues of the fumigant phosphine resulting from the use of aluminum and/or magnesium phosphide, respectively. Both of these chemicals have very similar use patterns, chemical properties and both result in the same residue (hydrogen phosphide), both qualitatively and quantitatively. In fact, due to the high reactivity and volatility of these two compounds the detection of finite residues is not expected and the residue data indicate non- detectable levels of phosphine, when label directions concerning aeration for 48 hours before entering into commerce are followed. The Agency has decided to revise the current tolerance expressions because it does not matter from a safety or practical standpoint, i.e. tolerance enforcement purposes, whether residues of phosphine result from treatment with aluminum phosphide or magnesium phosphide. In fact, having tolerances expressed in this manner precludes treatment of the food and/or feed commodities with phosphine gas delivered or generated via different technology. Different application techniques involving direct application of phosphine gas have the potential to reduce worker exposure because fumigators would not need to enter the facility being fumigated.

The aluminum and magnesium phosphide RED states that the tolerances listed under 40 CFR 180.225 (a) and (b), 185.200, and 186.200 and tolerances for magnesium phosphine listed under 40 CFR 180.375 (a) and (b), 185.3800, and 186.3800 should be amended to consolidate all of these tolerances in the Code of Federal Regulations. Following passage of the Food Quality Protection Act (FQPA), tolerances for pesticide residues in all types of food (raw or processed) are set under the same provision of the law and EPA is including all such tolerances in part 180 of the Code of Federal Regulations. The Agency will list all aluminum phosphide and magnesium phosphide tolerances under 40 CFR 180.225 and be subdivided into paragraphs (a)(1), (a)(2), (a)(3), and (a)(4). Tolerances in the new paragraph (a)(1) concern residues resulting in or on Raw Agricultural Commodities (RACs) from post-harvest fumigation uses. Tolerances in paragraph (a)(2) concern residues in or on RACs from preharvest treatment of pest burrows in agricultural and non-crop land areas. The Agency notes that this use involves control of vector borne disease, especially in the southwestern United States. Paragraph (a)(3) concerns residues resulting from fumigation of processed foods. Finally, paragraph (a)(4) concerns residues resulting from fumigation of animal feeds. There are no tolerances established, nor are there any uses registered, for the direct treatment of any field crop or greenhouse-grown food commodity.

The Agency recently updated the list of raw agricultural and processed commodities and foodstuffs derived from crops (Table 1 OPPTS GLN 860.1000). As a result of changes to this table, commodity definitions used in the CFR also need to be updated. For example, instead of a tolerance expressed as corn, it should now specify corn, grain or corn, forage, etc. Further, since the tolerances for phosphide will be combined under a single tolerance expression for phosphine, several commodities with tolerances currently listed under both aluminum and magnesium phosphide would need only one tolerance. The Agency notes that it is impossible for a laboratory to determine from strictly analytical methods whether phosphine residues resulted from Al or Mg phosphide application and for risk assessment it is irrelevant. In addition, with the required 48-hour aeration period required on all labels, finite residues are not expected in/on any food commodity.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62

FR 62961, November 26, 1997)(FRL-5754-7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of phosphine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for residues of phosphine in or on almond, nutmeat at 0.1 parts per million (ppm); avocadoes at 0.01 ppm; bananas at 0.01 ppm; barley, grain at 0.1 ppm; Brazil nut at 0.1 ppm; Cabbage,Chinese at 0.01 ppm; cacao, bean at 0.1 ppm; cashews at 0.1 ppm; citrus, citron at 0.01 ppm; coffee, bean, green at 0.1 ppm; corn, field, grain at 0.1 ppm; corn, pop, grain at 0.1 ppm; cotton, seed, undelinted at 0.1 ppm; date, dried at 0.1 ppm; eggplants at 0.01 ppm; endive (escarole) at 0.01 ppm; filbert at 0.1 ppm; grapefruit at 0.01 ppm; kumquats at 0.01 ppm; Legume vegetables succulent or dried group(excluding soybeans) at 0.0 1 ppm; lemons at 0.01 ppm; lettuce at 0.01 ppm; limes at 0.01 ppm; mangoes at 0.01 ppm; millet, grain at 0.1 ppm; mushrooms at 0.01 ppm; oats, grain at 0.1 ppm; oranges at 0.01 ppm; papayas at 0.01 ppm; peanut, nutmeat at 0.1 ppm; pecans at 0.1 ppm; peppers at 0.01 ppm; persimmons at 0.0 1 ppm; pistachios at 0.1 ppm; rice, grain at 0.1 ppm; rye at 0.1 ppm; safflower seed at 0.1 ppm; salsify tops at 0.01 ppm; sesame seed at 0.1 ppm; sorghum grain at 0.1 ppm; soybeans at 0.1 ppm; sunflower, seed at 0.1 ppm; sweet potatoes at 0.01 ppm; tangelos at 0.01 ppm; tangerines at 0.01 ppm; tomatoes at 0.01 ppm; walnuts at 0.1 ppm; wheat, grain at 0.1 ppm; all Raw Agricultural Commodities (RAC) resulting from preharvest treatment of pest burrows in agricultural and non-cropland areas, 0.01 ppm; phosphine residues resulting from fumigation of processed foods, 0.01 ppm; and phosphine residues resulting from fumigation of animal feeds, 0.01 ppm.

EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk.

The Agency does not normally use inhalation studies for oral (dietary) risk assessments. However, inhalation studies were used for these chemicals because: (1) Use of an inhalation "dose" provides a conservative approach for oral risk assessments; (2) these studies enable the Agency to quantify the dosage of phosphine exposed to laboratory animals; (3) the Agency required inhalation studies (rather than oral studies) for this chemical because exposure to this chemical via inhalation is much more likely for those individuals who would have occupational exposure.

EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by phosphine are discussed below.

1. *Acute toxicity.* A rat acute inhalation study on phosphine indicated an LC_{50} greater than 11 ppm, the highest dose tested (HDT). This puts phosphine in Toxicity Category I, i.e., Highly Toxic.

Given aluminum and magnesium phosphide's use patterns and chemical characteristics, the other acute toxicity 81-series guideline studies used to establish precautionary labeling were waived for these chemicals as they would not change the Toxicity Category or effect protective clothing requirements. The material of concern is phosphine gas which is the material with pesticidal properties, when either aluminum or magnesium phosphide are used.

2. *Subchronic toxicity.* In a 90 day rat inhalation study, Fischer 344 rats (10/sex/dose) were exposed to phosphine 6 hours/day, 5 days/week for 13 weeks at levels of 0, 0.3, 1.0 or 3.0 ppm. Additional groups (3-5/sex/group) were exposed at 0 or 10 ppm starting at week 8, and 0 or 5 ppm starting at week 12. Recovery groups were included in the study at each dose level and sacrificed after 4 weeks of post-exposure observations. In the groups exposed at levels up to 3.0 ppm, there was a transient decrease in body weight gain accompanied by decreased food consumption. Red blood cell counts, hemoglobin concentration, and hematocrit values were slightly decreased in males exposed at 3.0 ppm (at 4 weeks only), but no effects were observed in these males at 13 weeks or in females at either interval. No exposure-related gross or histologic findings were observed at levels up to and including 3.0 ppm. Exposure at 10 ppm for 3 days caused 40% mortality in females but no mortality in males. Exposure at 10 ppm for 4 weeks caused 80% death in females. Both males and females exposed at 10 ppm had coagulative necrosis in the tubules of the kidneys and pulmonary congestion was observed in the females that died. No histologic findings related to dosing were apparent in the rats exposed for 2 weeks at 5 ppm; an increase in the BUN and alkaline phosphatase were observed in males but not females exposed at 5 ppm. An LEL for subchronic exposure (13 weeks) was not established in this study. The no-observed adverse effect level (NOAEL) for 13 weeks was 3 ppm (HDT). An LEL of 10 ppm for 4 weeks was based on lethality (4/5 deaths for females) due to the sharp dose-response curve.

3. *Chronic toxicity/carcinogenity.* In a 2-year rat feeding study, diets were treated with Phostoxin pellets at 48 and 90 gm/metric ton, fumigated for 48 hours and 72 hours, mixed for 2 hours, and then aerated for one hour. The feed was then stored frozen in small sealed containers until used as laboratory rat feed. Sixteen separate batches of feed were treated utilizing this methodology over the 2-year period. Samples of diet were taken to determine phosphine at the time the feed was removed from the freezer. Phosphine levels ranged from 0.2 to 7.5 ppm and averaged approximately 1 ppm. The amounts of phosphine that remained in the feed offered to the rats as food was not measured (but would be expected to be less because of dissipation). Therefore, the actual dosages in this study are unknown. Two groups of 60 rats each (30 males and 30 females) were used, one as treatment group and other as controls. The rats were observed for the effects on growth, food consumption, survival, morbidity, hematology, blood chemistry and gross and microscopic pathology. No differences were seen between the controls and the treated animals for any toxicity parameter. No increased oncogenicity resulted from fumigation residues. The study was not considered guideline since toxicity, secondary to phosphine residues, is not possible when aeration is adequate. However, the study shows that toxic levels of residues were not achieved even with the excessive fumigation treatment rates.

In a chronic/oncogenicity study, Charles River Fischer CDF Rats (60/sex/group) were exposed, under dynamic chamber conditions, to 0, 0.3, 1 and 3 ppm of phosphine. The rats were kept under standard laboratory conditions, observed twice daily and sacrificed (10/sex/group) during week 52 of the study. Body weights; food consumption; routine hematologic, serum biochemical and urinary analyses were all comparable to control animals. There were no adverse effects observed for the initial 12 month period. Body weights;

food consumption; routine hematologic, serum biochemical and urinary analyses were all comparable to control animals. Ophthalmological observations, gross pathology, organ weights and histopathology indicated no adverse effects from the phosphine exposures. The NOAEL for the 52 week period was 3.0 ppm, the HDT.

4. *Mutagencity.* In a *Salmonella typhimurium* reverse gene mutation assay, the test was negative with hydrogen phosphide (PH_3) in all strains up to cytotoxic concentrations (≥488 ppm/plate +/-S9).

i. *Chromosome aberrations.* In an *in vitro* cytogenetic assay with Chinese hamster ovary (CHO) cells phosphine was positive at 2,500 and 5,000 ppm without S9 activation. This resulted in a significant but not dose-related increases in the frequency of cells with structural chromosome aberrations. Significant clastogenic effects were also noted at 2,500 ppm with S9 activation but not at the HDT (5,000 ppm).

ii. *Other genotoxic mechanisms.* In an *in vivo* unscheduled DNA Synthesis (UDS) in primary rat hepatocytes, the test was negative in male Fischer rats exposed via inhalation to PH_3 doses of 0, 4.8, 13, 18 or 23 ppm (equiv. to 0, 11.4, 30.8, 42.6 or 54.5 mg/m^3, respectively) for 6 hours. Overt toxicity (*i.e.*, difficulty in breathing) but no target cell cytotoxicity was observed at the HTD.

Based on the findings reported by Garry *et al.*, (1989) that pesticide applicators exposed to phosphine had increased levels of chromosome damage, the USEPA sponsored a series of acute (Kligerman *et al.*,1994a) and subacute (Kligerman *et al.*, 1994b) inhalation cytogenetic studies with phosphine. A summary of these studies are as follows:

(a) Phosphine was negative for the induction of micronucleated polychromatic erythrocytes (MPE) in bone marrow cells and splenocytes and negative for the induction of sister chromatid exchange or chromosomal aberrations in splenocytes of CD-1 male mice exposed by inhalation to 0, 5, 10 or 15 ppm for 6 hours. Overt toxicity, manifested as lethargy and shallow breathing was seen at the HDT. There was a dose-related and significant reduction of splenocyte cell cycling at all levels, which indicates that phosphine was cytotoxic to splenocytes. There was, however, no adverse effect on bone marrow cells (Kligerman, *et al.*, 1994).

(b) Male B6C3F1 mice and male F344 rats were exposed by inhalation to 0, 1.25, 2.5 or 5.0 ppm phosphine, 6 hours/day, 5 days/week over an 11-day period. Bone marrow cells and/or peripheral blood lymphocytes were harvested and examined for sister chromatid exchanges and chromosomal aberrations (mouse and rat peripheral blood lymphocytes) and for MPEs (rat bone marrow and mouse bone marrow and peripheral blood lymphocytes). In addition, B6C3F1 males were exposed via inhalation to 0 or 5 ppm as above over a 12-day period and mated with untreated females in a dominant lethal assay. Results show that phosphine was not genotoxic at any endpoint.

iii. Additional *in vivo* data summarized below were available for review:

(a) Following subchronic inhalation exposure (0, 0.3, 1.0 or 4.5 ppm, 6 hours/ day, 5 days/week for 13 weeks) but not acute inhalation exposure (0 or 5.5 ppm, 2 weeks, 6 hours/day, 5 days/ week for 2 weeks), phosphine at 4.5 ppm caused a statistically significant increase in micronucleus induction in the spleen lymphocytes and bone marrow cells of Balb-c male and female mice. There was, however, no increase in gene mutations at the hypoxanthine guanine phosphoribosyl transferase locus in the recovered spleen lymphocytes.

(b) After 6 hours of inhalation exposure, phosphine, at the HDT (19 ppm) induced a significant increase in chromosomal aberrations in the bone marrow of Sprague Dawley male rats but not in the female rats. The effect is considered equivocal because increased chromosomal aberration frequencies were only seen in high-dose males with severely reduced mitotic indices (MIs). Females did not show increased chromosome aberrations and did not have decreased MIs. There was also no effect on peripheral lymphocytes.

(c) In an Australian study of workers exposed to phosphine, 31 phosphine fumigators and 21 controls, all employed at the New South Wales Grain Corporation, were examined for micronucleus incidence in peripheral blood lymphocytes and their concentrated urine was assessed for mutagenicity in TA100 and TA98 strains of *S. typhimurium*. In addition, serum bile acids were measured. The subjects, all males, were matched for medication, X-ray exposure within the past year and smoking habits. There was no indication how often the fumigators were exposed, or the most recent exposure date or the length of the various fumigators employed. No individual data were presented to identify if certain individuals showed unusually high micronuclei incidence; or presence of mutagens in the urine.

Urine samples were concentrated 75-fold and the procedure of Yamaski and Ames (1977) was used to test mutagenicity to TA100 and TA98 in the presence or absence of metabolic activation (S9). There was no increase in the mutagenicity of urine from the fumigators (N-27) vs controls (N=-19) in this assay.

Serum bile acids showed no changes related to phosphine exposure. Cholesterol and some liver enzymes (gamma-glutamyl transferase were elevated in the exposed group. Micronuclei formation was measured in isolated peripheral blood lymphocytes cultured for 44 hours in the presence of phytohemagglutinin to stimulate mitosis, arrested at metaphase with cytochalasin-B and harvested by cytocentrifugation after 72 hours in culture. The micronucleus incidence was comparable among the fumigators and the control groups (overall MI for fumigators = 6.9 vs 7.1 for controls).

Phosphine is not mutagenic in bacteria but is clastogenic *in vitro*. Both the negative Ames test and the positive CHO cell chromosome assay are consistent with the *in vitro* test results for zinc phosphide. Studies conducted *in vivo* indicate that phosphine is not clastogenic in mice or rats and does not cause dominant lethal mutations in mice following acute exposures for up to 2 weeks. There is, however, evidence that inhalation exposures of phosphine for up to 13 weeks induced significant clastogenic and/or an euploidogenic effects in male and female mice. The biological relevance of this finding can not be fully ascertained until the results of the 2-year rat inhalation study currently underway are submitted and reviewed.

5. *Neurotoxicity.* In an acute neurotoxicity study, 11 Crl:CD®BR VAF/Plus® rats/sex/exposure group were exposed to 0, 20, 30, or 40 ppm of phosphine (1% a.i. in nitrogen) for four hours. Each treatment group was exposed on a different day, with the first exposure occurring six days prior to the final exposure. 11 rats/sex/exposure group were selected for functional observational battery (FOB) and motor activity (MA) testing prior to and following exposure, and on days 7 and 14 post-exposure; six rats/sex/exposure group were perfused for neuropathology. All animals survived to scheduled termination. There were no exposure-related clinical signs. FOB and MA parameters were characterized by variability both within and among control and exposed groups; this variability (which may be partly due to the unbalanced treatment schedule) confounded interpretation of some of

the results. Palpebral closure was noted in some exposed groups on day 1 and was significant in females exposed to 30 and 40 ppm and in males at 20 and 40 ppm. Body temperatures were significantly lowered for males and females on day 1 in all exposure groups. The remainder of the differences in the FOB parameters were random statistical variations that occurred both pre- and post-test, were not dose related, and were not consistent between the sexes. Motor activity (horizontal, vertical, total distance, and stereotypic time) was decreased at 20, 30, and 40 ppm, primarily during the 10 and 20 minute post-exposure time intervals (data comparing motor activity for the entire 30-minute assessment period was neither presented nor analyzed). With one exception, these reductions no longer occurred at 7 or 14 days after exposure. For males during the first 10-minute post-exposure interval, horizontal activity decreased significantly by 76.4, 71.7 and 83.8% in the 20, 30, and 40 ppm groups, respectively. Males in the 20 ppm group had the following decreases in horizontal activity: 76.4%, 77.6% (both statistically significant), and 89.4% (non-statistically significant) during the 10, 20, and 30 minute intervals, respectively. For females during the first 10-minute post-exposure interval, horizontal activity decreased significantly by 71.3, 48.0, and 83.5% in the 20, 30, and 40 ppm groups, respectively. Females in the 20 ppm group had the following decreases in horizontal activity: 71.3%, 85.8% (both significant), and 54.1% (non-statistically significant) during the 10, 20, and 30 minute intervals, respectively. Similar decreases occurred for both sexes for vertical activity, total distance, and stereotypic time. No phosphine-related neuropathological changes were observed in any exposure group. Significant increases in absolute and relative (body and brain weights) adrenal gland weights in males from the 40 ppm group were of questionable biological significance and did not show a concentration-response relationship. The significant decrease in temperature and motor activity, seen at all exposure levels in spite of the flaws in the study, are considered treatment-related. The LOEL for neurobehavioral findings is 20 ppm based on decreased body temperatures and decreased motor activity in males and females. The NOAEL is <20 ppm. Based on lack of systemic toxicity, the NOAEL for systemic toxicity is 40 ppm. It must be noted that the Agency has asked for additional information regarding this study and has not accepted the study until the requested data are submitted and reviewed.

In a subchronic inhalation neurotoxicity study, 16 Crl:CD®BE VAF/Plus® rats/sex/exposure group were exposed to phosphine (1% a.i. in nitrogen) for six hours/day, 5 days/week for approximately 90 days at 0, 0.3, 1, or 3 ppm. An additional six rats/sex were assigned to the 0 and 3 ppm groups for a 2-week recovery group. Eleven rats/sex/exposure group were assigned for neurobehavioral evaluations. Six of the eleven rats/sex/exposure group were designated for neuropathological evaluations. No exposure-related deaths occurred in this study. Body weights were slightly higher in high-concentration males (2.4%) and females (1.2%) after 13 weeks of treatment, and became equal or less than the control body weights after the 2 week recovery period. Palpebral closure was consistently increased in high-concentration animals compared to controls. The increase was significant ($p \leq 0.05$) in high-concentration males at week 4 and was exposure related. The increased palpebral closure in high-concentration females was not significantly different from the control group. The incidence of high-concentration males found sleeping was consistently higher than the controls and was significantly higher ($p \geq 0.05$) at week 4. The sleep incidence in males showed an exposure effect at weeks 4 and 13. A similar trend was observed in females, but the differences were not statistically significant. Body temperatures of high-concentration males were consistently lower than the controls and reached statistical significance ($p \geq 0.05$) at week 13. The decreased body temperature was exposure- related at weeks 4 and 13. Females did not show a treatment-related change in body temperature. The horizontal and vertical motor activities were significantly lower in high-concentration males than the control group at week 13, and were consistently, but not significantly lower at other time intervals. Motor activity measurements in females were compromised by high variations and significant decreases in the high-concentration group at the pretest interval. There were no treatment-related findings at necropsy or during the neurohistopathological examination of collected tissues. The effects seen in high-concentration males that could be treatment-related are slight, but are consistent and mutually supportive. The effects in females either did not occur, were not statistically significant, or were compromised by variations in pretest measurements. Due to the equivocal nature of the effects seen in high-concentration males, and the lack of effects seen in females, the tentative NOAEL for systemic/neurobehavioral findings is 3.0 ppm for males and females, a LOEL was not determined in this study. Since the procedures used in this study have not been validated, and since positive effects may be obscured by insensitive methods, the NOAEL is tentative and will be re-evaluated upon receipt of information requested from the sponsor. It must be noted that the Agency has asked for additional information regarding this study and has not accepted the study until the requested data are submitted and reviewed.

B. Toxicological Endpoints

1. *Acute toxicity.* The acute dietary endpoint is based upon the results of the 90-day inhalation study. The dose and endpoint for risk assessment was 5 ppm or 1.8 milligrams/kilogram/day (mg/kg/day) based on the lack of treatment-related effects following 15 days of exposure. This includes a 100 fold Uf to account for inter and intra species variation.

2. *Short - and intermediate - term toxicity.* Based on the use pattern and the fact that phosphine is a gas, an end-point and risk assessment were not conducted for short- and intermediate-term, oral or dermal exposures.

3. *Chronic toxicity.* EPA has established the chronic reference dose (RfD) for phosphine at 0.0113 mg/kg/day. This RfD is based on an interim report (one year) for a 2-year chronic/oncogenicity inhalation toxicity in rats. The dose for the risk assessment was a NOAEL=3 ppm = 0.004 mg/L=1.13 mg/kg/day. A 100 fold Uf was applied to account for inter and intra species variation.

4. *Carcinogenicity.* The results of a non-guideline 2-year rat feeding study did not indicate a carcinogenic concern. Additionally, an interim (one year) report for a 2-year inhalation carcinogenicity study has been reviewed and does not indicate a carcinogenic concern. The final report was submitted to the Agency in November, 1998 and is being reviewed; however, it is unlikely to change the Agency's evaluation of phosphine's carcinogenic potential.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established under (40 CFR 180.225 (a) and (b), 185.200, 186.200, 180.375, 185.3800, and 186.3800) for the residues of phosphine, in or on a variety of raw agricultural

commodities at either 0.01 ppm or 0.1 ppm level including food and feed tolerances. This rule does not propose any new tolerances but rather changes the existing tolerance expressions and eliminates reference to the source of the phosphine gas, i.e., generated from either aluminum or magnesium phosphide. Tolerances are set at 0.01 ppm for those commodities for which direct treatment is not permitted. Tolerances of 0.1 ppm were established for those commodities listed above for which aluminum and magnesium are allowed to come into direct contact, e.g., tablets are added directly to corn grain as it is stored in silos . The Agency does not expect finite residues at the consumer's dinner plate, even for those commodities with a 0.1 ppm tolerance. This is because these commodities are aerated for 48 hours, cooked, shelled, washed, or otherwise prepared in some other way before they are actually consumed. For example, nuts are shelled and further processed before reaching the consumer. Other commodities such as dates are washed and graded for packaging which would remove any unreacted phosphine residue. The Agency has residue data from numerous studies on a wide variety of raw agricultural commodities and processed foods that confirm, with adequate aeration (48 hours is required) there will not be finite residues in or on food commodities. Still the FDA does at times sample RACs before the further processing described above occurs and there is the potential that small amounts of unreacted phosphine residues of up to 0.1 ppm could be observed in one of the RACs listed. All aluminum and magnesium phosphide product labels are carefully reviewed to restrict direct addition of the fumigant to commodities that are further processed in a manner that it would preclude the possibility of unreacted fumigant being in or on the food supply presented to the consumer. Risk assessments were conducted by EPA to assess dietary exposures and risks from phosphine as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Dietary exposure to aluminum and magnesium phosphide can potentially occur via residues of phosphine gas remaining in treated commodities. A large number of studies involving numerous types of raw agricultural commodities and processed commodities submitted to the Agency for establishment of food tolerances indicate that residues of phosphine gas will be non- detectable with adequate aeration. One of these studies involved the analysis of 49 different processed foods, with all residues being <0.004 ppm (limit of detection for this study). There are many other studies cited in the Registration Standard (PB87-117172) that support the conclusion that residues will typically be non-detectable with adequate aeration, i.e., <0.004 ppm. Tolerances were established based on the limits of quantification of the analytical method for phosphine gas for those commodities that may not come into direct contact phosphine during the fumigation procedure. Tolerances of 0.1 ppm were established for those commodities for which aluminum and magnesium are allowed to come in direct contact. This tolerance level allows for any small amount of unreacted product compound left in the food or feed that would be removed later during processing. Direct addition (with it's 0.1 ppm tolerance) is not allowed for processed commodities, and is strictly prohibited by the product use manuals.

Anticipated residues, were used for both the chronic and acute dietary exposure analysis. The Agency conducted a Dietary Exposure Evaluation Model (DEEM) analysis, for both acute and chronic exposure scenarios, making the very conservative assumption (protective of human health) that all food contained in the DEEM consumption database (except meat/milk/poultry/eggs), i.e., the food consumed by an individual in a given day, would contain residues of phosphine gas at the anticipated residue level of 0.006 ppm. This was the highest limit of detection for any of the residue studies in the Agency's tolerance petition files and was used for both the acute and chronic analysis. The Agency considers this to be a "worst-case" scenario. Acute dietary exposure from food does not exceed the Agency's level of concern. The percent of the acute RfD occupied, at the 99.9th percentile, is less than 30% for the population subgroups examined. The Agency again notes that tolerances are based upon non-detectable residues in residue field trials. Because phosphine gas will dissipate into the atmosphere, especially as foods are cooked (heated) or prepared, residues are unlikely to be found on food at the time of consumption.

TABLE 1. ACUTE DIETARY (FOOD) EXPOSURE AT THE 99.9TH PERCENTILE

Population Subgroup	Exposure (mg/kg/day)	Percent Acute RfD
U.S. Population	0.003872	22
Non-nursing Infants (<1 yr old)	0.004943	27
Children (1-6 yr old)	0.004440	25

In addition, the acute dietary endpoint is based on a NOAEL which is the highest dose in the study. The true NOAEL may well be higher than that observed in the study. Therefore, the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic exposure and risk.* The results of the DEEM chronic exposure analysis for exposure are summarized in Table 2. Chronic exposure does not exceed the Agency's level of concern. The percent of the chronic RfD occupied, is less than 10% for the population subgroups examined.

These estimates of exposure are partially refined, yet still conservative in that it was assumed that all food (except meat/milk/poultry/eggs) consumed by an individual would contain phosphine gas residues at 0.006 ppm. This anticipated residue level is based on the highest limit of detection reported in tolerance petitions. The Agency again notes that all tolerances are based upon non-detectable residues in residue field trials. Because phosphine gas will dissipate into the atmosphere, especially as foods are cooked (heated) or prepared, residues are unlikely to be found on food at the time of consumption.

TABLE 2. CHRONIC DIETARY (FOOD) EXPOSURE

Population Subgroup	Exposure (mg/kg/day)	Percent Chronic RfD
U.S. Population	0.000261	2
Non-nursing Infants (<1 yr old)	0.001004	9
Children (1-6 yr old)	0.000474	4

Chronic aggregate dietary exposure (food and water) does not exceed HED's level of concern. Using conservative assumptions, chronic risk estimates from exposure in food were less than 10% for all population subgroups examined. In fact, due to the rapid dissipation of gaseous phosphine, the Agency does not expect finite residues on treated commodities at all if used according to label directions. Therefore, the Agency concludes that there is a reasonable certainty of no harm from chronic dietary exposure.

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemical that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified or left in effect demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate as required by section 408(b)(2)(E). EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than five years from the date of issuance of this tolerance.

2. *From drinking water.* Phosphine degrades in days (half-life is estimated to be 5 hours) and has a low exposure potential for contaminating ground and surface water because it is a gas. Therefore, EPA believes these uses will not result in any exposure through ground or surface water. Therefore, aggregate exposure is limited only to food. If new uses are added in the future, the Agency will reassess the potential impacts of phosphine on drinking water as a part of the aggregate risk assessment process. Due to the nature of these insecticides, addition of crop or residential uses is not likely.

3. *From non-dietary exposure.* Phosphine is restricted use pesticide that is used to fumigate grains and other non-food commodities. Phosphine is also used to control rodents in burrows. It has no residential uses. Residential exposure is not expected; therefore, no risk assessment for these scenarios were conducted.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether phosphine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, phosphine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that phosphine has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The aggregate acute risk reflects food source risk only, therefore an additional aggregate risk assessment is not needed (see Unit II.C.2 in the preamble of this document). The use patterns associated with aluminum and magnesium phosphide are not expected to impact water resources through labeled uses; therefore, exposure to humans through drinking water is not expected. In addition, all aluminum and magnesium phosphide products are restricted use pesticides, which have no indoor residential uses; therefore, residential exposure is not expected for these restricted use products (which do not have residential use other that rodent control in burrows). The acute risk from food exposure to phosphine is 22% of the RfD, which indicates an adequate margin of safety.

2. *Chronic risk.* Using the anticipated residues and 100% crop treated exposure assumptions described above, EPA has concluded that aggregate exposure to phosphine from food will utilize less than 10% of the RfD for the U.S. population. The subgroup with the highest aggregate exposure is 9% for Non-nursing infants (<1 year old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The potential residues

in drinking water are considered to be zero; therefore, the combined exposure of chronic food and drinking water exposure to phosphine would be no greater than less than 10% of the RfD for children or the general U.S. Population. Due to the nature of the non-dietary use, EPA believes that the commercial use of phosphine as a fumigant and in pest burrows will not result in any significant residential exposure. Therefore the chronic risk is based on food only.

3. *Short- and intermediate-term risk.* Short- and intermediate- term risks are assessed in tolerance actions where a pesticide has the potential for residential exposure through a route other than the diet. No such potential exists for phosphine. The acute and chronic risk assessments fully capture the risks associated with this tolerance action.

4. *Aggregate cancer risk for U.S. population.* EPA has determined that there is no evidence of carcinogenicity in the available studies. Based upon this determination it can be concluded that phosphine does not pose a cancer risk.

5. *Conclusion.* The Agency concludes that there is reasonable certainty that no harm will result from aggregate exposure to phosphine residues.

E. Aggregate Risks and Determination of Safety for Infants and Children and the General Population

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of phosphine, EPA considered data from a prenatal inhalation developmental toxicity study in rats.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a developmental study, CD derived Sprague Dawley mated female rats (24-27/dosage group) were exposed in inhalation chambers to concentrations of phosphine gas at 0, 0.03, 0.3, 3.0, 5.0 and 7.5 ppm, 6 hours per day on gestation days 6 through 15. The highest dose group was terminated after 10 days of exposures due to high mortalities (14/24). The treated females were observed twice daily for toxicity, and body weights and food consumption were monitored throughout the study. At day 20 post-coitus, the females were sacrificed and examined for corpora lutea, implantations, live and dead fetuses and early and late resorptions. Pups were identified, sexed and examined for external malformations and visceral and skeletal defects. The females and their fetuses from the high dose group were not examined for developmental effects. The only abnormalities observed were increased resorptions in liters (16 litters, 76 pups). Increased resorptions were not seen in the 0.3, 3.0 or 5.0 ppm groups. All other observations were comparable to the control females and pups. The maternal NOAEL was 5 ppm and the maternal LEL was 7.5 ppm based on the high incidence of maternal deaths. The reproductive NOAEL is 5 ppm and the developmental NOAEL was 5 ppm.

iii. *Reproductive toxicity study.* This study was not required for aluminum and magnesium phosphide. The complete toxicology data requirements for food- use chemicals are not required for aluminum and magnesium phosphide since little phosphine exposure is expected from use on foods as a fumigant. In fact, the Agency does not routinely require the standard toxicological data base for a food use chemical for fumigants. Fumigants are gases, which dissipate rapidly and provide for no residual control. Phosphine diffuses rapidly through the stored product because it is a small molecule and does not absorb to most commodities. Dietary exposure to this gas is not expected, tolerances are established to prevent misuse of the fumigants. It is for this reason, lack of exposure, that the Agency does not routinely require the complete battery of testing required for a food-use chemical, for fumigants. The very nature of the chemicals used for fumigation (very high volatility) make dietary exposure an unlikely scenario. The Agency reevaluated all previously waived food-use data requirements while reassessing these fumigants and determined that, based on lack of expected exposure, the data were not required. The only exception to this is the 2-year combined cancer-chronic study because there were specific concerns regarding chronic effects from low level exposure in grain workers.

iv. *Pre- and post-natal sensitivity.* The available toxicology data indicate no increased susceptibility in utero and/or postnatal exposure to phosphine. Aluminum/magnesium phosphide developmental toxicity to the offspring occurred at equivalent or higher doses than maternal toxicity.

v. *Conclusion.* The data base is considered complete, with respect to the usual data requirements for fumigants (See section E1iii above). There are no data gaps. The toxicity data for phosphine does not indicate increased susceptibility in utero or postnatal. Exposure assessments do not indicate a concern of potential risk to children because phosphine residues are not expected in food or drinking water and there is only a minor use of phosphine near residential sites, i.e., control of rodents in burrows. In addition, the Agency conducted a very conservative exposure assessment, i.e., protective of human health. It is for all these reasons that the Agency concludes that the additional safety factor of 10 can be removed.

Based on these risks EPA concludes that there is reasonable certainty that no harm will result to infants and children or the general population from aggregate exposure to phosphine residues.

III. Other Considerations

A. Metabolism In Plants and Animals

Based on the limited use pattern of aluminum and magnesium phosphide, plant and animal metabolism data were not required. The residue of concern is phosphine. The Agency has determined that decomposition products of phosphine are toxicologically insignificant at the levels found in treated commodities.

B. Analytical Enforcement Methodology

The Pesticide Analytical Manual (PAM) Vol. II lists, under aluminum phosphide, a colorimetric method (LOD = 0.01) and a GLC method with a flame photometric detection (LOD = 0.001 ppm) as Method A and B, respectively, for the enforcement of tolerances. The residue of concern is phosphine. It is noted that Method A remains a lettered method because of variable recoveries observed in an Agency method try-out. However, the method has been determined to be acceptable for enforcement because phosphine is highly reactive, and finite residues are

not expected. Data submitted in support of the established tolerances were collected by one of these two methods. The original Reregistration Standards for aluminum and magnesium phosphide reserved the requirements for human health studies until certain uncharacterized residues which resulted from the treatment of food were characterized and evaluated. Subsequent to the issuance of the Reregistration Standards, the Agency received information which identified these formerly unknown residues as oxidation products of phosphine. Having reviewed these data, the Agency has concluded that these decomposition products of phosphine are toxicologically insignificant at the levels found in the treated commodities.

Because aluminum and magnesium phosphide are inorganic compounds, recovery of residues using FDA Multiresidue Protocols is not expected, and the requirement for such data is waived.

C. Magnitude of Residues

Residue data reflecting registered postharvest treatments of stored raw agricultural and processed commodities indicate that, with adequate aeration or further processing after treatment, residues of phosphine dissipate to nondetectable levels (all <0.01 ppm). Residue data also indicate that the phosphine release from registered aluminum and magnesium phosphide products are not significantly different. Since aluminum and magnesium phosphide have essentially identical use patterns, the available residue data for aluminum phosphide has been translated to magnesium phosphide. Existing tolerances reflect a 48-hour aeration period.

D. International Residue Limits

The following tolerances for phosphine residues have been established by the CODEX Alimentary Commission: Cereal grains, 0.1 ppm; cocoa beans, 0.01 ppm; dried fruits, 0.01 ppm; dried vegetables, 0.01 ppm; peanuts, 0.01 ppm; spices, 0.01 ppm; tree nuts, 0.01 ppm. These tolerance levels are at or below the equivalent U.S. tolerances levels. The U.S. has no tolerances for use on spices or a broad tolerance for use on cereal grains; however, use on specific grains are registered uses in the U.S.. No U.S. registrants are apparently interested in obtaining such a tolerance for the Cereal Grains Crop Group (Crop Group 15) or an import tolerance for residues in/on spices. The lower tolerances probably reflects CODEX tolerances that do not allow direct addition of the fumigant to the raw agricultural commodity. Provided that one of the registrants submits a petition, with the supporting CODEX residue data and any corresponding use restriction, requesting that the higher U.S. tolerances (0.1 ppm) be reduced to 0.01 ppm, the Agency anticipates that harmonization for all commodities would be possible. The Agency notes that by changing the tolerance expression, new application technology could be registered that would eliminate the possibility of unreacted residues resulting from direct addition of the fumigant to raw agricultural commodities.

E. Rotational Crop Restrictions

Rotational crop restrictions are not needed as these insecticides are not used on agricultural crops.

IV. Conclusion

Tolerances are being revised and consolidated for residues of phosphine in the food commodities as outlined in the tables below. None of these proposed tolerances are new, the Agency is merely changing the tolerance expression to eliminate references concerning how the phosphine gas is generated.

V. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. After consideration of comments, EPA may issue a final rule. Such rule will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in further proceedings issues resolved in the final rule.

Although the standard comment period on tolerance proposals issued by EPA is 60 days, EPA finds for good cause that it would be in the public interest to have a comment period of only 30 days on this proposal. This proposed tolerance will allow registration under the Federal Insecticide, Fungicide, and Rodenticide Act of phosphine gas as an insecticide. Currently, phosphine gas is used as a insecticide but only when applied by means of the registered pesticides magnesium phosphide or aluminum phosphide. Application of phosphine gas directly will serve as a replacement for the use of methyl bromide as a fumigant. Methyl bromide use is generally being phased out in the United States and worldwide under the Montreal Protocol due to concerns with ozone depleting compounds. Finding replacements for methyl bromide's insecticidal uses is a top priority for EPA. Additionally, use of phosphine gas directly may reduce risks to workers.

VI. Public Docket and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300865] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300865]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), or require prior consultation as specified by executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A

certification statement explaining the factual basis for this determination was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

A. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create an unfunded federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

B. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: May 25, 1999.

James Jones

Director, Registration Division.

Therefore, it is proposed that 40 CFR chapter 1 be amended as follows.

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

b. Section 180.225 is revised to read as follows:

§ 180.225 Phosphine; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide phosphine in or on the following raw agricultural commodities resulting from post-harvest fumigation:

Commodity	Parts per million
Almond, nutmeat	0.1
Avocadoes	0.01
Bananas (includes Plantains)	0.01
Barley, grain	0.1
Brazil nuts	0.1
Cabbage, Chinese	0.01
Cacao bean	0.1
Cashews	0.1
Citrus citron	0.01
Cocoa bean	0.1
Coffee, bean, green	0.1
Corn, field, grain	0.1
Corn, pop, grain	0.1
Cotton, seed, undelinted	0.1
Date, dried	0.1
Eggplants	0.01
Endive/Ecarole	0.01
Filberts	0.1
Grapefruit	0.01
Kumquats	0.01
Lemons	0.01
Lettuce	0.01
Limes	0.01
Mangoes	0.01
Legume vegetables (succulent or dried group, excluding soybeans)	0.01
Millet, grain	0.1
Mushrooms	0.01
Oats	0.1
Oranges	0.01
Papayas	0.01
Peanut, nutmeat	0.1
Pecans	0.1
Peppers	0.01
Persimmons	0.01
Pimentos	0.01
Pistachio	0.1
Rice, grain	0.1
Rye, grain	0.1
Safflower, seed	0.1
Salsify tops	0.01
Sesame, seed	0.1
Sorghum, grain	0.1
Soybeans	0.1
Sunflower, seed	0.1
Sweet potatoes	0.01
Tangelos	0.01
Tangerines	0.01
Tomatoes	0.01
Walnuts	0.1
Wheat	0.1

(2) Tolerances are established for residues of the fumigant phosphine in or on all raw agricultural commodities (RAC) resulting from preharvest treatment of pest burrows in agricultural and non-crop land areas as listed in the following table:

Commodity	Parts per million
All RACs resulting from preharvest treatment of pest burrows	0.01

(3) Residues resulting from fumigation of processed foods:

Commodity	Parts per million
Processed foods	0.01

(4) Residues resulting from fumigation of animal feeds:

Commodity	Parts per million
Animal feeds	0.01

(5) To assure safe use of this pesticide, it must be used in compliance with the labeling conforming to that registered by the U.S. Environmental Protection Agency (EPA) under FIFRA. Labeling shall bear a restriction to aerate the finished food for 48 hours before it is offered to the consumer, unless EPA specifically determines that a different time period is appropriate. Where appropriate, a warning shall state that under no condition should any formulation containing aluminum or magnesium phosphide be used so that it will come in contact with any processed food, except processed brewer's rice, malt, and corn grits stored in breweries for use in the manufacture of beer.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.375 [Removed]

b. Section 180.375 is removed.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.200 [Removed]

b. Section 185.200 is removed.

§ 185.3800 [Removed]

c. Section 185.3800 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.200 [Removed]

b. Section 186.200 is removed.

§ 186.3800 [Removed]

c. Section 186.3800 is removed.

[FR Doc. 99–14089 Filed 6–8–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket Nos. 96–45 and 96–262; FCC 99–119]

Federal-State Joint Board on Universal Service; Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted the principles of a federal support mechanism that conforms to the *Second Recommended Decision*, however, the Commission does not believe that an adequate record yet exists to make determinations regarding some of the specific elements of the support methodology. Accordingly, the Commission has issued this document seeking comment on several specific implementation issues. In conjunction with our actions to implement an explicit high-cost support mechanism based on forward-looking costs, we also take action and seek comment on additional issues to permit us to identify implicit support remaining in interstate access charges by January 1, 2000.

DATES: Comments are due on or before July 2, 1999 and reply comments are due on or before July 16, 1999. Written comments by the public on the proposed information collections are due on or before July 2, 1999 and reply comments are due on or before July 16, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 9, 1999.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400. For additional information concerning the information collections contained in this Further Notice of Proposed Rulemaking contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

Initial Paperwork Reduction Act Analysis

1. This Further Notice of Proposed Rulemaking contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Further Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice of Proposed Rulemaking; OMB notification of action is due August 9, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

OMB Approval Number: None.

Title: Notification to High Cost Subscriber Lines and Certification Letter Accounting for Receipt of Federal Support (Proposals).

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or Other for Profit and State, Local or Tribal Government.

	Number of respondents	Estimate time per response	Total annual burden
Notification to High Cost subscriber Lines	30	3 hours (Quarterly)	1080 hours.
Certification Letter Accounting for Receipt of Federal Support	51	3 hours	153 hours.

Total Annual Burden: 1233 hours.
Estimated costs per respondent: $0.
Needs and Uses: The Commission proposes that carriers should be required to notify high-cost subscribers that their lines have been identified as high-cost lines. This information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the proposed collection of information will be used to verify that the carriers have accounted for its receipt of federal support in its rates or otherwise used the support for the "provision, maintenance, and upgrading of facilities and services for which the support is intended" in accordance with section 254(e).

I. Introduction

2. Although we are adopting the principles of a federal support mechanism that conform to the *Second Recommended Decision*, 63 FR 67837 (December 9, 1998), we do not believe that an adequate record yet exists to make determinations regarding some of the specific elements of the support methodology. Accordingly, we adopt this Further Notice of Proposed Rulemaking (*FNPRM*) seeking comment on several specific implementation issues. While we are resolving these implementation issues, we also are continuing to verify the operation of the cost model, including the input data elements. To complete this process, we issue separately an additional FNPRM on the model input and operational issues. We encourage commenters to consider both of these FNPRMs together, and frame their comments to recognize the close relationship between the issues discussed in each.

3. We intend to resolve the remaining methodological issues identified in this FNPRM and verify the operation of the cost model, including the input data elements, on which comment is being sought in the companion *Inputs FNPRM*. We anticipate adoption this fall of an order resolving these remaining issues, so that support may be based on forward-looking costs of providing supported services beginning January 1, 2000. In conjunction with our actions to implement an explicit high-cost support mechanism based on forward-looking costs, we also take action today and seek comment on additional issues to permit us to identify implicit support remaining in interstate access charges by January 1, 2000.

A. Methodology Issues

National Benchmark

4. In its *Second Recommended Decision*, the Joint Board supported using a cost-based benchmark, as opposed to one based on revenues, in evaluating rate comparability because state jurisdictions vary in how they set local rates. The Joint Board explained that forward-looking cost estimates for a given area could be compared against the single national cost benchmark in order to determine whether the area has costs that are significantly above the national average. We adopted the Joint Board's recommendation to employ a cost-based benchmark.

5. In setting the level of the national benchmark, the Joint Board recommended that the Commission consider using a range between 115 and 150 percent of the national weighted average cost per line. Although several commenters support the use of a national benchmark, many were reluctant to comment on the range proposed by the Joint Board in the absence of a finalized cost model. For that reason, we seek further comment on the specific cost benchmark that we should adopt, and we seek comment on whether the national benchmark should fall within the Joint Board's recommended range.

6. The current high-cost mechanism for large carriers provides increasing amounts of support based on the amount by which a carrier's loop costs exceed the national average, beginning with loop costs between 115 percent and 160 percent of the national average. In particular, the current federal support mechanism provides 10 percent support (in addition to the 25 percent allocation of all loop costs to the interstate jurisdiction) for large incumbent LECs with more than 200,000 working loops for book loop costs above 115 percent of the national average, and provides gradually more support for the portion of these carriers' book loop costs exceeding 160 percent of the national average. The following chart summarizes the levels of support provided by the current high-cost mechanism for large carriers:

Loop cost as a percent of the national average	Amount of intrastate loop cost supported (percent)
Greater than 115%, but not greater than 160%	10
Greater than 160%, but not greater than 200%	30
Greater than 200%, but not greater than 250%	60
Greater than 250%	75

While the existing mechanism provides support for loop costs beginning at 115 percent of the national average, it considers only loop costs, while the forward-looking cost model estimates the forward-looking cost of all components of the network necessary to provide the supported services.

7. Although we have not yet completed our work verifying the results of the forward-looking cost model, the cost model is now operational and, in a Report and Order, we have adopted the framework of our methodology for its use. The model currently suggests that, using this methodology, a cost benchmark level near the center of the range recommended by the Joint Board would provide support levels that are sufficient to enable reasonably comparable rates, in light of current levels of competition to preserve and advance the Commission's universal service goals. In addition to general comments on the Joint Board's recommended range for the cost benchmark, we also seek specific comment on the level at which we should set the national benchmark, including comment on what additional factors and considerations we should take into account before selecting a final national benchmark level. We encourage commenters to use updated model outputs in formulating their comments.

8. To ensure that there are no sudden withdrawals or reallocations of federal support to cover costs between the cost benchmark range that we ultimately adopt, we also seek comment today on the Joint Board's recommendation that the new forward-looking mechanism incorporate a hold-harmless provision. We seek comment on the specific operation of such a provision. We encourage commenters to consider and discuss the interaction between specific cost benchmark levels and the precise operation of the hold-harmless provision.

Area Over Which Costs Should Be Averaged

9. After further consultation with the Joint Board, we seek further comment on whether the federal support mechanism should calculate support levels by comparing the forward-looking costs of providing supported services to the benchmark at either (1) the wire center level; (2) the unbundled network element (UNE) cost zone level; or (3) the study area level.

10. A number of commenters have expressed support for calculating costs at the wire center level. As we strive to bring competition to local telephone markets while keeping rates for local service affordable and reasonably comparable in all regions of the country, we recognize two major benefits of such explicit deaveraged high-cost support. As competition places downward pressure on rates charged to urban, business, and other low-cost subscribers, we believe that support deaveraged to the wire center level or below may ensure that adequate support is provided specifically to the subscribers most in need of support, because the support reflects the costs of specific areas. In addition, deaveraged explicit support that is portable among all eligible telecommunications carriers and targeted in a granular manner to support high-cost subscribers could encourage efficient competitive entry in all areas, not just in urban or other low-cost areas. By permitting the incumbent's rates to reflect actual costs in all areas, subject to explicit support assessments or portable support payments, explicit deaveraged support may provide incentives to competitors to expand service beyond urban areas and business centers into all areas of the country and to all Americans, as envisioned by the 1996 Act. We seek comment on this analysis.

11. As an alternative to computing costs at the wire center level, we seek comment on whether we should compare costs to the benchmark at the level of UNE cost zones instead. Under this proposal, each wire center within a UNE cost zone would receive the same amount of support. Thus, support would still be targeted to the general areas that need it most, but upward pressure on the size of the federal fund would be lessened compared to the wire center approach. This approach would also coincide with the rules on the pricing of UNEs. Under our deaveraging rules, state commissions must establish different rates for elements in at least three defined geographical areas within the state to reflect geographic cost differences, and may use existing density-related zone pricing plans, or other cost-related zone plans established pursuant to state law. Using UNE zones may avoid opportunities for arbitrage, and because states are responsible for developing UNE zones, states will be able to develop zone boundaries based upon local conditions, including cost characteristics and the status of competition. We generally do not foresee any difficulty using the cost model to mirror state UNE zones, provided that state UNE zones correspond to wire center boundaries. We seek comment, however, on how state UNE zones that potentially do not correspond to wire center boundaries can be effectively used in the cost model. We encourage commenters to use updated model outputs in formulating their comments on this proposal. Finally, we ask commenters to propose any other cost zones, other than UNE zones, that may be an appropriate basis for computing costs.

12. We also seek comment on whether we should calculate costs at the study area level. In recommending that the federal support mechanism calculate costs at the study area level, the Joint Board suggested that the level of competition today has not eroded implicit support flows to such an extent as to threaten universal service. In addition, compared to calculating costs at the level of wire centers or UNE zones, calculating costs at the larger study area level may be more likely to prevent substantial increases in the size of the high-cost support mechanism because high-cost areas within the study area are averaged with lower-cost areas within the study area. In addition, we seek comment on whether comparing costs to the benchmark at the study area level is more consistent with a vision of a federal mechanism for reasonable rate comparability that focuses on support flows among states rather than within states, and whether such a vision is more consistent with the Joint Board's *Second Recommended Decision*. We seek specific comment, however, on the extent to which competition is likely to place steadily increasing pressure on implicit support flows from low-cost areas and the extent to which this pressure suggests that we should deaverage support in the implementation of our new mechanism. We urge commenters to use updated model outputs when responding to this analysis.

13. We seek specific comment on the impact of using study-area averaged costs in a study area where UNEs are available. In the *Local Competition Order*, the Commission determined that UNEs would be priced in a minimum of three rate zones within a state. If high-cost support is provided using study-area averaged costs, then all lines within the study area would be eligible for the same amount of support even though the UNE rates for those same lines would vary among rate zones within the state. We seek comment on whether this disparity between support amounts and UNE rates among different rate zones may create incentives for carriers to engage in arbitrage or other uneconomic activities unrelated to the purpose of high-cost support.

14. In recommending that costs be calculated at the study area level, the Joint Board was driven by concerns that the amount of federal high-cost universal service support be "properly measured" in light of the current state of local competition. Comparing costs to a benchmark when averaged over a smaller area is bound to produce higher support calculations, however, because high costs in one area are less likely to be diluted by low costs in another area when the area under consideration is smaller. As discussed, we agree with the Joint Board that federal support to enable reasonably comparable local rates for non-rural carriers should not increase significantly from current levels. We seek comment, however, on ways to resolve the tension between the goal of preventing the fund from increasing significantly above current levels, and the goal of ensuring that support is, to the extent possible, directly targeted to high-cost areas within study areas. In addition, we seek specific comment on four proposals to resolve this tension.

15. First, we propose, if we were to determine total support amounts in each study area by running the model to estimate costs at the study area level, to distribute support by running the model again at the wire center level in order to target support to high-cost wire centers within the study area. This approach would not significantly increase the size of the fund, but would ensure that support is distributed to areas that need it most. As a second alternative, we could determine support based on costs averaged at a level more granular than the study area, such as UNE zones or wire centers, but provide only a uniform percentage of the support so indicated. Such an approach would be consistent with the Joint Board's findings that rates are presently affordable and that competition has not yet eroded support to high-cost customers.

16. As a third alternative, we could determine support based on costs averaged at a level more granular than the study area, such as UNE zones or wire centers, but cap the amount of

support available to any particular state to a fixed percentage of the overall fund. As a fourth alternative, if we were to determine support based on costs averaged at the UNE zone or wire center level, we could limit the size of the fund either by raising the cost benchmark appropriately or adopting incremental funding levels for costs above the selected benchmark similar to the existing high-cost loop support mechanism. As an example of incremental funding levels, were we to adopt a cost benchmark of 135 percent of the national weighted average cost per line, we could fund 10 percent of the costs that are between 135 percent and 160 percent of the national average, 30 percent of the costs that are between 160 percent and 200 percent of the national average, and so forth. We seek comment on each of these proposals, including comment on how each meets the statutory requirement that support should be "sufficient." We also ask commenters to suggest additional methods for preventing the size of the fund from growing significantly.

Determining a State's Ability To Support High-Cost Areas

17. As discussed, we agree with the Joint Board that federal support to enable reasonably comparable local rates for non-rural carriers should be determined based, in part, on a state's ability to support its universal service needs internally and that such federal support should be available to the extent the state is unable to achieve reasonably comparable rates using its own resources. We concluded that a fixed dollar amount per line is a reasonably certain and specific means of assessing a state's ability to enable reasonable comparability of rates using its own resources.

18. In this *FNPRM*, we now seek comment on the fixed per-line dollar amount that should be set to estimate a state's ability to internally support its high-cost areas, and how the amount should be determined. As one option, we observe that in the *First Report and Order*, 62 FR 32862 (June 17, 1997), the Commission suggested a revenue benchmark of approximately $31. In the *Second Recommended Decision*, the Joint Board considered establishing a state's responsibility based on a percentage of revenues, specifically, a range between three and six percent of intrastate telecommunications revenues. We seek comment on whether the per-line amount should be set so that it amounts to between three and six percent of this original $31 revenue benchmark, in order to roughly equal, in absolute dollar terms, the amount that a state could reasonably have anticipated if measured on a revenue percentage basis. For example, a $2.00 per line figure would reflect roughly six percent of $31. Under this fixed dollar amount per line approach, the perceived need for support in the state is first calculated by comparing costs to the benchmark. The state's ability to enable reasonably comparable rates in the face of this perceived need would then be estimated by multiplying the per-line figure by the total number of non-rural carrier lines in the state. If the perceived support need exceeds this estimate of the state's own resources, federal support would support the difference in accordance with the benchmark methodology described. We seek comment on this proposal.

19. We also seek comment on whether wireless lines should be included in the calculation of a state's ability to support universal service. If commenters believe that wireless lines should be included, we seek comment on whether there should be a distinction between wireless lines of an ETC and wireless lines of a non-ETC. Finally, we emphasize that the use of a fixed per-line dollar value assessment to estimate states' abilities to support their universal service needs internally does not mandate the creation of state universal service funds for this purpose.

B. Distribution and Application of Support

20. As discussed, we have concluded that, consistent with section 254, carriers should be required to use support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." We seek comment on what specific restrictions, if any, are necessary to achieve this statutory requirement. Specifically, in the event that the Commission ultimately decides to average costs over an area larger than the wire center in determining support levels, we seek comment on how this application of support should be accomplished given our tentative conclusion to require carriers to apply federal high-cost support to the wire centers that triggered the need for support.

21. Although the Commission has the responsibility to ensure that support is sufficient to enable reasonable comparability of rates, the states establish specific rate levels. Therefore, we seek comment on whether making federal support available as carrier revenue, to be accounted for by the state in the rate setting process, will sufficiently fulfill the section 254(e)'s requirement that federal support shall be used "only for the provision, maintenance, or upgrading of facilities and services for which the support was intended." We tentatively conclude that making support available as part of the state rate-setting process would empower state regulators to achieve reasonable comparability of rates within their states. For example, we expect that states that have adopted price cap regulation could require exogenous price cap adjustments to reflect the increased support for high-cost areas and that states that retain rate of return regulation would count the new support towards carriers' revenue requirements. In either case, the state would be able to use federal support targeted to high-cost wire centers to enable reasonable comparability of local rates, if it so chose. We seek comment on this proposal. Specifically, we seek comment on whether all state commissions possess the jurisdiction and resources to take the actions this approach would require. We also seek comment on whether, under this proposal, carriers should be required to notify high-cost subscribers that their lines have been identified as high-cost lines and that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area.

22. In addition, we seek comment on what further restrictions, if any, we should impose on the use of federal support to ensure that recipient carriers use the support in a manner consistent with section 254. The Joint Board recommended that the Commission require carriers to certify that they will apply federal high-cost support in accordance with the statute. The Joint Board also recommended that the Commission should not require states to provide any certification as a "condition" for carriers in the state to receive high cost support, but the Commission should instead permit states to certify that, in order to receive federal universal service support, a carrier must use such funds in a manner consistent with section 254. We seek comment on whether state authority over local rates in a manner cognizant of federal support levels will adequately enforce the requirements of section 254(e), making additional federal regulation unnecessary. Because some states may lack either the authority or the desire to impose conditions on the use of high-cost support, we tentatively conclude that such state oversight, while valuable and potentially sufficient, may not in every case ensure that section 254(e)'s goals are met. Therefore, we seek comment on whether

it would be appropriate to condition the receipt of federal universal service high-cost support on any state action, including adjustments to local rate schedules reflecting federal support. We believe that denying support to states that lack the regulatory authority to ensure that federal funds are used appropriately would penalize those states and would not be consistent with section 254's mandates. We tentatively conclude, however, that even states that lack this authority would be able to certify to the Commission that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support for the "provision, maintenance, and upgrading of facilities and services for which the support is intended" in accordance with section 254(e). Conversely, if the state were unable or unwilling to take action to achieve the goals of section 254(e), we could allow such states to refuse federal high-cost support. We seek comment on these approaches, including comment on whether implementation of multiple options might best achieve the goals of section 254(e), and comment on whether any carrier-initiated action would be necessary in states with limited authority. Finally, we seek comment on what carrier or state commission action, if any, may be necessary to prevent double-recovery of universal service support at both the federal and state level.

23. Under the approach discussed, we recognize that we may need to allocate federal support among high-cost wire centers within a carrier's study area. If the federal support amount based on forward-looking cost provides only a portion of the support for a given wire center, or if we choose to fund only a portion of the support otherwise indicated by the model, we seek comment on means by which to perform this allocation. If a carrier does not receive support equal to the full amount of the difference between the forward-looking cost estimate for the wire center and the threshold level for federal support, we tentatively conclude that it should allocate the support among all lines in these high-cost wire centers in a pro rata manner, based upon the difference between the federal benchmark, plus state supported levels, and the wire center's forward-looking cost of providing service. We believe this approach has the potential to foster competition because the amount of the support available to competing eligible telecommunications carriers would be clearly identified, and thus competing carriers would be able to assess more accurately whether competitive entry is viable in a particular high-cost area. In addition, high-cost support would be distributed in such a manner that support levels in each high-cost wire center would be proportionate to costs. We seek comment on these proposals and tentative conclusions.

C. Hold-Harmless and Portability of Support

24. As discussed, we agree with the Joint Board that the federal high-cost support mechanism should have a hold-harmless provision to prevent immediate and substantial reductions of federal support and potentially significant rate increases. Under such a hold-harmless provision, the amount of support provided would be the greater of the amount generated under the forward-looking mechanism or the explicit amount presently received. We seek comment on how we should implement such a hold-harmless provision to best accomplish this goal. Specifically, we seek comment on whether the hold-harmless provision should be implemented on a state-by-state basis or on a carrier-by-carrier basis.

25. Under a state-by-state approach, the total amount of federal support provided in each state would be the greater of the total amount indicated by the forward-looking mechanism or the total amount presently received by carriers in the particular state. For example, assume a state has two carriers, Carrier A and Carrier B, each presently receiving $100 in federal high-cost intrastate support. Assume further that under the forward-looking mechanism, Carrier A is entitled to $100 and Carrier B is entitled to $95. The total amount of support indicated by the forward-looking mechanism ($195) is less than the total amount of support under the present mechanism ($200). Therefore, the hold-harmless provision would supply an additional $5 of support. Assume, however, that under the forward-looking mechanism, Carrier A is entitled to $120 and Carrier B is entitled to $90. The total amount of support indicated by the forward-looking mechanism ($210) is greater than the total amount of support under the present mechanism ($200). Although Carrier B would receive less support under the forward-looking mechanism, the state, as a whole, would receive more support under the forward-looking mechanism. Therefore, the hold-harmless provision does not supply any additional support. We believe that such a state-by-state hold-harmless is likely to prevent substantial increases in the size of the high-cost support mechanism because an increase in support for one carrier can be offset by a decrease in support for another carrier when determining the total amount of hold-harmless support provided in a particular state. On the other hand, the state-by-state approach may not prevent a decrease in support for certain carriers within a particular state. Redistribution of federal support within the state, however, may be accomplished by state commission action.

26. In contrast, under a carrier-by-carrier hold-harmless approach, the amount of federal support provided to each carrier in a state would be the greater of the amount indicated by the forward-looking mechanism or the explicit amount presently received by the carrier. For example, assume a state has two carriers, Carrier A and Carrier B, each presently receiving $100 in support. Assume further that, under the forward-looking mechanism, Carrier A is entitled to $125 and Carrier B is entitled to $75. Under a carrier-by-carrier hold-harmless provision, Carrier A would receive $125 pursuant to the forward-looking model, and Carrier B would receive $100 pursuant to the hold-harmless provision. Thus, the total amount of federal support provided in that state would increase to $225. A carrier-by-carrier approach ensures that no carrier receives less support under the forward-looking mechanism than it receives under the present mechanism. We believe, however, that the carrier-by-carrier approach, as opposed to the state-by-state approach, is more likely to inflate the size of the high-cost support mechanism because the amount of support provided to each carrier can only increase under this approach. Using updated model outputs, we ask commenters to comment on whether a state-by-state or a carrier-by-carrier hold-harmless approach is more consistent with universal service principles set forth in the Act and the role of the federal mechanism in providing high-cost support.

27. In addition, in the event that the Commission adopts a state-by-state hold-harmless provision, we seek comment on how such a provision should allocate support among carriers in the event that the total amount of hold-harmless support provided in a particular state is insufficient to fully hold each carrier harmless. Specifically, in the event the Commission adopts a state-by-state hold-harmless approach, we propose allocating the total amount of support *pro rata* among such carriers based on their relative reductions in support. For example, assume that a state has three carriers, Carrier A,

Carrier B, and Carrier C. Assume further that, under the present mechanism, Carrier A receives $150, Carrier B receives $125, and Carrier C receives $100. Also assume that, under the forward looking mechanism, Carrier A is entitled to $175, Carrier B is entitled to $100, and Carrier C is entitled to $75. The total amount of support indicated by the forward-looking mechanism ($350) is less than the total amount of support under the present mechanism ($375). Therefore, a state-by-state hold-harmless provision would provide an additional $25 of support. Because Carrier B and Carrier C have experienced a combined reduction in support of $50 and Carrier A has experienced no reduction in support, the $25 of hold-harmless support must be allocated between Carrier B and Carrier C. Under our proposal, the hold-harmless support would first be allocated to the carrier experiencing the greater relative reduction in support. Here, Carrier B received 80 percent ($100/$125) of its previous support amount, and Carrier C received 75 percent ($75/$100) of its previous support amount. In order to place Carrier B and Carrier C on equal footing, therefore, the first $5 of the total hold-harmless amount would be allocated to Carrier C, resulting in both Carrier B and Carrier C receiving 80 percent of their previous amount of support. The remaining $20 of support would be allocated *pro rata* between Carrier B and Carrier C so that both carriers receive the same total percentage of the support provided under the present mechanism. Carrier B would receive an additional $11.11 ($125/$225 × $20), for a total of 89 percent ($111.11/$125) of its support under the present mechanism, and Carrier C would receive an additional $8.88 ($100/$225 × $20), for a total of 89 percent ($88.88/$100) of its support under the present mechanism. We believe that this method of allocation allows for an equitable distribution of support in the event that the total state-by-state amount is insufficient to fully hold each carrier harmless. We seek comment on this proposal.

28. In the alternative, we seek specific comment on whether, if we eventually adopt a state-by-state rather than a carrier-by-carrier hold-harmless approach, we should distribute universal service high-cost support directly to the state commissions, rather than to carriers. The Joint Board considered and rejected distributing federal support to the states, rather than directly to carriers, because of the long-standing practice of distributing federal support directly to carriers and the absence of any affirmative evidence in the Act or its legislative history that Congress intended to alter this method of distribution. In addition, commenters that addressed this issue oppose a mechanism that would distribute support to the states. We seek additional comment, however, on whether support should be distributed to the state commissions for allocation among carriers in each state instead of through a federal allocation mechanism, in the event one or more carriers in the state experienced a reduction in support as a result of a state-by-state hold-harmless mechanism.

29. We also seek comment on the relationship between the hold-harmless approaches suggested, and the portability of federal high-cost support. As discussed, we concluded that, consistent with the Joint Board's recommendations and the policy we established in the First *Report and Order*, federal high-cost support should be portable, and available to all eligible telecommunications carriers, regardless of the technology used to provide the supported services. To implement portability, however, we must first determine the amount of support to be ported. Specifically, in the event a competitor wins a customer from an incumbent receiving hold-harmless support, we seek comment on whether the competitor should receive the incumbent's hold-harmless support, or whether the competitor should receive the amount of support determined on a forward-looking basis. Making the hold-harmless amount available to the competitor appears to be more competitively neutral, because both carriers would receive the same amount. However, given that the purpose of the hold-harmless provision is to prevent sudden rate increases by carriers that have grown dependent on current support in designing their rate structures, the hold-harmless amount could represent a windfall to an efficient competitor. While making the forward-looking amount available to the competitor and providing the hold-harmless amount to the incumbent may not be as competitively neutral, it would appear to approximate more closely the amount necessary to support high-cost service in the area. We seek comment on this issue. We encourage commenters to use updated model outputs in framing their comments on the issue of portability.

D. Adjusting Interstate Access Charges To Account for Explicit Support

30. As discussed, we agree with the Joint Board that we have the jurisdiction and statutory obligation to identify any universal service support that is implicit in interstate access charges and, as far as possible, make that support explicit. In this section we seek comment on how we should adjust interstate access charges to offset universal service support that we subsequently identify in interstate access charges and allow carriers to recover through increased support from the new federal mechanism. Because of the role access charges have played in supporting universal service, it is critical to implement changes in the interstate access charge system together with the complementary changes in the federal universal service support mechanism we adopt today. We seek comment on how we should adjust interstate access charges to reflect any increases in federal explicit support provided to non-rural carriers under the new federal mechanism and methodology.

31. The Commission determined in the First Report and Order that non-rural carriers would begin to receive high-cost support on July 1, 1999, based on forward-looking costs, and delayed the implementation of support based on forward-looking costs for rural carriers until at least January 1, 2001. As discussed, more time is needed to verify the models that will determine the forward-looking costs on which the intrastate high-cost support for non-rural carriers will be based. Thus, we are postponing the July 1, 1999, implementation of intrastate high-cost support for non-rural carriers until January 1, 2000. Because these models may also be used to determine levels of implicit support in interstate access charges and the amount of federal support a carrier should receive, this will also delay determination of the interstate high-cost support for non-rural carriers. This section addresses only the question of how to reduce interstate access charges to reflect increased explicit federal support for non-rural carriers that currently flows within the interstate jurisdiction. We will address any necessary interstate access charge reductions for rural carriers at a later date.

32. We tentatively conclude that we should require price cap LECs to reduce their interstate access rates to reflect any increased explicit federal high-cost support they receive. To do otherwise would give these carriers a windfall by allowing them to maintain rates that include implicit high-cost support even after the support has been made explicit. We tentatively conclude that the carriers should make an exogenous downward adjustment to the common line basket. In the short run, this will reduce the CCLC and multi-line PICCs.

In the longer run, this adjustment will keep down scheduled increases for the primary residential and single-line business PICC. The PICC is often passed on to the end user by the IXC that pays it. This approach will serve the dual purpose of eliminating implicit support and holding down per-line rates associated with primary residential and single-line business lines. This will, therefore, help keep basic telephone service affordable and comparable.

33. We seek comment on whether we should require price cap LECs to reflect explicit high-cost support by making the downward exogenous adjustment to their common line basket's price cap indexes (PCIs). Alternatively, we seek comment on whether we should instead permit incumbent LECs to reduce their access rates to offset the explicit support by lowering their common line charges on a geographically deaveraged basis. For example, we could reduce implicit support resulting from geographic averaging by permitting carriers to lower their SLCs on a deaveraged basis, reducing SLCs in low-cost areas, while maintaining the SLC caps in our rules for high-cost areas. We seek comment on whether we should allow carriers to determine where they lower their rates under such an approach. Alternatively, we seek comment on whether we or the state commissions should delineate the permissible areas for deaveraged reductions, and how those areas should be determined. We could, for example, require the deaveraging to occur based on the same rate zones that some states have already identified pursuant to our deaveraging requirement for the pricing of unbundled network elements and interconnection. We also seek comment on which common line rate elements should be deaveraged.

34. We also seek comment on whether price cap carriers should also reduce their base factor portion (BFP). For carriers that calculate their SLC based on the BFP, this would result in reductions to the SLC for multi-line business and non-primary residential lines, which would be offset by smaller reductions in CCL and multi-line PICC rates. We also seek comment on whether a downward adjustment to the incumbent LECs' PCIs should be across-the-board instead of targeted to the common line basket.

35. We also seek comment on whether we should reduce the SLC on primary residential and single-line business lines. Although such a reduction is an option, it would not further the goal of reducing implicit interstate support, unless it was targeted to low-cost wire centers within a study area. The current SLC cap of $3.50 per month on primary residential and single-line business lines already creates interstate implicit support for most of those lines. A general reduction in the SLC would increase the need for such support and would not reduce support implicit in the CCLC and the multi-line PICC. Although, at the end of the transition initiated by our *Access Charge Reform Order*, 62 FR 31040 (June 6, 1997), the combination of the SLC and PICC assessed to each line will permit carriers to recover the full interstate-allocated portion of their common line costs from the line that caused those costs to be incurred, any reduction in the SLC would delay this transitional process and result in a higher PICC on primary residential and single-line business lines. We do not expect any reductions to the common line basket to reduce common-line recovery below $3.50 per month, per line, but we seek comment on whether we should limit any reductions to the common line basket to the amount needed to reduce common line revenues per line to $3.50. We seek comment on how the remainder of the adjustment should be applied if that were to occur.

36. We tentatively conclude that non-rural rate-of-return LECs should apply additional interstate explicit high-cost support revenues to the CCL element, thus reducing CCL charges. We seek comment on this tentative conclusion. We also seek comment on whether these revenues should instead be deducted from the BFP, which would reduce the SLC for multi-line business lines and diminish the reduction to the CCLC. Furthermore, as noted, the Joint Board set forth certain guidelines that the Commission should follow when taking action to remove implicit support from interstate access rates, including: (1) there should be a corresponding dollar-for-dollar reduction in interstate access charges as implicit support in interstate access rates is replaced with explicit support; (2) any reductions in interstate access rates should benefit consumers; (3) universal service should bear no more than a reasonable share of joint and common costs; and (4) reasonable comparability should not be jeopardized, and neither consumers in general nor particular classes of consumers should be harmed. We seek comment on whether our proposals in this section conform to the Joint Board's guidelines.

37. Finally, we recognize that some proposals for access reform may have the added benefit of directing more federal support to high-cost areas, relative to low-cost areas. For example, some parties have suggested using the cost proxy model as the basis for converting the excess of access rates above the forward-looking cost of access from implicit support to geographically deaveraged support amounts. These support amounts would be both explicit and portable to competing LECs that serve the lines to which these support amounts would be assigned. It would appear that these proposals could potentially serve to direct more federal support to high-cost areas, relative to low-cost areas, much like we believe the use of the cost model in conjunction with an appropriate benchmark could direct such additional support to high-cost areas. We seek comment on whether and how adoption of an access reform proposal that would direct more federal support to high-cost areas, relative to low-cost areas, should affect our calculation of high-cost universal service support, if at all. To the extent possible, parties commenting on this issue should address specific access reform proposals that could be used in this manner to reform both high-cost universal service and access charges simultaneously.

II. Procedural Matters

A. Regulatory Flexibility Act

38. The Regulatory Flexibility Act (RFA) requires a Regulatory Flexibility Act analysis whenever an agency publishes a notice of proposed rulemaking, or promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification. The RFA generally defines "small entity" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. The Small Business Administration (SBA) defines a "small business concern" as an enterprise that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.

39. We conclude that neither an Initial Regulatory Flexibility Analysis nor a Final Regulatory Flexibility Analysis are required here because the foregoing *FNPRM* seeks comment only on the mechanisms that the Commission should use to provide high-cost support to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations, affiliates of such corporations, or dominant in their field of operations. Therefore, we certify, pursuant to the RFA, 5 U.S.C. 605(b),

that the proposals contained in the *FNPRM*, will not have a significant economic impact on a substantial number of small entities. The Office of Public Affairs, Reference Operation Division, will send a copy of this certification, along with this *FNPRM*, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA, see 5 U.S.C. 605(b), and to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, this certification, as well as this FNPRM (or summaries thereof), will be published in the **Federal Register**.

B. Filing Comments

40. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 2, 1999, and reply comments on or before July 16, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

41. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

42. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW–A325; Washington, D.C. 20554.

43. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–A523, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding, including the lead docket number in this case (CC Docket No. 96–45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

III. Ordering Clauses

44. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 214, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 214, 254, 303(r), 403, and 410, the Further Notice of Proposed Rulemaking is adopted. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

45. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14699 Filed 6–8–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 052699A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishery proposal; request for comments.

SUMMARY: NMFS announces that the Regional Administrator, Northeast Region, NMFS, is considering approval of an experimental fishing proposal. EFPs would allow vessels to conduct operations otherwise restricted by regulations governing the Northeast Multispecies Fishery, and would exempt vessels from days-at-sea (DAS), mesh sizes, and other gear restrictions. The experimental fishery proposal is for a comparative mesh selectivity study in waters south of Rhode Island Sound, South of Nantucket Island, North of Cape Cod Bay, and South of Long Island from Montauk to Shinnecock. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this document to provide interested parties the opportunity to comment on the proposed experimental fishery.

DATES: Comments on this notification must be received by June 24, 1999.

ADDRESSES: Comments should be sent to Jon Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fisheries."

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The initial experimental fishery proposal was submitted by the Rhode Island Department of Environmental Management in conjunction with the University of Rhode Island (URI) on March 15, 1999. It was later revised to include additional areas, species, and codend mesh sizes on May 12, 1999. Their proposal is for a comparative mesh selectivity experiment that would investigate mesh selectivity functions of three square codend mesh sizes—5.5

inch (14 cm), 6 inch (15.2 cm) and 6.5 inch (16.5 cm). The study will be conducted using two Rhode Island commercial fishing vessels, as well as representatives from the Massachusetts Division of Marine Fisheries, two Massachusetts commercial fishermen, two New York commercial fishermen, and participation by the New York Department of Environmental Protection. Sea trials will be conducted to quantify the mesh selectivity differences and comparative catch rates of winter flounder (*Pleuronectes americanus*), summer flounder (*Paralichthys dentatus*), yellowtail flounder (*Limanda ferrugina*), American plaice (*Hippoglossoides platessoides*), grey sole (*Glyptocephalus cynoglossus*), and windowpane flounder (*Lophopsetta maculata*). The experiment will test both 6.5 inch (16.5 cm) codend and 5.5 inch (14 cm) codend square mesh (treatments) against 6 inch (15.2 cm) codend square mesh (control) nets, including the use of mesh liners (currently prohibited under the regulations), by switching the control and treatment between the participating vessels on alternating tows. This alternating sampling sequence between two different vessels is designed to show how vessel power and size differences may contribute to mesh selectivity differences.

URI scientific personnel will monitor all cruise operations. All undersized fish will be returned to the sea as soon as possible. All other catch not used for sampling purposes will be landed and sold. The proposed operations will occur over a 20– to 24-day period to begin on or about July 15, 1999, through October 31, 1999.

EFPs would be issued to the participating vessels in the experiments in accordance with the conditions stated, and will exempt vessels from the mesh size, DAS, and other gear restrictions of the Northeast Multispecies Fishery Management Plan during the specified time frame.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14644 Filed 6–8–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 110
Wednesday, June 9, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

Meetings

The Advisory Commission on Electronic Commerce was established by Public Law 105–277 to conduct a thorough study of federal, state and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities and report its findings and recommendations to the Congress no later than April 21, 2000. Notice is hereby given, that the Advisory Commission on Electronic Commerce will hold meetings on June 21, 1999 from 4:00 p.m. to 5:00 p.m. at the Williamsburg Inn, East Lounge, Colonial Williamsburg, Williamsburg, Virginia and on June 22, 1999 from 8:30 a.m. to 5:00 p.m. at the College of William & Mary, University Center, located between Richmond and Jamestown Roads, Williamsburg, VA. The meetings of the Commission shall be open to the public. The proposed agenda for June 21 will address organization procedures for the Commission. The proposed agenda for June 22 includes presentations and panel discussions of relevant, background material on the issues related to the Commission's mission.

Records shall be kept of all Commission proceedings and shall be available for public inspection given adequate notice at the Commission's offices 2500 Wilson Boulevard, Arlington, VA 22201–3834.

The Commission shall consist of 19 members appointed for the life of the Commission. The membership shall be appointed as follows:

(a) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

(b) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose an income tax.).

(c) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of the following:

(i) 5 individuals appointed by the Majority Leader of the Senate;

(ii) 3 individuals appointed by the Minority Leader of the Senate;

(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

The Members of the Commission are as follows: (chairman designate) James S. Gilmore, III, Governor, Commonwealth of Virginia; Dean F. Andal, Chairman, California Board of Equalization, Michael Armstrong, Chief Executive Officer, AT&T; Joseph H. Guttentag, Deputy Assistant Secretary for International Tax Affairs, U.S. Department of the Treasury; Paul C. Harris, Sr., Delegate, Virginia House of Delegates; Delna Jones, Commissioner, Washington County, Oregon; Ron Kirk, Mayor, city of Dallas; Michael O. Leavitt, Governor, State of Utah; Gene N. LeBrun, President, National Conference of Commissioners on Uniform State Law; Gary Locke; Governor, State of Washington; Grover Norquist, President, Americans for Tax Reform; Robert Novick, Counselor, U.S. Trade Representative; Richard Parsons, President, Time Warner, Inc.; Andrew Pincus, General Counsel, U.S. Department of Commerce; Robert Pittman, President & Chief Operating Officer, America Online; David Pottruck, President & co-Chief Executive Officer, Charles Schwab and Company; John W. Sidgmore, Vice Chairman & Chief Operating Officer, MCI Worldcom; Stan Sokul, Association of Interactive Media; Theodore Waitt, President & Chief Executive Officer, Gateway, Inc.

Heather Rosenker,

Executive Director.

[FR Doc. 99–14691 Filed 6–8–99; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 2, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of their submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: CCC Cotton Loan Program Regulations—7 CFR Part 1427.

OMB Control Number: 0560–0074.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provides the Farm Service Agency (FSA) on behalf of the Secretary of Agriculture authority to

make available nonrecourse marketing assistance loans on 1996 through 2002 crops of upland or Extra Long Staple (ELS) cotton. Loans provide eligible producers with interim financing on their eligible production and facilitate the orderly distribution of cotton throughout the year. Producers requesting Commodity Credit Corporation cotton (CCC) loans must provide information regarding collateral pledged for loan and meet eligibility requirements which are basic to all commodity loan programs. FSA will collect information using several forms.

Need and Use of the Information: FSA will collect information to determine loan quantities and principal amounts to administer the program and verify commodity and producer eligibility. Without the information from the producer, CCC could not carry out the statutory loan provisions.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 85,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 11,002.

Agricultural Marketing Service

Title: Grain News Reports and Molasses Market News.

OMB Control Number: 0581–0005.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621) Section 203(g), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Grain News provides a timely exchange of accurate and unbiased information on current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with approximately 30 state departments of agriculture. The up-to-the-minute reports collected and disseminated by professional market reporters are intended to provide both buyers and sellers with the information necessary for making intelligent, informed marketing decisions, thus putting everyone in the marketing system in an equal bargaining position. AMS will collect information using market new reports.

Need and Use of the Information: AMS will collect information on various aspects of the grain and feed industry in determining available supplies and current pricing. Industry traders use market news information to make marketing decisions on when and where to buy sell. In addition, the reports are used by other Government agencies to evaluate market conditions an calculate price levels used for the Farmer-owned Reserve Program. The reports must be collected and disseminated by an impartial third party.

Description of Respondents: Business or other for-profit; Individuals or households; Farms, Federal Government.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion; weekly; monthly.

Total Burden Hours: 368.

Office of the Secretary, White House Liaison

Title: Advisory Committee Membership Background Information.

OMB Control Number: 0505–0001.

Summary of Collection: Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2281, *et seq.*) requires the Department to provide information concerning advisory committee members principal place of residence, persons or companies by whom they are employed, and other major sources of income. Board members under each program are appointed by the Secretary. Some of the information contained on Form AD–755 is used by the Department to conduct background clearances of prospective board members as required by departmental regulations. This clearance is required by all committee members who are appointed by the Secretary. The agencies, in conjunction with the Office of the Secretary, White House Liaison, will collect information using Form AD–755, Advisory Committee Membership Background Information.

Need and Use of the Information: The agencies and the Office of the Secretary, White House Liaison will collect information on the background of advisory committee nominees to make sure there are no delinquent loans to the United States Department of Agriculture, USDA, as well as making sure they have no previous record that could be a negative reflection to USDA. The information obtained from the form is also used in the compilation of an annual report to Congress. Failure of the Department to provide this information would require the Secretary to terminate the pertinent advisory committee.

Description of Respondents: Individuals or households.

Number of Respondents: 1,631.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 815.5.

Economic Research Service

Title: Agriculture Market Information Survey.

OMB Control Number: 0536–New.

Summary of Collection: U.S.C. 7 Section 1622 directs the Secretary of Agriculture to conduct, assist, and foster research investigation and experimentation to determine the best methods of processing, preparation for market, packaging, handling, transporting, storing, distributing, and marketing agricultural products. Providing economic information on agricultural/commodity market conditions is a longstanding and important mission of USDA. The mission of the Economic Research Service (ERS) is to provide economic information and analyses to improve public and private decisions on agriculture, food, natural resources, and rural development issues. In carrying out its mission, ERS plays a lead analytic and dissemination role in the USDA market outlook program. To improve the quality and delivery of information to its customers, and to provide input for program choices forced on ERS by declining resources, ERS has been attempting to assess whether and how the needs, types, and sources of information have changed for its customers. Based on the results of a series of ERS customer focus groups, a survey of ERS market outlook staff, interviews with USDA progr m administrators, and discussions with commodity and trade association staff, the ERS has concluded that the "market" for economic information on commodity markets—the need for, availability of, and access to economic information on agricultural markets—has changed significantly during the last decade and will continue to change in the future. To answer these questions and to obtain a better understanding of the forces for change in the "market" for economic information on agricultural/commodity markets, ERS decided to undertake a study to determine the value placed on different types of agricultural market information by decision makers in the public and private sectors. The study has two phases: Phase I will focus on public sector and Phase II will focus on private sector users of economic information on agricultural markets. ERS will collect information using a combination of telephone and mail-out surveys.

Need and Use of the Information: ERS will collect information to understand

how markets for economic information on agricultural commodities operate by identifying the primary uses for and sources of this information and by determining the types of information that managers and decision makers in the agribusiness sector value most. The data will be used to evaluate the role of USDA in the information market by examining how USDA information is used, where it overlaps with that of other information suppliers, where it is unique, and how it is valued by market participants. The purpose of the data is to develop insights into the most effective role for USDA, and particularly for ERS, in the provision of economic information on agricultural markets.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 1010.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 271.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–14541 Filed 6–8–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Solicitation for Membership to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 10 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is June 25, 1998.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 (The Farm Bill) authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996 with staggered 30 terms of 1, 2, and 3 years.

As a result of the staggered appointments, the terms for 10 of the 30 members who represent 10 specific categories will expire September 30, 1999. Nominations for a 3-year appointment for all 10 of the vacant categories are sought. Nominees will be carefully reviewed for their broad expertise, leadership, and relevancy to a category. The 10 vacancies are:

B. Farm Cooperatives

D. Plant Commodity Producers

G. National Aquaculture Associations

J. National Food Science Organizations

L. National Nutritional Science Societies

M. Land-Grant Colleges and Universities—1862

R. Scientific Community not closely associated with Agriculture

AA. An agency of USDA lacking Research Capabilities

BB. Research agency of the Federal Government other than USDA

DD. National Organization directly concerned with REE—

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category will be accepted. Please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, "Advisory Committee Membership Background Information" (which can be obtained from the contact person below) and will be vetted before selection. Send nominatee's name, resume, and their completed AD–755 to the Office of the Advisory Board, Research, Education, and Economics, Room 3918 South Building, Department of Agriculture, Washington, D.C. 20250–2255 no later than June 25, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 27th day of May 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–14540 Filed 6–8–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Special Cotton Import Quota Announcements Numbers 1 Through 10

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Ten special import quotas for upland cotton equal are established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quotas are referenced as the Commodity Credit Corporation Special Cotton Import Quota Announcement Numbers 1 through 10 and are set forth in subheadings 9903.52.01 through 9903.52.10, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: Each of the special quotas is subject to an established date and applies to upland cotton purchased not later than 90 days from the established date and entered into the United States not later than 180 days from the established date. Dates applicable to each individual special import quota are contained in this notice under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera, Farm Service Agency, United States Department of Agriculture, STOP 0518, 1400 Independence Avenue, S.W., Washington, DC 20013–0518 or call (202) 720–3452.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1–$^{3}/_{32}$ inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 3.00 cents per pound. This condition was met for 10 consecutive 10-week periods.

Therefore, quotas referenced as Special Cotton Import Quota Announcement Numbers 1 through 10 are established subject to the following dates and quantities.

Quota 1 is established as of March 4, 1999, and applies to upland cotton purchased not later than June 1, 1999, and entered into the United States not later than August 30, 1999. The quota amount, 42,549,915 kilograms (93,806,582 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—November 1998 through January 1999.

Quota 2 is established as of March 11, 1999, and applies to upland cotton purchased not later than June 8, 1999, and entered into the United States not later than September 6, 1999. The quota amount, 42,549,915 kilograms (93,806,582 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—November 1998 through January 1999.

Quota 3 is established as of March 18, 1999, and applies to upland cotton purchased not later than June 15, 1999, and entered into the United States not later than September 13, 1999. The quota amount, 42,549,915 kilograms (93,806,582 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—November 1998 through January 1999.

Quota 4 is established as of March 25, 1999, and applies to upland cotton purchased not later than June 22, 1999, and entered into the United States not later than September 20, 1999. The quota amount, 42,549,915 kilograms (93,806,582 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—November 1998 through January 1999.

Quota 5 is established as of April 1, 1999, and applies to upland cotton purchased not later than June 29, 1999, and entered into the United States not later than September 27, 1999. The quota amount, 42,949,885 kilograms (197,267 bales), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1998 through February 1999.

Quota 6 is established as of April 8, 1999, and applies to upland cotton purchased not later than July 6, 1999, and entered into the United States not later than October 4, 1999. The quota amount, 42,949,885 kilograms (197,267 bales), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1998 through February 1999.

Quota 7 is established as of April 15, 1999, and applies to upland cotton purchased not later than July 13, 1999, and entered into the United States not later than October 11, 1999. The quota amount, 42,949,885 kilograms (197,267 bales), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1998 through February 1999.

Quota 8 is established as of April 22, 1999, and applies to upland cotton purchased not later than July 20, 1999, and entered into the United States not later than October 18, 1999. The quota amount, 42,949,885 kilograms (197,267 bales), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1998 through February 1999.

Quota 9 is established as of April 29, 1999, and applies to upland cotton purchased not later than July 27, 1999, and entered into the United States not later than October 25, 1999. The quota amount, 42,949,885 kilograms (197,267 bales), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1998 through February 1999.

Quota 10 is established as of May 6, 1999, and applies to upland cotton purchased not later than August 3, 1999, and entered into the United States not later than November 1, 1999. The quota amount, 43,005,726 kilograms (197,524 bales), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—January 1999 through March 1999.

Each special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to extra long staple cotton.

Authority: Sec. 136, Pub. L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on May 28, 1999.

Parks Shackelford,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–14530 Filed 6–8–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Census Bureau

The American Community Survey (ACS); Proposed Information Collection

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paper work and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before August 9, 1999.

ADDRESSES: Direct all written comments to Linda Englemeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cynthia Taeuber, Bureau of the Census, Demographic Statistical Methods Division, Washington, DC 20233. Her telephone number is (301) 457–2899.

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Community Survey, which the Census Bureau initiated in November 1995, is a continuing full-scale operation of a continuous measurement system. Continuous measurement is a reengineering of the method for collecting the housing and socio-economic data traditionally collected in the decennial census. By selecting a new sample of addresses every month, the American Community Survey provides data every year instead of once in ten years. It blends the strength of small-area estimation from the decennial census with the quality and timeliness of continuing surveys through its large monthly survey.

The Census Bureau began the American Community Survey in four sites, added new sites each of the last three years, and presently conducts the American Community Survey in 31 sites. The expansion to 31 sites in November 1998 began the comparison phase of the continuous measurement system.

This comparison phase of the American Community Survey is designed primarily to collect information necessary to understand differences between estimates derived from the American Community Survey and the Census 2000 long form. This phase will help the Census Bureau and the Federal Government better understand the costs and benefits of a continuous measurement system, and make possible eliminating the long form in Census 2010. The content of the American Community Survey during the comparison phase is basically the same as the content of the Census 2000 long form. There are some differences to reflect the fact that the American Community Survey is conducted every month.

In November 1999, the Census Bureau plans to continue the comparison phase in the 31 sites, and to begin a three-year comparison phase on a national level as part of the decennial program. For this comparison, the Census Bureau is conducting the American Community Survey in counties with a broad mix of geographic and demographic characteristics.

In addition to selecting a sample of residential addresses, the Census Bureau will select a sample of group quarters (GQs) and conduct the American Community Survey with a sample of persons within the GQs. (To prevent duplication with Census 2000, the Census Bureau will not conduct American Community Survey interviews in group quarters during 2000.) The Census Bureau will also conduct a reinterview operation with a small sample of households to monitor the quality of data collected during Computer Assisted Personal Interviewing (CAPI).

II. Method of Collection

The Census Bureau will mail questionnaires to households selected for the American Community Survey. For households that do not return questionnaires, Census Bureau staff will attempt to conduct interviews via Computer Assisted Telephone Interviewing (CATI) and CAPI.

For some GQs, we will mail questionnaires to respondents. For other types of GQs, Field Representatives will either help respondents complete questionnaires or leave questionnaires and ask respondents to return them by mail.

Census Bureau staff will conduct reinterviews using CAPI.

III. Data

OMB Number: 0607–0810.

Form Number: ACS–1, ACS–1(GQ), ACS–3(GQ), ACS–290.

Type of Review: Regular.

Affected Public: Individuals and households.

Estimated Number of Respondents: During the period of November 1999 through October 2002, we plan to contact the following number of respondents: 2,554,850 households; 112,000 persons in group quarters; and 25,000 households in reinterview.

Estimated Time Per Response: Estimates are 38 minutes per household, 15 minutes per person in group quarters, and 10 minutes per household in the reinterview sample.

Estimated Total Annual Burden Hours: The estimate is an annual average of 560,000 burden hours.

Estimated Total Annual Cost: Except for their time, there is no cost to respondents.

Respondent Obligation: Mandatory.

Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collections techniques or others forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 4, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–14592 Filed 6–8–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Open Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on June 25, 1999, at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3407, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC. The meeting will begin at 9 a.m. and is scheduled to adjourn at 3 p.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session: 9 a.m.–3 p.m.

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Issue briefings.
5. Open discussion.

The meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSENC members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave, NW, Washington, DC 20230

For more information, contact Ms. Carpenter on (202) 482–2583.

Dated: June 3, 1999.

Iain S. Baird,

Deputy Assistant Secretary.

[FR Doc. 99–14546 Filed 6–8–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping of Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping

countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation an interested party as defined in section 771(9) of the Tariff of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of June 1999, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
Antidumping Duty Proceedings	
BELGIUM: Sugar A–423–077	6/1/98–5/31/99
CANADA:	
Oil Country Tubular Goods A–122–506	6/1/98–5/31/99
Red Raspberries A–122–401	6/1/98–5/31/99
FRANCE:	
Large Power Transformers A–427–030	6/1/98–5/31/99
Sugar A–427–078	6/1/98–5/31/99
GERMANY:	
Industrial Belts, Except Synchronous & V Belts A–428–802	6/1/98–5/31/99
Precipated Barium Carbonate A–428–061	6/1/98–5/31/99
Sugar A–428–082	6/1/98–5/31/99
HUNGARY: Tapered Roller Bearings A–437–601	6/1/98–5/31/99
ITALY:	
Large Power Transformers A–475–031	6/1/98–5/31/99
Synchronous and V-Belts A–475–802	6/1/98–5/31/99
JAPAN:	
Engineered Process Gas Turbo-Compressor Systems A–588–840	6/1/98–5/31/99
Fishnetting of Man-Made Fibers A–588–029	6/1/98–5/31/99
Forklift Trucks A–588–703	6/1/98–5/31/99
Grain-Oriented Electrical Steel A–588–831	6/1/98–5/31/99
Industrial Belts A–588–807	6/1/98–5/31/99
Large Power Transformers A–588–032	6/1/98–5/31/99
Nitrile Rubber A–588–706	6/1/98–5/31/99
NEW ZEALAND: Kiwifruit A–614–801	6/1/98–5/31/99
REPUBLIC OF KOREA: PET Film A–580–807	6/1/98–5/31/99
ROMANIA: Tapered Roller Bearings A–485–602	6/1/98–5/31/99
RUSSIA: Ferrosilicon A–821–804	6/1/98–5/31/99
SINAPORE: V-Belts A–559–803	6/1/98–5/31/99
SOUTH AFRICA: Furfuryl Alcohol A–791–802	6/1/98–5/31/99
SWEDEN: Stainless Steel Plate A–401–040	6/1/98–5/31/99
TAIWAN:	
Carbon Steel Plate A–583–080	6/1/98–5/31/99
Oil Country Tubular Goods A–583–505	6/1/98–5/31/99
Stainless Steel Butt-Weld Pipe Fittings A–583–816	6/1/98–5/31/99
Certain Helical Spring Lock Washers A–583–820	6/1/98–5/31/99
THE NETHERLANDS: Aramid Fiber A–421–805	6/1/98–5/31/99
THE PEOPLE'S REPUBLIC OF CHINA:	
Furfuryl Alcohol A–570–835	6/1/98–5/31/99
Silicon Metal A–570–806	6/1/98–5/31/99
Sparklers A–570–804	6/1/98–5/31/99
Tapered Roller Bearings A–570–601	6/1/98–5/31/99
VENEZUELA: Ferrosilicon A–307–807	6/1/98–5/31/99
Countervailing Duty Proceedings	
ITALY: Grain-Oriented Electrical Steel C–475–812	1/1/98–12/31/98
Suspension Agreements	
None.	

In accordance with § 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one

country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of June 1999. If the Department does not receive, by the last day of June 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 4, 1999.

Bernard R. Carreau,

Deputy Assistant Secretary for Group II, AD/ CVD Enforcement.

[FR Doc. 99–14629 Filed 6–8–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051899B]

Marine Mammals; Scientific Research Permit (PHF# 945–1499–00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, AK 99826, has been issued a permit to take three species of cetaceans for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7012).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On April 8, 1999, notice was published in the Federal Register (64 FR 17146) that a request for a scientific research permit to take (harass) up to 200 humpback whales (*Megaptera novaeangliae*), 20 minke whales (*Balaenoptera acutorostrata*), and 75 killer whales (*Orcinus orca*) annually for scientific research purposes during observational, photo-identification, prey assessment and acoustic monitoring activities, and collection of sloughed skin samples for export to New Zealand. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 - 226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 3, 1999.

Jeannie K. Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14643 Filed 6–8–99; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 June 1999 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 1 June 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–14623 Filed 6–8–99; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

June 3, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 68247, published on December 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335/635	629,148 dozen.
336/636	1,083,264 dozen.
338/339	3,937,332 dozen.
340/640	2,277,335 dozen.
341	4,795,987 dozen of which not more than 2,827,360 dozen shall be in Category 341-Y [2].
342/642	1,065,737 dozen.
351/651	308,068 dozen.
369-S [3]	741,241 kilograms.
647/648	762,698 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99-14591 Filed 6-8-99; 8:45 am]
BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Exemption of Undeliverable Textile and Apparel Products From Quota and Visa Requirements

June 3, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting undeliverable textile and apparel products from quota and visa requirements.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Brian F. Fennessy, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Directives from the chairman of the Committee for the Implementation of Textile Agreements (CITA) to the U.S. Customs Service establishing limits and visa requirements for textile and apparel products typically address the entry for consumption and withdrawal from warehouse for consumption of these products. General Note 16(e) of the Harmonized Tariff Schedule of the United States and U.S. Customs Service regulation 141.4(c) (19 CFR 141.4(c)) provide that "undeliverable articles," i.e., articles exported from the United States that are returned within 45 days after exportation, that have not left the custody of the carrier or foreign customs service, and that meet the other requirements of those provisions, are exempt from entry requirements. Therefore, textile and apparel products that meet the requirements of General Note 16(e) and 19 CFR 141.4(c) are not subject to textile and apparel quota and visa requirements.

Effective on June 9, 1999, Customs is directed to exempt undeliverable textile and apparel products that meet the requirements of General Note 16(e) and 19 CFR 141.4(c) from textile and apparel quota and visa requirements, regardless of date of exportation from the United States or the country of origin. This directive shall apply only to articles that were previously entered for consumption or withdrawn from warehouse for consumption.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Directives from the chairman of the Committee for the Implementation of Textile Agreements (CITA) to the U.S. Customs Service establishing limits and visa requirements for textile and apparel products typically address the entry for consumption and withdrawal from warehouse for consumption of these products. General Note 16(e) of the Harmonized Tariff Schedule of the United States and U.S. Customs Service regulation 141.4(c) (19 CFR 141.4(c)) provide that "undeliverable articles," i.e., articles exported from the United States that are returned within 45 days after exportation, that have not left the custody of the carrier or foreign customs service, and that meet the other requirements of those provisions, are exempt from entry requirements. Therefore, textile and apparel products that meet the requirements of General Note 16(e) and 19 CFR 141.4(c) are not subject to textile and apparel quota and visa requirements.

Effective on June 9, 1999, Customs is directed to exempt undeliverable textile and apparel products that meet the requirements of General Note 16(e) and 19 CFR 141.4(c) from textile and apparel quota and visa requirements, regardless of date of exportation from the United States or the country of origin. This directive shall apply only to articles that were previously entered for consumption or withdrawn from warehouse for consumption.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99-14590 Filed 6-8-99; 8:45 am]
BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Meeting Notice

TIME AND DATE: June 16, 1999, Wednesday, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Children's Sleepwear Amendment Revocation

The Commission will consider options related to the proposed revocation of the amendments to the children's sleepwear flammability standards issued in 1996 and 1999.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: June 7, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–14789 Filed 6–7–99; 2:59 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency, DOD.

ACTION: Notice of membership of the Defense Information Systems Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: 24 May, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Administration Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DISA SES Performance Review Board. They will serve a one-year renewable term, effective 24 May 1999.

Ms. Diann L. McCoy, Deputy Director for C4 and Intelligence Program Integration

Mr. Peter Paulson, Chief, Networks Division

John H. Campbell, Major General, USAF, Vice Director, DISA

Mr. Robert Hutten, Deputy Director for Strategic Plans and Policy

Ms. Dawn Hartley, Chief Technology Officer/Technical Director for Joint Interoperability Engineering Organization

Jack Penkoske,

Chief, Civilian Personnel Division.

[FR Doc. 99–14624 Filed 6–8–99; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 23, 1999.

TIME: June 23—Full Board, 8:30 a.m.–2:00 p.m., (open), 2:00–3:00 p.m., (closed).

LOCATION: University of Michigan, Michigan League, 911 North University Avenue, Ann Arbor, Michigan.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On June 23, the Governing Board will meet in open session from 8:00 a.m. to 2:00 p.m. Agenda items for this meeting of the Board include discussion on mathematics frameworks; action on National Assessment Design: 2000–2010; action on the NAGB plan and report to Congress on Achievement Levels; and action on NAGB report to Congress on Voluntary National Tests: purpose, definitions, and reporting plans.

From 2:00 to adjournment, 3:00 p.m., the Board will meet in closed session to review the Nominations Committee's recommendations of individuals to fill the upcoming Board vacancies. These discussions will relate solely to the internal personnel rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b (c) of Title 5 U.S.C.

Summaries of the activity of the closed session and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b (c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–14548 Filed 6–8–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: Natioal Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the

Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: June 28, 1999 from 9 a.m. to 4 p.m.

ADDRESSES: Holiday Inn Capitol, 550 C Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra Newkirk, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3100 ROB #3, Washington, D.C. 20202–5175. Telephone: (202) 708–5750. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1131a–1). The National Board of the Fund is authorized to commend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board is open to the public. The National Board will meet on Monday, June 28, from 9:00 a.m. to 4:00 p.m. to provide an overview of the Fund's program status and special initiatives.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed on this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection to the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, SW, Washington, D.C. 20202 from the hours of 8 a.m. to 4:30 p.m.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–14527 Filed 6–8–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies whose applications to the Secretary for initial or renewed recognition will be reviewed at the Advisory Committee meeting to be held on December 6–8, 1999. The notice also invites written comments on agencies submitting interim reports that will be reviewed at the December meeting.

Where Should I Submit My Comments?

Please submit your written comments by July 26, 1999 to Nami Randolph, Chief of the Accrediting Agency Evaluation Branch. You may contact her at the US Department of Education, 7th & D Streets, SW, Room 3915, ROB–3, Washington, DC 20202–5244, telephone: (202) 708–8481. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time, Monday through Friday.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity To Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments in response to this notice as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies. The Criteria are regulations found in 34 CFR part 602.

We will also include your comments in the staff analyses that we present to the Advisory committee at the December 1999 meeting. Therefore, in order for us to give full consideration to the comments we receive, it is important that we receive your comments on all agencies except the council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (ABA) by July 26, 1999. The deadline for receiving comments about the ABA is September 3, 1999 because that cited agency's interim report is not due to us until August 15, 1999. In all instances, your comments about agencies seeking initial or renewed recognition must relate to the Criteria for the Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review comments received after the deadline as complaints. If such comments upon investigation reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate. We will notify the commentors of the disposition of those comments.

What Agencies Are on the Agenda for the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if he determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed

during the December 1999 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Commission on Collegiate Nursing Education (Requested scope of recognition: Baccalaureate Degree Programs in Nursing Education and Graduate Degree Programs in Nursing Education.

Petitions for Renewal of Recognition

1. Accrediting Commission of Career Schools and Colleges of Technology (Requested scope of recognition: the Accreditation of private, postsecondary, non-degree-granting institutions and degree-granting institution, including those granting associate and baccalaureate degrees, that are predominantly organized to educate students for occupation, trade and technical careers).

2. American Psychological Association, Committee on Accreditation (Requested scope of recognition: the accreditation of doctoral programs in clinical, counseling, school and combined professional-scientific psychology, predocotral internship programs in professional psychology, and postdoctoral residency programs in professional psychology.

3. Council on Naturopathic Medical Education (Requested scope of recognition: the accreditation and preaccreditation (Candidate for Accreditation) of institutions and graduate programs in Naturopathy that lead to the degree of Doctor of Naturopathy (N.D.) or Doctor of Naturopathic Medicine (N.M.D.).

4. National Accrediting Commission of Cosmetology Arts and Sciences (Scope of recognition: the accreditation of postsecondary schools and departments of costmetology arts and sciences).

5. Transnational Association of Christian Colleges and Schools, Accrediting Commission (Requested scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of postsecondary institutions that offer certificates, diplomas, and associate, baccalaureate, and graduate degrees).

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency)—

1. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar.

2. Association for Clinical Pastoral Education, Inc., Accreditation Commission.

3. Accrediting Council on Education in Journalism and Mass Communciations.

4. American Dental Association, Commission on Dental Accreditation.

5. American Physical Therapy Association, Committee on Accreditation.

6. Commission on Opticianry Accreditation.

7. National Association of Nurse Practitioners in Reproductive Health, Council on Accreditation.

8. North Central Association of Colleges and Schools, Commission on Schools.

State Agency Recognized for the Approval of Public Postsecondary Vocational Eduation

Interim Report

1. Kansas State Department of Education.

State Agencies Recognized for the Approval of Nurse Education

Interim Report

1. New York State Board of Regents, Nursing Education Unit.

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Associate Degree-Granting Authority

1. Defense Language Institute (Accrdited by: Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges).

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, SW, Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, until November 22, 1999. They will be available again after the December 6–8 Advisory Committe meeting. It is preferred that an appointment be made in advance of such inspection or copying.

Authority: 5 U.S.C. Appendix 2.

Dated: June 3, 1999.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 99–14574 Filed 6–8–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–318–000]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

June 3, 1999.

Take notice that on May 28, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of July 1, 1999:

Thirty-sixth Revised Sheet No. 25
Thirty-sixth Revised Sheet No. 26
Thirty-sixth Revised Sheet No. 27
Thirty-fourth Revised Sheet No. 28
Second Revised Sheet No. 28B
Fifteenth Revised Sheet No. 30A

Columbia states that the purpose of this filing is to make a downward adjustment to its Rate Schedule FTS base rate demand determinants as provided for in Stipulation II, Article III, Section H(2) of the Docket No. RP95–408 et al. rate case settlement. The settlement provision authorizes such adjustments associated with contract demand reductions recognizing the loss of direct firm transportation deliveries to customers from gathering facilities

sold since the settlement up to 15,000 Dth/day. This filing reflects the loss in firm transportation demand determinants of 3,257 Dth/day (and associated commodity determinants) for one Rate Schedule FTS customer.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14557 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–9–23–000]

Eastern Shore Natural Gas Company; Proposed Changes in FERC GAS Tariff

June 3, 1999.

Take notice that on May 28, 1999, Eastern Shore Natural Gas Company (Eastern Shore) tenderd for filing its annual Fuel Retention Adjustment filing pursuant to Section 31 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Eastern Shore states that Section 31, "Fuel Retention Adjustment", specifies that, no less than thirty (30) days prior notice, Eastern Shore shall file with the Commission revised tariff sheets containing a re-determined Fuel Retention Percentage ("FRP") for affected transportation rate schedules to be effective July 1 of each year. Such FRP is designed to reimburse Eastern Shore for the cost of its Gas Required for Operations ("GRO") which consists of (a) gas used for compressor fuel and (b) gas otherwise used, lost or unaccounted for, in its operations. Eastern Shore's FRP is calculated by determining the GRO quantities attributable to system-wide operations for the affected transportation rate schedules using the last twelve (12) month period for which actual data is available and then dividing such quantity by the corresponding twelve (12) month period.

Eastern Shore states that as shown in its filing, Eastern Shore's calculated FRP is .3% which is no change from the current FRP in effect. As there is no change in its FRP Eastern Shore has requested that the current tariff sheets remain in effect.

Eastern Shore states that copies of its filing has been mailed to all firm and interruptible customers and interested states commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14562 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–323–000]

Gas Research Institute; Annual Application

June 3, 1999.

Take notice that on June 1, 1999, Gas Research Institute (GRI) filed an application requesting advance approval of its 2000–2004 Five-Year Research, Development and Demonstration (RD&D) Plan and 2000 RD&D Program, and the funding of its RD&D activities for 2000, pursuant to the Natural Gas Act, Section 154.401(b) of the Commission's Regulations, and the Order Approving Settlement issued by the Commission on April 29, 1998 [83 FERC ¶ 61,093 (1998)]. GRI's application seeks to collect funds to support its year 2000 Jurisdictional RD&D Program through jurisdictional rates and charges during the twelve months ending December 31, 2000.

In its application, GRI proposes to incur program obligations of $98 million in 2000, which GRI states is consistent with the April 29 Order. GRI states that $72.6 million of the year 2000 program obligations will be for Core Projects and $25.4 million for Non-Core Projects. Core projects are those benefiting predominately gas consumers and having one of the following as a basic objective: enhancing environmental quality; enhancing health and safety; lowering gas industry operating and maintenance costs; increasing gas system reliability or integrity; increasing gas supplies from emerging resources; or increasing efficiency. GRI projects total cash outlays to be $135 million for year 2000 including Administrative and General Expenses of $22.3 million.

Also consistent with the Commission's April 29 Order Approving Settlement, GRI proposes to fund the 2000 RD&D program by the use of the following surcharges: (1) a demand/reservation surcharge of 20 cents per Dth per Month for "high load factor customers"; (2) a demand/reservation surcharge of 12.3 cents per Dth per Month for "low load factor customers"; (3) a volumetric commodity/usage surcharge of .72 cents; and (4) a special "small customer" surcharge of 1.6 cents per Dth.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document by August 6, 1999. Comments on the Staff Report by all parties, except GRI, must be filed with the Commission on or before August 20, 1999. GRI's reply comments must be filed on or before August 27, 1999.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214

and 385.211. All protests, motions to intervene and comments should be filed on or before June 18, 1999. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14558 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–53–000]

K N Interstate Gas Transmission Co.; Tariff Filing

June 3, 1999.

Take notice that on May 28, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, to be effective July 1, 1999:

Third Revised Volume No. 1–A

8th Revised Sheet No. 4–D

First Revised Volume No. 1–C

13th Revised Sheet No. 4

KNI states that this filing contains adjustments to KNI's fuel and loss reimbursement percentages, pursuant to Section 15 of KNI's Third Revised Volume No. 1–B and First Revised Volume No. 1–D of its FERC Gas Tariff. KNI proposes an effective date of July 1, 1999, for the revised fuel and loss reimbursement percentages.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14556 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–317–000]

Koch Gateway Pipeline Company; Section 4 Filing

June 3, 1999.

Take notice that on May 28, 1999, Koch Gateway Pipeline Company (Koch Gateway), tendered for filing a section 4 filing pertaining to the termination of gathering services associated with the abandonment of its Bruni System granted in FERC Docket No. CP99–109–000 on May 4, 1999.

Koch Gateway proposes no changes to its published tariff therefore no revised tariff sheets are included in this filing. Koch Gateway filed with the Commission a list of gathering customers affected by the abandonment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14560 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–538–002]

Midwestern Gas Transmission Company; Compliance Filing

June 3, 1999.

Take notice that on May 27, 1999, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of July 1, 1999:

Tenth Revised Sheet No. 5

Midwestern states that it tendered the sheet for filing in compliance with Ordering Paragraph (B) of the "Ordering Granting", In Part, and Denying, In Part, Rehearing" issued by the Federal Energy Regulatory Commission (Commission) on May 12, 1999. Midwestern further states that the tendered sheet clarifies Midwestern's minimum reservation rate under Rate Schedule FT–A is $0.00. Midwestern requests that this sheet be made effective July 1, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14563 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–1184–001]

Minnesota Agri-Power, L.L.C.; Filing

June 3, 1999.

Take notice that on May 25, 1999, Enron Capital & Trade Resources Corporation (ECT), tendered for filing a

notice of termination of its participation in Minnesota Agri-Power, L.L.C.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 14, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14567 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–006]

Natural Gas Pipeline Company of America; Compliance Filing

June 3, 1999.

Take notice that on May 28, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 224A.01, to be effective January 1, 1999.

Natural states that the filing is submitted in compliance with the Commission's order issued May 14, 1999 in Docket No. RP99–176–005, which directed Natural to revise Section 5.1(c)(vi) of the General Terms and Conditions of its Tariff relating to the circumstances under which negotiated rate bids are allowed.

Natural requested any waivers which may be required to permit Substitute First Revised Sheet No. 224A.01 to become effective January 1, 1999 consistent with the Commission's order issued December 1, 1998 in Docket No. RP99–176–000, which granted Natural authority to implement a negotiated rate provision in its tariff consistent with the Commission's policy statement in Docket No. RM95–6–000.

Natural states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14554 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–315–000]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

June 3, 1999.

Take notice that on May 28, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective July 1, 1999.

Panhandle states that this filing removes from its currently effective rates the Miscellaneous Stranded Cost Volumetric Surcharge applicable to interruptible transportation service under Rate Schedules IT and EIT established in a February 12, 1997 Stipulation and Agreement in Docket No. RP96–260–000 (February 12, 1997 Settlement). The February 12, 1997 Settlement was approved by Commission letter order issued April 17, 1997. In accordance with Article I, Section 3(e) of the February 12, 1997 Settlement, the initial recovery period will terminate on June 30, 1999. Accordingly, Panhandle is now proposing to remove the Initial Docket No. RP96–260–000 Settlement Volumetric Surcharge of 0.09¢ applicable to Rate Schedules IT and EIT to be effective July 1, 1999.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14555 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–039]

Reliant Energy Gas Transmission Company; Proposed Changes in FERC Gas Tariff

June 3, 1999.

Take notice that on May 28, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 1999:

Seventh Revised Sheet No. 7E.02
Original Sheet No. 7Q

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate contract and the expiration of an existing negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14552 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–539–000]

Earle and H. Smith, 81 Bunker Hill Ave., Stratham, NH 03885 v. Portland Natural Gas Transmission System; Complaint

June 3, 1999.

Take notice that on June 1, 1999, Earle H. Smith III and Julie A. Smith filed a complaint, in Docket No. CP99–539–000, against Portland Natural Gas Transmission System (PNGTS). This complaint requests that PNGTS pay $7,900 for unauthorized use of their property, easement violations, and improper restoration of stone wall.

Specifically the complaint states that PNGTS constructed a natural gas pipeline through their property committing numerous violations to its certificate. Violations are claimed in the areas of:

- Safety—numerous OSHA violations (e.g., lack of safe access, and excavators working in close proximity to power lines);
- Easement violation—trench spoil spilled outside of the construction right-of-way and PNGTS failed to restore the area to preconstruction conditions, and right-of-way limits were staked improperly;
- Unauthorized use of their property—PNGTS should control off-road vehicles access to the right-of-way and posting "no repassing" signs is not enough; and
- Improper restoration of stone wall.

Any person desiring to be heard or to make any protest with reference to this complaint should, on or before June 11, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.214 and 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before June 11, 1999, since the amount in controversy in less than $100,000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14564 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–8–000]

South Georgia Natural Gas Company; Proposed Changes to FERC Gas Tariff

June 3, 1999.

Take notice that on May 28, 1999, South Georgia Natural Gas Company (South Georgia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1999:

Thirteenth Revised Sheet No. 5
Twelfth Revised Sheet No. 6
1st Alternate Thirteenth Revised Sheet No. 5
1st Alternate Twelfth Revised Sheet No. 6

South Georgia states that the instant filing is submitted pursuant to Section 19.2 of the General Terms and Conditions of its Tariff to adjust its fuel retention percentage (FRP) for all transportation services on its system effective July 1, 1999. The derivation of the revised FRP is based on South Georgia's gas required for operations (GRO) for the twelve-month period ending April 30, 1999, adjusted for the balance accumulated in the Deferred GRO Account at the end of said period, divided by the transportation volumes received during the same twelve-month period. In the filing, South Georgia request a limited waiver of the formula used in Section 19.2 to determine the FRP. As set forth more fully in filing, such request is based on South Georgia's belief that certain GRO volumes recorded in 1998 were inaccurate. As a result, South Georgia proposes to base the FRP on those months in which reliable data is available, as annualized to cover the entire twelve-month period for the FRP. Based on this calculation, the revised FRP is 1.93% which is a decrease from the currently effective FRP of 2.24%.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.fer.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14559 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2017–011]

Southern California Edison Company; Technical Workshop on Water Management and Intent To Conduct a Site visit

June 3, 1999.

The Federal Energy Regulatory Commission (Commission) received an application for a new license for the continued operation and maintenance of the existing Big Creek No. 4 Hydropower Project (BC#4) on February 26, 1997. BC#4 is located on the San Joaquin river, in Fresno, Madera, and Tulare Counties, California. The project is partially located on federal lands managed by the Forest Service. The project would have an installed capacity of 98.6 megawatts.

During scoping meetings held in December 1997, to solicit public comment on the relicensing of the BC#4, Southern California Edison Company (Edison) offered to conduct a technical workshop to explain the criteria that go into managing water for the operations of the hydropower projects in Edison's big Creek System (BCS) of which BC#4 is one part. Therefore, on January 11, 1999, the Commission requested that Edison provide a schedule and agenda

for the technical workshop before staff completes an evaluation of Edison's license application.

The purpose of this notice is to advise all parties of the scheduled technical workshop that will be conducted by Edison and attended by the Commission's staff on the water management procedures (including modeling) currently in use by Edison to operate the BCS and specifically BC#4. The technical workshop will be held at the Big Creek Clubhouse on June 29, 1999, from 9:30 a.m. to 5:00 p.m. All interested individuals, organizations, and agencies are invited to attend.

Four subjects related to BC#4 operations will be covered at the workshop: (1) overview of the BCS and BC#4's history; (2) overview of the San Joaquin River watershed and specific information regarding the drainage areas of individual projects within the BCS; (3) existing license conditions of projects throughout the BCS which are related to water management and the Mammoth Pool operating agreement; and (4) Edison's existing modeling capabilities.

In addition, a tour of some of the BCS's project facilities and project environment is scheduled for June 30, 1999. Those who wish to accompany us on this site visit should meet at Shaver Lake parking lot, located off of Route 168, at 9:30 a.m. Participants should provide their own transportation and food.

Furthermore, on February 3, 1999, the Commission issued the revised Scoping Document (SD2) and a notice of intent to prepare an Environmental Impact Statement for the relicensing of BC#4. To enable staff participating in the preparation of the Environmental Impact Statement of the proposed relicensing of the BC#4 to view BC#4's facilities and project area, a tour of the BC#4 facilities, including walking part of the 4-mile-long Horseshoe Bend Trail to view representative portions of the project's 6.3-mile-long bypassed reach, will be conducted on July 1, 1999. All interested individuals, organizations, and agencies are invited to attend this site visit also. Participants will meet at 9:30 a.m. at the Redinger Reservoir recreation access area parking lot, located off of Redinger Lake Road (Road 235). Participants should provide their own transportation and food for the site visit.

Any questions regarding this notice should be directed to John Ramer of the Commission at (202) 219–2833 or by e-mail: John.RamerFERC.Fed.US. For directional information you may also contact Geoffrey L. Rabone of Edison at (909) 394–8721 or Carol Efird at the Sierra National Forest (559) 297–0706 ext. 4871.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14568 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2573–001, et al.]

Southern Company Services, Inc., et al.; Correction

Independent Power Marketers

Abacus Group Ltd.
Docket No. ER98–4240–000
AC Power Corp.
Docket No. ER97–2867–000
ACN Power Inc.
Docket No. ER98–4685–000
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Docket No. ER94–24–000
Enserch Energy Services, Inc.
Docket No. ER98–895–000
Enserco Energy, Inc.

Docket No. ER98–2964–000
Entergy Power Marketing Corporation
Docket No. ER95–1615–000
First Energy Trading & Power Marketing, Inc.
Docket No. ER95–1295–000
FPL Energy Power Marketing, Inc.
Docket No. ER98–3566–000
GPU Advanced Resources, Inc.
Docket No. ER97–3666–000
Griffin Energy Marketing, L.L.C.
Docket No. ER97–4168–000
Horizon Energy Company
Docket No. ER98–380–000
H.Q. Energy Services (U.S.) Inc.
Docket No. ER97–851–000
Illinova Energy Partners, Inc.
Docket No. ER94–1475–000
Industrial Energy Applications, Inc.
Docket No. ER95–1465–000
Inventory Management & Distribution Co., Inc.
Docket No. ER97–4116–000
InterCoast Power Marketing Company
Docket No. ER94–6–000
LG&E Energy Marketing Inc.
Docket No. ER94–1188–000
Mid-American Power LLC
Docket No. ER96–1858–000
Montana Power Trading & Marketing Company
Docket No. ER97–399–000
NESI Power Marketing, Inc.
Docket No. ER97–841–000
NEV East, L.L.C.
Docket No. ER97–4652–000
NEV California, L.L.C.
Docket No. ER97–4653–000
NEV Midwest, L.L.C.
Docket No. ER97–4654–000
New Energy Partners, LLC
Docket No. ER99–1812–000
New Energy Ventures, Inc.
Docket No. ER97–4636–000
Niagara Mohawk Energy Marketing, Inc.
Docket No. ER96–2525–000
Northern/AES Energy LLC
Docket No. ER98–445–000
NRG Power Marketing Inc.
Docket No. ER97–4281–000
NYSEG Solutions, Inc.
Docket No. ER99–220–000
OGE Energy Resources, Inc.
Docket No. ER97–4345–000
PacifiCorp Power Marketing, Inc.
Docket No. ER95–1096–000
PEC Energy Marketing Inc.
Docket No. ER97–1431–000
Pepco Services, Inc.
Docket No. ER98–3096–000
PG&E Energy Services, Energy Trading Corp.
Docket No. ER95–1614–000
PG&E Energy Trading Power, L.P.
Docket No. ER95–1625–000
PP&L EnergyPlus Company
Docket No. ER98–4608–000
PPM One LLC
Docket No. ER97–3926–000
PPM Two LLC
Docket No. ER97–3927–000
PPM Three LLC
Docket No. ER97–3928–000
PPM Four LLC
Docket No. ER97–3929–000
PPM Five LLC
Docket No. ER97–3930–000
PPM Six LLC
Docket No. ER97–3931–000
Primary Power Marketing, LLC
Docket No. ER98–4333–000
Progress Power Marketing, Inc.
Docket No. ER96–1618–000
PSEG Energy Technologies Inc.
Docket No. ER97–2176–000
QST Energy Trading Inc.
Docket No. ER96–553–000
R. Hadler and Company, Inc.
Docket No. ER97–3056–000
Reliant Energy Services, Inc.
Docket No. ER99–1801–000
SCANNA Energy Marketing, Inc.
Docket No. ER96–1086–000
Select Energy, Inc.
Docket No. ER99–14–000
Sempra Energy Trading Corp.
Docket No. ER94–1691–000
SIGCORP Energy Services, L.L.C.
Docket No. ER99–2181–000
Southern Company Energy Marketing L.P.
Docket No. ER97–4166–000
Southern Energy California
Docket No. ER99–1841–000
Southern Energy New England, LLC
Docket No. ER98–4118–000
Southern Energy Retail Trading & Marketing, Inc.
Docket No. ER98–1149–000
Southern Energy Trading & Marketing Inc.
Docket No. ER95–976–000
Spokane Energy, LLC
Docket No. ER98–4336–000
TECO Energy Source, Inc.
Docket No. ER96–1563–000
TransAlta Energy Marketing Corp.
Docket No. ER96–1316–000
TransAlta Energy Marketing (U.S.) Inc.
Docket No. ER98–3184–000
UGI Power Supply, Inc.
Docket No. ER96–2715–000
Unicom Power Marketing, Inc.
Docket No. ER97–3954–000
Union Electric Development Corporation
Docket No. ER97–3663–000
Unitil Resources, Inc.
Docket No. ER97–2462–000
WPS Energy Services, Inc. and WPS Power Development, Inc.
Docket No. ER96–1088–000
XENERGY
Docket No. ER97–2517–000

Affiliated Power Producers

AES Alamitos, L.L.C.
Docket No. ER98–2185–000
AES Creative Resources, L.P. and AES Eastern Energy,
Docket No. ER99–1773–000
AES Huntington Beach, L.L.C.
Docket No. ER98–2184–000
AES Redondo Beach, L.L.C.
Docket No. ER98–2186–000
AmerGen Energy Company. L.L.C.
Docket No. ER99–754–000
Arthur Kill Power L.L.C.
Docket No. ER99–2161–000
Astoria Power L.L.C.
Docket No. ER99–2160–000
AYP Energy, Inc.
Docket No. ER99–954–000
Bridgeport Energy LLC
Docket No. ER98–2783–000
Cabrillo Power I, L.L.C.
Docket No. ER99–1115–000
Cabrillo Power II, L.L.C.
Docket No. ER99–1116–000
Carr Street Generating Station Station, L.P.
Docket No. ER98–4095–000
CH Resources, Inc.
Docket No. ER99–1001–000
CinCap VI, L.L.C.
Docket No. ER99–1727–000
Commonwealth Chesapeake Company, L.L.C.
Docket No. ER99–415–000
Cordova Energy Company L.L.C.
Docket No. ER99–2156–000
CSW Power Marketing
Docket No. ER97–1238–000
Denver City Energy Associates, L.P.
Docket No. ER97–4084–000
De Pere Energy L.L.C.
Docket No. ER97–4586–000
Duke Energy Morro Bay L.L.C.
Docket No. ER98–2681–000
Duke Energy Moss Landing L.L.C.
Docket No. ER98–2680–000
Duke Energy New Smyrna Beach Power Co. Ltd., LLP
Docket No. ER98–2624–000
Duke Energy Oakland L.L.C.
Docket No. ER98–2682–000
Duke Energy South Bay L.L.C.
Docket No. ER99–1785–000
Dunkirk Power L.L.C.
Docket No. ER99–2168–000
El Dorado Energy, LLC
Docket No. ER98–4109–000
El Segundo Power, L.L.C.
Docket No. ER98–1127–000
Elwood Energy L.L.C.
Docket No. ER99–1695–000
EME Homer City Generation, L.P.
Docket No. ER99–666–000
Energy East South Glens Falls, LLC
Docket No. ER99–1261–000
Entergy Nuclear Generating Company
Docket No. ER99–1004–000
ESI Vansycle, Partners, L.P.
Docket No. ER98–2494–000
FPL Energy AVEC LLC
Docket No. ER98–3565–000
FPL Energy Maine Hydro LLC
Docket No. ER98–3511–000
FPL Energy Mason LLC
Docket No. ER98–3562–000
FPL Energy Wyman LLC
Docket No. ER98–3563–000
FPL Energy Wyman IV LLC
Docket No. ER98–3564–000
Genesee Power Station L.P.
Docket No. ER99–806–000
Grayling Generation Station L.P.
Docket No. ER99–791–000
Harbor Cogeneration Company
Docket No. ER99–1248–000
Hawkeye Power Partners, L.L.C.
Docket No. ER98–2076–000
Huntley Power L.L.C.
Docket No. ER99–2162–000
Kincaid Generation LLC
Docket No. ER99–1432–000
Koch Power Louisiana L.L.C.
Docket No. ER99–637–000
Lake Benton Power Partners LLC
Docket No. ER97–2904–000
Lake Benton Power Partners II, LLC
Docket No. ER98–4222–000
Lake Road Generating Company, L.P.
Docket No. ER99–1714–000
Lakewood Cogeneration L.P.
Docket No. ER99–1213–000
LG&E Capital Corp.

Docket No. ER99–2108–000
LG&E Westmoreland Rensselaer
Docket No. ER99–1125–000
Long Beach Generation L.L.C.
Docket No. ER98–1796–000
Medcal Area Total Energy Plant, Inc.
Docket No. ER98–1992–000
Millenium Power Partners, LP
Docket No. ER98–830–000
Minnesota Agri-Power LLC
Docket No. ER99–1184–000
Mobile Energy Services Company L.L.C.
Docket No. ER99–1204–000
Monmouth Energy, Inc.
Docket No. ER99–1293–000
NGE Generation, Inc.
Docket No. ER97–2518–000
PanEnergy Lake Charles Generation, Inc.
Docket No. ER96–1335–000
PDI Canada, Inc.
Docket No. ER99–1936–000
PDI New England, Inc.
Docket No. ER99–1936–000
Penobscot Hydro, LLC
Docket No. ER99–1940–000
Pittsfield Generating Company, L.P.
Docket No. ER98–4400–000
Reliant Energy Coolwater, L.L.C.
Docket No. ER99–2082–000
Reliant Energy Mandalay, L.L.C.
Docket No. ER99–2080–000
Reliant Energy Ellwood, L.L.C.
Docket No. ER99–2081–000
Reliant Energy Etiwanda, L.L.C.
Docket No. ER99–2083–000
Reliant Energy Ormond Beach, LLC
Docket No. ER99–2079–000
Rockingham Power, L.L.C.
Docket No. ER99–1567–000
Rocky Road Power L.L.C.
Docket No. ER99–2157–000
Somerset Power L.L.C.
Docket No. ER99–1712–000
Southern Energy Bowline, L.L.C.
Docket No. ER99–2044–000
Southern Energy Canal, L.L.C.
Docket No. ER98–4115–000
Southern Energy Delta, L.L.C.
Docket No. ER99–1842–000
Southern Energy Kendall, L.L.C.
Docket No. ER98–4116–000
Southern Energy Lovett, L.L.C.
Docket No. ER99–2043–000
Southern Energy NY–GEN, L.L.C.
Docket No. ER99–2045–000
Southern Energy Potrero, L.L.C.
Docket No. ER99–1833–000
Southern Energy Wisconsin, L.L.C.
Docket No. ER99–669–000
State Line Energy, Inc.
Docket No. ER96–2869–000
Storm Lake Power Partners I, L.L.C.
Docket No. ER98–4643–000
Storm Lake Power Partners II, L.L.C.
Docket No. ER97–4222–000
Storm Lake Power Partners II, L.L.C.
Docket No. ER99–1228–000
Tenaska Frontier Partners, Ltd.
Docket No. ER98–1767–000
USGen New England
Docket No. ER98–6–000
West Georgia Company L.P.
Docket No. ER99–2186–000
West Texas Wind Energy Partners, L.L.C.
Docket No. ER98–1965–000
Western Kentucky Energy Corp.
Docket No. ER98–1279–000
Wisvest-Connecticut, L.L.C.
Docket No. ER99–967–000
WKE Station Two, Inc.
Docket No. ER98–1278–000

Other Utilities With Market-Based Rates

AG-Energy, L.P.
Docket No. ER98–2782–000
Automated Power Exchange
Docket No. ER98–1033–000
Boralex Stratton Energy Inc.
Docket No. ER98–4652–000
Brooklyn Navy Yard Cogeneration Partners, L.P.
Docket No. ER97–886–000
Cadillac Renewable Energy
Docket No. ER98–4515–000
Canadian Niagara Power Company
Docket No. ER99–1875–000
Choctaw Generation Limited Partnership
Docket No. ER98–3774–000
Cobisa-Person Limited Partnership
Docket No. ER98–2498–000
Cogen America Parlin Inc.
Docket No. ER96–1680–000
Cogen Energy Technologies
Docket No. ER98–4423–000
Commonwealth Atlantic Limited Partnership
Docket No. ER90–24–000
Consolidated Water Power Company
Docket No. ER98–4512–000
Dartmouth Power Associates LP
Docket No. ER96–149–000
Dighton Power Associates L.P.
Docket No. ER99–616–000
Edgar Electric Cooperative Association
Docket No. ER98–2305–000
GEN–SYS Energy
Docket No. ER97–4335–000
Geysers Power Company
Docket No. ER99–1983–000
Golden Spread Electric Cooperative
Docket No. ER99–705–000
Great Bay Power Corporation
Docket No. ER96–726–000
GS Electric Generating Cooperative, Inc.
Docket No. ER97–3583–000
Indeck Pepperell Power Associates, Inc.
Docket No. ER96–345–000
Logan Generating Company, L.P.
Docket No. ER95–1007–000
Lowell Cogeneration Company L.P.
Docket No. ER97–2414–000
LSP Energy Limited Partnership
Docket No. ER98–2259–000
Midwest Energy, Inc.
Docket No. ER96–2027–000
Milford Power L.P.
Docket No. ER93–493–000
Mountainview Power Company
Docket No. ER98–4301–000
Northeast Empire Limited Partnership #1
Docket No. ER98–4183–000
Northeast Empire Limited Partnership #2
Docket No. ER98–1125–000
Old Dominion Electric Cooperative
Docket No. ER97–4314–000
Oxbow Power Marketing, Inc.
Docket No. ER96–1196–000
Pacific Northwest Generating Cooperative
Docket No. ER97–504–000
PEI Power Corp.
Docket No. ER98–2270–000
Power City Partners, L.P.
Docket No. ER98–2782–000
Riverside Canal Power Company
Docket No. ER98–4302–000
RockGen Energy, L.L.C.
Docket No. ER99–970–000
SCC–L1 L.L.C.
Docket No. ER99–1914–000
SCC–L2, L.L.C.
Docket No. ER99–1915–000
SCC–L3, L.L.C.
Docket No. ER99–1942–000
Seneca Power Partners, L.P.
Docket No. ER98–2782–000
Sithe New England Holdings LLC
Docket No. ER98–1943–000
Southwood 2000, Inc.
Docket No. ER98–2603–000
Sterling Power Partners, L.P.
Docket No. ER98–2782–000
Sunlaw Cogeneration Partners, L.P.
Docket No. ER99–213–000
UAE Lowell Power L.L.C.
Docket No. ER99–1744–000
Westchester Resco Company, L.P.
Docket No. ER98–3030–000
Williams Generating Company—Hazelton
Docket No. ER97–4587–000
Wolverine Power Supply Cooperative, Inc.
Docket No. ER98–411–000

Erratum Notice

June 2, 1999.

Order Denying Rehearing, Revising Reporting Requirements for Power Marketers and Power Producers With Market-Based Rate Authorization, Staying Effect of the Revised Reporting Requirements, and Establishing Procedures

Issued May 27, 1999.

The order denying rehearing, revising reporting requirements for power marketers and power producers with market-based rate authorization, staying effect of the revised reporting requirements, and establishing procedures, which was issued May 27, 1999, was published in the **Federal Register** on June 4, 1999, at 64 FR 30001.

On page 30007, column 2, the last 3 lines of the first paragraph, delete the following sentence: "We are also eliminating the requirement that power marketers file informational reports on their purchases."

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14302 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91–150–012, ER91–326–004 and ER91–570–009]

Southern Company Services, Inc; Filing

June 3, 1999.

Take Notice that on May 19, 1999, Southern Company Services, Inc. (Southern Company), tendered for filing a compliance filing in the above-referenced docket number.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 38: 214). All such motions and protests should be filed on or before June 14, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14566 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–290–003]

Viking Gas Transmission Company; Tariff Filing

June 3, 1999.

Take notice that on May 28, 1999, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective July 1, 1999.

Sixteenth Revised Sheet No. 6
Tenth Revised Sheet No. 6a

Viking states that the purpose of this filing is to comply with the Offer of Settlement and Stipulation and Agreement (Settlement) filed by Viking on March 16, 1999 in the above-referenced docket and approved by the Commission by order issued May 12, 1999 by filing to place the Stage I Settlement Rates into effect in accordance with the terms and conditions of the Settlement

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferce.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14553 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–82–001]

Viking Gas Transmission Company; Tariff Filing

June 3, 1999.

Take notice that on May 28, 1999, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective as discussed below.

1st Revised Fifteenth Revised Sheet No. 6
2nd Revised Fifteenth Revised Sheet No. 6
1st Revised Ninth Revised Sheet No. 6A
2nd Revised Ninth Revised Sheet No. 6A

Viking states that the purpose of this filing is to revise Fifteenth Revised Sheet No. 6 and Ninth Revised Sheet No. 6A to reflect properly the effective date of the Fuel and Loss Retention Percentages accepted in Docket No. TM99–2–82–000. Accordingly, Viking respectfully requests an effective date of January 1, 1999 for 1st Revised Fifteenth Revised Sheet No. 6 and 1st Revised Ninth Revised Sheet No. 6A and an effective date of April 1, 1999 for 2nd Revised Fifteenth Revised Sheet No. 6 and 2nd Revised Ninth Revised Sheet No. 6A.

Viking states that copies of this filing have been served on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14561 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–151–000 et al.]

IGC/ERI Pan Am Thermal Generating Limited, et al.; Electric Rate and Corporate Regulation Filings

June 2, 1999.

Take notice that the following filings have been made with the Commission:

1. IGC/ERI Pan Am Thermal Generating Limited

[Docket No. EG99–151–000]

Take notice that on May 26, 1999, IGC/ERI Pan Am Thermal Generating Limited (IGC/ERI), with its address c/o NORESCO, 255 Main Street, Suite 500, Hartford, CT 06106, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. IGC/ERI is a Cayman Island limited liability company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities to be located

in Panama. The eligible facilities will consist of an approximately 96 MW diesel-fired electric generation project and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Western Massachusetts Electric Company, Northeast Utilities Service Company, Consolidated Edison Energy, Inc., Consolidated Edison Energy, and Massachusetts Inc.

[Docket Nos. EC99–75–000 and ER99–3060–000]

Take notice that on May 25, 1999, Western Massachusetts Electric Company (WMECO), Northeast Utilities Service Company (NUSCO) and Consolidated Edison Energy Massachusetts, Inc., (collectively, Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities associated with the sale of certain WMECO generating facilities. The Applicants also tendered for filing under Section 205 of the Federal Power Act certain agreements and a proposed amendment to NUSCO Tariff No. 9 pertaining to services related to the transfer of facilities.

The Applicants state that copies of this filing have been sent to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Wabash Valley Power Association, Inc., and American Municipal Power—Ohio, Inc., Complainants, vs. American Electric Power Service Corporation, Respondent

[Docket No. EL99–66–000]

Take notice that on May 27, 1999, Wabash Valley Power Association, Inc. (Wabash Valley) and American Municipal Power—Ohio, Inc. (AMP-Ohio) filed a complaint against American Electric Power Service Corporation (AEP) alleging that AEP's transmission rates and revenue requirements are unjust and unreasonable because historical costs have changed dramatically and AEP's revenues from use of its transmission system by third parties and by AEP for off-system sales have substantially increased.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Maine Public Service Company

[Docket Nos. ER95–836–004 and ER99–2472–001]

Take notice that on May 27, 1999, Maine Public Service Company (MPS), tendered for filing a compliance refund report for three of its customers, Houlton Water Company, Central Maine Power Company (AVEC), and Energy Atlantic, LLC as required by the Commission's December 22, 1998, order in Docket No. ER95–836–000 and the Commission's May 10, 1999, letter order approving the settlement in Docket Nos. ER95–836–004 and ER99–2472–000.

Copies of this filing were served upon all parties on the Commission's official service lists for these proceedings, affected state commissions, and all customers taking service under MPS's open access transmission tariff.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Enserco Energy Inc., P & T Power Company

[Docket Nos. ER96–2964–009 and ER97–18–003]

Take notice that on May 24, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. OGE Energy Resources, Inc.

[Docket No. ER97–4345–009]

Take notice that on May 21, 1999, the above-mentioned power marketer filed a revised quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. StratErgy, Inc.

[Docket No. ER99–1410–001]

Take notice that on May 27, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Dayton Power and Light Company

[Docket No. ER99–1987–000]

Take notice that on May 24, 1999, Dayton Power and Light Company (DP&L), in accordance with the Commission's order in North American Electric Reliability Council, 85 FERC ¶61,353 (1998), tendered for filing a statement concerning interim approaches to parallel flows associated with native load and network service, and to regional congestion problems.

DP&L states that it agrees to accept and implement NERC's procedures relating to parallel flows associated with native load and network service and its redispatch pilot program for the summer of 1999. DP&L also states that its Open Access Transmission Tariff should be considered modified by NERC's procedures.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Energy Lovett, L.L.C., Southern Energy Bowline, L.L.C., Southern Energy NY-Gen, L.L.C.

[Docket Nos. ER99–2043–001, ER99–2044–001, and ER99–2045–001]

Take notice that on May 27, 1999, Southern Energy Lovett, L.L.C., Southern Energy Bowline, L.L.C., Southern Energy NY-Gen, L.L.C. (collectively the Southern Parties), tendered for filing revised rate schedules in compliance with the letter order issued by the Federal Energy Regulatory Commission on April 28, 1999, in the above-captioned dockets.

Copies of this filing were served on all parties designated on the official service list.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Incorporated

[Docket No. ER99–2076–001]

Take notice that on May 14, 1999, Cinergy Services, Incorporated (Cinergy) tendered for filing a refund report.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER99–2244–001]

Take notice that on May 27, 1999, Niagara Mohawk Power Corporation tendered for filing a revised Attachment

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J—Form of Service Agreement For Retail Transmission Service—in compliance with the Commission's May 12, 1999, order in this proceeding.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. FirstEnergy Trading Services, Inc.

[Docket No. ER99–3063–000]

Take notice that on May 27, 1999, FirstEnergy Trading Services, Inc. (FirstEnergy Trading) (formerly, FirstEnergy Trading and Power Marketing, Inc.), tendered for filing an Electric Power Service Agreement for sales of power and energy to Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company under Rate Schedule FERC No. 1, Market Based Rate Schedule.

FirstEnergy Trading has asked that the Electric Power Service Agreement be permitted to become effective on June 1, 1999.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Central Vermont Public Service Corporation

[Docket No. ER99–3064–000]

Take notice that on May 26, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing an amended power sales tariff, FERC Electric Tariff, Original Volume No. 5. The filing eliminates provisions regarding resales of transmission rights from the power sales tariff. Central Vermont states that provisions for the resale of transmission rights are available pursuant to Central Vermont's amended and restated market-based sales tariff filed on April 30, 1999, in Docket No. ER99–2733–000.

Central Vermont requests waiver of the Commission's notice requirements so that the amended power sales tariff may become effective on May 1, 1999, which is coincident with the requested effective date of Central Vermont's amended and restated market-based sales tariff.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Energy Canal, L.L.C.

[Docket Nos. ER99–3065–000]

Take notice that on June 3, 1999, Southern Energy Canal, L.L.C. (Southern Canal), tendered for filing the following agreement as a service agreement under its Market Rate Tariff accepted by the Commission in the Docket No. ER98–4115–000:

1. Master Index Purchase and Sale Agreement by and between Southern Company Energy Marketing L.P. and Southern Energy Canal, L.L.C.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Energy Kendall, L.L.C.

[Docket Nos. ER99–3066–000]

Take notice that on May 27, 1999, Southern Energy Kendall, L.L.C. (Southern Kendall), tendered for filing the following agreement as a service agreement under its Market Rate Tariff accepted by the Commission in the Docket No. ER98–4116–000:

1. Master Index Purchase and Sale Agreement by and between Southern Company Energy Marketing L.P. and Southern Energy Kendall, L.L.C.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3067–000]

Take notice that on May 27, 1999, Alliant Energy Corporate Services, Inc., tendered for filing two executed Service Agreements. One agreement is for short-term firm point-to-point transmission service. The other agreement is for non-firm point-to-point transmission service. The agreements are signed by Alliant Energy Industrial Services, Inc., and Alliant Energy Corporate Services, Inc., and provide for transmission service under the Alliant Energy Corporate Services, Inc., open access transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of May 18, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER99–3068–000]

Take notice that on May 27, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., submitted for filing Amendment A, to the Independence Steam Electric Station Operating Agreement between Entergy Arkansas, Inc., the Arkansas Electric Cooperative Corporation, the Cities of Conway, Jonesboro, Osceola, and West Memphis, Arkansas and Entergy Power, Inc., dated July 31, 1979 (Operating Agreement). Entergy Services states that Amendment A formally adds the East Texas Electric Cooperative, Inc., as a Participant to the Operating Agreement.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Illinois Public Service Company

[Docket No. ER99–3069–000]

Take notice that on May 27, 1999, Central Illinois Public Service Company (CIPS), tendered for filing a Fourth Amendment to the Power Supply Agreement (PSA) between CIPS and the Illinois Municipal Electric Agency (IMEA) including Service Schedules C, F and H, a Fourth Amendment to the Transmission Services Agreement between CIPS and IMEA and a letter agreement specifying certain additional terms and conditions applicable under the PSA for the period January 1, 1999 through December 31, 2000.

CIPS requests an effective date of May 1, 1998, for Service Schedules F and H and of January 1, 1999, for the other agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Illinois Municipal Electric Agency and the Illinois Commere Commission.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Central Maine Power Company

[Docket No. ER99–3070–000]

Take notice that on May 27, 1999, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Central Vermont Public Service Corporation. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Carolina Power & Light Company

[Docket No. ER99–3072–000]

Take notice that on May 27, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Avista Energy, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed

Agreement originally filed in Docket No. ER98–3395–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Avista Corporation

[Docket No. ER99–3073–000]

Take notice that on May 27, 1999, Avista Corporation tendered for filing that Rate Schedule FERC No. 219, previously filed with the Federal Energy Regulatory Commission by Avista Corporation, formerly known as The Washington Water Power Company, under the Commission's Docket No. ER95–677–000 with City of Riverside is to be terminated, effective May 30, 1999 by the request of City of Riverside per its letter dated September 28, 1998.

Notice of the cancellation has been served upon The City of Riverside Public Utilities Department.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Avista Corporation

[Docket No. ER99–3074–000]

Take notice that on May 27, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 of the Commission Rules and Regulations, a Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 9, with Idaho County Light & Power.

Avista Corporation requests waiver of the prior notice requirement and that the Service Agreement be accepted for filing with an effective date of May 1, 1999.

Notice of the filing has been served upon Idaho County Light & Power.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Western Resources, Inc.

[Docket No. ES99–20–001]

Take notice that on May 26, 1999, Western Resources, Inc. (Western), requested an exemption from the reporting requirements of 18 CFR 34.10, in connection with the common stock authorized in ES99–20–000. Western states that the shares of common stock made under their Direct Stock Purchase Plan, will be issued on a continual and frequent basis, making the reporting requirements of 18 CFR 34.10 burdensome. Due to the complications and difficulties involved in reporting such frequent issuances, Western respectfully requests an exemption from the aforementioned reporting requirements.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Western Resources, Inc.

[Docket No. ES99–23–001]

Take notice that on May 26, 1999, Western Resources, Inc. (Western), requested an exemption from the reporting requirements of 18 CFR 34.10, in connection with the common stock authorized in ES99–23–000. Western states that the grants of common stock made under their Employee Stock Purchase Plan, will be made on a continual and frequent basis, making the reporting requirements of 18 CFR 34.10 burdensome. Due to the complications and difficulties involved in reporting such frequent grants, Western respectfully requests an exemption from the aforementioned reporting requirements.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Western Resources, Inc.

[Docket No. ES99–26–001]

Take notice that on May 26, 1999, Western Resources, Inc. (Western), requested an exemption from the reporting requirements of 18 CFR 34.10, in connection with the securities authorized in ES99–26–000. Western states that the issuance and sale of the securities referenced in the original docket will proceed on a continual and frequent basis, making the reporting requirements of 18 CFR 34.10 burdensome. Due to the complications and difficulties involved in such frequent issuances and sales, Western respectfully requests an exemption from the aforementioned reporting requirements.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Western Resources, Inc.

[Docket No. ES99–27–001]

Take notice that on May 26, 1999, Western Resources, Inc. (Western), requested an exemption from the reporting requirements of 18 CFR 34.10, in connection with the shares of common stock authorized in ES99–27–000. Western states that the shares of common stock made under their Direct Stock Purchase Plan, will be issued on a continual and frequent basis, making the reporting requirements of 18 CFR 34.10 burdensome. Due to the complications and difficulties involved in reporting such frequent issuances, Western respectfully requests an exemption from the aforementioned reporting requirements.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14529 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

June 3, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI99–8–000.

c. *Date Filed:* May 4, 1999.

d. *Applicant:* Gene A. Shanks.

e. *Name of Project:* Elfin Cove Hydro Project.

f. *Location:* Located on an unnamed stream, near Elfin Cove, Chichagof Island, Inian Peninsula, AK (T. 42 S., R. 55 E., sec. 36, Copper River Meridian). The project will occupy Federal lands located in the Tongass National Forest.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Gene A. Shanks, P.O. Box 47, Elfin Cove, AK 99825 (907) 239–9220.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E–mail address: diane.murray@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

Please include the docket number (DI99–8–000) on any comments or motions filed.

k. *Description of Project:* The proposed project will consist of: (1) an intake; (2) a 1,020-foot-long penstock; (3) a proposed generator with a capacity of 2.5 kilowatts; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14565 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

June 3, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 10942–001.

c. *Date filed:* March 8, 1994.

d. *Applicant:* Skykomish River Hydro.

e. *Name of Project:* Martin Creek Hydroelectric Project.

f. *Location:* On Kelley and Martin Creeks, Kings County, about 7 miles east of Skykomisk, Washington; the project is within the Mt. Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791–(a)–825(r).

h. *Applicant Contacts:* Scott Jacobs, Skykomish River Hydro, 1422 130th Avenue N.E., Bellevue, Washington, 98005, (425) 3455–0234 and Frank Frisk, Jr., 1054 31st St. NW, Suite 125, Washington, D.C. 20007, (202) 333–8433.

i. *FERC Contact:* David Turner, david.turenr@ferc.fed.us, (202) 219–2844.

j. *Deadline for filing comments, recommendations, terms and conditions and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. The proposed project would consist of: (1) a 60-foot-long and 9-foot-high rock-rubble water diversion structure on Martin Creek with a gated sluiceway, (2) a 42-foot-long, 9-foot-high rock-rubble water diversion structure on Kelley Creek with a gated sluiceway, (3) a 0.14-Acre impoundment on Martin Creek and a 0.025-acre impoundment on Kelley Creek, (4) a 10,436-footlong buried penstock, (5) a 40-foot by 50-foot concrete powerhouse containing one single Pelton wheel turbine generating 10.2-megawatt total rated capacity, (6) a 25-foot by 35-foot transformer substation located adjacent to the powerhouse, (7) 20-foot-wide groveled access roads totaling 4,200 feet, and (8) a 2.3-mile-long, buried 35.1-kilovolt transmission line connecting the project to Pudget Sound Power and Light Company's Skykomish substation, and (9) appurtenant facilities.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling

(202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

Any filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 358.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14569 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 3, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11718–000.

c. *Date filed:* April 12, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Patoka Lake Dam Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Patroka Dam on the Patoka River, near the Town of Jasper, Dubois County, Indiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2808 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Patoka Dam and Reservoir, and would consist of the following facilities: (1) a new 50-foot-long and 4-foot-diameter steel penstock; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 638 kilowatts; (3) a new 400-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 4 gigawatthours. The cost of the studies under the permit will not exceed $500,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commissions' mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a motion of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Any one may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14570 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 3, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11720–000.

c. *Date filed:* April 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Cecil M. Hardin Dam Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Cecil M. Hardin Dam on the Raccoon Creek, near the Town of Mansfield, Parke County, Indiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (303) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Cecil M. Hardin Dam and Reservoir, and would consist of the following facilities: (1) a new 50-foot-long and 58-inch-diameter steel penstock; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 750 kilowatts; (3) a new 1,000-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 4.6 gigawatthours. The cost of the studies under the permit will not exceed $500,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a

notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Any one may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14571 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 3, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11721–000.

c. *Date filed:* April 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* J. Edwards Roush Dam Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' J. Edwards Roush Dam on the Wabash River, near the Town of Huntington, Huntington County, Indiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' J. Edwards Roush Dam and Reservoir, and would consist of the following facilities: (1) a new 50-foot-long and 78-inch-diameter steel penstock; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 2300 kilowatts; (3) a new 4-mile-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 14 gigawatthours. The cost of the studies under the permit will not exceed $1,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice an Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14572 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 3, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11724–000.

c. *Date filed:* April 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* John Stennis Dam Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' John Stennis Dam on the Tombigbee River, near the Town of Columbus, Lowndes County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' John Stennis Lock and Dam, and would consist of the following facilities: (1) two new steel penstocks, each about 80-foot-long and 6-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 2700 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 17 gigawatthours. The cost of the studies under the permit will not exceed $1,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing

application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14573 Filed 6–8–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00580; FRL–6070–2]

Maximum Residue Limit Petitions for Pesticides on Food/Feed and New Inert Ingredients; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the EPA is seeking public comment on the following Information Collection Request (ICR): "Maximum Residue Limit Petitions for Pesticides on Food/Feed and New Inert Ingredients," (EPA ICR No. 0597.07, OMB No. 2070–0024). This ICR involves a collection activity that is currently approved. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments must be received on or before August 9, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code 7506C, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 703–305–5454, fax: 703–305–5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

You may be potentially affected by this notice if you have submitted a petition for a Maximum Residue Limit (MRL) or an exemption to the requirement for a MRL for an active or inert ingredient used in pesticides. By law, to protect the public health from unsafe pesticide residues, EPA is authorized to set MRLs on the nature and level of residues permitted to remain on food or feed (see sections 408(a)(1)(A) and (a)(1)(B) and section 408(b)(1) of the Federal Food, Drug and Cosmetic Act (FFDCA)). This ICR covers all requests for MRLs, or exemptions from the requirement of a MRL and the type of data that is required to be submitted.

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide manufacturing companies, pesticide registrants, Interregional Research Project No. 4 (IR–4) petitioners, and third party registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. You or your business are affected by this action if you have a conditional pesticide registration with the Agency. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr/. You can then easily follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6071 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number OPP–00590, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond to this Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00590, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00590. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the estimates provided, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.

- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the EPA and OMB ICR numbers.

IV. What Information Collection Activity or ICR Does this Notice Apply to?

EI'A is seeking comments on the following ICR:

Title: Maximum Residue Limit Petitions for Pesticides on Food/Feed and New Inert Ingredients.

ICR numbers: EPA ICR No. 0597.07, OMB No. 2070–0024.

ICR status: This ICR is currently scheduled to expire on June 30, 1999. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: To protect the public health from unsafe pesticide residues, the EPA is authorized to set MRLs on the nature and level of residues permitted to remain on food or feed (see sections 408(a)(1)(A) and (a)(1)(B) and section 408(b)(1) of the FFDCA). The use of pesticides to increase crop production often results in pesticide residues in or on the crop. While EPA is authorized to set pesticide MRLs, the Food and Drug Administration (FDA) is responsible for their enforcement. Food or feed commodities found to contain pesticide residues in excess of established MRLs are considered adulterated and are subject to seizure.

This ICR covers all requests for MRLs, or exemptions from the requirement of a MRL, for both active and inert ingredients in pesticides. The type of data that is required to be submitted is dependent on the type of MRL that is sought. There are five types of MRL petitions that may be submitted and EPA may request the submission of data and/or other relevant information to assist it in its review and in setting the appropriate MRLS. The five types are as follows:

1. Temporary MRL (or an exemption from the requirement for a temporary MRL) to permit sale of commodities containing residues resulting from authorized experimental use of an unregistered pesticide. In the absence of such a MRL or exemption, all such commodities must be destroyed. Because exposure is limited by the nature of the experimental use, the range of data required to support a temporary MRL is generally less than for a permanent MRL.

2. Permanent MRL (or an exemption from the requirement for a permanent MRL) for residues which would result from a pesticide use registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

3. Permanent MRL (or an exemption from the requirement for a permanent MRL) petitioned by third parties for residues resulting from registered uses, usually on minor crops for which the pesticide registrant is unwilling to seek a MRL. When minor crops are involved, the range of data requirements is adjusted to be commensurate with the extent of pesticide use.

4. MRLs for other ingredients in pesticides, such as solvents, baits, dust carriers, fillers, wetting or spreading agents, propellants, emulsifiers, etc.

5. MRLs for residues on commodities which are not grown in the United States, and therefore for which there is no U.S. registrant (i.e., import MRLs).

When necessary, EPA will also establish an MRL as part of the Agency's review of a state application for an emergency exemption for pesticides under section 18 of FIFRA. However, this information collection does not cover state submitted MRL data pursuant to section 18 activities since EPA collects relevant state MRL data under the ICR entitled "Application and Summary for an Emergency Exemption for Pesticides" (OMB No. 2070–0032).

It is EPA's responsibility to ensure that the maximum residue levels likely to be found in or on food/feed are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, it must ensure that adequate enforcement of the MRL can be achieved through the testing of submitted analytical methods. Once the data are deemed adequate to support the findings, EPA will establish the MRL or grant an exemption from the requirement of a MRL.

On August 3, 1996, the Food Quality Protection Act (FQPA) was signed into law. Effective upon signature, the new statute significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act. The new amendment establishes a strong health based safety standard for setting MRLs for pesticides in food. The FQPA requires that MRLs be set at a level to ensure that there be "a reasonable certainty that no harm will result from aggregate exposure." Among other things, FQPA requires EPA to consider a number of new factors when setting such MRLs or registering pesticide products, including: (1) Special protection for infants and children; (2) aggregate of exposure and risk from foods and other known sources, such as drinking water and household pesticide use; and (3) consideration of common mechanisms of toxicity (some chemicals have different molecular structures but cause deleterious effects in the same manner).

Since FQPA passed, EPA is applying this tough, new standard to all MRLs for newly-registered chemicals and food uses. In addition, FQPA has set a schedule for reassessing all 10,000 existing MRLs under this new standard by 2006. The new law did not provide for a phase-in period for many of the new requirements which had not previously been a part of EPA's risk assessment process. EPA has not changed the informational requirements of this ICR from the previous ICR. But while EPA does not require registrants to submit any additional information under this ICR, the new FQPA provisions requires EPA to consider additional information in order to make the necessary regulatory decisions. Therefore, petitioners, who submitted data to the Agency prior to passage of FQPA, are encouraged to supplement their original submissions with additional information. Respondents submitting new petitions may want to submit supplemental information to the Agency even without a requirement to do so. To allow for the most efficient processing and review of MRL petitions, the Agency has provided a description of the types of information that EPA considers helpful in the Appendices to Pesticide Registration (PR) Notice No. 97–1.

PR 97–1 applies to most applicants with registration applications, non-crop-destruct experimental use permit applications, and MRL or MRL exemption petitions pending within the Agency. It also applies to most future applicants seeking new or amended pesticide registrations and all actions involving synthetic chemicals, antimicrobial, biochemical and microbial pesticides. However, the notice does not apply to applicants

seeking fast track "me-too" registrations or amendments not involving new uses. There are no forms associated with this information collection.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the MRL reporting information collection is estimated to average 1,442 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants, pesticide companies, Interregional Research Project No. 4 (IR–4) petitioners, and third party registrants.

Estimated total number of potential respondents: 150.

Frequency of response: Once for each raw or processed commodity on which the pesticide is used.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 216,300.

Estimated total annual burden costs: $18,466,650.

VI. Are There Changes in the Estimates from the Last Approval?

No. The annual registrant burden estimate for this information collection will remain at 1,442 hours per year with the number of respondents submitting MRL petitions remaining at 150 annually. Changes to the ICR reflect the cost increase for labor rates only. The individual burden per product for PRA reporting has remained constant at 455 hours.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests.

Dated: May 19, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–14363 Filed 6–8–99; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00586; FRL–6063–4]

Formation and Request for Nominations to Serve on the Food Quality Protection Act, Science Review Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the formation and solicits nominations to serve on the Food Quality Protection Act, Science Review Board. The names, addresses, and professional affiliations of persons already serving on the Science Review Board are provided below. Section 104 of the Food Quality Protection Act of 1996 established the Science Review Board consisting of at least 60 scientists who shall be available to the Federal Insecticide, Fungicide, and Rodenticide Act, Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Panel. The Scientific Advisory Panel was established under section 25(d) of Federal Insecticide, Fungicide, and Rodenticide Act.

ADDRESSES: By mail, submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: (703) 305–5805.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00586. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Paul I. Lewis, FIFRA Scientific Advisory Panel (7101C), Office of Science Coordination and Policy, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 117, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: (703) 305–5369 or 305–7351; e-mail: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel (SAP) prior to being made public or issued to a registrant. In accordance with FIFRA section 25(d), the SAP is to have an opportunity to comment on the health and environmental impact of such actions. The Panel shall also make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists.

Section 104 of the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) established the FQPA Science Review Board (SRB) consisting of at least 60 scientists. These scientists shall be available to the SAP on an ad hoc basis to assist in reviews conducted by the Panel.

The Food Quality Protection Act mandated that members of the SRB shall be selected in the same manner as a member of SAP temporary subpanels.

The chair of the SAP, after consultation with the Administrator, may create temporary subpanels on specific projects to assist the full SAP in expediting and preparing its evaluations, comments, and recommendations. These subpanels will be composed of scientists to evaluate scientific studies relied upon by the Administrator with respect to the proposed action. Such additional scientists shall be selected by the SAP.

II. Applicability of Existing Regulations

With respect to the requirements of FIFRA section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, EPA's existing regulations applicable to special government employees, which include advisory committee members, will apply to the members of the SRB. These regulations appear at 5 CFR part 2635.

III. Nominees to the Science Review Board

The Agency announces and solicits nominations of scientists to serve on the SRB. The Agency has already selected members to the SRB and seeks additional participants (a list of current SRB members follows). Members shall be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. Members will be selected from among, but are not limited to, toxicology, pathology, environmental biology, and related sciences (e.g. pharmacology, biotechnology, biochemistry and biostatistics). No persons shall be ineligible to serve on the SRB by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). All nominees to the SRB should furnish information concerning their professional qualifications, educational background, employment history, and scientific publications.

If a SRB nominee is considered to assist in a review by the SAP for a particular session, the SRB nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the SRB nominee is required to submit a Confidential Financial Disclosure Report (OGE Form 450) which shall fully disclose, among other financial interests, the nominee's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the nominee's financial disclosure form prior to the nominee being appointed to a panel reviewing agency actions. This evaluation will identify conflicts that may arise between the member's financial interests and the agency actions under review. If the SRB nominee's financial disclosure form is approved by the EPA, the nominee will be assigned to a SAP session and be hired as a Special Government Employee.

The SAP consists of 7 members appointed by the Administrator from a list of 12 nominees, 6 nominated by the National Institutes of Health and 6 by the National Science Foundation, utilizing a system of staggered terms of appointment. The members are: Dr. Ronald Kendall, The Institute of Environmental and Human Health/ Texas Tech University Health Sciences Center, Lubbock, TX (chairperson); Dr. Charles Capen, Ohio State University, School of Veterinary Medicine, Department of Veterinary Biosciences, Columbus, OH; Dr. Ernest McConnell, Toxpath, Inc., Raleigh, NC; Dr. Fumio Matsumura, University of California, Institute of Toxicology and Environmental Health, Davis, CA; Herbert Needleman, M.D., University of Pittsburgh, School of Medicine, Pittsburgh, PA; Dr. Christopher Portier, National Institutes of Environmental Health Sciences, Research Triangle Park, NC, and; Dr. Mary Anna Thrall, Colorado State University, College of Veterinary Medicine and Biomedical Science, Fort Collins, CO.

EPA Science Advisory Board members are also available to serve on the SRB (there are over 300 scientific consultants on the EPA Science Advisory Board). Several EPA Science Advisory Board scientific consultants have served in the past on the SRB to assist in reviews conducted by the Panel. The following are the names, addresses, and professional affiliations of current members on the SRB.

Current FQPA SRB Members

Dr. John Adgate, University of Minnesota, Minneapolis, MN
Dr. Marion Anders, University of Rochester, Rochester, NY
Dr. Jack Barbash, United States Geological Service, Tacoma, WA
Dr. Osman Basaran, Purdue University, West Lafayette, IN
Dr. William Brimijoin, Mayo Clinic and Medical School, Rochester, NY
Dr. Arthur Buikema, Virginia Polytechnical Institute and State University, Blacksburg, VA
Dr. Allen Burton, Wright State University, Dayton, OH
Dr. Janice Chambers, Mississippi State University, Mississippi State, MS
Dr. Robert Chapin, National Institute of Environmental Health Sciences, Research Triangle Park, NC
Dr. Luz Claudio, Mount Sinai Hospital, New York, NY
Dr. Joel Coats, Iowa State University, Ames, Iowa
Dr. Rory Conolly, Chemical Industry Institute of Toxicology, Research Triangle Park, NC
Dr. Michael Cunningham, National Institute of Environmental Health Sciences, Research Triangle Park, NC
Dr. Terri Damstra, World Health Organization, Research Triangle Park, NC
Dr. Kenneth Davis, University of Memphis, Memphis, TN
Dr. Michael Doyle, University of Georgia, Griffin, GA
Dr. J. Larry Duda, Pennsylvania State University, University Park, PA
Dr. Amira Eldefrawi, University of Maryland, Baltimore, MD
Mr. James Fallon, United States Geological Service, Moundsview, MS
Dr. Richard Fenske, University of Washington, Seattle, WA
Dr. David Ferro, University of Massachusetts, Amherst, MA
Dr. John Fletcher, University of Oklahoma, Norman, OK
Dr. Paul Foster, Chemical Industry Institute of Toxicology, Research Triangle Park, NC
Dr. Natalie Freeman, Rutgers University, Piscataway, NJ
Dr. David Gaylor, Food and Drug Administration, Jefferson, AK
Dr. James Gibson, Dow AgroSciences LLC, Indianapolis, IN
Dr. Christian Grue, Washington Cooperative Fish and Wildlife Research Unit, Seattle, WA
Dr. Philip Guzelian, University of Colorado, Denver, CO
Dr. Robert Hale, Virginia Institute of Marine Science, Gloucester Point, VA
Dr. George Hallberg, The Cadmus Group, Waltham, MA
Dr. Lenwood Hall, University of Maryland, Queenstown, MD
Dr. James Hanson, National Institutes of Health, Bethesda, MD
Dr. Gordon Hard, American Health Foundation, Valhalla, NY
Dr. Jerry Hatfield, National Soil Tilth Laboratory, Ames, IA
Dr. Dale Hattis, Clark University, Worcester, MA
Dr. Paul Hendley, Zeneca AG Products, Richmond, CA
Dr. Diane Henshel, Indiana University, Bloomington, IN
Dr. Robert Herrick, Harvard University, Cambridge, MA
Dr. Elwood Hill, University of Nevada, Reno, NV
Dr. Robert Hill, University of Maryland, College Park, MD
Dr. Charles Hobbs, Lovelace Respiratory Research Institute, Albuquerque, NM
Dr. Bruce Hope, Oregon Department of Environmental Quality, Portland, OR
Dr. Art Hornsby, University of Florida, Gainesville, FL

Dr. Robert Horton, Iowa State University, Ames, IA
Dr. Lovell Jones, University of Texas, Houston, TX
Dr. Russell Jones, Rhone-Poulenc, Inc., Research Triangle Park, NC
Dr. Mont Juchau, University of Washington, Seattle, WA
Dr. Kathleen Keeler, University of Nebraska, Lincoln, NE
Dr. John Kissel, University of Washington, Seattle, WA
Dr. Robert Kreiger, University of California, Riverside, CA
Dr. Sam Kung, University of Wisconsin, Madison, WI
Dr. Tom LaPoint, University of North Texas, Denton, TX
George Lambert, M.D. University of Medicine and Dentistry of New Jersey, Piscataway, NJ
Dr. Peter Landrum, National Oceanic and Atmospheric Administration, Ann Arbor, MI
Dr. Dennis Laskowski, Dow AgroSciences LLC, Indianapolis, IN
Dr. Ross Leidy, North Carolina State University, Raleigh, NC
Dr. Martin Locke, United States Department of Agriculture, Stoneville, MS
Dr. Charles MacTutus, University of Kentucky, Lexington, KY
Dr. Margaret McCarthy, University of Maryland, Baltimore, MD
Dr. William McCarthy, Hoffman-LaRouche, Inc., Nutley, NJ
Dr. F.M. Anne McNabb, Virginia Polytechnical Institute and State University, Blacksburg, VA
Dr. Victor McFarland, United States Army Core of Engineers, Vicksburg, MS
Dr. Charles Menzie, Menzie-Cura and Associates, Inc., Chelmsford, MA
Dr. Karl Mierzejewski, Independent Consultant, State College, PA
Dr. Robert Moore, University of Wisconsin, Madison, WI
Dr. Tom Mueller, University of Tennessee, Knoxville, TN
Dr. Mark Nearing, United States Department of Agriculture, West Lafayette, IN
Dr. Benjamin Nelson, National Institute for Occupational Safety and Health, Cincinnati, OH
Dr. Jeff Novak, United States Department of Agriculture, Florence, SC
Dr. Raymond O'Connor, University of Maine, Orono, ME
Dr. John O'Donoughe, Eastman Kodak, Rochester, NY
Dr. Jim Oris, Miami University, Oxford, OH
Dr. Reynaldo Patino, Texas Cooperative Fish and Wildlife Research Unit, Lubbock, TX
Robert Peiffer, DVM, University of North Carolina, Chapel Hill, NC
Dr. James Petty, United States Geological Survey, Columbia, MO
Dr. Carey Pope, Northeast Louisiana University, Monroe, LA
Dr. Nu-may Ruby Reed, California Environmental Protection Agency, Sacramento, CA
J. Routt Reigart, M.D. Medical University of South Carolina, Charleston, SC
Dr. James Render, Michigan State University, East Lansing, MI
Mr. Darryl Rester, Louisiana State University, Baton Rouge, LA
Dr. Lorenz Rhomberg, Harvard Center for Risk Analysis, Boston, MA
Dr. George Roderick, University of Hawaii, Honolulu, HI
Dr. Tim Roland, United States Department of Agriculture, Edinburg, TX
Dr. William Rutula, University of North Carolina, Chapel Hill, NC
Dr. Ali Sadeghi, United States Department of Agriculture, Beltsville, MD
Dr. Syed Sattar, University of Ottawa, Ottawa, Ontario, Canada
Dr. Daniel Saunders, Frito Lay, Dallas, TX
Dr. Jay Schreider, Department of Pesticide Regulation, Sacremento, CA
Dr. Jeffery Scott, United States Department of Commerce, Charleston, SC
Dr. Lynne Sehulster, Centers for Disease Control, Atlanta, GA
Dr. Dhiren Shah, Food and Drug Administration, Washington, DC
Dr. James Shih, National Institutes of Health, Bethesda, MD
Dr. Lawrence Sirinek, Ohio Environmental Protection Agency, Columbus, OH
Dr. William Slikker, National Center for Toxicological Research, Jefferson, AK
Dr. David Smith, Mississippi State University, Mississippi State, MS
Dr. Tom Sobotka, Food and Drug Administration, Laurel, MD
Dr. Mark Sobsey, University of North Carolina, Chapel Hill, NC
Dr. Tammo Steenhuis, Cornell University, Ithaca, NY
Dr. James Swenberg, University of North Carolina, Chapel Hill, NC
Dr. Harold Thistle, United States Department of Agriculture, Forest Service, Missoula, MT
Dr. Mark Tumeo, Cleveland State University,Cleveland, OH
Dr. Harold van Es, Cornell University, Ithaca, NY
Dr. Ian van Wesenbeeck, Dow Elanco, Indianapolis, IN
Dr. John Vandenbergh, North Carolina State University, Chapel Hill, NC
Dr. Joel Walker, University of Arkansas, Fayetteville, AK
Dr. John Wargo, Yale University, New Haven, CT
Dr. R. Don Wauchope, U.S. Department of Agriculture, Tifton, GA
Dr. Carol Weisskopf, Washington State University, Richland, WA
Dr. Richard (Rick) Wetzler, Tufts University, Medford, MA
Dr. Mark Whalon, Michigan State University, East Lansing, MI
Dr. Willis Wheeler, Institute of Food and Agricultural Sciences, Gainesville, FL

List of Subjects

Environmental protection.

Dated: May 17, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–14358 Filed 6–8–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100145; FRL–6063–6]

Lockheed Martin Energy Research Corp. and Summitec Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Lockheed Martin Energy Research Corp. and its subcontractor, Summitec Corp., under an Interagency Agreement (IAG) with the Department of Energy (DOE), IAG No. DW89938591–01, will perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Lockheed Martin Energy Research Corp. and Summitec Corp. consistent with the requirements of 40 CFR 2.307(h)(3), 2.309(c), and 2.308(I)(2) and will enable Lockheed Martin Energy Research Corp. to fulfill the obligations of the contract.

DATES: Lockheed Martin Energy Research Corp. and Summitec Corp. will be given access to this information no sooner than June 21, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Schmitt, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 703, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5484; e-mail: schmitt.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under IAG No. DW89938591–01, which supports the OPP regulatory efforts, Lockheed Martin Energy Research Corp. and Summitec Corp. will (1) conduct analysis and evaluation of registrant submissions for FIFRA registration and (2) perform special technical assistance projects to assist the Office of Pesticide Programs/EPA with issues associated with setting standards.

OPP has determined that access to this information is necessary for the preformation of these tasks.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), 2.08(h)(2), and 2.209(c), this IAG with Lockheed Martin Energy Research Corp. and Summitec Corp., prohibits use of the information for any purpose not specified in the IAG and this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Lockheed Martin Energy Research Corp. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided under this IAG until the above requirements have been fully satisfied. Records of information provided under this IAG will be maintained by the Project Officers for each task in the EPA Office of Pesticide Programs.

All information supplied to Lockheed Martin Energy Research Corp. and Summitec Corp. by EPA for use in connection with this IAG will be returned to EPA when Lockheed Martin Energy Research Corp. and Summitec Corp. have completed their work.

List of Subjects

Environmental protection, Transfer of data.

Dated: May 27, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–14359 Filed 6–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100145; FRL–6083–8]

Research Triangle Institute; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Research Triangle Institute has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Research Triangle Institute consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(I)(2), and will enable Research Triangle Institute to fulfill the obligations of the contract.

DATES: Research Triangle Institute will be given access to this information no sooner than June 14, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Schmitt, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 703, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5484; e-mail: schmitt.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W9–8208, Research Triangle Institute will perform activities in support of the environmental chemistry methods programs. This includes validation of analytical methods to detect pesticide residues in foods. This contract involves no subcontractors.

OPP has determined that access by Research Triangle Institute to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Research Triangle Institute prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the Research Triangle Institute sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Research Triangle Institute is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this Research Triangle Institute until the above requirements have been fully satisfied. Records of information provided to this Research Triangle Institute will be maintained by the Project Officers for this contract in the EPA Office of Pesticide Programs. All information supplied to Research Triangle Institute by EPA for use in connection with this contract will be returned to EPA when Research Triangle Institute has completed its work.

List of Subjects

Environmental protection, Transfer of data.

Dated: May 27, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–14360 Filed 6–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100144; FRL–6083–7]

Dynamac Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Dynamac Corporation (Dynamac) has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Dynamac consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable Dynamac to fulfill the obligations of the contract.

DATES: Dynamac will be given access to this information no sooner than June 14, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Schmitt, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 703, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5484; e-mail: schmitt.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68D–W9–9014, Dynamac will review and evaluate toxicological and pharmacological studies reporting tests of pesticides in laboratory animals, clinical reports, monitoring and epidemiological studies, and accidental pesticide exposure incident studies. Additionally, Dynamac will develop and evaluate new procedures or methodologies for testing pesticides for hazards to humans; conduct expert reviews of complex science issues; and perform data extraction/entry from toxicological data summaries, using computerized data bases. This contract involves no subcontractor.

OPP has determined that access by Dynamac to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Dynamac prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Dynamac is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officers for this contract in the EPA Office of Pesticide Programs. All information supplied to Dynamac by EPA for use in connection with this contract will be returned to EPA when Dynamac has completed its work.

List of Subjects

Environmental protection, Transfer of data.

Dated: May 27, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–14361 Filed 6–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00273; FRL–6085–8]

Notice of Availability of FY 1999 Multimedia Environmental Justice Through Pollution Prevention Grant Funds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is soliciting grant proposals under the Environmental Justice Through Pollution Prevention (EJP2) grant program. EPA anticipates that approximately $750,000 will be available in Fiscal Year (FY) 1999. This program promotes pollution prevention approaches that address environmental justice concerns in affected communities. The grant funds support: (1) Local environmental, environmental justice, and community grassroots organizations, including religious and civic organizations, as well as tribal governments; (2) national and regional organizations working in partnership with local organizations, or tribal governments; (3) state and local governments; and (4) academic institutions.

DATES: All applications must be received by the EPA contractor, Eastern Research Group (ERG), on or before August 12, 1999. You must submit your application in accordance with the instructions contained in Unit V. of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Danielle Fuligni, Pollution Prevention Division (7409), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–841–0483; e-mail address: fuligni.danielle@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and the Application Package?

1. *Electronically*. You may obtain copies of the EJP2 grant program guidance and application package from the EPA Internet Home Page at http://www.epa.gov/opptintr/ejp2/.

You may obtain copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

2. *By mail*. You may mail a request for this information to the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section, at the address listed.

II. Scope and Purpose of the EJP2 Grant Program

The FY 1999 EJP2 grant program supports the use of pollution prevention approaches to address the environmental problems of minority and low-income communities and Federally recognized tribes. This grant program is designed to fund projects that have a direct impact on affected communities. Funds awarded must be used to support pollution prevention programs in minority and/or low-income communities. The Agency strongly encourages cooperative efforts between communities, businesses, industry, and government to address common pollution prevention goals. Project grants may involve public education, training, demonstration projects, collaborative public-private partnerships, or innovative approaches to develop, evaluate, and demonstrate non-regulatory strategies and

technologies. EPA will award grants to national organizations for projects to assess the results of previous and ongoing EJP2 grants as well as to develop tools for bringing pollution prevention approaches to bear on the problems of environmental justice.

Over the past 4 years, the EJP2 grants have been used to fund a broad range of innovative approaches and partnerships. EPA has funded 176 grants totaling over $14 million. There is less money for these grants this year. While in previous years, EPA has been able to fund 50 or more grants, this year we anticipate being able to fund no more than 10. This year, we will therefore focus our resources on a narrower set of priorities, including:

- *Information products and assistance*: Grantees would develop and disseminate information on effective environmental justice approaches, based in part on the results of earlier EJ/P2 grants.
- *New projects in priority areas*: Priorities include small business projects in environmental justice communities, tribal projects, projects using prevention approaches to protect children from toxics exposure, and projects to promote liveable communities.
- *Wrap-up of existing grants*: Existing grantees may apply for additional funding to bring ongoing or unfinished projects to completion, explore new implications resulting from work already undertaken in the project, or replicate results of a project in a new setting or with a new audience.

You may get more information from the grant application itself at the internet address previously provided or by calling the technical information contact person. The EJP2 grant application guidance provides more information on the above priorities.

III. Definition of Environmental Justice and Pollution Prevention

Environmental justice is defined by EPA as the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations, programs, and policies. Fair treatment means that no racial, ethnic, or socio-economic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises, and from the execution of Federal, state, local, and tribal programs and policies.

The Pollution Prevention Act of 1990 establishes a hierarchy of environmental protection practices. These practices include, in order of preference: Pollution prevention, recycling, treatment, and disposal.

Pollution prevention means source reduction; it includes any practice that reduces or eliminates any pollutant at the source of generation prior to recycling, treatment, or disposal. Pollution prevention also includes practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or by protection of natural resources by conservation.

This grant program implements practices at the top of the hierarchy--pollution prevention/source reduction--to bring about better environmental protection.

IV. Eligibility

Any affected, nonprofit community organizations with section 501(c)(3) or section 501(c)(4) Internal Revenue Service tax status or Federally recognized tribal organizations may submit an application upon the publication of this solicitation. A nonprofit organization is defined as any corporation, trust, association, cooperative, or other organizations that:

- Operates primarily for scientific, educational, service, charitable, or similar purposes in the public interest.
- Is not organized primarily for profit.
- Uses its net proceeds to maintain, improve, and/or expand its operations.

State and local governments and academic institutions are also eligible. Organizations must be incorporated by August 12, 1999, to be eligible to receive funds. Private businesses, Federal agencies, and individuals are ineligible for this grant. Organizations excluded from applying directly, as well as those inexperienced in grant writing, are encouraged to develop partnerships and prepare joint proposals with eligible national, regional, or local organizations.

As a result of the Lobbying Disclosure Act of 1995, EPA (and other Federal agencies) may not award grants to nonprofit, section 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a secton 501(c)(4) organization without distinguishing between lobbying funded by Federal money and lobbying funded by other sources.

No applicant can receive two grants for the same project at one time. EPA will consider only one proposal for a given project. Applicants may submit more than one application; however, applications must be for separate and distinct projects.

Organizations seeking funds from the EJP2 grant program can request up to $100,000 for local projects or projects that involve multiple communities located in more than 1 of the 10 EPA Regions, or projects that are national in scope. In accordance with 40 CFR parts 23 and 30, EPA no longer requires cost sharing or matching under this grant program.

V. How and to Whom Do I Submit My Application?

By mail or by person or courier submit your application to: EJP2 Grant Program, c/o ERG, 2200 Wilson Blvd., Suite 400, Arlington, VA 22201.

List of Subjects

Environmental protection, Grants, Pollution prevention.

Dated: June 3, 1999.

Joseph A. Carra,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–14639 Filed 6–8–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00603; FRL–6063–2]

Ecological Committee for FIFRA Risk Assessment Methods Scientific Peer Input Workshop on Probabilistic Methods

AGENCY: Environmental Protection Agency (EPA).
ACTION: Supplemental notice.

SUMMARY: This is a supplemental notice to the May 12, 1999 **Federal Register** notice (64 FR 25501) (FRL–6076–3) of EPA's Office of Pesticide Programs (OPP), announcing two public workshops to review the Ecological Committee for FIFRA Risk Assessment Methods' (ECOFRAM) proposed probabilistic tools and methods for evaluating the impact of pesticides on aquatic and terrestrial non-target organisms.

DATES: The Aquatic workshop will be held on Tuesday, June 22, 1999, from 8:30 a.m. to 5 p.m. and Wednesday, June 23, 1999, from 8 a.m. to 12 p.m. The Terrestrial workshop will be held on Wednesday, June 23, 1999 from 1 p.m. to 5 p.m. and Thursday, June 24, 1999 from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Old Town Holiday Inn Select, 480 King Street (corner of King and Royal Streets), Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: By mail: Ingrid Sunzenauer (7507C), or Gail

Maske (7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone numbers and e-mail addresses are as follows: Ingrid Sunzenauer (703) 305–5196, sunzenauer.ingrid@epa.gov; and Gail Maske (703) 305–5245, maske.gail@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Seating Availability

Seating for each session of the ECOFRAM Workshops will be limited to approximately 60 people and will be available on a first come, first served basis. If the number of attendees exceeds the capacity of the room, individuals can register at the door to receive copies of the workshop summaries.

II. Public Comment

The total public comment period will be limited to 1 hour for each workshop and 5 minutes for each individual, depending on the number of people who plan to make comments. Anyone who intends to make a public comment should sign in before the workshop begins.

List of Subjects

Environmental protection.

Dated: May 28, 1999.

Denise M. Keehner,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 99–14364 Filed 6–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–876; FRL–6082–6]

Notice of Filing Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–876, must be received on or before July 9, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Vera Soltero, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 713G, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–9359; e-mail: soltero.vera@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–876] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF-876) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petition

Petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgrEvo USA Company

PP 9E5060

EPA has received a pesticide petition (9E5060) from AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, Delaware 19808 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate (CAS 163520-33-0) herbicide safener AE F122006 in or on the raw agricultural commodities (RAC) rice grain at 0.05 parts per million (ppm) and rice straw

at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of AE F122006 (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate) in rice has been investigated and is understood. Total residue levels in animal and rice commodities (particularly grain) were very low. The initial metabolic transformation of AE F122006 in plants is hydrolysis of the prominent ester function, yielding the carboxylic acid, AE F129431 (4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid). In rice grain, the primary metabolite identified was AE C637375 (β-hydroxy-β-benzenepropanenitrile), which was found only in trace amounts. AE F129431 and its hydroxylated analog AE F162241 (4,5-dihydro-5-(4-hydroxyphenyl)-5-phenyl-3-isoxazolecarboxylic acid) comprised the major metabolic residues in rice straw.

2. *Analytical method.* Based on the results of the metabolism studies, the analytical targets selected were parent compound (AE F122006), and the metabolites AE F129431, AE F162241, and AE C637375. A practical analytical method utilizing capillary gas chromatography and a mass spectrometer detector is available for detecting and measuring levels of these residue targets. The limit of quantification (LOQ) is 0.02 ppm in rice grain and 0.05 ppm in rice straw.

3. *Magnitude of residues.* Eighteen residue trials were conducted in the major United States rice growing areas over 2-years (1996 to 1997). When applied twice at a single application rate of 0.071 pound of the safener per acre (80 g/ha) with the second application made at 65-days before harvest, combined residues in rice grain did not exceed the LOQ (0.02 ppm) with the exception of the results from one trial where the residues were 0.03 and 0.04 ppm for AE F122006 and AE C637375, respectively. In rice straw, the combined maximum residues did not exceed 0.2 ppm. Thus, the tolerances are proposed at 0.05 ppm in rice grain and 0.2 ppm in rice straw. Based on the results of the animal metabolism studies, no residues are anticipated in milk, meat, and eggs due to feeding rice grain or straw. Therefore, tolerances for these commodities are not required.

B. Toxicological Profile

1. *Acute toxicity.* AE F122006 is slightly toxic following acute oral exposure, no more than slightly toxic following acute dermal exposure and practically non-toxic following acute inhalation exposure. The acute rat oral LD_{50} of AE F122006 was 1,740 milligrams/kilograms (mg/kg). The acute rat dermal LD_{50} was greater than 2,000 mg/kg and the 4-hour rat inhalation LC_{50} was > 5 milligrams per liter (mg/l). AE F122006 was slightly irritating to rabbit eyes and non-irritating to rabbit skin. Based on these results, AE F122006 would be classified as EPA Category III for oral and dermal toxicity and eye irritation, and EPA Category IV for inhalation toxicity and dermal irritation. Technical AE F122006 was shown to be a dermal sensitizer in a guinea pig maximization assay, but no evidence of sensitization has been observed in a Buehler assay when formulated into a commercial product.

2. *Genotoxicity.* No evidence of genotoxicity was noted in *Salmonella* and *E. coli* reverse bacterial mutation assays, an *in vitro* mammalian gene mutation assay in Chinese hamster lung (V79) cells, an *in vivo* unscheduled DNA synthesis assay in rat hepatocytes, or a mouse micronucleus assay. An increase in chromosomal aberrations was observed in an *in vitro* assay in Chinese hamster lung (V79) cells, but only at toxic concentrations. Thus, the overall weight of evidence indicates that AE F122006 does not possess significant genotoxic activity.

3. *Reproductive and developmental toxicity.* A rat developmental toxicity study was conducted at dose levels of 0, 15, 120, and 1,000 mg/kg/day. Maternal toxicity (including one death) was noted at 1,000 mg/kg/day. Slight developmental toxicity (an increase in resorptions) but no evidence of teratogenicity was also noted at this level. No effects were noted at 120 mg/kg/day, which was considered to be the no-observed adverse effect level (NOAEL) for both maternal and developmental toxicity.

A rabbit developmental toxicity study was conducted at dose levels of 0, 5, 50, and 500 mg/kg/day. Maternal effects at 500 mg/kg/day consisted of decreased food consumption, slight weight loss during gestation days 6-8, and one death. In addition, one animal at 500 mg/kg/day had only two empty implantation sites. No evidence of teratogenicity or developmental toxicity was noted. Thus, 50 mg/kg/day was considered to be the NOAEL for maternal toxicity while 500 mg/kg/day was the NOAEL for developmental effects.

Although generally not a prerequisite for the establishment of tolerances for an inert safener, a 2-generation rat reproduction study with AE F122006 is in progress. In this study, AE F122006 was administered at dietary concentrations of 0, 20, 200, and 4,000 ppm. Although histopathology is still in progress, the preliminary results from the in-life data indicate that the NOAEL will likely be 200 ppm, based on decreased body weight (bwt) gain in both adults and weanlings (beginning at day 21) at 4,000 ppm. No reproductive effects have been observed at any dose level.

4. *Subchronic toxicity.* In a 90-day rat feeding study, AE F122006 was administered at dietary concentrations of 0, 20, 200, 2,000, and 4,000 ppm. The NOAEL for this study was considered to be 200 ppm (approximately 15.3 mg/kg/day) based on decreased weight gain at 2,000 ppm, and decreased weight gain, increased liver weights, and centrilobular hepatocyte enlargement at 4,000 ppm.

In a 90-day feeding study in mice, AE F122006 was administered at dietary concentrations of 13, 125, 1,250, and 2,500 ppm. Decreased kidney weights, increased liver weights, and histopathological changes in the liver (centrilobular hepatocyte enlargement and vacuolation) were noted at 1,250, and 2,500 ppm. The NOAEL for this study was 125 ppm (approximately 23 mg/kg/day).

In a 90-day dog feeding study, AE F122006 was administered to beagle dogs at dietary concentrations of 0, 25, 125, and 1,000 ppm. The NOAEL for this study was considered to be 25 ppm (approximately 1.3 mg/kg/day) based on slight histopathological effects in the kidneys at 125 ppm, and effects on the kidneys, spleen, liver, heart, and intestines at 1,000 ppm.

5. *Chronic toxicity.* Long-term studies in rats, mice, and dogs have not yet been completed. However, these studies are generally not a prerequisite to the establishment of tolerances for inert safeners, and no preneoplastic lesions were observed in any of the 90-day studies. Furthermore, AE F122006 is not closely related to any known human or animal oncogen, and a structure activity assessment revealed no structural alerts for oncogenicity.

6. *Animal metabolism.* AE F122006 was well absorbed and rapidly metabolized and excreted when administered to rats as a single oral dose in sesame oil. AE F122006 was poorly absorbed in dogs when administered as a single oral dose in 1% gum tragacanth.

A 2-fold increase in absorption was noted in dogs when administered via the diet. The primary metabolite in both rats and dogs was the carboxylic acid, AE F129431, which is the same as observed in plants.

The metabolism of AE F122006 in ruminants is adequately understood. A dairy cow was dosed with the compound at a level equivalent to 10 ppm in the diet for 7 days. Total residue levels were very low. Parent compound was seen in fats and milk only. The carboxylic acid, AE F129431, was the major metabolite identified in all of the tissues, with traces also being found in the milk.

The metabolism of AE F122006 in poultry is also adequately understood. Laying hens were fed the compound at a level equivalent to 10 ppm in the diet for 14 days. Residue levels were low in all commodities. The vast majority of the dose was excreted as AE F129431, with smaller amounts of AE F162241 and AE F122006. AE F129431 was the major metabolite identified in all of the tissues and yolks. Trace amounts of AE F122006 and AE F162241 were detected in liver and eggs with AE F122006 also being detected in the muscle.

7. *Endocrine disruption.* No special studies have been conducted to investigate the potential of AE F122006 to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in any of the standard toxicology studies that have been conducted with this product, and there is no reason to suspect that any such effects would be likely.

C. Aggregate Exposure

1. *Dietary exposure.* AE F122006 will be used only as a herbicide safener and, at this time, only for use on rice. No non-agricultural uses are anticipated. Thus, the only potential sources of non-occupational exposure to AE F122006 would consist of any potential residues in food and drinking water. As previously indicated, in the absence of any acute toxicity concerns, only chronic exposures have been evaluated.

i. *Food.* AE F122006 is being proposed for use only in rice. In the animal metabolism studies with ruminants and poultry, the concentration of AE F122006 and its metabolites in the edible tissues, milk and eggs were very low. Based on these results, no secondary residues of AE F122006 are expected in meat, milk and eggs as a result of using AE F122006 treated rice and/or rice commodities as animal feed. Thus, only potential exposures from direct human consumption of rice containing residues of AE F122006 were evaluated.

The potential dietary exposures from consumption of treated rice have been assessed using the Exposure 1 software system (TAS, Inc.) and the 1977-78 USDA food consumption data. Two different dietary exposure scenarios were evaluated. In the first, worst-case scenario, it was assumed that 100% of the rice consumed contained residues of AE F122006 at the proposed tolerance level of 0.05 ppm. However, it is anticipated that AE F122006 would be used on no more than 10% of the rice grown in the United States. Furthermore, rice is a nationally distributed crop. Rice treated with AE F122006 would be mixed in grain elevators and processing plants with other rice which was not treated with this product. Thus, a second, more realistic scenario assumed that only 10% of the commodities consumed contained residues of AE F122006, but that these residues remained at the proposed tolerance level of 0.05 ppm.

ii. *Drinking water.* The potential for AE F122006 and its main acid metabolite AE F129431 to leach into ground water and reach surface water has been assessed in various laboratory studies. These studies clearly demonstrate that both compounds are rapidly degraded in the environment. AE F122006 is rapidly hydrolyzed in soil (half-life = 0.1-day) to AE F129431 which is further metabolized to carbon dioxide and soil bound residue (half-life = 6.5 days).

A screening evaluation of worst-case shallow ground water concentration was conducted using the EPA model SCIGROW and a simple calculation of worst-case long-term surface water concentrations following use in rice paddies. The results indicate that both compounds (parent and its primary degradate) will not contaminate shallow ground water or surface water. Concentrations of AE F122006 and its primary degradate, AE F129431 in ground or surface water were calculated to be < 0.01 ppb. Potential residues in drinking water would be even lower. Since the contribution of any potential residues of AE F122006 in water to the total dietary intake of AE F122006 would be negligible, these values were not included in the dietary exposure assessment.

D. Cumulative Effects

There is no information to indicate that AE F122006 may share a common mechanism of toxicity with any other chemical. Thus, this assessment was limited strictly to AE F122006.

E. Safety Determination

1. *U.S. population.* No acute toxicity concerns were noted in either the acute toxicity studies or the developmental toxicity studies in rats or rabbits. Since an acute toxicology endpoint has not been identified, an acute risk assessment with AE F122006 is not necessary and has not been conducted.

Long-term studies in rats, mice and dogs, although generally not a prerequisite for issuance of tolerances for inert safeners, have not yet been completed. Based on the subchronic toxicity data, it appears that the dog is the species most sensitive to AE F122006. Therefore, a provisional RfD (ADI) of 0.0013 mg/kg/day has been proposed by using the NOAEL of 1.3 mg/kg/day from the 90-day dog study and a 1,000-fold (rather than 100-fold) margin of safety. The extra ten-fold safety factor is used to account for the fact that the RfD is calculated from the NOAEL of a subchronic rather than chronic toxicity study.

Although there is no indication or expectation of any oncogenic effect from AE F122006, a worst-case Q1* can be estimated based on the potential worst-case results from the ongoing rodent oncogenicity studies. Using the linearized multistage model with hypothetical worst-case tumor responses from the ongoing studies, a hypothetical worst-case Q1* was calculated to be 1.2×10^{-2} (mg/kg/day)$^{-1}$. This hypothetical Q1* can be used to generate an upper bound on any potential oncogenic risk that might result from exposure to AE F122006.

Under the most conservative, worst-case scenario, in which it is assumed that all rice commodities contain residues of AE F122006 at the proposed tolerance level, the potential exposures to the "General U.S. Population" and the most highly exposed adult subgroup, "Non-Hispanic other Than Black or White," would utilize about 0.7% and 3.2%, respectively, of the proposed provisional RfD. In a more realistic scenario, in which the treated rice is assumed to represent only 10% of the rice consumed in the United States and is assumed to be blended with non-treated rice prior to consumption, the potential exposures to the "General U.S. Population" and "Non-Hispanic Other Than Black or White" subgroup would utilize about 0.1% and 0.3% of the proposed provisional RfD, respectively. For chronic exposures, there is generally no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily exposure over a lifetime would not pose

appreciable risks to human health. Therefore, these dietary exposures clearly would not pose a significant risk to the health of the overall U.S. population.

As previously indicated, there is no indication that AE F122006 is likely to be oncogenic. Nevertheless, an upper bound on the potential oncogenic risks was estimated using the hypothetical Q1* of 1.2×10^{-2} $(mg/kg/day)^{-1}$. Under the worst-case scenario in which all rice contained tolerance level residues of AE F122006, the theoretical 95% upper bound estimates of potential oncogenic risk for the overall "U.S. Population" and "Non-Hispanic Other Than Black or White" subgroup would be 1×10^{-7} and 5×10^{-7}, respectively. Taking into account the expected market share of AE F122006, the upper bounds on the potential oncogenic risks for these 2 groups would be 1×10^{-8} and 5×10^{-8}, respectively. Thus, regardless of the outcome of the ongoing oncogenicity studies, the potential oncogenic risks to the overall U.S. population from dietary exposure to AE F122006 following its use in rice are clearly negligible.

2. *Infants and children.* Data from rat and rabbit developmental toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from potential exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from potential prenatal and postnatal exposure to the pesticide.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children to take into account possible increased sensitivity or based upon the completeness of the data base. No evidence of increased sensitivity to fetuses was noted in developmental toxicity studies in rats or rabbits. Although histopathology examinations from the 2-generation rat reproduction study have not yet been completed, there has been no indication of any reproductive effects or indication of increased sensitivity to the offspring. Furthermore, the proposed provisional RfD of 0.0013 mg/kg/day (which is derived from the NOAEL from the 90-day dog study and a 1,000-fold safety factor) is about 1,000-fold lower than the tentative (pending histopathology) NOAEL of 200 ppm (about 15 mg/kg/day) in the reproduction study. Thus, no additional safety factor to protect infants and children is deemed necessary.

According to the results of the dietary assessment, the population subgroup with the highest potential exposures to AE F122006 under scenarios previously described would be non-nursing infants (<1-year old). In the first, worst-case scenario, in which all rice and rice commodities contained residues of AE F122006 at the proposed tolerance levels, the potential dietary exposure to AE F122006 would utilize 4.5% of the proposed provisional RfD. Taking into account the fact that less than 10% of the rice consumed will be treated with AE F122006, the potential exposure to infants and children would utilize no more than 0.5% of the proposed provisional RfD. These values are substantially below the RfD and therefore would not pose an appreciable risk to human health.

Regardless of the outcome of the ongoing oncogenicity studies, the hypothetical upper bound estimate of potential oncogenic risk to infants and children under the worst-case exposure scenario was estimated to be approximately 7×10^{-7}. Under the more realistic scenario incorporating percent crop treated, the potential upper bound estimate of oncogenic risk would be no more than 7×10^{-8}. Thus, even under a worst-case scenario, the use of AE F122006 on rice would pose no more than a negligible risk of oncogenicity to infants and children.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRLs) established for residues of AE F122006.

[FR Doc. 99–14362 Filed 6–8–99; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 1999, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—May 13, 1999 (Open and Closed)

B. New Business

Regulation

—Leasing Authorities [12 CFR Parts 614, 616, 618, and 621]

***Closed Session**

C. Report

—OSMO Report

Dated: June 4, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–14694 Filed 6–7–99; 9:33 am]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, June 15, 1999 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 17, 1999 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–12: Campaign

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Advisory Opinion 1999–12: Campaign for Working Families, by Bobby R. Burchfield, counsel.

Progress Report on PricewaterhouseCoopers (Pwc) Recommendations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–14790 Filed 6–7–99; 3:36 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community Financial Services, Inc., Atlanta, Georgia, and Independent Bankers Financial Corp., Irving, Texas; to engage *de novo* through their subsidiary, Internet Banking Communications, LLC, Atlanta, Georgia, and thereby engage in the development and marketing of software products and related services to financial institutions, pursuant § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, June 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14622 Filed 6–8–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of two-day meeting on July 1 and 2, 1999.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a two-day meeting on Thursday, July 1 and Friday, July 2, 1999, from 9:00 to 4:30 p.m. in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office Building, 441 G St., NW, Washington, DC.

The purpose of the meeting is to:

- Receive FASAB staff update reports on FASAB Projects Plans and Financial Statement Reviews, and
- Discuss Property, Plant, and Equipment; Stewardship Reporting; Social Insurance; and Multi-use Heritage Assets.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION, CONTACT: Wendy Comes, Executive Director, 441 G St., NW, Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: June 4, 1999.

Wendy M. Comes,

Executive Director.

[FR Doc. 99–14642 Filed 6–8–99; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Record

AGENCY: General Services Administration.

ACTION: Notice of a revised system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) revises the Credentials, Passes, and Licenses (GSA/HRO–8) system of records. The revision updates the categories of individuals covered by the system and the categories of records in the system to include biometric identification information (e.g., electronic fingerprints) on employees participating in state-of-the-art identification methods.

DATES: The revision is effective on June 9, 1999.

FOR FURTHER INFORMATION CONTACT: GSA Privacy Program, Office of Management Services (CAI), 1800 F Street, NW., Washington, DC; phone (202) 501–1452.

GSA/HRO–8

SYSTEM NAME:

Credentials, Passes, and Licenses.

SYSTEM LOCATION:

This system of records is maintained by the Director, Office of Management Services (CA), 1800 F Street, NW., Washington, DC and by GSA regional offices listed in the appendix of this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees whose assigned responsibilities require the issuance of credentials for identification and security purposes, including employees participating in identification methods using the latest technology, such as biometrics, e.g., electronic fingerprinting.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee passes, licenses, and identification credentials, which may include the following GSA-wide forms and/or similar regional forms:

a. GSA Form 15, Weekend and Holiday Pass (personal characteristics).

b. GSA Form 48, Request for and Record of Credential or Pass (name, photo, official address and phone number, home address, next of kin and next of kin phone number, issuance date, serial number, employee signature, and issuing official).

c. GSA Form 277, Employee Identification and Authorization Credential—General (photo, signature of bearer, name of employee, signature of issuing official, date issued, identification serial number, Social Security Number (SSN), position title, official address and phone number, home address and phone number, next

of kin, next of kin phone number, and medical information).

d. OF 7, Property Pass (name, building, description of property, agency, and effective date).

e. GSA Form 2941, Parking Application (name address, agency, correspondence symbol, office telephone number, and length of service).

f. Biometric information, such as fingerprints, collected electronically.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended.

PURPOSE(S):

To assemble in one system information pertaining to passes and credentials for identification and security purposes; to facilitate the issuance and control of cards, parking permits, building passes, drivers licenses, and similar credentials; and to ensure only authorized access to secure areas and systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from this system may be disclosed as a routine use:

a. To the Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To a member of Congress or to a congressional staff member about an individual at the request of the individual.

c. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To a Federal agency, on request, in connection with the hiring and retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of a job, the letting of a contract, or the issuance of license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

e. By the Office of Personnel Management in the production of summary descriptive statistics in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process.

g. To officials of the Merit Systems Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

h. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

i. To the Office of Personnel Management in accordance with the agency's responsibility for evaluation of Federal personnel management.

j. To the extent that official personnel records in the custody of GSA are covered within the systems or records published by the Office of Personnel Management as Governmentwide records, they will be considered a part of that Governmentwide system. Other official personnel records covered by notices published by GSA and considered to be separate systems of records may be transferable to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

k. To an expert, consultant, or a contractor of GSA to the extent necessary to further the performance of a Federal duty.

l. To medical personnel in the event of a medical emergency.

POLICIES AND PRACTICES, FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is collected electronically and on paper and may be stored as paper forms or in electronic chips in the individual's identification card, and in associated automated data systems.

RETRIEVABILITY:

Name, SSN, identification (badge) serial number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable metal file cabinets or secured rooms. Electronic records are protected by a password and may also have a personal identification number (PIN) as a second level of protection.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2) and authorized GSA records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management Services (CA), General Services Administration, 1800 F St., NW., Washington, DC 20405. Since this is a geographically dispersed system, individuals may gain access to it by contacting the officials at locations listed in the appendix of this notice.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to the offices shown in the appendix. Individuals should provide name, social security number, period of employment, and position held to assist the office in locating the record.

RECORD ACCESS PROCEDURES:

An individual can obtain information on procedures for gaining access to records from the Director, Office of Management Services (CA), or the appropriate regional office listed in the appendix.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register**, 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is provided by employees being issued credentials and the issuing officials.

Appendix: GSA regional office addresses.

New England Region (includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) Regional Privacy Act Coordinator, General Services Administration, 10 Causeway Street, Boston, MA 02222

Northeast and Caribbean Region (includes New Jersey, New York, Puerto Rico, and Virgin Islands), Regional Privacy Act Coordinator, General Services Administration, 26 Federal Plaza, New York, NY 10278

Mid-Atlantic Region (includes Delaware, Maryland, Pennsylvania, Virginia and West Virginia, (but excludes the

National Capital Region) Regional Privacy Act Coordinator, General Services Administration, 100 Penn Square East, Philadelphia, PA 19107

Southeast Sunbelt Region (includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Regional Privacy Act Coordinator, General Services Administration, Summit Building, 401 West Peachtree Street, Atlanta, GA 30365–2550

Great Lakes Region (includes Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin), Regional Privacy Act Coordinator, General Services Administration, 230 South Dearborn Street, Chicago, IL 60604–1696

The Heartland Region (includes Iowa, Kansas, Missouri, and Nebraska), Regional Privacy Act Coordinator, General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131–3088

Greater Southwest Region (includes Arkansas, Louisiana, Oklahoma, New Mexico, and Texas), Regional Privacy Act Coordinator, General Sercices Administration, 819 Taylor Street, Fort Worth, TX 76102

Rocky Mountain Region (includes Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), Regional Privacy Act Coordinator, General Services Administration, Denver Federal Center, Bldg 41, Lakewood, CO 80011

Pacific Rim Region 9includes Arizona, California, Hawaii, and Nevada), Regional Privacy Act Coordinator, General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94102–3488

Northwest/Arctic Region (includes Alaska, Idaho, Oregon, and Washington), Regional Privacy Act Coordinator, General Services Administration, 400 15th Street SW, Auburn, WA 98001–6599

National Capital Region (includes the District of Columbia; the counties of Montgomery and Prince George's in Maryland; the city of Alexandria, Virginia; and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia), Regional Privacy Act Coordinator, General Services Administration, 7th and D Streets, SW, Washington, DC 20407

Dated: June 4, 1999.

Daniel K. Cooper,

Director, Administrative, Services Division.

[FR Doc. 99–14645 Filed 6–8–99 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the Secretary's Advisory Committee on Genetic Testing

AGENCY: Office of the Secretary, DHHS.

ACTION: Meeting notice.

Pursuant to Public Law 92–463, notice is hereby given of the first meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on June 30, 1999 at the National Institutes of Health, Building 31, C Wing, Conference Room 10; 9000 Rockville Pike, Bethesda, MD 20892. The meeting will be open to the public from 9 a.m to adjournment with attendance limited to space available. The first SACGT meeting will be for orientation and organizational purposes. There will be a limited period of time provided for public comment and interested individuals should contact the SACGT Executive Secretary as shown below.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. The SACGT is directed to (1) recommended policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; (3) and identify research needs related to the Committee's purview. The establishment of the SACGT was recommended by the Task Force on Genetic Testing (TFGT) of the NIH-DOE Working Group on the Ethical, Legal, and Social Implications (ELSI) of the Human Genome Project as well as the Joint NIH-DOE Committee to Evaluate the ELSI Program of the Human Genome Project.

The SACGT is composed of 13 non-governmental experts in relevant medical, scientific, and professional fields, including genetic testing, medical genetics, genetic counseling, primary health care, public health, clinical laboratory management, diagnostic technology, ethics, law, psychology, and social sciences, as well as patient/consumer advocates. Since the Clinical Laboratory Improvement Advisory Committee (CDC) and the Medical Devices Advisory Committee (FDA) have relevant roles in ensuring the quality and safety of genetic testing laboratories and genetic test kits, one current member of each of these committees serve on the SACGT. The heads, or their designees, of six DHHS agencies are nonvoting, *ex officio* members of the SACGT. The agencies are the Agency for Health Care Policy and Research; Centers for Disease Control and Prevention; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; and National Institutes of Health.

The draft meeting agenda and other information about the SACGT will be available at the following web site: *http://www.nih.gov/od/orda/sacgtdocs.htm*. Individuals who wish to provide public comments or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov*. The SACGT office is located at 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892.

Dated: June 2, 1999.

David Satcher,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 99–14531 Filed 6–8–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99130]

Improving Effectiveness of Tuberculosis; Prevention and Control Programs in Developing Countries Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a grant to provide education and technical assistance to improve the quality, efficiency, and effectiveness of programs for the prevention and control of tuberculosis (TB) in Central America, Southeast Asia, and Africa. This program addresses the "Healthy People 2000" priority areas of HIV Infection and Immunization and Infectious Diseases.

The purpose of this grant is to assist the recipient in providing technical assistance and conducting training

programs in countries of mutual interest to the CDC and the recipient. This project is designed primarily for TB control program managers working with TB control programs in developing countries whose TB situation is of strategic interest to the United States including Central America (Mexico) and Southeast Asia (Vietnam and the Philippines).

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bonafide agents, and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $125,000 is available in FY 1999 to fund one award. The award is anticipated to begin on or about September 1, 1999, for a 12-month budget period within a five-year project period. The funding estimate is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

D. Program Requirements

1. Assess the TB-related public health infrastructure, TB informational needs, and training needs of health care providers and TB control program personnel in developing countries with a high rate of TB and that are contributing to the U.S. immigrant population, especially Mexico, Vietnam, and the Philippines.

2. Encourage collaboration between TB control programs in the Unites States that have a high prevalence of TB among the foreign-born and developing countries in their TB control efforts.

3. Identify and propose project activities in response to findings in 1 and 2 above. Activities may include support of regional and international meetings designed to improve information transfer on a regional or international basis, and program assessments that can be used to improve the diagnosis and treatment of TB and improve TB control in developing countries contributing to the U.S. immigrant population, especially Mexico, Vietnam, and the Philippines.

4. Disseminate publications developed by international TB controllers throughout the world in developing countries, such as documents related to TB epidemiology.

5. Facilitate the incorporation of epidemiologic principles in TB international prevention and control programs and expedite the dissemination of epidemiologic findings in order to improve these programs.

6. Provide technical support for the North American Region Meetings regarding issues of international TB issues, such as programmatic research, training, and new technology transfer in international TB strategies.

7. Provide technical support of CDC Sponsored/Co-Sponsored Symposia at international conferences, including the 1999 conference in Madrid, Spain in the form of programmatic research, training, and new technology transfer in international TB strategies.

8. Support travel to meetings of selected staff from countries with extremely high TB rates, who will actively participate in these meetings by developing agendas, providing presentations on international TB topics and coordinating and participating in training seminars. These areas should include countries that are having an impact on U.S. morbidity, such as the Philippines and Vietnam, in addition to the top ten countries on the World Health Organization's (WHO) list of 22 high burden countries.

9. Develop a training program (mini-fellowship) to train international TB Control staff and other key personnel working in TB control activities and provide technical assistance to countries of mutual interest to the CDC and the recipient.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 double-spaced pages, printed on one side, with one inch margins, and 12 CPI font.

1. *Understanding of the Project:* Describe the problems to be addressed with the requested assistance and briefly propose a programmatic plan for each.

2. *Objectives and Operational Plan:* Establish long-(five year) and short-term (one year) objectives for programmatic plans. Objectives must be specific, measurable, time phased, and realistic. Describe the operational plan for achieving each objective. Concisely describe each component or major activity and how it will be carried out. Include a time line for completing each component or major activity.

3. *Evaluation Plan:* Discuss the plan for monitoring progress toward each of the objectives.

4. *Program Management:* Describe the professional personnel involved in the management of this project, their qualifications, and past achievements.

5. *Budget:* Submit a detailed budget and line-item justification that is consistent with the program purpose and proposed activities.

F. Submission and Deadline

Submit the original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/...Forms, or are in the application kit. On or before July 12, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applications will be reviewed and evaluated by a CDC appointed review committee according to the following criteria:

1. Extent to which the applicant understands the requirements, problems, objectives, complexities, and interactions required of this project (20 Points).

2. Degree to which the proposed objectives are clearly stated, realistic, time phased, and related to the purpose of this project (20 Points).

3. Adequacy of the plans for administering the project. (30 Points)

4. Extent to which the professional personnel proposed to be involved in this project are qualified, including evidence of past achievements appropriate to this project. In addition, the extent to which the applicant demonstrates having a large, world-wide constituency. (30 Points)

5. Budget: Consideration will be given to the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports. Progress reports must include the following for each program, function, or activity involved:

a. a comparison of actual accomplishments to the goals established for the period;

b. the reasons for slippage if established goals were not met; and

c. other pertinent information including, when appropriate, analysis and explanation of unexpected high costs for performance.

2. Financial status report no more than 90 days after the end of the budget period; and

3. Final financial and performance reports no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–6 Patient Care
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance

This program is authorized under section 301(a), 317(k)(1) and 317(k)(2) of the PHS Act, as amended [42 U.S.C. 241(a), 247b(k)(1) and 247b(k)(2)]. The Catalog of Federal Domestic Assistance Number is 93.947, TB Demonstration, Research, Public and Professional Education Projects.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Juanita Crowder, Grants Management Specialist, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146; Telephone (770) 488–2734; Email address: JDD2@CDC.GOV.

See also the CDC home page for this and other announcements on the Internet: http://www.cdc.gov. You may also download applications forms at this site.

Programmatic technical assistance may be obtained from: Harry Stern, Division of Tuberculosis Elimination, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–10, Atlanta, GA 30333; Telephone (404) 639–8120; Email Address: HAS3@CDC.GOV.

Dated: June 3, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14543 Filed 6–8–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control and Prevention

Meeting; National Institute for Occupational Safety and Health

The National Institute for Occupational Safety and Health (NIOSH) of the Center for Disease Control and Prevention (CDC) announces the following meeting.

Name: Developing a NIOSH Strategic Plan for Surveillance of Occupational Diseases, Injuries, and Hazards.

Time and Date: 9 a.m.–4:30 p.m., July 29, 1999.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 70 people. Seating will be limited to approximately 50 people.

Purpose: The purpose of this meeting is to request public advice in identifying gaps in the NIOSH's surveillance activities of occupational diseases, injuries, and hazards.

NIOSH is developing a strategic plan to guide its surveillance activities. NIOSH is one of several Federal agencies mandated to contribute to the development of an effective national surveillance system for occupational diseases, injuries, and hazards. Two separate, but interrelated activities are underway. One is the development of a NIOSH strategic plan for occupational disease and injury surveillance of the nation's work force. The second one is the development of a plan specific for the ongoing surveillance of hazards in the workplace (prior similar efforts include the National Occupational Hazard Survey [1972–74], the National Occupational Exposure Survey [1981–83] and the National Occupational Hazard Survey of Mining [1984–89]). To obtain input from occupational health and safety practitioners, researchers, and interested organizations, we plan to have a meeting where NIOSH will ask the attendees for their views on what specific surveillance objectives should be incorporated into the NIOSH Surveillance Strategic Plan.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Contact Persons for Additional Information: Lawrence J. Fine, M.D., Dr.P.H., NIOSH, CDC, M/S R12, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4428, and DeLon Hull, Ph.D., NIOSH, CDC, M/S R12, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4366.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 2, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14544 Filed 6–8–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 24 and 25, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn at Ballston, Ballroom, 4610 North Fairfax Dr., Arlington, VA.

Contact Person: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, or e-mail "cderoeve@bangate.fda.gov", or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 24, 1999, the committee will discuss a science-based enforcement strategy for filth and extraneous materials that emphasizes food safety. Further, there will be a discussion regarding the public health implications of patulin, a mycotoxin frequently found in apple juice and products containing apple juice. On June 25, 1999, the committee will be conducting an informational meeting during which it will be receiving reports of several working groups, including reports on "significant scientific agreement" for health claims, dietary supplement good manufacturing practices, whether food labels can and should be used to communicate information on emerging science to consumers, and research incentives for health claims for food products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 21, 1999. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m. and between approximately 4 p.m. and 4:30 p.m. on Thursday, June 24, 1999, and between approximately 8:30 a.m. and 9 a.m. on June 25, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 21, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 1999.

Sharon Smith Holston,

Acting Commissioner of Food and Drugs.

[FR Doc. 99–14549 Filed 6–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1060–N]

Medicare Program; Meeting of the Competitive Pricing Demonstration Area Advisory Committee, Maricopa County, AZ

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Area Advisory Committee (AAC) for the Maricopa County Competitive Pricing Demonstration on June 30 and July 1, 1999.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an AAC in each designated demonstration area to advise on implementation of the project, including the marketing and pricing of the plan and other factors. AAC meetings are open to the public.

DATES: The 2-day meeting is scheduled for June 30 and July 1, 1999, from 10:30 a.m. until 5 p.m., m.s.t.

ADDRESSES: The meeting will be held at the YWCA of the USA, Leadership Development Conference Center, 9440 North 25th Avenue, Phoenix, AZ 85021, (602) 944–0569.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Abbott, Regional Administrator, Health Care Financing Administration, 75 Hawthorne Street, 4th Floor, San Francisco, CA 94105, (415) 744–3501.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (CPAC) to make recommendations concerning the designation of demonstration sites and appropriate research designs for implementation. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area and other factors. Thus far, the Kansas City metropolitan area and Maricopa County in Arizona have been designated as demonstration sites.

The Maricopa County AAC has previously met on March 31, 1999, April 20, 1999, May 18 and 19, 1999, and June 7 and 8, 1999. The Maricopa County AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The members are: Joseph Anderson, Schaller Anderson Inc.; Rick Badger, Pacificare of Arizona; Reginald Ballantyne III, PMH Health Resources, Inc.; Donna Buelow, Arizona State Retirement System; Charles Cohen, Arizona Department of Insurance; John Hensing, M.D., Samaritan Health Systems; Mary Lynn Kasunic, Area Agency on Aging; Anne Lindeman, Governor's Advisory Council on Aging; Ben Lopez, Honeywell Corp.; Thomas Marreel, William M. Mercer Associates; Anthony Mitten, Maricopa County Medical Society; Edward Munno, Jr., Intergroup of Arizona; Susan Navran, Blue Cross Blue Shield of Arizona; Erik Olsen, D.D.S., American Association of Retired Persons; Leland Peterson, Sun Health Corp.; Donna Redford, Arizona Bridge to Independent Living; Herb Rigberg, M.D., Health Services Advisory Group; Martha Taylor, Arizona SHIP; Clyde Wright, M.D., Cigna of Arizona; Arthur Pelberg, M.D., Schaller Anderson Inc.; Joseph Hanss, M.D., physician; and Phyllis Biedess, Director, Arizona Health Care Cost Containment System (AHCCCS). In accordance with section 4012(b) of the BBA, the AAC will exist for the duration of the project in the area, expected to be five years from the January 1, 2000, start date.

This notice announces the June 30 and July 1, 1999, meeting of the

Maricopa County AAC. This meeting will be held from 10:30 a.m. to 5 p.m., m.s.t., at the YWCA of the USA, Leadership Development Conference Center in Phoenix, AZ.

The agenda for this 2-day meeting will include a report on the June 24, 1999, CPAC meeting, reports from the Maricopa County AAC benefit package subcommittee and the timeline subcommittee, discussion of a standard benefit package, and any other outstanding issues related to the decisions the AAC is charged with making.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the San Francisco Regional Administrator by 12 noon on June 23, 1999. Anyone who is not scheduled to speak may submit written comments to the San Francisco Regional Administrator by June 25, 1999.

These meetings are open to the public, but attendance is limited to space available.

Authority: Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, Section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 4, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–14630 Filed 6–8–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: May 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ALDERMAN, JOHN ALLEN FLORENCE, CO	06/17/1999
BENET, CONSTANCIA MIAMI, FL	06/17/1999
BLESER, RAYMOND ALAN SCHENECTADY, NY	06/17/1999
BRIGMAN, SHERRY WRIGHT AYLETT, VA	06/17/1999
BRIM, CHARLES EDWARD DENVER, CO	06/17/1999
BUSHNELL, RONALD EARL LODI, CA	06/17/1999
CASTELLANOS, CARLOS MIAMI, FL	06/17/1999
CONSOLIDATED AMBULETTE, INC NEWBURGH, NY	06/17/1999
CUTRONE, DIANA M FORT MILL, NC	06/17/1999
CUTRONE, ANTHONY FORT MILL, SC	06/17/1999
CYR, HEIDI M BLAINE, ME	06/17/1999
DALLMAN, JAMES HOWARD GRAND RAPIDS, MI	06/17/1999
DUONG, LINH HONG SEVERN, MD	06/17/1999
FAYAD, BALIL ABDELKADER STERLING HGTS, MI	06/17/1999
FERNANDEZ, ESTEVAN P MIAMI, FL	06/17/1999
FRIZZELL, ROBERT NASHVILLE, TN	06/17/1999
HENRY, STEVEN ALONZO ATLANTA, GA	06/17/1999
HSUE, KUZI BELLEVUE, WA	06/17/1999
IANNIELLO, MICHAEL NORTH BERGEN, NJ	06/17/1999
INTLEKOFER, MARK E MAQUOKETA, IA	06/17/1999
JANOSKIE, KAREL SCOTT GRAND JUNCTION, MI	06/17/1999
JASMIN, FRANTZ BRONX, NY	06/17/1999
JLO DIAGNOSTIC OF MIAMI, INC MIAMI, FL	06/17/1999
JOHN MICHKOVITS, DDS, PC SOUTH HAVEN, MI	06/17/1999
KRATZ, SUSAN V WAUKESHA, WI	06/17/1999
LICHTL, KENNETH LEE CANON CITY, CO	06/17/1999
LONG, JANET E TROY, VA	06/17/1999
MEDEROS, RAYMOND R TEGA CAY, SC	06/17/1999
MENESES, FRANCISCO MIAMI, FL	06/17/1999
MICKAIL, VICTORIA ROSE GRABERT MONROE, LA	06/17/1999
MURPH, JAMES T LORIS, SC	06/17/1999
NAGALINGAM, KUMARALINGAM OAKDALE, LA	06/17/1999
NGUYEN, TUOC KIM SEVERN, MD	06/17/1999
NILSSON, CHERYL LYNN GRANTSBURG, WI	06/17/1999
NORTON HEARING, INC BARRINGTON, RI	06/17/1999
NOZAWA, RANDALL FEDERAL WAY, WA	01/06/1999
OBREGON, JOSE MIAMI, FL	06/17/1999
PARKER, ELIZABETH KAY SMITHFIELD, NC	06/17/1999
PATEL, SHARAD BECHARBHAI SAGINAW, MI	06/17/1999
PATSALOS, DEAN NEWBURGH, NY	06/17/1999
PURSER, DANNY C PROVO, UT	06/17/1999
RADFORD, WILLIAM FRANCIS ATCHISON, KS	06/17/1999
RODRIGUEZ, MAUREEN MIAMI, FL	06/17/1999
RODRIGUEZ, ISABEL MIAMI, FL	06/17/1999
RODRIGUEZ, OLGA MIAMI, FL	06/17/1999
ROOSEVELT MEDICAL CENTER, INC COLLEGE PARK, GA	06/17/1999
SALDANA, TAMMY MINOT, ND	06/17/1999
SEBREN, TAMMY ODELL HAZEN, AR	06/17/1999
SHAPOSHNIKOV, LILLIAN LAS VEGAS, NV	06/17/1999
STRUGATS, MICHAEL N WOODMERE, NY	06/17/1999
TYSON, EVA JUNCTION CITY, KS	06/17/1999
VULCANO, JOSEPH MICHAEL BRONX, NY	06/17/1999
WADEHRA, DWARKA N CANTON, IL	06/17/1999
WASHINGTON DENTAL HEALTH CTR TACOMA, WA	01/06/1999
FELONY CONVICTIONS FOR HEALTH CARE FRAUD	
SCHAAL, DAWN M POSEN, IL	06/17/1999
FELONY CONTROL SUBSTANCE CONVICTIONS	
KOEHLER, PAMELA RAE	06/17/1999

Subject, city, state	Effective date
MCKINLEYVILLE, CA	
PATIENT ABUSE/NEGLECT CONVICTIONS	
ALBRIGHT, DONNA STOCKLAND, IL	06/17/1999
CANSLOR, STEPHEN JACKSON, MS	06/17/1999
CARROLL, KAREN SHAWANO, WI	06/17/1999
CHAND, NOBLE TUCUMCARI, NM	06/17/1999
CORBETT, FELICIA S COLUMBIA, SC	06/17/1999
FERNANDEZ, LUIS MORGANVILLE, NJ	06/17/1999
HERNANDEZ, SHARON CHRISTINE DENVER, CO	06/17/1999
LEWIS, ELIZABETH ANNE OLYMPIA, WA	06/17/1999
LONG, RICHARD LAZARUS JR SANTA BARBARA, CA	06/17/1999
LUCAS, BRENDA RUTH ALEXANDRIA, LA	06/17/1999
LUVINE, JENNIFER MOUNT OLIVE, MS	06/17/1999
MANDELLA, FRANCIS LUCILLE PORTERVILLE, CA	06/17/1999
MERRICK, CATRINA WILSON WESTWEGO, LA	06/17/1999
PERKINS, DONNA D AURORA, OH	06/17/1999
RICHARD, MICHAEL J SR BILOXI, MS	06/17/1999
SHANNON, RUTHIE PHILADELPHIA, MS	06/17/1999
TOWNSEND, BOBBY PEARL, MS	06/17/1999
TURRIETTA, EUGENE ALBUQUERQUE, NM	06/17/1999
VETAL, ANGELA E UTICA, NY	06/17/1999
WAGONER, ARCHIE EUGENE DETROIT, MI	06/17/1999
CONVICTION FOR HEALTH CARE FRAUD	
HAMPTON, VIRGINIA M ORANGEBURG, SC	06/17/1999
CONTROLLED SUBSTANCE CONVICTIONS	
ROACH, MARY PATRICIA PEAR, MS	06/17/1999
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ADAMS, DAVID J RIVER RIDGE, LA	06/17/1999
ALEXANDER, JENNY H CHICAGO, IL	06/17/1999
ALLISON, SHIRLEE M GOSHEN, IN	06/17/1999
ALTLAND, DONNA FLEMING YORK HAVEN, PA	06/17/1999
AMBROZIC, LISA L DES MOINES, IA	06/17/1999
ANDERSON, MICHAEL RED BUD, IL	06/17/1999
ANDERSON, SCOTT P SR DERBY, VT	06/17/1999
APPIAH, ALICE PETERSBURG, VA	06/17/1999
AUSTIN, DAN E FAIRFAX, VA	06/17/1999
BAGA, JOHN JAMES ST PAUL, MN	06/17/1999
BAUER, CHARLES DONALD SALINAS, CA	06/17/1999
BEAVER, PATSY R RICEVILLE, IA	06/17/1999
BOLTON, RUBY B SHAWNEETOWN, IL	06/17/1999
BROADWELL, JEFFREY M PLYMOUTH, VT	06/17/1999
BROCKUNIER, CHARLES W MONMOUTH, IL	06/17/1999
BRUNAULT, PAULA BELMONT, NH	06/17/1999
BUCHHOLZ, MARIA HOBE SOUND, FL	06/17/1999
CARINO, ROMEO CHICAGO, IL	06/17/1999
CHARAPATA-FOLKS, LORETTA L LAGRANGE, IL	06/17/1999
CLAPP, ARLENE S NORFOLK, VA	06/17/1999
CLEGHORN, PATRICIA L ELK RUN HGTS, IA	06/17/1999
COLBURN, STACY M COLCHESTER, VT	06/17/1999
CROTEAU, MICHELLE MANCHESTER, NH	06/17/1999
CZARNECKI, WILLIAM A HOFFMAN ESTATES, IL	06/17/1999
DAVIS, MARIA PROVIDENCE, RI	06/17/1999
DAVIS, VINCENT W MURPHYSBORO, IL	06/17/1999
DEVINE, JAMES S CULVER CITY, CA	06/17/1999
ESPOSITO, AMY STRATFORD, CT	06/17/1999
FERGUSON, ROCHELLE H SCIOTA, PA	06/17/1999
FERGUSON, CYNTHIA WILLIAMSPORT, PA	06/17/1999
FISK, LINDA L BURLINGTON, VT	06/17/1999
FLUDE, DEBORAH LONDON MILLS, IL	06/17/1999
FOX, SUZANNE R DANVILLE, IL	06/17/1999
GANN, LAURA ROCK FALLS, IL	06/17/1999
GILBERT, KRISTEN H S SEATUCKET, NY	06/17/1999
GREEN, THEOPHILUS E CHICAGO, IL	06/17/1999
GREER, SHERRY RENEE CYPRESS, IL	06/17/1999
HAENIG, WENDY ROBINSON, IL	06/17/1999
HALL, MILDRED O MIDDLETOWN, OH	06/17/1999
HAMES, BETTY ASHLAND, MS	06/17/1999
HANDY, MYRA CHICAGO, IL	06/17/1999
HARTIG, TERESA LYNN ATASCADERO, CA	06/17/1999
HICKORY TREE RESCUE SQUAD BLUFF CITY, TN	06/17/1999
HITE, DEBRA KAY CUSHING, OK	06/17/1999
HITZIG, PIETR BALTIMORE, MD	06/17/1999
HOLLAND, RICHARD W SILVER SPRING, MD	06/17/1999
HORNE, AARON S TABB, VA	06/17/1999
JAMES, KIMBERLEE ANN BUTLER, AL	06/17/1999
JOHNSON, SUSAN J W FRANKFORT, IL	06/17/1999
JONES, ALVINA SPOKANE, WA	06/17/1999
KING, NANCY E CONCORD, VT	06/17/1999
KINNEY, TARAH L BENNINGTON, VT	06/17/1999
KLAWITTER, RUTH HEATHER SAN FRANCISCO, CA	06/17/1999
KLEIN, HARLENE E KNOXVILLE, IA	06/17/1999
KRAUSE, ROBERT A LAS VEGAS, NV	06/17/1999
LANE, JUDY LOUISE BRATTLEBORO, VT	06/17/1999
LEWIS, LYANA PENFIELD BURLINGTON, VT	06/17/1999
LILTON, ORA L E ST LOUIS, IL	06/17/1999
MAGNER, ERIN G WOONSOCKET, RI	06/17/1999
MANGELS, TONI GALATIA, IL	06/17/1999
MARTINEZ, IRMA JEAN HILMAR, CA	06/17/1999
MCCUMBER, JAMES RAYMOND TUSCOLA, IL	06/17/1999
MCNABB, RHONDA LAVIER BRANDON, MS	06/17/1999
MERCHANT, LEO C ST JOHNSBURY, VT	06/17/1999
METCALF, ANGELA PARIS, IL	06/17/1999
MICKEL, AUDREY F GREENBRAE, CA	06/17/1999
MINYARD, LAURA A MARISSA, IL	06/17/1999
MYERS, DENNIS L MCKEESPORT, PA	06/17/1999
NUNEZ, JOSEPH M BURLINGTON, VT	06/17/1999
O'LEARY, PATRICIA SALINAS, CA	06/17/1999
PALMER, JEAN M MOUNT HOLLY, VT	06/17/1999
PAYNE, STANLEY M HOUSTON, TX	06/17/1999
PETERS, HAROLD R MIDDLEBURG HGTS, OH	06/17/1999
PHELPS, LOUISE M N BENNINGTON, VT	06/17/1999
PRESSLEY, LEESA J MANCHESTER, TN	06/17/1999
ROSS, JAMES L QUINCY, MA	06/17/1999
ROUNDTREE, SILVERRENE P SNOW HILL, MD	06/17/1999
ROWAN, BRUCE W	06/17/1999

Subject, city, state	Effective date
TACOMA, WA	
SCHWALBEN, EUGENE	06/17/1999
BALDWIN, NY	
SMITH, SHARON	06/17/1999
ASHUELOT, NH	
SMITH, TAMMARA	06/17/1999
GLEN BURNIE, MD	
SMITH, JOYCE KEEL	06/17/1999
BALTIMORE, MD	
SNYDER, MICHAEL K	06/17/1999
NORTH ADAMS, MA	
SONG–ANDERSON, KALEN ANDREYAH	06/17/1999
HAYWARD, CA	
ST CLOUD, LOURDES	06/17/1999
WALTHAM, MA	
STONE, PATRICIA	06/17/1999
NEW HAVEN, CT	
STOODLEY, JE ANN	06/17/1999
BELLOWS FALLS, VT	
THOMPSON, KANDI E	06/17/1999
BENNINGTON, VT	
TILLARY, TERESA A	06/17/1999
DURHAM, NC	
TURNER, GUY K	06/17/1999
WORCESTER, MA	
VIRGA, CHRISTINE PEARL	06/17/1999
RANDOLPH, VT	
WARMINGTON, GAEL M	06/17/1999
PLYMOUTH, MA	
WEHREN, LOIS E	06/17/1999
ELLICOTT CITY, MD	
WIGGINGTON, KAREN	06/17/1999
CORINTH, MS	
FEDERAL/STATE EXCLUSION/ SUSPENSION	
MILLER, SANDRENE A	06/17/1999
ORANGE, NY	
WASSEF, ADEL A	06/17/1999
CEDAR GROVE, NJ	
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
CCS MEDICAL EQUIPMENT DME, INC	06/17/1999
MIAMI, FL	
CORNER STONE COUNSELING ENID	06/17/1999
FT WORTH, TX	
FRIESEN READING CLINIC	06/17/1999
FT WORTH, TX	
MESA DRIVE PHARMACY	06/17/1999
MISSOURI CITY, TX	
OPIS MURRAY TRANSPORTATION	06/17/1999
MARKHAM, IL	
SHEPHERD PHARMACY	06/17/1999
PEARLAND, TX	
DEFAULT ON HEAL LOAN	
AHN, BUSUN	06/17/1999
VANCOUVER, WA	
BAKER, MARK LEE	06/17/1999
TREMONTON, UT	
BERTILSON, ROSS A	06/17/1999
MORA, MN	
BOATWRIGHT, HARRY WADE	06/17/1999
CHARLESTON, SC	
HARRIS, DENISE M	06/17/1999
NASHVILLE, TN	
HUSE, DEBRA LAREE	06/17/1999
WEST PLAINS, MO	
JAIN, ANUPAM	06/17/1999
NEW YORK, NY	
MCDANIEL, JULIUS C	06/17/1999
NEW YORK, NY	
MCDONALD, VICTORIA MOSELY	06/17/1999
BLUFFTON, SC	
MINHAS, MUJIB A	06/17/1999
BELLROSE, NY	
MORRIS, JEFFREY K	06/17/1999
LONGMONT, CO	
PERRY, MAURICE A	06/17/1999
HOUSTON, TX	
PHAN, DAI Q	06/17/1999
OAKLAND, NJ	
RICE, WILLIAM M	06/17/1999
MALDEN, MA	
ROBINSON–AKANDE, DEBORAH ANN	06/17/1999
CHICAGO, IL	
SANCHEZ, JAIME RAUL	06/17/1999
UNION CITY, NJ	
TIERNEY, RICHARD W	06/17/1999
ATLANTA, GA	
TOMPKINS, KEVIN A	06/17/1999
CHICAGO, IL	
TORRES, CARLOS R	06/17/1999
SAN JUAN, PR	
VANCE, JULIE E	06/17/1999
MILWAUKEE, WI	
VINTER, YELENA	06/17/1999
BROOKLYN, NY	
VOGEN, KENNETH W	06/17/1999
FOUNTAIN VALLEY, CA	
VOLPATO, RONALD N	05/12/1999
CHICO, CA	
WACH, JOHN R	06/17/1999
W VALLEY CITY, UT	
WAGNER, JOHN D	06/17/1999
E ELLIJAY, GA	
WALLACE, RICHARD LARRY JR	06/17/1999
ARTESIA, NM	
WALTON, TERI R	05/17/1999
PASADENA, CA	
SETTLEMENT AGREEMENTS	
KAWESCH, GLENN A	10/21/1997
LA JOLLA, CA	

Dated: May 28, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–14625 Filed 6–8–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Discretionary Funds for Projects To Establish Individual Development Accounts for Refugees

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Notice of availability of FY 1999 Discretionary Social Service Funds to public and private, non-profit agencies for projects to establish and manage Individual Development Accounts for refugees.

SUMMARY: The Office of Refugee Resettlement invites eligible entities to submit competitive grant applications for projects to establish and manage Individual Development Accounts (IDAs) for low-income refugee [1] participants. Eligible refugee participants who enroll in these projects will open and contribute systematically to IDAs for specified Savings Goals, including homeownership, business capitalization, and post-secondary education. Grantees may use ORR funds to provide matches for the savings in the IDAs up to $2,000 per individual refugee and $4,000 per refugee household. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is August 9, 1999. See Part IV of this announcement for more information on submitting applications.

ANNOUNCEMENT AVAILABILITY: The program announcement and the application materials are available on the ORR website at www.acf.dhhs.gov/programs/orr.

FOR FURTHER INFORMATION CONTACT: Carmel Clay-Thompson, Director, Division of Community Resettlement (DCR), ORR, Administration for

[1] In addition to persons who meet all requirements of 45 CFR 400.43, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons.

Children and Families (ACF), (Telephone: (202) 401–4557; Fax: (202) 401–5487) or Henley Portner, Program Specialist, DCR, ORR, ACF, (Telephone: (202) 401–5363; Fax: (202) 401–5772; E-mail: HPortner@ACF.DHHS.GOV).

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—program purpose, program objectives, legislative authority, funding availability, CFDA Number, definition of terms

Part II: Project and Applicant Eligibility—funding priorities, preferences, eligible applicants, project and budget periods, multiple applications, treatment of program income

Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and competitive review

Part IV: The Application—application materials, application development, application submission

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collection is included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD), which expires 10/31/2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Background

Program Purpose and Objectives: The Office of Refugee Resettlement invites qualified entities to submit competing grant applications for new projects that will establish, support, and manage Individual Development Accounts (IDAs) for eligible low-income refugee individuals and families. The Refugee IDA Program represents an anti-poverty strategy built on asset accumulation for low-income refugee individuals and families with the goal of promoting refugee economic independence. In particular, the objectives of this program are to: Increase the ability of low-income refugees to save; promote their participation in the financial institutions of this country; assist refugees in advancing their education; increase home ownership; and assist refugees in gaining access to capital. These new projects will accomplish these objectives by establishing programs that combine the provision of matched savings accounts with financial training and counseling.

Eligibility for this program is limited to refugees:

- Who have earned income and whose household earned income at time of enrollment does not exceed 200 percent of the federal poverty level; and
- Whose assets at time of enrollment do not exceed $10,000, excluding the value of a primary residence.

Grantees may target their projects to refugees with lower incomes and net worth than the limits described above. A copy of the HHS Poverty Guidelines is attached to this announcement. The Poverty Guidelines may also be found at http:/aspe.hhs.gov/poverty/99poverty.htm.

Grantees, in partnership with qualified financial institutions, will create Individual Development Accounts for refugee participants. Refugee participants will systematically contribute to the IDAs in order to purchase specified Savings Goals. Grantees may include any or all of the following Savings Goals in their IDA program:

- Home Purchase or Renovation;
- Post-Secondary Education, Vocational Training, or Recertification;
- Microenterprise Capitalization;
- Purchase of an Automobile;
- Purchase of a Computer.

Additional information on these Savings Goals is provided in the Definition of Terms section of this announcement.

ORR encourages applicants to include in their projects commitments of additional public or private funds for matching IDA deposits, operational overhead, or training. Documentation of additional funds should be provided in the application in writing, executed with the entity providing the non-ORR contribution, on letterhead of the entity, and signed by a person authorized to make a commitment on behalf of the entity.

The grantee will establish a "Savings Plan Agreement" with each refugee participant. The Savings Plan Agreement should include:

(1) A proposed schedule of savings deposits by the participant;
(2) The rate at which participant's savings will be matched;
(3) The Savings Goal for which the account is maintained;
(4) Any training or counseling which the participant agrees to attend;
(5) Agreement that the participant will not withdraw funds except for the specified Savings Goal or for an emergency and only after consultation with the grantee; and
(6) A procedure for amending the Agreement.

Applicants may propose additional provisions to be included in Savings Plan Agreements.

The IDA contains only the refugee participant's deposits and interest earned on those deposits. The grantee will create a parallel account (or parallel accounts), separate from the participants' IDAs, in a qualified financial institution, in which all matching ORR grant funds will be deposited and maintained on behalf of the refugee participants. Drawdown of the ORR grant funds and deposit of those funds into the parallel account(s) will be permitted no earlier than the time of the refugee's deposit to the IDA. Grantees must draw down ORR funds for matching IDA deposits within three months of the date that the refugee participant makes the deposit.

ORR funds may be used at a matching rate no greater than two-to-one for each dollar deposited in the IDA by the refugee participant. Grantees may choose to vary the amount of the match by type of Savings Goal and/or by income level of the refugee participants. Over the course of the five-year project period, not more than $2,000 in ORR grant funds may be provided through matching contributions to any one refugee individual and not more than $4,000 may be provided to any one refugee household.

The interest that accrues on the ORR matching funds deposited in the parallel account must be credited to the IDAs of the refugee participants. Interest on the matching funds is not subject to the $2,000/$4,000 limitation on total match for an individual and a household. The interest on the match funds in the parallel account may not be retained by the grantee for any purpose, including program administration, participant support services, or program data collection.

ORR strongly encourages applicants to incorporate in these projects financial training for the refugee participants. The training may be provided directly by the grantee or the grantee may choose to provide the training through subgrantees or other providers. The types of training provided by a grantee should reflect both the refugee population and the types of Savings Goals to be included in the program. Such training could include budgeting, cash management, savings, investment, and credit counseling. Specialized training and technical assistance should be provided for refugee participants whose Savings Goals are home purchase or microenterprise.

Legislative Authority: Section 412(c)(1)(A) of the Immigration and Nationality Act authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) To assist refugees in obtaining skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services."

Funding Availability: ORR expects to award approximately $5 million in FY 1999 funds for the Refugee IDA Program among approximately eight to twelve grantees. Grants are expected to range from $200,000 to $800,000. Approximately 75–80 percent of the ORR grant funds should be designated for the purpose of providing matches for the refugee IDA accounts. The remaining 20–25 percent of ORR funds may be used for the administrative and operational costs of the project and for financial training, counseling, and technical assistance.

The Director reserves the right to award more or less than the funds described in the absence of worthy applications or such other circumstances as may be deemed to be in the best interest of the government. Applicants may be required to reduce the scope of selected projects based on the amount of the approved grant award.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.576. The title of the program is the Refugee Individual Development Account Program.

Applicable Regulations: Applicable U.S. Department of Health and Human Services regulations can be found at 45 CFR part 74 or part 92.

Definition of Terms: Individual Development Accounts (IDAs) are leveraged, or matched, savings accounts. IDAs are established in insured accounts in qualified financial institutions; and the funds are intended for the Savings Goals specified in this announcement. Although the refugee participant maintains control of all funds that the participant deposits in the IDA, including all interest that may accrue on the funds, the participant must sign a Savings Plan Agreement with the grantee that specifies that the funds in the account will be used only for the participant's Savings Goal or for an emergency withdrawal. A signed Savings Plan Agreement is required for the refugee participant to be eligible for matching funds.

The Savings Goals, as specified below, are the purchases/investments for which the matching funds, and the interest on matching funds, are available when used in conjunction with the savings from the IDAs of refugee participants. The Savings Goal specified by a participant in the Savings Plan Agreement may be for the benefit of the refugee participant or of a refugee dependent of the refugee participant. Savings Goals are defined as follows:

- Home ownership: Includes costs of a principal residence including the downpayment and closing costs when purchasing a home; also renovation costs of a new home or of an existing primary residence. In the case of acquisition, the purchaser must be a first-time homebuyer.
- Microenterprise capitalization: Means costs described in a qualified business plan, such as capital, plant, equipment, working capital, and inventory expenses. The business plan must be approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund. The plan must also describe services or goods to be sold and include a marketing plan and projected financial statements. Also included in microenterprise capitalization are expenditures for a business expansion.
- Post-secondary Education, Vocational Training, and Recertification: Tuition or fees, professional recertification fees, books, supplies, and equipment related to the enrollment or attendance of a refugee student at an educational institution.
- Purchase of an Automobile: If necessary for the purpose of maintaining or upgrading employment.
- Purchase of a Computer: Including hardware and software, to support a refugee student's enrollment in an educational, vocational, or recertification institution or for a microenterprise.
- Qualified financial institution means a Federally insured bank, credit union, or savings and loan institution or a State-insured bank, credit union, or savings and loan institution if no Federally insured bank, credit union, or savings and loan institution is available.
- A parallel account is an insured account (or accounts) opened by the grantee in a qualified financial institution for the purpose of depositing the matching funds for the savings deposited by refugee participants in their individual IDAs. Interest earned on the matching funds must remain in the parallel account and be credited to the refugee participants. Both the matching funds and the interest earned on those funds must be made available to the refugee participant at the time that the participant purchases the Savings Goal. The matching funds and the interest on the matching funds in the parallel account are not available to the refugee participant except for the Savings Goals defined in this announcement.
- An emergency withdrawal is a withdrawal of funds, or a portion of funds, deposited by the refugee participant in his/her Individual Development Account. The withdrawal may also include any of the interest that may have accrued to the participant's savings in the account. Such a withdrawal must be approved by the project grantee and be consistent with the terms of the Savings Plan Agreement between the grantee and the refugee participant. Causes for emergency withdrawals include, but are not limited to, medical expenses, payments to prevent eviction or foreclosure, or payments for necessary living expenses. If funds withdrawn for emergency purposes are not repaid within 12 months, the refugee participant forfeits the match on those funds. Emergency withdrawals may never be authorized from the parallel account(s).

Part II. Project and Applicant Eligibility

Eligible Applicants: To be eligible for funding under this announcement, projects must meet the following requirements. Eligible applicants for these funds include States and private, non-profit organizations. Applicants may request funding to administer a refugee IDA project directly with refugee participants or as an intermediary agency which will administer multiple projects through participating community-based organizations. Private, non-profit agency applicants must provide documentation of their 501(c)(3) tax-exempt status at the time of the application submission.

Applicants must also provide documentation of participation of a qualified financial institution(s) in the project. This documentation must be in writing, on letterhead of the financial institution, and signed by a person authorized to make the commitment on behalf of the financial institution. The documentation must include a commitment by the financial institution to establish IDAs for the refugee participants, to establish a parallel account (or accounts) for the matching funds, and to provide the grantee with

account activity data on the IDAs and the parallel account(s) in a timely manner.

Project and Budget Periods: This announcement invites applications for project periods up to five years. Awards, on a competitive basis, will be for a one-year budget period. Applications for continuation grants funded under these awards beyond the first one-year budget period but within the five-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Under these projects, grantees should schedule their account activities so that all IDA accounts reach their maximum savings, and refugee participants have purchased their Savings Goal, within the five-year project period. Applicants should include in their applications their proposal for handling accounts in the event that any refugee participant has not completed the Savings Goal purchase by the end of the five-year project period. (For instance, applicants may consider creating an escrow account for each participant's matching funds.)

Part III: The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of November 20, 1998, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc., does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations, which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Attention: Shirley B. Parker, ORR Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this program announcement.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that: (1) The application was received by the closing date and submitted in accordance with the instructions in this announcement; and (2) the applicant is eligible for funding.

C. Competitive Review and Evaluation Criteria

Applications that pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement. Proposed projects will be reviewed using the following evaluation criteria:

1. Description of Targeted Population and Need for Assistance. The application identifies the refugee population to be assisted by this project and describes the need for assistance of this population. Indicators of the need for assistance include low rates of: use of financial institutions, home ownership, education, and access to capital; and high rates of: reliance on public assistance and incomes below 200 percent of the Federal poverty level. (15 points)

2. Project Plan and Design. The application provides a clear explanation of a feasible, appropriate, and complete plan for establishing and managing IDAs for the refugee participants. The plan clearly describes the structure, uses, requirements, and management of the IDAs and includes procedures for: managing the parallel account(s); ensuring that interest on the matches is correctly credited to individual refugee participants; and providing financial training appropriate to the refugee population and to the Savings Goals included in the project. (25 points)

3. Organizational and Staff Experience. Applicant organization and staff and partner organizations have demonstrated capability to implement and manage new programs and to recruit and work with the refugee population. The applicant has developed a partnership with a financial institution(s) to implement the IDAs. (25 points)

4. Proposed Outcomes and Expected Benefits. The outcomes and benefits proposed are reasonable and reflect the objectives of this announcement. The methodology proposed for collecting outcome data is reasonable. (20 points)

5. Project Budget. The budget is reasonable and clearly justified. The methodologies for estimating the number of refugee participants and amount of matching funds are reasonable. (15 points)

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the Standard Form 424 and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contacts named under the FOR FURTHER INFORMATION CONTACT section in the preamble of this announcement.

General Guidelines for Preparing a Project Description

Purpose: The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative, the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions: Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Project Summary/Abstract: Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance: Clearly identify the economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer, or be requested to provide, information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected: Identify the results and benefits to be derived from this project. ORR is particularly interested in the projected outcomes for the targeted refugee group, including the number of IDAs opened, rate of growth in savings, number and size of withdrawals for each of the Savings Goals, and the impact of the purchase of the Savings Goal on the participant's movement toward self-sufficiency.

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of IDAs to be opened. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location: Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information: Following is a description of additional information that should be placed in the appendix to the application.

Staff and Position Data: Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles: Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements: Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support: Provide statements from community, public, and commercial leaders that support the project proposed for funding.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative

justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ORR-sponsored conferences should be detailed in the budget.

Equipment

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Costs

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application, which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Self-explanatory.

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late.

2. Deadline. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Attention: Shirley B. Parker, ORR Grants Officer, 370 L'Enfant Promenade, SW, Washington, DC 20447. Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between

the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, ACF Mailroom, Second Floor (near loading dock), Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Shirley B. Parker, ORR Grants Officer." ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there is widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Reporting Requirements

Grantees under this program announcement will be required to provide quarterly program narrative reports, describing outcomes and activities under the grant. Grantees will also be required to submit semi-annual financial reports using the Financial Status Report (SF–269). A final financial and narrative report shall be due 90 days after the end of the Grant Project Period (i.e., after the final budget period).

Dated: June 3, 1999.

Lavinia Limón,

Director, Office of Refugee Resettlement.

Attachment A—The 1999 HHS Poverty Guidelines

One Version of the [U.S.] Federal Poverty Measure

[Information Contracts/References—Poverty Guidelines & Thresholds—Also History of U.S. Poverty Lines]

There are two slightly different versions of the federal poverty measures:

- The poverty thresholds, and
- The poverty guidelines.

The poverty thresholds are the original version of the federal poverty measure. They are updated each year by the Census Bureau (although they were originally developed by Mollie Orshansky of the Social Security Administration). The thresholds are used mainly for statistical purposes—for instance, preparing estimates of the number of Americans in poverty each year. (In other works, all official poverty population figures are calculated using the poverty thresholds, not the guidelines.)

The poverty guidelines are the other version of the federal poverty measure. They are issued each year in the **Federal Register** by the Department of Health and Human Services (HHS). The guidelines are a simplification of the poverty thresholds for use of administrative purposes—for instance, determining financial eligibility for certain federal program. (The full text of the **Federal Register** notice with the 1999 poverty guidelines is available here.)

1999 HHS POVERTY GUIDELINES

Size of family unit	48 contiguous states, and DC	Alaska	Hawaii
1	$8,240	$10,320	$9,490
2	11,060	13,840	12,730
3	13,880	17,360	15,970
4	16,700	20,880	19,210
5	19,520	24,400	22,450
6	22,340	27,920	25,690
7	25,160	31,440	28,930
8	27,980	34,960	32,170
For each additional person, add	2,820	3,520	3,240

Source: *Federal Register*, Vol. 64, No. 52, March 18, 1999, pp. 13428–13430.

[The separate poverty guidelines for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. Notice that the poverty thresholds—the original version of the poverty measure—have never had separate figures for Alaska and Hawaii.)

Programs using the guidelines (or percentage multiples of the guidelines—for instance, 130 percent of the guidelines) in determining eligibility include Head Start, the Food Stamp Program, the National School Lunch Program, and the Low-Income Home Energy Assistance Program. Note that is general, public assistance programs (Aid to Families with Dependent Children and its block grant successor Temporary Assistance for Needy Families, and Supplemental Security Income) do NOT use the poverty guidelines in determining eligibility. The Earned Income Credit program also does NOT use the poverty guidelines to determine eligibility.

The poverty guidelines (unlike the poverty thresholds) are designated by the year in which they are issued. For instance, the guidelines issued in March 1999 are designated the 1999 poverty guidelines. However, the 1999 HHS poverty guidelines only reflect price changes through calendar year 1998; accordingly, they are approximately equal to the Census Bureau poverty thresholds for calendar year 1998. [The 1998 thresholds will be issued in final form about September or October 1999; a preliminary version of the 1998 thresholds is now available from the Census Bureau.)

The poverty guidelines are sometimes loosely referred to as the "Federal poverty level" (FPL), but that term is ambiguous, and should be avoided in situation (e.g., legislative or administrative) where precision is important.

Go to the page of *Information Contracts and References* on the Poverty Guidelines, the Poverty Thresholds, and the Development and History of U.S. Poverty Lines.

Return to the *Poverty Guidelines, Research, and Measurement* main page.

[FR Doc. 99–14575 Filed 6–8–99; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ballast Water and

Shipping Committee of the Aquatic Nuisance Species Task Force. Meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Ballast Water and Shipping Committee will meet from 9:30 a.m. to 4:30 p.m. on Wednesday, June 23, 1999.

ADDRESSES: The Ballast Water and Shipping Committee Meeting will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LT Mary Pat McKeown, Chair, Ballast Water and Shipping Committee, at 202–267–0500 or mmckeown@comdt.uscg.mil or Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), we announce a meeting of the Ballast Water and Shipping Committee of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741).

Topics to be addressed include an update on efforts to compile a directory of ballast water research and technologies, factors to be considered in evaluating treatment technologies and management practices, and the nature and process for developing strategic national priorities for ballast water management research and development. Time permitting, presentations will be made describing specific ballast water management technologies and practices.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622 and the Chair of the Ballast Water and Shipping Committee at Environmental Standards Division, Office of the Operations and Environmental Standards, U.S. Coast Guard (G–MSO–4), 2100 Second Street, SW, Room 1309, Washington, DC 20593–0001. Minutes for the meetings will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: June 1, 1999.

Rowan W. Gould,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 99–14628 Filed 6–8–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–00]

Alaska Resource Advisory Council Meeting

SUMMARY: The BLM Alaska Resource Advisory Council will meet Monday, July 12, 1999, from 9:30 a.m. until 4:30 p.m. and Tuesday, July 13, 1999, from 9 a.m. until 3 p.m. The Council will continue the process of defining standards for management of natural resources on public lands in Alaska. As part of this process, the Council will take public comment on resource issues of concern.

The meeting will be held at the BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska. The entire meeting is open to the public with public comment taken from 1–2 p.m. Monday, July 12. Written comments may be submitted at the meeting or mailed to the address below.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: May 25, 1999.

Brenda Zenan,

Acting State Director.

[FR Doc. 99–14448 Filed 6–8–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–038; COC 62982]

Realty Action; Bureau Motion Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands near the community of Pagosa Springs, Archuleta County, Colorado have been examined and found suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. *et seq.*).

New Mexico Principal Meridian, Colorado

T.35 N., R.2 W.,
Sec. 9, NE¼SW¼
Containing 40 acres more or less.

This action is a motion by the Bureau of Land Management to make available lands identified in the San Juan Resource Management Plan not needed for Federal purposes and having potential for disposal to support community expansion. Lease or conveyance of the lands for recreational or public purpose use is consistent with current BLM land use planning and would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, San Juan Field Office, 15 Burnett Court, Durango, Colorado 81301.

The lease or conveyance of the lands will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit written comments regarding the classification of the public lands as being suitable for disposal under the R&PP Act, to the San Juan Field Office Manager, San Juan Field Office, 15 Burnett Court, Durango, Colorado 81301. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

FOR MORE INFORMATION CONTACT: Charlie Higby, phone (970) 247–4874.

Dated: May 27, 1999.

Kent Hoffman,

Associate Field Office Manager.

[FR Doc. 99–14198 Filed 6–8–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision, Saint Croix National Scenic Riverway, Wisconsin

SUMMARY: This notice announces a revision of the boundaries of the Saint Croix National Scenic Riverway to include approximately 28.75 acres of land. The National Park Service has determined this boundary revision is necessary: (1) For the proper care and management of the Riverway, and (2) to protect the immediate environment of the Namekagon River for the benefit and enjoyment of present and future generations.

FOR FURTHER INFORMATION CONTACT: Superintendent, Saint Croix National Scenic Riverway, 401 Hamilton Street, St. Croix Falls, Wisconsin 54024, or by telephone at 715–483 3284.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460l–9(c) authorizes the Secretary of the Interior to make this boundary revision. Notice is hereby provided that the boundary of Saint Croix National Scenic Riverway is revised, effective as of the date of publication of this notice, to include approximately 28.75 acres of privately owned land within the Riverway in Sawyer County, Wisconsin. The legal description for this land is as follows:

That part of the Southwest ¼ Southwest ¼, Section 31, Township 42 North, Range 8 West, 4th Principal Meridian, Sawyer County, Wisconsin, lying South of the southern right-of-way line of U.S. Highway 63.

The National Park Service has prepared a map bearing drawing number 5:630/60,007, dated March 1, 1999, which depicts the specific real property hereby included within the Riverway. Copies of this map are available at the following three locations: The Department of the Interior, National Park Service, Land Resources Division, 1849 "C" Street NW, Room 2444, Washington, DC 20240; National Park Service, Midwest Region Office, 1709 Jackson Street, Omaha, Nebraska 68102; and, Saint Croix National Scenic Riverway headquarters, at the address given above.

Dated: May 21, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 99–14589 Filed 6–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before MAY 29, 1999. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 24, 1999.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Desha County

Trippe Holly Grove Cemetery, AR 4 or Crooked Bayou Rd., approx. 2 mi. S of McGehee, McGehee vicinity, 99000729

Washington County

Mrs. Young Building, 5 S Block Ave., Fayetteville, 99000731

Waterman—Archer House, 2148 Markham, Fayetteville, 99000730

ILLINOIS

Greene County

Eldrid, James John, House, Bluffdale Township Rd., E of IL 100, Eldrid vicinity, 99000732

INDIANA

Delaware County

Beech Grove Cemetery, 1400 W. Kilgore Ave., Muncie, 99000734

Riverside Historic District, Roughly bounded by University Ave., Dicks, Gilbert and Light Sts., Muncie, 99000733

Floyd County

New Albany National Cemetery (Civil War Era National Cemeteries MPS), 1943 Ekin Ave., New Albany, 99000735

IOWA

Clayton County

Franklin Hotel, 102 Elkader St., Strawberry Point, 99000740

Hardin County

Slayton Farms—Round Barn, 20478 135th St., Iowa Falls vicinity, 99000739

Lyon County

Reynolds, Charles B., Round Barn (Iowa Round Barns: The Sixty Year Experiment TR), 2382 Harrison Ave., Doon vicinity, 99000737

Woodbury County

Davidson Building, 505 6th St., Sioux City, 99000736

LOUISIANA

Caddo Parish

St. Paul's Bottom (Boundary Increase), 1002–1162 Texas Ave., 959–1057 Texas Ave., 1127 Milam, Shreveport, 99000741

MISSOURI

Cape Girardeau County

Frizel—Welling House, 209 W. Main St., Jackson, 99000742

Pott, Frederick W. and Mary Karau, House, 826 Themis St., Cape Giradeau, 99000745

Shivelbine, August and Amalia, House, 303 S. Spanish St., Cape Girardeau, 99000743

Chariton County

Thomas, Fabrishous and Sarah A., House, 302 E. Second St., Salisbury, 99000744

NEBRASKA

Douglas County

Livestock Exchange Building, 2900 O Plaza, Omaha, 99000751

Howard County

Dannevirke Danish Lutheran Church and Community Hall, Dannervirke Rd. and Wausa, Elba, 99000750

Lancaster County

Burckhardt House (African American Historic and Architectural Resources in Lincoln, Nebraska MPS), 1236 Washington St., Lincoln, 99000746

McWilliams House (African American Historic and Architectural Resources in Lincoln, Nebraska MPS), 1723 N. 29th St., Lincoln, 99000748

Quinn Chapel African Methodist Episcopal Church and Parsonage (African American Historic and Architectural Resources in Lincoln, Nebraska MPS), 1225 S. 9th St., Lincoln, 99000749

Ross, Nimrod, House (African American Historic and Architectural Resources in Lincoln, Nebraska MPS), 445 S. 30th St., Lincoln, 99000747

Platte County

First Welch Calvinistic Methodist Church and Cemetery, Rural Rte 2, Monroe vicinity, 99000762

NEW YORK

Monroe County

First Presbyterian Church, 35 State St., Brockport, 99000752

Westchester County

Stony Hill Cemetery, Buckout Rd., Harrison, 99000753

NORTH CAROLINA

Buncombe County

North Carolina Electrical Power Company Electric Generating Plant, 2024 Riverside Dr., Woodfin, 99000754

PENNSYLVANIA

Lancaster County

Griest, W.W., Building, 8 N. Queen St., Lancaster, 99000755

TENNESSEE

Bledsoe County

Ross, Dr. James A., House, 102 Frazier St., Pikeville, 99000758

Davidson County

Tennessee Manufacturing Company, 1400 Eighth Ave., N, Nashville, 99000759

Shelby County

South Main Street Historic District (Boundary Increase), 384 Mulberry and 129 Talbot, Memphis, 99000756

Wayne County

Evans Chapel United Methodist Church, Old Clifton Turnpike, Waynesboro vicinity, 99000757

WISCONSIN

Milwaukee County

Commerce Street Power Plant, 1338 N. Commerce St., Milwaukee, 99000761

Rock County

Janesville High School, 408 S. Main St., Janesville, 99000760

For a Procedural Error a request for REMOVAL has been made for the following resource:

IOWA

Jefferson County

Commercial Block, 106, 108, 110 N. Main St., Fairfield, 99000120

[FR Doc. 99–14542 Filed 6–8–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–393–396 (Preliminary) and 731–TA–829–840 (Preliminary)]

Certain Cold-Rolled Steel Products From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigations Nos. 701–TA–393–396 (Preliminary) and antidumping investigations Nos. 731–TA–829–840 under section 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and 19 U.S.C. 1673b(a) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, Indonesia, Thailand, and Venezuela of certain cold-rolled steel products,[1] that are alleged to be subsidized by the Governments of Brazil, Indonesia, Thailand, and Venezuela and imports from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela of certain cold-rolled steel products that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in these investigations in 45 days, or in this case by July 19, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 26.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 2, 1999, by Bethlehem Steel Corp., Bethlehem, PA; Gulf States Steel, Inc., Gadsden, AL; Ispat Inland, Inc., East Chicago, IN; LTV Steel Co., Inc., Cleveland, OH; National Steel Corp., Mishawaka, IN; Steel Dynamics, Inc., Fort Wayne, IN; U.S. Steel Corp.; a unit of USX Corp., Pittsburgh, PA; Weirton Steel Corp., Weirton, WV; and United Steel Workers of America, Pittsburgh, PA.

Participation in These Investigations and Public Service List

Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in these investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service list

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to these investigations under the APO issued in these investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 23, 1999, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than June 16, 1999, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour

[1] For purposes of these investigations, the subject product includes all cold-rolled (cold-reduced) carbon steel flat products, including sheet and strip (whether or not in coils), the foregoing not clad, plated or coated with metal, and however provided for in the Harmonized Tariff System; interstitial free steels, motor lamination steels, and high strength low alloy steels are included in the scope.

within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 28, 1999, a written brief containing information and arguments pertinent to the subject matter of these investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 3, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14600 Filed 6–8–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Welfare-to-Work Competitive Grants

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of reduced fund availability.

SUMMARY: On January 26, 1999, the U.S. Department of Labor (DOL), Employment and Training Administration, (ETA) announced the third round of competitive grants under the Welfare-to-Work (WtW) grant program (64 FR 4010). The announcement described the conditions under which applications will be received under the WtW Competitive Grants program and how DOL/ETA planned to determine which applications to fund. Approximately $240 million was announced as available for WtW competitive grants under the Round Three announcement. This notice is to announce that the amount available for this competition has been reduced to approximately $200 million.

FOR FURTHER INFORMATION CONTACT: Cherly Turner, Welfare-to-Work, Room C–4524, 200 Constitution Avenue, NW, Washington, DC. 20210. Telephone: (202) 219–0180 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Of the $240 million originally announced as available for Round Three WtW competitive grants, up to $20 million has been set aside for an award to a single private entity to carry out the WtW Census 2000 Employment Project. This reduction leaves approximately $220 million available to be awarded as Round Three WtW competitive grants and is likely to reduce the number of grants to be awarded in Round Three by approximately five grant awards. The Solicitation for Grant Applications for the WtW Census 2000 Employment Project was published in the **Federal Register** on May 14, 1999 at 64 FR 26440.

Signed at Washington, DC, on June 3, 1999.

Janice Perry,

Grant Officer.

[FR Doc. 99–14577 Filed 6–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established under Section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United States, will meet in San Francisco, California.

DATES: The Committee will meet:

—On June 29, 1999, from 9:00 a.m. until approximately 5:00 p.m.; and

—On June 30, 1999, from 8:30 a.m. until approximately 5:00 p.m.

ADDRESSES: The Committee will meet at the Sir Francis Drake Hotel on Union Square at 450 Powell Street, San Francisco, California; telephone (415) 392–7755.

Mail comments, views, or statements in response to this notice to Chap Pierce, Director of Fire Protection Engineering and Systems Safety Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW, Washington, DC 20210. Phone: (202) 693–2255; fax: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA. Phone (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than June 18, 1999, to obtain appropriate accommodations.

Meeting Agenda: This meeting will include discussion of the following subjects: vertical tandem lifts in the marine cargo handling environment; an update on At Risk Assessment Guidelines; training partnerships; an update on ergonomics projects; a general OSHA standards update (including a standards update and a discussion on the draft safety and health program regulation and on Personal Protective Equipment (PPE)); and an OSHA compliance update. MACOSH subgroups will also report on their activities.

Public Participation: Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferable with copies, to Chap Pierce. Submissions received by June 18, 1999, will be provided to the members of the Committee and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Chap Pierce by June 22, 1999. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970

(29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–14586 Filed 6–8–99; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Meeting Notice

June 4, 1999.

TIME AND DATE: 10:00 a.m., Friday, June 11, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider the location and terms of oral argument in *Morgan* v. *Arch of Illinois*, Docket No. LAKE 98–17–D.

TIME AND DATE: 10:00 a.m., Thursday, June 17, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Baier* v. *Durango Gravel*, Docket No. WEST 97–96–DM (Issues include whether substantial evidence supports the judge's determination that Durango Gravel's termination of the complainant violated section 105(c) of the Mine Act.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen: (202) 653–5629/ (202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–14747 Filed 6–7–99; 12:05 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–8767]

Consideration of Amendment Request for Decommissioning the 600-Yard Bullet Catcher and the Southeast Wing of Building 3A of the Lake City Army Ammunition Plant in Independence, Missouri, and an Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Materials License No. SUC–1380), issued to the Department of the Army (the Army or the licensee), to authorize decommissioning of the 600-yard bullet catcher and the southeast wing of Building 3A of its Lake City Army Ammunition Plant (LCAAP) in Independence, Missouri.

The Army built the plant and still operates it for the purpose of manufacturing and testing small caliber conventional munitions for the U.S. Army. LCAAP was founded in 1941 as a Government-owned/contractor-operated facility. From its inception in 1941 until 1985, the plant operating contractor was Remington Arms.

During the 1960s and 1970s, there was a small depleted uranium (DU) operation at LCAAP. Part of their operation, the production of DU ordnance, occurred in the southeast wing of Building 3A. Developmental planning of the XM–101 DU spotting projectile started in 1959, and by 1961 LCAAP was producing the round. The Army designed these XM–101 rounds as "spotters" for small scale, shoulder fired weapons.

The maximum production capability was approximately 8,000 rounds per month although various supply problems resulted in a considerably lower production rate. The XM–101 (later M–101) round consisted of a fused, 20 millimeter (mm) projectile with a body constructed from DU. LCAAP also produced an XM–106 round that was identical to the XM–101, but without the explosive components. The installation designed, tested, manufactured and in later years, demilitarized some 75,000 20 mm DU spotter rounds. These spotter rounds were approximately six inches in length, 20 mm in diameter and weighed approximately one pound (lb) each. A machined DU body made up 0.45 lbs of the round's weight. The round contained a fused-white phosphorus charge that would detonate on impact with the ground.

By 1968, the program was terminated and LCAAP was left with an estimated 44,000 spotter rounds. In 1971, Remington Arms Company, Inc., the operator of LCAAP at the time, proposed a method for the disposal of approximately 44,000 remaining rounds of XM–101 ammunition. Because the rounds were fused, the safest demilitarization methodology involved shooting the rounds into a sand-filled catch box, identified as the "600-yard Bullet Catcher." The catch box was filled with sand as an impact material. The impact material was periodically replaced in the catch box. Remington would remove the "old" impact material (i.e., DU contaminated sand) from the 600-yard bullet catcher box and place it in an area of the site known as "Area 10." Remediation of "Area 10" is being addressed in a separate decommissioning plan approved on August 25, 1998.

NRC is requiring the licensee to remediate the 600-yard bullet catcher and the south east wing of Building 3A of LCAAP to meet NRC's decommissioning criteria and, during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the decommissioning plan, NRC will make the necessary findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. Approval of the LCAAP the 600-yard bullet catcher and Building 3A decommissioning plan will be documented in an amendment to SUC–1380.

NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

2. By mail, telegram, or facsimile to the Secretary, U. S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Department of the Army, Headquarters U.S. Army Industrial Operations Command, Rock Island, Illinois 61299–6000, Attention: Ms. Rosalene E. Graham; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 am and 4:15 pm Federal workdays; or by mail, addressed to the Executive Director for Operations, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceedings.

2. How that interest may be affected by the results of the proceedings, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

For further details with respect to this action, the site decommissioning plan is available for inspection at the NRC's Public Document Room, 2120 L Street NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 3rd day of June 1999.

For The Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–14581 Filed 6–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company; Ohio Edison Company; Pennsylvania Power Company; the Cleveland Electric Company; the Toledo Edison Company; Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duquesne Light Company (the licensee) to withdraw a portion of its July 9, 1998, application for proposed amendment to Facility Operating License Nos. DPR–66 and NPF–73 for the Beaver Valley Power Station, Unit Nos. 1 and 2, located in Shippingport, PA.

The withdrawn portion of the proposed amendment would have removed the values of the orifice diameter of each main steam safety valve (MSSV) from TS Table 3.7–3 (Unit 1) and Table 3.7–2 (Unit 2). This information will remain in the TSs.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 12, 1998 (63 FR 43203). However, by letter dated March 31, 1999, the licensee withdrew this portion of the proposed change as discussed above.

For further details with respect to this action, see the application for amendment dated July 9, 1998, and the licensee's letter dated March 31, 1999, which partially withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 3rd day of June 1999.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–14579 Filed 6–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 040–08794 and 040–08778]

Receipt of An Amendment Request for the Temporary Storage of Decommissioning Waste From the Molycorp York, Pennsylvania Facility (License No. SMB–1408) at the Molycorp Washington, Pennsylvania Facility (License No. SMB–1393) and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Source Materials License No. SMB–1393, to Molycorp, Incorporated (the licensee), for the temporary (5–10 years) storage of waste from the former Molycorp rare earth processing facility (License No. SMB–1408) in York, Pennsylvania.

The licensee submitted the amendment in a letter dated February 8, 1996, requesting that License No. SMB–1393 be amended to allow temporary storage of waste from its York decommissioning operations at the Molycorp Washington, PA facility.

The waste from Molycorp's York facility consists of soils from decommissioning waste containing thorium-232 and uranium-238, with a volume of approximately 3,000–5,000 cubic yards, and resulted from operations to recover rare earth metals from bastnaesite ore containing uranium and thorium which are natural components of this ore. These operations were conducted from April 1962 to September 24, 1993. The NRC will require the licensee to demonstrate that the temporary storage facility provides: (1) adequate containment for the waste; (2) sufficient monitoring of effluents during the transfer and storage activities and; (3) an adequate radiation protection plan to help maintain doses as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulation. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

2. By mail, telegram, or facsimile to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing

must also be served, by delivering it personally or by mail, to:

1. The applicant, Molycorp Incorporated, 350 North Sherman Street, York, Pennsylvania 17403, Attention: Mr. John Daniels, and;

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and 4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

For further details with respect to this action, the application for amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 26th day of May 1999.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–14580 Filed 6–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (Commission) has issued Amendment No. 135 to Facility Operating License Nos. DPR–80 and DPR–82 issued to Pacific Gas and Electric Company (the licensee) for operation of the Diablo Canyon Power Plant, Units 1 and 2 (DCPP) located in San Luis Obispo County, California.

Because the ITS were being issued as a single document for the two units, the licensee requested that the ITS be issued with the same amendment number for both units. This was acceptable to the Commission and the next amendment number for DCPP Unit 1 was used. Therefore, Amendment Nos. 133 and 134 for DCPP Unit 2 will never be used.

The amendments are effective as of the date of issuance and shall be implemented by May 31, 2000. The implementation of the amendments includes the two license conditions that are being added to Appendix D of the licenses as part of the amendments.

The amendments replace, in its entirety, the current Technical Specifications (TS) with a set of improved TS based on NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April 1995, including all approved changes to the standard TS; the Commission's Final Policy Statement, "NRC Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," published on July 22, 1993 (58 FR 39132); and 10 CFR 50.36, "Technical Specifications," as amended July 19, 1995 (60 FR 36953). In addition, the amendments added two license conditions to Appendix D of the operating licenses that require (1) The relocation of current TS requirements into licensee-controlled documents, and (2) the first performance of new and revised surveillance requirements for the improved TS to be related to the implementation date for the improved TS. The implementation of the amendments and the license conditions will be completed by May 31, 2000, as stated in the amendments.

The application for the amendments, as supplemented, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 29, 1999 (64 FR 14946). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and has determined not to prepare an environmental impact statement related to the action to convert the current TS to the improved TS. Based on the Environmental Assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment beyond that described in the Final Environmental Statement (FES) related to the operation of DCPP dated May 1973, and in the addendum to the FES dated May 1976. The Environmental Assessment was published in the **Federal Register** on May 26, 1999 (64 FR 28532).

For CN 9–01–LG in CTS 3/4.4 (and associated CN 3–13–M in CTS 6.0), the licensee has proposed to relocate the pressure/temperature (P/T) limits and low-temperature overpressure protection (LTOP) system limits from the CTS to the pressure temperature limits report (PTLR) and proposed to reference WCAP–14040–NP–A, Revision 1, "Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Curves," as the methodology for calculating the P/T and LTOP limits. The staff approved the use of this WCAP report in its generic SE dated October 16, 1995. The licensee, however, has determined that it will operate DCPP for the near future with the existing approved P/T and LTOP limits in the CTS. Therefore, the limits addressed in the PTLR of ITS 5.6.6 are the limits that the staff has previously reviewed and approved in Amendments 133 and 131 for DCPP, respectively, dated May 3, 1999. The amendments approved P/T limit curves that are valid for 16 effective full power years. The licensee will use the methodology in WCAP–14040–NP–A to calculate the future P/T and LTOP limits before the time when the current values given in the amendments become invalid. The staff will review the licensee's future plant-specific application of the PTLR methodology to allow the licensee's future use of PTLR methodology to calculate new P/T and LTOP limits without prior staff approval. In the associated CN 3–13–M in CTS 6.0, the licensee proposed to add a reference to the staff's letter providing this SE that addresses these amendments to the PTLR in ITS 5.6.6. This letter explained that Amendments 133 and 131 for DCPP approved the limits that are listed in the PTLR and addressed the methodology used by licensee to calculate the limits. The staff believes that the staff's approval of the P/T and LTOP limits in Amendments 133 and 131 was not an approval for the licensee to make future changes to these limits using the methodology described in the amendments. Listing the staff's letter that addressed Amendments 133 and 131 in ITS 5.6.6 may imply this is true and the staff is not ready at this time to

approve these amendments for that purpose. The review of these amendments, or any other licensee submittal, for the purpose of allowing the licensee to make future changes to the P/T and LTOP limits in ITS 5.6.6 without prior staff approval will the subject of a future letter.

For further details with respect to the amendments see (1) The application for amendment dated June 2, 1997, as supplemented by letters in 1998 dated January 9, June 25, August 5, August 28, September 25, October 16, October 23, November 25, December 4, December 17, and December 30, and letters in 1999 dated February 24, March 10, April 28, May 11, May 19, and May 27, and (2) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document rooms located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 28th day of May 1999.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Section 1, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–14578 Filed 6–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Consideration of an Amendment Request for Sequoyah Fuels Corp., Gore, Oklahoma and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to materials license SUB–1010 to authorize decommissioning of the Sequoyah Fuels Corp. (SFC) site near Gore, Oklahoma. This license is issued to SFC to possess contaminated material at its Gore site. NRC licenses these facilities under 10 CFR part 40. Specifically, the license authorizes SFC to possess up to 20 million metric tons of source material in any form. The contaminated material at the Gore site is in the form of uranium, uranium oxides, uranium fluorides, thorium, radium, and decay-chain products in process equipment and buildings, soil, sludge, and groundwater.

On March 26, 1999, the licensee submitted a site decommissioning plan (SDP) to NRC for review. The SDP proposes placing radiologically contaminated materials in a single, on-site, above-grade disposal cell constructed to the technical criteria of 10 CFR part 40, appendix A. It concludes that long-term doses from the contaminated materials placed in the cell and those remaining in the soil and groundwater meet the requirements of the Radiological Criteria for License Termination rule (10 CFR part 20, subpart E) (62 FR 39058). Therefore, the licensee proposes that no other decommissioning is required.

Prior to the issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Sequoyah Fuels Corp., P.O. Box 610, Gore, OK 74435 Attention: Mr. Craig Harlin, and;

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

For further details with respect to this action, the application for amendment is available for inspection at NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: J. C. Shepherd, Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6712. Fax.: (301) 415–5398.

Dated at Rockville, Maryland, this 3rd day of June, 1999.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Decommissioning Branch, Division of Waste Management Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–14582 Filed 6–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of June 7, 14, 21, and 28, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 7

There are no meetings scheduled for the Week of June 7.

Week of June 14—Tentative

Monday, June 14

2:00 p.m.

Briefing on 10 CFR Part 70—Proposed Rule for Revised Requirements for Domestic Licensing of Special Nuclear Material (Public Meeting) (Contact: Ted Sherr, 301–415–7218)

Tuesday, June 15

10:30 a.m.
All Employees Meeting (Public Meeting) ("The Green" Plaza Area)
1:30 p.m.
All Employees Meeting (Public Meeting) ("The Green" Plaza Area)

Wednesday, June 16

9:00 a.m.
Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting) (Contact: Ron Hauber, 301–415–2344)

Thursday, June 17

9:00 a.m.
Briefing on Status of Uranium Recovery (Public Meeting) (Contact: King Stablein, 301–415–7238)
11:00 a.m.
Affirmation Session (Public Meeting) (If needed)
1:30 p.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Friday, June 18

9:30 a.m.
Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301–415–1771)

Week of June 21—Tentative

There are no meetings scheduled for the Week of June 21.

Week of June 28—Tentative

There are no meetings scheduled for the Week of June 28.

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

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The NRC Commission Meeting Schedule can be found on the Internet at http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 4, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–14719 Filed 6–7–99; 11:23 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–16 and 50–341]

Detroit Edison Company; Temporary Closing of Local Public Document Room

Notice is hereby given that the Ellis Reference and Information Center, Monroe, Michigan, which serves as the Nuclear Regulatory Commission (NRC) local public document room (LPDR) for the Detroit Edison Company's Enrico Fermi Atomic Power Plant, will close on May 27, 1999, for extensive building renovation. The renovation is scheduled to be completed in two months. During this period the LPDR collection will be inaccessible to the public.

Every effort will be made to meet the informational needs of LPDR patrons during the renovation. Requests for records may be addressed to the NRC's Public Document Room (PDR), Gelman Building, 2120 L Street NW, Washington, DC 20555–0001. The telephone number is 800–397–4209, toll-free.

In addition, other LPDRs maintain records for the Fermi plant on microfiche. For the locations of these LPDRs, contact the PDR staff.

Dated at Rockville, Maryland, this 27th day of May 1999.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Information Services Branch, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 99–14583 Filed 6–8–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Tour of Advo Inc.

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission visit.

SUMMARY: Postal Rate Commission staff members will tour the Columbia, MD facility of Advo Inc. on Wednesday, June 9, 1999. Following the tour, the group will meet with executives of Advo to discuss postal matters.

DATES: The tour is scheduled for June 9, 1999, beginning at 9 a.m.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268–0001, 202–789–6820.

Dated: June 3, 1999.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 99–14534 Filed 6–8–99; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41486; File No. SR–NASD–97–76]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to Proposed Rule Change To Amend Its Rule 3230 Relating to Clearing Agreements

June 2, 1999.

I. Introduction

On October 14, 1997, the NASD Regulation, Inc. ("NASDR") submitted to the Securities and Exchange Commission ("Commission") on behalf of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 3230 to monitor the activities of introducing firms that are parties to clearing agreements. On November 20, 1997, NASDR filed Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 1, 1997.[4] Three comment letters were received on the proposal.[5] On August 18, 1998, the NASDR submitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John M. Ramsay, Deputy General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 19, 1997 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 39349 (November 21, 1997), 62 FR 63589.

[5] *See* Letters to Jonathan Katz, Secretary, Commission, from Alan G. Bower, Senior Vice President and Managing Counsel, Smith Barney, Inc., dated December 15, 1997 ("Smith Barney"); Henry H. Hopkins, Managing Director and Legal Counsel, and David Oestreicher, Associate Legal Counsel, T. Rowe Price Associates, Inc., dated December 19, 1997 ("T. Rowe Price"); and Thomas J. Berthel, Chairman, Local Firms Committee, Edward Schlitzer, Chairman, Clearing Firms Committee, and Thomas A. Franko, Ad Hoc Clearing Subcommittee, Securities Industry Association, dated December 29, 1997 ("SIA").

Amendment No. 2 to the Commission.[6] On November 18, 1998, the NASDR submitted Amendment No. 3 to the Commission.[7] This order approves the proposed rule change and Amendment No. 1 and approves Amendment Nos. 2 and 3 on an accelerated basis.

II. Description of the Proposal

The NASDR proposes to revise NASD Rule 3230 to enhance the ability of the Association and other securities self-regulatory organizations ("SROs") to monitor the activities of introducing firms that are parties to clearing agreements. NASD Rule 3230 governs the contractual agreements, known as clearing agreements, between a clearing firm and an introducing firm, that allocate certain functions and responsibilities associated with the clearing of, and transactions in, customer accounts. Generally, the proposed amendments to NASD Rule 3230 would provide for increased monitoring of customer complaints regarding introducing firms, require specific procedures for introducing firms requesting reports offered by clearing firms, and address procedures and responsibilities of introducing firms that are permitted to issue negotiable instruments of the clearing firms.

Specifically, the proposal, as amended, would require a clearing firm to provide promptly any written customer complaint it receives regarding the introducing firm to the introducing firm and the introducing firm's Designated Examining Authority ("DEA"). In addition, the proposal would require that the clearing firm notify the customer who submitted the written complaint in writing that the complaint was received and that it was provided to the introducing firm and the DEA. As initially proposed, the clearing firm would also have been required, in response to customer complaints, to inform customers of their right to transfer their accounts to another broker-dealer. As discussed further below, this provision was subsequently deleted from the proposal in response to comment letters received by the Commission.[8]

The proposal also would require the clearing firm to provide to each of its introducing firms, at the beginning of the agreement and annually thereafter, a list of all exception and other reports that it offers to assist its introducing firms in supervising and monitoring their customer accounts.[9] The proposal would require each introducing firm to notify its clearing firm of those specific reports offered that should be provided to the firm.[10]

In addition, the proposal would require the clearing firm to provide written notice, on an annual basis within 30 days of July 1 of each year (*i.e.*, between June 1 and July 31), to the introducing firm's Chief Executive Officer, Compliance Officer, and DEA, of the list of reports offered to the introducing firm and to specify those reports actually requested or supplied as of the report date.[11]

The proposal, as amended, would grant the NASD the discretion, upon a showing of good cause, to grant exemptions from the requirements relating to the handling of customer complaints and the provision of exception reports in instances where the introducing firm is an affiliated entity of the clearing firm.[12] The Association also proposes to amend NASD rule 9610(a) to add Rule 3230 to the list of rules for which exemptions are available.[13]

Finally, the proposal addresses those agreements that allow introducing firms to issue negotiable instruments (*e.g.*, checks) to their customers, for which the clearing firm is the maker or drawer. The proposed rule provides that the introducing firm must represent to the clearing firm that it has supervisory procedures in place, which it enforces and which are satisfactory to the clearing firm,[14] with respect to the issuance of such instruments.

III. Summary of Comments

The Commission received three comment letters on the proposed rule change.[15] As discussed further below, the commenters generally supported the proposed amendments to NASD Rule 3230; however, they recommended a number of modifications to the proposal.

A. Customer Complaints

One commenter stated that the proposed requirement that clearing firms must forward customer complaints may be unnecessary since NASD Rule 3070 already requires the reporting of customer complaints.[16] The NASDR declined to amend its proposal in response to this comment because the requirements differ and serve different purposes. Specifically, NASD Rule 3070 requires statistical reporting, while the proposal would require copies of the actual reports to be forwarded.

Two commenters recommended the deletion of the proposed requirement that the clearing firm notify complaining customers in writing that they have the right to transfer their accounts to another broker-dealer.[17] These commenters expressed concerns that the proposed requirement could be misleading as it could create the perception that the subject of the customer's complaint necessarily warranted a transfer.[18] For example, one commenter pointed out that the proposed statement "might well cause

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[6] *See* Letter from John M. Ramsay, Vice President and Deputy General Counsel, NASDR, to Katherine A. England, Assistant Director, Division, Commission, dated August 18, 1998 ("Amendment No. 2"). In Amendment No. 2, the NASDR responds to the comment letters received by the Commission and proposes to amend its filing to: (1) Delete the proposed requirement that, in response to customer complaints, the clearing firm must notify customers of their right to transfer their accounts; (2) delete the proposed requirement that the clearing firm provide, upon request of the introducing firm's Designated Examining Authority, reports that were offered to, but declined by, the introducing firm; (3) provide the NASD with the discretion to permit exemptions from the proposed customer complaint and exception report requirements for good cause shown; (4) modify its language relating to the issuance of negotiation instruments; and (5) conform the proposal to that of the New York Stock Exchange ("NYSE") by specifying an as of date for the required annual notice of exception reports.

[7] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASDR, to Katherine A. England, Assistant Director, Division, Commission, dated November 12, 1998 ("Amendment No. 3"). In Amendment No. 3, the NASDR proposes to amend the proposed rule language to limit the proposed exemption for good cause shown to instances in which the introducing firm is an affiliated entity of the carrying organization. The NASDR also proposes to amend NASD rule 9610(a) to add Rule 3230 to the list of rules for which exemptions are available.

[8] *See* Amendment No. 2, *supra* note 6.

[9] As initially proposed, the clearing firm would have been required to provide, upon request of the introducing firm's DEA, reports that were offered to the introducing firm, but which the introducing firm declined. This provision was subsequently deleted from the proposal. *See* Amendment No. 2, *supra* note 6.

[10] In addition, the clearing firm would be required to retain and preserve copies of the specific reports requested by or supplied to the introducing firm or have the capability to: (1) Recreate copies of reports provided, or (2) make available the report format and data elements provided in the original reports necessary to recreate the original reports.

[11] Under the original proposal, the clearing firm would have been required to notify the introducing firm and the introducing firm's DEA of exception and other reports offered or supplied to, or requested by, the introducing firm during the previous year. The NASDR now proposes to conform its proposal to that of the NYSE by clarifying that the requisite notice must be made as of a specific date, rather than during the course of the year. *See* Amendment No. 2, *supra* note 6.

[12] *See* Amendment No. 2, *supra* note 6; *see also* Amendment No. 3, *supra* note 7.

[13] *See* Amendment No. 3, *supra* note 7.

[14] To conform its proposal to that of the NYSE, the NASD proposes to require that the introducing firm's supervisory procedures, with respect to the issuance of negotiable instruments for which the clearing firm is maker or drawer, are "satisfactory to the carrying organization." *See* Amendment No. 2, *supra* note 6.

[15] *See* note 5, *supra*.

[16] *See* T. Rowe Price Letter, *supra* note 5.

[17] *See* Letters from T. Rowe Price and SIA, *supra* note 5.

[18] *Id.*

the customer to infer wrongdoing and take his or her business elsewhere, regardless of the merit of the complaint or the underlying circumstances * * *" [19] In response, the NASDR proposes to delete the provision that requires that customers be notified of their right to transfer their accounts to another broker-dealer, noting that investor education initiatives may more effectively accomplish the objectives of the proposed requirements.[20]

B. Exception Reports

One commenter recommended that the proposal should require clearing firms to produce and make available certain basic reports to their introducing firms, rather than to require clearing firms to provide notices of the reports that are offered to their introducing firms.[21] The NASDR declined to amend its proposal in response to this comment, noting that "firms generally have wide latitude to tailor clearing arrangements to individual business situations, and there is not industry standard for such arrangements or for the exception and other reports made available pursuant to such arrangements." [22]

One commenter recommended that the NASDR conform its proposed rule language to that of the NYSE by specifying that the proposed notification requirements apply to reports offered, requested or supplied as of a specific date, because it would not be feasible for clearing firms to track all of the various reports that introducing firms may have been offered, requested or received over the course of a year.[23] In response, the NASDR proposes to amend its proposed rule language to require clearing firms to notify the introducing firms and the introducing firm's DEA of exception and other reports offered or supplied to, or requested by, the introducing firms as of a specific date, rather than through the course of the year.[24]

The same commenter also opposed the proposed requirement that, upon the request of the introducing firm's DEA, the clearing firm must provide reports that were offered to the introducing firm, but which the introducing firm declined to receive.[25] This commenter noted that compliance with this proposed requirement may be impossible, or, at a minimum, burdensome to the clearing firm.[26] In response, the NASDR proposes to delete this proposed requirement.[27]

C. Exemption for Good Cause Shown

One commenter expressed concerns that the proposed provisions relating to customer complaints and exception reports would be unnecessary in situations in which clearing firms were already performing these compliance functions for their introducing firm subsidiaries.[28] In response to this comment, the NASDR proposes to amend its filing to allow the Association to grant an exemption from the customer complaint and exception report provisions in instances where the introducing firm is an affiliated entity of the clearing firm.[29]

D. Negotiable Instruments

One commenter expressed concerns about the NASDR's description of the proposed provisions relating to negotiable instruments, noting that the NASDR's interpretation "is misleading in that it implies that the [clearing firm] could be liable for the acts of the [introducing firm] independent of the [clearing firm's] obligations as maker or drawer." [30] In response, the NASDR proposes to amend its discussion in the proposal to clarify that the proposal "simply requires introducing firms to establish clear safeguards and procedures that are satisfactory to the clearing member when the introducing member issues checks to customers drawn to the clearing member's account" [31]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A of the Act [32] and the rules and regulations thereunder applicable to a national securities association.[33] The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 15A(b)(6) of the Act,[34] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, by assisting the NASD to better monitor the activities of introducing brokers, should help to prevent fraudulent and manipulative acts and practices. The proposal and the companion proposal submitted by the NYSE [35] represent an important step toward addressing recent concerns about questionable sales practices and potentially fraudulent activity engaged in by some introducing firms.[36] The Commission expects that the proposed rules, by establishing procedures for the handling of customer complaints, the offer and receipt of exception reports, and the introducing firm's issuance of negotiable instruments of the clearing firm, should assist the SROs in their regulatory efforts. In addition, by requiring clearing firms to provide to their introducing firms copies of customer complaints and lists of available exception reports, the proposal should help introducing firms to better monitor their customer accounts.

A. Customer Complaints

The proposed customer complaint provisions of the proposal would require clearing firms to provide any written customer complaint they receive regarding the introducing firm to the introducing firm and the introducing firm's DEA. In addition, the proposal would require that the customer who submitted the written complaint be notified in writing by the clearing firm that the complaint was received and that it was provided to the introducing firm and the DEA.

The Commission believes the proposed requirements relating to the handling of customer complaints received by clearing firms are reasonable. These procedures should enhance the ability of introducing firms and their DEAs to monitor complaints. In particular, DEAs and firms should be better able to identify patterns of complaints to determine, for example, whether there is a problem with the firm's supervisory procedures, operations, or an individual registered

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[19] *See* SIA Letter, *supra* note 5 (incorporation by reference Letter to Jonathan Katz, Secretary, Commission, from Thomas J. Berthel, Chairman, Local Firms Committee, Edward Schlitzer, Chairman, Clearing Firms Committee, and Thomas A. Franko, Ad Hoc Clearing Subcommittee, Securities Industry Association, dated November 3, 1997, on File No. SR–NYSE–97–25).

[20] *See* Amendment No. 2, *supra note 6.*

[21] *See* T. Rowe Price Letter, *supra* note 5.

[22] *See* Amendment No. 2, *supra* note 6.

[23] *See* SIA Letter, *supra* note 5.

[24] *See* Amendment No. 2, *supra* note 6.

[25] *See*SIA Letter, *supra*, note. 5.

[26] *Id.*

[27] *See* Amendment No. 2, *supra* note 6.

[28] *See* Smith Barney Letter, *supra* note 5.

[29] *See* Amendment No. 2, *supra* note 6.

[30] *See* SIA Letter, *supra* note 5.

[31] *See* Amendment No. 2, *supra* note 6.

[32] 15 U.S.C. 78o–3.

[33] In approving this rule, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78o–3(b)(6).

[35] The Commission is simultaneously approving the NYSE's amended proposal, File No. SR–NYSE–97–25.

[36] The Commission encourages the NASD, the NYSE, and others to continue to consider additional measures focusing on introducing and clearing firm processes that would assist in detecting and deterring fraudulent and manipulative activities.

representative. The Commission notes one commenter's concern that the proposal is duplicative because existing NASD Rule 3070(c) requires member firms to report to the Association statistical and summary information regarding customer complaints.[37] The Commission, however, believes that because this proposal would require the submission of a copy of the actual complaint to the DEA, the proposed reporting requirements supplement, rather than duplicate, the existing reporting requirements.

Moreover, the Commission agrees with the commenters that the notification provisions, initially proposed, which required clearing firms to advise complaining customers of their right to transfer their accounts, could have created the perception that the subject of the customer's complaint warranted a transfer. Many customer complaints relate to operational issues, such as delayed dividend checks, and are easily resolved by the firm. The Commission believes that broader investor education initiatives designed to inform investors of their rights would more effectively achieve the same objectives without creating the possibility of unnecessary confusion. The Commission is working with the SROs on educational initiatives in this area. Accordingly, the Commission believes that the Association's proposal to delete the proposed notification provision is appropriate.

B. Exception Reports

The proposal also would require clearing firms to provide a list of all reports that are offered to their introducing firms and would require each introducing firm to provide its clearing firm with a list of specific reports requested. The proposal further would require clearing firms to provide to their introducing firms and their introducing firm's DEA written annual notice, within 30 days of July 1, of the list of reports offered to each introducing firm and to specify those reports actually requested or supplied as of the report date.

Exception and other reports are important in the monitoring and supervision of customer accounts, from both a risk management and customer services perspective. For example, reports that flag unusual account activity or possible unauthorized trades may allow for early detection and correction of potential problems with a firm's supervisory procedures, operations, or an individual registered representative. The Commission therefore believes that the Association's proposal will enhance the firm's supervisory procedures and give DEAs more information to identify potential weaknesses at individual firms.

The Commission disagrees with the comment that the Association's rules should dictate certain basic reports that every introducing broker should receive.[38] The Commission is concerned that because an industry standard has not been established at this time, encouraging the NASD to establish a list of "basic" reports would likely result in many introducing brokers obtaining no more than that minimum, despite the fact that a particular introducing firm may need more comprehensive information. That being said, however, the Commission notes that it is the responsibility of each introducing firm to obtain from its clearing firm or elsewhere all relevant information that the introducing firm requires to adequately supervise and monitor its operations, including the handling of customers' accounts.

The Commission believes that the Association's proposal to amend the rule language to require clearing firms to provide the requisite notification regarding exception and other reports offered, supplied to, or requested by the introducing firm as of a specific date, rather than through the course of the year, is reasonable. The Commission also supports the NASDR's proposed deletion of the requirement that, at the request of the introducing firm's DEA, the clearing firm must provide reports that were offered to the introducing firm, but which the introducing firm declined to receive.

The Commission believes that these revisions to the original proposal should not diminish the value of the proposed amendments to NASD Rule 3230 as a supervisory tool. Information regarding reports available and those reports requested as of a specific date should assist both the introducing firm in assessing its prospective needs and the introducing firm's DEA in its regulatory efforts. Even without a reporting requirement, the DEA will still be able to determine which reports were made available to the introducing firm, and which were not requested. In addition, the Commission notes that both of these proposed revisions to the Association's original filing seek to conform the NASD's proposal to that submitted by the NYSE. The Commission believes that uniformity between the NASD's and the NYSE's rules in this area should ease the compliance burden on introducing firms and their clearing brokers alike, as well as enhance the usefulness of the rules for the firms' respective DEAs.

Finally, the Commission notes that the proposed requirements relating to exception reports apply to all clearing firm/introducing firm relationships, regardless of the manner in which the data is transmitted from the clearing firm to the introducing firm. Therefore, the proposed rules are equally applicable to clearing agreements that provide for the transmission from the clearing firm to the introducing firm of raw data, rather than information organized in a formatted report. Under either scenario, the Commission expects the introducing firm to determine what information is needed for the proper supervision of its customer accounts, and to have the ability to use the data provided by its clearing firm in its supervisory efforts.

C. Exemption for Good Cause Shown

The NASD is proposing to include an exemption from the customer complaint and exception report provisions of the proposal for those situations in which clearing firms are already performing these compliance functions for their introducing firm affiliates. The Commission believes that it is reasonable for the Association to have the authority to grant such an exemption in the limited circumstances in which the introducing firm is an affiliated entity of the clearing firm to avoid duplication of efforts.

D. Negotiable Instruments

The Commission believes that the proposed procedures to be followed by introducing firms that issue negotiable instruments for which the clearing firm is the maker or drawer are reasonable. Specifically, the Commission believes that it is appropriate for the introducing firm to be required to represent to the clearing firm that it has supervisory procedures in place, which it enforces, and which are satisfactory to the clearing firm. A clearing firm that finds that its introducing firm does not have minimal safeguards and procedures for the issuance of checks drawn on the clearing firm's account should, at a minimum, reexamine its relationship with the introducing firm. The Commission views the proposed requirement as a supplement to, rather than a replacement for, any other obligation or legal liability of the clearing firm as maker or drawer of the instrument.[39]

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[37] *See* T. Rowe Price, *supra* note 5.

[38] *See* T. Rowe Price Letter, *supra* note 5.

[39] *See e.g.*, NASD Guide to Rule Interpretations 1998, p. 75, Ability of a (k)(2)(ii) Broker/Dealer to

Continued

The Commission finds good cause for approving proposed Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the NASDR modifies the original filing in response to specific comments raised in three comment letters. Specifically, Amendment No. 2 deletes the proposed rule language requiring clearing firms to include in their responses to customer complaints a statement regarding the customer's right to transfer the account to another broker-dealer. As discussed above, the Commission believes that alternative investor education initiatives should inform public customers of their rights without raising the possibility of customer confusion regarding whether the clearing firm believes such action is warranted. Amendment No. 2 also adds a good cause exclusion from certain provisions of the proposed rule in certain circumstances. In Amendment No. 2, the NASDR also proposes several amendments to conform its proposed rule language to that proposed by the NYSE. In Amendment No. 3, the NASDR limits the proposed good cause exemption to situations in which the introducing firm is an affiliated entity of the clearing firm. As the modifications proposed in Amendment Nos. 2 and 3 are reasonable and do not significantly alter the original proposal, the Commission believes that Amendment Nos. 2 and 3 raise no new issues of regulatory concern. Accordingly, the Commission believes that it is consistent with Section 6 of the Act[40] to approve Amendment Nos. 2 and 3 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–76 and should be submitted by June 30, 1999.

VI. Conclusion

The Commission believes that the proposal, as amended, should significantly assist the efforts of introducing firms and their DEAs to fulfill their supervisory responsibilities. Specifically, the Commission believes that, by ensuring that clearing firms provide introducing firms with important information about their customers' accounts and by requiring that the introducing firms have in place supervisory procedures with respect to their issuance of negotiable instruments, the proposed rules should enhance good business practices by introducing firms. Further, by requiring that introducing firms receive copies of customer complaints and exception and other reports about their customers' accounts, the proposal should assist introducing firms in more quickly identifying and addressing potential problems with their supervisory procedures, operations, or an individual registered representative. This should reduce the risks to both the firm and its customers from questionable sales practices and potentially fraudulent activity.

In addition, the Commission believes that the proposal should also assist the regulatory efforts of the introducing firms' DEAs. Specifically, the Commission believes that the proposal may allow earlier detection by an introducing firm's DEA of potentially fraudulent activity, which will benefit investors and the public. Therefore, the Commission finds the approval of the proposed rule change, as amended, is consistent with the requirements of the Act applicable to a national securities association, and in particular, with the requirements of Section 15A(b)(6) of the Act[41] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[42] that the proposed rule change (SR–NASD–97–76) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14576 Filed 6–8–99; 8:45 am]

BILLING CODE 8010–01–M

Write Checks on Behalf of the Clearing Firm, *see also* Amendment No. 2, *supra* note 6.

[40] 15 U.S.C. 78f.

[41] 15 U.S.C. 78o–3.

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations (DCO). Notice is hereby given that Section S2.20 and Subchapter S2N are being amended to reflect responsibility for coordinating and implementing a comprehensive, nationwide program for DCO focusing on systems security and programmatic fraud. The changes are as follows:

Section S2.20 *The Office of the Deputy Commissioner, Operations*—(Functions):

Amend as follows:

1. The Office of Public Service and Operations Support (OPSOS) (S2N) provides operations analysis, program support, service to the public and employee services for the Deputy Commissioner, Operations (DCO), and conducts studies and analyses. Provides broad operations support to FOs, TSCs, PSCs, and the Office of Central Operations. OPSOS also integrates operational delivery of public services under the RSDI, SSI and health insurance (HI) programs for domestic beneficiaries and delivery of RSDI program services for foreign beneficiaries. Provides broad operations support to the maintenance of activities associated with the overall effectiveness and efficiency of the DCO components. Coordinates and implements a comprehensive DCO nationwide program to focus on systems security and programmatic fraud. Directs and coordinates internal management support functions to ensure effective position management, workforce utilization and management analysis and planning. Directs the overall DCO budget process. Plans, implements, manages and assesses the interrelated duties of delivery of SSA program and related services to the public.

Section S2N.00 *The Office of Public Service and Operations Support*—(Mission):

Amend as follows:

The Office of Public Service and Operations Support (OPSOS) is responsible for providing operational/program support and conducting studies and analyses related to service to the public, employee services and activities associated with financial management, budget and management information. The office provides broad operations support to the FOs, TSCs, PSCs and the Office of Central Operations. OPSOS is also responsible for integrating operational delivery of public services under the RSDI, SSI and HI programs for domestic beneficiaries and for the delivery of RSDI program services to foreign beneficiaries. Additionally, the Office provides broad operations support to the maintenance of the basic earnings data which support the Social Security programs. It conducts studies, pilots and other activities associated with the overall effectiveness and efficiency of DCO components. OPSOS provides support and guidance to the DCO, Operations' Associate Commissioners, Regional Commissioners, regional and OCO security officers and managers, FOs, TSCs, and PSCs on a broad range of security and program integrity issues. It directs and coordinates internal management support functions to ensure effective position management, workforce utilization and management analysis and planning. It directs the overall DCO budget process and plans, implements, manages and assesses the interrelated duties of delivering SSA program and related services to the public.

Section S2N.20 *The Office of Public Service and Operations Support*—(Functions):

Amend as follows:

C. The Immediate Office of the Associate Commissioner for Public Service and Operations Support (S2N) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities. Ensures open and effective communication with employees and Union representatives. Coordinates and implements a comprehensive DCO nationwide program to focus on systems security and programmatic fraud.

Dated: May 27, 1999.

John R. Dyer,

Principal Deputy Commissioner of Social Security.

[FR Doc. 99–14528 Filed 6–8–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 3044]

Shipping Coordinating Committee; Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, June 22, 1999, at 9:30 AM in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the forty-third session of the Marine Environment Protection Committee (MEPC 43) of the International Maritime Organization (IMO). MEPC 43 will be held from June 28–July 2, 1999. Proposed U.S. positions on the agenda items for MEPC 43 will be discussed.

The major items for discussion for MEPC 43 will begin at 9:30 AM and include the following:

a. Implementation of the OPRC Convention and the OPPR Conference resolutions

b. Harmful effects of the use of anti-fouling paints for ships

c. Harmful aquatic organisms in ballast water

d. Consideration and adoption of amendments to mandatory instruments

e. Identification and protection of Special Areas and Particularly Sensitive Sea Areas

f. Inadequacy of reception facilities

g. Prevention of air pollution from ships

h. Interpretation and amendments of MARPOL 73/78 and related Codes

i. Role of the human element with regard to pollution prevention

Members of the public may attend this meeting up to the seating capacity of the room. For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander John Meehan, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone: (202) 267–2714.

Dated: June 4, 1999.

Susan K. Bennett,

Director, Office of Transportation Policy.

[FR Doc. 99–14634 Filed 6–8–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 3058]

Bureau of Political-Military Affairs; Suspension of Munitions Export Licenses and Other Approvals Destined for Russian Companies and Related Matters

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Section 38 of the Arms Export Control Act and section 126.7 of the International Traffic in Arms Regulations, all licenses and other approvals for defense articles and defense services involving certain Russian entities, identified below, are suspended, effective immediately. Notice is further given that it is the policy of the United States to deny licenses, other approvals, exports and temporary imports of defense articles and defense services destined for these Russian entities.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Deputy Director, Department of State, Office of Defense Trade Controls, Department of State, 703–812–2568.

SUPPLEMENTARY INFORMATION: Section 126.7 of the International Traffic in Arms Regulations (ITAR) provides that any application for an export license or other approval under the ITAR may be disapproved, and any license or other approval or exemption granted under the ITAR may be revoked, suspended or amended without prior notice under various circumstances, including whenever such action is deemed to be in furtherance of world peace, the national security or the foreign policy of the United States or is otherwise advisable.

Pursuant to section 126.7(a)(1) of the ITAR, it is deemed that suspending the following foreign entities from participating in any activities subject to Section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States. Therefore, until further notice, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense articles and defense services from the United States; (b) transfers of U.S.-origin defense articles and defense services from foreign destinations; and (c) temporary import of defense articles to or from the following entities:

(1) Tula Instrument Design Bureau (including at Tula 300001, Russia);

(2) Volsk Mechanical Plant (including at Saratov Region, 412013, Volsk, Russia);

(3) Central Scientific Research Institute of Precision Machine-Building, aka Tzniitochmash (including at 142080 Klimovsk, Russia).

Furthermore, it is the policy of the United States to deny licenses and other approvals for exports and temporary imports of defense articles and defense services destined for these Russian entities.

Dated: June 3, 1999.

Eric D. Newsom,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 99–14635 Filed 6–8–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

DOT Partnership Council; Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

Time and Place: The Council will meet on Wednesday, June 23, 1999, at 10 a.m., at the Department of Transportation, Nassif Building, room 10214, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 10th floor.

Type of Meeting: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

Point of Contact: Jean B. Lenderking, Corporate Human Resource Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–8085.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to brief the Council on the Federal Employees Cancer Warmline, the Life with Cancer Signature Project in memory of the late American Federation of Government Employees (AFGE) President John Sturdivant; report sites identified for assessment during Phase II of DOT labor-management climate study; and showcase new DOT Partnership Council web-site.

Pubilc Participation: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by June 14, 1999 in order to be considered at the June 23rd meeting.

Issued in Washington, DC, on June 3, 1999.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Human Resource Leadership Division.

[FR Doc. 99–14621 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21–38A, Disposition of Scrap or Salvageable Aircraft Parts and Materials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the proposed Advisory Circular (AC) 21–38A, Disposition of Scrap or Salvageable Aircraft Parts and Materials, for review and comment. When an aviation part is not eligible for installation on an aircraft, aircraft engine, or aircraft propeller and the owner wishes to dispose of it, the part may either be salvageable or scrap. This AC provides information and recommendations to help manufacturers and other persons involved in the control, distribution, sale, maintenance, or disposal of scrap or salvageable aircraft engines, aircraft propellers, and aircraft parts and materials, by ensuring parts and materials are disposed of in a manner that does not allow them to be misrepresented as serviceable parts.

DATES: Comments submitted must be received no later than August 9, 1999.

ADDRESSES: Copies of the proposed AC 21–38A can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production and Airworthiness Certification Division, AIR–200, Room 815, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Loyal Woodworth, Federal Aviation Administration, Production and Airworthiness Certification Division, AIR–200, Room 815, 800 Independence Avenue, SW, Washington, DC 20591, 202–267–8361. The e-mail address is loyal.woodworth@faa.gov.

SUPPLEMENTARY INFORMATION: Interested persons are invited to comment on the proposed AC 21–38A listed in this notice, by submitting such written data, views, or arguments as they desire to the aforementioned address. Comments must be marked "Comments to AC 21–38A." All communications received on or before the closing date for comments will be considered by the Director, Aircraft Certification Service, before issuing the final AC. Comments received on the proposed AC 21–38A may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue, SW, Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on June 3, 1999.

Terry A. Allen,

Acting Manager, Production and Airworthiness Certification Division, AIR–200.

[FR Doc. 99–14615 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of the Record of Decision on the Potomac Consolidated Terminal Radar Approach Control (TRACON) Facility

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of Record of Decision for the Potomac Consolidated TRACON.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and FAA Order 1050.ID, Policies and Procedures for Considering Environmental Impacts, the Federal Aviation Administration (FAA) has made a final determination to consolidate the workforces and functions of the four Terminal Radar Approach Control (TRACON) facilities in the Baltimore-Washington area. These four stand-alone TRACONs are located at Baltimore-Washington International Airport (BWI), Ronald Reagan Washington National Airport (DCA), and Washington Dulles International Airport (IAD); and the FAA operated TRACON located at Andrews Air Force Base, Maryland (ADW). The facility will be called the Potomac Consolidated TRACON (PCT) and will be housed in a new building to be constructed at the former Vint Hill Farms Station in Fauquier County, Virginia.

The PCT will be established in a manner consistent with the alternative "Consolidation of DCA, IAD, BWI, and ADW TRACONs" described in the Final

Environmental Impact Statement (FEIS) as the preferred alternative. The FAA issued the FEIS on April 19, 1999. The FEIS analyzed two alternatives in detail. The first or No Action alternative would require physical replacement of the Baltimore and Dulles TRACONs, but would not consolidate the four facilities. The second or preferred alternative would provide full consolidation at one of two possible locations. The FEIS identified the preferred location as Vint Hill Farms.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE RECORD OF DECISION CONTACT: Mr. Joseph Champley, Project Support Specialist, Federal Aviation Administration, (800) 762–9531, Email: joe.champley@faa.gov.

The Record of Decision can be viewed on the Internet at http://www.faa.gov/ats/potomac.

Dated: June 3, 1999 in Washington, DC.

John Mayrhofer,

Director, TRACON Development Program.

[FR Doc. 99–14616 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Factors Affecting Award of Airport Improvement Program (AIP) Discretionary Funding

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) reiterates four factors that may militate against a decision by the FAA to award AIP discretionary funding to an airport sponsor. These factors are: revenue diversion; delinquent submissions of financial reports; unsatisfactory progress on existing grant agreements; and use of AIP entitlements funds on low priority development as calculated under the FAA's National Priority System (NPS) equation.

FOR FURTHER INFORMATION CONTACT: Mr. Barry L. Molar, Manager, Airports Financial Assistance Division, APP–500, on (202) 267–3831.

SUPPLEMENTARY INFORMATION: The FAA manages the AIP in accordance with statutory direction and agency policies and criteria. Decisions to award discretionary grants are made on the basis of a number of factors, including project evaluation under the NPS. The Congress has directed that FAA take certain additional factors into consideration. The FAA hereby provides notice and explanation of those factors, and the manner in which the FAA will consider them in making decisions on discretionary grants.

1. Improper Diversion of Airport Revenue

Airport sponsors receiving federal grants under the Airport Improvement Program (AIP) are subject to a number of statutory conditions, one of which restricts the use of airport revenue. The FAA published a notice of final policy and procedures concerning the use of airport revenues (64 FR 7696). The Notice defines proper and improper uses of airport revenue and describes actions the FAA may take to address improper revenue use.

It is the intent of the FAA to generally withhold AIP discretionary funding to those airports requesting such funding that are being investigated by the FAA for misuse of airport generated revenue. Airports qualifying under Title 49 U.S.C. 47107(b)(2) are exempted from this policy. This provision recognizes the rights of "grandfathered" airport sponsors to use airport revenues for other purposes. However, as discussed below, payments permitted under the "grandfather" provision may be considered a militating factor against the award of discretionary grants in certain circumstances.

General Rule

Title 49 U.S.C., Sections 47107(b) and 47133; generally requires airport revenues to be used for the capital or operating costs of the airport, the local airport system, or other facilities owned or operated by the airport sponsor and directly and substantially related to the actual air transportation of persons or property. If the FAA finds that an airport is not complying with this statute, after providing notice and an opportunity for hearing, and the sponsor does not take satisfactory corrective action, various enforcement actions are mandated or authorized. The enforcement actions affecting AIP funding that the FAA is authorized or required to take include any of the following, or combination thereof: withholding of future AIP entitlement and discretionary grants (49 U.S.C. 47106(d), 47111(e)); withholding approval of the modification of existing grant agreements that would increase the amount of AIP funds available (section 47111(e)); and withholding payments under existing grants (section 47111(d)).

Grandfather Provision

Under the "grandfather provision" of the revenue use requirement, sections 47107(b) and 47133(b), an airport operator may use airport revenues for local purposes other than those proscribed in sections 47107 and 47133 if a provision of law controlling the airport operator's financing enacted on or before September 2, 1982 or a covenant or assurance in an airport operator's debt obligation issued on or before September 2, 1982 provides for the use of airport revenues from any facility of the airport operator to support general debt obligations or other facilities of the airport operator. The statutory revenue-use provisions also permit local taxes on aviation fuel in effect on December 30, 1997 to be used for any local purpose.

Thus, the use of airport revenue for local purposes under these exceptions does not preclude the award of AIP grants to an airport operator. However, under 49 U.S.C. § 47115(f), the FAA must, in certain circumstances, consider as a factor militating against the distribution of discretionary AIP funding; the use of airport revenue for local purposes under the "grandfather provision." This militating factor applies only if the airport revenue so used in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of revenues used in the airport's first fiscal year ending after August 23, 1994, and adjusted for changes in the Consumer Price Index. In addition, the airport's failure to provide information needed by the FAA to determine whether Section 47115(f) applied to a specific grant application would prevent the FAA from making an evaluation required by Section 47115(f), and thus, would prevent the FAA from considering an application for discretionary funds.

2. Annual Financial Reports

Section 111(c) of the Federal Aviation Administration Authorization Act of 1994 (the 1994 Act) requires the Secretary of Transportation to submit to the Congress, and to make available to the public, in annual report listing in detail certain financial information requiring individual airport revenues and expenditures. The data is derived from reports by airport owners or operators, also required by Section 111(a)(19) of the 1994 Act. Under the authority of Assurance 26 of the Airport Sponsor Assurances, airport sponsors are required to submit annual reports. The FAA's September 10, 1998, Advisory Circular (AC) titled *Guide for Airport Financial Reports Filed by Airport Sponsors* specifies the report format and due dates.

Failure of an airport sponsor to file airport financial reports by the due date will cause FAA to withhold award of AIP discretionary funds. The sponsor will not be considered for discretionary funds until it provides acceptable corrective action and is determined by the FAA to be in compliance with the reporting requirements. If the FAA makes a determination that the sponsor is in noncompliance with Assurance 26, it may withhold all sources of AIP funding (both discretionary and entitlement). The FAA will suspend processing of discretionary grants (grants for funds not apportioned under Section 47111(e)) immediately upon determining that a sponsor's airport financial reports are overdue.

3. Progress on Existing Grant Agreements

As a general policy, the FAA encourages sponsors to take construction bids prior to submitting an application of AIP grants. Bid-based grants more accurately reflect actual project costs, allow for more efficient management of AIP obligations, and help to ensure sponsors proceed timely with projects. When AIP funds are obligated by a grant, airport sponsors are encouraged, to the extent practicable, to make timely AIP draw downs as they incur costs leading to completion of their projects. FAA financially closes AIP projects as soon as possible following physical completion of the project. Close adherence to this policy helps to ensure that AIP funds do not remain idle after they are obligated in a grant, that a sponsor complete projects in a timely manner, and that the need to amend grants to accommodate higher costs is minimized. This policy has been developed and applied by the FAA, prior to the advent of the AIP, to foster effective financial management of federal grant funds.

The airport sponsor's management of past AIP grants can influence FAA's consideration of AIP discretionary funds for proposed projects. Efficient and expeditious implementation by airport sponsors of past grant is encouraged. Factors which may militate against the distribution of discretionary funds include: failure to financially close a physically completed project in a timely manner; inability to commence or complete work under an approved grant in a timely manner; and, having an excessive number of open, uncompleted grants.

The FAA understands that there may be compelling that justify relaxation of the general policy in light of specific local factors. FAA will take these factors into consideration when evaluating requests that contemplate the use of discretionary funds, and in accordance with FAA policy, thoroughly document exceptions to this general rule.

4. Sponsor Use of Entitlement Funds

The FAA encourages airport sponsors to use entitlement funds on the "highest priority" work at the airport as calculated under the FAA's National Priority System (NPS) equation. A detailed discussion of the NPS was published in the **Federal Register** Notice dated August 25, 1997, entitled *Revisions to the Airport Capital Improvement Plan (ACIP) National Priority System*. For purposes of determining whether sponsor entitlements are being used on high priority projects, the FAA will calculate the priorities of sponsor work items from the NPS equation. This policy helps ensure that AIP funds in the aggregate are used for projects that contribute most to the safety, security, capacity, and efficiency of the Nation's system of airports. Conversely, if sponsors use entitlement funds for lower priority projects and FAA agrees to use discretionary funds for the highest priority projects, the aggregate result of AIP investments is likely to provide less benefits to the national system than under FAA's policy.

Therefore, if the FAA determines that an airport sponsor is using its entitlement funds on low priority rated projects while requesting discretionary funds for higher priority rated work, the FAA may withhold discretionary funds requested by the sponsor.

As with a sponsor's rate of progress on existing grants, the FAA understands that there may be legitimate circumstances for a sponsor to use its entitlement funds for lower priority work. In addition, the FAA is fully cognizant that the NPS equation cannot always demonstrate the total benefit of a project to the airport or the national system. Consequently, the FAA will thoroughly evaluate a sponsor's justification prior to denying a request for discretionary funding on the basis of the sponsor's use of entitlements for lower priority projects. In accordance with FAA policy, such exceptions must be documented by the airport sponsor and submitted to FAA. Issued in Washington, DC on May 25, 1999.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 99–14481 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Submission of Application Under the Airport Improvement Program (AIP) for Fiscal Year 1999 for Sponsor Entitlement and Cargo Funds

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces July 12, 1999, as the deadline for each airport sponsor to have on file with the FAA an acceptable fiscal year 1999 grant application for funds apportioned to it under the AIP.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: Section 47105(f) of title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). Notification of the sponsor's intent to apply during fiscal year 1999 for any of its available entitlement funds including those unused from prior years, shall be in the form of a project application submitted to the cognizant FAA Airports office no later than July 12, 1999.

This notice is promulgated to expedite and prioritize grants prior to the August 6, 1999, AIP expiration date as established by Public Law 106–31 (1999 Emergency Supplemental Appropriations Act). Absent an acceptable application by July 12, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(g), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds.

In prior fiscal years, FAA has had sufficient program flexibility to permit sponsors to provide notice later than the deadline date, or to use entitlement funds later in a fiscal year in spite of filing no notice to that effect. In FY 1999, however, FAA must make all discretionary grant awards prior to August 7, 1999, including discretionary grants of entitlement funds that are available to, but will not be used by, the airport sponsors to which they have been apportioned. Airport sponsors that

fail to notify FAA by the deadline date that they intend to use all or a portion of their entitlement funds in FY 1999 may have access to those funds in FY 1999 after August 6, only if legislation is enacted prior to October 1, 1999, to authorize the AIP beyond September 30. This includes prior year entitlement funds that remain available to an airport sponsor only through fiscal year 1999. In all other cases, airport sponsors may request unused entitlements after September 30, 1999.

The FAA views the receipt of this notice from the sponsors of primary commercial service airports as particularly important this fiscal year. The ability to use the contract authority associated with unused entitlement funds on a discretionary basis during the current truncated program will allow FAA to obligate additional critically needed AIP funds by August 6. This abbreviated "year-end conversion" will result in more discretionary dollars for airport development. For these reasons, the FAA will rely heavily upon the extent to which responses to the required notice indicate the availability of unused entitlement funds for discretionary use. Inasmuch as the FAA will be able to obligate these funds after August 6 as entitlements only with the enactment of follow-on authorizing legislation, sponsors are advised to give careful consideration to decisions related to the use of entitlement funds during fiscal year 1999.

Issued in Washington, DC on May 26, 1999.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 99–14620 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose the Revenue From and Use the Revenue From a Passenger Facility Charge (PFC) at Jackson International Airport, Jackson, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose the revenue from and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 9, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 120 North Hangar Drive, Jackson, MS 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dirk Vanderleest, Executive Director of the Jackson Municipal Airport Authority at the following address: Post Office Box 98109, Jackson, MS 39298–8109.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jackson Municipal Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 120 North Hangar Drive, Jackson, MS 39208–2306, (601) 965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites pubic comment on the application to impose the revenue from and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 2, 1999, the FAA determined that the application to impose the revenue from and use the revenue from a PFC submitted by Jackson Municipal Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 25, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–03–C–00–JAN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 2000.

Proposed charge expiration date: January 1, 2003.

Total estimated PFC revenue: $5,577,870.

Brief description of proposed project(s): Terminal Renovations; Rehabilitate East Parallel Taxiway.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators (ATCO) required to file FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Municipal Airport Authority.

Issued in Jackson, MS on June 2, 1999.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 99–14617 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Killeen Municipal Airport, Killeen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Killeen Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 9, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Don O. Christian, Director of Aviation, at the following address: Mr. Don O. Christian, Director of Aviation, City of Killeen, 1525 Airport Drive, Box A, Killeen, Texas 76543–5536.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Killeen Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 27, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 24, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1999.

Proposed charge expiration date: July 1, 2005.

Total estimated PFC revenue: $2,103,736.00.

PFC application number: 99–04–C–00–ILE.

Brief description of proposed projects:

Projects To Impose and Use PFC's

(1) Perform Airport Master Planning, Advanced Design, and Program Management for a Passenger Terminal Facility, (5) Joint Use Feasibility and Environmental Study, (6) Refurbish ARFF Vehicle, and (7) Apron Electrical and Lighting Upgrades.

Projects To Impose PFC's

(2) Terminal Facility Site Work and Utilities, (3) Construct Passenger Terminal Building and Apron, and (4) Construct East Side Parallel and Connecting Taxiways to Runway 15/33 at Robert Gray AAF.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR part 135 air charter operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Killeen Municipal Airport.

Issued in Fort Worth, Texas on May 27, 1999.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 99–14619 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lebanon Municipal Airport, Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Lebanon Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 9, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy J. Edwards, at the following address: Airport Manger, 5 Airpark Road, West Lebanon, New Hampshire 03784.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Lebanon under § 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Lebanon Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158)..

On May 20, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Lebanon was substantially complete within the requirements of § 158.25 if part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in par, no later than August 17, 1999.

The following is a brief overview of the impose and use application.

PFC Project#: 99–03–C–00–LEB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2000.

Proposed estimated charge expiration date: August 1, 2002.

Estimated total net PFC revenue: $181,075.

Brief description of project: Reconstruct Runway 18–36, Replace Seven Hilltop Obstruction Beacons, Airport Master Plan Update—Air Service Study, and PFC Administration.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTRACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lebanon Municipal Airport, 5 Airpark Road, West Lebanon, New Hampshire.

Issued in Burlington, Massachusetts on May 24, 1999.

Bradley A. Davis,

Assistant Manager, Airports Division, New England Region.

[FR Doc. 99–14618 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Centre County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Centre County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E. Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 536, Harrisburg, PA 17101–1720, Telephone: (717) 221–3411 or Steven Fantechi, P.E., Project Manager, Pennsylvania Department of Transportation, District 2–0, 1924–30 Daisy Street, PO Box 342, Clearfield, Pennsylvania, 16830, Telephone: (814) 765–0677.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives for transportation improvement which address identified transportation problems within South Central Centre County, Pennsylvania. The study includes U.S. Route 322, PA 144, PA 45, PA 192 and various local roadways. The initial stage of the project is for scoping, documentation of project need and development of conceptual alignment corridors. A range of conceptual alignment corridors will be developed within the context of the identified project needs, environmental constraints and public input. Possible alternatives include upgrade of existing facilities, no-build, construction on new alignment, Transportation System Management strategies, or a combination of alternatives. A complete public involvement program is part of the project.

Letters describing the proposed actions and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 2, 1999.

Ronald W. Carmichael,

FHWA Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 99–14626 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–5429]

Burlington Northern Santa Fe Railway

Public Hearing

The Burlington Northern Santa Fe Railway (BNSF) has petitioned the Federal Railroad Administration (FRA) seeking a permanent waiver of compliance with the Locomotive Safety Standards, Title 49, Code of Federal Regulations (CFR), § 229.21, which requires each locomotive in use shall be inspected once during each calendar day. BNSF seeks this waiver for locomotives utilized to haul loaded coal trains through Alliance, Nebraska. BNSF states that these locomotives are inspected prior to hauling empty coal trains to the mines for loading.

This proceeding is identified as FRA–1999–5429. FRA has issued a public notice seeking comments of interested parties and has conducted a field investigation in this matter. After examining the carrier's proposal and letters of protest, FRA determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9:00 a.m. on Wednesday, July 7, 1999, at the Porter House Restaurant located at 117 Box Butte Avenue, Alliance, Nebraska. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR § 211.25) by a representative designated by FRA.

The hearing will be a non-adversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on June 1, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–14627 Filed 6–8–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–425 (Sub–No. 1X) and AB–426 (Sub–No. 1X)]

Lone Star Railroad, Inc.—Abandonment Exemption—in Taylor and Jones Counties, TX

Southern Switching Company—Discontinuance of Service Exemption—in Taylor and Jones Counties, TX

On May 20, 1999, Lone Star Railroad, Inc. (LSRI), and Southern Switching Company (SSC) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemptions from the provisions of 49 U.S.C. 10903 for LSRI to abandon, and SSC to discontinue service over, a 4.5-mile line of railroad, known as the North Abilene Line, extending from milepost 147.3 at or near Abilene to milepost 142.8 at or near North Abilene, in Taylor and Jones Counties, TX.[1] The line traverses U.S. Postal Service Zip Code 79601 and includes the station of North Abilene.

The line does not contain federally granted rights-of-way. Any documentation in LSRI's and SSC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting exemption proceedings pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 7, 1999.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the exemptions. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public

[1] LSRI owns the line and SSC operates it pursuant to a contract with LSRI.

use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 29, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–425 (Sub-No. 1X) and AB–426 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902. Replies are due June 29, 1999.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 26, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–14599 Filed 6–8–99; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 64, No. 110
Wednesday, June 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[I.D. 012099C]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

Correction

In rule document 99–13206, beginning on page 28413, in the issue of Wednesday, May 26, 1999, make the following correction:

On page 28413, in the first column, the CFR title and part should read as set forth above.

[FR Doc. C9–13206 Filed 6–8–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

Correction

In rule document 99–12021 beginning on page 25437, in the issue of Wednesday, May 12, 1999, make the following correction:

§ 706.2 [Corrected]

On page 25437, in the third column, in amendatory instruction 2, in the first line, "15" should read "16".

[FR Doc. C9–12021 Filed 6–8–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 169

[USCG-1999-5525]

RIN 2115-AF82

Mandatory Ship Reporting Systems

Correction

In rule document 99–13781, beginning on page 29229, in the issue of Tuesday, June 1, 1999, make the following corrections:

1. On page 29230, in the first column, in the first line, "July 1, 1999" should read "August 2, 1999".

2. On the same page, in the same column, in the fifth line "July 1, 1999" should read "August 2, 1999".

[FR Doc. C9–13781 Filed 6–8–99; 8:45 am]

BILLING CODE 1505–01–D

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federal register

Wednesday
June 9, 1999

Part II

Environmental Protection Agency

40 CFR Part 180
Pesticides; Tolerance Processing Fees
Proposed Rule

VOL 64 ISS 110 JE 9 1999 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–30115; FRL–6028–2]

RIN 2070–AD23

Pesticides; Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: The Food Quality Protection Act of 1996, by providing increased protection from the risks of pesticides especially to infants and children, has changed the number of regulatory actions that now fall under the heading of "tolerance processing" along with the responsibilities associated with reviewing tolerance petitions and other tolerance actions. In addition, over the last 15 years, factors such as expanded data requirements, changes in risk assessment methods, improvements in data base management and tracking systems, and the increasing complexity of scientific review of petitions have resulted in costs substantially exceeding the fees currently charged. Today, the difference between costs for processing tolerance actions and fees collected is substantial. This proposal, when promulgated, will make the tolerance processing system self-supporting. It would revise the fees charged for processing tolerance actions for pesticides under the Federal Food, Drug, and Cosmetic Act. The statute requires EPA to collect fees that will, in the aggregate, be sufficient to cover the costs of evaluating tolerances for pesticide products. Once in place, the financial burden to process tolerance actions would be borne primarily by those constituencies who directly benefit, rather than by the taxpayer.

DATES: Written comments, identified by the docket control number [OPP–30115], must be received on or before September 7, 1999.

ADDRESSES: Comments must be submitted by regular mail, electronically or in person. Please follow the detailed instructions for each method as provided in Unit I of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Carol Peterson, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (703) 305–6598; e-mail: peterson.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This proposed rule may directly affect any person who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or anyone who is interested in obtaining or retaining a tolerance in the absence of a registration. This group can include pesticide manufacturers or formulators, companies that manufacture inert ingredients, importers of food, grower groups, or any person who seeks a tolerance. Federal, State, local, territorial, or tribal government agencies that petition for, or hold, emergency exemption tolerances are exempt from this rule. The vast majority of potentially affected categories and entities may include, but are not limited to:

Category	NAICS	SIC	Examples of Potentially Affected Entities
Chemical Industry.	325320	0286	Pesticide chemical manufacturers, formulators
.....	115112	0287	Chemical manufacturers of inert ingredients

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above could also be regulated. If available, the four-digit Standard Industrial Classification (SIC) codes or the six-digit North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice applies to certain entities. To determine whether you or your business is regulated by this action, you should carefully examine the applicability provisions in the rule (see Unit V of this preamble). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/homepage/fedrgstr/.

2. *Fax on demand.* You may request to receive a faxed copy of this document, as well as some supporting information, if available, by using a faxphone to call (202) 401–0527 and selecting item 6037, the economic analysis and item 6038 ICR form 1915.01. You may also follow the automated menu.

3. *In person.* If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number OPP–30115 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

C. How and to Whom Do I Submit Comments

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket number (i.e., "OPP–30115") in your correspondence.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epamail.epa.gov. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comment and data will also be accepted

on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–30115]. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. *How Should I Handle CBI Information That I Want to Submit to the Agency?*

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket number assigned to the notice, along with the name, date, and **Federal Register** citation.

II. Authority

Prior to being amended by the Food Quality Protection Act (FQPA), the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 321 *et seq.*) required EPA to collect fees to support the processing of petitions for tolerances (maximum allowable pesticide residue level) on raw agricultural commodities. FFDCA required EPA to collect such fees that will, in the aggregate, be sufficient to cover the costs of processing petitions, so that the tolerance program is as self-supporting as possible. FFDCA section 408(m)(1), as amended by FQPA, states that the Agency shall collect tolerance fees that, in the aggregate, will cover all costs associated with processing tolerance actions, including filing a tolerance petition and establishing, modifying, leaving in effect, or revoking a tolerance or tolerance exemption. These FQPA provisions also added to the types of regulatory actions that now fall under the heading of tolerance activities along with the responsibilities associated with reviewing tolerance petitions and other tolerance actions. EPA maintains the authority under section 408(m)(1)(D) to waive or refund part or all of the required fee when, in its judgement, the waiver or refund is equitable and not contrary to the purposes of the fee requirement.

III. Background

A. Regulatory History

Regulations governing the Agency's fee schedule were revised in 1972 and again in 1986 (40 CFR 180.33). In 1986, EPA used data from a 1983 Tolerance Cost Analysis to set tolerance petition fees "based on the actual cost of providing services." The 1986 **Federal Register** Notice also stated fees were set at "a level to recover through fees all costs of tolerance setting activity, less specifically waived or excluded activities."

Cost data for each type of tolerance action were developed using employee time accounting information, along with data on the number of completed actions for tolerance petitions, the frequency of actions, and processing costs by fee categories. Fiscal year (FY) 1982 was the base year used to gather data for direct costs and completions by fee category. Using the figure of $38,900 as the average salary and expenses for a full-time EPA employee, per tolerance category, the total annual cost of the tolerance program (in FY82) per tolerance type was calculated.

Over the years, tolerance fees have been increased only to reflect annual increases in Federal salaries. For instance, in 1986, the fee for a petition to establish a new tolerance, or to increase the level of an established tolerance was set at $44,100, and the fee for a petition for an exemption from the requirement of a tolerance was set at $8,100. As a result of these annual incremental payroll increases, the 1998 fees for these actions are $65,600 and $12,100, respectively.

B. Revenues

In fiscal years 1986 through 1996, tolerance fee collections ranged from $1.1 to $2.5 million and averaged $1.8 million annually. During fiscal years 1994–1996, EPA waived and/or refunded fees that amounted to $329,000 annually: an average of $91,000 annually based on those found to be in the public interest or on economic hardship plus an average of $238,000 annually from petitions submitted by the U.S. Department of Agriculture's Interregional Research Project No. 4 (IR–4)[1].

In addition to tolerance fee revenues, other sources of revenue contribute in part to tolerance activities. Product maintenance fees are currently assessed on all registered products. These fees are used to support the reregistration program. Of the total $16 million collected annually, the Agency estimates that approximately $6.72 million in revenues goes to reassessing tolerances.

Registration fees were imposed in 1988 to cover most types of registration actions. Later that same year, FIFRA was amended and these fees were temporarily suspended. FQPA extended the suspension until September 2001. However, as part of the FY 2000 budget, the administration proposes to reinstate pesticide registration fees in FY 2000. An estimated 0.38 million to be collected from the registration fee will support analyses that are needed for both general registration program activities and for tolerance setting activities. Whether it occurs in FY 2000 or in FY 2002, the costs for these analyses are not included in this tolerance fee proposal.

IV. 1997 Cost Estimates

A. Factors

Since the 1983 cost analysis, factors such as expanded data requirements, changes in risk assessment methods, improvements in data base management and tracking systems, the increasing

[1]U.S. Department of Agriculture's Interregional Research Project No. 4 (IR–4) is a program that supports the registration of minor crop use pesticides by performing crop field trial studies and generating pesticide residue data.

complexity of scientific review, and the provisions of FQPA have resulted in costs substantially exceeding the revenues from current fees.

The new FFDCA section 408(m) states that EPA must collect fees sufficient in the aggregate over a reasonable term to cover the costs incurred in processing tolerance actions. However, under the new legislation, more tolerance actions and more types of tolerance actions are required. For example, because all tolerances now are set under section 408, EPA has the authority to collect monies to cover the costs incurred for processed food tolerances or tolerances for processed foods for residues that occur following the treatment of a raw agricultural commodity. In addition, because FQPA includes other ingredients in its definition of a pesticide chemical, other tolerances are subject to fees. Similarly, section 18 emergency exemptions now require tolerances and also are subject to fees.

In addition, FQPA increases the Agency's responsibilities associated with evaluating each tolerance petition. More analyses must be performed prior to the establishment of a tolerance. EPA must now consider aggregate risk, which includes drinking water and non-occupational exposure, common mechanism of toxicity, and other factors in its tolerance reviews. The Agency must also make a specific finding that the tolerances are protective with respect to infants and children. FQPA also requires that all existing tolerances (over 9,700) be reassessed within 10 years.

All of these factors--more tolerances required, more extensive and resource intensive evaluations, and comprehensive reassessments on a short time frame--mean that the difference between costs for processing tolerance actions and fees collected is substantial.

B. Cost Analysis

Using methods similar to those used in 1983, the Agency estimated the average cost of processing tolerance actions today. It found that from fiscal year prior to the enactment of FQPA, the unit cost (that is, the cost to process one new chemical tolerance petition) was $282,600. This cost rose to $376,900 per new chemical petition after FQPA. These figures show that FQPA mandates increased tolerance processing costs for a new chemical by 33 percent. In the first 21 months since FQPA, the Agency's total costs for processing petitioned tolerances was estimated to be $7.7 million annually.

FQPA's mandate that EPA reassess all existing tolerances within a 10–year period also adds a substantial cost to the program--approximately $20.1 million annually. Many tolerances are currently being reassessed as part of the Agency's reregistration efforts on all pesticide chemicals registered prior to 1984. For these chemicals, the Agency estimates that additional analyses required by FQPA will cost about $1.7 million annually for those chemicals for which a reregistration eligibility decision has been made, and about $10.2 million annually for those pre-1984 chemicals for which a risk assessment has not yet been completed. Some examples of new program costs for which fees may be charged include the reassessment of tolerances established after 1984 and all tolerances on other chemicals. Annual costs for these two categories will amount to about $2.0 million and $4.7 million, respectively.

The overall total for processing tolerance actions for registration and reassessment activities is estimated to be $27.8 million annually. Since $7.10 million will be collected through other fees, the total annual additional amount that the Agency needs to recoup for all tolerance activities is $20.7 million. Copies of the Agency's "Tolerance Fee Economic Analysis" and supplementary materials are available in the public docket at the address given above in ADDRESSES.

C. Future Costs

EPA anticipates additional costs for processing tolerance actions in the near future. The costs will be incurred upon the implementation of FFDCA section 408(b)(2)(E) "Data and Information Regarding Anticipated and Actual Residue Levels," section 408(b)(2)(F) "Percent of Food Actually Treated," and section 408(f) "Special Data Requirements." Under these sections, whenever the Agency uses or has used anticipated or actual residue levels from field monitoring, in the evaluation of a new or existing tolerance, it must call-in additional data within 5 years to ensure that the residue levels (and associated risks) of those of the crops have not increased unacceptably. EPA is in the process of developing workplans and estimating resource needs for implementing these sections of the law in the hope of finalizing a policy by the end of 1999. Rather than delay today's proposal, the Agency hopes to issue an amendment to the Final Rule on Tolerance Fees sometime in the later part of the year 2000 to include these costs in the fee schedules.

Additional costs relating to tolerances also will stem from analyses such as, special subpopulations susceptibilities, common mechanisms of toxicity from similar substances, and endocrine effects (FFDCA sections 408(b)(2)(C) "Exposure of Infants and Children" and 408(p) "Estrogenic Substances Screening Program"). The current state of scientific knowledge does not lend itself to the development and implementation of standardized guidelines in these areas. Determining and quantifying appropriate endpoints and incorporating these endpoints into risk assessments is still very much under debate. EPA is currently working with the scientific community to determine the proper course of action and establish appropriate protocols. Once policies are made in these areas and guidelines are established, the resources required to review the data and perform the analyses will be estimated and the tolerance fee schedule will be amended to include the additional costs.

V. New Tolerance Fee System

The goal of designing and updating a new tolerance fee system is to develop a truly self-supporting tolerance program, as required by Congress. The criteria that were used in considering various approaches was a system that would be reasonable, uncomplicated, fair and equitable. Moreover, the new fee system must be fully accountable. EPA is committed to subject whatever approach is finally adopted to an annual independent audit. This will ensure the resulting tolerance fee system is adequately covering our needs and, at the same time, not overcharging those required to pay.

A. Possible Approaches

Once the total costs of the tolerance programs were determined, the question that remained was how to devise a system to recoup the money--not only who should pay, but what basis should be used to determine the fee amounts. Various approaches were considered. Each was based on a specific parameter, or factor, that would promote the Agency's goal of reducing the risks associated with pesticides.

For example, tolerance fees could be based on a sliding scale. Differential fees could be risk-based or set according to the toxicity of a chemical. The more toxic a chemical, the higher the tolerance fee would be. Biopesticides in general, reduced-risk chemicals, or candidates for FIFRA 25(b) exempted chemicals would pay the lowest fees. Another approach discussed was setting tolerance fees based on chemical use and/or usage. Similar to this approach is a fee based on sales. The underlying concept in these examples is that the more widely used chemicals usually generate the most sales for a company,

thus putting it in a better position to absorb an increased fee. Products with niche markets, or those used on minor uses would incur a much lower fee.

B. Proposed Approach

While the above approaches, and many others considered, have merit, they were dismissed for not meeting one or more of the accepted criteria. In many cases, some sort of evaluation had to be performed in order to determine the appropriate fee. Chemicals could not be easily classified until the end of our review and additional fees would have to be collected or fees rebated. Some fee structures considered were too costly to administer, required intricate screening procedures or complicated tracking systems, or were beyond our legislative authority.

The Agency opted to propose tolerance fees based on the resource needs required to review a specific type of tolerance action. Even within this approach, there were several different ways to identify the tolerance categories and assess the appropriate fee amounts. The Agency considered: (1) Continuing the practice of charging by petition, (2) charge by crop, use, or chemical, or (3) charge by tolerance. Each of the first two had significant problems. Moreover, since the Agency is shifting toward a more systematic and consistent way of tracking its actions by tolerance, it sought to design the new tolerance fee system on a per tolerance basis. The following is a detailed description of its preferred approach for a new tolerance fee system.

1. *Petitioned tolerance actions.* The Agency proposes to set new tolerance fees based on resource needs for each type of tolerance action. This means that the Agency would charge a significantly larger amount for the first tolerance of a chemical, whether it be a new or registered chemical, since this would require the most work to process. Subsequent tolerances for the same crop or tolerances for additional crops within the same petition would be charged considerably less. In contrast, a separate new food use tolerance petition submitted at a later date, would be charged a slightly higher fee per tolerance than if the use was included in the original petition because processing it would require some amount of rework. This means that, resources are used to review the existing file and apply the new information to the previous assessments. A single tolerance fee was set for this category because historically, petitioners have submitted one crop per new use petition. If this practice is likely to change, (for example a petitioner would choose to add several crops to its label), the Agency could consider an incremental fee structure similar to a first food use petition. Tolerances for antimicrobial pesticides would be charged a different fee because these types of pesticides require a different set of data that must be submitted. Fees for temporary tolerances for experimental use permits, and tolerance exemptions also reflect the reduced data sets, and thus reduced review resources, that are required.

Fees will be imposed for any crop and/or use that ultimately results in the establishment of a tolerance or exemption from the requirement of a tolerance. This includes direct application to an agricultural plant or crop, preplant uses in the soil, or indirect uses that may result in inadvertent residues in a raw agricultural commodity. Some examples of when a tolerance fee would be imposed, in addition to direct agricultural crop uses, are for pesticide residues that indirectly occur in food or feed as a result of aquatic weed control in irrigation ditches, mosquito control use, bulk storage fumigation use, as a bird repellent, or for residues that could occur in rotated crops. Dermal applications to livestock, use in ponds or reservoirs for weed control or disease control of fish, shellfish, oysters etc., forestry uses (for residues in maple sap), and use in or around apiaries (residues in honey or beeswax) are all subject to tolerance fees. Similarly, uses of pesticides in food or feed handling establishments, such as restaurants, breweries, supermarkets, processing plants, dairies, or canneries, are subject to tolerance fees should residues occur.

For the purposes of assessing a fee, an import tolerance (a pesticide tolerance with no current U.S. uses or registrations) would be treated as if there was a U.S. registration for the chemical. The party wishing to obtain or retain a tolerance for import purposes would be responsible for the payment of the fee. Further, under this revised fee system, the tolerance modification category includes renewals, extensions, and conversions of a temporary tolerance or time-limited (non-section 18) tolerance as well as all amendments to existing tolerances.

i. *Counting tolerances.* The new fee would be based on the number of individual tolerances required rather than on a petition basis. (Currently, one petition may include up to nine crops for one base fee.) This means that every food or feed item for which a tolerance is either established or exempted, that is, every line item listed in Title 40 of the Code of Federal Regulations (CFR) is counted as one tolerance. A crop group tolerance (a single tolerance which is applicable to a group of similar crops) would be considered one tolerance action. An exemption from the requirement of a tolerance for "all food commodities" would be considered one tolerance action, whereas a tolerance exemption request for a chemical on barley and corn would be considered two tolerance actions.

A separate fee would be imposed for each raw and processed commodity that would require a tolerance or exemption. If residues are found to concentrate in processed commodities or are found in livestock tissue, separate tolerances would be required. A chemical used on almonds therefore would be charged for a minimum of two tolerances--on the raw commodities nutmeats and hulls, whereas a chemical used on oranges would require one tolerance for the fruit (the raw commodity), and if residues were found to concentrate in the dry pulp, peel, oil, molasses, or juice, additional tolerances would be needed and fees charged. In addition, if the almond hulls or the orange pulp or molasses were to be used as feed and livestock feeding studies are required, then a fee for each tolerance required on meat, fat, meat by products, milk, poultry and eggs would be charged.

An example of how this scheme would work is if a company wished to register a new active ingredient on cotton. The company would petition the Agency for tolerances on the raw commodities cottonseed and forage (two tolerances). Processing studies reveal that the chemical concentrates in the meal, crude oil, and refined oil (three tolerances) and livestock feeding studies show that hulls fed to cattle result in residues in the meat, fat and milk (three tolerances). Using the table in Unit V.B.1.iii. of this preamble, the registrant would be charged a total of $537,300 in tolerance fees ($504,400 for the first tolerance of a new active ingredient, plus $4,700 for each of the seven additional tolerances). If however, in a subsequent petition, this company wished to add cotton to an existing food-use product label, it would be charged $135,200 ($16,900 for each of the eight new use tolerances) because the review costs are substantially less than for a new active ingredient.

ii. *Deficient petitions.* The Agency would not process a petition that is deficient. Administrative deficiencies that may be easily corrected, such as improper formatting, illegible pages, *etc.*, would not incur any penalty if the error can be corrected within 14 calendar days. If the petitioner believes that the correction cannot be made

within this time frame, it must notify the Agency. If, after 14 days the petitioner has not responded, the petition would be treated as if it has been withdrawn and the original fee, less $7,500 for handling and initial review, would be returned.

Once the Agency has initiated its scientific review, a resubmission fee would be imposed for substantially flawed petitions that require one or more resubmissions of data or other required information. Defective studies cost the Agency a tremendous amount of resources and delay the review of the petition considerably. Resources are wasted reviewing an unacceptable study and, in many cases, more times and effort is spent working with the affected petitioner to generate useful data. For this reason, EPA is instituting an admittedly large penalty for ineffective and/or poorly conducted studies. We hope that this will serve as an incentive to submit only quality data and information for review.

Petitioners would have up to 75 calendar days from the date of EPA notification to correct the deficiency without penalty, after which an additional 35 percent of the original fee would be charged. The resubmission fee would be required at the time the requested studies and/or other material are submitted. If the correction cannot be made within this time frame, the petitioner must notify the Agency, as soon as possible within the 75 days, of the circumstances surrounding the delay. If, after 75 days the petitioner has not responded, or subsequently fails to submit the required material within the negotiated time frame, the petition would be treated as if it had been withdrawn in the manner consistent with 40 CFR 152.105, and the original fee would not be returned. A deficiency that would warrant the resubmission fee would include a study that is not fully acceptable and must be repeated in its entirety or in parts (*e.g.*, a toxicology study that is categorized as "non-upgradable"), or any other significant issue that prevents the continuation of the science review or the Agency from reaching a regulatory decision.

iii. *Fee schedule.* Using this scheme, EPA proposes the following fee schedule for petitioned tolerance actions.

Petitioned action	Fee
First Food-use Petition for a New Active Ingredient[1]	(1st tol.) = $504,400 (add'l tol.) = 4,700
First Food-use Petition for a Registered Non-Food Active Ingredient[1]	(1st tol.) = 468,800 (add'l tol.) = 4,700
New Use Tolerance or Exemption for an Active or Other Ingredient	16,900
Temporary Tolerance or Exemption for an Experimental Use Permit	51,200
Time-limited Tolerance for an Emergency Exemption	0
Exemption from the Requirement of a Tolerance for an Active Ingredient[1]	145,400
Tolerance Modification for an Active or Other Ingredient	4,400
Tolerance for an Other Ingredient	62,300
Exemption from the Requirement of a Tolerance for an Other Ingredient	59,300
Tolerance or Exemption for an Antimicrobial Active Ingredient	68,200
Request for Fee Waiver or Refund[2]	7,500

[1] Excluding antimicrobial active ingredients.
[2] Fee will be returned if waiver or refund is warranted.

2. *Reassessed tolerances.* As with petitioned tolerances, EPA proposes to set fees for reassessing tolerances based on estimated resource needs for each type of reassessment. Different fee amounts would be charged for a pre-1984 chemical for which a Reregistration Eligibility Decision document (RED) has been completed, a pre-1984 chemical that is currently in the reregistration queue, or a chemical for which tolerances were set after 1984. Differences would take into account the amount of review that has already taken place (*i.e.*, whether the chemical has or will go through, or is even subject to, the reregistration process), and the additional analyses that must be performed due to FQPA provisions.

For tolerances that were reassessed as part of a reregistration eligibility decision that has already been made, the basic science evaluation has already occurred. For these chemicals, the Agency must go back and perform the FQPA analyses, such as a drinking water exposure assessment, the aggregate risk assessment, and the special finding for infants and children. The Agency, however, must perform a complete risk assessment, including the FQPA requirements, for chemicals that had not gone through reregistration at the time FQPA was passed, or are not subject to reregistration, i.e., those chemicals registered between November 1984 and August 1996. The fee proposed for the chemicals subject to reregistration but for which a RED is issued after the enactment of FQPA does not reflect the actual amount of resources needed to review these tolerances because credit is given for product maintenance fees that have already been paid. Moreover, for the tolerances of chemicals that were registered after November 1984 and as such are not subject to reregistration, the Agency must reevaluate all existing data and perform a complete risk assessment.

i. *Counting tolerances.* For the group of chemicals that are already registered, tolerances have been added over the lifetime of the registration (some older chemicals have over 100 tolerances). The amount a registrant would pay for tolerance reassessment would depend on the total number of tolerances to be reassessed. The Agency would charge one amount for the first tolerance and a lesser amount for additional tolerances. As with petitioned tolerance actions, a crop group tolerance would be considered one tolerance action. Similarly, an exemption from the requirement of a tolerance for "all food commodities" would be considered one tolerance action. A chemical with tolerances on corn (fresh, grain, and forage) would be considered three tolerance actions. A tolerance exemption for a chemical on barley and corn would be considered two tolerance actions.

ii. *Fee schedule.* Using this scheme, the Agency proposes the following fee schedule for tolerance reassessments.

Tolerance reassessment	Fee
Tolerance for an Active Ingredient for which a Reregistration Eligibility Document was issued before August 1996	$12,500

Tolerance reassessment	Fee
Tolerance for an Active Ingredient for which a Reregistration Eligibility Document is issued after August 1996[1]	(1st tol) = 227,700 (add'l tol) = 500
Tolerance for an Active Ingredient First Registered between November 1984 and August 1996	(1st tol) = 289,800 (add'l tol) = 1,700
Active Ingredient Tolerance Exemption	20,600
Other Ingredient Tolerance	201,400
Other Ingredient Tolerance Exemption	79,300
Request for Fee Waiver or Refund[2]	7,500

[1] The calculated tolerance fees for the chemicals in reregistration are offset by monies received via product maintenance fees.
[2] Fee will be returned if waiver or refund is warranted.

iii. *Payment schedule.* Fees generally would be collected prior to the commencement of the reassessment and would be independent of the resulting tolerance decision. Itemized payment statements would be sent to the registrant(s) of a technical active ingredient (or chemical case) at the beginning of the fiscal year that the tolerance reassessment is scheduled. The registrant(s) would have 90 days to remit the appropriate amount. Registrants who share the responsibility for a single active ingredient or chemical case will be encouraged to work together to determine how the fee will be paid. The Agency will include in its reassessment only those tolerances for which it receives payment. For those chemicals whose tolerance reassessments have commenced prior to the promulgation of this rule, a bill will be sent to affected parties for work performed. A tolerance reassessment will not become final until the required fee is submitted. EPA will revoke any existing tolerance for non-payment of the fee.

3. *Tolerance fee waivers.* As part of the new fee structure, the Agency proposes to grant routine fee waivers for certain tolerance actions. Fee waivers are proposed for:

i. *Petitions submitted by IR–4.* U.S. Department of Agriculture's Interregional Research Project No. 4 (IR–4) is a program that supports the registration of minor crop use pesticides by performing crop field trial studies and generating pesticide residue data. Since this program is supported by taxpayer dollars, charging a fee would be contrary to the purposes of this proposal.

ii. *Minor use tolerances actions, except when the minor use constitutes the first food use or the sole use(s) of an existing chemical.* Traditionally, minor use pesticides are produced for niche markets with often low profit margins. Because of this, many minor use crop farmers do not have a wide selection of pest control products and an increase in fees may jeopardize the continued registrations. FQPA has essentially put into law the Agency's long standing policies to aid the registration and retention of pesticides used on minor crops. Granting an automatic fee waiver for tolerance actions for minor use crops is consistent with Agency policy and Congressional intent. For the purposes of this proposal, EPA is defining a minor use as any crop use other than that on alfalfa, almonds, apples, barley, beans (dry and snap), canola, corn (field, sweet, and pop), cottonseed, grapes, hay, pecans, potatoes, rice, rye, sorghum, soybeans, sugarbeets, sugarcane, sunflower, oats, oranges, peanuts, tomatoes, or wheat.

Fees for pesticide chemicals used solely on minor uses, however, cannot be automatically exempt from the proposed fees because of the large amount of resources required to process or reassess the tolerances. While the submission of a new chemical registration for strictly minor uses is extremely rare, there are a handful of existing pesticide chemicals that are registered for use only on minor crops. To establish or reassess the tolerances the Agency must still review a full set of data and conduct a complete risk evaluation. For all minor use only chemicals, the Agency proposes to impose a fee equivalent to a single, first tolerance, temporary tolerance or tolerance exemption. For example, if a registrant is applying for a new chemical registration and has submitted a tolerance petition for use on garden beets, onions, and turnips, the fee would be $504,400, regardless of how many individual tolerances were established. Similarly, if an existing chemical was registered in 1985 for use on garden beets, onions, and turnips and tolerances were established for beet roots, beet greens, onion bulbs, turnip roots, turnip tops, and several livestock commodities, the registrant would be charged a tolerance reassessment fee of $289,800.

iii. *Time-limited tolerances for emergency exemptions.* If, in a single year, there occurs a severe pest infestation for which there is no registered pesticide available, EPA may grant an emergency exemption from FIFRA requirements for that pesticide. And because an emergency situation is occurring, the Agency must respond quickly. The passage of FQPA now requires the Agency to set time limited tolerances for these emergency uses. The States submit the exemption requests and accompanying tolerance petitions on behalf of their growers. Due to the urgent nature of these types of tolerance actions, and given that the state governments would be paying the fees with taxpayer dollars, charging a fee would be contrary to the purposes of this proposal.

iv. *Petitions to revoke a tolerance and tolerance revocations.* Imposing a fee for these types of tolerance actions would be impractical.

v. *Biopesticide tolerance actions, except plant-pesticides.* Biopesticides usually affect a single pest and, similar to minor use pesticides, often have low profit margins. Because these pesticides are by and large less risky than conventional, synthetic pesticide chemicals, EPA has adopted a number of policies to encourage their development and registration. The assessment of biopesticides requires a different and abbreviated set of data for registration and any associated tolerance actions, therefore less resources are generally required to reach a regulatory decision. Waiving the tolerance fee is consistent with existing policies. The tolerance review for plant-pesticides, however, cannot be waived at this time. Although the Agency also believes that plant-pesticides are inherently lower risk, the fees cannot be routinely waived because of the large amount of resources are necessary to process or reassess the tolerances. Moreover, these products often become profitable soon after introduction.

vi. *Other ingredients generally regarded as safe (List 4A inerts).* Tolerance reassessment fees would not be required for other ingredients the Agency has declared as minimal risk and generally regarded as safe, that is, those currently on List 4A. Fees for petitioned tolerance exemptions for

other ingredients to be added to List 4A would be refunded once it was determined that the List 4A designation was warranted. The most current listing of the List 4A inerts can be found posted on the Internet on EPA's home page at http://www.epa.gov/opprd001/inerts/lists.html, or by writing Registration Support Branch (Inerts), Registration Division (Mail Code 7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

vii. *Tolerance exemptions for chemicals exempted from FIFRA regulations under section 25(b).* Similarly, tolerance reassessment fees would not be required for active ingredients that have been exempted from FIFRA regulation under section 25(b). These chemicals have been declared by the Agency to be of a character which is unnecessary to be subject to the Act in order to carry out its purposes. Fees for petitioned tolerance exemptions for active ingredients to be added to this list would be refunded once it was determined that the 25(b) designation was warranted. The list of FIFRA exempted substances can be found in 40 CFR part 152.25.

EPA believes that the above waivers are equitable and not contrary to the purposes of the fee requirement, yet invites the public to comment on this issue. Other views have been raised. For example, although it is the Agency's policy to promote the development and use of biopesticides, some companies engaged in the registration of these types of pesticides are large and can afford to pay a fee. The Agency recognizes that there are other ways to champion these products without granting a full fee waiver. One way is to grant fee waivers via the submission of a small business waiver request (see below). Similarly the minor use fee waiver would also apply to many biological pesticide petitions. Another option is to set fees for biologicals based on the percentage of the fee imposed for a conventional chemical. In deliberations for this fee proposal, the Agency found administrative costs and complexity argued against a case-by-case analysis for these categories. However, EPA would like to hear differing views.

The Agency estimates that revenues waived from these waived actions will be $2.5 million annually for petitioned tolerance actions and $2.4 million annually for tolerance reassessments. Because EPA must collect fees "in the aggregate" to cover its costs, all of the calculated fees for each category must be adjusted upwards in order to recover the $4.9 million annual revenue shortfall. Accordingly, the Agency raised the fees by 48 percent for the petitioned tolerance categories and 23 percent for reassessed tolerance categories.

EPA also will continue the practice of granting fee waivers on a case-by-case basis when warranted, and when requested in writing by the petitioner or registrant. For these requests, OPP has revised and expanded the current criteria for granting fee waivers for safer products, products that are in the public interest, and to those registrants who demonstrate an economic hardship. An updated Pesticide Registration Notice will be made available in draft form for public comment. A fee of $7,500 shall accompany every waiver or refund request. The fee will be returned if the request is granted. Conversely, the fee will be forfeited if the request is denied.

4. *Implementation.* Petitioners would continue following the established procedures outlined in the current regulations. When applying for a tolerance or tolerance exemption, petitioners would send EPA their remittance, data, and supporting materials. The cover letter, application or petition, data, and all supporting materials would continue to be sent to EPA's Office of Pesticide Programs in Washington, DC. The payments themselves would continue to be sent to EPA's Financial Management Division (FMD) in Pittsburgh, Pennsylvania. The Agency would not begin processing the petition until it had been notified by FMD that the check had cleared.

For tolerances that are to be reassessed, the Agency would send affected registrants a bill at the beginning of each fiscal year for those chemicals that are scheduled to be reevaluated during that year. Registrants would be sent a pre-printed form listing their chemical and all the associated tolerances. On the form, they would be asked to verify the list, identify those tolerances they wish to support, and calculate the appropriate fee amount. The Agency will use the information on the response forms and include only those tolerances for which the fee has been paid in its risk assessment. Multiple registrants of the same active ingredient would be given 90 days to coordinate their response and jointly pay the required fee for that chemical. If no registrant comes forth to pay for a particular tolerance, the Agency will publish a notice in the **Federal Register** which will alert other potential impacted parties and provide them with the opportunity to support the reassessment of that tolerance. Tolerances will be revoked for non-payment of fees.

i. *Annual adjustments.* EPA proposes to continue the practice of raising fees annually to reflect inflation. Currently these annual fee adjustments are based on the total percentage change in basic pay in Federal employee salaries, that is, the Cost of Living Adjustment, or COLA. The Agency has looked at the issue of adjusting fees over time and proposes to continue to link the increases to the COLA. Other approaches that were suggested were tying the annual adjustment to the total percentage change that occurred during the previous year in the Consumer Price Index (CPI), or perhaps base the adjustment on the greater of either the COLA or the CPI. EPA invites comment on this issue. In addition to annual adjustments to the fee scale, the Agency intends to evaluate the tolerance fee system periodically to determine if revenues are adequately covering costs and whether fees should be adjusted accordingly.

ii. *Transition.* For the purposes of FFDCA section 408(m), a tolerance or exemption will not be considered officially granted or reassessed until the appropriate fee is paid. Registrants of chemicals for which a tolerance action has begun and not yet granted or declared reassessed prior to the finalization of this rule would be required to pay the revised fee. Petitioners or registrants that are in the tolerance review queue upon publication of this proposal would be subject to retroactive billing.

Because this document is a proposal, it is important to note that the individual fee amounts proposed may change upon promulgation due to the comments received. Affected parties must keep in mind that, since the Agency must collect fees to cover its costs "in the aggregate," a decrease in one fee will result in the increase of another.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) determined that this proposed rule is not a "significant regulatory action." The Agency determined that this rule, when promulgated, is estimated to impose an aggregate regulatory burden of $20.7 million annually and therefore is unlikely to have a major economic impact on pesticide registrants. Promulgation of

this proposed rule will have no impact on any other sector of the economy, or on any other government entities, programs or policies. In addition, the proposed rule is consistent with the purposes of FFDCA, and does not conflict with any other statutory mandate or with the principles of the Executive Order.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This determination is based on the Agency's 1997 Cost Analysis which is available in the OPP public docket for this rulemaking. In addition, for those small businesses that are affected by this action, EPA has provided the opportunity to request fee waivers and has set forth criteria based on economic hardship. Tolerance fee waivers will be granted on a case-by-case basis for petitioners or registrants who cannot pay.

For this analysis, we have adopted the definition of small businesses from FIFRA section 4(i)(5)(E)(ii)(I): Entities with 150 or fewer employees and an average annual gross revenue of $40 million over a 3–year period. This definition differs from the standard definition applied under the Regulatory Flexibility Act (RFA). According to section 601(3) of the RFA, agencies must use the definition of "small business" that is provided under the Small Business Act, 15 U.S.C. section 631 *et seq.*, unless it establishes an alternative definition. The agency may use the alternative definition for RFA purposes only after it has consulted with the Office of Advocacy of the Small Business Administration (SBA) and provided an opportunity for public comment.

According to SBA, small entities vary by Standard Identification Code (SIC), and, for chemical manufacturers, are based solely on the number of employees. Most establishments producing organic chemicals are defined as small if they have fewer than 500 employees. For chemical manufacturing, however, the number of employees may not be closely related to the total annual sales of a company. Since chemical testing primarily requires a financial outlay, EPA believes that the number of employees is a less reliable measure of a company's ability to pay applicable fees than is a company's total annual sales. Therefore, in this proposed rulemaking, the Agency is proposing to use the FIFRA definition of "small business" for RFA purposes. This definition is discussed in the document that gives additional information on small entity impacts.

EPA is hereby seeking comment on the use of the Agency's definition of "small business," as well as on the "Small Entity Impacts of the Economic Analysis of Proposed Tolerance Fee Schedule" document. EPA is also consulting with the Office of Advocacy of the SBA concerning the Agency's use of the EPA definition. Any comments regarding the impacts that this action may impose on small entities should be submitted to the Agency in the manner specified in Unit I of this preamble.

C. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub.L. 104–4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The cost associated with this action are described in the Executive Order 12866 section above. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

D. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. Today's proposal would implement requirements specifically set forth by the Congress in FFDCA without the exercise of any discretion by EPA. The proposal does not significantly or uniquely affect the communities of Indian tribal governments. Tribal governments would not be subject to the requirements of today's proposal. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposal.

E. Enhancing Intergovernmental Partnerships

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. Today's proposal would implement requirements specifically set forth by the Congress in FFDCA without the exercise of any discretion by EPA. It would not create a mandate on State, local or tribal governments. The proposal would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposal.

F. Children's Health Protection

This proposed rule is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit VI.A. above). In addition, this proposed rule is procedural in nature and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

G. National Technology Transfer and Advancement Act

This proposed regulation does not involve technical standards. As such, the requirement in section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (15 U.S.C. 272 note) which directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical, does not apply to this action. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. EPA invites public comment on this conclusion.

H. Environmental Justice

This proposed rule does not directly affect minority populations or low-income groups. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency does not need to consider environmental justice-related issues regarding the environmental and health conditions in low-income and minority communities.

I. Paperwork Reduction Act

The new information collection requirements contained in this proposed

rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1915.01) and a copy may be obtained from Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by calling (202) 260–2740, or electronically by sending an e-mail message to "farmer.sandy@epa.gov." An electronic copy has also been posted with the **Federal Register** notice on EPA's homepage with other information related to this action.

The information collection requirements related to the tolerance petition process are already approved under OMB control number 2070–0024 (EPA ICR #597), and this proposed rule does not affect that activity. However, this proposed rule does contain two minor information collection activities that are not currently approved, including the requirements related to the identification of the tolerances that the Agency should include in the reassessment of the chemical, and the process for requesting a fee waiver or refund. These new activities are discussed in the ICR document, and are not effective until EPA issues a final rule and until OMB has approved the information collection under the Paperwork Reduction Act (PRA) and assigned an OMB control number to that approval. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

The annual burden for the proposed information collection activities contained in this proposed rule are estimated to be 2.3 hours for each submission of the tolerance reassessment form, 2 hours for each fee waiver or refund request submitted, and 0.3 hours to maintain records. These estimates include the time needed to become familiar with the requirements (first year implementation is an additional 1 hour per registrant), review the instruction, complete the form, and transmit or otherwise disclose the information. Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information

Any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, increasing electronic submissions, etc. may be sent to EPA at the address provided in Unit I of this preamble. Please include the docket number and ICR number in any correspondence related to the information collection components of this proposed rule. The final rule will respond to any comments received on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 180 is proposed to be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 321(q), 346a, 371.

2. Section 180.33 would be revised to read as follows:

§ 180.33 Fees.

(a) *Fees for petitioned tolerance actions.* (1) Each petition to establish, modify, or leave in effect a tolerance or exemption from the requirement of a tolerance must be accompanied by the appropriate fee as listed in the following table unless such fee is waived according to paragraph (e) of this section.

Petitioned action	Fee
First Food-use Petition for a New Active Ingredient[1]	(1st tol.) = $504,400 (add'l tol.) = 4,700
First Food-use Petition for a Registered Non-Food Active Ingredient[1]	(1st tol.) = 468,800 (add'l tol.) = 4,700
New Use Tolerance or Exemption for an Active or Other Ingredient	16,900
Temporary Tolerance or Exemption for an Experimental Use Permit	51,200
Time-limited Tolerance for an Emergency Exemption	0
Exemption from the Requirement of a Tolerance for an Active Ingredient[1]	145,400
Tolerance Modification for an Active or Other Ingredient	4,400
Tolerance for an Other Ingredient	62,300
Exemption from the Requirement of a Tolerance for an Other Ingredient	59,300
Tolerance or Exemption for an Antimicrobial Active Ingredient	68,200
Request for Fee Waiver or Refund [2]	7,500

[1] Excluding antimicrobial active ingredients.
[2] Fee will be returned if waiver or refund is warranted.

(2) A petitioner must remit a fee for each tolerance requested for a pesticide chemical residue. A tolerance fee is required for each food or feed item that requires a tolerance or exemption from the requirement of a tolerance. Similarly, a tolerance fee is required for each processed food or feed item and each livestock food or feed item that requires a tolerance be established. A tolerance fee is required for residues that occur in or on individual food or feed items as a result of indirect pesticide use.

(3)(i) A crop group tolerance petition, for the purposes of assessing a tolerance fee under this paragraph, will be

considered a request for a single tolerance action.

(ii) A request for an exemption from the requirement of a tolerance on all food commodities, for the purposes of assessing a tolerance fee under this paragraph, will be considered a request for a single tolerance action.

(iii) A modification to a tolerance includes renewals, conversions of a temporary tolerance or time-limited tolerance as well as all amendments to existing permanent or temporary tolerances or tolerance exemptions.

(iv) For new chemical or first food-use tolerance petitions submitted for minor uses only, a fee equivalent to a single, first tolerance, temporary tolerance or tolerance exemption is required.

(4) A petition will not be accepted for processing and the Agency will take no regulatory action until the required fee is submitted.

(5) For the purposes of section 408(m) of the Federal Food, Drug, and Cosmetic Act, a tolerance or tolerance exemption will not be granted until the appropriate fee has been received.

(b) *Fees for reassessed tolerances.* (1)(i) Applicable fees are required for each Agency action to modify or leave in effect an existing tolerance or exemption from the requirement of a tolerance that results from an Agency-initiated tolerance reassessment activity. The fee listed in the following table must be paid prior to the reassessment of the established tolerances of a particular chemical upon notice from the Agency. Such notice shall be sent to each producer of the particular pesticide chemical.

Tolerance reassessment type	Fee
Tolerance for an Active Ingredient for which a Reregistration Eligibility Document was issued before August 1996	$12,500
Tolerance for an Active Ingredient for which a Reregistration Eligibility Document is issued after August 1996[1]	(1st tol) = 227,700 (add'l tol) = 500
Tolerance for an Active Ingredient First Registered between November 1984 and August 1996	(1st tol) = 289,800 (add'l tol) = 1,700
Active Ingredient Tolerance Exemption	20,600
Other Ingredient Tolerance	201,400
Other Ingredient Tolerance Exemption	79,300
Request for Fee Waiver or Refund [2]	7,500

[1] The calculated fee is offset by monies received via product maintenance fees.
[2] Fee will be returned if waiver or refund is warranted.

(ii) Where a chemical has no registered uses in the United States, or where no registrant pays the applicable fee to support a particular tolerance to be reassessed for a chemical, a notice shall be published in the **Federal Register** to provide other potentially impacted parties the opportunity to support the retention of that tolerance by petitioning the Agency.

(2) A single tolerance fee is required for every tolerance established or exemption from the requirement of a tolerance per raw agricultural commodity. Similarly a single tolerance fee is required for each processed commodity and each livestock commodity with an established tolerance. A tolerance fee is required for residues that occur in or on individual food or feed items as a result of indirect pesticide use.

(3)(i) An established crop group tolerance, or an existing exemption from the requirement of a tolerance on all food commodities, for the purposes of assessing a tolerance reassessment fee under this paragraph, will be considered a single tolerance action.

(ii) An existing exemption from the requirement of a tolerance on all food commodities, for the purposes of assessing a tolerance reassessment fee under this paragraph, will be considered a single tolerance action.

(4) For the purposes of section 408(m) of the Federal Food, Drug, and Cosmetic Act, a tolerance reassessment will not become final until the required fee is submitted.

(5) The Administrator shall revoke a tolerance or exemption from the requirement of a tolerance for non-payment of the applicable fee.

(c) *Withdrawal of a petition.* If a petition is withdrawn by the petitioner before significant Agency scientific review has begun, the fee, less $7,500 for handling and initial review, shall be returned. No fee will be returned after the commencement of scientific review. If a withdrawn petition is resubmitted, it must be accompanied by the fee required in paragraph (a) of this section for a new submission.

(d) *Deficient petitions.* (1) If a petition is not accepted for processing because it is administratively incomplete, and the petitioner rectifies the problem within 14 calendar days, no resubmission fee will be imposed. If the petitioner believes that the correction cannot be made within this time frame, it must notify the Agency. If, after 14 days the petitioner has not responded, the petition will be treated as if it has been withdrawn and the original fee, less $7,500 for handling and initial review, would be returned.

(2)(i) If, after the Agency's scientific review has begun and a submission has been determined to be scientifically deficient, such that additional data are required or any other significant issue arises that prevents the continuation of the scientific review or the Agency from making a regulatory decision, a resubmission fee shall be imposed. Petitioners have up to 75 calendar days from the date of EPA notification to correct the deficiency without penalty, after which an additional 35 percent of the original fee will be charged. The resubmission fee would be required at the time the requested studies and/or other material is submitted. If the petitioner believes that the correction cannot be made within this time frame, it must notify the Agency. If, after 75 days the petitioner has not responded, or subsequently fails to submit the required material within the negotiated time frame, the petition will be treated as if it has been withdrawn. The original fee will not be returned.

(ii) A deficiency that would warrant the resubmission fee would include a study that is not fully acceptable and must be repeated in whole or in part (*e.g.*, a toxicology study that is categorized as "non-upgradable"), or any other significant issue that prevents the continuation of the scientific review or the Agency from reaching a regulatory decision.

(e) *Fee waivers.* (1) No fee under this section will be imposed for any of the following actions:

(i) A petition submitted by the Inter-Regional Research Project Number 4 (IR–4 Program).

(ii) A minor use tolerance action, except when the minor use constitutes the first food use or the sole use of an existing chemical.

(iii) A biopesticide tolerance action, except for a plant-pesticide.

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(iv) A petition for an emergency exemption tolerance under FFDCA section 408(l)(6).

(v) A petition to revoke a tolerance or a tolerance revocation.

(vi) Other ingredients generally regarded as safe (List 4A inerts).

(vii) Tolerance exemptions for chemicals exempted from regulation under section 25(b) of FIFRA.

(2) The Administrator may waive or refund part or all of any fee required by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest, or that payment of the fee would result in an unreasonable economic hardship on the person required to remit the fee.

(i) A request for a fee waiver or refund must be submitted to the Agency in writing and must adhere to Agency criteria for tolerance fee waiver or refund requests. A fee of $7,500 shall accompany every waiver or refund request. The fee will be returned if the request is granted. Conversely, the fee will be forfeited if the request is denied.

(ii) A petition or tolerance reassessment action for which a waiver of the fee has been requested will not be acted upon until the fee has been waived, or if the waiver has been denied, the proper fee is submitted. A request for a refund will not be accepted after scientific review has begun.

(3) For the purposes of this section, EPA defines a minor use as any crop use other than that on alfalfa, almonds, apples, barley, beans (dry and snap), canola, corn (field, sweet, or pop), cottonseed, grapes, hay, pecans, potatoes, rice, rye, sorghum, soybeans, sugarbeets, sugarcane, sunflower, oats, oranges, peanuts, tomatoes, or wheat.

(4)(i) Fees for petitioned tolerance exemptions for other ingredients to be added to List 4A are to be refunded when it is determined by the Agency that the List 4A designation is warranted.

(ii) The most current listing of List 4A inerts can be found posted on the Internet on EPA's home page at http://www.epa.gov/opprd001/inerts/lists.html, or by writing Registration Support Branch (Inerts), Registration Division (Mail Code 7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(5) Fees for petitioned tolerance exemptions for active ingredients to be added to the list of chemicals exempted from regulation under FIFRA section 25(b) will be refunded when it is determined by the Agency that the 25(b) designation is warranted. The list of FIFRA exempted substances can be found in 40 CFR 152.25.

(f) *Objections, hearings, or requests for administrative review.* (1) Objections, hearings, or requests for administrative review filed under section 408(g) of the Federal Food, Drug and Cosmetic Act must be accompanied by a fee of $15,500.

(2) A person who files a requests for judicial review of an order under section 408(h) of the Federal Food, Drug and Cosmetic Act must pay the costs of preparing the record on which the order is based.

(3) A person may file a written request for a waiver of the objection fee in lieu of the objection fee. A waiver fee of $7,500 shall accompany the request only if the person has a financial interest in the matter. This waiver fee is not required to be remitted if the person does not have a financial interest in the matter.

(g) *Method of payment.* All deposit and fee payments required under this section must be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All remittances must be sent to the U.S. Environmental Protection Agency, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Both the envelope and the payment must be specifically labeled "Tolerance Fees" and should include only a copy of the letter or petition requesting the tolerance or the tolerance reassessment filing form. The actual letter, petition, or form, along with supporting data must be forwarded within 30 days of payment to the Agency at its headquarters address in Washington, DC.

(h) *Changes to fee schedule.* (1) This fee schedule will be increased annually to reflect the annual increase in Federal salaries. When such changes are made based on the Federal General Schedule (GS) pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule.

(2) Agency tolerance processing costs and existing fee amounts will be reviewed periodically to ensure that revenues collected are adequately covering the costs incurred. If, as a result of this review, adjustments in the fee schedule are warranted, the changes will be subject to public notice and comment procedures.

[FR Doc. 99–14477 Filed 6–8–99; 8:45 am]

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Federal Register

Wednesday
June 9, 1999

Part III

Federal Retirement Thrift Investment Board

5 CFR Parts 1620, 1650, 1651, and 1690
Expansion and Continuation of Thrift Savings Plan Eligibility; Methods of Withdrawing Funds From the Thrift Savings Plan; Death Benefits; and Miscellaneous Regulations; Final Rule

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1620, 1650, 1651, and 1690

Expansion and Continuation of Thrift Savings Plan Eligibility; Methods of Withdrawing Funds From the Thrift Savings Plan; Death Benefits; and Miscellaneous Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a final rule to reorganize and amend the regulations on continuation of Thrift Savings Plan (TSP) eligibility; to amend the regulations concerning TSP death benefits and withdrawal options; and to create a new rule pertaining to power-of-attorney documents.

The reorganization of the continuation of eligibility regulations eliminates obsolete and redundant provisions. The amendments to those regulations codify a new TSP loan policy for employees returning to civilian service pursuant to the Uniformed Services Employment and Reemployment Rights Act, codify current TSP procedures governing participation by judges of the Courts of Federal Claims and Veterans Appeals, and otherwise update the terms used in those regulations to correspond with the terms used throughout the Board's other regulations.

The amendment to the withdrawal regulations provides that a participant's TSP account will be forfeited if the participant does not withdraw his or her account in a timely manner. The account will be restored if the participant complies with the withdrawal requirements.

The amendment to the death benefit regulations explains that a deceased participant's TSP account will be transferred into the Government Securities Investment (G) Fund after the TSP receives notice of the participant's death.

The new power-of-attorney regulation explains how a participant or beneficiary can authorize an individual to act on his or her behalf with respect to transactions with the TSP.

DATES: This final rule is effective July 9, 1999.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest, (202) 942–1662, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

Analysis of Part 1620

FERSA created the Federal Employees' Retirement System (FERS), and required the establishment of TSP accounts for "employees and Members" covered by FERS. *See* FERSA section 101(a), 100 Stat. at 541–44, codified as amended at 5 U.S.C. 8432. For purposes of FERS participation, "employee" and "Member" were defined at FERSA section 101(a), 100 Stat. at 517–20, codified as amended at 5 U.S.C. 8401(11) and (20). Voluntary TSP participation was also authorized for "employees and Members" covered under the Civil Service Retirement System (CSRS). *See* FERSA section 206(a)(1), 100 Stat. at 593–4, codified as amended at 5 U.S.C. 8351. FERSA also permitted TSP participation by various other specifically named groups, such as employees covered under the Foreign Service retirement plan. However, only individuals so authorized by FERSA could participate in the TSP.

From time to time since the passage of FERSA, Congress has expanded FERS participation and TSP eligibility to other groups of employees. Congress has also permitted certain groups of employees to maintain CSRS and FERS coverage after leaving Federal employment, and permitted them to retain their TSP eligibility. In addition, Congress has extended TSP participation to Supreme Court justices, Federal District Court judges, bankruptcy judges, and United States magistrates even though they are not covered by CSRS or FERS.

The Board created 5 CFR part 1620 to describe the rules for TSP participation by these individuals. Because part 1620 was written incrementally, it contained duplication, such as numerous definition sections, restated general TSP principles found elsewhere in the Board's regulations, and described deadlines for actions which have passed. This final rule eliminates those obsolete and redundant provisions.

Removed Interim Subparts A, D, and I

The Continuing Appropriations for Fiscal Year 1987, Public Law 99–591, 100 Stat. 3341, permitted food service employees of the House of Representatives who transferred from Federal employment to employment with a private contractor to retain Federal retirement system coverage and their TSP eligibility. On July 14, 1987, the Board published an interim rule with request for comment in the **Federal Register** (52 FR 28293) to implement that provision. The Board received no comment on the interim rule, which was codified at 5 CFR part 1620, subpart A.

The Federal Employees' Retirement System, Technical Corrections [Act of 1988], Public Law 100–238, title I, 101 Stat. 1744, 1744–67, permitted TSP participation by individuals covered by CSRS as a result of the provision of law described in 5 U.S.C. 8347(o). Under section 8347(o), individuals who were employed by an international organization before October 1, 1988, while not employed by the Federal Government, are nevertheless covered by CSRS. On March 28, 1988, the Board published an interim rule with request for comment in the **Federal Register** (53 FR 10038) to implement the above-mentioned provision. The Board received no comment on this interim rule, which was codified at 5 CFR part 1620, subpart D.

Section 101 of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Control Board Act), Public Law 104–8, 109 Stat. 97, 100, established the District of Columbia Financial Responsibility and Management Assistance Authority (Control Board) as an entity within the Government of the District of Columbia. Under the Control Board Act, certain persons who separated from Federal employment and who became employed by the Control Board could maintain their Federal retirement system coverage and TSP eligibility. On January 29, 1996, the Board published an interim rule with request for comment in the **Federal Register** (61 FR 2872), governing TSP participation by CSRS and FERS employees of the Control Board. That interim rule was codified at subpart I. On April 26, 1996, the Control Board Act was amended by section 153 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, to permit a broader group of Control Board employees to elect CSRS or FERS coverage and thereby TSP eligibility. On October 25, 1996, the Board published

in the **Federal Register** (61 FR 55201) an interim rule with request for comment, amending interim subpart I to reflect the 1996 amendments. The Board received no comment on either rule.

Interim subparts A, D, and I are removed by this rule because they are now unnecessary. The deadline for food service employees to elect Federal retirement coverage passed in 1987 and Board regulations no longer need to address the requirements of that election. The remaining provisions of interim subpart A, which describe the rules for making TSP contributions, are unnecessary because food service employees participate in the TSP under the same rules that apply to all Federal employees.

With respect to interim subpart D, §§ 1620.52 and 1620.53 describe the initial election period for employees covered by the subpart and are no longer needed because the election period has passed. The remainder of interim subpart D is unnecessary because it restates general TSP rules found elsewhere in the TSP regulations.

Finally, with respect to interim subpart I, CSRS and FERS employees of the D.C. Control Board also participate in the TSP under conventional rules. Although certain employees of the D.C. Control Board are eligible for CSRS or FERS coverage while others are not, this is a matter within the jurisdiction of the United States Office of Personnel Management, and Board regulations need not address the particulars of that eligibility.

New Subpart A

This final rule creates a new subpart A to explain the rules that generally apply to all TSP participants covered by part 1620. New § 1620.1 describes who is covered by part 1620 and explains that part 1620 must be read in conjunction with the Board's other regulations at 5 CFR chapter VI. Currently, each subpart of part 1620 contains its own definition section, which results in unnecessary duplication. New § 1620.2 consolidates the definitions, to the extent possible, and conforms the terms used in this part to those used throughout the remainder of 5 CFR chapter VI. New § 1620.3 states the general rule, currently repeated throughout part 1620, that an employing agency must timely notify an employee of his or her TSP eligibility and the applicability of part 1620.

New Subpart B

The Federal Employees' Retirement System, Technical Corrections [Act of 1988], Public Law 100–238, tit. I, 101 Stat. 1744, 1744–67, permitted the continuation of CSRS and FERS retirement coverage, and resulting TSP eligibility, for three separate groups of Federal employees: (1) those transferred or otherwise assigned to a cooperative extension service (CES), as defined at 7 U.S.C. 3103(5); (2) those who enter on approved leave-without-pay status to serve as full-time officers or employees of an organization composed primarily of "employees" as defined at 5 U.S.C. 8331(1) or 8401(11); and (3) those in an approved leave-without-pay status assigned to a State or local government under the Intergovernmental Personnel Act (IPA), 5 U.S.C. chapter 33, subchapter VI.

On March 28, 1988, the Board published an interim rule with request for comment in the **Federal Register** (53 FR 10038) to implement these provisions of the 1988 Act, which was codified at 5 CFR part 1620, subparts B and C. Interim subpart B addresses CES employees, while interim subpart C addresses union and IPA employees. On May 18, 1988, the Board published in the **Federal Register** (53 FR 17685) an amendment to the March 28, 1988, interim rule which extended the period during which union employees could elect TSP participation. The Board received no comment on either rule.

This rule condenses interim subparts B and C into a new subpart B because, with few exceptions, the same rules apply to TSP participation by union, IPA, and CES employees. Some provisions of the interim regulations have been moved to the new subpart A, *i.e.*, the definitions (§§ 1620.11 and 1620.31), the employee notice provisions (§§ 1620.18(b) and 1620.39), and the reference to other TSP regulations (§§ 1620.19 and 1620.40). Others have been eliminated because they only restated general TSP principles found elsewhere in TSP regulations, *i.e.*, the deadline for making employee contributions (§§ 1620.14 and 1620.33) and the computation of basic pay (§§ 1620.16 and 1620.35). Interim rule §§ 1620.17, 1620.36, and 1620.37, which describe retroactive TSP contributions, are combined and rewritten in new section 1620.13 to omit material discussed in the error correction regulations at 5 CFR part 1605.

New Subpart C

Section 401(a) of the Federal Employees Health Benefits Amendments Act of 1988, 5 U.S.C. 8440a, permits justices and judges of the United States, as defined at 28 U.S.C. 451, to participate in the TSP. Similarly, section 7(a) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, 5 U.S.C. 8440b, permits bankruptcy judges and United States magistrates to participate in the TSP. On August 10, 1989, the Board published an interim rule with request for comment in the **Federal Register** (54 FR 32785) to implement sections 8440a and 8440b. The August 10 interim rule was codified at subparts E and F of part 1620. On January 13, 1994, the Board published an interim rule with request for comment in the **Federal Register** (59 FR 1889) to implement an amendment made to 5 U.S.C. 8440a and 8440b by the Thrift Savings Plan Technical Amendments Act of 1990, Public Law 101–335, section 3(b), 104 Stat. 319, 320–21. The 1990 amendment lifted investment restrictions that had required participants to invest their TSP accounts solely in the Government Securities Investment (G) Fund. On November 18, 1996, the Board published an interim rule with request for comment in the **Federal Register** which, *inter alia*, conformed the definitions of basic pay found at §§ 1620.72 and 1620.83 to the definition of that term contained in the Thrift Savings Plan Act of 1996, 5 U.S.C. 8401(4). The Board received no comment on the foregoing publications.

To the extent it is not repeated elsewhere in Board regulations, the information in interim subparts E and F is retained because justices and judges of the United States, United States magistrates, and bankruptcy judges participate with special rules for contributions, withdrawals, and spousal rights. Therefore, this rule condenses interim subparts E and F into a new subpart C.

The new subpart C also contains a discussion of two groups of TSP participants not mentioned in interim subparts E and F. Section 306(d)(1) of the Judicial Improvements Act of 1990, 5 U.S.C. 8440c, permits judges of the United States Court of Federal Claims to participate in the TSP. Section 5(a)(1) of the United States Court of Veterans Appeals, Amendments [Act of 1991], 5 U.S.C. 8440d, permits judges of the Court of Veterans Appeals to participate in the TSP. The Board did not publish regulations in part 1620 to implement sections 8440c and 8440d. However, because these judges participate in the TSP under rules similar to those affecting other judges, the Board decided to discuss them also in the new subpart C.

New subpart C also contains a new statement of law. Interim rule

§§ 1620.73 and 1620.84, which deal with TSP withdrawals, are condensed into a new § 1620.22. However, after the interim regulations were written, legislation was passed that authorized in-service withdrawals. Therefore, new § 1620.22 explains in-service as well as post-employment withdrawal eligibility. New § 1620.22 does not discuss the withdrawals themselves, or the procedures for obtaining them, because those matters are discussed at length in the Board's withdrawal regulations at 5 CFR part 1650.

The new subpart C also condenses several provisions of the Board's interim regulations to eliminate redundant and obsolete statements. New § 1620.21 explains the TSP contribution rules currently found in interim rule §§ 1620.72 and 1620.83, while new § 1620.23 explains the spousal rights currently discussed in interim rule §§ 1620.74 and 1620.85.

The remaining provisions of interim subparts E and F are eliminated. The new subpart C also omits the definitions currently found at interim §§ 1620.71 and 1620.81. If the meaning of any word is not apparent from the text of the regulation, it is defined in the new subpart A. The new subpart C also does not describe the circumstances under which a judge's annuity will be offset, presently set forth in interim rule §§ 1620.72(c) and 1620.75, because judges' annuities are administered by the Administrative Office of the United States Courts, not the TSP. Finally, interim rule § 1620.82 is eliminated. The initial election period established under 5 U.S.C. 8440a has passed; therefore interim rule § 1620.82(a) is obsolete. Elections occurring outside the initial election period must follow the rules found at 5 CFR part 1600; therefore, interim rule § 1620.82(b) is also unnecessary.

New Subpart D

The Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (1990 Portability Act), Public Law 101–508, 104 Stat. 1388, 1388–335 to 1388–341 (codified largely at 5 U.S.C. 8347(q)(1) and 8461(n)(1)), permitted CSRS and FERS employees of the Department of Defense and the United States Coast Guard who moved on or after January 1, 1987, to a Nonappropriated Fund (NAF) Instrumentality of the Department of Defense (DOD) to participate in the TSP if they elected to maintain their CSRS or FERS retirement coverage after the move. On June 10, 1991, the Board published an interim rule with request for comment in the **Federal Register** (56 FR 26,722) implementing the 1990 Portability Act as it pertained to the TSP. The Board received no comment on the 1991 interim rule, which was codified at 5 CFR part 1620, subpart G.

Section 1043 of the 1996 Defense Authorization Act for Fiscal Year 1996 (Defense Authorization Act), Public Law 104–106, 110 Stat. 186, 434–439, amended the 1990 Portability Act to allow a broader group of employees to participate in the TSP, both prospectively and retroactively. On August 9, 1996, the Board published an interim rule with request for comment in the **Federal Register** (61 FR 41485) amending interim subpart G to implement the Defense Authorization Act amendments.

The Board received a comment from one Federal agency objecting to three provisions of interim subpart G: §§ 1620.93(b), 1620.93(c) and 1620.94(a). After consideration thereof, the Board determined to promulgate those interim provisions as final. Those provisions are renumbered as §§ 1620.33(b), 1620.33(c) and 1620.34(a), respectively, on the new subpart D.

The new subpart D does not change the substance of interim subpart G; rather, it renumbers and reorganizes its provisions. The new subpart D also does not contain certain provisions that have been moved to the new subpart A, *i.e.*, definitions of *basic pay* and *retirement coverage* (§ 1620.91), the employee notice provision (§ 1620.98), and the reference to other TSP regulations (§ 1620.99). The new subpart D omits as unnecessary several provisions of interim subpart G. First, interim rule §§ 1620.92(a)(2) and (b) repeat the TSP contribution election rules found at 5 CFR 1600; that repetition is removed from the new rule and replaced with a reference to part 1600. Second, interim rule § 1620.93(b) provides a detailed restatement of the TSP error correction procedures found at 5 CFR 1605.2(c); new § 1620.33 replaces that recitation with a reference to § 1605.2(c). Finally, interim rule § 1620.95, which explains that the NAF instrumentality must submit agency contributions to the TSP record keeper, is also omitted as an unnecessary restatement of the process described at 5 CFR part 1600.

New Subpart E

Section 4 of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 5 U.S.C. 8432b, describes the rights to TSP benefits afforded to an employee who is restored to a pay status from a leave-without-pay status or reemployed in the civilian service under 38 U.S.C. chapter 43 following a release from military service, discharge from hospitalization related to that service, or other similar event. On April 21, 1995, the Board published an interim rule with request for comment in the **Federal Register** (60 FR 19990), which was codified at 5 CFR part 1620 subpart H.

On August 20, 1996, the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755, added section 414(u) to the Internal Revenue Code. Section 414(u) provides that retroactive contributions made by a reemployed veteran pursuant to USERRA are not subject to the elective deferral limit at 26 U.S.C. 402(g) for the year in which the contributions are made. On April 14, 1997, the Board published a final rule in the **Federal Register** (62 FR 18234) which removed a reference in interim subpart H to the elective deferral limit. The April 14 rule also adopted the amended subpart H as final.

This final rule makes one substantive amendment to the 1997 final rule: under new TSP policy, a TSP participant whose loan was closed by taxable distribution due to a USERRA-related absence will be provided an opportunity to reinstate the TSP loan upon reemployment or upon return to Federal employment if the participant was on approved leave-without-pay. An employee will be given one year from the date of his or her reemployment to request reinstatement of the loan. The TSP record keeper will inform the employee if reinstatement is feasible, *i.e.*, whether loan repayment can be accomplished within the time limits described in 5 CFR 1655.13(a)(5), and will not violate the restriction set forth in 5 CFR 1655.4 on the number of outstanding TSP loans. If reinstatement is not feasible, the participant will be given a one-time opportunity to repay the loan in full in the amount which, in effect, reverses the taxable distribution. The TSP record keeper will inform the employee of the amount he or she must repay, and the employee must provide the funds in a single payment to the TSP record keeper within 90 days of that notice.

This final rule also renumbers and reorganizes the substance of subpart H of the 1997 final rule and places it in a new subpart E. The new subpart E does not contain the definition of *record keeper*, currently at § 1620.101 of the 1997 final rule, because that term is defined in new subpart A. In addition, *basic pay* and *retroactive period* have been redefined to be consistent with the Board's other regulations. Section

1620.103 of the 1997 final rule is also omitted because lost earnings are discussed at 5 CFR part 1606.

The provisions of this final rule amending part 1620 were published in proposed form in the **Federal Register** on March 23, 1999 (64 FR 13924). The Board received no comment on that proposed rule, and therefore adopts the rule as final without change.

Analysis of the Amendment to Part 1650

The deadline for a participant to withdraw or begin withdrawing his or her account is governed by 5 U.S.C. 8433. Under section 8433(f), this deadline is April 1 of the year following the later of the year in which the participant turns age 70½ or the year in which the participant separates from Government employment. Final regulations governing the deadline for withdrawing a TSP account were published in the **Federal Register** on September 18, 1997 (62 FR 49113). These regulations did not address the action the Board will take if a participant fails to comply with the withdrawal deadline.

Under this amendment to the 1997 final rule, whenever a participant does not comply with the withdrawal deadline, the Board will transfer all of the funds in his or her account to the Government Securities Investment Fund (G Fund) that are not already invested in that Fund. The participant will be sent a notice of this action and informed that the account will be declared abandoned and forfeited unless the participant takes the appropriate withdrawal action within 90 days of the date of notice. Forfeiture is necessary because participants who have not taken timely action to withdraw their accounts are no longer eligible to have a TSP account.

If, at a later time, a participant reclaims the TSP account and a proper withdrawal election has been received, the Board will restore the funds to the account and authorize the withdrawal. The amount the participant may withdraw is the amount of funds in the account at the time the Board declared it to be abandoned and forfeited. No earnings will be paid on these funds during the forfeiture period. If the participant reclaims the account balance, but decides not to take a lump sum or monthly payments withdrawal, the Board will purchase an annuity for the participant after it has received the necessary information from him or her. The option of electing an annuity is not available for TSP accounts of $3,500 or less. Those accounts will be paid in accordance with § 1650.22.

This amendment to part 1650 was published in proposed form in the **Federal Register** on March 22, 1999 (64 FR 13725). The Board received no comment on the proposed amendment, and therefore adopts the rule as final without change.

Analysis of the Amendment to Part 1651

The disbursement of death benefits from the TSP is governed by the provisions of 5 U.S.C. 8433(e) and 8424(d). Under section 8433(e), if a TSP participant dies before he or she has completed a withdrawal election, the account is disbursed in accordance with the order of precedence set forth at section 8424(d). Final regulations governing the payment of the TSP account to a beneficiary were published in the **Federal Register** on June 13, 1997 (62 FR 32426).

These regulations do not address how the account will be invested between the participant's death and disbursement of the account to the beneficiary(ies). In the past, the Board has maintained the account as it was invested upon the participant's death; the Board cannot maintain a separate account for a beneficiary and will not permit a beneficiary to direct how the account should be invested. However, it may take several months before the Board can identify and locate the rightful beneficiary(ies) of an account and pay the account balance. During this time, a participant's balances in some investment funds can experience significant changes in value as a result of fluctuations in the market.

FERSA permits a participant to elect to invest all or any portion of his or her contributions in several investment options. At present, all investment options except the Government Securities Investment (G) Fund are invested in securities that fluctuate in value as market conditions change. In contrast, money in the G Fund is invested in short-term Government securities that are backed by the full faith and credit of the United States and that do not fluctuate in value.

Before a participant can invest in an investment fund other than the G Fund, he or she must provide a one-time acknowledgment that the investment is made at the participant's risk, that the participant is not protected by the United States Government or by the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment. FERSA does not grant to beneficiaries the right to own or control the TSP account of a deceased participant; instead, the account is paid out to them as quickly as administratively feasible. Thus, beneficiaries are not solicited to acknowledge the risk of investment in market securities pending payout to them.

Because money in investment funds other than the G Fund remains subject to market risk even after a participant's death, however, and because beneficiaries have neither acknowledged nor have any control over that risk, the Board intends to transfer the entire TSP account into the G Fund after receiving written notice of a participant's death if the participant dies with any portion of his or her account in an investment fund other than the G Fund. The account will continue to accrue earnings at the G Fund rate in accordance with part 1645 until the account is paid in accordance with the order of precedence set forth in paragraph (a) of this section. This action will eliminate the market risk to the beneficiary and will preserve the value of a deceased participant's account until it can be paid out.

This amendment to part 1651 was published in proposed form in the **Federal Register** on February 11, 1999 (64 FR 6818). The Board received nine comments from individuals, three of whom identified themselves as TSP participants, and one comment from a Federal employee group. Comments on the proposed regulations generally opposed the proposed amendment on the ground that the transfer from the C and F Funds to the G Fund might come immediately after the C and F Funds have lost value. While the Board recognizes that this is a possibility, it is equally possible that a transfer could come immediately before a fluctuation in the market that causes the C and F Funds to lose value. Since there is no way to predict if, when, or how the market will fluctuate, the Board believes that it is more prudent to handle the account in a way that preserves the *status quo* at the time of notification of death.

Six of the commenters suggested that the Board permit the beneficiary to decide how to invest the funds. This suggestion is legally and practically impossible. The Board may not legally permit a beneficiary to manage investments in an account since FERSA does not permit the Board to maintain an account for a beneficiary. Although one commenter objected to this restriction, it is not a restriction that the

Board has the authority to alter. Instead, Congress, in drafting FERSA, decided that the Board should immediately pay out the balance in a deceased participant's account to the rightful beneficiary. Thus, the suggestion is also practically impossible since, as soon as the beneficiary is identified, the account is paid.

The risk of market fluctuation which this amendment is designed to mitigate is that fluctuation that may take place after the participant dies but before the beneficiary has been paid. One commenter suggested that the Board can mitigate this risk by lessening the time it takes to identify the proper beneficiary. However, the time needed to identify a beneficiary is dependent upon persons and events that are beyond the Board's control. First, the Board has no knowledge that a separated participant has died until someone (who need not be a beneficiary) notifies the Board of the participant's death. The Board's regulations require that this notice be accompanied by a copy of a death certificate in order to establish the fact of death; however, persons do not always comply with this request. Thus, payment is often delayed until the Board can secure a copy of the participant's death certificate.

After the fact of the death has been established, the Board must determine the identity of the rightful beneficiary. This means not only ensuring that the person designated is the person whom the participant wishes to receive the balance in his or her TSP account, but also that the address for the beneficiary is current. Participants are encouraged to file a Form TSP–3, Designation of Beneficiary; they are also encouraged to ensure that this designation remains current. Participants often do neither and, even if there is a designation of beneficiary form on file, the Board must expend time locating the designated beneficiary.

Even more difficult and time-consuming are the situations in which the participant has not filed a designation of beneficiary form. In these cases, the beneficiary will be identified in accordance with FERSA's order of precedence. However, this process of identification often involves several rounds of correspondence among the Board, the person who provides notice of the participant's death, and persons who might be the appropriate beneficiary. While this process does not occur in each case, it occurs with sufficient regularity to suggest to the Board that participants and their beneficiaries need the protection against market fluctuation that transferring the account into the G Fund would provide.

Four of the commenters suggested that the Board should leave the account invested as the participant left it. Generally, these commenters recognized that the participant had assumed a risk that the value of his or her account could decrease as well as increase; it was a risk, they suggested, that the participant should be regarded as having imposed on his or her heirs. This conclusion is unwarranted; a living participant's investment choices are subject to his or her control, whereas those of a deceased participant clearly are not.

Moreover, a further suggestion of one of the commenters is inherently infeasible. That commenter suggested that participants be given the option of authorizing the Board to transfer their accounts into the G Fund after their death only if the market had not declined and that, if it had declined, the Board should wait until the account had regained its value before transferring the balance. While the Board recognizes that some market fluctuations in the recent past have been brief and dramatic, historically this has often not been the case. Because the Board cannot legally maintain an account for a beneficiary, it does not have the authority to hold an account for a period of time, however short, until the market has regained a loss (if it does).

Given the restrictions on the Board and its duty to act in the best interests of all participants and their beneficiaries, the Board believes that the best way to do this is, upon notification of a participant's death, to preserve the then-value of the account from the possibility of decline until the balance can be paid out. For this reason, the Board has decided to adopt the proposed rule as final without change.

Analysis of the Amendment to Part 1690

Many sections of the Board's regulations require a TSP participant to sign a TSP form to affect certain transactions in his or her TSP account, including (but not limited to) withdrawals, loans, interfund transfers, and the designation of a beneficiary in the event of death. However, a participant may become unable to manage his or her own account for various reasons, such as incapacity or absence due to extended travel. In such circumstances, an attorney-in-fact may affect transactions in the TSP on behalf of the participant by signing the TSP form(s) as an agent of the participant.

This final rule requires that, before an attorney-in-fact may sign a TSP form on behalf of a participant, the Board must receive and approve either a general power of attorney that authorizes the attorney-in-fact to act on behalf of the principal in the areas of personal property, finance, retirement, or business transactions; or a special power of attorney that specifically grants the attorney-in-fact the authority to affect transactions in the TSP on behalf of the participant. A valid power of attorney must be authenticated, attested, acknowledged, or certified before a notary public or other authorized official. When the Board receives a power of attorney, it will review it and advise the participant or attorney-in-fact whether it is valid for affecting transactions in the TSP.

This amendment to part 1690 was published in proposed form in the **Federal Register** on December 14, 1998 (63 FR 68699). The Board received no comment on the proposed rule and therefore is adopting it as a final rule without change.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104–4, section 201, 109 Stat. 48, 64, the effects of this regulation on State, local, and tribal governments, and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Parts 1620, 1651, and 1690

Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, chapter VI, Code of Federal Regulations, is amended as set forth below:

1. Part 1620 is revised to read as follows:

PART 1620—EXPANDED AND CONTINUING ELIGIBILITY

Subpart A—General

Sec.
1620.1 Application.
1620.2 Definitions.
1620.3 Contributions.
1620.4 Notices.

Subpart B—Cooperative Extension Service, Union, and Intergovernmental Personnel Act Employees

1620.10 Definition.
1620.11 Scope.
1620.12 Employing authority contributions.
1620.13 Retroactive contributions.
1620.14 Payment to the record keeper.

Subpart C—Article III Justices and Judges; Bankruptcy Judges and U.S. Magistrates; and Judges of the Courts of Federal Claims and Veterans Appeals

1620.20 Scope.
1620.21 Contributions.
1620.22 Withdrawals.
1620.23 Spousal rights.

Subpart D—Nonappropriated Fund Employees

1620.30 Scope.
1620.31 Definition.
1620.32 Employees who move to a NAF instrumentality on or after August 10, 1996.
1620.33 Employees who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965.
1620.34 Employees who move from a NAF instrumentality to a Federal Government agency.
1620.35 Loan payments.
1620.36 Transmission of information.

Subpart E—Uniformed Services Employment and Reemployment Rights Act (USERRA)—Covered Military Service

1620.40 Scope.
1620.41 Definitions.
1620.42 Processing TSP contribution elections.
1620.43 Agency payments to record keeper; agency ultimately responsible.
1620.44 Restoring forfeited agency automatic (1%) contributions.
1620.45 Restoring post-employment withdrawals and reversing taxable distributions.
1620.46 Agency responsibilities.

Authority: 5 U.S.C. 8474(b)(5) and (c)(1).

Subpart C also issued under 5 U.S.C. 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8).

Subpart D also issued under sec. 1043(b), Pub. L. 104–106, 110 Stat. 186, 434–435; and sec. 7202(m)(2), Pub. L. 101–508, 104 Stat. 1388.

Subpart E also issued under 5 U.S.C. 8432b(i).

Subpart A—General

§ 1620.1 Application.

The Federal Employees' Retirement System Act of 1986 (codified as amended largely at 5 U.S.C. 8351 and 8401 through 8479) originally limited TSP eligibility to specifically named groups of employees. On various occasions, Congress has since expanded TSP eligibility to other groups. Depending on the circumstances, that subsequent legislation requires retroactive contributions, waives open season rules, or provides other special features. Where necessary, this part describes those special features. The employees and employing agencies covered by this part are also governed by the other regulations in 5 CFR chapter VI to the extent that they do not conflict with the regulations of this part.

§ 1620.2 Definitions.

As used in this part:

Account balance means the nonforfeitable valued account balance of a TSP participant as of the most recent month-end.

Basic pay means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

Board means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C).

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

CSRS employee or *CSRS participant* means any employee or participant covered by CSRS or an equivalent retirement system, including employees authorized to contribute to the TSP under 5 U.S.C. 8351.

Election period means the last calendar month of a TSP open season and is the earliest period in which an election to make or change a TSP contribution election can become effective.

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8351(a), 8432(a), or 8440a through 8440d.

Employer contributions means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3), and agency matching contributions under 5 U.S.C. 8432(c)(2).

Employing agency means the organization that employs an individual described at § 1620.1 as being eligible to contribute to the TSP and that has authority to make personnel compensation decisions for such employee.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B).

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, and any equivalent Federal Government retirement system.

FERS employee or *FERS participant* means any employee or participant covered by FERS.

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A).

Individual account means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

In-service withdrawal means an age-based or financial hardship withdrawal from the TSP obtained by a participant before separation from Government employment.

Investment fund means either the G Fund, the F Fund, or the C Fund, and any other TSP investment funds created after December 27, 1986.

Monthly processing cycle means the process, beginning on the evening of the fourth business day of the month, by which the TSP record keeper allocates the amount of earnings to be credited to participant accounts in the TSP, implements interfund transfer requests, and authorizes disbursements from the TSP.

Open season means the period during which employees may choose to begin making contributions to the TSP, to change or discontinue (without losing

the right to recommence contributions the next open season) the amount currently being contributed to the TSP, or to allocate prospective contributions to the TSP among the investment funds.

Plan participant or participant means any person with an account in the TSP, or who would have an account in the TSP but for an employing agency error.

Post-employment withdrawal means a withdrawal from the TSP obtained by a participant who has separated from Government employment.

Separation from Government employment means the cessation of employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for 31 or more full calendar days.

Spouse means the person to whom a TSP participant is married on the date he or she signs forms on which the TSP requests spouse information including a spouse from whom the participant is legally separated, and includes a person with whom a participant is living in a relationship that constitutes a common law marriage in the jurisdiction in which they live.

Thrift Savings Fund means the Fund described in 5 U.S.C. 8437.

Thrift Savings Plan, TSP, or *Plan* means the Thrift Savings Plan established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan (TSP) contribution election means a request by an employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period, or to change the allocation of future TSP contributions among the investment funds, and made effective pursuant to 5 CFR part 1600.

Thrift Savings Plan Service Computation Date means the date, actual or constructed, that includes all "service" as defined at 5 CFR 1603.1.

Thrift Savings Plan Service Office means the office established by the Board to service participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

§ 1620.3 Contributions.

The employing agency is responsible for transmitting to the Board's record keeper, in accordance with Board procedures, any employee and employer contributions that are required by this part.

§ 1620.4 Notices.

An employing agency must notify affected employees of the application of this part as soon as practicable.

Subpart B—Cooperative Extension Service, Union, and Intergovernmental Personnel Act Employees

§ 1620.10 Definition.

As used in this subpart, *employing authority* means the entity that employs an individual described in § 1620.11 and which has the authority to make personnel compensation decisions for such employee.

§ 1620.11 Scope.

This subpart applies to any individual participating in CSRS or FERS who:

(a) Has been appointed or otherwise assigned to one of the cooperative extension services, as defined in 7 U.S.C. 3103(5);

(b) Has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by 5 U.S.C. 8331(1) and 8401(11); or

(c) Has been assigned, on an approved leave-without-pay basis, from a Federal agency to a state or local government under 5 U.S.C. chapter 33, subchapter VI.

§ 1620.12 Employing authority contributions.

The employing authority, at its sole discretion, may choose to make employer contributions under 5 U.S.C. 8432(c) for employees who are covered under FERS. Such contributions may be made for any period of eligible service after January 1, 1984, provided that the employing agency must treat all its employees who are eligible to receive employer contributions in the same manner. The employing authority can only commence or terminate employer contributions during an open season and must provide all affected employees with notice of a decision to commence or terminate such contributions at least 45 days before the beginning of the applicable election period. The employing authority may not contribute to the TSP on behalf of CSRS employees.

§ 1620.13 Retroactive contributions.

(a) An employing authority can make retroactive employer contributions on behalf of FERS employees described in this subpart, but cannot duplicate employer contributions already made to the TSP.

(b) An employing authority making retroactive employing agency contributions on behalf of a FERS employee described in § 1620.12 must continue those contributions (but only to the extent they relate to service with the employing authority) if the employee returns to his or her agency of record or is transferred to another Federal agency without a break in service.

(c) CSRS and FERS employees covered by this subpart can make retroactive employee contributions relating to periods of service described in § 1620.12, unless they already have been given the opportunity to make contributions for these periods of service.

§ 1620.14 Payment to the record keeper.

(a) The employing authority of a cooperative extension service employee (described at § 1620.11(a)) is responsible for transmitting employer and employee contributions to the TSP record keeper.

(b) The employing authority of a union employee or an Intergovernmental Personnel Act employee (described at § 1620.11(b) and (c), respectively) is responsible for transmitting employer and employee contributions to the employee's Federal agency of record. Employee contributions will be deducted from the employee's actual pay. The employee's agency of record is responsible for transmitting the employer and employee's contributions to the TSP record keeper in accordance with Board procedures. The employee's election form (TSP–1) will be filed in the employee's official personnel folder or other similar file maintained by the employing authority.

Subpart C—Article III Justices and Judges; Bankruptcy Judges and U.S. Magistrates; and Judges of the Courts of Federal Claims and Veterans Appeals

§ 1620.20 Scope.

(a) This subpart applies to:

(1) A justice or judge of the United States as defined in 28 U.S.C. 451;

(2) A bankruptcy judge appointed under 28 U.S.C. 152 or a United States magistrate appointed under 28 U.S.C. 631 who has chosen to receive a judges' annuity described at 28 U.S.C. 377 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659, 102 Stat. 3910–3921;

(3) A judge of the United States Court of Federal Claims appointed under 28 U.S.C. 171 whose retirement is covered by 28 U.S.C. 178; and

(4) A judge of the Court of Veterans Appeals appointed under 38 U.S.C. 7253.

(b) This subpart does not apply to a bankruptcy judge or a United States magistrate who has not chosen a judges' annuity, or to a judge of the United States Court of Federal Claims who is not covered by 28 U.S.C. 178. Those individuals may participate in the TSP only if they are otherwise covered by CSRS or FERS.

§ 1620.21 Contributions.

(a) An individual covered under this subpart can contribute up to 5 percent of basic pay per pay period to the TSP, and, unless stated otherwise in this subpart, he or she is covered by the same rules and regulations that apply to a CSRS participant in the TSP.

(b) The following amounts are not basic pay and no TSP contributions can be made from them:

(1) An annuity or salary received by a justice or judge of the United States (as defined in 28 U.S.C. 451) who is retired under 28 U.S.C. 371(a) or (b), or 372(a);

(2) Amounts received by a bankruptcy judge or a United States magistrate under a judges' annuity described at 28 U.S.C. 377;

(3) An annuity or salary received by a judge of the United States Court of Federal Claims under 28 U.S.C. 178; and

(4) Retired pay received by a judge of the United States Court of Veterans Appeals under 38 U.S.C. 7296.

§ 1620.22 Withdrawals.

(a) *Post-employment withdrawal.* An individual covered under this subpart can make a post-employment withdrawal election described at 5 U.S.C. 8433(b):

(1) Upon separation from Government employment.

(2) In addition to the circumstance described in paragraph (a)(1) of this section, a post-employment withdrawal election can be made by:

(i) A justice or judge of the United States (as defined in 28 U.S.C. 451) who retires under 28 U.S.C. 317(a) or (b) or 372(a);

(ii) A bankruptcy judge or a United States magistrate receiving a judges' annuity under 28 U.S.C. 377;

(iii) A judge of the United States Court of Federal Claims receiving an annuity or salary under 28 U.S.C. 178; and

(iv) A judge of the United States Court of Veterans Appeals receiving retired pay under 38 U.S.C. 7296.

(b) *In-service withdrawals.* An individual covered under this subpart can request an in-service withdrawal described at 5 U.S.C. 8433(h) if he or she:

(1) Has not separated from Government employment; and

(2) Is not receiving retired pay as described in paragraph (a)(2) of this section.

§ 1620.23 Spousal rights.

(a) The current spouse of a justice or judge of the United States (as defined in 28 U.S.C. 451), or of a Court of Veterans Appeals judge, possesses the rights described at 5 U.S.C. 8351(b)(5).

(b) A current or former spouse of a bankruptcy judge, a United States magistrate, or a judge of the United States Court of Federal Claims, possesses the rights described at 5 U.S.C. 8435 and 8467 if the judge or magistrate is covered under this subpart.

Subpart D—Nonappropriated Fund Employees

§ 1620.30 Scope.

This subpart applies to any employee of a Nonappropriated Fund (NAF) instrumentality of the Department of Defense (DOD) or the U.S. Coast Guard who elects to be covered by CSRS or FERS and to any employee in a CSRS- or FERS-covered position who elects to be covered by a retirement plan established for employees of a NAF instrumentality pursuant to the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, Public Law 101–508, 104 Stat. 1388, 1388–335 to 1388–341, as amended (codified largely at 5 U.S.C. 8347(q) and 8461(n)).

§ 1620.31 Definition.

As used in this subpart, *move* means moving from a position covered by CSRS or FERS to a NAF instrumentality of the DOD or Coast Guard, or *vice versa*, without a break in service of more than one year.

§ 1620.32 Employees who move to a NAF instrumentality on or after August 10, 1996.

Any employee who moves from a CSRS- or FERS-covered position to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS, will be eligible to contribute to the TSP as determined in accordance with 5 CFR part 1600.

§ 1620.33 Employees who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965.

(a) *Future TSP contributions.*—(1) *Employee contributions.* An employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of that move may elect to make any future contributions to the TSP in accordance with 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, within 30 days of the date of his or her election to be covered by CSRS or FERS. Such contributions will begin being deducted from the employee's pay no later than the pay period following the election to contribute to the TSP. Any TSP contribution election which may have been in effect at the time of the employee's move will not be effective for any future contributions.

(2) *Employer contributions.* If an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, elects to be covered by FERS:

(i) The NAF instrumentality must contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that the employee is eligible to receive under 5 U.S.C. 8432(c)(1), beginning no later than the pay period following the employee's election to be covered by FERS; and

(ii) If the employee elects to make contributions to the TSP pursuant to paragraph (a)(1) of this section, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of that employee any amounts that the employee is eligible to receive under 5 U.S.C. 8432(c)(2), beginning at the same time as the employee's contributions are made pursuant to paragraph (a)(l) of this section.

(b) *Retroactive TSP contributions.* (1) Without regard to any election to contribute to the TSP under paragraph (a)(l) of this section, the NAF instrumentality will take the following actions with respect to an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of the move:

(i) *Agency automatic (1%) makeup contributions.* The NAF instrumentality must, within 30 days of the date of the employee's election to be covered by FERS, contribute to the Thrift Savings Fund an amount representing the agency automatic (1%) contribution for all pay periods during which the employee would have been eligible to receive the agency automatic (1%) contribution under 5 U.S.C. 8432, beginning with the date of the move and ending with the date that agency

automatic (1%) contributions begin under paragraph (a)(2) of this section. Lost earnings will not be paid on these contributions unless they are not made by the NAF instrumentality within the time frames required by these regulations.

(ii) *Employee makeup contributions.* (A) Within 60 days of the election to be covered by FERS, an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by FERS, may make an election regarding employee makeup contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions which the employee would have been eligible to make under 5 U.S.C. 8432 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the date that agency automatic (1%) contributions begin under paragraph (a)(2) of this section.

(B) Within 60 days of the election to be covered under CSRS, an employee who moved to a NAF instrumentality before August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS, may make an election regarding make-up contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions that the employee would have been eligible to make under 5 U.S.C. 8351 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the pay period following the date the election to be covered by CSRS is made.

(C) Deductions made from the employee's pay pursuant to an employee's election under paragraph (b)(1)(ii)(A) or (B) of this section, as appropriate, must be made according to a schedule that meets the requirements of 5 CFR 1505.2(c). The payment schedule must begin no later than the pay period following the date the employee elects the schedule.

(iii) *Agency matching makeup contributions.* The NAF instrumentality must pay to the Thrift Savings Fund any matching contributions attributable to employee contributions made under paragraph (b)(1)(ii)(A) of this section which the NAF instrumentality would have been required to make under 5 U.S.C. 8432(c), at the same time that those employee contributions are contributed to the Fund.

(2) Makeup contributions must be reported for investment by the NAF instrumentality when contributed, according to the employee's election for current TSP contributions. If the employee is not making current contributions, the retroactive contributions must be invested according to an election form (TSP–1–NAF) filed specifically for that purpose.

(c) *Noneligible employees.* An employee who is covered by a NAF retirement system is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement system coverage must be removed from the TSP as required by the regulations at 5 CFR part 1605.

(d) *Elections.* If a TSP election was made by an employee of a NAF instrumentality who elected to be covered by CSRS or FERS before August 10, 1996, and the election was properly implemented by the NAF instrumentality because it was valid under then-effective regulations, the election is effective under the regulations in this subpart.

§ 1620.34 Employees who move from a NAF instrumentality to a Federal Government agency.

(a) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by a NAF retirement system is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement coverage must be removed from the TSP as required by the regulations at 5 CFR part 1605.

(b) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by CSRS or FERS will become eligible to participate in the TSP as determined in accordance with 5 CFR part 1600.

§ 1620.35 Loan payments.

NAF instrumentalities must deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the record keeper in accordance with 5 CFR part 1655 and Board procedures. Loan payments may not be deducted and transmitted for employees who elect to be covered by the NAF retirement system. Such employees will be considered to have separated from Government service and must prepay their loans or the TSP will declare the loan to be a taxable distribution.

§ 1620.36 Transmission of information.

Any employee who moves to a NAF instrumentality must be reported by the losing Federal Government agency to the TSP record keeper as having transferred to a NAF instrumentality of the DOD or Coast Guard rather than as having separated from Government service. If the employee subsequently elects not to be covered by CSRS or FERS, the NAF instrumentality must submit an Employee Data Record to report the employee as having separated from Federal Government service as of the date of the move.

Subpart E—Uniformed Services Employment and Reemployment Rights Act (USERRA)-Covered Military Service

§ 1620.40 Scope.

To be covered by this subpart, an employee must have:

(a) Separated from Federal civilian service or entered leave-without-pay status in order to perform military service; and

(b) Become eligible to seek reemployment or restoration to duty by virtue of a release from military service, discharge from hospitalization, or other similar event that occurred on or after August 2, 1990; and

(c) Been reemployed in, or restored to, a position covered by CSRS or FERS pursuant to the provisions of 38 U.S.C. chapter 43.

§ 1620.41 Definitions.

As used in this subpart:

Basic pay means basic pay as defined in § 1620.2, except for the portion of the retroactive period when an employee did not receive a Federal salary. In that case, basic pay is the rate of pay that would have been payable to the employee had he or she remained continuously employed in the position last held before separating (or entering leave-without-pay status) to perform military service.

Current contributions means those contributions that are made prospectively for any pay period after the employee has been reemployed.

Leave without pay or *LWOP* means a temporary nonpay status and absence from duty (including military furlough) to perform military service.

Reemployed or *reemployment* means reemployed in (or restored from a nonpay status to) a position pursuant to 38 U.S.C. chapter 43, which is subject to 5 U.S.C. chapter 84 or which entitles the employee to contribute to the TSP pursuant to 5 U.S.C. 8351.

Retroactive period means the period for which an employee is entitled to

make up missed employee contributions and to receive retroactive agency contributions.

Retroactive period beginning date means, for an employee who was eligible to contribute to the TSP when military service began, the date following the effective date of separation or, in the case of LWOP, the date the employee enters LWOP status. For an employee who was not eligible to make TSP contributions when military service began, the retroactive period begins on the first day of the first pay period in the election period during which the employee would have been eligible to make contributions had the employee remained in Federal civilian service.

Retroactive period ending date means the earlier of the following two dates: the date before the first day of the first election period during which a contribution election could have been made effective after reemployment, or the last day of the pay period before the pay period during which routine current contributions are begun after the employee is reemployed (or restored). If an employee who was making contributions when he or she separated elects not to make routine current contributions, the ending date of the retroactive period is the last day of the pay period during which the employee elects to terminate contributions.

Separation or *separated* means the period an employee was separated from Federal civilian service (or entered a leave-without-pay status) in order to perform military service.

§ 1620.42 Processing TSP contribution elections.

(a) *Current TSP contribution elections.* Immediately upon reemployment, an employee's agency will give an eligible employee the opportunity to submit a TSP election form (Form TSP–1) to make current contributions. The effective date of the current Form TSP–1 will be the first day of the first full pay period in the most recent TSP election period. If the employee is reemployed during a TSP Open Season but before the election period, he or she can also submit an election form that will become effective the first day of the first full pay period in the following election period.

(b) *Retroactive contribution elections.* (1) An employee has the following options for making retroactive contributions:

(i) If the employee had a valid contribution election form (Form TSP–1) on file when he or she separated, that election form will be reinstated for purposes of retroactive contributions.

(ii) Instead of making the contributions for the retroactive period under the reinstated contribution election form, the employee may submit a new election form for any Open Season that occurred during the retroactive period. However, the allocation election on each Form TSP–1 for the retroactive period must be the same as the allocation election on the current Form TSP–1.

(2) An employee who terminated contributions within two months before entering military service will be eligible to make a retroactive contribution election effective for the first Open Season that occurs after the effective date that the contributions were terminated. This election may be made even if the termination was made outside of an Open Season.

§ 1620.43 Agency payments to record keeper; agency ultimately responsible.

(a) *Agency making payments to record keeper.* The current employing agency always will be the agency responsible for making payments to the record keeper for all contributions (both employee and agency) and lost earnings, regardless of whether some of that expense is ultimately chargeable to a prior employing agency.

(b) *Agency ultimately chargeable with expense.* The agency ultimately chargeable with the expense of agency contributions and lost earnings attributable to the retroactive period is ordinarily the agency that reemployed the employee. However, if an employee changed agencies during the period between the date of reemployment and October 13, 1994, the employing agency as of October 13, 1994, is the agency ultimately chargeable with the expense.

(c) *Reimbursement by agency ultimately chargeable with expense.* If the agency that made the payments to the record keeper for agency contributions and lost earnings is not the agency ultimately chargeable for that expense, the agency that made the payments to the record keeper may, but is not required to, obtain reimbursement from the agency ultimately chargeable with the expense.

§ 1620.44 Restoring forfeited agency automatic (1%) contributions.

If an employee's agency automatic (1%) contributions were forfeited because the employee was not vested when he or she separated to perform military service, the employee must notify the employing agency that a forfeiture occurred. The employing agency will follow the procedure described in § 1620.47(d) to have those funds restored.

§ 1620.45 Restoring post-employment withdrawals and reversing taxable distributions.

(a) *Post-employment withdrawals.* Employees who received automatic cashouts because their account balances were $3,500 or less, or who were required to withdraw their TSP accounts before March 1995 because they were not eligible for retirement benefits when they separated, may elect to have the separation for military service treated as if it never occurred. These employees will be permitted to return amounts to the TSP that represent the full amount of the post-employment withdrawal.

(b) *Reversing taxable distributions.* An employee who separated or who entered into nonpay status to perform military service, and whose TSP loan was therefore declared a taxable distribution, may be eligible to have that distribution reversed.

(1) If the employee received a post-employment withdrawal when he or she separated to perform military service, he or she can have a taxable distribution reversed only if that withdrawal is returned under the procedures described in paragraph (a) of this section. If the employee is not eligible to or does not return the withdrawal, he or she cannot have the taxable distribution reversed.

(2) The taxable distribution can be reversed either by reinstating the TSP loan or by repaying the loan in full. TSP loan repayments can be reinstated only if the loan can be repaid within five years of its disbursement for non-residential loans and 15 years for residential loans; and if the employee will have no more than two loans outstanding, one of which can be a residential loan.

(c) *Process.* Eligible employees must notify the TSP record keeper of their intent to return the withdrawn funds and/or reverse a taxable distribution. This notification must be given within one year of reemployment and the employee must provide the TSP record keeper with a copy of the SF–50, Notification of Personnel Action, indicating reemployment or reinstatement was made pursuant to 38 U.S.C. chapter 43, or a letter from his or her agency indicating reemployment or restoration pursuant to 38 U.S.C. chapter 43. If the participant is eligible to return a withdrawal and/or reverse a distribution, the TSP record keeper will:

(1) In the case of a request to return withdrawn funds, notify the employee of the amount of funds to be returned.

(2) In the case of a request to reverse a taxable distribution, reinstate the loan

if permitted, or if not, inform the employee of the repayment amount for the loan.

(3) In the case of returned withdrawal and a repaid loan, inform the employee that both actions must be accomplished in the same transaction (i.e., one payment for both amounts).

(4) In all cases inform the employee that he or she must provide the funds in a single payment to the TSP record keeper within 90 days after the record keeper sends the employee the notice advising of the amount and procedures for repaying the loan or withdrawal. Repayment must be submitted in the form of a certified or cashier's check, a certified or treasurer's draft from a credit union, or a money order.

(d) *Earnings.* Employees will not receive retroactive earnings on any amounts returned to their accounts under this section.

§ 1620.46 Agency responsibilities.

(a) *General.* Each employing agency must establish procedures for implementing these regulations. These procedures must at a minimum require agency personnel to identify eligible employees and notify them of their options under these regulations and the time period within which these options must be exercised.

(b) *Agency records; procedure for reimbursement.* The agency that is making the payments to the record keeper for all contributions (both employee and agency) and lost earnings will obtain from prior employing agencies whatever information is necessary to make accurate payments. If a prior employing agency is ultimately chargeable under § 1620.43(b) for all or part of the expense of agency contributions and lost earnings, the agency making the payments to the record keeper will determine the procedure to follow in order to collect amounts owed to it by the agency ultimately chargeable with the expense.

(c) *Payment schedule; matching contributions report.* Agencies will, with the employee's consent, prepare a payment schedule for making retroactive employee contributions which will be consistent with the procedures established at 5 CFR part 1605 for the correction of employing agency errors.

(d) *Agency automatic (1%) contributions.* Employing agencies must calculate the agency automatic (1%) contributions for all reemployed (or restored) FERS employees, report those contributions to the record keeper, and submit lost earnings records to cover the retroactive period within 60 days of reemployment.

(e) *Forfeiture restoration.* When notified by an employee that a forfeiture of the agency automatic (1%) contributions occurred after the employee separated to perform military service, the employing agency must submit to the record keeper Form TSP–5–R, Request to Restore Forfeited Funds, to have those funds restored.

(f) *Thrift Savings Plan Service Computation Date.* The agencies must include the period of military service in the Thrift Savings Plan Service Computation Date (TSP–SCD) of all reemployed FERS employees. If the period of military service has not been credited, the agencies must submit an employee data record to the TSP record keeper containing the correct TSP Service Computation Date.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

2. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

3. Section 1650.15 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 1650.15 Required withdrawal date.

* * * * *

(c) In the event that a participant does not withdraw his or her account or begin receiving payments in accordance with paragraph (a) of this section, the Board will transfer all of the funds in the participant's account not already invested in the Government Securities Investment Fund (G Fund) to that Fund. A notice of this action will be sent to the participant with a warning that his or her account will be declared abandoned and forfeited unless the participant comes into compliance with paragraph (a) of this section within 90 days of the date of the notice.

(d) If the participant does not take the appropriate withdrawal action within the 90 day period provided in paragraph (c) of this section, the Board will purchase an annuity for the participant after the following steps have been taken:

(1) The account has been declared abandoned and the funds in the account have been forfeited;

(2) A notice of this action has been sent to the participant;

(3) The participant reclaims the account balance that was abandoned, but decides against a withdrawal pursuant to §§ 1650.10 or 1650.11; and

(4) The participant provides the information that the Board needs to purchase an annuity pursuant to § 1650.12.

PART 1651—DEATH BENEFITS

4. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

5. Section 1651.1 is amended by adding in alphabetical order the definitions of "C Fund", "F Fund", "G Fund", and "Investment fund", to read as follows:

§ 1651.1 Definitions.

* * * * *

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

* * * * *

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Investment fund means the C Fund, the F Fund, the G Fund, or any other TSP investment fund created subsequent to December 27, 1986;

* * * * *

6. Section 1651.2 is amended by adding a new paragraph (c) to read as follows:

§ 1651.2 Entitlement to benefits.

* * * * *

(c) If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the Board will transfer the entire account into the G Fund after receiving written notice of the participant's death. The account will continue to accrue earnings at the G Fund rate in accordance with 5 CFR part 1645 until it is paid in accordance with the order of precedence set forth in paragraph (a) of this section.

PART 1690—MISCELLANEOUS REGULATIONS

7. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

8. Section 1690.2 is added to read as follows:

§ 1690.2 Power of attorney.

This section applies to all regulations in this chapter that require a signature by the participant on a Thrift Savings Plan (TSP) form, where the participant desires to effect transactions through an

agent (*i.e.*, an attorney-in-fact). Before an attorney-in-fact may sign a TSP form on behalf of a participant, the Board must have approved either a general power of attorney which authorizes the attorney-in-fact to act on behalf of the participant with respect to the principal's personal property or in Federal Government retirement, financial, or business transactions; or a special power of attorney which authorizes the attorney-in-fact to effect transactions in the TSP on behalf of the participant. For a power of attorney to be acceptable to effect transactions in the TSP, it must be authenticated, attested, acknowledged, or certified before a notary public or other official authorized by law to administer oaths or affirmations. The Board will advise the person submitting a power of attorney whether it is valid to effect transactions in the TSP.

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Part IV

Department of Education

34 CFR Part 5b

Privacy Act of 1974; Implementation; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 5b

RIN 1880–AA78

Privacy Act Regulations; Implementation

AGENCY: Office of Inspector General, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department's regulations implementing the Privacy Act of 1974 (the Act). These amendments are needed to modify existing departmental regulations to exempt from certain provisions of the Act a new system of records known as the Office of Inspector General (OIG) Hotline Complaints Files (System No. 18–10–0004) (ED/OIG Hotline Complaint Files). These exemptions are needed to protect information regarding Hotline complaints from disclosure to target individuals and others who could interfere with the processing and disposition of the information and with law enforcement activities relating to the Hotline complaints.

DATES: These regulations are effective July 9, 1999.

FOR FURTHER INFORMATION CONTACT: Gary Mathison, Acting Assistant Inspector General for Investigations, U.S. Department of Education, 400 Maryland Avenue, SW., room 4106, Switzer Building, Washington, DC 20202–1530. Telephone: (202) 205–8762. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On November 24, 1997, the Secretary published a notice of proposed rulemaking (NPRM) for this amendment in the **Federal Register** (62 FR 62670). The NPRM included a detailed summary of major issues on pages 62670–62672. In the same issue of the **Federal Register**, the Secretary published a Notice of a New System of Records entitled "Hotline Complaint Files of the Inspector General" (62 FR 62673). The Secretary stated that the new system would not be implemented until the proposed exemptions became final. The exemptions become final on the effective date of these final regulations.

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

The exemptions are authorized under the Privacy Act, 5 U.S.C. 552a(j)(2) and (k)(2). Under subsection (j)(2) of the Act, the Secretary through rulemaking may exempt from certain provisions of the Act those systems of records maintained by a component of the Department that performs as its principal function any activity pertaining to the enforcement of criminal laws, if the information in the system is compiled for the purpose of criminal investigation. Under 5 U.S.C. 552a(k)(2), the Secretary through rulemaking may exempt from a more limited number of Privacy Act requirements a system of records that contains investigatory materials compiled for civil and administrative law enforcement purposes.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations. We did not receive any comments.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

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(Catalogue of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 5b

Privacy.

Dated: June 4, 1999.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 5b of title 34 of the Code of Federal Regulations as follows:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b is revised to read as follows:

Authority: 5 U.S.C. 301 and 552a.

2. Section 5b.11 is amended by revising paragraphs (b), introductory text, and (c)(1), introductory text, to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) *Specific systems of records exempted under (j)(2).* The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) and the Hotline Complaint Files of the Inspector General ED/OIG (18–10–0004) systems of records from the following provisions of 5 U.S.C. 552a and this part:

* * * * *

(c) * * *

(1) The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) and the Hotline Complaint Files of the Inspector General ED/OIG (18–10–0004) from the following provisions of 5 U.S.C. 552a and this part to the extent that these systems of records consist of investigatory material and complaints that may be included in investigatory material compiled for law enforcement purposes:

* * * * *

[FR Doc. 99–14585 Filed 6–8–99; 8:45 am]

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VOL 64 ISS 110 JE 9 1999 UMI

Federal Register

Wednesday
June 9, 1999

Part V

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Training and Information for Parents of Children With Disabilities; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Education—Training and Information for Parents of Children With Disabilities

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Secretary announces a final priority for one program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act (IDEA), as amended. The Secretary may use this priority to support grants in fiscal year 1999 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. This final priority is intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: This priority takes effect on July 9, 1999.

FOR FURTHER INFORMATION CONTACT: For further information on the priority under the Training and Information for Parents of Children with Disabilities Program contact the U.S. Department of Education, 400 Maryland Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8038. FAX: (202) 205–8105. Internet: Debra__Sturdivant@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Department at the address listed. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

SUPPLEMENTARY INFORMATION: This notice contains one final priority under the Training and Information for Parents of Children with Disabilities program authorized by IDEA.

On March 25, 1999, the Secretary published a notice of proposed priority for this program in the **Federal Register** (64 FR 14556).

This proposed priority supports the National Education Goals by helping to improve results for children with disabilities.

The publication of this priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, seventeen parties submitted comments. An analysis of the comments and of the changes in the proposed priority follows. We discuss substantive issues under the sections of the priority to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Comment: One commenter questioned whether only the States listed in the March 25, 1999 **Federal Register** announcement would be considered for the fiscal year 1999 funding cycle. The commenter further recommended that the final priority include the four (4)-year schedule for submitting applications for all of the State awards.

Discussion: Only the States listed in the March 25, 1999 **Federal Register** announcement as eligible for the fiscal year 1999 funding cycle, Guam, Palau, the Commonwealth of the Northern Mariana Islands and the freely associated States will be eligible for funding in fiscal year 1999. The Parent Training and Information (PTI) centers program is moving the competition cycles for the centers to a four (4)-year cycle with a pre-determined schedule of the States eligible for the competition. Including the anticipated schedule in the priority itself would limit the Secretary's ability to revise the schedule based on unforseen circumstances. The regular four (4)-year cycle is expected to be:

1999: AZ, DE, DC, IA, IN, MA, MN, MS, MO, SD, VA, WA, WY.
2000: HI, ID, LA, NH, NC, OK, PA, RI, TN, WV, VI, AS.
2001: AK, AL, CO, FL, KY, ME, MD, NE, NY, ND, NV, PR, VT, WI.
2002: AR, CA, CT, GA, IL, KS, MI, MT, NJ, NM, OH, OR, SC, TX, UT.

States and the freely associated States that are not listed here will be included in a cycle if and when they receive initial funding.

Changes: None.

Comment: Several commenters suggested that a five (5)-year funding schedule would be a better strategy than the proposed four (4)-year funding schedule.

Discussion: The Secretary believes that four years provides a more appropriate funding cycle in order to provide adequate Federal oversight for the PTI centers.

Changes: None.

Comment: One commenter suggested that the annual reporting cycle should go to a process of reporting data from the beginning of a grant year to the end of a grant year.

Discussion: The statute requires an annual report by fiscal year. Therefore, the Secretary is not legally authorized to change this requirement by requesting that the PTI centers report data by grant year as opposed to reporting data by fiscal year.

Changes: None.

Comment: One commenter suggested that the language on page 14557, paragraph (a) of the priority should be amended to include parents of children that are not identified at all.

Discussion: The priority, as written, includes parents of children who are not identified at all. The language referring to children who may be inappropriately identified was intended to include those children who may not be identified at all. However, the Secretary acknowledges the concerns of the commenter and agrees to clarify the language of the priority.

Changes: The priority language will be amended by adding "including those who are not identified at all" to the end of the sentence.

Comment: One commenter suggested that parents would choose not to use the mediation process in States where the SEA uses its own staff as mediators. The commenter stated that parents have questions about the impartiality of mediators who work for the State and are vested in the State's interest.

Discussion: Section 615(e) (1) and (2) of IDEA includes language that requires that the mediation process must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The statute further states that a local educational agency or State agency may establish procedures to require parents who choose not to use the mediation process, to meet with a disinterested party who is under contract with a PTI center or community parent resource center (CPRC), or an appropriate alternative dispute resolution entity, at a time and location convenient to the parents. The Secretary believes that the language contained in IDEA takes into account the concerns of the commenter.

Changes: None.

Comment: One commenter recommended that the Department should require entities such as colleges, universities, local schools, and State education agencies that receive Federal education funds, to seek partnerships with PTI centers as well as parents in the general population. The commenter further stated that networking, collaboration, and information sharing should not be the full responsibility of PTI centers but should be shared by all related entities.

Discussion: The Department supports partnerships among the PTI centers and entities such as colleges, universities, local schools, and State education agencies that receive Federal education funds. In addition, the Department has made significant investments to create the type of partnerships described by the commenter in order to promote and insure the implementation of the IDEA Amendments of 1997.

Changes: None.

Comment: One commenter recommended that PTI centers should be funded to specifically serve low income parents and children affected by learning disabilities.

Discussion: Section 682(b)(3) of IDEA states that each parent training and information center is required to serve the parents of infants, toddlers, and children with the full range of disabilities. Each of the centers should have information and knowledge about learning disabilities as well as an awareness of additional resources in the local area or State that are available for this group of children and their families.

Changes: None.

Comment: Several commenters suggested that the language requiring PTI centers to work cooperatively with the Community Parent Resource Centers (CPRCs) in the State should be expanded to require PTI centers to share some of their funding with CPRCs so that the work of the CPRCs is acknowledged and supported financially.

Discussion: The intent of paragraph (h) in the proposed priority to establish cooperative relations with the CPRCs was to reinforce the requirement in section 683(b)(3) of IDEA that the CPRCs establish cooperative partnerships with the PTI centers. PTI centers can choose to enter into projects with CPRCs where subcontracting could occur. However, the Secretary does not believe it is necessary for the PTI centers to share funding for the projects to maximize existing resources, work together when possible, and be supportive of each other.

Changes: There are no substantive changes. However, the order of paragraphs (g) and (h) in the proposed priority has been reversed in the final priority to make clear the intent of the priority.

Comment: One commenter suggested that the priority clarify that no new PTI centers will be funded in States where they currently exist.

Discussion: Other than interim awards for California, New York, and Illinois in fiscal year 1999, no awards will be made in any State that are not consistent with the regular four (4)-year funding cycle schedule.

Changes: None.

Comment: Several commenters suggested a change to the language of the proposed priority so that Parent to Parent programs are specifically mentioned as partners to PTI centers, share PTI centers' funding, and demonstrate cooperative relationships in their State.

Discussion: The Secretary believes that the concerns of the commenters are addressed within the work scope of the priority, which requires PTI centers to network and work with local organizations and agencies, including community-based organizations, such as Parent to Parent programs, that serve parents and families of children with disabilities. The Secretary further emphasizes that it is in the best interest of families who have children with disabilities that all providers of services and supports work together to maximize resources and reach as many families as possible.

Changes: None.

Comment: One commenter recommended that certain organizations, such as the protection and advocacy agencies, should not be eligible to receive PTI center funding.

Discussion: Under the current statute there is only one exclusion that is specifically mentioned—Institutions of Higher Education. Otherwise, any organization or entity that meets the eligibility criteria for this priority may apply for an award.

Changes: None.

Comment: One commenter suggested that the language in the priority requiring a project to budget for a two-day Project Director's meeting should be changed to read as follows: A project's budget must include funds to attend a regional Project Director's meeting to be held each year of the project.

Discussion: The Alliance Project, which is the national technical assistance project funded by the Office of Special Education Programs, funds and supports the attendance of project directors to attend a two-day national conference in Washington, DC.

Changes: The priority language has been amended as suggested by the commenter.

Comment: Several commenters expressed concern about the need to fund a project that has as its focus the very diverse and specialized needs of traditionally underserved multicultural and multilingual families living in poverty in urban and in rural communities.

Discussion: Working with underserved, diverse families is part of the mandate for both the PTI centers and the CPRCs. It is not the intent of the PTI centers program to create two systems, but to encourage the integration of these groups where and when possible. The current technical assistance provider, Alliance, is aware of the need to provide a variety of approaches to support the diverse and specialized needs of traditionally underserved multicultural and multilingual families, and will continue to develop expertise and expand its services to meet the needs of all families.

Changes: None.

Special Education—Training and Information for Parents of Children With Disabilities

Purpose of Program

The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Under section 682(e) of IDEA, the Secretary is required to: (a) make at least one award to a parent organization in each State, unless the Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval; and (b) select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

Eligible applicants for awards under this priority are parent organizations, as defined in section 682(g) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that (a) has a board of directors, the parent and professional members of which are broadly representative of the population to be served and the majority of whom are parents of children with disabilities, that includes individuals with disabilities working in the fields of special education, related services, and early intervention; or (b) if the private

nonprofit organization does not have such a board, has a membership that represents the interest of individuals with disabilities and must establish a special governing board with the same requirements as paragraph (a) and develops a memorandum of understanding between this special governing board and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decision making responsibilities and authority of each.

Priority

Under section 682 of the Act, and 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only those applications that meet this proposed priority:

Proposed Absolute Priority—Parent Training and Information Centers (84.328M)

Background: The IDEA Amendments of 1997 strengthen the role of parents and increase their involvement in decisions about their children's education. Other changes in the law, increased dependence on and the use of technology, and a greater emphasis on networking and promoting partnerships between parents and school personnel, require the PTI centers to be strengthened and refocused. In order to allocate resources more equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Department will begin to make awards in four (4)-year cycles for each State. In FY 1999, applications for 4-year awards will be accepted for the following States: Arizona; Delaware; District of Columbia; Iowa; Indiana; Massachusetts; Minnesota; Mississippi; Missouri; South Dakota; Virginia; Washington; and Wyoming.

In addition to the above State awards, the Secretary intends to fund one award that focuses on the needs of Native-American families who have children with disabilities and one award that focuses on the needs of military families who have children with disabilities.

Until the first four (4)-year cycle is completed, there is a need to have an interim schedule for awards in States where there is more than one PTI and their current awards do not have the same end date. Therefore, we will hold a competition for one or more awards in these States for the time periods needed to match the end date of the last Center funded. Applications will be accepted for FY 1999 interim competitions for the following States: (1) California—3-year award; (2) Illinois—3-year award, and (3) New York—2-year award.

Priority: The Secretary will establish an absolute priority to support parent training and information centers that—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, including those who are not identified at all;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities;

(d) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decision making processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of the Act for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(f) Contract with the State education agency, if the State elects to contract with the parent training and information center, for the purpose of meeting with parents who choose not to use the mediation process to encourage the use, and explain the benefits, of mediation consistent with sections 615(e)(2)(B) and (D) of IDEA;

(g) Establish cooperative relations with the Community Parent Resource Center or Centers in their State in accordance with section 683(b)(3) of IDEA;

(h) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities;

(i) Annually report to the Secretary on—

(1) The number of parents to whom parent training and information centers provided information and training in the most recently concluded fiscal year; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

(j) If there is more than one parent center in a particular State, coordinate their activities to ensure the most effective assistance to parents in that State.

An applicant must identify the strategies it will undertake—

(a) To ensure that the needs for training and information of underserved parents of children with disabilities in the areas to be served are effectively met, particularly in underserved areas of the State; and

(b) To work with the community-based organizations, particularly in the underserved areas of the State.

A parent training and information center that receives assistance under this absolute priority may also conduct the following activities—

(a) Provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(b) Assist students with disabilities to understand their rights and responsibilities on reaching the age of majority, as included under section 615(m) of IDEA; and

(c) Assist parents of children with disabilities to be informed participants in the development and implementation of the State improvement plan under IDEA.

A project's budget must include funds to attend a regional Project Directors' meeting to be held each year of the project.

In order to demonstrate eligibility to receive a grant, an applicant must describe how its board or special governing committee meets the criteria for a parent organization in section 682(g) of IDEA. In addition, any parent organization that establishes a special governing committee under section 682(g)(2) of IDEA must demonstrate that the by-laws of its organization allows the governing committee to be responsible for operating the project (consistent with existing fiscal policies of its organization).

Current funding levels, population of school age children, and the relative proportion of children living in poverty

will be considered in determining funding levels for grants.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Intergovernmental Review

The Training and Information for Parents of Children with Disabilities program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1482.

(Catalog of Federal Domestic Assistance Numbers: Special Education—Training and Information for Parents of Children with Disabilities, 84.328)

Dated: June 3, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–14532 Filed 6–8–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Inviting Applications for New Awards for Fiscal Year 1999

AGENCY: Department of Education.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for one fiscal year 1999 competition under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended. This notice supports the National Education Goals by helping to improve results for children with disabilities.

Note: The Department of Education is not bound by any estimates in this notice.

Special Education—Training and Information for Parents of Children With Disabilities [CFDA No. 84.328]

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Eligible Applicants: Eligible applicants for awards under this priority are parent organizations, as defined in section 682(g) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that (a) has a board of directors, the parent and professional members of which are broadly representative of the population to be served and the majority of whom are parents of children with disabilities, that includes individuals with disabilities working in the fields of special education, related services, and early intervention; or (b) if the private nonprofit organization does not have such a board, has a membership that represents the interests of individuals with disabilities and must establish a special governing board with the same requirements as paragraph (a) and develops a memorandum of understanding between this special governing board and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decision making responsibilities and authority of each.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 97; and (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Absolute Priority—Parent Training and Information Centers (84.328M)

The priority for the Parent Training and Information Centers in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: June 15, 1999.

Deadline for Transmittal of Applications: July 23, 1999.

Deadline for Intergovernmental Review: September 21, 1999.

Estimated Number of Awards: 18.

Estimated Project Awards: Project award amounts are for a single budget period of 12 months. The FY 1999 State awards, interim State awards, and awards focusing on Native American families and military families are listed below:

Arizona	Up to $200,000
Delaware	Up to $164,300
District of Columbia	Up to $136,700
Indiana	Up to $267,800
Iowa	Up to $176,200
Massachusetts	Up to $278,500
Minnesota	Up to $267,000
Mississippi	Up to $192,500
Missouri	Up to $208,400
South Dakota	Up to $159,773
Virginia	Up to $290,900
Washington	Up to $244,100
Wyoming	Up to $128,500
California	Up to $377,150
Illinois	Up to $158,000
New York	Up to $270,100
Native American Families.	Up to $100,000
Military Families	Up to $100,000

Awards may also be made to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels have not been specified.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 60 double-spaced pages using the following standards: (1) a "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides); and (2) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or

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margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Project Period: Up to 48 months.

For Application Information Contact: For this priority under the Special Education—Training and Information for Parents of Children with Disabilities program, contact the U.S. Department of Education, 400 Maryland Avenue, SW, room 3527, Switzer Building, Washington, D.C. 20202–2734. Telephone: (202) 205–8038. FAX: (202) 205–8105. Internet: Debra__Sturdivant@ed.gov.

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(Catalog of Federal Domestic Assistance Numbers: Special Education—Training and Information for Parents of Children with Disabilities, 84.328)

Program Authority: 20 U.S.C. 1482.

Dated: June 3, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–14533 Filed 6–8–99; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday
June 9, 1999

Part VI

Environmental Protection Agency

40 CFR Part 799

Proposed Test Rule for In Vitro Dermal Absorption Rate Testing of Certain Chemicals of Interest to Occupational Safety and Health Administration; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42196; FRL–5760–3]

RIN 2070–AB07

Proposed Test Rule for In Vitro Dermal Absorption Rate Testing of Certain Chemicals of Interest to Occupational Safety and Health Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers, importers, and processors of 47 chemical substances of interest to the Occupational Safety and Health Administration (OSHA) to conduct *in vitro* dermal absorption rate testing. These chemicals, and others, were designated for *in vitro* dermal absorption rate testing in the 31st, 32nd, and 35th Reports of the TSCA Section 4(e) Interagency Testing Committee (ITC) to the EPA Administrator. The dermal absorption rate data obtained under this testing program would be used to support OSHA's development of "skin designations" for the chemical substances included in this proposed rule. Skin designations are used by OSHA to provide specific guidance to employers concerning whether changes should be made to processes involving chemical substances in order to reduce the hazard of systemic toxicity from dermal absorption of these chemicals. Changes to a process might include changes in engineering controls or changes in the use of or type of personal protective equipment. Skin designations alert industrial hygienists, employers, and workers to potential adverse health effects resulting from dermal exposure to chemicals in the workplace. Persons who export or intend to export any chemical substance included in the final rule based on this proposed rule will be subject to the export notification requirements in TSCA section 12(b)(1).

DATES: Comments, identified by docket control number OPPTS–42196, must be received by EPA on or before August 9, 1999. Your request to present oral comments must be in writing and must be received by EPA on or before July 9, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section of this preamble. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS–42196 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information*: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 554–1404; TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information: Keith Cronin, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–8157; fax number: (202) 260–1096; e-mail address: cronin.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

You may be affected by this action, if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in Table 2 of this unit. Use of the term "manufacture" in this preamble will encompass "import," unless otherwise stated. In addition, as described in Unit VI. of this preamble, once the Agency issues the final rule, any person who exports, or intends to export, one of these chemical substances will be subject to the export notification requirements in 40 CFR part 707, subpart D. The export notification requirements do not apply until the Agency issues a final test rule, and then, only apply to exports of the chemical substances that are contained in the final test rule. Therefore, entities potentially affected by this proposed rule may include, but are not limited to:

TABLE 1.— ENTITIES POTENTIALLY AFFECTED BY THE PROPOSED TESTING REQUIREMENTS

Type of entity	SIC	NAICS	Examples of potentially affected entities
Chemical manufacturers and importers	28, 2911	325, 32411	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances
Chemical processors	28, 2911	325, 32411	Persons who process one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in Table 1 of this unit could also be affected. The Standard Industrial Classification (SIC) codes and the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in Unit V.C. of this preamble entitled "Would I Be Required To Test Under This Rule?" and consult the proposed regulatory text in § 799.5115. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in "FOR FURTHER INFORMATION CONTACT" at the beginning of the preamble.

If you are an entity identified in Table 1 of this unit, you would only be subject to the testing requirements contained in this proposed rule if you manufacture or process any of the 47 chemical substances that are listed in Table 2 of this unit.

TABLE 2.—LIST OF CHEMICAL SUBSTANCES PROPOSED FOR TESTING

CAS No.	Chemical substance
60–29–7	Ethyl ether
74–96–4	Ethyl bromide
75–05–8	Acetonitrile
75–15–0	Carbon disulfide
75–35–4	Vinylidene chloride
77–73–6	Dicyclopentadiene
77–78–1	Dimethyl sulfate
78–59–1	Isophorone
78–83–1	Isobutyl alcohol
78–87–5	Propylene dichloride
78–92–2	*sec*-Butyl alcohol
79–20–9	Methyl acetate
79–46–9	2-Nitropropane
91–20–3	Naphthalene

TABLE 2.—LIST OF CHEMICAL SUBSTANCES PROPOSED FOR TESTING—Continued

CAS No.	Chemical substance
92–52–4	Biphenyl
95–49–8	*o*-Chlorotoluene
95–50–1	*o*-Dichlorobenzene
97–77–8	Disulfiram
98–29–3	*tert*-Butylcatechol
99–99–0	*p*-Nitrotoluene
100–00–5	*p*-Nitrochlorobenzene
100–01–6	*p*-Nitroaniline
100–44–7	Benzyl chloride
106–42–3	*p*-Xylene
106–46–7	*p*-Dichlorobenzene
107–06–2	Ethylene dichloride
107–31–3	Methyl formate
108–03–2	1-Nitropropane
108–90–7	Chlorobenzene
108–93–0	Cyclohexanol
109–66–0	Pentane
109–99–9	Tetrahydrofuran
110–12–3	Methyl isoamyl ketone
111–84–2	Nonane
120–80–9	Catechol
121–69–7	Dimethylaniline
122–39–4	Diphenylamine
123–42–2	Diacetone alcohol
126–99–8	*beta*-Chloroprene
127–19–5	Dimethyl acetamide
142–82–5	*n*-Heptane
150–76–5	*p*-Methoxyphenol
528–29–0	*o*-Dinitrobenzene
628–63–7	*n*-Amyl acetate
768–52–5	*N*-Isopropylaniline
25013–15–4	Vinyl toluene
34590–94–8	Dipropylene glycol methyl ether

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and other documents from the EPA Internet EPA Home Page at http://www.epa.gov/. On the Home Page select "Law and Regulations" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person* . The official record for this proposed rule, which includes the public version, has been established under docket control number OPPTS–42196. The official record consists of the documents referenced in this preamble (see Unit VIII. of this preamble), as well as the public comments that will be received during the comment period, and other information related to this rulemaking, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as all documents that are referenced in those documents. The public version of the offical record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted as described in Unit I.C. and D. of this preamble, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS–42196 in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., East Tower, Rm. G–099, Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Document Control Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., East Tower, Rm. G–099, Washington, DC. The telephone number for the OPPT Document Control Office is (202) 260–7093.

3. *Electronically.* Submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or you may mail or deliver your computer disk to the addresses identified in Units I.C.1. or 2. of this preamble. Do not submit any information electronically that you consider to be CBI. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic comments must be identified by docket control number OPPTS–42196. Electronic comments may be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want To Submit To The Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comments that include any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, consult the technical person identified in "FOR FURTHER INFORMATION CONTACT" at the beginning of this preamble.

E. Can I Request An Opportunity To Present Oral Comments To The Agency?

You may submit a request for an opportunity to present oral comments. This request must be in writing. If such a request is received on or before July 9, 1999, EPA will hold a public meeting on this proposed rule in Washington, DC. This written request must be submitted to the address provided in Unit I.C. of this preamble. If such a request is received, EPA will announce the scheduling of the public meeting in a subsequent **Federal Register** document. If a public meeting is announced, and if you are interested in attending or presenting oral and/or written comments at the public meeting, you should follow the instructions provided in the subsequent **Federal Register** document announcing the public meeting.

F. What Should I Consider as I Prepare My Comments For EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final rule. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.

•Make sure to submit your comments by the deadline in this document.

•At the beginning of your comments, be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, your comments must identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

G. Are There Issues On Which EPA Is Particularly Interested In Receiving Comment?

EPA invites comment on any aspect of this proposed rule. EPA is particularly interested in specific comments on the approach discussed in Unit V.C. of this preamble, entitled "Would I Be Required To Test Under This Rule?"

II. Authority

This document proposes a test rule under TSCA section 4(a) (15 U.S.C 2603(a)) that would require an *in vitro* dermal absorption rate test for 47 of the chemical substances designated by the ITC for this testing.

Section 2(b)(1) of TSCA (15 U.S.C. 2601(b)(1)) states that it is the policy of the United States that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures [.]" To implement this policy, TSCA section 4(a) mandates that EPA require by rule that manufacturers and processors of chemical substances and mixtures conduct testing if the Administrator finds that:

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data [.]

If EPA makes these findings for a chemical substance or mixture, the Administrator must require by rule that testing be conducted on that chemical substance or mixture. The purpose of the testing would be to develop data about the substance or mixture's health and environmental effects for which there is an insufficiency of data and experience, and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of the substance or mixture, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

Once the Administrator has made a finding under TSCA section 4(a)(1)(A)(i) (i.e., a finding that a chemical substance may present an unreasonable risk of injury to health or the environment) or a finding under TSCA section 4(a)(1)(B)(i) (i.e., a finding that a chemical substance is or will be produced in substantial quantities and either it may enter the environment in substantial quantities or there may be significant or substantial human exposure to the chemical substance), EPA may require any type of health or environmental effects testing necessary to address unanswered questions about the effects of the chemical substance. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(A)(i) or (B)(i) findings, as long as EPA also finds that there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and that testing is necessary to develop such data. This approach is explained in more detail in EPA's statement of policy for making findings under TSCA section 4(a)(1)(B) (frequently described as the "B" policy) in the **Federal Register** of May 14, 1993 (58 FR 28736, 28738–28739).

In this proposed rule, EPA intends to use its broad TSCA section 4(a) authority to obtain dermal absorption rate data necessary to support OSHA's development of "skin designations" (see Unit III.C. of this preamble) for the 47 chemical substances included in the proposed rule. EPA has made preliminary findings for these chemicals under TSCA section 4(a)(1)(B) that: They are produced in substantial quantities; there is or may be substantial human exposure to them; existing data are insufficient to determine or predict their health effects; and testing is necessary to develop such data.

Under TSCA section 10(b), EPA is responsible, through an interagency committee, for collecting data and disseminating the data to other Federal agencies, such as OSHA, as the Agency is proposing in this document. EPA has used its TSCA section 4(a) authority in the past to support regulatory programs of other EPA offices as well as other Federal agencies needing health and/or environmental effects test data. See, e.g., the final test rule for the Office of Water Chemicals (58 FR 59667, 59673 November 10, 1993).

III. Background

A. Why Is EPA Proposing To Take This Action?

Under TSCA section 4(e)(1), the ITC is responsible for recommending chemical substances and mixtures to the EPA Administrator for priority testing consideration. The chemical substances and mixtures so designated by the ITC comprise a list called the *Priority Testing List*. OSHA nominated 658 chemical substances and mixtures for ITC review in September 1991. The results of the ITC's review were published in the **Federal Register** issues of May 5, 1993 (58 FR 26898, 26900) and July 16, 1993 (58 FR 38490, 38492–38493). OSHA requested that the ITC assess the availability of data relevant to dermal absorption for these chemical substances and mixtures and determine the need for further testing (58 FR 26898, 26900, May 5, 1993). OSHA indicated to the ITC that it needed quantitative measures of dermal absorption to evaluate the potential hazard of these chemicals to workers (58 FR 38490, 38492, July 16, 1993). These quantitative measures are expressed as the dermal absorption rate for a particular chemical (59 FR 35720, 35725, July 13, 1994).

In its 31st, 32nd, and 35th ITC Reports to the EPA Administrator (58 FR 26898, May 5, 1993; 58 FR 38490, July 16, 1993; and 59 FR 67596, December 29, 1994, respectively), the ITC designated for *in vitro* dermal absorption rate testing a total of 83 of the chemical substances nominated by OSHA. In reducing OSHA's list of 658 chemicals to 83 chemicals, the ITC

grouped the nominated chemicals into categories as a means of prioritizing the chemicals for consideration. Chemicals that were assigned to categories such as polymers, pesticides, and chloroflurocarbons were eliminated from consideration by the ITC. They were eliminated because, among other reasons, they are regulated under other Federal authorities or because EPA, under TSCA, does not have the authority to require the testing of certain chemicals (58 FR 26898, 26900–26902 and 58 FR 38490, 38493). The remaining chemicals were then grouped by production volume, and literature searches were performed.

The ITC performed searches for data relating to the chemicals on the following data bases: RTECS (Registry of Toxic Effects of Chemical Substances), TOXLINE (TOXicology information onLINE), MEDLINE (MEDlars onLINE), TOXLIT (TOXicology LITerature from special sources), CECATS (OPPT/Risk Assessment Division/Chemical Screening Branch's Existing Chemical Assessment Tracking System), TSCATS (Toxic Substances Control Act Test Submissions), and INDEX MEDICUS. The search strategy was designed to identify any toxicological tests that used the dermal route of exposure. The information from the searches was collected and the chemicals were subcategorized based on the number of postings (58 FR 38490, 38493).

The 83 chemicals designated by the ITC were identified as follows: The ITC first ascertained those chemicals having no dermal information postings in any of the data bases searched, and, in its 31st ITC Report, the ITC designated this group of 24 chemicals for priority testing consideration (58 FR 26898, 26900). A second group of chemicals with limited dermal toxicity or dermal absorption data (as determined by the searches described in this unit) from which dermal absorption rate could not be estimated was then identified by the ITC, which designated this group of 34 chemicals in its 32nd ITC Report (Ref. 1) (58 FR 38490, 38492, 38494). Another 25 chemicals were designated in the 35th ITC Report, after the ITC reviewed the dermal data of 63 high production volume chemicals with slightly larger information bases (59 FR 67596, 67598). These data were insufficient to estimate dermal absorption rate because dermal absorption rate could not be calculated on the basis of the dermal absorption data which were available to the ITC.

The ITC then reviewed data from TSCA section 8(a) and 8(d) rules which were promulgated by EPA for these 83 chemical substances included in the 31st, 32nd, and 35th ITC Reports (40 CFR 712.30(e) (58 FR 68311, December 27, 1993; 59 FR 5956, February 9, 1994; 60 FR 34879, July 5, 1995)). These rules required the reporting to EPA of certain production, use and exposure-related information, and unpublished health and safety data concerning these 83 chemicals.

In reviewing the available data relating to these 83 chemicals, the ITC determined that the dermal absorption rate data for methyl methacrylate (Ref. 2), diethyl phthalate (Ref. 3), and cyclohexanone (Ref. 4) would meet OSHA's data needs for the chemicals (59 FR 35720, 35722, July 13, 1994; 60 FR 42982, 42985, August 17, 1995). Accordingly, the ITC withdrew its designation for these 3 chemicals: Methyl methacrylate and diethyl phthalate in the 34th ITC Report (59 FR 35720, 35725, July 13, 1994), and cyclohexanone in the 36th ITC Report (60 FR 42982, 42987, August 17, 1995).

Eighty of the chemical substances nominated by OSHA are thus currently designated by the ITC for *in vitro* dermal absorption rate testing under TSCA. In the **Federal Register** notices containing the 31st, 32nd, and 35th ITC Reports, EPA additionally solicited proposals for TSCA section 4 enforceable consent agreements (ECAs) for dermal absorption rate testing of the 80 chemical substances. EPA received no proposals for ECAs for dermal absorption rate testing in response to these solicitations.

On April 3, 1996 (61 FR 14773), EPA again solicited interested parties to submit proposals for ECAs. On June 26, 1996, EPA received a proposal for the development of an ECA for *tert*-butyl alcohol from the ARCO Chemical Company (ARCO). On March 26, 1998, EPA received a study entitled "[^{14}C]-*t*-Butyl Alcohol: Topical Application: Dermal Absorption Study in the Male Rat," from ARCO (Ref. 5). This study was reviewed and found acceptable as a means of determining the dermal absorption rate for *tert*-butyl alcohol (Ref. 6). Accordingly, this action does not propose testing of *tert*-butyl alcohol.

In this action, EPA is proposing *in vitro* dermal absorption rate testing of 47 chemical substances of interest to OSHA. These chemical substances are listed in Table 2 of Unit I.A. of this preamble, entitled "List of Chemical Substances Proposed for Testing," and in Table 2 of § 799.5115(i) of the proposed regulatory text, entitled "Required Testing: Chemical Substances Designated for *In Vitro* Dermal Absorption Rate Testing." EPA has selected these 47 chemicals for testing because the Agency believes that the production volumes of these chemicals are higher than the production volumes of the 32 chemicals remaining out of the 80 chemicals currently designated by the ITC. Testing of the latter chemicals for dermal absorption rate will be addressed at a later date.

B. How Was the Test Standard Developed For EPA's Use in This Proposed Rule?

In the solicitations discussed in Unit III.A. of this preamble, EPA referenced an *in vitro* dermal absorption rate test protocol for review by potential submitters in developing their proposed protocols (Ref. 7). The draft protocol was developed by a group of scientists from EPA in conjunction with ITC member and liaison agencies (Consumer Product Safety Commission (CPSC), Department of Defense (DoD), Food and Drug Administration (FDA), National Institute for Occupational Safety and Health (NIOSH), and OSHA) and consisted of the methods of Bronaugh and Collier (Ref. 7). EPA received public comments on the proposed protocol and entered them, along with the protocol itself, into the dockets for the 31st, 32nd, and 35th ITC Reports, as appropriate (docket control numbers OPPTS–41038, OPPTS–41039, and OPPTS–41042, respectively). In addition, the Chemical Manufacturers Association (CMA) submitted a proposed protocol outlining an alternative method (Ref. 8). Scientists from EPA and other Federal agencies represented on the ITC (including OSHA) reviewed the public comments and the CMA proposal. Based on their review of the Bronaugh and Collier protocol, public comments, and the CMA proposal, EPA and ITC scientists developed the *in vitro* dermal absorption rate test method which is the test standard used in this proposed rule.

C. How Will The Data Developed Under This Test Rule Be Used?

This proposed rule would require the development of quantitative measures of dermal absorption rate to assist in evaluating the potential contribution of dermal absorption of the chemical substances proposed for testing to total exposures to workers from chemicals in the workplace. The dermal absorption rate data obtained under this testing program would be used to support OSHA's development of "skin designations" for the chemical substances included in this proposed rule.

OSHA assigns a skin designation to a chemical if it determines that cutaneous exposure (through the skin, eyes, and mucous membranes) to the chemical may result in systemic toxicity. Skin

designations are used by OSHA to provide specific guidance to employers concerning whether changes should be made to processes involving chemical substances in order to reduce the hazard of systemic toxicity from dermal absorption of these chemicals. Changes to a process might include changes in engineering controls or changes in the use or type of personal protective equipment. Skin designations alert industrial hygienists, employers, and workers to potential adverse health effects resulting from dermal exposure to chemicals in the workplace.

The information that would be developed under this test rule would not only support OSHA's activities, but also would support chemical risk assessment activities at EPA as well as at other Federal agencies. In particular, these data would provide input for chemical risk assessments involving environmental exposure scenarios which include intentional or incidental skin contact.

IV. EPA Findings

A. What Is The Basis For EPA's Proposal To Test These Chemical Substances?

As indicated in Unit II. of this preamble, in order to develop a rule under TSCA section 4(a) requiring the testing of chemical substances or mixtures, EPA must make certain findings for those chemicals regarding either:

1. Hazard (TSCA section 4(a)(1)(A)(i)); or

2. Production and either chemical release or human exposure (TSCA section 4(a)(1)(B)(i)).

EPA is proposing to require testing of the chemical substances included in this test rule based on its findings under TSCA section 4(a)(1)(B)(i) relating to "substantial" production and "substantial human exposure," as well as findings under TSCA sections 4(a)(1)(B)(ii) and (iii).

In EPA's "B" policy, discussed in Unit II. of this preamble, "substantial" production of a chemical substance or mixture is generally interpreted to be aggregate production (including import) volume equaling or exceeding one million pounds (lbs) per year of that chemical substance or mixture (58 FR 28736, 28746, May 14, 1993). The "B" policy sets out the numeric threshold for "substantial human exposure" of workers to a chemical substance or mixture of 1,000 workers annually being exposed to that chemical substance or mixture. *Id.* See EPA's "B" policy (58 FR 28736, May 14, 1993) for further discussion on how EPA makes decisions under TSCA section 4(a)(1)(B)(i).

EPA has found preliminarily that, under TSCA section 4(a)(1)(B)(i), each of the 47 chemical substances proposed for dermal absorption rate testing is produced in "substantial quantities" and there is or may be "substantial human exposure" to each chemical substance. In addition, under TSCA section 4(a)(1)(B)(ii), EPA believes that there are insufficient data and experience to reasonably determine or predict the effects of the manufacturing, processing, or use of these chemical substances, or of any combination of such activities, on human health. In particular, as discussed in Unit IV.D. of this preamble, EPA has determined that there are insufficient data relating to dermal absorption rate resulting from human exposure to these chemicals. EPA also finds that testing the substances identified in this document is necessary to develop such data (TSCA section 4(a)(1)(B)(iii)). EPA has not identified any "additional factors" as discussed in the "B" policy (58 FR 28736, 28746, May 14, 1993) to cause the Agency to use decisionmaking criteria other than those described in the policy.

The specific chemical substances included in this proposed test rule are listed in Table 2 of Unit I.A. of this preamble, and in § 799.5115(i) of the proposed regulatory text.

B. Are These Chemical Substances Produced in Substantial Quantities?

Each of the chemical substances included in this proposal is produced in an amount equal to or greater than one million lbs per year (Ref. 9), based on information gathered pursuant to the 1994 TSCA section 8(a) Inventory Update Rule (40 CFR part 710) and contained in the TSCA Chemical Update System. Their production volumes range from over one million to well over one billion lbs annually. Assuming the continued accuracy of these figures, EPA believes that these annual production volumes are "substantial" as that term is used with reference to production in TSCA section 4(a)(1)(B)(i). See 58 FR 28736, 28746, May 14, 1993.

C. Are a Substantial Number Of Workers Exposed To These Chemicals?

EPA finds that the manufacturing, processing, and use of the chemical substances included in this document result or may result in exposure of a substantial number of workers. Table 3, entitled "Exposure Information for Chemical Substances Included in This Proposed Test Rule," in Unit IV.C. of this preamble contains an estimate of the actual and potential worker exposure to these chemical substances (Ref. 10). These chemical substances are used in a wide variety of applications as industrial solvents, which result in potential exposures of workers as described in the exposure support document for this proposed rule (Ref. 10). EPA believes that the exposure to each chemical substance of 1,000 workers or more (Table 3 of this unit) is or may be "substantial" as that term is used with reference to "human exposure" in TSCA section 4(a)(1)(B)(i). See 58 FR 28376, 28746, May 14, 1993.

TABLE 3.—EXPOSURE INFORMATION FOR CHEMICAL SUBSTANCES INCLUDED IN THIS PROPOSED TEST RULE

CAS No.	Chemical name	Number of workers exposed[1]
60-29-7	Ethyl ether	272,746
74-96-4	Ethyl bromide	12,285
75-05-8	Acetonitrile	31,341
75-15-0	Carbon disulfide	45,761
75-35-4	Vinylidene chloride	2,679
77-73-6	Dicyclopentadiene	5,247
77-78-1	Dimethyl sulfate	10,482
78-59-1	Isophorone	47,097
78-83-1	Isobutyl alcohol	256,975
78-87-5	Propylene dichloride	2,944
78-92-2	*sec*-Butyl alcohol	126,200
79-20-9	Methyl acetate	20,455
79-46-9	2-Nitropropane	9,817
91-20-3	Naphthalene	112,695
92-52-4	Biphenyl	32,000

TABLE 3.—EXPOSURE INFORMATION FOR CHEMICAL SUBSTANCES INCLUDED IN THIS PROPOSED TEST RULE—Continued

CAS No.	Chemical name	Number of workers exposed[1]
95-49-8	*o*-Chlorotoluene	11,617
95-50-1	*o*-Dichlorobenzene	92,248
97-77-8	Disulfiram	53,525
98-29-3	*tert*-Butylcatechol	27,528
99-99-0	*p*-Nitrotoluene	4,354
100-00-5	*p*-Nitrochlorobenzene	2,949
100-01-6	*p*-Nitroaniline	1,448
100-44-7	Benzyl chloride	41,075
106-42-3	*p*-Xylene	20,367
106-46-7	*p*-Dichlorobenzene	33,960
107-06-2	Ethylene dichloride	83,245
107-31-3	Methyl formate	7,739
108-03-2	1-Nitropropane	21,535
108-90-7	Chlorobenzene	18,049
108-93-0	Cyclohexanol	112,366
109-66-0	Pentane	38,464
109-99-9	Tetrahydrofuran	356,041
110-12-3	Methyl isoamyl ketone	18,835
111-84-2	Nonane	7,277
120-80-9	Catechol	13,517
121-69-7	Dimethylaniline	30,479
122-39-4	Diphenylamine	155,673
123-42-2	Diacetone alcohol	264,660
126-99-8	*beta*-Chloroprene	17,752
127-19-5	Dimethyl acetamide	28,944
142-82-5	*n*-Heptane	449,487
150-76-5	*p*-Methoxyphenol	250,088
528-29-0	*o*-Dinitrobenzene	1,358
628-63-7	*n*-Amyl acetate	265,435
768-52-5	*N*-Isopropylaniline	>1,000[2]
25013-15-4	Vinyl toluene	25,353
34590-94-8	Dipropylene glycol methyl ether	210,735

[1]National Occupational Exposure Survey (NOES) conducted by the NIOSH (1981–1983), unless otherwise indicated. These data are the most recent available to the Agency (Ref. 10).
[2]Not listed in NOES data base. The exposure analysis for this chemical is attached to Reference 10.

D. Do Sufficient Data Exist For These Chemical Substances?

As discussed in this preamble, dermal absorption rate is an important factor in ascertaining the effects of the 47 chemicals in this proposed rule on human health. EPA has determined that there are no dermal absorption rate data for the chemicals in this proposed rule and, therefore, existing data are insufficient to reasonably determine or predict the human health effects relating to dermal absorption rate that result from manufacturing, processing, or use of the subject chemical substances. This finding is based on the review and analysis of relevant data by the ITC (which included EPA participation), as described in Unit III.A. of this preamble.

E. Is Testing Necessary For These Chemical Substances?

EPA believes that the proposed testing of the 47 subject chemical substances is necessary to develop dermal absorption rate data. This testing is needed to determine if the manufacturing, processing, or use of these chemical substances presents an unreasonable risk of injury to human health.

V. Proposed Rule

A. How Would the Studies Proposed Under This Test Rule Be Conducted?

EPA is proposing specific testing and reporting requirements for the chemical substances specified in Table 2 in § 799.5115(i) of the proposed regulatory text according to the *in vitro* dermal absorption rate test standard set forth at § 799.5115(h) of the proposed regulatory text.

The test standard that would be required under this rule was developed as described in Unit III.B. of this preamble. This standard describes the procedures for measuring a permeability constant (Kp) and a short-term absorption rate for chemicals in liquid form. Measurement of short-term absorption rates is only required when a Kp cannot be obtained using this test standard. For most chemicals, a Kp is useful in estimating skin permeation. However, for "harsh" chemicals, i.e., those that may damage the skin more severely with prolonged contact, it is more appropriate to obtain a short-term absorption rate measurement.

This test standard utilizes established *in vitro* diffusion cell techniques that allow absorption rate studies to be conducted using human skin (see the proposed regulatory text at § 799.5115(h)). The *in vitro* approach was chosen for practical considerations because it is efficient in terms of labor and materials and can be performed easily by a variety of laboratories. In addition, *in vitro* diffusion cell studies are necessary for measuring a Kp (Ref. 7).

The *in vitro* dermal absorption rate test standard allows use of cadaver skin and static diffusion cells to maintain the viability of the skin, thus more closely simulating *in vivo* conditions. This test method also requires the use of radiolabelled chemical substances unless the test sponsor can demonstrate that alternative, non-radiolabelled methods provide sensitivity sufficient to detect the parent chemical (and its major metabolites in those cases in which skin viability is maintained). The first six parameters that are discussed (choice of membrane, preparation of membrane, diffusion cell design, temperature, testing hydrophobic chemicals, and vehicle) are similar for determination of either of the two percutaneous absorption rate values. In

contrast, the remaining two parameters (i.e., dose and study duration) are different for the two percutaneous absorption rate values.

Testing under this proposed rule must be conducted in accordance with TSCA Good Laboratory Practice (GLP) Standards (40 CFR part 792).

B. What Substances Would Be Tested Under This Rule?

EPA is proposing that the chemical substances listed in Table 2 in § 799.5115(i) of the proposed regulatory text be tested at a purity of at least 99%.

C. Would I Be Required To Test Under This Rule?

Under TSCA section 4(a)(1)(B), EPA has made preliminary findings that there are insufficient data and experience to reasonably determine or predict health effects resulting from the manufacturing, processing, or use of the chemical substances listed in this proposed rule. As a result, under TSCA section 4(b)(3)(B), manufacturers and processors of these substances would be subject to the rule with regard to those listed chemicals which they manufacture or process.

1. *Would I be subject to this rule?* You would be subject to this rule and may be required to test if you manufacture (which is defined by statute to include import) or process, or intend to manufacture or process, one or more chemical substances listed in this proposed rule during the time period discussed in Unit V.C.2. of this preamble, entitled "When would my manufacturing or processing (or my intent to do so) cause me to be subject to this rule?" However, if you do not know or cannot reasonably ascertain that you manufacture or process a listed test substance (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you would not be subject to the rule.

2. *When would my manufacturing or processing (or my intent to do so) cause me to be subject to this rule?* You would be subject to this rule if you manufacture or process, or intend to manufacture or process, a substance listed in the rule at any time from the effective date of the final test rule to the end of the test data reimbursement period.

The term *reimbursement period* is defined at 40 CFR 791.3(h) and may vary in length for each substance to be tested under a final TSCA section 4(a) test rule, depending on what testing is required and when testing is completed. See Unit V.C.4. of this preamble, entitled "How do the reimbursement procedures work?"

3. *Would I be required to test if I were subject to the rule?* It depends on the nature of your activities. All persons who would be subject to this TSCA section 4(a) test rule, which incorporates EPA's generic procedures applicable to TSCA section 4(a) test rules (contained within 40 CFR part 790), would fall into one of two groups, designated here as Tier 1 and Tier 2. Persons in Tier 1 (those who would have to initially comply with the rule) must either: Submit to EPA letters of intent to conduct testing, conduct this testing, and submit the test data to EPA or apply to and obtain from EPA exemptions from testing. Persons in Tier 2 (those who would not have to initially comply with the rule) need not take any action unless they are notified by EPA that they are required to do so, as described in Unit V.C.3.d. of this preamble, entitled "What would my obligations be if I were in Tier 2?" Note that persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit V.C.4. of this preamble, entitled "How do the reimbursement procedures work?"

a. *Who would be in Tier 1 and Tier 2?* All persons subject to this rule would be considered to be in Tier 1 unless they fall within Tier 2. The following table describes who is in Tier 1 and Tier 2.

TABLE 4.— PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (Persons initially required to comply)	Tier 2 (Persons not initially required to comply)
•Persons that manufacture (as defined at TSCA section 3(7)), or intend to manufacture, a test rule substance who are not listed under Tier 2	•Persons that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule substance solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilograms (kg) (1,100 lbs) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (as described at 40 CFR 790.42(a)(5)). •Persons that process (as defined at TSCA section 3(10)) or intend to process a test rule substance (see 40 CFR 790.42(a)(2))

b. *When would it be appropriate for a person in Tier 1 to apply for an exemption rather than to submit a letter of intent to conduct testing?* You may apply for an exemption if you believe that the required testing will be performed by another person (or a consortium of persons formed under TSCA section 4(b)(3)(A)) in Tier 1. You can find procedures relating to exemptions in 40 CFR 790.80 through 790.99, and in the proposed regulatory text at § 799.5115(c)(2), (c)(5), and (c)(7). In this rule, EPA would not require equivalence data (i.e., data demonstrating that your substance is equivalent to the substance actually being tested) as a condition for approval of your exemption. EPA is interested in evaluating the effects attributable to each listed substance itself and has specified almost pure substances for testing.

c. *What would happen if I were in Tier 1 and I submitted an exemption application?* EPA believes that requiring the collection of duplicative data is unnecessarily burdensome. As a result, if EPA has received a letter of intent to test from another source or has received (or expects to receive) the test data that would be required under this rule, the Agency would conditionally approve your exemption application under 40 CFR 790.87. The Agency would

terminate conditional exemptions, if a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data to EPA. EPA may then require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and the proposed regulatory text at § 799.5115(c)(6). Persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit V.C.4. of this preamble, entitled "How do the reimbursement procedures work?."

d. *What would my obligations be if I were in Tier 2?* If you are in Tier 2, you would be subject to the rule and you would be responsible for providing reimbursement to persons in Tier 1, as described in Unit V.C.4. of this preamble. You are considered to have an automatic conditional exemption. You would not need to take any action unless you are notified by EPA that you are required to do so.

If a problem occurs with the initiation, conduct, or completion of the required testing, or the submission of the required data to EPA, the Agency may require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and the proposed regulatory text at § 799.5115(c)(6).

In addition, you would need to submit a notice of intent to test or an exemption application if:

i. No manufacturer in Tier 1 has notified EPA of its intent to conduct testing and

ii. EPA has published a **Federal Register** document directing all persons in Tier 2 to submit to EPA letters of intent to conduct testing or exemption applications. See 40 CFR 790.48(b) and the proposed regulatory text at § 799.5115(c)(4) and (c)(5).

The Agency would conditionally approve an exemption application under 40 CFR 790.87, if EPA has received a letter of intent to test or has received (or expects to receive) the test data required under this rule.

e. *How did EPA decide who would be in Tier 1 and Tier 2 and who would be excluded from the rule?* Under 40 CFR 790.2, EPA may establish procedures applying to specific test rules that differ from the generic procedures governing TSCA section 4(a) test rules in 40 CFR part 790. For purposes of this proposed rule, EPA is proposing to set forth certain requirements that differ from those under 40 CFR part 790.

Under 40 CFR part 790, in TSCA section 4(a) test rules EPA traditionally has treated the following persons as being in Tier 2. (These rules are found at 40 CFR part 799, subparts B and D).

- Processors (40 CFR 790.42(a)(2));
- Manufacturers of less than 500 kg (1,100 lbs) per year ("small-volume manufacturers") (40 CFR 790.42(a)(4)); and
- Manufacturers of small quantities for research and development ("R&D manufacturers") (40 CFR 790.42(a)(5)).

EPA has historically placed processors in Tier 2 because the Agency "expected that, in most cases, testing will be performed by the manufacturers and that part of the cost of testing will be passed on to processors through the pricing mechanism, thereby enabling them to share in the costs of testing" (50 FR 20652, 20654, May 17, 1985). In addition, "[t]here are so many processors that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs" (48 FR 31786, 31789, July 11, 1983).

EPA has historically placed small-volume manufacturers and R&D manufacturers in Tier 2 because this type of manufacturing "normally represents a small percentage of the overall production volume [and] test sponsors are not expected to expend the administrative resources to recover the small proportional amounts of the testing costs from these manufacturers" (55 FR 18881, May 7, 1990).

In this proposed test rule, EPA has reconfigured the tiers in 40 CFR 790.42. EPA has added the following persons to Tier 2: Byproduct manufacturers; impurity manufacturers; manufacturers of naturally occurring substances; manufacturers of non-isolated intermediates; and manufacturers of components of Class 2 substances. The Agency took administrative burden and complexity into account in determining who was to be in Tier 1 in this proposed rule. EPA believes that those persons in Tier 1 who would conduct testing under this rule, when finalized, would generally be large chemical manufacturers who, in the experience of the Agency, have traditionally conducted testing or participated in testing consortia under previous TSCA section 4(a) test rules.

The Agency also believes that byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 substances have not themselves historically participated in testing or contributed to reimbursement of those persons who have conducted testing. EPA understands that these may include persons for whom the marginal transaction costs involved in negotiating and administering testing arrangements are deemed likely to raise the expense and burden of testing to a level that is disproportional to the additional benefits of including these persons in Tier 1. Therefore, EPA does not believe that the likelihood of the persons proposed to be added to Tier 2 actually doing the testing is sufficiently high to justify burdening these persons with Tier 1 requirements (e.g., submitting requests for exemptions). Nevertheless, these persons, along with all other persons in Tier 2, would be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit V.C.4. of this preamble, entitled "How do the reimbursement procedures work?"

Section 4(b)(3)(B) of TSCA requires all manufacturers and processors of a chemical substance to test that chemical substance if EPA has made findings for that chemical substance, and therefore issued a TSCA section 4(a) test rule requiring testing. However, practicality must be a factor in determining who is subject to a particular test rule. Thus, persons who do not know or cannot reasonably ascertain that they are manufacturing or processing the substances subject to this proposed rule, e.g., manufacturers or processors of the substances as trace contaminants who are not aware of these activities, would not be subject to the rule. See Unit V.C.1 of this preamble and § 799.5115(b)(2) of the proposed regulatory text.

EPA is soliciting comment on who should be included in Tier 1 and Tier 2. The Agency may define these categories differently in response to comments received. EPA is also soliciting comment on who should not be subject to the rule. The latter persons are described at Unit V.C.1 of this preamble and § 799.5115(b)(2) of the proposed regulatory text.

f. *Should EPA prioritize which persons in Tier 2 would be required to perform testing?* EPA is considering subdividing Tier 2 to enable the Agency to prioritize which persons in Tier 2 would be required to perform testing, if needed. This would involve subdividing Tier 2 into:

i. *Tier 2A.* Those who manufacture, or intend to manufacture, a test rule substance solely as one or more of the following: A byproduct; an impurity; a naturally occurring substance; a non-isolated intermediate; a component of a Class 2 substance; in amounts less than 1,100 lbs. annually; or in small quantities solely for research and development.

ii. *Tier 2B.* Those who process, or intend to process, a test rule substance. If the Agency needed testing from persons in Tier 2, EPA would seek testing from persons in Tier 2A before proceeding to Tier 2B. EPA believes that, if the Agency were to subdivide Tier 2, persons in Tier 2A should be required to submit letters of intent to test or exemption applications before processors are called upon because testing costs are traditionally passed by manufacturers along to processors.

EPA is soliciting comment on whether this subtiering scheme should be applied in the final rule.

4. *How do the reimbursement procedures work?* In the past, persons subject to test rules have independently worked out among themselves their respective financial contributions to those persons who have actually conducted the testing. However, if persons are unable to agree privately on reimbursement, they may take advantage of EPA's reimbursement procedures at 40 CFR part 791, promulgated under the authority of TSCA section 4(c). These procedures include: The opportunity for a hearing with the American Arbitration Association; publication by EPA of a **Federal Register** document concerning the request for a hearing; and the appointment of a hearing officer to propose an order for fair and equitable reimbursement. The hearing officer may base his or her proposed order on the production volume formula set out at 40 CFR 791.48, but is not obligated to do so. Under this proposed rule, amounts manufactured as impurities would be included in production volume (40 CFR 791.48(b)), subject to the discretion of the hearing officer (40 CFR 791.40(a)). The hearing officer's proposed order may become the Agency's final order, which is reviewable in Federal court (40 CFR 791.60).

D. What Are the Reporting Requirements Proposed Under This Test Rule?

You would be required to submit interim progress reports for each test every 6 months, beginning 6 months after the effective date of the final rule. You would be required to submit a final report for a specific test by the deadline indicated as the number of months after the effective date that would be shown in Table 2 in § 799.5115(i) of the proposed regulatory text.

E. Would There Be Sufficient Test Facilities and Personnel To Undertake the Testing in This Test Rule?

EPA has conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by TSCA section 4(a) test rules and has found that test facilities and personnel would adequately accommodate the testing specified in this proposed rule (Ref. 11).

F. Might EPA Seek Further Testing of the Chemicals in This Proposed Test Rule?

If EPA determines that it needs additional data regarding any of the chemical substances included in this proposed rule, the Agency might seek further health and/or environmental effects testing for these chemicals. Should the Agency decide to seek such additional testing, EPA would initiate a separate action for this purpose.

VI. Export Notification

Any person who exports, or intends to export, one of the chemical substances contained in this proposed rule in any form will be subject to the export notification requirements in TSCA section 12(b)(1) and 40 CFR part 707, subpart D, but only after the final rule is issued and only if the chemical is contained in the final rule. However, notification of export would generally not be required for articles, as provided by 40 CFR 707.60(b).

VII. Materials in the Official Record

The official record for this proposed rule has been established under docket control number OPPTS–42196. The following is a listing of the documents that have already been placed in the official record for this proposed rule:

A. Supporting Documentation

1. **Federal Register** documents:

a. Notice containing the 31st ITC Report to the EPA Administrator (58 FR 26898, May 5, 1993 (FRL–4583–4)).

b. Notice containing the TSCA section 4(a)(1)(B) Final Statement of Policy (58 FR 28736, May 14, 1993 (FRL–4059–9)).

c. Notice containing the 32nd ITC Report to the EPA Administrator (58 FR 38490, July 16, 1993 (FRL–4630–2)).

d. TSCA Sections 8(a) and 8(d) Final Rules for Chemicals Contained in the 31st ITC Report to the EPA Administrator (58 FR 68311, December 27, 1993 (FRL–4644–1)).

e. TSCA Sections 8(a) and 8(d) Final Rules for Chemicals Contained in the 32nd ITC Report to the EPA Administrator (59 FR 5956, February 9, 1994 (FRL–4745–5)).

f. Notice containing the 34th ITC Report to the EPA Administrator (59 FR 35720, July 13, 1994 (FRL–4870–4)).

g. Notice containing the 35th ITC Report to the EPA Administrator (59 FR 67596, December 29, 1994 (FRL–4923–2)).

h. TSCA Sections 8(a) and 8(d) Final Rules for Chemicals Contained in the 35th ITC Report to the EPA Administrator (60 FR 34879, July 5, 1995 (FRL–4954–9)).

i. Notice containing the 36th ITC Report to the EPA Administrator (60 FR 42982, August 17, 1995 (FRL–4965–6)).

j. Small Business Size Standards; Final Rule, issued by the Small Business Administration (SBA) (61 FR 3280, January 31, 1996).

k. Notice containing EPA's Solicitation of Interested Parties for Proposals for Enforceable Consent Agreements for Testing of 80 Chemicals of Interest to OSHA (61 FR 14773, April 3, 1996 (FRL–5359–3)).

2. Correspondence:

a. ARCO Chemical Company. Letter to Charles M. Auer, USEPA. Proposal for Development of ECA for *Tert*-Butyl Alcohol (June 26, 1996).

b. ARCO Chemical Company. Letter to Keith Cronin, USEPA. Letter transmitting a Dermal Absorption Rate Study in the Male Rat for *Tert*-Butyl Alcohol (March 23, 1998).

3. Other support documentation:

EPA. "EPA Interim Guidance for Implementing the Small Business Regulatory Enforcement Fairness Act and Related Provisions of the Regulatory Flexibility Act." EPA SBREFA Task Force (February 5, 1997).

B. References

1. ITC. Chemicals Under Consideration for the 32nd ITC Report; Summary of Skin Absorption Data on OSHA Tier 2 Chemicals (September 22, 1993).

2. Zeneca. Methyl Methacrylate: *In Vitro* Absorption through Human Epidermis. Zeneca Central Toxicology Report No. CTL/P/4025 provided by the Methacrylate Producers Association, Washington, D.C. (1993).

3. Scott, R.C., Dugard, P.H., Ramsey, J.D., and Rhodes, C. *In Vitro* Absorption of Some *o*-Phthalate Diesters through Human and Rat Skin. *Environmental Health Perspectives*. 74:223–227 (1987).

4. Mraz, J., Galova, E., Nohova, H., and Vitkova, D. Uptake, Metabolism and Elimination of Cyclohexanone in Humans. *International Archives of Occupational Environmental Health*. 66:203–208 (1994).

5. ARCO Chemical Company. [^{14}C]-*t*-Butyl Alcohol: Topical Application: Dermal Absorption Study in the Male Rat. *Huntington Life Sciences* (January 7, 1998).

6. OSHA. Review of [^{14}C]-*t*-Butyl Alcohol: Topical Application: Dermal Absorption Study in the Male Rat. (June 24, 1998).

7. Bronaugh, R.L., and Collier, S.W. Protocol for *In Vitro* Percutaneous Absorption Studies. *In Vitro Percutaneous Absorption: Principles, Fundamentals, and Applications.* R.L. Bronaugh and H.I. Maibach, Eds. CRC Press, Boca Raton, FL. pp. 237–241 (1991).

8. Chemical Manufacturers Association (CMA). Letter to Charles M. Auer, USEPA. (October 21, 1994).

9. EPA. Economic Impact Analysis and Small Entity Impact Analysis of Proposed TSCA Section 4(a) Test Rule for 47 Chemicals Targeted for *In Vitro* Dermal Absorption Rate Testing. OPPT/EETD/EPAB, Washington, DC (May 5, 1999).

10. EPA. CEB Support to the OSHA Chemicals Test Rule—Number of Workers Exposed and TRI Release Data. OPPT/EETD/CEB, Washington, DC (March 1998).

11. EPA. EPA Census of TSCA Testing Laboratories. Washington, DC (October 10, 1996).

12. EPA. Laboratory Cost Estimate for *In Vitro* Dermal Absorption Rate Testing. OPPT/EETD/EPAB, Washington, DC (April 14, 1999).

13. EPA. "Treatment of 12(b) Export Notification Unit Costs for Section 4 Test Rule Analyses." OPPT/EETD/EPAB, Washington, DC (April 1, 1999).

14. EPA. "Economic Analysis in Support of the TSCA 12(b) Information Collection Request." OPPT/EETD/EPAB, Washington, DC (October 30, 1998).

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a "significant regulatory action" provided in section 3(f) of the Executive Order.

EPA has prepared an economic analysis of the potential impact of this proposed rule, which is contained in a document entitled "Economic Impact Analysis and Small Entity Impact Analysis of Proposed TSCA Section 4(a) Test Rule for 47 Chemicals Targeted for *In Vitro* Dermal Absorption Rate Testing" (Ref. 9). This document is available as a part of the public version of the official record for this action (instructions for accessing this document are contained in Unit I.B. of this preamble), and is briefly summarized here. The costs developed in the economic impact analysis are based on laboratory test cost estimates that have been placed in the docket for this proposed rule (Ref. 12).

While legally subject to this test rule, processors of a subject chemical would only be required to comply with the requirements of the rule if they are directed to do so by EPA as described in § 799.5115(c)(5) and (c)(6) of the proposed regulatory text. EPA would only require processors to test if no person in Tier 1 has submitted a notice of its intent to conduct testing, or if, under 40 CFR 790.93, a problem occurs with the initiation, conduct, or completion of the required testing, or the submission of the required data to EPA. Because EPA has identified at least one manufacturer in Tier 1 for each subject chemical, the Agency assumes that, for each chemical in this proposed rule, at least one such person will submit a letter of intent to conduct the required testing and that that person will conduct such testing and will submit the test data to EPA. Because processors would not need to comply with the rule initially, the economic analysis does not address processors.

To evaluate the potential economic impact of testing on manufacturers of the chemical substances in this proposed rule, EPA estimated the impact of testing requirements as a percentage of each chemical's sale price. This measure compares the annualized testing costs per pound (based on the conservative assumption that all chemicals are produced in volumes of one million lbs), to the price per pound for each chemical. First, annualized testing costs (including laboratory and administrative expenditures) are calculated by converting the total testing costs in the first year into an equivalent series of expenditures over 15 years using a 7% discount rate. Second, annualized testing costs are divided by one million lbs (the assumed production volume per chemical) to derive the annualized unit (per pound) testing cost. The price impacts—testing costs as a percentage of each chemical's price—are calculated by dividing the annualized unit testing cost by each unit price and multiplying by 100. The Agency's estimated total costs of testing (including both laboratory and administrative costs), annualized testing cost, price impacts, and public reporting burden hours for the chemicals are presented in the economic analysis (Ref. 9).

Based on the economic analysis, the total one-time cost of this action, if finalized as proposed, is estimated to be $1.55 million. When this cost is annualized over 15 years using a 7% discount rate, the total annualized cost is estimated to be $170,576, with an estimated annualized cost of $3,628 per chemical. In addition, the estimated cost of the TSCA section 12(b)(1) export notification, which, in the final rule, would be required for the first export to a particular country of a chemical subject to the rule, is estimated to be $83.38 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $19.08 for each subsequent export notification submitted by that exporter (Ref. 9, 13, and 14).

The economic impacts of the testing, expressed as a percentage of each chemical's sale price, range from 0.09% to 3.3%, with an average impact of 0.64%. EPA estimates that 5 of the 35 chemicals for which price data are available will experience an adverse impact of 1% or greater under the assumption that production volumes for these chemicals are one million lbs. In fact, these chemicals are all manufactured or imported in excess of 10 million lbs, reducing the estimated impact by a factor of 10 to less than 1%. For the remaining 12 chemicals without price data, EPA estimates that with annualized testing costs of $3,628 per chemical and one million lbs production volumes each, an economic impact of 1% or greater would occur only at a sales price below $0.36 per lb. Given that the average price for the other 35 chemicals is $0.97 per lb (prices range from $0.11 to $3.96 per lb), that the unavailability of price data for these 12 chemicals may indicate that they are higher priced specialty chemicals, and that their production volumes are likely to be higher than the one million lbs minimum, the likelihood of an adverse impact is low.

B. Executive Order 12898

This proposed rule does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

C. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this proposed rule, because it is not "economically significant" as defined under Executive Order 12866; and does not concern an

environmental health or safety risk that may have a disproportionate effect on children. This proposed rule would require the development of quantitative measures of dermal absorption rate to assist in evaluating the potential contribution of the chemical substances proposed for testing to total exposures to adult workers. The public is invited, however, to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early life exposure to the 47 chemicals proposed for testing in this document.

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this rule, if promulgated as proposed, will not have a significant economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this proposed rule (Ref. 9), and is briefly summarized here. The costs developed in the small entity impact analysis are based on the laboratory test cost estimates that have been placed in the docket for this proposed rule (Ref. 12).

For the purpose of analyzing potential impacts on small entities, EPA used the RFA definition of small entities in RFA section 601(6). Under this section, a small entity may be a small government, a small non-profit organization, or a small business. Because EPA does not believe that governments or non-profit organizations are likely to be burdened by testing requirements under this proposed rule, EPA's analysis presents only the estimated potential impacts on small businesses.

Section 601(3) of the RFA establishes as the default definition of small business the definition used in section 3 of the Small Business Act (15 U.S.C. 632) under which the SBA establishes small business size standards (13 CFR 121.201). For this proposed rule, EPA has analyzed the potential small business impacts using the size standards established under the RFA section 601(3) definition.

In addition, in analyzing potential impacts, the RFA recognizes that it may be appropriate at times for Federal agencies to use an alternate definition of small business. As such, RFA section 601(3) also provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. Even though the Agency has used the default SBA definition of small business to conduct its analysis of potential small entity impacts for this proposed rule, EPA does not believe that the SBA size standards are generally the best size standards to use in assessing potential small entity impacts with regard to TSCA section 4(a) test rules.

The SBA size standards, which are primarily intended to define whether a business entity is eligible for Federal government programs and preferences reserved for small businesses (13 CFR 121.101), "seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation" (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. The SBA size standard is generally based on the number of employees an entity in a particular industrial sector may have. For example, in the chemical manufacturing industrial sector (i.e., SIC 28 and SIC 29), approximately 98% of the industries would be classified as small businesses under the default SBA definition. The SBA size standard for 75% of this industry sector is 500 employees, and the size standards for 23% of this industry sector are 750, 1,000, or 1,500 employees. As a result, when assessing the potential impacts of test rules on chemical manufacturers, EPA believes that a standard based on total annual sales may provide a more appropriate means to judge the ability of a chemical manufacturing firm to support chemical testing without significant costs or burdens.

EPA is currently determining what level of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical industry usually impacted by TSCA section 4(a) test rules, but has not yet reached a determination. As stated in this unit, therefore, the factual basis for the RFA determination for this proposed rule is based on an analysis using the default SBA size standards. Although EPA is not proposing to establish an alternate small business definition in the small entity impact analysis conducted for this proposed rule, the analysis includes the results of calculations using a size standard based on total annual sales. EPA is interested in receiving comments on whether the Agency should consider establishing an alternate small business definition to use in the small entity impact analyses for future TSCA section 4(a) test rules, and what size cutoff may be appropriate.

Based on the Agency's estimated total costs for this proposed rule, which are summarized in Unit VIII.A. of this preamble, EPA estimates that the annualized cost for the testing in this proposed rule will be $3,628 per chemical. As discussed previously, EPA was unable to obtain any price information on 12 of the 47 chemicals in this proposed test rule. Nevertheless, EPA provides an estimate of the price of these chemicals in the economic analysis, and concludes that the total cost of testing these 47 chemicals as proposed, will not result in a significant impact on the chemical manufacturers subject to the proposed rule, regardless of their size. EPA identified a total of 102 ultimate corporate entities (UCEs) that would be potentially impacted by the proposed test rule. None of these manufacturers would experience a significant impact as a result of the rule.

In addition, the estimated cost of the TSCA section 12(b)(1) export notification, which, as a result of the final rule, would be required for the first export to a particular country of a chemical subject to the rule, is estimated to be $83.38 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $19.08 for each subsequent export notification submitted by that exporter (Ref. 9, 13, and 14). EPA has concluded that the costs of TSCA section 12(b)(1) export notification would have a negligible impact on exporters of the chemicals in the final rule, regardless of the size of the exporter.

The Agency has also examined the standard practices that industry uses in carrying out chemical testing in response to test rules, such as this one. Based on that examination, EPA believes that:

1. Small businesses do not perform the testing themselves, nor do they participate in the organization of the testing effort, because health effects testing of chemical substances is generally carried out by consortia of the large manufacturers or importers of the chemical substances;

2. A small business would experience only very minor costs, if any, in securing an exemption from testing requirements, because exemption request requirements, described generally at 40 CFR 790.80 through 790.99 and the proposed regulatory text at § 799.5115(c)(2), (c)(5), and (c)(7), are minimal and EPA does not charge a fee for filing such a request; and

3. Small businesses are unlikely to be affected by the reimbursement requirements because under the reimbursement provisions described in 40 CFR part 791, manufacturers and importers with a significant share of production or importation are the entities that will likely pay the highest share of testing costs, and the marginal

benefit of securing reimbursement from small contributors may not be worth the cost.

Information relating to this determination has been included in the public version of the official record for the proposed rule. This information will also be provided to the SBA Chief Counsel for Advocacy upon request. Any comments regarding the impacts that this action may impose on small entities, or regarding whether the Agency should consider establishing an alternate definition of small business to be used for analytical purposes for future test rules and what size cutoff may be appropriate, should be submitted to the Agency in the manner specified in Unit I.C. of this preamble.

E. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and included on the related collection instrument. The information collection activities related to chemical testing under TSCA section 4(a) have already been approved under OMB control number 2070–0033 (EPA ICR# 1139), and the information collection activities related to export notification under TSCA section 12(b)(1) are already approved under OMB control number 2070–0030 (EPA ICR# 0795). Since this proposed rule does not contain any new information collection activities, additional review and approval of these activities by OMB under the PRA is not necessary.

Although the information collection activities contained in this proposed rule have already been approved by OMB, the total burden hours currently approved for the information collection activities related to chemical testing in general include an average burden estimate to cover future test rules. As described in the information collection instrument for chemical testing, the Agency's total burden estimate specifically accounts for the potential issuance of approximately 7 final test rules during the approval period, with an estimated burden of less than 20,000 burden hours each. EPA believes that the existing approval includes a sufficient burden hour allocation to cover the estimated burden related to this proposed rule, if finalized as proposed. When the final rule is issued, EPA will verify that the approved burden hours will cover the estimated burden for the final rule, or request that the total approved burden hour allocation be increased accordingly.

The standard chemical testing program involves the submission of letters of intent to test (or exemption applications), study plans, semi-annual progress reports, and test results. For this proposed rule, EPA estimates that the information collection activities related to chemical testing would result in 105.4 burden hours for each chemical, for a total estimated burden increase of 4,954 hours (Ref. 9). The estimated burden of the information collection activities related to export notification is 0.5–1.5 burden hours for each chemical/country combination (Ref. 9). In estimating the total burden hours approved for the information collection activities related to export notification, the Agency has included sufficient burden hours to accommodate any export notifications that may be required by the Agency's issuance of final chemical test rules (Ref. 9, 13, and 14). As such, EPA does not expect to need to request an increase in the total burden hours approved by OMB for export notifications.

As defined by the PRA and 5 CFR 1320.3(b), *burden* means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed action in the manner specified in Unit I.C. of this preamble. In the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposal.

F. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. It is estimated that the total one-time cost of the rule, which is summarized in Unit VIII.A. of this preamble, is $1.55 million, with the total annualized cost estimated to be $170,576, and the estimated annual cost per chemical to be $3,628. In addition, EPA has determined that this proposed rule does not significantly or uniquely affect small governments. Accordingly, today's proposed rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

G. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

EPA does not believe the today's proposed rule under TSCA section 4(a) creates a Federal mandate on State, local, or tribal governments, and thus, EPA does not believe that the requirements of section 1(a) of Executive Order 12875 apply to this rule. The Agency does not know of any State, local, or tribal governments that would be subject to the requirements of the rule if it were promulgated as proposed. In the history of the TSCA section 4(a) testing program, the Agency has never received a letter of intent to

test or an exemption application from a State, local, or tribal government. EPA is requesting comment on whether any State, local, or tribal government would be subject to the requirements of the proposed rule. If, on the basis of these comments, EPA determines that the rule would create a Federal mandate, the Agency will consult with representatives of affected State, local, or tribal governments in accordance with the Executive Order prior to promulgating the final rule.

H. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA has determined that this proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This determination is based on the Agency's belief that, as a practical matter, the burden of chemical testing under TSCA section 4(a) rules has traditionally fallen on large, private sector manufacturers rather than on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

If the Agency has made findings under TSCA section 4(a), EPA is required by TSCA section 4(b) to include specific standards for the development of data in test rules. The testing that would be required under this rule would be conducted according to the enforceable *in vitro* dermal absorption rate test standard proposed in this document. This test standard was developed by EPA in conjunction with ITC member and liaison agencies (CPSC, DoD, FDA, NIOSH, and OSHA). It was based on the methods of Bronaugh and Collier (Bronaugh, R.L., and Collier, S.W., Protocol for *In Vitro* Percutaneous Absorption Studies, *In Vitro Percutaneous Absorption: Principles, Fundamentals, and Applications*. R.L. Bronaugh and H.I. Maibach, Eds. CRC Press, Boca Raton, FL. pp. 237–241 (1991)) (Ref. 7) , and modified in response to public comments. The group of scientists that developed this test standard did so based on their experience with the methodologies available for conducting this type of testing. As a result of their collective expertise in these methodologies, they considered the method developed for this testing program to be an effective and efficient method for testing a large number of chemicals to determine an *in vitro* dermal absorption rate using human cadaver skin.

EPA is not aware of any potentially applicable voluntary consensus standards which needed to be considered in lieu of the *in vitro* dermal absorption rate test standard included in this proposed rule. The Agency invites comment on the potential use of voluntary consensus standards in this proposed rule, and, specifically, invites the public to identify potentially applicable voluntary consensus standard(s) and to explain why such standard(s) should be used here.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Laboratories.

Dated: June 1, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I, subchapter R, be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.5115 to subpart D to read as follows:

§ 799.5115 Chemical testing requirements for certain chemicals of interest to the Occupational Safety and Health Administration.

(a) *What substances will be tested under this section?* Table 2 in paragraph (i) of this section identifies the chemical substances that must be tested under this section. The purity of each test substance must be 99% or greater unless otherwise specified in this section.

(b) *Am I subject to this section?* (1) If you manufacture (including import) or intend to manufacture, or process or intend to process, any chemical substance listed in Table 2 of paragraph (i) of this section at any time from the effective date specified in Table 2 of paragraph (i) of this section to the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that chemical substance.

(2) If you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in Table 2 of paragraph (i) of this section during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this section with respect to that chemical substance.

(c) *If I am subject to this section, when must I comply with it?* (1)(i) Persons subject to this section are divided into two groups, as set forth in Table 1 of this paragraph: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1 of this paragraph.

TABLE 1.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Persons initially required to comply with this section (Tier 1)	Persons not initially required to comply with this section (Tier 2)
•Persons not otherwise specified in column 2 of this table that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section.	•Persons that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilograms (kg) (1,100 lbs) annually (as described at 40 CFR 790.42(a)(4)); or —For research and development (as described at 40 CFR 790.42(a)(5)). •Persons that process (as defined at TSCA section 3(10)) or intend to process a chemical substance included in this section (see 40 CFR 790.42(a)(2)).

(ii) Table 1 of paragraph (c)(1)(i) of this section expands the list of persons specified in § 790.42(a)(2), (a)(4), and (a)(5) of this chapter, who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4) and (c)(5) of this section.

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2 of paragraph (i) of this section, you will be required to comply with this section with regard to that chemical substance, as described in paragraph (d) of this section, no later than 30 days after the effective date specified in Table 2 of paragraph (i) of this section for that chemical substance. Sections 790.45(a) and 790.80(b)(1) of this chapter do not apply to this section.

(3) If you are in Tier 2 with respect to a chemical substance listed in Table 2 of paragraph (i) of this section, you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that chemical substance only if directed to do so by EPA under paragraphs (c)(5) or (c)(6) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 of paragraph (i) of this section within 30 days after the effective date in Table 2 of paragraph (i) of this section, EPA will publish a **Federal Register** document that will specify the test and the chemical substance for which no letter of intent has been submitted. Section 790.48(b)(2) of this chapter does not apply to this section.

(5) If you are in Tier 2 with respect to a chemical substance listed in Table 2 of paragraph (i) of this section, and if you manufacture or process this chemical as of the effective date specified in Table 2 of paragraph (i) of this section, or within 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section, you must do the following: For each test on that chemical specified in the **Federal Register** document described in paragraph (c)(4) of this section, either notify EPA by letter of your intent to test or submit to EPA an exemption application. You must comply within 30 days after the date of publication of the **Federal Register** document described in paragraph (c)(4) of this section. Sections 790.48(b)(3), and 790.80(a)(2) and (b)(1) of this chapter do not apply to this section.

(6) If a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a chemical substance listed in Table 2 of paragraph (i) of this section, under the procedures in 40 CFR 790.93 and 790.97, EPA will terminate all testing exemptions with respect to that substance and may notify persons in Tier 1 and Tier 2 that they are required to submit letters of intent to test or exemption applications within a specified period of time. A notification will be given by certified letter or by publication of a **Federal Register** document.

(7) If you are required to comply with this section, but your manufacturing or processing of a chemical substance listed in Table 2 of paragraph (i) of this section begins after the applicable compliance date referred to in paragraphs (c)(2), (c)(5) or (c)(6) of this section, you must comply by submitting a letter of intent to test or an exemption application as of the day you begin manufacturing or processing. Sections 790.45(d)(1) and (d)(2), and 790.80(b)(2) and (b)(3) of this chapter do not apply to this section.

(d) *What must I do to comply with this section?* (1) To comply with this section you must either:

(i) Submit to EPA a letter of intent to test, conduct the testing specified in Table 2 of paragraph (i) of this section, and submit the test data to EPA; or

(ii) Apply to and obtain from EPA an exemption from testing.

(2) You must also comply with the procedures governing test rule requirements in part 790 of this chapter, including the submission of letters of intent to test or exemption applications, the conduct of testing, and the submission of data; part 792 of this chapter; and this section.

(e) *If I do not comply with this section, when will I be considered in violation of it?* You will be considered in violation of this section as of 1 day after the date by which you are required to comply with this section. Sections 790.45(e) and (f) of this chapter do not apply to this section.

(f) *How are EPA's data reimbursement procedures affected for purposes of this section?* If persons subject to this section are unable to agree on the amount or method of reimbursement for test data development for one or more chemical substances included in this section, any person may request a hearing as described in 40 CFR part 791. In the determination of fair reimbursement shares under this section, if the hearing officer chooses to use a formula based on production volume, the total production volume amount will include amounts of a chemical substance produced as an impurity.

(g) *Who must comply with the export notification requirements?* Any person who exports, or intends to export, a chemical substance listed in Table 2 of paragraph (i) of this section is subject to part 707, subpart D, of this chapter.

(h) *What test standard must I follow?* The chemical substances identified by Chemical Abstract Service (CAS) registry number and chemical name in Table 2 of paragraph (i) of this section must be tested as follows:

(1) *Applicability.* This *in vitro* dermal absorption rate test standard must be used for all testing conducted under this section.

(2) *Source.* The source used to develop this test standard is the "Protocol for *In Vitro* Percutaneous Absorption Studies," (Referenced in paragraph (h)(8)(i)(A) of this section).

(3) *Purpose.* In the assessment and evaluation of the characteristics of a chemical substance or mixture (test substance), determination of the rate of absorption of the chemical substance where dermal exposure to the chemical substance in the workplace may result in systemic toxicity is important. This test standard is designed to develop data on the rate at which chemicals are absorbed through the skin so that the body burden of chemical resulting from dermal exposure in the workplace can be better evaluated.

(4) *Principles of the test method.* This test standard describes procedures for measuring a permeability constant (Kp) and a short-term *in vitro* absorption rate for chemical substances in liquid form. The test standard utilizes *in vitro* diffusion cell techniques which allow absorption studies to be conducted with human skin. *In vitro* diffusion studies are necessary for measuring a Kp. This test standard specifies the use of cadaver skin and static diffusion cells to maintain the viability of the skin, thus, more closely simulating *in vivo* conditions. It also requires the use of radiolabeled test chemicals unless it can be demonstrated that procedures utilizing a non-radiolabeled test substance are able to measure the substance with a sensitivity equivalent to the radiolabeled method.

(5) *Test procedure*—(i) *Choice of membrane*—(A) *Skin selection.* Human cadaver skin must be used in all testing conducted under this test standard. The most accurate absorption-rate data for regulatory concerns related to human health would be obtained with live human skin. Because this test standard requires the use of static diffusion cells, maintenance of skin viability is not necessary. However, the time elapsed between death and harvest of the tissue must be reported.

(B) *Number of samples.* Data from a total of at least six samples obtained from at least three human subjects must be averaged to allow for biological variation among subjects.

(C) *Anatomical region.* In order to minimize the variability in skin absorption measurements for these tests, samples of human skin must be obtained from the abdominal region of human subjects of known source and disease state. Variability in skin permeation is well known to occur in different anatomical regions. The trunk and its extremities have reasonably similar barrier properties (less than 2-fold differences). Enhanced absorption can be observed in regions of the face (4-fold) and the scrotum (20-fold). Small differences in regional absorption may not be significant compared to intersubject variability

(D) *Validation of human skin barrier.* Barrier properties of human skin must be pretested with a standard compound such as tritiated water prior to conducting an experiment with the test chemical because barrier alteration can result from surgery or topical scrubbing, as discussed in the reference in paragraph (h)(8)(i)(B) of this section.

(ii) *Preparation of membrane.* Full thickness skin must not be used. Because chemicals are taken up by blood vessels directly beneath the epidermis *in vivo*, this *in vitro* test standard must be conducted using a membrane with most of the dermis removed. This is particularly important for hydrophobic chemicals that diffuse slowly through the dermis. A suitable membrane must be prepared from skin with a dermatome at a thickness of 200 to 500 millimeters (mm). The microtomed skin samples can be stored frozen for up to 2 weeks, if necessary, provided that they are frozen quickly and the barrier properties of the samples are confirmed.

(iii) *Diffusion cell design.* Static diffusion cells must be used in these studies. The testing laboratory must verify that the difference in the concentration of the test compound across the skin membrane does not decrease by more than 10% during the experiment. This will ensure that the test compound concentration in the receptor fluid does not alter the penetration rate. Concentration of the neat liquid must be taken as the density of the compound.

(iv) *Temperature.* Skin must be maintained at a physiological temperature of 32° Celsius.

(v) *Testing hydrophobic chemicals.* Chemicals with water solubility less than about 10 milligrams/liter do not freely partition from skin into aqueous receptor fluid. To increase the water solubility of such hydrophobic chemicals, polyethoxyoleate (polyethylene glycol (PEG) 20 oleyl ether) must be added to the receptor fluid at a concentration of 6%. To ensure that an increase in concentration of the chemical in the receptor fluid does not alter penetration rate, the concentration difference across the membrane must not decrease by more than 10% during the experiment.

(vi) *Vehicle.* If the test chemical is a liquid at room temperature and does not damage the skin during the determination of Kp, it must be applied neat. If the chemical cannot be applied neat because it is a solid at room temperature or because it damages the skin when applied neat, it must be dissolved in water. If the concentration of a hydrophobic chemical in water is not high enough so that a steady-state absorption can be obtained, the chemical must be dissolved in isopropyl myristate. A sufficient volume of liquid must be used to completely cover the skin and provide the amount of test chemical needed as described in paragraph (h)(5)(vii) of this section.

(vii) *Dose*--(A) *Kp.* An "infinite dose" of the test chemical must be applied to the skin to achieve the steady-state rate of absorption necessary for calculation of a Kp. The actual concentration required to give an undepletable reservoir on the surface of the skin depends on the rate of penetration of the test chemical. Preliminary studies may be necessary to determine this concentration. The diffusion cell tops must be covered with a stopper or with parafilm 7 to ensure that significant evaporation of the vehicle or test chemical does not occur. The skin barrier integrity must be verified at the end of the experiment by measuring the absorption of a standard compound such as tritiated water, as discussed in the reference in paragraph (h)(8)(i)(B) of this section.

(B) *Short-term absorption rate.* Short-term absorption rates must be determined for all test chemicals. The dose of test chemical applied to the skin must be sufficient to completely cover the exposed skin surface. A minimum of four to six diffusion cells must be set up using skin from a single subject and two to three of these shall be terminated at 10 and 60 minutes. Skin absorption at each sampling time is the sum of the receptor-fluid levels and the absorbed chemical that remains in the skin, as discussed in the reference in paragraph (h)(8)(i)(C) of this section. Unabsorbed chemical must be removed from the skin surface by washing gently with soap and water. This procedure must be repeated with skin from two additional subjects. In order to ensure reliable short-term absorption rates, the diffusion cell tops must be covered with a stopper or with parafilm 7 to prevent evaporation of the test chemical.

(viii) *Study duration*—(A) *Kp.* This *in vitro* dermal absorption rate test must be performed until at least four absorption measurements are obtained during the steady state absorption portion of the procedure. A preliminary study may be

useful to establish time points for sampling. The required absorption measurements can be accomplished in an hour or two with fast-penetrating chemicals but require 24 hours or longer for slow-penetrating chemicals. Unabsorbed material need not be removed from the surface of the skin.

(B) *Short-term exposure rate.* The test chemical must be applied to skin for durations of at least 10 and 60 minutes. At the end of the study, the unabsorbed material must be removed from the surface of the skin with soap and water and the amount absorbed into the skin and receptor fluid must be determined, as discussed in the reference in paragraph (h)(8)(i)(C) of this section.

(6) *Results*—(i) *Kp.* The Kp must be calculated by dividing the steady-state rate of penetration (measured in micrograms x hr^{-1} x centimeters $(cm)^{-2}$) by the concentration of the test chemical (measured in micrograms x cm^{-3}) applied to the skin. For example, if the steady-state rate is 1 microgram x hr^{-1} x cm^{-2} and the concentration applied to the skin is 1,000 micrograms x cm^{-3}, then the Kp value is calculated to be 0.001 cm x hr^{-1}.

(ii) *Short-term exposure rate.* The rates of penetration (micrograms x hr^{-1} x cm^{-2}) must be determined from the total amount of test chemical found in the receptor fluid and skin after the 10- and 60-minute exposures.

(7) *Test reports.* In addition to compliance with the TSCA Good Laboratory Practice (GLP) Standards at 40 CFR part 792, the following specific information must be collected and reported under paragraph (i) of this section:

(i) *Test systems and test methods.* (A) A description of the date, time, and location of the test, the name(s) of the person(s) conducting the test, the location of records pertaining to the test, as well as a GLP statement. These statements must be certified by the signatures of the individuals performing the work and their supervisors.

(B) A description of the source, identity, and purity of the test chemical and the source, identity, and handling of the test skin. There must be a detailed description of the test procedure and all materials, devices used and doses tested, as well as a detailed description and illustration of flow-cell design. There must also be a description of the skin preparation method including measurements of the skin membrane thickness.

(C) A description of the analytical techniques to be used, including their accuracy, precision, and detection limits (in particular for non-radiolabeled tests), and, if a radiolabel is used, there must be a description of the radiolabel (e.g., type, location of, and radiochemical purity of the label).

(D) All data must be clearly identified as to dose and specimen. Derived values (means, permeability coefficient, graphs, charts, etc.) are not sufficient.

(ii) *Conduct of study.* Data must be collected and reported on the following:

(A) Monitoring of testing parameters.

(B) Temperature of chamber.

(C) Receptor fluid pH.

(D) Barrier property validation.

(E) Analysis of receptor fluid for radioactivity or test chemical.

(iii) *Results.* The Kp or short-term absorption rate must be presented. In addition, all raw data from each individual diffusion cell must be maintained to support the calculations of Kp and short-term exposure rates. When radiolabeled compounds are used, a full balance of the radioactivity must be presented, including cell rinsing and stability of the test substance in the donor compartment.

(8) *References.* (i) For background information on this test standard, the following references should be consulted. These references are available at the TSCA Nonconfidential Information Center, Rm. NE B–607, Environmental Protection Agency, 401 M St., SW., Washington, DC, 12 noon to 4 p.m., Monday through Friday, except legal holidays.

(A) Bronaugh, R.L., and Collier, S.W. Protocol for *In Vitro* Percutaneous Absorption Studies. *In Vitro Percutaneous Absorption: Principles, Fundamental, and Applications.* R.L. Bronaugh and H.I. Maibach, Eds. CRC Press, Boca Raton, FL. pp. 237–241 (1991).

(B) Bronaugh, R.L.. Stewart, R.F., and Simon, M. Methods for *In Vitro* Percutaneous Absorption VII: Use of Excised Human Skin. *Journal of Pharmaceutical Sciences.* Vol. 75, pp. 1094–1097 (1986).

(C) Bronaugh, R.L., Stewart, R.F., and Storm, J.E. Extent of Cutaneous Metabolism during Percutaneous Absorption of Xenobiotics. *Toxicology and Applied Pharmacology.* Vol. 99, pp. 534–543 (1989).

(ii) Two additional documents consulted in developing this test standard are:

(A)Walker, J.D., Whittaker, C. and McDougal, J.N. Role of the TSCA Interagency Testing Committee in Meeting the U.S. Government Data Needs: Designating Chemicals for Percutaneous Absorption Rate Testing. *Dermatoxicology.* F. Marzulli and H. Maibach, Eds. Taylor & Francis, Washington, DC. pp. 371–381 (1996).

(B) Bronaugh, R.L. Stewart, R.F. Methods for *In Vitro* Percutaneous Absorption Studies IV: The Flow-Through Diffusion Cell. *Journal of Pharmaceutical Sciences.* Vol. 74, pp. 64–67 (1985).

(i) *Reporting requirements.* The reports submitted under this section must include the information specified in paragraph (h)(7) of this section. Interim progress reports for each test must be submitted every 6 months, beginning 6 months after the effective date of any specific test listed in Table 2 of this paragraph. A final report for a specific test must be submitted by the deadline indicated as the number of months after the effective date shown in Table 2 of this paragraph.

TABLE 2.—REQUIRED TESTING: CHEMICAL SUBSTANCES DESIGNATED FOR IN VITRO DERMAL ABSORPTION RATE TESTING

CAS No.	Chemical name	Deadline for final report	Number of interim (6 month) reports required	Effective date
60–29–7	Ethyl ether	9	1	
74–96–4	Ethyl bromide	9	1	
75–05–8	Acetonitrile	9	1	
75–15–0	Carbon disulfide	9	1	
75–35–4	Vinylidene chloride	9	1	
77–73–6	Dicyclopentadiene	9	1	
77–78–1	Dimethyl sulfate	9	1	
78–59–1	Isophorone	9	1	
78–83–1	Isobutyl alcohol	9	1	
78–87–5	Propylene dichloride	9	1	
78–92–2	*sec*-Butyl alcohol	9	1	

TABLE 2.—REQUIRED TESTING: CHEMICAL SUBSTANCES DESIGNATED FOR IN VITRO DERMAL ABSORPTION RATE TESTING—Continued

CAS No.	Chemical name	Deadline for final report	Number of interim (6 month) reports required	Effective date
79-20-9	Methyl acetate	9	1	
79-46-9	2-Nitropropane	9	1	
91-20-3	Naphthalene	9	1	
92-52-4	Biphenyl	9	1	
95-49-8	*o*-Chlorotoluene	9	1	
95-50-1	*o*-Dichlorobenzene	9	1	
97-77-8	Disulfiram	9	1	
98-29-3	*tert*-Butylcatechol	9	1	
99-99-0	*p*-Nitrotoluene	9	1	
100-00-5	*p*-Nitrochlorobenzene	9	1	
100-01-6	*p*-Nitroaniline	9	1	
100-44-7	Benzyl chloride	9	1	
106-42-3	*p*-Xylene	9	1	
106-46-7	*p*-Dichlorobenzene	9	1	
107-06-2	Ethylene dichloride	9	1	
107-31-3	Methyl formate	9	1	
108-03-2	1-Nitropropane	9	1	
108-90-7	Chlorobenzene	9	1	
108-93-0	Cyclohexanol	9	1	
109-66-0	Pentane	9	1	
109-99-9	Tetrahydrofuran	9	1	
110-12-3	Methyl isoamyl ketone	9	1	
111-84-2	Nonane	9	1	
120-80-9	Catechol	9	1	
121-69-7	Dimethylaniline	9	1	
122-39-4	Diphenylamine	9	1	
123-42-2	Diacetone alcohol	9	1	
126-99-8	*beta*-Chloroprene	9	1	
127-19-5	Dimethyl acetamide	9	1	
142-82-5	*n*-Heptane	9	1	
150-76-5	*p*-Methoxyphenol	9	1	
528-29-0	*o*-Dinitrobenzene	9	1	
628-63-7	*n*-Amyl acetate	9	1	
768-52-5	*N*-Isopropylaniline	9	1	
25013-15-4	Vinyl toluene	9	1	
34590-94-8	Dipropylene glycol methyl ether	9	1	

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Part VII

Environmental Protection Agency

40 CFR Part 745

Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62158A; FRL–6058–6]

RIN 2070–AD11

Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule to establish fees for the accreditation of training programs and certification of contractors engaged in lead-based paint activities pursuant to section 402(a)(3) of the Toxic Substances Control Act (TSCA). As specified in section 402(a)(3), EPA must establish and implement a fee schedule to recover, for the U.S. Treasury, the Agency's cost of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors engaged in lead-based paint activities. Specifically, this rule establishes the fees to be charged in those States and Indian country without authorized programs for training programs seeking accreditation under 40 CFR 745.225, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226. About three-quarters of the nation's housing stock built before 1978 (64 million homes) contains some lead-based paint. When properly maintained and managed, this paint poses little risk. If improperly managed, chips and dust from this paint can create a health hazard. Recent studies indicate that nearly one million children have blood-lead levels above safe limits; the most common source of lead exposure in the United States is lead-based paint. Today's rule supports the effort of 40 CFR part 745, subpart L to ensure that contractors claiming to know how to inspect, assess or remove lead-based paint, dust or soil are well qualified, trained and certified to conduct these activities. This final rule is based on a proposal published in the **Federal Register** of September 2, 1998.

DATES: The requirements in this final rule will take effect on June 11, 1999. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Rm. E–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mike Wilson, Project Manager, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 202–260–4664; fax number: 202–260–0770; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226. Potentially affected categories and entities may include:

Type of Entity	SIC Code	Examples of Entities
Lead abatement professionals	1799, 8734	Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities. Firms engaged in lead-based paint activities.
Training programs	1799, 8331, 8742, 8748	Training programs providing training services in lead-based paint activities.

This table is not intended to be exhaustive, but rather provides a guide to the entities that are likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the provisions in 40 CFR part 745. The Standard Industrial Classification (SIC) codes that are provided in the table have been included to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the FOR FURTHER INFORMATION CONTACT section.

II. How Can I Get Additional Information, Including Copies of this or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "Federal Register Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person

The Agency has established an official record for this action under docket control number OPPTS–62158A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding

legal holidays. The telephone number of the Center is (202) 260–7099.

III. Who Will Be Required to Pay Fees Under this Rule?

The fees in this rule apply to: (1) Training programs applying to EPA for the accreditation and re-accreditation of training courses in the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, and (2) individuals and firms seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the above-mentioned disciplines. Consistent with TSCA section 402(a)(3) and as further described in this preamble, this rule precludes the imposition of fees for the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

This rule applies only in States and Indian country where there are no authorized programs pursuant to 40 CFR part 745, subpart Q. For further information regarding the authorization status of States or Indian Tribes contact the National Lead Information Center (NLIC) at 1–800–424–LEAD.

IV. Under What Legal Authority Is this Action Being Issued?

EPA is issuing this rule under the authority of section 402 of TSCA (15 U.S.C. 2682). Sections 402(a)(1) and (a)(2) require the Agency to promulgate regulations for, among other things, the accreditation of training programs and the certification of individuals and firms engaged in lead-based paint activities. The regulation titled "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child Occupied Facilities" was published in the **Federal Register** of August, 29 1996 (61 FR 45805) (FRL–5389–9), and appears at 40 CFR part 745, subpart L. Section 402(a)(3) of TSCA requires, with certain exceptions, that the Administrator of EPA impose a fee on persons operating accredited training programs and on individuals and firms engaged in lead-based paint activities certified under TSCA. Section 402(a)(3) requires that the fees be established at a level necessary to cover the costs of administering and enforcing the standards and regulations under this section. EPA does not have the authority to retain fees collected under this program. Therefore, fees collected by the Agency will be deposited into the U.S. Treasury as required by 31 U.S.C. 3302(b).

Section 553 of the Administrative Procedure Act (APA) provides that most final rules should become effective no sooner than 30 days after publication in the **Federal Register**. The purpose of the 30–day lag time is to "afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt." Sen. Rep. 752, 79th Cong., 1st sess. at p.15. However, the APA also provides that agencies may for "good cause" make rules effective in less than 30 days. Such good cause exists if it is in the interest of the persons affected by the rule that it be issued earlier. Attorney General's Manual on the APA at 37. EPA is invoking the "good cause" exemption in section 553(d)(3) of the APA to make this rule effective in less than 30 days because EPA believes that the early effective date will allow parties seeking certification or accreditation under the rule to receive the benefit of earlier EPA action on their applications. This may be particularly important to those training programs which have submitted early applications for accreditation in States and Tribes where EPA is administering the lead program, and which will not be able to offer lead-based paint activities training that satisfies EPA requirements after March 1, 1999, without EPA accreditation. Those parties wishing to defer payment of fees established under this rule may simply defer submission of an application to EPA for accreditation or certification.

V. How Does this Action Fit into EPA's Overall Lead Program?

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. TSCA section 402, *Lead-Based Paint Activities Training and Certification*, directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and to establish standards for conducting lead-based paint activities. Section 404 of TSCA requires that EPA establish procedures for States and Indian tribes seeking to establish their own lead-based paint activities programs. On August 29, 1996, EPA promulgated final rules that implemented sections 402 and 404 of TSCA titled "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities." These rules are codified at 40 CFR part 745, subparts L and Q.

Section 402(a)(3) of TSCA directs the Agency to establish fees to recover the cost of administering and enforcing the lead-based paint activities training and certification program. The statute provides an exemption from fee payment for training programs operated by a State government, local government, or nonprofit organization.

Today's rule addresses this TSCA requirement with respect to entities regulated under part 745, subpart L. This rule establishes fees for the certification and periodic re-certification of individuals and firms, and for the accreditation and periodic re-accreditation of training programs. Also included are fees for examinations, replacement of a lost certificate or identification card, and for registration in more than one EPA-administered jurisdiction.

This rule also provides an exemption from fee payment for training programs operated by federally recognized Indian Tribes. As more fully described in the proposal for this rule, EPA's action in exempting Tribal training programs from the requirement to pay user fees recognizes that Tribes are government entities that should not be singled out from States and local governments for the payment of user fees.

EPA expects to develop additional regulations addressing lead-based paint activities for commercial and public buildings, bridges and superstructures, renovation and remodeling, and for the disposal of lead-based paint debris. To the extent EPA requires additional accreditations or certifications pursuant to such rules, additional fee rules may be developed.

VI. Summary of Proposed Rule and Public Comments

On September 2, 1998, EPA issued a direct final rule (63 FR 46668) (FRL–6017–8), and proposed rule (63 FR 46734) (FRL–6017–7) to establish fees for the accreditation of training programs and certification of contractors engaged in lead-based paint activities pursuant to section 402(a)(3) of the Toxic Substances Control Act (TSCA). As specified in section 402(a)(3), the proposed rule would have established fees to recover, for the U.S. Treasury, the Agency's cost of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors engaged in lead-based paint activities. Specifically, the proposal established the fees to be charged in those States and Indian country without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

In response to the proposal, EPA received 23 letters from the public during the comment period. On October 16, 1998, EPA announced that it was withdrawing the direct final rule and acting on the proposed rule (63 FR 55547) (FRL–6040–1). The Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors Proposal docket (OPPTS-62158) contains the proposal, public comments on the proposal, material EPA has added in reply to the public comments, and the Regulatory Impact Analysis for the proposed and the final rules.

As indicated above EPA received 23 comments by the close of the comment period. The largest number of responses was received from public health and environmental protection departments (32% of the responses) and lead-based paint activities firms (32% of the responses). Other commenters included representatives of lead-based paint training programs (14% of the responses) and businesses providing both training and consulting services (14% of the responses). A summary of all comments received, and EPA's responses, may be found in the appropriate sections of this preamble, or in the Response to Comments document which is available for public review in the TSCA Docket for this rulemaking (see Unit II. of this preamble). The paragraphs that follow briefly describe some of the key concerns that were raised by the commenters.

The majority of the comments received raised concerns regarding the fee levels. Specifically the concerns include the following: (1) The fees will be a disincentive to building a network of qualified trainers and abatement professionals; (2) the fees will promote unlawful practice; (3) the fees will have a negative impact on programs to train low-income persons; (4) worker fees are too high and this is magnified by mobility issues; (5) State concerns that the fees do not represent true cost; and (6) the fees will increase abatement cost and reduce the number of homes for which lead-based paint hazards are abated.

Several commenters raised concerns regarding the proposed provisions allowing fee exemptions for training programs operated by State and local governments, federally recognized Indian Tribes, and nonprofit organizations. Commenters also addressed the proposed rule's effect on small business, the multi-jurisdiction registration fee, the proposed one-time firm certification fee, and the inconsistency of inspector and risk assessor fees.

Importantly, EPA received no comments which questioned the overall program cost or the manner in which it was derived.

VII. Final Rule Provisions

In light of the public's comments, the Agency has carefully reviewed the proposed rulemaking and identified areas, within the Agency's discretion, which have been modified in this final rulemaking to respond to public comments. Except for these changes, this final rule is as proposed on September 2, 1998. These changes are described below.

A. Inconsistency of Risk Assessor and Inspector Fees

A commenter notes that the Federal fees seem to be inconsistent for risk assessors versus inspectors. Since an inspection can be conducted not only by a person certified by EPA as an inspector, but also by a person certified by EPA as a risk assessor, it would seem appropriate that the certification and re-certification fee for the risk assessor should be higher than the certification and re-certification fees for the inspector.

Upon review of risk assessor and inspector fees, an error was identified in the manner in which the burden determinations were applied. This error involved the transposition of numbers associated with evaluation factors used in determining the supervisor, risk assessor, and inspector fee levels. The Agency has recalculated the fees based upon corrected evaluation factors with the following result:

Lead-based Paint Activities-Individual	Certification	Re-certification
Inspector	$400	$350
Risk assessor	$520	$420
Supervisor	$470	$390

B. Firm Fee

EPA received comments regarding the firm fee. The commenters note that a one-time fee collected from a firm will do little in future fiscal years to recover the costs associated with the firm. Furthermore, several commenters do not feel that the proposed fee is adequate to recover costs.

The Agency evaluated the one-time certification fee for firms and agrees that it is inadequate to recover costs associated with the firm in future years. Therefore, the Agency will charge a fee to maintain a firm's certification of $430 every 3 years following initial certification to recover the continuing costs associated with the firm. This fee will include the established fixed amount to recover enforcement and headquarters administrative costs along with the cost of additional administrative tasks associated with this fee collection.

C. Worker Fee Levels and Worker Mobility

EPA received comments which expressed concern that worker fee levels are too high. One commenter feels that the total impact of training, certification, and lost wages during training for workers is cost prohibitive. Another commenter points out that workers are hourly wage-earners and cannot afford the fees proposed by EPA.

Many of the commenters were also concerned that the high fee levels are magnified by worker mobility issues which will further drive contracting firms costs up. The commenters feel that workers are hired for a particular job and laid off at the completion of that job. Therefore, workers tend to move from firm to firm and even out of the business. The commenters believe that these costs are prohibitive for contractor firms and make the cost of employee attrition unmanageable.

EPA also received comments which raised the issue that the proposed fees would have a disproportionately negative impact on efforts to train and certify low-income persons from the neighborhoods that are most impacted by lead hazards. As one commenter states "the fees will have a chilling effect on community/low-income worker training programs."

In response to these comments the Agency has decided to adjust the program cost distribution as it relates to firms and workers. The Agency, in a

separate determination discussed above, has evaluated the one-time certification fee for firms and has determined that it is inadequate to recover costs associated with the firm in future years. The Agency will charge a fee to maintain a firms certification of $430 every 3 years following initial certification. Therefore, the Agency has applied the increased revenue generated by the additional firm fee to reduce the worker fee level. The worker fee has decreased approximately 22% from $360 to $280. This $280 fee for workers provides for a 3– or 5–year certification period based upon the type of course completed. This translates to an annual cost of between $56 and $94. The worker re-certification fee was correspondingly lowered to $240.

D. Multi-jurisdiction Registration Fees for Firms

A commenter noted that firms are not assessed a multi-jurisdiction registration fee as are individuals and training providers.

Upon review of multi-jurisdiction registration fees for firms, an omission was found in the text of the proposed rule. The Economic Analysis for the rulemaking takes into account multi-jurisdiction registration for firms, the proposed rule does not. Therefore, EPA has modified the final rule text to include multi-jurisdiction fee provisions for firms.

E. Multi-jurisdiction Registration Fees for Indian Country

EPA received comments which argue that the accreditation and certification fees would be a disincentive to building a network of qualified trainers and abatement professionals.

Upon further evaluation it was determined that the multi-jurisdiction registration fee may cause a negative impact on the availability of lead abatement services in Indian Country. The Agency feels that the proposed multi-jurisdiction fee may be prohibitive and decrease the number of individuals, firms, and training programs willing to offer services in Tribes.

Therefore, the Agency has decided to change the multi-jurisdiction registration fee by modifying how the fee relates to Indian Tribes. Certification and accreditation to perform lead-based paint activities in Indian Tribes without authorized programs will be issued according to the boundaries established by the 10 EPA Regions. Therefore, an individual, firm, or training program that is certified or accredited to provide lead abatement services or training in any unauthorized Indian Tribe within a given EPA Region will be able to provide services in all unauthorized Indian tribes within the EPA Region. Also, the title "multi-state registration fee" in the proposed regulatory text has been modified to "multi-jurisdiction fee" to better reflect the nature of the fee.

F. Definition of Nonprofit

EPA received a comment which questions the adequacy of the proposed definition of "nonprofit." The commenter states that labor-management sponsored training programs, which are operated as nonprofit entities, are for the most part not qualified under 501(c)(3) of the Internal Revenue Service (IRS) code.

EPA notes that Subtitle C of Title X (section 1033), amending the Occupational Safety and Health Act of 1970, provides authority to provide grants to nonprofit organizations seeking to establish training programs. That provision defines nonprofit organizations as including colleges and universities, joint labor-management trust funds, states and nonprofit government employee organizations. As indicated, this statutory language includes labor-management trust funds, many of which the commenter notes would not be eligible for fee waivers under the proposed rule. It is the Agency's position that the definition of nonprofit be refined for purposes of this rulemaking in order to be consistent with this related provision.

In the process of refining the definition of nonprofit, the Agency has determined that no single IRS tax exempt classification or group of classifications adequately incorporates nonprofit training programs for purposes of this rulemaking. Therefore, a more general definition was developed which enables the Agency to adequately ensure the nonprofit status of an organization without incorporating the constraints of the IRS tax exemption classifications. The revised definition reads as follows: "Nonprofit means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual."

VIII. How Do I Pay the Fees?

Each fee payment described in this rule shall be in U.S. currency and shall be paid by check or money order. Individuals, firms, or training programs shall submit fee payments in accordance with instructions provided with the application materials. No application will be considered complete until payment is made and final certification/accreditation shall be dependent on the payment of the applicable fees.

IX. How Can I Apply for Accreditation or Certification?

The application requirements can be found in 40 CFR 745.225 and 745.226. In addition, the Agency has prepared application packages and guidance on applying. This material is available from EPA through the National Lead Information Center at 1–800–424–LEAD.

X. How Do the Regulatory Assessment Requirements Apply to this Action?

A. Executive Order 12866

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993) it has been determined that this is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). EPA has prepared an economic analysis of the potential impact of this action, which is estimated to be $5.6 million over the next 5 years. The analysis is contained in a document entitled "Economic Analysis of the TSCA Section 402(a)(3) Lead-Based Paint Accreditation and Certification Fee Rule." This document is available as a part of the public version of the official record for this action.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As indicated in Unit I. of this preamble, within the EPA-administered universe, the potentially affected entities consist of the following three basic types of entities: (1) Individuals engaged in lead-based paint activities; (2) firms engaged in lead-based paint activities; and (3) for-profit entities providing lead-based paint training. The potential impact of this action on small entities within this universe is described in Chapter 6 of the economic analysis, as referred to in Unit X.A. of this preamble.

In estimating the universe of potentially impacted small entities, EPA used the definitions provided by the Small Business Administration (SBA). This rule provides fee waivers for training programs operated by State and local governments, Indian Tribes, and nonprofit organizations. As such, these entities are not affected by this rule. With regard to individuals, to the extent that "individuals" are in business for themselves, EPA considered that entity to be a firm with one employee. The

analysis assumes that firms are likely to pay all or a portion of their employee's certification fees. As a result, the small entity impact analysis focuses on the potential impacts on two distinct types of affected entities, i.e., firms engaged in lead-based paint activities (including individuals in business for themselves), and for-profit entities providing lead-based paint training.

EPA estimates that 1,541 firms engaged in lead-based paint activities will be certified during the first 5 years in the EPA- administered program universe. Using the revenue distribution for Standard Industrial Code (SIC) 1799 and 8734, EPA estimates that approximately 98% of these firms qualify as "small" under the SBA definition for small businesses. However, even if the Agency assumes that the firms pay all of the certification fees for their employees, the impact is still estimated to be less than 1% of annual revenues for all of these firms.

Within the EPA-administered program universe, EPA estimates that there will be 52 training providers accredited during the first 5 years in the EPA-administered program universe. Of the 52, only 60% (31) of these training providers are estimated to be for-profit entities that will be required to pay a fee. Using the revenue distribution for SIC 1799, EPA estimates that virtually all of these for-profit training providers qualify as "small" under the SBA definition of small business. Although it is estimated that 12 of these 31 fee paying for-profit training providers may incur impacts that are slightly higher than 3% of their revenue, the data also suggest that these for-profit training providers have greater revenues than the SIC 1799 revenue distribution suggests. For example, using the revenue distribution of Massachusetts and Ohio training providers, only 1 of the 31 for-profit training providers is estimated to have a potential impact of greater than 1% of annual sales.

As indicated above, additional details regarding the Agency's basis for this certification are presented in Chapter 6 of the economic analysis, which is included in the public version of the official record for this action. In addition, information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request.

C. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection referenced in this rule (i.e., those included in 40 CFR 745.238) have already been approved by OMB under control number 2070–0155 (EPA ICR #1715.02). This rule does not have any impact on the existing burden estimate or collection description, such that additional approval by OMB is necessary.

The existing Information Collection Request (ICR), identified as EPA ICR 1715.02, identifies and quantifies the burden associated with the submission of applications by individuals, firms, and training programs. The burden estimates are based on the following required submissions:

1. *Firms.* A certification letter.

2. *Training program.* An application which includes the following: (i) The training programs name, address, and telephone number, (ii) a list of courses for which it is applying for accreditation, (iii) a statement signed by the training program manager that clearly indicates how the training program meets the minimum requirement for accreditation, or a statement that indicates that the training program will use the EPA-developed curriculum if available, (iv) a copy of the course test, a description of the activities and procedures for conducting the assessment of hands on skills, and a description of the facilities and equipment for lecture and hands on training, and (v) a quality control plan, which outlines procedures for periodic revision of training materials and exams, annual reviews of instructors, and adequacy of training facilities.

3. *Individuals.* For supervisors, risk assessors, and inspectors an application which includes the submission of proof of: (i) Completion of an accredited training course, (ii) passing the course test, (iii) meeting the educational and/or experience requirements (if applicable), and (iv) passing the third party exam. For project designers and abatement workers an application which includes submission of proof of: completion of a training course, passing the course test, and meeting educational and/or experience requirements (if applicable).

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

Comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing applicant burden, including through the use of automated collection techniques, may be submitted to the person listed in the "FOR FURTHER INFORMATION CONTACT" section at the beginning of this document, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), EPA has determined that this regulatory action is not subject to the requirements of sections 202 and 205. This rule is not expected to result in expenditures of $100 million or more in any given year for State, local and Tribal governments, in the aggregate, or for the private sector. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, no action is needed under section 203 of the UMRA.

E. Executive Orders 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12898

Pursuant to Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency's analysis determined that the fees are not likely to cause disproportionate impacts for minority or low-income populations. The cost of the fees, even if passed on to consumers, is a small fraction of the cost of lead hazard evaluation and abatement projects. Thus, the establishment of these fees is not likely to result in fewer lead hazard evaluation or abatement activities. In addition, EPA, HUD, and State and local organizations have developed programs to help disadvantaged communities respond to lead risks.

H. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA has determined that this rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit X.A. of this preamble). Furthermore, although this rule is associated with EPA's overall lead-based paint management program which is designed to reduce health risks to children, this rule itself simply establishes a user fee schedule and does not address environmental health or safety risk.

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Fees, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 745 is amended as follows:

PART 745— [AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2615, 2681-2692, and 42 U.S.C. 4852d.

2. In § 745.223 by adding the following three new definitions in alphabetical order to read as follows:

§ 745.223 Definitions.

* * * * *

Local government means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.

* * * * *

Nonprofit means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

* * * * *

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

* * * * *

3. In § 745.225 by adding paragraphs (b)(4) and (f)(3)(v) to read as follows:

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

* * * * *

(b) * * *

(4) A training program applying for accreditation must submit the appropriate fees in accordance with § 745.238.

* * * * *

(f) * * *

(3) * * *

(v) A payment of appropriate fees in accordance with § 745.238.

* * * * *

4. In § 745.226 by adding paragraphs (a)(6), (e)(3), (f)(6), and (f)(7) to read as follows:

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

* * * * *

(a) * * *

(6) Individuals applying for certification must submit the appropriate fees in accordance with § 745.238.

* * * * *

(e) * * *

(3) Individuals applying for re-certification must submit the appropriate fees in accordance with § 745.238.

* * * * *

(f) * * *

(6) Firms applying for certification must submit the appropriate fees in accordance with § 745.238.

(7) To maintain certification a firm shall submit appropriate fees in accordance with § 745.238 every 3 years.

* * * * *

5. By adding § 745.238 to read as follows:

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

(a) *Purpose.* To establish and impose fees for certified individuals and firms engaged in lead-based paint activities and persons operating accredited training programs under section 402(a) of the Toxic Substances Control Act (TSCA).

(b) *Persons who must pay fees.* Fees in accordance with paragraph (c) of this section must be paid by:

(1) *Training programs.* (i) All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

(ii) Exemptions. No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

(2) *Firms and individuals.* All firms and individuals seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

(c) *Fee amounts*—(1) *Certification and accreditation fees.* Initial and renewal certification and accreditation fees are specified in the following table:

Certification and Accreditation Fee Levels

Training Program	Accreditation[1]	Re-accreditation[1] [every 4 years, see 40 CFR 745.225(f)(1) for details]
Initial Course		
Inspector	$2,500	$1,600
Risk assessor	$1,760	$1,150
Supervisor	$3,250	$2,050
Worker	$1,760	$1,150
Project designer	$1,010	$710
Refresher Course		
Inspector	$1,010	$710
Risk assessor	$1,010	$710
Supervisor	$1,010	$710
Worker	$1,010	$710
Project designer	$640	$490

Lead-based Paint Activities-Individual	Certification[1]	Re-certification[1] [every 3 or 5 years, see 40 CFR 745.226(e)(1) for details]
Inspector	$400	$350
Risk assessor	$520	$420
Supervisor	$470	$380
Worker	$280	$240
Project designer	$470	$390

Lead-based Paint Activities-Firm	Certification[1]	Certification Renewal[1] [every 3 years, see 40 CFR 745.226(f)(7) for details]
Firm	$540	$430

[1] Fees will be adjusted periodically based on adjustments accounting for changes in participation and operating costs.

(2) *Certification examination fee.* Individuals required to take a certification exam in accordance with § 745.226 will be assessed a fee of $70 for each exam attempt.

(3) *Multi-jurisdiction registration fee.* An individual, firm, or training program certified or accredited by EPA may wish to provide training or perform lead-based paint activities in additional EPA-administered jurisdictions. A fee of $35 per discipline will be assessed for each additional EPA-administered jurisdiction in which an individual, firm, or training program applies for certification/re-certification or accreditation/re-accreditation. For purposes of this multi-jurisdiction registration fee, an EPA-administered jurisdiction is either an individual state without an authorized program or all Indian Tribes without authorized programs that are within a given EPA Region.

(4) *Lost identification card or certificate.* A $15 fee shall be charged for replacement of an identification card or certificate. (See replacement procedure in paragraph (e) of this section.)

(d) *Application/payment procedure—(1) Certification and re-certification in one or more EPA-administered jurisdiction—* (i) Individuals. Submit a completed application (titled "Application for Individuals to Conduct Lead-based Paint Activities"), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(ii) Firms. Submit a completed application (titled "Application for Firms to Conduct Lead-based Paint Activities"), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(2) *Accreditation and re-accreditation in one or more EPA-administered jurisdiction.* Submit a completed application (titled "Accreditation Application for Training Programs"), the materials described at § 745.225, and the application fee described in paragraph (c) of this section.

(3) *Application forms.* Application forms and instructions can be obtained from the National Lead Information Center at: 1–800–424–LEAD.

(e) *Identification card replacement and certificate replacement.* (1) Parties seeking identification card or certificate replacement shall complete the applicable portions of the appropriate application in accordance with the instructions provided. The appropriate applications are:

(i) Individuals. "Application for Individuals to Conduct Lead-based Paint Activities."

(ii) Firms. "Application for Firms to Conduct Lead-based Paint Activities."

(iii) Training programs. "Accreditation Application for Training Programs."

(2) Submit application and payment in the amount specified in paragraph (c)(4) of this section in accordance with the instructions provided with the application package.

(f) *Adjustment of fees.* (1) EPA will collect fees reflecting the costs associated with the administration and enforcement of subpart L of this part with the exception of costs associated with the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, and nonprofit organization. In order to do this, EPA will periodically adjust the fees to reflect changed economic conditions.

(2) The fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the **Federal Register**.

(g) *Failure to remit a fee.* (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (d) of this section.

(2) EPA will not replace identification cards or certificates for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (e) of this section.

[FR Doc. 99–14597 Filed 6–8–99; 8:45 am]
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Part VIII

The President

Executive Order 13124—Amending the Civil Service Rules Relating to Federal Employees With Psychiatric Disabilities

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Presidential Documents

Title 3—

The President

Executive Order 13124 of June 4, 1999

Amending the Civil Service Rules Relating To Federal Employees With Psychiatric Disabilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and in order to give individuals with psychiatric disabilities the same hiring opportunities as persons with severe physical disabilities or mental retardation under the Civil Service Rules, and to permit individuals with psychiatric disabilities to obtain Civil Service competitive status, it is hereby ordered as follows:

Section 1. *Policy.*

(a) It is the policy of the United States to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. The Federal Government as an employer should serve as a model for the employment of persons with disabilities and utilize the full potential of these talented citizens.

(b) The Civil Service Rules governing appointment of persons with psychiatric disabilities were adopted years ago when attitudes about mental illness were different than they are today, which led to stricter standards for hiring persons with psychiatric disabilities than for persons with mental retardation or severe physical disabilities. The Civil Service Rules provide that persons with mental retardation, severe physical disabilities, or psychiatric disabilities may be hired under excepted appointing authorities. While persons with mental retardation or severe physical disabilities may be appointed for more than 2 years and may convert to competitive status after completion of 2 years of satisfactory service in their excepted position, people with psychiatric disabilities may not.

(c) The Office of Personnel Management (OPM) and the President's Task Force on Employment of Adults with Disabilities believe that the Federal Government could better benefit from the contributions of persons with psychiatric disabilities if they were given the same opportunities available to people with mental retardation or severe physical disabilities.

Sec. 2. *Implementation.*

(a) The Director of the Office of Personnel Management shall, consistent with OPM authority, provide that persons with psychiatric disabilities are subject to the same hiring rules as persons with mental retardation or severe physical disabilities.

(b) Civil Service Rule III (5 CFR Part 3) is amended by adding the following new paragraph to subsection (b) of section 3.1:

"(3) An employee with psychiatric disabilities who completes at least 2 years of satisfactory service in a position excepted from the competitive service."

Sec. 3. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

William J. Clinton

THE WHITE HOUSE,
June 4, 1999.

[FR Doc. 99–14825
Filed 6–8–99; 8:45 am]
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Presidential Documents

Title 3—

The President

Executive Order 13125 of June 7, 1999

Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where they may be underserved (e.g., health, human services, education, housing, labor, transportation, and economic and community development), it is hereby ordered as follows:

Section 1. (a) There is established in the Department of Health and Human Services the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission). The Commission shall consist of not more than 15 members appointed by the President, one of which shall be designated by the President as Chair. The Commission shall include members who: (i) have a history of involvement with the Asian American and Pacific Islander communities; (ii) are from the fields of health, human services, education, housing, labor, transportation, economic and community development, civil rights, and the business community; (iii) are from civic associations representing one or more of the diverse Asian American and Pacific Islander communities; and (iv) have such other experience as the President deems appropriate.

(b) The Secretary of the Department of Health and Human Services (Secretary) shall appoint an Executive Director for the Commission.

Sec. 2. The Commission shall provide advice to the President, through the Secretary, on: (a) the development, monitoring, and coordination of Federal efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where such persons may be underserved and the collection of data related to Asian American and Pacific Islander populations and sub-populations; (b) ways to increase public-sector, private-sector, and community involvement in improving the health and well-being of Asian Americans and Pacific Islanders; and (c) ways to foster research and data on Asian Americans and Pacific Islanders, including research and data on public health.

Sec. 3. The Department of Health and Human Services shall establish the White House Initiative on Asian Americans and Pacific Islanders (Initiative), an interagency working group (working group) whose members shall be appointed by their respective agencies. The Executive Director of the Commission shall also serve as the Director of the Initiative, and shall report to the Secretary or the Secretary's designee. The working group shall include both career and noncareer civil service staff and commissioned officers of the Public Health Service with expertise in health, human services, education, housing, labor, transportation, economic and community development, and other relevant issues. The working group shall advise the Secretary on the implementation and coordination of Federal programs as they relate to Asian Americans and Pacific Islanders across executive departments and agencies.

Sec. 4. The head of each executive department and each agency designated by the Secretary shall appoint a senior Federal official responsible for management or program administration to report directly to the agency head on activity under this Executive order, and to serve as a liaison to the

Initiative. The Secretary also may designate additional Federal Government officials, with the agreement of the relevant agency head, to carry out the functions of the Initiative. To the extent permitted by law and to the extent practicable, each executive department and designated agency shall provide any appropriate information requested by the working group, including data relating to the eligibility for and participation of Asian Americans and Pacific Islanders in Federal programs. Where adequate data are not available, the Initiative shall suggest the means of collecting such data.

Sec. 5. Each executive department and designated agency (collectively, the "agency") shall prepare a plan for, and shall document, its efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs where Asian Americans and Pacific Islanders may be underserved. This plan shall address, among other things, Federal efforts to: (a) improve the quality of life for Asian Americans and Pacific Islanders through increased participation in Federal programs where they may be underserved and the collection of data related to Asian American and Pacific Islander populations and sub-populations; (b) increase public-sector, private-sector, and community involvement in improving the health and well-being of Asian Americans and Pacific Islanders; and (c) foster research and data on Asian Americans and Pacific Islanders, including research and data on public health. Each agency's plan shall provide appropriate measurable objectives and, after the first year, shall assess that agency's performance on the goals set in the previous year's plan. Each plan shall be submitted at a date to be established by the Secretary.

Sec. 6. The Secretary shall review the agency plans and develop for submission to the President an integrated Federal plan (Federal Plan) to improve the quality of life of Asian American and Pacific Islanders through increased participation in Federal programs where such persons may be underserved. Actions described in the Federal Plan shall address improving access by Asian Americans and Pacific Islanders to Federal programs and fostering advances in relevant research and data. The Secretary shall ensure that the working group is given the opportunity to comment on the proposed Federal Plan prior to its submission to the President. The Secretary shall disseminate the Federal Plan to appropriate members of the executive branch. The findings and recommendations in the Federal Plan shall be considered by the agencies in their policies and activities.

Sec. 7. Notwithstanding any other Executive order, the responsibilities of the President that are applicable to the Commission under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 8. Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). To the extent permitted by law and appropriations, and where practicable, agencies shall, upon request by the Secretary, provide assistance to the Commission and to the Initiative. The Department of Health and Human Services shall provide administrative support and funding for the Commission.

Sec. 9. The Commission shall terminate 2 years after the date of this Executive order unless the Commission is renewed by the President prior to the end of that 2-year period.

Sec. 10. For the purposes of this order, the terms: (a) "Asian American" includes persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent; and

(b) "Pacific Islander" includes the aboriginal, indigenous, native peoples of Hawaii and other Pacific Islands within the jurisdiction of the United States.

William J. Clinton

THE WHITE HOUSE,
June 7, 1999.

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Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter the "Act"), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the Republic of Belarus will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 3, 1999.

[FR Doc. 99–14859
Filed 6–9–99; 8:45 am].
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 99–27 of June 3, 1999

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (the "Act"), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to Vietnam will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, June 3, 1999.

[FR Doc. 99–14860
Filed 6–9–99; 8:45 am]
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 99–28 of June 3, 1999

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (the "Act"), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the wavier authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, June 3, 1999.

[FR Doc. 99–14861
Filed 6–9–99; 8:45 am]
Billing code 4710–10–M

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Rules and Regulations

Federal Register
Vol. 64, No. 111
Thursday, June 10, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Update of FOIA fee schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991, the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on June 1, 1998. 63 FR 27667, May 20, 1998.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge	$48 per hour
Copy Charge (paper)	$.04 per page, if done in-house, or generally available commercial rate (approximately $.10 per page).
Copy Charge (3.5" diskette)	$5.00 per diskette.
Copy Charge (audio cassette)	$3.00 per diskette.
Duplication of Video	$25.00 for each individual videotape; $16.50 for each additional individual videotape
Copy Charge for large documents (e.g., maps, diagrams)	Actual commercial rates.

Dated: June 4, 1999.

Kenneth M. Pusateri,

General Manager

[FR Doc. 99–14685 Filed 6–9–99; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–11]

Amendment to Class E Airspace; Neosho, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Neosho, MO.

DATES: The direct final rule published at 64 FR 10940 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 8, 1999 (64 FR 10940). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on April 19, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14610 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–18]

Amendment to Class E Airspace; Washington, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rue; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which

revises Class E airspace at Washington, IA.

DATES: The direct final rule published at 64 FR 14593 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 26, 1999 (64 FR 14593). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 14, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14609 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–23]

Amendment to Class E Airspace; Thedford, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Thomas County Airport, Thedford, NE. The FAA has developed Global Positioning System (GPS) Runway (RWY) 11, GPS RWY 29, and VHF Omnidirectional Range (VOR) RWY 11, Standard Instrument Approach Procedures (SIAPs) to serve Thomas County Airport, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 11, GPS RWY 29, and VOR RWY 11 SIAPs in controlled airspace.

The old Thomas County Airport was closed and a new Thomas County Airport was constructed approximately 2 miles farther west. Therefore, a new Airport Reference Point (ARP) was established and is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 11, GPS RWY 29, and VOR RWY 11 SIAPs, amend the ARP, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 16, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–23, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408

SUPPLEMENTARY INFORMATION: The FAA has developed GSS RWY 11, GPS RWY 29, and VOR RWY 11 SIAPs to serve the Thomas County Airport, Thedford, NE. The amendment to Class E airspace at Thedford, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The new ARP is included in this document. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, or a written notice of intent to submit an adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–23." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * * *

ACE NE E5 Thedford, NE [Revised]

Thedford, Thomas County Airport, NE
(Lat. 41°57'44"N., long. 100°34'08"W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Thomas County Airport.

* * * * * *

Issued in Kansas City, MO, on May 10, 1999.

Donovan D. Schardt

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14608 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–12]

Amendment to Class E Airspace; West Union, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at West Union, IA.

DATES: The direct final rule published at 64 FR 19261 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 20, 1999 (64 FR 19261). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice ofintent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 21, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14607 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–13]

Amendment to Class E Airspace; Cresco, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Cresco, IA.

DATES: The direct final rule published at 64 FR 19262 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 20, 1999 (64 FR 19262). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 21, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14606 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–26]

Amendment to Class E Airspace; Rolla/Vichy, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Rolla/Vichy, Rolla National Airport, Rolla, MO. A review of the Class E airspace area for Rolla/Vichy, Rolla National Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 25, 1999.

EFFECTIVE DATE: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–26, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Rolla/Vichy, MO. A review of the Class E airspace for Rolla/Vichy, Rolla National Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Rolla/Vichy, Rolla National Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–26." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant

regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 600 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Rolla/Vichy, MO [Revised]

Rolla/Vichy, Rolla National Airport, MO
(Lat. 38°07′39″N., long. 91°46′11″W.)
Vichy VORTAC
(Lat. 38°09′15″N., long. 91°42′24″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Rolla/Vichy, Rolla National Airport and within 3 miles each side of the 067° radial of the Vichy VORTAC, extending from the 6.6-mile to 7.4 miles northeast of the Vichy VORTAC.

Issued in Kansas City, MO, on May 21, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14605 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–21]

Amendment to Class E Airspace; Ottawa, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Ottawa Municipal Airport, Ottawa, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17 and GPS RWY 35 Standard Instrument Approach Procedures (SIAPs) to serve Ottawa Municipal Airport, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17 and GPS RWY 35 SIAPs in controlled airspace.

In addition, the Ottawa Nondirectional Radio Beacon (NDB) has been decommissioned. Based on this information, references to the Ottawa NDB in the text header and airspace designations have been removed.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17 and GPS RWY 35 SIAPs, remove references to the Ottawa NDB, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 28, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–21, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17 and GPS RWY 35 SIAPs to serve the Ottawa Municipal Airport, Ottawa, KS. The amendment to Class E airspace at Ottawa, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. Any references to the Ottawa NDB have been removed from the text header and airspace designation.

The amendment at Ottawa Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and

a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contract concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–21." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Ottawa, KS [Revised]

Ottawa Municipal Airport, KS
(Lat. 38°32'19"N., long. 95°15'11"W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ottawa Municipal Airport.

* * * * *

Issued in Kansas City, MO, on May 11, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14604 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–16]

Amendment to Class E Airspace; Shenandoah, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Shenandoah, IA.

DATES: The direct final rule published at 64 FR 19265 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 20, 1999 (64 FR 19265). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on May 11, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–14603 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–10]

Amendment to Class E Airspace; Lebanon, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Lebanon, MO.

DATES: The direct final rule published at 64 FR 10938 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 8, 1999 (64 FR 10938). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on April 19, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division.

[FR Doc 99–14602 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Experimental Nonletter-Size Business Reply Mail Categories and Fees; Implementation Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Renewal of Experimental Classifications and Fees for Nonletter-Size Business Reply, Docket No. MC99–1.

During the past two years, the Postal Service has studied the effects of two alternative experimental accounting methods for nonletter-size business reply mail (BRM) with a controlled number of recipients: The reverse manifesting method and the bulk weight averaging method. Until the implementation of a permanent classification and fees, the Postal Service intends to continue the experiment with up to 10 participants to resolve some administrative and technical issues related to permanent implementation of the bulk weight averaging accounting method.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Lettmann, (202) 268–6261, or Michael T. Tidwell, (202) 268–2998.

SUPPLEMENTARY INFORMATION: The Postal Service will review applications and select as many as six mailers to join the four current participants in the experiment. It is hoped that the BRM received by the participants will represent a diverse range of products returned by BRM. The limitation on the number of participants in the extension of the weight averaging experiment is consistent with the need to conduct an experiment that can be managed effectively, with the narrow scope of the administrative and technical issues the extension is expected to resolve, and with the relatively short time frame during which the extension is likely to be in effect.

The selection of experiment participants depends on various criteria such as mail volume, product type and packaging, geographic location, ability to implement and maintain quality control procedures for accounting and documentation, and availability of postal resources. A prospective participant should be able to participate until February 29, 2000, and, if selected, begin within a short period of time. Only the weight averaging method of counting the returned nonletter-size BRM pieces will be tested as part of this experiment.

As part of this study, participants will be charged lower per piece BRM fees for qualifying pieces as follows:

For participants using the weight averaging accounting method, the per piece accounting fee is 1 cent, plus the appropriate First-Class Mail or Priority Mail postage.

Participants must pay an *annual* business reply mail permit fee and an *annual* business reply mail advance deposit accounting fee, which are currently $100.00 and $300.00, respectively. In addition, there will be a monthly audit and maintenance fee of $600.00 assessed per BRM account at each site where the experimental weight averaging accounting method is employed.

Background

As a consequence of Postal Rate Commission Docket No. MC97–1, the United States Postal Service has engaged in an experiment since June 8, 1997, which was designed to test the feasibility of two alternative methods of accounting for nonletter-size Business Reply Mail: the reverse manifesting method and the bulk weight averaging method. For each method, the experiment was designed to involve up to 10 recipients of nonletter-size BRM. On an experimental basis, separate experimental set-up/qualification, monthly auditing or sampling, and per piece fees were established for each method. All experimental classifications and fees are scheduled to expire on June 7, 1999.

To date, four BRM recipients have participated in the experiment, which is scheduled to expire on June 7, 1999. One participant began the experiment utilizing the reverse manifest method. Three others elected to participate utilizing the weight averaging method.

Approximately nine months ago, the one participant using the reverse manifest method unilaterally determined on the basis of internal operational considerations that it would switch to the weight averaging method. The Postal Service has since been unable to recruit any participants to experiment with the reverse manifest method. Although the Postal Service believes that the method has potential, the limited experience during the experiment did not provide an adequate opportunity to fully evaluate the method or overcome the shortcomings with the method that were identified when the experiment was initiated. As a consequence, the operational feasibility of the reverse manifest method remains unproved.

The experiment has demonstrated the feasibility of the bulk weight averaging accounting method for nonletter-size BRM to the satisfaction of the Postal Service. At the same time, the Postal Service has determined that it must resolve some administrative and technical issues related to the operation of bulk weight averaging before implementing the method on a permanent basis.

Accordingly, on March 10, 1999, the Postal Service filed two requests before the Postal Rate Commission. The first request sought an extension of the current bulk weight averaging experiment beyond its June 7, 1999, expiration date to allow for the continuation of work to resolve the aforementioned administrative and technical issues that stand in the way of

implementing weight averaging on a permanent basis. That proceeding was designated by the Postal Rate Commission as Docket No. MC99–1. The second request proposed the establishment of a permanent classification and fees for weight averaged nonletter-size BRM. That proceeding was designated as Docket No. MC99–2. The Postal Service intends to let the reverse manifest classification and fees expire as scheduled.

Manual BRM Verification Method

The manual counting, weighing, rating, and billing for incoming nonletter-size BRM at delivery post offices is a labor-intensive and time-consuming task usually performed by postage due unit employees. These postal employees must weigh and rate each piece individually and calculate the appropriate postage and fees.

This manual process frequently takes place during a short period between the arrival of the BRM at the postage due unit and the arrival of the BRM recipient at the post office to pick up the mail. Depending on mail volume, the necessary accounting sometimes delays the release and delivery of the mail. Such delays can adversely affect the recipient's ability to meet customer fulfillments expeditiously.

Weight Averaging Method

Some recipients of large volumes of incoming nonmachinable BRM and local postal officials have developed an alternative accounting method, bulk weight averaging, that allows the recipients to take possession of their incoming mail sooner than mail manually weighed and rated on a piece-by-piece basis by the Postal Service.

This method also makes it less expensive for the Postal Service to determine the postage and fees. This alternative method reduces postal workhours, provides more expeditious accounting, allows for earlier delivery of BRM pieces, and increases recipient satisfaction with BRM service.

Application of the bulk weight averaging accounting method for a BRM permit account requires periodic sampling and monitoring of the permit holder's nonletter-size BRM. As a consequence, the added administrative overhead generates extraordinary postal costs not covered by the current $100.00 annual BRM permit fee and $300.00 annual BRM advance deposit accounting fee.

For purposes of the current experiment, the Postal Service adopted additional fees for the nonletter-size BRM weight averaging accounting method:

- A one-time set-up/qualification fee of $3,000.
- A $3,000 monthly maintenance fee.
- A $0.03 per piece accounting fee.

These fees expire on June 7, 1999. On May 14, 1999, in Docket No. MC99–1, the Postal Rate Commission recommended the extension of the nonletter-size BRM experiment until February 29, 2000, or until implementation of permanent fees, whichever comes first, which was the term requested by the Postal Service. The Commission also recommended the classification and fees proposed in a Joint Stipulation and Agreement by the parties in Docket No. MC99–1. The Commission's recommendations were approved in the May 26, 1999, Decision of the Governors of the United States Postal Service. Accordingly, on June 8, 1999, the following fees will apply to nonletter-size BRM subject to the terms of the weight averaging experiment:

- A $600 monthly maintenance fee.
- A $0.01 per piece accounting fee.

The one-time set-up/qualification fee has been eliminated. These new experimental fees expire on February 29, 2000, or upon implementation of permanent fees, whichever comes first.

Selection Process for Participants

A reply mail recipient who wants to participate in the extension of the nonletter-size BRM experiment must submit a written request to: Manager, Mail Preparation and Standards, Postal Service Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2405. The request must include sufficient data to assist in making an initial determination.

Consideration is given to product type, geographic location, variability in the weight and daily volume of BRM, current accounting and quality control procedures, and availability of postal resources. In selecting participants, the manager of Mail Preparation and Standards also uses the following criteria:

- The applicant must receive at one site a yearly average volume of approximately 100,000 or more nonletter-size BRM pieces eligible for the current $0.08 per piece fee.
- The applicant must be prepared to participate in the experiment through February 29, 2000.
- The applicant must be prepared to begin operation at a mutually agreed upon time soon after selection.

If the manager of Mail Preparation and Standards determines that the applicant is suitable for participation, the applicant is instructed to follow the appropriate application procedures for authorization, as described in Domestic Mail Manual G092 and published in this final rule. If the manager of Mail Preparation and Standards determines that the applicant is not suitable, that manager sends the applicant a written notice explaining the reasons for the determination and, if appropriate, requests additional information for further review.

Decisions of the manager of Mail Preparation and Standards may be appealed to the BRM Experiment Review Board, Postal Service Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2405. Appeals must include sufficient information to assist the Review Board in reconsideration of initial determinations. Decisions of the Review Board are final.

Implementation

Pursuant to 39 U.S.C. 3624, the PRC on May 14, 1999, issued to the Governors of the Postal Service its Recommended Decision on the Postal Service's Request to extend the weight averaging portion of the nonletter-size BRM experiment.

After reviewing the PRC's Recommended Decision and its consequences for the Postal Service and postal customers, the Governors, pursuant to 39 U.S.C. 3625, acted on the PRC's recommendations on May 26, 1999. (Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Renewal of Experimental Classification and Fees for Nonletter-Size Business Reply Mail Categories and Fees, Docket No. MC99–1.)

The Governors determined to approve the PRC's recommendations, and the Board of Governors set an implementation date of June 8, 1999, for the classification and fee changes to take effect. A notice announcing the Governors' Decision and the final Domestic Mail Classification Schedule and Fee Schedule changes is published elsewhere in this issue of the **Federal Register**.

This final rule contains the DMM standards adopted by the Postal Service to implement the Governors' Decision.

As described below, the Postal Service is limiting these experimental fee categories to those pieces of nonletter-size business reply mail that are outside the parameters of current automation-compatible letter-size business reply mail. As a consequence, the final rule excludes letter-size pieces which could qualify for Qualified Business Reply Mail (QBRM) rates and fees. (Currently, pieces weighing two ounces or less can qualify for QBRM.)

Because of the purpose and limited scope of this experiment, the Postal Service finds no need to solicit comment on the standards for nonletter-size BRM or to delay implementation of this extension.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[REVISED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise G092 to the Domestic Mail Manual as follows:

G GENERAL INFORMATION

* * * * *

G090 Experimental Classifications and Rates

[Revise G092 to remove references to reverse manifesting; remove 2.0, which explains reverse manifesting; and renumber 3.0 to 5.0 to leave weight averaging as the experimental accounting method as follows:]

G092 Nonletter-Size Business Reply Mail

1.0 BASIC ELIGIBILITY

[Amend 1.1 to remove references to reverse manifesting to read as follows:]

1.1 Description

The standards in G092 apply to pieces claimed by an authorized mailer at the experimental fees for nonletter-size business reply mail (BRM). Draft Publication 405, Guide to Business Reply Mail, contains an explanation of weight averaging sampling procedures, calculations, and other information.

[Revise 1.2 to read as follows:]

1.2 Applicability

BRM pieces eligible under G092 must:

a. Be mailed as First-Class Mail or Priority Mail and meet the specific standards in 2.0.

b. Meet the applicable physical standards for nonletter-size mail in C050 (i.e., flat-size mail, machinable parcels, irregular parcels, or outside parcels) and C100 for First-Class Mail, except any BRM piece accounted for under the weight averaging method in 2.0 may not exceed 5 pounds. Reply mail letters which cannot qualify for Qualified Business Reply Mail (QBRM) because they weigh too much also are eligible for the weight averaging method.

c. Meet the basic standards for BRM in S922 other than those specific to letter-size pieces or pieces processed as QBRM.

d. Meet the addressing standards in A010 and bear a delivery address with the correct ZIP+4 code and barcodes assigned to the BRM permit holder by the USPS.

e. Be marked as specified in the service agreement under 2.0 and comply with any current or future USPS marking standard.

f. Meet the documentation and postage payment standards in 2.0 and the service agreement.

g. Be received at the post office that serves the permit holder.

[Amend 1.3 by removing 1.3d concerning the set-up/qualification fee and redesignating current 1.3e as 1.3d to read as follows:]

1.3 Fees

Each BRM piece eligible under G092 is charged the corresponding single piece rate for First-Class Mail or Priority Mail plus the appropriate fee as shown in 4.2. To receive pieces under this fee schedule, the participating mailer also must pay fees for these accounts and services:

* * * * *

d. Applicable monthly maintenance fee.

[Amend 1.4 to remove the reference to reverse manifesting information and change the manager to whom BRM customer requests are submitted to read as follows:]

1.4 Participation in Test

A business reply mail recipient who wants to participate in the experiment and receive an account for nonletter-size BRM under G092 must submit a written request for consideration to the manager of Mail Preparation and Standards, USPS Headquarters (see G043 for address). The request must include sufficient data to assist the manager in making an initial determination. The manager may request additional data and an on-site visit to the applicant's plant. If the manager determines that the applicant is suitable for participation, the applicant follows the application procedures in 2.0. Consideration is given to product type, geographic location of the mailer's site of operation, variability in the weight and daily volume of BRM, current accounting and quality control procedures, and availability of postal resources. In selecting participants, the manager also uses the following additional criteria:

a. The applicant must receive or expect to receive at one site a yearly average volume of approximately 100,000 or more nonletter-size BRM pieces eligible for the current $0.08 per piece fee under S922.

b. The applicant must be able to participate in the experiment through February 29, 2000.

c. The applicant must be prepared to begin operation at a mutually agreed upon time soon after selection.

[Remove current 2.0 in its entirety. Redesignate current 3.0 through 3.4 as 2.0 through 2.4, respectively, to read as follows:]

2.0 WEIGHT AVERAGING

* * * * *

[Amend renumbered 2.2 to change the manager to whom customers submit requests to read as follows:]

2.2 Application

A business reply mail recipient applying for participation in the extension of the weight averaging experiment must complete a standard application provided by the Postal Service. The applicant submits this application to the manager of Mail Preparation and Standards. The applicant includes with the application documentation that contains sample BRM pieces and labels representative of the weight range and types of pieces to be weight-averaged.

[Amend renumbered 2.3 to change the manager to whom customers submit requests and to change the effective dates to read as follows:]

2.3 Authorization

The manager of Mail Preparation and Standards reviews the application and proceeds as follows:

a. If the applicant meets the conditions required for the experimental weight averaging accounting method and the application is otherwise consistent with the purposes and goals of the experiment, the manager approves the application and prepares a service agreement with the applicant. The agreement details the operating procedures for weight averaging and the responsibilities of the applicant and the Postal Service. For the purposes of the experiment, the Postal Service may require additional documentation and periodic review and inspection of each experiment participant's BRM processing and accounting operations. No agreement may remain in effect beyond the February 29, 2000, outside duration date established for the extension of the experiment. The

experimental classification and fees take effect on June 8, 1999; they will expire on February 29, 2000, or when the permanent classification and fees for weight averaged nonletter-size BRM are implemented, whichever comes first.

b. If the application does not appear to meet the conditions required for the weight averaging method, the manager of Mail Preparation and Standards denies the application and sends written notice to the applicant, with the reasons for denial. The applicant has 10 days after receipt of the notice to file a written appeal to the BRM Experiment Review Board, U.S. Postal Service Headquarters. Decisions of the Review Board are final.

[Remove renumbered 3.4, Renewal, in its entirety.]

[Re-designate current 4.0 as 3.0.]

3.0 REVOCATION

[Amend renumbered 3.1 to change the manager who may revoke a participant's authorization and remove the reference to a manifest to read as follows:]

3.1 Reasons

The manager of Mail Preparation and Standards may revoke a BRM participant's authorization for the experiment if that participant:

a. Provides incorrect data on the required documentation and appears unable or unwilling to correct the problems.

b. Neglects to perform required quality control procedures.

c. No longer meets the criteria in this standard and the service agreement.

* * * * *

[Revise 3.3 to shorten the appeal period to 10 days to read as follows:]

3.3 Appeal

Revocation proceeds if the participant is unable or unwilling to correct the discrepancies found. The participant may file a written appeal of revocation within 10 days from the date of receipt of the notice, with evidence explaining why the authorization should not be revoked. The appeal must be filed with the BRM Experiment Review Board, which issues the final agency decision. The participant may continue to accept BRM under the authorization, pending a decision on appeal. The revocation decision takes effect 7 days after receipt by the participant.

[Re-designate current 5.0 as 4.0:]

4.0 RATES AND FEES

[Amend 4.1 to change references from "5.2" and "5.3 and 5.4" to "4.2" and "4.3 and 4.4," respectively, to read as follows:]

4.1 Rate Application

Each BRM piece received under G092 is charged the applicable per piece fee in 4.2 and the appropriate single-piece First-Class Mail rate or Priority Mail rate. In addition to the fees in 4.3 and 4.4, the required BRM permit fee and BRM advance deposit account fee must be paid every 12 months.

[Amend 4.2 by removing 4.2b and revising 4.2 to read as follows:]

4.2 Per Piece Fee

Per piece, in addition to single-piece rate First-Class Mail or Priority Mail postage for nonletter-size experimental (weight averaging): $0.01.

[Amend 4.3 by removing 4.3b and revising 4.3 to read as follows:]

4.3 Monthly Maintenance Fee

Monthly fee for nonletter-size experimental (weight averaging): $600.00.

5.4 [Removed]

[Remove current 5.4. There is no longer a one-time set-up/qualification fee.]

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. As provided by 39 CFR 111.3, notice of issuance will be published in the **Federal Register**.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–14636 Filed 6–8–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300858; FRL–6080–4]

RIN 2070–AB78

Aminoethoxyvinylglycine; Temporary Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary tolerance for residues of aminoethoxyvinylglycine in or on food commodities of the stone fruit crop group. Abbott Laboratories requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire on April 1, 2001.

DATES: This regulation is effective May 13, 1999. Objections and requests for hearings must be received by EPA on or before August 9, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300858], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300858], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300858]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 902W43, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8263, greenway.denise@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1999 (64 FR 11872) (FRL–6067–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of

1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 9G5048) for a temporary tolerance by Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064. The notice included a summary of the petition prepared by Abbott Laboratories, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.502 be amended by establishing a temporary tolerance for residues of the biochemical plant regulator aminoethoxyvinylglycine, in or on food commodities of the stone fruit crop group. The proposed temporary tolerance level of 0.170 part per million (ppm) was inadvertently not stated in the notice of filing. This tolerance will expire on April 1, 2001.

Under section 408(g)(1) of the FFDCA, a regulation issued under subsection (d)(4) shall take effect upon publication unless the regulation specifies otherwise. In this case, the temporary tolerance will be effective on May 13, 1999.

Section 801 of the Congressional Review Act (CRA), 5 U.S.C. 801, generally requires that, before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding. EPA has determined that there is good cause for making today's rule final prior to submission to Congress because the timing is such that immediate action was necessary to allow farmers to sell and distribute certain stone fruit produce with residues of this product this year. This pesticide is only applied once during the growing season, and this must be done 7-14 days prior to the beginning of the harvest period. The harvest season for certain stone fruits is very early in the year. Many of the tests sites for these stone fruits are located in the Southern region of the United States. Thus, in order to provide for the sale and distribution of certain stone fruit produce with residues of this pesticide in 1999 and to optimize the benefits of the experimental use of the pesticide, approval of the use was necessary in May of this year. Furthermore, the Agency has provided notice and comment for this rulemaking action and no comments were received. The Agency has also provided a 60–day objection period in this final rule as required by section (g)(2) of the FFDCA. See Unit V. of this preamble for further information. Thus, further notice and public procedure are unnecessary. The Agency finds that this constitutes good cause to provide for an immediate effective date pursuant to 5 U.S.C. 808(2).

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of aminoethoxyvinylglycine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a temporary tolerance for residues of aminoethoxyvinylglycine on food commodities of the stone fruit crop group at 0.170 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

Because the technical active ingredient being evaluated in the associated Experimental Use Permit (275–EUP–82) is a conditionally registered section 3 pesticide product, EPA has previously evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by aminoethoxyvinylglycine are discussed in this unit, and presented in the **Federal Register** of May 7, 1997 (62 FR 24835) (FRL–5713–5) and in a subsequent correction to the Final Rule, which appeared in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5751–5).

B. Toxicological Endpoints

1. *Acute toxicity.* A battery of acute toxicity studies placed technical aminoethoxyvinylglycine in Toxicity Categories III and IV.

2. *Chronic toxicity.* Using an uncertainty factor of 1,000, EPA has established the reference dose (RfD) for aminoethoxyvinylglycine at 0.002 milligrams/kilogram of body weight/day (mg/kg bwt/day). This RfD is based on a no observed adverse effect level (NOAEL) of 2.2 mg/kg bwt/day from a subchronic toxicity study that demonstrated reduced body weight gain, food consumption, and food efficiency; increased severity and incidence of reversible kidney and liver effects; and discoloration of the liver.

C. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances, to expire April 1, 2001, were previously established at 0.08 ppm (40 CFR 180.502) for the residues of aminoethoxyvinylglycine, in or on the food commodities apples and pears. This rule establishes a temporary tolerance at 0.170 ppm, to expire April 1, 2001, for the residues of aminoethoxyvinylglycine in or on food commodities of the stone fruit crop group. Risk assessments were conducted by EPA to assess dietary exposures from the additional stone fruit uses of aminoethoxyvinylglycine proposed for the Experimental Use Permit 275–EUP-82 via PP 9G5048 as follows:

A worst-case scenario (using tolerance level residues for both the existing apple/pear use and for the experimental stone fruit use, and 100% crop treated) aggregate risk assessment was prepared. The reported assessment includes exposure to aminoethoxyvinylglycine through food.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological

study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In the case of aminoethoxyvinylglycine, because there were no acute toxic endpoints, no acute dietary risk assessments were required or performed.

ii. *Chronic exposure and risk.* The endpoint and dose level selected for assessment of chronic dietary risks are based on a 90-day feeding study with an uncertainty factor of 1,000 and use a RfD of 0.002 mg/kg bwt/day determined from a NOAEL of 2.2 mg/kg bwt/day. In considering the sensitivity of infants and children the thousand-fold safety factor includes an additional uncertainty factor of 10 for incompleteness of data until a 2-generation reproduction study in rats is completed. The study was a condition of registration of the subject active ingredient, and interim data have been submitted to the Agency. The results of the chronic dietary exposure analysis indicate a reasonable certainty of no harm to the U.S. population or subpopulations, including infants and children, as the result of the pesticidal uses of aminoethoxyvinylglycine on apples, pears, and stone fruits.

2. *From drinking water.* Studies of the potential for aminoethoxyvinylglycine to be present in water have not yet been conducted. As a worst-case scenario, residue levels in water were calculated to be 0.0012 ppm by assuming that 10% of the applied treatment could drift into nearby drinking water sources. This conservative approach is consistent with a worst-case exposure scenario.

i. *Acute exposure and risk.* In the case of aminoethoxyvinylglycine, because there were no acute toxic endpoints, no acute risk assessments based on drinking water exposure were required or performed.

ii. *Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOAEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause aminoethoxyvinylglycine to exceed the RfD if the temporary tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with aminoethoxyvinylglycine in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the temporary tolerance is granted.

3. *From non-dietary exposure.* Aminoethoxyvinylglycine is currently not registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether aminoethoxyvinylglycine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, aminoethoxyvinylglycine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that aminoethoxyvinylglycine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For risk assessment purposes, there were no acute endpoints identified for aminoethoxyvinylglycine.

2. *Chronic risk.* Using the Theoretical Maximum Residue Contribution (TMRC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to aminoethoxyvinylglycine from food (the current section 3 apple and pear uses plus the experimental stone fruit use) will utilize 6.9% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to aminoethoxyvinylglycine in drinking water (there is no non-dietary, non-occupational exposure because neither the Experimental Use Permit nor the section 3 registrations involve residential use), EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to aminoethoxyvinylglycine residues.

3. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of aminoethoxyvinylglycine.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—* i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of aminoethoxyvinylglycine, EPA considered data from developmental toxicity studies in the rat. A 2-generation reproduction study in the rat is pending and was a condition of the section 3 registration for the subject active ingredient. Interim data on the first generation have been received by the Agency. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for pre-and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no

appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional ten-fold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor. In this case, due to the incompleteness of the data, the Agency used a thousand-fold uncertainty factor in the RfD calculations, and previously imposed a requirement for a 2-generation reproduction study in rats. The thousand-fold uncertainty factor includes an additional uncertainty factor of 10 to protect infants and children.

ii. *Developmental toxicity studies.* In a developmental toxicity study in rats by oral gavage, a NOAEL of 1.77 mg active ingredient/kg bwt/day was determined for both developmental and maternal toxicity.

iii. *Reproductive toxicity study.* Two-generation rat reproduction data are pending; as a condition of the section 3 registration. Interim data on the first generation have been submitted to the Agency.

iv. *Conclusion.* Due to the incomplete data set (2-generation rat reproduction data, a condition of registration for the active ingredient are pending), the Agency used a thousand-fold uncertainty factor in the RfD calculations. The thousand-fold uncertainty factor includes an additional uncertainty factor of 10 to protect infants and children. The data adequately support the conditional 1997 registration of the active ingredient and also adequately support the temporary tolerance level of 0.170 ppm proposed for the experimental stone fruit use.

2. *Acute risk.* For risk assessment purposes, there were no acute endpoints identified for aminoethoxyvinylglycine.

3. *Chronic risk.* Using the conservative exposure assumptions described in this unit, EPA has concluded that aggregate exposure to aminoethoxyvinylglycine from food will utilize 50.9% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to aminoethoxyvinylglycine in drinking water (there is no non-dietary, non-occupational exposure because neither the Experimental Use Permit nor the section 3 registered products are for residential use), EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to aminoethoxyvinylglycine.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to aminoethoxyvinylglycine residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of aminoethoxyvinylglycine in plants and animals is adequately understood for the purposes of these temporary tolerances.

B. Analytical Enforcement Methodology

The submitted analytical method, High Performance Liquid Chromatography (HPLC)/Fluorescence detector, is acceptable; it is also verified and validated.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

The experimental program (275–EUP–82) specifies a single application of 50 grams of active ingredient be applied 7–14 days prior to anticipated harvest. For the purposes of the temporary tolerance, the magnitude of residues was evaluated in/on peaches at proposed and exaggerated label rates. After application of proposed label rates, residue levels were below the level of quantitation, if detectable at all, within 5 days of application. Exaggerated rates (up to 4 times the proposed label rates) demonstrated rapid decline of residues to below quantifiable levels by 14 days after application. The limit of quantitation (LOQ) is 0.170 ppm and the limit of detection (LOD) is 0.050 ppm.

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for residues of aminoethoxyvinylglycine.

IV. Conclusion

Therefore, the temporary tolerance, to expire April 1, 2001, is established for residues of aminoethoxyvinylglycine in or on food commodities of the stone fruit crop group at 0.170 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 9, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions

on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300858] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the temporary tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action

does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 13, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 13, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. In § 180.502, in paragraph (a), by alphabetically adding the following commodity to the table:

§ 180.502 Aminoethoxyvinylglycine; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* * *		* *
Stone fruit crop group	0.170	04/01/01

* * * * *

[FR Doc. 99–14760 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300873; FRL–6085–4]

RIN 2070–AB78

Kresoxim-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of kresoxim-methyl and its metabolites in or on pome fruit, grapes, pecans, apple pomace, raisins, and meat byproducts of cattle, sheep and goats. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 10, 1999. Objections and requests for hearings must be received by EPA on or before August 9, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300873], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300873], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300873]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Product Manager 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1999 (64 FR 11874) (FRL–6063–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 7F4880 for tolerances by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for the combined residues of the fungicide kresoxim-methyl, (BAS 490F) or (methyl (*E*)-2-[2-(2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetate) and its metabolites as follows: (BF 490–1) or (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid; (BF 490–2) or (*E*)-2-[2-(2-hydroxymethylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated); and (BF 490–9) or (*E*)-2-[2-(4-hydroxy-2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated) in or on pome fruit at 0.5 parts per million (ppm), grapes at 1.0 ppm, pecans, at 0.15 ppm, apple pomace at 1.0 ppm, and raisins at 1.5

ppm. The petition also requested that 40 CFR part 180 be amended by establishing tolerances in or on meat byproducts of cattle, sheep and goats at 0.01 ppm for the residues of the metabolite (BF 490–1) or ((*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid) resulting from the use of the fungicide kresoxim-methyl.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of kresoxim-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of kresoxim-methyl and its metabolites in or on pome fruit, grapes, pecans, apple pomace, raisins, and meat byproducts of cattle, sheep and goats. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by kresoxim-methyl are discussed in this unit.

1. *Acute toxicity.* A battery of acute toxicity studies using technical kresoxim-methyl resulted in the following: an acute rat oral $LD_{50} > 5,000$ milligrams/kilogram(mg/kg) (toxicity category IV); an acute rat dermal $LD_{50} > 2,000$ mg/kg (toxicity category III); an acute rat inhalation $LC_{50} > 5.6$ milligrams/liter(mg/L) (toxicity category IV); mild eye irritation in a primary eye irritation study using rabbits (toxicity category III); no irritation in a primary skin irritation study using rabbits (category IV); and no sensitization demonstrated in a dermal sensitization study using guinea pigs.

2. *Subchronic toxicity.* i. In a 90–day oral toxicity study, rats were fed kresoxim-methyl at dose levels of 0, 500, 2,000, 8,000, and 16,000 parts per million (ppm) (0, 36, 146, 577, and 1,170 mg/kg/day for males and 0, 43, 172, 672, and 1,374 mg/kg/day for females). The Lowest Observed Adverse Effect Level (LOAEL) for male rats was 8,000 ppm based on elevated serum GGT. A LOAEL was not established for females. The No Observed Adverse Effect Level (NOAEL) for males was 2,000 ppm and for females was 16,000 ppm.

ii. In a 90–day oral toxicity study, mice were fed kresoxim-methyl at levels of 0, 250, 1,000, 4,000, and 8,000 ppm (0, 57, 230, 909, and 1,937 mg/kg/day for males and 0, 80, 326, 1,326 and 2,583 mg/kg/day for females). A LOAEL was not determined for either sex. The NOAEL for males and females was 8,000 ppm.

iii. In a 21–day dermal toxicity study, 5 male and 5 female rats were treated with kresoxim-methyl by dermal occlusion at doses of 0 and 1,000 mg/kg/day, 6 hours/day for 21 days. The NOAEL for males and females was 1,000 mg/kg/day. A LOAEL was not determined.

3. *Developmental toxicity.* i. In a developmental toxicity study, rats were gavaged with kresoxim-methyl at dose levels of 0, 100, 400, or 1,000 mg/kg/day on gestation days 6–15. No clinical signs of toxicity were observed in any treated animals during the study and no treatment-related gross abnormalities were observed at maternal necropsy. The maternal NOAEL was ≥ 1,000 mg/kg/day and the maternal LOAEL was not determined. There were no treatment-related external, visceral, or skeletal malformations/variations observed in any of the fetuses. The developmental NOAEL was ≥ 1,000 mg/kg/day and the developmental LOAEL was not determined.

ii. In a developmental toxicity study, rabbits were gavaged with kresoxim-methyl at dose levels of 0, 100, 400 or 1,000 mg/kg/day on gestation days 7–19. No clinical signs of toxicity were observed in any treated animals during the study and no treatment-related gross abnormalities were observed at maternal necropsy. The maternal NOAEL was ≥ 1,000 mg/kg/day and the maternal LOAEL was not determined. There were no differences between treated and control groups for number of corpora lutea/doe, implantation sites/doe, pre- and post-implantation loss, resorptions/doe, fetuses/litter, fetal sex ratios, gravid uterine or fetal body weights, or number of dead fetuses. The overall incidence rates for litters containing fetuses with major malformations in the 0, 100, 400, and 1,000 mg/kg/day groups were 7/13, 7/14, 11/15, and 10/14, respectively. There was no statistically significant difference between control and treated groups of fetuses regarding the number of external, soft-tissue, or skeletal malformations/variations with the exception of fetal incidence of fused sternebrae in the low dose group compared to the controls ($p < 0.05$). Since a dose-response relationship was not apparent, toxicological significance could not be established. The developmental NOAEL was ≥ 1,000 mg/kg/day and the developmental toxicity LOAEL was not identified.

4. *Reproductive Toxicity.* In a 2–generation reproduction study, 25 rats/sex/dose were fed kresoxim-methyl at dose levels of 0, 50, 1,000, 4,000, or 16,000 ppm for two generations. Two litters were produced in the first generation (F_{1a} and F_{1b}) and one litter in the second generation (F_2). Premating doses for the F_0 males were 5.1, 102.6, 411.0, and 1,623.1 mg/kg, respectively and for F_0 females were 5.6, 108.7, 437.2 and 1,741.1 mg/kg, respectively. Premating doses for the F_1 males were 4.4, 88.3, 362.7, and 1,481.6 mg/kg and for the F_1 females were 5.0, 100.8, 416.6, and 1,652.6 mg/kg, respectively. Animals were given test or control diet for at least 10 weeks then mated within the same dose group. F_1 animals were chosen from the F_{1a} litters and weaned on the same diet as their parents. At least 22 litters/group were produced in

each generation. All animals were exposed to test material either in the diet or during lactation until sacrifice.

There were no dose- or treatment-related clinical signs of toxicity in the parental animals of either sex or generation. No dose- or treatment-related gross or histological abnormalities were observed at necropsy in either parent or first generation animals of either sex. The LOAEL for systemic/postnatal developmental toxicity was 4,000 ppm based on reduced body weights and body weight gains of the parent and first generation parental animals and delayed growth and maturation of the first and second generation pups. The NOAEL for systemic toxicity was 1,000 ppm. No treatment-related effects were observed in the reproductive performances of either generation. There were no dose- or treatment-related clinical signs of toxicity in the offspring of either generation. The NOAEL for reproductive toxicity was ≥ 16,000 ppm and the LOAEL for reproductive toxicity was not identified.

5. *Mutagenicity.* No mutagenicity was noted in the following assays: reverse gene mutation, *S. typhimurium*, *E. coli*; forward gene mutation - HGPRT locus; chromosome aberrations, human lymphocyte cultures; mouse bone marrow micronucleus; unscheduled DNA synthesis, rat hepatocyte cultures; and unscheduled DNA synthesis, rat hepatocytes (*in vivo/in vitro* procedure).

6. *Chronic Toxicity.* i. In a 2–year chronic feeding study, 20 rats/sex/dose were fed kresoxim-methyl at dose levels of 0, 200, 800, 8,000, or 16,000 ppm (0, 9, 36, 370 or 746 mg/kg/day for males and 0, 12, 48, 503, or 985 mg/kg/day for females). The LOAEL for male and female rats was 8,000 ppm based in males on the increase in SGGT levels, liver weight and histopathological changes, and in females on roughly 10% lowered body weights and weight gains throughout most of the study. The NOAEL for both sexes was 800 ppm.

ii. In a 1–year chronic feeding study, 5 dogs/sex/dose were fed kresoxim-methyl at levels of 0, 1,000, 5,000 or 25,000 ppm (0, 27, 138, or 714 mg/kg/day for males and 0, 30, 146, or 761 mg/kg/day for females). The LOAEL for males was 25,000 ppm based on decreased mean body weight and body weight gain and decreased food efficiency. A LOAEL was not identified for females. The NOAEL for males was 5,000 ppm, and for females was 25,000 ppm.

7. *Carcinogenicity.* i. In a 2–year oncogenicity feeding study, 50 rats/sex/dose were fed kresoxim-methyl at dose levels of 0, 200, 800, 8,000, or 16,000 ppm (0, 9, 36, 375, and 770 mg/kg/day for males and 0, 12, 47, 497, and 1,046 mg/kg/day for females). Clinical observations and mortality were not affected by treatment in either sex of rats. Body weights and body weight gains of males and females were decreased relative to controls in the respective 8,000 and 16,000 ppm groups throughout most or all of the study. The incidence of gross liver masses increased in both sexes ($p \leq 0.05$ in 8,000 ppm males; $p \leq 0.01$ in 8,000 and 16,000 ppm females). This was correlated in males with dose-related increases in the incidence of microscopic lesions including eosinophilic cell foci, mixed cell foci, cellular hypertrophy (dose related; $p \leq 0.05$ or 0.01 at 16,000 ppm), and biliary cysts ($p \leq 0.05$ at 8,000 ppm) and in females with altered cell foci, mixed cell foci, bile duct proliferation, and cholangiofibrosis ($p \leq 0.05$, 0.01, or 0.001 at 16,000 ppm). The liver (with bile ducts) is therefore implicated as a target organ in both sexes of rats. The increased incidence in females of gross ovarian masses ($p \leq 0.05$ at 16,000 ppm), microscopic ovarian cysts ($p \leq 0.001$ at 800 and 16,000 ppm), uterine/cervical dilation ($p \leq 0.01$ at 800 and 16,000 ppm) and brain hemorrhage ($p \leq 0.05$ at 16,000 ppm) and in males of enlarged testes ($p \leq 0.05$ at 800 and 8,000 ppm) did not appear to be treatment-related. The LOAEL for both male and female rats was 8,000 ppm. The LOAEL for males was based on the minor decrease in body weight and body weight gain and the increase in gross and microscopic liver (and biliary) lesions. The LOAEL in females was based on the lowered body weights and weight gains and on the increased incidence of liver masses. The NOAEL for both sexes was 800 ppm. Liver carcinoma was the primary neoplastic finding in both sexes of rats, consistent with the histopathological findings.

ii. In an 18–month feeding study, mice were fed kresoxim-methyl at dose levels of 0, 400, 2,000, and 8,000 ppm (0, 60, 304, and 1,305 mg/kg/day for males and 0, 81, 400, and 1,662 mg/kg/day) for 18 months. An additional 10 animals were treated for 12 months in a satellite study. The LOAEL was 2,000 ppm (400 mg/kg/day) for females, based on decreased weight gain and 8,000 ppm (1,350 mg/kg/day for males, based on decreased weight gain and liver amyloidosis. The NOAEL was 400 ppm (81 mg/kg/day) for females and 2,000 ppm (304 mg/kg/day) for males. At the doses tested, there was not a treatment related increase in tumor incidence when compared to controls. Dosing was considered adequate and the high dose rate was above the limit dose of 1,000 mg/kg/day for both sexes.

8. *Metabolism.* In a metabolism study, rats were gavaged with kresoxim-methyl at dose levels of 50 or 500 mg/kg or 15–day repeated doses of 50 mg/kg, or as a single intravenous dose of 5 mg/kg/day. Radiolabeled test compound was included in one 500 mg/kg dose group to facilitate metabolite identification. Biliary metabolites were assessed in rats with cannulated bile ducts given an oral dose of 50 or 500 mg/kg/day.

Orally administered test compound was widely distributed and quickly eliminated. Results indicated there was no bioaccumulation. In both sexes, the major routes of excretion were feces and the urine. No radioactivity was detected in exhaled air. A total of 32 different metabolites were identified in the urine, feces, bile, plasma, liver, and kidneys of rats. There were some sex, dose, route, and label-dependent differences in the metabolite profiles.

9. *Neurotoxicity.* i. In an acute oral neurotoxicity, 10 rats/sex/dose were gavaged with kresoxim-methyl at dose levels of 0, 500, 1,00, or 2,000 mg/kg. No signs of neurotoxicity were observed at any dose level and no systemic toxicity was observed at any dose level. A LOAEL was not established. The NOAEL for acute neurotoxicity is 2,000 mg/kg.

ii. In a subchronic oral neurotoxicity study, 10 rats/sex/dose were fed kresoxim-methyl at dose levels of 0, 1,000, 4,000 or 16,000 ppm (0, 78, 317, 1,267 mg/kg/day) for 3 months. All animals survived to scheduled termination. There were statistically significant decreases in body weight, body weight gain, and food consumption on some days only at the high-dose level for males and females. No effects were observed at the other dose levels. There were no observable signs of a neurotoxic effect at any dose level. Functional observation battery and motor activity remained comparable to controls throughout the study an no neuropathological endpoints were observed during the histological examinations. The LOAEL for systemic toxicity is 16,000 ppm for males and females based on decreases in body weight, body weight gain, and food consumption. The NOAEL for systemic toxicity is 4,000 ppm for male and female rats, and is ≥ 16,000 ppm for neurotoxicity.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute endpoint was not selected because no adverse effects resulting from a single exposure were identified in an acute

neurotoxicity study in rats, and developmental toxicity studies in the rat and rabbit.

2. *Short- and intermediate-term toxicity.* A short- and intermediate -term endpoint was not selected because no dermal or systemic toxicity was seen in a 21–day dermal toxicity study in rats.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for kresoxim-methyl at 0.36 mg/kg/day. This RfD is based on a 2–year oncogenicity feeding study in rats. The FQPA safety factor was reduced to 1X for chronic dietary exposure because there was no increase in susceptibility identified in developmental or reproductive toxicity studies. Therefore, the chronic PAD (chronic population adjusted dose or cPAD) and the chronic RfD are identical.

4. *Chronic dermal toxicity.* EPA selected the RfD of 0.36 mg/kg/day to assess long-term dermal exposure. This RfD (identified above) is from an oral study and, based on available data, dermal absorption is expected to be equivalent to oral absorption (approximately 63–70%). Therefore a dermal absorption factor was not required for risk calculations. This endpoint was selected for occupational exposure only as there are no residential uses of kresoxim-methyl.

5. *Carcinogenicity.* Kresoxim-methyl has been classified as a "likely human carcinogen". The Q_1^* for kresoxim-methyl is 2.90×10^{-3}. The Q_1^* is based on the female rat combined (adenomas and/or carcinomas) liver tumor rates from a 2–year oncogenicity feeding study.

C. Exposures and Risks

1. *From food and feed uses.* There are no food or feed uses currently registered for kresoxim-methyl. In today's action, tolerances are being established at 40 CFR 180.554 for combined residues of the fungicide kresoxim and its metabolites in or on pome fruit at 0.5 ppm, grapes at 1.0 ppm, pecans at 0.15 ppm, apple pomace at 1.0 ppm, raisins at 1.5 ppm, and meat byproducts of cattle, sheep and goats at 0.01 ppm. Risk assessments were conducted by EPA to assess dietary exposures from kresoxim methyl as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No toxicological endpoint attributable to a single (acute) dietary exposure was identified.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis used the cPAD of 0.36 mg/kg/day which applies to all population subgroups. Anticipated residue values were used and EPA assumed that 100% of all crops having kresoxim-methyl tolerances were treated. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The Agency estimated that chronic dietary exposure to kresoxim-methyl will utilize 0.1% of the cPAD for the U.S. population and 0.2% of the cPAD for the most highly exposed population subgroup, non-nursing infants. The chronic dietary risk does not exceed the Agency's level of concern.

iii. *Dietary cancer risk.* Kresoxim-methyl is classified as a "likely human carcinogen" with a Q^* of 2.90×10^{-3}. The upper bound lifetime cancer risk estimated for U.S. population is 5.7×10^{-7} and is below the Agency's level of concern (cancer risks greater than 1×10^{-6}). Therefore, the dietary food cancer risk to kresoxim-methyl is below the Agency's level of concern.

2. *From drinking water.* Kresoxim-methyl is relatively short lived and therefore, unlikely to leach to ground water or move offsite to surface water in significant concentrations. However, the major acid degradate/metabolite (BF 490–1) has physical/chemical characteristics in common with pesticides that are known to leach to groundwater or to move offsite to surface water. Possible contamination of groundwater and surface water by BF 490–1 may occur when applied to fields with one or more of the following characteristics: alkaline soils, low organic matter, high sand, shallow groundwater table, and nearby bodies of water.

i. *Acute exposure and risk.* No acute risk is expected from exposure to kresoxim-methyl.

ii. *Chronic exposure and risk.* The Agency used the Screening Concentration in Ground Water (SCI-GROW) screening model to determine the estimated environmental concentration (EEC) in ground water and the Pesticide Root Zone model-Exposure Analysis Modeling (PRZM-EXAMS) to determine the EEC in surface water. Drinking water levels of comparison (DWLOC) which represent the upper limit of a chemical's concentration in drinking water that will result in an acceptable aggregate exposure were calculated for comparison to the EEC's from the SCI-GROW and PRZM-EXAMS model values. The combined ground water EEC for kresoxim-methyl and BF 490–1 is 4.1 parts per billion (ppb) (groundwater screening for kresoxim-methyl is negligible and groundwater screening concentration for BF 490–1 is 4.1 ppb). The combined surface water EEC for kresoxim-methyl and BF 490–1 is 5.0 ppb. The combined groundwater EEC of 4.1 ppb and the combined surface water EEC of 5.0 ppb are substantially lower than the Agency's chronic (non-cancer) DWLOC of 12,593 ppb for the U.S. population and the chronic (non-cancer) DWLOC of 3,591 ppb for the most highly exposed population subgroup, non-nursing infants. Therefore, the Agency concludes with reasonable certainty that residues of kresoxim-methyl and BF 490–1 do not contribute significantly to the aggregate chronic (non-cancer) human health risk.

The Agency calculated a chronic (cancer) DWLOC of 4.9 ppb for the U.S. population. The combined groundwater EEC of 4.1 ppb is lower than the chronic (cancer) DWLOC of 4.9 ppb. The PRZM-EXAMS surface water EEC of 5.0 ppb produces a cancer risk estimate in the range of 10E6. However, EPA believes this overstates the cancer risk because the chronic dietary exposure estimates for kresoxim-methyl assumed 100% crop treated. The Agency calculated the expected market share for kresoxim-methyl and assumed that kresoxim-methyl would capture 100% of the market share from the alternative product with the highest use. The maximum kresoxim-methyl percent crop treatment estimates for apples, pears, pecans, and grapes are 70%, 55%, 55%, and 30%, respectively. The Agency considers these estimates to be conservative with actual use rates of kresoxim-methyl likely to be considerably lower. The Agency believes that actual dietary exposure to kresoxim-methyl and BF 490–1 will

decrease at least by a factor of > 2% resulting in a combined surface water DWLOC for kresoxim-methyl and BF 490–1 of ≥ 5.0 ppb.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency believes that the three conditions, discussed in section 408(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency.

3. *From non-dietary exposure.* Kresoxim-methyl has no proposed or registered residential uses. Therefore, no non-occupational, non-dietary exposure and risk are expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether kresoxim-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, kresoxim-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that kresoxim-methy has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* No acute risk are expected because no acute dietary endpoint was determined.

2. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to kresoxim-methyl from food will utilize 0.1% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to kresoxim-methyl in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Aggregate cancer risk for U.S. population.* The upper bound lifetime cancer risk estimated for U.S. population is in the range of 10E6. The Agency's general level of concern for cancer risks is for risks greater than risks in the range of 1×10^{-6}. Use of percent crop treated estimates will significantly lower the combined surface water estimates and thus significantly lower the risk estimate. Therefore, the Agency concludes with reasonable certainty that no harm will result from aggregate exposure to kresoxim-methyl and its metabolites.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of kresoxim-methyl and its metabolites.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—*i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of kresoxim-methyl and its metabolites, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and post-natal sensitivity.* In the prenatal developmental toxicity studies in rat and rabbit fetuses, no evidence of developmental toxicity in fetuses was seen at the limit dose. In the 2–generation reproduction study in rats, offspring effects occurred only at parentally toxic dose levels.

iii. *Conclusion.* There is a complete toxicity database for kresoxim-methyl and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Taking

into account the lack of any special pre- or post-natal susceptibility and the completeness of the toxicity and exposure data base, EPA concluded that an additional tenfold safety factor was not needed to protect the safety of infants and children.

2. *Acute risk.* No acute risk is expected because no acute dietary endpoint was identified.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to kresoxim-methyl from food will utilize 0.2% of the cPAD for the most highly exposed population subgroup, non-nursing infants. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for dietary exposure to kresoxim-methyl in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to kresoxim-methyl residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues in plants and animals is adequately understood. The residues of concern in plants are kresoxim-methyl, (BAS 490F or methyl (*E*)-2-[2-(2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetate) and its metabolites as follows: BF 490-1 or (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid; BF 490-2 or (*E*)-2-[2-(2-hydroxymethylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated); and BF 490-9 or (*E*)-2-[2-(4-hydroxy-2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated). The residue of concern in animals is the metabolite BF 490-1 or (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid.

B. Analytical Enforcement Methodology

Adequate enforcement methodology high performance liquid chromatography/using ultra violet detection (HPLC/ULV) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

The Agency has concluded that residue data submitted in support of the tolerances for kresoxim-methyl as follows: 0.5 ppm for pome fruit, 1.0 ppm for grapes, 0.15 ppm for pecans, 1.0 for apple pomace, 1.5 ppm for raisins, and 0.01 ppm for meat byproducts of cattle, sheep and goats are adequate.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits for kresoxim-methyl.

E. Rotational Crop Restrictions

Rotational crop restrictions are not required as rotation to other crops is not anticipated.

IV. Conclusion

Therefore, tolerances are established for *combined residues* of kresoxim-methyl (methyl (*E*)-2-[2-(2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetate) and its metabolites as follows: (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid; (*E*)-2-[2-(2-hydroxymethylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated); and (*E*)-2-[2-(4-hydroxy-2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated) in or on the following commodities: pome fruit at 0.5 ppm, grapes at 1.0 ppm, pecans, at 0.15 ppm, apple pomace at 1.0 ppm, and raisins at 1.5 ppm. Tolerances are established in or on meat byproducts of cattle, sheep and goats at 0.01 ppm for the metabolite [(*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid] resulting from the use of the fungicide kresoxim-methyl.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 9, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300873] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 28, 1999.

Joseph J. Merenda, Jr.

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.554 is added to read as follows:

§ 180.554 Kresoxim-methyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the fungicide kresoxim-methyl (methyl (*E*)-2-[2-(2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetate) and its metabolites as follows: (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid; (*E*)-2-[2-(2-hydroxymethylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated); and (*E*)-2-[2-(4-hydroxy-2-methylphenoxy)-methyl]phenyl-2-(methoxyimido)acetic acid (free and glucose conjugated) in or on the following commodities:

Commodity	Parts per million
Apple, pomace	1.0
Grapes	1.0
Pecans	0.15
Pome fruit	0.5
Raisins	1.5

(2) Tolerances are established in or on the following commodities for the residues of the metabolite (*E*)-2-[2-(2-methylphenoxy)methyl]-phenyl-2-(methoxyimido)acetic acid resulting from the use of the fungicide kresoxim-methyl:

Commodity	Parts per million
Cattle, meat byproducts	0.01
Goat, meat byproducts	0.01
Sheep, meat byproducts	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–14761 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Conduct at the Mt. Weather Emergency Assistance Center and at the National Emergency Training Center

44 CFR Part 15

RIN 3067–AC83

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule makes certain technical amendments to 44 CFR part 15 to reflect the name change of a FEMA facility, to effect other minor changes governing conduct at the Mt. Weather Emergency Assistance Center (Mt. Weather) and at the National Emergency Training Center (NETC), and to consolidate the rules applicable to both facilities.

EFFECTIVE DATE: This rule is effective on July 12, 1999.

FOR FURTHER INFORMATION CONTACT: For information on Mt. Weather, contact John L. Matticks, Senior Resident Manager, Mt. Weather Emergency Assistance Center, Federal Emergency Management Agency, Washington, DC 20472, (telephone) (540) 542–2001, (facsimile) (540) 542–2005, or (email) John.Matticks@fema.gov; for information on the National Emergency Training Center, Ronald P. Face, Jr., Assistant Administrator, United States Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727, (telephone) (301) 447–1223, (facsimile) (301) 447–1052, or (email) ron.face@fema.gov.

SUPPLEMENTARY INFORMATION.

Throughout this preamble and rule the term "we" means the Federal Emergency Management Agency or FEMA.

This final rule makes certain technical amendments to 44 CFR part 15, as follows:

1. We changed the heading of part 15 from "Conduct at the FEMA Special Facility" to "Conduct at the Mt. Weather Emergency Assistance Center and at the National Emergency Training Center."

2. Part 15 previously contained two subparts, the one relating to the "Special Facility", now Mt. Weather, and the other to the NETC. In this final rule we eliminated the subparts and consolidated the rules, while separately treating rules that differ at the two facilities.

3. We changed all references from "the Special Facility" to the "Mt. Weather Emergency Assistance Center" or to "Mt. Weather".

3. We changed the format of certain sections for purposes of clarity.

4. We changed a reference to the "Manual on Fund Raising within the Federal Service" to the current requirements under 5 CFR 950, Solicitation of Federal Civilian and Uniformed Service Personnel for Contribution to Private Voluntary Organizations.

5. We changed certain Public Law and Statutes at Large citations to United States Code citations for consistency within 44 CFR and to assure those using the latest version of the United States Code that they have the latest version of law involved.

Administrative Procedure Act Determination

FEMA is publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. This final rule is a rule of agency organization, procedure, or practice that is excepted from the prior public comment requirements of the § 553(b). The rule makes nonsubstantive, nonsignificant changes in 44 CFR 15 to change the heading of part 15, to change references from "the Special Facility" to the "Mt. Weather Emergency Assistance Center" or to "Mt. Weather", to change the format of certain sections, to change certain references and citations to more current ones, and to consolidate rules for Mt. Weather and the NETC.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed the final rule under E.O. 12866.

Regulatory Flexibility Act

I certify that this rule is not a major rule under Executive Order 12291. It will not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and we do not expect it (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities. We have not prepared a regulatory flexibility analysis of this proposed rule.

Paperwork Reduction Act

This final rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Congressional Review of Agency Rulemaking

We have submitted this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 15

Federal buildings and facilities, Penalties.

Accordingly, we revise 44 CFR Part 15 to read as follows:

PART 15—CONDUCT AT THE MT. WEATHER EMERGENCY ASSISTANCE CENTER AND AT THE NATIONAL EMERGENCY TRAINING CENTER

Sec.

15.1 Applicability.
15.2 Definitions.
15.3 Access to Mt. Weather.
15.4 Inspection.
15.5 Preservation of property.
15.6 Compliance with signs and directions.
15.7 Disturbances.
15.8 Gambling.
15.9 Alcoholic beverages and narcotics.
15.10 Soliciting, vending, and debt collection.
15.11 Distribution of handbills.
15.12 Photographs and other depictions.
15.13 Dogs and other animals.
15.14 Vehicular and pedestrian traffic.
15.15 Weapons and explosives.
15.16 Penalties.
15.17. Other laws.

Authority: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 13239, 3 CFR, 1979 Comp., p. 412; Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2201 *et seq.*; delegation of authority from the Administrator of General Services, dated July 18, 1979; Pub.L. 80–566, approved June 1, 1948, 40 U.S.C. 318–318d; and the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 271 *et seq.*

§ 15.1 Applicability.

The rules and regulations in this part apply to all persons entering, while on, or leaving all the property known as the Mt. Weather Emergency Assistance Center (Mt. Weather) located at 19844 Blue Ridge Mountain Road, Bluemont, Virginia 20135, and all the property known as the National Emergency Training Center (NETC), located on 16825 South Seton Avenue in Emmitsburg, Maryland, which the Federal Emergency Management Agency (FEMA) owns, operates and controls.

§ 15.2 Definitions.

Terms used in part 15 have these meanings:

Administrator means the Administrator, United States Fire Administration, FEMA.

Director means the Director of the Federal Emergency Management Agency.

FEMA means the Federal Emergency Management Agency.

Mt. Weather means the Mt. Weather Emergency Assistance Center, Bluemont, VA.

NETC means the National Emergency Training Center, Emmitsburg, MD.

Senior Resident Manager means the Senior Resident Manager, Mt. Weather Emergency Assistance Center.

We means the Federal Emergency Management Agency or FEMA.

§ 15.3 Access to Mt. Weather.

Mt. Weather contains classified material and areas that we must protect in the interest of national security. The facility is a restricted area. We deny access to Mt. Weather to the general public and limit access to those persons having official business related to the missions and operations of Mt. Weather. The Director or the Senior Resident Manager must approve all persons and vehicles entering Mt. Weather. All persons must register with the Mt. Weather Police/Security Force and must receive a Mt. Weather identification badge and vehicle parking decal or permit to enter or remain on the premises. No person will enter or remain on Mt. Weather premises unless he or she has received permission from the Director or the Senior Resident Manager and has complied with these procedures.

§ 15.4 Inspection.

(a) *In general.* All vehicles, packages, handbags, briefcases, and other containers being brought into, while on or being removed from Mt. Weather or the NETC are subject to inspection by the Police/Security Force and other authorized officials. A full search of a vehicle or person may accompany an arrest.

(b) *Inspection at Mt. Weather.* We authorize inspection at Mt. Weather to prevent the possession and use of items prohibited by these rules and regulations or by other applicable laws, to prevent theft of property and to prevent the wrongful obtaining of defense information under 18 U.S.C. 793. If individuals object to such inspections they must tell the officer on duty at the entrance gate before entering Mt. Weather. The Police/Security Force and other authorized officials must not authorize or allow individuals who refuse to permit an inspection of their vehicle or possessions to enter the premises of Mt. Weather.

§ 15.5 Preservation of property.

At both Mt. Weather and NETC we prohibit:

(a) The improper disposal of rubbish;

(b) Willful destruction of or damage to property;

(c) Theft of property;

(d) Creation of any hazard on the property to persons or things;

(e) Throwing articles of any kind from or at a building;

(f) Climbing upon a fence; or

(g) Climbing upon the roof or any part of a building.

§ 15.6 Compliance with signs and directions.

Persons at Mt. Weather and the NETC must comply at all times with official signs that prohibit, regulate, or direct, and with the directions of the Police/Security Force and other authorized officials.

§ 15.7 Disturbances.

At both Mt. Weather and NETC we prohibit any unwarranted loitering, disorderly conduct, or other conduct at Mt. Weather and NETC that:

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of classrooms, dormitory rooms, entrances, foyers, lobbies, corridors, offices, elevators, stairways, roadways or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by government employees or government contractors;

(d) Interferes with the delivery of educational or other programs; or

(e) Prevents persons from obtaining in a timely manner the administrative services provided at both facilities.

§ 15.8 Gambling.

We prohibit participating in games for money or other personal property, including the operation of gambling devices, the conduct of a lottery or pool, or the sale or purchase of numbers tickets at both facilities.

§ 15.9 Alcoholic beverages and narcotics.

At both Mt. Weather and the NETC we prohibit:

(a) Operating a motor vehicle by any person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines as defined in Title 21 of the Annotated Code of Maryland, Transportation, sec. 21–902 or in Title 18.2, ch. 7, Art. 2 of the Code of Virginia, secs. 18.2–266 and 18.2–266.1, as applicable;

(b) Entering upon or while on either property being under the influence of or using or possessing any narcotic drug, marijuana, hallucinogen, barbiturate or amphetamine. This prohibition does not apply in cases where a licensed physician has prescribed the drug for the person;

(c) Entering upon either property or being on either property under the influence of alcoholic beverages;

(d) Bringing alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines onto the premises unless the Director, the Senior Resident Manager, or the Administrator or designee for the NETC authorizes it in writing; and

(e) Use of alcoholic beverages on the property except:

(1) In the Balloon Shed Lounge at Mt. Weather and in other locations that the Director or the Senior Resident Manager authorizes in writing; and

(2) In the Student Center at the NETC and other locations that the Director or the Administrator, or designee, authorizes in writing.

§ 15.10 Soliciting, vending, and debt collection.

(a) We prohibit soliciting alms and contributions, commercial or political soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts unless the Director for either facility or the Senior Resident Manager approve the activities in writing and in advance.

(b) The prohibitions of this section do not apply to:

(1) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR part 950, Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations. The Director, or the Senior Resident Manager, or the Administrator for the NETC or designee, must approve all such national or local drives before they are conducted on either premises;

(2) Authorized concessions;

(3) Personal notices posted by employees on authorized bulletin boards; and

(4) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978, 5 U.S.C. 7101 *et seq.*

§ 15.11 Distribution of handbills.

We prohibit the distribution of materials such as pamphlets, handbills or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere at Mt. Weather and the NETC unless the Director, the Senior Resident Manager, or the Administrator for the NETC or designee, approves such distribution or display, or when such distribution or display is conducted as part of authorized government activities.

§ 15.12 Photographs and other depictions.

(a) *Photographs and other depictions at Mt. Weather.* We prohibit taking photographs and making notes, sketches, or diagrams of buildings, grounds or other features of Mt. Weather, or the possession of a camera while at Mt. Weather except when the Director or the Senior Resident Manager approves in advance.

(b) *Photographs and other depictions at the NETC.* (1) Photographs may be taken inside classroom or office areas of the NETC only with the consent of the occupants. Except where security regulations apply or a Federal court order or rule prohibits it, photographs may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings.

(2) Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of the Assistant Administrator, Management Operations and Student Support, United States Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727, (telephone) (301) 447–1223, (facsimile) (301) 447–1052, or other authorized official where photographs are to be taken.

§ 15.13 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, must not be brought onto Mt. Weather grounds or into the buildings at NETC for other than official purposes.

§ 15.14 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles entering or while at Mt. Weather or the NETC must drive carefully and safely at all times and must obey the signals and directions of the Police/Security Force or other authorized officials and all posted traffic signs;

(b) Drivers must comply with NETC parking requirements and vehicle registration requirements;

(c) At both Mt. Weather and the NETC we prohibit:

(1) Blocking entrances, driveways, walks, loading platforms, or fire hydrants on the property; and

(2) Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs.

(3) Where warning signs are posted vehicles parked in violation may be removed at the owners' risk and expense.

(d) The Director or the Senior Resident Manager or the Administrator for the NETC or designee may issue and post specific supplemental traffic directives if needed. When issued and posted supplemental traffic directives will have the same force and effect as if they were in these rules. Proof that a parked motor vehicle violated these rules or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

§ 15.15 Weapons and explosives.

No person entering or while at Mt. Weather or the NETC will carry or possess firearms, other dangerous or deadly weapons, explosives or items intended to be used or that could reasonably be used to fabricate an explosive or incendiary device, either openly or concealed, except:

(a) For official purposes if the Director or the Senior Resident Manager or the Administrator for the NETC or designee approves; and

(b) In accordance with FEMA policy governing the possession of firearms.

§ 15.16 Penalties.

(a) *Misconduct.* (1) Whoever is found guilty of violating any of these rules and regulations is subject to a fine of not more than $50 or imprisonment for not more than 30 days, or both. (See 40 U.S.C. 318c.)

(2) We will process any misconduct at NETC according to FEMA/NETC policy or instructions.

(b) *Parking violations.* We may tow at the owner's expense any vehicles parked in violation of State law, FEMA, Mt. Weather, or NETC instructions.

§ 15.17. Other laws.

Nothing in the rules and regulations in this part will be construed to abolish any other Federal laws or any State and local laws and regulations applicable to Mt. Weather or NETC premises. The rules and regulations in this part supplement penal provisions of Title 18, United States Code, relating to Crimes and Criminal Procedure, which apply without regard to the place of the offense and to those penal provisions that apply in areas under the special maritime and territorial jurisdiction of the United States, as defined in 18 U.S.C. 7. They supersede provisions of State law, however, that Federal law makes criminal offenses under the Assimilated Crimes Act (18 U.S.C. 13) to the extent that State laws conflict with these regulations. State and local criminal laws apply as such only to the extent that the State reserved such authority to itself by the State consent or cession statute or that a Federal statute vests such authority in the State.

Dated: May 26, 1999.

James L. Witt,

Director.

[FR Doc. 99–14326 Filed 6–9–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 99–823]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules that implement the Freedom of Information Act (FOIA) fee schedule. This amendment pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived in accordance with the rules. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 1–C–804, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, (202) 418–0440 or via Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: The FCC is amending § 0.467(a) of the Commission's Rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1987. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

Regulatory Procedures

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 0 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: § 5, 48, Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.467 is amended by revising the table in paragraph (a)(1), its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * *

Grade	Hourly fee
GS–1	9.40
GS–2	10.22
GS–3	11.52
GS–4	12.94
GS–5	14.47
GS–6	16.13
GS–7	17.93
GS–8	19.85
GS–9	21.92
GS–10	24.14
GS–11	26.53
GS–12	29.80
GS–13	37.81
GS–14	44.69
GS–15	52.56

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a) (1) of this section were computed at step 5 of each grade level based on the General Schedule effective January 1999 and include 20 percent for personnel benefits.

* * * * * *

[FR Doc. 99–14495 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–191; RM–9351]

Radio Broadcasting Services; Leesville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C3 for Channel 224A at Leesville, Louisiana, and modifies the license for Station KJAE(FM) to specify operation on the nonadjacent higher powered channel, consistent with the provisions of Section 1.420(g) of the Commission's Rules. Although an additional equivalent channel was identified as available to Leesville in the event another party expressed an interest in a Class C3 channel at that community, no other interest was received. *See* 63 FR 59262, November 3, 1998. Coordinates used for Channel 228C3 at Leesville are 31–11–29 NL and 93–14–35 WL. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–191, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana is amended by adding Channel 228C3 at Leesville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14722 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–5; RM–9430]

Radio Broadcasting Services; Velva, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 235C1 to Velva, ND, as the community's first local aural service. *See* 64 FR 5624, February 4, 1999. Channel 235C1 can be allotted to Velva in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 48–03–18 NL; 100–55–54 WL. Canadian concurrence in the allotment has been received since Velva is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATE: Effective July 12, 1999. A filing window for Channel 235C1 at Velva will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–5, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Velva, Channel 235C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14723 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–4; RM–9429]

Radio Broadcasting Services; Cannon Ball, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 298C to Cannon Ball, ND, as the community's first local aural service. *See* 64 FR 5624, February 4, 1999. Channel 298C can be allotted to Cannon Ball in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 46–24–48 NL; 100–38–12 WL. Canadian concurrence in the allotment has been received since Cannon Ball is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 298C at Cannon Ball, ND, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–4, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Cannon Ball, Channel 298C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14724 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–7; RM–9432]

Radio Broadcasting Services; Delhi, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dana Puopolo, allots Channel 248A to Delhi, NY, as the community's second local aural transmission service. *See* 64 FR 5625, February 4, 1999. Channel 248A can be allotted to Delhi in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.6 kilometers (3.5 miles) southwest, at coordinates 42–15–23 NL; 74–58–35 WL, to avoid a short-spacing to Station WMYY, Channel 247A, Schoharie, NY. Canadian concurrence in the allotment has been received since Delhi is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 248A at Delhi, NY, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–7, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 248A at Delhi.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14725 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–37; RM–9450]

Radio Broadcasting Services; Flasher, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 290C to Flasher, ND, as the community's first local aural service. *See* 64 FR 7848, February 17, 1999. Channel 290C can be allotted to Flasher in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 46–27–12 NL; 101–14–06 WL. Canadian concurrence in the allotment has been received since Flasher is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 290C at Flasher, ND, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–37, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Flasher, Channel 290C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14726 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–38; RM–9451]

Radio Broadcasting Services; Berthold, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 264C to Berthold, ND, as the community's first local aural service. *See* 64 FR 7847, February 17, 1999. Channel 264C can be allotted to Berthold in compliance with the Commission's minimum distance separation requirements without a site restriction, at coordinates 48–18–54 NL; 101–44–12 WL. Canadian concurrence in the allotment has been received since Berthold is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 264C at Berthold will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–38, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Berthold, Channel 264C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14727 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–39; RM–9464]

Radio Broadcasting Services; Ranier, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Washington Interstate Broadcasting Company, Inc., allots Channel 252A to Ranier, OR, as the community's first local aural service. *See* 64 FR 7847, February 17, 1999. Channel 252A can be allotted to Ranier in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.4 kilometers (5.8 miles) north, at coordinates 46–10–18 NL; 122–57–42 WL, to avoid a short-spacing to vacant and unapplied-for Channel 252C3 at Dallas, OR. Canadian concurrence in the allotment has been received since Ranier is located within 320 kilometers (200 miles) of the U.S.–Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 252A at Ranier, OR, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–39, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Ranier, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14728 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–40; RM–9465]

Radio Broadcasting Services; Richardton, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 270C to Richardton, ND, as the community's first local aural service. *See* 64 FR 7847, February 17, 1999. Channel 270C can be allotted to Richardton with a site restriction of 6.2 kilometers (3.8 miles) southwest, at coordinates 46–50–25 NL; 102–21–35 WL, to avoid a short-spacing to Station KBTO, Channel 270C1, Bottineau, ND. Canadian concurrence in the allotment has been received since Richardton is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 270C at Richardton, ND, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–40, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Richardton, Channel 270C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14729 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–41; RM–9466]

Radio Broadcasting Services; Wimbledon, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Plains Broadcasting, Inc., allots Channel 276C1 to Wimbledon, ND, as the community's first local aural service. *See* 64 FR 7846, February 17, 1999. Channel 276C1 can be allotted to Wimbledon without the imposition of a site restriction, at coordinates 47–10–18 NL; 98–27–30 WL. Canadian concurrence in the allotment has been received since Wimbledon is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1999. A filing window for Channel 276C1 at Wimbledon, ND, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–41, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Wimbledon, Channel 276C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14730 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–113; RM–9296]

Radio Broadcasting Services; Tumon, GU

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Guam Broadcast Services, Inc., allots Channel 282A at Tumon, Guam, as the community's first local aural transmission service. *See* 63 FR 38785, July 20, 1998. Channel 282A can be allotted to Tumon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 282A at Tumon are 13–30–25 North Latitude and 144–48–05 East Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 14, 1999. A filing window for Channel 282A at Tumon, Guam, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–113, adopted May 19, 1999, and released May 28, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73 [AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Guam, is amended by adding Tumon, Channel 282A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14731 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990527146–9146–01; I.D. 052099B]

RIN 0648–AM24

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery, Framework Adjustment 11; Northeast Multispecies Fishery, Framework Adjustment 29

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 29 to the Northeast Multispecies FMP. This final rule creates a 1999 seasonal Georges Bank Sea Scallop Exemption Area (Exemption Area) in and adjacent to Closed Area II and includes the following primary measures for vessels fishing in the Exemption Area: A possession limit of up to 10,000 lb (4,536.0 kg) of scallop meats per trip; a maximum of three trips for full and part-time vessels and a maximum of one trip for occasional vessels; an automatic minimum deduction of 10 days-at-sea (DAS) for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a total allowable catch (TAC) of yellowtail flounder of 387 metric tons (mt); and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 500 lb (226.8 kg), among other measures. In addition, this rule implements a minimum mesh twine top of 8 inches (20.32 cm) for vessels under a scallop DAS when fishing outside the Exemption Area. The primary intent of this action is to provide scallop vessels with a short-term strategy to access Closed Area II without compromising multispecies rebuilding or habitat protection, while the New England Fishery Management Council (Council) develops an amendment that would implement a sea scallop area rotational management plan.

DATES: Effective June 15, 1999, except for § 648.51(b)(2)(ii), which is effective December 16, 1999.

ADDRESSES: Copies of Framework Adjustment 11/Framework Adjustment 29 to the Atlantic Sea Scallop/Northeast Multispecies FMPs, its Environmental Assessment (EA), and regulatory impact review are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA, 01906–1097.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Jon C. Rittgers, Acting Regional Administrator, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: On December 12, 1994, NMFS implemented an emergency action that closed three large areas with historically high concentrations of several multispecies: Two Georges Bank closures (Closed Area I and Closed Area II), and one closure in southern New England (Nantucket Lightship Closed Area). These areas were closed to all vessels capable of catching groundfish, including scallop vessels, because of their ability to catch significant amounts of juvenile flatfish, and because of concern that scallop dredge gear disrupts groundfish spawning activity. The emergency action was subsequently implemented on a continuous basis through measures included in Framework 9 to the Northeast Multispecies FMP (60 FR 19364, April 18, 1995).

In March 1997, results from the 23rd Stock Assessment Workshop determined that the Atlantic sea scallop resource was at a low level of biomass and that catches were driven primarily by variations in the number of recruits entering the fishery. However, the report also noted that for Georges Bank, abundance and fishing mortality were at moderate levels due to half the primary scallop area on Georges Bank and in the Great South Channel being closed since December 1994. In fact, at the time of the assessment, i.e., after 20 months of protection, biomass increases in the closed areas were approximately three-fold and increasing.

In 1998, the Center for Marine Science and Technology of the University of Massachusetts, Dartmouth (CMAST) requested an experimental fishery to determine the abundance and distribution of sea scallops in Closed Area II. A cooperative experimental research fishery was conducted by NMFS' Northeast Fisheries Science Center, CMAST, and the fishing industry, using commercial sea scallop vessels.

At its April 14–15, 1999, meeting, the Council voted to limit sea scallop access to Closed Area II for one fishing year and selected a sea scallop target TAC based on an intermediate harvestable biomass estimate (4,300 mt) for this area. The Council also voted to recommend opening only certain portions of Closed Area II to minimize the possible impact on finfish bycatch and habitat. Detailed information on finfish bycatch levels caught by scallop dredge vessels during the 1998 cooperative experimental research fishery showed that during the months August through October, the time period when this experiment was conducted, virtually no cod or haddock—two of the three primary groundfish species of particular concern—were caught. However, results from the experiment demonstrated significant bycatch levels of yellowtail flounder, the third primary groundfish species. Although recent information indicates that some rebuilding of Georges Bank cod, haddock, and yellowtail flounder stocks has occurred, recruitment remains poor and the most recent scientific advice is to keep fishing mortality at or below the multispecies Amendment 7 objective for these stocks.

After deliberating three different area options developed to address habitat and bycatch concerns, the Council recommended to open that portion of Closed Area II south of 41°30' N. lat., an option recommended by the Habitat Committee, where scallop dredge vessels are considered to have the least impact on the bottom. Although data from the cooperative experimental fishery demonstrated that this alternative had a slightly higher bycatch of yellowtail flounder when compared to the other area options, bycatch of all species combined was lowest for this area.

This action adopts a sea scallop target TAC of 4,300 mt of meat weight for vessels fishing under the Georges Bank Sea Scallop Exemption Program (Exemption Program). Of this target TAC, a total of 4,257 mt will be designated for use as a directed sea scallop allocation. Forty-three mt of the 4,300 mt (1 percent) will be set aside for funding research of this fishery, if research programs are adopted, and an additional 43 mt, over and above the 4,300 mt allocated, will be set aside to help fund the cost of observers.

To minimize groundfish bycatch and habitat impacts, this action opens the portion of Closed Area II that lies south of 41°30'N. lat. from June 15, 1999, through December 31, 1999. In addition,

this framework sets a TAC of 387 mt for yellowtail flounder that may be harvested from this area, 15 percent of the 1999 yellowtail flounder target TAC. This provision requires that when the yellowtail flounder TAC for the Exemption Program is projected to be reached, access by scallop dredge vessels into this exempted area must be discontinued.

This action implements a buffer zone adjacent to that portion of Closed Area II south of 41°30'N. lat., comprising a larger zone referred to as the Georges Bank Sea Scallop Exemption Area. This buffer zone is established at 67°40'W. long. and has a northern boundary line of 42°12' N. lat., intersecting with Closed Area II, and a southern boundary line of 40°24' N. lat., intersecting the outer boundary of the exclusive economic zone, respectively. Vessels fishing under the Exemption Program may not fish for or harvest sea scallops outside of the Exemption Area during that trip, nor may they enter the Exemption Area more than once per trip. Scallop vessels fishing under a scallop DAS, but that are not fishing under this Exemption Program, will be prohibited from entering the Exemption Area, unless transiting for safety reasons in accordance with the provisions of § 648.81(e).

All limited access scallop vessels, including vessels that hold a scallop Confirmation of Permit History, will be eligible to fish for the sea scallop target TAC in the Exemption Area. Full-time and part-time scallop vessels will each be allowed up to three trips into the Exemption Area of up to 10,000 lb (4,536.0 kg) of meats per trip, and occasional vessels will be allowed one trip of up to 10,000 lb (4,356.0 kg) of meats. Note that the 10,000 lb (4,356.0 kg) of meats per trip is a possession limit rather than a landing limit to help ensure the enforceability of this measure.

All scallop vessels fishing in the Exemption Program must have installed on board an operational Vessel Monitoring System (VMS) unit that meets the minimum performance criteria as specified in the regulations (occasional permitted vessels are the only limited access scallop vessels not currently required to have a VMS). Scallop vessels planning to fish on an Exemption Area trip must so declare by notifying the Administrator, Northeast Region, NMFS (Regional Administrator), through the VMS. Vessels will be provided with instructions on procedures for this notification requirement. For each trip declared, a minimum of 10 DAS will automatically be deducted. A fundamental objective of this action is to ensure that the 1999 fishing year target fishing mortality of 0.83, established by Amendment 7 to the Atlantic Sea Scallop FMP, will not be exceeded. Analysis indicates that by assessing each exemption trip a minimum of 10 DAS, conservation neutrality will be maintained, i.e., fishing mortality should not increase beyond status quo.

On or after October 1, 1999, after taking into account data on the number of eligible vessels participating and the total number of trips taken, the Regional Administrator may adjust the scallop possession limit, if necessary, and/or allocate one or more additional trips, if enough of the sea scallop target TAC remains to warrant such an adjustment or allocation, for full- and part-time permitted vessels that declared a trip under the Exemption Program prior to September 1. Occasional vessels would not be allocated an additional trip, regardless of whether they declared a trip under the Exemption Program before September 1.

At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops (not to exceed a cumulative total of 43 mt) for each trip on which an observer is taken in order to help defray costs. The vessel owner will be responsible for paying for the cost of the observer.

This action increases the regulated multispecies incidental catch allowance from 300 lb (136.1 kg) to 500 lb (226.8 kg) per trip for scallop vessels when fishing under the Exemption Program and authorizes the Regional Administrator to make mid-season adjustments, if necessary, to reduce regulatory discards. Because vessels are expected to catch more groundfish (specifically yellowtail flounder) in the Exemption Area, increasing the allowance of regulated species will help reduce discards. In addition, vessels that have an observer on board would be allowed to retain all regulated species caught, provided the fish caught in excess of the possession limit is donated to charity.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Exemption Area on a monthly basis through the VMS e-mail system to facilitate placement of observers. This and the following information must be reported prior to the 15th of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the month in question. In addition, any vessel selected for observer coverage must provide 5 working days notice prior to departure of any trip declared under the Exemption Program. Vessels will be provided with additional information by mail regarding all notification requirements.

Each vessel participating in this program is required to report information on a daily basis through the VMS. On all trips to the Exemption Area, vessels must report their daily pounds (kilograms) of scallop meats kept. In addition, vessels on observed trips must provide a separate report of the daily pounds (kilograms) of scallop meats kept and the pounds (kilograms) of yellowtail flounder caught on tows that were observed.

Vessels that have declared a trip under the Exemption Program are prohibited from possessing more than 50 U.S. bushels (400 lb (181.4 kg) of meats) of shell stock when outside of the designated Exemption Area specified in this framework. This 400–lb (181.4 kg) scallop meat limit for shell stock is considered part of the 10,000–lb (4,536.0–kg) meat weight possession limit. A limit on the amount of sea scallops landed in the shell is a necessary enforcement tool for purposes of monitoring the 10,000– lb (4,536.0–kg) meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, live scallops, yet not compromise the enforceability of the possession limit.

All scallop vessels, including those currently fishing with nets, that are fishing under the Exemption Program must use scallop dredge gear that conforms to the current sea scallop dredge vessel gear restrictions specified in § 648.51, with the exception of the twine top mesh size restrictions. For vessels fishing in the Exempted Area, twine tops must have a minimum mesh size of 10–inch (25.40–cm) square or diamond mesh. Vessels not fishing in the Exempted Area and fishing under a scallop DAS are required to have a minimum mesh twine top of 8–inch (20.32–cm) square or diamond mesh. This 8–inch (20.32–cm) minimum mesh twine top requirement does not expire at the end of the fishing year, but continues indefinitely. It has a delayed effective date of December 16, 1999, to allow industry time to order and purchase this gear. The purpose of increasing the twine top measurement is to reduce bycatch of groundfish and other finfish. Recent research demonstrates that this increase may significantly reduce bycatch of certain species, especially flatfish species.

Vessels fishing under the Exemption Program are prohibited from off-loading their scallop catch at more than one location. This measure will help in monitoring the TAC as well as aid enforcement in tracking landings and in enforcing the trip limit.

Disapproved Measure

The framework action proposed to restrict vessels to a maximum of 10 DAS when fishing east of a buffer zone established at 67°40' W. long. This restriction would require additional compliance monitoring to ensure vessels remain within the 10 DAS limit. With certain exceptions, current regulations at § 648.51(c) limit crew size to a maximum of seven persons, including the operator. However, some vessel operators are considering taking fewer crew as a cost saving measure. Fewer crew may require longer trips that could possibly exceed 10 DAS if it were allowed. Therefore, because this measure would disrupt alternative approaches by some vessel owners or operators to reduce costs and increase efficiency, while having no discernable conservation benefit, it violates national standard 5 and national standard 7 of the Magnuson-Stevens Fishery Conservation and Management Act. National standard 5 requires conservation and management measures consider efficiency in the harvesting of fishery resources. National standard 7 requires conservation and management measures minimize costs where practicable. Therefore, this measure is disapproved.

In addition to disapproving this measure, NMFS is unable to guarantee observer coverage to the degree that the Council recommends in the framework document. At its April 1999 meeting, the Council voted to include a statement in the document that observer coverage should occur on at least 25 percent of the scallop trips in the Exemption Area. By this statement, the Council clearly is sending a strong message about its serious concerns regarding the need to monitor this fishery for compliance purposes, including accurate finfish bycatch reports. NMFS shares this concern but cannot, at this time, fund a domestic observer program to the level recommended by the Council. NMFS is currently exploring several options that would fund observer coverage, including the 43–mt set aside recommended by the Council for this purpose.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

The public was provided the opportunity to express comments on allowing access by scallop vessels into the multispecies closed areas at numerous meetings. The following list includes all meetings, including plan development team meetings, at which this action was on the agenda, discussed, and public comment was heard:

Date	Meeting
1997:	
October 17	Scallop and Multispecies PDT
1996:	
June 17	Scallop Advisory Panel
July 28–29	Scallop Oversight Committee
1999:	
January 8	Scallop PDT
January 25–26	Scallop PDT
January 27–28	Council
February 4	Habitat Committee and Habitat Advisory Panel
February 8	Scallop Advisory Panel
February 9	Scallop Oversight Committee
February 11	Multispecies Oversight Committee
February 11	Scallop PDT
February 12	Gear Conflict Committee
February 23	Science and Statistical Committee
February 24–25	Council
March 9	Habitat Committee and Habitat Advisory Panel
March 16	Multispecies PDT
March 17–18	Scallop PDT
March 22–23	Joint Multispecies Oversight Committee/Multispecies Advisory Panel
March 29	Enforcement Oversight Committee
April 8–9	Scallop Oversight Committee
April 14–15	Council

Documents summarizing the Council's proposed action, and the analysis of biological and economic impacts of this and alternative actions, were available for public review 1 week prior to the final Council meeting, as is required under the framework adjustment process. Written comments were accepted up to, and during that meeting.

Comments and Responses

Comment 1: Several commenters stated that this action should remain conservation neutral, i.e., there should be no net increase in fishing mortality for sea scallops.

Response: The framework analyses demonstrate that total fishing mortality will not increase, except in the unlikely event that a large portion of inactive vessels, including vessels that hold a Confirmation of Permit History, begin fishing.

Comment 2: Many industry participants requested that this framework serve as a cornerstone for a more permanent rotational scallop fishing strategy.

Response: The framework action's intent is to allow temporary access to Closed Area II to scallop fishing while the Council develops an amendment that may, as a portion of the management plan, include a formal area rotation strategy. The scallop fishery for Closed Area II will provide an opportunity to collect needed information to make this strategy possible.

Comment 3: Some industry members commented that the sea scallop management measures proposed for Closed Area II are too restrictive and that fishing effort, consequently, would remain in the open areas.

Response: The Council has accounted for the benefits, costs, and risks associated with the closed area fishery when choosing this action. The EA shows that, currently, it would be more economical for scallopers to fish in the Exemption Program than in the existing open areas.

Comment 4: Several comments were received regarding the shortsightedness of reopening Closed Area II regarding several important fishery resources.

Response: As noted earlier, the EA concludes that there will be no net increase in fishing mortality for scallops. One of the more critical groundfish stocks, Georges Bank yellowtail, has recovered considerably from its once highly depleted condition. While continued rebuilding is necessary, this action takes the necessary steps to protect this valuable resource through implementation of a TAC, which, when reached, will result in eliminating access to Closed Area II by scallop vessels. The action also promotes fishing effort reduction in

areas where scallops are depleted and increases yield, while at the same time minimizing habitat impacts by keeping some important areas closed. This action will thus promote rebuilding of the scallop resource by reducing effort on small, fast-growing scallops and minimize impacts on other rebuilding stocks. This action, therefore, takes a meaningful step toward achieving optimum yield, considering both the Sea Scallop and the Multispecies FMPs.

Comment 5: Some commenters expressed concern regarding the destruction to the ocean floor that could be caused by scallop dredge vessels in Closed Area II.

Response: This action re-opens only those areas in Closed Area II that are believed to have the lowest habitat value within this area. The bottom of the re-opened portion primarily consists of a high-energy sand and shell bottom. While not devoid of other species, the habitat in this area is not as complex and diverse as the habitats to the north within Closed Area II, which will remain closed to scallop fishing.

Although the proposed action will increase impacts in the area to be opened for scallop fishing, the compensating effect will be to reduce scallop fishing effort in areas that are now open. Some of these presently open areas have significantly more complex and diverse habitat than that found in the southern portion of Closed Area II. The biological impacts of this trade- off are discussed in the EA. On balance, therefore, this action was determined to be consistent with Essential Fish Habitat objectives.

A portion of the scallop target TAC has been set aside as a source of funding for experiments that may help to identify more selective fishing gears or gears that have less habitat impacts.

Comment 6: Several commenters noted that the Georges Bank closed areas were closed to scallop dredge gear partly because this gear disrupts spawning activity of groundfish.

Response: This action restricts access by scallop dredge vessels into Closed Area II to a time frame when groundfish spawning activity is considered to be minimal; i.e., June 15, 1999, to December 31, 1999. Scallop vessel access to Closed Area I and the Nantucket Lightship Closed Area are not allowed under this action at this time because of concern regarding issues such as groundfish spawning activity.

Comment 7: Some commenters stated that any economic gain derived from scallop fishing in Closed Area II will be offset or lost by the setback to cod, yellowtail flounder, and other recovering species.

Response: This action sets a yellowtail flounder TAC, which, when reached, results in termination of the Exemption Program. The yellowtail TAC will ensure that the proposed closed area fishery will not cause a setback to the species' rebuilding schedule. Cod and haddock do not appear to be vulnerable to scallop fishing with dredges within Closed Area II during the proposed fishing season. Furthermore, increasing the twine top mesh and the expected effort transfers from areas now open to scallop fishing will limit the impacts on other species. By suspending the fishery when certain thresholds are exceeded and by requiring different fishing gear, this action will mitigate the negative impacts on species even though a net increase in mortality is expected.

Comment 8: Several industry members commented that the yellowtail flounder TAC will likely force an early closure of the Georges Bank Sea Scallop Exemption Program.

Response: This action includes a 10–inch (25.40–cm) twine top mesh for scallop dredge vessels that declare into the Exemption Program. This larger mesh is expected to reduce yellowtail flounder bycatch substantially. If coupled with voluntary industry efforts to change fishing methods to avoid bycatch, these actions could delay suspension of the fishery due to excess bycatch.

Comment 9: Questions were raised about barndoor skate and how this exemption program may further impact this species.

Response: NMFS is currently considering a petition to list the barndoor skate as an endangered species. Although bycatch information on this species was derived from the 1998 experimental fishery, until the barndoor skate population is assessed and more information becomes available, the Council and NMFS are unable to determine the impacts on the population.

Comment 10: Industry commented that the groundfish closure areas compromise approximately half of the Georges Bank scallop grounds by area and that scallop vessels should be able to regain access to these areas.

Response: Under current conditions, the biomass within the closed areas on Georges Bank includes much more than half of the scallop biomass of the Georges Bank stock. This imbalance has arisen mainly due to the excessively high fishing mortality on scallops within areas now open to scallop fishing.

The Council and NMFS agree that access by scallopers could be allowed into the closed areas if it does not jeopardize the rebuilding schedule for groundfish or scallops and minimizes impacts on habitat as much as possible. Since these issues have been adequately addressed for Closed Area II, this action allows access to a portion of this area under certain conditions.

Comment 11: Industry commented that gear research for the purposes of reducing bycatch should be encouraged and suggested that a portion of the TAC used to fund this.

Response: This action sets aside 1 percent of the scallop target TAC (43 mt) as a means to fund research projects such as new gears or gear modifications that would reduce bycatch by scallop dredge vessels.

Comment 12: Several industry members requested that the northeast corner of the Nantucket Lightship Closed Area be open for scallop fishing.

Response: This action does not reopen the Nantucket Lightship Closed Area or portions of this area due to uncertainty about the scallop and habitat resources in this area and, more particularly, because of concern regarding the poor condition of the Southern New England yellowtail flounder stock.

Comment 13: Due to the potential of gear conflicts, lobster industry members requested that the closed area(s) to be reopened be modified in such a way as to avoid areas with concentrations of lobster pot gear.

Response: Smaller area options within Closed Area II were rejected to give the scallop industry maximum flexibility to avoid stationary gear and research experiments, as well as avoid finfish bycatch. Fortunately, the experimental fishery showed that there are relatively fewer scallops in most areas with dense concentrations of lobster pot gear. The Council believes, and NMFS concurs, that it is better to let the industry develop working arrangements in small, specific areas where lobster gear might temporarily coincide with areas of higher scallop abundance.

Comment 14: One commenter asked why the intermediate harvestable sea scallop biomass estimate (4,300 mt) was selected over the high biomass estimate (6,300 mt).

Response: The Council chose, and NMFS is implementing by this action, a target scallop TAC that represents an intermediate harvestable biomass estimate provided by scientists. These biomass figures were based on different dredge efficiency estimates. Because of uncertainty surrounding the correct dredge efficiency to use, combined with a Scallop Plan Development Team recommendation against choosing the high biomass figure because of risk

factors associated with historically high catch levels, this action adopts the intermediate estimate of 4,300 mt.

Comment 15: Safety issues were raised regarding the concentration of scallop vessels into small reopened portions of Closed Area II.

Response: This action allows access to the largest area that was under consideration during the development of Framework Adjustment 11/29. This larger area gives the fleet the most flexibility to avoid bycatch and reduces the potential for problems caused by crowding.

Comment 16: Concern was expressed that this exemption program would encourage a "derby-style" fishery.

Response: Although a derby-style fishery could ensue, the scallop possession limit to some extent addresses this concern.

Comment 17: Many people have commented that the high biomass of scallops in Closed Area II represents an important opportunity to learn how to manage an essentially rebuilt stock for optimum yield, as national standard 1 requires.

Response: Additional data collected during the closed area scallop fishery could be an important source of information for developing an area rotation management strategy, contemplated for Amendment 10 to the Atlantic Sea Scallop FMP.

Comment 18: Industry commented that they cannot accommodate the required gear modification in time for the planned implementation of the framework adjustment. The proposed action will cause substantial amounts of inventory to become obsolete and the gear cannot be used for other purposes.

Response: A primary reason for requiring 8-inch (20.32–cm) mesh twine tops in all areas outside of the Exemption Area is to compensate for the increased bycatch expected in the closed area scallop fishery. Although only limited studies of its effectiveness are available, preliminary indications are that substantial bycatch reductions can be expected (especially for flounders), without losing many scallops in areas now open to fishing. This gear is expected to have additional, but unquantified long-term benefits that will be realized through reducing unwanted bycatch or bycatch that cannot be legally landed. Implementation of the 8-inch (20.32–cm) twine top requirement will be delayed until December 16, 1999, to allow time to obtain adequate supplies.

The cost of purchasing new twine tops is minimal when compared to the benefits and increased profits expected from this measure. Vessels that are not able to obtain 10-inch (25.40–cm) mesh twine tops will be able to take their three closed area trips later in the season, provided that the fishery is not suspended for exceeding the yellowtail flounder target TAC.

Comment 19: Industry commented that early access to the closed area is necessary to avoid adverse fall weather and corresponding safety issues, as well as to improve scallop yield.

Response: This action will allow access for scallop fishing in Closed Area II starting June 15, 1999. Although full-time scallop vessels generally fish year-round, part-time and occasional vessels, which tend to be smaller, less seaworthy vessels, would benefit from this early opening since it will allow them to take all of their trips during the summer months when weather is often favorable and scallop yield is high.

Classification

Notice and opportunity for public comment were provided to discuss the management measures implemented by this rule. Comments were received from members of the fishing industry and are responded to in the preamble of this rule. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds for good cause that additional prior notice and additional opportunity for public comment is unnecessary and for the reasons set forth below it would be contrary to the public interest to delay this rule in order to provide further notice and further opportunity for public comment.

Recently, Amendment 7 to the Atlantic Sea Scallop FMP became effective (64 FR 14835, March 29, 1999). This amendment, which addresses the new Sustainable Fisheries Act requirements, substantially reduces the level of fishing for scallops through the year 2008 by revising the current fishing effort reduction schedule. Although a less severe reduction is proposed for fishing year 1999, failure to allow scallop vessels access to Closed Area II as soon as finfish bycatch concerns would be mitigated to the largest extent possible, i.e., June 15, will increase costs to scallop vessels fishing in currently open areas where scallop biomass is low and where the stock is dominated by small scallops. Furthermore, an earlier opening date will allow more time for smaller vessels to fish their allotted trips during good weather. Accordingly, the AA also finds that under 5 U.S.C. 553(d), the need to have this regulation in place by June 15, 1999, is good cause to waive part of the 30-day delay in effectiveness of this regulation.

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 533 is not being published as explained above, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a regulatory flexibility analysis is not required and none has been prepared, the socioeconomic impacts on affected fishers and alternatives to mitigate such impacts were considered by the Council and NMFS. The primary intent of this action is to allow scallop vessels an opportunity to remain economically viable, while ensuring that the fishing mortality for the entire sea scallop stock does not exceed the F target of F=0.83 in the FMP for 1999.

This final rule has been determined to be significant for the purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains three new collection-of-information requirements and revises three current collection-of-information requirements. The collection of this information has been approved through emergency clearance by OMB under OMB control number 0648–0385. The estimated response times are as follows:

New Collection-of-Information Requirements

1. Monthly reporting of intention to fish in the Georges Bank Sea Scallop Exemption Program through the VMS e-mail messaging system (§ 648.58(c)(3)(i))(10 minutes/response).

2. Daily reporting of sea scallops kept and, for observed trips, sea scallops kept and yellowtail flounder caught on observed tows through the VMS e-mail messaging system for vessels fishing in the Georges Bank Sea Scallop Exemption Program (§ 648.58(c)(10))(10 minutes/response).

3. Notice requirements for observer deployment (§ 648.58(c)(3)(iii))(2 minutes/response).

Revised Collection-of-Information Requirements 1. Documentation of installation of a VMS unit (§ 648.10(b)) (2 minutes/response).

2. Declaration into the Georges Bank Sea Scallop Exemption Program through the VMS prior to leaving the dock (§ 648.58(c)(3)(ii))(2 minutes/response)

3. Installation of a VMS unit on board the vessel (§ 648.10(b))(1 hour/response).

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, NationalMarine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.10, paragraph (b) introductory text is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification.* Multispecies vessels issued an Individual DAS or Combination Vessel permit, scallop vessels issued a full-time or part-time limited access scallop permit, and scallop vessels issued an occasional limited access permit when fishing under the Georges Bank Sea Scallop Exemption Program specified in § 648.58, or scallop vessels fishing under the small dredge program specified in § 648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VMS notification of this paragraph (b), unless otherwise authorized or required by the Regional Administrator under § 648.10(d), must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS installed on board that meets those criteria. If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the an operational VMS unit that meets the criteria to be installed on board the vessel and for the owner to provide documentation of such installation to the Regional Administrator. Vessels that are required to or have elected to use a VMS unit shall be subject to the following requirements and presumptions:

* * * * *

3. In § 648.14, paragraphs (a)(39) and (h)(13) are revised and paragraphs (h)(27) and (h)(28) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of Closed Area II specified in § 648.58 or 648.81(b)(2).

* * * * *

(h) * * *

(13) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear that uses net or net material, or any other material, on the top half of the dredge with a mesh size smaller than that specified in § 648.51(b)(2), unless otherwise prohibited under paragraph (h)(27) of this section.

* * * * *

(27) Enter or be in the area described in § 648.58(b) when fishing under a scallop DAS, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in § 648.58(c)(7).

(28) Fail to comply with any of the provisions and specifications of § 648.58.

* * * * *

4. In § 648.51, paragraph (b) introductory text, and paragraph (b)(2) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, all trawl vessels fishing for scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS program with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

* * * * *

(2) *Minimum mesh size.* (i) From June 15, 1999, through December 15, 1999, for vessels fishing under a scallop DAS, unless otherwise restricted under § 648.58, and from June 15, 1999, and beyond, for all vessels not fishing under the scallop DAS program, the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm) square or diamond mesh.

(ii) Starting December 16, 1999, unless otherwise restricted under § 648.58, the mesh size of a net, net material, or any other material on the top of a scallop dredge possessed or used by vessels fishing under a scallop DAS shall not be smaller than 8–inch (20.32–cm) square or diamond mesh.

(iii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

* * * * *

5. In § 648.52, paragraph (c) is added to read as follows:

§ 648.52 Possession limits.

* * * * *

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Georges Bank Sea Scallop Exemption Program as described in § 648.58 are prohibited from possessing or landing per trip more than the sea scallop possession limit specified in § 648.58(c)(6).

6. Section 648.58 is added to read as follows:

§ 648.58 Georges Bank Sea Scallop Exemption Program.

(a) *Eligibility.* (1) During the period June 15, 1999, through December 31, 1999, all scallop vessels issued a limited access scallop permit may fish in the Georges Bank Sea Scallop Exemption Area, defined in paragraph (b) of this section, when fishing under a scallop DAS, provided the vessel complies with the requirements of paragraph (c) of this section.

(2) Except for scallop vessels fishing under a scallop DAS that have not declared a fishing trip into the Georges

Bank Sea Scallop Exemption Program, as specified under paragraph (c)(3)(i) of this section, vessels may fish in that portion of the exemption area described in paragraph (b) of this section that lies outside of Closed Area II, as described in § 648.81(b), provided the vessel complies with all applicable regulations.

(b) *Georges Bank Sea Scallop Exemption Area.* The Georges Bank Sea Scallop Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GEORGES BANK SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
DA1	40°24.000'	67°40.000'
DA2	40°24.000'	65°43.121'(on U.S./Canada Maritime Boundary)
G6	41°30.000'	66°34.728'(on U.S./Canada Maritime Boundary)
G7	41°30.000'	67°20.000'
DA4	42°12.000'	67°20.000'
DA5	42°12.000'	67°40.000'
DA1	40°24.000'	67°40.000'

(c) *Requirements.* To fish in the Georges Bank Sea Scallop Exemption Area under the Georges Bank Sea Scallop Exemption Program an eligible vessel must comply with the following requirements:

(1) *Season.* The vessel may only fish in the Georges Bank Sea Scallop Exemption Area under the Georges Bank Sea Scallop Exemption Program only from June 15 through December 31, 1999, unless otherwise specified by notification in the **Federal Register**.

(2) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a).

(3) *Declaration.* (i) The vessel must submit a monthly report through the VMS e-mail messaging system, prior to the 15th of the month preceding the month in question, of its intention to fish in the exemption area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the month in question.

(ii) In addition, on the day the vessel leaves port to fish under the Georges Bank Sea Scallop Exemption Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to leaving port.

(iii) A vessel selected for observer coverage must provide notice to NMFS, in accordance with the notification requirements specified under § 648.11(b), as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Georges Bank Sea Scallop Exemption Program.

(4) *Number of trips.* If the vessel is a full or part-time scallop vessel, it must not fish more than three trips in the Georges Bank Sea Scallop Exemption Area during the season described in paragraph (c)(1) of this section, unless otherwise specified by notification in the **Federal Register**. If the vessel is an occasional scallop vessel, it must not fish more than one trip in the Georges Bank Sea Scallop Exemption Area during the season described in paragraph (c)(1) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Georges Bank Sea Scallop Exemption Program must not fish for, catch, or harvest scallops from outside of the Georges Bank Sea Scallop Exemption Area and must not enter or exit the Exemption Area more than once per trip.

(6) *Possession limits.* (i) Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, a vessel declared into the Georges Bank Sea Scallop Exemption Program may possess and land up to 10,000 lb (4,536.0 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (176.1 L) of in-shell scallops.

(ii) The vessel may possess and land up to 500 lb (226.8 kg) of regulated multispecies, unless otherwise restricted under § 648.86(a)(2)(i) or (b), or the vessel is carrying a NMFS approved sea sampler or observer on board the vessel. A vessel carrying an approved sea sampler or observer may possess all regulated multispecies caught, provided the regulated multispecies in excess of 500 lb (226.8–kg) are donated to charity. A vessel subject to the 500–lb (226.8–kg) possession limit must separate all regulated multispecies onboard from other species of fish so as to be readily available for inspection.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge gear only in accordance with the dredge vessel restrictions specified under § 648.51(b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting.* When transiting to and from the Georges Bank Sea Scallop Exemption Area, all gear on board must be properly stowed and not available for immediate use in accordance with the provisions of § 648.81(e).

(9) *Off-loading restrictions.* The vessel may not off-load its sea scallop catch at more than one location.

(10) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Georges Bank Sea Scallop Exemption Program. The reports must be submitted in 24–hour intervals, beginning at 0000 hours and ending at 2400 hours each day, and include the following information:

(i) Total pounds/kilograms of scallop meats kept; and

(ii) For each trip that the vessel has a NMFS approved observer on board, the total pounds/kilograms of scallop meats kept and total pounds/kilograms of yellowtail flounder caught on tows that were observed by a NMFS approved observer.

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Georges Bank Sea Scallop Exemption Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Possession limit increase.* The Regional Administrator may increase the sea scallop possession limit specified under paragraph (c)(6) of this section for a vessel that has declared a

fishing trip into the Georges Bank Sea Scallop Exemption Program and on which a NMFS approved sea sampler or observer is on board the vessel, or on which a NMFS approved research project is being conducted. Notification of this increase of the possession limit will be provided to the vessel with the observer selection notification. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer and/or defraying the cost of the research project, whichever is applicable, regardless of whether the vessel lands or sells sea scallops on that trip.

(f) *In-season adjustments.* (1) *Adjustment process for sea scallop possession limit and number of trips under the Georges Bank Sea Scallop Exemption Program.* On or after October 1, 1999, the Regional Administrator may adjust the sea scallop possession limit, and/or allocate one or more additional trips for full and part-time limited access sea scallop vessels that declared into and began a trip under the Georges Bank Sea Scallop Exemption Program prior to September 1, 1999. Occasional permitted vessels would not be allocated an additional trip regardless of whether or not they declared or began an exempted trip before September 1, 1999.

(2) *Termination of Georges Bank Sea Scallop Exemption Program because of yellowtail flounder bycatch/incidental catch.* NMFS shall publish notification in the **Federal Register** that the Georges Bank Sea Scallop Exemption Program is terminated as of the date the Regional Administrator projects that the 387 mt of yellowtail flounder will be caught by vessels fishing in the Georges Bank Sea Scallop Exemption Program described in this section.

(g) *Transiting.* Limited access sea scallop vessels intending to fish for scallops under a scallop DAS that have not declared a trip into the Georges Bank Sea Scallop Exemption Program may not enter, fish, or be in the area known as the Georges Bank Sea Scallop Exemption Area described in paragraph (b) of this section, unless:

(1) The operator has determined that there is a compelling safety reason; and

(2) The vessel's fishing gear is stowed in accordance with the requirements of § 648.81(e).

7. In § 648.80, paragraph (h)(1) is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(h) * * * (1) Except as provided in paragraph (h)(2) of this section and in § 648.58(c)(6)(ii), a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

* * * * *

8. In § 648.81, paragraph (b)(1) introductory text is revised to read as follows:

§ 648.81 Closed areas.

* * * * *

(b) * * * (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a map depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section, or unless exempt under the Georges Bank Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area II described in § 648.58(b):

* * * * *

9. In § 648.86, the section heading and paragraphs (a)(2)(iii) and (c) are revised to read as follows:

§ 648.86 Possession restrictions.

* * * * *

(a) * * *

(2) * * *

(iii) Except for vessels fishing under the Georges Bank Sea Scallop Exemption Program from July 1 through December 31, 1999, as provided in § 648.58(c)(6)(ii), scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(c) *Other possession restrictions.* Vessels are subject to all other applicable possession limit restrictions as specified under § 648.58(c)(6), § 648.82(b)(3), § 648.83(b)(1), § 648.88(a) and (c), and § 648.89(c).

10. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Open access permit restrictions.

* * * * *

(c) *Scallop multispecies possession limit permit.* Unless otherwise prohibited in § 648.86(b), and except as provided in § 648.58(c)(6)(ii) for vessels fishing under the Georges Bank Sea Scallop Exemption Program, a vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

[FR Doc. 99–14745 Filed 6–7–99; 2:35 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 050499C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Regulatory Area in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the amount of the 1999 Pacific cod total allowable catch (TAC) allocated to vessels catching Pacific cod for processing by the offshore component in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 7, 1999, through 2400 hours, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12904, March 11, 1999) and subsequent reserve apportionment (64 FR 16362, April 5, 1999) established the amount of the Pacific cod TAC allocated to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area as 2,363 metric tons (mt), determined in accordance with § 679.20(c)(4)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the Pacific cod TAC allocated to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,163 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained for the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 Pacific cod TAC allocated to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 7, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14746 Filed 6–7–99; 2:35 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 111
Thursday, June 10, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–2 PR]

Almonds Grown in California; Revisions to Requirements Regarding Credit for Promotion and Advertising Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revising the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule would revise the requirements regarding the activities for which handlers may receive such credit. The changes would make the promotion program more effective and efficient, clarify the regulations, and improve program administration.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revising the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the order. The order is funded through the collection of assessments from almond handlers. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule would revise the requirements regarding the activities for which handlers may receive such credit. It would provide for more effective promotion programs and improved clarity to the regulations, resulting in improved program administration and more efficient and effective use of industry promotion funds. This proposal was unanimously recommended by the Board at meetings on December 2, 1998, and March 5, 1999.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 989.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising, that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion including paid advertising activities. Those regulations are prescribed in § 981.441.

The Board has proposed the following changes to those regulations.

Revising Time Frames for Submitting Documentation

Section 981.441(a) provides that, in order for handlers to receive credit against their assessment obligation for their own promotional expenditures, the Board must determine that such expenditures meet applicable requirements. Currently, credit may be granted in the form of a payment from the Board, or as an offset to the Board's assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to assessment billings. This 2-week period is also currently specified in § 981.441(e)(6)(ii). Assessments are typically billed in four installments for a crop year near the end of the following months—November, January, April, and August.

Based on past experience with the program, the majority of handlers file claims for credit for their promotional activities during the later months of a crop year. The vast majority of claims are thus received at the Board offices near the third and fourth filing deadlines. Because of this, the Board's staff has found that it needs more time to review and process handler documentation for promotional claims submitted during this time to grant credit against handlers' assessment obligations at the time assessment notices are issued. Thus, the Board recommended that, in order for handlers to receive credit for their promotional activities on their third and fourth assessment billings (April and August), the documentation for such activities must be submitted to the Board three weeks, rather than two weeks, prior to those billings. Appropriate changes are proposed to paragraphs (a) and (e)(6)(ii) of § 981.441.

Section 981.441(e)(6)(iv) currently provides that final claims for credit-back advertising be submitted to the Board within 105 days after the close of the crop year, in situations when handlers have filed a statement of credit-back commitments outstanding as of the close of the crop year. The Board recommended changing this 105-day time frame for several reasons. First, the deadline can cause confusion among handlers because it overlaps with the time frame for filing the first claims of the new crop year. In addition, the overlap creates program administration problems for Board staff with regard to reviewing claims and applying credit for two separate years during the same time period. Finally, the current deadline causes a delay in completion of the Board's year-end accounting practices and annual financial audit. Thus, the Board recommended that this deadline be reduced from 105 to 76 days after the close of the end of the crop year. This would eliminate confusion and program administration problems associated with the overlap period for filing claims, and would allow the Board's end-of-year financial audit to be completed by December or earlier of the following crop year, as opposed to January or later. Section 981.441(e)(6)(iv) is proposed to be modified accordingly.

When handlers have not filed a statement of credit-back commitments outstanding at the close of a crop year, the deadline for filing final promotional claims with the Board is two weeks prior to the final assessment notice (mid-August). However, this deadline date is not clearly specified in the current regulations and has caused some confusion in the past. Therefore, the Board recommended establishing August 15 as the deadline for filing final claims in this situation. This would provide more clarity and reduce confusion regarding the deadline for filing final claims. Section 981.441(e)(6)(iv) is proposed to be modified accordingly.

Redefining Growing Region

Section 981.441(e)(3) currently does not generally allow handlers to receive credit against their assessment obligation for outdoor advertising or sponsorships that are conducted in the major growing regions of California. The major growing regions currently listed in the regulation are the following 11 almond-growing counties: Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare counties. The rationale for this exclusion is that historically, much of the outdoor advertising and sponsorship activities in the major growing areas have been to encourage growers to do business with specific handlers rather than encouraging consumption of almonds. This is contrary to the intent of this program, which is to promote the sale, consumption, or use of almonds.

The Board recommended removing this list of counties from the regulations and adding substitute language. Production and new acreage planted in the almond industry have increased significantly in recent years, and production areas have been shifting within the State. The current regulations do not take this into account, and the aforementioned list of counties no longer accurately reflects the major growing areas.

The Board believes a more flexible approach would be to revise the regulations to specify that no credit be given for outdoor advertising activities conducted in any California county with more than 1,000 bearing acres of almonds. This approach would adequately define the major growing regions, and accommodate production shifts in the future. This would, in effect, remove Sacramento County as a major growing area and would thus allow outdoor advertising in that county. Sacramento County contains a major metropolitan area, which lends itself to the use of outdoor advertising, and is a minor almond growing area, with only 110 acres compared to an industry total of over 400,000 acres. The other 10 counties listed above would continue to be regions ineligible for this type of credit. Other counties with significant almond acreage such as Kings, San Luis Obispo, Solano, Sutter, Tehama, Yolo, and Yuba would also be classified as major almond growing areas under the proposal, and outdoor advertising in those counties, would, thus, be considered ineligible for credit-back.

The Board further believes that modifying the regulations in this manner would better reflect the original intent of the regulation, and would allow more flexibility for shifts in production within the growing area. Section 981.441(e)(3) is proposed to be modified accordingly. The Board also recommended that sponsorship be completely eliminated as a credit-back activity; this recommendation is discussed below.

Revisions to List of Credit-Back Activities

Section 981.441(e)(4)(ii) lists 13 other market promotion activities for which credit may be granted. These activities currently include marketing research (except pre-testing and test-marketing of paid advertising); trade and consumer product publicity; printing costs for promotional material; direct mail printing and distribution; retail in-store demonstrations; point-of-sale materials (not including packaging); sales and marketing presentation kits; trade fairs and exhibits; trade seminars; 50/50 advertising with retailers; couponing (printing, distribution, and handling costs only); purchase of Board-produced promotional materials; and sponsorships.

The Board recommended revising the requirements regarding trade and consumer product publicity. Trade and consumer product publicity includes disseminating information through various communications media to

attract public attention. Handlers often hire an outside agency to conduct such activities. Usually, such an agency charges a fee for its work. In the past, this agency fee has been included as part of the credit-back activity, as agency fees for paid advertising are. However, in the case of trade and consumer product publicity, the Board has encountered difficulties in associating agency fees to particular credit-back activities, and determining whether this fee is appropriate, because there is no standard fee or guidelines for such fees. For paid advertising, this does not pose a problem because there is a standard agency fee that can easily be associated directly to a particular activity. Thus, the Board recommended that agency fees for publicity no longer be included as a credit-back activity. All of the other allowable activities associated with publicity (such as materials) which can be directly tied to a specific publicity campaign would still be eligible for credit.

The Board also recommended that trade seminars be removed from this list of credit-back activities. Trade seminars include special events designed to educate the trade about the almond industry and its products. Although Board records indicate there has been no use of this area as a credit-back activity by handlers, the Board believes that there is a high possibility of misuse in this area. Trade seminars are not well defined and standardized activities; thus, lavish entertainment or elaborate sales meetings could be characterized as trade seminars. Trade shows will remain as a credit-back activity, however. These events are widely used and the activities are well-defined and standardized, such as setting up booths to exhibit merchandise to customers. Thus, the Board recommended that trade seminars be removed from the list of credit-back activities.

The Board also recommended that handlers' purchases of Board-produced promotional materials be removed from the list of credit-back activities. Board funds are used to develop various promotional materials that are made available to handlers. In the past, handlers could purchase such materials from the Board and receive promotion credit. However, the Board has recently developed an allocation system whereby handlers may receive a certain percentage of promotional material produced by the Board free of charge. Each handler's allocation for a crop year is based on the percentage of almonds handled during the prior year. Handlers may purchase additional material at cost. This new system, not covered by the credit-back regulations, allows Board staff to plan more effectively and to purchase materials more cost effectively, while maintaining a promotional tool for handlers. Since this new system was developed, the Board determined that continuing to allow credit for purchase of Board-produced promotional material would result in overlap of two similar programs. Therefore, the Board recommended that purchase of such material be removed from the list of credit-back activities.

In addition, the Board recommended that sponsorship be removed from the list of credit-back activities. Sponsorship includes the financial support of an event or person carried out by another group or person. Sponsorship can be targeted towards consumers, the trade, or may be undertaken for general goodwill. A review of sponsorship claims submitted in the past indicates several claims appear to fall into the category of general goodwill rather than to promote the sale and consumption of almonds as the primary purpose. Further, Board staff has had difficulty in determining a reasonable rate for crediting some of the activities due to a lack of an industry standard. Finally, Board staff has found that many of the most effective activities typically claimed as sponsorship can be applicable under other credit-back areas in the regulations. Thus, the Board recommended that sponsorship be removed from the list of credit-back activities.

The Board also recommended that a new credit-back activity be added to the regulations concerning use of the Internet. Several handlers have or are developing web-sites to promote their almonds. This is a rapidly developing communication medium becoming widely recognized as a valuable promotional tool. Thus, the Board believes handlers should be allowed credit for development and use of the Internet for promotional purposes. Because of the vast array of uses of the Internet, however, the Board believes guidelines should be implemented regarding crediting handlers' expenditures in this area. Thus, the Board recommended that handlers be allowed up to $5,000 credit against their assessment obligation for the development and use of a web-site on the Internet for advertising and public relations purposes. No credit would be given for costs regarding E-commerce (which is equivalent to opening a store), Extranet (private web sites within the Internet), or portions of a web-site that target the farming or grower trade. The Board believes these types of activities lend themselves to potential abuses and may not necessarily advance the intent of the program, which is to promote the sale, use, and consumption of almonds.

Appropriate changes are proposed to be made to the list of credit-back activities specified in § 981.441(e)(4)(ii) to incorporate all of these changes.

Recommendation Regarding Credit-Back for Almond Products

Section 981.441(a) specifies that handlers may be granted credit against their assessment obligation for an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities. Section 981.441(e)(iv) provides that when products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. For example, if a handler paid $1,000 in advertising costs to promote a product which contained 60 percent almonds by weight, such handler would be able to file a claim for credit against his or her assessment obligation of 60 percent of $1,000, or $600. The amount of credit would be 66⅔ percent of $600, or $400. If the product contained 70 percent almonds by weight, the handler would be eligible to receive a credit against his or her assessment of 66⅔ percent of the 70 percent, or $467.

The Board recommended adding an exception to this portion of the regulations. Specifically, handlers who own almond-containing "unique" or "non-traditional" products would be allowed to request that the Board grant them a one-year exemption from this "percentage rule." Thus, in the above example, a handler could request from the Board an exemption and receive credit for 66⅔ percent of his or her advertising costs for the product, or $667, regardless of the weight of the almonds in the product. The Board believes that this special exception would provide handlers incentive to produce and advertise unique almond products, resulting in increased almond sales for the industry. The Board members would be responsible for reviewing such requests from handlers and determining whether an exception would be granted on a case-by-case basis.

The Department has concerns with this recommendation. Although there was support for this concept at the industry meetings which led to the recommendations, those participating in the meetings were not able to develop criteria to define a "unique" or "non-traditional" product. Thus, there would be no specific parameters for Board staff to review claims against. Because of

this, the recommendation calls for the Board itself, rather than staff, to determine what products would qualify (Board staff currently reviews all promotion claims). It is unclear how the Board would make such determinations. The lack of criteria could potentially lead to subjective decision making and Board members reviewing claims could create potential conflicts of interest. The purpose of these regulations is to provide a clear set of guidelines that can be applied uniformly by Board staff to avoid these situations. While the Department supports the concept of providing incentive for new product development, it is not proceeding with this recommendation at this time because of the aforementioned concerns.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule would revise § 981.441 of the order's administrative rules and regulations regarding credit-back promotion and advertising. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain of their direct expenditures for marketing promotion activities, including paid advertising. This rule would make several revisions to the requirements regarding the activities for which handlers may receive such credit. These revisions include: Revising the time frames and clarifying deadlines for when handlers must submit documentation to the Board on activities conducted; redefining the growing region eligible for credit for certain types of outdoor advertising; revising the list of creditable activities by eliminating credit for fees charged by advertising and public relations agencies for publicity, trade seminars, purchase of Board-produced promotional material, and sponsorships; and adding use of the Internet as a promotional tool as a new, credit-back activity.

Regarding the impact of this rule on affected entities, the changes proposed herein are designed to provide for a more effective and efficient use of the industry's advertising and promotion funds, and to improve program administration. Requiring handlers to submit documentation to the Board 3 weeks, as opposed to 2 weeks, prior to the Board's April and August assessment billings would change the timing, but not the frequency, of the filings submitted by handlers. This change is not expected to increase the reporting burden on handlers, but rather provide the Board's staff sufficient time to review the material and credit handlers' accounts in a more timely manner. Clarifying the deadline for filing claims at the end of a crop year would eliminate confusion among handlers and would allow the Board to complete its year end accounting practices more timely. Redefining the growing region eligible for credit for outdoor advertising to include only counties with less than 1,000 bearing acres of almonds would help ensure that credit only be given for outdoor advertising that encourages consumers to buy almonds (as opposed to such advertising done in larger bearing counties directing growers to specific handlers). It would also add flexibility to the regulations to accommodate production shifts in the future. Adding the Internet as a credit-back activity would allow handlers to take advantage of a new communication medium and to provide them with a new promotional opportunity that can be used to offset a portion of their assessment obligation. Removing certain activities available for credit-back is not expected to negatively impact handlers, as numerous promotional activities remain for them to offset a portion of their assessment obligation. The activities proposed to be removed have received little use in the past, and in some cases lend themselves to potential abuses that result in ineffective use of promotional funds. The changes proposed are expected to be equally beneficial to all handlers who conduct their own promotional activities and to the industry as a whole.

Several alternatives to the proposed changes were considered. The first alternative in all cases is to leave the regulations as they currently exist. However, this does not address the changes in the industry, technology, or promotional practices. Nor does it address the administrative inefficiencies and the potential program abuses that have been identified. Alternatives to the recommendations concerning removing certain activities from the list of credit-back activities included leaving the activities in the regulations, with further definition and clarification added. However, it was determined that this would lead to increased regulations and guidelines, with no assurance of solving the problems. In addition, most of the activities being removed have been used very infrequently by handlers. The removal of credit for purchase of Board-produced promotional materials was replaced by an alternative system whereby handlers are provided a free allocation of such materials, with the option of purchasing additional materials at cost.

Regarding the changing of dates for submitting documents to the Board, different dates were considered. However, it was determined that the dates ultimately recommended would allow the minimum amount of time necessary for Board staff to review documents, apply credit to handlers' assessment accounts, and to complete year-end accounting practices in a timely manner. Alternatives to changing the growing region definition included using a different acreage number as a threshold to defining a producing county. However, the industry agreed for purposes of the credit-back program, 1,000 acres was appropriate. Another alternative considered removing the restriction of outdoor advertising in almond growing counties, but that does not address the problem of handlers advertising to growers.

It was determined that the proposed changes are the best way to address the situation at this time. These regulations were designed to reflect the industry's practices, and these proposed revisions

are intended to respond to an evolving marketplace and changing promotional practices. Changes have been and will continue to be recommended based on industry and program experiences.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Additionally, the Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, the December 2, 1998, and March 5, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board formed a task force in July 1998 to review its credit-back advertising program. The task force met periodically during the following months to review the program and consider appropriate changes. The task force presented its recommendations to the Board's Public Relations and Advertising Committee on November 13, 1998, and that committee presented its recommendations to the Board on December 2, 1998. The March 5, 1999, meeting was held to finalize the Board's recommendations. All of these meetings were open to the public, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested parties to respond to this proposal. Thirty days is deemed appropriate because any changes resulting from this proposed rule need to be in place prior to the beginning of the 1999–2000 crop year, which begins on August 1, 1999, so handlers can be given adequate notice to plan their promotional activities accordingly. All written comments received timely will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.441 is amended by revising the second sentence in paragraph (a), paragraphs (e)(3), (e)(4)(ii), the first sentence in paragraph (e)(6)(ii), and paragraph (e)(6)(iv) to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) * * * Credit will be granted either in the form of a payment from the Board, or as an offset to the assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to the Board's first and second assessment billings, and at least 3 weeks prior to the Board's third and fourth assessment billings in a crop year. * * *

* * * * *

(e) * * *

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising in California almond growing counties with more than 1,000 bearing acres: *Provided*, That outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) * * *

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity: *Provided,* That no Credit-Back shall be given for related fees charged by an advertising or public relations agency;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) 50/50 advertising with retailers;

(J) Couponing (printing, distribution, and handling costs only); and

(K) Development and use of web-site on the Internet for advertising and public relations purposes; *Provided,* That Credit-Back shall be limited to $5,000 per year, and no credit shall be given for costs for E-commerce (mail ordering through the Internet), Extranet (restricted web sites within the Internet), or portions of a web-site that target the farming or grower trade.

* * * * *

(6) * * *

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided,* That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year. * * *

(iii) * * *

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims pertaining to such commitments outstanding must be submitted within 76 days after the close of that crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

* * * * *

Dated: June 4, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–14690 Filed 6–9–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–99–03]

Pork Promotion, Research, and Consumer Information Order—Decrease in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would decrease by sixteen-hundredths of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1998 five-market average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These proposed changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250–0251. Comments will be available for public inspection during regular business hours at the above office in Room 2627 South Building; 14th and Independence Avenue, SW.; Washington, D.C. 20250–0251.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register**. (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 1,000 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.601).

This proposed rule would decrease the amount of assessments on imported pork and pork products subject to assessment by sixteen-hundredths of a cent per pound, or as expressed in cents per kilogram, thirty-three-hundredths of a cent per kilogram. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1998. The average annual market price decreased from $51.30 per hundredweight in 1997 to $31.82 per hundredweight in 1998, a decrease of about 38 percent. Adjusting the assessments on imported pork and pork products would result in an estimated decrease in assessments of $888,000 over a 12-month period. Assessments collected for 1998 were $3,834,656. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29962, 60 FR 33681 and 60 FR 58501) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would decrease the assessments on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule August 28, 1998, and effective on September 28, 1998; (63 FR 45935). Based on information reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch, this decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1998. This decrease in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.45 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal**

Register at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Statistical Bulletin No. 697 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts based on information reported by USDA, AMS, LGMN Branch. Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price decreased from $51.30 per hundredweight in 1997 to $31.82 per hundredweight in 1998, a decrease of about 38 percent. This decrease would result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110, 63 FR 45935; August 28, 1998, of an amount equal to sixteen-hundredths of a cent per pound, or as expressed in cents per kilogram, thirty-three hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1998, through December 31, 1998, the proposed decrease in assessment amounts would result in an estimated $888,000 decrease in assessments over a 12-month period.

This proposed rule provides for a 30-day comment period. This comment period is appropriate because the proposed rule simply provides for an adjustment in the per pound assessment levels on imported pork and pork products to reflect changes in live hog prices which occurred from 1997 to 1998. These live hog prices form the basis for the assessments. This adjustment, if adopted, should be made effective as soon as possible to promote optimum equity.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. In § 1230.110 paragraph (b) is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

* * * * *

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.0000	.20	.440920
0203.12.1010	.20	.440920
0203.12.1020	.20	.440920
0203.12.9010	.20	.440920
0203.12.9020	.20	.440920
0203.19.2010	.24	.529104
0203.19.2090	.24	.529104
0203.19.4010	.20	.440920
0203.19.4090	.20	.440920
0203.21.0000	.20	.440920
0203.22.1000	.20	.440920
0203.22.9000	.20	.440920
0203.29.2000	.24	.529104
0203.29.4000	.20	.440920
0206.30.0000	.20	.440920
0206.41.0000	.20	.440920
0206.49.0000	.20	.440920
0210.11.0010	.20	.440920
0210.11.0020	.20	.440920
0210.12.0020	.20	.440920
0210.12.0040	.20	.440920
0210.19.0010	.24	.529104
0210.19.0090	.24	.529104
1601.00.2010	.28	.617288
1601.00.2090	.28	.617288
1602.41.2020	.31	.683426
1602.41.2040	.31	.683426
1602.41.9000	.20	.440920
1602.42.2020	.31	.683426
1602.42.2040	.31	.683426
1602.42.4000	.20	.440920
1602.49.2000	.28	.617288
1602.49.4000	.24	.529104

Dated: June 4, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–14689 Filed 6–9–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

[Notice 1999–8]

11 CFR Part 110

Candidate Debates

AGENCY: Federal Election Commission.

ACTION: Petition for rulemaking; notice of availability.

SUMMARY: On May 25, 1999, the Commission received a Petition for Rulemaking from Mary Clare Wohlford, William T. Wohlford and Martin T. Mortimer urging the Commission to amend its rules so that the objective criteria for inclusion in Presidential and Vice Presidential debates is established by the Commission itself, and not left to the discretion of debate staging organizations. This petition is available for inspection in the Commission's Public Records Office.

DATES: Statements in support of or in opposition to the petitions must be filed on or before July 12, 1999.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Senior Attorney, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to debates@fec.gov, and should include the full name, electronic mail address and postal service address of the commenter. Additional information on electronic submission is provided below.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Senior Attorney, or Paul Sanford, Staff Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On May 25, 1999, the Commission received a Petition for Rulemaking from Mary Clare Wohlford, William T. Wohlford and Martin T. Mortimer regarding the Commission's candidate debate regulations at 11 CFR 110.13. Paragraph (c) of that section states, *inter alia*, that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate." *Id.* The petitioners assert that the objective criteria for inclusion in Presidential and Vice Presidential debates should be established by the Commission itself, and not left to the discretion of debate staging organizations. Therefore, the petition urges the Commission to revise this paragraph to set forth "mandatory criteria for participation in Presidential and Vice Presidential Debates." Petition at 1.

Specifically, the petition recommends that the debates be open to any candidate that (1) has the mathematical potential to win the election in that he or she is on the ballot in enough states to earn 270 Electoral College votes; and (2) has proven his or her viability by having spent at least $500,000 on the campaign by the end of the month preceding the date of the first scheduled debate held on or after September 1 of the election year. In addition, the petition recommends that candidates have equal access to debates held before September 1 without regard to the above requirements.

Copies of the petitions are available for public inspection in the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Copies of the petitions can also be obtained at any time of the day and week from the Commission's home page at www.fec.gov, or from the Commission's FlashFAX service. To obtain copies of the petitions from FlashFAX, dial (202) 501–3413 and follow the FlashFAX service instructions. Request document # 239 to receive the petition.

All statements in support of or in opposition to the petitions should be addressed to Rosemary C. Smith, Senior Attorney, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to debates@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. All comments, regardless of form, must be submitted by July 12, 1999.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: June 4, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–14714 Filed 6–9–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket No. 99–09]

RIN 1557–AB89

Community Development Corporations, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend part 24, the regulation governing national bank investments that are designed primarily to promote the public welfare. This proposal simplifies the prior notice and self-certification requirements that apply to national banks' public welfare investments; expands the types of investments that a national bank may self-certify by removing geographic restrictions; and permits eligible national banks with assets of less than $250 million to self-certify any public welfare investment. The OCC is also seeking comment on whether to modify the methods of demonstrating community support or participation currently prescribed by part 24, and whether the OCC could simplify or streamline the procedures and standards contained in part 24. The proposal encourages national banks to make public welfare investments by making it easier to comply with the applicable procedures.

DATES: Comments must be received on or before August 9, 1999.

ADDRESSES: Please direct comments to: Docket No. 99–09, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219. Comments are available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874-5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: David Lewis, Community Development Investments Manager, Community Development Division, (202) 874–4930; Michael S. Bylsma, Director, Community and Consumer Law Division, (202) 874–5750; or Heidi M. Thomas, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC is proposing to amend 12 CFR part 24, which contains the rules relating to national banks' investments in community development corporations (CDCs), community development (CD) projects, and other public welfare investments. Part 24 implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities and families, subject to certain percentage of capital limitations. (The investments authorized pursuant to 12 U.S.C. 24(Eleventh) are collectively referred to in this proposal as "public welfare investments"). The purpose of this proposal is to make burden-reducing changes that will make it easier for national banks to use the public welfare investment authority that the statute and regulation provide.

The OCC originally adopted part 24 in 1993 and substantially revised the regulation, pursuant to its Regulation Review Program, in 1996. *See* 58 FR 68464 (Dec. 27, 1993) (final regulation); 61 FR 49654 (Sept. 23, 1996) (1996 amendments). The 1996 amendments encouraged national banks to make public welfare investments by eliminating unnecessarily burdensome provisions and streamlining the part 24 procedures. Among other things, the 1996 amendments: modified the test for determining whether an investment primarily promotes the public welfare; streamlined the investment self-certification and prior approval

procedures; and expanded the list of activities eligible for self-certification.

The OCC is committed to continually reevaluating its rules to reduce unnecessary regulatory burden and simplify compliance, consistent with the safe and sound operation of national banks. This proposal addresses several issues regarding national bank compliance with part 24 that have arisen since 1996. Specifically, the proposal further simplifies the prior notice and self-certification requirements that apply to national banks' public welfare investments; further expands the types of investments a national bank may self-certify by removing geographic restrictions; and permits an eligible community bank to self-certify any public welfare investment. An eligible community bank is an eligible bank [1] with assets of less than $250 million.

Description of the Proposal

Community Benefit Information Requirement (§ 24.3(c))

Current § 24.6 lists certain public welfare investments that an eligible bank may make by submitting a self-certification letter to the OCC within 10 working days after it makes the investment. No prior notification or approval is required. For all other public welfare investments, a national bank must submit an investment proposal to the OCC for prior approval. Unless otherwise notified in writing by the OCC, the proposed investment is deemed approved 30 calendar days from the date on which the OCC receives the bank's investment proposal.

Regardless of which procedure applies, § 24.3(c) currently requires a national bank making a public welfare investment to demonstrate the extent to which the investment benefits communities otherwise served by the bank. (The requirement of § 24.3(c) is referred to in this proposal as the community benefit information requirement.) Section 24.5 requires the bank to provide a statement in its self-certification letter or investment proposal certifying that it has complied with this requirement.

The OCC is proposing to remove the community benefit information requirement, because this requirement is not mandated by statute and may constrict national banks from making otherwise qualifying and beneficial public welfare investments. Moreover, the OCC's experience in implementing 12 CFR part 24 suggests that national banks are seeking more public welfare investment opportunities across broader geographic markets than previously. Enhanced interstate operations and the increasing availability of Internet banking and other forms of remote banking limit the value of the community benefit information requirement for the OCC's evaluation of investment proposals.

Although, as a matter of law, a bank's authority to make public welfare investments pursuant to 12 U.S.C. 24(Eleventh) and 12 CFR part 24 is independent of its obligation to serve the credit needs of its entire community under the Community Reinvestment Act (CRA), the OCC recognizes that banks may want the OCC to consider a public welfare investment for CRA purposes. Retention of the community benefit information requirement is not necessary, however, to facilitate the identification of a public welfare investment that a bank believes should be considered for CRA purposes. Instead, the OCC proposes to amend § 24.5 to provide that a national bank that wants the OCC to consider a specific public welfare investment during a CRA examination may include a simple statement to that effect in its public welfare investment proposal or self-certification letter.[2]

Demonstration of Community Support (§ 24.3(d))

Under section 24.3(d), a national bank may make investments pursuant to part 24 if it demonstrates that it has non-bank community support for, or participation in, the investment. Section 24.3(d) provides that a national bank may demonstrate this support or participation in a number of ways, including:

(1) In the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;

(2) Establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

(3) Formation of a formal business relationship with a community-based organization in connection with the proposed investment;

(4) Contractual agreements with community partners to provide services in connection with the proposed investment;

(5) Joint ventures with local small businesses in the proposed investment; and

(6) Financing for the proposed investment from the public sector or community development organizations.

Prior to the 1996 amendments, part 24 required the affected primary beneficiaries and representatives of local or State government to have endorsed and demonstrated support for the investment. In the case of a CDC, a bank had to demonstrate support through non-bank community participation on the organization's board of directors. 12 CFR 24.4(a)(3) (1993). The OCC modified the community support/participation requirement in the 1996 amendments to provide banks and community groups more flexibility in structuring community partnerships under part 24. The OCC added the nonexclusive list of examples of community support or participation to the final rule in response to comments on the 1996 proposal.

The OCC has not changed § 24.3(d) in this proposal, but invites comment on whether the approach adopted in the 1996 amendments is effective in encouraging community involvement in national banks' public welfare investments. For example, is the current non-bank community support or participation requirement appropriate? Are there other ways of demonstrating support or participations? In particular, commenters addressing these issues are invited to discuss whether:

(1) The current community participation prong of the public welfare test has been sufficient in obtaining evidence of adequate community support and involvement in national banks' community development investments;

(2) General letters of support from community groups or local officials, without other evidence of community support or participation, should be considered sufficient to satisfy this requirement;

(3) Stricter requirements for community support or participation will have the effect of discouraging public welfare investments pursuant to part 24; and

(4) Institutions should demonstrate community support for, or participation in, investments in national or regional

[1] Part 24 defines an "eligible bank" as a national bank that is well capitalized, has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (the CAMELS rating), has a Community Reinvestment Act rating of "Outstanding" or "Satisfactory," and is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive. 12 CFR 24.2(e).

[2] The OCC's approval of a public welfare investment made pursuant to 12 CFR part 24 does not affect how the investment is evaluated for CRA purposes, and an investment approved under part 24 is not necessarily a qualified investment for purposes of CRA.

community development investment vehicles, and if so, what form this demonstration should take.

Self-Certification of Public Welfare Investments by an Eligible Community Bank (§ 24.5(a))

An eligible national bank may make public welfare investments listed in § 24.6 without prior OCC approval by submitting a self-certification letter to the OCC that satisfies the requirements in the regulation. 12 CFR 24.5(a). Investments eligible for self-certification include certain investments relating to low- and moderate-income housing, small businesses located in low- and moderate-income areas, employment or job training for low- or moderate-income individuals, or technical assistance services for non-profit community development organizations; investments as a limited partner in certain low-income housing tax credit projects; investments in national banks with a community development focus; investments approved by the Federal Reserve Board under 12 CFR 208.21; and investments previously determined by the OCC to be permissible under part 24. 12 CFR 24.6. Other investments require application to, and approval by, the OCC.

Because community banks operate with more limited resources than larger institutions, the tasks associated with the prior approval process for public welfare investments place a greater burden on them. In addition, the OCC recognizes that smaller community banks may serve as the only source of investments for some CDCs and CD projects located in small towns or rural areas and that the prior approval process may inhibit community banks from making these investments. The proposal therefore amends § 24.5(a) to permit eligible community banks (national banks with less than $250 million in assets) to self-certify *all* public welfare investments, not only those investments listed in § 24.6. This change will reduce the regulatory burden and costs associated with the part 24 prior approval process for eligible community banks in particular and may encourage more community banks to make public welfare investments in local CDCs and CD projects that might not be able to attract investments from other sources.

This change is consistent with 12 U.S.C. 24 (Eleventh), which does not require a national bank to receive prior OCC approval before making a public welfare investment within the 5 percent of capital aggregate limit. Moreover, the change does not raise safety and soundness concerns because the application process is eliminated only for investments by eligible community banks. The eligibility standard in § 24.2(e) ensures that only well-capitalized, well-run community banks can take advantage of this streamlined approach. In addition, these public welfare investments are subject to review during the examination process pursuant to § 24.7. Finally, as set forth in § 24.7, if the OCC finds that an investment violates law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to the deposit insurance fund, it may require the bank to take appropriate remedial action.

The Local Community Investment Requirement for Self-Certification (§ 24.6(b)(2))

Currently, part 24 does not permit a national bank to self-certify an investment if, among other things, more than 25 percent of the investment is used to fund projects that are located in a State or metropolitan area other than the States or metropolitan areas in which the bank maintains its main office or has branches. 12 CFR 24.6(b)(2). If any portion of a bank's investment funds projects outside of its local areas, the bank must include in its self-certification letter a statement that no more than 25 percent of the investment funds these projects. 12 CFR 24.5(a)(3)(vii).

The OCC proposes to remove this local community investment requirement in § 24.6(b) so that a national bank can use the less burdensome self-certification process to make eligible public welfare investments in *any* area. This change removes a requirement that is not necessary to implement the statute because, as discussed in connection with the removal of the community benefit information requirement, 12 U.S.C. 24 (Eleventh) does not require that a bank link its public welfare investments to the communities it serves. In addition, this change permits national banks to use the self-certification process for investments in national community development investment vehicles. Because these vehicles often provide funds for projects located throughout the United States, it has not always been possible for a bank to certify that not more than 25 percent of the bank's investment will support projects in States or metropolitan areas other than those in which the bank's main office or branches are located. Thus, this change should expand the opportunities for banks to fund worthwhile public welfare projects.

As with the proposal to remove the community benefit information requirement, the OCC recognizes that, in some cases, the local community investment requirement for self-certification has served as a way for banks to identify investments that they believe may be eligible for CRA credit. For the same reasons as discussed in connection with that change, a bank that wants the investment to be considered for CRA purposes may include a statement to that effect in its self-certification letter. This information will be provided to supervisory staff in connection with the bank's CRA examination. The OCC notes that this change affects only the eligibility of the investment for self-certification. It does not modify either the part 24 standards for permissible public welfare investments or the CRA standards set forth in 12 CFR Part 25.

Comments

The OCC requests comment on all aspects of this proposal, including the extent to which these proposed changes will encourage national banks to make public welfare investments. Commenters are also invited to suggest other revisions that would simplify the standards or streamline the procedures currently contained in part 24.

In addition, the OCC seeks comment on the impact of this proposal on community banks. As discussed in connection with certain of the proposed changes, the OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comment on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

Finally, the OCC solicits comment on whether the proposal is written clearly and is easy to understand. On June 1, 1998, the President issued a Memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. The OCC invites comment on how to make this proposal clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposal would not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The proposal would reduce regulatory burden on national banks by simplifying the prior approval process and simplifying and expanding the self-certification process for part 24 investments. The economic impact of this proposal on national banks, regardless of size, is expected to be minimal.

Paperwork Reduction Act

For purposes of compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the OCC invites comment on:

(1) Whether the proposed collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557–0194, Washington, D.C. 20503, with copies to Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Attention: Paperwork Reduction Project 1557–0194, Washington, D.C. 20219.

The proposal is expected to reduce annual paperwork burden for recordkeepers because it eliminates certain application and self-certification requirements. The collection of information requirements in this proposal are found in 12 CFR 24.5. This information is required for the public welfare investment self-certification and prior approval procedures. The likely respondents are national banks.

Estimated average annual burden hours per recordkeeper: 1.9. Start-up costs: None.

Executive Order 12866 Determination

The Comptroller of the Currency has determined that this proposal does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule is limited to the prior notice and self-certification process for part 24 investments. The OCC therefore has determined that the proposal will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 24 of chapter I of title 12 of the Code of Federal Regulations to read as follows:

PART 24—COMMUNITY DEVELOPMENT CORPORATIONS, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

1. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24 (Eleventh), 93a, 481 and 1818.

2. In § 24.2, paragraphs (f), (g), (h) and (i) are redesignated as paragraphs (g), (h), (i) and (j), and a new paragraph (f) is added to read as follows:

§ 24.2 Definitions.

* * * * *

(f) *Eligible community bank* means an eligible bank that, as of December 31 of either of the prior two calendar years had total assets of less than $250 million.

* * * * *

§ 24.3 [Amended]

3. In § 24.3, paragraph (c) is removed, and paragraph (d) is redesignated as paragraph (c).

4. In § 24.5, paragraph (a)(1) and paragraph (a)(3)(iii) are revised, paragraph (a)(3)(v) is amended by adding the word "and" at the end of the paragraph, paragraph (a)(3)(vi) is amended by removing the term "; and" and adding a period in its place at the end of the sentence, paragraph (a)(3)(vii) is removed, paragraph (a)(4) is redesignated as paragraph (a)(5), a new paragraph (a)(4) is added, paragraph (b) is amended by redesignating paragraph (b)(3) through (b)(6) as paragraphs (b)(4) through (b)(7), and a new paragraph (b)(3) is added to read as follows:

§ 24.5 Public welfare investment self-certification and prior approval procedures.

(a) * * *

(1) Subject to § 24.4(a), an eligible bank may make an investment described in § 24.6(a) and an eligible community bank may make any investment that satisfies the requirements of § 24.3 without prior notification to, or approval by, the OCC if the bank follows the self-certification procedures in this section.

* * * * *

(3) * * *

(iii) The type of investment (equity or debt), the investment activity listed in § 24.3(a) or § 24.6(a), as applicable, that the investment supports, and a brief description of the particular investment;

* * * * *

(4) If the bank wants the OCC to consider the investment during an examination under the CRA (12 U.S.C. 2901 *et seq.*) and to determine whether

it meets the criteria for a qualified investment set forth in 12 CFR part 25, the bank may include a brief statement to that effect in its letter of self-certification.

* * * * *

(b) * * *

(3) If the bank wants the OCC to consider the investment during an examination under the CRA and to determine whether it meets the criteria for a qualified investment set forth in 12 CFR part 25, the bank may include a brief statement to that effect in its investment proposal.

* * * * *

§ 24.6 [Amended]

5. In § 24.6, paragraph (b)(1) is amended by adding an "or" at the end, paragraph (b)(2) is removed, and paragraph (b)(3) is redesignated as paragraph (b)(2).

Dated: May 27, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–14754 Filed 6–9–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 99N–1309]

Obstetrical and Gynecological Devices; Proposed Classification of Female Condoms

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify the preamendments female condom intended for contraceptive and prophylactic purposes. Under this proposal, the preamendments female condom would be classified into class III (premarket approval). The agency is publishing in this document the March 7, 1989, recommendations of FDA's Obstetrics-Gynecology Devices Panel (the Panel) regarding the classification of this device. After considering public comments on this classification proposal, FDA will publish a final rule classifying this device. This action is being taken to establish regulatory controls that will provide reasonable assurance of the safety and effectiveness of this device.

DATES: Written comments by Septmeber 8, 1999. See section IV of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Premarket Testing Guidelines for Female Barrier Contraceptive Devices Also Intended to Prevent Sexually Transmitted Diseases, April 4, 1990" to the Division of Small Manufacturers Assistance (DSMA) (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 401–443–8818. In order to receive this draft guidance via your fax machine, call the CDRH Facts-On-Demand (FOD) System at 800–899–0381 or 301–827–0111 from a touch-tone-telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (384) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

A. Classification of Medical Devices

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendations for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final rule under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and regulations, FDA consulted with the Obstetrical and Gynecological Device Classification Panel regarding the classification of this device. This panel was subsequently terminated, rechartered, and renamed the Obstetrics-Gynecology Devices Panel (the Panel).

B. Regulatory History of Female Condoms

In the **Federal Register** of April 3, 1979 (44 FR 19894), FDA published a proposed rule classifying all known obstetrical and gynecological preamendments devices, including condoms. The proposed rule described the methods used by the agency to identify such preamendments devices, e.g., FDA's 1972 survey of device manufacturers, FDA's searches of published literature, and the activities of the Panel. Subsequently, in the

Federal Register of February 26, 1980 (45 FR 12710), FDA published a final rule classifying certain obstetrical and gynecological preamendments devices, including classifying the condom into class II (§ 884.5300 (21 CFR 884.5300)). The condom encompasses preamendments barrier-type sheaths that cover the entire shaft of the penis for purposes of contraception (preventing pregnancy), prophylaxis (preventing transmission of sexually transmitted diseases (STD's)), or semen collection (diagnostic testing). Preamendments devices characteristically falling within this classification are generally referred to as condoms.

Following classification of the condom into class II, FDA received two 510(k) notifications for "female condoms" intended to be inserted into the vagina and held in place to line the vaginal walls for purposes of contraception and prophylaxis. These 510(k) notifications claimed substantial equivalency to the condom identified in § 884.5300. Initially, in late 1987, in response to a 510(k) notification submitted by the Energy Basin Clinic to market a "barrier female condom," FDA concurred that this condom, later called the Bikini Condom, was substantially equivalent to the class II condom (Ref. 1). Subsequently, in 1989, the agency received a 510(k) notification from the Wisconsin Pharmacal Co. for the WPC–333 female use condom-like device (WPC–333 device), later called the Femshield/Reality (Intra-) Vaginal Pouch and Reality Female Condom. This 510(k) submission brought new information to the agency's attention concerning the existence of a preamendments female use condom-like device.

The Wisconsin Pharmacal Co. claimed in its 510(k) notification that its WPC–333 device was substantially equivalent to the condom identified in § 884.5300 as well as to another preamendments device known as the Gee Bee Ring. Documentation in the 510(k) notification indicated that the Gee Bee Ring was a double-ringed pouch-type preamendments device intended for insertion into the vagina to line the walls of the vagina for contraceptive (pregnancy prevention) and prophylactic (prevention of STD's transmission) purposes (Ref. 2).

Upon receiving this information, FDA verified the existence, commercial distribution, and uses of the Gee Bee Ring, as best it could, through an affidavit and review of a May 1934 booklet printed contemporaneously with the distribution of the product (Refs. 2 and 3). The booklet entitled *A New Method for the Profession*, states on page 12, "[T]he technique with this method (the modified Gee Bee technique) has a factor of safety equal to, if not better than, the diaphragm. It overcomes all the objections to the rubber condom * * *." These statements are taken by the agency to mean that the device was indicated as a contraceptive product (by reference to the diaphragm), and as a prophylactic product (by reference to the condom, which at that time (1934) was solely indicated as a prophylactic, i.e., for preventing the transmission of sexually related diseases). Subsequently, the agency presented this Gee Bee Ring information to the Panel as new information about a preamendments device not previously known to the agency.

During an open meeting held on March 7, 1989, (Ref. 14) the Panel reviewed all available information concerning the classification of a barrier-type pouch device that is inserted into the vagina prior to coitus and lines the vaginal wall and external cervix. Such available information indicated that the preamendments device, known as the Gee Bee Ring, was distributed, beginning in the 1930's and for some years thereafter, as a female condom, i.e., as a "modified condom placed in the hands of the female * * * for proper insertion and use." (See Ref. 2.) The Panel determined that this particular device represented a generic type of preamendments device that the Panel identified as the vaginal pouch, rather than the condom, noting that the classification regulation for the condom device (§ 884.5300) identifies the condom as "a sheath *which completely covers the penis* with a *closely fitting membrane*" (emphasis added). The regulation also states that the condom is used "for contraceptive and for prophylactic purposes (preventing transmission of sexually transmitted disease)" and "to collect semen to aid in the diagnosis of infertility." Because an intravaginal pouch loosely lines the interior of the vagina, rather than closely fitting the penis, and because there is no data to establish the safe and effective use of the intravaginal pouch, the Panel recommended that FDA not include the intravaginal pouch in the condom classification (§ 884.5300), but classify this generic type of device as a device that is distinct from condoms.

Subsequently, in April 1989, in response to the Wisconsin Pharmacal Co. 510(k), FDA advised the firm that its WPC–333 device is not substantially equivalent to either the condom identified in § 884.5300 or the Gee Bee Ring, due to design differences. As a result, in accordance with section 513(f) of the act, the device was automatically classified into class III (Ref. 4). In April 1989, FDA also advised the Energy Basin Clinic that the agency's response to the firm's 510(k) was incorrect, in that the firm's "barrier female condom" is not substantially equivalent to the condom as defined in § 884.5300 and that commercial marketing would misbrand the device under section 502(f) and (o) of the act (21 U.S.C. 352(f) and (o)) (Ref. 5).

During an August 25, 1989, open Panel meeting, FDA, the Panel, other Federal health agency experts, and interested parties discussed premarket testing requirements for female barrier contraceptives that also claim prevention of STD's transmission. Currently, postamendments female condoms are classified automatically by statute (section 513(f) of the act) into class III and in the **Federal Register** of June 7, 1990 (55 FR 23299), FDA has made available draft guidance describing the studies needed to support a PMA application for female condoms that also claim to prevent STD's (Ref. 6). This draft guidance describes the preclinical, clinical feasibility, and clinical safety and effectiveness studies needed to expedite the study and evaluation of PMA's for female condom devices that also claim prevention of STD's transmission. See the **ADDRESSES** section of this document for the guidance's availability.

On August 29, 1990, FDA responded to another 510(k) notification for a "female condom" which was submitted by MD Personal Products, Inc. (hereinafter referred to as MD Products). In response to the 510(k), FDA advised MD Products that its pouch-type device intended to line the vagina is not substantially equivalent to either the condom identified in § 884.5300 or the Gee Bee Ring, due to differences in technological characteristics and design (Ref. 7).

On May 29, 1993, FDA approved the PMA for the Wisconsin Pharmacal Co. "Reality" Female Condom (Ref. 8).

II. Recommendations of the Panel

During a public meeting held on March 7, 1989, the Panel made the following recommendations with respect to the classification of the intravaginal pouch:

A. Identification

The Panel recommended that the device be identified as follows: An intravaginal pouch is a sheath-like device that lines the vaginal wall and is inserted into the vagina prior to the initiation of coitus. It is indicated for

contraceptive and prophylactic (preventing the transmission of STD's) purposes.

The Panel cautioned against the use of the term condom in the generic type of device because a condom is defined as "a sheath which completely covers the penis with a closely fitting membrane," and use of the term to identify this generic type of device may be misunderstood by some persons to suggest that products in this group have the same performance characteristics as traditional full-sheath male condoms.

B. Recommended Classification of the Panel

The Panel recommended that the intravaginal pouch be classified into class III (premarket approval). The Panel unanimously recommended assigning a high priority to premarket approval because of the absence of testing and clinical medical data regarding the safety and effectiveness of the device and because device failure could result in release of semen into the vagina leading to unwanted pregnancies and transmission of disease, such as acquired immune deficiency syndrome (AIDS) caused by the human immunodeficiency virus (HIV) from HIV-infected semen. For women for whom pregnancy is contraindicated due to medical conditions such as heart disease or diabetes mellitus, the risk of an unwanted pregnancy can be severe, even life threatening.

C. Summary of Reasons for Recommendation

After reviewing the information provided by FDA, and after consideration of the open discussions during the Panel meeting and the Panel members' personal knowledge of and clinical experience with the device system, the Panel gave the following reasons in support of its recommendation to classify the intravaginal pouch into class III.

The Panel recommended that the intravaginal pouch be classified into class III because no published laboratory or clinical study data could be found that demonstrate the safety and effectiveness of the device. Reference to this type of device in past literature is limited (Ref. 2). More recent literature affirms the preliminary nature of certain studies; the need for in vitro and in vivo preclinical studies, including permeability studies of the device materials with respect to bacterial and viral STD-causing organisms; and the need for microbiological and clinical data that demonstrate the safety and contraceptive and prophylactic efficacy of this generic type of device (Ref. 9).

The Panel believed that the intravaginal pouch should be classified into class III because general controls and special controls would not provide reasonable assurance of the safety and effectiveness of the device, and the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. Although the safety of some device characteristics, such as the biocompatibility of device substances contacting the body, could be controlled through materials tests and specifications, the Panel believes there is insufficient evidence that a performance standard could be established to provide reasonable assurance of the safe and effective performance of the device. For example, no valid scientific evidence demonstrates whether, how often, or to what degree, the intravaginal pouch dislodges or becomes displaced during intercourse.

D. Summary of Data on Which the Recommendation is Based

The Panel based its recommendation on information provided by FDA, data and information contained in references 2 and 9, and on the Panel members' personal knowledge of, and experience with, contraceptive methods of birth control, including barrier-type contraceptives. Additionally, the Panel found no data in the literature or in studies discussed before the Panel to support the safety and effectiveness of the devices.

The Panel noted that failure of intravaginal pouches because of breakage, leakage, dislodgement, or displacement that leads to the release of semen, could result not only in undesired pregnancies, but also in the transmission of STD's, such as AIDS. Therefore, the Panel recommended that the labeling of these devices contain use effectiveness information, particularly, pregnancy rate information, and adequate indications and directions for use. The Panel believed that the device must be subject to premarket approval to assure that manufacturers demonstrate the satisfactory performance of the device for its intended use or uses, thereby providing reasonable assurance of its safety and effectiveness.

E. Risks to Health

The Panel identified the following risks to health associated with use of the device:

1. Pregnancy

Leakage, breakage, dislodgement, or displacement of the device during sexual intercourse could result in the occurrence of an undesired pregnancy.

2. Disease Transmission

If the device fails due to leakage, breakage, dislodgement, or displacement, contact with infected semen or vaginal secretions or mucosa could result in the transmission of STD's, including HIV (causing AIDS).

3. Adverse Tissue Reaction

Unless the biocompatibility of materials and substances comprising the device are tested, local tissue irritation, and sensitization or systemic toxicity could occur when the vaginal pouch contacts the vaginal wall and cervical mucosa, and the penis.

4. Ulceration and Other Physical Trauma

III. Proposed Classification

On its own initiative, FDA is proposing to change the name of the generic type of device identified by the Panel from "intravaginal pouch" to "female condom." FDA agrees with the Panel's finding that the female condom represents a type of preamendments device that has different technological characteristics than the preamendments condom identified in § 884.5300 and concurs with the Panel's recommendation that the female condom not be considered a type of device that falls within the classification category of condom (§ 884.5300).

FDA believes that the proposed name, "female condom," better connotes the intended female use and purposes of the device than does the term, "intravaginal pouch," i.e., female usage of the pouch-like device to line the vaginal walls for purposes of preventing pregnancy and STD's transmission. Adequate labeling for female condoms, including adequate directions for use, and actual usage by female users will make clear to sexual partners the differences between female condoms and male condoms.

FDA disagrees with the Panel's concern that the use of the term "condom" to describe or make reference to the female condom may imply that the female condom will have the same contraceptive and prophylactic effectiveness as a condom, as defined in § 884.5300, in preventing undesired pregnancy and protecting against STD's, including AIDS. The agency believes any such misconception can be dispelled by requiring that the labeling of the female condom device clearly and adequately state the contraceptive failure rates pertinent to any claims made for preventing undesired pregnancy and adequately describe clinical effectiveness data, including

pertinent information on the impermeability of the device to sexually transmitted viral or bacterial disease, associated with any prophylactic claims for protection against STD's, including AIDS.

FDA notes that differences in technological characteristics and design among devices within the same generic type of device may raise new questions of safety and effectiveness that prevent the devices from being substantially equivalent to one another. Such was the case for the 510(k) notifications for certain postamendments female condoms claiming substantial equivalence to the preamendments female condom, the Gee Bee Ring. In the preamble of the final rule setting forth classification procedures (43 FR 32988 at 32989, July 28, 1978), FDA noted that "The term 'generic type of device' describes FDA's grouping, for reasons of administrative convenience, of devices that are to be regulated in the same way because they present *similar safety and effectiveness concerns.* A generic type of device will include devices that may or *may not be* 'within a type' and 'substantially equivalent' to each other." (Emphasis added.)

FDA believes the female condom should be classified into class III because general controls and special controls would not provide reasonable assurance of the safety and effectiveness of the device and the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. FDA believes that the calling for PMA's for this device should be a high priority.

FDA agrees with the Panel's conclusions and recommendations regarding the unproven contraceptive effectiveness of the preamendments female condom and its indeterminate efficacy in protecting against the transmission of STD's. The agency has neither received nor found in the literature valid scientific evidence from laboratory tests, preclinical studies, or clinical investigations that does the following: (1) Demonstrates the biocompatibility of materials used in the preamendments female condom; (2) measures performance characteristics, such as displacement, dislodgement, bursting, and tearing; (3) assesses the contraceptive safety and effectiveness of the preamendments device in preventing pregnancy, in terms of reported failure or pregnancy rates based upon usage (Refs. 2, 9, and 10); or (4) demonstrates the prophylactic efficacy of the preamendments device in protecting against the transmission of STD's, including HIV (Refs. 10 through 13). The agency believes that the present voluntary industry standard and the agency's methodology for testing conventional condoms for pinhole leaks are not suitable for testing the female condom for leaks without significant modification and validation.

FDA notes that the labeling of certain marketed barrier contraceptive devices, such as the contraceptive diaphragm and accessories (21 CFR 884.5350), and the cervical cap (21 CFR 884.5250), identify pregnancy rates associated with the use of the devices. The expected failure or pregnancy rates for use of the conventional full-sheath condom are widely published. Such information is not available for the preamendments female condom device. Consequently, the agency agrees with the Panel that pregnancy rate information, derived from valid clinical study data, should be included in female condom labeling. Otherwise, the labels would fail to disclose a material fact regarding the consequences which may result from using the female condom.

IV. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA believes that there is likely no interest at this time in marketing the device to be classified by this rule. FDA is taking this action because it has determined that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device, if there is any interest in marketing one in the future. Without this rule (and a subsequent requirement for PMA's), a person could market a device by claiming substantial equivalence to the Gee Bee Ring. All premarket submissions for "female condom" type devices that FDA has received to date have been for devices that have been found to be not substantially equivalent to the Gee Bee Ring and, therefore, those devices are not preamendments devices and are not to be classified by this rule. If a final rule is issued classifying these devices in class III, FDA would be required to undertake subsequent notice and comment rulemaking to establish an effective date by which PMA's would be required for this device. Under section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), a rule requiring PMA's for this device could not take effect any sooner than 30 months after the effective date of a final rule classifying the device or 90 days after publication of the final rule requiring the PMA's, whichever is later.

The agency therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule requires no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Submission of Comments

Interested persons may, on or before September 8, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments

are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from the Office of Device Evaluation, CDRH, FDA, to the Energy Basin Clinic regarding substantially equivalent determination for the Barrier Condom, August 3, 1987.
2. Beadle, E. L., "A New Method for the Profession: Outline of Successful Prophylactic Program," The Hemingway Press, Waterbury, CN, 1934.
3. Affidavit from Richard Beadle to FDA regarding the Gee Bee Ring, its labeling, and its distribution, July 17, 1989.
4. Letter from the Office of Device Evaluation, CDRH, FDA, to the Wisconsin Pharmacal Co. regarding the not substantially equivalent determination for the WPC–333 Vaginal or Female Condom, April 14, 1989.
5. Letter from the Office of Device Evaluation, CDRH, FDA, to the Energy Basin Clinic regarding the not substantially equivalent determination for the Barrier Condom, April 26, 1989.
6. CDRH, FDA guidance document entitled "Premarket Testing Guidelines for Female Barrier Contraceptive Devices Also Intended to Prevent Sexually Transmitted Diseases," April 4, 1990.
7. Letter from the Office of Device Evaluation, CDRH, FDA, to MD Personal Products, Inc., regarding the not substantially equivalent determination for the Women's Choice Brand Condom," August 29, 1990.
8. Letter from the Office of Device Evaluation, CDRH, FDA, to the Wisconsin Pharmacal Co. regarding PMA approval for the "Reality" Female Condom, May 7, 1993.
9. Bounds, W., J. Guillebaud, L. Stewart, and S. Steele, "A Female Condom (Femshield™); A Study of its User-Acceptability," *British Journal of Family Planning*, 14:83, 1988.
10. Bounds, W., "Male and Female Condoms," *British Journal of Family Planning*, 15:14, 1989.
11. Connell, E. B., "Barrier Contraceptives," *Clinical Obstetrics and Gynecology*, 32:377, 1989.
12. Harris, J. R., L. W. Kanagas, and J. D. Shelton, "Role of Condoms in Preventing HIV Transmission in Developing Countries," *Heterosexual Transmission of AIDS*, ch. 32, p. 399, Alan R. Liss, Inc., 1990.
13. Gregersen, E., and B. Gregersen, "The Female Condom—A Pilot Study of the Acceptability of a New Female Barrier Method," *Acta Obstetricia ET Gynecologica Scan*, 69:73, 1990.
14. Obstetrics-Gynecology Devices Panel, transcript and meeting minutes, March 7, 1989.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5330 is added to subpart F to read as follows:

§ 884.5330 Female condom.

(a) *Identification.* A female condom is a sheath-like device that lines the vaginal wall and is inserted into the vagina prior to the initiation of coitus. It is indicated for contraceptive and prophylactic (preventing the transmission of sexually transmitted diseases) purposes.

(b) *Classification.* Class III (premarket approval).

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* No effective date has been established of the requirement for premarket approval for the devices described in paragraph (b) of this section. See § 884.3 for effective dates of requirement for premarket approval.

Dated: May 28, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–14653 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI72–01–7280; FRL–6357–2]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to disapprove a revision to Michigan's State Implementation Plan (SIP) which would change the State's definition of volatile organic compound (VOC). The Michigan Department of Environmental Quality (MDEQ) submitted this revision on August 20, 1998 and supplemented it with a November 3, 1998, letter.

DATES: Comments on this proposed action must be received by July 12, 1999.

ADDRESSES: You may send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312)886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

A. Background Information
B. Contents of State Submittal and EPA's Evaluation
C. EPA's Proposed Action

A. Background

On August 20, 1998, the MDEQ submitted to EPA a proposed revision to the Michigan SIP. MDEQ supplemented the proposed revision with a November 3, 1998, letter from Robert Irvine. The submittal included a revision to the State's definition of VOC, as well as other rule revisions and rescissions. In this document EPA is proposing action only on the revision to the definition of VOC, R 336.1122(f). We will address the remaining rule revisions and rescissions in separate rulemaking actions.

B. Contents of State Submittal and EPA's Evaluation

The State's definition of the term "volatile organic compound" is "any compound of carbon, or mixture of compounds of carbon that participates in photochemical reactions, excluding the following materials, all of which do not contribute appreciably to the formation of ozone: * * * *" The definition goes on to list the exempt compounds. The wording of the State definition is ambiguous, in that it could

imply that there are compounds, other than those listed, which arguably do not "participate in photochemical reactions," and therefore may be excluded from the definition of VOC. Instead, the State should define the term VOC as all organic compounds except those that EPA has listed as negligibly photochemically reactive. (See 40 CFR 51.100(s).) As worded, the definition is unacceptable.

The State has added the following substances as materials excluded from the State definition of VOC: acetone; cyclic, branched, or linear completely-methylated siloxanes; parachlorobenzotriflouride; trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC–142b); chlorodifluoromethane (HCFC–22); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); trifluoromethane (HFC–23); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); and perfluorocarbon compounds which fall into these classes: cyclic, branched, or linear, completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds are on the list of compounds exempted from the Federal definition of VOC in 40 CFR 51.100(s), and their exclusion is acceptable.

In addition to the compounds listed above, however, the State has included as an exempt compound, "ingredient compounds in materials other than surface coatings that have a vapor pressure less than or equal to 0.1 millimeters of mercury at the temperature at which they are used." This is unacceptable because it contradicts established EPA policy and is inconsistent with the Federal definition of VOC found in 40 CFR 51.100(s).

In the past, MDEQ has cited EPA's similar treatment of certain VOCs in our Consumer Products rule to justify its proposed change. However, we noted in our proposed Consumer Products rule (61 FR 14531) that the we adopted the volatility threshold specifically for consumer products, to differentiate between products containing ingredients with higher volatility. Many consumer products would contain 100 percent VOC by definition, making all of them subject to rules designed to reduce VOCs from consumer products, unless we devised a means to distinguish them. To address this problem, we examined the possibility of targeting only those consumer products with relatively higher volatility. We also noted in the proposed rule for Consumer Products that it did not alter our overall VOC policy, which does not allow vapor pressure cutoffs, such as 0.1 mm Hg, to exempt compounds from the definition of VOC. Thus, the proposed Consumer Products rule did not redefine VOC, it proposed to adopt an applicability threshold based on pressure for that specific source category only.

Michigan has proposed a change to the definition of VOC which would allow the State to use "other methods and procedures acceptable to the department" to determine compliance with emission limits if the methods listed in rules 336.2004 and 336.2040 do not result in accurate or reliable results. This represents unacceptable State discretion. The State must submit any change in test methods to EPA for our approval as a SIP revision.

C. EPA's Proposed Action

To determine a rule's approvability, we must evaluate the rule for consistency with the requirements of the Clean Air Act, EPA regulations and the our interpretation of these requirements as expressed in EPA policy guidance documents. We have found Michigan's proposed SIP revision to be inconsistent with the Federal definition of VOC in 40 CFR 51.100(s). The proposed revision is also inconsistent with EPA policy guidance documents, including: "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" dated May 25, 1988; EPA's policy memorandum dated June 8, 1989, from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, entitled "Definition of VOC: Rationale;" EPA's policy memorandum dated April 17, 1987, from G. T. Helms, Chief, Control Programs Operations Branch, entitled "Definition of VOC;" and EPA's policy memorandum dated April 17, 1987, from G. T. Helms, Chief, Control Programs Operations Branch, entitled "Definition of Volatile Organic Compounds (VOC's)." Therefore, we are proposing to disapprove Michigan's SIP revision request.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA's disapproval of the State request under Section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal disapproval action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 28, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–14763 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6358–2]

Report to Congress on Fossil Fuel Combustion Wastes; Response to Requests for Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Response to requests for extension of public comment period.

SUMMARY: The Environmental Protection Agency published a notice of availability on April 28, 1999 (64 FR 22820) for the Agency's Report to Congress on Fossil Fuel Combustion Wastes that is required by section 8002(n) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(n). That notice also announced a 45-day public comment period on the report. The Agency has received numerous requests to extend the public comment period by up to six months. Because the Agency is currently subject to a court-approved consent decree to issue its regulatory determination by October 1, 1999, EPA is not able, at this time, to grant an extension of the comment period, since any extension would leave insufficient time for EPA to complete a regulatory determination by that date. However, the Agency is currently discussing the possibility of an extension of this deadline with the parties to the consent decree. Such an extension would allow the Agency to grant an extension of the public comment period. Pending the conclusion of those discussions and any extension of the consent decree deadline, the closing date for the comment period on the Report remains June 14, 1999.

DATES: The comment period on the Report to Congress on Fossil Fuel Combustion Wastes closes June 14, 1999.

ADDRESSES: Those persons wishing to submit public comments must send an original and two copies of their comments referencing EPA docket number F–1999–FF2P–FFFFF to: RCRA Docket Information Center (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC, 20460. Hand deliveries of comments should be made to the Arlington, VA address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also identify the docket number F–1999–FF2P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I Building, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that the public make an appointment by calling (703) 603–9230.

The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The Report to Congress is also available electronically. See the Supplementary Information section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of the Report to Congress, contact Dennis Ruddy, U.S. Environmental Protection Agency (5306W), 401 M Street, SW., Washington, DC 20460, at (703) 308–8430, or e-mail: ruddy.dennis@epa.gov.

SUPPLEMENTARY INFORMATION: Copies of the full report, titled Report to Congress: Wastes from the Combustion of Fossil Fuels; Volume 2—Methods, Findings, and Recommendations (EPA publication number EPA 530–R–99–010), are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: http://www.epa.gov/epaoswer/other/fossil/index.htm. Printed copies of Volume 2 and the executive summary, titled Report to Congress: Wastes from the Combustion of Fossil Fuels; Volume 1—Executive Summary (EPA publication number EPA 530–S–99–010), can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810. The Executive Summary is also available in electronic format at the EPA Web site identified above.

I. Background

The Environmental Protection Agency published a notice of availability on April 28, 1999 (64 FR 22820) for the Agency's Report to Congress on Fossil Fuel Combustion Wastes that is required by section 8002(n) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(n). Please see the April 28, 1999 notice for particulars on the purpose and content of the Report to Congress.

The April 28, 1999 notice also announced a 45-day public comment period on the Report to Congress, which was to end on June 14, 1999. In response to that notice, numerous parties have requested that EPA extend the public comment period by up to six months. EPA is, however, currently required by a court-approved consent decree in *Gearhart* v. *Reilly*, Civil No. 91–2345 (D.D.C.) to complete the regulatory determination by October 1. EPA would not be able to meet this deadline if the Agency granted any extension to the comment period. The Agency is currently discussing the possibility of an extension of this deadline with the parties to the consent decree. Such an extension would in turn allow the Agency to grant an extension of the public comment period. However, unless and until the court-approved schedule is modified, the Agency is bound to work towards completing the regulatory determination under the current schedule. Therefore, interested parties should be prepared to submit their comments by the current June 14, 1999 deadline for the receipt of public comments.

In the event the current court-ordered schedule for completing the regulatory determination is extended, the Agency will promptly publish a notice in the **Federal Register** extending the deadline for the receipt of public comments.

Dated: June 4, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–14768 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–207; RM–9626]

Radio Broadcasting Services; Kuna, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 247C to Kuna, Idaho, as that locality's first local aural transmission service. Petitioner is requested to provide additional engineering showings to demonstrate that its proposal could comply with the city grade coverage requirements of Section 73.315 of the Commission's Rules. Coordinates used for this proposal are 43–04–26 NL and 116–59–54 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–207, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14732 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–208; RM–9627]

Radio Broadcasting Services; Melba, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 260C2 to Melba, Idaho, as that locality's

first local aural transmission service. Petitioner is requested to provide additional engineering showings to demonstrate that its proposal could comply with the city grade coverage requirements of Section 73.315 of the Commission's Rules. Coordinates used for this proposal are 43–08–21 NL and 116–45–25 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–208, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14733 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–209; RM–9628]

Radio Broadcasting Services; Buras, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 279C2 to Buras, Louisiana, as that community's first local aural transmission service. Petitioner is requested to provide additional engineering showings to demonstrate the availability of a suitable area for tower construction as the site restriction required to accommodate the proposal appears to be located in marshland. Coordinates used for this proposal are 29–18–15 NL and 89–32–00 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–209, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14734 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–210; RM–9629]

Radio Broadcasting Services; Flagstaff, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain West Broadcasting, requesting the allotment of Channel 279C3 to Flagstaff, Arizona, as that community's fifth local FM transmission service. A separate request, filed by Mark S. Haughwout to allot Channel 279A to Flagstaff will be considered as comments in support of the instant proposal, as Commission policy is to allot the highest class channel requested to a community that meets the technical provisions of our rules. Coordinates used for this proposal are 35–17–19 NL and 111–38–26 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., President, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–210, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC's Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14735 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–211; RM–9630]

Radio Broadcasting Services; Winona, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 242C3 to Winona, Arizona, as that locality's first local aural transmission service. Information is requested regarding the attributes of Winona, Arizona, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 35–12–12 NL and 111–24–24 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–211, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14736 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–212; RM–9640]

Radio Broadcasting Services; Amelia, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 249C3 to Amelia, Louisiana, as that community's first local aural transmission service. Petitioner is requested to provide additional engineering showings to demonstrate the availability of a suitable area for tower construction as the site restriction required to accommodate the proposal appears to be located in marshland. Coordinates used for this proposal are 29–30–21 NL and 91–03–46 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–212, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14737 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–213; RM–9641]

Radio Broadcasting Services; Kootenai, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 294A to Kootenai, Idaho, as that locality's first local aural transmission service. As Kootenai is located within 320 kilometers (200 miles) of the U.S.-Canada border, concurrence of the Canadian government to this proposal is required. Coordinates used for this proposal are 48–18–37 NL and 116–30–45 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–213, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14738 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–202; RM–9620]

Radio Broadcasting Services; Mountainaire, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 293A to Mountainaire, Arizona, as that locality's first local aural transmission service. Information is requested regarding the attributes of Mountainaire, Arizona, to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 35–13–00 NL and 111–42–01 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–202, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14739 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–203; RM–9621]

Radio Broadcasting Services; Dove Creek, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 273C3 to Dove Creek, Colorado, as that locality's first local aural transmission service. Coordinates used for this proposal are 35–45–54 NL and 108–54–18 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to

filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–203, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14740 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–204; RM–9623]

Radio Broadcasting Services; Grand View, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 228A to Grand View, Idaho, as that locality's first local aural transmission service. Coordinates used for this proposal are 42–53–47 NL and 116–05–30 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–204, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14741 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–205; RM–9624]

Radio Broadcasting Services; Hazelton, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 232C3 to Hazelton, Idaho, as that locality's first local aural transmission service. Coordinates used for this proposal are 42–35–54 NL and 114–07–54 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–205, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14742 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–206; RM–9525]

Radio Broadcasting Services; Kimberly, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 291C3 to Kimberly, Idaho, as that locality's first local aural transmission service. Coordinates used for this proposal are 42–30–22 NL and 114–21–45 WL.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mountain West Broadcasting, c/o Victor A. Michael, Jr., 6807 Foxglove Drive, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–206, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14743 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 111
Thursday, June 10, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Chief Economist; Notice of Intent To Establish an Advisory Committee on Small Farms and Solicit Nominations for the Committee

AGENCY: Office of the Chief Economist, USDA.

ACTION: Notice of intent to establish and solicitation of nominations for Advisory Committee on Small Farms.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to establish an Advisory Committee on Small Farms. The purpose of the Committee is to gather and analyze information regarding small U.S. farms and ranches and recommend to the Secretary of Agriculture actions to take to ensure their continued viability and to enhance their economic livelihood. The Committee is in the public interest and within the duties and responsibilities of the Department of Agriculture. Establishment of the Committee also ensures the continued implementation and consideration of the recommendations made by the National Commission on Small Farms in its report, "A Time to Act."

DATES: Written comments and nominations must be received on or before June 25, 1999.

ADDRESSES: Comments and nominations should be sent to Alfonzo Drain, Deputy Director of Small Farms, Office of the Chief Economist, U.S. Department of Agriculture, Room 112–A, Jamie L. Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250–3810. Telephone: 202–720–3238; Fax: 202–690–4915.

FOR FURTHER INFORMATION CONTACT: Alfonzo Drain, 202/720–3238. E-mail address: adrain@nass.usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Secretary of Agriculture intends to establish the Advisory Committee on Small Farms, hereinafter referred to as the Committee.

The Committee will monitor government and private sector actions and policy and program proposals that relate to small farms and ranches, including limited-resource farms and ranches; evaluate the impact such actions and proposals may have upon the growth and continuation of small farms and ranches; review USDA programs and strategies to implement small farm policy; advise the Secretary on actions to strengthen USDA programs; and evaluate other approaches that the Committee would deem advisable or which the Secretary of Agriculture or the Director of Sustainable Development and Small Farms may request the Committee to consider.

The Committee will have 15 members, one of whom will serve as chair and be appointed by the Secretary of Agriculture, and one of whom will serve as a vice-chair and be appointed by the Committee. Members will represent small farms and ranches, and the diverse groups USDA programs serve, including but not limited to, finance, commerce, conservation, cooperatives, nonprofit organizations, rural communities, academia, state and local governments, Native Americans, farm workers, and other interests as the Secretary determines. USDA will follow equal opportunity practices in making appointments to the Committee. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The Secretary of Agriculture shall make all appointments to the Committee and the members will serve at the Secretary's discretion. Members will serve staggered terms. Initially, the Secretary will appoint 5 members to one-year terms, 5 members to two-year terms, and 5 members to three-year terms. As vacancies expire, the Secretary will appoint members as appropriate. The Committee may establish subcommittees as it determines necessary subject to the provisions of the Federal Advisory Committee Act and the approval of the chair or the chair's designee.

Persons nominated for the Advisory Committee on Small Farms will be required to complete and submit an Advisory Committee Membership Background Information Questionnaire (form AD 755).

The duties of the Committee are solely advisory. The Committee will meet at least once a year and make recommendations to the Secretary of Agriculture regarding USDA's small farms program and other matters related to small farms. The first meeting is planned for September 1999, and all meetings will be open to the public. Committee members will be reimbursed for official travel expenses only.

Nominations are being sought through the media, the **Federal Register**, and other appropriate methods. Nominations should include the following information: name, title, address, telephone number, and organization, and may be submitted by e-mail to: adrain@nass.usda.gov or faxed to (202) 690–4915. The required Advisory Committee Membership Information Questionnaire is also available on the Internet (see instructions below) and may be requested by telephone, fax, or e-mail using the information above. The completed questionnaire may be faxed to the number above, mailed, or e-mailed directly from the Internet web site.

All mailed correspondence should be sent to Alfonzo Drain, Office of the Chief Economist, U.S. Department of Agriculture, Room 112–A, Jamie L. Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250–3810. You may access the Advisory Committee Membership Background Information Questionnaire (form AD 755) on-line at: *http://www.usda.gov/oce/osfsd/advisorynotice.htm*. You will have a choice of completing and submitting the Questionnaire on-line or printing it from an Adobe PDF file and mailing or faxing the completed Questionnaire to the above address or fax number.

Signed at Washington, DC, June 1, 1999.

Keith Collins,

Chief Economist, Office of the Chief Economist.

[FR Doc. 99–14777 Filed 6–9–99; 8:45 am]

BILLING CODE 3410–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 17, 1999; 8:30 a.m.

PLACE: Sheraton Chicago Hotel, 301 East North Water Street, Parlor C (lobby level), Chicago, Illinois 60611.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: June 7, 1999.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 99–14837 Filed 6–8–99; 11:07 am]

BILLING CODE 6230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:45 p.m. on July 1, 1999, at the JC Penney Government Relations Office (Suite 1015), 1156 15th Street NW, Washington, DC 20036. The purpose of the meeting is to invite representatives from the financial services industry to discuss current issues in the mortgage lending discrimination debate including credit scoring, community outreach by lending institutions, and lending to minority owned businesses. The Committee will continue planning future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lewis Anthony, 202–483–3262, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–14662 Filed 6–9–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 4 p.m. on June 29, 1999, at the Frederick County Commission, Winchester Hall, First Floor Hearing Room, 12 East Church Street, Frederick, Maryland 21701. The purpose of the meeting is to review the status of the current project on Korean American store owners in Baltimore, discuss alternatives and select the next project, and hear presentations by invited speakers on civil rights developments.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–14663 Filed 6–9–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 18, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of May 14, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. Racial and Ethnic Tensions in American Communities: The New York Report
VI. State Advisory Committee Report "Alaskan Natives and Other Minorities in the Special Education Program of Four Alaskan Districts" (Alaska)
VII. Future Agenda Items.

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–14926 Filed 6–8–99; 3:29 pm]

BILLING CODE 6750–06–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Antidumping Duty Administrative Review of Heavy Forged Hand Tools From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on Heavy Forged Hand Tools from the People's Republic of China. The review covers four manufacturers/exporters of the subject merchandise to the United

States for the period February 1, 1997 to January 31, 1998.

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Frank Thomson, Office 4, Office of the AD/CVD Enforcement, Import Administration. U.S. Department of Commerce, 14th St. and Constitution Ave., NW Washington, DC 20230, telephone: (202) 482–3601, or (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the final results of the this review within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the final results until July 7, 1999. *See* Memorandum from Bernard T. Carreau to Robert LaRussa, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building (June 1, 1999).

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A).

Dated: June 4, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–14780 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final determination of antidumping duty investigation.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final determination in the antidumping duty investigation of hot-rolled flat-rolled carbon-quality steel (Hot-Rolled Steel) from the Russian Federation (Russia).

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski or Rick Johnson at (202) 482–3208 or 482–3818, respectively; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Postponement of Final Determination and Extension of Provisional Measures

On February 25, 1999, the affirmative preliminary determination was published in this proceeding (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 64 FR 9312). Pursuant to section 735(a)(2) of the Act, on March 4, 1999, respondent JSC Severstal (Severstal) requested that the Department extend the final determination in this case for the full sixty days permitted by statute. Severstal also requested an extension of the provisional measures (*i.e.*, suspension of liquidation) period from four to six months in accordance with the Department's regulations (19 CFR 351.210(e)(2)). Therefore, in accordance with 19 CFR 351.210(b)(2)(ii), on May 6, 1999, we partially extended this final determination until June 10, 1999 (*see Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation*, 64 FR 24329). Due to complex and contentious issues associated with this final determination, this notice serves to fully extend this final determination until no later than 135 days after the date of publication of the preliminary determination as originally requested by the respondents, *i.e.*, until July 10, 1999. Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: June 4, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–14781 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–802]

Final Determination of Sales at Less Than Fair Value: Uranium From the Republic of Kazakhstan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: June 10, 1999.

FOR FURTHER INFORMATION CONTACT: James C. Doyle, Sally C. Gannon or Juanita H. Chen, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–3793.

SUMMARY: After the Republic of Kazakhstan ("Kazakhstan") terminated the suspension agreement on uranium from Kazakhstan, the U.S. Department of Commerce ("Department") resumed its antidumping investigation on uranium from Kazakhstan. The Department determines that imports of uranium from Kazakhstan are being sold, or are likely to be sold, in the United States at less than fair value, as provided in Section 735 of the Tariff Act of 1930, as amended (1994) ("the Act").

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective in 1994. In addition, unless otherwise indicated, all citations to the Department's regulations are citations to the regulations at 19 CFR Part 353 (1994).

Case History

On November 29, 1991, the Department initiated an antidumping investigation on uranium from the Union of Soviet Socialist Republics ("Soviet Union"). *See Initiation of Antidumping Duty Investigation: Uranium from the Union of Soviet Socialist Republics*, 56 FR 63711 (December 5, 1991). On December 25, 1991, the Soviet Union dissolved and the United States subsequently recognized the twelve newly independent states ("NIS") which emerged, one of which was the Republic of Kazakhstan. On January 16, 1992, the Department presented an antidumping duty questionnaire to the Embassy of the Russian Federation, the only NIS which had a diplomatic facility in the United States at that time, for service on Kazakhstan. On January 30, 1992, the Department sent questionnaires to the

United States Embassy in Moscow, which served copies of the questionnaire on the permanent representative to the Russian Federation of each NIS. The questionnaires were served on February 10 and 11, 1992. On March 25, 1992, the Department stated that it intended to continue its antidumping duty investigation with respect to the NIS of the former Soviet Union. *See Postponement of Preliminary Antidumping Duty Determination: Uranium from the Former Union of Soviet Socialist Republics (USSR)*, 57 FR 11064 (April 1, 1992).

On June 3, 1992, the Department issued its preliminary determination, in its antidumping duty investigation on uranium from Kazakhstan, that imports of uranium from Kazakhstan were being, or were likely to be, sold in the United States at less than fair value, as provided for in the Act. *See Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380 (June 3, 1992). On October 16, 1992, the Department amended the preliminary determination to include highly enriched uranium ("HEU") in the scope of the investigation. *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49221 (October 30, 1992). Also on this date, the Department also signed an agreement suspending the InvestigationInvestigation investigation. *See Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan*, 57 FR 49222 (October 30, 1992) ("Suspension Agreement"). The basis for the Suspension Agreement was an agreement by Kazakhstan to restrict exports of uranium to the United States.

On November 10, 1998, the Department received notice from Kazakhstan of its intent to terminate the Suspension Agreement. Section XII of the Suspension Agreement provides that Kazakhstan may terminate the Suspension Agreement at any time upon notice to the Department, and termination would be effective 60 days after such notice. Accordingly, on January 11, 1999, the Department terminated the Suspension Agreement, as requested by Kazakhstan, and resumed the ilnvestigationnvestigation. *See Termination of Suspension Agreement, Resumption of Antidumping Investigation, and Termination of Administrative Review on Uranium From Kazakhstan*, 64 FR 2877 (January 19, 1999). On January 13, 1999, the Department issued a supplemental questionnaire for the original period of investigation ("POI") to Kazakhstan. The supplemental questionnaire was issued to Kazakhstan as requests for separate rates were not submitted to the Department. On January 28, 1999, Kazakhstan requested a 60-day postponement of the date of the Department's final determination. On February 1, 1999, Kazakhstan submitted its response to Section A of the supplemental questionnaire. On February 3, 1999, Kazakhstan submitted minor corrections to its Section A response. On February 17, 1999, Kazakhstan submitted its response to Sections C and D of the supplemental questionnaire.

In reviewing Kazakhstan's response, the Department determined that Kazakhstan's response required significant additional information. Therefore, on March 5, 1999, the Department issued a second supplemental questionnaire. On March 12, 1999, the Department published a notice in the **Federal Register** postponing the final determination date to June 3, 1999 and postponing the hearing date to May 12, 1999. *See Notice of Postponement of Final Antidumping Determination: Uranium From Kazakhstan*, 64 FR 12287 (March 12, 1999). On March 17, 1999, Kazakhstan responded to the Department's second supplemental questionnaire. Kazakhstan stated that it has endeavored to the best of its ability to assemble the information, but complete data no longer exists for the POI. Kazakhstan argued that it should not be penalized for actions taken by parties, such as the Russian Federation Ministry for Atomic Energy ("MINATOM"), prior to the existence of Kazakhstan. Instead, Kazakhstan provided information from 1994, which it claimed was the earliest available data, and provided no translations for the documents previously submitted. On April 19, 1999, Kazakhstan submitted additional information to supplement its Section D response.

The Department conducted verification of the provided information. The Department conducted verification in Almaty, Kazakhstan, from May 4, 1999 through May 8, 1999. On May 5, 1999, the Department published a notice in the **Federal Register** extending the deadline for case briefs until May 17, 1999, rebuttal briefs until May 21, 1999, and extending the hearing date to May 25, 1999. *See Antidumping Investigation on Uranium from the Republic of Kazakhstan: Notice of Extension of Time for Briefs and Hearing*, 64 FR 24137 (May 5, 1999).

On May 17, 1999, the Department received case briefs from Kazakhstan and from the uranium coalition consisting of the Ad Hoc Committee of Domestic Uranium Producers (a petitioner), the Paper, Allied-Industrial-Chemical and Energy Workers International Union (the successor to petitioner Oil, Chemical, and Atomic Workers' Union), and USEC, Inc. (hereinafter collectively "Uranium Coalition"). On May 21, 1999, the Department received rebuttal briefs from Kazakhstan and the Uranium Coalition. On May 26, 1999, the Department conducted a hearing on the issues.

Scope of the Investigation

The merchandise covered by this investigation constitutes one class or kind of merchandise. The merchandise covered by this investigation includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys; dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}. Both low enriched uranium ("LEU") and HEU are included within the scope of this investigation. LEU is uranium enriched in U^{235} to a level of up to 20 percent, while HEU is uranium enriched in U^{235} to a level of 20 percent or more. The uranium subject to this investigation is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50, of the Harmonized Tariff Schedule ("HTS"). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive. HEU is also included in the scope of this investigation. "Milling" or "conversion" performed in a third country does not confer origin for purposes of this investigation. Milling consists of processing uranium ore into uranium concentrate. Conversion consists of transforming uranium concentrate into natural uranium hexafluoride (UF_6).

Since milling or conversion does not confer origin, uranium ore or concentrate of Kazakhstan origin that is subsequently milled and/or converted in a third country will be considered of Kazakhstan origin. The Department continues to regard enrichment of uranium as conferring origin.

Period of the Investigation

The POI is June 1, 1991 through November 30, 1991.

Verification

As provided in Section 776(b) of the Act, the Department conducted a verification of the information provided by Kazakhstan using standard verification procedures including, where possible, the examination of relevant sales and financial records and attempts to trace back to original source documentation containing relevant information, as well as the examination of 1994 documentation and other available information.

Best Information Available

The Department has determined, in accordance with Section 776(c) of the Act, that the use of best information available ("BIA") is appropriate in this investigation. In deciding whether to use BIA, Section 776(c) provides that the Department may take into account whether the respondent provided a complete, accurate, and timely response to the Department's request for factual information. The Department requires a response which provides complete and accurate information on U.S. sales and factors of production in order to consider the response in its final determination. The responses which Kazakhstan submitted were severely deficient on their face: no U.S. sales data was provided, and factors of production information from the POI was so incomplete as to render the data useless for the Department's purposes. Furthermore, the Department was unable to verify the information which Kazakhstan did provide. Accordingly, the incomplete nature of Kazakhstan's responses and the failure of the data to verify requires the Department to use BIA. BIA is based on information submitted in the petition, detailed in the Department's initiation notice, and analyzed in the preliminary determination. *See* Comment 2, below.

Fair Value Comparisons

To determine whether sales of uranium from Kazakhstan to the United States were made at less than fair value, the Department sought to compare the United States prices to the foreign market value. *See* Comment 2, below.

Interested Party Comments

Comment 1: The Uranium Coalition argues that the Department's decision to issue a new questionnaire to Kazakhstan after termination of the Suspension Agreement, because Kazakhstan may not have had a full opportunity to respond to the original antidumping questionnaire, was inconsistent with the factual record and established legal precedent. The Uranium Coalition contends that record evidence indicates the Department gave Kazakhstan ample opportunity to respond in the preliminary segment of this Investigationinvestigation. The Uranium Coalition states that the Department exceeded the minimum requirements of delivering a public version of the petition to the Embassy for the Soviet Union in Washington, D.C., notifying Kazakhstan of the deadline for its response, providing Kazakhstan an opportunity to extend the deadline for its response, and ensuring Kazakhstan had adequate opportunity to comment on information submitted by other parties. *See* 19 C.F.R. Sections 353.12(g), 353.31(b)(2), and 353.31(c)(3). The Uranium Coalition notes that the Department delivered two copies of the petition, two copies of the questionnaire, extended the deadline for responses three times, issued a new service list, and remained in constant contact with the Deputy Trade Representative of the Trade Representation of the Russian Federation. The Uranium Coalition further notes that in the Department's cable requesting the Foreign Commercial Service deliver the questionnaire, the Department stated that its efforts in serving the questionnaires is to give each republic the opportunity to fully participate. The Uranium Coalition goes on to state that its arguments concerning the Department's efforts are supported by the findings of the court in the *Techsnabexport, Ltd.* v. *United States* proceedings (hereinafter collectively "Tenex" proceedings). See 795 F. Supp. 428 (Ct. Int'l Trade Ct. Int'l Trade1992) ("Tenex I"); 802 F. Supp. 469 (Ct.t. Int'lnt'l Traderade 1992) ("Tenex II"). The Uranium Coalition points out that it had been argued in the Tenex proceedings that the Department had violated the parties' procedural due process rights to notice and opportunity to participate, and the Court of International Trade ("CIT") determined that the actions taken by the Department provided adequate process and the opportunity to participate in the Investigationinvestigation to the fullest extent, thus, the Department should not have been concerned about Kazakhstan's opportunity to respond to the questionnaire upon resumption of the Investigationinvestigation.

The Uranium Coalition notes that the Department's preliminary determination was based on BIA because Kazakhstan did not supply any requested information. The Uranium Coalition argues that the Department has consistently refused to accept new information submitted to remedy deficiencies that led to a BIA preliminary determination, citing *Certain Fresh Cut Flowers from Columbia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42855 (August 19, 1995); and *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Italy*, 58 FR 37152, 37153 (July 9, 1993). The Uranium Coalition also argues that 19 U.S.C. Section 1673c(i)(1)(B) directs the Department to treat the date on which the Suspension Agreement is terminated as the day on which the preliminary determination is issued. The Uranium Coalition argues that allowing submission of information after the preliminary determination will lead to abuse of the statutory provision for suspension agreements, in that initially non-cooperative parties could be afforded an additional opportunity to provide the required information, perhaps years later.

Finally, the Uranium Coalition argues that due process is compromised by the collection of new information after the preliminary determination, as the Department is left insufficient time to properly analyze the information, conduct verification, and interested parties are left insufficient time to review and comment on the information. The Uranium Coalition notes that due process concerns are particularly serious if the Department issues a final determination based on a data set different from that used in the preliminary determination.

Kazakhstan argues that the Department's decision to provide Kazakhstan an opportunity to submit information in the resumed Investigationinvestigation was correct and proper. Kazakhstan notes that the Department "may request any person to submit factual information at any time during a proceeding." 19 CFR. Section 353.31(b)(1). Kazakhstan agrees that the Department made a valiant effort to serve the initial questionnaire, but argues that it was unable, not unwilling, to respond to the questionnaire. Kazakhstan argues that at the time of the initial questionnaire, Kazakhstan was

undergoing its creation and restructuring, including establishing a system to oversee uranium production in its territory. Kazakhstan notes that the National Joint-Stock Company of Atomic Energy and Industry ("KATEP") was not created until after the questionnaires were served on the NIS. Kazakhstan notes that its willingness to respond is demonstrated by its full cooperation with the Department during the seven years of the suspension agreement. Kazakhstan argues that this indicates that it would have provided the information requested by the Department in the original Investigationinvestigation had it been in a position to do so at the time.

Kazakhstan disagrees with the Uranium Coalition's claim that the Department is creating bad precedent in suspension agreements by allowing Kazakhstan the opportunity to submit sales and factor information in the resumed investigation. Kazakhstan argues that because the circumstances in this investigation are exceptional, the only "precedent" established is that the Department has the discretion, under extreme circumstances and in the interest of fairness, to determine whether it is appropriate to provide an opportunity to submit information in a resumed investigation. Kazakhstan notes that the Department's decision to provide such an opportunity is in accordance with the Tenex proceedings, where the CIT stated that if presented with the question, it would "decide in conjunction with review of the final determination whether the opportunity given [to provide republic-specific data] was statutorily sufficient." *See* 802 F. Supp. at 473

Kazakhstan also disagrees with the Uranium Coalition's claim that the domestic interested parties may not have had an adequate opportunity to review and comment on the information submitted in the resumed investigation. Kazakhstan notes that the Uranium Coalition had over three months to examine Kazakhstan's sales and factor information, none of which has materially changed since the date of initial filing. Accordingly, Kazakhstan argues that the Uranium Coalition cannot contend it had no opportunity to comment on the submitted information. Kazakhstan further notes that the Uranium Coalition has never offered material comments or submitted any sales or factor information specific to Kazakhstan during any point in the investigation.

In light of the circumstances, Kazakhstan argues that the Department appropriately provided Kazakhstan the opportunity to submit information in the resumed investigation. Kazakhstan argues that the supplemental questionnaires were all the more appropriate considering there was no republic-specific information on the record which would allow the Department to make a proper analysis of dumping in the resumed investigation.

Department's Position: The Department recognizes that the court in the Tenex proceedings determined that the actions taken by the Department provided adequate opportunity to participate in the investigation to the fullest extent. In discussing notice and opportunity to be heard and participate in the investigation, the CIT stated that the "petition gave notice of intent to reach exports from the republics as well as the USSR, and the proceedings have been sufficiently delayed so that the plaintiffs have had adequate notice and opportunity to participate." *Tenex I* at 437. The Court further stated that "although unionwide data was used at the outset, presumably the republics have been given the opportunity to provide republic-specific data. If presented with the question, the court will decide in conjunction with review of the final determination whether the opportunity given was statutorily sufficient." *Tenex II* at 473.

Given the unique circumstances of this case and the lapse of time since the original questionnaires were presented, Kazakhstan may have gained access to the data the Department originally requested. The Department determined that it was appropriate to give such additional opportunity to Kazakhstan to provide the originally-requested information at this time. The CIT noted that the "[due process] test is one of fundamental fairness in light of the total circumstances." *Tenex I* at 436. Therefore, while the Department fulfilled its due process obligation given the circumstances at the beginning of this proceeding, the circumstances have changed, calling for a more accommodating opportunity to respond to the original questionnaire.

In essence, the Uranium Coalition argues that the Department gave Kazakhstan too much due process; yet fails to indicate a maximum limit on due process measures. The Department took such measures in light of the unique circumstances of this investigation. At the time of the preliminary investigation and issuance of the original questionnaire, the Soviet Union had just collapsed and the resulting NIS, including Kazakhstan, were struggling to establish themselves. Taking this into consideration, along with the fact that eight years have elapsed since initiation of the investigation, the Department considers it reasonable to have afforded Kazakhstan an additional opportunity to fully participate in the investigation.

Comment 2: The Uranium Coalition argues that the Department should use BIA and apply the 177.87 percent margin calculated for natural uranium in the preliminary determination. The Uranium Coalition notes that Section 776(c) of the Act mandates the Department to use BIA "whenever a party * * * refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation * * *" *See also* 19 U.S.C. Section1677e(c). The Uranium Coalition argues that application of BIA furthers the purpose of encouraging full disclosure by respondents, so that the Department can compute margins as accurately as possible. The Uranium Coalition argues that the Department must apply BIA even when a respondent's inability to provide requested information is due to circumstances outside the respondent's control. *See Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan*, 55 F.R. 34585 (August 23, 1990) (documents destroyed by fire); *NSK Ltd.* v. *United States*, 794 F. Supp. 1156, 1160 (Ct. Int'l Trade 1992) (corporate policy to destroy data after five years). The Uranium Coalition argues that the CIT has rejected a "best efforts" exception to the application of BIA. *See Tai Yang Metal Industrial Co., Ltd.* v. *United States*, 712 F. Supp. 973, 977–78 (Ct. Int'l Trade 1989); *Uddeholm Corp.* v. *United States*, 676 F. Supp. 1234, 1237 (Ct. Int'l Trade 1987). The Uranium Coalition further argues that Kazakhstan's inability to obtain information from third parties [1] is no exception to the requirement of a BIA determination. The Uranium Coalition argues that the Department has consistently applied BIA when information held by a third party has not been submitted. *See Fresh and Chilled Atlantic Salmon from Norway; Final Results from Antidumping Duty Administrative Review*, 58 FR 37912, 37915 (July 14, 1993); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 65527, 65538 (December 13, 1996). The Uranium Coalition also notes that the

[1] The Uranium Coalition notes that it is uncertain from the evidence whether Kazakhstan expended sufficient effort in obtaining information from third parties.

Department has determined that the fact that a third party might have incentive not to provide information is no exception to the application of BIA. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24368 (May 6, 1999) [2].

The Uranium Coalition argues that the Department should apply total, not partial, BIA in calculating the final margin. The Uranium Coalition first argues that the Department should have proceeded to a final determination based on BIA due to Kazakhstan's failure to answer the original questionnaire. Disagreeing with the Department's decision to issue a supplemental questionnaire instead, the Uranium Coalition argues that, nevertheless, the Department should apply total BIA in its final determination as Kazakhstan's subsequent response is inadequate, untimely and not verifiable. The Uranium Coalition points to numerous deficiencies in Kazakhstan's response, including: (1) No U.S. sales information provided for its Section C response, which is necessary to calculate prices; (2) information based on 1994 and 1998 data, instead of 1991 data; (3) factors of production reported only for the in situ leaching production processes, despite the use of other processes during both 1991 and 1994; (4) incomplete factors of production data provided; (5) no financial or government documents provided; (6) no quantity and value of sales data provided for its Section A response; and (7) no supporting documentation for Section D provided, as requested by the Department. The Uranium Coalition argues that Kazakhstan should not be allowed to benefit from submitting self-selected information. While 1991 information may no longer be available, the Uranium Coalition argues that regardless of the passage of time, change in personnel, and destruction of relevant records, the Department should base its final determination on BIA. *See Koyo Seiko Co. Ltd.* v. *United States*, 796 F. Supp. 517, 525 (Ct. Int'l Trade 1992) (applying BIA where respondent was unable to provide 1974 information in 1986). The Uranium Coalition argues that not only is the Department unable to calculate foreign market value without factors of production data, overall, the submitted data is insufficient for the Department to calculate a margin.

As Kazakhstan is the sole respondent and a non-market economy, the Uranium Coalition argues the only rate the Department should use is the rate from the preliminary determination. The rate established in the preliminary determination was based upon the petition and information submitted by Petitioners and two parties from which the Department solicited information. *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, et al.* 57 FR at 23382.

The Uranium Coalition argues that Kazakhstan has not cooperated with the investigation from the start, beginning with its failure to respond to the original questionnaire. The Uranium Coalition notes that while Kazakhstan had 60 days to prepare for the resumed investigation after providing notice of its intent to terminate the Suspension Agreement, it nevertheless provided no information. Furthermore, the Uranium Coalition notes that the data untimely provided by Kazakhstan during verification could have been reviewed prior to the date its questionnaire responses were due. The Uranium Coalition argues that this demonstrates Kazakhstan's failure to cooperate; the Department should consider Kazakhstan's lack of cooperation in its final determination and apply the rate established in the preliminary determination.

While Kazakhstan disagrees with the continuation of the investigation, it argues that if the investigation is not terminated, the Department should use 1994 factor information in its final determination. Kazakhstan argues that it cooperated to the best of its ability, again noting that the original respondent named in the petition, the Soviet Union, no longer exists. Kazakhstan states that several third parties control the POI data on sales and production for the area in the Soviet Union now known as Kazakhstan. Kazakhstan notes that it attempted to obtain data from these third parties. Within MINATOM, Kazakhstan states that it contacted and requested information from the First Department, Atomredmetzoloto, which oversaw mining and milling in the Soviet Union during the POI, and Techsnabexport, which oversaw all uranium sales from the Soviet Union during the POI. Kazakhstan states that it received no information from these requests. Kazakhstan also states that while the regional departments that reported to Atomredmetzoloto (Uzhpolymetal, Vostokredmet, Tselliny and Prikaspiysky (a.k.a. Kaskor)) are possible sources of POI sales and production information, it is unclear what records they created and retained in the ordinary course of business as each followed different standards then. Furthermore, Kazakhstan notes that none of these records are under its control; Uzhpolymetal is in Kyrgyzstan and Vostokredmet is located in Tajikistan. As for Tselliny and Kaskor, Kazakhstan states that it explained during verification that neither regional department was under the direct control of KATEP or of Kazatomprom. Finally, Kazakhstan notes that because many of the third parties now compete with Kazakhstan in the uranium market, they have an incentive not to respond to requests for information.

Kazakhstan also argues that after the dissolution of the Soviet Union on December 25, 1991, there was no formal centralized management of uranium activities in Kazakhstan until the establishment of KATEP on February 12, 1992. Kazakhstan notes that while KATEP was created to take sole responsibility for all sales of subject merchandise from Kazakhstan, KATEP did not have full day-to-day management responsibility over all uranium production in Kazakhstan. Kazakhstan asserts that Kazatomprom, created on July 12, 1997, was the first entity with sole responsibility for the mining and marketing of uranium from Kazakhstan. Kazakhstan argues that the lack of formal oversight contributed to the incomplete nature of the 1991 and 1994 records.

Kazakhstan argues that the passage of time is another constraint on the availability of information. Kazakhstan notes that the individuals who recorded information during the POI are not the same individuals who helped prepare the questionnaire responses. Without the personal recollection of these individuals, Kazakhstan argues that reconstruction of the archived files was difficult. Kazakhstan also argues that because the POI is eight years ago, much of the 1991 (as well as the 1994) information has been destroyed in the ordinary course of business pursuant to document destruction policies, referencing the certificate of destruction produced during verification as examples of the policies. *See* May 13, 1999 Verification Report ("Verification Report"), at 13 and 26. Kazakhstan was also hindered in its efforts to locate data as much of the information on uranium was, and still is, considered state secrets. Kazakhstan states that knowledge on the material was limited and circulation of information was restricted. Only a limited number of

[2] The Uranium Coalition states that while that determination was made under the current antidumping statute, the principle of making an adverse inference when information is not provided applies to the pre-URAA use of BIA. *See Rhone Poulenc* v. *United States*, 899 F.2d 1185, 1190–91 (Fed. Cir. 1990).

documents on uranium were made and circulated among a small circle of officials. Accordingly, Kazakhstan argues that this made locating complete sets of documents difficult.

Kazakhstan argues that its efforts in light of the unusual and difficult situation indicates it cooperated to the best of its ability and, thus, the Department should use the 1994 factors information submitted by Kazakhstan in the final determination. Kazakhstan argues that the 1994 information it produced, despite the described obstacles, is as complete as possible, as well as verifiable. Kazakhstan states that it submitted 1994 factors information for four of the seven facilities operating during the POI. Kazakhstan argues that the Department has complete information on the total uranium output at these four facilities, and the inputs needed to produce one kilogram of uranium at each of those facilities. Kazakhstan argues that the main source documents provided for 1994, the technical reports, tied to other information available for 1994, such as the unit reports, monthly cost of production reports and the annual report filed with government authorities. Kazakhstan concedes that the Department was generally unable to trace the 1994 technical reports to a level of detail lower than the unit reports but argues that this was because more detailed information did not exist, and was not because of any inconsistency in the information.

Kazakhstan argues that the 1994 factors information is as representative of uranium production during the POI as any other source. Kazakhstan also argues that the 1994 factors information accurately represents possible uranium production today. Accordingly, Kazakhstan argues that an antidumping duty based on the provided 1994 factors information would be superior to one based on other sources. In comparing the 1994 information with the limited information available for 1991, Kazakhstan claims that similar inputs were consumed at similar levels and facility production levels were comparable. In fact, Kazakhstan suggests that 1994 data may be preferred over 1991 data as Kazakhstan controlled the 1994 facilities, whereas MINATOM controlled the 1991 facilities. Furthermore, Kazakhstan argues that the 1994 factors are based on actual production information in Kazakhstan at the same facilities operating in 1991, whereas the factors submitted by petitioners and used in the preliminary determination were estimates for Canadian facilities, where actual source documents were not used.

Kazakhstan notes that the Department has substantial discretion in selecting the source of BIA to use in its calculations. *See Magnesium Corp.* v. *United States*, 938 F. Supp. 885, 902 (Ct. Int'l Trade 1996). Kazakhstan asserts that the Uranium Coalition incorrectly contends that the Department must use information submitted in the petition as BIA. Kazakhstan notes that the Department may consider any and all information on the record in selecting BIA and argues that the final determination should be based on republic-specific data. Accordingly, Kazakhstan argues that the data it has submitted is far superior to the information submitted by the petitioners.

Department's Position: The Department continues to apply the overall rate of 115.82 percent as the BIA rate for the final determination. The Department notes that at verification none of the information provided, timely or otherwise, could be traced to annual report information at verification. Further, the Department was unable to check original well-site and factory information to tie to the few technical reports available for review. As a result, the record data can only be considered fragmentary. Without any verifiable data, the Department must resort to the rate established at preliminary determination. Additionally, while Kazakhstan asserts that it should not be held responsible for the failure of Tenex to provide data regarding U.S. shipments of subject merchandise during the POI, the Department notes that precedent to the contrary exists. Even where another party controls the information, the Department may rely on BIA if the information is not provided by the respondent. *See Helmerich & Payne, Inc.* v. *United States*, 24 F. Supp. 2d 304, n. 6 (Ct. Int'l Trade 1998).

The Department's practice is to base BIA on a simple average of the margins based on petition data, as opposed to the highest margin based on petition data, when the Department determines that the respondent has attempted to cooperate with the Department's Investigationinvestigation. In this instance, the Department calculated a natural and enriched uranium rate, modifying the original petition rates. Therefore, the Department considers it appropriate to apply the average rate of 115.82%. See e.g., Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan, 57 FR 17892 (April 28, 1992). The Department believes that Kazakhstan attempted to cooperate in this proceeding because, while the response lacks sufficient data to use in the calculation of a dumping margin, it nevertheless contains sufficient data for the Department to conclude that a serious and sustained effort was undertaken by Kazakhstan to provide data responsive to the Department's questionnaires for the POI. Therefore, the Department is basing the final margin on an average of the margins for uranium concentrate and enriched uranium derived from the petition. In this instance, the petition included margins for natural and enriched uranium, which the Department adjusted for purposes of the preliminary determination *See Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan*, 57 FR 17892 (April 28, 1992). The average of those rates, as adjusted, is 115.82 percent.

Comment 3: The Uranium Coalition asserts that the Department has the authority to clarify the scope of this Investigationinvestigation to include Kazakhstan origin natural uranium enriched in third countries in order to prevent the potential circumvention of any future antidumping duty order. The Uranium Coalition further asserts that such a clarification would be in accordance with the Department's substantial transformation analysis, the intent of the petition, and the purpose of the antidumping law. Regarding their circumvention concerns, the Uranium Coalition cites the potential cost savings for utilities purchasing Kazakhstan origin uranium at the unrestricted market price and claim that contracts permitting the foreign enrichment of Kazakhstan origin uranium are already in place. The Uranium Coalition notes that the Department's need to address potential circumvention in its substantial transformation analyses may result in a determination which differs from that of the United States Customs Service ("U.S. Customs") and that, in this case, the elements of the Department's substantial transformation analysis require a determination that third-country enrichment does not change the country of origin of Kazakhstan uranium.

The Uranium Coalition asserts that, while the petition's scope did not specifically include uranium enriched in third countries, its intent was clearly to cover all forms of uranium products and to prevent circumvention. The Uranium Coalition argues that there was no reasonable basis in 1991 to foresee the increasing use of foreign enrichment by U.S. utilities and that the Suspension Agreement was subsequently modified to cover these third-country enrichment transactions. Finally, the Uranium

Coalition notes that the Department must clarify the scope of this Investigationinvestigation in order to achieve the antidumping law's purpose of remedying the negative impact on a U.S. industry of unfairly traded imports. The Uranium Coalition argues that, when the unfairly-priced Kazakhstan uranium is enriched abroad rather than in the United States, the injurious effect on the mining sector of the U.S. industry is not altered and that the adverse effects are in fact exacerbated because the enrichment sector of the U.S. industry is damaged.

Kazakhstan contends that the Uranium Coalition's request represents an untimely attempt to improperly expand the scope of the investigation and any resulting antidumping duty order to cover uranium produced in countries not subject to this Investigationinvestigation. Kazakhstan argues that all of the factors normally considered by the Department in its substantial transformation analysis confirm that enrichment does substantially transform and confer a new country of origin on enriched uranium. Thus, Kazakhstan asserts the Department does not have the authority to expand the scope of this proceeding. Kazakhstan further asserts that including uranium enriched, and therefore produced, in third countries in the scope of this case would violate the World Trade Organization's Agreement on Rules of Origin as well as "circumvent" the standards for circumvention established in the U.S. statute.

Department's Position: The Department agrees with Kazakhstan, in part. As an initial matter, there is no evidence on the record to indicate that there were any entries into the United States during the POI of Kazakhstan uranium enriched in a third country. In fact, the Uranium Coalition notes in its brief that the practice about which they are concerned evolved after the POI. The Uranium Coalition's concern clearly centers on current and future contracts involving third-country enrichment and, therefore, is unrelated to the calculation of a dumping margin on uranium from Kazakhstan during the POI. Thus, the Department need not decide in this final determination whether uranium from Kazakhstan enriched in a third country was sold at less than fair value during the POI.

With respect to the third-country enrichment issue, its importance and complexity is illustrated by the extensive argument contained in the Uranium Coalition's and Kazakhstan's briefs and in the time devoted to this issue at the hearing. However, Kazakhstan argues that the Uranium Coalition raised the third-country enrichment issue so late in the proceeding that its due process rights were prejudiced. The Department finds that neither the Department nor Kazakhstan could effectively examine the issue prior to issuance of the final determination. A review of the case schedule on and after the date of the Uranium Coalition's filing illustrates the point. The Uranium Coalition's submission was filed on April 26, 1999, one week prior to the beginning of verification. The Department conducted verification in Kazakhstan during the week of May 4, 1999 through May 8, 1999, and issued a verification report on May 13, 1999. Parties filed case briefs on May 17, 1999, and rebuttal briefs on May 21, 1999. The hearing was held on May 26, 1999, just eight days before the date of the final determination. This schedule simply did not permit the Department sufficient time to issue supplemental questionnaires, pose questions to the Uranium Coalition or engage in the other activities necessary to properly evaluate the law, arguments, and facts surrounding this issue. Additionally, the Uranium Coalition's filing on this issue was made in the context of an investigation resumed after an almost eight-year hiatus, during which the Government of Kazakhstan began rationalizing its uranium production. Furthermore, during the initial investigation, the respondent country became independent, further complicating the link between the initial 1991–92 phase of the investigation, the 1999 resumed investigation, and the third-country enrichment issue.

As a result of the above considerations, and to provide sufficient opportunity for full analysis of the law, argument and facts regarding this issue, the Department will initiate a scope inquiry on Kazakhstan uranium enriched in a third country simultaneously with the issuance of any antidumping order in this proceeding.

Comment 4: The Uranium Coalition contends that the Department should include uranium imported under a U.S. Customs temporary import bond ("TIB") within the scope of this Investigationinvestigation in order to prevent certain "swap" transactions which may otherwise be used to circumvent a future antidumping duty order. The Uranium Coalition argues that, in this case, the Department has clear evidence, based on the past conduct of importers and domestic parties during the administration of the Suspension Agreement, that temporarily-imported merchandise can be, and has been, used to introduce dumped merchandise into U.S. commerce. The Uranium Coalition asserts that the Department has the authority to inform U.S. Customs that, due to the fungibility of the product and the nature of commercial activities in this particular industry, all Kazakhstan uranium entries, including TIB entries, must be subject to antidumping duty assessment to prevent circumvention of an order.

Alternatively, the Uranium Coalition urges the Department, at a minimum, to direct U.S. Customs to consider any entry of Kazakhstan uranium as a consumption entry subject to the antidumping order unless the TIB "statement of use" accompanying the TIB application under 19 CFR 10.31 includes a statement that the uranium to be imported under TIB will not be, and has not been, used as part of any swap, loan, or exchange transaction.

Kazakhstan argues that the Uranium Coalition's request to include Kazakhstan uranium entered under TIB in the scope of this proceeding is both untimely and improper and should be rejected by the Department. Kazakhstan notes that this issue was first raised in the Uranium Coalition's case brief, disallowing the Department the opportunity to make use of proper notice and comment procedures before departing from a prior practice with such broad implications. Furthermore, Kazakhstan notes the Uranium Coalition's concession that the Department has previously held, and the CIT upheld, that antidumping duty orders do not apply to merchandise entered under TIB.

Department's Position: The Department agrees with Kazakhstan. As noted by the Uranium Coalition, the Department has previously rejected a request to apply antidumping duties to merchandise imported under TIB procedures. *See Remand Determination: Titanium Metals Corp.* v. *United States*, Court No. 94–04–00236 (Apr. 17, 1995). The CIT then upheld this decision. See *Titanium Metals Corp.* v. *United States*, 901 F. Supp. 362 (Ct. Int'l Trade 1995). While the Department recognizes the Uranium Coalition's concerns regarding the atypical characteristics of uranium and the uranium industry, the Department reaffirms its prior finding that merchandise entered pursuant to TIB is not entered for consumption. As a result, antidumping duties cannot apply to TIB entries. In addition, the Department has no legal authority to instruct U.S. Customs to require an additional certification for such Kazakhstan TIB entries, as alternatively requested by the Uranium Coalition.

Comment 5: Kazakhstan notes that the respondent named in the original antidumping petition, the Soviet Union, was dissolved less than one month after initiation of the Investigationinvestigation and no longer exists. Kazakhstan stresses that while the courts sustained the determination to continue the Investigationinvestigation despite the dissolution of the Soviet Union, the final determination of the Investigationinvestigation must be based on facts involving Kazakhstan, not the Soviet Union. Kazakhstan argues that the distinction between Kazakhstan and the Soviet Union is critical to the Department's analyses of: (1) Whether the petition was filed on behalf of the domestic industry against Kazakhstan in particular; (2) whether there were sales of subject merchandise from Kazakhstan to the United States during the POI; and (3) the selection of surrogate values for Kazakhstan.

According to the Uranium Coalition, the fact that Kazakhstan is no longer a part of the Soviet Union does not change the Department's obligation to conduct an antidumping investigation of uranium produced during the POI in the territory which is now Kazakhstan. The Uranium Coalition argues that the Department reasonably construed the antidumping statute as authorizing continuation of this Investigationinvestigation, despite the fact that the petition leading to this Investigationinvestigation was filed against subject merchandise from the Soviet Union.

According to the Uranium Coalition, Section 731 of the Act instructs the Department to impose antidumping duties whenever foreign merchandise is sold at less than fair value in the United States, where the International Trade Commission determines that such imported merchandise causes injury to a domestic industry. The Uranium Coalition further argues that this statutory provision contains no requirement that the Department take changes in the political landscape of a foreign territory into account when determining whether the imposition of antidumping duties is warranted. According to the Uranium Coalition, it is the foreign merchandise—not the particular political configuration of the territory in which the merchandise originated—which is the critical aspect of the antidumping analysis. Thus, the Uranium Coalition concludes, changes in the geopolitical territory of the former Soviet Union are not relevant for purposes of determining whether uranium produced in any region of the former Soviet Union was traded unfairly in the United States.

In support of its conclusion, the Uranium Coalition cites to Tenex II. *See* 802 F. Supp. 469. According to the Uranium Coalition, the CIT held that the Department had full legal authority to continue its uranium investigation against the former Soviet republics, notwithstanding dissolution of the Soviet Union, because the antidumping statute did not require the Department to take into account changes in political structures in the course of its investigation. Further, according to the Uranium Coalition, since the Tenex proceedings, this rationale has been applied consistently by the Department. *See Transfer of the Antidumping Order on Solid Urea from the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment*, 57 Fed. Reg. 28828 (Jun. 29, 1992); *Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong*, 62 Fed. Reg. 42965 (Aug. 11, 1997); *Solid Urea from the German Democratic Republic*, 63 Fed. Reg. 7122, 7122–23 (Feb. 12, 1998); *Certain Cut-to-Length Carbon-Quality Steel Plate from the Former Yugoslav Republic of Macedonia*, 64 Fed. Reg. 12993 (Mar. 16, 1999).

Department's Position: The Department agrees with Kazakhstan, in part. The Department agrees that Kazakhstan is a different entity from the Soviet Union. In recognition of that fact, the Department attempted to collect and verify separate Kazakhstan-specific information. However, Kazakhstan failed to provide sufficient verifiable data which the Department could use in its analysis. As a result, the Department must use BIA, for the reasons discussed in Comment 2, above. The Department notes that the continuation of this investigation against Kazakhstan was challenged at the CIT, where the Department's decision to continue was upheld. *See* Tenex proceedings.

Comment 6: Kazakhstan argues that the investigation should be terminated as the Uranium Coalition does not have the support of the domestic industry and, thus, lacks standing to represent the industry in the resumed investigation. Kazakhstan claims that two of the original petitioners, Power Resources, Inc. ("PRI") and Cogema, Inc. ("Cogema"), currently account for over half the production of uranium in the United States. Kazakhstan states that PRI expressed its opposition to the investigation in an April 15, 1999 letter and Cogema expressed its opposition in a May 5, 1999 letter. Kazakhstan argues that their opposition indicates that the investigation is not "on behalf of" the domestic uranium industry.

Kazakhstan argues that the Department has the power to rescind its decision to initiate an antidumping investigation where it is discovered that the petition is not being maintained on behalf of the industry. *See Gilmore Steel Corp.* versus *United States*, 585 F. Supp. 670, 674 (Ct. Int'l Trade 1984). Kazakhstan argues that when members of the domestic industry provide grounds to doubt a petitioner's standing, the Department should evaluate whether those parties which oppose the investigation represent a majority of the domestic industry, to determine whether the petition is properly filed on behalf of the domestic industry. *See Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, 966 F.2d 660, 662–63 (Fed. Cir. 1992). Kazakhstan claims that PRI and Cogema account for a majority of the domestic industry and, since this majority of the domestic industry opposes the investigation, Kazakhstan argues that the Department should terminate the investigation immediately.[3]

The Uranium Coalition also states that the letters from PRI and Cogema were not properly filed, are therefore not on the record of this investigation and thus cannot be considered by the Department. Moreover, even if the letters had been properly placed on the record, the Uranium Coalition continues, Cogema and PRI are parties that are related to the producer through their joint ventures in Kazakhstan. Hence, neither PRI nor Cogema would be considered part of the domestic industry.

Department's Position: The Department agrees with the Uranium Coalition. The Department notes that the letters submitted by PRI and Cogema, as domestic uranium producers opposed to the investigation, were improperly submitted and cannot be considered. First, the letter from PRI, to which Kazakhstan refers, does not appear on the record for this investigation. Second, the courtesy copies of the PRI and Cogema letters provided separately to Department analysts show no certificate of service, and thus it appears that the parties were never properly served the letters. Pursuant to 19 CFR 353.31(g)(2), the Department "will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served,

[3] As an alternative, Kazakhstan suggest that the Department survey all uranium producers in the United States to determine the producers' stance on the investigation.

and, for each, indicating the date and method of service." Third, neither letter contains a certification as to the contents of the letter, as required under 19 CFR 353.31(i).[4]

The PRI and Cogema letters were also untimely submitted. Pursuant to 19 CFR 353.31(c)(2), the Department "will not consider any allegation in an investigation that the petitioner lacks standing unless the allegation is submitted, together with supporting factual information, not later than 10 days before the scheduled date for the Secretary's preliminary determination." The Department notes that while Pathfinder Mines Corporation ("Pathfinder"), a Cogema subsidiary, properly submitted a letter to the record in furtherance of Cogema's opposition, Pathfinder's letter was dated May 17, 1999, which is clearly past the regulatory deadline.

Finally, even if PRI and Cogema had properly expressed their opposition to this investigation, publicly available information indicates that PRI, a wholly owned subsidiary of Cameco, and Cogema, a foreign-owned producer, have certain joint ventures with Kazakhstan that mandate the Department to disregard their opposition to the investigation. *See* the Uranium Coalition's rebuttal brief, at Exhibit 3 ("The Reconstruction of the Uranium Industry in Kazakhstan"). Section 771(4)(A) defines the term industry to mean "the domestic producers as a whole of a like product." Section 771(4)(B) provides that "when some producers are related to the exporters * * * of the allegedly * * * dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry." As both PRI and Cogema have business relations with the foreign producer in this investigation, the Department is disregarding their positions for purposes of standing. For these aforementioned reasons, even if the objections had been properly and timely filed, the Department would continue this investigation.

Comment 7: Kazakhstan argues that it made no sales of subject merchandise to the United States during the POI as it did not exist during the POI. Kazakhstan argues that as part of the Soviet Union, the region's economy was under the guidance and control of Soviet authorities and companies existing in the region had no independent production or sales activities. Kazakhstan argues that during the POI, Tenex had sole authority for making sales of uranium produced in the Soviet Union, noting that Tenex is a wholly-owned and controlled subsidiary of MINATOM. Kazakhstan further notes that, pursuant to contracts between Tenex and the uranium producers for the region during the POI, the manner in which the uranium producers were compensated for uranium provided to Tenex reveal that the uranium producers had no control over sales. Accordingly, Kazakhstan states that even if there was any evidence of sales from Kazakhstan to the United States during the POI, and Kazakhstan asserts there is no such evidence, under the circumstances it is not reasonable to conclude that Kazakhstan or its uranium producers bore any responsibility for those sales.

Kazakhstan insists that "where parties in the territory that is now the Republic of Kazakhstan were not even responsible for the sales of their merchandise at the time, proving the negative is virtually impossible." *See* Kazakhstan's Rebuttal Brief, at 17. Kazakhstan states that the Uranium Coalition has not disputed that no sales of subject merchandise produced in Kazakhstan were made to the United States during the POI. Kazakhstan argues that without sales, the Department has previously held that "there are no United States prices with which to compare foreign market value, and, thus, no dumping margins." *See Final Determination of No Sales at Less Than Fair Value: Ferrosilicon from Argentina*, 58 FR 27534, 27535 (May 10, 1993). Kazakhstan argues that this conclusion flows directly from the definition of U.S. price. *See* 19 CFR 353.41(a). Kazakhstan argues there is no evidence of any sales, thus, the Department has no reasonable basis to conclude that there were any dumping margins and the investigation should be terminated.

The Uranium Coalition argues that Kazakhstan's assertion, that it made no sales of subject merchandise to the United States during the POI, is based on the incorrect assumption that the investigation covers material sold by Kazakhstan or by a "Kazakh entity." The Uranium Coalition argues that Kazakhstan should properly be considering material from Kazakhstan that is sold in the United States, and not considering the party that controlled production or sold the uranium, noting that the Department's instructions to U.S. Customs was "for all manufacturers, producers, and exporters of uranium from Kazakhstan." The Uranium Coalition notes that the burden of proof is on Kazakhstan to produce evidence that there were no sales of subject merchandise to the United States during the POI. *See Electrolytic Manganese Dioxide from Ireland; Final Determination of No Sales at Less Than Fair Value*, 54 FR 8776 (March 2, 1989); *see also, Final Determination of No Sales at Less Than Fair Value: Ferrosilicon from Argentina*, 58 FR 27534, 27535 (May 10, 1993). The Uranium Coalition argues that Kazakhstan has failed to meet its burden by failing to provide verified evidence, noting that the Department's verification report states that Kazakhstan did not provide any evidence that could have resolved whether there were any shipments to the United States during the POI. Furthermore, the Uranium Coalition contends that it is highly likely that there were sales of uranium from Kazakhstan to the United States during the POI as the region now known as Kazakhstan accounted for 50 percent of all uranium production by the former Soviet republics in 1991. *See* the Uranium Coalition's Rebuttal Brief at 32.

Department's Position: The Department agrees with the Uranium Coalition. The issue of continuing this proceeding with respect to the individual Republic was previously settled in court. *See* Tenex proceedings. Thus, the claim that Kazakhstan itself did not make any sales of uranium to the U.S. during the POI is irrelevant to this investigation. As the Uranium Coalition points out, Kazakhstan accounted for 50 percent of all uranium production of the Soviet Union. Furthermore, at verification, the Department found that Tenex and the Tselliny combinat had signed a commission agreement in 1990. *See* Verification Report at 3. This commission contract supports the contention that a regular channel of trade of natural uranium from Kazakhstan through Tenex to foreign locations had been established. The Department noted at verification that Kazakhstan's responses "included shipping documents indicating that uranium produced in Kazakhstan may have been shipped to the United States by Tenex both before and during the POI." *See* Verification Report at 10–11. At verification, given this evidence, the Department attempted to confirm whether there were sales of subject merchandise to the United States during

[4] The Department notes that even had the letters been certified, the contents fail to substantiate Kazakhstan's claim that PRI and Cogema represent a majority of the domestic uranium industry by providing the evidence stipulated in the Department's regulations. Accordingly, the Department cannot assume that PRI and Cogema represent a majority of the domestic uranium industry.

the POI. While the Department requested additional data from Kazakhstan regarding U.S. sales, Kazakhstan failed to provide any data to clarify the existing evidence. Similarly, when the Department attempted to follow up on the Tenex-Tselliny combinat contract, Kazakhstan did not provide any supporting documentation, such as receipts or other documentation indicating payments received from Tenex pursuant to the contract. As a result, the Department was unable to examine key source data which could have supported Kazakhstan's claim of no shipments to the United States of subject merchandise during the POI. Evidence on the record indicates that uranium from what is now known as Kazakhstan was most likely shipped to the United States during the POI. Kazakhstan was unable to provide information countering this evidence. Accordingly, the Department must conclude as BIA that there were sales of subject merchandise to the United States during the POI and Kazakhstan did not provide data on those sales.

Comment 8: Kazakhstan argues that the Department should use South Africa as the primary surrogate country. Kazakhstan argues that its surrogate value submission to the record, dated April 28, 1999, demonstrates that South Africa satisfies the statutory criteria for selection as the primary surrogate country, pursuant to Section 773(c)(4) of the Act. Kazakhstan argues that the Department is permitted to select a different surrogate country in the final determination than selected in the preliminary determination, citing *Tehnoimportexport* v. *United States*, 766 F. Supp. 1169, 1175 (Ct. Int'l Trade 1991); and *Kerr McGee Chemical Corp.* v. *United States*, 985 F. Supp. 1166, 1180 (Ct. Int'l Trade 1997). Kazakhstan argues that in the preliminary determination, the Department used a single surrogate based on Soviet Union economic data because, lacking accurate or detailed information, the Department mistakenly assumed that the level of economic development of the former Soviet Union republics was essentially the same. However, Kazakhstan argues there is now enough information available to show the former republics' different levels of economic development, thus, the Department should not make the same assumption at the final determination. Kazakhstan argues that the Department has generally preferred using publicly available pricing information as the source of surrogate values as opposed to using proprietary information. Kazakhstan asserts that the only publicly available information on the record to value virtually every input used to produce subject merchandise is from South Africa. Accordingly, Kazakhstan argues that the Department should select South Africa as the primary surrogate country in the interest of calculating a fair and accurate margin in the final determination. Finally, Kazakhstan argues that the Department should not add freight charges to the valuation of any input for which freight-inclusive import values are used as surrogate values.

The Uranium Coalition rebuts Kazakhstan's contention that South Africa should be the primary surrogate country by stating that the Department does not change surrogate countries after the preliminary determination unless it finds compelling reasons to do so. The Uranium Coalition argues that, to date, Kazakhstan has not provided such information. Further, the Uranium Coalition cites to the *Addendum to Memorandum Regarding Choice of Surrogate Countries, Antidumping Investigation of Uranium from the Former Soviet Union* (March 24, 1992), where the Department determined that the most appropriate course of action was to use the surrogate countries decided upon for the Soviet Union, for the NIS. The Uranium Coalition also contends that Kazakhstan's premise that the Department did not perform a surrogate country analysis is incorrect. Furthermore, the Uranium Coalition states that Kazakhstan's assertion that because Kazakhstan is not the Soviet Union that the Department's prior analysis is incorrect. Finally, the Uranium Coalition argues that the information on the record for South Africa is incomplete and unreliable in many respects.

Department's Position: As the Department is relying on BIA for its calculation of the antidumping duty margin in this proceeding, this issue is moot. *See* Comment 2.

Suspension of Liquidation

In accordance with Section 735(d) of the Act, the Department is instructing U.S. Customs to continue suspending liquidation of all unliquidated entries of uranium from Kazakhstan, as defined in the Scope of the Investigation section of this notice, that are entered or withdrawn from warehouse for consumption on or after January 11, 1999 (the effective date of the termination of the Suspension Agreement). U.S. Customs shall continue to require a cash deposit or bond equal to 115.82 percent *ad valorem*, the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price, for all manufacturers, producers and exporters of uranium from Kazakhstan. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with Section 735(b)(2) of the Act, the Department has notified the International Trade Commission ("ITC") of its final determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the United States uranium industry. The ITC shall make this determination before the latter of: (1) 120 days after the effective date of the preliminary determination; or (2) 45 days after publication of the Department's final determination. If the ITC determines that such injury does not exist with respect to uranium, this proceeding will be terminated and all securities will be refunded or canceled. If the ITC determines that such injury exists with respect to uranium, the Department will issue an antidumping duty order directing U.S. Customs officials to assess antidumping duties on all imports of uranium from Kazakhstan for the period discussed above in the Suspension of Liquidation section of this notice.

This determination is issued and published in accordance with Section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 C.F.R. 353.20(a)(4).

Dated: June 3, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–14782 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990416102–9102–01]

RIN 0648–ZA54

Notice and Request for Proposals

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Request for proposals.

SUMMARY: The Collaborative Science, Technology, and Applied Research (CSTAR) Program represents an NOAA/NWS effort to create a cost-effective continuum from basic and applied research to operations through

collaborative research between operational forecasters and academic institutions which have expertise in the environmental sciences. These activities improve the accuracy of forecasts and warnings of environmental hazards by applying scientific knowledge and information from the modernization of the NWS. The NOAA CSTAR Program is a contributing element of the U.S. Weather Research Program, which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Proposals must be received by the NWS no later than close of business, Friday, October 1, 1999. We anticipate review of full proposals will occur during October 1999 and funding should begin during early 2000 for most approved projects. January 1, 2000, should be used as the proposed start date on proposals, unless otherwise directed by the appropriate Program Officer. Applicants should be notified of their status within 3 months of the closing date. All proposals must be submitted in accordance with the guidelines below. Failure to follow these guidelines will result in proposals being returned to the submitter.

ADDRESSES: Proposals must be submitted to National Weather Service, NOAA; 1325 East-West Highway, Room 13316; Silver Spring, Maryland 20910–3283.

FOR FURTHER INFORMATION CONTACT: Sam Contorno at the above address, or at phone 301–713–1970 ext. 193, or fax to 301–713–1520, or on the Internet at samuel.contorno@noaa.gov.

SUPPLEMENTARY INFORMATION:

Funding Availability

NOAA/NWS believes its warning and forecast mission will benefit significantly from a strong partnership with outside investigators. Current program plans assume the total resources provided through this announcement will support extramural efforts through the broad academic community. Because of Federal budget uncertainties, it has not been determined how much money will be available through this announcement. Proposals should be prepared assuming an annual budget of no more than $125,000. It is expected between two and four awards will be made dependent on the availability of funds. This program announcement is for projects to be conducted by university investigators not to exceed a 3-year period. When a proposals for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for initial funding, the NWS has no obligation to provide additional funding in connection with that award in subsequent years. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress in relation to the stated goals of the proposal to address specific science needs and priorities of the NWS and the availability of funds. Applications should include a scope of work and a budget for the entire award period. Each funding period must be discrete and clearly distinguished from any other funding period. The funding instrument for extramural awards will be a cooperative agreement since one or more NOAA/NWS components—forecast offices, Centers, or regional headquarters—will be substantially involved in implementation of the project. Examples of substantial involvement may include, but are not limited to, proposals for collaboration between NOAA scientists and a recipient scientist and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement. Matching share is not required by this program.

Program Objectives

The long term objective of the CSTAR Program is to improve the overall forecast and warning capabilities of the operational hydrometeorological community by addressing the following national science priorities: Quantitative Precipitation Estimation (QPE) and Forecasting (QPF), including precipitation type and probabilistic QPF (PQPF); Flash flood and probabilistic river prediction; Prediction of seasonal-to-interannual and decadal climate variability, and the impacts of these variabilities on extreme weather events; Prediction of tropical cyclones near landfall, including track, intensity, and associated precipitation, and hazardous weather; Prediction of marine conditions, including fog, winds, coastal ocean, and open ocean waves; The effect of topography and other surface forcing on local weather regimes; Locally hazardous weather, especially severe convection, winter weather, and phenomena that affect aviation; Conditions conducive for the rapid development of wildfires and the dispersion of smoke and other air-quality hazards.

Individual NWS Regions and Centers have a subset of these science priorities due to differences in factors such as topography, weather regimes, and mission.

Program Priorities

NOAA will give sole attention to individual proposals addressing the identified science needs/priorities from NWS Regions and the National Centers for Environmental Prediction (NCEP) as listed below. It is anticipated one proposal will be funded addressing one or more of the science needs/priorities of both the NWS Eastern and Central Regions. Universities are also encouraged to submit proposals addressing any of the science needs/priorities of other NWS Regions and Centers. However, there is no guarantee funding will be available for these activities. Principal investigators must clearly describe collaborative activities and scientific interactions with NWS forecast offices, River Forecast Centers, National Centers, or regional headquarters throughout the course of the research proposal. A proposal must be submitted by multiple principle investigators and contain at least two distinct subtasks addressing one or more of the science needs/priorities listed by a single NWS Region or by NCEP. Investigators are asked to specify clearly which science priorities/needs are being pursued and to which region or center(s) they belong.

The names, affiliations and phone numbers of relevant NWS regional/NCEP focal points are provided. Prospective applicants should communicate with these focal points for information on priorities within regional science needs. Applicants should send proposals to the NOAA NWS program office identified earlier rather than to individual focal points.

NWS Central Region Science Needs/Priorities

The NWS Central Region science needs/priorities which can be addressed by proposals are as follows:

Improve severe weather warnings by:

(1) Developing more accurate conceptual models for tornado, hail, and wind events for different geographical locations in Central Region, including the Central Plains, Northern Plains, Ozark Plateau, mid and upper Mississippi Valley, lower Ohio Valley, and Great Lakes regions.

(2) Developing more accurate diagnostic strategies/methodologies to interrogate remote sensing data (radar, satellite, etc.) particularly for weaker and shorter lived severe thunderstorm and tornado events.

(3) Expanding our understanding of elevated nocturnal convection for

different geographical locations in Central Region.

Improve QPFs through a better understanding of:

(1) The climatology of precipitation, including subregional information stratified by day, season, and amount and time of occurrence.

(2) Cloud physics and micro-physical processes related to precipitation efficiency of stratiform and connective clouds.

(3) Water vapor distribution and transport.

(4) The initiation of convective precipitation (tropical, lake/sea breeze, complex terrain, etc.).

(5) The uniqueness of stratiform precipitation.

(6) The uniqueness of extreme heavy rain events.

(7) Precipitation estimation methods.

(8) Geographic and orographic influences. Improve winter weather forecasts by better understanding the development, intensification, and sudden acceleration northeastward of strong mid-west storm systems following lee side cyclogenesis.

Improve aviation forecasts by better understanding the development and dissipation of fog and stratus for the different geographical locations in Central Region. Develop more efficient and effective methodologies to review numerical model guidance in the forecast process. Develop innovative methodologies to improve weather services to the public.

FOR FURTHER INFORMATION CONTACT: Richard Livingston, NOAA/NWS/Central Region Scientific Services Division, 816–426–5672 ext. 300, or on the Internet at Richard.Livingston@noaa.gov.

NWS Eastern Region Science Needs/Priorities

NWS Eastern Region has listed the following science needs/priorities to be addressed by proposals:

Unique geomorphic influences on weather problems such as the type, amount, duration, and intensity of precipitation associated with the complex terrain of the Appalachian Mountains; or the formation, duration, and intensity of severe storms and winter weather phenomena along the Atlantic Seaboard and the Great Lakes. The relationship of land-falling tropical storms and hurricanes to severe weather, heavy precipitation, flooding, and flash flooding throughout the eastern United States. The development and enhancement of severe storms throughout the Middle Atlantic and the Piedmont regions due to the influence of small-scale thermal and moisture boundaries. The interaction of gravity waves and related phenomena with severe storms and winter weather systems throughout the East.

The primary factors causing high winds, waves, and flooding near the Atlantic Coast, Chesapeake Bay, and Great Lakes. Widespread river and localized flash flooding produced by synoptic and sub-synoptic scale weather systems interacting with the complex topography and expanding urbanization of the eastern United States.

Innovative approaches to formulate, produce, display, and deliver high-resolution hydrometeorological forecasts and products to meet the evolving needs of the user community throughout the heavily populated eastern United States.

FOR FURTHER INFORMATION CONTACT: Gary Carter, NOAA/NWS//Eastern Region Scientific Services Division, 516–524–5131, or on the Internet at gary.carter@noaa.gov.

NWS Western Region Service Needs/Priorities

The science needs/priorities are based on Doppler weather surveillance radar (WSR–88D) measurements of convective and wintertime QPEs over complex terrain in the inter-mountain West area of the United States. In the arid inter-mountain West, water is a critical and closely managed resource. Complex terrain, the location of many NWS WSR–88D radars on mountain tops, and unique meteorological/orographic characteristics of western storms combine to limit the effectiveness of the current WSR–88D QPE algorithms. Proposals should be targeted at improving the capability of the WSR–88D to assist operational forecasters to: Make better summertime convective flash-flood warnings over inter-mountain West terrain.

Provide improved WSR–88D-based winter season rain and snow QPEs. These WSR–88D based QPEs are very dependent on complex terrain.

FOR FURTHER INFORMATION CONTACT: Andy Edman, NOAA/NWS/Western Region Scientific Services Division, 801–524–5131, or on the Internet at andy.edman@noaa.gov.

NWS Pacific Region Science Needs/Priorities

The science needs/priorities of the NWS Pacific Region are as follows:

Optimizing the utility of new observing systems, especially satellite observations over the Pacific. Conducting observational synoptic climatological studies. Helping develop and enhance operational and off-line mesoscale modeling studies and capabilities aimed at improving Pacific Region model support.

FOR FURTHER INFORMATION CONTACT: Mark Jackson, NOAA/NWS/Pacific Region Regional Scientist, 808–532–6413, or on the Internet at mark.jackson@noaa.gov.

NWS National Centers for Environmental Prediction Science Needs/Priorities

The individual centers of NCEP have established the following science needs/priorities which may be addressed in proposals:

Environmental Modeling Center

Atmospheric and ocean data assimilation.

Atmospheric and ocean numerical forecast modeling.

Hydrometerological Prediction Center

Ensemble models for PQPF.

Targeted observations for improvement of medium range forecasting(day 3–7).

Marine Prediction Center

Objective marine verification using all in-situ and remote data sources.

Improved use of surface marine observations from all sources in data assimilation.

Climate Prediction Center

Improve monthly and seasonal precipitation skill scores.

Improve coupled model and associated ensemble runs.

Aviation Weather Center

Improve prediction of locally hazardous weather (e.g., sever convection, winter weather, etc.) that affect aviation.

Improve predictions of icing and turbulence.

Storm Prediction Center

Development of technology to remotely sense the detailed vertical distribution of moisture in the atmosphere.

Development of a relocatable mesoscale model which has detailed boundary layer physics for improvement in forecasting hail, wind gusts, etc.

Tropical Prediction Center

Improve hurricane-intensity and wind-structure forecasts. Continue improving hurricane track forecasts.

FOR FURTHER INFORMATION CONTACT: Sondra Young, NOAA/NWS/National Centers for Environmental Prediction, 301–763–8000 ext. 7004, or on the Internet at sondra.young@noaa.gov.

Eligibility

All accredited U.S. colleges and universities are eligible for funding under this announcement. The restriction is needed because the results of the collaboration are to be incorporated in academic processes which ensure academic multidisciplinary peer review as well as Federal review of scientific validity for use in operations. Funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

The evaluation criteria and weighting of the criteria are as follows:

(1) Operational Applicability (30 percent): Importance and applicability of the proposed science activities to operational hydrometeorology. Are prospects good that the proposed science priorities can be transferred to weather forecast operations in a reasonable time frame?

(2) Scientific Merit (30 percent): Intrinsic scientific value of the subject and the study proposed as they relate to the specific science priorities.

(3) Experience of principal investigators collaborating and interacting with operational hydrometeorologists (20 percent): Principal investigators must clearly document past scientific collaborations with operational meteorologists.

(4) Cost Effectiveness (10 percent): Ability of researchers to leverage other resources; high ratio of operationally useful results versus proposed costs.

(5) Methodology (10 percent): Focused scientific objective and strategy, including data management considerations, project milestones, and timeliness; and final products.

Selection Procedures

All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer panel review, three to seven NWS experts representing NWS Regions and Centers and non-Federal experts may be used in this process. Their recommendations and evaluations will be considered, along with the program policy factors discussed below, by the selecting official who will select the proposals to be funded and determine the amount of funds available for each proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. Because the selecting official will take into account program policy factors, awards may not necessarily be made to the highest scored proposals.

Program Policy Factors

In deciding which applications are to be funded, the Selecting Official will choose at least one award which addresses the Central Region science needs and at least one award which addresses the Eastern Region science needs. Further, the selecting official may take into account the need to spread awards geographically and among universities. While a university may submit more than one application, the selecting official may limit the awards to only one per university. Finally, the amount of funds available and whether an application substantially duplicates other projects currently approved for funding or funded by NOAA or other Federal agencies may be considered by the Selecting Official.

Proposal Submission

The requirements for proposal preparation are provided below. Failure to follow these requirements will result in proposals being returned to the submitter.

Proposals

(1) Proposals submitted to the NOAA NWS CSTAR Program must include the original and two unbound copies of the proposal.

(2) Investigators are not required to submit more than three copies of the proposal. Investigators are encouraged to submit official proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5×11), or otherwise unusual materials submitted as part of the proposal. Only three copies of the federally required forms are needed.

(3) Proposals are limited to 30 pages (numbered), including budget, investigators vitae, and all appendices and should be limited to funding requests for 1- to 3-year duration. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count.

(4) Proposals should be sent to the NWS at the address listed earlier.

(5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements: All proposals should include the following elements:

(1) Signed title page. The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale, and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institutions investigators, total proposed cost, and budget period.

(3) Results from prior research. The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, PIs, period of award, and total award. The section should be a brief summary and should exceed two pages total.

(4) Statement of work. The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the priorities of the NWS Region or Center, and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. A year-by-year summary of proposed work must be included. The statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. In general, proposals from three or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions.

(5) Budget, Applicants must submit a Standard Form 424 "Application for Federal Assistance," including a detailed budget using the Standard Form 424a, "Budget Information—Non-Construction Programs." The form is included in the standard NOAA application kit. The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Additional text to justify expenses should be included as necessary.

(6) Vitae. Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last 3 years with up to five other relevant papers.

(7) Current and pending support. For each investigator, submit a list which includes project title, supporting agency with grant number, investigator months, dollar value, and duration. Requested values should be listed for pending support.

Other Requirements

(1) Applicants may obtain a standard NOAA application kit from the NOAA Office of Grants Management. Primary applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

(2) Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies; to State and Local Governments, as applicable. Applications under this program are not subject to E.O. 12372, "Intergovernmental Review of Federal Programs."

(3) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(4) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(5) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) the delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to DOC.

(6) Buy American-Made Equipment or Products. Applicants who are authorized to purchase equipment or products with funding provided under this program are encouraged to purchase American-made equipment and products to the maximum extent feasible.

(7) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(8) Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

(9) Pre-award Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(10) Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

(11) Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(12) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

(13) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document. If an application is selected for funding, the DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the DOC.

In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA NWS. The NOAA NWS does not have a direct telephonic device for the deaf (TDD capabilities can be reached through the State of Maryland-supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The standard application forms required to be used have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

Authority: 15 U.S.C. 313; 49 U.S.C. 44720 (b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.* (CFDA No.11.468)—Applied Meteorological Research.

Classification: This notice has been determined to be not significant for purposes of E.O. 12866. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Dated: June 7, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–14783 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052799A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification

is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on May 4, 1999, to the Newfield Exploration Company and to BP Amoco; on May 7, 1999, to the Amerada Hess Corporation; and on June 3, 1999, to the Shoreline Exploration Corporation and the EEX Corporation, all from Houston, TX.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or David Bernhart, Southeast Region (727) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: June 3, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14786 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051899A]

Marine Mammals; File No. 930–1486

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that U.S. Geological Survey, Biological Resources Division, Western Ecological Research Center, 6924 Tremont Road, Dixon, CA 95620 (Principal Investigator: Mr. Dennis Orthmeyer) has been issued a permit to inadvertently harass various cetacean and pinniped species during aerial surveys for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562–980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 29, 1999, notice was published in the **Federal Register** (64 FR 14886) that a request for a scientific research permit to take marine mammals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 3, 1999.

Jeannie Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14787 Filed 6–9–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Petition for Exemption From the Statutory Dual Trading Prohibition in the Ten-Year U.S. Treasury Note Futures Contract Traded on the Project A Electronic Trading System

AGENCY: Commodity Futures Trading Commission.

ACTION: Amended order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending its February 26, 1999 Order granting the Chicago Board of Trade ("CBT") or "Exchange") an exemption from the statutory prohibition against dual trading in the U.S. Treasury Bond futures contract ("T-Bond") traded on its Project A electronic trading system to include the Ten-Year U.S. Treasury Note ("Ten-Year T-Note") futures contract traded on Project A.

DATES: This Order is to be effective June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansly, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st St., NW., Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On February 26, 1999, the Commission issued an Order granting CBT an exemption from the statutory dual trading prohibition for its T-Bond futures contract as traded on the Exchange's electronic trading system, Project A.[1] In issuing the Order, the Commission found that CBT met the standards for granting a dual trading

[1] 64 FR 10450 (March 4, 1999). A copy of this Order is attached as Appendix A.

exemption contained in section 4j(a) of the Commodity Exchange Act ("Act") and Commission Regulation 155.5 with regard to Project A T-Bond futures.

By letter dated March 15, 1999, shortly after the Order was issued, CBT notified the Commission that its Ten-Year T-Note futures contract traded on Project A had become an affected contract market as well, and supplemented its Petition for Exemption from the Dual Trading Prohibition to include that contract.[2] The Exchange has represented by letter dated April 20, 1999, that, with respect to the February 26, 1999 Order exempting Project A T-Bond futures from the dual trading prohibition, there have been no material changes concerning the operation of the Project A system or to CBT's trade monitoring system as applicable thereto. Therefore, the Commission finds that CBT meets all relevant standards for granting a dual trading exemption for the Ten-Year T-Note future contract as traded on Project A.

Accordingly, on this date, the Commission *hereby amends* its February 26, 1999 Order granting CBT's Petition for Exemption from the Dual Trading Prohibition for trading on Project A of its electronically traded U.S. Treasury Bond futures contracts to include an exemption for CBT's electronically traded Ten-Year U.S. Treasury Note futures contract.

For this exemption to remain in effect, CBT must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CBT's program.

The provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until its is revoked in accordance with section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). If other CBT contracts electronically traded on Project A become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

It is so ordered.

Dated: June 4, 1999.

Jean A. Webb,

Secretary to the Commission.

[2] An "affected contract market" is a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* section 4j(a)(4) of the Act. Under section 4(j(a) of the Act and Regulation 155.5(b), the dual trading prohibition applies to each affected contract market. The Commission, therefore, must consider separately each affected contract market. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading on a screen-based system such as Project A. *See* 58 FR 40335 (July 28, 1993).

APPENDIX A—COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Petition for Exemption From the Dual Trading Prohibition in the U.S. Treasury Bond Futures Contract Traded on the Project A Electronic Trading System

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is granting the petition of the Chicago Board of Trade ("CBT" or "Exchange") for exemption from the prohibition against dual trading in the U.S. Treasury Bond futures contract traded on its Project A electronic trading system.

DATES: This Order is to be effective February 26, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew S. Baer, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On January 31, 1998, the Chicago Board of Trade ("CBT" or "Exchange") submitted a Petition for Exemption From the Dual Trading Prohibition for its affected U.S. Treasury Bond ("T-Bond") futures contract [1] as traded on the Exchange's electronic trading system, Project A. Upon consideration of this petition and other matters of record, the Commission hereby finds that CBT meets the standards for granting a dual trading exemption contained in section 4j(a) of the Act and Commission Regulation 155.5 with regard to Project A T-Bond futures.[2]

Subject to CBT's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds that CBT maintains a trade monitoring system for Project A which is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading and, to the full extent feasible, other violations involving the making of trades and execution of customer orders, as required by section 5a(b) of the Act and Commission Regulation 155.5. The Commission further finds that CBT's trade monitoring system for Project A T-Bonds includes audit trail and recordkeeping systems that satisfy sections 4j(a)(3) and 5a(b) of the Act and Commission Regulations 1.35 and 155.5.[3]

With respect to each required component of the trade monitoring system, the Commission finds as follows:

(a) Physical Observation of Trading Areas—The requirements of section 5a(b)(1)(A) of the Act are not relevant to Project A trading, insofar as Project A is a computerized, screen-based system and therefore has no floor.

(b) Audit Trail and Recordkeeping Systems—The Exchange's trade monitoring system for Project A T-Bonds satisfies the audit trail standards of section 5a(b)(1)(B) of the Act in that it is capable of capturing essential data on the terms, participants, and

[1] An "affected contract market" is a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* section 4j(a)(4) of the Commodity Exchange Act ("Act"). Under section 4j(a) of the Act and Regulation 155.5(b), the dual trading prohibition applies to each affected contract market. The Commission, therefore, must consider separately each affected contract market. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading on a screen-based system such as Project A. *See* 58 FR 40335 (July 28, 1993). Therefore, Project A T-Bonds must be considered independently of the CBT's floor-traded T-Bond contract market, which was included in the Exchange's exemption petition for its affected open outcry contract markets.

[2] The burden to prove that the exemption standards of the Act and Commission regulations are met rests exclusively on the contract market. The dual trading provisions set forth in section 4j of the Act and the standards for trade monitoring systems provided in section 5a(b) of the Act were enacted as part of the Futures Trading Practices Act of 1992 ("FTPA"). Pub. L. 102–546, 101, 106 Stat. 3590 (1992). The FTPA's legislative history makes clear that the burden to prove that the exemptions standards are met rests upon the contract market. For instance, the 1992 House-Senate Conference Committee stated that "a board of trade may satisfy the initial burden of demonstrating that each of its designated contract markets complies with trade monitoring system requirements of section 5a(b) of the Act, subject to requests for further information by the Commission, by showing that it has maintained an ongoing record of compliance with those requirements." H.R. Conf. Rep. No. 102–978 at 53 (1992). The Conference Committee adopted the 1991 House Bill's (H.R. 707) dual trading provisions, with amendments relating to exemptions. *Id.* at 50. The 1991 Senate Bill (S. 207) similarly placed on the exchange the burden to demonstrate the ability of its systems to meet the standards and reiterated the view, previously expressed in the 1989 Senate Bill (S. 1729), that an exchange has the best access to its own records and therefore is in the best position to show that its systems are effective and satisfactory. S. Rep. No. 102–22 at 32 (1991); S. Rep. No. 101–191 at 39–40 (1989).

[3] 17 CFR 1.35, 155.5. Section 4j(a)(3) requires the Commission to exempt a contract market from the prohibition against dual trading upon finding that the monitoring system in place at the contract market satisfies the requirements of section 5a(b), governing audit trails and trade monitoring systems, with regard to violations attributable to dual trading at such contract market. If the trade monitoring system does not satisfy the requirements, section 4j(a)(3) requires the Commission to deny the exemption or in the alternative to exempt a contract market from the prohibition against dual trading on stated conditions upon finding that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing and that corrective actions are sufficient and appropriate to bring the contract market into compliance with the standards set forth in section 5a(b). Regulation 155.5(b) prohibits floor brokers from dual trading in an affected contract market unless that contract market is exempted under Regulation 155.5(d).

sequence of transactions. The requirements of that Section regarding the capture of relevant data on unmatched trades and outtrades are not relevant to Project A trading, as unmatched trades and outtrades cannot occur on the Project A system. The Commission further finds that CBT accurately and promptly records the essential data on terms, participants, times (in increments of no more than one minute in length), and the sequence of Project A trades through a means that is unalterable, continual, independent, reliable, and precise, as required by section 5a(b)(3) of the Act. This includes the real-time submission of trades to clearing as they are matched by the system. Consistent with the guidelines to Commission Regulation 155.5, the Commission also finds that CBT has demonstrated the use of Project A T-Bond trade timing data in its surveillance systems for dual trading-related and other abuses.

The audit trail produced by Project A for T-Bond futures includes trade execution times that are presumptively 100 percent accurate (barring computer malfunction) and precise to within 1/100th of a second. All trades are also recorded in the exact sequence of occurrence. Among other things, the order ticket timestamps required by Regulation 1.35(a–1) are automatically furnished by the system, independent of the person making the trade, as is the order number. Project A also automatically records the time at which a terminal operator enters an order, the time when an order is matched to make a trade, the time the system generates a confirmation message to a terminal operator, and the time of any changes to an order. Once entered, orders and records of changes to orders are unalterable and cannot be deleted. If an order cannot be entered immediately upon its receipt by a terminal operator, the order is recorded on a written order ticket, timestamped, and then entered when possible. For every Project A order, either this order ticket timestamp or the order entry time recorded by the system acts as the broker receipt time required by section 5a(b)(3)(B) of the Act.

CBT satisfies the requirements of section 5a(b)(1)(B) of the Act by maintaining an adequate recordkeeping system that is able to capture essential data on the terms, participants, and sequence of transactions executed on Project A. The Exchange uses such data as well as information on violations of such requirements on a consistent basis to bring appropriate disciplinary actions relating to Project A trading.

(c) Surveillance Systems and Disciplinary Action—As required by sections 5a(b)(1)(C), (D), and (F) of the Act, CBT uses information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders on Project A. In addition, CBT assesses meaningful penalties against violators.

On a daily basis, CBT reviews computerized surveillance exception reports to detect dual trading-related and other trading abuses on Project A. All relevant trade data are included in these reports. The exception reports are designed to identify such suspicious activity as trading ahead, frontrunning, trading against, crossing orders, and wash trading. Since the introduction of side-by-side (simultaneous Project A and open outcry) trading of T-Bonds in September 1998, CBT has begun using a specialized exception report designed to identify certain trading ahead violations that use both the Project A and open outcry markets. The CBT has stated that it intends to develop systems and programs that integrate surveillance of its Project A and open outcry markets. The Exchange should be diligent in pursuing this process.

From January, 1997 through December, 1998, the Exchange initiated 21 investigations into all types of possible abuses on Project A, nine of which had been closed as of December, 1998. One of those nine was closed within the four-month objective set forth in Commission Regulation 8.06, and another three were closed within four to six months. Thus, only 44 percent of those Project A investigations opened and closed during 1997–98 were closed within six months. If CBT cannot complete its Project A investigations within the objective set by Regulation 8.06, it should provide the reasons why such investigations require more than four months to complete. Based on examination of its computerized surveillance reports, CBT initiated four dual trading-related investigations during that period, one of which resulted in referral to a disciplinary committee. As of December 1998 that case was still pending. In other Project A-related disciplinary actions, the Exchange levied $20,000 in fines, imposed one ten-day suspension, and issued four reprimands.

(d) Commitment of Resources—The Commission finds that CBT meets the requirements of section 5a(b)(1)(E) by committing sufficient resources for its trade monitoring system relating to Project A, including automating elements of such trade surveillance system, to be effective in detecting and deterring violations. CBT also maintains an adequate staff to investigate and to prosecute disciplinary actions.

Accordingly, on this date, the Commission *hereby grants* CBT's Petition for exemption from the dual trading prohibition for trading on Project A of its electronically traded U.S. Treasury Bond futures contracts.

For this exemption to remain in effect, CBT must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CBT's program.

The provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). If other CBT contracts electronically traded on Project A become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

It is so ordered.

Dated: February 26, 1999.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 99–14712 Filed 6–9–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Alternative Executive, or Block Trading, Procedures for the Futures Industry

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") will consider contract market proposals to adopt alternative executive execution, or block trading, procedures for large size or other types of orders on a case-by-case basis under a flexible approach to the requirements of the Commodity Exchange Act ("Act") and the Commission's regulations. The Commission continues to be open to further comments on the various issues surrounding potential alternative execution procedures from industry participants.

EFFECTIVE DATE: This Advisory is effective upon issuance.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

After careful consideration of public comments and interviews with interested securities and futures industry participants, the Commission has decided to evaluate contract market proposals to adopt alternative execution, or block trading, procedures for large size or other types of orders on a case-by-case basis. As discussed below, the Commission believes that the appropriate terms and conditions governing such execution procedures are best addressed in the context of specific proposals. The Commission stands ready to consider any rule proposal submitted by a contract market that expressly allows such transactions to be executed using any combination of competitive and noncompetitive execution procedures. The Commission plans to take a flexible approach in considering such proposals.

II. The Commission Solicited Comments on Alternative Execution, or Block Trading Procedures in its Concept Release Concerning the Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market

On January 26, 1998, the Commission published a Concept Release in the **Federal Register** for public comment concerning the regulation of noncompetitive transactions executed on or subject to the rules of a contract market.[1] Among other things, the Concept release discussed a wide range of issues concerning alternative execution procedures.[2] Specifically, the Commission wished to explore whether certain alternative execution procedures for large size or other types of orders could be developed to satisfy the needs of market participants while furthering the policies and purposes of the Act and the Commission's regulations. Through the questions posed in the Concept Release, commenters were asked whether the Commission should permit alternative execution procedures pursuant to the rules of a contract market; what general qualifying standards should govern a proposal's eligibility for approval by the Commission; and whether additional regulatory requirements should be imposed on these procedures to maintain integrity and to provide guidance to self-regulatory entities.[3] Of the sixty-four comment letters the Commission received in response to the Concept Release, fifty-seven specifically addressed such execution procedures.[4]

These comment letters revealed two divergent viewpoints concerning the adoption of alternative execution procedures by contract markets. Eleven commenters generally supported such procedures, while forty-nine commenters generally opposed them. The supporting comment letters indicated that alternative execution procedures should be implemented in order to alleviate the current difficulties faced by institutional market participants in executing large futures and option orders. These commenters stated that execution procedures could be structured in such a way as to minimize any negative impact on market volume, liquidity, price discovery, transparency, or customer protection. Conversely, the opposing comment letters generally stated that alternative execution procedures would divert order flow away from the centralized, competitive marketplace, thereby reducing liquidity and jeopardizing the price discovery and hedging functions of the futures markets. These commenters stated that such execution procedures would prevent floor traders and certain other entities from participating in large transactions between institutions and that customers ultimately would be harmed by the lack of transparency associated with these procedures.

A. Current Contract Market Large Order Execution Procedures

Under the Act and the Commission's regulations, all futures and option transactions generally must be executed openly and competitively by open outcry, by posting of bids and offers, or by equally open and competitive methods in the trading pit or ring or similar place provided by a designated contract market.[5] As noted in the Concept Release, the Commission has approved or allowed into effect various contract market rules which establish procedures for the execution of large orders.[6] These procedures generally preserve the competitive forces available on a centralized market and thereby comply with the open and competitive execution requirement. The Commission also has taken steps to streamline its own regulations to facilitate the adoption of large order execution ("LOX") procedures by contract markets.[7]

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[1] 63 FR 3708 (January 26, 1998).

Throughout the Concept Release and in this Advisory, the Commission uses the term "noncompetitive transaction" to refer to those transactions that are negotiated and executed by counterparties other than through open outcry or other competitive means, but in accordance with the written rules of a contract market that have been submitted to and approved by the Commission. The noncompetitive transactions discussed in the Concept Release are distinguishable from those abusive trading practices prohibited by section 4c(a) of the Act, such as wash sales, cross trades, accommodation trades, and fictitious sales. Moreover, as noted by many of the commenters responding to the Concept Release, these noncompetitive transactions might be structured in such a manner that promotes competitive pricing, transparency, or other beneficial goals.

The Commission recognizes, however, that new execution procedures for large size or other types of orders might utilize a combination of competitive and noncompetitive trading practices. The term "alternative execution procedures" is intended to embrace the entire range of potential execution procedures that might be proposed by a contract market including those referred to in the Concept Release and comments thereon as block trading procedures. This includes those procedures that provide some degree of exposure of large size orders to the competitive pressures of the centralized futures marketplace as well as those that are purely noncompetitive.

[2] The Release also included questions concerning the oversight of: (1) Exchanges of futures contracts for physicals ("EFPs"), which are authorized under the Act and the Commission's regulations; (2) other potential noncompetitive transactions, including exchanges of futures contracts for qualifying swap agreements ("EFS transaction") and exchanges of option contracts for physicals ("EOPs"); and (3) the use of execution facilities for noncompetitive transactions. The overall purpose of the Concept Release was to solicit comments on the current regulatory structure governing noncompetitive transactions and whether this approach should be modified in light of recent developments in the marketplace.

On January 7, 1999, the Commission approved the New York Mercantile Exchange's ("NYMEX") proposal to adopt new Rule 6.21A, which authorize EFS transactions pursuant to the terms and conditions of a three-year pilot program. *See* Commission Press Release No. 4228–99. Any contract market which is interested in allowing EFS transactions in their designated markets may submit a proposal to the Commission for its consideration, pursuant to Section 5a(a)(12)(A) of the Act and Commission Regulation 1.41.

[3] The comment period on the Concept Release originally was scheduled to run from January 26, 1998, through March 27, 1998, but was extended by the Commission until April 27, 1998. 63 FR 13640 (March 20, 1998). At the request of the Futures Industry Association, the Commission further extended the comment period on those parts of the Release that related to alternative execution procedures until September 1, 1998. 63 FR 24164 (May 1, 1998).

[4] Several comments submitted multiple and/or joint comment letters.

[5] *See* sections 4(a) and 4b of the Act; Commission Regulation 1.38(a). There are, however, certain limited exceptions to this requirement. Section 4c(a) of the Act prohibits certain types of noncompetitive or otherwise abusive trading practices, such as wash sales, cross trades, accommodations trades, and fictitious sales, but provides an exception for EFPs that are executed in accordance with contract market rules that have been approved by the Commission. An EFP involves simultaneous transactions in the futures and cash commodity markets. One party buys the physical commodity and simultaneously sells (or gives up long) futures contracts while the other party sells the physical commodity and simultaneously buys (or receives long) futures contracts. Subject to applicable contract market rules, the futures transaction is negotiated privately by the parties rather than being executed openly and competitively on a centralized market. All domestic contract markets permit EFPs, although there is some variation among the specific contract market rule which govern these transactions.

[6] *See, e.g.*, Chicago Mercantile Exchange ("CME") Rule 521 ("All-Or-None Transactions"); New York Cotton Exchange ("NYCE") Rule 1.10–B ("Block Order Execution"); New York Futures Exchange ("NYFE") Rule 312 ("Block Order Execution").

CME also has developed request for quote ("RFQ") procedures which allow market participants to solicit transactions of a particular size for any of the contracts traded through Globex2, its electronic trading system. In addition, CMD allows firms to engage in pre-execution discussions regarding Globex2 trades as long as the solicited counterparty waits a reasonable period of the time before entering an order opposite that of the initiating party.

[7] Commission Regulation 1.39 generally sets forth the conditions and requirements governing the crossing of simultaneous buying and selling orders of different principals. Under Regulation 1.39(a), when trading is conducted in a pit or ring, a contract market member may execute buying and selling orders from different principals for the same commodity directly between such principals at the market price, pursuant to the written rules of such contract market which have been approved by the Commission, provided that the member first offers both orders to the pit. In 1991, the Commission amended Regulation 1.39 to allow a contract market member to follow alternative procedures for the

There is some debate, however, as to whether the existing procedures meet the needs of futures market participants. Several commenters responding to the Concept Release stated that the availability of alternative execution procedures is crucial to attracting and retaining institutional participation in the futures markets: These participants increasingly need to trade large quantities of futures contracts in connection with their securities activities. According to commenters, such transactions would severely tax the available liquidity of the centralized futures marketplace. These commenters stated that alternative execution procedures would allow large futures transactions, which require size and price certainty, to be implemented in an efficient and cost effective manner.

B. Potential Alternative Execution Procedures Discussed in the Concept Release

Pursuant to section 4(a) of the Act and Commission Regulation 1.38(a), the Commission has broad authority to approve contract market rules which allow futures and option transactions to be executed in the noncompetitive manner.[8] The text of these provision does not limit the types of noncompetitive transactions that may be approved by the Commission. In light of this authority, the Concept Release sought to identify new execution procedures that go beyond those that already exist in the futures industry and to encourage debate on such procedures. The Release described several scenarios which departed from the usual open and competitive execution requirement in various degrees. Certain examples envisioned market participants being allowed to alert potential counterparties of their general interest in trading a particular contract at a particular time, to divulge specific information about quantity and price to potential counterparties, or to negotiate the specific terms of futures and option transactions. Another variation would adjust execution procedures to confer a degree of priority on particular orders, such as market maker orders, that they might not attain in the open and competitive trading environment.[9] Finally, the Release noted that market participants might be permitted to execute certain transactions bilaterally, away from the centralized marketplace, and to report them to the relevant contract market and clearing organization in a manner similar to the way EFPs are handled currently. These examples, while not exhaustive, were intended to illustrate a range of possible execution procedures that could be adopted by contract markets.

The Concept Release also discussed how block trading procedures operate in the securities markets.[10] Generally speaking, with respect to securities exchanges, the specific terms of a block transaction are negotiated "upstairs" away from the exchange floor. Exchange rules govern the manner in which such transactions ultimately are brought to the floor for execution. Typically, a brokerage firm will arrange the block transaction for its customer. After receiving a customer's order to purchase or sell a block of securities, the firm must decide whether to contact the exchange specialist.[11] By contacting the specialist, the firm can determine the prevailing price of the stock and as well as the needs of the specialist. If the specialist is interested in taking the opposite side of the entire block at a mutually agreeable price, there is no need to utilize the block trading procedures.

If block trading procedures are necessary, the brokerage firm must then decide whether to "position" the block for its house account, to "shop the block" by contacting potential customers to take the opposite side of the transaction, or to combine these strategies. Upon agreement to a price for the block,[12] the customer's order is transmitted to the floor where it is crossed against the firm's house account and/or against other customer orders, subject to applicable exchange rules.[13]

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crossing of orders if these procedures comply with contract market LOX rules that have been approved by the Commission. 56 FR 12336 (March 25, 1991).

CME adopted, and the Commission approved, Rule 549 which established LOX procedures for transactions involving 300 or more futures contracts in the Standard & Poor's 500 Stock Price Index or the Nikkei Stock Average. Despite allowing the pre-execution solicitation of interest and discussion of price, these LOX procedures were used by market participants on only one occasion in the several years they were available. Ultimately, CME terminated these procedures in April 1998.

[8] Section 4(a) makes it unlawful for any person to enter into a contract for the purchase or sale of a commodity for future delivery "unless such transaction is conducted on or subject to the rules of board of trade which has been designated by the Commission as a contract market for such commodity." Commission Regulation 1.38(a) provides that the open and competitive execution requirement "shall not apply to transaction which are executed noncompetitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive execution of such transactions." As noted previously, the Commission exercised this authority in approving NYMEX's proposal of EFS transactions.

[9] The Commission already has approved several contract market proposals establishing market maker programs. These programs, which aim to encourage market participation in specified new or low volume contracts, often provide market makers with certain trading priorities that they would not otherwise obtain under traditional open and competitive execution methods. *See, e.g.*, Coffee, Sugar & Cocoa Exchange ("CSCE") Registered Market Maker Program (approved by the Commission on April 30, 1991); Chicago Board of Trade ("CBOT") Modified Market Maker Program for the Wilshire Small Cap Index Future Contract (allowed into effect without prior Commission approval on June 18, 1993); CME Principal Market Maker Program (approved by the Commission on April 10, 1995); NYMEX Specialist Market Maker Program (approved by the Commission on July 8, 1998).

[10] In the securities industry, a block trade is commonly defined as a transaction involving 10,000 or more shares. Blocks may be traded on securities exchanges, in over-the-counter markets, or through "principal-to-principal" trade execution venues. 63 FR 3706, 3717–3718 (January 26, 1998).

[11] Under New York Stock Exchange ("NYSE") Rule 127(a), a member organization that receives an order for the purchase or sale of a block of stock is obligated to explore the market to determine whether ti can absorb the order without a significant impact on price. Unless professional judgment dictates otherwise, this research should include contacting the specialist to ascertain the extent of the specialist's interest in participating in the block at a specific price or prices.

Each stock listed on the NYSE is allocated to a specialist. The specialist, through his or her many roles, is responsible for maintaining the market's fairness, competitiveness and efficiency. At the beginning of each trading day, the specialist establishes a fair market price for each of his or her assigned stocks. The specialist also provides current market quotations to other brokers throughout the day. The specialist executes limit and stop orders for other brokers on a commission basis and maintains the limit order book. Moreover, the specialist is obligated to maintain "orderly markets" in his or her assigned stocks by making sure that trading occurs throughout the day with minimal price fluctuations. Finally, the specialist acts as a dealer by buying stocks from the trading crowd when other bids are available or selling stocks to the trading crowd when other offers are not made. The specialist's goal is to minimize the temporary imbalance between public supply and demand.

[12] When positioning a block, the brokerage firm quotes a tentative price for the stock. Barring an extreme and unexpected movement in the price of the stock, the customer may be reasonably assured of execution at the quoted price. In "shopping the block," the firm contacts potential customers to take the opposite side at a specified price. The firm might be willing to negotiate this price depending on how interested other investors are in participating in the transaction. The firm continues to contact potential customers until there is a sufficient quantity of orders for the opposite side at a single price. At this point, the firm returns to its original customer to confirm his or her interest in the block transaction at the negotiated price, also known as the "clean-up price.

[13] A block transaction that is proposed to be priced within the current market bid-ask spread is subject to NYSE Rule 76, which governs cross trades. Under this rule, when the floor broker has an order to buy and an order to sell in the same security, the broker must "publicly offer such security at a price which is higher than his bid by the minimum variation permitted in such security before making a transaction with himself." All such bids and offers must be clearly announced to the trading crowd before the floor broker can proceed with the cross transaction.

A block transaction that is proposed to be priced outside of the current market quotation is subject to NYSE Rule 127. Under this rule, the floor broker

Continued

The success of the block trading procedures described above is dependent upon the particular market structure of the securities industry. As noted above, the specialist plays an extremely important role in managing the entire process. Moreover, the trading crowd for a particular stock may be substantially smaller than the floor population surrounding a designated contract market. Over the years, as well as in response to the Commission's Concept Release, certain market participants have suggested that the open and competitive execution requirement be relaxed to permit block trading procedures similar to those found in the securities industry. These commenters assert that such procedures can be adopted by contract markets with minimal adverse effects on market volume, liquidity, transparency, or customer protection. However, given the significant differences in market structure that exist between the securities and futures markets, it is questionable whether securities block trading procedures could be easily transferred to contract markets. Although the supporting comment letters generally urged the Commission to allow block trading procedures, they did not specify how these procedures should be implemented, whether the specialist's role should be replicated on the futures side, or the extent to which the trading crowd should be allowed to participate in a block transaction.

III. The Commission's Approach to Alternative Execution Procedures

Given the lack of consensus among the commenters responding to the Concept Release and among industry participants regarding the appropriate terms and conditions which should govern alternative execution procedures for large size or other types of orders, the Commission has decided to evaluate such procedures on a case-by-case basis. Under this approach, each contract market would, of course, retain the discretion whether to permit alternative execution procedures. Additionally, each contract market would have the ability to develop procedures that reflect the particular characteristics and needs of its individual markets and market participants. For example, a contract market might decide to employ different execution procedures for each of the individual contracts for which it is designated.

The Commission will consider proposals from contract markets to permit alternative execution procedures. The Commission encourages contract markets to solicit the input of, and coordinate with, various interested parties in the development of such execution procedures for large orders, including its membership, futures commission merchants, end-users, and industry associations. The Commission also notes that the ideas discussed in and the specific questions asked by the Concept Release provide general guidance as to the various issues that should be addressed by a contract market seeking Commission approval of particular alternative execution procedures. For example, a contract market should discuss the impact of its proposal on the usefulness of the contract market as a vehicle for price discovery and risk transfer, whether its proposal represents the least anticompetitive means of achieving its objective,[14] whether the proposed transactions fulfill some need of market participants that traditional open outcry cannot fulfill as well, and whether the transaction are structured in such a way as to complement the competitive market.

Based on its experience in reviewing contract market proposals for alternative execution procedures, the Commission will determine whether any further Commission action is appropriate. As stated above, the Commission remains open to further written comments on the various topics surrounding potential alternative execution procedures. Moreover, Commission staff stands ready to discuss these issues with industry representatives.

[14] *See* section 15 of the Act.

must: (1) Inform the specialist of his or her intention to cross the block orders at a specific price; (2) probe the market to determine whether more stock would be lost to orders in the trading crowd than is reasonable under the circumstances; (3) fill at least a portion of the limit orders previously entered at the trading post from the block orders; and (4) cross the remaining block orders at the negotiated clean-up price. NYSE Rule 127 sets forth the broker's obligation to fill the limit orders of the specialist and the trading crowd. Such obligations depend, in part, on whether the broker is handling agency orders for both sides of the block transaction or whether all or a part of one side of the block is for the brokerage firm's house account.

The Chicago Board Options Exchange ("CBOE") also has procedures which allow potential counterparties to negotiate the terms and conditions of certain complex and large size option orders prior to the time such orders are brought down to the trading floor. Under CBOE Rule 6.9, a member or member organization representing an order for an option traded on CBOE ("original order"), including spread, combination, straddle, or stock-option orders, may solicit a member, member organization, customer, or broker-dealer to transact in person or by order ("solicited order") with the original order. The priority of the solicited order is dependent upon the degree of disclosure of the original order to the trading crowd and upon whether the solicited order improves the market price.

Issued in Washington, DC on June 4, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–14713 Filed 6–9–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps (ROTC) Program Subcommittee

AGENCY: U.S. Army Cadet Command, DOT.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Reserve Officers' Training Corps (ROTC) Program Subcommittee.

Dates of Meeting: July 12, 1999 thru July 13, 1999.

Place of Meeting: Executive Inn West, 830 Phillips Lane, Louisville, Kentucky 40209–1387.

Time of Meeting: 0830 to 1100 on July 12, 1999 and 0830–1430 on July 13, 1999.

Proposed Agenda: Review and discussion of the status of Army ROTC since the February 1999 meeting at the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Spadafora, U.S. Army Cadet Command, ATCC–TE, Fort Monroe, Virginia 23651–5000; phone (757) 727–4595.

SUPPLEMENTARY INFORMATION: 1. The Subcommittee will review the significant changes in ROTC scholarships, missioning, advertising strategy, marketing, camps and on-campus training, the Junior High School Program and ROTC Nursing.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management office in writing at least five days prior to the meeting of their intent to attend the meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits, the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding the July 1999 meeting of the ROTC Program Subcommittee should be addressed to Mr. Roger Spadafora, U.S. Army Cadet

Command, ATCC–TE, Fort Monroe, Virginia 23651–5000, telephone number (757) 727–4595.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–14776 Filed 6–9–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; ECR Technology Limited

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to ECR Technology Limited, a revocable, nonassignable, exclusive license in the United States, to practice the Government-Owned invention described in U.S. Patent No. 5,651,976 entitled "Controlled Release of Active Agents Using Inorganic Tubules" issued July 29, 1997.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 9, 1999.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR part 404).

Dated: May 26, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–14664 Filed 6–9–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 12, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.*

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 4, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1999–2000 Private School Survey.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 45,000.

Burden Hours: 16,667.

Abstract: The National Center for Education Statistics (NCES) collects information on private schools, both religious-affiliated and independent, every two years in order to maintain a universe frame of private schools that is of sufficient accuracy and completeness to serve as a sampling frame for NCES surveys of private schools and to generate biennial data on the total number of private schools, teachers, and students. Since 1980, this Elementary/Secondary data collection has formed the basis for national statistical data on private schools.

[FR Doc. 99–14687 Filed 6–9–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Waivers Granted of Certain Federal Program Requirements

ACTION: Notice of waivers granted by the U.S. Secretary of Education under the waiver authority in the Elementary and Secondary Education Act.

SUMMARY: The Elementary and Secondary Education Act (ESEA), as reauthorized by the Improving America's Schools Act (Pub. L. 103–382) permits the Secretary of Education to grant waivers of certain Federal program requirements in order to further effective innovation and improvements in teaching and learning in accordance with specific local needs.

As of December 31, 1998, the U.S. Department of Education had approved 355 requests for waivers. This notice, published as provided for in section 14401(g) of the ESEA, identifies the 115 waivers approved by the Department of Education from January 1, 1998 through December 31, 1998.

(A) *Waivers Approved Under the General Waiver Authority in Section 14401 of the ESEA:*

(1) Applicant: New York State Education Department, Albany, NY.

Requirement Waived: Section 14201(a) of the ESEA.
Duration of Waiver: Three years.
Date Granted: January 8, 1998.
(2) Applicant: District of Columbia Public Schools, Washington D.C.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1998.
Date Granted: February 2, 1998.
(3) Applicant: Florida Department of Education, Tallahassee, FL.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: February 2, 1998.
(4) Applicant: Mississippi Department of Education, Jackson, MS.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through August 1998.
Date Granted: February 2, 1998.
(5) Applicant: New York State Education Department, Albany, NY.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: February 2, 1998.
(6) Applicant: West Virginia Department of Education, Charleston, WV.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through June 1999.
Date Granted: February 2, 1998.
(7) Applicant: Seminole County Public Schools, Sanford, FL.
Requirement Waived: Section 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: February 3, 1998.
(8) Applicant: Tucson Unified School District, Tuscon, AZ.
Requirement Waived: Sections 1113(a)(4) of the ESEA.
Duration of Waiver: Three years.
Date Granted: February 9, 1998.
(9) Applicant: Alabama Department of Education, Montgomery, AL.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1998.
Date Granted: April 17, 1998.
(10) Applicant: Fleetwood Area School District, Blandon, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: April 17, 1998.
(11) Applicant: Miles City Elementary School District No. 1, Miles City, MT.
Requirement Waived: Sections 1113(b)(1)(A) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: April 17, 1998.
(12) Applicant: Utah State Office of Education, Salt Lake City, UT.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through July 1999.
Date Granted: April 17, 1998.
(13) Applicant: Washington State Department of Education, Olympia, WA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1999.
Date Granted: May 2, 1998.
(14) Applicant: Bellevue School District, Bellevue, WA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: May 13, 1998.
(15) Applicant: Minot Public School District No. 1, Minot, ND.
Requirement Waived: Section 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: May 13, 1998.
(16) Applicant: Seminole County Public Schools, Sanford, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: May 13, 1998.
(17) Applicant: California Department of Education, Sacramento, CA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through August 1998.
Date Granted: June 10, 1998.
(18) Applicant: Nebraska Department of Education, Lincoln, NE.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through August 1998.
Date Granted: June 10, 1998.
(19) Applicant: Hawaii Department of Education on behalf of Sunset Beach Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.
(20) Applicant: Hawaii Department of Education on behalf of Kihei Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.
(21) Applicant: Hawaii Department of Education on behalf of Makalapa Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.
(22) Applicant: Hawaii Department of Education on behalf of Salt Lake Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.
(23) Applicant: Hawaii Department of Education on behalf of Kipapa Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.
(24) Applicant: El Centro School District on behalf of Margaret Hedrick School District, El Centro, CA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1998.
(25) Applicant: Hawaii Department of Education on behalf of Waihe'e Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 24, 1998.
(26) Applicant: Hawaii Department of Education on behalf of Pearl City Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 24, 1998.
(27) Applicant: Hawaii Department of Education on behalf of Hale Kula Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 24, 1998.
(28) Applicant: Sweetwater Union High School District, Chula Vista, CA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 24, 1998.
(29) Applicant: Buncombe County Schools, Weaverville, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 30, 1998.
(30) Applicant: Northeast Bradford School District on behalf of Northeast Bradford Elementary School, Rome, PA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 30, 1998.
(31) Applicant: Warwick School District, Lititz, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.

Duration of Waiver: Three years.
Date Granted: June 30, 1998.
(32) Applicant: Belle Vernon Area School District, Belle Vernon, PA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 10, 1998.
(33) Applicant: Decatur Township School District, Indianapolis, IN.
Requirement Waived: Sections 1113(a) and 1113(c) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 10, 1998.
(34) Applicant: Laurel Highlands School District, Uniontown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 10, 1998.
(35) Applicant: Meriwether County School District, Greenville, GA.
Requirement Waived: Section 1113(c)(1) of the ESEA.
Duration of Waiver: One year.
Date Granted: July 10, 1998.
(36) Applicant: Trinity Area School District, Washington, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 10, 1998.
(37) Applicant: Brevard County Public Schools, Viera, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1998.
(38) Applicant: Madison Metropolitan School District, Madison,WI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1998.
(39) Applicant: Oak Harbor School District, Oak Harbor, WA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1998.
(40) Applicant: West Chester Area School District, Chester, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1998.
(41) Applicant: Carteret County Schools, Beaufort, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 14, 1998.
(42) Applicant: Okaloosa County School District, Fort Walton Beach, FL.
Requirement Waived: Section 1113(a)(4) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 14, 1998.
(43) Applicant: San Bernardino City Unified School District on behalf of Palm Avenue Elementary School, San Bernardino, CA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 14, 1998.
(44) Applicant: Taylor County Elementary School, Campbelleville, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 14, 1998.
(45) Applicant: South Eastern School District, Fawn Grove, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 18, 1998.
(46) Applicant: Clay County District Schools, Green Cove Springs, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 24, 1998.
(47) Applicant: DuBois Area School District, DuBois, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 24, 1998.
(48) Applicant: McKeesport Area School District, McKeesport, PA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 24, 1998.
(49) Applicant: Northern Lehigh School District, Slatington, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 24, 1998.
(50) Applicant: Amherst County Schools, Amherst, VA.
Requirement Waived: Sections 1113(c)(1) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 2, 1998.
(51) Applicant: Clay County District Schools, Green Cove Springs, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 2, 1998.
(52) Applicant: Huntingdon Area School District, Huntingdon, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 2, 1998.
(53) Applicant: Maine School Union 122, Caribou, ME.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 2, 1998.
(54) Applicant: Puerto Rico Department of Education, San Juan, PR.
Requirement Waived: Section 1113(a)(5) of the ESEA.
Duration of Waiver: Through June 2001.
Date Granted: August 2, 1998.
(55) Applicant: Middletown Area School District, Middletown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 4, 1998.
(56) Applicant: Owensboro Independent School District, Owensboro, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 4, 1998.
(57) Applicant: Port Angeles School District, Port Angeles, WA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 4, 1998.
(58) Applicant: Keene School District, Keene, NH.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 6, 1998.
(59) Applicant: Northampton Area School District, Northampton, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 6, 1998.
(60) Applicant: White Plains Public Schools, White Plains, NY.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 6, 1998.
(61) Applicant: Conestoga Valley School District, Lancaster, PA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113 (c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.
(62) Applicant: Hempfield School District, Landisville, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.
(63) Applicant: Highlands School District, Natrona Heights, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.
(64) Applicant: Juniata County School District, Miffintown, PA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(1) of the

ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.
(65) Applicant: Kentucky Department of Education on behalf of Pikeville Elementary School, Frankfort, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 8, 1998.
(66) Applicant: Franklin Area School District, Harrisburg, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 10, 1998.
(67) Applicant: Minnesota Department of Education, Saint Paul, MN.
Requirement Waived: Sections 7302 and 7134(c) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 10, 1998.
(68) Applicant: Cumberland County Schools, Fayetteville, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 12, 1998.
(69) Applicant: Henderson County Public Schools, Hendersonville, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 12, 1998.
(70) Applicant: Edgecombe County Schools, Tarboro, NC.
Requirement Waived: Section 1113(c)(1) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 16, 1998.
(71) Applicant: Millcreek School District, Edinboro, PA.
Requirement Waived: Section 1113(a)(1)(B) of the ESEA.
Duration of Waiver: One year.
Date Granted: August 16, 1998.
(72) Applicant: Mount Pleasant Area School District, Mount Pleasant, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 16, 1998.
(73) Applicant: Scranton School District, Scranton, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 16, 1998.
(74) Applicant: Los Angeles Unified School District, Los Angeles, CA.
Requirement Waived: Section 421(b) of the General Education Provisions Act.
Duration of Waiver: One year.
Date Granted: August 22, 1998.
(75) Applicant: Arizona Department of Education, Phoenix, AZ.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through June 1999.
Date Granted: August 26, 1998.
(76) Applicant: Arkansas Department of Education, Little Rock, AR.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1999.
Date Granted: August 26, 1998.
(77) Applicant: Delaware Department of Education, Dover, DE.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through October 1999.
Date Granted: August 26, 1998.
(78) Applicant: Hawaii Department of Education, Honolulu, HI.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(79) Applicant: Iowa Department of Education, Des Moines, IA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(80) Applicant: Louisiana Department of Education, Baton Rouge, LA.
Requirement Waived: 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(81) Applicant: Massachusetts Department of Education, Malden, MA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(82) Applicant: Minnesota Department of Education, Saint Paul, MN.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(83) Applicant: Montana Office of Public Instruction, Helena, MT.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(84) Applicant: New York State Education Department, Albany, NY.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(85) Applicant: North Dakota Department of Public Instruction, Bismarck, ND.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(86) Applicant: Tennessee Department of Education, Nashville, TN.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(87) Applicant: Virginia Department of Education, Richmond, VA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: August 26, 1998.
(88) Applicant: Eau Claire Area School District, Eau Claire, WI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 28, 1998.
(89) Applicant: Kansas State Department of Education, Topeka, KS.
Requirement Waived: Section 1003(a) of the ESEA.
Duration of Waiver: One year.
Date Granted: August 31, 1998.
(90) Applicant: Maine Department of Education, Augusta, ME.
Requirement Waived: Comprehensive School Reform Demonstration Program—eligible grade spans.
Duration of Waiver: Three years.
Date Granted: August 31, 1998.
(91) Applicant: Virginia Department of Education, Richmond, VA.
Requirement Waived: Comprehensive School Reform Demonstration Program—eligible grade spans.
Duration of Waiver: Three years.
Date Granted: September 1, 1998.
(92) Applicant: Alaska Department of Education, Juneau, AK.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: September 23, 1998.
(93) Applicant: Carlynton School District, Carnegie, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: September 23, 1998.
(94) Applicant: Georgia Department of Education, Atlanta, GA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: September 23, 1998.
(95) Applicant: Florida Department of Education, Tallahassee, FL.

Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: September 24, 1998.
(96) Applicant: Kutztown Area School District, Kutztown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 1, 1998.
(97) Applicant: Southern York County School District, Glen Rock, PA.
Requirement Waived: Sections 1113(a)(2)(B) and 1113(c)(1) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 1, 1998.
(98) Applicant: Valley Grove School District, Franklin, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 1, 1998.
(99) Applicant: District of Columbia Public Schools, Washington D.C.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: November 2, 1998.
(100) Applicant: Kentucky Department of Education, Frankfort, KY.
Requirement Waived: Section 1116(c)(1)(C) and 1116(d)(3)(A)(ii) of the ESEA.
Duration of Waiver: Two years.
Date Granted: November 2, 1998.
(101) Applicant: Nevada Department of Education, Carson City, NV.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1999.
Date Granted: November 2, 1998.
(102) Applicant: School District of Haverford Township, Havertown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: November 2, 1998.
(103) Applicant: Upper Dublin School District, Dresher, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: November 2, 1998.
(104) Applicant: Idaho Department of Education, Boise, ID.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through December 1999.
Date Granted: November 2, 1998.
(105) Applicant: West Virginia Department of Education, Charleston, WV.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through June 1999.
Date Granted: November 2, 1998.
(106) Applicant: Utah State Office of Education, Salt Lake City, UT.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through July 1999.
Date Granted: November 5, 1998.
(107) Applicant: New Jersey Department of Education, Trenton, NJ.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through December 1999.
Date Granted: November 10, 1998.
(108) Applicant: Mississippi Department of Education, Jackson, MI.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through December 1999.
Date Granted: November 12, 1998.
(109) Applicant: School District of Fort Atkinson, Fort Atkinson, WI.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 1, 1998.
(110) Applicant: Crawford School District, Meadville, PA.
Requirement Waived: Section 1113 (a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 9, 1998.
(111) Applicant: Laurel Public Schools, Laurel, MT.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 9, 1998.
(112) Applicant: School District of Philadelphia, Philadelphia, PA.
Requirement Waived: Section 5108 and 7307 of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 9, 1998.
(113) Applicant: Orange County Public Schools, Orange, VA.
Requirement Waived: Sections 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 14, 1998.
(114) Applicant: Owens Valley Career Development Center, Bishop, CA.
Requirement Waived: 34 CFR 75.533.
Duration of Waiver: One year.
Date Granted: December 14, 1998.

(B) *Waivers Approved Under the Waiver Authority in Section 1113(a)(7) of the ESEA:*

(1) Applicant: San Diego City Schools, San Diego, CA.
Requirement Waived: Sections 1113(a) and (c) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 9, 1998.

APPLYING FOR A WAIVER: Requests for waivers that would be implemented and affect school-level activities beginning with the semester immediately following January 1, 2000 must be submitted to the Department in substantially approvable form no later than October 1, 1999. Request for waivers that would be implemented and affect school-level activities beginning with the 2000–2001 school year must be submitted to the Department of Education in substantially approvable form no later than April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Carla Kirksey at the Department's Waiver Assistance Line, (202) 401–7801. The Department's Waiver Guidance, which provides examples of waivers, explains the waiver authorities in detail, and describes how to apply for a waiver, is also available at this number. The Guidance and other information on flexibility are available at the Department's World Wide Web site at *http://www.ed.gov/flexibility.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Eduction documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.hmt

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Dated: June 3, 1999.

Judith Johnson,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 99–14661 Filed 6–9–99; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[FE Docket No. PP–197, DOE/EIS–0307]

Notice of Reopening Scoping Period and Schedule for Public Scoping Meetings; Public Service Company of New Mexico

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that it is reopening the scoping period and will hold additional public scoping meetings for the environmental impact statement (DOE/EIS–0307) that is being prepared in connection with an application for a Presidential permit filed by Public Service Company of New Mexico (PNM). An EIS is being prepared because DOE has determined that the issuance of the Presidential permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). PNM has applied for a Presidential permit to construct electric transmission lines across the U.S.-Mexican border. The previous public scoping period extended from February 12, 1999, to April 14, 1999, during which time DOE conducted seven public meetings to obtain comments on the three alternative transmission corridors that were proposed in PNM's Presidential permit application. The purpose of this notice is to open a new scoping period to obtain additional comments, particularly on three additional alternative transmission corridors that have been identified subsequent to the original scoping period.

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The second scoping period starts with the publication of this notice in the **Federal Register** and will continue until July 14, 1999. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by July 14, 1999, in defining the scope of the EIS. Comments received or postmarked after that date will be considered to the extent possible. Additional information on the scoping process is available in the scoping notice published in the **Federal Register** on February 12, 1999 (64 FR 7173).

Dates, times, and locations for the public scoping meetings are:

1. June 29, 1999, 1 to 3 P.M., Desert Hills Social Center, 2980 S. Camino del Sol, Green Valley, Arizona.
2. June 29, 1999, 6 to 8 P.M., St. Ann's Hall, 18 Baca, Tubac, Arizona.
3. June 30, 1999, 10 to 12 P.M., Meeting Room, Buenos Aries National Wildlife Refuge, Sasabe, Arizona. (Directions: From Tucson, take I–19 S to Ajo Way/Highway 86, go W on Ajo Way 20 miles to Three Points/Robles Junction. Proceed S on Route 286 approximately 37 miles. Follow signs to headquarters 3 miles E.)
4. June 30, 1999, 3 to 5 P.M., Mary E. Dill Primary School, Multi Purpose Room 10451 South Sasabe, Three Points (Robles Junction), Arizona.
5. June 30, 1999, 7 to 9 P.M., Plaza Hotel and Conference Center (Wildcat I and II), 1900 E. Speedway Boulevard, Tucson, Arizona.

Requests to speak at a public scoping meeting(s) should be received by Mrs. Russell, the NEPA Document Manager, at the address indicated below on or before June 25, 1999. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, NEPA Document Manager, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or electronic mail at Ellen.Russell@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy 1000 Independence Avenue, SW, Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, connected, operated, or maintained at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR 205.320–205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On December 28, 1998, PNM, a regulated public utility, filed an application for a Presidential permit with the Office of Fossil Energy of DOE. PNM proposes to construct two transmission lines on a single right-of-way extending approximately 140 to 230 miles from the electric switchyard near the Palo Verde Nuclear Generating Station (PVNGS), located approximately 30 miles west of Phoenix, Arizona, to the U.S.-Mexico border in the vicinity of Nogales or Sasabe, Arizona. South of the border, PNM would extend the lines approximately 60 to 120 miles to the Santa Ana Substation, located in the City of Santa Ana, Sonora, Mexico, and owned by the Comision Federal de Electricidad (CFE), the national electric utility of Mexico. In its application for a Presidential permit, PNM identified three alternative corridors for construction of the cross-border transmission lines. These corridors, Alternatives 1, 2 and 3 below, were the subject of public meetings conducted in Nogales, Tucson, Patagonia, Sells, Ajo, Gila Bend, and Casa Grande, Arizona, in March 1999.

During these meetings, residents and interested groups provided comments that have led to the identification of three additional alternative corridors (Alternatives 4, 5, and 6) that will be studied in the EIS. The purpose of this notice is to reopen the scoping period for the EIS and to announce additional public scoping meetings to collect additional comments, particularly on Alternatives 4, 5, and 6. To assist the first time reader, a description of each of the corridors follows. Oral and written comments previously submitted on Alternatives 1, 2, and 3 have been entered in the official record of this proceeding and need not be resubmitted.

Alternative 1

This alternative corridor begins at the electrical switchyard near the Palo Verde Nuclear Generating Station (PVNGS), continues south, following existing transmission lines, past Gila Bend and across the Barry M. Goldwater Air Force Range to Ajo where it turns southeast to the vicinity of Why and continues across the western boundary of the Tohono O'odham Nation and then southeast to the international border (145 miles in the U.S., 264 miles total).

Alternative 2

This alternative corridor proceeds south and east from the electrical switchyard near the PVNGS to the vicinity of Mobile where it turns south crossing the middle to eastern area of the Tohono O'odham Nation and then proceeds southeast to the international border in the vicinity of San Miguel (158 miles in the U.S., 240 miles total).

Alternative 3

This alternative corridor extends southeasterly from the electrical switchyard near the PVNGS to Interstate 10, approximately three miles north of Red Rock. From this point, the corridor continues in a southeasterly direction, following I–10 and existing transmission lines, through Tucson, to Arizona Highway 83. East of Highway 83 the corridor turns south, following a designated utility corridor (that does not contain transmission lines) to Sonoita, then southwest to Patagonia, crossing the border in the vicinity of Nogales (234 miles in the U.S., 301 miles total).

Alternative 4

This alternative corridor extends southeasterly from the electrical switchyard near the PVNGS to I–10, approximately three miles north of Red Rock. From this point, the line continues in a southeasterly direction, following I–10 and existing transmission lines to Marana. At Marana, this alternative corridor turns south, following an existing powerline corridor west of the Saguaro National Park, across the eastern edge of the Tohono O'odham Nation Schuk Toak District (known as the Garcia Strip) to an area just north of Three Points (Robles Junction). From Three Points, this alternative corridor heads southwest toward the Baboquivari Mountains on new right-of-way. This alternative corridor remains west of the Buenos Aires National Wildlife Refuge and east of the Baboquivari Mountains, crossing into Mexico near Sasabe (209 miles in the U.S., 288 miles total).

Alternative 5

This alternative corridor extends southeasterly from the electrical switchyard near the PVNGS to I–10, approximately three miles north of Red Rock. The corridor continues in a southeasterly direction, following I–10 and existing transmission lines, through Tucson. Near the intersection of I–10 and Business Route 19, the corridor turns south, paralleling Business Route 19 and I-19, passing Sahuarita and Green Valley. The corridor remains well east of I–19, gradually approaching I–19 near Amado and Tubac, and continuing south crossing the border in Nogales (216 miles in the U.S., 283 miles total).

Alternative 6

This alternative corridor is the same as Alternate 4 from the electrical switchyard near the PVNGS to an area north of three Points (Robles Junction.). From Three Points, this alternative corridor would turn southeast, following an existing powerline corridor across the southwestern corner of the San Xavier District of the Tohono O'odham Nation and then east, across an area south of ASARCO's Mission Complex Mine Area. This alternative corridor continues east, following an existing transmission corridor, across I–19 and Business Route 19 to a point east of Sahuarita. This corridor then turns south following the same route as Alternative 4, crossing the border in Nogales (229 miles in the U.S., 296 miles total).

Battelle Memorial Institute is assisting DOE in preparation of the EIS. Battelle is also maintaining an EIS web site for DOE at: www.battelle.org/projects/pnmeis. From this site, the PNM Presidential permit application can be downloaded, as well as the project fact sheet, verbatim transcripts from the March 1999 public scoping meetings, and other project-related information.

Issued in Washington, DC, on June 4, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 99–14658 Filed 6–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation for Applications of Petroleum Technologies on Non-Allotted Native American Lands

AGENCY: National Petroleum Technology Office through the Federal Energy Technology Center, Pittsburgh, Department of Energy.

ACTION: Issuance of financial assistance solicitation.

SUMMARY: The U. S. Department of Energy's (DOE) National Petroleum Technology Office (NPTO) through the Federal Energy Technology Center (FETC) announces that it intends to issue a competitive Program Solicitation (PS), No. DE-PS26–99BC15184 for the program entitled "Applications of Petroleum Technologies on Non-allotted Native American Lands". Through this solicitation, NPTO seeks to support applications conducting applied research for development, exploration and environmental solutions for problems on Native American and Alaskan Native Corporation lands whose mineral rights are held in common for the benefit of the tribe. Applications will be subjected to a comparative merit review by a DOE technical panel, and awards will be made to a limited number of applicants on the basis of the scientific merit, application of relevant program policy factors, and the availability of funds.

DATES: The solicitation is expected to be ready for release by June 17, 1999 and will have two (2) separate closing dates for submission of applications. The first closing date will be on or about August 17, 1999 and the second closing date on or about October 19, 1999. It should be noted that applications will only be considered for the closing date for which they are submitted. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation and prior to submitting applications, check for any changes (i.e. closing date of solicitation) and/or amendments, if any through the Internet at FETC's Home Page <http://www.fetc.doe.gov/business>.

FOR FURTHER INFORMATION CONTACT: Mr. Larry D. Gillham, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 3628, Tulsa, OK 74101–3628; (Telephone: (918) 699–2034, FAX: (918) 699–2038, E-mail: gillham@npto.doe.gov).

ADDRESSES: The solicitation will be available through the Internet at FETC's Home Page <http://www.fetc.doe.gov/business>. TELEPHONE REQUESTS WILL NOT BE ACCEPTED FOR ANY FORMAT VERSION OF THE SOLICITATION.

SUPPLEMENTARY INFORMATION: Through Program Solicitation No. DE-PS26–99BC15184, the Department of Energy seeks applications for innovative technical approaches to apply research for development, exploration and

environmental solutions for problems on non-allotted Native American lands. In cooperation with the Tribal management, proposed efforts must be economically and environmentally viable. This solicitation will have three categories of grant awards and they are described below:

The Development program is directed toward technologies to improve the development of a known oil field on Native American and Alaskan Native Corporation lands.

The Exploration program is directed toward technologies to promote the exploration of undiscovered oil reserves on Native American and Alaskan Native Corporation lands.

The Environmental program is directed toward technologies to reduce the cost of effective environmental oil field compliance.

Eligibility: Eligibility for participation in this Program Solicitation is considered to be full and open and all interested parties may apply. However, to be considered for evaluation, each applicant must provide written proof that the applicant has both access to and the permission of the tribe to perform on non-allotted Native American or Alaskan Native Corporation lands. The tribe must also agree that data and information generated during the performance of the project will be transferred to the public. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. While national laboratories may not participate as a prime they may participate as a sub-contractor.

Areas of Interest: A variety of approaches is sought: (1) For the Development program, the types of technologies to be considered are not limited to but may include reservoir characterization, completion or stimulation, secondary or tertiary oil recovery, artificial lift, well workovers, well drilling, field studies and production management; (2) for the Exploration program, the types of technologies to be considered are not limited to but may include non-invasive exploration techniques, computer-based modeling for exploration and well drilling and evaluation; and (3) for the Environmental program, the types of technologies to be considered are not limited to but may include soil remediation and remediation due to past operational practices or problems, air emissions, innovative waste and produced water management.

Awards: DOE currently has available $2.0 million for this solicitation. Out-year funding shall depend upon availability of future year appropriations. DOE anticipates multiple awards (i.e., between three (3) and six (6)) with a project duration of 3 years or less. A minimum 20% non-federal cost-share is required for all applications. Collaboration between industry, university, and DOE National Laboratories is strongly encouraged.

Issued in Pittsburgh, Pennsylvania on June 2, 1999.

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–14778 Filed 6–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 24, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: Massachusetts Institute of Technology; Plasma Science and Fusion Center (Room NW17–213); 77 Massachusetts Avenue; Cambridge, MA 02139.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: The Committee will hear presentations on fusion research at the Massachusetts Institute of Technology and tour the facilities there.

Tentative Agenda

Thursday, June 24, 1999

8:45 a.m.
MIT/Plasma Science Fusion Center Overview
9:15 a.m.
C-Mod Program
Lower Hybrid Current Drive Upgrades
9:45 a.m.
Levitated Dipole Experiment
11:00
Technology Programs
11:50 a.m.
Spin-Offs from Fusion
1:30 p.m.
Tour of Laboratories
2:30 p.m.
Public Comments
3:00 p.m.
FESAC Business
5:00 p.m.
Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@science.doe.gov (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190; Forrestal Building; 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 3, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–14660 Filed 6–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. 98–33–NG; et al.]

Avista Corporation (Formerly the Washington Power Company); et al.; Orders Granting, Amending, and Vacating Authorizations To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending, and vacating natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on June 2, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX.—ORDERS GRANTING, AMENDING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Import volume	Export volume	Comments
1381–A	05–11–99	Avista Corporation (Formerly The Washington Power Company) 96–33–NG.			Name change.
1480	05–19–99	Cascade Natural Gas Corporation 99–29–NG.	100 Bcf		Import from Canada beginning July 1, 1999, and extending through June 30, 2001.
754–A	05–19–99	Kamine/Besicorp Natural Dam L.P. 92–04–NG.			Vacate long-term import authority.
1481	05–19–99	Pawtucket Power Associates Limited Partnership 99–31–NG.	10.584 Bcf		Import from Canada beginning on May 31, 1999, and extending through May 30, 2001.
1482	05–19–99	Dartmouth Power Associates Limited Partnership 99–32–NG.	11.68 Bcf		Import from Canada beginning on May 7, 1999, and extending through May 6, 2001.
1483	05–20–99	AEC Marketing (USA) Inc. 99–30–NG	200 Bcf		Import from Canada beginning on June 30, 1999, and extending through June 29, 2001.
745–A	05–20–99	Kamine/Besicorp Syracuse L.P. 92–90–NG.			Vacate long-term import authority.
377–A	05–20–99	Kamine/Besicorp Syracuse L.P. 89–47–NG.			Vacate long-term import authority.
389–B	05–20–99	Kamine/Besicorp Syracuse L.P. 89–48–NG.			Vacate long-term import authority.
1485	05–24–99	Enron International Gas Sales Company 99–33–LNG.	600 Bcf		Import of liquefied natural gas from various sources beginning on the date of first import over a two-year term.

[FR Doc. 99–14659 Filed 6–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–319–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of June 1, 1999:

Thirty-Seventh Revised Sheet No. 8
Thirty-Seventh Revised Sheet No. 9
Thirty-Sixth Revised Sheet No. 13
Forty-Fourth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.4 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that this filing also includes the annual restatement of the "Eligible MDQ" used to design the reservation surcharge. ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2.5 million to $2.4 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. this filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14672 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–320–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective June 1, 1999:

Forty-Fifth Revised Sheet No. 18

ANR states that the above-referenced tariff sheet is being filed by ANR to reflect the impact of the annual update of the Eligible MDQ that is used to calculate its currently effective Gas Realignment (GSR) Reservation Surcharges, as required by and consistent with ANR's transition cost recovery mechanism set forth in its tariff. ANR advises that the Eligible MDQ has increased by approximately eleven percent (11%), thereby reducing the level of the GSR surcharges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14673 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–538–000]

B–R Pipeline Company Portland General Company; Notice of Application

June 4, 1999.

Take notice that on May 28, 1999, B–R Pipeline Company (B–R), P.O. Box 806278, 125 South Franklin Street, Chicago, Illinois 60680–4124, and Portland General Electric Company (PGE), One World Trade Center, Suite 1300, Portland, Oregon 97204 (jointly referred to as Applicants), filed in Docket No. CP99–538–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, requesting the following authorizations: (1) permission and approval to abandon by sale to B–R a 10. per cent tenancy-in-common share (12 per cent of PGE's interest) of a pipeline known as the "Kelso-Beaver Pipeline" (KBP); (2) certificate authority for B–R to acquire, own, and operate this 10.5 percent tenancy-in-common interest in the KBP; (3) certificate authority for B–R to construct, own, and operate, at B–R's expense, a delivery point for interstate transportation service consisting of a tap, meter, appurtenant facilities (collectively the Delivery Point) located near the terminus of the KBP in Columbia County, Oregon, which will connect with a non-jurisdictional pipeline to be built and owned by United States Gypsum Company (Gypsum) as an extension of Gypsum's new wallboard manufacturing plant in Rainier, Oregon; (4) certificate authority for B–R to transport natural gas on behalf of Gypsum from the existing KBP's interconnect with Northwest Pipeline Corporation (Northwest) in Kelso, Washington, to the interconnect with Gypsum's facilities extending from Gypsum's new plant; and (5) waiver of the Commission's requirements to file annual reports, rates, tariffs, and contracts involving service by B–R for Gypsum, all as more fully set forth in the application which is on file with the Commission and open to public inspection. this filing may be viewed on the web at: http:///www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Applicants state that on October 24, 1991, the Commission issued a certificate authorizing PGE and KB Pipeline Company (KB) to construct and operate 17 miles of twenty-inch diameter pipeline with a capacity of 193 MMcf/day (the KBP) and other facilities. It is indicated that the KBP extends from an interconnection with Northwest in Kelso, Washington, to a delivery point at PGE's Beaver Generating Station in Columbia County, Oregon and to an interconnection with KB's local distribution affiliate and only customer, Northwest Natural Gas Company (Northwest Natural). Applicants further state that neither PGE nor KB was required to offer open access transportation for third parties or to file open access tariffs.

Applicants request authority for PGE to abandon by sale to B–R its right, title, and interest in and to a 10.5 per cent tenancy-in-common of the KBP, and Applicants request corresponding certificate authority for B–R to acquire this 10.5 per cent interest as tenant-in-common so the B–R may transport and deliver natural gas belonging to Gypsum for use at a new Gypsum wallboard plant in Rainier, Oregon. Applicants assert that as part of that sale, PGE will assign to Gypsum and B–R, with respect to such 10.5 per cent interest, all transportation and other rights, and Gypsum and B–R will assume all obligations that accompany such an ownership share under the original joint ownership agreement. Applicants further assert that B–R's ownership of 10.5 per cent tenancy-in-common will not alter the total capacity or the maximum allowable operating pressure that applies currently to the KBP.

In addition to the proposed purchase and ownership of the 10.5 per cent interest in the KBP, B–R seeks certificate authority to construct, own, and operate for the purpose of transporting natural gas to Gypsum a Delivery Point, which will be located near the terminus of the existing KBP within existing rights-of-way. Applicants assert that B–R would build no other facilities; rather, Gypsum, an affiliate of B–R, plans to extend an eight-inch pipeline from its new plant in Rainier, Oregon to the Delivery Point. Applicants further assert that Gypsum's pipeline will be built and operated as an extension of Gypsum's new plant and will not be subject to the Commission's jurisdiction under either the NGA or NGPA. Applicants indicate that apart from the $2.5 million to be paid to PGE to purchase a share of the KBP, the cost of B–R's new Delivery Point is estimated to be $65,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14668 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–321–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of July 1, 1999:

Twenty-Second Revised Sheet No. 31
Forty-Eighth Revised Sheet No. 32

CNG states that the purpose of this filing is to terminate the surcharge established under Section 18.2.A of the General Terms and Conditions of CNG's FERC Gas Tariff, effective as of July 1, 1999. Article III, Section F of the September 30, 1999 Stipulation and Agreement in Docket Nos. RP97–406–000, et al., determined the currently-effective level of this surcharge (as detailed in Appendix C of the Stipulation and Agreement), and established that CNG would continue its collection of this surcharge through and including June 30, 1999. The Commission approved the Stipulation and Agreement by order dated November 24, 1998. 85 FERC ¶61,261 (1998).

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14674 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–6–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 4, 1999.

Take notice that on May 28, 1999, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Thirteenth Revised Sheet No. 11A, reflecting an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 1.32% to 1.53% effective July 1, 1999.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14677 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–16–000]

Dow Interstate Gas Company; Petition for Rate Approval

June 4, 1999.

Take notice that on June 1, 1999, Dow Intrastate Gas Company (DIGCO), tendered for filing pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval for interruptible transportation service performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). The petition is filed to comply with a Commission letter order dated March 12, 1997, in Docket No. PR96–10–000, which approved DIGCO's current rates, and required a filing on or before June 1, 1999, to justify such rates or establish new system rates. DIGCO is an intrastate pipeline organized and operating solely within Louisiana. Its mailing address is c/o The Dow Chemical Company, 400 W. Sam Houston Pkwy. S., Houston, TX 77042–1299.

DIGCO proposes, as fair and equitable, a maximum system-wide interruptible transportation rate of $.0615 per MMBtu, plus 0.3% in-kind fuel reimbursement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14679 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–033]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on June 1, 1999, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet, to become effective June 1, 1999:

Sixteenth Revised Sheet No. 31

El Paso states that the above tariff sheet is being filed to implement one negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14671 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–5–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on July 1, 1999:

Twentieth Revised Sheet No. 21
Twenty-first Revised Sheet No. 22

According to Granite State, the foregoing tariff sheets propose a revised Power Cost Adjustment (PCA) surcharge applicable to its firm transportation services during the third quarter of 1999 to reimburse Granite State for certain electric power costs that it is obligated to pay Portland Pipe Line Corporation pursuant to the terms of a lease of a pipeline from Portland Pipe Line.

Granite State further states that the total surcharge of $1.3318 consists of the sum of two components: the Quarterly Forecast PCA factor of $1.7294 which is based on projected incremental electric power costs to be billed to Granite State during the third quarter of 1999 and the Reconcilable PCA factor of $<0.3976> which reconciles the accumulated over/under past surcharge collections in the Deferred Account on a quarterly basis. The method for developing the surcharge in the foregoing manner was approved by the Commission in orders issued in Docket Nos. RP98–155–003 and TM98–4–4–001, according to Granite State.

Granite State further states that copies of its filing have been served on its firm transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14676 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–17–001]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

June 4, 1999.

Take notice that on June 2, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective April 7, 1999:

Original Sheet No. 22
Original Sheet No. 60
Original Sheet No. 71
Original Sheet No. 72
Original Sheet No. 73
Original Sheet No. 75
Original Sheet No. 176
Original Sheet No. 177
Original Sheet No. 179
Original Sheet No. 192
Original Sheet No. 195

HIOS asserts that the purpose of the filing is to comply with the Commission's May 3, 1999 letter order in the captioned proceeding in regard that a Delaware LLC has members, not partners.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of

the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

This filing may be viewed on the web at http://www.ferc.fed.us.online/rims.htm (call 202–298–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14669 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–22–000]

Nautilus Pipeline Company, L.L.C. Notice of Filing

June 4, 1999.

Take notice that on May 28, 1999, Nautilus Pipeline Company, L.L.C. filed standards of conduct under Order Nos. 497 *et al.*[1] 566 *et al.*[2] and 599.[3]

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 21, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at ttp://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14678 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–322–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1999.

Take notice that on May 28, 1999, Northern Border Pipeline Company (Northern Border), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective on July 1, 1999:

Fifth Revised Sheet Number 108
Fifth Revised Sheet Number 117

The proposed changes would, on an illustrative basis, increase revenues from jurisdictional service by $30 million during the first year that such changes are in effect.

By this filing, Northern Border is proposing a return on equity of 15.25 percent. For the twelve months ending June 30, 2000, this request equates to a pre-tax return on total capital of approximately 13.5 percent. Northern Border is also proposing to increase the provision in 426.1, Donations, not to exceed $200,000 a year. Northern Border's filing also reflects an amortization period of 60 months for a regulatory asset resulting from Docket No. FA93–45. In Pro Forma Sheet Number 118, Northern Border proposes to modify the number of months between the mandatory periodic review of its equity rate of return from 36 months to 60 months. Based upon revenue and cost analyses, Northern Border additionally supports the conclusion that the at-risk conditions contained in the certificates for facilities placed in-service during 1991 and 1992 at Docket Nos. CP89–576 and CP91–967–002 should not be triggered.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14675 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–76–000, et al.]

Phibro Inc., et al.; Electric Rate and Corporate Regulation Filings

June 3, 1999.

Take notice that the following filings have been made with the Commission:

1. Phibro Inc.

[Docket No. EC99–76–000]

Take notice that on May 28, 1999, Phibro Inc. (Phibro) tendered for filing an application for authorization under section 203 of the Federal Power Act to transfer its Rate Schedule FERC No. 1 and associated active contracts and other jurisdictional facilities to its affiliate Phibro Power LLC. Phibro requests expeditious approval of the application.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992(; Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirement for Transportation and Affiliate Transactions. Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, order on *rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

2. El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC

[Docket No. EC99–77–000]

Take notice that on May 28, 1999, pursuant to Section 203 of the Federal Power Act, El Segundo Power, LLC (El Segundo), Long Beach Generation LLC (Long Beach), Cabrillo Power I LLC (Cabrillo I) and Cabrillo Power II LLC (Cabrillo II) (jointly, the Applicants) filed a joint application for approval of a corporate reorganization. Each of the Applicants owns electric generation facilities located in the State of California. The proposed corporate reorganization will not change the ultimate ownership or control of the facilities.

A copy of the application has been served on the California Public Utilities Commission.

The Applicants have requested waivers of the Commission's regulations so that the filing may become effective at the earliest possible date, but no later than June 25, 1999.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Colorado Power Partners

[Docket No. EG99–152–000]

Take notice that on May 28, 1999, Colorado Power Partners (CPP), 1001 Louisiana Street, Houston, Texas 77002, (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the commission's regulations and section 32 of the Public Utility Holding Company Act, as amended.

Colorado Power Partners is a Colorado general partnership which owns the Brush Cogeneration Facility consisting of Brush 1 and Brush 3 (Facility), located in Brush, Colorado and is engaged exclusively in the generation of electric energy for sale at wholesale. The Facility is a topping cycle cogeneration facility consisting of two gas turbines, a heat recovery steam generator, an extraction-condensing steam turbine, a waste-heat steam boiler, a steam-heat exchanger and waste-heat hot water boilers. The Facility is operated by Colorado Cogen Operators Limited Liability Company pursuant to an operation and maintenance agreement. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992.

Copies of this application have been served upon the Colorado Public Utility Commission and the Securities and Exchange Commission.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Western Energy Marketers, Inc., Environmental Resources Trust, Inc., CET Marketing, L.P., Cogen Energy Technologies, L.P.

[Docket No. ER98–537–002, Docket No. ER98–3233–003, Docket Nos. ER98–4412–001, and ER98–4412–002, Docket Nos. ER98–4423–001, and ER98–4423–002]

Take notice that on May 28, 1999 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER99–1981–000, Docket No. ER99–2013–000]

Take notice that on May 28, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP Companies), tendered for filing a response to the April 30, 1999, deficiency letter in the above-captioned dockets. The response constitutes an amendment to the NSP Companies' filings, which were submitted in compliance with ordering paragraphs (D) and (E) of the Commission's Order on Petition for Declaratory Order issued December 16, 1998 in North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998).

The NSP Companies state they have served a copy of the filing on the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin and all parties to the underlying proceedings. NSP also states it has served a courtesy copy on NERC and the Mid-Continent Area Power Pool.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER99–3075–000]

Take notice that on May 28, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Avista Energy, Inc., under Delmarva's market rate sales tariff.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER99–3076–000]

Take notice that on May 28, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Transaction Letter dated May 26, 1999 with Horizon Energy Company d/b/a Exelon Energy (EXELON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Transaction Letter.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER99–3079–000]

Take notice that on May 28, 1999, the New England Power Pool (NEPOOL or Pool), Executive Committee tendered for filing a request for termination of membership in NEPOOL, with an effective date of June 1, 1999, of LG&E Energy Marketing Inc. (LEM). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by LEM. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of LEM with an effective date of June 1, 1999, would relieve this entity, at LEM's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove LEM from membership in the Pool.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER99–3080–000]

Take notice that on May 28, 1999, the New England Power Pool Executive Committee for filing for acceptance a signature page to the New England

Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Providence Energy Services, Inc., (Providence Energy). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Providence Energy's signature page would permit NEPOOL to expand its membership to include Providence Energy. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Providence Energy a member in NEPOOL.

NEPOOL requests an effective date of June 1, 1999, for commencement of participation in NEPOOL by Providence Energy.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER99–3084–000]

Take notice that on May 28, 1999, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy Gulf States, Inc., Entergy Arkansas, Inc., and Entergy New Orleans, Inc., tendered for filing changes to Interconnection Agreements with Georgia Gulf Corporation; Huntsman Petrochemical Corporation; Tenaska Frontier Partners, Ltd.; LSP Energy Limited Partnership; Tennessee Valley Authority; Union Carbide Corporation; PPG Industries, Inc.; CII Carbon, L.L.C.; PanEnergy Lake Charles Generation; South Mississippi Electric Power Authority; Louisiana Energy and Power Authority; and Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn G & T, Inc., and Sam Rayburn Municipal Power Agency.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Avista Corp.

[Docket No. ER99–3085–000]

Take notice that on May 28, 1999, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with PP&L EnergyPlus Co.

AVA requests the Service Agreement be given the respective effective date of May 24, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. American Atlas #1, Ltd., L.L.L.P.

[Docket No. ER99–3086–000]

Take notice that on May 28, 1999, American Atlas #1, Ltd., L.L.L.P. (American Atlas), tendered for filing pursuant to Rules 205 and 207 an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective June 1, 1999, and accepting its power purchase agreement with Tri-State Generation and Transmission Association, Inc., to be effective the same date.

In transactions where American Atlas will sell electric energy and/or capacity at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed with the purchasing party.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER99–3087–000]

Take notice that on May 28, 1999, Commonwealth Edison Company (ComEd), tendered for filing a revised Firm Service Agreement with Alliant Bulk Power under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of May 1, 1999, for the revised service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Alliant.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER99–3088–000]

Take notice that on May 28, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with PECO Energy Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Electric Power Company

[Docket No. ER99–3089–000]

Take notice that on May 28, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with PG&E Energy Trading-Power, L.P. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Maine Electric Power Company

[Docket No. ER99–3090–000]

Take notice that on May 28, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with PP&L EnergyPlus Co. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Maine Electric Power Company

[Docket No. ER99–3091–000]

Take notice that on May 28, 1999, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with Select Energy, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Maine Power Company

[Docket No. ER99–3092–000]

Take notice that on May 28, 1999, Central Maine Power Company (CMP), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's regulations, 18 CFR Part 35, a Service Agreement for Local Network Transmission Service by and between CMP and Fox Islands Electric Cooperative, Inc. (the Service Agreement).

CMP has requested that the Service Agreement become effective on May 1, 1999.

Copies of this filing have been served upon the Maine Public Utilities Commission and Fox Islands Electric Cooperative, Inc.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER99–3093–000]

Take notice that on May 28, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Louisiana, Inc. (ELI), Entergy Mississippi, Inc. (EMI), and Entergy Gulf States, Inc. (EGSI), tendered for filing Generator Imbalance Agreements with South Mississippi Electric Association, Tennessee Valley Authority, LSP Energy Limited Partnership, CII Carbon, L.L.C., Union Carbide Corporation, Georgia Gulf Corporation, Louisiana Energy and Power Authority, Huntsman Petrochemical Corporation, Tenaska Frontiers Partners, Ltd., PPG Industries, Inc., PanEnergy Lake Charles, and Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn Municipal Power Agency, and Sam Rayburn G&T, Inc.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Central Maine Power Company

[Docket No. ER99–3094–000]

Take notice that Central Maine Power Company (CMP), on May 28, 1999, tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's regulations, 18 CFR Part 35, a Service Agreement for Local Network Transmission Service by and between CMP and Kennebunk Light & Power District (the Service Agreement).

CMP has requested that the Service Agreement become effective on May 1, 1999.

Copies of this filing have been served upon the Maine Public Utilities Commission and Kennebunk Light & Power District.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Avista Corporation

[Docket No. ER99–3095–000]

Take notice that on May 28, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Service Agreement under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, with Cogentrix Energy Power Marketing, Inc.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of April 30, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. PJM Interconnection, L.L.C.

[Docket No. ER99–3097–000]

Take notice that on May 28, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing an unexecuted interconnection service agreement between PJM and Statoil Energy/Paxton, L.P.

PJM requests a waiver of the Commission's 60-day notice requirement and an effective date of May 1, 1999.

Copies of this filing were served upon Statoil Energy/Paxton, L.P., and the Pennsylvania Public Utility Commission.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. EGC 1999 Holding Company, L.P.

[Docket No. ER99–3098–000]

Take notice that on May 28, 1999, EGC 1999 Holding Company, L.P. (1999 Holdco), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting 1999 Holdco's FERC Electric Rate Schedule No. 1 to be effective on July 1, 1999.

1999 Holdco intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where 1999 Holdco sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Ameren Services Company

[Docket No. ER99–3099–000]

Take notice that on May 28, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Dayton Power and Light Company, The Energy Authority, Public Service Company of Colorado, and Utilicorp United, Inc. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Ameren Services Company

[Docket No. ER99–3100–000]

Take notice that on May 28, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Dayton Power and Light Company, The Energy Authority, Public Service Company of Colorado, and Utilicorp United, Inc., (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Electric Power Company

[Docket No. ER99–3101–000]

Take notice that on May 28, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and FirstEnergy Corporation (FirstEnergy). The Transmission Service Agreements allow FirstEnergy to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on FirstEnergy, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Prairieland Energy, Inc.

[Docket No. TX99–2–000]

Take notice that on May 21, 1999, Prairieland Energy, Inc. (Prairieland), tendered for filing an application with the Federal Energy Regulatory Commission requesting the Commission to order Commonwealth Edison Company (Edison) to provide transmission service pursuant to Section 211 of the Federal Power Act.

Prairieland had requested 12 Megawatts (MW) of firm point-to-point transmission service for a term of five years commencing October 1, 1998.

Copies of Prairieland's application were served upon representatives of Edison and the Illinois Commerce Commission.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 99–14667 Filed 6–9–99; 8:45 am]

BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–171 Oklahoma]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

June 4, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application for approval of additional marina facilities. Grand River Dam Authority proposes to permit Dennis Blakemore, d/b/ a Honey Creek Landing, Ltd. (permittee), to modify an existing commercial marina facility located on Grand Lake's Honey Creek adjacent to the Honey Creek Bridge (US Highway 59). The proposed modifications include the relocation of a fuel dock from its approved location, about 845 feet from the northern shoreline to a new (present) location, about 130 feet from the northern shoreline. Further, the permittee proposes to replace four existing boat slips with a building containing a business office, bathhouse, and laundromat. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA and be obtained by calling the Commission's Public Reference Room at (202) 208–1371. In the DEA, staff concludes that approval of the proposed action, alternative actions, or the no-action alternative would not constitute a major Federal action significantly affecting the quality of the human environment.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to: Mr. David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1494–160 to all comments. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14670 Filed 6–9–99; 8:45 am]

BILLING CODE 5717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements " (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for renewal.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for renewal: Criteria for Classification of Solid Waste Disposal Facilities and Practices—40 CFR Part 258, OMB No. 2050–0122, current expiration date is January 31, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection described below.

DATES: Comments must be submitted on or before August 9, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–99–FC2P–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: *rcradocket@epamail.epa.gov.* Comments in electronic format should also be identified by the docket number F–99–FC2P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov/epaoswer/XXXX.htm*

FTP: *ftp.epa.gov*

Login: anonymous

Password: your Internet address

Files are located in/pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic

comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking contact Dwight Hlustick, EPA, Office of Solid Waste (5306W), Municipal and Industrial Solid Waste Division, 401 M Street, SW, Washington, D.C. 20460, phone 703 308–8647, e-mail address hlustick.dwight@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Criteria for Classification of Solid Waste Disposal Facilities and Practices, 40 CFR Part 258.

OMB No.: 2050–0122.

Current expiration date: January 31, 2000.

Affected entities: Owners or operators of new MSWLFs, existing MSWLFs, and lateral expansions of existing MSWLFs. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in SIC codes 922, 495, 282, 281, and 287 may be affected by this rule.

Abstract: Under statutory authority found in RCRA, EPA established mandatory regulations (See 40 CFR Part 258) that established the Criteria for Municipal Solid Waste Landfills (MSWLFs) for landfills that co-dispose of household waste with sewage sludge and that receive ash from municipal waste combustion (MWC) facilities (including ash monofills). EPA believes these requirements mitigate potential hazards to human health and the environment from the potential mismanagement by owners or operators of MSWLFs. This information will be used by the State Director to confirm owner or operator compliance with the regulations under Part 258. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and the clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The burden to respondents for complying with the Part 258 information collection requirements is approximately 222,680 hours per year, with an annual cost of $8,034,720. The estimated number of respondents is 2300 with an average annual burden of approximately 97 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 2, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–14766 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6357–1]

Agency Information Collection Activities; Health and Safety Data Reporting; Submission of ICR No. 0575.08 to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "TSCA Section 8(d) Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies," [EPA ICR No. 0575.08; OMB Control No. 2070–0004] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on July 31, 1999. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on January 14, 1999 (64 FR 2488). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download a copy of the ICR off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 0575.08.

ADDRESSES: Send comments, referencing EPA ICR No. 0575.08 and OMB Control No. 2070–0004, to the following addresses:

Ms. Sandy Farmer,
U.S. Environmental Protection Agency,
Regulatory Information Division (Mail Code: 2137),
401 M Street, S.W.,
Washington, DC 20460;

And to:

Office of Information and Regulatory Affairs,
Office of Management and Budget (OMB),
Attention: Desk Officer for EPA,
725 17th Street, N.W.,
Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 0575.08; OMB Control No. 2070–0004.

Current Expiration Date: Current OMB approval expires on July 31, 1999.

Title: TSCA Section 8(d) Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies.

Abstract: Section 8(d) of the Toxic Substances Control Act (TSCA) and regulations at 40 CFR part 716 requires manufacturers and processors of chemicals to submit lists and copies of health and safety studies relating to the health and/or environmental effects of certain chemical substances and mixtures. In order to comply with the reporting requirements of section 8(d), respondents must search their records to identify any health and safety studies in their possession, copy and process relevant studies, list studies that are

currently in progress, and submit this information to EPA.

EPA uses this information to construct a complete picture of the known effects of the chemicals in question, leading to determinations by EPA of whether additional testing of the chemicals is required. The information enables EPA to base its testing decisions on the most complete information available and to avoid demands for testing that may be duplicative. EPA will use information obtained via this collection to support its investigation of the risks posed by chemicals and, in particular, to support its decisions on whether to require industry to test chemicals under section 4 of TSCA.

Responses to the collection of information are mandatory (see 40 CFR part 716). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between 2 hours and 32 hours per response, depending upon the requirements that the collection places on each respondent, for an estimated 1,203 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated No. of Respondents: 1,203.

Estimated Total Annual Burden on Respondents: 4,542 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is a decrease (from 9,668 hours to 4,542 hours) in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB. This decrease reflects updated analyses of information related to the historical reporting patterns and the numbers of chemicals listed on the TSCA section 8(d) reporting rule, and EPA's revisions to section 8(d) reporting requirements.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: June 4, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–14764 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6357–8]

Adequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy Status.

SUMMARY: In this notice, we are publicizing the list of submitted state implementation plans (SIPs) with motor vehicle emissions budgets that we have found adequate or inadequate for transportation conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate.

Areas can use the SIPs that we have found adequate in conformity determinations, and any conformity determination already made using a SIP that is adequate will remain valid. SIPs that we have found inadequate cannot be used for further conformity determinations.

FOR FURTHER INFORMATION CONTACT: Regarding this notice or future guidance: Laura Voss, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105. *voss.laura@epa.gov* (734) 214–4858.

Regarding specific areas listed in the table: see the EPA Regional contact person listed in the table.

SUPPLEMENTARY INFORMATION:

Background

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved when reviewed with the entire SIP submission.

The list in this notice is not a complete list of all SIPs that have been submitted to EPA. This is merely a list of those pending SIP submissions that we have found adequate or inadequate to date. We have approved some SIPs, and we are still reviewing the adequacy of others. We've described our future process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We will be revising our conformity rules shortly to codify this guidance. You can obtain a copy of this guidance from EPA's conformity website: *http://www.epa.gov/oms/transp.htm*, or by calling the contact name listed in FOR FURTHER INFORMATION CONTACT section. Future adequacy determinations will also be announced in the **Federal Register**.

Status of Submitted Budgets:

State	Pollutant	Area	Submitted SIP	Date of finding	Adequate/inadequate
Region 1: Contact Donald Cooke, U.S. EPA Region 1, Suite 1100 (CAQ), One Congress Street, Boston, MA 02114–2023, cooke.donald@epa.gov (617) 918–1668					
ME	Ozone	Portland Area	15%	April 28, 1999	Adequate.
NH	Ozone	Boston-Lawrence-Worcester Area	Post-96 rate of progress.	April 29, 1999	Adequate.
			Attainment demonstration.	August 19, 1998	Adequate.
NH	Ozone	Portsmouth-Dover-Rochester Area	Post-96 rate of progress.	April 29, 1999	Adequate.
			Attainment demonstration.	August 19, 1998	Adequate.
MA	Ozone	Boston-Lawrence-Worcester (E. Mass) Area	15%	June 5, 1997	Adequate.
			Post-96 rate of progress.	June 5, 1997	Adequate.
MA	Ozone	Boston-Lawrence-Worcester (E. Mass) Area	Attainment demonstration.	February 19, 1999	Adequate.
MA	Ozone	Springfield (W. Mass) Area	Attainment demonstration.	February 19, 1999	Adequate.
Region 2: Contact Rudolph Kapichak, U.S. EPA Region 2, Air Programs Branch, 290 Broadway, New York, NY 10007, kapichak.rudolph@epa.gov (212) 637–3804					
NY	Ozone	New York Portion of the NY–NJ–CT severe ozone nonattainment area.	Post-96 rate of progress.	September 17, 1997	Adequate.
Region 3: Contact Paul Wentworth (Maryland, Virginia, and D.C. areas); Larry Budney (Delaware areas); U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103, wentworth.paul@epa.gov (215) 814–2183; budney.larry@epa.gov (215) 814–2184					
DC	Ozone	Washington DC	Post-96 rate of progress.	December 31, 1997	Adequate.
MD	Ozone	Maryland portion of DC area	Post-96 rate of progress.	February 27, 1998	Adequate.
VA	Ozone	Northern Virginia portion of DC area	Post-96 rate of progress.	February 27, 1998	Adequate.
MD	Ozone	Baltimore	Post-96 rate of progress.	April 28, 1999	Adequate.
MD	Ozone	Cecil County	Post-96 rate of progress.	April 28, 1999	Adequate.
DE	Ozone	New Castle County	Post-96 rate of progress.	April 29, 1999	Adequate.
DE	Ozone	Kent County	Post-96 rate of progress.	April 29, 1999	Adequate.
Region 4: Contact Kay Prince, U.S. EPA Region 4, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street S.W., Atlanta, GA 30303, prince.kay@epa.gov (404) 562–9026					
KY	Ozone	Louisville	15%	April 29, 1999	Adequate.
TN	Ozone	Memphis	Maintenance plan	August 7, 1998	Adequate.
Region 5: Contact Ryan Bahr, U.S. EPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, AR–18J, Chicago, IL 60604–3590, bahr.ryan@epa.gov (312) 353–4366					
IN	Ozone	Lake and Porter County	Post-96 rate of progress.	February 2, 1998	Adequate.
IL	Ozone	Chicago area	Post-96 rate of progress.	February 3, 1998	Adequate.
Region 6: Contact Jahan Behnam, U.S. EPA Region 6, Fountain Place 12th Floor Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, behnam.jahanbakhsh@epa.gov (214) 665–7247					
LA	Ozone	Baton Rouge	Attainment demonstration.	April 28, 1999	Adequate.
TX	Ozone	El Paso	Section 179B international border plan.	January 12, 1998	Adequate.
Region 8: Contact Jeff Houk, U.S. EPA Region 8, 999 18th Street Suite 500, Denver, CO 80202–2466, houk.jeff@epa.gov (303) 312–6445					
CO	Carbon monoxide.	Colorado Springs	Maintenance plan	April 29, 1999	
			1998—2009 budgets		Inadequate.
			2010 budget and beyond.		Adequate.

State	Pollutant	Area	Submitted SIP	Date of finding	Adequate/inadequate
CO	Carbon monoxide.	Longmont	Maintenance plan	May 14, 1999	Inadequate.
UT	Carbon monoxide.	Ogden	Maintenance plan	April 29, 1999	Adequate.
UT	Carbon monoxide.	Provo	Attainment demonstration.	May 14, 1999	Inadequate.
Region 9: Contact Karina O'Connor, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, oconnor.karina@epa.gov (415) 744–1247.					
AZ	Carbon monoxide.	Phoenix	Attainment demonstration.	May 5, 1999	Inadequate.
AZ	Ozone	Phoenix	Attainment demonstration and 15%.	May 5, 1999	Inadequate.
CA	PM 10	San Joaquin Valley	Attainment demonstration.	May 5, 1999	Inadequate.
NV	Carbon monoxide.	Las Vegas	Attainment demonstration.	May 5, 1999	Inadequate.
Region 10: Contact Wayne Elson, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, elson.wayne@epa.gov (206) 553–1463.					
AK	Carbon monoxide.	Anchorage	Attainment demonstration.	May 14, 1999	Inadequate.
AK	Carbon monoxide.	Fairbanks	Attainment demonstration.	May 14, 1999	Inadequate.
WA	Carbon monoxide.	Spokane	Attainment demonstration.	May 14, 1999	Inadequate.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 3, 1999.

Robert Perciasepe,

Assistant Administrator for Office of Air and Radiation.

[FR Doc. 99–14769 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–9]

Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice of charter renewal.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) is renewing the Charter for the Urban Wet Weather (UWW) Flows Advisory Committee (and its two subcommittees) for an additional 2-year period. This Committee serves the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. appl. 2 section 9(c). The purpose of the Urban Wet Weather Flows Federal Advisory Committee is to provide advice and counsel to the Administrator of EPA on issues associated with urban wet weather discharges, including municipal and industrial storm water runoff, combined sewer overflows, and sanitary sewer overflows. It is determined that the Urban Wet Weather Flows Federal Advisory Committee is in the public interest in connection with the performance of duties imposed on the Agency by law.

FOR FURTHER INFORMATION: Contact Kevin Weiss, Office of Wastewater Management, USEPA, at (202) 260–9524, or Internet: weiss.kevin@epa.gov

Dated: May 18, 1999.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 99–14767 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6358–1]

Environmental Laboratory Advisory Board, Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Protection Agency (EPA) will convene an open meeting of the Environmental Laboratory Advisory Board (ELAB) on June 30, 1999, from 1:00 p.m. to 5:00 p.m. to be held at the Sheraton Hotel located at 534 Broadway, Saratoga Springs, New York.

Topics for discussion will include at a minimum reporting on the status of ELAB's previous recommendations, a review of activities by the Third Party Assessors Workgroup, proposed changes to the National Environmental Laboratory Accreditation Conference standards, and the findings of the Scope of Accreditation Workgroup. The public is encouraged to attend. Time will be allotted for public comment.

Written comments on the meeting agenda should be directed to Ms. Elizabeth Dutrow; Designated Federal Officer; USEPA; 401 M Street, SW (8724R); Washington, DC 20460. If questions arise, please contact Ms. Dutrow by phone at (202) 564–9061, by facsimile at (202) 565–2441 or by email at dutrow.elizabeth@epa.gov.

Dated: May 18, 1999.

Nancy W. Wentworth,

Director, Quality Assurance Division.

[FR Doc. 99–14758 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6356–7]

National Drinking Water Advisory Council; Small Systems Implementation Working Group; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on June 23 and June 24, 1999 at the Hyatt on Printer's Row, 500 S. Dearborn, Chicago, Illinois. The meeting will begin at 1:00 p.m. and conclude at 5:00 p.m. on June 23, and will begin at 8:30 a.m. and conclude at 4:00 p.m. on June 24. The meeting is open to the public to observe, but seating will be limited.

The purpose of this meeting is to analyze relevant issues and facts related to small systems. Working group members will begin to propose stategic options for U.S. EPA and States to consider in assisting small systems in meeting the public health objectives of the Safe Drinking Water Act. Statements will be taken from the public at this meeting, as time allows.

For more information, please contact Peter E. Shanaghan, Designated Federal Officer, Small Systems Implementation Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street, S.W., Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epamail.epa.gov.

Dated: May 26, 1999.

Elizabeth Fellows,

Acting Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–14765 Filed 6–9–99; 8:45 am]

BILLING CODE 6560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, June 22, 1999 (1st Session 10:00 a.m., 2nd Session 2:00 p.m., Central Daylight Time).

PLACE: Thurgood Marshall School of Law, Texas Southern University, 3100 Cleburne Street, Houston, Texas 77004.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes, and
2. Panels on Employment Discrimination as it Affects Low Wage Earners.

Note: Any matters not discussed or concluded may be carried over to a later meeting. (In addition to published notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission meetings). Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: June 8, 1999.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 99–14927 Filed 6–8–99; 3:29 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 3, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0718.

Title: Part 101 governing the Terrestrial Microwave Fixed Radio Services.

Form Number: Not applicable.

Type of Review: Extension of existing collection.

Respondents: Businesses; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 1,025 respondents and 19,000 recordkeepers.

Estimated Time Per Response: 1.77 hours per response and 120 hours per recordkeepers. This reflects an annual estimate of 1,025 respondents making various filings and an estimated 19,000 licensees maintaining records.

Frequency of Response: Recordkeeping Reporting, on occasion.

Total Annual Burden: 1489 hours.

Total Annual Cost: $90,624.

Needs and Uses: The information requirements are used to determine technical, legal, and other qualifications of applicants to operate a station in the public and private operational fixed services. The information is also used to ensure the applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act, 47 U.S.C. Section 310. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14720 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 4, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as

required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0207.

Title: Section 11.35, Equipment Operational Readiness; Section 11.51 EAS Code and Attention Signal Transmission Requirements; Section 11.52, EAS Code and Attention Signal Monitoring Requirements; Section 11.61, Participating Broadcasting Stations to Test EAS Equipment Requirement.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 15,000.

Estimate Time Per Response: 10 sec. (156 responses annually/respondent)

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 6,500 hours.

Total Annual Costs: None.

Needs and Uses: The Commission adopted Rules that require the weekly testing of all Emergency Alert System (EAS) by broadcasting stations including cable television across the United States. Records of this information is necessary to document compliance with this Rule and to enhance awareness and participation in the national, state and local EAS. Accurate recordkeeping of this data is vital in determining the location and nature of possible equipment failure on the part of the transmitting or receiving entity. Furthermore, since the national level EAS is solely for the use of the President of the United States, its proper operation must be assured.

The purpose of the information is to ensure that the emergency alert systems throughout the United States are in good working condition thus ensuring that communities will have access to communications systems in time of national emergency and/or local weather related or man made disasters.

OMB Control Number: 3060–0059.

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 5,077.

Estimate Time Per Response: 1 to 5 mins. (330 responses annually/respondent)

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 28,030 hours.

Total Annual Costs: None.

Needs and Uses: Radio frequency (RF) devices (examples: microwaves, computer microprocessor, computers, computer peripherals, telephones with memory or other advanced features, video cameras, recorders, transmitters, electronic musical instruments, video games and radio remote control toys.) imported into the United States are capable of causing harmful interference (safety of life) to radio systems. The FCC working in conjunction with U.S. Customs is responsible for the regulations of both authorized radio services and devices that can cause interference. FCC Form 740 must be completed for each radio frequency device as defined in 47 U.S.C. 302 and D.F.R. 2.802, which is imported into the Customs territory of the United States. Purpose of this information is to keep non-compliant devices from being distributed to the general public thereby reducing the potential for harmful interference being caused to authorized communications. Form can be filed electronically.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14721 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 3, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC 316.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2700.

Estimated Time Per Response: 2.5 hours (1 hour respondent; 1.5 hours contract attorney).

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 2700.

Total Annual Cost: $1,054,000.

Needs and Uses: Filing of the FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of corporation holding broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; where there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; and where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder. The data is used by FCC staff to determine if the applicant is qualified to become a Commission licensee or permittee of a commercial or noncommercial broadcast station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14744 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2333]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

June 3, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 25, 1999. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations (WT Docket No. 98–229).

Number of Petitions Filed: 4

Subject: Streamlining of Radio Technical Rules in Part 73 and 74 of the Commission's Rules (MM Docket No. 98–93).

Numbers of Petitions Filed: 1.

Subject: 1998 Biennial Regulatory Review—Review of International Common Carrier Regulatory (IB Docket No. 98–118).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14648 Filed 6–9–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Transpac Services Inc., 360A West Merrick Road, 2/Fl., Valley Stream, NY 11580, Officers: Samuel K. Ma, President (Qualifying Individual), Josephine W. Ma, Vice President

Admiral Overseas Shipping Company, Inc., 41 W. Yokuts Avenue Suite 233, Stockton, CA 95207, Officers: Romeo B. Dilla, Jr., President (Qualifying Individual), Christen P. Della, Vice President Finance

AGI Logistics (Los Angeles) Inc., 754 S. Glasgow Avenue, Inglewood, CA 90301, Officers: Chi-Wing Wong, Chief Executive Officer (Qualifying Individual), Yung-Heung Wong, Director, Jane T. Gee, Director

Amasia Group, Inc., 156–15 146TH Avenue Room 214, Jamaica, NY 11434, Officer: Dick Mao, President (Qualifying Individual)

Amos Cargo Service, Inc., 901 W. Victoria Street Unit B–2, Compton, CA 90220, Officer: Chong W. Kim, President (Qualifying Individual)

Delta Line International Inc., 9164 NW 150 Terrace, Miami, FL 33018, Officer: Ana M. Vega, President (Qualifying Individual)

Edco Export & Ocean Freight Corporation, 5220 NW, 163rd Street, Miami Lakes, FL 33014, Officers: Cory Diaz, President, (Qualifying Individual), Edgar Callander, Vice President

ENI Shipping Inc., 500 Carson Plaza Drive, #217, Carson, CA 90746, Officer: Kevin Hangduck Lee, President (Qualifying Individual)

Everexcel International Freight Forwarding Co., 2075 S. Atlantic Blvd., #C, Monterey Park, CA 91754, Officers: Bonnet Fan, Director (Qualifying Individual), Ginette S.H. Fan, Secretary, Lian Hai Li, Chief Executive Officer

Global Container Line, Inc., 10540 N.W. 26th Street, Suite G–150, Miami, FL 33172, Officer: Alicia Arocha, President (Qualifying Individual)

Global Shipping, Inc., Parlway One, Suite 201, 2697 International Parkway, Virginia Beach, VA 23452, Officers: R. Timothy Jones, Vice President (Qualifying Individual), J. Michael Gatchell, President

Golden Gate Shipping, Inc., 405 North Oak Street, Inglewood, CA 90302, Officers: Julio Almario, Vice President (Qualifying Individual), Wenceslao Villaluz, President, Isabel Villaluz, Vice President Administration

Inter-Americas Transport Inc., 5647 Cartagena Street, Houston, TX 77035, Officers: Armando Miralles, President (Qualifying Individual), Sharon L. Gray, Officer, Board of Directors, Irene Sadkowski Cosme, Officer, Board of Directors

Jecc Management, Inc., 22339 Harbor Ridge Lane, Unit 5, Torrance, CA 90502, Officers: Jack C. Wu, President (Qualifying Individual), Ellen L. Wu, Vice-President, Christina L. Wu, Secretary

Neptune International Group, Inc., 17890 Castleton Street, #105, City of Industry, CA 91748, Officers: Ke Chang Tan, President (Qualifying

Individual), Min Yi Zhu, Financial Officer, Hak Man Tam, Director
North American Cargo Inc., 140–55 34th Avenue, #4M, Flushing, NY 11354, Officers; Mohan Krishnamurti, President (Qualifying Individual), Jacob T. Puthenparambil, Secretary
Oconca Shipping (Lax) Inc., 229 S. Glasgow Avenue, Inglewood, CA 90301, Officers: Mimi Mak, President (Qualifying Individual), Michael Wong, Vice President
Palumbo International Freight Forwarders, Inc., Calle Nebraska 2–8 Ext. Parkville, Guaynabo, PR 00969, Officers: Margarota G. Casseres, Secretary (Qualifying Individual), Filippo Palumbo, President, Mauro Moretti, Treasurer
Pan Star Express Corporation, 353 North Oak Street, Inglewood, CA 90302, Officers: Joe Pan, Chief Executive Officer (Qualifying Individual), Ken Chen, Secretary, Ivy Wang, Chief Financial Officer
Sea Way International, Inc., 350 7th Avenue, Suite 2202, New York, NY 10001, Officers: C. Kim, President (Qualifying Individual), Jay Lee, Managing Director

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Multitrans, Inc., 9024 N.W. 12th Street, Suite #1, Miami, FL 33172, Officers: Jairo A. Gomez, Jr., President, Luis F. Gomez, Vice President (Qualifying Individual)
U.S. Intermodal Maritime Inc., 1330 Broadway, Suite 1054, Oakland, CA 94612, Officers: Dong Ho Lee, President, Sung Wook Lee, Treasurer (Qualifying Individual)
Pro Logistics, Inc., 736 N. Delphia, Park Ridge, IL 60068, Officer: Charles H. Trulls, President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Narita Line, Inc., 24412 S. Main Street, Suite 104, Carson, CA 90745, Officers: Matthew Leung, President (Qualifying Individual), Herbert Lo, Vice President
Global Access, 1510 Interstate 45 North, Suite 200, Conroe, TX 77301, Lisa A. Barragan, Sole Proprietor
John P. Coston & Company, Inc., 2425 Brockton, Suite 103, San Antonio, TX 78217, Officers: Patricia Ann Coston Spradling, President (Qualifying Individual), Mary Kathryn Coston, Vice President
Shipping Solutions International, LLC, 12345 SW Spring Ct., Portland, OR 97225, Officer: Tamra Gay Keeler-Parr, Manager (Qualifying Individual)
Seajet Express Inc. d/b/a Seajet, 10 Summit Avenue, Suite 3, Berkley Heights, NJ 07922, Officers: Michael Caseley, President (Qualifying Individual), Andreas Bauermeister, Exec. Vice President
ARO Cargo Services, Inc., 51–22 Skillman Avenue, Suite 2R, Woodside, NY 11377, Officer: Olga Hernandez, President (Qualifying Individual)
RCL Agencies, Inc., 842 Clifton Avenue, Suite #1, Clifton, NJ 07013, Officers: Patrick Costin, President (Qualifying Individual), Joseph Cuccurullo, Vice President
Trans AM Air and Sea Freight (ORD) Inc., 755 Route 83, Suite 216, Bensenville, IL 60106, Officers: Lam Yuen Sum, President, Raymond Fok, Vice President (Qualifying Individual)

Dated: June 7, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–14718 Filed 6–9–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Cardinal Financial Corporation, Fairfax, Virginia; to acquire 100 percent of the voting shares of Cardinal Bank - Dulles, NA, Reston, Virginia.

2. Cardinal Financial Corporation, Fairfax, Virginia; to acquire 100 percent of the voting shares of Cardinal Bank - Manassas/Prince William, NA, Manassas, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Banks, Inc., Creve Coeur, Missouri; to acquire 100 percent of the voting shares of Century Bank, Beverly Hills, California.

Board of Governors of the Federal Reserve System, June 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14784 Filed 6–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than June 25, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Independent Bankers Financial Corp., Irving, Texas, and Community Financial Services, Inc., Atlanta, Georgia; to engage *de novo* through their subsidiary, Internet Banking Communications, LLC, Atlanta, Georgia, in the development and marketing of software products and related services to financial institutions, § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14785 Filed 6–9–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

[Docket No. JFMIP–SR–99–7]

Joint Financial Management Improvement Program (JFMIP)–Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft titled, "Seized Property and Forfeited Assets System Requirements" dated June 2, 1999. The draft is being issued to update a May 1993 document. The draft incorporates: (1) Statutory and regulatory changes; (2) technological changes; and (3) JFMIP documentation changes. The document is designed to provide financial managers with Governmentwide mandatory requirements for financial systems in order to process and record financial events effectively and efficiently, and to provide complete, timely, reliable, and consistent information for decision makers and the public.

DATES: Comments are due by August 13, 1999.

ADDRESSES: Copies of the exposure draft have been mailed to agency senior financial officials and are available on the JFMIP website: *http://www.financenet.gov/financenet/fed/jfmip/jfmipexp.htm*.

Comments should be addressed to JFMIP, 441 G Street NW, Room 3111, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Doris Chew, 202–512–9216 or via Internet: *chewd.jfmip@gao.gov*.

SUPPLEMENTARY INFORMATION: The Federal Financial Management Improvement Act (FFMIA) of 1996 mandated that agencies implement and maintain systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial systems requirements documents as a key benchmark that agency systems must meet in order to be substantially in compliance with systems requirements provisions under FFMIA. To support the requirements outlined in the FFMIA, we are updating requirements documents that are obsolete and publishing additional requirements documents.

Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 99–14652 Filed 6–9–99; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99145]

Hepatitis Education for Inmates and Correctional Staff; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement with one or more national voluntary organizations involved with correctional facilities to develop and distribute materials to educate inmates and correctional staff about the risks of transmission and acquisition of viral hepatitis, as well as prevention, counseling, testing, and treatment of viral hepatitis, with an emphasis on hepatitis A, B, and C prevention and counseling. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases.

The purpose of the program is to provide assistance for the development of educational materials that address the prevention, testing, counseling, and treatment of viral hepatitis (focus on the prevention of hepatitis A, B, and C virus infection including hepatitis B vaccination) in correctional settings in the United States. Specifically, applications are solicited for projects aimed at developing and distributing educational materials on viral hepatitis to inmates, and correctional staff.

B. Eligible Applicants

Applications may be provided only to organizations currently providing health education materials to correctional populations and health related training materials to staff of correctional institutions at a national or regional level.

Since the purpose of the program is to provide assistance for the development of educational materials that address the prevention, testing, counseling, and treatment of viral hepatitis in correctional settings in the United States, only applications from organizations that develop and distribute educational materials on viral hepatitis to inmates and correctional staff are solicited.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $100,000 is available in FY 1999 to fund up to 3 awards. It is expected that the average award will be $35,000, ranging from $25,000 to $40,000. It is expected that the award(s) will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

A preference will be given to applicants with access to inmates and corrections staff at local, state, and/or federal (public and private) corrections programs with a demonstrated high concentration of inmates and corrections staff at high risk for viral hepatitis infection.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. below, and CDC will be

responsible for the activities listed under 2. below:

1. Recipient Activities.

a. Conduct a needs assessment to demonstrate a genuine and compelling need for educational materials for inmates and correctional staff. At the conclusion of the needs assessment, begin to develop appropriate educational materials.

b. Develop educational materials on prevention, testing, counseling, and treatment for inmates in all types of correctional settings. The applicant may include formative research and focus group testing of materials. The central focus of these educational materials should be the prevention of hepatitis A, B, and C virus infection including hepatitis B vaccination.

c. Develop appropriate materials specific to the needs of this inmate and correctional staff population and correlate with the needs assessment done in the first year.

d. Develop an inmate education curriculum emphasizing risk-reduction, specific to the prevention of viral hepatitis.

e. Evaluate the program established to determine pre- and post-education knowledge about the prevention of hepatitis.

2. CDC Activities.

a. Provide technical information for all forms of viral hepatitis including information about current testing, modes of transmission, treatment, vaccinations, and complications.

b. Provide assistance in the development and distribution of the educational materials for both inmates and correctional staff.

c. Provide the source of information for these educational materials.

d. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially an or at least on an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced 12 cpi font.

Include the following in the narrative section of your application:

1. Program objectives that respond to the program requirements outlined in this announcement.

2. An operational plan that describes how the objectives will be achieved.

3. An evaluation plan that includes qualitative and quantitative measures to assess the effectiveness of the program in accomplishing your program objectives.

4. A projected time line for conducting the proposed program and evaluation activities.

5. A description of personnel that includes current and proposed staff with position titles, position descriptions, and percentage of time staff person will devote to assigned project responsibilities. Also, include a curriculum vitae of new staff.

6. A detailed, line-item budget for the project and a budget narrative that justifies each line-item.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit. On or before July 23, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time prior to the submission to the review panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Objectives

The degree to which the project objectives are capable of achieving the specific requirements defined in the program announcement. (25 points)

2. Plan

The degree to which the proposed activities described in the plan of operation, if well executed, are capable of attaining project objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (25 points)

3. Evaluation

The degree to which the proposed plan of evaluation will adequately measure the objectives. (10 points)

4. Staff

The degree to which the current and proposed staff are appropriate for executing the project activities. (10 points)

5. Capacity

a. The degree to which organization demonstrates expertise in representing both the security and health aspects of a broad range of correctional facilities and activities (e.g., pre-release). (15 points)

b. Evidence of experience/history working with corrections in health, security, education, and training of inmates and staff. (15 points)

6. Budget

The degree to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

7 . Human Subjects

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (Not Scored)

____ YES ____ NO

Comments: _____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Quarterly Progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic

Assistance Number

This program is authorized under sections 301(a) and 317(k)(1)of the Public Health Service Act, (42 U.S.C. sections 247b(k)(1) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance (CFDA) number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (404) 842–2749, Email address: lxt1@cdc.gov.

See also the CDC homepage on the Internet to obtain a copy of this announcement: http://www.cdc.gov

For program technical assistance, contact: Linda Moyer, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Rickettsial Diseases, Hepatitis Branch, 1600 Clifton Rd, NE., Atlanta, GA 30333, Telephone: (404) 639–2709, E-mail address: lam1@cdc.gov.

Dated: June 4, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14700 Filed 6–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1590]

Merck & Co., Inc., et al.; Withdrawal of Approval of 32 New Drug Applications and 48 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 32 new drug applications (NDA's) and 48 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: JULY 12, 1999.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 5–620	Mannitol Injection	Merck & Co., Inc., P.O. Box 4, BLA–20, West Point, PA 19486.
NDA 6–903	Milibis (glycobiarsol) Tablets	Sanofi Pharmaceuticals, Inc., 90 Park Ave., New York, NY 10016.
NDA 7–542	Tromexan Tablets	Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, NJ 07936–1080.
NDA 8–153	Dramamine (dimenhydrinate) Injection	G.D. Searle & Co., 4901 Searle Pkwy., Skokie, IL 60077.
NDA 8–843	Pro-Banthine (propantheline bromide) Injection	Do.
NDA 10–126	VapoSteam	Richardson-Vicks, 1 Far Mill Crossing, Shelton, CT 06484.
NDA 11–316	Temaril (trimeprazine tartrate) Tablets, Syrup, and Capsules	Allergan, 2525 Dupont Dr., P.O. Box 19534, Irvine, CA 92623–9534.
NDA 11–583	Hydeltrasol Injection	Merck & Co., Inc.
NDA 12–575	Actifed with Codeine (pseudoephedrine hydro-chloride, 30 milligrams (mg)/5 milliliters (mL), triprolidine hydrochloride, 25 mg/5 mL, codeine phosphate, 10 mg/5 mL)	Glaxo Wellcome Inc. 5 Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709.
NDA 13–553	Esimil (guanethidine monosulfate/hydro-chlorothiazide) Combination Tablets	Novartis Pharmaceuticals Corp.
NDA 15–865	Levoprome (methotrimeprazine) Injection	Immunex Corp., 51 University St., Seattle, WA 98101–2936.
NDA 16–349	10% Dextrose Injection	Baxter Healthcare Corp., Rte. 120 and Wilson Rd., Round Lake, IL 60073–0490.
NDA 16–717	10% Travert (invert sugar) Injection in PL 146 Container	Do.
NDA 16–938	Catarase (chymotrypsin intraocular solution) 1:5000 Ophthalmic Intraocular Solution	Ciba Vision Ophthalmics, 11460 John Creek Pkwy., Duluth, GA 30097–1556.
NDA 17–796	Byrel (piperazine citrate) Syrup	Sanofi Pharmaceuticals, Inc.

Application No.	Drug	Applicant
NDA 17–916	Stannous Macro-aggregated Albumin (SnMAA)	Syncor Pharmaceuticals, Inc., 1313 Washington Ave., Golden, CO 80401.
NDA 17–954	Bretylol (bretylium tosylate) Injection, 50 mg/mL	Faulding Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
NDA 18–115	Triaminic-12 (phenyl-propanolamine hydro-chloride 75 mg and chlorpheniramine maleate 12 mg) Sustained-release Tablets	Novartis Consumer Health, Inc., 560 Morris Ave., Summit, NJ 07901–1312.
NDA 18–193	Velosulin (Regular purified pork insulin) Injection	Novo Nordisk Pharmaceuticals Inc., 100 Overlook Ctr., suite 200, Princeton, NJ 08540–7810.
NDA 18–194	Insulatard (NPH purified pork isophane insulin suspension) Injection	Do.
NDA 18–195	Mixtard 70/30 (70% purified pork isophane suspension and 30% purified pork insulin) Injection	Do.
NDA 18–580	Yutopar (ritodrine hydrochloride) Injection	Astra USA Inc., P.O. Box 4500, Westborough, MA 01581–4500.
NDA 18–698	Thallous Chloride TL–201 Injection	Syncor Pharmaceuticals, Inc.
NDA 18935	Pseudoephedrine Hydrochloride 120 mg/Chlorpheniramine Maleate 12 mg Extended-release Capsules	Schwarz Pharma, P.O. Box 2038, Milwaukee, WI 53201.
NDA 19–381	Ten-K Tablets (Potassium Chloride Extended-release Tablets USP)	Novartis Pharmaceuticals Corp.
NDA 19–580	Osmovist (iotrolan) Injection	Berlex Laboratories, Inc., 340 Changebridge Rd., P.O. Box 1000, Montville, NJ 07450–1000.
NDA 19–585	Mixtard Human 70/30 (70% human insulin isophane suspension and 30% human insulin (semisynthetic)) Injection	Novo Nordisk Pharmaceuticals Inc.
NDA 20–755	Caverject (alprostadil injection) aqueous, 5 microgram (mcg)/mL (only those portions of NDA that deal with 5 mcg/mL strength)	Pharmacia & Upjohn, 7000 Portage Rd., Kalamazoo, MI 49001–0199.
NDA 50–031	RONDOMYCIN (methacycline hydrochloride) Syrup	Pfizer Inc., 235 East 42d St., New York, NY 10017–5755.
NDA 50–073	Coly-Mycin M Diagnostic (sodium colistimethate for diagnostic use)	Parke-Davis Pharmaceutical Research, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 50–075	Polycillin (ampicillin trihydrate)	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000.
NDA 50–287	TERRAMYCIN (oxytetra-cycline) Tablets	Pfizer Inc.
ANDA 40–097	Hydrocortisone and Acetic Acid Otic Solution USP, 1%/2%	Bausch & Lomb Pharmaceuticals, Inc., 8500 Hidden River Pkwy., Tampa, FL 33637.
ANDA 63–163	Clindamycin Phosphate Injection USP, 150 mg/mL)	Bedford Laboratories, Div. of Ben Venue Laboratories, Inc., 270 Northfield Rd., Bedford, OH 44146.
ANDA 70–107	PROPACET 100 (Propoxyphene Napsylate and Acetaminophen Tablets USP), 100 mg/650 mg	Teva Pharmaceuticals USA, 1510 Delp Dr., Kulpsville, PA 19443.
ANDA 70–691	Methyldopate Hydrochloride Injection USP, 50 mg/mL	Faulding Pharmaceutical Co., 11 Commerce Dr., Cranford, NJ 07016.
ANDA 70–732	Propoxyphene Napsylate and Acetaminophen Tablets USP, 100 mg/650 mg	Teva Pharmaceuticals USA Do.
ANDA 70–849	Methyldopate Hydrochloride Injection USP, 50 mg/mL	Faulding Pharmaceutical Co.
ANDA 70–969	Thiothixene Hydrochloride Oral Solution USP (Concentrate) 5 mg/mL	Alpharma, U.S. Pharmaceuticals Div., 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
ANDA 71–990	Metoclopramide Injection USP, 5 mg/mL	Faulding Pharmaceutical Co.
ANDA 72–155	Metoclopramide Injection USP, 5 mg/mL	Bedford Laboratories.
ANDA 72–244	Metoclopramide Injection USP, 5 mg/mL	Do.
ANDA 72–247	Metoclopramide Injection USP, 5 mg/mL	Do.
ANDA 72–383	Sulfamethoxazole and Trimethoprim for Injection Concentrate USP	Do.
ANDA 72–427	Potassium Chloride Extended-release Capsules USP, 10 milliequivalents (mEq)	Savage Laboratories, 60 Baylis Rd., Melville, NY 11747.
ANDA 72–966	Albuterol Sulfate Tablets USP, 2 mg	Copley Pharmaceutical, Inc., 25 John Rd., Canton, MA 02021.
ANDA 72–967	Albuterol Sulfate Tablets USP, 4 mg	Do.
ANDA 73–307	Albuterol Sulfate Inhalation Solution, 0.5%	Do.
ANDA 73–398	Potassium Chloride Extended-release Capsules USP, 8 mEq	Savage Laboratories Do.
ANDA 73–495	Albuterol Sulfate Inhalation Solution, 0.083%	Copley Pharmaceutical, Inc.
ANDA 74–285	Diflunisal Tablets USP, 250 mg and 500 mg	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 74–406	Sufentanil Citrate Injection USP, 50 mcg/mL	Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705.
ANDA 74–665	Inapamide Tablets USP, 1.25 mg and 2.5 mg	Novopharm N.C. Inc., U.S. Agent for Novopharm Ltd., 4700 Novopharm Blvd., Wilson, NC 27893.
ANDA 80–763	Hydramine (diphenhydramine hydrochloride) Elixir 12.5 mg/5 mL	Alpharma.
ANDA 83–296	Aeroseb-DEX (dexamethasone 0.01%) Topical Aerosol Spray	Allergan Herbert, P.O. Box 19534, Irvine, CA 92623–9534.
ANDA 84–055	ELDECORT (Hydro-cortisone Cream USP) 2.5%	ICN Pharmaceuticals, Inc., 3300 Hyland Ave., Costa Mesa, CA 92626.
ANDA 85–482	LIBRITABS (Chlordiazepoxide Tablets USP)	Do.

Application No.	Drug	Applicant
ANDA 85–805	Aeroseb-HC (hydrocortisone 0.5%) Topical Aerosol Spray	Allergan Herbert.
ANDA 86–164	Nitrol Ointment (Nitroglycerin Ointment, 2%)	Savage Laboratories.
ANDA 86–604	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 5 mg	Forest Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 87–171	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 2.5 mg	Do.
ANDA 87–286	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 1 mg	Do.
ANDA 87–322	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 1.5 mg	Do.
ANDA 87–323	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 2 mg	Do.
ANDA 87–615	Sustachron (Nitroglycerin Extended-release) Buccal Tablets, 3 mg	Do.
ANDA 87–702	Nitrol Ointment (Nitroglycerin Ointment, 2% unit-dose)	Savage Laboratories.
ANDA 87–998	Spironolactone Tablets USP, 25 mg	Purepac Pharmaceutical Co.
ANDA 88–421	Amitriptyline Hydro-chloride Tablets USP, 10 mg	Copley Pharmaceutical Inc.
ANDA 88–422	Amitriptyline Hydro-chloride Tablets USP, 25 mg	Do.
ANDA 88–423	Amitriptyline Hydro-chloride Tablets USP, 50 mg	Do.
ANDA 88–424	Amitriptyline Hydro-chloride Tablets USP, 75 mg	Do.
ANDA 88–425	Amitriptyline Hydro-chloride Tablets USP, 100 mg	Do.
ANDA 88–426	Amitriptyline Hydro-chloride Tablets USP, 150 mg	Do.
ANDA 89–817	DEY-LUTE (Isoetharine Inhalation Solution USP) Sulfite-Free, 0.08%	Dey, L.P., 2751 Napa Valley Corporate Dr., Napa, CA 94558.
ANDA 89–818	DEY-LUTE (Isoetharine Inhalation Solution USP) Sulfite-Free, 0.1%	Do.
ANDA 89–819	DEY-LUTE (Isoetharine Inhalation Solution USP) Sulfite-Free, 0.17%	Do.
ANDA 89–820	DEY-LUTE (Isoetharine Inhalation Solution USP) Sulfite-Free, 0.25%	Do.
ANDA 89–932	Theophylline Extended-Release Capsules, 300 mg	F.H. Faulding & Co., Ltd., U.S. Agent: Faulding Inc., 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 89–976	Theophylline Extended-Release Capsules, 100 mg	Do.
ANDA 89–977	Theophylline Extended-Release Capsules, 200 mg	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective July 12, 1999.

Dated: May 24, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–14656 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Annual Comprehensive List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing an annual comprehensive list of all guidance documents currently in use at the agency. FDA committed to publishing this list in its February 1997 "Good Guidance Practices" (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to inform the public of the existence and availability of all current guidance documents.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Information on where to obtain a single copy of listed guidance documents is provided for each agency Center individually in the specific Center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: Lisa M. Helmanis, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publish an annual comprehensive list of guidance documents and quarterly updates that list all guidance documents that were issued and withdrawn during that quarter, including "Level 2" guidance documents.

On June 1, 1998, the President instructed all Federal agencies to ensure the use of "plain language" in all new documents. As part of this initiative,

FDA uses the principles of "plain language" set forth by the President when writing its guidance documents. The agency seeks public comment on the clarity of its guidances.

The following comprehensive list of guidance documents represents all guidances currently in effect. This comprehensive list is maintained on the FDA World Wide Web home page. This list will be updated and published annually in the **Federal Register**. The guidance documents on this comprehensive list are organized by the issuing Center or Office within FDA, and are further grouped by the intended users or regulatory activities to which they pertain. Dates provided in the following list refer to the date of issuance or, where applicable, the date of last revision of the document. Document numbers are provided where available.

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Requirements for Infrequent Plasmapheresis Donors	August 27, 1982	FDA regulated industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), CBER, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet: http://www.fda.gov/cber
Recommendations to Decrease the Risk of Transmitting AIDS from Plasma Donors	March 24, 1983	Do	Do
Deferral of Blood Donors Who Have Received the Drug Accutane (isotretinoin/Roche); 13-cis-retinoic acid)	February 28, 1984	Do	Do
Equivalent Methods for Compatibility Testing	December 14, 1984	Do	Do
Plasma Derived from Therapeutic Plasma Exchange	December 14, 1984	Do	Do
Reduction of the Maximum Platelet Storage Period to 5 Days in an Approved Container	June 2, 1986	Do	Do
Deferral of Donors Who Have Received Human Pituitary-Derived Growth Hormone	November 25, 1987	Do	Do
Recommendations for the Management of Donors and Units That Are Initially Reactive for Hepatitis B Surface Antigen (HBsAg)	December 2, 1987	Do	Do
Extension of Dating Period for Storage of Red Blood Cells, Frozen	December 4, 1987	Do	Do
To Licensed In-Vitro Diagnostic Manufacturers: Handling of Human Blood Source Materials	December 23, 1987	Do	Do
Recommendations for Implementation of Computerization in Blood Establishments	April 6, 1988	Do	Do
Control of Unsuitable Blood and Blood Components	April 6, 1988	Do	Do
Discontinuance of Prelicensing Inspection for Immunization Using Licensed Tetanus Toxoid and Hepatitis B and Rabies Vaccines	July 7, 1988	Do	Do
Physician Substitutes	August 15, 1988	Do	Do
To Licensed Manufacturers of Blood Grouping Reagents: Criteria for Exemption of Lot Release	August 26, 1988	Do	Do
To Manufacturers of HTLV–I Antibody Test Kits: Antibody to Human T–Cell Lymphotropic Virus, Type I (HTLV–I) Release Panel I	October 18, 1988	Do	Do
HTLV–1 Antibody Testing	November 29, 1988	Do	Do
Use of Recombigen HIV–1 LA Test	February 1, 1989	Do	Do
Guidance for Autologous Blood and Blood Components	March 15, 1989	Do	Do
HTLV–I Antibody Testing	July 6, 1989	Do	Do
Use of Recombigen HIV–1 Latex Agglutination (LA) Test	August 1, 1989	Do	Do
Requirements for Computerization of Blood Establishments	September 8, 1989	Do	Do
Abbott Laboratories' HIVAG–1 Test for HIV–1 Antigen(s) Not Recommended for Requirements for Computerization of Blood Establishments	October 4, 1989	Do	Do
Autologous Blood Collection and Processing Procedures	February 12, 1990	Do	Do
Use of Genetic Systems HIV–2 EIA	June 21, 1990	Do	Do
Deficiencies Relating to the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Responsibilities of Blood Establishments Related to Errors & Accidents in the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do
Revision to October 26, 1989 Guideline for Collection of Blood or Blood Products from Donors with Positive Tests for Infectious Disease Markers (High Risk Donors)	April 17, 1991	Do	Do
FDA Recommendations Concerning Testing for Antibody to Hepatitis B Core Antigen (Anti-HBc)	September 10, 1991	Do	Do
Disposition of Blood Products Intended for Autologous Use That Test Repeatedly Reactive for Anti-HCV	September 11, 1991	Do	Do
Clarification of FDA Recommendations for Donor Deferral and Product Distribution Based on the Results of Syphilis Testing	December 12, 1991	Do	Do
Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products	April 23, 1992	Do	Do
Use of Fluorognost HIV–1 Immunofluorescent Assay (IFA)	April 23, 1992	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	April 23, 1992	Do	Do
Exemptions to Permit Persons with a History of Viral Hepatitis Before the Age of Eleven Years to Serve as Donors of Whole Blood and Plasma; Alternative Procedures (21 CFR 640.120)	April 23, 1992	Do	Do
Changes in Equipment for Processing Blood Donor Samples	July 21, 1992	Do	Do
Nomenclature for Monoclonal Blood Grouping Reagents	August 19, 1993	Do	Do
Volume Limits for Automated Collection of Source Plasma	November 4, 1992	Do	Do
Revision of October 7, 1988 Memo Concerning Red Blood Cell Immunization Programs	December 16, 1992	Do	Do
Recommendations Regarding License Amendments and Procedures for Gamma Irradiation of Blood Products	July 22, 1993	Do	Do
Deferral of Blood and Plasma Donors Based on Medications	July 28, 1993	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	August 19, 1993	Do	Do
Changes in Administrative Procedures	September 9, 1993	Do	Do
Guidance Regarding Post Donation Information Reports	December 10, 1993	Do	Do
Donor Suitability Related to Laboratory Testing for Viral Hepatitis and a History of Viral Hepatitis	December 22, 1993	Do	Do
Recommendations for the Invalidation of Test Results When Using Licensed Viral Marker Assays to Screen Donors	January 3, 1994	Do	Do
Recommendations for Deferral of Donors for Malaria Risk	July 26, 1994	Do	Do
Use of and FDA Cleared or Approved Sterile Docking Device (STCD) in Blood Bank Practices (transmittal memo 8/12/94) (corrects 7/29/94 Memo)	August 5, 1994	Do	Do
Recommendations to Users of Medical Devices That Test for Infectious Disease Markers by Enzyme Immunoassay (EIA) Test Systems	December 20, 1994	Do	Do
Timeframe for Licensing Irradiated Blood Products	February 3, 1995	Do	Do
Revision of 8/27/82 FDA Memo: Requirements for Infrequent Plasmapheresis Donors	March 10, 1995	Do	Do
To All Establishments Performing Red Blood Cell Immunizations: Revised Recommendations for Red Blood Cell Immunization Programs for Source Plasma	March 14, 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Recommendations for the Deferral of Current and Recent Inmates of Correctional Institutions as Donors of Whole Blood, Blood Components, Source Leukocytes and Source Plasma	June 8, 1995	Do	Do
Disposition of Products Derived from Donors Diagnosed with, or at Known High Risk for, Creutzfeldt-Jakob Disease	August 8, 1995	Do	Do
Recommendations for Labeling and Use of Units of Whole Blood, Blood Components, Source Plasma, Recovered Plasma or Source Leukocytes Obtained from Donors with Elevated Levels of Alanine Aminotransferase (ALT)	August 8, 1995	Do	Do
Precautionary Measures to Further Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease by Blood and Blood Products	August 8, 1995	Do	Do
Recommendations for Donor Screening with a Licensed Test for HIV–1 Antigen	August 8, 1995	Do	Do
Guidance Concerning Conversion to FDA-Reviewed Software Products	November 13, 1995	Do	Do
Donor Deferral Due to Red Blood Cell Loss During Collection of Source Plasma by Automated Plasmapheresis	December 4, 1995	Do	Do
Additional Recommendations for Donor Screening With a Licensed Test for HIV–1 Antigen	March 14, 1996	Do	Do
Additional Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leucocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	May 16, 1996	Do	Do
Recommendations and Licensure Requirements for Leukocyte-Reduced Blood Products	May 29, 1996	Do	Do
Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human T–Lymphotropic Virus Type I (HTLV–I)	July 19, 1996	Do	Do
Interim Recommendations for Deferral of Donors at Increased Risk for HIV–1 Group O Infection	December 11, 1996	Do	Do
Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) by Blood and Blood Products	December 11, 1996	Do	Do
Interstate Shipment of Interferon for Investigational Use in Laboratory Research Animals or Tests in Vitro	November 21, 1983	Do	Do
Alternatives to Lot Release	July 20, 1993	Do	Do
Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Therapy Products; Notice	October 14, 1993	Do	Do
Home Specimen Collection Kit Systems Intended for Human Immunodeficiency Virus (HIV–1 and/or HIV–2) Antibody Testing; Revisions to Previous Guidance	February 23, 1995	Do	Do
Interim Definition and Elimination of Lot-by-Lot Release for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products	December 8, 1995	Do	Do
Draft Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation; Notice	September 23, 1996	Do	Do
The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents	February 27, 1997	Do	Do
Preclearance of Promotional Labeling; Clarification	March 5, 1997	Do	Do
Draft Guidance for Industry: Computerized Systems Used in Clinical Trials; Availability	June 18, 1997	Do	Do
Recommended Methods for Short Ragweed Pollen Extracts	November 1, 1985	Do	Do
Information Relevant to the Manufacture of Acellular Pertussis Vaccine	August 23, 1989	Do	Do
Recommended Methods for Blood Grouping Reagents Evaluation	March 1, 1992	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Recommended Methods for Evaluating Potency, Specificity and Reactivity of Anti-Human Globulin	March 1, 1992	Do	Do
Methods of the Allergenic Products Testing Laboratory	October 1, 1993	Do	Do
Guide to Inspections of Blood Banks, Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs	September 1, 1994	FDA personnel	Do
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1, 1995	Do	Do
Guide to Inspections of Source Plasma Establishments (Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs)	June 1, 1997	Do	Do
Notification Process for Transfusion Related Fatalities and Donation Related Deaths (revised telephone number)	October 7, 1997	FDA regulated industry	Do
Submission Requirements for Requesting Certificates for Exporting Products to Foreign Countries	October 15, 1997	Do	Do
CBER Refusal to File (RTF) Guidance for Product and Establishment License Applications	July 12, 1993	Do	Do
OELPS, Advertising and Promotional Labeling Staff Procedural Guidance Document (Draft)	August 1, 1994	Do	Do
Guidance on Alternatives to Lot Release for Licensed Biological Products	October 27, 1994	Do	Do
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products	November 1, 1995	Do	Do
Computer Assisted Product License Application (CAPLA) Guidance Manual	March 1, 1996	Do	Do
FDA Guidance Concerning Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-Derived Products	April 26, 1996	Do	Do
Guidance for Industry—The Content and Format for Pediatric Use Supplements	May 23, 1996	Do	Do
Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair of Reconstruction	May 24, 1996	Do	Do
Guidance for Industry for the Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA-Derived Product or a Monoclonal Antibody Product for In Vivo Use	August 15, 1996	Do	Do
Draft Guidance for Industry: Manufacture, Processing or Holding of Active Pharmaceutical Ingredients	September 20, 1996	Do	Do
Draft Guidance for Industry; Submitting Application Archival Copies in Electronic Format	November 4, 1996	Do	Do
Draft Guidance for Industry; Electronic Submission of Case Report Forms and Case Report Tabulations	November 4, 1996	Do	Do
Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products	January 10, 1997	Do	Do
Proposed Approach to Regulation of Cellular and Tissue-Based Products	February 28, 1997	Do	Do
Tables 1 and 2 from Proposed Approach to Regulation of Cellular and Tissue-Based Products	March 4, 1997	Do	Do
Guidance for Industry—Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	March 13, 1997	Do	Do
Guidance for Industry for the Evaluation of Combination Vaccines for Preventable Diseases: Production, Testing and Clinical Studies	April 10, 1997	Do	Do
Guidance for Industry—Changes to an Approved Application: Biological Products	July 24, 1997	Do	Do
Guidance for Industry—Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products	July 24, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry—Screening and Testing of Donors of Human Tissue Intended for Transplantation	July 29, 1997	Do	Do
Guidance for Industry—Donor Screening for Antibodies to HTLV–II	August 15, 1997	Do	Do
Draft Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts	August 25, 1997	Do	Do
Guidance for Industry—Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report	August 27, 1997	Do	Do
Draft Guidance for Industry Efficacy Evaluation of Hemoglobin-and Perfluorocarbon-Based Oxygen Carriers	September 1, 1997	Do	Do
Guidance for Industry—The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) in FDA—Regulated Products for Human Use	October 7, 1997	Do	Do
FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics	November 25, 1992	Do	Do
FDA Guidance Document Concerning Use of Pilot Manufacturing Facilities for the Development and Manufacture of Biological Products; Availability	July 11, 1995	Do	Do
Advertising and Promotion; Guidance; Notice	October 8, 1996	Do	Do
Interpretative Guidelines of the Source Plasma (Human) Standards	October 2, 1973	Do	Do
Guidelines for Reviewing Amendments to Include Plasmapheresis of Hemophiliacs	July 20, 1976	Do	Do
Package Insert: Immune Serum Globulin (Human)	March 30, 1978	Do	Do
Guidelines for Interpretation of Potency Test Results for All Forms of Adsorbed Diphtheria and Tetanus Toxoids	April 12, 1979	Do	Do
Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances	June 1, 1980	Do	Do
Collection of Human Leukocytes for Further Manufacturing (Source Leukocytes)	January 28, 1981	Do	Do
Platelet Testing Guidelines—Approval of New Procedures and Equipment	July 1, 1981	Do	Do
Revised Guideline for Adding Heparin to Empty Containers for Collection of Heparinized Source Plasma (Human)	August 1, 1981	Do	Do
Guidelines for Meningococcal Polysaccharide Vaccines	July 17, 1985	Do	Do
Guideline for the Uniform Labeling of Blood and Blood Components	August 1, 1985	Do	Do
Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline On General Principles of Process Validation	May 1, 1987	Do	Do
Guideline On Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	Do	Do
Guideline On Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Revised Guideline for the Collection of Platelets, Pheresis	October 7, 1988	Do	Do
Draft Guideline for the Design of Clinical Trials for Evaluation of Safety and Efficacy of Allergenic Products for Therapeutic Uses	November 1, 1988	Do	Do
Guidelines for Release of Pneumococcal Vaccine, Polyvalent	February 1, 1989	Do	Do
FDA Regulated Industries for Drug Master Files	September 1, 1989	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
FDA Regulated Industries for Collection of Blood or Blood Products from Donors With Positive Tests for Infectious Disease Markers ("High Risk" Donors)	October 26, 1989	Do	Do
Guideline for Determination of Residual Moisture in Dried Biological Products	January 1, 1990	Do	Do
Guideline on the Preparation of Investigational New Drug Products (Human & Animal)	March 1, 1991	Do	Do
Draft Guideline for the Validation of Blood Establishment Computer Systems	September 28, 1993	Do	Do
Guideline for Adverse Experience Reporting for Licensed Biological Products	October 15, 1993	Do	Do
Guideline for Quality Assurance in Blood Establishments	July 11, 1995	Do	Do
To In Vitro Diagnostic Reagent Manufacturers: Guidance On the Labeling of Human Blood Derived In Vitro Diagnostic Devices In Regard to Labeling for HTLV–III/LAV Antibody Testing	December 6, 1986	Do	Do
To Biologic Product Manufacturers—Controlling Materials of Bovine or Ovine Origin	May 3, 1991	Do	Do
To Sponsors of INDs Using Retroviral Vectors	September 20, 1993	Do	Do
To Manufacturers: Bovine Derived Materials (BSE)	December 17, 1993	Do	Do
To Blood Establishment Computer Software Manufacturers	March 31, 1994	Do	Do
To Sponsors of INDs for Human Immunoglobulin Products	May 23, 1994	Do	Do
To Manufacturers of Licensed Anti-HIV Test Kits	May 26, 1994	Do	Do
Letter to Manufacturers of Immune Globulin Intravenous (Human) (IGIV), Aseptic Meningitis Syndrome	October 3, 1994	Do	Do
To Manufacturers of Immune Globulin Products: Testing for Hepatitis C Virus RNA Immunoglobulin	December 27, 1994	Do	Do
To Blood Establishment Computer Software Manufacturers	February 10, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: HCV RNA Testing by PCR	March 3, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: Additional Information Regarding HCV RNA Testing by PCR	March 13, 1995	Do	Do
To Health Professionals: Implementation of Testing for HCV RNA by PCR for Immune Globulin Products for Intramuscular Administration	March 14, 1995	Do	Do
Dear Colleague: Regarding Reverse Transcriptase Activity in Viral Vaccines Produced in Chicken Cells	January 4, 1996	Do	Do
To Manufacturers of FDA-Regulated Drug/Biological/Device Products, Bovine Spongiform Encephalopathy (BSE)	May 9, 1996	Do	Do
To Manufacturers: Implementation of Testing for Hepatitis C Virus RNA by Manufacturers: Implementation of Testing for Hepatitis C Virus RNA by Polymerase Chain Reaction (PCR) of Intramuscular Immune Globulin Preparations	June 13, 1996	Do	Do
To Manufacturers: HIV–1 Group O	July 31, 1996	Do	Do
To All Plasma Derivative Manufacturers and to ABRA: Warning Statement for Plasma Derivative Product Labeling	October 7, 1996	Do	Do
To Biologic Product Manufacturers: Revised Procedures for Internal Labeling Review Number Assignment	December 3, 1996	Do	Do
To Plasma Fractionators—CBER's View on Product Recalls Conducted by the Plasma Fractionation Industry	May 29, 1997	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products Subject to Licensure	June 20, 1983	Do	Do
Draft PTC in the Production and Testing of Interferon Intended for Investigational Use in Humans (Interferon Test Procedures)	July 28, 1983	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology	April 10, 1985	Do	Do
Draft PTC in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to Human Immunodeficiency Virus Type 1 (1989)	August 8, 1989	Do	Do
PTC in the Collection, Processing and Testing of Ex Vivo Activated Mononuclear Leukocytes for Administration to Humans	August 22, 1989	Do	Do
Cytokine and Growth Factor Pre-Pivotal Trial Information Package	April 2, 1990	Do	Do
PTC in the Safety Evaluation of Hemoglobin-Based Oxygen Carriers	August 21, 1990	Do	Do
PTC in the Design and Implementation of Field Trials for Blood Grouping Reagents and Anti-Human Globulin	March 1, 1992	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products for Further Manufacturing into Blood Grouping Reagent and Anti-Human Globulin	March 1, 1992	Do	Do
Supplement to the PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability	April 6, 1992	Do	Do
Draft PTC in the Characterization of Cell Lines Used to Produce Biologicals	July 12, 1993	Do	Do
PTC in the Manufacture and Testing of Therapeutic Products for Human Use Derived from Transgenic Animals	August 22, 1995	Do	Do
PTC on Plasmid DNA Vaccines for Preventive Infectious Disease Indications	December 22, 1996	Do	Do
PTC in the Manufacture and Testing of Monoclonal Antibody Products for Human Use	February 28, 1997	Do	Do
Reviewer Guidance, Computer Software	April 26, 1995	FDA Personnel	Do
Informed Consent for Plasmapheresis/Immunization	October 1, 1995	Do	Do
Draft Reviewers' Guide: Changes in Personnel	October 1, 1995	Do	Do
Disease Associated Antibody Collection Program	October 1, 1995	Do	Do
Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software	January 13, 1997	Do	Do
Compliance Program Guidance Manual (Drugs and Biologics)	1994	Do	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–605–6050 (Publication No. 94–920699)
Guidance for Industry: Industry-Supported Scientific and Educational Activities	November 1997	FDA regulated industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), CBER, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.) or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet: http://www.fda.gov/cber
To Biologic Product Manufacturers—Withdrawal of Human Blood-Derived Materials Because Donors Diagnosed With, or At Increased Risk For, CJD	December 11, 1997	Do	Do
To Allergenic Extract Manufacturers—Standardized Grass Pollen Extracts	December 23, 1997	Do	Do
Draft Guidance for Industry: Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMS)	December 1997	Do	Do
Dear Doctor Letter—Difficulty in Obtaining Immune Globulin Intravenous (Human)	January 26, 1998	Health care providers	Do
Guidance for Industry: Year 2000 Date Change for Computer Systems and Software Applications Used in the Manufacture of Blood Products	January 1998	FDA regulated industry	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use	January 1998	Do	Do
Draft Guidance for Industry: Container and Closure Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products	January 1998	Do	Do
Draft Guidance for Industry: Clinical Development of Programs for Drugs, Devices and Biological Products Intended for Treatment of Osteoarthritis (OA)	February 1998	Do	Do
Draft Guidance for Industry: Manufacturing, Processing or Holding Active Pharmaceutical Ingredients	March 1998	Do	Do
Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy	March 1998	Do	Do
Dear Doctor Letter—Standardized Grass Pollen Extracts	May 11, 1998	Health care providers	Do
Draft Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research	May 1998	FDA regulated industry	Do
Draft Guidance for Industry: Pilot Program for Electronic Investigational New Drug (eIND) Applications for Biological Products	May 1998	Do	Do
Draft Guidance for Industry: Electronic Submissions of Case Report Forms (CRFs), Case Report Tabulations (CRTs) and Data to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Draft Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/ Establishment License Application (ELA) to the Center for Biologics Evaluation and Research	May 1998	Do	Do
Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds	May 1998	Do	Do
Guidance for Industry: Classifying Resubmissions in Response to Action Letters	May 1998	Do	Do
Guidance for Industry: Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis and Impact on Dosing and Labeling	May 1998	Do	Do
Guidance for Industry: Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 1998	Do	Do
Guidance for Industry: Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products	May 1998	Do	Do
Draft Guidance for Industry: Stability Testing of Drug Substances and Drug Products	June 1998	Do	Do
ICH Draft Guidance on Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	June 9, 1998	Do	Do
ICH Guidance on Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	Do	Do
Draft Guidance for Industry: Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996	June 12, 1998	Do	Do
Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	June 1998	Do	Do
Guidance for Industry: Errors and Accidents Regarding Saline Dilution of Samples Used for Viral Marker Testing	June 1998	Do	Do
Draft Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Virus Type 1	July 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and for the Completion of the FDA Form 356h "Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use"	July 1998	Do	Do
Guidance for Industry: Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements	July 1998	Do	Do
Guidance for Industry: Environmental Assessment of Human Drug and Biologics Applications	July 1998	Do	Do
Draft Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods	July 1998	Do	Do
Dear Colleague Letter—Use of Haemophilus influenzae Conjugate Vaccines in Combination With DTaP in Infants	August 12, 1998	Health care providers	Do
Dear Doctor Letter—Albumin Use in Seriously Ill Patients	August 19, 1998	Do	Do
Draft Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test	August 1998	FDA regulated industry	Do
Draft Guidance for Industry: Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	August 1998	Do	Do
ICH Guidance on Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
ICH Guidance on Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
ICH Guidance on Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin	September 24, 1998	Do	Do
Change to the Guidance Entitled "Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) by Blood and Blood Products"—Information Sheet	September 8, 1998	Do	Do
Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV	September 1998	Do	Do
Draft Guidance for Industry: Submitting Debarment Certification Statements	September 1998	Do	Do
Guidance for Industry: How to Complete the Vaccine Adverse Reporting System Form (VAERS–1)	September 1998	Do	Do
Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review	September 1998	Do	Do
CBER's Year 2000 Letter	October 27, 1998	Do	Do
Draft Guidance for Industry: Developing Medical Imaging Drugs and Biologics	October 1998	Do	Do
Dear Blood Bank/Transfusion Service Director Letter: Hepatitis C Virus Risk	November 3, 1998	Do	Do
Dear Doctor Letter—Important Drug Warning: Immune Globulin Intravenous (Human)	November 13, 1998	Health care providers	Do
Draft Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product	November 1998	FDA regulated industry	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis and Recommendations for Dosing and Labeling	November 1998	Do	Do
Draft Document: United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128	December 1997 (released November 1998)	Do	Do
Draft Guidance for Industry: General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products	November 1998	Do	Do
To Viral Vaccine IND Sponsors—Use of PCR-Based Reverse Transcriptase Assay	December 18, 1998	Do	Do
Guidance for Industry: FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	December 1998	Do	Do
Draft Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing	December 1998	Do	Do
Draft Guidance for Industry: Content and Format of Geriatric Labeling	December 1998	Do	Do
Dear Healthcare Provider: Important Drug Warning: Safety Information Regarding the use of Abbokinase (Urokinase)	January 25, 1999	Health care providers	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Vaccine or Related Product	January 1999	FDA regulated industry	Do
Guidance on Amended Procedures for Advisory Panel Meetings	January 1999	Do	Do
Guidance for Industry: Providing Regulatory Submissions in Electronic Format—General Considerations	January 1999	Do	Do
Guidance for Industry: Population Pharmacokinetics	February 1999	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products	February 1999	Do	Do
Guidance for Industry: Clinical Development Programs for Drugs, Devices and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	February 1999	Do	Do
Dear Colleague Letter: Voluntary Recall of Tripedia, DTaP Vaccine	February 4, 1999	Health care providers	Do

III. Guidance Documents Issued by the Center for Devices and Radiological Health (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance on Medical Device Tracking (Docket No. 98D–0132)	February 19, 1998	Office of Compliance (OC)	Division of Small Manufacturers Assistance, CDRH, Food and Drug Administration, 1–800–638–2041 or 301–827–0111 or (FAX) Facts on Demand at 1–800–899–0381 or Internet at http://www.fda.gov/cdrh
Guidance on Lead Wires and Patient Cables	March 9, 1998	OC	Do
Global Harmonization Task Force: Draft Document on the Essentials Principles of Safety and Performance of Medical Devices on a Global Basis	October 28, 1998	OC	Do
Medical Devices: Draft Global Harmonization Task Force Study Group 3 Process Validation Guidance (Draft)	July 16, 1998	OC	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Letter to Medical Device Manufacturer on Pentium Processors	February 14, 1995	OC	Do
Guideline for Preparing Notices of Availability of Investigational Medical Devices	November 1, 1985	OC/Bioresearch Monitoring (BIMO)	Do
All Diagnostic Ultrasound Manufacturers and Importers-Exemption from Reporting Under 21 CFR 1002	February 24, 1986	OC/Division of Enforcement I (DOEI)	Do
General Principles of Software Validation; Draft Guidance	June 9, 1997	OC/DOEI	Do
Exemption from Reporting and Recordkeeping Requirements for Certain Sunlamp Product Manufacturers	September 16, 1981	OC/DOEI	Do
Clarification of Radiation Control Regulations for Diagnostic X-ray Equipment (FDA 89–8221)	March 1, 1989	OC/DOEI	Do
A Guide for the Submission of Abbreviated Radiation Safety Reports on Cephalometric X-ray Devices: Defined as Dental Units with an Attachment for Mandible Work that Holds a Cassette and Beam Limiting Device	March 1, 1996	OC/DOEI	Do
A Guide for the Submission of Abbreviated Radiation Safety Reports on Image Receptor Support Devices for Mammographic X-ray Systems	March 1, 1996	OC/DOEI	Do
A Guide for the Submission of an Abbreviated Radiation Safety Report on X-ray Tables, Cradles, Film Changers or Cassette Holders Intended for Diagnostic Use	March 1, 1996	OC/DOEI	Do
Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and their Major Components	January 1, 1982	OC/DOEI	Do
Guideline for the Manufacture of In Vitro Diagnostic Products	January 10, 1994	OC/DOEI	Do
Letter to Medical Device Industry on Endoscopy and Laparoscopy Accessories (Galdi)	May 17, 1993	OC/DOEI	Do
Manufacturers/Assemblers of Diagnostic X-ray Systems: Enforcement Policy for Positive-Beam Limitation (PBL) Requirements in 21 CFR 1020.31(g)	October 13, 1993	OC/DOEI	Do
Retention of Records Required by 21 CFR 1002	August 24, 1981	OC/DOEI	Do
All U.S. Condom Manufacturers, Importers and Repackagers	April 7, 1987	OC/Division of Enforcement II (DOEII)	Do
Letter to Ophthalmologists about Lasers for Refractive Surgery	June 27, 1997	OC/DOEII	Do
Manufacturers and Initial Distributors of Hemodialyzers	May 23, 1996	OC/DOEII	Do
Manufacturers and Users of Lasers for Refractive Surgery	October 10, 1996	OC/DOEII	Do
Shielded Trocars and Needles Used for Abdominal Access During Laparoscopy	August 23, 1996	OC/DOEII	Do
Prospective Manufacturers of Barrier Devices Used During Oral Sex for STD Protection	October 31, 1996	OC/DOEII	Do
Condoms: Inspection and Sampling at Domestic Manufacturers and of all Repackers; Sampling from all Importers (Damaska Memo to Field on 4/8/87)	April 8, 1987	OC/DOEII	Do
Guide for Preparing Product Reports for Lasers and Products Containing Lasers	September 1, 1985	OC/DOEII	Do
Hazards of Volume Ventilators and Heated Humidifiers	September 15, 1993	OC/DOEII	Do
Latex Labeling Letter (Johnson)	March 18, 1993	OC/DOEII	Do
Letter—Condom Manufacturers and Distributors (included in Condom Packet #398)	April 5, 1994	OC/DOEII	Do
Letter to Industry, Powered Wheelchair Manufacturers from R. M. Johnson	May 10, 1993	OC/DOEII	Do
Letter to Manufacturers/Repackers Using Cotton	April 22, 1994	OC/DOEII	Do
Manufacturers and Initial Distributors of Sharps Containers and Destroyers Used by Health Care Professionals	February 3, 1994	OC/DOEII	Do
Compliance Guide for Laser Products (FDA 86–8260)	September 1, 1985	OC/DOEII	Do
Dental Handpiece Sterilization (Dear Doctor Letter)	September 28, 1992	OC/DOEII	Do

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Ethylene Oxide; Ethylene Chlorohydrin; and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Levels of Exposure	June 23, 1978	OC/DOEII	Do
Letter—Manufacturers, Distributors and Importers of Condom Products (included in Condom Packet #K398)	February 23, 1994	OC/DOEII	Do
Letter—Manufacturers, Importers, and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention (Holt) (included in Condom Packet #398)	February 13, 1989	OC/DOEII	Do
Regulatory Requirements for Medical Gloves—A Workshop Manual FDA Publication No. 96–4257	September 1, 1996	OC/DOEII	Do
Standard Specification for Rubber Contraceptives (Condoms) (included in Condom Packet #398)	October 28, 1983	OC/DOEII	Do
Pesticide Regulation Notice 94–4 Interim Measures for the Registration of Antimicrobial Products/Liquid Chemical Germicides with Medical Device Use Claims	June 30, 1994	OC/DOEII	Do
Open Door Operation of Microwave Ovens as a Result of Oven Miswiring	March 28, 1980	OC/Division of Enforcement III (DOEIII)	Do
Guide for Preparing Abbreviated Reports of Microwave and RF Emitting Electronic Products Intended for Medical Use	September 1, 1996	OC/DOEIII	Do
Final Design Control Inspectional Strategy	March 1, 1997	OC/DOEIII	Do
Abbreviated Reports on Radiation Safety for Microwave Products (Other Than Microwave Ovens)—E.G. Microwave Heating, Microwave Diathermy, RF Sealers, Induction, Dielectric Heaters, Security Systems	August 1, 1995	OC/DOEIII	Do
Design Control Guidance for Medical Device Manufacturers	March 11, 1997	OC/DOEIII	Do
Abbreviated Reports on Radiation Safety of Non-Medical Ultrasonic Products	August 1, 1995	OC/DOEIII	Do
Application for a Variance from 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device	March 1, 1987	OC/DOEIII	Do
Computerized Devices/Processes Guidance—Application of the Medical Device GMP to Computerized Devices and Manufacturing Processes	May 1, 1992	OC/DOEIII	Do
Guidance for the Submission of Cabinet X-Ray System Reports Pursuant to 21 CFR 1020.40	February 1, 1975	OC/DOEIII	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Electronic Products (General)	October 1, 1987	OC/DOEIII	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps (replaces FDA 82–8127)	September 1, 1995	OC/DOEIII	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamps and Sunlamp Products (replaces FDA 82–8127)	September 1, 1995	OC/DOEIII	Do
Guide for Preparing Product Reports on Sunlamps and Sunlamp Products (21 CFR 1002)	September 1, 1995	OC/DOEIII	Do
Guide for Preparing Reports on Radiation Safety of Microwave Ovens	March 1, 1985	OC/DOEIII	Do
Guide for Submission of Information on Accelerators Intended to Emit X-Radiation Required Pursuant to 21 CFR 1002.10	April 1, 1971	OC/DOEIII	Do
Guide for Submission of Information on Analytical X-Ray Equipment Required Pursuant to 21 CFR 1002.10	April 30, 1974	OC/DOEIII	Do
Guide for Submission of Information on Industrial Radiofrequency Dielectric Heater and Sealer Equipment Pursuant to 21 CFR 1002.10 and 1002.12 (FDA 81–8137)	September 1, 1980	OC/DOEIII	Do
Guide for Submission of Information on Industrial X-Ray Equipment Required Pursuant to 21 CFR 1002.10	March 1, 1973	OC/DOEIII	Do
Guide for the filing of Annual Reports for X-Ray Components and Systems	July 1, 1980	OC/DOEIII	Do
Guide for the Submission of Initial Reports on Computed Tomography X-Ray Systems	September 1, 1984	OC/DOEIII	Do

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Impact Resistant Lenses: Questions and Answers (FDA 87–4002) (see shelf # 460)	September 1, 1987	OC/DOEIII	Do
Imports Radiation-Producing Electronic Products (FDA 89–8008)	November 1, 1988	OC/DOEIII	Do
Information Requirements for Cookbooks and User and Service Manuals	October 31, 1988	OC/DOEIII	Do
Keeping Medical Devices Safe from Electromagnetic Interference	July 1, 1995	OC/DOEiii	Do
Keeping Up With the Microwave Revolution (FDA Pub No. 91–4160)	March 1, 1990	OC/DOEIII	Do
Laser Light Show Safety—Who's Responsibility (FDA 86–8262)	May 1, 1986	OC/DOEIII	Do
Letter to All Foreign Manufacturers and Importers of Electronic Products for Which Applicable FDA Performance Standards Exist	May 28, 1981	OC/DOEIII	Do
Letter to Trade Association: ReUse of Single-use or Disposable Medical Devices	December 27, 1995	OC/DOEIII	Do
Letter: Changes in Regulations Concerning Records and Reports on Radiation-Emitting Electronic Products	October 27, 1995	OC/DOEIII	Do
Medical Device Electromagnetic Interference Issues, Problem Reports, Standards, and Recommendations		OC/DOEIII	Do
Medical Devices and EMI: The FDA Perspective	January 1, 1995	OC/DOEIII	Do
Policy on Lamp Compatibility (sunlamps)	September 2, 1986	OC/DOEIII	Do
Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products	August 21, 1986	OC/DOEIII	Do
Policy on Warning Label Required on Sunlamp Products	June 25, 1985	OC/DOEIII	Do
Quality Assurance Guidelines for Hemodialysis Devices	February 1, 1991	OC/DOEIII	Do
Quality Control Guide for Sunlamp Products (FDA 88–8234)	March 1, 1988	OC/DOEIII	Do
Quality Control Practices for Compliance with the Federal Mercury Vapor Lamp Performance Standard	May 1, 1980	OC/DOEIII	Do
Reporting and Compliance Guide for Television Products including Product Report, Supplemental Report, Radiation Safety Abbreviated Report, Annual Report, Information and Guidance	October 1, 1995	OC/DOEIII	Do
Reporting Guide for Laser Light Shows and Displays (21 CFR 1002) (FDA 88–8140)	September 1, 1995	OC/DOEIII	Do
Reporting Guide for Product Reports on High Intensity Mercury Vapor Discharge Lamps (21 CFR 1002)	September 1, 1995	OC/DOEIII	Do
Reporting of New Model Numbers to Existing Model Families	June 14, 1983	OC/DOEIII	Do
Revised Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products (replaces FDA 82–8127)	September 1, 1995	OC/DOEIII	Do
Safety of Electrically Powered Products: Letter To Medical Device and Electronic Product Manufacturers From Lillian Gill & BHB correction memo	September 18, 1996	OC/DOEIII	Do
Suggested State Regulations for Control of Radiation—Volume II Nonionizing Radiation—Lasers (FDA Pub No. 83–8220)	January 1, 1982	OC/DOEIII	Do
Unsafe Patient Lead Wires and Cables	September 3, 1993	OC/DOEIII	Do
Guide for Preparing Annual Reports for Ultrasonic Therapy Products	September 1, 1996	OC/DOEIII	Do
Guide for Preparing Product Reports for Medical Ultrasound Products	September 1, 1996	OC/DOEIII	Do
Guide for Preparing Product Reports for Ultrasonic Therapy Products (physical therapy only)	August 1, 1996	OC/DOEIII	Do
Guide for Establishing and Maintaining a Calibration Constancy Intercomparison System for Microwave Oven Compliance Survey Instruments (FDA 88–8264)	March 1, 1988	OC/DOEI & III	Do
The FDA Export Reform and Enhancement Act of 1996/Export Certification	October 1, 1996	OC/Division of Program Operations (DPO)	Do

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Sec. 300.600 Commercial Distribution with Regard to Premarket Notification (Section 510(k)) (CPG 7124.19)	September 24, 1987	OC/Office of the Director (OD)	Do
Global Harmonization Task Force: Availability of Draft Documents on Adverse Event and Vigilance Reporting of Medical Device Events	August 31, 1998	OC/Office of Surveillance and Biometrics (OSB)	Do
Commercial Distribution/Exhibit Letter (Use instead of Hile letter) (Display)	April 10, 1992	OC/Other (OT)	Do
Working Draft of the Current Good Manufacturing Practice (CGMP) Final Rule	July 1, 1995	OC/OT	Do
Guidance for the Medical Device Industry on PMA Shell Development and Modular Review	November 6, 1998	ODE	Do
Medical Devices Containing Materials Derived from Animal Sources (Except In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry	November 6, 1998	ODE	Do
Frequently Asked Questions on the New 510(k) Pardigm	October 22, 1998	ODE	Do
Guidance to Industry Supplements to Approved Applications for Class III Medical Devices: Use of Published Literature, Use of Previously Submitted Material, and Priority Review	May 20, 1998	ODE	Do
Convenience Kits Interim Regulatory Guidance	May 20, 1997	ODE	Do
Kit Certification for 510(k)s	July 1997	ODE	Do
Guidance for Industry—Contents of a Product Development Protocol	July 27, 1998	ODE	Do
Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices (replaces Reviewer Guidance for Computer-Controlled Medical Devices Undergoing 510(k) Review 8/29/91)	May 28, 1998	ODE	Do
New Model Medical Device Development Process	June 3, 1998	ODE	Do
Modifications to Devices Subject to Premarket Approval—the PMA Supplement Decision Making Process	August 6, 1998	ODE	Do
Guidance for Off-the-Shelf Software Use in Medical Devices	August 17, 1998	ODE	Do
PMA/510(k) Expedited Review—Guidance for Industry and CDRH Staff	March 20, 1998	ODE	Do
Guidance on Amended Procedures for Advisory Panel Meetings	March 30, 1998	ODE	Do
'Real-Time' Review Program for Premarket Approval Application (PMA) Supplements	April 22, 1997	ODE	Do
A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications	March 30, 1998	ODE	Do
Freedom of Information/510(K) Process Changes	May 15, 1997	ODE	Do
Guidance for Submitting Reclassification Petition	January 1, 2000	ODE	Do
Product Development Protocol	October 1, 1997	ODE	Do
Guidance on PMA Interactive Procedures for Day-100 Meetings and Subsequent Deficiencies—for Use by CDRH and Industry (Docket No. 98D–0079)	February 19, 1998	ODE	Do
Procedures for Class II Device Exemptions from Premarket Notification Guidance for Industry and CDRH Staff (Docket No. 98D–0083)	February 25, 1998	ODE	Do
New section 513(f)(2)—Evaluation of Automatic Class III Designation: Guidance for Industry and CDRH Staff (Docket No. 98D–0082)	February 19, 1998	ODE	Do
SMDA Changes—Premarket Notification; Regulatory Requirements for Medical Devices (510k) Manual Insert	April 17, 1992	ODE	Do
#D95–2, Attachment A (Interagency Agreement between FDA & HCFA)	September 15, 1995	ODE	Do
#D95–2, Attachment B (Criteria for Categorization of Investigational Devices (HCFA)	September 15, 1995	ODE	Do
30–Day Notices and 135–Day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH (Docket No. 98D–0080)	February 19, 1998	ODE	Do
510(k) Quality Review Program (blue book memo)	March 29, 1996	ODE	Do

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Distribution and Public Availability of PMA Summary of Safety and Effectiveness Data Packages	October 10, 1997	ODE	Do
Document Review by the Office of the Chief Counsel (Blue Book Memo G96–1))	June 6, 1996	ODE	Do
HCFA Reimbursement Categorization Determinations for FDA-approved IDEs	September 15, 1995	ODE	Do
ODE Executive Secretary Guidance Manual	August 7, 1987	ODE	Do
Determination of Intended Use for 510(k) Devices: Final Document (Docket No. 98D–0081)	February 19, 1998	ODE	Do
Letter—Vascular Graft Industry (Philip Phillips)	November 22, 1995	ODE	Do
Letter to Industry, Powered Wheelchair/Scooter or Accessory/Component Manufacturer from Susan Alpert, Ph.D., M.D.	May 26, 1994	ODE	Do
Preamendments Class III Strategy; SXAlpert	April 19, 1994	ODE	Do
4-of-A-Kind PMA's	October 1, 1991	ODE	Do
Application of the Device Good Manufacturing Practice (GMP) Regulation to the Manufacture of Sterile Devices	December 1, 1983	ODE	Do
CDRH's 510(k)/IDE/PMA Refuse to Accept/Accept/File Policies (see #D94–1, #K94–1, & #P94–1)	June 30, 1993	ODE	Do
Classified Convenience Kits	April 30, 1993	ODE	Do
Color Additive Petitions (p. II–19 of PMA Manual)	June 1, 1987	ODE	Do
Color Additive Status List (Inspection Operations Manual)	February 1, 1989	ODE	Do
Early Collaboration Meetings Under the FDA Modernization Act (FDAMA), Guidance for Industry and CDRH Staff, Final Document (Docket No. 98D–0078)	February 19, 1998	ODE	Do
Color Additives for Medical Devices (Sneako)	November 15, 1995	ODE	Do
Deciding When to Submit a 510(k) for a Change to an Existing Device (see CDRH F–O–D #1935)	January 10, 1997	ODE	Do
Device Specific Guidance Documents (List)	May 11, 1993	ODE	Do
FDA Clinical Investigator Information Sheets	May 1, 1989	ODE	Do
FDA Guide for Validation of Biological Indicator Incubation Time (Source: Sterilization Committee; through Virginia Ross; HFZ–332)	January 1, 1986	ODE	Do
FDA Policy For The Regulation Of Computer Products (DRAFT) (See 2099)	November 13, 1989	ODE	Do
Format for IDE Progress Reports	January 1, 2000	ODE	Do
Guidance for Preparation of PMA Manufacturing Information	August 1, 1992	ODE	Do
Guideline for the Monitoring of Clinical Investigations	January 1, 1988	OC/BIMO	Do
Guideline on General Principles of Process Validation	May 1, 1987	ODE	Do
Guideline on Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	ODE	Do
Guideline on Validation of the Limulus Amebocyte Lysate (LAL) Test as an End-Product Endotoxin Test	December 1, 1987	ODE	Do
Indications for Use Statement	January 2, 1996	ODE	Do
Industry Representatives on Scientific Panels	March 27, 1987	ODE	Do
Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance (see 1198)	April 1, 1996	ODE	Do
Limulus Amebocute Lysate; Reduction of Samples for Testing	October 23, 1987	ODE	Do
Master Files Part III; Guidance on Scientific and Technical Information	June 1, 1987	ODE	Do
Memorandum: Electromagnetic Compatibility for Medical Devices: Issues and Solutions	June 13, 1995	ODE	Do
Methods for Conducting Recall Effectiveness Checks	June 16, 1978	ODE	Do
Necessary Information for Diagnostic Ultrasound 510(k) (Draft)	November 24, 1987	ODE	Do
Perspectives on Clinical Studies for Medical Device Submissions (Statistical)	January 1, 2000	ODE	Do
PMA Review Statistical Checklist	January 1, 2000	ODE	Do

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Points to Consider in the Characterization of Cell Lines Used to Produce Biological Products (from John C. Petricciani, M.D.)	June 1, 1984	ODE	Do
Preamendment Class III Devices	March 11, 1992	ODE	Do
Premarket Notification [510(k)] Status Request Form, revised	March 7, 1994	ODE	Do
Premarket Submission Coversheet, Instructions, and Survey	January 19, 1995	ODE	Do
Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers (FDA 90–4236)	September 1, 1989	ODE	Do
Proposal for Establishing Mechanisms for Setting Review Priorities Using Risk Assessment and Allocating Review Resources (include with 926–930)	June 30, 1993	ODE	Do
Questions and Answers for the FDA Reviewer Guidance: Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities (see 198)	September 3, 1996	ODE	Do
Shelf Life of Medical Devices	March 1, 1991	ODE	Do
Substantial Equivalence (SE) Decision Making Documentation ATTACHED: 'SE' Decision Making Process (Detailed) i.e. the decision making tree	January 1, 1990	ODE	Do
Suggested Content for Original IDE Application Cover Letter—Version 4	February 27, 1996	ODE	Do
Suggestions for Submitting a Premarket Approval (PMA) Application	April 1, 1993	ODE	Do
Threshold Assessment of the Impact of Requirements for Submission of PMAs for 31 Medical Devices Marketed Prior to May 28, 1976	January 1, 1990	ODE	Do
Guidance on IDE Policies and Procedures	January 20, 1998	ODE	Do
Viable Bacteriophage in Co2 Laser Plume: Aerodynamic Size Distribution	January 1, 2000	ODE	Do
Deciding When to Submit a 510(k) for a Change to an Existing Device (blue book memo #K97–1) (see CDRH F–O–D #935)	January 10, 1997	ODE/blue	Do
Memorandum of Understanding Regarding Patient Labeling Review (blue book memo #G96–3))	August 9, 1996	ODE/blue	Do
Continued Access to Investigational Devices During PMA Preparation and Review (blue book memo)	July 15, 1996	ODE/blue	Do
510(k) Additional Information Procedures (blue book memo #K93–1)	July 23, 1993	ODE/blue/510k	Do
510(k) Refuse to Accept Procedures (blue book memo #K94–1)	May 20, 1994	ODE/blue/510k	Do
510(k) Sign-Off Procedures (blue book memo #K94–2)	June 3, 1994	ODE/blue/510k	Do
510(k) Sterility Review Guidance and Revision of 11/18/1994 (blue book memo #K90–1)	February 12, 1990	ODE/blue/510k	Do
Cover Letter: 510(k) Requirements During Firm-Initiated Recalls; Attachment A: Guidance on Recall and Premarket Notification Review Procedures During Firm-Initiated Recalls of Legally Marketed Devices (blue book memo #K95–1)	November 21, 1995	ODE/blue/510k	Do
Guidance on the Center for Devices and Radiological Health's Premarket Notification Review Program (blue book memo #K86–3)	June 30, 1986	ODE/blue/510k	Do
Premarket Notification—Consistency of Reviews (blue book memo #K89–1)	February 28, 1989	ODE/blue/510k	Do
Review of 510(k)s for Computer Controlled Medical Devices (blue book memo #K91–1)	August 29, 1991	ODE/blue/510k	Do
Executive Secretaries Guidance Manual ıG87–3	August 7, 1987	ODE/blue/gnrl	Do
Consolidated Review of Submissions for Diagnostic Ultrasound Equipment, Accessories and Related Measurement Devices (blue book memo #G90–2)	October 19, 1990	ODE/blue/gnrl	Do
Consolidated Review of Submissions for Lasers and Accessories (blue book memo #G90–1)	October 19, 1990	ODE/blue/gnrl	Do
Device Labeling Guidance (blue book memo Γ91–1)	March 8, 1991	ODE/blue/gnrl	Do
Documentation and Resolution of Differences of Opinion on Product Evaluations (blue book memo #G93–1)	December 23, 1993	ODE/blue/gnrl	Do

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ODE Regulatory Information for the Office of Compliance—Information Sharing Procedures (blue book memo #G87–2)	May 15, 1987	ODE/blue/gnrl	Do
PMA/510(k) Expedited Review (blue book memoG94–2)	May 20, 1994	ODE/blue/gnrl	Do
PMA/510(k) Triage Review Procedures (blue book memo #G94–1)	May 20, 1994	ODE/blue/gnrl	Do
Review of Laser Submissions (blue book memo #G88–1)	April 15, 1988	ODE/blue/gnrl	Do
Toxicology Risk Assessment Committee (blue book memo #G89–1)	August 9, 1989	ODE/blue/gnrl	Do
Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing' (blue book memo) (Replaces #G87–1 #8294)	May 1, 1995	ODE/blue/gnrl	Do
Delegation of IDE Actions (blue book memo #D88–1)	April 26, 1988	ODE/blue/ide	Do
Goals and Initiatives for the IDE Program (blue book memo #D95–1)	July 12, 1995	ODE/blue/ide	Do
IDE Refuse to Accept Procedures (blue book memo #D94–1)	May 20, 1994	ODE/blue/ide	Do
Implementation of the FDA/HCFA Interagency Agreement Regarding Reimbursement Categorization of Investigational Devices, Att. A Interagency Agreement, Att. B Criteria for Catergorization of Investigational Devices, & Att. C–List (blue book memo #D95–2)	September 15, 1995	ODE/blue/ide	Do
Overdue IDE Annual Progress Report Procedures (blue book memo) #D93–1	July 23, 1993	ODE/blue/ide	Do
Review of IDEs for Feasibility Studies (blue book memo #D89–1)	May 17, 1989	ODE/blue/ide	Do
Assignment of Review Documents (blue book memo #I90–2)	August 24, 1990	ODE/blue/integ	Do
Document Review Processing (blue book memo #I91–1)	February 12, 1992	ODE/blue/integ	Do
Integrity of Data and Information Submitted to ODE (blue book memo #I91–2)	May 29, 1991	ODE/blue/integ	Do
Meetings with the Regulated Industry (blue book memo #I89–3)	November 20, 1989	ODE/blue/integ	Do
Nondisclosure of Financially Sensitive Information (blue book memo #I92–1)	March 5, 1992	ODE/blue/integ	Do
Policy Development and Review Procedures (blue book memo #I90–1)	February 15, 1990	ODE/blue/integ	Do
Telephone Communications Between ODE Staff and Manufacturers (blue book memo #I93–1)	January 29, 1993	ODE/blue/integ	Do
Clinical Utility and Premarket Approval (blue book memo #P91–1)	May 3, 1991	ODE/blue/pma	Do
Criteria for Panel Review of PMA Supplements (blue book memo #P86–3)	January 30, 1986	ODE/blue/pma	Do
Panel Report and Recommendations on PMA Approvals (blue book memo #P86–5)	April 18, 1986	ODE/blue/pma	Do
Panel Review of 'Me-Too' Devices (blue book memo #P86–6)	July 1, 1986	ODE/blue/pma	Do
Panel Review of Premarket Approval Applications (blue book memo #P91–2)	May 3, 1991	ODE/blue/pma	Do
PMA Compliance Program (blue book memo #P91–3)	May 3, 1991	ODE/blue/pma	Do
PMA Filing Decisions (blue book memo #P90–2)	May 18, 1990	ODE/blue/pma	Do
PMA Refuse to File Procedures (blue book memo #P94–1)	May 20, 1994	ODE/blue/pma	Do
PMA Supplements: ODE's letter to manufacturers; identifies situations which may require the submission of a PMA supplement (when PMA Supplements are required) (blue book memo) #P90–1	April 24, 1990	ODE/blue/pma	Do
PMAs Early Review and Preparation of Summaries of Safety and Effectiveness (blue book memo #P86–1)	January 27, 1986	ODE/blue/pma	Do
Premarket Approval Application (PMA) Closure (blue book memo #P94–1)	July 8, 1994	ODE/blue/pma	Do

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Review and Approval of PMAs of Licensees (blue book memo #P86–4)	October 22, 1990	ODE/blue/pma	Do
Review of Final Draft Medical Device Labeling (blue book memo #P91–4)	August 29, 1991	ODE/blue/pma	Do
Distribution and Public Availability of Premarket Approval Application Summary of Safety and Effectiveness Data Packages (P98–1)	October 10, 1997	ODE/blue/pma	Do
PMA Summaries of Safety and Effectiveness and Federal Register Notices of PMA Approvals—Review by the Office of General Counsel (Revised) (P98–1)	June 11, 1993	ODE/blue/pma	Do
PMA Review Schedules (P87–1)	March 31, 1988	ODE/blue/pma	Do
Points to Consider Guidance Document on Assayed and Unassayed Quality Control Material	February 3, 1999	ODE/Division of Clinical Laboratory Devices (DCLD)	Do
Review Criteria for Assessment of Antimicrobial Susceptibility Test Discs	October 30, 1996	ODE/DCLD	Do
Guidance for Submission of Immunohistochemistry Applications to the FDA	June 3, 1998	ODE/DCLD	Do
In Vitro Diagnostic Creatinine Test System	July 2, 1998	ODE/DCLD	Do
In Vitro Diagnostic Bicarbonate/Carbon Dioxide Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Chloride Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Glucose Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Potassium Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Sodium Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic Urea Nitrogen Test System	July 6, 1998	ODE/DCLD	Do
In Vitro Diagnostic C–Reactive Immunological Test System	July 20, 1998	ODE/DCLD	Do
In Vitro Diagnostic Calibrators	July 20, 1998	ODE/DCLD	Do
Points To Consider For Hematology Quality Control Materials	September 30, 1997	ODE/DCLD	Do
Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse to be Used by the Consumer	December 30, 1998	ODE/DCLD	Do
Review Criteria for Assessment of Professional Use Human Chorionic Gonadotropin (hCG) in Vitro Diagnostic Devices (IVDs)	November 6, 1996	ODE/DCLD	Do
Letter to IVD Manufacturers on Streamlined PMA	December 22, 1997	ODE/DCLD	Do
Guidance Document for the Submission of Tumor Associated Antigen Premarket Notification [510(k)] to FDA	September 19, 1996	ODE/DCLD	Do
Review Criteria for Assessment of Rheumatoid Factor (RF) In Vitro Diagnostic Devices Using Enzyme-Linked Immunoassay (EIA), Enzyme Linked Immunosorbent Assay (ELISA), Particle Agglutination Tests, and Laser and Rate Nephgelometry	February 21, 1997	ODE/DCLD	Do
Guidance for 510(k)s on Cholesterol Tests for Clinical Laboratory, Physicians' Office Laboratory, and Home Use	July 14, 1995	ODE/DCLD	Do
Assessing the Safety/Effectiveness of Home-use In Vitro Diagnostic Devices (IVDs): Draft Points to Consider Regarding Labeling and Premarket Submissions	October 1, 1988	ODE/DCLD	Do
Data for Commercialization of Original Equipment Manufacturer, Secondary and Generic Reagents for Automated Analyzers	June 10, 1996	ODE/DCLD	Do
DCLD Tier/Triage lists (include 931)	May 31, 1996	ODE/DCLD	Do
Draft Criteria for Assessment of In Vitro Diagnostic Devices for Drugs of Abuse Assays Using Various Methodologies	August 31, 1995	ODE/DCLD	Do
Draft Guidance Document for 510(k) Submission of Fecal Occult Blood Tests	July 29, 1992	ODE/DCLD	Do
Draft Guidance Document for 510(k) Submission of Glycohemoglobin (Glycated or Glycosylated) Hemoglobin for IVDs	September 30, 1991	ODE/DCLD	Do
Draft Guidance Document for 510(k) Submission of Immunoglobulins A, G, M, D and E Immunoglobulin System In Vitro Devices	September 1, 1992	ODE/DCLD	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for 510(k) Submission of Lymphocyte Immunophenotyping IVDs using Monoclonal Antibodies	September 26, 1991	ODE/DCLD	Do
Draft Review Criteria for Nucleic Acid Amplification Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms	June 14, 1993	ODE/DCLD	Do
Guidance Criteria for Cyclosporine PMAs	January 24, 1992	ODE/DCLD	Do
Draft: Premarketing Approval Review Criteria for Premarket Approval of Estrogen (ER) or Progesterone (PGR) Receptors In Vitro Diagnostic Devices Using Steroid Hormone	September 10, 1992	ODE/DCLD	Do
Points to Consider for Cervical Cytology Devices	July 25, 1994	ODE/DCLD	Do
Points to Consider for Collection of Data in Support of In-Vitro Device Submissions for 510(k) Clearance	September 26, 1994	ODE/DCLD	Do
Points to Consider for Portable Blood Glucose Monitoring Devices Intended for Bedside Use in the Neonate Nursery	February 20, 1996	ODE/DCLD	Do
Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Diagnostic Devices/Cover Letter dated 3/14/1996	February 1, 1996	ODE/DCLD	Do
Review Criteria for In Vitro Diagnostic Devices for the Assessment of Thyroid Autoantibodies Using Indirect Immunofluorescence Assay (IFA), Indirect Hemagglutination Assay (IHA), Radioimmunoassay (RIA), and Enzyme Linked Immunosorbent Assay (ELISA)	February 1, 1994	ODE/DCLD	Do
Review Criteria for Assessment of Alpha-Fetoprotein (AFP) In Vitro Diagnostic Devices for Fetal Open Neural Tube Defects Using Immunological Test Methodologies	July 15, 1994	ODE/DCLD	Do
Review Criteria for Assessment of Antimicrobial Susceptibility Devices	May 31, 1991	ODE/DCLD	Do
Review Criteria for Assessment of Cytogenetic Analysis Using Automated and Semi-Automated Chromosome Analyzers	July 15, 1991	ODE/DCLD	Do
Review Criteria for Assessment of Human Chorionic Gonadotropin (hCG) In Vitro Diagnostic Devices (IVDs)	September 27, 1995	ODE/DCLD	Do
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Chlamydiae in Clinical Specimens	January 1, 1992	ODE/DCLD	Do
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium Spp. (Tuberculosis (TB))	July 6, 1993	ODE/DCLD	Do
Review Criteria for Assessment of Laboratory Tests for the Detection of Antibodies to Helicobacter pylori	September 17, 1992	ODE/DCLD	Do
Review Criteria for Assessment of Portable Blood Glucose In Vitro Diagnostic Devices Using Glucose Oxidase, Dehydrogenase, or Hexokinase Methodology	February 14, 1996	ODE/DCLD	Do
Review Criteria for Blood Culture Systems	August 12, 1991	ODE/DCLD	Do
Review Criteria for Devices Assisting in the Diagnosis of C. Difficile Associated Diseases	May 31, 1990	ODE/DCLD	Do
Review Criteria for Devices Intended for the Detection of Hepatitis B 'e' Antigen and Antibody to HBe	December 30, 1991	ODE/DCLD	Do
Review Criteria for In Vitro Diagnostic Devices for Detection of IGM Antibodies to Viral Agents	August 1, 1992	ODE/DCLD	Do
Review Criteria for In Vitro Diagnostic Devices that Utilize Cytogenetic In Situ Hybridization Technology for the Detection of Human Genetic Mutations (Germ Line and Somatic)	February 15, 1996	ODE/DCLD	Do
Review Criteria For Premarket Approval of In Vitro Diagnostic Devices for Detection of Antibodies to Parvovirus B19	May 15, 1992	ODE/DCLD	Do
Review Criteria for the Assessment of Allergen-Specific Immunoglobulin E (IGE) In-Vitro Diagnostic Devices Using Immunological Test Methodologies	March 2, 1993	ODE/DCLD	Do

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Review Criteria for the Assessment of Anti-nuclear Antibodies (ANA) In-Vitro Diagnostic Devices Using Indirect Immunofluorescence Assay (IFA), Immunodiffusion (IMD) and Enzyme Linked Immunosorbant Assay (ELISA)	September 1, 1992	ODE/DCLD	Do
Non-Automated Sphygmomanometer (Blood Pressure Cuff) Guidance	November 19, 1998	ODE/DCRND	Do
Cardiac Monitor Guidance (including Cardiotachometer and Rate Alarm)	November 5, 1998	ODE/Division of Cardiovascular, Respiratory and Neurological Devices (DCRND)	Do
Diagnostic ECG Guidance (Including Non-Alarming ST Segment measurement)	November 5, 1998	ODE/DCRND	Do
Carotid Stent—Suggestions for Content of Submissions to the Food and Drug Administration in Support of Investigational Devices Exemption (IDE) Applications	October 26, 1996	ODE/DCRND	Do
Non-Invasive Blood Pressure (NIBP) Monitor Guidance	March 10, 1997	ODE/DCRND	Do
Guidance for Off-the-Shelf Software Use in Medical Devices; Draft Document	June 4, 1997	ODE/DCRND	Do
Draft Percutaneous Transluminal Coronary Angioplasty Package Insert Template	February 7, 1995	ODE/DCRND	Do
Medical Device Labeling—Suggested Format and Content; Draft Document	August 12, 1997	ODE/DCRND	Do
Draft Intravascular Brachytherapy—Guidance for Data to be Submitted to the Food and Drug Administration in Support of Investigational Device Exemption (IDE) Applications	May 24, 1996	ODE/DCRND	Do
510(k) Reviewer Guidelines—Tracheostomy Tubes 868.5800	January 1, 2000	ODE/DCRND	Do
Balloon Valvuloplasty Guidance For The Submission Of an IDE Application and a PMA Application	January 1, 1989	ODE/DCRND	Do
Rechargeable Battery Preliminary Guidance for Data to be Submitted to FDA in Support of Premarket Notification Applications	July 12, 1993	ODE/DCRND	Do
Review Guidance for Anesthesia Conduction Catheter	May 15, 1991	ODE/DCRND	Do
Coronary and Cerebrovascular Guidewire Guidance	January 1, 1995	ODE/DCRND	Do
Draft Guidance: Human Heart Valve Allografts	June 21, 1991	ODE/DCRND	Do
Draft Replacement Heart Valve Guidance	October 14, 1994	ODE/DCRND	Do
Draft Reviewer Guidance for Ventilators	July 1, 1995	ODE/DCRND	Do
Draft Reviewer Guidance on Face Masks and Shield for CPR	March 16, 1996	ODE/DCRND	Do
Draft Version Cardiac Ablation Preliminary Guidance (Data to be Submitted to FDA in Support Investigation Device Exemption Application	March 1, 1995	ODE/DCRND	Do
Draft Version Electrode Recording Catheter Preliminary Guidance (Data to be Submitted to FDA in Support of Premarket Notifications	March 1, 1995	ODE/DCRND	Do
Excerpts Related to EMI from November 1993 Anesthesiology and Respiratory Devices Branch (to be used with EMI standard)	November 1, 1993	ODE/DCRND	Do
General Guidance Document: Non-Invasive Pulse Oximeter	September 7, 1992	ODE/DCRND	Do
Guidance for Oxygen Conserving Device 510(k) Review 73 BZD 868.5905 Non-continuous Ventilator Class II	February 1, 1989	ODE/DCRND	Do
Reviewer Guidance for Premarket Notification (510(k)) Submissions—Labeling, Performance and Environmental Testing for Electronic Devices	July 19, 1995	ODE/DCRND	Do
Guidance for Peak Flow Meters for Over-the-Counter Sale	June 1, 1993	ODE/DCRND	Do
Guidance for the Preparation of the Annual Report to the PMA Approved Heart Valve Prostheses	April 1, 1990	ODE/DCRND	Do
Heated Humidifier Review Guidance	August 30, 1991	ODE/DCRND	Do
Implantable Pacemaker Lead Testing Guidance For The Submission of a Section 510(k) Notification	September 1, 1989	ODE/DCRND	Do
Implantable Pacemaker Testing Guidance	January 12, 1990	ODE/DCRND	Do
Policy for Expiration Dating (DCRND RB92–G)	October 30, 1992	ODE/DCRND	Do

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Review Guidelines for Oxygen Generators and Oxygen Equipment	Undated	ODE/DCRND	Do
Reviewer Guidance for Nebulizers, Metered Dose Inhalers, Spacers and Actuators	November 9, 1990	ODE/DCRND	Do
Reviewer's Guidance for Oxygen Concentrator	August 30, 1991	ODE/DCRND	Do
Electrocardiograph (ECG) Electrode	February 11, 1997	ODE/DCRND	Do
Electrocardiograph (ECG) Lead Switching Adapter	February 11, 1997	ODE/DCRND	Do
Electrocardiograph (ECG) Surface Electrode Tester	February 11, 1997	ODE/DCRND	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Protective Restraints	December 1, 1995	ODE/Division of Dental Infection Control and General Hospital Devices (DDIGD)	Do
Guidance for the Preparation of Premarket Notifications for Dental Composites	November 27, 1998	ODE/DDIGD	Do
Neonatal and Neonatal Transport Incubators Premarket Notifications	September 18, 1998	ODE/DDIGD	Do
Reexamination of the Evaluation Process for Liquid Chemical Sterilant and High Level Disinfectants	May 19, 1997	ODE/DDIGD	Do
Further Information on the Regulation of Liquid Chemical Sterilants and High Level Disinfectants	August 5, 1997	ODE/DDIGD	Do
Guidance on the Content and Format of Premarket Notifications [510(k)] Submissions for Liquid Chemical Sterilants and High Level Disinfectants	December 18, 1997	ODE/DDIGD	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Surgical Masks	January 16, 1998	ODE/DDIGD	Do
Premarket Notification [510(k)] Submissions for Testing for Skin Sensitization to Chemicals in Natural Rubber Products (Replaces: Guidance on the Content and Format of Premarket Notifications [510(k)] Submissions for Testing for Skin Sensitization to Chemicals in Natural Rubber Products—2/13/98)	January 13, 1999	ODE/DDIGD	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions of Washers and Washer-Disinfectors	August 4, 1998	ODE/DDIGD	Do
Devices for the Treatment and/or Diagnosis of Temporomandibular Joint Dysfunction and/or Orofacial Pain	June 10, 1998	ODE/DDIGD	Do
Dental Impression Materials—Premarket Notification	August 17, 1998	ODE/DDIGD	Do
OTC Denture Cushions, Pads, Reliners, Repair Kits, and Partially Fabricated Denture Kits	August 18, 1998	ODE/DDIGD	Do
Dental Cements—Premarket Notification	August 18, 1998	ODE/DDIGD	Do
Groups Capable of Testing for Latex Skin Sensitization (Addendum to #944)	July 28, 1997	ODE/DDIGD	Do
Addendum to: Guidance on Premarket Notification [510(k)] Submissions for Sterilizers Intended for Use in Health Care Facilities	September 19, 1995	ODE/DDIGD	Do
Guidance Document on Dental Handpieces	July 1, 1995	ODE/DDIGD/Dental Devices Branch (DDB)	Do
510(k) Guidance for Screw Type Endosseous Implants for Prosthetic Attachment	August 11, 1992	ODE/DDIGD/DDB	Do
510(k) Information Needed for Hydroxyapatite Coated Titanium Endosseous Implants	July 6, 1993	ODE/DDIGD/DDB	Do
510(k) Information Needed for Metallurgical Endosseous Implants	August 12, 1993	ODE/DDIGD/DDB	Do
510(k) Information Needed for Ti-Powder Coated Titanium Endosseous Implants	July 13, 1993	ODE/DDIGD/DDB	Do
Draft Guidance Document for the Preparation of Premarket Notification [510(k)'s] for Dental Alloys	March 3, 1997	ODE/DDIGD/DDB	Do
Guidance Document for the Preparation of Premarket Notifications (510(k)'s) for Temporomandibular Joint Implants	January 23, 1995	ODE/DDIGD/DDB	Do
Guidance for the Arrangement and Content of a Premarket Approval (PMA) Application For An Endosseous Implant For Prosthetic Attachment	May 16, 1989	ODE/DDIGD/DDB	Do
Guidance for the Preparation of Premarket Notification [510(k)] for Resorbable Periodontal Barriers	January 1, 2000	ODE/DDIGD/DDB	Do

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Information Necessary for Premarket Notification Submissions for Screw-Type Endosseous Implants	December 9, 1996	ODE/DDIGD/DDB	Do
Outline of Recommended Procedures for a Clinical Investigation of Endosseous Implants Under a 510(k)	January 1, 2000	ODE/DDIGD/DDB	Do
Outline of Recommended Procedures for Animal Laboratory Studies of Endosseous Implants	January 1, 2000	ODE/DDIGD/DDB	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Piston Syringes	April 1, 1993	ODE/DDIGD/General Hospital Devices Branch (GHDB)	Do
Draft Supplementary Guidance on the Content of Premarket Notification [510(k)] Submissions for Medical Devices with Sharps Injury Prevention Features (Antistick)	March 1, 1995	ODE/DDIGD/GHDB	Do
Guidance on 510(k) Submissions for Implanted Infusion Ports	October 1, 1990	ODE/DDIGD/GHDB	Do
Guidance on Premarket Notification [510(k)] Submissions for Short-Term and Long-Term Intravascular Catheters	March 16, 1995	ODE/DDIGD/GHDB	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Clinical Electronic Thermometers	March 1, 1993	ODE/DDIGD/GHDB	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for External Infusion Pumps	March 1, 1993	ODE/DDIGD/GHDB	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for Hypodermic Single Lumen Needles	April 1, 1993	ODE/DDIGD/GHDB	Do
Guidance on Premarket Notification [510(k)] Submissions for Automated Endoscope Washers, Washer/Disinfectors, and Disinfectors Intended for Use in Health Care Facilities	August 1, 1993	ODE/DDIGD/Infection Control Devices Branch (ICDB)	Do
Guidance on Premarket Notification [510(k)] Submissions for Surgical Gowns and Surgical Drapes	August 1, 1993	ODE/DDIGD/ICDB	Do
Guidance on the Content and Format of Premarket Notification 510(k) Submissions for Liquid Chemical Germicides	December 6, 1996	ODE/DDIG/ICDB	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants (and 3/9/94 Addendum)	October 1, 1993	ODE/DDIGD/ICDB	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Sharps Containers	October 1, 1993	ODE/DDIGD/ICDB	Do
Addendum to Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants	March 9, 1994	ODE/DDIGD/ICDB	Do
Guidance on Premarket Notification 510(k) for Sterilizers Intended for Use in Health Care Facilities	March 3, 1993	ODE/Division of General and Restorative Devices (DGRD)	Do
Guidance Document for Powered Suction Pump 510(k)s	September 30, 1998	ODE/DGRD	Do
Guidance Document for Industry and CDRH Staff for the Preparation of Investigational Device Exemptions and Premarket Approval Applications for Bone Growth Stimulator Devices (Replaces: Guidance Document for the Preparation of Investigatinal Device Exemptions and Premarket Approval Applications for Bone Growth Stimulator Devices—8/12/88)	March 18, 1998	ODE/DGRD	Do
Guidance for Content of Premarket Notifications for Esophageal and Tracheal Prostheses	April 28, 1998	ODE/DGRD	Do
Guidance Document for Surgical Lamp 510ks	July 13, 1998	ODE/DGRD	Do
Protocol for Dermal Toxicity Testing for Devices in Contact with Skin (Draft)	January 1, 2000	ODE/DGRD	Do
Guide for 510(k) Review of Processed Human Dura Mater	June 26, 1990	ODE/DGRD	Do
Guide for TENS 510(k) Content (Draft)	August 1, 1994	ODE/DGRD	Do
Guidelines for Reviewing Premarket Notifications that Claim Substantial Equivalence to Evoked Response Stimulators	January 1, 2000	ODE/DGRD	Do

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Guidance for Studies for Pain Therapy Devices—General Considerations in the Design of Clinical Studies for Pain-Alleviating Devices	May 12, 1988	ODE/DGRD	Do
Galvanic Skin Response Measurement Devices—Draft Guidance for 510(k) Content	August 23, 1994	ODE/DGRD	Do
Draft Version Guide for Cortical Electrode 510(k) Content	August 10, 1992	ODE/DGRD	Do
Draft Version Neuro Endoscope Guidance	July 7, 1994	ODE/DGRD	Do
Draft Version Guidance for Clinical Data to be Submitted for Premarket Approval Application for Cranial Electrotherapy Stimulators	August 20, 1992	ODE/DGRD	Do
Draft Version 1—Biofeedback Devices—Draft Guidance for 510(k) Content	August 1, 1994	ODE/DGRD	Do
Draft Version—Guidance on Biocompatibility Requirements for Long Term Neurological Implants: Part 3—Implant Model	September 12, 1994	ODE/DGRD	Do
Draft Premarket Notification Review Guidance for Evoked Response Somatosensory Stimulators	June 1, 1994	ODE/DGRD	Do
Draft Version Cranial Perforator Guidance	July 13, 1994	ODE/DGRD	Do
ORDB 510(k) Sterility Review Guidance	July 3, 1997	ODE/DGRD	Do
Draft Guidance for Testing MR Interaction with Aneurysm Clips	May 22, 1996	ODE/DGRD	Do
Draft 510(k) Guideline for General Surgical Electrosurgical Devices	May 10, 1995	ODE/DGRD/General Surgery Devices Brancch (GSDB)	Do
Draft Guidance for Arthroscope and Accessory 510(k)s	May 1994	ODE/DGRD/GSDB	Do
Guidance for the Preparation of a Premarket Notification for Extended Laparoscopy Devices	August 30, 1994	ODE/DGRD/GSDB	Do
Guidance on the Content and Organization of a Premarket Notification for a Medical Laser	June 1, 1995	ODE/DGRD/GSDB	Do
Guidance Document for Testing Bone Anchor Devices	April 20, 1996	ODE/DGRD/Orthopedic Devicas Branch (ORDB)	Do
510(k) Information Needed for Hydroxyapatite Coated Orthopedic Implants	February 20, 1997	ODE/DGRD/ORDB	Do
Calcium Phosphate (Ca-P) Coating Draft Guidance for Preparation of FDA Submissions for Orthopedic and Dental Endosseous Implants	February 21, 1997	ODE/DGRD/ORDB	Do
Draft Data Requirements for Ultrahigh Molecular Weight Polyethylene (Uhmupe) Used in Orthopedic Devices	March 28, 1995	ODE/DGRD/ORDB	Do
Draft Guidance Document for Femoral Stem Prostheses	August 1, 1995	ODE/DGRD/ORDB	Do
Draft Guidance Document for Testing Acetabular Cup Prostheses	May 1, 1995	ODE/DGRD/ORDB	Do
Draft Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Orthopedic Devices-The Basic Elements	July 16, 1997	ODE/DGRD/ORDB	Do
Draft Guidance for the Preparation of Premarket Notifications [510(k)s] for Cemented, Semi-Constrained Total Knee Prostheses	April 1, 1993	ODE/DGRD/ORDB	Do
Draft Guideline for Reviewing Spinal Fixation Device Systems	January 9, 1997	ODE/DGRD/ORDB	Do
Draft of Guidance Document for Testing of Orthopedic Implants with Metallic Plasma Sprayed Porous Coatings Subject to Required Post Market Surveillance	October 25, 1995	ODE/DGRD/ORDB	Do
Draft Outline for a Guidance Document for Testing Orthopedic Bone Cement, request for comments by December 10, 1993	November 1, 1993	ODE/DGRD/ORDB	Do
Guidance Document for Testing Biodegradable Polymer Implant Devices	April 20, 1996	ODE/DGRD/ORDB	Do
Guidance Document for Testing Non-Articulating, "Mechanically Locked", Modular Implant Components	May 1, 1995	ODE/DGRD/ORDB	Do
Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement	April 28, 1994	ODE/DGRD/ORDB	Do

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Guidance Document for the Preparation of IDE and PMA Applications for Intra-Articular Prosthetic Knee Ligament Devices	February 18, 1993	ODE/DGRD/ORDB	Do
Guidance Document for the Preparation of Premarket Notification for Ceramic Ball Hip Systems	January 10, 1995	ODE/DGRD/ORDB	Do
Reviewers Guidance Checklist for Intramedullary Rods	February 21, 1997	ODE/DGRD/ORDB	Do
Reviewers Guidance Checklist for Orthopedic External Fixation Devices	February 21, 1997	ODE/DGRD/ORDB	Do
Electroencephalograph Device Draft Guidance for 510(k) Content	June 25, 1997	ODE/DGRD/Plastic and Reconstructive Surgery Devices Branch (PRSB)	Do
Alternate Suture Labeling Resulting from the January 11, 1993, Meeting with HIMA	January 11, 1993	ODE/DGRD/PRSB	Do
Copy of October 9, 1992 Letter and Original Suture Labeling Guidance		ODE/DGRD/PRSB	Do
Draft Guidance for Preparation of PMA Applications for Silicone Inflatable (Saline) Breast Prostheses	January 18, 1995	ODE/DGRD/PRSB	Do
Draft Guidance for Preparations of FDA Submissions of Silicone Gel-Filled Breast Prostheses	May 11, 1992	ODE/DGRD/PRSB	Do
Draft Guidance for Testing of Alternative Breast Prostheses (nonsilicone gel-filled)	September 1, 1994	ODE/DGRD/PRSB	Do
Draft Guidance for the Preparation of a Premarket Notification for a Non-Interactive Wound and Burn Dressing [510(k)]	March 31, 1995	ODE/DGRD/PRSB	Do
Draft Guidance for the Preparation of IDE Submission for Interactive Wound and Burn Dressing	April 1, 1995	ODE/DGRD/PRSB	Do
Letter: Core Study for Silicone Breast Implants	January 11, 1996	ODE/DGRD/PRSB	Do
Electrical Muscle Stimulator (EMS) Labeling Indications, Contraindications, Warnings, etc.	July 11, 1985	ODE/DGRD/Restorative Devices Branch (REDB)	Do
Technological Reporting for Powered Muscle Stimulator 510k Submissions	January 1, 1992	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Notification (510(k)) Applications for Therapeutic Massagers and Vibrators	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Beds	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Communications Systems (Powered and Non-Powered) and Powered Environmental Control Systems	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Electromyograph Needle Electrodes	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Exercise Equipment	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Heating and Cooling Devices	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Immersion Hyudrobaths	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Muscle Stimulators, and Ultrasound Diathermy and Muscle Stimulators	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Powered Tables and Multifunctional Physical Therapy Tables	July 26, 1995	ODE/DGRD/REDB	Do
Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Submerged (Underwater) Exercise Equipment	July 26, 1995	ODE/DGRD/REDB	Do

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Guidance Document for the Preparation of Premarket Notification [510k)] Applications for Mechanical and Powered Wheelchairs, and Motorized Three-Wheeled Vehicles	July 26, 1995	ODE/DGRD/REDB	Do
Aqueous Shunts—510(k) Submissions	November 16, 1998	ODE/Division of Opthalmics Devices (DOD)	Do
Guidance for Industry—Guidance Document for Nonprescription Sunglasses	October 9, 1998	ODE/DOD	Do
Third Party Review Guidance for Vitreous Aspiration and Cutting Device Premarket Notification (510k)	January 31, 1997	ODE/DOD	Do
Dear Sponsor Letter Concerning the Revocation of 21 CFR Part 813 IOL IDE Regulations	May 20, 1997	ODE/DOD	Do
Retinoscope Guidance	July 8, 1998	ODE/DOD	Do
Opthalmoscope Guidance	July 8, 1998	ODE/DOD	Do
Slit Lamp Guidance	July 8, 1998	ODE/DOD	Do
Revised Procedures for Adding Lens Finishing Laboratories to Approved Premarket Approval Applications for Class III Rigid Gas Permeable Contact Lens for Extended Wear	August 11, 1998	ODE/DOD	Do
Announcement by Dr. Alpert at 7/26/96 Ophthalmic Panel Meeting Concerning Manufacturers & Users of Lasers for Refractive Surgery [excimer	August 26, 1996	ODE/DOD	Do
Announcement: Information for Manufacturers & Users of Lasers for Refractive Surgery [excimer]	September 22, 1997	ODE/DOD	Do
Intraocular Lens (IOL) Guidance Document	October 10, 1997	ODE/DOD	Do
FDA Guidelines for Multifocal Intraocular Lens IDE Studies and PMAs	May 29, 1997	ODE/DOD	Do
Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses	May 12, 1994	ODE/DOD	Do
Contact Lenses: The Better the Care the Safer the Wear—FDA Publication No. (FDA) (91–4220)	April 1, 1991	ODE/DOD	Do
An FDA Survey of U.S. Contact Lens Wearers (Carol L. Herman) Reprinted from Contact Lens Spectrum	July 1, 1987	ODE/DOD	Do
Facts for Consumers from the Federal Trade Commission—Eyeglasses	April 1, 1986	ODE/DOD	Do
Important Information About Rophae Intraocular Lenses	August 20, 1992	ODE/DOD	Do
Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers [excimer]	October 10, 1996	ODE/DOD	Do
Ophthalmic Device Triage List	March 19, 1998	ODE/DOD	Do
Discussion Points for Expansion of the 'Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers' Draft Document	September 5, 1997	ODE/DOD	Do
Letter to Manufacturers and Users of Lasers for Refractive Surgery [excimer]	October 10, 1996	ODE/DOD	Do
Owners Certification of Lasers as PMA Approved Devices [excimer]	September 26, 1996	ODE/DOD	Do
Update on Excimer Lasers for Nearsightedness	May 20, 1998	ODE/DOD	Do
Amendment 1: Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses	June 28, 1994	ODE/DOD	Do
Certification Statement for the Impact Resistance Test	February 3, 1995	ODE/DOD	Do
Premarket Notification 510(k) Guidance for Contact Lens Care Products	May 1, 1997	ODE/DOD	Do
Eye Valve Implant (and all glaucoma drainage devices) manufacturers letter from N. C. Brogdon	November 16, 1995	ODE/DOD	Do
New FDA Recommendations & Results of Contact Lens Study (7-day letter)	May 30, 1989	ODE/DOD	Do
Sunglass Letter including 510(k) format	October 8, 1996	ODE/DOD	Do
Sunglass Package	February 3, 1995	ODE/DOD	Do
Guidance for Industry; Noise Claims in Hearing Aid Labeling	October 21, 1998	ODE/Division of Reproductive, Abdominal, ENT, and Radiological Devices (DRAERD)	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for the Submission of Premarket Notification for Magnetic Resonance Diagnostic Devices	November 14, 1998	ODE/DRAERD	Do
Guidance for the Content of Premarket Notifications for Intracorporeal Lithotripters	November 30, 1998	ODE/DRAERD	Do
Guidance for the Submission of Premarket Notifications for Radionuclide Dose Calibrators	November 20, 1998	ODE/DRAERD	Do
Guidance for the Submission of Premarket Notifications for Emission Computed Tomography Devices and Accessories (SPECT and PET) and Nuclear Tomography Systems	December 3, 1998	ODE/DRAERD	Do
Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems	February 4, 1999	ODE/-DRAERD	Do
Harmonic Imaging with/without Contrast—Premarket Notification Requirements	November 16, 1998	ODE/DRAERD	Do
Guidance for the Content of Premarket Notifications for Metal Expandable Biliary Stents	February 5, 1998	ODE/DRAERD	Do
Guidance for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters	February 11, 1997	ODE/DRAERD	Do
Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification	January 14, 1998	ODE/DRAERD	Do
Letter to Manufacturers of Falloposcopes	September 5, 1996	ODE/DRAERD	Do
Letter to Manufacturers of Prescription Home Monitors for Non-Stress Tests	September 6, 1996	ODE/DRAERD	Do
Latex Condoms for Men—Information for 510(k) Premarket Notifications: Use of Consensus Standards for Abbreviated Submissions	July 23, 1998	ODE/DRAERD	Do
Uniform Contraceptive Labeling	July 23, 1998	ODE/DRAERD	Do
Guidance to Industry and CDRH Reviewers—Guidance for the Content of Premarket Notifications for Conventional and Permeability Hemodialyzers (Replaces: Guidelines for Premarket Testing of New Conventional Hemodialyers, High Premeability Hemodialyzers and Hemofilters)	August 7, 1998	ODE/DRAERD	Do
Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures	September 10, 1998	ODE/DRAERD	Do
Guidance for the Technical Content of a Premarket Approval (PMA) Application for an Endolymphatic Shunt Tube with Valve	April 1, 1990	ODE/DRAERD	Do
Letter: Notice to Manufacturers of Bone Mineral Densitometers	September 25, 1997	ODE/DRAERD	Do
Draft Guidance to Hearing Aid Manufacturers for Substantiation of Claims	August 5, 1994	ODE/DRAERD/Ear, Nose, and Throat Devices Branch (ENTB)	Do
Guidance for Submission of a 510(k) Premarket Notification for an Air Conduction Hearing Aid	April 1, 1991	ODE/DRAERD/ENTB	Do
Guidance For The Arrangement and Content of a Premarket Approval (PMA) Application For a Cochlear Implant in Children Ages 2 through to 17 Years	May 1, 1990	ODE/DRAERD/ENTB	Do
Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims	October 21, 1996	ODE/DRAERD/ENTB	Do
Guideline for the Arrangement and Content of a Premarket Approval (PMA) Application for a Cochlear Implant in Adults at Least 18 Years of Age	May 1, 1990	ODE/DRAERD/ENTB	Do
Draft Guidance for Hemodialyzer Reuse Labeling	October 6, 1995	ODE/DRAERD/Gastroenterology and Renal Devices Branch (GRDB)	Do
Draft Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis	May 30, 1997	ODE/DRAERD/GRDB	Do
Condom Packet: 4/13/94 R. J. Rivera Letter, Condom Guidance & 7 Tabs, General Guidance for Modifying Condom Labeling to Include Shelf Life	April 13, 1994	ODE/DRAERD/Obstetrics/Gynecology Devices Branch (OGDB)	Do

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Draft Guidance for the Content of Premarket Notifications for Loop and Rollerball Electrodes for GYN Electrosurgical Excisions	July 29, 1991	ODE/DRAERD/OGDB	Do
Draft Guidance for the Content of Premarket Notifications for Menstrual Tampons	May 25, 1995	ODE/DRAERD/OGDB	Do
Draft Thermal Endometrial Ablation Devices (Submission Guidance for an IDE)	March 14, 1996	ODE/DRAERD/OGDB	Do
Guidance ('Guidelines') for Evaluation of Fetal Clip Electrode	March 8, 1977	ODE/DRAERD/OGDB	Do
Guidance ('Guidelines') for Evaluation of Hysteroscopic Sterilization Devices	May 10, 1976	ODE/DRAERD/OGDB	Do
Guidance ('Guidelines') for Evaluation of Laparoscopic Bipolar and Thermal Coagulators (and Accessories)	January 1, 2000	ODE/DRAERD/OGDB	Do
Guidance ('Guidelines') for Evaluation of Tubal Occlusion Devices	November 22, 1977	ODE/DRAERD/OGDB	Do
Guidelines for Evaluation of Non-Drug IUDs	September 28, 1976	ODE/DRAERD/OGDB	Do
Hysteroscopes and Gynecology Laparoscopes—Submission Guidance for a 510(k) —includes 00192	March 27, 1996	ODE/DRAERD/OGDB	Do
Hysteroscopes and Laparoscopic Insufflators: Submission Guidance for a 510(k)	August 1, 1995	ODE/DRAERD/OGDB	Do
In-vivo Devices for the Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE Draft Document	June 14, 1997	ODE/DRAERD/OGDB	Do
Intrapartum Continuous Monitors for Fetal Oxygen Saturation and Fetal pH; Submission Guidance for a PMA; Draft Document	June 14, 1997	ODE/DRAERD/OGDB	Do
Premarket Testing Guidelines for Falloposcopes	November 20, 1992	ODE/DRAERD/OGDB	Do
Premarket Testing Guidelines for Female Barrier Contraceptive Devices also Intended to Prevent Sexually Transmitted Diseases	April 4, 1990	ODE/DRAERD/OGDB	Do
Premarket Testing Guidelines for Home Uterine Activity Monitors	March 31, 1993	ODE/DRAERD/OGDB	Do
Information for a Latex Condom 510(k) Submission for Obstetrics-Gynecology Branch (draft)	March 1994	ODE/DRAERD/OGDB	Do
Testing Guidance for Male Condoms Made from New Material (Non-Latex)	June 29, 1995	ODE/DRAERD/OGDB	Do
Draft Guidance for Review of Bone Densitometer 510(k) Submissions	November 9, 1992	ODE/DRAERD/Radiology Devices Branch (RDB)	Do
Guidance for Content and Review of a Magnetic Resonance Diagnostic Device 510(k) Application and 10/11/95 MRI Guidance Update for dB/dt	August 2, 1988	ODE/DRAERD/RDB	Do
Guidance for Magnetic Resonance Diagnostic Devices—Criteria for Significant Risk Investigations	September 29, 1997	ODE/DRAERD/RDB	Do
Guidance for the Comment and Review of 510(k) Notifications for Picture Archiving and Communications Systems (PACS) and Related Devices [See 2099]	August 1, 1993	ODE/DRAERD/RDB	Do
Guidance for the Submission of 510(k)s for Solid State X-ray Imaging Devices	June 1, 1997	ODE/DRAERD/RDB	Do
Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers	September 30, 1997	ODE/DRAERD/RDB	Do
Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems	June 19, 1996	ODE/DRAERD/RDB	Do
Reviewer Guidance for Automatic X-Ray Film Processor 510(k)	February 1, 1990	ODE/DRAERD/RDB	Do
Simplified 510(k) procedures for certain radiology devices: 12/21/93 letter from L. Yin, ODE/DRAERD, to NEMA	December 21, 1993	ODE/DRAERD/RDB	Do
510(k) Checklist for Sterile Lubricating Jelly Used With Transurethral Surgical Instruments	September 19, 1994	ODE/DRAERD/Urology and Lithrotripsy Devices Branch (ULDB)	Do
Draft Guidance to Firms on Biliary Lithotripsy Studies	August 2, 1990	ODE/DRAERD/ULDB	Do
CDRH Interim Regulatory Policy for External Penile Rigidity Devices	September 10, 1997	ODE/DRAERD/ULDB	Do
Checklist for Mechanical Lithotripters and Stone Dislodgers Used in Gastroenterology and Urology	November 1, 1994	ODE/DRAERD/ULDB	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft—510(k) Checklist for Conditioned Response Enuresis Alarms	November 23, 1994	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Condom Catheters	February 23, 1995	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Endoscopic Electrosurgical Unit (ESU) and Accessories Used in Gastroenterology and Urology	August 16, 1995	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Endoscopic Light Sources Used in Gastroenterology and Urology	June 22, 1995	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Non-Implanted Electrical Stimulators Used for the Treatment of Urinary Incontinence	June 6, 1995	ODE/DRAERD/ULDB	Do
Draft 510(k) Checklist for Urological Irrigation System and Tubing Set	August 1, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for Clinical Investigations of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH)	November 11, 1994	ODE/DRAERD/ULDB	Do
Draft Guidance for Information on Clinical Safety and Effectiveness Data for Extracorporeal Shock Wave Lithotripsy of Upper Urinary Tract (Renal Pelvis, Renal Calyx and Upper Ureteral) Calculi	February 5, 1992	ODE/DRAERD/ULDB	Do
Draft Guidance for Preclinical and Clinical Investigations of Urethral Bulking Agents Used in the Treatment of Urinary Incontinence	November 29, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for Preparation of PMA Applications for Penile Inflatable Implants	March 16, 1993	OD/DRAERD/ULDB	Do
Draft Guidance for Preparation of PMA Applications for Testicular Prostheses	March 16, 1993	ODE/DRAERD/ULDB	Do
Draft Guidance for Preparation of PMA Applications for the Implanted Mechanical/Hydraulic Urinary Continence Device (Artificial Urinary Sphincter)	May 1, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for the Clinical Investigation of Urethral Stents	November 2, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for the Content of Premarket Notifications for Endoscopes Used in Gastroenterology and Urology	March 17, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for the Content of Premarket Notifications for Penile Rigidity Implants	May 30, 1995	ODE/DRAERD/ULDB	Do
Draft Guidance for the Content of Premarket Notifications for Urological Balloon Dilatation Catheters	January 24, 1992	ODE/DRAERD/ULDB	Do
Draft Guidance Outline—Points to Consider for Clinical Studies for Vasovasostomy Devices	November 30, 1993	ODE/DRAERD/ULDB	Do
Draft of Suggested Information for Reporting Extracorporeal Shock Wave Lithotripsy Device Shock Wave Measurements	January 18, 1991	ODE/DRAERD/ULDB	Do
Guidance for the Content of Premarket Notifications for Biopsy Devices Used in Gastroenterology and Urology	February 10, 1993	ODE/DRAERD/ULDBDo	
Guidance for the Content of Premarket Notifications for Conventional and Antimicrobial Foley Catheters	September 12, 1994	ODE/DRAERD/ULDB	Do
Guidance for the Content of Premarket Notifications for Ureteral Stents	February 10, 1993	ODE/DRAERD/ULDB	Do
Guidance for the Content of Premarket Notifications for Urine Drainage Bags	June 7, 1994	ODE/DRAERD/ULDB	Do
Guidance for the Content of Premarket Notifications for Urodynamic/Uroflowmetry Systems	July 29, 1994	ODE/DRAERD/ULDB	Do
Guidance to Manufacturers on the Development of Required Postapproval Epidemiologic Study Protocols for Testicular Implants	January 1, 2000	ODE/DRAERD/ULDB	Do
Center for Devices and Radiological Health's Investigational Device Exemption (IDE) Refuse to Accept Policy	June 30, 1993	ODE/IDE/blue/	Do
Center for Devices and Radiological Health's Premarket Notification [510(k)] Refuse to Accept Policy—(updated Checklist 3/14/95)	June 30, 1993	ODE/510k/blue/	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance For Request and Issuance of Interim Notice Letters for Mammography Facilities Under the MQSA	October 21, 1998	Office of Health and Industry Programs (OHIP)/Division of Mammography Quality and Radiation Programs (DMQRP)	Do
Continuing Education Credits for Reading/ Writing Articles/Papers and Presenting Courses/Lectures	March 17, 1998	OHIP/DMQRP	Do
Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies	August 13, 1998	OHIP/DMQRP	Do
Additional Mammography Review Policy	March 26, 1998	OHIP/DMQRP	Do
Guidance For Review of Cases of Possible Suspension or Revocation of Mammography Facility Certificates Under the Mammography Quality Standards Act (42 U.S.C. 263(b))	March 26, 1998	OHIP/DMQRP	Do
Guidance for Review of Requests for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Act (42 U.S.C. 263(b))	March 26, 1998	OHIP/DMQRP	Do
Guidance for Submission of Requests for Reconsideration of Adverse Decisions on Accreditation of Mammography Facilities Under the Mammography Quality Standards Act, 42 U.S.C. 263(b)	March 26, 1998	OHIP/DMQRP	Do
Supplement to The Physician's Continuing Experience Requirement	April 9, 1998	OHIP/DMQRP	Do
Requalification for Interpreting Physician's Continuing Experience	May 28, 1998	OHIP/DMQRP	Do
MQSA Policy Statements in a Question and Answer	June 2, 1998	OHIP/DMQRP	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations	August 27, 1998	OHIP/DMQRP	Do
MQSA Policy Statements for the Interim Regulations	August 6, 1998	OHIP/DMQRP	Do
Policy for Facilities Changing Accreditation Bodies	April 15, 1998	OHIP/DMQRP	Do
Addendum to What a Mammography Facility Should do to Prepare for an MQSA Inspection	July 31, 1996	OHIP/DMQRP	Do
Handbook of Selected Tissue Doses for Fluoroscopic and Cineangiographic Examination of the Coronary Arteries (in SI Units) FDA 95–8289, (Units of milliray (mmmGy) tissue dose and gray (Gy) air kerma)	September 1, 1995	OHIP/DMQRP	Do
What a Mammography Facility Should Do to Prepare for an MQSA Inspection	June 30, 1995	OHIP/DMQRP	Do
Policy Notebook in a Q/A Format (update to existing document)	January 23, 1998	OHIP/DMQRP	Do
Guidance for Staff, Industry, and Third Parties Implementation of Third Party Programs Under the FDA Modernization Act of 1997	October 30, 1998	OHIP/Division of Small Manufacturer's Assistance (DSMA)	Do
Pages 39.html Exporting Medical Devices and 391.html Foreign Liaison List	June 30, 1998	OHIP/DSMA	Do
Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA)	January 6, 1999	OHIP/DSMA	Do
A Pocket Guide to Device GMP Inspections—Inspections of Medical Device Manufacturers and GMP Regulation Requirements	November 1, 1991	OHIP/DSMA	Do
Medical Device Reporting for Manufacturers	March 1997	OHIP/DSMA	Do
Regulatory Requirement for Devices for the Handicapped (FDA 87–4221)	August 1, 1987	OHIP/DSMA	Do
Comparison Chart: 1996 Quality System Reg vs. 1978 Good Manufacturing Practices Reg vs. ANSI/ISO/ASQC Q9001 and ISO/DI 13485:1996 (include 126)	January 1, 2000	OHIP/DSMA	Do
Small Business Guide to FDA (FDA 96–1092)	January 1, 1996	OHIP/DSMA	Do
Investigational Device Exemptions [IDE] Manual (FDA 96–4159)/DSMA	July 1, 1996	OHIP/DSMA	Do
An Introduction to Medical Device Regulations (FDA 92–4222)	January 1, 1992	OHIP/DSMA	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
In Vitro Diagnostic Devices: Guidance for the Preparation of 510(k) Submissions (supersedes FDA 87–4224)	January 1, 1997	OHIP/DSMA	Do
Instructions for Completion of Medical Device Registration and Listing Forms FDA 2891, 2891a and 2892	July 1, 1997	OHIP/DSMA	Do
Additional Guidance for Testing Immunity to Radiated Electromagnetic Fields—Infant Apnea Monitor Standard	September 1, 1993	OHIP/DSMA	Do
Classification Names for Medical Devices and In Vitro Diagnostic Products (FDA Pub No. 95–4246)	March 1, 1995	OHIP/DSMA	Do
Labeling—Regulatory Requirements for Medical Devices (FDA 89–4203)	September 1, 1989	OHIP/DSMA	Do
List of Current CDRH Addresses for Report Submission and Ordering of CDRH Forms	July 30, 1996	OHIP/DSMA	Do
Obtaining CDRH Guidance Documents	May 13, 1998	OHIP/DSMA	Do
Premarket Approval (PMA) Manual (FDA 97–4214)	July 1, 1997	OHIP/DSMA	Do
Premarket Notification: 510(k)—Regulatory Requirements for Medical Devices (FDA 95–4158)	August 1, 1995	OHIP/DSMA	Do
Procedures for Laboratory Compliance Testing of Television Receivers—Part of TV Packet	May 1, 1986	OHIP/DSMA	Do
Regulation of Medical Devices Background Information for Foreign Officials	May 1, 1996	OHIP/DSMA	Do
MDR Documents Access Information	May 10, 1996	OHIP/DSMA	Do
MDR Documents Access Information for CDRH Electronic Docket (ED)	February 29, 1996	OHIP/DSMA	Do
MDR Documents Access Information for CDRH Facts-On-Demand (FOD)	February 29, 1996	OHIP/DSMA	Do
MDR Documents Access Information for Industry Organizations	May 8, 1996	OHIP/DSMA	Do
MDR Documents Access Information for National Technical Information Service (NTIS)	May 10, 1996	OHIP/DSMA	Do
MDR Documents Access Information for World Wide Web (WWW)	February 29, 1996	OHIP/DSMA	Do
Medical Device Quality Systems Manual: A Small Entity Compliance Guide	December 1, 1996	OHIP/DSMA	Do
Overview of FDA Modernization Act of 1997, Medical Device Provisions	February 19, 1998	OHIP/DSMA	Do
Medical Device Appeals and Complaints—Guidance on Dispute Resolutions	February 1, 1998	OHIP/DSMA/Office of the Center Director (OCD)	Do
Medical Device Reporting for User Facilities	April 1996	OHIP/Division of Device User Programs and Systems Analysis (DUPSA)	Do
Human Factors Points to Consider for IDE Devices	January 17, 1997	OHIP/DUPSA	Do
Human Factors Principles for Medical Device Labeling	September 1, 1993	OHIP/DUPSA	Do
Write it Right	August 1, 1993	OHIP/DUPSA	Do
Do It By Design—An Introduction to Human Factors in Medical Devices	December 1, 1996	OHIP/DUPSA	Do
FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions: Availability	February 6, 1998	OHIP/Regs	Do
Statistical Aspects of Submissions to FDA: A Medical Device Perspective (also includes as Appendix the Article Observed Uses and Abuses of Statistical Procedures in Medical Device Submissions	June 1, 1984	OSB/Division of Biostatistics (DB)	Do
Statistical Guidance for Clinical Trials of Non Diagnostic Medical Devices (Replaces Clincal Study Guidance, formerly 891)	January 1, 1996	OSB/DB	Do
Amendment to Guidance on Discretionary Postmarket Surveillance on Pacemaker Leads	March 30, 1994	OSB/Division of Postmarket Surveillance (DPS)	Do
Guidance on Procedures to Determine Application of Postmarket Surveillance Strategies	February 19, 1998	OSB/DPS	Do
Guidance on Procedures for Review of Postmarket Surveillance Submissions	February 19, 1998	OSB/DPS	Do
SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance	February 19, 1998	OSB/DPS	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Proposed Draft Guidance to Sponsors Regarding Required Postmarket Surveillance Studies of Plasma-Sprayed Porous-Coated Hip Prostheses	October 7, 1994	OSB/DPS	Do
Guidance to Sponsors on the Development of a Discretionary Postmarket Surveillance Study for Permanent Implantable Cardiac Pacemaker Electrodes (Leads)	June 9, 1993	OSB/DPS	Do
Medical Device Reporting for Distributors	April 1996	OSB/Division of Surveillance Systems (DSS)	Do
Medical Device Reporting: An Overview	April 1996	OSB/DSS	Do
MDR Internet List Server (listserv) Instruction Sheet	August 29, 1996	OSB/DSS	Do
MEDWATCH FDA Form 3500A For Use By User Facilities, Distributors and Manufacturers for Mandatory Reporting	June 1, 1993	OSB/DSS	Do
Instructions for Completing FDA Form 3500A with Coding Manual for Form 3500A (MEDWATCH)	December 15, 1995	OSB/DSS	Do
MDR Policy/Guidance for Endosseus Implant Devices	December 1992	OSB/DSS	Do
MDR Guidance—Blood Loss Policy	December 1995	OSB/DSS	Do
Summary Reporting Approval for Adverse Events	July 31, 1997	OSB/DSS	Do
Common Problems: Baseline Reports and MedWatch Form 3500A (letter to manufacturer—undated)		OSB/DSS	Do
MDR Guidance Document: Remedial Action Exemption—E1996001	July 30, 1996	OSB/DSS	Do
Variance from Manufacturer Report Number Format [MDR letter]	July 16, 1996	OSB/DSS	Do
Instructions for Completing Form 3417: Medical Device Reporting Baseline Report [MDR]	March 31, 1997	OSB/DSS	Do
MDR Guidance Document No. 1—IOL—E1996004	August 7, 1996	OSB/DSS	Do
MDR Guidance Document No. 3—Needlestick & Blood Exposure—E1996003	August 9, 1996	OSB/DSS	Do
MDR Reporting Guidance For Breast Implants—E1996002	August 7, 1996	OSB/DSS	Do
Instructions for Completing Semi-Annual Report, Form 3419 (MDR)	September 24, 1996	OSB/DSS	Do
Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date	May 15, 1998	Office of Standards and Technology (OST)/Division of Electronics and Computer Science (DECS)	Do
Draft Document—A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems	February 7, 1997	OST/Division of Postmarket Surveillance (DPS)	Do
Frequently Asked Questions on Recognition of Consensus Standards	February 19, 1998	OST/OD	Do
Guidance on the Recognition and Use of Consensus Standards	February 19, 1998	OST/OD	Do

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Aerosol Steroid Product Safety Information in Prescription Drug Advertising and Promotional Labeling	January 12, 1996	Advertising	Drug Information Branch (HFD–210), CDER, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573, or via Internet at http://www.fda.gov/cder/guidance/index.htm
Dissemination of Reprints of Certain Published, Original Data	October 8, 1996	Do	Do
Funded Dissemination of Reference Texts	October 8, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Consumer-Directed Broadcast Advertisements	August 12, 1997	Advertising draft	Do
Promoting Medical Products in a Changing Healthcare Environment; Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs)	January 5, 1998	Do	Do
Alprazolam Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	November 27, 1992	Biopharmaceutic	Do
Bioavailability Policies and Guidelines		Do	Do
Bumetanide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Buspirone Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 15, 1998	Do	Do
Captopril Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 13, 1993	Do	Do
Carbidopa and Levodopa Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 19, 1992	Do	Do
Cefactor Capsules and Suspension In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Cholestyramine Powder In Vitro Bioequivalence	July 15, 1993	Do	Do
Cimetidine Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Clozapine (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 15, 1996	Do	Do
Corticosteroids, Dermatologic (topical) In Vivo	June 2, 1995	Do	Do
Diclofenac Sodium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 6, 1994	Do	Do
Diflunisal Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Diltiazem Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Dissolution Testing of Immediate Release Solid Oral Dosage Forms	August 25, 1997	Do	Do
Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations	September 26, 1997	Do	Do
Flurbiprofen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Gemfibrozil Capsules or Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 15, 1992	Do	Do
Glipizide (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Guanabenz Acetate Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Hydroxchloroqoine Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 28, 1995	Do	Do
Indapamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Ketoprofen (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Leucovorin Calcium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 4, 1988	Do	Do
Medroxyprogesterone Acetate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 17, 1987	Do	Do
Metaproferenol Sulfate and Albuterol Metered Dose Inhalers In Vitro	June 27, 1989	Do	Do
Metoprolol Tartrate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Nadolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Naproxen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Nortriptyline Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Oral Extended (controlled) Release In Vivo Bioequivalence and In Vitro Dissolution Testing	September 9, 1993	Do	Do
Pentoxifyline (extended-release tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Do	Do
Phenytoin/Phenytoin Sodium (capsules, tablets, suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 4, 1994	Do	Do

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Pindolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Piroxicam (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 15, 1992	Do	Do
Potassium Chloride (slow-release tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 6, 1994	Do	Do
Ranitidine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Selegiline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Do	Do
Statistical Procedure for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design	July 1, 1992	Do	Do
Trazodone Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 30, 1988	Do	Do
Antifungal (topical)	February 24, 1990	Biopharmaceutic draft	Do
Antifungal (vaginal)	February 24, 1990	Do	Do
Bioanalytical Methods Validations for Human Studies	January 5, 1999	Do	Do
Food-Effect Bioavailability and Bioequivalence Studies	December 30, 1997	Do	Do
In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches	December 30, 1997	Do	Do
Topical Dermatological Drug Product NDAs and ANDAs—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies	June 18, 1998	Do	Do
Waiver Policy	March 29, 1993	Do	Do
Glyburide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Biopharmaceutic testing	Do
Drug Master Files	September 1, 1989	Chemistry	Do
Environmental Assessment of Human Drugs and Biologics Applications	July 27, 1998	Do	Do
FDA's Policy Statement for the Development of New Stereoisomeric Drugs	May 1, 1992	Do	Do
Format and Content for the CMC Section of an Annual Report	September 1, 1994	Do	Do
Format and Content of the Chemistry, Manufacturing and Controls Section of an Application	February 1, 1987	Do	Do
Format and Content of the Microbiology Section of an Application	February 1, 1987	Do	Do
PAC–ALTS: Postapproval Changes—Analytical Testing Laboratory Sites	April 28, 1998	Do	Do
Reviewer Guidance: Validation of Chromatographic Methods	November 1, 1994	Do	Do
Submission of Chemistry, Manufacturing and Controls Information for Synthetic Peptide Substances	November 1, 1994	Do	Do
Submission of Documentation for Sterilization Process Validation Applications for Human and Veterinary Drug Products	November 1, 1994	Do	Do
Submitting Documentation for Packaging for Human Drugs and Biologics	February 1, 1987	Do	Do
Submitting Documentation for the Manufacturing of and Controls for Drug Products	February 1, 1987	Do	Do
Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Submitting Supporting Documentation in Testing Drug Applications for the Manufacture of Drug Substances	February 1, 1987	Do	Do
Submitting Samples and Analytical Data for Methods Validation	February 1, 1987	Do	Do
SUPAC–IR—Immediate-Release Solid Oral Dosage Forms: Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls, In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation	November 30, 1995	Do	Do
SUPAC–IR: Immediate Release Solid Oral Dosage Forms; Manufacturing Equipment Addendum	October 21, 1997	Do	Do
SUPAC–IR Questions and Answers	February 18, 1997	Do	Do

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SUPAC–MR: Modified Release Solid Oral Dosage Forms: Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation	October 6, 1997	Do	Do
SUPAC–SS—Nonsterile Semisolid Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation	June 13, 1997	Do	Do
BACPAC I: Intermediates in Drug Substance Synthesis (Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation)	November 30, 1998	Chemistry draft	Do
Content and Format of Investigational New Drug Applications (INDs) for Phases 2 and 3 Studies of Drugs, Including Specific Therapeutic Biotechnology-Derived Products—Preliminary Dra t	December 10, 1997	Do	Do
Metered Dose Inhalers (MDI) and Dry Powder Ir nalers (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation	November 19, 1998	Do	Do
NDAs: Impurities in Drug Substances	January 21, 1999	Do	Do
Stability Testing of Drug Substances and Drug Products	June 8, 1998	Do	Do
Submission of Documentation in Drug Applications for Container Closure Systems Used for the Packaging of Human Drugs and Biologics	July 15, 1997	Do	Do
Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications	November 1, 1991	Do	Do
SUPAC–IR/MR: Immediate Release and Modified Release Solid Oral Dosage Forms, Manufacturing Equipment Addendum	April 28, 1998	Do	Do
SUPAC–SS: Nonsterile Semisolid Dosage Forms	January 5, 1999	Do	Do
Tracking of NDA and ANDA Reformulations for Solid, Oral, Immediate Release Drug Products		Do	Do
Acute Bacterial Exacerbation of Chronic Bronchitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Clinical antimicrobial draft	Do
Acute Bacterial Meningitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Acute Bacterial Sinusitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Acute or Chronic Bacterial Prostatitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Acute Otitis Media; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Bacterial Vaginosis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Community Acquired Pneumonia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Complicated Urinary Tract Infections and Pyelonephritis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Empiric Therapy of Febrile Neutropenia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
General Considerations for Clinical Trials; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Lyme Disease; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Nosocomial Pneumonia; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Secondary Bacterial Infections of Acute Bronchitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Streptococcal Pharyngitis and Tonsillitis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Uncomplicated Gonorrhea—Cervical, Urethral, Rectal, and/or Pharyngeal; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Uncomplicated Urinary Tract Infections; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do

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Uncomplicated and Complicated Skin and Skin Structure Infections; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Vuvlovaginal Candidiasis; Developing Antimicrobial Drugs for Treatment	July 22, 1998	Do	Do
Clinical Evaluation of Antidepressant Drugs	September 1, 1977	Clinical medical	Do
Clinical Evaluation of Antidiarrheal Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Antiepileptic Drugs (adults and children)	January 1, 1981	Do	Do
Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy of Postmenopausal Women	March 20, 1995	Do	Do
Clinical Evaluation of Radiopharmaceutical Drugs	October 1, 1981	Do	Do
Clinical Evaluation of Analgesic Drugs	December 1, 1992	Do	Do
Clinical Evaluation of Antacid Drugs	April 1, 1978	Do	Do
Clinical Evaluation of Anti-Inflammatory and Antirheumatic Drugs (adults and children)	April 1, 1988	Do	Do
Clinical Evaluation of Anti-Anxiety Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Anti-Infective Drugs (Systemic)	September 1, 1977	Do	Do
Clinical Evaluation of Drugs to Prevent, Control and/or Treat Periodontal Disease	November 1, 1978	Do	Do
Clinical Evaluation of Gastric Secretory Depressant (GSD) Drugs	September 1, 1977	Do	Do
Clinical Evaluation of General Anesthetics	May 1, 1982	Do	Do
Clinical Evaluation of Hypnotic Drugs	September 1, 1977	Do	Do
Clinical Evaluation of Laxative Drugs	April 1, 1978	Do	Do
Clinical Evaluation of Local Anesthetics	May 1, 1982	Do	Do
Clinical Evaluation of Psychoactive Drugs in Infants and Children	July 1, 1979	Do	Do
Content and Format for Pediatric Use Supplements	May 24, 1996	Do	Do
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products	November 20, 1995	Do	Do
Development of Vaginal Contraceptive Drugs (NDA)	April 19, 1995	Do	Do
FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	February 2, 1999	Do	Do
FDA Requirements for Approval of Drugs to Treat Superficial Bladder Cancer	June 20, 1989	Do	Do
FDA Requirements for Approval of Drugs to Treat Non-Small Cell Lung Cancer	January 29, 1991	Do	Do
Format and Content of the Clinical and Statistical Sections of an Application	July 1, 1988	Do	Do
Format and Content of the Summary for New Drug and Antibiotic Applications	February 1, 1987	Do	Do
Formatting, Assembling and Submitting New Drug and Antibiotic Applications	February 1, 1987	Do	Do
General Considerations for the Clinical Evaluation of Drugs in Infants and Children	September 1, 1977	Do	Do
General Considerations for the Clinical Evaluation of Drugs	December 1, 1978	Do	Do
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Ovarian Cancer	April 13, 1988	Do	Do
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Colon and Rectal Cancer	April 19, 1988	Do	Do
OTC Treatment of Hypercholesterolemia	October 27, 1997	Do	Do
Points to Consider: Clinical Development Programs for MDI and DPI Drug Products	September 19, 1994	Do	Do
Points to Consider in the Clinical Development and Labeling of Anti-Infective Drug Products	October 26, 1992	Do	Do
Points to Consider in the Preclinical Development of Immunomodulatory Drugs for the Treatment of HIV Infection and Associated Disorders	May 1, 1993	Do	Do
Points to Consider in the Preclinical Development of Antiviral Drugs	November 1, 1990	Do	Do

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Postmarketing Adverse Experience Reporting for Human Drugs and Licensed Biological Products; Clarification of What to Report	August 27, 1997	Do	Do
Postmarketing Reporting of Adverse Drug Experiences	March 1, 1992	Do	Do
Preparation of Investigational New Drug Products (Human and Animal)	November 1, 1992	Do	Do
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	May 15, 1998	Do	Do
Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs	July 22, 1993	Do	Do
Study of Drugs Likely to be Used in the Elderly	November 1, 1989	Do	Do
Abuse Liability Assessment	July 1, 1990	Clinical medical draft	Do
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)	February 18, 1998	Do	Do
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	March 18, 1998	Do	Do
Clinical Evaluation of Antihypertensive Drugs	May 1, 1988	Do	Do
Clinical Evaluation of Anti-Anginal Drugs	January 1, 1989	Do	Do
Clinical Evaluation of Anti-Arrhythmic Drugs	July 1, 1985	Do	Do
Clinical Evaluation of Drugs for the Treatment of Congestive Heart Failure	December 1, 1987	Do	Do
Clinical Evaluation of Drugs for Ulcerative Colitis (3rd draft)		Do	Do
Clinical Evaluation of Lipid-Altering Agents in Adults and Children	September 1, 1990	Do	Do
Clinical Evaluation of Motility-Modifying Drugs		Do	Do
Clinical Evaluation of Weight-Control Drugs	October 1, 1997	Do	Do
Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review	November 22, 1996	Do	Do
Developing Medical Imaging Drugs and Biologics	October 13, 1998	Do	Do
Development and Evaluation of Drugs for the Treatment of Psychoactive Substance Use Disorders	February 12, 1992	Do	Do
Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products	February 18, 1997	Do	Do
Points to Consider for System Inflammatory Response Syndrome (SIRS) 1st Draft		Do	Do
Points to Consider in the Preparation of IND Applications for New Drugs Intended for the Treatment of HIV-Infected Individuals	September 1, 1991	Do	Do
Preclinical and Clinical Evaluation of Agents Used in the Prevention or Treatment of Postmenopausal Osteoporosis	April 1, 1994	Do	Do
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications	September 21, 1998	Do	Do
Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro	April 7, 1997	Clinical pharmacology	Do
Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application	February 1, 1987	Do	Do
Pharmacokinetics and Pharmacodynamics in Patients with Impaired Renal Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	May 15, 1998	Do	Do
Population Pharmacokinetics	February 10, 1999	Do	Do
General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products	November 30, 1998	Clinical pharmacology draft	o
In Vivo Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling	November 19, 1998	Do	Do
A Review of FDA's Implementation of the Drug Export Amendments of 1986		Compliance	Do
Compressed Medical Gases	December 1, 1989	Do	Do
Expiration Dating and Stability Testing of Solid Oral Dosage Form Drugs Containing Iron	June 27, 1997	Do	Do
General Principles of Process Validation	May 1, 1987	Do	Do

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Good Laboratory Practice Regulations Questions and Answers		Do	Do
Monitoring of Clinical Investigations	January 1, 1988	Do	Do
Nuclear Pharmacy Guideline Criteria for Determining When to Register as a Drug Establishment	May 1, 1984	Do	Do
Sterile Drug Products Produced by Aseptic Processing	May 1, 1987	Do	Do
Validation of Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Computerized Systems Used in Clinical Trials	June 18, 1997	Compliance draft	Do
Investigating Out of Specification (OOS) Test Results for Pharmaceutical Production	September 30, 1998	Do	Do
Manufacture, Processing or Holding of Active Pharmaceutical Ingredients	April 17, 1998	Do	Do
Repackaging of Solid Oral Dosage Form Drug Products	February 1, 1992	Do	Do
ANDAs: Impurities in Drug Products	January 5, 1999	Generic drug draft	Do
ANDAs: Impurities in Drug Substances	July 24, 1998	Do	Do
Content and Format of an Abbreviated New Drug Application (ANDA)—Positron Emission Tomography (PET) Drug Products—With Specific Information for ANDAs for Fludeoxyglucose F18 Injection	April 18, 1997	Do	Do
Letter announcing that the OGD will now accept the ICH long-term storage conditions as well as the stability studies conducted in the past	August 18, 1995	Generic drug	Do
Letter describing efforts of CDER & ORA to clarify the responsibilities of CDER chemistry review scientists and ORA field investigators in the new and abbreviated drug approval process in order to reduce duplication or redundancy in the process	October 14, 1994	Do	Do
Letter on incomplete Abbreviated Applications, Convictions under GDEA, Multiple Supplements, Annual Reports for Bulk Antibiotics, Batch Size for Transdermal Drugs, Bioequivalence Protocols, Research, Deviations from OGD Policy	April 8, 1994	Do	Do
Letter on the request for cooperation of regulated industry to improve the efficiency and effectiveness of the generic drug review process, by assuring the completeness and accuracy of required information and data submissions	November 8, 1991	Do	Do
Letter on the provision of new information pertaining to new bioequivalence guidelines and refuse-to-file letters	July 1, 1992	Do	Do
Letter on the provision of new procedures and policies affecting the generic drug review process	March 15, 1989	Do	Do
Letter on the response to 12/20/84 letter from the Pharmaceutical Manufacturers Association about the Drug Price Competition and Patent Term Restoration Act	March 26, 1985	Do	Do
Letter to all ANDA and AADA applicants about the Generic Drug Enforcement Act of 1992 (GDEA), and the Office of Generic Drugs intention to refuse-to-file incomplete submissions as required by the new law	January 15, 1993	Do	Do
Letter to regulated industry notifying interested parties about important detailed information regarding labeling scale-up, packaging, minor/major amendment criteria, and bioequivalence requirements	August 4, 1993	Do	Do
Organization of an Abbreviated New Drug Application and an Abbreviated Antibiotic Application	April 7, 1997	Do	Do
Variations in Drug Products that May Be Included in a Single ANDA	January 27, 1999	Do	Do
E5 Ethnic Factors in the Acceptability of Foreign Clinical Data	June 10, 1998	ICH draft guidances efficacy	Do

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Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances	November 25, 1997	ICH draft guidances—quality	Do
Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products	June 9, 1998	Do	Do
S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)	November 18, 1997	ICH draft guidances safety	Do
E1A The Extent of Population Exposure to Assess Clinical Safety: for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions	March 1, 1995	ICH guidances—efficacy	Do
E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting	March 1, 1995	Do	Do
E2B Data Elements for Transmission of Individual Case Reports	January 15, 1998	Do	Do
E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs	May 19, 1997	Do	Do
E4 Dose-Response Information to Support Drug Registration	November 9, 1994	Do	Do
E6 Good Clinical Practice: Consolidated Guideline	May 9, 1997	Do	Do
E7 Studies in Support of Special Populations: Geriatrics	August 2, 1994	Do	Do
E8 General Considerations for Clinical Trials	December 24, 1997	Do	Do
E9 Statistical Principles for Clinical Trials	September 16, 1998	Do	Do
M3 Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	November 25, 1997	ICH guidances—joint safety/efficacy (multidisciplinary)	Do
Q1A Stability Testing of New Drug Substances and Products	September 22, 1994	ICH guidances—quality	Do
Q1B Photostability Testing of New Drug Substances and Products	May 16, 1997	Do	Do
Q1C Stability Testing for New Dosage Forms	May 9, 1997	Do	Do
Q2A Text on Validation of Analytical Procedures	March 1, 1995	Do	Do
Q2B Validation of Analytical Procedures: Methodology	May 19, 1997	Do	Do
Q3A Impurities in New Drug Substances	January 4, 1996	Do	Do
Q3B Impurities in New Drug Products	May 19, 1997	Do	Do
Q3C Impurities: Residual Solvents	December 24, 1997	Do	Do
Q5A Biotechnological/Biological Pharmaceutical Products, Viral Safety Evaluation	September 24, 1998	Do	Do
Q5B Quality of Biotechnology Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products	February 23, 1996	Do	Do
Q5C Quality of Biotechnological Products: Stability Testing of Biotechnology/Biological Products	July 10, 1996	Do	Do
Q5D Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	September 21, 1998	Do	Do
S1A The Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals	March 1, 1996	ICH guidances—safety	Do
S1B Testing for Carcinogenicity in Pharmaceuticals	February 23, 1998	Do	Do
S1C Dose Selection for Carcinogenicity Studies of Pharmaceuticals	March 1, 1995	Do	Do
S1C(R) Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes	December 4, 1997	Do	Do
S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals	April 24, 1996	Do	Do
S2B Genotoxicity: Standard Battery Testing	November 21, 1997	Do	Do
S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies	March 1, 1995	Do	Do
S3B Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies	March 1, 1995	Do	Do
S5A Detection of Toxicity to Reproduction for Medicinal Products	September 22, 1994	Do	Do
S5B Detection of Toxicity to Reproduction for Medicinal Products: Addendum on Toxicity to Male Fertility	April 5, 1996	Do	Do

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S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals	November 18, 1997	Do	Do
E3 Structure and Content of Clinical Study Reports	July 17, 1996	IHC guidances—efficacy	Do
A Revision in Sample Collection Under the Compliance Program Pertaining to Pre-Approval Inspections	July 15, 1996	Industry letters	Do
Certification Requirements for Debarred Individuals in Drug Applications	July 27, 1992	Do	Do
Continuation of a series of letters communicating interim and informal generic drug policy and guidance. Availability of Policy and Procedure Guides, and further operational changes to the generic drug review program	June 1, 1990	Do	Do
Fifth of a series of letters providing informal notice about the Act, discussing the statutory mechanisms by which ANDA applicants may make modifications in approved drugs where clinical data is required	April 10, 1987	Do	Do
Fourth of a series of letters providing informal notice to all affected parties about policy developments and interpretations regarding the Act. Three year exclusivity provisions of Title I	October 31, 1986	Do	Do
Implementation of the Drug Price Competition and Patent Term Restoration Act. Preliminary Guidance	October 11, 1984	Do	Do
Implementation Plan USP injection nomenclature	October 2, 1995	Do	Do
Instructions for Filing Supplements Under the Provisions of SUPAC–IR	April 11, 1996	Do	Do
Seventh of a series of letters about the act providing guidance on the "180-day exclusivity" provision of section 505(j)(4)(B)(iv) of the FD&C Act	July 29, 1988	Do	Do
Sixth of a series of informal notice letters about the Act discussing the 3- and 5-year exclusivity provisions of sections 505(c)(3)(d) and 505(j)(4)(D) of the FD&C Act	April 28, 1988	Do	Do
Streamlining Initiatives	December 24, 1996	Do	Do
Supplement to 10/11/84 letter about policies, procedures and implementation of the Act (Q & A format)	November 16, 1984	Do	Do
Third of a series of letters regarding the implementation of the Act	May 1, 1985	Do	Do
Regulatory Submissions in Electronic Format; General Considerations	January 28, 1999	Information technology	Do
Regulatory Submissions in Electronic Format; New Drug Applications	January 28, 1999	Do	Do
Acetaminophen, Aspirin and Codeine Phosphate Tablets/Capsules	December 1, 1993	Labeling	Do
Acetaminophen and Codeine Phosphate Oral Solution/Suspension	December 1, 1993	Do	Do
Acetaminophen and Codeine Phosphate Tablets/Capsules	December 1, 1993	Do	Do
Alprazolam Tablets USP	August 1, 1996	Do	Do
Amiloride Hydrochloride and Hydrochlorothiazide Tablets USP	September 1, 1997	Do	Do
Amlodipine Besylate Tablets	September 1, 1997	Do	Do
Astemizole Tablets	September 1, 1997	Do	Do
Atenolol Tablets USP	August 1, 1997	Do	Do
Barbituate, Single Entity-Class Labeling	March 1, 1981	Do	Do
Butalbital, Acetaminophen, Caffeine and Hydocodone Bitartrate Tablets	September 21, 1997	Do	Do
Butalbital, Acetaminophen and Caffeine Capsules/Tablets USP	September 1, 1997	Do	Do
Butorphanol Tartrate Injection USP	October 1, 1992	Do	Do
Captopril and Hydrochlorothiazide Tablets USP	April 1, 1995	Do	Do
Captopril Tablets	February 1, 1995	Do	Do
Carbidopa and Levodopa Tablets USP	February 1, 1992	Do	Do
Chlordiazepoxide Hydrochloride Capsules	January 1, 1988	Do	Do
Cimetidine Hydrochloride Injection	September 1, 1995	Do	Do
Cimetidine Tablets	September 1, 1995	Do	Do
Cisapride Oral Suspension	September 1, 1997	Do	Do

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Cisapride Tablets	September 1, 1997	Do	Do
Clindamycin Phosphate Injection USP	September 1, 1998	Do	Do
Clorazepate Dipotassium Capsules/Tablets	March 1, 1993	Do	Do
Combination Oral Contraceptives—Physician and Patient Labeling	January 1, 1994	Do	Do
Cyproheptadine Hydrochloride Tablets/Syrup	December 1, 1986	Do	Do
Diclofenac Sodium Delayed-Release Tablets	January 1, 1997	Do	Do
Diltiazem Hydrochloride Extended-Release Capsules	September 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulphate Tablets USP	April 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulfate Oral Solution USP	April 1, 1995	Do	Do
Dipivefrin Hydrochloride Ophthalmic Solution USP	October 1, 1998	Do	Do
Dipivefrin Hydrochloride Ophthalmic Solution, 0.1%	November 2, 1998	Do	Do
Ergoloid Mesylates Tablets	January 1, 1988	Do	Do
Fludeoxyglucose F18 Injection	January 1, 1997	Do	Do
Flurbiprofen Tablets USP	January 1, 1994	Do	Do
Fluvoxamine Maleate Tablets	September 1, 1997	Do	Do
Gentamicin Sulfate Ophthalmic Ointment and Solution USP	April 1, 1992	Do	Do
Heparin Sodium Injection USP	March 1, 1991	Do	Do
Hydrocodone Bitartrate and Acetaminophen Tablets USP	April 1, 1994	Do	Do
Hydroxyzine Hydrochloride Injection	December 1, 1989	Do	Do
Hypoglycemic Oral Agents—Federal Register	April 1, 1984	Do	Do
Indomethacin Capsules USP	September 1, 1995	Do	Do
Informal Labeling Guidance Texts for Estrogen Drug Products—Patient Labeling	August 1, 1992	Do	Do
Informal Labeling Guidance Texts for Estrogen Drug Products—Professional Labeling	August 1, 1992	Do	Do
Isoetharine Inhalation Solution	March 1, 1989	Do	Do
Itraconazole Capsules, USP	September 1, 1998	Do	Do
Leucovorin Calcium for Injection	July 1, 1996	Do	Do
Leucovorin Calcium Tablets, USP	July 1, 1996	Do	Do
Local Anesthetics—Class Labeling	September 1, 1982	Do	Do
Meclofenamate Sodium Capsules	July 1, 1992	Do	Do
Medroxyprogesterone Acetate Tablets, USP	September 1, 1998	Do	Do
Metaproterenol Sulfate Inhalation Solution USP	May 1, 1992	Do	Do
Metaproterenol Sulfate Syrup, USP	May 1, 1992	Do	Do
Metaproterenol Sulfate Tablets	May 1, 1992	Do	Do
Metoclopramide Tablets/ Oral Solution, USP	February 1, 1995	Do	Do
Naphazoline Hydrochloride Ophthalmic Solution	March 1, 1989	Do	Do
Naproxen Sodium Tablets, USP	September 1, 1997	Do	Do
Naproxen Tablets, USP	September 1, 1997	Do	Do
Niacin Tablets	July 1, 1992	Do	Do
Paclitaxel Injection	September 1, 1997	Do	Do
Phendimetrazine Tartrate Capsules/Tablets, and Extended-Release Capsules	February 1, 1991	Do	Do
Phentermine Hydrochloride Capsules/Tablets	August 1, 1988	Do	Do
Promethazine Hydrochloride Tablets	March 1, 1990	Do	Do
Propantheline Bromide Tablets	August 1, 1988	Do	Do
Pyridoxine Hydrochloride Injection	June 1, 1984	Do	Do
Quinidine Sulfate Tablets/Capsules USP	October 1, 1995	Do	Do
Ranitidine Tablets	November 1, 1993	Do	Do
Risperidone Oral Solution	September 1, 1997	Do	Do
Risperidone Tablets	September 1, 1997	Do	Do
Sulfacetamide Sodium Ophthalmic Solution/Ointment	August 1, 1992	Do	Do
Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension and Ointment	January 1, 1995	Do	Do
Sulfamethoxazole and Phenazopyridine Hydrochloride Tablets	February 1, 1992	Do	Do
Sulfamethoxazole and Trimethoprim Tablets and Oral Suspension	August 1, 1993	Do	Do
Theophylline Immediate-Release Dosage Forms	February 1, 1995	Do	Do
Theophylline Intravenous Dosage Forms	September 1, 1995	Do	Do
Thiamine Hydrochloride Injection	February 1, 1988	Do	Do
Tobramycin Sulfate Injection USP	May 1, 1993	Do	Do
Venlafaxine Hydrochloride Tablets	October 1, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Verapamil Hydrochloride Tablets	October 1, 1991	Do	Do
Vitamin A Capsules	February 1, 1992	Do	Do
Zolpidem Tartrate Tablets	September 1, 1997	Do	Do
Content and Format for Geriatric Labeling	January 21, 1999	Labeling draft	Do
Non-Contraceptive Estrogen Class Labeling	October 15, 1998	Do	Do
Non-Contraceptive Estrogen Drug Products—Physician and Patient Labeling	January 8, 1999	Do	Do
OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis)	July 16, 1998	Do	Do
Therapeutic Equivalence Code Placement on Prescription Drug Labels and Labeling	January 28, 1999	Do	Do
Enforcement Policy on Marketing OTC Combination Products		OTC	Do
General Guidelines for OTC Combination Products		Do	Do
Upgrading Category III Antiperspirants to Category I		Do	Do
OTC Nicotine Substitutes	March 1, 1994	OTC draft	Do
Points to Consider for OTC Actual Use Studies	July 22, 1994	Do	Do
Format and Content of the Nonclinical Pharmacology/Toxicology Section of an Application	February 1, 1987	Pharmacology/toxicology	Do
Points to Consider in the Nonclinical Pharmacology/Toxicology Development of Topical Drugs Intended to Prevent the Transmission of Sexually Transmitted Diseases (STD) and/or for the Development of Drugs Intended to Act as Vaginal Contraceptives		Do	Do
Reference Guide for the Nonclinical Toxicity Studies of Antiviral Drugs Indicated for the Treatment of Non-Life Threatening Disease: Evaluation of Drug Toxicity Prior to Phase I Clinical Studies	February 1, 1989	Do	Do
Single Dose Acute Toxicity Testing for Pharmaceuticals	August 26, 1996	Do	Do
180–Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	July 14, 1998	Procedural	Do
Advisory Committees: Implementing Section 120 of the Food and Drug Modernization Act of 1997	November 2, 1998	Do	Do
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act	November 23, 1998	Do	Do
Fast Track Drug Development Programs: Designation, Development, and Application Review	November 18, 1998	Do	Do
Implementation of Section 126, Elimination of Certain Labeling Requirements, of the FDA Modernization Act of 1997	July 21, 1998	Do	Do
National Uniformity for Nonprescription Drugs Ingredient Labeling for OTC Drugs	April 9, 1998	Do	Do
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act	June 29, 1998	Do	Do
Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act	June 15, 1998	Do	Do
Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements	May 15, 1998	Do	Do
Submitting Debarment Certification Statements	October 2, 1998	Procedural draft	Do
Classifying Resubmissions in Response to Action Letters	May 14, 1998	User fee	Do
Submitting and Reviewing Complete Responses to Clinical Holds	May 14, 1998	Do	Do

V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition (CFSAN)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Compliance Policy Guides Manual	1996	FDA regulated industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (Order No. PB96–920500)
Compliance Programs Guidance Manual	1995	Do	NTIS (Order No. PB95–915499)
Inspection Operations Manual	October 1994	Do	NTIS (Order No. PB95–913399)
Regulatory Procedures Manual	August 1995	Do	NTIS (Order No. PB95–265534)
Requirements of Laws and Regulations Enforced by the U.S. Food and Drug Administration "Blue Book"	1997	Do	Superintendent of Documents, Government Printing Office, Washington, DC 20402
FDA Recall Policy	1995	Do	Industry Activities Staff (HFS–565), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed	1995	Food and animal feed industries	Do
Pesticides Analytical Manual	1994	Food Industry	NTIS (Order No. PB94–911899)
FDA Advisory for Deoxynivanol (DON) in Finished Wheat Products Intended for Human Consumption and in Grain and Grain By-Products for Animal Feed	September 16, 1993	Food and animal feed industries	Office of Plant & Dairy Foods & Beverages (HFS–306), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681
FDA's Cosmetic Labeling Manual	October 1991	Cosmetic industry	Office of Colors and Cosmetics (HFS–105), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4493
Statement of Policy: Foods Derived from New Plant Varieties	May 29, 1992	Developers of new plant food varieties	Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3100
A Food Labeling Guide	September 1994	Food industry	Superintendent of Documents, Government Printing Office, Washington, DC 20402, 202–512–1800
Appendix I—Model Small Business Food Labeling Exemption Notice	August 7, 1993	Do	Industry Activities Staff (HFS–565), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5251
Food Labeling: Questions and Answers	August 1993	Do	Do
Food Labeling: Questions and Answers: Volume II	August 1995	Do	Superintendent of Documents, Government Printing Office, Washington, DC 20420, 202–512–1800
Fair Packaging and Labeling Act Requirements and Interpretations	June 1978	Do	NTIS (Order No. PB83–222117)
Bacteriological Analytical Manual 7th Edition	1992	FDA regulated industries	AOAC International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2417, 301–924–7077
FDA Food Importer's Guide for Low-Acid Canned and Acidified Foods	1995	Food industry	Industry Activities Staff (HFS–565), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5251
Fabrication of Single Service Containers and Closures for Milk and Milk Products	1995	States	Milk Safety Branch (HFS–626), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175
Evaluation of Milk Laboratories	1995	Do	Do
Methods of Making Sanitation Ratings Of Milk Supplies	1995	Do	Do
Dry Milk Ordinance	1995	Do	Do
Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers	1995	Dairy industry	Do
Frozen Dessert Processing Guidelines	1989	Do	Office of Plant and Dairy Foods and Beverages (HFS–302), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175
Pasteurized Milk Ordinance	1995	States	Milk Safety Branch (HFS–626), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases	1993	Food industry	Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561
Guidelines for Determining Metric Equivalents of Household Measures	October 1, 1993	Do	Do
List of Food Defect Action Levels (DALS)	1995	Food and Animal Feed Industries Industry Activities Staff (HFS–565), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5251	
Action Levels for Poisonous or Deleterious Substances in Human Food and Feed (Also Found in CPG's)	1995	Do	Do
1997 FDA Food Code	1997	States	NTIS
Seafood List	1993	Seafood industry	Superintendent of Documents, Government Printing Office, Washington, DC 20402, 202–512–1800
Manual of Operations National Shellfish Sanitation	1992	States	Office of Seafood (HFS–407), Shellfish Sanitation Branch, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150
Fish and Fisheries Products Hazards and Controls Guide	1996	Seafood industry	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150
Guidance for Submitting Requests Under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food Articles	1996	Food packaging industry	Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3100
Guidelines for the Preparation of Petition Submissions	1996	Do	Do
Guidelines for Approval of Color Additives in Contact Lenses Intended as Colors	1996	Color or contact lens industry	Do
Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs or Cosmetics Use	February 1993	Color additives industry	Do
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations	December 1992	Food packaging industry	Do
Recommendations for Submission of Chemical and Technological Data for Direct Food Additive and GRAS Food Ingredient Petitions	May 1993	Do	Do
Recommendations for Chemistry Data for Indirect Food Additive Petitions	June 1995	Do	Do
Enzyme Preparations: Chemistry Recommendations for Food Additive and GRAS Affirmation Petitions	January 1993	Food enzyme industry	Do
Estimating Exposure to Direct Food Additive and Chemical Contaminants in the Diet	September 1995	Food and food ingredient industry	Do
Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (also known as Redbook I)	1982	Petitioners for food or color additives	NTIS (Order No. PR–83–170696)
Environmental Assessment Technical Handbook	March 1987	Do	NTIS (Order No. PB87–175345–AS, A–01)
Preparing Environmental Assessments: General Suggestions	August 1990	Do	Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW, Washington, DC 20204, 202–418–3100
Step-by-Step Guidance for Preparing Environmental Assessments	March 1987	Do	Do
Environmental Assessment of Food-Packaging Materials with Enhanced Degradation Characteristics	February 1994	Do	Do
Color Additive Petitions Information and Guidance	1996	Do	Do
Toxological Testing of Food Additives	1983	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
List of Products for Each Product Category	October 8, 1992	Food industry	Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561
Label Declaration of Allergenic Substances in Foods; Notice to Manufacturers	June 10, 1996	Do	Do
Guidance on Labeling of Foods that Need Refrigeration by Consumers	February 24, 1997	Do	Do
Interim Guidance on the Voluntary Labeling of Milk and Milk Products that Have Not Been Treated With Recombinant Bovine Somatropin	February 10, 1994	Do	Do
Guidelines Concerning Notification and Testing of Infant Formula	1985	Infant formula manufacturers	Office of Special Nutritionals (HFS–450), Food and Drug Administration, 200 C St. SW, Washington, DC 20204 202–205–4168
Clinical Testing of Infant Formulas with Respect to Nutritional Suitability for Term Infants	1985	Do	Do
Guidelines for the Evaluation of the Safety and Suitability of New Infant Formulas for Feeding	Infants with Allergic Diseases	1988	Do
Guidelines for the Evaluation of the Safety and Suitability of Infant Formulas for Feeding Infants with Allergic Diseases	1990	Do	Do
Guidelines for the Clinical Evaluation of New Products Used in the Dietary Management of Infants, Children and Pregnant Women with Metabolic Disorders	1987	Do	Do
Guidance Document for Arsenic (Trace Elements in Seafood)	January 1993	States	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150 or via Internet: FDA Home Page http://vm.cfsan.fda.gov/list.html
Guidance Document for Cadmium (Trace Elements in Seafood)	January 1993	Do	Do
Guidance Document for Chromium (Trace Elements in Seafood)	January 1993	Do	Do
Guidance Document for Lead (Trace Elements in Seafood)	August 1993	Do	Do
Guidance Document for Nickel (Trace Elements in Seafood)	January 1993	Do	Do
FDA's Policy for Foods Developed by Biotechnology	1995	Food industry	Internet: FDA Home Page http://vm.cfsan.fda.gov
Bovine Spongiform Encephalopathy (BSE) In Products for Human Use	1997	Do	Office of Plant and Dairy Foods and Beverages (HFS–302), CFSAN, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–9175 or via Internet: FDA Home Page http://www.fda.gov/opacom/morechoices/industry/guidance/gelguide.htm
Shellfish Sanitation Model Ordinance	1995	States	Shellfish Program Implementation Branch, Office of Field Programs (HFS–628), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–8137
Draft Working Guide to Minimize Microbial Hazards for Fresh Fruits and Vegetables	1998	Farmers and food packers	Food Safety Initiative (HFS–3), Food and Drug Administration, 200 C. St. SW, Washington, DC 20204 or jsaltsman@bangate.fda.gov
Iron-Containing Supplements and Drugs: Label Warning and Unit Dose Packaging; Small Entity Compliance Guide	1997	Dietary supplement manufacturers: small entities	Office of Special Nutritionals (HFS–450), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Partial List of Enzyme Preparations That are Used in Foods	1998	FDA regulated industry	Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Partial List of Microorganisms and Microbial-Derived Ingredients That Are Used in Food	1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Fish and Fishery Products Hazards and Controls Guide, 2nd Edition	January 1998	Do	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
HACCP Regulations for Fish and Fishery Products: Questions and Answers	1997	Do	Do
Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body	1998	Do	Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099
Small Business Juice Labeling: Questions and Answers	1998	Do	Do
FDA Nutrition Labeling Manual, A Guide for Developing and Using Data Bases	March 1998	Do	Do
HACCP Regulation for Fish and Fishery Products: Questions and Answers, Issue Three, Revised	January 1999	Seafood processors	Office of Seafood (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3150
Foods—Adulteration Involving Hard or Sharp Foreign Objects (CPG)	February 1999	FDA field offices	Office of Plant and Dairy Foods and Beverages (HFS–300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Food Additive Petition Expedited Review	January 1999	FDA personnel and regulated industry	Office of Premarket Approval, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3074, premarkt@cfsan.fda.gov OR http://vm.cfsan.fda.gov/dms/opa-expe.html
Use of Antibiotic Resistance Marker Genes in Transgenic Plants	September 1998	FDA regulated industry	Do—premarkt@cfsan.fda.gov OR http://vm.cfsan.fda.gov//dms/opa-armg.html
Changes to the "Pesticides and Industrial Chemicals in Domestic Foods" Compliance Program for FY 99	December 30, 1998	FDA districts	FOI/Domestic Programs Branch (HFS–636), Office of Field Programs, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4771
FY 99 Mycotoxin Collection and Sample Analysis Schedule	November 13, 1998	Do	Do
Revisions to the EHEC Method	November 23, 1998	Do	Do
Vibrio Vulnificus and Vibrio parahaemolyticus in Retail Shell Oysters CFSAN Assignment 98–7	June 17, 1998	Do	Do
Revisions to Att F "Special Survey Obligations—Dioxins and Furans in Food" of the Pesticides and Industrial Chemicals Domestic Food Compliance Program for FY99	September 30, 1998	Do	Do
Collection and Analyses of Physical Sample to Support Undeclared Allergen Cases: NLEA and General Labeling Requirements; Domestic Compliance Program	November 30, 1998	Do	Do
Assignment to Assure Unpasteurized Juice Manufacturers and Imported Juice Products Provide Required Label Warnings, Placards, and/or meet the 5 log Pathogen Reduction Requirement	September 21, 1998	Do	Do
Assignment to Assure Unpasteurized Juice Manufacturers and Imported Juice Products Provide Required Label Warnings, Placards, and/or meet the 5 log Pathogen Reduction Requirement	November 3, 1998	Do	Do
Pesticides in Imported Ginseng (Field Assignment)	September 17, 1998	FDA districts	FOI/Imports Branch (HFS–606), Office of Field Programs, Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Radionuclides in Foods	October 2, 1998	Do	Do
Letters to Manufacturers of Prepared Sandwiches	August 21, 1998	Manufacturers of prepared sandwiches	Office of Field Programs (HFS–600), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5194 or JohnThomas@OFP@FDA.CFSAN, FAX 292–260–0133

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 3—General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals	July 1994	Animal drug industry	Internet via: http://www.fda.gov/cvm or Communications Staff (HFV–12), CVM, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, FAX 301–594–1831
Guideline 4—Guidelines for Efficacy Studies for Systemic Sustained Release Sulfonamide Boluses for Cattle		Do	Do
Guideline 5—Stability Guidelines	December 1990	Do	Do
Guideline 6—Guidelines for Submitting NADA's for Generic Drugs Reviewed by NAS/NRC		Do	Do
Guideline 9—Preclearance Guidelines for Production Drugs	October 1975	Do	Do
Guideline 10—Amendment of Section II(G)(1)(b)(4) of the Preclearance Guidelines	October 1975	Do	Do
Guideline 13—Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Feeds	January 1985	Do	Do
Guideline 14—Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in FOOD Producing Animals		Do	Do
Guideline 15—Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in NON–FOOD Producing Animals	February 1977	Do	Do
Guideline 16—FOI Summary Guideline	May 1985	Do	Do
Guideline 18—Antibacterial Drugs in Animal Feeds: Human Health Safety Criteria		Do	Do
Guideline 19—Antibacterial Drugs in Animal Feeds: Animal Health Safety Criteria		Do	Do
Guideline 20—Antibacterial Drugs in Animal Feeds: Antibacterial Effectiveness Criteria		Do	Do
Guideline 22—Guideline Labeling of Arecoline Base Drugs Intended for Animal Use		Do	Do
Guideline 23—Medicated Free Choice Feeds—Manufacturing Control	July 1985	Do	Do
Guideline 24—Guidelines for Drug Combinations for Use in Animals	October 1983	Do	Do
Guideline 25—Guidelines for the Efficacy Evaluation of Equine Anthelmintics	January 1979	Do	Do
Guideline 29—Guidelines for the Effectiveness Evaluation of Swine Anthelmintics	September 1980	Do	Do
Guideline 31—Guidelines for the Evaluation of Bovine Anthelmintics	July 1981	Do	Do
Guideline 33—Target Animal Safety Guidelines for New Animal Drugs	June 1989	Do	Do
Guideline 35—Bioequivalence Guideline—Final	1996	Do	Do
Guideline 36—Guidelines for Efficacy Evaluation of Canine/Feline Anthalmintics	July 1985	Do	Do
Guideline 37—Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Poultry Feed for Pigmentation	March 1984	Do	Do
Guideline 38—Guideline for Effectiveness Evaluation of Topical/Otic Animal Drugs	August 1984	Do	Do
Guideline 40—Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry	April 1992	Do	Do
Guideline 41—Draft Guideline: Formatting, Assembling, and Submitting New Animal Drug Applications	June 1992	Do	Do
Guideline 42—Animal Drug Manufacturing Guidelines, 1994	1994	Do	Do
Guideline 43—Guidance on Generic Animal Drug Products Containing Fermentation-Derived Drug Substances	October 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 45—Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle	August 1993	Do	Do
Guideline 48—Guidance for Industry for the Submission of Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products	November 1994	Do	Do
Guideline 49—Guidance Document for Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products	April 1996	Do	Do
Guideline 50—Draft Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Teat Antiseptic Products	February 1993	Do	Do
Guideline 52—Guidance—Microbiological Testing of Antimicrobial Drug Residues in Food	January 1996	Do	Do
Guideline 53—Guideline for the Evaluation of the Utility of Food Additives in Diets Fed to Aquatic Animals	May 1994	Do	Do
Guideline 54—Draft Guideline for Utility Studies for Anti-Salmonella Chemical Food Additives in Animal Feeds	June 1994	Do	Do
Guideline 55—Supportive Data for Cat Food Labels Bearing "Reduces Urinary pH Claims: Guideline in Protocol Development"	June 1994	Do	Do
Guideline 56—Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials	November 1994	Do	Do
Guideline 57—Master Files—Guidance for Industry for the Preparation and Submission of Veterinary Master Files	July 1995	Do	Do
Guideline 58—Guidance for Industry for Good Target Animal Study Practices: Clinical Investigators and Monitors	May 1997	Do	Do
Guideline 59—Guidance for Industry: Submitting a Notice of Claimed Investigational Exemption in Electronic Format to CVM via E-Mail	January 1999	Do	Do
Guidance 61—Guidance for Industry—FDA Approval of Animal Drugs for Minor Uses and for Minor Species	January 1999	Do	Do
Guideline 62—Guidance for Industry—Consumer-Directed Broadcast Advertisements	August 1997	Do	Do
Guideline 63—Guidance for Industry—Validation of Analytical Procedures: Definition and Terminology—Draft Guidance	December 1997	Do	Do
Guideline 64—Guidance for Industry—Validation of Analytical Procedures: Methodology—Draft Guidance	December 1997	Do	Do
Guideline 65—Guidance for Industry—Industry-Supported Scientific and Educational Activities	November 1997	Do	Do
Guideline 66—Guidance for Industry—Professional Flexible Labeling of Antimicrobial Druge—Draft Guidance	January 1998	Do	Do
Guideline 67—Guidance for Industry—Small Entities Compliance Guide for Renderers	February 1998	Do	Do
Guideline 68—Guidance for Industry—Small Entities Compliance Guide for Protein Blenders, Feed Manufacturers, and Distributors	February 1998	Do	Do
Guideline 69—Guidance for Industry—Small Entities Compliance Guide for Feeders of Ruminant Animals With On-Farm Feed Mixing Operations	February 1998	Do	Do
Guideline 70—Guidance for Industry—Small Entities Compliance Guide for Feeders of Ruminant Animals Without On-Farm Feed Mixing Operations	February 1998	Do	Do
Guideline 71—Guidance for Industry—Use of Human Chorionic Gonadotropic (HCG) as a Spawning Aid for Fish	April 1998	Do	Do
Guideline 72—Guidance for Industry—GMP's for Medicated Feed Manufacturers Not Required to Register and Be Licensed With FDA	May 1998	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guideline 73—Draft Guidance for Industry—Stability Testing of New Animal Drug Substances and Products	July 1998	Do	Do
Guideline 74—Draft Guidance for Industry—Stability Testing for New Dosage Forms of New Animal Drugs	July 1998	Do	Do
Guideline 75—Guidance for Industry—Stability Testing: Photostability Testing of New Animal Drug Substances and Products: Draft Guidance	July 1998	Do	Do
Guideline 76—Guidance for Industry—Questions and Answers—BSE Feed Regulation	July 1998	Do	Do
Guideline 77—Guidance for Industry—Interpretation of On-Farm Feed Manufacturing and Mixing Operations—Draft Guidance	August 1998	Do	Do
Guideline 78—Guidance for Industry—Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals—Draft Guidance	November 1998	Do	Do

VII. Guidance Documents Issued by the Office of Regulatory Affairs

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Compliance Policy Guides Manual	August 1996	FDA staff personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (Order No. PB96–915499) or via Internet www.fda.gov/ora/compliance—ref/cpg/cpgtc.html
Compliance Policy Guide Medical Device Warning Letter Draft Pilot	August 27, 1998	Do	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via Internet www.fda.gov/ora/compliance—ref/dev—pl.pdf
Compliance Policy Guide-DRAFT Commercialization of In Vitro Diagnostic Devices (IVD's) Labeled for Research Use Only or Investigational Use Only	January 5, 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/cdrh/comp/ivddrfg.html
Compliance Policy Guide 675.400 (CPG 7126.24) REVISION Rendered Animal Feed Ingredients	November 13, 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/cpg/cpgvet/cpg675.400.html
Compliance Policy Guide—DRAFT Distributor Medical Device Reporting	August 28, 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/cpg—mdr3.txt
Compliance Policy Guide 257.100 NEW Deferral of Source Plasma Donors Due to Red Cell Loss During Collection of Source Plasma by Automated Plasmapheresis	December 21, 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/cpg/default.html
FDA/ORA International Inspection Manual and Travel Guide	May 1997	Do	Division of Emergency & Investigational Operations (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 29857 or via Internet www.fda.gov/ora/inspect—ref/itob/itob.html
Glossary of Computerized System and Software Development Terminology	August 1995	Do	NTIS (Order No. PB96–127352) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Import Alerts	continuously	Do	Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or via Internet www.fda.gov/ora/fiars/ora—import—alerts.html
Investigations Operations Manual	January 1999	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3276 or via Internet www.fda.gov/ora/inspect—ref/iom/iomtc.html
Investigations Operations Manual-REVISION: Chapter 4—Sampling	July 1998	Do	Do
Investigations Operations Manual-REVISION: Chapter 5—Establishment Inspection	July 1998	Do	Do
Laboratory Procedures Manual	June 1994	Do	Division of Field Science (HFC–141), Food and Drug Administration, 5600 Fishers Lane, rm. 12–41, Rockville, MD 20857, ATTN: Donna Porter or via Internet www.fda.gov/ora/science—ref/lpm/lpmtc.html
Regulatory Procedures Manual	August 1997	Do	NTIS (Order No. PB97–196182) or via Internet www.fda.gov/ora/compliance—ref/rpm/rpmtc.html
Regulatory Procedures Manual: UPDATE/New Subchapter/ Application Integrity Policy	March 1998	Do	Division of Compliance Policy, or via Internet www.fda.gov/ora/compliance—ref/rpm/rpmtc.html
Regulatory Procedures Manual: UPDATE Subchapter/Warning Letters	March 1998	Do	Do
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual; UPDATE/REVISION Subchapter/Priority Enforcement Strategy for Problem Importers	April 1998	Do	Do
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Import Procedures	April 1998	Do	Do
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Notice of Sampling	April 1998	Do	Do
Regulatory Procedures Manual: UPDATE/NEW Subchapter/Granting and Denying Transportation and Exportation (T&E) Entries	May 1998	Do	Do
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Seizure	June 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/rpm—new2/ch6.html
Regulatory Procedures Manual: UPDATE/REVISION Subchapter/Supervisory Charges	June 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/rpm—new2/ch9chgs.html
Regulatory Procedures Manual: NEW Subchapter/ Civil Penalties—Electronic Product Radiation Control	July 1998	Do	Division of Compliance Policy or via Internet at www.fda.gov/ora/compliance—ref/ch6civpen.html
Guide to Inspections of Bulk Pharmaceutical Chemicals	May 1994	Do	NTIS (Order No. PB96–127154) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Pharmaceutical Quality Control Laboratories	July 1993	Do	NTIS (Order No. PB96–127279) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Microbiological Pharmaceutical Quality Control Laboratories	July 1993	Do	NTIS (Order No. PB96–127287) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Validation of Cleaning Processes	July 1993	Do	NTIS (Order No. PB96–127246) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Lyophilization of Parenterals	July 1993	Do	NTIS (Order No. PB96–127253) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of High Purity Water Systems	July 1993	Do	NTIS (Order No. PB96–127261) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guide to Inspections of Dosage Form Drug Manufacturers-CGMPs	October 1993	Do	NTIS (Order No. PB96–127212) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Oral Solid Dosage Forms Pre/Post Approval Issues for Development and Validation	January 1994	Do	NTIS (Order No. PB96–127345) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Topical Drug Products	July 1994	Do	NTIS (Order No. PB96–127394) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Sterile Drug Substance Manufacturers	July 1994	Do	NTIS (Order No. PB96–127295) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Oral Solutions and Suspensions	August 1994	Do	NTIS (Order No. PB96–127147) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Nutritional Labeling and Education Act (NLEA) Requirements	February 1995	Do	NTIS (Order No. PB96–127378) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Interstate Carriers and Support Facilities	April 1995	Do	NTIS (Order No. PB96–127386) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Dairy Product Manufacturers	April 1995	Do	NTIS (Order No. PB96–127329) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Miscellaneous Foods Vol. I	May 1995	Do	NTIS (Order No. PB96–127220) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Miscellaneous Foods Vol. II	September 1996	Do	NTIS (Order No. PB97–196133) or via Intefnet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 1 - Administrative Procedures/Scheduled Processes	November 1996	Do	NTIS (Order No. PB97–196141) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 2- Processes/Procedures	April 1997	Do	NTIS (Order No. PB97–196158) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Cosmetic Product Manufacturers	February 1995	Do	NTIS (Order No. PB96–127238) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Blood Banks	September 1994	Do	NTIS (Order No. PB96–127303) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Source Plasma Establishments	December 1994	Do	NTIS (Order No. PB96–127360) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1996	Do	NTIS (Order No. PB96–199476) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Biotechnology Inspections Guide	November 1991	Do	NTIS (Order No. PB96–127402) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Computerized Systems in Drug Processing	February 1983	Do	NTIS (Order No. PB96–127337) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Foreign Medical Device Manufacturers	September 1995	Do	NTIS (Order No. PB96–127311) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Foreign Pharmaceutical Manufacturers	May 1996	Do	NTIS (Order No. PB96–199468) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Mammography Quality Standards Act (MQSA) Auditors Guide	January 1998	Do	NTIS (Order No. PB98–127178) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Electromagnetic Compatibility Aspects of Medical Device Quality Systems	December 1997	Do	NTIS (Order No. PB98–127152) or via Internet www.fda.gov/ora/inspect—ref/igs/iglist.html

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guide to Inspections of Grain Product Manufacturers	March 1998	Do	Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3276
Guide to Bioresearch Monitoring Inspections of In Vitro Devices	February 1998	Do	Do
Guide to Inspections of Viral Clearance Processes for Plasma Derivatives	March 1998	Do	Do
Guide to Traceback of Fresh Fruits and Vegetables Implicated in Epidemiological Investigations	August 1998	Do	Do
Guide to Inspections of Computerized Systems in the Food Processing Industry	August 1998	Do	Do—Internet at www.fda.gov/ora/inspect—ref/igi/iglist.html
Guideline for the Monitoring of Clinical Investigators	January 1988	FDA regulated industry	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420
Computerized Systems Used in Clinical Trials-DRAFT	June 18, 1997	Do	Do
Compliance Program 7348.806: Bioresearch Monitoring; Good Laboratory Practices (Nonclinical)	Revised August 17, 1998	FDA staff personnel	Do—Internet http://www.fda.gov/ora/compliance—ref/bimo/default.html
Compliance Program 7348.810: Sponsors, Contract Research Organizations and Monitors	Revised October 30, 1998	Do	Do
Compliance Program 7348.811: Bioresearch Monitoring; Clinical Investigations	Revised September 2, 1998	Do	Do
Food Laboratory Practice Program (Nonclinical Laboratories) 7348.808A; EPA Data Audit Inspections	October 1, 1991	Do	Division of Compliance Policy
Compliance Program 7348.809; Bioresearch Monitoring; Institutional Review Board	August 18, 1994	Do	Do
Good Laboratory Practice Regulations Management Briefings	August 1979	Do	Do—Internet at www.fda.gov/ora/compliance—ref/bimo/default.html

VIII. Guidance Documents Issued by the Office of the Commissioner and Office of Policy

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, Fax, E-mail or Internet
Draft Guidance for Industry; Exports and Imports under the FDA Export Reform and Enhancement Act of 1996	June 1998	Regulated industry	Internet via www.fda.gov/opacom/fedregister/frexport.html
FDA's Development, Issuance and Use of Guidance Documents	February 1997	FDA personnel and regulated industry	Internet via www.fda.gov/opacom/morechoices/moreindu.html or Office of Policy (301–827–3360)
Industry Supported Scientific and Educational Activities	December 1997	Regulated industry	Internet via www.fda.gov/cder/guidance/index.htm or Office of Policy (301–827–3360)
Draft Guidance on Broadcast Advertisements	February 1997	Do	Do
Direct Final Rule Guidance	November 1997	FDA personnel	Internet via www.fda.gov/opacom/morechoices/industry/guidedc.htm or Lisa Helmanis (301–443–3480)
Small Entities Compliance Guide: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)	February 1997	Regulated industry	Internet via www.fda.gov/opacom/campaigns/tobacco/tobret.htm or 1–888–FDA–4KIDS
Children & Tobacco—Frequently Asked Questions about the New Regulations (Draft)	July 1997	Do	Do
Children & Tobacco—A Retailer's Guide to the New Federal Regulations	October 1997	Do	Do
Children & Tobacco—A Guide to the the New Federal Regulations	October 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, Fax, E-mail or Internet
FDA's Standards Policy	October 1995	FDA personnel and regulated industry	60 FR 53078, October 11, 1995 or Office of Policy (301–827–3360)
Policy & Guidance Handbook for FDA Advisory Committees	1994	FDA personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–487–4650 (Order No. PB94–158854)

Dated: June 4, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14752 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1149]

Draft Guidance for Industry on In Vivo Pharmacokinetics and Bioavailability Studies and In Vitro Dissolution Testing for Levothyroxine Sodium Tablets; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "In Vivo Pharmacokinetics and Bioavailability Studies and in Vitro Dissolution Testing for Levothyroxine Sodium Tablets." The draft guidance contains agency recommendations on how to design in vivo pharmacokinetics and bioavailability studies and perform in vitro dissolution testing for levothyroxine sodium tablets.

DATES: Written comments on the draft guidance may be submitted by August 9, 1999. General comments on documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry can be obtained on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments and requests are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Michael J. Fossler, Center for Drug Evaluation and Research (HFD–870), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6417.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "In Vivo Pharmacokinetics and Bioavailability Studies and in Vitro Dissolution Testing for Levothyroxine Sodium Tablets." This draft guidance contains agency recommendations on how to design in vivo pharmacokinetics and bioavailability studies and perform in vitro dissolution testing for levothyroxine sodium tablets, which were identified as new drugs in a notice published in the **Federal Register** of August 14, 1997 (62 FR 43536).

Levothyroxine sodium was introduced into interstate commerce during the 1950's without approval of new drug applications (NDA's) for the drug products. As a result of concerns about the stability and consistent potency of the products, the agency announced that orally administered drug products containing levothyroxine sodium were new drugs (62 FR 43536). The notice stated that a manufacturer who wished to continue to market orally administered levothyroxine sodium products had to submit an NDA. The agency allowed current manufacturers 3 years to obtain approved NDA's, until August 14, 2000.

A number of firms have contacted FDA for advice regarding how to conduct bioavailability studies and in vitro dissolution testing for levothyroxine sodium tablets. Because of this interest, and the need to provide consistent advice to all firms who intend to submit NDA's for this product, FDA has developed this draft guidance on designing in vivo pharmacokinetics and bioavailability studies and performing in vitro dissolution testing for levothyroxine sodium tablets. The guidance documents FDA's current thinking on this subject. Although the guidance is being submitted in draft for comment, FDA recognizes that sponsors of already marketed levothyroxine sodium products that are required to obtain approved NDA's by August 14, 2000, may already have begun to conduct bioavailability and dissolution studies. The study design described in this guidance may be used for these studies or an alternative approach may be used. In either case, the study designs will be acceptable if scientifically justified. FDA will revise the study designs described in the guidance in accordance with any comments received, if appropriate.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on in vivo pharmacokinetics and bioavailability studies and in vitro dissolution testing for levothyroxine sodium tablets. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may, on or before August 9, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 3, 1999.

Peggy Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–14751 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1081–N]

Medicare Program; June 24, 1999, Meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City Metropolitan Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee (the CPAC) and the Area Advisory Committee (AAC) for the Kansas City metropolitan area on June 24, 1999. The CPAC will first meet independently before convening a joint session with the Kansas City metropolitan area AAC.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to create the CPAC to make recommendations on sites to be included in the demonstration and appropriate research designs for the project. The BBA also requires the Secretary to appoint AACs in the demonstration sites to advise on the implementation of the project. This meeting is open to the public.

DATES: The CPAC is scheduled to meet on June 24, 1999, from 10 a.m. until 5:30 p.m., c.d.s.t. The CPAC will meet jointly with the Kansas City metropolitan area AAC from 1 p.m. to 5:30 p.m. the same day.

ADDRESSES: The meeting will be held at the Kansas City Airport Hilton, 8801 NW 112th Street, Kansas City, MO 64153, (816) 891–8900.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard C4–14–17, Baltimore, MD 21244–1850, (410) 786–6451 (for information about the CPAC). Richard P. Brummel, Deputy Regional Administrator, Health Care Financing Administration, Richard Bolling Federal Building, Room 235, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5233 (for information about the Kansas City metropolitan area AAC).

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to meet periodically and make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research designs for implementation. The CPAC has previously met on May 7, 1998, June 24 and 25, 1998, September 23 and 24, 1998, October 28, 1998, January 6, 1999, and May 13, 1999.

The CPAC consists of 15 individuals who are independent actuaries, experts in competitive pricing and the administration of the Federal Employees Health Benefit Program, and representatives of health plans, insurers, employers, unions, and beneficiaries. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, Health Care Financing Administration; John Bertko, Actuary Principal, Reden & Anders, Ltd.; Dave Durenberger, Vice President, Public Policy Partners; Gary Goldstein, M.D., former CEO, The Oschner Clinic; Samuel Havens, Healthcare Consultant and Chairman of Health Scope/United; Margaret Jordan, President and CEO, The Margaret Jordan Group; Chip Kahn, President, The Health Insurance Association of America; Cleve Killingsworth, President, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, Senior Fellow, The Brookings Institution; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President, Service Employees International Union, AFL-CIO; and Jay Wolfson, Director, Florida Health Information Center, University of South Florida. The chairperson of the CPAC is James Cubbin and the co-chairperson is Robert Berenson, M.D. In accordance with section 4012(a)(5) of the BBA, the CPAC will terminate on December 31, 2004.

Section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) in each demonstration site to advise the Secretary on the implementation of the project. Thus far, the CPAC has designated the Kansas City metropolitan area and Maricopa County in Arizona as demonstration sites. The Kansas City metropolitan area AAC has previously met on March 26, 1999, April 8, 1999, April 22, 1999, and May 12, 1999. The Maricopa County AAC has previously met on March 31, 1999, April 20, 1999, and May 18 and 19, 1999. Additional meetings for the Maricopa County AAC are scheduled for June 7 and 8, 1999.

The Kansas City metropolitan area AAC consists of 17 members who represent health plans, providers, and Medicare beneficiaries. The members of the Kansas City metropolitan area AAC are: E.J. Holland, Jr., Assistant Vice President for Corporate Benefits, Sprint; Robert Bonney, Vice President, Managed Care, St. Luke's Shawnee Mission PHO; Hazel Borders, beneficiary; Richard Brown, President and CEO, Health Midwest; Cynthia Finter, President and Executive Director, Kaiser Permanente, Kansas City Region; Tresia Franklin, Director of Benefits Administration, Hallmark Cards, Inc.; Alan Freeman, CEO, Cass Medical Center; Herman Johnson, beneficiary; John Kennedy, Senior Vice President of Blue Cross and Blue Shield of Kansas City; Mike Oxford, Executive Director, Topeka Independent Living Resource Center; Jean Rumbaugh, Vice President, Government Programs, HealthNet; Kathleen Sebelius, Kansas Insurance Commissioner; Zarina Shockley-Sparling, Executive Director, Humana, Inc.; Jan Stallmeyer, R.N., President, Principal Health Care of Kansas City, Inc.; Charles Van Way III, M.D., Metropolitan Medical Society; Barry Wilkinson, President (retired), Heavy Construction Workers Labor Local 663; and Esther Wolf, Associate, School of Social Welfare, University of Missouri at Kansas City. The chairperson of the Kansas City metropolitan area AAC is E.J. Holland, Jr.

The agenda for the June 24, 1999, meeting will include the following:

- In the morning, the CPAC will meet to review the status and any pending issues from the Maricopa County AAC, as well as review preliminary information on future demonstration site selection.
- In the afternoon, the CPAC and Kansas City metropolitan area AAC will meet in a joint session to discuss and decide how to measure disruption in the Kansas City market due to competitive

pricing and to develop a communication and education plan for Kansas City beneficiaries.

Individuals or organizations that wish to make 5-minute oral presentations on the CPAC agenda issues should contact Sharon Arnold, CPAC Executive Director, by 12 noon, June 16, 1999, to be scheduled. A written copy of the oral remarks should be submitted to the executive director no later than 12 noon, June 16, 1999. Anyone who is not scheduled to speak may submit written comments to the executive director by 12 noon, June 18, 1999.

Individuals or organizations that wish to make 5-minute oral presentations on the Kansas City metropolitan area AAC agenda issues should contact Richard Brummel, Kansas City Deputy Regional Administrator, by 12 noon, June 16, 1999, to be scheduled. A written copy of the oral remarks should be submitted to the Kansas City Deputy Regional Administrator no later than 12 noon, June 16, 1999. Anyone who is not scheduled to speak may submit written comments to the Kansas City Deputy Regional Administrator by 12 noon, June 18, 1999.

The number of oral presentations may be limited by the time available. This meeting is open to the public, but attendance is limited to the space available.

(Section 4012 of the Balanced Budget Act of 1997, Pub. L. 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App.2, section 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 4, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–14647 Filed 6–9–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 64 FR 16977–80, dated April 7, 1999). This notice reflects the changes in the functional statement in the Bureau of Health Professions, Division of Medicine.

Section RP–20–Function

Delete the functional statement in its entirety and replace with the following:

DIVISION OF MEDICINE (RP4)

Serves as the principal focus with regard to education, practice, and research of medical personnel; with special emphasis on allopathic and osteopathic and podiatric medicine, and closely associated assistants, particularly physician assistants. Specifically: (1) Provides professional expertise in the direction and leadership required by the Bureau for planning, coordinating, evaluating, and supporting development and utilization of the Nation's health personnel for these professions; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of such personnel; (3) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between the members of the health care team, their tasks, education requirements, and training modalities, credentialing and practice; (4) supports and encourages the planning, development, and operation of regionally integrated educational systems; (5) conducts and supports studies and evaluations of physician and podiatric personnel requirements, distribution and availability and cooperates with other components of the Bureau and Agency in such studies; (6) analyzes and interprets physician and podiatric programmatic data collected from a variety of sources; (7) conducts, supports, or obtains analytical studies to determine the present and future supply and requirements of physicians and podiatrists by specialty and geographic location, including the linkages between their training and practice characteristics; (8) conducts and supports studies to determine potential national goals for the distribution of physicians in graduate medical education programs and develops alternative strategies to accomplish these goals; (9) supports and conducts programs with respect to activities, associated with the international migration, domestic training, and utilization of foreign medical graduates and U.S. citizens studying abroad; (10) maintains liaison with relevant health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver health services; and (11) provides consultation and technical assistance to public and private organizations, agencies, and institutions, other agencies of the Federal Government, and international agencies and foreign governments, on all aspects of the Division's functions.

Section RP–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon the date of signature.

Dated June 2, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–14753 Filed 6–9–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Council Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 23, 1999.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 3, 1999.

LaVerne J. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–14692 Filed 6–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 14, 1999.

Time: 4:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Suddendorf, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443=2926.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 26, 1999.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Antonio Noronha, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–7722, anoronha@willco.niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 4, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–14693 Filed 6–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169, Revision)

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act, (42 U.S.C. Chapter 1114) authorized funds to support protection and advocacy services on behalf of individuals with mental illness and severe emotional disturbance who are at risk for abuse and neglect and other civil rights violations while under treatment in a residential facility. Under the PAIMI Act, formula grant awards are made to protection and advocacy (P&A) systems designated by the governors of the 50 states and 5 territories, and the District of Columbia to ensure that the rights of individuals with mental illness and severe emotional disturbance are not violated. The PAIMI Act requires P & A systems to file an annual report on their activities and accomplishments and to provide in the report information on such topics as, numbers of individuals served, types of complaints addressed, the number of intervention strategies used to resolve the presenting issues. The Act also requires that the P&A Advisory Council also submit an annual report that assesses the effectiveness of the services provided by P&A systems.

The Center for Mental Health Services (CMHS) is revising the PAIMI Annual Program Performance Report for the following reasons: (1) to make it consistent with the revised annual program report format used by the Administration on Developmental Disabilities, Administration on Children and Families; and, (2) to conform to the GPRA requirements that the reporting burden to the States be reduced. CMHS proposes no revisions to the PAIMI Annual Advisory Council Report.

Planned revisions to the PAIMI Annual Program Performance Report include: (1) Deletion of financial expenditure and sub-contractor information, which P&A systems are required to submit annually to the SAMHSA Grants Management Office; (2) Deletion of items that are more appropriate for inclusion in the Guidance for Applicants (GFA), such as PAIMI program staff positions, by-laws & policies and procedures; (3) PAIMI staff, advisory council and governing board demographic information will be reduced to a comprehensive graph format; (4) All "information not available" statements will be deleted to ensure that P&A systems focus on gathering more accurate client data during the intake and referral process; (5) Sections such as, PAIMI program mechanisms for public comment, individual PAIMI clients, etc. will be reduced to a graph format similar to that approved by OMB for use by the Administration on Developmental Disabilities, Administration on Children and Families, which administers the Protection and Advocacy to the

Developmentally Disabled (PADD) Program; (6) Case complaints and problems of the individuals served by the P&As will be modified to capture more accurate information on incidents of abuse, neglect and civil rights violations, such as the incidents of seclusion and restraint used in the emergency rooms of general hospitals on individuals with mental illness, co-occurring disorders and severe emotional disturbance, during transport to and from a residential treatment facility, etc.; and, (7) Sections focused on the types of intervention strategies, public education and awareness/training activities used by the P&As on behalf of the clients served will be placed in a chart format. The revised format will be effective for the report due on January 1, 2001.

The annual burden estimate is as follows:

	Number. of respondents	Number of responses per respondent	Hours per response	Total hour burden
Annual Program Performance Report	56	1	26	1,456
Activities & accomplishments			(20)	(1,120)
Performance outcomes			(3)	(168)
Expenses			(0)	(0)
Budget			(2)	(112)
Priority statement			(1)	(56)
Advisory Council Report	56	1	10	560
Total				2,016

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 14, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–14701 Filed 6–9–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: July 15, 1999, at 1:00 p.m. and July 16 at 8:30 a.m.

ADDRESSES: Fourth floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include discussions about the proposed Fiscal Year 2000 Work Plan and the Restoration Reserve.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 99–14702 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting; Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force (Task Force) will meet from 9:00 a.m. to 5:00 p.m. on Wednesday, June 23, 1999 and from 8:00 a.m. to 1:00 p.m. on Thursday, June 24, 1999.

PLACE: The meeting will be held at the Shilo Inn, 2500 Almond Street, Klamath Falls, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda items at this meeting will be: (1) A report on the Clean Water Act Total Maximum Daily Load Process—how this might constrain nonpoint pollution; (2) A report on the status of the Department of the Interior's flow study and associated flow study efforts; (3) A status report on the 1999 Klamath Project operations and the Long-term Environmental Impact Statement; (4) Task Force discussion of the Mid-term Evaluation; (5) Reports from the Sub-basin Planning Groups on progress of sub-basin planning and restoration efforts and the Task Force's review of the plans; and (6) Task Force decision on FY2000 Project Funding.

For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Elizabeth Stevens,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 99–14449 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Final Endangered Species Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice

SUMMARY: The Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), hereafter referred to as the Services, announce the availability of their final joint Endangered Species Consultation Handbook. This document provides internal guidance to all employees of the two agencies relative to conducting consultations and conferences under section 7 of the Endangered Species Act of 1973, as amended (Act). Its purpose is to provide policy and guidance for section 7 procedures to promote efficiency and nationwide consistency within and between the Services. Although intended primarily as internal agency guidance, this handbook is fully available for public information and use.

FOR FURTHER INFORMATION CONTACT: Sandy Tucker, Division of Endangered Species, Fish and Wildlife Service (telephone 703–358–2106; or Craig Johnson, Office of Protected Resources, National Marine Fisheries Service (telephone 301–713–1401).

SUPPLEMENTARY INFORMATION:

Background

Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) outlines the procedures for interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(1) of the Act directs all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of species listed pursuant to the Act. Section 7(a)(2) of the Act requires Federal agencies to insure that their actions are not likely to jeopardize listed species or result in the destruction or adverse modification of designated critical habitat. The consultation process between the Services and other Federal agencies to verify avoidance of jeopardy is generally defined in 50 CFR part 402 and further developed in this handbook.

This handbook provides consistent procedures for the Services' compliance with the consultation and conference provisions of section 7 of the Act by:

(1) Providing national procedural and policy guidance;

(2) Providing standardized guidance to Service offices and personnel who participate in consultation and conferencing procedures under section 7;

(3) Providing assistance to other Federal agencies and applicants in the non-Federal sector who are involved in section 7 procedures; and

(4) Providing for conservation of federally listed, proposed, and candidate species.

Within the Fish and Wildlife Service Manual we incorporate the handbook by reference into chapter I, part 734.

Public Comments Addressed

We published the notice of Availability of a draft consultation handbook in the **Federal Register** on December 21, 1994 (59 FR 65781). The Services considered all information and recommendations from comments submitted on the draft handbook. Our analysis follows.

Issue #1: Many commenters requested that certain terms used in the handbook be defined. Some commenters questioned the clarity or accuracy of specific definitions.

Response: The Services reviewed all the terms mentioned in comment letters. We improved definitions as necessary and new definitions were added. These were taken from the Act or regulations, if available. If not available in those documents, we defined terms by common usage and practice developed over 20 years of section 7 implementation. To further assist handbook users, we added an expanded glossary with all the definitions to the handbook. As terms are used in the text, we repeated the definitions and revised the glossary in Appendix E (FWS Intra-Service Consultation Handbook).

Issue #2: Several commenters requested clarification and further discussion of the relationship between processes relating to section 7 and section 10 of the Act.

Response: The handbook addresses procedures to be used in conducting section 7 consultations on the issuance of section 10 permits. The Services have also jointly produced (November 1996) a final handbook entitled Endangered Species Habitat Conservation Planning Handbook on the processing of applications for section 10 "incidental take" permits. The Habitat Conservation Planning Handbook is available from the U.S. Fish and Wildlife Service, Division of Endangered Species, 1849 C Street, NW (Mail Stop 420 Arlington Square), Washington, DC 20240, or from the Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway (PR–3), Silver Spring, MD 20910.

Issue #3: Commenters on the FWS Intra-Service Consultation Handbook were concerned with the requirement that candidate species be addressed as though they are proposed for listing and that this infringes on the authorities of States to manage non-listed species.

Response: The FWS Intra-Service Consultation Handbook clarifies that the need to address candidate species (species for which FWS has adequate information to propose listing) applies only to consultations that are being conducted on actions that the FWS is authorizing, funding, or carrying out. FWS has implemented this internal policy to assist in the conservation of candidate species and to ensure that actions taken by FWS will not be a factor in the necessity to list candidate species in the future. FWS staff will bear any additional workload required to address candidate species in conducting the internal FWS section 7 consultation, so no burden will be placed on the States. FWS recognizes that the States have the lead for addressing the needs of non-listed species and desires to work closely with the States in developing conservation plans for candidate species.

Issue #4: Commenters stated that the handbook should provide a better discussion of how the section 7 process interfaces with other laws, particularly the National Environmental Policy Act (NEPA), and should address ways of streamlining the consultation process.

Response: A section has been added to the handbook on coordination with other environmental reviews which addresses how the NEPA and the section 7 processes can be undertaken simultaneously to minimize the need for extended consultation time frames. A section has also been added to the handbook which outlines streamlined consultation processes which are currently ongoing between the Services and other agencies on various programs, and encourages the Services to look for ways to implement such processes for other existing programs.

Issue #5: Commenters requested that the handbook clarify the role and authority of Federal agencies in the section 7 process, and also clarify the involvement of State agencies, Tribal

governments, and other non-federal parties, especially applicants for Federal permits or funds.

Response: The Services have revised the handbook to better recognize the authority of Federal action agencies and to stress that the Services will work cooperatively with these agencies during consultation, particularly in developing the scope of the proposed action, identifying adverse effects to listed species, developing reasonable and prudent alternatives to avoid jeopardy, and developing reasonable and prudent measures to minimize the impacts of incidental take. The Services acknowledge that the action agency can best judge if an action is technologically feasible and within their authority to carry out.

In addition, the Services have revised the handbook to encourage the inclusion of State and Tribal governments in the consultation process. State and Tribal governments, as managers of land and wildlife resources, often have information and expertise available which is important to the consultation. The Services are committed to notifying affected State and Tribal governments of ongoing consultations, and requesting that they supply any information pertinent to the consultation. While the Services recognize that it is the decision of the Federal action agency to include these governmental agencies in the formal consultation process, we will encourage Federal agencies to do so. Likewise, we will encourage the action agency to include entities such as local governments and outside interest groups.

Issue #6: Commenters requested that the handbook provide more specific guidance and examples on a number of issues, including the difference between a "may affect" and "not likely to adversely affect" determination, procedures to follow when projects have beneficial effects, clarification of timeframes and procedures for the various types of consultations, and the discussion of consultations on ongoing water projects.

Response: The Services have added language and examples, where appropriate, to clarify all section 7 processes that commenters questioned. We provided new flow charts for Informal, Formal, Early, and Emergency Consultation processes, and for Conference processes. Appendix C includes recent examples of various types of consultations. The handbook is approximately 850 double-sided pages in length.

Summary of Streamlining Measures

The Services have made numerous reforms in the consultation handbook to encourage better coordination, shortened consultation timeframes, and streamlined consultation processes. Improvements include:

1. Clear guidance and standards for all aspects of the consultation program.
2. Incorporating language and policies which encourage early coordination with all parties with an interest in the consultation, including other Federal agencies, applicants, State agencies, and Tribal governments.
3. Encouraging coordination with reviews conducted under other environmental statutes, including NEPA and the Fish and Wildlife Coordination Act.
4. Requiring the integration of section 7 consultation processes with section 10 requirements early in the process of Habitat Conservation Plan review and approval.
5. Establishing joint policies and procedures for FWS and NMFS.
6. Encouraging development of programmatic consultations and streamlined consultation processes. An example of these processes is the Memorandum of Agreement developed among the Services, the Forest Service, and the Bureau of Land Management to review projects developed under the Northwest Forest Plan.

Questions on the Contents of the Handbook

Questions on the content of the handbook may be addressed to the FWS Regional Office nearest you, or to NMFS Headquarters.

FWS Region 1: CA, HI, ID, ND, OR, WA, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the Pacific Trust Territories

Chief, Division of Consultation and Conservation Planning, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Telephone: (503) 231–6241; Fax: (503) 231–6243.

FWS Region 2: AZ, NM, OK, TX

Regional ESA Section 7 Coordinator, U.S. Fish and Wildlife Service, 500 Gold Avenue S.W., (P.O. Box 1306), Albuquerque, New Mexico 87103(–1306); Telephone: (505) 248–6653; Fax: (505) 248–6922.

FWS Region 3: IA, IL, IN, MI, MN, MO, OH, WI

Chief, Ecological Services Operations, U.S. Fish and Wildlife Service, B.H. Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056; Telephone: (612) 713–5334; Fax: (612) 713–5292.

FWS Region 4: AL, AR, FL, GA, KY, LA, MS, NC, PR, SC, TN, U.S. Virgin Islands

Chief, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345; Telephone: (404) 679–4156; Fax: (404) 679–7081.

FWS Region 5: CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV

Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone: (413) 253–8615; Fax: (413) 253–8482.

FWS Region 6: CO, KS, MT, NE, ND, SD, UT, WY

Regional ESA Section 7 Coordinator, U.S. Fish and Wildlife Service, Street Address: Lake Plaza North Building, 134 Union Blvd., 4th Floor, Lakewood, Colorado 80228; Telephone: (303) 236–7400; Fax: (303) 236–0027. Mailing Address: Denver Federal Center, P.O. Box 25486, Denver, Colorado 80225.

FWS Region 7: AK

Regional Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; Telephone: (907) 786–3505; Fax: (907) 786–3350.

NMFS Headquarters Office

National Section 7 Coordinator, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, PR 3, Silver Spring, Maryland 20910; Telephone: (301) 713–1401 x 174; Fax: (301) 713–0376.

Where To Obtain a Copy of the Consultation Handbook

You may purchase copies of the handbook through the Superintendent of Documents at the U.S. Government Printing Office (GPO) for $55.00. The GPO stock number for the handbook is 024-010–00718–4. Contact the Superintendent of Documents order desk at (202) 512–1800 for further information. You may find the GPO order form on the Internet at GPO's Sales Product Catalog site located at: http://www.access.gpo.gov/su_docs/sale/prf/prf.html.

National Environmental Policy Act

The Department of the Interior has determined that the issuance of the consultation handbook is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM2,

Appendix 1.10 and 516 DM 6, Appendix 1.4A(3).

Author/Editor

The editors of this document were Susan Linner and Mary Klee, U.S. Fish and Wildlife Service, Division of Endangered Species, Arlington, Virginia, and Margaret Lorenz, Endangered Species Division, National Marine Fisheries Service, Silver Spring, Maryland.

Authority

The authority for this action is the Endangered Species Act of 1973 , as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 29, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: May 17, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14686 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1410–00–P and AA–6666–0]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kijik Corporation for 581.41 acres. The lands involved are in the vicinity of Nondalton, Alaska.

Seward Meridian, Alaska

T. 2 S., R. 33 W.,
Sec. 25.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 12, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Land Law Examiner, Branch of State and Project Adjudication.

[FR Doc. 99–14696 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–11; WYW 83359]

Public Land Order No. 7342; Modification and Partial Revocation of 12 Secretarial Orders; Wyoming; Correction

AGENCY: Bureau of land management, Interior.

ACTION: Public land order; Correction.

SUMMARY: The Bureau of Land Management, Wyoming published a public land order (PLO), in the **Federal Register** of June 18, 1998. The PLO contained incorrect legal descriptions. This document will correct those errors.

EFFECTIVE DATE: [Insert Date of Publication in **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Jim Paugh, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6306.

Correction

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows: The land description in Public Land Order No. 7342, 63 FR 33389, June 18, 1998, page 33389, column 3, line 42, T. 14 N., R. 98 W., Sec. 15, which reads "SE¼E¼;" is hereby corrected to read "SE¼SE¼;". On page 33390, column 1, line 47, under T. 20 N., R. 105 W., which reads "Sec. 21, E½;" is hereby corrected to read "Sec. 20, E½;".

Dated: June 4, 1999.

Jim Paugh,

Realty Officer.

[FR Doc. 99–14703 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–01; COC–62995]

Notice of Proposed Withdrawal; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 165,000 acres of Federal lands and 6,400 acres of reserved Federal minerals to protect nationally significant scientific and cultural resource values, and the ecological diversity of the Yellow Jacket Canyon region of southwestern Colorado. This notice segregates the lands and minerals described below for up to 2 years from surface entry, mineral material sales, and mining. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Mark Stiles, Southwest Center Manager, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, 970–240–5300.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to protect the nationally significant scientific and cultural resource values and the ecological diversity of the Yellow Jacket Canyon area while the lands are under study for additional protection through some form of special designation. The area represents the focus of northern Anasazi development, with more than 100 sites per square mile in many areas, representing the highest known archaeologic site density of any area in the nation. The total number of sites on public lands within the area is estimated at nearly 20,000. In 1985, the Bureau of Land Management's Resource Management Plan for the San Juan/San Miguel Planning Area designated the area as the Anasazi Culture Multiple Use Area of Critical Environmental Concern (ACEC) in recognition of the tremendous cultural values present.

Approximately 90 percent of the land proposed for withdrawal is currently leased for oil and gas under the Mineral Leasing Act of 1920. Approximately 74 producing oil, gas, and carbon dioxide wells maintain these leases. The temporary segregation and subsequent withdrawal would not affect existing mineral leases or any of the associated facilities or authorizations currently in place, nor would it affect the ability of the Bureau of Land Management to authorize actions typically associated with oil and gas development (such as

the drilling of new wells, re-drilling or re-completion of wells, construction of collection systems, and plugging and abandonment). Development of oil and gas resources in this area has been carefully managed over the years to mitigate potential impacts to cultural resources and other values. Effective mitigation of such potential impacts would continue to be emphasized during the temporary segregation period and under the proposed withdrawal.

The proposal, if finalized, would withdraw the following described Federal lands and minerals, subject to valid existing rights, from settlement, sale, location, and entry under the general land laws, including the mining and mineral material sales laws, but not the mineral leasing laws. The proposal includes withdrawing the reserved Federal mineral interest underlying private surface within the ACEC, but would not affect surface rights of those private lands. The allowance of any temporary land use permits, rights-of-way or cooperative agreements would be authorized only when necessary to accommodate valid existing rights and previously authorized actions.

New Mexico Principal Meridian

T. 35 N., R. 16 W.,
Sec. 6.
T. 35 N., R. 17 W.,
Secs. 1, 12, and 13.
T. 35 N., R. 19 W.,
Secs. 3 to 10, inclusive, secs.15 to 22, inclusive, and secs. 28 to 30, inclusive.
T. 35 N., R. 20 W.,
Secs. 1 to 3, inclusive, secs.10 to 15, inclusive, secs. 22 to 27, inclusive, secs. 34 and 35.
T. 36 N., R. 16 W.,
Secs. 18 to 20, inclusive, and secs. 29 to 32, inclusive.
T. 36 N., R. 17 W.,
Secs. 4, secs. 8 to11, inclusive, secs. 13 to 30, inclusive, and sec. 36.
T. 36 N., R. 18 W.,
Secs. 1 to 32, inclusive; sec. 36, N½.
T. 36 N., R. 19 W.,
Secs. 1 to 34, inclusive, and sec. 36.
T. 36 N., R. 20 W,.
Secs. 1 to 3, inclusive, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34 to 36, inclusive.
T. 37 N., R. 17 W.,
Secs. 3, 4, secs. 8 to 10, inclusive, secs. 16 to 20, inclusive, and secs. 30 and 31.
T. 37 N., R. 18 W.,
Secs. 1 to 36, inclusive.
T. 37 N., R. 19 W.,
Secs. 1 to 36, inclusive.
T. 37 N., R. 20 W.,
Secs. 1 to 3, inclusive, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34 to 36, inclusive.
T. 38 N., R. 17 W.,
Secs. 33 and 34.
T. 38 N., R. 18 W.,
Secs. 13 to 15, inclusive, and secs.17 to 35, inclusive.
T. 38 N., R. 19 W.,
Secs. 2 to 36, inclusive.
T. 38 N., R. 20 W.,
Secs. 1 to 3, inclusive, secs.10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34 to 36, inclusive.
T. 39 N., R. 18 W.,
Secs. 6, 7, secs. 17 to 20, inclusive, and secs. 29 and 30.
T. 39 N., R. 19 W.,
Secs. 1 to 3, inclusive, secs. 5, 7, 8, secs. 10 to 15, inclusive, secs. 18, 19, and secs. 21 to 28, inclusive, sec. 30, and secs. 32 to 34, inclusive.
T. 39 N., R. 20 W.,
Secs. 13, 14, secs. 23 to 27, inclusive, and secs. 34 to 36, inclusive.

The areas described aggregate approximately 165,000 acres of Federal lands and 6,400 acres of reserved Federal mineral estate underlying privately held surface in Montezuma and Dolores Counties.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the Federal lands and minerals will be segregated from settlement, sale, location, and entry under the general land laws, including the mining and mineral material sales law, subject to valid existing rights, unless the proposal is canceled or unless the withdrawal is finalized prior to the end of the segregation. Further, the segregation does not preclude issuance of land use permits, rights-of-way or other authorizations that are needed to accommodate valid existing rights and previously authorized actions under the Mineral Leasing Act and other public land laws. All previously authorized activities and permitted uses of the segregated lands may be continued in accordance with the terms of the authorization.

Dated: June 8, 1999.

Ray Brady,

Manager, Lands and Realty Group.

[FR Doc. 99–14917 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Prepation of a Draft Environmental Impact Statement on Floating Production, Storage, and Offloading Systems on the Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The Minerals Management Service (MMS) will prepare an Environmental Impact Statement (EIS) on floating production, storage, and offloading (FPSO) systems on the Gulf of Mexico (GOM) Outer Continental Shelf (OCS). The MMS has awarded a contract to Ecology and Environment, Inc. (E&E) to prepare the EIS to examine the use of FPSO systems in the deepwater areas (water depths greater than 200 meters or 656 feet) in the Central and Western Planning Areas of the GOM OCS. The contract was awarded in April 1999; it is anticipated that completion of the EIS will take 18 months. Based upon the analysis in the EIS, the MMS will decide whether FPSO systems will be an acceptable option for consideration for use on the GOM OCS; the decision will not constitute approval for the use of any particular FPSO at any specific site. Individual plans proposing use of an FPSO will be subject to MMS's established project-specific and site-specific evaluation and decision process.

1. *Authority.* Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA), the MMS is announcing its intent to prepare an EIS on FPSO systems on the GOM OCS. This NOI also serves to announce the scoping process for this DEIS. Throughout the scoping process, Federal and State agencies, local governments, and other interested parties will have the opportunity to aid the MMS in determining the scope of the DEIS, significant issues that should be addressed, and alternatives to be considered.

2. *Proposed Action.* FPSO's may be used as production facilities to develop marginally economic or remote oil fields in the deepwater areas of the GOM OCS. This DEIS will consider scenarios that represent the potential range of FPSO activities that could occur if the proposed action were implemented. The "base case" of the proposed action to be evaluated is a permanently moored, double-hulled, shipshaped FPSO with up to 1 million barrels of crude oil storage capability. The seafloor well equipment and on-board production equipment will be the same types as those used with other deepwater production facilities. Produced oil will be offloaded to nondynamically positioned, 500,000-barrel-capacity shuttle tankers for transport to ports in Texas or Louisiana or to the Louisiana Offshore Oil Port (LOOP). Associated or produced gas will be transferred to shore via a gas pipeline.

The range of the proposed action will include technical variations such as the use of disconnectable moorings, single

hull or single bottom design variations, non-shipshaped FPSO systems, increased crude oil storage up to 2.3 million barrels, dynamically positioned shuttle tankers, reinjection of natural gas for later recovery, and gas-to-liquids conversion.

3. *Alternatives.* One of the alternatives to be considered in the DEIS is the exclusion of FPSO systems from the "lightering prohibited area" established by the U.S. Coast Guard at 33 CFR part 156 subpart C. Other alternatives may be identified during the scoping process.

4. *Scoping.* Scoping is an open and early process for determining the scope of the DEIS and for identifying significant issues related to a proposed action. Scoping also provides an opportunity for interested parties to help identify alternatives to the proposed action. For this DEIS, public scoping meetings will be held from 7 p.m. to 10 p.m. on June 21, 1999, at the Natural Resources Center—Room 1003, Texas A&M University in Corpus Christi, Texas; on June 22, 1999, at the Radisson Hotel and Conference Center, 9100 Gulf Freeway, Houston, Texas; on June 23, 1999, at the Beaumont Hilton in Beaumont, Texas; on June 24, 1999, at the Players Island Hotel in Lake Charles, Louisiana; and on June 28, 1999, at the Radisson Inn Airport in Kenner (New Orleans), Louisiana. Additional information on the scoping meetings will be distributed to interested parties. Details on the times and locations for the public scoping meetings will also be advertised in local media and are available on the MMS website at http://www.mms.gov or through the MMS Public Information Office at 1–800–200–GULF or GulfPublicInfo@mms.gov.

5. *Comments on the NOI.* In addition to participation at the scoping meetings, Federal and State agencies, local governments, and other interested parties are invited to send their written comments on the scope of the DEIS, significant issues to be addressed, and alternatives that should be considered in the DEIS to the contact person at the address listed below. Comments should be enclosed in an envelope labeled "Comments on the NOI to Prepare a DEIS on FPSO's" and should be submitted no later than 45 days after publication of this NOI in the **Federal Register**.

6. *Decisions.* The MMS will make several decisions based on the analysis in the EIS; (a) whether FPSO systems will be permitted in the Central and Western Planning Areas of the GOM OCS; (b) the range of acceptable FPSO operations; and (c) the potential exclusion of FPSO systems in certain geographic areas of the Central and Western Planning Areas of the GOM OCS; or (d) a decision for no action. The no action alternative will mean that FPSO systems will not be permitted in the Central and Western Planning Areas of the GOM OCS.

FOR FURTHER INFORMATION: Questions concerning the NEPA process and the DEIS should be directed to Minerals Management Service, Gulf of Mexico OCS Region, Attention: Ms. Deborah Cranswick (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2744.

Dated: June 4, 1999.

Chris C. Oynes,

Regional Director, Gulf of Mexico, OCS Region.

[FR Doc. 99–14704 Filed 6–9–99; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 18, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. AA1921–111 (Review) (Roller Chain from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 1, 1999.)
5. Outstanding action jackets:

(1) Document No. EC–99–011: Approval of study objectives, annotated study outline, final staffing plan, and final work schedule in Inv. No. 332–406 (Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan).

(2) Document No. GC–99–047; Inv. Nos. 751–TA–17–20 (Titanium Sponge from Japan, Russia, Kazakhstan, and Ukraine).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14891 Filed 6–8–99; 2:57 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–11]

Alfred Khalily, Inc. d.b.a. Alfa Chemical; Grant of Restricted Registration

On January 8, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued on Order to Show Cause to Alfred Khalily, Inc., d.b.a. Alfa Chemical (Respondent) of New York, notifying it of an opportunity to show cause as to why DEA should not deny its applications for registration as an importer and as a distributor of List I chemicals, for reason that such registration would be inconsistent with the public interest as determined pursuant to 21 U.S.C. 823(h).

Respondent, through counsel, filed a request for a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Uniondale, New York on May 19 and 20, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument. On October 30, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's applications be granted subject to two conditions. On November 23, 1998, the Government filed exceptions to the Administrative Law Judge's Opinion and Recommended Ruling and on December 15, 1998, Respondent filed its reply to the Government's exceptions. Thereafter, on December 16, 1998, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

Alfred Khalily started Respondent in 1990, and is Respondent's president, only officer, and only employee. In 1991, Respondent merged with another company named American Roland pursuant to a two-year contract. This company was involved in the

importation, brokering, and contract manufacturing of controlled substances and chemicals. Mr. Khalily was an assistant manager at American Roland.

In 1992, the president of R.J. Meyer, a Mexican company, visited American Roland. Mr. Khalily was not a part of that meeting. However he met R.J. Meyer's president in June of 1993, when Respondent company split from American Roland and Respondent took over the R.J. Meyer account.

In October 1994, DEA's Long Island office received information from DEA's Atlanta office regarding three "very large shipments" of hydriotic acid, a List I chemical, from Ajay Chemical in Georgia to Respondent in New York. Hydriotic acid can be used in the illegal manufacture of methamphetamine and it takes at least one gallon of hydriotic acid to manufacture one kilogram of methamphetamine. Further investigation revealed two additional shipments of hydriotic acid from Ajay Chemical to Respondent. These shipments occurred in late December 1993, March 1994, May 1994, July 1994, and October 1994 for a total of over 11,000 kilograms (kgs.) of hydriotic acid.

On November 8, 1994, DEA personnel visited Respondent's business which is located in Mr. Khalily's home in a residential area. Mr. Khalily told a DEA investigator that R.J. Meyer was a regular customer of Respondent; that Respondent has sold R.J. Meyer pharmaceutical products other than hydriotic acid in the past; and that R.J. Meyer was a paint manufacturer that used the hydriotic acid as a disinfectant in the manufacture of paint. During this visit, Mr. Khalily gave the investigator a Purchase Authorization Form from R.J. Meyer which indicated that R.J. Meyer intended to use the hydriotic acid it purchased from Respondent as a disinfectant and a cleaner of metals.

In July or August 1993, R.J. Meyer's president first contacted Mr. Khalily regarding the purchase of hydriotic acid. In approximately 1993, R.J. Meyer sent Respondent a purchase order for hydriotic acid. Mr. Khalily then sent R.J. Meyer a Purchase Authorization Form which detailed the provisions of the "Anti-Drug Abuse Act of 1988," regarding the reporting of suspicious orders and the need to establish the identity of the purchaser, and which requested that R.J. Meyer "please identify the general use you intend for all Hydriotic Acid purchased from Alfa Chem." In response to this request, R.J. Meyer listed the following proposed uses for the hydriotic acid: agents for reducing fabrications of iodides, disinfectants, metal finishing, reducing in the pigment, and petroleum acidification. It was Mr. Khalily's understanding that R.J. Meyer was engaged in "contract manufacturing" whereby R.J. Meyer would supply a manufacturer with the "synthesizing path" and the necessary raw materials, and the contractor would return the finished product to R.J. Meyer.

Based on price, Respondent selected Ajay Chemicals, Inc. (Ajay), as the manufacturer to supply this order. Respondent ultimately engaged in five transactions with R.J. Meyer for hydriotic acid. In general, when Respondent received an R.J. Meyer purchase order, it would then send a purchase order to Ajay. Mr. Khalily would call Sky Harbor warehouse, R.J. Meyer's warehouse, to notify them that a shipment would be arriving. The shipments were sent by Ajay via Yellow Freight, directly to Sky Harbor. Ajay paid Yellow Freight and R.J. Meyer paid Sky Harbor. Ajay would send an invoice to Respondent and Respondent would then send a check to Ajay. Respondent would send an invoice to R.J. Meyer, who would in turn send a check to Respondent. Mr. Khalily would call Sky Harbor to check to see if the shipment was received and would later call to see if the shipment had been picked up.

Specifically, in December 1993 Respondent sold R.J. Meyer 3,080 kgs. of hydriotic acid; 1,686 kgs. in March 1994; 1,686 kgs. in May 1994; 1,686 kgs. in July 1994; and 6,650 pounds or approximately 3,016 kgs. in October 1994. A review of R.J. Meyer's purchase orders revealed that shipments were either consigned to Jose Gutierrez, and sometimes Gus Pimental c/o Sky Harbor Delivery in Tucson, Arizona, or to Jose Gutierrez c/o Gus Pimentel at a warehouse in Phoenix, Arizona.

Ajay's invoices showed that the hydriotic acid was sold to Respondent, but was to be shipped to R.J. Meyer at Sky Harbor Delivery c/o Jose Gutierrez. According to these invoices Respondent was billed approximately $42,000 for the first shipment, approximately $41,500 for the last shipment, and $22,086 for the other three shipments.

According to Respondent's invoices, Respondent sold the hydriotic acid to R.J. Meyer, but it was shipped to Jose Gutierrez at Sky Harbor Delivery. These shipments were "FOB Destination," which according to Mr. Khalily means that the shipper's responsibility ends when the product is delivered to the specified location. Respondent billed R.J. Meyer approximately $63,000 for the first and last shipments, and $33,720 for the other three shipments.

Bills of Lading for two of the transactions indicated that the hydriotic acid was shipped from Ajay and was consigned to R.J. Meyer c/o Sky Harbor Delivery, Attention: Jose Gutierrez.

Air freight Door to Door receipts showed a transfer fee of $92.75 for the May 1994 shipment, and a transfer fee of $166.25 for the October 1994 shipment. Sky Harbor billed Respondent for these fees. The Government alleges that these fees indicate that Respondent rented the space from Sky Harbor. However, Mr. Khalily testified that R.J. Meyer leased the space at Sky Harbor for the deliveries. According to Mr. Khalily, some of the containers of hydriotic acid leaked because there were not properly sealed by Ajay. Respondent paid the transfer fees to Sky Harbor so that the warehouse would accept the shipment and place the containers outside with container material around them so as not to damage the warehouse facility.

According to Sky Harbor employees, all of the shipments were picked up by the same Hispanic male in a rental truck and on one or two occasions, the shipment would be loaded into two trucks because the cargo was so large.

During the course of the investigation of these shipments, a DEA investigator questioned an employee of R.J. Meyer who indicated that Respondent was a "customer" of R.J. Meyer and that they had a long-standing relationship. Regarding these five shipments, the employee indicated that R.J. Meyer had "brokered" the transactions for Respondent. However, Mr. Khalily acknowledged that while R.J. Meyer sometimes participated in transactions with Respondent where R.J. Meyer acted as the broker, R.J. Meyer was the customer in these five transactions. All of the purchase orders for these transactions submitted to Respondent by R.J. Meyer indicated that R.J. Meyer was the customer.

The employee of R.J. Meyer indicated that R.J. Meyer never received any of the five shipments; the shipments had not come into Mexico; and that she had no information regarding the final destination of the shipment. DEA has not been able to determine the disposition of the shipment after they left the Sky Harbor warehouse. Specifically, DEA does not know if the shipments ever entered Mexico.

According to a DEA investigator who testified at the hearing in this matter, Respondent is considered to be the exporter of the hydriotic acid because it was "the principal party of interest that is arranging to have the chemical exported out of the country." A review of DEA's records indicated that no export declarations were filed by any party to the five transactions at issue.

Mr. Khalily testified that because the transactions were "FOB Destination," his responsibilities ended when the shipments were delivered to the Sky Harbor warehouse in Arizona.

In a letter to DEA dated May 24, 1995, in response to a subpoena for information regarding these shipments, Mr. Khalily stated that prior to the shipments, "The local DEA was notified and they gave their O.K. The shipment was made directly to our customer. * * * From our background checking we know our customer has been in the chemical and pharmaceutical business for the past 30 years."

At the hearing, Mr. Khalily testified that in his opinion the five transactions did not involve extraordinary amounts of hydriotic acid. He believed that the chemical was being used as a disinfectant and testified that:

> [W]hen you are starting a production run of disinfectant you probably use about maybe 30 or 40 55-gallon drums, approximately, a regular run, to start the production. Then later on, for other productions, you just replenish—a little bit less. May about 20 or 30 55-gallon drums is (sic) used to be able to achieve that.

According to Mr. Khalily, an initial start-up of a product run would require approximately 7,000 to 10,000 pounds of hydriotic acid. The Government did not present any evidence to dispute Respondent's explanation for the quantity of hydriotic acid that it sold to R.J. Meyer.

Mr. Khalily also testified that the method of delivery of these transactions was not unusual. The same method of delivery was used for these transactions as was used for other transactions with R.J. Meyer. According to Mr. Khalily, an unusual method of delivery would include: "Picking up from you, from your warehouse or picking up from a third party or drop shipping into some other place which you don't know about," Mr. Khalily explained that a drop ship is when "you are sending to a third party which is not part of the transaction."

At the hearing, Mr. Khalily admitted that he does not know Jose Gutierrez or Gus Pimentel, however he believed that they were representatives of R.J. Meyer, who would be responsible for the export of the hydriotic acid. When told that R.J. Meyer's president indicated that Jose Gutierrez was not an R.J. Meyer representative, Mr. Khalily stated that, "[t]his was the first time I heard of that. All the purchase orders that they have, they have the name of their representatives on it." Mr. Khalily admitted that he did not know what happened to the five shipments after they were delivered to Arizona.

In October 1995, Respondent submitted an application to be registered as an importer of various List I chemicals. The address listed on the application is also Mr. Khalily's residence. Respondent submitted a second application in October 1995 to be registered as a distributor of various List I chemicals. The address on this application is for a public warehouse where individuals can lease space to store goods. DEA did not conduct a preregistration investigation at either of these locations.

Accordingly to Mr. Khalily, the warehouse address listed on the distributor application is a public bonded warehouse that he has used for 18 years. He explained that he does not have any specific space leased, but that we will be charged based on the square footage his product(s) takes up. In response to a question regarding security at the warehouse, Mr. Khalily stated:

> It is a public, bonded warehouse. United States Customs leave their goods over there. What other provision [do] I have to have? * * * I talked to the manager * * * and he would allow me to build a cage, sort of the same way that the controlled substance are controlled. There is a fenced in area which two people would have * * * the key to that cage. And also, it has an alarm and is very much contained, within the same facility.

Although there are currently no security arrangements specifically established for Respondent at the warehouse, Mr. Khalily explained that he would make the necessary arrangements when he anticipated receiving any regulated substances.

Mr. Khalily testified that listed chemicals have comprised less than one percent of his business, and that he subsequently ceased listed chemical transactions with R.J. Meyer because it "was a kind of service that I was supplying to them, and it wasn't really our main business." Mr. Khalily further testified that since 1994, his practice in selling listed chemicals has become to ask which state the customer is calling from; to ask for the customer's DEA number, the product they are seeking, and their phone number; and to call DEA in Washington to double-check the accuracy of the DEA number of the customer.

In arguing against Respondent's registration, the Government contends that Respondent has not maintained adequate controls against diversion, as evidenced by the disappearance of over 1,750 gallons of hydriotic acid. The Government further argues that Respondent violated 21 U.S.C. 841(d)(2), since Respondent knew or had reasonable cause to believe that the listed chemical it was distributing would be used to unlawfully manufacture methamphetamine. The Government also contends that the transactions involved the following regulatory violations by Respondent: (1) Failure to report an extraordinary quantity of a listed chemical; (2) failure to identify the other party to the transaction; (3) failure to keep and maintain records of regulated transactions; and (4) failure to notify the DEA 15 days in advance of an export of a listed chemical. The Government notes that Respondent's experience in the chemical industry made him aware of the regulatory requirements, but that Respondent "was more concerned with seeking a profitable venture rather than ensuring the integrity of the regulated transactions in which he was involved."

In arguing in favor of its registration, Respondent alleges that the term "extraordinary quantity" is vague, and that the quantities involved in the transactions at issue were not extraordinary, and the transactions were conducted in the normal course of international commerce, and were "[f]ar from being a series of secretive and unreported sales." As to the identification requirement, Respondent argues that R.J. Meyer was the only party Respondent was required to identify. Respondent also contends that it was not required to file any export documentation since it was merely acting as a broker and therefore was not considered a "regulated person" at that time. Respondent points out that its principal officer "has substantial experience in the chemical industry and is fully aware of the regulatory requirements."

Pursuant to 21 U.S.C. 958(c)(2)(A), "[t]he Attorney General shall register an applicant to import or export a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest." Pursuant to 21 U.S.C. 823(h), "[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest."

Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may properly rely on any one or a combination of these factors, and give each factor the weight he deems appropriate in determining whether an application should be denied. See Jacqueline Lee Pierson, Energy Outlet, 56 FR 14,269 (1999); Henry J. Schwarz, Jr. M.D., 54 FR 16,422 (1989).

As a preliminary matter, DEA has consistently held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of an applicant or registrant for registration. See, e.g., Rick's Pharmacy, 62 FR 42,595 (1997); Big T Pharmacy, Inc., 47 FR 51,830 (1982). Since Mr. Khalily is the owner of Respondent, his conduct is relevant in determining whether or not to grant Respondent's applications for registration.

Regarding factor one, the Government alleged that the fact that over 1,750 gallons of a listed chemical disappeared is evidence that Respondent failed to maintain effective controls against the diversion of listed chemicals. However, the Government did not provide any specific argument under this factor to support its allegation. The Deputy Administrator concludes that Respondent's failure to properly identify Jose Gutierrez, which will be discussed in more detail under factor two, clearly shows that Respondent failed to maintain effective controls against the diversion of listed chemicals.

Pursuant to 21 CFR 1309.71, there are general security requirements that List I chemical handlers must meet. The Deputy Administrator agrees with Judge Randall that the Government failed to prove by a preponderance of the evidence that the physical security at both locations is inadequate. DEA did not conduct a preregistration inspection at either location to determine whether or not the facilities lacked adequate security.

As to factor two, Respondent's compliance with applicable law, it must first be determined whether Respondent was subject to the laws and regulations relating to listed chemicals. A "regulated person" engaged in a "regulated transaction" is subject to various recordkeeping, reporting and identification requirements. Respondent was a regulated person pursuant to 21 U.S.C. 802(38), since it distributed a listed chemical when it caused the hydriotic acid to be delivered, "FOB destination" to Sky Harbor warehouse in Arizona.

Respondent seems to suggest that it was not a regulated person at the time of the transactions at issue in 1993 and 1994, because it was acting as a broker, and "brokers" were not added to the definition of "regulated person" until 1995. However, like Judge Randall, the Deputy Administrator rejects Respondent's argument. Starting in 1995, a broker engaged in an international transaction is a regulated person pursuant to 21 U.S.C. 802(38), (42), and (43). "International transaction" is defined in 21 U.S.C. 802(42) as "a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates." Although Respondent entered into a contract with a Mexican company for hydriotic acid, these were not "international transactions" because Respondent only arranged for the chemicals to be delivered to Arizona.

Pursuant to 21 U.S.C. 802(39), a sale or distribution of above a threshold amount of a listed chemical is a regulated transaction. In 1993 and 1994, the threshold for hydriotic acid was 1.7 kgs. Each of the transactions at issue in this proceeding were above the threshold amount and were therefore regulated transactions.

The Deputy Administrator concludes that since Respondent was a regulated person engaged in regulated transactions at the times at issue in this proceeding, it was subject to various recordkeeping, reporting and identification requirements.

The Government alleged that Respondent violated these regulatory requirements by failing to maintain records of these transactions; to report these transactions to DEA; to properly identify the other party to the transactions; and to file required export declarations. In addition, the Government alleged that Respondent violated 21 U.S.C. 824(d)(2) because it knew or had reasonable cause to believe that the listed chemical that it was distributing would be used to unlawfully manufacture methamphetamine.

First, the Deputy Administrator agrees with Judge Randall that the Government has failed to present any evidence regarding the adequacy of Respondent's records. Therefore, the Government has failed to prove by a preponderance of the evidence that Respondent violated the recordkeeping provisions found in 21 U.S.C. 830(a) and 21 CFR 1310.03, 1310.04, and 1310.06.

Next, pursuant to 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1), a regulated person is required to report to DEA "[a]ny regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part."

The phrase "extraordinary quantity" is not defined in the regulations. Judge Randall noted that "[b]y merely comparing the threshold of 1.7 kilograms to each of the five sales, whose quantities ranged from 1,686 kilograms to 3,080 kilograms, the quantities would seem to be extraordinary." However, Mr. Khalily testified that he did not believe that these quantities were excessive because R.J. Meyer indicated that it was using the chemical as a disinfectant for contract manufacturing and that these amounts were reasonable for the stated purpose. The Government did not present any evidence at the hearing as to why it believed that these were extraordinary quantities, nor did it present any evidence to dispute Mr. Khalily's explanation of the amounts needed by R.J. Meyer for its stated purpose. The Deputy Administrator agrees with Judge Randall that "[g]iven this alternate explanation for the large amounts of hydriotic acid being shipped, the lack of evidence to the contrary, and the lack of any further guidance in the regulations, * * * the quantities alone in these transactions are not sufficient to trigger the reporting requirements of section 1310.05 as they pertain to the Respondent."

Likewise the phrase "uncommon method of payment or delivery" is not defined in the regulations. Regarding the method of payment for these shipments, Respondents was paid by a business account check drawn on R.J. Meyer's bank and Respondent used a business check to pay Ajay from its own checking account. The Deputy Administrator agrees with Judge Randall's conclusion that there is no evidence that there was an uncommon method of payment for these shipments.

As to the method of delivery, Mr. Khalily testified that the method of delivery used for these transaction was the same as was used by Respondent in

non-listed chemical transactions. He further testified that he believed that Jose Gutierrez was R.J. Meyer's representative, and the transaction documents support this interpretation. As Judge Randall noted, "[t]hese documents, prepared in 1993 and 1994, weigh heavily in favor of finding credible Mr. Khalily's interpretation of Mr. Gutierrez's role in these transactions on behalf of R.J. Meyer."

However, with the benefit of hindsight, the method of delivery for these transactions was suspicious. Mr. Gutierrez signed for the hydriotic acid at Sky Harbor warehouse, and loaded it into a rental truck. DEA has been unable to determine the whereabouts of the hydriotic acid after it was picked up by Mr. Guiterrez. But as Judge Randall noted, "at the time the transaction[s] arose, Mr. Khalily did not have the benefit of this hindsight."

Therefore, the Deputy Administrator agrees with Judge Randall's conclusion "that preponderating evidence supports Mr. Khalily's interpretation of Mr. Gutierrez's relationship to R.J. Meyer * * *." However, the Deputy Administrator shares Judge Randall's concern "that Mr. Khalily failed to ascertain Mr. Guiterrez's role in the transaction prior to shipping the listed chemicals to him as the named recipient on behalf of R.J. Meyer."

Next, the Government alleged that Respondent failed to properly identify the other party to the transactions at issue as required by 21 CFR 1310.07(a). While Mr. Khalily and Respondent's predecessor has a long-standing business relationship with R.J. Meyer, he had never met Mr. Gutierrez before. Mr. Khalily testified that he assumed that Mr. Gutierrez was a representative of R.J. Meyer because "[a]ll purchase orders that they have, they have the name of their representatives on it." But, pursuant to 21 CFR 1310.07(c), "[w]hen transacting business with a new representative of a firm, the regulated person must verify the claimed agency status of the representative." Mr. Khalily failed to do this. Judge Randall found that "[b]ased on his own testimony, it appears that Mr. Khalily merely assumed that Mr. Gutierrez was a representative of R.J. Meyer, rather than to verify his identity with R.J. Meyer, prior to shipping the listed chemicals to him." Therefore, the Deputy Administrator agrees with Judge Randall that the preponderance of the evidence shows that Mr. Khalily failed to properly identify the other party to the five transactions as required by 21 CFR 1310.07.

As to the Government's allegation that Respondent failed to file the appropriate export documentation, the Deputy Administrator agrees with Judge Randall that pursuant to the regulations Respondent was not required to file such documentation. Pursuant to 21 CFR 1313.21(a) (1993 & 1994), DEA must be notified at least 15 days in advance of any export of threshold or above threshold quantities of a listed chemical. The term "chemical export" is defined in 21 CFR 1313.02(a) (1993 & 1994) [1] as "transferring ownership or control, or the sending or taking of threshold quantities of listed chemicals out of the United States * * *." The regulations further define "chemical exporter" as "a regulated person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the listed chemical out of the United States." 21 CFR 1313.02(b) (1993 & 1994).[2]

While Respondent was selling above threshold quantities of hydriotic acid to a Mexican company, these sales were "FOB Destination" transactions and therefore Respondent's responsibility ended when the chemicals were delivered to the warehouse in Arizona. Respondent did not send or take the listed chemicals out of the United States, nor was it the "principal party in interest" with the power and control over sending the chemicals out of the United States. Therefore, it was not responsible for filing any export documentation.

As to factor three, there is no evidence that Respondent or its owner, Mr. Khalily, has been convicted of any criminal acts related to controlled substances or listed chemicals.

Regarding Respondent's past experience in the manufacture or distribution of chemicals, Mr. Khalily has been involved with the importation, contract manufacturing, and brokering of transactions involving controlled substances and listed chemicals for a number of years. As a result, he has been aware of the regulatory requirements regarding listed chemicals. Nonetheless, Mr. Khalily distributed a listed chemical on five occasions without properly identifying the other party to the transaction in violation of the regulations which allowed over 11,000 kgs. of hydriotic acid to disappear.

As to other factors relevant to the public health and safety, Judge Randall noted Mr Khalily's failure to take responsibility for his role in the transactions and his lack of concern regarding the disappearance of the five shipments. Further, Mr. Khalily did not present adequate assurances that Respondent will implement better procedures for properly identifying other patties to listed chemical transactions.

Judge Randall concluded that "[t]he Government has not proven by a preponderance of the evidence that the Respondent is conducting five regulated transactions of hydriotic acid, failed to comply with any record-keeping or reporting requirements." Further, the Government has failed to prove that Respondent was required to file export documents. But, the Deputy Administrator agrees with Judge Randall that the evidence does support the conclusion that Respondent failed to properly identify Mr. Gutierrez thereby allowing over 11,000 kgs. of a listed chemical that can be used in the illicit manufacture of methamphetamine to disappear.

Judge Randall concluded that "[t]he Government has proven by a preponderance of the evidence that the Respondent's failure to comply with identification regulations contributed to the ultimate loss of the shipments, leading to a greater likelihood that they could have been diverted to illicit use, the very evil addressed by this regulatory and statutory scheme." Judge Randall also concluded that "Respondent has done nothing to assure the DEA that it will act more responsibly in future transactions." Nonetheless, after considering all of the facts and circumstances of this case, Judge Randall concluded that complete denial of Respondent's applications is not warranted. However, Judge Randall further concluded that Respondent's prior conduct warrants closer monitoring than in other cases.

Therefore, Judge Randall recommended that Respondent's applications be granted with the following conditions:

(1) The Respondent be required to maintain a log of all listed chemical transactions he engages in for a period of three years from the date of issuance of these DEA Certificates of Registration. At a minimum, the log shall indicate the date that the shipment occurred, the name and address of all the parties involved in the transaction, the destination of the shipments, and the name and quantity of the listed chemical shipped. Upon request by the Special Agent in Charge of the local DEA Field Division, or his designee, the Respondent shall submit or otherwise make available his log for inspection.

[1] This regulation has since been renumbered and can now be found in 21 CFR 1300.02(5).

[2] This regulation has since been renumbered and can now be found in 21 CFR 1300.02(6).

(2) For three years from the date of issuance of the DEA Certificates of Registration, the Respondent shall consent to periodic inspections at its registered locations by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

In its exceptions to Judge Randall's Opinion and Recommended Ruling, the Government argued that the Administrative Law Judge gave undue weight to Mr. Khalily's testimony that Respondent had no obligation to report the transactions as a result of the proposed use for the hydriotic acid. Further, the Government argued that Respondent had an obligation to report these shipments since they were for extraordinary quantities and there was an uncommon method of delivery.

Specifically, the Government contended that Respondent's explanation of the quantities distributed was self-serving, and that Judge Randall gave too much significance to the intended uses listed on R.J. Meyer's purchase authorization form. "The Government believes that this form, standing alone, is inadequate to prove that the listed uses were intended, or even valid, uses." The Government disagreed with the Administrative Law Judge's conclusion that mere quantities of shipments alone are not sufficient to require reporting and that the method of delivery was reasonable based upon Mr. Khalily's mistaken impression that Mr. Gutierrez was an agent of R.J. Meyer.

The Government argued that the quantities of these shipments were extraordinary because they each greatly exceeded the threshold for hydriotoc acid; "the physical size of the product shipment was bulky and large"; and "the amount of illicit methamphetamine that could ostensibly be made from this product was immense." The Government also argued that an uncommon method of delivery was used for these shipments because Mr. Khalily "did not know the persons to whom he shipped the [hydriotic acid,] * * * [t]he shipments were picked up by rental truck * * * [and] [n]o one knows where the [hydriotic acid] went."

The Government further contended that "the burden of establishing whether any given shipment is required to be reported falls heavily upon the regulated industry." In support of its position, the Government cites to the final rule implementing the chemical Diversion and Trafficking Act wherein DEA declined to define either "extraordinary quantity" or "uncommon method of delivery", but rather stated:

> The chemical industry is expected to understand the nature of its legitimate business transactions and must make informed decisions as to whether the above terms apply to any of their transactions.

See 54 FR 31,657,31,659 (1989).

Based upon the record before him, the Deputy Administrator finds that the Government has not established that the quantities of these shipments were extraordinary. While these shipments seem large to the Deputy Administrator, the Respondent's explanation based upon the intended use of the hydriotic acid for the quantities shipped was unrebutted by the Government. The Deputy Administrator would like to have considered evidence of whether R.J. Meyer's intended use for the hydriotic acid was legitimate and what the usual quantities are in the industry for the intended use, however no such evidence was presented by the Government. Therefore, the Deputy Administrator is left with nothing but Respondent's explanation, and as stated above the industry is expected to understand the nature of its business. Consequently, based upon the evidence in the record before him the Deputy Administrator concludes that Respondent was not required to report these transactions in light of the quantities shipped.

The Deputy Administrator has considered the Government's contention that these shipments should have been reported based upon an uncommon method of delivery. However as stated above, the method of delivery employed for these transactions was the same as had been employed by Respondent with R.J. Meyer in previous non-listed chemical transactions, and based upon the transaction documents, Respondent's assumption that Mr. Gutierrez was a representative of R.J. Meyer was not unreasonable.

In its exceptions, the government also disagreed with the Administrative Law Judge's conclusion that Respondent was not required to file any export documents. Essentially the Government argued that by selling hydriotic acid to a Mexican company Respondent was exporting the chemical, and therefore was responsible for filing the appropriate documents. However as previously noted, the Deputy Administrator agrees with Judge Randall that since these were "FOB Destination" transactions, Respondent responsibility ended when the shipments were received at the warehouse in Arizona. Therefore, Respondent did not meet the definition of a chemical exporter since it did not have "the power and responsibility for determining and controlling the sending of the listed chemical out of the United States." 21 CFR 1313.02(b) (1993 & 1994).

Finally, the government took exception to Judge Randall's conclusion that despite Respondent's failure to properly identify the other party to these transactions, Respondent's applications should not be denied. The Government argued that Respondent's failure to determine the identity of Mr. Gutierrez resulted in the disappearance of over 11,000 kgs. of hydriotic acid which could be used to produce over 1,700 kgs. of methamphetamine. The Government further argued that Respondent has distanced itself from the transactions; has accepted no culpability for its actions; and "thus has not shown that it can be depended upon to carry out DEA regulations in the future."

In its response to the Government's exceptions, Respondent contended that it is not distancing itself from its own conduct, however it argues that the Government also bears some responsibility for failing to prevent the listed chemical from disappearing. Respondent asserted that "[t]he Government must provide expert assistance to the chemical industry. It should provide information to assist the chemical handlers in recognizing potential problem transactions." Specifically, Respondent argued that it would have benefited from knowing that in 1993, "the Southwest was the home for the illegal production of amphetamines and [hydriotic acid] was the main ingredient." In addition, Respondent argued that had they known of Ajay's concerns regarding the first four of the transactions, "the final sale in October 1994 would have occurred." According to Respondent, Mr. Khalily "believes that he did everything the law required in 1993 and 1995 and that he should not be held solely accountable when there were other parties involved in these transactions, including the DEA, who were equally unable to prevent the listed chemical from disappearing."

The Deputy Administrator agrees with Respondent that such information may have been helpful to Respondent. However, in 1993 and 1994 Respondent was experienced in the handling of listed chemicals and Mr. Khalily testified that he was familiar with the provisions of the law relating to listed chemicals. Consequently, he knew that he had to properly identify the other party to any transaction involving a listed chemical. While it is true that Respondent and its predecessor had a long-standing business relationship with R.J. Meyer, he had never before dealt with Mr. Gutierrez.

The Deputy Administrator is extremely concerned by Mr. Khalily's failure to properly identify Mr. Gutierrez and verify whether he was a representative of R.J. Meyer. This is particularly troubling given that Mr. Khalily knew that hydriotic acid was a listed chemical; that he had not seen Mr. Gutierrez's name on previous invoices; and that R.J. Meyer had not previously purchased hydriotic acid from Respondent. All of these things combined should have caused Mr. Khalily to recognize the need to ascertain whether Mr. Gutierrez was in fact a representative of R.J. Meyer.

Nontheless, the Deputy Administrator agrees with Judge Randall that denial of Respondent's applications is not warranted in this case. Although Respondent was clearly not as careful as he should have been in identifying Mr. Gutierrez, Respondent did follow its normal business practices regarding these shipments and there has been no other evidence of any wrongdoing by Respondents. However, chemicals are designated as listed chemicals because they have the potential to be used to manufacture dangerous substances. Consequently those who deal with these chemicals have to be ever vigilant to ensure that they are not diverted for illegal purposes. Therefore, the Deputy Administrator agrees with Judge Randall that Respondent's prior conduct warrants that Respondent should be more closely monitored than other registrants.

The Deputy Administrator agrees with Judge Randall's recommendation that Respondent's applications be granted with the following conditions:

(1) The Respondent be required to maintain a log of all listed chemical transactions he engages in for a period of three years from the date of issuance of these DEA Certificates of Registration. At a minimum, the log shall indicate the date that the shipment occurred, the name and address of all the parties involved in the transaction, the destination of the shipments, and the name and quantity of the listed chemical shipped. Upon request by the Special Agent in Charge of the local DEA Field Division, or his designee, the Respondent shall submit or otherwise make available his log for inspection.

(2) For three years from the date of issuance of the DEA Certificates of Registration, the Respondent shall consent to periodic inspections at its registered locations by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the applications for registration as an importer and a distributor of various listed chemicals, submitted by Alfred Khalily, Inc., d.b.a. Alfa Chemical, be, and they hereby are, granted subject to the above described conditions. This order is effective upon issuance of the DEA Certificates of Registration, but not later than July 12, 1999.

Dated: June 1, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–14650 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 23, 1998, (63 FR 71155), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methamphetamine (1105), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture methamphetamine to produce products for distribution to its customers.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 25, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14651 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration; Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 24, 1999, Los Angeles Cannabis Resources Center, Inc., 7494 Santa Monica Blvd., #215, West Hollywood, California 90046, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of marihuana (7360), a basic class of controlled substance.

The firm plans to develop single-cannabinoid strains of marihuana and to provide cannabis and naturally extracted plant-derived cannabionids for use in pharmaceutical research and cannabionoid-based drug development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 9, 1999.

Dated: May 28, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–14649 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–09–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 4–99]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, June 17, 1999, 1:30 p.m.

SUBJECT MATTER: Consideration of a Request for Reopening of the Final Decision on a claim against Albania, as follows: Claim No. ALB–075 Haritini Poulos.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW, Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, June 7, 1999.

Judith H. Lock,

Administrative Officer.

[FR Doc. 99–14838 Filed 6–8–99; 11:07 am]

BILLING CODE 4410–BA–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Privacy Act of 1974; Systems of Records

AGENCY: Foreign Claims Settlement Commission, Justice.

ACTION: Notice of Privacy Act systems of records.

SUMMARY: The Foreign Claims Settlement Commission of the United States herewith publishes an updated Notice of its Privacy Act Systems of Records. Publication of such notice is required under subsection (e)(4) of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4). This update is necessary in order to reflect changes in the location of some of the Commission's records systems, and the deletion of seven systems (Justice/FCSC–2, "Bulgaria, Claims Against (1st Program)," Justice/FCSC–10, "Czechoslovakia, Claims Against," Justice/FCSC–16, "Hungary, Claims Against (1st Program)," Justice/FCSC–18, "Italy, Claims Against (1st Program)," Justice/FCSC–21, "Panama, Claims Against," Justice/FCSC–26, "Rumania, Claims Against (1st Program)," and Justice/FCSC–29, "Yugoslavia, Claims Against (1st Program)"), due to the release of the records in those systems to the National Archives for permanent retention. In addition, as part of the review of Privacy Act systems of records mandated by the President's Memorandum on Privacy and Personal Information in Federal Records of May 14, 1998, the Commission has deleted three other systems (Justice/FCSC–13, "Payroll Records," Justice/FCSC–14, "General Personnel Records," and Justice/FCSC–15, "General Financial Records"), based on a determination that the records in those systems were duplicative of records in other systems or otherwise had become superfluous.

EFFECTIVE DATE: June 10, 1999.

ADDRESSES: 600 E Street, NW, Room 6002, Washington, DC 20579.

FOR FURTHER INFORMATION CONTACT: Judith H. Lock, Administrative Officer, Tel. 202–616–6986, FAX 202–616–6993.

Pursuant to 5 U.S.C. 552a(e)(4), the Foreign Claims Settlement Commission hereby publishes the systems of records as currently maintained by the agency.

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JUSTICE/FCSC–1

SYSTEM NAME:

Indexes of Claimants (Alphabetical)—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Maintained on all individuals who filed claims for compensation under the statutes administered by the Foreign Claims Settlement Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Microfilm copies of index cards and computer-generated paper indexes containing names of claimants, claim and decision numbers, date and disposition of claims, addresses and dates of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSES:

To enable Commission personnel and interested members of the public to ascertain whether any named individual, corporation, or other legal entity has submitted a claim to the Commission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Used by authorized Commission personnel for identification of individual claims and to obtain information concerning disposition of claims.

—The information contained in this system of records (except for that pertaining to the system "Justice/FCSC–27: Germany, Holocaust Survivors Claims Against", described below) is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a

proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof,

ii. Any employee of the FCSC in his or her official capacity,

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm rolls stored in steel drawers. Computer-generated paper indexes stored on shelves in cardboard binders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Security guards in building. Records maintained in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Permanent records. Disposition will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6986 Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and information obtained by actions taken by the Foreign Claims Settlement Commission as a result of adjudication of individual claims.

JUSTICE/FCSC–2

SYSTEM NAME:

Bulgaria, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals who suffered property losses in Bulgaria between August 9, 1955, and July 2, 1963.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any, date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and U.S.-Bulgarian Claims Agreement of July 2, 1963.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a Members of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 24, 1971.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–3

SYSTEM NAME:

Certification of Awards—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving awards under the International Claims Settlement Act of 1949, as amended, and War Claims Act of 1948, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of claimants and amounts of awards certified to Treasury Department for payment. Name and address of claimant's representative, if any, also included in certification voucher.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

International Claims Settlement Act of 1949, as amended, and War Claims Act of 1948, as amended.

PURPOSES:

Maintained as a record of the names, addresses, and amounts awarded to individuals in the Commission's claims programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Award certifications prepared by authorized FCSC personnel and forwarded to Treasury Department for payment in accordance with statutory authority and Treasury Department regulations and procedures.

—The information contained in this system of records (except for that pertaining to the system "Justice/FCSC–27: Germany, Holocaust Survivors Claims Against") is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about a claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Contained in file folders.

RETRIEVABILITY:

By voucher number and date of certification.

SAFEGUARDS:

Building has building guards. Records are maintained in file cabinets in locked rooms.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993. Notification Procedure: Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

From award portion of decisions as determined by FCSC.

JUSTICE/FCSC–4

SYSTEM NAME:

China, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses, death and disability in mainland China arising between October 1, 1949, and May 11, 1979.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization of claimant; nature and amount of claim; description, ownership and value of property; and evidence to support claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles I and V, International Claims Settlement Act of 1949, as amended,

and the U.S.-China Claims Settlement Agreement of May 11, 1979.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Adjudication of claims, issuance of decisions as to the validity and amounts of claims and issuance of certifications to each individual claimant as to amount determined by FCSC officials and personnel. Such amounts and copies of FCSC decisions were certified to the Secretary of State and to the Secretary of the Treasury.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975, Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–5

SYSTEM NAME:

Civilian Internees (Vietnam)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

American citizens held by a hostile force in Southeast Asia during Vietnam Conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form contains name and address, date and place of birth, birth certificates. Verification of internment furnished by State Department contains names, addresses and inclusive dates of internment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5(i), War Claims Act of 1948, as amended.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Adjudication of claims of American citizens and certification of awards by authorized FCSC personnel to Treasury Department for payment.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged

with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed by claim number. (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, or his or her survivor(s), where applicable.

JUSTICE/FCSC–6

SYSTEM NAME:

Correspondence (General)–FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Generally, U.S. nationals suffering property or financial losses in foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing names and addresses of individuals, description and location of property or other types of losses. Inquiries generally are related to claims, Commission procedures and other related matters not included under the "Correspondence (Inquiries concerning claims in foreign countries)" system, JUSTICE/FCSC–7.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To enable the Commission to maintain a record of the correspondence it processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—For dissemination of requested information to individuals by FCSC personnel. Correspondence may be referred to other concerned agencies on matters not within the jurisdiction of FCSC.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetical in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Security guards in building. Records maintained in file cabinets in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone:202/616–6975. Fax:202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–7

SYSTEM NAME:

Correspondence (Inquiries Concerning Claims in Foreign Countries)—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing names and addresses of individuals and description and location of property or other types of losses. Inquiries generally are related to claims programs administered by FCSC. Records also include those transferred from State Department which may relate to such programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, sec. 4(d), International Claims Settlement Act of 1949, as amended, and sec. 216, War Claims Act of 1948, as amended.

PURPOSE:

To enable the Commission to maintain a record of the correspondence it has processed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—For dissemination of information by authorized FCSC personnel to individuals making inquiries concerning various claims programs authorized under the International Claims Settlement Act of 1949, as amended, the War Claims Act of 1948, as amended, international claims agreements, and for notification purposes for newly authorized claims programs in which individuals may be eligible to participate.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivision, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be sense use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetical in file cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Security guards in building. Records maintained in file cabinets in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–8

SYSTEM NAME:

Cuba, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses, death and disability in Cuba arising on or after January 1, 1959.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim, including medical and death records in claims involving death and disability.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V, International Claims Settlement Act of 1949, as amended.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Cuba submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Adjudication of claims, issuance of decisions as to the validity and amounts of claims and issuance of certifications to each individual claimant as to amount determined by FCSC officials and personnel. Such amounts and copies of FCSC decisions were certified to the Secretary of State pending conclusion of any claims settlement agreement between US and Cuba.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and

whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File Folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–9

SYSTEM NAME:

Czechoslovakia, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Czechoslovakia from August 9,1958, to February 2, 1982.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Czechoslovakian Claims Settlement Act of 1981 (22 U.S.C. note prec. 1642), and the U.S.-Czechoslovakian Claims Settlement Agreement of February 2, 1982.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Czechoslovakia submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the

Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC—10

SYSTEM NAME:

East Germany, Registration of Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals who suffered certain property losses in East Germany.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims registration form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; and description, ownership, and value of property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended.

PURPOSE:

To enable the Commission to conduct an evaluation of potential claims against the former German Democratic Republic, in order to determine whether sufficient claims existed to justify enactment of legislation authorizing a formal claims adjudication program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Information received from individuals on registration forms was used to evaluate whether to propose enactment of legislation to authorize a formal claims adjudication program.

—Registration forms filed were also used by FCSC personnel in the distribution of formal claim application forms once a formal claims adjudication program was authorized.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Numerical order in file folders. Cross-reference alphabetical index (see system "JUSTICE/FCSC–1" above).

RETRIEVABILITY:

By name. (see system "JUSTICE/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. System manager(s) and address: Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC—11

SYSTEM NAME:

Federal Republic of Germany, Questionnaire Inquiries From—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals suffering losses in Eastern European countries, including Germany.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaires from Federal Republic of Germany (Ausgleichsamt) containing name, address, date and place of birth or naturalization; description and location of property. Such information was furnished to Federal Republic of Germany by U.S. residents who filed claims under the West German Federal Compensation Laws (BEG).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

To maintain a file on requests for information from Germany that have been received and acted upon.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—To inform Federal Republic Of Germany (FRG) Equalization of Burdens offices whether individuals who filed claims for losses compensable under the West German Federal Compensation Laws also filed claims with the Foreign Claims Settlement Commission under U.S. claims statutes and received compensation under such statutes for the same losses. Information furnished to FRG obtained from FCSC decisions or claim applications from individuals who filed claims with FCSC.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Questionnaire from Federal Republic of Germany (Equalization of Burdens Offices).

JUSTICE/FCSC—12

SYSTEM NAME:

Hungary, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Hungary that arose between August 9, 1955, and March 6, 1973.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and U.S.-Hungarian Claims Agreement of March 6, 1973.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Hungary submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to

the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC—13

SYSTEM NAME:

Italy, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims against Italy for certain property losses attributable to military action by Italian forces during World War II. Benefits extended to U.S. nationals who acquired their U.S. citizenship after the date of their property losses, to individuals who did not file under the 1st Italian Claims Program, and to individuals with claims for property losses arising in territory ceded pursuant to the Treaty of Peace with Italy, which claims had been excluded under the 1st program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended by Pub. L. 85–604.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Italy submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the

Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 24, 1971.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–14

SYSTEM NAME:

Micronesia, Claims Arising In—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inhabitants of Micronesia, including U.S. nationals, who suffered damages to property, disability and death arising out of military operations during World War II, and arising during the period from the dates of the securing of the various islands of Micronesia by Allied forces up until July 1, 1951.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Micronesian Claims Act of 1971.

PURPOSE(S):

To enable the Micronesian Claims Commission (MCC), under the supervision of the FCSC, to carry out its statutory responsibility to determine the validity and amount of the claims against Italy submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under authority of the Micronesian Claims Act of 1971; notifications to claimants of rights to appeal; and preparation by authorized personnel of Foreign Claims Settlement Commission assigned to duty in the Trust Territory of the Pacific Islands and locally hired employees of the MCC of certifications of awards, if any, to Secretary of the Interior for payment.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used to identify claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–15

SYSTEM NAME:

Poland, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Poland due to nationalization or other taking of such property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and U.S.-Poland Claims Agreement of July 16, 1960.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Poland submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on March 31, 1966.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–16

SYSTEM NAME:

Prisoners of War (Pueblo)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Armed Forces and civilian employees of the U.S. Government assigned to duty on the USS Pueblo who were captured by military forces of North Korea on January 23, 1968, and held prisoner by such forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant, date and places of birth, branch of service and military service number. In case of death, date, place and name of spouse, names, address and date of birth of surviving children, name and address of parents and Veterans Administration (VA) claim number. Proof of death if no VA claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 6(e), War Claims Act of 1948, as amended.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to

determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for adjudication of claims for detention benefits, issuance of decisions concerning eligibility of claimant to receive compensation; notifications to claimants of rights to appeal; and preparation by authorized Commission personnel of certifications of awards to Treasury Department for payment. Verifications from State Department include names and addresses and inclusive dates of detention.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By claim number. Cross-referenced by alphabetical index cards which contain claim numbers (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at the Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–17

SYSTEM NAME:

Prisoners of War (Vietnam)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Armed Forces of the United States who were captured and held by a hostile force during the Vietnam conflict beginning February 28, 1961.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant; date and place of birth, branch of service and military service number. In case of death, date, place, name of spouse, names, addresses and dates of birth of surviving children, name and address of parents and Veterans Administration claim number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sect. 6(f), War Claims Act of 1948, as amended.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records used for adjudication of claims for detention benefits; issuance of decisions concerning eligibility of claimants to receive compensation; notifications to claimants of rights of appeal; and preparation of certification of awards to Treasury Department for payment by authorized Commission personnel. Verification of captured status obtained from rosters or casualty reports furnished by the respective armed service branches.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC'18

SYSTEM NAME:

Rumania, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Rumania which arose between August 9, 1955 and March 30, 1960.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description; ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and the US-Rumania Claims Agreement of March 30, 1960.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Rumania submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to the Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 25, 1971.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–19

SYSTEM NAME:

Soviet Union, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for loss of property in the Soviet Union prior to November 16, 1933, and claims by individuals based upon liens acquired with respect to property in the U.S. assigned to U.S. Government by the Soviet Government under Litvinov Assignment of November 16, 1933.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against the Soviet Union submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to the Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on August 9, 1959.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC—20

SYSTEM NAME:

Yugoslavia, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Yugoslavia which arose between July 19,1948, and November 5, 1964.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and U.S.-Yugoslavia Claims Agreement of November 5, 1964.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Yugoslavia submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on July 15, 1969.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–21

SYSTEM NAME:

German Democratic Republic, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in the German Democratic Republic which arose between May 8, 1945, and October 18, 1976.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI, International Claims Settlement Act of 1949, as amended.

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against the German Democratic Republic submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notification to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC is determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission; 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–22

SYSTEM NAME:

General War Claims Program—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses during World War II.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II of War Claims Act of 1948, as amended.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation by authorized FCSC personnel of transmittals of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the

statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record from this system of records may be disclosed as a routine use to a member of Congress or to a Congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–23

SYSTEM NAME:

Vietnam, Claims for Losses Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Vietnam arising between April 29, 1975, and December 28, 1980.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII, International Claims Settlement Act of 1949, as amended.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Vietnam submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to members of Congress, Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

JUSTICE/FCSC–24

SYSTEM NAME:

Ethiopia, Claims for Losses Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Ethiopia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims information including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the December 19, 1985 Compensation Agreement between the Government of the United States of America and the Provisional Military Government of Socialist Ethiopia.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Ethiopia submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to members of Congress, Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–25

SYSTEM NAME:

Egypt, Claims Against.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Egypt.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; other evidence establishing entitlement to compensation of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the Agreement Between the Government of the United States of America and the Government of the Arab Republic of Egypt Concerning Claims of Nationals of the United States of May 1, 1976.

PURPOSES:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Egypt submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act and Agreement; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the Immigration and Naturalization Service.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein including but not limited to Members of Congress or Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC'1" above).

SAFEGUARDS:

Under security safeguards at the Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–26

SYSTEM NAME:

Albania, Claims Against.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals with claims for property losses in Albania.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; other evidence establishing entitlement to compensation of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the Agreement Between the Government of the United States of America and the Government of Albania on the Settlement of Certain Outstanding Claims of March 10, 1995 (went into force April 18, 1995).

PURPOSE:

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims against Albania submitted to it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act and Agreement; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the Immigration and Naturalization Service.

—The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein including but not limited to Members of

Congress or Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

—Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at the Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC 20579. Telephone: 202/616–6975. Fax: 202/616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–27

SYSTEM NAME:

Germany, Holocaust Survivors' Claims Against.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street, Northwest, Room 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural persons who assert claims for loss of liberty or damage to body or health as a result of National Socialist measures of persecution conducted directly against them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and valuation of claim, including description of measures of persecution; other evidence establishing entitlement to compensation for claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 104–99, and the Agreement Between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of National Socialist Measures of Persecution of September 19, 1995.

PURPOSE(S):

To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims before it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

Records were used for the purpose of determining the validity and amount of claims; issuance of decisions concerning eligibility to receive compensation under the claims statute and Agreement; notifications to claimants of rights to appeal; preparation of decisions for certification to the Secretary of State for use in diplomatic settlement negotiations with Germany; and preparation of certifications of awards to the Secretary of the Treasury for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the INS. As required by the authorizing statute, the information contained in this system of records will be maintained as confidential information which will be exempt from disclosure to the public.

—Law Enforcement: In the event that a system of records maintained by the FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim.

SAFEGUARDS:

At FCSC: Building employees security guards. Records are maintained in a locked room accessible to authorized FCSC personnel and other persons when accompanied by such personnel.

RETENTION AND DISPOSAL:

Records are maintained in accordance with 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579; telephone 202–616–6975, fax 202–616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

JUSTICE/FCSC–28

SYSTEM NAME:

Iraq, Registration of Potential Claims Against.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street NW, Room 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural and juridical persons with potential claims against Iraq that are outside the jurisdiction of the United Nations Compensation Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and valuation of claim, including description of property or other asset or interest that is the subject of the claim; other evidence establishing entitlement to compensation for claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Information in the system was collected under the Foreign Claims Settlement Commission's general authority to adjudicate claims conferred by 22 U.S.C. 1621 *et seq.*

PURPOSE:

To enable the Commission to formulate recommendations concerning the drafting of legislation to authorize formal adjudication of claims against Iraq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

—Records are used for the purpose of determining the validity and amount of potential claims, to facilitate planning for adjudication of such claims in the future. Names and other information furnished by registrants may be used for verifying citizenship status with the INS. Names and addresses of individual registrants will be subject to public disclosure. Other information provided by the individual registrants will be maintained as confidential information which will be exempt from disclosure to the public.

—Law Enforcement: In the event that a system of records maintained by the FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

—A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by registration number. Alphabetical index used for identification of registrant.

SAFEGUARDS:

At FCSC: Building employs security guards. Records are maintained in a locked room accessible to authorized FCSC personnel and other persons when accompanied by such personnel.

RETENTION AND DISPOSAL:

Records are maintained in accordance with 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW, Room 6002, Washington, DC 20579; telephone 202–616–6975, fax 202–616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Registrant on whom the record is maintained.

Dated at Washington, DC.

Judith H. Lock,

Administrative Officer.

[FR Doc. 99–14638 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OJP (NIJ)–1234]

RIN 1121–ZB57

National Institute of Justice; Announcement of the Availability of the National Institute of Justice Solicitation for Evaluation of a Multi-Site Demonstration for Enhanced Judicial Oversight of Domestic Violence Cases

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Evaluation of a Multi-site Demonstration for Enhanced Judicial Oversight of Domestic Violence Cases."

DATES: Due date for receipt of proposals is close of business, Friday, July 9, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is soliciting proposals for an evaluation of the Judicial Oversight Demonstration Initiative. The Judicial Oversight Demonstration Initiative, a collaboration between NIJ and the Violence Against Women Office (VAWO), is a program designed to reduce domestic violence through enhanced judicial oversight, victim safety, and offender accountability. This solicitation calls for a single evaluation to measure the added value resulting from the changes and enhancements made at each of the demonstration sites.

The evaluation will consist of four phases—Methodological Refinement and Baseline Data Collection, Formative Evaluation, Process Evaluation, and Outcome/Impact Evaluation.

This solicitation makes $500,000 available for the first stage of the multi-site evaluation. Up to $2.5 million is anticipated for the entire multi-year evaluation expected to extend to five years.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Evaluation of a Multi-site Demonstration for Enhanced Judicial Oversight of Domestic Violence Cases" (refer to document no. SL000357). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–14666 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1233]

RIN 1121–ZB86

Announcement of the Availability of the National Institute of Justice Solicitation for Research on Violence Against Indian Women

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Research on Violence Against Indian Women."

DATES: Due date for receipt of proposals is close of business, Friday, July 9, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ), in collaboration with the Office of Justice Programs' Violence Against Women Office (VAWO), is soliciting proposals for research on violence against women issues among Native Americans. Grants will be awarded in conjunction with the S.T.O.P. (Services/Training/Officers/Prosecutors) Violence Against Indian Women Discretionary Grant Program.

Recommended study areas include, but are not limited to: Instrumentation development for measuring prevalence and incidence rates of violence against Indian women with and understanding and sensitivity to Native cultures; enforcing the provisions of the VAWA in Tribal Courts; factors affecting the safety of Indian women in Public Law 280 States; effectiveness of batterer reeducation; level of shelter services provided; patterns of abuse; and the impact of domestic violence training on tribal response to violence.

NIJ encourages both qualitative and quantitative research proposals. NIJ has allocated $450,000 for this solicitation and anticipates awarding up to 4 grants for a period of 24 months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Research on Violence Against Indian Women" (refer to document no. SL000359). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–14665 Filed 6–9–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration, Unemployment Insurance Service: Proposed Information Collection Request Submitted for Public Comment and Recommendations; State Quality Service Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the new State Quality Service Plan (SQSP), which was designed in consultation with end users, and will replace the Program Budget Plan (PBP), which has been used for more than a decade.

Guidelines for completion and submittal of the SQSP are contained in a handbook, which has been designed not to become obsolete annually, as was the case with the PBP. Fiscal year-specific information such as Federal Program Focus, or additional budget allocations, will be provided annually in an implementation memorandum that will initiate the planning process each year. The requirements of the reporting and data collection process

itself will remain unchanged from year to year.

The SQSP introduces a process which allows the State partner to provide a narrative summary of the State focus for the coming fiscal year called the State Program Narrative. In addition, the SQSP introduces a Tier I/Tier II concept for performance measures which reduces from the PBP the number of measures with the potential to require mandatory Corrective Action Plans for failure to meet criterioned measures (Tier I). At the same time, continuous program improvement is enhanced with an expanded array of measures for which program performance may be negotiated between a State and ETA (Tier II). Finally, the number of required forms has been reduced, and some replaced with formats that can be transmitted electronically. Because of its length, the SQSP Handbook is not included with the notice. Copies of the handbook may be obtained by contacting the addressee below. The handbook also is available on the Internet at http://www.itsc.state.md.us/.

The proposed information collection request follows.

DATES: Written comments must be submitted on or before August 9, 1999. Written comments should:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: William N. Coyne, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4522, 200 Constitution Avenue, NW, Washington, D.C. 20210, 202–219–5223, Ext. 142 (this is not a toll-free number); FAX, 202–219–8506; Internet: wcoyne@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The SQSP is the planning instrument for the Unemployment Insurance (UI) system nationwide. The statutory basis for the SQSP is Title III of the Social Security Act, which establishes conditions for each State to receive grant funds to administer its UI program. Plans are prepared annually, since funds for UI operations are appropriated each year. ETA's annual budget request for State UI operations contains workload assumptions for which a State must plan in order for the Secretary of Labor to carry out her responsibilities under Title III. ETA issues financial planning targets based on the budget request. States make plans based on these assumptions and targets.

II. Current Actions

ETA proposes to replace the PBP with the State Quality Service Plan.

Type of Review: Revised Process.

Specifically, we propose the following:

Agency: Employment and Training Administration.

Title: SQSP Handbook.

Record keeping: States are required to keep records consistent with retention and access requirements at 29 CFR 97.42.

Affected Public: State Employment Security Agencies (SESA's).

Total Respondents: 53.

Frequency: Annually.

Total Responses: 53 plans.

Average Time Per Response: 40 hours.

Estimated Total Burden Hours: 2098.

Estimated Total Burden Cost: $61,324.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: June 4, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–14756 Filed 6–9–99; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Change to Sunshine Act Meeting of the Board of Directors

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64.FR.30367, June 7, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: The Board of Directors of the Legal Services Corporation will meet on June 12, 1999. The meeting will begin at 1:00 p.m. and continue until conclusion of the Board's agenda.

LOCATION: The Westin Hotel, 1672 Lawrence Street, Denver, CO 80202–2010.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

CHANGES TO THE MEETING: The following item has been added to the open session of the meeting:

7. Approval of minutes of the Board's teleconference meeting of May 27, 1999.

The remainder of the Board of Directors' agenda will be as follows:

8. Chairman's Report.
9. Members' Report.
10. President's Report.
11. Inspector General's Report.
12. Consider and act on the Board's meeting schedule, including designation of locations, for year 2000.
13. Consider and act on the report of the Board's Operations and Regulations Committee.
- Consider and act on the Committee's recommendation regarding proposed final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
- Consider and act on the Committee's recommendation regarding final rule, 45 CFR Part 1628, Recipient Fund Balances.
- Consider and act on the Committee's recommendation regarding proposed amendment(s) to the Corporation's 403(b) Thrift Plan that are intended to increase the Corporation's employer contribution level to match the Civil Service Retirement System.

14. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
15. Report on the status of the work of the special panel established to study and report to the board on issues relating to LSC grantees' representation of legal alien workers and the requirement that they be "present in the United States."
16. Appointment of Acting Vice President of Programs.
17. Consider and act on proposed resolution ratifying the adoption of the

new corporate logo for LSC's 25th Anniversary.

CLOSED SESSION:

18. Briefing [1] by the Inspector General on the activities of the OIG.

19. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

OPEN SESSION:

20. Consider and act on other business.

21. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: June 7, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–14815 Filed 6–7–99; 4:40 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 1:00 p.m., Monday, June 14, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Two (2) Requests from Federal Credit Unions to Convert to Community Charters.

2. Final Rule: Amendment to Part 707, NCUA's Rules and Regulations, Truth In Savings—Disclosure of the Annual Percentage Yield.

3. Final Rule: Amendments to Part 712, NCUA's Rules and Regulations, Credit Union Service Organization (CUSOs).

RECESS: 2:15 p.m.

TIME AND DATE: 2:30 p.m., Monday, June 14, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 or Section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).

2. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Request from a Corporate Credit Union for a National Field of Membership. Closed pursuant to exemption (8).

4. Five (5) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–14822 Filed 6–7–99; 4:40 pm]

BILLING CODE 7535–01–M

NATIONAL INSTITUTE FOR LITERACY

Submission for OMB Review; Comment Request

ACTION: Notice.

On May 28, 1999, the National Institute for Literacy (NIFL) published a notice requesting comments for the Office of Management and Budget's review of NIFL's Information Collection Request. In that notice, the title and abstract of the notice were inadvertently omitted. The correction should be inserted after **DATES**, as follows:

Title: Equipped for the Future (EFF) Center for Training, Technical Assistance and Materials Development.

Abstract: The National Institute For Literacy (NIFL) was created by the National Literacy Act of 1991 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. NIFL is authorized to carry out a wide range of activities that will improve and expand the system for delivery of adult literacy services nationwide.

For the past four years, the NIFL has been working with a range of partners in states across the country to develop a customer-driven, standards-based, collaborative approach to adult literacy system reform. The EFF standards that have been developed through this effort define the critical skills and knowledge that enable adults to effectively carry out their responsibilities as workers, parents and family members, and citizens and community members. The standards have been developed and refined with the assistance of a broad cross section of literacy and basic skills programs, as well as with the advice and guidance of key stakeholders in the workforce development, family literacy, and civic participation movements in this country. By September of 1999 NIFL will have completed the major development work on the standards and will release a Users Guide designed to introduce key constituencies to the Standards and how they can be used for teaching and learning, program improvement, accountability, and system reform.

The EFF Center for Training, Technical Assistance and Materials Development will work collaboratively and with National Institute for Literacy (NIFL) to assure the effective integration of EFF into on-going adult education, family literacy, welfare-to-work, skill standards voluntary partnerships, and other workforce development systems.

Dated: June 7, 1999.

Sharyn M. Abbott,

Executive Officer, NIFL.

[FR Doc. 99–14748 Filed 6–9–99; 8:45 am]

BILLING CODE 8065–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date & Time: June 10 and 11, 1999; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 580, Arlington, Virginia 22230.

Contact Person: Dr. Alison Flatau, Control, Materials and Mechanics Cluster, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230. 703/306–1361, x5069.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3

Dated: June 4, 1999.
Karen J. York,
Committee Management Officer.
[FR Doc. 99–14705 Filed 6–9–99; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (1119).
Date and Time: June 21, 1999 (8:30 a.m. to 6:00 p.m.); June 22, 1999 (8:30 a.m. to 6:00 p.m. and June 23, 1999 (8:30 a.m. to 2:00 p.m.).
Place: National Science Foundation, 4201 Wilson Boulevard, Suite 320, Arlington, Virginia.
Type of Meeting: Closed.
Contact Person: Celeste Pea, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1682.
Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.
Agenda: To review and evaluate the Urban Systemic Initiatives (USI) Program and provide an assessment of program-level technical and managerial matters pertaining to proposal decisions and program operations.
Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the government in the Sunshine Act would be improperly disclosed.
Dated: June 4, 1999.
Karen J. York,
Committee Management Officer.
[FR Doc. 99–14709 Filed 6–9–99; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (#153).
Date/Time: July 8–9, 1999, 7:30 a.m.–5:30 p.m.
Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585 4201 Wilson Boulevard, Arlington, VA 22230.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.
Dated: June 4, 1999.
Karen J. York,
Committee Management Officer.
[FR Doc. 99–14706 Filed 6–9–99; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental and Integrative Activities: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Experimental and Integrative Activities (#1193).
Date/Time: June 24, 1999; 8:45 a.m. to 5:30 p.m.
Place: National Science Foundation, Room 1105.17, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Rita V. Rodriguez, Program Director for Minority Institutions Infrastructure Program, Division of Experimental and Integrative Activities, National Science Foundation, Room 1160, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.
Purpose of Meeting: To provide further evaluation and final recommendation of submitted Minority Institutions Infrastructure proposals submitted to NSF for financial support.
Agenda: To review and discuss recommendations concerning CISE Minority Institutions Infrastructure proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.
Dated: June 4, 1999.
Karen J. York,
Committee Management Officer.
[FR Doc. 99–14711 Filed 6–9–99; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).
Date & Time: June 22 & 23, 1999.
Place: Arlington Hilton, 8th Floor, 950 North Stafford St., Arlington, VA 22203.
Type of Meeting: Closed.
Contact Person: Dr. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1587.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate CoOP Program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.
Dated: June 4, 1999.
Karen J. York,
Committee Management Officer.
[FR Doc. 99–14707 Filed 6–9–99; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).
Date and Time: June 23 and 24, 1999.
Place: Arlington Hilton, 8th Floor, 950 North Stafford St., Arlington, VA 22203.
Type of Meeting: Closed.
Contact Person: Dr. Reeve, Section Head, National Science Foundation, 4201 Wilson

Blvd., Arlington, VA 22230. Telephone: (703) 306–1587.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate MARGINS Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 4, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–14708 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Microbial Observatories; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Microbial Observations, a sub-panel of the Advisory Panel for Genetics (1149).

Date and Time: Monday & Tuesday, June 21–22, 1999, 9:00 A.M.–5:00 P.M.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Philip Harriman, Program Director, and Charles Liarakos, Deputy Division Director for Microbial Observatories, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1440).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Microbial Observations Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 4, 1999

Karen York,

Committee Management Officer.

[FR Doc. 99–14710 Filed 6–9–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–398]

Florida Power & Light Co., Orlando Utilities Commission of the City of Orlando, Florida and Florida Municipal Power Agency; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–16, issued to the Florida Power & Light Company, *et al.* (the licensee), for operation of the St. Lucie Plant, Unit 2, located in St. Lucie County, Florida.

The proposed amendment would revise the Unit 2 Technical Specifications (TS) to clarify the nonconservative wording of TS 3/4.5.1, "Safety Injection Tanks," Surveillance Requirement 4.5.1.1.d.1 and would revise TS 3/4.5.2, "ECCS Subsystems—Tavg Greater Than or Equal to 325°F," Surveillance Requirement 4.5.2.e.1. The proposed changes would align the surveillance specification with the intent and design bases requirements intended to be verified.

On May 24, 1999, FPL staff submitted a license amendment request, described above, to amend their TS. On June 3, 1999, St. Lucie, Unit 2, began to experience problems unrelated to systems in the previously mentioned TS sections. These problems ultimately resulted in the plant entering TS Mode 3, "Hot Standby," on June 4, 1999, in order to repair and troubleshoot these unrelated equipment problems. Due to the nature of these repairs, the possibility that other emerging work activities may require a lower mode, and the desire of the NRC to avoid granting a notice of enforcement discretion, the staff has decided to pursue this exigent TS amendment. Without this amendment, St. Lucie Plant, Unit 2, could not resume power operation if they were to enter Mode 4, or "Hot Shutdown."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated. There are no physical changes to plant equipment or changes in plant operation that could initiate an accident or adversely affect accident mitigation or consequences. This PLA [proposed license amendment] provides a wording clarification of the Technical Specification Surveillance 4.5.1.1.d.1 requirements for verifying that each SIT [safety injection tank] isolation valve (V–3614, V–3624, V–3634, and V–3644) opens automatically prior to exceeding an actual or simulated RCS [reactor coolant system] pressure of 515 psia, such that design bases functions and safety are assured. This PLA also provides a wording clarification (Surveillance 4.5.2.e.1) for the automatic isolation and interlock action of the SDC [shutdown cooling] system (V–3480, V–3481, V–3651, and V–3652) from the RCS prior to exceeding an RCS pressure (actual or simulated) of 515 psia, such that design bases functions and safety are assured. These clarifications explicitly align the surveillance requirements with the intent and design basis functions for the valves being verified. As such, this change is considered administrative.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no physical changes to plant equipment or changes in plant operation that could create a new or different kind of accident. This PLA does not result in

any plant configuration changes or new failure modes. This PLA provides a wording clarification of the Technical Specification Surveillance 4.5.1.1.d.1 requirements for verifying that each SIT isolation valve (V–3614, V–3624, V–3634, and V–3644) opens automatically prior to exceeding an actual or simulated RCS pressure of 515 psia. This PLA also provides a wording clarification (Surveillance 4.5.2.e.1) for the automatic isolation and interlock action of the SDC system (V–3480, V–3481, V–3651, and V–3652) from the RCS prior to exceeding an RCS pressure (actual or simulated) of 515 psia. These clarifications explicitly align the surveillance requirements with the intent and design basis functions for the valves being verified. As such, this change is considered administrative.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a reduction in the margin of safety. This administrative PLA clarifies the surveillance requirements of the subject Technical Specifications by aligning the surveillances with the intent and design bases functions for the valves being verified. This PLA does not result in any plant configuration changes. As such, the assumptions and conclusions of the accident analyses in the UFSAR remain valid and the associated safety limits will continue to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently. Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 24, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no

significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 24, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Dated at Rockville, Maryland, this 7th day of June 1999.

For the Nuclear Regulatory Commission.

William C. Gleaves,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–14749 Filed 6–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 31 of Regulatory Guide 1.84, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Revision 31 of Regulatory Guide 1.85, "Materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 12 of Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Single copies of regulatory guides, both active and draft, may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, USNRC, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Active guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Copies of active and draft guides are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273; fax (202) 634–3343. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, MD, this 24th day of May 1999.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 99–14750 Filed 6–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1671]

Standard Review Plan for the Recertification of the Gaseous Diffusion Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of comment period.

SUMMARY: On February 19, 1999 (64 FR 8412), the Nuclear Regulatory Commission (NRC) published for public comment a draft NUREG–1671 entitled, "Standard Review Plan for the Recertification of the Gaseous Diffusion Plants." The comment period for this proposed NUREG expired on May 20, 1999. The United States Enrichment Corporation (USEC) has requested an extension of the comment period until November 19, 1999. Given that the renewal of the Certificates of Compliance for the gaseous diffusion plants is not scheduled again until December 31, 2003, the NRC has decided to reopen the comment period. The comment period now expires on November 19, 1999.

DATES: The comment period has been reopened and now expir4es on November 19, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send/written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm during Federal workdays.

Draft NUREG–1671 is available for inspection and copying for a fee at the NRC Public Document Room (PDR),

2120 L Street, NW, Washington, DC 20555–0001.

A free single copy of draft NUREG–1671, to the extent of supply, may be requested by writing to U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001. Draft NUREG–1671 is available on the World Wide Web at http://www.nrc.gov/NRC/NUREGS/indexnum.html. Comments may be submitted by selecting the "comments" link on the main page for the draft NUREG.

FOR FURTHER INFORMATION CONTACT: For information regarding draft NUREG–1671 contact Charles Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6755. Dated at Rockville, Maryland, this 3rd day of June 1999.

For the Nuclear Regulatory Commission.

Elizabeth Q. TenEyck,

Director, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–14762 Filed 6–9–99; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Renewal of Experimental Nonletter-Size Business Reply Mail Classifications and Fees; Changes in Domestic Classification and Fees

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule and accompanying fee changes.

SUMMARY: This notice sets forth the changes to Domestic Mail Classification Schedule (DMCS) section 931 and the accompanying Fee Schedule section 931 changes to be implemented as a result of the May 26, 1999, Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental Nonletter-Size Business Reply Mail Classification and Fees.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Tidwell, (202) 268–2998.

SUPPLEMENTARY INFORMATION: On March 10, 1999, pursuant to its authority under 39 U.S.C. 3621 *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on the renewal of the experimental classification and fees for weight-averaged nonletter-size Business Reply Mail. The PRC designated the filing as Docket No. MC99–1. On March 19, 1999, the PRC published a notice of the filing, with a description of the Postal Service's proposals, in the **Federal Register** (64 FR 13613–13617).

On May 14, 1999, pursuant to its authority under 39 U.S.C. 3624, the PRC issued to the Governors of the Postal Service its recommended decision on the Postal Service's request. The PRC recommended the extension of the experimental weight averaging classification for the term specified in the Postal Service's Request, subject to the fees proposed by the Docket No. MC99–1 parties in a Stipulation and Agreement.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendations on May 26, 1999. [Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Renewal Of Experimental Classification and Fees For Weight Averaged Nonletter-Size Business Reply Mail, Docket No. MC99–1.] The Governors determined to approve the Commission's recommendations. Set forth below are revised Domestic Mail Classification Schedule section 931 and Fee Schedule 931, which incorporate the classification and fee changes approved by the Governors.

Also on May 26, 1999, the Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to make the classification and fee changes approved by the Governors effective at 12:01 a.m. on June 8, 1999 (Resolution No. 99–6).

In accordance with the aforementioned Decision of the Governors and Resolution No. 99–6, the Postal Service hereby gives notice that these classification and fee changes will become effective at 12:01 a.m. on June 8, 1999. Implementing regulations also become effective at that time, as noted elsewhere in this issue.

Changes in the Domestic Mail Classification Schedule

The following material reflects changes to Domestic Mail Classification Schedule (DMCS) section 931 approved by the Governors of the United States Postal Service in response to the Postal Rate Commission's Recommended Decision in Docket No. MC99–1. This material also reflects changes to DMCS section 931 which will result from the June 7, 1999, expiration of provisions relating to the experimental classification and fees for nonletter-size Business Reply Mail subject to the reverse manifest method of accounting.

Domestic Mail Classification Schedule Section 931—Business Reply Mail

931 BUSINESS REPLY MAIL

931.1 Definitions

931.11 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

931.12 A business reply mail piece is nonletter-size for purposes of this section if it meets addressing and other preparation requirements, but does not meet the machinability requirements specified by the Postal Service for mechanized or automated letter sortation.

This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

931.2 Description of Service

931.21 The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons and labels under any one license for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

931.3 Requirements of the Mailer

931.31 Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

931.32 Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons, or labels.

931.4 Fees

931.41 The fees for business reply mail are set forth in Fee Schedule 931.

931.42 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.

931.43 An accounting fee as set forth in Fee Schedule 931 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

931.5 [RESERVED]

931.6 Experimental Weight Averaging Fees

931.61 [RESERVED]

931.62 A nonletter-size weight averaging monthly fee as set forth in Fee Schedule 931 must be paid each month during which the distributor's weight averaging account is active.

This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the weight averaging nonletter-size business reply mail experiment.

This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

931.7 Authorizations and Licenses

931.71 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Fee Schedule 931.

931.72 Except as provided in section 931.73, the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

931.73 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all business reply mail.

931.74 The license to mail business reply mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.

931.75 Authorization to pay experimental nonletter-size business reply mail fees as set forth in Fee Schedule 931 may be canceled for failure of a business reply mail advance deposit trust account holder to meet the standards specified by the Postal Service for the weight averaging accounting method.

This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.

Changes in DMCS Fee Schedule 931

The following material reflects changes to DMCS Fee Schedule 931 approved by the Governors of the United States Postal Service in response to the Postal Rate Commission's Recommended Decision in Docket No. MC99–1. This material also reflects changes to Fee Schedule 931 which will result from the June 7, 1999, expiration of provisions relating to the experimental classification and fees for nonletter-size Business Reply Mail subject to the reverse manifest method of accounting.

FEE SCHEDULE 931—BUSINESS REPLY MAIL

	Fee
Active business reply advance deposit account:	
Per piece:	
Qualified	$0.05
Nonletter-size, using weight averaging (experimental)	0.01
Other	0.08
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	0.30
Annual License and Accounting Fees:	
Accounting Fee for Advance Deposit Account	300
Permit fee (with or without Advance Deposit Account)	100
Monthly Fees for customers using weight averaging for nonletter-size business reply:	
Nonletter-size, using weight averaging (experimental)	600

Note: Experimental per piece and monthly fees are applicable only to participants selected by the Postal Service for the nonletter-size business reply mail experiment. The experimental fees expire February 29, 2000, or upon implementation of permanent fees for weight-averaged nonletter-size business reply mail, whichever comes first.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–14637 Filed 6–8–99; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23458; File No. 812–11518]

First Defined Portfolio Fund LLC

June 4, 1999.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or the "Act").

SUMMARY OF APPLICATION: Applicant seeks an order pursuant to Section 6(c) of the Act exempting Applicant and any other open-end investment company or series thereof advised by First Trust Advisors L.P. "First Trust Advisors") or any entity controlled by or under common control with First Trust Advisors that follows the same investment strategy as the Target 10 Series, the Target 5 Series, or the Global Target 15 Series, from the provisions of Section 12(d)(3) of the 1940 Act top the extent necessary to permit the Target 10 Series to invest up to 10.5%, the Target 5 Series to invest up to 20.5%, and the Global Target 15 Series to invest up to 7.5%, of their respective total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

Applicant: First Defined Portfolio Fund LLC.

Filing Date: The application was filed on February 18, 1999, amended and restated on May 25, 1999, and on June 3, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

a hearing on this application by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 30, 1999, and accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, 1001 Warrenville Road, Lisle, Illinois 60532, Suite 300.

FOR FURTHER INFORMATION CONTACT: Martha Peterson, Attorney, or Susan Olson, Branch Chief, Office or Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609 (tel. (202) 942–8090).

Applicant's Representations

1. First Defined Portfolio Fund LLC (the "Fund" or the "Applicant") is a registered, open-end management investment company (File No. 811–09235). It currently consists of seven series: the DOW℠ Target 5 Portfolio (i.e., the Target 5 Series), the Dow℠ Target 10 Portfolio (i.e., the Target 10 Series), the Global Target 15 Portfolio (i.e., the Global Target 15 Series), the Target 10 Large Cap Portfolio, the Target 15 Large Cap Portfolio, the Target Small Cap Portfolio and the 10 Uncommon Values Portfolio (collectively, the "Current Fund Series"). Applicant was organized under the laws of Delaware as a limited liability company on January 8, 1999. Under Delaware law, limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant ("Interest") represents an undivided interest in the stocks held in one of Applicant's portfolios.

2. Interests in the Fund and any future fund relying on the application are not and will not be offered directly to the public but will be offered to separate accounts which serve as funding vehicles for variable annuity contracts and other variable insurance products. Interests of each Current Fund Series are sold only to American Skandia Life Assurance Corporation Variable Account B ("Account B"), to fund the benefits of variable annuity policies issued by American Skandia Life Assurance Corporation ("American Skandia"). The variable annuity owners of Account B who have contract values allocated to any of the Applicant's portfolios have indirect beneficial rights in the Interests and have the right to instruct American Skandia with regard to how it votes the Interests that it holds in its variable annuity separate accounts.

3. First Trust Advisors is the advisor of each of the Funds's series.

4. Applicant states that the portfolio of the Target 10 Series consists of an investment portfolio of the common stocks of the ten companies in the Dow Jones Industrial Average (the "Dow") having the highest dividend yields as of a date specified in the prospectus (the "Stock Selection Date"). These ten companies are popularly known as the "Dogs of the Dow." Applicant also states that take portfolio of the Target 5 Series consists of the common stock of the five companies with the lowest per share stock price of the ten companies in the Dow that have the highest dividend yields as of the Stock Selection Date specified in the prospectus. Finally, Applicant states that the portfolio of the Global Target 15 Series consists of the common stocks of the five companies with the lowest per share stock price of the ten companies in each of the Dow, the Financial Times Industrial Ordinary Share Index ("FT Index"), and the hang Seng Index, respectively, that have the highest dividend yields in the respective index as of the applicable Stock Selection Date.

5. Applicant states that on the initial Stock Selection Date, First Trust Advisors will establish the percentage relationships among the portfolio securities of each issuer held by the Target 5 Series, the Target 10 Series and the Global Target 15 Series (the "Series"), respectively, for the period until the Series are rebalanced. The Target 5 Series, the Target 10 Series and Global Target 15 Series are adjusted annually on their Stock Selection Date. The Target 5 Series, the Target 10 Series and the Global Target 15 Series intend to invest in the portfolio securities determined by their respective strategies in relatively equal amounts. When additional amounts are invested in the Target 5 Series, the Target 10 Series and the Global Target 15 Series, additional securities will be purchased in numbers reflecting as closely as practicable the percentage relationship of the number of securities established on the Stock Selection Date. Similarly, sales of securities by each Series will attempt to replicate the percentage relationship of securities held in the portfolio of each Series. The percentage relationship among the number of securities in the Target 5 Series, the Target 10 Series and the Global Target 15 Series should therefore remain relatively stable until the Series are rebalanced. On the Stock Selection Date each year, First Trust Advisors will rebalance the portfolios with a new mix of securities in the Target 5 Series, the Target 10 Series and the Global Target 15 Series selected pursuant to the investment strategy of each Series. Applicant states that, given the fact that the market price of portfolio securities will vary after the Stock Selection Date, the value of the securities of each company as compared to the total assets of the Target 5 Series, the Target 10 Series and the Global Target 15 Series will fluctuate above and below the proportion established on the Stock Selection Date.

6. Applicant states that the Target 5 Series, the Target 10 Series and the Global Target 15 Series intend to invest in their portfolio securities determined by their respective strategies in relatively equal amounts and the Series may purchase securities in odd lots to achieve this goal. However, it may be more efficient for a Series to purchase securities in 100 or 50 share lots or in board lot size in the case of the Global Target 15 Series. A "board lot" is comprised of a fixed number of shares determined by the issuer. Most fees associated with trading, settling, and transfer of Hong Kong securities are charged on a per board lot basis. Accordingly, Applicant states that it is more efficient for the Global Target 15 Series to purchase securities in the specified board lot size. As a result, securities of a securities related issuer may represent (i) more than 10% but in no event more than 10.5% of the value of the Target 10 Series' total assets; (ii) more than 20%, but in no event more than 20.5% of the value of the Target 5 Series' total assets; and (iii) more than 6.7%, but in no event more than 7.5% of the value of the Global Target 15 Series, as of the close of business on the business day following the applicable Stock Selection Date. Although each Series will strive to purchase equal values of each of the stocks represented in a Series' portfolio, Applicant believes the flexibility to deviate slightly from this requirement is appropriate because it enables a Series to meet its purchase requirements while trying to obtain the best price. Applicant states that this is particularly important for the Global Target 15 Series because it is more

efficient to purchase Hong Kong securities on a board lot basis. Applicant submits that because the size of board lots vary widely, it is appropriate to permit the Global Target 15 Series to invest up to 7.5% of the value of its asset as of the close of business on the business day following the Stock Selection Date in the securities of a securities related issuer.

7. Applicant states that the objective of the Target 10 Series, the Target 5 Series and the Global Target 15 Series is to provide above-average total return. Each of these Series seeks its objective by investing in common stocks issued by companies that are expected to provide income and to have the potential for capital appreciation. These Series may or may not achieve that objective. Applicant states that the stocks held in these Series are not expected to reflect the entire applicable index or indices, and the prices of Interests are not intended to parallel or correlate with movements in the applicable index or indices. Applicant states that, generally, it will not be possible for all of the funds in the Target 10 Series Target 5 Series and Global Target 15 Series to be 100% invested in the prescribed mix of stocks at any time. Applicant states that First Trust Advisors will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate rounds lots of the portfolio securities.

8. The Dow consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the broader domestic stock market and of American industry. Applicant states that the Dow Jones & Company, Inc. is not affiliated with it and had not participated, and will not participate, in any way in the management of the Target 10 Series, Target 5 Series, or Global Target 15 Series or the selection of the stock purchased by such Series.

9. The FT Index consists of common stocks listed on the London Stock Exchange which are chosen by the editors of The Financial Times (London). The FT Index is an unweighted average of 30 companies representative of British industry and commerce. The companies in the FT Index are highly capitalized, major factors in their industries, and their stocks are widely held by individuals and institutional investors. All companies in the FT Index are listed and traded on the London Stock Exchange. The publishers of the FT Index are unaffiliated with the Fund and First Trust Advisors and do not participate in any way in the management of any Series or the selection of stocks purchased for a Series. Changes in the components of the FT Index are made entirely by the editors of The Financial Times without consultation with the companies, the stock exchange or any official agency. For the sake of continuity, changes are rarely made.

10. The Hang Seng Index consists of 33 of the 358 stocks currently listed on the Stock Exchange of Hong Kong Ltd. (the "Hong Kong Stock Exchange"). The Hang Seng Index is representative of four major market sectors: commerce and industry, finance, properties, and utilities. The Hang Seng Index is a recognized indicator of stock market performance in Hong Kong. In computing the Hang Seng Index, the companies included therein are weighted by market capitalization and therefore the index is strongly influenced by stocks with large capitalizations. The publishers of the Hang Seng Index are unaffiliated with the Fund and First Trust Advisors and do not participate in any way in the management of any Series or the selection of stocks purchased for a Series.

11. Applicant states that it is not a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). Nonetheless, Applicant states that it does not pay federal income tax on its interest, dividend income or capital gains. As a limited liability company whose interests are sold only to Account B, Applicant states that it is disregarded as an entity for purposes of federal income taxation. Applicant states that American Skandia, through its variable annuity separate accounts, is treated as owning the assets of the portfolios directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Applicant states that under current tax law, interest, dividend income and capital gains of Applicant are not taxable to Applicant, and are not currently taxable to American Skandia or to contract owners, when left to accumulate within a variable annuity contract.

12. Section 817(h) of the Code provides that in order for a variable contract which is based on a segregated asset account to qualify as an annuity contract under the Code, the investment made by that account must be "adequately diversified" in accordance with Treasury regulations.

13. Applicant states that the Target 10 Series, Target 5 Series and Global Target 15 Series must comply with the Section 817(h) diversification requirements. Therefore, Applicant states that First Trust Advisors may depart from the portfolio investment strategy, if necessary, in order to satisfy the Section 817(h) diversification requirements. Applicant represents that in all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each portfolio will be chosen solely according to the applicable formula described above and will not be based on the research opinions or buy or sell recommendations of First Trust Advisors.

14. Applicant represents that First Trust Advisors does not have any discretion as to which common stocks are purchased. Applicant states that securities purchased for the Target 10 Series, Target 5 Series, and Global Target 15 Series may include securities of issuers in the Dow (and with respect to the Global Target 15 Series, issuers in the FT Index and the Hang Seng Index as well as the Dow) that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter, or principal underwriter or their affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. The Target 10 Series, Target 5 Series, and Global Target 15 Series undertake to comply with all of the requirements of Rule 12d3–1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities related issuer.

2. Section 6(c) of the Act provides that the Commission by order upon application may, conditionally or unconditionally, exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the

exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant states that Section 12(d)(3) was intended: (a) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, (b) to prevent potential conflicts of interests; (c) to eliminate certain reciprocal practices between investment companies and securities related business; and (d) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. A potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely in the basis of investment merit. Applicant states that this concern does not arise in this situation. Applicant states that generally, neither the Applicant nor First Trust Advisors has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the applicable index or indices (which along with the publishers of the indices are unaffiliated with Applicant and First Trust Advisors). In addition, with respect to the Target 10 Series, the stock must also qualify as one of the ten companies in the Dow that has the highest dividend yields as of the Stock Selection Date. With respect to the Target 5 Series, the stock must qualify as one of the five companies with the lowest per share stock price of the ten companies in the Dow that have the highest dividend yields as of the Stock Selection Date. Finally, with respect to the Global Target 15 Series, the stock must qualify as one of the five companies with the lowest per share stock price of the ten companies in each of the Dow, FT Index, and Hang Seng Index, respectively, that has the highest dividend yields in the respective index as of the Stock Selection Date.

5. Applicant states that the relief requested is substantially similar to that granted to management companies serving as investment options underlying variable annuities. In addition, Applicant states that the Commission has granted similar Section 12(d)(3) relief to unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolios securities to the extent necessary to meet redemptions, pay expenses, and in other limited circumstances.

6. Applicant states that First Trust Advisors is obligated to follow the applicable investment formula described above as nearly as practicable. Applicant states that, like prior applicants for Section 12(d)(3) relief, securities purchased for each portfolio will be chosen with respect to the specified formula. Applicant states that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular portfolio would fail to be "adequately diversified" under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as an annuity under the Code. Applicant states that the likelihood of this exception arising is extremely remote. In such a situation, Applicant states that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant states that this limited discretion does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies in a securities related business that Section 12(d)(3) is designed to prevent.

7. Applicant states that the liquidity of the portfolios of the Target 10 Series and Target 5 Series is not a concern here since each common stock selected will be a component of the Dow, listed on the New York Stock Exchange, and among the most actively traded securities in the United States. Similarly, the liquidity of the portfolio of the Global Target 15 Series is also not a concern here as each common stock selected will be a component of the Dow, FT Index, or Hang Seng Index, listed on the New York Stock Exchange, London Stock Exchange, or the Hong Kong Stock Exchange and among the most actively traded securities in their respective countries.

8. In addition, Applicant states that the effect of a Series' purchase of the stock of parents of broker-dealers would be de minimis. Applicant states that the common stocks of securities related issuers represented in the Dow, FT Index or the Hang Seng Index, as the case may be are widely held with active markets and that potential purchases by a portfolio would represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

9. Another possible conflict of interest which has raised concern is where broker-dealers may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant states that because of the large market capitalization of the issuers in the Dow, FT Index and Hang Seng Index and the small portion of these issuers' common stock and trading value that would be purchased by a Series, it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a portfolio would be invested in the broker-dealer or a parent thereof.

10. Finally, another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer in which the company had invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application that no company whose stock is held by the Target 10 Series, Target 5 Series, or Global Target 15 Series nor any affiliate of such a company, will act as broker or dealer for the Target 10 Series, Target 5 Series, or Global Target 15 Series in the purchase or sale of any security for such Series' portfolio.

11. Applicant seeks relief not only with respect to the Fund and its Series described above, but also with respect to any other existing or future open-end investment company or series thereof that is advised by First Trust Advisors, or any entity controlled by or under common control with First Trust Advisors, and that follows an investment strategy that is the same as the investment strategy of the Target 10 Series, Target 15 Series, or Global Target 15 Series (the "Future Funds"). Applicant represents that any such Future Funds will comply with the terms and conditions of the Application, as amended.

12. Applicant represents that the terms of the relief requested are consistent with the relief previously granted in similar applications. Applicant states that the terms of the relief requested are consistent with the standards set forth in Section 6(c) of the Act.

Applicant's Conditions

Applicant agrees to the following conditions:

With respect to the Target 10 Series:

(a) The common stock is included in the Dow as of the applicable Stock Selection Date;

(b) The common stock represents one of the ten companies in the Dow that have the highest dividend yields as of the applicable Stock Selection Date;

(c) As of the close of business on the business day following the applicable Stock Section Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of such Series' total assets, but in no event more than 10.5% of the value of such Series' total assets;

2. With respect to the Target 5 Series:

(a) The common stock is included in the Dow as of the applicable Stock Selection Date;

(b) The common stock represents one of the five companies with the lowest dollar per share stock price of the ten companies in the Dow that have the highest dividend yields as of the applicable Stock Selection Date;

(c) As of the close of business on the business day following the applicable Stock Section Date, the value of the common stock of each securities related issuer represents approximately 20% of the value of such Series' total assets, but in no event more than 20.5% of the value of such Series' total assets;

3. With respect to the Global Target 15 Series:

(a) The common stock is included in the Dow, the Hang Seng Index, or the FT Index as of the applicable Stock Selection Date;

(b) The common stock represents one of the five companies with the lowest per share stock price of the ten companies on each of the Dow, the FT Index, and the Hang Seng Index, respectively, that have the highest dividend yield as of the applicable Stock Selection Date;

(c) As of the close of business on the business day following the applicable Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 6.7% of the value of such Series' total assets, but in no event more than 7.5% of the value of such Series' total assets; and

4. No company whose stock is held by the Target 10 Series, Target 5 Series, or Global Target 15 Series, or any affiliate thereof, will act as a broker or dealer for any Target 10 Series, and Target 5 Series, or any Global Target 15 Series in the purchase or sale of any security for such Series' portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that the order requested is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14757 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23857; 812–11622]

Norwest Advantage Funds, et al.; Notice of Application

June 3, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants, Norwest Advantage Funds ("NAF"), Core Trust (Delaware) ("Core Trust") (each, a "Trust"), Norwest Corporation Master Savings Trust (the "NW Plan"), Norwest Bank Minnesota, N.A. ("Norwest Bank"), and Norwest Investment Management, Inc. ("NIM") seek an order to permit an in-kind redemption of shares of the Fund by an affiliated person of the Fund.

FILING DATE: The application was filed on May 28, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, Two Portland Square, Portland, ME 04101 and Norwest Center, Sixth and Marquette, Minneapolis, MN 55490–1026.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Nadya Roytblat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NAF is organized as a Delaware business trust and is registered under the Act as an open-end management investment company. NAF offers shares in 39 separate series, including the Index Fund ("Fund"). As a feeder fund in a master-feeder structure, the Fund seeks to achieve its investment objective by investing all of its assets in the Index Portfolio of Core Trust ("Portfolio"). The investment objective of the Portfolio is to replicate the return of the S&P 500 Index. Core Trust is organized as a Delaware business trust and is registered under the Act as an open-end management investment company. Core Trust offers shares in 21 separate series, including the Portfolio.

2. Norwest Bank is a national bank and is a wholly-owned subsidiary of Wells Fargo & Company, a bank holding company. NIM is a wholly-owned subsidiary of Norwest Bank and is registered under the Investment Advisers Act of 1940 ("Advisers Act"). NIM serves as investment adviser to the Portfolio. The NW Plan is an employee benefit plan for affiliates of the Norwest Corporation, the parent corporation of Norwest Bank. The NW Plan owns approximately 29% of the Fund's outstanding voting securities.

3. Wells Fargo has determined to combine a number of existing employee benefit plans, including the NW Plan into a single plan ("New Plan"). The New Plan will not offer the Fund as an investment option for plan participants and will instead offer an index investment option in an index collective trust fund ("CTF") managed by Barclays Global Investors, N.A., which is not affiliated with any participant in the Transaction. The New Plan would redeem in-kind its interest in the Fund and ultimately reinvest the proceeds of the redemption in the CTF ("Transaction"). The Transaction is expected to take place on or about June 30, 1999.

4. The Fund's prospectus and statement of additional information

provide that, under certain circumstances, the Fund may satisfy a request for redemption in-kind with portfolio securities. The Transaction will be completed only if each Trust's board of trustees ("Board"), including the trustees who are not "interested persons" as that term is defined in Section 2(a)(19) of the Act ("Independent Trustees") approves the redemption in-kind.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include, among others, any person owning 5% or more of the outstanding voting securities of the other person and any person controlling, controlled by or under common control with the other person. Under section 2(a)(9) of the Act, a person that owns beneficially more than 25% of the voting securities of a company is presumed to control the company.

2. Applicants state that Norwest Bank, as the record holder on behalf of the NW Plan of 29% of the outstanding voting securities of the Fund, would be an affiliated person of the Fund. Applicants also state that because the Fund holds greater than 5% of the outstanding voting securities of the Portfolio, the Fund would be an affiliated person of the Portfolio, and Norwest Bank, through its subsidiary, NIM, could be viewed as an affiliated person of an affiliated person of the Portfilio. Applicants state that to the extent that an in-kind redemption could be viewed as involving the sale of portfolio securities from the Fund to the NW Plan, section 17a(a)(2) may prohibit the Transaction.

3. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the terms of the Transaction meet the standards set forth in section 17(b) of the Act. Applicants contend that the potential conflicts of interest posed by an in-kind redemption are that the portfolio securities redeemed would be selected or priced in a way that would be unfair to either the redeeming fund or the remaining shareholders. Applicants state that the redemption in-kind will not involve any choice as to the securities to be distributed. Applicants also submit that the portfolio securities to be distributed in-kind will be valued in the same manner as they would be valued for purposes of determining the Fund's net asset value.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Fund will distribute to the NW Plan pursuant to an in-kind redemption a pro rata share of each portfolio security held by the Portfolio ("In-Kind Securities"), provided that the Fund may distribute cash (i) in lieu of odd lot securities, fractional shares and accruals on such securities, and (ii) as proceeds from the liquidation of S&P 500 Index futures contracts held by the Portfolio.

2. The In-Kind Securities distributed to the NW Plan will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of the redemption setting forth a description of each security distributed in-kind, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14680 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41472; File No. SR–Amex–99–14]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange LLC Relating to a Reduction in the Morgan Stanley High Technology Index Value

June 2, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to split the Morgan Stanley High Technology Index ("Index") to one-third its current value.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose, of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to split the Morgan Stanley High Tech Index to one-third its current value and temporarily increase its position and exercise limits to three times their current levels as discussed more fully below. Position and exercise limits will revert to their applicable limits at the expiration of the furthest LEAP expiration month as established on the date of the split.

Morgan Stanley High Tech Index: On September 26, 1995, the Commission approved the Exchange's request to permit options trading on the Index.[3] Initially, the aggregate value of the stocks contained in the Index was reduced by a divisor to establish an index benchmark value of 200. The Index's current value, as of the close on April 7, 1999, taken from Bloomberg Financial Markets Commodities News

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 36283 (Sept. 26, 1995), 60 FR 51825 (Oct. 3, 1995).

and rounded to the nearest whole number, was approximately 1075.

As a consequence of the rising of the Index's value, premium levels for options on the Index have also risen. These higher premium levels have discouraged retail investors and some market professionals from trading options on the Index. The Exchange believes that decreasing the value of the Index may make the Index options more attractive to retail investors and other market professionals and therefore more competitive with other products in the marketplace. As a result, the Exchange is proposing to decrease the Index to one-third its present value.

To decrease the Index's value, the Exchange will triple the divisor used in calculating the Index. No other changes are proposed as to the components of the Index, its method of calculation (other than the change in the divisor), expiration style of the option, or any other Index specification.

The lower valued Index will result in substantial lowering of the dollar values of option premiums for Morgan Stanley High Technology contracts. The Exchange plans to adjust outstanding series similar to the manner in which equity options are adjusted for a 3-for-1 stock split. On the effective date of the split "ex-date," the number of outstanding Morgan Stanley option contracts will be tripled and strike prices reduced by a factor of three.

Position and Exercise Limits: Currently, the Index's position and exercise limits are equal to 15,000 contracts on the same side of the market. The Exchange proposes to triple the Index's position and exercise limits to 45,000 contracts on the same side of the market. This change will be made in conjunction with the simultaneous reduction of the Index's value and the tripling of the number of contracts.

Because the new limits will be equivalent to the Index's present limits, there is no additional potential for manipulation of the Index or the underlying securities. Further, an investor who is currently at the 15,000 contract limit will, as a result of the index value reduction, automatically hold 45,000 contracts to correspond with the lowered Index value. The position and exercise limits will revert to their then applicable limits at the expiration of the furthest non-LEAP (Long Term Equity Anticipation Security) expiration month as established on the date of the split.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–14 and should be submitted by July 1, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14682 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41471; File No. SR–BSE–99–1]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. To Allow Specialist Remote Access to the BEACON System

June 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt a one-year pilot program for remote specialist trading on the BEACON trading system, under which BSE specialists will be permitted to conduct regular trading activities off the BSE's trading floor. Proposed new language is italicized.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change's purpose was clarified and technical changes were made during a conversation between George Mann, General Counsel, BSE, and Joshua Kans, Attorney, Division of Market Regulation ("Division"), Commission, May 26, 1999.

CHAPTER XXXIII

Boston Exchange Automated Communication Order-routing Network (BEACON)

BEACON Remote

Sec. 9. BEACON terminals and related equipment will be provided to remote member firm locations for specialist trading. The remote terminals will be linked to the BEACON Trading System and will provide the same functionality as is available to on-floor specialists. All orders directed to remote specialists, including ITS commitments and administrative messages, will be from the Woburn data center through BEACON as occurs with on-floor specialists. Floor broker orders will be routed to remote specialists under the same criteria by which they are routed to on-floor specialists. There will be no remote floor brokerage services. The following shall apply to specialists participating in the 12-month BEACON Remote pilot program:

(a) All rules and policies of the Board of Governors of the Exchange shall apply except as specifically excluded or amended under this section.

(b) Only member firms with existing Exchange specialist operations are eligible for participation in the 12-month BEACON Remote pilot program.

(c) Any eligible firm may apply to the Market Performance Committee to participate in the pilot program.

(d) Unless the Market Performance Committee specifically authorizes otherwise, participating member firms shall be prohibited from trading remotely any securities which are currently being traded on-floor by that individual member firm.

(e) The number of specialty stocks traded remotely shall not exceed two hundred (200) per specialist account.

(f) Individual securities may not be traded by one specialist firm in more than one location.

(g) All layoff orders must be included in BEACON drop copy.[1]

(h) All rule references pertaining to the trading floor of the Exchange, including:

Chapter I–B, Section 2 ("Dealings on Floor—Hours");
Chapter I–B, Section 3 ("Dealings on Floor—Persons");
Chapter II, Section 2 ("Recording of Sales");
Chapter II, Section 6 ("Bids and Offers for Stocks");
Chapter II, Section 9 ("Trading for Joint Account");
Chapter II, Section 10 ("Discretionary Transactions");
Chapter II, Section 13 ("Trading Against Privileges");
Chapter II, Section 15 "Record of Orders from Offices to Floor");
Chapter II, Section 23 ("Dealing on Other Exchanges, or Publicly Outside the Exchange");
Chapter II, Section 31 ("Offering Publicly on the Floor");
Chapter VII, Section 2 ("Member-organization Accounts");
Chapter XV, Section 1 ("Registration");
Chapter XV, Section 2 ("Responsibilities");
Chapter XV, Section 3 ("Code of Acceptable Business Practices for Specialists");
Chapter XV, Section 5 ("Preference on Competitive Basis");
Chapter XV, Section 6 ("The Specialist's Book");
Chapter XV, Section 9 ("Opening Listed Stock");
Chapter XV, Section 10 ("Hours");
Chapter XV, Section 16 ("Status of Orders When Primary Market Closed");
Chapter XV, Section 18 ("Procedures for Competing Specialists");
Chapter XVI ("Special Offerings");
Chapter XVIII, Section 1 ("Penalties");
Chapter XVII, Section 4 ("Imposition of Fines for Minor Violation(s) of Rules and Floor Decorum Policies");
Chapter XX, Section 6 ("Gratuities");
Chapter XXII, Section 2 ("Capital and Equity Requirements");
Chapter XXXI, Section 2 ("Intermarket Trading System");
Chapter XXXI, Section 3 ("Pre-Opening Application");
Chapter XXXI, Section 4 ("Trade-Throughs and Locked Markets");
Clearing Corporation Rule 3, Section 2 ("Dual Member Broker/Dealer Accounts");
Clearing Corporation Rule 3, Section 3 ("Boston Representative Broker/Dealer Accounts");
Clearing Corporation Rule 3, Section 4 ("Specialist Member");
Clearing Corporation Rule 4, Section 4 ("Bills Rendered");

shall be deemed to include any trading done remotely through BEACON, and all such trades shall be deemed to be executions on the Exchange.

(i) A written confidentiality policy regarding the location of equipment and access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading.

(j) Floor policies regarding dress code, smoking, identification and visitors shall not apply.

(k) All Exchange correspondence, memoranda, bulletins and other publications shall be sent to BEACON Remote specialists via electronic mail through BEACON and via U.S. mail or overnight delivery.

(l) All BEACON Remote specialists will have stentofon, as well as telephone access, to the physical trading floor.

(m) Servicing of BEACON terminals and related equipment shall be by Exchange authorized and trained personnel only.

(n) The [4]*Exchange's examination program would include the remote specialist operations of all firms.*

(o) Any arbitration or disciplinary action arising out of trading activity pursuant to this section would be held at the physical offices of the Exchange located in Boston.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to establish a limited scope, one-year pilot program to provide for remote specialist trading through the BEACON system.[5] At present, access to the BEACON system is provided only to specialists located on the Exchange's physical trading floor, and all market-making occurs on that physical floor. The Exchange views the remote specialist proposal as the natural first

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[1] *Drop copy is a BEACON system enhancement which permits the electronic loading of layoff system trade data for realtime specialist position updating, clearance, settlement and audit trail purposes.*[4]

[4] In its filing, the Exchange used the term "DOT system trade data" in this footnote. The Exchange now proposes to use the term "layoff system trade data." Conversation between George Mann, General Counsel, BSE, and Joshua Kans, Attorney, Division, Commission, May 26, 1999.

[5] The BEACON system is the Exchange's securities communication, order-routing and execution system. *See generally* BSE Rules, Chapter XXXIII.

step in the progression from a manual open outcry system of trading to an automated electronic trading system. Although the Exchange believes that many traditional exchanges are considering eliminating their trading floors, due to the numerous electronic communications networks with which the Exchange must now compete, the Exchange seeks to provide its specialist member firms with the option of virtual access to the Exchange's physical floor via a remote BEACON terminal located in the firms' offices, while retaining the ability to centralize specialists on the Exchange's physical trading floor.

The Exchange proposes to implement the program by adding Section 9, "BEACON Remote," to Chapter XXXIII of the Exchange's rules. Because of the framework of the BEACON trading system and the BEAM on-line surveillance system,[6] all trades on the Exchange occur within the confines of BEACON and are monitored real-time BEAM. Section 9 would permit specialist operations to function remotely within the confines of these Exchange systems, and within the framework of the existing rules of the Exchange, although those operations would not be physically conducted on the trading floor. As such, all executions that occur within the BEACON System, whether on-floor or remote, would be considered executions occurring on the floor of the Exchange, not unlike executions which occur today on the Cincinnati Stock Exchange, which has no physical trading floor. Both remote and on-floor specialists would have equal access to all BEACON functionalities, including access to the Intermarket Trading System ("ITS") through the recently developed BEACON System interface.

The Exchange is proposing to permit remote specialist access to the BEACON system for a 12-month pilot program. The Exchange would provide BEACON terminals and related equipment to remote member firm locations for specialist trading during this period. The remote terminals will be linked to the BEACON Trading System utilizing dedicated lines and connected via the same wide area network currently utilized to link the physical trading floor to the Woburn data center. These terminals will provide the same functionality as is available to on-floor specialists. All orders directed to remote specialists, including ITS commitments and administrative messages, will be from the Woburn data center through BEACON as occurs with on-floor specialists. Floor brokers orders will also be routed to remote specialists under the same criteria by which they are routed to on-floor specialists. Members will not be able to use the BEACON Remote pilot to conduct floor brokerage services.

Proposed Section 9(a) would provide that all rules and policies of the Board of Governors of the Exchange shall apply except as specifically excluded or amended. Accordingly, all of the Exchange's membership, net capital, equity, examination, specialist performance evaluation, competing specialist, stock allocation, trading and specialist rules and policies would apply equally to remote specialists. Surveillance and compliance monitoring of remote specialist trading activity would occur through BEAM as it does today for on-floor specialists, and trading issues with a remote specialist would be addressed via telephone and e-mail (as opposed to in person on the trading floor).

The following limitations will apply to remote specialists participating in the 12-month pilot program; Proposed Section 9(b) would provide that only existing Exchange specialist operations are eligible to participate. Proposed Section 9(e) would provide that the total number of specialty stocks traded remotely shall not exceed two hundred (200) per specialist account. Proposed Section 9(d) would provide that securities currently traded on-floor by a firm cannot be moved to a remote location unless specifically authorized by the Exchange's Market Performance Committee. Proposed Section 9(g) would provide that all layoff orders must be included in BEACON drop copy, meaning that remote specialists would be required to utilize layoff systems that are electronically linked to BEACON to help ensure that a surveillance audit trail is created by the drop copy report.[7]

In addition, the following provisions shall apply to the program: any eligible firm may apply to the Exchange's Market Performance Committee to participate in the pilot program (Section 9(c)); a specialist firm may not trade individual securities in more than one location (Section 9(f)); all rule references pertaining to the trading floor of the Exchange shall be deemed to include any trading done remotely through BEACON, and all such trades shall be deemed to be executions on the Exchange (Section 9(h)); a written confidentiality policy regarding the location of equipment and access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading (Section 9(i))[8]; floor policies regarding dress code, smoking, identification and visitors shall not apply (Section 9(j))[9]; all Exchange correspondence, memoranda, bulletins and other publications shall be sent to BEACON Remote specialists via electronic mail through BEACON and via U.S. mail or overnight delivery (Section 9(k)); all BEACON Remote specialists will have stentofon, as well as telephone access, to the physical trading floor (Section 9(l)[10]; servicing of BEACON terminals and related equipment shall be by Exchange authorized and trained personnel only (Section 9(m)); the Exchange's examination program would include the remote specialist operations of all firms (Section 9(n))[11]; and any arbitration or disciplinary action arising out of trading activity pursuant to this section would be held at the physical offices of the Exchange located in Boston (Section 9(o)).

(2) Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[12] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in

[6] The BEAM system provides the Exchange with real-time capabilities to monitor specialist trading activity within the BEACON system.

[7] The drop copy system generates a report of all executions of orders laid off to other market centers for purposes of specialist position updating, clearance and settlement, and audit trail. BSE members may layoff orders to the New York Stock Exchange through the Designated Order Turnaround ("DOT") system and to the American Stock Exchange through the Post Execution Reporting ("PER") system.

[8] Proposed confidentiality policies should provide that BEACON terminals would be physically located in a secure area without open access, and that members have made a specific person responsible for ensuring compliance.

[9] The Exchange adopted those floor policies in its Minor Rule Plan, pursuant to BSE Rules chapter XVIII, section 4.

[10] BSE's stentofon system provides electronic voice communications among BSE members.

[11] The Exchange conducts a full examination of the books and records of those member firms assigned to it as the Designated Examining Authority ("DEA"). In addition, the Exchange conducts a more limited examination of the books and records of all non-DEA member firms with specialist operations on the floor (limited to books and records related to specialist operation only). This review would be expanded to include the examination of the books and records of all firms with remote specialist operations.

[12] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–99–1 and should be submitted by July 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14684 Filed 6–9–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41473; File No. SR–NASD–99–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Locked and Crossed Markets that Occur at or Prior to the Market's Open

June 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Propoeed Rule Change

Nasdaq is proposing to amend the portion of NASD Rule 4613(e) regarding locked and crossed market conditions[4] that occur prior to the market's opening. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

4613. Character of Quotations.

(a)–(d) No changes.

(e) Locked and Crossed Markets.

(1) A market shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) the bid quotation entered is equal to (*"lock"*) or greater than (*"cross"*) the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to (*"lock"*) or less than (*"cross"*) the bid quotation of another market maker entering quotations in the same security.

[The prohibitions of this rule include the entry of a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time if such quotation continues to lock or cross the market at the market's opening, and requires a market maker or ECN that enters a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time to take action to avoid the lock or cross at the market's open or immediately thereafter, but in no case more than 30 seconds after 9:30:00 a.m.]

(C) *Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening.*

(i) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a market maker that is a party to a lock/cross because the market maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker ("party to a lock/cross") may, beginning at 9:20 a.m. Eastern Time, send through Nasdaq's SelectNet system (or its successor system) a message of any size that it at the receiving market maker's quoted price ("Trade-or-Move Message"). Any market maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(ii) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.—If a market maker locks or crosses the market between 9:20 and 9:29:59 a.m. Eastern Time, the market maker must immediately send through SelectNet to the market maker whose quotes it is locking or crossing a Trade-or-Move Message that is at the receiving market maker's quoted price and that is for at least 5,000 shares (in instances where there are multiple market makers to lock/cross, the locking/crossing market maker must send a message to each party to the lock/cross and the aggregate

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On May 14, 1999, Nasdaq amended its proposal to require a market participants that sends a Trade-or-Move Message (as defined below) to place a modifier on the message indicating the message is a Trade-or-Move Message. *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, date May 14, 1999 ("Amendment No. 1").

[4] A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

size of all such messages must be at least 5,000 shares). A market maker that receives a Trade-or-Move Message during this period and that is party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(iii) A market maker that sends a Trade-or-Move Message pursuant to subparagraphs (e)(1)(C)(i) or (e)(1)(C)(ii) of this rule must append to the message a Nasdaq-provided symbol indicating that it is a Trade-or-Move Message.

(2)–(3) No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing amendments to NASD Rule 4613(e) that would alter the obligations regarding locked and crossed markets that occur prior to the market's open.

Background

Nasdaq has observed a number of locked/crossed markets on the open. This often occurs because a member will enter a quote prior to the open that will lock/cross the market on the open. Nasdaq's current role regarding locked/crossed markets has alleviated some, but not all, of the locked/crossed market situations. Specifically, current NASD Rule 4613(e) provides that if a market participant enters a quote at or after 9:25 a.m. that would lock/cross the market on the open, the locking/crossing market participant must take action when the market opens, but in no case later than 9:30:30 a.m., to unlock/uncross the market by (for example) sending a SelectNet message to the market participant(s) it is locking/crossing. Under the current rule, however, locks/crosses still occur at the open because the passively locked/crossed market participant may not respond immediately to the incoming SelectNet message. To address ongoing concerns with locked and crossed markets, Nasdaq is proposing the following amendments to NASD Rule 4613(e).

Generally, the proposed amendments provide that if a market participant is a party to a locked/crossed market prior to the open, beginning at 9:20 a.m. the market participant has the *right* to send the other parties to the lock/cross a SelectNet message ("Trade-or-Move Message"), to which the receiving market participant(s) must respond in one of two ways. Specifically, the receiving market participant(s) must respond to the Trade-or-Move Message within 30 seconds by either: (1) Trading with the message for the full size of the message; or (2) moving its quotation to a price level that unlocks or uncrosses the market. Thus, the receiving market participant has the choice of either trading in full or moving its quote out of the way.[5] Under the proposal, a market participant's *obligations* would vary slightly depending on whether the lock/cross occurs prior to or after 9:20 a.m., as specified below.

Locks/Crosses Occurring At or After 9:20 and Before 9:30 a.m.

If a market participant locks/crosses the market between 9:20 a.m. and 9:29:59 a.m. Eastern Time, the market participant would be required to send—prior to or immediately after entering a locking/crossing quotation—a Trade-or-Move message(s) that was for at least an aggregate size of 5,000 shares to the party or parties that he or she is locking/crossing. (If there are multiple market participants being locked/crossed, the proposed rule will require the "initiating" or "active" locker to send Trade-or-Move Messages—whose aggregate size was at least 5,000 shares—to all parties to the lock/cross.)[6] The receiving market participant will then be required to trade in full with the incoming message within 30 seconds or move its quote out of the way within 30 seconds.[7] Prior to sending a Trade-or-Move Message, a market participant must append to the SelectNet message a symbol indicating that such message has been designated as "Trade-or-Move." Nasdaq is requiring market participants to append such a symbol so that the receiving market participant knows that it owes some obligation to the incoming message.[8] Of course, a market participant could accept a portion of the incoming Trade-or-Move Message, but would be required to move its quote within the 30 second time period.

In addition, if the receiving market participant trades in full with the message (*i.e.*, up to the full amount of the incoming Trade-or-Move-Message), the market participant may maintain its locked/crossed quotes and not move if it wishes to trade more shares. Thereafter, any party to the lock/cross would have the right, but not the obligation, to send a Trade-or-Move Message to any other party to the lock/cross, and any party to the lock/cross that receives a Trade-or-Move Message would then have the obligation to trade or move within 30 seconds.

Locks/Crosses Prior to 9:20 a.m.

For locks/crosses that occur prior to 9:20 a.m. Eastern Time, any party to a lock/cross would have the right but not the obligation *beginning at 9:20 a.m.*, to send a Trade-or-Move Message of any size to any party to the lock/cross. Similar to the above, any party to the lock/cross that receives a Trade-or-Move Message would have the obligation, beginning at 9:20 a.m., to trade or move within 30 seconds. Unlike locks/crosses that occur at or after 9:20 a.m., there is no requirement that the "actively" locking/crossing market participant send a specific number of shares to the parties to the lock/cross. The rationale for this distinction is that it is often difficult to determine which party actively locked/crossed the market in the period prior to 9:20 a.m. because market participants often do not actively

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[5] As discussed more fully below, the receiving market participant also may trade with a portion of the incoming Trade-or-Move Message, and move its quote. A market participant that trades in full with the incoming Trade-or-Move Message is not required to move its quote.

[6] Thus, a market participant would be prohibited from locking/crossing the market in the 10-minute period prior to the open unless the actively locking/crossing market participant is willing to trade at least 5,000 shares.

[7] Nasdaq states that because the proposed rule will apply to quotations entered prior to the market's open, the market participant receiving a Trade-or-Move Message prior to the open would have no liability under NASD Rule 4613(b) ("NASD's Firm Quote Rule"). In addition, Nasdaq believes that a market maker receiving a Trade-or-Move Message prior to the open would owe no liability to the message under SEC Rule 11Ac1–1 ("SEC Firm Quote Rule"). Thus, a market maker would be permitted to move its quote without trading upon the receipt of what, during market hours, would be a SelectNet "liability" order.

[8] *See* Amendment No. 1, *supra* note 3. Specifically, Nasdaq plans to change its system so that a Trade-or-Move SelectNet message may be encoded with the following message: "trad or mov." This change will allow market participants to distinguish a Trade-or-Move Message (to which the recipient has an obligation to respond under the proposed rule) from other pre-opening messages that a market participant may receive.

monitor their quotes prior to that time. This is also the reason why, under the proposed rule, the obligations and rights of the parties to the lock/cross do not start until 9:20 a.m.

Nasdaq believes that the 9:20 a.m. benchmark establishes a reasonable point in time for when market participants should be actively monitoring their quotes, responding to incoming Trade-or-Move Messages, and monitoring prospectively for whether they are the actively locking/crossing market participants in the market and thus required to send out a Trade-or-Move Message for at least an aggregate of 5,000 shares, It is Nasdaq's view that if a party receives a Trade-or-Move Message at or after 9:20 a.m. and stays at its quote without trading at all or trading in full, this generally would be considered a violation of the locked/crossed market rule, as amended by this proposal, and would not be considered a violation of NASD's Firm Quote Rule.[9]

The following are examples of how the proposed rule would work.

At 9:21 a.m., MMA locks four market participants—MMB, MMC, MMD and MME—each quoting 1,000 shares. Since the lock has occurred after 9:20 a.m., MMA is required to send a Trade-or-Move Message for at least 5,000 shares to each of these four market makers. Accordingly, MMA sends a Trade-or-Move Message for 1,100 shares to MMB, who declines and moves. MMC receives a 1,500 share order, fills it partially (1,000 shares), and, as required, moves its quote out of the way. MMD receives a message for 400 shares, fills the message in full, and then moves down 1/8 to unlock the market.[10] MME receives a 2,000 share message, and fills it completely; MME is permitted to remain at her quote, but is not required to do so. MME also may send a Trade-or-Move Message to MMA, who must trade or move, or MMA may send another Trade-or-Move Message to MME, who then would have to trade or move.

As a second example, assume that at 9:18 a.m., MMW and MMX are bidding 74, and MMY and MMX enter offer prices of 73, thus crossing the market. Since it is before 9:20 a.m., no Trade-or-Move Messages may be sent yet. At 9:20 a.m., all four market participants would have the right to send Trade-or-Move Messages of any size to either of the two market participants crossing them. Any party not filling such an order in full within 30 seconds would have to move its quote out of the cross.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[11] and Section 11A[12] of the Act. Section 15A(b)(6) requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. An association's rules may not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

Nasdaq believes that the proposed amendments to NASD rule 4613(e) are consistent with sections 15A(b)(6) and 11A(a)(1)(C) of the Act. By attempting to resolve locks and crosses on the market's opening, the proposed amendments foster cooperation and coordination with members. In addition, Nasdaq believes that the proposal also will ensure the fair and orderly operation of Nasdaq and the protection of investors, as its purpose is to limit disruptions to the Nasdaq market and the potential for harm to investors.

B. Self-Regulation Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–23 and should be submitted by July 1, 1999.

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[9] If a market maker receives a Trade-or-Move Message within the last 30 seconds before the opening (*i.e.*, at or after 9:29:30 a.m.), the market maker still has the obligation to trade or move within 30 seconds, even if the end of that 30 seconds occurs after the market's open. Unlike today, a market that actively locked the market prior to the open would not be required to resend to the parties to the lock/cross a SelectNet message at or after 9:30:00 a.m., in an attempt to unlock/uncross the market on the open.

However, a market maker that wishes to enter a locking/crossing quote at or after 9:30:00 a.m. would be required to use reasonable means to avoid locking/crossing the market by, for example, sending a SelectNet message to the party (or parties) it will lock/cross. *See NASD Notice to Members 97–49.*

[10] Because MMD has filled the message in full, he is not required to move his quote.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78k–1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14681 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41469; File No. SR–NYSE–97–25]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change to Amend its Rule 382 Relating to Carrying Agreements

June 2, 1999

I. Introduction

On September 16, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 382 to monitor the activities of introducing firms that are parties to carrying agreements.

The proposed rule change was published for comment in the **Federal Register** on October 14, 1997.[3] Seven comment letters were received on the proposal.[4] On November 12, 1998, the NYSE submitted to the Commission a letter responding to the issues raised in the comment letters received by the Commission.[5] On November 25, 1998, the NYSE submitted Amendment No. 1 to the proposed rule change.[6] This order approves the proposed rule change and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The NYSE proposes to revise NYSE Rule 382 to enhance the ability of the Exchange and other securities self-regulatory organizations ("SROs") to monitor the activities of introducing firms that are parties to carrying agreements. NYSE Rule 382 governs the contractual agreements, known as "carrying agreements. NYSE Rule 382 governs the contractual agreements, known as "carrying agreements," between a carrying firm and an introducing firm, that allocate certain functions and responsibilities associated with the carrying of, and transactions in, customer accounts. Generally, the proposed amendments to NYSE Rule 382 would provide for increased monitoring of customer complaints regarding introducing firms, require specific procedures for introducing firms requesting reports offered by carrying firms, and address procedures and responsibilities of introducing firms that are permitted to issue negotiable instruments of the carrying firms.

Specifically, the proposal, as amended, would require a carrying firm to provide promptly any written customer complaint it receives regarding the introducing firm to the introducing firm and the introducing firm's Designated Examining Authority ("DEA"). In addition, the proposal would require that the carrying firm notify the customer who submitted the written complaint in writing that the complaint was received and that it was provided to the introducing firm and the DEA. As initially proposed, the carrying firm would also have been required, in response to customer complaints, to inform customers of their right to transfer their accounts to another broker-dealer. As discussed further below, this provision was subsequently deleted from the proposal in response to comment letters received by the Commission.[7]

The proposal also would require a carrying firm to provide to each of its introducing firms, at the beginning of the agreement and annually thereafter, a list of all exception and other reports that it offers to assist its introducing firms in supervising and monitoring their customer accounts. The proposal would require each introducing firm to notify the carrying firm of those specific reports offered that should be provided to the firm.[8]

In addition, the proposal would require the carrying firm to provide written notice, on an annual basis within 30 days of July 1 of each year (*i.e.*, between June 1 and July 31), to the introducing firm's Chief Executive Officer, Compliance Officer, and DEA, of the list of reports offered to the introducing firm and to specify those reports actually requested or supplied as of the report date.

The Exchange also proposes to amend its original filing to conform its rule language to the amended proposal submitted by the National Association of Securities Dealers, Inc. ("NASD").[9] The proposal, as amended, would grant the NYSE the discretion, upon a showing of good cause, to grant exemptions from the requirements relating to the handling of customer complaints and the provision of exception reports in instances where the introducing firm is an affiliated entity of the carrying firm.[10]

Finally, the proposal addresses those agreements that allow introducing firms to issue negotiable instruments (*e.g.*, checks) to their customers, for which the carrying firm is the maker or drawer. The proposed rule provides that the introducing firm must represent to the carrying firm that it has supervisory procedures in place, which it enforces and which are satisfactory to the carrying firm, with respect to the issuance of such instruments.

III. Summary of Comments

The Commission received seven comment letters on the proposed rule change.[11] As discussed further below, all of the commenters, except one,[12] generally opposed the proposal: four expressed concerns that the proposal was unnecessarily broad,[13] while two stated that the proposal was inadequate

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* Securities Exchange Act Release No. 39200 (October 3, 1997), 62 FR 53369.

[4] *See* Letters to Jonathan Katz, Secretary, Commission, from Mark R. Grewe, Schroder & Co. Inc., dated October 14, 1997 ("Schroder"); Jonathan Kord Lagemann, Esq., dated October 30, 1997; Olga Monetti, dated October 29, 1997; Stephen Tenison, Senior Vice President-Compliance, Global Financial Services, L.L.C., dated October 29, 1997 ("Global"); J. David Coker, Coker & Palmer, Inc., dated October 29, 1997 ("Coker & Palmer"); Erich Sokolower, Managing Director, Repex & Co., Inc., dated October 31, 1997 ("Repex"); and Thomas J. Berthel, Chairman, Local Firms Committee, Edward Schlitzer, Chairman, Clearing Firms Committee, and Thomas A. Franko, Ad Hoc Clearing Subcommittee, Securities Industry Association, dated November 3, 1997 ("SIA").

[5] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 11, 1998 ("NYSE Response Letter").

[6] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division, Commission, dated November 24, 1998 ("Amendment No. 1"). In Amendment No. 1, NYSE proposes to amend its filing to: (1) delete the proposed requirement that, in response to customer complaints, the carrying firm must notify the customers of their right to transfer their accounts; and (2) add a good cause exclusion from certain provisions of the proposed rule when the introducing firm is an affiliated entity of the carrying firm.

[7] *See* Amendment No. 1, *supra* note 6.

[8] In addition, the carrying firm will be required to retain and preserve copies of the specific reports requested by, or supplied to, the introducing firm or have the capability to: (1) recreate copies of reports provided, or (2) make available the report format and data elements provided in the original reports necessary to recreate the original reports.

[9] *See* Amendment No. 1, *supra* note 6.

[10] *Id.*

[11] *See* note 4, *supra*.

[12] *See* SIA Letter, *supra* note 4.

[13] *See* Letters from Schroder, Global, Coker & Palmer, and Repex, *supra* note 4.

as it failed to hold carrying firms responsible for the actions of their introducing firms.[14] Two of the commenters specifically opposed any attempts by the NYSE to hold carrying firms liable for the actions of their introducing brokers.[15] In response, the NYSE stated that the proposed rule change would not hold the carrying firms responsible for the actions of their introducing firms, noting, "the proposals are not intended to alter the fundamental carrying/clearing contractual relationship."[16]

A. Customer Complaints

Two of the comment letters stated that requiring carrying firms to send copies of written customer complaints to the introducing firm's DEA is unnecessary because the introducing firm is already required to submit information about its customer complaints to its DEA.[17] In response, the NYSE distinguished the proposed customer complaint requirements from existing reporting rules, such as NYSE Rule 351, which require statistical information about customer complaints to be provided to the DEA on a quarterly basis. The NYSE noted that the proposal would supplement, rather than duplicate, the existing reporting requirements by requiring that copies of actual written complaints be provided immediately to the DEA.[18]

Three comment letters expressed concerns that the proposed notification provisions advising complaining customers of their rights to transfer their accounts would be misleading as it could create the perception that the subject of the complaint necessarily warranted a transfer.[19] For example, one commenter pointed out that the proposed statement "might well cause the customer to infer wrongdoing and take his or her business elsewhere, regardless of the merit of the complaint or the underlying circumstances * * *."[20] Another commenter suggested that the proposed response "should be reserved for only serious allegations where a transfer of account is an appropriate response."[21] In response, the NYSE proposes to delete this provision from its proposal, noting that investor education initiatives may more effectively accomplish the objectives of the proposed requirements.[22]

B. Exception Reports

One commenter believed that the proposed requirement that carrying firms provide a notice, on an annual basis, of reports offered to their introducing firms was unnecessary and served no ongoing useful purpose.[23] This commenter recommended that the DEA and introducing broker should be permitted to choose whether or not to receive such annual notices.[24] In response, the Exchange reaffirmed its belief that the annual notice would serve as an important regulatory tool for the introducing firm's DEA by enhancing the DEA's ability to conduct on-site examinations and by providing useful information regarding the specific data available to the introducing firm to monitor its customer accounts.[25] The NYSE further noted that the proposal would require carrying firms to provide information about updated, and possibly reformatted, reports that might be useful to the introducing firm, as well.[26]

C. Negotiable Instruments

One commenter noted that the representations required of the introducing firm that it have supervisory procedures in place with respect to check writing that are "satisfactory" to the carrying firm places responsibility on the carrying firm that may be inconsistent with other requirements, noting that NYSE rule 382(b)(4) permits the responsibility for the receipt and delivery of funds to be allocated pursuant to the carrying agreement.[27] The NYSE stated that although the carrying firm, as the maker or drawer of the negotiable instrument, should be satisfied as to the adequacy of the introducing firm's procedures relating to the issuance of such negotiable instruments, the proposal was not intended "to impose supervisory obligations on the carrying organization that are not part of its contractual allocated responsibilities or part of its supervisory responsibilities pursuant to Rule 382."[28]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[29] and the rules and regulations thereunder applicable to a national securities exchange.[30] The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section (b)(5) of the Act[31] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, by assisting the NYSE to better monitor the activities of introducing firms, should help to prevent fraudulent and manipulative acts and practices. The proposal and the companion proposal submitted by the NASD[32] represent an important step toward addressing recent concerns about questionable sales practices and potentially fraudulent activity engaged in by some introducing firms.[33] The Commission expects that the proposed rules, by establishing procedures for the handling of customer complaints, the offer and receipt of exception reports, and the introducing firm's issuance of negotiable instruments of the carrying firm, should assist the SROs in their regulatory efforts. In addition, by requiring carrying firms to provide to their introducing firms copies of customer complaints and lists of available exception reports, the proposal should help introducing firms to better monitor their customer accounts.

A. Customer Complaints

The proposed customer complaint provisions of the proposal would require carrying firms to provide any written customer complaint they receive regarding the introducing firm to the introducing firm and the introducing firm's DEA. In addition, the proposal would require that the customer who submitted the written complaint be

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[14] *See* Letters from Lagemann and Monetti, *supra* note 4.

[15] *See* Letters from Schröder and SIA, *supra* note 4.

[16] *See* NYSE Response Letter, *supra* note 5.

[17] *See* Letters from Schroder and Global, *supra* note 4.

[18] *See* NYSE Response Letter, *supra* note 5.

[19] *See* Letters from Schroder, Global, and SIA, *supra* note 4.

[20] *See* SIA Letters, *supra* note 4.

[21] *See* Global Letter, *supra* note 4.

[22] *See* Amendment No. 1, *supra* note 6; *see also* NYSE Response Letter, *supra* note 5.

[23] *See* Global Letter, *supra* note 4.

[24] *Id.*

[25] *See* NYSE Response Letter, *supra* note 4.

[26] *Id.*

[27] *See* SIA Letter, *supra* note 4.

[28] *See* NYSE Response Letter, *supra* Note 5.

[29] 15 U.S.C. 78f.

[30] In approving this rule, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(5).

[32] The Commission is simultaneously approving the NASD's amended proposal, File No. SR–NASD–97–76.

[33] The Commission encourages the NYSE, the NASD, and others to continue to consider additional measures focusing on introducing and clearing firm processes that would assist in detecting and deterring fraudulent and manipulative activities.

notified in writing by the carrying firm that the complaint was received and that it was provided to the introducing firm and the DEA.

The Commission believes the proposed requirements relating to the handling of customer complaints received by carrying firms are reasonable. These procedures should enhance the ability of introducing firms and their DEAs to monitor complaints. In particular, DEAs and firms should be better able to identify patterns of complaints and to determine, for example, whether there is a problem with the firms' supervisory procedures, operations, or an individual registered representative. The Commission notes the commenters' concerns that the proposal is duplicative because existing NYSE Rule 351 requires member firms to report to the Exchange statistical and summary information regarding customer complaints.[34] The Commission, however, believes that because this proposal would require the submission of a copy of the actual complaint to the DEA, the proposed reporting requirements supplement, rather than duplicate, the existing reporting requirements.

Moreover, the Commission agrees with the commenters that the notification provisions, initially proposed, which required carrying firms to advise complaining customers of their right to transfer their accounts, could have created the perception that the subject of the customer's complaint warranted a transfer. Many customer complaints relate to operational issues, such as delayed dividend checks, and are easily resolved by the firm. The Commission believes that broader investor education initiatives designed to inform investors of their rights would more effectively achieve the same objectives without creating the possibility of unnecessary confusion. The Commission is working with the SROs on educational initiatives in this area. Accordingly, the Commission believes that the NYSE's proposal to delete the proposed notification provision is appropriate.

B. Exception Reports

The proposal also would require carrying firms to provide a list of all reports that are offered to their introducing firms and would require each introducing firm to provide its carrying firm with a list of specific reports requested. The proposal further would require carrying firms to provide to their introducing firms and the introducing firms' DEA written annual notice, within 30 days of July 1, of the list of reports offered to each introducing firm and to specify those reports actually requested or supplied as of the report date.

Exception and other reports are important tools in the monitoring and supervision of customer accounts, from both a risk management and customer services perspective. For example, reports that flag unusual account activity or possible unauthorized trades may allow for early detection and correction of potential problems with a firm's supervisory procedures, operations, or an individual registered representative. In addition, the Commission believes that information regarding reports available and those reports requested as of a specific date should assist both the introducing firm in assessing its prospective needs and the introducing firm's DEA in its regulatory efforts.

Finally, the Commission notes that the proposed requirements relating to exception reports apply to all carrying firm/introducing firm relationships, regardless of the manner in which the date is transmitted from the carrying firm to the introducing firm. Therefore, the proposed rules are equally applicable to carrying agreements that provide for the transmission from the clearing firm to the introducing firm of raw data, rather than information organized in a formatted report. Under either scenario, the Commission expects the introducing firm to determine what information is needed for the proper supervision of its customer accounts, and to have the ability to use the data provided by its carrying firm in its supervisory efforts.

C. Exemption for Good Cause Shown

The NYSE is proposing to include an exemption from the customer complaint and exception report provisions of the proposal for those situations in which carrying firms are already performing these compliance functions for their introducing firm affiliates. The Commission believes that it is reasonable for the Exchange to have the authority to grant such an exemption in the limited circumstances in which the introducing firm is an affiliated entity of the carrying firm to avoid duplication of efforts.

In addition, the Commission notes that this proposed revision to the NYSE's original filing seeks to conform the Exchange's rule language to the amended proposal submitted by the NASD. The Commission believes that uniformity between the NYSE's and the NASD's rules in this area should ease the compliance burden on introducing firms and their carrying brokers alike, as well as enhance the usefulness of the rules for the firms' respective DEAs.

D. Negotiable Instruments

The Commission believes that the proposed procedures to be followed by introducing firms that issue negotiable instruments for which the carrying firm is the maker or drawer are reasonable. Specifically, the Commission believes that it is appropriate for the introducing firm to be required to represent to the carrying firm that it has supervisory procedures in place, which it enforces, and which are satisfactory to the carrying firm. A carrying firm that finds that its introducing firm does not have minimal safeguards and procedures for the issuance of checks drawn on the carrying firm's account should, at a minimum, reexamine its relationship with the introducing firm. The Commission views the proposed requirement as a supplement to, rather than a replacement for, any other obligation or legal liability of the carrying firm as maker or drawer of the instrument.[35]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the NYSE addresses the concerns raised in the seven comment letters received by the Commission on this proposal. Moreover, Amendment No. 1 modifies the original filing only slightly, in response to specific comments raised by interested parties. Specifically, Amendment No. 1 deletes the proposed rule language requiring carrying firms to include in their responses to customer complaints a statement regarding the customer's right to transfer the account to another broker-dealer. As discussed above, the Commission believes that alternative investor education initiatives to inform public customers of their rights as investors would be equally effective, without raising the possibility of customer confusion regarding whether the carrying firm believes such action is warranted. Amendment No. 1 also adds a good cause exclusion from certain provisions of the proposed rule in circumstances in which the introducing firm is an affiliated entity of the carrying firm and the carrying firm has assumed the responsibility for performing certain compliance functions for the introducing firm. As the modifications proposed in

[34] *See* Letters from Schroder and Global, *supra* note 4.

[35] *See, e.g.*, NYSE Information Memo No. 96–4 (November 22, 1996); NYSE Interpretation Handbook, p. 561–62, (k)(2)(ii)/017.

Amendment No. 1 are reasonable and do not significantly alter the original proposal, the Commission believes that Amendment No. 1 raises no new issues of regulatory concern. Accordingly, the Commission believes that it is consistent with section 6 of the Act [36] to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–25 and should be submitted by July 1, 1999.

VI. Conclusion

The Commission believes that the proposal, as amended, should significantly assist the efforts of introducing firms and their DEAs to fulfill their supervisory responsibilities. Specifically, the Commission believes that, by ensuring that carrying firms provide introducing firms with important information about their customers' accounts and by requiring that the introducing firms have in place supervisory procedures with respect to their issuance of negotiable instruments, the proposed rules should enhance good business practices by introducing firms. Further, by requiring that introducing firms receive copies of customer complaints and exception and other reports about their customers' account, the proposal should assist introducing firms in more quickly identifying and addressing potential problems with their supervisory procedures, operations, or an individual registered representative. This should reduce the risks to both the firm and its customers from questionable sales practice and potentially fraudulent activity.

In addition, the Commission believes that the proposal should also assist the regulatory efforts of the introducing firms' DEAs. Specifically, the Commission believes that the proposal may allow earlier detection by an introducing firm's DEA of potentially fraudulent activity, which will benefit investors and the public. Therefore, the Commission finds the approval of the proposed rule change, as amended, is consistent with the requirements of the Act applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5) of the Act [37] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[38] that the proposed rule change (SR–NYSE–97–25) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14683 Filed 6–9–99; 8:45 am]

BILLING CODE 8010–01–M

[36] 15 U.S.C. 78f.

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Trade Mission Online Company Profile Data".

Form No: 2111.

Description of Respondents: U.S. Small Business Exporters.

Annual Responses: 100,000.

Annual Burden: 50,000.

Comments: Send all comments regarding this information collection to Ken Fletcher, Program Analysts, Office of International Trade, Small Business Administration, 409 3rd Street SW, Suite 8500, Washington, DC 20416. Phone No: 202–205–6436.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–14716 Filed 6–9–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Delegation of Authority To Conduct Asset Sales of Loans and Other Properties

A. The Administrator of the Small Business Administration (the "Agency") Aida Alvarez pursuant to the authority vested in her by the Small Business Act, 72 Stat. 384, as amended and the Small Business Investment Act of 1958, 72 Stat. 689 as amended, hereby delegates to the Assistant Administrator for Portfolio Management the following authority to conduct sales in bulk of Agency assets including loans and properties.

1. To conduct a public sale of 7(a), 503, 504 and disaster business and home loans or portfolios of loans and properties that have been designated for the Asset Sales Program.

2. To enter into any and all agreements with lenders that are required to market and sell assets as part of the Asset Sales Program.

3. To remove any loans or properties from a particular sale or from the Asset Sales Program.

4. To oversee and take all necessary action in connection with the administration, servicing, collection and liquidation of any loan that has been designated for the Asset Sales Program.

5. To solicit bids from qualified bidders for the purchase of loan assets or properties held by the Agency or for which the Agency has been authorized to act as agent for their sale by participating lenders or third parties holding Agency guaranteed or direct loans.

6. To execute on behalf of SBA loan sale agreements and any other documents necessary to consummate the sale and transfer of certain loans and properties designated for the Asset Sales Program to successful bidders approved by the Deputy Administrator.

7. To take all necessary action in connection with matters related to the

Asset Sales Program and to do and perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the powers granted herein.

8. To certify true copies of any records, papers, documents or instruments in the possession of the Agency, to certify the nonexistence of records; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.

9. The authority and powers delegated herein may not be re-delegated.

B. The Administrator of the Small Business Administration (the "Agency") Aida Alvarez pursuant to the authority vested in her by the Small Business Act, 72 Stat. 384, as amended and the Small Business Investment Act of 1958, 72 Stat. 689 as amended, hereby delegates to the Deputy Administrator the following authority:

To approve the selection of the successful bidder or bidders for any asset sale conducted by the Agency. The Deputy Administrator's approval of all bids will be based on the advice and recommendation of a committee consisting of the Chief Financial Officer, Chief Operating Officer, General Counsel, Associate Administrator for Financial Assistance, and the Associate Deputy Administrator for Capital Access.

Aida Alvarez,

Administrator.

[FR Doc. 99–14715 Filed 6–9–99; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on the Caribbean Basin Economic Recovery Act: Report to Congress

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Section 221(f) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (19 U.S.C. 2702(f)) ("the Act") requires the Administration to submit a report to the Congress on or before October 1, 1999 regarding the operation of the program. All interested parties are invited to submit comments relevant to the issues to be examined in preparing such a report, including the considerations included in subsections 212(b) and (c) of the Act (19 U.S.C. 2702(b) and (c)).

DATES: Public comments are due by noon on Wednesday, June 30, 1999.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: James M. Roberts, Director for Central American and Caribbean Affairs, (202)–395–5190).

SUPPLEMENTARY INFORMATION: Section 212(f) (19 U.S.C. 2702(f)) of the Caribbean Basin Economic Recovery Act states:

> On or before October 1, 1993, and the close of each 3-year period thereafter, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the consideration described in subsections (b) and (c).

The Chairman of the Trade Policy Staff Committee invites written comments from the public relevant to the program's operation, including the status of beneficiary countries under the criteria set out below. Interested parties may comment on any aspect of the program's operation. Issues to be examined include: The program's effect on the volume and composition of trade and investment between the United States and the region; its effect on economic growth and development of beneficiary countries; the effect on U.S. firms and consumers; the degree to which the Act has encouraged the trade and investment policies cited in the Act; and the administrative requirements for beneficiary exporters and U.S. importers.

Interested parties are also asked to comment on the following Act designation criteria as contained in sections 212(b) and (c) of the Act:

(b) * * * In addition, the President shall not designate any country a beneficiary country under this title—

(1) If such country is a Communist country;

(2) If such country

(A) Has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) Has taken steps to repudiate or nullify—

(i) Any existing contract or agreement with, or

(ii) Any patent, trademark or other intellectual property of, a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) Prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) Good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) A dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) If such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) If such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) If a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) Unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) If such country has not or is not taking steps to afford internationally

recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) An expressions by such country of its desire to be so designated;

(2) The economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) The degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979;

(5) The degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) The degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) The degree to which such country is undertaking self-help measures to promote its own economic development;

(8) Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(9) The extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) The extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) The extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

Persons submitting written comments should provide a statement in twenty copies, by noon, Wednesday, June 30, 1999, to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 501, 600 176th Street, NW, Washington, DC 20508. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Room 101, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–14657 Filed 6–9–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST–1999–5631]

The Interagency Task Force on the Roles and Missions of the U.S. Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Notice reopening public comment period.

SUMMARY: This notice announces that we are reopening until July 15, 1999, the period for submitting comments on the roles and missions of the U.S. Coast Guard. The original comment period ended on June 1, 1999.

DATES: Comments are now due July 15, 1999.

ADDRESSES: Your written comments must be signed and refer to docket number OST–199–5631. Send them to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001. All comments received will be available for public examination at this address between 10 a.m. and 5 p.m., ET. Monday through Friday, except Federal Holidays. Persons who wish notification of the receipt of their comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: John Crowley, Jr., Interagency Task Force on the Roles and Missions of the U.S. Coast Guard, 1111 Jefferson Davis Highway, Suite 502 West Tower, Arlington, VA 22302, telephone (703) 416–0192, facsimile (703) 416–6793.

SUPPLEMENTARY INFORMATION: The President has directed an independent study on the appropriate roles and missions of the U.S. Coast Guard through year 2020. The Interagency Task Force on the Roles and Missions of the U.S. Coast Guard will seek to identify and distinguish which Coast Guard roles, missions, and functions: (a) Might be added or enhanced; (b) might be maintained at current levels of performance; or (c) might be reduced or eliminated. The Task Force will also consider whether private organizations, public authorities, local or State governments, or other federal agencies might better perform current Coast Guard roles, missions, and functions. The Task Force will also consider the impact on Coast Guard roles, missions, and functions of future prospects in the areas of technology, demographics, the law of the sea, national security, etc.

On May 10, 1999, the Office of the Secretary of Transportation published a notice seeking public comment on the roles and missions of the U.S. Coast Guard to help the Task Force determine whether those roles and missions are still appropriate. The Coast Guard has received several requests for more time to comment.

This notice reopens the comment period until July 15, 1999, to provide the public with additional time to review and comment on the roles and missions of the U.S. Coast Guard. It should not disadvantage any person, and will give the Task Force the benefit of additional informed comments.

Issued in Washington, DC on June 3, 1999.

Nancy McFadden,

General Counsel.

[FR Doc. 99–14773 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed redevelopment of

properties in the Waterfront South area of Seattle in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Gene Fong, Division Administrator, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, WA 98501, telephone: (360) 753–9413; Terry McCarthy, Deputy Assistant Secretary, Washington State Ferries (WSF), 801 Alaskan Way, Seattle, WA 98104, telephone: (206) 515–3403 and/or Tim King, P.E., Project Manager, Washington State Ferries, 811 First Avenue, Seattle, WA 98104, telephone: (206) 233–9127; or David Schniedler, Manager of Customer Service Marine Division, Port of Seattle, Pier 69, P.O. Box 1209, Seattle, WA 98111, telephone: (206) 728–3523.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Washington State Ferries (WSF)/Washington State Department of Transportation (WSDOT) and the Port of Seattle (PORT), will prepare an environmental impact statement (EIS) on a proposal for redevelopment of Seattle waterfront properties in the area of Colman Ferry Dock and Pier 48 in King County, Washington, at the terminus of State Route 519.

The project, known as "Waterfront South", would provide for the improvement and redevelopment of waterfront properties generally bounded by Terminal 46 on the south, Alaskan Way (State Route 519) to the east, and Colman Ferry Dock (Piers 50 and 52) to the north. Improvements to Alaskan Way and to an interim remote vehicle holding area bounded by Alaskan Way, 1st Avenue South, and Royal Brougham Way are also included.

The condition of the existing physical facilities within the limits of the Waterfront South project require varying degrees of structural improvement to maintain existing uses. In addition, the Colman Dock ferry terminal facilities are approaching capacity and at present only marginally accommodate passengers and vehicles using the facility. Increased delays to ferry riders and increased congestion to the local community are anticipated through the forecast year 2025 if no action is taken. This increase results from passenger and vehicle demand on existing auto ferry routes (Seattle-Bainbridge Island, and Seattle-Bremerton), new service on a potential third auto ferry route between Seattle and Southworth, increased demand on existing Passenger Only Fast Ferry (POFF) routes (Seattle-Bremerton, and Seattle-Vashon Island), and new demand resulting from the addition of two new POFF routes between Seattle-Kingston and Seattle-Southworth in Year 2001.

The primary purpose of the proposed project is to create a multi-modal regional transportation facility capable of accommodating current and future ferry ridership. A secondary goal of the project is to take full advantage of the revenue-sharing potential of public sector capital investments.

The proposed Waterfront South project will combine infrastructure improvements at Colman Dock and Pier 48 to accommodate long range ferry traffic serviced by WSF; will expand and improve a remote vehicle holding area (RHA) located south of Colman Dock; will add capacity to existing arterials between the RHA and Colman Dock; will allow improvements to existing public open space owned and operated by the City of Seattle; will accommodate limited international ferry service and/or commercial moorage; and to the extent practical will allow for future development of the Pier 48 upland property.

In addition to the No Action alternative required under NEPA, alternatives under consideration include the following common design options for improving, locating or relocating, or reconstructing facilities and operations: vehicle holding on Colman Dock; a fourth auto slip and connecting overhead passenger walkways at Pier 50; limited retail development at Colman Dock; additional pedestrian and vehicle ticketing capabilities; new POFF terminal and maintenance facilities south of Colman Dock; expanded public open space; improvement of existing and addition of new pedestrian walkways, ramps and bridges; improved transit connections; channelization and signal improvements between the RHA and Colman Dock; upgrade of historic sites and public parks; improvement/expansion to an interim RHA currently in planning and environmental review as part of a separate project, SR 519; and contaminated sediment remediation undertaken in conjunction with project construction. Selective elements being considered include: transient small boat moorage, moorage for a historic vessel, international ferry service to Victoria, British Columbia, commercial boat moorage, and commercial/retail development on the upland properties of Pier 48.

The three option packages currently under consideration include all of the common and some of the selective elements outlined in addition to the location and configuration of a new passenger only passenger and maintenance facility at pier 48. Features unique to the options packages are: (A) Splits the passenger only terminal and maintenance facilities between Colman Dock and Pier 48; (B) locates the new WSF passenger only terminal and maintenance facilities within the Pier 48 right of way, and, (C) modification of A and B which would likely require greater cooperation among key stakeholders including the CITY, WSF, and the PORT, and may result in a larger public access area.

All options considered will require WSF/WSDOT to purchase all or part of Pier 48 from the PORT. Option C would require additional exchanges of current ownership or operational agreements be established between the WSF/WSDOT, the PORT, and the CITY.

Public involvement completed as part of the master planning process in 1996 and 1997 included formation of a Citizens Advisory Committee (CAC), interviews and coordination with stakeholders, public open houses, a speakers bureau, and project newsletters. Additional planning has occurred since the Master Development Plan was completed to develop options to assist in the scoping process and alternatives development for the EIS.

Announcements describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, local agencies, affected Indian Tribes, private organizations, and citizens who have previously expressed or are known to have an interest in this proposal. A series of open houses beginning in May 1999 are scheduled as a part of the EIS public involvement plan. Two EIS scoping meetings are scheduled for June 15, 1999—one for agencies and the other for the public. Input from these open houses and scoping meetings will then be used to identify the alternatives for study in the EIS. Subsequent to Scoping, the EIS public involvement plan will also include newsletters, bulletins, stakeholder coordination, and continued involvement of the CAC. A public hearing will be held after the release of the Draft EIS to receive public and agency comments. Public notice will be given of the time and place of the future meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone numbers provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 1, 1999.

Michael R. Brower,

Transportation and Environmental Engineer, FHWA Washington Division.

[FR Doc. 99–14779 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports, Part 248

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need and usefulness of BTS collecting independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, the Department will accept the annual report submitted to the stockholders. Comments are requested concerning whether the audited reports are needed by DOT as: (a) A means to monitor an air carrier's continuing fitness to operate, (b) reference material used by analysts in examining foreign route cases, (c) reference material used by analysts in examining proposed acquisitions, mergers, and consolidations, (d) a means whereby the Department sends a copy of the report to International Civil Aviation Organization (ICAO) in fulfillment of a U.S. treaty obligation, and (e) corroboration of carriers' Form 41 filings. Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility and clarity of the information collected.

DATES: Written comments should be submitted by August 9, 1999.

ADDRESSES: Comments should be directed to Mr. Bernie Stankus, Office of Airline Information, K–25, Room 4201, 400 Seventh Street, NW., Washington, DC 20590–0001.

COMMENTS: Comments should identify the OMB #2138–0004 and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0004. The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0004

Title: Submission of Audit Reports, Part 248.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 84.

Estimated Time Per Response: 15 minutes.

Total Annual Burden: 21 hours.

Needs and Uses: The audit reports are used as follows: (a) A means of monitoring an air carrier's continuing fitness to operate, (b) reference material by analysts in examining foreign route cases, (c) reference material by analysts in examining proposed acquisitions, mergers, and consolidations, (d) a means whereby the Department sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a U.S. treaty obligation, and (e) corroboration of carriers' Form 41 filings.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 99–14771 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether: (a) The supplemental reports are needed by BTS to fulfill the U.S. treaty obligation of furnishing financial and traffic reports to ICAO; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by August 9, 1999.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

COMMENTS: Comments should identify the OMB #2138–0039 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0039. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 47.

Estimated Time Per Response: 20 minutes.

Total Annual Burden: 16 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the air carriers' Form 41 submissions to DOT. BTS Form EF is the means by which BTS supplies the

remaining one percent of the air carrier data to ICAO.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 99–14772 Filed 6–9–99; 8:45 am]

BILLING CODE 4910–62–U

UNITED STATES INFORMATION AGENCY

FY99 Burma Refugee Scholarship Program; Request for Proposals

SUMMARY: The Office of Academic Programs of the United States Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces an open competition for the Burma Refugee Scholarship Program (BRSP) which will begin recruitment and selection in FY99 (Academic year 1999–2000) and enrollment in FY00. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to develop an educational program for approximately five Burmese students and professionals, living in India as refugees, to receive undergraduate and/or graduate training in a variety of fields in the humanities and sciences in U.S. colleges and universities for a three year grant period running until 2002. The requirements are outlined in this letter and in the attached Program Goals, Objectives, and Implementation (POGI) document.

Program Information

Overview: The goal of the program is to support the economic and democratic development of Burma by helping to educate potential leaders living outside of Burma who could assist in its future transition to a democratic government. It is USIA's intent to provide grantees with programs of the highest quality that meet their academic and personal needs and to further the Agency's mission to promote mutual understanding. We also request that administration efficiencies and cost-sharing be actively sought.

Guidelines: The applicant organization shall design a proposal with a cost of up to $300,000 to conduct the recruitment, selection, and placement of no more than five Burmese undergraduate students living in India in an appropriate U.S. academic setting. Monitoring the students' academic progress will be a requirement of the organizations. Grant administration should begin October 1, 1999. Students with undergraduate degrees who are bridging to a master's program would also be eligible. We estimate that these funds will support five students for up to a year of intensive English-language training and two years towards an associate, bachelor's or master's degree program.

Administration in the Region: The organization must work closely with USIA, the U.S. Information Service (USIS), Immigration and Naturalization Service, and the U.S. Embassy in India to coordinate appropriate documentation for grantees' entry into the United States. The USIS representative administering the BRSP is in India, but it may be difficult for USIS officers to provide extensive facilitative assistance for this program. Applicant proposals should therefore include a plan to provide for publicity, recruitment, and selection in India, should USIS support be unavailable. The organization will be responsible for administering the program through its own resources and subcontractors, as required. The organization must also provide relocation or transition assistance to the students in the U.S. at the time their studies are terminated.

Requirements and Implementation: The proposal should respond to and describe the following major requirements:

- Planning and monitoring the entire exchange program;
- Selection and notification of participants, including publicizing the program to appropriate audiences in India using such methods as media, alumni networks, and local educational institutions and NGOs; and plans for distributing, answering inquiries about, and receiving applications—which may require the assistance of volunteers or paid staff in the region and/or special mailing arrangements;
- Travel;
- Placement at U.S. universities;
- Orientations;
- Provision of housing/stipends;
- On-going advising and student services;
- Cross cultural counseling;
- Cultural and community enrichment activities about the U.S.;
- Internships and professional development;
- Evaluation and alumni activities; and
- Fiscal management.

To the extent possible, the applicant should designate a contact person in India who would provide assistance with dissemination and submission of applications. Please review the application form to ensure that it includes all the information needed for review panel deliberations.

Length of Program: The proposed length of the Burmese scholarships is three years—up to one year of intensive English-language training followed by up to two years of academic study. The duration of the USIA grant cannot exceed three years. Students must understand this policy in advance. Where there are compelling circumstances, students may receive a limited extension to complete their degrees at the discretion of the project director and the USIA program officer. Summer periods should be used for a mix of academic, professional and enrichment activities.

Pre-Academic and English-Language Training: Applicants must describe plans for pre-academic preparation and English-language training. USIA recommends that immediately after the initial orientation, participants be tested to determine which level of English-language courses are appropriate. Several levels of intensive English-language courses, from beginning to advanced, should be made available. It is assumed that most participants in this scholarship program will need up to one year of English-language instruction. Students who need additional instruction beyond the first year will be required to take the additional instruction at their placement universities.

Recruitment: The recruitment material and award publicity should provide all relevant information to potential applicants. The key conditions, benefits, and terms of the program—what is, and what is not covered under the grant—should be fully described to candidates and nominees before they accept an award and travel to the U.S. The description of study opportunities should be basic and include essential information for applicants who are unfamiliar with the U.S. educational system, and the policy on dependents should be described. All individuals should be fully informed of these policies before they accept an award.

Stipends: Please address the question of participant stipend levels in the narrative, including what expenses the stipend is intended to cover and the estimated monthly cost of housing provided to students. The USIA program officer must be informed in advance of any proposed adjustment in stipend levels and must approve such changes prior to implementation.

Fields of Study: Eligibility fields for the FY–99 program should respond to critical development needs in Burma, promote mutual understanding and potential linkages with the U.S., and attract academically qualified students who are likely to become future leaders in Burma. The program announcement

might include a statement such as: "Eligible fields of study are drawn from the standard university curriculum, with priority given to agriculture, business administration, community/public health, economics, education, environmental studies, journalism, legal studies, natural resources management political science, and public administration. If a subject area is proposed that is not among these priority fields, candidates should give special attention to explaining how this course of study would support the goals of the program." The final list of eligible fields and the text of the announcement must be reviewed and approved by the Office of Academic Programs, in consultation with USIA's East Asia and Pacific Area Office, prior to program implementation.

Selection Criteria: The Burma Refugee Scholarship Program is directed toward Burmese students and professionals who are outside Burma. The proposal should outline the selection criteria and selection process for the program. A corresponding statement of the selection criteria should be included in the program announcement for potential applicants. The leadership elements and the expectation that students will be active alumni following the conclusion of the program should be mentioned. Applicants should plan to work closely with USIA in developing the selection criteria.

Timeline: The proposed should include a projected timeline, from first announcement to student arrival and placement in the U.S., which takes into consideration the logistical and communications obstacles in the region. These include immigration requirements, travel arrangements, time required to obtain student records, and the like. The timeline should include dates of key elements, such as "candidates notified," "pre-arrival materials mailed," etc.

U.S. Educational System, American Culture and Institutions: It is essential that prior to arrival, as well as during orientation, applicants and participants be informed of the general nature, philosophy and goals of U.S. higher education, particularly with regard to the broad scope of a liberal arts bachelor's degree program. Applicants and participants should clearly understand that they will be required to take courses in a variety of academic fields and should be briefed about the specifics of this grant. Students should receive guidance from the academic advisor to assist them in choosing appropriate courses outside their major field.

To support the mutual understanding goal of the exchange, USIA is particularly interested in opportunities for academic and enrichment experiences related to U.S. institutions, society, and culture. It is recommended that the applicant stipulate that students take one or more courses in a U.S. Studies field, such as American history, literature, or government. USIA welcomes other creative ideas for exposing students to American institutions, such as "issues" discussion groups for students, visits to political campaign offices and polling places, attendance at school board or city council meetings, exposure to American religious institutions, and civic-related volunteer work. Student attendance at museums, concerts, plays, and other cultural events featuring American content should be encouraged and facilitated wherever possible. The awardee will be requested to keep USIA informed of the status of this part of the program throughout the year.

Program Activities: Applicants should describe plans for orientation, including pre-departure orientation; goals and approaches for the academic portion of the program, including any special activities such as internships or academic enrichment; cultural and community projects; evaluation and follow-up; and alumni-tracking. For example, volunteer work, student presentations to the local community, and matching of students with a local host family might be among the enrichment activities proposed. Internships should be designed to provide a close match with a student's field of academic or professional interest. USIA requests that applicants provide support systems (such as tutoring, counseling, host family, mentor or buddy system, consultation with student advisor and project director) to the students during the program.

Pre-Arrival Information: Please provide a sample copy of the pre-arrival information in advance to the USIA program officer. Information should be complete, accurate for the program site and detailed. Key points about academic requirements, academic departments and available courses, housing, what to bring with them, personal budgeting considerations, policies on dependents, and other critical issues should be included in the material. The material should be designed to serve as a useful post-arrival reference as well, supplemented with additional information. Students should also receive a summary of key points in addition to the complete package. This should include exchange policy matters as well as "what to bring."

GPRA–Outcomes and Results: Applicants must include a statement of goals and expected outcomes for the program, including how results, as necessitated by Government Performance and Results Act (GPRA) requirements would be measured. Outcomes might include, but are not limited to, the following areas: developing a cadre of Burmese leaders with first-hand experience in the U.S., advancement of development goals for Burma, conflict resolution and building viable non-governmental institutions in Burma, and expansion of professional relationships between individuals and institutions in the U.S. and Burma. Project goals and planning should be linked to desired outcomes. For example, if it is a goal to produce or influence leaders in Burma, potential leadership qualities should be among the selection criteria for applicants.

Measurements might include: alumni achievements and activities; the quality and quantity of institutional linkages established as a result of the program; and degree of positive change in participant and/or public attitudes as a result of the program.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $300,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

A. Program Costs

(1) One-way economy fare international travel from their overseas location;
(2) Domestic travel;
(3) Tuition, room and board, incidental expenses, maintenance for university vacation periods;
(4) Education materials;
(5) Cost of standardized test fees;
(6) Per diem for orientation, professional, academic and cultural enrichment.

B. Administrative Costs (Not To Exceed 20% of the Budget)

(1) Staff salaries and benefits;
(2) Staff travel;

(3) Communications (including telephone, fax, postage, etc.);
(4) Office supplies;
(5) Other direct costs.

For the budget presentation, applicants should submit a three-column budget which includes the following information:

Column 1—FY–99 USIA funds requested
Column 2—Amount of cost-sharing in FY–99
Column 3—Total FY–99 Budget (Total of Columns 1 and 2)

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. Applicants will find those federally required forms which must be included in the proposal submission in the Proposal Submission Instructions section of the solicitation package.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the title and number E/AEF–99–04. Please submit a one-page Executive Summary and a narrative as part of the proposal. The Executive Summary should contain an overview of the goals and activities of the program in order to set the context for modifications and budget requests. The narrative should deal with program facts only, and not contain the history of the organization or program philosophy, except as directly relevant to the proposed activity. It should outline the purpose of the program and the major activities funded under the award which meet the goals of the program. Concurrently, this will provide background information for a review of the proposed budget and program modifications.

Applicants should explain in the narrative any personnel changes which are anticipated in the coming year. Please also indicate briefly the responsibilities of all staff listed as working on this project, including those whose employment is cost-shared. Please submit resumes for employees under Tab E.

Further Information: For further information, or to request a Solicitation Package, contact the Office of Academic Programs, E/AEF, Room Number 208, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 619–5406, fax number (202) 401–1728. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer, Tim Gerhandson, on all other inquiries and correspondence.

Please read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202401–7616. The "Table of Contents" listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposal copies must be received at the US. Information Agency by 5 p.m. Washington, DC time on *June 30, 1999.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline. The FY99 BRSP applications (the original proposal), 10 hard copies, and one extra application cover sheet should be submitted to: United States Information Agency, Bureau of Educational and Cultural Affairs, Reference: E/AER–99–04, Grants Management Division, E/XE, Room 326, 301 4th St. SW, Washington, DC 20547.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA EA area office(s) and the USIA post(s) overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer. Awards will be subject to the availability of FY99 funding. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program.

The narrative is not a program report or an annual report, nor does it replace any reporting requirements outlined in the grant. However, the grant proposal is the only document that the review panel will consider during its deliberations, so it should provide all relevant information for a full review. It should not be assumed that panelists will have prior familiarity with applicants or this particular scholarship program.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.
2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible, Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resources and follow-up activities).
6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined USIA's Office of Contracts. The Agency will consider the past

performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years. Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures. For further information, please contact my designee for this program, Tim Gerhardson, at (202) 619–5406, or tgerhard@usia.gov on e-mail.

Dated: June 18, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–14836 Filed 6–9–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Future Leaders Exchange Program Administrative Components

NOTICE: Request for proposals.

SUMMARY: The Division for the NIS Secondary School Initiative, Office of Citizen Exchanges, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the Future Leaders Exchange (FLEX) program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct a package of Administrative Components for the recruitment, selection and other related activities listed below for approximately 930 high school students from the 12 New Independent States (NIS) of the former Soviet Union who will come to the U.S. for the 2000/2001 academic year under the FLEX program. This RFP is only for the package of administrative components described in this solicitation. Grants for other program components, including placement and supervision of the students while they are in the United States, will be competed separately. Final award of the grant or grant(s) is subject to the availability of funding.

Program Information

Overview

The Future Leaders Exchange (FLEX) program has been sponsored by USIA since 1992, when it was authorized and funded under the Freedom Support Act. The 2000/2001 FLEX program will be its eighth cycle. The program provides an opportunity for high school students aged 15–17 from the 12 countries of the New Independent States (NIS) of the former Soviet Union to live with an American host family for eleven months and attend a full academic year of high school. The scholarship covers all aspects of the students' program, including recruitment and selection, orientation, travel, family and school placement, supervision while in the U.S., maintenance allowances, health and accident insurance, cultural and educational enhancements, and alumni activities upon return to their home countries. Placement, supervision,

maintenance, and enhancements are not part of the package covered by this solicitation. For budgeting purposes, applicants should assume that the number of participants will be 930, with about 33% coming from Russia, 20% from Ukraine, and the remaining 47% from the other ten NIS countries. Details can be found in the Project Objectives, Goals and Implementation guidelines. Applicants must address the complete package of components outlined below.

The objectives of the FLEX program are:

1. To foster interaction between young people from the United States and the former Soviet Union and promote a greater understanding of one another so as to contribute to our common future through our greatest resource, our youth.

2. To provide high school students from the former Soviet Union with an opportunity to live with American host families, attend a U.S. high school, and learn about American society, history, culture, and the economic and political foundations of the United States.

3. To integrate the people of the former Soviet Union into the global citizenry by assisting young people of the NIS countries in building a new and open society and by promoting democratic values and the development of democratic institutions at the grass roots level.

4. To provide opportunities for a diverse group of youth from the NIS to acquire values and skills and enhance those personal qualities that will make them successful citizens and future leaders of their societies.

Through participation in the FLEX program, students should:

1. Acquire an understanding of important elements of a civil society. This will include concepts such as volunteerism, the idea that American citizens can and do act at the grass roots level to deal with societal problems, and an awareness of and respect for the rule of law.

2. Demonstrate a willingness and a commitment to serve as agents for change in their countries after they return home.

3. Develop an appreciation for American culture.

4. Interact with Americans and generate enduring ties.

5. Teach Americans about the cultures of their home countries.

Eligibility

Applicants may be public institutions or organizations that are legally incorporated and recognized by the IRS as not-for-profit. Applicants may be single organizations or two or more organizations working in consortium. For consortia, each organization should submit a separate proposal for its components and indicate clearly how these dovetail with the other consortium member(s).

Guidelines

The package of components for this solicitation encompasses the following:

1. Recruitment and selection of student finalists through a merit-based competition in each country.

2. Documentation—assistance with passports, visas; assistance to USIA with preparation of IAP66 forms on finalists and alternates.

3. Medical screening and clearance to ensure that the students are healthy; immunizations as necessary.

4. Orientation—Programming for all participants prior to departure from the NIS.

5. Travel—Ticketing and all arrangements from the students' homes to their host communities and return.

6. Communications and liaison with the students' natural families during the program year.

7. On-program counseling for students and the staff and volunteers of the placement organizations in dealing with problems.

8. Information management—Tracking and database maintenance on all applicants through their selection as finalists, their placement, and travel.

9. Tracking of, support for and follow-up programming with alumni upon their return home.

The following considerations apply to these responsibilities:

1. The grantee organization(s) must coordinate overall planning with the USIS staff in each country at the outset and ask USIS to indicate where the staff would like to have input or play a role.

2. The ongoing communications with natural parents, follow-up activities with alumni, and relations with foreign government officials all require that the organization(s) maintain a year-round presence in the NIS countries. The grantee(s) should seek to conduct these functions efficiently and cost-effectively. An American staff person should head each permanent office in the NIS with FLEX program responsibilities.

3. All on-the-ground operations in the NIS of this administrative machinery must be staffed by non-U.S. Government personnel in such a way as to ensure that USIS and American embassy personnel are not encumbered by the day-to-day functioning of the program.

4. The aim of the program is to select students who have the personal qualities, motification, and the academic, language and social skills to be successful on the exchange. Recruitment and selection must be conducted on the basis of merit and be free of political influence and corruption; to accomplish this, the process must be under the overall direct control of Americans at all times. Selection of finalists will be conducted in the U.S.

5. Selection must reflect the cultural, ethnic, national and geographic diversity of the NIS. The recruitment process must be open in allowing and making it possible for any student who meets the eligibility criteria to apply. A serious effort must be made to include qualified students with physical disabilities. A pre-academic English enrichment program will be offered to a small percentage (approximately 3%) to ensure that the weaker language qualifications of students with disabilities and students from more remote areas is not an excluding factor in their selection. [The English program is competed separately.] It is not necessary or even possible, given budget constraints and areas of civil unrest, to cover every oblast. The grantee(s) should focus recruitment on major population areas, while keeping the process open to applicants from all areas.

6. Uniform predeparture orientation programming conducted regionally for all FLEX students is essential because it reinforces their identity as participants in a government scholarship program enables the dissemination of information, policies and procedures critical to the students' success.

7. What happens to participants once they return home is critically important to ensuring the program's success in fulfilling its objectives and to reinforce the transfer of the American experience to the NIS. The grantee(s) must provide a clear, systematic plan for alumni tracking. USIA will expect reports on alumni to include dates of re-entry into the NIS, current places of residence, and current educational/professional activities. Some follow-on activities will be centrally funded and managed by USIA. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

Participants travel on J–1 visas. As the sponsor is USIA, IAP66 forms are prepared using the Government program designation number. As noted above, the grantee is responsible for assisting USIA in the preparation of these forms.

Timetable

The recruitment and selection process must be concluded by March 1, 2000, so that finalist applications can be

disseminated to the organizations responsible for placing the students in host families and schools. Travel to the U.S. is expected to take place in July/August 2000, in conjunction with the needs of the placement organizations. Return travel should be similarly undertaken in May/June 2001. All component should be planned in accordance with the dates and deadlines set by the needs of the program (e.g., the date by which students need to apply for passports, the timing of arrival in the host families, the conclusion of the school year).

Proposed Budget

The per capita cost of this whole package of components excluding travel and orientation must not exceed $3,000 per finalist. Travel must be arranged in compliance with laws on the use of American flag carriers.

Applicants must submit a comprehensive line-item budget for the entire package of components. There must be a summary budget as well as a break-down reflecting both the administrative and program costs and an indication of participant per capita costs. Cost-sharing is encouraged, cash contributions and in-kind. Please refer to the Proposal Submission Instructions and POGI for complete budget and formatting instructions and for allowable costs.

Organizations with less than four years of experience in conducting international exchange programs will be deemed ineligible.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the solicitation instructions. All eligible proposals will be reviewed by the program office, as well as the USIA Office of NIS Affairs and the USIS posts in the NIS countries. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals also may be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission and design outlined above.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate organizational competency and logistical capacity. Agenda and plan should adhere to the program overview, timetable and guidelines described above.

3. *Ability to achieve program objectives:* Proposals should clearly demonstrate an understanding of the program's objectives stated above and how the organization will achieve them.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (e.g., staffing, program venue) and program content (especially selection of participants and orientation).

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The proposal should clearly explain how the organization will make use of and coordinate with other related NIS and U.S. operations it may be conducting. Proposals should reflect substantial area expertise, a grasp of cross-cultural issues, the needs of the hosting community (including the American host schools and the placement organizations), and a thorough understanding of how to work effectively with NIS authorities and complexities of the environment.

6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful activities that are relevant to this program, as well as responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Project Evaluation:* The proposal should include a plan to evaluate the success of the organization in achieving the stated objectives. The grantee(s) will also be expected to cooperate with USIA in evaluating the program under the requirements of the Results Act (GPRA). Proposals should reflect an understanding and grasp of these responsibilities.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding and in-kind contributions.

10. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of potential impact and significance in the partner countries.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number E/PY–00–02.

For Further Information, Contact: The NIS Secondary School Initiative Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, tel: (202) 619–6299, fax: (202) 619–5311, e-mail: <daronson@usia.gov> to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Diana Aronson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's 'Grants Information Fax on Demand System,' which is accessed by calling 202/401–7616. The 'Table of Contents' listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on Monday, July 12, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted.

Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original, one fully-tabbed copy (Tabs A–F) and eight copies of the application should be sent to: U.S. Information Agency, Ref.: *E/PY–00–02*, Office of Grants Management, E/XE, Room 568, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires that all organizations use Y2K complaint systems including hardward, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation appropriating funds annually for USIA's exchange programs, including the Freedom Support Act.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: June 7, 1999.

Brian J. Sexton,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–14775 Filed 6–9–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

South Africa Teacher Training Program; Notice; Request for Proposals

SUMMARY: The Advising, Teaching and Specialized Programs Division of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for a training program for primary school teachers of math and science in South Africa. The program will target the upper primary level which comprises grades seven through nine. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501 (C) may submit proposals to design, implement, monitor, and evaluate a primary teacher training program for teachers of math and science in South Africa. The program will comprise three phases: (1) Preliminary consultations in South Africa to discuss a detailed implementation strategy; (2) the development and execution of South Africa-based teacher training workshops; and (3) the development and execution of U.S.-based teacher-training summer institutes. The grant award will be up to $300,000 for year one, and may be renewed for two additional years pending availability of funds and successful implementation.

Program Information

Overview

In response to President Mandela's efforts to raise the level of math and science education, and in support of the United States-South Africa Binational Commission, USIA and grantee organization will develop, in collaboration with the South Africa Department of Education (DOE), a primary school teacher training project for teachers of math and science. The grantee will work with the DOE, its respective entities, and supporting ministries and organizations that are directly responsible for national education and teacher training.

The project will span a three-year period and will consist of yearly two-week in-country skills development workshops for 100 teachers, followed by

yearly one-month U.S.-based summer institutes for up to 25 master teacher trainers (initial grant for one year only; see "Summary"). At the conclusion of the program approximately three hundred primary school teachers will have participated. Participants will be selected from all 9 provinces and two provinces will host the training workshops.

USIA solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this program. The Grantee organization will consult regularly with USIA and the South Africa DOE with regard to program development and management. Proposals should demonstrate an understanding of the issues confronting teacher training in South Africa as well as a broad understanding of teacher training models and practices.

The goal of the program is to assist the South Africa DOE in identifying, developing, and implementing a teacher training program for primary school teachers of math and science. The program objectives are to:

(1) Increase the professional competence of primary school teachers by conducting in-country training workshops and U.S.-based summer institutes;

(2) Develop a corps of South African educators who will serve as resource facilitators and teacher trainers;

(3) Expand and/or establish school to school, teacher to teacher partnerships in South Africa at the primary level in order to foster school linkages and enhance teacher training, technology linkages where applicable, and cross fertilization of ideas.

Primary teachers throughout South Africa provide basic academic and life skills development for the students. As in other countries, the development and enhancement of teacher training skills and in-service workshops for primary teachers remains critical to their success and the success of their students. The rationale for the program is that improved math and science instruction at the primary level will increase the abilities of South African primary teachers to provide quality instruction resulting in the improvement of student's academic and life skills.

Guidelines

Program Planning and Implementation

The program will consist of three phases: a review of primary education in South Africa in general, and math and science specifically, and the refinement of a project implementation plan, an in-country training workshop, and a U.S.-based summer institute. It is anticipated that the grantee will begin phase I of the program no later than August, 1999 and that the grantee, USIA, and DOE, will define a timetable for the remainder of the program as part of discussions in phase I.

Phase I

The grantee organization will work with USIA and the DOE to undertake preliminary work in South Africa to refine a comprehensive project plan for yearly two-week in-service training workshops for approximately 100 teachers of math and science at the primary level. It is anticipated that the DOE will provide the following assistance as part of the overall program:

(1) Identify and provide training site(s);

(2) Assist grantee in developing program strategies;

(3) Provide lodging, meals, and transportation costs for all in-service trainees.

Additional in-kind, or cash contributions, on the part of the DOE may be negotiated as part of phase I.

The project plan should include, but not be limited to:

(1) Delineation of program responsibility between DOE, USIA, and grantee;

(2) Country needs assessment and project goals and objectives;

(3) The development of materials and resources that will enhance current learning programs and reflect practical, inquiry, and experiential learning concepts;

(4) A mutually agreed upon protocol for selection of participants;

(5) Monitoring and evaluation components.

(6) A plan for on-going communications and contact with program participants which emphasizes resource and master teacher trainer linkages.

Phase II

The in-country training workshops will be conducted over a two-week period at appropriate sites selected in conjunction with the DOE. A total of four U.S. and four South African trainers who have demonstrated expertise in professional development, training, and/or content areas will conduct the training workshops. It is anticipated that the trainers will work in pairs sharing their expertise and insights.

The workshop schedule should incorporate time for both individual and group work as well as intensive training on specific approaches to the teaching of math and science education. The workshop could include field experience or a model school component in order to provide participants with hands-on experience using new teaching techniques and materials. Specific areas that may be addressed in the in-country workshops are:

(1) A review of present attitudes and approaches to teaching math and science, and the introduction of new/current math and science teaching methodologies and approaches that integrate various content areas and continuous assessment techniques;

(2) The design of appropriate lesson plans and learning programs;

(3) The development of teaching materials appropriate for primary classes in South Africa.

Appropriate training materials will be developed by the grantee organization and will be provided to each participant for use during the training and in the classroom after they return to their respective schools. A selection component should be built into an on-going assessment process to identify up to 25 participants who will attend the summer institute to be held in the United States. Those selected should possess leadership potential and a full grasp of the content areas of the workshop.

Phase III

The U.S.-based summer institute for up to 25 primary master teacher trainers should put emphasis on developing the capacities of teacher trainers/educators to assess, train, and mentor teachers of math and science. The program should include a variety of formats, such as discussion sessions, lectures, workshops, and practical application. The emphasis should be on learning math and science through an inquiry model and should integrate knowledge of content areas with knowledge of learning strategies and students. All instruction and materials should include pedagogically and culturally appropriate materials and references relevant to South Africa. The workshop could include field experience or a model school component in order to provide participants with hands-on experience using new teaching techniques and materials. The curriculum for the summer institutes should partially build upon the successes of the previous in-country workshops held in South Africa and promote an understanding of life-long learning. Close communication will be needed among the grantee organization, USIA, participants, and U.S. host.

Specific areas that may be addressed in the summer institutes are:

(1) New/current math and science teaching methodologies and approaches (putting theory into practice);

(2) Professional teacher development and evaluation;

(3) The design and implementation of in-service training programs and workshops for teachers;

(4) Leadership training;

(5) A review of existing South African math and science content areas.

(6) The introduction and/or adaptation of existing math and science materials and practices pertinent to local conditions in South Africa.

Appropriate training materials will be developed by the grantee organization and will be provided to each participant for use during the training and in the classroom after they return to their respective schools.

Programs must comply with J–1 visa regulations (post will issue IAP–66 forms). Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $300,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicant may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The total allowable costs for the program include the following:

(1) Costs necessary for the effective administration of the program including salaries for grant organization employees, benefits, and other direct and indirect costs are described in the detailed instructions in the application package. While this announcement does not prescribe a rigid ratio of administrative to program cost, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) percent of the total requested from USIA. Proposals should show cost-sharing, including both contributions from the applicant and from other sources.

(2) Program costs, including general program costs and program costs for each South African participant in the U.S.-based summer institutes and South African-based training workshops.

(3) International and domestic airfare; visas; transit costs; ground transportation costs.

(4) Per Diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual U.S. cities. For activities outside of the U.S., the published Federal per diem rates must be used. Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at Http://www.policyworks.gov/.

(5) Walk-around and book allowance. Participants are entitled to a walk-around allowance of $10 per day, plus a participant book allowance of $150. U.S. staff do not receive these benefits.

(6) Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

(7) Room rental. Room rental for group activities should not exceed $250 per day.

(8) Materials development. Proposals may contain costs to purchase and develop appropriate materials for participants.

(9) One working meal for the program is allowed. Per capita costs may not exceed $5–$8 for a lunch and $14–$20 per a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

(10) An international travel allowance of $100 may be provided to each participant to be used for incidental expenditures during international travel.

(11) All summer institute participants will be covered under the terms of USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company. Administrative costs. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number *E/ASX–99–03.*

For Further Information Contact: The Office of Academic Programs, Advising, Teaching, and Specialized Programs Division, Fulbright Teacher Exchange Branch, E/ASX, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Telephone number (202) 619–4556, fax number (202) 401–1433, and e-mail address jtcox@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer John Cox on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed. Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. The "Table of Contents" listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposals copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, July 9, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASX–99–03,* Office of Grants Management, E/EX, Room 326, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIA posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be

interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of African Affairs and the USIA post overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful training programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity without USIA support ensuring that the USIA Teacher Training Program is successfully sustained.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the

availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: June 4, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–14774 Filed 6–9–99; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutants Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[IL–64–2–5807; FRL–6329–5]

RIN 2060–AE40 and 2060–AE44

National Emission Standards for Hazardous Air Pollutants Phosphoric Acid Manufacturing and Phosphate Fertilizers Production

AGENCY: Environmental Protection Agency (Agency).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing major sources in phosphoric acid manufacturing and phosphate fertilizers production plants (SIC 2874). Hazardous air pollutants (HAPs) emitted by the facilities covered by this rule include hydrogen fluoride (HF); arsenic, beryllium, cadmium, chromium, manganese, mercury, and nickel (HAP metals); and methyl isobutyl ketone (MIBK). Human exposure to the HAP constituents in these emissions may be associated with adverse carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects. Implementation of the rules will achieve an emission reduction of HF estimated at 315 megagrams per year (Mg/yr) (345 tons per year [tpy]). The standards will reduce 940 Mg/yr (1035 tpy) of total fluorides and particulate matter containing heavy metals which are regulated pollutants under the Clean Air Act as amended (the Act). This action also amends 40 CFR part 9 by updating the table of currently approved information collection control numbers to include the information requirements contained in this final rule.

The standards are promulgated under the authority of section 112 of the Clean Air Act (the Act) and are based on the Administrator's determination that phosphoric acid manufacturing and phosphate fertilizers production plants may reasonably be anticipated to emit several of the 188 HAPs listed in section 112(b) of the Act from the various process operations found within the industry. The NESHAP will provide protection to the public by requiring all phosphoric acid manufacturing and phosphate fertilizers plants that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Effective Date.* June 10, 1999. See the Supplementary Information section concerning judicial review.

Incorporation by Reference. The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of June 10, 1999.

ADDRESSES: *Docket.* Public Docket No. A–94–02, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday at the following address in room M–1500, Waterside Mall (ground floor): U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7549. A reasonable fee may be charged for copying docket materials. For additional information on the Docket and electronic availability see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations contact:

Region I

Office of Ecosystem Protection, U.S. EPA, Region I, CAP, JFK Federal Building, Boston, MA 02203, (617) 565–3351

Region II

Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4000

Region III

Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III, 3AT10, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–3989

Region IV

Lee Page, Air Enforcement Branch, U.S. EPA, Region IV, Atlanta Federal Center 61 Forsyth Street, Atlanta, GA 30303–3104, (404) 562–9131

Region V

George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V, 5AE–26, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088

Region VI

John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 665–7220.

Region VII

Donald Toensing, Chief, Air Permitting and Compliance Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7446

Region VIII

Douglas M. Skie, Air and Technical Operations Branch Chief, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6432

Region IX

Barbara Gross, Air Compliance Branch Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1138

Region X

Anita Frankel, Office of Air Quality, U.S. EPA, Region X, OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 533–2963

For information concerning the analyses performed in developing this rule, contact Mr. Ken Durkee, telephone number (919) 541–5425, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Today's rulemaking applies to process components at new and existing phosphoric acid manufacturing and phosphate fertilizers production plants. Examples of those process components are listed in the following table:

Source category	Examples
Phosphoric Acid Manufacturing	Wet Process Phosphoric Acid Process Line, Superphosphoric Acid Process Line, Phosphate Rock Dryer, Phosphate Rock Calciner, Purified Phosphoric Acid Process Line.
Phosphate Fertilizers Production	Diammonium and/or Monoammonium Phosphate Process Line, Granular Triple Superphosphate Process Line, Granular Triple Superphosphate Storage Building.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the regulations. This table lists the types of entities that the Agency is now aware could be potentially regulated. To determine whether your facility is covered by the regulations, you should carefully examine the applicability criteria in the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket and Electronic Information

The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket index, technical support information, the economic profile of the industry (item II-A–27) and other materials related to this rulemaking are available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4000. The e-mail address for the Center is "a-and-r-docket@epamail.epa.gov". A reasonable fee may be charged for copying docket materials. In addition to being available in the docket, an electronic copy of today's document which includes the regulatory text is available through the Technology Transfer Network (TTN) at the Unified Air Toxics Website (UATW). Following promulgation, a copy of the rule will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). More comprehensive information concerning the rule will be posted on the UATW (http://www.epa.gov/ttn/uatw/7__10yrstds.html). The TTN provides information and technology exchange in various areas of air pollution control. If more information on the TTN is needed, call the TTN HELP line at (919) 541-5384.

Judicial Review

The NESHAP for new and existing major sources in phosphoric acid manufacturing and phosphate fertilizers production plants were proposed in the **Federal Register** (FR) on December 27, 1996 (61 FR 68430). This **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Act, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading the preamble to the final rule.

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A. Background and Purpose of Standards
B. Technical Basis of Regulation
C. Stakeholder and Public Participation
II. Summary of Promulgated Standards
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IV. Summary of Comments on Proposal and Responses
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I. Background

A. Background and Purpose of Standards

Section 112 of the Act requires the Agency to promulgate regulations for the control of HAP emissions from both new and existing major sources. The statute requires the regulations to reflect the maximum degree of reduction in emissions of HAPs that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental effects, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology (MACT).

Section 112 of the Act requires the Agency to establish national standards to reduce HAP emissions from major sources and certain area sources that emit one or more HAPs. Section 112(b) contains a list of HAPs to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed and section 112(e) requires the Agency to devise a schedule for development of those NESHAP. The Agency must list all known source categories and subcategories of "major sources" that emit one or more of the listed HAPs. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAPs. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes phosphoric acid manufacturing and phosphate fertilizers production.

The control of HAPs is achieved through the promulgation of technology-based emission standards under section 112(d) and work practice standards under 112(h) for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including

requirements for operator training or certification) as provided in subsection (h); or (5) a combination of the above. (See section 112(d)(2).) The Agency may promulgate more stringent standards at a later date if residual risk remains after the imposition of controls. (See section 112(f)(2)). Pursuant to section 112(d) of the Act, on December 27, 1996 the Agency proposed NESHAP for new and existing sources in the phosphoric acid manufacturing and phosphate fertilizers production source categories (61 FR 68430).

B. Technical Basis of Regulation

For existing sources, section 112(d) of the Act requires that the Agency establish NESHAP which require the maximum degree of reductions achievable by available control techniques. Such standards (called "maximum achievable control technology" or "MACT") may be no less stringent than "the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has information)." In general, NESHAP are to be numerical limitations derived from the application of emissions control technologies. This level of control is commonly referred to as the MACT floor. As a starting point, the Agency gathered available data to analyze to identify the technology that could achieve the lowest emissions. Since the HAP HF was the main concern for this standard, the initial approach was focused upon determining MACT for HF. The same approach was later extended to HAP metals for subsequent analyses.

During its information collection effort regarding HF emissions, the Agency found that there is a large body of existing data for the surrogate pollutant total fluoride, which the Agency previously designated for control under § 111 of the Act through the development of new source performance standards (NSPS) and emissions guidelines (EG). The NSPS are emissions limitations for new sources based upon the best demonstrated technologies considering cost, non-air quality health and environmental impacts, and energy impacts. Given a limited amount of direct data on HF emissions and a large body of data developed to demonstrate achievement of permitted emissions which include HF as a component of total fluorides, the Agency chose to use total fluoride as a surrogate for HF in its analyses. By adopting the approach of regulating total fluoride as surrogate for HF, the Agency availed itself of information reflecting the effect of over twenty years of implementation of NSPS and EG which are technology-based standards. The Agency obtained performance data derived from emissions tests conducted to establish compliance with emissions limitations required by NSPS and with State-permitted emissions limitations developed pursuant to EG for previously existing sources.

Performance data were analyzed for several different types and configurations of wet scrubbing devices and the data indicated that no one design achieves superior control. Further, the data were reviewed for the purpose of calculating MACT floors. Data for sources with multiple emission tests showed significant variability which tended to have as its upper bound the permitted emission limits. This was to be expected since the controls were designed and operated to achieve specific limits as reflected in permits. The permit limits were typically based upon NSPS and EG. Since the data indicated that the level of control capable of being achieved was reflected in sources' permits, the Agency elected to directly calculate floors on the basis of the permitted emission limits. So, to determine emissions limits corresponding to MACT floors, the Agency first identified the median of the top twelve percent of permits issued to sources for each process. After thus identifying the best controlled sources and establishing preliminary MACT floors, the Agency again analyzed the available test data to ascertain that the control levels of the permit limits were being achieved and to determine if greater degrees of control were actually being achieved in practice for individual processes. For sources of total fluorides, test data showed that the permitted emissions were reflective of the degree of emissions control actually being achieved.

For phosphate rock dryers and calciners, the MACT floors were established using particulate matter as a surrogate for HAP metals. For dryers, the MACT floor analysis was performed using permitted emissions of particulate matter. The available test data indicate permitted levels are being achieved. For calciners, the permits were all based upon general process rate allowances which were not developed specifically for phosphate rock calcining. In the case of calciners, there were numerous test reports for particulate matter. Test data showed that the permits do not reflect the level of emissions reductions achieved in practice. So, for calciners, the MACT analysis was based upon the test data, which consistently were lower than permitted levels.

One source manufactures a purified phosphoric acid (PPA) through a solvent extraction method. The plant emits MIBK, which is a HAP. Fugitive emissions of MIBK from valves, flanges, and seals are reduced by means of an ongoing maintenance and repair program. As the lone PPA facility in the source category, its control methods constitute the MACT floor for controlling fugitive emissions of MIBK. The MIBK cannot be emitted through a conveyance designed and constructed to capture this pollutant. Upon consideration of the fugitive nature of these emissions, the available information and the public comments received, the Agency has concluded that it is not feasible to prescribe or enforce an emission standard for control of these emissions. In section 112(h)(1), the Act provides that the Administrator may prescribe a work practice consistent with the provisions of section 112(d) in lieu of an emission standard, if it is not feasible to prescribe or enforce an emission standard for control of a HAP. In this instance, the current work practices at the plant constitute the floor level of control for PPA plants. The LDAR (leak detection and repair) provisions in 40 CFR part 63, subpart H were determined during development of the hazardous organics NESHAP to be MACT for fugitive emissions sources with similar characteristics to those of the one plant emitting MIBK. After considering all available information, especially the public comments received, the Agency has concluded that subpart H is at least equivalent to the facility's current practices and has adopted the LDAR provisions of the Hazardous Organics NESHAP (HON) as part of the MACT controls for this process.

Having thus identified the floor level of control for the different processes and pollutants of concern, the Agency then considered the possibility of setting more stringent limitations. The final rule, like the proposal, does not require facilities to achieve emission reductions more stringent than the MACT floor.

As a part of a reconsideration, the Agency first explored the possibility that different control technologies were available and demonstrated for the classes of sources being controlled by today's action. None were found that had been demonstrated and could be applied without creating additional negative impacts to other environmental media. The Agency also considered whether new source emission limits could be applied to existing sources. The emissions data showed that high levels of control were being achieved in both cases and that there was minimal

opportunity for additional significant reductions to be achieved by going from the existing-source MACT floors to the levels of new source MACT. Balanced against the minimal potential for additional reductions were the costs of retrofitting controls to plants for which emissions data showed the existence of multiple test data points near the MACT floor. As an example, the Agency previously calculated the annualized capital cost for the addition of a new wet scrubber to a model WPPA (wet process phosphoric acid) plant producing 36 tons per hour to be $17,253 per year. Such a plant operating at the existing source MACT level which would install a new scrubber to achieve the new source MACT level would reduce HF emissions by 0.34 tons per year. So, the cost effectiveness of the additional reduction would be $50,744 per ton of additional HF removed, which the Agency considers to be inappropriately high at this time. Thus, the Agency concludes that requiring existing sources to be controlled beyond the MACT floor would be unreasonable in terms of cost.

For new sources, section 112(d) of the Act requires that the Agency establish NESHAP which may be no less stringent than "the emission control that is achieved in practice by the best controlled similar source." For new sources, the most stringent permit issued for any given process was adopted as MACT, except for calciners. Performance test data indicated that the most stringent permit limits were being achieved in practice. The calciners limit was based upon test data that showed an achievable level of performance exceeding the permitted requirements. Thus, MACT was set for all but one of the subcategories at the level of the most stringent permit requirements because there was no case in which more effective controls were identified.

C. Stakeholder and Public Participation

In the development of these standards, numerous representatives of the phosphate fertilizers industry were consulted. Industry representatives have included trade associations and producers. Representatives from other interested Agency offices, regional offices, and State environmental agencies participated in the regulatory development process as members of an informal work group. The work group was involved in the regulatory development process, and was given opportunities to review and comment on the standards before proposal and promulgation. Finally, industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed standards and to provide additional information during the public comment period that followed proposal.

The standards were proposed in the **Federal Register** on December 27, 1996 (61 FR 68430). The preamble to the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing and, therefore, one was not held. The public comment period was from December 27, 1996 to February 25, 1997. Sixteen comment letters were received. Commenters included industry representatives, control device manufacturers, State agencies and an environmental organization. The comments were carefully considered, and changes were made in the proposed standards when determined by the Agency to be appropriate. A detailed discussion of these comments and responses can be found in Section IV of this preamble.

II. Summary of Promulgated Standards

The NESHAP emissions limits for existing and new sources are given in the tables below.

EMISSIONS LIMITATIONS FOR EXISTING PHOSPHORIC ACID MANUFACTURING PLANTS AND PHOSPHATE FERTILIZERS PLANTS

Class of source	Pollutant	Emission limit
Wet Process Phosphoric Acid Process Line	Total Fluorides	0.020 lb. Total Fluoride (F^-) Per Ton P_2O_5 Feed.
Superphosphoric Acid Process Line	Total Fluorides	0.010 lb. F^- Per Ton P_2O_5 Feed.
Diammonium and/or Monoammonium Phosphate Process Line.	Total Fluorides	0.060 lb. F^- Per Ton P_2O_5 Feed.
Granular Triple Superphosphate Process Line.	Total Fluorides	0.150 lb. F^- Per Ton P_2O_5 Feed.
Granular Triple Superphosphate Storage Buildings.	Total Fluorides	5.0×10^{-4} lb. F^- Per Hour Per Ton of P_2O_5 Stored.
Phosphate Rock Dryers	Particulate Matter	0.2150 lb. PM Per Ton of Rock Feed.
Phosphate Rock Calciners	Particulate Matter	0.060 grains PM Per Dry Standard Cubic Foot.
Purified Phosphoric Acid Process Line	MIBK	Implement Part 63, Subpart H, Leak Detection and Repair Program.

EMISSIONS LIMITATIONS FOR NEW PHOSPHORIC ACID MANUFACTURING PLANTS AND PHOSPHATE FERTILIZER PLANTS

Class of source	Pollutant	Emission limit
Wet Process Phosphoric Acid Process Line	Total Fluorides	0.01350 lb. Total Fluoride (F^-) per ton P_2O_5 Feed.
SuperphosPhoric Acid Process Line	Total Fluorides	0.00870 lb. F^- per ton P_2O_5 Feed.
Diammonium and/or Monoammonium Phosphate Process Line.	Total Fluorides	0.0580 lb. F^- per ton P_2O_5 Feed.
Granular Triple SuperphosPhate Process Line.	Total Fluorides	0.1230 lb. F^- per ton P_2O_5 Feed.
Granular Triple SuperphosPhate Storage Buildings.	Total Fluorides	5.0×10^{-4} lb. F^- Per Hour Per Ton of P_2O_5 Stored.
Phosphate Rock Dryers	Particulate Matter	0.060 lb. PM Per Ton of Rock Feed.
Phosphate Rock Calciners	Particulate Matter	0.040 grains PM Per Dry Standard Cubic Foot.
Purified Phosphoric Acid Process Line	MIBK	Implement Part 63, Subpart H, Leak Detection and Repair Program.

The form, but not the substance, of the standard for one subcategory has changed since proposal. In the proposal, the Agency noted that two types of superphosphoric acid process lines currently operate: a vacuum evaporation process and a submerged combustion process. These processes are quite distinct from one another and they use different feedstock. Moreover, the submerged combustion process is not amenable to the same level of control as is the vacuum evaporation process. The Agency therefore concluded that these processes should be regulated as separate subcategories under this NESHAP.

Because only one facility currently exists in the submerged combustion process subcategory, the proposal's emission standard for the subcategory consisted of the lone source identified by company name. In the final regulation, the Agency has established an emission limit for the submerged combustion process subcategory generally without reference to the specific facility. Doing so ensures that changes in the facility's name or ownership would not change the applicable emission standard.

Consistent with the proposal, the final regulation does not distinguish between process types in its establishment of new source emission limits for superphosphoric acid production. As the Agency noted at proposal, a new facility "could avail itself of the same resources as other companies in the industry" in choosing the kind of process to employ in manufacturing superphosphoric acid. (See 61 FR 68438.) Put another way, the Agency examined both vacuum evaporation process and submerged combustion process sources to identify the "best controlled similar source," which serves as the MACT floor for new sources. The Agency concluded that the MACT floor was represented by a facility employing the vacuum evaporation process. No commenter objected to this proposal and the Agency has retained it in the final regulation.

Two additional technical changes are present in the final regulation. First, the standards as proposed often referred to "plants" in defining the affected source, but the final regulation refers to "process lines." For example, the proposed standard for a "Wet Process Phosphoric Acid Plant" now refers to a "Wet Process Phosphoric Acid Process Line." Because the NSPS used the term "plant," the proposal (based in large part upon the NSPS) did as well. However, in practice, the "plant" to which the NSPS applies is indeed a single process line. EPA has chosen to use the more specific term in the final regulation in order to promote clarity for the regulated public. The Agency is confident that this change has no effect on the stringency of the standard.

Second, the requirement that owners or operators of purified phosphoric acid process lines ensure that each product acid and raffinate stream have no more than a specified concentration of MIBK and that they ensure that the chiller stack exit gas stream remains below a given temperature has been moved from the monitoring section of the rule to its more appropriate location in the emission standard section.

An annual performance test is required to demonstrate compliance with each applicable numerical limit for total fluorides or particulate matter. The monitoring provisions require an owner or operator using a wet scrubbing device to continuously monitor the pressure drop and liquid flow rate of scrubbing devices used to control total fluorides or particulate matter. The feed rate of raw materials to the processes must also be continuously monitored. During the performance test, the owner/operator must record the scrubber pressure drop and liquid flow rate to establish baseline levels. Following the performance test, it is an operating requirement that the owner/operator must maintain scrubber pressure drop and liquid flow rate within plus or minus twenty percent of the values recorded during the performance test or within a range established upon the basis of prior successful tests. Any exceedance of the operating range averaged over 24 hours is a violation of the operating requirement.

For PPA plants that emit MIBK, the standards require implementation of a leak detection and repair program, continuous monitoring of chiller stack temperature and daily monitoring of MIBK concentrations at two points in the process.

As required by the NESHAP General Provisions (40 CFR part 63, subpart A), the owner or operator must develop and implement a startup, shutdown, and malfunction plan. Most notification, recordkeeping, and reporting requirements in the general provisions apply to phosphoric acid manufacturing and phosphate fertilizers production facilities. These include but are not limited to: (1) initial notification(s) of applicability, notification of performance test, and notification of compliance status; (2) a report of performance test results; (3) a Startup, Shutdown, and Malfunction Plan with semiannual reports of reportable events (if they occur); and (4) semiannual reports of excess emissions. If excess emissions are reported, the owner or operator must report quarterly until a request to return the reporting frequency to semiannual is approved.

The NESHAP General Provisions also require that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records on site for at least 2 years but may retain the records off site the remaining 3 years. The files may be retained on microfilm, microfiche, on a computer, on computer disks, or on magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

III. Summary of Impacts

The overall effect of the rule is to raise the control performance of plants in the industry to the level achieved by the best performing plants. In addition to the health and environmental benefits associated with HAP emission reductions, benefits of this action include a decrease in site-specific levels of non-HAP pollutants and lowered occupational exposure levels for employees.

The Agency estimates that up to 550 Mg/yr (605 tpy) of HF, the predominate HAP, and other HAPs are emitted from sources at phosphoric acid manufacturing and phosphate fertilizers production plants at the current level of control. Implementing MACT-level controls is expected to reduce these HAP emissions from regulated sources by about 315 Mg/yr (345 tpy) nationwide. Plants affected by the standards are expected to achieve these reductions by upgrading or installing wet scrubbing systems.

Expected impacts to energy usage and other media are expected to be negligible. The largest possible impact will be a minor increase in liquid streams flowing to cooling ponds. Since the processes are net consumers of water, those flows will be recycled to the processes.

The nationwide capital and annualized costs of the NESHAP, including emission controls and associated monitoring equipment, are estimated at $1.4 million and $862,000/yr, respectively. The economic impacts are predicted to increase product prices less than three-fourths of a percent. One company in the industry is a small entity which would be subject to the standards. The economic impact of the NESHAP on this company is estimated to be low and would not be significant. No production line or plant closures are expected.

IV. Summary of Comments on Proposal and Responses

A. Selection of Pollutants

1. Hydrogen Fluoride

Comment. One commenter said that the Agency had no empirical data measuring whether and to what extent HF is actually emitted from phosphoric acid manufacturing and phosphate fertilizer production facilities, and, that the Agency should not, and legally may not, propose or promulgate a NESHAP for HF emissions from these facilities. The commenter questioned whether or not phosphoric acid manufacturing and phosphate fertilizer production facilities actually emit HF. The commenter said that no direct measurements of HF emissions from such facilities have ever been made. The commenter went on to question the calculations used to support the original listing of the source categories and the validity of the listings. The commenter further questioned the suitability of the Agency's use of a state permitting report (docket item II–I–32cc) since it did not contain results of direct measurements of HF. The commenter read the March 1995 review draft technical support document (TSD) as recognizing, whether or not, and to what extent, HF may be emitted by the sources affected by the draft NESHAP is dependent to a large extent on the levels of silica present in the processes in question. The commenter postulated that ammonia also ties up fluoride as ammonium bifluoride, making it even less likely that phosphoric acid manufacturing and phosphate fertilizer production facilities actually emit HF. Thus, the commenter concluded that it appears that the Agency is basing both its determination that the facilities in question emit HF and its estimation of the amount of HF emitted on two sources: (1) "calculations" made by an EPA contractor; and (2) a report prepared by a company in connection with state toxic air pollutant permitting. The commenter said that these "calculations" are unverified estimates and are not based on empirical data. The commenter continued that the state permitting report was not based on actual measurements of HF emissions. Rather, the silica content of monitoring impingers employed to test total fluoride emissions in two test runs was used to create a mass balance for various fluoride species across all of the fluoride emission points at the facility in question.

One commenter said that the HF fraction of the fluorides in air emissions from phosphate-ore plants, in view of the speciating difficulties of ascertaining the exact fraction as HF, should be closer to the "⅓ rule" of chemistry (the reaction of H_2SiF_6—> 2HF + SiF_4), not the 28–49 percent range EPA is considering. The commenter said that with silica present in all parts of the phosphoric acid process it is logical for the HF portion in air emissions to be a mere fraction of the 28–49 percent range.

Response. The Agency responds to the statement that HF has not been directly measured or detected at phosphate fertilizer complexes by referring to docket items II–A–6 and II–A–12 which are reports of Agency tests which used Fourier transform infrared spectroscopy (FTIR) sampling and analysis to directly measure HF and silicon tetrafluoride at two facilities. Hydrogen fluoride was measured in amounts that exceeded the major source cutoff under Section 112. It was noteworthy that no silicon tetrafluoride was present in several test runs. In those test runs where silicon tetrafluoride was measured, its concentrations were dwarfed by those of HF. In a third test reported in docket item II–D–15, HF was also measured. The significance of all of these tests is that there are major sources of HAP emissions and HF was in fact directly measured. The low amount of silicon tetrafluoride present is supportive of the Agency's approach of estimating the HF component of total fluoride as one third of the total as predicted by the chemical equations cited in the TSD. The information in the State toxics permitting report (docket item II–I–32cc), which was submitted to the State by a source in the industry, supports this approach.

Comment. One commenter said the Agency used inconsistent methodology in evaluating and regulating HF from processes and the associated cooling ponds. It was the commenter's position that the Agency must use total fluoride as a surrogate for HF in all situations, including cooling pond emissions. Further, the commenter thought that use of one HF test from one cooling pond was highly questionable given the historic wide variation in fluoride emission data from gypsum/cooling ponds. The commenter cited an Agency publication that gave fluoride emission data for gypsum/cooling ponds that has ranged from 0.2 to 10 lbs. of fluoride a day per acre of surface area. The commenter concluded that gypsum/cooling ponds remain a major source of fluoride emissions and the Agency had not established a sound scientific basis for concluding that HF was not a significant part of the large fluoride emissions from the cooling ponds.

Response. The Agency's analysis of NESHAP for cooling ponds focused upon HF emissions because direct measurement data were available. The Agency is aware that those results differed from those of prior studies, including the Agency's own FTIR studies. The variations in data result in different possible estimates of total emissions. Nevertheless, these differences are not important for the purposes of the present rulemaking. The MACT floor determination is driven by the availability of existing control techniques. Here, MACT for existing cooling ponds is no control because there are no demonstrated control techniques used in practice which could have been applied to these sources, regardless of estimated emissions.

Total fluorides were used as a surrogate for HF to establish MACT for emissions from process sources, in contrast to the ponds, because no direct measurements of HF were available and because the NSPS are based on total fluorides. The Agency notes that the results of the FTIR analyses for cooling ponds gave proportions of HF relative to total fluoride which were consistent with those predicted by chemical stoichiometry and, therefore, are supportive of the Agency's approach to estimating the impacts of the emission standards for processes. Since the control of total fluorides and HF from process sources is accomplished with the same control technology (scrubbers), the MACT analysis results in the same level of control regardless of how the emissions are characterized. The use of total fluoride as a surrogate for HF simply changes the manner in which the emissions limit is quantified, not the actual level of control.

2. HAP Metals

Comment. Three commenters stated that particulate matter is an adequate performance measurement for the most likely control technology (wet scrubbers). However, they were concerned that particulate matter used as a surrogate may not accurately track all HAP metals emissions. Their primary concern arose from the fact that calciners operate at temperatures near 1,500 degrees F, which volatilize some HAP metals (such as arsenic, cadmium, mercury and selenium). They noted that such volatilized metals would likely condense as sub-micron particles (for which the scrubbers have significantly lower control efficiency than they do for the bulk of the calciner particulate matter) and that Method 5 measurements would not reflect those emissions. This could lead to an erroneous conclusion that those

pollutants were adequately reduced. In consideration of these concerns, the commenters suggested that the final rule should require affected sources to collect appropriate data (such as that established by Method 29) with which to determine the extent of HAP emissions from calciners.

Response. As the commenters noted, the MACT floor technology consists of wet scrubbers. EPA used available particulate matter emissions data to serve as a surrogate for HAP metals. This PM Surrogate will require the installation of equipment at least as efficient as the technology that is representative of the floor level of emissions. Emission tests and analysis for metals is more costly than simply testing for particulate and would not result in a different floor technology. Therefore the Agency is requiring that particulate testing be performed to demonstrate compliance.

Comment. One commenter said that no direct information was presented to confirm the existence of HAP from dryers and calciners at phosphoric acid manufacturing facilities. The commenter asked that all sections of the proposal dealing with these sources be deleted in the absence of some evidence that they are major HAP emitters.

Another commenter said that the data cited by the Agency are not a sufficient basis for the establishment of a NESHAP for such metals. The commenter stated that there are no stack test data specific to HAP metals and the only data on HAP metals cited are those included in a state toxic air pollutant permitting report (docket item II–I–32cc). The commenter said the establishment of NESHAP (or for particulate matter as a surrogate for such metals) is beyond the legal authority of the Agency under the Act.

Response. Since HAP metals are present in phosphate rock, they will also be emitted from equipment subjecting the ore to high temperatures. The information in the TSD and the docket, to which commenters allude, is air toxics information provided to the State of North Carolina (docket items II–I–32aa and cc) that certifies that a particular source in that State emits HAP metals from dryers and calciners. The State has endorsed the submittals of that source in the form of approved air toxics permits. In particular, item II–I–32aa, which is an attachment to item II–I–32cc, contains results of direct testing of particulate matter from calciner emissions. The testing found arsenic, manganese, nickel, and cadmium, all of which are HAPs. Thus, the Agency concluded that PM is an effective surrogate for HAP metals.

Also, the docket includes item II–I–52u that refers to information provided to a State regulatory agency that indicates that HAP compounds are emitted from calciners that a commenter operated and for which the commenter has current operating permits. Commenter's point that some dryers and calciners may not be major HAP emitters by themselves would not excuse the Agency from a duty to establish emissions limits for that equipment when it is located at major sources of HAPs.

3. Total Reduced Sulfur (TRS)

Comment. One commenter expressed concern that the NESHAP would not address TRS emissions from WPPA plants. The commenter gave as an example one facility that emits 1690 tons per year of TRS and noted that those emissions dwarfed those of kraft pulp mills in its jurisdiction. The commenter suggested that TRS should be regulated and the most appropriate way to do so would be through the next review of the NSPS in subpart T.

Response. Because the TRS pollutants are not listed as HAPs for the purposes of the Act, the Agency presently is not required to regulate TRS under section 112 of the Act. The commenter's suggestion of considering limits on TRS during the next review of the NSPS in Subpart T will be addressed in that context.

B. Compliance Provisions

1. Use of Monitored Operating Parameters for Establishing Violations of the Standards

Comment. A number of commenters expressed their opinions on the Agency's proposal to relate operation outside established site-specific ranges of wet scrubber pressure drop and liquid flow rate to exceedances of the emissions limits. The commenters were unanimous in questioning such relationships for emissions levels for total fluorides and particulates for the sources subject to these NESHAP. One commenter claimed that there was no basis for limiting the variation in operating parameter monitoring results to plus or minus ten percent of the level observed during a performance test. The commenter said there were no data in the record to support any correlation between operating parameter exceedances and a violation of the proposed NESHAP emission limits, much less a correlation between a greater than ten percent variation in operating parameter values and such a violation. Another commenter said the proposed ±10 percent restriction limit on the emission control devices (usually scrubber pressure drop and the liquid flow rate) was needlessly restrictive. The commenter recommended a ±17 percent restriction limit as being less restrictive and serving as a "surrogate" indicator for continuous monitoring of equipment whose function is to maintain emission limits.

The primary industry commenter argued that there is nothing in the record of this rulemaking to establish that an operating parameter exceedance is "credible evidence" of the duration, much less the existence, of a violation of the proposed NESHAP emission limits. The commenter noted that the data contained in the record of this rulemaking consist entirely of performance test results and there are absolutely no data or information in the record upon which the Agency could base a determination that the operating parameter exceedances identified in the proposal can be equated with a violation of the proposed NESHAP emission limits. The commenter provided data for the purpose of indicating that sources might meet proposed emissions limits over a wide range of operating conditions. The data covered a period of years and included a wide range of operating conditions. As a group, these commenters were of the opinion that control device operating parameters such as scrubber pressure drop and liquid flow rate could be used as indicators of proper operation and the need for maintenance.

In the event that the monitoring provisions of the proposal were retained, three commenters recommended that sources electing to use historic test results to establish a range of operation for control device operating parameters as provided by proposed §§ 63.604(d)(2) or 63.624(f)(2) should be given the same opportunity to retest to demonstrate that prior exceedances did not constitute violations of emission limits as provided in §§ 63.604(d)(1) or 63.624(f)(1). Pursuing the logic of the previous paragraph, one of the commenters said the basis for the retest option would be the fact that compliance with the emission limits can be achieved even if operating parameter values are outside the range observed during a compliance performance test. The commenter held that this rationale was valid whether the operating parameter ranges are established by the plus or minus ten percent method or by the owner or operator under the alternative method.

Some commenters believe it is prudent to keep the continuous parameter monitoring requirements in

the proposed rule to assist operators in determining whether their controls are operating properly. They note that while it is not necessarily true that sources are in compliance with the emission standards just because their two monitored operating parameters are within the range of values established during the performance test, exceedances of operating parameters are good indicators of control device malfunctions. These commenters recommended not allowing sources that exceed the continuous monitoring parameters set during the performance test to have the opportunity to retest within 30 days to demonstrate that the prior exceedance did not constitute a violation of an emission limit, as proposed. The commenters believe it would be very difficult to ensure that the proposed provisions requiring the source to establish and maintain during the re-test the same operating conditions that existed during the exceedance of the operating range could be properly followed and that the retest would, in all probability, not represent conditions present during the exceedance. Furthermore, they commented that the allowance to retest would add another layer of complications for determining compliance under the rule. They recommended deleting the allowance to retest from the final rule.

Response. The final rule accommodates the concerns raised with regard to the Agency's proposal linking exceedances of operating parameter ranges to compliance with the emission limit. Specifically, the final rule eliminates this direct linkage, based on data submitted by commenters' indicating that compliance with an operating parameter range does not always correlate to compliance with the emission limit, and it establishes instead operating parameter limits which help assure continuous compliance with the emission limit. In so doing, the rule also reflects other concerns that the standard should contain operating requirements aimed at ensuring proper operation and maintenance of sources' control devices. Consequently, although the data available to the Agency did not establish an exact correlation between operating parameter values and specific exhaust gas concentrations, the rule retains the requirement to maintain operating parameter values within established ranges, in order to help assure that MACT is being complied with on a continuous basis.

Monitoring of an operating parameter, with an enforceable operating limit, will help assure continuous compliance with the emission limit through continuous emission reductions. The operating limit is a separately enforceable requirement of the rule and is not secondary to the emission limit.

This standard requires sources using wet scrubbers to continuously monitor the scrubber liquid flow rate and the pressure drop across the scrubbers and to maintain these operating parameters within ranges under which the source demonstrates, via a performance test, the source can comply with the emission limit. The operating limits established during a performance test help assure continuous compliance with the emission limit. The EPA has considered the commenters' argument that an exceedance of an operating parameter is not necessarily an exceedance of an emission limit and has consequently not made operating limit exceedances automatic violations of the emission limit; however, the Agency has made these operating limits separately enforceable requirements of the rule in order to promote continuous compliance with the emission limit.

By doing so, the final rule accounts for the commenters' claims in two ways: (1) the operating limits include an operating margin of ±20 percent for sources that base the operating limit upon the baseline values of operating parameters established in the most recent performance test; and (2) by allowing sources to establish operating limit ranges based upon baseline values of operating parameters established in either historic performance tests or performance tests conducted specifically to establish such ranges. Thus, sources have two options to establish operating limit ranges within which the source will still be in compliance with the operating limit. By including an operating margin, the EPA recognizes that control devices can be operated and maintained under a range of conditions and still help assure compliance with the emission limit through continuous emission reduction. For the final rule, the Agency has increased the operating margins in the first instance described above from ±10 percent at proposal to ±20 percent. This change was made in response to the Agency's review of data submitted by the industry commenters that showed a wide range of variability in the level of operating parameters over which the emissions limits could be achieved. The Agency believes that sources which operate in these expanded margins and sources which keep operating parameters within a range established on the basis of test data generally will be meeting the emission limit and, thus, these changes make the operating requirements more likely to provide a reasonable assurance of the source's compliance status. As an additional safeguard to ensure that these operating requirements are set to help assure continuous compliance with the emission limit, when performance testing shows emissions near the emission limits, the permitting agencies have the discretion to shrink a previously-established operating range when a source operating within the broader range could be expected to exceed the emission limits. On the other hand, the Agency does not believe that it is necessary to further expand these operating margins, as some commenters suggest, because the rule permits sources to undertake additional performance testing to establish operating limits which reflect compliance with the emission limit for the full range of operating conditions at the source.

Finally, because the final rule does not make operating limit exceedances automatic violations of the emission limit, and because the operating limits are separately enforceable requirements of the rule, a provision which allows the source to retest to show that certain operating parameter levels do not equate with an emission limit violation is unnecessary. Accordingly, the Agency has deleted the retest provision, as suggested by the State commenters.

Comment. Two commenters said, in many cases, the pressure drops involved are less than one inch and the commenter is unaware of monitoring equipment that can measure at the tenth of an inch level necessary to determine whether or not the measured pressure drop is plus or minus ten percent of that observed during a performance test.

Response. As a result of the comments concerning possible unavailability of instrumentation with suitable sensitivity, the Agency contacted an instrument vendor and was advised that the necessary equipment is available.

Comment. One commenter speaking for the industry as a whole said that operating parameter exceedances may not be denominated as violations of NESHAP emission limits. The commenter said the Act provides no legal authority to denominate operating parameter exceedances as violations of emission limits. The commenter said this is particularly the case when, as here, the emission limits have been developed using a database which consists entirely of performance test results. In such a case, the denomination of operating parameter exceedances as a violation of the emission limit would have the effect of changing the emission limit without

sufficient technical support in the record.

The commenter anticipated that the Agency could argue that section 113(e) of the Act provides the necessary legal authority and noted that the section provides that the duration of a violation may be established by "any credible evidence (including evidence other than the applicable test method)." However, the commenter posited that any argument that section 113(e) provides legal authority to denominate operating parameter exceedances as a violation of emission limits in general, and the proposed NESHAP in particular, would be without merit. The commenter argued section 113(e) permits any credible evidence other than the applicable test method to be used only to establish the duration of a violation, not the fact that a violation has occurred.

Response. The final rule does not make exceedances of operating requirements per se violations of the emission limitation. As such, the commenter's concern presumably has been addressed by changes since proposal. The Agency, however, specifically disagrees with the commenter's suggestion that, under the Act, parameter deviations cannot be denominated as violations of applicable emission standards. Section 113(a) of the Act directly contradicts the commenter's position. It permits enforcement actions for violations of the statutory requirements "on the basis of any information available to the Administrator* * * *" This broad language means that the Agency can prove a violation based on any information available, limited only by general evidentiary rules.

In addition, the commenter's reading of section 113(e) is too constrained. As the Agency stated in the Credible Evidence rulemaking, section 113(e)'s focus on the duration of a violation grew out of Congress's desire to reverse a judicial decision prohibiting the Agency from establishing a violation's duration by non-reference test methods. See 62 FR 8314, 8320–22 (February 24, 1997). Section 113(e) should not, therefore, be read to limit the Agency's ability to prove the fact of an emission violation, in addition to the duration of such violation, by any credible evidence.

2. Selection of Monitored Parameters

Comment. One commenter said operating parameter ranges should be established on the basis of any relevant data as opposed to the proposal that would allow alternatives to the plus or minus ten percent operating range to be established using data obtained during full-scale performance testing. The commenter thought that data other than that obtained during full-scale performance testing could validly establish operating ranges for pressure drop and liquid flow rate that are representative of compliance with the NESHAP emission limits. The commenter believed that because other data may be used to establish the required operating ranges, and because the ranges must be approved by appropriate government officials, the proposed §§ 63.604(d)(2) and 63.624(d)(2) should be revised to permit the establishment of the required operating ranges on the basis of any relevant data or information, including engineering assessments and manufacturer's recommendations.

Another commenter said that changes in pressure drop are not always an accurate indication of changes in performance for certain types of scrubbers. In particular, the commenter said phosphoric acid production and DAP/MAP fertilizer production are each highly scaling (e.g. depositing hard incrustations inside process vessels) services, and pressure taps necessary for continuous pressure drop monitoring readily scale over in both services. The commenter said that while it is certainly possible to operate a continuous pressure drop monitoring system in these services, keeping the pressure taps from scaling over can be a maintenance-intensive effort. So, the commenter suggested that the final version of the proposed rule should allow for continuous monitoring and recording of some other appropriate indicator parameter(s) in lieu of pressure drop in cases where other parameters provide a more accurate indication of scrubber performance.

Response. Since the scrubber pressure drop and liquid flow rate are direct indicators of the operation of the control device and its performance during the most recent testing, the final standards continue to require that those parameters be monitored. The commenters' suggestions that other "relevant" or "appropriate" indicators should be specified in lieu of pressure drop and liquid flow rate are vague and would result in case-by-case debates as to whether any of innumerable options may or may not accomplish the same degree of feedback on the performance of emissions controls. The commenters provided no data as to how other parameters correlate with emissions limits. Likewise, establishment of the required operating ranges on the basis of any relevant data or information, including engineering assessments and manufacturer's recommendations, as suggested by the commenters, would be insufficient because there would be no link established between such ranges and the emission limits as is the case when ranges are set during performance testing. The general provisions provide the opportunity for sources to obtain consideration of alternative monitoring, as needed.

3. Frequency of Testing

Comment. Two commenters said that the proposed one-time performance testing was inadequate. The commenters cited the example of one source that is required to test WPPA plants, phosphate rock dryers and calciners, DAP/MAP plants and GTSP plants on an annual basis. The commenters recommended that the Agency require testing either annually or once every permit cycle. The commenters consider one-time performance testing insufficient and a step backwards from their current requirements.

The commenters considered the proposed one-time performance test requirement for sources ineffective and inadequate to demonstrate compliance with each applicable numerical emission limit for total fluorides and particulate matter (surrogate pollutants). They stated that most sources at the affected facilities currently perform at least annual stack testing for the surrogate pollutants identified above. They commented that air pollution control agencies have required this level of testing because their experience indicates that these sources are prone to problems with control device maintenance. They note that many affected facilities, which represent large industrial complexes that have undertaken this type of stack testing for numerous years, use their own environmental compliance staff to conduct the tests, minimizing any economic burden. Accordingly, the commenters recommended that the minimum requirement for ensuring compliance with the proposed emission standards should be annual stack testing using the methods described in the performance tests and compliance provisions sections (§§ 63.606 and 63.626).

Response. The Agency has taken note of the comments that the equipment and control devices in these source categories are subject to harsh conditions that cause corrosion and scaling of the process components and that State agencies already require annual tests of these facilities. So, the performance of the emissions controls will vary over time and so may emissions. Thus, the Agency is promulgating a requirement for annual

testing in the final rule. This change is also important in light of the decision not to make operating parameter exceedances violations of the emission standards, which raises concerns as to how to ensure appropriate enforcement of the NESHAP. As was noted by commenters, most jurisdictions already require annual, or more frequent testing and, so, this will add minimal burden beyond that already required of the sources.

Comment. One commenter said that in the event that the Agency retains the provisions for designating exceedances of operating parameter ranges as violations, he supports the alternative method of setting the operating range for parameters of the air pollution control device.

Response. The alternative for establishing operating ranges based upon prior performance test results was retained in the final rule.

4. Simultaneous Testing

Comment. Two commenters said the requirement for simultaneous testing would be burdensome for most facilities with multiple emission points because, read strictly, this would require multiple test crews and equipment whenever dealing with multiple emission points. One of the commenters said this requirement would add nothing to the quality of the information gathered. The other commenter found ambiguity in the word "simultaneous." He questioned whether "simultaneous" meant exactly at the same time, or within a certain number of minutes or hours. Also, the commenter said the processes undertaken at these facilities are continuous operations and variations within these continuous operations would be expected to be slight. Finally, the commenter said simultaneous performance testing had never been required by the existing NSPS on which the proposed NESHAP were based. The commenter said under the NSPS, the relevant regulatory authority establishes performance testing requirements based on the circumstances presented by individual facilities. The commenter said that the NSPS performance testing requirements have been in place for more than 20 years and there is no suggestion that the current approach to performance testing is inadequate or inappropriate. So, he recommended that the timing of performance testing be decided by the Administrator on a case-by-case basis.

Response. Since there is a limited number of sources where multiple emissions points are present and there are no known instances where testing has been a problem in the past, the Agency decided not to make simultaneous testing mandatory in the final rule. The site-specific test plan required by § 63.7(c)(2) of the general provisions will cause development of test plans that can address the concerns which lead the Agency to propose simultaneous testing.

5. Process Monitoring Requirements for Purified Phosphoric Acid (PPA) Plants

Comment. One commenter recommended that the proposed process feed rate monitoring requirements be amended to delete reference to PPA plants. They noted that their plant records P_2O_5 feed to the process on a daily basis, and that, given the averaging period for MIBK additions, continuous recording of feed rate is unnecessary. In addition, the commenter recommended substituting "product" for "stripped" in connection with the descriptions of the acid streams in proposed § 63.604(f)(1) to distinguish them from those referenced in proposed § 63.604(f)(2).

Response. The Agency agrees with the commenter and the regulations have been appropriately changed.

6. Other

Comment. One commenter opined that approval authority for operating parameter ranges should be broadened. As proposed, §§ 63.604(d)(2) and 63.624(d)(2) required that pressure drop and liquid flow rate ranges be approved by "the permitting authority." The commenter was concerned that limiting approval authority to the permitting authority was unnecessarily restrictive and could result in the inability of an owner or operator to establish operating parameter ranges because there may be, at the relevant time, no "permitting authority" to give approval. To address this potential problem, the commenter recommended that operating parameter range approval authority be vested in the "Administrator."

Response. That term was deleted from the final rule which, instead, now refers to the Administrator as defined in the General Provisions 40 CFR, part 63, 63.2 Definitions.

Comment. One commenter recommended that the proposal (§§ 63.605(c)(3)(ii) and 63.625(c)(3)(ii)), which would require that the P_2O_5 content of the feed to the processes subject to the NESHAP be determined in accordance with Method 9 of the Association of Official Analytical Chemists (AOAC), be revised. The commenter observed that Method 9 was the accepted method for P_2O_5 determinations in 1974 when it was specified by, and incorporated by reference in, the NSPS for the processes subject to the proposed NESHAP. In the intervening 23 years, AOAC has developed and specified more advanced methods for making the P_2O_5 determination, including Methods 962.02, 969.02, and 978.03. The commenter recommended that in order to avoid specifying outdated methods for the P_2O_5 determination; and in order to keep this section of the NESHAP "evergreen," proposed 40 CFR 63.605(c)(3)(ii) and 63.625(c)(3)(ii) be revised to read: "(ii) The P_2O_5 content (Rp) of the feed shall be determined in accordance with the method(s) of the Association of Official Analytical Chemists."

Response. The Agency agrees that the specified AOAC methods are appropriate methods to determine the total phosphorus content of fertilizer, has amended § 63.14 to incorporate by reference AOAC methods 929.01, 929.02, 957.02, 958.01, 962.02, 969.02, and 978.01, and has added appropriate references to those methods in the rule. The Agency also has identified appropriate test methods published by The Association of Florida Phosphate Chemists to quantify total phosphorus content of fertilizer. In addition the Agency has added appropriate references to methods published by The Association of Florida Phosphate Chemists to quantify total phosphorus content of phosphoric acid, superphosphoric acid, triple superphosphate, and ammonium phosphate.

The commenter suggested that a general reference to AOAC methods was a way to avoid citing outdated methods. The Agency does not agree that this is acceptable since changes to a method could affect the stringency of the regulation. It is therefore important that the Agency review changes in consensus methods to assure that this does not inadvertently happen. The Agency accomplishes this by citing a specific version of a consensus method.

Comment. A commenter recommended that the determination of whether pressure drop is measured across each scrubber in the process scrubbing system or across the entire scrubbing system be left to the Administrator on a case-by-case basis. The commenter noted that production facilities subject to the NESHAP employ various types of scrubbers, and various scrubber configurations, as a means of achieving compliance with the current NSPS and that these same systems will be used to achieve compliance with the NESHAP. The commenter said that, because of the variation in the types and configurations of scrubbers used to achieve compliance, a requirement to

measure the total pressure drop across each scrubber in the process scrubbing system in all cases could be unnecessarily burdensome. The commenter went on to say that monitoring of both pressure drop and flow rate may not be appropriate in all cases and that the determination of the appropriate operating parameter(s) for monitoring should be made on a case-by-case basis. The commenter posited that the requirement to install continuous parameter monitoring systems for both pressure drop and flow rate in all cases could be unduly burdensome, inappropriate and not supported by the record. The commenter said whether pressure drop or flow rate is the relevant parameter for monitoring turns largely on the HAP being controlled by the relevant NESHAP.

Response. The documentation of the proposed NESHAP made clear that the Agency was aware of the wide range of possible scrubber configurations that can be and are used to meet the NESHAP level of control. As written, the rules provide sources with flexibility to meet the emission limits in the manner most efficient for a given source. Accordingly, when choosing to use multiple control devices to achieve limits that can be met by a single device, a source also accepts the requirements attendant to operating and monitoring those devices. To allow sources to monitor only chosen components of control systems as suggested by the commenters would undermine the effectiveness of the monitoring requirements in assessing the overall performance of controls. The control systems are essentially doing the same job regardless of whether removal of pollutants is occurring in one or a series of vessels. The main concern is one of providing sufficient time for the effluent gases to contact an absorbent liquid. The key parameters therefore are contact time as reflected by pressure drop and sufficient quantities of absorbent as reflected by liquid flow rate. The overall operating effectiveness of the controls is reflected in those two parameters.

Comment. One commenter questioned the two hour test time in proposed § 63.605(e)(1) which would require that the sampling time for each run of a performance test for phosphate rock calciner particulate matter emissions be "at least 2 hours." Further, the commenter believed that the equipment employed in performing the relevant reference method would be incapable of producing accurate results when operated for a two-hour period due to the plugging of the particulate matter filters involved. Consequently, the commenter suggested that the per-run sampling time for particulate matter performance testing of phosphate rock calciners be set at one hour.

Response. There are two factors generally considered when specifying a minimum particulate matter (Method 5) sampling time in a regulation. The first priority is to assure that sufficient sample mass would be collected to obtain quantitative results with an acceptable degree of confidence at the level of the emission limit. The sample size needed to determine compliance at concentrations of 0.040 grains per dry standard cubic foot is small enough that one hour is a sufficient sampling time. The second factor is the time necessary to obtain a sample that represents normal process operational cycles. Calcination is a continuous operation. Hence, this is not an overriding factor. Thus, consistent with the commenter's suggestion, the Agency is specifying a minimum sampling time for each performance test run of 1 hour.

Comment. One commenter said the Agency recognized in the preamble to the proposed NESHAP that performance testing requirements for uncontrolled GTSP storage buildings have not yet been proposed by the agency and reserved the right to comment on these performance testing requirements when they are proposed.

Response. The Agency previously promulgated Methods 13 A and B which are applicable to GTSP storage buildings. Sources electing to determine compliance without control devices or stacks need to develop site-specific test protocols that are equivalent to Method 13. Source owners wanting to assure compliance in an alternative manner should propose a measurement procedure in their site-specific test plans, required by § 63.7(c)(2). The regulation requires that the owner or operator submit those plans to the Agency for review within twelve months of promulgation. The Administrator's review procedure is governed by § 63.7(c)(3). In the interest of maintaining uniformity in the implementation of the NESHAP, the Administrator has retained from delegation the authority to approve site-specific test plans for uncontrolled granular triple superphosphate storage buildings developed pursuant to § 63.7(c)(2)(i). This retention of authority is contained in § 63.629 entitled "Miscellaneous requirements."

C. Emission Limits

1. General

Comment. One commenter expressed the opinion that the Agency has proposed reasonable emissions limits which can be reasonably met using commercially available control technologies.

Response. None required.

2. Wet Process Phosphoric Acid (WPPA) Plants

Comment. One commenter said the Agency should amend the standard for existing WPPA facilities to be the same as for new WPPA facilities because the proposed action failed to consider and analyze the economic advantage that the proposed standard would give existing facilities over new facilities.

Also, the commenter said the proposed MACT floor standard for existing facilities failed to consider the benefits of airborne radionuclides reductions achieved by the proposed new facility standard. Citing the Agency's proposal not to exercise its statutory authority to go "beyond-the-floor" and require more stringent controls on existing WPPA plants based upon EPA's analysis of the health impacts of HF and HAP metals, the commenter was unaware of any Agency analysis of the human health and environmental benefit. The commenter maintained that the Agency was required by section 112(d) to evaluate the public health benefit and the environmental benefit which would result from the decreased radionuclide emissions associated with the particulate if existing WPPA facilities were required to meet the new source WPPA standard for HF emissions.

Response. The Agency's actions have been guided by the language of the Act. The Act clearly states that standards for new and existing sources should be determined differently. The commenter was correct in his observation that the Agency has a duty to consider going beyond the floor level of control for existing sources.

For this rulemaking, there were no data which to base analyses of additional reductions in radionuclide emissions. There was information on HF and HAP metals emissions. So, the Agency's analysis for going beyond the MACT floor focused upon those pollutants.

As a part of that consideration, the Agency first explored the possibility that different control technologies were available and demonstrated for the classes of sources being controlled by today's action. None were found that had been demonstrated and could be applied without creating additional negative impacts on other environmental media. The Agency also considered whether the new source emission limits could be applied to

existing sources. The emissions data showed that high levels of control were being achieved in both cases and that there was minimal opportunity for incremental reductions to be achieved in a cost-effective manner by going from the existing-source MACT floors to the levels of new source MACT. As discussed above (I. B.), a simple calculation of the application of new source MACT in place of existing source MACT for the subcategory of WPPA plants, which have the greatest differential between the two levels of control, indicates that the costs would be unreasonable. In that example, the annualized capital cost of achieving the additional annual HF reduction of 0.34 tons per year was $17,253 per year. There, the cost effectiveness of the additional reduction would be $50,744 per ton of additional HF removed, which the Agency considers to be inappropriate at this time.

3. Evaporative Cooling Towers at Phosphoric Acid Manufacturing Plants

Comment. Commenters support the Agency's proposed requirement to forbid the introduction of liquids containing the effluent from air pollution control devices into any evaporative cooling tower. They agree that it does not make sense to scrub hydrogen fluoride and other HAPs from potential emission points and then allow these HAPs to evaporate when the scrubber water is routed to evaporative cooling towers.

One commenter said that separating water discharges of pollution control devices from the evaporative cooling towers would cost one source in its jurisdiction approximately $0.4 million for process alterations. The commenter stated that it could cause the source various operational problems of increased water consumption and plant water effluent, for which the source has no water effluent-handling facilities outside of land application.

One commenter stated that his is the only existing facility affected by this proposal and estimates compliance costs will be several hundred thousand dollars. He commented that the Agency had not considered the benefits or the compliance costs of the proposed work standard and that § 63.602(e) should be deleted.

Response. For phosphoric acid manufacturing, the Agency has elected to base NESHAP upon the floor level of control. This is the least stringent option permitted by the Act. Any consideration of costs would be of significance only for consideration of options for control levels exceeding the floor level of stringency.

Comment. Two commenters noted that the language for existing and new evaporative cooling towers does not agree and proposed that § 63.602(e) should be used for both.

Response. The Agency agrees that the language for existing and new evaporative cooling towers should have been identical. It was the Agency's intent to use the language described for existing sources for new ones also and this has been changed on the final rule.

4. Phosphate Rock Calciners and Dryers

Comment. One commenter expressed the opinion that the proposed particulate matter limit of 0.040 grain per dry standard cubic foot (gr/dscf) for calciners is readily achievable and went on to note that emissions below 0.025 gr/dscf have been achieved for at least one calciner. The commenter suggested that the Agency should also limit emissions of fluorides from calciners.

Response. The Agency agrees with the comments upon the achievability of the proposed emissions limits. The first number referred to by the commenter was selected as MACT for existing calciners via the rationale in the proposal. The limit selected for existing sources was established on the basis of test data for several calciners that actually process phosphate ore and the data show that the emissions limits can be met on an ongoing basis. The lower number given by the commenter has been achieved by calciners in other categories. However, the commenter provided no information that this level of control is achievable for phosphate rock calciners. The selection of new source MACT described in the proposal was made using data specific to this industry to ensure achievability. The Agency did consider setting a fluoride limit for calciners. The wet scrubbers used in the industry for control of particulate matter also capture hydrogen fluoride. Even if the Agency had established an HF floor, it would have been based upon the same control devices that provided the basis for setting the particulate limit.

5. Purified Phosphoric Acid (PPA) Plants

Comment. One commenter initially recommended that the level of the proposed MIBK standard should be changed from that which was proposed. Included with the comments was information describing plant modifications, updated MIBK inventory records and process records from which emissions could be determined. The Agency reviewed the updated information and concluded that it supported neither the proposed standards nor those suggested in the commenter's recommendations. To clarify the comment, the commenter consulted with its State air pollution control agency to discuss alternatives. Two commenters stated that the leak detection and repair (LDAR) provisions of 40 CFR part 63, subpart H would be a workable means of addressing fugitive emissions. Other commenters stated that the LDAR program would not address tank and stack emissions and they supported keeping the proposed requirements to maintain the chiller stack temperature and the MIBK concentration of the raffinate (process waste materials) and product acid within specified limits.

Response. One commenter manufactures PPA through a solvent extraction method. The plant emits MIBK, which is a HAP. Fugitive emissions of MIBK from valves, flanges, and seals are reduced by means of an ongoing maintenance and repair program. As the lone PPA facility in the source category, its control methods constitute the MACT floor for controlling fugitive emissions of MIBK. At proposal, the Agency translated the source's maintenance and repair program into a numerical limit on MIBK that was to be determined through plant production and MIBK makeup records. The proposal was based upon the premise that the MIBK makeup requirement was a result of fugitive emissions. That approach was proposed because the Agency thought that doing so would simplify enforcement of a standard based upon effectiveness of the work practices in place at the plant for limiting process losses of MIBK. In response to a commenter, the Agency reviewed information in the record prior to proposal and the additional information provided by the commenter for the purpose of determining whether the proposed numerical limit would be an appropriate means of implementing MACT. The data indicated that a numerical limit could not be established. Emissions were not related to production and, therefore, the proposed standard which tied allowable emissions to the production rate was not a valid approach.

The MIBK cannot be emitted through a conveyance designed and constructed to capture this pollutant.

Upon consideration of the fugitive nature of these emissions, the available information and the public comments received, the Agency has concluded that it is not feasible to prescribe or enforce an emission standard for control of these emissions. In section 112(h)(1), the Act provides that the Administrator may prescribe a work practice standard

consistent with the provisions of section 112(d) in lieu of an emission standard, if it is not feasible to prescribe or enforce an emission standard for control of a HAP. In this instance, the work practices at the plant constitute the floor level of control. The Agency agrees with the commenters recommendation that the leak detection and repair (LDAR) provisions of 40 CFR part 63, subpart H provides a means of expressing the work practices as a regulatory requirement. The LDAR provisions in subpart H were determined during development of the hazardous organics NESHAP to be MACT for fugitive emissions sources with similar characteristics to those of the one plant emitting MIBK. After considering all available information, the Agency has concluded that subpart H is at least equivalent to the facility's current practices and has adopted the LDAR provisions of the HON as part of the MACT controls for this process. Accordingly, the Agency has referenced the subpart H requirements in today's rulemaking. The Agency is keeping the proposed requirements to monitor and maintain the chiller stack temperature and the MIBK concentration of the raffinate and product acid within specified limits.

Comment. One commenter suggested generalizing the definition of a PPA plant by modifying the proposed language to read as follows: "Purified phosphoric acid plant means any facility which uses solvent extraction to separate impurities from wet process phosphoric acid product acid for the purposes of rendering the product suitable for industrial, manufacturing or food grade uses."

Response. The Agency found the commenter's suggestion acceptable and has incorporated it into the final rule with a wording change that clarifies that coverage is limited to those sources employing a HAP compound as a solvent. So, the rules will effectively cover only one of the two processes now in use because the second process does not emit HAPs.

6. *Granular Triple Superphosphate (GTSP) Storage Buildings*

Comment. One commenter supported the Agency's proposed approach limiting applicability for GTSP storage buildings to only those storage buildings co-located with GTSP plants. The commenter concurred with the Agency's rationale and cited additional reasons why the NESHAP for GTSP storage buildings should be made applicable only to such storage buildings collocated with GTSP plants. The commenter said requirements of the proposed NESHAP for such facilities were based directly upon the pre-existing NSPS and said his review of the background documents associated with the original NSPS rulemaking indicated it was clear that the Agency intended that the NSPS apply only to collocated GTSP storage facilities. Furthermore, he noted the only GTSP storage facilities sampled in connection with the development of the NSPS were collocated facilities.

As a consequence of review of the public record, the commenter made several specific suggestions about the proposed rules. First, he said the definition of "fresh" GTSP in proposed § 63.621 should be redefined if the Agency does not limit the applicability of the NESHAP to collocated GTSP storage facilities. The commenter suggested that for regulatory purposes, the appropriate inquiry is the extent to which GTSP in storage actually emits significant amounts of fluorides. The commenter provided engineering data on measured fluoride emissions from stored GTSP and said the data demonstrate that the vast majority of fluoride emissions occur within 48 hours of the production of GTSP. The commenter recommended that the definition of "fresh" GTSP be revised to read: "Fresh granular Triple superphosphate means granular Triple superphosphate produced within the preceding 72 hours" based on the data provided.

The commenter also said that the percentage of fresh GTSP that must be present during performance testing would also have to be revised accordingly. If this were not done, no existing GTSP plant would be capable of producing "fresh" GTSP at a rate which would permit the current 20 percent limitation to be met. The commenter recommended that the percentage of the total amount of stored GTSP which must be fresh at performance testing should also be revised from 20 percent to six percent.

Response. In general, the Agency agrees with the commenter's conclusions and recommendations. The proposed approach was to adopt the technical component of the NSPS and to add language exempting GTSP storage buildings co-located with GTSP process lines. Shortly after proposal, the co-location issue and the technical concerns raised by the commenter also arose in the context of the NSPS itself. The NSPS was subsequently revised (see 62 FR 18308) to address those concerns. The main features of the revised NSPS were a change to the definition of "fresh GTSP" that was consistent with the commenter's recommendation and a provision requiring producers of GTSP not to ship freshly produced GTSP until it had cured. In effect, the producers were to hold the GTSP in their storage buildings until the HF emissions had tapered off as a result of curing. This, in effect, accomplished the purpose of the proposed NESHAP with regard to limiting applicability to co-located storage buildings. In fact, the approach of the revised NSPS better accomplished that purpose by more clearly addressing which storage buildings were subject to the rules. Since, the revised NSPS addresses the concerns voiced by the commenter and the Agency considers the revised NSPS to better accomplish the purposes of establishing MACT, the final rule for this NESHAP has been amended to reflect the requirements of the NSPS, as revised.

7. *Cooling Ponds.*

Comment. One commenter said that the Agency must regulate the corrosive hazardous waste in the cooling pond either under this rule or by a definitive deadline under RCRA. The commenter said that the proposed HF standards would require the discharge of air pollution scrubber water containing HF into cooling pond water resulting in unregulated corrosive hazardous waste discharge to ground waters and surface waters. The commenter added that the Agency's analysis of the non-air impacts of releases of pollution from cooling ponds did not discuss the cooling pond water pH issue and the commenter was unable to find any discussion of the non-air impacts of the surface and groundwater releases from these ponds resulting from putting additional HF into the ponds. The commenter suggested that addition of more HF to the cooling ponds will lower the pH of these ponds even further below the corrosive hazardous waste standard of a pH of 2.0. As such, the commenter maintained that the proposal did not accomplish the section 112(d)(2) mandate that emission standards "shall require the maximum degree of reduction in the emissions of the hazardous air pollutants subject to this section" achievable "taking into consideration costs and any non-air quality health and environmental impacts and energy impacts." The commenter believed that section 112(d)(2) required EPA to consider: (a) the enclosure of systems to eliminate emissions; (b) the collection, capture or treatment of such pollutants when released from a process, stack or storage facility; or, (c) design standards for processes.

In addition, the commenter said the proposed rule also did not comply with

the Pollution Prevention Act because the proposed rule did not address the cooling pond water corrosive hazardous issue by EPA using its powers under section 112 of the Act or under RCRA to eliminate or reduce the surface and groundwater pollution from the HF in the cooling ponds.

Response. Although this rulemaking is focused upon air emissions and regulating cooling ponds with respect to RCRA goals would be outside the scope of this action, the Agency has considered the impacts of MACT upon other media. An engineering analysis of options for addressing the HF content of cooling ponds was included in the docket prior to proposal as item II-B–9. As part of that analysis, consideration was given to a process that would eliminate flows to cooling ponds as encouraged by the Pollution Prevention Act. While the Agency found the new process promising, it was not demonstrated under commercial conditions and could not be adopted as an available control technology. This was specifically discussed in the proposal (61 FR 68444).

As the preamble to the proposed rules indicated, it is the Agency's expectation that five process lines would need to upgrade or replace existing controls to meet the NESHAP. Since those facilities currently route their scrubber effluent to cooling ponds, the effects of the rule would constitute a very small incremental change to current practices at those facilities. Given the relatively small contribution of scrubber effluent to the ponds and buffering effects of the complex mixture of chemicals in the ponds, there would be no observable effect resulting from changes to the air pollution controls.

D. Other Comments

1. *Determination of Major Source Status*

Comment. One commenter noted that pursuant to 40 CFR 63.1 (b)(3), owners or operators of stationary sources potentially subject to the NESHAP must make an initial applicability determination concerning whether or not they are a major source and, therefore, subject to the NESHAP. The commenter acknowledged that this applicability determination is specifically made the responsibility of the owner or operator of a stationary source. The commenter asked that in order to ensure that the statements concerning the number of major sources contained in the December 27, 1996 preamble do not inadvertently lead to "prejudgments" on major source determinations, the Agency should specifically recognize, in the preamble to the final NESHAP, that the calculations and the permit report used as the basis for the estimates referred to in the proposal notice are not the exclusive sources to be relied upon in making such major source determinations. The commenter requested the Agency to explicitly state that such determinations may be made upon any relevant data or information, including, but not limited to, the calculation procedure used by the Agency.

Response. It is a normal practice for the Agency to examine the impacts of its rules upon the environment and upon the regulated community. In its estimates of the impacts of the proposed rules, the Agency projected that 15 facilities may be major sources subject to this NESHAP. Those estimates are the Agency's expectations and do not constitute a determination of major source status for individual sources for purposes of Title V operating permits. However, the Agency does consider its methods of estimation to be sound and would carefully examine any analyses provided by sources that indicated lesser amounts of emissions. In particular, the argument by industry that silica or free ammonia remove all available HF is not supported by the FTIR data available for this rulemaking. If one could assume that sufficient quantities of reactants, such as silica and ammonia in this case, were present to theoretically drive a reaction to completion, real world actualities such as imperfect mixing or equilibrium limitations would prevent complete reactions of available ingredients from occurring. Thus, regardless of the silica or ammonia content of the emissions streams for this industry, it is expected that HF will be present in the final exhaust. The most definitive approach for sources to employ to determine their individual major source status would be for sources to directly measure for HAP compounds using FTIR via a test method validated per EPA Method 301.

2. NSPS Exemption

Comment. One commenter observed that proposed §§ 63.610 and 63.630 would exempt any "process component" subject to the NESHAP from otherwise applicable NSPS. The commenter stated that the term "process component" is not defined in the proposed NESHAP or in the Act. In order to avoid any subsequent confusion on the scope of the NSPS exemption, the commenter recommended that the term "process component" be replaced by the term "affected source" or, alternatively, that the term "process component" be specifically defined.

Response. The Agency agrees with the commenter and has replaced the term "process component" with the term "affected source." Further, while reviewing the proposed exemption to determine its response to the commenter, the Agency found that the timing of the performance test as required in the general provisions could lead to further confusion as to a source's compliance status during the period between the compliance date of the NESHAP and completion of the performance test. The final rule has been re-worded to require the source to demonstrate compliance via a performance test by the compliance date for the NESHAP and to have a valid operating permit pursuant to Title V to qualify for the NSPS exemption.

3. Draft Technical Support Document (TSD)

Comment. One commenter said that throughout the draft TSD, companies involved in the manufacture of phosphoric acid or the production of phosphate fertilizer were often misidentified. Also, the commenter noted that several of the production and other values given in the TSD were inaccurate and urged the Agency to use the most accurate and up-to-date values available. With regard to the discussion on nutrient carry-over and industry trends, the commenter cited some concerns and asked that the sections quoted in his comment letter be deleted from the draft TSD or revised.

One commenter provided additional information on the type of processes present at two plants in its jurisdiction. The commenter highlighted the production of a unique kind of GTSP from phosphate ore and limestone at one plant. That source makes "GTSP" by acidizing limestone with phosphoric acid and is different from the normal process which acidifies phosphate ore with phosphoric acid. The commenter said GTSP thus made from limestone does not fall under the definition stated in the proposed standards. The information about the second source noted a change of ownership.

Response. The original draft of the TSD was sent to outside reviewers, including the commenters, and was subsequently revised according to comments received. The draft TSD in the docket was current as of May 1995. The purpose of the draft TSD was to assemble the information upon which MACT could be established and various environmental and economic impacts could be assessed. The draft TSD also presented the Agency's methodologies and projections of the impacts of the NESHAP as they were envisioned at that

time. Subsequently, companies have been bought and sold and the productive output of the industry has changed. Newer information and analyses pertinent to the rulemaking have since been made available and added to the docket. Thus, given that the draft TSD has served its original purpose and any newer relevant information is in the docket, the Agency will not revise the draft TSD.

4. Applicability Diammonium and/or Monoammonium Phosphate (DAP/MAP) Emission Limits

Comment. One commenter described one of his sources that manufactures MAP/DAP using thermal process phosphoric acid, instead of WPPA. The commenter cited the information in the TSD to support his observation that information available to the Agency indicate that HAP emissions are a concern only in those instances where WPPA is used to manufacture DAP/MAP. The commenter requested that the Agency clarify the applicability of the NESHAP to exclude those sources not using WPPA to manufacture DAP/MAP.

Response. The Agency agrees with the commenter and the regulations in subpart BB have been revised by incorporating language the commenter provided.

5. Applicability—Research and Development Facilities

Comment. One commenter recommended that the Agency include an exemption for research and development (R&D) facilities. The commenter cited section 112(c)(7) of the Clean Air Act (the Act) and its direction to establish a separate source category for R&D facilities as necessary to ensure equitable treatment of such facilities. The commenter cited other recent NESHAP that have included R&D exemptions and said that this rulemaking needed to include such an exemption for consistency. The commenter suggested that the following language be added to the definitions contained in the rule: "Research and development activities means (1) activities conducted at a laboratory to analyze air, soil, water or product samples for contaminants, environmental impact, or quality control, (2) activities conducted to test more efficient production processes or methods for preventing or reducing adverse environmental impacts, provided that the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit, except in a de minimis manner, and (3) activities conducted at a research or laboratory facility that is operated under the close supervision of technically trained personnel the primary purpose of which is to conduct research and development into new processes and products and that is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner."

Response. The Agency agrees with the commenter and has added appropriate language, including an R&D facility definition similar to the commenter's, into the rules. The Agency plans to issue a NESHAP applicable to R&D facilities at a later date.

6. Notification

Comment. One commenter recommended that notification, recordkeeping and reporting requirements should be coextensive with those required under the current NSPS. The proposed rules would apply §§ 63.9 and 63.10 of the NESHAP general provisions with their recordkeeping and reporting that in the commenter's opinion is neither appropriate nor justified. The commenter said the record of the NESHAP general provisions rulemaking makes it clear that the notification, recordkeeping and reporting requirements were developed to address situations where the NESHAP for a particular chemical or process would be the initial federal regulation addressing that chemical or process. The commenter said that phosphoric acid manufacturing and phosphate fertilizer production facilities have long been subject to federal regulation under the NSPS and State regulation under provisions similar to the NSPS and owner/operators of regulated sources and government regulators are familiar and adept with these preexisting notification, recordkeeping and reporting requirements. The commenter recommended that notification, recordkeeping and reporting requirements be coextensive with the requirements of the pre-existing NSPS and submitted that such an approach is consistent with 40 CFR 63.10(a)(7) which permits owners and operators subject to both NSPS and NESHAP, along with the Administrator or the state permitting authority, to mutually agree on a common schedule for submitting required reports. The commenter said his recommendation was also consistent with 40 CFR 63.10(f) which permits the Administrator to waive the recordkeeping and reporting requirements of the NESHAP general provisions.

Response. The Agency discussion in the preambles proposing and promulgating the part 63 general provisions did not support the commenter's points concerning their application to sources subject to prior regulations. Instead, the discussions made clear that the part 63 requirements, while patterned after those parts 60 and 61, were made more extensive because of the need to incorporate specific legal requirements added by the 1990 Amendments to the Act. The Agency also mentioned the importance of maintaining consistent requirements for the various source categories affected by NESHAP and minimizing case-by-case negotiations on timing and content of notification and recordkeeping activities. Last, the Agency does not concur with the commenter's interpretation of 40 CFR 63.10(a)(7). That language is specifically aimed at instances where affected sources are subject to both NSPS and NESHAP. Since this rule specifically exempts those sources subject to its requirements from duplicate coverage by NSPS, the language of § 63.10(a)(7) is not applicable.

Comment. One commenter asked for the intent of §§ 63.608 and 63.628 to be clarified. The commenter said proposed §§ 63.608 and 63.628 specified that particular reporting requirements of § 63.10 would be applicable to owners and operators of phosphoric acid manufacturing and phosphate fertilizer production facilities. Furthermore, proposed §§ 63.604 and 63.605 specified the monitoring requirements applicable to owners and operators of such facilities. Certain of the monitoring requirements otherwise applicable under 40 CFR 63.8 were not made applicable to phosphoric acid manufacturing and phosphate fertilizer production facilities. Concomitantly, the reporting requirements of § 63.10 associated with those monitoring requirements also were not made applicable to such facilities by proposed §§ 63.608 and 63.628. However, the excess emissions report which was made applicable to such facilities by proposed §§ 63.608(a)(2) and 63.628(a)(2) was required, by the NESHAP general provisions, to include information concerning certain of the monitoring requirements not made applicable to phosphoric acid manufacturing and phosphate fertilizer production facilities. The commenter asked that the Agency's intent be made specific in the final NESHAP so that it would be clear that the excess emissions report required by proposed §§ 63.608(a)(2) and 63.628(a)(2) is to include only the information relevant to the monitoring requirements

specifically imposed on phosphoric acid manufacturing and phosphate fertilizer production facilities pursuant to proposed §§ 63.604 and 63.624.

Response. The Agency explored the commenter's concerns and came to agree that the coordination of the general provisions requirements for notification, recordkeeping, reporting, and compliance dates as proposed could be improved. The sections of the rule addressing those points have been restructured and a table has been added to specifically state the applicability of the components of the general provisions. The timing of the initial performance test relative to the compliance date and the exemption from new source performance standards were further clarified to eliminate ambiguity. These changes should ease implementation via Title V operating permits.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. The nationwide capital and annualized costs of the NESHAP, including emission controls and associated monitoring equipment, are estimated at $1.4 million and $862,000/yr, respectively.

C. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, the Agency may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If the Agency complies by consulting, Executive Order 12875 requires the Agency to provide to the Office of Management and Budget a description of the extent of the Agency's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on State, local or tribal governments, because they do not own or operate any sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nevertheless, in developing this rule, EPA consulted with States to enable them to provide meaningful and timely input in the development of this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The EPA projects that annual economic impacts would be far less than $100 million. Thus, today's final rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these final rules contain no regulatory requirements that might significantly or uniquely affect small governments because they do not impose any enforceable duties on small governments; such governments own or operate no sources subject to these proposed rules and therefore would not be required to purchase control systems to meet the requirements of these proposed rules.

E. Regulatory Flexibility

The Agency has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The Agency has also determined that this rule will not have a significant economic impact on a substantial number of small entities. The Agency has found that two of the twenty-one firms that potentially could be subject to the standards are small firms. Of the two, data indicate that one is an area source which would not be covered by the standards. The second source could be major and subject to the requirements of the standards. Information available to the Agency shows that the second source is able to achieve the control levels of the NESHAP using existing equipment. The testing, monitoring, recordkeeping and reporting requirements are essentially identical to current requirements and, thus, should cause little or no change in these burdens.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Agency will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on the date of publication in the **Federal Register**.

G. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0361.

The information to be collected includes the results of annual performance testing to be conducted to demonstrate compliance with the emissions limits in the rules. At the time that performance testing will be performed, sources will be required to measure and record operating parameters for the processes and control devices. Following the performance testing, sources will be required under authority of the Clean Air Act to monitor and record operating parameters to assure that they were maintained within approved ranges, based upon values determined during the performance tests. One source will be required to monitor potential emissions from equipment leaks and to keep records of leaks detected and repairs made to correct leaks. The purpose of the monitoring and recordkeeping requirements is to provide implementing agencies information to assure that MACT is implemented on an ongoing basis.

The Agency estimated the projected cost and hour burden of the standards. The average annual reporting burden was estimated to be 132 hours per response. There will be fifteen likely respondents and reports will required twice a year. The total burden would equate to 3790 hours per year nationwide and the corresponding cost was estimated to be $121,773 per year. The total capital cost of the monitoring devices was estimated to be $564,200 of which the major cost would be for the installation of sensors to measure and record the flow of scrubbing liquid to the control devices. The annualized cost of that capital would be $53,200 per year and the operation and maintenance of the monitoring equipment was estimated as $13,300 per year. Thus, the total annualized capital and operation and maintenance costs were estimated to be $66,500 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9, § 9.1 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), directs all Federal agencies to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adapted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the requirements of the NTTAA, today's rulemaking incorporates the analytical methods of two consensus standard bodies. Instead of developing its own methods for determining the phosphate content of feedstocks to the processes covered by the standards, the Agency is incorporating by reference into today's rules certain analytical protocols of the Association of Official Analytical Chemists and of The Association of Florida Phosphate Chemists.

Also, consistant with the NTTAA, the EPA conducted a search to identify voluntary consensus standards for emissions test methods. The search identified 17 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 12 of the candidate consensus standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Five of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date. This rule requires standard EPA methods known to the industry and States. Approved alternative methods also may be used with prior EPA epproval.

I. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885,

April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

J. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on the communities of Indian tribal governments, because they do not own or operate any sources subject to this rule and therefore are not required to purchase control systems to meet the requirements of this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 14, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et. seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding new entries under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories[3]	
* * * * *	
63.602–63.603	2060–0361
63.605–63.608	2060–0361
63.625–63.628	2060–0361
63.630	2060–0361
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.14 is amended by adding new paragraphs (g) and (h) to read as follows:

§ 63.14 Incorporation by Reference.

* * * * *

(g) The materials listed below are available for purchase from AOAC International, Customer Services, Suite 400, 2200 Wilson Boulevard, Arlington, Virginia, 22201–3301, Telephone (703) 522–3032, Fax (703) 522–5468.

(1) AOAC Official Method 978.01 Phosphorus (Total) in Fertilizers, Automated Method, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(2) AOAC Official Method 969.02 Phosphorus (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(3) AOAC Official Method 962.02 Phosphorus (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(4) AOAC Official Method 957.02 Phosphorus (Total) in Fertilizers, Preparation of Sample Solution, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(5) AOAC Official Method 929.01 Sampling of Solid Fertilizers, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(6) AOAC Official Method 929.02 Preparation of Fertilizer Sample, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(7) AOAC Official Method 958.01 Phosphorus (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d)(3)(vi).

(h) The materials listed below are available for purchase from The Association of Florida Phosphate Chemists, P.O. Box 1645, Bartow, Florida, 33830, Book of Methods Used and Adopted By The Association of Florida Phosphate Chemists, Seventh Edition 1991, IBR.

(1) Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample, IBR approved for § 63.606(c)(3)(ii) and § 63.626(c)(3)(ii).

(2) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus—P_2O_5 or $Ca_3(PO_4)_2$, Method A-Volumetric Method, IBR approved for § 63.606(c)(3)(ii) and § 63.626(c)(3)(ii).

(3) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B—Gravimetric Quimociac Method, IBR

approved for § 63.606(c)(3)(ii) and § 63.626(c)(3)(ii).

(4) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method C—Spectrophotometric Method, IBR approved for § 63.606(c)(3)(ii) and § 63.626(c)(3)(ii).

(5) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A—Volumetric Method, IBR approved for § 63.606(c)(3)(ii), § 63.626(c)(3)(ii), and § 63.626(d)(3)(v).

(6) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B—Gravimetric Quimociac Method, IBR approved for § 63.606(c)(3)(ii), § 63.626(c)(3)(ii), and § 63.626(d)(3)(v).

(7) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C—Spectrophotometric Method, IBR approved for § 63.606(c)(3)(ii), § 63.626(c)(3)(ii), and § 63.626(d)(3)(v).

* * * * *

3. Part 63 is amended by adding subpart AA consisting of §§ 63.600 through 63.610 to read as follows:

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

Sec.

63.600 Applicability.
63.601 Definitions.
63.602 Standards for existing sources.
63.603 Standards for new sources.
63.604 Operating requirements.
63.605 Monitoring requirements.
63.606 Performance tests and compliance provisions.
63.607 Notification, recordkeeping, and reporting requirements.
63.608 Applicability of general provisions.
63.609 Compliance dates.
63.610 Exemption from new source performance standards.

Appendix A to Subpart AA of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart AA

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

§ 63.600 Applicability.

(a) Except as provided in paragraphs (c) and (d) of this section, the requirements of this subpart apply to the owner or operator of each phosphoric acid manufacturing plant.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAPs) emitted from the following new or existing affected sources at a phosphoric acid manufacturing plant:

(1) Each wet-process phosphoric acid process line. The requirements of this subpart apply to the following emission points which are components of a wet-process phosphoric acid process line: reactors, filters, evaporators, and hot wells;

(2) Each evaporative cooling tower at a phosphoric acid manufacturing plant;

(3) Each phosphate rock dryer located at a phosphoric acid manufacturing plant;

(4) Each phosphate rock calciner located at a phosphoric acid manufacturing plant;

(5) Each superphosphoric acid process line. The requirements of this subpart apply to the following emission points which are components of a superphosphoric acid process line: evaporators, hot wells, acid sumps, and cooling tanks; and

(6) Each purified acid process line. The requirements of this subpart apply to the following emission points which are components of a purified phosphoric acid process line: solvent extraction process equipment, solvent stripping and recovery equipment, seal tanks, carbon treatment equipment, cooling towers, storage tanks, pumps and process piping.

(c) The requirements of this subpart do not apply to the owner or operator of a new or existing phosphoric acid manufacturing plant that is not a major source as defined in § 63.2.

(d) The provisions of this subpart do not apply to research and development facilities as defined in § 63.601.

§ 63.601 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

Equivalent P_2O_5 feed means the quantity of phosphorus, expressed as phosphorous pentoxide, fed to the process.

Evaporative cooling tower means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to remove heat from process water by direct contact.

Exceedance means a departure from an indicator range established under this subpart, consistent with any averaging period specified for averaging the results of the monitoring.

HAP metals mean those metals and their compounds (in particulate or volatile form) that are included on the list of hazardous air pollutants in section 112 of the Clean Air Act. HAP metals include, but are not limited to: antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium expressed as particulate matter as measured by the methods and procedures in this subpart or an approved alternative method. For the purposes of this subpart, HAP metals are expressed as particulate matter as measured by 40 CFR part 60, appendix A, Method 5.

Phosphate rock calciner means the equipment used to remove moisture and organic matter from phosphate rock through direct or indirect heating.

Phosphate rock dryer means the equipment used to reduce the moisture content of phosphate rock through direct or indirect heating.

Phosphate rock feed means all material entering any phosphate rock dryer or phosphate rock calciner including moisture and extraneous material as well as the following ore materials: fluorapatite, hydroxylapatite, chlorapatite, and carbonateapatite.

Purified phosphoric acid process line means any process line which uses a HAP as a solvent in the separation of impurities from the product acid for the purposes of rendering that product suitable for industrial, manufacturing or food grade uses.

Research and development facility means research or laboratory operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and where the facility is not engaged in the manufacture of products for commercial sale in commerce or other off-site distribution, except in a de minimis manner.

Superphosphoric acid process line means any process line which concentrates wet-process phosphoric acid to 66 percent or greater P_2O_5 content by weight.

Total fluorides means elemental fluorine and all fluoride compounds, including the HAP hydrogen fluoride, as measured by reference methods specified in 40 CFR part 60, appendix A , Method 13 A or B, or by equivalent or alternative methods approved by the Administrator pursuant to § 63.7(f).

Wet process phosphoric acid process line means any process line manufacturing phosphoric acid by reacting phosphate rock and acid.

§ 63.602 Standards for existing sources.

(a) *Wet process phosphoric acid process line.* On and after the date on which the performance test required to

be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 10.0 gram/metric ton of equivalent P_2O_5 feed (0.020 lb/ton).

(b) *Superphosphoric acid process line.*

(1) *Vacuum evaporation process.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 5.0 gram/metric ton of equivalent P_2O_5 feed (0.010 lb/ton).

(2) *Submerged combustion process.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 100.0 gram/metric ton of equivalent P_2O_5 feed (0.20 lb/ton).

(c) *Phosphate rock dryer.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.10750 kilogram/metric ton of phosphate rock feed (0.2150 lb/ton).

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.1380 gram per dry standard cubic meter (g/dscm) [0.060 grains per dry standard cubic foot (gr/dscf)].

(e) *Evaporative cooling tower.* No owner or operator shall introduce into any evaporative cooling tower any liquid effluent from any wet scrubbing device installed to control emissions from process equipment. Each owner or operator of an affected source subject to this paragraph (e) must certify to the Administrator annually that he/she has complied with the requirements contained in this section.

(f) *Purified phosphoric acid process line.*

(1) Each owner or operator subject to the provisions of this subpart shall comply with the provisions of subpart H of this part.

(2) For any existing purified phosphoric acid process line, any of the following shall constitute a violation of this subpart:

(i) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of twenty parts per million for each product acid stream.

(ii) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of thirty parts per million for each raffinate stream.

(iii) A daily average chiller stack exit gas stream temperature in excess of fifty degrees Fahrenheit.

§ 63.603 Standards for new sources.

(a) *Wet process phosphoric acid process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 6.750 gram/metric ton of equivalent P_2O_5 feed (0.01350 lb/ton).

(b) *Superphosphoric acid process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 4.350 gram/metric ton of equivalent P_2O_5 feed (0.00870 lb/ton).

(c) *Phosphate rock dryer.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.030 kilogram/metric ton per megagram of phosphate rock feed (0.060 lb/ton).

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.0920 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)].

(e) *Evaporative cooling tower.* No owner or operator shall introduce into any evaporative cooling tower any liquid effluent from any wet scrubbing device installed to control emissions from process equipment. Each owner or operator of an affected source subject to this paragraph (e) must certify to the Administrator annually that he/she has complied with the requirements contained in this section.

(f) *Purified phosphoric acid process line.*

(1) Each owner or operator subject to the provisions of this subpart shall comply with the provisions of subpart H of this part.

(2) For any new purified phosphoric acid process line, any of the following shall constitute a violation of this subpart:

(i) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of twenty parts per million for each product acid stream.

(ii) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of thirty parts per million for each raffinate stream.

(iii) A daily average chiller stack exit gas stream temperature in excess of fifty degrees Fahrenheit.

§ 63.604 Operating requirements.

On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, the owner/operator using a wet scrubbing emission control system must maintain three-hour averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber within the allowable ranges established pursuant to the requirements of § 63.605(d)(1) or (2).

§ 63.605 Monitoring requirements.

(a) Each owner or operator of a new or existing wet-process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, or phosphate rock calciner subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record the mass flow of phosphorus-bearing feed material to the process. The monitoring system shall have an accuracy of ±5 percent over its operating range.

(b)(1) Each owner or operator of a new or existing wet-process phosphoric acid process line or superphosphoric acid process line subject to the provisions of this subpart shall maintain a daily record of equivalent P_2O_5 feed by first determining the total mass rate in metric ton/hour of phosphorus bearing feed using a monitoring system for

measuring mass flowrate which meets the requirements of paragraph (a) of this section and then by proceeding according to § 63.606(c)(3).

(2) Each owner or operator of a new or existing phosphate rock calciner or phosphate rock dryer subject to the provisions of this subpart shall maintain a daily record of phosphate rock feed by determining the total mass rate in metric ton/hour of phosphorus bearing feed using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a) of this section.

(c) Each owner or operator of a new or existing wet-process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer or phosphate rock calciner using a wet scrubbing emission control system shall install, calibrate, maintain, and operate the following monitoring systems:

(1) A monitoring system which continuously measures and permanently records the pressure drop across each scrubber in the process scrubbing system in 15-minute block averages. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(2) A monitoring system which continuously measures and permanently records the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system in 15-minute block averages. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(d) Following the date on which the performance test required in § 63.606 is completed, the owner or operator of a new or existing affected source using a wet scrubbing emission control system and subject to emissions limitations for total fluorides or particulate matter contained in this subpart must establish allowable ranges for operating parameters using the methodology of either paragraph (d)(1) or (2) of this section:

(1) The allowable range for the daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system is ± 20 percent of the baseline average value determined as a requirement of § 63.606(c)(4), (d)(4), or (e)(2). The Administrator retains the right to reduce the ± 20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard, but, in no instance shall the adjustment be reduced to less than ± 10 percent. The owner or operator must notify the Administrator of the baseline average value and must notify the Administrator each time that the baseline value is changed as a result of the most recent performance test. The baseline average values used for compliance shall be based on the values determined during the most recent performance test. The new baseline average value shall be effective on the date following the performance test.

(2) The owner or operator of any new or existing affected source shall establish, and provide to the Administrator for approval, allowable ranges of baseline average values for the pressure drop across and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with this subpart. Allowable ranges may be based upon baseline average values recorded during previous performance tests using the test methods required in this subpart and established in the manner required in § 63.606(c)(4), (d)(4), or (e)(2). As an alternative, the owner or operator can establish the allowable ranges of baseline average values using the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.606(c)(4), (d)(4), or (e)(2). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to establish the allowable ranges were obtained. The allowable ranges of baseline average values developed pursuant to the provisions of this paragraph must be submitted to the Administrator for approval. The owner or operator must request and obtain approval of the Administrator for changes to the allowable ranges of baseline values. When a source using the methodology of this paragraph is retested, the owner operator shall determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters from previous tests. Any new allowable ranges of baseline average values resulting from the most recent performance test shall be effective on the date following the retest. Until changes to allowable ranges of baseline average values are approved by the Administrator, the allowable ranges for use in § 63.604 shall be based upon the range of baseline average values proposed for approval.

(e) Each owner or operator of a new or existing purified phosphoric acid process line shall:

(1) Install, calibrate, maintain, and operate a monitoring system which continuously measures and permanently records the stack gas exit temperature for each chiller stack.

(2) Measure and record the concentration of methyl isobutyl ketone in each product acid stream and each raffinate stream once daily.

§ 63.606 Performance tests and compliance provisions.

(a)(1) On or before the applicable compliance date in § 63.609 and once per annum thereafter, each owner or operator of a phosphoric acid manufacturing plant shall conduct a performance test to demonstrate compliance with the applicable emission standard for each existing wet-process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, and phosphate rock calciner. The owner or operator shall conduct the performance test according to the procedures in subpart A of this part and in this section.

(2) As required by § 63.7(a)(2) and once per annum thereafter, each owner or operator of a phosphoric acid manufacturing plant shall conduct a performance test to demonstrate compliance with the applicable emission standard for each new wet-process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, and phosphate rock calciner. The owner or operator shall conduct the performance test according to the procedures in subpart A of this part and in this section.

(b) In conducting performance tests, each owner or operator of an affected source shall use as reference methods and procedures the test methods in 40 CFR part 60, appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(c) Each owner or operator of a new or existing wet-process phosphoric acid process line or superphosphoric acid process line shall determine compliance with the applicable total fluorides standards in § 63.602 or § 63.603 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (PK)$$

Where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).
Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).
N = number of emission points associated with the affected facility.
P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).
K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13B is used, the fusion of the filtered material described in Section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in section 7.3.3 and 7.3.4. in Method 13 A, may be omitted. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed using the following equation:

$P = M_p R_p$

Where:

M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).
R_p = P_2O_5 content, decimal fraction.

(i) The accountability system described in § 63.605(a) and (b) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The P_2O_5 content (R_p) of the feed shall be determined using as appropriate the following methods (incorporated by reference—see 40 CFR 63.14) specified in the Book of Methods Used and Adopted By The Association Of Florida Phosphate Chemists, Seventh Edition 1991, where applicable:

(A) Section IX, Methods of Analysis For Phosphate Rock, No. 1 Preparation of Sample.

(B) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method A-Volumetric Method.

(C) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B-Gravimetric Quimociac Method.

(D) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method C-Spectrophotometric Method.

(E) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A-Volumetric Method.

(F) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B-Gravimetric Quimociac Method.

(G) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C-Spectrophotometric Method.

(4) To comply with § 63.605(d) (1) or (2), the owner or operator shall use the monitoring systems in § 63.605(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.605(d) (1) or (2).

(d) Each owner or operator of a new or existing phosphate rock dryer shall demonstrate compliance with the particulate matter standards in § 63.602 or § 63.603 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$E = (C_s Q_{sd})/(P K)$

Where:

E = emission rate of particulate matter, kg/Mg (lb/ton) of phosphate rock feed.
C_s = concentration of particulate matter, g/dscm (g/dscf).
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = phosphate rock feed rate, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 (40 CFR part 60, appendix A) shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The system described in § 63.605(a) shall be used to determine the phosphate rock feed rate (P) for each run.

(4) To comply with § 63.605(d) (1) or (2), the owner or operator shall use the monitoring systems in § 63.605(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the particulate matter runs. The arithmetic average of the one-hour averages determined during the three test runs shall be used as the baseline average values for the purposes of § 63.605(d) (1) or (2).

(e) Each owner or operator of a new or existing phosphate rock calciner shall demonstrate compliance with the particulate matter standards in §§ 63.602 and 63.603 as follows:

(1) Method 5 (40 CFR part 60, appendix A) shall be used to determine the particulate matter concentration. The sampling time and volume for each test run shall be at least 60 minutes and 1.70 dscm.

(2) To comply with § 63.605(d) (1) or (2), the owner or operator shall use the monitoring systems in § 63.605(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the particulate matter runs. The arithmetic average of the one-hour averages determined during the three test runs shall be used as the baseline average values for the purposes of § 63.605(d) (1) or (2).

§ 63.607 Notification, recordkeeping, and reporting requirements.

(a) Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in § 63.9.

(b) Each owner or operator subject to the requirements of this subpart shall comply with the recordkeeping requirements in § 63.10.

(c) The owner or operator of an affected source shall comply with the reporting requirements specified in § 63.10 as follows:

(1) *Performance test report.* As required by § 63.10, the owner or operator shall report the results of the initial and annual performance tests as part of the notification of compliance status required in § 63.9.

(2) *Excess emissions report.* As required by § 63.10, the owner or operator of an affected source shall submit an excess emissions report for any exceedance of an operating parameter limit. The report shall contain the information specified in § 63.10. When no exceedances of an operating parameter have occurred, such information shall be included in the report. The report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half. If exceedances are reported, the owner or operator shall report quarterly until a request to reduce reporting frequency is approved as described in § 63.10.

(3) *Summary report.* If the total duration of control system exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, the owner or operator shall submit a summary report containing the information specified in § 63.10 rather than the full excess emissions report, unless required by the Administrator. The summary report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half.

(4) If the total duration of control system operating parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, the owner or operator shall submit a summary report and the excess emissions report.

§ 63.608 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are applicable to the owner or operator subject to the requirements of this subpart are shown in appendix A to this subpart.

§ 63.609 Compliance dates.

(a) Each owner or operator of an existing affected source at a phosphoric acid manufacturing plant shall achieve compliance with the requirements of this subpart no later than June 10, 2002. Notwithstanding the requirements of § 63.7(a)(2)(iii), each owner or operator of an existing source at an affected existing phosphoric acid manufacturing plant shall fulfill the applicable requirements of § 63.606 no later than June 10, 2002.

(b) Each owner or operator of a phosphoric acid manufacturing plant that commences construction or reconstruction of an affected source after December 27, 1996 shall achieve compliance with the requirements of this subpart upon startup of operations or by June 10, 1999, whichever is later.

§ 63.610 Exemption from new source performance standards.

Any affected source subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR part 60, subpart T, subpart U or subpart NN. To be exempt, a source must have a current operating permit pursuant to Title V of the Act and the source must be in compliance with all requirements of this subpart. For each affected source, this exemption is effective upon the date that the owner or operator demonstrates to the Administrator that the requirements of §§ 63.604, 63.605 and 63.606 have been met.

APPENDIX A TO SUBPART AA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA

40 CFR citation	Requirement	Applies to subpart AA	Comment
63.1(a)(1) through (4)	General Applicability	Yes.	
63.1(a)(5)		No	[Reserved].
63.1(a)(6) through (8)		Yes.	
63.1(a)(9)		No	[Reserved].
63.1(a)(10) through (14)		Yes.	
63.1(b)	Initial Applicability Determination	Yes.	
63.1(c)(1)	Applicability After Standard Established	Yes.	
63.1(c)(2)		Yes.	Some plants may be area sources.
63.1(c)(3)		No	[Reserved].
63.1(c)(4) and (5)		Yes.	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions	Yes.	Additional definitions in § 63.601.
63.3	Units and Abbreviations	Yes.	
63.4(a)(1) through (3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)		Yes.	
63.4(b) and (c)	Circumvention/Severability	Yes.	
63.5(a)	Construction/Reconstruction Applicability	Yes.	
63.5(b)(1)	Existing, New, Reconstructed Sources Requirements.	Yes.	
63.5(b)(2)		No	[Reserved].
63.5(b)(3) through (6)		Yes.	
63.5(c)		No	[Reserved].
63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes.	
63.5(e)	Approval of Construction/Reconstruction	Yes.	
63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
63.6(a)	Compliance with Standards and Maintenance Applicability.	Yes.	
63.6(b)(1) through (5)	New and Reconstructed Sources Dates	Yes.	See also § 63.609.
63.6(b)(6)		No	[Reserved].
63.6(b)(7)		Yes.	
63.6(c)(1)	Existing Sources Dates	Yes.	§ 63.609 specifies dates.
63.6(c)(2)		Yes.	
63.6(c)(3) and (4)		No	[Reserved].
63.6(c)(5)		Yes.	
63.6(d)		No	[Reserved].
63.6(e)(1) and (2)	Operation & Maintenance Requirements	Yes.	§ 63.604 specifies additional requirements.

APPENDIX A TO SUBPART AA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA—Continued

40 CFR citation	Requirement	Applies to subpart AA	Comment
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes.	§63.604 specifies additional requirements.
63.6(f)	Compliance with Emission Standards	Yes.	§§63.602 through 605 specify additional requirements.
63.6(g)	Alternative Standard	Yes.	
63.6(h)	Compliance with Opacity/VE Standards	No	Subpart AA does not include VE/opacity standards.
63.6(i)(1) through (14)	Extension of Compliance	Yes.	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)		Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)	Performance Test Requirements Applicability	Yes.	§63.609(a) applies rather than §63.7(a)(2)(iii).
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)	Conduct of Tests	Yes.	§§63.604 and 63.605 specify additional requirements.
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	
63.8(a)(1)	Monitoring Requirements Applicability	Yes.	
63.8(a)(2)		No	Subpart AA does not require CMS performance specifications.
63.8(a)(3)		No	[Reserved].
63.8(a)(4)		Yes.	
63.8(b)	Conduct of Monitoring	Yes.	
63.8(c)(1) through (4)	CMS Operation/Maintenance	Yes.	
63.8(c)(5) through (8)		No	Subpart AA does not require COMS/CEMS or CMS performance specifications.
63.8(d)	Quality Control	Yes.	
63.8(e)	CMS Performance Evaluation	No	Subpart AA does not require CMS performance evaluations
63.8(f)(1) through (5)	Alternative Monitoring Method	Yes.	
63.8(f)(6)	Alternative to RATA Test	No	Subpart AA does not require CEMS.
63.8(g)(1)	Data Reduction	Yes.	
63.8(g)(2)		No	Subpart AA does not require COMS or CEMS
63.8(g)(3) through (5)		Yes.	
63.9(a)	Notification Requirements Applicability	Yes.	
63.9(b)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
63.9(f)	Notification of VE/Opacity Test	No	Subpart AA does not include VE/opacity standards.
63.9(g)	Additional CMS Notifications	No	Subpart AA does not require CMS performance evaluation, COMS, or CEMS.
63.9(h)(1) through (3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No	[Reserved].
63.9(h)(5) and (6)		Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting-Applicability	Yes.	
63.10(b)	General Recordkeeping Requirements	Yes.	
63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
63.10(c)(2) through (4)		No	[Reserved].
63.10(c)(5)		Yes.	
63.10(c)(6)		No	Subpart AA does not require CMS performance specifications.
63.10(c)(7) and (8)		Yes.	
63.10(c)(9)		No	[Reserved].
63.10(c)(10) through (13)		Yes.	
63.10(c)(14)		No	Subpart AA does not require a CMS quality control program.
63.10(c)(15)		Yes.	
63.10(d)(1)	General Reporting Requirements	Yes.	

APPENDIX A TO SUBPART AA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA—Continued

40 CFR citation	Requirement	Applies to subpart AA	Comment
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	No	Subpart AA does not include VE/opacity standards.
63.10(d)(4) and (5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes.	
63.10(e)(1) and (2)	Additional CMS Reports	No	Subpart AA does not require CEMS or CMS performance evaluations.
63.10(e)(3)	Excess Emissions/CMS Performance Reports	Yes.	§63.606(c)(2) includes additional requirements. A CMS performance report is not required.
63.10(e)(4)	COMS Data Reports	No	Subpart AA does not require COMS.
63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
63.11(a)	Control Device Requirements Applicability	Yes.	
63.11(b)	Flares	No	Flares not applicable.
63.12	State Authority and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporation by Reference	Yes.	
63.15	Information Availability/Confidentiality	Yes.	

4. Part 63 is amended by adding subpart BB consisting of §§ 63.620 through 63.631 to read as follows:

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

Sec.

63.620 Applicability
63.621 Definitions.
63.622 Standards for existing sources.
63.623 Standards for new sources.
63.624 Operating requirements.
63.625 Monitoring requirements.
63.626 Performance tests and compliance provisions.
63.627 Notification, recordkeeping, and reporting requirements.
63.628 Applicability of general provisions.
63.629 Miscellaneous requirements.
63.630 Compliance dates.
63.631 Exemption from new source performance standards.

Appendix A to Subpart BB of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart BB

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

§63.620 Applicability.

(a) Except as provided in paragraphs (c) and (d) of this section, the requirements of this subpart apply to the owner or operator of each phosphate fertilizers production plant.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAPs) emitted from the following new or existing affected sources at a phosphate fertilizers production plant:

(1) Each diammonium and/or monoammonium phosphate process line. The requirements of this subpart apply to the following emission points which are components of a diammonium and/or monoammonium phosphate process line: reactors, granulators, dryers, coolers, screens, and mills.

(2) Each granular triple superphosphate process line. The requirements of this subpart apply to the following emission points which are components of a granular triple superphosphate process line: mixers, curing belts (dens), reactors, granulators, dryers, coolers, screens, and mills.

(3) Each granular triple superphosphate storage building. The requirements of this subpart apply to the following emission points which are components of a granular triple superphosphate storage building: storage or curing buildings, conveyors, elevators, screens and mills.

(c) The requirements of this subpart do not apply to the owner or operator of a new or existing phosphate fertilizers production plant that is not a major source as defined in § 63.2.

(d) The provisions of this subpart do not apply to research and development facilities as defined in § 63.621.

§63.621 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

Diammonium and/or monoammonium phosphate process line means any process line manufacturing granular diammonium and/or monoammonium phosphate by reacting ammonia with phosphoric acid which has been derived from or manufactured by reacting phosphate rock and acid.

Equivalent P_2O_5 feed means the quantity of phosphorus, expressed as phosphorous pentoxide, fed to the process.

Equivalent P_2O_5 stored means the quantity of phosphorus, expressed as phosphorus pentoxide, being cured or stored in the affected facility.

Exceedance means a departure from an indicator range established for monitoring under this subpart, consistent with any averaging period specified for averaging the results of the monitoring.

Fresh granular triple superphosphate means granular triple superphosphate produced within the preceding 72 hours.

Granular triple superphosphate process line means any process line, not including storage buildings, manufacturing granular triple superphosphate by reacting phosphate rock with phosphoric acid.

Granular triple superphosphate storage building means any building curing or storing fresh granular triple superphosphate.

Research and development facility means research or laboratory operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and where the facility is not engaged in the manufacture of products for commercial sale in commerce or other off-site distribution, except in a de minimis manner.

Total fluorides means elemental fluorine and all fluoride compounds, including the HAP hydrogen fluoride, as measured by reference methods

specified in 40 CFR part 60, appendix A, Method 13 A or B, or by equivalent or alternative methods approved by the Administrator pursuant to § 63.7(f).

§ 63.622 Standards for existing sources.

(a) *Diammonium and/or monoammonium phosphate process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 30 grams/metric ton of equivalent P_2O_5 feed (0.060 lb/ton).

(b) *Granular triple superphosphate process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 75 grams/metric ton of equivalent P_2O_5 feed (0.150 lb/ton).

(c) *Granular triple superphosphate storage building.*

(1) On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 0.250 grams/hr/metric ton of equivalent P_2O_5 stored (5.0×10^{-4} lb/hr/ton of equivalent P_2O_5 stored).

(2) No owner or operator subject to the provisions of this subpart shall ship fresh granular triple superphosphate from an affected facility.

§ 63.623 Standards for new sources.

(a) *Diammonium and/or monoammonium phosphate process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 29.0 grams/metric ton of equivalent P_2O_5 feed (0.0580 lb/ton).

(b) *Granular triple superphosphate process line.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 61.50 grams/metric ton of equivalent P_2O_5 feed (0.1230 lb/ton).

(c) *Granular triple superphosphate storage building*

(1) On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 0.250 grams/hr/metric ton of equivalent P_2O_5 stored (5.0×10^{-4} lb/hr/ton of equivalent P_2O^5 stored).

(2) No owner or operator subject to the provisions of this subpart shall ship fresh granular triple superphosphate from an affected facility.

§ 63.624 Operating requirements.

On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is required to be completed, the owner/operator using a wet scrubbing emission control system must maintain three-hour averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber within the allowable ranges established pursuant to the requirements of § 63.625(f)(1) or (2).

§ 63.625 Monitoring requirements.

(a) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate process line or granular triple superphosphate process line subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record the mass flow of phosphorus-bearing feed material to the process. The monitoring system shall have an accuracy of ±5 percent over its operating range.

(b) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate process line or granular triple superphosphate process line subject to the provisions of this subpart shall maintain a daily record of equivalent P_2O_5 feed by first determining the total mass rate in metric ton/hour of phosphorus bearing feed using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a) of this section and then by proceeding according to § 63.626(c)(3).

(c) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, or granular triple superphosphate storage building using a wet scrubbing emission control system shall install, calibrate, maintain, and operate the following monitoring systems:

(1) A monitoring system which continuously measures and permanently records the pressure drop across each scrubber in the process scrubbing system in 15-minute block averages. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(2) A monitoring system which continuously measures and permanently records the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system in 15-minute block averages. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(d) The owner or operator of any granular triple superphosphate storage building subject to the provisions of this subpart shall maintain an accurate account of granular triple superphosphate in storage to permit the determination of the amount of equivalent P_2O_5 stored.

(e)(1) Each owner or operator of a new or existing granular triple superphosphate storage building subject to the provisions of this subpart shall maintain a daily record of total equivalent P_2O_5 stored by multiplying the percentage P_2O_5 content, as determined by § 63.626(d)(3), times the total mass of granular triple superphosphate stored.

(2) The owner or operator of any granular triple superphosphate storage building subject to the provisions of this subpart shall develop for approval by the Administrator a site-specific methodology including sufficient recordkeeping for the purposes of demonstrating compliance with § 63.622(c)(2) or § 63.623(c)(2), as applicable.

(f) Following the date on which the performance test required in § 63.626 is completed, the owner or operator of a new or existing affected source using a wet scrubbing emission control system and subject to emissions limitations for total fluorides or particulate matter contained in this subpart must establish allowable ranges for operating parameters using the methodology of either paragraph (f)(1) or (2) of this section:

(1) The allowable range for the daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system is ±20 percent of the baseline average value determined as a requirement of § 63.626(c)(4) or (d)(4). The

Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard, but, in no instance shall the adjustment be reduced to less than ±10 percent. The owner or operator must notify the Administrator of the baseline average value and must notify the Administrator each time that the baseline value is changed as a result of the most recent performance test. The baseline average values used for compliance shall be based on the values determined during the most recent performance test. The new baseline average value shall be effective on the date following the performance test.

(2) The owner or operator of any new or existing affected source shall establish, and provide to the Administrator for approval, allowable ranges of baseline average values for the pressure drop across and of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with this subpart. Allowable ranges may be based upon baseline average values recorded during previous performance tests using the test methods required in this subpart and established in the manner required in § 63.626(c)(4) or (d)(4). As an alternative, the owner or operator can establish the allowable ranges of baseline average values using the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.626(c)(4) or (d)(4). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to establish the allowable ranges were obtained. The allowable ranges of baseline average values developed pursuant to the provisions of this paragraph must be submitted to the Administrator for approval. The owner or operator must request and obtain approval of the Administrator for changes to the allowable ranges of baseline average values. When a source using the methodology of this paragraph is retested, the owner operator shall determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters from previous tests. Any new allowable ranges of baseline average values resulting from the most recent performance test shall be effective on the date following the retest. Until changes to allowable ranges of baseline average values are approved by the Administrator, the allowable ranges for use in § 63.624 shall be based upon the range of baseline average values proposed for approval.

§ 63.626 Performance tests and compliance provisions.

(a)(1) On or before the applicable compliance date in § 63.630 and once per annum thereafter, each owner or operator of a phosphate fertilizers production plant subject to the provisions of this subpart shall conduct a performance test to demonstrate compliance with the applicable emission standard for each existing diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, or granular triple superphosphate storage building. The owner or operator shall conduct the performance test according to the procedures in subpart A of this part and in this section.

(2) As required by § 63.7(a)(2) and once per annum thereafter, each owner or operator of a phosphate fertilizers production plant subject to the provisions of this subpart shall conduct a performance test to demonstrate compliance with the applicable emission standard for each new diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, or granular triple superphosphate storage building. The owner or operator shall conduct the performance test according to the procedures in subpart A of this part and in this section.

(b) In conducting performance tests, each owner or operator of an affected source shall use as reference methods and procedures the test methods in 40 CFR part 60, appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(c) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate process line or granular triple superphosphate process line shall determine compliance with the applicable total fluorides standards in § 63.622 or § 63.623 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (PK)$$

Where:

E = emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).

N = number of emission points associated with the affected facility.

P = equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).

K = conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13 B is used, the fusion of the filtered material described in section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in sections 7.3.3 and 7.3.4 in Method 13 A, may be omitted. The sampling time and sample volume for each run shall be at least one hour and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed using the following equation:

$P = M_p R_p$

Where:

M_p = total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).

R_p = P_2O_5 content, decimal fraction.

(i) The accountability system described in § 63.625(a) and (b) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The P_2O_5 content (R_p) of the feed shall be determined using as appropriate the following methods (incorporated by reference—see 40 CFR 63.14) specified in the Book of Methods Used and Adopted By The Association Of Florida Phosphate Chemists, Seventh Edition 1991, where applicable:

(A) Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample.

(B) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus—P_2O_5 or $Ca_3(PO_4)_2$, Method A—Volumetric Method.

(C) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B—Gravimetric Quimociac Method.

(D) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or Ca3$(PO_4)_2$, Method C—Spectrophotometric Method.

(E) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A—Volumetric Method.

(F) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate,

Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B—Gravimetric Quimociac Method.

(G) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C—Spectrophotometric Method.

(4) To comply with § 63.625(f)(1) or (2), the owner or operator shall use the monitoring systems in § 63.625(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.625(f)(1) or (2).

(d) Each owner or operator of a new or existing granular triple superphosphate storage building shall determine compliance with the applicable total fluorides standards in § 63.622 or § 63.623 as follows:

(1) The owner or operator shall conduct performance tests only when the following quantities of product are being cured or stored in the facility.

(i) Total granular triple superphosphate is at least 10 percent of the building capacity, and

(ii) Fresh granular triple superphosphate is at least six percent of the total amount of granular triple superphosphate, or

(iii) If the provision in paragraph (d)(1)(ii) of this section exceeds production capabilities for fresh granular triple superphosphate, fresh granular triple superphosphate is equal to at least 5 days maximum production.

(2) In conducting the performance test, the owner or operator shall use as reference methods and procedures the test methods in 40 CFR part 60, appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(3) The owner or operator shall determine compliance with the total fluorides standard in §§ 63.622 and 63.623 as follows:

(i) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (PK)$$

Where:

E = emission rate of total fluorides, g/hr/metric ton (lb/hr/ton) of equivalent P_2O_5 stored.

C_{si} = concentration of total fluorides from emission point "i," mg/dscm (mg/dscf).

Q_{sdi} = volumetric flow rate of effluent gas from emission point "i," dscm/hr (dscf/hr).

N = number of emission points in the affected facility.

P = equivalent P_2O_5 stored, metric tons (tons).

K = conversion factor, 1000 mg/g (453,600 mg/lb).

(ii) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13B is used, the fusion of the filtered material described in section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in Sections 7.3.3 and 7.3.4 in Method 13 A, may be omitted. The sampling time and sample volume for each run shall be at least one hour and 0.85 dscm (30 dscf).

(iii) The equivalent P_2O_5 feed rate (P) shall be computed using the following equation:

$P = M_p R_p$

Where:

M_p = amount of product in storage, metric ton (ton).

R_p = P_2O_5 content of product in storage, weight fraction.

(iv) The accountability system described in § 63.625(d) and (e) shall be used to determine the amount of product (M_p) in storage.

(v) The P_2O_5 content (R_p) of the product stored shall be determined using as appropriate the following methods (incorporated by reference—see 40 CFR 63.14) specified in the Book of Methods Used and Adopted By The Association Of Florida Phosphate Chemists, Seventh Edition 1991, where applicable:

(A) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method A—Volumetric Method.

(B) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method B—Gravimetric Quimociac Method.

(C) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method C—Spectrophotometric Method, or,

(vi) The P_2O_5 content (R_p) of the product stored shall be determined using as appropriate the following methods (incorporated by reference—see 40 CFR 63.14) specified in the Official Methods of Analysis of AOAC International, sixteenth Edition, 1995, where applicable:

(A) AOAC Official Method 957.02 Phosphorus (Total) In Fertilizers, Preparation of Sample Solution.

(B) AOAC Official Method 929.01 Sampling of Solid Fertilizers.

(C) AOAC Official Method 929.02 Preparation of Fertilizer Sample.

(D) AOAC Official Method 978.01 Phosphorus (Total) in Fertilizers, Automated Method.

(E) AOAC Official Method 969.02 Phosphorus (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method.

(F) AOAC Official Method 962.02 Phosphorus (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method.

(G) AOAC Official Method 958.01 Phosphorus (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method.

(4) To comply with § 63.625(f) (1) or (2), the owner or operator shall use the monitoring systems described in § 63.625(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.625(f) (1) or (2).

§ 63.627 Notification, recordkeeping, and reporting requirements.

(a) Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in § 63.9.

(b) Each owner or operator subject to the requirements of this subpart shall comply with the recordkeeping requirements in § 63.10.

(c) The owner or operator of an affected source shall comply with the reporting requirements specified in § 63.10 as follows:

(1) *Performance test report.* As required by § 63.10, the owner or operator shall report the results of the initial and annual performance tests as part of the notification of compliance status required in § 63.9.

(2) *Excess emissions report.* As required by § 63.10, the owner or operator of an affected source shall submit an excess emissions report for any exceedance of an operating parameter limit. The report shall contain the information specified in

§ 63.10. When no exceedances of an operating parameter have occurred, such information shall be included in the report. The report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half. If exceedances are reported, the owner or operator shall report quarterly until a request to reduce reporting frequency is approved as described in § 63.10.

(3) *Summary report.* If the total duration of control system exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, the owner or operator shall submit a summary report containing the information specified in § 63.10 rather than the full excess emissions report, unless required by the Administrator. The summary report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half.

(4) If the total duration of control system operating parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, the owner or operator shall submit a summary report and the excess emissions report.

§ 63.628 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are applicable to the owner or operator subject to the requirements of this subpart are shown in appendix A to this subpart.

§ 63.629 Miscellaneous requirements.

The Administrator retains the authority to approve site-specific test plans for uncontrolled granular triple superphosphate storage buildings developed pursuant to § 63.7(c)(2)(i).

§ 63.630 Compliance dates.

(a) Each owner or operator of an existing affected source at a phosphate fertilizers production plant shall achieve compliance with the requirements of this subpart no later than June 10, 2002. Notwithstanding the requirements of § 63.7(a)(2)(iii), each owner or operator of an existing affected source at a phosphate fertilizers production plant shall fulfill the applicable requirements of § 63.626 no later than June 10, 2002.

(b) Each owner or operator of a phosphate fertilizers production plant that commences construction or reconstruction of an affected source after December 27, 1996 shall achieve compliance with the requirements of this subpart upon startup of operations or by June 10, 1999, whichever is later.

(c) The owner or operator of any existing uncontrolled granular triple superphosphate storage building subject to the provisions of this subpart shall submit for approval by the Administrator a site-specific test plan for each such building according to the provisions of § 63.7(b)(2)(i) no later than June 12, 2000.

§ 63.631 Exemption from new source performance standards.

Any affected source subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR part 60, subpart V, subpart W, or subpart X. To be exempt, a source must have a current operating permit pursuant to Title V of the Act and the source must be in compliance with all requirements of this subpart. For each affected source, this exemption is effective upon the date that the owner or operator demonstrates to the Administrator that the requirements of §§ 63.624, 63.625 and 63.626 have been met.

APPENDIX A TO SUBPART BB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB

40 CFR citation	Requirement	Applies to subpart BB	Comment
63.1(a)(1) through (4)	General Applicability	Yes.	
63.1(a)(5)		No	[Reserved].
63.1(a)(6) through (8)		Yes.	
63.1(a)(9)		No	[Reserved].
63.1(a)(10) through (14)		Yes.	
63.1(b)	Initial Applicability Determination	Yes.	
63.1(c)(1)	Applicability After Standard Established	Yes.	
63.1(c)(2)		Yes	Some plants may be area sources.
63.1(c)(3)		No	[Reserved].
63.1(c)(4) and (5)		Yes.	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions	Yes	Additional definitions in § 63.621.
63.3	Units and Abbreviations	Yes.	
63.4(a)(1) through (3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)		Yes.	
63.4(b) and (c)	Circumvention/Severability	Yes.	
63.5(a)	Construction/Reconstruction Applicability	Yes.	
63.5(b)(1)	Existing, New, Reconstructed Sources Requirements.	Yes.	
63.5(b)(2)		No	[Reserved].
63.5(b)(3) through (6)		Yes.	
63.5(c)		No	[Reserved].
63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
63.5(e)	Approval of Construction/Reconstruction	Yes.	
63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
63.6(a)	Compliance with Standards and Maintenance Applicability.	Yes.	
63.6(b)(1) through (5)	New and Reconstructed Sources Dates	Yes	See also § 63.629.
63.6(b)(6)		No	[Reserved].

APPENDIX A TO SUBPART BB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB—Continued

40 CFR citation	Requirement	Applies to subpart BB	Comment
63.6(b)(7)		Yes.	
63.6(c)(1)	Existing Sources Dates	Yes	§ 63.629 specifies dates.
63.6(c)(2)		Yes.	
63.6(c)(3) and (4)		No	[Reserved].
63.6(c)(5)		Yes.	
63.6(d)		No	[Reserved].
63.6(e)(1) and (2)	Operation & Maintenance Requirements	Yes	§ 63.624 specifies additional requirements.
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes	§ 63.624 specifies additional requirements.
63.6(f)	Compliance with Emission Standards	Yes	§§ 63.622 through 625 specify additional requirements.
63.6(g)	Alternative Standard	Yes.	
63.6(h)	Compliance with Opacity/VE Standards	No	Subpart BB does not include VE/opacity standards.
63.6(i)(1) through (14)	Extension of Compliance	Yes.	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)		Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)	Performance Test Requirements Applicability	Yes	§ 63.629(a) applies rather than § 63.7(a)(2)(iii).
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)	Conduct of Tests	Yes	§§ 63.624 and 63.625 specify additional requirements.
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	
63.8(a)(1)	Monitoring Requirements Applicability	Yes.	
63.8(a)(2)		No	Subpart BB does not require CMS performance specifications.
63.8(a)(3)		No	[Reserved].
63.8(a)(4)		Yes.	
63.8(b)	Conduct of Monitoring	Yes.	
63.8(c)(1) through (4)	CMS Operation/Maintenance	Yes.	
63.8(c)(5) through (8)		No	Subpart BB does not require COMS/CEMS or CMS performance specifications.
63.8(d)	Quality Control	Yes.	
63.8(e)	CMS Performance Evaluation	No	Subpart BB does not require CMS performance evaluations.
63.8(f)(1) through (5)	Alternative Monitoring Method	Yes.	
63.8(f)(6)	Alternative to RATA Test	No	Subpart BB does not require CEMS.
63.8(g)(1)	Data Reduction	Yes.	
63.8(g)(2)		No	Subpart BB does not require COMS or CEMS.
63.8(g)(3) through (5)		Yes.	
63.9(a)	Notification Requirements Applicability	Yes.	
63.9(b)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
63.9(f)	Notification of VE/Opacity Test	No	Subpart BB does not include VE/opacity standards.
63.9(g)	Additional CMS Notifications	No	Subpart BB does not require CMS performance evaluation, COMS, or CEMS.
63.9(h)(1) through (3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No	[Reserved].
63.9(h)(5) and (6)		Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting-Applicability	Yes.	
63.10(b)	General Recordkeeping Requirements	Yes.	
63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
63.10(c)(2) through (4)		No	[Reserved].
63.10(c)(5)		Yes.	

APPENDIX A TO SUBPART BB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB—Continued

40 CFR citation	Requirement	Applies to subpart BB	Comment
63.10(c)(6)		No	Subpart BB does not require CMS performance specifications.
63.10(c)(7) and (8)		Yes.	
63.10(c)(9)		No	[Reserved].
63.10(c)(10) through (13)		Yes.	
63.10(c)(14)		No	Subpart BB does not require a CMS quality control program.
63.10(c)(15)		Yes.	
63.10(d)(1)	General Reporting Requirements	Yes.	
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	No	Subpart BB does not include VE/opacity standards.
63.10(d)(4) and (5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes.	
63.10(e)(1) and (2)	Additional CMS Reports	No	Subpart BB does not require CEMS or CMS performance evaluations.
63.10(e)(3)	Excess Emissions/CMS Performance Reports	Yes	§63.626(c)(2) includes additional requirements. A CMS performance report is not required.
63.10(e)(4)	COMS Data Reports	No	Subpart BB does not require COMS.
63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
63.11(a)	Control Device Requirements Applicability	Yes.	
63.11(b)	Flares	No	Flares not applicable.
63.12	State Authority and Delegations	Yes	Authority for approval of site-specific test plans for GTSP storage buildings is retained (see §63.628(a)).
63.13	Addresses	Yes.	
63.14	Incorporation by Reference	Yes.	
63.15	Information Availability/Confidentiality	Yes.	

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18 CFR Part 35
Regional Transmission Organizations; Proposed Rule

Regional Transmission Organizations; Intent To Prepare and Environmental Assessment for the Regional Transmission Organizations Rulemaking, Request for Comments on Environmental Issues, and Public Scoping Meeting; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Proposed Rulemaking

May 13, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations under the Federal Power Act (FPA) to facilitate the formation of Regional Transmission Organizations (RTOs). The Commission proposes to require that each public utility that owns, operates, or controls facilities for the transmission of electric energy in interstate commerce make certain filings with respect to forming and participating in an RTO. The Commission also proposes minimum characteristics and functions that a transmission entity must satisfy in order to be considered to be an RTO.

DATES: Initial comments are due August 16, 1999. Reply comments are due September 15, 1999.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

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I. Introduction and Summary

In 1996 the Commission put in place the foundation necessary for

competitive wholesale power markets in this country—open access transmission.[1] Since that time, the industry has undergone sweeping restructuring activity, including a movement by many states to develop retail competition, the growing divestiture of generation plants by traditional electric utilities, a significant increase in the number of mergers among traditional electric utilities and among electric utilities and gas pipeline companies, large increases in the number of power marketers and independent generation facility developers entering the marketplace, and the establishment of independent system operators (ISOs) as managers of large parts of the transmission system. Trade in bulk power markets has continued to increase significantly and the Nation's transmission grid is being used more heavily and in new ways.

As a result, the traditional means of grid management is showing signs of strain and may be inadequate to support the efficient and reliable operation that is needed for the continued development of competitive electricity markets. In addition, there are indications that continued discrimination in the provision of transmission services by vertically integrated utilities may also be impeding fully competitive electricity markets. These problems may be depriving the Nation of the benefits of lower prices, more reliance on market solutions, and lighter-handed regulation that competitive markets can bring.

If electricity consumers are to realize the full benefits that competition can bring to wholesale markets, the Commission must address the extent of these problems and appropriate ways of mitigating them. Competition in wholesale electricity markets is the best way to protect the public interest and ensure that electricity consumers pay the lowest price possible for reliable service. We believe that further steps may need to be taken to address grid management if we are to achieve fully competitive power markets. We further believe that regional approaches to the numerous issues affecting the industry may be the best means to eliminate remaining impediments to properly functioning competitive markets.

Our objective is for all transmission owning entities in the Nation, including non-public utility entities, to place their transmission facilities under the control of appropriate regional transmission institutions in a timely manner. We seek to accomplish our objective by encouraging voluntary participation. We are therefore proposing in this rulemaking minimum characteristics and functions for appropriate regional transmission institutions; a collaborative process by which public utilities and non-public utilities that own, operate or control interstate transmission facilities, in consultation with the state officials as appropriate, will consider and develop regional transmission institutions; a willingness to consider incentive pricing on a case-specific basis and an offer of non-monetary regulatory benefits, such as deference in dispute resolution, reduced or eliminated codes of conduct, and streamlined filing and approval procedures; and a time line for public utilities to make appropriate filings with the Commission and initiate operation of regional transmission institutions. As a result, we expect jurisdictional utilities to form Regional Transmission Organizations (RTOs).

As discussed in detail herein, regional institutions can address the operational and reliability issues now confronting the industry, and any residual discrimination in transmission services that can occur when the operation of the transmission system remains in the control of a vertically integrated utility. Appropriate regional transmission institutions could: (1) improve efficiencies in transmission grid management[2]; (2) improve grid reliability; (3) remove the remaining opportunities for discriminatory transmission practices; (4) improve market performance; and (5) facilitate lighter handed regulation.

Thus, we believe that appropriate regional transmission institutions could successfully address the existing impediments to efficient grid operation and competition and could consequently benefit consumers through lower electricity rates resulting from a wider choice of services and service providers. There are likely to be substantial cost savings brought about by regional transmission institutions.

In light of important questions regarding the complexity of grid regionalization raised by state regulators and applicants in individual cases, we are proposing a flexible approach. We are not proposing to mandate that utilities participate in a regional transmission institution by a date certain. Instead, we act now to ensure that they consider doing so in good faith. Moreover, the Commission is not proposing a "cookie cutter" organizational format for regional transmission institutions or the establishment of fixed or specific regional boundaries under section 202(a) of the FPA.

Rather, the Commission is proposing to establish fundamental characteristics and functions for appropriate regional transmission institutions. We will designate institutions that satisfy all of the minimum characteristics and functions as Regional Transmission Organizations (RTOs). Hereinafter, the term Regional Transmission Organization, or RTO, will refer to an organization that satisfies all of the minimum characteristics and functions.

Pursuant to our authority under section 205 of the FPA to ensure that rates, terms and conditions of transmission and sales for resale in interstate commerce by public utilities are just, reasonable and not unduly discriminatory or preferential, and our authority under section 202(a) of the FPA to promote and encourage regional districts for the voluntary interconnection and coordination of transmission facilities by public utilities and non-public utilities for the purpose of assuring an abundant supply of electric energy throughout the U.S. with the greatest possible economy, we propose the following.[3]

First, the Commission proposes minimum characteristics and functions that an RTO must satisfy. Industry participants, however, retain flexibility in structuring RTOs that satisfy these characteristics and functions. For example, we do not propose to require or prohibit any one form of organization for RTOs or require or prohibit RTO ownership of transmission facilities. The characteristics and functions could be satisfied by different organizational forms, such as ISOs, transcos, combinations of the two, or even new organizational forms not yet discussed in the industry or proposed to the Commission.

Second, we propose to adopt an "open architecture" policy regarding RTOs, whereby all RTO proposals must

[1] See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 FR 21540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996) (*Order No. 888*), *order on reh'g*, Order No. 888–A, 62 FR 12274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 FR 64688, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *appeal docketed*, Transmission Access Policy Study Group, *et al.* v. FERC, Nos. 97–1715 *et al.* (D.C. Cir.).

[2] Appropriate regional institutions could improve efficiencies in grid management through improved pricing, congestion management, more accurate estimates of Available Transmission Capability, improved parallel path flow management, more efficient planning, and increased coordination between regulatory agencies.

[3] The Commission's legal authority is discussed in Section II.

allow the RTO and its members the flexibility to improve their organizations in the future in terms of structure, operations, market support and geographic scope to meet market needs. In turn, the Commission will provide the regulatory flexibility to accommodate such improvement.

Third, we propose guidance on flexible transmission ratemaking that may be proposed by RTOs, including ratemaking treatments that will address congestion pricing and performance based regulation. We also propose to consider on a case-by-case basis incentive pricing that may be appropriate for transmission facilities under RTO control.

Finally, all public utilities (with the exception of those participating in an approved regional transmission entity that conforms to the Commission's ISO principles) that own, operate or control interstate transmission facilities must file with the Commission by October 15, 2000 a proposal for an RTO with the minimum characteristics and functions adopted in the Final Rule,[4] or, alternatively, a description of efforts to participate in an RTO, any existing obstacles to RTO participation, and any plans to work toward RTO participation. Each proposed RTO must plan to be operational by December 15, 2001. We expect that such proposals would include the transmission facilities of public utilities as well as transmission facilities of public power and other non-public utility entities to the extent possible.

A public utility that is a member of an existing transmission entity that has been approved by the Commission as in conformance with the eleven ISO principles set forth in Order No. 888 must make a filing no later than January 15, 2001 that explains the extent to which the transmission entity in which it participates meets the minimum characteristics and functions for an RTO, or proposes to modify the existing institution to become an RTO. Alternatively, the public utility must file an explanation of efforts, obstacles and plans with respect to conforming to these characteristics and functions.

Through the required filings, utilities will make known to the public any plans for RTO participation so that other utilities and the competitive market can respond accordingly. This proposal relies primarily on the enlightened self-interest of stakeholders in each region. Such public disclosure of plans for transmission facilities will benefit the industry, the financial community, and public policy makers as the electric industry restructuring continues.

To facilitate RTO formation in all regions of the Nation, the Commission proposes to sponsor and support a collaborative process under section 202(a) to take place in the spring of 2000. Under this process, we expect that public utilities and non-public utilities, in coordination with state officials, Commission staff, and all affected interest groups, will actively work toward the voluntary development of specific RTOs.

Prior to undertaking this proposed rulemaking, we held eight technical conferences in 1998 with all industry stakeholders as well as three technical conferences this year with state regulatory commissions to obtain their views on the need for, and benefits of, regional organizations. We gained valuable insight from the participants, including many state commissions that have undertaken or are considering state retail choice programs for the consumers in their states. In light of the comments received, we wish to respond to several concerns that were raised.

First, we are not proposing to mandate RTOs, nor are we proposing detailed specifications on a particular organizational form for RTOs. The goal of this rulemaking is to get RTOs in place through voluntary participation. While this Commission has specific authorities and responsibilities under the FPA to protect against undue discrimination and remove impediments to wholesale competition, we believe it is preferable to meet these responsibilities in the first instance through an open and collaborative process that allows for regional flexibility and induces voluntary behavior.

Second, the development of RTOs is not intended to interfere with state prerogatives in setting retail competition policy. The Commission believes that RTOs can successfully accommodate the transmission systems of all states, whether or not a particular state has adopted retail competition. However, for those states that have chosen to adopt retail wheeling, RTOs can play a critical role in the realization of full competition at the retail level as well as at the wholesale level. In addition, the Commission believes that RTOs will not interfere with a state's prerogative to keep the benefits of low-cost power for the state's own retail consumers.

Third, we propose to allow RTOs to prevent transmission cost shifting by continuing our policy of flexibility with respect to recovery of sunk transmission costs, such as the "license plate" approach.

Fourth, the existence of RTOs has not, and will not in the future, interfere with traditional state and local regulatory responsibilities such as transmission siting, local reliability matters, and regulation of retail sales of generation and local distribution. In fact, RTOs offer the potential to assist the states in their regulation of retail markets and in resolving matters among states on a regional basis. They also provide a vehicle for amicably resolving state and Federal jurisdictional issues.

Finally, we do not propose to establish regional boundaries in this rulemaking. Our foremost concern is that a proposed RTO's regional configuration is sufficient to ensure that the required RTO characteristics and functions are satisfied. To this end, the Commission proposes guidance regarding the scope and regional configuration of RTOs.

We now turn to the state of the electric utility industry in the wake of Order No. 888 and how the development of RTOs achieves efficient, reliable and competitive power markets.

II. Background

In April 1996, in Order Nos. 888 and 889, the Commission established the foundation necessary to develop competitive bulk power markets in the United States: non-discriminatory open access transmission services by public utilities and stranded cost recovery rules that would provide a fair transition to competitive markets. Order Nos. 888 and 889 were very successful in accomplishing much of what they set out to do. However, they were not intended to address all problems that might arise in the development of competitive power markets. Indeed, the nature of the emerging markets and the remaining impediments to full competition have become apparent in the three years since the issuance of our orders.

A. The Foundation for Competitive Markets: Order Nos. 888 and 889

In Order Nos. 888 and 889, the Commission found that unduly discriminatory and anticompetitive

[4] An RTO proposal includes a basic agreement filed under section 205 of the FPA setting out the rules, practices and procedures under which an RTO will be governed and operated, and requests by the public utility members of the RTO under section 203 of the FPA to transfer control of their jurisdictional transmission facilities from individual public utilities to the RTO. Most RTO proposals by public utilities are likely to involve one or more filings under FPA sections 203, 205, or 206, but the number and types of filing may vary depending upon the type of RTO proposed, and the number of public utilities involved in the proposal. Under the proposed rule, a utility may file a petition for a declaratory order asking whether a proposed transmission entity would qualify as an RTO, to be followed by appropriate filings under sections 203, 205 and/or 206.

practices existed in the electric industry, and that transmission-owning utilities had discriminated against others seeking transmission access.[5] The Commission stated that its goal was to ensure that customers have the benefits of competitively priced generation, and determined that non-discriminatory open access transmission services (including access to transmission information) and stranded cost recovery were the most critical components of a successful transition to competitive wholesale electricity markets.[6]

Accordingly, Order No. 888 required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to (1) file open access non-discriminatory transmission tariffs containing, at a minimum, the non-price terms and conditions set forth in the Order, and (2) functionally unbundle wholesale power services. Under functional unbundling, the public utility must: (a) take transmission services under the same tariff of general applicability as do others; (b) state separate rates for wholesale generation, transmission, and ancillary services; and (c) rely on the same electronic information network that its transmission customers rely on to obtain information about its transmission system when buying or selling power.[7] Order No. 889 required that all public utilities establish or participate in an Open Access Same-Time Information System (OASIS) that meets certain specifications, and comply with standards of conduct designed to prevent employees of a public utility (or any employees of its affiliates) engaged in wholesale power marketing functions from obtaining preferential access to pertinent transmission system information.

During the course of the Order No. 888 proceeding, the Commission received comments urging it to require generation divestiture or structural institutional arrangements such as regional independent system operators (ISOs) to better assure non-discrimination. The Commission responded that, while it believed that ISOs had the potential to provide significant benefits, efforts to remedy undue discrimination should begin by requiring the less intrusive functional unbundling approach. Order No. 888 set forth eleven principles for assessing ISO proposals submitted to the Commission.[8] Order No. 888 also stated:

> [W]e see many benefits in ISOs, and encourage utilities to consider ISOs as a tool to meet the demands of the competitive marketplace.
>
> As a further precaution against discriminatory behavior, we will continue to monitor electricity markets to ensure that functional unbundling adequately protects transmission customers. At the same time, we will analyze all alternative proposals, including formation of ISOs, and, if it becomes apparent that functional unbundling is inadequate or unworkable in assuring non-discriminatory open access transmission, we will reevaluate our position and decide whether other mechanisms, such as ISOs, should be required.[9]

In section III.A.2 of this Notice of Proposed Rulemaking, we discuss our experiences to date with functional unbundling. It has become apparent that several types of regional transmission institutions, in addition to the kinds of ISOs approved to date, may also be able to provide the benefits attributed to ISOs in Order No. 888.

B. Developments Since Order Nos. 888 and 889

In the three years since Order Nos. 888 and 889 were issued, numerous significant developments have occurred in the electric utility industry. Some of these reflect changes in governmental policies; others are strictly industry driven. These activities have resulted in a considerably different industry landscape from the one faced at the time the Commission was developing Order No. 888, resulting in new regulatory and industry challenges.

Order Nos. 888 and 889 required a significant change in the way many public utilities have done business for most of this century, and most public utilities accepted these changes and made substantial good faith efforts to comply with the new requirements. Virtually all public utilities have filed tariffs stating rates, terms and conditions for third-party use of their transmission systems. In addition, improved information about the transmission system is available to all participants in the market at the same time that it is available to the public utility as a result of utility compliance with the OASIS regulations.

The availability of tariffs and information about the transmission system has fostered a rapid growth in dependence on wholesale markets for acquisition of generation resources. Areas that have experienced generation shortages have seen rapid development of new generation resources. For example, New England, where there was deep concern about adequacy of generation supply only three years ago, now has approximately 30,000 MW of generation proposed. That response comes almost entirely from independent generating plants that are able to sell power into the bulk power market through open access to the transmission system. Power resources are now acquired over increasingly large regional areas, and interregional transfers of electricity have increased.

The very success of Order Nos. 888 and 889, and the initiative of some utilities that have pursued voluntary restructuring beyond the minimum open access requirements , have put new stresses on regional transmission systems—stresses that call for regional solutions.

1. Industry Restructuring and New Stresses on the Transmission Grid

Open access transmission and the opening of wholesale competition in the electric industry have brought an array of changes in the past several years: divestiture by many integrated utilities of some or all of their generating assets; significantly increased merger activity both between electric utilities and between electric and natural gas utilities; increases in the number of new participants in the industry in the form of independent power marketers and generators; increases in the volume of trade in the industry, particularly as marketers make multiple sales; state efforts to create retail competition; and new and different uses of the transmission grid.

With respect to divestiture, since August 1997, approximately 50,000 MW of generating capacity have been sold (or are under contract to be sold) by utilities, and an additional 30,000 MW is currently for sale. In total, this represents more than 10 percent of U.S. generating capacity. In all, according to publicly available data, 27 utilities have sold all or some of their generating assets and 7 others have assets for sale. Buyers of this generating capacity have included traditional utilities with specified service territories as well as independent power producers with no required service territory.

Since Order No. 888 was issued, there have been more than 20 applications filed with us to approve proposed mergers involving public utilities. Most of these mergers have been approved by various regulatory authorities, including the Commission, although a few have been rejected or withdrawn, and several mergers are pending regulatory approval. Most of these merger proposals have been between electric utilities with contiguous service areas, while some of the proposed mergers have been between utilities with non-

[5] *Order No. 888*, FERC Stats & Regs. at 31,682.
[6] *Id.* at 31,652.
[7] *Id.* at 31,654–55.
[8] *Id.* at 31,730.
[9] *Id.* at 31,655.

contiguous service areas. The Commission has also been presented with merger applications involving the combination of electric and natural gas assets.

There has been significant growth in the volume of trading in the wholesale electricity market. In the first quarter of 1995, according to power marketer quarterly filings, marketer sales totaled 1.8 million MWh, but by the second quarter of 1998, such sales escalated to 513 million MWh.[10] Many new competitors have entered the industry. For example, in the first quarter of 1995, there were eight power marketers (either independent or affiliated with traditional utilities) actively trading in wholesale power markets, but by the second quarter of 1998, there were 108 actively trading power marketers. The Commission has granted market-based rate authority to well over 500 wholesale power marketers, of which some are independent of traditional investor-owned utilities, some are affiliated with traditional utilities, and some are traditional utilities themselves.[11]

State commissions and legislatures have been active in the past few years studying competitive options at the retail level, setting up pilot retail access programs, and, in some states, implementing full scale retail access programs. As of May 1, 1999, 18 states have enacted electric restructuring legislation, 3 have issued comprehensive regulatory orders, and 26 others have legislation or orders pending or investigations underway.[12] Fifteen states have implemented full-scale or pilot retail competition programs that offer a choice of suppliers to at least some retail customers. Eight states have set in motion programs to offer access to retail customers by a date certain.

Because of the changes in the structure of the electric industry, the transmission grid is now being used more intensively and in different ways than in the past. The Commission is concerned that the traditional approaches to operating the grid are showing signs of strain. According to the North American Electric Reliability Council (NERC), "the adequacy of the bulk transmission system has been challenged to support the movement of power in unprecedented amounts and in unexpected directions."[13] These changes in the use of the transmission system "will test the electric industry's ability to maintain system security in operating the transmission system under conditions for which it was not planned or designed."[14] It should be noted that, despite the increased transmission system loadings, NERC believes that the "procedures and processes to mitigate potential reliability impacts appear to be working reliably for now," and that even though the system was particularly stressed during the summer of 1998, "the system performed reliably and firm demand was not interrupted due to transmission transfer limitations."[15]

An indication that the increased and different use of the transmission system is stressing the grid is the increased use of transmission line loading relief (TLR) procedures.[16] NERC's TLR procedures were invoked 250 times between January 1 and September 1, 1998 to prevent facility or interface overloads on the Eastern Interconnection.[17]

It appears that the planning and construction of transmission and transmission-related facilities may not be keeping up with increased requirements. According to NERC, "Business is increasing on the transmission system, but very little is being done to increase the load serving and transfer capability of the bulk transmission system."[18] The amount of new transmission capacity planned over the next ten years is significantly lower than the additions that had been planned five years ago, and most of the planned projects are for local system support.[19] NERC states that, "The close coordination of generation and transmission planning is diminishing as vertically integrated utilities divest their generation assets and most new generation is being proposed and developed by independent power producers."[20]

The transition to new market structures has resulted in new challenges and circumstances. For example, during the week of June 22–26, 1998, the wholesale electric market in the Midwest experienced numerous events that led to unprecedented high spot market prices. Spot wholesale market prices for energy briefly rose as high as $7,500 per MWh, compared to an average price for the summer of approximately $40 per MWh in the Midwest if the price spikes are excluded.[21] This experience led to calls for price caps, allegations of market power, and a questioning of the effectiveness of transmission open access and wholesale electric competition.

The Commission staff undertook an investigation of the price spike incident. Staff's report concluded that the unusually high price levels were caused by a combination of factors, particularly above-average generation outages, unseasonably hot temperatures, storm-related transmission outages, transmission constraints, poor communication of price signals, lowered confidence in the market due to a few contract defaults, and inexperience in dealing with competitive markets.[22]

The Commission's staff found that the market institutions were not adequately prepared to deal with such a dramatic series of events. Regarding regional transmission entities, the staff report observed: "The necessity for cooperation in meeting reliability concerns and the Commission's intent to foster competitive market conditions underscores the importance of better regional coordination in areas such as maintenance of transmission and generation systems and transmission planning and operation."[23] Support for this view comes from many sources. For example, the Public Utilities Commission of Ohio, in its own report on the price spikes, recommended that policy makers "take unambiguous action to require coordination of transmission system operations by regionwide Independent System Operators."[24]

On September 29, 1998, the Secretary of Energy Advisory Board Task Force on Electric System Reliability published its

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[10] Power marketer quarterly filings, *cited in Staff Report to the Federal Energy Regulatory Commission on the Causes of Wholesale Electric Pricing Abnormalities in the Midwest During June 1998*, (September 22, 1998) (Staff Price Spike Report) at 3–1 to 3–2. It must be noted that a significant portion of the sales represent the retrading of power by a number of different market participants. In other words, there may be multiple resales of the same generation.

[11] *Id.* at 3–1.

[12] "Status of Electric Utility Deregulation Activity as of May 1, 1999," Energy Information Administration.

[13] Reliability Assessment 1998–2007, North American Electric Reliability Council (September 1998), at 26.

[14] *Id.*

[15] *Id.*

[16] The TLR procedures are designed to remedy overloads that result when a transmission line or other transmission equipment carries or will carry more power than its rating, which could result in either power outages or damage to property. The TLR procedures are designed to bring overloaded transmission equipment to within NERC's Operating Security Limits essentially by curtailing transactions contributing to the overload. *See* North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998) (*NERC*).

[17] Reliability Assessment 1998–2007 at 27.

[18] *Id.* at 26.

[19] *Id.* at 7.

[20] *Id.*

[21] Staff Price Spike Report at 3–8 to 3–11.

[22] *Id.* at v.

[23] *Id.* at 5–8.

[24] Ohio's Electric Market, June 22–26, 1998, What Happened and Why, A Report to the Ohio General Assembly, at iii.

final report.[25] The Task Force was convened in January 1997 to provide advice to the Department of Energy on critical institutional, technical, and policy issues that need to be addressed in order to maintain bulk power electric system reliability in a more competitive industry. The Task Force found that "the traditional reliability institutions and processes that have served the Nation well in the past need to be modified to ensure that reliability is maintained in a competitively neutral fashion;" that "grid reliability depends heavily on system operators who monitor and control the grid in real time;" and that "because bulk power systems are regional in nature, they can and should be operated more reliably and efficiently when coordinated over large geographic areas."[26]

The report noted that many regions of the United States are developing ISOs as a way to maintain electric system reliability as competitive markets develop. According to the Task Force, ISOs are significant institutions to assure both electric system reliability and competitive generation markets. The Task Force concluded that a large ISO would: (1) be able to identify and address reliability issues most effectively; (2) internalize much of the loop flow caused by the growing number of transactions; (3) facilitate transmission access across a larger portion of the network, consequently improving market efficiencies and promoting greater competition; and (4) eliminate "pancaking" of transmission rates, thus allowing a greater range of economic energy trades across the network.[27]

2. Successes, Failures, and Haphazard Development of Regional Transmission Entities

Since Order No. 888 was issued, there have been both successful and unsuccessful efforts to establish ISOs, and other efforts to form regional entities to operate the transmission facilities in various parts of the country. While we are encouraged by the success of some of these efforts, it is apparent that the results have been inconsistent, and much of the country's transmission facilities remain outside of an operational regional transmission institution.

Proposals for the establishment of five ISOs have been submitted to and approved, or conditionally approved, by the Commission. These are the California ISO,[28] the PJM ISO,[29] ISO New England ISO,[30] the New York ISO,[31] and the Midwest ISO.[32] In addition, the Texas Commission has ordered an ISO for the Electric Reliability Council of Texas (ERCOT).[33] Moreover, our international neighbors in Canada and Mexico are also pursuing electric restructuring efforts that include various forms of regional transmission entities.[34]

The PJM, New England and New York ISOs were established on the platform of existing tight power pools. It appears that the principal motivation for creating ISOs in these situations was the Order No. 888 requirement that there be a single system wide transmission tariff for tight pools. In contrast, the establishment of the California ISO and the ERCOT ISO was the direct result of mandates by state governments. The Midwest ISO, which is not yet operational, is unique. It began through a consensual process and was not driven by a pre-existing institution. Two states in the region subsequently required utilities in their states to participate in either a Commission-approved ISO (Illinois and Wisconsin), or sell their transmission assets to an independent transmission company (Wisconsin).

The approved ISOs have similarities as well as differences. All five Commission-approved ISOs operate, or propose to operate, as non-profit organizations. All five ISOs include both public and non-public utility members. However, among the five, there is considerable variation in governance, operational responsibilities, geographic scope and market operations. Four of the ISOs rely on a two-tier form of governance with a non-stakeholder governing board on top that is advised, either formally or informally, by one or more stakeholder groups. In general, the final decision making authority rests with the independent non-stakeholder board. One ISO, the California ISO, uses a board consisting of stakeholders and non-stakeholders.

Four of the five ISOs operate traditional control areas, but the Midwest ISO does not currently plan to operate a traditional control area. Three are multi-state ISOs (New England, PJM and Midwest), while two ISOs (California and New York) currently operate within a single state. The current Midwest ISO members do not encompass one contiguous geographic area and there are holes in its coverage. The ISO New England administers a separate NEPOOL tariff, while the other four administer their own ISO transmission tariffs.

Three ISOs operate or propose to operate centralized power markets (New England, PJM and New York), and one ISO (California) relies on a separate power exchange (PX) to operate such a market.[35] The Midwest ISO did not originally envision an ISO-related centralized market for its region.[36] In addition, at least one separate PX has begun to do business in California apart from the PX established through the restructuring legislation.[37]

Not all efforts to create ISOs have been successful. For example, after more than two years of effort, the proponents of the IndeGO ISO in the Pacific Northwest and Rocky Mountain regions ended their efforts to create an ISO. More recently, members of MAPP, an existing power pool that covers six U.S.

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[25] Maintaining Reliability in a Competitive U.S. Electricity Industry; Final Report of the Task Force on Electric System Reliability (Sept. 29, 1998) (Task Force Report). The Task Force was comprised of 24 members representing all major segments of the electric industry, including private and public suppliers, power marketers, regulators, environmentalists, and academics.

[26] Task Force Report at x–xi.

[27] *Id.* at 76.

[28] Pacific Gas & Electric Company, *et al.*, 77 FERC ¶61,204 (1996), *order on reh'g*, 81 FERC ¶61,122 (1997) (*Pacific Gas & Electric*).

[29] Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 81 FERC ¶61,257 (1997), *reh'g pending* (PJM).

[30] New England Power Pool, 79 FERC ¶61,374 (1997), *order on reh'g*, 85 FERC ¶61,242 (1998) (order conditionally authorizing ISO New England); New England Power Pool, 83 FERC ¶61,045 (1998), *reh'g pending* (order on NEPOOL tariff and restructuring)(*NEPOOL*).

[31] Central Hudson Gas & Electric Corporation, *et al.*, 83 FERC ¶61,352 (1998), *order on reh'g*, 87 FERC ¶61,135 (1999) (*Central Hudson*).

[32] Midwest Independent Transmission System Operator, *et al.*, 84 FERC ¶61,231, *order on reconsideration*, 85 FERC ¶61,250, *order on reh'g*, 85 FERC ¶61,372 (1998) (*Midwest ISO*).

[33] *See* 16 Texas Administrative Code §23.67(p).

[34] *See* Policy Proposal for Structural Reform of the Mexican Electricity Industry, Secretary of Energy, Mexico (February 1999); Third Interim Report of the Ontario Market Design Committee (October 1998); TransAlta Enterprises Corporation, 75 FERC ¶61,268 at 61,875 (1996) (recognition of the restructuring in the Province of Alberta, Canada to create a Grid Company of Alberta).

[35] The California PX offers day-ahead and hour-ahead markets and the ISO operates a real-time energy market. Participation in the PX market is voluntary except that the three traditional investor-owned utilities in California must bid their generation sales and purchases through the PX for the first five years. New York will offer day-ahead and real-time energy markets that will be operated by the ISO. PJM and New England offer only real-time energy markets, although PJM has proposed to operate a day-ahead market. The ERCOT ISO is the only other ISO that does not currently operate a PX.

[36] There are indications, however, that the Midwest ISO is considering the formation of a power exchange. *See* Joint Committee for the Development of a Midwest Independent Power Exchange, "Solicitation of Interest-Creation of an Independent Power Exchange for the U.S. Midwest," February 5, 1999.

[37] *See* Automated Power Exchange, Inc., 82 FERC ¶ 61,287, *reh'g denied*, 84 FERC ¶ 61,020 (1998), *appeals docketed*, No. 98–1415 (D.C. Cir. Sept. 14, 1998) and No. 98–1419 (D.C. Cir. Sept. 14, 1998).

states and two Canadian provinces, failed to achieve consensus for establishing a long-planned ISO. In the Southwest, proponents of the Desert Star ISO have not been able to reach agreement on a formal proposal after more than two years of discussion.

Various reasons have been advanced to explain why it is difficult to form a voluntary, multi-state ISO. These include cost shifting in transmission capital costs; disagreements about sharing of ISO transmission revenues among transmission owners; difficulties in obtaining the participation of publicly-owned transmission facilities; concerns about the loss of transmission rights and prices embedded in existing transmission agreements; the likelihood of not being able to maintain or gain a competitive advantage in power markets through the use of transmission facilities; and the preference of certain transmission owners to sell or transfer their transmission assets to a for-profit transmission company in lieu of handing over control to a non-profit ISO.

Apart from these efforts to create ISOs, we have received proposals for other types of transmission entities. For example, in October 1998 a group of Arizona entities filed a request with the Commission to create an "independent scheduling administrator" (ISA) in Arizona.[38] Unlike an ISO, this entity would not administer its own transmission tariff nor would it have any direct operational responsibilities. Instead, it appears that its functions would be limited to monitoring the scheduling decisions and OASIS site operation of the Arizona utilities that operate transmission facilities.[39] In case of disputes, the ISA would provide a type of expedited dispute resolution process. The applicants state that the ISA would be a transitional organization that would ultimately evolve or be merged into a stronger, multi-state ISO.[40] In other developments, one public utility has recently made a filing with us to sell its transmission assets to a newly formed affiliate.[41] Another public utility recently filed a request for declaratory order asking us to find that its proposal to transfer its transmission assets (in the form of ownership or a lease) to a "transco" in return for a passive ownership interest in the transco, would satisfy the Commission's eleven ISO principles.[42]

As part of general restructuring initiatives, several states now require independent grid management organizations. For example, an Illinois law requires that its utilities become members of a FERC-approved regional ISO by March 31, 1999, and Wisconsin law gives its utilities the option of joining an ISO or selling their transmission assets to an independent transmission company by June 30, 2000. In both states, the backstop is a single-state organization if regional organizations are not developed. Recently, Virginia and Arkansas have also enacted legislation requiring their electric utilities to join or establish regional transmission entities.

3. The Commission's ISO and RTO Inquiries; Conferences with Stakeholders and State Regulators

In light of the various restructuring activities occurring throughout the U.S., the Commission has, within the past year, held 11 public conferences in 9 different cities across the country to hear the views of industry, consumers, and state regulators with respect to the need for RTOs and their appropriate roles and responsibilities.

The Commission initiated an inquiry in March 1998 pertaining to its policies on ISOs. A notice establishing procedures for a conference gave the following rationale:

> In Order Nos. 888 and 889 and their progeny, the Commission established the fundamental principles of non-discriminatory open access transmission services. Nevertheless, many issues remain to be addressed if the Nation is to fully realize the benefits of open access and more competitive electric markets.
>
> * * * * *
>
> Given the dramatic changes taking place in both wholesale and retail electric markets and the many proposals under consideration with respect to the creation of ISOs or other transmission entities, such as transmission-only utilities, it is time for the Commission to take stock of its policies in order to determine whether they appropriately support our dual goals of eliminating undue discrimination and promoting competition in electric power markets.[43]

Accordingly, the Commission held a series of eight conferences in 1998 to gain insight into participants' views on the formation and role of ISOs in the electric utility industry. The first conference was held in April 1998 at the Commission's offices in Washington, D.C. Between May 28 and June 8, 1998, the Commission held seven regional conferences in Phoenix, Kansas City, New Orleans, Indianapolis, Portland, Richmond and Orlando. As a result of these conferences, the Commission heard approximately 145 oral presentations and received a large number of written comments on the appropriate size, scope, organization and functions of regional transmission institutions. A number of different viewpoints were expressed. They will be discussed elsewhere in this NOPR and are summarized in Appendix A hereto.

On October 1, 1998, the Secretary of Energy delegated his authority under section 202(a) of the FPA to the Commission. In doing so the Secretary stated that section 202(a) "provides DOE with sufficient authority to establish boundaries for Independent System Operators (ISOs) or other appropriate transmission entities."[44] The Secretary also stated,

> FERC is also increasingly faced with reliability-related issues. Providing FERC with the authority to establish boundaries for ISOs or other appropriate transmission entities could aid in the orderly formation of properly-sized transmission institutions and in addressing reliability-related issues, thereby increasing the reliability of the transmission system.

On November 24, 1998, we gave notice in this docket of our intent to initiate a consultation process with State commissions pursuant to section 202(a).[45] The purpose of the consultations was to afford State commissions a reasonable opportunity to present their views with respect to appropriate boundaries for regional transmission institutions and other issues relating to RTOs. Conferences with State commissioners were held in St. Louis, Missouri on February 11, 1999; in Las Vegas, Nevada on February 12, 1999; and in Washington, D.C. on February 17, 1999. In all, we heard oral presentations by representatives of 41 state commissions during these consultations, with others monitoring or providing written comments.[46] During these sessions, we received much valuable advice. We have set forth in Appendix B a summary of the comments received, and discuss in

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[38] Arizona Independent Scheduling Administrator Association, Docket No. ER99–388–000 (filed October 29, 1998).

[39] A proposal for a similar entity has been in the Pacific Northwest. This entity, described as an independent grid scheduler, would make actual scheduling decisions rather than simply monitoring the decisions made by current transmission owners. *See* Regional ISO Conference (Portland), transcript at 39–40.

[40] *See* Applicant's filing, Docket No. ER99–388–000, at 3.

[41] FirstEnergy, Inc., Docket No. EC99–53–000 (filed March 19, 1999).

[42] Entergy Services, Inc., Docket No. EL99–57–000 (filed April 5, 1999).

[43] Inquiry Concerning the Commission's Policy on Independent System Operators, Notice of Conference, Docket No. PL98–5–000, at 1–2 (March 13, 1998).

[44] 63 FR 53889 (1998).

[45] Notice of Intent to Consult Under Section 202(a), 63 FR 66158 1998*), FERC Stats & Regs. ¶ 35,534 (1998).

[46] *See* Appendix B for a list of commenters.

Section III.B below our response to some of the major concerns expressed.

C. Statutory Framework

The Commission is granted the authority and responsibility by FPA sections 205 and 206, 16 U.S.C. 824d, 824e, to ensure that the rates, charges, classifications, and service of public utilities (and any rule, regulation, practice, or contract affecting any of these) are just and reasonable and not unduly discriminatory, and to remedy undue discrimination in the provision of such services. In fulfilling its responsibilities under FPA sections 205 and 206, the Commission is required to address, and has the authority to remedy, undue discrimination and anticompetitive effects. The Commission has a statutory mandate under these sections to ensure that transmission in interstate commerce and rates, contracts, and practices affecting transmission services, do not reflect an undue preference or advantage (or undue prejudice or disadvantage) and are just, reasonable, and not unduly discriminatory or preferential.[47] Additionally, as discussed in Order No. 888,[48] there is a substantial body of case law that holds that the Commission's regulatory authority under the FPA "clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] §§ 202 and 203, and under like directives contained in §§ 205, 206, and 207."[49]

The Commission also has the authority and responsibility under section 203 of the FPA to review mergers and other transactions involving public utilities, including dispositions of jurisdictional facilities by public utilities. This includes public utilities' transfers of control of jurisdictional transmission facilities to entities such as RTOs. Under section 203, the Commission must approve a proposed disposition of jurisdictional facilities if it is consistent with the public interest. The Commission may grant an application under section 203 upon such terms and conditions as it finds necessary to secure the maintenance of adequate service and the coordination in the public interest of jurisdictional facilities.

Further, section 202(a) of the FPA, whose authority has recently been delegated to the Commission by the Secretary of Energy,[50] authorizes and directs the Commission "to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy * * *." The purpose of this division into regional districts is for "assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources * * *." Section 202(a) states that it is "the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts."

III. Discussion

A. Barriers to Assuring an Abundant Supply of Electric Energy Throughout the United States with the Greatest Possible Economy

In light of our experiences with ISOs and other utility restructuring activity in the aftermath of Order Nos. 888 and 889, and after almost three years of experience with implementation of Order Nos. 888 and 889, we believe that there remain important transmission-related impediments to a competitive wholesale electric market. We have grouped these remaining impediments into two broad categories. The first category of impediments consists of engineering and economic inefficiencies inherent in the current operation and expansion of the transmission grid—inefficiencies that, in and of themselves, are hindering fully competitive power markets and imposing unnecessary costs on electric consumers. The second category of impediments consists of continuing opportunities for transmission owners to unduly discriminate in the operation of their transmission systems so as to favor their own or their affiliates' power marketing activities. Both sets of impediments unnecessarily restrict the scope of bulk power markets and inhibit the large-scale competition that we sought in issuing Order Nos. 888 and 889.

The situation of the electric industry is somewhat analogous to the natural gas industry after the initial step of open access transportation was taken. In 1985, the Commission issued Order No. 436,[51] which instituted open-access, nondiscriminatory transportation of natural gas with the goal of increasing competition and permitting gas users to purchase gas directly from gas merchants. However, the Commission subsequently found that open access alone was not sufficient to remove all barriers to competition.[52] Because of the different structures of the electric and gas industries, the specific remaining impediments to competition may not be the same, but there are similarities in that open access, without sufficient mechanisms for ensuring that such access is equal and efficient for all participants, may not be enough to promote a fully competitive market.[53]

Our current understanding of industry conditions, as set forth below, will be enhanced by future consultations with and analysis from all industry stakeholders, including state commissions. The Commission seeks comments in order to achieve a deeper

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[47] Once such a finding is made, the Commission is required to remedy it. *See, e.g.*, Southern California Edison Company, 40 FERC ¶ 61,371 at 62,151–52 (1987), *order on reh'g* 50 FERC ¶ 61,275 at 61,873 (1990), *modified sub nom.*, Cities of Anaheim v. FERC, 941 F.2d 1234 (D.C. Cir. 1991); Delmarva Power and Light Company, 24 FERC ¶ 61,199 at 61,466, *order on reh'g* 24 FERC ¶ 61,380 (1983).

[48] *Order No. 888*, FERC Stats. & Regs. at 31,669.

[49] Gulf States Utilities Co. v. FPC, 411 U.S. 747, 758–59, *reh'g denied*, 412 U.S. 944 (1973) (Gulf States). *See also* City of Huntingburg v. FPC, 498 F.2d 778, 783–84 (D.C. Cir. 1974) (Commission has a duty to consider the potential anticompetitive effects of a proposed Interconnection Agreement.)

[50] 63 FR 53889 (1998).

[51] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 1985), *vacated and remanded*, Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *readopted on an interim basis*, Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. & Regs. [Regulations Preambles, 1986–1990] ¶30,761 (1987), *remanded*, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, 54 FR 52334 (Dec. 21, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,880 (1990), *aff'd in part and remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

[52] In the case of natural gas, we found that the principal remaining barrier was the continued existence of bundled city-gate firm sales service that had a transportation component of higher quality than available through open access. Hence, we issued Order No. 636 to unbundle services and equalize the quality of service offered. *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. ¶ 30,939 (April 8, 1992), *reh'g granted and denied in part*, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. ¶ 30,950 (August 3, 1992), *order on reh'g* Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), Notice of Denial of Rehearing (January 8, 1993), 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part*, United Dist. Companies v. FERC, 88 F.3d 1105 (D.C. Cir. July 16, 1996), *order on remand*, Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[53] For a discussion of the similarities and differences in the structure and regulation of the natural gas and electric industries, *see generally Santa and Sikora, Open Access And Transition Costs: Will The Electric Industry Transition Track The Natural Gas Restructuring?, 15 Energy L.J. 273 (1994).*

appreciation of any impediments to competition in the Nation's electricity markets and how they should be addressed.

1. Engineering and Economic Inefficiencies in the Operation, Planning and Expansion of Regional Transmission Grids

The transmission facilities of any one utility in a region are part of a larger, integrated transmission system. From an electrical engineering perspective, each of the three interconnections in the United States (the Eastern, the Western and ERCOT) operates as a single "machine." [54] The Eastern Interconnection also extends into Canada, and the Western Interconnection includes parts of Canada and Mexico.

Problems have arisen over the last three years, in part, because we have multiple operators of each of these machines. Each separate operator usually makes independent decisions about the use, limitations and expansion of its piece of the interconnected grid based on incomplete information. This approach—separate operation of each utility's own transmission facilities—would make engineering sense only if each system operated independently of the others. But the physical reality is that, within the three interconnected grids, any action taken by one transmission provider can have major and instantaneous effects on the transmission facilities of all other transmission providers.[55]

This is not a new phenomenon. Since the very first transmission interconnection between two neighboring utilities, interconnected utilities have had to cope with the fact that electricity will flow over others' lines. In the past, these effects were often small or infrequent and the utility could generally pass any costs through to captive customers. Today, with the increase in bulk power trade and the large shifts in power flows, the effects may be large, frequent and not recoverable by the utility bearing the cost.

Another important change is that the structure of the industry that exists today is very different from the industry that existed three years ago when we issued Order No. 888. The industry is no longer composed uniformly of vertically-integrated, self-sufficient public utilities that do not compete with each other. Instead, it is an increasingly de-integrated and decentralized industry with many new and existing participants that actively compete against each other.[56]

As a consequence of these changes in trade patterns and industry structure, certain operational problems have become more significant and more difficult to resolve. These include: maintaining reliable grid operations; determining available transmission capability (ATC); [57] managing transmission congestion; and planning and investing in new transmission facilities. In addition, traditional approaches to the pricing and provision of transmission service may be hindering the further development of competitive and efficient bulk power markets. These impediments include: pancaking of transmission access charges; non-market approaches to managing congestion; the absence of clear transmission rights; the absence of secondary markets in transmission service; and the possible disincentives created by the level and structure of transmission rates. The Commission believes that properly structured RTOs can address both sets of problems and further the development of competitive bulk power markets.

a. Reliable Grid Operations

The United States has one of the most reliable power systems in the world. For over thirty years, NERC and the regional reliability councils have developed and implemented voluntary standards to maintain the security of the transmission systems. There is no net public policy benefit to promoting competition if reliability suffers as a consequence.[58] The promotion of competition must therefore go hand-in-hand with the creation of new institutions to ensure that reliability is maintained or improved in any new industry structure.[59] We fully agree with the findings of the DOE Reliability Task Force:

* * * there is a critical need to be sure that reliability is not taken for granted as the industry restructures, and thus does not "fall through the cracks."[60]

The DOE Reliability Task Force also pointed out that with the entry of many new participants, dramatic increases in unbundled power sales and shifts in electrical flows, the nation's bulk power system is being stressed in ways that have never been experienced before. A similar conclusion was reached by NERC in its 1998 summer assessment of bulk power reliability:

Throughout the Regions, parallel path flows from increased electricity transfers are stressing the transmission systems. These flows are at magnitudes and in directions not anticipated at the time the systems were designed. * * * The transmission system will be required to operate under unprecedented, and sometimes unstudied, conditions.[61]

These stresses have always existed but not in these magnitudes. Moreover, they could be more readily accommodated through voluntary ad hoc agreements when there were fewer industry participants who generally did not compete against each other in any significant way.[62] But as we have noted, this traditional industry structure is rapidly disappearing. Our concern is that the reliability fault lines may become more prominent and dangerous.

It is well accepted that the operation of interconnected transmission networks requires careful coordination and the exchange of information between many individual systems. Any operational change on one system in the network instantly affects other systems. For example, the shipment of power from one location to another will divide among all transmission paths from source to destination based on the laws of physics.[63] This is referred to as

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[54] North American Electric Reliability Council, Electric Reliability Panel, "Reliable Power: Renewing the North American Electric Reliability Oversight System," December 1997, at 9.

[55] U.S. Congress, Office of Technology Assessment, "Electric Power Wheeling and Dealing, Technological Considerations for Increasing Competition," May, 1989.

[56] For example, there are now about 550 Commission-approved power marketers. Decentralization has also increased because of divestiture of generating plants by traditionally vertically integrated utilities. Such sales are frequently required by state governments as one element of the structural reforms that accompany the introduction of retail competition. During the last three years, utilities have sold or have contracts to sell more than 50,000 MW of existing generating capacity. About 30,000 MW of additional capacity is currently being offered for sale.

[57] *See* definition of ATC *infra*.

[58] Unless otherwise noted, we use the term "reliability" to refer to the reliable or secure operation of the bulk power grid. This is one component of the broader NERC definition, which also includes "adequacy" (i.e., sufficient generation and transmission capacity) as a second component of overall reliability. *See* North American Electric Reliability Council, "Glossary of Terms," August 1996, at 21.

[59] *See* George C. Loehr, "Ten Myths About Electric Deregulation: Electrons May Seem Imaginary, But Reliability Is Real," Public Utilities Fortnightly, April 15, 1998, at 28–31.

[60] DOE Task Force Report, at xv.

[61] NERC, "1998 Summer Assessment: Reliability of Bulk Electricity Supply in North America," May 1998, at 2–3.

[62] In assessing the continued viability of the current system, NERC's blue-ribbon Electric Reliability Panel concluded that: "The competitive dynamics among a much larger universe of players is not at all conducive to a system of voluntary peer compliance." Electric Reliability Panel Report, December 1997, at 28.

[63] The amount of power flowing on any path in an electrical network is inversely proportional to that path's impedance. Impedance will depend on the actual length of the line and its voltage. *See* U.S. Congress, Office of Technology Assessment, Electric

parallel path or loop flow. Such flows will also affect a neighboring system's ability to determine ATC accurately. In addition, if a transmission facility is already loaded close to its operating limit, the additional flow resulting from a transaction contracted for on a neighboring system may overload the facility and threaten reliability. In order to operate the system in a reliable manner, a single, independent grid operator must know all sources and destinations for each transaction. The Commission believes that an RTO, as the only transmission provider and security coordinator in its region, would have the information needed to identify the effects of parallel flows and accommodate them in its operations.

At present, the industry's ability to maintain reliable grid operation is hindered by the existence of many separate organizations that directly or indirectly affect the operation and expansion of the grid. There are more than 100 owners of the Nation's grid who operate about 140 separate control areas.[64] In addition, there are 10 regional reliability councils, 23 security coordinators, 5 regional transmission groups (RTGs) and 5 independent system operators. With so many entities, the lines of authority and communication are not always as clear as they should be.[65] An additional complication is that many of these entities also own generation or have a decision making process that continues to be dominated by traditional vertically integrated utilities.[66] Therefore, their independence and commercial neutrality as grid operators is subject to question.

It appears that information that is critical for maintaining reliability is not being shared as readily now as was generally the case in the past. NERC recently observed that there is a growing "reluctance on the part of the market participants to share operational real-time and operational planning data with TPs [transmission providers]."[67] This is not surprising because, as we have noted before, information that is needed for reliability purposes may also have a commercial value.[68] If market participants believe that the entity that receives operational information for reliability reasons may use it for commercial advantage, they will understandably be reluctant to supply the information. After spending more than 18 months reviewing the current reliability system, the DOE Reliability Task Force concluded that this inherited system, with its patchwork of organizations, inadequate information sharing and overlapping and sometimes unclear responsibilities, is "clearly unsustainable" and that until new policies and institutions are in place, "substantial parts of North America will be exposed to unacceptable risk."[69]

This is not just a theoretical concern. During last year's regional ISO conferences, several industry participants described three "reliability near misses" in the Midwest. The three incidents on July 22, 1993, August 7, 1996 and July 11, 1997 came very close to producing major outages throughout the Midwest.[70] While there has been some improvement in coordination among different systems, we believe that there are limits to the amount of coordination that can be achieved between separate organizations, especially if they are competing for the right to use the same limited transmission capacity and sometimes competing for the same customers. While competition requires decentralization, we think that reliable and efficient grid operation requires more coordination. The Commission believes that a beneficial platform for both competition and reliability is a single independent grid operator that sees the "big picture" by having access to real-time information on conditions and schedules for the entire regional grid.[71] Such an entity does not exist in several regions of the country. As a consequence, there is, at present, a disconnect between electrical flows and information flows that could have major reliability consequences.

b. Determining Available Transmission Capability (ATC)

Any transportation service provider should know how much commodity it can carry. For electric transmission service providers, the calculations of total transmission capability (TTC) and ATC are needed to make this determination. TTC and ATC are key elements of the OASIS information system.[72] Order No. 889 requires each transmission provider to calculate and post TTC and ATC numbers to give its transmission customers a reasonable estimate of how much power can be carried between any two locations on the grid and how much capacity is available to support additional trade at any given time.

We have received many complaints about the accuracy and usefulness of posted ATC numbers. There are several reasons why it is difficult to determine available transmission capability accurately.

First, ATC numbers are still calculated on an individual company basis in many areas of the country. Separate calculations of ATC by individual companies are fundamentally inconsistent with the physical reality of an interconnected transmission system. An individual transmission provider may post ATC numbers in good faith, and attempt to provide transmission service based on these numbers, only to learn later that the transfer capability that it thought was available no longer exists because of decisions made by other transmission providers that it did not know about at the time it made its calculations. Accurate ATC numbers would require reliable and timely information about load, generation, facility outages and transactions on neighboring systems. Individual transmission operators will generally not have this information. They also may apply differing assumptions and criteria to ATC calculations, which may produce wide variations in posted ATC values for the same transmission path.[73] All these considerations make it virtually impossible for an individual transmission provider that operates one

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Power Wheeling and Dealing: Technological Considerations for Increasing Competition, OTA–E–409, May 1989, at 110–11.

[64] A control area is an electrical system bounded by interconnection (tie-line) metering and telemetry. Within a control area, resources are balanced against load, and generation is regulated to maintain interchange schedules with other control areas and to achieve the target frequency (60 hz) for the entire interconnection. *See* NERC Operating Policies Manual (available on the NERC website at www.nerc.com).

[65] *See, e.g.*, Western Systems Coordinating Council, EL99–23–000, comments of Enron Power Marketing, Inc. at 4–5.

[66] *See, e.g.*, New England Power Pool, 86 FERC ¶ 61,262 at 61,965 (1999).

[67] NERC, Reliability Assessment 1998–2007 at 39 (1998).

[68] *Midwest ISO*, 84 FERC at 62, 158–159.

[69] DOE Task Force Report at vii and xi.

[70] Regional ISO Conference (Indianapolis), transcript at 24–29.

[71] The importance of a single operator for reliability was stressed in comments of AMEREN and Commonwealth Edison. *See* Regional ISO Conference (Indianapolis), transcript at 19–29.

[72] ATC is a measure of transfer capability remaining in the physical transmission network for further commercial activity over and above already committed uses. TTC is the amount of electric power that can be transferred over the interconnected transmission network in a reliable manner based on certain specified conditions, North American Reliability Council, Glossary of Terms (1998).

[73] This, in turn, creates other problems. According to NERC, the "inconsistent calculation [of ATC] can increase the use of TLR and other operational complexities, which has the potential to cause reliability problems." NERC, Reliability Assessment, 1998–2007, September, 1998, at 40. (*See* definition of TLR in section II.)

part of a large interconnected grid to calculate ATC accurately.[74]

Second, requests for transmission service are usually based on "contract path" scheduling. This is the practice of finding a contiguous chain of utilities from the power supplier to the power consumer and contracting with those utilities to transmit the power. The implicit assumption is that all the power flows through the utilities along this "contract path." In fact, the power divides up and flows along all paths from the supplier to the buyer. All utilities in the region are affected. Contract path scheduling provides little or no information about actual flows on the grid.[75] In its October 1997 report to the Commission, the Commercial Practices Working Group commented that: "Reserving and scheduling transmission on a contract path basis does not even closely resemble the physical impact on the system."[76] We note that NERC is encouraging initiatives that would move the industry toward recognizing actual flows in scheduling.[77]

c. Managing Congestion

Congestion occurs when requests for transmission service exceed the capability of the grid. When transmission constraints limit the amount of power that can be transmitted, the loads on the system may not be able to be served by the least-cost mix of available generators. The constraints may reflect voltage, temperature and dynamic limits. Relieving congestion leads to a more costly pattern of generation dispatch. The cost of congestion is the additional energy cost associated with the new pattern of dispatch.

We recognize that even optimally designed systems will normally experience at least occasional congestion that at times can be significant and costly. In general, congestion can be managed in two ways: the construction of new transmission facilities that increase grid capacity; or the redispatch of existing or new generators to reduce flows or create counterflows on the constrained facility. The complete elimination of congestion would typically require the construction of new transmission facilities. While this may be a physically effective solution, it may not always be cost effective. Because of this, we believe that an efficiently operated transmission system should have in place mechanisms for pricing congestion and then managing congestion through changes in the pattern of dispatch. Without mechanisms for determining the cost of congestion, it will be virtually impossible to make rational, cost effective decisions to expand the grid.

The Commission believes that efficient congestion management is best performed at the regional level. At present, outside of the operational ISOs, transaction curtailment through transmission loading relief (TLR) procedures is the dominant approach for dealing with congestion in the Eastern Interconnection. NERC has reported that its TLR procedures were invoked 329 times between July 1997 and October 1998 on the Eastern Interconnection.[78] Current TLR procedures are cumbersome, inefficient and disruptive to bulk power markets because they rely exclusively on physical measures of flows with no attempt to assess the relative costs of different congestion management options. Moreover, TLR actions are typically taken by one utility without assessing the costs imposed on other grid users. This inevitably raises the suspicion that the TLR request could be motivated by competitive rather than reliability concerns. For these reasons, the Commission has encouraged NERC to develop regional market approaches to managing congestion.[79]

The Commission recognizes, however, that NERC may not be able to comply fully with this policy in the absence of regional organizations that have the authority and ability to promote regional congestion markets. There are three considerations that support this conclusion.

First, a regional organization would have accurate and reliable information about existing and possible future conditions on the grid. Such information is generally not available to individual transmission providers. RTOs would have this information because they would function as both regional security coordinators and regional transmission providers.

Second, congestion management is best performed at a regional level. This is shown in the largely unsuccessful efforts of Commonwealth Edison to create congestion markets that would allow transmission customers to "buy-through" (*i.e.*, firm up) transmission rights on congested flow gates. After six months of its one year experiment, we note that Commonwealth concluded that it is "difficult for one transmission owner to identify and implement redispatch" when the physical limitations and cost effective options for relief exist on other transmission systems that are beyond their reach.[80]

Third, RTOs will be able to establish and define rights to the use of the grid. At present, with multiple and independent operators of the grid, individual users and owners have unclear and conflicting rights to the grid. This makes it difficult to establish congestion markets. A congestion market, like any other market, cannot develop in the absence of clear rights.[81] Such rights, whether held by transmission users or owners, are a necessary prerequisite for establishing congestion markets. Without establishing such rights, the industry will continue to grapple with the problem of incomplete markets. Thus, it is difficult to achieve efficient and competitive regional bulk power markets if congestion on the transmission grid is not accurately priced.

d. Planning and Expanding Transmission Facilities

Transmission planning and expansion are more difficult today than three years ago. While uncertainty has always been a fact of life for any transmission planning exercise, the level of uncertainty has increased with the increasing number and distance of unbundled transactions and the wider variation in generation dispatch patterns. Uncertainty has also increased because:

Generation developers are reluctant to disclose their plans for future capacity additions. Similarly, utilities intending to purchase from others are reluctant to speculate on whom or where their suppliers might be, making modeling of such transactions for transmission analysis virtually impossible.[82]

One troubling consequence of this uncertainty has been a noticeable decline in planned transmission investments. NERC recently reported that the level of planned transmission

[74] In addition, it has been frequently alleged that individual transmission may intentionally post inaccurate ATC numbers to favor their own power marketing efforts. These allegations are discussed in section III.A.2.

[75] *See* Allegheny Power Service Corporation *et al.*, 78 FERC ¶ 61,314 at 62,339.

[76] October 31, 1997 report, at 39.

[77] *See NERC*, 85 FERC at 62,363.

[78] North American Electricity Reliability Council, Interim Market Interface Committee, Minutes of Jan. 12 and 13, 1999 meeting, Exhibit D.

[79] *See NERC*, 85 FERC at 62,364.

[80] Commonwealth Edison, Interim Report on Non-Firm Redispatch, Docket No. ER98–2279, December 17, 1998, at 4, 10.

[81] Robert Cooter and Thomas Ulen, Law and Economics, Scott, Foresman and Company, 1988, at 91 ("From a legal viewpoint, property is a bundle of rights").

[82] NERC, "Reliability Assessment, 1998–2007," September 1998, at 39.

additions is significantly lower than five years ago despite an overall increase in load growth and unbundled transmission service.[83] While this could simply reflect better utilization of the existing grid, the Commission is concerned that it may also reflect an incompatibility of existing planning institutions with the new market realities.

We are also concerned that the existing approach to transmission pricing may not sufficiently encourage the investments in transmission facilities that are needed to improve the reliability and efficiency of the grid. Inadequate investment could be a major impediment to the development of regional bulk power markets and a possible source of future reliability problems. There are at least three concerns about the way transmission prices are set.

First, although there are varying degrees of investment coordination around the country, utilities ultimately make transmission investment decisions individually rather than through joint decisions that internalize commercial and reliability effects of the investment. It may be unclear which utility should have the responsibility for expanding capacity to relieve a transmission constraint. For example, power flows scheduled by one utility with ample transmission capacity on its own lines may overload a neighbor's lines. The first utility may be unwilling to expand transmission capacity because it needs no extra transmission capacity itself, and the second utility may be unwilling to expand transmission capacity because it collects no revenues from the power flows scheduled by others. In a multi-utility region, decisions about where to site new facilities and who should pay for capacity expansions can be even more complex unless a regional body provides a forum for discussions and a method for resolving disputes.

Second, the motivation for constructing new facilities is changing as the industry changes. Formerly, a utility built transmission primarily to deliver power from its generating plants to its customers. Inadequate transmission would have hurt power sales, the principal source of utility revenue. Today, facility expansion may be needed to transmit power sold by others. As generation and transmission ownership become increasingly separate and as many states implement or even merely consider retail access, the transmission owner's traditional incentive for making new transmission investment to support its power sales erodes. Incentives for transmission investment need to be related more to the power needs of the region than the generation stock of the transmission owners.

Third, the transmission owner that does invest in transmission to overcome a constraint may be concerned about recovering its investment. Under traditional ratemaking practices, it must recover its investment over a long period of time, typically thirty years. But subsequent generation construction on the power-poor side of the constraint may obviate the need for the line and threaten recovery of its capital cost. In addition, where there is higher risk, a higher return commensurate with the higher risk may be appropriate. To support this, customers and regulators would want assurance that the decision to invest in transmission is made in the best interests of the region, considering not only all the transmission options but also the generation and demand management alternatives to transmission construction. Therefore, as discussed below, we will consider concrete proposals from regional transmission organizations for transmission pricing reforms and the explicit use of pricing incentives to encourage RTOs to make efficient investments in new transmission facilities.

e. Pancaked Transmission Rates

With the exception of power pools, open access under Order No. 888 focuses on individual, existing transmission providers. Order No. 888 does not require transmission pricing reforms that are needed to support efficient and competitive bulk power markets. The "missing" reforms include, among others, the elimination of pancaked transmission access charges, the use of reservation-based (as opposed to load-based) transmission tariffs and the availability of secondary markets in transmission rights.[84] In this section, we will focus on the problems created by the widespread pancaking of transmission access charges.[85]

In most of the United States, a transmission customer pays separate, additive access charges every time its contract path crosses the boundary of a transmission owner. By raising the cost of transmission, pancaking reduces the size of geographic power markets. This, in turn, can result in concentrated electricity markets. Balkanization of electricity markets hurts electricity consumers, in general, by forcing them to pay higher prices than they would in a larger, more competitive, bulk power market.[86]

The Commission has heard from many states about the negative effects of pancaked rates in their efforts to introduce retail competition. At this time, about 21 states have introduced or are planning to introduce competition for retail loads under their jurisdiction.[87] Because the Commission has jurisdiction over transmission service and rates for unbundled retail customers, we have an obligation to address these concerns.[88] A retail choice initiative, no matter how well designed at the state level, may fail if the pool of potential competitors is effectively limited to a few nearby supply sources because of pancaked transmission charges.

This concern of pancaked rates was highlighted to us in the recent consultations with our state commission colleagues. Several state commissioners emphasized that the success of their retail competition initiatives is related to the adoption of non-pancaked transmission tariffs and other ISO policies.[89] We believe that the likelihood of success for existing and planned retail choice initiatives is significantly enhanced if the Commission can ensure fair and efficient access to a regional market without pancaked transmission access charges, and that we need to take steps beyond Order No. 888 to accomplish this.

f. Conclusion

We believe that the preferred solution to the engineering and economic problems discussed in this section is a regional solution. Notwithstanding it success, Order No. 888 has not been able to produce a fully efficient and competitive outcome because it does not address ATC calculations, congestion

[83] *Id.* at 7.

[84] *See, e.g.*, Capacity Reservation Open Access Transmission Tariffs, Notice of Proposed Rulemaking, FERC Stats. and Regs. ¶ 32,519 (1996) and Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act: Policy Statement, 69 FERC ¶ 61,086 (1994).

[85] We did, however, require non-pancaked rates for power pools that offer non-pancaked rates to their own members in Order No. 888. *Order No. 888*, FERC Stats. and Regs. at 31,727–28.

[86] While it is difficult to estimate the exact impact on consumers, we note that there have been studies of the deregulated British power markets that have found excessive concentration in generation has produced prices 20 to 40 percent above competitive levels at certain times. Richard Green and David Newbery, *Competition in the British Electricity Spot Market*, 100 J. Pol. Econ., 929, 1992.

[87] "Status of Electric Utility Deregulation as of May 1, 1999," Energy Information Administration.

[88] *Order No. 888*, FERC Stats. and Regs. at 31,651–52.

[89] *See, e.g.*, Comments of Gerald Thorpe (Maryland) and President Herbert Tate (New Jersey), RTO Conference (Washington, DC), transcript at 37–39; 49–51.

management, reliability, pancaking of transmission access charges, and grid planning and expansion. These are regional problems. Therefore, we are proposing a rule to encourage the development of independent regional transmission operators that can promote both electric system reliability and competitive generation markets.

2. Actual and Perceived Discriminatory Conduct by Transmission Owners to Favor Their Own or Affiliated Merchant Operations

In addition to operational inefficiencies impeding full competition, there also exist questions about residual discrimination in the provision of transmission services by public utilities. As discussed below, many in the industry have expressed a fundamental mistrust of transmission owners. In addition, there are allegations, and in some circumstances findings, of actual discrimination by transmission owners. We discuss below indications of discriminatory conduct by vertically integrated utilities and seek further comment on utility practices subsequent to Order No. 888.

Utilities that control monopoly transmission facilities and also have power marketing interests [90] have poor incentives to provide equal quality transmission service to their power marketing competitors. It is, in fact, in the economic self-interest of transmission-owning utilities to favor their own power marketing interests and frustrate their competitors. As the Commission stated in Order No. 888:

> It is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide themselves. The inherent characteristics of monopolists make it inevitable that they will act in their own self-interest to the detriment of others by refusing transmission and/or providing inferior transmission to competitors in the bulk power markets to favor their own generation, and it is our duty to eradicate unduly discriminatory practices.[91]

The exercise of transmission market power allows transmission providers with power marketing interests to benefit in the short-run by making more power sales at higher prices, and benefit in the long-run by deterring entry by other market participants. As a result, prices to the Nation's electricity consumers will be higher than need be.

It was to eliminate this inherent tendency of a vertically-integrated utility to favor its own power sales that Order Nos. 888 and 889 required utilities to functionally unbundle their transmission and power merchant services. Generally, functional unbundling requires a public utility to: separate its transmission system functions and staff from wholesale generation marketing functions and staff; abide by a standard of conduct to define impermissible contact between generation and transmission personnel; take transmission services under the same open access tariff of general applicability as do others; state separate rates for wholesale generation, transmission, and ancillary services; and rely on the same Open Access Same-Time Information System (OASIS) that its transmission customers rely on to obtain information about its transmission system when buying or selling power.[92] The Commission imposed these requirements to establish a foundation for open grid access and competitive electricity markets.

Functional unbundling did not change the incentives of vertically-integrated utilities to use their transmission assets to favor their own generation, but instead attempted to reduce the ability of utilities to act on those incentives. In Order No. 888, the Commission received and considered numerous comments that functional unbundling was unlikely to work, and that more drastic restructuring, such as corporate unbundling, was needed.[93] However, the Commission decided at the time to adopt what it considered to be the less intrusive and less costly remedy.

Clearly, Order No. 888 has resulted in wholesale power markets becoming more competitive, more transmission services being made available to more potential users than ever before, and generally lower transaction costs.

However, market participants increasingly have alleged that numerous transmission service problems related to discriminatory conduct remain, and that these problems are impeding competitive wholesale power markets.[94] Our information about alleged continued discriminatory practices comes from several sources. These include formal complaints filed with the Commission, informal complaints made to the Commission's enforcement hotline, oral and written comments made in conjunction with public conferences held by the Commission, and pleadings filed with the Commission in various dockets.

Compared to the situation before Order No. 888, transmission-owning utilities must now resort to more subtle means to frustrate their marketing competitors and favor their own marketing interests. Continued discrimination may be conscious and deliberate, but it may also result from the failure to make sufficient efforts to change the way integrated utilities have done business for many years. In either case, the tendency of transmission owners to confer advantages, however subtle, upon their own marketing interests is discriminatory as against other marketers.

In the sections that follow, we will outline the information derived from filings and other sources about remaining impediments to competition caused by continued discriminatory conduct by transmission owners. We note, and we are well aware, that many allegations that have been made in various forums are unproved, and perceived discrimination may in fact turn out to have justifiable explanations. It is often hard to determine, on an after-the-fact basis, whether an action was motivated by an intent to favor affiliates or simply resulted from the need to serve native load customers or the impartial application of operating or technical requirements. Given our considerable difficulty in determining whether there has been compliance with our regulations, the question arises whether functional unbundling is an appropriate long-term regulatory solution.

We consider allegations of discrimination, even if not reduced to formal findings, to be a serious concern for two reasons. First, we may be seeing only the "tip of the iceberg." We are aware that instances of actual discriminatory conduct may be undetectable in a non-transparent market. In addition, there are significant disincentives to filing and pursuing formal complaints that would result in definitive findings. Transmission customers often tell the Commission's enforcement staff that they are reluctant to make even informal complaints because of concerns that the Commission will not take strong action, and fear, perhaps most importantly, of retribution by their transmission supplier.[95] We also have been told that

[90] The term power marketing interests is used as shorthand herein to include the utility's own wholesale merchant function as well as any affiliates with wholesale merchant functions.

[91] *Order No.* 888, FERC Stats. and Regs. at 31,682.

[92] *Id.* at 31,654–55.

[93] *Id.* at 31,653–54.

[94] *See, e.g.,* of Roger Fontes on behalf of the Northern California Power Agency, Regional ISO Conference (Phoenix), Transcript at 136 ("In general, orders 888 and 889 have not fully remedied undue discrimination in providing transmission service in this country.")

[95] *See* Comments of Dan Jones on behalf of the Public Utilities Commission of Texas, Regional ISO

the complaint process is costly and time-consuming,[96] and that the Commission's remedies for transmission violations do not impose sufficient financial harms on the transmission provider to act as a significant deterrent.[97]

Perhaps the most problematic aspect of relying on after-the-fact enforcement in the fast-paced business of power marketing, however, is that there may be no adequate remedy for lost short-term sale opportunities. For example, the Electric Power Supply Association has told us:

> Furthermore, even if the exercise of such discrimination could be adequately documented and packaged in the form of a complaint under Section 206 of the Federal Power Act under a more streamlined complaint process contemplated by the Commission, it would still be extremely costly and inefficient to deal with such complaints on a case-by-case basis. More than likely, the potential power transactions for which transmission principally was sought would disappear by the time a Commission ruling was obtained.[98]

Accordingly, actual problems with functional unbundling may be more pervasive than formally adjudicated complaints would suggest, and the informal allegations we hear provide valuable insight.

Second, we consider the allegations of discrimination to be serious because, if nothing else, they represent a *perception* by market participants that the market is not working fairly because such participants know that integrated utilities have the incentive and opportunity to discriminate. Mistrust in the market can itself be a serious impediment to competition. If market participants perceive that other participants have an unfair advantage through the affiliation with the transmission provider, it can inhibit their willingness to participate in the market, including, for example, building new generating units, thus thwarting the development of robust competition. Such mistrust can also harm reliability. As stated by NERC, there is a reluctance on the part of market participants to share operational real-time and planning data with transmission providers because of the suspicion that they could be providing an advantage to their affiliated marketing groups.[99]

The functional unbundling policy underlying Order No. 888 was an attempt to regulate the behavior of transmission owners. There are growing indications, however, that the conflicting incentives that vertically integrated utilities have regarding transmission access may be too difficult to police. Many have asserted that it is not realistic even to expect functional unbundling to eliminate attempts by transmission owners to gain economic advantage. Companies have an obligation to maximize value for shareholders, and it should be no surprise that they will be aggressive in doing so. For example, in comments to the Commission in the Order No. 888 proceeding, the Federal Trade Commission advised the Commission that a functional unbundling approach "* * * would leave in place the incentive and opportunity for some utilities to exercise market power in the regulated system. Preventing them from doing so by enforcing regulations to control their behavior may prove difficult." A representative of Lafayette Utilities told us at the New Orleans ISO Conference:

> Notwithstanding functional separation and the requirement not to discriminate, transmission personnel are well aware of the interests of their company's generation function, and can find a way to give preferential treatment. * * *[100]

A representative of a Wisconsin public utility told us:

> Administration of the tariff entails a myriad of decisions that require discretion, as well as "technical" judgments (like [available transmission capability] and [capacity benefit margin]) that have significant competitive ramifications. It is inevitable that these decisions and judgments will be made with competitive concerns in mind. Functional separation does not solve this problem.[101]

Similarly, at our regional ISO conference in Indianapolis, we were told:

> In a capital intensive industry where a high percentage of the investment is in generation assets, it is inconceivable that a utility, which in some cases has very high generation cost, would somehow manage its transmission system so as not to give its generation a competitive advantage. I think this is self-evident.[102]

While it should not be assumed that such problems exist in every circumstance, clearly many market participants do not believe the market can yet be trusted with respect to their commercial interests, at least in some areas. We now turn to some of the areas that have produced the most complaints about continuing discrimination.

a. Calculation and Posting of Available Transmission Capability in a Manner Favorable to the Transmission Provider

Perhaps the most significant complaint with respect to alleged discriminatory conduct under functional unbundling concerns the important function of calculating and posting the amount of transmission capability that is available on a transmission provider's system. The transmission provider is required to calculate and post on its OASIS the TTC and ATC for each posted transmission path.[103] ATC is the capacity that is stated to be available for transmission service requests. As we discussed above in Section III.A.1, it is not possible to calculate accurately the transmission capability of one system without knowing the flows scheduled by all other interconnected transmission providers in the region. Given this technical problem, it may be impossible to distinguish an inaccurate ATC presented in good faith from an inaccurate ATC presented for the purpose of favoring the transmission provider's marketing interests.

Transmission providers with power marketing interests have incentives to understate ATC on those paths valuable to its marketing competitors, or to divert transmission capacity so that it is available for use by its own marketing interests. If there is insufficient ATC, competitors may be forced to forego power sale transactions or use a less desirable alternative path if one is available.

The Commission has found violations of ATC postings in three cases. In *Washington Water Power Company*,[104] the transmission owning utility showed that it had no firm ATC, which would have discouraged any potential marketers who needed firm transmission service to make a sale. However, the utility then offered its power marketing affiliate, Avista

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Conference (Kansas City), Transcript at 1985 ("And we've also heard that these entities are hesitant to bring those complaints forward because they have to deal with both sides of that utility").

[96] We note that we have recently issued a Final Rule regarding complaint procedures designed to make them more efficient. *See* Complaint Procedures, Final Rule, Docket No. RM98–13–000, 86 FERC ¶ 61,324 (issued March 31, 1999).

[97] Comments of National Energy Marketers Association, Docket No. RM98–5–000 (filed January 22, 1999).

[98] Motion to Intervene and Comments of Electric Power Supply Association in Support of Petition for Rulemaking, Docket No. RM98–5–000 (filed Sept. 21, 1998), at 3.

[99] NERC Reliability Assessment 1998–2007, at 39.

[100] Comments of Frank Ledoux on behalf of Lafayette Utilities System, Regional ISO Conference (New Orleans), Transcript at 180.

[101] Statement of Roy Thilly on behalf of Wisconsin Public Power, Inc. at 2, Docket No. PL98–5–000 (filed April 15, 1998).

[102] Comments of Kenneth Hegemann on behalf of American Municipal Power, Ohio, Regional ISO Conference (Indianapolis), Transcript at 174.

[103] *See* 18 CFR 37.6(b) (1998).

[104] 83 FERC ¶ 61,097 (1998), *further order*, 83 FERC ¶ 61,282 (1998).

Energy, an "interruptible firm" transmission service that was not available to competitors. As the Commission explained in finding a violation of Order No. 888:

> Avista received a preference from Washington Water Power that was not available to any of its competitors. Simply stated, Avista's customer was deprived of the benefit of choosing among all potential power suppliers.

The case of *Wisconsin Public Power Inc. SYSTEM* v. *Wisconsin Public Service Corporation, et al.* (*Wisconsin Public*)[105] demonstrates both the difficulties and suspicions of discrimination resulting from when a transmission customer requests transmission service from an integrated utility. WPPI was seeking additional network transmission service from both Wisconsin Public Service Corporation (WPSC) and Wisconsin Power & Light Company (WP&L). In both cases, the requests were denied because of claims that the transmission owners were using all available capacity. In the case of WPSC, the Commission initially found that the utility had not properly reserved capacity for its merchant function and directed that it recompute its ATC without that reservation. After WPSC submitted additional documentation, the Commission accepted some of WPSC's merchant priority, but still found that it had violated its obligations under its tariff, and that its actions raised serious concerns about the functional separation of its staff. With respect to WP&L, the Commission found that it provided unduly preferential treatment to its merchant function, had been changing its ATC without posting those changes on OASIS, and had been computing ATC where none exists.[106]

The *Wisconsin Public* cases demonstrate, if nothing else, the difficulty of achieving, and enforcing, functional separation of a utility's transmission and merchant functions. These types of cases require substantial Commission investigative and adjudicative resources, not to mention the resources of the parties involved. The Commission recognized in *Wisconsin Public* how RTOs could help eliminate these problems. The Commission stated:

> As we recently explained in *Louisville Gas & Electric Company, et al.*, 82 FERC ¶ 61,308 at 62,222 & n. 39 (1998), a properly structured ISO, or other transmission entity can eliminate the potential for the strategic use of a transmission owner's priority to use internal system capacity for native load. The ISO or other transmission entity can also eliminate the incentive to engage in strategic curtailments of generation that a transmission operator's generation service competitors own and can remove any incentive to game OASIS operations. This will promote generation entry and competition, since a properly structured ISO or other transmission entity would have no economic stake in favoring certain market participants over others and potential entrants would likely see the transmission market as fair. An ISO, therefore, could help to solve the problems established in the instant complaints.[107]

The case of *Morgan Stanley Capital Group* v. *Illinois Power Company*[108] also demonstrated problems associated with ATC and a transmission provider's use of its system for its own purposes. Morgan Stanley complained that Illinois Power failed to accurately post ATC, failed to award transmission capacity in a non-discriminatory manner, and allocated transmission in favor of its own bulk power marketing arm. Illinois Power admitted the ATC posting error, and the Commission found other violations of its tariff in responding to Morgan Stanley's request for service. Although the Commission initially also found that Illinois Power did not designate its own network resources in the same manner as network customers are required to designate them, Illinois Power disputed this, and after showing that its network resource was legitimate, the Commission dismissed its rehearing as moot. Nevertheless, this case demonstrates that a combination of ATC errors and unclear procedures feeds the mistrust in the marketplace with respect to a transmission owner's ability to use its system to favor itself.

We also have currently pending before us several formal complaints alleging that a transmission provider is improperly keeping its transmission capability for its merchant function. In one case, a power marketer asserts that a transmission provider has refused service over an interconnection on the basis that the transmission provider needs all the ATC for native load. The marketer has alleged that the transmission provider's claims of reliability concerns are a mask to block competitors from importing power into the transmission provider's system when the transmission provider has higher cost generation available.[109] In another recent formal complaint filing, it is alleged that a transmission provider denied transmission service and then improperly provided it to its merchant group.[110]

Aside from these cases involving formal complaints, there have been a number of other complaints with respect to ATC calculation. For example, our enforcement staff receives hotline complaints concerning ATC posting problems. The enforcement staff has confirmed a number of such ATC errors. In most cases, these errors were corrected within several months of having them pointed out, and the utilities often offered explanations based on hardware or software problems. We make no judgment whether such identified errors were an intentional attempt to thwart competition; however, they had the potential to have that effect.

In July 1997, the Commission held a technical conference concerning how well the OASIS system was working. Several commenters suggested that erroneous ATC calculation and posting was hurting competition. A representative from Electric Clearinghouse told us that there is a pervasive problem of incorrect or stale information on the OASIS sites, and that "competition is blocked when this occurs." That same representative stated that very little firm ATC is offered due to the utility's caution or strategy, and that some providers will not offer firm ATC because they do not want to curtail their own transactions.[111] At the same conference, a representative from the American Public Power Association told us:

> ATC is often understated and inconsistently posted on adjacent OASIS nodes. Inter-regional coordination is lacking. This fact limits the usefulness of the system for commercial purposes.[112]

In March 1998, a group referring to themselves as power industry stakeholders[113] filed a petition for rulemaking on electric power industry structure.[114] Although we are not addressing here the specific relief they are requesting in that Petition, the

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[105] 83 FERC ¶ 61,198 (1998), *order on reh'g*, 84 FERC ¶ 61,120 (1998).

[106] 83 FERC at 61,860.

[107] *Id.* at 61,859.

[108] 83 FERC ¶ 61,204, *order granting clarification and dismissing reh'g*, 83 FERC ¶ 61,299 (1998).

[109] Aquila Power Corporation v. Entergy Services, Inc., Docket No. EL98–36–000, Amended and Restated Complaint at 6 (filed June 23, 1998).

[110] Arizona Public Service Company v. Idaho Power Company, Docket No. EL99–44–000 (filed March 3, 1999).

[111] Open Access Same Time Information Technical Conference, Docket No. RM95–9–003 (July 18, 1997), transcript at 23.

[112] *Id.* at 28.

[113] The group consists of a number of power marketers and users, including, for example, Coalition for a Competitive Electric Market, ELCON, Electric Clearinghouse, Inc., and Enron Power Marketing, Inc.

[114] Petition for a Rulemaking on Electric Power Industry Structure and Commercial Practices and Motion to Clarify or Reconsider Certain Open-Access Commercial Practices, Docket No. RM98–5–000.

Petition does contain a number of fairly specific allegations indicating problems in the market. For example, the Petition asserts:

Concepts such as ATC and the OASIS have become vehicles for obstructing and curtailing, rather than accommodating, transactions. Incumbents are able to deny new entrants access to critical, accurate information across control areas. This can take the form of out-of-date or incorrect postings of ATC or, in some instances, intentional withholding of actual ATC. Regardless of the cause, more transmission capability is physically available than is being released for sale.[115]

The Petition alleges the existence of "ATC exclusions, inaccuracies and misuses that deny new entrants the ability to evaluate market opportunities, and therefore, prevent reasonable access to the grid." [116] The Petition cited specific instances of inconsistent ATC calculations for the same interconnection by the systems on either side; an OASIS showing ATC that was not in fact made available for scheduling; and an OASIS showing no ATC but the utility then using that path for a sale.[117]

EPSA, the trade association representing certain power suppliers, filed comments in support of the Petition and echoed many of the same experiences:

EPSA agrees that this discriminatory conduct persists principally because of the continuing incentives and opportunity for transmission owning public utilities covertly to discriminate against other transmission customers, by, for example, minimizing reported available transmission capability (ATC), delaying or inaccurately posting ATC on the OASIS, or otherwise manipulating market operations.[118]

EPSA further stated that, "The manipulation of ATC—whether with the intent to deceive or as the result of poor OASIS management—is a serious entrance barrier for competitive power suppliers." [119]

At our regional ISO conference in New Orleans, we were told by a representative from the Public Service Commission of Yazoo City, Mississippi, of a specific instance of what it considered to be discriminatory treatment:

Yazoo City, as a participant, has experienced first hand an individual [transmission] owner's continued ability to use its ownership and control [of] transmission to disadvantage competitors, notwithstanding Order 888's mandate of non-discriminatory transmission access.

The representative then went on to describe an instance where a marketer could not complete a 10 MW power sale because of transmission restrictions, but then the transmission provider offered to supply the capacity itself.[120] The representative concluded that Orders Nos. 888 and 889 have not fully eliminated undue discrimination and this will not be achieved "as long as transmission owners are allowed to fence in transmission-dependent utilities and others located on their transmission system to enhance the value of their generation assets at increased cost to competitors."

One specific area where there have been allegations that transmission owners are using ATC to favor their own merchant operations concerns the calculation and use of Capacity Benefit Margin (CBM). Although there is no single accepted definition, CBM is generally used to mean an amount of transmission transfer capability reserved by load serving entities to ensure access to generation from interconnected systems to meet their generation reliability requirements.[121] Some utilities subtract CBM from their total transmission capability to arrive at ATC. There is no uniform method for calculating CBM. The ability to withhold CBM to ensure reliability not only confers a reliability advantage for the transmission provider, but may give the transmission provider the opportunity to selectively withhold ATC over paths and interconnections useful to its generation competitors.

The use of CBM is an issue that is currently being considered in several cases pending before the Commission.[122] For example, with respect to the formation of the PJM ISO, the Commission noted that it was not demonstrated that the PJM Pool's historical practice of withholding firm transmission interface capacity as a substitute for installed generating reserves is consistent with our open access policies. The Commission observed that the load serving entities that own generating capacity within the PJM control area appeared to benefit from this practice as suppliers in addition to benefitting as load serving entities.[123] The Commission set the issue for further briefing and it remains pending. In another pending proceeding concerning WPSC's CBM calculation, two of the parties assert that CBM "removes firm transmission capacity from open access offerings, thereby raising an unnecessary and unjustifiable barrier to competition," and "fosters discrimination by giving merchant functions gatekeeping control over CBM-related transmission access and by giving individual interface transmission owners broad discretion over where and how much CBM is withdrawn from ATC." [124] In the same proceeding, Electric Clearinghouse, Inc. asserts that "the CBM set-aside embodies undue discrimination in access to the monopoly owned transmission wires because it ensures certain users a priority over the reserved transmission interface capacity to the exclusion of other firm transmission users." [125]

As we stated above, we fully recognize that these are assertions made in pending cases in which we have not yet made findings. They are referenced here as illustrative of the suspicions in the industry of continuing opportunities for discriminatory treatment that may disadvantage certain competitors where generation owners continue to operate transmission.

b. Standards of Conduct Violations

To ensure the functional separation of a transmission provider's transmission and merchant functions, the Commission adopted standards of conduct that prohibit the transmission provider's marketing interest employees from having any more access to transmission system information than is available on OASIS, and requires the transmission provider's transmission employees to provide impartial service to all transmission customers.[126] If a transmission provider's marketing interests have favorable access to transmission system information or receive more favorable treatment of their transmission requests, this obviously creates a disadvantage for marketing competitors.

In spite of the standards of conduct, there continues to be a perception by

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[115] Petition at 7–8.

[116] *Id.* at 15.

[117] *Id.* at Appendix D.

[118] EPSA Comments, Docket No. RM98–5–000, at 2 (filed September 21, 1998).

[119] *Id.* at 8.

[120] Comments of Rebert D. Priest on behalf of the Public Service Commission of Yazoo City, Regional ISO Conference (New Orleans), Transcript at 201–03. After hearing this assertion, Entergy Services, Inc. filed a letter in which it stated that it was unable to identify any Entergy-imposed restrictions that would have prevented the power purchase. *See* Letter in Docket No. PL98–5–000 (filed July 1, 1998).

[121] NERC, Available Transfer Capability Definitions and Determinations (June 1996), at 14.

[122] The Commission recently noticed a technical conference, to be held May 20 and 21, 1999, on the issue of CBM. *See* Capacity Benefit Margin in Computing Available Transmission Capacity, Notice of Technical Conference, Docket No. EL99–46–000.

[123] *PJM*, 81 FERC at 62,277.

[124] Protest of Madison Gas & Electric Company and Wisconsin Public Power Inc., Docket No. EL98–2–003 at 3 (filed August 21, 1998).

[125] Protest of Electric Clearinghouse, Inc., Docket No. EL98–2–003, at 3 (filed Ausust 21, 1998).

[126] *See* 18 CFR Part 37 (1998).

many market participants that the transmission provider's marketing and transmission interests are not fully functionally separated. In cases in which the Commission has issued formal orders, we have found serious concerns with functional separation and improper information sharing with respect to at least four public utilities.[127] In addition, our enforcement staff receives numerous telephone calls about standards of conduct issues; some of these are simply questions about what is permissible conduct, but others are complaints of a violation. In a number of cases, our staff has verified non-compliance with the standards of conduct.[128]

The petitioners for rulemaking in Docket No. RM98–5–000 allege that there are common instances of "unauthorized exchanges of competitively valuable information on reservations and schedules between transmission system operators and their own or affiliated merchant operation employees."[129] They also cite OASIS data showing an instance where a transmission provider quickly confirmed requests for firm transmission service by an affiliate, while service requests from independent marketers took much longer to approve.

We believe that some of the identified standards of conduct violations are transitional issues resulting from a new way of doing business, and we acknowledge that many utilities are making good-faith efforts to properly implement standards of conduct. However, we also believe that there is great potential for standards of conduct violations that will never even be reported or detected. The use of standards of conduct is not the optimal procedure for ensuring a fair marketplace, and may be unnecessary in a properly structured and operated market.

We are increasingly concerned about the extensive regulatory oversight and administrative burdens that have resulted from policing compliance with standards of conduct. We have discussed above some of the cases in which the Commission had to address potential violations of the standards of conduct. In addition, transmission providers were required to file their standards of conduct for Commission review. In response, the Commission initially issued 8 orders concerning 126 public utilities' standards of conduct.[130] Generally, these orders required the utilities to revise their standards of conduct and post, on the OASIS, organizational charts and job descriptions for transmission/reliability and wholesale merchant function employees. The Commission subsequently issued 13 more orders requiring the public utilities to further revise their standards of conduct and/or organizational charts and job descriptions.[131] The Commission has also issued three orders on rehearing of the standards of conduct orders.[132]

As of April 1, 1999, 51 utilities' standards of conduct and organizational charts and job descriptions have been accepted and 75 utilities' standards of conduct and/or organizational charts and job descriptions have not been accepted and are pending review. This is an indication of the significant regulatory effort required by both public utilities and the Commission to make the standards of conduct approach workable—a regulatory effort that could be greatly reduced through more distinct organizational separation.

c. Line Loading Relief and Congestion Management

A number of complaints have been made alleging that transmission providers are acting in a discriminatory manner in implementing line loading relief, which is required when a transmission line is in danger of being overloaded. Such complaints allege that the transmission providers are not providing redispatch service, are favoring their own transactions, and are failing to follow curtailment priorities established in Order No. 888.[133] All of these actions by transmission providers may provide subtle competitive advantages in wholesale markets. For example, for those purchasers for whom service reliability is particularly important, purchasing power from a transmission provider may be viewed as offering enhanced reliability.

Like the issue of calculating ATC, the fact that curtailment of service in times of congestion is in the control of the transmission provider, who also has power transactions on the affected transmission lines, leads to suspicions of discriminatory behavior that are difficult to verify. For example, a representative of Blue Ridge Power Agency told us at one of our ISO conferences:

> There simply is no shaking the notion that integrated generation and transmission-owning utilities have strategic and competitive interests to consider when addressing transmission constraints. Functional unbundling and enforcement of [standard of] conduct standards require herculean policing efforts, and they are not practical.[134]

Likewise, we were told at another ISO conference that operators with reliability responsibility possess actual controlling authority over transactions, "thereby giving them a tremendous advantage over competitors."[135]

d. OASIS Sites That Are Difficult To Use

Aside from the problems alleged with respect to posting inaccurate ATC calculations on OASIS sites, there have been complaints that some transmission providers have implemented their OASIS sites as a tool to impede competition rather than as it was intended—as a tool to foster competition. It has been alleged that transmission providers have no incentive to make the sites easier to use, because it is primarily the transmission providers' marketing competitors who would benefit from better OASIS sites.[136] The petitioners in Docket No. RM98–5–000 asserted:

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[127] *See Wisconsin Public*, 83 FERC at 61,855, 61,860 (WPSC's actions raised "serious concerns" as to functional separation; WP&L's actions demonstrated that it provided unduly preferential treatment to its merchant function); *Washington Water Power*; 83 FERC at 61,463 (utility found to have violated standards in connection with its marketing affiliate); Utah Associated Municipal Power Systems v. PacifiCorp, 87 FERC ¶ 61,044 (1999) (finding that PacifiCorp had failed to maintain functional separation between merchant and transmission functions).

[128] *See, e.g.*, Communications of Market Information Between Affiliates, Docket No. IN99–2–000, 87 FERC ¶ 61,012 (1999) (Commission issued declaratory order based on hotline complaint clarifying that it is an undue preference in violation of section 205 for a public utility to tell an affiliate to look for a marketing offer prior to posting the offer publicly).

[129] Petition at 15.

[130] The citations for these orders are: 81 FERC ¶ 61,332 (1997), 81 FERC ¶ 61,338 (1997), 81 FERC ¶ 61,339 (1997), 82 FERC ¶ 61,028 (1998), 82 FERC ¶ 61,073 (1998), 82 FERC ¶ 61,132 (1998), 82 FERC ¶ 61,193 (1998) and 82 FERC ¶ 61,246 (1998).

[131] The citations for these orders are: 84 FERC ¶ 61,131 (1998), 84 FERC ¶ 61,255 (1998), 84 FERC ¶ 61,320 (1998), 84 FERC ¶ 61,327 (1998), 85 FERC ¶ 61,068 (1998), 85 FERC ¶ 61,145 (1998), 85 FERC ¶ 61,227 (1998), 85 FERC ¶ 61,390 (1998), 86 FERC ¶ 61,044 (1999), 86 FERC ¶ 61,079 (1999), 86 FERC ¶ 61,146 (1999), 86 FERC ¶ 61,185 (1999) and 86 FERC ¶ 61,246

[132] The citations for these orders are: 82 FERC ¶ 61,131 (1998), 83 FERC ¶ 61,357 (1998), and 85 FERC ¶ 61,382 (1998).

[133] We set for evidentiary hearing a formal complaint by Wisconsin Electric Power Company making these types of allegations. Wisconsin Electric Power Company v. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), 86 FERC ¶ 61,121 (1999). The parties subsequently filed a settlement agreement.

[134] Regional ISO Conference (Richmond), Transcript at 20.

[135] Comments of Marvin Carraway on behalf of Clarksdale Public Utilities Commission, Regional ISO Conference (Kansas City), Transcript at 107.

[136] *See, e.g.*, Comments of representative from Enron Power Marketing speaking at Commission's

Indeed, to gain a competitive advantage over those who are dependent on the timeliness and accuracy of OASIS, vertically integrated transmission owners have an incentive to make OASIS as slow and uninformative as possible.[137]

Similarly, EPSA has told us that "the present transmission regime gives existing transmission-distribution utilities an inherent advantage to reserve capacity for their own native load use, and provides them with no incentive to maintain a properly functioning OASIS."[138]

As we stated above with respect to ATC calculation, we are not in a position to make a judgment that transmission providers are deliberately making their OASIS sites difficult to use in order to disadvantage marketing competitors. In fact, we are aware that some OASIS sites are well run and engender few complaints from users, and that there may be legitimate technical and transitional difficulties responsible for some of the problems complained of. However, this is another example of the situation where market participants perceive discriminatory intent, whether or not one exists, because of the apparent opportunity and incentive to discriminate.

e. Other Issues Related to Functional Unbundling and Dealing With Remaining Undue Discrimination

While the Commission here has not attempted to provide an exhaustive compilation of the remaining opportunities for discriminatory practices by transmission operators who are also in the power business,[139] it believes that the potential for such problems increases in a competitive environment *unless* the market can be made structurally efficient and transparent with respect to information, and equitable in its treatment of competing participants. We invite public comments on the extent to which there remains undue discrimination in transmission services, and if it remains, in what forms. Those comments should address both the areas of alleged discrimination we have discussed above, as well as any other areas that commenters may have experienced. In addition, we are asking for comments about what remedies we should impose in an effort to eliminate any remaining discriminatory conduct. For example, should we require mandatory participation in an RTO, or are there other possible remedies? Could a performance-based rate system be designed to realign economic interests to remove the motive for discrimination?

One thing that seems apparent is that a system that attempts to control behavior that is motivated by economic self-interest through the use of standards of conduct will require constant and extensive policing. This kind of regulation goes beyond traditional price regulation and forces us to regulate very detailed aspects of internal company policy and communication. For functional unbundling to be successful, we have to be concerned, in some sense, about "who spoke to whom" in the company cafeteria. Functional unbundling does not necessarily promote light-handed regulation. It also undoubtedly imposes a cost on those entities that have to comply with the standards of conduct who face additional training and rules that create rigidities in their internal management activities.

It appears, based upon our experience thus far, that no matter how detailed the standards of conduct and how intensive our enforcement, competitors will continue to be suspicious that the wall between transmission operations and power sales is being breached in subtle and hard to detect ways. The perception that many entities that operate the transmission system cannot be trusted is not a good foundation on which to build a competitive power market. It creates needless uncertainty and risk for new investments in generation.

In section III.B below, we will address how the use of independent RTOs can help eliminate the opportunity for unduly discriminatory practices by transmission providers, restore the trust among competitors that all are playing by the same rules, and reduce the need for overly intrusive regulatory oversight.

B. Benefits That Regional Transmission Organizations Can Offer

In the preceding sections, we have set forth what we consider to be at least some of the remaining transmission related impediments to full competition in the electricity markets. These impediments include engineering and economic inefficiencies in the operation and structure of the existing transmission grid that inhibit the development of broad-based markets for electric power, and remaining opportunities for discriminatory practices by transmission owners with power marketing interests.

We now believe that the establishment of properly structured RTOs throughout the U.S. can effectively remove the remaining impediments to competition in the power markets. As discussed elsewhere in this NOPR, a properly structured RTO will be an entity that is independent from all generation and power marketing interests, and has the exclusive responsibility for grid operations, short-term reliability, and transmission service within a region. Such an entity would not only confer benefits related to removing impediments to competition, but would also enhance reliability and allow for less intrusive government regulation of transmission providers.

We note that the Commission's recognition of the benefits of regional transmission organizations is not new. The Commission has encouraged the industry to create such institutions for more than six years. In 1993, the Commission issued a policy statement encouraging the formation of RTGs, which were defined as voluntary organizations of transmission owners, users, and other entities interested in coordinating transmission planning (and expansion), operation and use on a regional and inter-regional basis.[140] The Commission summarized the benefits of such entities as enabling the market for electric power to operate in a more competitive, and thus more efficient manner; providing coordinated regional planning of the transmission system to assure that system capabilities are adequate to meet system demands; decreasing the delays that are inherent in the regulatory process, resulting in a more market-responsive industry; and resolving technical transmission issues (*e.g.*, loop flow).[141]

One year later, the Commission issued a transmission pricing policy statement which encouraged RTGs to address transmission pricing and offered to provide more latitude to RTGs than to individual utilities for innovative pricing proposals, recognizing that issues such as loop flow required a regional approach.[142] Then, two years after that in Order No. 888, the Commission encouraged the industry to consider ISOs, and gave specific guidance on characteristics and functions in the form of 11 principles.

July 1997 OASIS Technical Conference, transcript at 43–44.

[137] Petition at 37.

[138] EPSA Comments, Docket No. RM98–5–000. at 8 (filed September 21, 1998).

[139] There have been other violations alleged. For example, many relate to pricing and discounting.

[140] Policy Statement Regarding Regional Transmission Groups, FERC Stats. & Regs. ¶ 30,976 at 30,870 and n.4 (1993) (*RTG Policy Statement*).

[141] *RTG Policy Statement*, FERC Stats. & Regs. at 30,871.

[142] Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, 59 FR 55031 (November 3, 1994), FERC Stats. & Regs., Regulations Preambles ¶ 31,005, at 31,140, 31,145 (*Transmission Pricing Policy Statement.*)

The Commission has not been alone in recognizing the benefits of RTOs. In fact, there is surprising unanimity about the benefits of regional transmission solutions to grid management. For example, the Edison Electric Institute adopted a resolution that "recognizes the potential benefits of voluntary grid regionalization in addressing pancaked transmission rates, congestion management and reliability, transmission planning, and market power * * *" and supported "flexible, voluntary, market-based approaches" toward grid regionalization.[143] The American Public Power Association has stated that "mandating RTOs will prevent further inequities in the provision of wholesale transmission service, provide guidance to the states, advance regional solutions to reliability issues to head off future crisis situations such as the 1998 Midwest Price Spikes, and partially mitigate serious market power concerns that have arisen due to the high number of recent mergers in the electric utility industry."[144] The National Energy Marketers Association urges the Commission to "take bold steps necessary to create larger regional transmission organizations (RTOs) and to force maximum participation into (sic) these organizations."[145] Other industry groups representing very different interests have reached similar conclusions.[146]

States are also recognizing the need for regional approaches to grid operation. At least five states have passed laws or issued regulations requiring transmission owning utilities in their states to participate in regional transmission entities.[147] Other state regulators have highly praised the new regional transmission entities that are functioning in their regions.[148]

While these industry groups and state regulators may not agree on the form of such regional organizations and how aggressive the Commission should be in encouraging their development, they do generally agree that such entities would provide substantial benefits.

We note, additionally, that this same conclusion has also been reached in other countries. In almost every country that has chosen to introduce competition in its power sector, a single regional or national grid management organization has or will be created as the necessary platform for achieving fair and efficient bulk power competition.[149]

In the following discussion, we address the significant benefits of establishing RTOs.

1. An RTO Would Improve Efficiencies in the Management of the Transmission Grid

As discussed in section III.A above, numerous inefficiencies in the current operation and structure of the transmission grid may be impeding full competition. Establishing RTOs could help remove most, if not all, of those inefficiencies in a number of ways.

First, an RTO would improve efficiency through regional transmission pricing. The Commission has long recognized that transmission pricing reform is most effectively accomplished on a regional basis.[150] An RTO would have the geographic scope needed to eliminate pancaked transmission rates within its region. This would broaden the generation market and could result in more potential suppliers and less concentrated generation markets, thereby fostering more competitive markets and lower prices to consumers.

Second, regional scope would improve congestion management on the grid. An RTO would improve the way congestion is managed over a large area, thus expanding the number of potential transactions over existing facilities while reducing the number of curtailments.

The scheduling of power by multiple utilities over a regional grid can lead to unexpected overloads on constrained facilities. This can be a serious barrier to competitive power trading because some power sale transactions may have to be curtailed. With a regional scope, an RTO would be better able to manage congestion. An RTO would be in a better position to prevent congestion or control it through application of appropriate regionwide congestion pricing to ration use of the grid if necessary. An RTO would also more readily identify schedules that could lead to congestion, and relieve congestion through regional redispatch authority. A pricing approach to capacity allocation would improve efficiency by ensuring that the most highly valued transactions remain on the grid and possibly result in less curtailment than under the present approach.

Third, an RTO would improve efficiency by providing more accurate estimates of ATC than those currently provided by individual systems. Conditions on all parts of the regional grid affect ATC on individual utility systems. Factors such as load estimates, generation and transmission outages, generation dispatch orders and transactions on individual systems can affect the determination of ATC. An individual utility may not have complete or timely information regarding such factors and may apply assumptions and criteria in its ATC estimates that are different from those of neighboring transmission operators, leading to wide variations in ATC values for the same transmission path. The information needed may be considered confidential, and market participants would be more willing to share it with an independent body.

An RTO would produce better ATC estimates because it would have access to complete regional usage information, would have current information because the RTO will be the security coordinator as well as the OASIS site administrator, and would calculate ATC values on a consistent region-wide basis using a regional flow model. An RTO would also resolve most, and perhaps all, of the complaints of inaccurate ATC

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[143] Edison Electric Institute, Resolution Regarding Grid Regionalization, adopted by the Board of Directors, January 7, 1999.

[144] Motion of American Public Power Association For Leave To Lodge, Docket No. RM99–2–000, filed March 17, 1999, at 2.

[145] NEA, "National Guidelines For Restructuring The Electric Generation Transmission and Distribution Industries," January 1999, at 6.

[146] The Electric Power Supply Association recommends that "ISOs Must be Regional in Scope." (EPSA Position Statement on Independent System Operators, January 1997, at 1.) The Electricity Consumers Resource Council (ELCON) states that "a competitive electricity marketplace requires the formation of large, regional independent system operators." (ELCON, "Independent System Operators," Profiles On Electricity Issues, No. 16, March 1997, at 2.

[147] Laws to encourage participation in regional ISOs or transcos have been passed in Wisconsin, Illinois, Virginia, and Arkansas. Regulations to encourage this outcome have been issued by the Nevada commission.

[148] *See, e.g.*, Comments of Commissioner Marlene Johnson, RTO Conference (District of Columbia), transcript at 23–24; Commissioner Gerald Thorpe (Maryland), transcript at 39–40; President Herbert Tate (New Jersey), transcript at 47–50; and Commissioner Nora Mead Brownell (Pennsylvania), transcript at 54.

[149] Government of Mexico, Secretaria de Energia, *Policy proposal for structural reform of the Mexican electricity sector*, 1999; World Bank, *Reforms and Private Participation in the Power Sector of Selected Latin American and Caribbean and Industrialized Countries*, 1994; National Regulatory Research Institute, *Electric Power industry Restructuring in Australia: Lessons From Down Under*, Occasional Paper #20, Ohio State University, January 1997; World Bank (Industry and Energy Department), *Central and Eastern Europe: Power Sector Reform in Selected Countries* 1997; Ontario (Canada) Market Design Committee, *The Fourth and Final Report*, January, 1999; Alberta (Canada) Department of Energy, *Moving To Competition, A Guide to Alberta's New Electricity Structure*, 1994; Jan Moen, *A Common Electricity Market in Norway and Sweden: Prerequisites, Development and Results So Far*, Norwegian Water Resources and Energy Administration, May, 1996; National Grid Company, *Grid System Management*, Coventry, England; and J. Culy, E. Read and B. Wright, "The Evolution of New Zealand's Electricity Supply Structure," in *International Comparisons of Electricity Regulation*, Gilbert and Kahn, editors, Cambridge University Press, 1996.

[150] *Transmission Pricing Policy Statement*, FERC Stats. & Regs. at 31,145.

postings. Problems are likely to remain only to the extent that scheduling reservations across several RTOs continue to be made on a contract path basis.

Fourth, an RTO also would more effectively manage parallel path flows. With an RTO in place, the geographic scope for scheduling and pricing transmission would be widened and parallel path flows would be internalized within the RTO. This should result in more accurate ATC calculations, improve reliability, and, with appropriate transmission pricing, eliminate or reduce disputes among transmission owners regarding uncompensated uses of facilities.

Fifth, an RTO would promote more efficient planning for transmission or generation investments needed to increase transmission capacity. One advantage of an RTO that is helpful in planning is that it will be able to see the "big picture." Planning and expansion of grid facilities will no longer be done on a piecemeal basis. An RTO would help identify the best place on the grid to locate new generation.[151] An RTO also will have more options available to it because of its size and configuration. It has the potential to select and implement the most efficient investment or operating option within the region for relieving a bottleneck. This is in marked contrast to the current situation in many regions where individual transmission owners are generally limited to investment options in their particular service areas even though better (*i.e.*, less costly) options may be available elsewhere in the region.

Sixth, an RTO would increase coordination between separate state regulatory agencies by providing a single point of focus for transmission expansion review, possibly even encouraging multi-state agreements to review and approve new transmission facilities.[152] As RTOs develop viable regional planning processes, there may be a growing willingness on the part of individual states to accommodate regional regulatory review on either a formal or informal basis.[153]

Seventh, transactions costs would also be reduced with an RTO in place. For example, the consolidation of transmission control operations would cut general and administrative costs over the long term. In addition, an RTO would administer a single regional transmission tariff, thereby permitting "one stop shopping" for regional transmission service and resulting in simpler and more efficient procedures for transmission users to transmit power over greater distances.

Eighth, through regional standardization of transmission services and the terms and conditions under which they are transacted, an RTO would facilitate establishing transmission rights and the "tradeability" of transmission rights. The early experience suggests that independent regional transmission organizations are in the best position to establish well-defined rights to the use of the grid.[154] Such rights are essential to establishing congestion markets. Clear rights are also needed for the ability to trade transmission rights between customers that place different values on capacity. Such trade helps ensure an efficient allocation of current capacity and helps ensure that new capacity is built only when and where necessary. [155]

Ninth, an RTO would facilitate the success of state retail access programs by providing greater confidence in the markets and a larger regional market with access to more potential suppliers.

2. An RTO Would Improve Grid Reliability

With the improved transmission access that has resulted from industry compliance with Order No. 888, the volume of wholesale electricity transactions has significantly increased along with the number of market participants. This has led to industry concerns that traditional reliability rules may not guarantee that the bulk power system remains secure. Many transmission owners in a region make independent decisions about use of a common regional transmission grid. A reliability problem on one utility's transmission system may threaten the reliability of its neighbor's system. A regional body that operates the regional grid and enforces reliability rules for the entire region could prove helpful to current efforts and should be considered. An RTO would enhance reliability by (1) operating the system for a large region, (2) ensuring coordination during system emergencies and restorations, (3) conducting comprehensive and objective reliability studies, (4) coordinating generation and transmission outage schedules, and (5) sharing of ancillary services responsibilities.

3. An RTO Would Remove Opportunities for Discriminatory Transmission Practices

In an RTO, the control of transmission operation is cleanly separated from power market participants. An RTO would have no financial interests in any power market participant, and no power market participant would be able to control an RTO. This separation will eliminate the economic incentive and ability for the transmission provider to act in a way that favors or disfavors any market participant in the provision of transmission service.[156] Accordingly, ATC calculations can be made in an unquestionably objective manner, OASIS sites can be equally relied upon by all transmission users, and line loading relief should be free from preferences for certain market participants.

In addition, the separation of transmission operation from power marketing activities also would reduce opportunities for intentional or inadvertent communication of commercially valuable information from the transmission provider to any market participant, and should eliminate any advantage that market participants may now have with respect to arranging transmission service with an affiliated transmission provider.

Finally, removing the opportunity for discriminatory transmission practices will help ensure the openness and integrity of the commercial process. We have been told repeatedly of the importance of transparency and fairness in the relationship between transmission users and transmission providers. This was a prominent topic at our ISO conferences last year. Fairness, impartiality and market confidence are also important to reliability. If the operator orders certain actions to be taken for system reliability purposes that might harm the interests of some users, those users must know that the action being ordered has been made

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[151] One of the benefits of the ERCOT (Texas) ISO has been, due to the ISO's comprehensive view of the grid, the ability to identify the most effective spots on the grid to locate new generation facilities. *See* Chairman Patrick Wood (Texas), transcript at 205–06.

[152] The Commission recognizes that there may be legal impediments to such a shift. For example, most state siting laws typically require that the proposed facility must be assessed in terms of its benefits for the state rather than the region. *See* Ileana Elsa Garcia, "State Electric Facility Siting Practices," background paper prepared for the Harvard Electric Policy Group, April 10, 1997.

[153] To encourage this movement, we propose requiring that the RTO's planning and expansion process must " accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities." *See* section III.E.

[154] *See* Central Hudson Gas & Electric Corporation, *et al.*, 86 FERC ¶ 61, 062 at 61, 228–33 (1999); *PJM*, 81 FERC at 62,240.

[155] Capacity Reservation Open-Access Transmission Tariffs, Notice of Proposed Rulemaking, 61 FR 21847 (May 10, 1996), FERC Stats. & Regs. ¶ 32, 519 (*CRT NOPR*).

[156] Appropriate price regulation of RTOs would still be needed.

fairly and with only technical factors in mind.

One important benefit of an RTO is that it could help eliminate the suspicions about, or remaining actual discriminatory practices by, grid operators. The DOE Reliability Task Force concluded that regional reliability entities such as RTOs must be "truly independent of commercial interests so that their reliability actions are—and are seen to be—unbiased and untainted * * *" [emphasis added] [157] The same conclusion was reached by the blue-ribbon Electric Reliability Panel convened by NERC to recommend reforms in the current U.S. reliability system. The panel concluded that: "(t)o dispel suspicions that the system operator favors one participant over another * * *, the operator must be independent from market participants." [158]

4. An RTO Would Result in Improved Market Performance

By improving efficiencies in the management of the grid, improving grid reliability, and removing any remaining opportunities for discriminatory transmission practices, the widespread development of RTOs would also improve the performance of electricity markets in several ways and consequently lower prices to the Nation's electricity consumers.

The RTO benefits discussed so far in this section would result in improving the competitiveness of wholesale electricity markets. To the extent that RTOs foster fully competitive wholesale markets, the incentives to operate generating plants efficiently are bolstered. Suppliers will continuously seek to avoid being made uncompetitive by rivals. We have now had close to two decades of experience with generating plants being operated in at least partially competitive markets. Non-traditional generators have had the opportunity to realize increased profits through reduced costs and improved operating performance. For years, the growing presence of independent power generators has led to highly efficient new capacity coming on line. The evidence is clear that market incentives can lead to highly efficient plant operations.

The incentives for more efficient plant operation can also affect existing generation facilities. Especially noteworthy is the recent experience that indicates improvements in the generation sector in regions with RTOs. Regions which have ISOs in place are undergoing dramatic shifts in the ownership of generating facilities. Large-scale divestiture and high levels of new entry in California and the Northeast are changing the ownership structure of these regions' generators. Availability of customers, and the presence of competing suppliers, are creating the incentives for better-performing plants. All plants are coming under pressure to improve their availabilities and operating efficiencies. Individual firms have made strategic decisions to seek to become more competitive, or to prepare themselves for future competition.[159]

By improving competition, RTOs will also reduce the potential for market power abuse. As discussed earlier, eliminating pancaked transmission prices will expand the scope of markets and bring more players into the markets.[160] By eliminating the mistrust in the current grid management, entry by new generation into the market will become more likely as new entrants will perceive the market as more fair and attractive for investment. And with more players, the market becomes deeper and more fluid, allowing for more sophisticated forms of transacting and smoother matching of buyers and sellers.

The full value of the benefits of RTOs to improve market performance cannot be known with precision before their development, and we do not yet have a long enough track record with existing institutions with which to measure. The Commission will estimate the potential cost savings from RTOs as part of its National Environmental Protection Act analysis. At this time, we foresee several billion dollars annually in efficiency gains to the economy.[161]

The Commission seeks comment on the effect of RTOs on electricity market performance, including any data or other information that could shed light on quantifying the extent of those benefits.

5. An RTO Would Facilitate Lighter-Handed Governmental Regulation

There are several ways that the existence of a properly structured RTO would reduce the need for Commission oversight and scrutiny, which would benefit both the Commission and the industry.

A number of regulatory benefits depend critically on the RTO being truly independent of power marketing interests. For example, to the extent an RTO is independent of power marketing interests, there would be no need for this Commission to monitor and attempt to enforce compliance with the standards of conduct designed to unbundle a utility's transmission and generation functions.

An independent RTO with an impartial dispute resolution mechanism would resolve disputes without resort to the Commission complaint process. The Commission has demonstrated its willingness to defer to such mechanisms.[162] It is generally more efficient for these organizations to resolve many disputes internally rather than bringing every dispute to the Commission. We seek comment on what types of disputes or other matters would be appropriate for the Commission to defer to the decisions of the RTO? In granting deference to decisions that result from an acceptable ADR process,

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[157] *See* Secretary of Energy Advisory Board, U.S. Department of Energy, "Maintaining Reliability in a Competitive U.S. Electricity Industry," September 29, 1998 at xv.

[158] Electric Reliability Panel of the North American Reliability Council, "Reliable Power: Renewing the North American Electric Reliability Oversight System," December 1997, at 17.

[159] Examples include: Virginia Power, which has made more than $1 billion in capital improvements and other investments (without raising rates) between 1992 and 1998, including $921 million in generating plant and approximately $125 million in transmission line upgrades. *See* Virginia Power, Virginia Power Statement on SCC Report, May 24, 1998. This document is available on Virginia Power's website at http://www.vapower.com/news/archive/releases980324.html; Entergy, which has achieved high performance at its nuclear units in terms of capacity factors, outage times and refueling periods, *See* Entergy Operation Services, Inc., Entergy Nuclear Units Have Outstanding Year as Entergy Forges Ahead with National Nuclear Company, January 26, 1999, press release. This document is available on Entergy's website at http://www.entergy.com/news/1999/nr012699.htm.; New York Power Authority, which has lowered operating and maintenance budgets, refinanced debt, and invested $181 million in capital improvements. *See* New York Power Authority, NYPA Exceeds Performance Goals in 1998, February 12, 1999, press release. This document is available on NYPA's website at http://www.nypa.gov/press/0212a.htm.; Green Mountain Power, which reduced operations and maintenance expenditures by 50% between 1998 and 1995. *See* Green Mountain Power Corporation, Sales and Expenditures, 1995 Annual Report. This document is available on Green Mountain Power Corporation's website at http://www.gmpvt.com/annrpt95/salesex2.htm; and the Tennessee Valley Athority, which realized cost savings of 22% on fossil-fueled and hydroelectric plant outage projects which were subject to a continuous improvement process. *See* Hans E. Picard and C. Robert Seay, Jr., Competitive Advantage Through Continous Outage Improvement, Electric Power Research Institute Fossil Plant Maintenance Conference, July 29, 1998. This document is avialable at website http://www.isc.net/ pconsult/epri.html..

[160] Evidence from the UK and strategic behavior studies, however, indicates that such market power can lead to ongoing cost impacts as well as outright efficiency losses. *See* Richard Green and David Newbery, Competition in the British Electricity Spot Market, 100 J. POL. ECON., 929, 1992.

[161] The benefits are likely to come substantially from lower generation operation and maintenance costs that result from new plants, improved performance of existing plants, and improved congestion management.

[162] *See PJM*, 81 FERC at 62,269.

would there be a need to distinguish between RTOs that are ISOs and RTOs that are transcos?

The Commission could also consider adopting streamlined filing and approval procedures. The Commission could consider different filing requirements for established RTOS. For example, should we lower the threshold for the types of changes to operations or practices that would not require a filing with the Commission? Should such a policy be applied equally for non-profit and for-profit RTOs?

Another regulatory benefit is that an RTO could result in more streamlined transmission rate proceedings. The Commission has indicated its willingness to grant more latitude to transmission pricing proposals from appropriately constituted regional groups, and RTOs would be such groups.[163]

To the extent that RTOs increase market size and decrease market concentration, the competitive consequences of proposed mergers would become less problematic and thereby help further streamline the Commission's utility merger decision making process.

6. Conclusion

The Commission believes that the widespread formation of RTOs can provide substantial benefits. The Commission invites comment on the benefits of RTOs and the magnitude of these benefits.

C. Concerns Expressed by the State Commissions

Our Notice of Intent to Consult with State Commissions in this proceeding initiated our commitment to take into account the advice and concerns of the states in formulating an RTO policy. Through written and oral comments made during the consultations in February 1999, and in response to a series of follow-up questions, state commissioners raised a number of concerns regarding RTO policy. The Commission appreciates the state commissioners' serious consideration and their comments have helped shape our proposal. We take the opportunity to summarize the principal concerns and how our proposal addresses those concerns.

1. Federal Mandate

Most states oppose a FERC mandate to form RTOs.[164] The proposed rule would not generically require public utilities to transfer control of their transmission facilities to an RTO; however, we do seek comment on the issue. We are proposing to provide the impetus needed to help form RTOs by engaging the industry and the states in a national dialogue regarding RTO characteristics, setting minimum characteristics and functions for RTOs, providing flexibility for innovative transmission rate proposals, including a willingness to consider incentive pricing proposals, and establishing regional processes with Commission staff participation after a Final Rule is issued for fostering RTO formation. Thus, the proposed rule stops short of generically ordering utilities into RTOs but instead, as WUTC expresses it, we are at this time adopting: "* * * a policy of encouraging voluntary RTO participation and filings * * *" [165] The Commission is, however, concerned that the current transmission grid management framework may be preventing electricity markets from reaching their full competitive potential. We will evaluate the comments received in response to our proposals to determine if additional action is needed.

2. Regional Flexibility

At all three consultations with the state commissions and in written comments, we were urged by almost every state commission not to impose a "one size fits all" approach to RTO design.[166] The vast majority of the respondents to the Commission's follow-up questions were unwilling to designate a particular type of RTO organization as superior in all cases. The Commission agrees and does not propose to establish a mandatory national template for RTOs. Such a policy would be ill advised at this time. Neither this Commission, nor, we suspect, anyone else in the industry knows now what is the best combination of ownership and control to achieve an optimal RTO. Given the lack of experience to date, the Commission believes that the best policy is to encourage regional experimentation. Thus, as discussed below, the proposed rule would establish only minimum characteristics and functions needed for Commission approval as an appropriate RTO. We also propose to initiate collaborative regional processes in which each region would be encouraged to design an RTO that best meets its needs. This collaborative process is discussed below.

Our proposed policy of regional flexibility should also help some states' concerns with the cost of an RTO. As discussed above, we believe RTO development will result in substantial benefits for the Nation. However, some states are concerned that the costs of an RTO will exceed its benefits. The cost of meeting the minimum RTO characteristics need not be large, but it is not always easy to measure the long-term RTO benefits that would offset these costs. By permitting regional flexibility, subject to our minimum characteristics and functions, the proposed rule allows each region to design an RTO that has costs commensurate with the regional benefits expected.

3. Retail Markets

States that have not adopted a retail access policy are concerned that an RTO in their state might interfere with their prerogatives regarding adopting, or not adopting, retail access. The comments and responses of some state commissions reiterate the concern that RTO formation will lead to retail access where it does not yet exist.[167] The proposed rule does not require retail access. The Commission agrees with FPSC that, "FERC should not pursue any policy that would interfere with or contravene a state's authority to adopt or refrain from adopting direct retail access." [168] Having an RTO in a state does nothing to interfere with the state's authority to decide retail access policy. Some states whose utilities are in RTOs can have retail access while others can choose not to have retail access. This is demonstrated today by the presence of ISOs in the Middle Atlantic and New England regions, but not all of the states in those regions have yet adopted retail competition. Some states with retail access believe that an RTO is needed to support their customer choice plan because the RTO allows customers, aggregators and marketers to reach supplies over a larger area. Those states that do not have retail access can nevertheless benefit from an RTO as their utilities enjoy the benefits of the RTO to lower native load generation rates by buying and selling power over a larger market area.

Some states are also concerned that having a Commission-regulated RTO provide transmission service for retail

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[163] *See Transmission Pricing Policy Statement*, FERC Stats. & Regs. at 31,145, 31,148.

[164] *See, e.g.* Comments in Docket No. RM99–2–000 of North Carolina Utilities Commission (NCUC) at 1; Washington Utilities and Transportation Commission at (WUTC) at 4; Georgia Public Service Commission (GPSC) at 10; Mississippi Public Service Commission (MPSC) at 3; and South Carolina Public Service Commission (SCPSC) at 1.

[165] WUTC at 4–5.

[166] *See, e.g.*, comments of Florida Public Service Commission (FPSC) at 3.

[167] *See, e.g.* response of Kentucky Public Service Commission (KPSC) at 1.

[168] FPSC comments at 4.

customers would lead to some loss of control over retail market services, such as the ability to assure reliability. A primary purpose of an RTO is to ensure transmission reliability. Whether there is any decrease in state control over any aspects of retail market services would depend on the design of the particular RTO. Under any RTO design, the states would retain full control over the generation adequacy of franchised power suppliers, transmission siting and local distribution reliability. Further, the proposed rule would encourage state involvement both in RTO design and ongoing oversight, providing states a vehicle to protect all aspects of transmission reliability on behalf of retail customers.

4. Effect on States with Low Cost Generation

States with relatively low cost power are concerned that an RTO would result in local utilities selling their low cost power to other states. However, the vast majority of the respondents to a follow-up question on this issue stated that this is not a likely problem.[169] Similarly, we do not believe RTOs will cause such a result. The presence or absence of retail access is the principal factor affecting potential out-of-state sales of low-cost power, and this is in the hands of state policy makers. Arguably, retail access could lead to low cost power being sold out of state if incumbent utilities no longer have an obligation to serve retail customers. However, this could happen with or without an RTO. Where there is no retail access, state authorities can continue to ensure that a utility with a monopoly franchise sells its lowest cost power to local native load, even if the utility's transmission is operated by an RTO. Indeed, an RTO could actually lower retail rates by expanding the market region for the utility to sell the higher cost power not sold to native load and sharing in the benefits of regionwide resource planning and congestion management.[170] And finally, utilities that now have low cost generation will help assure access to future low cost generation plants by participating in an RTO. New low-cost generation plants are more likely to be attracted to regions with a well-functioning regional market governed by an RTO.[171] In other words, a state that is low-cost today may not be low-cost tomorrow without an RTO in its area.

We seek comment from state commissions regarding how an RTO in their state would affect power costs.

5. Need for Independent Transmission Operation

Many states believe that transmission operators should be structurally independent of other market participants. Responses to follow-up questions indicated that independence of the transmission operator is a basic assumption for an effective RTO.[172] As the Pennsylvania Public Utility Commission (PaPUC) states, "It is therefore the case that RTOs must have sufficient independence from direct control by any single entity or interest group to perform these functions well and honestly."[173] As discussed below, our proposed rule would require strict independence of transmission operation from market participants for approval of an RTO application.

6. Transmission Cost Shifting

There is a concern by some states with utilities with relatively low cost transmission facilities that, by joining an RTO, their utilities' transmission costs will be averaged with the higher cost facilities of utilities in other states in determining RTO transmission rates.[174] As a result, these states are concerned that joining an RTO will increase local transmission rates. This is known as transmission cost shifting. It has been an issue in every ISO the Commission has approved to date. That is why, in each of those ISO cases, we have allowed a transition period in which access fees are based on some form of "license plate" pricing: access fees are paid by load serving entities based on the fixed transmission costs of the local utility. As discussed below, we propose to continue and perhaps expand such flexibility in allowing the license plate approach or other approaches to recover current sunk transmission costs during a transition period.

7. Boundary Drawing

Many states expressed opposition to the Commission drawing regional or RTO boundaries in a rulemaking.[175] The proposed rule does not set boundaries. Instead, we propose factors for assessing whether a proposed RTO's geographic configuration will ensure that the required RTO functions, such as assuring reliability, internalizing loop flow, managing congestion, and eliminating pancaked rates, are satisfied. In other words, we are proposing that the boundaries and other factors affecting scope and regional configuration will depend on the functions that an RTO performs. We note, however, that some RTO functions are likely to be carried out more effectively in a large region.

8. Regional Approach to Reliability

Many states believe that regional operation of transmission is needed to assure the continued reliability of the transmission system.[176] The proposed rule would require regional operation of transmission by an RTO with primary responsibility for short-term reliability as a condition for approval of an RTO application. This is discussed below.

9. Pricing Reform

Many states want regional approaches to transmission pricing reform. In particular, they would like to decrease the incidence of pancaked transmission rates. Our proposal is aimed at developing RTOs that would provide the forum and have the geographic scope for a regional approach to transmission pricing reform. The proposed rule would also permit flexibility for experimenting with innovative forms of congestion management, which would mean fewer TLR curtailments and more assurance that native load is served.

10. Participation of Public Power

In some regions of the Nation, substantial portions of the transmission grid are owned by pubic agencies. The states in these regions have expressed a concern that our RTO initiative must address how to assure that such public agencies join the RTO. Some of the responses to follow-up questions reiterated the need to include public power agencies in any RTO formation.[177]

The proposed rule would not require RTO formation and so does not address

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[169] *See, e.g.*, responses of Virginia State Corporation Commission (VSCC) at 1; WUTC comments at 2; Wisconsin Public Service Commission (WPSC) comments at 1; and Florida Public Service Commission (FPSC) comments at 1. *But see, e.g.*, response of Alabama Public Service Commission (APSC) at 1, and response of District of Columbia Public Service Commission (DCPSC) at 1.

[170] *See* response of Indian Utility Regulatory Commission (IURC) at 1.

[171] According to data in a recent survey, about 64% of announced merchant power plants will be located in California, Texas, New York, New England, and the middle Atlantic area, while such states account for only about 30% of total electricity load in the U.S. *See* Announced Merchant Plants, survey prepared by the Electric Power Supply Association, Appril 13, 1999.

[172] *See e.g.*, responses of KPSC at 2 and Missouri Public Service Commission (MoPSC) at 1.

[173] Supplemental comments at 7.

[174] *See, e.g.*, comments of WUTC at 6.

[175] *See, e.g.*, comments of NCUC at 1 and WUTC at 3.

[176] *See, e.g.*, comments of NCUC at 3.

[177] *See, e.g.*, responses of Iowa Utilities Board (IUB) at 1 and New Mexico Public Regulation Commission (NMPRC) at 1.

how to require public agency transmission owners to join RTOs. As suggested by KPSC,[178] we will allow flexibility in RTO formation in order to meet, where possible, the requirements of public agencies. Nevertheless, the Commission's objective is to encourage the placement of all transmission facilities under the control of an RTO. In section III–G of this notice, we have requested comments on ways the Commission can facilitate public power participation in RTOs. We are also proposing regional processes to help facilitate RTO formation under section 202(a) of the Federal Power Act. Because section 202(a) applies to public power as well as public utilities, the regional processes will include publicly owned transmission entities.

11. State Role in RTO Governance

States want a role in the governance of any RTOs for their states, and the Commission proposes to be as flexible as possible in accommodating their needs. The state commission responses to follow-up questions show that some states want to be closely involved in RTO operation[179] while others believe it better to remain independent of the RTO in order to engage in better oversight.[180] Practically all respondents see siting authority remaining with the states.

As discussed below, the proposed rule encourages RTO design to accommodate appropriate state oversight, especially with regard to planning and siting new multi-state transmission facilities. We request comments on the appropriate state role in RTO governance. For example, should state government officials participate as voting members of an RTO?

12. Existing Regional Transmission Entities

During our consultations, many of the state commissioners from the northeastern region and a representative from California, where transmission facilities are already, or soon will be, under the control of Commission-approved ISOs, asked that the Commission not require major changes to these ISOs during their implementation periods.[181] The commissioners observed that their states' ISOs were still undergoing an implementation and learning period and, in some instances, are important to retail choice program implementation.

The Commission respects the investment of time and other resources made in the existing ISOs. We understand the importance of avoiding change during the critical implementation periods. Due to these considerations, and our proposed policy of regional flexibility, the proposed rule does not require major changes to the existing transmission entities that the Commission has found in conformance with the ISO principles of Order No. 888 at this time, absent compelling circumstances. However, any entity must meet our minimum RTO characteristics and functions to receive any of the benefits to be accorded RTOs. Our objective is to have all of the Nation's transmission grid under the control of RTOs that have the minimum characteristics and functions adopted in the Final Rule. That is why we propose to require the public utility members of existing transmission entities that have been found in conformance with the Commission's ISO principles to make a filing, individually or jointly, with the Commission no later than October 15, 2000, that explains the extent to which the entity in which it or they participate meets the minimum RTO characteristics and functions. The Commission is also concerned about impediments to transactions between existing ISOs (as well as any future RTOs). We therefore encourage existing ISOs to consider ways to reduce any impediments to transactions among them.

The Commission invites further comments from the state commissions on all aspects of the proposed rule.

D. Minimum Characteristics and Functions for a Regional Transmission Organization

In this section, we propose minimum characteristics and functions for a transmission entity to qualify as an RTO. These characteristics and functions are designed to ensure that any RTO will be independent and able to provide reliable, non-discriminatory and efficiently priced transmission service to support competitive regional bulk power markets. There are four minimum characteristics for an RTO:

(1) Independence from market participants;

(2) Appropriate scope and regional configuration;

(3) Possession of operational authority for all transmission facilities under the RTO's control; and

(4) Exclusive authority to maintain short-term reliability.

In addition, there are seven minimum functions that an RTO must perform. An RTO must:

(1) Administer its own tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities;

(2) Create market mechanisms to manage transmission congestion;

(3) Develop and implement procedures to address parallel path flow issues;

(4) Serve as a supplier of last resort for all ancillary services required in Order No. 888 and subsequent orders;

(5) Operate a single OASIS site for all transmission facilities under its control with responsibility for independently calculating TTC and ATC;

(6) Monitor markets to identify design flaws and market power; and

(7) Plan and coordinate necessary transmission additions and upgrades.

The Commission seeks comment on the following questions: (1) whether the Commission's enumeration of minimum criteria omits a necessary minimum characteristic or function, or includes an unnecessary characteristic or function; (2) whether there is a need to distinguish between minimum characteristics and minimum functions (*i.e.*, adopt separate categories for the minimum requirements); and (3) if so, whether any of the minimum characteristics should be re-characterized as minimum functions, and vice versa. Comments on these questions should take into account the Commission's objective in this rulemaking of encouraging the formation of RTOs that promote competitive markets and non-discriminatory access to, and reliable operation of, the electric grid.

Under this proposal, all RTOs must satisfy the four minimum characteristics on their first day of operation as approved RTOs. The Commission also proposes that all RTOs be prepared to perform at least four of the seven minimum functions on their first day of operation as approved RTOs. Recognizing that more time may be needed to perform certain functions, we are proposing that for the other three of the functions—establishing procedures for addressing parallel path flows with neighboring systems, managing congestion, and planning transmission expansion—additional time ranging from one to three years after initial operation will be allowed.

The Commission seeks comments on whether we should grant RTO status to entities that are not able to perform immediately these three functions. The Commission also seeks comments on

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[178] Response at 1.

[179] *See, e.g.*, responses of WUTC at 4 and Arizona Corporation Commission (ACC) at 2.

[180] *See, e.g.*, response of Wisconsin Public Service Commission (WPSC) at 3.

[181] *See, e.g.*, Comments at the Washington, DC conference of New England Conference of Public Utilities Commissioners, Inc. (NECPUC) at 4 and remarks of California Senator Peace, RTO Conference (Las Vegas), transcript at 3–4.

whether we should grant RTO status to entities that may not be able to perform on the first day of operation certain other (i.e., any of the remaining four) of the minimum functions. Should we differentiate, for purposes of initial implementation, between any of the seven minimum functions? If so, has the Commission appropriately identified those minimum functions that are most likely to require additional time to perform?

We propose to give transmission entities flexibility in deciding how to meet these seven minimum functions. For five of the functions (tariff administration, congestion management, ancillary services, market monitoring and planning and expansion), we propose to establish standards for how the function is performed, but an RTO will have the option of demonstrating that an alternative proposal is consistent with or superior to the standards in the proposed rule.[182] The Commission seeks comment on whether this flexibility—i.e., the option of demonstrating that an alternative proposal is consistent with or superior to the proposed rulemaking standards—should apply to any or all of the minimum characteristics.[183]

We also propose that the RTOs would have flexibility in designing their organizational structures. We are receptive to all types of RTO proposals as long as they satisfy the specified minimum characteristics and functions. For example, we will consider proposals for non-profit or for-profit organizations. An RTO can be an operator of the grid that it controls, an operator and owner of the grid that it controls, or a combination of the two.[184] The minimum characteristics and functions provide a wide range of implementation flexibility and discretion. They represent a floor, not a ceiling. To encourage further evolution, the Commission is proposing an "open architecture" requirement. Under this requirement, the RTO must permit further improvements that will enhance the efficient operation of regional bulk power markets.

[182] We use the term "standard" to refer to the required sub-elements under each characteristic and function.

[183] Alternative proposals may include requests for appropriate transition periods. We will consider such proposals on a case-by-case basis, based on an assessment of their effect on regional power markets.

[184] One example of an arrangement that combines these two approaches would be a transmission entity that owns and operates some transmission facilities and operates other facilities under long-term leases or other agreements with existing or new transmission owners.

Minimum Characteristics

1. Characteristic 1: Independence. The RTO Must be Independent of Market Participants. (Proposed § 35.34(i)(1))

Market participants must be assured that the RTO will provide transmission access to all market participants on a fair and non-discriminatory basis. The Commission believes that it is a prerequisite for achieving fair, open and competitive power markets. An RTO needs to be independent in both reality and perception.[185] As we have said before in the context of ISOs, we think that "the principle of independence is the bedrock upon which the ISO must be built * * *"[186] It is the Commission's view that independence can be achieved if the RTO satisfies three conditions. First, the RTO, its non-stakeholder governing board members and its employees must have no financial interests in market participants.[187] Second, the RTO's decision making must not be controlled by any market participants. Third, the RTO must have independent authority to file changes to its transmission tariff. We now discuss these conditions.

a. The RTO, its employees and any non-stakeholder directors must not have financial interests in any electricity market participants. (Proposed § 35.34(i)(1)(i))

We propose that the RTO, the non-stakeholder members of its governing board and all employees be prohibited from having financial interests in any market participants. The prohibition clearly applies to current financial interests. It does not preclude past financial ties with market participants. Nor does it require a total or permanent prohibition on all future financial ties with market participants in the region. Such a prohibition would make it difficult for the RTO to hire experienced and knowledgeable employees. Therefore, we will employ a rule of reason standard in deciding what financial ties with market participants would be acceptable after an individual leaves the RTO. As has been the case in our review of conflict of interest standards for ISOs, the Commission would establish these standards on a case-by-case basis.[188]

The Commission requests commenters to address some or all of the following issues related to the proposed requirements. Do we need to define the financial independence requirement in more specific terms or is it sufficient to enunciate the general principle and then apply it on a case-by-case basis? Should the definition of stakeholders or market participants be expanded to include entities that operate distribution-only facilities (*i.e.*, entities that perform the "wires" function at lower voltages) and transmission entities in neighboring regions? Should this definition be broadened to include sellers and buyers of ancillary services? Are there any circumstances in which the definition should be expanded to include entities that do not participate in power markets in the region but that provide transmission services to the RTO or buy transmission service from the RTO? Do we need to add more specificity to the requirement that RTOs have conflict of interest standards? Are there lessons to be learned from the experience of ISOs with conflict of interest standards that can now be applied more generally to RTOs?

b. An RTO must have a decisionmaking process that is independent of control by any market participant or class of participants. (Proposed § 35.34(i)(1)(ii))

This requirement would be satisfied, for example, by an RTO with (a) a non-stakeholder governing board and (b) a prohibition on market participants having more than a *de minimis* (one percent) ownership interest in the RTO.[189] The Commission seeks

[185] This is also the conclusion of almost every one of the state commission representatives who attended our recent consultatons with the state regulatory community. *See, e.g.*, Comments of Commissioners Marlene Johnson and Herbert Tate, Regional ISO Conference (Washington, D.C.), transcript at 66–67, 95; Comments of Judy Sheldrew, RTO Conference (Las Vegas), transcript at 58.

[186] Atlantic City Electric Company, *et al.*, 77 FERC ¶ 61,148 at 61,574 (1996). The same conclusion was reached by the DOE Reliability Task Force and the NERC Reliability Panel. The DOE Task Force concluded that regional reliability entities must be "truly independent of commercial interests so that their reliability actions are—and are seen to be—unbiased and untainted * * *" Task Force Report at xv. The Electric Reliability Panel concluded that "(t)o dispel suspicions that the system operator favors one particular over another * * * the operator must be independent from market participants." North American Electric Reliability Council, Electric Reliability Panel, Reliability Power: Renewing the North American Electric Reliability Oversight System, December 22, 1997, at 17.

[187] We use the terms "stakeholder" and "market participant" interchangeably. They mean any entity that buys or sells electric energy in the RTO's region or in any neighboring region that might be affected by the RTO's actions, or any affiliate of such entity.

[188] *See, e.g. Midwest ISO*, 84 FERC at 62,152–53, *order on reh'g* 85 FERC at 62,036; *NEPOOL*, 79 FERC at 62,586–87.

[189] It is our understanding that a similar standard was established by the British government when it created the National Grid Company (NGC), the largest, for profit transmission company in the world. The company's basic corporate documents

comments on whether this kind of RTO should be deemed to satisfy automatically this element of the independence requirement. We also request comments on whether there should be a single standard for independent decision making for all RTOs regardless of whether they are for-profit or non-profit entities. The Commission recognizes that there may be other ways to satisfy the independent decision making requirement. Therefore, we propose to consider other governance and ownership proposals, which will be judged on a case-by-case basis against the general requirement of independent decisionmaking.

With regard to the RTO governing board, we propose to define a non-stakeholder governing board as a governing board of individuals without any financial ties to market participants or their affiliates. Individuals on such a board are independent, rather than representative, of market participants. Board members usually have experience in a variety of fields related to the RTO's operations. These could include, among others, transmission operations and planning, law, electricity regulation, business management, market analysis, and risk management. The non-stakeholder board would be the ultimate decision making authority, though it could choose to delegate decisions to its staff or committees of stakeholders.[190] The board would be advised by the RTO staff and perhaps by a committee of stakeholders. In recent proceedings, we have accepted this two tier approach because it represents a middle ground in that it attempts to balance independence with expertise.

In the case of a non-stakeholder board, how can we ensure that the concerns of market participants are communicated effectively to the board? We request comments on what, if any, additional requirements should apply to a governing board that is not a stakeholder board or to a governing board with both stakeholders and non-stakeholders. For either stakeholder or non-stakeholder boards, should we impose an upper limit on the size of the board? How should the Commission consider proposals for state regulatory or other governmental officials to select board members for either stakeholders or non-stakeholder boards? How should the Commission view proposals for state government officials to serve as voting members of RTO boards?

With regard to market participants having no more than a *de minimis* interest in the ownership of the RTO, we propose to consider a *de minimis* interest as having no more than a one percent interest in the ownership of an RTO. We seek comment on whether one percent is an appropriate *de minimis* ownership interest and, if not, what would constitute appropriate *de minimis* ownership for purposes of establishing independence. We also request comment on whether there are conditions under which market participants should be allowed to have more than a *de minimis* ownership interest in an RTO. Should the Commission have a different standard for passive interests? How should the Commission treat preferred equity shares?

There are several reasons why we are proposing that the independent decision making standard can be satisfied by an RTO with (a) a non-stakeholder governing board and (b) a prohibition on market participants having more than a *de minimis* (one percent) ownership interest in the RTO. First, affiliated transmission companies (*i.e.*, transmission companies in which one or more market participants have more than a *de minimis* ownership interest) may not be trusted by market participants even with elaborate protections (*e.g.*, voting trusts, independent trustees and corporate boards not chosen by the owners). We believe that market participants are likely to suspect that the safeguards will be gamed. This, in turn, could affect investment behavior. In particular, market participants may be reluctant to make needed investments in generation or marketing of electricity if they believe that the RTO is likely to give favored treatment to its affiliates.

Second, affiliated transmission entities that are not independent of market participants would continue the regulatory need for detailed and hard to enforce codes of conduct. If we permit RTOs to be affiliated with one or more market participants, we believe that the Commission may have to devote considerable regulatory resources to "chasing after conduct" (*i.e.*, allegations of favoritism). If our experience with functional unbundling as well as with affiliated natural gas pipelines provides any lessons, we will probably find it necessary to issue detailed rules that deal with internal corporate matters relating to organizational responsibilities, corporate communications, etc.[191] For this reason, the existence of affiliated transmission entities also could make it difficult to pursue light-handed regulation.

Commenters are asked to address whether these are reasonable assessments of the effects of allowing market participants to have more than a *de minimis* ownership interest in RTOs. Is there relevant experience from other regulated industries? If we were to allow market participants to have more than a *de minimis* ownership interest for a transition period, how long should the transition period be? Would any additional safeguards be required during such a transition period? In general, which type of institution would better serve the goal of independence: a transco with *de minimis* ownership and a non-stakeholder board or an ISO with a non-stakeholder board?

c. The RTO Must Have Exclusive and Independent Authority To File Changes to Its Transmission Tariff with the Commission under Section 205 of the Federal Power Act. (Proposed § 35.34(i)(1)(iii)

We believe that independence requires that the RTO provide service under its own open access transmission tariff and that it has the right to file changes to its tariff with the Commission on its own authority. In other words, the RTO should not be required to get the prior approval of transmission customers, transmission owners or any other entities to make Section 205 filings with the Commission. The rationale is that if the RTO is taking over the open access transmission service obligation from current transmission providers, the RTO

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prohibit market participants from serving on NGC's board and from owning more than one percent of the shares in its voting equity. A similar prohibition appears to exist in the Wisconsin state law that mandates Wisconsin utilities to join either an ISO or an independent transmission company by a specific date. *See* 1997 Wisconsin Act 204, Section 30.

[190] An ISO governing board's delegation of decisions to a stakeholder committee would be contingent on this committee not being dominated by one segment of the industry. We recently found that the existing tiered governance arrangements of the New York and New England ISOs failed to meet this standard and we ordered both ISOs to reduce the voting power of dominant utilities in the lower tier of stakeholders charged with advising the non-stakeholder governing boards. *See Central Hudson*, 87 FERC at __, slip. op. at 12–13; New England Power Pool, 86 FERC ¶ 61,262 at 61,965.

[191] Natural gas pipelines that transport gas for others and are affiliated with gas marketers or brokers must conform to the standards of conduct outlined in Section 161.3 of the Commission's regulations. Further, such pipelines, pursuant to Section 250.16 of the Commission's regulations must maintain: (a) provisions in their effective tariffs that divulge operating employees and facilities shared by the pipeline and its affiliate(s) and the procedures used to address complaints; (b) a data log showing, by customer (affiliate and non-affiliate), how capacity on the pipeline was allocated; and (c) information concerning shippers receiving discounted rates. Within the natural gas pipeline industry, these requirements are sometimes viewed as overly intrusive regulation. *See* "FERC Clarifies Affiliate Etiquette For Gas Pipelines," The Energy Daily, November 17, 1998, at 1.

must be able to independently and unilaterally propose changes in its tariff.[192] While this is not likely to be a concern for transcos, our recent experience suggests that it is an important issue for ISOs that seek to become RTOs. We have approved ISOs that appear not to meet this standard. For example, the New England ISO provides transmission service under the tariff of the NEPOOL RTG rather than its own tariff.[193] In our order approving the Midwest ISO, we stated that: "We believe that any problems that may arise can be addressed by the Midwest ISO's authority to file changes unilaterally to the congestion management procedures." [194] However, our order also accepted a requirement that the ISO get the prior approval of existing transmission owners before filing certain types of changes in its tariff with us.[195] Separately, we have a pending request for clarification on this issue from the PJM ISO.[196] Can an RTO be truly independent if it does not have the authority to file changes in its tariff without the approval of other entities such as transmission owners? Should the ISO's unilateral filing authority be limited to transmission rate design and terms and conditions that directly affect access but not to changes that would affect transmission owners' ability to collect their overall revenue requirements? In practice, is this a viable distinction? If an RTO's filed rate schedule also includes market design rules, should the RTO have Section 205 filing authority to make changes in these rules?

2. Characteristic 2: Scope and Regional Configuration. The RTO must serve an appropriate region. The region must be of sufficient scope and configuration to permit the RTO to effectively perform its required functions and to support efficient and nondiscriminatory power markets. (Proposed § 35.34(i)(2))

We propose that all RTO proposals filed with us identify a region of appropriate scope and configuration. The scope and configuration of the regions in which RTOs are to operate, and the extent to which RTOs control the transmission facilities within a region, will significantly affect how well they will be able to achieve the desired regulatory, reliability, operational, and competitive benefits. Accordingly, we set forth below what we consider to be relevant factors that may affect the appropriate scope and configuration for a region that an RTO will serve.[197] If the formation of RTOs is undertaken without considering the goals that large regions can best achieve, it is unlikely that RTOs will be configured to provide maximum benefits. Transmission owners could seek to gain strategic advantage by the way an RTO is formed. For example, an RTO could be placed to act as a toll collector on a critical corridor.[198] Alternatively, an RTO could propose configurations that interfere with the formation of a larger, more appropriately configured RTO.

The Commission is aware that there is likely no one "right" configuration of regions. One particular boundary may satisfy one desirable RTO objective and conflict with another. The industry will continue to evolve, and the appropriate regional configurations will likely change over time with technological and market developments. The Commission is also mindful of the interests of individual states regarding RTO boundaries. Given all these considerations, the Commission believes that the public interest will best be served if we establish at the time of the Final Rule a set of factors that encourage appropriate regional configuration, without actually prescribing boundaries.

In the discussion that follows, the Commission sets forth, and solicits comments on, the factors that it believes are important for an appropriately configured region in which an RTO would operate.

a. Factors Affecting The Appropriate Scope And Regional Configuration Of An Acceptable Region

The Commission has grouped the factors that it believes are significant to developing appropriate regions into regional configuration factors and factors for evaluating boundaries.

i. Regional Configuration Factors

The Commission believes that the most important consideration in evaluating the geographic configuration of an RTO is that such configuration permit the RTO to perform its functions effectively. We believe that many of the characteristics and functions for an RTO proposed in this section suggest that the regional configuration of a proposed RTO should be large in scope.[199] For example:

- Making accurate and reliable ATC determinations: An RTO of sufficient regional scope can make more accurate determinations of ATC across a larger portion of the grid using consistent assumptions and criteria.
- Resolving loop flow issues: An RTO of sufficient regional scope would internalize loop flow and address loop flow problems over a larger region.
- Managing transmission congestion: A single transmission operator over a large area can more effectively prevent and manage transmission congestion.
- Offering transmission service at non-pancaked rates: Competitive benefits result from eliminating pancaked transmission rates within the broadest possible energy trading area.
- Operations: A single OASIS operator over an area of sufficient regional scope will better allocate scarcity as regional transmission demand is assessed; promote simplicity and "one-stop shopping" by reserving and scheduling transmission use over a larger area; and lower costs by reducing the number of OASIS sites.
- Planning and coordinating transmission expansion: Necessary transmission expansion would be more efficient when planned and coordinated over a larger region.

The Commission recognizes, however, that there may be other factors that limit how large a region may be, for example, the requirement that an RTO be the grid operator. There may be a limitation on how many facilities or transactions can be reliably overseen by a single operator, imposed either by hardware

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[192] The Commission has previously stated that the "[a]uthority to act unilaterally . . . is a crucial element of a truly independent ISO." 79 FERC ¶ 61,374 at 62,585 (1997).

[193] This has been protested by the New England Conference of Public Utility Commissioners. *See* "Motion For Leave To Submit Answer. . . ." Docket Nos. OA97–237 and ER97–1079, April 8, 1997.

[194] *See Midwest ISO*, 84 FERC at 62,163.

[195] *Id.* at 62,151.

[196] "PJM Interconnection, LLC's Request For Clarification, Or In The Alternative, Rehearing," Docket No. OA97–261, December 27, 1997.

[197] We note that a number of parties have asked the Commission to take the initiative to make the RTO formation process more orderly. For example, 11 state commissions filed a petition with FERC in February 1998 (which was noticed in both the Midwest ISO proceeding and in the generic ISO inquiry) asking FERC to take action on the geographic configuration of ISOs, arguing that inappropriate borders for ISOs could result in reduced customer benefits, economic inefficiencies, unnecessary complication of coordinated operations, and detrimental impacts on planning. However, in our three RTO conferences, representatives of several other state commissions expressed concern about the Commission playing too strong a role in RTO formation, arguing, for example, that we should not define RTO geographic boundaries but should leave this to the parties in each area of the country to determine.

[198] *See* Statement of Ohio Commission Chairman Craig Glazer, RTO Conference (St. Louis), transcript at 85–87.

[199] This reiterates the conclusion we reached in the eleven ISO principles in Order No. 888, where we stated that "[t]he portion of the transmission grid operated by a single ISO should be as large as possible." *Order No. 888*, FERC Stats. & Regs. at 31,731.

design or costs, or imposed by human limitations to process the required amount of information.

The Commission is not proposing that the RTO must be a control area operator, although four of the five ISOs approved so far by the Commission are each a single control area.[200] If those forming an RTO decide that the RTO should be a control area operator, this too may limit the RTO's size. However, control area functions might be performed over a large area by a master-satellite (or other hierarchical) structure. The Commission solicits comments on the technical limitations or cost limitations on how large an RTO can be if it is to have control area responsibilities.

The difficulty and cost of transferring operational control over many transmission systems to one RTO may also affect regional configuration. The larger the number of transmission systems, the more complex the task may be and the longer it may take to accomplish. The Commission solicits comments on how the number of transmission systems to be combined would affect the cost and time required to form an RTO.

A third factor that may limit size is rate treatment. As regions get larger and involve more existing owners of transmission, reaching consensus on an appropriate transmission rate design for the region may prove challenging. Also, a uniform transmission rate treatment which averages the costs of existing transmission assets across the region could subject some RTO participants to higher transmission rates. Moreover, sharing the costs of future transmission improvements may raise issues regarding whether the transmission improvements provide benefits to the entire region and who should pay those costs. These issues are discussed further below with respect to cost shifting concerns.

Are there other factors that may limit the geographic scope of an RTO? The Commission solicits comments on this issue.

ii. Factors for Evaluating Boundaries

In addition to the factors affecting the size of a region, other factors may affect the location of regional boundaries. The Commission believes that RTO boundaries should be drawn so as to facilitate and optimize the competitive, reliability, efficiency, and other benefits that RTOs are intended to achieve, as well as to avoid unnecessary disruption to existing institutions. The Commission proposes below a list of factors it would consider in evaluating the configuration for a proposed RTO. Various factors may indicate different configurations, and assessing the appropriateness of a region's configuration will require a balancing of factors.

Given this qualification, the Commission proposes that the following factors should be considered in evaluating an RTO's boundaries:

Facilitate performing essential RTO functions and achieving RTO goals, as discussed elsewhere in this proposed rule: The regions should be configured so that an RTO operating therein can ensure non-discrimination and enhance efficiency in the provision of transmission and ancillary services, maintain and enhance reliability, encourage competitive energy markets, promote overall operating efficiency, and facilitate efficient expansion of the transmission grid. For example, we understand that there have been instances where transmission system reliability was jeopardized due to the lack of adequate real-time communication between separate transmission operators in times of system emergencies. To the extent possible, RTO boundaries should encompass areas for which real-time communication is critical, and unified operation is preferred.

Recognize trading patterns: Given that a goal of this initiative is to promote competition in electricity markets, regions should be configured so as to recognize trading patterns, and be capable of supporting trade over a large area, and not perpetuate unnecessary barriers between energy buyers and sellers. There may exist today some infrastructure or institutional barriers inhibiting trade between regions that could be mitigated economically. It would be desirable that RTO boundaries not perpetuate these barriers.

Not facilitate the exercise of market power. While the industry should work toward a goal of virtually seamless trade between RTOs, it may be that initially a significant amount of trade may be contained within RTOs. Thus, it is important to avoid creating an RTO region that is dominated by a only a few buyers or sellers of energy, or a region where an RTO of inappropriate scope and configuration can exercise transmission market power by acting as an unnecessary toll collector on a critical corridor.

Encompass existing control areas: Existing control areas have established systems for load balancing within their area. Most existing control areas are relatively small. For the sake of efficiency, it may be advisable not to divide them. However, the affected parties would not be precluded from proposing to divide control areas if they found it otherwise advantageous.

Encompass existing regional transmission entities: Because existing ISOs, and any other regional transmission entities we may hereafter approve, already integrate transmission systems, it may not be efficient to divide them into different regions. This is not to say, however, that RTO boundaries must coincide with existing regional transmission entities. An appropriate region may well be larger, and there may be circumstances that support combining or reconfiguring existing entities.

Encompass one contiguous geographic area: The competitive, efficiency, reliability, and other benefits of RTOs can be best achieved if there is one transmission operator in a region. To be most effective, that operator should have control over all transmission facilities within a large geographic area, including the transmission facilities of non-public utility entities. This consideration could preclude a noncontiguous region, or a region with "holes."

Encompass a highly interconnected portion of the grid: To promote reliability and efficiency, portions of the transmission grid that are highly integrated and interdependent should not be divided into separate RTOs. One RTO operating the integrated facilities can better manage the grid. This is not to say, however, that every weak interconnection belongs on a regional boundary. Where a weak interface is frequently constrained and acts as a barrier to trade, it may be appropriate to place that interface within an RTO region. It may be more difficult to expand a weak interface on the boundary between two regions; this may act as a barrier to trade between the two regions. The Commission welcomes comments on the relative merits of internalizing constraints within a region versus having constraints act as natural boundaries between regions.

Take into account existing regional boundaries (e.g. North American Electric Reliability Council (NERC) regions) to the extent consistent with the Commission's goals for RTOs: An RTO's configuration should, to the extent possible, not disrupt existing useful institutions. The Commission recognizes that utilities have been working together regionally in different contexts for some time. There is value in keeping together parties that have been working together.

Take into account international boundaries: The Commission recognizes

[200] The Midwest ISO is the only Commission-approved ISO that has not proposed a single control area.

that natural transmission boundaries do not necessarily coincide with international boundaries. Indeed, a large part of Canada's transmission system, and a small part of Mexico's, is interconnected on a synchronous basis with that of the U.S. Accordingly, an appropriate region need not stop at the international boundary. However, this Commission does not have, and does not seek, jurisdiction over the facilities in a foreign country. We will ask our international neighbors to participate in discussion of these issues. Perhaps what may be thought of as a "dotted line" boundary at the international border could be used to indicate that a natural transmission region does not necessarily stop at the border, while this Commission's jurisdiction does.

The Commission seeks comments on the appropriateness of these factors to determine an appropriate configuration for the regions in which RTOs would operate, and also asks if any additional factors may be appropriate.

b. Potential Geographic Configurations

Any number of RTO configurations could be appropriate regions. One approach to establishing RTO regions is to use existing configurations. These include the three electric interconnections within the continental United States, the ten NERC reliability councils, and the twenty-three NERC security coordinator areas. (*See* Appendix C to this NOPR for depictions of these configurations [201]). These configurations are offered only for the purposes of having three examples for assessing how well selected regions can satisfy the minimum RTO characteristics and functions and for focusing commenters on the trade-offs involved in determining an RTO configuration. The Commission has not concluded that the example sets of boundaries are acceptable configurations. The Commission seeks comments on how well the regions served by existing institutions would satisfy the factors enunciated above, and specifically how well they would be able to satisfy the minimum RTO characteristics and functions outlined in this section, and the advantages and disadvantages of these three examples. The Commission also welcomes presentation and evaluation of other methods to define appropriate regions.

c. Control of Facilities within a Region

In addition to the scope and configuration of the region, effective performance also requires that most or all of the transmission facilities in a region be included in the RTO. Any RTO proposal filed with us should plan to operate all transmission facilities within its proposed region. We recognize, however, that there may be cases where the proponents of an RTO may not be able to obtain agreement by all transmission owners within a region of appropriate scope and configuration to transfer operating control of their facilities to the RTO. This may occur, for example, because certain facilities may be owned by governmental entities that have restrictions on transfer of control that may require time to resolve. We do not believe that it would be desirable to deny RTO status or delay RTO start-up where the transmission owners representing a significant portion of the facilities within a region are ready to move forward, while a few others are not. On the other hand, we do not believe it would be desirable to approve an RTO proposal for a proposed region if the proponents represent only a small portion of the facilities in that region.

We therefore propose to accept as RTOs only those proposals for which a region of appropriate scope and configuration is identified and the proponents represent a sufficient portion of the transmission facilities within the identified region. Where the proponents do not represent all the facilities within a region, they should identify the reasons why all facilities are not represented, any efforts that will be made to eventually include all facilities, and any interim arrangements that could be made with the non-represented facility owners to maximize coordination within the region.

We solicit comments on how best to balance our goal of having RTOs in place that operate all transmission facilities within an appropriately sized and configured region against the reality that there may be difficulties in obtaining 100 percent participation in all regions in the near term. Should we deny RTO status for any proposal that does not include all transmission facilities within an appropriate region? If we do not deny RTO status for less than 100 percent participation, is there some guideline that we should use for determining when the proponents represent an appropriate "critical mass" for the region? Should we require that the RTO at least negotiate certain agreements with any non-participants within its region to ensure maximum coordination? If so, what should be the terms of such agreements?

Finally, we seek comment on the question of how much deference, if any, we should give to the proposed scope and regional configuration of a proposed RTO. How readily, if at all, after balancing all appropriate factors, should the Commission be willing to substitute its vision of an appropriate RTO configuration for that of its proponents? To what extent should the Commission take into account the degree of support in assessing a proposed RTO configuration? Should approval or disapproval by affected state commissions of the scope or configuration of a proposed RTO affect the level of deference the Commission should afford such a proposal?

3. Characteristic 3: Operational Authority. The RTO must have operational responsibility for all transmission facilities under its control.[202] (Proposed § 35.34(i)(3))

a. The Regional Transmission Organization May Choose to Directly Operate Facilities (Direct control), delegate certain tasks to other entities (Functional Control) or Use a Combination of the Two Approaches. (Proposed § 35.34(i)(3)(i))

Operational control raises two basic questions: What functions should be performed by an RTO? How should an RTO perform the functions that it has reserved for itself? With respect to the first question, there is a concern that some splits of functions between an RTO that is an ISO and existing control area operators could compromise reliability and allow the control area operators to continue to favor their own power marketing efforts.[203]

One solution would be for all RTOs to operate a single control area. We have decided not to propose this as a requirement or two reasons. First, the recent experience with the California ISO suggests that the cost of investing in new control centers and telecommunications systems and developing new operating systems can be very high.[204] Second, there is some uncertainty as to whether it is technically feasible to establish a single traditional control area over a large

[201] While the maps in Appendix C accurately depict the existing configurations extending into Canada, this is not intended to suggest that our jurisdiction under this proposed rule reaches there.

[202] Transmission facilities will be distinguished from local distribution facilities using the criteria that were established in Order No. 888. *Order No. 888*, FERC Stats. and Regs. ¶ 31,036 at 31,770–71.

[203] *Midwest ISO*, 84 FERC at 62,156–60, 62,161.

[204] A recent report commissioned by the California ISO found that the higher costs of the California ISO relative to other ISOs could be explained, in part, by the decisions "to build a privately dedicated communications network, to have a hot standby backup center half a state away, to not rely on existing infrastructure more than necessary, to attempt full functionality on day one, to accomplish the job in about one year. . . ." *See* "A Comparative Analysis Of Operating Independent System Operators In The United States," prepared by James H. Caldwell Jr. (TGAL, Inc.) For the California ISO, October 15, 1998, at 13.

geographic area. In light of these considerations, we do not propose to require that an RTO must operate a single control area. However, the RTO must have ultimate responsibility for providing non-discriminatory transmission service for all market participants and for ensuring the short-term reliability of the grid.[205] We propose to give an RTO considerable flexibility in deciding on the particular division of operational responsibilities with existing control areas that will allow it to achieve this outcome.

We will also grant an RTO considerable flexibility in deciding how best to perform the functions that it has reserved for itself. The RTO may choose to operate the grid through direct physical operation by RTO employees, contractual agreements with other entities (*e.g.*, transmission owners and control area operators) or combinations of the two. For example, an RTO could lease some control equipment from the owners of existing control centers or convert some employees at these control centers into RTO employees. Or alternatively, the RTO could establish a system of hierarchical control in which it operates a master control center and existing control centers become satellites of the RTO control center for certain specified functions.[206] Under this arrangement, the personnel of the existing control centers might become employees of the RTO or remain as employees of the control center owner but supervised by RTO personnel. We will leave it to the discretion of the RTO to decide on the combination of direct and functional control that works best for its circumstances.[207] Our only requirement is that the system of operational control chosen by the RTO must ensure reliable operation of the grid and non-discriminatory access to the grid by all market participants. In addition, to ensure that the RTO does not become locked into an operational system that is unsatisfactory, the Commission will require an RTO to prepare a public report that assesses the efficacy of its operational arrangements no later than two years after it begins operations.

The Commission requests commenters to address the following questions. What has been the experience of existing tight power pools with master-satellite and hierarchical forms of control? Was there a need to modify these operational arrangements when the pool was replaced by an ISO? Outside of tight power pools, has the functional unbundling requirement in Order No. 888 led to any divisions of previously integrated internal operational systems? If so, have these new divisions of operational responsibilities created any reliability problems?

b. The RTO must be the security coordinator for the transmission facilities that it controls. (Proposed § 35.34(i)(3)(ii))

The Commission will also require that any qualifying RTO be the NERC approved security coordinator for its region. A security coordinator is a new type of grid entity that typically coordinates reliability between multiple control areas across a region. It has been promoted by NERC since 1995 to improve coordination and communication across control areas. At present, there are more than 20 security coordinators.[208]

Up to now, the job of a security coordinator has been to anticipate reliability problems and to take actions to correct these problems if they arise. Among the key functions of a security coordinator are to: (1) perform load-flow and stability studies of the transmission system to identify and address security problems; (2) exchange necessary security information with control area operators, ISOs and regional reliability councils; (3) monitor real-time operating characteristics (*e.g.*, availability of operating reserves, interchange schedules, system frequency, actual flows versus limits, generation capacity deficiencies) that could affect reliability; (4) take appropriate action including, if necessary, the shedding of load in the event of a reliability problem.[209]

In our Midwest ISO order, we required that the proposed ISO must be the security coordinator for its region. Our justification for this requirement was that:

> This role [the role of a security coordinator] is central to maintaining grid reliability and non-discriminatory access. Under proposed NERC policies, security coordinators would be required to anticipate problems that could jeopardize the reliability of the interconnected grid. In the course of performing these reliability functions, the Security Coordinator would receive considerable information which is commercially sensitive. Therefore, it is important that the proposed Midwest ISO Security Coordinator be performed by an entity that is independent of market participants.

The same logic applies to any RTO proposal. Therefore, we will require that a qualifying RTO must be the security coordinator for its region.[210]

4. *Characteristic 4: Short-term Reliability.* The RTO must have exclusive authority for maintaining the short-term reliability of the grid that it operates. (Proposed § 35.34(i)(4))

a. The RTO must have exclusive authority for receiving, confirming and implementing all interchange schedules. (Proposed § 35.34(i)(4)(i))

Historically, interchange schedules have referred to the scheduling actions between adjacent control areas. These schedules could be triggered by the sale or exchange of electricity or the wheeling of electricity between the two control areas. The first type of action, the sale or exchange of electricity between control areas, usually has not been accompanied by a separate transmission transaction. Instead, the transmission service was implicit in the overall transaction and, therefore, its cost was not quoted separately. With the growth of unbundled transmission service, triggered in part by our Order No. 888 requirements, bundled interchange transactions will become rarer. This means that in the future, interchange schedules will generally be accompanied by, and coincide with, transmission schedules.

We are proposing that an RTO "must receive and evaluate all requests for transmission service under its own FERC approved tariff."[211] If the RTO operates a control area, this implies that the RTO will also be receiving, confirming and implementing interchange schedules. Therefore, the three actions should go hand-in-hand for an RTO that operates a control area.

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[205] In our order approving the Midwest ISO, we stated that our approval of the ISO was based on the applicants' commitment that the ISO would be able to "take *all* actions necessary to provide nondiscriminatory transmission service, promote and maintain reliability." *Midwest ISO*, 84 FERC at 62,159.

[206] *See, e.g.*, Marija Ilic and Shell Liu, Hierarchical Power System Control: Its Value in a Changing Industry, Springer-Verlag, 1996. It appears that certain types of hierarchical arrangements have operated successfully in the PJM and NEPOOL pools for many years.

[207] This topic is also addressed in our discussion of the RTO's role as a provider of ancillary services. See the discussion of Function 4.

[208] *See* NERC, Operating Policy 9—Security Coordinator Procedures. The current version of this document is available on the NERC website at http://www.nerc.com/~oc/opermanl.html. *See also*, NERC TLR Order, 85 FERC ¶ 61,353 at 62,360–62.

[209] *Midwest ISO*, 84 FERC at 62, 155–56.

[210] We note that this was also the conclusion of the blue-ribbon Electric Reliability Panel of NERC. In its final report, the panel concluded that "It is essential that the security coordinators perform their functions independent of any market influences." The panel recommended that security coordinators should be "structured as independent entities, or their role subsumed into independent system operator-type organizations." NERC, Electric Reliability Panel, "Reliable Power: Renewing the North American Electric Reliability Oversight System," December 1997, at 35.

[211] *See* the discussion of Function 1 (Tariff Administration and Design), *infra*.

However, this may not be the case for RTOs that do not operate control areas. As we stated in our Midwest ISO order, our basic concern is that non-RTO control area operators who are also competitors in power markets may be "able to know their competitors' schedules or transactions* * *" [212] If this is true, such knowledge would give the control area operators an unfair competitive advantage. The Commission directed the ISO to monitor for this potential problem and report to us immediately if the problem arises. We recognize, however, that it may be difficult to detect this discrimination. In addition to our current code of conduct standards, are there any actions that the Commission should require to reduce the likelihood of this problem that do not require the consolidation of all existing control areas within the region? Is it feasible for a non-RTO control area operator, operating within an RTO region, to perform its functions without having access to commercially sensitive information involving its competitors? For example, could an RTO provide control area operators with information about scheduled net interchanges between control areas without disclosing the individual transactions making up the new interchanges? [213]

b. The RTO must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities. (Proposed § 35.34(i)(4)(ii))

As we have stated before, the dividing line "between transmission control and generation control is not always clear because both sets of functions are ultimately required for reliable operation of the overall system." [214] The entity that controls the transmission system must have some degree of control over some generation. [215] In general, we do not think that this authority should extend to initial unit commitment and dispatch decisions of generators. However, the Commission believes that it is necessary and appropriate that the RTO have authority to order redispatch of any generating unit when necessary for the reliability of the grid.

c. When the RTO operates transmission facilities owned by other entities, the RTO must have authority to approve and disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards. (Proposed § 35.34(i)(4)(iii))

Control over transmission maintenance is a necessary RTO function because planned and unplanned outages of individual transmission facilities affect the overall transfer capability of the grid. If a facility is removed from service for any reason, the power flows on all regional facilities are affected. These shifting power flows may cause other facilities to become overloaded, and so adversely affect system reliability. The availability or unavailability of specific transmission facilities can also have major effects on electricity market prices. [216]

Under this proposed requirement, the RTO would determine whether the proposed maintenance of transmission facilities could be accommodated within established state, regional and national reliability standards. The RTO's regional perspective will allow it to coordinate individual maintenance schedules with each other as well as with expected seasonal system demand variations. Since the RTO will have access to extensive information, it will see the "big picture" and be able to make more accurate assessments of the reliability effect of proposed maintenance schedules than individual, sub-regional transmission owners.

If the RTO is a transmission company that owns and operates transmission facilities, these assessments would be an internal company matter. If the RTO is an ISO, it would need to review transmission requests made by various transmission owners (TOs) of its region. [217] In this latter case, we would expect the RTO to: receive requests for authorization of preferred maintenance outage schedules; review and test these schedules against reliability criteria; approve specific requests for scheduled outages; require changes to maintenance schedules when they fail to meet reliability standards; and update and publish maintenance schedules on a regular basis.

The Commission requests commenters to address a number of questions related to this proposed requirement. Does it cede too much or too little authority to the RTO? If the RTO requires a transmission owner to reschedule its planned maintenance, should the transmission owner be compensated for any costs created by the required rescheduling? Would it be feasible to create a market mechanism to induce transmission owners to plan their maintenance so as to minimize reliability effects? Should an RTO that is an ISO have any authority to require rescheduling of maintenance if it anticipates that the planned maintenance schedule will adversely affect power markets? If the RTO is a transco, can it manipulate its transmission maintenance schedules in a manner that harms competition?

The proposed requirement does not give the RTO any authority over proposed generation maintenance schedules. However, in our order approving the Midwest ISO, we observed that "the dividing line between transmission control and generation control is not always clear because both sets of functions are ultimately required for reliable operation of the overall system." [218] Should the RTO have some authority over generation maintenance schedules? If so, how much authority should it have?

We also anticipate that the RTO will need to establish performance standards for transmission facilities under its direct or contractual control. Such standards could take the form of targets for planned and unplanned outages. The rationale for this requirement is that two transmission owners should not receive equal compensation if one owner operates a reliable transmission facility while the other operates an unreliable facility. For RTOs that are transcos, we would anticipate that such quality standards would be implicit or explicit in any performance based regulatory proposal. [219]/ Is it possible for a non-profit ISO to establish similar incentive schemes for the transmission owners whose facilities it operates?

Facility ratings. It is widely recognized that reliable operation of the transmission system in the short-term requires both continuous monitoring of equipment availability and loading, and actions to maintain loading levels within the established operating ranges

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[212] *See Midwest ISO*, 84 FERC at 62,154–55.

[213] *See Id.* at 62,160:

[214] Id. at 62,151.

[215] This seems to be generally recognized in the industry. For example, the participants in the Midwest ISO proposed that the ISO "will possess authority over generation to the extent that generation affects transmission." *See* ER98–1438–000, Applicants' Response at 3.

[216] *See* "Staff Report to the FERC on the Causes of Wholesale Electric Pricing Abnormalities in the Midwest During June 1998," September 22, 1998, at 4–3.

[217] Since some of these transmission owners may also own generation, they may have an incentive to schedule transmission maintenance at times that would increase the prices received from their power sales. A transmission company, not affiliated with any generators, would not have these same incentives.

[218] *Midwest ISO*, 84 FERC at 62,180.

[219] We note that the National Grid Company in England and Wales reports annually on quality of service in certain dimensions (systems availability, interconnector availability, system security and quality of supply) to the Director General of Electricity Supply. *See* National Grid Company "Report of the Director General of Electricity Supply, Financial Year 1997–98." A copy of this report will be placed in the public record.

and equipment ratings. If a transmission line or other facility becomes overloaded or experiences a forced outage, the short-term reliability of the power system may be threatened. Therefore, we anticipate that the RTO will need to monitor equipment availability and loading so that it can determine which control actions or redispatch options are necessary. The options open to the RTO for ensuring short-term reliability, such as direct control of transmission facilities, initiating transmission loading relief procedures or pursuing redispatch options and bids, are discussed in other sections.

To determine whether existing or scheduled power flows will threaten short-term system reliability, flow levels must be compared to ratings established in power flow reliability studies. The entity that establishes these ratings and operating ranges will have a major influence on the reliable operation of the power system. Its determinations will not only affect system reliability but also ATC. The Commission believes that RTOs are best situated to establish ratings and operating ranges for two reasons. First, they will have the most complete information about expected and real-time operating conditions. Second, RTOs will be trusted since they will be independent in two ways: they will not have any economic interests in electricity market outcomes and they will not be owned or controlled by any market participants.

The Commission recognizes that an RTO that is an ISO may initially need to rely upon existing values for equipment ratings and operating ranges so as not to disrupt reliable system operation. The RTO will then have the ongoing task of validating and updating these existing values, focusing initially on those identified as critical to the development of a competitive electricity market.

The Commission understands that transmission owners may be concerned that changes in existing equipment ratings may lead to problems of equipment safety and possible damage. These concerns could trigger disputes over the values established by the RTO. We propose that if there is a dispute over values established for equipment ratings, the RTO values will prevail until the outcome of the dispute resolution process. It is the intent of the Commission to promote RTOs that have the expertise and personnel capable of determining both equipment ratings and operating ranges necessary to maintain system reliability. In addition, since RTOs will be independent of all stakeholders in the electricity market, they will not have an incentive to distort the operation of electricity markets by manipulating equipment ratings and reliability assumptions. And most significantly, since the RTO is ultimately responsible for system reliability, it will be careful not to harm system equipment. Therefore, to avoid an impasse over equipment ratings that are determined by one market participant and contested by a second, we believe that the RTO's values should prevail when there is disagreement, until resolution is reached through an ADR process approved by the Commission.[220]

The Commission asks commenters to address the following issues. Given that an RTO has responsibility for system reliability, what should be the extent of its liability for its actions? Would this differ depending on whether the RTO owns the facilities?

d. If the RTO operates under reliability standards established by another entity (*e.g.*, a regional reliabilify council), the RTO must report to the Commission if these standards hinder it from providing reliable, non-discriminatory and efficiently priced transmission service. (Proposed § 35.30(i)(4)(iv))

RTOs may be new organizations. However, they will be sharing some of their responsibilities with existing organizations. For example, the New England ISO shares its responsibilities with the NEPOOL RTG.[221] The New York ISO shares its reliability responsibilities with the New York State Reliability Council. We anticipate that, in the near future, RTOs will be implementing reliability standards that are established by a separate regional reliability council.[222] We believe this is necessary to maintain the reliable operation of the grid, but it also raises concerns because almost every reliability standard will have a commercial consequence, and regional or sub-regional reliability groups may not be as independent of market participants as RTOs.[223] As a consequence, an RTO could be required to implement a reliability standard that may favor the commercial interests of certain types of market participants when an equally effective, but more commercially neutral, variant of the standard might be feasible. Therefore, it is important that the RTO notify us immediately if implementation of externally established reliability standards will prevent it from meeting its obligation to provide reliable, non-discriminatory transmission service.

Minimum Functions

1. Function 1: Tariff Administration and Design. The RTO must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities. (Proposed § 35.30(j)(1))

The pro forma open access transmission tariff that accompanied Order No. 888's functional unbundling is based on a traditional approach to transmission service: it relies on embedded cost ratemaking, contract path scheduling and physical rights to service. We recognized that it did not break new ground on transmission pricing because it was based "on the practices and procedures" that were traditionally used by public utilities that owned transmission facilities. Instead, the focus of the pro forma tariff is on the non-price terms and conditions of transmission service needed to get non-discriminatory transmission service. Our intent was to "initiate open access" for individual transmission providers. We stated that our issuance of the pro forma tariff was "* * * not intended to signal a preference for contract path/embedded cost pricing for the future."[224] In the Capacity Reservation Tariff (CRT) NOPR that was issued at the same time, we emphasized that: "* * * the Commission is not committed to traditional tariff design."[225] Since the issuance of Order No. 888, the Commission has encouraged transmission providers to come forward with other open access transmission tariffs that they believe have pricing

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[220] This is the same policy that we adopted in approving the Midwest ISO. *See Midwest ISO*, 84 FERC at 62,165–66.

[221] Commissioner Malachowski, representing the New England Conference of Public Utility Commissions (NECPUC), stated that the current sharing of power between the New England ISO and NEPOOL is unsatisfactory. He said that the New England commissions believe that more decision making authority must be transferred to the ISO. As a specific example, the mentioned the need for the ISO to have more direct authority over market design. RTO Conference (Washington, D.C.), transcript at 123.

[222] In Order 888, we required that any ISO should "comply with their applicable standards set by NERC and the regional reliability council." (ISO Principle No. 4)

[223] *See Central Hudson*, 83 FERC at 62,411 for a discussion of our concerns about the relationship between the New York ISO and the New York State Reliability Council. In this instance, we were willing to accept the fact that the NYSRC will establish rules that the ISO would implement because any new rule or revisions to existing rules would be "subject to immediate suspension by the NYSRC if requested to do so by the New York ISO." *Id.*

[224] *Order No. 888*, FERC Stats. & Regs. at 31,666–67.

[225] *CRT NOPR*, FERC Statutes and Regulations at 33,228 (1996).

provisions that are equal or superior to the mandated tariff that was part of the Order No. 888 initiative.

To date, the most significant innovations in transmission access and pricing have been brought to us by ISOs. This is not surprising. Given the interconnectedness of the grid, it is necessary to introduce regional pricing innovations through some kind of regional organization. This cannot be done by individual transmission providers acting alone. We anticipated that regional organizations would be the likely innovators in our Transmission Pricing Policy Statement. Among the innovations that have been proposed since the issuance of Order No. 888 are: locational pricing; fixed transmission rights (FTRs) and transmission congestion contracts (TCCs) that give defined financial rights to grid users (*i.e.*, financial rather than physical rights to the grid); and explicit market-based pricing of congestion and ancillary services.[226] In almost every instance, we have approved these proposals because they offer the promise of promoting overall operating efficiency and encouraging fair, open and competitive energy markets.

Therefore, we take this opportunity to reaffirm the importance of such reform by establishing it as an explicit obligation for qualifying RTOs. The wording of this requirement is general and this is intentional. The Commission believes that RTOs are in the best position at this time to develop innovative transmission access and pricing regimes that will promote competition and meet the needs of their region. The Commission invites commenters to address whether more specific guidance is required.

In carrying out Function 1, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnections.[227] (Proposed § 35.30(j)(1)(i))

The rationale for this standard is straightforward. The RTO cannot ensure nondiscriminatory transmission service to all market participants unless it is the sole provider of transmission service over facilities that it owns or controls. If it is to be an effective "provider", it must be the only entity that receives, evaluates and approves or denies requests for transmission service. However, it cannot make informed decisions unless it has accurate and unbiased information about pending transmission requests and current system conditions. This, in turn, implies that in addition to being the transmission service provider, the RTO must be the operator of the OASIS site as well as the regional security coordinator (see the discussion of function 5 and characteristic 3).

An organization like an independent scheduling administrator that simply monitors the scheduling decisions of current transmission owners and offers dispute resolution services in case of a dispute would not qualify as an RTO. Similarly, a transmission organization that offers service under another entity's tariff would not meet this standard.

An RTO's obligation to provide nondiscriminatory transmission service is not limited just to existing users. It is important that the RTO ensures nondiscriminatory access to transmission service for new entrants such as new generators. This requires that the RTO, rather than existing transmission owners, have the authority to review and approve requests for interconnections. The Commission believes that the RTO cannot be an effective provider of transmission service if it lacks the authority to ensure that new customers are interconnected to the grid. This standard should be relatively easy to implement for an RTO that owns transmission facilities. However, it may be more difficult for an RTO that does not own transmission facilities because actual physical construction of the interconnection facilities will usually be made by an existing transmission owner who may also be a competitor of the new generator. Therefore, the Commission invites comments on how this standard can be made effective for RTOs that are ISOs. Are there lessons to be learned from the experience of qualifying facilities (QFs) under PURPA in getting interconnections to the grid that would be applicable to ISOs? Should this standard be expanded to give the RTO the authority to review and approve all new interconnections (*e.g.*, to connect new generators, to improve reliability, to increase trading opportunities with neighboring regions) or all transmission investments above some threshold dollar amount?

b. The RTO tariff must not result in transmission customers paying multiple access charges to recover capital costs over facilities that it controls (*i.e.*, no pancaking of transmission access charges). (Proposed § 35.34(j)(1)(ii))

The elimination of transmission rate pancaking for large regions is a central goal of the Commission's RTO policy. Therefore, the offering of non-pancaked transmission access charges is a requirement for a conforming RTO. In the existing world of many individual transmission service providers, transmission customers have generally been required to pay an access charge to each transmission provider along the contract path (and pay nothing to providers off the contract path). This is a form of distance-based transmission pricing, but the charge is a function of corporate boundaries crossed on the contract path rather than distance traveled on actual flow paths. Such pancaked transmission charges have led to multiple transmission charges across several transmission systems and make it difficult to create region-wide power markets. Competition is clearly enhanced when customers are able to access larger numbers of generators over a wide geographic region when they pay a single transmission access charge. In Order No. 888, we required tight power pools and holding companies to offer a system-wide tariff with non-pancaked rates.[228] To date, non-pancaked transmission access charges have been a feature of all five ISOs that we have approved. In this NOPR, we are proposing to extend that requirement to RTOs.

[226] *See, e.g., Pacific Gas & Electric*, 81 FERC ¶ 61,122 (1997), *Central Hudson*, 83 FERC ¶ 61,352 (1998), *NEPOOL*, 85 FERC ¶ 61,242 (1998); *PJM*; 81 FERC ¶ 61,257 (1997).

[227] The Commission, of course, retains ultimate authority to order transmission services and interconnections pursuant to the FPA.

[228] *Order No. 888*, FERC Stats. & Regs. at 31,727–29, 31,731.

Would the requirement for a tariff with non-pancaked rates make the voluntary formation of RTOs more difficult because it might result in the potential for sudden and unacceptable transmission rate charges? Is the severity of any such problem related to the scope and regional configuration of the proposed RTO? Does the use of so-called license plate design allow the RTO to meet this requirement without cost shifting? Would the provision for a reasonable transition period help?

Waiving of access charges. While the Commission wishes to encourage more efficient intra-regional trade, it also would like to encourage inter-regional trade. Boundaries are always a potential impediment to trade, whether between states, RTOs or countries. Therefore, we encourage RTOs to negotiate the mutual waiving of transmission access charges to increase the size of effective trading areas. In the Midwest ISO proceeding, we were told that this was difficult to implement.[229] Therefore, commenters are requested to recommend actions that the Commission could take to facilitate reciprocal waiving of access charges. Even if there is mutual waiving of access charges, are there other pricing impediments to inter-regional trade (*e.g.*, differences in scheduling and curtailment conventions between regions) that are likely to impede trade?

2. Function 2: Congestion Management. The RTO must ensure the development and operation of market mechanisms to manage transmission congestion. (Proposed § 35.34(j)(2)).

In carrying out Function 2, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. The market mechanisms must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals regarding the consequences of their transmission usage decisions. The RTO must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant. (Proposed § 35.34(j)(2)(i))

As we stated in our recent order addressing NERC's transmission loading relief (TLR) procedures, the traditional approaches to congestion management may no longer be acceptable in a competitive, vertically de-integrated industry.[230] For example, the use of administrative curtailment procedures has important economic consequences for market participants, yet such procedures are usually invoked without regard to the relative value of transactions that are curtailed. This can lead to a considerable disruption of power markets and can be financially damaging for market participants. The Commission has concluded that efficient congestion management requires a greater reliance on market mechanisms.[231] Recent experience suggests that only a large regional organization like an RTO will be able to create a workable and effective congestion management market.[232]

As we noted in our order approving the PJM ISO, markets that are based on locational marginal pricing and financial rights for firm transmission service provide a sound framework for efficient congestion management.[233] However, just as we do not intend to mandate a single corporate form for RTOs, we will not require one specific market approach to congestion management. It is our intent to give RTOs considerable flexibility in experimenting with different market approaches to managing congestion. However, we believe that a workable market approach to congestion management should generally establish clear and tradeable rights for transmission usage, promote efficient regional dispatch, support the emergence of secondary markets for transmission rights, and provide market participants with the opportunity to hedge locational differences in energy prices.

A market approach to congestion management should lead to more efficient transmission prices. As we explained in our Transmission Pricing Policy Statement, an efficient pricing policy must meet certain objectives.[234] Of the four objectives set forth in the Policy Statement, two are particularly relevant for congestion management. First, the generators that are dispatched in the presence of transmission constraints should be those that can serve system loads at least cost, given the constraints. Second, given that the demand for transmission services during periods of congestion exceeds the system's ability to supply them, the limited transmission capacity should be used by market participants that value that use most highly.

In designing market mechanisms for congestion management, the Commission recognizes that it is important to consider the time frame in which decisions must be made and actions must be taken. It is the nature of electric systems that operating conditions, including those that lead to the presence or absence of congestion, are constantly changing. Thus, to manage congestion efficiently while ensuring safety and reliability, system operators must be able to take decisive action quickly.

One possible implication of this need for quick, decisive action is that markets that directly support congestion management may have to be subject to some coordination by the RTO. For example, a congestion market that is not coordinated by the RTO might require transmission customers to negotiate individually with generators to pre-arrange an alternative dispatch that would allow the transmission customer's transaction to proceed (or to be efficiently altered) if and when congestion arises. However, because congestion can occur suddenly and unexpectedly, time may not permit the operator to (1) identify impending transmission constraints, (2) inform customers whose transactions are affected, (3) allow customers to contact generators, and (4) receive instructions from customers as to what actions they wish the operator to take with respect to their pending transactions. We have expressed concerns that such a process may be unwieldy and even unworkable in the limited time in which operators must act.[235] Although the process could be simplified by completing some of these activities in advance, such simplifications may come at the cost of eliminating some potentially efficient options.

The Commission invites comments on our requirement that RTOs must be responsible for managing congestion with a market mechanism. Can

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[229] *See* Response of Midwest ISO Participants, May 1, 1998, at 11–13.

[230] *See NERC*, 85 FERC at 62,364.

[231] *Id.*

[232] The recent experience of Commonwealth Edison suggests that redispatch markets operated by individual utilities will not be able to elicit an adequate response by generators. After six months of an experimental program, Commonwealth concluded that it is "difficult for one transmission owner to identify and implement redispatch" when the physical limitations and cost effective options for relief are on other transmission systems. According to Commonwealth, the only viable solution would be for the redispatch market to be operated by a regional transmission system operator. *See* Commonwealth Edison, Interim Report on Non-Firm Redispatch, Docket No. ER98–2279, December 17, 1998, at 4 and 10.

[233] *See, e.g., PJM*, FERC 62,252–53.

[234] *Transmission Pricing Policy Statement*, FERC Stats. & Regs. at 31,140–44.

[235] We expressed similar concerns in our order authorizing the formation of the Midwest ISO. *See Midwest ISO*, 84 FERC at 62,165–66. Nevertheless, we opted to allow the Midwest ISO to go forward with its proposal in order to gain actual operating experience.

decentralized markets for congestion management be made to work effectively and quickly? Can the RTO's role be limited to that of a facilitator that simply brings together market participants for the purpose of engaging in bilateral transactions to relieve congestion? If not, will these markets require centralized operation by the RTO or some other independent entity? How can an RTO ensure that enough generators will participate in the congestion management market to make possible a least-cost dispatch? Are there any special considerations in evaluating market power in a congestion market operated or facilitated by an RTO?

We propose that the congestion management function need not necessarily be in place on the first day of RTO operation, and propose to allow up to one year after start-up for this function to be implemented. We recognize that the new approaches to congestion management called for by newly competitive markets may take additional time to work out. We seek comment on whether such an additional implementation time period is warranted, and whether one year is an appropriate additional time period.

3. Function 3: Parallel Path Flow. The RTO must develop and implement procedures to address parallel path flow issues within its region and with other regions. The RTO must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operation. (Proposed § 35.34(j)(3))

Many power sales and transmission service contracts are written under the assumption that the power delivered will flow on a particular contract path. This relatively straightforward and easy to administer "contract path" approach assumes that it is possible to determine and fix the path through the transmission network along which power will flow from source to sink. However, this assumption often does not accurately reflect what actually occurs because the scheduled power transfer will flow across the interconnected electrical path between source and destination according to laws of physics, which means that some power may flow over the lines of adjoining transmission systems. This power flow effect is commonly referred to as "parallel path flow" or "loop flow."

Parallel path flows have the potential to create, and have in the past created, disputes among transmission system owners. There are efficiency and economic equity issues involved when a scheduled transaction in fact causes power flows over the facilities of an entity that is not compensated, or when the costs of mitigating parallel flows are allocated to various transmission owners.[236] There are also reliability issues involved when parallel path flows overload a transmission line, and decisions must be made as to what actions to take, and who should bear responsibility for taking necessary steps to unload that line.[237] The interdependent nature of electricity flow implies that one party's ability to transmit energy will depend upon the actions of others, and, for scheduling and pricing purposes, the capacity of the entire network and not just individual systems is the most important factor.[238]

The Commission has previously expressed its view that the issues surrounding parallel path flow are best resolved by mutual arrangements between the utilities that have chosen to interconnect.[239] More recently, the Commission directed all public utilities in the Eastern Interconnection to file an interim redispatch plan if they are not currently participating in a regional congestion management program through a power pool.[240]

The Commission believes that the formation of RTOs, with their widened geographic scope of transmission scheduling and expanded coverage of uniform transmission pricing structures provides an opportunity to "internalize" most, if not all, of the effect of parallel path/loop flow in their scheduling and pricing processes within a region. In particular, we believe that RTO access to region-wide information on network conditions and power transactions, coupled with efficient congestion management and well specified physical and financial transmission usage rights, could help RTOs, as regional grid managers, in taking preemptive action against curtailment incidents that would otherwise be induced by parallel path/loop flow loading of critical transmission facilities. We anticipate that parallel path/loop flow related disputes will diminish to the extent that RTOs are relatively large and able to implement more realistic scheduling and pricing procedures that subsume the effect of parallel path/loop flow within their regions.

We propose that measures to address parallel path flow may not necessarily be in place on the first day of RTO operation, and propose to allow up to three years after start-up for this function to be implemented. We seek comment on whether such an additional implementation time period is warranted, and whether three years is an appropriate additional time period.

4. Function 4: Ancillary Services. An RTO must serve as the supplier of last resort of all ancillary services required by Order No. 888, FERC Stats. & Regs. ¶31,038 (Final Rule on Open Access and Stranded Costs), and subsequent orders. (Proposed § 35.34(j)(4))

In carrying out Function 4, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. All market participants must have the option of self-supplying or acquiring ancillary services from third parties subject to any general restrictions imposed by the Commissions's ancillary services regulations in Order No. 888, FERC Stats. & Regs. ¶ 31,038 (Final Rule on Open Access and Stranded Costs), and subsequent orders. (Proposed § 35.34(j)(4)(i))

An RTO is a transmission provider and therefore is subject to the general requirements established by the Commission for the provision of ancillary services under Order Nos. 888 and 889 and succeeding orders. Specifically, these require that the transmission provider must provide or cause to be provided six ancillary services on an unbundled basis.[241] Of the six ancillary services, a transmission customer is obligated to purchase two of the services from the transmission provider (the RTO)—scheduling, system control and dispatch service and reactive supply and voltage control from generation. For the remaining four services, a transmission customer has the option of self-providing these services, either by acquiring them from

[236] *See* Indiana Michigan Power Company and Ohio Power Company, 64 FERC ¶ 61,184 (1993) (*Indiana Michigan*) (complaint that 95% of a power sale flowed over transmission system that was not compensated); Southern California Edison Company, *et al.*, 73 FERC ¶ 61,219 (1995) (*Southern California*) (Commission approved plan for mitigating loop flows within the WSSC).

[237] *See NERC*, 85 FERC ¶ 61,353 (1998).

[238] The Order No. 888 *pro forma* open access tariff does not explicitly recognize the effect of parallel path/loop flow.

[239] *See Indiana Michigan*, 64 FERC at 62,554.

[240] *NERC*, 85 FERC at 62,363–64.

[241] The six ancillary services are: (1) Scheduling, System Control and Dispatching Service; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve-Spinning Reservice; and (6) Operating Reserve-Supplemental Reserve Service. *Order No. 888*, FERC Stats. & Regs. at 31,706–17; *Order No. 888–A*, FERC Stats. & Regs. at 30,227–34.

a third party or providing them from the customer's own resources.

Our rationale for imposing the ultimate supply obligation on the RTO is that not all transmission customers may be equally able to self-supply (some own generation, others do not) and that in many circumstances it may be more efficient (i.e., less costly) for the RTO to provide the service for all transmission users on an aggregated basis. Our rationale for allowing self-supply is that it provides a possible competitive check on the RTO to ensure that it acquires the services at lowest cost. In addition, the Commission believes, as a matter of policy, that legal monopolies should not be granted (i.e., serving as the sole provider of ancillary services) unless they are natural monopolies.

The ancillary services policies in Order Nos. 888 and 889 were developed for transmission providers that were generally vertically integrated utilities. There was an expectation that they would be able to provide many of the generation based ancillary services from their own generating resources. An RTO by definition will not own any generating resources. Does this difference necessitate a different set of ancillary service requirements for RTOs? Are there other ancillary services, in addition to scheduling, system control and dispatch, and reactive supply and voltage control from generation sources, for which the self-supply option should be eliminated? Under what circumstances can the RTO's obligation as the ancillary services supplier of last resort be eliminated?

b. The RTO must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided. All ancillary service providers must be subject to direct or indirect operational control by the RTO. The RTO must promote the development of competitive markets for ancillary services whenever feasible. (Proposed § 35.34(j)(4)(ii))

This policy would, in effect, grant RTOs the exclusive right, subject to national and regional reliability norms, to determine the quantities and, in some instances, the locations at which certain ancillary services must be provided. It would also require that the RTO be able to exercise complete operational control, either directly or indirectly, over any supplier of ancillary services.

Direct control (sometimes referred to as hands-on control or actual physical operation) would require, for example, that RTO employees "push the button" or that RTO computers send instructions directly to generating units or other facilities to take certain physical actions. Automatic generation control (AGC) might be one example of direct control. If the RTO has direct control, it would have authority, by contract or other means, to send direct electronic signals to those generators who have offered, in return for a payment, to increase or decrease the output of their units in response to the RTO's signals. Indirect control (sometimes referred to as functional control, directed control or contractual control) requires that the RTO send instructions to the owner of the facility who then, in turn, performs the actual physical actions to implement these instructions. Indirect control usually requires that there be a contractual agreement between the RTO and the owner of the facilities that has agreed to provide ancillary services.

The Commission requests commenters to address whether these are minimum requirements needed to ensure that the RTO can satisfy its obligation to maintain targeted levels of reliability. Would it be feasible for the RTO to maintain reliability with less authority?

In our Midwest ISO order, we stated that the ISO "* * * should use competitive procurement for all services needed to operate the system."[242] This general requirement would apply to ancillary services since they are clearly needed to operate a reliable bulk power system. One prerequisite for competitive procurement is a competitive market.[243] The Commission would anticipate that many of the generation-based ancillary services (*e.g.*, balancing and reserves) could be acquired in short-term markets that would operate in parallel to basic energy markets.[244] This has been the approach taken by most of the ISOs that we have approved and we see no reason why this would be different for transcos or other types of RTO entities. Other services such as black start capability and voltage support are probably best acquired in long-term markets where potential suppliers would compete for the right to enter into a long-term contract with the RTO. Apart from establishing the general requirement to use competitive markets, the Commission believes that it is best to leave many of the detailed market design questions to the individual RTOs with case-by-case review by us.[245] As we noted earlier, we intend to permit regional flexibility and encourage experimentation. Such experimentation would be discouraged if we issued regulations that are too detailed.

The Commission believes that, whenever it is economically feasible, it is important for the RTO to provide accurate price signals that reflect the costs of supplying ancillary services to particular customers. Accurate price signals are especially important because some of the RTO's customers may be competing against each other in other power sales markets. It is important that the RTO's actions not distort regional power market competition by charging potential competitors inaccurate prices for ancillary services that they purchase from the RTO.

c. The RTO must ensure that its transmission customers have access to a real-time balancing market. The RTO must either develop and operate such markets itself or ensure that this task is performed by another entity that is not affiliated with any market participant. (Proposed § 35.34(j)(4)(iii))

Real-time balancing refers to the moment-to-moment matching of loads and generation on a system-wide basis. It is a function that control area operators must perform to maintain frequency at 60 hz. Real-time balancing is usually achieved through the direct control of select generators (and, in some cases, loads) who increase or decrease their output (or consumption in the case of loads) in response to instructions from the system operator. Over the last two years, the Commission has seen an increasing use by system operators of market mechanisms that rely on bids from generators to achieve

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[242] *See* Midwest ISO, 84 FERC ¶ 61,231 at 62,164 (1998).

[243] However, we recognize that the existence of a competitive supply market for ancillary services is no guarantee that the RTO will automatically buy efficiently. Therefore, since the RTO may be the de facto buyer of many of these services, the Commission is receptive to performance-based regulatory proposals that would give RTOs explicit incentives to be efficient buyers of ancillary services. *See* section III.F.

[244] *See* Eric Hirst and Brendan Kirby, Unbundling Generation and Transmission Services for Competitive Electricity Markets, a report prepared for the National Regulatory Research Institute (NRRI 98–05), January 1998.

[245] These would include design issues such as: Are ancillary service bids received before, after or at the same time as energy market bids? Do ancillary service markets clear simultaneously or sequentially? Must the RTO publicly announce the amount of each ancillary service that it needs prior to bidding? What do generators bid (capacity, energy or both)? If there are multiple bid components, are they evaluated together or separately? Should the RTO acquire ancillary services from outside its region? These are some of the design issues that have arisen in the operation of ancillary markets by the California ISO. We expect that there will be other design issues as other ancillary market proposals are presented to us.

overall, real-time balancing.[246] Since system-wide balancing is a critical element of reliable short-term grid operation, we will require that it be a responsibility of the RTO. The Commission would expect that an RTO will perform the overall system balancing function directly if it operates a control area or indirectly if it supervises the operation of sub-regional control areas.

A separate, but related, issue is balancing by individual grid users. The fact that the overall system must be in balance to maintain frequency does not necessarily require that there be a moment-to-moment balance between the individual loads and resources of bilateral traders and load-serving entities and the schedules and actual production of individual generators. Imbalances are inevitable since generators do not exactly meet their schedules and loads always vary from moment-to-moment.

As we noted in the Midwest ISO order, unequal access to balancing options for individual customers can lead to unequal access in the quality of transmission service available to different customers. This could be a significant problem for RTOs that serve some customers who operate control areas and other customers who do not. Under current NERC regulations, control area operators have access to inadvertent energy accounts so they can pay back imbalances in kind and thereby avoid any penalties.[247] In contrast, non-control area transmission customers do not have access to such accounts. Instead, under the pro forma tariff, load serving entities are subject to a deadband and then penalties if the magnitude of their imbalances fall outside the deadband. Our concern, as we stated in our Midwest ISO order, is that "nondiscriminatory access would suffer" under such a system.[248] Therefore, the Commission proposes to require that RTOs operate a real-time balancing market that would be available to all transmission customers, or ensure that this task is performed by another entity not affiliated with market participants.[249]

The Commission believes that it is important to give RTOs considerable discretion in how such a market would be operated. An RTO may choose to operate the market itself or assign the task to another entity (*e.g.*, a for-profit exchange) that would operate the market under the RTO's supervision. In addition, the Commission would expect that the design of such a market will necessarily vary between RTOs that operate control areas and those that do not. However, in those instances where RTO does not operate a control area, the RTO must be especially vigilant that transmission customers who continue to operate control areas cannot use that functional responsibility to the disadvantage of non-control area customers.[250]

The Commission invites comments on the use of market mechanisms to support overall system balancing and imbalances of individual transmission users. Is it feasible to rely on markets to support a function that is so time-sensitive? Can such markets be made to function efficiently if the RTO is not a control area operator? For the imbalances of individual transmission customers, should a distinction be made between loads and generators? Should customers have the option of paying for all imbalances in such a market or only imbalances within a specified band?

5. *Function 5: OASIS and TTC and ATC.* The RTO must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC. (Proposed § 35.34(j)(5))

The operation of an OASIS site has many dimensions. For example, it includes specific practices and terminology. In response to a consensus request from the industry, we recently issued a NOPR that proposes to standardize various practices and terms. The focus of that NOPR is on standardization of protocols for posting, naming and responding to posted information.[251] Apart from these practices, the central and probably most controversial aspect of OASIS operation is the calculation and posting of ATC numbers. The calculation of ATC depends, in turn, on the calculation of TTC.[252] These calculations are different from business practices in that the focus is on content rather than procedures and practices. There is widespread dissatisfaction with the reliability of posted ATC numbers. The Commission has received formal and informal complaints from transmission customers stating that they cannot rely on posted ATC numbers. Criticisms of posted ATC numbers have also been the subject of a widely publicized report issued by a major industry group.[253] It is been alleged that transmission providers who also compete in power markets against their competitors have both the incentive and ability to post unreliable ATC numbers.[254]

We recognize that an individual transmission provider may post ATC numbers on OASIS in good faith only to find that the projected capability does not exist because of scheduling decisions taken by other transmission providers elsewhere on the grid. In such circumstances, transmission providers are not acting unscrupulously. Instead, the problem is simply a mismatch between information flows and electrical flows. Regional transmission organizations that perform ATC calculations based on complete and timely information would tend to eliminate this problem. This seems to be supported by fact that the Commission has received very few complaints about ATC calculations made by ISOs.

The essential feature of our proposed requirement is that the RTO become the administrator of a single OASIS site for all transmission facilities over which it is the transmission provider. This is consistent with earlier orders.[255] Moreover, every ISO that we have approved so far has become the OASIS site administrator for the customers that it serves. However, we recognize that this generally stated requirement inevitably raises questions as to the level of RTO involvement in ATC calculations. An RTO could be involved in ATC calculations at three general levels. At Level 1, the RTO's role would be limited to receiving and posting ATC numbers received from transmission owners. At Level 2, the RTO would receive raw data from transmission

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[246] *See Pacific Gas & Electric*, 81 FERC ¶ 61,122 (1997), *Central Hudson*, 83 FERC ¶ 61,352 (1998), *NEPOOL*, 85 FERC ¶ 61,242 (1998); *PJM*, 81 FERC ¶ 61,257 (1997).

[247] NERC Operating Manual, at P1–9.

[248] Midwest ISO, 84 FERC at 62,155.

[249] We have already approved such markets for four ISOs. *See e.g.*, PJM Interconnection, L.L.C., Order Accepting In Part and Rejecting In Part Proposed Revisions To Rate Schedules, September 16, 1998 and New England Power Pool, "Order Conditionally Accepting Market Rules and Conditionally Approving Market Based Rates, 85 FERC ¶ 61,379 (1998). These markets generally allow all transmission customers to settle their imbalances at real time energy market prices. We note that participants in the Midwest ISO have issued a request for proposals that could lead to the establishment of such a market in their region. *See* Solicitation of Interest, Creation of an Independent Power Exchange for the U.S. Midwest, Joint Committee for the Development of a Midwest Independent Power Exchange (Feb. 5, 1999).

[250] *See Midwest ISO*, 84 FERC at 62,159–160.

[251] Open Access Same-Time Information System, Notice of Proposed Rulemaking, FERC Statutes and Regulations ¶ 32,531 (1998).

[252] *See* section III.A.1 for definitions of these terms.

[253] Commercial Practices Working Group and the OASIS How Working Group, "Industry Report to the Federal Energy Regulatory Commission on the Future of OASIS, October 31, 1997.

[254] This is discussed more fully in Section III.A.

[255] In the Primergy merger order, we required that the proposed ISO should be "responsible for calculating ATC." *See* Primergy, 79 FERC ¶ 61,158, May 14, 1997.

owners and centrally calculate ATC values. At Level 3, the RTO would centrally calculate ATC values on data partially or totally developed by the RTO. The proposed requirement that the RTO be the OASIS site administrator is based on the expectation that the RTO will operate at Level 3.

The RTO must eventually operate at Level 3 to ensure that ATC values are based on accurate information that is based on consistent assumptions and to minimize the opportunities for conscious manipulation. In general, the RTO must perform all the calculations and studies necessary to develop the underlying data. When data are supplied by others, the RTO must create a system for regularly validating the data for accuracy and assumptions. If there is a dispute over ATC values, the RTO's values should be used pending the outcome of the dispute resolution process.[256] The RTO must also establish the operating standards (subject to regional and national reliability requirements) underlying the ATC calculations.

6. *Function 6: Market Monitoring.* The RTO must monitor markets for transmission services, ancillary services and bulk power to identify design flaws and market power and propose appropriate remedial actions. (Proposed § 35.34(j)(6))

In carrying out Function No. 6, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. The RTO must monitor markets for transmission service and the behavior of transmission owners, if any, to determine if their actions hinder the RTO in providing reliable, efficient and nondiscriminatory transmission service. (Proposed § 35.34(j)(6)(i))

b. The RTO must monitor markets for ancillary services and bulk power. This obligation is limited to markets that the RTO operates. (Proposed § 35.34(j)(6)(ii))

c. The RTO must periodically assess how behavior in markets operated by others (*e.g.*, bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects RTO operations and conversely how RTO operations affect the performance of power markets operated by others. (Proposed § 35.34(j)(6)(iii))

The RTO's role as market monitor. To date, the Commission has found monitoring to be essential in helping to ensure non-discrimination and efficiency in the provision of transmission and ancillary services; encourage fair, open, and competitive energy markets; and promote overall operating efficiency.[257] As we stated in the New England ISO order, "markets are likely to evolve in ways that may not be totally anticipated. To ensure that the markets operate competitively and efficiently, it is important that any problems involving market power or market design are quickly identified so that appropriate solutions can be crafted."[258] To date, we have been willing to use ISOs, or their independent monitoring organizations, as a "first line of defense" in detecting both market power abuses and market design flaws.

The proposed requirements are arguably based on the presumption that an RTO will be a non-profit, system operator that does not own any facilities. The requirements may not be appropriate for a for-profit transco that owns the facilities that it operates.[259] Therefore, a threshold question is: what should be the market monitoring role, if any, of an independent, for-profit transco? Is it reasonable to expect that such an RTO could be objective in its assessments? If the RTO is an ISO, do its monitoring activities need to be further insulated to ensure independence and objectivity? For example, should monitoring be performed by one or more individuals or organizations that are funded by the RTO but that have the right to issue reports without the RTO's approval?

The Commission believes that RTOs that are ISOs have a significant comparative advantage over other entities in monitoring markets.[260] First, RTOs have access to considerable information about market conduct and performance. For example, we would expect that an RTO, in the normal course of business, will develop or receive information on quantities of bulk power and transmission services bought and sold by different market participants, expected and real time transmission system conditions, planned maintenance of both generation and transmission facilities and anticipated and real time patterns of load and generation. Second, RTOs will be completely independent of all market participants. For these reasons, the Commission believes that we and our colleagues in state commissions can have great confidence in the RTO market assessments.[261] Our early experience with market assessments performed by the New England and California ISOs has been encouraging. The assessments have been comprehensive and objective even to the point of criticizing past actions by the ISOs themselves.[262]

Despite the advantages of better information and incentives, the Commission believes that it is neither fair nor feasible to impose a monitoring obligation on RTOs for markets that they do not operate. Our preliminary assessment is that it would be difficult for an RTO to monitor a market in which it does not have information on prices, bidding patterns and marginal costs. However, our experience with ISOs has shown that markets for power, ancillary services and transmission service are inextricably intertwined regardless of how they are organized or who operates them.[263] Therefore, we are proposing a middle ground for monitoring regional markets not operated by the RTO. The RTO's monitoring of markets operated by others will be limited to assessing how behavior in these markets affects RTO markets and operations and conversely how RTO markets and operations affect these other markets.

The Commission also recognizes that any markets, whether operated by the RTO or others, will inevitably be affected by basic structural characteristics such as the existing pattern of ownership and control of generation and transmission facilities. Such characteristics are often beyond the control of the RTO. Since our overarching goal in promoting RTOs is to promote fair, open and competitive electricity markets, we and our state commission colleagues need to understand how these structural features affect the potential for competition. Therefore, we propose to require RTOs to provide periodic assessments as to the effect of existing structural conditions on the competitiveness of their region's

[256] This is the same requirement that the Commission imposed on the Midwest ISO. *See Midwest ISO*, 84 FERC at 62,154.

[257] *Pacific Gas & Electric*, 81 FERC at 61,552; *PJM*, 81 FERC at 62,282; *NEPOOL*, 85 FERC at 62,479–480; *Midwest ISO*, 84 FERC at 62,180–181.

[258] New England ISO, 85 FERC ¶ 62,379 at 62,479–480 (1998).

[259] We note that at least one entity that is contemplating the creation of a for-profit transmission company has proposed that this company would perform a market monitoring function. *See* Statement of Mr. Frank Gallaher on behalf of Entergy Corporation, Regional ISO Conference (New Orleans), transcript at 18.

[260] *See Midwest ISO*, 84 FERC at 62,181.

[261] The early experience with market assessments in California and New England seems to support this conclusion. *See* AES Redondo Beach, *et al.*, 85 FERC ¶ 61,123 at 61,462 (1998).

[262] *See* Peter Cramton and Robert Wilson, A Review of ISO New England's Proposed Market Rules, Docket No. ER97–1079, September 9, 1998, and the California ISO Market Surveillance Committee's Preliminary Report On the Operation of the Ancillary Services Markets., Docket No. ER98–2843, August 19, 1998 Markets.

[263] *See* AES Redondo Beach, *et al.*, 85 FERC ¶ 61,123 at 61,453 and 61,459–460 (1998).

electricity markets. Of all the industry organizations that may exist in a region, we think that an RTO is best suited to make this assessment because of its first hand knowledge of day-to-day grid and generation operations and its independence.

The Commission requests comments on several threshold issues related to these proposed market monitoring requirements. Some argue that RTOs should not be charged with any monitoring responsibilities particularly with respect to market power abuses.[264] They argue that the antitrust laws and the Commission offer sufficient protection against competitive abuses. Others have argued that RTOS are somewhat akin to organized stock exchanges and that the Commission should follow the SEC precedent of requiring extensive and sophisticated market monitoring by all of the organized exchanges. Are there features of electricity and transmission markets that argue for imposing similar market monitoring responsibilities on RTOs?

If the Commission decides to require RTOs to provide some form of market monitoring, there are several other questions that arise. Should the Commission rely on RTOs as the "first line of defense" for detecting both design flaws and market power abuses? If this were our approach, what would be an appropriate role for the Commission in market monitoring? If the RTO is operating one or more markets (*e.g.*, ancillary services), is it reasonable to expect that it can perform an objective self-assessment? Is there a difference in the market monitoring that the Commission can expect from RTOs? For example, if the RTO proposes to take a market position in secondary transmission rights, is it plausible to expect that the RTO can perform an objective assessment of this market? Since the success of retail competition will often depend critically on the actions of RTOs, what should be the role of state commissions in market monitoring?

Scope of monitoring activities: design flaws. In observing the experience of ISOs over the last year, we have learned that new market designs almost inevitably include design flaws that become apparent only after the markets begin operation.[265] Often these problems arise because of unexpected interactions between different related markets and unanticipated incentives for buyers and sellers. Electricity market restructuring in other countries has also experienced the need to make many revisions to market designs and rules.[266] These experiences indicate that monitoring is essential to ensure that the markets and structures evolve to ensure just and reasonable rates to consumers. The Commission recognizes that market monitoring can be expensive. We would welcome estimates of the amount of money spent by ISOs to monitor markets and their assessments as to whether they will need to spend more or less money in the future.

Scope of monitoring activities: market power abuses. As we have noted before, it is often difficult to predict whether certain entities will have market power in the future. This is especially true in new markets which operate with new participants and new transmission flow patterns. In situations like this, the past is often not a very good predictor of the future. As a consequence, the Commission has found that in certain situations the better approach is to institute an effective monitoring plan rather than to debate numerous assumptions and projections that inevitably underlie competing market power analyses.[267] For abuses that arise from market power, should the RTO's role be limited to detecting and describing the abuses? In the case of localized market power (*e.g.*, generating units that must run for reliability reasons), should the RTO have the authority to take corrective actions? If the market power has structural causes, what role should the RTO have in developing structural solutions? Should RTOs that are ISOs be required to make regular assessments as to whether they have sufficient operational authority?

Sanctions and penalties. The Commission seeks comment on whether RTOs should be allowed to impose penalties and sanctions. Should the penalties be limited to violations of RTO rules and procedures? Should the RTO be allowed to impose penalties for the exercise of market power? How much discretion should the RTO have in setting penalties? For example, should the RTO's penalty authority be limited to collecting liquidated damages?

d. The RTO must provide reports on market power abuses and market design flaws to the Commission and affected regulatory authorities. The reports must contain specific recommendations about how observed market power abuses and market flaws can be corrected. (Proposed § 35.34(j)(6)(iv)).

In order for regulatory agencies, interested parties and the general public to benefit from monitoring activities, regular reporting of findings is critical. Other than this general requirement, we do not propose at this time to establish detailed standards on the format, length and content of monitoring reports. We think that these decisions are best left to the RTO.

Should this reporting requirement be limited to producing reports only when a specific problem is encountered? Or should RTOs be required to make periodic reports that assess the state of competition and transmission access even in the absence of specific problems? We note that the California and New England ISOs have committed to producing annual public reports. Arguably such reports give market participants and others a regular opportunity to say whether they agree or disagree with the RTO assessment. Also, it is conceivable that such reports would be helpful to any market monitoring activities that this Commission and state commissions may wish to pursue in the future.

7. Function 7: Planning and Expansion. The RTO must be responsible for planning necessary transmission additions and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. (Proposed § 35.34(j)(7))

In carrying out Function 7, the RTO must satisfy each standard discussed below, or demonstrate that an alternative proposal is consistent with or superior to satisfying the standard.

a. The RTO planning and expansion process must encourage market-driven operating and investment actions for preventing and relieving congestion. (Proposed § 35.34(j)(7)(i))

RTOs should be designed to promote efficient usage and efficient expansion of their regional grids. The former requires efficient price signals, such as congestion pricing; the latter requires control over planning and expansion. Our specific proposal is that the RTO should have ultimate responsibility for both transmission planning and expansion within its region.[268] This

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[264] *See, e.g.*, David B. Raskin, ISOs; The New Antitrust Regulators? The Electricity Journal (April 1998).

[265] For example, the ancillary services markets in the summer of 1998 in California behaved at odds with what one would expect in an efficient market. The California ISO market surveillance committee produced an extensive evaluation of this problem which led to discussions of possible solutions.

[266] *See, e.g.*, James Barker, Jr., Bernard Tenenbaum, and Fiona Wolfe, "Governance and Regulation of Power Pools and System Operators: An International Comparison," Energy Law Journal, Volume 18, 1997, at 308–309.

[267] *Pacific Gas & Electric*, 77 FERC ¶ 61,265 (1996). *NEPOOL*, 85 FERC ¶ 61,379 (1998).

[268] Investments in new transmission facilities might be needed for a variety of reasons such as interconnecting new generation or load, protecting

requirement is motivated by the fact that investments in new transmission facilities must be coordinated to ensure a least cost outcome that maintains or improves existing reliability levels. In the absence of a single entity with overall responsibility, there would be danger that transmission investments would work at cross-purposes and possibly even hurt reliability. We recognize that the RTO's implementation of this general requirement will require addressing many specific design issues.[269] Once again, we propose to give RTOs considerable flexibility in designing a planning and expansion process that works best for its region. We recognize that the specific features of this process must take account of and accommodate existing institutions and physical characteristics of the region.

Within these constraints, the Commission has a clear preference for market-driven operating and investment actions for preventing and relieving congestion.[270] However, we understand that the feasibility of obtaining market driven solutions requires satisfying other prerequisites. For example, transmission prices must accurately reflect existing patterns of congestion. Accurate congestion prices are the link between current usage and future expansion. Therefore, we place considerable emphasis on the need for RTOs to establish a system of congestion management that establishes clear rights for existing and new transmission facilities and price signals that reflect congestion. (*See* section III.F) Independent governance is also a necessary condition for efficient expansion. While accurate price signals can signal the need for expansion, such expansion may never be achieved if the RTO operates under a faulty governance system (*e.g.*, a governance system that allows market participants to block expansions that will hurt their commercial interests).

b. The RTO's planning and expansion process must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The RTO's planning and expansion process must be coordinated with programs of existing Regional Transmission Groups (RTGs) where necessary. (Proposed § 35.34(j)(7)(ii))

At present, certification and siting of new transmission facilities is almost always performed by a state agency, typically the public utilities commission, in the state in which the facility will be located.[271] While there have been discussions about the need for regional certification and siting since most new transmission lines are integral elements of a regional grid system, such proposals have met with little success.[272] With the growth of RTOs, this could conceivably change. The emergence of a single regional transmission organization on the industry side may encourage the development of regional organizations or agreements that deal with transmission siting and certification on the regulatory side. The Commission believes that this would be a positive development if it is a voluntary decision of the affected states and replaces existing state-by-state determinations that often lack a regional perspective. To facilitate any voluntary actions taken by our state colleagues, we will require that the RTO planning and coordination system must be able to accommodate the possible future emergence of a regional regulatory system.

The Commission recognizes that regional transmission planning in some areas is being performed to varying degrees by RTGs.[273] It would be inefficient for RTOs initially to replicate the efforts of RTGs. Therefore, we require that RTOs discuss their planning and expansion with existing RTGs. However, over time, we would expect that the RTG's planning process would become an RTO function and the need for such coordination would be reduced or eliminated.

c. If the Regional Transmission Organization is unable to satisfy this requirement when it commences operation, it must file a plan with the Commission with specified milestones that will ensure that it meets this requirement no later than three years after initial operation. (Proposed § 35.34(j)(7)(iii))

We recognize that establishing an efficient procedure for transmission planning and expansion may require coordination and agreements among multiple parties and regulatory jurisdictions, and that this may take some time to accomplish. Accordingly, we do not propose that an RTO be capable of performing this function on its first day of operation. We do expect, however, that RTO proposals contain at least a plan explaining how the RTO intends to work toward implementing this function. Such a plan should set forth milestones that will result in this function being performed within three years after initial operation. We seek comment on whether three years is an appropriate amount of time for implementation of this function.

E. Open Architecture

The Commission believes that RTOs hold great promise in accomplishing our goal of promoting competition in regional wholesale electricity markets. That is why we want to accelerate their development. We understand that there are many difficult organizational, technical, and policy issues that must be addressed in realizing proposals, and that markets are evolving quickly and possibly in ways that cannot be foreseen at the time of RTO organization. Further, the nature of the institutions supporting the markets may change over time as well.

For these reasons, the Commission will require that RTO design have the ability to evolve over time. The Commission is committed to a policy of "open architecture." Simply put, open architecture requires that there be no provision in any RTO proposal that precludes the RTO and its members from improving their organizations to meet market needs. The Commission will provide the regulatory flexibility to allow such evolution.

Under open architecture, an RTO should be able to evolve in several ways, as long as it continues to satisfy the minimum RTO characteristics and

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or enhancing system reliability, improving system operating efficiency and flexibility, reducing or eliminating congestion and minimizing the need for "must-run" contracts with one or more generators.

[269] Our experience with regional transmission groups suggests that the following issues, among others, will need to be addressed: Who establishes the planning criteria? Who sets the design criteria? Should they be uniform across the system or vary with location? Who can initiate studies for transmission investments? Who evaluates and publishes different options? Who recommends which projects should be built and how the costs and benefits of the project should be allocated?

[270] This is a topic that has been discussed widely within the industry. *See, e.g.*, the papers of Steven L. Walton, Indego Transmission Expansion Strategy, Steven Stoft, Five Things You Should Know About Grid Investment and Ray Coxe, New Paradigms for Siting Transmission in Competitive Electric Markets. These papers are available through the Harvard Electric Policy Group website http://ksgwww.harvard.edu/hepg.

[271] *See* Ileana Elsa Garcia, State Electric Facility Siting Practices, prepared for the Harvard Electric Policy Group (HEPG), April 10, 1997. Available through the HEPG website at http://ksgwww.harvard.edu/hepg.

[272] *See* NARUC, "Options for Jurisdiction over Transmission Facility Siting," a resource document for the NARUC Committee on Electricity, 1991 and Charles D. Gray, NARUC Assistant General Counsel, Memorandum, January 1995. Available through the HEPG/website at http://ksgwww.harvard.edu/hepg.

[273] The Commission has approved RTGs for the New England Power Pool, *et al.*, 83 FERC ¶ 61,045 (1998), Mid-Continent Area Power Pool, 76 FERC ¶ 61,261 (1996), Northwest Regional Transmission Association, 71 FERC ¶ 61,397 (1995), Western Regional Transmission Association, 71 FERC ¶ 651,158 (1995), and Southwest Regional Transmission Association, 69 FERC ¶ 61,100 (1994).

functions. For example, open architecture would allow basic changes in the organizational form of the RTO. An RTO that initially does not own any transmission facilities might acquire ownership of some or all of those facilities. The RTO's enabling agreements should at best anticipate and facilitate such a change, but at minimum should not prevent it or make it more difficult than necessary.

Market trading patterns, technological change, and changes in corporate strategies will make changes in RTO membership inevitable and desirable. Accommodating change will require flexibility and adaptability in the RTO organization and open architecture will permit this.

Market support and operations is another RTO dimension that could benefit from open architecture. For example, an RTO may not initially operate a PX to support a regional spot market, but if RTO members later find that a PX would help the region, the RTO could propose to add the PX function as well as a PX market monitoring function. It is important that the basic RTO agreement not close off such development. Our proposed open architecture policy will ensure that such future development is not foreclosed.

The Commission is interested in receiving comments regarding an open architecture policy to ensure that initial RTOs can develop. What flexibility needs to be built into RTO contracts? What regulatory flexibility is needed from the Commission as part of an open architecture policy? In which areas of RTO organization or operations is it especially important for the Commission to expect improvement?

F. Ratemaking for Transmission Facilities Under RTO Control

The Commission expects RTOs to reform transmission pricing, and in return we propose to allow RTOs greater flexibility in designing pricing proposals. In 1994, the Commission issued its Transmission Pricing Policy Statement encouraging transmission pricing reform and setting out standards to be used to evaluate innovative transmission pricing proposals.[274] In the Transmission Pricing Policy Statement the Commission allowed "substantial flexibility" to be given to RTGs in justifying non-conforming proposals. The Commission allowed this because RTGs represent the combined interests of transmission owners, users and state authorities and because pricing proposals for treating loop flow problems work better if all utilities in the region use the same method.

In this section, we discuss a number of areas in which we expect RTOs to provide innovative pricing and in which the Commission may be expected to allow flexibility. We seek comments on the issues discussed and other RTO pricing issues.

1. Single Transmission Access Rate for Capital Cost Recovery

One issue in ISO proposals that have come before the Commission is the recovery of transmission capital costs through a single access rate. Under such a rate, the capital costs of all RTO members would be averaged, resulting in a rate that is higher than the individual system rate for relatively low-cost transmission systems and lower than the rate for high-cost transmission systems. This can cause two kinds of "cost-shifting" concerns: high-cost transmission providers are concerned about cost recovery, and customers of the low-cost providers are concerned about increased rates.

Transmission cost shifting has been an issue in every ISO the Commission has approved to date, and we have allowed a flexible approach to resolving the issue. In each of those cases, we have allowed a transition period of between five and ten years during which access fees are based on some form of "license plate" pricing: access fees are paid by load serving entities based on the fixed transmission costs of the local utility.[275]

We propose to continue our flexibility in allowing the recovery of current sunk transmission costs as transition mechanisms to single rates if proposed by RTOs, including the license plate approach as well as others. We request comment regarding whether the license plate approach to fixed cost recovery is an appropriate long-term measure.

2. Congestion Pricing

As discussed in prior sections, managing regional congestion is one of the problems that an RTO can help solve. We believe that efficient congestion management requires a greater reliance on market mechanisms[276] and this can be effectively accomplished with price signals. We propose to allow RTOs considerable flexibility in experimenting with different market approaches to managing congestion through pricing.[277] Proposals should, however, ensure that the generators that are dispatched in the presence of transmission constraints must be those that can serve system loads at least cost, and limited transmission capacity should be used by market participants that value that use most highly.[278]

The Commission intends to be flexible in reviewing pricing innovations, and we ask for comments as to what specific requirements, if any, may best suit our RTO goals.

3. Performance Based Rate Regulation

Once RTOs are formed, the Commission is interested in finding ways to ensure their satisfactory performance. One way to induce good grid operation by an RTO is through performance-based regulation, or PBR. PBR may consist of price/revenue caps, price incentives, or performance standards.[279] Performance-based regulation identifies factors of good performance such as efficient congestion management, lowering operator costs, and meeting reliability targets. Great care must be taken in selecting the performance factors. RTOs should have a reasonable chance of meeting or exceeding the performance targets, but the targets must not be too easy to meet. We would reward only performance that is truly superior to that which individual transmission owners could achieve outside an RTO.

The Commission seeks comments on applying PBR to RTOs. Should PBR be voluntary or applied to all RTOs? What degree of regulatory scrutiny would a PBR regime require? In addition, the Commission seeks comment on the specifics of how PBR would be applied

[274] The Policy Statement sets out five principles that transmission pricing proposals should conform to: meet the traditional revenue requirement; reflect comparability (open access tariff); promote economic efficiency; promote fairness; and be practical. The Policy Statement requires non-conforming proposals to satisfy additional factors: promote competitive markets and produce greater overall consumer benefits. Overall consumer benefits are measured principally by greater access and customer choice, projected price decreases to power customers, and service flexibility and products to meet customer needs.

[275] *See, e.g.*, Order Directing Amendments to Proposals to Restructure the Pennsylvania-New Jersey-Maryland Interconnection and Providing Guidance, 77 FERC ¶ 61,148 at 61,577 (addressing concerns about cost-shifting between high- and low-cost transmission providers).

[276] *See NERC*, 85 FERC at 62,364.

[277] This is consistent with our *Transmission Pricing Policy Statement's* allowance of substantial flexibility to pricing proposals from RTGs because RTGs are comprised of broad membership to facilitate transmission access, develop a comprehensive regional plan for transmission expansion, share transmission information and provide for dispute resolution. 64 FERC 61,138 (1993). RTOs possess these same characteristics.

[278] *Transmission Pricing Policy Statement*, FERC Stats. & Regs. at 31,140–44.

[279] *See* Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities, Policy Statement on Incentive Regulation, 61 FERC ¶ 61,168 at 61,590–92 (1992), and L. Brown, Michael Einhorn, and Ingo Vogelsang, Incentive Regulation: A Research Report (1989).

effectively to an RTO. For productivity incentives, what productivity objectives should be adopted and how should productivity be measured? How would a revenue cap or a price cap be set? What intermediate adjustments to the cap should be allowed? How often should base costs be examined?

4. Consideration of Incentive Pricing Proposals

RTOs would bring extensive benefits to North American electricity markets and would further the objectives of sections 202(a), 205 and 206 of the FPA. We would be willing to consider, on a case by case basis, allowing the transmission owners that bring about those benefits to share in them through incentive pricing for public utility transmission owners that turn over control of their transmission facilities to an RTO.[280] RTOs would be expected to propose and justify specific proposals on a case-by-case basis.

One potential treatment that could be considered is allowing transmission owners that participate in RTOs to receive a higher return on equity (ROE) on transmission plant than under current policy because a transmission owner participating in an RTO puts its grid to a higher valued use than one operating individually. This relates the incentive to the benefit produced by the RTO. The simplest way to create a higher ROE is to share the benefits of an RTO between transmission owners and customers. Alternatively, a higher ROE could be implemented by either allowing an ROE at the high end of the zone of reasonable returns for RTO participants and an ROE in the current range for non-participants. Is it appropriate to allow a higher ROE as a means of sharing the benefits created by RTOs or should higher ROEs be limited only to increases in risk? Is the risk of transmission capital recovery increased or decreased by transferring transmission facilities to an RTO from a vertically integrated firm?

With improved grid operation and investment in new facilities to relieve constraints, RTOs may lower grid operating costs. Another incentive that could be considered would be to keep transmission rates at current levels and allow participating RTO transmission owners to keep the benefits from cost savings over time or to lower transmission rates partly while owners keep part of the benefits. Would such treatment encourage better performance?

The Commission could also consider flexibility in cost recovery for RTO participation. The capital cost of transmission plant is normally recovered over a relatively long time period. RTO participants could be allowed accelerated recovery for the costs of transmission expansion. Similarly, the recovery of capital start-up costs of RTO participation could be accelerated as well. Is it appropriate to allow such accelerated recovery as an incentive to transfer transmission facilities to an RTO or should capital recovery periods continue to be based on the useful life of transmission facilities? Is industry restructuring and the potential introduction of distributed generation technology likely to affect the risk associated with transmission investment recovery periods?

The Commission may also be willing to consider non-traditional methods for valuing transmission assets that are under the control of a RTO. The Commission's traditional ratemaking policy values assets at original cost, less depreciation. One alternative may be for rate base to reflect a higher valuation through some measure of replacement cost. Where an RTO or other independent owner purchases transmission assets and pay a price that reflects such an enhanced valuation of assets, the Commission may want to consider allowing the RTO to include in its rates an acquisition premium that reflects the enhanced value.

The Commission might also consider flexibility in allowing levelized or non-levelized rate methods. Both methods can produce reasonable results in particular circumstances, especially when one method is used consistently throughout the life of a utility's facilities. The Commission has, however, been reluctant to allow switching from a non-levelized to a levelized rate design during the life of a facility. The Commission's current policy is that a utility must prove that switching methods is reasonable in light of its past recovery of capital.[281] The Commission could consider granting some latitude for RTO pricing proposals for levelized rate cost recovery.

The Commission seeks comments on whether to entertain case-by-case proposals of rate incentive treatments for RTO participants. Will transmission owners respond to incentives, and will incentives be sufficient to achieve our objective of RTO formation? Which incentives are most likely to be successful in so doing? Are there specific forms of incentive pricing that are inappropriate and problematic? Are safeguards needed if the Commission decides to allow incentive treatments? In justifying a proposed rate treatment, should an RTO be required to demonstrate that its benefits are likely to outweigh the pecuniary "costs" of the proposal? Would certain incentive pricing encourage RTOs to favor capital-based resource decisions (at the expense of more efficient alternatives) or to favor transmission solutions over alternative ways of relieving particular transmission constraints? We also seek comment on whether and how public power transmission owners that participate in RTOs could benefit from flexible ratemaking and incentive pricing treatments.

Finally, our willingness to consider incentive pricing proposals is conditioned on an RTO meeting all of the proposed minimum characteristics and functions. Allowing any incentive pricing to RTO participants is based on a sharing of the extensive benefits that an RTO brings to electricity markets. Only an RTO that meets the minimum characteristics and functions can produce such extensive benefits, and it would be inappropriate for the Commission to consider incentive pricing to members of an RTO that falls short. We would, however, be open to considering other innovative transmission rate treatments, such as providing service at non-pancaked rates and regional congestion management proposals, for an organization that does not meet all of the minimum RTO characteristics and functions.

G. Public Power Participation in RTOs

The Commission's objective of encouraging all transmission owning entities in the Nation to place their transmission facilities under the control of an RTO includes transmission owned or controlled by public power entities [*e.g.*, municipals, cooperatives, Federal Power Marketing Agencies (PMAs), Tennessee Valley Authority (TVA), and other state and local entities]. We are aware that some public power entities have filed open access tariffs with the Commission and others are participating in ISOs and other regional institutions. We also are aware, however, that many public power entities may face several difficult issues regarding RTO participation. The Commission is concerned about any obstacle to public power participation in the formation and successful operation of any form of RTO. Accordingly, we request comments that identify issues that

[280] As discussed above in section III–B, there are also a number of non-pricing regulatory benefits that could be offered to RTO members, such as deference in dispute resolution, reduced or eliminated codes of conduct, and streamlined filing and approval procedures.

[281] *See* Consumers Energy Company, 85 FERC ¶61,100, at 61,366–367, 1998); Kentucky Utilities Company, 85 FERC ¶61,274, at 62,103–105 (1998).

public power entities and others face regarding RTO participation and that suggest ways the Commission might facilitate their resolution. We expect public power entities to fully participate in the proposed collaborative process for forming RTOs after our Final Rule is issued, as discussed in section III–I below.

One issue is the Internal Revenue Service (IRS) Code "private use" restrictions on the transmission facilities of public power entities financed by tax-exempt bonds. IRS temporary regulations may allow facilities financed by outstanding tax-exempt bonds to be used to wheel power in accordance with Order No. 888, but they may not allow the issuance of additional tax-exempt bonds for expanded transmission or permit transfer of operational control of existing transmission facilities financed by tax-exempt bonds to a for-profit transco.[282] In addition, there is uncertainty regarding what may happen after the temporary regulations expire on January 22, 2001.

We solicit comments on the extent to which IRS Code restrictions may limit the transfer of operational control or other forms of control, or ownership, of public power transmission facilities to a for-profit transco. What impact would IRS Code restrictions have on public power participation in other forms of an RTO? While IRS Code restrictions might prevent issue of additional tax-exempt bonds for transmission expansions made in accordance with RTO participation, are non-tax exempt forms of financing a viable option for public power participation in selected transmission additions?

In addition to private use restrictions, are there other restrictions on public power institutions that may limit their participation in RTOs? For example, to what extent would state or local charter limitations, prohibitions on participating in stock-owning entities, or the current policies of various local regulatory entities affect or impede full public power participation in RTOs? Are there some forms of associate membership or participation in RTOs, or other special accommodations, that the Commission should consider to make it more feasible for public power entities to overcome obstacles to participation in RTOs?

The Commission seeks comment on legal restrictions or other considerations regarding the PMAs that prevent their participation in RTOs. For example, Bonneville Power Administration and other entities in the Pacific Northwest may face unique circumstances that may affect RTO formation in that area. These include the design of the power and transmission system for the production of hydroelectric energy involving the 1961 Columbia River Treaty, the Bonneville Project Act, the Federal Columbia River Transmission System Act, the Pacific Northwest Electric Power Planning and Conservation Act of 1980, and the Northwest Preference Act. There may also be obstacles to TVA participation in an RTO. How can the Commission help overcome any such limiting factors to full RTO formation?

H. Other Issues

The Commission seeks comment on a number of other issues regarding RTO participation. These issues are presented in this section.

1. Pre-existing Transmission Contracts

What is the appropriate treatment of existing transmission agreements when an RTO is formed? In Order Nos. 888 and 888–A, we specifically chose not to abrogate existing requirements and transmission contracts when the utility filed an open access tariff.[283] However, an RTO represents an entirely different context. We must balance the need for a uniform approach for transmission pricing and the elimination of pancaked rates—one of the principal benefits of an RTO—with the need to recognize the equities inherent in existing transmission contracts. The potential financial impact of giving up an advantageous transmission arrangement may act as a disincentive to joining an RTO.

In the ISO filings that we have acted on to date, we have evaluated various "transition plans" regarding existing contracts on a case-by-case basis.[284] At this juncture, we do not intend to resolve this issue generically but instead propose to confine our policy to addressing this issue on an RTO-by-RTO basis. We solicit comments on this approach. How critical is this concern to transmission owners' and others' decisions on whether to support RTO formation? Is the financial impact of giving up an advantageous transmission arrangement significant enough to act as a disincentive to RTO membership?

2. Treatment of Existing Regional Transmission Entities

We propose to adopt in the Final Rule certain characteristics and functions to be required of RTOs. It could turn out that the ISOs and any other regional transmission entities that conform to the Commission's ISO principles that we have approved to date do not meet all of these characteristics and functions. It is our expectation that, to the extent this is the case, the existing regional transmission entities will over time evolve to be consistent with the characteristics and functions adopted in the Final Rule. The Commission recognizes that a number of operational, financial and political issues will need to be addressed in the course of such an evolution and that it cannot be accomplished overnight. We also respect the investment of time and other resources made in the existing transmission entities, and understand the importance of avoiding change during the critical implementation period these institutions are now undergoing. Given these considerations, and our policy of regional flexibility, the proposed rule does not require major changes to the existing transmission entities. However, our objective is to encourage all of the Nation's transmission grid to be under the control of RTOs that have the minimum characteristics and functions adopted in the Final Rule. We therefore propose to require each public utility that is a member of an existing regional transmission entity that has been approved by the Commission as in conformance with the eleven ISO principles set forth in Order No. 888 to make a filing no later than January 15, 2001 that explains the extent to which the transmission entity in which it participates meets the minimum characteristics and functions for an RTO, or proposes to modify the existing institution to become an RTO. Alternatively, the public utility may file an explanation of efforts, obstacles and plans with respect to conforming to these characteristics and functions.[285] The Commission is also concerned about impediments to transactions between existing transmission entities, as well as any future RTOs. We therefore encourage existing transmission entities to consider ways to reduce any impediments to transactions among them and direct

[282] *See* Uncrossing the Wires, Transmission in a Restructured Market, a report by The Large Public Power Council, December 1998, at 10.

[283] *See* Order No. 888 at 31,664–65; Order No. 88–A at 30,181, 30,199; clarified, 76 FERC at 61,027; Order No. 888–B, 81 FERC at 62,072, 62, 090, 62,100.

[284] *See PJM*, 81 FERC at 62,280–81; *Midwest ISO*, 84 FERC at 62,169–70 and *order on reh'g*, 85 FERC at 62,418–20 (1998); *Pacific Gas & Electric*, 777 FERC at 61,821, 81 FERC at 61,470–71; *NEPOOL*, 83 FERC at 61,241–42; Central Hudson Gas & Electric Co. *et al.*, 86 FERC at 61,218–19.

[285] Of course, there is nothing to prevent an existing transmission entity from making an RTO filing prior to this date if it so chooses.

them to provide the Commission with a progress report by January 15, 2001.

The Commission seeks comment on this issue.

3. Participation by Canadian and Mexican Entities

Canadian and Mexican involvement in RTO formation would be beneficial to both, as well as to the United States. In certain areas, "natural" electricity trading regions already cross national borders. Expansion of electricity trade in the North American bulk power market requires that regional institutions include all market participants so that they may enjoy direct access to market information and the benefits of non-pancaked transmission rates. In addition, any reliability standards implemented by RTOs must be acceptable to the affected nations and consider all resources to avoid wasteful duplication of grid facilities.[286]

We encourage electric utilities in Canada and Mexico, and their regulatory authorities, to participate in the discussions of the rulemaking. Perhaps what may be thought of as a "dotted line" RTO boundary could be used at international borders to indicate an unwillingness to artificially limit an RTO's scope while recognizing jurisdictional limits. The Commission emphasizes that Canadian and Mexican authorities would be responsible for approving prices and other terms and conditions of transmission service provided over any RTO transmission facilities located in their countries. We invite the comments of Canadian and Mexican authorities on these and other issues.

4. Providing Service to Transmission-owning Utilities that do not Participate in an RTO

The transmission owners that turn control of transmission facilities over to an RTO will help bring significant operational and commercial benefits to a region. To what extent should transmission owners who do not participate in their region's RTO share in those benefits? Would it be appropriate to allow RTO members to provide transmission service at individual system rates to non-participating transmission owners located in the RTO region, thereby denying non-participants the benefits of non-pancaked transmission rates? The Commission seeks comment on the treatment by an RTO of non-participating transmission owners in the RTO region.

5. RTO Filing Requirements

Any transfer of control of jurisdictional transmission facilities owned, operated, or controlled by public utilities required by RTO formation must be approved by the Commission pursuant to its Section 203 authority under the FPA. The RTO transmission rates, terms, and conditions of service must also be approved pursuant to Section 205 of the FPA. We request comments on whether the Commission should provide for expedited or streamlined processing procedures for Section 203 transfers of jurisdictional facilities to RTOs that meet the characteristics and functions of the Final Rule, and for the related Section 205 transmission rates, terms, and conditions. We also welcome specific suggestions regarding how we can further expedite or streamline our procedures.

6. Power Exchanges (PXs)

Another important issue is the relationship between RTOs and power exchanges. Of the five ISOs approved to date, only the Midwest ISO chose not to include a power exchange in the design submitted to us.[287] However, after the Commission approved this proposal, several ISO participants joined with other Midwestern power entities in issuing a public request for proposals that would create an independent power exchange that would operate in conjunction with the ISO.[288] This recent Midwest initiative appears to have been motivated, at least in part, by the large price spikes that were experienced last summer. Our staff's report concluded that one of probable causes of the price spikes was the lack of price transparency and that "centralized trading institutions such as power exchanges could have provided better price signals in the market and helped to reduce price volatility."[289]

Regions may want to consider establishing a PX that is operated by an RTO. However, some oppose RTO-operated PXs, contending that the two principal functions of PXs, market making and price discovery, are not natural monopoly functions.[290] They also contend that power exchanges force market participants to buy and sell electricity using standardized contracts that may not meet their particular needs. They argue that the full benefits of electricity competition can be achieved only if there is competition for the market as well as in the market. Finally, they assert that if power exchanges are introduced, an RTO should be specifically prohibited from operating the exchange because this would compromise the RTO's independence in fulfilling its principal responsibilities as a transmission service provider and system operator.[291]

In contrast, those who recommend that an RTO should operate a PX contend that the two functions of short-term forward or spot market operations and system operations are difficult to separate.[292] It is their view that there will be significant inefficiencies unless the two functions are performed simultaneously by a single entity.[293] In addition, they contend that there is no inherent conflict between the RTO as a transmission service provider and a spot market operator as long as the RTO has no commercial interest in whether prices are high or low in the markets that it operates.

We leave it to each region to decide whether there is a need for a PX and whether the RTO should operate the PX. The Commission will accept an RTO

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[286] Historically, Canada and Mexico have participated in North American utility organizations such as NERC and Western Systems Coordinating Council (WSCC). Maintaining Reliability in a Competitive U.S. Electricity Industry, Final Report of the Task Force on Electric System Reliability, Secretary of Energy Advisory Board, DOE, September 29, 1998 at 9, 58.

[287] In California, PXs are operated by separate organizations that coordinate with the ISO.

[288] *See* Joint Committee for the Development of a Midwest Independent Power Exchange, "Solicitation of Interest-Creation of an Independent Power Exchange for the U.S. Midwest," February 5, 1999.

[289] Staff Report to the Federal Energy Regulatory Commission on the Causes of Wholesale Electric Pricing Abnormalities in the Midwest During June 1998, September 1998, at 4–4. Centralized power exchanges appear to have other benefits. Since most power exchanges establish credit and security standards as a condition for participation and reserve funds to cover defaults, they create a type of insurance by spreading counterparty risks among all participants and thereby reducing the likelihood of cascading transaction defaults such as those that occurred in the Midwest. In addition, it is generally accepted that an organized and transparent spot market is a prerequisite for a viable futures market which would allow market participants to hedge the risk of future price fluctuations. Finally, we note that during our recent consultations with state commissions, several state commissioners informed us that organized and open spot markets were critical to the success of their efforts to introduce retail competition in their respective states.

[290] *See, e.g.*, comments of Enron in PL98–5, Washington, D.C., transcript at 211.

[291] *See, e.g.*, comments of Automated Power Exchange, Inc., in PL98–5 at 3.

[292] *See* Professor William W. Hogan, "Enabling The Power Of Markets," presentation at the EEI Chief Executive Conference, Scottsdale, Arizona, January 7, 1999, at 8. A copy of this presentation is available on Professor Hogan's website (www.ksg.harvard.edu/people.whogan).

[293] *See* Dr. Larry Ruff, "Competition in Electricity: Where Do We Go From Here?", lecture at the Institute of Economic Affairs, London Business School, October 13, 1998. Available through the website of the Harvard Electric Policy Group (http://ksgwww.harvard.edu/hepg/FPpapers.html).

proposal that includes a PX in its design as long as its operation of the PX does not compromise its independence as a transmission service provider. We request comments on the following questions. Given that a power exchange is useful, should it be part of an RTO or otherwise associated with an RTO? If an area has more than one PX, should the PXs have equal standing before the RTO? Is an organized PX necessary for successful retail competition? If an RTO operates congestion markets and balancing markets, are there efficiencies to be gained by allowing or encouraging the RTO to operate day ahead or hour ahead energy markets? Is it feasible for an FTO to operate a spot energy market wit out compromising its ability to provide non-discriminatory transmission service to all market participants? If a PX is operated by a non-RTO entity, is there a need to require certain specified forms of coordination between the two organizations?

I. Implementation of the Rule

The Commission seeks to support timely RTO formation in every region of the country. To that end, the Commission envisions regional collaborations soon after issuance of the Final Rule, building on progress made to that date. Further, pursuant to our expectation that utilities and other participants in the electric industry form RTOs, the Commission proposes to require that certain filings be made by October 15, 2000 concerning RTO formation. The collaborative process and filing requirements are discussed in more detail below.

1. Collaborative Process

During our consultations with the state commissions, many said that Commission leadership is needed to facilitate RTO formation and that only we could facilitate broad regional participation. To facilitate RTO formation in all regions of the Nation, the Commission proposes a collaborative process under section 202(a) to take place in the spring of 2000, after adoption of a Final Rule. The Commission expects public utilities and non-public utilities, in coordination with appropriate state officials, and affected interest groups in a region to fully participate in working to develop an RTO.

To assist in structuring the regional collaborations and to further inform the Commission on activities in each region, we propose that regional workshops be held throughout the Nation after the Final Rule is issued. The goal of these workshops would be to share information about the status of RTOs or RTO proposals in the region, to identify any impediments to RTO formation in the area, to explore what process could most expeditiously advance agreements on RTO formation, and to determine what role, if any, Commission staff should play in advancing discussions in the region. These regional workshops would be convened by Commission staff in cooperation with the affected state officials. The Commission would specifically invite each entity in the Nation that owns or operates transmission facilities, and representatives from Canada and Mexico as appropriate, to the public workshops. The Commission proposes to make staff resources, including settlement judges, available through our Dispute Resolution Service to assist in designing and possibly facilitating regional collaborations following the workshops. Commission technical staff will be made available for participation in the regional collaborations.

Would regional workshops advance RTO formation? Under whose auspices should regional workshops be held? Would it be beneficial to have the Commission's Dispute Resolution Service staff facilitate discussions regarding RTO formation? Should the Commission staff convene the regional workshops or should Commission staff be made available to attend meetings convened by others? If the Commission staff convenes workshops, in how many cities should meetings be convened and how should the cities be chosen? Would the three U.S. interconnections be appropriate starting points? Would participation of Commission staff aid or stifle negotiations on RTO development?

2. Filing Requirement

The Commission is hopeful that the direction provided by this rulemaking, the regional collaborations described above, and the possibility of incentive rate treatments will lead to the prompt development of RTO proposals. Thus, we propose that all public utilities that own, operate or control interstate transmission facilities (except those already participating in a regional transmission entity in conformance with our eleven ISO principles) must file with the Commission by October 15, 2000, either (1) a proposal to participate in an RTO that will be operational no later than December 15, 2001, or (2) an alternative filing describing efforts to participate in an RTO, obstacles to RTO participation, and any plans and timetables for future efforts (see proposed § 35.34(c)).[294] To the extent possible, RTO proposals should include the transmission facilities of public power and other non-public utility entities.

The number and type of filings necessary to effectuate an RTO proposal necessarily will vary depending upon the type of RTO being proposed and the circumstances of each individual public utility participant. At a minimum, an RTO proposal must include a basic agreement filed under section 205 of the FPA setting out the rules, practices and procedures under which an RTO will be governed and operated, and requests by the public utility members of the RTO for approval under section 203 of the FPA to transfer control of their jurisdictional transmission facilities. However, depending upon the circumstances, there may need to be additional section 205 or 206 amendments to existing public utility contracts or rate schedules in order to effectuate an RTO proposal.

For those public utilities that file an RTO proposal on or before October 15, 2000, we will permit them to file a petition for declaratory order asking whether a proposed transmission entity would qualify as an RTO, with a description of the organizational and operational structure and the intended participants of the institution, an explanation of how the institution would satisfy each of the RTO minimum characteristics and functions, and a commitment to submit necessary section 203, 205 and 206 filing promptly after receiving the Commission's determination on the declaratory order petition (see proposed § 35.34(d)(3)). This declaratory order petition option thus is to be used only in conjunction with the filing of a proposal for an RTO that is to begin operation no later than December 15, 2001.

If a public utility is not able to file an RTO proposal on or before October 15, 2000, it must alternatively file by that date a description of any efforts made by the public utility to participate in an RTO, the reasons it has not participated in an RTO, including identifying specific obstacles to RTO participation, and any plans and timetables the public

[294] A proposal to form a transmission institution that does not meet all of the minimum RTO characteristics and functions will not be approved as an RTO. This does not necessarily mean that the proposal will not otherwise be approved as consistent with the FPA. However, the proposal will not qualify as an RTO. For transmission organizations that do not meet all of the minimum RTO characteristics and functions, however, we would still be open to considering, and indeed encourage, regional filings for providing service at non-pancaked rates and regional congestion management proposals.

utility has for further work toward RTO participation (see proposed § 35.34(f)). If a public utility makes such an alternative filing, the Commission at that time will determine what steps, if any, need to be taken.

The above requirements, however, do not apply to a public utility that is a member of an existing transmission entity that the Commission has found to be in conformance with the Order No. 888 ISO principles. Rather, each such public utility must make a filing no later than January 15, 2001 that (1) explains the extent to which the transmission entity in which it participates meets the minimum characteristics and functions for an RTO, (2) proposes to modify the existing institution to become an RTO, or (3) explains efforts, obstacles and plans with respect to conforming to these characteristics and functions (see proposed § 35.34(g)).[295]

The Commission does not propose to mandate RTO participation by rule, and instead proposes to induce voluntary participation through a combination of guidance on the minimum characteristics and functions of an RTO, possible rate incentives, a collaborative process for structuring regional dialogues, and filing requirements. The Commission seeks comment on whether the filing requirements discussed above are inconsistent with or otherwise would inhibit voluntary participation in RTOs. The Commission also seeks comment on whether it needs to generically mandate RTO participation by all public utilities to remedy undue discrimination under sections 205 and 206 of the FPA. We also seek comment on whether a performance based system could be designed to realign economic interests to remove the motive for discrimination.

In considering what actions might be appropriate if a utility fails to voluntarily join an RTO, the Commission seeks comment on whether market-based rates for generation services could continue to be justified for a public utility that does not participate in an RTO, whether a merger involving a public utility that is not a member of an RTO would be consistent with the public interest, whether non-participants that own transmission facilities should be allowed to use the non-pancaked transmission rates of the RTO participants in that region, whether transmission services provided by a transmitting utility need to be under RTO control to satisfy the discrimination standards of sections 211 and 212 of the FPA, and whether a public utility's lack of participation would otherwise be in violation of the FPA. Does the possibility of any of these remedial actions for RTO non-participation undermine or otherwise inhibit voluntary participation in RTOs? How should the Commission consider the efficiency, reliability, and discrimination implications of RTO non-participation? How should the Commission consider non-participation by utilities that constitute "holes" in an RTO region?

The Commission anticipates that public utilities will file proposals for ISOs, transcos, or other types of regional transmission institutions prior to the effective date of the Final Rule. We clarify that the Commission will continue to apply to these proposals the ISO principles contained in Order No. 888 and the case precedent established for ISOs. However, a public utility that files such a proposal prior to the effective date of the Final Rule would still be subject to the October 15, 2000 or January 15, 2001 filing requirement, as appropriate, in the Final Rule.

[295] Of course, there is nothing to prevent an existing entity from making an RTO filing prior to this date if it so chooses.

IV. Environmental Statement

In furtherance of the National Environmental Policy Act of 1969, the staff of the Federal Energy Regulatory Commission will prepare an environmental assessment (EA) that will consider the environmental impacts of the proposed rule. A notice of intent to prepare the EA, request comments on the scope of the EA, and notice of a public scoping meeting is published elsewhere in this issue of the **Federal Register**.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601–612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. If this proposed rule goes into effect, it will establish minimum characteristics and functions for RTOs, none of which is likely to meet the SBA's definition of a small electric utility, i.e., one that disposes of 4,000,000 MWh per year or less. 13 C.F.R. § 121.201. Furthermore, the rule will not have the requisite impact upon transmission owners.

In *Mid-Tex Elec. Coop.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

The proposed rule will not regulate any small entities, nor will it impose upon them any significant costs of compliance. Small entities will be free to determine for themselves whether to participate in an RTO and whether any costs associated with joining an RTO will be adequately offset by attendant benefits. The only requirement the rule would impose upon a small entity would be the need to file a statement explaining its efforts to join an RTO, any barriers it encountered, and any future plans to seek to join an RTO. The Commission believes that the costs associated with preparing and filing such a statement will be minimal. Consequently, the Commission certifies that this proposed rule will not have a significant economic impact upon a substantial number of small entities.

VI. Public Reporting Burden and Information Collection Statement

The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. FERC identifies the information provided under Part 35 as FERC–516 and under Part 33 as FERC–519.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

Public Reporting Burden: Estimated Annual Burden:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–516	12	1	300	3,600
FERC–519	[1] 50	1	80	4,000
Totals				7,600

[1] Includes respondents who make application to form an RTO and the responses of utilities who choose not to participate.

Total Annual Hours for Collection (reporting+record keeping, (if appropriate))=7,600.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs—Annualized Costs (Operations & Maintenance) −$401,518 (7,600 hours ÷ 2080 hours per year × $109,889 =$401,518). The cost per respondent is equal to $8,030 (participants and non-participants).

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. *(Footnote 5 CFR 1320.11)*

Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–516, Electric Rate Schedule Filings; FERC–519 Application for Sale, Lease, or Other Disposition, Merger or Consolidation of Facilities or for the Purchase or Acquisition of Securities of a Public Utility.

Action: Proposed Data Collections.

OMB Control No.: 1902–0096 and 1902–0082.

The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: One time.

Necessity of Information: The proposed rule revises the requirements contained in 18 CFR part 35. The Commission is seeking to establish RTOs nationwide by December 2001. In particular, the Commission will establish in this proposed rule characteristics and functions which applicants must meet to become Commission approved RTOs. The Commission will engage in a collaborative process with state officials and others to facilitate RTO development. The proposed rule will require that each public utility that owns, operates or controls transmission facilities participate in one-time filings proposing an RTO or make a filing explaining why they are not participating in an RTO proposal.

Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Offices of Electric Power Regulation and Economic Policy will use the data included in filings under Section 203 and 205 of the Federal Power Act to evaluate efforts for the interconnection and coordination of the U.S. electric transmission system and to ensure the orderly formation of RTOs as well as for general industry oversight. These information requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208–1415, fax: (202) 208–2425, E-mail: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

VII. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Initial comments should not exceed 100 double-spaced pages and should include an executive summary. The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. on August 16, 1999.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should not exceed 50 double-spaced pages and should include an executive summary. The original and 14 copies of the reply comments must be received by the Commission before 5:00 p.m. on September 15, 1999.

Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM99–2–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–2–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM99–2–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by adding a new Subpart F consisting of § 35.34 to read as follows:

Subpart F—Procedures and Requirements Regarding Regional Transmission Organizations

§ 35.34 Regional Transmission Organizations.

(a) *Purpose.* This section establishes required characteristics and functions for Regional Transmission Organizations for the purpose of promoting efficiency and reliability in the operation and planning of the electric transmission grid and ensuring nondiscrimination in the provision of electric transmission services. This section further directs each public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce to make certain filings with respect to forming and participating in a Regional Transmission Organization.

(b) *Definitions.*

(1) *Regional Transmission Organization* means an entity that satisfies the minimum characteristics set forth in paragraph (i) of this section, performs the functions set forth in paragraph (j) of this section, and accommodates the open architecture conditions set forth in paragraph (k) of this section.

(2) *Market participant* means any entity that buys or sells electric energy in the Regional Transmission Organization's region or in any neighboring region that might be affected by the Regional Transmission Organization's actions, or any affiliate of such an entity.

(c) *General rule.* Except for those public utilities subject to the requirements of paragraph (g) of this section, every public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of [effective date of the final regulation] must file with the Commission, no later than October 15, 2000, one of the following:

(1) A proposal to participate in a Regional Transmission Organization consisting of one of the types of submittals set forth in paragraph (d) of this section; or

(2) A submittal consistent with paragraph (f) of this section.

(d) *Proposal to participate in a Regional Transmission Organization.* For purposes of this section, a proposal to participate in a Regional Transmission Organization means:

(1) Necessary filings, made individually or jointly with other entities, pursuant to sections 203, 205 and/or 206 of the Federal Power Act (16 U.S.C. 824b, 824d, and 824c), as appropriate, to create a new Regional Transmission Organization;

(2) Necessary filings, made individually or jointly with other entities, pursuant to sections 203, 205 and/or 206 of the Federal Power Act, as appropriate, to join a Regional Transmission Organization approved by the Commission on or before the date of the filing; or

(3) A petition for declaratory order, filed individually or jointly with other entities, asking whether a proposed transmission entity would qualify as a Regional Transmission Organization and containing at least the following:

(i) A detailed description of the proposed transmission entity, including a description of the organizational and operational structure and the intended participants;

(ii) A discussion of how the transmission entity would satisfy each of the characteristics and functions of a Regional Transmission Organization specified in paragraphs (i), (j) and (k) of this section;

(iii) A detailed description of the section 205 rates that will be filed for the transmission entity; and

(iv) A commitment to make necessary filings pursuant to sections 203, 205 and/or 206 of the Federal Power Act, as appropriate, promptly after the Commission issues an order in response to the petition.

Note to paragraph (d): Under this paragraph (d), the Commission would consider a request for incentive rate treatment or another form of innovative transmission pricing, such as performance based rates. Such a filing must include a detailed explanation of how the proposed rate treatment would help achieve each of the minimum characteristics and functions and would result in benefits to consumers.

(e) *Transfer of operational control.* Any public utility's proposal to participate in a Regional Transmission Organization filed pursuant to paragraph (c)(1) of this section must propose that operational control of that public utility's transmission facilities will be transferred to the Regional Transmission Organization on a schedule that will allow the Regional Transmission Organization to commence operating the facilities no later than December 15, 2001.

Note to paragraph (e): The requirement in this paragraph (e) may be satisfied by proposing to transfer to the Regional Transmission Organization ownership of the facilities in addition to operational control.

(f) *Alternative filing.* The submittal referred to in paragraph (c)(2) of this section must contain a description of any efforts made by that public utility to participate in a Regional Transmission Organization; the reasons it has not, to date, participated in a Regional Transmission Organization, including identification of any existing obstacles to participation in a Regional Transmission Organization; and any plans the public utility has for further work toward participation in a Regional Transmission Organization.

(g) *Public utilities participating in approved transmission entities.* Every public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of [effective date of the final regulation], and that has filed with the Commission to transfer operational control of its facilities to a transmission entity that has been approved or conditionally approved by the Commission as being in conformance with the eleven ISO principles set forth in Order No. 888, FERC Stats. & Regs. ¶31,036 (Final Rule on Open Access and Stranded Costs) on or before [effective date of the final regulation], must, individually or jointly with other entities, file with the Commission, no later than January 15, 2001:

(1) A statement that it is participating in a transmission entity that has been so approved;

(2) A detailed explanation of the extent to which the transmission entity in which it participates has the characteristics and performs the functions of a Regional Transmission Organization specified in paragraphs (i) and (j) of this section and accommodates the open architecture conditions in paragraph (k) of this section; and

(3) To the extent the transmission entity in which the public utility participates does not meet all the requirements of a Regional Transmission Organization specified in paragraphs (i), (j), and (k) of this section, the public utility must file either a proposal to participate in a Regional Transmission Organization that meets such requirements in accordance with paragraph (d) of this section, a proposal to modify the existing transmission entity so that it conforms to the requirements of a Regional Transmission Organization, or a filing containing the information specified in paragraph (f) of this section addressing any efforts, obstacles, and plans with respect to conformance with those requirements.

(h) *Entities that become public utilities with transmission facilities.* An entity that is not a public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of [effective date of the final regulation], but later becomes such a public utility, must file a proposal to participate in a Regional Transmission Organization in accordance with paragraph (d) of this section, or an alternative filing in accordance with paragraph (f) of this section, by October 15, 2000 or 60 days prior to the date on which the public utility engages in any transmission of electric energy in interstate commerce, whichever comes later. If a proposal to participate in accordance with paragraph (d) of this section is filed, it must propose that operational control of the applicant's transmission system will be transferred to the Regional Transmission Organization within 6 months of filing the proposal.

(i) *Required characteristics for a Regional Transmission Organization.* A Regional Transmission Organization must satisfy the following characteristics when it commences operation:

(1) *Independence.* The Regional Transmission Organization must be independent of market participants.

(i) The Regional Transmission Organization, its employees, and any non-stakeholder directors must not have financial interests in any market participants.

(ii) A Regional Transmission Organization must have a decision making process that is independent of control by any market participant or class of participants.

(iii) The Regional Transmission Organization must have exclusive and independent authority to file changes to its transmission tariff with the Commission under Section 205 of the Federal Power Act.

(2) *Scope and regional configuration.* The Regional Transmission Organization must serve an appropriate region. The region must be of sufficient scope and configuration to permit the Regional Transmission Organization to effectively perform its required functions and to support efficient and non-discriminatory power markets.

(3) *Operational authority.* The Regional Transmission Organization must have operational responsibility for all transmission facilities under its control.

(i) The Regional Transmission Organization may choose to directly operate facilities (direct control), delegate certain tasks to other entities (functional control) or use a combination of the two approaches. If certain operational functions are delegated to, or shared with, entities other than the Regional Transmission Organization, the Regional Transmission Organization must ensure that this sharing of operational responsibility will not adversely affect reliability or provide some market participants with an unfair competitive advantage. Within two years after initial operation as a Regional Transmission Organization, the Regional Transmission Organization must prepare a public report that assesses whether any division of operational responsibilities hinders the Regional Transmission Organization in providing reliable, non-discriminatory and efficiently priced transmission service.

(ii) The Regional Transmission Organization must be the security coordinator for the facilities that it controls.

Note to paragraph (i)(3)(ii): The provision in this paragraph (i)(3)(ii) requires that the Regional Transmission Organization undertake the functions in its region currently assigned to security coordinators by NERC in "NERC Operating Policy 9—Security Coordinator Procedures." It is recognized that NERC "security coordinators" are relatively new and that they may not necessarily be permanent institutions. However, the functions NERC currently assigns to security coordinators are critical ones that should be performed by the entity with operational authority for transmission facilities within the region.

(4) *Short-term Reliability.* The Regional Transmission Organization must have exclusive authority for maintaining the short-term reliability of the grid that it operates.

(i) The Regional Transmission Organization must have exclusive authority for receiving, confirming and implementing all interchange schedules.

(ii) The Regional Transmission Organization must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities.

(iii) When the Regional Transmission Organization operates transmission facilities owned by other entities, the Regional Transmission Organization must have authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards.

(iv) If the Regional Transmission Organization operates under reliability standards established by another entity (*e.g.*, a regional reliability council), the Regional Transmission Organization must report to the Commission if these standards hinder it from providing reliable, non-discriminatory and efficiently priced transmission service.

(j) *Required functions of a Regional Transmission Organization.* The Regional Transmission Organization must perform the following functions. Unless otherwise noted, the Regional Transmission Organization must satisfy these obligations when it commences operations.

(1) *Tariff administration and design.* The Regional Transmission Organization must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraphs (j)(1)(i) and (ii) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for

transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnections.

(ii) The Regional Transmission Organization tariff must not result in transmission customers paying multiple access charges to recover capital costs for transmission service over facilities that the Regional Transmission Organization controls (*i.e,* no pancaking of transmission access charges).

(2) *Congestion management.* The Regional Transmission Organization must ensure the development and operation of market mechanisms to manage transmission congestion. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraph (j)(2)(i) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The market mechanisms must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions. The Regional Transmission Organization must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant.

(ii) The Regional Transmission Organization must satisfy this requirement no later than one year after it commences initial operation.

(3) *Parallel path flow.* The Regional Transmission Organization must develop and implement procedures to address parallel path flow issues within its region and with other regions. The Regional Transmission Organization must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operation.

(4) *Ancillary services.* The Regional Transmission Organization must serve as a supplier of last resort of all ancillary services required by Order No. 888, FERC Stats. & Regs. ¶31,036 (Final Rule on Open Access and Stranded Costs), and subsequent orders. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraphs (j)(4)(i)-(iii) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) All market participants must have the option of self-supplying or acquiring ancillary services from third parties subject to any restrictions imposed by the Commission in Order No. 888, FERC Stats. & Regs. ¶31,036 (Final Rule on Open Access and Stranded Costs), and subsequent orders.

(ii) The Regional Transmission Organization must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided. All ancillary service providers must be subject to direct or indirect operational control by the Regional Transmission Organization. The Regional Transmission Organization must promote the development of competitive markets for ancillary services whenever feasible.

(iii) The Regional Transmission Organization must ensure that its transmission customers have access to a real-time balancing market. The Regional Transmission Organization must either develop and operate such markets itself or ensure that this task is performed by another entity that is not affiliated with any market participant.

(5) *OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC).* The Regional Transmission Organization must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC.

(6) *Market monitoring.* The Regional Transmission Organization must monitor markets for transmission services, ancillary services and bulk power to identify design flaws and market power and propose appropriate remedial actions. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraphs (j)(6)(i)-(iv) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization must monitor markets for transmission service and the behavior of transmission owners, if any, to determine if their actions hinder the Regional Transmission Organization in providing reliable, efficient and nondiscriminatory transmission service.

(ii) The Regional Transmission Organization must monitor markets for ancillary services and bulk power. This obligation is limited to markets that the Regional Transmission Organization operates.

(iii) The Regional Transmission Organization must periodically assess how behavior in markets operated by others (e.g., bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects Regional Transmission Organization operations and conversely how Regional Transmission Organization operations affect the performance of power markets operated by others.

(iv) The Regional Transmission Organization must provide reports on market power abuses and market design flaws to the Commission and affected regulatory authorities. The reports must contain specific recommendations about how observed market power abuses and market flaws can be corrected.

(7) *Planning and expansion.* The Regional Transmission Organization must be responsible for planning necessary transmission additions and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. The Regional Transmission Organization must carry out this function by satisfying the standards listed in paragraphs (j)(7)(i) and (ii) of this section, or by demonstrating that an alternative proposal is consistent with or superior to satisfying such standards.

(i) The Regional Transmission Organization planning and expansion process must encourage market-driven operating and investment actions for preventing and relieving congestion.

(ii) The Regional Transmission Organization's planning and expansion process must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The Regional Transmission Organization's planning and expansion process must be coordinated with programs of existing RTGs where necessary.

(iii) If the Regional Transmission Organization is unable to satisfy this requirement when it commences operation, it must file a plan with the Commission with specified milestones that will ensure that it meets this requirement no later than three years after initial operation.

(k) *Open architecture.* (1) Any proposal to participate in a Regional Transmission Organization must not contain any provision that would limit the capability of the Regional Transmission Organization to evolve in ways that would improve its efficiency, consistent with the requirements in paragraphs (i) and (j) of this section.

(2) Nothing in this regulation precludes an approved Regional Transmission Organization from seeking to evolve with respect to its organizational design, market design, geographic scope, ownership arrangements, methods of operational control and other appropriate ways if the changes are consistent with the

requirements of this section. Any future filing seeking approval of such changes must demonstrate that the proposed changes will meet the requirements of paragraphs (i) and (j) of this section and this paragraph (k).

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A—Staff Summary of FERC-Industry ISO Conferences

[Docket No. PL98–5–000]

During 1998, the Commission conducted a series of eight public conferences with the electric power industry for the purpose of examining its ISO policies. The Commission wanted to learn whether any changes to its policies that affect the development of ISOs and other forms of regional grid management structures are appropriate to further promote competition and reliability in bulk power markets. The Commission also wanted to learn whether it should also be more prescriptive in this area. The Commission also focused on the future of ISOs in administering the electric transmission grid on a regional basis. [1]

ISO Trust, Flexibility and Mandate

Participants largely agreed on the need for improved regional organizations to operate the grid and implement reliability rules. They emphasized the need for transmission operations to be structurally independent, trustworthy, and fair in order for competitive generation markets to flourish. There seemed to be a consensus that any Commission ISO policy should be flexible to meet the needs and characteristics of each region and its state commissions, and that the Commission should avoid any one-size-fits-all approach to ISO structure and functions that might stifle innovation. Participants differed, however, on whether the Commission should require or merely encourage ISOs.

Reasons offered as to why the voluntary approach to ISO formation has not worked uniformly across the Nation included: (1) some states that have not yet decided on retail access believe that an ISO inevitably will lead to retail access; (2) some low-cost states are concerned that ISOs and retail access will increase their electric rates because utilities will be able to use ISOs to sell their low-cost power elsewhere; (3) some see ISOs as overly expensive, burdensome, and bureaucratic; and (4) some see transmission access as having improved enough through the on-going implementation of Order Nos. 888 and 889.

Recommendations on what the Commission should do next ranged from wait and see, to act decisively now. Some in the first camp claimed that the Commission lacks the authority to mandate participation in ISOs. Some counseled that the Commission should continue to just nurture the formation of ISOs and allow development of organizations that best fit the local needs of a particular region and avoid stifling innovation by continuing the case-by-case approval of voluntary ISO submittals. Some suggested that the Commission merely define its basic objective as the availability of efficient and reliable transmission service on a non-discriminatory basis, and to encourage hold-outs to join.

Those conference participants favoring stronger action contended that functional unbundling has not worked well enough and that it is unrealistic to expect it to do so. Many claimed that some vertically integrated utilities are employing preferential reliability practices or manipulating postings of ATC and capacity benefit margin values to favor their own wholesale merchant functions. They further claimed that there is a reluctance to lodge complaints out of concern that the Commission may not take strong action or there might be reprisals by the utilities. Others contended that some utilities are impeding ISO formation by refusing to participate, and that, as long as ISO boundaries are drawn by the voluntary decisions of the transmission owners to pick and choose the ISO which most advances their individual corporate and competitive objectives, the result is likely to be ISOs whose shape and composition impede its ability to create a true competitive market. Strong action advocates also seemed to be looking for clear guidance on transmission pricing, operation of energy markets, and the phase-in of certain ISO responsibilities.

Many of those concerned about a patchwork of ISO grid coverage suggested that now is the time for the Commission to mandate ISOs (possibly tempered with incentives), or at least mandate participation in negotiations on ISO formation. Several suggested that the Commission work with the states to develop specific directives and guidelines as a way to assure that enough momentum on ISO formation is achieved. One guideline that was suggested would incorporate a standardized ISO tariff and a standardized set of rules governing reciprocity among ISOs. It would be coupled with a flexible ISO design that could accommodate varying regional needs. Others variously recommended (1) specification of minimum ISO functions as a basic model and letting the regions justify any departure therefrom; (2) ordering the formation of ISOs and allowing enough time for each region to develop a proposal that best suits its local needs; and (3) exercising all Commission authority to monitor and manage comprehensive ISO formation.

ISO Purposes and Functions

The many notions about what the proper functions of an ISO should be seemed to reflect what each participant saw as the critical regional objectives (*e.g.*, promotion of retail access; more efficient grid operation, planning and expansion; enhanced system reliability; elimination of loop flow issues; solution of "seams" problems between control areas; elimination of rate pancaking; improved congestion management; enhanced reserve sharing; establishment of one-stop shopping through creation of a regional OASIS; enhanced market monitoring, and improved real-time communication among all transmission entities). Accordingly, suggested ISO functions included: control area responsibilities; numerous security coordinator and reliability duties; impartial operation of a regional OASIS to improve ATC postings; administration of an ISO-wide tariff; generation redispatch duties to relieve congestion; and ancillary services markets coordination responsibilities.

Some participants argued, however, that certain functions should not be foisted upon ISOs. Some contended that it would be detrimental to the markets and the administration of ISOs if ISOs become involved with functions that are not natural monopolies such as power exchange activities because this would compromise the ISO's independence in fulfilling its primary transmission responsibilities. Many cautioned that an ISO should not be involved in market monitoring beyond data gathering tasks, due to the attendant administrative burden and cost, and because enforcement should be the sole prerogative of regulatory authorities.

ISO Size

Most participants agreed that, as a general proposition, bigger ISOs can be more effective than smaller ISOs, given the growth in unbundled power sales and the lessening of traditional cooperation among utilities that have now become competitors. For example, with regard to the connection between size and effective reliability management, it was pointed out that an excessive number of control areas in the Midwest has inhibited communication and coordination, and contributed to several of the Midwest's recent reliability "near misses."

Basically, participants saw the "proper" size as depending upon a number of factors: (1) The purposes and functions of the ISO (such as enhancing reliability or accommodating regional power markets); (2) the operating characteristics and make-up of the local regional transmission system; (3) being large enough to capture scale economies yet not too big to operate without difficulty and handle large volumes of next-hour transactions; (4) recognizing historic coordination arrangements, trading patterns, and load patterns; and (5) remaining responsive to local transmission concerns and conventions on such matters as how wide an area over which costs associated with transmission construction and generation redispatch should be spread.

Alternatives to ISOs

A number of participants counseled that the Commission should seriously consider alternatives to ISOs such as investor-owned transcos, and independent grid administrators or schedulers (IGA or ISA).

IGA/ISA supporters were concerned about what could be quickly implemented that would avoid the high costs that seem to be associated with comprehensive ISO initiatives, yet would provide immediate control over the more egregious actions of some transmission providers. IGA/ISA structures were described to include any of the following: (1) One-stop shopping through an OASIS that uniformly calculates ATC

[1] *See* Inquiry Concerning the Commission's Policy on Independent System Operators, Notice of Conference (dated March 13, 1998), and Notice of Panels for Conference (dated April 7, 1998). *See also*, Inquiry Concerning the Commission's Policy on Independent System Operators, Notice of Regional Conferences (dated April 27, 1998).

values; (2) independent coordination of reservations and power flow scheduling; and (3) fast-track dispute resolution. It was claimed that such structures would avoid cost-shifting controversies and congestion management complications because the IGA/ISA members would continue to operate their own transmission and set their own individual rates. While there was some support for IGA/ISA structures as an interim step toward full ISO formation, many participants expressed concern about the Commission approving "watered-down" versions of an ISO that fail to address pressing needs for grid expansion and pricing reform.

Transco supporters argued that a transco can offer everything that a full ISO can provide, plus the additional efficiency that is inherent in combining operation and ownership of transmission assets driven by the same corporate and market incentives. Transcos were also said to provide more opportunity for shareholders to benefit from the strong performance of any facilities placed under an ISO. As such, transcos were touted as the natural end-state of transmission restructuring. ISO supporters countered that the ISO structure need not foreclose passing incentive-rate revenues on to transmission owners. They also claimed that, unlike a transco, an ISO is not dependent upon the successful transfer of all of the transmission assets within a region and, if an ISO is sized wrong, it can be more readily corrected than a transco for the same reason.

Finally, some participants suggested that ISOs and transcos are actually complementary forms. Others claimed that who owns the transmission is irrelevant as long as the regional grid operator is independent; it is big enough to internalize loop flows; it directs region-wide transmission planning; and it allows for competitive bidding on the installation of new facilities to expand the grid.

ISO Pricing and Cost-shifting Concerns

Some participants supported differing forms of ISO rate structures: flow-based rates, distance-based pricing, average-cost based rates, and locational marginal cost-based pricing. Many cautioned that a Commission mandate on the use of any particular tariff structure would be a major obstacle to the voluntary formation of ISOs; therefore, they recommended that the Commission provide great deference to the needs of each region as to what locally is seen to be fair and reasonable pricing.

In particular, many participants raised concerns about cost-shifting within an ISO that might result from membership with significantly disparate embedded transmission costs and imposition of an ISO-wide access tariff that reflects some composite of such costs. These participants counseled that the Commission should allow "license plate" access rates that reflect only the cost of the transmission zone within the ISO in which the load to be served is located. One participant suggested, however, that even license plate rates can raise cost-shifting concerns, if the cost of an upgrade that is used primarily for the benefit of external loads is included in the cost basis for the affected zone.

Non-jurisdictional Transmission Participation

Most participants expressed the view that government-owned and other regional non-jurisdictional transmission owners need to fully participate in an ISO in order for it to be completely successful. It was suggested that this is especially true for the West, where large amounts of non-jurisdictional transmission is controlled by Bonneville Power Administration, Western Area Power Administration, Southwestern Power Administration, large municipals, cooperatives, public power districts, British Columbia Hydro, and the Alberta grid. Some participants wanted the Commission to provide guidance on how to bring public power and other non-jurisdictional transmission owners into an ISO. In this regard, some suggested that the Department of Energy needs to issue guidance to the federal power marketing agencies on their active support of any ISO initiatives. Public power participants, who strongly supported ISOs, expressed concern that any ISO participation on their part could adversely affect the financing of their facilities due to Internal Revenue Code "private-use" restrictions.

Existing Transmission Contracts

Some participants emphasized the need for ISOs to honor (grandfather) existing transmission contract arrangements to maintain any benefits that were bargained. Others emphasized the need for ISOs to abrogate any existing transmission contracts to eliminate any preferential transmission treatment. Those favoring grandfathering, however, acknowledged that it could become a very complicated administrative matter in the event that there is insufficient transmission capacity to serve everyone.

Panelists

The Commission held conferences in Washington, D.C. and in seven cities in different regions of the country.

Washington, D.C.

In the lead-off two-day conference held on April 15–16, 1998, in Washington, D.C., approximately 400 individuals attended each day. Panelists represented:

American Electric Power Company
American Public Power Association
California Independent System Operator
California Independent System Operator, Market Surveillance Committee (by Stanford University)
California Public Utilities Commission
Cameron McKenna LLP
Cinergy Energy Services, Inc.
Commonwealth Edison Company
Coalition For A Competitive Electric Market (by Enron Corporation)
Economic Analysis Group
Edison Electric Institute
Edison Electric Institute (by NERA)
Electric Power Supply Association.
Entergy Services, Inc.
Harvard University (John F. Kennedy School of Government)
Industrial Consumers (by Electricity Consumers Resource Council)
ISO New England
Members Systems of the New York Power Pool (by Putnam, Hayes & Bartlette, Inc.)
Mid-Continent Area Power Pool (by Morgan, Lewis & Bockius)
Montana Power Company
National Association of Regulatory Utility Commissioners (by Iowa Utilities Board)
National Rural Electric Cooperative Association
NGC Corporation
Pennsylvania Public Utility Commission
PJM Interconnection, L.L.C.
Public Utilities Commission of Ohio
Public Service Commission of the State of New York
Rhode Island Public Utilities Commission
Secretary of Energy's Task Force on Electric System Reliability
Sithe Energies, Inc. (By Economics Resource Group)
Transmission Access Study Group (by Wisconsin Public Power, Inc.)
Transmission Alliance (by Merrill Lynch)
Transmission Dependent Utility Systems (by Arkansas Electric Corporation
U.S. Department of Justice
U.S. Generating Company and PJM Supporting Companies (by Steptoe & Johnson LLP)
Wabash Valley Power Association, Inc.
Wisconsin Electric Power Company

Phoenix

Almost 90 people attended the May 28, 1998, Phoenix conference. Panelists represented:

Arizona Corporation Commission
Arizona Public Service Company
Automated Power Exchange, Inc.
California ISO
Desert STAR
K.R. Saline & Associates
Colorado Springs Utilities
Cyprus Climax Metals, BHP Copper, Phelps Dodge, ASARCO and Motorola (by Energy Strategies, Inc.)
Goldman Sachs & Co.
Northern California Power Agency.
Salt River Project Agricultural Improvement and Power District
Southwest Power Trading Council (by Enron Corp.)
Tri-State Generation and Transmission Cooperative, Inc.

Kansas City

About 90 people attended the May 29, 1998, Kansas City conference. Panelists represented:

City Utilities of Springfield, Missouri
Clarksdale Public Utilities Commission
Cooperative Power Association
Iowa Utilities Board
Kansas Corporation Commission
Mid-America Regulatory Conference (by Kansas Corporation Commission)
Midwest Coalition for Effective Competition (by MCES and Environmental Law and Policy Center)
Midwest ISO Participants (by Wisconsin Electric Power Company and Ameren Services)
Minnesota Department of Public Service

Missouri Office of Public Counsel
Missouri Public Service Commission
Nebraska Public Power District
Northern States Power Company
Public Utility Commission of Texas
Shook, Hardy, Bacon, LLP
Southwest Power Pool

New Orleans

The June 1, 1998, New Orleans conference panelists represented:

Arkansas Electric Cooperative
Entergy Corporation
Gulf Coast Power Marketers Coalition
Houston Industries Power Corporation, Inc.
Lafayette Utilities System
Louisiana Energy Users Group
Public Service Commission of Yazoo City, Mississippi
Southern Company Services, Inc.
Southwest Power Pool
Southwestern Public Service Company

Indianapolis

About two hundred people attended the June 4, 1998, Indianapolis conference. Among the panelists represented:

AMEREN
American Municipal Power of Ohio
Cinergy Services Inc.
Citizens Action Coalition of Indiana
Consumers Energy Company
Detroit Edison Company
Energy Michigan
FirstEnergy Corporation
Illinois Industrial Energy Consumers
Indiana Municipal Power Agency
Indiana Utility Regulatory Commission
Kentucky Public Service Commission
Madison Gas and Electric Company
Mid-America Regulatory Commissioners (by Michigan Public Service Commission)
Midwest Coalition for Effective Competition
Midwest ISO Participants
Michigan Public Power Agency
Minnesota Public Utilities Commission
Public Utilities Commission of Ohio
Wisconsin Electric Power Company

Portland

About 160 people attended the June 5, 1998, Portland conference. Panelists represented:

Automated Power Exchange
Bonneville Power Administration
California ISO
California Municipal Utilities Association
California Public Utilities Commission
Chelen County PUD (on behalf of Independent Grid Scheduler)
CIBC Oppenheimer Corp.
Columbia Falls Aluminum Company, et al.
Idaho Power Company
Idaho Public Utilities Commission
Industrial Customers of Northwest Utilities
Land and Water Fund of the Rockies Energy Project
Montana Department of Environmental Quality
Montana Power Company
Northern California Power Agency.
Oregon Public Utilities Commission
Pacific Northwest Generating Cooperative
PacifiCorp
Platte River Power Authority
Public Power Council
Public Service Company of Colorado
Puget Sound Energy, Inc.
Transmission Agency of Northern California
Turlock Irrigation District
University of California
Washington Utilities and Transportation Commission
Western Power Trading Forum
Western Regional Transmission Association

Richmond

About 55 people attended the June 8, 1998, Richmond conference. Panelists represented:

Blue Ridge Power Agency
LG&E Energy (on behalf of Midwest ISO Participants)
Mid-Atlantic Power Association
North Carolina Electric Membership Corporation
Old Dominion Electric Cooperative
TransEnergie U.S., Ltd.
Virginia State Corporation Commission
Virginia Committee for Fair Utility Rates and Old Dominion Committee for Fair Utility Rates
Virginia Electric & Power Company

Orlando

The June 8, 1998, Orlando conference was attended by about 100 people. Panelists represented:

Dynergy
Enron Power Marketing (by Basford & Associates)
Florida Municipal Power Agency
Florida Power & Light Company
Florida Power Corporation
Florida Public Service Commission
Florida Reliability Coordinating Council, Inc.
Morgan Stanley & Company
Municipal Electric Authority of Georgia
National Grid Company of England and Wales
Seminole Electric Cooperative, Inc.

Other Commenters

Alabama Electric Cooperative, Inc.
Allegheny Power, et al.
Barbara R. Barkovich
California Department of Water Resources
California Electricity Oversight Board
California Independent Energy Producers Association
Central Illinois Light Company
Citizens Group Responsible Use of Rural & Agricultural Land
Commonwealth of Pennsylvania Utility Commission
Commonwealth of Virginia, Division of Energy Regulations
Commonwealth of Virginia State Corporation Commission
Consumer Counsel Office of the Attorney General of Virginia
Consumers Energy Company
Cooperative Power Association
CSW Operating Companies
CSX Transportation
D. Basford & Associates, Inc.
Dairyland Power Cooperative
Department of Energy, Bonneville Power Administration
Desert Southwest Power Trading Council
Dominion Resources Inc.
Economic Resources Group, Inc.
Electricities of North Carolina, Inc.
Electricity Consumers Resource Council, et al.
Energy Strategies, Inc.
Fiona Woolf
Georgia System Operations Corporation, et al.
Goldman, Sachs & Company
Gregory J. Werden
Gridco Commenters
Houston Industries, Inc.
IES Utilities Inc., et al.
Illinois Commerce Commission
Independent Grid Scheduler Organizing Group
Independent Power Producers of New York, Inc.
Indiana Energy Michigan
Indiana Office of Utility Consumer Counsel
Kentucky Utilities Company
Kentucky Public Service Commission
Large Public Power Council
Marija D. Ilic
Mid-Atlantic Public Service Commissions
Midwest Independent Transmission System Operator, Inc.
Midwest Municipal Intervenors, et al.
Minnesota Power Company
Minnesota Public Utilities Commission
Mississippi Office of Public Counsel
Montana Public Service Commission
Multiple Public Interest Organizations
New York Mercantile Exchange
New Mexico Industrial Energy Consumers
Northern Indiana Public Service Company
Northwest Power Plant Planning Council
Oak Ridge National Laboratory
Office of Ohio Consumers' Counsel
Oklahoma Corporation Commission
Oklahoma Gas and Electric Company
Orange & Rockland Utilities
Oregon Public Utilities Commission
Otter Tail Power Company
Pacific Gas & Electric Company
PECO Energy Company
Pennsylvania Office of Consumers Advocate
PJM Supporting Companies
Portland General Electric Company
Powersmiths International, Inc.
Project For Sustainable FERC Policy
ProLiance Energy, LLC
Public Service Commission of Wisconsin
Public Service Electric & Gas Company
Public Utilities Board of the City of Brownsville, Texas
Public Utility District No. 1 of Chelan County, Washington
Selkirk Cogen Partners, L.P.
Sierra Pacific Power
Southern California Gas Company, et al.
Southwest Transmission Dependent Utility Group
Staff of Bureau of Economics of the Federal Trade Commission
State of California Public Utilities Commission
State of Florida Public Service Commission
State of Idaho & Idaho Public Utilities Commission
State of Kansas Citizens' Utility Ratepayer Board's
State of Minnesota Public Utilities Commission
State of Montana Department of Environmental Quality
State of New York Public Service Commission
State of Rhode Island and Province Plantations

The Williams Companies Inc.
Transmission Operators of Public Service Company of Colorado
Tucson Electric Power Company
University of Arizona
Virginia Committee for Fair Utility Rates, et al.
Washington Department of Community, Trade and Economic Development Energy Policy Group
Western Area Power Administration
Wisconsin Intervenors
Wisconsin Public Power, Inc.
Wisconsin Public Service Corporation

Appendix B—Staff Summary of FERC Consultations With the States

[Docket No. RM99–2–000]

In Docket No. RM99–2–000, as part of a broader inquiry into its RTO policies, the Commission held a series of three regional conferences to elicit the views and recommendations of state regulatory authorities with respect to the development of independent RTOs and whether and how it should use its authority under section 202(a) of the Federal Power Act.[1] The Commission also wanted to learn whether the goals of full competition and non-discriminatory transmission access can be achieved in the absence of broad participation by transmission-owning utilities in RTOs. Conferences were held in St. Louis, Las Vegas, and Washington, D.C. in February 1999.

Need for Commission Mandate

There was little real dispute by participants over the need for independent and impartial regional grid management, whether it be for improved grid operation, increased reliability, identifying promising new generation locations, broadening markets by reducing rate pancaking, or all of these. Most of the states also recognized that the Commission is the necessary and appropriate facilitator for forming RTOs, due to its broad jurisdiction. However, comments as to how best the Commission should proceed next were mixed.

One state wondered whether the Commission has the authority to mandate RTOs. Several Northeastern and Mid-Atlantic states that already have strong ISOs were concerned that the Commission might disturb their ISOs before an adequate period of time has elapsed to reveal their strengths and weaknesses. One state suggested that the Commission should look into setting up a joint board of state and federal regulators on RTO issues. Some Southeastern states saw no need for a Federal policy on RTOs right now. They felt that the grid is operated adequately and preferred to let the market sort RTO developments.

States west of the Appalachians generally recognized the need for structural independence of transmission through RTOs beyond functional unbundling sooner rather than later and saw a need for strong Commission leadership on RTO formation. They differed on the urgency and the necessary extent of Commission involvement. Many of the states advocating a more aggressive role were located in the Midwest, which had experienced price spikes during the summer of 1998.

One state insisted that Commission action is needed to quicken the pace of RTO formation so that development of competitive electricity markets is not delayed. One vigorously complained about the persistent lack of fuller RTO participation in the Midwest and the possible strategic advantage to vertically integrated utilities not participating. To counter the fragmentation in the Midwest, it recommended that the Commission mandate utility participation or, at a minimum, eliminate pancaked transmission rates within each regional reliability council. Another suggested that the Commission interpret any utility's refusal to join an RTO as an indicator of undue discrimination. One recommended that the Commission strongly promote fuller participation in RTOs by using a combination of "carrots" and "sticks" as incentives.

Flexibility

A pervasive theme was the need for the Commission to avoid taking a one-size-fits-all approach to RTOs. Many states recommended that, if the Commission wants to establish RTO policy pursuant to its section 202(a) authority, the policy must be implemented in a way that adequately recognizes any regional differences in industry structures. One Midwestern state counseled that the Commission should partner with the states to develop a memorandum of understanding (MOU) on regional transmission matters. The MOU would outline common desires and objectives, describe the regulatory tools to get there, and the circumstances under which the tools would be used.

Other states suggested that the Commission, before it considers taking any stronger action, issue guidelines and allow enough time for each state to determine which are appropriate for it in forming regional RTOs. The guidelines would reflect determinations on such issues as how to encourage participation by and otherwise deal with non-jurisdictional transmission entities; whether to allow a state to opt out of a mandatory RTO policy; and how to ensure that no state's economy is harmed by an RTO. Several states suggested that cost/benefit analyses be done for each region. Finally, numerous states recommended that the Commission not mingle retail competition issues with RTO issues, contending that retail choice is a state prerogative.

RTO Size

Several states were concerned about how large is large enough for an RTO, and how the Commission expects to set the proper regional boundaries. In the East, states served by established ISOs expressed concern that their ISOs might have to incur additional costs for modifications that might be required to meet a potential Commission size criterion before market forces have had the chance to suggest an appropriate size. Some suggested that because the existing ISOs are so crucial to promoting retail competition in states that have already adopted retail choice, the Commission should carefully consider any order that would expand, merge, or restructure an existing ISO. Some states cautioned that expanding their existing ISOs beyond a certain point might also lead to reliability problems or inheriting problems from adjacent regions.

One state recommended that only minimum size criteria be established rather than the specific locations of boundaries. Other states recommended that, if the Commission insists on establishing regional boundaries, that it consider the relative costs and benefits of an RTO sized according to each regional boundary set. One state suggested that the Commission rely on the existing NERC regional councils as the starting point for determining proper RTO boundaries. Another state suggested that the Mid-Continent Area Power Pool (MAPP) and Mid-American Interconnected Network (MAIN) interfaces should be placed within a single RTO. Some western states contended that, while only one regional reliability council serves the West, many non-jurisdictional cooperative and government utilities control such a substantial amount of transmission that creating RTOs in the West will be difficult absent clear direction from the Commission.

Alternative Forms of RTOs

While several states argued that competing ISO and transco structures could lead to further fragmentation and limited RTO operations, others argued that mandating specific forms of RTOs now would impede the ability of the states and regions to adopt models that are best suited for their particular needs and that the Commission should not lock in particular RTO structures but should instead retain flexibility to address changing future needs. One state favored a non-profit ISO structure, because it doubted that the industry would lend itself to the development of any transco with sufficient geographic coverage and adequate independence from generation interests. It noted, however, that if a for-profit transco could meet the size and independence criteria, the transco would have advantages over an ISO in the form of a stronger business orientation and superior access to capital for grid expansion.

Transmission Cost Shifting and Low Power Cost States

Many states counseled that the Commission should allow a region to opt-out of an average cost based RTO-wide rate, if such a rate would shift highly disparate embedded transmission costs among its RTO customers and force some to suffer transmission rate increases. Many western states suggested that concern over the enhanced ability of utilities to export their low cost power to other regions through an RTO, as well as concerns about transmission cost shifting, not only led to the demise of the IndeGo ISO but has thwarted further RTO development in the West.

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[1] *See* Regional Transmission Organizations, Notice Of Intent To Consult Under Section 202(a) dated November 24, 1998, and Notice Of Dates And Locations For Consultation Sessions With State Commissions (dated January 13, 1999).

Panelists

St. Louis

About 120 people attended the February 11, 1999, conference in St. Louis. Panelists represented commissions in:

Arkansas
Florida
Illinois
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
Oklahoma
South Dakota
Tennessee
Texas
Wisconsin

Las Vegas

About 96 people attended the February 12, 1999, conference held in Las Vegas. Panelists represented commissions in:

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Washington, D.C.

The panelists at the February 17, 1999, conference in Washington, D.C. represented commissions in:

Alabama
Connecticut
District of Columbia
Georgia
Maryland
Massachusetts
Mississippi
New Jersey
New York
North Carolina
Pennsylvania
Rhode Island
West Virginia

Other Commenters

Canadian Electricity Association
ISO New England
Mid-American Regulatory Commissioners
National Association of Regulatory Utility Commissioners
New England Conference of Public Utilities Commissioners, Inc.
Regional Electric Power Cooperation
Virginia State Corporation Commission
Western Interstate Energy Board

Appendix C—Existing Configurations

This Appendix depicts the three existing configurations discussed in Section III.D.2: the three electric interconnections within the continental United States, the ten NERC reliability councils, and the twenty-three NERC security coordinator areas.

[The attachments to this Appendix are available for public inspection and copying during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, and through the Commission's Records and Information Management System (RIMS). RIMS is available remotely via Internet through FERC's Home page using the RIMS link or the Energy Information Online icon.]

[FR Doc. 99–12553 Filed 6–9–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Intent To Prepare an Environmental Assessment for the Regional Transmission Organizations Rulemaking, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

May 14, 1999.

To further the policies and goals of the National Environmental Policy Act of 1969 (NEPA), the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment (EA) that will consider the environmental impacts of the proposed rulemaking on Regional Transmission Organizations (RTO). The proposed rule was issued by the Commission on May 13, 1999, and appears elsewhere in this issue of the **Federal Register**. The Commission requests public comments on the scope of the issues it will address in the EA. All comments received will be considered during the preparation of the EA. A comment period will be allotted for public review of the EA.

Scoping comments are due on or before June 14, 1999; the public scoping meeting will be held at 10:00 a.m. on July 8, 1999 in the Commission Meeting Room, 888 First Street, NE, Room 2C, Washington, D.C. 20426.

Summary of the Proposed Action

In Order Nos. 888 and 889, the Commission established the foundation necessary to develop competitive bulk power markets in the United States: Non-discriminatory open access transmission services by public utilities and stranded cost recovery rules that would provide a fair transition to competitive markets. Order Nos. 888 and 889 were not intended to address all problems that might arise in the development of competitive power markets. Indeed, since the issuance of Order Nos. 888 and 889, the industry has undergone changes. Trade in bulk power markets has continued to increase significantly and the Nation's transmission grid is being used more heavily and in new ways.

After almost three years of experience with implementation of Order Nos. 888 and 889, there remain transmission-related impediments to a competitive wholesale electric market. In an effort to ensure that electricity consumers realize the full benefits that competition can bring to wholesale markets, the Commission has issued a Notice of Proposed Rulemaking, the objective of which is to encourage all transmission facilities in the Nation, including transmission facilities owned or controlled by non-public utility entities, to form appropriate regional transmission institutions in a timely manner.

Accordingly, as set forth in detail in the Notice of Proposed Rulemaking, the Commission proposes the following:

- Minimum characteristics and functions that an RTO must satisfy. Industry participants will retain flexibility in structuring RTOs that satisfy the standards.
- An "open architecture" policy regarding RTOs, whereby all RTO proposals must allow the RTO and its members the flexibility to improve their organizations in terms of structure, operations, market support and geographic scope to meet market needs. In turn, the Commission will provide the regulatory flexibility to accommodate such improvement.
- Guidance on flexible transmission ratemaking that may be proposed by RTOs, including ratemaking treatments that will address congestion pricing and performance based regulation. The Commission will consider on a case-by-case basis incentive pricing that may be appropriate for transmission facilities under RTO control.
- A plan for encouraging formation of RTOs across the Nation that includes: (1) A collaborative process to take place in the spring of 2000 for all stakeholders to actively work toward the voluntary development of specific RTOs; and (2) filing requirements whereby all public utilities that own, operate or control interstate transmission facilities must file with the Commission by October 15, 2000 a proposal for an RTO with the standards adopted in the final rule, or a description of reasons that it has not filed such a proposal. Each proposed RTO must plan to be operational by December 15, 2001.

Public Participation

The public is invited to provide comments that will assist us in conducting an accurate and thorough analysis of the potential environmental impacts of the proposed rule. Comments should address environmental issues, including any potential environmental effects of the proposed rule, alternatives to the proposed rule, and measures to avoid or lessen environmental impacts (if any). The more specific the comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, D.C. 20426.
- Label one copy of the comments for the attention of Jim Turnure, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE, Room 64–09, Washington, D.C. 20426.
- Mail your comments so that they will be received in Washington, D.C. on or before June 14, 1999.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskettes or via Internet e-mail. Comments may be filed in the following formats: WordPerfect 6.1 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–2–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM99–2–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt.

Questions on electronic filings should be directed to Brooks Carter at 202–501–8145, e-mail address: Brooks.Carter@FERC.FED.US.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolve by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS submitted in electronic format all available on CIPS. User

assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

In addition to asking for written comments, we invite any interested parties to attend our public scoping meeting that will be held on July 8, 1999. The meeting will be held at 10:00 a.m. in the Commission Meeting Room, 888 First Street, N.E., Room 2C, Washington, D.C. 20426. The purpose of the public meeting is to provide interested parties another opportunity to offer comments on the proposed rule.

A copy of the EA will be made available for review and comment to all interested parties. A 30-day comment period will be provided for reviewing the EA. The Commission will consider all comments on the EA in developing the final rule.

David P. Boergers,

Secretary.

[FR Doc. 99–12667 Filed 6–9–99; 8:45 am]

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Thursday
June 10, 1999

Part IV

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; 100% Fee Recovery, FY 1999; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG08

Revision of Fee Schedules; 100% Fee Recovery, FY 1999

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1999, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1999 is approximately $449.6 million.

EFFECTIVE DATE: August 9, 1999.

ADDRESSES: Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments.
III. Final Action.
IV. Voluntary Consensus Standards.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.
X. Small Business Regulatory Enforcement Fairness Act.

I. Background

OBRA–90, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF). Certain NRC costs related to reviews and other assistance provided to the Department of Energy were excluded from the fee recovery requirement for FY 1999 by the FY 1999 Energy and Water Development Appropriations Act.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established at 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees. The NRC published a proposed rule that presented the amendments to parts 170 and 171 necessary to comply with OBRA–90 for FY 1999 on April 1, 1999 (64 FR 15876).

II. Responses to Comments

A total of thirty-four comments were received on the proposed rule. Although the comment period ended on May 3, 1999, the NRC evaluated the 26 comments which were received by the close of business on May 5, 1999. The NRC was unable to consider the eight comments received after May 5, 1999, as they were not received in sufficient time for the NRC staff and the Commission to evaluate them fully in the limited period available for preparing a final rule in this expedited rulemaking proceeding. In any event, a cursory review of those late comments did not reveal any substantive new issues.

Many of the comments were similar. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows:

A. Legal Issues

Several commenters raised questions about NRC's legal interpretation of OBRA–90 and the IOAA. These comments are addressed first because their resolution establishes the framework for addressing subsequent issues raised by commenters.

The commenters attempted to present a balanced view of the proposed fee schedule, and even applauded the NRC's "considerable effort over the past year to reduce inefficiencies through strategic planning and reorganizations." Nonetheless, it is abundantly clear that most commenters believe that the NRC has a long way to go to reach a truly fair and equitable system of fee allocation. Several commenters asserted that the NRC lacks the legal authority to set fees in accordance with the proposed fee schedule. These commenters challenged the agency's interpretation of the statutes underpinning NRC's fee collection proposal. These same questions have been raised since the inception of the 100 percent fee collection requirement in 1991. The Commission has consistently interpreted its statutory mandate, but in the face of continuing complaints, the Commission will again address the concerns raised by commenters.

1. *Comment.* Comments submitted by or on behalf of commercial nuclear power reactors, the uranium recovery industry, and a materials licensee expressed serious concern over inequities caused by the statutory mandate that NRC collect an annual charge from licensees aggregating approximately 100 percent of the budget authority for the fiscal year, less fees collected under Part 170 and any amount appropriated from the Nuclear Waste Fund or the General Fund. These commenters are particularly distressed at having to absorb charges in their annual fees for activities that do not directly benefit them, such as international activities, Agreement State oversight and regulatory support, activities for other Federal agencies, and fee reductions or exemptions for small entities and nonprofit educational institutions. One commenter, speaking on behalf of several commercial power reactors, questioned the NRC's legal and constitutional authority to impose these charges. The commenter did not believe the 100 percent budget recovery requirement could be reconciled with OBRA–90, which requires that annual fees bear a reasonable relationship to the cost of regulatory services and to be fairly and equitably allocated among licensees.

Commenters concluded that the desired relief for this problem can come only by legislative changes to OBRA–90 to relax the 100 percent budget recovery requirement so that certain costs can be removed from the fee base. They remained hopeful that the desired relief may be forthcoming in spite of their awareness that the Administration has not supported such a relaxation. In some cases, however, commenters perceived that the NRC has alternatives it is not using, such as charging Agreement States for services provided. In addition, they insisted that the NRC should recover these types of costs through General Funds appropriations from the Congress. In their view, when all else fails, the NRC must simply discontinue the "unfunded" program rather than pass along these costs to the licensees. These commenters asserted

that this becomes particularly necessary in today's era of utility deregulation because reactor licensees' ability to pass through costs to their customers has been reduced.

One commenter maintained that the NRC has the authority to charge other Federal agencies part 170 fees. Another commenter went so far as to say that the NRC is not at liberty to relieve anyone from paying fees for associated services, *i.e.*, to grant exemptions from user fees because, under OBRA–90, Congress directed NRC to recover its costs by collecting fees from "any person who receives a service or thing of value." This commenter maintained that there was no exemption authority for this requirement, relying on the definition of "person" under the Atomic Energy Act to argue not only that the NRC has authority to impose charges for these types of activities, but also that it is compelled to charge the recipients for them. Thus, it would have the NRC recover Agreement State oversight and support costs through fees assessed on the Agreement States or their licensees. The commenter also stated that costs of international activities should be recovered through fees imposed on the Department of State; that other Federal agency licensing and inspection charges should be assessed against the regulated Federal agency; that small entities and nonprofit educational institutions should not be relieved of fees for the costs associated with them; and that either a General Fund appropriation should be sought to recover those expenses or they should pay their own costs. Other commenters also advocated these proposals.

In support of these arguments, commenters charged that OBRA–90 does not permit charging licensees for programs not directly related to the licensees charged, that the surcharge imposed to recover these costs is unlawful, unfair, arbitrary, and discriminatory. These commenters charged that OBRA–90 is unconstitutional in that it denies reactor licensees equal protection under the due process clause of the Constitution and constitutes an unfair taking of property without just compensation. They believed, uniformly, that the surcharge bears no relation to services or benefits to the licensees against whom it is assessed and that these costs should be recovered from the beneficiaries. Commenters cited the reduced ability of reactor licensees to pass through costs to their ultimate customers in an era of utility deregulation and reasserted their view that power reactor licensees should only be assessed for programs of direct relevance to them.

Response. OBRA–90 requires that the sum total of annual charges NRC collects from its licensees equal approximately 100 percent of NRC total budget authority for each fiscal year, less fees assessed under the IOAA and amounts appropriated to NRC from the Nuclear Waste Fund. The NRC is expected to establish a schedule of annual charges that fairly and equitably allocates this amount among licensees and reasonably reflects the costs of providing services to licensees or classes of licensees, to the maximum extent practicable. This means that the NRC must promulgate each fiscal year a fee schedule that is as fair and equitable as can be achieved, given the other constraints with which it is faced. The NRC does not have discretion to assess less than this amount, as several commenters suggested. The costs of services that do not directly benefit licensees must be recovered under our current statutory mandate.

In the Statement of Considerations for the 1991 final fee rule the Commission concluded that the Congressional intent behind the requirement to collect "approximately 100 percent" of its budget was for the NRC to identify and allocate as close as possible to 100 percent of its budget authority to the various classes of NRC licensees. The NRC has historically interpreted this requirement as referring to the inherent uncertainties in estimating and collecting fees, such that additional fees would not need to be collected in case of shortfall, nor refunds necessarily made in case of over collection. (*See* 56 FR 31472, 31473; July 10, 1991).

Moreover, the Conference Report for OBRA–90 specifically acknowledged the fact that there would be certain "expenses that cannot be attributed either to an individual licensee or a class of licensees." The NRC is expected to

> fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributable to individual licensees or classes of licensees. These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

H.R. Conf. Rep. No. 101–964, at 963, *reprinted* in 1990 U.S.C.C.A.N. 2374, 2668. Thus, Congress has directed that licensees, of necessity, will have to pay for some of the expenses that are not generated by efforts directly on their behalf, regrettable as that may be. While every effort is made to impose such costs equitably, there is one controlling requirement which is inflexible: the NRC must set its schedule so that it can recoup approximately 100 percent of its budget authority, less the amounts it properly may recover from other areas, such as charges for services (IOAA fees) and Nuclear Waste Fund Appropriations. In order to meet that mandate, the NRC has been forced to assess fees to licensees to recover the costs of certain types of activities that, while not necessarily directly benefitting the licensees charged, leave no other means to be recovered. This includes functions such as services provided to other Federal agencies, Agreement State oversight and international activities. It is understandable that licensees who absorb the impact of these charges will object to them and wish to be relieved of them. However, their arguments overlook an important qualifier in the standard: namely, "to the maximum extent practicable." That is, when Congress enacted this admittedly rigorous requirement, it was aware of the fact that there would be certain costs that would not be susceptible to recovery as others were. The Congress still has not relieved the NRC from the onus of the collection requirement. Certain expenses cannot be attributed to an individual licensee or class of licensees but may be recovered from licensees who can fairly, equitably, and practicably contribute to payment.

The NRC can readily explain why these costs are spread to agency licensees as part of a fee "surcharge." The NRC lacks the legal authority to assess IOAA charges against Federal agencies (other than the Tennessee Valley Authority). The IOAA states, in pertinent part, "[E]ach service or thing of value provided by an agency . . . to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible." A "person on official business of the United States Government" has long been construed to mean a Federal agency. This construction indicates that the NRC requires separate Congressional authorization in order to override this provision and lawfully impose fees on other Federal agencies. For example, in light of this language, section 161w. of the Atomic Energy Act was enacted in 1972 to allow the NRC to impose Part 170 fees on the Tennessee Valley Authority. Section 161w. was further amended in 1992 to include the United States Enrichment Corporation, prior to its privatization. Had the NRC's statutory mandate included the authority to impose fees on all Federal agencies, this legislation would have been unnecessary. The NRC believes it

should be granted the authority to charge other Federal agencies for services rendered and recently submitted to Congress, as a provision in its proposed FY 2000 authorization bill, an amendment to section 161w. which would provide the authority to impose Part 170 fees on all Federal agencies.

Similarly, the NRC lacks the authority to impose annual fees on the Agreement States and their licensees because OBRA–90 permits the assessment of annual fees only on NRC licensees. The Agreement States and their licensees are not "NRC licensees." The NRC also has made policy decisions not to assess fees on nonprofit educational institutions in order to further the public good and to limit the fees assessed on small businesses in accordance with the policies underlying the Regulatory Flexibility Act. Under the circumstances, it is understandable that a substantial portion of these costs are recovered through annual fees imposed on power reactors. A large percentage of the NRC's budget is devoted to the regulation of power reactors. Accordingly, a large portion of the annual fee must be borne by these licensees.

The commenters suggested that, in the absence of such legislation, the NRC should not perform the activities encompassed within the annual fee surcharge. The Commission is not prepared to eliminate these important functions that help assure the public health and safety and the common defense and security without a clear statutory directive from the Congress. Thus, a legislative solution to the fee recovery requirement is required to eliminate the concerns raised by the commenters. Over the years, the NRC has had limited success in obtaining fee legislation that would reduce the burdens on its licensees by having some or all of NRC expenses in these areas obtained through appropriations from the General Fund.

While the Commission continues to support legislative relief, absent such relief the Commission has limited ability to remedy any inequities in its fee structure because it is required to collect approximately 100 percent of its budget in fees. The NRC has taken several actions within existing fee laws to address concerns regarding its fee structure:

1. The NRC identified fairness and equity concern categories in its February 1994 Report to Congress on NRC Fee Policy and indicated that legislation was necessary to address these concerns. The recommended legislation has not been enacted.

2. In FY 1995, the NRC acted under existing fee laws to help to mitigate the fairness and equity concerns by treating costs for activities that do not directly benefit NRC licensees similar to overhead and distributing the costs to the broadest base of NRC licensees.

3. The NRC established a policy to obtain reimbursement for services provided to other Federal agencies when such reimbursements are authorized by law.

4. The NRC obtained appropriation legislation that removed from the fee base certain costs incurred as a result of regulatory reviews and other assistance provided to the Department of Energy.

5. The NRC took actions to shift cost recovery for certain activities from Part 171 annual fees to Part 170 specific fees for services.

6. As part of its FY 2000 authorization bill, the NRC is seeking an amendment to section 161w. of the Atomic Energy Act to provide the authority to impose Part 170 fees on all other Federal agencies.

In sum, the Commission believes that the fee schedules it is promulgating in this final rule satisfy all legal requirements and do not deprive any licensee of its constitutional rights.

2. *Comment.* One commenter said that the basis for annual fees for operating reactors should be megawatt generation capability instead of the proposed fixed flat annual fee. This commenter argued that the proposed fee structure placed a disproportionate burden on the ratepayers of utilities with small reactors and resulted in a competitive disadvantage to those reactors.

Response. OBRA–90 requires that annual fees have a reasonable relationship to the expenditure of Commission resources. No available data demonstrates that the Commission expends fewer resources on reactors with lower generation capacity than it does on facilities with greater generation capability. Furthermore, Commission services are not allocated on the basis of megawatt generation capability. Because there is no relationship between generic costs and generation capacity, there is no legal basis for charging annual fees based on megawatt generation capability.

3. *Comment.* One commenter said that the NRC should designate as small entities, for reduced fee purposes, all those companies with small business certification under the U.S. Small Business Administration's (SBA) Small Disadvantaged Business Program, commonly known as the 8(a) Program. The NRC should then refund the higher fees collected for the last two years from all 8(a) firms. The commenter further requested that the NRC change its definition of small entity for environmental remediation service companies to conform to the SBA's revised size standards, which now categorize such companies with fewer than 500 employees as "small entities."

Response. On April 11, 1995 (60 FR 18344), the NRC promulgated a final rule, after notice and comment rulemaking, that revised its size standards. The final rule established the small entity classification applicable to small businesses as follows. Those companies providing services having no more than $5 million in average annual gross revenues over its last three completed fiscal years, or, for manufacturing concerns, having an average of 500 or fewer employees during the preceding 12-month period would qualify as small entities (10 CFR 2.810). The NRC promulgated this rule pursuant to Section 3(a)(2) of the Small Business Act, which permits Federal agencies to establish size standards via notice and comment rulemaking, subject to the approval of the SBA Administrator. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry. Unlike the NRC, the SBA's Standard Industrial Classification (SIC) System establishes size standards based on types of economic activity or industry.

The Commission will further consider the issue raised by this commenter regarding its designation of small entities for reduced fee purposes, and will separately address the commenter's request for a partial annual fee exemption.

4. *Comment.* A few commenters indicated that the NRC has not provided sufficient information on which to evaluate the fees to be assessed for FY 1999. One commenter stated that the NRC violated the Administrative Procedure Act (APA) by failing to provide an explanation of how it arrived at its proposed fee schedules.

Response. The NRC believes it has provided sufficient information concerning its proposed fee schedule to allow effective evaluation and constructive comment on the proposed rule. In Part II of the Statement of Considerations supporting the proposed rule, the NRC provided a detailed explanation of the FY 1999 budgeted costs for the various classes of licensees being assessed fees. In addition, the NRC work papers pertinent to the development of the fees to be assessed were placed in the Public Document

Room (PDR) on April 1, 1999, on the first day of the public comment period. These work papers provide additional information concerning the development and calculation of the fees, including NRC's FY 1999 budgeted resources at the subactivity level for the agency's major programs. The NRC has also made NUREG–1100, Vol. 14, "Budget Estimates, Fiscal Year 1999" (Feb. 1998), which discusses in detail NRC's budget for FY 1999 available in the PDR. In addition, NRC staff always makes itself available either to meet with interested parties in person, or to respond to telephone inquiries to explain its fee schedules.

B. Specific Comments—Part 170

1. Expand the Scope of Part 170

Comment. The NRC received twelve comments on the proposal to expand the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals, and full cost recovery for time expended by Project Managers (PMs), except leave time and time spent on generic activities such as rulemaking.

Many of those commenting on this issue opposed full cost recovery for PMs. Several uranium recovery licensees commented that, coupled with the proposed increase in the hourly rate to be assessed for NRC staff review time, the proposed change could double Part 170 fee assessments, an increase that would be extremely burdensome to licensees. One commenter indicated that billing for all of a PM's time would reduce necessary communication, such as phone calls, between the NRC and the licensees. This commenter also objected to licensees being required to pay for the time a PM spends to become familiar with a site. A similar comment was received from a reactor licensee who, although not specifically indicating opposition to the proposal, stated that Part 170 fees should not be assessed for PM or resident inspector time spent in training or other administrative tasks not directly associated with the licensee. One commenter indicated that the licensees paying for the PM time have little or no input over what the PM is reviewing. A power reactor commenter supported full cost recovery for PMs only if work priorities were mutually agreed upon by NRC and the licensee.

Several of the uranium recovery commenters also questioned the amount of time spent by PMs and other NRC staff in reviewing licensees submittals. They indicated that, in many cases, the amount of time spent on uranium recovery issues appears to be excessive in light of what they characterize as the low level of risk posed by uranium recovery operations. One uranium recovery commenter stated that the proposal presents the potential for an open-ended escalation of fees that do not directly benefit the licensees.

Other commenters partially or fully supported the proposed expansion of Part 170. The Nuclear Energy Institute (NEI), which primarily represents the commercial nuclear reactor industry, urged the NRC to continue to separate out fees related to a given licensee and assess those fees to the licensee under Part 170. NEI stated that it is inappropriate for one licensee to subsidize, through annual fees, additional agency oversight incurred by another licensee because it is not performing well. Another commenter who supported the proposal recommended that the NRC demonstrate how the expanded Part 170 costs are removed from the Part 171 fee schedule. One power reactor commenter agreed, in part, with shifting cost recovery from annual fees to fees for services. However, the commenter stated, that as more services are billed by the hour, the opportunity for inefficiencies in reviews and billing abuse becomes greater. This commenter suggested that hourly fees be capped to allow licensees to make budget forecasts.

Another commenter supported the assessment of Part 170 fees for all inspections, stating that the change is expected to lower the costs of inspections for good performers. However, this commenter opposed the proposal to expand Part 170 to include reviews of documents that do not require formal approval. This commenter stated that these documents are submitted in compliance with regulations without an expectation of NRC assistance in assuring compliance, and that licensees should have control over Part 170 charges.

A materials licensee questioned how the proposed additional Part 170 fees would be billed, indicating that if NRC has truly downsized, the expanded scope of Part 170 is not justified.

Response. The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for Project Manager time, except leave time and time spent on generic activities such as rulemaking. Expanding the scope of Part 170 is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations. Incident investigations, performance assessments and evaluations, reviews of reports and other documents, and PM activities are services which the NRC provides to specific, identifiable recipients. Thus, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the service than through annual fees assessed to all of the licensees in the class.

Based on the requirement of OBRA–90 that the NRC recover approximately 100 percent of its budget authority through fees, the costs of these services must be paid either by applicants and licensees under Part 170 as fees for services rendered to them or by licensees under Part 171 as annual fees. To calculate the total amount to be assessed in Part 171 annual fees, the estimated amount to be recovered through Part 170 fees in a given fiscal year is subtracted from the total budget authority for that fiscal year. Therefore, if all other things remain equal, increasing the costs to be recovered under Part 170 would shift these costs away from Part 171 annual fees. Although this change may result in increased Part 170 fees assessed to the individual licensees receiving the specific services, the overall fee burden for licensees in that fee class is not increased. It should be noted that because this final rule will become effective after the last quarterly part 170 billing in FY 1999, the changes will not have an effect on the estimated part 170 collections for FY 1999 and thus do not affect the FY 1999 annual fees.

As described in the proposed rule, this change will result in the assessment of Part 170 fees to individual licensees to recover the full costs for PMs assigned to their sites, except for PM activities that are of a generic nature, such as rulemaking and preparation of generic guidance documents, and leave time. If a PM is assigned multiple sites, the PM's time that is not site-specific

will be prorated to all of the sites to which he or she is assigned. The NRC acknowledges some commenters' concerns about individual licensees being charged for the time a PM is in training or performing administrative tasks and time for a newly-appointed PM to become familiar with a particular site. However, these types of activities are necessary for the PMs to provide effective oversight for the operation of an assigned site or sites. Therefore, the cost of these activities should be borne by those licensees receiving the benefit of PM services, whether the services are specific licensing and inspection actions, or other duties associated with serving as the agency focal point for oversight of a site or sites. Examples of PM activities that will be billed to the specific site or sites include: discussions with NRC regional employees on specific plant issues; visits to the site(s); scheduling, planning and coordinating work with the technical staff; and answering technical questions.

The NRC disagrees with the suggestion that PM time should be billed only if the work priorities are mutually agreed upon by NRC and the licensee. It would be inappropriate to have entities regulated by the NRC concur in how the agency carries out its regulatory functions related to that specific entity. The agency's work priorities, including those of PMs, are carefully reviewed by NRC management to assure that the appropriate resources are spent to accomplish the agency's health and safety mission. Assessing Part 170 fees to recover the cost of a particular service provided to an individual applicant or licensee does not diminish the requirement for NRC management to carefully balance workload and assigned resources in an efficient and effective manner. This also applies to the suggestions that the NRC staff spends excessive time on reviews and that increasing the scope of Part 170, as proposed, would open the door for inefficiencies in reviews and billing abuses.

The NRC is committed to performing all of its activities as expeditiously and efficiently as possible. This commitment is evidenced by the streamlining and downsizing the agency has accomplished and the resulting budget reductions. In addition, billing for activities under Part 170 provides licensees a greater opportunity to review and challenge specific costs because the charges are individually itemized on the Part 170 bills.

Part 170 fees for these additional activities will be applicable only to those applicants and licensees subject to full cost billing under Part 170. Those materials licensees who hold licenses for which amendment and inspection fees have been eliminated from part 170 will not be subject to Part 170 fees for these additional activities as they are included in their part 171 annual fees.

2. Including Orders and Escalated Enforcement Actions in Part 170 in FY 2000

The NRC solicited public comment on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule.

Comment. Four comments were received on this issue. Two commenters opposed adding these activities to Part 170; one commenter supported their inclusion. The fourth commenter indicated that the direct allocation of these costs to those who receive the services warrants further evaluation and that it would welcome the opportunity to comment on a definitive proposal in the FY 2000 fee rule. This commenter stated that, in addition to being viewed as a penalty upon licensees who exercise their rights to challenge the NRC action, there are additional implications in situations where the licensee is successful in such a challenge. Another commenter stated that the assessment of Part 170 fees for these actions would result in a "de facto additional civil penalty, and further challenge the economics of operation for that facility." NEI, on the other hand, urged the NRC to continue to assess fees under Part 170 for activities related to a given licensee, and stated that "application of this principle dictates that the industry support assessing fees for escalated enforcement actions under Part 170." NEI went on to say that the perception that these enforcement actions serve as an industry-wide deterrent has not been borne out. One commenter who opposed the assessment of Part 170 fees for these activities stated that the licensees would have to pay fees for pursuing any enforcement action they disagreed with, which could result in a "chilling effect" on challenges to enforcement actions. The commenter also stated that licensees would be required to pay for the review of a violation and corrective actions even if the NRC concludes that full mitigation of a possible civil penalty is appropriate, and potentially would be charged fees when NRC withdraws an enforcement action.

Response. The NRC agrees that there are arguments for and against assessing Part 170 fees for the development of, and evaluation of response to, orders and NOVs accompanying escalated enforcement actions. This issue will be further evaluated prior to promulgation of the FY 2000 fee rule.

3. Eliminate Part 170 Average-cost ("Flat") Amendment Fees

Comment. The NRC received one comment on its proposal to eliminate the Part 170 fees that are based on the average costs to review amendments ("flat" fees). The commenter supported the proposed change, stating that it simplifies budgeting and increases efficiency for both the NRC and licensees.

Response. The NRC is amending 10 CFR 170.31 to eliminate the flat amendment fees for materials licensees. This change streamlines the NRC process and eliminates any delays in processing these amendments due to incorrect payments. The NRC believes that, as the commenter indicated, this change will also be more efficient for licensees. This change will result in an estimated $900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

4. Hourly Rates

Comment. The NRC received eight comments that specifically addressed the proposed increases in the professional hourly rates. Those commenting indicated that the increases would create a substantial financial burden for the licensees, particularly when added to the proposal to expand the scope of Part 170. Several commenters stated that the proposed hourly rates exceed the hourly charges of senior consultants or principals at major consulting firms, and exceed the generally accepted rate for similar work in private industry. Some commenters stated that the rate is unjustifiably high and does not reflect the actual cost of providing regulatory services to licensees. One commenter said that the increase does not coincide with actual cost of living increases. This commenter stated that the increases cannot be justified based on inflation indicators over the period which have increased on the order of 3 percent or less per year. Uranium recovery commenters stated that the hourly charges should be predictable to permit licensees to budget and plan accordingly. An individual uranium recovery licensee and The National Mining Association (NMA), whose members include owners and operators of uranium mills, mill tailings sites and *in situ* uranium production facilities, added that, to the extent such hourly rates are a result of the 100 percent budget recovery requirement of OBRA–90, the NRC should work with

Congress to make the fee system more equitable. One commenter suggested that support staff be reduced parallel with FTE reductions and questioned whether materials program support staff could be shared with other programs to lessen what the commenter termed the "support imbalance and consequent licensee load."

Response. As stated in the proposed rule, due to a budget coding error that occurred in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates plus salary and benefit increases since that time. The FY 1997 hourly rate for the reactor program was $131, and the FY 1997 hourly rate for the nuclear materials and nuclear waste program was $125. The NRC salaries and benefits increased 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999. Considering only these increases, the FY 1999 hourly rates would be $142 for the reactor program and $136 for the materials program. However, there has also been a shift in the proportion of direct resources between the reactor program and the materials program. As a result, the materials program has a larger share of the direct resources than in the past and consequently must absorb more of the overhead and management and support costs. The professional hourly rates are based on budgeted costs. Because overhead resources are budgeted separately for the materials and reactor programs, they cannot be "shared" for purposes of the hourly rate calculations as suggested by one commenter. Agency management and support costs, on the other hand, are not budgeted separately for the reactor and materials programs. Instead, these costs are allocated to the programs based on their share of the budgeted direct resources. Because the materials program now has a larger share of the direct resources than in the past, more of the management and support costs have been allocated to the materials program.

As indicated in previous final rules, the NRC professional hourly rates must be established at levels to meet the statutory requirement of OBRA–90 to recover through fees approximately 100 percent of the budget authority, less the appropriation from the Nuclear Waste Fund. The NRC is not able to use inflation or other indices as the basis for the development of the hourly rates charged under 10 CFR 170 and 171 because these factors may not allow the NRC to meet the 100 percent fee recovery requirement.

Given the budgeted costs that must be recovered through the hourly rates, it is necessary to increase the FY 1999 hourly rates to $141 for the reactor program and $140 for the materials program. The method and budgeted costs used in the calculation of the hourly rates are discussed in Section III of this final rule. In addition, the agency work papers supporting each proposed and final rule include details of the hourly rate calculations. These work papers also contain details of the agency's budget used in the development of the FY 1999 hourly rates and fees. The work papers supporting the fee rules are available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington DC 20555–001. The specific details regarding the NRC's FY 1999 budget are documented in the NUREG–1100, Vol. 14, "Budget Estimates, Fiscal Year 1999" (February 1998). Copies of NUREG–1100 may be purchased from the Reproduction and Distribution Services Section, OCIO, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and from the National Technical Information Service, Springfield, VA 22161–0002. A copy is also available for inspection, and copying for a fee, in the NRC Public Document Room.

5. Fee Adjustments

Comment. Five comments were received on the proposed fee adjustments to the fee schedules for specific classes of licensees set forth in §§ 170.21 and 170.31. NEI specifically commented on the NRC's proposal to revise §§ 170.21 and 170.31 to reflect the increased hourly rates and the results of the biennial review of Part 170 fees required by the Chief Financial Officers (CFO) Act. NEI questioned the statement in the proposed rule that the average number of professional hours required to conduct inspections and to review and approve new license applications increased for 20 of 33 fee categories. NEI stated that license applications have become more uniform and inspection frequency is expected to decline as a result of implementation of the NRC's new risk-informed, performance-based regulatory philosophy. Four other commenters expressed opposition to the increased fees for materials licensees, which include increases in Part 170 fees for certain categories. These commenters indicated that the proposed changes would have adverse affects on licensees. A manufacturer of portable density and moisture testing gauges stated that economic hardship on licensees will lead to the sale and disposal or abandonment of gauges and subsequent license termination. The commenter stated that use of a valuable tool will be diminished as a result of the fee increases and referred to the low cost of regulating this category of radioactive materials devices, the low activity of material in the devices, and the safety record of these devices. Other commenters indicated that the increases were unjustified, pointing to the safety record of devices covered by fee category 3P (all other byproduct material) and the time span between inspections for these types of licenses. One commenter stated that, in light of NRC's efforts to streamline its licensing, inspection and enforcement programs, costs should be reduced commensurate with a reduction in resources and activity.

Response. The results of the biennial review of fees were based on actual staff hours reported for the various license categories over a 5-year period. During the 5-year period, almost 700 new license applications and almost 4000 amendment requests were processed for fee category 3P, "All other byproduct material", and approximately 2300 inspections were conducted. Similar numbers of actions were reported for nuclear medicine licenses. Although fewer actions were reported for certain other categories, the volume of data is sufficient to support the increases in the average time spent on these categories. Based on the volume analyzed in the biennial review, the NRC has no basis to modify the average time results for processing these applications and inspections. The NRC is streamlining its licensing and inspection efforts and is working on a series of guidance documents related to about 20 categories of materials licenses. Because these initiatives are still under development, the full efficiencies have yet to be realized. Based on the requirement for NRC to recover approximately 100 percent of its budget authority through fees each fiscal year and the requirement to biennially review and revise charges to recover the costs of providing the services, the NRC is unable to establish fees based on cost reductions that may occur in future fiscal years. Part 170 fees must approximate current costs. The NRC is adopting the results of the biennial review in this final rule for those fee categories subject to flat fees based on the average professional time to complete the actions. These revised flat fees also reflect the increased hourly rates for FY 1999.

C. Specific Comments—Part 171

1. Rebaseline With a 50 Percent Cap

Comment. Nine commenters specifically addressed the two options

presented by the NRC for rebaselining the FY 1999 annual fees: Option A, rebaseline without a cap, or Option B, rebaseline with a 50 percent cap on FY 1999 annual fee increases. Five commenters, uranium recovery licensees or persons representing the uranium recovery class, preferred the 50 percent cap, "if forced to choose." These commenters indicated that the cap would at least spread the annual fee increases for uranium recovery licensees over two years to lessen the drastic impact to their budgets for a given year. One uranium recovery commenter indicated that even the 50 percent increase is excessive when governmental inflation indexes indicate an inflation rate of 3 percent or less. The National Mining Association (NMA) stated that the uranium recovery licensees had no warning of how significant the increase in fees would be for FY 1999. Another commenter, a materials licensee, supported the cap, but stated that 50 percent was too high. This commenter recommended that all fee increases be capped at a level commensurate with the inflation rate. Three commenters, NEI, a reactor licensee, and a materials licensee, supported rebaselining without a cap. These commenters stated that rebaselining without a cap is more fair because it allows NRC to determine the amount of resources devoted to regulation of certain licensees and allocate the costs to those licensees. One commenter stated that the cap could result in an unfair allocation to some licensees of costs over the cap amount incurred for other licensees. NEI stated that it is inappropriate given the developing competitive environment in which nuclear licensees will operate or are already operating, to require all licensees to subsidize any licensee who received services costing more than the cap amount.

Response. The Commission is establishing rebaselined FY 1999 annual fees without a cap, after comparing the allocation of its FY 1999 budgeted costs with those of FY 1995. The Commission concluded that there have been significant changes in the allocation of agency resources among the various classes of NRC licensees. This fulfills the Commission's policy commitment made in the Statement of Considerations accompanying the FY 1995 fee rule (60 FR 32225) that base annual fees would be re-established (rebaselined) if there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with significant fee increases, establishing new baseline annual fees without a cap results in a fair and equitable allocation of costs among licensees.

The major purpose for the option to establish the FY 1999 rebaselined annual fees with a 50 percent cap was to provide greater fee stability than would be provided by rebaselining without a cap, and to provide advance notice to licensees of the full annual fees for their future budget planning purposes. There was, however, a lack of overwhelming support for the cap. Some commenters who chose the cap were in fact reluctant to support either option. Capping fee increases for a class or classes of licensees necessarily results in additional fees being assessed to other classes of licensees in order to recover approximately 100 percent of the budget as required by statute. A cap on FY 1999 fee increases has the potential to exacerbate concerns about the fairness and equity of licensees being charged for activities that do not directly benefit them. Based on these concerns, an evaluation of NRC budget allocation data, and the lack of overwhelming support from commenters, the Commission has decided against adopting a cap on fee increases for FY 1999.

2. Rebaselining Frequency

Comment. Eight comments were received in response to the NRC's solicitation of public comment on whether the NRC should, in future years, continue to use the percent change method and rebaseline fees every several years, as established in the FY 1995 fee rule statements of consideration, or return to a policy of rebaselining annual fees every year. Five commenters were in favor of rebaselining every several years, three were in favor of rebaselining annually. In support of annual rebaselining, NEI stated that the percentage change method does not promote the in-depth review, revision, and streamlining of programs it believes is necessary to ensure maximum agency efficiency. In a similar comment, Duke Energy Corporation (Duke) stated it believes that annual rebaselining would enable the NRC to better monitor its programs and ensure that costs are accurately assessed to licensees who benefit from the associated services and would ensure that licensees would not unjustly subsidize the costs of services provided to other licensees. The NMA and several uranium recovery licensees commented that the fees should only be rebaselined every several years so that the fees remain reasonably predictable from year to year. These commenters stated that a reasonable degree of predictability of the fees is needed to enable licensees to plan, forecast, and budget accurately. The United States Enrichment Corporation (USEC) also supported rebaselining every several years as appropriate, such as when there is significant downsizing, agency reorganization, or additions of new fee classes. USEC stated that although rebaselining provides for a more in-depth review of the NRC's programmatic efforts, it also has the potential to reintroduce into the fee process an instability that the percentage change method was created to address. USEC referred to the methodology for stabilizing fees described by the NRC in the FY 1996 fee rule, stating that consistent and appropriate application of that methodology should result in rebaselining when warranted, but not necessarily annually. USEC stated that the methodology will result in a fair allocation of fees while maintaining some stabilization and fee predictability.

Response. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years as warranted. The current policy of adjusting the annual fees only by the percent change in NRC's total budget unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees provides for fee stabilization, which is a continuing issue of concern for licensees as evidenced by the comments received. The commenters did not provide overwhelming support for reversing the current policy. Therefore, the Commission is continuing the policy as described in the Statement of Considerations for the FY 1995 final fee rule (60 FR 32218; June 20, 1995) to stabilize fees by adjusting the annual fees only by the percent change in NRC's total budget, with additional adjustments for the numbers of licensees paying fees, changes in Part 170 fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The Commission stated in the FY 1995 rule that the percent change method would be used for a maximum of four years. Annual fees for FYs 1996, 1997, and 1998 were established based on the percent change method. The Commission determined

that it is appropriate to establish new baseline fees for FY 1999 based on the program and fee policy changes that have taken place since FY 1995, and the addition of a new fee class for spent fuel storage/reactor decommissioning. Based on the experience gained as a result of applying the criteria for rebaselining over the past four years, the Commission has determined that in the future annual fees should be rebaselined every three years, or earlier if warranted. The decision on the appropriate method for establishing annual fees for the intervening two years will be made each year.

3. Spent Fuel Storage/Reactor Decommissioning Annual Fee

Comment. Four comments were received on NRC's proposal to establish a spent fuel/storage decommissioning annual fee to be assessed to all reactor licensees, regardless of their operating status, and to Part 72 licensees who do not hold a Part 50 license. Duke supported the proposed change, stating that the current fee regulation would impose duplicative fees on licensees for use of a part 72 general license if they already perform the same activities under a specific Part 72 license. Duke contends that imposition of such substantial and duplicative fees is inconsistent with Congress' direction in the Nuclear Waste Policy Act of 1982, as amended, that NRC eliminate the need for specific NRC authorization for onsite storage of spent fuel to the maximum extent practicable. Duke stated that the duplicate annual fees for both types of licenses would deny licensees the reasonable opportunity to use the general licenses, and supports the removal of such disincentive by revising the fee regulations as proposed. South Carolina Electric and Gas Company objected to the proposed fee because it does not maintain an Independent Spent Fuel Storage Installation (ISFSI), has adequate storage capacity in its Spent Fuel Pool (SFP), and does not plan to build an ISFSI for at least 15 years. The commenter stated that, under the proposal, it would pay fees for continuing to store spent fuel in the SFP until an ISFSI is needed, but would not realize services or benefits for those fees. The commenter stated that it is not appropriate for its customers to pay the ISFSI fees of other licensees and, had DOE honored its obligation to take possession of spent fuel by January 1998, the fee would not be an issue. Two other commenters, reactor licensees who have permanently ceased operations, opposed the imposition of the proposed fee for their licenses because they have no fuel onsite. These commenters argued that because they have no fuel onsite they derive no benefit from NRC activities related to spent fuel storage. GE Nuclear stated that its Vallecitos Boiling Water Reactor (VBWR) derives no comparable benefit from the NRC's decommissioning activities because essentially all of the facilities, structures, and systems, external to the containment vessel associated with VBWR operations have been removed, leaving a very small containment structure and internal components subject to future decommissioning. PECO Energy Company (PECO) stated that the Peach Bottom Atomic Power Station Unit 1 (PBAPS) spent fuel pool has been off-loaded, drained, and decontaminated. PECO stated that it plans to keep PBAPS Unit 1 in a SAFSTOR and the only activity being performed is required Technical Specifications Surveillance through December 2015.

Response. The NRC is establishing a spent fuel storage/reactor decommissioning annual fee in this final rule. However, this new annual fee will not be assessed to those reactors that have permanently ceased operations and have no spent fuel onsite. The NRC agrees with the commenters that NRC's generic spent fuel storage activities are not applicable to reactors that have ceased operations and have removed all fuel from the site. However, the new fee will be assessed to all reactors who have fuel onsite regardless of the storage option the licensee elects to use. The NRC recognizes that sites will be required to continue to store spent fuel onsite until another solution becomes available. The fact that DOE has not taken possession of the spent fuel does not relieve NRC of the OBRA–90 requirement to recover approximately 100 percent of its budget authority through fees, including those costs associated with generic spent fuel storage activities. The NRC believes that assessing a spent fuel storage/reactor decommissioning annual fee to all reactor licensees who have spent fuel onsite and all Part 72 licensees who do not hold a Part 50 license is a reasonable approach for recovering NRC costs for generic spent fuel storage and reactor decommissioning activities. The current policy has raised concerns that the fee structure could create a disincentive for licensees to pursue dry storage. The spent fuel storage/reactor decommissioning annual fee will give equivalent fee treatment to both storage options. The annual fee also addresses concerns about the fairness of assessing multiple annual fees if a licensee holds multiple Part 72 licenses for different designs. Further, the annual fee will result in most reactor licensees being assessed the costs of NRC's generic reactor decommissioning activities. This annual fee includes the costs of NRC's generic and other research activities directly related to reactor decommissioning and spent fuel storage (both storage options), and other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except those activities which are subject Part 170 fees. The final FY 1999 spent fuel storage/reactor decommissioning annual fee is $206,000. This reflects that an annual fee is not being imposed on those six reactors which have permanently ceased operations and have no fuel onsite. This also takes into account the prorated FY 1999 annual fee to be assessed to DOE for the Part 72 license issued on March 19, 1999, for the storage of fuel and fuel debris resulting from the Three Mile Island Unit 2 accident.

4. Revised Fuel Cycle Matrix

Comment. USEC, although supportive of the decreased FY 1999 annual fees for the Paducah, Kentucky and Portsmouth, Ohio Gaseous Diffusion Plants (GDPs), requested that the NRC revise the fee rule to recognize that the GDPs are the operational equivalent of a single plant and assess a single fee for the complex. USEC argued that a double assessment on the two certificates of compliance results in a significantly disproportionate allocation of costs to USEC. USEC also requested that NRC revise the Effort Factor rating in the fuel facility matrix used by NRC to assess relative effort for a facility. Specifically, USEC took issue with NRC's matrix evaluation of the relative weight and, hence, NRC's regulatory effort for GDP activities. USEC stated that NRC counted the risk for UF6 twice, once as solid and once as liquid. USEC argues that the risk is less, and that the Effort Factor for UF6 should be reduced from 10 to 5 for the GDPs.

Response. The NRC has rejected previous requests from USEC that a single fee be assessed for the two GDPs. For the reasons stated in response to USEC's comments on the proposed FYs 1997 and 1998 fee rules (62 FR 29197; May 29, 1997, and 63 FR 31843; June 10, 1998), and in NRC's March 23, 1998, denial of USEC's annual fee exemption request, the NRC believes that USEC must pay a full annual fee for each of its enrichment facilities. USEC has recently appealed the FY 1998 annual fee assessments for the two GDPs. Because USEC raised these same specific issues in its current exemption

request, we will address those issues in our forthcoming response to the exemption request. In the fuel facility matrix, the NRC assessed the risk based on the total relative amounts of UF6 and the number and complexity of the processes involved with UF6. These factors merit weighting the value as 10 for the GDPs when compared to other fuel cycle facilities.

D. Other Comments

1. Inconsistency in Hourly Rate and Annual Fee Calculation Tables

Comment. One commenter stated that there is an inconsistency in the proposed rule between the table showing the calculation of the professional hourly rates and the table showing the amount to be recovered through annual fees. Specifically, the commenter stated that Table I, "Budget and Fee Recovery Amounts for FY 1999", indicates that $103.5 million is expected to be recovered through Part 170 fees in FY 1999, while Table II, "FY 1999 Budget Authority to be Included in Hourly Rates" indicates that $257.4 million is to be recovered through Part 170 fees in FY 1999.

Response. The amounts shown in Tables I and II are correct. In the proposed rule, Table I, "Budget and Fee Recovery Amounts for FY 1999," shows that the estimated amount for recovery under Part 170 totals $103.5 million. Table II, "FY 1999 Budget Authority to be Included in Hourly Rates," shows that the total budgeted costs for the reactor program excluding direct contract support, plus the management and support costs allocated to the reactor program, totals $257.4 million. This sum, which is used to develop the reactor program hourly rate, is recovered through the imposition of fees under both Parts 170 and Parts 171.

2. Adverse Effects of Fee Increases

Comment. Many commenters opposed the fee increases in general, indicating that the increases are not justified and would have adverse economic impacts on NRC licensees. Several commenters expressed concerns that with the decline in the number of licensees, the remaining licensees are required to pay a greater share of NRC's costs with no increase in benefits. Some commenters stated that NRC's budget should be reduced in a manner that is consistent with the reduction in the number of licensees. Others specifically requested that the NRC consider options to address the effects of increased license fees and a declining number of licensees. Commenters also indicated that there should be a reduction in NRC costs as the agency moves towards a performance-based regulatory structure, translating to lower fees. Although some commenters recognized NRC's efforts to downsize and streamline its programs, they indicated that the NRC should find ways to further streamline and operate more efficiently. Some commenters requested that the increased fees be reconsidered based on the low risk and safety records associated with the licensed activities. NEI cited several reasons why the NRC should consider decreasing its future budget requests, including: NRC's revised oversight process which should result in decreased inspection hours; a declining number of industry events that should lead to fewer inspections; and the NRC's revised enforcement process which should require fewer agency resources. NEI also suggested that the NRC consider additional changes to its organizational structure, such as eliminating the regional offices and reducing the resources related to research activities.

Response. The NRC's budget, which is carefully scrutinized and reviewed by OMB and Congress prior to approval, reflects the resources necessary to carry out its health and safety mission. The NRC is continuing its streamlining efforts and constantly looks for ways to further improve its operations. However, some of the NRC's streamlining initiatives and the activities required to transition to performance-based licensing require an initial expenditure of resources before the results of those actions are realized. The rebaselined annual fees, which increased for some classes and decreased for other classes, reflect the budgeted costs for each class of licensee. The NRC recognizes that there may be adverse economic impacts on those classes of licensees with fee increases for FY 1999. However, as the NRC has stated in response to similar comments received on previous fee rules, because OBRA–90, as amended, requires the NRC to recover approximately 100 percent of its budget authority through fees, the NRC cannot mitigate the adverse economic impacts by eliminating or reducing the fee increases for one class of licensee without increasing the fees, and thus creating adverse economic impacts, for another class of licensees. Therefore the NRC has considered only the impacts it is required to consider by law. As required by the Regulatory Flexibility Act of 1980, the NRC has considered the impact of its fee regulations on small entities and evaluated alternatives to minimize those impacts. This evaluation is included in the Regulatory Flexibility Analysis which is Appendix A to this final rule. As a result of this analysis, the NRC is continuing the maximum annual fee of $1,800 established in FY 1991 for certain small entities, and the lower-tier small entity fee of $400 established in FY 1992 for small entities with relatively low gross annual receipts and for manufacturing concerns with relatively few employees.

As explained in the proposed rule, the rebaselined FY 1999 annual fees reflect program changes that have occurred since the last rebaselining in FY 1995. These changes include the NRC's successful downsizing and streamlining efforts. The NRC's budget to be recovered through fees has decreased from approximately $504.0 million in FY 1995 to approximately $449.6 million in FY 1999, a reduction of more than 10 percent. In constant 1993 dollars, the NRC's budget has decreased by $127.5 million, or approximately 24 percent, since FY 1993, as shown in the following table:

Fiscal year (FY)	1993	1994	1995	1996	1997	1998	1999
Budget ($ millions, constant 1993 dollars)	540.0	522.4	498.7	439.7	434.1	427.0	412.5
Difference from FY1993 ($ millions)		17.6	41.3	100.3	105.9	113.0	127.5

The rebaselined FY 1999 annual fees reflect the budgeted costs for each class of licensee, less the estimated Part 170 collections for that class for FY 1999. The FY 1999 annual fees for materials licenses subject to "flat" Part 170 fees also reflect the results of the biennial review of fees as required by the CFO Act, as well as the inclusion of the budgeted costs for license amendments, renewals, and inspections. The FY 1999 annual fees increased for certain categories of these materials licensees. However, these licensees are no longer required to pay Part 170 fees for amendments, renewals, and inspections.

Although fewer resources may be needed to complete licensing reviews

and conduct inspections for a particular class of licensees as the number of licensees in the class declines, there is not necessarily a correlation between the number of licensees and the agency's regulatory oversight mission. For instance, the need for rulemaking is not diminished as the number of licensees decrease. However, a portion of the costs associated with certain rulemaking and other generic activities is allocated to the annual fee surcharge based on the ratio of Agreement States licenses to NRC licenses in the affected class of licensees. The surcharge costs are then assessed to all classes of licensees based on their share of the budget. As a result, the full economic impact of additional Agreement States and the resulting loss of NRC licensees is not borne entirely by the affected class.

The NRC's budgets are outside the scope of this rulemaking and therefore commenters' suggestions regarding future NRC budgets are not addressed in this final rule. The NRC's budget is public information and undergoes Office of Management and Budget and Congressional review annually. The NRC is establishing the rebaselined FY 1999 annual fees at the levels necessary to recover the budgeted costs for each class of licensee from that class to the extent practicable, and to recover the surcharge costs from all classes of licensees based on their share of the budget.

3. Uranium Recovery Issues

Comment. Several comments relating to specific uranium recovery issues were received from uranium recovery licensees and their representatives. The commenters claimed that the uranium recovery industry has been targeted for especially large fee increases and gave several reasons why they believe their treatment under the proposed rule is especially harsh and unfair. The commenters stated that the increases in hourly rates and license fees place an undue burden on the uranium recovery industry, which is suffering from a depressed market. The commenters expressed concern that they cannot "pass through" such costs, and the fee increases directly affect the profitability and viability of an operation. The commenters also indicated that the imposition of such high fees and hourly rates on the uranium recovery industry discourages current uranium production and discourages companies from maintaining facilities in a standby status until market conditions improve. This, commenters claimed, is against the national interest of preserving the domestic energy production infrastructure. Commenters stated that NRC efforts to promote performance-based licenses for uranium recovery licensees should result in lower, not higher, licenses fees for the uranium recovery class. Commenters pointed to areas where they believe NRC engages in excessive regulatory oversight of the uranium recovery licensees: conducting two inspections each year of uranium in-situ leach (ISL) operations, compared to the one inspection conducted per year before the NRC's closed the Uranium Recovery Field Office, and requiring excessively detailed studies and analysis of surface water drainage issues at sites with uranium mill tailings impoundments. The commenters also questioned the need for increased NRC efforts related to groundwater concerns for in-situ facilities when it is questionable if NRC should be regulating in-situ leach wellfields and associated groundwater concerns.

Response. The NRC does not select, or "target," any class of licensees for fee increases or fee reductions. Instead, rebaselined annual fees are established to recover the budgeted costs of NRC's regulatory programs for each class of licensee, plus a percentage of the surcharge costs allocated to that class based on their share of the budget. The NRC has addressed similar comments in previous fee rules concerning the market condition of the uranium recovery industry and the national interest of preserving the energy production infrastructure. The Commission continues to conclude that it cannot set fees based on passthrough considerations. As stated in response to comments on this issue in the FY 1993 fee rule (58 FR 38667; July 20, 1993), the Commission lacks the expertise or information needed to determine whether, in a market economy, particular licensees can or cannot recapture the costs of annual fees from their customers. The Commission is not a financial regulatory agency and does not have the resources necessary to evaluate continuously purely business factors. The annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services in order to meet the requirements of OBRA–90. Therefore, the Commission is not changing its previous decisions against basing fees on licensees' economic status.

The NRC has examined ways to reduce or eliminate inspections. In establishing inspection frequencies, the NRC considers the risk to public health and safety and the environment. Sites under reclamation are to be inspected once every three years unless a specific request is received from a licensee for the NRC staff to review elements of construction. Sites on standby status are to be inspected every two to three years. Facilities that are currently in operational status are to be inspected twice a year, with the option for a reduction to once a year, depending on the inspection record. If an operating uranium recovery licensee has a good inspection record and the NRC determines that a reduced number of inspections is warranted, the NRC will eliminate one annual inspection.

The NRC agrees that performance-based licensing should result in reduced Part 170 fees for uranium recovery licensees. Under a performance-based license, a licensee is allowed flexibility to make certain changes at the site without the need for a license amendment. This streamlined form of license, when implemented properly by the licensee, should result in less hours spent on staff reviews of licensee submittals.

The NRC staff's experience in the area of erosion protection has shown that this is an area where impacts to the impoundment may be the greatest. To provide additional guidance for the licensees in this and other technical areas, the NRC developed a Standard Review Plan for Reclamation of Title II Sites and an erosion report that discusses acceptable design methods and analyses for erosion control. These two documents were released for public comment in February 1999. The NRC staff is reviewing and will be responding to the comments received. The final versions of these documents should provide more clearly the types of design methods and analyses that would serve as acceptable bases for the NRC's staff's conclusions about the stability of the site.

In late 1997, the NRC began examining its role in the regulation of ISL wellfields and the associated groundwater. To assist the NRC in this endeavor, in April 1998, the National Mining Association (NMA) provided the Commission with a White Paper in which it discussed four major concerns, including one related to in-situ facility regulation. Based on the NRC staff's and NMA's concerns, the NRC staff prepared a paper which is now before the Commission which outlines options for NRC regulation of groundwater and wastes at ISL facilities. The Commission's decision will shape NRC's future regulatory program in this area.

4. NRC's Fee Billing Systems and Practices

Comment. Two commenters requested that NRC modify its billing systems and practices. NEI requested that NRC allocate the costs of services to individual units at multi-unit sites. NEI complained that under current practice the agency "arbitrarily" allocates site-wide inspection fees to one unit. NEI stated that due to varying ownership percentages in each unit, it is critically important in a competitive environment for site-wide fees to be allocated to the individual units. The NMA requested that NRC continue its efforts to provide bills that contain more meaningful descriptions of the work done. The NMA stated that in the private sector, adequate explanations are provided for clients to fully understand what was done, when it was done, and how much time was spent on each discreet activity. The NMA indicated that such a system could help identify problems, such as excessive time spent on reviews of licensee submittals.

Response. Beginning with the FY 1998 fee rule, which became effective August 10, 1998, the NRC is assessing Part 170 fees to recover all of the resident inspector's time, except leave time and time spent in support of another facility. For resident inspectors, all non-inspection time is charged to the docket to which they are assigned. However, a senior resident inspector may be assigned to the site rather than to a specific unit at a multi-unit site. In these cases, the senior resident inspector's non-inspection time is currently billed to the lowest docket number for the site. Due to billing system limitations, the NRC is not able at this time to provide separate billings for each unit for the non-inspection senior resident inspector time. The NRC will pursue modification of its billing system in the future to allocate this senior resident time to each docket on a prorated basis, e.g, if there are three dockets and one senior resident inspector at the site, each docket will be billed for one-third of the senior resident inspector's time that is not related to a specific inspection.

With respect to the request from materials licensees that more detailed information be provided on their bills, the NRC converted to a new billing format in October 1998 for materials licensing actions subject to full cost recovery under Part 170. These bills now provide more detailed information on the charges to support the licensing review costs. A supporting document is included with these bills which provides information on the date of the application, the control number for the application, the name of the NRC reviewer and/or contractor, the number of regular and non-regular hours expended by the reviewer, and the NRC reviewer's title. In FY 2000 the NRC plans to convert to a new inspection fee billing system for materials licensees that will provide more detailed information for inspections.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1999 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1999, the NRC's budget authority is $469.8 million, of which $17.0 million has been appropriated from the NWF. In addition, $3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 1999 Appropriations Act states that this $3.2 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately $449.6 million in FY 1999 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 1999 is $5.2 million less than the amount estimated for recovery in the NRC's FY 1998 fee rule.

The reduced budgeted costs to be recovered through fees for FY 1999 reflect several actions taken by the NRC. These actions include strategic planning, downsizing, and a more aggressive policy on seeking reimbursement from Federal agencies for performing services that are not a required part of the agency's statutory mission. For example, for FY 1999, the NRC entered into an agreement with the U.S. Agency for International Development to fund NRC's staff costs associated with providing nuclear safety assistance to the countries of the former Soviet Union. As a result, NRC licensees are not required to pay for the costs of this activity in FY 1999. These costs were previously included in NRC's budget authority and the costs were recovered through annual fees assessed to NRC licensees.

The NRC estimates that approximately $107.7 million will be recovered in FY 1999 from fees assessed under Part 170 and other receipts, compared to $94.6 million in FY 1998. The increase from FY 1998 is primarily due to increased Part 170 collections largely attributable to changes in Commission policy included in the FY 1998 final fee rule, such as billing full cost under Part 170 for resident inspectors, and a $4.1 million carryover from additional collections in FY 1998 that were unanticipated at the time the final FY 1998 fee rule was published. In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net adjustment of approximately $2.1 million for payments received in FY 1999 for FY 1998 invoices. The remaining $339.8 million will be recovered in FY 1999 through the 10 CFR Part 171 annual fees, which is approximately $20.4 million less than in FY 1998.

Table I summarizes the budget and fee recovery amounts for FY 1999:

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 1999

[Dollars in millions]

Total Budget	$469.8
Less NWF	−17.0
Less General Fund (Reviews for DOE and other Federal agencies)	−3.2
Total Fee Base	$449.6
Less estimated Part 170 fees	−103.5
Less other receipts (estimated)	−4.2
Part 171 Fee Collections Required	341.9
Part 171 Billing Adjustment [1].	
Unpaid FY 1999 invoices (estimated)	3.4
Less estimated payments received in FY 1999 for prior year invoices	−5.5
Subtotal	−2.1

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 1999—Continued

[Dollars in millions]

Adjusted Part 171 Collections Required	$339.8

[1] These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1999.

Because the final FY 1999 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the **Federal Register**.

The NRC announced in the FY 1998 proposed rule that the final rule would no longer be mailed to all licensees. However, because the NRC solicited public comments on two potential annual fee schedules for FY 1999, the FY 1999 final rule is being mailed to all licensees. As a cost-saving measure, the NRC does not plan to routinely mail future final fee rules to all licensees, but will send the final rules to any licensee or other person upon request. As a matter of courtesy, the NRC will continue to send the proposed fee rules to all licensees.

In addition to publication in the **Federal Register**, the final rule is available on the Internet at http://ruleforum.llnl.gov/. Copies of the final rule will also be mailed upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov.

The NRC is amending 10 CFR Parts 170 and 171 as discussed in Sections A. and B. below:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

Four major amendments have been made to 10 CFR Part 170 as well as several administrative amendments to update information in certain sections and to accommodate the major changes. These amendments further the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the IOAA recover the full cost to the NRC of identifiable regulatory services that each applicant or licensee receives.

The major changes to 10 CFR Part 170 are:

1. Expanded Part 170 Cost Recovery

The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by Project Managers.

Part 170 fees are based on Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. The term "special benefits" includes services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations.

In the NRC's FY 1998 fee rulemaking, steps were taken to more appropriately recover costs for certain activities through Part 170 fees rather than through Part 171 fees. This further expansion of the scope of Part 170 for FY 1999 will result in cost recovery for additional activities through Part 170 fees rather than through Part 171 fees.

a. Inspections.

Part 170 fees will be assessed for all inspections, including licensee-specific performance reviews, assessments, evaluations, and incident investigations. Examples of activities that will be billable under Part 170 are performance assessments of fuel facilities, Diagnostic Evaluation Team assessments, and Incident Investigation Team investigations. Licensees who volunteer to participate in a performance review or assessment at NRC's request and which the NRC accepts will be exempted from these Part 170 fees. The inspections that are being included in Part 170 are "special benefits" provided to identifiable recipients, whether or not an inspection report is issued. For example, incident investigations are investigations of significant operational events involving power reactors and other facilities. Causes of the events are determined and corrective actions taken. Incident Investigation Teams investigate events of potentially major significance. Although the investigations may result in some generic lessons, the investigations are primarily a direct service provided to the specific licensee and assist the licensee in complying with NRC regulations. The costs of any generic efforts that may result from the investigations, such as the development of new regulatory requirements and guidance, will continue to be recovered through Part 171 annual fees, not through Part 170 fees assessed to the licensee. In addition, any time expended by NRC's Office of Investigations on these activities will be recovered through Part 171 fees. These Part 170 fees will not apply to materials licenses for which no inspection fee is specified in Part 170 because the inspection costs are included in the Part 171 annual fee for those fee categories.

b. Additional Document Reviews.

Part 170 is also expanded to include reviews of documents submitted to the NRC that do not require formal or legal approvals or amendments to the technical specifications or license. Examples are certain financial assurance reviews, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71(e) Final Safety Analysis Reports (FSARs). Although no specific approval is issued, reviews of these submittals are services provided by the NRC to identifiable recipients that assist them in complying with NRC regulations.

c. Project Manager Time.

All Project Manager's (PM) time, excluding leave and time spent on generic activities such as rulemaking, will be recovered through Part 170 fees assessed to the specific applicant or licensee to which the PM is assigned. This change is applicable to all licensees subject to full cost fees under Part 170 and to which PMs are assigned.

Examples of PM activities which will be subject to Part 170 cost recovery are those associated with oversight of the assigned license or plant (e.g., setting work priorities, planning and scheduling review efforts, preparation and presentations of briefings for visits to NRC by utility officials, interfacing with other NRC offices, the public, and

other Federal and state and local government agencies, and visits to the assigned site for purposes other than a specific inspection), and training. Examples of PM generic activities that will not be subject to fee recovery under Part 170 are rulemaking and the development of regulatory guides, generic licensing guides, standard review plans, and generic letters and bulletins. If a PM is assigned to more than one license or site, costs for activities other than licensee-specific licensing or inspection activities will be prorated to each of the licenses or sites to which the PM is assigned. The concept of full cost recovery for PMs is similar to the concept of full cost recovery for Resident Inspectors, which was added to Part 170 in the FY 1998 final fee rule (June 10, 1998; 63 FR 31840).

d. Other.

The NRC also solicited public comment in the proposed rule on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule. The costs of these activities are currently recovered through Part 171 annual fees. The Commission will further evaluate this issue prior to promulgating the FY 2000 fee rule.

2. Amendment Fees Based on Average Costs

The NRC is revising 10 CFR 170.31 to eliminate the amendment fees for small materials licensees that are based on the average time to complete the reviews ("flat" fees) and include the amendment processing costs in the Part 171 annual fees assessed to the small materials licensees. This change continues the NRC's initiatives to streamline its fee program. In a similar action, the inspection and renewal fees for these licensees were eliminated in the FY 1995 and FY 1996 fee rulemakings, respectively, and the costs included in the annual fees for these categories of licensees.

Although not all materials licensees request amendments during a given fiscal year, approximately 80 percent request at least one amendment over a five-year period and approximately 40 percent of these licensees request multiple amendments during a five-year period.

In addition to streamlining the NRC process, this change eliminates the steps licensees currently take to submit the payments for their amendment requests. It also eliminates any delays in approving proposed amendments due to incorrect payments and provides an efficient means of recovering these costs. The NRC believes that the efficiencies to be gained outweigh any inequities that may result because not all materials licenses are amended each fiscal year.

This change results in an estimated $900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

3. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These revised rates are based on the number of FY 1999 direct FTEs and the FY 1999 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The hourly rate for the reactor program is $141 per hour ($250,403 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under § 170.21 of the fee regulations. The hourly rate for the nuclear materials and nuclear waste program is $140 per hour ($248,728 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under § 170.31 of the fee regulations. In the FY 1998 final fee rule, these rates were $124 and $121, respectively. The FY 1998 rates represented a decrease from FY 1997 of $7 per hour for the reactor program from FY 1997, and $4 per hour for the materials program.

This increase can be readily explained. In calculating the FY 1999 hourly rates, the NRC staff discovered that a coding error in NRC's budget, which is used in the development of fees, occurred for FY 1998. This coding error contributed to the hourly rate decreases for that year. In addition, costs for direct FTEs and overhead are calculated for the reactor and materials programs and for the surcharge. Although the FY 1999 hourly rates reflect an increase of $17–$19 per hour compared to FY 1998, the error was in the reduced FY 1998 hourly rate, not in the increased FY 1999 hourly rate. Specifically, 134 FTE and approximately $10 million in contract support for regional management and support were erroneously coded as direct resources for FY 1998 rather than as overhead. The correction of that error in FY 1999 results in substantial increases in the hourly rates compared to FY 1998, from $124 to $141 for the reactor program, and from $121 to $140 for the materials program. This is the result of the increased overhead costs to be allocated to the two programs, with fewer direct FTE to divide the costs among. In addition, the proportion of direct resources has shifted. The materials program now has a larger share. Therefore, the materials program must absorb more of the overhead and management and support costs.

Because of the error in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates of $131 and $125 for the reactors and materials programs, respectively. Applying only the salary and benefit increases of 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999, would result in FY 1998 hourly rates of $137 for the reactor program and $131 for the materials program, and 1999 hourly rates of $142 for the reactor program and $136 for the materials program. This does not consider the shift that has occurred in the proportion of direct resources from the reactor program to the materials program that results in the materials program having a larger share and therefore absorbing more of the overhead and management and support costs.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.

c. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 1999 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries and Benefits	$99.2m	$26.4m
Overhead Salaries and Benefits, Program Travel and Other Support	$54.1m	$15.0m
Allocated Agency Management and Support	$104.2m	$28.1m
Subtotal	$257.5m	$69.5m
Less offsetting receipts	−.1m	
Total Budget Included in Hourly Rate	$257.4m	$69.5m
Program Direct FTEs	1,028.0	279.7.
Rate per Direct FTE	$250,403	$248,728.
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$141	$140.

As shown in Table II above, dividing the $257.4 million (rounded) budget for the reactor program by the reactor program direct FTEs (1,028) results in a rate for the reactor program of $250,403 per FTE for FY 1999. The Direct FTE Hourly Rate for the reactor program is $141 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($250,403) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Dividing the $69.5 million (rounded) budget for the nuclear materials and nuclear waste program by the program direct FTEs (279.7) results in a rate of $248,728 per FTE for FY 1999. The Direct FTE Hourly Rate for the materials program is $140 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($248,728) by the number of productive hours in one year (1,776 hours).

Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1999 hourly rates.

4. Fee Adjustments

The NRC is adjusting the Part 170 fees in §§ 170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of Part 170 fees required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that the fees based on the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. The data for the average number of professional staff hours needed to complete licensing action were last updated in FY 1997 (62 FR 29194; May 29, 1997). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1997. The licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the professional hourly rate for FY 1999 of $140 per hour.

The licensing fees reflect an increase in average time for new license applications for 20 of the 33 materials fee categories included in the biennial review, a decrease in average time for 8 fee categories, and the same average time for the remaining 5 fee categories. The average time for export and import new license applications and amendments remained the same for 6 fee categories in §§ 170.21 and 170.31, and decreased for 4 fee categories.

The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing "flat" fees are applicable to fee categories K.1 through K.5 of § 171.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of § 171.16. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

5. Administrative Amendments

a. The NRC is amending § 170.2, Scope, and § 170.3, Definitions, to specifically include Certificates of Compliance (Certificates) issued pursuant to Part 76. The NRC issued two Certificates pursuant to Part 76 to the United States Enrichment Corporation for operation of the two gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. Part 76 certificates are added to the definition of Materials License in § 170.3 (Uranium enrichment facilities are already defined in § 170.3). These changes are administrative changes to clarify the applicability of Part 170 fees to these Certificates.

b. The NRC is revising the definition of "Inspection" to specifically include performance assessments, evaluations, and incident investigations. This change is being made to incorporate the expansion of Part 170 in this final rule to include these activities.

c. The NRC is revising the definition of "Special projects" to include financial assurance submittals, responses to Confirmatory Action Letters, uranium recovery licensees' land-use survey reports, and 10 CFR 50.71 Final Safety Analysis Reports in the list of examples of documents submitted for review that would be subject to special project fees. This revision is needed to incorporate the change in this final rule to include the review of these documents in Part 170.

d. The NRC is revising § 170.5, Communications, to indicate that all communications concerning Part 170 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Officer has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

e. The NRC is deleting the current exemption in § 170.11(a)(11), which eliminates fees for amendments to

change the name of the Radiation Safety Officer for portable gauge licenses issued in accordance with NUREG–1556,[1] Volume 1. This final rule eliminates the requirement for amendment fees for these licenses and thus the exemption is no longer needed.

f. The NRC is adding § 170.11(a)(12) to provide an exemption from Part 170 fees for those licensee-specific performance assessments or evaluations for which the licensee volunteers at NRC's request. This change accommodates action in this final rule to include performance assessments and evaluations in Part 170, except those for which the licensee volunteers at NRC's request and which are accepted by the NRC.

g. The NRC is revising § 170.12, Payment of Fees, to reflect the revision to Part 170 to include performance assessments, evaluations, and incident investigations, reviews of reports and other documents, and full cost recovery for project managers. This section is also revised to delete references to amendment fees for materials licenses that are not based on full cost to reflect the elimination of these fees in this final rule. The costs for these activities will be included in the Part 171 annual fee for these materials licensees.

Section 170.12(h), Method of Payment, is redesignated as § 170.12(f) and revised to specify the information the NRC needs to issue refunds. This change is necessitated by new Treasury requirements that were effective January 1, 1999.

In summary, the NRC has:

1. Revised Part 170 to include full cost recovery for all plant or licensee-specific inspections, including performance reviews, assessments, evaluations, and incident investigations, reviews of reports and other documents, and all of the Project Managers' time excluding time spent on generic activities and leave time;

2. Eliminated Part 170 "flat" amendment fees for materials licenses. The amendment costs will be recovered through Part 171 annual fees assessed to materials licensees;

3. Revised the two 10 CFR Part 170 hourly rates; and

4. Revised the licensing fees assessed under 10 CFR Part 170 to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency, and to reflect the revised hourly rates.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC has made three major amendments to 10 CFR Part 171 and several administrative amendments to update information in certain sections and to incorporate the major changes. These major changes result in annual fees being assessed to licensees previously exempted from annual fees, increased annual fees for some licensees, and decreased annual fees for other licensees.

The changes are consistent with our statutory mandate; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class' and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692–93). Costs not attributable to a class of licensees are allocated following the conferees' guidance that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." (136 Cong. Rec. at H12692-3). The Conference Report guidance also provides that: "these expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment." As in the past, these costs are allocated to the entire population of NRC licensees that pays annual fees, based on the amount of the budget directly attributable to a class of licensees. This results in a higher percentage of these costs being allocated to operating power reactor licensees as opposed to other classes of licensees.

The major changes to Part 171 are in the following areas.

1. Reactor Decommissioning/Spent Fuel Storage

The NRC is revising 10 CFR Part 171.15 to establish a spent fuel storage/reactor decommissioning annual fee. This annual fee will be assessed to those Part 72 licensees who do not hold a Part 50 license and to all operating and non-operating Part 50 power reactor licensees, except those power reactor licensees who have permanently ceased operations and have no fuel onsite. The full amount of the FY 1999 annual fee will be billed to those Part 50 licensees who are in a decommissioning or possession only status upon publication of the FY 1999 final rule. Payment will be due on the effective date of the FY 1999 rule. For operating power reactors and those Part 72 licensees who do not hold a Part 50 license, the new fee will be reflected in the fourth quarter FY 1999 annual fee bill. Any adjustments for prior payments during FY 1999 will be made in accordance with § 171.19(b). The annual fees in 10 CFR 171.16 for Part 72 licenses for independent spent fuel storage have been eliminated. This change assures equivalent fee treatment for both wet (spent fuel pool) and dry (Independent Spent Fuel Storage Installation) storage of spent fuel. This change will also ensure that power reactor licensees who benefit from NRC's generic activities bear a fair portion of these costs relating to decommissioning of reactors.

This change does not affect the manner in which licensing and inspection costs are recovered (i.e., Part 170 fees will still be assessed to Part 72 licensees and to Part 50 licensees in decommissioning or possession only status for licensing and inspection services). The NRC will continue to include the costs for generic decommissioning/reclamation costs for nonpower reactors, fuel facilities, materials, and uranium recovery licensees in the surcharge assessed to operating licensees, including operating power reactors.

2. Annual Fees

The NRC is establishing new baseline annual fees for FY 1999. The annual fees in §§ 171.15 and 171.16 are revised for FY 1999 to recover approximately 100 percent of the FY 1999 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 1999 is $339.8 million, compared to $360.2 million for FY 1998.

In the FY 1995 final fee rule (60 FR 32218, 32225; June 20, 1995), the NRC

[1] Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

stated that it would stabilize annual fees as follows:

For FY 1996 through FY 1999, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either condition occurred, the annual fee base would be recalculated. The percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. This method of determining annual fees is the "percent change" method. The FY 1996, FY 1997, and FY 1998 annual fees were based on the percent change method.

New baseline fees are established for FY 1999 based on the program changes that have taken place since the baseline fees were established in FY 1995, including those resulting from the agency's strategic planning efforts, downsizing, reorganization of agency resources, and the addition of a new annual fee class (spent fuel storage/reactor decommissioning) as previously described. In addition, there have been several fee policy changes since FY 1995. Fee policy changes include the elimination of renewal fees in FY 1996 for most materials licensees, the elimination of amendment fees for these licensees in FY 1999, and the inclusion of these costs in the materials licensees' annual fees.

Table III below shows the FY 1999 rebaselined annual fees for representative categories of licensees.

TABLE III

Class of licensees	FY 1999 annual fee
Power Reactors (including spent fuel storage/reactor decommissioning annual fee)	$2,776,000
Spent fuel storage/reactor decommissioning	206,000
Nonpower Reactors	85,900
High Enriched Uranium Fuel Facility	3,281,000
Low Enriched Uranium Fuel Facility	1,100,000
UF_6 Conversion Facility	472,000
Uranium Mills	131,000
Solution Mining	109,000
Transportation:	
Users and Fabricators	66,700
Users only	2,200
Typical Materials Licensees:	
Radiographers	14,700
Well loggers	9,900
Gauge users	2,600
Broad scope medical	27,800
Broad scope manufacturers	26,000

The annual fees assessed to each class of licensees include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licensees but must be recovered from the licensees to comply with the requirements of OBRA–90. The FY 1999 budgeted costs that will be recovered in the surcharge from all licensees are shown in Table IV.

TABLE IV.—SURCHARGE

Category of costs	FY 1999 budgeted costs ($, M)
1. Activities not directly attributable to an existing NRC licensee or class of licensee:	
a. International activities	6.3
b. Agreement State oversight	6.4
c. Low-level waste disposal generic activities	4.1
d. Site decommissioning management plan activities not recovered under Part 170	4.6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on legal constraints or Commission policy:	
a. Fee exemption for nonprofit educational institutions	6.9
b. Licensing and inspection activities associated with other Federal agencies	2.8
c. Costs not recovered from small entities under 10 CFR 171.16(c)	5.3
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	14.6
b. Generic decommissioning/reclamation, except those related to power reactors	4.2
Total Budgeted Costs	55.2

The NRC has continued to allocate the surcharge costs, except LLW surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume disposed by the certain classes of licensees. The surcharge costs allocated to each class are included in the annual fee to be assessed to each licensee. The FY 1999 surcharge costs that are allocated to each class of licensee are shown in Table V.

TABLE V.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge $,M
	Percent	$,M	Percent	$,M	
Operating power reactors	74	3.0	80.3	41.0	44.0
Spent fuel storage/reactor decommissioning	.....	.....	6.3	3.2	3.2
Nonpower reactors	.....	.....	0.1	0.0	0.0
Fuel facilities	8	0.4	5.0	2.6	2.9
Materials users	18	0.7	5.9	3.1	3.8
Transportation	.....	.....	1.0	0.5	0.5
Rare earth facilities	.....	.....	0.1	0.0	0.0
Uranium recovery	.....	.....	1.3	0.7	0.7
Total Surcharge	.....	4.1	.....	51.1	55.2

The budgeted costs allocated to each class of licensees and the calculation of the rebaselined fees are described in 3. and 4. below. The work papers which support this final rule show in detail the allocation of NRC budgeted resources for each class of licensee and how the fees are calculated. The work papers may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

Because this final FY 1999 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1999 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1999 rule. Those materials licensees whose license anniversary date during FY 1999 falls before the effective date of the FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of the license and payment will be due on the date of the invoice.

3. Revised Fuel Cycle and Uranium Recovery Matrixes

The NRC is adopting revised matrixes in the determination of annual fees for fuel facility and uranium recovery licensees. As part of the rebaselining efforts, the NRC is using a revised matrix depicting the categorization of fuel facility and uranium recovery licenses by authorized material and use/activity and the relative programmatic effort associated with each category.

a. *Fuel Facility Matrix.*

The NRC is using a revised fuel facility matrix based on the commensurate level of regulatory effort related to the various fuel facility categories from both safety and safeguards perspectives. The revised matrix results in a more accurate reflection of the NRC's current costs of providing generic and other regulatory services to each type of fuel facility.

The FY 1999 budgeted costs of approximately $16.3 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the revised matrix. The revisions to the matrix take into account changes in process operations at certain fuel facilities. The revised matrix also explicitly recognizes the addition of the uranium enrichment plants to the fee base and a reduction of three licensees (B&W Parks Township, B&W Research and General Atomic) as the result of the termination of licensed activities. In the revised matrix (which is included in the publicly available work papers), licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from safety and safeguards perspectives. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is amenable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in them not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among those remaining licensees/certificate holders. This would result in a higher fee for those remaining in the fee category.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor).

The effort factors for the various subclasses of fuel facility licensees are as follows:

	Number of licenses	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (33.1%)	76 (54.7%).
Enrichment	2	70 (25.5%)	34 (24.5%).
Low Enriched Uranium Fuel	4	88 (32.0%)	24 (17.3%).
UF6 Conversion	1	12 (4.4%)	0 (0%).
Limited Operations Facility	1	8 (2.9%)	3 (2.2%).
Others	1	6 (2.2%)	2 (1.4%).
Total	11	275 (100%)	139 (100%).

These effort factors are applied to the $16.3 million total annual fee amount. This amount includes the low level waste (LLW) surcharge and other surcharges allocated to the fuel facility class.

b. *Uranium Recovery Matrix.*

Of the $2.1 million total budgeted costs-allocated to the uranium recovery class to be recovered through annual fees, approximately $870,000 will be assessed to DOE to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining $1.3 million will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. Because the final FY 1999 annual fees will result in certain uranium recovery licensees going from an annual billing process based on the anniversary date of their license to quarterly billing, those licensees will be billed upon publication of the final FY 1999 rule for the balance of the full FY 1999 annual fee. Payment of the balance of the FY 1999 annual fee will be due on the effective date of the FY 1999 rule.

The NRC has revised the matrix established in FY 1995 to determine the annual fees for the conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The revised matrix reflects NRC's significantly increased efforts related to groundwater concerns for in-situ licenses and its somewhat increased efforts related to groundwater concerns for conventional mills. The revised matrix also reflects an increase in regulatory efforts related to waste operations for in-situ licenses. The matrix has also been updated to reflect the changes in the number of licensees within each fee category. The number of conventional mills has decreased from 4 in FY 1995 to 3 in FY 1999 and the number of licensees in the solution mining fee category has increased by 1.

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed:

(1) The methodology identifies three categories of licenses: conventional uranium mills, solution mining uranium mills, and mill tailings disposal facilities. Each of these categories benefits from the generic uranium recovery program;

(2) The matrix relates the category and the level of benefit, by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements has been further divided into three subelements;

(5) The three major subelements of generic activities related to uranium facility operations are activities related to the operation of the mill, activities related to the handling and disposal of waste, and activities related to prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to decommissioning of facilities and cleanup of land, reclamation and closure of the tailings impoundment, and cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factors and the percentage of the total generic uranium recovery program benefitting the various subclasses are as follows:

	Number of licenses	Level of benefit		
		Weighted factor	Total for subclass	Percent
Class I facilities	3	770	2310	31
Class II facilities	7	645	4515	61
11e(2) disposal	1	475	475	6
11e(2) disposal incidental to existing tailings sites	2	75	150	2
Total	13	1965	7450	100

4. Annual Fee Determination for Other Classes

a. Power Reactor Licensees.

The approximately $267.3 million in budgeted costs to be recovered through annual fees assessed to operating power reactors is divided equally among the 104 operating reactors. This results in a FY 1999 annual fee of $2,570,000 per reactor. In addition, each operating reactor will be assessed the spent fuel storage/reactor decommissioning annual fee (see paragraph 4.b.), which for FY 1999 is $206,000 for each power reactor. This results in a total FY 1999 annual fee of $2,776,000 for each operating power reactor.

b. Spent Fuel Storage/Reactor Decommissioning.

For FY 1999, budgeted costs of approximately $24.8 million are to be recovered through annual fees assessed to Part 50 power reactors, except those Part 50 licensees who have permanently ceased operations and have no spent fuel onsite, and to Part 72 licensees who

do not hold a Part 50 license. The costs are divided equally among the licensees, resulting in a FY 1999 annual fee of $206,000 for each licensee.

c. Nonpower Reactors.

Budgeted costs for FY 1999 of approximately $343,400 are to be recovered from four nonpower reactors subject to annual fees. This results in a FY 1999 annual fee of $85,900.

d. *Rare Earth Facilities.*

The FY 1999 budgeted costs of approximately $91,200 for rare earth facilities to be recovered through annual fees are allocated uniformly to the three licensees who have a specific license for receipt and processing of source material. This results in a FY 1999 annual fee of $30,400.

e. *Materials Users.*

To equitably and fairly allocate the $30.5 million in FY 1999 budgeted costs to be recovered in annual fees assessed to the approximately 5700 diverse material users and registrants, the NRC has continued the methodology used in FY 1995 to establish baseline annual fees for this class. The annual fee is based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows:

Annual Fee = (Application Fee + (Average Inspection Cost divided by Inspection Priority)) multiplied by the constant + (Unique Category Costs).

The constant is the multiple necessary to recover $30.5 million and is 1.3 for FY 1999. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1999, unique costs of approximately $955,400 were identified for the medical development program which is attributable to medical licensees. The annual fees for each fee category are shown in § 171.16(d).

f. *Transportation.*

Of the approximately $3.6 million in FY 1999 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately $870,000 will be recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance DOE holds. Of the remaining $2.7 million, approximately 10 percent is allocated to holders of approved quality assurance plans authorizing use, and approximately 90 percent will be allocated to holders of approved quality assurance plans authorizing design, fabrication, and use. This results in FY 1999 annual fees of $2,200 for holders of approved quality assurance plans for use only. The FY 1999 annual fees for holders of approved quality assurance plans for design, fabrication, and use is $66,700.

5. Administrative Amendments

a. The NRC is revising § 171.9, Communications, to indicate that all communications concerning Part 171 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Officer has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

b. The NRC is revising § 171.13 to reflect the establishment of an annual fee for power reactors in a decommissioning or possession only status, except those that have no spent fuel onsite.

c. The NRC is revising § 171.15 as follows:

(1) The heading for § 171.15 is revised to read: Section 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses

(2) Paragraph (b) of § 171.15 is revised in its entirety to establish the FY 1999 annual fees for operating power reactors, power reactors in decommissioning or possession only status that have no spent fuel onsite, and Part 72 licensees who do not hold Part 50 licenses. Fiscal year references are changed from FY 1998 to FY 1999. The activities comprising the base annual fees and the additional charge (surcharge) are listed in § 171.15(b), (c), and (d) for convenience purposes.

Each operating power reactor will pay an FY 1999 annual fee of $2,776,000, which includes the annual fee of $206,000 for spent fuel storage/reactor decommissioning. Each power reactor in decommissioning or possession only status, except those who have permanently ceased operations and have no spent fuel on-site, and each Part 72 licensee who does not hold a Part 50 license will pay the spent fuel storage/reactor decommissioning annual fee of $206,000.

(3) Paragraph (e) of § 171.15 is revised to show the amount of the FY 1999 annual fee for nonpower (test and research) reactors. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

d. The NRC is revising § 171.16 as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. This section is revised to clarify that failure to file a small entity certification in a timely manner could form the basis for the denial of any refund that would otherwise be due. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $350,000 to $5 million will pay a maximum annual fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being made because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the final rule for convenience.

(2) Section 171.16(d) is revised to establish the FY 1999 annual fees for materials licensees, including Federal agencies, licensed by the NRC. The FY 1999 annual fees for materials licenses range from $600 for a license authorizing the use of source material for shielding, to $27,800 for a license of broad scope for human use of byproduct, source, or special nuclear material. The annual fee for the "master" materials licenses of broad scope issued to Federal agencies is $358,000.

(3) Footnote 1 of § 171.16(d) is being amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. All other licensees and approval holders who held a license or approval

on October 1, 1998, will be subject to the FY 1999 annual fees.

Holders of new licenses issued during FY 1999 are subject to a prorated annual fee in accordance with the proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1999, will not be assessed an annual fee for FY 1999. Thereafter, the full annual fee will become due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

e. The NRC is revising § 171.17 as follows:

(1) Section 171.17(a) is being revised to add an annual fee proration provision for those reactor licensees in a decommissioning or possession only status that have no spent fuel onsite and those Part 72 licensees that do not hold Part 50 licenses. The spent fuel storage/reactor decommissioning annual fee for these licensees will be prorated based on the number of days during the fiscal year the license subject to the annual fee was in effect. This provision is the same as the proration provision provided for operating reactors in this section.

(2) Section 171.17(b) is being revised to exclude Part 72 licenses from the proration provision for materials licenses. The annual fees for Part 72 licenses will be prorated as provided in revised § 171.17(a).

f. The NRC is revising Section 171.19 as follows:

(1) Section 171.19(b) is being revised to update the fiscal year references, to include a billing process for those licensees whose annual fee for the previous fiscal year was based on the anniversary date of the license and whose revised annual fee for the current fiscal year is based on quarterly billing, and to give credit for partial payments made by certain licensees in FY 1999 toward their FY 1999 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1999 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

(2) Section 171.19(c) is being revised to update fiscal year references.

As in FY 1998, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than $100,000 and the revised annual fee for the current fiscal year is $100,000 or more. In this case, the revised amount will be billed to the licensees upon publication of the final rule in the **Federal Register**, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 1999, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1999 before the effective date of the FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of their license. Payment will be due on the date of the invoice.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material.

In summary, the NRC has:

1. Established a new spent fuel storage/reactor decommissioning annual fee in 10 CFR 171.15, and eliminated the current annual fee in 10 CFR 171.16 for independent spent fuel storage licenses. The annual fee will be assessed to those Part 72 licensees who do not hold a Part 50 license and to all Part 50 power reactor licensees, except those that have permanently ceased operations and have no spent fuel onsite;

2. Established new baseline annual fees for FY 1999.

3. Used revised matrixes for allocating the fuel facility and uranium recovery budgeted costs to licensees in those fee classes.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is establishing the licensing, inspection, and annual fees necessary to recover approximately 100 percent of its budget authority less amounts appropriated from the Nuclear Waste Fund and the General Fund as required by the Omnibus Budget Reconciliation Act of 1990. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television*

Ass'n, Inc. v. *United States*, 415 U.S. 352 (1974), and *Federal Power Commission* v. *New England Power Co.*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia Circuit: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Ass'n* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub.L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998, and was amended in FY 1998 to extend the 100 percent fee recovery requirement through FY 1999. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the amount of the FY 1999 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed sources and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1999 budget of $469.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, the NRC's FY 1999 appropriations language provides that $3.2 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies be excluded from fee recovery.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by OBRA–90 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1999. The final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 1999.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.2, paragraph (r) is added to read as follows:

§ 170.2 Scope.

* * * * *

(r) An applicant for or a holder of a certificate of compliance issued under 10 CFR Part 76.

3. In § 170.3, the definition of the terms *Inspections, Materials license,* and *Special projects* are revised to read as follows:

§ 170.3 Definitions.

* * * * *

Inspections means:

(1) Routine inspections designed to evaluate the licensee's activities within the context of the licensee having primary responsibility for protection of the public and environment;

(2) Non-routine inspections in response or reaction to an incident, allegation, follow up to inspection deficiencies or inspections to determine implementation of safety issues. A non-routine or reactive inspection has the same purpose as the routine inspection;

(3) Reviews and assessments of licensee performance;

(4) Evaluations, such as those performed by Diagnostic Evaluation Teams; or

(5) Incident investigations.

* * * * *

Materials license means a license, certificate, approval, registration, or other form of permission issued by the NRC under the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71, 72 and 76.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical reports reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

* * * * *

4. Section 170.5 is revised to read as follows:

§ 170.5 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

5. In § 170.11, paragraph (a)(11) is removed and reserved and paragraph (a)(12) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(12) A performance assessment or evaluation for which the licensee volunteers at the NRC's request and which is selected by the NRC.

* * * * *

6. Section 170.12 is revised to read as follows:

§ 170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category or adding a new fee category prior to receiving the prescribed application fee. The application fee(s) is charged whether the Commission approves the application or not. The application fee(s) is also charged if the applicant withdraws the application.

(b) *Licensing fees.* (1) Licensing fees will be assessed to recover full costs for—

(i) The review of applications for new licenses and approvals;

(ii) The review of applications for amendments to and renewal of existing licenses or approvals;

(iii) Preapplication consultations and reviews; and

(iv) The full cost for project managers assigned to a specific plant or facility, excluding leave time and time spent on generic activities (such as rulemaking).

(2) Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. The full cost fees for professional staff time will be determined at the professional hourly rates in effect the time the service was provided. The full cost fees are payable upon notification by the Commission.

(3) The NRC intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for NRC review, until the review is completed, except for costs that were deferred before August 9, 1991. The deferred costs will be billed as described in paragraphs (b)(5), (b)(6) and (b)(7) of this section. Each bill will identify the applications and documents submitted for review and the costs related to each.

(4) The NRC intends to bill each applicant or licensee for costs related to project manager time on a quarterly basis. Each bill will identify the costs related to project manager time.

(5) Costs for review of an application for renewal of a standard design certification which have been deferred prior to the effective date of this rule must be paid as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the entity shall pay the installment. If the design is not referenced, or if all of the costs are not recovered, within

fifteen years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the renewal, or remainder of those costs, at that time.

(6) Costs for the review of an application for renewal of an early site permit which have been deferred prior to the effective date of this rule will continue to be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(7)(i) The full cost of review for a standardized design approval or certification that has been deferred prior to the effective date of the rule must be paid by the holder of the design approval, the applicant for certification, or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR Part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the approved/certified design is referenced in an application for a construction permit, combined license issued under 10 CFR Part 52, or operating license. In the case of a standard design certification, the applicant for certification shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

(ii) In the case of a design which has been approved and for which an application for certification is pending, no fees are due until after the certification is granted. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of certification, the applicant shall pay the costs, or remainder of those, at the time.

(iii) In the case of a design for which a certification has been granted, if the design is not referenced, or if all costs are not recovered, within fifteen years after the date of the certification, the applicant shall pay the costs for the review of the application, or remainder of those costs, at that time.

(c) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector (including the senior resident inspector), assigned to a specific plant or facility. The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an official duty status (i.e., all time in a non-leave status will be billed), and the hours will be billed at the appropriate hourly rate established in 10 CFR 170.20. Resident inspectors' time related to a specific inspection will be included in the fee assessed for the specific inspection in accordance with paragraph (c)(2) of this section.

(2) Inspection fees will be assessed to recover the full cost for each specific inspection, including plant- or licensee-specific performance reviews and assessments, evaluations, and incident investigations. For inspections that result in the issuance of an inspection report, fees will be assessed for costs incurred up to approximately 30 days after the inspection report is issued. The costs for these inspections include preparation time, time on site, documentation time, and follow-up activities and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

(3) The NRC intends to bill for resident inspectors' time and for specific inspections subject to full cost recovery on a quarterly basis. The fees are payable upon notification by the Commission.

(d) *Special Project Fees.* (1) Fees for special projects are based on the full cost of the review. Special projects includes activities such as—

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports; and (v) 10 CFR 50.71 final safety analysis reports.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review is completed. Each bill will identify the documents submitted for review and the costs related to each. The fees are payable upon notification by the Commission.

(e) *Part 55 review fees.* Fees for Part 55 review services are based on NRC time spent in administering the examinations and tests and any related contractual costs. The fees assessed will also include related activities such as preparing, reviewing, and grading of the examinations and tests. The NRC intends to bill the costs at quarterly intervals to the licensee employing the operators.

(f) *Method of payment.* All license fee payments are to be made payable to the U.S. Nuclear Regulatory Commission. The payments are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using E.D.I. (Electronic Data Interchange), check, draft, money order, or credit card. Payment of invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank at the address indicated on the invoice. Specific written instructions for making electronic payments and credit card payments may be obtained by contacting the License Fee and Accounts Receivable Branch at 301–415–7554. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

7. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	$141 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	$140 per hour.

8. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application—new license	$9,100
Amendment	9,100
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license	5,600
Amendment	5,600
3. Application for export of components requiring foreign government assurances only.	
Application—new license	1,700
Amendment	1,700
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application—new license	1,100
Amendment	$1,100
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	
Amendment	210

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

9. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application	$640.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Application	$1,300.
E. Licenses or certificates for construction and operation of a uranium enrichment facility.	
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$150.
C. All other source material licenses:	
Application	$5,500.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$6,600.
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,400.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$10,200.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4).	
Application	$2,400.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,700.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,400.
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$2,000.
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$3,200.
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$1,000.
K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$600.
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Application	$5,500.
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$2,300.
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$2,300.
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations:	
Application	$5,800.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,300.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,700.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,500.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$6,000.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$11,200.
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,100.
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,400.
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$2,400.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$320.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,200.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$3,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,580.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$530.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$390.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
15. Import and Export licenses:	
Licenses issued under 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	$9,100.
Amendment	$9,100.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	$5,600.
Amendment	$5,600.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,700.
Amendment	$1,700.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,100.
Amendment	$1,100.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$210.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application (initial filing of Form 241)	$1,200.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment/revision fees.*

Applications for amendments to export and import licenses and revisions to reciprocity initial applications must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with §170.12(c).

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in §170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

10. The heading of Part 171 is revised to read as follows:

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

11. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

12. Section 171.9 is revised to read as follows:

§171.9 Communications.

All communications concerning the regulations in this part should be addressed to the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, MD.

13. Section 171.13 is revised to read as follows:

§171.13 Notice.

The annual fees applicable to any NRC licensee subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** as soon as possible but no later than the third quarter of the fiscal year. The annual fees will become due and payable to the NRC as indicated in § 171.19. Quarterly payments of the annual fee of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, fees would be assessed based on the rates in effect for the previous fiscal year.

14. Section 171.15 is revised to read as follows:

§171.15 Annual Fees: Reactor licenses and spent fuel storage/reactor decommissioning.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a Part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a Part 72 license who does not hold a Part 50 license shall pay the annual fee for each unit for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

(b)(1) The FY 1999 annual fee for each operating power reactor is $2,776,000.

(2) The FY 1999 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 1999 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is $206,000.

(2) This fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (this fee is also included in the operating power

reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 1999 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not directly attributable to an existing NRC licensee or class of licensees (e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The total FY 1999 surcharge allocated to operating power reactor class of licensees is $44 million, not including the amount allocated to the new fee class, spent fuel storage/reactor decommissioning. The FY 1999 operating power reactor surcharge to be assessed to each operating power reactor is $423,000. This amount is calculated by dividing the total operating power reactor surcharge ($44 million) by the number of operating power reactors (104).

(3) The FY 1999 surcharge allocated to spent fuel storage/reactor decommissioning class of licensees is $3.2 million. The FY 1999 spent fuel storage/reactor decommissioning surcharge to be added to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is $26,500. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licensees, except those that permanently ceased operations and have no fuel onsite, and Part 72 licensees who do not hold a Part 50 license.

(e) The FY 1999 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	$85,900
Test reactor	$85,900

15. Section 171.16 is revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

(a)(1) The provisions of this section apply to person(s) who are authorized to conduct activities under—

(i) 10 CFR part 30 for byproduct material;

(ii) 10 CFR part 40 for source material;

(iii) 10 CFR part 70 for special nuclear material;

(iv) 10 CFR part 71 for packaging and transportation of radioactive material; and

(v) 10 CFR part 76 for uranium enrichment.

(2) Each person identified in paragraph (a)(1) of this section shall pay an annual fee for each license the person holds at any time during the first six months of the Federal fiscal year (October 1 through March 31). Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the period October 1 through March 31 of the fiscal year as provided in § 171.17 of this section. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If you hold more than one license, the total annual fee you will be assessed will be the cumulative total of the annual fees applicable to the licenses you hold.

(b) The annual fee is comprised of a base annual fee and an additional charge (surcharge). The activities comprising the surcharge are shown in paragraph (e) of this section. The activities comprising the base annual fee is the sum of the NRC budgeted costs for:

(1) Generic and other research activities directly related to the regulation of materials licenses as defined in this part; and

(2) Other safety, environmental, and safeguards activities for materials licenses, except costs for licensing and inspection activities that are recovered under Part 170 of this chapter.

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification with the annual fee payment, the licensee may pay reduced annual fees for as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less;	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. The NRC will include a copy of NRC Form 526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1999 annual fees, including the surcharge shown in paragraph (e) of this section, for materials licensees subject to fees under this section are shown below:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	3,281,000
Nuclear Fuel Services SNM–124	3,281,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,100,000
General Electric Company SNM–1097	1,100,000
Siemens Nuclear Power SNM–1227	1,100,000
Westinghouse Electric Company SNM–1107	1,100,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities:	
(a) Facilities with limited operations:	
Framatome Cogema SNM–1168	432,000
(b) All Others:	
General Electric SNM–960	314,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI) See 10 CFR part 171.15(c).	
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,300
E. Licenses or certificates for the operation of a uranium enrichment facility	2,043,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	472,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	131,000
Class II facilities [4]	109,000
Other facilities [4]	30,400
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	81,000
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	13,000
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	600
C. All other source material licenses	11,700
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	26,000
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,300
C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	15,300

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license	3,600
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,400
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	5,700
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	14,800
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	3,200
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	4,600
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	2,100
K. Licenses issued under Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	1,700
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,200
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution	5,000
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	5,200
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when authorized on the same license	14,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,600
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	11,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,400
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	9,900
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	18,900
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	15,300
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] ...	27,800

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued
[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	5,800
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,000
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,300
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,800
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	600
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[5] N
B. Quality assurance program approvals issued under 10 CFR Part 71:	
Users and Fabricators	86,700
Users	2,200
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210 N/A (See 10 CFR Part 171.15(c).	
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR Parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	358,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 872,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	869,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. Once NRC issues a license for these categories, the Commission will consider establishing an annual fee for that type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or

Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

16. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors and Part 72 licensees who do not hold Part 50 licenses. The annual fees for power and nonpower reactors and those Part 72 licensees who do not hold a Part 50 license that are subject to fees under this part and are granted a license to operate on or after October 1 of a Fiscal Year is prorated on the basis of the number of days remaining in the fiscal year. Thereafter, the full annual fee is due and payable each subsequent fiscal year. The base operating power reactor annual fee for operating reactor licensees who have requested amendment to withdraw operating authority permanently during the fiscal year will be prorated based on the number of days during the fiscal year the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently cease operations and have permanently removed fuel from the site during the fiscal year will be prorated on the basis of the number of days remaining in the fiscal year after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those Part 72 licensees who do not hold a Part 50 license who request termination of the Part 72 license and permanently cease activities authorized by the license during the fiscal year based on the number of days the license was in effect prior to receipt of the termination request.

(b) Materials licenses (excluding Part 72 licenses included in § 171.17(a)). (1) *New licenses and terminations.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

(2) *Downgraded licenses.* (i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not afftected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications to downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

17. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

(b) Annual fees in the amount of $100,000 or more and described in the **Federal Register** notice issued under § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 1998 was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 1999 is $100,000 or more (subject to quarterly billing), will be issued a bill upon publication of the final rule for the full amount of the FY 1999 annual fee, less any payments received for FY 1999 based on the anniversary date billing process.

(c) Annual fees that are less than $100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the

license is considered to be the first day of the month in which the original license was issued by the NRC. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1.D, 2(A)(2) other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

(e) Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

Dated at Rockville, Maryland, this 3rd day of June, 1999.

For the Nuclear Regulatory Commission.

Jesse Funches,

Chief Financial Officer.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards

The Omnibus Budget Reconciliation Act (OBRA–90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 1999 is approximately $449.6 million.

Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

Because the NRC is establishing a new annual fee class for FY 1999 and based on program changes that have occurred, the NRC is establishing new baseline annual fees this fiscal year. This rebaselining results in an increase in the annual fees charged to some categories of materials licensees.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 1999 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an competitive extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee and for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees indicating that the monetary threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that even the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives, in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

The NRC established, and is continuing for FY 1999, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1999, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 application fees, or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, will pay for most of the FY 1999 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is continuing for FY 1999, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in each year since 1992, the NRC is continuing the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. Therefore, even though the rebaselined annual fees will result in increased annual fees charged to several categories of materials licensees, licensees who qualify as small entities will not be adversely affected.

III. Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in previous fee rules remain valid for FY 1999.

Attachment 1 to Appendix A—U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1999

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Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees in complying with the FY 1999 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 1999 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, the appropriate small entity fee, and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organization*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small-entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less	
35 to 500 employees	1,800
Less than 35 employees	400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the annual fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $1,800 or $400 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $900 or $200 for each fee category billed instead of the full small entity annual fee of $1,800 or $400.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. Licensees will not be issued a new invoice for the reduced amount. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy " of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions about the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 et. seq. NRC's implementing regulations are found at 10 CFR Part 13.

[FR Doc. 99–14697 Filed 6–9–99; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 64, No. 112
Friday, June 11, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 353, 870, and 890

RINS 3206–AG02 and 3206–AH15

Reemployment Rights of Employees Performing Military Duty

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) which was enacted into law on October 13, 1994. The law and these regulations safeguard the job rights of Federal employees who leave their employment to perform duty with the uniformed services.

These regulations also implement provisions that expand on the coverage of the affected employees under the Federal Employees' Group Life Insurance (FEGLI) Program and the Federal Employees Health Benefits (FEHB) Program. The regulations were developed in consultation with the Departments of Labor and Defense.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: For parts 213 or 353: Raleigh M. Neville, (202) 606–0830. For parts 870 or 890: Abby L. Block, (202) 606–0004.

SUPPLEMENTARY INFORMATION: OPM published for comment on September 1, 1995 (at 60 FR 45650), and October 30, 1995 (at 60 FR 55173), interim regulations implementing the new USERRA law.

Comments on Part 353

We received comments from two agencies on the restoration-to-duty aspect of the law in 5 CFR part 353. We also received two comments from an agency on the health and life insurance changes in parts 870 and 890.

Section 4314 of title 38, United States Code, enacted as part of USERRA, requires OPM to place in other agencies a National Guard technician when the adjutant general of a State determines that it is "impossible or unreasonable" to reemploy the person in a dual status military/civilian technician position.

One commenter suggested that we make clear in the final regulations that National Guard technicians who fail to maintain active military membership in the Guard for reasons within their control (such as misconduct, military retirement, failure to meet weight or security requirements, etc.) are not eligible for the special mandatory placement in other agencies provided under section 4314 of title 38.

We agree that the law was not intended to provide a mandatory placement right in other agencies for Guard technicians who lose their military membership for reasons within their control. To do so would be to extend an extraordinary employment benefit to Guard technicians far beyond that accorded to any other group—including disabled combat veterans and others who have lost Federal jobs for reasons outside their control. Such a placement provision would also be contrary to the stated purpose of USERRA—which is to encourage and protect "noncareer service" that lasts no more than a cumulative total of 5 years, with some exceptions for training and emergency call-ups. (See 38 U.S.C. 4301)

Such a policy would also be inconsistent with 5 U.S.C. 3329—a provision that was enacted specifically to protect long-term Guard members, but which, significantly, provides only for priority placement in the Department of Defense, not mandatory placement in other agencies. (This is just one of a number of special protections already provided for technicians; for example, 5 U.S.C. 3304 gives technicians who are removed involuntarily a 1-year window of opportunity to be appointed noncompetitively to another civil service job.)

Finally, National Guard technicians knew that they were making a career decision when they volunteered for extended active duty with the Guard. These technicians were not merely absent from their technician positions (as envisioned by the law); rather, they had abandoned their jobs in order to pursue careers in the military. Interruption of that career for reasons within the individual's control should no more entitle the Guard member to mandatory job rights in another agency than would loss of Reserve membership for a Reservist or, for that matter, loss of a career choice for any other Government or private sector employee. We have, therefore, amended final regulation 5 CFR 353.110(a)(1)(iii) accordingly.

This commenter also suggested that we amend 5 CFR 353.211 to make clear that, because the term "employer," as it pertains to National Guard technicians, means the Adjutant General of a State, these technicians may no longer appeal to the Merit Systems Protection Board (MSPB) a State's failure to reemploy them; they must now go to court. We have made this change. (Note, however, that this does not affect a technician's right to appeal to MSPB OPM's failure to place the individual under 38 U.S.C. 4314(d).)

A commenter suggested that we delete the word "substantially" in the third sentence in 5 CFR 353.108 (pertaining to the effect of performance and conduct on restoration rights for both injured employees and those on military duty), saying that this "will eliminate the suggestion that something less than substantial is acceptable." Actually, this section says that an employee may not be denied restoration rights unless he or she was separated "for cause that is substantially unrelated to the injury or to the performance of uniformed service." There is no implication that restoration can be denied when the separation was something less than "substantially unrelated" to the injury or military duty. This standard will be maintained.

This commenter also suggested that in 5 CFR 353.109 (concerning a transfer of function to another agency), we substitute the words from the statute "of like seniority, status, and pay" for "equivalent" in denoting the position to which the position to which the person is entitled. Actually, "equivalent position," in this context, has long been interpreted as "like seniority, status, and pay." We note, too, that "seniority" is already included in the definition of "status." We did not include the term

separately, here, however, because seniority is not typically a factor for Federal positions and is thus not commonly used.

This commenter also questions whether OPM should create a 30-day standard in 5 CFR 353.207 by which time agencies must restore an employee who has been absent on military duty for more than 30 days. The agency suggests that it may be preferable to require prompt or reasonable reemployment, instead. The 30-day standard has been in effect for many years and has been consistently applied by MSPB in such a way as to require prompt and reasonable reemployment by an agency. In this connection, it should be noted that 30 days is the maximum an agency can delay a restoration. It is conceivable that by changing this to a standard without a definite time limit, situations may devolve in which it may be considered "reasonable" for an agency to restore someone long after 30 days have elapsed.

Because of questions about the applicability of USERRA and other laws to U.S. citizens located outside of the United States, one commenter suggested that we clarify what USERRA does, in fact, cover civil service employees stationed overseas. We have amended 5 CFR 353.103 to do so.

Other comments dealt with editorial and clerical errors.

Comments on Parts 870 and 890

OPM received two comments from a Federal agency on the interim regulations. One commenter suggested that the sentence added at the end of 5 CFR 870.501(d) be added to section 870.501(a) instead. Although we did not accept this suggestion as stated, we amended paragraph section 870.501(a) to clarify that the last sentence of section 870.501(d) is an exception. We also eliminated the words "in nonpay status" from the last sentence of section 870.501(d) because it is possible to be in a pay status and eligible for USERRA benefits at the same time.

These changes were incorporated into the final FEGLI regulations that were published in the **Federal Register** on September 17, 1997 (62 FR 48731).

One commenter objected to three phrases in 5 CFR 890.303(i) and one in section 890.304: (1) "on the date that the absence to serve in the uniform services begins," (2) "enters on military furlough or," (3) "provided the employee continues to be entitled to benefits under part 353," and (4) "or the date entitlement to of this chapter." Since these phrases reflect the requirements of USERRA, we cannot accept this suggestion. For example, under the provisions of USERRA a separated employee who leaves military service and does not return to his or her civilian position within the time limit set by the law loses eligibility for continued health benefits coverage.

One commenter suggests we delete the words "but not earlier than the date the enrollment would otherwise terminate under paragraph (a)(1)(v)" as not applicable to employees with continued coverage under USERRA. (See 5 CFR 390.304) Paragraph (a)(1)(v) reflects the provisions of the FEHB law and regulations giving employees who are in nonpay status continued entitlement to FEHB coverage for 365 days. The FEHB entitlement remains even if entitlement to coverage under USERRA is lost. Therefore, we have not accepted this suggestion.

One commenter suggests amending the interim regulations to specify that the regulations apply to employees who met the requirements of USERRA on October 13, 1994, so that they would cover employees whose insurance terminated due to separation for military service, but who met the USERRA requirements on or after that date. We have amended the interim regulations to clarify that they apply to separated employees as well as employees in nonpay status who met the USERRA requirements on October 13, 1994.

Both commenters object to the requirement that the employee pay the full premium (both employee and Government shares) plus an additional 2 percent after the initial 365 days of coverage. One commenter also objects to the requirement that the employee pay premiums on a current basis after the first 365 days. There is no statutory authority for the Government to pay its share for coverage beyond 365 days, nor is there statutory authority for OPM to waive the Government share after 365 days in nonpay status. Therefore, employees must pay it. Further, since USERRA is patterned after COBRA, 29 U.S.C. 1161, *et seq.*, (which requires private sector employers to provide continued group health coverage to separated employees for a period of 18 months at a cost to the individual of up to 102 percent of the premium), we have patterned these regulations after the temporary continuation of coverage (TCC) provision of the FEHB law, 5 U.S.C. 8905(a), (the FEHB equivalent to COBRA) to the extent applicable. The TCC provisions are not applicable for the first 365 days because, under FEHB law and regulation, the employees and the Government continue to pay their respective shares for that period.

Both the FEGLI and FEHB regulations have been amended to show that employees who separate to perform military service are considered to be employees for the purpose of continuing these benefits. The FEHB regulations have also been amended to show that FEHB coverage may continue for up to 18 months after the employee enters military service.

In addition to these changes, we added the phrase "or similar authority" each time we refer to 5 CFR part 353 in the FEGLI and FEHB regulations. This change clarifies that the FEGLI and FEHB provisions also apply to entities covered by the FEGLI and FEHB regulations but not by part 353.

The interim regulations for part 870 were adopted as final and published in the **Federal Register** on September 17, 1997.

Technical and Clarifying Amendments

We have amended the final regulations to reflect perfecting changes made by the Veterans' Benefits Improvements Act of 1996 (which includes USERRA technical amendments), enacted into law on October 9, 1996.

We have also amended 5 CFR 353.106(c) to provide that agencies not only have an obligation to consider employees absent on military duty for any promotion they may have been entitled to, but also to any "incident or advantage of employment."

These regulations were developed in consultation with the Departments of Labor and Defense.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

List of Subjects in Parts 213, 353, 870, and 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is adopting the interim regulations amending 5 CFR parts 213, 353, 870, and 890, which were published at 60 FR 45650 and 60 FR 55173 on September 1, 1995, and October 30, 1995, respectively, as final regulations with the following changes:

PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY

1. The authority citation for 5 CFR part 353 continues to read as follows:

Authority: 38 U.S.C. 4301 et. seq., and 5 U.S.C. 8151.

2. Section 353.103 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 353.103 Persons covered.

(a) The provisions of this part pertaining to the uniformed services cover each agency employee who enters into such service regardless of whether the employee is located in the United States or overseas. * * *

* * * * *

3. Section 353.106 is amended by adding a new sentence at the end of paragraph (c) and by adding paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 353.106 Personnel actions during employee's absence.

* * * * *

(c) * * * In addition, agencies have an obligation to consider employees absent on military duty for any incident or advantage of employment that they may have been entitled to had they not been absent. This is determined by:

(1) Considering whether the "incident or advantage" is one generally granted to all employees in that workplace and whether it was denied solely because of absence for military service;

(2) Considering whether the person absent on military duty was treated the same as if the person had remained at work; and

(3) Considering whether it was reasonably certain that the benefit would have accrued to the employee but for the absence for military service.

4–5. In § 353.110 paragraph (a)(2) is amended by removing the word "time" from the first sentence and paragraph (a)(1)(iii) is revised to read as follows:

§ 353.110 OPM placement assistance.

(a) * * *

(1) * * *

(iii) National Guard technicians when the Adjutant General of a State determines that it is impossible or unreasonable to reemploy a technician otherwise eligible for restoration under 38 U.S.C. 4304 and 4312 (pertaining to character and length of service), and the technician is a noncareer military member who was separated invountarily from the Guard for reasons beyond his or her control; and

* * * * *

6. Section 353.203(a)(4)(ii) is revised to read as follows:

§ 353.203 Length of service.

(a) * * *

(4) * * *

(ii) Ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress, as determined by the Secretary concerned.

* * * * *

§ 353.208 [Amended]

7. Section 353.208 is amended by removing the number 6 before the word "permitted" in the first sentence of the section.

8. Section 353.210 is revised to read as follows:

§ 353.210 Department of Labor assistance to applicants and employees.

USERRA requires the Department of Labor's Veterans' Employment and Training Service [VETS] to provide employment and reemployment assistance to any Federal employee or applicant who requests it. VETS staff will attempt to resolve employment disputes brought to investigate. If dispute resolution proves unsuccessful, VETS will, at the request of the employee, refer the matter to the Office of the Special Counsel for representation before the Merit Systems Protection Board (MSPB).

9. In § 353.211 paragraph (b) is amended by adding two new sentences at the end to read as follows:

§ 353.211 Appeal rights.

* * * * *

(b) * * * However, National Guard technicians do not have the right to appeal to MSPB a denial of reemployment rights by the Adjutant General. Technicians may file complaints with the appropriate district court in accordance with 38 U.S.C. 4323 (USERRA).

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

10. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102(f) also issued under sec. 153 of Pub. L. 104–134, 110 Stat 1321; section 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L is also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

11. Section 890.303 is amended by revising paragraph (i) to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(i) *Service in the uniformed services.* The enrollment of an individual who separates to enter the uniformed services under conditions that entitle him or her to benefits under part 353 of this chapter, or similar authority, may continue for the 18-month period beginning on the date that the absence to serve in the uniformed services begins, provided that the individual continues to be entitled to benefits under part 353 of this chapter, or similar authority. The enrollment of an employee who enters on military furlough or is placed in nonpay status to serve in the uniformed services may continue for the 18-month period beginning on the date that the absence to serve in the uniformed service begins, provided that the employee continues to be entitled to benefits under part 353 of this chapter, or similar authority. An employee in nonpay status is entitled to continued coverage under paragraph (e) of this section if the employee's entitlement to benefits under part 353 of this chapter, or similar authority, ends before the expiration of 365 days in nonpay status. The enrollment of an employee who met the requirements of chapter 43 of title 38, United States Code, on October 13, 1994, may continue for the 18-month period beginning on the date that the absence to serve in the uniformed services began, provided that the employee continues to be entitled to continued coverage under part 353 of this chapter, or similar authority. If the enrollment of such an employee had terminated due to the expiration of 365 days in nonpay status or because of the employee's separation from service, it may be reinstated for the remainder of the 18-month period beginning on the date that the absence to service in the uniformed service began, provided that the employee continues to be entitled to continued coverage under part 353 of this chapter, or similar authority.

12. In § 890.304 paragraphs (a)(1)(vi), (a)(1)(vii), and (a)(1)(viii) are revised to read as follows:

§ 890.304 Termination of enrollment.

(a) * * *

(1) * * *

(vi) The day he or she is separated, furloughed, or placed on leave of absence to serve in the uniformed services under conditions entitling him or her to benefits under part 353 of this chapter, or similar authority, for the purpose of performing duty not limited to 30 days or less, provided the employee elects in writing to have the enrollment so terminated.

(vii) For an employee who separates to serve in the uniformed services under

conditions entitling him or her to benefits under part 353 of this chapter, or similar authority, for the purpose of performing duty not limited to 30 days or less, the date that is 18 months after the date that the absence to serve in the uniformed services began or the date entitlement to benefits under part 353 of this chapter, or similar authority, ends, whichever is earlier, unless the enrollment is terminated under paragraph (a)(1)(vi) of this section.

(viii) For an employee who is furloughed or placed on leave of absence under conditions entitling him or her to benefits under part 353 of this chapter, or similar authority, the date that is 18 months after the date that the absence to serve in the uniformed services began or the date entitlement to benefits under part 353 of this chapter, or similar authority, ends, whichever is earlier, but not earlier than the date the enrollment would otherwise terminate under paragraph (a)(1)(v) of this section.

* * * * *

13. In § 890.305 paragraph (a) is revised to read as follows:

§ 890.305 Reinstatement of enrollment after military service.

(a) The enrollment of an employee or annuitant whose enrollment was terminated under § 890.304(a)(1)(vi), (vii), or (viii) or § 890.304(b)(4)(iii) is automatically reinstated on the day the employee is restored to a civilian position under the provisions of part 353 of this chapter, or similar authority, or on the day the annuitant is separated from the uniformed services, as the case may be.

* * * * *

14. In § 890.501 paragraphs (e), (f), and (g) are revised to read as follows:

§ 890.501 Government contributions.

* * * * *

(e) Except as provided in paragraphs (f) and (g) of this section, the employing office must make a contribution for an employee for each pay period during which the enrollment continues.

(f) Temporary employees enrolled under 5 U.S.C. 8906a must pay the full subscription charge including the Government contribution. Employees with provisional appointments under § 316.403 of this chapter are not considered to be enrolled under 5 U.S.C. 8906a for the purposes of this paragraph.

(g) The Government contribution for an employee who enters the uniformed services and whose enrollment continues under § 890.303(i) ceases after 365 days in nonpay status.

15. In § 890.502 paragraph (f) is revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(f) *Uniformed services.* (1) Except as provided in paragraph (f)(2) of this section, an employee whose coverage continues under § 890.303(i) is responsible for payment of the employee share of the cost of enrollment for every pay period for which the enrollment continues for the first 365 days of continued coverage as set forth under paragraph (b) of this section. For coverage that continues after 365 days in nonpay status, the employee must pay, on a current basis, the full subscription charge, including both the employee and Government shares, plus an additional 2 percent of the full subscription charge.

(2) Payment of the employee's share of the cost of enrollment is waived for the first 365 days of continued coverage in the case of an employee whose coverage continues under § 890.303(e) following furlough or placement on leave of absence under the provisions of part 353 of this chapter, or similar authority, or under § 890.303(i) if the employee was ordered to active duty before September 1, 1995, under section 12301, 12304, 12306, 12307, or 688 of title 10, United States Code, in support of Operation Desert Storm.

[FR Doc. 99–14846 Filed 6–10–99; 8:45 am]
BILLING CODE 8325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–273–AD; Amendment 39–11192; AD 99–12–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737–200C series airplanes, that currently requires a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts. That AD also provides for an optional preventative modification that constitutes terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating modification. This amendment is prompted by reports of cracking in the body frames between stringers 19 left and 25 left and at body stations 360 to 500B. The actions specified by this AD are intended to prevent opening or loss of the cargo door during flight, and consequent rapid decompression of the airplane.

DATES: Effective July 16, 1999.

The incorporation by reference of Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; and Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993; as listed in the regulations, was approved previously by the Director of the Federal Register as of August 9, 1993 (58 FR 36863, July 9, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–13–02, amendment 39–8615 (58 FR 36863, July 9, 1993), which is applicable to all Boeing Model 737–200C series airplanes, was published in the **Federal Register** on February 1, 1999 (64 FR 4791). The action proposed to continue to require a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts. The action also proposed to require accomplishment of the previously optional terminating modification.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 90 airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 93–13–02, and retained in this AD, take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $12,960, or $720 per airplane, per inspection cycle.

The new modification that is required by this new AD will take approximately 160 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $5,500 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $271,800, or $15,100 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8615 (58 FR 36863, July 9, 1993), and by adding a new airworthiness directive (AD), amendment 39–11192, to read as follows:

98–12–08 Boeing: Amendment 39–11192. Docket 98–NM–273–AD. Supersedes AD 93–13–02, Amendment 39–8615.

Applicability: All Model 737–200C series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening or loss of the cargo door during flight, and consequent rapid decompression of the airplane, accomplish the following:

Restatement of Requirements of AD 93–13–02

(a) Prior to the accumulation of 29,000 flight cycles or within 250 flight cycles after August 9, 1993 (the effective date AD 93–13–02, amendment 39–8615), whichever occurs later, accomplish an external detailed visual inspection to detect cracks of the fuselage skin between stringers 19 left and 25 left and at body stations 360 to 540, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. If any crack is found, prior to further flight, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform an internal detailed visual inspection to detect cracks of the frames between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with either service bulletin.

(2) Repair all cracks in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 3,000 flight cycles after completing the requirements of paragraph (a) of this AD, unless accomplished within the last 6,000 flight cycles prior to August 9, 1993, perform an internal detailed visual inspection to detect cracks of the frames between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Thereafter, repeat the internal detailed visual inspection at intervals not to exceed 9,000 flight cycles. If any crack is found, prior to further flight, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If any crack is found that does not exceed the limits specified in the Boeing 737 Structural Repair Manual (SRM), repair the crack in accordance with the Boeing 737 SRM. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 9,000 flight cycles.

(2) If any crack is found that exceeds the limits specified in the Boeing 737 SRM, repair the crack in accordance with a method approved by the Manager, Seattle ACO. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 9,000 flight cycles.

New Requirements of This AD

(c) Prior to the accumulation of 75,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, install doublers on the frames located between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(d)(2) Alternative methods of compliance approved previously in accordance with AD 93–13–02, amendment 39–8615, are

approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraphs (a)(2), (b)(1), and (b)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. The incorporation by reference of these documents was approved previously by the Director of the **Federal Register** as of August 9, 1993 (58 FR 36863, July 9, 1993). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 16, 1999.

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14821 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–91–AD; Amendment 39–11190; AD 99–12–06]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. VN 411B Very High Frequency (VHF) Navigation Receivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires replacing certain AlliedSignal Inc. VN 411B VHF navigation receivers installed on aircraft if the receivers do not have Modification 21 incorporated. This AD is the result of a report of navigation receiver interference during landing operations. The actions specified by this AD are intended to prevent VHF navigation receiver interference from frequency modulation (FM) radio station broadcasts, which could cause distortion of the navigation audio and deflection of the desired flight path of the airplane during landing operations with possible loss of control of the airplane.

DATES: Effective July 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 23, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from AlliedSignal, Inc. 23500 W. 105th Street, Olathe, Kansas 66051–1950. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–91–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Souter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134, facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain AlliedSignal Inc. VN 411B very high frequency (VHF) navigation receivers installed in aircraft was published in the **Federal Register** as a supplement notice of proposed rulemaking (NPRM) on December 22, 1998 (63 FR 70698). The supplemental NPRM proposed to require replacing any VHF navigation receiver that does not have Modification 21 incorporated with one where an AlliedSignal Bendix/King-owned service center has incorporated Modification 21. Accomplishment of the proposed action as specified in the supplemental NPRM would be in accordance with AlliedSignal Bendix/King Service Bulletin VN 411B–21, dated November 1996.

The NPRM was the result of a report of navigation receiver interference during landing operations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 19 VHF navigation receivers in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per receiver to accomplish this action, and that the average labor rate is approximately $60 an hour. The manufacturer is not charging the owner/operator for exchanging the navigation receiver unit and is offering 2 workhours of labor warranty credit to accomplish this action. Based on these figures, this AD imposes no cost impact on U.S. operators. The FAA has no way of determining if any of the affected airplanes have navigation receivers with Modification 21 incorporated.

Compliance Time of This AD

The condition specified by this AD is not caused by actual hours time-in-service (TIS) of the aircraft where the affected VHF navigation receivers are installed. The need for replacing the VHF navigation receiver with one that incorporates hardware modifications has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of this AD is presented in calendar time instead of hours TIS.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–12–06 AlliedSignal Inc.: Amendment 39–11190; Docket No. 95–CE–91–AD.

Applicability: The following very high frequency (VHF) navigation receivers that are installed on, but not limited to, Learjet Model 31A, Fokker Model F27–50, and British Aerospace Model ATP airplanes:

—VN 411B, BPN 3614004–4101, all serial numbers, that are currently at Modification Status 18, 19, or 20;

—VN 411B, BPN/KPN 3614004–4101/066–1101–00, all serial numbers, that are currently at Modification Status 18, 19, or 20;

—VN 411B, P/N 066–1101–00, serial numbers up to and including 4229, that are currently at Modification Status 18, 19, or 20; and

—VN 411B, P/N 066–1101–31/40/50, serial numbers up to and including 10799, that are currently at Modification Status 19 or 20.

Note 1: This AD applies to each airplane in which a VHF navigation receiver identified in the preceding applicability provision has been installed, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent VHF navigation receiver interference from frequency modulation (FM) radio station broadcast frequencies, which could cause distortion of the navigation audio and deflection of the desired flight path of the airplane during landing operations with possible loss of control of the airplane, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD or upon replacement or repair of any affected AlliedSignal VHF navigation receiver, whichever occurs first, remove the navigation receiver and install one where an AlliedSignal Bendix/King service center has incorporated Modification 21, in accordance with AlliedSignal Bendix/King Service Bulletin VN 411B–21, dated November 1996.

(b) As of the effective date of this AD, no person may install, on any airplane, one of the affected VHF navigation receivers that does not have Modification 21 incorporated in accordance with AlliedSignal Bendix/King Service Bulletin VN 411B–21, dated November 1996.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) The removal and installation required by this AD shall be done in accordance with AlliedSignal Bendix/King Service Bulletin VN 411B–21, dated November 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal, Inc., 23500 W. 105th Street, Olathe, Kansas 66051–1950. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on July 23, 1999.

Issued in Kansas City, Missouri, on June 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14537 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–127–AD; Amendment 39–11191; AD 99–12–07]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. This AD requires replacing the passenger oxygen container and mask assembly with an improved design passenger oxygen container and mask assembly. This AD is the result of an incident where a passenger had put on the oxygen mask and the lanyard pin did not automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight. The actions specified by this AD are intended to prevent the above situation from occurring on other airplanes, which could result in passenger injury if the lanyard pin is not manually pulled in a timely manner.

DATES: Effective July 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–127–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 1900D airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 1, 1999 (64 FR 9939). The NPRM proposed to require replacing the existing passenger oxygen container and mask assembly, part number (P/N) 129–384005–3, with an improved design passenger oxygen container and mask assembly, P/N 129–384005–5. Accomplishment of the proposed replacement as specified in the NPRM would be accomplished by incorporating Puritan Bennett Kit No. 280041–00: Lanyard Retrofit Drop Out Box, which contains all the necessary parts and instructions.

The NPRM was the result of an incident where a passenger had put on the oxygen mask and the lanyard pin did not automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the NPRM and no comments were received on the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Differences Between the Service Information and This AD

The compliance time presented in Raytheon Service Bulletin SB 35–3233, Issued: December, 1998, is "as soon as possible after receipt of this Service Bulletin, but no later than 600 hours after receipt of this Service Bulletin." The FAA concurs that the action should be accomplished as soon as possible, but has no way of enforcing this compliance time. The FAA also assumes that what Raytheon means by "600 hours after receipt of this Service Bulletin" is 600 hours time-in-service (TIS).

In order to assure that the replacement required by this AD is accomplished within a reasonable period of time without inadvertently grounding the affected airplanes, the FAA is utilizing a compliance time of "within the next 200 hours TIS after the effective date of this AD".

Cost Impact

The FAA estimates that 300 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the replacement, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost to the owners/operators of the affected airplanes. Based on the figures presented above, the total cost impact of this AD on U.S. operators is estimated to be $72,000, or $240 per airplane.

Raytheon is also offering warranty credit for labor, as well as parts, provided that all paperwork is submitted to the manufacturer no later than December 31, 1999.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–12–07 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Amendment 39–11191; Docket No. 98–CE–127–AD.

Applicability: Model 1900D airplanes, serial numbers UE–1 through UE–338, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the oxygen mask lanyard pin to automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight, which could result in passenger injury if the lanyard pin is not manually pulled in a timely manner, accomplish the following:

(a) Within the next 200 hours time-in-service after the effective date of this AD, replace the passenger oxygen container and mask assembly, part number 129–384005–3 (or FAA-approved equivalent part number), with an improved design passenger oxygen container and mask assembly, part number 129–384005–5 (or FAA-approved equivalent part number). Accomplish this replacement by incorporating Puritan-Bennett Kit No. 280041–00: Lanyard Retrofit Drop Out Box, which contains all the necessary parts and instructions. This kit is referenced in Raytheon Mandatory Service Bulletin SB 35–3233, Issued: December, 1998.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a passenger oxygen container and mask assembly that is not of an improved design,

part number 129–384005–5 (or FAA-approved equivalent part number).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) The replacements required by this AD shall be done in accordance with Puritan-Bennett Kit No. 280041-00: Lanyard Retrofit Drop Out Box, Revision A01, dated October 21, 1998, as referenced in Raytheon Mandatory Service Bulletin SB 35–3233, Issued: December, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on July 23, 1999.

Issued in Kansas City, Missouri, on June 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14536 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41453A, International Series Release No. 1198A, File No. S7–4–99]

RIN 3235–AH68

Exemption of the Securities of the Kingdom of Sweden Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule that was published on June 2, 1999 (64 FR 29550). The regulation relates to the designation of debt obligations issued by the Kingdom of Sweden as "exempted securities" for the purpose of marketing and trading futures contracts on those securities in the United States.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Joshua Kans, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001, at 202/942–0079.

SUPPLEMENTARY INFORMATION: On May 26, 1999, the Commission issued a final rule amending Rule 3a12–8 to designate debt obligations issued by the Kingdom of Sweden as "exempted securities" for the purpose of marketing and trading futures contracts on those securities in the United States. The amendment became effective on June 2, 1999, when the **Federal Register** published the final rule.

As published, the final regulation contains an error which may prove to be misleading and is in need of clarification.

Accordingly, the publication on June 2, 1999 of the final regulation that was the subject of FR Doc. 99–13927 is corrected as follows:

PART 240—[CORRECTED]

On page 29553, in the text beginning on the second column and continuing onto the third column, the mandatory language for amendment 2 is corrected to read:

"2. Section 240.3a12–8 is amended by removing the word "or" at the end of paragraph (a)(1)(xix), removing the period at the end of paragraph (a)(1)(xx) and adding ";or" in its place, and adding paragraph (a)(1)(xix), to read as follows:"

Dated: June 7, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14866 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM99–6–000; Order No. 604]

Electronic Service of Documents

Issued May 26, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending Rule 2010(f) (18 CFR 385.2010(f)) to permit participants to proceedings before the Commission voluntarily to serve documents on one another by electronic means. This revision is intended to give the participants more flexibility in meeting the service requirements, and to encourage participants to gain experience with electronic service. This change is an important step in the Commission's plan to convert to broad-based electronic filing.

DATES: This final rule is effective July 12, 1999.

FOR FURTHER INFORMATION CONTACT:
Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 501–8145;
Wilbur Miller, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 208–0953.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System

(RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending 18 CFR 385.2010 to allow for electronic service of documents in certain circumstances. The Commission is modifying the existing service rule to make clear that willing participants may serve and receive documents by electronic means. This revision is intended to give participants more flexibility in meeting the service requirements, and to encourage participants to gain experience with electronic service. This change is an important step in the Commission's plan to convert to broad-based electronic filing.

II. Background

In order to increase the efficiency with which it carries out its program responsibilities, the Commission is moving forward with measures to use information technology to reduce the amount of paperwork required in proceedings before the Commission. One part of that effort, and the subject of this rulemaking, is to make document service more efficient by employing electronic means where the participants so agree. This rule follows the Commission's action in 86 FERC ¶61,324 (1999) (rehearing pending), in which it amended its complaint procedures, in 18 CFR 385.206(c), to allow service of complaints by electronic mail.

Both the legislative and executive branches of the Federal Government have set as goals the substitution of electronic means of communication and information storage for paper means. For example, the Government Paperwork Elimination Act directs agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic record-keeping, where practical, by October 2003.[1] Similarly, Office of Management and Budget Circular A–130 requires agencies to employ electronic information collection techniques where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service.[2]

On May 13, 1998, the Commission issued a request for comments and notice of intent to hold a technical conference in its Electronic Filings Initiative, Docket No. PL 98–1–000. The Commission stated, *inter alia*, that it intended to clarify its rules to facilitate the use of electronic service.[3] It also presented the question whether it should encourage electronic service among parties over the Internet.[4]

Most commenters and participants at the conference favored some form of electronic service, including the following recommendations: (a) allowing participants to reach agreement among themselves regarding electronic service; (b) allowing electronic service over the Internet; (c) allowing e-mail notice of filing with a reference to a copy of the filing on the filer's or the Commission's web site; and (d) use of a server to facilitate electronic service by the Commission and by participants in proceedings.

The Commission continues to believe that electronic service among participants should be encouraged. The revision contained in this rulemaking is preliminary to the separate task of implementing procedures governing electronic filing of documents.

III. Discussion

Rule 2010(f) currently states that service may be effected by first-class United States mail or better, or "[b]y delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt." The current rule does not provide specifically for electronic service. To make clear that such service is permissible, the Commission is amending the service rule to add the express option of service by electronic means among participants who voluntarily agree to use electronic service.

This rule is only intended to address service among participants, and does not change the rules for filings made with the Commission. Electronic filing with the Commission will be the subject of a future rulemaking.

This rule leaves it up to individual participants to come to agreement about the use of electronic service. It will not be necessary for every participant in a particular case to agree to use electronic service. Agreements need not be reciprocal. For instance, if participant A prefers to receive service electronically, participant B could agree to serve A electronically even if B did not want electronic service.

Under this rule, participants should not discriminate in their use of electronic service. For instance, if multiple participants agree to serve one another documents in a particular format via e-mail, they cannot refuse to serve another willing participant the same way. However, the rule contains no restriction on the number or variety of methods of electronic service that can be used in a particular matter. Some participants could agree to receive service in one format, while at the same time other participants could agree to receive service in another format.

Depending on the software used for creation of documents, the page numbering of documents may vary depending on the fonts, margins and other formatting options used. The Commission recognizes that such formatting differences can create problems in accurate citation to documents filed with the Commission. But such problems should be surmountable. To ensure a consistent citation format for documents officially filed with the Commission, participants should cite to the official version of the filed document in compliance with Rule 2003(c).[5]

Under this rule, in matters set for hearing before an Administrative Law Judge (ALJ), the ALJ should consult the participants to determine where use of electronic service is appropriate. One difficulty in litigated cases is that many of the documents served are not filed with the Commission, which may complicate the issue of which version of a document should be used for citation purposes. Moreover, Rule 403(c)[6] requires that responses to discovery be under oath or certified as true and accurate. The Commission believes that the ALJs are in the best position to determine whether participants may serve responses to discovery via electronic means, and if electronic service is permitted, how to satisfy the oath/certification requirement.

The Commission recognizes that some methods of electronic service, under

[1] Pub. L. 105–277, Sections 1702–1704.
[2] Circular A–130, Para. 8.a.1(k).
[3] 63 FR 27532 (May 13, 1998).
[4] Id.
[5] 18 CFR 385.2003(c).
[6] 18 CFR 385.403(c).

some circumstances, may not be as reliable as other traditional means of service. Participants under this rule will need to consider how to verify service. Some participants' mail systems may provide notification that a recipient has received a transmission. If that type of system verification were not available, the transmitter could agree to notify the recipients by telephone to let them know that they were being served, and the recipient could assume the obligation to notify the transmitter if the service was not received. Alternatively, the document itself could request that the recipient notify the transmitter that the document had been received. If the transmitter did not receive timely notification of receipt, it would contact the intended recipient to learn whether the document was successfully received.

The Commission has considered the potential effect of this final rule on Year 2000 preparations and has concluded that the rule will not have any adverse impact on Year 2000 readiness.

Due to the limited scope of this rule, the Commission is issuing it as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only a matter of agency procedure. Furthermore, it merely clarifies the existing service rule to provide electronic service as an option expressly. Electronic service has in fact already been used in some Commission proceedings. Finally, the rule is entirely voluntary; no participant can be required to send or receive service electronically. Therefore, the Commission finds notice and comment procedures to be unnecessary.

Although the Commission invites participants to agree to use electronic service, this rulemaking does not include any change regarding service on or by the Office of the Secretary (OSEC); service on OSEC must be made via the more traditional methods of service found in Section 2010(f)(1) and (2).

To the extent that the regulations regarding a particular type of document place additional requirements on service, those rules will prevail over the generic rule on service. For instance, sections 4.22 and 375.314 require service or notification by certified mail; those requirements cannot be met by electronic service at this time. No changes to these regulations are being made at this time.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of rules that will have a significant impact on a substantial number of small entities.[7] The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule will have such an impact on small entities. Most companies regulated by the Commission do not fall within the RFA's definition of small entity.[8] Further, the filing requirements of small entities are not impacted by this rule. No participants are required to use electronic service; they will do so only voluntarily. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[9] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended.[10] This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

VI. Information Collection Statement

The following collection of information contained in this rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[11] FERC identifies the information provided under 18 CFR Part 385 as FERC–601.

Public Reporting Burden: Estimated Annual Burden: The burden estimates for complying with current paper service regulations are reflected in all of the Commission's information collections which require service by the applicant or parties to a proceeding. As part of the Commission's ongoing efforts to streamline the regulatory process, the Commission has consolidated the burden hours associated with the service of documents to a proceeding under single collection of information for easier reference.[12] FERC–601 has been designated to be that point of reference. The total burden estimates for service under these existing information collections, based on 10,000 applications and 10,000 intervenors per year are as follows:

Data collection	No. of respondents (applicants plus intervenors)	No. of documents	No. of responses	Hours per response	Total annual hours
FERC–601 (see footnote 12)	20,000	40,000	1,000,000	0.50	500,000

Record keeping adds an additional 20,000 hours. Therefore, the total annual hours for Service under the current regulations, (Reporting + record keeping) = 520,000 hours.

Based on the Commission's experience with electronic service of documents, it is estimated that about 20% of the 1,000,000 responses will be served electronically in the first year, 30% in the second year, and 40% in the third year, at a burden rate of 0.25 hours per document. This includes an allowance for the overhead of working out electronic service agreements, maintaining Internet addresses, and storing electronic records. The current

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 601(3) provides the definition of small business concern.

[9] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[10] 18 CFR 380.4(a)(2)(ii).

[11] 44 U.S.C. 3507(d).

[12] Currently, the burden hours are attributed to the following collections of information approved by OMB: 1902–0082; 1902-0083; 1902–0096; 1902–0098; 1902–0058; 1902–0115; 1902–0073; 1902–0060; 1902–0062; 1902–0153; 1902–0154; 1902–0155; 1902-0086; 1902–0089; 1902–0120.

annual reporting burden for proposed FERC–601, based on current regulations, is 520,000 hours.

The comparison of burden under the pre-existing and new regulation for the estimated number of documents that will be served electronically is:

BURDEN HOURS FOR 3 YEAR PERIOD

Form of service	First Year reduction 20%	Second Year reduction 30%	Third Year Reduction 40%	Total burden hours
Current (all paper)	520,000	520,000	520,000	1,560,000
New (paper or optional electronic)	470,000	445,000	420,000	1,335,000

The burden reduction under the revised regulation is estimated to be 225,000 hours over three years.

Information Collection Costs: The Commission has projected the cost savings over three years to be approximately $11,800,000. The Commission assumes that there are no other startup costs, such as having to acquire Internet access. The program is voluntary and contingent on agreement of the parties, so that no one is required to obtain Internet access if they do not have it for other business purposes.

(The Commission makes the assumption that the average cost for a Commission employee is comparable to the costs for industry. This assumption equates to total number of reporting hours + 2,080 hours in the work year × $109,889 (current costs for FERC employee-salary + benefits). A true reflection of the costs to industry should be based on market prices for the resources necessary to comply with the information collection. Financial costs include both non-recurring costs such as the cost of capital investments necessary to fulfill the information collection and recurring costs such as the cost of operating and maintaining capital investments.)

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[13] Accordingly, pursuant to OMB regulations, the Commission is providing notice of this revised information collection to OMB.

Title: FERC–601, Electronic Service.

Action: Proposed Data Collection.

OMB Control No. (See footnote 12).

The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On occasion.

Necessity of Information: This rule adds an optional method for service of documents. Because it is voluntary, parties will be able to determine for themselves the benefits costs of electronic service, in particular the cost savings, over the traditional method of serving documents. The Commission believes that the rule will, in many cases, make service of documents quicker, more reliable and less expensive than the other existing options. Internal Review: The Commission already requires in most instances that parties filing documents in proceedings before it serve those documents upon other interested parties. This requirement is necessary to ensure fundamental fairness in the Commission's proceedings. This rule does not add any requirement, but instead adds an alternative method of a voluntary nature to accomplish service. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements. Parties receiving service require the documents in order to inform themselves of arguments being made, and evidence and other information being submitted, in Commission proceedings. The parties use this information to form and develop their own positions and contentions.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208–1415, fax: (202)273–0873, e-mail: mike.miller@ferc.fed.us.

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC, 20503. Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395–3087, fax: (202)395–7285.

[13] 5 CFR 1320.12.

VII. Congressional Review

The provisions of 5 U.S.C. 801, regarding Congressional review of rulemakings, do not apply to this rulemaking because it concerns agency procedure and practice and will not substantially affect the rights and obligations of non-agency parties. 5 U.S.C. 804(3)(C).

VIII. Effective Date

This regulation becomes effective July 12, 1999. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By The Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, part 385, chapter I, title 18, *Code of Federal Regulations*, is hereby amended as set forth below.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C 60502; 49 App. U.S.C. 1–85.

2. Section 385.2010(f) is revised to read as follows:

§ 385.2010 Service (Rule 2010).

* * * * *

(f) *Methods of service.* Service of any document must be made:

(1) By United States mail, first-class or better;

(2) By delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt; or

(3) By electronic means to participants who have agreed to receive

service via the specified electronic means.

* * * * *

[FR Doc. 99–13986 Filed 6–10–99; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

Oral Dosage Form New Animal Drugs; Neomycin Sulfate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplemental NADA provides for use of neomycin sulfate in turkey drinking water for the control of mortality associated with *Escherichia coli* organisms susceptible to neomycin sulfate in growing turkeys. The regulations are also amended to provide for a tolerance for neomycin residues in edible turkey tissues and an acceptable daily intake (ADI).

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7570.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental NADA 11–315 that provides for use of Neomix® 325 and Neomix® AG 325 (neomycin sulfate) soluble powder in turkey drinking water for the control of mortality associated with *E. coli* organisms susceptible to neomycin sulfate in growing turkeys. The supplemental NADA is approved as of May 5, 1999, and 21 CFR 520.1484 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, a tolerance for residues of neomycin in edible tissues of turkeys has not been previously established. Section 556.430 is amended editorially to reflect current format, to provide tolerances for neomycin residues in edible turkey tissue, and to provide an ADI for neomycin.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for use in turkey drinking water qualifies for 3 years of marketing exclusivity beginning May 5, 1999, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for this approval and conducted or sponsored by the applicant. The 3 years marketing exclusivity is limited to use of the drug for the control of mortality associated with *E. coli* organisms susceptible to neomycin sulfate in growing turkeys.

FDA has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment. Therefore, an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1484 is revised to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

(a) *Specifications.* Neomycin sulfate soluble powder contains 20.3 grams of neomycin sulfate (equivalent to 14.2 grams of neomycin base) per ounce.

(b) *Sponsors.* See 000069, 046573, 050604, and 051259 in § 510.600(c) of this chapter for use as in paragraph (d)(1) of this section. See 000009 for use as in paragraphs (d)(1) and (d)(2) of this section.

(c) *Related tolerances.* See § 556.430 of this chapter.

(d) *Conditions of use*–(1) *Cattle (excluding veal calves), swine, sheep, and goats.*

(i) *Amount.* 10 milligrams of neomycin sulfate per pound of body weight per day (22 milligrams per kilogram) in divided doses for a maximum of 14 days.

(ii) *Indications for use.* For the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin sulfate in cattle (excluding veal calves), swine, sheep, and goats.

(iii) *Limitations.* Add to drinking water or milk; not for use in liquid supplements. Prepare a fresh solution daily. If symptoms persist after using this preparation for 2 or 3 days, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms, but not to exceed a total of 14 consecutive days. Discontinue treatment prior to slaughter as follows: Cattle (not for use in veal calves), 1 day; sheep, 2 days; swine and goats, 3 days.

(2) *Turkeys*–(i) *Amount.* 10 milligrams of neomycin sulfate per pound of body weight per day (22 milligrams per kilogram) for 5 days.

(ii) *Indications for use.* For the control of mortality associated with *E. coli* organisms susceptible to neomycin sulfate in growing turkeys.

(iii) *Limitations.* Add to drinking water; not for use in liquid supplements. Prepare a fresh solution daily. If symptoms persist after using this preparation for 2 or 3 days, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms, but not to exceed a total of 5 consecutive days.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.430 is revised to read as follows:

§ 556.430 Neomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of neomycin is 6 micrograms per kilogram of body weight per day.

(b) *Tolerances.* Tolerances are established for residues of parent neomycin in uncooked edible tissues as follows:

(1) *Cattle, swine, sheep, and goats.* 7.2 parts per million (ppm) in kidney (target tissue) and fat, 3.6 ppm in liver, and 1.2 ppm in muscle.

(2) *Turkeys.* 7.2 ppm in skin with adhearing fat, 3.6 ppm in liver, and 1.2 ppm in muscle.

(3) *Milk.* A tolerance is established for residues of parent neomycin of 0.15 ppm.

Dated: May 28, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–14924 Filed 6–10–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC036–2017; FRL–6356–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting the conditional approval of the District of Columbia's (the District's) enhanced vehicle inspection and maintenance (I/M) program which was granted on June 2, 1998 (63 FR 29955) to a full approval. The District's I/M program was conditionally approved as a revision to its State Implementation Plan (SIP) in the rule published on June 2, 1998. The sole condition imposed in EPA's June 2, 1998 conditional approval was that the District's enhanced I/M program begin on or before April 30, 1999. The District began testing vehicles on April 26, 1999, and fulfilled its condition for full approval of the I/M program. The District's program meets all the requirements of the Clean Air Act for enhanced I/M.

DATES: This rule is effective on August 10, 1999, unless EPA receives adverse written comment by July 12, 1999. If adverse comment is received, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You may inspect copies of the documents relevant to this action during normal business hours at the following locations: Air Protection Division, 14th floor, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Avenue, S.E., Washington, DC 20020. Please contact Catherine L., Magliocchetti at (215) 814–2174 if you wish to arrange an appointment to view the docket at the Philadelphia office.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174 , or by e-mail at magliocchetti.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is EPA taking today?
Who is affected by this action?
Who will benefit from this action?

What Action is EPA Taking Today?

In this action, we are converting our conditional approval of the District's I/M program as a revision to the SIP to a full approval. The District's enhanced I/M program was conditionally approved and made part of the District's SIP in a rule published on June 2, 1998 (63 FR 29955).

The sole condition imposed in the June 2, 1998 conditional approval was that the District's enhanced I/M program begin on or before April 30, 1999. The District began testing vehicles on April 26, 1999, and thereby has fulfilled the sole condition necessary for full approval of the I/M program. Because the District has fulfilled the condition imposed in the June 2, 1998 rule, we are converting our conditional approval of the I/M SIP to a full approval.

Who is Affected by This Action?

It is important to note that our action today does not impose any new requirements on District residents; we are merely giving full versus conditional federal approval to the District law and regulations that are already in place to implement an enhanced I/M program. Those laws and regulations were made part of the District's SIP by the final rule published on June 2, 1998 (63 FR 29955).

Who Will Benefit From This Program?

The residents of the District will benefit from this program, which is designed to keep vehicles maintained and operating within pollution control standards. And, since air pollution does not recognize political boundaries, neighboring states' residents will also benefit from implementation of this program which is designed to prevent excessive vehicle pollution.

EPA Action

EPA is converting its conditional approval approval of the District's enhanced I/M SIP to full approval. An extensive discussion of the District's I/M plan and our rationale for its approval was provided in the previous final rule which conditionally approved the I/M SIP (see 63 FR 29955 and 63 FR 15118) and in our Technical Support Document, dated March 10, 1998. This action to convert our conditional approval to full approval is being published without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comment. However, in a separate document in this **Federal Register** publication, we are proposing to this action should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse comment by July 12, 1999. Should we receive such comments, we will publish a withdrawal and inform the public that this action will not take effect. Anyone interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on August 10, 1999.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget

a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action converting the conditional approval of the District of Columbia's enhanced inspection and maintenance program SIP revision to a full approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone,

Enhanced Inspection and Maintenance (I/M).

Dated: May 27, 1999

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. In § 52.470, an entry for Title 18, Chapters 4, 6, 7, 11, 26 and 99 is added at the end of the table in paragraph (c) in the "EPA Approved Regulations in the District of Columbia SIP" to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/Subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Title 18—Vehicles and Traffic				
Chapter 4 Motor Vehicle Title and Registration				
Section 411	Registration of Motor Vehicles: General Provisions.	10/10/86	June 11, 1999.	
Section 412	Refusal of Registration	10/17/97	June 11, 1999.	
Section 413	Application for Registration	9/16/83	June 11, 1999.	
Section 429	Enforcement of Registration and Reciprocity Requirements.	3/4/83	June 11, 1999.	
Chapter 6 Inspection of Motor Vehicles				
Section 600	General Provisions	4/23/82	June 11, 1999.	
Section 602	Inspection Stickers	3/15/85	June 11, 1999.	
Section 603	Vehicle Inspection: Approved Vehicles.	6/29/74; Recodified 4/1/81	June 11, 1999.	
Section 604	Vehicle Inspection: Rejected Vehicles.	11/23/84	4/10/86 51 FR 12322.	
Section 606	Vehicle Inspection: Condemned Vehicles.	6/29/74; Recodified 4/1/81	June 11, 1999.	
Section 607	Placement of Inspection Stickers on Vehicles.	4/7/77; Recodified 4/1/81	June 11, 1999.	
Section 608	Lost, Mutilated or Detached Inspection Stickers.	6/30/72; Recodified 4/1/81	June 11, 1999.	
Section 609	Inspection of Non-Registered Motor Vehicles.	6/30/72; Recodified 4/1/81	June 11, 1999.	
Section 617	Inspection Certification	7/22/94	June 11, 1999.	
Section 618	Automotive Emissions Repair Technician.	7/22/94	June 11, 1999.	
Section 619	Vehicle Emission Recall Compliance.	10/17/97	June 11, 1999.	
Chapter 7 Motor Vehicle Equipment				
Section 701	Historic Motor Vehicles	2/25/78; Recodified 4/1/81	June 11, 1999.	
Section 750	Exhaust Emission Systems.	4/26/77; Recodified 4/1/81	June 11, 1999.	
Section 751	Compliance with Exhaust Emission Standards.	7/22/94	June 11, 1999.	
Section 752	Maximum Allowable Levels of Exhaust Components.	10/17/97	June 11, 1999.	
Section 753	Inspection of Exhaust Emission Systems.	5/23/83	4/10/86 51 FR 12322.	
Section 754	Federal Transient Emissions Test: Testing Procedures.	7/22/94	June 11, 1999.	
Section 755	Federal Transient Emissions Test: Equipment.	7/22/94	June 11, 1999.	
Section 756	Federal Transient Emissions Test: Quality Assurance Procedures.	7/22/94	June 11, 1999.	

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP—Continued

State citation	Title/Subject	State effective date	EPA approval date	Comments
	Chapter 11 Motor Vehicle Offenses and Penalties			
Section 1101	Offenses Related to Title, Registration, and Identification Tags.	6/30/72; Recodified 4/1/81	June 11, 1999.	
Section 1103	Offenses Related to Inspection Stickers.	6/30/72; Recodified 4/1/81	June 11, 1999.	
Section 1104	False Statements, Alterations, Forgery, and Dishonest Checks.	11/29/91	June 11, 1999.	
Section 1110	Penalties for Violations	11/29/91	June 11, 1999.	
	Chapter 26 Civil Fines for Moving and Non-Moving Violations			
Section 2600.1	Infraction: Inspection, Registration Certificate, Tags.	8/31/90	June 11, 1999.	
	Chapter 99 Definitions			
Section 9901	Definitions	10/17/97	June 11, 1999.	

§ 52.473 [Amended]

3. In section 52.473, paragraph (a) is reserved.

[FR Doc. 99–14593 Filed 6–10–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300690B; FRL–6076–5]

RIN 2070–AB78

Certain Plant Regulators; Cytokinins, Auxins, Gibberellins, Ethylene, and Pelargonic Acid; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of the active ingredients cytokinins, auxins, gibberellins, ethylene, and pelargonic acid in or on all food commodities, when used as plant regulators and applied to plants, seeds, or cuttings and on all food commodities after harvest. It does not apply to residues of these substances that are intended to be produced and used in living plants (also known as plant-pesticides), which are being addressed in a future rulemaking. This regulation also removes any existing crop-specific tolerances and/or exemptions from the requirement of a tolerance for the subject active ingredients and such tolerances are considered to be reassessed as required by the Food Quality Protection Act of 1996 (FQPA). This regulation eliminates the need to establish maximum permissible levels for residues of the subject active ingredients. EPA has established this regulation on its own initiative to facilitate the addition of new crops, application rates, and uses to the labels of products containing the listed active ingredients when used as plant regulators.

DATES: This regulation is effective June 11, 1999. Objections and requests for hearings must be received by EPA on or before August 10, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300690B], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300690B], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300690B]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th fl., CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8263, Greenway.Denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you in determining whether or not this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section at the beginning of this preamble.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/, or go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/op/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300690B. The official record consists of any documents that are specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805."

II. Background

In the **Federal Register** of October 23, 1998 (63 FR 56882) (FRL–6019–7), EPA issued a proposal pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) to amend 40 CFR part 180 by establishing exemptions from the requirement of a tolerance for the active ingredients cytokinins (specifically: aqueous extract of seaweed meal and kinetin); auxins (specifically: indole-3-acetic acid and indole-3-butyric acid); gibberellins [gibberellic acids (GA3 and GA4 + GA7), and sodium or potassium gibberellate]; ethylene; and pelargonic acid, in or on all food commodities, when used as plant regulators on plants, seeds, or cuttings and on all food commodities, after harvest, in accordance with good agricultural practices. EPA concurrently proposed the revision or revocation and removal of any existing crop-specific tolerances and/or exemptions from the requirement of tolerances for the listed active ingredients when used as plant regulators. In taking this action the EPA will consider those tolerances and/or exemptions to be reassessed (FFDCA 408(q) as amended by the FQPA of 1996).

The Agency has selected this group of plant regulators as the subject of this rule due to their non-toxic mode of action, low toxicity profile, low application rates, and the expectation that plant regulator uses will not significantly increase their intake above normally consumed levels. There are additional plant regulator active ingredients which may meet the selection criteria. The Agency may, in the future, propose a similar document addressing other candidate plant regulator active ingredients.

All of the subject active ingredients are currently registered plant regulators, with the exception of indole-3-acetic acid. The Agency discourages the establishment (or existence) of tolerances, or exemptions from the requirement of a tolerance, for active ingredients for which there are no registered pesticide products. Therefore, the proposal stated that any subsequent Final Rule would not include indole-3-acetic acid (a naturally occurring analog of indole-3-butyric acid) in the tolerance exemption for auxins, unless during the comment period specific requests that it be included were received. Such requests were required to document the commentor's intention to promptly submit upon publication of the Final Rule an application to register a plant regulator product containing indole-3-acetic acid as an active ingredient.

The Agency made the proposal upon its own initiative to facilitate the addition of new crops, application rates, and uses to the labels of products containing the listed active ingredients when used as plant regulators. A plant regulator is defined by EPA as "...any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof..." (Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 2(v)).

Additionally, plant regulators are characterized by their low rates of application; high application rates of the same compounds often are herbicidal.

III. Response to Public Comments

In the **Federal Register** of January 8, 1999 (64 FR 1157), the Agency reopened and extended by 30 days the original comment period associated with the proposal of October 23, 1998. The 30-day extension was in response to requests from the public for additional time to comment on the Proposed Rule. There were thirteen comments: eight in support, two pledging to register indole-3-acetic acid, two concerned with data compensation issues and one seeking the addition of 1-naphthaleneacetic acid (NAA) to the list of subject active ingredients.

The American Phytopathological Society (APS), the California Citrus Quality Council, and the Wilbur-Ellis Company wrote in general support of the Proposed Rule. The Interregional Research Project No. 4 (IR-4) wrote in

support of the inclusion of the gibberellins. Westbridge Agricultural Products; Atlantic Laboratories, Inc.; and Acadian Seaplants Limited supported the proposal in general, and the inclusion of cytokinins in particular. Aqua-10 Laboratories supported the proposal in general, and the inclusion of cytokinins, auxins, and gibberellins in particular.

The APS letter also offered the view that the subject plant regulator active ingredients ought not be regulated by EPA under FIFRA.

Agency Response: Deregulation of the subject active ingredients under section 25(b) of FIFRA (exemption) is beyond the scope of this Final Rule.

Plant Biotech, Inc. and JH Biotech, Inc. alerted the Agency of their intention to submit applications for the registration of products containing the active ingredient indole-3-acetic acid. This was in response to the Agency's statement that indole-3-acetic acid would not be included as an auxin exempted from the requirement of a tolerance in the Final Rule unless a documented commitment to register pesticide products containing it as an active ingredient was received during the comment period.

Agency Response: The auxin indole-3-acetic acid has been retained as a subject active ingredient exempted from the requirement of a tolerance by this Final Rule.

AMVAC Chemical Corporation wrote in support of the proposal; and also requested that the Agency add to the Final Rule, under auxins, plant regulators based on 1-naphthaleneacetic acid (NAA). The company argued that, "the NAA products met the Agency's specified criteria for inclusion in the Rule."

Agency Response: First, the proposal and this Final Rule address active ingredients, not the end-use products formulated from the subject active ingredients. Second, the reach of the Final Rule cannot exceed that of the proposal; NAA and related compounds were not addressed in the proposal and so cannot be included in the Final Rule. Third, the proposal acknowledged that active ingredients other than those included may meet the selection criteria, and stated that such active ingredients may be considered in the future should the Agency prepare a similar document. Fourth, the data sets reviewed for the subject active ingredients are complete in that all were registered post FIFRA 1984, thus meeting the current data requirements, or were (or are a naturally occurring analog of) the subject of an existing Reregistration Eligibility Document (RED). Only upon the completion of the pending NAA RED can a decision on its candidacy for a broad tolerance exemption be assessed.

Abbott Laboratories and Agtrol International wrote seeking assurance that their FIFRA data compensation privileges for gibberellins data would not be lost as a result of the establishment of the exemption from tolerance for that plant regulator active ingredient.

Agency Response: The standard for establishment of a tolerance exemption under section 408(c)(2) does not include a consideration of the effects such exemption may have regarding FIFRA compensation rights. In addition, the establishment of an exemption from the requirement of a tolerance for residues of a pesticide under FFDCA does not alter existing FIFRA data requirements or the need to comply with the data compensation provisions of FIFRA. Applicants for FIFRA registrations will continue to be required to submit or cite supporting data on the subject plant regulator active ingredients, or obtain waivers from the data requirements. The citation of compensable data (as defined by FIFRA section 3(c)) still must be accompanied by an offer to pay.

IV. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..."Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based on the information and data considered and discussed in the proposal, the Agency has determined that use of these pesticides as plant regulators will not pose a dietary risk under reasonably foreseeable circumstances. Accordingly, EPA concludes that, in amending 40 CFR part 180, to establish the exemptions as proposed, there is a reasonable certainty that no harm to the general population, including infants and children, will result from aggregate exposure to the pesticide chemical residues of the subject active ingredients, when used as plant regulators.

In reaching this conclusion, EPA considered the potential cumulative effects from substances with a common mechanism of toxicity. The subject plant regulator active ingredients are found in most plants, and some are synthesized structural analogs which function like those occurring naturally. The amounts found in or applied to plants are low enough to regulate growth by a variety of different modes of action without being toxic to the plant (non-toxic modes of action). In addition, toxicological studies on the subject plant regulators at high dose levels (at or above limit doses) identified no toxic endpoints for risk assessment, and these substances are naturally occurring in the normal human diet. Therefore, EPA concluded there was no significant potential for cumulative effects for the subject active ingredients.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) and as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA

currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 10, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes exemptions from the tolerance requirement under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

VII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 17, 1999.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.224 [Removed]

2. By removing § 180.224.

3. Section 180.1016 paragraph (a) is revised to read as follows:

§ 180.1016 Ethylene; exemption from the requirement of a tolerance.

* * * * *

(a) For all food commodities, it is used as a plant regulator on plants, seeds, or cuttings and on all food commodities after harvest and when applied in accordance with good agricultural practices.

* * * * *

§ 180.1042 [Removed]

4. By removing § 180.1042.

5. By revising § 180.1098, to read as follows:

§ 180.1098 Gibberellins [Gibberellic Acids (GA3 and GA4 + GA7), and Sodium or Potassium Gibberellate]; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of gibberellins [gibberellic acids (GA3 and GA4 + GA7), and sodium or potassium gibberellate] in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

§ 180.1099 [Removed]

6. By removing § 180.1099.

7. By adding new §§ 180.1157 and 180.1158 to subpart D to read as follows:

§ 180.1157 Cytokinins; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of cytokinins (specifically: aqueous extract of seaweed meal and kinetin) in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

§ 180.1158 Auxins; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of auxins (specifically: indole-3-acetic acid and indole-3-butyric acid) in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

8. Section 180.1159 paragraph (a) is revised to read as follows:

§ 180.1159 Pelargonic acid; exemption from the requirement of tolerances.

(a) An exemption from the requirement of a tolerance is established for residues of pelargonic acid in or on all food commodities when used as a plant regulator on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

* * * * *

[FR Doc. 99–14864 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300878; FRL–6066–6]

RIN 2070–AB78

Sulfosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sulfosate (the trimethylsulfonium salt of glyphosate, also known as glyphosate-trimesium) in or on poultry meat by-products (mbyp) and in cattle, goat, hog, sheep, and horse kidney and mbyp, except kidney. This regulation increases the tolerances for residues of sulfosate in cattle, goat, hog, sheep, and horse fat and meat; in milk; in eggs; in or on soybean seed; in soybean hulls; and in aspirated grain fractions. This regulation revokes the existing tolerances in poultry, cattle, goat, hog, sheep, and horse liver and mbyp (except liver). Zeneca Ag. Products requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 11, 1999. Objections and requests for hearings must be received by EPA on or before August 10, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300878], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300878], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-

docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300878]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5697, tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1999 (64 FR 17171) (FRL–6071–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Zeneca Ag Products, PO Box 751, Wilmington, DE 19897. This notice included a summary of the petition prepared by Zeneca Ag Products, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.489 be amended by establishing tolerances for residues of the herbicide sulfosate, in or on cattle, goat, hog, sheep, and horse kidney at 3.5 parts per million (ppm); in cattle, goat, hog, sheep, and horse mbyp, except liver and kidney, at 1.0 ppm (due to an error, this tolerance was listed as 2.5 ppm in the notice of filing, at 64 FR 17171); and to increase the tolerance in cattle, goat, hog, sheep, and horse fat to 0.2 ppm; in cattle, goat, hog, sheep, and horse meat to 0.6 ppm; in cattle, goat, hog, sheep, and horse liver to 0.75 ppm; in milk to 1.1 ppm;; in or on soybean seed to 21 ppm (of which no more than 13 ppm is TMS); in soybean hulls to 45 ppm (of which no more than 25 ppm is TMS); and in aspirated grain fractions to 1,300 ppm (of which no more than 720 ppm is TMS).

Due to differences in methods for estimating residues in food commodities and EPA policy in expressing tolerances for residues in mbyp, liver, and kidney, EPA determined that modifications were needed to the following proposed tolerances: kidney of cattle, hogs, sheep, goats, and horses should be increased from 3.5 ppm to 6.0 ppm; meat by-products should be expressed in terms of "mbyp (except kidney)" at 1.5 ppm (instead of the requested 1.0 ppm); meat of cattle, hogs, sheep, goats, and horses should be increased from 0.6 ppm to 1.0 ppm; fat of cattle, hogs, sheep, goats, and horses should be increased from 0.2 ppm to 0.5 ppm; and milk should be increased from 1.1 ppm to 1.5 ppm. An amended new tolerance was not requested for eggs; the existing tolerance should be increased from 0.02 ppm to 0.05 ppm. In addition, the current tolerances for liver and mbyp (except liver) of cattle, hogs, sheep, goats, and horses should be deleted because they are covered by "mbyp (except kidney)". The current tolerance for poultry mbyp, now expressed as "mbyp (except liver)" should be expressed in terms of "mbyp", and the tolerance for poultry liver should be deleted because it is covered by the tolerance for "mbyp".

The differences in tolerances determined for these commodities are due to the following. Zeneca used an average of residues measured at the three dosing levels in animal feeding studies to estimate residues for animal commodities. Because residues of the PMG ion (*N*-(phosphonomethyl)glycine) measured in animal feeding studies were less than the limit of quantitation (LOQ) at lower dosing levels, EPA used residue levels measured at the highest dose rate (1,000 ppm) to calculate residues, resulting in higher values for tolerances for some animal commodities as described above. In addition, requested tolerances for mbyp of cattle, hogs, sheep, goats, and horses were expressed in terms of "mbyp except kidney and liver". However, the tolerance levels are higher than those needed to cover residues in liver and, therefore, liver is being deleted from the "except" clause. Similarly, existing tolerances for poultry mbyp must be revised to express the tolerance in terms of "poultry mbyp" and to delete the tolerance expressions for "poultry mbyp (except liver)" and "poultry liver".

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sulfosate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of sulfosate in or on soybean, seed at 21 ppm (of which no more than 13 ppm is TMS); soybean hulls at 45 ppm (of which no more than 25 ppm is TMS); aspirated grain fractions at 1,300 ppm (of which no more than 720 ppm is TMS); kidney of cattle, hogs, sheep, goats, and horses at 6.0 ppm; mbyp (except kidney) of cattle, hogs, sheep, goats, and horses at 1.5 ppm; meat of cattle, hogs, sheep, goats, and horses at 1.0 ppm; fat of cattle, hogs, sheep, goats, and horses at 0.5 ppm; milk at 1.5 ppm; poultry mbyp at 0.1 ppm; poultry meat at 0.05 ppm; poultry fat at 0.05 ppm; and eggs at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sulfosate are

discussed in Unit II. A. of the **Federal Register** document published on September 11, 1998 (63 FR 48597)(FRL–6026–6). Please note that this unit included a typographical error. In the discussion of the feeding carcinogenicity study in mice, "79" should have been "7.9" in the following phrase: "In addition, there was increased incidence of white matter degeneration in the lumbar region of the spinal cord (males only) (2, 3, 4, 4, 79% response, controls to high dose)...".

B. Toxicological Endpoints

The toxicological endpoints for sulfosate are discussed in Unit II. B. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.489) for the residues of sulfosate in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from sulfosate as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated (PCT) as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

For the acute analysis, tolerance level residues and 100% crop treated (CT) were used. For the chronic analysis, tolerance level residues, anticipated residue levels for soybean commodities based on field trial data, treatment of 20 percent of soybeans in the United States with sulfosate, and PCT information obtained from public and proprietary databases for other crops were used. To estimate percent of crop treated, typically a range of estimates are supplied, and the upper end of this range is assumed for the exposure assessment. By using the upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. The registrant submitted a projected market share percentage of 20% for soybeans. EPA scientists determined that this value is a reasonable conservative usage estimate based on comparison to the market share of other herbicides presently applied to herbicide-tolerant crops. Therefore, 20% was used in the chronic analysis for soybeans. For soybeans, the percent of the crop that can be treated with sulfosate will be capped at 14,500,000 acres (20% of the 1998 soybean acreage) by the sulfosate registration.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. Based on the above information, EPA finds that the PCT information is reliable and has a valid basis. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing sulfosate in a particular area.

i. *Acute exposure and risk.* Acute food risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The %PADs (Populated adjusted dose, RfD adjusted for 3x FQPA safety factor, %RfD/3) were below the Agency's level of concern at the 95th percentile for the U.S. population and all subgroups, with the highest exposure of 42% PAD in the subgroup all infants (< 1 year). The results of this analysis indicate that the acute risk from sulfosate residues on food is below the Agency's level of concern.

ii. *Chronic exposure and risk.* The chronic food analysis for sulfosate was conducted using use anticipated residues for some commodities and PCT information. Tolerance level residue values were used for the majority of the commodities. The %PADs were below HED's level of concern for the U.S. population and all subgroups, with the highest exposure of 26% PAD in the subgroup Children (1–6 years old). The results of this analysis indicate that the chronic risk from sulfosate residues on food is below the Agency's level of concern.

2. *From drinking water.* EPA does not have monitoring data available to perform a quantitative drinking water risk assessment for sulfosate at this time. In a previous risk assessment for the use of sulfosate in/on corn, wheat, pome fruit, and soybeans, ground and surface water exposure estimates were calculated for sulfosate at a maximum annual application rate of 4.75 lbs a.i./acre (see 63 FR 48597). For this risk assessment for the use of sulfosate on soybeans, the Agency estimated ground and surface water exposures using the values provided in the previous risk assessment and adjusting for the current maximum annual application rate of 8 lbs a.i./acre.

i. *Acute exposure and risk.* Estimated acute drinking water levels of concern (DWLOCs) range from 2,000 parts per billion (ppb) for infants < 1 year old to 10,500 ppb for the U.S. population. The estimated average concentration of sulfosate in surface water for acute exposure is 211 ppb. The estimated average concentration of sulfosate in groundwater is 0.00377 ppb. The estimated acute concentrations of sulfosate in surface water and groundwater are less than the acute DWLOCs for sulfosate. Therefore, taking into account the present uses and uses proposed in this action, OPP concludes with reasonable certainty that residues of sulfosate in drinking water (when considered along with other sources of

exposure for which OPP has reliable data) would not result in unacceptable levels of acute aggregate human health risk at this time.

ii. *Chronic exposure and risk.* Estimated chronic DWLOCs range from 250 ppb for children 1–6 years old to 1,060 ppb for the U.S. population. The estimated average concentration of sulfosate in surface water for chronic exposure is 20 ppb. The estimated average concentration of sulfosate in groundwater is 0.00377 ppb. The estimated chronic concentrations of sulfosate in surface water and groundwater are less than the chronic DWLOCs for sulfosate. Therefore, taking into account the present uses and uses proposed in this action, OPP concludes with reasonable certainty that residues of sulfosate in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of chronic aggregate human health risk at this time.

3. *From non-dietary exposure.* Sulfosate is currently not registered for use on any residential non-food sites: Therefore, residential exposure to sulfosate residues will be through dietary exposure only.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether sulfosate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, sulfosate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that sulfosate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute risk estimates associated with aggregate exposure to sulfosate in food and water do not exceed the Agency's level of concern. The acute dietary analysis for sulfosate is a highly conservative estimate of dietary exposure conducted using tolerance level residue values and 100%CT. For the U.S. population, 10% of the PAD is occupied by food exposure. For the most highly exposed subgroup, all infants (< 1 year), 42% of the PAD is occupied by food exposure. The maximum estimated concentrations of sulfosate in surface and ground water are less than OPP's DWLOCs for sulfosate as a contribution to acute aggregate exposure. Therefore, OPP concludes with reasonable certainty that residues of sulfosate in drinking water do not contribute significantly to the acute aggregate human health risk at the present time considering the present uses and the uses proposed in this action.

2. *Chronic risk.* Using anticipated residues for soybean commodities; tolerance level residue values were used for the remaining commodities; %crop treated information for soybeans, oranges, grapefruit, corn, peaches and wheat; and exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sulfosate from food will utilize 9% of the PAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1–6 years old), discussed below. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sulfosate in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sulfosate residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are no residential uses or exposure senarios, short- and intermediate-term aggregate exposure is not expected.

4. *Aggregate cancer risk for U.S. population.* Sulfosate was classified as a "Group E" carcinogen (no evidence for carcinogenicity in humans, see Unit II.B.4 of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sulfosate residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* The determination of the 3x safety factor for infants and children is discussed in Unit II.E.1.i. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

ii. *Developmental toxicity studies.* Developmental toxicity is discussed in Unit II.E.1.ii. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

iii. *Reproductive toxicity study.* Reproductive toxicity is discussed in Unit II.E.1.iii. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

iv. *Pre- and post-natal sensitivity.* Pre- and post-natal sensitivity is discussed in Unit II.E.1.iv. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

v. *Conclusion.* With the exception of the requested developmental neurotoxicity study, there is a complete toxicity database for sulfosate and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Acute risk estimates associated with aggregate exposure to sulfosate in food and water do not exceed the Agency's level of concern. The acute food analysis for sulfosate is a highly conservative estimate of food exposure with the use of tolerance level residue values and 100%CT. For the most highly exposed subgroup, all infants (< 1 year), 42% of the PAD is occupied by food exposure. The maximum estimated concentrations of sulfosate in surface and ground water are less than EPA's DWLOCs for sulfosate infants and children as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of sulfosate in drinking water do not contribute significantly to the acute aggregate human health risk at the present time considering the present uses and the uses proposed in this action.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sulfosate from food will utilize 26 percent of the RfD for infants and

children. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sulfosate in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD RfD.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to sulfosate residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues in plants and animals is understood. EPA has determined that the tolerance expression for sulfosate must include both of the parent ions.

B. Analytical Enforcement Methodology

Analytical enforcement methodology for sulfosate is discussed in Unit III.B. of the **Federal Register** document published on September 11, 1998 (63 FR 48597).

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

The crop field trial data are adequate to support these tolerances.

D. International Residue Limits

There are no Codex, Canadian or Mexican tolerances or maximum residue limits for residues of sulfosate in the subject commodities. Therefore, a compatibility issue is not relevant to the proposed tolerances.

E. Rotational Crop Restrictions

EPA has previously reviewed two confined rotational crop studies for sulfosate and concluded that rotational crop restrictions were not required.

IV. Conclusion

Therefore, the tolerances are established for residues of sulfosate in soybean seed at 21 ppm (of which no more than 13 ppm is TMS); soybean hulls at 45 ppm (of which no more than 25 ppm is TMS); aspirated grain fractions at 1,300 ppm (of which no more than 720 ppm is TMS); kidney of cattle, hogs, sheep, goats, and horses at 6.0 ppm; mbyp (except kidney) of cattle, hogs, sheep, goats, and horses at 1.5 ppm; meat of cattle, hogs, sheep, goats, and horses at 1.0 ppm; fat of cattle, hogs, sheep, goats, and horses at 0.5 ppm; milk at 1.5 ppm; poultry mbyp at 0.1 ppm; and eggs at 0.05 ppm. In addition, the current tolerances for liver and mbyp (except liver) of cattle, hogs, sheep, goats, horses, and poultry are revoked.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 10, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300878] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in

paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affecf the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. In § 180.489 the table to paragraph (a) is amended as follows:

i. By removing the complete entries for cattle, liver; cattle, mbyp except liver; goats, liver; goats, mbyp, except liver; hogs, liver; hogs, mbyp except liver; horses, liver; horses, mbyp except liver; poultry, liver; poultry, mbyp except liver; sheep, liver; and sheep, mbyp except liver.

ii. By revising the entries for aspirated grain fractions; cattle, fat; cattle, meat; eggs; goats, fat; goats, meat; hogs, fat; hogs, meat; horses, fat; horses, meat; milk; sheep, fat; sheep, meat; soybean, hulls; and soybean, seed.

iii. By adding entries for cattle, kidney; cattle, mbyp (except kidney); goats, kidney; goats, mbyp (except kidney); hogs, kidney; hogs, mbyp (except kidney); horses, kidney; horses, mbyp (except kidney); poultry, mbyp; sheep, kidney; and sheep, mbyp (except kidney).

The additions and revisions read as follows:

§ 180.489 Sulfoxate (Sulfonium, trimethyl-salt with N- (phosphonomethyl)glycine (1:1)); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	*
Aspirated grain fractions (of which no more than 720 ppm is TMS)	1,300
* * *	*
Cattle, fat	0.5
Cattle, kidney	6.0
Cattle, mbyp (except kidney)	1.5
Cattle, meat	1.0
* * *	*
Eggs	0.05
Goats, fat	0.5
Goats, kidney	6.0
Goats, mbyp (except kidney)	1.5
Goats, meat	1.0
* * *	*
Hogs, fat	0.5
Hogs, kidney	6.0
Hogs, mbyp (except kidney)	1.5
Hogs, meat	1.0
Horses, fat	0.5
Horses, kidney	6.0
Horses, mbyp (except kidney)	1.5
Horses, meat	1.0
Milk	1.5
* * *	*
Poultry, mbyp	0.1
* * *	*
Sheep, fat	0.5
Sheep, kidney	6.0
Sheep, mbyp (except kidney)	1.5
Sheep, meat	1.0
* * *	*
Soybean, hulls (of which no more than 25 ppm is TMS)	45
Soybean, seed (of which no more than 13 ppm is TMS)	21
* * *	*

* * * * *

[FR Doc. 99–14994 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–70; RM–9380]

Radio Broadcasting Services; Deer Lodge, Hamilton & Shelby, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 242C for Channel 240C3 at Hamilton, Montana, and modifies the license for Station KBMG at Hamilton, to specify operation on Channel 242C and substitutes Channel 245C1 for Channel 243C2 at Deer Lodge, Montana and modifies the license for Station KQRV at Deer Lodge to specify operation on Channel 245C1 in response to a petition filed by Marathon Media of Montana, L.P. and Robert C. Toole. *See* 64 FR 12923, March 16, 1999. The coordinates for Channel 242C at Hamilton are 46–48–09 and 113–58–21 and 46–06–03 and 112–57–00 for Channel 245C1 at Deer Lodge. To accommodate the substitutions at Deer Lodge and Hamilton, we shall also substitute Channel 244C1 for Channel 242C1 at Shelby, Montana, and modify the license for Station KZIN accordingly. The coordinates for Channel 244C1 are 48–19–42 and 112–02–03. Canadian concurrence has been received for the allotments at Shelby and Hamilton. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–70, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 240C3 and adding Channel 242C at Hamilton, by removing Channel 243C2 and adding Channel 245C1 at Deer Lodge, and by removing Channel 242C1 and adding Channel 244C1 at Shelby.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14793 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 112
Friday, June 11, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–054–1]

RIN 0579–AB02

Importation of Unmanufactured Wood Articles From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from Mexico. This change would require that these wood articles from Mexico meet certain treatment and handling requirements to be eligible for importation into the United States. We believe this action is necessary to prevent the introduction into the United States of dangerous plant pests, including forest pests, with unmanufactured wood articles from Mexico.

DATES: Consideration will be given only to comments received on or before August 10, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–054–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–054–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Jane E. Levy, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The unrestricted importation of logs, lumber, and other unmanufactured wood articles into the United States could pose a significant hazard of introducing plant pests detrimental to agriculture and to natural, cultivated, and urban forests. "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles," contained in 7 CFR 319.40–1 through 319.40–11 (and referred to below as the wood subpart), is intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles.

Currently, § 319.40–3(a) provides a general permit for the importation of unmanufactured wood articles (other than articles from certain subfamilies of the family Rutaceae) into the United States from Canada and from States in Mexico adjacent to the United States/Mexico border. A general permit means the written authorization provided in § 319.40–3; no separate paper permit is required. Under a general permit, unmanufactured wood articles from Canada and from Mexican States adjacent to the U.S. border may be imported into the United States provided they are accompanied by an importer document stating that the articles are derived from trees harvested in, and have never been moved outside, Canada or adjacent States in Mexico, and subject to the inspection and other requirements in § 319.40–9. Unmanufactured wood articles imported into the United States from adjacent States in Mexico in accordance with § 319.40–3(a) include, but are not limited to, logs, lumber, railroad ties, fence posts, firewood, solid wood packing material, and mesquite wood for cooking.

In contrast, unmanufactured wood articles from Mexican States that are not adjacent to the United States/Mexico border are subject to the more rigorous requirements of the wood subpart for importing wood articles from all other countries except Canada. These more rigorous requirements include requirements for treatment and other special handling to ensure freedom from plant pests. Section 319.40–5 provides import and entry requirements for specified regulated articles such as bamboo timber (§ 319.40–5(a)), tropical hardwoods (§ 319.40–5(c)), temperate hardwoods (§ 319.40–5(d)), and railroad ties (§ 319.40–5(f)). Section 319.40–6 provides universal importation options, including treatment and handling options, for unmanufactured wood articles imported into the United States, including logs (§ 319.40–6(a)), lumber (§ 319.40–6(b)), wood chips and bark chips (§ 319.40–6(c)), wood mulch, humus, compost, and litter (§ 319.40–6(d)), and cork and bark (§ 319.40–6(e)).

The less restrictive importation requirements for unmanufactured wood articles imported into the United States from Canada and the States of Mexico adjacent to the United States/Mexico border are based on the premise that the forests in the United States share a common forested boundary with Canada and adjacent States in Mexico and, therefore, share, to a reasonable degree, the same forest pests.

However, in February 1998, the Forest Service, U.S. Department of Agriculture (USDA), published a study entitled "Pest Risk Assessment of the Importation into the United States of Unprocessed *Pinus* and *Abies* Logs from Mexico."[1] This pest risk assessment was requested by the Animal and Plant Health Inspection Service (APHIS), USDA, to evaluate the forest insect and pathogen complexes in the forests of the United States and the adjacent States of Mexico. The Forest Service's pest risk assessment shows that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico. This conclusion has also been confirmed by USDA inspectors finding a number of dangerous plant pests on wood imports from adjacent States in Mexico during inspections at ports of entry along the United States/Mexico border.

The Forest Service's pest risk assessment clearly indicates that the mountain top forests of the adjacent States in Mexico, from which unmanufactured wood articles are moving into the United States, should be viewed as biological islands, not as an extension of the U.S. forest ecosystem. These biological islands

[1] For copies of this pest risk assessment, contact the person listed under **FOR FURTHER INFORMATION CONTACT** or access the assessment on the Forest Service's Forest Products Laboratory Web site at Internet address http://www.fpl.fs.fed.us/documents/fplgtr/fplgtr104.pdf

contain their own unique combination of forest pests, which are different than those currently found in the United States. Those pests have the potential to substantially harm U.S. forests if they become established in the United States.

In its research, the Forest Service used pine and fir pests as surrogates for determining the overall pest risk associated with all of the native trees grown in these isolated biological forested regions in Mexico. This method was used in order to keep the assessment manageable. Timber species of pine and fir were chosen specifically because: (1) They constitute the majority of the unmanufactured wood articles imported into the United States from Mexico; and (2) the pest complexes of pine and fir trees have been the focus of more research, and are, therefore, better understood than the pest complexes for many other genera of imported timber trees. APHIS concurs with the Forest Service that extrapolation of this type of data is scientifically both rational and defensible.

Based on the conclusions of the Forest Service's pest risk assessment, we are proposing to amend the wood subpart in three ways.

First, we propose to limit the use of a general permit under § 319.40–3(a) for unmanufactured wood articles imported from the adjacent States in Mexico. Under proposed § 319.40–3(a), only unmanufactured mesquite wood for cooking, unmanufactured wood for firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes would be allowed importation under a general permit.[2] Mesquite is a woody species that is continuous on both sides of the United States/Mexico border and, therefore, presents little foreign pest risk. Firewood would not pose a significant pest risk because of its limited distribution and consumption near the border. Small, noncommercial packages of unmanufactured wood to be used for personal cooking or personal medicinal purposes also would not pose a significant pest risk because the packages would be limited in quantity and therefore easily inspected, and likely would be distributed and consumed near the border. Except as discussed below, all other unmanufactured wood articles from the adjacent States of Mexico would be allowed into the United States only in accordance with the importation and entry requirements in place for unmanufactured wood articles from the rest of Mexico and all other countries except Canada. This proposed rule would result in a more consistent regulation of unmanufactured wood articles from all the States of Mexico, as well as all other countries except Canada.

Second, we propose to amend § 319.40–5 to add an additional treatment option for pine and fir lumber from Mexico. Currently, the only treatment options for imported pine and fir lumber from Mexico are heat treatment (under § 319.40–7(c)) or heat treatment with moisture reduction (under § 319.40–7(d)) before importation into the United States, as required by § 319.40–6(b)(1); or heat treatment or heat treatment with moisture reduction within 30 days after release from the port of first arrival in the United States, at a U.S. facility operating under a compliance agreement with APHIS, as required by § 319.40–6(b)(2). However, based on conclusions of the Forest Service's pest risk assessment and on APHIS' evaluation of treatment options, we are proposing to allow standard industry cut lumber made from pine or fir species originating in Mexico to be imported into the United States from any State of Mexico if, prior to arrival, that lumber is 100 percent free of bark and fumigated with methyl bromide in accordance with schedule T–312 contained in the Plant Protection and Quarantine Treatment Manual, incorporated by reference at § 300.1, or with an initial methyl bromide concentration of at least 240 g/m^3 with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration. This treatment is effective against the pine and fir pests identified in the Forest Service's pest risk assessment.

Third, we propose to amend § 319.40–5 to add an additional treatment option, with a thickness requirement, to the importation of railroad ties from Mexico. Currently, pursuant to § 319.40–5(f), railroad ties from nonborder States of Mexico must be completely free of bark and accompanied by an importer document stating that the railroad ties will be pressure treated within 30 days following the date of importation to be eligible for importation into the United States. Because of the proposed change to the general permit section of the wood subpart described earlier, railroad ties from States of Mexico adjacent to the U.S. border would no longer be eligible for importation into the United States under a general permit. Based on conclusions of the Forest Service's pest risk assessment, we propose to amend § 319.40–5 to provide an additional treatment option for the importation of railroad ties from Mexico that would allow the importation of railroad ties (cross-ties) originating from all States in Mexico if they are 100 percent free of bark, no thicker than 8 inches, and fumigated with methyl bromide using the concentration levels specified in the paragraph above. Railroad ties may continue to be imported under current requirements that they be completely free of bark and pressure-treated with a preservative approved by the U.S. Environmental Protection Agency (EPA) within 30 days following the date of importation. Under the existing requirements, we would also allow Mexican railroad ties that are debarked in accordance with § 319.40–7(b) to be imported into the United States if the railroad ties have been heat treated in accordance with § 319.40–7(c).

These actions appear to be necessary to reduce the risk of the introduction of dangerous plant pests on unmanufactured wood articles moving from Mexico into the United States.

Use of Methyl Bromide

Methyl bromide is currently in widespread use as a fumigant. It is proposed as a treatment option for standard industry cut lumber made from pine or fir species and railroad ties from Mexico. The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. EPA, based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018–65082). That rule froze methyl bromide production in the United States at 1991 levels and required the phasing out of domestic use of methyl bromide by the year 2001. EPA's methyl bromide regulations were issued under the authority of the Clean Air Act. Recently, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, amended the Clean Air Act. The amendments provide that the production of methyl bromide shall not terminate prior to January 1, 2005, and directs EPA to promulgate new rules to reduce and terminate the production, importation, and consumption of methyl bromide in accordance with the phaseout schedule of the Montreal Protocol. The Montreal Protocol, an international treaty governing the production and use of ozone-depleting chemicals, provides for a phaseout of methyl bromide, with an

[2] Other unmanufactured wood articles, such as solid and loose wood packing material and bamboo timber, would continue to be allowed importation into the United States under a general permit in accordance with § 319.40–3(b), (c), (d), and (e).

exemption for quarantine and preshipment uses, in developed countries by the year 2005 and in developing countries, including Mexico, by the year 2015. EPA has indicated that it will publish proposed and final regulations to achieve production and importation reductions from the 1991 base levels of methyl bromide as follows: 25 percent reduction in 1999, 50 percent reduction in 2001, 70 percent reduction in 2003, 100 percent reduction in 2005. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, further provides a quarantine-use exemption for the production, importation, consumption of methyl bromide to fumigate commodities entering or leaving the United States for purposes of complying with APHIS regulations. EPA has also indicated that it will work closely with USDA, State agricultural departments, and other stakeholders to define the preshipment and quarantine uses that will be exempt from the phaseout. Our proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years. Nonetheless, APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation.

Miscellaneous

We are also proposing to amend § 319.40–5(f) to require that pressure treatment of railroad ties be conducted at a U.S. facility under compliance agreement with APHIS. This would affect railroad ties imported from all countries except Canada. We propose this action to help ensure compliance with the requirement that railroad ties must be pressure treated within 30 days following the date of importation into the United States.

In § 319.40–3, paragraph (a) requires articles imported under general permit to be accompanied by an importer document. The importer document must state that the regulated articles are derived from trees that were harvested in, and have never moved outside, Canada or States in Mexico adjacent to the U.S. border. We are proposing to amend § 319.40–3(a) to remove the requirement that the importer document must state that the articles have never been moved outside Canada or States in Mexico adjacent to the U.S. border; the "derived from" requirement will remain. We are also proposing to amend § 319.40–3(a) to specify that the importer document only needs to accompany commercial shipments of unmanufactured wood articles imported into the United States under a general permit. With respect to Mexico, the importer document requirement currently helps ensure that logs and lumber from adjacent States in Mexico are not moved into other States in Mexico for processing or milling and then imported into the United States. However, because we are proposing to disallow movement under general permit for most unmanufactured wood articles from adjacent States in Mexico, this precaution would no longer be necessary. With respect to Canada, it is highly improbable that wood articles from Canada would be processed or milled in another country and then returned to Canada for export to the United States. Therefore, we do not believe that this requirement is necessary for unmanufactured wood articles imported into the United States from Canada. Further, it is not administratively feasible to require an importer document for noncommercial shipments of mesquite wood for cooking and firewood, or for small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal uses imported into the United States from States in Mexico adjacent to the United States border; therefore, we propose to specify that commercial shipments of unmanufactured wood articles imported from Canada, and commercial shipments of mesquite wood for cooking and firewood imported from adjacent States in Mexico, be accompanied by the importer document described above.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are proposing to amend the wood subpart by adding a treatment option for pine and fir lumber and railroad ties imported from Mexico, and by adding that unmanufactured wood articles from Mexico's border States meet certain treatment and handling requirements to be eligible for importation into the United States. We believe this action is necessary to help prevent the introduction into the United States of dangerous plant pests, including forest pests, with unmanufactured wood articles from Mexico.

Because this proposal concerns unmanufactured wood articles, it would affect the importation into the United States of both hardwood and softwood species from Mexico. However, this analysis focuses on softwood lumber, particularly pine and fir, since it comprises nearly all the unmanufactured wood articles imported from Mexico. In 1997, imports of U.S. lumber from Mexico consisted of about 98 percent softwood species, by value, and only about 2 percent hardwood species. Also in 1997, 97 percent of U.S. imports of unmanufactured softwood articles from Mexico, not including solid wood packing material (SWPM) and continuously shaped softwood (which may be manufactured), were softwood lumber.

The value of U.S. production of softwood lumber in 1996 was about $16 billion. U.S. production of softwoods that year totaled 33.9 billion board feet (bbf), compared to 12.7 bbf of hardwoods. Softwood imports in 1996 reached 18.0 bbf, compared to exports of 1.9 bbf, for net imports of 16.1 bbf. In other words, U.S. supply of softwoods, not including stocks, was about 50 bbf (production + imports − exports), with about one-third of the nation's supply imported.

Values of 1997 U.S. imports and exports of some major categories of unmanufactured softwood articles are found in table 1, below. U.S. trade with both the whole world and Mexico is shown, allowing some insight into Mexico's share of U.S. imports, and the U.S. trade position overall for these commodities. By far, the main commodity is softwood lumber, for which U.S. imports, worth $7.3 billion, dwarfed U.S. exports, worth $1.1 billion. Of the commodities included in table 1, 93 percent of imports were softwood lumber. Softwood lumber imports from Mexico, at $97.6 million, represent 1 percent of total U.S. softwood lumber imports.

Continuously shaped softwood is a category that includes both manufactured and unmanufactured articles. Therefore, the value shown for these imports from Mexico ($120 million) overstates the value of imports that would be affected by the proposed rule. (On the other hand, there are other unmanufactured wood articles that enter from Mexico, such as solid wood packing material, that are not shown in this table.) As indicated, one-fourth of continuously shaped softwood that is imported into the United States comes from Mexico. As is the case of softwood lumber, the value of U.S. imports of these articles is several times greater than the value of exports.

The United States is a large net exporter of untreated softwood logs and poles, with 1997 exports valued at about $1.5 billion, compared to 1997 imports

of $61 million. Of these imports, Mexico is a minor supplier, providing three percent of the total. Similarly, for fuel wood and railroad ties (not impregnated),[3] Mexico supplied only a small portion of total U.S. imports in 1997: 6 percent, in each instance.

In summary, unmanufactured softwood articles imported into the United States are predominantly lumber. Their value significantly outweighs that of exports of U.S. softwood lumber. In 1997, about one percent of softwood lumber imports, worth about $97.6 million, came from Mexico. Shipments from Mexico of continuously shaped softwood are of greater value ($120 million in 1997), but a large share may be manufactured articles. For softwood logs and poles, the United States is in a strong net export position, with the value of imports only about four percent of the value of exports. Importations from Mexico of softwood logs and poles, fuel wood, and railway ties represent small percentages of total U.S. imports of these commodities.

TABLE 1.—U.S. TRADE WITH MEXICO AND THE WORLD IN PRINCIPAL UNMANUFACTURED SOFTWOOD ARTICLES, 1997

Wood category	U.S. imports			U.S. exports		
	From the world (dollars)	From Mexico (dollars)	Percentage from Mexico	To the world (dollars)	To Mexico (dollars)	Percentage to Mexico
Softwood lumber	7,345,096,000	97,614,000	1	1,100,577,000	39,435,000	4
Softwood, continuously shaped	488,057,000	120,340,000	25	111,756,000	8,310,000	7
Softwood logs and poles, not treated	61,207,000	1,764,000	3	1,488,347,000	3,001,000	0.2
Fuel wood	5,220,000	377,000	6	5,601,000	170,000	3
Railway ties, not impregnated	3,650,000	232,000	6	5,938,000	11,000	0.1
Total	7,904,430,000	220,327,000	2.8	2,715,219,000	50,927,000	1.9

Source: Foreign Agriculture Service's Global Agricultural Trade System using data from the United Nations Statistical Office.
Notes: Listed commodities have the following six-digit codes from the Harmonized Tariff Schedule of the United States: softwood lumber, 440710; softwood, continuously shaped, 440910; softwood logs and poles, not treated, 440320; fuel wood, 440110; and railway ties, not impregnated, 440610. Continuously shaped softwood includes articles processed in various ways, such as wood molding. Many of these articles are "manufactured," and therefore would not be affected by this proposed rule. Also, firewood included under the fuel wood category would not be affected by the proposed rule.

Since potential effects of the proposed rule largely concern imports of unmanufactured wood articles from Mexico's border States, it is necessary to estimate their share of Mexico's exports to the United States. Using data obtained from U.S. ports of entry, we estimate that affected commodities worth about $31.3 million came from Mexico's border States in 1997, which is slightly more than one-third of the value of all shipments of these articles from Mexico (see table 2).

El Paso, TX, is the principal port through which affected articles enter the United States. In 1997, approximately $81.7 million worth of these articles (89 percent of unmanufactured wood articles imported from Mexico) entered the United States through the port of El Paso. We estimate that 30 percent of these articles originated in Mexico's border States. Other U.S. border ports of entry report higher percentages coming from Mexico's border States—50 percent for Laredo, TX, and 100 percent for San Diego, CA, and Nogales, AZ—but the volumes of articles shipped were much smaller. Not surprisingly, most unmanufactured wood articles that enter through ports not near the United States/Mexico border (e.g., shipments by sea) originate from nonborder States in Mexico.

TABLE 2.—VALUE OF U.S. IMPORTS OF UNMANUFACTURED WOOD ARTICLES FROM ALL OF MEXICO AND FROM MEXICAN STATES ADJACENT TO THE UNITED STATES, BY PORT OF ENTRY, 1997

U.S. port of entry	Estimated value of imports from all of Mexico (dollars)	Estimated proportion of shipments from Mexico's border States (percentage)	Estimated value of imports from Mexico's border States (dollars)
El Paso, TX	81,730,000	30	24,519,000
San Diego, CA	5,551,000	100	5,551,000
Laredo, TX	1,859,000	50	929,500
Portland, OR	1,021,000	0	0
San Francisco, CA	735,000	0	0
Los Angeles, CA	591,000	0	0
Nogales, AZ	341,000	100	341,000
Mobile, AL	80,000	0	0
Total	91,908,000		31,340,500

Sources: Foreign Agriculture Service, Forest and Fishery Products Division, for the estimated values of imports; Plant Protection and Quarantine, APHIS, for the estimated proportion of shipments from Mexico's border States.
Note: Percentages of imports estimated as originating in Mexico's border states are based on numbers of shipments. Therefore, estimated values in the last column do not account for differences in shipment values. Available data does not permit a more accurate estimation of values. Also, shipments of unmanufactured hardwood articles that may be included in these values are assumed to be very minor.

[3] Impregnated railway ties are not considered unmanufactured wood articles.

The significance of these levels of import can be put in perspective by comparing them to U.S. production and trade levels overall. Unmanufactured wood articles include a variety of commodities, but the value of softwood lumber production in the United States offers a reasonable basis for comparison, since the major timber species that would be affected by the proposed rule are pine and fir. When continuously shaped softwood articles are not considered, less than 2 percent (about 1.4 percent) of unmanufactured softwood articles imported into the United States came from Mexico in 1997 (see table 1). Assuming imports contribute about one-third of total U.S. supply, imports from Mexico would, therefore, amount to about 0.5 percent of the U.S. supply of unmanufactured softwood articles. Further, if about one-third of Mexico's shipments originate in Mexico's border States, shipments from the border States would represent about 0.5 percent of unmanufactured softwood articles imported by the United States, or about 0.15 percent of U.S. supply.

Mention should be made of SWPM, such as wooden pallets, crates, packing blocks, and dunnage. This packing material is used to prevent damage to cargo during shipment. Currently, SWPM originating in Mexico's border States and Canada may contain bark; SWPM entering the United States from anywhere else in the world must be without bark or be heat treated, fumigated, or treated with preservatives. In addition, SWPM from China has additional requirements (see § 319.40–5(g)). The proposed rule would require that SWPM restrictions for Mexico's border States be the same as for the rest of the world except Canada and China.

An informal survey of the ports of entry shown in table 2 found that a negligible amount of SWPM that is untreated or not free of bark enters the United States from Mexico. None is reported to enter through El Paso, TX, San Diego, CA, San Francisco, CA, Los Angeles, CA, or Nogales, AZ, and less than 1 percent is reported for Laredo, TX, and Portland, OR. (No contact was made with Mobile, AL.) Clearly, nearly all SWPM from Mexico's border States already meets the entry requirements that would be imposed by this proposed rule. Therefore, potential economic effects with respect to SWPM imports need not be given further consideration.

Economic Consequences

Two parts of the proposed rule could have an impact on U.S. imports of unmanufactured wood articles from Mexico: (1) Adding methyl bromide fumigation as a treatment option for pine and fir lumber and railroad ties from Mexico; and (2) placing unmanufactured wood articles from Mexico's border States under the same treatment requirements, in general, as the rest of the Mexico.

Adding Methyl Bromide Fumigation Option for Pine and Fir Lumber and Railroad Ties

For railroad ties from nonborder States of Mexico, current regulations require that the ties be completely debarked and either heat treated prior to importation or pressure treated within 30 days following importation. Under this proposed rule, fumigation would become an available treatment option. Virtually all railroad ties imported into the United States from Mexico are pressure treated for commercial reasons (i.e., in addition to eliminating pests, it protects the ties from decay). We expect that this would continue, and that few importers would utilize the proposed fumigation method. In order to comply with the wood subpart, importers may choose to fumigate railroad ties prior to importation if the railroad ties will be pressure treated beyond 30 days following importation. In any event, importations of railroad ties from Mexico represent a small percentage of total U.S. imports of railroad ties (6 percent of total U.S. imports, valued at $232,000). Therefore, we expect that adding methyl bromide fumigation as a treatment option would have very little or no impact on importers of railroad ties.

For pine and fir lumber imported from nonborder States of Mexico, treatments available under the current regulations are heat treatment and heat treatment with moisture reduction. Under this proposed rule, fumigation would become an available treatment method. Kiln drying is a type of heat treatment with moisture reduction, and is the most common method used to treat lumber from Mexico. Kiln drying is used almost exclusively over other treatments for lumber because kiln drying is the industrial standard and it increases the economic value of the wood. For this reason, this analysis focuses on comparing the most common method, kiln drying, to the proposed alternative, methyl bromide fumigation.

In 1997, softwood lumber imported from Mexico cost an average of $318 per cubic meter ($750.48 per thousand board feet), according to data compiled by the Foreign Agricultural Service, USDA. This figure is higher than average domestic unmanufactured green softwood prices of $137.71 per cubic meter ($325 per thousand board feet) in Northern California because: (1) Higher valued ponderosa pine constitutes a large percentage of imports from Mexico; (2)lumber imported from Mexico is mostly "shop grade" lumber, often used for making molding; (3) reported prices of lumber imported from Mexico may include delivery costs (F.O.B. delivered), whereas prices for domestic lumber do not (F.O.B. mill); and (4) some of the lumber imported from Mexico may already be kiln dried, which commands a higher price.[4]

Costs associated with kiln drying pine and fir lumber range between approximately $12 and $20 per cubic meter. In comparison, methyl bromide fumigation is reported to cost about one-third of this amount, or between $4.60 and $6.90 per cubic meter.[5] There is not an appreciable difference in the time required to apply the two treatments. Methyl bromide fumigation of lumber requires 2 days for the actual treatment and up to 2 days for setup and dismantling and airing of the cargo. Kiln drying of lumber takes 3 to 4 days.

At first glance, it would appear that there could be cost savings for Mexican exporters of pine and fir lumber to the United States—and potentially lower prices for U.S. importers—by replacing kiln drying with methyl bromide fumigation. However, kiln drying serves other commercial purposes besides satisfying phytosanitary requirements. U.S. importers may prefer kiln dried lumber, whereby fumigation would only result in an unnecessary additional cost. Information is not available to estimate the percentage of imports that would be fumigated instead of kiln dried.

Irrespective of the proposed addition of methyl bromide as a treatment option, any potential costs of this proposed rule for producers and consumers in the United States are likely to be very minor. As discussed above, the value of softwood lumber imported from Mexico is estimated to be only 0.5 percent of the value of the U.S. supply of softwood lumber. If it happens that kiln drying remains the preferred treatment alternative after fumigation is allowed, most shipments of pine and fir lumber imported into the United States from nonborder States of Mexico would not be affected.

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[4] Based on communication with the Foreign Agricultural Service, USDA.

[5] Estimated costs for kiln drying are based on communication with the Forest Products Laboratory, Forest Service, USDA. Estimated costs for fumigation are based on communications with fumigation companies operating at California ports and the Port of Baltimore.

No Longer Exempting Unmanufactured Wood Articles From Mexico's Border States

As a result of this proposed rule, unmanufactured wood articles from Mexico's border States would be subject to the same importation and entry requirements as unmanufactured wood articles from the rest of Mexico (except for mesquite wood for cooking and firewood and small, noncommercial packages of unmanufactured wood for personal cooking or medicinal purposes). This change would have its primary impact on softwood lumber, which constitutes the vast majority of all unmanufactured wood articles imported from Mexico's border States.

Currently, softwood lumber from Mexico's border States can be imported without restriction, provided that the lumber was derived from trees harvested in Mexico's border States and has never been moved outside those States. Under this proposal, lumber from Mexico's border States would have to be either heat treated, heat treated with moisture reduction, or fumigated with methyl bromide. As with lumber from the rest of Mexico, the most likely treatments chosen would be kiln drying, at a cost of $12 to $20 per cubic meter, or methyl bromide fumigation, which could be done for, at most, one-third the cost of kiln drying.

As stated previously in this document, the total value of unmanufactured wood articles imported from Mexico's border States in 1997 was approximately $31.3 million; almost all of these imports were softwood lumber. If we assume that all unmanufactured wood articles imported from Mexico's border States are untreated, and would be kiln dried or fumigated to comply with this proposed rule, the impact of requiring treatment would range between $565,000 and $1.6 million, depending on whether most importers choose to kiln dry or fumigate the wood. (This calculation was made by first assuming that all unmanufactured wood articles imported from Mexico's border States in 1997 were softwood lumber, and then by using the value of $318 per cubic meter of softwood lumber to arrive at a total of 98,428 cubic meters of softwood lumber imported from Mexico's border States, multiplied by the midpoint in the range of costs for kiln drying and fumigation.)

Some of the lumber imported from Mexico's border States may already be kiln dried and would not require additional treatment as a result of this proposed rule. We do not have data to estimate the quantity of lumber imports from Mexico's border States that is already kiln dried nor what percentage of imports would be fumigated rather than kiln dried under this proposal. We welcome public comments with information that would help us more precisely estimate total potential treatment costs.

This proposed rule would result in small additional cost for an extremely small fraction of the U.S. supply of unmanufactured softwood articles. The benefit of the proposed rule is greater protection of U.S. forests. The potential for exotic pest introduction via imports of unmanufactured wood articles necessitates rigorous mitigation measures. The cost to producers and consumers could range in the millions of dollars if these measures are not taken.[6] The cost of treating unmanufactured wood articles imported from Mexico's border States is small, compared to the possible consequences of not changing existing regulations.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of the proposed rule on small entities. The Small Business Administration (SBA) has established size criteria by Standard Industrial Classification for determining which economic entities meet the definition of a small firm. Data from the SBA was used to estimate the number of small entities potentially affected by this proposed rule.

The proposed rule would add a treatment option for railroad ties and pine and fir lumber from Mexico, and would add treatment and handling requirements for logs, lumber, and other unmanufactured wood articles imported from States in Mexico adjacent to the U.S. border. Entities most likely to be affected by the proposed rule are those that import pine and fir lumber. These entities include sawmills, lumber wholesalers, lumber retailers, wood article manufacturers, and general contractors of home construction. The SBA classifies sawmills and wood article manufacturers as small entities if fewer than 500 people are employed. Wood wholesalers and retailers are considered small with fewer than 100 employees. A general contractor is considered small with annual receipts of less than $17 million.

The number, size, and location of entities that actually import pine and fir lumber from Mexico could not be quantified by APHIS. According to SBA data, there are about 177,014 entities in these potentially affected industries. More than 87 percent of these firms, between approximately 154,029 and 155,447, are classified as small according to SBA criteria. Thus, the majority of firms likely to be affected by this proposed rule would be small entities. It is presumed that the majority of these entities would be ones located in the southwestern United States.

Given the small fraction of the U.S. supply of unmanufactured wood articles imported from Mexico, and the even smaller percentage originating in Mexico's border States, we expect that the effect of this proposed rule on small entities in the United States would be negligible. If the proposal is adopted, and kiln dried imports from nonborder States are instead fumigated, cost savings may be partly realized by U.S. buyers through lower prices. For imports from Mexico's border States, costs to U.S. buyers may increase due to the new treatment requirements. But as discussed above, treatment costs are a small fraction of total product costs, so any impact, negative or beneficial, would be slight.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

We have prepared an environmental assessment for this proposed rule. The assessment provides a preliminary basis for the conclusion that the importation of unmanufactured wood articles from Mexico under the conditions specified in this proposed rule would reduce the risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment.

We prepared the environmental assessment in accordance with: (1) The

[6] Estimates of economic losses if representative insects and pathogens of concern were introduced into the United States are in the "Pest Risk Assessment of the Importation into the United States of Unprocessed *Pinus* and *Abies* Logs from Mexico," referred to previously in this document. Estimated costs of introduction range from less than $1 million to more than $50 million, depending on the pest. To obtain copies of this pest risk assessment, see the instructions under footnote 1 of this document.

National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

We invite you to comment on all aspects of this proposed rule, including the environmental assessment. For information on when and where to send your comments, please refer to the **DATES** and **ADDRESSES** sections near the beginning of this document.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB). The forms that we are proposing to require for the importation into the United States of certain unmanufactured wood articles from the adjacent States in Mexico have been approved by OMB for the importation of unmanufactured wood articles from other areas of Mexico and other countries. The time that would be needed for the completion of forms under this proposal is included in the paperwork hours approved by OMB for the affected CFR sections. The assigned OMB control number is 0579–0119.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.40–3, paragraph (a) would be amended as follows:

§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

(a) *Canada and Mexico.* (1) The following articles may be imported into the United States under general permit:

(i) From Canada: Regulated articles, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae; and

(ii) From States in Mexico adjacent to the United States: Commercial and noncommercial shipments of mesquite wood for cooking and firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes.

(2) Commercial shipments allowed in paragraph (a)(1) of this section are subject to the inspection and other requirements in § 319.40–9 and must be accompanied by an importer document stating that they are derived from trees harvested in Canada or States in Mexico adjacent to the United States border.

* * * * *

3. In § 319.40–5, paragraph (f) would be amended by adding the words "at a U.S. facility under compliance agreement with APHIS" immediately before the period, and a new paragraph (l) will be added to read as follows:

§ 319.40–5 Importation and entry requirements for specified articles.

* * * * *

(l) *Railroad ties and pine and fir lumber from Mexico.* Cross-ties (railroad ties) 8 inches or less at maximum thickness and lumber derived from pine and fir may be imported from Mexico into the United States if they:

(1) Originate from Mexico;

(2) Are 100 percent free of bark; and

(3) Are fumigated prior to arrival in the United States. The regulated article and the ambient air must be a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T–312 contained in the Treatment Manual. In lieu of the schedule T–312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m^3 with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

Done in Washington, DC, this 7th day of June 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–14844 Filed 6–10–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–62–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 737–600, –700, and –800 series airplanes, that currently requires an inspection of the power distribution panels (PDP) to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. That AD also requires repetitive torque checks of the terminal attachment screws. This action would add a requirement for repetitive replacement of the PDP rigid bus assembly with a new assembly. This proposal is prompted by reports of loss of electrical power from the engine-driven generators or the auxiliary power unit due to overheating, melting, and subsequent failure of the power feeder terminals. The actions specified by the proposed AD are intended to prevent such conditions, which could result in increased risk of fire and the loss of electrical power from the associated alternating current power source.

DATES: Comments must be received by July 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–62–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 29, 1999, the FAA issued AD 99–08–03, amendment 39–11107 (64 FR 15920, April 2, 1999), applicable to all Boeing Model 737–600, –700, and –800 series airplanes, to require an inspection of the power distribution panels (PDP) to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. That action also requires repetitive torque checks of the terminal attachment screws. That action was prompted by reports of loss of electrical power from the engine-driven generators or the auxiliary power unit due to overheating, melting, and subsequent failure of the power feeder terminals. The requirements of that AD are intended to prevent such conditions, which could result in increased risk of fire and the loss of electrical power from the associated alternating current power source.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–08–03, the FAA specified that the actions required by that AD were considered "interim action" and that the FAA was considering further rulemaking action to supersede that AD to require repetitive replacement of the PDP rigid bus assembly with a new assembly for all Boeing Model 737–600, –700, and –800 series airplanes. The FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–08–03 to continue to require an inspection of the PDP's to verify proper installation of the power feeder terminals and associated hardware, and corrective actions, if necessary. This action also would continue to require repetitive torque checks of the terminal attachment screws. This proposed AD would add a requirement for repetitive replacement of the PDP rigid bus assembly with a new assembly.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 153 airplanes of the affected design in the worldwide fleet. The FAA estimates that 56 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 99–08–03 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $6,720, or $120 per airplane.

The new replacement that is proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $20,160, or $360 per airplane, per replacement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11107 (64 FR 15920, April 2, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–62–AD. Supersedes AD 99–08–03, Amendment 39–11107.

Applicability: All Boeing Model 737–600, –700, and –800 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating, melting, and subsequent failure of the power feeder terminals, which could result in increased risk of fire and the loss of electrical power from the associated alternating current (AC) power source, accomplish the following:

Restatement of Requirements of AD 99–08–03, Amendment 39–11107:

Initial Inspection

(a) Within 90 days after April 19, 1999 (the effective date of AD 99–08–03, amendment 39–11107): Perform a one-time general visual inspection to verify proper installation of the power feeder terminals and associated hardware located in power distribution panels (PDP) P91 and P92, in accordance with the following procedures: Using a flashlight, inspect each of the six power feeder terminals by looking into the access holes located in the plastic cover of the rigid bus assembly. The holes are located on the aft face of PDP's P91 and P92. [Refer to the Boeing 737–600, –700, –800, –900 Airplane Maintenance Manual (AMM), Section 24–21–71/401, Figure 401 (Sheet 1), for the location of PDP P91 and P92.] On PDP P91, the holes are adjacent to terminal blocks TB5001 and TB5002. On PDP P92, the holes are adjacent to terminal blocks TB5005 and TB5006. There are a total of six holes per PDP. [Refer to the Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71/401, Figure 401 (Sheet 2), for the location of the access holes on the PDP's.] Note that although each PDP has nine power feeder terminals, only the six terminals adjacent to the access holes require inspection. Verify that the power feeder terminal is properly installed and held in place on the busbar by the No. 8 socket head cap screw, and verify that the cap screw is inserted into the hole in the terminal. For the proper power feeder terminal and screw buildup, refer to the Boeing 737–600, –700, –800, –900 AMM, Chapter 24–21–71/401, Figure 401 (Sheet 4). The subject power feeder terminal is identified as item [7] and the cap screw as item [12]. This visual inspection does not require loosening or removing any fasteners. The inspection may require looking through the access hole at a slight angle to see the terminal clearly. The terminal can be identified by its shiny metal finish; the current transformer behind the terminal block is made of plastic with a flat black finish. If the power feeder terminal and No. 8 socket head cap screw are not assembled as shown in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–71/401, Figure 401 (Sheet 4): Prior to further flight, replace the rigid bus assembly with a new assembly, in accordance with the procedures specified in Boeing 737–600, –700, –800, –900 AMM, Section 24–21–22.

Repetitive Torque Check

(b) Concurrent with the accomplishment of the requirements of paragraph (a) of this AD: Perform a torque check of the attachment screws of the power feeder terminals in accordance with the procedures specified in Boeing Maintenance Tip 737 MT 24–003, dated May 14, 1998. Repeat the torque check thereafter at intervals not to exceed 1,000 flight hours, in accordance with the maintenance tip.

New Requirements of This AD

Repetitive Replacement

(c) Within 1,000 flight hours after accomplishment of the eighth torque check required by paragraph (b) of this AD: Replace the PDP rigid bus assembly with a new assembly, in accordance with the procedures specified in Boeing 737–600, –700, –800, –900 AMM, Chapter 24–21–22. Repeat the replacement thereafter at intervals not to exceed 1,000 flight hours after every eighth torque check in accordance with the procedures specified in the AMM.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14817 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require repetitive tests of the flight idle backup system of the propeller control system; repetitive inspections to determine the level of wear of the pins and bushings of the cam followers on the power lever rods of the engine controls; and follow-on corrective actions, if necessary. This proposal also would require eventual replacement of the power lever and condition lever rods of the engine controls with new, improved parts, which constitutes terminating action for the repetitive tests and inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the flight idle backup system. In the event of failure of the primary propeller control system, such failure of the flight idle backup system could lead to uncommanded movement of the pitch of the propeller blade to below flight idle and into reverse thrust during flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–40–AD, 1601 Lind Avenue, SW.,

Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–40–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received reports indicating that wear has been detected on the cam followers of the power lever rods of the engine controls. The LBA further advises that such wear, if not corrected, could lead to failure of the flight idle backup system. In the event that the pitch control unit of the primary propeller control system fails, such failure of the flight idle backup system could lead to uncommanded movement of the pitch of the propeller blade to below flight idle and into reverse thrust during flight, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998, which describes procedures for repetitive tests of the flight idle backup system of the propeller control system; repetitive detailed visual inspections to determine the level of wear of the pins and bushings of the cam followers on the power lever rods of the engine controls; and follow-on corrective actions, if necessary. The corrective actions include replacement of the power lever rods with new power lever rods, replacement of the pins and bushings with new pins and bushings, inspections of the pins and bushings for wear or looseness, and tests of the flight idle backup system at changed intervals.

Dornier also has issued Service Bulletin SB–328–76–268, Revision 1, dated December 9, 1998, which describes procedures for replacement of the power lever and condition lever rods of the engine controls with new, improved parts. This replacement eliminates the need for the repetitive tests of the flight idle backup system and repetitive inspections of the power lever rods.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directive 1998–344/3, dated February 11, 1999, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Foreign Service Information

Operators should note that Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, does not specify corrective actions if any discrepancy is found while performing the flight idle backup test. This proposed AD would require repair of any discrepancy to be accomplished in accordance with a method approved by either the FAA, or the LBA (or its delegated agent).

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the test proposed by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane, per test cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane, per inspection cycle.

It would take approximately 10 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is

estimated to be $30,000, or $600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GMBH: Docket 99–NM–40–AD.

Applicability: Model 328–100 series airplanes having serial numbers (S/N) 3005 through 3098 inclusive, and S/N 3100, 3103, 3104, 3106, 3107, 3109, and 3110, on which Dornier Service Bulletin SB–328–76–268, dated August 11, 1998, or Revision 1, dated December 9, 1998, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flight idle backup system, which, in the event of failure of the primary propeller control system, could lead to uncommanded movement of the pitch of the propeller blade to below flight idle and into reverse thrust during flight, and consequent reduced controllability of the airplane, accomplish the following:

Flight Idle Backup Test

(a) Prior to the accumulation of 3,000 total flight hours, or within 3 days after the effective date of this AD, whichever occurs later, perform a test of the flight idle backup system of the propeller control system in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. If any discrepancy is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfahrt-Bundesamt (LBA) (or its delegated agent). Repeat the test thereafter at intervals not to exceed 1 day until accomplishment of the requirements of paragraph (c), (d), (e), or (f), as applicable.

Inspection of Cam Followers of Power Lever Rods

(b) Prior to the accumulation of 3,000 total flight hours, or within 7 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to determine the level of wear of the pins and bushings of the cam followers of the power lever rods of the engine controls, in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. Classify the level of wear for each power lever rod as specified in paragraphs (b)(1), (b)(2), and (b)(3) and accomplish the requirements of paragraph (c), (d), or (e) of this AD, as applicable, at the times specified in that paragraph.

(1) Type A wear: The bushing is worn such that the pin is visible in one or more locations.

(2) Type B wear: The bushing is worn, but the pin is not visible.

(3) Type C wear: The bushing is not worn.

Corrective Actions

(c) For power lever rods on which Type A wear is detected during the inspection required by paragraph (b) of this AD: Within 900 flight hours after accomplishment of that inspection, accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. Accomplishment of paragraph (c)(1) or (c)(2) terminates the tests required by paragraph (a) of this AD for that power lever rod only.

(1) Replace the power lever rod with a new power lever rod.

(2) Replace the pins and bushings with new pins and bushings, and accomplish paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Thereafter, accomplish follow-on inspections and corrective actions (i.e. inspections for wear or looseness of the replaced pins and bushings), at the times and in accordance with the Accomplishment Instructions of the alert service bulletin; and,

(ii) Within 900 flight hours after replacement of the pins and bushings, replace the power lever rod with a new power lever rod.

(d) For power lever rods on which Type B wear is detected during the inspection required by paragraph (b) of this AD: Thereafter, accomplish follow-on inspections and corrective actions at the times and in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998, until the requirements of paragraph (f) of this AD are accomplished.

(e) For power lever rods on which Type C wear is detected during the inspection required by paragraph (b) of this AD: Determination of Type C wear terminates the tests required by paragraph (a) of this AD for that power lever rod only. Thereafter, accomplish follow-on inspections and corrective actions at the times and in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998, until the requirements of paragraph (f) of this AD are accomplished.

Terminating Action

(f) Within 6 months after the effective date of this AD: Replace the power lever

and condition lever rods of the engine controls with new, improved parts in accordance with Dornier Service Bulletin SB–328–76–268, Revision 1, dated December 9, 1998. Accomplishment of the replacement constitutes terminating action for the requirements of this AD.

Note 2: Replacement of the power lever and condition lever rods accomplished prior to the effective date of this AD in accordance with Dornier Service Bulletin SB–328–76–268, dated August 11, 1998, is considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in German airworthiness directive 1998–344/3, dated February 11, 1999.

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14819 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–06–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that would have required modification of the off-wing emergency evacuation slide system. That proposal was prompted by reports that a certain type of off-wing escape slide aboard several airplanes separated from the airplane during flight. This new action revises the proposed rule by expanding the applicability to include additional airplanes. The actions specified by this new proposed AD are intended to prevent separation of the emergency evacuation slide from the airplane, which could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation.

DATES: Comments must be received by July 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–06–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 17, 1999 (64 FR 7827). That NPRM would have required modification of the off-wing emergency evacuation slide system. That NPRM was prompted by reports that a certain type of off-wing escape slide aboard several airplanes deployed and separated from the airplane during flight. Such separation of the emergency evacuation slide from the airplane could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to the NPRM.

Request to Expand Applicability

One commenter requests that the applicability of the proposed rule be revised to add Boeing Model 757–300 series airplanes. The commenter states that the effectivity listing in Boeing Service Bulletin 757–25–0200, dated January 21, 1999 (which is cited in the proposal as an appropriate source of service information for accomplishment of the actions specified), is applicable to both Model 757–200 and –300 series airplanes.

The FAA concurs with the commenter's request, having determined that the effectivity listing in the service bulletin referenced by the commenter does indeed include Model 757–300 series airplanes. The applicability and cost impact information of this supplemental NPRM has been revised accordingly.

Request to Revise Certain Wording

In addition, the FAA has received a comment requesting that the word "deployed" be removed from the sentence in the preamble that currently reads, "This proposal is prompted by reports that a certain * * * escape slide * * * deployed and separated from the airplane during flight." The commenter considers the word "deployed" to imply that the off-wing escape slide inflated. The commenter reports that, in all such cases where the off-wing slide was lost, it did not inflate but rather rotated out of its storage compartment and departed the airplane either in its packed configuration or in an unfurled condition.

The FAA concurs with the commenter's request. The purpose of the quoted statement is to explain the event that caused the unsafe condition. In light of the fact that the cause of the unsafe condition was inaccurately described, this supplemental NPRM has been revised to remove the word "deployed" from the summary section of the preamble.

Conclusion

Since adding airplanes to the applicability of this supplemental NPRM expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 503 airplanes of the affected design in the worldwide fleet. The FAA estimates that 441 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes identified in Boeing Service Bulletin 757–25–0182, Revision 1 (301 U.S.-registered airplanes), it would take approximately 40 work hours per airplane to accomplish the proposed modification of the door latch system, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,450 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $1,158,850, or $3,850 per airplane.

For airplanes identified in Boeing Service Bulletin 757–25–0200 (441 U.S.-registered airplanes), it would take approximately 4 work hours to accomplish the proposed installation of the bumper assembly and placards, at an average labor rate of $60 per work hour. Required parts would cost approximately $457 per airplane. Based on these figures, the cost impact of the proposed installation on U.S. operators is estimated to be $307,377, or $697 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–06–AD.

Applicability: Model 757–200 and –300 series airplanes equipped with off-wing emergency evacuation slides, as listed in Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997, or Boeing Service Bulletin 757–25–0200, dated January 21, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the emergency evacuation slide from the airplane, which could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the left and right off-wing emergency evacuation slide systems by accomplishment of paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes listed in Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997: Modify the door latch system of the left and right off-wing emergency evacuation slide systems in accordance with the service bulletin.

Note 2: Modification of the door latch system of the off-wing emergency evacuation slide system, prior to the effective date of this AD, in accordance with Boeing Service Bulletin 757–25–0182, dated October 10, 1996, is considered acceptable for compliance with paragraph (a)(1) of this AD.

(2) For airplanes listed in Boeing Service Bulletin 757–25–0200, dated January 21, 1999: Install a bumper assembly on the bottom of the left and right off-wing escape slide carriers, and install new placards in the area of the maintenance access door, in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14820 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–35]

Proposed Modification of Class D Airspace and Class E Airspace; Terra Haute, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace and Class E airspace at Terra Haute, IN. An analysis of the controlled airspace required for the instrument approach procedure for Terra Haute International-Hulman Field Airport, in light of the recent runway extension for that airport, have resulted in the need to modify the Class D airspace and the Class E airspace extension to the Class D airspace. The purpose of this action is to provide adequate operations at the airport. This action would increase the radius of the Class D airspace and modify the Class E airspace extension, incorporating the increased radius, for this airport.

DATES: Comments must be received on or before July 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–35, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–35." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D and associated Class E airspace at Terra Haute, IN, by increasing the radius of the Class D airspace and modifying the Class E airspace extension to the Class D airspace, incorporating the increased radius, for Terra Haute International-Hulman Field Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures and flight operations. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL IN D Terra Haute, IN [Revised]

Terra Haute International-Hulman Field Airport, IN
(Lat. 39°27′05″ N., long. 087°18′27″ W.)
Terra Haute, Sky King Airport, OH
(Lat. 39°32′52″ N., long. 087°22′38″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 5.7-mile radius of the Terra Haute International-Hulman Field Airport, excluding that airspace within a 1.0-mile radius of Sky King Airport.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL IN E4 Terra Haute, IN [Revised]

Terra Haute International-Hulman Field Airport, IN
(Lat. 39°27′05″ N., long. 087°18′27″ W.)
Terra Haute VORTAC
(Lat. 39°29′20″ N., long. 087°14′56″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Terra Haute VORTAC 047° radial, extending from the 5.7-mile radius of the Terra Haute International-Hulman Field Airport to 10.5 miles northeast of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on May 27, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–14856 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–34]

Proposed Modification of Class E Airspace; Escanaba, MI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Escanaba, MI. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 9 has been developed for Delta County Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before July 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–34, 2300 East Devon Avenue, Des Plaines, Illinois 60018

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–34." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Escanaba, MI, to accommodate aircraft executing the proposed ILS Rwy 9 SIAP at Delta County Airport, by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from the surface are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998,

which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(Lat. 45°43′22″N., long. 87°05′37″W.)
Escanaba VORTAC
(Lat. 45° 43′ 22″N., long. 87° 05′ 37″W.)
Escanaba VORTAC
(Lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)

Within a 4.3-mile radius of the Escanaba, Delat County airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 4.3-mile radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 4.3-mile radius to 7.4 miles east of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 266° radial, extending from the 4.3-mile radius to 7.0 miles west of the VORTAC, and within 3.2-miles each side of the Escanaba VORTAC 171° radial, extending from the 4.3-mile radius to 7.0 miles south of the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(lat. 45° 43′ 22″ N., long. 87° 05′ 37″W.)
Escanaba VORTAC
(lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Escanaba, Delta County Airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 6.8-miles radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 6.8-mile radius to 7.8 miles east of the VORTAC, and within 2.6 miles north and 3.5 miles south of the Escanaba VORTAC 270° radial extending from the 6.8-mile radius to 11.7 miles west of the VORTAC, and within 3.2 miles each side of the Escanaba VORTAC 171° radial, extending from the 6.8-mile radius to 7.0 miles south of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on May 27, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–14855 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–36]

Proposed Revocation of Class E Airspace, Lafayette, Aretz Airport, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Class E airspace for Lafayette, Aretz Airport, IN. All instrument approach procedures for the Aretz Airport have been cancelled in preparation for the closure of the airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is no longer needed to contain aircraft executing instrument procedures. This action would revoke the Class E airspace for Lafayette, Aretz Airport, IN.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–36, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related

aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–36". The postcard will be date/time stamped and returned to the commenter. all communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revoke the existing Class E airspace area at Lafayette, Aretz Airport, IN. All instrument approach procedures for the Aretz Airport have been canceled in preparation for the closure of the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is no longer needed to contain aircraft executing instrument procedures. The area would be removed from the appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significnat rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71:1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Lafayette, Aretz Airport, IN [Removed]

* * * * *

Issued in Des Plaines, Illinois on May 28, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–14857 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of Management Plan/Regulations of the Channel Islands National Marine Sanctuary; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Scoping Meetings

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Initiation of review of management plan/regulations; intent to prepare environmental impact statement; scoping meetings.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) was designated in September 1980, and consists of 1,252 square nautical miles of open ocean and near shore habitat approximately 25 miles off the coast of Santa Barbara, California, encompassing the waters surrounding San Miguel, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands from mean high tide to six nautical miles offshore. The present management plan for the Sanctuary was completed in 1982. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and

release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen to twenty-four months. NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the sanctuary's management plan and regulations. The scoping meetings are scheduled for the weeks of June 21 and July 5, 1999, as detailed below.

DATES: Written comments should be received on or before July 27, 1999.

Scoping meetings will be held:

(1) Monday, June 21, 1999, 6:30pm in Lompoc.

(2) Tuesday, June 22, 1999, 6:30pm in Santa Barbara.

(3) Wednesday, June 23, 1999, 6:30pm in Oxnard.

(4) Thursday, June 24, 1999, 6:30pm in Long Beach.

(5) Friday, June 25, 1999, 6:30pm in Ventura.

(6) Wednesday, July 14, 1999, 2:00pm in Washington, D.C.

ADDRESSES: Written comments may be sent to the Channel Islands National Marine Sanctuary (Management Plan Review), 113 Harbor Way, Santa Barbara, California 93109. Comments will be available for public review at the same address.

Scoping meetings will be held at:

(1) Cabrillo High School, Room SS–5, 4350 Constellation Rd., Lompoc, CA 93456.

(2) Chase Palm Park Center, 323 East Cabrillo, Santa Barbara, CA 93103.

(3) Casa Sirena Hotel and Marina, 3605 Peninsula Rd., Oxnard, CA 93035.

(4) Long Beach Aquarium Theatre, Long Beach, CA 90802.

(5) Sheraton 4-Points, Windjammers Meeting Room, 1080 Navigation, Ventura, CA 93001.

(6) Herbert C. Hoover Building, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Anne Walton, Management Plan Specialist, at (805) 884–1470.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 4, 1999.

John Oliver,

Chief Financial Officer/Chief Administrative Officer, National Ocean Service.

[FR Doc. 99–14717 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–116824–98]

RIN 1545–AW91

Notice and Opportunity for Hearing Upon Filing of Notice of Lien; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the notification required to be provided to any taxpayer named in a notice of lien under section 6323.

DATES: The public hearing originally scheduled for Tuesday, June 15, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking, and notice of public hearing that appeared in the **Federal Register** on Friday, January 22, 1999 (64 FR 3461), announced that a public hearing was scheduled for Tuesday, June 15, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6323 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Thursday, April 22, 1999. The outlines of topics to be addressed at the hearing were due on Tuesday, June 1, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of June 7, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, June 15, 1999, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–14797 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC036–2017–b; FRL–6356–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to convert our conditional approval of the District of Columbia's enhanced inspection and maintenance (I/M) program as a revision to the District of Columbia State Implemention Plan (SIP) to a full approval. In the "Rules and Regulations" section of this **Federal Register**, we are converting our conditional approval of the District's I/M SIP to a full approval as a direct final rule without prior proposal because we view this as a noncontroversial action and we anticipate no adverse comments. If we receive no adverse comments, we will not take further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 12, 1999.

ADDRESSES: Send written comments to: David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You may inspect copies of the documents relevant to this action during normal business hours at the following locations: Air Protection Division, 14th floor, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and District of

Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Avenue, S.E., Washington, DC 20020. Please contact Catherine L. Magliocchetti at (215) 814–2174 if you wish to arrange an appointment to view the docket at the Philadelphia office.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174 , or by e-mail at magliocchetti.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Inspection and Maintenance Program, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–14594 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 20

[CC Docket No. 94–102; DA 99–1049]

Compatibility of Wireless Services With Enhanced 911; Request for Comment on Wireless E911 Phase II Automatic Location Identification Requirements

AGENCY: Federal Communications Commission.

ACTION: Request for comment.

SUMMARY: This document requests comment on several issues relating to implementation of Phase II of the Commission's Enhanced 911 (E911) service rules. The Commission's E911 Rules require that covered wireless carriers deploy Automatic Location Identification (ALI) as part of E911 service beginning October 1, 2001, provided certain conditions are met. The Commission has expressed concern that the effect of this rule may not be technologically or competitively neutral for certain technologies, and expressed its willingness to consider such issues either in the E911 rulemaking or in response to requests for waivers. In response to a document released on December 24, 1998, a number of parties filed waiver requests and responsive pleadings. This document solicits comments on a variety of related issues in order to expedite decisionmaking on whether or not to promulgate Phase II standards in light of the potential availability of handset-based technologies.

DATES: Comments are due on or before June 17, 1999, and reply comments are due on or before July 2, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mindy Littell, 202–418–1310, or Dan Grosh, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Public Notice in CC Docket No. 94–102, DA 99–1049, released June 1, 1999. The complete text of the Public Notice is available for inspection and copying during normal business hours in the Reference Information Center, Federal Communications Commission, Court Yard Level, 445 12th Street, SW, Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), CY–B400, 445 12th Street, SW, Washington, DC 20554.

Synopsis of the Public Notice

1. Section 20.18(e) of the Commission's E911 rules currently require that covered wireless carriers deploy ALI as part of E911 service beginning October 1, 2001, provided certain conditions are met. This rule was adopted in the First Report and Order (61 FR 40348, August 2, 1996) and provides that covered carriers must provide the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square (RMS) methodology. The Commission, in a Memorandum Opinion and Order in this proceeding (63 FR 2631, January 16, 1998) (E911 Reconsideration Order), the Wireless Telecommunications Bureau (the Bureau) responded to concerns that the effect of section 20.18(e) might not be technologically and competitively neutral for some technologies that might be used to provide ALI, particularly handset-based technologies such as those using the Global Positioning Satellite (GPS) system. In addition, the Commission indicated its willingness to consider such issues either in the E911 rulemaking or in response to requests for waivers. In a Public Notice released late last year (64 FR 3478, January 22, 1999) (Waiver Public Notice), the Commission set forth guidelines and a filing schedule to assist those interested in filing waivers to section 20.18(e). The Waiver Public Notice also sought comment on the accuracy standards that should apply to handset-based solutions as part of the Phase II requirements or as a condition of any Phase II waiver that the Commission would grant. A number of parties filed waiver requests and other pleadings in response to the Waiver Public Notice.

2. In order to expedite decisionmaking on whether or not to promulgate Phase II standards in light of the potential availability of handset-based technologies, the Bureau released another Public Notice seeking targeted comment on: (1) whether to adopt standards for handset approaches similar to those outlined in two specific proposals submitted in the proceeding; (2) how specifically to handle the issues of roaming and handset turnover; and (3) whether the Commission should clarify or modify its methodology for determining ALI accuracy under Phase II. Comments submitted in response to this Public Notice will be included in the pending wireless E911 docket, and be utilized by the Commission in its further development of policies and rules for wireless E911 deployment, as well as potentially, in its consideration of the pending waiver requests.

3. First, based on the waiver petitions filed in response to the Waiver Public Notice and the comment received on those petitions, the Public Notice is seeking targeted comment on certain standards for handset-based solutions proposed by interested parties, including two proposals filed since the end of the formal pleading cycle on the Waiver Public Notice. Under both proposals, carriers deploying a handset-based solution would be required to start providing ALI on wireless 911 calls before the October 1, 2001, deadline and to provide ALI to a greater degree of accuracy than required under the Commission's rules.

4. One proposal was filed by SnapTrack, a developer of a handset-based solution incorporating GPS technology. SnapTrack has proposed conditions under which, it argues, carriers deploying a handset-based solution should be deemed compliant with the Phase II requirements. According to SnapTrack, the Commission should deem carriers to be in compliance if they: (1) begin to deploy location-capable handsets by January 1, 2001; (2) deploy only location-capable handsets after December 31, 2001; and (3) achieve location accuracy of 90 meters using circular error probability (CEP) methodology.

5. A second proposal was filed by APCO, an association of public safety communications officials. APCO proposed that the Commission permit a carrier to implement a handset-based

solution only if it deploys ALI-capable handsets according to a specific schedule and meets firm deadlines for achieving specific levels of ALI-capable handsets among all of its subscribers. Specifically, APCO proposes that the waiver conditions should include the following: (1) carriers must begin to offer ALI-capable handsets no later than January 1, 2001; at least 80 percent of handsets being deployed on the carrier's system must be ALI-capable as of December 31, 2001; and 100 percent of handsets being deployed on the carrier's system must be ALI capable as of December 31, 2002; (2) 25 percent of all phones in use on the carrier's system must be ALI-capable by the end of 2002, 50 percent must be ALI-capable by the end of 2003; 75 percent must be ALI-capable by the end of 2004; and 100 percent must be ALI-capable by the end of 2005; (3) carriers must commit to a specific average accuracy level substantially better than the current Phase II requirement; and (4) carriers must agree to implement technologies that meet industry standards for interfacing with all carriers and PSAPs.

6. Other parties proposed similar approaches relating to early deployment and increased accuracy. For instance, with regard to location accuracy, AirTouch has suggested that the Commission approve ALI-capable handsets that provide ALI with 90-meter accuracy and 70 percent reliability as determined using CEP. Similarly, Ameritech has suggested that the Commission require handset-based solutions to meet a two-dimensional location accuracy standard of 90 meters with 67 percent confidence.

7. On the other hand, some parties have argued that any change to the Commission's rules that permits something less than 100 percent compliance by October 1, 2001, will unduly delay the availability of ALI to all Americans. These parties assert that the public interest would not be served by permitting such a phased-in implementation schedule despite any putative benefits from an earlier start date and greater degree of accuracy.

8. Because the SnapTrack and APCO submissions were filed late in the waiver proceeding, preventing some interested parties from commenting on these proposals, and because the Bureau believes that targeted comment focused on specific proposals will expedite decisionmaking, it is seeking additional comments on these proposals.

9. In response to the Waiver Public Notice, petitioners and commenters provided limited information concerning steps to minimize the problems likely to be encountered by customers without ALI-capable handsets roaming outside of service areas that have adopted a network-based solution and into areas where a carrier has deployed a handset-based solution. One of the concerns is that, because the handsets of such "roamers" will lack the necessary equipment or software needed for the carrier's handset-based approach, the carrier may not provide ALI for all calls, as the Commission's rules require. Waiver proponents predict that roamer issues will be insubstantial and will disappear over time as a result of handset churn and the fact that manufacturers will take advantage of economies of scale and mass produce ALI-capable handsets. In addition, several parties contend that, even if a roamer cannot be located to Phase II specifications, the carrier will be able to provide the PSAP with Phase I-level location information. The Bureau requests additional information regarding the extent of roamers who may not have ALI-capable handsets and other concerns related to providing ALI for roamers without ALI-capable handsets. The Bureau also requests additional information with respect to the usefulness of Phase I location information as a back-up for wireless users without ALI-capable handsets.

10. The Bureau also requests comment on the issues of handset turnover and roaming. It noted that only one commenter specifically addressed the handling of subscribers who do not replace their handsets frequently. There is concern that this type of customer, when served by a carrier deploying a handset-based system, may not enjoy the public safety benefits of ALI for an extended period of time. One solution may be to impose an obligation upon carriers adopting a handset-based system to offer either to retrofit or to replace subscriber handsets to make them ALI-capable at the carrier's expense or, at a minimum, at a very substantial discount, if subscribers have not upgraded their handsets by a certain date. This would help ensure that customers who do not regularly upgrade their handsets will not be left without ALI following the deployment of a handset-based system in their service area. The Bureau seeks comment on the potential costs of such an approach and request suggestions on what period of time would be appropriate before the carrier would be obligated to retrofit or replace non-ALI-capable handsets of its subscribers.

11. Sprint commented that the best solution may be a combination of approaches. Specifically, Sprint favors deploying a handset-based system for new customers, along with establishing an interim network software solution capable of providing location information that would exceed Phase I requirements for those customers with non-GPS handsets and end users of other carriers roaming into a Sprint service area. Sprint argues that this software-based network system, while not as accurate as the traditional triangulation devices previously proposed, would be substantially less expensive and would provide sufficient accuracy to meet public safety needs. Specifically, Sprint contends that, were it to adopt a handset-based approach as its principal means of implementing Phase II E911 service, it would also install a software-based network solution that could provide location information with an accuracy within 285 meters for non-ALI-capable handsets. Sprint's submission appears to present a means by which carriers adopting a handset-based system could provide ALI for all calls, as required by the rules. The Bureau requests comment on this approach and the level of location accuracy that could be provided using this software-based network system.

12. In addition, the Bureau seeks comment on the appropriate methodology for determining ALI accuracy. In the E911 Reconsideration Order, Section 20.18(e) was amended to clarify that licensees subject to the section—regardless of the ALI technology utilized—must provide to the designated PSAP the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square (RMS) methodology. Since the rule's amendment, the Commission has received several filings indicating that it may be necessary to reevaluate the appropriate methodology for determining ALI accuracy. Specifically, filings and presentations by Ericsson and the Wireless E9–1–1 Implementation Ad Hoc (WEIAD) group seek clarification of the accuracy requirement. These parties argue that the RMS methodology adopted by the Commission should not apply to the ALI accuracy for all E911 calls because a small number of measurements that are very inaccurate will prevent a carrier from complying with the ALI requirement even if the vast majority of ALI measurements are less than 125 meters. In response to the waiver requests, Cell-Loc commented that confusion still exists regarding the meaning of an RMS accuracy specification. SnapTrack and other proponents of handset-based solutions advocate the use of CEP in evaluating

the accuracy of those systems. TruePosition, a proponent of a network-based solution, asserts that SnapTrack has mischaracterized the accuracy standard and the degree of market penetration necessary to exceed it.

13. Because of the importance of this issue with respect to all ALI technologies, the Bureau seeks additional comment on all of these arguments and invites recommendations on the appropriate methodology for measuring ALI accuracy, consistent with the Commission's goal of providing the best ALI accuracy for all callers.

Filing Schedules and Instructions

14. Interested parties may file comments on the topics raised in this document no later than June 17, 1999; reply comments must be filed on or before July 2, 1999.

Administrative Information

15. To file formally in this proceeding, commenters must file an original and five copies of all comments and reply comments. If parties want each Commissioner to receive a personal copy of their comments, an original and ten copies must be filed. All comments should reference CC Docket No. 94–102 and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, TW–A325, S.W., Washington, D.C. 20554. One copy of all comments should be sent to Mindy Littell, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., 3–B103, Washington, DC 20554. One copy should also be sent to: International Transcription Service, Inc. (ITS), CY–B400, 445 12th Street, SW, Washington, DC 20554.

16. Because these comments will be included in CC Docket No. 94–102, and may be considered in the context of the ongoing wireless E911 rulemaking, we believe that it is appropriate to treat this as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 CFR 1.1200, 1.1206.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–14930 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–214, RM–9546]

Radio Broadcasting Services; Camp Wood, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by La Radio Cristiana Network, Inc. proposing the substitution of Channel 251C3 for Channel 256A at Camp Wood, Texas, and modification of the construction permit for Station KAYG. The channel can be allotted to Camp Wood in compliance with the Commission's spacing requirements at coordinates 29–42–53 and 100–00–56. Mexican concurrence will be requested for this allotment. In accordance with Section 1.420(g) of the Commission's Rules, should another party indicate an interest in the Class C3 allotment, the modification cannot be implemented unless an equivalent class channel is also allotted to Camp Wood.

DATES: Comments must be filed on or before July 26, 1999, and reply comments on or before August 10, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry D. Wood, Paul H. Brown, Wood, Maines & Brown Chartered, 1827 Jefferson Place, NW, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–214, adopted May 26, 1999, and released June 4, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–14794 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144; DA 99–974]

Comments Requested on the Construction Requirements for Commercial Wide-Area 800 MHz Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio commercial licensees that are part of a wide area system following the decision by the U.S. Court of Appeals for the District of Columbia to remand to the Commission for further analysis its decision to adopt construction requirements for these licensees that differ from those adopted for Economic Area 800 MHz licensees.

DATES: Comments are due to be filed by July 12, 1999, and reply comments are due by July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Scott A. Mackoul or Don Johnson, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This document, released May 21, 1999, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington,

DC 20036 (202) 857–3800. The document is also available via the internet at http://www.fcc.gov/Bureaus/Wireless/Public Notices/1999/index.html.

Synopsis of Document

1. In this document, the Wireless Telecommunications Bureau ("Bureau") requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio commercial licensees that are part of a wide area system ("wide-area licensees"). The Bureau seeks comment on this matter following the decision by the U.S. Court of Appeals for the District of Columbia in *Fresno Mobile Radio, Inc.* v. *F.C.C.* (165 F.3d 965, DC Cir., Feb 5, 1999) to remand to the Commission for further analysis its decision to adopt construction requirements for incumbent wide-area licensees that differ from those adopted for Economic Area ("EA") 800 MHz licensees. The court held that the Commission did not adequately explain whether wide-area licensees are sufficiently different from EA 800 MHz or other geographic based licensees to warrant different construction requirements.

2. In this document, the Bureau seeks comment on whether the Commission should adopt on remand the construction requirements that were in effect for wide-area licensees prior to the *Fresno* decision. Section 90.629 of the Commission's rules states the current construction requirements of wide-area licensees. Initially, 800 MHz licensees were able to apply for a period of up to five years to construct and place their system in operation if an extended implementation period was justified. In 1995, the Commission stopped accepting requests for extended implementation, accelerated the termination date of existing implementation periods, and required licensees seeking to retain extended implementation to demonstrate compliance with section 90.629 of the Commission's rules. Because the court held that the Commission failed to adequately explain its rationale for adopting different construction requirements in the 800 MHz band, parties who support the Commission's decision are encouraged to explain fully why the agency's approach is reasonable.

3. In this document, the Bureau also solicits comment on whether the Commission should adopt for wide-area licensees construction requirements similar to those imposed on EA 800 MHz licensees and other licensees that are licensed on a geographic area basis. Parties who believe that construction requirements should be similar to geographic area licensees are encouraged to take into account the differences in the way the Commission licensed wide-area 800 MHz systems (i.e., by site-specific licensing) and geographic area licenses when addressing what should be the appropriate requirements for wide-area licensees. In order to determine whether a wide-area licensee has met the coverage requirements, these parties are also encouraged to address whether the Commission should measure the relevant population based on the entire wide-area, individual EAs located within a wide-area system, or some other alternative. In addition, interested parties are asked to address how the Commission should determine the new timetable for construction of wide-area systems. The Bureau stated that one option would be to adopt the three and five year benchmarks that were adopted for 800 MHz EA licensees, and begin the construction period as of the effective date of the new construction requirements. The Bureau asked for comment on whether the three and five year benchmarks for wide-area licensees would be fair to EA 800 MHz licensees given that wide-area licensees have already had a number of years to construct their systems. The Bureau also requested comment on alternative construction timetables, and on whether the Commission should require a wide-area licensee to construct a minimum number of frequencies throughout its wide-area system.

4. Additionally in this document, the Bureau also permits interested parties to present alternative proposals for construction requirements for wide-area licensees. Parties that do present alternative proposals are asked to consider that their proposals should balance the need to provide wide-area licensees with construction requirements that are not unduly burdensome with the need to ensure that wide-area licensees do not warehouse spectrum or unreasonably delay service to the public. Moreover, parties are asked to address the specific technical differences and similarities associated with constructing commercial wide-area 800 MHz SMR systems, EA 800 MHz systems, and other wireless services that are licensed on a geographic basis, and how these differences and similarities should affect the construction requirements for wide-area licensees.

Federal Communications Commission.

Jim Schlichting,

Deputy Bureau Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–14835 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies Mr. W. A. Barr's petition to require warning systems on all vehicles to alert operators and the immediate public when a vehicle is not immobilized and may move after the operator exits the vehicle. Based on our analysis of his petition, we conclude that the cost of requiring the system requested by Mr. Barr would far exceed the potential benefits.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Flanigan's telephone number is: (202) 366–4918. His facsimile number is (202) 366–4329.

Background

1980 Defect Investigation of Ford Vehicles

In 1980, we conducted an extensive investigation (Office of Defects Investigation (ODI) Case No. C8–02) of alleged safety-related defects in model year 1970 through 1979 Ford vehicles. On June 6, 1980, we made an initial determination that a safety-related defect existed in all of those vehicles. We determined that the park gear may not be securely engaged after an attempt to shift; that the transmission may shift to reverse by itself without warning, allowing the vehicle to move while unattended; and that such uncontrolled vehicle movement may result, and had resulted, in injury or death to vehicle occupants or pedestrians. However, the Secretary of Transportation never made a final determination of the existence of a safety-related defect. Instead, this investigation was terminated by a settlement agreement entered into on

December 30, 1980. The settlement agreement required Ford to send both warning letters and self-sticking labels to all owners of the subject vehicles. These letters and labels informed recipients of our determination and reminded them of proper procedures to follow when parking and leaving their vehicles. The proper procedure includes making sure the transmission is in the park position, setting the parking brake, and shutting off the engine.

Mid-1980's Petitions for Defect Investigation

On March 6, 1985, the Center for Auto Safety (CFAS) petitioned us to initiate an expedited defect investigation into the failure of automatic transmissions in 1966 through early 1980 Ford vehicles to hold or engage in park. CFAS stated that these vehicles have been the cause of more fatalities and injuries than any other defect since our 1980 settlement with Ford. CFAS believed that, because the terms of this settlement called for reopening the investigation if the warning labels failed to decrease park to reverse incidents, we should do so. CFAS stated that the reason for the supposed ineffectiveness was that the labels were not being placed in a significant number of vehicles. We denied this petition based mainly on the fact that there was no new technical information presented by CFAS which would alter our findings in the 1980 defect investigation. Also, the data showed that the number and rate of park to reverse incidents involving the subject Ford vehicles had declined in every year since the 1980 settlement. ODI compiled a report discussing the rationale for denying CFAS's petition that was published on July 3, 1985 (P85–15–30) (hereafter referred to as "the 1985 ODI report").

Mr. Barr petitioned us on December 4, 1986, and again on June 29, 1989, to commence a formal defect investigation to address not only Ford vehicles, but all vehicles with automatic transmissions. In these petitions, Mr. Barr asserted that any movement of a vehicle with no driver and with an automatic transmission which has been placed in the park position occurred because of an "illusory park" unless the shift lever was removed from the latched position after the driver exited the vehicle. He further asserted that the possibility of such an illusory park condition constituted a safety-related defect.

Mr. Barr stated that a vehicle's transmission is in an "illusory park" position when either the vehicle operator does not fully move the shift lever into the park position or the transmission components are degraded, broken, or maladjusted. He further states that, if a transmission is in illusory park, it will appear to the vehicle operator that the vehicle is immobilized upon exiting the vehicle. Two modes of park to reverse incidents could result when the vehicle is in illusory park. If the vehicle's engine is running, internal forces in the transmission could cause the park system to migrate to the reverse position. As a result, the vehicle would move rearward in powered reverse. If the vehicle's engine is not running and the transmission comes out of park, the vehicle could move forward or backward, depending on the grade of the roadway. Mr. Barr asserts that, unless the shift lever is manually removed from the latched park position after the operator has left the vehicle, any movement of a vehicle with no operator and an automatic transmission occurs because the vehicle was in the "illusory park" position.

We denied both of these petitions because there was no reason to expect that any further investigation of this matter would result in a determination that the vehicles in question contained a safety-related defect, because we had already conducted a thorough investigation on this subject for the 1985 ODI report.

The Current Petition for Rulemaking

On June 24, 1998, Mr. Barr petitioned us to conduct rulemaking to require a warning system on all vehicles that would alert operators and the immediate public when a vehicle is not immobilized and may move after the operator exits the vehicle. Mr. Barr states that "it is reasonable that every empty vehicle with an automatic transmission which moves, does so because the selector lever was not in the park slot or was in the park slot but the park system linkage was broken or maladjusted so that the system could not properly place the pawl in its park position." He bases this assertion on analysis provided by Ford in response to our investigation. In Ford's response, it states that, if the driver shifts into park, it is impossible for the transmission to "jump" or "slip" into reverse unless a transmission component is broken or the control system is grossly maladjusted.

As a result of vehicles being placed into "illusory park," Mr. Barr believes that there are 64 fatalities and 650 injuries annually. He derives these numbers first by citing data obtained from the 1985 ODI report. For this report, Fatality Analysis Reporting System (FARS) data for the period of 1975 through 1984 were searched for all incidents which involved driver-less vehicles and in which a pedestrian was killed. This search produced 443 records for an average of 44.3 fatalities per year. Mr. Barr also cites data submitted to us by Ford regarding the CFAS petition (P85–15) which lists fatalities caused by non-Ford vehicles with automatic transmissions. From this list, Mr. Barr extracted only the vehicles that were not contained in the FARS data used in the 1985 ODI report. From this he found an additional 197 fatalities during the same ten year period for an average of 19.7 per year. Adding the annual averages of 44.3 fatalities found in the FARS data to the 19.7 fatalities found in the list Ford submitted gives Mr. Barr his estimate of 64 fatalities per year.

Mr. Barr estimates the injury rate of 650 per year by using data contained in the 1985 ODI report. The report shows that ODI received reports on 4,597 injuries and 412 fatalities as a result of park to reverse incidents in all model year 1966 through 1979 Ford vehicles. This yields a ratio of 11.2 injuries per fatality. By assuming that this Ford vehicle ratio would be similar when comparing injuries to fatalities in all driver-less vehicle incidents, he estimated that the number of injuries would be approximately ten times the number of fatalities, thus coming up with the value of 650 injuries per year.

Because Mr. Barr believes that there is no feasible mechanical fix that would remedy the perceived problem, he petitioned us to implement new requirements for vehicles with automatic transmissions to have warning systems that alert the driver and/or nearby pedestrians when one of three situations occur. First, when the driver opens the driver side door and the transmission shift lever is not latched in park, a warning of this condition would be activated until the driver latches the shift lever in park or closes the door. Second, when the driver opens the driver side door and the park system linkage is broken or maladjusted, another warning annunciating that condition would be activated until the driver deactivates it by opening a manual switch. This switch would be automatically closed when the ignition is next activated. Third, if the driver ignores either of the first two warnings, a loud, audible, exterior warning would be activated to warn the driver and nearby pedestrians that the vehicle is not properly immobilized.

Agency Analysis of Mr. Barr's Petition

Based on our analysis of Mr. Barr's petition, we conclude that he has made

a number of assumptions, many of which cause him to substantially overstate the problem size. For instance, in his petition, Mr. Barr asserted that "it is reasonable that every empty vehicle with an automatic transmission that moves, does so because the selector lever was not in the park slot or was in the park slot but the park system linkage was broken or maladjusted so that the system could not properly place the pawl in its park position." The data obtained from the 1985 ODI report that he cites in the petition refer to vehicles in which there was no *driver* present and a pedestrian was killed. This does not necessarily mean that the vehicles were empty. As discussed below, in many of the cases, while they were driverless, there were other passengers present in the vehicles. One of these other passengers may have caused the transmission to move out of the park position by inadvertently bumping the shift lever. Further, if children are left unattended and unrestrained, they could play with the shift lever and take it out of park.

Cases of children moving the shift lever can be avoided by taking a few simple precautions. First, as required by all States, children should be restrained in a vehicle at all times. This would make it more difficult for them to access the shift lever. Also, children should not be left unattended. Second, most States also require that, when a vehicle is left unattended, the vehicle's transmission must be placed in the park position and the parking brake must be engaged. Moreover, many states require that the key be turned to the position which locks the ignition and must be removed. Most owners' manuals also contain these precautions. When these precautions are taken, it is highly unlikely for a passenger to be able to move the vehicle's shift lever out of the park position. And, if a vehicle's transmission was somehow jostled out of park by some means, the parking brake would be set and the engine would be off which would also make it highly unlikely for the vehicle to be involved in a park to reverse incident.

As stated above, we believe that Mr. Barr's estimates of fatalities caused by park to reverse incidents are substantially overstated. He used FARS data for a time span (1975 through 1984) that includes the vast majority of the Ford vehicles that were subject to the 1980 defect investigation. We believe a fair estimate of the current problem should not include a population of old vehicles that had an unusually high incidence of transmission problems in an analysis of the entire vehicle population. The rate of park to reverse incidents in the non-Ford vehicle population was much lower than that of the Ford vehicles during that time span. In fact, for model year 1970 through 1979 Ford vehicles, there were 72 fatalities reported to ODI between 1981 and 1985 that were apparently caused by a park to reverse incident. During this same period of time, a total of 26 such fatalities was reported to ODI that involved model year 1970 through 1979 General Motors (GM), Chrysler, and American Motors Corporation vehicles combined. Thus, the Ford vehicles apparently were involved in almost three times more park to reverse incidents than the next three largest manufacturers combined. For this reason, we believe that using the 1975[1] through 1984 FARS data will substantially overestimate the average number of fatalities that could be expected to occur in the late 1990's.

In addition, Mr. Barr's use of the 1975–1984 time period misses the effects of a significant amendment to Standard No. 114, Theft Protection. During the 1975–1984 time period examined by Mr. Barr, Standard No. 114 required that vehicles have a key locking system that prevents the vehicle's steering or forward self-mobility, or both, when the ignition key is removed. Significantly, Standard No. 114 at that time did not prohibit systems in which the transmission lever could be shifted when the vehicle is parked with the ignition locked.

That changed with our May 30, 1990, rule amending Standard No. 114 (55 FR 21868). Since September 1, 1992, when the changes became effective, Standard No. 114 has required the key-locking system to prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key. This was a significant change that required many manufacturers to redesign their automatic transmissions. Mr. Barr's use of 1975–1984 data completely misses the impacts of this upgrade of the safety standard. We conclude that the failure to consider this upgrade is another cause of Mr. Barr substantially overestimating the number of rollaway crashes.

Mr. Barr also used an inaccurate method in determining the number of annual injuries which occur as a result of park to reverse incidents. He cites our driverless vehicle injury and fatality reports for Ford's 1966 through 1979 model year vehicles and applies this ratio to all other manufacturers' vehicles. As stated above, the Ford vehicles exhibited an unusually high rate of involvement in park to reverse incidents and, therefore, should not be used to estimate the involvement of other non-Ford vehicles. Based on the significantly lower rate of involvement in park to reverse incidents of the non-Ford vehicles, we believe Mr. Barr's assumptions that the rate of injury will be approximately the same in both Ford and non-Ford vehicles and that data from 1975 through 1984 is still valid in the late 1990's caused him to substantially overestimate the expected injuries.

We do, however, recognize that some transmissions may contain defects that have the ability to create unsafe conditions by allowing vehicles to move after the driver believes that he or she has placed the transmission in park. However, we believe that Mr. Barr's approach to remedy these occasional problems is far too costly. His approach would be expensive as manufacturers would have to redesign transmissions to accommodate a sensor system to detect the multiple situations he describes when the transmission is not adequately placed in the park position. Internal and external annunciators would have to be installed that could produce a clear audible warning. Because transmission control systems can be electronically or mechanically-controlled, it is difficult to estimate an exact cost for the system. However, we believe it would exceed $20 per vehicle. With approximately 16,000,000 million vehicles produced annually in the U.S., this would put the annual cost of such a requirement at a minimum of $320,000,000, which would far exceed the likely anticipated benefits of such a requirement.

We will continue to investigate particular makes and models of vehicles on a case-by-case basis where there is information indicating the existence of a possible safety defect. Using this method, we can focus on a specific vehicle's specific problem. For instance, we have conducted defect investigations regarding defective gear selection indicators that may show that the vehicle is in park when actually it is not, water leakage into transmissions which could cause malfunctions, and broken internal components which could also cause malfunctions. In many cases, these investigations have led manufacturers to recall the vehicles to provide a remedy for the problem.

In accordance with 49 CFR part 552, this completes our review of the petition. We have concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, we deny Mr. Barr's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 7, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–14834 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 052599C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources; Reef Fish Resources of the Gulf of Mexico; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on its "Draft Amendment 12 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic, Including Environmental Assessment and Regulatory Impact Review," and "Draft Amendment 17 to the Fishery Management Plan for Reef Fish Resources, Including Environmental Assessment and Regulatory Impact Review."

DATES: Written comments on the Draft Amendments will be accepted by the Gulf Council through July 14, 1999, but are preferred by July 1, 1999. The public hearings will be held in June. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to, and copies of the draft amendments are available from, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619. The public hearings will be held in Florida, Alabama, and Texas. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Draft Amendment 12 contains provisions for extending the commercial king mackerel permit moratorium for 3 or 5 years from its current expiration date of October 15, 2000, in order to provide time for the Gulf and South Atlantic Councils to develop and implement a controlled access system for the king mackerel fishery. Draft Amendment 17 contains provisions for extending the commercial reef fish permit moratorium by 3, 4, or 5 years from its current expiration date of December 31, 2000, in order to provide time for the Gulf Council to develop and implement a controlled access system for the reef fish fishery.

A total of 4 public hearings on both draft amendments will be held to obtain public comments on these draft amendments. The public comment period for these draft amendments ends on July 14, 1999; however, the Council prefers to receive written comments by July 1, 1999.

Public hearings will be held from 7:00 p.m. to 10:00 p.m. at all of the following locations:

1. Monday, June 14, 1999—City Hall Auditorium, 3001 Municipal Drive, Madeira Beach, FL;

2. Tuesday, June 15, 1999—National Marine Fisheries Service Panama City Laboratory, 3500 Delwood Beach Road, Panama City FL;

3. Wednesday, June 16, 1999—Orange Beach Community Center, 27235 Canal Road, Orange Beach, AL; and

4. Thursday, June 17—Ellis Memorial Library, 700 West Avenue A, Port Aransas, TX.

Copies of the draft amendments can be obtained by calling 813–228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 7, 1999.

Dated: June 7, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14903 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 112
Friday, June 11, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on June 28 and 29, 1999.

DATES: The meeting will be held on June 28 and 29, 1999, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held in the Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room on the fourth floor of the Franklin Court Building, 1099 14th St., N W., Washington, DC on Monday and Tuesday, June 28 and 29, 1999. from 8:30 AM to 5 PM each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 1999 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 1999 pension actuarial examination and the May 2000 basic actuarial examinations will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Public Law 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1999 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 2 PM on June 29 and will continue for as long as necessary to complete the discussion, but not beyond 3:30 PM. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person may also file written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications statements should be mailed no later than June 21, 1999 to Patrick W. McDonough, Joint Board for the Enrollment of Actuaries, Office of Director of Practice, Internal Revenue Service (C:AP:P), 1099 14th St., NW., Washington, DC 20005 or by facsimile to (202) 694–1876.

Dated: June 8, 1999.

Paulette Tino,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 99–14890 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Commodity Credit Corporation's (CCC) intention to request a reinstatement of a previously approved information collection, under the Noninsured Crop Disaster Assistance Program (NAP). Assistance under the NAP is authorized by Section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), and implemented by regulations issued by CCC. Section 196(b) of the 1996 Act specifies that producers shall provide records and information as requested by the Secretary to carry out the program.

DATES: Comments on this notice must be received by August 10, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact G. Sean O'Neill, Chief, NAPB, PECD, FSA, USDA, STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250–0517; e-mail Sean__Oneill@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0175.

Type of Request: Reinstatement of a previously approved collection.

Abstract: The information which will be collected under OMB control number 0560–0175 will allow CCC to effectively administer noninsured crop disaster assistance authorized and mandated by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). The information collected allows CCC to provide assistance under the noninsured crop disaster assistance program for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under section 508(b) of the Federal Crop Insurance Act is not available; and that is produced for food or fiber. Additionally, the 1996 Act specifically makes benefits available for

floricultural, ornamental nursery, Christmas tree crops, turfgrass sod, seed crops, aquiculture (including ornamental fish), and industrial crops. The information collected is necessary to determine whether a producer, crop and commodity meet applicable conditions for assistance and to determine compliance with existing rules. When damage to a crop or commodity occurs as a result of a natural disaster, producers requesting NAP assistance must: (1) File a current crop year report of acreage; (2) file a notice of loss with the local FSA county office within 15 days of the occurrence or 15 days of the date damage to the crop or commodity becomes apparent; (3) certify production by the applicable acreage reporting date for the crop in the subsequent crop year; and (4) file an application for payment with the local FSA county office no later than the applicable acreage reporting date for the crop in the subsequent crop year. When a producer requests FSA to calculate an approved yield for a specific crop on the basis of actual yield versus reduced yields (i.e. transitional-yield (T-yield), assigned yield, zero yield, etc.), the producers must certify annually the planted acreage and production for the crop year prior to the applicable reporting dates.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.5554 hours per response.

Respondents: NAP crop producers.

Estimated Number of Respondents: 497,000.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 2,511,901 hours.

Proposed topics for comments include, but are not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of informational technology. Comments regarding this information collection requirement should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Agriculture, Washington, D.C. 20503, or to G. Sean O'Neill, Chief, Noninsured Assistance Program Branch; Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, Room 3646-South Building, 1400 Independence Avenue, SW, Washington, D.C. 20250–0517; e-mail Sean__Oneill@wdc.fsa.usda.gov. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on June 7, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–14845 Filed 6–10–99; 8:45 am]

BILLING CODE 3410–05–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: July 12, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On January 22, March 22, and April 9, 16, 23, and 30, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 3483, 13767, 17312, 18877, 19976 and 23267) of proposed additions to and deletions from the Procurement List:

Additions

The following comments pertain to Towbar Assembly, 3920–01–000–0559:

Comments were received from the current contractor. The commenter said the corporate unit which produces the towbar assemblies is a small business whose main customer is the U.S. Postal Service, and losing this contract for the Postal Service would have a major effect on corporate income and employment levels. The commenter did not provide details on these effects. According to data available to the Committee, this contract represents a percentage of the contractor's total sales which is below the level the Committee normally considers to constitute severe adverse impact on a company. Consequently, the Committee has concluded that addition of these towbar assemblies to the Procurement List is not likely to have a severe adverse impact on the contractor.

The addition of the towbar assemblies to the Procurement List will create employment for people who are blind. The unemployment rate of such people far exceeds that of people without disabilities. The Committee believes creating this employment outweighs the possible loss of jobs for some of the commenter's employees, who could more easily find other employment.

The following comments pertain to Vegetable Oil, 8945–00–NSH–0001:

Comments were received from one of the current contractors in response to a Committee request for sales data. The contractor indicated that it is a small business facing intense competition from larger businesses, and that the percentage decrease in its sales which it believed this Procurement List addition would cause would be devastating to the company.

This contractor is one of two currently supplying the Government's requirements of this vegetable oil. Its contract represents a somewhat smaller portion of its total sales than its comments indicated would cause a devastating impact. In addition, the nonprofit agency which will supply the vegetable oil after it is added to the Procurement List will phase in its production over a two year period, during which Government purchases of the vegetable oil from the commenting contractor are expected to increase. Consequently, the impact of the addition on the contractor will be less and more gradual than the contractor anticipated. Accordingly, the Committee does not believe the addition of the vegetable oil to the Procurement List will have a severe adverse impact on the contractor.

The following material pertains to all of the items being added to the Procurement List:

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current

or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Towbar Assembly
3920–01–000–0559
Vegetable Oil
8945–00–NSH–0001
(15% of the total Government requirement)

Services

Base Supply Center and Operation of Individual Equipment Element Store, Mountain Home Air Force Base, Idaho
Base Supply Center and Operation of Individual Equipment Element Store, Nellis Air Force Base, Nevada

Carwash Service

USDI, Bureau of Land Management, 1661 South Fourth Street, El Centro, California

Janitorial/Custodial

INS Detention Center, 1115 N. Imperial Highway, El Centro, California
Santa Ana Federal Building, 34 Civic Center Plaza, Santa Ana, California
U.S. Customhouse, 300 S. Ferry Street, Terminal Island, California

Photocopying Service

GPO Program #C294–S (FHWA Register)
(Requirements for the Government Printing Office, Washington, DC)

Security Services

Air Passenger Terminal, Travis Air Force Base, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Pencil, Mechanical 7520–00–164–8950
7520–0–268–9916
Fly Tent, Nylon, Polyurethane Coated
8340–00–102–6370
8340–01–185–5512

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–14851 Filed 6–10–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 12, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, 910th Air Lift Wing, Youngstown Air Reserve Station, Vienna, Ohio
NPA: The Clovernook Center, Opportunities for the Blind, Cincinnati, Ohio
Commissary Shelf Stocking, Custodial and Warehousing, Camp Pendleton, California
NPA: Job Options, Inc., San Diego, California
Operation of Peace Corps Warehouse and Distribution Center, 2416 Oakville Street, Alexandria, Virginia
NPA: Sheltered Occupational Center of Northern Virginia, Arlington, Virginia
Switchboard Operation, Langley Air Force Base, Virginia

NPA: Association for Retarded Citizens of the Peninsula, Inc, Hampton, Virginia

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service has been proposed for deletion from the Procurement List:

Grounds Maintenance, Basewide (except Military Family Housing), Kelly AFB, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–14852 Filed 6–10–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–805]

Frozen Concentrated Orange Juice From Brazil; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson at (202) 482–1776, or Sergio Gonzalez at (202) 482–1779, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230.

POSTPONEMENT OF FINAL RESULTS OF ADMINISTRATIVE REVIEW: The Department published the preliminary results of the eleventh administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil on February 5, 1999 (64 FR 5767). The current deadline for the final results in this review is June 7, 1999. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department finds that it is not practicable to complete this administrative review within the original time frame due to the complex nature of certain issues in this review which require further consideration. Thus, the Department is extending the time limit for completion of the final results until August 4, 1999, which is 180 days after the date on which notice of the preliminary results was published in the **Federal Register**. *See* Memorandum to Robert S. LaRussa, dated June 7, 1999.

This extension is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: June 7, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–14898 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Commerce; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–004. *Applicant:* U.S. Department of Commerce, Seattle, WA 98115–0700. *Instrument:* Multibeam Echosounder (Sonar). *Manufacturer:* ELAC NAUTIK, Germany. *Intended Use:* See notice at 64 FR 23056, April 29, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides dual frequency (50 kHz and 180 kHz) capability to allow a ship to perform a near-shore to off-shore survey mission using a depth range from less than 50 m to over 1000 m. The Naval Oceanographic Office advised May 27, 1999 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–14900 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 99–009. *Applicant:* University of Illinois at U/C, Purchasing Division, 207 Henry Administration Building, 506 S. Wright Street, Urbana, IL 61801. *Instrument:* Confocal Microscope Attachment. *Manufacturer:* Witec GmbH, Germany. *Intended Use:* The instrument will be used in conducting the experiments on the following materials: (1) Polymers—measurement of the light transmission at a wavelength of 5 microns as a function of position, (2) biomaterials—taking vibrational spectra in a liquid environment via reflection, (3) membranes—observation of molecules passing through the membrane in a liquid environment, (4) aluminum—using reflection spectroscopy to study the chemistry of corrosion in salt water and (5) superconductors—making microscopic circuits in high-Tc superconductors by selectively doping using UV light. In addition, the instrument will be used by students as a research tool in the course Physics 499 Thesis Research. Application accepted by Commissioner of Customs: May 7, 1999.

Docket Number: 99–010. *Applicant:* University of Wisconsin—Madison,

Department of Physics, 1150 University Avenue, Madison, WI 53706. *Instrument:* Diagnostic Neutral Beam System. *Manufacturer:* Budker Institute of Nuclear Physics, Russia, CIS. *Intended Use:* The instrument is intended to be used for studies of plasma with emphasis on fluctuation and confinement studies. The instrument will also be used by graduate students to learn plasma diagnostic techniques, and collect and analyze scientific data which will be used in the course of their doctoral studies. Application accepted by Commissioner of Customs: May 13, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–14899 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval and availability of revision to the final revised management plan for the Sapelo Island National Estuarine Research Reserve, 1999–2004.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, has approved the revised Management Plan for the Sapelo Island National Estuarine Research Reserve (SINERR). The SINERR was designated in 1976 and has been operating under a Management Plan approved on December 18, 1990. Pursuant to Section 315 of the Coastal Zone Management Act, 16 U.S.C. Section 1461, and Section 921.33(c)of the implementing regulations, a state must revise its management plan at least every five years, or more often if necessary. This revision is Georgia's effort to comply with this requirement.

The revisions to the SINERR Management Plan include the items listed below,

1. The plan adds three full-time state positions to the SINERR staff; one each in research, education and management.

2. With Georgia General Assembly approved state funds, the SINERR has constructed a mainland interpretive center at the Meridian ferry dock. This 3,000 square foot elevated building is the primary public outreach facility for the SINERR. The center has a large exhibit hall, a 50-seat audio visual room, handicap-accessible facilities and a boardwalk.

3. Under a NOAA matching grant, an existing building on Sapelo Island has been converted into an education/research laboratory. The facility has an audio visual room, office and storage space, an educational laboratory and a wet laboratory to support SINERR education and research/monitoring programs.

4. The revised management plan includes the establishment of education and research task forces from a reorganized SINERR Advisory Committee. The Education Task Force is comprised of representatives from local education institutions, such as colleges, secondary schools, marine sciences programs and state agencies. The Research Task Force is comprised of representatives from the scientific and academic communities.

5. The revised management plan includes the printing and distribution of the SINERR Ecological Site Characterization. This document presents a history of human activity on Sapelo Island and describes the physical, biological and chemical parameters of the SINERR's various habitats.

The impacts of the SINERR Management Plan have not changed and the initial Environmental Impact Statement (EIS) prepared at the time of designation is still valid. NOAA has made the determination that the proposed project will not have a significant effect on the human environment and therefore qualifies for a categorical exclusion under NOAA Administrative Order 216–6. An environmental assessment will not be prepared.

Copies of the document can be obtained from the Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, PO Box 15, Sapelo Island, GA 31327. (912) 485–2251.

FOR FURTHER INFORMATION CONTACT: Laurie McGilvray, OCRM, Estuarine Reserves Division, 1305 East-West Highway, 11th Floor (N/ORM5), Silver Spring, Maryland 20910, (301) 713–3155, Extension 158.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves)

Dated: June 3, 1999.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–14907 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval and availability of revision to the final revised management plan for the Weeks Bay National Estuarine Research Reserve, 1998–2003.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management, has approved the revised Management Plan for the Weeks Bay National Estuarine Research Reserve (WBNERR). WBNERR was designated in 1986 and has been operating under a Management Plan approved in 1985. Pursuant to Section 315 of the Coastal Zone Management Act, 16 U.S.C., Section 1461, and Section 921.33(c) of the implementing regulations, a state must revise its management plan at least every five years, or more often if necessary. This revision is Alabama's effort to comply with this requirement.

The revisions to the WBNERR Management Plan provide a more complete and updated articulation of reserve goals, objectives, and activities in the areas of administration, research/monitoring, stewardship, education/interpretation, boundaries/acquisition/facilities construction, and the volunteer program for a five year period from 1998 to 2003. The plan will increase community awareness and understanding of the Weeks Bay estuary through Reserve programs and partnerships. Highlights include:

1. Staffing. The revised Management Plan increases Reserve staff, including the addition of a full-time Research Coordinator to manage the System-wide Monitoring Program, initiate research and secure research funds, and support third party research activities in the Reserve boundaries.

2. Future Boundary Expansion and Land Acquisition. The revised Management Plan identifies the five

tracts of land (191 acres) currently held by the Weeks Bay Reserve Foundation as areas to be incorporated into the Reserve boundaries in the future. It initiates a land acquisition plan that identifies and prioritizes key ecological areas for future acquisition and/or protection.

3. Core and Buffer Areas. The revised Management Plan establishes the water bottoms within the Reserve boundaries up to mean high tide as the core area of the Reserve and the Reserve land areas as buffer to protect the core and provide additional protection for estuarine-dependent species.

4. Facilities. Under the revised Management Plan, the Reserve administration will improve existing facilities and develop buildings and boardwalks adjacent to the Interpretive Center to optimize the stewardship function of the Reserve with respect to resource protection, research, and education while maintaining a low impact on the immediate resources in that area.

5. Education. The revised Management Plan calls for the design and implementation of comprehensive programs of education and interpretation for all audiences to strengthen understanding, appreciation and stewardship of estuaries, coastal habitats and associated watersheds.

6. Research, Monitoring, and Coastal Decision Making. The revised Management Plan provides for the use of the System-wide Monitoring Program information and other research to provide a basis within the watershed for better informed decisions on the part of public and private users of the watershed.

7. Resource Protection. The revised Management Plan incorporates portions of the Weeks Bay Watershed Management Plan which has been developed to improve the water quality in Weeks Bay and the Weeks Bay watershed.

8. Habitat Restoration. The revised Management Plan describes current restoration of Reserve habitats (e.g. the pitcher plant bog, the southwest Weeks Bay shoreline). It establishes a process to identify and prioritize other habitats that have been degraded by human impact or have been disturbed leading to decreased productivity/biodiversity within the Reserve ecosystem.

The impacts of the WBNERR Management Plan have not changed and the initial Environmental Impact Statement (EIS) prepared at the time of designation remains valid. NOAA has made the determination that the proposed project will not have a significant effect on the human environment and therefore qualifies for a categorical exclusion under NOAA Administrative Order 216–6. An environmental assessment will not be prepared.

Copies of the document can be obtained from the Weeks National Estuarine Research Reserve, 11300 US Highway 98, Fairhope, Alabama 36532. (334) 928–9792.

FOR FURTHER INFORMATION CONTACT: Nathalie Peter, OCRM, Estuarine Reserves Division, 1305 East-West Highway, 11th Floor (N/ORM5), Silver Spring, Maryland 20910, (301) 713–3132, extension 119.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: June 3, 1999.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–14906 Filed 6–10–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990520139–9139–01; I.D. 050799A]

RIN 0648–AM68

Disaster Assistance for Northeast Multispecies Fishery Failure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS requests comments on a proposed plan for disbursing funds to assist persons who have incurred losses from a commercial fishery failure due to the declining stocks of groundfish which has caused harm to the Northeast multispecies fishery. This proposed plan contains criteria for eligibility, limitations and conditions for receiving disaster assistance.

DATES: Comments must be received by June 28, 1999.

ADDRESSES: Comments should be sent to: Kevin Chu, NMFS, 166 Water St., Woods Hole, MA 02543. Direct all written comments regarding Paperwork Reduction Act and collection of information burden estimates to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230, and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kevin Chu, NMFS, Northeast Region ((508) 495–2367).

SUPPLEMENTARY INFORMATION: In the Emergency Supplemental Appropriations section of the FY 1999 Appropriations Act (Public Law No. 105–277), Congress appropriated $5,000,000 to NOAA to provide emergency disaster assistance to persons or entities in the Northeast multispecies fishery who have incurred economic losses from a commercial fishing failure under a fishery resource disaster declaration made in 1994 pursuant to section 308(b) of the Interjurisdictional Fisheries Act (IFA) of 1986. Although the funds are available until used, NMFS is not obligated to compensate every individual affected by the Northeast multispecies collapse or to expend all the funding on assistance.

Pursuant to his authority under this section of the IFA, former Secretary of Commerce Ron Brown declared a fishery resource disaster on March 18, 1994, for the Northeast multispecies fishery. This disaster has extended through this year and is expected to continue, causing a number of additional fishery closures in New England and economic hardship in the fishery.

The Gulf of Maine stocks of groundfish have declined drastically over the past three decades. Since the first declaration of a fishery disaster in 1994, recovery measures for Northeastern groundfish have improved the prospects for commercially important cod, haddock, and yellowtail flounder stocks on Georges Bank, but measures intended to protect Gulf of Maine cod have not been as successful. Gulf of Maine stocks of cod, white hake, American plaice, and yellowtail flounder remain overfished. The spawning biomass continues to decline, reducing the probability that sizable groups of new fish will be produced. As a result of the continued crisis in the Northeast multispecies fishery, a number of areas in the Gulf of Maine have been closed to many types of fishing gear for up to 3 months during the period of February through June 1999, resulting in lost fishing opportunities.

There have been many meetings of fishermen discussing the best use of these disaster assistance funds, including a number of meetings of a group called the Tri-state Conference, composed of fishermen from Massachusetts, New Hampshire and

Maine. NMFS' proposed plan was developed based on comments received from numerous fishermen and other interested persons, including but not limited to, a public hearing on March 19, 1999, in Portsmouth, NH.

The proposed plan has two components. First, there is a program to provide direct assistance by compensating Federal permit holders and crew for economic harm based on reductions in used Days-at-Sea (DAS) under the authority of Section 308(d) of the IFA. In exchange for this compensation, permit holders would commit to operating their vessels for research on fishery-related subjects and would provide personal economic and social data important for evaluating the effects of fishery management decisions. Second, NMFS intends to set aside a portion of the funds for the training and deployment of affected persons as at-sea data collectors aboard scallop fishing vessels. This document explains the proposed direct assistance program. It does not discuss the training and deployment part of the plan, which will be done under contract.

The proposed direct assistance plan has two goals: (1) To provide a mechanism to get financial assistance as quickly as possible to fishermen most affected by the groundfish collapse, and (2) to involve the industry in fisheries and gear research, thereby providing additional data for the long-term management of the fishery. This program would use a formula for calculating lost fishing opportunities as an indicator of the economic harm caused by the declining groundfish stocks.

NMFS seeks comments on the proposed disaster assistance program.

Definitions

Charter or party boat means any vessel that carries passengers for hire to engage in recreational fishing.

Commercial fishing or *fishing commercially* means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish.

Day(s)-at-Sea (DAS) means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid multispecies permit, any species of fish, the harvest of which is managed by 50 CFR part 648.

Fishing year means for the NE multispecies fishery, from May 1 through April 30 of the following year.

Northeast multispecies or *multispecies finfish* or *multispecies* means the following species:

American plaice—*Hippoglossoides platessoides.*

Atlantic cod—*Gadus morhua.*

Haddock—*Melanogrammus aeglefinus.*

Ocean Pout—*Macrozoarces americanus.*

Pollock—*Pollachius virens.*

Redfish—*Sebastes fasciatus.*

Red hake—*Urophycis chuss.*

Silver hake (whiting)—*Merluccius bilinearis.*

White hake—*Urophycis tenuis.*

Windowpane flounder—*Scophthalmus aquosus.*

Winter flounder—*Pleuronectes americanus.*

Witch flounder—*Glyptocephalus cynoglossus.*

Yellowtail flounder—*Pleuronectes ferrugineus.*

Multispecies permit means a permit issued by NMFS to fish for, possess, or land multispecies finfish in or from the Exclusive Economic Zone.

Regulated species means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Compensation for Economic Harm as Measured by Unused Multispecies DAS

The proposed plan is to compensate fishermen for economic harm caused by the fishery collapse, using a calculation of unused multispecies DAS as a proxy for economic harm. Permit holders and crew members would be compensated based on any decrease in multispecies fishing activity in 1999 due to the area closures. The decrease would be calculated by comparing the multispecies days the vessel fished in February through June 1998 and the multispecies days the vessel fished in 1999 during the same closure months. The details of the compensation plan are provided here.

Eligibility

Permit holders would be eligible to participate in this program if they hold a currently valid Federal multispecies permit and landed and sold at least 10,000 lb (4535 kg) of multispecies finfish to federally permitted dealers between May 1, 1997, and April 30, 1998. Verification of the sale would be based only on dealer weigh-out reports submitted to NMFS prior to April 1, 1999.

Party/Charter vessels are not eligible for this program, because they were not technically excluded from fishing in the closed areas under Framework Adjustments 26 and 27.

By law, persons with net annual revenues from commercial fishing of $2 million or more are also not eligible to receive funds through this program. However, NMFS proposes a different maximum limit of $75,000 (or $150,000 if filing a joint tax return) on the net income from commercial fishing that an affected person could have received in 1998 to be eligible for compensation. Comments are requested on whether this limit is appropriate.

Any permit holder whose permit was sanctioned during the February through June 1999 closures cannot qualify for compensation from the period of the sanction.

Permit holders otherwise eligible for compensation who sold their vessels on or after February 1, 1999, would not be eligible to participate in this program. Persons who owned a vessel that held a valid multispecies permit during the 1998–99 fishing year and who purchased a new vessel after February 1, 1999, would be eligible based on the history of the vessel used during 1998.

Calculation of Historical Activity

A. For the purposes of this program, NMFS would define "historical activity" as fishing activity during 1998 (or, in some cases, 1997) in the areas listed here that were closed in 1999, excluding the Western Gulf of Maine closed area. NMFS would calculate the historical activity based on the number of DAS fished by each eligible vessel during 1998 in the following months and areas:

February—blocks 124–125
March—blocks 124–125
April—blocks 123–125, 130–133
May—blocks 129–133, 136–140
June—blocks 139–147, 152

Figure 1 shows the areas of these blocks.

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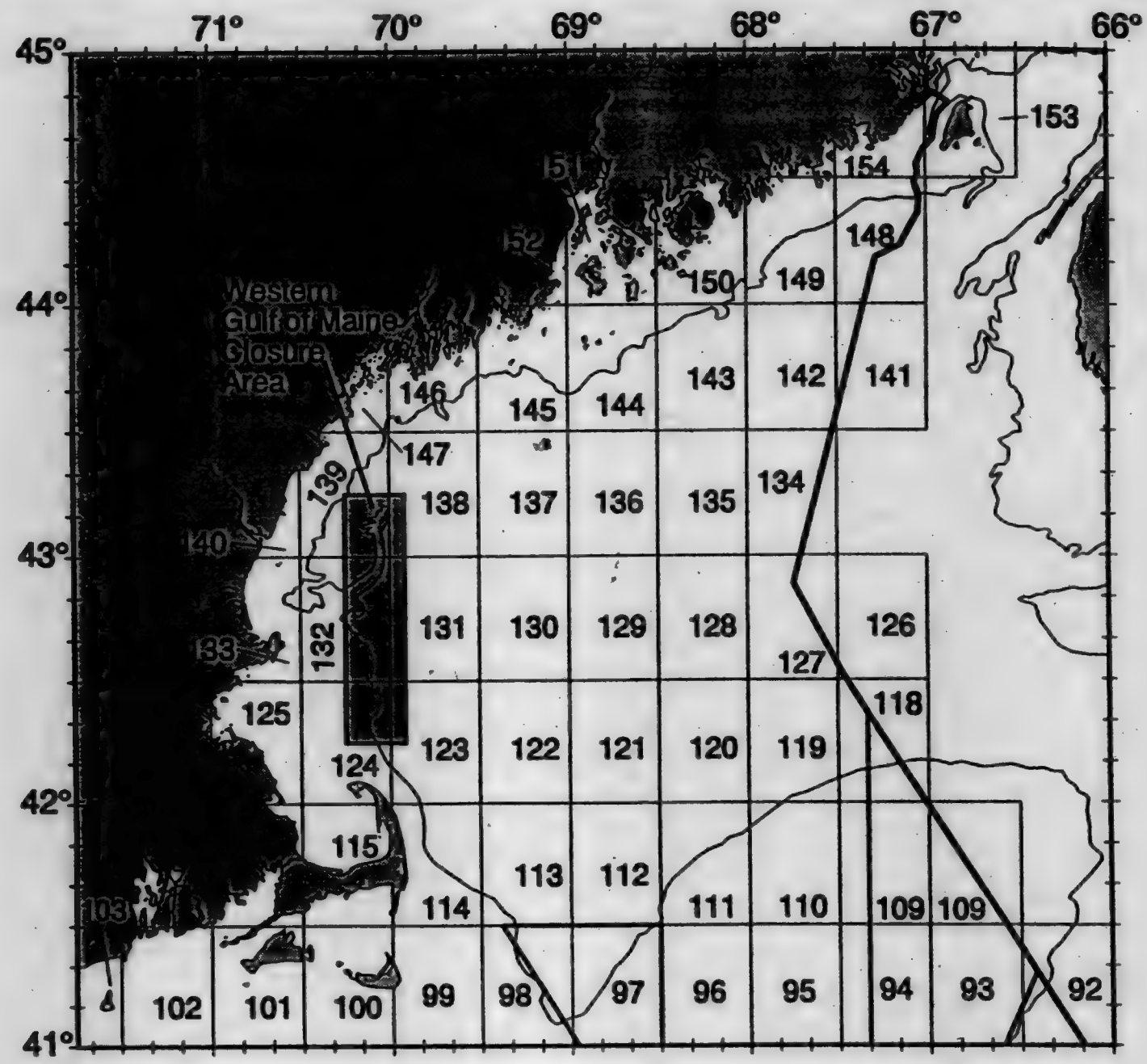

Figure 1. Gulf of Maine area closure reference blocks

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Note that in no case would DAS fished in the Western Gulf of Maine Closed Area be considered as historical activity, since that is considered a long-term, year-round closure.

B. There were some closures in March, May and June of 1998. Therefore, if a vessel used no DAS in May or June 1998, NMFS would calculate the number of DAS fished by that vessel in the appropriate areas during the same months of 1997. Some areas were closed from March 1 through March 30, 1998, but not closed on March 31 of that year. Therefore, if a vessel used either no DAS during March 1998 or only fished on March 31 of that year, NMFS would calculate the number of DAS fished by that vessel in the appropriate areas during the same months of 1997.

C. Some persons may have been prevented from fishing in 1998 due to illness or problems with their vessels. NMFS assumes that vessel owners have chosen fishing as their primary activity by virtue of their investment in their boats. Therefore, if there are two consecutive calendar months from February through June 1998 for which a vessel had no record of any fishing activity (e.g., negative reports were submitted for March and April 1998), NMFS would assume that the vessel was prevented from fishing by circumstances beyond the control of the vessel owner. In this circumstance, NMFS would calculate the number of multispecies DAS during those same months in 1997. If the 2-month gap in 1998 fishing activity was due to a permit sanction, however, NMFS would not consider 1997 fishing activity.

D. Calculation of multispecies DAS fished would be made to the nearest hour of fishing time and would then be rounded down to the nearest half day. A permit holder can receive no more compensation for economic harm than the level represented by the number of days of historical activity as calculated using this method.

E. The number of multispecies DAS fished during a fishing year plus the number of unused multispecies DAS for which a vessel receives compensation in that year cannot exceed the total number of multispecies DAS allocated to that vessel for that year.

Documentation Used To Determine Historical Activity

A. For vessels greater than 30 ft (9.14 m), NMFS would use vessel call-in system reports and vessel trip reports received by NMFS prior to April 1, 1999, to determine when a vessel fished in a 1999 closure area. If a trip was called in but no log report was submitted, or vice versa, the trip would not be included.

Some vessel trip reports have been submitted with insufficient information to determine whether the vessel fished in the closed areas, although this information is required. Under this proposed plan, the permit holder would not get credit for historical activity on any trips for which the logbooks were not filled out as required. NMFS specifically seeks comments on this provision.

B. For vessels 30 ft (9.14 m) or less, NMFS would base historical activity on vessel trip reports received by NMFS prior to April 1, 1999. (These vessels do not participate in the call in system.) The same problem of logbooks submitted without sufficient geographic information pertains to vessels under 30 ft (9.14 m) as for larger vessels. NMFS proposes to use the same solution for this category as it uses for vessels over 30 ft (9.14 m).

Documentation Used To Determine 1999 Activity

A. For vessels greater than 30 ft (9.14 m), NMFS would base activity on vessel call-in system reports.

B. For vessels 30 ft (9.14 m) or less, NMFS would base activity on vessel trip reports submitted as of the publication date of this document or, for May and June 1999, by the 15th day following each month. As required by regulations, every vessel trip report, including negative reports, must be submitted within 15 days of the end of each month. Vessels that have not submitted timely reports will not be eligible for compensation for that month. NMFS may compare dealer weigh-out reports and logbooks for May and June to confirm claims that no landings were made when no trip is reported.

Calculation of Economic Harm

A. For each month in which a vessel has historical activity, NMFS would tally the number of multispecies DAS fished in 1999 in areas that have not been closed. Economic harm would be calculated on a monthly basis as the historical DAS (multispecies DAS fished in the closed areas as described earlier) used that month minus the multispecies DAS used that month in 1999. For example, if a vessel has 10 DAS of historical activity in April 1998 and fished 5 DAS in April 1999, the permit holder and crew would be eligible for compensation for the equivalent of up to 5 DAS. If a vessel has 10 DAS of historical activity in April 1998 and fished 15 DAS outside the closed area in 1999, the permit holder and crew would not be eligible for compensation for economic harm for that month.

B. Compensation for economic harm would be at a rate of $1500 for each 24-hour DAS and $750 for each half DAS. This amount would be decreased to $900 per DAS if the permit holder does not designate crew to receive compensation. However, persons fishing alone may designate themselves as crew and receive the full compensation. (See Compensation for Crew) These amounts are consistent with NMFS estimates of the average net revenue and crew costs per multispecies DAS per vessel in the areas closed by Framework Adjustment 26.

C. A DAS for which a permit holder receives compensation would be considered a DAS used. For compensation received based on economic harm during the 1998–1999 fishing year (i.e., during the February, March and April 1999 closures), DAS for which a permit holder receives compensation cannot be carried over to the 1999–2000 fishing year. For compensation received based on economic harm during the 1999–2000 fishing year (i.e., during the May and June 1999 closures), DAS for which a permit holder receives compensation would be subtracted from the total allowable DAS for the year. For example, if a permit holder in the fleet DAS category is compensated for 10 DAS not used in June 1999, the total 1999–2000 DAS for the vessel s/he currently owns would be reduced from 88 to 78.

D. The number of DAS for which persons would receive compensation would be based on the total number of requests received by NMFS. No compensation would be paid until all requests are received and processed. Because compensation cannot be released until the universe of applicants is known, and because eligibility and unused DAS are calculated from official records held by NMFS and based on information required to be submitted to NMFS, there would be no appeals of NMFS determinations of eligibility or unused DAS.

E. If the total requests for compensation for economic harm exceed the funds available, the number of DAS for which each person is compensated would be reduced by the same proportion. If reduced, the proportional DAS for which each person is compensated would be rounded down to the nearest half day.

F. If the total requests for compensation for economic harm total less than the funds available, the excess funds would be used to defray costs in

the following cooperative research program.

G. The agreement to participate in research in exchange for compensation through this program is binding. If a permit holder decides to withdraw from the program, he or she must return any compensation to NMFS, which will then be used to defray costs in the cooperative research program.

Compensation for Crew Members

NMFS would ask permit holders to identify crew members that have also been harmed by the groundfish collapse and to specify in the application the vessel's share system. Crew members will be compensated a portion of the vessel's total compensation, based on the vessel's share system. An eligible crew member is expected to have worked for the permit holder for at least 6 out of the last 10 months. NMFS will make a direct payment to each identified crew member based on the percentage share specified by the permit holder. It will pay the remainder of the vessel's compensation to the permit holder. Permit holders that do not specify any crew members for compensation would be compensated at a reduced rate of $900 per DAS. A permit holder fishing alone would designate him/herself as the captain of the vessel, thereby receiving the full $1500 per DAS discussed above.

Research Requirement

Vessels and crew members that receive compensation under this program would be required to participate in research projects for the number of days they were compensated. If NMFS cannot compensate persons at the full level requested, a permit holder's obligation for research would be only for the number of DAS for which compensation is received. Permit holders would not be required to use their allotted fishing DAS for this research. However, if a permit holder intended to land multispecies fish caught during the course of a research day, the permit holder would use a DAS, which would also count as a research day.

The cost of personnel (captain and crew) required to operate the vessel during this research would be borne by the permit holder. This would be a condition of receiving compensation. All other operation costs would be borne by the researcher.

If a permit holder is not asked to provide his/her vessel for research by September 30, 2000, this obligation will cease. Instead, the permit holder would be required to submit the last 5 years of Federal tax returns and complete a survey of economic and social data needed to better evaluate the impacts of fishery management measures. If this information it not received, the permit holder's DAS for the 2001–2002 fishing year would be reduced by the number of DAS for which he/she was compensated under this program. Note that this provision requires approval from OMB for this collection of information and could not come into effect until NMFS receives such approval.

If the vessel is sold while still under a research obligation, the commitment would transfer with the permit, which automatically transfers with the vessel upon sale, unless there is a purchase and sale agreement stating otherwise. The research requirement would not be voided by the sale of a vessel, unless the permit holder permanently retires the vessel's multispecies permit.

The research would be undertaken at a mutually agreed date before May 1, 2001. If a vessel is requested for research by September 30, 2000, and the research is not conducted before May 1, 2001, the vessel's allowed DAS for fishing year 2001–2002 will be reduced by the number of DAS for which it was committed for research. If crew members are compensated as part of this program and are still with the vessel, they would be expected to serve during the requested research period.

Application Process

A. NMFS would determine who is eligible to participate in the program based on dealer weigh-out reports and would calculate the maximum level of direct assistance for which the permit holder would be eligible.

B. NMFS would send letters and a copy of the final **Federal Register** document to all multispecies permit holders explaining the program, informing them whether they qualify to participate and, if so, the maximum amount of economic harm they can claim based on unused DAS. The letter would contain an application form that asks the permit holder to identify the number of eligible DAS for which the holder would seek compensation in exchange for a commitment from the permit holder to make his or her vessel available for research in the future, if requested. The permit holder would be required to identify crew members that should share in the compensation and to inform NMFS of the percentage of available compensation each crew member should get, based on the usual share system of the vessel. Permit holders would have 30 days from the date of mailing to respond to the invitation to participate. A date by which all responses must be postmarked would be included in the invitation to participate.

C. NMFS will tally the total eligible compensation requested for all applications received by the deadline. If the total eligible compensation requested is less than the funds available, NMFS will approve payment of the requested amounts. If the eligible compensation requested exceeds the funds available, NMFS will approve payment for each permit holder based on a prorated reduction in the number of DAS. The value of a DAS will remain the same, but fewer unused DAS will be compensated in this case. Partial DAS will be rounded downward to the nearest half DAS. Because the total DAS requested cannot be evaluated until the logbooks from the vessels under 30 ft (9.14 m) (which can be submitted up to July 15) have been entered in the NMFS database, compensation under this program should not be expected before September 1999.

D. NMFS will report payments disbursed under this program to the Internal Revenue Service and will issue IRS Form 1099–G to each recipient of compensation for economic harm.

Classification

Catalogue of Federal Domestic Assistance

This program will be listed in the Catalogue of Federal Domestic Assistance under number 11.452 (Unallied Industry Projects).

National Environmental Policy Act

NMFS will conduct an Environmental Assessment of this program prior to publication of the final rule. Comments on the potential impacts of this program on the quality of the human environment are requested.

Regulatory Flexibility Act

NMFS has conducted an initial regulatory flexibility review for this action, which is included here. The action is being taken as a result of concern about the economic impact of the declining groundfish stocks in the Gulf of Maine. The objective of the program is to compensate persons in the Northeast multispecies fishery who have incurred losses from a commercial fishing failure. The program to compensate fishermen for economic harm would be open to permit holders of a currently valid Northeast multispecies permit who landed 10,000 lb (4535 kg) of multispecies fish between May 1, 1997, and April 30, 1998, as recorded by dealer weigh-out reports. NMFS estimates fewer than 500

permit holders would qualify for compensation by having landed 10,000 lb (4535 kg) of multispecies fish and having historical activity in the areas closed in 1999. Assuming that on average, each permit holder employed one other crew member, there might be 1000 persons able to participate in this program.

The reporting or record-keeping requirements for this program include an initial form to indicate willingness to participate in the program. The form would also allow permit holders to identify crew members that should share in the compensation. The program would also require permit holders to provide the services of their vessels, if asked, for future research at a mutually agreed date and time, not to exceed 2 years in the future. The permit holders would be expected to cover the costs of captain and crew needed to operate the vessel during this research, which is estimated to be $700 on average. The other costs of operating the vessel would be covered by the researcher. Participation in the compensation program would be voluntary, and persons would not be expected to participate unless it was economically beneficial to do so. Permit holders would be expected to keep a record of the number of days they engaged in cooperative research. In addition, if a permit holder is not asked to engage in research by September 30, 2000, the proposed program calls for permit holders to submit 5 years of Federal income tax forms and to complete a survey of economic and social concerns instead, provided OMB approves this collection of information. Fishermen who have not kept copies of their tax returns would need to request copies from the IRS at a cost of $23.00 per return.

There are no Federal rules that duplicate, overlap, or conflict with the proposed action.

In providing assistance to alleviate the economic harm caused by the fishery decline, any significant economic impacts of this program are expected to be positive and are intentional. Therefore, NMFS has not considered alternatives that would minimize any significant economic impacts.

E.O. 12866

This proposed program has been determined to be significant for the purposes of E.O. 12866.

Paperwork Reduction Act (PRA)

This proposed program contains a collection-of-information requirement subject to review and approval by OMB under the PRA. An emergency clearance for the collection of information required to disburse these funds is being sought from OMB. This is a one-time collection of information. There would be no annual information collection burden. If NMFS continues this program, it will seek additional clearance for any required collection of information.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Public reporting burden for this collection of information is estimated at 1.5 hours per response, to submit a form indicating willingness to participate in the program. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

Federal Policies and Procedures

Recipients of Federal assistance through this program are subject to all Federal laws and Federal and Department of Commerce (Commerce) policies, regulations, and procedures applicable to Federal financial assistance awards and must comply with general provisions that apply to all recipients under Commerce Federal assistance programs.

False Statements

A false statement on the application or any document submitted for consideration of financial assistance is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

Delinquent Federal Debts

No award of Federal funds shall be made if the would-be recipient has an outstanding delinquent Federal debt or fine until either: (a) the delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or, (c) other arrangements satisfactory to Commerce are made.

Internal Revenue Service (IRS) Information

An applicant classified for tax purposes as an individual, partnership, proprietorship, corporation, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number, employer identification number as applicable, or registered foreign organization number) on Form W–9, "Payer's Request for Taxpayer Identification Number." Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. Form W–9 shall be submitted to NOAA upon application for assistance. The TIN will be provided to the IRS by Commerce on Form 1099–G, "Statement for Recipients of Certain Government Payments."

Disclosure of a recipient's TIN is mandatory for Federal income tax reporting purposes under the authority of 26 U.S.C., section 6011 and 6109(d), and 26 CFR, 301.6109–1. This is to ensure the accuracy of income computation by the IRS. This information will be used to identify an individual who is compensated with Commerce funds or paid interest under the Prompt Payment Act.

Name Check

Recipients may be subject to a name check review process. Name checks are intended to reveal if they or any key individuals associated with an application for award have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on their management, honesty, or financial integrity. In the name check process, Commerce performs a credit check on businesses and individuals. A criminal background check on an individual's name is performed by the Federal Bureau of Investigation. There is no charge to recipients for the name check.

Audits

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, section 1 *et seq.*, an audit of the award of assistance may be conducted at any time. The Inspector General of

Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the Office of the Inspector General (OIG) requires an audit on a Commerce award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with Commerce, or any other Federal, state or local audit entity.

Government-Wide Debarment and Suspension

You must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Non-procurement Debarment and Suspension" and the related section of the certification form prescribed here applies.

Dated: June 4, 1999.

Andrew J. Kemmerer,

Acting Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 99–14788 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021699A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Hazards Investigation in Southern California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals by harassment incidental to collecting marine seismic-reflection data offshore from southern California has been issued to the U.S. Geological Survey (USGS).

DATES: This authorization is effective from June 3, 1999, through July 31, 1999.

ADDRESSES: A copy of the application may be obtained by writing to Donna Wieting, Acting Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, or Christina Fahy, NMFS, 562–980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines "harassment" as:

...any act of pursuit, torment, or annoyance which

(a) has the potential to injure a marine mammal or

marine mammal stock in the wild; or (b) has the

potential to disturb a marine mammal or marine mammal

stock in the wild by causing disruption of behavioral

patterns, including, but not limited to, migration,

breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 15, 1999, NMFS received a request from the USGSfor authorization to take small numbers of several species of marine mammals by harassment incidental to collecting marine seismic-reflection data offshore from southern California. Seismic data was planned to be collected during a 2-week period between May and July 1999 to support studies of the regional landslide and earthquake hazards and to understand how saltwater invades coastal aquifers. A revised request was received on February 11, 1999.

Background

The USGS proposes to conduct a high-resolution seismic survey offshore from Southern California to investigate (1) the hazards posed by landslides and potential earthquake faults in the nearshore region from Santa Barbara to San Diego and (2) the invasion of seawater into freshwater aquifers that are critical to the water supply for people within the Los Angeles-San Pedro area. Both of these tasks are multi-year efforts that require using a small airgun.

Coastal Southern California is the most highly populated urban area along the U.S. Pacific coast. The primary objective of the USGS research is to provide information to help mitigate the earthquake threat to this area. The USGS emphasizes that the goal is not earthquake prediction but rather an assistance in determining what steps might be taken to minimize the devastation should a large quake occur. The regional earthquake threat is known to be high, and a major earthquake could adversely affect the well being of a large number of people.

Important geologic information that the USGS will derive from this project's seismic-reflection data concerns how earthquake deformation is distributed offshore; that is, where the active faults are and what the history of movement along them has been. This should improve understanding of the shifting pattern of deformation that occurred

over both the long term (approximately the last 100,000 years) and short term (the last few thousand years). The USGS seeks to identify actively deforming structures that may constitute significant earthquake threats. The USGS also proposes to locate offshore landslides that might affect coastal areas. Not only major subsea landslides might affect the footings of coastal buildings, but also very large slides can generate local tsunamis. These large sea waves can be generated by seafloor movement that is produced either by landslides or by earthquakes. Knowing where large slides have occurred offshore will help locate areas susceptible to wave inundation.

Some faults that have produced earthquakes lie entirely offshore or extend into offshore areas where they can be studied using high-resolution seismic-reflection techniques. An example is the Rose Canyon fault, which, extending through the San Diego area, is considered to be the primary earthquake threat. This fault extends northward from La Jolla, beneath the inner continental shelf, and appears again onshore in the Los Angeles area. This fault and others like it near shore could generate moderate (M5-6) to large (M6-7) earthquakes.

Knowing the location and geometry of fault systems is critical to estimating the location and severity of ground shaking. Therefore, the results of this project will contribute to decisions involving land use, hazard zonation, insurance premiums, and building codes.

The proposed work is in collaboration with scientists at the Southern California Earthquake Center, which analyzes faults and earthquakes in onshore regions, and with scientists at the Scripps Institute of Oceanography, who measure strain (incremental movement) on offshore faults.

The USGS also wants to collect high-resolution seismic- reflection data to locate the sources and pathways of seawater that intrudes into freshwater aquifers below San Pedro. Ground water usage in the Los Angeles basin began in the mid-1800s. Today, more than 44,000 acre-feet of freshwater each year are extracted from the aquifers that underlie just the city of San Pedro. Extracting freshwater from coastal aquifers causes offshore salt water to flow toward areas of active pumping. To limit this salt-water intrusion, the Water Replenishment District and water purveyors in San Pedro are investing $2.7 million per year to inject freshwater underground to establish a zone of high water pressure in the aquifer. The resulting zone of high pressure will form a barrier between the invasive saltwater and the productive coastal aquifers.

USGS scientists in San Diego are working with the Los Angeles County Department of Public Works and the Water Replenishment District to develop a ground-water simulation model to predict fluid flow below San Pedro and nearby parts of the Los Angeles Basin. This model will eventually be used in managing water resources. The accuracy of the present model, however, is compromised by a paucity of information about aquifer geometry and about other geologic factors that might affect fluid flow. Data the USGS collects will be used to improve three-dimensional, fluid-flow models to aid in the management of water resources.

Because noise from seismic airguns and other acoustic instruments may result in the harassment or injury of marine mammals incidental to conducting the activity, an IHA under section 101(a)(5)(D) of the MMPA is warranted.

Fieldwork described here will be the third airgun survey that the USGS has conducted under close supervision by marine-mammal biologists. In March 1998, the USGS used a large (6500 in^3; 106 liters) airgun array in and around Puget Sound to study the regional earthquake hazard. The USGS employed 12 biologists, who worked on two ships continuously to oversee airgun operations. On several occasions, the USGS shut off the airguns when marine mammals entered safety zones that had been stipulated by NMFS under an IHA, and, when mammals left these zones, the USGS gradually ramped up the array as required to avoid harming wildlife. Marine mammal biologists reported that, during the survey, no overt distress was evident among the dense marine mammal populations, and, afterward, no unexplained marine mammal strandings occurred. In August 1998, the USGS surveyed offshore from Southern California, using a small airgun (40 in^3; 655 cm^3). Marine mammal biologists oversaw this activity, and the survey the USGS proposes here will be conducted with similar oversight.

Experimental Design

Marine studies conducted by the USGS focus on areas where natural hazards have their greatest potential impact on society. In Southern California, USGS studies will concern four areas. The first area in priority is the coastal zone and continental shelf between Los Angeles and San Diego, where much of the hazard appears to be associated with strike-slip faults, such as the Newport-Inglewood and Palos Verdes faults. The second study area lies offshore, in the Santa Monica, San Pedro, and San Diego Trough deeps, where rapid sedimentation has left a more complete record, relative to shallow-water areas, that the USGS can use to decipher earthquake history. The third area is the extension into the Santa Barbara Channel of major elements of onshore geology, including some large faults. The fourth area is the geologic boundary, marked generally by the Channel Islands, between the inner California Borderland (dominated by strike-slip faults) and the Santa Barbara Channel (dominated by compressional faults). The study proposed here focuses on the highest priority area, which lies near shore between Los Angeles and San Diego.

The seismic-reflection survey will last 14 days. From its experience collecting seismic-reflection data in this general area during 1998, the USGS proposed to conduct the 1999 survey sometime within the May through July window. The basis for this decision is its desire to avoid the gray whale migrations and the peak arrival of other mysticete whales during late summer.

The USGS has not yet determined the exact tracklines for the survey, but the USGS does know the areas where airgun use will be concentrated. Two of these areas are southwest and southeast of Los Angeles, and the third and largest one is west and northwest of San Diego. In these areas seismic-reflection data will be collected along a grid of lines that are about 2 km (1.2 mi) apart.

The USGS proposes to use a small airgun and 200-m (656–ft) long streamer to collect seismic-reflection data. The potential effect on marine mammals is from the airgun; mammals cannot become entangled in the streamer. The USGS will also use a low-powered, high-resolution seismic system to obtain detailed information about the very shallow geology. The seismic- reflection system will be onboard a vessel owned by a private contractor. Ocean-bottom seismometers will be deployed to measure the velocity of sound in shallow rocks to help unravel the recent history of fault motion. These seismometers are passive recorders and pose no threat to the environment.

Ship navigation will be accomplished using satellites of the Global Positioning System. The survey ship will be able to report accurate positions, which is important to mitigating the airgun's effect on marine mammals and to analyzing what impact, if any, airgun operations had on the environment.

The Seismic Sound Sources

During this survey, the USGS will operate two sound sources--an airgun and a high-resolution Huntec(TM) system. The main sound source will be a single small airgun of special type called a generator-injector, or GI-gun (trademark of Seismic Systems, Inc., Houston, TX). This type of airgun consists of two small airguns within a single steel body. The two small airguns are fired sequentially, with the precise timing required to stifle the bubble oscillations that typify sound pulses from a single airgun of common type. These oscillations impede detailed analysis of fault and aquifer structure. For arrays consisting of many airguns, bubble oscillations are canceled by careful selection of airgun sizes. The GI-gun is a mini-array that is carefully adjusted to achieve the desired bubble cancellation. Airguns and GI-guns with similar chamber sizes have similar peak output pressures.

The GI-gun for this survey has two equal-sized chambers of 35 in^3 (57 mm^3), and the gun will be fired every 12 seconds. Compressed air delivered to the GI-gun will have a pressure of about 3000 psi. The gun will be towed 12 meters (39.4 ft) behind the vessel and suspended from a float to maintain a depth of about 1 m (3.3 ft).

The manufacturer's literature indicates that a GI-gun of the size the USGS will use has a sound-pressure level (SPL) of about 220 dB re 1 µPa-m. In comparison, a 40–in^3 (65 mm^3) airgun has an SPL of 216 dB re 1 µPa-m (Richardson *et al.*, 1995). The GI-gun's output sound pulse has a duration of about 10 ms. The amplitude spectrum of this pulse, as shown by the manufacturer's data, indicates that most of the sound energy is at frequencies below 500 Hz. Field measurements by USGS personnel indicate that the GI-gun's emits low sound amplitudes at frequencies above 500 Hz. Thus, high-amplitude sound from this source is at frequencies that are outside the main hearing band of odontocetes and pinnipeds (Richardson *et al.*, 1995).

The high-resolution Huntec(TM) system uses an electrically powered sound source. In operation, the sound producing and recording hardware are towed behind the ship near the seabottom. The unit emits sound about every 0.5 seconds. This system provides highly detailed information about stratified sediment, so that dates obtained from fossils in sediment samples can be correlated with episodes of fault offset. The SPL for this unit is 210 dB re 1 µPa-m. The output-sound bandwidth is 0.5 kHz to 8 kHz, with the main peak at 4.5 kHz.

Description of Habitat and Marine Mammals Affected by the Activity

The Southern California Bight supports a diverse assemblage of 29 species of cetaceans (whales, dolphins, and porpoises) and 6 species of pinnipeds (seals and sea lions). The species of marine mammals that are likely to be present in the seismic research area during the year include the bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right whale dolphin (*Lissodelphis borealis*), Risso's dolphin (*Grampus griseus*), pilot whale (*Globicephala macrorhynchus*), Dall's porpoise (*Phocoenoides dalli*), sperm whale (*Physeter macrocephalus*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), blue whale (*Balaenoptera musculus*), minke whale (*Balaenoptera acutorostrata*), fin whale (*Balaenoptera physalus*), harbor seal (*Phoca vitulina*), elephant seal (*Mirounga angustirostris*), northern sea lion (*Eumetopias jubatus*), and California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*) and sea otters (*Enhydra lutris*). General information on these species can be found in the USGS application and in Barlow *et al.* (1997). Please refer to those documents for information on the biology, distribution, and abundance of these species.

Potential Effects of Seismic Surveys on Marine Mammals

General Discussion

Seismic surveys are used to obtain data about rock formations up to several thousands of feet deep. These surveys are accomplished by transmitting sound waves into the earth, which are reflected off subsurface formations and recorded with detectors in the water column. A typical marine seismic source is an airgun array, which releases compressed air into the water creating an acoustical energy pulse that is directed downward toward the seabed. Hydrophones spaced along a streamer cable just below the surface of the water receive the reflected energy from the subsurface formations and transmit data to the seismic vessel. Onboard the vessel, the signals are amplified, digitized, and recorded on magnetic tape.

Disturbance by seismic noise is the principal means of taking by this activity. Vessel noise may provide a secondary source. Also, the physical presence of vessel(s) could lead to some non-acoustic effects involving visual or other cues.

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by open-water seismic operations may be detectable some distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or by masking a signal of comparable frequency. An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source (or vessel) react to the generated sounds or to visual cues.

Seismic pulses are known to cause some species of whales, including gray whales, to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds is a possibility for those species of whales using low frequencies for communication, the intermittent nature of seismic source pulses will limit the extent of masking. Bowhead whales, for example, are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986).

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and seasons. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Hearing damage is not expected to occur during the project. While it is not known whether a marine mammal very close to the airgun would be at risk of permanent hearing impairment, temporary threshold shift (TTS) is a theoretical possibility for animals very close to an airgun. However, planned monitoring and mitigation measures (described later in this document) are designed to detect marine mammals occurring near the seismic source(s) and to avoid, to the greatest extent practicable, exposing them to sound

pulses that have any possibility of causing hearing damage, including TTS.

Maximum Sound-Exposure Levels for Marine Mammals

Loud continuous sounds can damage the hearing of marine mammals. However, the adverse effects of sound on mammals have been documented for exposure times that last for tens of seconds or minutes, but effects have not been documented for the brief pulses typical of the GI-gun (10 ms) and the Huntec(TM) system (0.3 ms). NMFS has long considered that the maximum SPLs to which marine mammals should be exposed from impulse sounds are 180 dB re 1 μPa_{RMS} for mysticetes and sperm whales, and 190 dB re 1 μPa_{RMS} for odontocetes and pinnipeds. More recently, scientists at two workshops on acoustic noise and marine mammals supported NMFS' determination.

At the time of its application, the USGS lacked detailed measurement of sound-transmission loss for the southern California offshore, so, based upon the best science available, the USGS estimated how SPL varies with distance from the airgun by assuming that sound decays according to 25Log(R). The coefficient 25 accounts approximately for the attenuation that is caused by the sound interacting with the seabottom. The USGS used this procedure to derive safety zone estimates based on the 220 dB SPL produced by the GI-gun, the larger of the two sound sources the USGS plans to use.

Assuming that the 25Log(R) decay that the USGS used to estimate safe distances from the airgun is correct, this indicates that an SPL of 190 dB re 1 µPa is attained about 16 m (52.5 ft) away from the airgun, and an SPL of 180 dB re 1 µPa is attained at about 40 m (131 ft) away. However, for precautionary reasons during field operations, the USGS proposes that, at all times, the safe distance for odontocetes and pinnipeds be 50 m (164 ft) and for mysticetes, 100 m (328 ft).

Comments and Responses

A notice of receipt of the application and proposed authorization was published on March 5, 1999 (64 FR 10644), and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC), the California Coastal Commission (CCC), and one individual. The CCC asked a number of questions; those relevant to the application for an IHA are included here. Information on the authorization request and expected impact on marine mammal species, not subject to reviewer comments, can be found in the proposed authorization notice and is not repeated here, but is considered part of the record of decision, except as modified by this notice.

On May 11, 1999, the CCC objected to the USGS project and its consistency determination, even though the CCC staff had recommended approval (see CD–32–99). During the May 11, 1999, public hearing, the USGS modified its project to avoid operating within the 3–mile limit of State waters and to expand the marine mammal safety radius for odontocetes to be the same as mysticetes (i.e., 100 m (328 ft) safety zone) in order to ensure that marine mammals would be exposed to no greater than 180 dB sound levels. Nevertheless, even with these modifications, the CCC found the project was not consistent to the maximum extent practicable with the California Coastal Management Plan (CCMP).

The CCC further determined that alternative measures exist that would enable the project to be conducted in a manner consistent to the maximum extent practicable with the CCMP. One alternative measure identified by the CCC would require no night-time seismic activities. The CCC requirements are discussed later in this document. On May 28, 1999, the USGS submitted a letter to NMFS, requesting the CCC suggested modifications be made to their application for an IHA.

Comment 1: The MMC questions the statement in the USGS application that NMFS considers that the maximum sound pressure levels (SPLs) to which marine mammals can be exposed are 180 dB re 1 μPa_{RMS} * * * for mysticetes and sperm whales, and 190 dB re 1 μPa_{RMS} for odontocetes and pinnipeds. No citation was provided for this statement and, while the MMC is aware that the referenced sound levels were judged to be appropriate by the panel of experts convened by NMFS last September, the MMC was not aware that NMFS had accepted or made known the panel's findings in this regard. The MMC requests NMFS' rationale for these determinations.

Response: NMFS notes that the mentioned SPLs have been adopted by NMFS as the lower bound for Level A harassment authorizations for impulse sounds, such as from seismic airguns (please refer to 50 CFR 216.3 for a definition of Level A and Level B harassment), and have relatively long usage in establishing safety zones for marine mammals in such areas as the U.S. Beaufort Sea (see 61 FR 26501, May 28, 1996; 61 FR 38715, July 25, 1996; 62 FR 38263, July 17, 1997; and 63 FR 40505, July 29, 1998) and Puget Sound (see 62 FR 488817, September 17, 1997, and 63 FR 2213, January 14, 1998). The rationale for using these levels was provided first in an authorization to the Exxon Corporation for seismic work in southern California in 1995 (see 60 FR 53753, October 17, 1995). Because of the length of that discussion, it is not repeated here. However, since the time of that authorization, NMFS has questioned the reliability of using data on humans as surrogates for marine mammal impacts. As a result, until better scientific data on marine mammals are collected, NMFS has adopted a more precautionary level of 190 dB as the lower bound for Level A harassment for odontocetes and pinnipeds, and not the higher levels noted in the Exxon authorization.

NMFS wishes to clarify that, under section 101(a)(5)(D) of the MMPA, applicants may apply for a take by acoustic injury (Level A harassment); however, NMFS limits the use of authorizations for harassment involving the "potential to injure" to takings that may involve non-serious injury, such as TTS. Serious injury for marine mammals, such as permanent hearing loss within the species' primary hearing range, may lead fairly quickly to the animal's death. For example, if an application indicates that the short-term use of an acoustic source at its maximum output level has the potential to cause TTS in a marine mammal's hearing ability, that taking would constitute a Level A "harassment" take, since the animal's hearing ability would be expected to recover and, therefore, the section 101(a)(5)(D) application would be appropriate. However, if the acoustic source at its maximum level has the potential to cause a permanent threshold shift in a marine mammal's hearing ability or potentially could cause TTS over a significant period of time on the same animals, that activity will be considered by NMFS to be capable of causing serious injury to a marine mammal and, therefore, might not be appropriate for an IHA, unless effective mitigation was implemented to prevent more than non-serious injury.

It should also be understood that, while NMFS considers that the maximum SPLs to which marine mammals should be exposed from impulse sounds are 180 dB re 1 μPa_{RMS} for mysticetes and sperm whales and 190 dB re 1 μPa_{RMS} for odontocetes and pinnipeds, the definition of "harassment" in section 3 of the MMPA authorizes takes by harassment to include injury (Level A harassment). As mentioned previously, 180 dB/190 dB SPLs are considered by NMFS to be the

lowest level of Level A harassment. This means that safety zones are established as a mitigation measure to reduce takings to the lowest level practicable as required by section 101(a)(5)(D)(ii)(I). Therefore, in accordance with section 101(a)(5)(D)(v), provided the applicant requested takes that included Level A harassment, the fact that a marine mammal entered the designated safety zone undetected is not considered a violation of the MMPA or of the IHA.

In any case, in order to obtain a certificate of compliance (required of the USGS by the Coastal Zone Management Act) from the CCC, the USGS must observe the more restrictive 180–dB criterion for both mysticetes and odontocetes. Accordingly, the USGS, in a letter to NMFS, amended its application to indicate that a safety zone of 100 m (328 ft) should be established, which is equivalent to 180 dB using 20Log(R) SPL.

Comment 2: The CCC asked, if the operation includes shallow water, why 25Log(R) is an appropriate dispersion model? Also, one of the two sources, the Huntec system, emits sound at or near the bottom (if at all). Again, is the 25Log(R) the appropriate dispersion model for this source. If the assumption that 25Log(R) is the correct attenuation factor, the MMC recommends, in order to protect marine mammals from serious injury, that a more conservative estimate of the attenuation rate be used to calculate the safety zones, or that measurements be made at the beginning of the surveys to confirm the assumed 25Log(R) within the horizontal distances less than the depth of the water column.

Response: The USGS notes that it used a 25Log(R) decay in SPL because acoustic modeling and measurements in the field show that sound decays quickly in water that overlies a sloping seabottom. In a medium with no acoustic interfaces, sound spreads spherically and SPL reduces at 20Log(R). A sloping bottom, however, causes sound to exit the water layer and beam into the underlying sediment, enhancing the transmission loss toward a beach (e.g., Jensen and Tindle, 1987; Deane and Buckingham, 1993; Glegg *et al.*, 1993; Richardson *et al.*, 1994; Jensen *et al.*, 1994). In fact, a zone of high transmission loss, an "acoustic shadow zone," lies just offshore from a beach. This argues against the common misunderstanding that underwater sound intensifies up-slope toward a beach.

The enhanced transmission loss, relative to 20Log(R), that occurs over a sloping bottom has been verified by field measurements from scattered locations. The USGS, in conjunction with its 1997 seismic survey in Puget Sound (Fisher *et al.*, 1999) measured sound decay with distance from a 108–liter (L) airgun array (Bain, 1999). A least-squares, straight-line fit to data from ranges less than 10 km (5.4 nm) indicates that airgun sound decays at 29Log(R). In water 90 m (295 ft) deep off Los Angeles Harbor, USGS scientists measured a 26Log(R) transmission loss, using the same airgun the USGS will deploy this coming season. Off the Big Sur coast of central California, the SPL of a single 1.6 L airgun decreased at 25Log(R) decay toward the beach.

Greenridge Sciences, Inc.(1998) measured the transmission loss of airgun sound at Platform Harmony in the Santa Barbara Channel. Estimated loss was high, the coefficient of the logarithm is 48 to 60. Finally, measurements of acoustic thermometry (ATOC) sounds versus distance, in nearshore water that is 10 m (33 ft) to 80 m (262 ft) deep, indicate a high transmission loss (TL) of about 43Log(R).

Therefore, on the basis of abundant, numerical acoustic modeling and some field measurements, the USGS and NMFS believe that 25Log(R) is a conservative estimate of sound TL for airgun sounds over a sloping seabottom, like that offshore from southern California. In particular, sound that propagates into shallow water near and within the 3–mile (4.8 km) limit should decay sharply toward shore. However, the CCC will require the USGS to observe a 100–m (328–ft) safety radius around the airgun, which distance is consistent with the source level of the airgun and a 20Log(R) TL model. At this distance, received SPL would be 180 dB using a 20Log(R) TL model. Because a more conservative estimate of the attenuation rate has been used to calculate the safety zones measurements, NMFS does not consider it necessary for measurements to be made at the beginning of the surveys to confirm the TL.

The Huntec instrument is deployed at varying depths beneath the sea surface to avoid noise from large ships and ocean waves, but no attempt is made to maintain this instrument at a close distance to the sea floor. For safety reasons, the Huntec vehicle remains at least 50 m (164 ft) above the seafloor, except in water that is shallower than 100 m (328 ft), where the Huntec will be at a depth of about 10 m (33 ft). The maximum deployment is 150 m (492 ft). The maximum SPL of the Huntec is about 25 percent of the G-I gun's maximum SPL, and mitigation zones were calculated to account for the GI-gun. These zones, therefore, are even more conservative for Huntec.

Comment 3: The CCC asked how will marine mammals be observed and avoided during low-visibility times (such as night-time and fog)? Will there only be visual monitoring or is acoustic monitoring included as well.

Response: The USGS proposes to rely on visual monitoring; there will not be any aerial surveys or acoustic monitoring. At night, biologists proposed to use light-amplification scopes to improve visibility and detection of the animals. However, in order for the USGS to be consistent to the greatest extent practicable with the CCMP, the USGS will not conduct GI-gun seismic surveys during nighttime.

Comment 4: The MMC notes that marine mammal observers aboard the seismic vessels will need to work 6 hour shifts if seismic operations continue around the clock. The MMC questions whether two observers will be able to effectively monitor and detect marine mammals approaching the designated safety zones, particularly at night and after the first few days working the alternating 6–hour shifts. The MMC recommends that NMFS consult with the applicant to better determine the rationale for using two observers as proposed.

Response: Three biological observers will be employed with two on watch at all times. According to restrictions placed on the USGS by the CCC, the USGS will be unable to use the airgun for 8 hours overnight, so all observers will benefit from a full, 8–hour sleep, and off-watch periods during the day offer additional rest.

Comment 5: The CCC asks who will be conducting the marine mammal monitoring?

Response: Employees of researchers at the Cascadia Research in Olympia, WA, will likely oversee monitoring.

Comment 6: The CCC asks why a 35–in^3 airgun is louder than a 45–in^3 airgun? Is that because it contains two chambers?

Response: The GI-gun uses 3000–psi pressure, while most airguns use 2000–psi pressure. This likely accounts for the greater source strength of the GI-gun.

Estimated Number of Potential Harassments of Marine Mammals

The zone of influence for the GI-gun is defined to be the circle whose radius is the distance from the gun where the SPL reduces to 160 dB re 1 μPa_{rms} for those marine mammals that can hear either the low frequency sound from seismic airguns or the mid-frequency Huntec system. For 25Log(R) TL, the zone of influence is estimated to be a

circle with a radius of 250 m (820 ft); for 20Log(R), the zone of influence would be 1,000 m. Based solely on estimated marine mammal populations within the survey area and on the number of individuals that were observed during the 1998 USGS survey and not on the expected number of animals that may be harassed by the GI-gun and Huntec system, the USGS estimates that up to 5 killer whales, 10 minke whales, 50 northern sea lions, 100 northern fur seals, 100 northern elephant seals, 100 Dall's porpoise, 100 Risso's dolphins, 100 northern right-whale dolphins, 100 Pacific white-sided dolphins, 100 bottlenosed dolphins, 200 California sea lions, 200 Pacific harbor seals, and 6,000 common dolphins may be harassed incidental to the USGS survey. No mysticetes (except possibly minke whales) or sperm whales are expected to be in the area at the time of the survey and, therefore, would not be subject to incidental harassment, and no marine mammals will be seriously injured or killed as a result of the seismic survey. In addition, because the Huntec system will be towed near the seabottom and because the attenuation of mid-frequency sources is greater than low frequency sources, it is likely that few to no marine mammals at or near the surface will be affected by this acoustic instrument.

Mitigation of Potential Environmental Impact

To avoid potential TTS injury to marine mammals, a safety zone will be established and monitored continuously by biologists, and the USGS must shut off the airguns whenever the ship and a marine mammal converge closer than 100 m (328 ft). However, because no authorization was requested to incidentally harass mysticetes (except minke whales) or sperm whales (since they're not expected to be in the area), a safety zone of 250 m (820 ft) will need to be monitored for these species.

The USGS plans to have marine biologists aboard the ship who will have the authority to stop airgun operations when a mammal enters the safety zone.

During seismic-reflection surveying, the ship's speed will be only 4 to 5 knots, so that, when the airgun is being discharged, nearby marine mammals will have gradual warning of the vessel's approach and can move away. Finally, NMFS will coordinate with the local stranding network during the time of the survey to determine whether strandings can be related to the seismic operation.

Additionally, in accordance with the May 28, 1999, request from the USGS, airgun activities will not be conducted during nighttime. This will decrease the potential that a marine mammal might enter the safety zone undetected.

Monitoring and Reporting

Biologists, affiliated with the Cascadia Research Collective in Olympia, Washington, will monitor marine mammals at all times while the airguns are active. Three trained marine mammal observers will be aboard the seismic vessel to mitigate the potential environmental impact from airgun use and to gather data on the species, number, and reaction of marine mammals to the airgun. To ensure that no marine mammals are within the safety zone, monitoring will begin no later than 30 minutes prior to the acoustic sources being turned on. Each observer will work shifts that limit on-watch times to no more than 4 consecutive hours. Observers will use 7x50 binoculars with internal compasses and reticules to record the horizontal and vertical angle to sighted mammals. Monitoring data to be recorded during airgun operations include the observer on duty and weather conditions (such as Beaufort sea state, wind speed, cloud cover, swell height, precipitation, and visibility). For each mammal sighting, the observer will record the time, bearing and reticule readings, species, group size, and the animal's surface behavior and orientation. Observers will instruct geologists to shut off the airgun array whenever a marine mammal enters its respective safety zone.

Consultation

Under section 7 of the Endangered Species Act, NMFS has completed consultation on the issuance of an IHA. NMFS finds this action to be unlikely to adversely affect listed marine mammals because the endangered whales are expected to be in offshore waters outside the Channel Islands at the time of the year that the activity will take place and northern sea lions, which are expected to be in more northerly waters during the summer, are not known to be affected by low frequency seismic sources unless close to the source.

Conclusions

NMFS has determined that the short-term impact of conducting marine seismic-reflection data in offshore southern California may result, at worst, in a temporary modification in behavior by certain species of pinnipeds and cetaceans. While behavioral modifications may be made by certain species of marine mammals to avoid the resultant noise from the seismic airgun, this behavioral change is expected to have no more than a negligible impact on the animals.

In addition, no take by serious injury or death is anticipated, and takes will be at the lowest level practicable due to the incorporation of the mitigation measures previously mentioned. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to the USGS for the possible harassment of small numbers of several species of marine mammals incidental to collecting marine seismic-reflection data offshore from southern California during the period from June 3 through July 31, provided the mitigation, monitoring and reporting requirements described in the authorization are undertaken.

Dated: June 3, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14902 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Peacekeeper Missile System Deactivation/ Dismantlement at F.E. Warren Air Force Base, Wyoming

The United States Air Force Space Command is issuing this notice to advise the public that the Air Force intends to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of deactivation/dismantlement of the Peacekeeper Missile System of the 90th Space Wing based at F. E. Warren Air Force Base in Cheyenne, Wyoming. The EIS will also evaluate the potential impacts of sustainment of the current system which is the No Action

Alternative. The Strategic Arms Reduction Treaty II (START II) requires deactivation of the Peacekeeper Missile System. Deactivation will only occur if the Treaty is ratified by Russia and entered into force. As modified by the Helsinki Agreement, the Treaty requires complete dismantlement by December 31, 2007. In order to meet the Treaty deadline, deactivation could start as early as October 2000.

Public scoping meetings are planned in the towns of Cheyenne, Wheatland, and Torrington, Wyoming. The purpose of these meetings is to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Notice of the times and locations of the meetings will be made available to the community using the local news media. The schedule for the scoping meetings is as follows:

Date	Location	Time
June 28, 1999	East High School, 2800 E. Pershing Blvd., Cheyenne, WY	6:30–9:30 p.m.
June 29, 1999	Wheatland High School, 1207 13th Street, Wheatland, WY	6:30–9:30 p.m.
June 30, 1999	Torrington High School, 23rd Ave & West C, Torrington, WY	6:30–9:30 p.m.

In addition to seeking public input on environmental issues and concerns at the scoping meetings, the Air Force is soliciting written comments regarding the EIS scope. To ensure the Air Force will have sufficient time to fully consider public inputs on issues, written comments should be mailed for receipt no later than August 2, 1999.

Please direct written comments or requests for further information concerning the Peacekeeper system deactivation/dismantlement EIS to: Mr. Jonathan D. Farthing, HQ AFCEE/ECA 3207 North Road, Brooks AFB, TX 78235–5363, (210) 536–3787.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–14847 Filed 6–10–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy. This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160).

The subsequent arrangement RTD/CA(KO)–1 concerns the return of 8,431 grams of CANFLEX Fuel Bundle of which 6,747 grams consists of 111.7 grams of the isotope U–235 (1.64 percent enrichment) and the remaining 1,684 grams consists of 33.3 grams of the isotope U-235 (1.98 percent enrichment). Included in this return is 5,153 grams of enriched sintered UO2 pellets of which 3,965 grams consists of 65 grams of the isotope U-235 (1.64 percent enrichment) and the remaining 1,188 grams consists of 23.5 grams of the isotope U-235 (1.98 percent enrichment). The material is being returned to Canada from the Republic of Korea to be irradiated for performance test in NRU reactor in Canada as part of a Joint Canada/Korea fuel development program. This will be the first of a series of returns to Canada until the total amount of material originally transferred to the Republic of Korea to be incorporated into CANFLEX fuel bundles is returned to AECL. The original retransfer was implemented September 1998 and is documented as RTD/KO(CA)–7.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than June 28, 1999.

Dated: June 7, 1999.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 99–14883 Filed 6–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement; Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

AGENCY: Department of Energy.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to construct, operate and monitor, and eventually close a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nye County, Nevada. As part of its proposal, DOE is considering shipping spent nuclear fuel and high-level radioactive waste in the State of Nevada over a rail line that would be constructed or over an existing highway route that may need upgrading to accommodate heavy-haul trucks. Portions of the rail corridor or highway route would cross perennial and ephemeral streams and their associated floodplains, as well as possible wetlands. Furthermore, portions of the transportation system in the immediate vicinity of the proposed repository would be located within the 100-year floodplains of Midway Valley Wash, Drillhole Wash, Busted Butte Wash and/or Fortymile Wash. No other aspect of repository-related operations or nuclear or nonnuclear repository facilities would be located within the 500-year or 100-year floodplains of these washes. In accordance with DOE regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR Part 1022), DOE will prepare a floodplain and wetlands assessment commensurate with proposed decisions and available information. The assessment will be included in the Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada. A draft of this EIS is scheduled to be published during the summer of 1999.

DATES: The public is invited to comment on this notice on or before July 1, 1999. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be addressed to Ms. Wendy Dixon, EIS Project Manager, Yucca Mountain Site Characterization Office,

U.S. Department of Energy, P.O. Box 30307, M/S 010, Las Vegas, Nevada 89036–0307. Comments also can be submitted via electronic mail to: eisr@notes.ymp.gov.

FOR FURTHER INFORMATION CONTACT:

Proposed Action: Ms. Wendy Dixon, EIS Project Manager, at the above address, or by calling (800)–881–7292.

Floodplain and Wetlands Environmental Review Requirements: Ms. Carol Borgstrom, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202)–586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: In accordance with the Nuclear Waste Policy Act, as amended, DOE is studying Yucca Mountain in Nye County, Nevada, to determine its suitability for the deep geologic disposal of commercial and DOE spent nuclear fuel and high-level radioactive waste. In 1989, DOE published a Notice of Floodplain/Wetlands Involvement (54 FR 6318, February 9, 1989) for site characterization at Yucca Mountain, and in 1992 published a Floodplain Statement of Findings (57 FR 48363, October 23, 1992).

DOE is now preparing an EIS (DOE–EIS–0250) to assess the potential environmental impacts from the construction, operation and monitoring, and eventual closure of the proposed geologic repository. DOE issued a Notice of Intent to prepare the EIS on August 7, 1995 (60 FR 40164). As part of its proposal, DOE is considering shipping spent nuclear fuel and high-level radioactive waste in the State of Nevada over a rail line that would be constructed or over an existing highway route that may need upgrading to accommodate heavy-haul trucks. For the rail mode, DOE is evaluating five potential corridors (Figure 1). For the heavy-haul truck mode, DOE is evaluating three potential locations for an intermodal transfer station associated with five potential highway routes (Figure 2; an intermodal transfer station is a facility at which shipping casks containing spent nuclear fuel and high-level radioactive waste would be transferred from trains to trucks, and empty shipping casks would be transferred from trucks to trains). The rail corridors would be about 400 meters (0.25 mile) wide. The Carlin Corridor would be the longest at 520 kilometers (323 miles) followed by the Caliente (513 kilometers, 319 miles), Caliente-Chalk Mountain (345 kilometers, 214 miles), Jean (181 kilometers, 112 miles), and Valley Modified (159 kilometers, 98 miles) corridors. The heavy-haul routes would utilize existing roads and rights-of-ways which typically would be less than 400 meters (0.25 miles) in width. The Caliente Route would be the longest at 533 kilometers (331 miles) followed by the Caliente-Las Vegas (377 kilometers, 234 miles), Caliente-Chalk Mountain (282 kilometers, 175 miles), Sloan/Jean (190 kilometers, 118 miles) and Apex/Dry Lake (183 kilometers, 114 miles) routes.

Portions of the transportation system in the immediate vicinity of the proposed repository are likely to be located within the 100-year floodplains of Midway Valley Wash, Drillhole Wash, Busted Butte Wash and/or Fortymile Wash (Figure 3). Fortymile Wash, a major wash that flows to the Amargosa River, drains the eastern side of Yucca Mountain. Midway Valley Wash, Drillhole Wash and Busted Butte Wash are tributaries to Fortymile Wash. Although water flow in Fortymile Wash and its tributaries is rare, the area is subject to flash flooding from thunderstorms and occasional sustained precipitation. There are no naturally occurring wetlands near the proposed repository facilities, although there are two man-made well ponds in Fortymile Wash that support riparian vegetation.

If the Proposed Action were implemented, DOE would use an existing road during construction of the repository that crosses the 100-year floodplain of Fortymile Wash (Figure 3). This road and other features of site characterization that involve floodplains have previously been examined by DOE and a Statement of Findings was issued in 1992 (57 FR 48363, October 23, 1992). It is uncertain at this time whether this existing road would require upgrading to accommodate the volume and type of construction vehicles.

In addition, transportation infrastructure would be constructed either in Midway Valley Wash, Drillhole Wash and Busted Butte Wash, or in Midway Valley Wash, Drillhole Wash and Fortymile Wash. The decision on which washes would be involved is dependent on future decisions regarding the mode of transport (rail or truck) which, in turn, would require the selection of one rail corridor or the selection of one site for an intermodal transfer station and its associated heavy-haul route. Structures that might be constructed in a floodplain could include one or more bridges to span the washes, one or more roads that could pass through the washes, or a combination of roads and culverts in the washes. No other aspect of repository-related operation of nuclear or nonnuclear facilities would be located within 500-year or 100-year floodplains.

Outside of the immediate vicinity of the proposed repository, the five rail corridors, and the three sites for an intermodal transfer station and associated five heavy-haul routes, would cross perennial and ephemeral streams, and possibly wetlands. It is likely that a combination of bridges, roads and culverts, or other engineered features, would be needed to span or otherwise cross the washes and possible wetlands, although the location of such structures is uncertain at this time.

DOE will prepare an initial floodplain and wetlands assessment commensurate with the proposed decisions and available information. This assessment will be included in the Draft EIS that is scheduled to be issued for public comment later this summer. If, after a possible recommendation by the Secretary of Energy, the President considers the site qualified for an application to the U.S. Nuclear Regulatory Commission for a construction authorization, the President will submit a recommendation of the site to Congress. If the site designation becomes effective, the Secretary of Energy will submit to the Nuclear Regulatory Commission a License Application for a construction authorization. DOE would then probably select a rail corridor or a site for an intermodal transfer station among those considered in the EIS. Following such a decision, additional field surveys, environmental and engineering analyses, and National Environmental Policy Act reviews would likely be needed regarding a specific rail alignment for the selected corridor or the site for the intermodal transfer station and its associated heavy-haul truck route. When more specific information becomes available about activities proposed to take place within floodplains and wetlands, DOE will conduct further environmental review in accordance with 10 CFR Part 1022. Information that would be considered in a subsequent assessment includes, for example, the identification of 500-year and 100-year floodplains among feasible alignments of the selected rail corridor or the site of the intermodal transfer station and its associated heavy-haul route, identification of individual wetlands, and whether the floodplains and wetlands could be avoided. If the floodplains and wetlands could not be avoided, information on specific engineering designs and associated construction activities in the floodplains and wetlands also would be needed to permit a more detailed assessment and

to ensure that DOE minimizes potential harm to or within any affected floodplains or wetlands.

Issued in Las Vegas, Nevada, on the 4th day of June 1999.

Wendy Dixon,

EIS Project Manager.

BILLING CODE 6450-01-P

VOL 64 ISS 112 JE 11 1999 UMI

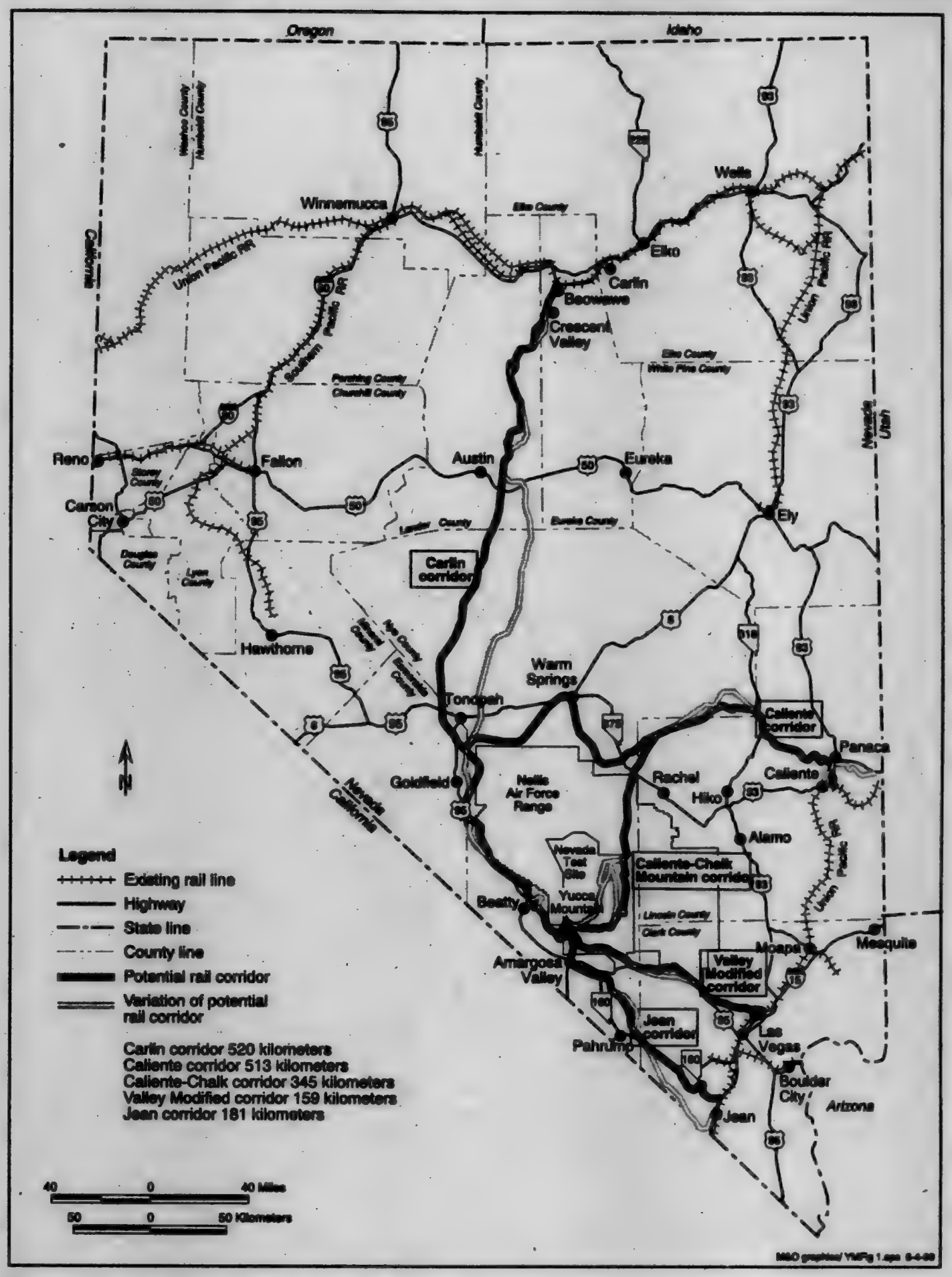

Figure 1. Potential Nevada rail corridors to Yucca Mountatin.

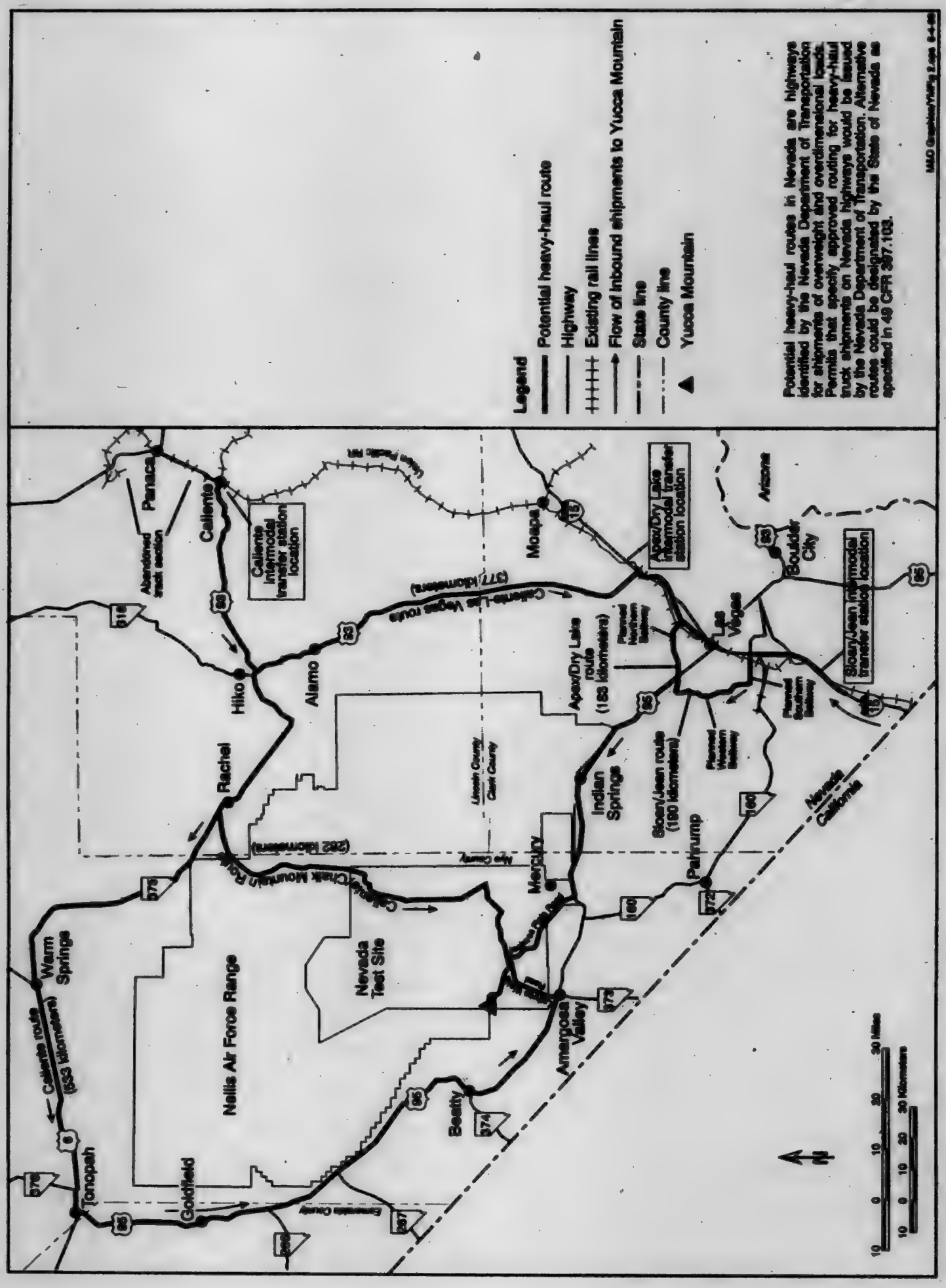

Figure 2. Potential routes in Nevada for heavy-haul trucks.

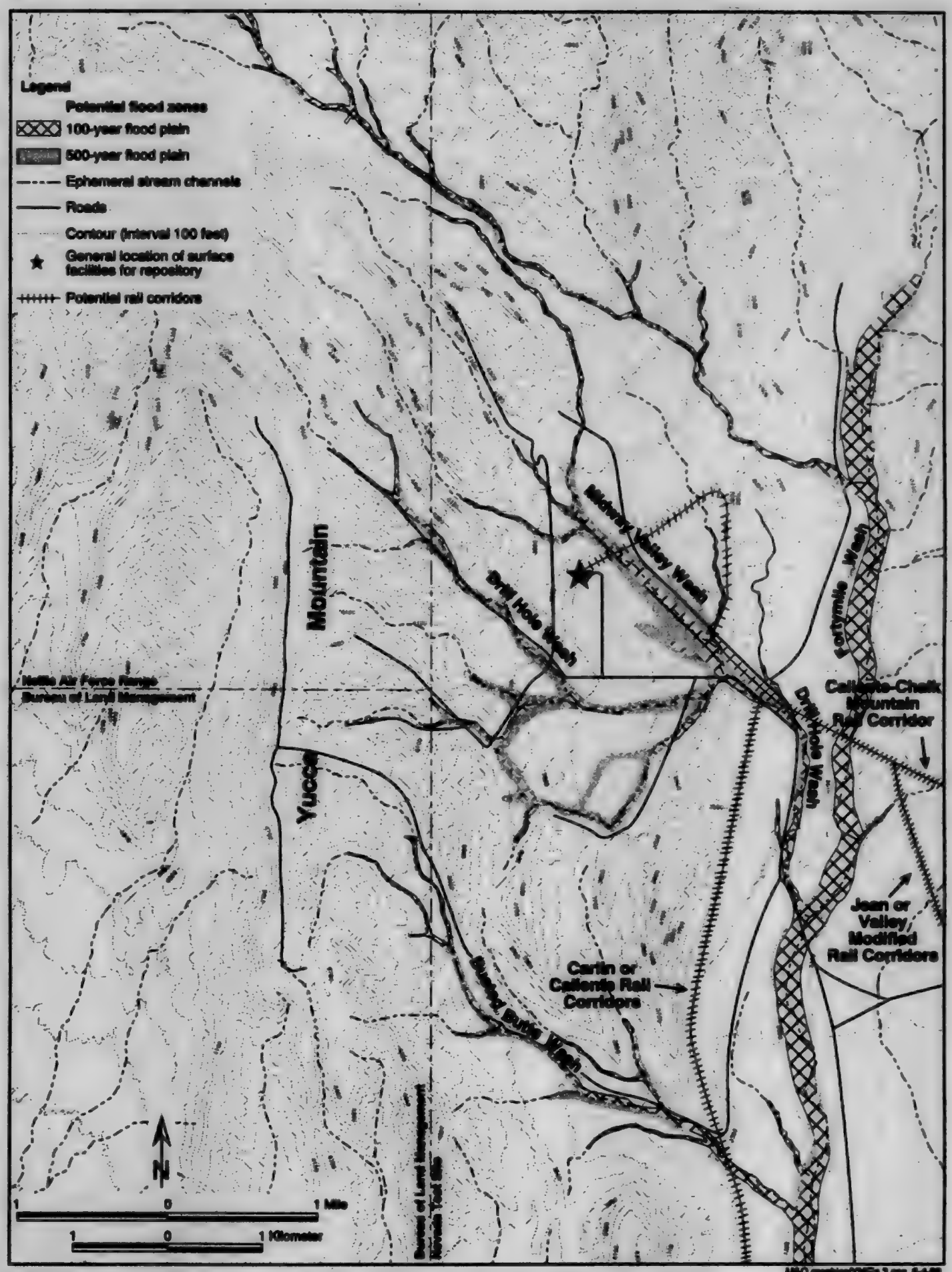

Figure 3. Yucca Mountain site topography, plains, and potential rail corridors.

[FR Doc. 99–14880 Filed 6–10–99; 8:45 am]
BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Chicago Operations Office; Solicitation for Financial Assistance Applications for Sensor and Control Technologies for Industrial Manufacturing Applications

AGENCY: Department of Energy.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for federal assistance to assist U.S. manufacturing industries in research, development, and demonstration projects on advanced sensor and control technologies. Each project must: (1) meet the high priority needs identified in the eight Industries of the Future (IOF) technology roadmaps. Roadmaps have been issued for each of the following eight IOF's: agriculture, aluminum, chemical, forest products, glass, metalcasting, mining, and steel; (2) have wide applicability across the IOF industries; and (3) improve energy efficiency and productivity as well as reduce the impact of U.S. manufacturing industries on the environment through a reduction in the generation of wastes and pollutants. The financial assistance applications should clearly describe how the project objectives will be achieved.

DATES: The complete solicitation document will be available on or about June 17, 1999, on the Internet by accessing the DOE Chicago Operations Office Acquisition Group Home Page at *http://www.ch.doe.gov/business/ACQ.htm* under the heading "Current Solicitations", Solicitation No. DE–SC02–99CH10999. Applications (in hard copy only) will be due at the DOE Chicago Operations Office no later than 3:00 p.m. local time on August 20, 1999. Any amendments to this solicitation will be posted on the Internet. Please note that users will not be alerted when the solicitation is issued on the Internet or when amendments are posted on the Internet. Prospective applicants are therefore advised to check the above Internet address on a daily basis. The cooperative agreements are expected to be awarded on or about January 15, 2000.

ADDRESSES: Completed applications referencing Solicitation No. DE–SC02–99CH10999 must be submitted to: U.S. Department of Energy, Chicago Operations Office, Attn: Denise Clarke, Bldg. 201, Room 3D–04, 9800 South Cass Avenue, Argonne, IL 60439–4899.

SUPPLEMENTARY INFORMATION: DOE's Office of Industrial Technology (OIT) supports industry efforts to increase energy efficiency, reduce waste, and increase productivity. OIT's goal is to accelerate research, development, demonstration and commercialization of energy efficient, renewable and pollution prevention technologies benefiting industry, the environment, and U.S. energy security.

As a result of this solicitation, DOE anticipates providing a total of $1 million in FY 2000. The awards made through this solicitation will provide seed support (in the range of $100,000 or less) for innovative research and development during the first year of a phased approach. This will allow more data or information to be generated for assessment of the likelihood of success of the proposed research and development in impacting IOF vision plans. A down-selection process will occur after the completion of the proposed Phase I research and development to determine whether a project awarded under this solicitation will continue to the next stage of development and demonstration. The down-selection process will be based on an assessment of the following: the project's progress toward meeting the Phase I performance objectives; its impact on IOF industry vision plans; and the remaining technological risks. The out-year funding from DOE/OIT, which is subject to availability of funds, shall not exceed $400,000 per project per year; and the life cycle for awards resulting from this solicitation, from research through development and demonstration, is normally three years, with a potential extension of two additional years for exceptional quality of innovation and leap-frog advancement to sensor and control technologies.

Any non-profit or for-profit organization, university, or other institution of higher education, or non-federal agency or entity is eligible to apply. DOE National Laboratory participation as a prime participant is not allowed but is permissible as a subcontractor and is limited to no more than 50% of the total project costs for each budget period. A minimum non-federal cost-sharing commitment of 20% of the total approved budget for each budget period is required for each awardee. For demonstration projects, the minimum cost-sharing commitment is 50% of the total cost of the project.

FOR FURTHER INFORMATION CONTACT: Denise Clarke at (630) 252–2107, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899, by facsimile at (630) 252–5045 or by electronic mail at *denise.clarke@ch.doe.gov.*

Issued in Argonne, Illinois on June 4, 1999.

John D. Greenwood,

Acquisition and Assistance Group Manager.

[FR Doc. 99–14882 Filed 6–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response × proposed frequency of response per year × estimated number of likely respondents.)

DATES: Comments must be filed on or before July 12, 1999. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer,

Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–882T, "Generic Clearance of Questionnaire Testing, Evaluation and Research.

2. Energy Information Administration; OMB No. 1905–0186; Extension of a Currently Approved Collection; Voluntary.

3. The EIA–882T is used to conduct pretest/pilot surveys (personal visit or face-to-face interviews, telephone interviews, mail questionnaires), focus groups, and cognitive interviews. Data are used to modify questionnaires to improve the quality of data. Samples of respondents are selected to participate.

4. Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

5. 1,000 hours (4,000 respondents × 1 response per year × .25 hours per response).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., June 7, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–14881 Filed 6–10–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–516–001, FERC–516]

Information Collection Submitted for Review and Request for Comments

June 7, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Public Law 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of January 28, 1999 (64 FR 4402) and has made this notification in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–516 "Electric Rate Schedule Filings"

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* OMB No. 1902–0173.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There are decreases to the reporting burden as a result of the implementation of Order No. 888 and an increase in the number of tariff service agreements which have reduce the preparation time for filings. This a mandatory information collection requirements and the Commission does not consider the information to be confidential.

a. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Part 1, Sections 15, 19, 20, 205 and 206 of the Federal Pewer Act (FPA) (16 U.S.C. 808, 812, 813, 824d–f). A public utility must obtain Commission authorization for all rates and charges made, related contracts and service conditions, and for wholesale sales and transmission of energy in interstate commerce. The Commission is authorize to investigate the rates charges by public utilities subject to its jurisdiction. If after investigation the Commission determines that the rates, terms or conditions are "unjust and unreasonable or unjustly discriminatory or unduly preferential," it is authorized to determine and prescribe the just and reasonable rates, terms or conditions. Either full or abbreviated cost data is required to support the proposed rate levels as part of the justification for the complete electric rate schedules. Submission of the information is necessary because of the complexity of the electric industry and the controversial nature of many of the elements of a utility's cost to provide service. Sufficient detail must be obtained for the Commission to make informed and equitable decisions concerning the appropriate level of rates, and to aid customers and other parties who wish to challenge the rate proposed by the utility. Failure to issue these requirements would mean the Commission is not meeting its statutory obligations. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 35 and 292.

5. *Respondent Description:* The respondent universe currently comprises on average 858 companies subject to the Commission's jurisdiction.

6. *Estimated Burden:* 536,800 total burden hours, 858 respondents, 3.42 responses annually, 183 hours per response (average).

7. *Estimated Cost Burden to Respondents:* $28,359,815 (536,800 hours × $109,889 (salary + benefits) ÷ 2080 work hours per year)).

Authority: Sections 15, 19, 20, 205 and 206 of the Federal Power Act (FPA), (16 U.S.C. 808, 812, 813, 824d–f).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14814 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-329-000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

June 7, 1999.

Take notice that on June 2, 1998, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets hereto in compliance with the Commission's Order No. 587–K issued April 2, 1999 in the above-referenced docket, Tariff Sheet Nos. 18, 18A, 19, 19A, 19B, 19C, 45, 65A, 69, 69A and 69B to be effective July 2, 1999 in order to implement the GISB Standards adopted under Order No. 587–K.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14811 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–540–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

June 7, 1999.

Take notice that on June 1, 1999 Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP99–540–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility a 20-inch tap constructed and placed in service under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) to facilitate delivery of natural gas on behalf of Acadian Gas Pipeline Company (Acadian), an intrastate pipeline company, in St. Charles Parish, Louisiana, under Koch Gateway's blanket certificate issued in Docket No. CP82–430, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Koch Gateway requests authorization to place into jurisdictional service a 20-inch tap installed under Section 311(a) of the NGPA and Section 284.3(c) of the Commission's regulations. This facility is located on Koch Gateway's pipeline designated as Index 300, in St. Charles Parish, Louisiana.

Koch Gateway states that, currently, use of this facility is limited solely to shippers utilizing transportation service under Part 284, Subpart B of the Commission's regulations. Koch Gateway further states that upon approval of this request for certification, Acadian will be able to receive gas transported to this facility pursuant to jurisdictional open-access transportation agreements as well as Part 284, Subpart B facilities will provide Acadian access to shippers utilizing Natural Gas Act transportation service and, thus, will provide Acadian with additional flexibility in obtaining gas supplies. Koch Gateway also states that Acadian estimates its peak day requirements for this facility are 200,000 Dth, and that such quantities will be transported pursuant to Koch Gateway's Firm Transportation Service and Interruptible Transportation Service Rate Schedules.

Koch Gateway states that certification of the subject facility will not have an impact on its peak day and annual deliveries because no change in service is proposed. Koch Gateway further states that it will continue operate the facility in compliance with 18 CFR, Part 157, Subpart F; that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers; and that its tariff does not prohibit the proposed change in jurisdictional status of the subject facilities or the addition of new delivery points.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14801 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–324–000]

Koch Gateway Pipeline Company; Tariff Filing

June 7, 1999.

Take notice that on June 1, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing its cash-in/cash-out report for the period April 1, 1998 through March 31, 1999.

In accordance with Section 154.209 of the Commission's Regulations, copies of this filing have been served upon Koch's customers, state commissions and other interested parties. In addition, copies of the instant filing are available during regular business hours for public inspection in Koch's offices in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us.online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14806 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–27–004]

Natural Gas Pipeline Company of America; Notice of Application To Amend Certificate

June 7, 1999.

Take notice that on May 27, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–27–004 an Application to Amend Certificate (Amendment) to delete the Commission's authorization for construction of certain new natural gas facilities. The existing certificate authority in this docket was issued during 1996–1998 as part of the Northern Border Project.[1] Natural's proposal is more fully set forth in the application on file with the Commission and open to public inspection. This application may be viewed at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for help).

The purpose of the Amendment is to delete the existing authority to construct and operate 4.1 miles of 36-inch pipeline looping east of Station 110 and 0.5 miles of 36-inch pipeline across the Mississippi River, which Natural no longer believes are needed. Natural has constructed and put into service the additional compression authorized for Station 110. The only construction activities concerning the looping and river crossing are preliminary site studies and the purchase and storing of steel pipe in a western Illinois storage site. Natural says that under winter conditions, this additional compression is sufficient to move an additional 110 MMcf/day of gas from Harper, Iowa to the Chicago area. Natural says that the Amendment does not raise any environmental, rate or service issues.

Any person desiring to be heard or making any protest with reference to said application should on or before June 28, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission. Any person who has previously intervened in Docket No. CP96–27–000/001/002 does not need to intervene again.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14800 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

[1] See the Preliminary Determination issued on August 1, 1996 (76 FERC ¶ 16,142); Order Issuing Certificate issued on August 1, 1997 (80 FERC ¶61,147); and Order Amending Certificate issued on February 27, 1998 (82 FERC ¶ 61,207)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2585–002]

Northbrook Carolina Hydro, LLC; Site Visit to Idols Hydroelectric Project

June 7, 1999.

Take notice that Commission staff will hold a site visit with Northbrook Carolina Hydro, LLC, licensee for the constructed Idols Hydroelectric Project, FERC No. 2585–002. The project is located on the Yadkin River in Forsyth County, North Carolina. The site visit will be held on Wednesday, June 23, 1999, from 11:00 a.m. to approximately 2:00 p.m.

The purpose of the visit is to enable Commission staff responsible for preparing the environmental assessment of the proposed surrender of license to view the existing dam, reservoir, and nearby areas. All interested individuals, organizations, and agencies are invited to attend the site visit.

Participants will meet at the parking lot adjacent to the project dam. To access the project site, take Exit No. 184 (Clemmons) from I–40, located west of Winston-Salem; proceed south on Clemmons Road about 2.5 miles until the road reaches a T intersection; turn right on Ferry Road and drive about 2.0 miles, parallel to a railroad track; a few hundred yards after the road crosses this railroad track, turn right at a dirt road, which leads to the project.

If you have any questions concerning this matter, please contact Jim Haimes, EA Coordinator for the Commission, at (202) 219–2780 or J. Charles (Chuck) Ahlrichs, representative for the licensee, in Seattle, Washington at (425) 557–3680.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99–14804 Filed 6–10–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3071–000]

Northeast Utilities Service Company; Notice of Termination

June 7, 1999.

Take notice that on May 27, 1999, Northeast Utilities Service Company tendered for filing notification that effective May 31, 1999, Rate Schedule FERC No. NU Operating Companies 19 and supplements thereto, effective date of January 1, 1998 and filed with the Federal Energy Commission by Northeast Utilities Service Company (NUSCO), on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Public Service Company of New Hampshire, is to be terminated in accordance with its terms and by mutual consent of the parties thereto.

Notice of the proposed termination has been served upon Citizens Power Sales, the sole customer served under this rate schedule.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 16, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99–14813 Filed 6–10–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–66–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

June 7, 1999.

Take notice that on June 1, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its EFRC Gas Tariff, First Revised Volume No. 1–A: Twenty-second Revised Sheet No. 5. PG&E GT–NW requests that the above-referenced tariff sheet become effective July 1, 1999.

PG&E GT–NW asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." These tariff changes reflect that PG&E GT–NW's fuel and line loss surcharge percentage will decrease to −0.0001% per Dth per pipeline-mile for the six-month period beginning July 1, 1999. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99–14812 Filed 6–10–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–325–000]

Tennessee Gas Pipeline Company; Request for Waiver and Filing of Take-or-Pay Reports

June 7, 1999.

Take notice that on June 1, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a request for waiver of Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee states that it is requesting this waiver to permit Tennessee to omit the filing of the revised tariff sheets scheduled to be filed by June 1, 1999, to be effective on July 1, 1999, because Tennessee has incurred only $25,000 of new recoverable take-or-pay costs since its last recovery filing submitted in Docket No. RP99–167.

Tennessee notes that the deferral of recovery of take-or-pay costs will not affect the accounting for additional costs and carrying charges, in accord with Article XXV, Sections 3.2 and 3.3, and the costs will be recovered through future filings pursuant to Article XXV.

Tennessee further notes that it is filing reports showing the derivation of the balances in its Demand and Volumetric Transition Cost Accounts, including carrying charge calculations, and the status of its recovery filings relative to the cap.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before

June 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14807 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–326–000]

Tennessee Gas Pipeline Company; Proposed Changes in FERC Gas Tariff

June 7, 1999.

Take notice that on June 1, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of July 1, 1999:

Eighth Revised Sheet No. 1
Original Sheet No. 29B
Original Sheet No. 236
Original Sheet No. 237
Original Sheet No. 238
Original Sheet No. 239
Original Sheet No. 240
Original Sheet No. 241
Tenth Revised Sheet No. 317
Ninth Revised Sheet No. 318
Sixth Revised Sheet No. 401
Third Revised Sheet No. 404
Original Sheet No. 513A
Original Sheet No. 513B
Original Sheet No. 513C
Original Sheet No. 513D
Original Sheet No. 513E
Original Sheet No. 659H
Original Sheet No. 659I
Original Sheet No. 659J
Original Sheet No. 659K
Original Sheet No. 659L
Original Sheet No. 659M
Original Sheet No. 659N
Original Sheet No. 659O
Original Sheet No. 659P
Original Sheet No. 659Q
Original Sheet No. 659R
Original Sheet No. 659S

Tennessee states that its filing is being made to implement new interruptible park and loan (PAL) services under Rate Schedule PAL. Tennessee states that PAL services will provide its customers with greater flexibility in managing their transportation needs and enable customer to more easily address excesses and shortages of gas supply on a temporary basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14808 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–328–000]

Tennessee Gas Pipeline Company; Proposed Changes in FERC Gas Tariff

June 7, 1999.

Take notice that on June 2, 1999, Tennessee Gas Pipeline Company (Tennessee), pursuant to Section 4 of the Natural Gas Act and Part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Original and revised tariff sheets pertaining to Rate Schedule NET 384. Tennessee requests that the tariff sheets be made effective July 1, 1999.

Tennessee states that the purpose of the tariff filing is to (1) revise Rate Schedule NET 284 to provide Rate Schedule NET shippers with an additional opportunity to convert to Part 284 service under Rate Schedule NET 284, (2) submit two pro forma service agreements under Rate Schedule NET 284, (3) provide for Authorized Overruns (AO) under Rate Schedule NET 284, (4) redefine the rights that NET 284 shippers have to use secondary receipt and delivery points.

In particular, Tennessee proposes to revise Rate Schedule NET 284 to establish a window period in which Rate Schedule NET shippers will have the opportunity to convert to Part 284 service under Rate Schedule NET 284. Specifically, Tennessee proposes to revise Section 1(b) of Rate Schedule NET 284 to permit NET shippers to convert to NET 284 service by providing notice of their election to Tennessee during the period July 1–December 1, 1999. Tennessee states that the conversions will be carried out under the newly modified terms of section 157.217 of the Commission's regulations.

Tennessee also proposes to include a provision for Authorized Overruns under Rate Schedule NET 284. The AO tariff language will be comparable to the AO provisions under Tennessee's other firm transportation Rate Schedules, i.e., Rate Schedules FT–A, FT–G, FT–GS. In particular, NET 284 shippers will be permitted to nominate Authorized Overruns only upon Tennessee's advance approval through the EBB. The per unit rate for Authorized Overruns will be the volumetric derivative of the maximum applicable charge under the shipper's contract and the NET 284 Rate Schedule designed on a 100 percent load factor basis. Authorized Overruns will have the same scheduling and allocation/curtailment priority as Authorized Overruns under other firm transportation services, as set forth in Article III, Section 5 and 6 of the General Terms and Conditions of Tennessee's FERC Gas Tariff. Tennessee's proposal will not result in any degradation of service to firm shippers because AO quantities have a lower priority than firm primary, secondary and tertiary service.

Tenesseee is revising the NET 284 Rate Schedule to provide that a NET 284 shipper's use of secondary receipt and delivery points will be limited to those points located in the NET 284 rate zone segment(s) in which the shipper has reserved capacity. Currently, NET 284 shippers have secondary rights to all points on [Tennessee's] system within Shipper's transportation Path. Under the General Terms and Conditions of Tennessee's FERC Gas Tariff, Transportation Path is defined as the zone of primary receipt through the zone of primary delivery. However, unlike Rate Schedule FT–A shippers, NET 284 shippers do not reserve capacity by zones; they reserve capacity by rate zone segments. Moreover, the NET 284 rate zone segments do not correspond to zone on the Tennessee

system. Under the existing tariff, a NET 284 shipper which reserves capacity in a rate zone segment which includes only a portion of a zone, has secondary rights to all points in the zone, including points which are not located in the rate zone segment covered by the shipper's reservation charges. In order to remedy this situation, Tennessee proposes to revise Rate Schedule NET 284 to provide that NET 284 shippers will have secondary rights only to those points located in NET rate zone segment(s) in which they have reserved capacity. Tennessee states that the proposed tariff revision is consistent with the Commission's general policy that shippers should only be able to access secondary receipt and delivery points on portions of the system which are covered by their reservation charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14810 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–327–000]

Texas Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

June 7, 1999.

Take notice that on June 1, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 1999:

Thirty-first Revised Sheet No. 10
Fourteenth Revised Sheet No. 10A
Nineteenth Revised Sheet No. 11A
Fifteenth Revised Sheet No. 11B
Twenty-ninth Revised Sheet No. 12
Fourth Revised Sheet No. 208
Original Sheet No. 208A

Texas Gas states that the filing seeks to recover under the provisions of Order No. 528 addition take-or-pay settlement payments made by Texas Gas as a result of certain obligations to indemnify a producer against additional royalty obligations arising out of the producer's prior take-or-pay settlement with Texas Gas. Texas Gas proposes to absorb 25 percent of the costs and seeks authority to recover 75 percent or approximately $1.3 million, exclusive of interest, via a commodity surcharge of $.0020/MMBtu on all mainline throughput, with no direct bill recovery. The Order No. 528 commodity surcharge is scheduled to be in effect for a 12-month period beginning July 1, 1999.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14809 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–16–006]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

June 7, 1999.

Take notice that on May 18, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on April 27, 1999, Transco submitted refunds (total principal and interest amount of $4,389,744.64) to all affected shippers in Docket Nos. CP96–16–005, CP97–193–002, and CP97–193–003.

Transco states that on October 1, 1997, as supplemented on October 3, 1997, Transco filed tariff sheets in Docket No. CP96–16 which set forth the initial incremental reservation rates for the SunBelt firm transportation service (SunBelt filing). At the time the SunBelt filing was made Transco's rate of return had not been determined by the Commission in Docket No. RP95–197. In the SunBelt filing Transco stated that upon resolution of the rate of return issue Transco would file revised tariff sheets in Docket No. CP96–16 to effective November 1, 1997.

Transco states that on March 1, 1999, Transco filed revised tariff sheets in Docket No. CP96–16–005 (March 1 filing), to reflect in the SunBelt incremental reservation rates the rate of return approved by the Commission in its Order on rehearing in Docket RP95–197–033 on December 1, 1998 (85FERC ¶61,323) (Opinion No. 414–B). The Commission approved Transco's March 1 filing on March 29, 1999. Transco began assessing the reduced SunBelt reservation rates effective April 1, 1999.

Transco also states that on October 1, 1997, Transco filed tariff sheets which set forth the initial reservation rate surcharge for the Maiden Delivery Lateral Expansion project (Maiden Lateral filing). In the Maiden Lateral filing Transco stated that upon resolution of the rate of issue in Docket No. RP95197–000, Transco would file revised tariff sheets to reflect that resolution in the reservation rate surcharge, effective November 1, 1997.

Transco states that on March 1, 1999 revised tariff sheets were filed in Docket Nos. CP97–193–002 and CP97–193–003 to reflect the rate of return approved by the Commission in Opinion 414B. The Commission approved those tariff sheets on March 29, 1999. Transco began assessing the reduced Maiden Lateral reservation surcharge effective April 1, 1999.

Transco further states that transportation refunds have been calculated for the period November 1, 1997 through March 31, 1999 based on the difference between the amounts billed and amounts calculated utilized the revised rates.

Any person desiring to protest said filing should file protests with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14799 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–281–000]

Transwestern Pipeline Company; Granting Late Intervention

June 7, 1999.

Motions to intervene in the above-captioned proceedings were due on April 19, 1999. Pacific Gas and Electric Company and PNM Gas Services, a division of Public Service Company of New Mexico, filed motions to intervene out of time. No party filed an answer in opposition to the motion.

The petitioner appears to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioner to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. 717–717(W). Participation of the late intervenor shall be limited to matters set out in its motion to intervene. The admission of the late intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14805 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–78–000, et al.]

Enron Capital and Trade Resources Corp., et al.; Electric Rate and Corporate Regulation Filings

June 4, 1999

Take notice that the following filings have been made with the Commission:

1. Enron Capital & Trade Resources Corp., SCC–L1, L.L.C., SCC–L2, L.L.C. and SCC–L3, L.L.C.

[Docket No. EC99–78–000]

Take notice that on June 2, 1999, Enron Capital & Trade Resources Corp., on behalf of itself and its wholly-owned subsidiaries SCC–L1, L.L.C., SCC–L2, L.L.C. and SCC–L3, L.L.C. tendered an application for approval of a corporate reorganization pursuant to Section 203 of the Federal Power Act.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Colorado Cogen Operators, LLC

[Docket No. EG99–153–000]

Take notice that on May 28, 1999, Colorado Cogen Operators, LLC, 4845 Pearl East Circle, Suite 300, Boulder, Colorado 80301 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Colorado limited liability company. The Applicant operates or intends to operate three separately owned eligible facilities, all gas-fired cogeneration facilities, that are located in close proximity to each other in the town of Brush, Colorado (the Facilities). One of the Facilities is under construction and will be 60 megawatts; one is operating as a 50-megawatt plant but is expected (subject to modification of air permits) to be upgraded to as high as 80 megawatts; and one is a 68-megawatt qualifying facility. All of the electric output of the Facilities is or will be sold at wholesale to Public Service Company of Colorado.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Colorado Energy Management LLC

[Docket No. EG99–154–000]

Take notice that on May 28, 1999, Colorado Energy Management LLC, 4845 Pearl East Circle, Suite 300, Boulder, Colorado 80301 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Colorado limited liability company. The Applicant owns a newly constructed 60-megawatt gas-fired electric generation plant consisting of two 25-megawatt gas turbines located in the town of Brush, Colorado (the Facility). The Facility is scheduled to begin commercial operation June 20, 1999. All of the electric output of the Facility will be sold at wholesale, initially to Public Service Company of Colorado.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. AA#1 Services, LLC

[Docket No. EG99–155–000]

Take notice that on May 28, 1999, AA#1 Services, LLC, 4845 Pearl East Circle, Suite 300, Boulder, Colorado 80301 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Colorado limited liability company. The Applicant intends to operate a 75-megawatt electric cogeneration power plant (the Facility) located in Rifle, Colorado, for the plant's owners, American Atlas #1, Ltd., L.L.L.P. All of the electric output of the Facility will be sold at wholesale to Tri-State Generation and Transmission Association, Inc.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Erie Boulevard Hydropower, L.P.

[Docket No. EG99–156–000]

Take notice that on May 28, 1999, Erie Boulevard Hydropower, L.P.

(Applicant), with its principal office at c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will be engaged in owning and operating 72 eligible facilities located in New York State. The eligible facilities consist of approximately 660 MW of hydroelectric generation plants. The Applicant will sell electric energy exclusively at wholesale. Electric energy produced by the eligible facilities is sold exclusively at wholesale.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Minergy Neenah, L.L.C.

[Docket No. EG99–157–000]

Take notice that on June 1, 1999, Minergy Neenah, L.L.C. (Minergy Neenah) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application. On June 3, 1999, Minergy Neenah filed the Affidavit of Richard O'Conor that was inadvertently omitted from the application.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Reliant Energy Indian River, LLC

[Docket No. EG99–158–000]

Take notice that on June 2, 1999, Reliant Energy Indian River, LLC (Reliant Indian River) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. § 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission).

Reliant Indian River is a Delaware limited liability company and proposes to acquire the Indian River generating facility located in Brevard County, Florida. The Indian River generating facility presently is owned by the Orlando Utilities Commission.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Colorado Power Partners

[Docket No. ER99–3077–000]

Take notice that on May 28, 1999, Colorado Power Partners (CPP), tendered for filing an application with the Federal Energy Regulatory Commission (Commission) requesting acceptance of CPP FERC Electric Rate Schedule Nos. 1 and 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

CPP is seeking blanket approval to sell electric energy and capacity at market-based rates from the Brush Cogeneration Facility, located in Brush, Colorado, to Public Service Company of Colorado under CPP FERC Electric Rate Schedule No. 1. CPP also requests that the Commission accept CPP FERC Electric Rate Schedule No. 2 so that CPP may make sales of energy and capacity from the Brush Cogeneration Facility to third parties at market-based rates should the opportunity arise.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Yadkin, Inc.

[Docket No. ER99–3078–000]

Take notice that on May 28, 1999, pursuant to Section 35.15(a) of the Commission's Regulations, Yadkin, Inc. (Yadkin) filed with the Federal Energy Regulatory Commission a Notice of Termination of the Interchange Service Agreement between Yadkin and Carolina Power & Light Company, effective January 30, 1959, designated as Yadkin Rate Schedule FERC No. 3.

Additionally, pursuant to Section 35.15(a) of the Commission's Regulations, Yadkin requests an effective date for this termination 60 days from the date of filing or July 28, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER99–3081–000]

Take notice that on May 28, 1999, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Consolidated Edison Energy, Inc. (ConEdison). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of ConEdison's signature page does not change the NEPOOL Agreement in any manner, other than to make ConEdison a member in NEPOOL.

NEPOOL requests an effective date of June 1, 1999, for the commencement of participation in NEPOOL by ConEdison.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Pool

[Docket No. ER99–3082–000]

Take notice that on May 28, 1999, the New England Power Pool Executive Committee tendered for filing for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by ACN Power, Inc. (ACN Power). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of ACN Power's signature page would permit NEPOOL to expand its membership to include ACN Power. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make ACN Power a member in NEPOOL.

NEPOOL requests an effective date of July 1, 1999, for commencement of participation in NEPOOL by ACN Power.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Pool

[Docket No. ER99–3083–000]

Take notice that on May 28, 1999, the New England Power Pool (NEPOOL or Pool) Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of June 1, 1999, of e prime, inc. Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by e prime, inc.. The New England Power Pool Agreement, as amended (the "NEPOOL Agreement"), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of e prime, inc. with an effective date of June 1, 1999 would relieve this entity, at e prime, inc.'s request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove e prime, inc. from membership in the Pool.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Montaup Electric Company

[Docket No. ER99–3096–000]

Take notice that on May 28, 1999, Montaup Electric Company (Montaup) hereby tendered for filing information relating to its cost of transmission service pursuant to the settlement agreement in Docket Nos. ER97–4691–000 and ER98–861–000.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Colorado Energy Management LLC

[Docket No. ER99–3104–000]

Take notice that on May 28, 1999, Colorado Energy Management LLC, tendered for filing pursuant to Rules 205 and 207 an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective June 20, 1999, and accepting two power purchase agreements between it and Public Service Company of Colorado, running continuously from June 20, 1999, through April 30, 2007.

In transactions where Colorado Energy Management LLC will sell electric energy and/or capacity at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed with the purchasing party.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Riverside Canal Power Company

[Docket No. ER99–3105–000]

Take notice that on May 28, 1999, Riverside Canal Power Company tendered for filing a Power Purchase and Sale Agreement for short term transactions between Riverside Canal Power Company and Williams Energy Marketing & Trading Company to be in effect as of May 1, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Mountainview Power Company

[Docket No. ER99–3106–000]

Take notice that on May 28, 1999, Mountainview Power Company tendered for filing a Power Purchase and Sale Agreement for short term transactions between Mountainview Power Company and Williams Energy Marketing & Trading Company to be in effect as of May 1, 1999.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Electric Company

[Docket No. ER99–3108–000]

Take notice that on May 28, 1999, Commonwealth Electric Company, (Commonwealth) tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and DukeSolutions, Inc. (DukeSolutions). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to DukeSolutions under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Cambridge Electric Light Company

[Docket No. ER99–3109–000]

Take notice that on May 28, 1999, Cambridge Electric Light Company (Cambridge) tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and DukeSolutions, Inc. (DukeSolutions). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to DukeSolutions under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho County Light & Power Cooperative Association, Inc.

[Docket No. ES99–39–000]

Take notice that on June 1, 1999, Idaho County Light & Power Cooperative Association, Inc. (ICL&P), tendered for filing an application to issue securities pursuant to section 204 of the Federal Power Act (FPA), 16 U.S.C. § 824c, and Part 34 of the Regulation of the Federal Energy Regulatory Commission (Commission), 18 CFR 34. ICL&P's filing is available for public inspection at its offices in Grangeville, Idaho.

ICL&P respectfully requests that the Commission: (1) authorize long-term borrowing up to $3 million over a two year period commencing July 15, 1999, pursuant to a loan agreement and (2) exempt ICL&P from any requirement to use competitive bidding or negotiated placement in relation to the debt.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER99–3107–000]

Take notice that on May 28, 1999, New York State Electric & Gas Corporation, (NYSEG) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.15, a notice of cancellation (Cancellation) of Rate Schedule FERC No. 106 (Rate Schedule) between NYSEG and Long Island Lighting Company (LILCO).

NYSEG requests that the Cancellation be deemed effective as of May 29, 1999.

NYSEG served copies of the filing upon the New York State Public Service Commission and LILCO.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–14798 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Project; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 67–085.

c. *Date Filed:* May 5, 1999.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Big Creek Nos. 2A and 8 and Eastwood Project.

f. *Location:* San Joaquin River, Eastern Fresno County, California. The project occupies in part, lands of the Sierra National Forest.

g. *Filed Pursuant to:* 18 CFR § 4.200.

h. *Applicant Contact:* Mr. Bryant C. Danner, Executive Vice President and General Counsel, Southern California EdisonCompany, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302–4459

i. *FERC Contact:* Any questions on this notice should be addressed to Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address: annumzziatta.purchiaroni@ ferc.fed.us

j. *Deadline for filing comments and or motions:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (67–085) on any comments or motions filed.

k. *Description of Amendment:* The licensee proposes to replace the existing deteriorating water conduit pipeline on Chinquapin and Camp 62 Creeks with a system where both creeks enter Ward Tunnel directly via shafts bored from both diversions. The licensee also proposes to construct a new diversion on Chinquapin Creek, decommission the old diversion, and construct two temporary access roads to facilitate the drilling of bore holes and removal of the abandoned facilities. The project boundary will not be increased to accommodate the new project works.

l. *Locations of the application:* a copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commissions' mailing should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requriements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14802 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Project; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1494–181.

c. *Date Filed:* April 22, 1999.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary E. Von Drehle, Grand River Dam Authority P.O. Box 409, Vinita, OK 74301 (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at Jon.Cofrancesco@ferc.fed.us or telephone 202–219–0079.

j. *Deadline for filing comments and or motions:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20416.

Please include the project number on any comments or motions filed.

k. *Description of Project:* 1494–181 Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to issue a permit to Terry Frost, d/b/a/ Cherokee Yacht Club (permittee), to make modifications to an existing commercial marina located on Duck Creek within the project's Grand Lake. The existing facility contains five boat docks with a total of 187 slips and a breakwater. The permittee proposes to add 12 slips to the existing boat docks, bringing the total number of slips to 199, and to add a gas dock containing 3 slips.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application

may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14803 Filed 6–10–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed May 31, 1999 Through June 04, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990183, DRAFT SUPPLEMENT, COE, NM, Rio Grande Floodway, Flood Protection Plan, San Acacia to Bosque del Apache Unit, Socorro County, NM, Due: July 26, 1999, Contact: Anthony J. Apodaca III (505) 342–3364.

EIS No. 990184, FINAL EIS, FAA, CT, Sikorsky Memorial Airport, Proposed Runway 6–24 Improvements, Construction, Stratford, CT, Due: July 12, 1999, Contact: John Silva (781) 238–7602.

EIS No. 990185, FINAL EIS, NPS, VT, Marsh-Billings-Rockefeller National Historical Park, General Management Plan, Implementation, Woodstock, VT, Due: July 12, 1999, Contact: Rolf Diamant (802) 457–3368.

EIS No. 990186, DRAFT EIS, BLM, NM, Rio Puerco Resource Management Plan Amendment, Managing Land and Resource for EL Malpais National Conservation Area and Chain of Craters Wilderness Study Area, Lies South of the City of Grants, Cibola County, NM, Due: September 24, 1999, Contact: Kent Hamilton (505) 761–8700.

EIS No. 990187, FINAL EIS, USN, GU, AK, AS, HI, Marianas Islands Military Training, Implementation, Marianas Training Plan, Guam, Commonwealth of the Northern Mariana Islands, Asia, Hawaii and Alaska, Due: July 12, 1999, Contact: Stanley Uehara (808) 471–9338.

EIS No. 990188, FINAL EIS, NAS, CA, Programmatic EIS—NASA Ames Aerodynamic Testing Program, Implementation, Analyzation of the Noise Envelope of Future Wind Tunnel Testing at the National Full-Scale Aerodynamic Complex (NFAC), NASA Ames Research Center, Moffet Field, Santa Clara County, CA, Due: July 12, 1999, Contact: Sandra Olliges (202) 358–1112.

EIS No. 990189, DRAFT EIS, AFS, CA, Herger-Feinstein Quincy Library Group Forest Recovery Act, Establishing and Conducting a Pilot Project, Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA, Due: July 26, 1999, Contact: David Peters (530) 283–7821.

Amended Notices

EIS No. 990168, FINAL EIS, AFS, AK, Sea Level Harvest Timber Sale, Implementation, Tongass Coast Guard Permit, NPDES Permit and COE Section 10 and 404 Permit, Revillagigedo (Revilla) Island, AK, Due: July 12, 1999, Contact: Craig Trulock (907) 228–4125. Published FR–06–11–99—Correction to Due Date and Title.

Dated: June 8, 1999.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–14904 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 17, 1999 through May 21, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–BLM–G02008–NM Rating EC2, Bistil/De-Na-Zin Wilderness Oil and Gas Development, To Drill 13 Oil and Gas Wells on Two Leases, Permit to Drill and Right-of-Way Permit, San Juan County, NM.

Summary: EPA expressed environmental concerns due to potential impacts to the wilderness area. EPA requested that BLM consider selection of Alternative A as the agency preferred alternative. However, EPA would not object to the selection of the No Action Alternative, if chosen.

ERP No. D–COE–E39048–FL Rating LO, Alligator Chain of Lakes and Lake Gentry Extreme Drawdown and Habitat Enhancement Project, Implement Aquatic Habitat Enhancement, Osceola County, FL.

Summary: EPA had no objections to the proposed drawdown of the Alligator Chain and Lake Gentry in order to promote fisheries production and recreational opportunties.

ERP No. D–FAA–D51026–00 Rating EC2, Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON), To consolidated four TRACON in Baltimore-Washington Metro Terminal Area, Possible Site is Vint Hill Farms, VA, DC and MD.

Summary: EPA expressed environmental concern regarding the proposed action as it relates to future air traffic actions. EPA requested clarification of this issue.

ERP No. D–FAA–F51044–OH Rating EO2, Toledo Express Airport (TOL), Proposed Noise Compatibility Plan Air Traffic Actions and Proposed Aviation Related Industrial Development, Airport Layout Plan and Funding, Lucas County, OH.

Summary: EPA expressed environmental objections due to potentially significant noise impacts. EPA expressed detailed comments regarding the generic nature of the DEIS and the lack of interagency coordination along with detailed comments on noise, wetlands and supporting data.

Final EISs

ERP No. F–BOP–D80028–WV Preston County Federal Correctional Facility, Construction, Preston County, WV.

Summary: EPA expressed environmental concerns regarding potential wetland impacts that should be avoided. Mitigation measures will be required for wetland impacts that cannot be avoided.

ERP No. F–BOP–D81030–WV Ohio and Tyler Counties Federal Correctional Facility, Construction and Operation, Three Possible Sites: Wheeling-Ohio County Airport Industrial Park, Fort Henry and Iver Flats, Ohio and Tyler Counties, WV.

Summary: EPA expressed environmental concerns due to potential wetlands impacts. Mitigation measures will be required for wetland impacts (building or road placement) that cannot be avoided. EPA concurs generally with the decisions presented in this document and continues to encourage early delineation of the wetlands to allow the facility design to preferably avoid or minimize the wetlands impacts.

ERP No. F–TVA–E39038–TN Columbia Dam Component of the Duck River Project, Implementation, Use of Lands Acquired, Possible COE Section 404 Permit, Maury County, TN.

Summary: EPA expressed environmental concerns regarding the proposed reuse of lands and the attendant pollution potential associated with development. EPA also expressed concern about the development of the Fountain Creek Reservoir for water supply from a potential wetlands inundation and development perspective.

Dated: June 8, 1999.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–14905 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6359–8]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency gives notice of a meeting of the Good Neighbor Environmental Board.

The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets three times annually. Members of the public are invited to provide oral and/or written comments to the Board. Time will be provided at the meeting to obtain input from the public.

DATES: The Board will meet on June 24 and 25, 1999. The Board will meet on June 24 from 8:30 a.m. to 4:00 p.m. and on June 25 from 8:30 a.m. to 2:30 p.m.

ADDRESSES: Marriott Hotel-University Park, Tucson, Arizona located at 880 E. 2nd Street. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2695.

Dated: May 27, 1999.

Melanie Medina-Ortiz,

Designated Federal Officer, Good Neighbor Environmental Board.

[FR Doc. 99–14862 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several Committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Health and Ecological Effects Subcommittee (HEES)

The Health and Ecological Effects Subcommittee (HEES) of the Advisory Council on Clean Air Compliance Analysis (Council) will review the draft Prospective Study: Report to Congress, with a focus on the health and ecological aspects of the Clean Air Act Amendments (CAAA) Section 812 Prospective Study data. The HEES will meet on Monday, June 28, 1999 from 9:30 am to 5:00 pm and Tuesday, June 29, 1999 from 9:00 am to 4:00 pm. The meeting will take place in the Science Advisory Board Conference Room M3709, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The last meeting of the HEES meeting was announced in the **Federal Register** [See 64 FR 15160, March 30, 1999]; a history of HEES Advisories can be found in that notice.

The draft charge to the HEES is as follows:

The Agency has requested that the Council—and its subsidiary HEES—review the forthcoming materials and provide advice to the Agency pursuant to the following general charge questions, consistent with the review

responsibilities of the Council as defined in section 812 of the CAAA90:

(a) It has been suggested to the Agency that the WHO (1996) study provides scientific evidence of the existence of a 15 year lag between changes in PM exposure and changes in associated adverse health effects. Heretofore, however, the Agency has interpreted the WHO authors' summing of incidences at the end of the 15 exposure period of the Dockery study as a matter of mathematical convenience, not evidence of the WHO authors' belief in the existence or magnitude of a lag between changes in exposure and changes in risk of adverse health effect. What is the SAB HEES view regarding the proper interpretation and use of the WHO (1996) study? Specifically, does the HEES believe it is reasonable to assume that, based on the WHO (1996) study or other evidence, there is no reduction in risk of adverse health consequences until 15 years following a reduction in PM exposure?

(b) Are the input data used for each component of the analysis sufficiently valid and reliable for the intended analytical purpose?

(c) Are the models, and the methodologies they employ, used for each component of the analysis sufficiently valid and reliable for the intended analytical purpose?

(d) If the answers to either of the two questions above is negative, what specific alternative assumptions, data or methodologies does the Council recommend the Agency consider using for the first prospective analysis?

For Further Information: (a) *Contacting Program Office Staff and Obtaining Review Materials*—To obtain copies of the draft documents pertaining to the CAA Section 812 Prospective Study, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–5580; FAX (202) 260–9766, or via e-mail at: <jefferson.catrice@epa.gov>. To discuss technical aspects of the draft document pertaining to the CAAA–90 Section 812 Prospective Study: Report to Congress, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via e-mail at: <democker.jim@epa.gov>.

(b) *Contacting SAB Staff and Obtaining Meeting Information*—To obtain copies of the meeting agendas or rosters of participants, please contact Ms. Diana L. Pozun, Management Assistant to the Council and HEES, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington, DC 20460; at Tel. (202) 260–8432; FAX (202) 260–7118; or via e-mail: <pozun.diana@epa.gov>. To discuss technical or logistical aspects of the Council and HEES subcommittee review process (Tel. (202) 260–4126; or via e-mail: <nugent.angela@epa.gov>), Designated Federal Officer to the Council and HEES, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, FAX (202) 260–7118 or Mr. Robert Flaak, Team Leader, Committee Operations Staff (Tel. (202) 260–5133; or via e-mail: <flaak.robert@epa.gov> at the same address.

(c) *Obtaining Copies of SAB Reports*—Copies of SAB prepared final reports mentioned in this **Federal Register** Notice may be obtained immediately from the SAB Home Page (www.epa.gov/sab) or by mail/fax from the SAB's Committee Evaluation and Support Staff at Tel. (202) 260–4126, or FAX (202) 260–1889. Please provide the SAB report number when making your request. *Draft* reports in progress can be obtained from Ms. Pozun once the Committee or Subcommittee Chair has released the draft.

2. Integrated Risk Project Peer Review Subcommittee

The Integrated Risk Project Peer Review Subcommittee of the Science Advisory Board (SAB) will meet on Thursday and Friday, July 1 and 2, 1999 in room 3709 at the U.S. Environmental Protection Agency (US EPA), Waterside Mall Headquarters Building, 401 M Street, SW, Washington, DC 20460. The meeting will begin at 8:30 am and end no later than 5:30 pm each day.

Purpose of the Meeting: In 1995 EPA and the U.S. Congress asked the SAB to revisit and update the assessment of environmental risks and risk reduction strategies contained in the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (EPA–SAB–EC–90–021). EPA also asked the SAB to: explore additional techniques and criteria for identifying environmental risks; identify risk reduction opportunities and strategies, identify uncertainties and data quality issues associated with risk rankings; provide an assessment of the costs and benefits of various risk reduction options; and propose a new framework for assessing ecosystem value.

In conducting this project, the IRP Steering Committee decided to look beyond risk comparisons; to go beyond strictly scientific considerations, and to explore the entire environmental decision-making and management process from their perspectives as scientists. In order to develop a more integrated, science-based environmental protection approach, the IRP Subcommittees considered the various technical analyses that underlie the process.

Two reports were produced. A short summary document for the general reader capturing the main points of the longer, technical, document which describe an overall framework for integrating supplemented by individual chapters on economic analysis, pollution, risk assessment, and valuation. These fall into three categories. Methodology (i.e., ecological and health effects, risk reduction options, the report card and the deliberation pieces of the valuation chapter), primer (i.e., economics), and philosophy (i.e., bulk of the valuation chapter).

The purpose for this meeting is to conduct a peer review of the reports which will be conducted by members of the SAB Executive Committee who did not participate in the IRP supported by consultants to the SAB who also did not work on the IRP project. The main focus of the Peer Review is the short report and the Steering Committee developed chapters of the long report (introduction, framework, performance evaluation, and the decision making approach) since these provide the main messages on the integration concept that we are recommending to the Agency. The individual Subcommittee reports will also be reviewed by the Peer Review Committee.

Proposed Charge Questions: The proposed charge questions are:

Charge Question 1. Does the integrated framework document as a whole provide a useful and scientifically valid concept for the Agency to develop processes and procedures for integrated environmental decision-making?

Charge Question 2. Do the chapters on ecology, health, risk reduction options, report card, and the deliberative portion of the valuation chapter describe adequate and useful methods for addressing/ranking frisks?

Charge Questions 3. Does the document provide an adequate and useful description for how this information might be linked in decision-making?

Charge Question 4. Does the economics chapter provide an adequate an useful primer for economic analysis?

Charge Question 5. Does the chapter on valuation provide and adequate and

useful philosophy describing how to incorporate values into decision-making, clearly articulating that more than science is needed in the decision-making process?

Charge Question 6. Is the document clearly written, comprehensible and complete?

For Further Information Concerning the Meeting: The draft IRP reports are accessible via the SAB website (http://www.epa.gov/sab). For those without access to the web single copies of the document may be obtained by contacting Ms. Wanda Fields, Science Advisory Board (1400), US Environmental Protection Agency, 401 M Street SW., Washington DC 20460, telephone (202) 260–5510, fax (202) 260–7118; or via e-mail at: <fields.wandaepa.gov>. Member of the public desiring additional information about the meeting should contact Dr. John R. Fowle III, Designated Federal Officer, Integrated Risk Project Peer Review Subcommittee, Science Advisory Board (1400), Room 3702F, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–8325; fax at (202) 260–7118; or via e-mail at <fowle.jack@epa.gov>. A copy of the draft agenda will be available approximately two weeks prior to the meeting on the SAB website (www.epa.gov/sab) or from Ms. Wanda Fields at the address and numbers noted above.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Dr. Fowle in writing (by email, by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, June 24, 1999 in order to be included on the Agenda. Public comments will be limited to 10 minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

3. Environmental Health Committee (EHC)

The Environmental Health Committee (EHC) of the Science Advisory Board (SAB), augmented by members of the FIFRA Scientific Advisory Panel and the EPA Children's Health Protection Advisory Committee, will meet on Tuesday and Wednesday, July 27–28, 1999 at the Sheraton Crystal Hotel, 1800 Jefferson Davis Highway, Arlington VA 22202. The hotel telephone number is 703–486–1111. the meeting will begin at 9 am and end no later than 5:30 pm.

Purpose of the Meeting: The EHC is meeting to provide advice and comment to EPA on certain revised sections of the EPA's Proposed Guidelines for Carcinogen Risk Assessment (The proposed guidelines were initially published in the **Federal Register**, Vol. 61, No. 79, April 23, 1996, pg. 17960, and were subsequently revised in December, 1998) and other issues related to childhood cancer. The Committee will examine the proposed cancer risk assessment approaches as they relate to children. Specifically, the Committee will address (a) the adequacy of the general guidance provided in various sections of the Guidelines; (b) the adequacy of the Guidelines to provide science-based assessments for use by risk managers in assessing the impact of their decisions on children; (c) the soundness of the default assumptions used in the absence of specific data; (d) the use of selected defaults as they pertain to children; (e) dose adjustment of children; (f) perinatal testing; (g) adjustments to slope factors for lifetime and partial lifetime exposure scenarios for children; and (h) exposure assessment. The Committee will also review EPA's responses to a set of nine questions concerning childhood cancer posed by the Agency's Children's Health Protection Advisory Committee to Administrator Browner by letter dated May 12, 1999. These questions range from the use of default values and the justification for departing from defaults, to latent risks and the research needed to evaluate the differential susceptibility of adults and children. The complete draft Charge for this meeting will be posted on the SAB Website (http://www.epa.gov/sab) by June 18, 1999.

At the public meeting, Agency staff and invited experts on carcinogenesis and pediatric issues will brief the Committee on revisions to the Proposed Guidelines. In concert with these presentations, EPA will present written background materials for the Subcommittee's information and consideration.

Availability of Review Materials: Copies of EPA primary background documents for the meeting may be obtained by contacting Dr. William Wood, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 564–3358; e-mail to <wood.bill@epa.gov>. Anyone desiring additional information on the substantive issues to be addressed should also contact Dr. Wood as noted above.

For Further Information: Members of the public desiring additional information about the conduct of the public meeting itself should contact Mr. Samuel Rondberg, (1400), Designated Federal Officer, Environmental Health Committee, Science Advisory Board, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (301) 812–2560; fax at (410) 286–2689; or via e-mail at <samuelr717@aol.com>. A copy of the draft agenda will be available on the SAB Website (http://www.epa.gov/sab) or upon request from Ms. Wanda Fields at (202) 260–5510, or by FAX at (202) 260–7118 or via e-mail at <fields.wanda@epa.gov> no later than June 30, 1999.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Rondberg in writing (by letter, or by e-mail—see previously stated information) no later than 12 noon Eastern Time, July 20, 1999 in order to be included on the Agenda. These oral comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc), and include at least 35 copies of an outline of the issues to be addressed, or of the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition,

may be found on the SAB Website (http://www.epa.gov/sab) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 7, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–14858 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–36193; FRL–6070–5]

Inert Ingredients No Longer Used in Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has removed certain chemicals from its list of pesticide product inert ingredients that are not currently used in pesticide products. Future use of these chemicals as inert ingredients in pesticide products will not be permitted unless a petitioner or registrant satisfies all data requirements as identified by the Agency, and the Agency is able to make a determination that the use of the inert ingredient will not pose unreasonable risk to human health or the environment. This notice is the result of ongoing evaluation of pesticide inert ingredients.

FOR FURTHER INFORMATION CONTACT: By mail: Vera Soltero, Minor Use, Inerts, and Emergency Response Branch (MUIERB), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone, and e-mail address: 1921 Jefferson Davis Highway, Room 707C, Arlington, VA, (703) 308–8373, e-mail: soltero.vera@epa.gov.

SUPPLEMENTARY INFORMATION:

I. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home page at the **Federal Register**- Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–36193], including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

II. Background

On April 22, 1987, EPA announced certain policies designed to reduce the potential for adverse effects from the use of pesticide products containing toxic inert ingredients (52 FR 13305). In developing the policy, the Agency reviewed the available data on chemicals used as inert ingredients, and concluded that some inert ingredients had potentially significant long-term health and environmental hazards associated with their use in pesticide products. The 1987 notice categorized all inert ingredients into four lists, according to toxicity, as follows: List 1 inert ingredients, described as "inerts of toxicological concern," were so categorized on the basis of toxicological or adverse ecological effects which had been documented in studies subject to peer review. The criteria used for placement of inert ingredients on List 1 were discussed in detail in the November 22, 1989 **Federal Register** notice (54 FR 58314). In summary, the criteria for inclusion on List 1 included carcinogenicity, adverse reproductive effects, neurotoxicity or other chronic effects, developmental toxicity (birth defects), adverse ecological effects or the potential for bioaccumulation. List 2 inert ingredients, "potentially toxic inerts/high priority for testing," are structurally similar to chemicals known to be toxic and may have data suggesting a basis for concern. List 3 inert ingredients, "inerts of unknown toxicity," do not have data supporting their inclusion on Lists 1 or 2 (or 4; see below). List 4 inert ingredients, "minimal hazard or risk inerts," consists of ingredients which are generally regarded as innocuous. In a subsequent **Federal Register** notice (54 FR 48314, November 22, 1989), EPA further revised List 4, creating two subcategories: (1) List 4A, "inerts generally regarded as safe" and (2) List 4B, "inerts for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect public health or the environment".

The Agency further revised List 4A in 1994 (59 FR 49400, September 28, 1994)(FRL–4872–5), and continues to evaluate the toxicity of inert ingredients. EPA's designation of inert ingredients according to list has been published as the "List of Pesticide Product Inert Ingredients" (May 17, 1995), and is available through the Office of Pesticide Program's Public Information and Record Integrity Branch at the address given above.

On June 24, 1998, the Agency delisted 249 inert ingredients from List 1, List 2 and List 3 (63 FR 34384)(FRL–5792–3). Many of the delisted List 1 inert ingredients were removed from pesticide products after EPA issued data call-in notices (DCIs) under section 3(c)(2)(B) of FIFRA. In response to the issuance of DCIs for List 1 inert ingredients, most registrants of products containing List 1 inert ingredients chose to cancel the registration or reformulate the product to remove the List 1 inert ingredient. According to Agency records, none of the delisted chemicals had been used in any registered pesticide product for over two years, and in most cases, had not been used as inert ingredients in registered pesticide products for over 5 years.

III. Inert Ingredients no Longer Used in Pesticide Products

The Agency has identified certain additional List 2 and List 3 inert ingredients that are no longer used in pesticide products. All of these chemicals are on the Toxics Release Inventory (TRI) published by the Agency as a source of information about toxic chemicals that are being used, manufactured, treated, transported, or released into the environment. The purpose of the TRI is to provide citizens with accurate information about potentially hazardous chemicals. Facilities meeting certain criteria are required to report releases of the approximately 600 TRI chemicals into the air, water and land, as well as reporting off-site transfers. They are also required to report on pollution prevention activities and chemical recycling.

List 2 inert ingredients which are no longer used in pesticide products are identified as follows (with chemical name and Chemical Abstracts Service (CAS) Registry Numbers:

LIST 2—INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS

Chemical Name	CAS Registry No.
Chloroethane	75–00–3
m-Cresol	108–39–4
p-Cresol	106–44–5

The chemicals *p*-cresol and *m*-cresol were included in List 2 when it was originally published as part of the Inerts Strategy in 1987. They were not delisted in June 24, 1998, but were inadvertently omitted from the updated List 2.

List 3 inert ingredients which are no longer used in pesticide products are identified as follows (with chemical name and Chemical Abstracts Service (CAS) Registry Numbers):

LIST 3—INERT INGREDIENTS NO LONGER USED IN PESTICIDE PRODUCTS

Chemical Name	CAS Registry No.
Dicyclopentadiene	77–73–6
4,4'-Isopropylidenediphenol	80–05–7
Manganese chloride	7773–01–5
Nitrocellulose	9004–70–0
Potassium bromide	7758–01–2
Safrole	94–59–7
Zinc carbonate	3486–35–9
Zinc dodecylbenzene sulfonate	12068–16–5
Zinc sulfide	1314–98–3

According to Agency records, none of the above chemicals is currently used in pesticide products. If a registrant disputes the Agency's determination concerning inert ingredients that are no longer used in pesticide products and still has an active registration for a pesticide product containing one of the chemicals identified as no longer used in pesticide products, the registrant should immediately notify the Agency as detailed in the "ADDRESSES" section of this notice. The registrant should include the inert ingredient name, CAS Registry No. for the inert ingredient in question and the EPA Registration Number of the pesticide product containing the inert ingredient.

IV. Future Use of Chemicals that are No Longer Permitted for Use as Inert Ingredients

Because of the toxicological and other concerns associated with List 1 and List 2 ingredients, and the fact that the EPA does not have adequate data to show that these chemicals do not result in unreasonable adverse effects on human health and the environment, the Agency does not expect to approve future applications involving the use of any of the above List 2 chemicals as ingredients. Data requirements for any such future requests will be determined by the Agency on a case-by-case basis. Use of any of the above List 3 chemicals will be considered by the Agency under the same procedures that apply to new inert ingredients specified in the April 22, 1987, Inert Ingredient Policy Statement.

V. Process for Future Removal of Inert Ingredients that are No Longer Used as Inert Ingredients

As a part of its ongoing inerts strategy, the Agency will continue to perform future reviews of List 1, List 2, and List 3 inert ingredients to identify those inert ingredients which are no longer used. The Agency will issue future **Federal Register** notices removing those chemicals from its list of inert ingredients. Any associated exemptions from the requirement of a tolerance for such chemicals when used as inert ingredients will also be revoked. The Agency will not remove any List 4A or 4B inert ingredients from its list of inert ingredients, since sufficient data have been presented to establish that the use of these chemicals as inert ingredients will not present a hazard to public health or the environment.

In an effort to identify inert ingredients which are no longer used, the Agency may contact registrants of pesticide products or manufacturers/suppliers of substances which are used as inert ingredients in pesticide formulations. This action may be necessary to verify the information currently contained in the Agency's database relative to product formulation information.

The Agency considers all alternate formulations valid for purposes of registration unless a registrant provides specific written notice to the Agency that a particular formulation will no longer be used. Therefore, the Agency encourages registrants as part of their pesticide product stewardship program to provide the Agency with written notice identifying specific formulations that are no longer used as part of the pesticide product registration and amendment process. This action will assist the Agency in better identifying those inert ingredients that are no longer used in pesticide products as well as improving the overall accuracy of the Agency's product formulation information.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 2, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–14759 Filed 6–10–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6357–9]

Voluntary Guide for Industrial Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of draft guidance for public comment.

SUMMARY: The EPA, with assistance from State representatives, who serve as members of a Task Force from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), industry, and public interest stakeholders, has developed a draft voluntary *Guide for Industrial Waste Management*. The purpose of the *Guide* is to assist facility managers, State and Tribal environmental managers, and the public in evaluating and choosing protective practices for managing non-hazardous industrial waste in new landfills, waste piles, surface impoundments, and land application units. The *Guide* recommends best management practices and key factors to take into account in siting, operating, designing, monitoring, and performing corrective action and closure and post closure care. The *Guide* is available in both paper copy and CD–ROM. The CD–ROM version of the guidance incorporates user-friendly ground-water and air models to evaluate potential risks and choose appropriate facility designs. The *Guide* is designed to complement, not supersede, state and tribal industrial non-hazardous waste management programs.

This guidance reflects four underlying principles: Adopt a multi-media approach to protect human health and the environment; Tailor management practices to risks posed by the waste and the location of the unit; Affirm State and Tribal leadership; and Foster a partnership among the public, facility managers and regulatory agencies.

DATES: Information and comments must be received on or before December 13, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–IDWA–FFFFF to: RCRA Docket

Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand delivery of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the docket number F–1999–IDWA–FFFFF. All electronic comments must be submitted as an ASCII file without the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), US EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting material are available electronically.

The *Guide* is available on the Internet. Follow these instructions to access the information electronically.

WWW: http://www.epa.gov/industrialwaste
FTP: *ftp.epa.gov*
Login: anonymous
Password: your Internet address
Files are located in pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be developed during the development of the final *Guide*. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled during transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information and copies of the *Guide* and CD–ROM, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In Washington, D.C., metropolitan area, call 703–412–9810 or TDD 703–412–3323. A limited number of paper copies of the Guide and supporting documents (i.e., ground-water and air software technical background documents and user manuals) are available for distribution. These are available on a first-come first-serve basis.

Questions regarding any aspect of the Industrial Waste *Guide* or the CD–ROM may be left on the following voice mail number (703–605–0755.) This voice mail box will be checked frequently and answers will be provided in a timely manner.

Questions of a technical or policy nature regarding the *Guide* or CD–ROM may also be directed to the following individuals:

Paul Cassidy (703–308–7281) for questions on siting, protecting surface water, designing and installing liners systems, operating, monitoring performance, closure and post-closure care and CD–ROM;
John Sager (703–308–7256) for questions on waste characterization, protecting groundwater, corrective action and CD–ROM;
Pat Cohn (703–308–8675) for questions on building partnerships, integrating pollution prevention, and designing a land application program;
Mark Schuknecht (703–308–7494) for questions on designing a land application program only; and
Dwight Hlustick (703–308–8647) for questions on protecting air quality only.

Technical questions or information regarding the ground-water software and supporting materials may be directed to Virginia Colten-Bradley (703–308–8613).

Technical questions or information regarding the air software and supporting materials may be directed to Charlotte Bertrand (703–308–9053).

Questions for these individuals can also be e-mailed to their e-mail address:

cassidy.paul@epamail.epa.gov
sager.john@epamail.epa.gov
cohn.patricia@epamail.epa.gov
colten-bradley.virginia@epamail.epa.gov
bertrand.charlotte@epamail.epa.gov
hlustick.dwight@epamail.epa.gov
schuknecht.mark@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Customer Service

How can I influence the development of the final *Guide*? In developing the draft *Guide* and CD–ROM, we have tried to address issues that are of interest to stakeholders. Your comments will improve this *Guide* and CD–ROM. We invite you to provide different views, new approaches, new data, or other relevant information on any aspect of the draft *Guide* or draft CD–ROM. We have developed specific questions (See Section II. Request for Comments: Questions and Issues) that are included in this Supplementary Information Section. Your comments will be most effective if you follow the suggestions below:

Explain your views as clearly as possible and why you feel that way;
Provide solid technical data to support your views;
Tell us which parts you support, as well as those you disagree with;
Provide specific examples to illustrate your concerns;
Offer specific alternatives; and
Refer your comments to specific sections of the *Guide*, e.g., page 12 of Chapter 5, or to specific screen numbers of the CD–ROM, e.g., CA__010.

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I. Background and Overview

A. Setting the Context

About 7.6 billion tons of industrial waste are generated and managed on-site at manufacturing facilities each year. Of this, almost 97 percent is waste water managed in surface impoundments, with the remaining more concentrated solids being managed in landfills, waste piles, and land application units. These wastes come from the broad spectrum of

American industries and are neither municipal wastes nor hazardous wastes under federal or state laws. State and tribal governments have regulatory responsibility for ensuring proper management of these wastes in on-site units, and their programs vary considerably.

EPA and 12 state representatives selected from the membership of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) began development of this guidance in 1996 with the formation of a State/EPA Steering Committee. The goals of the Steering Committee were threefold: first, to define a baseline of protective management practices; second, to complement existing state and tribal regulatory programs; and third to produce an effective and user friendly *Guide* that all stakeholders will use. The Steering Committee is co-chaired by one EPA and one state member. At the same time, the Steering Committee had the benefit of a Focus Group of industry and public interest stakeholders, chartered under the Federal Advisory Committee Act, to provide advice throughout development of the guidance. Steering Committee and Focus Group members are listed in Appendix I at the end of this notice.

The draft *Guide* reflects the results of this productive consultative process. Focus Group members provided extensive comment and commitment of their time throughout. Their thoughtful input helped to make the draft guidance a better and more effective product, although the final decisions are those of the Steering Committee.

All material that was part of the development of this draft *Guide* is contained in the public docket and is available for viewing. This material includes previous drafts of issue papers, meeting notes, and materials submitted by the Steering Committee and the Focus Group.

B. The Scope

This guidance is useful for a broad array of industrial process wastes, especially those that are managed at the facilities where they are generated. We did not consider certain extractive wastes, such as those from mining or oil and gas production, and recommendations may not be suitable for these wastes. Furthermore, any facilities that receive municipal solid waste, as well as industrial waste, are subject to municipal landfill criteria, 40 CFR part 258, and state or tribal municipal landfill regulations. They are not addressed by this guidance.

The guidance focuses, in particular, on the design of new units. Liner design and siting concerns are clearly directed at new units. However, other management recommendations, such as for ground-water monitoring, operating practices, and closure and post-closure care, may be helpful in making management decisions for currently-operating units as well.

C. Underlying Principles

This guidance reflects four underlying principles:

Protect human health and the environment. This is the focal point. The guidance is multi-media, emphasizing surface water, ground water, and air protection, with a comprehensive framework of technologies and practices that make up a sound waste management system.

Tailor management practices to risks. There is enormous diversity in the nature of industrial wastes and the environmental settings where they are managed. The guidance provides conservative national management recommendations and user-friendly modeling tools to make location-specific adjustments. It also identifies complex analytic tools to conduct comprehensive site-specific analyses.

Affirm State and Tribal leadership. States, tribes, and some local governments have primary responsibility for adopting and implementing programs to ensure proper management of industrial waste. It is important to note that individual states or tribes may have more stringent or extensive regulatory requirements based on local or regional conditions or policy considerations. This *Guide* complements, but does not supersede regulatory programs. It can help you make decisions on meeting requirements and filling potential gaps. Facility managers and the public using this *Guide* should consult with your regulatory agency throughout the process to understand its regulations and how the agency wants you to use the *Guide.*

Foster a partnership. The public, facility managers and regulatory agencies share a common interest in preserving quality neighborhoods, protecting the environment and public health, and enhancing the economic well-being of the community. This *Guide* provides a common technical framework to facilitate discussion. Stakeholders are encouraged to stay involved and work together to achieve meaningful environmental results.

D. Using the Guidance

There are a few key steps to follow:

Understand and comply with all existing Federal, State or Tribal regulations, permits and operating agreements that apply to a waste management unit. The guidance is designed to complement existing requirements, not to take their place.

Thoroughly characterize constituents and concentrations in the waste. Waste characterization is the foundation for choosing and implementing tailored, protective management practices. To assess potential ground-water risks, the guidance provides drinking water maximum contaminant levels (MCLs), when they exist, and health-based reference levels for 191 constituents. To assess potential air risks, the guidance provides inhalation health-based reference levels for 95 volatile and semi-volatile constituents.

Take advantage of pollution prevention, recycling and treatment opportunities. Pollution prevention, recycling, and treatment can minimize reliance on waste disposal, reduce disposal costs and reduce future costs and liabilities for closure and post-closure care and corrective action. Pollution prevention and recycling also conserve raw materials.

Build a partnership between all stakeholders who have an interest in waste management decisions. Keep stakeholders informed and involved on an ongoing basis.

Tailor management practices to the wastes and the environmental setting of the unit. The *Guide* covers all the components of a sound waste management system. It recommends best management practices and the key factors to take into account in siting, operation, design, monitoring, corrective action, closure and post closure care. The guidance also directs you to a wide variety of useful tools and resources, and includes a number of these tools in appendices. In particular, the guidance recommends risk-based approaches and incorporates models to choose liner systems and waste application rates for ground-water protection and to evaluate the need to control volatile organic air emissions.

Here is an example of how the risk-based evaluation would work for choosing a liner system design. For ground water, the approach is three-tiered, relying on modeling fate and transport of constituents through subsurface soils to ground water. Successive tiers in the analysis incorporate more site-specific data to tailor protective management practices to your particular circumstances. The CD–ROM version of the guidance contains ground-water software for Tier 1 and 2 analyses.

Tier 1—National Evaluation: Once you know the concentrations of

constituents in the waste leachate, the *Guide* provides generic recommendations on appropriate liner design. If leachate from wastes going into a unit contains several constituents, choose the most protective liner design indicated for any of the constituents.

Tier 2—Location Adjusted Evaluation: To obtain a recommendation that more closely reflects your site, use location-specific data for up to seven of the most sensitive waste-and site-specific variables to assess whether a particular liner design will be protective.

Tier 3—Comprehensive Site Assessment: This tier relies on a comprehensive analysis of specific waste and site characteristics to assess whether a particular liner design will be protective. The guidance identifies a number of models for this detailed analysis.

E. What Comes Next?

The draft guidance is available in a paper copy, on a CD–ROM, and through the Internet at www.epa.gov/industrialwaste. EPA and the state participants from ASTSWMO welcome your comments on all aspects of this draft including the substantive recommendations and the practicality and user friendliness of the risk-based modeling tools. Section II of this notice frames a number of questions and issues. Based on your comments, we will make revisions and release a final version of this draft *Guide*.

EPA and state representatives participating in this effort believe that the recommendations in the final *Guide* will help to improve management of industrial waste at facilities across the country. EPA and ASTSWMO will widely disseminate the final *Guide* and explain the rationale behind the recommendations to regulators, industries and the public to foster understanding and to encourage stakeholders to integrate final recommendations in future industrial non-hazardous waste planning throughout the country.

The *Guide* is designed for users with different levels of technical knowledge and experience in environmental fields. Because many of the recommendations address complex and highly technical practices and engineered systems, we urge users to seek out technical experts and resources to assist in detailed planning, design and implementation.

We recognize that facility managers, regulatory agency staff and the public all have a different role in ensuring protective waste management. Building an effective partnership between all stakeholders can facilitate sound decisions that protect human health and the environment and make common sense for individual facilities.

Facility managers: The *Guide* can help you make the decisions necessary to ensure environmentally responsible unit siting, design, and operation in partnership with State and tribal regulators and the public.

State and tribal regulators: The *Guide* provides a handy implementation reference that complements your program.

The public: The *Guide* can help you be an informed and knowledgeable partner in addressing industrial waste management issues in your community.

II. Request for Comments: Questions and Issues

A. Overview

Our objectives throughout development of this draft *Guide* have been to provide protective, substantive recommendations, informative discussion of each topic, and references and tools that help users proceed to a more in-depth study and review of each topic. We have attempted to make the guidance easy-to-use, accessible and meaningful to users with a wide range of experience and different levels of technical knowledge. However, we recognize that individual topics are addressed at varying levels of detail. We have developed a series of questions for most chapters of the *Guide*. We have also highlighted some general questions regarding the *Guide* and CD–ROM. We invite comments on all aspects of the *Guide* and CD–ROM, including the following questions.

- Are the recommendations appropriate, realistic, and protective?
- Does the *Guide* meet the needs of small businesses?
- Does the *Guide* meet the needs of the interested public?
- Does the coverage for each topic provide the right level of detail? What could be added, subtracted or handled differently to make each topic more useful?
- Is the *Guide* organized to provide quick access to the information you are seeking?
- Are there other references and sources of information that should be cited in the guidance or included on the CD–ROM?
- For the CD–ROM, does the software work well? Do the interactive portions of the CD–ROM present useful information? Is the CD–ROM organized well?
- For the ground-water and air models, do the individual models work well? Are the models easy to use and understandable? (See sections below for further discussion of issues associated with each model.)

B. Getting Started

Chapter 1. Building Partnerships: We recognize that the process of building successful partnerships between regulators, industry, and the public can be contentious.

- Would it be helpful in the final guidance to provide case studies of successful partnerships? If so, can you provide examples of partnerships that have been successful in solving problems and addressing specific waste management issues?

Chapter 3. Integrating Pollution Prevention: The *Guide* addresses pollution prevention, recycling and treatment in abbreviated fashion. Because the primary focus of the *Guide* is waste management, we chose to defer to the many excellent resources and materials devoted entirely to waste reduction, pollution prevention and treatment rather than attempt to cover them comprehensively. In addressing pollution prevention, our objectives for this guidance have been two. First, the guidance attempts to clearly identify the many linkages between making and implementing sound waste management decisions and pollution prevention, recycling and treatment options that can reduce waste management costs and long term liabilities. Second, we have tried to identify and include references that will give you a jump start to the wealth of resources that are available.

- Are there other references that will provide users with the best points of entry and assistance to address pollution prevention, waste reduction, recycling and treatment?
- Recognizing that the primary focus of the guidance is waste management, are there additional pollution prevention topics that the *Guide* should cover in more detail, such as, recycled product procurement guidelines, beneficial use or reuse of materials, or specific pollution prevention activities that overlap with waste management activities? Provide us with specific information and examples if you can on areas that you believe should be included.

Chapter 4. Considering the Site: This chapter recommends a wide variety of data sources to provide information on the geologic and hydrologic characteristics of a site.

- Can the existing information systems that integrate a wide variety of hydro-geologic information be easily used to make a site-specific determination that a planned unit will be sited in an acceptable location? If not, would it be helpful for users to be able to access one hub that could connect to a variety of data sources to evaluate a planned site?
- Alternatively, are determinations relating to wetlands, floodplains, fault areas, karst terrain, etc. so site-specific that national data bases will not provide sufficiently detailed information to help in the evaluation of an individual site?

As part of EPA's effort to address the siting of industrial waste management

units, the Agency is investigating the potential to develop a tool that would allow a user to quickly get an initial determination as to whether the unit is located in or close to an undesirable location. The EPA is investigating the use of available data from the U.S. Fish and Wildlife Services regarding wetlands, the Federal Emergency Management Agency regarding floodplains, and the U.S. Geological Survey regarding karst and seismic areas and making this information part of the Agency's EnviroMapper application. The EnviroMapper application provides users with interactive Geographic Information System (GIS) functionality using EPA spatial data. EnviroMapper allows users to view spatial data at the national, state, and county levels, as well as utilize GIS functionality, such as displaying multiple spatial layers, zooming, panning, identifying features, and querying single EnviroFacts points. EPA is considering the initial development of a GIS protocol for one State that would map the location of floodplains, wetlands, and seismic and karst locations within the State using the EnviroMapper application. We are interested in receiving comments on the utility of such a protocol. The Agency is also considering the potential addition of cultural (e.g., demographics), administrative (e.g., parks), and physical (e.g., pipelines) information to this planned GIS protocol. Questions concerning the initial development of the GIS protocol can be directed to John Sager whose number was previously listed in an earlier part of today's preamble.

C. Protecting Air Quality

Chapter 5. Protecting Air Quality: The guidance recommends assessing human health risks posed by volatile and semi-volatile compounds released from waste management units and taking appropriate measures to reduce significant risks. Measures to reduce risks include implementing pollution prevention or treatment to reduce or eliminate VOC concentrations in the waste and implementing controls to reduce emissions from the unit.

1. Assessing Air Risks: The *Guide* suggests two approaches to assessing risk. The first is a limited site-specific air assessment using the Industrial Waste Air Model (IWAIR) included in the CD ROM version of the guidance. This air model assesses direct risks through inhalation of volatile and semi-volatile compounds. The second approach is a comprehensive risk assessment that relies on detailed analysis of waste-and site-specific data and the use of models designed to assess multi-pathway exposures to airborne contaminants. The guidance identifies several models for such a detailed analysis.

IWAIR contains three modeling components. The first is an emissions model that estimates emissions of specific constituents from the unit into the atmosphere. The second component of the model estimates atmospheric dispersion of constituents and ambient air concentrations at a specific receptor point. The third component combines constituent concentrations at the specified receptor point with receptor exposure factors and toxicity benchmarks to estimate risk.

Emissions: IWAIR incorporates the emissions model CHEMDAT8. Once a user enters data to characterize the unit and the waste, CHEMDAT8 calculates the emission rate. CHEMDAT8 was developed by EPA and has undergone extensive review. IWAIR allows a user to enter site-specific data for unit and waste characteristics or to rely on default data to calculate emissions.

Dispersion: The dispersion model used in IWAIR is EPA's model Industrial Source Complex Short Term Version 3 (ISCST3). ISCST3 is a complex model and running it to develop a new dispersion factor for each site and waste management unit requires extensive meteorological data and technical expertise. In order to create an easily accessible and user-friendly modeling tool to evaluate the dispersion of air emissions, ISCST3 was previously run to generate a database of dispersion factors. The dispersion factors are included in IWAIR and have been calculated for many separate scenarios designed to cover a broad range of unit characteristics. There is a dispersion factor for each combination of:

—29 meteorological stations, chosen to represent the nine general climate regions of the continental U.S.;
—4 unit types;
—14 surface area sizes for landfills, land application units and surface impoundments, and seven surface area sizes and 2 heights for waste piles;
—6 receptor distances downwind from the unit out to a maximum of 1000 meters; and
—16 directions in relation to the center point of the unit.

The default dispersion factors were derived by modeling each of these scenarios. When IWAIR is run, the maximum dispersion factor, at a distance selected by the user for a specific waste management unit size, is used for the computations.

The advantage of this approach to dispersion modeling is that IWAIR provides you with a quick, easy-to-use method to calculate dispersion. Relying directly on ISCST3 requires significant technical expertise, access to a very complex and resource-intensive model, and substantial amounts of data. On the other hand, a limitation of the IWAIR model is the fact that it does not reflect the exact conditions of a specific location.

Risk model: This component of IWAIR combines the constituent-specific emission rate with the dispersion factor to calculate a VOC's concentration in the air at a specified receptor location. IWAIR calculates adult-worker or resident exposures based on inhalation, body weight, exposure duration and frequency, and ambient concentrations of constituents at a specific receptor location. Default values for these parameters are based on EPA's Exposure Factors Handbook. IWAIR relies on standard health benchmarks (cancer slope factors for carcinogens and reference concentrations for non-carcinogens) to calculate risk or acceptable waste constituent concentrations.

IWAIR can be used two ways. Forward calculation uses known constituent concentrations in a waste to calculate risk to receptors at specified locations. Backward calculation starts with a target risk level at a specified receptor location. The model then calculates the concentration levels in a waste that can be protectively managed in a unit without exceeding a pre-selected target risk level.

The Air Model User's Manual and Background Document contain detailed discussion on all components of the model. We invite comments on all aspects of the model, the values and data sources used to characterize specific parameters, and the modeling approach, including the following questions.

- Is the modeling approach that relies on matching limited site specific information to previously calculated dispersion factors a reasonable method to estimate dispersion of constituents from a unit? Are there refinements to this approach that could improve site-specific calculations and still be incorporated into a similar user-friendly and accessible model?
- Are the assumptions built into various components of the model reflective of the range of unit characteristics and conditions encountered in real situations?

We are also obtaining peer review of IWAIR by a group of technical experts who have been commissioned to provide an independent analysis of the model and the way it is used in the

guidance. The results of the peer review will be noticed in the **Federal Register**, as soon as they are available, so that interested parties may obtain copies for review.

2. Controls:

• Are there other control techniques or technologies that are effective in minimizing the release of particulates or VOCs from waste management units besides those discussed in Chapter 5 of the *Guide*? (While the Guide addresses VOC's through modeling, best management practices are identified as appropriate activities for addressing particulates from these units.)

D. Protecting Ground Water

Chapter 7. Protecting Ground Water: The guidance recommends tailoring protective liner systems to the wastes that are managed in a unit and evaluating whether land application of a waste is appropriate using a three-tiered approach to ground-water modeling and risk assessment. The type of assessment you choose depends, in part, on the complexity of a site and the characteristics of the waste. All three rely on ground-water modeling to evaluate the potential for ground-water contamination. Each successive tier incorporates more site-specific data to tailor recommendations to your circumstances.

The modeling tool for Tiers 1 and 2 is the EPA Industrial Waste Evaluation Model (IWEM) incorporated into the CD ROM version of this guidance. This is a stand-alone, simple-to-use model that does not require previous modeling experience. Tier 1 tables are also in the paper-copy version of the guidance.

Tier 1—National Evaluation: Once you know the expected leachate concentrations of constituents in a waste, generic design recommendations (e.g., liner system or whether land application is appropriate) are provided. This tier of analysis uses a summary of site conditions that exist across the country.

Tier 2—Location-Adjusted Evaluation: You can enter data for up to seven of the most sensitive waste-and site-specific variables to assess whether an alternative design will be protective.

Tier 3—Comprehensive Risk Assessment: This tier relies on a comprehensive analysis of all waste and site characteristics to assess whether an alternative design will be protective.

Chapter 7a. Assessing Risk: IWEM analyzes different liner scenarios over a 10,000 year time frame. Tier 1 and 2 risk evaluations work as follows. IWEM can evaluate 191 constituents with toxicity reference levels that are either drinking water maximum contaminant levels (MCLs) set under the Safe Drinking Water Act or health-based numbers (HBNs) derived from several sources. In addition, the model allows a user to add additional chemicals for analysis and to adjust MCLs and HBNs to reflect state-specified or other values.

First, IWEM identifies a benchmark concentration (MCL or HBN) for each constituent in a receptor well associated with a waste management unit. The goal is not to exceed the benchmark concentrations in the receptor well (defined as a monitoring well). The model starts from this benchmark concentration in the receptor well and uses the effects of dilution and attenuation and leakage rate from a unit to determine the leachate concentration threshold values for wastes that can be protectively managed in a particular unit design. In a similar fashion, the model determines leachate concentration threshold values for wastes that are being considered for land application.

Leachate concentration threshold values for constituents are based on toxicity reference levels, with two exceptions. First, the 39 hazardous waste toxicity characteristic (TC) constituents are capped at their TC levels, because concentrations above those levels would cause the waste to be regulated as a hazardous waste and thus outside the scope of this *Guide*. Second, the model caps each leachate concentration threshold value at 1000 mg/l, because we do not expect constituent concentrations in leachates exceeding 1000 mg/l to be released from industrial waste management units.

The IWEM Technical Background Document accompanying the model thoroughly explains the model, including the parameters that have the greatest effect on modeling results. The parameters that a user can input are:

- Infiltration rate from the unit;
- Surface area of the waste management unit;
- Depth to water table;
- Distance to the well;
- Thickness of the aquifer;
- Retardation rate; and
- Degradation rate.

One of the most sensitive parameters is the infiltration rate or the rate at which leachate is released from a unit and moves into subsurface soils. The infiltration rate is influenced by a number of factors, including the amount of precipitation, the level of liquid in the unit (head), and the hydraulic conductivity of the liner material. For synthetic liners, the occurrence of tears, rips or holes also influences the infiltration rate.

Units that rely only on natural soils underlying the unit, including units for direct land application of waste, generally have higher leakage rates. A single clay or synthetic liner can reduce the leakage rate to some extent. However, composite and double liners that combine two or more layers of liner material with leachate collection and leak detection (for double liners) significantly increase the effectiveness of the containment system in minimizing leakage to the subsurface during the period when the leachate collection system is actively managed.

For a landfill that no longer receives waste and for surface impoundments and waste piles where waste remains in place at closure, the cap that is placed over the unit becomes an important component of the final containment system. One key purpose of the final cap is to minimize the infiltration of precipitation into a closed unit. Precipitation generates leachate that may eventually migrate into subsurface soils and to ground water. The liner system in the short term, and the cap and the liner system together in the long term, to a large extent determine the infiltration rate from the unit. The infiltration rate that is associated with various unit designs is one of the most sensitive variables in evaluating the degree of protectiveness provided by a particular liner system.

The *Guide* recommends a comprehensive approach to design, construction, operation and long term care of a waste management unit to minimize the potential for problems affecting liner performance . This includes:

- Recommending a liner design, taking into account the characteristics of the waste managed in the unit;
- Emphasizing construction quality assurance and control;
- Emphasizing compatibility between the liner and the waste;
- Continuing operation and maintenance practices to protect liner performance;
- Ground-water monitoring, to assess liner performance, as an integral component of a protective management system;
- Closing the unit with a cap that meets or exceeds the design of the liner (infiltration through the cap equal to or less than leakage through the liner); and
- Post-closure care and monitoring to maintain the cap for the time period necessary to ensure the waste no longer poses a risk to human health.

Assumptions concerning liner performance have a significant impact on the modeling results. A brief summary of the modeling scenarios for each liner type follows (the model currently assumes that performance

levels remain constant for the 10,000 year time frame of the modeling effort).

No liner: This is a waste management unit that sits in direct contact with native soil. Monte Carlo analysis of a range of infiltration rates is based on water balance and native soil type for 97 meteorological stations. In Tier 2, the model can provide a regional infiltration rate based on a user-specified location.

Single liner: This consists of three feet of compacted clay with a hydraulic conductivity of 10^{-7} cm/sec. Monte Carlo analysis of a range of infiltration rates is based on water balance for 97 meteorological stations. In Tier 2, the model can provide users with a regional infiltration rate based on a user-specified location.

Composite liner: This is an engineered system that consists of three feet of compacted clay and a synthetic liner. The system is assumed to include a leachate collection system that maintains a hydraulic head of no more than 12 inches for landfills and waste piles. The leakage rate is a single value calculated using an equation, developed by Giroud and Bonaparte, based on one 0.005 in.^{2} hole per acre. For landfills, the calculated leakage rate is 0.1 gallon/acre/day and for surface impoundments the calculated leakage rate is 0.9 gallon/acre/day. This would represent a high performing liner. The assumptions regarding the composite liner leakage rate are discussed in the IWEM Technical Background Document.

In general, we have learned much over the past 20 years about the performance of liner systems and caps, and there have been many improvements in construction, installation, and quality assurance and control procedures. However, we recognize that there is still uncertainty associated with liner performance, both in the near term as well as in the long term. While some studies indicate that engineering properties of liners may last for many (perhaps several hundred) years, there are a variety of factors that may influence longevity and performance, such as poor construction, installation or facility operation, or geologic movement below the liner that can cause holes, tears or larger failures. Some defects are likely to have little to moderate effect on the leakage rate. Other defects may have a significant effect and may even necessitate corrective action.

We have conducted some preliminary sensitivity analyses to compare infiltration rates from a variety of theoretical composite liner scenarios. Scenarios varied the size of holes and tears; the number per acre; contact between the geomembrane and the clay layer; the conductivity of the underlying clay layer, and the head of liquid on top of the geomembrane. Results of these preliminary analyses provided a range of infiltration rates ranging from well below to well above the infiltration rate of 3.3E–05 meters/year used in the Tier 1 analysis for landfills. These results indicate several key areas in which EPA, the Steering Committee, and the Focus Group could conduct additional evaluations to evaluate liner effectiveness more thoroughly:

- What empirical data are available concerning liner defects at the time of installation and over time to serve as a basis for identifying reasonable performance scenarios?
- What are reasonable methods for estimating leakage? Some estimation methods may be reasonable within specific bounds or time frames for various performance scenarios, but may not work for a wide range of performance scenarios or time frames.
- If we were to conduct a Monte Carlo analysis of leakage rates for composite liners, what is a reasonable range to include in the analysis?
- How should we account for degradation of the liner system over time? (A more thorough discussion of the sensitivity analyses is in the IWEM Technical Background Document.)

Another area of uncertainty is the fate of constituents within a unit. Over time, a number of degradation processes may be under way that reduce the hazards associated with some constituents. On the other hand, a landfill with an intact cover may be reasonably dry, reducing leachate generation, but also slowing down degradation. Other toxic constituents, such as heavy metals, can not degrade.

Covers present continuing engineering challenges over time, because they are more susceptible to factors such as freezing and thawing, wetting and drying, temperature fluctuations, root infiltration, and subsidence. Covers are, however, not subject to chemical attack from waste constituents, nor are they subject to the same stresses from waste placement as a bottom liner. Also, final covers are simpler to repair, which would help control the risk of infiltration into the landfill, assuming there is an active program to monitor or periodically replace the cover. Unless the final cover is regularly repaired or replaced, the bottom liner could outlast the cover. While covers containing a synthetic membrane are likely to prevent precipitation from entering a closed unit during the period that they are performing as designed and assuming there are no failures, uncorrected failure of a cover would allow precipitation to enter the unit. After leachate removal is discontinued, this could lead to a "bathtub effect," where the unit has increasing leachate volumes and hydraulic head that could lead to increased leakage rates or overflow.

We invite comments on all aspects of the model, the values, and data sources used for specific parameters, and the modeling scenarios for liner performance, including the following questions.

- Is the cap of 1000 mg/l concentration for constituents in leachate from a non-hazardous industrial waste management unit realistic? If not, please provide data on which waste units may generate leachate that contains constituents at higher concentration levels and what those levels and constituents are likely to be.
- What performance assumptions, modeling approaches and design scenarios are reasonable to address the question of the changing effectiveness of liners and caps over time?
- Can you provide data on the occurrence of defects in liners at the time of installation and on changes in leakage rates or indicators of possible changes in liner defects that occur over time?
- The hazardous waste program deals with uncertainties associated with liner and cap performance by requiring treatment prior to disposal. How should such uncertainties be dealt with for non-hazardous industrial wastes? One possibility is to rely on quality assurance and quality control, long-term ground-water monitoring, and corrective action to address non-hazardous waste management units. Where uncertainties are too great, EPA could elect to rely on the hazardous waste program to list such wastes as hazardous and require treatment. A second approach could be to rely on treatment of certain non-hazardous wastes. What other approaches are available? Please provide any expressions of support for or concerns about any of these approaches.
- Should the composite liner scenario use a different infiltration rate, or Monte Carlo analysis to reflect a range of performance levels, rather than the single value currently used in our Tier 1 analysis? What values should be used, and what is the basis for using them? The IWEM Technical Background Document presents the range of infiltration rates used in the Tier 2 analysis and discusses the limitations of the Tier 2 modeling results if one were to use infiltration rates outside the modeled range of infiltration rates.

We are also obtaining peer review of the ground-water model by a group of technical experts who have been commissioned to provide an independent analysis of the model and the way it is used in the guidance. The results of the peer review will be noticed in the **Federal Register** as soon as they are available so that interested parties may obtain copies for review.

In Chapter 7a of the *Guide*, EPA makes reference to an alternative Tier 2

model developed by the American Petroleum Institute (API). API's Graphical Approach for Determining Site-Specific Dilution-Attenuation Factors (DAFs) was presented to the Steering Committee and the Focus Group during the development of this *Guide*. API developed this approach to simplify calculation of facility-specific DAFs. A copy of API's User Manual for this graphical approach has been included on the CD-ROM. EPA solicits comment on API's request that this model be incorporated in the Guide as an alternative Tier 2 assessment tool.

Chapter 7b. Designing and Installing Liners and Caps: Construction and installation quality assurance and quality control are critical to ensuring liner and cap performance. The guidance is intended to reflect up-to-date installation practices and techniques and the appropriate materials and techniques for installing a liner system and a final cap.

- Are there additional practices and techniques that should be reflected in the guidance?
- For those with experience installing liners and operating lined units, how do you measure liner performance and what are your experiences over time when monitoring and addressing liner performance?

Chapter 7c. Designing a Land Application Program: The *Guide* recommends an evaluation framework for a number of waste and soil parameters, in addition to the constituents in Tier 1, that are important in designing an effective land application program. The *Guide* discusses the waste and soil parameters and their relationship to the establishment of an appropriate application rate as part of an effective land application program at a unit.

- Are there models or other tools available to simplify design and evaluation of a land application program?

E. Ensuring Long Term Protection

Chapter 9. Monitoring Performance: The *Guide* urges a multi-media approach to protective waste management. While the Monitoring Performance chapter briefly addresses monitoring other environmental media such as air, soil, and surface water, the chapter is devoted primarily to ground-water monitoring.

Should the guidance expand discussion and recommendations concerning monitoring other environmental media, and if so, how?

Chapter 11. Performing Closure and Post Closure Care: As discussed above under Protecting Ground Water: Assessing Risk, proper closure and post closure care are critical elements of a program that ensures long term protection.

- Please comment on factors that should be taken into account in determining the time frame for post-closure care and in determining when it is appropriate to end post-closure care.
- What experience can you report regarding materials and construction techniques for final caps that work particularly well or that may pose problems?

The draft *Guide* represents a substantial amount of time and effort on the part of the Steering Committee and Focus Group representatives. EPA believes that the *Guide* has the potential to be widely used by States, industry, and the environmental community based on the voluntary nature of the guidance, the multi-media aspects of the *Guide*, and, in EPA's opinion, the quality of the work that will continue through the development of the final *Guide*. EPA looks forward to receiving comments on this *Guide* and working with the Steering Committee and the Focus Group as we develop a final *Guide* for industrial non-hazardous solid waste management.

Dated: May 14, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

Appendix 1—Current and Past Steering Committee Representatives

James Warner, Minnesota Pollution Control Agency
Anne Dobbs, Texas Natural Resource Conservation Commission
Cyndi Darling, Maine Department of Environmental Protection
Jon Dilliard, Montana Department of Environmental Quality
Richard Hammond, New York State Department of Environmental Conservation
Elizabeth Haven, California State Water Resource Control Board
Jim Hull, Missouri Department of Natural Resources
Jim Knudson, Washington State Department of Ecology
Marc Crooks, Washington State Department of Ecology
Chris McGuire, Florida Department of Environmental Protection
Gene Mitchell, Wisconsin Department of Natural Resources
William Pounds, Pennsylvania Department of Environmental Protection
Bijan Sharafkhani, Louisiana Department of Environmental Quality
Kerry Callahan, Association of State and Territorial Solid Waste Management Officials
Paula Clark, Maine Department of Environmental Protection
Norm Gumenik, Arizona Department of Environmental Quality
Steve Jenkins, Alabama Department of Environmental Management
Jim North, Arizona Department of Environmental Quality
Robert Dellinger, EPA
Richard Kinch, EPA
Paul Cassidy, EPA
John Sager, EPA
Pat Cohn, EPA
Dwight Hlustick, EPA
Virginia Colten-Bradley, EPA
Charlotte Bertrand, EPA
Mark Schuknecht, EPA

Current and Past Focus Group Representatives

Paul Bork, The Dow Chemical Company
Walter Carey, Nestle, USA, Inc. and New Milford Farms
Rama Chaturvedi, Bethlehem Steel Corporation
H.C. Clark, Rice University
Barbara Dodds, League of Women Voters
Chuck Feerick, Exxon Company, USA
Robert Giraud, Dupont Company
Jonathan Greenberg, Browning-Ferris Industries
John Harney, Citizens Round Table/PURE
Richard Jarman, National Food Processors Association
James Meiers, Indianapolis Power and Light Company
Andrew Miles, The Dexter Corporation
Scott Murto, General Motors and American Foundry Society
James Roewer, Edison Electric Institute
Edward Repa, Environmental Industry Association
Tim Saylor, International Paper
Amy Schaffer, American Forest and Paper Association
Ed Skernolis, WMX Technologies, Inc.
Michael Wach, Western Environmental Law Center
David Wells, University of South Alabama Medical Center
Pat Gwin, Observer from the Cherokee Nation of Oklahoma
Dorris Cellarius, Sierra Club
Brian Forrestal, Laidlaw Waste Systems
Michael Gregory, Arizona Toxics Information and Sierra Club
Gary Robbins, Exxon Company
Kevin Sall, National Paint and Coatings Association
Bruce Steiner, American Iron and Steel
Lisa Williams, Aluminum Association

[FR Doc. 99–14770 Filed 6–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–1105]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 7, 1999, the Commission released a public notice announcing the June 22 and June 23, 1999, meeting and agenda of the North American Numbering Council (NANC).

The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 7, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, June 22, 1999, from 8:30 a.m., until 5 p.m., and on Wednesday, June 23, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW, Room TW–C305, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, June 22, 1999

1. Approval of May 25–26, 1999, meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report. Update on wireline wireless integration report. Present proposed plan for oversight management of LNP implementation matters.
3. N–1 Query Issue. Presentation by Telcordia regarding contribution to modify N–1 architecture.
4. Numbering Resource Optimization (NRO) Working Group Report. Report and Recommendation on COCUS replacement model. Final report due Common Carrier Bureau by June 30, 1999.
5. NANC obligations under the Notice of Proposed Rulemaking, CC Docket 99–200, (rel. June 2, 1999). Discussion and work plan development.
6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

Wednesday, June 23, 1999

7. Cost Recovery Working Group Report.
8. Audits Issue Management Group. Report and recommendation on NANPA obligation to perform audits under the fixed price bid.
9. Industry Numbering Committee (INC) Report.
10. Steering Group Report.
11. Other Business.

Federal Communications Commission

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–14925 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: *Thursday, June 10, 1999 at 10:00 a.m.*

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA:

Revised Advisory Opinion 1999–9: Bill Bradley for President, Inc., by Robert F. Bauer, counsel.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–14992 Filed 6–9–99; 11:52 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011253–005.

Title: Deppe/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement.

Parties: Deppe Linie GmbH & Co. ("Deppe"), Lykes Lines Limited, LLC ("Lykes").

Synopsis: The proposed modification deletes the Mediterranean Sea from the geographic scope, specifies in greater detail the amount of space to be chartered under the Agreement, revises the number of vessels to be operated and their maximum capacity, clarifies that no party is required to become or remain a party to any other agreement, specifies that Deppe will not charter space from other carriers in the trade without the consent of Lykes, requires that any further agreement contemplated in the Agreement cannot go into effect unless filed and effective under the Shipping Act of 1984, and clarifies the duration and termination of the Agreement.

Agreement No.: 202–011576–003.

Title: South American Independent Lines Association.

Parties: Interocean Lines, Inc., Seaboard Marine, Ltd., Trinity Shipping Line, S.A.

Synopsis: The proposed amendment would revise the Agreement's independent action ("IA") provisions to permit an IA to become effective on four calendar days' notice, rather than four business days, and would revise the service contract provisions to conform to the provisions of the Ocean Shipping Reform Act of 1998. It also revises a party's address and deletes Seaboard Marine, Ltd. as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: June 8, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–14914 Filed 6–10–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to

collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 10. 1999.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Report of Condition for Foreign Subsidiaries of U.S. Banking Organizations and Financial Information for Foreign Subsidiaries of U.S. Banking Organizations.

1Agency form number: FR 2314a, b and c

OMB control number: 7100-0073

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. banks, bank holding companies, and Edge and agreement corporations.

Annual reporting hours: 6,825 burden hours.

Estimated average hours per response: 1.5 to 10.5

Number of respondents: 1,362

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)) data are exempt from disclosure pursuant to Sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (8)).

Abstract: The FR 2314 is the only source of comprehensive and systematic data on the assets, liabilities, and earnings of the foreign bank and nonbank subsidiaries of U.S. banking organizations and is used to monitor the growth, profitability, and activities of these foreign companies. The FR 2314a collects information on assets and liabilities and includes several memoranda items on contingent liabilities and twelve supporting schedules. The supporting schedules provide detail on cash and balances due from depository institutions, securities, loans and lease financing receivables, other assets, claims on related organizations, deposits, other liabilities, liabilities to related organizations, changes in capital and reserve accounts, income and expenses, assets held in trading accounts, and past due and nonaccrual loans and leases. The FR 2314b collects somewhat less information on assets and liabilities, off-balance-sheet items, income and expenses, and securities. The FR 2314c is a brief one-page report that collects information on total assets, equity capital, net income, and off-balance-sheet items.

Proposal to approve under OMB delegated authority the extension for three years, with revisions, of the following reports:

1. Report title: Domestic Finance Company Report of Assets and Liabilities.

Agency form number: FR 2248

OMB control number: 7100-0005

Frequency: Monthly.

Reporters: Domestic finance companies.

Annual reporting hours: 800 burden hours.

Estimated average hours per response: 40 minutes.

Number of respondents: 100

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225(a)). Individual respondents data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2248 collects balance sheet data on major categories of consumer and business credit receivables and on major short-term liabilities. For quarter-end months (March, June, September, and December), the report collects information on other assets and liabilities outstanding as well as information on capital accounts in order to provide a full balance sheet. The Federal Reserve proposes to reduce the authorized size of the FR 2248 reporting panel from 120 finance companies to 100 finance companies.

2. Report title: Financial Statements for a Bank Holding Company Subsidiary Engaged in Bank-Ineligible Securities Underwriting and Dealing.

Agency form number: FR Y-20

OMB control number: 7100-0248

Frequency: Quarterly.

Reporters: Bank holding companies.

Annual reporting hours: 2,568 burden hours.

Estimated average hours per response: 12.35 hours.

Number of respondents: 52

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 1844(b) and (c)]. Individual respondents data are confidential under section (b)(4) of the Freedom of Information Act [5 U.S.C. 552(b)(4)].

Abstract: The FR Y-20 report is filed by bank holding companies that have received the Board's approval by Order to engage in limited underwriting and dealing in securities, including all types of debt and equity securities that a bank may not underwrite or deal in directly. The FR Y-20 report contains a balance sheet (Schedule SUD), a supporting schedule of securities owned, including money market obligations (Schedule SUD-A), a statement of income (Schedule SUD-I), and a statement of changes in stockholders' equity (Schedule SUD-SE). Several of these schedules also include various memoranda items, such as intercompany liabilities, off-balance sheet items, and year-to-date income and expenses.

Current Actions: The Federal Reserve proposes several limited changes to the FR Y-20. The first is amending the cover page of the report to include a structure indicator box to denote if the report is prepared on a consolidated or unconsolidated basis of accounting. The Federal Reserve further proposes two changes to the report's balance sheet: 1) the inclusion of a line item for Loans and leases held for trading (line item 11), and 2) the inclusion of a contra-asset line item, Allowance for losses from loans and leases held for trading (line item 11.a). The Federal Reserve also proposes two changes to the statement of income: 1) adding a structure indicator box on the first page to denote whether a consolidated, unconsolidated or parent-only statement of income is being submitted and 2) amending expense line item 16 to include exchange fees. The proposed changes to the FR Y-20 instructions also include organizational reporting structure guidance, revisions due to changes in Board Orders and Board Legal Division opinions, changes in accounting standards, and guidance promulgated by the Financial Accounting Standards Board and the American Institute of Certified Public Accounts. The instructions also include other clarifications and minor editorial changes.

Discontinuation of the following report:

1. Report title: Report of Broker Carrying Margin Accounts.

Agency form number: FR 2240

OMB control number: 7100-0001

Effective Date: Wednesday, June 30, 1999.

Frequency: Annual.

Reporters: Member firms of the New York or American Stock Exchange that carry customer margin accounts as of the end of June.

Annual reporting hours: 246 burden hours.

Estimated average hours per response: 2.7 hours.

Number of respondents: 91.

Small businesses are affected.

General description of report: The Board's Legal Division previously has determined that this report is authorized by law (15 U.S.C. 78q(g)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2240 collects certain balance sheet information from securities brokers and dealers carrying margin accounts in order to regulate margin credit.

Current Actions: The Division of Research and Statistics proposes to discontinue the FR 2240. The report has become unnecessary because the vast majority of reporters already submits margin credit data to the New York Stock Exchange, which makes the data available on an aggregate basis to the Board of Governors and the general public.

Board of Governors of the Federal Reserve System, June 7, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–14826 Filed 6–10–99; 8:45a.m.]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act

Agency form number: unnum Reg CC

OMB Control number: 7100-0235

Frequency: Event-generated

Reporters: State Member Banks

Annual reporting hours: 174,384 hours.

Estimated average hours per response: Notice of exceptions, Case by case hold notice, or Notice to potential customers upon request: 3 minutes; Notice posted where customers make deposits: 15 minutes; Notice of changes in policy: 20 hours; and Annual notice of new ATMs: 5 hours.

Number of respondents: 989 state member banks

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 4008). Because the Federal Reserve System does not collect any information, no issue of confidentiality exists. If during a compliance examination a violation of the Expedited Funds Availability Act is noted, then the information regarding such violation may be kept confidential (5 U.S.C. 552(b)(8)).

Abstract: The third party disclosure requirements are intended to alert consumers about their financial institutions' check-hold policies and to help prevent unintentional (and costly) overdrafts. Most disclosures resulting from a policy change must be made thirty days before actions is taken, or within thirty days if the action makes funds available more quickly. Model forms, clauses, and notices are

appended to the regulations to provide guidance.

The Board's Regulation CC applies to all depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the Regulation CC paperwork burden on their respective constituencies.

Board of Governors of the Federal Reserve System, June 7, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–14827 Filed 6–10–99; 8:45a.m.]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, June 16, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14971 Filed 6–9–99; 10:08 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Grants for Short-Term Policy Research on Welfare Outcomes (ASPE), Notice Inviting Applications for New Award for Fiscal Year 1999

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Announcement of the availability of funds and request for applications for short-term policy research.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the availability of funds and invites applications for short-term policy research. We anticipate that between 4 and 7 entities will receive funding. We do not anticipate any new data collection under this grant but rather secondary analysis of existing data.

CLOSING DATE: The closing date for submitting applications under this announcement is July 26, 1999.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Telephone: (202) 690–8794. Requests for forms and administrative questions will be accepted and responded to up to 10 working days prior to closing date of receipt of applications.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.os.dhhs.gov* (see section on available grants and contracts). Application submissions may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the Grants Officer at the address or phone number listed above. Technical questions should be directed to Audrey Mirsky-Ashby, DHHS, ASPE, Telephone, 202–401–6640 or e-mail, amirsky@osaspe.dhhs.gov. Written technical questions may also be faxed to 202–690-6562 or may be addressed to Ms. Audrey Mirsky-Ashby at the following address. Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW, Room 404E, Hubert H. Humphrey Building, Washington, DC 20201. Please call Ms. Audrey Mirsky-Ashby to confirm receipt.

Part I. Supplementary Information

Legislative Authority

This grant is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Pub. L. 105–277, Department of Health and Human Services Health and Human Services Appropriations Act, 1999.

Eligible Applicants

Pursuant to section 1110 of the Social Security Act, any public and private nonprofit organizations including universities and other institutions of higher education may apply. Applications may also be submitted by private for-profit organizations. However, no grant funds may be paid as profit, i.e., any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.705).

Available Funds

Approximately $550,000 is available from ASPE, in funds appropriated for fiscal year 1999. ASPE anticipates providing between 4 and 7 awards with award amounts ranging from $75,000 to $150,000. No awards greater than $150,000 will be made. If additional funding becomes available in fiscal years 1999 or 2000, additional projects may be funded. No federal funds received as a result of this announcement can be used to purchase computer equipment.

Background

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) brought about fundamental changes in our nation's income support program for needy families with children. Welfare reform was expected to alter individuals' behavior in regard to work, marriage, fertility and program participation. As part of PRWORA, the

Aid to Families with Dependent Children Program was replaced by the Temporary Assistance to Needy Families (TANF) block grant program to states. Under TANF, states were given considerable flexibility to design and implement their support programs for needy families with children. In addition to this increased flexibility, TANF ended the individual entitlement to cash assistance, imposed a 60 month life time limit on the receipt of assistance and conditioned assistance on participation in work related activities.

Between January 1993 and December 1998, the number of people receiving federally funded assistance under Title IV-A of the Social Security Act fell from 14.1 million to just under 8 million recipients, a reduction of 44 percent. This decline has occurred partly in response to the strong economy, the Administration's grants of Federal waivers to 43 States, and the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

In response to the demand from the public and policymakers there is a broad array of research being conducted regarding the outcomes of welfare reform. While we are learning a lot about the employment and earnings of those who leave welfare, we know little about outcomes in other domains, such as child well-being or family structure, and we know very little about low-income families who do not come on to the welfare rolls. We also know little about subgroups with specific employment barriers.

There is solid and consistent evidence from a variety of sources that welfare reform has increased the average employment and earnings of welfare recipients. Experimental studies of State waiver demonstrations and other work programs that are very similar to TANF programs show consistently positive impacts on employment and earnings. Recent results from specific State programs show employment increases in the range of about 7 to 29 percent, and earnings increases of about 16 to 27 percent. For example, in the evaluation of the Minnesota Family Investment Program (MFIP), earnings for single-parent long-term recipients in urban counties increased by $1,041(26.9 percent), and the percent ever employed increased by 17.0 percentage points (28.8 percent) over 18 months.

Analyses of data from the Census Bureau's annual Current Population Survey (CPS) indicate a clear pattern of increased employment. The March employment rate of previous-year AFDC adult recipients increased from 19 to 25 percent between 1992 and 1996, and jumped to almost 32 percent in 1997. Also, the March employment rate of single mothers whose previous-year income was under 200 percent of poverty rose from 44 percent in 1992 to 54 percent in 1997, with average annual increases in 1996 and 1997 twice as large as in the previous 3 years.

The evidence about impacts on family income, on food security and hunger, on health insurance status, on child outcomes, and on other family experiences, are much less clear at this point. The best reading of the available evidence suggests that because the baseline levels of employment and earnings for welfare recipients are so low, even with substantial increases most families exiting welfare continue to be poor. Further, while some families are benefitting dramatically from the new incentives, requirements and opportunities, others are being left behind. However, preliminary evidence from states does not support the hypotheses that large numbers of people are becoming homeless or that more children are being moved into foster care as a result of welfare reform policies.

A recent analysis of the effects of welfare reform on Medicaid coverage, published by Families USA, found using data from the U.S. Census Bureau's Current Population Survey and from the Health Care Financing Administration, found that over two-thirds of a million low-income people—approximately 675,000—lost Medicaid coverage and became uninsured as of 1997 due to welfare reform. The majority (62 percent) of those who became uninsured due to welfare reform were children. Results from waiver demonstrations and studies of recipients who left welfare ("leaver" studies) for the most part indicate that average family income has been unchanged with some families increasing their income but others experiencing declines. For example, 2-year impacts on clients assessed as "job-ready" from Indiana's waiver demonstration showed earnings up 17.0 percent ($1,374) and quarters of employment up 12.8 percent, but total combined income from earnings and benefits was unchanged.

There is some early evidence that the most disadvantaged families may be losing income. CPS data indicate that real average family income for the bottom quintile of female-headed families with children declined between 1995 and 1997, after increasing from 1993 to 1995.

Part II. Purpose and Responsibilities

Purpose

The purpose of these grants is to support policy relevant research to complement ongoing research and evaluations on the outcomes of welfare reform, and to broaden our understanding of the outcomes of welfare reform. These grants are meant to supplement other leavers grants that ASPE has previously funded (see the web site at http://aspe.os.dhhs.gov/hsp/isp/98grants.htm for a description of these grants).

These grants are to support short-term research and data analysis efforts that are designed to be completed within twelve months. ASPE hopes to support efforts to analyze a variety of information about individuals (adults and children) and their families, including their economic and non-economic well-being and their participation in government programs. We hope to gain some understanding of the broader issues of the labor market and individual behaviors such as the differential effects of the business cycle on subgroups of the eligible population. The identification of important subgroups such as rural residents, individuals with significant barriers to success (e.g., mental illness, domestic violence, substance abuse, illiteracy, people with disabilities) and analyses of outcomes for these groups is also encouraged. Analyses that focus on differential outcomes by race/ethnicity are also encouraged. In addition, while average effects or outcomes are important it is also important in the context of welfare reform to look at the distribution of the outcomes, to identify and understand the winners and losers, and to understand the reasons why some individuals are winners and others are losers. Thus researchers are encouraged to look beyond averages.

Our intent is to sponsor analytic work and not to fund the provision of services. While research may be conducted in service settings, proposals of this nature will be carefully scrutinized to assure that these funds are not used for non-research purposes, no matter how worthwhile.

ASPE is interested in exploring research associated with three welfare related populations: (1) Those who are eligible for welfare but do not enroll either due to diversion programs or simply to failure to apply or enroll; (2) program participants and (3) program leavers. ASPE is interested in analyses that would inform the following issues and questions. While the list represents some of the many topics that are important to ASPE researchers and

policymakers, the suggested questions are in no way meant to be exhaustive.

Participation Decisions/Entry and Exit

How do program participation decisions and the outcomes for those who do not enroll in the TANF assistance program either because they are diverted from the program or choose not to apply or enroll differ vis-a-vis those who do enroll? How does this relate to decisions to participate in related support programs such as Food Stamps and Medicaid?

What are the effects of welfare reform on program entry and exit and on the composition of the caseload? For example, does welfare reform effect on the number of mothers on the rolls with young children? What role, if any, do other supports including public and private transfers (e.g., child support payments); work supports (e.g., Medicaid, child care, transportation); and social and community supports play in the decision to participate in or leave TANF? What role do these supports play in achieving success outside the TANF assistance program for those who do not enter TANF and/or those who leave the assistance program?

Business Cycle Effects

What are the business cycle effects, as experienced on the regional level, on entry and exit from TANF and how are different groups (e.g., those experiencing barriers to success) impacted?

Impacts on Well-Being

What are the differential impacts of participation or non-participation on individual and family well-being? How is welfare reform affecting the experiences of program participants and their outcomes including economic and non-economic well-being? How are the children of low income and welfare families faring under welfare reform on measures such as school achievement, behavioral problems, and health status? What facilitates positive outcomes or success? What effect has the increased focus on work and responsibility had on the children of low income and welfare families?

Self-Sufficiency Timeline

How quickly can we expect welfare recipients to become self-sufficient? Can welfare recipients accumulate sufficient skills to move forward in the labor market and increase their earnings to a level to meet basic needs and beyond? Are there groups that will be left behind? What strategies would enable those hard-to-serve recipients to move successfully into the labor market?

Individuals Who Leave the Rolls With No Earnings

Many of those who leave the welfare rolls are leaving for work but many also leave for non-work reasons. Little is known about this group—where do they turn for support—family, friends, other support systems? How effective and/or stable are these supports? How are they and their children faring?

Grantee Responsibilities

1. No later than ninety (90) days after the date of award, the Grantee shall submit an outline of progress to date. This progress report should note any changes to the work plan. The grantee shall provide concise, quarterly progress reports with format and content to be provided by the Federal Project Office.

2. After completing the analysis, the Grantee shall prepare a final report describing the results of the study, including the procedures and methodology used to conduct the analysis, the research questions answered, the knowledge and information gained from the project, and any barriers encountered in completing the project. A draft of this report shall be delivered to the Federal Project Officer no later than thirty (30) days before the completion of the project. After receiving comments on the draft report from the Federal Project Officer, the Grantee shall deliver at least three (3) copies of a final report to the Grants Officer before the completion of the project. One of these copies must be unbound, suitable for photocopying.

ASPE Responsibilities

1. ASPE shall provide consultation in the planning and operation of grant activities.

2. ASPE shall assist in information exchange and the dissemination of reports to appropriate Federal, State, and local entities.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, the forms necessary for submission, and the evaluation criteria under which the applications will be reviewed. Potential grant applicants should read this section carefully in conjunction with the information provided above. The application must contain the required Federal forms, title page, table of contents, and sections listed below. All pages of the narrative should be numbered.

The application should include the following elements:

1. *Abstract:* A one page summary of the proposed project.

2. *Goals and objective of the project:* An overview that describes the need for the proposed project; indicates the background and policy significance of the issue area(s) to be researched; outlines the specific quantitative and qualitative questions to be investigated; and clearly describes how the proposed project will advance scientific knowledge and policy development. If the proposal builds on any current project, the application should describe how funding under this announcement will enhance, not substitute for, current efforts.

3. *Methodology and Design:* Provide a description and justification of how the proposed research project will be implemented, including methodologies, chosen approach, definition of study populations, data sources, key variables and research plan and analytic plans. In addition, provide evidence of access to database(s) proposed to be studied.

To the extent that the analysis uses data on individuals from multiple, separate sources, such as administrative databases from several State agencies, the proposal should discuss measures taken to maintain confidentiality, as well as demonstrate that the Grantee has obtained authorized access to those data sources. The preferred form of proof is a signed agreement with each of the relevant agencies/departments. Though not preferable, letters of support from the appropriate agencies are acceptable, provided that the letter clearly states that the proposing agency has the authorization to access and link all necessary data. Grant applicants must assure that the collected data will only be used for management and research purposes, and that all identifying information will be kept completely confidential.

4. *Experience, capacity, qualifications, and use of staff:* Briefly describe the grant applicant's organizational capabilities and experience in conducting pertinent research projects. Identify key staff who are expected to carry out the research project and provide a curriculum vitae or resume for each person. Provide a brief discussion of how key staff will contribute to the success of the project.

5. *Work plan:* A work plan should be included which lists the start and end dates of the project, a time line which indicates the sequence of tasks necessary for the completion of the project, and the responsibilities of each of the key staff. The plan should identify the time commitments of key

staff members in both absolute and percentage terms, including other projects and teaching or managerial responsibilities. The work plan should include a discussion of any plans for dissemination of the results of the study, e.g., articles in journals and presentations at conferences.

6. *Budget:* Grant applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all Federal line items. A narrative explanation of the budget should be included that states clearly how the funds associated with this announcement will be used and describes the extent to which funds will be used for purposes that would not otherwise be incorporated within the project. The applicant should budget for one trip to Washington, DC to discuss results of the research. Cost sharing-matching is a mandatory requirement under this award. Applicants must demonstrate the amount and details of the cost sharing-matching arrangement. If the proposal entails funding from any additional sources, the applicant should also document the level of funding and describe how these funds will be expended.

Review Process and Funding Information

Applications will initially be screened for compliance with the timeliness and completeness requirements. Three (3) copies of each application are required. One of these copies must be in an unbound format, suitable for copying. If only one of the copies is the original (i.e., carries the original signature and is accompanied by a cover letter) it should not be this copy. Applicants are encouraged to send an additional two (2) copies to ease processing, but the application will not be penalized if these extra copies are not included. The grant applicant's Standard Form 424 must be signed a representative of the applicant who is authorized to act with full authority on behalf of the applicant.

A Federal review panel will review and score all applications submitted by the deadline date that meet the screening criteria (all information and documents as required by this announcement.) The panel will use the evaluation criteria listed below to score each application. The panel results will be the primary element used by the ASPE when making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

As a result of this competition between 4 and 7 grants averaging between $75,000 and $150,000 each are expected to be made from funds appropriated for fiscal year 1999. Additional awards may be made depending on the policy relevance of proposals received and the available funding, including funds that may become available in fiscal years 1999 or 2000.

Reports

As noted in the Grantee Responsibilities, one substantive report is required under the grant: a final report containing all results and analysis (draft version due no later than thirty (30) days before the end of the project and final version due at the conclusion of the project).

In addition, Grantees shall provide concise quarterly progress reports. The specific format and content for these reports will be provided by the Federal Project Officer. .

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submission of applications under this announcement is July 26, 1999. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays, during the working hours of 9 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building, located at 200 Independence Avenue, SW in Washington, DC. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as having met the deadline if it is either received at, or hand-delivered to, the mailing address on or before July 26, 1999, or postmarked before midnight three days prior to July 26, 1999, and received in time to be considered during the competitive review process.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from the U.S. Postal Service or from a commercial carrier (such as UPS, Federal Express, etc.) as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. If proof cannot be provided, the application will not be considered for funding. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to: (1) Natural disasters, such as floods, hurricanes, or earthquakes; (2) a widespread disruption of the mail; or, (3) if DHHS determines a deadline extension to be in the best interest of the Federal government. The Department will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Forms

Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to ten (10) working days prior to closing date of receipt of applications.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.hhs.gov* (see section on available grants and contracts). You may fax your request to the attention of the Grants Officer at (202) 690–6518. Completed grant applications may not be faxed or submitted electronically.

The printed Federal Register notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

Also see section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of Application

In no case shall an application for the ASPE grant (excluding the resumes, appendices and other appropriate attachments) be longer than twenty-five double-spaced pages. Only relevant attachments should be included, for example, resumes of key personnel. Videotapes, brochures, and other promotional materials will be discarded and not reviewed. Project narratives should be formatted with 1 inch margins, double spaced lines, 12 point type, with consecutively numbered pages.

Selection Process and Evaluation Criteria

Selection of successful applicants will be based on the technical and financial criteria described in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The review panel will prepare a summary of all applicant scores, strengths and weaknesses, and recommendations and submit it to the ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, grant applicants should take care to ensure that all criteria are fully addressed in the applications. Grant applications will be reviewed as follows:

1. *Goals, Objectives, and Potential Usefulness of the Analyses* (25 points). The potential usefulness of the objectives and how the anticipated results of the proposed project will advance policy knowledge and development of welfare reform policies. If the proposed project builds on previous work, the application should explain how. If the project uses pre-TANF data, the application should explain both the value of this data and its limitations data in the post-TANF world. Applications will be judged on the quality and policy relevance of the proposed research questions, study populations, and analyses (including subgroup analyses).

2. *Quality and Soundness of Methodology and Design* (30 points). The appropriateness, soundness, and cost-effectiveness of the methodology, including the research design, selection of existing data sets, data gathering procedures, statistical techniques, and analytical and modeling strategies. Richness of policy-relevant data and demonstrated ability to secure data will be an important scoring factor in this criterion.

3. *Qualifications of Personnel and Organizational Capability.* (25 points). The qualifications of the project personnel for conducting the proposed research as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project. Reviewers will evaluate the principal investigator and staff on research experience and demonstrated research skills.

Reviewers may consider references for work completed on prior research projects. Principal investigator and staff time commitments also will be a factor in the evaluation. Reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars or organizations in search of similar goals. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

4. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives.* (20 points). Reviewers will examine if the work plan and budget are reasonable and sufficient to ensure timely implementation and completion of the study and whether the application demonstrates an adequate level of understanding by the applicant of the practical problems of conducting such a project. Adherence to the work plan is necessary in order to produce results in the time frame desired; demonstration of an applicant's ability to meet the schedule will therefore be an important part of this criterion. Evidence of past history in meeting deadlines will be considered. Reviewers will also examine the use of any additional funding and the role that funds provided under this announcement will play in the overall project.

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

The Catalog of Federal Domestic Assistance number is 93–239.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);

2. Budget Information—Non-construction Programs (Standard Form 424A);

3. Assurances—Non-construction Programs (Standard From 424B);

4. Table of Contents;

5. Budget Justification for Section B Budget Categories;

6. Proof of Non-profit Status, if appropriate;

7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;

8. Project Narrative Statement, organized in five sections, addressing the following topics (limited to thirty (25) single-spaced pages):

(a) Abstract,

(b) Goals, Objectives and Usefulness of the Project,

(c) Methodology and design,

(d) Background of the Personnel and Organizational Capabilities and

(e) Work plan (timetable);

9. Any appendices or attachments;

10. Certification Regarding Drug-Free Workplace;

11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;

12. Certification and, if necessary, Disclosure Regarding Lobbying;

13. Supplement to Section II—Key Personnel;

14. Application for Federal Assistance Checklist.

Dated: June 3, 1999.

Ann Segal,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–14795 Filed 6–10–99; 8:45 am]

BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC).

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) Research involving human embryonic stem cells and (2) the comprehensive system of human subjects protections. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on June 28, 1999 from 11:30 am to 12 noon.

Dates/Times	Location
June 28, 1999, 8:30 am–5:00 pm.	The Washington Ballroom, Hotel Washington, 515 15th Street, NW, Washington, DC.
June 29, 1999, 8:30 am–5:00 pm.	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: June 4, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–14923 Filed 6–10–99; 8:45 am]

BILLING CODE 4166–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–21]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. An Evaluation of the Pediatrician's Role in Facilitating Early Parent-Child Communication About Sexuality and HIV Risk—New—National Center for HIV, STD, and TB Prevention (NCHSTP). The Centers for Disease Control and Prevention is proposing a study to evaluate whether pediatricians providing medical care to children between the ages of 6 and 12 years old currently facilitate early communication between parents and children about sexuality and STD/HIV prevention. The purpose of this project is to develop and conduct a survey which will focus on the delivery of sexual and STD/HIV education to parents for the purpose of facilitating parent-child dialogue about sexuality and sexual risk. The survey will assess which services are currently offered by physicians (e.g., discussions, pamphlets, videos, referrals to educational programs); when and to whom physicians offer services; the barriers that prevent physicians from offering services; and the types of services pediatricians believe are feasible to offer. Results of this survey will be used to develop effective programs to help pediatricians facilitate communication between parents and children about sexuality and STD/HIV prevention. Increasing parent-adolescent communication about sexuality and STD/HIV is important because many adolescents are having unprotected sex at an early age, and although parent-adolescent communication has been found to be associated with lower sexual risk behavior among adolescents many parents are not talking to their adolescents. Thus, strategies are needed to inform parents about the benefits of communication as a way to enhance their child's sexual health. Consistent with recommendation from the American Medical Association and the American Academy of Pediatrics, physicians can play an important role in educating parents about ways to promote their child's sexual health. The total cost to respondents is estimated at $22,500 based on an hourly rate of $75.00 per hour for pediatricians.

Respondents	Number of respondents	Number of responses/respondents	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Pediatricians	900	1	0.33	297

Dated: June 4, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14832 Filed 6–10–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1719]

Angus Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Angus Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4-(Diiodomethylsulfonyl) toluene as a slimicide in the manufacture of food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4668) has been filed by Angus Chemical Co., c/o Phillip A. Johns, 10900 Silent Wood Pl., North Potomac, MD 20878–4829. The petition proposes to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 4-(Diiodomethylsulfonyl) toluene as a slimicide in the manufacture of food-contact paper and paperboard.

The agency has determined under 21 CFR 25.32(q) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 24, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–14839 Filed 6–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1174]

Dietary Supplements; Center for Food Safety and Applied Nutrition Strategy; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of May 13, 1999 (64 FR 25889). The document announced a public meeting to solicit comments that will assist the Center for Food Safety and Applied Nutrition to develop an overall strategy for achieving effective regulation of dietary supplements under the Dietary Supplement Health and Education Act. The document published with an incorrect date for the submission of written comments. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Naomi Kulakow, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–8682, FAX 202–260–8957, e-mail "nkulakow@bangate.fda.gov".

In FR Doc. 99–12039, appearing on page 25889 in the **Federal Register** of Thursday, May 13, 1999, the following corrections are made:

1. On page 25889, in the third column, under the "Dates" caption, "May 28, 1999." is corrected to read "August 20, 1999."

2. On page 25890, in the third column, under the "Comments" section, in the second line, "May 28, 1999," is corrected to read "August 20, 1999,".

Dated: June 7, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–14840 Filed 6–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–98–4001]

Memorandum of Understanding Between the Food and Drug Administration and States of Iowa

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the FDA and the State of Iowa Department of Public Health. The purpose of the MOU is to establish policies, procedures, and responsibilities for the billing and collection of mammography facility inspection fees under the Mammography Quality Standards Act.

DATES: The agreement became effective July 14, 1998.

FOR FURTHER INFORMATION CONTACT: Lireka P. Joseph, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 2094 Gaither Rd., Gaithersburg, MD 20850, 301–443–2845.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20. 108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: June 4, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

BILLING CODE 4160–01–F

July 8, 1998

MEMORANDUM OF UNDERSTANDING

BETWEEN

STATE OF IOWA
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

RE: BILLING AND COLLECTION OF MAMMOGRAPHY QUALITY STANDARDS ACT (MQSA) MAMMOGRAPHY FACILITY INSPECTION FEES IN STATES PARTICIPATING IN THE U.S. FOOD AND DRUG ADMINISTRATION'S MQSA STATES AS CERTIFIERS DEMONSTRATION PROJECT

Control No. 125-98-4001

VOL 64 ISS 112 JE 11 1999 UMI

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Number assigned: 225-98-4001

MEMORANDUM OF UNDERSTANDING

BETWEEN

STATE OF IOWA
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

I. **PURPOSE:**

This Memorandum of Understanding (MOU) establishes policies, procedures, and responsibilities for the billing and collection of Mammography Quality Standards Act (MQSA) mammography facility inspection fees while the State of Iowa is participating in the Food and Drug Administration's (FDA) MQSA States as Certifiers Demonstration Project. The Demonstration Project is for one year, but may be renewable for a second year by mutual agreement.

II. **BACKGROUND:**

This MOU has been developed because of the need to bill and collect annual mammography facility inspection fees according to provisions contained in the MQSA while the State of Iowa is participating in the demonstration project. The State of Iowa voluntarily applied and agreed to participate in this demonstration project.

Each agency recognizes that this MOU documents a working relationship. It does not infer any contractual obligations nor assumption of liability by one agency for any action of the other agency.

It is understood that each agency continues to exercise its respective jurisdictional authority, and that the cooperation extended to the other agency does not transfer any jurisdictional authorities.

The MQSA constrains the disposition of inspectional fees collected under section (r). Subparagraph (r)(1)(B)(i) provides that fees collected from facilities to cover the costs of inspections "shall be deposited as an offsetting collection of the appropriations for the Department of Health and Human Services (DHHS) as provided in appropriations Acts and shall remain available without fiscal limitation." This language requires the inspectional entity, whether the FDA, a

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State under contract, or a certifying State, to deposit funds collected from facilities for inspections into a DHHS account. All inspection funds collected under this MOU will be deposited into the DHHS account initially, then apportioned between FDA and the State according to the inspection costs of each.

III. SUBSTANCE OF AGREEMENT:

1. The State of Iowa will provide the FDA, within five business days, the results of all annual MQSA inspections and MQSA follow-up inspections conducted by the State during the demonstration project. Based on this information, the FDA will mail a bill to the inspected mammography facilities to cover the costs of the annual inspections. The bill will set forth the type of inspection conducted (annual or follow-up), the fee to be paid, and the date payment is due (30 days after billing date). Inspection fees will be billed to and collected from the party that operates the facility. If the facility is owned or controlled by an entity other than the operator, it is up to the owner and the operator to establish, through contract or otherwise, how the costs of facility inspections will be paid.

   If full payment is not received by the due date, a second bill will be sent. At that time, interest will begin to accrue at the prevailing rate set by the Department of the Treasury (currently, the prevailing rate is 14.00 percent), a 6.00 percent late payment penalty will be assessed in accordance with 45 CFR 30.13, and a $20 administrative fee will be assessed for each 30-day period that a balance remains due. If payment is not received within 30 days of a third and final bill, FDA may initiate action to collect unpaid balances (with interest and penalties), including the use of collection agencies and reporting of delinquencies to commercial credit reporting agencies.

2. The fees for annual MQSA mammography facility inspections have been determined by the fees set by the State of Iowa. The total fee billed to the facility for each annual MQSA inspection during the demonstration project will be the State fee of $850 for the first unit and $300 for each additional unit plus $509; thus, the total fee will be $1359 plus $300 for each additional unit. The FDA will retain the $509 from each annual MQSA inspection fee for mammography facility inspection-related services provided to the State of Iowa. The types of services that will be provided by the FDA are as follows:

   - Billing facilities for fees due for annual inspections.
   - Collecting facility payments.
   - Training and certification of inspectors.
   - Development of instrument calibration procedures and calibration of instruments used in the inspections.
   - Supplying, repairing, and replacing inspection equipment.
   - Design, programming, and maintenance of inspection data systems.

1d

- Administrative support attributable to facility inspections.

3. The FDA will pay the State of Iowa $850 for the first unit and $300 for each additional unit for each annual MQSA inspection fee collected from non-governmental entity mammography facilities for inspections conducted by the State during the demonstration project. The State of Iowa will be paid monthly beginning approximately 60 days after receipt of the first inspection record file from Iowa. This monthly payment amount will be based upon the actual amount collected from mammography facilities from the previous month as opposed to the number of inspections conducted during that period. That is, the State of Iowa will receive $850 for the first unit and $300 for each additional unit for each annual MQSA inspection fee which is collected in full by the FDA during each month the State is participating in the demonstration project. Payment will be made electronically. The data contained in the attached Automated Clearinghouse (ACH) information sheet will be utilized by the FDA to pay the State of Iowa for annual MQSA inspections and MQSA follow-up inspections conducted during the demonstration project.

4. Under the MQSA, all certified mammography facilities except governmental entities are subject to the payment of inspection fees. During the period of time the State of Iowa is participating in the demonstration project, the FDA will not pay the State of Iowa, under this MOU, for annual MQSA inspections of mammography facilities which are government entities. FDA will reimburse the State of Iowa for annual MQSA inspections of facilities which are governmental entities through a modification of the MQSA inspection contract between the FDA and the State of Iowa entered into on February 1, 1998. The contract will be extended to cover one year from the effective date of the demonstration project. Should the State cease participating in, or be terminated from, the demonstration project, an MQSA inspection contract may be re-negotiated.

IV. DEFINITION:

1. Governmental Entity

A "governmental entity" is a mammography facility subject to the MQSA inspection that meets all of the following criteria:

The entire salary of all on-site personnel of the mammography facility is directly paid by a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, the building, office, or other space occupied by the mammography facility is owned by, rented by, or leased to a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof,

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the facility's mammography equipment is owned by, rented by, or leased to a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, and a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof has the ultimate authority to make day-to-day decisions concerning the management and operation of the mammography facility.

or

A facility qualifies as a government entity if at least 50% of the mammography screening examinations provided during the preceding 12 months were funded under the Breast and Cervical Cancer Mortality Prevention Act of 1990, 42 U.S.C. 300k et seq.

V. AUTHORITY

The FDA is vested with authority under section 354(r) of the Public Health Services Act (the PHS Act) (42 U.S.C. 262 *et seq.*) to assess and collect fees from mammography facilities to cover the costs of annual inspections required by the MQSA. Under 354(q) of the PHS Act, FDA may approve a state to perform some of the agency's certification functions. The MQSA amended Title III of the PHS Act by adding a new section 354 (42 U.S.C. 263b) to require uniform national quality standards for mammography facilities.

The State of Iowa is authorized by State statute, Iowa Code Chapter 136.15

VI. NAME AND ADDRESSES OF PARTICIPATING AGENCIES:

A. FDA:

Office of Health and Industry Programs
1350 Piccard Drive
Rockville, MD 20850

B. State of Iowa:

Department of Public Health
Bureau of Radiological Health
Lucas State Office Building
321 E. 12th Street
Des Moines, IA 50319-0075

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VII. LIAISON OFFICERS:

A. For FDA:

Lireka P. Joseph, Dr. P.H.
Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

B. For State of Iowa:

Donald A. Flater
Chief
Bureau of Radiological Health
Iowa Department of Public Health

VIII. PERIOD OF AGREEMENT:

After acceptance by both parties, this MOU will be become effective on or after July 1, 1998 and continue until the completion of the demonstration project or upon termination in writing by either party with a 30-day prior notice (such notice shall be sent to the addresses listed in Section V). This MOU may be modified by mutual written consent at any time. The effective date will be specified in the letter formally approving the State of Iowa as a participant in the demonstration project.

IX. CONCURRENCE:

FDA:

(Signature and date) 7/9/98
Lireka P. Joseph, Dr.P.H.
Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

State of Iowa:

Donald A. Flater 7/14/98
(Signature and date)
Donald A. Flater
Chief
Bureau of Radiological Health
Iowa Department of Public Health

(Signature and date) 7/14/98
Christopher G. Atchison
Director
Iowa Department of Public Health

[FR Doc. 99–14796 Filed 6–10–99; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) Announces the Opportunity for Clinical Trial Agreements (CTA) in Conjunction with a Major Multicenter Clinical Trial Aimed at Developing Practical, Safe and Effective Means of Preventing the Progression of Liver Disease in Patients With Chronic Hepatitis C Virus (HCV) Infection

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) seeks capability statements from parties interested in entering into a potential Clinical Trial Agreement (CTA) to provide agent for treating subjects in the Hepatitis C Clinical Trial (HCCT). Collaborator applicants developing capability statements must also include plans for packaging, labeling, and distributing agent and placebo. The primary criterion for selecting a potential Collaborator is the scientific merit of proposals for use of preventing the progression of liver disease in patients with chronic hepatitis C virus infection.

The control of the HCCT shall reside entirely with the Institute and the scientific participants of the trial. In the event that any adverse effects are encountered which, for legal or ethical reasons, may require communication with the FDA, the relevant collaborating institutions will be notified. Neither the conduct of the trial nor the results should be represented as a NIDDK endorsement of the drug under study.

DATES: Only written Capability Statements received by the NIDDK on or before August 1, 1999 will be considered during the initial design phase. Potential Collaborators may be invited to meet with the Selection Committee at the Collaborator's expense to provide additional information. The Institute may issue an additional notice of opportunity during the design of the trial if circumstances change or if the trial design alters substantially.

FOR ADDITIONAL INFORMATION AND QUESTIONS: Capability statements should be submitted to Dr. Michael W. Edwards, Office of Technology Development, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, BSA Building, Suite 350 MSC 2690, 9190 Rockville Pike, Bethesda, MD 20814–3800; Tel: 301/496–7778, Fax: 301/402–0535; Email:mels@nih.gov.

SUPPLEMENTARY INFORMATION: The HCCT will be conducted as collaborative contracts among nine (9) Clinical Centers (CCs) a central data coordinating (DCC) with biostatistical expertise and with input from a hepatologist, and a central virological testing laboratory (VL). The HCCT will be designed to evaluate whether continuous long-term antiviral therapy can slow the progression of liver disease, preventing cirrhosis or preventing worsening of cirrhosis, decompensation, development of hepatocellular carcinoma (HCC) and death from liver disease. The Trial will also evaluate the natural history of hepatitis C and the factors that predict or correlate with disease progression. The major focus will be to evaluate whether antiviral therapy, despite not leading to eradication of HCV, can suppress hepatocellular injury, necrosis and fibrosis.

HCCT is expected to recruit approximately 800 patients with chronic hepatitis C who have failed to respond to therapy with alpha interferon (with or without ribavirin) and who have significant fibrosis on liver biopsy. The carefully designed cohort of patients will be enrolled in a study of the efficacy and safety of a continuous long-term antiviral therapy (for as long as four years)

Capability Statements

The design concept described above is not final. The final design will be developed over the course of the first year of the trial by the HCCT Steering Committee (which will include the Principal Investigators of the Clinical Centers, the Data Coordinating Center, the Virology Laboratory and the NIDDK Project Officer). It is possible that the final design for HCCT may include more than one agent.

A Selection Committee will utilize the information provided in the "Collaborator Capability Statements" received in response to this announcement to help in its deliberations. The Selection Committee will interact with the Steering Committee to develop the most appropriate design, based on a thorough understanding of the efficacy and side effects associated with all agents proposed.

It is the intention of the NIDDK that qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 8 pages and should address the following selection criteria:

(1) The statement should provide specific details regarding the safety and efficacy of the proposed agent for long-term use in hepatitis C patients.

(2) The statement should include a detailed plan demonstrating the ability of the Collaborator to provide sufficient quantities of the agent in a timely manner for the duration of the study.

(3) The statement should outline plans for packaging, labeling, and distributing the agent along with placebo. The statement should describe the commitment of other resources such as scientific research, personnel, services, facilities, or equipment that would be used to support conduct of the trial.

(4) The statement must address willingness to promptly publish research results and ability to be bound by PHS policies.

Dated: June 4, 1999.

L. Earl Laurence,

Deputy Director, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 99–14824 Filed 6–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–16]

Proposed Information Collection: Comment Request; Application for Fee Personnel Designation—VA, Fee or Roster Designation—HUD–92563

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Coments due date: August 10, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage

Insurance Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410, telephone (202) 708–2700, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1994 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for Fee Personnel Designation—VA, Fee or Roster Designation—HUD–92563.

OMB Control Number, if applicable: 2502–0122.

Description of the need for the information and proposed use: This Notice requests reinstatement with change of a previously approved OMB information collection authorization. HUD's collection of this information is needed to make determinations of eligibility and qualifications of applicants for fee work. Qualified applicants are hen placed on panels or rosters for assignment of fee work. This process ensures that only qualified personnel are placed on appraisal and inspection panels.

Agency from number, if applicable: HUD–92563.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 10,000 frequency of responses is 1, the total annual responses are 10,000 and the estimated annual burden hours requested is 50,000.

Status of the proposed information collection: Reinstatement with change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 1, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–14920 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–15]

Proposed Information Collection: Comment Request; Personal Financial and Credit Statement HUD–92417

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: August 10, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHEN INFORMATION CONTACT: Sylvia Miller, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U:S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Personal Financial and Credit Statement.

OMB Control Number, if applicable: 2502–0001.

Descrption of the need for the information and proposed use: This form is used by HUD to determine the capability, reputation, experience and ability of the project sponsor to develop a successful project and have the resources to complete it. This form (HUD–92417) is part of the basic application form for mortgage insurance.

Agency form numbers, if applicable: HUD–92417.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimate number of respondents is 8,000, frequency of responses is once, and the total annual responses are 8,000, and the estimated annual burden hours requested are 64,000.

Status of the proposed information collection: Reinstatement without change of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 1, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–14921 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4447–N–1]

Proposed Information Collection: Comment Request; Commitment To Guarantee Mortgage-Backed Securities

AGENCY: Office of the President of Government. National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* August 10, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Policy, Planning and Risk Management, Department of Housing and Urban Development, 451—7th Street, SW., Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Commitment to Guarantee Mortgage-Backed Securities.

OMB Control Number, if applicable: 2503–0001.

Description of the need for the information and proposed use: This form is used by Mortgage-Backed Securities issuers to apply for Ginnie Mae commitment authority to guarantee mortgage-backed securities.

Agency form numbers, if applicable: HUD Form 11704.

Members of affected public: For-profit businesses (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Respondents	Frequency of response	Hours of response*
Form 11704	625	4	624

*.25 hrs × 625 issuers = 156 hrs.
*156 hrs × 4 requests per yr. = 624 hrs annually.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 2, 1999.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 99–14922 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–27]

Submission for OMB Review: American Housing Survey (AHS)—1999 National Sample

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development seeks updated locating and states information on participants in the American Housing Survey (AHS)—1999 National Sample. The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: July 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, and extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 3, 1999.

David S. Cristy,

Director, Information Technology, Capital Planning Staff.

Submission of Proposed Information Collection to OMB

Title of Proposal: American Housing Survey (AHS)—1999 National Sample.

Office: Policy Development and Research.

OMB Approval Number: 2528–0017.

Description of the Need for the Information and Its Proposed Use: The 1999 AHS–N is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for the nation. The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issue.

Form Number: AHS–26, AHS–27, and AHS–28.

Respondents: Individuals or households.

Frequency of Submission: Biennially.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	55,480		1		0.61		33,845

Total Estimated Burden Hours: 33,845.

Status: Revision.

Contact: Ronald J. Sepanik, HUD, (202) 708–1060 ext. 5887; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 3, 1999.

[FR Doc. 99–14918 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–28]

Submission for OMB Review: Survey of Market Absorption of New Apartment Buildings

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development seeks updated locating and states information on participants in the Survey of Market Absorption of New Apartment Buildings. The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: July 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 3, 1999.

David S. Cristy,

Director, Information Technology, Capital Planning Staff.

Submission of Proposed Information Collection to OMB

Title of Proposal: Survey of Market Absorption of News Apartment Buildings.

Office: Policy Development and Research.

OMB Approval Number: 2528–0013.

Description of the Need for the Information and Its Proposed Use: The Department of Housing and Urban Development conducts this survey in order to determine if the supply of renal housing is keeping pace with current and future needs. Additional information such as asking rent (or price for condominium units) and number of bedrooms is also collected.

Form Number: H–31 and SOMA–1.

Respondents: Business or other for-profit.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Information Collection	12,000		1		.3		3,600

Total Estimated Burden Hours: 3,600.

Status: Extension without changes.

Contact: Ronald J. Sepanik, HUD, (202) 708–1060 ext. 5887; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 3, 1999.

[FR Doc. 99–14919 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–23]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 4, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–14755 Filed 6–10–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability; Draft Restoration Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf the of Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Restoration Plan (RP) for the Hi View Terrace Superfund Site. The Draft RP describes the DOI's proposal to restore natural resources injured as a result of remedial actions undertaken to address the release of hazardous substances from the Hi View Terrace Superfund Site.

DATES: Written comments must be submitted on or before July 15, 1999.

ADDRESSES: Request for copies of the Draft RP may be made to: Ms. Kathryn Jahn, U.S. Fish and Wildlife Service, New York Field Office. 3817 Luker Road, Cortland, New York 13045.

Written comments or materials regarding the Draft RP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kathryn Jahn, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045.

Interested parties may also call (607) 753–9334 or send e-mail to kathryn_jahn@fws.gov for further information.

SUPPLEMENTARY INFORMATION: The Hi View Terrace Superfund Site (Site) consists of lots at 100, 110, and 116, Hi View Terrace in West Seneca, New York, portions of which were filled with cyanide-contaminated material. A removal action was subsequently undertaken in 1988 and 1989. A total of 5,600 tons of soil and debris were removed, and the area backfilled with clean material. About 0.5 acre of wetland at the Site was lost due to the remedial work, reducing the quantity and quality of wetlands available for wildlife. As compensation for this loss we reached settlement of $25,000 with the Responsible Party.

The Draft RP is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43 of the Code of Federal Regulation Part 11. The Draft RP describes several habitat restoration and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative entails the use of $25,000 by the Town of West Seneca to purchase a 17-acre parcel of land along Cazenovia Creek to create the Cazenovia Creek Nature Preserve. Details regarding the proposed project are contained in the Draft Restoration Plan.

The Final Revised Procedures for the Service for implementing the National Environmental Protection Act, published in the **Federal Register** on January 16, 1997, provide a categorical exclusion for natural resource damage assessment restoration plans prepared under CERCLA when only minor or negligible change in the use of the affected areas is planned. The DOI has determined that the Preferred Alternative will result in only a minor change in the use of the affected area. Accordingly this Restoration Plan qualifies for a categorical exclusion under NEPA.

Interested members of the public are invited to review and comment on the Draft RP. Copies of the Draft RP are available from the U.S. Fish and Wildlife Service's New York Field Office at 3817 Luker Road. Cortland, New York 13045. Additionally the Draft RP is available for review at the Town Clerk's Office at the West Seneca Town Hall, 1250 Union Road, West Seneca, New York 14224. All comments received on the Draft RP will be considered and a response provided either through revision of this Draft Plan and incorporation into the Final Restoration Plan or by letter to the commentor.

Author: The primary author of this notice is Ms. Kathryn Jahn, New York Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, NY 13045.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.

Dated: June 3, 1999.

Paul R. Nickerson,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 99–14897 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–010–1430–01; MTM 84895, MTM 88157]

Notice of Intent To Plan Affecting Two Tracts of Public Land in Yellowstone County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to plan affecting two tracts of public land in Yellowstone County, Montana.

SUMMARY: An environmental assessment will be prepared for amendment of the Billings Resource Management Plan to provide guidance on the management of the Four Dances Natural Area and the Sundance Lodge Recreation Area. The Billings Resource Management Plan (RMP) was completed in 1984. There is no land use planning guidance for the Sundance Lodge Recreation Area acquired in 1997 or the Four Dances Natural Area which was acquired in 1999. The environmental assessment will meet the requirements of the Federal Land Policy and Management Act of 1976. The document will guide future management decisions for the two acquired properties.

DATES: Any issues, concerns, or alternatives should be submitted to the BLM at the below address on or before August 1, 1999.

FOR FURTHER INFORMATION CONTACT: David C. Jaynes, Assistant Field Manager, BLM, 810 East Main Street, Billings, Montana 59105 or call 406–238–1540.

SUPPLEMENTARY INFORMATION: The Sundance Lodge Recreation Area (MTM 84895), formerly the Altman Ranch, was acquired in 1997 and contains approximately 379.9 surface and mineral acres of bottom land along the Clarks Fork of the Yellowstone River, located two miles southeast of Laurel, Montana.

The Four Dances Natural Area (MTM 88157), formerly the Larsen property, or Sacrifice Cliff, was acquired in 1999 and contains approximately 765 surface and mineral acres of land along the Yellowstone River. The open space values of this land are protected by a conservation easement that is held by the Montana Land Reliance and any use, land management, or development on this property will be done in conformance with this easement. Approximately 10 percent of the property is riparian land along the Yellowstone River with the remainder uplands on a plateau approximately 250 feet above the river overlooking Billings, Montana. The overall objective for the plan is to manage these areas for recreation while protecting scenic, cultural, and wildlife values.

The public is requested to assist the BLM in the identification of issues. Examples of potential issues are: what types of recreational activities will be allowed, what types of facilities will be constructed, and what types of land treatments would be allowed. Meetings for the proposed RMP amendment are not yet scheduled. When meetings are scheduled the public will be notified through local news releases.

Dated: June 4, 1999.

Sandra S. Brooks,

Field Manager.

[FR Doc. 99–14816 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00: GP9–0201]

Notice of Meeting of Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Meeting of the Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of the Eastern Washington Resource Advisory Council; Spokane, Washington, July 13, 1999.

SUMMARY: A meeting of the Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of Eastern Washington Resource Advisory Council will be held on July 13, 1999. The meeting will convene at 8:30 a.m. at the Spokane District Office of The Bureau of Land Management, 1103 N. Fancher, Spokane, Washington; 99212–1275. The meeting will adjourn no later than 5:00 p.m.. The meeting will consist of a field demonstration of techniques to assess achievement of rangeland health standards along Crab Creek in Lincoln County, Washington. Those wishing to join the tour at Tokio, Washington may do so at 9:30 a.m. Public comments will be heard from 12:00 p.m. until 12:30 p.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212–1275; or call 509–536–1200.

Dated: June 4, 1999.

Joseph K. Buesing,

District Manager.

[FR Doc. 99–14695 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Scoping for the Merced Wild and Scenic River Management Plan, Yosemite National Park; Mariposa and Madera Counties, California

SUMMARY: Pursuant to provisions of the National Environmental Policy Act (Pub. L. 91–190) and the Wild and Scenic Rivers Act (Pub. L. 90–542), the National Park Service is initiating public scoping for a conservation planning and environmental impact analysis process for a Merced River Management Plan for river segments in Yosemite National Park. This will culminate with a river management plan that comprehensively encompasses protection and enhancement of the values for which Merced River was designated as a Wild and Scenic River. The plan will address resource protection, potential development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of the 1968 Wild and Scenic Rivers Act. The purpose of this scoping phase is to elicit early public comments regarding issues and concerns, a suitable range of alternatives and appropriate mitigation measures, and the nature and extent of potential environmental impacts which should be addressed.

Background

In 1987 Congress designated 122 miles of the Merced River as Wild and Scenic, including 81 miles within Yosemite National Park. Subsequently the Bureau of Land Mangement and U.S. Forest Service jointly completed a comprehensive river management plan for Merced River segments outside of Yosemite National Park. The National Park Service is now initiating planning for the remaining segments. The two segments subject to this effort are the Merced River (the main stem, originating near Mt. Lyell and meandering through Yosemite Valley and flowing out of the park near El Portal) and the South Fork (originating near Triple Divide Peak and flowing out of the park near Wawona). In accord with the 1968 Wild and Scenic Rivers Act, the river segments within Yosemite

National Park have been classified, boundaries delineated, and outstandingly remarkable values identified.

Scoping and Public Meetings

Involvement of interested individuals and organizations will be a key element of the current conservation planning and environmental analysis process, and concurrently Tribal, federal, state, and local governments will be consulted. At this time it has not been determined whether an Environmental Assessment or an Environmental Impact Statement may be appropriate. However, all written responses and comments received during the forthcoming public meetings will aid in the preparation of either document. Suggestions regarding issues to be addressed and information relevant to determining scope of the current planning and analysis process are being sought, through July 14, 1999. Four public scoping meetings will be held from 6pm to 8pm, as noted below; additional information will be released via regional and local news media, and updates are also available by phone at (209) 372–0584.

June 22, San Francisco (Upper Fort Mason, Building 201, Golden Gate National Recreation Area, near the intersection of Bay and Franklin Streets);

June 23, Modesto (Mallard Inn, 1720 Sisk Road);

June 24, Mariposa (Best Western Yosemite Way Station, 4999 Highway 140);

June 28, Yosemite Valley (Visitor Center, East Auditorium).

Decision Process

Scope of issues identified to date include: cultural and natural resource protection, development standards for any facilities, land management, user capacities, appropriate types of recreation, and protection of visual resources. All scoping feedback received will be incorporated into the information base guiding the preparation of a comprehensive plan for future management of the river. Written comments should be addressed to the Superintendent, Yosemite National Park, PO Box 577, Yosemite National Park, California 95389, and must be postmarked not later than July 14, 1999 (or if sent via e-mail, transmitted by that date to "Yose_Merced_River@nps.gov").

Notice of future developments, including availability of the draft environmental document and plan, will be accomplished via regional news media, direct mailings, and **Federal Register** if warranted. The official responsible for final decision regarding the forthcoming plan is the Regional Director, Pacific West Region, National Park Service; the official responsible for subsequent implementation would be the Superintendent, Yosemite National Park.

Dated: June 4, 1999.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 99–14823 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Anvik Village, AK in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Anvik Village, AK in the possession of the American Museum of Natural History, New York, NY.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of Anvik Village.

In 1903, human remains representing a minimum of seven individuals were excavated by Rev. John W. Chapman from AK, Yukon-Koyukuk Borough, Anvik Village, and donated to the Museum. No known individuals were identified. The 45 associated funerary objects include 11 pottery dishes; a baleen comb; a tobacco box; three wooden boxes; three metal knives; two knife handles; four implements; two handles; a graver's tool; six bone tubes; two bone needles; an ivory point; a scraper; two bear tooth pendants; a flint chip; and four metal bracelets.

These individuals have been identified as Native American based on burial practices and types of associated funerary objects. Geographic location is consistent with the post-contact territory of the Ingalik (an Athabascan group). The Ingalik have occupied Anvik Village since 1887 and for an undetermined period prior to that date. Some, perhaps all, of the graves date to the post-contact period. Burial practices are consistent with interior Athabascan and Ingalik funerary practices. Associated funerary objects are consistent with Ingalik culture. Museum catalog information describes the remains as Athabascan.

Based on the above mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of seven individuals of Native American ancestry. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 45 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and Anvik Village.

This notice has been sent to officials of Anvik Village, Ingalik Inc., and Doyon, Ltd. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Martha Graham, Registrar for Cultural Resources, Department of Anthropology, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192; telephone: (212) 769-5846 before July 12, 1999. Repatriation of the human remains and associated funerary objects to Anvik Village may begin after that date if no additional claimants come forward.

Dated: June 1, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 99–14828 Filed 6–10–99; 8:45 am]

BILLING CODE BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the American Museum of Natural History, New York, NY which meets the definition of "sacred object" under Section 2 of the Act.

The cultural item is a Natoas bundle used in the Blackfeet Sun Dance. The bundle is comprised of a woman's headdress, a badger skin bag, a digging stick, a case for the items, a shawl for covering the bundle, four bags for the headdress parts, four bundle skins and wrappings, a paint outfit bag, nine paint bags, five sets of paints, a bag with skin scraps, seven rattles, a Nez Perce bag, a rawhide piece, three smudge sticks, a tripod for supporting the bundle, and a strap for the main bundle. This particular Natoas bundle is sometimes referred to as Many White Horses' Natoas bundle.

In 1906, the Museum purchased the bundle (AMNH Accession 1906-5), through intermediaries, from Mary Wolf Chief, the widow of Many White Horses. Mary Wolf Chief was co-keeper of the bundle who had the authority to sell the bundle, and voluntarily sold it to the Museum because she said that it had brought her bad luck.

Mr. Clayton Arrowtop traces his ancestry directly and without interruption to Many White Horses and Mary Wolf Chief, his great grandparents. During consultation, Mr. Arrowtop and Blackfeet elders identified the bundle as a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religion by its present-day adherents. Representatives of the Blackfeet Nation and Blackfeet elders have confirmed that Mr. Arrowtop is the appropriate custodian of the bundle.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (b)(1), Mr. Clayton Arrowtop can trace his ancestry directly and without interruption by means of the traditional kinship system of the Blackfeet Nation to Many White Horses and Mary Wolf Chief. Finally, officials of the Museum have determined that the Museum has right of possession, but that the Museum will waive that right in this case.

This notice has been sent to officials of the Blackfeet Nation. Any other lineal descendant, or representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Martha Graham, Registrar for Cultural Resources, Department of Anthropology, American Museum of Natural History, Central Park West at 79th Street, telephone: (212) 769-5846 before July 12, 1999. Repatriation of this object to Mr. Clayton Arrowtop may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the contents of or determinations within this notice.

Dated: May 27, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–14831 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Oregon in the Possession of the Hastings Museum of Natural and Cultural History, Hastings, NE

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Hastings Museum of Natural and Cultural History (formerly the Hastings Museum), Hastings NE which meet the definition of "unassociated funerary objects" under Section 2 of the Act.

The ten cultural items consist of eight black faceted glass beads and two white pony beads.

At an unknown date, museum records indicate nine black beads were excavated from a burial site in the state of Oregon by an unknown individual. In 1939, these beads were received by the Hastings Museum as part of an exchange with the John Bear Estate and catalogued as accession number 18429. During the inventory of 1989, eight black beads and two white beads were found associated with this accession number. It is unclear where the white beads came from or where the ninth black bead may be. The museum believes the white beads are associated with the remaining black beads.

Based on the material and types of beads present, these cultural items date to the post–1850 historic period. Consultation information provided by the Confederated Tribes of the Grand Ronde Community of Oregon shows that the aboriginal territory of the tribes include a large portion of western Oregon. Based on this information, officials of the Hastings Museum of Natural and Cultural History have determined that the geographical location of this grave was likely to have been within the aboriginal and historic territory of the Confederated Tribes of the Grand Ronde Community of Oregon.

Officials of the Hastings Museum of Natural and Cultural History have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these ten cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Hastings Museum of Natural and Cultural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Confederated Tribes of the Grand Ronde Community of Oregon.

This notice has been sent to officials of the Confederated Tribes of the Grand Ronde Community of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Teresa Kreutzer, Curator, Hastings Museum of Natural and Cultural History, P.O. Box 1286, Hastings, NE 68902; telephone: (402) 461-2399, fax: (402) 461-2379 before July 12, 1999. Repatriation of these objects to the Confederated Tribes of the Grand Ronde Community of Oregon may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: May 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist,Manager, Archeology and Ethnography Program.

[FR Doc. 99–14830 Filed 6–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Hawai'i in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs.

In 1893, human remains representing two individuals were removed from "a lava cave on the island of Hawai'i' by Dr. J.M. Whitney. At an unknown date, Dr. C.N. Pierce donated these remains to the Academy of Natural Sciences of Philadelphia, PA. In 1966, these remains were placed on loan to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1998, one of these individuals was officially transferred to the collections of the University of Pennsylvania Museum. In 1999, the second individual was officially transferred to the collections of the University of Pennsylvania Museum. No known individuals were identified. No associated funerary objects were present.

Based on original accession information, these individuals have been identified as Native Hawaiian. Geographical and historical evidence provided during consultation by Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs indicates cultural affiliation between these human remains and present day Native Hawaiians.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs.

This notice has been sent to officials of Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before July 12, 1999. Repatriation of the human remains to Hui Malama I Na Kupuna O Hawai'i Nei, the Hawai'i Island Burial Council, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: June 1, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99-14829 Filed 6-10-99; 8:45 am]

BILLING CODE 4310-70-F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-364 (Review)]

Aspirin From Turkey

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on aspirin from Turkey.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-205-3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background.—On June 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 10012, March 1, 1999) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on July 1, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found responses submitted by Rhodia, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 7, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 7, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14912 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–367 through 370 (Review)]

Color Picture Tubes From Canada, Japan, Korea, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm.*

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. § 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to color picture tubes from Japan, the Commission found that both domestic and respondent interested party group responses to its notice of institution [1] were adequate and voted to conduct full reviews.

With regard to color picture tubes from Canada, Korea, and Singapore, the Commission found that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[2]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14913 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The notice of institution for all of the subject reviews was published in the **Federal Register** on Mar. 1, 1999 (64 FR 10014).

[2] Commissioner Crawford dissenting.

INTERNATIONAL TRADE COMMISSION

Certain Fresh Cut Flowers From Chile, Ecuador, Mexico, And Peru [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty orders on standard carnations from Chile and pompom chrysanthemums from Peru and antidumping duty orders on standard carnations from Chile, fresh cut flowers from Ecuador, and fresh cut flowers from Mexico.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the countervailing duty orders on standard carnations from Chile and pompom chrysanthemums from Peru and the antidumping duty orders on standard carnations from Chile, fresh cut flowers from Ecuador, and fresh cut flowers from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules

[1] The investigation numbers are as follows: Chile is 701–TA–276 (Review) and 731–TA–328 (Review), Ecuador is 731–TA–331 (Review), Mexico is 731–TA–333 (Review), and Peru is 303–TA–18 (Review).

of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. § 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to standard carnations from Chile and fresh cut flowers from Ecuador, the Commission found that the domestic interested party group responses to its notice of institution [2] were inadequate and the respondent interested party group responses were adequate.[3] The Commission also found that other circumstances warranted conducting full reviews.[4]

With regard to fresh cut flowers from Mexico and pompom chrysanthemums from Peru, the Commission found that both the domestic interested party group responses and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[5]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14910 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on Feb. 1, 1999 (64 FR 4898).

[3] Chairman Bragg and Commissioner Crawford dissenting with respect to the adequacy of the respondent interested party group response for standard carnations from Chile.

[4] Commissioner Crawford dissenting.

[5] Commissioner Crawford dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–286 (Review) and 731–TA–365 (Review)]

Industrial Phosphoric Acid From Israel and Belgium

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty order on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the countervailing duty order on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (64 FR 10017, March 1, 1999) were adequate and voted to conduct full reviews. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14911 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–339 (Review) and 731–TA–340–A through 340–I (Review)]

Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on solid urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

[1] The investigation numbers are as follows: Romania is 731–TA–339 (Review) and Armenia, Belarus, Estonia, Lithuania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan are, respectively, 731–TA–340–A through 340–I (Review).

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on solid urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On June 3, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 10020, March 1, 1999) of the subject five-year reviews were adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[2] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.[3]

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on August 2, 1999, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[4] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before August 5, 1999, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by August 5, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the reviews period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14909 Filed 6–10–99; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Hillman dissenting. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[3] Commissioner Hillman dissenting.

[4] The Commission has found responses submitted by Agrium US, Inc.; CF Industries, Inc.; Coastal Chem, Inc.; Mississippi Chemical Corp.; PCS Nitrogen, Inc.; Terra Industries, Inc.; the Ad Hoc Committee of Domestic Nitrogen Producers; and the Government of Romania to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act 42 U.S.C. 9601, et seq.

Notice is hereby given that on May 27, 1999, a proposed Consent Decree in *United States of America et al.* v. *Braselman Corporation, et al.*, Civil Action No. 96–0862 (consolidated with No. 96–0872) was lodged in the United States District Court for the Eastern District of Louisiana. The United States and the State of Louisiana filed these actions under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended ("CERCLA") for reimbursement of response costs incurred and to be incurred by the United States for response actions related to the release or threatened release of hazardous substances at the Bayou Bonfouca Superfund Site ("Site") in the City of Slidell, Louisiana.

Under the proposed Consent Decree, the Alabama Great Southern Railroad Company ("Alabama Great Southern") has agreed to pay the U.S. EPA Hazardous Substance Superfund $11,700,000 in reimbursement of past and potential future response costs at the Site. The United States entered into a prior Consent Decree with Kerr-McGee Chemical Corporation and Kerr-McGee Corporation in which the those defendants agreed to pay $20,000,000 to resolve their liability at the Site. The United States also entered into a previous Consent Decree with Fleming American Investment Trust, Ltd. under which that defendant paid $3,600,000 to resolve its responsibility at the Site. The United States incurred approximately $125,000,000 in cleaning up the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America et al.* v. *Braselman Corporation et al.*, DOJ Ref. No. 90–11–2–803A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Hal Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana 70130; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas Texas 75202; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–14894 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given a proposed Consent Decree in *United States* v. *Ray McCune et al.*, Civ. Action No. 2:97CV 0860B was lodged in the United States District Court for the District of Utah on May 11, 1999.

The proposed decree settles the United States' Complaint against Ray R. McCune under sections 104, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9604, 9607, and 9613(g)(2), for reimbursement of costs incurred by the United States in response to the release or threat of release of hazardous substances from the Reclaim Barrel Company Site located at 8487 South Redwood Road, West Jordan, Salt Lake County, Utah ("the Site"). The proposed decree provides for recovery of $10,000.00 in response costs based on Mr. McCune's limited financial ability to fully reimburse the United States for response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ray McCune et al.*, Civ. Action No. 2:97CV 0860B, DOJ # 90–11–2–1270.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Utah, 350 South Main Street, Salt Lake City, Utah 84107; at the Region VIII Office of the U.S. Environmental Protection Agency, 999 18th Street, Suite 500, North Tower, Denver, CO 90202; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. Copies of the Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting copies, please enclose a check in the amount of $4.75 for the Ray McCune Consent Decree (25 cents per page reproduction costs (payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–14893 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7 notice is hereby given that on May 26, 1999, a proposed Consent Decree in *United States* v. *Quanex Corporation*, Civil Action No. H–99–1633, was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought civil penalties and injunctive relief for violations of National Pollutant Discharge Elimination System (NPDES) permits and pollution prevention regulations at a facility located in Rosenberg, Fort Bend County, Texas. The Consent Decree resolves allegations that Quanex Corporation, the facility owner until December 3, 1997, and Vision Metals, Inc., the facility owner after December 3, 1997, failed to comply with NPDES permits by violating effluent limits, failing to monitor, failing to report, failing to properly operate and maintain the facility, and failing to comply with the Spill Prevention Control and Countermeasure Plan regulatory requirements. The Consent Decree also resolves allegations that Quanex failed to comply with two Administrative Orders. Quanex is required to pay a civil penalty of $466,421. Vision Metals, Inc. is required to pay a civil penalty of $58,907 and perform injunctive relief to ensure compliance with its NPDES permit and the pollution prevention regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *U.S.* v. *Quanex Corporation*, D.J. Ref. 90–5–1–1–4495.

The Consent Decree may be examined at the Office of the Untied States Attorney, 910 Travis, Suite 1500, Houston, Texas 77208, at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $15.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–14892 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Capstar Broadcasting Corporation and Triathlon Broadcasting Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Capstar Broadcasting Corporation and Triathlon Broadcasting Company*, Civil Action No. 99–CV00993. On April 21, 1999, the United States filed a Complaint alleging that the proposed acquisition by Capstar Broadcasting Corporation ("Capstar") of the radio assets of Triathlon Broadcasting Company ("Triathlon") in Wichita, Kansas, would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Compliant, requires Capstar to divest five radio stations in Wichita pursuant to the Final Judgment. Copies of the Complaint, proposed Final Judgment and Competitive Impact

Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the District of the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig W. Conrath, Chief Merger Task Force, Antitrust Division, Department of Justice, 1401 H St. NW., Suite 4000, Washington, DC 20530 (telephone: (202) 307–0001).

Constance K. Robinson,

Director of Operations & Merger Enforcement.

United States of America, United States Department of Justice, Antitrust Division, 4000 City Center Building, Washington, DC 20530, Plaintiff, v. Capstar Broadcasting Corporation, 600 Congress Ave. Suite 1400, Austin, TX 78701 and Triathlon Broadcasting Company, 750 B Symphony Towers, Suite 1920, San Diego, CA 92101, Defendants.

[Civil Action No. 990993]

Stipulation

It is stipulated by and between the undersigned parties by their respective attorneys, as follows:

1. This Court has jurisdiction over the subject matter of this action and the parties have agreed to waive all objections to personal jurisdiction and venue in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: April 20, 1999.

For Plaintiff United States of America.

Karl D. Knutsen,

United States Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

For Defendant Capstar Broadcasting Corporation.

Neil W. Imus,

Vinson & Elkins L.L.P., 1455 Pennsylvania Ave., N.W., Washington, D.C. 20006, (202) 639–6675.

For Defendant Triathlon Broadcasting Company.

David J. Laing,

Baker & McKenzie, 815 Connecticut Ave., NW., Washington, DC 20006, (202) 452–7023.

United States of America, Plaintiff, v. Capstar Broadcasting Corporation, and Triathlon Broadcasting Company, Defendants.

[Civil Action No. 99 0993]

Final Judgment

Whereas, plaintiff, the United States of America, filed its complaint in this action on April 21, 1999, and plaintiff and defendants Capstar and Triathlon by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, these Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And Whereas, plaintiff requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the complaint;

And Whereas, Defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that Defendants will not later raise claims of hardship, contractual bar, or difficulty as grounds for asking the Court to delay or modify the divestiture described below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows.

I. Jurisdiction

This Court has jurisdiction over each of the Defendants and over the subject matter of this action, and Defendants have agreed to waive any objection to personal jurisdiction or venue. The Complaint states a claim upon which relief may be granted against the Defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "Capstar" means defendant Capstar Broadcasting Corporation, a Delaware corporation with its headquarters in Austin, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to Hicks, Muse, Tate, & Furst Incorporated ("Hicks-Muse"), a Delaware corporation with its headquarters in Dallas, Texas.

B. "Triathlon" means defendant Triathlon Broadcasting Company, a Delaware corporation with its headquarters in San Diego, California, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. "Defendants" means Capstar and Triathlon.

D. "Antitrust Division" means the Antitrust Division of the United States Department of Justice.

E. "Radio Assets" means all of the assets, tangible or intangible, used in the operation of the radio stations KEYN–

FM, KWSJ–FM, KNSS–AM, KFH–AM, and KQAM–AM, that sell advertising time in Wichita, Kansas, including all real property (owned or leased) used in the operation of these stations, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of these stations; all licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission ("FCC") and other government agencies related to these stations; all contracts, agreements, leases and commitments of Defendants relating to their operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to these stations; and all logs and other records maintained by the operator or owner in connection with its business, except that in the case of KNSS–AM, the divestiture may include only those assets necessary to continue the transmitting, programming, and selling of that station in its present form.

F. "Acquirer" means the entity to whom defendant Capstar divests the Radio Assets.

G. "Wichita" means the Wichita, Kansas Metropolitan Survey Area, which includes Sedgwick, Harvey and Butler Counties, Kansas.

III. Applicability

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, specifically including any trustee or trustees appointed by defendant pursuant to an FCC Trust Agreement (as defined in Section V(A)) applicable to the Radio Assets.

B. Defendant Capstar shall require, as a condition of the sale or other disposition of any of the Radio Assets, that the Acquirer or Acquirers agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Radio Assets

A. Capstar is hereby ordered and directed in accordance with the terms of this Final Judgment to divest the Radio Assets to (i) an Acquirer acceptable to the Antitrust Division at its sole discretion or (ii) the Trustee identified pursuant to § V at the same time it acquires Triathlon. Unless plaintiff otherwise consents in writing, the divestiture pursuant to the section IV of this Final Judgment, or by the Trustee appointed pursuant to Section V, shall include all the Radio Assets and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Radio Assets can and will be used by an Acquirer as a viable and ongoing radio business. The divestiture, whether pursuant to section IV or section V of this Final Judgment, shall be made (1) to an Acquirer that, in the sole judgment of plaintiff, has the capability and the intent of completing effectively, and has the managerial, operational, and financial capability to compete effective as a radio operator in the Wichita area; and (2) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with the ability of the Acquirer to compete effectively.

B. Defendant Capstar agrees to use its best efforts to divest the Radio Assets, and to obtain all regulatory approvals necessary for such divestiture, as expeditiously as possible.

C. In accomplishing the divestiture ordered by the Final Judgment, defendant Capstar promptly shall make known, by usual and customary means, the availability of the Radio Assets. Defendant Capstar shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide each person with a copy of this Final Judgment. Defendant Capstar shall make known to any person making an inquiry regarding a possible purchase of the Radio Assets described in Section II that the Radio Assets are being offered for sale. Capstar shall also offer to furnish all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Radio Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney-work product privilege. Defendant Capstar shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. In accomplishing the divestiture ordered by this Section IV, defendant Capstar shall permit prospective purchasers of the Radio Assets to have access to personnel and to make such inspection of assets, and any and all financial, operational, and or other documents and information, as is customary in a due diligence process.

E. Defendant Capstar shall not interfere with any efforts by any Acquirer to employ the general manager or any other employee of the Radio Assets.

V. Appointment of Trustee

A. In the event that Capstar has not divested the Radio Assets in the time period specified in § IV above, Henry M. Rivera shall, subject to the prior approval of the FCC, become Trustee (the "Trustee") to effect the operation and sale of the Radio Assets pursuant to an FCC Trust Agreement submitted by Capstar to the FCC, as amended, and attached to this proposed Final Judgment as Exhibit A (the "FCC Trust Agreement"). In the event of Mr. Rivera's resignation, incapacity to act, death, or insolvency, the Court shall appoint, on application of plaintiff and subject to such prior approvals as may be required, a Trustee selected by plaintiff, to effect the divestiture of the assets.

B. After the Trustee's appointment has become effective, only the Trustee shall have the right to sell the Radio Assets. The Trustee shall have the power and authority to accomplish the sale pursuant to the conditions of the FCC Trust Agreement.

C. The Trustee shall serve at the cost and expense of defendant Capstar, on such terms and conditions contained in the FCC Trust Agreement or as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the Trustee and all costs and expenses so incurred pursuant to the attached FCC Trust Agreement.

D. Defendants shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture of the Radio Assets, and shall use their best efforts to assist the Trustee in accomplishing the required divestiture, including its best efforts to effectuate all necessary regulatory approvals. Subject to a customary confidentiality agreement, the Trustee shall have full and complete access to the personnel, books, records and facilities related to the Radio Assets, and, at the Trustee's request, Defendants shall develop such financial or other information as may be necessary for the divestiture of the Radio Assets. The Trustee shall permit prospective purchasers of the Radio Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

E. After his appointment becomes effective, the Trustee shall file reports pursuant to this Final Judgment and the FCC Trust Agreement with defendant Capstar, the plaintiff, and the Court, setting forth the Trustee's efforts to accomplish divestiture of the Radio

Assets as contemplated under this Final Judgment; provided, however, that to the extent that such reports contain information that the Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Radio Assets, and shall describe in detail each contact with any such person during that period. The Trustee shall maintain full records of all efforts made to divest the Radio Assets.

F. Within four (4) months after the date of entry of this proposed Final Judgment, if the Trustee has not accomplished the divestiture required by Section V of this Final Judgment, the Trustee shall promptly file with the Court a report setting forth: (1) the Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Trustee's recommendations; provided, however, that to the extent such reports contain information that the Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Trustee at the same time shall furnish such reports to the plaintiff and to defendant Capstar, which shall have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it deems appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the Trustee's appointment after all applicable government approvals are obtained.

G. Upon divestiture of the radio assets, the FCC Trust will be deemed terminated and the Trustee discharged.

VI. Notice

Capstar shall provide advance notification of the Antitrust Division when it directly or indirectly acquires any assets of or any interest (including any financial, security, loan, equity or management interest) in any broadcast radio station that sells advertising time in Wichita, Kansas, or enters into any joint sales agreement or any cooperative selling arrangement with any other operator of radio stations serving listeners in Wichita, Kansas. This obligation to provide notice is met under this section when a transaction is subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act").

Notification under this section shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only about the sales of radio advertising time in Wichita. Notification shall be provided at least thirty (30) days prior to the acquisition of any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Defendant Capstar shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed, and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

VII. Preservation of Assets/Hold Separate

Until the divestiture of the Radio Assets required by Sections IV or V of the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to operate the Radio Assets as separate, independent, ongoing, economically viable and active competitors to the other stations in Wichita, Kansas, and shall take all steps necessary to ensure that, except as necessary to comply with Section IV and paragraphs B and C of this Section of the Final Judgment, the management of said stations, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendant Capstar in the case of Triathlon stations and defendant Triathlon in the case of Capstar stations.

B. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by the Radio Assets, and shall maintain at 1997, 1998, or previously approved levels for 1999, whichever are higher, promotional advertising, sales, marketing and merchandising support for such radio stations.

C. Defendants shall take all steps necessary to ensure that the assets used in the operation of the Radio Assets are fully maintained. The sales and marketing employees of the Radio Assets shall not be transferred or reassigned to any other station, except for transfer bids initiated by employees pursuant to each defendant's regular, established job posting policies, provided that Defendants give plaintiff and Acquirer ten (10) days' notice of such transfer.

D. Defendant Capstar shall not, except as part of a divestiture approved by plaintiff, sell any Radio Assets.

E. Defendants shall take no action that would jeopardize the sale of the Radio Assets.

F. Defendant Capstar shall appoint a person or persons to oversee the assets to be held separate who will be responsible for Defendant's compliance with Section VI of this Final Judgment.

VIII. Financing

Defendant Capstar is ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V or this Final Judgment.

IX. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment or determining whether the Final Judgment should be modified or terminated and subject to any legally recognized privilege, from time to time:

A. duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendants made to their principal offices, shall be permitted:

(1) Access during office hours of the Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the Defendants' principal offices, the Defendants shall submit written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Section IX or X of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendants to the plaintiff, the Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of civil Procedure, and the Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by the plaintiff to the Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Defendants are not a party.

X. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendant Capstar shall deliver to plaintiff an affidavit as to the fact and manner of defendant's compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by defendant, or its representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Radio Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendant Capstar has taken to solicit a buyer for the Radio Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendant Capstar shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendant Capstar has taken and all steps defendant Triathlon has implemented on an on-going basis to preserve the Radio Assets describing any changes to the efforts and actions outlined in its earlier affidavit(s) filed pursuant to this section within fifteen (15) calendar days after such change is implemented.

C. Defendant Capstar shall preserve all records of all efforts to preserve the Radio Assets and to divest the Radio Assets.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

ATTACHMENT A

Wichita Stations Trust Agreement

THIS TRUST AGREEMENT (the "*Trust Agreement*") is entered into as of April 30, 1999, and shall be effective April 30, 1999, by and between Capstar Broadcasting Corporation, a Delaware corporation ("*Beneficiary*"), and Henry M. Rivera (the "*Trustee*").

Recitals

A. Beneficiary, through subsidiaries, holds various licenses, permits and authorizations issued by the Federal Communications Commission (the "FCC") with respect to the radio station in the Wichita, Kansas radio market (the "*Wichita Market*") listed on *Annex A* hereto (the "*Capstar Wichita Station*").

B. Pursuant to the Agreement and Plan of Merger dated as of July 23, 1998 (the "*Purchase Agreement*"), among Capstar Radio Broadcasting Partners, Inc., TBC Radio Acquisition Corp., a wholly-owned subsidiary of Capstar Radio Broadcasting Partners, Inc. ("*Merger Sub*"), and Triathlon Broadcasting Company, a Delaware corporation ("*Triathlon*"), Merger Sub will be merged (the "*Merger*") with and into Triathlon, with Triathlon being the surviving corporation and an indirect wholly-owned subsidiary of Beneficiary. Triathlon, through its subsidiaries, holds various licenses, permits, and authorizations issued by the FCC with respect to certain radio stations in the Wichita Market listed on *Annex B* hereto (the "*Triathlon Wichita Stations*"). The Merger will result in the attribution to Beneficiary of the Triathlon Wichita Stations. Accordingly, each reference in this Trust Agreement to Beneficiary shall be deemed, following the consummation of the merger, to include Triathlon, and the Capstar Wichita Station and the Triathlon Wichita Stations shall be referred to collectively as the "*Stations.*"

C. The Communications Act of 1934, as amended, and the rules, regulations, and policies of the FCC (collectively, the "*Communications Act*") do not permit Beneficiary to own and operate all of the Stations. Beneficiary desires to enter into this Trust Agreement to facilitate consummation of the Merger by assuring that such consummation will not result in the attribution to Beneficiary of radio stations with overlapping signal contours in the Wichita Market in contravention of the Communications Act.

D. Interim acquisition by the Trustee of the Station Assets (as hereinafter defined) for the purpose of holding and operating the same for productive business use and selling the Station Assets to a government-approved buyer or buyers pursuant to the Final Judgment in *United States* v. *Capstar Broadcasting Corporation and Triathlon Broadcasting Company*, C.A. No. _____ (D.D.C. Apr. ____, 1999) as proposed, entered or modified (the "Final Judgment") (proposed Final Judgment attached hereto), provided that the Trustee continues to operate the Stations until such a sale can be consummated, would provide an appropriate mechanism to facilitate consummation of the Merger while complying with the laws and regulations relating to transactions of this type, and accordingly the Trustee and Beneficiary desire to associate together for the joint conduct of the business of holding and operating such Station Assets.

Now, Therefore, in consideration of the recitals and of the respective agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

Agreements

1. *Creation and Purpose of The Wichita Stations Trust.* Subject to the terms and conditions hereof, a trust in respect of the Stations is hereby created and established, to be known as the "Wichita Stations Trust," and the Trustee hereby accepts the trust created hereby and agrees to serve as trustee hereunder. The trust created hereby shall be irrevocable until such time as the Trustee sells the Station Assets to a government-approved buyer or buyers.

2. *Assets to be Conveyed; Assumption of Obligations.*

(a) From time to time on or before consummation of the Merger, Beneficiary shall convey, transfer, assign, and deliver to Trustee, and Trustee shall acquire and assume from Beneficiary, all of Beneficiary's right, title, interest, and obligations in and to all of the assets, properties, contracts, leases, and agreements that are used, held for use, useful or necessary in the conduct of the business and operation of each Station as of the date of this Trust Agreement, including the following assets:

(i) All of Beneficiary's right, title and interest in and to the licenses, permits and other authorizations issued by any governmental authority and used, held for use, useful or necessary in the conduct of the business and operation of any Station, including the call letters of each Station and any applications for such licenses, permits and authorizations;

(ii) All of Beneficiary's right, title and interest in and all to all real property, including leasehold interests and easements, used, held for use, useful or necessary in the conduct of the business and operation of any Station;

(iii) All equipment, office furniture and fixtures, office materials and supplies, inventory, spare parts, motor vehicles and other tangible personal property of every kind and description, owned, leased or held by Beneficiary and used, held for use, useful or necessary in the conduct of the business and operation of the Stations;

(iv) All cash in each Station's operating bank accounts;

(v) All accounts receivable arising out of the operation of each Station;

(vi) All of Beneficiary's rights under and interest in all contracts relating to the conduct of the business of any Station (the "*Assumed Contracts*"), and any contract for the sale of the Stations as contemplated by Section 3;

(vii) All programs and programming materials of whatever form or nature owned by Beneficiary and used or held for use on or by any Station;

(viii) All of Beneficiary's rights, title and interest in and to the trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them and good will related thereto, jingles, logos, slogans, licenses, permits and privileges owned or held by Beneficiary and used, held for use, useful or necessary in the conduct of the business and operation of any Station;

(ix) All files, records, books of account, computer programs and software and logs relating to the operation of any Station, including payable records, receivable records, invoices, statements, traffic material, programming information and studies, technical information and engineering data, news and advertising studies and consultants' reports, ratings reports, marketing and demographic data, sales correspondence, lists of advertisers, promotional materials, credit and sales reports, budgets, financial reports and projections, sales, operating and business plans, filings with the FCC and original executed copies of all written contracts to be assigned hereunder.

(x) All of Beneficiary's rights under manufacturers' and vendors' warranties relating to items included in the Station Assets and all similar rights against third parties relating to items included in the Station Assets to the extent contractually assignable; and

(xi) All intangible assets of Beneficiary relating to any Station or the business and operation of any Station not specifically described above, including goodwill, and all other assets used or held for use in connection with any Station.

The assets to be transferred to the Trustee hereunder are hereinafter collectively referred to as the "*Station Assets.*" Notwithstanding this Section 2(a), beneficiary and Trustee acknowledge that the Station Assets shall include only those assets that Beneficiary would have sold to a third party in an arms-length transaction involving the Stations consistent with the Final Judgment. The Trustee shall retain and hold the Station Assets only in accordance with the terms and conditions set forth in this Trust Agreement.

(b) The Trustee shall assume and be solely responsible for the payment, performance and discharge of all of Beneficiary's liabilities, obligations, and duties under or in respect of the Assumed Contracts that relate to and accrue in the period after transfer of the Station Assets. Except as specifically provided in this Trust Agreement, the Trustee shall not be liable for and shall not assume any liabilities, obligations, or duties of Beneficiary (whether known or unknown, matured or unmatured, or fixed or contingent).

(c) Prior to the date hereof, Beneficiary shall have obtained policies of insurance, or procured the amendment of or riders to existing policies of insurance, to provide insurance coverage related to the Station Assets under the umbrella policies currently held by Beneficiary. All such policies shall name the Trustee as the insured or an additional insured and shall not be canceled or amended without thirty (30) days prior written notice to the Trustee. The Trustee is hereby authorized to make payment of all premiums, and all deductibles and excesses, related to such policies of insurance in the same manner as any other expense in the ordinary course of business of the Stations.

3. *Management and Other Actions by Trustee.*

(A) The Wichita Stations Trust is authorized to carry on business. During the term of this Trust Agreement, the right to manage and direct the management of the business of the Stations shall be solely vested in the Trustee, subject to the following:

(i) The Trustee shall have the obligation to consummate the sale of the Station Assets within four (4) months from the date of the entry of the Final Judgment, pursuant to the conditions contained herein and at a price that renders to Beneficiary the maximum cash present value for the Station Assets. The Trustee has read that certain Stipulation and Order and the proposed Final Judgment attached thereto which Beneficiary executed on April ____, 1999, in the Civil Action styled "United States v. _____," which Final Judgment shall apply to the Trustee under Section III(A) thereof effective this date, consistent with the obligations assumed by Beneficiary under the Stipulation and Order (attached hereto). Without limiting the generality of the foregoing, the Trustee shall have the power and authority to hire at the cost and expense of Beneficiary any investment bankers, attorneys or other agents reasonably necessary, in the judgment of the Trustee, to assist in the sale of the Station Assets, and such professionals or agents shall be solely accountable to the Trustee. The Trustee shall have the power and authority to accomplish the sale of the Station Assets at the earliest possible time to any purchaser approved by the Department of Justice ("DOJ") who the DOJ determines has the intent and managerial, operational and financial capability to compete effectively as a radio station operator in the Wichita Market. Beneficiary shall not take any action to jeopardize the Trustee's sale of the Station Assets, but shall use its best efforts to assist the Trustee in accomplishing the required sale, including its best efforts to effect all regulatory approvals. The Trustee and Beneficiary shall permit prospective purchasers of the Stations to have access to personnel and to make such inspection of physical facilities and any and all financial, operational and other documents and information as may be relevant to the sale of the Station Assets. To facilitate the sale of the Station Assets, the Trustee may request in writing from Beneficiary such representations and warranties, consents, information, covenants and indemnities (which may be directly provided by Beneficiary to a buyer, as negotiated and determined by the Trustee, so long as notice and copies of any such communications are given by Beneficiary to the Trustee) regarding such sale, and such request shall not be unreasonably denied.

(ii) In fulfilling its obligations to effectuate the sale of the Station Assets, the Trustee shall take all actions necessary or appropriate to effectuate the transfer of title to the Station Assets held by the Trustee pursuant to this Trust Agreement to (and assumption of the liabilities, obligations and commitments of the Station Assets by) an unaffiliated third party. In this regard, the Trustee shall enter into appropriate agreements and submit and fully prosecute appropriate applications to the FCC requesting approval to assign the Station Assets. The Trustee also shall seek and obtain the prior approval of the DOJ for the sale of the Station Assets. Beneficiary shall have the right to request the Trustee to sell the Station Assets to an unaffiliated third party it a binding contract (an "Existing Sale Agreement") has been entered into, but not consummated, prior to the effective date of this Trust Agreement. If the DOJ concurs with such sale, the Trustee shall take all necessary and appropriate actions to effectuate the sale as provided herein and therein, including without limitation by accepting the assignment of the Existing Sale Agreement.

(iii) The Trustee shall file monthly reports with Beneficiary and the DOJ setting forth the Trustee's efforts to sell the Station Assets as contemplated by this Trust Agreement. Such

reports shall be designated confidential and shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Station Assets, and shall describe in detail each contact with any such person during that period. The Trustee shall maintain full records of all efforts undertaken to sell the Station Assets. If the Trustee has failed to consummate the sale of the Station Assets within four (4) months from the date of the entry of the Final Judgment, the Trustee shall promptly produce a report stamped confidential to Beneficiary, the DOJ and the Court setting forth (1) the Trustee's efforts to sell the Station Assets; (2) the reasons, in the Trustee's judgment, why the required sale has not been consummated; and (3) the Trustee's recommendations.

(iv) Within five (5) business days following execution of a binding agreement for the sale of the Station Assets, including all contemplated ancillary agreements (*e.g.*, financing agreements), to effect, in whole or in part, the sale of the Station Assets, the Trustee shall notify Beneficiary and the DOJ of the proposed sale. The notice (as provided for herein) shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Station Assets, together with the full details of same. Within fifteen (15) calendar days of receipt by the DOJ, the DOJ may request from Beneficiary, the proposed purchaser, any other third party, or the Trustee, additional information concerning the proposed sale, the proposed purchaser and any other potential purchaser. Beneficiary and the Trustee shall furnish the requested information within fifteen (15) calendar days of receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the DOJ has been provided the additional information, whichever is later, the DOJ shall provide written notice to Beneficiary and the Trustee, stating whether or not it objects to the proposed sale. If the DOJ fails to object within the period specified, or if the DOJ provides written notice that it does not object, then the DOJ will be deemed to have approved the sale pursuant to the trust agreement. Beneficiary may only object to the sale where the Trustee has acted with malfeasance.

(v) The Trustee shall have absolute and complete control over the operations of the Station Assets pending their sale. The Trustee shall operate the Stations as separate, independent, ongoing, economically viable and active competitors to Beneficiary, and the Trustee shall ensure that the management of the Stations is kept separate and apart from, and not influenced by, Beneficiary. The Trustee shall use all reasonable efforts to maintain and increase sales of advertising time, and to maintain promotional advertising, sales, marketing and merchandising support for the Stations at 1998 levels or greater.

(vi) The Trustee shall conduct the operations of the Stations in accordance with its duties as a licensee of the FCC. In addition, the Trustee shall, within fifteen (15) days of the end of each calendar month, provide to Beneficiary's Chief Financial Officer such monthly financial reports consisting of unaudited balance sheets of the Stations and related statements of operations and cash flows for the month and three-month period then ended as shall be necessary for Beneficiary to meet its financial reporting requirements to its accountants, lenders, the Securities and Exchange Commission and any other governmental authorities of competent jurisdiction. In no case shall such information be provided to Beneficiary's employees who are involved in the management or operation of Beneficiary's radio stations in the Wichita Market.

(vii) Any employee hired by the Trustee who is not employed at the Stations as of the effective date of this Trust Agreement shall not be a 1% or greater shareholder, director, officer, or employee of Beneficiary or its affiliates, and may not have any business and familial relationship (as defined in the FCC Policy Statement in MM Docket No. 85–218, FCC 86–67 (March 17, 1986)) with Beneficiary or with any 1% or greater shareholder, director, officer, or employee of Beneficiary or its affiliates.

(b) The trustee shall cause any employee hired by him pursuant to Section 3(a)(vii) and any person previously employed by Beneficiary whom the Trustee elects to retain, to execute and deliver to the Trustee an agreement, in form and substance acceptable to the Trustee, pursuant to which such employee agrees to comply with the rules, regulations and policies of the FCC, including without limitation all rules, regulations and policies governing communications among such employee and Beneficiary or its officers, directors, employees, and affiliates, regarding the Stations and their management and operations.

(c) Effective as of the effective date of this Trust Agreement, the Trustee will hire on behalf of the Wichita Stations Trust those current employees of the Stations on the same terms and conditions as such employees were employed by Beneficiary, provided that the Trustee is not required to provide such employees with any medical, pension, insurance or other employee benefit plans, programs or arrangements. To the extent that Beneficiary provides such employees of the Wichita Stations Trust with group medical, group insurance and/or pension plan benefits on or after the date of this Trust Agreement through plans maintained by Beneficiary for its employees, the Trustee shall within such reasonable time as deemed necessary or appropriate by Beneficiary provide to Beneficiary or its designee such reports, data or other information as Beneficiary or its designee shall Beneficiary for purposes of administering such plans or satisfying any reporting or other requirements as may be required by law or any governmental agency. In no event shall the Trustee or the Wichita Stations Trust be responsible for any liabilities or obligations relating to or arising under any of Beneficiary's employee benefit plans, programs or arrangements, whether such liabilities or obligations arise, or relate to a period, prior or subsequent to the effective date of this Trust Agreement, except for liabilities or obligations caused by Trustee's own gross negligence or willful misconduct. All liabilities or obligations that relate to or arise under any of Beneficiary's employee benefit plans, programs or arrangements, except for liabilities or obligations caused by Trustee's own gross negligence or willful misconduct, shall remain the sole and complete responsibility of Beneficiary and shall be subject to the indemnification provided in Section 4(c) of this Trust Agreement.

(d) To the extent that the Trustee determines in his discretion that management and operation of the Stations consistent with past practice or that payment of the charges and other expenses set forth in Section 4(c) requires funds in excess of the ordinary cash flow of the Stations (as diminished by any prior remittances of cash accumulations from operations in excess of the actual and projected expenses as determined by the Trustee in his sole discretion ("*Excess Cash Flow*"), Beneficiary agrees to provide a line of credit to Trustee in the amount of $250,000. Beneficiary shall not communicate directly or indirectly with the Trustee about, or participate with the Trustee in making, any decision to draw on the line of credit or as to when or how the funds will be used. The Trustee may draw on the line of credit by making a written draft on Beneficiary for a specific amount of funds. Beneficiary shall, within ten days of receipt of such draft, provide such funds to Trustee in the amount requested, up to the limit of the line of credit. The outstanding principal balance under the line of credit shall bear interest at a rate equal to the rate in effect under Beneficiary's credit facility at the time the Trustee draws on such line of credit. The principal amount of any drawings on the line of credit, together with accrued and unpaid interest thereon, shall be paid from (i) Excess Cash Flow and (ii) if any balance is outstanding upon completion of any sale of the Station Assets pursuant to Section 3, then prior to any distribution contemplated by Section 5(b), from the proceeds of any such sale. All amounts paid under this Section 3(d) shall be applied first to all interest then accrued and unpaid hereunder, and the balance, if any, to principal.

(e) To the extent that the Stations' operations generate Excess Cash Flow, such Excess Cash Flow shall first be applied to repay amounts due to Beneficiary under the line of credit provided for in Section 3(d), and thereafter shall be remitted to Beneficiary from time to time as the trustee shall determine.

(f) No person other than the Trustee or managers designated by the Trustee shall have any authority with respect to the management of the Stations or Station Assets for so long as this Trust Agreement is in effect. The Trustee shall have no beneficial interest in the Station Assets.

(g) Except as expressly provided in this Trust Agreement, the Trustee shall not: (1) incur any debt or guaranty obligation in favor

of any other person; (2) engage in any business other than as necessary in Trustee's reasonable opinion to meet his fiduciary duties with respect to the operation of the Stations as a broadcast license serving the Wichita Market; (3) sell or otherwise transfer, assign or encumber the Station Assets, or (4) enter into any agreement to do so, or enter into any merger, consolidation, or similar transaction or engage in any reclassification or similar transaction.

(h) The Trustee shall have full authority and power over the operation and management of the Stations, shall conduct the operations of the Stations in the ordinary course of business consistent with past operations of the Stations, and, to the extent possible, shall maintain the status quo of such operations as currently conducted with a view to maximizing the value to be received by Beneficiary consistent with the Trustee's duties as a licensee of the FCC and as a fiduciary of Beneficiary. Without limiting the generality of the foregoing, during the term of this Trust Agreement, except as contemplated by this Trust Agreement, the Trustee shall not:

(i) Fail to use all commercially reasonable efforts to preserve intact Beneficiary's present business organization of the Stations and preserve each Station's relationships with customers, suppliers and other having business dealings with it;

(ii) Fail to use commercially reasonable efforts to maintain the Station Assets in their current condition, except for ordinary wear and tear;

(iii) Fail to use all commercially reasonable efforts to maintain the present format of the Stations;

(iv) Except for amendments of employment agreements in the ordinary course of business and consistent with past operations of the Stations, materially amend any material contract or default in any material respect (or take or omit to take any action that, with or without the giving of notice or passage of time, would constitute a material default) under any material contract or, except in the ordinary course of business and consistent with past operations of the Stations, enter into any new material contract;

(v) Sell (Whether by merger, consolidation, or the sale of an equity interest or assets), lease, or dispose of any Station Assets except pursuant to an agreement to sell the Station Assets, which is permitted under this Trust Agreement, or in the ordinary course of business and consistent with past practice or, even if in the ordinary course of business and consistent with past practices (other than sales of surplus or obsolete equipment), whether in one or more transactions, in no event involving a Station Asset or Station Assets having an aggregate fair market value in excess of $75,000'

(vi) (A) Mortgage, (B) pledge, or (C) subject to any material lien, pledge, claim, security interest, restriction, mortgage, tenancy and other possessory interest, conditional sale or other title retention agreement, assessment, easement, right of way, covenant, restriction, right of first refusal, defect in title, encroachment or other burden, option or encumbrance of any kind, any Station Assets;

(vii) Enter into, or enter into negotiations or discussions with any person other than a purchaser under an agreement to sell the Station Assets, which is permitted under this Trust Agreement, with respect to, any local marketing agreement, time brokerage agreement, join sales agreement, or any other similar agreement;

(viii) Fail to use commercially reasonable efforts to maintain the ability of each Station to operate at a maximum power and full coverage at all times; or

(ix) Agree to or make any commitment, orally or in writing any actions prohibited the this Trust Agreement or the Final judgment.

Notwithstand this Section 3(h), Beneficiary acknowledges that the business organization and operator of the Station Assets of station KNSS(AM)—as they exist on the date of this Trust Agreement will change as the station is incorporated in the operation and business organization of the Triathlon Wichita Stations.

(i) The Trustee shall have any and all such further powers and shall take such further actions (including, but not limited to, taking legal action) as may be necessary to fulfill the Trustee's obligations under this Trust Agreement.

(j) If as of the date hereof any of the Stations are not subject to a binding Existing Sale Agreement for a Sale (or Sales) (as defined below) of the Station Assets, or if any Existing Sale Agreement terminates or expires during the term of this Agreement, the Trustee shall promptly take such actions and execute such documents in order to effect a disposition of the Station Assets which renders to Beneficiary the maximum cash present value for the Station Assets. The Trustee may negotiate the terms and conditions of a binding agreement for the sale of the Station Assets (a "Sale Agreement") in his sole and absolute discretion. Trustee shall submit and fully prosecute appropriate applications to such governmental authorities as such Sale Agreement requires, requesting approval to assign such Station Assets, and, upon satisfaction of all closing conditions under such agreements (unless waived, in whole or in part, by the Trustee), transfer title to the Station Assets to the third party (or parties).

4. *Concerning the Trustee.*

(a) The Trustee shall be entitled to receive as a trustee fee (the "*Wichita Trustee Fee*") for his services hereunder a fee of $2,500 per month for each Station that is in the Wichita Stations Trust (which amount shall be prorated for each Station for partial months based on a 30-day month), *provided, however*, that the Wichita Trustee Fee plus any Capstar II Trustee Fee to which the Trustee may be entitled under the Capstar Trust II Agreement entered into as of April 30, 1999, by and between the Beneficiary and the Trustee (the "*Capstar Trust II Agreement*") shall not exceed a total of $15,000 per month. The fee (the "*Engagement Fee*") received by the Trustee pursuant to the Engagement and Assignment Agreement entered into as of February 3, 1999, by and between the Beneficiary and the Trustee (the "*Engagement and Assignment Agreement*") shall be credited toward any amounts otherwise due as a Wichita Trustee Fee and a Capstar II Trustee Fee. In the event that the Wichita Trustee Fees and the Capstar II Trustee Fees paid to the Trustee, in the aggregate, do not exceed the Engagement Fee, nothing in this Agreement shall restrict the Trustee's entitlement to the entire Engagement Fee. The Trustee agrees that in return for the Wichita Trustee Fees, he will devote such time to the Wichita Stations Trust as is necessary, appropriate, or advisable in the proper exercise of his fiduciary duties hereunder. Payment of Trustee's monthly compensation shall be made by Beneficiary within 20 days after the end of each calendar month during the term of this Trust Agreement.

(b) The Trustee is expressly authorized to incur and pay from the Station Assets held in trust all reasonable expenses, disbursements, and advances incurred or made by the Trustee in the performance of his duties hereunder (including reasonable fees, expenses and disbursements of his counsel), which the Trustee in good faith deems necessary, proper, or advisable in the performance of his duties under this Trust Agreement; provided, however, that the Trustee may pay legal fees attributable to legal services that he personally performs for the Wichita Stations Trust in his capacity as an attorney if, and only if, at any time during the calendar month in which such services are performed the combined number of stations in the Wichita Stations Trust and the Capstar Trust II is five or fewer.

(c) The Trustee shall not be liable, except for his own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against the Trustee, Beneficiary shall indemnify and hold harmless the Trustee (and any successor trustee) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with (i) the Trustee's performance of his duties under this Trust Agreement and/or any Sale Agreement, (ii) Beneficiary's failure to perform its obligations under the Trust Agreement, (iii) any liability arising out of or related to the Station Assets that accrued or arose prior to the date of transfer to the Trustee, including without limitation with respect to the Assumed Contracts, (iv) losses arising out of or related to the Station Assets, and the operation thereof on a going concern basis, that are not recovered from the proceeds of a Sale, or otherwise under the Trust Agreement, (v) fines and penalties levied by the FCC or any other governmental authority, and costs related thereto, which may be caused or incurred by the transactions contemplated by the Trust Agreement, any Sale or any other action, error or omission of any person other than the Trustee, (vi) taxes that may be levied upon or payable by the Trustee, in his personal capacity, arising out of or related to the Trust and (vii) the Trustee's obligation, if any, under the employment laws, including without limitation the Employee Retirement Security Act of 1974, as amended. Payments to the Trustee pursuant to this Section 4(c) shall be made within 20 days of Trustee's submission to Beneficiary of an invoice or bill therefor,

plus appropriate supporting documentation. The obligations of Beneficiary to the Trustee under this Section 4(c) shall survive the resignation, incapacity to act, death or insolvency of the Trustee and the termination of this Trust Agreement.

(d) The Trustee shall be entitled to rely in good faith upon any order, judgment, certification, demand, notice, instrument or other writing delivered to him hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity or the service thereof. The Trustee may act in reliance upon any instrument or signature believed by him in good faith to be genuine and may assume that any person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so. The Trustee may act pursuant to the advice of counsel with respect to any matter relating to this Trust Agreement and shall not be liable for any action taken or omitted in good faith in accordance with such advice. The Trustee's counsel and advisors shall be independent of, and have no relationship with, Beneficiary.

(e) Subject to Section 4(c), the rights and duties of the Trustee hereunder shall terminate upon the Trustee's incapacity to act, death or insolvency, and no interest in the Sale Agreement or the Station Assets directly or indirectly held by the Trustee nor any of the rights and duties of a deceased or insolvent Trustee may be transferred by will, devise, succession or in any manner except as provided in this Trust Agreement. The heirs, administrators, executors or other representatives of an incapacitated, deceased or insolvent Trustee shall, however, have the right and duty to convey the Sale Agreement and the Station Assets held by the Trustee to one or more successor trustees designated by Beneficiary pursuant to Section 4(g).

(f) The Trustee (and any successor trustee) may resign by giving not less than 60 days prior written notice of resignation to Beneficiary, provided that a successor trustee has been appointed, such appointment has received all necessary approval from the FCC, and any order granting such approval has become a final order with respect to which no action, request for stay, petition for hearing or reconsideration, or appeal has expired. Beneficiary shall cooperate fully in the prompt appointment of a successor trustee and shall not unreasonably interfere with or delay the effectiveness of such resignation.

(g) In the event of such resignation, incapacity to act, death or insolvency of the Trustee, the Court shall appoint, on application of the DOJ, a Trustee selected by the DOJ, subject to such prior approval of the FCC as may be required, to effect the divestiture of the Station Assets. Any successor trustee shall succeed to all of the rights and obligations of the Trustee replaced hereunder and shall be deemed the Trustee for purposes of this Trust Agreement, upon execution of such successor trustee of a counterpart of this Trust Agreement.

(h) The Trustee and any successor trustee designated pursuant to Sections 4(f) and (g) shall not be 1% or greater stockholder, officer, employee, director, or affiliate of Beneficiary, and may not have any business or familial relationship (as defined in the FCC Policy Statement in MM Docket No. 85–218, FCC 86–67 (March 17, 1986)) with any officer, employee, director, or 1% of greater stockholder or affiliate of Beneficiary. Neither the Trustee nor any successor trustee will serve as an officer, employee, or director of Beneficiary, its affiliates, or its successor companies.

(i) The Trustee agrees to resign as Trustee if requested to do so by the DOJ in order for Defendants (as defined in the Final Judgment) to meet their obligations under the Final Judgment. Such resignations will not be effective until a successor trustee has been appointed pursuant to the provisions of the Trust Agreement.

5. *Termination: Distribution of Station Assets or Proceeds from Sale of Station Assets.*

(a) Subject to such FCC and DOJ approval as may be required, and following the receipt of such approval, this Trust Agreement and the Wichita Stations Trust created hereby shall terminate if such termination would not cause Beneficiary to be in violation of the Communications Act or the Final Judgment.

(b) Upon the termination of this Trust Agreement under Section 5(a) or pursuant to a Sale (or Sales) of all or substantially all of the Station Assets to an unaffiliated third party (or parties) pursuant to Section 3, the Trustee shall receive the money, securities, rights or property which are distributed or are distributable in respect of the Station Assets, and, after paying (or reserving for payment thereof) any reasonable expenses or liabilities incurred pursuant to this Trust Agreement, shall promptly distribute or cause the distribution of such money, securities, rights or property to Beneficiary or its designee.

6. *Communications.*

(a) The Trustee may communicate with and provide reports to Beneficiary concerning the implementation of the Wichita Station Trust, but not concerning the management and operations of the Stations except as provided in Section 3(a)(vi).

(b) The Trustee may engage in the communications contemplated by Section 3 hereof to facilitate a Sale (or Sales) of the Station Assets to an unaffiliated third party (or parties).

(c) During the term of this Trust Agreement, neither Beneficiary nor any of its officers, directors, employees, stockholders, or affiliates shall communicate with the Trustee regarding the operation or management of the Stations; provided, however, that Beneficiary may communicate with the Trustee as provided in Section 3, and concerning the mechanics of implementing any Sale of the Station Assets to an unaffiliated third party.

(d) Any communications permitted by Section 6(a), (b), or (c) shall be evidenced in writing, and shall be retained the Trustee for inspection upon request by the FCC.

(e) All notices, requests, consents, waivers, and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (a) if transmitted by facsimile, upon acknowledgement of receipt thereof in writing by facsimile or otherwise, (b) if personally delivered, upon delivery or refusal of delivery, or (c) if mailed by registered or certified United States mail, return receipt requested, postage prepaid, upon delivery or refusal of delivery. All notices, consents, waivers, or other communications required or permitted to be given hereunder shall be addressed to the respective party to whom such notice, consent, waiver, or other communication relates at the following addresses:

If to Beneficiary: Capstar Broadcasting Corporation, 600 Congress Avenue, Suite 1400, Austin, Texas 78701, Attention: William S. Banowsky, Jr., Facsimile: (512) 340–7890.

With copies to:

Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201, Attention: Michael D. Wortley, Rodney L. Moore, Facsimile: (214) 999–7732.

Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006, Attention: Nathaniel F. Emmons, Facsimile: (202) 719–7049

If to the Trustee: Henry M. Rivera, Shook Hardy & Bacon L.L.P., Hamilton Square, Suite 800, 600 14th Street, NW, Washington, D.C. 20005–2004, Facsimile: (202) 783–4211.

Any party by written notice to the other parties pursuant to this Section 6(e) may change the address or the persons to whom notices or copies thereof shall be directed.

7. *Miscellaneous.*

(a) This Trust Agreement (which term shall be deemed to include the annexes, exhibits, and schedules hereto and the other certificates, documents, and instruments delivered hereunder), constitutes the entire agreement between the parties hereto and supersedes all prior agreements, commitments, or understandings with respect to the subject matter hereof. This Trust Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by each of the parties hereto. Substantial changes in this Trust Agreement may be made only as approved by the FCC and the DOJ, pursuant to and consistent with the Final Judgment. A copy of any substantial change shall be filed by the Trustee with the FCC and the DOJ within ten days following the execution thereof, with copies to the appropriate divisions and bureaus of the FCC and the DOJ.

(b) This Trust Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns, and nothing in this Trust Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Trust Agreement. Subject to Section 4(g), this Trust Agreement shall not be assignable by any of the parties hereto.

(c) If any term or other provision of this Trust Agreement is invalid, illegal, or incapable of being enforced by any rule of applicable law, or public policy, all other conditions and provisions of this Trust

Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated herein are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Trust Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated herein are consummated as originally contemplated to the fullest extent possible.

(d) The headings of the sections of this Trust Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Trust Agreement. Unless otherwise stated, references in this Trust Agreement to Sections, subsections, Annexes, Exhibits, Schedules, and other subdivisions refer to the corresponding Sections, subsections, Annexes, Exhibits, Schedules, and other subdivisions of this Trust Agreement. The words "this Trust Agreement," "herein," "hereby," "hereunder," "hereof," and words of similar import, refer to this Trust Agreement as a whole and not to any particular subdivision unless expressly so limited. The word "or" is not exclusive, and the word "including" (in its various forms) means "including without limitation." Pronouns in the masculine, feminine, or neuter genders shall be construed to state and include any other gender.

(e) This Trust Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

(f) This Trust Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument, and shall become effective when one or more counterparts have been signed and delivered by each of the parties hereto, it being understood that all parties need not sign the same counterpart.

8. *Relationship to Final Judgment.*

The Trustee hereby agrees to be bound by the applicable provisions of the Final Judgment, and to the extent that any provision contained in this Trust Agreement is inconsistent with the Final Judgment, the provisions of the Final Judgment shall govern.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed on their behalf as of the date first written above.

Beneficiary: Capstar Broadcasting Corporation

By: _____
William S. Banowsky, Jr.,
Executive Vice President

Trustee: Wichita Stations Trust

By: _____
Henry M. Rivera
Trustee

Annex A

KNSS(AM), Wichita, Kansas

Annex B

KFH(AM), Wichita, Kansas
KQAM(AM), Wichita, Kansas
KEYN(FM), Wichita, Kansas
KWSJ(FM), Haysville, Kansas

United States of America, Plaintiff, v. Capstar Broadcasting Corporation, and Triathlon Broadcasting, Company, Defendants.

[Civil Action No. 99–CV–00993]

(Judge Oberdorfer)

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint on April 21, 1999, alleging that Capstar Broadcasting Corporation's ("Capstar") proposed acquisition of Triathlon Broadcasting Company ("Triathlon") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that Capstar and Triathlon both own and operate radio stations throughout the United States, and that they each own and operate radio stations in the Wichita, Kansas, metropolitan area. Specifically, the complaint alleges that Capstar owns KKRD–FM, KRZZ–FM, and KNSS–AM in Wichita and that Capstar controls approximately 20 percent of the Wichita radio advertising market. The complaint also alleges that Triathlon owns KZSN–FM, KRBB–FM, KEYN–FM, KWSY–FM, KFH–AM, and KQAM–FM in Wichita and controls approximately 33 percent of the radio advertising revenues in the Wichita radio advertising market. The proposed acquisition would give Capstar a significant share of the radio advertising market in Wichita and control over stations that are close substitutes for each other based upon their specific audience characteristics. According to industry estminates, the proposed acquisition would give Capstar control of over 45 percent of the radio advertising revenue—even after Capstar divests the two lowest ranked FM radio stations pursuant to Federal Communications Commission ("FCC") regulations. As a result, the combination would substantially lessen competition in the sale of radio advertising time in the Wichita metropolitan area.

The prayer for relief seeks: (a) adjudication that Capstar's proposed acquisition of Triathlon described in the Complaint would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action, and (d) such other relief as is proper.

Before this suit was filed, the United States reached a proposed settlement with Capstar and Triathlon which is memorialized in the Stipulation and proposed Final Judgment which have been filed with the Court. Under the terms of the proposed Final Judgment, Capstar must divest five stations—KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM—to another radio operator approved by plaintiff at the time it acquires Triathlon. If Capstar does not divest these stations to an approved buyer at the time it acquires Triathlon, Capstar must place the stations in an FCC Trust. The FCC Trust Agreement was filed with the Court as an attachment to the proposed Final Judgment. Unless the Antitrust Division of the United States Department of Justice (the "Antitrust Division") grants an extension, the Trustee must divest the stations to a buyer approved by the Antitrust Division at its sole discretion within four (4) months of the date of entry of the Final Judgment.

The proposed Final Judgment also requires both Capstar and Triathlon to ensure, to the extent they are able under the proposed Final Judgment, that these stations will be operated independently as viable ongoing businesses while Capstar and Triathlon continue to operate them. If the stations are transferred to the Trustee, the Trustee has agreed that he will operate the stations independently as viable ongoing businesses. Further, the proposed Final Judgment requires Capstar to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of broadcast radio advertising time in Wichita.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. The Alleged Violation

A. The Defendants

Capstar is a Delaware corporation with its headquarters in Austin, Texas.

Capstar owns approximately 309 radio stations in 76 U.S. markets. In 1997, Capstar had total revenue of approximately $350 million, approximately $4.9 million of which was derived from its Wichita stations.

Triathlon is a Delaware corporation headquartered in San Diego, California. Triathlon currently owns 31 radio stations in six U.S. markets. In 1997, Triathlon had total revenue of approximately $33.6 million, approximately $8 million of which was derived from its Wichita stations.

B. Description of the Events Giving Rise to the Alleged Violation

On July 23, 1998, Capstar and Triathlon entered into an Agreement and Plan of Merger ("Agreement"). Under the terms of the Agreement, Triathlon agreed to transfer its licensee companies, including Triathlon Broadcasting of Wichita Licensee, Inc., to Capstar. Also under the terms of the Agreement, Triathlon agreed to sell Triathlon Broadcasting Company to Capstar.

Capstar and Triathlon compete for the business of local and national companies seeking to advertise in the Wichita radio market. The proposed acquisition of Triathlon by Capstar, and the threatened loss of competition that would be caused thereby, precipitated the government suit.

C. Anticompetitive Consequences of the Proposed Acquisition

1. The Sale of Radio Advertising Time in Wichita

The Complaint alleges that the provision of advertising time on radio stations serving the Wichita, Kansas Metropolitan Survey Area ("MSA") constitutes a line of commerce and a section of the country, or a relevant market, for antitrust purposes. The Wichita MSA is the geographical unit for which Arbitron furnishes radio stations, advertising agencies, and advertisers with data to aid in evaluating radio audience size and composition. Advertisers use this data in making decisions about which radio station or combination of radio stations can deliver their target audiences in the most efficient and cost-effective way. The Wichita MSA includes Butler, Harvey, and Sedgwick Counties. Radio stations earn their revenues from the sale of advertising time to local and national advertisers. Many local and national advertisers purchase radio advertising time in Wichita because they find such advertising preferable to advertising in other media for their specific needs. For such advertisers, radio time (a) may be less expensive and more cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); (b) may reach certain target audiences that cannot be reached as effectively through other media; or (c) may render certain services or offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these and other reasons, many local and national advertisers in Wichita who purchase radio advertising time view radio either as a necessary advertising medium for them or as a necessary advertising complement to other media.

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Wichita, the existence of such advertisers would not prevent radio stations from raising their prices a small but significant amount. At a minimum, stations could raise prices profitably to those advertisers who view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate among different customers, radio stations may charge higher rates to advertisers that view radio as particularly effective for their needs, while maintaining lower rates for other advertisers.

2. Harm to Competition

The Complaint alleges that Capstar's proposed acquisition of Triathlon would lessen competition substantially in the provision of radio advertising time in the Wichita MSA. The proposed transaction would create further market concentration in an already concentrated market. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A of the Complaint, a combination of Capstar and Triathlon would substantially increase the concentration in the Wichita radio advertising markets. The HHI currently is 3040. If Capstar divests only the two least significant FM stations, Capstar's share of the Wichita radio market, based on advertising revenue, would increase from approximately 20 percent to approximately 45 percent. The approximate post-merger HHI would be 3680, representing an increase of about 640 points. This substantial increase in concentration is likely to give Capstar unilateral power to raise advertising rates and reduce the level of service provided to advertisers in Wichita.

Today, several Capstar and Triathlon stations in Wichita compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Wichita, they are close substitutes for each other based on their specific audience characteristics. The proposed merger would eliminate this competition.

During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

During individualized rate negotiations, advertisers that desire to reach certain listeners can help ensure competitive rates by "playing off" Capstar stations against Triathlon stations. Capstar's acquisition of Triathlon will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Capstar stations. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give Capstar the ability to raise prices and reduce the quality of its service to some advertisers on its stations in Wichita.

b. Advertisers could not turn to other Wichita radio stations to prevent Capstar from imposing an anticompetitive price increase.

If Capstar raised prices or lowered services to those advertisers who buy advertising time on Capstar and Triathlon stations in Wichita because of their strength in delivering access to certain audiences, non-Capstar radio stations in Wichita would not be induced to change their formats to attract those audiences in sufficiently large numbers to defeat a price increase. Successful radio stations are unlikely to undertake a format change solely in response to small but significantly increases in price being charged to advertisers by a multi-station firm such as Capstar because they would likely lose a substantial portion of their existing audiences. Even if less successful stations did change format, they would still be unlikely to attract

enough listeners to provide suitable alternatives to the merged entity. In addition, new entry into the Wichita radio advertising market would not be timely, likely or sufficient to deter the exercise of market power. For all these reasons, plaintiff concludes that the proposed transaction would lessen competition substantially in the sale of radio advertising time on radio stations serving the Wichita MSA in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in Wichita. It requires Capstar to divest five stations: KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM. The relief will reduce the share in advertising revenues Capstar would have achieved in the transaction from 45 percent to less than 40 percent. The divestitures will preserve choices for advertisers and will ensure that radio advertising prices do not increase and services do not decline as a result of the transaction.

Capstar must divest the KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM assets to either another buyer or a Trustee at the time it acquires Triathlon. The divestitures must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Except in the case of KNSS–AM, the divestitures shall include all the assets of the stations being divested. The divestitures shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial radio businesses. If defendants fail to divest these stations within the time periods specified in the Final Judgment, a Trustee agreed upon by plaintiff and Defendants and identified in the Final Judgment will be entrusted to effect the divestitures. If the Trustee is appointed, the proposed Final Judgment provides that Capstar will pay all costs and expenses of the Trustee and any professionals and agents retained by the Trustee. After appointment, the Trustee will file monthly reports with the plaintiff, Capstar and the Court, setting forth the Trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the Trustee has not accomplished the divestitures within four (4) months after the date of the Order's entry, the Trustee shall promptly file with the Court a report setting forth (1) the Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Trustee's judgment, why the required divestitures have not been accomplished and (3) the Trustee's recommendations. At the same time the Trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment requires that prior to the consummation of the transaction, defendants will maintain the independence of their respective radio stations in Wichita until the closing of the merger and the transfer of KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM to either a buyer approved by the plaintiff or to the Trustee.

The proposed Final Judgment also prohibits Capstar from entering into certain agreements with other Wichita radio stations without providing at least thirty (30) days' notice to the plaintiff. Specifically, Capstar must notify the plaintiff before acquiring any interest in another Wichita radio station. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"). Moreover, Capstar may not agree to sell radio advertising time for any other Wichita radio station, or to have another radio station that also sells radio advertising time in Wichita sell its radio advertising time, without providing plaintiff with notice. In particular, the provision requires Capstar to notify the plaintiff before it enters into any Joint Sales Agreements ("JSAs") in Wichita. Under a JSA, one station sells another station's advertising time. Despite their clear competitive significance, JSAs may not all be reportable to the Department under the HSR Act. Thus, this provision in the proposed Final Judgment ensures that the plaintiff will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Wichita radio advertising market.

The relief in the proposed Final Judgment is intended to remedy the likely anitcompetitive effects of Capstar's proposed transaction with Triathlon in Wichita. Nothing in this Final Judgment is intended to limit the plaintiffs ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in Wichita, or any other markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provision of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Any such written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trail on the merits of its Complaint against defendants. The plaintiff is satisfied, however, that the divestiture of KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM, and KQAM–AM,

and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Wichita radio advertising markets. Thus, the proposed Final Judgment would achieve the relief the plaintiff would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

15 U.S.C. 16(e).

As the United States Court of Appeals for the District of Columbia Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the plaintiff's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc*, 858 F.2d 456, 462 (9th Cir. 1988) (*citing United States v. Bechtel Corp.* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment therefore should not be reviewed under a standard of whether it is certain to eliminate very anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"[3]

This is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: May 12, 1999.

Respectfully submitted,

Karl D. Knutsen,

Attorney, Merger Task Force.

U.S. Department of Justice

Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Competitive Impact Statement were served this 12th day of May, 1999, by United States mail, to the following:

David J. Laing, Baker & McKenzie, 815 Connecticut Ave. N.W., Washington, D.C. 20006, *Counsel for Triathlon Broadcasting Company.*

Neil W. Imus, Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, *Counsel for Capstar Broadcasting Corporation*

Karl D. Knutsen.

[FR Doc. 99–14896 Filed 6–10–99; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States* v. *Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc.*, Civil No. 99–1018 on April 26, 1999. A Competitive Impact Statement was filed on May 24, 1999. The Complaint alleged that the proposed acquisition of English China Clays ("ECC") by Imetal would violate Section 7 of the Clayton Act, 15 U.S.C. Section 18, in the markets for water-washed and calcined kaolin and fused silica in the United States and in the

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[1] 119 Cong. Rec. 24598 (1973). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[2] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States v. National Broad. Co.* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft* 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'") (citations omitted).

[3] *United States v. American Tel. and Tel Co*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (*quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted)); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

market for paper-grade ground calcium carbonate ("GCC") in the Southeastern United States. The Southeastern U.S. was defined as the thirteen states of North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Arkansas, Missouri, Texas, and Virginia. The proposed Final Judgment, filed at the same time as the Complaint, requires Imetal, among other things, to: (1) divest production facilities and associated reserves for water-washed and calcined kaolin; (2) sell its interest in Alabama Carbonates, L.P., a joint venture that makes paper-grade GCC, as well as substantial GCC reserves; and (3) sell the fused silica operations of ECC.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies to be implemented by Imetal. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations.

United States District Court, District of Columbia

[Civil No: 99–1018]

United States of America, Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, PLC and English China Clays, Inc., Defendants.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Imetal" means defendant Imetal, a French corporation with its headquarters in Paris, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. "ECC" means defendant English China Clays, plc, a United Kingdom corporation with its headquarters in Reading, England, and its subsidiary, defendant English China Clays, Inc., A Delaware corporation with its headquarters in Roswell, Georgia, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. "DBK" means DBK Minerals, Inc., a Delaware subsidiary of Imetal, with its headquarters in Dry Branch, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. "DBK Plant" means the kaolin plant of DBK located in Dry Branch, Georgia.

E. "Kaolin Assets" means the Sandersville #1 plant of ECC and Kaolin Reserves inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sanderville #1 Plant, including research and development activities, and real property containing the Sandersville #1 Plant and the Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site and off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of Sandersville #1 Plant and the Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how trade secrets, specifications for materials, and quality assurance and control procedures utilized by ECC at the Sandersville #1 Plant.

F. "DBK Plant Assets" means the DBK Plant inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin, including calcined kaolin, from the DBK Plant, including research and development activities, and real property containing the DBK Plant, Kaoline Reserves and Calcined Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal in connection with the operation of the DBK Plant;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the DBK Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or DBK at the DBK Plant.

G. "GCC" means ground calcium carbonate.

H. "GCC Assets" means DBK's interests in Alabama Carbonates, L.P. ("Alabama Carbonates"), a limited partnership between Carbonate Corporation, a subsidiary of Omya, Inc., and Georgia Marble Stone Corporation ("Georgia Marble"), a subsidiary of DBK, located in Sylacauga, Alabama, which manufactures GCC products in slurry form for use in paper production.

I. "GCC Reserves" means economically recoverable calcium carbonate stone reserves located in the Sylacauga, Alabama area of a minimum pureness quality suitable for slurry products produced and sold to the paper industry.

J. "GCC Reserve Assets" means GCC Reserves in quantities sufficient to ensure that Alabama Carbonates will have available to it 500,000 tons per year of crushed, washed and reduced to size stone suitable to use as feedstock for a period of thirty (30) years. Determination of the amount of GCC Reserves needed to meet this standard shall take into account the amount of any GCC Reserves that any principal or affiliate of Alabama Carbonates (other

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than the defendants) owns, leases or has an option on, and are available to Alabama Carbonates. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller cannot agree on the amount of GCC Reserves that must be divested to meet the standard set forth above or the fair market value of such reserves, such issue may be submitted to binding arbitration in accordance with Section IX of the Final Judgment in this case.

K. "Fused Silica Assets" means the fused silica plant of Minco, Inc. acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica; including research and development activities; all rights, titles, and interest, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreement, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Imetal in connection with the operation of the fused silica plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused silica.

L. "Fused Magnesia Assets" means the fused magnesia plant acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia; including research and development activities, all rights, titles, and interests, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused magnesia plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused magnesia.

M. "Kaolin Reserves" means kaolin clay suitable for producing kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Kaolin Assets or, if divested pursuant to the Final Judgment in this case, the DBK Plant Assets, at full capacity for a period of twenty (20) years.

N. "Calcined Kaolin Reserves" means kaolin clay suitable for producing calcined kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Calcined Assets or, if divested pursuant to the Final Judgment in this case, the calcining assets of the DBK Plant Assets, at full capacity for a period of twenty (20) years.

O. "Calcining Assets" means a plant or plants with two (2) calciners suitable for producing calcined kaolin sold to the paper industry, other than the calcining facilities in Sandersvillle, Georgia, with a combined capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin, including research and development activities; real property containing Calcining Assets and Calcined Kaolin Reserves; all rights, titles and interests including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Calcining Assets and the Calcined Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin from the Calcining Assets and the Calcined Kaolin Reserves, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, quality assurance and control procedures utilized by Imetal or ECC at the Calcining Assets.

P. "Sandersville #1 Plant" means the water-washed kaolin plant of ECC with a capacity of 850,000 tons annually located in Sandersville, Georgia.

Q. "ECC Kaolin Business" means the entire United States water-washed and calcined kaolin business acquired by Imetal from ECC, including the operation of ECC's Sandersville #1 Plant, Sandersville #2 Plant and the Wrens Plant.

R. "Hold Separate Assets" means the ECC Kaolin Business, the Fused Silica Assets and the Fused Magnesia Assets collectively.

II. Objectives

The Final Judgment filed in this case is meant to ensure Imetal's prompt divestiture of the Kaolin Assets, Calcining Assets, GCC Assets, GCC Reserve Assets, and Fused Silica Assets for the purposes of creating viable competitors in the development, production and sale of each of these products and to remedy the effects that the United States alleges would otherwise result from Imetal's proposed acquisition of ECC. This Hold Separate Stipulation and Order ensures the timely and complete transfer of these assets and maintains the separation of the ECC and Imetal water-washed kaolin, calcined kaolin, GCC for papermaking, fused silica and fused magnesia businesses as independent, viable competitors until the required divestitures are complete.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V. Hold Separate Provisions

A. Imetal shall preserve, maintain, and operate the Hold Separate Assets as independent competitive businesses, with management, research, development, production, sales and operations of such assets held entirely separate, distinct and apart from those of Imetal. Imetal shall not coordinate its production, marketing or sale of any products with that of any of Judgment. Imetal may, subject to the use of firewalls acceptable to the United States, plan the post-divestiture integration of its DBK and ECC kaolin businesses.

D. Imetal shall provide and maintain sufficient working capital to maintain the Hold Separate Assets as viable, ongoing businesses, consistent with current business plans.

E. Imetal shall provide and maintain sufficient lines and sources of credit to maintain the Hold Separate Assets as viable, ongoing businesses.

F. Imetal shall maintain, on behalf of the Hold Separate Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of each of the businesses on a monthly and quarterly basis.

G. Imetal shall use all reasonable efforts to maintain and increase the sales of each of the Hold Separate Assets to be divested, such as maintaining at 1998 or previously approved levels for 1999, whichever are higher, internal research and development funding, sales, marketing, and support for the Hold Separate Assets.

H. Imetal shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

I. Imetal shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

J. Except in the ordinary course of business or as is otherwise consistent with this Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of entry of this Order, works for any of the Hold Separate Assets. Defendants shall not solicit to hire any individual who, on the date of entry of this Order, was an employee of any of the assets to be divested under the Final Judgment.

K. Within ten (10) days of the filing of this Hold Separate Stipulation and Order, defendants shall appoint one or more persons who shall have complete managerial responsibility for the Hold Separate Assets, subject to the provisions of this Order and the Final Judgment, until such time as this Order is terminated. In the event that such manager(s) is unable to perform his or her duties, Imetal shall appoint from the current management of the Hold Separate Assets, subject to the plaintiff's approval, a replacement within ten (10) working days. Should Imetal fail to initially appoint a manager acceptable to the United States, or fail to appoint any replacement required within ten (10) working days, the United States shall appoint the manager.

L. Imetal shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divesture pursuant to the Final Judgment to a suitable purchaser.

M. This Order shall remain in effect as to the ECC Kaolin Business until the divesture of the Kaolin or DBK Plant Assets required by the Final Judgment is complete, or until further Order of the Court. This Order shall remain in effect as to the Fused Silica Assets and Fused Magnesia Assets until the divestiture of the Fused Silica Assets required by the Final Judgment is complete, or until further Order of the Court.

Dated: April 26, 1999.

For Plaintiff United States of America

Patricia G. Chick,

Esquire, D.C. Bar #266403, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20005, (202) 307–0946.

For Defendants Imetal and DBK Minerals, Inc.:

George M. Chester, Jr.,

Esquire, D.C. Bar #238196, James R. Atwood, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20044–7566, (202) 662–6000.

For Defendant English China Clays, Plc and English China Clays, Inc.

William R. Norfolk,

Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004–2498, (212) 558–4000.

It is ordered by the Court, this _____ day of April, 1999.

United States District Judge.

[Civil No.: 99–1016]

United States of America, Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, Plc, and English China Clays, Inc., Defendants.

Final Judgment

Whereas, plaintiff, the United States of America, and defendants Imetal ("Imetal"), DBK Minerals, Inc. ("DBK"), English China Clays, plc and English China Clays, Inc. (together "ECC"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication

of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and having consented that this Final Judgment shall settle all claims made by plaintiff in its Complaint filed April 26, 1999;

And whereas, defendants have agreed to bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is, in the event of the acquisition of ECC by Imetal, the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the water-washed kaolin, calcined kaolin, ground calcium carbonate ("GCC"), and fused silica businesses specified in the Complaint;

And whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. "Imetal" means defendant Imetal, a French corporation with its headquarters in Paris, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. "ECC" means defendant English China Clays, plc, a United Kingdom corporation with its headquarters in Reading, England, and its subsidiary, defendant English China Clays, Inc., a Delaware corporation with its headquarters in Roswell, Georgia, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. "DBK" means DBK Minerals, Inc., a Delaware subsidiary of Imetal, with its headquarters in Dry Branch, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. "DBK Plant" means the kaolin plant of DBK located in Dry Branch, Georgia.

E. "Kaolin Assets" means the Sandersville #1 plant of ECC and the Kaolin Reserves inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including research and development activities, and real property containing the Sandersville #1 Plant and the Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site and off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Sandersville #1 Plant and the Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by ECC at the Sandersville #1 Plant.

F. "DBK Plant Assets" means the DBK Plant inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin, including calcined kaolin, from the DBK Plant, including research and development activities, and real property containing the DBK Plant, Kaolin Reserves and Calcined Kaolin Reserves; all rights titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal in connection with the operation of the DBK Plant;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the DBK Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or DBK at the DBK Plant.

G. "GCC" means ground calcium carbonate.

H. "GCC Assets" means DBK's interests in Alabama Carbonates, L.P. ("Alabama Carbonates"), a limited partnership between Carbonate Corporation, a subsidiary of Omya, Inc., and Georgia Marble Stone Corporation ("Georgia Marble"), a subsidiary of DBK, located in Sylacauga, Alabama, which manufactures GCC products in slurry form for use in paper production.

I. " GCC Reserve" means economically recoverable calcium carbonate stone reserves located in the Sylacauga, Alabama area of a minimum pureness quality suitable for slurry products produced and sold to the paper industry.

J. "GCC Reserve Assets" means GCC Reserves in quantities sufficient to ensure that Alabama Carbonates will have available to it 500,000 tons per year of crushed, washed and reduced to size stone suitable to use as feedstock for a period of thirty (30) years. Determination of the amount of GCC Reserves needed to meet this standard shall take into account the amount of any GCC Reserves that any principal or affiliate of Alabama Carbonates (other than the defendants) owns, leases or has an option on, and are available to Alabama Carbonates. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller cannot agree on the amount of GCC Reserves that must be divested to meet the standard set forth above or the fair market value of such reserves, such issue may be submitted to binding arbitration in accordance with Section IX of this Final Judgment.

K. "Fused Silica Assets" means the fused silica plant of Minco, Inc. acquired from Minco Acquisition Corp. In 1998, inclusive of:

(1) All tangible assets in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including research and development activities; all rights, titles, and interest, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused silica plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused silica.

L. "Fused Magnesia Assets" means the fused magnesia plant acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia, including research and development activities; all rights, titles, and interests, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused magnesia plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused magnesia.

M. "Kaolin Reserves" means kaolin clay suitable for producing kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Kaolin Assets or, if divested pursuant to this Final Judgment, the DBK Plant Assets, at full capacity for a period of twenty (20) years.

N. "Calcined Kaolin Reserves" means kaolin clay suitable for producing calcined kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Calcined Assets or, if divested pursuant to this Final Judgment, the calcining assets of the DBK Plant Assets, at full capacity for a period of twenty (20) years.

O. "Calcining Assets" means a plant or plants with two (2) calciners suitable for producing calcined kaolin sold to the paper industry, other than the calcining facilities in Sandersville, Georgia, with a combined capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin, including research and development activities; real property containing Calcining Assets and Calcined Kaolin Reserves; all rights, titles and interests including all fee and leasehold rights, all manufacturing, person property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Calcining Assets and the Calcined Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin from the Calcining Assets and the Calcined Kaolin Reserves, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or ECC at the Calcining Assets.

P. "Sandersville #1 Plant" means the water-washed kaolin plant of ECC with a capacity of 850,000 tons annually located in Sandersville, Georgia.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale of all or substantially all of its assets or of lesser business units that include its water-washed kaolin, calcined kaolin, GCC, or fused silica businesses or assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or within five (5) days after notice of entry of the Final Judgment, whichever is later, to sell the Kaolin Assets or at their option the DBK Plant Assets, the Calcining Assets, the GCC Assets and the Fused Silica Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States in its sole discretion and to sell the GCC Reserve Assets to the purchaser of the GCC Assets, to Georgia Marble's joint venturer in Alabama Carbonates, or to Alabama Carbonates.

B. Defendants are also ordered to enter into, at the option of Alabama Carbonates, a short-term contract to supply Alabama Carbonates with crushed, washed and reduced to size calcium carbonate stone suitable to use as feedstock for slurry products produced and sold to the paper industry in quantities and quality and at terms and conditions substantially similar to those of the existing supply and services agreements between Georgia Marble and Alabama Carbonates and which is acceptable to the United States in its sole discretion. Such contract shall have a term of either three (3) years from the divestiture of the GCC Assets and GCC Reserve Assets or two (2) years from the conclusion of any arbitration permitted by Section IX of this Final Judgment,

whichever is longer, and shall be terminable by Alabama Carbonates on six months' notice. The United States, in its sole discretion, may extend the term of the short-term contract for periods of time not to exceed one year in total.

C. Defendants shall use their best efforts to accomplish said divestitures as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any divestitures for an additional period of time not to exceed sixty (60) calendar days.

D. In accomplishing the divestitures ordered by this Final Judgment, defendants shall make known promptly, by usual and customary means, the availability of the Kaolin Assets or at their option the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process, except such information as is subject to attorney-client privilege or attorney work-product privilege. Defendants shall make such information available to the United States at the same time that such information is made available to any other person. In the event that defendants enter into an agreement to negotiate exclusively with a prospective purchaser for the divestiture of any asset to be divested, defendants' obligations to furnish information to other prospective purchasers may be suspended during such period of exclusive negotiations, provided however, that nay such suspension of this obligation shall not affect the time period within which defendants must sell the asset.

E. As customarily provided as part of a due diligence process, defendants shall permit prospective purchasers of the assets to have access to personnel and to make inspection of such assets; access to any and all zoning, building, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ any DBK or ECC employee who works at, or whose principal responsibility concerns, any aspect of the Kaolin Assets (or, if appropriate, the DBK Plant Assets), the Calcining Assets, the GCC Assets, the GCC Reserve Assets or the Fused Silica Assets.

G. Defendants shall not take any action, direct or indirect, that would impede in any way the operation of any business connected with the assets to be divested, or take any action, direct or indirect, that would impede the divestiture of any asset.

H. Defendants shall warrant to any and all purchasers of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets and the Fused Silica Assets that each existing asset will be operational on the date of sale.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, whether by defendants or by trustee appointed pursuant to Section VI of this Final Judgment, shall include the entire Kaolin Assets (or, of appropriate, the DBK Plant Assets), Calcining Assets, GCC Assets, GCC Reserve Assets and Fused Silica Assets, or such other assets as may be substituted or additionally included by the Trustee under Section VI of the Final Judgment. Such divestitures shall be accomplished by selling or otherwise conveying the assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser as viable ongoing businesses, engaged in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment, shall be made to a purchaser or purchasers who, as demonstrated to the United States' sole satisfaction: (1) has the capability and intent of competing effectively in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses; and (3) is not hindered by the terms of any agreement between the purchaser and defendants which gives defendants the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere with the ability of the purchaser to compete.

J. Defendants shall warrant to the purchaser of the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, the Fused Silica Assets and the Fused Magnesia Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that with respect to the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, the Fused Silica Assets and the Fused Magnesia Assets, defendants will not undertake, directly or indirectly, following the divestiture of any such asset, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

K. In the event that there is a divestiture by either the defendants or the trustee of the DBK Plant Assets, including at least two calciners with capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, such divestiture shall satisfy the requirements of this Final Judgment to divest the Kaolin Assets and the Calcining Assets.

V. Notice of Proposed Divestitures

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and shall list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt of the United States of a divestiture notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from the defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If

the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section VI may not be consummated. Upon objection by defendants under the provision in Section VI(B), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VI. Appointment of Trustee

A. In the event that defendants have not divested any of the Kaolin Assets or DBK Plant Assets, Calcining Assets, GCC Assets, the GCC Reserve Assets, or Fused Silica Assets within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each such asset. The trustee shall have the right, in its sole discretion, to sell either the DBK Plant Assets or the Kaolin Assets. The trustee shall have the right, in its sole discretion, to additionally include in the sale of the Fused Silica Assets the Fused Magnesia Assets. The trustee shall also have the right, in its sole discretion, and upon notice to the defendants and approval of the United States, to require the divestiture of additional related assets reasonably necessary to divest the Kaolin Assets, the Calcining Assets, and the Fused Silica Assets as viable stand-alone businesses including, but not limited to, sales and marketing facilities and organizations, research and development facilities and organizations. In any such event, all of the obligations of the defendants under the Final Judgment shall apply to the added assets as well.

B. After the appointment of a trustee become effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of the defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset sold by the trustee, and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of each of the businesses to be divested, and defendants shall develop such financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective purchasers of each of the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, or the Fused Silica Assets, or other assets being sold by the trustee, to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestitures within six(6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment for a period of time requested by the United States.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to

acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all of the Kaolin Assets or DBK Plant Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, or the Fused Silica Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to plaintiff an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets and to effect the ordered divestitures.

VIII. Firewall

A. During the period of any supply contract for dry processed calcium carbonate between Imetal and Alabama Carbonates, Imetal shall construct and maintain in place a firewall that prevents any information about the purchaser's requirements, purchases, or future requirements for dry processed calcium carbonate from flowing to any other Imetal employee involved in the production, sale or marketing of GCC for paper by Imetal or the former ECC. To implement this provision, Imetal is required to identify those employees of Imetal or of the former ECC who are involved in the production, sale or marketing of GCC for paper, and all such identified employees shall be prohibited from receiving any information about Alabama Carbonates' requirements, purchases, or future requirements for dry processed calcium carbonate. All other employees of Imetal or the former ECC who receive any such information shall be prohibited for passing on such information to the identified employees.

B. Imetal shall, within ten (10) business days of the entry of the Hold Separate Stipulation and Order, submit to the Department of Justice a document setting forth in detail its procedure to effect compliance with this provision. The Department of Justice shall have the sole discretion to approve Imetal's compliance plan and shall notify Imetal within three (3) business days whether it approves or rejects Imetal's compliance plan. In the event that Imetal's compliance plan is rejected, the reasons for the rejection shall be provided to Imetal and Imetal shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection; a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by the Department of Justice and implemented by Imetal.

IX. Arbitration

A. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller of the GCC Reserve Assets cannot agree on the amount of GCC Reserves that need to be divested or the fair market value of such reserves, any of those persons may elect to settle the issue through binding arbitration. The seller shall enter into a reasonable arbitration agreement, acceptable to the United States in its sole discretion, to govern such arbitration. The agreement shall provide that:

(1) Any controversy to be settled by arbitration shall be submitted to the American Arbitration Association;

(2) The arbitrator appointed shall be one acceptable to the United States in its sole discretion;

(3) The United States shall provide its assistance to the arbitrator and may submit evidence;

(4) Rules and procedures shall be adopted to ensure that the controversy shall be completed within four months from the appointment of the arbitrator and any ward made pursuant to any arbitration shall be final and binding on the parties to the arbitration.

B. When any such controversy is submitted to arbitration, defendants shall promptly notify the United States in writing and shall promptly serve a copy of the final award on the United States.

C. If any such controversy is submitted to arbitration, the period of time provided by Section IV(A) of this Final Judgment for the defendants to accomplish the divestiture required shall be tolled during the period of the arbitration. Following the conclusion of such arbitration, the United States shall, if necessary, extend the period of time provided in Section IV(A), to provide the defendants up to sixty (60) days in which to complete the divestiture.

X. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Kaoline Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, the Fused Silica Assets, or the Fused Magnesia Assets.

XI. Financing

Defendants are ordered and directed not to finance all or any part of any acquisition made pursuant to Sections IV or VI of this Final Judgment.

XII. Compliance inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may

(2) Subject to the reasonable convenience of defendants and without

restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VI or VII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1999.

United States District Judge.

[Civil No: 99 1018]

Judge Gladys Kessler

Filed: April 26, 1999.

United States of America Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc., Defendants.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 26, 1999, the United States file a civil antitrust Complaint alleging that the proposed acquisition of English China Clays, plc ("ECC") by IMETAL ("Imetal") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, with respect to four relevant products. The Complaint alleges that Imetal and ECC are two of five U.S. producers of water-washed kaolin; two of four U.S. producers of calcined kaolin for use in paper-making; the only two producers in the Southeastern United States of ground clacium carbonate ("GCC") in slurry form for the paper industry ("paper-grade GCC"); and the two leading U.S. producers of fused silica. The request for relief seeks: (1) a judgement that the proposed merger would violate Section 7 of the Clayton Act; (2) inductive relief preventing consummation of the proposed acquisition; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When the Complaint was filed, the United States also filed a proposed Final Judgment and a Hold Separate Stipulation and Order that would settle the lawsuit. The proposed settlement permits Imetal to acquire ECC, but requires divestitures that will preserve competition in the four relevant product markets alleged in the Complaint. The proposed Final Judgment orders defendants to divest production facilities and associated assets, as defined in the proposed Final Judgment, for water-washed kaolin, calcined kaolin, and fused silica, to divest Imetal's interest in Alabama Carbonates, L.P., a joint venture that make paper-grade GCC, and to divest substantial GCC reserves. Defendants must accomplish these divestures within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment in this matter, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to purchaser acceptable to the Antitrust Division of the United States Department of Justice ("DOJ"). If the defendants do not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust which may, if necessary, include extending the trust and the trustees' appointment by a period requested by the United States.

In addition, under the terms of the Hold Separate Stipulation and Order, defendants must hold specified assets to be divested separate and apart from their other businesses until the required divestitures have been accomplished. Defendants must, until the required divestitures are accomplished, preserve and maintain the specified assets to be divested as saleable and economically viable ongoing concerns.

The plaintiff and defendants have stipulated that the proposed Final judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Event Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Imetal is a French corporation with headquarters in Paris, France. It produces building materials, industrial metals, and industrial minerals worldwide. In the United States, Imetal produces kaolin through its DBK Minerals, Inc. subsidiary ("DBK") at a plant in Dry Branch, Georgia and at a plant in Jeffersonville, Georgia; dry-processed GCC through The Georgia Marble Company ("Georgia Marble"), a subsidiary of DBK, at a number of locations throughout the United States, including its plant in Sylacauga, Alabama; paper-grade GCC through a joint venture, Alabama Carbonates, L.P., in Sylacauga, Alabama, in which Georgia marble has a 50 percent ownership interest; and fused silica, through its G–E Minerals, Inc. subsidiary at a plant in Greenville, Tennessee. In 1997, Imetal reported

total sales in excess of 10 billion French francs.

ECC is a United Kingdom Corporation with headquarters in Reading, England. It produces industrial minerals, pigments and chemicals worldwide. In the United States, ECC produces kaolin through its English China Clays, Inc. subsidiary at two plants in Sandersville, Georgia and at a plant in Wrens, Georgia; and paper-grade GCC at a plant in Sylacauga, Alabama and at plants in Maryland and Wisconsin. In addition, in 1998, ECC purchased Minco Acquisition Corporation, a company that produces fused silica and fused magnesia at plants in Midway, Tennessee. In 1997, ECC reported total sales of about 850 million pounds Sterling.

On January 11, 1999, Imetal announced a cash tender offer for all of the shares of ECC. This transaction, which would increase concentration in the already highly concentrated markets for water-washed kaolin clay, calcined kaolin clay and fused silica in the United States, and would increase concentration in the already highly concentrated market for paper-grade GCC in the Southeastern United States, precipitated the government's suit.[1]

B. The Markets

Water-Washed Kaolin

Kaolin is a clay consisting of a crystalline hydrated aluminum silicate, ususlly found as the mineral kaolinite. The clay is mined in open pit quarries, and processed using crushing and grinding equipment. Water-washed kaolin is treated with water and flotation, which removes impurities and separates the kaolin by particle size. It is sold in a number of different grades, differentiated generally by particle size and brightness.

The vast majority of water-washed kaolin is used in paper-making, both as a pigment in coating formulations and as a filler in the body of paper. In coating formulations, kaolin is typically used in conjunction with other pigments, such as GCC. The kaolin has unique properties, however, and the other pigments are typically used as a complement, rather than a replacement, for water-washed kaolin. Kaolin is used as a filler primarily in paper that is made using an acid process, where calcium carbonate fillers cannot generally be used.

Thus, for many paper companies, no good substitute exists for water-washed kaolin. A small but significant increase in the price of water-washed kaolin would not cause a significant number of paper customers currently purchasing water-washed kaolin to substitute other products.

Much of the world's highest quality kaolin deposits are found in a relatively small area in Georgia. All of the U.S. producers of water-washed kaolin are located in Georgia, and sell products from their plants in Georgia throughout the United States.

Calcined Kaolin

Calcined kaolin is water-washed kaolin that has been further processed by calcining or baking at a temperature of about 1000 degrees Centigrade under controlled conditions. The high temperature alters the structure of the water-washed kaolin, resulting in a whiter and brighter kaolin that has a higher refractive index. Because of its higher brightness, calcined kaolin is used in paper-making applications that require greater opacity than that provided by water-washed kaolin. Calcined kaolin costs more than twice as much as regular water-washed kaolin.

For many paper customers, no good substitute exists for calcined kaolin. A a small but significant increase in the price of calcined kaolin would not cause a significant number of paper customers currently purchasing calcined kaolin to substitute other products.

All of the U.S. producers of calcined kaolin for paper-making are located in Georgia, and sell their products from plants in Georgia to paper companies throughout the United States.

GCC for Paper Coating Applications

Natural calcium carbonate is typically found in the ground in marble or limestone deposits. The stone is quarried and then processed through a series of screening and dry grinding steps into particles of various sizes, ranging down to about two (2) microns. The dry-processed GCC can also be further ground using a wet-grinding process into particle sizes as small as one (1) micron or less. GCC varies in color depending on the reserves from which it is quarried. The purest GCC comes from calcitic marble deposits. These high bright deposits are scarce, and some of the finest high bright deposits are located in the Sylacauga, Alabama area.

Paper-making requires the brightest white GCC. The vast majority of GCC sold for paper-making is wet-processed and sold in slurry form. Most of the GCC consumed in paper-making, but most PCC used in paper-making is used as filler. GCC is preferred over PCC in coating applications because of its runnability, higher printability and gloss.

A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products.

Paper-grade GCC, unlike water-washed and calcined kaolin, is produced in a number of locations throughout the United States. Because of high transportation costs, sales of GCC tend to be regional rather than nationwide.

Fused Silica

Fused silica is formed by melting pure non-crystalline silicon dioxide at high temperatures. This process creates a material with a low coefficient of thermal expansion which improves resistance to extreme heat, corrosion, abrasion, and electrical non-conductivity. Fused silica is used in sophisticated applications such as investment castings and epoxy molding compounds used in the electronics industry, as well as in refractory applications.

There are no economical substitutes for fused silica. A small but significant increase in the price of fused silica would not cause a significant number of current fused silica customers to substitute other products. Domestic producers of fused silica generally have a single plant, and sell their products throughout the United States.

C. Harm to Competition as a Result of the Proposed Transaction

Water-washed Kaolin

Imetal and ECC compete with each other in the development, production and sale of water-washed kaolin in the United States—a market which is now highly concentrated and would become substantially more concentrated as a result of the proposed acquisition. There are only five U.S. producers of water-washed kaolin. ECC is the largest, and Imetal is the third largest. The proposed transaction would reduce the number of firms making water-washed kaolin to four and create a single firm with well over 50% of domestic production capacity. The acquisition would consolidate the industry into two large players—the combined Imetal/ECC and Engelhard Corp.—and two relatively small players—Thiele Kaolin Company and J.M. Huber. It would eliminate the direct competition between Imetal and ECC that has benefited consumers, and likely lead to higher prices through increased opportunities for coordination

[1] On April 27, 1999, Imetal consummated its cash tender offer, subject to the terms of the proposed settlement filed in this case.

and from the elimination of a significant competitor in an oligopolistic market.

Moreover, new entry into the development, production and sale of water-washed kaolin is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition price increase. Building a water-washed kaolin plant could cost $100 million or more and take a minimum of two years. In addition, entry into the production of water-washed kaolin would require the location, testing and acquisition of substantial kaolin reserves to justify the investment in the plant.

Calcined Kaolin

The market for calcined kaolin for paper-making is even more concentrated than is the market for water-washed kaolin. There are only four producers, and ECC and Imetal are the second and third largest, respectively. (Engelhard is the industry leader and Thiele is the smallest participant.) The proposed transaction would reduce the number of firms making calcined kaolin for paper-making to only three, eliminating the direct competition between Imetal and ECC that has benefited consumers. The acquisition would likely lead to higher prices for calcined kaolin for paper-making.

New entry is unlikely to occur and would not be timely or sufficient to defeat a post-acquisition price increase. To be an effective competitor, any new entrant would require at least two calciners with substantial capacity (estimated at 85,000 to 100,000 tons annually) in order to be able to supply large paper customers' requirements and to be considered a credible source. Construction of a single calciner (with the necessary attendant infrastructure) could cost a minimum of $30 million and require at least two years, sometimes much longer, for permitting and construction. In addition, any entrant not already in the water-washed kaolin business would also face the barriers to entry into that business.

GCC for Paper Coating

There are only four firms that make paper-grade GCC in the United States: Omya, Inc., ECC, Alabama Carbonates, and Columbia River Carbonates (in Washington State). Only two of these firms are located in the Southeastern United States. One is ECC and the other is Alabama Carbonates, which is a joint venture owned 50% by Omya and 50% by Imetal's Georgia Marble. Both are in Sylacauga, Alabama.

Imetal and ECC compete in the sale of paper-grade GCC in the Southeastern United States. ECC has substantial high bright reserves of GCC in the Sylacauga area, which it quarries and processes at its Sylacauga plant. The plant does both dry processing and wet processing, and sells wet-processed GCC in slurry form for use in paper-making. Georgia Marble has many hundreds of years of GCC reserves in the Sylacauga area, which it quarries and dry processes at its Sylacauga plant, across the street from the ECC plant. Georgia Marble does not have a wet processing plant, but it has a 50% interest in the Alabama Carbonates joint venture, which has a wet processing plant right next to the Georgia Marble facility.

Alabama Carbonates was formed as a joint venture between Georgia Marble and Omya in 1990 for the purpose of selling paper-grate GCC in thirteen states in the southeastern U.S. Under the terms of the joint venture, both Omya and Georgia Marble agreed to sell paper-grade GCC in the designated are only through the joint venture.[2] Georgia Marble supplies the raw material which it quarries, crushes, washes, and dry processes into feedstock suitable for the wet processing plant at an agreed-upon price. Omya operates the wet-processing plant, sells the paper-grade GCC and collects a fee for these services.

Transport costs for GCC are high. As a result, GCC sales, unlike sales of water-washed and calcined kaolin, tend to be regional. ECC and Alabama Carbonates are the only companies that compete directly with each other for sales of paper-grade GCC in the Southeastern United States.

The proposed transaction would likely result in unilateral price increases to customers in the Southeastern United States. Entry is unlikely to occur, and would not be timely or sufficient to defeat a post-acquisition increase in the price of paper-grade GCC. The only other producer of paper-grade GCC is Omya, which would have no incentive to ship into the Southeast for the purpose of defeating its own price increase and, in any event, is barred from doing so by the terms of its joint venture agreement.[3] A *de novo* entrant would have to acquire substantial high bright reserves in the Southeast, establish a quarry and build a processing plant. While the quarry and plant would require considerable expenditures of money and take substantial time, the most significant barrier is obtaining appropriate reserves. Paper-grade GCC requires high bright reserves, which are a scarce resource and are generally believed to be largely unavailable in the Southeast because they are owned primarily by Georgia Marble and ECC.

Fused Silica

Imetal and ECC are the two leading producers of fused silica in the United States. They account for more than 80% of domestic fused silica production, and more than 95% of the fused silica sold in the United States for investment castings. The two companies compete significantly with each other, and are each other's only meaningful competition in sales of fused silica for investment castings. The only other producer, Pemco, accounts for a tiny percentage of sales.

Imetal and ECC face competition from other domestic producers and from imports in sales of fused silica for refractories. Overall, however, according to the defendants' documents, the two firms account for almost two-thirds of the total fused silica sales.

The proposed transaction would eliminate the direct competition between Imetal and ECC that has benefited consumers, and would create a single firm with a virtual monopoly in the sales of fused silica for investment castings and an overwhelming share of total domestic sales of fused silica. This concentration would likely result in unilateral price increases to consumers of fused silica.

Aluchem, Inc., an industrial minerals company, has announced plans to build a new plant in Alabama that will be capable of making fused silica. This planned entry by Aluchem, Inc. is not likely to be sufficient to deter an anticompetitive price increase, however. New entry is very difficult, time consuming and costly, and sufficient new entry is unlikely to occur and would not be timely or sufficient to defeat a post-acquisition fused silica price increase.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires substantial divestitures with respect to each of the products that is the subject of the Complaint. These divestitures are designed to ensure that the competition that would be eliminated by the proposed acquisition will be preserved and maintained. Under the terms of the proposed Final Judgment, defendants must accomplish these divestitures within one hundred and eighty (180) calendar days after the filing of that proposed Final Judgment, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to a purchaser

[2] There is a limited exception in the joint venture agreement for certain pre-existing customers of the venturers.

[3] Columbia River Carbonates, the fourth producer of paper-grade GCC, is another joint venture in which Omya is a participant.

acceptable to United States. If defendants fail to divest the assets within this period, a trustee, selected by the United States, will be appointed by the Court to sell the assets. Section VI of the proposed Final Judgment, which provides for the appointment of a trustee, contains a "Crown Jewel" provision that empowers the trustee to sell additional assets if necessary to effect certain of the divestitures.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if any divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

Kaolin

With respect to water-washed and calcined kaolin, Section IV of the proposed Final Judgment requires defendants to divest the Sandersville No. 1 water-w hed kaolin plant of ECC, with an annual capacity of 850,000 tons, and to divest two calciners, with a minimum annual capacity of 85,000–100,000 tons. Alternatively, defendants may at their option sell the DBK plant in Dry Branch, Georgia. This plant includes both a water-washed kaolin plant with capacity of slightly over one million tons, and a calcined kaolin plant.

In all cases, the plant divestiture requires divestiture of all tangible and intangible assets used in connection with those plants, and divestiture of sufficient kaolin reserves to operate the plant at full capacity for 20 years.

Currently, DBK has two plants: the DBK plant, and a 300,000 ton capacity plant in Jeffersonville, Georgia, which it acquired in 1997 when it purchased Nord Kaolin Co. The Jeffersonville plant is largely idled, except for the calcined at that location. The proposed transaction thus would give the combined company about 1 million tons more water-washed kaolin capacity than ECC had before the tender offer. Divestiture of the DBK plant would eliminate any increase in concentration in water-washed kaolin resulting from the acquisition. The Sandersville No. 1 plant is only slightly smaller than the DBK plant. In plaintiff's view, it is sufficiently close to DBK's stand-alone capacity that a purchaser of that plant could be an effective replacement for DBK in the market.

With respect to calcined kaolin, ECC currently has 4 calciners, with a total capacity of about 200,000 tons, making calcined kaolin for paper-making. DBK currently has 3 calciners, with a total capacity of about 105,000 tons, devoted to this product. Even after the required divestiture, the proposed transaction would result in some increased concentration in capacity for calcined kaolin for paper-making. From what plaintiff learned during the course of its investigation, however, the required divestiture should be sufficient for the purchaser to be a viable, effective new entrant into that market. Accordingly, plaintiff concluded that this divestiture is likely to substantially mitigate any anticompetitive effects of the proposed transaction with respect to calcined kaolin for paper-making.

GCC for Paper-Coating

With respect to paper-grade GCC, Section IV of the proposed Final Judgment requires defendants to divest Georgia Marble's interest in the Alabama Carbonates limited partnership.[4] Pending divestiture of Georgia Marble's interest in Alabama Carbonates, the Hold Separate Stipulation and Order requires Imetal to resign its seats on the Alabama Carbonates Management Committee and to assign to its joint venturer its right to name committee members.

Section IV of the proposed Final Judgment also requires defendants to divest sufficient GCC reserves for Alabama Carbonates to operate at its maximum stated contractual capacity of 500,000 tons for 30 years. These reserves must be economically recoverable, located in the Sylacauga, Alabama area, and of minimum pureness quality suitable for paper-grade GCC. Defendants must divest these reserves to the purchaser of Georgia Marble's interest, to Omya, or to Alabama Carbonates.

The divestiture of reserves is designed to ensure that Alabama Carbonates will be able to operate independently of Georgia Marble. Currently, Alabama Carbonates relies on Georgia Marble for its raw material and for all dry processing of its feedstock. Such dependence on the company that, after the proposed transaction, will be its only competitor, raises obvious competitive problems. In order to operate independently the limited partnership must have its own reserves and its own processing facilities. The plaintiff concluded as a result of its investigation that 30 years' reserves was the minimum that the limited partnership would need to consider making the required investments in processing facilities.

The proposed Final Judgment permits defendants, in calculating the quantity of reserves required to be divested, to take into account any economically recoverable reserves Omya already owns, uses or has an option on in the Sylacauga area that are of suitable quality and are available to Alabama Carbonates. The proposed Final Judgment further provides that, if Alabama Carbonates, Omya, or the purchaser of Georgia Marble's interest in Alabama Carbonates cannot agree with the defendants (or with the trustee if the trustee is the seller) on the amount of GCC Reserves to be divested to provide 500,000 tons of feedstock for 30 years, or cannot agree on the fair market value of those reserves, they may submit those issues to binding arbitration. Section IX of the proposed Final Judgment sets forth the procedures to be followed in the event of such arbitration.

This provision for arbitration is designed to address two somewhat different concerns. First, defendants maintain that Omya already has extensive high bright GCC reserve holdings in the Sylacauga area and that Alabama Carbonates therefore does not need substantial additional reserves in order to be a viable independent competitor. As a result of its investigation, the United States disagreed and was unwilling to agree to a proposed settlement without a sufficient divestiture of GCC reserves to enable the joint venture to be a viable independent competitor. The arbitration provision permitted the parties to reach a settlement agreement that satisfies the United States' competitive concerns, while at the same time providing defendants with a mechanism for assuring themselves that they are protected against an unnecessary sale of their reserves.

Second, given the contractual provisions of the Alabama Carbonates limited partnership agreement, there is a high likelihood that defendants will have no choice but to sell the GCC reserves to Omya. In such a situation, where there is a single buyer, the market forces that operate in a typical negotiation on price are absent. Defendants sought the option of

[4] Under the provisions of the proposed Final Judgment, defendants must divest this interest to a purchaser or purchasers acceptable to the United States. Under the terms of the limited partnership agreement, however, Georgia Marble's joint venturer, Omya, has a contractual right to prior notice of any sale of the interest and a right to match any offer for that interest.

arbitration to provide them a modicum of protection in their negotiations. There is precedent for this in other Antitrust Division consent decrees that have ordered divestiture to a particular buyer.

In addition to the divestiture provisions outlined above, Section IV of the proposed Final Judgment requires defendants, at the option of Alabama Carbonates, to supply the joint venture with feedstock for a period up to three years. This provision is designed to provide Alabama Carbonates with a reasonable transition period to make the investment required for it to be self-sufficient in the long term. The proposed Final Judgment further requires defendants to erect a firewall (Section VIII) during the term of any such supply contract, to ensure that no one at the combined Imetal/ECC with responsibility for paper-grade GCC receives any competitively sensitive information about Alabama Carbonates' requirements or purchases.

Fused Silica

Section IV of the proposed Final Judgment requires defendants to divest the fused silica plant of ECC, together with all tangible and intangible assets used in connection with the plant. This divestiture would eliminate any anticompetitive effects of the proposed transaction with respect to fused silica.

ECC acquired this fused silica plant within the last year when it acquired Minco. Minco also operates a fused magnesia plant, at the same location, that defendants wish to retain. The two plants are separate businesses and there is no overlap between ECC and Imetal with respect to fused magnesia, so retention of the fused magnesia businesses should not pose a problem under Section 7 of the Clayton Act. It may be, however, that the two plants together are more readily saleable than is the fused silica plant alone. For this reason, Section VI of the proposed Final Judgment provides that if the fused silica plant goes to a trustee for sale, the trustee may also sell the fused magnesia plant (together with all tangible and intangible assets used in connection with that plant).

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, with respect to kaolin, simply requiring divestiture of the DBK plant. Diverstitute of the DBK plant has two advantages over divestiture of the Sandersville No. 1 water-washed kaolin plant: (1) it would essentially put the purchaser in the same position as Imetal before the tender offer; and (2) unlike Sandersville No. 1, the DBK plant has been operated as a stand-alone business and has a clear track record as such.

The United States ultimately adopted the framework of the proposed Final Judgment, however, because it concluded that a divestiture of the Sandersville No. 1 plant could, under the proper circumstances, effectively redress the likely anticompetitive effects of the proposed transaction. During the course of the investigation, defendant ECC entered into pre-settlement negotiations and signed a preliminary Letter of Intent with Thiele Kaolin Company for the sale of the Sandersville No. 1 plant. A purchase by Thiele would cause higher concentration than would result if the Sandersville No. 1 plant were sold to a firm outside the kaolin industry. However, both defendants and Thiele argued that the additional capacity would permit Thiele to better compete for large paper customers against the two industry leaders. While the United States did not "pre-approve" a sale to Thiele—the parties did not have a definitive agreement, and their Letter of Intent did not address at all some issues that would be important to plaintiff's evaluation of any proposed sale—plaintiff concluded that a divestiture of the type contemplated in the Letter of Intent could satisfy the United States' competitive concerns with respect to water-washed kaolin. Plaintiff therefore concluded that defendants should be permitted to try to divest the Sandersville No. 1 plant if they so chose.

The United States also considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Imetal and ECC. The United States is satisfied that the divestitures required by the proposed Final Judgment will facilitate continued viable competition in the four relevant product markets alleged in the Complaint and will effectively prevent the anticompetitive effects that the Complaint alleges would result from the proposed acquisition.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other

considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term "'public interest' take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[5] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

[5] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F.Supp. 713, 715 (D.Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Betchtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981). *See also Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[6]

A proposed consent decree in an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final judgment requires a standard more flexible and less strict that the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[7]

[6] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1979); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d at 565.

[7] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Mayland* v. *United States*, 460 U.S. 1001 (1983), Quoting *United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

VIII. Determinative Documents

The only determinative document, within the meaning of the APPA, that was considered by the United States in formulating the proposed Final Judgment is the preliminary Letter of Intent between defendant ECC and Thiele Kaolin Company, a copy of which is attached as Exhibit A.

Respectfully submitted.

Dated: May 24, 1999.

For Plaintiff United States of America:

Patricia G. Chick,

D.C. Bar #266403, Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, DC 20530, Telephone: (202) 307–0946, Facsimile: (202) 514–9033.

Exhibit A

Exhibit A cannot be published in the **Federal Register.** A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 215, Washington, D.C. 20530, (202) 514–2481.

[FR Doc. 99–14470 Filed 6–10–99; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98 CV 7168 (FB)(MDG)]

United States, State of New York, Commonwealth of Pennsylvania and State of Florida v. Waste Management, Inc., Ocho Investment Corp., Eastern Environmental Services, Inc.; Response to Public Comments on Antitrust Consent Decree

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on May 21, 1999, the United States filed its responses to public comments on the proposed Final Judgment in *United States* v. *Waste Management, Inc. and Eastern Environmental Services, Inc.*, Civil No. 98 CV 7168 (FB)(MDG) (E.D.N.Y., filed Dec. 31, 1998), with the United States District Court in Brooklyn, New York.

On November 17, 1998, the United States, New York, Pennsylvania and Florida filed a Complaint, which alleged that Waste Management's proposed acquisition of Eastern Environmental

would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal in nine markets around the country, including the New York, NY (disposal of commercial and residential municipal solid waste); Pittsburgh and Bethlehem/Allentown, PA (disposal of municipal solid waste); Carlisle/Chambersburg, PA area (collection of commercial waste and disposal of municipal solid waste); and Miami/Ft. Lauderdale, and suburban Tampa, FL (collection of commercial waste). The proposed Final Judgment, filed on December 31, 1998, requires Waste Management and Eastern to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Amended Complaint.

Public comment was invited within the statutory 60-day comment period. The public comments and the United States's responses thereto are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Amended Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, and the United States's Certificate of Compliance wit Provisions of the Antitrust Procedures and Penalties Act (to which the public comments and the United States's responses are attached) are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW, Washington, D.C. 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations and Merger Enforcement, Antitrust Division.

United States's Certificate of Compliance With Provisions of the Antitrust Procedures and Penalties Act

The United States of America hereby certified that it has complied with the provisions of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), and states;

1. The Complaint in this case was filed on November 17, 1998, and an Amended Complaint was filed on December 1, 1998. The proposed Final Judgment ("Judgment") and the Hold Separate Stipulation and Order ("Hold Separate Order") were filed on December 31, 1998. The government's Competitive Impact Statement was filed on February 2, 1999.

2. Pursuant to 15 U.S.C. 16(b), the Judgment, Hold Separate Order, and Competitive Impact Statement were published in the **Federal Register** on February 26, 1999 (64 Fed. Reg. 9527). A copy of the notice is attached as Exhibit 1.

3. Pursuant to 15 U.S.C. 16(d), the United States furnished copies of the Amended Complaint, Hold Separate Order, proposed Final Judgment and Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. 16(c), a summary of the terms of the proposed Judgment and the Competitive Impact Statement were published in The New York Times, a newspaper of general circulation in New York, NY, and in the The Washington Post, a newspaper of general circulation in the District of Columbia. Copies of the certificates of publication from The New York Times and The Washington Post appear in Exhibit 2.

5. On January 11, 1999, the defendants—Waste Management, Inc., Eastern Environmental Services, Inc., and Ocho Acquisition Corporation—filed with the Court a joint statement describing their communications with employees of the United States Department of Justice concerning the proposed Final Judgment, as required by 15 U.S.C. 16(g).

6. During the 60-day comment period after publication of notice in the **Federal Register**, The New York Times and The Washington Post, the United States received five written comments on the proposed settlement. These comments were from: (a) the Pulaski County, Kentucky Solid Waste Management District; (b) the Environmental Committee of the Pocono Mountains Chamber of Commerce in Stroudsburg, Pennsylvania; (c) the Schuylkill County, Pennsylvania Office of Solid Waste and Resource Management; (d) the Monroe County, Pennsylvania Municipal Waste Management Authority; (e) Recycle Worlds Consulting Corporation of Madison, Wisconsin.

7. The United States evaluated and responded to each of the comments it received. The comments did not convince the United States that it should withdraw its consent to the proposed settlement. The complete text of the comments and the responses appear in Exhibits 3–7; they are summarized below.

A. The Pulaski County, KY Comment

The Pulaski County Solid Waste Management District complained that a combination of Waste Management and Eastern would substantially eliminate competition in the collection and disposal of the county's residential waste. In our response, we point out that Pulaski County has entered into a long-term contract for collection and disposal of its waste, which does not expire until sometime in the year 2002. Under these circumstances, we note, it is highly unlikely that the merger had eliminated any existing competition between the defendants in waste collection or disposal services. In our views, it is simply to early to predict whether the merger would eliminate any significant potential competition that may occur after the contract expires in 2002.

B. The Monroe County, PA Comments

The Monroe County Municipal Solid Waste Authority and the Pocono Mountains Chamber of Commerce, both based in Stoudsburg, PA, asserted that the governments should have sought and obtained divestiture relief that would eliminate the anticompetitive effects of the defendants' merger in Monroe County, Pennsylvania. In that market, these commentators point out, a combination of Waste Management and Eastern would control eighty percent of more of the collection and disposal of the county's municipal waste. In its response, the United States pointed out that the proposed Final Judgment requires the defendant to divest the Waste Management commercial hauling routes in the Scranton/Wilkes-Barre, PA area, which is about 30 miles from the major population center of Monroe Country, and that the earlier Final Judgment in *United States* v. *USA Waste Services, Inc. and Waste Management, Inc.*, No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998), requires Waste Management to divest commercial waste hauling routes in the Allentown, PA area, which is only about 20 miles south of Monroe County. These divestiutes, once approved by the courts, would install in each of these areas one or more new competitors whose operations would be sufficiently close to provide a serious competitive check on the combination's ability to raise prices after consummating their merger.

C. The Schuylkill County Comment

The Schuylkill County Office of Solid Waste and Resource Management ("OSWRM"), based in Pottsville, PA, similarly complained that the governments should have sought and obtained divestiture relief that would eliminate the anticompetitive effects of the merger in Schuylkill County, PA. OSWRM alleged that the merger would leave Waste Management as the

dominant commercial waste hauler in Schuylkill County.

In our response, we pointed out that the United States did not seek relief with respect to commercial hauling in Schuylkill County because the amount of commerce was relatively small (Eastern's operations had less than $1 million in annual revenue), and Schuylkill County, like Monroe County, is reasonable close to two areas in which divestitures mandated by the pending final Judgment and the consent decree in USA Waste case would establish independent competitiors fully capable of disciplining an exercise of market power by Waste Management after it merges with Eastern.

D. The Recycle Worlds Consulting Corp. Comment

RecycleWorlds, a private waste industry consultant, expressed concern that the Final Judgment would not halt the wave of mega-mergers currently sweeping through the nation's waste industry. In this rapidly consolidating industry, some markets, RecycleWorlds explained, may become dominated by a handful of large integrated waste collection and disposal firms, and more prone to collusive price increases by the few remaining competitors. To prevent Waste Management from squeezing waste collection competitors by increasing the prices at landfills sites at which they dispose their waste, RecycleWorlds would require Waste Management to divest its waste collection operations or its waste disposal operations in any market in which it competes with Eastern. Failing that, RecycleWorlds urged the government not to approve any asset divestiture under the Judgment to any of the handful of major integrated waste firms, such as Republic, Allied or BFI. These firms may be more inclined to cooperate with Waste Management in raising prices in some markets in order to avoid potential price wars with Waste Management elsewhere.

In its response, the United States noted that it does not believe that requiring Waste Management to divest all collection or disposal operations in any overlap market would be more procompetitive than the divestitures ordered by the pending Judgment. Indeed, pursuing Recycle World's alternative may result in Waste Management obtaining vast market power in waste collection or in waste disposal services since, in effect, if Waste Management agrees to divest one line of business it can obtain an overwhelming market share in the other line. As to Recycle World's second point, the United States will not approve any proposed divestiture under the Judgment that may substantially lessen competition in any market. To that end, the Antitrust Division recently rejected Waste Management's proposal to divest these assets under the decree to Allied Waste Services, Inc. Allied, the nation's third largest waste industry firm, had agreed to acquire Browning-Ferris Industries, Inc., the industry's second firm. The pervasive competitive overlaps between the Allied/BFI operations and the disposal and collection operations ordered divested under the Judgment convinced the United States that the proposed divestiture would not advance competition in any market.

8. Pursuant to 15 U.S.C. 16(b)–(h), the United States has arranged to publish in the **Federal Register** by May 29, 1999, a copy of the comments and the United States's responses.

9. With these steps having been taken, the parties have fulfilled their obligations under the APPA. Pursuant to the Hold Separate Order that the Court entered on December 31, 1998, the Court may now enter the proposed Judgment, if it determines that the entry of the Judgment is in the public interest. For the reasons set forth in the Competitive Impact Statement, and in its responses to the public comments, the United States strongly believes that the Judgment is in the public interest and that the Court therefore promptly should enter it.

Dated: May 20, 1999.

Respectfully submitted,

Anthony E. Harris, Esquire (AH 5876)

U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Exhibit 1

Exhibit 1 was unable to be published in the **Federal Register**. A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Room 215, Washington, DC 20530, or call (202) 514–2481. It is can also be obtained from the **Federal Register**, Volume 64 No. 38, Page 9527–9541 dated Friday, February 26, 1999.

Exhibit 2

Exhibit 2 Advertising Order forms was unable to be published in the **Federal Register**. A copy can be obtained from the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Room 215, Washington, DC or (202) 514–2481.

Exhibit 3

March 26, 1999.

J. Robert Kramer II,

Chief, Litigation II, Anti-Trust Division, United States Department of Justice, 1401 H Street N.W., Suite 3000, Washington, DC 20530

Re: *United States of America, State of New York, Commonwealth of Pennsylvania, and State of Florida vs. Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc.*

United States District Court/Eastern District of New York Case Number: 98–7168

Dear Mr. Kramer: This letter will advise of my representation of the Pulaski County (KY) Solid Waste Management District. The District Board has approved a Resolution opposing the acquisition of Eastern Environmental Services, Inc., by Waste Management, Inc. The Resolution is enclosed, and is submitted to you pursuant to the public comment period, and should be included as comment on the acquisition and above-referenced litigation and proposed final judgment therein.

If you need any additional information relative to this matter, please do not hesitate to contact me at one of the above-listed telephone numbers or address. Thank you for your assistance in this regard.

Very truly yours,

Jeffrey Scott Lawless,

Travis, Pruitt & Lawless.

Enclosure: Resolution

cc:

Board Members.
Solid Waste Coordinator

Resolution of the Board of the Pulaski County Solid Waste Management District

Whereas the Pulaski County Solid Waste Management District is a Solid Waste Management District established pursuant to the provisions of Chapter 109 of the Kentucky Revised Statutes, and as such is given the authority to operate and contract for services relative to the operation of solid waste management facilities, and said district is further given the authority under the Pulaski County Solid Waste Management Ordinance, to make, amend, revoke, and enforce reasonable rules and regulations, governing the storage, collection, transportation, processing, and disposal of solid waste, and shall prepare, update, implement, and maintain the Solid Waste Management Plan for the Pulaski County geographical area, said County being a political subdivision of the Commonwealth of Kentucky, with an estimated population of 56,000, and;

Whereas, as of or about 1996, there were within Pulaski County, Kentucky, two independent, locally owned entities engaged in the collection and transportation of solid waste, said entities being "B & M Sanitation Service, Inc." and "G & W Disposal, Inc." and since that time, said entities

have been acquired, either by merger or stock acquisition, by Waste Management Inc., and;

Whereas, as of 1999, there were five (5) landfills operating in the Commonwealth of Kentucky, within a one-hundred (100) mile radius of Pulaski County, which engage in the processing or disposal of solid waste, being more particularly identified (with the respective owners of each) as follows:

(1) Lilly, Kentucky (Waste Management, Inc.)
(2) Williamsburg, Kentucky (Waste Management, Inc.)
(3) Irvine, Kentucky (Waste Management, Inc.)
(4) Pulaski Landfill (Eastern Environmental Services, Inc.)
(5) Stanford, Kentucky (Republic)

and;

Whereas, the District is a party to an agreement with G & W Disposal, Inc., (now Waste Management, Inc.) for the provision of solid waste collection services to citizens and residents of Pulaski County, Kentucky, and the District is further a party to an Agreement with Pulaski Grading, Inc. (a subsidiary of Eastern Environmental Services, Inc.), for the provision of solid waste disposal services to and for the benefit of the citizens and residents of Pulaski county, Kentucky, and that said agreements expire by their terms during calendar year 2002, and;

Whereas, the United States Department of Justice and others have initiated an action in the United States District Court for the Eastern District of New York, styled *United States of America, State of New York, Commonwealth of Pennsylvania, and State of Florida* v. *Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc.*, 98–7168, contesting the acquisition (hereinafter the "Acquisition") of Eastern Environmental Services, Inc. (hereinafter "Eastern"), and Waste Management, Inc., (hereinafter "Waste Management") and according to the pleadings of record therein, the Acquisition "would substantially reduce competition in disposal of municipal solid waste in" five highly concentrated markets, "and that it would substantially lessen competition in commercial waste collection services in four highly concentrated" markets, and further, it is alleged that "the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste", and;

Whereas on December 31, 1998, the Plaintiffs in the aforementioned litigation filed a Proposed Settlement that would permit Waste Management to complete its acquisition of Eastern, but would require said Defendants to divest certain waste collection and disposal assets in such a way as to preserve competition in the market areas identified in the pleadings; and,

Whereas, pursuant to the Competitive Impact Statement filed of record in the aforementioned action:

Significant new entry into [affected waste collection and disposal] markets would be difficult, time consuming, and unlikely to occur soon. Many customers of commercial waste collection firms have entered into "Evergreen" contracts, tieing them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, i.e. selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor for competing for such accounts, which, if won, may be very unprofitable to serve. The existence of long-term contracts are price discrimination substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

and, the District does hereby adopt said statement as its own finding, as a correct and accurate statement of the nature of waste collection activity as its exists in Pulaski County, Kentucky, as the District has in the past entered into such extended contracts for the provision of collection and disposal services (specifically, the most recent contracts being of a ten year duration), and;

Whereas the District does hereby make a finding that the acquisition by Waste Management of aforementioned Pulaski County-area solid waste collectors, and the proposed acquisition by Waste Management of Eastern, significantly reduces the competitive options of the District and its citizens, for the collection and disposal of residential and commercial waste, and would likely result in an increase (or a refusal to negotiate further reductions) in the fees and charges for collection and disposal of the residential and commercial waste of the District and its citizens, and;

Whereas, as was noted in the Competitive Impact Statement, and the District does hereby find:

Entry into the disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming task. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and is not likely to prevent exercise of market power after the [Acquisition].

and

[In the Pulaski County geographic area] Waste Management's acquisition of Eastern would remove a significant competitor in disposal of municipal solid waste. With the elimination of Eastern, [Waste Management] will no longer compete as aggressively since it will not have to worry about losing business to Eastern. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely ensure that customers will pay substantially higher prices for disposal of municipal solid waste, collection of [residential or] commercial waste, or both, following the [Acquisition], and;

Whereas, the District desires to eliminate the anti-competitive effects of the Acquisition in collection and disposal of municipal solid waste from Pulaski County, Kentucky.

Now, therefore, be it hereby resolved, by the Board of the Pulaski County Solid Waste Management District, as follows:

(A) That the Pulaski County Solid Waste Management District opposes and objects to the Acquisition of Eastern Environmental Service, Inc., by Waste Management, Inc.

(B) The the Pulaski County Solid Waste Management District respectfully requests that the United States Department of Justice, Anti-Trust Division, modify the proposed Final Judgment as follows:

1. That Eastern Environmental Services, Inc., be required to sell, on or before a reasonable date certain, its interest in the Pulaski Landfill, (located at Dixie Ben Road, Pulaski County, Kentucky, being License Number 100–00008, issued by the Natural Resources and Environmental Protection Cabinet, Division on Waste Management), to the Pulaski County Solid Waste Management District, Pulaski County, Kentucky, or any other purchaser acceptable to both the United States, the Commonwealth of Kentucky, and the Pulaski County Solid Waste Management District.

Or alternatively:

2. That Waste Management, Inc. or Eastern Environmental Services, Inc., be required to open and obtain a continuous operating permit issued by the Kentucky Department of Natural Resources for the operation of a landfill to be located in Pulaski County, Kentucky, and that said landfill be thereupon leased to the District for a term of years, subject to the approval of the Commonwealth of Kentucky, and the District.

Or alternatively:

3. That Waste Management be required to develop, construct, and implement an alternative solid waste management or disposal facility, whereby the efficiency of extracting "recovered material" is increased, waste requiring disposal is reduced, solid waste is managed in an environmentally

protected manner, and solid waste is converted to beneficial by-products or materials; and that such facility be operated jointly with, or solely by, the Pulaski County Solid Waste Management District, for a period not to exceed twenty years.

(C) That this Resolution be communicated to the United States Department of Justice, Anti-Trust Division, to the attention of the following: J. Robert Kramer, II, Chief, Litigation II, Anti-Trust Division, United States Department of Justice, 1401 H Street N.W., Suite 3000, Washington, DC 20503.

and that said comments be evaluated by the United States Department of Justice, so that the concerns of the residents and citizens of Pulaski County, Kentucky may be addressed and included in such manners as the United States Department of justice Antitrust Division may, under the circumstances, consider appropriate.[1]

Adopted this the 18th day of March, 1999.

Pulaski County Solid Waste Management District

Charles T. Estes,

Board Chairman.

Attest: Donna Turner,

Secretary.

Jeffrey Scott Lawless, Attorney,

Travis, Pruitt & Lawless, P.O. Drawer 30, Somerset, KY 42502–0030.

Jeffrey Scott Lawless, Esquire,
Travis, Pruitt & Lawless, 207 East Mt. Vernon Street, Post Office Drawer 30, Somerset, KY 42502–0030

Re: Comment on Proposed Final Judgment in United States, State of New York, et al, v. Waste Management, Inc., Eastern Environmental Services, Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)

Dear Mr. Lawless: This letter responds to your letter of March 26, 1999 commenting on the Final Judgment in this case on behalf of your client, the Pulaski County, Kentucky Solid Waste Management District. The Amended Compliant in this case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of municipal solid waste in 12 markets in New York, Pennsylvania, and Florida. The proposed consent decree, now pending in federal district court in Brooklyn, New York, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the markets alleged in the Complaint.[1] This relief, if approval by the Court, would establish one or more new competitors in each of the markets for which relief was sought, replacing the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the complaint nor the proposed Judgment address the competitive effects of the merger in the collection and disposal of residential waste in Pulaski County, Kentucky. A combination of Waste Management and Eastern Environmetal would control four of the five landfills within a 100 mile radius radius of Pulaski County.

The United States did not allege that a combination of Waste Management and Eastern Environmental would raise serious competitive problems in the collection and disposal of Pulaski County because the county has long-term agreements with Waste Management and with Eastern Environmental, which provide that the residential waste will be collected by Waste Management and that disposal of that waste will be handled by Eastern Environmental. These agreements, which do not expire until at 2002, effectively preclude competition between Waste Management and Eastern for the county's collection and disposal of waste. In addition, in this case, we believe that it would be difficult to predict what the competitive landscape will look like in 2002 when Pulaski County is once again in the market for a firm to collect and to dispose of its resident's waste. For that reason, we were not prepared to allege, or attempt to prove, that the proposed merger would be anticompetitive in Pulaski County, KY.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Exhibit 4

J. Robert Cramer, II
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Suite 3000, Washington, DC 20530

cc: Pennsylvania Attorney General Fisher

Dear J. Robert Cramer, II: The Pocono Mountains Chamber of Commerce Environmental Committee would like to offer its comments on the issue referenced above.

Our Committee serves the Chamber of Commerce's Executive Committee and Board of Directors, reviewing environmental issues and advising on appropriate Executive Committee and Board actions. The Environmental Committee also comments directly, where appropriate, on environmental issues impacting Monroe County. The Environmental Committee feels the referenced merger does not serve the best interests of Monroe County citizens.

The results of the merger is that one parent company will control collection and disposal of a disproportionate amount of the county's municipal waste. The county's other haulers are independent operators. These haulers will be unable to compete for commercial waste collection and municipal collection contracts. And, since none of these smaller companies owns a disposal facility, Waste Management will control their tipping fees. Recent history has shown that the independents are charged higher tipping fees than Waste Management charges its own haulers.

Since the merger a number of commercial businesses have contacted the Environmental Committee, reporting that their commercial collection rates have nearly tripled. While our committee understands that Waste Management has submitted a divestiture plan intended to alleviate concerns of this nature, this plan has done nothing to relieve the onerous effect the merger has had on Monroe County.

Our informed opinion is that approval of the merger will adversely effect the interest of Monroe County's citizens and businesses.

Thank you for the opportunity to file these comments. Please contact us if we can answer any other questions.

Respectfully,

Michael Beckenbach,

Chairman, Pocono Mountains Chamber of Commerce Environmental Committee.

Mr. Michael Beckenbach,
Chairman, Environment Committee, Pocono Mountains Chamber of Commerce, c/o Gallagher & Gallagher, Stroudsburg Division, 701 Main Street, Stroudsburg, PA 18360

Re: Comment on Proposed Final Judgment in United States, State of New York, et al. v. Waste Management, Inc., Eastern Environmental Services, Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)

Dear Mr. Beckenbach: This letter responds to your letter of April 10, 1999 commenting on the Final Judgment in the above case. The Amended Complaint in the case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of waste in a number of markets throughout the Northeast and in Florida. In northeastern Pennsylvania, the Amended Complaint alleged, the merger would substantially reduce competition in the collection of commercial waste in the Scranton/Wilkes-Barre market. The proposed Final Judgment now pending in federal district court in Brooklyn, New York would settle the case with respect to the Scranton market by, inter alia, requiring Waste Management to divest its front-end loader commercial waste

[1] Although some acquisitions, like some snakes, are beneficial, the Kentucky Court of Appeals once noted that "may snakes are poisonous, and only the zoologist, herpetologist, or experienced woodsman is able to distinguish those which are not" *Lawson* v. *Commonwealth*, 164 S.W.2d 972 (1942). The District would therefore defer to the good judgment of the "experienced woodsmen" of the Department of Justice's Anti-Trust Division.

[1] The markets alleged in the Amended Complaint, and for which divestiture relief was obtained in the Final Judgment, include the disposal of municipal solid waste in the Pittsburgh, Carlisle-Chambersburg, and Bethlehem, PA areas, and in New York City, NY (commercial and residential); and collection of commercial waste in the Carlisle-Chambersburg, Bethlehem, and Scranton, PA; suburban Tampa (Hillsborough Co.) and Miami/Ft. Lauderdale, FL (Dade and Broward counties) areas.

collection routes that service Luzerne and Lackawanna counties, which comprise much of the greater metropolitan Scranton/Wilkes-Barre, PA area. This divestiture, if approved by the Court, would establish an independent competitor in the market for which relief was sought, and replace the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the complaint in this case nor the proposed consent decree address the competitive effects of the merger in Monroe County, PA, in which a combination of Waste Management and Eastern would dominate municipal and commercial waste collection services, controlling over eighty percent of all waste collected. The combined firm has already substantially increased its prices for collection of municipal waste. We believe that the proposed judgment, and the pending decree in the earlier USA Waste/Waste Management case,[1] address this competitive issue.

Monroe County is a thinly populated area that abuts and lies directly southeast of the Scranton/Wilkes-Barre area. Its business and population center—Stroudsburg—is about 30 miles from the Scranton/Wilkes-Barre area and about 25 miles north of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

The divestitures of commercial waste collection routes ordered by this Judgment and the decree in the USA Waste case would establish independent commercial waste haulers in the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Monroe County, the rivalry offered by the new competitors should be sufficient to discipline any post-merger exercise of market power by the combined Waste Management and Eastern in the collection of commercial waste. These new competitors may also be capable of vigorous competition in the collection of the county's residential waste, a market not addressed in our complaint or the consent decree.

In addition, the next two largest waste haulers in Monroe County following Waste Management's acquisition of Eastern would be Hopkins and Muscaro, each of which is about the same size as Eastern in Monroe County. Thus, after the merger, there may be as many as four other competitors in the market—Hopkins, Muscaro, and the two decree firms—capable of competing as vigorously as Eastern prior to its acquisition by Waste Management.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

[1] *United States* v. *USA Waste Services, Inc., Waste Management, Inc., et al.*; No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998). The consent decree in the USA Waste case ordered Waste Management to divest its commercial waste collection routes that service the City of Allentown, and Lehigh and Northampton counties. Those routes were sold to Republic Services, Inc., which installed a large independent competitor in the commercial waste collection market in the Allentown, PA area.

Exhibit 5

J. Robert Kramer, II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530

Re: *United States, et al.* v. *Waste Management, Ocho Acquisition Corp. and, Eastern Environmental Services, Inc.* Civil No. 98 CV 7168 (FB)

Dear Mr. Kramer: On behalf of the residents of Schuylkill County, please consider the contents of this letter as public comment in response to a proposed final judgment in the above referenced matter which was advertised in the **Federal Register** on February 26, 1999 pursuant to the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The County of Schuylkill is a political subdivision established by Pennsylvania law and is authorized by Act 101, the Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, to provide for disposal capacity for municipal waste generated within its boundaries. For the past nine years, this has been accomplished by providing individuals, municipalities and the commercial sector reasonable and cost effective municipal waste collection and disposal alternatives through capacity assurance and operation contracts with permitted waste processing and disposal facilities. The County also licenses haulers of municipal waste, which allows the County to properly track the disposition of its waste. The ability of the County to provide this valuable service has been substantially impaired by the recent merger of Waste Management, Inc. and Eastern Environmental Services, Inc. The County believes that the proposed settlement does not meet the requirements of the Clayton Antitrust Act and is not in the public interest for reasons listed below.

1. Schuylkill County is located in East Central Pennsylvania and is in fact adjacent to market areas named in the complaint as being adversely affected from a competitive standpoint by the merger. A regional map is enclosed with this letter identifying the municipal waste hauling, processing and disposal operations that serve Schuylkill County. The County has identified that the result of the merger would be that one company would control the collection and disposal of approximately 66% of the County's municipal waste stream. This figure is backed-up by two sources of information: (1) PA Dept. Of Environmental Protection's Waste Destination Reports and (2) the County's hauler licensing database which indicates the merged companies would own 95% of the commercial front-end load container capacity; 44% of the rear-load capacity; and 60% of the roll-off container capacity.

2. Remaining haulers within the county are small, independent companies that are unable to compete in two important and specific areas, commercial waste collection and municipal contracting. The independent haulers do not have the necessary equipment to conduct commercial collection effectively. Also, the small companies cannot compete effectively for large municipal contracts. Typically, the only hauling companies that bid on municipal contracts in Schuylkill County are Waste Management, Pine Grove Hauling Co. (Eastern) and J.P. Mascaro. Mascaro usually is the high bidder due to the long distance to their nearest disposal facility. The result of the merger has been, and will be, a substantial reduction in competition in those specific areas.

3. Since the merger, it is well documented that Waste Management has raised its rates significantly for the collection of commercial and residential waste.

4. The proposed settlement agreement has already been implemented with the requirement that the companies divest certain relevant assets. However, these divestitures have no effect on the competitive disadvantages created by the merger in this area.

5. The County encourages municipal governments to join together to bid waste collection contracts to more cost effectively manage their municipal waste streams. However, with no competitive bidders, those efforts will fail.

Consequently, the County feels that the proposed judgement provides no relief in the area from the anti-competitive effects of the merger of Waste Management and Eastern Environmental, and the public interests will not be served by the approval of the proposed consent decree.

The County appreciates this opportunity to file written comments. Please contact me if you have any questions or require additional information.

Sincerely,

Wayne Bowen,

County Environmental Coordinator.

Enclosures.

cc:
Board of County Commissioners
U.S. Senator Specter
U.S. Senator Santorum
U.S. Rep. Holden
Senator Rhoades
Rep. Argall
Rep. Allen
Rep. Lucyk
William McDonnell, PADEP NE Regional Office
Jim Snyder, PADEP Central Office
Bob Shafer
Michael O'Rourke, Esq.
Mark Scarbinsky
Mary Kay Bernosky, Esq.

The Major MSW Hauling Operations and Processing/Disposal Facilities Serving Schuylkill County Map of April 1999 was not able to be published in the **Federal Register**. A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Room 215, Washington, DC 20530 or (202) 514–2481.

Major MSW Hauling Operations and Processing/Disposal Facilities Servicing Schuylkill County, April 1999

Hauling Operations

In-County
- Waste Management
1. Pottsville (consolidated with Deitrick Coal Twp.)
2. Frackville (consolidated with Deitrick Coal Twp.)
- Eastern Environmental
3. Pine Grove Hauling, Port Clinton (consolidated with Deitrick Coal Twp.)
4. Pine Grove Hauling, Schuylkill Haven (formerly Minchoff) (consolidated with Deitrick Coal Twp.)
- Other major or potential major competitors
None

Out-of-County
- Waste Management
5. Deitrick Sanitation, Coal Twp., Northumberland Co.
6. Waste Management, Allentown, Lehigh County
7. Waste Management, Scranton, Lackawanna County
8. Grand Central Sanitation, Pen Argyl, Northampton County
- Eastern Environmental
9. Altamere, Mt Carmel, Northumberland Co. (consolidated with Deitrick Coal Twp.)
10. Pine Grove Hauling, Lansford, Carbon County (formerly Knepper Sanitation) (consolidated with Deitrick Coal Twp.)
- Other Major or Potential Major Competitors
11. BFI, Leesport, Berks Co.
12. Mascaro, Nantocke, Luzerne Co., Reading, Berks Co., Lehigh Co.
13. Republic, Allentown, Lehigh Co. (acquired routes from Waste Management Allentown per Justice Department)
14. Slusser, Hazleton, Luzerne Co.
15. Carbon Service, Lehighton, Carbon Co.

Disposal/Transfer Facilities

In-County
- Waste Management
16. BSC transfer station, Pottsville (currently not accepting waste)
- Eastern Environmental
17. Coldren Transfer Station, Port Clinton (Pine Grove Hauling)
18. Pine Grove Landfill
- Other Major or Potential Major Competitors
19. Tamaqua Transfer Station
20. NSLA Transfer Station
21. CES Landfill, Foster Twp.

Out-of-County
- Waste Management
22. Deitrick Transfer Station Coal Twp., Northumberland Co.
23. Transfer Station, New Smithville, Lehigh Co.
24. Grand Central Landfill, Pen Argyl, Northampton Co.
25. Dauphin Meadows Landfill, Dauphin Co.
26. Modern Landfill, York Co.
27. Pottstown Landfill, Montgomery Co.
28. G.R.O.W.S. Landfill, Bucks Co.
29. Tullytown Landfill, Bucks Co.
- Eastern Environmental
30. Bethlehem Landfill, Northampton, Co.
31. Alliance Landfill, Lackawanna Co.
- Other Major or Potential Major Competitors
32. Mascaro Transfer Facility, Lehigh Co.
33. Keystone Landfill, Lackawanna Co.
34. Chrin Landfill, Northampton Co.
35. Pioneer Crossing Landfill (Mascaro), Berks Co.
36. Conestoga Landfill (BFI), Berks Co.

Impact of Waste Management/Eastern Merger

Number of hauling operations controlled by merger—10 (67%)
Controlled by others—5 (33%)
Number of disposal facilities controlled by merger—9 (64%)
Controlled by others—5 (36%)
Number of transfer facilities controlled by merger—4 (57%)
Controlled by others—3 (43%)
Total controlled by merger—23 (64%)
Controlled by others—13 (36%)

Mr. Wayne Bowen,
Environmental Coordinator, Office of Solid Waste and Resource Management, Schuylkill County Courthouse, 401 North Second Street, Pottsville, Pennsylvania 17901–2528

Re: Comment on Proposed Final Judgment in *United States, State of New York, et al.* v. *Waste Management, Inc., Eastern Environmental Services,* Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)

Dear Mr. Bowen: This letter responds to your letter of April 26, 1999 commenting on the Final Judgment in the above case. The Amended Complaint in the case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of waste in a number of markets throughout the Northeast and in Florida. In south central Pennsylvania, the Amended Complaint alleged, the merger would substantially reduce competition in the collection of commercial waste in the Scranton/Wilkes-Barre market. The proposed Final Judgment now pending in federal district court in Brooklyn, New York would settle the case with respect to the Scranton/Wilkes-Barre market by, inter alia, requiring Waste Management to divest its front-end loader commercial waste collection routes that service Luzerne and Lackawanna counties, which comprise much of the greater metropolitan Scranton/Wilkes-Barre PA area. This divestiture, if approved by the Court, would establish an independent competitor in the market for which relief was sought, and replace the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the Complaint in this case nor the proposed Judgment address the competitive effects of the merger in Schuylkill County, PA, in which a combination of Waste Management and Eastern Environmental would dominate municipal and commercial waste collection services, controlling over eighty percent of all waste collected. The combined firm has already substantially increased its prices for collection of municipal waste. We believe that the proposed Judgment, and the pending decree in the earlier USA Waste/Waste Management case,[1] may address the competitive issues you have raised.

Schuylkill County is a thinly populated area that abuts and lies directly southwest of the Scranton/Wilkes-Barre area. Though the county's business and population center, Pottsville, is about 40 miles from the Scranton/Wilkes-Barre area, it is only about 25 miles west of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

As you point out, the Final Judgment does not require Waste Management to divest any of the commercial route operations that it acquired from Eastern in Schuylkill County. The Division did not seek divestiture relief with respect to that market for several reasons. First, the total amount of commercial waste collection business that Waste Management assumed through acquiring Eastern was small, less than $1 million in annual revenues. Second, Schuylkill County abuts several counties in which the Judgment required Waste Management to divest route operations. The divestitures of commercial waste collection routes mandated by this Judgement and the decree in the USA Waste case, once implemented, would establish relatively large independent commercial waste haulers in both the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Schuylkill County, rivalry offered by the new competitors may be sufficient to discipline any exercise of market power in commercial waste collection by the combined Waste Management and Eastern. Also, the new commercial waste hauling competitors established by these judgments may be capable of offering vigorous competition in the collection of the country's residential waste, a market not addressed in our complaint or the consent decree.[2]

Finally, I should point out that the Judgment and the decree in the USA Waste case mandate that Waste Management divest two large landfills, Modern and Bethlehem, that you indicate also service the Schuylkill County market. The divestitures of these landfills will introduce additional competition in the disposal of waste from the Schuylkill County area.

Thank you for bringing your concerns to our attention; we hope this information will

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[1] *United States* v. *USA Waste Services, Inc., Waste Management, Inc., et al.,* No. 1:98 CV 1616 (N.D. Ohio, filed July 17, 1998). The consent decree in the USA Waste case ordered Waste Management to divest its commercial waste collection routes that service the City of Allentown, and Lehigh and Northampton counties. Those routes were divested to Republic Services, Inc., which installed a very large independent competitor into the commercial waste collection market in the Allentown, PA area.

[2] In general, barriers to entry into the collection of residential waste are not as formidable as those that impede entry into the collection of commercial waste. For this reason, the Division did not challenge the combination's effect on the market for collecting the county's residential waste. Of course, entry into collection of residential waste could be very difficult in those situations in which the area's disposal facilities are controlled by a waste collection rival. That is not the case here.

help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Exhibit 6

April 22, 1999.

J. Robert Kramer, II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530

Re: United States, et al. v. Waste Management, Inc., Ocho Acquisition Corp. and Eastern Environmental Services, Inc. Civil No. 98 CV 7168 (FB)

Dear Mr. Kramer: Please consider the contents of this letter as public comment in response to an invitation for public comment on proposed Final Judgment in the above referenced matter which was advertised in the Federal Register on February 26, 1998 pursuant to the provision of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The Monroe County Municipal Waste Management Authority is a political subdivision established by Pennsylvania law under the Municipal Authorities Act, of 1945. The Authority by agreement with the County, and as authorized by ACT 101 is responsible for implementing the County's Municipal Waste Management Plan. The Authority operates a waste management system highlighted by the licensing of all municipal waste haulers within the County, and providing individuals, municipalities, and companies reasonable and cost effective municipal waste collection and disposal alternatives through contracts with disposal and transfer facilities. The ability of the Authority to provide this service has been substantially impacted by the recent merger of Waste Management Inc. and Eastern Environmental Services, Inc. The Authority believes that the proposed settlement does not meet the requirements of the Clayton Antitrust Act, and is not in the public interest for the following reasons.

Monroe County is located in northeastern Pennsylvania near, and in fact adjacent to market areas named in the complaint as being adversely affected from a competitive standpoint by the merger. A regional map is enclosed with these comments identifying the location in Monroe County. In earlier comments, a copy of which is enclosed, the Authority identified that the net result of the merger would be that one company would control the collection of approximately 72% of the County's municipal waste stream, and the disposal of approximately 82% of the municipal waste generated within the county.

Remaining haulers within the County are small, independent companies which are unable to compete in two important and specific areas, commercial waste collection and municipal contracting. Furthermore, none of these small independent haulers own disposal facilities, and are required to dispose of the waste at facilities owned by Waste Management which controls disposal fees, often charging independent haulers a higher tipping fee for disposal than is charged to its own hauling company.

The independent haulers do not have the necessary equipment to conduct commercial collection effectively, or to transport municipal waste loads long distance to obtain competitive tipping rates. Also, the small companies cannot compete effectively for large municipal contracts. In addition to Waste Management and Eastern, only one company has responded to municipal requests for competitive bidding. The result of the merger has been, and will be, a substantial reduction in competition in those specific areas.

Since the above merger, it is well documented that Waste Management has nearly tripled rates for the commercial collection of municipal waste. Copies of relevant information in this regard is enclosed. The Authority has been inundated with telephone calls and written communications complaining of the new pricing structures.

The Authority has been urging municipal governments to join together to bid waste collection contracts to more effectively mandate the municipal waste stream. However, with no competitive bidders, those efforts will fail.

The proposed settlement agreement has already been implemented with the requirement that the companies divest certain relevant assets. However, these divestitures have had no effect on the competitive disadvantages created by the merger in this area.

Consequently, we feel that the proposed judgment provides no relief in this area from the anti-competitive effects of the merger of Waste Management and Eastern Environmental, and the public interest will not be served by the approval of the consent degree in this case.

We appreciated the opportunity to file written comments. Kindly contact the undersigned if we can provide further information, or answer any questions.

Sincerely,

Dean D.W. DeLong,

Executive Director.

Enclosures to Exhibit 6 letter from Dean D.W. DeLong, Executive Director of Municipal Waste Management Authority of Stroudsburg, PA was unable to be published in the **Federal Register**. A copy be obtained form the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 215, Washington, D.C. 20530 or (202) 514–2481.

Mr. Dean D.W. DeLong,
Executive Director, Monroe County Municipal Waste Management Authority, 912 Main Street, Suite 203, Stroudsburg, PA 18360

Re: Comment on Proposed Final Judgment in United States, State of New York, et al. v. Waste Management, Inc., Eastern Environmental Services, Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)

Dear Mr. DeLong: This letter responds to your letter of April 22, 1999 commenting on the Final Judgment in the above case. The Amended Complaint in the case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of waste in a number of markets throughout the Northeast and in Florida. In northeastern Pennsylvania, the Amended Complaint alleged, the merger would substantially reduce competition in the collection of commercial waste in the Scranton/Wilkes-Barre market. The proposed Final Judgment now pending in federal district court in Brooklyn, New York would settle the case with respect to the Scranton market by, *inter alia*, requiring Waste Management to divest its front-end loader commercial waste collection routes that service Luzerne and Lackawanna counties, which comprise much of the greater metropolitan Scranton/Wilkes-Barre, PA area. This divestiture, if approved by the Court, would establish an independent competitor in the market for which relief was sought, and replace the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In your letter, you express concern that neither the Complaint in this case nor the proposed Judgment address the competitive effects of the merger in Monroe County, PA, in which a combination of Waste Management and Eastern Environmental would dominate municipal and commercial waste collection services, controlling over eighty percent of all waste collected. The combined firm has already substantially increased its prices for collection of municipal waste. We believe that the proposed Judgment, and the pending decree in the earlier USA Waste/Waste Management case,[1] address the competitive issues you have raised.

Monroe county is a thinly populated area that abuts and lies directly southeast of the Scranton/Wilkes-Barre area. Its business and population center—Stroudsburg—is about 30 miles form the Scranton/Wilkes-Barre area and about 25 miles north of the city of Allentown and Northampton and Lehigh counties in Pennsylvania.

The divestitures of commercial waste collection routes mandated by this Judgment and the decree in the USA Waste case, once implemented, would establish a relatively large independent commercial waste hauler in both the Scranton/Wilkes-Barre and Allentown areas. Given the proximity of these markets to Monroe County, the rivalry offered by the new competitors should be sufficient to discipline any exercise of market power by the combined Waste Management and Eastern Environmental in the collection of commercial waste. The new competitors established by these antitrust judgments may also be capable of vigorous competition in

[1] *United States* v. *USA Waste Services, Inc., Waste Management, Inc., et al.*, No. 1:98 CV 1616 (N.D. Ohio, filed July 17,1998). The consent decree in the USA Waste case ordered Waste Management to divest its commercial waste collection routes that service the City of Allentown, and Lehigh and Northampton counties. Those routes were divested to Republic Services, Inc., which installed a large independent competitor in the commercial waste collection market in the Allentown, PA area.

the collection of the county's residential waste, a market not addressed in our complaint or the consent decree.[2]

In addition, the next two largest waste haulers in Monroe County following Waste Management's acquisition of Eastern would be Hopkins and Muscaro, each of which is about the same size as Eastern in Monroe County. Thus, after the merger, there may be as many as four other competitors in the market—Hopkins, Muscaro, and the two decree firms—capable of competing as vigorously as Eastern prior to its acquisition by Waste Management.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Exhibit 7

Exhibit 7 letter with attachments from Peter Anderson of Recycle Worlds Consulting of Madison, WI dated April 27, 1999 was unable to be published in the **Federal Register**. A copy can be obtained from the Document Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Room 215, Washington, DC 20530 or (202) 514–2481.

May 20, 1999.

Mr. Peter Anderson,
President, RecycleWorlds Consulting Corp., 4513 Vernon Blvd., Suite 15, Madison, Wisconsin 53705–4964

Re: Comment on Proposed Final Judgment in United States, *State of New York, et al.* v. *Waste Management, Inc., Eastern Environmental Services, Inc.*, No. 98 CV 7168(JB) (E.D.N.Y., December 31, 1998)

Dear Mr. Anderson: This letter responds to your April 27, 1999 comment on the proposal Final Judgment in the above case. The Amended Complaint charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of municipal solid waste in 12 markets in New York, Pennsylvania, and Florida. The proposed consent decree, now pending in Federal district court in Brooklyn, New York, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the markets alleged in the Complaint.[1] This relief, if approved by the Court, would establish one or more new competitors in each of the markets for which relief was sought, replacing the competitive rivalry lost when Waste Management acquired Eastern Environmental.

In a transaction approved by the United States and the State of New York, Waste Management divested to Republic Services, Inc. the rights to Eastern's proposal to dispose of New York City's residential waste in early January 1999, See Judgment section IV(B), On April 20, 1999, the United States, however, rejected Waste Management's proposal to sell the other waste collection and disposal assets under this decree to Allied Waste Industries, Inc. ("Allied"). Such a sale, we concluded, would raise serious competitive concerns in waste collection or disposal, or both, in virtually all of the markets for which the Judgment has ordered relief.[2] Of course, if Waste Management has not divested these assets to an acceptable purchaser within five days after entry of the Judgment, the United States will promptly seek, and the Court will likely appoint, a trustee to complete the sale. See Judgment sections V(A) and (B) and Hold Separate Stipulation and Order, section IV(F).

In your comment, you assert that the diversitures ordered by this Judgment do not go far enough to eliminate the competitive problems in the Nation's waste industry. To be sure, the decree in this case and in other recent Government antitrust cases (e.g., *United States* v. *USA Waste, Inc., Waste Management, Inc.*, No. 1:98 1616 (N.D. Ohio, filed July 21, 1998)) have not prevented the wave of consolidations, currently sweeping through this industry. Indeed, several recent mega mergers have significantly reduced the number of major competitors, and that has perhaps made several waste markets and more susceptible to collusive post-merger price increases. To cure these competitive problems, you propose a fairly "dramatic remedy," *i.e.*, require that Waste Management divest all of its waste disposal or collection operations in markets where there are substantial competitive overlaps between its operations and those of Eastern. If this not not done, then you propose that we ensure that the assets divested under the Judgment are not sold to a large integrated national waste firm, but to a municipal agency or a small stand-along independent—entities that, in your view, may have a greater incentive to vigorously compete against defendants' operations.

We do not believe that requiring Waste Management to divest all of its waste collection or disposal operations in any market in which its operations overlap with Eastern's would produce a more procompetitive result than the relief currently in the Judgment. Indeed, pursuing your proposal would permit Waste Management to acquire the lion's share of any number of waste collection or disposal markets, since, in effect, you propose that if Waste Management agrees to abandon one line of business, it would be free to monopolize the other.

We do, however, agree with your conclusion that Waste Management's divestiture of the decree assets to a firm such as Allied/BFI is undesirable because it would significantly reduce competition and enhance opportunities for cooperative post-merger price increases. We have so informed Waste Management, and we are prepared to have management and sale to these crucial waste assets transferred to a trustee, if Waste Management does not promptly divest these operations to a purchases acceptable to the United States.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Certificate of Service

I certify that on May 20, 1999, I caused a copy of the foregoing United States's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act to be served on the parties in this case by mailing the pleading first-class, postage prepaid, to

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[1] The markets alleged in the Amended Compliant, and for which divestiture relief was obtained in the Final Judgment, include the dispesal of municipal solid waste in the Pittsburgh, Carlisle-Chambersburg, and Bethlehem, PA areas, and in New York City, NY (commercial and residential); and collection of commercial waste in the Carlisle-Chambersburg, Bethlehem, and Scranton, PA; suburban Tampa (Hillsborough Co.) and Miami/FT. Lauderdale, FL (Dade and Broward counties) areas.

[2] In early March 1999, Allied announced that it had agreed to acquire Browning-Ferris Industries, Inc., for $7.5 billion. Allied is the Nation's fourth largest waste collection and disposal firm; BFI is the Nation's second largest waste firm. That combination would, by itself, raise serious competition concerns in a number of waste disposal and collection markets throughout the country. Selling the assets under the decree to a combination of Allied/BFI would result in a significant reduction in actual and potential competition in waste disposal services thought the Northeast—a regional market including major cities along the Eastern seaboard, such as New York, Boston, Philadelphia, Baltimore and Washington—as well as a reduction in localized competition for waste disposal services in the Pittsburgh, PA area, and for commercial waste collection services in the Miami/Ft. Lauderdale, FL area, and potentially in the Carlisle-Chambersburg, PA area.

[2] In general, barriers to entry into the collection of residential waste are not as formidable as those that impede entry into the collection of commercial waste. For this reason, the Division did not challenge the combination's effect on the market for collecting the county's residential waste. Of course, as you point out, entry into collection of residential waste could be very difficult in those situations in which the area's disposal facilities are controlled by a waste collection rival. That is not the case here. In Monroe County, there is at least one other major independent landfill (owned by DeNaples) that accepts significant amounts of the county's waste. Moreover, the closest landfill owned by Eastern Environmental apparently accepted less than 200 tons of waste annually from Monroe County, and hence did not compete directly against the Waste Management landfill.

a duly-authorized legal representative of each of the parties, as follows:

Jonathan L. Greenblatt, Esquire,
Steven C. Sunshine, Esquire,
Michael Strub, Jr., Esquire,
Shearman & Sterling, 801 Pennsylvania Avenue, NW, Washington, D.C. 20004–2604.

James R. Weiss, Esquire,
Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Washington, DC 20006–8425.

Counsel for Defendants Waste Management, Inc. and Ocho Acquisition Corp.

Neal R. Stoll, Esquire,
Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022–3897.

Counsel for Defendant Eastern Environmental Services, Inc.

Richard E. Grimm,
Kay Taylor,
Assistant Attorneys General, Antitrust Bureau, Office of the Attorney General, State of New York, 120 Broadway, Suite 26–01, New York, NY 10271.

Counsel for Plaintiff State of New York

James A. Donahue, III,
Chief Deputy Attorney General,
Benjamin L. Cox,
Deputy Attorney General, 14th Floor, Strawberry Square, Harrisburg, PA 17120.

Counsel for Plaintiff Commonwealth of Pennsylvania

Lizabeth A. Leeds,
Douglas L. Kilby,
Assistant Attorneys General, Antitrust Section, PL–01, The Capitol, Tallahassee, FL 32399–1050

Counsel for Plaintiff State of Florida

Anthony E. Harris, Esq. AH 5876,
U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

[FR Doc. 99–14469 Filed 6–10–99; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Forms for Agricultural Recruitment System

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed reinstatement, without change, collection of the Agricultural and Food Processing Clearance Order, Form ETA–790, Agricultural and Food Processing Clearance Memorandum, Form ETA–795, Migrant Worker Itinerary, Form ETA–785, and Job Service Manifest Record, Form ETA–785A.

A copy of the proposed information collection request can be obtained by contacting the employee or office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 10, 1999.

ADDRESSES: Rogelio Valdez, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4470, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5257, extension 167 (this is not a toll-free number) and, Internet address: rvaldez@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Migrant and Seasonal Farm worker regulations at 20 CFR 653.500 established procedures for agricultural clearance to all local offices to use the interstate clearance forms as prescribed by ETA. Local and State Employment offices use the Agricultural and Food Processing Clearance Order to extend job orders beyond their jurisdictions. Applicant holding local offices use the Agricultural Clearance Memorandum to give notice of action on a clearance order, request additional information, report results, and to accept or reject the extended job order. State agencies use the Migrant Worker Itinerary to transmit employment and supportive service information to labor-demand areas, and to assist migrant workers in obtaining employment. The Job Service Manifest Record shows names, addresses, and characteristics of all people named on the Migrant Worker Itinerary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Action

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of a reinstatement, without change, to an existing collection of information previously approved and assigned OMB Control No. 1205–0134.

There is no change in burden.

Type of Review: Reinstatement, without change.

Agency: Employnment and Training Administration, Labor.

Titles: Agricultural and Food Processing Clearance Order, Agricultural and Food Clearance Memorandum, Migrant Worker Itinerary, and Job Service Manifest Record. OMB Number: 1205–0134.

Affected Public: Individuals and households, employers, and State Governments.

Total Respondents 52.

Frequency: On occasion.

Estimated Total Burden Hours: 6,500.

Form	Volume per year	Hours per response	Hours per year
ETA–790	2,000	1.0	2,000

Form	Volume per year	Hours per response	Hours per year
ETA–795	3,000	.5	1,500
ETA–785	3,500	.5	1,750
ETA–785A	2,500	.5	1,250

Total Burden Cost: None.

Comments submitted in response to this will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 7, 1999.

John R. Beverly III,

Director, Employment Service.

[FR Doc. 99–14849 Filed 6–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension of two information collections: (1) Labor Organization and Auxiliary Reports and (2) Request of examination and/or treatment (LS–1). A copy of the proposed information collection requests (ICR) and/or the reporting forms can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 13, 1999. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–3201, Washington, DC 20210, (202) 693–0339 (this is not a toll-free number). Fax number: (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office Labor-Management Standards administers the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). The LMRDA provides for the disclosure of information on the financial transactions and administrative practices of labor organizations, and under certain circumstances, reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. The reporting provisions implement a basic tenet of the LMRDA, the guarantee of democratic procedures and safeguards within labor organizations that are designed to protect the basic rights of union members

II. Current Actions

The Department of Labor is seeking extension of the approval of the collection of information to be used by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1215–0188.

Agency Numbers: LM–1, LM–2, LM–3, LM–4, LM–10, LM–15, LM–15A, LM–16, LM–20, LM–21, S–1.

Affected Public: Not-for-profit institutions; individuals or households; business or other for-profit.

Total Respondents: 33,652.

Frequency: (As indicated in the burden hours summary chart)

Total Burden Hours (Reporting and Recordkeeping) Summary:

Cite/reference	Total respondents	Frequency	Total responses	Average Time per response	Burden (in hours)
Form LM–1	358	Annually	358	55 minutes	328
Form LM–2	6,005	Annually	6,005	15.25 hours	91,576
Form LM–3	14,234	Annually	14,234	6.75 hours	96,080
Form LM–4	9,285	Annually	9,285	.86 hours	7,975
Form LM–10	211	Annually	211	35 minutes	123
Form LM–15	389	As Necessary	389	1.83 hours	712
Form LM–15A	81	Semi-Annually	81	22 minutes	30
Form LM–16	82	As Necessary	82	21 minutes	29
Form LM–20	254	As Necessary	254	22 minutes	93
Form LM–21	64	Annually	64	35 minutes	37
Form LM–30	64	Annually	64	35 minutes	37

Cite/reference	Total respondents	Frequency	Total responses	Average Time per response	Burden (in hours)
Form S–1	89	Annually	89	35 minutes	52
Simplified Annual Report Format.	2,536	Annually	2,536	12 minutes	507
Totals	33,652		33,652		197,589

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $0.

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing or building a vessel. In addition, several acts extend coverage to certain other employees. Under section 7 of the Longshore Act, the employer/insurance carrier is responsible for furnishing medical care for the injured employee for such period of time as the injury or recovery period may require. Form LS–1 serves two purposes: it authorizes the medical care and provides a vehicle for the treating physician to report the findings, treatment given and anticipated physical condition of the employee.

II. Current Actions

The Department of Labor seeks extension of approval to collect information on Form LS–1 to verify that proper medical treatment as been authorized and to determine the severity of a claimant's injuries and thus his/her entitlement to compensation benefits which they are responsible by law to provide if a claimant is medically unable to work as a result of a work-related injury. If the information were not collected, verification of authorized medical care and entitlement to compensation benefits would not be possible.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Examination and/or Treatment.

OMB Number: 1215–0066.

Agency Number: LS–1.

Affected Public: Individuals or households.

Total Respondents: 16,500.

Frequency: On Occasion.

Total Responses: 115,500.

Total Burden Hours: (reporting): 124,740.

Total Burden Costs (capital/start-up): $0.

Total Burden Costs (operation/maintenance): $41,580.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 7, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99–14848 Filed 6–10–99; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with he Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because he necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, mut be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates an fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of

Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA990002 (Mar. 12, 1999)
MA990006 (Mar. 12, 1999)
MA990007 (Mar. 12, 1999)
MA990009 (Mar. 12, 1999)
MA990017 (Mar. 12, 1999)
MA990018 (Mar. 12, 1999)
MA990019 (Mar. 12, 1999)

Volume II

Pennsylvania
PA990001 (Mar. 12, 1999)
PA990002 (Mar. 12, 1999)
PA990004 (Mar. 12, 1999)
PA990008 (Mar. 12, 1999)
PA990018 (Mar. 12, 1999)
PA990019 (Mar. 12, 1999)
PA990021 (Mar. 12, 1999)
PA990063 (Mar. 12, 1999)

Volume III

None.

Volume IV

None.

Volume V

Missouri
MO990001 (Mar. 12, 1999)
MO990002 (Mar. 12, 1999)
MO990003 (Mar. 12, 1999)
MO990005 (Mar. 12, 1999)
MO990006 (Mar. 12, 1999)
MO990007 (Mar. 12, 1999)
MO990008 (Mar. 12, 1999)
MO990009 (Mar. 12, 1999)
MO990010 (Mar. 12, 1999)
MO990012 (Mar. 12, 1999)
MO990013 (Mar. 12, 1999)
MO990014 (Mar. 12, 1999)
MO990015 (Mar. 12, 1999)
MO990016 (Mar. 12, 1999)
MO990020 (Mar. 12, 1999)
MO990041 (Mar. 12, 1999)
MO990042 (Mar. 12, 1999)
MO990043 (Mar. 12, 1999)
MO990046 (Mar. 12, 1999)
MO990047 (Mar. 12, 1999)
MO990048 (Mar. 12, 1999)
MO990049 (Mar. 12, 1999)
MO990050 (Mar. 12, 1999)
MO990051 (Mar. 12, 1999)
MO990052 (Mar. 12, 1999)
MO990053 (Mar. 12, 1999)
MO990056 (Mar. 12, 1999)
MO990057 (Mar. 12, 1999)
MO990058 (Mar. 12, 1999)
MO990060 (Mar. 12, 1999)
MO990062 (Mar. 12, 1999)
MO990064 (Mar. 12, 1999)
MO990065 (Mar. 12, 1999)
MO990066 (Mar. 12, 1999)
MO990067 (Mar. 12, 1999)
MO990068 (Mar. 12, 1999)
MO990069 (Mar. 12, 1999)
MO990070 (Mar. 12, 1999)
MO990071 (Mar. 12, 1999)
MO990072 (Mar. 12, 1999)

Nebraska
NE990001 (Mar. 12, 1999)
NE990002 (Mar. 12, 1999)
NE990003 (Mar. 12, 1999)
NE990005 (Mar. 12, 1999)
NE990007 (Mar. 12, 1999)
NE990009 (Mar. 12, 1999)
NE990010 (Mar. 12, 1999)
NE990011 (Mar. 12, 1999)
NE990019 (Mar. 12, 1999)
NE990025 (Mar. 12, 1999)
NE990038 (Mar. 12, 1999)
NE990044 (Mar. 12, 1999)
NE990057 (Mar. 12, 1999)

New Mexico
NM990001 (Mar. 12, 1999)
NM990005 (Mar. 12, 1999)

Texas
TX990018 (Mar. 12, 1999)

Volume VI

None.

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 3rd day of June 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–14545 Filed 6–10–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Monday, July 12 and Tuesday, July 13, 1999, at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–2508, Washington, DC 20210 from 9:00 am to 4:30 pm.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, DC 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting
- Discussion on VETS' Response to the Report of the Congressional Commission on Servicemembers and Veterans Transition Assistance
- Update on Pending Legislation
- Update on the Implementation of the Workforce Investment Act
- Briefing on VETS' Strategic Plan

The meeting will be open to the public. Other matters may be discussed.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–693–4741 no latter than June 25, 1999.

Signed at Washington, D.C. this June 8, 1999.

Espiridion (Al) Borrego,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 99–14850 Filed 6–10–99; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–075]

National Environmental Policy Act; Ames Research Center; Aerodynamics Testing Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the final environmental impact statement (FEIS) for the NASA Ames Aerodynamics Testing Program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA has prepared and issued a FEIS for the proposed NASA Ames Aerodynamics Testing Program (ATP). The FEIS addresses environmental issues associated with proposed wind tunnel testing of high performance aircraft powered by engines with supersonic jet exhaust and powered-lift systems in the National Full-Scale Aerodynamics Complex (NFAC) at NASA Ames Research Center (ARC), Santa Clara County, California. The ATP proposes to define the envelope of future wind tunnel testing in the NFAC and change the operational parameters for testing in two facilities at ARC: the 40- by 80-foot Wind Tunnel and the 80- by 120-Foot Wind Tunnel. This program would increase maximum noise levels but would not increase the number of wind tunnel operation hours.

NASA's preferred alternative, Alternative 2, would allow 600 hours annually of full-scale wind tunnel testing of advanced aircraft technologies, but would limit the higher noise aerodynamic testing to daytime hours (*i.e.*, between 7:00 a.m. and 7:00 p.m.).

NASA has developed and issued a Mitigation Implementation Plan for the Agency's preferred alternative.

DATES: NASA will take no final action on the proposed ATP before July 12, 1999 or 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the ATP FEIS, whichever is later.

ADDRESSES: The FEIS and Mitigation Implementation Plan can be reviewed at the following locations:

(a) Mountain View Public Library, Reference Section, 585 Franklin Street, Mountain View, CA (650–903–6887).

(b) Sunnyvale Public Library, Reference Section, 665 West Olive Avenue, Sunnyvale, CA (408–730–7300).

(c) NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546 (202–358–0167).

(d) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(e) NASA, Spaceport USA, Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407–867–2497, so that arrangements can be made.

In addition, the FEIS and Mitigation Implementation Plan can be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(a) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–4191).

(b) NASA, Dryden Flight Research Center, Edwards AFB, (661–258–2662).

(c) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(d) NASA, Goddard Space Flight Center, Greenbelt, MD 20771(301–286–0730).

(e) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(f) NASA, Langley Research Center, Hampton, VA 23665 (757–864–2497).

(g) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–5549).

(h) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited copies of the FEIS and Mitigation Implementation Plan are available, on a first request basis, by contacting Sandra Olliges at the address, telephone number, or electronic mail address provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Olliges, NASA, Ames Research Center, M.S. 218–1/Building 218, Moffett Field, CA 94035–1000; telephone 650–604–3355; electronic mail (solliges@mail.arc.nasa.gov).

SUPPLEMENTARY INFORMATION: Better performance and decreased operational costs are necessary and critical components of future generations of high-performance military and civil aircraft development programs. High-performance aircraft share common requirements for testing with propulsion systems of very high thrust and increased jet exhaust velocities, which will tend to produce noise levels greater than present airplanes. These include new vertical take-off and landing fighter jets, as well as future generation supersonic civil transports.

The key to the successful development of these future generation aircraft is testing of the actual propulsion systems installed in full-scale models. The NFAC at ARC is the only test facility in the world that has this capability. Conducting such tests would provide a key capability for helping ensure the long-term dominance of U.S. aircraft in both the military environment and commercial marketplace.

The X–32/X–35 Joint Strike Fighter (JSF) testing project could be one of the first projects implemented under the ATP. The X–32/X–35 test aircraft and associated proposed testing project established the operational boundaries of high-noise testing in the NFAC wind tunnel facilities for the ATP. Testing at ARC for the High Speed Civil Transport program, which is developing new technology for supersonic civilian airliners that are economically viable and more environmentally friendly, is another program that could fall under the envelope of the ATP.

The JSF program is investigating the technical feasibility of fielding an affordable, military viable, multi-service aircraft in the 2010 time frame. This program currently has a dual experimental aircraft designation of X–32 and X–35. The JSF concept currently has three variations: (1) A Short Takeoff Vertical Landing attack aircraft for the U.S. Marine Corps and the U.K. Royal Navy; (2) a U.S. Air Force Conventional Takeoff and Landing multi-role fighter aircraft; and (3) an aircraft carrier capable fighter/attack aircraft for the U.S. Navy. The X–32/X–35 JSF program provides a unique opportunity to potentially develop a truly common and affordable aircraft for expeditionary naval forces and fixed-base land use.

It is important to note that the specific tests discussed in the FEIS may be representative of future test requirements not specifically identified to date. Therefore, this ATP FEIS will serve as a baseline document for the environmental evaluation of subsequent testing at Ames Research Center. The FEIS addresses common elements of such testing in a single document and provides detailed information on each

aspect of the ATP to the extent that such data are available.

Programmatic and test specific alternatives for this proposed testing that were considered include, but are not necessarily limited to: (1) Alternative daily time periods for typical testing activities; (2) modification of the testing procedures to reduce noise levels; (3) tests at a location other than Ames Research Center; and (4) elimination of the proposed ATP—"no action." As a result of preliminary analysis, the FEIS considers four alternatives in detail, including the "no action" alternative. The three action alternatives considered in detail would create the same maximum noise levels but differ primarily in the number of testing hours permitted annually and the daily time periods for different testing noise levels.

The FEIS considers the potential environmental impacts associated with the proposed ATP. Particular emphasis is placed on potentially incurred noise impacts and air emissions associated with the testing.

The FEIS is a program-level Environmental Impact Statement and thus, analyzes the environmental impacts of implementing a proposed new operational protocol for aerodynamics testing at ARC in the NFAC wind tunnel complex. The ATP would be made up of smaller, specific, limited duration and scope projects, such as the X–32/X–35 JSF testing project. If the ATP were adopted, any future testing project would be required to comply with the parameters of the ATP. NASA would be required to determine whether each proposed aerodynamics testing project is consistent with the ATP. If such a proposed aerodynamics testing project does not comply the ATP, assuming that ATP were adopted, additional environmental analysis and NEPA documentation would be prepared, as appropriate, before any final decision is made.

Comments on the Draft Environmental Impact Statement (DEIS) were solicited from Federal, State, and local agencies, organizations, and the general public through: (a) notices published in the **Federal Register**—NASA notice on June 28, 1995, (60 FR 33438) and U.S. Environmental Protection Agency notice on June 30, 1995, (60 FR 34246), (b) notices in the San Jose Mercury News and the La Oferta Review, (c) direct mailing of a fact sheet to persons within the proposed noise contours, and (d) a series of public participation meetings. A total of 13 written and 32 oral comments (arising during public meetings on the DEIS), primarily related to noise, were provided on the DEIS. These comments have been addressed in the FEIS.

Jeffrey E. Sutton,

Associate Administrator for Management Systems.

[FR Doc. 99–14875 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–076]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Aervoe-Pacific Company, of Gardnerville, Nevada, has applied for a partially exclusive license to practice the invention described and claimed in United States Patent No. 5,772,912, entitled "Environmentally Friendly Anti-Icing Fluid," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: June 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–14876 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–078]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that AVIR, L.L.C. of Charlottesville, VA, 22906, has applied for a partially exclusive license, limited to the field of use defined as "remote sensing of chemical weapons agents and drug manufacturing," to practice the inventions described and claimed in: U.S. Patent No. 5,128,797 entitled "NON-MECHANICAL OPTICAL PATH SWITCHING AND ITS APPLICATION TO DUAL BEAM SPETROSCOPY INCLUDING GAS FILTER CORRELATION RADIOMETER;" NASA Case No. LAR–15361–1–CU entitled "MULTI-GAS SENSOR;" and NASA Case No. LAR–15818–1–CU entitled "OPTICAL PATH SWITCHING BASED DIFFERENTIAL ABSORPTION RADIOMETRY FOR SUBSTANCE DETECTION;" all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center.

DATES: Responses to this notice must be received by August 10, 1999.

FOR FURTHER INFORMATON CONTACT: Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA, 23681–2199; telephone 757–864–3230.

Dated: June 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–14878 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–077]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Midwest Industrial Supply, Inc., of Canton, Ohio, has applied for a partially exclusive license to practice the invention described and claimed in United States Patent No. 5,772,912, entitled "Environmentally Friendly Anti-Icing Fluid," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: June 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–14877 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–079]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that SPX Corporation, of Muskegon, MI 49443, has applied for a partially exclusive license, limited to the field of use defined as "motor vehicle exhaust emission monitoring," to practice the inventions described and claimed in: U.S. Patent No. 5,128,797 entitled "NON-MECHANICAL OPTICAL PATH SWITCHING AND ITS APPLICATION TO DUAL BEAM SPETROSCOPY INCLUDING GAS FILTER CORRELATION RADIOMETER;" NASA Case No. LAR–15361–1–CU entitled "MULTI-GAS SENSOR;" and NASA Case No. LAR–15818–1–CU entitled "OPTICAL PATH SWITCHING BASED DIFFERENTIAL ABSORPTION RADIOMETRY FOR SUBSTANCE DETECTION;" all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the NASA Langley Research Center.

DATES: Responses to this notice must be received by August 10, 1999.

FOR FURTHER INFORMATON CONTACT: Kurt G. Hammerle, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA, 23681–0001; telephone 757–864–2470; facsimile 757–864–9190.

Dated: June 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–14879 Filed 6–10–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Callaway Plant; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (Commission) has issued Amendment No. 133 to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1 located in Callaway County, Missouri.

The amendment is effective as of the date of issuance and shall be implemented by April 30, 2000. The implementation of the amendment includes the two license conditions which are being added to Appendix C of the license as part of the amendment.

The amendment replaces, in its entirety, the current Technical Specifications (TS) with a set of improved TS based on NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April 1995, including all approved changes to the standard TS; the Commission's Final Policy Statement, "NRC Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," published on July 22, 1993 (58 FR 39132); and 10 CFR 50.36, "Technical Specifications," as amended July 19, 1995 (60 FR 36953). In addition, the amendment adds two license conditions to Appendix C of the operating license that require (1) the relocation of current TS requirements into licensee-controlled documents, and (2) the first performance of new and revised surveillance requirements for the improved TS to be related to the implementation date for the improved TS. The implementation of the amendment and the license conditions will be completed by April 30, 2000, as stated in the amendment.

The application for the amendment, as supplemented, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 27, 1999 (64 FR 22658). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and has determined not to prepare an environmental impact statement related to the action to convert the current TS to the improved TS. Based on the Environmental Assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment beyond that described in the Final Environmental Statement (FES) related to the operation of Callaway Plant, Unit 1 in NUREG–0813 dated January 1982. The Environmental Assessment was published in the **Federal Register** on May 26, 1999 (64 FR 28535).

For CN 9–01–LG in CTS 3/4.4 (and associated CN 3–13–M in CTS 6.0), the licensee has proposed to relocate the pressure/temperature (P/T) limits and cold overpressure mitigation system (COMS) limits from the CTS to the pressure temperature limits report (PTLR) and proposed to reference WCAP–14040–NP–A, Revision 1, "Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Curves," as the methodology for calculating the P/T and COMS limits. The staff approved the use of this WCAP report in its generic SE dated October 16, 1995. The licensee, however, has stated that it will operate Callaway, Unit 1 for the near future with the existing approved P/T and COMS limits in the CTS. Therefore, the limits addressed in the PTLR are the limits that the staff has previously reviewed and approved in Amendment 124 dated April 2, 1998. The amendment approved P/T limit curves that are valid for 20 effective full power years. The licensee will use the methodology in WCAP–14040–NP–A to calculate the future P/T and COMS limits before the time when the current values given in the amendment become invalid. The staff will review the licensee's future plant-specific application of the PTLR methodology to allow the licensee's future use of the PTLR methodology to calculate new P/T and COMS limits without prior staff approval. In the associated CN 3–13–M in CTS 6.0, the licensee proposed to add a reference to Amendment 124 to the PTLR in ITS 5.6.6. The amendment approved the limits that are listed in the PTLR and addressed the methodology used by licensee to calculate the limits. The staff believes that the staff's approval of the P/T and COMS limits in Amendment 124 was not an approval for the licensee to make future changes to these limits using the methodology described in the amendment. Listing Amendment 124 in ITS 5.6.6 may imply this is true and the

staff is not ready at this time to approve Amendment 124 for that purpose. The review of Amendment 124, or any other licensee submittal, for the purpose of allowing the licensee to make future changes to the P/T and COMS limits in ITS 5.6.6 without prior staff approval will the subject of a future letter.

For further details with respect to the amendment see (1) the application for amendment dated May 15, 1997, as supplemented by letters in 1998 dated June 26, August 4, August 27, September 24, October 21 (2 letters), November 23, November 25, December 11, and December 22, and in 1999 dated February 5, March 9, April 7, April 21, April 30, May 4, May 27, and May 28, and (2) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room located at the Elmer Ellis Library, University of Missouri, Columbia, Missouri, 65201.

Dated at Rockville, Maryland, this 28th day of May 1999.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–14841 Filed 6–10–99; 8:45 am]

BILLING CODE 7590–01–F

NUCLEAR REGULATORY COMMISSION

Laboratory Testing of Nuclear-Grade Activated Charcoal; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 99–02 to all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. It concerns the laboratory testing of nuclear-grade activated charcoal that is used in the safety-related air-cleaning units of engineered safety feature ventilation systems of nuclear power plants to reduce the potential onsite and offsite consequences of a radiological accident by adsorbing iodine. The purpose of the generic letter is to request licensees of operating nuclear power reactors to amend their facility technical specifications to reference either the American Society for Testing and Materials (ASTM) standard ASTM D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon," or an alternate test protocol that has been demonstrated to give comparable results. Licensees may also propose another course of action, which would be subject to NRC review and approval. The objective is to assure licensee compliance with the licensing bases of their respective facilities, as they relate to the onsite and offsite dose consequences of General Design Criterion 19 of Appendix A to 10 CFR part 50 and the guideline values of subpart A of 10 CFR part 100, respectively.

The generic letter also requests that licensees submit information. The requested information will enable the NRC staff to determine to which testing standard licensees are currently testing the nuclear-grade activated charcoal of their engineered safety features ventilation systems.

DATES: The generic letter was issued on June 3, 1999.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: John P. Segala, at (301) 415–1858.

SUPPLEMENTARY INFORMATION: This generic letter is available in the NRC Public Document Room under accession number 9906030055. This generic letter is discussed in Commission information paper SECY–99–132 which is also available in the NRC Public Document Room.

Dated at Rockville, Maryland, this 3rd day of June 1999.

For The Nuclear Regulatory Commission.

Scott F. Newberry,

Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–14842 Filed 6–10–99; 8:45 am]

BILLING CODE 7590–01–F

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23861; 812–11410]

Emerging Markets Growth Fund, Inc., et al.; Notice of Application

June 7, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(3)(A) and (D) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The order would permit applicant, Emerging Markets Growth Fund, Inc. (the "Fund"), to invest in an affiliated investment vehicle, Capital International Global Emerging Markets Private Equity Fund, L.P. (the "Partnership").

APPLICANTS: The Fund, the Partnership, Capital International Investments, LLC (the "General Partner"), Capital International, Inc. (the "Manager"), Capital Group International, Inc. ("CGII"), and CGPE LLC ("CGPE").

FILING DATES: The application was filed on November 17, 1998. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Capital International, Inc., 11100 Santa Monica Boulevard, Los Angeles, CA 90025.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Attorney, at (202) 942–0572 or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund, a Maryland corporation, currently is a closed-end management investment company registered under the Act. The Fund's shares are

registered under the Securities Act of 1933. The Fund's investment objective is to seek long-term capital growth by investing in equity securities of issuers in developing countries. The Fund may invest up to 10% of its assets in developing country securities that are not readily marketable. The Fund currently invests in nine private equity funds that invest in various regions globally and that are sponsored and advised by entities unaffiliated with the Manager.[1]

2. The Fund offers new shares for sale on a limited basis to investors that meet certain suitability criteria prescribed by the Fund. Pursuant to an SEC exemptive order, on or about July 1, 1999, the Fund intends to convert from a closed-end fund to a registered open-end interval fund with monthly redemptions.[2] In anticipation of the conversion, as of January 1, 1999, all new investors in the Fund must be "qualified purchasers," within the meaning of section 2(a)(51) of the Act and the rules and interpretive positions under the Act.

3. The Partnership is organized as a limited partnership under the laws of Delaware. The Partnership relies on the exception from the definition of investment company in section 3(c)(7) of the Act. The investment objective of the Partnership is to seek long-term capital appreciation through privately negotiated equity and equity-related investments in emerging market companies ("Equity Investments"). The General Partner of the Partnership is a Delaware limited liability company wholly-owned by CGII, CGPE, and the Manager. CGII is a wholly-owned subsidiary of The Capital Group Companies, Inc. ("Capital Group"). CGPE is wholly-owned by the Manager and officers and employees of companies controlled by the Capital Group (collectively, the "Associates"). The General Partner has made a U.S. $35.06 million capital commitment to the Partnership.

4. The Fund proposes to invest up to U.S. $95 million (less than 1% of the Fund's total assets as of March 1, 1999, and less than 10% of the Partnership's interests) in the Partnership. Applicants state that investing through the Partnership in Equity Investments would enable the Fund to achieve greater diversification by participating in many more investments than would be the case if the Fund invested directly in Equity Investments. In addition, applicants state that, given the Fund's current fee and expense structure, and the resource-intensive nature of the investment process for Equity Investments, it is not cost-effective for the Fund to invest directly in Equity Investments on a diversified basis. The Fund's board of directors (the "Board"), including a majority of the directors who are not "interested persons" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Directors"), has authorized the proposed investment by the Fund in the Partnership. Of the Fund's fourteen member Board, ten are Independent Directors. Of the ten Independent Directors, none is or will be a direct investor in CGPE. and nine are neither directors nor officers of any investor in the Partnership.

5. The Partnership has an advisory board comprised exclusively of representatives of current limited partners (together with future limited partners, "Limited Partners") that have a capital commitment of at least $40 million to the Partnership and other Limited Partners that are selected by the General Partner ("Advisory Committee"). A representative of the Fund, who is an Independent Director of the Fund and is not otherwise affiliated with the Partnership or any of the Limited Partners, will become a member of the Advisory Committee if the requested relief is granted. The Advisory Committee is responsible for, among other things: (a) providing advice and counsel to the Partnership and the General Partner in connection with potential conflicts of interest and other matters relating to the Partnership as may be requested by the General Partner or as provided in the partnership agreement, as modified by side letters ("Partnership Agreement"); and (b) approving certain valuation determinations of the Partnership's assets or interests.

6. The Manager, a wholly-owned subsidiary of CGII, serves as investment adviser to the Fund and the Partnership and is registered under the Investment Advisers Act of 1940 (the "Advisers Act"). The Manager will waive its management fee, including administrative fees, with respect to the Fund's net assets represented by the investment in the Partnership. Specifically, the Fund's aggregate net assets will be adjusted downward by the amount invested in the Partnership prior to determining the Manager's fee.

7. The Manager is responsible for all direct and indirect expenses incurred by the Manager in connection with identifying investments for the Partnership and all direct and indirect routine administrative expenses of the Partnership incurred in connection with managing the Partnership following the first closing, which occurred on July 10, 1998. For its services, the Manager receives an advisory fee throughout the term of the Partnership. In addition, the Manager, as a member of the General Partner, will be entitled to receive certain fees which may be characterized as a "performance fee." The Partnership is responsible for all expenses except routine administrative expenses incurred in connection with the operation of the Partnership.

8. Each Limited Partner must execute a subscription agreement ("Subscription Agreement") to invest in the Partnership. The term of the Partnership is ten years from the final closing, which occurred on January 19, 1999, but the General Partner may extend the term for one one-year period at its discretion and for an additional one-year period with the approval of a majority in interest of the Limited partners. Limited Partners generally may not withdraw from the Partnership nor transfer any of their interests, rights, or obligations under the Partnership, except with the express written consent of the General Partner.[3]

9. All Limited Partners that enter into the Partnership Agreement after the first closing date will make a capital contribution to the Partnership on the date of their admission so that the percentage of their capital commitment that is contributed to the Partnership is equal to the percentage of the other Limited Partners' and General Partner's (together, the "Partners") capital commitments (a "Catch-up Contribution"). Any Limited Partner, other than the Fund, that is admitted to the Partnership after the fifteenth business day following the first closing date will be required to pay to all previously admitted Partners (in accordance with their respective percentage interests) an additional amount equal to a 1% monthly rate on the Catch-up Contribution from the date capital contributions were made by the previously admitted Partners to the date of its admission (the "Additional Amount"). The Additional Amount which

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[1] None of the Fund's current commitments to any single private equity fund exceeds 1% of the Fund's net assets.

[2] Investment Company Act Release Nos. 23433 (Sept. 11, 1998) (notice) and 23481 (Oct. 7, 1998) (order).

[3] Notwithstanding the foregoing, for regulatory compliance reasons, Limited Partners that are subject to fiduciary obligations under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), may withdraw from the Partnership in the event it becomes reasonably likely that the assets of the Partnership are deemed to be "plan assets" under ERISA rules and regulations. If Limited Partners subject to ERISA withdraw in the aggregate over 50% of the capital commitments of all Limited Partners subject to ERISA, any Limited Partner may elect to withdraw from the Partnership in accordance with the terms and procedures set forth in the Partnership Agreement.

the Fund will be required to pay on its admission will be an additional amount on its Catch-up Contribution at a rate equal to the then prime rate plus 2% per year (or a *pro rata* portion thereof) from the date capital contributions were made by the previously admitted Partners to the date of the Fund's admission. In addition, all new Limited Partners (including the Fund) will be required to pay to the Manager their share of current management fees as well as management fees from the first closing date. With respect to management fees allocable to the period prior to its admission, each new Limited Partner will pay an additional amount on the allocable amount of management fees at the rate of the then prime rate plus 2% per year (or a *pro rata* portion thereof) from the date the management fees were made by the previously admitted Partners to the date of its admission. Any such retroactive management fee allocated to the Fund will be credited against the management fees it pays to the Manager.

10. Applicants request relief to permit: (a) the Fund to invest as a Limited Partner up to U.S. $95 million (less than 1% of the Fund's total assets and less than 10% of the Partnership's interests) in the Partnership; (b) the General Partner to invest as a general partner in the Partnership; (c) the Chase Manhattan Bank, as trustee for the Second Plaza Group Trust (together with any successor trustee or trust, "Plaza Trust"), any investor in the Fund who in the future may become an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Fund by virtue of the investor's ownership of 5% or more of the Fund's outstanding securities ("Future Affiliates") and any affiliated person of a Future Affiliate (also, "Future Affiliates"), to invest as a Limited Partner in the Partnership under the terms and conditions of the Partnership Agreement and the Subscription Agreement; (d) the Manager, as investment adviser to the Fund and the Partnership, to effect the transactions described above in (a); (e) the Manager, CGII, and CGPE to exercise ownership rights in the General Partner and to invest in the Partnership indirectly through their ownership of the General Partner; (f) the Manager and the Associates to invest and exercise ownership rights in CGPE; (g) each of applicants, Plaza Trust, General Motors Investment Management Corporation ("Plaza Advisers"), current and future Limited Partners, and the Future Affiliates to exercise its rights and obligations under the Partnership Agreement and Subscription Agreement; and (h) any officer, director, or employee of the Fund or of any affiliated person of the Fund to participate as a member of the Advisory Committee of the Partnership and to exercise their rights and fulfill their obligations with respect to the Advisory Committee in accordance with the terms and conditions of the Partnership Agreement.

11. Applicants also request relief to allow the Limited Partners, the Chase Manhattan Bank, as trustee for General Motors Employees Global Group Pension Trust (together with any successor trustee or trust, the "Pension Trust"), and any affiliated person of Plaza Trust or Pension Trust, including Plaza Advisers ("Trust Affiliates"), not to be considered affiliated persons, or affiliated persons of affiliated persons, of the Fund, either because: (a) the Limited Partners (including Plaza Trust) are "partners" or "copartners" of the Fund in the Partnership; or (b) they own (or are deemed to own) 5% or more of the Partnership's outstanding voting securities.[4]

Applicants' Legal Analysis

A. Section 2(a)(3)

1. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person holding 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are held by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; (d) any officer, director, partner, copartner, or employee of the other person; and (e) any investment adviser to an investment company or member of an advisory board to an investment company (collectively, the "first-tier affiliates").

2. The Manager, as the investment adviser to the Fund and the Partnership and as the manager of the General Partner, is a first-tier affiliate of each. The General Partner would be a first-tier affiliate of the Fund. The Manager, CGII, and CGPE are members of the General Partner. Applicants state that the General Partner may be controlled by each, and the Partnership is likely controlled by the General Partner, perhaps making the Manager, CGII, and CGPE first-tier affiliates of the Partnership and, hence, affiliated persons of first-tier affiliates ("second-tier affiliates") of the Fund.

3. Applicants state that each Limited Partner who owns 5% or more of the interests in the Partnership, to the extent that the interests are deemed voting securities, may be a first-tier affiliate of the Partnership. Further, applicants state that because the Fund also will own more than 5% of the interests in the Partnership if the requested relief is granted, it also may be a first-tier affiliate of the Partnership. Therefore, each other Limited Partner could be a second-tier affiliate of the Fund. In addition, each Limited Partner would, absent exemptive relief, be a first-tier affiliate of every other Partner in the Partnership, including the Fund, making the affiliated persons of each Limited Partner second-tier affiliates of the Fund.

4. Applicants state that Pension Trust is an owner with the power to vote 5% or more of the outstanding voting securities of the Fund and, together with Pension Trust's investment adviser, Plaza Advisers, may be a first-tier affiliate of the Fund. Applicants also state that Plaza Trust owns more than 5% of the outstanding Limited Partner interests in the Partnership, and, thus, may be a first-tier affiliate of the Partnership. Applicants further state that Plaza Trust and Pension Trust may be under common control and, therefore, Plaza Trust and certain other persons that make up the Trust Affiliates may be second-tier affiliates of the Fund. In addition, applicants state that some Associates may be directors, officers, or employees of the Manager or the Fund, arguably making them second-tier affiliates of the Fund.

B. Exemption From Sections 2(a)(3)(A) and (D)

1. The Fund requests an exemption under section 6(c) from sections 2(a)(3)(A) and (D) so that Limited Partners in the Partnership who are not otherwise first- or second-tier affiliates of the Fund would not, solely by reason of their status as Limited Partners or 5% holders of the Partnership's interests, be deemed to be first- or second-tier affiliates of the Fund. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. Applicants state that the requested

[4] Plaza Trust and Pension Trust are group trusts formed under and for the benefit of certain employee benefit plans of General Motors Corporation and its affiliates. Plaza Advisers serves as the investment adviser for both the Plaza Trust and Pension Trust and, in that capacity, has discretionary authority over their respective interests in the Partnership and the Fund. As of March 31, 1999, Pension Trust also owned approximately 7.4% of the Fund's outstanding securities.

relief meets the standards of section 6(c) and would relieve certain Limited Partners and their affiliated persons (and the Fund) of the burden of monitoring for compliance with the Act in connection with their independent and legitimate business and investment activities.

C. Section 17(a).

1. Section 17(a) of the Act makes it unlawful or any first- or second-tier affiliate of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. As noted above, applicants state that because the Partnership may be deemed to be a first- or second-tier affiliate of the Fund, section 17(a) may prohibit the Partnership from selling a limited partnership interest in the Partnership to the Fund. In addition, applicants state that because Plaza Trust, the Limited Partners, and the Future Affiliates may be deemed to be first- or second-tier affiliates of the Fund, section 17(a) may prohibit Plaza Trust, the Limited Partners, and the Future Affiliates from acting in accordance with the terms of the Partnership Agreement and the Subscription Agreement.

2. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request relief under sections 6(c) and 17(b) to permit the Fund to participate in the Partnership, and to permit Plaza Trust, the Limited Partners, and the Future Affiliates to act in accordance with the terms of the Partnership Agreement and the Subscription Agreement.

3. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that each Limited Partner will participate in the Partnership in proportion to each Limited Partner's commitment, and each Limited Partner will share *pro rata* in the costs, risks, and any profits earned in proportion to its investment, except as noted above. In addition, applicants state that the proposed investment by the Fund in the Partnership is consistent with the Fund's investment objective and policies as recited in the Fund's registration statement. Further, applicants state that the proposed investment is consistent with the general purposes of the Act.

4. Applicants state that investing in the Partnership will enable the Fund to further diversify its portfolio and to obtain exposure to Equity Investments while reducing investment transaction costs. Applicants submit that investing in the Partnership will provide the Fund with access to investment opportunities that do not exist with respect to the public markets in which the Fund principally invests. Applicants state that Equity Investments are typically direct investments in closely-held enterprises that have either limited or no securities publicly outstanding and about which there exists little or no publicly available information. Accordingly, the process of investing in Equity Investments requires detailed on-site investigation of the enterprise and complex negotiations regarding the terms of the potential investment.

5. As noted above, all Limited Partners other than the Fund that are admitted after the fifteenth business day following the first closing date will be required to pay an Additional Amount equal to a 1% monthly rate on their Catch-up Contribution. This monthly rate calculated over a one-year period would equal an annual rate of approximately 12%. The Fund will be required to pay an Additional Amount on its Catch-up Contribution at a rate equal to the then-prime rate, plus 2% per year.[5] Accordingly, if the prime rate were to exceed 10% prior to the time the Fund is admitted into the Partnership, the Fund would pay an Additional Amount calculated at a higher rate than that rate used to calculate the Additional Accounts for the other Limited Partners. Notwithstanding that the Fund may have to pay a higher Additional Amount than that applicable to other Limited Partners, applicants believe that the consideration to be paid by the Fund is reasonable and fair and does not involve overreaching. In exchange for the ability to gain admission to the Partnership after the final closing date (which occurred on January 19, 1999), to which all other Limited Partners are subject, applicants believe that it is reasonable and fair for the Fund to bear the risk of fluctuations in the prime rate between the final closing date and the date the Fund is admitted into the Partnership.

[5] Applicants state that as of June 1, 1999, the prime rate was 7.75%

D. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any first- or second-tier affiliate of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates. As noted above, the Partnership, the General Partner, the Limited Partners, Plaza Trust, Pension Trust, the Trust Affiliates, the Future Affiliates, the Manager, CGII, CGPE, the Associates, and Capital Group may be first- or second-tier affiliates of the Fund. Accordingly, an investment in the Partnership by the Fund may represent a joint arrangement among these entities for the purposes of section 17(d).

2. Rule 17d–1 under the Act permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment company is on a basis different from or less advantageous than that of the other participants.

3. Applicants believe that the proposed investment by the Fund in the Partnership satisfies the standards of rule 17d–1. Applicants state that the Fund will participate in the Partnership on terms that are comparable to the terms applicable to the other Limited Partners. Furthermore, both the profits to be earned and the risks to be incurred will be allocated among each of the Limited Partners *pro rata*, in direct proportion to each Limited Partner's investment. With regard to the payment by the Fund of an Additional Amount that could be at a rate higher than that for other Limited Partners, applicants state that the fund would receive a corresponding benefit not offered to other Limited Partners, namely the ability to participate in the Partnership after the final closing date.

Applicants' Conditions

Applicants agree that any other of the SEC granting the requested relief will be subject to the following conditions:

1. The Manager will waive its management fee (which includes administrative fees) payable by the Fund with respect to the Fund's net assets committed to the Partnership by the Fund's proposed investment in the Partnership. To effectuate this waiver, Fund assets represented by the Partnership interests purchased by the

Fund under the proposed investment will be excluded from the net assets of the Fund in the calculation of the management fee. As this waiver relates to the Manager's fee schedule, any Fund assets invested in the Partnership will be excluded from the Fund's assets before any fee calculation is made; thus, the Fund's aggregate net assets will be adjusted by the amount invested in the Partnership prior to determining the fee based on the Manager's fee schedule (the amount waived pursuant to this procedure is the "Reduction Amount" for purposes of condition no. 4, below). In addition, the Manager will credit against any future management fees payable to it in conjunction with the management of Fund assets other than those represented by the Partnership interests under the proposed investment, any amount of retroactive management fees, including any other amounts directly related to the retroactive management fees, payable to it from the first closing date that the Fund is admitted to the Partnership. The credit shall be applied to the management fee paid by the Fund for management of its assets after exclusion of the Fund's assets represented by its Partnership interests.

2. Any fees payable by the Fund to the Manager so excluded in connection with the proposed investment, as described in the application, will be excluded for all time, and will not be subject to recoupment by the Manager or by any other investment adviser at any other time.

3. The Fund's proposed investment in the Partnership will be no more than U.S. $95 million.

4. If the Manager waives any portion of its fees or bears any portion of its expenses in respect of the Fund (an "Expense Waiver"), the adjusted fees for the Fund (gross fees minus Expense Waiver) will be calculated without reference to the Reduction Amount. If the Reduction Amount exceeds adjusted fees, the Manager will reimburse the Fund in an amount equal to such excess.

5. The Fund's proposed investment in the Partnership will not be subject to a sales load, redemption fee, distribution fee analogous to those adopted in accordance with rule 12b–1 by an investment company registered under the Act, or service fee (analogous to that defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

6. The Fund's proposed investment in the Partnership will be in accordance with the Fund's investment restrictions and will be consistent with its policies as recited in its registration statement.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14874 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23860; 812–10756]

WEBS Index Fund, Inc., et al.; Notice of Application

June 7, 1999.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit an open-end management investment company, whose portfolios will consist of the component securities of certain indices, to issue shares of limited redeemability; permit secondary market transactions in the shares of the portfolios at negotiated prices on the American Stock Exchange LLC (the "AMEX"); permit affiliated persons of the portfolios to deposit securities into, and receive securities from, the portfolios in connection with the purchase and redemption of aggregations of the portfolios' shares; and permit certain portfolios to pay redemption proceeds more than seven days after the tender of shares of the portfolios for redemption.

APPLICANTS: WEBS Index Fund, Inc. (the "Fund"), Barclays Global Fund Advisors (the "Adviser"), and Funds Distributor, Inc. (the "Distributor").

FILING DATES: The application was filed on August 14, 1997. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 2, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, WEBS Index Fund, Inc., 400 Bellevue Parkway, Wilmington, Delaware 19809, Attn: Gary M. Gardner, Esq., Asst. Secretary.

FOR FURTHER INFORMATION CONTACT: Timothy Kane, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company incorporated in the State of Maryland and registered under the Act. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the Fund. The Distributor, a broker registered under the Securities Exchange Act of 1934 (the "Exchange Act") and a member of the National Association of Securities Dealers, Inc., serves as the principal underwriter of the Fund's shares on an agency basis.

2. Currently, the Fund has 17 series operating and now proposes to establish 11 new series (each such new series, a "WEBS Index Series"). Each WEBS Index Series will invest in a portfolio of equity securities ("Portfolio Securities") generally consisting of component securities of a specified securities index compiled by Morgan Stanley Capital International Inc. (collectively, the "MSCI Indices").[1] The eleven proposed WEBS Index Series are the Brazil WEBS Index Series, the Greece WEBS Index Series, the Indonesia (Free) WEBS Index Series,[2] the South Korea WEBS Index

[1] Each of the MSCI Indices is calculated by Morgan Stanley Capital International Inc. ("MSCI"). The trade price of the WEBS of each WEBS Index Series, as traded on the AMEX, will be disseminated over the facilities of the Consolidated Tape Association.

[2] MSCI calculates two indices in some countries in order to address the issue of restrictions on foreign ownership in such countries. The additional indices are called "Free" indices, and they include

Series, the Portugal WEBS Index Series, the Taiwan WEBS Index Series, the Thailand (Free) WEBS Index Series, the Turkey WEBS Index Series, the South Africa WEBS Index Series, the United States WEBS Index Series, and the EMU WEBS Index Series.

3. The investment objective of each WEBS Index Series will be to provide investment results that correspond generally to the price and yield performance of publicly traded securities in the markets that are represented by the particular MSCI Index. Each WEBS Index Series will be passively managed by the Adviser with the assistance of, among other things, computer analytics designed to help the Adviser select securities that will provide the returns of the relevant MSCI Index. A WEBS Index series generally will not hold all of the issues that comprise the subject MSCI Index. Instead, each WEBS Index Series will attempt to hold a representative sample of the securities in the subject index, which will be selected by the Adviser using quantitative analytical models in a technique known as "portfolio sampling."[3] Using portfolio sampling, a WEBS Index Series will normally not replicate exactly the particular index. The Adviser expects that, over time, the "expected tracking error" of a WEBS Index Series relative to the performance of its corresponding index will be less than 5 percent.[4]

4. Shares of a WEBS Index Series ("WEBS") will be sold in aggregations of 50,000 to 500,000 shares ("Creation Units") depending on the WEBS Index Series. The price of a Creation Unit will be approximately $450,000 to $10,000,000 (based on the range of values of the Portfolio Securities of each WEBS Index Series as of April 30, 1999).

5. Creation Units may be purchased only by or through a Depository Trust Company ("DTC") participant that has entered into an authorized participant agreement with the fund and the Distributor ("Authorized Participant"). WEBS generally will be issued in exchange for an in-kind deposit of securities and cash. The Fund also may sell WEBS on a "cash only" basis or permit a cash purchase option. An investor wishing to make an in-kind purchase of a Creation Unit from a WEBS Index Series will have to transfer to the Fund a "Portfolio Deposit" consisting of: (i) a portfolio of securities that has been selected by the Adviser to correspond to the returns on the relevant MSCI Index ("Deposit Securities"),[5] (ii) a cash payment equal per Creation Unit to the dividends accrued on the Portfolio Securities of the WEBS Index Series since the last dividend payment on the Portfolio Securities, net of expenses and liabilities (the "Dividend Equivalent Payment"), and (iii) a cash payment or credit to equalize any differences between (a) the sum of the market value per Creation Unit of the Deposit Securities and the Dividend Equivalent Payment and (b) the net asset value ("NAV") per Creation Unit of the WEBS Index Series (the "Balancing Amount" and, together with the Dividend Equivalent Payment, the "Cash Component").[6] Cash purchases of Creation Units will be made in the same manner as in-kind purchases except that an investor must pay the cash equivalent of the Deposit Securities. An investor purchasing a Creation Unit from a WEBS Index Series will be charged a purchase fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the WEBS Index Series incurring costs in connection with the purchase of the Creation Units.[7] Each WEBS Index Series will disclose in its prospectus the Transaction Fees charged by the WEBS Index Series for both in-kind and cash purchases of Creation Units.

6. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the orders to the Fund. The Distributor will issue confirmations of acceptance, issue delivery instructions to the WEBS Index Series to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributors also will be responsible for delivering prospectuses to purchasers of Creation Units.

7. Persons purchasing Creation Unit-size aggregations of WEBS from a WEBS Index Series may hold the WEBS or sell some or all of them in the secondary market. WEBS will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. One or more AMEX specialists will be assigned to make a market in WEBS. The price of WEBS traded on the AMEX will be based on a current bid/offer market, and each WEBS is expected to have a market value of less than $50 (based on the value of the Portfolio Securities of each WEBS Index Series as of April 30, 1999). Transactions involving the sale of WEBS in the secondary market will be subject to customary brokerage commissions and charges. Applicants expect that the price at which WEBS trade will be disciplined by arbitrage opportunities by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that WEBS will not trade at a material discount or premium in relation to their NAV.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market, for WEBS, also may purchase WEBS for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of WEBS will include both institutional and retail investors.[8]

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only companies and share classes which foreigners may purchase.

[3] Under this technique, each stock in a benchmark index will be considered for inclusion in the portfolio of a WEBS Index Series based on its contribution to certain capitalization, industry, and fundamental investment characteristics. Subject to the need to comply with the diversification and other requirements of the Internal Revenue Code and other restrictions on portfolio management, the Adviser will seek to construct the portfolio of each WEBS Index Series so that, in the aggregate, its capitalization, industry, and fundamental investment characteristics perform like those of the subject MSCI Index. Certain WEBS Index Series may invest in securities that are not in its benchmark index to a limited extent.

[4] The tracking error will generally be greater for WEBS Index Series that have corresponding indices with fewer component stocks.

[5] The identity and number of shares of the Deposit Securities required for each WEBS Index Series will change as rebalancing adjustments and corporate events are reflected from time to time by the Adviser. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the securities constituting an MSCI Index. The Fund may permit or require the substitution of an amount of cash for any Deposit Security that is unavailable in sufficient quantity or for other reasons.

[6] On each business day, the Adviser will make available through the Distributor, immediately prior to the opening of trading on the AMEX, the list of the names and the required number of shares of each Deposit Security for each WEBS Index Series that permits in-kind purchases of Creation Units. The Portfolio Deposit will be applicable to purchases of Creation Units until a change in the Portfolio Deposit composition is next announced. In addition, the Fund will make available on each business day the Dividend Equivalent Payment effective through and including the previous business day, per outstanding WEBS of each WEBS Index Series, and the AMEX will make available throughout the trading day, the sum of the Dividend Equivalent Payment effective through and including the close of the previous trading session in the relevant securities market, plus the current value of the Deposit Securities as in effect on such day reflected in U.S. dollars at the prevailing exchange rate.

[7] To offset the Fund's brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities, the investor will be required to pay a fixed purchase fee plus an additional variable charge expressed as a percentage of the Portfolio Deposit's NAV.

[8] WEBS will be registered in book-entry form only. DTC or its nominee will be the registered

Continued

9. WEBS will not be individually redeemable. WEBS will only be redeemable in Creation Unit-size aggregations through each WEBS Index Series. To redeem an investor will have to accumulate enough WEBS to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive a portfolio of securities generally consisting of the Deposit Securities in effect on the date the redemption request is received, together with a "Cash Redemption Payment" consisting of an amount identical to the amount of the Cash Component and equal to a proportional amount of the Dividend Equivalent Payment, plus or minus the Balancing Amount. An investor may receive the cash equivalent of a Portfolio Security (i) if neither the investor nor the Authorized Participant acting in its behalf may take delivery of the Portfolio Security in the applicable jurisdiction, (ii) if it is not possible to make deliveries of the Portfolio Security in the jurisdiction, or (iii) in certain other circumstances.[9] A redeeming investor will pay a Transaction Fee to offset the fund's transaction costs, whether the redemption proceeds are in-kind or cash. An additional variable charge, expressed as a percentage of the redemption proceeds, will be made for cash redemptions.

10. Because each WEBS Index Series generally will redeem Creation Units in-kind, a WEBS Index Series will not have to maintain large cash reserves for redemptions. Even when a WEBS Index Series will require or allow cash redemptions, the WEBS Index Series will liquidate Portfolio Securities or utilize temporary bank borrowings in order to obtain the necessary cash. This will allow the assets of each WEBS Index Series to be committed as fully as possible to tracking its MSCI Index. Accordingly, applicants state that each WEBS Index Series will be able to track its MSCI Index more closely than certain other investment products that must allocate a greater portion of their assets to reserves for cash redemptions.

11. Applicants state that no WEBS Index Series will be marketed or otherwise held out as a "mutual fund." All marketing materials will refer to a WEBS Index Series as an "investment company" without reference to an "open-end fund" or "mutual fund." Any advertising material where features of obtaining, buying or selling Creation Unit aggregations of WEBS are described, or where there is a reference to redeemability, will prominently disclose that WEBS are not redeemable and that owners of WEBS may acquire and tender WEBS for redemption to the Fund in Creation Unit aggregations only. The same type of disclosure will be provided in each WEBS Index Series' prospectus, statement of additional information ("SAI"), marketing or advertising materials published under rule 482 under the Securities Act of 1933 ("Securities Act"), and all reports to shareholders.[10] The Fund will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of WEBS.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) (1) and (2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because WEBS will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit the Fund to register and operate as an open-end management investment company and issue WEBS that are redeemable in Creation Unit aggregations. Applicants state that investors may purchase WEBS in Creation Units from each WEBS Index Series and redeem Creation Units through each WEBS Index Series. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors generally should be able to sell WEBS in the secondary market at approximately their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in WEBS will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of WEBS in the secondary market will not comply with section 22(d) and rule 22c–1. Applicants request an exemption under section 6(c) of the Act from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing WEBS. Applicants maintain while there is little legislation history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices,

owner of all outstanding WEBS. Records reflecting the beneficial owners of WEBS will be maintained by DTC or its participants.

[9] The Fund has a policy to permit residents of New Zealand and Australia to redeem Creation Units solely for cash because residents of those countries are subject to unfavorable tax consequences if they are eligible to receive in-kind redemption proceeds from the Fund.

[10] Applicants state that persons purchasing Creation Units will be cautioned in the prospectus or SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent WEBS, and sells WEBS directly to its customers; or if it chooses to couple the creation of a supply of new WEBS with an active selling effort involving solicitation of secondary market demand for WEBS. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus or SAI also will state that broker-dealer firms should note that dealers who are not "underwriters" but are effecting transactions in WEBS, whether or not participating in a distribution of WEBS, are generally required to deliver a prospectus because the prospectus delivery exemption in section 4(3) of the Securities Act is not available to such transactions under section 24(d) of the Act.

and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting WEBS to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in WEBS would not cause dilution for owners of WEBS because such transactions do not directly involve Fund assets, and (ii) to the extent different prices exist during a given trading day, or from day to day, these variances will occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in WEBS will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of WEBS and their NAV generally remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that local market delivery cycles for transferring Portfolio S ecurities to redeeming investors, together with local market holiday schedules, will require a delivery process in excess of seven calendar days for some WEBS Index Series in certain circumstances during the calendar year. Applicants request relief under section 6(c) from section 22(e) so that certain of the WEBS Index Series may pay redemption proceeds up to twelve calendar days after the tender of WEBS for redemption.[11] Except as otherwise subsequently disclosed in the prospectus or SAI for the relevant WEBS Index Series, applicants expect, however, that these WEBS Index Series will be able to deliver redemption proceeds within seven days at all other times.[12]

8. The principal reason for the requested exemption is that settlement of redemptions for the WEBS Index Series is contingent not only on the settlement cycle of the United States market but also on the currently practicable delivery cycles in the local markets for the underlying foreign securities of each WEBS Index Series. Applicants believe that the Fund will be able to comply with the delivery requirement of section 22(e) except where the holiday schedule applicable to the specific foreign market will not permit delivery of redemption proceeds within seven calendar days.

9. Applicants state that section 22(e) of the Act was designed to prevent unreasonable, undisclosed, and unforeseen delays in the payment of redemption proceeds. Applicants assert that their requested relief will not lead to the problems section 22(e) was designed to prevent. Delays in the payment of WEBS redemption proceeds will occur principally due to local holidays. Applicants state that the local holidays relevant to each WEBS Index Series (for the following year) will be listed in the series' prospectus or SAI or both, and these disclosure documents will identify instances in such year when, due to such holidays, more than seven days will be needed to deliver redemption proceeds.

Section 17(a) of the Act

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units may be "in-kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of a WEBS Index Series from purchasing or redeeming Creation Units in-kind. Because the definition of "affiliated person" of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the WEBS Index Series so long as fewer than twenty Creation Units are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the WEBS Index Series to purchase and redeem Creation Units.

11. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of the WEBS Index Series described above from purchasing or redeeming Creation Units. The composition of a Portfolio Deposit made by a purchaser or given to a redeeming investor will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person of a WEBS Index Series to effect a transaction detrimental to the other holders of WEBS. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the WEBS Index Series.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new WEBS Index Series of the Fund, whether identical or similar to a WEBS Index Series, by means of filing a post-effective amendment to the Fund's registration statement or by any other means, unless applicants have requested and received with respect to such new series, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission.

2. Each WEBS Index Series' prospectus will clearly disclose that, for purposes of the Act, WEBS are issued by the WEBS Index Series and that the acquisition of WEBS by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

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[11] Specifically, applicants request that the (i) Brazil WEBS Index Series be permitted to make redemption payments up to ten calendar days after the tender of a Creation Unit for redemption, (ii) Indonesia (Free) WEBS Index Series be permitted to pay redemption proceeds up to twelve calendar days after the tender of a Creation Unit for redemption, (iii) South Korea WEBS Index Series be permitted to pay redemption proceeds up to ten calendar days after the tender of a Creation Unit for redemption, (iv) Taiwan WEBS Index Series be permitted to pay redemption proceeds up to eleven calendar days after tender of a Creation Unit for redemption, (v) Thailand (Free) WEBS Index Series be permitted to pay redemption proceeds up to ten calendar days after tender of a Creation Unit for redemption, (vi) Turkey WEBS Index Series be permitted to pay redemption proceeds up to ten calendar days after tender of a Creation Unit for redemption, and (vii) EMU WEBS Index Series be permitted to pay redemption proceeds up to twelve calendar days after tender of a Creation Unit for redemption. Applicants do not request relief from section 22(e) with respect to the other four WEBS Index Series.

[12] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

3. As long as the Fund operates in reliance on the requested order, the WEBS will be listed on a national securities exchange.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14873 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 14, 1999.

An open meeting will be held on Monday, June 14, 1999, at 10:00 a.m., in Room 1C30.

Closed meetings will be held on Monday, June 14, 1999, following the 10:00 a.m. open meeting and on Thursday, June 17, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the open meeting scheduled for Monday, June 14, 1999, at 10:00 a.m., will be:

The Commission will hear oral argument on appeal by the Division of Enforcement from an administrative law judge's initial decision. For further information, please contact Joan L. Loizeaux at (202) 942–0950.

The subject matter of the closed meeting scheduled for Monday, June 14, 1999, following the 10:00 a.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Thursday, June 17, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated; June 7, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15056 Filed 6–9–99; 3:46 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41475; File No. SR–CBOE–99–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

June 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III and below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[4]
Level Three (QHN)	4)$0.06	$0.00
Disney (DIS)	0.08	0.00
Echostar Communications (QHS)	0.15	0.00
Terayon Communications (TUN)	0.11	0.00
Manugistics Group, Inc. (ZUQ)	0.17	0.00
Taiwan Semiconductor (TSM)	0.03	0.00
Veeco Instruments, Inc. (QVC)	0.12	0.00
Airtran Holdings, Inc. (VJQ)	0.25	0.00

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[4]
Amerisource Health (AAS)	0.10	0.00
Finish Line Inc	0.15	0.00
Kemet Corporation (KQE)	0.20	0.00
Florida Panthers (PAW)	0.15	0.00
Pegasus Systems (PUG)	0.15	0.00
Lucent Technologies (LU)	0.12	0.00
NCR Corp.	0.12	0.00
HMT Technology (HTQ)	0.12	0.00
Estee Lauder (EL)	0.09	0.00
iMall Incorporated (IUM)**	0.10	0.00

These fees will be effective as of June 1, 1999, except for the surcharge and change in the Order Book Official brokerage fee for iMall Incorporated (which is a newly listed class) which went into effect on May 27, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)[5] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–22 and should be submitted by July 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14868 Filed 6–10–99; 8:45 am]

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[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41476; File No. SR–DTC–99–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to DTC's Enhancement of Its Repo Tracking System

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 19, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change enhances DTC's Repo Tracking System ("RTS")[2] to enable participants to use a new participant terminal system ("PTS") function to cancel principal and income ("P&I") distributions that result from RTS tracking.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] For a detailed description of RTS, refer to Securities Exchange Act Release No. 28765 (January 10, 1991), 56 FR 1832.

in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide participants with additional flexibility in their use of RTS. Under RTS, a participant that has purchased a security ("repo buyer") is obligated to make payments on future P&I distributions, other than the final distribution, to the participant recorded in RTS as the seller of the security ("repo seller"). At issue is the concern for a P&I distribution which includes a principal payment large enough to significantly affect the value of the securities. In such cases, RTS tracking of the distribution might expose the repo buyer to significant credit risk until a related "mark-to-market" payment is received from the repo seller.

To control this risk, DTC's current procedures permit the repo buyer to unilaterally cancel a particular P&I payment through RTS at the participant level by submitting a hard copy letter of instruction to DTC by 11:30 a.m. (ET) on the distribution payment date. The rule change provides a PTS function, called PIAR (Principal and Income Adjustments resulting from Repurchase agreements), to submit instructions to cancel a P&I payment, and thus eliminate the need to submit a hard copy letter of instruction.[4] Participants will be charged the current $.09 PTS inquiry fee for each PIAR PTS inquiry and the same $.31 fee currently charged for RTS adjustments for each credit or debit adjustment that results from a PIAR entry.

Under the rule change, participants will be able to use the new PIAR PTS function to review and cancel P&I payments resulting from RTS tracking. The PIAR function will allow repo buyers to cancel P&I payments scheduled to be credited to the repo seller on payable date and it will also allow participants to view all of their repo P&I payments, both as repo buyer and repo seller, for the current day.

DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act[5] and the rules and regulations thereunder because the proposed rule change will give participants greater flexibility in controlling risk without substantially changing the current operation of RTS.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was developed in response to an ongoing effort by The Bond Market Association to address industry concerns regarding potential credit exposure as a result of principal paydowns. The proposed rule change has been developed through discussions with several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[6] and pursuant to Rule 19b–4(f)(1)[7] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to File No. SR–DTC–99–13 and should be submitted by July 2, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14869 Filed 6–10–99; 8:45 am]

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[3] The Commission has modified the text of the summaries prepared by DTC.

[4] DTC has included in its filing an Important Notice to Participants, dated April 19, 1999, which describes the rule change enhancements to RTS and includes a new section of the dividend service guide relating to PIAR. DTC's filing is available for inspection at the Commission's Public Reference Room or through DTC.

[5] 15 U.S.C. 78q–1(b)(3)(A).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41478; File No. SR–NSCC–99–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change That Establishes Additional Procedures for Class A Surveillance of Certain Settling Members and Permits the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 10, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and amended on June 2, 1999, the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through May 31, 2000.

[1] 15 U.S.C. 78(b)(1).

[2] Letter from Julie Beyers, Vice President and Associate Counsel, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 2, 1999).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the temporary approval of additional procedures which govern the placement of NSCC members on Class A surveillance and the clearing fund deposit and other collateral requirements for such members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC seeks to extend the temporary approval of a rule change governing the application of Class A surveillance procedures and the additional collateralization requirements to settling members that engage in certain over-the-counter ("OTC") market making activities.[4] To decrease the risk associated with OTC market makers, NSCC has added Addendum O to its rules and procedures. Addendum O permits NSCC to place setting members on Class A surveillance under certain conditions.

NSCC has also adopted an interim collateralization policy which permits NSCC in its discretion to require settling members that clear for or are themselves OTC market makers and that are placed on Class A surveillance to deposit special collateral in amounts based upon the settling member's OTC activities relative to its amount of excess net capital.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because the surveillance procedures and additional collateralization will facilitate the prompt and accurate clearance and settlement of securities transactions and in general will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. As the Commission previously stated, it finds that the proposed rule change is consistent with NSCC's obligations under the Act because it will help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making.[6]

Under the proposal, NSCC will continue to have the authority with respect to settling members which participate in OTC market making activities or clear for correspondents that engage in such activity (1) to place such members on Class A surveillance, (2) to require such members to post additional collateral with NSCC, and (3) to calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control of or is responsible for and to protect investors and the public interest.[7]

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption until it makes a filing requesting permanent approval of the rule change. This will allow NSCC to continue to protect itself and its participants from the potential risks of OTC market making activities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of such filings will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–99–06 and should be submitted by July 2, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–06) be, and hereby is, approved on an accelerated basis through June 4, 2000.

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[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] For a complete discussion of NSCC's Class A surveillance procedures and collateralization requirements, refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04]; and 40034 (May 27, 1998), 63 FR 30277 [File No. SR–NSCC–98–03].

[5] 15 U.S.C. 78q–1

[6] *Supra* note 3.

[7] As noted in each of the previous approval orders, prior to filing a proposed rule change seeking permanent approval of the procedures set forth in this temporary approval order, NSCC shall present to the Commission a more detailed report on its findings regarding the adequacy of the controls and discussing any changes to be made to the procedures.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14867 Filed 6–10–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41477; File No. SR–NSCC–99–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NSCC's Annuities Processing Service

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 30, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends NSCC's Annuities Processing Service ("APS") to change the name of the service to "Insurance Processing Service." In addition, the rule change makes corresponding name and clarification changes to reflect that NSCC's members may use the service to submit data, information, and settle payments for life insurance products as well as for annuity products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 19, 1997, the Commission approved NSCC's rule filing to establish APS,[3] which provides a centralized communication link connecting participating insurance carriers with their multiple distribution channels, including broker-dealers, banks, and the broker-dealers' or banks' affiliated insurance agencies ("distributors") where appropriate. Phase one of the APS system provided NSCC participants with the ability to send and receive daily information regarding annuity contract positions, the value of the contract's underlying assets, and the settlement of commission monies.

The Commission approved phase two of APS on December 16, 1998,[4] which provides distributors with the ability to transmit to insurance carriers information regarding annuity applications and subsequent premium payments and to settle initial and subsequent premiums. In addition, phase two enables insurance carriers to transmit to distributors information about transactions and events that have occurred with respect to existing annuity contracts.

On October 8, 1998,[5] the Commission approved a rule change to permit NSCC to transmit data and information and to settle payments regarding life insurance products as well as annuity products. At that time, no changes were made to the rules which referred only to annuities processing. Thus, the purpose of the proposed rule change is to change the name of the APS service and make corresponding name and clarification changes to the related provisions of NSCC's rules and procedures to reflect the nature of the insurance processing services available to NSCC's members.[6]

NSCC believes that the proposed rule change is consistent with Section 17A of the Act[7] and the rules and regulations thereunder because it clarifies NSCC's rules and procedures to more accurately reflect the nature of its annuity and insurance processing system, which facilitates the prompt and accurate clearance and settlement of securities transactions by providing centralized communication between insurance carriers and broker-dealers, banks, and their affiliated insurance agencies.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[8] and pursuant to Rule 19b–4(f)(1)[9] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416, for a detailed description of APS.

[4] Securities Exchange Act Release No. 40799 (December 16, 1998), 63 FR 71175.

[5] Securities Exchange Act Release No. 40634 (November 4, 1998), 63 FR 63096.

[6] Under the rule change, NSCC is also deleting the provisions of Section I.B of Addendum Q which were originally included by mistake.

[7] 15 U.S.C. 78q–1

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–99–04 and should be submitted by July 2, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99–14870 Filed 6–10–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41479; File No. SR–NYSE–98–32]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto Relating to Shareholder Approval of Stock Option Plans

June 4, 1999.

I. Introduction

On October 13, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's shareholder approval policy ("Policy") with respect to stock option and similar plans. The proposed rule change was published for comment in the **Federal Register** on November 19, 1998.[3] The Exchange submitted an amendment to the filing on November 17, 1998.[4] On December 26, 1998, the Commission extended the comment period until January 25, 1999.[5] The Commission received 19 comments on the proposal in response to both the regular and extended comment periods.[6] On March 12, 1999, the Exchange submitted Amendment No. 2.[7] This order approved the proposal, as amended, on a pilot basis until September 30, 2000.

II. Background

The Exchange proposes to amend paragraphs 312.01, 312.03, and 312.04 of the Listed Company Manual ("Manual"). The proposal amends the Exchange's Policy with respect to stock option and similar plans ("Plans").

The Policy requires, as a prerequisite to listing, shareholder approval of Plans or any other arrangement pursuant to which either officers or directors acquire stock. There are, however, four exemptions from this requirement, one of which is an exemption for Plans that are "broadly-based." Historically, the Exchange had not provided a definition of what constituted a "broadly-based" Plan other than to state that such a Plan must include employees other than officers and directors. The only example in the Policy of such a Plan was an employee stock option plan, or "ESOP."

In December 1997, the Exchange filed a proposed rule change amending the Policy. The proposal was amended on January 28, 1998 and was then published for public comment by the Commission ("Original Proposal").[8] The Original Proposal codified, among other things, existing Exchange interpretations regarding "broadly-based" Plans. Specifically, the Original Proposal stated that the determination of whether a Plan was "broadly-based" required the review of a number of factors, including the number of persons included in the Plan, and the nature of the company's employees, such as whether there were separate compensation arrangements for salaried and hourly employees. The proposal also codified a non-exclusive safe harbor for Plans in which at least 20 percent of a company's employees were eligible, provided that the majority of those eligible were neither officers nor directors.[9] The Commission did not receive any comments on the proposal, and subsequently approved it, as amended, on April 8, 1998.[10]

Following the Commission's approval of the Original Proposal, the Exchange and the Commission received a significant number of inquiries and comments regarding the Original Proposal. Many of these inquiries and comments originated from the institutional investor community and focused on the definition of "broadly-based." Commenters expressed general concern that, without shareholder approval, companies could dilute the value of existing shares by creating new Plans.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40679 (November 13, 1998), 63 FR 64304.

[4] Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Richard C. Strasser, Assistant Director, Division of Market Regulation, SEC, dated November 25, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified the reason why its proposed "broadly-based" definition is limited to "exempt employees" under the Fair Labor Standards Act of 1938 in the eligibility part of the definition but not in the participation part.

[5] In response to the solicitation of comments, the Commission received a request to extend the comment period. Letter from Sarah Teslik, Council of Institutional Investors, to Jonathan G. Katz, Secretary, SEC, dated November 20, 1998 ("CII Comment Period Extension Request"). As originally noticed, the comment period expired on December 10, 1998.

[6] Letters from Aldo Del Nou to Commissioner (sic) Arthur Levitt, SEC, dated October 17, 1998; CII Comment Period Extension Request; Kurt N. Schacht, Chief Legal Officer, State of Wisconsin Investment Board to Jonathan G. Katz, Secretary, SEC, dated November 30, 1998; Neil Minow, Lens Investment Management, LLC, to Jonathan G. Katz, Secretary, SEC, dated December 1, 1998; Sarah Teslik, Council of Institutional Investors, to Jonathan G. Katz, Secretary, SEC, dated November 30, 1998 ("CII–I"); Howard D. Sherman, President, Institutional Shareholder Services, to Jonathan G. Katz, Secretary, SEC, dated December 2, 1998; James E. Heard, Chairman and Chief Executive Officer, Proxy Monitor, to Jonathan G. Katz, Secretary, SEC, dated December 4, 1998; Richard Ferlauto, Managing Director, Proxy Voter Services, to Jonathan G. Katz, Secretary, SEC, dated December 8, 1998; Linda S. Selbach, Barclays Gloval Investors, to Jonathan G. Katz, Secretary, SEC, dated December 7, 1998; Lewis A. Sanders, Sanford C. Bernstein & Co., Inc. to Jonathan G. Katz, Secretary, SEC, dated December 9, 1998; Kay R.H. Evans, Executive Director, Maine State Retirement System, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1998; Jack M. Marco, The Marco Consulting Group, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1998; George M. Philip, Executive Director, New York State Teachers' Retirement System, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1998; Kayla J. Gillan, General Counsel, California Public Employees' Retirement System, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1998 ("Cal PERS"); John J. Sweeney, President, American Federation of Labor and Congress of Industrial Organizations, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1998 ("AFL–CIO"); Bart Naylor, Director, Corporate Affairs, International Brotherhood of Teamsters, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1998; Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated December 10, 1998; Michelle Edkins, Corporate Governance Executive, Hermes Investment Management Limited, to Jonathan G. Katz, Secretary, SEC, dated January 18, 1999; Sarah Teslik, Council of Institutional Investors, to Jonathan G. Katz, Secretary, SEC, dated April 14, 1999 ("CII–II").

[7] Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Jonathan G. Katz, Secretary, SEC, dated March 11, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange submitted a sunset provision pursuant to which the proposed rule change will expire on September 30, 2000. Amendment No. 2 also contained the Exchange's response to the comment letters.

[8] Securities Exchange Act Release No. 39659 (February 12, 1998), 63 FR 9036 (February 23, 1998).

[9] According to the NYSE, the 20% test was based upon the "rule of thumb" the Exchange had historically used in determining whether a Plan was "broadly-based." *See Request for Comment on NYSE Shareholder Approval Requirement for Broadly-Based Stock Option Plans* at 2 ("Request for Comment").

[10] Securities Exchange Act Release No. 39839, 63 FR 18481 (April 15, 1998).

In response, the Exchange issued the Request for Comment regarding the definition of "broadly-based" Plans. The Exchange received 166 comments in response to that request.[11] According to the NYSE, the listed company community favored retaining the new Policy, while the institutional investor community favored a narrower definition of what constituted a "broadly-based" Plan, and suggested that such definition be an exclusive test instead of a non-exclusive safe harbor.

A Stockholder Approval Policy Task Force ("Task Force") was subsequently established to review the comments and to make recommendations concerning possible changes to the Policy. The Task Force was composed of representatives of the Exchange's Legal Advisory Committee, Individual Investor Committee, Pension Manager Advisory Committee, and Listed Company Advisory Committee. In addition, member of other Exchange constituencies, including the Council of Institutional Investors, were represented on the Task Force.

Following its deliberations, the Task Force recommended that certain changes be made to the definition of a "broadly-based" Plan.[12] In addition, the Task Force recommended that the Exchange actively consider setting an overall dilution maximum for all non-tax qualified Plans that otherwise would be exempt from shareholder approval requirements. The Task Force recommended that the Exchange direct it or another appropriate group to immediately consider this issue with a target date of the NYSE's September 1999 Board meeting. The Task Force further stated that the goal should be to complete this study in time for Exchange review prior to the year 2000 proxy statement season.

This proposed rule change implements the first three Task Force recommendations to change the existing rule.[13] The proposed rule change amends the definition of what constitutes a "broadly-based" Plan and adds some general language concerning approval of Plans under the Policy. In addition, in its filing, the Exchange stated that it had adopted the Task Force's final recommendation and had convened a new task force ("Dilution Task Force") to consider a possible listing standard that would include a dilution test.

[11] Interested persons are directed to the public file located at the Commission's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549 to review the comments received by the NYSE. The public file contains: (1) a Summary of Comment Letters (Exhibit B); (2) the NYSE Request for Comment (Exhibit 2A); (3) the Comment Letters in Response to the Request for Comment (Exhibit 2B); and (4) the Report of the NYSE Task Force (Exhibit 2C). The public file may also be inspected at the principal office of the NYSE.

[12] *See Report of the Special Task Force on Stockholder Approval Policy.*

[13] *Id.*

III. Description of Proposal

The proposed rule change amends the definition of "broadly-based" which is used to determine whether a Plan is exempt from shareholder approval. The new definition would classify a Plan as "broadly-based" if, pursuant to the terms of the Plan: (a) at least a majority of the issuer's full time, exempt U.S. employees [14] are eligible to participate under the Plan; and (b) at least a majority of the shares awarded under the Plan (or shares of stock underlying options awarded under the Plan) during the shorter of the three-year period commencing on the date the Plan is adopted by the issuer, or the term of the Plan itself, are made to employees [15] who are not officers or directors of the issuer.[16] The new definition is an exclusive test, not a safe harbor as in the current rule.

The proposed rule change also expresses the Exchange's general policy towards Plans. The Exchange recognized the increased use of Plans by companies and expressed its view that companies should consider submitting Plans to shareholders, whether or not required under the Exchange's Policy.

In its filing, the Exchange stated that the proposed changed blend tests based both on Plan eligibility and awards. Furthermore, the Exchange expects that the proposed rule change will provide certainty because it is an exclusive test applicable to all Plans and because it adopts the Commission's definition of "officer."[17]

[14] *See* 29 U.S.C. 213(a) for the definition of "exempt" employees.

[15] In Amendment No. 1, the Exchange explained that the proposed definition of "broadly-based" would be a two-part test. In the first prong, a majority of the company's full-time employees who are "exempt" employees must be eligible to receive stock. As a general matter, "exempt" employees are salaried employees in an executive, administrative, or professional capacity. According to the NYSE, the Task Force recommended limiting this prong of the definition to "exempt employees" because non-exempt employees are often covered by compensation arrangements that do not include stock options.

The second part of the test requires that at least a majority of the shares awarded under the Plan be awarded to employees who are not officers or directors. This part of the test is not limited to "exempt" employees, allowing the calculation of the "majority of shares awarded" to include both "exempt" and non-exempt employees who are not officers or directors. According to the NYSE, the focus of this requirement is to ensure that a company actually implements a Plan in a "broadly-based" fashion. In this regard, it does not matter whether the awards to persons other than officers or directors are to "exempt" or non-exempt employees.

[16] In this regard, the Exchange proposes to use the definition of "officer" contained in Commission Rule 16a–1(f) under the Act, 17 CFR 240.16a–1(f).

[17] *See supra* note 16.

IV. Summary of Comments

The Commission received 19 comments on the proposed rule change.[18] Of the 19 comment letters, 13 letters opposed the proposed rule change,[19] three comment letters offered qualified support for the proposal,[20] one comment letter supported the proposed rule change,[21] and one comment requested an extension of the comment period.[22] One letter did not address the issues raised in the proposed rule change.[23]

These comment letters raised a number of concerns regarding the amendment to the Policy. The Exchange submitted a written response to the issues raised in the comment letters in Amendment No. 2.[24] The following discussion summarizes the issues raised by the commenters and the Exchange's response.

A. Dilution

A majority of the comment letters expressed concern over the lack of a dilution test.[25] Dilution refers to the diminished value of a shareholder's investment that can occur when stock options are granted. These commenters believe that the expanded definition of "broadly-based" Plans will essentially permit unlimited dilution to occur and

[18] *See supra* note 6.

[19] *See* letters from State of Wisconsin Investment Board; Lens Investment Management; CII–I; Institutional Shareholder Services; Proxy Monitor; Proxy Voter Services; Barclays Global Investors; Maine State Retirement System; Marco Consulting Group; AFL–CIO; Teamsters; Hermes Investment Management; and CII–II.

[20] *See* letters from Sanford C. Bernstein; NY State Teachers' Retirement System; and Cal PERS. Cal PERS, while not specifically addressing the substance of the proposed amendments, suggested that they should only be approved for one year while a dilution test is developed. As discussed below, Cal PERS also supported disclosure.

[21] *See* letter from Investment Company Institute urging adoption of the proposed rule change and stating that the proposed definition addresses many of their previouis concerns with the existing rule.

[22] *See* CII Comment Period Extension Request letter. This letter did not address the proposed rule change's substantive issues.

[23] *See* letter from Mr. Del Nou. Mr. Del Nou's letter requested that shareholders be offered stock options and raised purported constitutional issues regarding shareholder voting rights.

[24] *See supra* note 7.

[25] *See* letters from State of Wisconsin Investment Board; Lens Investment Management; CII–I; Institutional Shareholder Services; Proxy Monitor; Barclays Global Investors; Sanford C. Bernstein; Maine State Retirement System; NY State Teachers' Retirement System; Cal PERS; AFL–CIO; Investment Company Institute Hermes Investment Investment Management; and CII–II.

allow unlimited amounts of equity to be given to Plan participants without share holder approval.[26] Many of these commenters questioned why any Plan that has a dilutive effect on a shareholder's investment should be exempt from a shareholder vote. For example, one commenter observed that shareholders are concerned with the cost of equity-based Plans and not the business decision of who can (or does) receive equity-based compensation.[27] Another commenter suggested that the grant of stock options may also have the effect of a stealth hostile takeover from within the company be diluting shareholders' voting power.[28] Several commenters stated that the definition of "broadly-based" Plans should only be adopted in conjunction with adoption of a dilution test and were opposed to the NYSE's decision to consider a dilution test at a later date.[29] Other commenters believe there should be no exemption for "boardly-based" Plans and that a dilution commenters believe there should be no exemption for "broadly-based" Plans and that a dilution test should be the sole standard.[30]

In Amendment No. 2, the Exchange responded to the comments on dilution. The Exchange stated that while it agrees that it is appropriate to consider a dilution test and is committed to doing so, a dilution test raises numerous policy issues that it was unable to consider in time for the 1999 proxy season. Moreover, the Exchange did not originally seek comment on this issue in the Request for Comment. The Exchange further expressed its commitment to review this issue by amending its proposal to be effective only until September 30, 2000. The Exchange stated that while it expects to propose a dilution test to replace the revised stockholder approval test in advance of the year 2000 proxy season, it proposes to make the current changes to the "broadly-based" test effective through the 2000 proxy season in the event there is any unforseen delay in this schedule.

B. Conflict of Interest

Another area of concern for commenters was the apparent conflict of interest of officers and directors.[31] The commenters remarked on the inherent conflict of interest that arises because officers and directors themselves benefit from the Plans they cause a company to establish without shareholder approval and oversight. The comment letters expressed concern over the removal of shareholder oversight and suggested that where officers and directors are allowed to participate in a Plan, the Plan should not be allowed to be considered "broadly-based."[32]

The Exchange contends that "broadly-based" Plans have long been exempt from shareholder approval requirements. The Exchange explained that the "broadly-based" exemption originally was adopted requirements. The Exchange explained that the "broadly-based" exemption originally was adopted because the NYSE believed that any potential concerns regarding preferential treatment of officers or directors would be mitigated if a Plan was boardly available to a company's employees. The Exchange, however, did reiterate its plan to examine whether to continue to rely on the concept of "broadly-based" Plans as a basis for exemption from the shareholder approval requirement or whether to abandon that standard in a favor of a dilution test.

C. The Use of an "Exempt" Employee Test

Several commenters expressed concerns about the proposed eligibility standard in the proposed rule.[33] As discussed above, the eligibility standard provides that in determining if a Plan is "broadly-based," the Exchange will look at the number of "exempt" employees eligible to participate in the Plan. The term "exempt" employee is based upon the definition found in the Fair Labor Standards Act of 1934.[34] The commenters believe that limiting the eligibility requirement to require only a majority of a company's full-time "exempt" employees could potentially exclude a majority of a company's workforce. Many of the commenters quoted Department of Labor statistics showing that only about 25 percent of the overall U.S. workforce is classified as "exempt."[35] According to these figures, on average, only 12.5 percent of a company's workforce would need to be eligible to participate for a Plan to be considered "broadly-based" under the NYSE proposed rule—and thus avoid a shareholder vote.[36] Several of these commenters also expressed concern over excluding low level workers from eligibility because they believed the proposed rule change could be interpreted as a disincentive to grant non-exempt employees stock options, or conversely as an incentive to make stock options available only to a privileged few.[37] Finally, commenters asserted that the NYSE's rationale for excluding non-exempt employees because they are covered by other compensation arrangements is not correct.[38]

In response, the Exchange states that it continues to believe that limiting the proposal to "exempt" employees is appropriate. NYSE states that the Task Force, which included representatives of listed companies, leading investor groups, and institutional investors, unanimously proposed the "exempt" employee distinction. The Task Force believed that stock options are primarily used to compensate "exempt" employees. Moreover, the Task Force expressed its belief that non-exempt employees generally seek other forms of compensation or benefits, such as cash, medical benefits, or retirement packages. The NYSE notes that the Task Force was aware that some parties thought that limiting this prong of the test to "exempt" employees was too narrow. Despite these contentions, the Task Force unanimously accepted the "exempt" employee distinction.

The Task Force's recommendations were further reviewed and considered by the Exchange's Board. In approving the proposal, the Board accepted the Task Force's recommendation and also

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[26] *See* letters from State of Wisconsin Investment Board; Lens Investment Management; Institutional Shareholder Services; Proxy Monitor; Cal PERS; Hermes Investment Investment Management; and CII–II.

[27] *See* letter from Institutional Shareholder Services.

[28] *See* letter from Lens Investment Management.

[29] *See, e.g.,* letters from Lens Investment Management stating that "under no circumstances should the Exchange be permitted to bifurcate the rulemaking in this way" and letter from Institutional Shareholder Services stating that "the proposed listing standard, absent a meaningful "dilution" test, is fundamently flawed." *See also* letter from State of Wisconsin Investment Board; and CII–II.

[30] *See* letters from State of Wisconsin Investment Board; Barclays Global Investors; Sanford C. Bernstein; Maine State Retirement System; Marco Consulting Group; and Hermes Investment Management.

[31] *See* letters from Lens Investment Management; CII–I; Proxy Voter Services; Sanford C. Bernstein; NY State Teachers' Retirement System; Cal PERS; Teamsters; and Hermes Investment Management. *See also* letter from AFL–CIO, which was concerned about Plans that allow board member participation.

[32] *See* letter from Proxy Voter Services. *See also* letter from Cal PERS stating that "to the extent those who participate in the decision to approve a plan also may personally benefit from it, and obvious conflict of interest exists."

[33] *See* letters from Lens Investment Management; CII–I; Institutional Shareholder Services; Proxy Voter Services; AFL–CIO; Marco Consulting Group; and Teamsters.

[34] *See supra* note 14.

[35] *See* letter from CII–I; Institutional Shareholder Services; Proxy Voter Services; AFL–CIO; and Marco Consulting Group.

[36] For example, the AFL–CIO stated that the "definition effectively assures that "broadly-based' plans will not be truly 'broadly-based.' "

[37] *See* letters from Proxy Voter Services; AFL–CIO; and Teamsters.

[38] *See* letters from Proxy Voter Services; and AFL–CIO. In their letter, Proxy Voter Services stated that "a growing number of companies include grant options and other types of stock awards to 'non-exempt' employees as part of their total compensation packages."

endorsed limiting the test to "exempt" employees. According to the NYSE, the Board expressed its concern that not limiting the test to "exempt" employees could result in companies structuring their compensation programs to offer non-exempt employees stock options instead of other benefits that may be preferred by those employees simply to comply with the Exchange's shareholder approval policy, and not because it was an appropriate compensation policy. The Board believed that management should establish compensation policies based on what management believes is best for its company.

D. Participation Test

One commenter supported the participation prong of the proposed rule change.[39] The commenter stated that, by requiring review of awards granted during the first three years of a Plan, the Exchange recognized the importance of implementing a Plan in a truly "broadly-based" fashion.

Three commenters argued that the participation prong of the "broadly-based" test does not sufficiently prevent companies from granting a majority of options awarded under a Plan to executives after the three-year time period.[40] These commenters pointed out that a company could reserve a majority of shares to be awarded under a Plan and grant them to officers and directors after the three-year time period had elapsed.[41] Moreover, a company could either grant no awards during the initial time period or only a nominal amount and then make the remaining grants to executives after the three-year time period expires. In either of these scenarios, the commenters noted, the company would be in compliance with the proposed rule although shareholders would not have been provided the opportunity to approve the awards to executives. To resolve this, one commenter recommended limiting Plans to three years.[42] Another commenter suggested changing the test so that a majority of the shares must be awarded to nonofficers and directors over the entire life of the Plan or over a rolling three-year period.[43]

The Exchange recognizes that the three-year test could, in theory, allow a company to administer a Plan in a non-broadly-based manner after the initial three years. The Exchange stated, however, that it anticipates that companies will act in good faith, and it has no reason to believe that companies will drastically change their compensation policies in the later years of a Plan.

According to the Exchange, the Task Force specifically considered this issue and determined that if a Plan is to be exempt from shareholder approval, it is critical not only to require a broad group of employee eligibility, but also to require that a company administer a Plan in a "broadly-based" manner. However, when considering how to best measure a company's administration of a Plan, the Task Force decided that a three-year period was realistic. The Exchange expressed the Task Force's concern that imposing a one-year test could result in companies structuring their Plans to comply with Exchange rules instead of promoting sound compensation policies. For these reasons, the NYSE determined that the Task Force recommendation was reasonable, recognizing that is was a package of compromises, and that the Exchange needed to consider this recommendation in the context of the full Task Force report. Moreover, the Exchange noted that this issue may well be moot if the Exchange later implements a dilution test.[44]

E. Disclosure

Seven commenters requested that the Commission require full disclosure to shareholders of all Plans implemented without shareholder approval.[45] One commenter observed that shareholders have diminished access to important information regarding issues that are not approved by shareholder votes.[46]

F. Other Issues[47]

Three commenters suggested that the Commission should decide the issues on which shareholders can vote because of the competition between exchanges is gaining listed companies.[48] One commenter suggested that a uniform standard be applied to all exchanges to safeguard shareholder interests in this area.[49] Finally, several commenters argued that all Plans should be subject to shareholder approval.[50]

One commenter supported the proposed rule change as an exclusive test, rather than a non-exclusive safe harbor as under the existing rule.[51] This commenter believed it should ensure shareholder protection and provide greater certainty to the process.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[52] In particular, the Commission believes the proposal is consistent with the requirement of section 6(b)(5) of the Act.[53] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between issuers.

The Commission has carefully considered the proposed rule change and believes the amended proposed rule change to be consistent with the requirements of the Act. In approving the proposal, the Commission recognizes that the majority of the

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[39] *See* letter from Investment Company Institute.

[40] *See* letters from Institutional Shareholder Services; Marco Consulting Group; and NY State Teachers' Retirement System.

[41] *See, e.g.*, letter from Marco Consulting Group, which stated that most stock option Plans last for 10 years.

[42] *See* letter from NY State Teachers' Retirement System.

[43] *See* letter from Institutional Shareholder Services.

[44] Plans approved under the rules approved today, however, will continue to be subject to the participation test. If a Plan is not administered in a "broadly-based" fashion during the first three years, shareholder approval will be required for any shares that the company later seeks to add to the Plan. The Exchange will review all listing applications seeking to add additional shares to any Plan approved under the rules approved today. Telephone call between Steven Walsh, NYSE, Michael Simon, Milbank, Tweed, Hadley & McCloy, and Kelly McCormick, SEC, on March 30, 1999.

[45] *See* letters from State of Wisconsin Investment Board; Lens Investment Management; CII–I; NY State Teachers' Retirement System; Cal PERS; Teamsters; and Hermes Investment Management; and CII–II.

[46] *See* letter from Teamsters.

[47] One comment letter, Sanford C. Bernstein, addressed concerns regarding key employee Plans (*i.e.*, non-broadly-based Plans that (a) provide that no single officer or director may acquire more than 1 percent of the issuer's common stock and (b) together with all non-broadly-based Plans of the issuer, do not authorize the issuance of more than 5 percent of the issuer's common stock at the time the Plan is adopted. The key employee exemptions were at issue in the Original Proposal and were not considered or amended in the current proposed rule change.

[48] *See* letters from CII–I; AFL–CIO and Cal PERS.

[49] *See* letter from Cal PERS, which argues that shareholder voting is a national issue and "urges the Commission to take steps necessary to ensure that a uniform standard is applied to safeguard shareholders' interests in this area." *See also* letter from CII–II.

[50] *See* letters from State of Wisconsin Investment Board; Barclays Global Investors; Sanford C. Bernstein; Maine State Retirement System; Marco Consulting Group; and Hermes Investment Management. In addition, Lens Investment Management asserted that the Exchange had not adequately justified the exemption for "broadly-based" Plans.

[51] *See* letter from investment Company Institute.

[52] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[53] 15 U.S.C. 78f(b)(5).

commenters opposed the proposal and believed a dilution standard would be more appropriate. Nevertheless, the Commission believes that, by including a specific test to ensure that Plans are actually implemented in a "broadly-based" fashion, the proposed rule change is an improvement over the existing rule. Moreover, the proposed rule change amends the definition of "broadly-based" by making it an exclusive test instead of the current non-exclusive safe harbor. By providing issuers with an exclusive rule, all Plans reviewed by the Exchange will be subject to the same standards. This standardization of review should enable issuers to more easily comply with the Exchange's listing standards and prevent uneven application of the rule. Accordingly, this aspect of the proposed rule will help to ensure that, consistent with the Act, the rule is not designed to permit unfair discrimination among issuers.

The Commission is approving the rule change on a pilot basis until September 30, 2000 in order to give the NYSE time to develop a dilution test. Based on the task force's recommendations, the Exchange has established the Dilution Task Force to study the dilution issue and has stated that it currently expects to propose a dilution test to replace the revised "broadly-based" test by the year 2000 proxy season.[54] Accordingly, the Commission is satisfied, for the reasons discussed more fully below, that the proposed rule change should address concerns raised by commenters to the Original Proposal, while also satisfying the requirements of section 6(b)(5) of the Act.[55]

A. Conflict of Interest

A number of the commenters raised concerns about exempting from shareholder approval any Plan in which officers and directors can participate, because of the apparent conflict of interest. Upon careful review, however, the Commission is satisfied that this aspect of the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act for the reasons discussed below.

NYSE current rules and proposed rules will continue to require shareholders to vote on Plans pursuant to which officers and directors may acquire stock unless a Plan meets one of four exemptions set forth in the NYSE Manual.[56] As noted by the Exchange, one of these exemptions, the "broadly-based" exemption, has been recognized by the Exchange for many years and was implemented because of the belief that Plans available to a broad group of employees would alleviate concerns that the Plan could give preferential treatment to officers and directors. The Commission believes that it is reasonable for the NYSE to determine that Plans that are "broad-based" should be eligible for the exemption even though officers and directors may participate in the Plan because Plans that are truly "broadly-based" should provide sufficient protection to shareholders from officer and director conflicts of interest and self-dealing.

While the NYSE could decide to eliminate the "broadly-based" exemption, the Act does not dictate how a self-regulatory organization should regulate in this area. Rather, the Commission must find that a self-regulatory organization's proposed rules are consistent with the Act before they can be adopted.[57] The Commission believes that the rationale behind the "broadly-based" exemption is sound and will protect investors from self-dealing by officers and directors, consistent with the requirements of section 6(b)(5) of the Act.

B. Definition of "Broadly-Based"

The proposal defines a "broadly-based" Plan as one in which at least a majority of the issuer's full-time "exempt" employees are eligible to participate.[58] In contrast, the current definition provides that a Plan would be considered "broadly-based" if at least 20 percent of all of a company's employees are eligible to receive stock or options under a Plan and at least half of those eligible are neither officers nor directors. In other words, the proposal limits the eligibility prong of the test to "exempt" employees while the current rule does not. Some comment letters suggested that the proposal unfairly limits the number and classification of employees eligible to participate in a Plan. Several commenters also were critical of limiting the eligibility prong to "exempt" employees because this excludes a large part of the workforce and could result in companies not offering such Plans to low level workers.

Upon review, however, the Commission notes that the proposal is not a significant change from the current approved standards. The current rule requires that 20 percent of a company's workforce be eligible, but only requires that 10 percent of those eligible be non-officers and directors. The proposed rule change requires that at least half of an issuer's full-time "exempt" workforce be eligible to participate. A number of comment letters cited to Department of Labor statistics, which state that 25 percent of the U.S. workforce is exempt. If this number is correct, the majority of employees eligible to participate should be approximately 12.5 percent, on average, which could result in a slight increase in required eligibility over the current rule. Although it is difficult to precisely compare these two measures, on the whole, the number of eligible employees measured to determine if a Plan is "broadly-based" under the proposed rule change is not significantly different from the existing approved rule. Accordingly, limiting eligibility to "exempt" employees does not appear to significantly alter the number of employees currently being offered participation in a Plan.

Several factors also minimize concerns about the eligibility prong of the proposed test. First, the Commission notes that nothing in the NYSE rules prevents companies from offering a Plan to more than "exempt" employees. The eligibility prong is the minimum required for a Plan to be eligible for the "broadly-based" exemption. Second, companies currently offering Plans to all employees except officers and directors already are not required to submit these Plans to a shareholder vote. The Commission believes it is unlikely that companies will change these Plans to comply with the minimum requirements of the rules approved today. Finally, the Commission notes that certain companies may need to expand the base of employees eligible for a Plan in order to meet the participation prong of the "broadly-based" definition. Thus, the proposed change to the eligibility prong appears to include a reasonable number of employees eligible to participate in Plans which should help to protect investors, pursuant to section 6(b)(5) of the Act.

The participation prong of the "broadly-based" definition requires that at least a majority of the shares awarded under a Plan during the shorter of the three-year period commencing on the Plan adoption date or the term of the

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[54] Because there may be slippage in its schedule, the Exchange is proposing to extend the pilot through the year 2000 proxy season.

[55] The Commission notes that under Section 19(b)(2) of the Act, the Commission must approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules thereunder. The Commission must disapprove a proposed rule change only if it does not make such a finding. The Commission's standard of review for the proposed rule changes of self-regulatory organizations is determined by, among other things, Section 6(b) of the Act.

[56] *See* NYSE Manual Paragraph 312.03.

[57] *See supra* note 55.

[58] *See supra* notes 14 and 15.

Plan be made to employees who are not officers or directors of the issuer. In contrast, the current rule does not have any requirements regarding actual awards or grants under a Plan. The Commission believes that this portion of the proposal should help to ensure that Plans are "broadly-based." To comply with the participation prong of the test, companies will need to monitor the awards granted to officers and directors under "broadly-based" Plans to ensure that officers and directors are not the primary recipients of such awards. Participation under "broadly-based" Plans also will be monitored by the Exchange to ensure compliance with the Exchange rules.[59] This should provide protection to investors, consistent with section 6(b)(5) of the Act, by ensuring that companies do not take advantage of the exemption by merely allowing non-executives to be eligible for awards under Plans without actually granting them awards.

While the participation prong is an improvement over the current rule in that it requires that Plans actually be administered in a "broadly-based" manner, the Commission recognizes that, as proposed, the participation requirement will only apply for the first three years of a Plan (or the term of the Plan if it is shorter than three years). Accordingly, as some commenters argued, for Plans that are longer than three years, companies could nominally comply with the participation requirement by granting no, or a small amount of, awards during the first three years of the Plan to non-executives and reserve the majority of shares to be awarded to officers and directors after the three years have elapsed.

In response to these concerns, the NYSE stated that it recognized that "in theory a company could administer a Plan in a non-broadly based manner."[60] Nevertheless, the NYSE stated that it expects companies to act in good faith and has no reason to believe that a company will drastically change its compensation policy in later years of a Plan. The Commission agrees with the NYSE but expects the NYSE to monitor whether companies are continuing to administer Plans in a "broadly-based" manner after the initial three-year period to determine if changes need to be made to the participation prong of the test. While the Commission recognizes that the NYSE is working on a dilution standard that may replace the "broadly-based" standard by the next proxy season, the NYSE should monitor and notify those companies that are subject to this rule if it believes that they are not complying with the spirit of the rule by delaying actual awards under a Plan until the three-year period has expired.

If the NYSE proposes to retain the participation prong of the "broadly-based" test long with a dilution standard, the Commission requests further information on actual awards made by issuers to comply with the participation prong. The NYSE also should address whether the development of a rolling three-year period would give companies the flexibility they need to make awards under Plans while at the same time ensuring that Plans are administered in a "broadly-based" manner or some other alternative to address the concerns discussed above. In approving the participation prong with the three-year limit, the Commission has considered the need to provide companies with flexibility in administering awards under the Plan. The Commission believes that the sixteenth-month pilot period, along with the NYSE's monitoring of Plans complying with the "broadly-based" exemption, should help to ensure that any necessary changes will be made to the rule if companies violate the spirit of the rule by offering a majority of shares to offices and directors after the three-year period has lapsed.

C. Dilution Standard and Pilot

The Exchange has committed to study a dilution standard for determining when shareholder approval is necessary for Plans. As noted above, a substantial majority of comments expressed concern about the potential dilution of shareholder's equity upon the grant of stock options under a Plan. These commenters were generally critical of the NYSE's decision to consider dilution at a later date. While some of these commenters believed that a dilution test should replace the "broadly-based" exemption immediately, other believed the definition of "broadly-based" Plans should only be adopted along with a dilution test.

While the majority of commenters believe that dilution is a preferable standard over the current proposal, the Commission's standards for reviewing the NYSE's proposal is whether it is consistent with the Act. For the reasons discussed above, the Commission believes that, until such time as a dilution standard is developed, the proposal is a reasonable effort to clarify which Plans are "broadly-based" and therefore except from shareholder approval. Accordingly, the adoption of he proposed rule for the pilot period should protect investors in accordance with section 6(b)(5) of the Act by helping to ensure that only "broadly-based" Plans will be exempted from shareholder approval. In making this finding, as noted above, the Commission does have some questions about how certain portions of the two prong test will be implemented. The pilot period should provide the NYSE with necessary time to monitor the changes approved today and to address these questions if the NYSE determines that the "broadly-based" test should continue to be applied together with a dilution standard.[61]

The pilot period also should provide the NYSE with the necessary time to formulate a dilution standard. We note that one commenter suggested a one-year pilot and another commenter was critical of the proposed sixth-month sunset provisions, suggesting that it would unduly delay the adoption of a dilution standard.

The Commission believes, however, that it is appropriate to approve the proposed rule so that it is effective until September 30, 2000. The NYSE has shown its commitment to be responsive to the comments on dilution by immediately establishing the Dilution Task Force to consider this issue. The NYSE represents that it intends to consider adopting a dilution standard to be place prior to he next proxy season in the year 2000. Because the Commission recognizes that matters involving shareholder voting rights are extremely important and involve a wide variety of interested parties, the Commission believes that adoption of the proposed rule change until September 30, 2000 will ensure that the NYSE is given adequate time to consider and implement and alternative to the proposal. Further this schedule would not prevent the NYSE from replacing the proposal being approved today with a dilution standard prior to the pilot's expiration, assuming Commission approval pursuant to section 19(b) of the Act.[62]

Finally, we note that several commenters stated that disclosure of Plans adopted without shareholder

[59] *See supra* note 44.

[60] *See* Amendment No. 2, *supra* note 7.

[61] We note that nay extension of the current proposal would have to be approved by the Commission pursuant to Section 19(b)(2) of the Act. Of course, as detailed above, NYSE has indicated its intention to submit a proposal, pursuant to Section 19(b)(2) of the Act, to replace or supplement the pilot with a dilution standard. *See infra* note 62.

[62] We note that the Commission would expeditiously publish for comment and review any proposal submitted by the NYSE to adopt a dilution standard so that such a standard could be put in place as soon as possible.

approval should be required. The Division of Corporation Finance is presently reviewing Commission rules requiring disclosure of executive and director compensation (Item 402 of Regulations S–K; Item 10 of Schedule 14A) and director and director nominee qualifications and relationships (Items 401 and 404 of Regulation S–K), with a view toward determining whether to recommend changes to the Commission. One of the issues to be examined is the extent to which additional disclosure should be provided in registrant filings about non-shareholder approved Plans.

D. Conclusion

In summary, the Commission believes that the current proposal helps to address some of the earlier concerns raised by the NYSE's Original Proposal for determining when a Plan including officers and directors is "broadly-based" enough to be exempt from the shareholder approval requirements. The Original Proposal merely intended to codify the NYSE's existing policy interpreting the "broadly-based" exemption, which it had used for many years. While the Original Proposal was submitted to a full notice and comment period, no comments were received on the rule prior to its approval. Nevertheless, after Commission approval of the NYSE's rule, several commenters, particularly those representing institutional investors, raised concerns over the Commission's approval process as well as the NYSE's role in developing its definition of a "broadly-based" Plan.

Both the NYSE and the Commission have taken these concerns seriously. While the Original Proposal provided the NYSE with more flexibility in determining when a Plan was "broadly-based" and entitled to the exemption, the current proposal has the benefit of providing a clear bright line test. This should provide benefits to both investors and issuers consistent with section 6(b)(5) of the Act.

The NYSE has indicated its strong commitment to develop a dilution standard that potentially could replace the current proposal by the next proxy season. The Commission requests that any proposal by the NYSE to adopt a dilution standard be submitted to the Commission by October 15, 1999. This should provide the Commission with sufficient time to review and solicit comment on the proposal prior to the beginning of the proxy season in 2000. If the NYSE is unable to submit a proposal by this date, the Exchange must submit a status report by October 15, 1999 on the NYSE's progress in developing a dilution standard.[63]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Exchange submitted Amendment No. 1 to clarify the use of the "exempt" employee definition in the eligibility prong of the test and not in the participation prong of the test. As discussed earlier, the Commission is satisfied that the use of "exempt" employees in determining the level of eligibility does not unfairly exclude a large number of employees. Because the amendment only serves to clarify and does not change the meaning or intent of the proposed rule, it does not raise any new regulatory issues. Therefore, the Commission believes good cause exists, consistent with section 6(b)(5)[64] and section 19(b)[65] of the Act, to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 amends the proposal so that it would be effective for a pilot period until September 30, 2000. As discussed above, this pilot period seems reasonable and should provide the NYSE with adequate time to monitor the rule as well as provide the NYSE with time to develop a dilution test. Amendment No. 2 does not substantially change the meaning or intent of the proposed rule change. Because Amendment No. 2 further explains the Exchange's commitment regarding the development of a dilution test and raises no new issues or regulatory concern regarding the proposed rule change, the Commission believes that good cause exists, consistent with section 6(b)(5)[66] and section 19(b)[67] of the Act, to approve the amendment on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–32 and should be submitted by July 2, 1999.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[68] that the amended proposed rule change (SR–NYSE–98–32) is approved on a pilot basis until September 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[69]

Margaret H. McFarland,

Deputy Secretary.

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[63] The Commission recognizes that the NYSE could decide, as some commenters suggested, to keep the "broadly-based" exemption in its rules and adopt a dilution standard as part of the test. Any request by the NYSE to change or extend the standard being adopted in this order must be submitted to the Commission no later than May 16, 2000 along with a monitoring report about the Plans utilizing the revised "broadly-based" exemption. Any new proposal containing the new definition approved today should also address the questions noted above about the three-year limit in the participation prong. Further, the monitoring report should include, at a minimum, information on the types and number of employees who are eligible to participate under a Plan, as well as information concerning actual awards being made under the Plans.

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78s(b).

[66] 15 U.S.C. 78f(b)(5).

[67] 15 U.S.C. 78s(b).

[68] 15 U.S.C. 78s(b)(2).

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41461; File No. SR–PCX–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to 50-Up During High Volume, and/or High Volatility Situations

June 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 20, 1999,[3] the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the maximum permissible number of option contracts for orders that are executable through PCX's automatic execution system ("Auto-Ex") to fifty contracts. Proposed new language is italicized.

¶4889 Unusual Market Circumstances

Rule 6.28(a)–(b)(8)—No change.

(9) The Exchange may increase the permissible size of orders that may be automatically executed over the Auto-Ex system to up 50 contracts, to be effected on a case-by-case basis in a particular option issue, or for all option issues, when two Floor Officials and one Floor Governor deem such an increase to be appropriate. Pursuant to this Rule, the ability to execute orders of up to 50 contracts will only occur during high volume or high volatility emergency situations. At all other times, the order size for Auto-Ex will remain to be the number of contracts permitted under Rule 6.87.

(c) and (d)—No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On May 28, 1999 the PCX filed Amendment No. 1. *See* letter to John Roeser, Attorney, Division of Market Regulation, Commission, from Robert P. Pacelio, Staff Attorney, PCX, dated May 27, 1999. In amendment No. 1, the Exchange made a technical modification to the proposed rule filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

In 1990, the Exchange implemented its Auto-Ex system through which public customer market and marketable limit orders may be executed automatically at the best bid or offer displayed at the time the order is entered into the Pacific Options Exchange Trading System ("POETS").[4] Initially, Auto-Ex was limited to implementation in all equity options classes, for the number or contracts approved by the Options Floor Trading Committee ("OFTC"), at two trading posts and any option that became multiply traded.[5] In 1993, the Commission approved a proposal by the PCX to designate option orders of ten contracts or less in all options series, including Long-term Equity AnticiPation Securities ("LEAPS"), to be eligible for automatic execution through Auto-Ex.[6] In 1994, the Commission approved a proposal by the PCX to designate options orders of twenty contracts or less to be eligible for execution through Auto-Ex.[7] Currently, because Auto-Ex is only permitted to automatically execute option orders of twenty contracts or less, market and marketable limit orders of more than twenty contracts are routed by POETS to members on the trading floor for manual representation.

The PCX is now proposing to increase the maximum permissible number of option contracts for order that may be executed through the Auto-Ex system to fifty contracts. The PCX proposes that this increase in permissible order size to fifty contracts for Auto-Ex be done on a case-by-case basis for an individual option issue, or for all option issues when two Floor Officials and one Floor Governor deem such an increase appropriate. The PCX currently anticipates that the ability to execute orders of up to fifty contracts through Auto-Ex will only occur during high volume, and/or high volatility emergency situations. At all other times, the order size for Auto-Ex will remain at twenty contracts, unless the Commission approves an Exchange proposal to increase that number to greater than twenty contracts.[8]

The PCX believes that Auto-Ex has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other non-emergency situations for certain option issues. Automatic executions of orders for up to fifty contracts during such high volume situations will help alleviate a backlog of orders in the systems that may occur and allow for the quick, efficient execution of public customer orders. The Exchange represents that the existing system has sufficient capacity to implement the increase in order size.

The Exchange's proposed rule change specifically states that the Exchange may increase the permissible size of orders that may be automatically executed over the Auto-Ex system to up to fifty contracts, to be effected on a case-by-case basis in a particular option issue, or for all option issues, when two Floor Officials and one Floor Governor deem such an increase to be appropriate. It further states that, pursuant to this rule, the ability to execute orders of up to fifty contracts will only occur during high volume or high volatility emergency situations, and at all other times, the order size for Auto-Ex will remain the number of contracts permitted under Rule 6.87.

Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[9] of the Act in general and

[4] The Commission approved the POETS and its Auto-Ex feature as a pilot program in January 1990. *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (order approving File No. SR–PSE–89–26). On July 30, 1993, the Commission approved the program on a permanent basis. *See* Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993) ("Release No. 34–32703").

[5] *See* Securities Exchange Act Release No. 28264 (July 26, 1990), 55 FR 31272 (August 1, 1990) at note 2.

[6] *See* Release No. 34–32703.

[7] *See* Securities Exchange Act Release No. 34946 (November 6, 1994), 59 FR 59265 (November 16, 1994).

[8] On February 10, 1999, the PCX filed a proposal (SR–PCX–99–04) with the Commission to increase the number of option orders that may be executed automatically to fifty contracts without regard to whether a high volume or high volatility emergency situation exists.

[9] 15 U.S.C. 78f(b).

furthers the objectives of section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to improve impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,[11] it has become effective pursuant to section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6).[13]

The Commission believes that increasing to fifty the number of option contracts executable through the Exchange's Auto-Ex order execution system should enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option classes consistent with its obligations under the Act. The Commission finds good cause to allow the proposed rule change to become operational on June 4, 1999. This accelerated operative date should facilitate the enhancement of execution and operational efficiencies through Auto-Ex during high volume or high volatility emergency situations. The Commission has previously approved a substantially similar proposal by the American Stock Exchange LLC.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–14 and should be submitted by July 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14872 Filed 6–10–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(5).

[11] The Commission has waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* Securities Exchange Act Release No. 41098 (February 24, 1999), 64 FR 10511 (March 4, 1999).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29088]

Airport Privatization Pilot Program; Public Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of extension of comment period for final application of Stewart International Airport, Newburgh, New York; Notice of Public Meeting.

SUMMARY: On April 8, 1999, the Federal Aviation Administration (FAA) published a notice in the **Federal Register** (64 FR 17208) seeking information and comments from interested parties on the final application by the State of New York for participation of Stewart International Airport (SWF) in the Airport Privatization, Pilot Program. The deadline for submitting comments was June 7, 1999. The comment period has now been extended until June 28, 1999 to allow the public more time to examine and comment on the final application. A public meeting will be held on June 12, 1999.

DATES: Comments must be received by June 28, 1999. The public meeting will be held on Saturday, June 12, 1999 from 11am to 3pm.

ADDRESSES: The public meeting will be held in the auditorium of the Little Britain Elementary School, 1160 Little Britain Road, New Windsor, New York, (914) 496–2301. The SWF final application is available for public review in the Federal Aviation Administration Office of Chief Counsel, 800 Independence Avenue, SW—Room 915G., Washington, DC 20591. The New York State Department of Transportation (NYSDOT), the airport sponsor, has also made as copy of the application available at the following locations:

Town Clerk's Office, Town of New Windsor, Town Hall 555 Union Avenue, New Windsor, NY 12553.

Town Clerk's Office, Town of Newburgh, Town Hall, 20–26 Union Avenue, Newburgh, NY 12550.

Newburgh Free Library, 124 Grand Street, City of Newburgh, Newburgh, NY 12550.

Orange County Planning Department, 124 Main Street, Goshen, NY 10924.

Airport Director's Office, Airport Administration Building, 1035 First Street, Stewart International Airport, New Windsor, NY 12553.

Comments on the SWF final application must be delivered or mailed, in quadruplicate, to the Federal Aviation Administration Office of Chief Counsel (AGC–200), 800 Independence Avenue, SW., Washington, DC 20591, Attention: Docket No. 29088. All comments must be marked "Docket No. 29088". Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 29088." The

postcard will be date stamped and returned to the commenter. Comments on this Notice may be delivered to or examined in the aforementioned FAA Office of Chief Counsel (Room 915G) on weekdays, except Federal holidays, between 8:30 am and 5:00 pm.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Compliance Officer, (202–267–8741), Airport Compliance Division (AAS–400), Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Section 149 of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104–264 (October 9, 1996), added a new section 47134 to Title 49 of the U.S. Code, Section 47134 authorizes the Secretary of Transportation and, through delegation, the FAA Administrator to exempt a sponsor of a public use airport that has received Federal assistance from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. Such exemption will require approval of 65 percent of the air carriers serving the airport and having 65 percent of the landed weight. The Administrator is also authorized to exempt a private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport. No air carrier approval is necessary for the latter exemption.

On January 10, 1999, NYSDOT filed a final application for SWF. The FAA determined that the application is substantially complete. As part of its review of the SWF final application on April 8, 1999, the FAA requested comments and information submitted by interested parties during the 60-day comment period ending June 7, 1999. This notice extends the comment period until June 28, 1999.

The public meeting scheduled for June 12, 1999, will consist of two parts. The first part of the meeting will accept public comments on the SWF final application for inclusion in Docket No. 29088. The second part of the meeting will be an informal session for the FAA to answer general questions on the Airport Privatization Pilot Program and how FAA requirements will apply to private airport operators generally. Because the SWF final application is presently before the agency for a decision, the FAA will not be able to discuss the application or the pending agency decision. Issued in Washington, DC on June 7, 1999.

David L. Bennett,

Director, Office of Airport Safety and Standards.

[FR Doc. 99–14853 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Final Environmental Impact Statement Colorado Airspace Initiative (CAI)

AGENCY: Federal Aviation Administration (FAA).

ACTION: Extension of the time period during which the FAA will receive public comment on its Notice of Availability and Intent to Adopt the Final Environmental Impact Statement for the Colorado Airspace Initiative.

SUMMARY: On Tuesday, April 27, 1999, the Federal Aviation Administration provided notice that it was recirculating and intended to adopt the Final Environmental Impact Statement (FEIS) prepared by the Air National Guard (ANG) for the modification of exiting, and the establishment of new military training airspace areas in Colorado, hereinafter known as the Colorado Airspace Initiative (CAI). Due to public interest in this initiative, the FAA is extending the public comment period until 2 August 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gaffin, Environmental Specialist, Environmental Programs Division (ATA–300), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–3075.

SUPPLEMENTARY INFORMATION: As provided in 40 CFR 1506.3 and FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, the FEIS of another Federal Agency may be adopted in accordance with the procedures in 40 CFR 1506.3 Under 40 CFR 1506.3(b), if the actions covered by an EIS and the actions proposed by another Federal agency are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. The FAA has determined that the proposed action of modifying existing and establishing new military training airspace areas over the State of Colorado is substantially the same as the actions considered in the ANG's FEIS. FAA staff has independently reviewed the ANG FEIS to determine if it is current and that the FAA NEPA procedures have been satisfied. FAA has determined that the FEIS adequately assesses and discloses the potential environmental impacts of the proposed action. FAA staff concluded that, after mitigation measures are taken into consideration, the existing airspace can be modified and new military training airspace can be established with no significant impacts on environmental resources.

The proposal will modify existing and establish new military training airspace areas over the State of Colorado. The ANG has requested this action to respond to changes in readiness training requirements. The requirements are reflected in specific United States Air Force regulations for military aircraft and personnel operating in the affected airspace. Additionally, this action responds to the changes in commercial aircraft arrival and departure corridors required for operation of the Denver International Airport.

The ANG evaluated the environmental impacts of the CAI in its document, Final Environmental Impact State for the Colorado Airspace initiative, (FEIS) dated August 1997. The preferred alternative was also the environmentally preferred alternative in the FEIS. THe preferred alternative was modified in response to concerns raised by private citizens, government agencies, and various public interest groups. The ANG changed its proposal to narrow the widths of portions of corridors of four military training routes and withdrew one route. Subsequently, the ANG issued a Record of Decision (ROD) on October 28, 1997, approving the preferred alternative as modified. The ANG then submitted the FEIS to the FAA with it application for airspace approval.

In furtherance of CEQ regulations, in addition to the executive summary of the ANG FEIS, the FAA is recirculating the following information: (1) the ANG's ROD; (2) a summary of public comments submitted during the aeronautical review and responses to the comments; and (3) a summary of the refinements that ANG made in the Rod to the preferred alternative after the ANG FEIS was issued.

Any person may obtain a copy of the ANG FIS, ROD and the above-referenced information by submitting a request to: Air National Guard Readiness Center, Program Manger, CAI EIS, ANGRC/

CEVP, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.

Written comments may be sent to the address below, and are due by August 2, 1999: Federal Aviation Administration, Environmental Programs Division, Air Traffic Airspace Management Program, Attn.: Elizabeth Gaffin, rm. 422, 800 Independence Ave., SW, Washington, DC 20591.

Issued in Washington, DC on June 7, 1999.

William J. Marx,

Manager, Environmental Programs Division.

[FR Doc. 99–14854 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 99–10]

Operating Subsidiary Notice

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice and request for comment on an operating subsidiary application.

SUMMARY: The Office of the Comptroller of the Currency (OCC) requests comment concerning an application filed by the National Bank of Commerce, Memphis, Tennessee (NBC Bank) to expand the activities of its operating subsidiary, NBC Capital Markets Group, Inc., (NBCCMG), to purchase, sell, underwrite, and deal in certain debt obligations.

DATES: Comments should be submitted by July 12, 1999.

ADDRESSES: Written comments regarding the application should be submitted to the Office of the Comptroller of the Currency, Communications Division, Docket No. 99–10, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile to fax number (202) 874–5274, or by Internet mail to REGS.COMMENTS@OCC.TREAS.GOV. A copy of the application and comments received will be available for inspection at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC 20219. Appointments to inspect the application and review the comments received can be made by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Beth Kirby, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210, or Beverly Evans, Senior Bank Structure Analyst, Bank Organization and Structure, (202) 874–5060.

SUPPLEMENTARY INFORMATION:

Background Information

NBC Bank has filed an application with the OCC, under 12 CFR 5.34(f), to expand the activities of its operating subsidiary, NBCCMG. The application requests the OCC's permission to purchase, sell, underwrite, and deal in certain debt obligations, including corporate debt, and securities issued by a trust or other vehicle secured by, or representing interests in, debt obligations.

NBCCMG is authorized currently to underwrite and deal in, to a limited extent, municipal revenue bonds and to conduct securities brokerage services, underwrite and deal in U.S. Government obligations and general obligations of States and their political subdivisions, and buy and sell money market instruments. See Decision of the Comptroller of the Currency on the Application by National Bank of Commerce, Memphis, Tennessee to Commence New Activities in an Operating Subsidiary (October 20, 1998) ("Commerce Decision").

NBCCMG would continue to operate within the framework of limitations in 12 CFR 5.34(f) and would continue to be subject to the conditions set forth in the Commerce Decision. In particular, NBC Bank has committed that the revenues NBCCMG would receive from any underwriting and dealing activity not permissible for a national bank would not exceed 25% of the total revenues of NBCCMG.

Under section 5.34(f), the OCC may permit a national bank to conduct an activity through its operating subsidiary that is different from that permissible for the parent national bank, subject to the additional requirements specified in 12 CFR 5.34(f), if the OCC concludes that the activity is part of or incidental to the business of banking or is permitted under other statutory authority.

In considering the proposed activities, the OCC will consider each proposed activity and will weigh:

(1) The form and specificity of any restriction applicable to the parent bank;

(2) Why the restriction applies to the parent bank; and

(3) Whether it would frustrate the purpose underlying the restriction on the parent bank to permit a subsidiary of the bank to engage in the particular activity.

The OCC's evaluation of these factors will also take into account the safety and soundness implications of the activity for the operating subsidiary and the parent national bank, the regulatory safeguards that apply to the operating subsidiary and to the activity itself, any conditions that may be imposed in conjunction with an application approval, and any additional undertakings by the bank or the operating subsidiary that address the foregoing factors.

For activities not previously approved by the OCC, the OCC provides public notice and opportunity for comment on the application by publishing notice of the application in the **Federal Register**. In publishing notice of the application, the OCC does not take a position on issues raised by the proposal. Notice is published solely to seek the views of interested persons on the issues. Publication does not represent a determination by the OCC that the proposal meets, or is likely to meet, the criteria outlined earlier. Interested parties are invited to comment on any aspect of the application.

Dated: June 3, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–14908 Filed 6–10–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3206

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3206, Information Statement by United Kingdom Withholding Agents Paying Dividends From U.S. Corporations to Residents of the United States and Certain Treaty Countries.

DATES: Written comments should be received on or before August 10, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions

should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Statement by United Kingdom Withholding Agents Paying Dividends From U.S. Corporations to Residents of the United States and Certain Treaty Countries.

OMB Number: 1545–0153.

Form Number: 3206.

Abstract: Form 3206 is used to report dividends paid by U.S. corporations through United Kingdom nominees to beneficial owners who are residents of countries other than the United Kingdom with which the U.S. has a tax treaty providing for reduced withholding rates on dividends. The data is used by IRS to determine whether the proper amount of income tax was withheld.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 3 hrs., 7 min.

Estimated Total Annual Burden Hours: 15,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14884 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8843

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition.

DATES: Written comments should be received on or before August 10, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement for Exempt Individuals and Individuals With a Medical Condition.

OMB Number: 1545–1411.

Form Number: 8843.

Abstract: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the United States because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.

Current Actions: There are no changes being made to Form 8843 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 1 hr., 11 min.

Estimated Total Annual Burden Hours: 177,120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14885 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8308

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8308, Report of a Sale or Exchange of Certain Partnership Interests.

DATES: Written comments should be received on or before August 10, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Report of a Sale or Exchange of Certain Partnership Interests.

OMB Number: 1545–0941.

Form Number: 8308.

Abstract: Form 8308 is an information return that gives the IRS the names of the parties involved in an exchange of a partnership interest under Internal Revenue Code section 751(a). It is also used by the partnership as a statement to the transferor and transferee. It alerts the transferor that a portion of the gain on the sale of a partnership interest may be ordinary income.

Current Actions: There are no changes being made to Form 8308 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 7 hr., 18 min.

Estimated Total Annual Burden Hours: 1,460,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–14886 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the Electronic Tax Administration Advisory Committee (ETAAC).

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of ETAAC Friday, June 18, 1999. The meeting will be held in the United States Capitol Building, Room HC5, Washington, D.C. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting Friday, June 18, 1999

9:00 Meeting Opens
12:00 Break for Lunch
1:00 Meeting Resumes
3:00 Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) 1999 Filing Season—Lessons Learned
(2) Initiatives for 2000 Filing Season
(3) Account Management Presentation
(4) PRIME Contractor
(5) Fed/State Relations
(6) Report to Congress

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Assistant Commissioner, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

The meeting will be open to the public, and will be in a room that accommodates approximately 150 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, *notification of intent to attend the meeting must be made with Ms. Robin Marusin by June 14, 1999. Ms. Marusin can be reached at 202–622–8284.* Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Robin Marusin on or after Monday June 7 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this

meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC call Robin Marusin at 202–622–8184.

Terrence H. Lutes,

Acting Assistant Commissioner, Electronic Tax Administration.

[FR Doc. 99–14887 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The IRS Advisory Council (IRSAC) will hold a public meeting on the IRS modernization; taxpayer burden reduction efforts; performance measures; filing season overview and planning; and IRS automated information tools.

DATES: The meeting will be held, Wednesday, June 30, 1999.

ADDRESSES: The meeting will be held in Room 3313, Main Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds; Office of Public Liaison and Small Business Affairs, CL:PL, Room 7559 IR, 1111 Constitution Avenue, N.W., Washington, DC 20224, telephone 202–622–5188 not a toll-free number. E-mail address: *public__liaison@ccgate.hq.irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRSAC will be held on Wednesday, June 30, 1999, beginning at 9 am in Room 3313, main building, 1111 Constitution Avenue, NW, Washington, DC 20225.

Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice. The meeting will be in a room that accommodates approximately 50 people, including IRSAC members and IRS officials. Due to the limited space and security specifications, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622–5188 (not toll-free). Attendees are encouraged to arrive at least 30 minutes prior to the starting time of the meeting, to allow enough time to clear security at the 1111 Constitution Avenue, N.W., entrance. If you would like for the IRSAC to consider a written statement, please call (202) 622–5081, write to Merci del Toro, Office of Public Liaison, CL:PL, Internal Revenue Service, 1111 Constitution Avenue, N.W., Room 7559 IR, Washington, D.C. 20224, or E-mail at *public__liaison@ccgate.hq.irs.gov.

Dated: June 8, 1999.

Susanne M. Sottile,

Designated Federal Official, National Director, Office of Public Liaison and Small Business Affairs.

[FR Doc. 99–14888 Filed 6–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 01–99

Questions Presented

a. May compensation be paid under 38 U.S.C. 1151 for disability incurred or aggravated as the result of a sexual assault by a Department of Veterans Affairs (VA) physician which occurred while a veteran was receiving an examination or medical treatment at a VA facility?

b. May compensation be paid under 38 U.S.C. 1151 for a psychiatric disability incurred or aggravated as the result of a VA examination or medical treatment, or is compensation under those provisions limited to incurrence or aggravation of physical disability?

Held:

a. Section 1151 of title 38, United States Code, as applicable to claims filed before October 1, 1997, does not authorize payment of compensation for disability incurred or aggravated as the result of a sexual assault by a Department of Veterans Affairs (VA) physician which occurred while a veteran was receiving treatment or an examination at a VA facility. For purposes of compensation under those provisions, the disability must result from the medical treatment or examination itself and not from independent causes occurring coincident with the treatment or examination. A sexual assault generally would not constitute medical treatment or examination within the meaning of 38 U.S.C. 1151 and would not provide a basis for compensation under those provisions. However, if the actions or procedures alleged to have constituted an assault would otherwise be within the ordinary meaning of the terms "medical treatment or "examination," then compensation may be payable under section 1151. Accordingly, it may be necessary to make factual determinations in individual cases as to whether the actions or procedures alleged to have caused disability constituted part of "medical treatment" or "examination" or were independent actions merely coincidental with such treatment or examination.

b. VA may pay compensation under 38 U.S.C. 1151 for psychiatric disability due to a disease or injury incurred or aggravated as a result of VA hospitalization, medical or surgical treatment, examination, or vocational rehabilitation.

Effective Date: February 16, 1999.

VAOPGCPREC 02–99

Redesignated Advisory Opinion VAOPGCADV 08–99

Date: April 7, 1999.

VAOPGCPREC 03–99

Question Presented

What is the proper effective date of the award and date of commencement of payment for a monetary allowance for spina bifida awarded under 38 U.S.C. 1805 in a case where the claim for such benefits was filed prior to November 21, 1997 (the date of enactment of Pub. L. No. 105–114, which amended 38 U.S.C. 1806 retroactive to October 1, 1997), or prior to October 1, 1997 (the date 38 U.S.C. 1805 and 1806 became effective)?

Held

Section 1806 of title 38, United States Code, as amended by Pub. L. No. 105–114, governs the determination of the effective date and date of commencement of payment for any monetary allowance awarded under 38 U.S.C. 1805 for spina bifida in children of Vietnam veterans. Although Pub. L. No. 105–114 was enacted on November 21, 1997, Congress expressly provided that the amendment to section 1806 would be retroactive to October 1, 1997, when 38 U.S.c. 1805 and 1806 first became effective. Because Congress expressly prescribed the retroactive reach of Pub. L. 105–114, the judicial default rules stated in *Landgraf* v. *USI Film Products*, 511 U.S. 244 (1994) and *Karnas* v. *Derwinski*, 1 Vet. App. 308 (1991), are inapplicable. Accordingly, the provisions the provisions of section 1806, as amended, would govern the effective date and date of commencement of payment of any award under section 1805, including awards based on claims filed prior to October 1, 1997. The proper effective date and date of commencement of payment in any particular case must be determined by application of the statutory provisions referenced in section 1806, as amended.

Effective Date: March 26, 1999.

By Direction of the Secretary.

Leigh A. Bradley,

Genenral Counsel.

[FR Doc. 99–14915 Filed 6–10–99; 8:45 am]

BILLING CODE 8320–01–M

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Corrections

Federal Register
Vol. 64, No. 112
Friday, June 11, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-930-1430-01;NMNM-102308]

Notice of Proposed Withdrawal; New Mexico

Correction

In notice document 99– 9556 beginning on page 18932 in the issue of Friday, April 16, 1999, make the following correction:

On page 18933, first column, lines twelve and thirteen beneath the first land description (**New Mexico Principal Meridian, New Mexico**) is corrected to read as follows:

Sec. 17, N½, N½S½, S½SW¼, and SW¼SE¼;

[FR Doc. C9–9556 Filed 6–10–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP97–006

Correction

In notice document 99–12579 beginning on page 27343, in the issue of Wednesday, May 19, 1999, make the following correction:

On page 27346, remove Figure 4 and insert Figure 3 as follows:

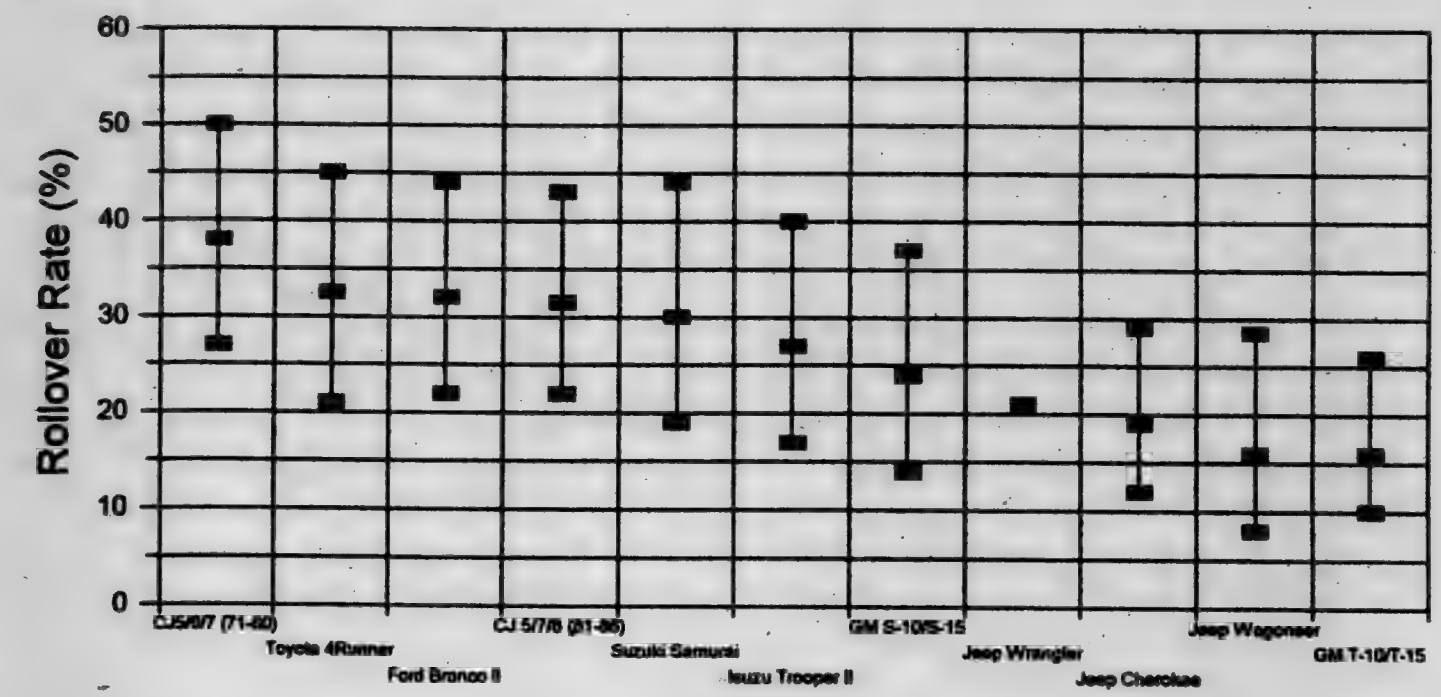

Figure 3. Predicted Percentage of First-Event Single-Vehicle Rollover per Single-Vehicle Crash with 95% Confidence Intervals, for Crash Years 1986 through 1988 (Maryland, Michigan, New Mexico, and Utah), EA89-013.

[FR Doc. C9–12579 Filed 6–10–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday
June 11, 1999

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention
Office of Community Oriented Policing Services

Department of Education

Office of Elementary and Secondary Education

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration
Office of the Assistant Secretary for Planning and Evaluation

National Evaluation of the Safe Schools/ Healthy Students Initiative; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Community Oriented Policing Services

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office of the Assistant Secretary for Planning and Evaluation

[OJP (OJJDP)–1232]

RIN 1121–ZB85

National Evaluation of the Safe Schools/Healthy Students Initiative

AGENCIES: Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP); Department of Justice, Office of Community Oriented Policing Services (COPS); Department of Education, Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program; Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS); Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Notice of funding availability.

SUMMARY: The Departments of Justice, Education, and Health and Human Services are requesting applications for a national evaluation of the Safe Schools/Healthy Students Initiative. The overarching goal of the evaluation is to document the effectiveness of collaborative community efforts to promote safer schools and provide opportunities for children's healthy development. The evaluation will demonstrate how community collaborative efforts develop, function, and facilitate change within community institutions and within individuals. Further, the evaluation must explore each of the six individual components of the collaboration-school safety, alcohol and other drug and violence prevention and intervention programs, school and community mental health preventive and treatment intervention services, early childhood psychosocial and emotional development programs, education reform, and safe school policies. The overarching collaborative questions and each of the six facets must be examined in terms of surveillance, process, and intensive outcome analyses.

DATES: Applications must be received by Wednesday, July 21, 1999.

ADDRESSES: An application package containing a copy of the solicitation for the National Evaluation of the Safe Schools/Healthy Students Initiative with application instructions and forms is available online at the following Web sites: www.ojjdp.ncjrs.org; www.ed.gov/fedreg.htm; www.ed.gov/offices/OESE/SDFS; www.samhsa.gov; www.mentalhealth.org; and www.usdoj.gov/cops. The application package can also be obtained by calling OJJDP's Juvenile Justice Clearinghouse at 800–638–8736. The address for submitting completed application is provided in the application package.

FOR FURTHER INFORMATION CONTACT: Kellie J. Dressler, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–514–4817. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, October 19, 1998, Pub. L. 105–277.

Background

The Safe Schools/Healthy Students Interagency Evaluation Management Team (IEMT) seeks qualified applicants to assist in conducting an evaluation of the Safe Schools/Healthy Students (SS/HS) Initiative. The IEMT comprises representatives of the three Departments participating in the Safe Schools/Healthy Students Initiative and will provide oversight for the national evaluation. The successful applicant will conduct cross-site process and outcome evaluations, monitor a core set of indicators (surveillance), and provide evaluation support to grantees for local evaluation activities. Applicants are encouraged to review the Safe Schools/Healthy Students Initiative Program Announcement for detailed information about the initiative. (The SS/HS Program Announcement is available at www.ojjdp.ncjrs.org or by calling the Juvenile Justice Clearinghouse at 800–638–8736.) The period of performance for the evaluation is anticipated to be September 1999 to September 2004.

The IEMT will competitively award one cooperative agreement under this solicitation. Given the purpose of the evaluation, the overall evaluation design is intended to carefully document both the process and the outcome aspects of the initiative. The design should encompass the broad issue of formation of community collaborations, the impact of these collaborations on school safety and development of healthy students, economic analyses, and surveillance of core indicators.

Eligibility Requirements

The IEMT invites applications from public and private agencies, organizations, institutions, or individuals. Applicants must demonstrate that they have experience in evaluating broad-based community initiatives. Private, for-profit organizations must agree to waive any profit or fee. Joint applications from two or more eligible applicants are welcome, as long as one is designated the primary applicant (for purposes of correspondence, awards, and management) and any others as coapplicants.

Award Period

The project will be funded for up to 5 years in five 1-year budget periods. Applicants should submit a 5-year project plan. Funding after the first budget period depends on performance of the grantee, availability of funds, and other criteria established at the time of award.

Award Amount

Up to $3 million is available for the initial 1-year budget period.

Dated: May 25, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Dated: May 25, 1999.

Joseph E. Brann,

Director, Office of Community Oriented Policing Services.

Dated: May 27, 1999.

Judith Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

Dated: May 26, 1999.

Nelba Chavez,

Administrator, Substance Abuse and Mental Health Services Administration.

Dated: May 25, 1999.

Margaret A. Hamburg,

Assistant Secretary, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–14139 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–18–P

federal register

Friday
June 11, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Security of Checked Baggage on Flights Within the United States; Extension of Comment Period; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–1999–5536; Notice No. 99–05]

RIN 2120–AG51

Security of Checked Baggage on Flights Within the United States; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On April 19, 1999, the FAA published a Notice of Proposed Rulemaking (NPRM) regarding security of checked baggage on flights within the United States and invited comments for a 60-day period. The comment period was originally scheduled to close on June 18, 1999; however, the FAA is extending the comment period an additional 60 days in response to a request from the Air Transport Association (ATA) for an extension to allow the ATA and its members to conduct an in-depth analysis of the proposal.

DATES: Comments must be received on or before August 17, 1999.

ADDRESSES: Comments should be mailed or delivered, in duplicate, to U.S. Department of Transportation Dockets, Docket No. FAA–1999–5536; 400 Seventh St., SW, Rm. Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: *9-NPRM-CMTS@faa.gov*. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except federal holidays.

Comments regarding national security information or sensitive security information should not be submitted to the public docket. These comments should be submitted according to procedures for safeguarding sensitive security information and sent to: Federal Aviation Administration, Office of Civil Aviation Security Operations, Attn: FAA Security Control Point, Docket No. FAA–1999–5536; 800 Independence Ave., SW, Washington, DC 20591. Questions on these procedures may be directed to Lon M. Siro (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lon M. Siro, Aviation Security Specialist, Civil Aviation Security Office of Policy and Planning, ACP–100, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–3414.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action. Late-filed comments will be considered to the extent practicable. The proposal may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: Comments to Docket No. FAA–1999–5536. The postcard will be date-stamped and mailed to the commenter.

Availability of NPRM's

An electronic copy of the NPRM may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339), the Government Printing Office's electronic bulletin board service (telephone: (202) 512–1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948.

Internet users may reach the FAA's webpage at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Federal Register's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of the NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number or notice number of the NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Extension of Comment Period

On April 19, 1999, the FAA published Notice No. 99–05, Security of Checked Baggage on Flights Within the United States (64 FR 19220). The FAA requested that comments to that document be submitted on or before June 18, 1999. By letter dated April 20, 1999, the Air Transport Association (ATA) requested that the FAA extend the comment period for 60 days. The ATA stated that the extension would allow both the ATA and its members to conduct an in-depth analysis of the proposal.

The FAA determines that extending the comment period is in the public interest and that good cause exists for taking this action. Accordingly, the comment period for Notice No. 99–05 is extended until August 17, 1999.

Issued in Washington, DC, on June 4, 1999.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–14833 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–13–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 1121/P.L. 106–33

To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the "Lewis R. Morgan Federal Building and United States Courthouse". (June 7, 1999; 113 Stat. 117)

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Fastener Quality Act Amendments Act of 1999 (June 8, 1999; 113 Stat. 118)

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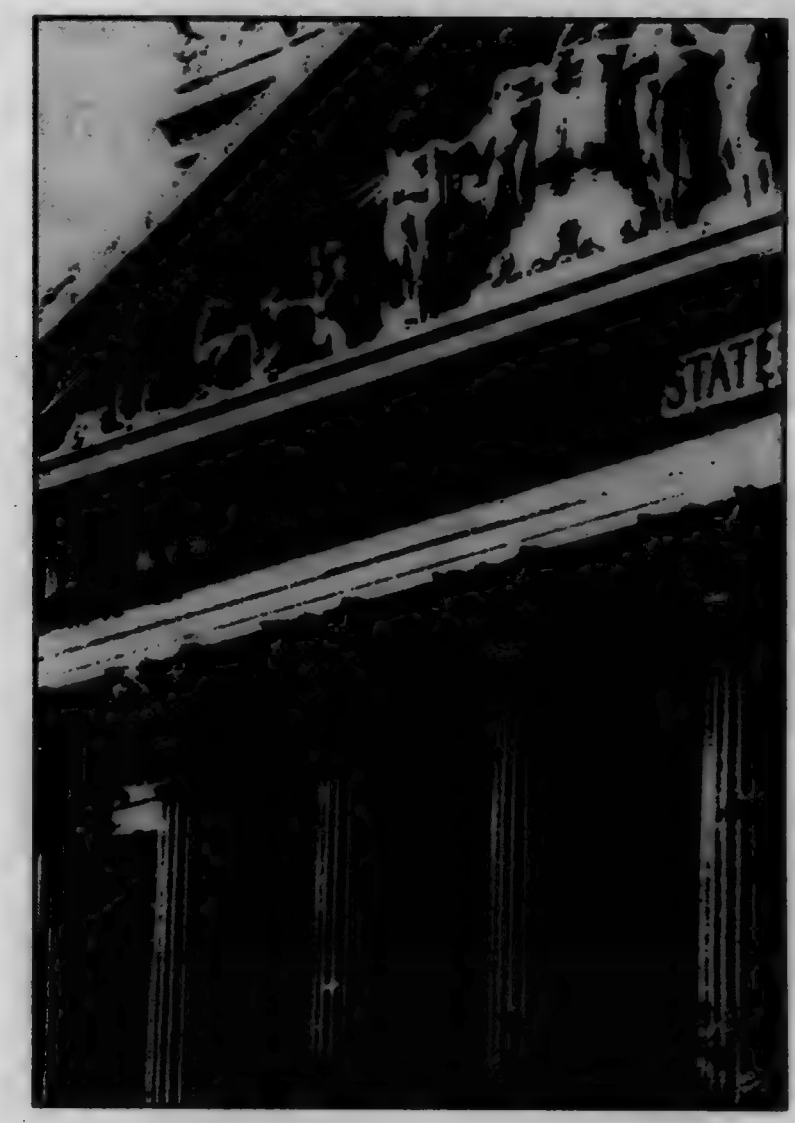

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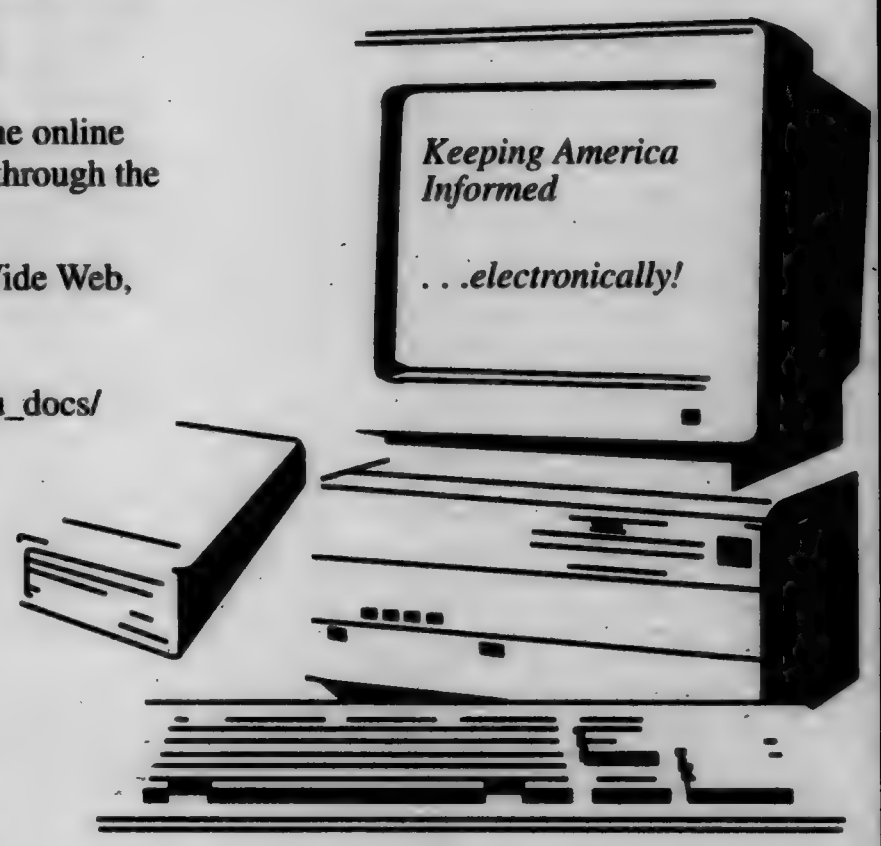

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Rules and Regulations

Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–32–AD; Amendment 39–11189; AD 99–12–05]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, PA–31–350, and PA–31P–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31–325, PA–31–350, and PA–31P–350 airplanes. This AD requires installing access holes for the inspection of the elevator spar; inspecting the elevator ice protection boots for looseness and reinstalling or replacing the elevator ice protection boots if looseness is found. This AD also requires repetitively inspecting the elevator spars for cracks, and replacing the elevators or elevator spar assemblies with parts of improved design either at a certain time period or when cracks are found, whichever occurs first. This AD is the result of reports of cracks developing in the elevator spar inboard of the outboard hinge location on the affected airplanes. The actions specified by this AD are intended to prevent failure of the elevator spar caused by fatigue cracking, which could result in reduced airplane controllability.

DATES: Effective July 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–32–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Herderich, Aerospace Engineer, FAA, Atlanta Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, and PA–31P–350 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 25, 1998 (63 FR 65147). The NPRM proposed to require installing access holes for the inspection of the elevator spar; inspecting the elevator ice protection boots for looseness and reinstalling or replacing the elevator ice protection boots if looseness is found. The NPRM also proposed to require repetitively inspecting the elevator spars for cracks, and replacing the elevators or elevator spar assemblies with parts of improved design either at a certain time period or when cracks are found, whichever occurs first.

Accomplishment of the proposed inspection access holes installation, inspections, and elevator ice protection boots reinstallation or replacement as specified in the NPRM is required in accordance with Piper Service Bulletin No. 998A, dated August 4, 1997.

Accomplishment of the installation of the improved design elevators or elevator spar assemblies as specified in the NPRM is required in accordance with the maintenance manual.

The NPRM was the result of reports of cracks developing in the elevator spar inboard of the outboard hinge location on the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA's Aging Commuter Aircraft Policy

The actions required in this AD are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to replacing the elevators or elevator spar assemblies with ones of improved design would be to repetitively inspect this area for the life of the airplane.

Cost Impact

The FAA estimates that 1,739 airplanes in the U.S. registry will be affected by this AD.

The inspection holes installation and initial inspections will take

approximately 2 workhours per airplane to accomplish with an average labor rate of approximately $60 an hour. Parts cost approximately $26 per airplane. Based on these figures, the total cost impact of the inspection access holes installation and initial inspections on U.S. operators is estimated to be $253,894, or $146 per airplane.

These figures only take into account the costs of the initial inspection and do not take into account the costs of repetitive inspections. The FAA has no way of determining the number of repetitive inspections an owner/operator will incur over the life of the airplane before the replacement becomes mandatory.

The elevator spar assembly replacements will take approximately 36 workhours per airplane to accomplish with an average labor rate of approximately $60 an hour. Parts cost approximately $600 per airplane ($300 per elevator spar assembly with 2 elevator spar assemblies per airplane). Based on these figures, the total cost impact of the elevator spar assembly replacement on U.S. operators is estimated to be $4,799,640, or $2,760 per airplane.

According to Piper, numerous airplanes already have complied with the initial inspection requirements of this AD, specifically most of the Model PA–31–350 airplanes since many of these are used in commuter service.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–12–05 The New Piper Aircraft, Inc.: Amendment 39–11189; Docket No. 97–CE–32–AD.

Applicability: The following airplane model and serial numbers, certificated in any category, that are not equipped with the applicable improved design elevators or elevator spar assemblies specified in the "Replacement Elevator P/N" and "Replace Spar P/N" columns of the "Material Required Table" on page 4 of Piper Service Bulletin No. 998A, dated August 4, 1997:

Models	Serial No.
PA–31, PA–31–300, and PA–31–325.	31–2 through 31–8312019
PA–31–350	31–5001 through 31–8553002
PA–31P–350	31P–8414001 through 31P–8414050

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the elevator spar caused by fatigue cracking, which could result in reduced airplane controllability, accomplish the following:

(a) Upon accumulating 2,500 hours time-in-service (TIS) on each elevator spar assembly or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 998A, dated August 4, 1997:

(1) Install access holes for the inspection of the elevator spar;

(2) Inspect the elevator spars for cracks; and

(3) Inspect the elevator ice protection boots for looseness.

(b) If the elevator ice protection boots are found loose during the inspection required by paragraph (a)(3) of this AD, prior to further flight, reinstall or replace the elevator ice protection boots in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 998A, dated August 4, 1997.

(c) If no cracks are found in the elevator spars during the inspection required by paragraph (a)(2) of this AD, reinspect the elevator spars for cracks at intervals not to exceed 100 hours TIS, provided no cracks are found (if cracks are found, refer to paragraphs (d) and (d)(1) of this AD).

(d) At whichever of the compliance times presented in paragraphs (d)(1) and (d)(2) of this AD that occurs first, replace each elevator or elevator spar assembly with a part of improved design as specified in the "Replacement Elevator P/N" and "Replace Spar P/N" columns of the "Material Required Table" on page 4 of Piper Service Bulletin No. 998A, dated August 4, 1997. Accomplish these replacements in accordance with the applicable maintenance manual.

(1) Prior to further flight on any elevator spar assembly where any cracks are found during the initial inspection required by paragraph (a)(2) of this AD or any repetitive inspection required by paragraph (c) of this AD; or

(2) Within 1,000 hours TIS after the initial inspection required by paragraph (a)(2) of this AD.

(e) Replacing both the left and right elevators or elevator spar assemblies with parts of improved design as specified in the "Replacement Elevator P/N" and "Replace Spar P/N" columns of the "Material Required Table" on page 4 of Piper Service Bulletin No. 998A, dated August 4, 1997, is considered terminating action for the repetitive inspection requirement of this AD.

(1) This action may be accomplished at any time to terminate the repetitive inspections, but must be accomplished prior to further flight on any elevator spar found cracked or within 1,000 hours TIS after the initial inspection, whichever occurs first.

(2) If one elevator spar assembly is replaced prior to further flight when a crack is found, the other elevator spar assembly must still be repetitively inspected every 100 hours TIS until replacement at 1,000 hours TIS after the initial inspection or when cracks are found, whichever occurs first.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive

compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(h) The installations, inspections, and replacements required by this AD shall be done in accordance with Piper Service Bulletin No. 998A, dated August 4, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment becomes effective on July 23, 1999.

Issued in Kansas City, Missouri, on June 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14535 Filed 6–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–22–AD; Amendment 39–11193; AD 99–12–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–12–02, which was sent previously to all known U.S. owners and operators of Raytheon Aircraft Corporation (Raytheon) Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. This AD requires incorporating operating limitations that restrict operation of the airplanes to normal category operation and prohibit them from acrobatic and utility category operations; limit the flight load factor to 0 to 2.5 G; and limit the maximum airspeed to 175 miles per hour (mph) (152 knots). This AD resulted from a report of an in-flight separation of the right wing on a Raytheon Beech Model A45 (T–34A) airplane. The actions specified by this AD are intended to assure the operational safety of the above-referenced airplanes.

DATES: Effective July 9, 1999, to all persons except those to whom it was made immediately effective by priority letter AD 99–12–02, issued May 28, 1999, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before July 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 99–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information related to this AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone: (316) 946–4125; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On May 28, 1999, the FAA issued priority letter AD 99–12–02, which applies to all Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. That AD resulted from a report of an in-flight separation of the right wing on a Raytheon Beech Model A45 (T–34A) airplane. The airplane was involved in mock aerial combat with another Beech Model A45 (T–34A) airplane.

The left wing remained attached to the airplane following separation of the right wing. As the airplane made ground contact, the left wing forward and rear spars and wing attach fittings sustained overload fractures.

Examination of the right wing revealed structural fatigue cracks at several of the fracture surfaces. Although it did not separate from the airplane, the left wing also showed structural fatigue cracks at several locations.

Priority letter AD 99–12–02 requires fabricating two placards using letters of at least 1/10-inch in height with each consisting of the following words, and installing these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view:

Never exceed speed, Vne-175 MPH (152 knots) IAS; Normal Acceleration (G) Limits −0, and +2.5; ACROBATIC MANEUVERS PROHIBITED.

This AD also requires marking the airspeed indicators to specify the limitations referenced in the placards, and incorporating a copy of the AD into the Limitations Section of the Airplane Flight Manual (AFM).

The FAA's Determination and Explanation of the AD

Since an unsafe condition was identified that is likely to exist or develop in other Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes of the same type design airplanes, the FAA:

1. Determined that the Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes should not be operated without restrictions until the wing structure has been inspected in accordance with inspection procedures approved by the FAA, and the structure is found to be free of cracks;

2. Determined that all of the above-referenced airplanes should be restricted to normal category operation and prohibited from acrobatic and utility category operations; the flight load factor should be limited to 0 to 2.5 G; and the maximum airspeed should be limited to 175 miles per hour (mph) (152 knots);

3. Determined that immediate AD action should be taken to assure the operational safety of these airplanes; and

4. Issued AD 99–12–02 as a priority letter on May 28, 1999.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 28, 1999, to all known U.S. operators of Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Differences Between This AD and the Service Information and Possible Follow-Up Action

The actions required by this AD are different than those recommended in Raytheon Safety Communique No. 162, Rev. 1, dated June 1999, which specifies not operating the affected airplanes. Based on the service history of the wing structure of the Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes and all available information related to the referenced accident, the FAA has determined that the restrictions imposed by this AD will continue to assure the operational safety of these airplanes until detailed inspection procedures are developed.

When inspection procedures are developed for the wing structure of the affected airplanes, the FAA will evaluate these procedures and will decide whether to initiate further rulemaking action. Further action may include alleviating the restrictions imposed by this AD.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–22–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–12–02 Raytheon Aircraft Corporation: Amendment 39-11193; Docket No. 99–CE–22–AD.

Applicability: Beech Models 45 (YT–34), A45 (T–34A, B-45), and D45 (T–34B) airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To assure the operational safety of the above-referenced airplanes, accomplish the following:

(a) Prior to further flight after the effective date of this AD, accomplish the following:

(1) Fabricate two placards using letters of at least 1/10-inch in height with each consisting of the following words:

Never exceed speed, Vne-175 MPH (152 knots) IAS; Normal Acceleration (G) Limits 0, and +2.5; ACROBATIC MANEUVERS PROHIBITED."

(2) Install these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view.

(3) Insert a copy of this AD into the Limitations Section of the Airplane Flight Manual (AFM).

(b) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, modify the airspeed indicator glass by accomplishing the following:

(1) Place a red radial line on the indicator glass at 175 miles per hour (mph) (152 knots).

(2) Place a white slippage index mark between the airspeed indicator glass and the case to visually verify that the glass has not rotated.

(c) Within the next 10 hours TIS after the effective date of this AD, mark the outside surface of the "g" meters with lines of approximately 1/16-inch by 3/16-inch, as follows:

(1) A red line at 0 and 2.5; and

(2) A white slippage mark between each "g" meter glass and case to visually verify that the glass has not rotated.

(d) Fabricating and installing the placards and inserting a copy of this AD into the AFM as required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD, respectively, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA

Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) Information related to this priority letter AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment becomes effective on July 9, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 99–12–02, issued May 28, 1999, which contains the requirements of this amendment.

Issued in Kansas City, Missouri, on June 4, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14932 Filed 6–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–145–FOR; State Program Amendment No. 98–1]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed reference changes in its surface and underground mining rules concerning application requirements for geology descriptions and public participation. Indiana also proposed to add a new provision to its rule pertaining to surface mining application requirements for postmining land use information. Indiana intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Proposed Amendment

By letter dated March 8, 1999 (Administrative Record No. IND–1633), Indiana sent us an amendment to its program under SMCRA. Indiana sent the amendment at its own initiative. Indiana proposed to amend the Indiana Administrative Code (IAC) at 310 IAC 12–3 regarding permit application requirements for geology descriptions, postmining land uses, and public participation.

We announced receipt of the amendment in the March 25, 1999, **Federal Register** (64 FR 14412). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on April 26, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

1. 310 IAC 12–3–31 Surface Mining Permit Applications; Geology Description and 310 IAC 12–3–69 Underground Mining Permit Applications; Geology Description

a. At 310 IAC 12–3–31(a)(3), Indiana replaced a reference to "IC 13–4.1" with a reference to "IC 14–34." This change was necessary because Indiana recodified the Indiana Surface Coal Mining and Reclamation Act, effective July 1, 1995. Indiana repealed Indiana Code (IC) 13–4.1 and recodified its substantive provisions at IC 14–8 and 14–34. We find that this change will not make Indiana's regulation less effective than the counterpart Federal regulation at 30 CFR 780.22(a)(3).

b. At 310 IAC 12–3–31(c), 12–3–69(a)(3), and 12–3–69(c)(3), Indiana replaced references to "this rule" with references to "this article." Since Article 12 contains all of the State's rules for coal mining and reclamation operations, the references to "this article" in Indiana's rules are consistent with the references to "this chapter" in the counterpart Federal regulations at 30 CFR 780.22(c), 784.22(a)(3), and 784.22(c)(3). Therefore, Indiana's amended regulations at 310 IAC 12–3–31(c), 12–3–69(a)(3), and 12–3–69(c)(3) are no less effective than the counterpart Federal regulations.

c. At 310 IAC 12–3–69(d), Indiana replaced a reference to "subsection (b)" with a reference to "subsections (b)(2) and (b)(3)." As revised, the director may waive in writing only the permit application geologic information requirements for subsections (b)(2) and (b)(3) if that information is unnecessary because other reliable information is available. This is consistent with the requirements of the counterpart Federal regulation at 30 CFR 784.22(d). We find that Indiana's amended regulation at 310 IAC 12–3–69(d) is no less effective than the counterpart Federal regulation.

2. 310 IAC 12–3–48 Surface Mining Permit Applications; Reclamation and Operations Plan; Postmining Land Uses

Indiana proposes to revise this rule by adding a new provision at subsection (a)(3) that requires the detailed description of the proposed land use in the reclamation plan to include an explanation of the consideration given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs. Indiana's new provision at 310 IAC 12–3–48(a)(3) is substantively the same as the counterpart Federal regulation provision at 30 CFR 780.23(b)(3), and we are approving it.

3. 310 IAC 12–3–106 Permit Applications; Public Participation

At 310 IAC 12–3–106(a)(8), Indiana proposes to correct a reference to its experimental practice regulatory provisions by replacing the reference to "section 94" with a reference to "section 94.1." Indiana repealed section 94 and added section 94.1 effective October 1, 1993. We find that this correction will make Indiana's regulation no less effective than the counterpart Federal regulation at 30 CFR 773.13(a)(vi).

4. IC 14–34–8–8 Bond Pool

In the April 20, 1992, **Federal Register** (57 FR 14350), we approved IC 13–4.1–6.5–8 [currently IC 14–34–8–8] with two additional requirements. At 30 CFR 914.16(h)(1), we required Indiana to complete an actuarial study of the surface coal mine reclamation bond pool as set forth in the OSM and Indiana Department of Natural Resources Cooperative Agreement GR 193184 and to initiate action to implement any forthcoming recommendations on participant fees and other matters affecting the long-term solvency of the pool. At 30 CFR 914.16(h)(2), we required Indiana to recalculate the performance bonds for all existing bond pool members and, if indicated, require the submission of additional Phase I performance bond. In response to these requirements, Indiana submitted an Actuarial Study Final Report dated June 1992 (Administrative Record No. IND–1124) and completed the bond recalculations. In 1994, we conducted a review of the Indiana bond pool, including bond pool operation, solvency, bond adjustments, and bond replacements. On page 11 of the October 14, 1994, annual report for Indiana (Administrative Record No. IND–1640), we reported that Indiana operated the bond pool consistent with the assumptions used in the actuarial study and that the bond pool was solvent. We also found that Indiana conducted bond evaluation and made bond adjustments as needed. Therefore, we are taking this opportunity to remove the requirements codified at 30 CFR 914.16(h)(1) and (h)(2).

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1638).

By letter dated April 15, 1999 (Administrative Record No. IND–1642), the Fish and Wildlife Service (FWS) commented about Indiana's proposed new provision at 310 IAC 12–3–48(a)(3). This new provision concerns the detailed description of the proposed land use in the reclamation plan. It requires the applicant to include an explanation of the consideration given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

The FWS commented that it seems inappropriate for the State to pass a regulation requiring changes in its coal regulatory program before OSM has reviewed and approved the changes.

The Indiana Surface Coal Mining and Reclamation Act at Indiana Code (IC) 14–34–2–4(b) allows Indiana to submit a formal amendment to OSM only after the provisions of the amendment have been approved by the governor or have become law. We approved IC 14–34–2–4(b) on April 10, 1996 (61 FR 15891), after finding that neither SMCRA nor the Federal regulations contain specific requirements regarding the administrative or legislative procedures in the State for rulemaking. However, the Federal regulation at 30 CFR 732.17(g) requires States to submit to OSM as an amendment any proposed changes to laws or regulations of an approved State program. It also specifies that these laws or regulations must not take effect for purposes of a State program until approved by OSM.

In the March 1, 1999, Indiana Register (22 IR 1941), Indiana published a final rule notice of the proposed changes to the Indiana program being considered by OSM in this final rule. The Indiana final rule notice specified that the amendments to 310 IAC 12–3 will not become effective until the Indiana Department of Natural Resources receives notice of approval from OSM and publishes notice of that approval in the Indiana Register. Therefore, even though the Governor of Indiana approved the changes to 310 IAC 12–3–48 and the changes were published as final in the Indiana Register, they will not become effective until approved by OSM.

The FWS also commented that a balance must be maintained between consideration of the wishes of surface land owners and local planning entities and the need to adhere to the environmental protection requirements of SMCRA and other Federal and State environmental laws and regulations. The FWS recommended that in situations where those laws and regulations take precedent over local plans and preferences, the "consideration" should include an explanation of why the conflict occurred, along with a brief explanation of the purpose and requirements of the relevant laws and regulations.

As discussed in Finding 2, Indiana's new provision at 310 IAC 12–3–48(a)(3) is substantively the same as the counterpart Federal regulation provision at 30 CFR 780.23(b)(3). However, we did provide the above comment and recommendation to Indiana for its consideration when implementing the new provision.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1638). By letter dated April 26, 1999, EPA stated that it had no comments to offer (IND–1646).

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 17, 1999, we requested comments on Indiana's amendment (Administrative Record No. IND–1638), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Indiana on March 8, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of

subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 26, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
March 8, 1999	June 14, 1999	310 IAC 12–3–31(a)(3), (c); 12–3–48(a)(3); 12–3–69(a)(3), (c)(3), (d); 12–3–106(a)(8)

§ 914.16 [Amended]

3. Section 914.16 is amended by removing and reserving paragraph (h).

[FR Doc. 99–15028 Filed 6–11–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ37

Veterans Education: Increase in Educational Assistance Rates

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute the monthly rates of basic educational assistance payable to veterans and servicemembers under the Montgomery GI Bill—Active Duty must be adjusted each fiscal year in accordance with a statutory formula. The Veterans Benefits Assistance Act of 1998 provides an increase of approximately 20% that supersedes the otherwise applicable statutory increase for Fiscal Year 1999 (October 1, 1998, through September 30, 1999). The regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Active Duty are changed to show the rates indicated in the Act for Fiscal Year 1999. Regular annual adjustments to these rates will resume commencing with Fiscal Year 2000.

DATES: *Effective Date:* This final rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: As provided by the Veterans Benefits Act of 1998 (Pub. L. 105–178, Subtitle B), the rates of basic educational assistance under the Montgomery GI Bill—Active Duty payable to students pursuing a program of education full time must be increased by approximately 20%.

It should be noted that some veterans will receive an increase in monthly payments that will be less than 20%. The increase does not apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (so-called "kickers"). It does not apply to amounts payable for dependents. Veterans who previously had eligibility under the Vietnam Era GI Bill receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased by 20%.

Public Law 105–178, Subtitle B increases the full-time rates for institutional training. These increased rates result in proportionate increases in the benefits payable for other types of training whose rates are based on the

institutional training rates. For example, monthly rates payable to veterans in apprenticeship or other on-job training are set by statute at a given percentage of the full-time institutional rate.

38 U.S.C. 3015(a) and (b) require that the Department of Veterans Affairs (VA) pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the Montgomery GI Bill—Active Duty in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter-time have had their payments limited to 50% or less of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter-time or less have had their payments limited to 25% or less of the full-time institutional rate. Changes are made consistent with the authority and formula described in this paragraph.

Nonsubstantive changes also are made for the purpose of clarity.

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612 and does not directly affect small entities. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final rule in 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 4, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7136, paragraphs (b), (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 1998, and before October 1, 1999, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$528.00
¾ time	396.00
½ time	264.00
Less than ½ but more than ¼ time	264.00
¼ time	132.00

(Authority: 38 U.S.C. 3015)

(2) If a veteran's service is described in paragraph (a) of this section, the monthly rate payable to the veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 1998, and before October 1, 1999, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$396.00
Second six months of pursuit of training	290.40
Remaining pursuit of training	184.80

(Authority: 38 U.S.C. 3015, 3032(c))

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is:

(i) $439.85 for training that occurs after September 30, 1997, and before October 1, 1998; and

(ii) $528.00 for training that occurs on or after October 1, 1998, and before October 1, 1999.

(Authority: 38 U.S.C. 3015)

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 1998, and before October 1, 1999, is the rate stated in the following table.

Training	Monthly rate
Full time	$429.00
¾ time	321.75
½ time	214.50
Less than ½ but more than ¼ time	214.50
¼ time or less	107.25

(Authority: 38 U.S.C. 3015, 3032(c))

(2) The monthly rate of educational assistance payable to a veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 1998, and before October 1, 1999, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$321.75
Second six months of pursuit of training	235.95
Remaining pursuit of training	150.15

(Authority: 38 U.S.C. 3015, 3032(c))

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is:

(i) $357.38 for training that occurs after September 30, 1997, and before October 1, 1998; and

(ii) $429.00 for training that occurs on or after October 1, 1998, and before October 1, 1999.

(Authority: 38 U.S.C. 3015)

3. In § 21.7137, paragraph (c)(2) introductory text is amended by removing "1997, and before October 1, 1998" and adding, in its place "1998, and before October 1, 1999"; paragraph (c)(2)(i) is amended by removing "$627.85" and adding, in its place "$716.00"; paragraph (c)(2)(ii) is amended by removing "$471.39" and adding, in its place, "$537.50"; paragraph (c)(2)(iii) is amended by removing "$313.93" and adding, in its place "$358.00"; paragraph (c)(2)(iv) is amended by removing "$156.96" and adding, in its place "$179.00"; and paragraph (a) is revised to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 1998, and before October 1, 1999, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$716.00	$752.00	$783.00	$16.00
¾ time	537.50	564.00	587.50	12.00
½ time	358.00	376.00	391.50	8.50
Less than ½ but more than ¼ time	358.00	.....	.....	.....
¼ time or less	179.00	.....	.....	.....

(Authority: 38 U.S.C. 3015(e), (f), and (g))

(2) For veterans pursuing apprenticeship or other on-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 1998, and before October 1, 1999, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$498.75	$511.13	$522.00	$5.25
2nd six months of pursuit of program	346.78	356.13	363.83	3.85
3rd six months of pursuit of program	208.60	214.73	219.45	2.45
Remaining pursuit of program	196.70	202.48	207.73	2.45

(Authority: 38 U.S.C. 3015(e), (f), (g))

(3) The monthly rate payable to a veteran who is pursuing a cooperative course is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Oct. 1, 1997–Sept. 30, 1998	$627.85	$663.85	$694.85	$16.00
On or after Oct. 1, 1998, and before Oct. 1, 1999	716.00	752.00	783.00	16.00

(Authority: 38 U.S.C. 3015)

* * * * *

[FR Doc. 99–14916 Filed 6–11–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[FRL–6345–3]

RIN 2060–AE75

National Emission Standards for Hazardous Air Pollutants for Source Categories; Wool Fiberglass Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in wool fiberglass manufacturing facilities. This action also adds Method 316 and Method 318 for the measurement of formaldehyde from wool fiberglass manufacturing lines to appendix A of part 63.

The hazardous air pollutants (HAPs) emitted by the facilities covered by this rule include compounds of three metals (arsenic, chromium, lead) and three organic HAPs (formaldehyde, phenol, and methanol). Exposure to these HAPs can cause reversible or irreversible health effects including carcinogenic, respiratory, nervous system, developmental, reproductive, and/or dermal health effects. The EPA estimates the final rule will reduce nationwide emissions of HAPs from these facilities by 530 megagrams per year (Mg/yr) (580 tons per year [ton/yr]), an approximate 30 percent reduction from the current level of emissions. In addition, the rule will achieve an estimated 760 Mg/yr (840 ton/yr) of particulate matter (PM) reductions.

These standards implement section 112(d) of the Clean Air Act (CAA) and are based on the Administrator's determination that wool fiberglass manufacturing facilities may reasonably be anticipated to emit several of the 188 HAPs listed in section 112(b) of the CAA from the various process operations found within the industry. The final rule will provide protection to the public by requiring all wool

fiberglass plants that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

In compliance with the Paperwork Reduction Act (PRA), this action also amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for this rule.

A supplement to the proposed rule was proposed in the **Federal Register** on February 12, 1999 (64 FR 7149). The EPA will give careful consideration to all comments on the supplemental proposal and will amend this final rule in a future action as appropriate.

EFFECTIVE DATE: June 14, 1999. See the **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: *Docket.* The docket for this rulemaking containing the information considered by the EPA in development of the final rule is Docket No. A–95–24. This docket is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Johnson, at (919) 541–5025, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information regarding Methods 316 and 318, contact Ms. Rima N. Dishakjian, Emissions, Monitoring, and Analysis Division, at (919) 541–0443.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by the final rule are facilities that manufacture wool fiberglass. Regulated categories and entities are shown in Table 1.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description
Industrial Federal Government: Not Affected. State/Local/Tribal Government: Not Affected.	Wool Fiberglass Manufacturing Plants (SIC 3296).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1380 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate regional representative:

Region I—Janet Bowen, Office of Ecosystem Protection, U.S. EPA, Region I, CAP, JFK Federal Building, Boston, MA 02203, (617) 565–3595.

Region II—Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4000.

Region III—Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III, 3AT10, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2110.

Region IV—Lee Page, Air Enforcement Branch, U.S. EPA, Region IV, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104, (404) 562–9131.

Region V—George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V, 5AE–26, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088.

Region VI—John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 665–7220.

Region VII—Donald Toensing, Chief, Air Permitting and Compliance Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7446.

Region VIII—Douglas M. Skie, Air and Technical Operations Branch Chief, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6432.

Region IX—Barbara Gross, Air Compliance Branch Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1138.

Region X—Anita Frankel, Air and Radiation Branch Chief, U.S. EPA, Region X, AT–092, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1757.

Judicial Review. The NESHAP for wool fiberglass manufacturing plants was proposed on March 31, 1997 (62 FR 15228); this action announces the EPA's final decisions on the rule. Under section 307(b)(1) of the CAA, judicial review of the NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Technology Transfer Network. In addition to being available in the docket, an electronic copy of today's document, which includes the regulatory text, is available through the Technology Transfer Network (TTN) at the Unified Air Toxics Website (UATW). Following promulgation, a copy of the rule will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). The TTN facilitates the exchange of information in various areas of air pollution control, such as technology. If more information on the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. The following outline is provided to aid in reading this preamble to the final rule.

I. Background
A. Background and Purpose of Standards
B. Technical Basis of Regulation
C. Stakeholder and Public Participation
II. Summary of Final Rule
A. Applicability
B. Emission Standards
C. Compliance and Performance Test Provisions
D. Monitoring and Operating Requirements
E. Notification, Reporting, and Recordkeeping Requirements
III. Summary of Changes Since Proposal
A. Definitions
B. Performance Test Provisions
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E. Display of OMB Control Numbers
IV. Summary of Impacts
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A. Selection of Pollutants

B. Selection of Emission Limits
C. Monitoring
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VI. Administrative Requirements
A. Docket
B. Executive Order 12866—Regulatory Planning and Review
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D. Unfunded Mandates Reform Act
E. Regulatory Flexibility
F. Submission to Congress and the General Accounting Office
G. Paperwork Reduction Act
H. Pollution Prevention Act
I. National Technology Transfer and Advancement Act
J. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
K. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

I. Background

A. Background and Purpose of Standards

Section 112 of the CAA requires that the EPA promulgate regulations for the control of HAP emissions from both new and existing major sources. The statute requires the regulations to reflect the maximum degree of reduction in emissions of HAPs that is achievable, taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

Section 112 of the CAA requires the EPA to establish national standards to reduce air emissions from major sources and certain area sources that emit one or more HAPs. Section 112(b) contains a list of HAPs to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed and a schedule for development of these NESHAP. The Agency must list all known source categories and subcategories of "major sources" that emit one or more of the listed HAPs. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAPs. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes wool fiberglass manufacturing.

The control of HAPs is achieved through the promulgation of technology-based emission standards under section 112 for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or (5) a combination of the above. (See section 112(d)(2).) The EPA may promulgate more stringent regulations to address residual risk that remains after the imposition of controls. (See section 112(f)(2).) Pursuant to section 112(d) of the CAA, on March 31, 1997, the EPA proposed NESHAP for new and existing major sources in the wool fiberglass manufacturing source category (62 FR 15228).

B. Technical Basis of Regulation

Since proposal, no changes have been made in the emission standards or the MACT floor that is the basis for the emission standards. The rationale for the selection of the standards, including their technical basis, is discussed in the preamble to the proposed rule (62 FR 15228, March 31, 1997).

C. Stakeholder and Public Participation

Various stakeholders were involved in the development of these standards. Individual wool fiberglass companies and the industry association (the North American Insulation Manufacturers Association) were consulted throughout the development of these standards. Representatives from State and Regional enforcement agencies, as well as representatives from other offices within the EPA, participated in the regulatory development process by reviewing and commenting on the standards during development.

The NESHAP for wool fiberglass manufacturing (40 CFR part 63, subpart NNN) was proposed in the **Federal Register** on March 31, 1997 (62 FR 15228). The public comment period ended on May 30, 1997. Industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed standard and to provide additional information during the public comment period. Although the Agency offered at proposal the opportunity for oral presentation of data, views, or arguments concerning the proposed rule, no one requested a hearing and a hearing was not held. The EPA received nine letters containing comments on the proposed standard from various groups including associations representing industry, regulatory agencies, and air pollution control equipment vendors, as well as from State regulatory agencies and a private citizen. This final rule reflects the EPA's full consideration of the comments. The major public comments, along with the EPA's responses to the comments on the proposed rule, are summarized in this preamble. A more detailed discussion of public comments and EPA's responses is contained in the docket (Docket No. A–95–24; Item V–C–2).

II. Summary of Final Rule

A. Applicability

As stated in § 63.1380, the final NESHAP applies to each of the following existing and newly constructed sources located at a wool fiberglass manufacturing facility: All glass-melting furnaces, rotary spin (RS) manufacturing lines that produce bonded building insulation, and flame attenuation (FA) manufacturing lines producing bonded pipe insulation. The rule also applies to new FA manufacturing lines producing bonded heavy-density products. RS and FA manufacturing lines that produce nonbonded products, where no binder is applied, are not subject to the standards. A facility emitting less than 10 tons per year of any HAP or less than 25 tons per year of any combination of HAPs is an area source and is not subject to this NESHAP. Facilities that manufacture mineral wool from rock or slag are not subject to this rule but are subject to a separate NESHAP for mineral wool production. (See 62 FR 25370 (May 8, 1997), notice of proposed rulemaking.)

B. Emission Standards

No changes were made to the emission limits as proposed. The emission standards are contained in the final rule in § 63.1382.

C. Compliance and Performance Test Provisions

As stated in § 63.1387, new sources must demonstrate compliance with the standard at startup. Existing sources must comply within 3 years of the effective date of the final rule but may request an extension for a fourth year pursuant to the regulatory authority under section 112(i)(3)(B) of the CAA.

As required by § 63.1384, owners or operators must, by conducting a performance test, demonstrate initial compliance with the PM emission limits for affected glass-melting furnaces and the formaldehyde emission limits for affected RS and FA manufacturing lines. During the initial performance test, the owner or operator must monitor and record the glass pull rate of the furnace and the glass pull rate of each manufacturing line during each of the three test runs and determine the emission rate for each run. A determination of compliance will be based on the average of the three individual test runs.

In § 63.1384, the owner or operator is required to monitor and record all parameter values at least every 15 minutes during the performance test and to calculate an average using all of the parameter measurements. However, the standard requires that the appropriate parameters for incinerators and scrubbers be continuously monitored and recorded.

The owner or operator of an electrostatic precipitator (ESP) that is used to control PM emissions from a glass-melting furnace must monitor and record the ESP operating parameter(s) and establish the parameter limit(s) that will be used to monitor the ESP performance following the performance test. Where a cold top electric furnace is operated without the use of an add-on PM control device, the owner or operator must monitor and record the air temperature above the surface of the glass melt to ensure that the maximum temperature does not exceed 120 °C (250 °F) at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface. The owner or operator of a glass-melting furnace that is not equipped with an add-on PM control device and that is not a cold top electric furnace must monitor and record the furnace operating parameter(s) and establish the parameter limit(s) that will be used to monitor the furnace performance following the performance test.

To determine compliance with the emission limits for new and existing RS and FA manufacturing lines subject to the standard, the owner or operator must measure formaldehyde emissions to the atmosphere from forming and, when present, curing and cooling processes, and sum the emissions from these processes. The owner or operator must, according to § 63.1384, conduct the initial performance test for each new or existing RS manufacturing line while making the building insulation product with the highest loss on ignition (LOI) expected to be produced on that manufacturing line. Initial performance tests are required for new FA manufacturing lines producing heavy-density products and on new and existing FA manufacturing lines producing pipe products. Performance tests for each affected FA manufacturing line must be conducted while producing the highest LOI heavy-density or pipe product, as appropriate.

During performance tests on affected RS and FA manufacturing lines, the owner or operator must record, as specified in § 63.1384, the LOI and density of each product for each line tested, the free formaldehyde content of the resin(s) used during the tests, and the binder formulation(s) used during the tests. The performance tests must be conducted using the resin having the highest free formaldehyde content that the owner or operator expects to use on that line. If the owner or operator uses process modifications to comply with the emission limits for affected RS or FA manufacturing lines, the owner or operator must monitor and record the process parameter(s) and establish the process parameter limit(s) that will be used to monitor the performance of the process modifications following the performance tests. If a wet scrubbing control device is used to control formaldehyde emissions from affected RS or FA manufacturing lines, the owner or operator must continuously monitor and record the scrubber parameters and establish the operating limits of the pressure drop across each scrubber, the scrubbing liquid flow rate to each scrubber, and the identity and feed rate of any chemical additive. Where a thermal incinerator is used to comply with the emission limit for formaldehyde, the owner or operator is required to continuously measure and record the incinerator operating temperature during the performance test and determine the average temperature during each 1-hour test run. The average of the three test runs will be used to monitor compliance.

Under § 63.1384, the owner or operator may seek to broaden or extend the operating limits established during the performance tests for affected control devices and processes by conducting additional performance tests to demonstrate compliance at the new limits.

Under § 63.1384, the owner or operator of RS and FA manufacturing lines may conduct short-term experimental production runs without conducting additional performance tests. The final rule requires the owner or operator to notify the Administrator at least 15 days in advance of an experimental production run. The experimental runs must not exceed 1 week in duration unless a longer period is approved by the Administrator. The owner or operator may conduct the experimental production run unless notified of a decision to disapprove the run or unless notified of a request for additional information prior to the date of the run.

D. Monitoring and Operating Requirements

Owners or operators of affected sources must submit, under § 63.1383, an operations, maintenance, and monitoring plan as part of their application for a part 70 permit. The plan must include procedures for the proper operation and maintenance of processes and control devices used to comply with the emission limits as well as the corrective actions to be taken when control devices or process parameters deviate from allowable levels established during performance testing. The plan also must identify the procedures for the proper operation and maintenance of monitoring devices including periodic calibration and verification of accuracy.

Section 63.1383 requires that each baghouse used on a glass-melting furnace be equipped with a bag leak detection system having an audible alarm that automatically sounds when an increase in particulate emissions above a predetermined level is detected. Such a device monitors the performance of the baghouse, detects an increase in PM emissions, and indicates that maintenance of the baghouse is needed. The operating limits of § 63.1382 require the owner or operator to initiate corrective action within 1 hour of the alarm sounding according to the operations, maintenance, and monitoring plan. If the alarm is activated for more than 5 percent of the total operating time during the 6-month block reporting period, the owner or operator must develop and implement a Quality Improvement Plan (QIP). The QIP must be consistent with the compliance assurance monitoring rule, 40 CFR part 64 subpart D (62 FR 54900, October 22, 1997).

The monitoring requirements of § 63.1383 require the owner or operator of each ESP used to control an affected glass-melting furnace to monitor and record the established ESP parameter(s) according to the procedures in the operations, maintenance, and monitoring plan. The final rule requires the owner or operator to initiate corrective action within 1 hour, according to the procedures in the facility's operations, maintenance, and monitoring plan, if the monitored

parameter(s) deviates from the limit(s) established during performance tests. If the monitored parameter(s) is outside the established limit(s) for more than 5 percent of the total operating time in a 6-month block reporting period, the owner or operator must develop and implement a QIP. The owner or operator must operate the ESP such that the monitored parameter(s) does not deviate from the established limit(s) for more than 10 percent of the total operating time in a 6-month block reporting period.

Under § 63.1383 of the final rule, the owner or operator of a cold top electric furnace, who complies with the PM emission limit without the use of an air pollution control device, must monitor and record the air temperature above the glass melt to monitor when the temperature exceeds the maximum temperature of 120 °C (250 °F) measured at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface. The owner or operator must initiate corrective action within 1 hour according to § 63.1382 if the average air temperature exceeds the maximum. If the air temperature as measured above the molten glass exceeds the maximum for more than 5 percent of the total operating time in a 6-month block reporting period, the owner or operator is required to develop and implement a QIP. The rule also requires that the owner or operator operate the cold top electric furnace so that the maximum temperature is not exceeded for more than 10 percent of the total operating time in a 6-month block reporting period.

The final rule (§ 63.1383) requires the owner or operator of a glass-melting furnace, which is not equipped with an air pollution control device for PM control and which is not a cold top electric furnace, to monitor the glass-melting furnace according to the procedures in the operation, maintenance, and monitoring plan. The plan must include the furnace operating parameter(s) and parameter limit(s) to be monitored to identify any operational problems, a monitoring schedule, and recordkeeping procedures. As required by § 63.1382, the owner or operator must initiate corrective action within 1 hour if the monitored operating parameter(s) deviates from the limits established during the initial performance. The rule also requires the owner or operator to develop and implement a QIP if the monitored furnace operating parameter value(s) is outside the established limit(s) for more than 5 percent of the total operating time in a 6-month block reporting period. The owner or operator must operate the affected glass-melting furnace so that the monitored furnace parameter value(s) is not outside the established limit(s) for more than 10 percent of the total operating time in a 6-month block reporting period.

The final rule, under § 63.1383, requires the owner or operator to monitor and record the glass pull rate on all existing and new glass-melting furnaces. If the monitored pull rate exceeds by more than 20 percent the average glass pull rate measured during the performance test, the owner or operator must initiate corrective action within 1 hour as required by § 63.1383. If the glass pull rate exceeds (by more than 20 percent) the average established during the performance test for more than 5 percent of the total operating time in a 6-month block reporting period, the owner or operator must develop and implement a QIP. The final rule requires the owner or operator to operate the glass-melting furnace so that the glass pull rate does not exceed (by more than 20 percent) the average established during the performance test for more than 10 percent of the total operating time in a 6-month block reporting period.

If an incinerator is used to control formaldehyde emissions, § 63.1383 requires that the owner or operator continuously monitor and record the operating temperature. Following the initial performance test, the operating limits of § 63.1382 require that the owner or operator maintain the temperature so that the temperature, averaged over any 3-hour block period, does not fall below the average temperature established during the initial performance test. As required in § 63.1383, the owner or operator must also annually inspect each incinerator to ensure its proper operation and maintenance. The rule specifies that, at a minimum, the following be included in the inspection:

(1) Burners, pilot assemblies, and pilot sensing devices;
(2) Adjustment of combustion air;
(3) Internal structures, such as baffles;
(4) Dampers, fans, and blowers;
(5) Proper sealing;
(6) Motors;
(7) Refractory lining; and (8) Incinerator shell.

Section 63.1383 of the final rule requires that the owner or operator, who uses a wet scrubbing control device to control formaldehyde emissions from affected RS or FA manufacturing lines, continuously monitor and record the gas pressure drop across each scrubber, the scrubbing liquid flow rate to each scrubber, and the identity and feed rate of any chemical added to the scrubbing liquid. As required in § 63.1382, the owner or operator must initiate corrective action according to the procedures in the facility's operations, maintenance, and monitoring plan within 1 hour if the average scrubber parameter for any 3-hour block period deviates from the limit(s) established during the initial performance test. If any scrubber parameter is outside an established limit(s) for more than 5 percent of the total operating time in a 6-month block reporting period, the owner or operator must develop and implement a QIP. The owner or operator must operate each affected scrubber such that none of the monitored parameters deviate from the established limits for more than 10 percent of the total operating time in a 6-month block reporting period.

As required in § 63.1383, the owner or operator who uses process modifications to comply with the emission limits for RS or FA manufacturing lines must establish a correlation between the parameter(s) to be monitored and formaldehyde emissions. The owner or operator must also include as part of the operations, maintenance, and monitoring plan information on how the process will be operated and maintained, the process parameter(s) to be monitored including the correlation between the parameter(s) and formaldehyde emissions, a monitoring schedule, and recordkeeping procedures to document proper operation of the process modifications. Section 63.1382 of the final rule requires the owner or operator to initiate corrective action within 1 hour of a deviation of a process parameter from the established limits and to develop and implement a QIP if the process parameter(s) is outside the established limit(s) for more than 5 percent of the total operating time in a 6-month block reporting period. The owner or operator must operate the process so that the process modification parameters do not deviate from the established limits for more than 10 percent of the total operating time in a 6-month block reporting period.

Under § 63.1383 of the final rule, the owner or operator must monitor and record the free formaldehyde content of each resin shipment, the formulation of each batch of binder used, and, every 8 hours, product LOI and product density. Following the performance test, § 63.1382 requires that the owner or operator must formulate binders using resins having a free formaldehyde content that does not exceed the free formaldehyde content range contained in the resin specification established and used during the performance test.

The final rule also requires that the owner or operator use a binder formulation that does not vary from the specification and operating range established during the performance test. For purposes of this rule, the addition of urea and lignin to the binder formulation is not considered changes in the formulation.

Failure to operate all affected processes and control devices according to the operating limits of § 63.1382, for example, failure to initiate corrective actions or failure to develop and implement a QIP, is considered a violation of the operating requirements.

Under § 63.1383 of this rule, the owner or operator may modify any of the control device or process parameter limits established during the initial performance tests provided that the owner or operator conducts additional emission testing to verify compliance at the new parameter levels.

E. Notification, Reporting, and Recordkeeping Requirements

Notification, reporting, and recordkeeping requirements for MACT standards are included in the NESHAP general provisions (40 CFR part 63, subpart A). The general provisions require: (1) Initial notification(s) of applicability, notification of performance test, and notification of compliance status; (2) a report of performance test results; (3) a startup, shutdown, and malfunction plan with semiannual reports of any reportable events; and (4) semiannual reports of deviations from established parameters. When deviations in operating parameters established during performance testing are reported, the owner or operator must report quarterly until a request to return to semiannual reporting is approved by the Administrator.

In addition to the requirements of the general provisions, § 63.1386 of the final rule specifies additional records to be kept by the owner or operator. The final rule requires the owner or operator to maintain records of the following, as applicable:

(1) Bag leak detection system alarms, including the date and time of the alarm, when corrective actions were initiated, the cause of the alarm, an explanation of the corrective actions taken, and when the cause of the alarm was corrected;

(2) ESP parameter value(s) used to monitor ESP performance, including any period when the value(s) deviates from the established limit(s), the date and time of the deviation, when corrective actions were initiated, the cause of the deviation, an explanation of the corrective actions taken, and when the cause of the deviation was corrected;

(3) Air temperature above the molten glass in an uncontrolled cold top electric furnace, including any period when the temperature exceeds 120 °C (250 °F) at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface, the date and time of the exceedance, when corrective actions were initiated, the cause of the exceedance, an explanation of the corrective actions taken, and when the cause of the exceedance was corrected;

(4) Uncontrolled glass-melting furnace (that is not a cold top electric furnace) parameter value(s) used to monitor furnace performance, including any period when the value(s) exceeds the established limit(s), the date and time of the exceedance, when corrective actions were initiated, the cause of the exceedance, an explanation of the corrective actions taken, and when the cause of the exceedance was corrected;

(5) The LOI and product density for each bonded product manufactured on a RS or FA manufacturing line, the free formaldehyde content of each resin shipment received and used in binder formulation, and the binder formulation of each batch;

(6) Process parameter level(s) for RS and FA manufacturing lines that use process modifications to comply with the emission standards, including any period when the parameter level(s) deviates from the established limit(s), the date and time of the deviation, when corrective actions were initiated, the cause of the deviation, an explanation of the corrective actions taken, and when the cause of the deviation was corrected;

(7) Scrubber pressure drop, scrubbing liquid flow rate, and any chemical additive (including chemical feed rate to the scrubber), including any period when a parameter level(s) deviates from the established limit(s), the date and time of the deviation, when corrective actions were initiated, the cause of the deviation, an explanation of the corrective actions taken, and when the cause of the deviation was corrected;

(8) Incinerator operating temperature and results of periodic inspection of incinerator components, including any period when the temperature falls below the established average or the inspection identifies problems with the incinerator, the date and time of the problem, when corrective actions were initiated, the cause of the problem, an explanation of the corrective actions taken, and when the cause of the problem was corrected;

(9) Glass pull rate, including any period when the pull rate exceeds the average pull rate established during the performance test by more than 20 percent, the date and time of the exceedance, when corrective actions were initiated, the cause of the exceedance, an explanation of the corrective actions taken, and when the cause of the exceedance was corrected.

The NESHAP general provisions (40 CFR part 63, subpart A) require that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records onsite for at least 2 years but may retain the records offsite the remaining 3 years. The files may be retained on microfilm, on microfiche, on a computer, on computer disks, or on magnetic tape disks. Reports may be made on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

III. Summary of Changes Since Proposal

Changes have been incorporated into the final NESHAP for wool fiberglass manufacturing plants in response to comments on the proposed rule. The principal changes made since proposal are summarized below. Additional discussion of changes and the rationale for these changes is presented in section V of this preamble.

A. Definitions

In response to public comments, minor clarifying changes were made in § 63.1381 to the definitions of *building insulation, glass pull rate, manufacturing line,* and *wool fiberglass.* For purposes of clarifying the applicability of the rule and because of changes in the monitoring requirements for certain glass-melting furnaces, definitions were added for *cold top electric furnace, new source, and wool fiberglass manufacturing facility.*

B. Performance Test Provisions

In response to public comments, the EPA revised the proposed provision that would allow the owner or operator of RS and FA manufacturing lines subject to the NESHAP to conduct short-term experimental production runs without conducting additional performance tests. Section 63.1384 of the final rule requires that the owner or operator notify the Administrator at least 15 days in advance of an experimental production run. The duration of the test run may not exceed 1 week unless the Administrator approves a longer period. The Administrator may disapprove the experimental production run or request additional information but such disapproval or request for additional information must be made prior to the date of the experimental production run.

Other revisions clarify the proposed requirements for performance testing by specifying the frequency for monitoring and recording process and/or control device parameters during performance tests. The requirements to establish process and control device parameter limits for compliance monitoring are more appropriately a part of the requirements for performance testing and, thus, were moved from the monitoring requirements section to the performance test requirements section. The requirement for RS manufacturing lines to use the most frequently manufactured building insulation when conducting performance tests was deleted from the proposed definition of *building insulation*. A requirement was added to the performance testing provisions (§ 63.1384) for affected RS and FA manufacturing lines to conduct performance test while manufacturing the product having the highest LOI expected to be produced on the affected line. Because a glass-melting furnace may supply more than one manufacturing line, the final rule clarifies that, in addition to the furnace glass pull rate, the glass pull rate for the manufacturing line must also be monitored during the performance test.

Methods for measuring formaldehyde emissions from RS and FA manufacturing lines were contained in the proposed rule. Because the Agency now has an FTIR method (Method 320) that can be used at other sources, a self-validating method is no longer necessary. Method 318 was modified by removing the spiking procedures, which simplifies use of the method. The EPA has also clarified that this method is only applicable at mineral wool and wool fiberglass manufacturing sources. In response to comments, the final rule also contains editorial and clarifying changes in Method 318.

C. Monitoring Requirements

The monitoring requirements section in the proposed rule specified, for each control device and process, the parameter that was to be monitored. In the final rule, the section on monitoring requirements was revised. In the final rule, the monitoring requirements section (§ 63.1383) specifies that process or control device parameters must be monitored as well as monitoring frequency. The final rule recognizes that a deviation of a process or control device parameter from a level established during a performance test is more appropriately a violation of an operating limit rather than a violation of an emission limit. The operating limits are part of the standard and are specified in § 63.1382.

The proposed rule stated that the owner or operator of each affected source had to submit an operations, maintenance, and monitoring plan containing information on the proper operation and maintenance of process modifications and control devices, the parameter(s) to be monitored that would be used to determine compliance, and corrective actions to be taken when monitoring indicated a deviation from the limit(s) established during the performance tests. The final rule (§ 63.1383) clarifies that the operations, maintenance, and monitoring plan must also include procedures for the proper operation and maintenance of all monitoring devices. As proposed, each baghouse used on a glass-melting furnace must be equipped with a bag leak detection system having an audible alarm that automatically sounds when an increase in particulate emissions above a predetermined level is detected. In response to comments and for consistency with other regulations, § 63.1383 of the final standard requires that the monitor be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot). Also, because guidelines for the operation and maintenance of triboelectric bag leak detection systems have become available since proposal, these guidelines are specifically cited in the rule. The EPA's "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997) is available on the TTN under Emission Measurement Center (EMC), Continuous Emission Monitoring. To maintain consistency with bag leak detection system requirements in other regulations and to allow owners and operators flexibility to make necessary bag leak detection system adjustments, the final rule specifies that following initial adjustment, the owner or operator may adjust the range, averaging period, alarm set points, or alarm delay time as specified in the approved operations, maintenance, and monitoring plan. The final rule further specifies that in no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a 365 day period unless a responsible official, as defined in § 63.2 of the general provisions in subpart A of 40 CFR part 63, certifies in writing to the Administrator that the fabric filter has been inspected and found to be in good operating condition. The final rule clarifies that the alarm must be located in an area where appropriate plant personnel will be able to hear it and that in response to the sounding of an alarm, the owner or operator must complete corrective actions in a timely manner. The final rule also specifies some example corrective actions for bag leak detection system alarms that may be included in the operations, maintenance, and monitoring plan.

Under the proposed rule, the owner or operator would continuously monitor and record the glass pull rate on all existing and new glass-melting furnaces. As a result of comments, § 63.1383 of the final rule clarifies what is meant by continuous monitoring of the glass pull rate. Similar revisions were made to the monitoring requirements for other control devices and process parameters to clarify the requirements for monitoring frequency. Revisions were made to the proposed rule to clarify when corrective actions are required in response to monitored levels that are outside the limits established during performance tests.

Under the proposed NESHAP, the owner or operator would be in violation of the standard if the binder formulation deviated from the formulation specifications used during the performance test. In response to comments, the final rule states that the addition of urea and lignin to the binder formulation does not constitute a change in binder formulation, and the operating limits in § 63.1382 for the binder formulation and the use of resins were clarified to incorporate this change.

In response to comments, clarifying changes were made throughout the monitoring and operating requirements to indicate that because some control device or process parameters used for monitoring purposes may be established as minimum and/or maximum values, it is not always appropriate to have requirements that are in terms of exceeding control device or process parameter values. Other minor editorial changes were made throughout the monitoring and operating requirements to improve clarity.

Consistent with the general provision requirements to operate and maintain air pollution equipment in a manner consistent with good air pollution control practices, the final rule contains specific provisions for the annual inspection of incinerators to ensure that they maintain their performance in reducing formaldehyde emissions.

The proposed rule allowed the owner or operator of a glass-melting furnace that complies with the PM emission limit without the use of add-on control devices to determine the appropriate process parameter or control device parameter to monitor to determine compliance. Section 63.1383 of the final

rule specifies that the owner or operator of a cold top electric furnace is required to monitor the air temperature above the molten glass surface. Section 63.1382 requires the owner or operator of a cold top electric furnace to operate the furnace such that the air temperature above the molten glass does not exceed 120 °C (250 °F) more than 10 percent of total operating time in a 6-month block reporting period.

D. Notification, Reporting, and Recordkeeping Requirements

The proposed rule specified additional records to be kept by the owner or operator in addition to the requirements of the general provisions. Editorial and clarifying revisions were made to the final notification, reporting, and recordkeeping requirements (§ 63.1386). The final rule specifies that the time that corrective action is initiated, as well as when the cause of the alarm, deviation, or exceedance was corrected, must be recorded. In addition, product density and glass pull rate were added to the list for which records are required to be kept, consistent with the monitoring provisions in § 63.1383. Other revisions were made to the recordkeeping provisions consistent with changes made in the monitoring and operating provisions.

E. Display of OMB Control Numbers

The EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to list the information requirements contained in this final rule. The EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and its subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

IV. Summary of Impacts

The impacts estimated to be attributable to the final rule are the same as those estimated to be attributable to the proposed rule (62 FR 15228, March 31, 1997). Nationwide emissions of formaldehyde from existing RS and FA manufacturing lines are estimated to be 1,770 Mg/yr (1,950 ton/yr) at the current level of control. Implementation of the final rule will reduce nationwide formaldehyde emissions from existing sources by 410 Mg/yr (450 ton/yr). Emission reductions from RS manufacturing lines producing building insulation constitute the entire reduction; there are no emission reductions from FA manufacturing lines. Reduction in formaldehyde emissions from new RS manufacturing lines is estimated to be 120 Mg/yr (130 ton/yr) in the fifth year of the standard. Total reductions in formaldehyde emissions from both existing and new RS manufacturing lines, therefore will be 530 Mg/yr (580 ton/yr). Nationwide PM emissions from existing glass-melting furnaces at the current level of control, are about 750 Mg/yr (830 ton/yr). Under this rule, PM emissions from existing furnaces will be reduced by about 600 Mg/yr (660 ton/yr), of which 40 Mg/yr (50 ton/yr) is particulate matter less than 10 microns (μm) in diameter (PM–10). The PM emission reduction from new glass-melting furnaces resulting from this rule is estimated to be 160 Mg/yr (180 ton/yr) in the fifth year of the standard. Under the final rule, PM emissions from existing and new furnaces will be reduced by a total of 760 Mg/yr (840 ton/yr). Current nationwide emissions of metal HAPs from existing furnaces is 270 kg/yr (600 lb/yr). Under the final rule, metal HAP emissions from existing furnaces and new furnaces will be reduced by 9 kg/yr (20 lb/yr) and 2 kg/yr (5 lb/yr), respectively.

The EPA expects no water or solid waste impacts from the final rule. Because this standard is based on the use of baghouses, dry ESP's, thermal incinerators, and process modifications, there are no water pollution impacts. One existing RS manufacturing line uses scrubbers to control HAP emissions from forming. This rule will not affect the water pollution impact of the scrubbers. No additional sources are expected to add wet scrubbers for the control of HAP emissions. The PM captured by the baghouses added to existing uncontrolled electric furnaces will be recycled back to the furnace and no solid or hazardous waste is generated by the use of thermal incinerators. The EPA estimates that the rule will have a minor impact on energy consumption.

The total nationwide capital cost for existing glass-melting furnaces under the final rule is $3.2 million; the total annual cost is $1.5 million. These costs result from the expected addition of baghouses to seven electric glass-melting furnaces as well as the monitoring costs of bag leak detection systems installed on baghouses and temperature monitors installed on cold top electric furnaces.

The EPA estimates the nationwide capital costs of upgrading process modifications on 30 RS manufacturing lines to be $16.3 million, with annual costs of $4.8 million. None of the existing curing ovens that are uncontrolled for HAPs will have to add an incinerator. None of the FA manufacturing lines subject to the rule will require additional controls to comply with the emission standards. Therefore, no control costs are associated with complying with the final rule for FA manufacturing lines. For all RS and FA manufacturing lines subject to the standard, there is a one-time cost of $15,000 per line to establish the process parameter values for compliance monitoring. Because the parameters that the owner or operator is required to monitor on RS and FA manufacturing lines are currently monitored by the industry, no additional costs will be incurred for monitoring beyond the one-time cost of $15,000 per line.

Total nationwide capital cost for the standard is estimated to be $19.5 million and annual nationwide cost is estimated to be $6.3 million/yr, including installation, operation, and maintenance of emission control and monitoring systems.

The economic analysis of the rule finds impacts at the facility and market-level to be modest. The average market price increases for both structural and nonstructural wool fiberglass are expected to be less than 0.5 percent. The resultant decreases in quantity demanded range from 0.17 percent for structural insulation markets to 0.22 percent for nonstructural insulation markets. None of the affected firms are classified as small businesses and no closures are predicted.

V. Summary of Responses to Major Comments

The EPA received nine comment letters on the proposed NESHAP for wool fiberglass manufacturing. A copy of each comment letter is available for public inspection in the docket for the rulemaking (Docket No. A–95–24; see

the ADDRESSES section of this preamble for information on inspecting the docket). The EPA has had follow-up discussions with commenters regarding specific issues initially raised in their written comments. Copies of correspondence and other information exchanged between the EPA and the commenters during the post-comment period are available for public inspection in the docket for the rulemaking.

All comments received by EPA were reviewed and carefully considered by the Agency. The EPA made changes to the rule where appropriate. A summary of responses to major comments received on the proposed rule is presented below. Additional discussion of the EPA's responses to public comments is presented in the document "Summary of Public Comments and Responses on Wool Fiberglass Manufacturing NESHAP" (Docket A–95–24, Item V–C–2).

A. Selection of Pollutants

Comment: Two commenters stated that the issues of fine mineral fibers as HAP and the health effects of wool fiberglass particles greater than 1 micron in diameter should be addressed. One commenter stated that because the definition of fine mineral fibers is under review in response to new data on health effects and respirability, the EPA should address in the final preamble the possibility of a new definition for fine mineral fibers and its effects on the NESHAP.

Response: The rule does not include emission limits for fine mineral fibers at wool fiberglass manufacturing facilities because EPA determined that the affected sources do not emit "fine mineral fibers," as presently defined by the CAA. Fiberglass emissions from the affected manufacturing lines at wool fiberglass manufacturing facilities consist of clumps of fibers that are much larger than 10 micrometers in diameter. The CAA, by contrast, defines "fine mineral fibers" to include mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less. (See section 112(b)(1)n.3.)

B. Selection of Emission Limits

Comment: One commenter stated that the EPA determined the MACT floor for glass-melting furnaces inappropriately by establishing equipment standards as the MACT floor rather than a straightforward determination of numerical MACT floors as specified in section 112(d)(3) of the CAA. Such an approach, according to the commenter, has allowed the EPA to use emissions data from the worst performing units to set emission limits that are no more stringent than the nearly 20-year-old NSPS for glass-melting furnaces. The commenter believes that new baghouses and precipitators, and low-cost upgrades of existing ones, would allow much more stringent emission limits. The commenter stated that the EPA should base the MACT floors on the numerical emissions of the best performing 12 percent for existing sources and the best performing source for new sources and revise the emission limits to be consistent with the more stringent floors.

Response: In determining the MACT floor, the EPA is not limited merely to examining emissions test data from the best performing sources and calculating the numeric mean of such sources' emission rates, because the test data may not translate directly to truly achievable standards. Rather, the Agency has taken alternative approaches to establishing MACT floors in the past, depending on the type, quality, and applicability of available emissions information. (See 62 FR 49051, 49060 (September 18, 1997) (describing various alternatives)).

Among the standard options the EPA may follow is to establish the floor in consideration of the emissions control technology used by the best performing sources. Specifically, the Agency could establish the new source MACT floor based on the technology employed by the best-controlled similar source and the existing source MACT floor based on the technology used by the average of the best-performing 12 percent of sources (or, in the case of categories with fewer than 30 sources, the average of the best-performing five sources). The EPA would then calculate a numeric MACT emission limit that is achievable in practice by sources employing that technology, in view of process and air pollution control device variability.

The EPA followed this technology-driven approach in the present rulemaking. Available emissions information indicates that both baghouses and ESP's are equally effective in controlling PM emissions from glass-melting furnaces, and that the best performing sources in the wool fiberglass source category employ such technology. Accordingly, the Agency determined that either of these technologies, when well-designed and well-operated, would form the basis of the MACT floor for controlling emissions from glass-melting furnaces in this source category. The EPA then sought, consistent with the CAA, to express the MACT floor in terms of a numeric emissions limit. To do so, it evaluated existing test data from wool fiberglass facilities controlling glass-melting furnace emissions with baghouses and ESP's. Because the measured emission rates varied, even though each of the sources had well-operated and maintained air pollution control equipment, the Agency concluded that the measured rates were indicative of equipment and process variability. The EPA therefore established the MACT floor at an emission level achievable by the best performing technology, after accounting for normal operating variability.

The Agency's approach in this rulemaking to determine the applicable MACT floors is consistent with the CAA. The CAA requires a standard that is "achievable" (42 U.S.C. 112(d)(2) ("Emission standards * * * shall require the maximum degree of reductions in emissions * * * that the Administrator * * * determines is achievable * * * ")). However, the commenter's insistence on setting the MACT floor based solely on a numeric average would require the Agency to establish a standard that, in light of normal and unavoidable control equipment and process variability, would not be achievable consistently by the best performing sources in the category. The EPA's method in the present rulemaking, by contrast, heeds Congress's attention to achievability and is a prudent exercise of the discretion the CAA grants the Agency "to use its best engineering judgment in collecting and analyzing the (available emissions) data, and in assessing the data's comprehensiveness, accuracy, and *variability*, in order to determine which sources achieve the best emission reductions." (59 FR 29196, 29199 (June 6, 1994)) (emphasis added). See also *National Lime Association* v. *E.P.A.*, 627 F.2d 416, 431 n. 46 (D.C. Cir. 1980) ("to be achievable, we think a uniform standard must be capable of being met under most adverse conditions which can reasonably be expected to recur").

Comment: Two commenters stated that the EPA is not limited to setting emission limits at the MACT floors and thermal and catalytic incinerators could provide cost-effective 98 to 99 percent emission reductions on RS forming, curing, and cooling and FA forming and curing. According to one commenter, the emission limits for flame attenuation manufacturing lines are much too high; more appropriate formaldehyde emission limits are 0.068–0.078 lb/ton. Another commenter stated that emissions as low as 0.02 kg/Mg for RS manufacturing, 0.13 kg/Mg for heavy-density flame attenuation

manufacturing, and 0.11 kg/Mg for pipe flame attenuation manufacturing could be achieved if catalytic oxidation were used to control forming, curing, and cooling processes. According to one commenter, the EPA should also consider other creative control technology applications, for example, ducting multiple sources, such as forming and curing, to a single control unit at a much lower cost than separate controls on individual process units while achieving 98–99 percent reduction in forming and curing oven emissions. One commenter also stated that the EPA has ignored the use of carbon-and zeolite-based concentrators, which can reduce exhaust volumes thereby reducing the size and cost of required control devices. According to this commenter, such concentrators can reduce exhaust volumes to be treated at least tenfold and sometimes much greater allowing the use of small control devices after forming and curing. Alternatively, the concentrated exhaust could be ducted to the curing oven or curing oven control device, thus allowing for low-cost control of emissions from the entire wool fiberglass manufacturing line.

Response: Even though incineration is demonstrated on rotary spin curing ovens and is the MACT floor for new and existing rotary spin curing ovens, incineration is not demonstrated for rotary spin forming or for flame attenuation forming or flame attenuation curing. Further, concentrators are not demonstrated in this industry for any process. Although not demonstrated, the EPA considered the beyond-the-floor control option of incineration for both rotary spin forming and flame attenuation forming and curing processes. According to an analysis of the cost effectiveness of beyond-the-floor controls for RS manufacturing lines, the cost effectiveness of controlling formaldehyde emissions from forming using incineration is $183,000 per ton of formaldehyde reduction. On FA manufacturing lines producing heavy-density products, the cost effectiveness of controlling formaldehyde emissions using incineration is $1.95 million per ton of formaldehyde reduction for forming processes and $13.5 million per ton of formaldehyde reduction for curing processes. On FA manufacturing lines producing pipe products, the cost effectiveness of controlling formaldehyde emissions using incineration is $2.7 million per ton of formaldehyde reduction for forming processes and $42.3 million per ton of formaldehyde reduction for curing processes. At this time, the EPA considers that the cost effectiveness of these beyond-the-floor controls are not reasonable. Therefore, the EPA rejected beyond-the-floor controls and set emission standards at the MACT floor level.

Comment: A commenter stated that, in light of formaldehyde classification as a Class B1, probable human carcinogen, the EPA should reconsider its use of the largest emission rates as the emission limits for the flame attenuation lines producing pipe products and heavy-density products. According to one commenter, the emission limits for flame attenuation manufacturing lines are much too high with more appropriate formaldehyde emission limits being 0.068–0.078 lb/ton. Another commenter stated that emissions as low as 0.13 kg/Mg for heavy-density flame attenuation manufacturing, and 0.11 kg/Mg for pipe flame attenuation manufacturing could be achieved if catalytic oxidation were used to control forming, curing, and cooling processes.

Response: In establishing emission limits for affected FA manufacturing lines, the EPA followed the approach used for glass-melting furnaces. Process modifications constitute the pollution control technology used by the best performing sources, and each of the facilities currently producing pipe insulation and heavy density products employ an identical level of process modifications on their FA manufacturing lines. Nevertheless, the measured emission rates of formaldehyde from these sources varied. Because the same degree of pollution control had different emission rates, the Agency concluded that operational variability accounted for the differences and factored such variability into the promulgated emission standard by setting the MACT floor at a level achievable in practice by sources using the identified technology.

Comment: Because the EPA is allowing averaging of emissions across the various units making up the manufacturing line, one commenter stated that this tends to increase emissions above those associated with emission limits on separate process units and that EPA should set emission limits more stringent than the sum of the floor limits rather than allow averaging.

Response: In setting emission limits for rotary spin and flame attenuation manufacturing lines, the EPA used available emissions data for each process unit (forming, curing, and cooling for rotary spin lines, and forming and curing for flame attenuation lines) to determine the appropriate MACT floor for each process unit in the line. The Agency then summed emissions from the MACT floors to create a resultant line-based MACT floor emission limit. Therefore, the EPA disagrees that these "line" limits are less stringent than the limits that would have been established for individual process units if the source subject to MACT had been defined more narrowly. For instance, because the MACT floor for cooling on rotary spin lines and for curing on flame attenuation lines is no control, the EPA may not have set emission limits for these sources if limits were set on a unit-by-unit basis. Thus, potentially higher emissions would have been allowed than are currently being allowed under this rule.

C. Monitoring

Comment: Several comments were received concerning the use of bag leak detectors for monitoring baghouses used to control emissions from glass-melting furnaces. One commenter stated that because the industry standard for sensitivity of bag leak detectors is 0.0005 gr/dscf, the sensitivity cited in the rule should be changed from 0.0004 gr/dscf to 0.0005 gr/dscf.

According to another commenter, the requirements to install and operate bag leak detectors according to EPA guidance (§ 63.1384(b)(5)) will be difficult to enforce. The commenter further stated that if EPA wants the guidance to be followed, it should be contained in a rule; if not, it should be in the preamble as recommended practice.

Another commenter asked if a source would be in violation of the standard if the alarm on the bag leak detector is activated more than 10 percent of the total operating time during a 6-month block reporting period.

Response: After reviewing technical data from a supplier of dust detection equipment and reviewing other EPA standards that require bag leak detectors for consistency, EPA has modified the required sensitivity level to "0.0044 gr/dscf or less." This change does not alter the intended function of the bag leak detector, and is consistent with the industry standard for sensitivity and other EPA standards.

Although EPA understands, as the one commenter indicated, that enforcement may be more difficult, there are currently no performance specifications available for bag leak detectors. EPA guidance on the use of triboelectric bag leak detectors has been developed and is cited in the rule along with information on its availability.

In the proposed and final rules, the source would not be in violation of the standard if the alarm on the bag leak detector is activated more than 10 percent of the total operating time during a 6-month block reporting period. The EPA issued a supplemental proposal (64 FR 7149, February 12, 1999) for wool fiberglass and other source categories which, along with other compliance issues, deals with the question as to the existence of a violation when the bag leak detector alarm is activated and how it is enforced. The EPA will consider all comments on the supplemental proposal and will amend this final rule in a future action as appropriate.

Comment: For clarity with State agencies, one commenter recommended that the requirement in § 63.1386(e) to "continuously monitor and record" as it applies to glass pull rate be defined to mean to install, operate and maintain pull rate monitoring and recording equipment per the written operations, maintenance, and monitoring plan.

Response: Based on additional information provided by the commenter, EPA learned that the commenter would like the rule to clarify the monitoring and recording frequency associated with continuous monitors for glass pull rate. According to the commenter, the process is very steady and there is not a need for minute-by-minute monitoring and recordkeeping. EPA has revised the rule to require that on existing glass-melting furnaces with continuous monitors and on all new glass-melting furnaces, the glass pull rate must be monitored and recorded on an hourly basis and every 4 hours an average is to be calculated for purposes of determining compliance. At any time that a 4-hour average pull rate exceeds the average pull rate established during the performance test by greater than 20 percent, corrective action must be initiated within 1 hour. If a 20 percent or more exceedance of the pull rate occurs for more than 5 percent of the total operating time in the 6-month block reporting period, a QIP is required. The final rule requires the owner operate the glass-melting furnace so that the glass pull rate does not exceed, by more than 20 percent, the established maximum glass pull rate for more than 10 percent of the total operating time in the 6-month block reporting period.

As a result of this comment, the EPA examined the other monitoring provisions and made similar clarifying changes throughout the monitoring section as they pertain to monitoring frequency and averaging period.

D. Performance Tests

Comment: One commenter recommended revisions to the monitoring requirements of § 63.1386(g)(2) to clarify that if changes are made in the binder formulation that would not result in an increase in HAP emissions, such as the use of resin extenders, additional emissions testing is not required. The commenter explained that binder formulations are developed and controlled centrally by technical experts at each company and are not subject to modification at each plant. According to this commenter, normal practice is for any new binder formulation to be supported by additional emission tests. For reasons of material availability and cost reduction, the commenter explained that the binder formulation specification allows some flexibility for substituting resin extenders. During subsequent discussions with the commenter, it was explained that extenders replace components of the binder and that urea and lignin are used as extenders and replace some of the formaldehyde and phenol in the binder. The extenders act to dilute the binder and because the rate of application of the extended binder does not change, the emissions of formaldehyde and phenol are decreased.

Response: Based on this comment as well as additional information supplied by the commenter on the use of extenders and their effects on formaldehyde emissions, the EPA has revised the rule to permit the addition of the extenders urea and lignin in the binder formulations without the need to perform additional emission testing.

During discussions to obtain additional information from the commenter on this issue, the commenter was also concerned that the occasional switching of resin suppliers where the resins are made to the same specifications, may be interpreted by enforcement agencies as a change in resin and require additional emissions testing. The EPA does not intend for additional emission testing to be performed where a facility switches resin suppliers as long as the resin from the new supplier is made to the same product specifications as that used during the performance test.

VI. Administrative Requirements

A. Docket

The docket is intended to be an organized file of the administrative records compiled by EPA. The docket is a dynamic file because information is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket will contain the record in case of judicial review. (See section 307(d)(7)(A) of the CAA.) The location of the official rulemaking record, including all public comments received on the proposed rule, is in the **ADDRESSES** section at the beginning of this preamble.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine if a regulatory action is "significant," and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of the Executive Order and is therefore not subject to OMB review.

C. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on State, local or tribal governments, because they do not own or operate any sources that would be subject to this rule. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA has determined that the total nationwide capital cost for the standard is approximately $19.5 million and the annual nationwide cost is approximately $6.3 million/yr. This rule is based partially on pollution prevention alternatives and on a manufacturing line approach. It is the least costly and burdensome approach for industry since the purchase of add-on control devices will be avoided by most of the industry. The only costs to State and local governments are those associated with implementing this standard through the permitting process, and these costs are recouped through permit fees. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it does not impose any enforceable duties on small governments; such governments own or operate no sources subject to these rules and therefore would not be required to purchase control systems to meet the requirements of the rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant impact on a substantial number of small entities because no company that owns sources in the source category meets the criteria for small business. The Small Business Administration defines "small business," as the term applies to SIC 3296, as a firm with fewer than 750 employees. None of the firms in the industry have fewer than 750 employees and, thus, are not small businesses by this criterion.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 14, 1999.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0359.

The information collection requirements include the notification, reporting, and recordkeeping requirements of the NESHAP general provisions, authorized under section 114 of the CAA, which are mandatory for all owners or operators subject to national emission standards. All information submitted to the EPA for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. This rule does not require any notifications or reports beyond those required by the general provisions. Subpart NNN does require additional records of specific information needed to determine compliance with the rule. These include records of: (1) Any bag leak detection system alarm, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken; (2) ESP parameter values, such as secondary voltage for each electrical field including any deviation outside the limits established during the performance test and a brief explanation of the cause of the deviation and the corrective action taken; (3) air temperature above the surface of the molten glass of a cold top electric furnace that does not use an add-on control device for PM emission control, including any air temperature above 120 °C (250 °F) with a brief explanation of the cause and the corrective action taken; (4) operating parameter(s) for uncontrolled glass melting furnace (that

is not a cold top electric furnace) that does not use an add-on control device for the control of PM emissions including any exceedance of the level established during the performance test and a brief explanation of the cause of the exceedance and the corrective action taken; (5) the free-formaldehyde content of the resin being used; (6) the formulation of the binder being used; (7) the product LOI and product density for each 8-hour period on a RS or FA manufacturing line subject to the NESHAP; (8) forming process modification parameter(s), including any period when the parameter level(s) deviate from the level(s) established during the performance test and a brief explanation of the cause of the deviation and the corrective action taken; (9) pressure drop, liquid flow rate, and information on chemical additives to the scrubbing liquid, including any period when there is a deviation from the levels established during the performance tests and a brief explanation of the cause and the corrective action taken; (10) incinerator operating temperature, including any 3-hour block period when the temperature falls below the level established during the performance test, and the results of the annual inspection, including any problems discovered during the inspection, with a brief explanation of the cause and, the corrective action taken; and (11) glass pull rate, including any period when the pull rate exceeds the average pull rate established during the performance test by more than 20 percent, with a brief explanation of the cause of the exceedance, the corrective action taken, and the time the corrective action was initiated. All records documenting corrective actions must include the time of the alarm, deviation, or exceedance and the time that the corrective action is initiated as well as when the cause of the alarm, deviation, or exceedance is corrected. Each of these information requirements is needed to determine compliance with the standards.

The annual public reporting and recordkeeping burden to industry for this collection is estimated at 17,100 labor hours per year at an annual cost of $548,000. This estimate includes a one-time performance test and report (with repeat tests where needed); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event in which the procedures in the plan were not followed; semiannual excess emissions reports; notifications; and recordkeeping. The annualized capital cost associated with monitoring requirements is estimated at $41,000. The operation and maintenance cost is estimated at $3,000/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

H. Pollution Prevention Act

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. The emission standards for RS and FA manufacturing lines subject to the standard are formulated as line standards, i.e., the sum of the individual forming, curing, and cooling MACT floor emission levels for RS manufacturing lines and forming and curing MACT floor emission levels for certain FA manufacturing lines. By formulating the standard as a line standard, tradeoffs are allowed for existing facilities that will accomplish the same environmental results at lower costs and will encourage process modifications and pollution prevention alternatives. According to the industry, new RS manufacturing lines may be able to meet the line standard without the use of costly incinerators with their energy and other environmental impacts, such as increased nitrogen oxides (NO_X) and sulfur oxides (SO_X) emissions, by incorporating pollution prevention measures, such as binder reformulation and improved binder application efficiency. Pollution prevention alternatives will also increase binder utilization efficiency and reduce production costs for industry. In selecting the format of the emission standard for emissions from manufacturing lines, the EPA considered various alternatives such as setting separate emission limits for each process, i.e., forming, curing, and cooling. A line standard gives the industry greater flexibility in complying with the emission limits and is the least costly because industry can avoid the capital and annual operating and maintenance costs associated with the purchase of add-on control equipment by using pollution prevention measures.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), directs the EPA to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation for not using such standards. This section summarizes the EPA's response to the requirements of the NTTAA for the analytical test methods promulgated as part of this final rule.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for the EPA's emissions sampling and analysis reference methods and industry recommended materials analysis procedures cited in this rule. Candidate voluntary consensus standards for materials analysis were identified for product loss on ignition (LOI), product density, and free formaldehyde content. Consensus comments provided by industry experts were that the candidate standards did not meet industry materials analysis requirements. Therefore, EPA has determined these voluntary consensus standards were impractical for the wool fiberglass manufacturing NESHAP. The EPA, in consultation with the North American Insulation Manufacturers Association (NAIMA), has formulated industry-specific materials analysis, consensus standards which are promulgated in this rule.

The EPA search to identify voluntary consensus standards for the EPA's emissions sampling and analysis reference methods cited in this rule identified 17 candidate standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 12 of the candidate consensus standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the rule would be not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Five of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date. This rule requires standard EPA emission test methods known to the industry and States. Approved alternative methods also may be used with prior EPA approval.

J. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that(1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns the environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it is based on technology performance and not on health or safety risks.

K. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statue, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. No wool fiberglass manufacturing facilities are owned or operated by Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirement

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Wool fiberglass manufacturing.

Dated: May 13, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et. seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1, the table is amended by adding new entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories[3]	
* * * * *	
63.1383	2060–0359
63.1386	2060–0359
63.1387	2060–0359
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

4. Part 63 is amended by adding subpart NNN consisting of §§ 63.1380 through 63.1399 to read as follows:

Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

Sec.

63.1380 Applicability.
63.1381 Definitions.
63.1382 Emission standards.
63.1383 Monitoring requirements.
63.1384 Performance test requirements.
63.1385 Test methods and procedures.
63.1386 Notification, recordkeeping, and reporting requirements.
63.1387 Compliance dates.
63.1388—63.1399 [Reserved]
Table 1 to Subpart NNN of part 63—Applicability of general provisions (40 CFR part 63, subpart A) to subpart NNN.
Appendix A to Subpart NNN of part 63—Method for the determination of LOI
Appendix B to Subpart NNN of part 63—Free formaldehyde analysis of insulation resins by hydroxylamine hydrochloride
Appendix C to Subpart NNN of part 63—Method for the determination of product density

Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

§ 63.1380 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, the requirements of this subpart apply to the owner or operator of each wool fiberglass manufacturing facility that is a major source or is located at a facility that is a major source.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAPs), as measured according to the methods and procedures in this subpart, emitted from the following new and existing sources at a wool fiberglass manufacturing facility subject to this subpart:

(1) Each new and existing glass-melting furnace located at a wool fiberglass manufacturing facility;

(2) Each new and existing rotary spin wool fiberglass manufacturing line producing a bonded wool fiberglass building insulation product; and

(3) Each new and existing flame attenuation wool fiberglass manufacturing line producing a bonded pipe product and each new flame attenuation wool fiberglass manufacturing line producing a bonded heavy-density product.

(c) The requirements of this subpart do not apply to a wool fiberglass manufacturing facility that the owner or operator demonstrates to the Administrator is not a major source as defined in § 63.2.

(d) The provisions of this part 63, subpart A that apply and those that do not apply to this subpart are specified in Table 1 of this subpart.

§ 63.1381 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

Bag leak detection system means systems that include, but are not limited to, devices using triboelectric, light scattering, and other effects to monitor relative or absolute particulate matter (PM) emissions.

Bonded means wool fiberglass to which a phenol-formaldehyde binder has been applied.

Building insulation means bonded wool fiberglass insulation, having a loss on ignition of less than 8 percent and a density of less than 32 kilograms per cubic meter (kg/m^3) (2 pounds per cubic foot [lb/ft^3]).

Cold top electric furnace means an all-electric glass-melting furnace that operates with a temperature of 120 °C (250 °F) or less as measured at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface.

Flame attenuation means a process used to produce wool fiberglass where molten glass flows by gravity from melting furnaces, or pots, to form filaments that are drawn down and attenuated by passing in front of a high-velocity gas burner flame.

Glass-melting furnace means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming processes. The forming apparatus, including flow channels, is not considered part of the glass-melting furnace.

Glass pull rate means the mass of molten glass that is produced by a single glass-melting furnace or that is used in the manufacture of wool fiberglass at a single manufacturing line in a specified time period.

Hazardous Air Pollutant (HAP) means any air pollutant listed in or pursuant to section 112(b) of the Clean Air Act.

Heavy-density product means bonded wool fiberglass insulation manufactured on a flame attenuation manufacturing line and having a loss on ignition of 11 to 25 percent and a density of 8 to 48 kg/m^3 (0.5 to 3 lb/ft^3).

Incinerator means an enclosed air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases.

Loss on ignition (LOI) means the percent decrease in weight of wool fiberglass after it has been ignited. The LOI is used to monitor the weight percent of binder in wool fiberglass.

Manufacturing line means the manufacturing equipment for the production of wool fiberglass that consists of a forming section where molten glass is fiberized and a fiberglass mat is formed and which may include a curing section where binder resin in the mat is thermally set and a cooling section where the mat is cooled.

New source means any affected source the construction or reconstruction of which is commenced after March 31, 1997.

Pipe product means bonded wool fiberglass insulation manufactured on a flame attenuation manufacturing line and having a loss on ignition of 8 to 14 percent and a density of 48 to 96 kg/m^3 (3 to 6 lb/ft^3).

Rotary spin means a process used to produce wool fiberglass building insulation by forcing molten glass through numerous small orifices in the side wall of a spinner to form continuous glass fibers that are then broken into discrete lengths by high-velocity air flow. Any process used to produce bonded wool fiberglass building insulation by a process other than flame attenuation is considered rotary spin.

Wool fiberglass means insulation materials composed of glass fibers made from glass produced or melted at the same facility where the manufacturing line is located.

Wool fiberglass manufacturing facility means any facility manufacturing wool fiberglass on a rotary spin manufacturing line or on a flame attenuation manufacturing line.

§ 63.1382 Emission standards.

(a) *Emission limits*—(1) *Glass-melting furnaces.* On and after the date the initial performance test is completed or required to be completed under § 63.7 of this part, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere in excess of 0.25 kilogram (kg) of particulate matter (PM) per megagram (Mg) (0.5 pound [lb] of PM per ton) of glass pulled for each new or existing glass-melting furnace.

(2) *Rotary spin manufacturing lines.* On and after the date the initial performance test is completed or required to be completed under § 63.7 of this part, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere in excess of:

(i) 0.8 kg of formaldehyde per megagram (1.2 lb of formaldehyde per ton) of glass pulled for each existing rotary spin manufacturing line; and

(ii) 0.4 kg of formaldehyde per megagram (0.8 lb of formaldehyde per ton) of glass pulled for each new rotary spin manufacturing line.

(3) *Flame attenuation manufacturing lines.* On and after the date the initial performance test is completed or required to be completed under § 63.7 of this part, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere in excess of:

(i) 3.9 kg of formaldehyde per megagram (7.8 lb of formaldehyde per ton) of glass pulled for each new flame attenuation manufacturing line that produces heavy-density wool fiberglass; and

(ii) 3.4 kg of formaldehyde per megagram (6.8 lb of formaldehyde per ton) of glass pulled from each existing

or new flame attenuation manufacturing line that produces pipe product wool fiberglass.

(b) *Operating limits.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.1384 is completed, the owner or operator must operate all affected control equipment and processes according to the following requirements.

(1)(i) The owner or operator must initiate corrective action within 1 hour of an alarm from a bag leak detection system and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) The owner or operator must implement a Quality Improvement Plan (QIP) consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when the bag leak detection system alarm is sounded for more than 5 percent of the total operating time in a 6-month block reporting period.

(2)(i) The owner or operator must initiate corrective action within 1 hour when any 3-hour block average of the monitored electrostatic precipitator (ESP) parameter is outside the limit(s) established during the performance test as specified in § 63.1384 and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) The owner or operator must implement a QIP consistent with the compliance assurance monitoring provisions of 40 CFR part 64 subpart D when the monitored ESP parameter is outside the limit(s) established during the performance test as specified in § 63.1384 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) The owner or operator must operate the ESP such that the monitored ESP parameter is not outside the limit(s) established during the performance test as specified in § 63.1384 for more than 10 percent of the total operating time in a 6-month block reporting period.

(3)(i) The owner or operator must initiate corrective action within 1 hour when any 3-hour block average temperature of a cold top electric furnace as measured at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface, exceeds 120 °C (250 °F) and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) The owner or operator of a cold top electric furnace must implement a QIP consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when the temperature, as measured at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface, exceeds 120 °C (250 °F) for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) The owner or operator must operate the cold top electric furnace such that the temperature does not exceed 120 °C (250 °F) as measured at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface, for more than 10 percent of the total operating time in a 6-month reporting period.

(4)(i) The owner or operator must initiate corrective action within 1 hour when any 3-hour block average value for the monitored parameter(s) for a glass-melting furnace, which uses no add-on controls and which is not a cold top electric furnace, is outside the limit(s) established during the performance test as specified in § 63.1384 and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) The owner or operator must implement a QIP consistent with the compliance assurance monitoring provisions of 40 CFR Part 64 subpart D when the monitored parameter(s) is outside the limit(s) established during the performance test as specified in § 63.1384 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) The owner or operator must operate a glass-melting furnace, which uses no add-on controls and which is not a cold top electric furnace, such that the monitored parameter(s) is not outside the limit(s) established during the performance test as specified in § 63.1384 for more than 10 percent of the total operating time in a 6-month block reporting period.

(5)(i) The owner or operator must initiate corrective action within 1 hour when the average glass pull rate of any 4-hour block period for glass melting furnaces equipped with continuous glass pull rate monitors, or daily glass pull rate for glass melting furnaces not so equipped, exceeds the average glass pull rate established during the performance test as specified in § 63.1384, by greater than 20 percent and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) The owner or operator must implement a QIP consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when the glass pull rate exceeds, by more than 20 percent, the average glass pull rate established during the performance test as specified in § 63.1384 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) The owner or operator must operate each glass-melting furnace such that the glass pull rate does not exceed, by more than 20 percent, the average glass pull rate established during the performance test as specified in § 63.1384 for more than 10 percent of the total operating time in a 6-month block reporting period.

(6) The owner or operator must operate each incinerator used to control formaldehyde emissions from forming or curing such that any 3-hour block average temperature in the firebox does not fall below the average established during the performance test as specified in § 63.1384.

(7)(i) The owner or operator must initiate corrective action within 1 hour when the average pressure drop, liquid flow rate, or chemical feed rate for any 3-hour block period is outside the limits established during the performance tests as specified in § 63.1384 for each wet scrubbing control device and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) The owner or operator must implement a QIP consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when any scrubber parameter is outside the limit(s) established during the performance test as specified in § 63.1384 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) The owner or operator must operate each scrubber such that each monitored parameter is not outside the limit(s) established during the performance test as specified in § 63.1384 for more than 10 percent of the total operating time in a 6-month block reporting period.

(8)(i) The owner or operator must initiate corrective action within 1 hour when the monitored process parameter level(s) is outside the limit(s) established during the performance test as specified in § 63.1384 for the process modification(s) used to control formaldehyde emissions and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) The owner or operator must implement a QIP consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D

when the process parameter(s) is outside the limit(s) established during the performance test as specified in § 63.1384 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) The owner or operator must operate the process modifications such that the monitored process parameter(s) is not outside the limit(s) established during the performance test as specified in § 63.1384 for more than 10 percent of the total operating time in a 6-month block reporting period.

(9) The owner or operator must use a resin in the formulation of binder such that the free-formaldehyde content of the resin used does not exceed the free-formaldehyde range contained in the specification for the resin used during the performance test as specified in § 63.1384.

(10) The owner or operator must use a binder formulation that does not vary from the specification and operating range established and used during the performance test as specified in § 63.1384. For the purposes of this standard, adding or increasing the quantity of urea and/or lignin in the binder formulation does not constitute a change in the binder formulation.

§ 63.1383 Monitoring requirements.

On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.1384 is completed, the owner or operator must monitor all affected control equipment and processes according to the following requirements.

(a) The owner or operator of each wool fiberglass manufacturing facility must prepare for each glass-melting furnace, rotary spin manufacturing line, and flame attenuation manufacturing line subject to the provisions of this subpart, a written operations, maintenance, and monitoring plan. The plan must be submitted to the Administrator for review and approval as part of the application for a part 70 permit. The plan must include the following information:

(1) Procedures for the proper operation and maintenance of process modifications and add-on control devices used to meet the emission limits in § 63.1382;

(2) Procedures for the proper operation and maintenance of monitoring devices used to determine compliance, including quarterly calibration and certification of accuracy of each monitoring device according to the manufacturers's instructions; and

(3) Corrective actions to be taken when process parameters or add-on control device parameters deviate from the limit(s) established during initial performance tests.

(b)(1) Where a baghouse is used to control PM emissions from a glass-melting furnace, the owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection system.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must produce output of relative PM emissions.

(iii) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. If a negative pressure or induced air baghouse is used, the bag leak detection system must be installed downstream of the baghouse. Where multiple bag leak detection systems are required (for either type of baghouse), the system instrumentation and alarm may be shared among the monitors.

(v) A triboelectric bag leak detection system shall be installed, operated, adjusted, and maintained in a manner consistent with the U.S. Environmental Protection Agency guidance, "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997). Other bag leak detection systems shall be installed, operated, adjusted, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(vi) Initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(vii) Following the initial adjustment, the owner or operator shall not adjust the range, averaging period, alarm setpoints, or alarm delay time except as detailed in the approved operations, maintenance, and monitoring plan required under paragraph (a) of this section. In no event shall the range be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless a responsible official as defined in § 63.2 of the general provisions in subpart A of this part certifies that the baghouse has been inspected and found to be in good operating condition.

(2) The operations, maintenance, and monitoring plan required by paragraph (a) of this section must specify corrective actions to be followed in the event of a bag leak detection system alarm. Example corrective actions that may be included in the plan include the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other conditions that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

(c)(1) Where an ESP is used to control PM emissions from a glass-melting furnace, the owner or operator must monitor the ESP according to the procedures in the operations, maintenance, and monitoring plan.

(2)The operations, maintenance, and monitoring plan for the ESP must contain the following information:

(i) The ESP operating parameter(s), such as secondary voltage of each electrical field, to be monitored and the minimum and/or maximum value(s) that will be used to identify any operational problems;

(ii) A schedule for monitoring the ESP operating parameter(s);

(iii) Recordkeeping procedures, consistent with the recordkeeping requirements of § 63.1386, to show that the ESP operating parameter(s) is within the limit(s) established during the performance test; and

(iv) Procedures for the proper operation and maintenance of the ESP.

(d) The owner or operator must measure and record at least once per shift the temperature 46 to 61 centimeters (18 to 24 inches) above the surface of the molten glass in a cold-top electric furnace that does not use any add-on controls to control PM emissions.

(e)(1) Where a glass-melting furnace is operated without an add-on control device to control PM emissions, the owner or operator must monitor the glass-melting furnace according to the procedures in the operations, maintenance, and monitoring plan.

(2) The operations, maintenance, and monitoring plan for the glass-melting

furnace must contain the following information:

(i) The operating parameter(s) to be monitored and the minimum and/or maximum value(s) that will be used to identify any operational problems;

(ii) A schedule for monitoring the operating parameter(s) of the glass-melting furnace;

(iii) Recordkeeping procedures, consistent with the recordkeeping requirements of § 63.1386, to show that the glass-melting furnace parameter(s) is within the limit(s) established during the performance test; and

(iv) Procedures for the proper operation and maintenance of the glass-melting furnace.

(f)(1) The owner or operator of an existing glass-melting furnace equipped with continuous glass pull rate monitors must monitor and record the glass pull rate on an hourly basis. For glass-melting furnaces that are not equipped with continuous glass pull rate monitors, the glass pull rate must be monitored and recorded once per day.

(2) On any new glass-melting furnace, the owner or operator must install, calibrate, and maintain a continuous glass pull rate monitor that monitors and records on an hourly basis the glass pull rate.

(g)(1) The owner or operator who uses an incinerator to control formaldehyde emissions from forming or curing shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the operating temperature in the firebox of each incinerator.

(2) The owner or operator must inspect each incinerator at least once per year according to the procedures in the operations, maintenance, and monitoring plan. At a minimum, an inspection must include the following:

(i) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation and clean pilot sensor, as necessary;

(ii) Ensure proper adjustment of combustion air and adjust, as necessary;

(iii) Inspect, when possible, internal structures, for example, baffles, to ensure structural integrity per the design specifications;

(iv) Inspect dampers, fans, and blowers for proper operation;

(v) Inspect for proper sealing;

(vi) Inspect motors for proper operation;

(vii) Inspect combustion chamber refractory lining and clean and repair/replace lining, as necessary;

(viii) Inspect incinerator shell for corrosion and/or hot spots;

(ix) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments; and

(x) Generally observe that the equipment is maintained in good operating condition.

(xi) Complete all necessary repairs as soon as practicable.

(h) The owner or operator who uses a wet scrubbing control device to control formaldehyde emissions must install, calibrate, maintain, and operate monitoring devices that continuously monitor and record the gas pressure drop across each scrubber and scrubbing liquid flow rate to each scrubber according to the procedures in the operations, maintenance, and monitoring plan. The pressure drop monitor is to be certified by its manufacturer to be accurate within ±250 pascals (±1 inch water gauge) over its operating range, and the flow rate monitor is to be certified by its manufacturer to be accurate within ±5 percent over its operating range. The owner or operator must also continuously monitor and record the feed rate of any chemical(s) added to the scrubbing liquid.

(i)(1) The owner or operator who uses process modifications to control formaldehyde emissions must establish a correlation between formaldehyde emissions and a process parameter(s) to be monitored.

(2) The owner or operator must monitor the established parameter(s) according to the procedures in the operations, maintenance, and monitoring plan.

(3)The owner or operator must include as part of their operations, maintenance, and monitoring plan the following information:

(i) Procedures for the proper operation and maintenance of the process;

(ii) Process parameter(s) to be monitored to demonstrate compliance with the applicable emission limits in § 63.1382. Examples of process parameters include LOI, binder solids content, and binder application rate;

(iii) Correlation(s) between process parameter(s) to be monitored and formaldehyde emissions;

(iv) A schedule for monitoring the process parameter(s); and

(v) Recordkeeping procedures, consistent with the recordkeeping requirements of § 63.1386, to show that the process parameter value(s) established during the performance test is not exceeded.

(j) The owner or operator must monitor and record the free-formaldehyde content of each resin shipment received and used in the formulation of binder.

(k) The owner or operator must monitor and record the formulation of each batch of binder used.

(l) The owner or operator must monitor and record at least once every 8 hours, the product LOI and product density of each bonded wool fiberglass product manufactured.

(m) For all control device and process operating parameters measured during the initial performance tests, the owners or operators of glass-melting furnaces, rotary spin manufacturing lines or flame attenuation manufacturing lines subject to this subpart may change the limits established during the initial performance tests if additional performance testing is conducted to verify that, at the new control device or process parameter levels, they comply with the applicable emission limits in § 63.1382. The owner or operator shall conduct all additional performance tests according to the procedures in this part 63, subpart A and in § 63.1384.

§ 63.1384 Performance test requirements.

(a) The owner or operator subject to the provisions of this subpart shall conduct a performance test to demonstrate compliance with the applicable emission limits in § 63.1382. Compliance is demonstrated when the emission rate of the pollutant is equal to or less than each of the applicable emission limits in § 63.1382. The owner or operator shall conduct the performance test according to the procedures in 40 CFR part 63, subpart A and in this section.

(1) All monitoring systems and equipment must be installed, operational, and calibrated prior to the performance test.

(2) Unless a different frequency is specified in this section, the owner or operator must monitor and record process and/or add-on control device parameters at least every 15 minutes during the performance tests. The arithmetic average for each parameter must be calculated using all of the recorded measurements for the parameter.

(3) During each performance test, the owner or operator must monitor and record the glass pull rate for each glass-melting furnace and, if different, the glass pull rate for each rotary spin manufacturing line and flame attenuation manufacturing line. Record the glass pull rate every 15 minutes during any performance test required by this subpart and determine the arithmetic average of the recorded measurements for the test runs.

(4) The owner or operator shall conduct a performance test for each existing and new glass-melting furnace.

(5) During the performance test, the owner or operator of a glass-melting furnace controlled by an ESP shall monitor and record the ESP parameter level(s), as specified in the operations, maintenance, and monitoring plan, and establish the minimum and/or maximum value(s) that will be used to demonstrate compliance after the initial performance test.

(6) During the performance test, the owner or operator of a cold top electric furnace that is not equipped with an add-on control device for PM emissions control, must monitor and record the temperature 46 to 61 centimeters (18 to 24 inches) above the molten glass surface to ensure that the maximum temperature does not exceed 120 °C (250 °F).

(7) During the performance test, the owner or operator of a glass melting furnace (other than a cold top electric furnace) that is not equipped with an add-on control device for PM emissions control, must monitor and record the furnace parameter level, and establish the minimum and/or maximum value(s) that will be used to demonstrate compliance after the initial performance test.

(8) The owner or operator must conduct a performance test for each rotary spin manufacturing line, subject to this subpart, while producing the building insulation with the highest LOI expected to be produced on that line; and for each flame attenuation manufacturing line, subject to this subpart, while producing the heavy-density product or pipe product with the highest LOI expected to be produced on the affected line.

(9) The owner or operator of each rotary spin manufacturing line and flame attenuation manufacturing line regulated by this subpart must conduct performance tests using the resin with the highest free-formaldehyde content. During the performance test of each rotary spin manufacturing line and flame attenuation manufacturing line regulated by this subpart, the owner or operator shall monitor and record the free-formaldehyde content of the resin, the binder formulation used, and the product LOI and density.

(10) During the performance test, the owner or operator of a rotary spin manufacturing line or flame attenuation manufacturing line who plans to use process modifications to comply with the emission limits in § 63.1382 must monitor and record the process parameter level(s), as specified in the operations, maintenance, and monitoring plan, which will be used to demonstrate compliance after the initial performance test.

(11) During the performance test, the owner or operator of a rotary spin manufacturing line or flame attenuation manufacturing line who plans to use a wet scrubbing control device to comply with the emission limits in § 63.1382 must continuously monitor and record the pressure drop across the scrubber, the scrubbing liquid flow rate, and addition of any chemical to the scrubber, including the chemical feed rate, and establish the minimum and/or maximum value(s) that will be used to determine compliance after the initial performance test.

(12) During the performance test, the owner or operator of a rotary spin manufacturing line or affected flame attenuation manufacturing line shall continuously record the operating temperature of each incinerator and record the average during each 1-hour test; the average operating temperature of the three 1-hour tests shall be used to monitor compliance.

(13) Unless disapproved by the Administrator, an owner or operator of a rotary spin or flame attenuation manufacturing line regulated by this subpart may conduct short-term experimental production runs using binder formulations or other process modifications where the process parameter values would be outside those established during performance tests without first conducting performance tests. Such runs must not exceed 1 week in duration unless the Administrator approves a longer period. The owner or operator must notify the Administrator and postmark or deliver the notification at least 15 days prior to commencement of the short-term experimental production runs. The Administrator must inform the owner or operator of a decision to disapprove or must request additional information prior to the date of the short-term experimental production runs. Notification of intent to perform an experimental short-term production run shall include the following information:

(i) The purpose of the experimental production run;

(ii) The affected line;

(iii) How the established process parameters will deviate from previously approved levels;

(iv) The duration of the experimental production run;

(v) The date and time of the experimental production run; and

(vi) A description of any emission testing to be performed during the experimental production run.

(b) To determine compliance with the PM emission limit for glass-melting furnaces, use the following equation:

$$E = \frac{C \times Q \times K_1}{P} \qquad \text{(Eq. 1)}$$

Where:

E = Emission rate of PM, kg/Mg (lb/ton) of glass pulled;
C = Concentration of PM, g/dscm (gr/dscf);
Q = Volumetric flow rate of exhaust gases, dscm/h (dscf/h);
K_1 = Conversion factor, 1 kg/1,000 g (1 lb/7,000 gr); and
P = Average glass pull rate, Mg/h (tons/h).

(c) To determine compliance with the emission limit for formaldehyde for rotary spin manufacturing lines and flame attenuation forming processes, use the following equation:

$$E = \frac{C \times MW \times Q \times K_1 \times K_2}{K_3 \times P \times 10^6} \qquad \text{(Eq. 2)}$$

Where:

E = Emission rate of formaldehyde, kg/Mg (lb/ton) of glass pulled;
C = Measured volume fraction of formaldehyde, ppm;
MW = Molecular weight of formaldehyde, 30.03 g/g-mol;
Q = Volumetric flow rate of exhaust gases, dscm/h (dscf/h);
K_1 = Conversion factor, 1 kg/1,000 g (1 lb/453.6 g);
K_2 = Conversion factor, 1,000 L/m^3 (28.3 L/ft^3);
K_3 = Conversion factor, 24.45 L/g-mol; and
P = Average glass pull rate, Mg/h (tons/h).

§ 63.1385 Test methods and procedures.

(a) The owner or operator shall use the following methods to determine compliance with the applicable emission limits:

(1) Method 1 (40 CFR part 60, appendix A) for the selection of the sampling port location and number of sampling ports;

(2) Method 2 (40 CFR part 60, appendix A) for volumetric flow rate;

(3) Method 3 or 3A (40 CFR part 60, appendix A) for O_2 and CO_2 for diluent measurements needed to correct the concentration measurements to a standard basis;

(4) Method 4 (40 CFR part 60, appendix A) for moisture content of the stack gas;

(5) Method 5 (40 CFR part 60, appendix A) for the concentration of PM. Each run shall consist of a minimum run time of 2 hours and a minimum sample volume of 60 dry standard cubic feet (dscf). The probe

and filter holder heating system may be set to provide a gas temperature no greater than 177 ±14 °C (350 ±25 °F);

(6) Method 316 or Method 318 (appendix A of this part) for the concentration of formaldehyde. Each run shall consist of a minimum run time of 1 hour;

(7) Method contained in appendix A of this subpart for the determination of product LOI;

(8) Method contained in appendix B of this subpart for the determination of the free-formaldehyde content of resin;

(9) Method contained in appendix C of this subpart for the determination of product density;

(10) An alternative method, subject to approval by the Administrator.

(b) Each performance test shall consist of 3 runs. The owner or operator shall use the average of the three runs in the applicable equation for determining compliance.

§ 63.1386 Notification, recordkeeping, and reporting requirements.

(a) *Notifications.* As required by § 63.9(b) through (h) of this part, the owner or operator shall submit the following written initial notifications to the Administrator:

(1) Notification for an area source that subsequently increases its emissions such that the source is a major source subject to the standard;

(2) Notification that a source is subject to the standard, where the initial startup is before June 14, 2002.

(3) Notification that a source is subject to the standard, where the source is new or has been reconstructed, the initial startup is after June 14, 2002, and for which an application for approval of construction or reconstruction is not required;

(4) Notification of intention to construct a new major source or reconstruct a major source; of the date construction or reconstruction commenced; of the anticipated date of startup; of the actual date of startup, where the initial startup of a new or reconstructed source occurs after June 14, 2002, and for which an application for approval or construction or reconstruction is required (See § 63.9(b)(4) and (5) of this part);

(5) Notification of special compliance obligations;

(6) Notification of performance test; and (7) Notification of compliance status.

(b) *Performance test report.* As required by § 63.10(d)(2) of the general provisions, the owner or operator shall report the results of the initial performance test as part of the notification of compliance status required in paragraph (a)(7) of this section.

(c) *Startup, shutdown, and malfunction plan and reports.* (1) The owner or operator shall develop and implement a written plan as described in § 63.6(e)(3) of this part that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process modifications and control systems used to comply with the standard. In addition to the information required in § 63.6(e)(3), the plan shall include:

(i) Procedures to determine and record the cause of the malfunction and the time the malfunction began and ended;

(ii) Corrective actions to be taken in the event of a malfunction of a control device or process modification, including procedures for recording the actions taken to correct the malfunction or minimize emissions; and

(iii) A maintenance schedule for each control device and process modification that is consistent with the manufacturer's instructions and recommendations for routine and long-term maintenance.

(2) The owner or operator shall also keep records of each event as required by § 63.10(b) of this part and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in § 63.10(e)(3)(iv) of this part.

(d) *Recordkeeping.* (1) As required by § 63.10(b) of this part, the owner or operator shall maintain files of all information (including all reports and notifications) required by the general provisions and this subpart:

(i) The owner or operator must retain each record for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site;

(ii) The owner or operator may retain records on microfilm, on a computer, on computer disks, on magnetic tape, or on microfiche; and

(iii) The owner or operator may report required information on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

(2) In addition to the general records required by § 63.10(b)(2) of this part, the owner or operator shall maintain records of the following information:

(i) Any bag leak detection system alarms, including the date and time of the alarm, when corrective actions were initiated, the cause of the alarm, an explanation of the corrective actions taken, and when the cause of the alarm was corrected;

(ii) ESP parameter value(s) used to monitor ESP performance, including any period when the value(s) deviated from the established limit(s), the date and time of the deviation, when corrective actions were initiated, the cause of the deviation, an explanation of the corrective actions taken, and when the cause of the deviation was corrected;

(iii) Air temperature above the molten glass in an uncontrolled cold top electric furnace, including any period when the temperature exceeded 120 °C (250 °F) at a location 46 to 61 centimeters (18 to 24 inches) above the molten glass surface, the date and time of the exceedance, when corrective actions were initiated, the cause of the exceedance, an explanation of the corrective actions taken, and when the cause of the exceedance was corrected;

(iv) Uncontrolled glass-melting furnace (that is not a cold top electric furnace) parameter value(s) used to monitor furnace performance, including any period when the value(s) exceeded the established limit(s), the date and time of the exceedance, when corrective actions were initiated, the cause of the exceedance, an explanation of the corrective actions taken, and when the cause of the exceedance was corrected;

(v) The formulation of each binder batch and the LOI and density for each product manufactured on a rotary spin manufacturing line or flame attenuation manufacturing line subject to the provisions of this subpart, and the free formaldehyde content of each resin shipment received and used in the binder formulation;

(vi) Process parameter level(s) for RS and FA manufacturing lines that use process modifications to comply with the emission limits, including any period when the parameter level(s) deviated from the established limit(s), the date and time of the deviation, when corrective actions were initiated, the cause of the deviation, an explanation of the corrective actions taken, and when the cause of the deviation was corrected;

(vii) Scrubber pressure drop, scrubbing liquid flow rate, and any chemical additive (including chemical feed rate to the scrubber), including any period when a parameter level(s) deviated from the established limit(s), the date and time of the deviation, when corrective actions were initiated, the cause of the deviation, an explanation of

the corrective actions taken, and when the cause of the deviation was corrected;

(viii) Incinerator operating temperature and results of periodic inspection of incinerator components, including any period when the temperature fell below the established average or the inspection identified problems with the incinerator, the date and time of the problem, when corrective actions were initiated, the cause of the problem, an explanation of the corrective actions taken, and when the cause of the problem was corrected;

(ix) Glass pull rate, including any period when the pull rate exceeded the average pull rate established during the performance test by more than 20 percent, the date and time of the exceedance, when corrective actions were initiated, the cause of the exceedance, an explanation of the corrective actions taken, and when the cause of the exceedance was corrected.

(e) *Excess emissions report.* As required by § 63.10(e)(3)(v) of this part, the owner or operator shall report semiannually if measured emissions are in excess of the applicable standard or a monitored parameter deviates from the levels established during the performance test. The report shall contain the information specified in § 63.10(c) of this part as well as the additional records required by the recordkeeping requirements of paragraph (d) of this section. When no deviations have occurred, the owner or operator shall submit a report stating that no excess emissions occurred during the reporting period.

§ 63.1387 Compliance dates.

(a) *Compliance dates.* The owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of this subpart by no later than:

(1) June 14, 2002, for an existing glass-melting furnace, rotary spin manufacturing line, or flame attenuation manufacturing line; or

(2) Upon startup for a new glass-melting furnace, rotary spin manufacturing line, or flame attenuation manufacturing line.

(b) *Compliance extension.* The owner or operator of an existing source subject to this subpart may request from the Administrator an extension of the compliance date for the emission standards for one additional year if such additional period is necessary for the installation of controls. The owner or operator shall submit a request for an extension according to the procedures in § 63.6(i)(3) of this part.

§§ 63.1388—63.1390 [Reserved]

TABLE 1 TO SUBPART NNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN

General provisions citation	Requirement	Applies to subpart NNN	Explanation
63.1(a)(1)–(a)(4)	Applicability	Yes.	
63.1(a)(5)		No	[Reserved].
63.1(a)(6)–(a)(8)		Yes.	
63.1(a)(9)		No	[Reserved].
63.1(a)(10)–(a)(14)		Yes.	
63.1(b)(1)–(b)(3)	Initial Applicability Determination	Yes.	
63.1(c)(1)–(c)(2)	Applicability After Standard Established.	Yes.	
63.1(c)(3)		No	[Reserved].
63.1(c)(4)–(c)(5)		Yes.	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions	Yes	Additional definitions in § 63.1381.
63.3(a)–(c)	Units and Abbreviations	Yes.	
63.4(a)(1)–(a)(3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)		Yes.	
63.4(b)–(c)		Yes.	
63.5(a)(1)–(a)(2)	Construction/Reconstruction	Yes.	
63.5(b)(1)	Existing, New, Reconstructed	Yes.	
63.5(b)(2)		No	[Reserved].
63.5(b)(3)–(b)(6)		Yes.	
63.5(c)		No	[Reserved].
63.5(d)	Approval of Construction/Reconstruction.	Yes.	
63.5(e)		Yes.	
63.5(f)		Yes.	
63.6(a)	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(b)(1)–(b)(5)		Yes.	
63.6(b)(6)		No	[Reserved].
63.6(b)(7)		Yes.	
63.6(c)(1)	Compliance Date for Existing Sources.	Yes	§63.1387 specifies compliance dates.
63.6(c)(2)		Yes.	
63.6(c)(3)–(c)(4)		No	[Reserved].
63.6(c)(5)		Yes.	
63.6(d)		No	[Reserved].
63.6(e)(1)–(e)(2)	Operation & Maintenance	Yes	§ 63.1383 specifies operations/maintenance plan.
63.6(e)(3)	Startup, Shutdown Malfunction Plan.	Yes.	
63.6(f)(1)–(f)(3)	Compliance with Nonopacity Emission Standards.	Yes.	

TABLE 1 TO SUBPART NNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN—Continued

General provisions citation	Requirement	Applies to subpart NNN	Explanation
63.6(g)(1)–(g)(3)	Alternative Nonopacity Standard	Yes.	
63.6(h)	Opacity/VE Standards	No	Subpart NNN-no COMS, VE or opacity standards.
63.6(i)(1)–(i)(14)	Extension of Compliance	Yes.	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)		Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)	Performance Testing Requirements.	Yes	§ 63.1384 has specific requirements.
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance Program/Test Plan.	Yes.	
63.7(d)	Performance Testing Facilities	Yes.	
63.7(e)(1)–(e)(4)	Conduct of Performance Tests	Yes.	
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Performance Tests	Yes.	
63.8(a)(1)–(a)(2)	Monitoring Requirements	Yes.	
63.8(a)(3)		No	[Reserved].
63.8(a)(4)		Yes.	
63.8(b)	Conduct of Monitoring	Yes.	
63.8(c)	CMS Operation/Maintenance	Yes.	
63.8(d)	Quality Control Program	Yes.	
63.8(e)	Performance Evaluation for CMS	Yes.	
63.8(f)	Alternative Monitoring Method	Yes.	
63.8(g)	Reduction of Monitoring Data	Yes.	
63.9(a)	Notification Requirements	Yes.	
63.9(b)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension.	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
63.9(f)	Notification of VE/Opacity Test	No	Opacity/VE tests not required.
63.9(g)	Additional CMS Notifications	Yes.	
63.9(h)(1)–(h)(3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No	[Reserved].
63.9(h)(5)–(h)(6)		Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting	Yes.	
63.10(b)	General Requirements	Yes.	
63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
63.10(c)(2)–(c)(4)		No	[Reserved].
63.10(c)(5)–(c)(8)		Yes.	
63.10(c)(9)		No	[Reserved].
63.10(c)(10)–(15)		Yes.	
63.10(d)(1)	General Reporting Requirements	Yes.	
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	No	No limits for VE/opacity.
63.10(d)(4)	Progress Reports	Yes.	
63.10(d)(5)	Startup, Shutdown, Malfunction Reports.	Yes.	
63.10(e)(1)–(e)(3)	Additional CMS Reports	Yes.	
63.10(e)(4)	Reporting COM Data	No	COM not required.
63.10(f)	Waiver of Recordkeeping/Reporting.	Yes.	
63.11(a)	Control Device Requirements	Yes.	
63.11(b)	Flares	No	Flares not applicable.
63.12	State Authority and Delegations	Yes.	
63.13	State/Regional Addresses	Yes.	
63.14	Incorporation by Reference	No.	
63.15	Availability of Information	Yes.	

Appendix A to Subpart NNN of Part 63—Method for the Determination of LOI

1. Purpose

The purpose of this test is to determine the LOI of cured blanket insulation. The method is applicable to all cured board and blanket products.

2. Equipment

2.1 Scale sensitive to 0.1 gram.

2.2 Furnace designed to heat to at least 540 °C (1,000 °F) and controllable to ±10 °C (50 °F).

2.3 Wire tray for holding specimen while in furnace.

3. Procedure

3.1 Cut a strip along the entire width of the product that will weigh at least 10.0 grams. Sample should be free of dirt or foreign matter.

Note: Remove all facing from sample.

3.2 Cut the sample into pieces approximately 12 inches long, weigh to the nearest 0.1 gram and record. Place in wire tray. Sample should not be compressed or overhang on tray edges.

Note: On air duct products, remove shiplaps and overspray.

3.3 Place specimen in furnace at 540 °C (1,000 °F), ±10 °C (50 °F) for 15 to 20 minutes to insure complete oxidation. After ignition, fibers should be white and should not be fused together.

3.4 Remove specimen from the furnace and cool to room temperature.

3.5 Weigh cooled specimen and wire tray to the nearest 0.1 gram. Deduct the weight of the wire tray and then calculate the loss in weight as a percent of the original specimen weight.

Appendix B to Subpart NNN of Part 63—Free Formaldehyde Analysis of Insulation Resins by Hydroxylamine Hydrochloride

1. Scope

This method was specifically developed for water-soluble phenolic resins that have a relatively high free-formaldehyde (FF) content such as insulation resins. It may also be suitable for other phenolic resins, especially those with a high FF content.

2. Principle

2.1 a. The basis for this method is the titration of the hydrochloric acid that is liberated when hydroxylamine hydrochloride reacts with formaldehyde to form formaldoxine:

$$HCHO + NH_2OH{:}HCl \rightarrow CH_2{:}NOH + H_2O + HCl$$

b. Free formaldehyde in phenolic resins is present as monomeric formaldehyde, hemiformals, polyoxymethylene hemiformals, and polyoxymethylene glycols. Monomeric formaldehyde and hemiformals react rapidly with hydroxylamine hydrochloride, but the polymeric forms of formaldehyde must hydrolyze to the monomeric state before they can react. The greater the concentration of free formaldehyde in a resin, the more of that formaldehyde will be in the polymeric form. The hydrolysis of these polymers is catalyzed by hydrogen ions.

2.2 The resin sample being analyzed must contain enough free formaldehyde so that the initial reaction with hydroxylamine hydrochloride will produce sufficient hydrogen ions to catalyze the depolymerization of the polymeric formaldehyde within the time limits of the test method. The sample should contain approximately 0.3 grams free formaldehyde to ensure complete reaction within 5 minutes.

3. Apparatus

3.1 Balance, readable to 0.01 g or better.

3.2 pH meter, standardized to pH 4.0 with pH 4.0 buffer and pH 7 with pH 7.0 buffer.

3.3 50-mL burette for 1.0 N sodium hydroxide.

3.4 Magnetic stirrer and stir bars.

3.5 250-mL beaker.

3.6 50-mL graduated cylinder.

3.7 100-mL graduated cylinder.

3.8 Timer.

4. Reagents

4.1 Standardized 1.0 N sodium hydroxide solution.

4.2 Hydroxylamine hydrochloride solution, 100 grams per liter, pH adjusted to 4.00.

4.3 Hydrochloric acid solution, 1.0 N and 0.1 N.

4.4 Sodium hydroxide solution, 0.1 N.

4.5 50/50 v/v mixture of distilled water and methyl alcohol.

5. Procedure

5.1 Determine the sample size as follows:

a. If the expected FF is greater than 2 percent, go to Part A to determine sample size.

b. If the expected FF is less than 2 percent, go to Part B to determine sample size.

c. Part A: Expected FF ≥ 2 percent.

Grams resin = 60/expected percent FF

i. The following table shows example levels:

Expected % free formaldehyde	Sample size, grams
2	30.0
5	12.0
8	7.5
10	6.0
12	5.0
15	4.0

ii. It is very important to the accuracy of the results that the sample size be chosen correctly. If the milliliters of titrant are less than 15 mL or greater than 30 mL, reestimate the needed sample size and repeat the tests.

d. Part B: Expected FF < 2 percent

Grams resin = 30/expected percent FF

i. The following table shows example levels:

Expected % free formaldehyde	Sample size, grams
2	15
1	30
0.5	60

ii. If the milliliters of titrant are less than 5 mL or greater than 30 mL, reestimate the needed sample size and repeat the tests.

5.2 Weigh the resin sample to the nearest 0.01 grams into a 250-mL beaker. Record sample weight.

5.3 Add 100 mL of the methanol/water mixture and stir on a magnetic stirrer. Confirm that the resin has dissolved.

5.4 Adjust the resin/solvent solution to pH 4.0, using the prestandardized pH meter, 1.0 N hydrochloric acid, 0.1 N hydrochloric acid, and 0.1 N sodium hydroxide.

5.5 Add 50 mL of the hydroxylamine hydrochloride solution, measured with a graduated cylinder. Start the timer.

5.6 Stir for 5 minutes. Titrate to pH 4.0 with standardized 1.0 N sodium hydroxide. Record the milliliters of titrant and the normality.

6. Calculations

$$\% FF = \frac{mL\ sodium\ hydroxide \times normality \times 3.003}{grams\ of\ sample}$$

7. Method Precision and Accuracy

Test values should conform to the following statistical precision:

Variance = 0.005

Standard deviation = 0.07

95% Confidence Interval, for a single determination = 0.2

8. Author

This method was prepared by K. K. Tutin and M. L. Foster, Tacoma R&D Laboratory, Georgia-Pacific Resins, Inc. (Principle written by R. R. Conner.)

9. References

9.1 GPAM 2221.2.

9.2 PR&C TM 2.035.

9.3 Project Report, Comparison of Free Formaldehyde Procedures, January 1990, K. K. Tutin.

Appendix C to Subpart NNN of Part 63—Method for the Determination of Product Density

1. Purpose

The purpose of this test is to determine the product density of cured blanket insulation. The method is applicable to all cured board and blanket products.

2. Equipment

One square foot (12 in. by 12 in.) template, or templates that are multiples of one square foot, for use in cutting insulation samples.

3. Procedure

3.1 Obtain a sample at least 30 in. long across the machine width. Sample should be free of dirt or foreign matter.

3.2 Lay out the cutting pattern according to the plant's written procedure for the designated product.

3.2 Cut samples using one square foot (or multiples of one square foot) template.

3.3 Weigh product and obtain area weight (lb/ft^2).

3.4 Measure sample thickness.

3.5 Calculate the product density:

Density (lb/ft^3) = area weight (lb/ft^2)/ thickness (ft)

5. Appendix A to part 63 is amended by adding in numerical order methods 316 and 318 to read as follows:

Appendix A To Part 63—Test Methods

* * * * *

Method 316—Sampling and Analysis for Formaldehyde Emissions From Stationary Sources in the Mineral Wool and Wool Fiberglass Industries

1.0 *Introduction*

This method is applicable to the determination of formaldehyde, CAS Registry number 50–00–0, from stationary sources in the mineral wool and wool fiber glass industries. High purity water is used to collect the formaldehyde. The formaldehyde concentrations in the stack samples are determined using the modified pararosaniline method. Formaldehyde can be detected as low as 8.8×10^{10} lbs/cu ft (11.3 ppbv) or as high as 1.8×10^{3} lbs/cu ft (23,000,000 ppbv), at standard conditions over a 1 hour sampling period, sampling approximately 30 cu ft.

2.0 *Summary of Method*

Gaseous and particulate pollutants are withdrawn isokinetically from an emission source and are collected in high purity water. Formaldehyde present in the emissions is highly soluble in high purity water. The high purity water containing formaldehyde is then analyzed using the modified pararosaniline method. Formaldehyde in the sample reacts with acidic pararosaniline, and the sodium sulfite, forming a purple chromophore. The intensity of the purple color, measured spectrophotometrically, provides an accurate and precise measure of the formaldehyde concentration in the sample.

3.0 *Definitions*

See the definitions in the General Provisions of this Subpart.

4.0 *Interferences*

Sulfite and cyanide in solution interfere with the pararosaniline method. A procedure to overcome the interference by each compound has been described by Miksch, et al.

5.0 *Safety.* (Reserved)

6.0 *Apparatus and Materials*

6.1 A schematic of the sampling train is shown in Figure 1. This sampling train configuration is adapted from EPA Method 5, 40 CFR part 60, appendix A, procedures.

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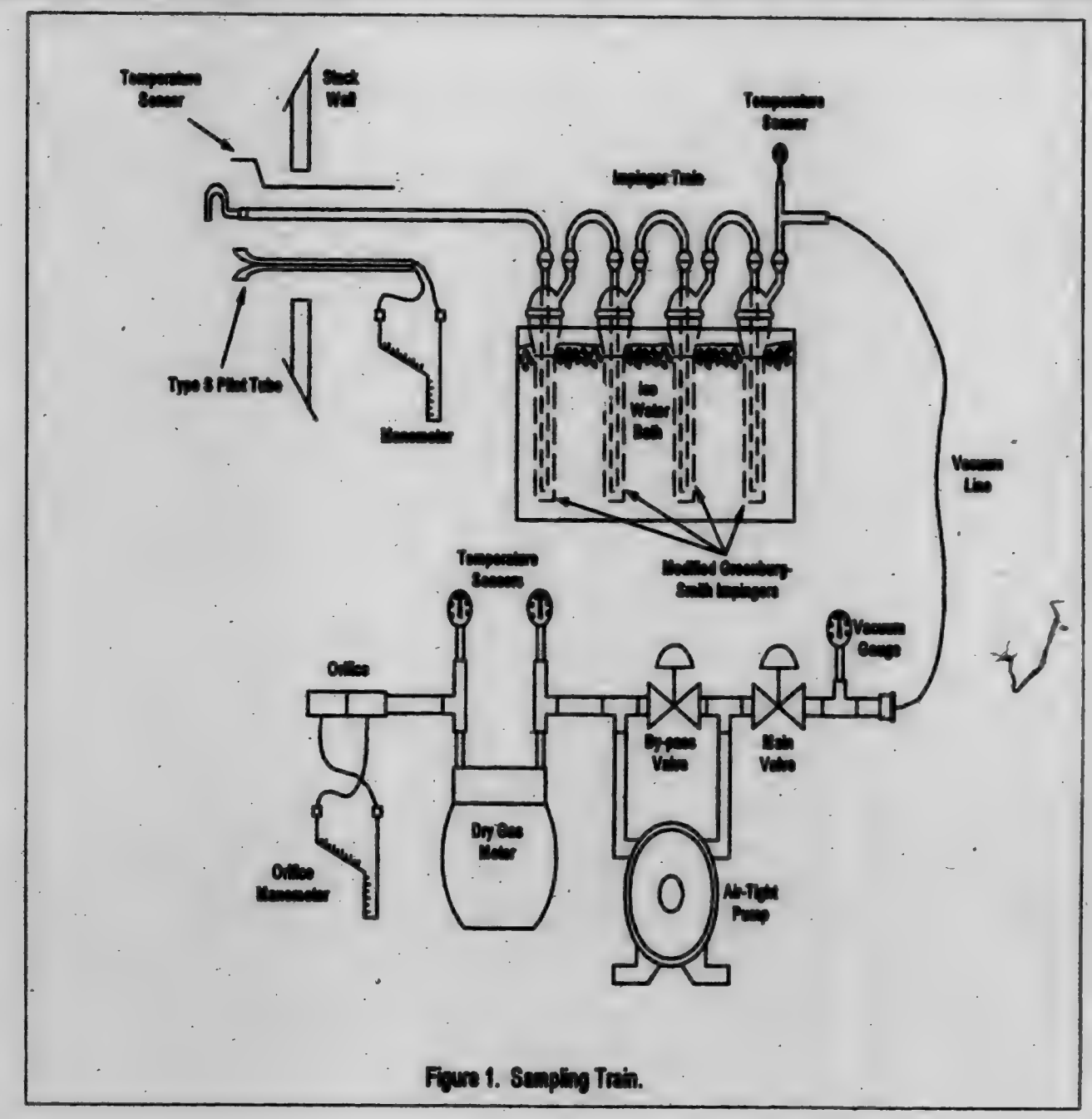

Figure 1. Sampling Train.

The sampling train consists of the following components: probe nozzle, probe liner, pitot tube, differential pressure gauge, impingers, metering system, barometer, and gas density determination equipment.

6.1.1 Probe Nozzle: Quartz, glass, or stainless steel with sharp, tapered (30° angle) leading edge. The taper shall be on the outside to preserve a constant inner diameter. The nozzle shall be buttonhook or elbow design. A range of nozzle sizes suitable for isokinetic sampling should be available in increments of 0.15 cm (1/16 in), e.g., 0.32 to 1.27 cm (⅛ to ½ in), or larger if higher volume sampling trains are used. Each nozzle shall be calibrated according to the procedure outlined in Section 10.1.

6.1.2 Probe Liner: Borosilicate glass or quartz shall be used for the probe liner. The probe shall be maintained at a temperature of 120°C ± 14°C (248°F ± 25°F).

6.1.3 Pitot Tube: The pitot tube shall be Type S, as described in Section 2.1 of EPA Method 2, 40 CFR part 60, appendix A, or any other appropriate device. The pitot tube shall be attached to the probe to allow constant monitoring of the stack gas velocity. The impact (high pressure) opening plane of the pitot tube shall be even with or above the nozzle entry plane (see Figure 2–6b, EPA Method 2, 40 CFR part 60, appendix A) during sampling. The Type S pitot tube assembly shall have a known coefficient, determined as outlined in Section 4 of EPA Method 2, 40 CFR part 60, appendix A.

6.1.4 Differential Pressure Gauge: The differential pressure gauge shall be an inclined manometer or equivalent device as described in Section 2.2 of EPA Method 2, 40 CFR part 60, appendix A. One manometer shall be used for velocity-head reading and the other for orifice differential pressure readings.

6.1.5 Impingers: The sampling train requires a minimum of four impingers, connected as shown in Figure 1, with ground glass (or equivalent) vacuum-tight fittings. For the first, third, and fourth impingers, use the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm inside diameters (½ in) glass tube extending to 1.3 cm (½ in) from the bottom of the flask. For the second impinger, use a Greenburg-Smith impinger with the standard tip. Place a thermometer capable of measuring temperature to within 1°C (2°F) at the outlet of the fourth impinger for monitoring purposes.

6.1.6 Metering System: The necessary components are a vacuum gauge, leak-free pump, thermometers capable of measuring temperatures within 3°C (5.4°F), dry-gas meter capable of measuring volume to within 1 percent, and related equipment as shown in Figure 1. At a minimum, the pump should be capable of 4 cfm free flow, and the dry gas meter should have a recording capacity of 0–999.9 cu ft with a resolution of 0.005 cu ft. Other metering systems may be used which are capable of maintaining sample volumes to within 2 percent. The metering system may be used in conjunction with a pitot tube to enable checks of isokinetic sampling rates.

6.1.7 Barometer: The barometer may be mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in Hg). In many cases, the barometric reading may be obtained from a nearby National Weather Service Station, in which case the station value (which is the absolute barometric pressure) is requested and an adjustment for elevation differences between the weather station and sampling point is applied at a rate of minus 2.5 mm Hg (0.1 in Hg) per 30 m (100 ft) elevation increase (rate is plus 2.5 mm Hg per 30 m (100 ft) of elevation decrease).

6.1.8 Gas Density Determination Equipment: Temperature sensor and pressure gauge (as described in Sections 2.3 and 2.3 of EPA Method 2, 40 CFR part 60, appendix A), and gas analyzer, if necessary (as described in EPA Method 3, 40 CFR part 60, appendix A). The temperature sensor ideally should be permanently attached to the pitot tube or sampling probe in a fixed configuration such that the top of the sensor extends beyond the leading edge of the probe sheath and does not touch any metal. Alternatively, the sensor may be attached just prior to use in the field. Note, however, that if the temperature sensor is attached in the field, the sensor must be placed in an interference-free arrangement with respect to the Type S pitot openings (see Figure 2–7, EPA Method 2, 40 CFR part 60, appendix A). As a second alternative, if a difference of no more than 1 percent in the average velocity measurement is to be introduced, the temperature gauge need not be attached to the probe or pitot tube.

6.2 Sample Recovery

6.2.1 Probe Liner: Probe nozzle and brushes; bristle brushes with stainless steel wire handles are required. The probe brush shall have extensions of stainless steel, Teflon™, or inert material at least as long as the probe. The brushes shall be properly sized and shaped to brush out the probe liner, the probe nozzle, and the impingers.

6.2.2 Wash Bottles: One wash bottle is required. Polyethylene, Teflon™, or glass wash bottles may be used for sample recovery.

6.2.3 Graduated Cylinder and/or Balance: A graduated cylinder or balance is required to measure condensed water to the nearest 1 ml or 1 g. Graduated cylinders shall have division not >2 ml. Laboratory balances capable of weighing to ± 0.5 g are required.

6.2.4 Polyethylene Storage Containers: 500 ml wide-mouth polyethylene bottles are required to store impinger water samples.

6.2.5 Rubber Policeman and Funnel: A rubber policeman and funnel are required to aid the transfer of material into and out of containers in the field.

6.3 Sample Analysis

6.3.1 Spectrophotometer—B&L 70, 710, 2000, etc., or equivalent; 1 cm pathlength cuvette holder.

6.3.2 Disposable polystyrene cuvettes, pathlengh 1 cm, volume of about 4.5 ml.

6.3.3 Pipettors—Fixed-volume Oxford pipet (250 µl; 500 µl; 1000 µl); adjustable volume Oxford or equivalent pipettor 1–5 ml model, set to 2.50 ml.

6.3.4 Pipet tips for pipettors above.

6.3.5 Parafilm, 2° wide; cut into about 1" squares.

7.0 *Reagents*

7.1 High purity water: All references to water in this method refer to high purity water (ASTM Type I water or equivalent). The water purity will dictate the lower limits of formaldehyde quantification.

7.2 Silica Gel: Silica gel shall be indicting type, 6–16 mesh. If the silica gel has been used previously, dry at 175°C (350°F) for 2 hours before using. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used.

7.3 Crushed Ice: Quantities ranging from 10–50 lbs may be necessary during a sampling run, depending upon ambient temperature. Samples which have been taken must be stored and shipped cold; sufficient ice for this purpose must be allowed.

7.4 Quaternary ammonium compound stock solution: Prepare a stock solution of dodecyltrimethylammonium chloride (98 percent minimum assay, reagent grade) by dissolving 1.0 gram in 1000 ml water. This solution contains nominally 1000 µg/ml quaternary ammonium compound, and is used as a biocide for some sources which are prone to microbial contamination.

7.5 Pararosaniline: Weigh 0.16 grams pararosaniline (free base; assay of 95 percent or greater, C.I. 42500; Sigma P7632 has been found to be acceptable) into a 100 ml flask. Exercise care, since pararosaniline is a dye and will stain. Using a wash bottle with high-purity water, rinse the walls of the flask. Add no more than 25 ml water. Then, carefully add 20 ml of concentrated hydrochloric acid to the flask. The flask will become warm after the addition of acid. Add a magnetic stir bar to the flask, cap, and place on a magnetic stirrer for approximately 4 hours. Then, add additional water so the total volume is 100 ml. This solution is stable for several months when stored tightly capped at room temperature.

7.6 Sodium sulfite: Weigh 0.10 grams anhydrous sodium sulfite into a 100 ml flask. Dilute to the mark with high purity water. Invert 15–20 times to mix and dissolve the sodium sulfite. This solution must be prepared fresh every day.

7.7 Formaldehyde standard solution: Pipet exactly 2.70 ml of 37 percent formaldehyde solution into a 1000 ml volumetric flask which contains about 500 ml of high-purity water. Dilute to the mark with high-purity water. This solution contains nominally 1000 µg/ml of formaldehyde, and is used to prepare the working formaldehyde standards. The exact formaldehyde concentration may be determined if needed by suitable modification of the sodium sulfite method (Reference: J.F. Walker, Formaldehyde (Third Edition), 1964.). The 1000 µg/ml formaldehyde stock solution is stable for at least a year if kept tightly closed, with the neck of the flask sealed with Parafilm. Store at room temperature.

7.8 Working formaldehyde standards: Pipet exactly 10.0 ml of the 1000 µg/ml formaldehyde stock solution into a 100 ml volumetric flask which is about half full of high-purity water. Dilute to the mark with high-purity water, and invert 15–20 times to mix thoroughly. This solution contains nominally 100 µg/ml formaldehyde. Prepare

the working standards from this 100 µg/ml standard solution and using the Oxford pipets:

Working standard, µ/mL	µL or 100 µg/mL solution	Volumetric flask volume (dilute to mark with water)
0.250	250	100
0.500	500	100
1.00	1000	100
2.00	2000	100
3.00	1500	50

The 100 µg/ml stock solution is stable for 4 weeks if kept refrigerated between analyses. The working standards (0.25–3.00 µg/ml) should be prepared fresh every day, consistent with good laboratory practice for trace analysis. If the laboratory water is not of sufficient purity, it may be necessary to prepare the working standards every day. The laboratory must establish that the working standards are stable—DO NOT assume that your working standards are stable for more than a day unless you have verified this by actual testing for several series of working standards.

8.0 *Sample Collection*

8.1 Because of the complexity of this method, field personnel should be trained in and experienced with the test procedures in order to obtain reliable results.

8.2 Laboratory Preparation

8.2.1 All the components shall be maintained and calibrated according to the procedure described in APTD–0576, unless otherwise specified.

8.2.2 Weigh several 200 to 300 g portions of silica gel in airtight containers to the nearest 0.5 g. Record on each container the total weight of the silica gel plus containers. As an alternative to preweighing the silica gel, it may instead be weighed directly in the impinger or sampling holder just prior to train assembly.

8.3 Preliminary Field Determinations

8.3.1 Select the sampling site and the minimum number of sampling points according to EPA Method 1, 40 CFR part 60, appendix A, or other relevant criteria. Determine the stack pressure, temperature, and range of velocity heads using EPA Method 2, 40 CFR part 60, appendix A. A leak-check of the pitot lines according to Section 3.1 of EPA Method 2, 40 CFR part 60, appendix A, must be performed. Determine the stack gas moisture content using EPA Approximation Method 4,40 CFR part 60, appendix A, or its alternatives to establish estimates of isokinetic sampling rate settings. Determine the stack gas dry molecular weight, as described in EPA Method 2, 40 CFR part 60, appendix A, Section 3.6. If integrated EPA Method 3, 40 CFR part 60, appendix A, sampling is used for molecular weight determination, the integrated bag sample shall be taken simultaneously with, and for the same total length of time as, the sample run.

8.3.2 Select a nozzle size based on the range of velocity heads so that it is not necessary to change the nozzle size in order to maintain isokinetic sampling rates below 28 l/min (1.0 cfm). During the run do not change the nozzle. Ensure that the proper differential pressure gauge is chosen for the range of velocity heads encountered (see Section 2.2 of EPA Method 2, 40 CFR part 60, appendix A).

8.3.3 Select a suitable probe liner and probe length so that all traverse points can be sampled. For large stacks, to reduce the length of the probe, consider sampling from opposite sides of the stack.

8.3.4 A minimum of 30 cu ft of sample volume is suggested for emission sources with stack concentrations not greater than 23,000,000 ppbv. Additional sample volume shall be collected as necessitated by the capacity of the water reagent and analytical detection limit constraint. Reduced sample volume may be collected as long as the final concentration of formaldehyde in the stack sample is greater than 10 (ten) times the detection limit.

8.3.5 Determine the total length of sampling time needed to obtain the identified minimum volume by comparing the anticipated average sampling rate with the volume requirement. Allocate the same time to all traverse points defined by EPA Method 1, 40 CFR part 60, appendix A. To avoid timekeeping errors, the length of time sampled at each traverse point should be an integer or an integer plus 0.5 min.

8.3.6 In some circumstances (e.g., batch cycles) it may be necessary to sample for shorter times at the traverse points and to obtain smaller gas-volume samples. In these cases, careful documentation must be maintained in order to allow accurate calculations of concentrations.

8.4 Preparation of Collection Train

8.4.1 During preparation and assembly of the sampling train, keep all openings where contamination can occur covered with Teflon™ film or aluminum foil until just prior to assembly or until sampling is about to begin.

8.4.2 Place 100 ml of water in each of the first two impingers, and leave the third impinger empty. If additional capacity is required for high expected concentrations of formaldehyde in the stack gas, 200 ml of water per impinger may be used or additional impingers may be used for sampling. Transfer approximately 200 to 300 g of pre-weighed silica gel from its container to the fourth impinger. Care should be taken to ensure that the silica gel is not entrained and carried out from the impinger during sampling. Place the silica gel container in a clean place for later use in the sample recovery. Alternatively, the weight of the silica gel plus impinger may be determined to the nearest 0.5 g and recorded.

8.4.3 With a glass or quartz liner, install the selected nozzle using a Viton-A O-ring when stack temperatures are <260°C (500°F) and a woven glass-fiber gasket when temperatures are higher. See APTD–0576 for details. Other connection systems utilizing either 316 stainless steel or Teflon™ ferrules may be used. Mark the probe with heat-resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point.

8.4.4 Assemble the train as shown in Figure 1. During assembly, a very light coating of silicone grease may be used on ground-glass joints of the impingers, but the silicone grease should be limited to the outer portion (see APTD–0576) of the ground-glass joints to minimize silicone grease contamination. If necessary, Teflon™ tape may be used to seal leaks. Connect all temperature sensors to an appropriate potentiometer/display unit. Check all temperature sensors at ambient temperatures.

8.4.5 Place crushed ice all around the impingers.

8.4.6 Turn on and set the probe heating system at the desired operating temperature. Allow time for the temperature to stabilize.

8.5 Leak-Check Procedures

8.5.1 Pre-test Leak-check: Recommended, but not required. If the tester elects to conduct the pre-test leak-check, the following procedure shall be used.

8.5.1.1 After the sampling train has been assembled, turn on and set probe heating system at the desired operating temperature. Allow time for the temperature to stabilize. If a Viton-a O-ring or other leak-free connection is used in assembling the probe nozzle to the probe liner, leak-check the train at the sampling site by plugging the nozzle and pulling a 381 mm Hg (15 in Hg) vacuum.

Note: A lower vacuum may be used, provided that the lower vacuum is not exceeded during the test.

If a woven glass fiber gasket is used, do not connect the probe to the train during the leak-check. Instead, leak-check the train by first attaching a carbon-filled leak-check impinger to the inlet and then plugging the inlet and pulling a 381 mm Hg (15 in Hg) vacuum. (A lower vacuum may be used if this lower vacuum is not exceeded during the test.) Next connect the probe to the train and leak-check at about 25 mm Hg (1 in Hg) vacuum. Alternatively, leak-check the probe with the rest of the sampling train in one step at 381 mm Hg (15 in Hg) vacuum. Leakage rates in excess of (a) 4 percent of the average sampling rate or (b) 0.00057 m^3/min (0.02 cfm), whichever is less, are unacceptable.

8.5.1.2 The following leak-check instructions for the sampling train described in APTD–0576 and APTD–0581 may be helpful. Start the pump with the fine-adjust valve fully open and coarse-valve completely closed. Partially open the coarse-adjust valve and slowly close the fine-adjust valve until the desired vacuum is reached. Do not reverse direction of the fine-adjust valve, as liquid will back up into the train. If the desired vacuum is exceeded, either perform the leak-check at this higher vacuum or end the leak-check, as described below, and start over.

8.5.1.3 When the leak-check is completed, first slowly remove the plug from the inlet to the probe. When the vacuum drops to 127 mm (5 in) Hg or less, immediately close the coarse-adjust valve. Switch off the pumping system and reopen the fine-adjust valve. Do not reopen the fine-adjust valve until the coarse-adjust valve has been closed to prevent the liquid in the impingers from being forced backward in the sampling line and silica gel from being entrained backward into the third impinger.

8.5.2 Leak-checks During Sampling Run:

8.5.2.1 If, during the sampling run, a component change (e.g., impinger) becomes necessary, a leak-check shall be conducted immediately after the interruption of sampling and before the change is made. The leak-check shall be done according to the procedure described in Section 10.3.3, except that it shall be done at a vacuum greater than or equal to the maximum value recorded up to that point in the test. If the leakage rate is found to be no greater than 0.0057 m^3/min (0.02 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable. If a higher leakage rate is obtained, the tester must void the sampling run.

Note: Any correction of the sample volume by calculation reduces the integrity of the pollutant concentration data generated and must be avoided.

8.5.2.2 Immediately after component changes, leak-checks are optional. If performed, the procedure described in section 8.5.1.1 shall be used.

8.5.3 Post-test Leak-check:

8.5.3.1 A leak-check is mandatory at the conclusion of each sampling run. The leak-check shall be done with the same procedures as the pre-test leak-check, except that the post-test leak-check shall be conducted at a vacuum greater than or equal to the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.00057 m^3/min (0.02 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable. If, however, a higher leakage rate is obtained, the tester shall record the leakage rate and void the sampling run.

8.6 Sampling Train Operation

8.6.1 During the sampling run, maintain an isokinetic sampling rate to within 10 percent of true isokinetic, below 28 l/min (1.0 cfm). Maintain a temperature around the probe of 120°C ± 14°C (248° ± 25°F).

8.6.2 For each run, record the data on a data sheet such as the one shown in Figure 2. Be sure to record the initial dry-gas meter reading. Record the dry-gas meter readings at the beginning and end of each sampling time increment, when changes in flow rates are made, before and after each leak-check, and when sampling is halted. Take other readings required by Figure 2 at least once at each sample point during each time increment and additional readings when significant adjustments (20 percent variation in velocity head readings) necessitate additional adjustments in flow rate. Level and zero the manometer. Because the manometer level and zero may drift due to vibrations and temperature changes, make periodic checks during the traverse.

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Figure 2 - Formaldehyde Field Data

Plant . . . . . .
Location . . . . . .
Operator . . . . . .
Date . . . . . .
Run No . . . . . .
Sample box No . . . . . .
Meter box No . . . . . .
Meter ΔH . . . . . .
C Factor . . . . . .
Pitot tube coefficient, Op

SCHEMATIC OF STACK CROSS SECTION

Ambient temperature . . . . . .
Barometric pressure . . . . . .
Assumed moisture, percent . . . .
Probe length, m (ft) . . . . . .
Nozzle Identification No . . . .
Average calibrated nozzle diameter, cm (in.) . . . . . .
Probe heater setting . . . . . .
Leak rate, m^3/min (cfm) . . . . .
Probe liner material . . . . . .
Static pressure, mm Hg (in. Hg) .
Filter No. . . . . .

BILLING CODE 6560-50-C

Traverse point number	Sampling time (e) min.	Vacuum mm Hg (in. Hg)	Stack temperature (T) °C (°F)	Velocity head (ΔP) mm (in) H_2O	Pressure differential across orifice meter mm H_2O (in. H_2O)	Gas sample volume m^3 (ft^3)	Gas sample temperature at dry gas meter		Filter holder temperature °C (°F)	Temperature of gas leaving condenser or last impinger °C (°F)
							Inlet °C (°F)	Outlet °C (°F)		
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	.....	.....	.....	.....	.....	.....	Avg.	Avg.	.....	.....
Average	.....	.....	.....	.....	.....	.....	Avg.	.....	.....	.....

8.6.3 Clean the stack access ports prior to the test run to eliminate the chance of sampling deposited material. To begin sampling, remove the nozzle cap, verify that the probe heating system are at the specified temperature, and verify that the pitot tube and probe are properly positioned. Position the nozzle at the first traverse point, with the tip pointing directly into the gas stream. Immediately start the pump and adjust the flow to isokinetic conditions. Nomographs, which aid in the rapid adjustment of the isokinetic sampling rate without excessive computations, are available. These nomographs are designed for use when the Type S pitot tube coefficient is 0.84 ± 0.02 and the stack gas equivalent density (dry molecular weight) is equal to 29 ± 4. APTD–0576 details the procedure for using the nomographs. If the stack gas molecular weight and the pitot tube coefficient are outside the above ranges, do not use the nomographs unless appropriate steps are taken to compensate for the deviations.

8.6.4 When the stack is under significant negative pressure (equivalent to the height of the impinger stem), take care to close the coarse-adjust valve before inserting the probe into the stack in order to prevent liquid from backing up through the train. If necessary, a low vacuum on the train may have to be started prior to entering the stack.

8.6.5 When the probe is in position, block off the openings around the probe and stack access port to prevent unrepresentative dilution of the gas stream.

8.6.6 Traverse the stack cross section, as required by EPA Method 1, 40 CFR part 60, appendix A, being careful not to bump the probe nozzle into the stack walls when sampling near the walls or when removing or inserting the probe through the access port, in order to minimize the chance of extracting deposited material.

8.6.7 During the test run, make periodic adjustments to keep the temperature around the probe at the proper levels. Add more ice and, if necessary, salt, to maintain a temperature of <20°C (68°F) at the silica gel outlet.

8.6.8 A single train shall be used for the entire sampling run, except in cases where simultaneous sampling is required in two or more separate ducts or at two or more different locations within the same duct, or in cases where equipment failure necessitates a change of trains. An additional train or trains may also be used for sampling when the capacity of a single train is exceeded.

8.6.9 When two or more trains are used, separate analyses of components from each train shall be performed. If multiple trains have been used because the capacity of a single train would be exceeded, first impingers from each train may be combined, and second impingers from each train may be combined.

8.6.10 At the end of the sampling run, turn off the coarse-adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final dry gas meter reading, and conduct a post-test leak-check. Also, check the pitot lines as described in EPA Method 2, 40 CFR part 60, appendix A. The lines must pass this leak-check in order to validate the velocity-head data.

8.6.11 Calculate percent isokineticity (see Method 2) to determine whether the run was valid or another test should be made.

8.7 Sample Preservation and Handling

8.7.1 Samples from most sources applicable to this method have acceptable holding times using normal handling practices (shipping samples iced, storing in refrigerator at 2°C until analysis). However, forming section stacks and other sources using waste water sprays may be subject to microbial contamination. For these sources, a biocide (quaternary ammonium compound solution) may be added to collected samples to improve sample stability and method ruggedness.

8.7.2 Sample holding time: Samples should be analyzed within 14 days of collection. Samples must be refrigerated/kept cold for the entire period preceding analysis. After the samples have been brought to room temperature for analysis, any analyses needed should be performed on the same day. Repeated cycles of warming the samples to room temperature/refrigerating/rewarming, then analyzing again, etc., have not been investigated in depth to evaluate if analyte levels remain stable for all sources.

8.7.3 Additional studies will be performed to evaluate whether longer sample holding times are feasible for this method.

8.8 Sample Recovery

8.8.1 Preparation:

8.8.1.1 Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool. When the probe can be handled safely, wipe off all external particulate matter near the tip of the probe nozzle and place a cap over the tip to prevent losing or gaining particulate matter. Do not cap the probe tightly while the sampling train is cooling because a vacuum will be created, drawing liquid from the impingers back through the sampling train.

8.8.1.2 Before moving the sampling train to the cleanup site, remove the probe from the sampling train and cap the open outlet, being careful not to lose any condensate that might be present. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used, let any condensed water or liquid drain into the impingers. Cap off any open impinger inlets and outlets. Ground glass stoppers, Teflon ™ caps, or caps of other inert materials may be used to seal all openings.

8.8.1.3 Transfer the probe and impinger assembly to an area that is clean and protected from wind so that the chances of contaminating or losing the sample are minimized.

8.8.1.4 Inspect the train before and during disassembly, and note any abnormal conditions.

8.8.1.5 Save a portion of the washing solution (high purity water) used for cleanup as a blank.

8.8.2 Sample Containers:

8.8.2.1 Container 1: Probe and Impinger Catches. Using a graduated cylinder, measure to the nearest ml, and record the volume of the solution in the first three impingers. Alternatively, the solution may be weighed to the nearest 0.5 g. Include any condensate in the probe in this determination. Transfer the combined impinger solution from the graduated cylinder into the polyethylene bottle. Taking care that dust on the outside of the probe or other exterior surfaces does not get into the sample, clean all surfaces to which the sample is exposed (including the probe nozzle, probe fitting, probe liner, first three impingers, and impinger connectors) with water. Use less than 400 ml for the entire waste (250 ml would be better, if possible). Add the rinse water to the sample container.

8.8.2.1.1 Carefully remove the probe nozzle and rinse the inside surface with water from a wash bottle. Brush with a bristle brush and rinse until the rinse shows no visible particles, after which make a final rinse of the inside surface. Brush and rinse the inside parts of the Swagelok (or equivalent) fitting with water in a similar way.

8.8.2.1.2 Rinse the probe liner with water. While squirting the water into the upper end of the probe, tilt and rotate the probe so that

all inside surfaces will be wetted with water. Let the water drain from the lower end into the sample container. The tester may use a funnel (glass or polyethylene) to aid in transferring the liquid washes to the container. Follow the rinse with a bristle brush. Hold the probe in an inclined position, and squirt water into the upper end as the probe brush is being pushed with a twisting action through the probe. Hold the sample container underneath the lower end of the probe, and catch any water and particulate matter that is brushed from the probe. Run the brush through the probe three times or more. Rinse the brush with water and quantitatively collect these washings in the sample container. After the brushing, make a final rinse of the probe as describe above.

Note: Two people should clean the probe in order to minimize sample losses. Between sampling runs, brushes must be kept clean and free from contamination.

8.8.2.1.3 Rinse the inside surface of each of the first three impingers (and connecting tubing) three separate times. Use a small portion of water for each rinse, and brush each surface to which the sample is exposed with a bristle brush to ensure recovery of fine particulate matter. Make a final rinse of each surface and of the brush, using water.

8.8.2.1.4 After all water washing and particulate matter have been collected in the sample container, tighten the lid so the sample will not leak out when the container is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container clearly to identify its contents.

8.8.2.1.5 If the first two impingers are to be analyzed separately to check for breakthrough, separate the contents and rinses of the two impingers into individual containers. Care must be taken to avoid physical carryover from the first impinger to the second. Any physical carryover of collected moisture into the second impinger will invalidate a breakthrough assessment.

8.8.2.2 Container 2: Sample Blank. Prepare a blank by using a polyethylene container and adding a volume of water equal to the total volume in Container 1. Process the blank in the same manner as Container 1.

8.8.2.3 Container 3: Silica Gel. Note the color of the indicating silica gel to determine whether it has been completely spent and make a notation of its condition. The impinger containing the silica gel may be used as a sample transport container with both ends sealed with tightly fitting caps or plugs. Ground-glass stoppers or Teflon™ caps maybe used. The silica gel impinger should then be labeled, covered with aluminum foil, and packaged on ice for transport to the laboratory. If the silica gel is removed from the impinger, the tester may use a funnel to pour the silica gel and a rubber policeman to remove the silica gel from the impinger. It is not necessary to remove the small amount of dust particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use water or other liquids to transfer the silica gel. If a balance is available in the field, the spent silica gel (or silica gel plus impinger) may be weighed to the nearest 0.5 g.

8.8.2.4 Sample containers should be placed in a cooler, cooled by (although not in contact with) ice. Putting sample bottles in Zip-Lock™ bags can aid in maintaining the integrity of the sample labels. Sample containers should be placed vertically to avoid leakage during shipment. Samples should be cooled during shipment so they will be received cold at the laboratory. It is critical that samples be chilled immediately after recovery. If the source is susceptible to microbial contamination from wash water (e.g. forming section stack), add biocide as directed in section 8.2.5.

8.8.2.5 A quaternary ammonium compound can be used as a biocide to stabilize samples against microbial degradation following collection. Using the stock quaternary ammonium compound (QAC) solution; add 2.5 ml QAC solution for every 100 ml of recovered sample volume (estimate of volume is satisfactory) immediately after collection. The total volume of QAC solution must be accurately known and recorded, to correct for any dilution caused by the QAC solution addition.

8.8.3 Sample Preparation for Analysis 8.8.3.1 The sample should be refrigerated if the analysis will not be performed on the day of sampling. Allow the sample to warm at room temperature for about two hours (if it has been refrigerated) prior to analyzing.

8.8.3.2 Analyze the sample by the pararosaniline method, as described in Section 11. If the color-developed sample has an absorbance above the highest standard, a suitable dilution in high purity water should be prepared and analyzed.

9.0 *Quality Control*

9.1 Sampling: See EPA Manual 600/4–77–02b for Method 5 quality control.

9.2 Analysis: The quality assurance program required for this method includes the analysis of the field and method blanks, and procedure validations. The positive identification and quantitation of formaldehyde are dependent on the integrity of the samples received and the precision and accuracy of the analytical methodology. Quality assurance procedures for this method are designed to monitor the performance of the analytical methodology and to provide the required information to take corrective action if problems are observed in laboratory operations or in field sampling activities.

9.2.1 Field Blanks: Field blanks must be submitted with the samples collected at each sampling site. The field blanks include the sample bottles containing aliquots of sample recover water, and water reagent. At a minimum, one complete sampling train will be assembled in the field staging area, taken to the sampling area, and leak-checked at the beginning and end of the testing (or for the same total number of times as the actual sampling train). The probe of the blank train must be heated during the sample test. The train will be recovered as if it were an actual test sample. No gaseous sample will be passed through the blank sampling train.

9.2.2 Blank Correction: The field blank formaldehyde concentrations will be subtracted from the appropriate sample formaldehyde concentrations. Blank formaldehyde concentrations above 0.25 μg/ml should be considered suspect, and subtraction from the sample formaldehyde concentrations should be performed in a manner acceptable to the Administrator.

9.2.3 Method Blanks: A method blank must be prepared for each set of analytical operations, to evaluate contamination and artifacts that can be derived from glassware, reagents, and sample handling in the laboratory.

10 *Calibration*

10.1 Probe Nozzle: Probe nozzles shall be calibrated before their initial use in the field. Using a micrometer, measure the inside diameter of the nozzle to the nearest 0.025 mm (0.001 in). Make measurements at three separate places across the diameter and obtain the average of the measurements. The difference between the high and low numbers shall not exceed 0.1 mm (0.004 in). When the nozzle becomes nicked or corroded, it shall be repaired and calibrated, or replaced with a calibrated nozzle before use. Each nozzle must be permanently and uniquely identified.

10.2 Pitot Tube: The Type S pitot tube assembly shall be calibrated according to the procedure outlined in Section 4 of EPA Method 2, or assigned a nominal coefficient of 0.84 if it is not visibly nicked or corroded and if it meets design and intercomponent spacing specifications.

10.3 Metering System

10.3.1 Before its initial use in the field, the metering system shall be calibrated according to the procedure outlined in APTD–0576. Instead of physically adjusting the dry-gas meter dial readings to correspond to the wet-test meter readings, calibration factors may be used to correct the gas meter dial readings mathematically to the proper values. Before calibrating the metering system, it is suggested that a leak-check be conducted. For metering systems having diaphragm pumps, the normal leak-check procedure will not delete leakages with the pump. For these cases, the following leak-check procedure will apply: Make a ten-minute calibration run at 0.00057 m^3/min (0.02 cfm). At the end of the run, take the difference of the measured wet-test and dry-gas meter volumes and divide the difference by 10 to get the leak rate. The leak rate should not exceed 0.00057 m^3/min (0.02 cfm).

10.3.2 After each field use, check the calibration of the metering system by performing three calibration runs at a single intermediate orifice setting (based on the previous field test). Set the vacuum at the maximum value reached during the test series. To adjust the vacuum, insert a valve between the wet-test meter and the inlet of the metering system. Calculate the average value of the calibration factor. If the calibration has changed by more than 5 percent, recalibrate the meter over the full range of orifice settings, as outlined in APTD–0576.

10.3.3 Leak-check of metering system: The portion of the sampling train from the pump to the orifice meter (see Figure 1)

should be leak-checked prior to initial use and after each shipment. Leakage after the pump will result in less volume being recorded than is actually sampled. Use the following procedure: Close the main valve on the meter box. Insert a one-hole rubber stopper with rubber tubing attached into the orifice exhaust pipe. Disconnect and vent the low side of the orifice manometer. Close off the low side orifice tap. Pressurize the system to 13–18 cm (5–7 in) water column by blowing into the rubber tubing. Pinch off the tubing and observe the manometer for 1 min. A loss of pressure on the manometer indicates a leak in the meter box. Leaks must be corrected.

Note: If the dry-gas meter coefficient values obtained before and after a test series differ by >5 percent, either the test series must be voided or calculations for test series must be performed using whichever meter coefficient value (i.e., before or after) gives the lower value of total sample volume.

10.4 Probe Heater: The probe heating system must be calibrated before its initial use in the field according to the procedure outlined in APTD–0576. Probes constructed according to APTD–0581 need not be calibrated if the calibration curves in APTD–0576 are used.

10.5 Temperature gauges: Use the procedure in section 4.3 of USEPA Method 2 to calibrate in-stack temperature gauges. Dial thermometers such as are used for the dry gas meter and condenser outlet, shall be calibrated against mercury-in-glass thermometers.

10.6 Barometer: Adjust the barometer initially and before each test series to agree to within ±2.5 mm Hg (0.1 in Hg) of the mercury barometer. Alternately, if a National Weather Service Station (NWSS) is located at the same altitude above sea level as the test site, the barometric pressure reported by the NWSS may be used.

10.7 Balance: Calibrate the balance before each test series, using Class S standard weights. The weights must be within ±0.5 percent of the standards, or the balance must be adjusted to meet these limits.

11.0 *Procedure for Analysis.*

The working formaldehyde standards (0.25, 0.50, 1.0, 2.0, and 3.0 µg/ml) are analyzed and a calibration curve is calculated for each day's analysis. The standards should be analyzed first to ensure that the method is working properly prior to analyzing the samples. In addition, a sample of the high-purity water should also be analyzed and used as a "0" formaldehyde standard.

The procedure for analysis of samples and standards is identical: Using the pipet set to 2.50 ml, pipet 2.50 ml of the solution to be analyzed into a polystyrene cuvette. Using the 250 µl pipet, pipet 250 µl of the pararosaniline reagent solution into the cuvette. Seal the top of the cuvette with a Parafilm square and shake at least 30 seconds to ensure the solution in the cuvette is well-mixed. Peel back a corner of the Parafilm so the next reagent can be added. Using the 250 µl pipet, pipet 250 µl of the sodium sulfite reagent solution into the cuvette. Reseal the cuvette with the Parafilm, and again shake for about 30 seconds to mix the solution in the cuvette. Record the time of addition of the sodium sulfite and let the color develop at room temperature for 60 minutes. Set the spectrophotometer to 570 nm and set to read in Absorbance Units. The spectrophotometer should be equipped with a holder for the 1-cm pathlength cuvettes. Place cuvette(s) containing high-purity water in the spectrophotometer and adjust to read 0.000 AU.

After the 60 minutes color development period, read the standard and samples in the spectrophotometer. Record the absorbance reading for each cuvette. The calibration curve is calculated by linear regression, with the formaldehyde concentration as the "x" coordinate of the pair, and the absorbance reading as the "y" coordinate. The procedure is very reproducible, and typically will yield values similar to these for the calibration curve:

Correlation Coefficient: 0.9999
Slope: 0.50
Y-Intercept: 0.090

The formaldehyde concentration of the samples can be found by using the trend-line feature of the calculator or computer program used for the linear regression. For example, the TI–55 calculators use the "X" key (this gives the predicted formaldehyde concentration for the value of the absorbance you key in for the sample). Multiply the formaldehyde concentration from the sample by the dilution factor, if any, for the sample to give the formaldehyde concentration of the original, undiluted, sample (units will be micrograms/ml).

11.1 Notes on the Pararosaniline Procedure

11.1.1 The pararosaniline method is temperature-sensitive. However, the small fluctuations typical of a laboratory will not significantly affect the results.

11.1.2 The calibration curve is linear to beyond 4 "µg/ml" formaldehyde, however, a research-grade spectrophotometer is required to reproducibly read the high absorbance values. Consult your instrument manual to evaluate the capability of the spectrophotometer.

11.1.3 The quality of the laboratory water used to prepare standards and make dilutions is critical. It is important that the cautions given in the Reagents section be observed. This procedure allows quantitation of formaldehyde at very low levels, and thus it is imperative to avoid contamination from other sources of formaldehyde and to exercise the degree of care required for trace analyses.

11.1.4 The analyst should become familiar with the operation of the Oxford or equivalent pipettors before using them for an analysis. Follow the instructions of the manufacturer; one can pipet water into a tared container on any analytical balance to check pipet accuracy and precision. This will also establish if the proper technique is being used. Always use a new tip for each pipetting operation.

11.1.5 This procedure follows the recommendations of ASTM Standard Guide D 3614, reading all solutions versus water in the reference cell. This allows the absorbance of the blank to be tracked on a daily basis. Refer to ASTM D 3614 for more information.

12.0 *Calculations*

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculations.

12.1 Calculations of Total Formaldehyde

12.1.1 To determine the total formaldehyde in mg, use the following equation if biocide was not used:

Total mg formaldehyde=

$$C_d \times V \times DF \times 0.001 \text{ mg/µg}$$

Where:

C_d = measured conc. formaldehyde, µg/ml
V = total volume of stack sample, ml
DF = dilution factor

12.1.2 To determine the total formaldehyde in mg, use the following equation if biocide was used:

Total mg formaldehyde=

$$\frac{C_d \times V}{(V - B) \times DF \times 0.001 \text{ mg/µg}}$$

Where:

C_d = measured conc. formaldehyde, µg/ml
V = total volume of stack sample, ml
B = total volume of biocide added to sample, ml
DF = dilution factor

12.2 Formaldehyde concentration (mg/m³) in stack gas. Determine the formaldehyde concentration (mg/m³) in the stack gas using the following equation: Formaldehyde concentration (mg/m³) =

$$\frac{K \times [\text{total formaldehyde, mg}]}{V_m(\text{std})}$$

Where:

K = 35.31 cu ft/m³ for V_m(std) in English units, or
K = 1.00 m³/m³ for V_m(std) in metric units
V_m(std) = volume of gas sample measured by a dry gas meter, corrected to standard conditions, dscm (dscf)

12.3 Average dry gas meter temperature and average orifice pressure drop are obtained from the data sheet.

12.4 Dry Gas Volume: Calculate V_m(std) and adjust for leakage, if necessary, using the equation in Section 6.3 of EPA Method 5, 40 CFR part 60, appendix A.

12.5 Volume of Water Vapor and Moisture Content: Calculated the volume of water vapor and moisture content from equations 5–2 and 5–3 of EPA Method 5.

13.0 *Method Performance*

The precision of this method is estimated to be better than ±5 percent, expressed as ± the percent relative standard deviation.

14.0 *Pollution Prevention.* (Reserved)

15.0 *Waste Management.* (Reserved)

16.0 *References*

R.R. Miksch, et al., Analytical Chemistry, November 1981, 53 pp. 2118–2123.
J.F. Walker, Formaldehyde, Third Edition, 1964.
US EPA 40 CFR, part 60, Appendix A, Test Methods 1–5

Method 318—Extractive FTIR Method for the Measurement of Emissions From the Mineral Wool and Wool Fiberglass Industries

1.0 *Scope and Application*

This method has been validated and approved for mineral wool and wool fiberglass sources. This method may not be applied to other source categories without validation and approval by the Administrator according to the procedures in Test Method 301, 40 CFR part 63, appendix A. For sources seeking to apply FTIR to other source categories, Test Method 320 (40 CFR part 63, appendix A) may be utilized.

1.1 Scope. The analytes measured by this method and their CAS numbers are:

Carbon Monoxide 630–08–0
Carbonyl Sulfide 463–58–1
Formaldehyde 50–00–0
Methanol 1455–13–6
Phenol 108–95–2

1.2 Applicability

1.2.1 This method is applicable for the determination of formaldehyde, phenol, methanol, carbonyl sulfide (COS) and carbon monoxide (CO) concentrations in controlled and uncontrolled emissions from manufacturing processes using phenolic resins. The compounds are analyzed in the mid-infrared spectral region (about 400 to 4000 cm−1 or 25 to 2.5 μm). Suggested analytical regions are given below (Table 1). Slight deviations from these recommended regions may be necessary due to variations in moisture content and ammonia concentration from source to source.

TABLE 1.—EXAMPLE ANALYTICAL REGIONS

Compound	Analytical region (cm^{-1}) $FL_m - FU_m$	Potential interferants
Formaldehyde	2840.93–2679.83	Water, Methane.
Phenol	1231.32–1131.47	Water, Ammonia, Methane.
Methanol	1041.56–1019.95	Water, Ammonia.
COS[a]	2028.4–2091.9	Water, CO_2, CO.
CO[a]	2092.1–2191.8	Water, CO_2, COS.

[a] Suggested analytical regions assume about 15 percent moisture and CO_2, and that COS and CO have about the same absorbance (in the range of 10 to 50 ppm). If CO and COS are hundreds of ppm or higher, then CO_2 and moisture interference is reduced. If CO or COS is present at high concentration and the other at low concentration, then a shorter cell pathlength may be necessary to measure the high concentration component.

1.2.2 This method does not apply when: (a) Polymerization of formaldehyde occurs, (b) moisture condenses in either the sampling system or the instrumentation, and (c) when moisture content of the gas stream is so high relative to the analyte concentrations that it causes severe spectral interference.

1.3 Method Range and Sensitivity

1.3.1 The analytical range is a function of instrumental design and composition of the gas stream. Theoretical detection limits depend, in part, on (a) the absorption coefficient of the compound in the analytical frequency region, (b) the spectral resolution, (c) interferometer sampling time, (d) detector sensitivity and response, and (e) absorption pathlength.

1.3.2 Practically, there is no upper limit to the range. The practical lower detection limit is usually higher than the theoretical value, and depends on (a) moisture content of the flue gas, (b) presence of interferants, and (c) losses in the sampling system. In general, a 22 meter pathlength cell in a suitable sampling system can achieve practical detection limits of 1.5 ppm for three compounds (formaldehyde, phenol, and methanol) at moisture levels up to 15 percent by volume. Sources with uncontrolled emissions of CO and COS may require a 4 meter pathlength cell due to high concentration levels. For these two compounds, make sure absorbance of highest concentration component is <1.0.

1.4 Data Quality Objectives

1.4.1 In designing or configuring the system, the analyst first sets the data quality objectives, i.e., the desired lower detection limit (DL_i) and the desired analytical uncertainty (AU_i) for each compound. The instrumental parameters (factors b, c, d, and e in Section 1.3.1) are then chosen to meet these requirements, using Appendix D of the FTIR Protocol.

1.4.2 Data quality for each application is determined, in part, by measuring the RMS (Root Mean Square) noise level in each analytical spectral region (Appendix C of the FTIR Protocol). The RMS noise is defined as the RMSD (Root Mean Square Deviation) of the absorbance values in an analytical region from the mean absorbance value of the region. Appendix D of the FTIR Protocol defines the MAU_{im} (minimum analyte uncertainty of the i^{th} analyte in the m^{th} analytical region). The MAU is the minimum analyte concentration for which the analytical uncertainty limit (AU_i) can be maintained: if the measured analyte concentration is less than MAU_i, then data quality is unacceptable. Table 2 gives some example DL and AU values along with calculated areas and MAU values using the protocol procedures.

TABLE 2.—EXAMPLE PRE-TEST PROTOCOL CALCULATIONS

Protocol value	Form	Phenol	Methanol	Protocol appendix
Reference concentration[a] (ppm-meters)/K	3.016	3.017	5.064	
Reference Band Area	8.2544	16.6417	4.9416	B
DL (ppm-meters)/K	0.1117	0.1117	0.1117	B
AU	0.2	0.2	0.2	B
CL	0.02234	0.02234	0.02234	B
FL	2679.83	1131.47	1019.95	B
FU	2840.93	1231.32	1041.56	B
FC	2760.38	1181.395	1030.755	B
AAI (ppm-meters)/K	0.18440	0.01201	0.00132	B
RMSD	2.28E–03	1.21E–03	1.07E–03	C
MAU (ppm-meters)/K	4.45E–02	7.26E–03	4.68E–03	D
MAU (ppm at 22)	0.0797	0.0130	0.0084	D

[a] Concentration units are: ppm concentration of the reference sample (ASC), times the path length of the FTIR cell used when the reference spectrum was measured (meters), divided by the absolute temperature of the reference sample in Kelvin (K), or (ppm-meters)/K.

2.0 *Summary of Method*

2.1 Principle

2.1.1 Molecules are composed of chemically bonded atoms, which are in constant motion. The atomic motions result in bond deformations (bond stretching and bond-angle bending). The number of fundamental (or independent) vibrational motions depends on the number of atoms (N) in the molecule. At typical testing temperatures, most molecules are in the ground-state vibrational state for most of their fundamental vibrational motions. A molecule can undergo a transition from its ground state (for a particular vibration) to the first excited state by absorbing a quantum of light at a frequency characteristic of the molecule and the molecular motion. Molecules also undergo rotational transitions by absorbing energies in the far-infrared or microwave spectral regions. Rotational transition absorbencies are superimposed on the vibrational absorbencies to give a characteristic shape to each rotational-vibrational absorbance "band."

2.1.2 Most molecules exhibit more than one absorbance band in several frequency regions to produce an infrared spectrum (a characteristic pattern of bands or a "fingerprint") that is unique to each molecule. The infrared spectrum of a molecule depends on its structure (bond lengths, bond angles, bond strengths, and atomic masses). Even small differences in structure can produce significantly different spectra.

2.1.3 Spectral band intensities vary with the concentration of the absorbing compound. Within constraints, the relationship between absorbance and sample concentration is linear. Sample spectra are compared to reference spectra to determine the species and their concentrations.

2.2 Sampling and Analysis

2.2.1 Flue gas is continuously extracted from the source, and the gas or a portion of the gas is conveyed to the FTIR gas cell, where a spectrum of the flue gas is recorded. Absorbance band intensities are related to sample concentrations by Beer's Law. Where:

$$A_\nu = \sum a_i b c_i \qquad (6)$$

A_ν = absorbance of the i^{th} component at the given frequency, ν.
a = absorption coefficient of the i^{th} component at the frequency, ν.
b = path length of the cell.
c = concentration of the i^{th} compound in the sample at frequency ν.

2.2.2 After identifying a compound from the infrared spectrum, its concentration is determined by comparing band intensities in the sample spectrum to band intensities in "reference spectra" of the formaldehyde, phenol, methanol, COS and CO. These reference spectra are available in a permanent soft copy from the EPA spectral library on the EMTIC bulletin board. The source may also prepare reference spectra according to Section 4.5 of the FTIR Protocol.

Note: Reference spectra not prepared according to the FTIR Protocol are not acceptable for use in this test method. Documentation detailing the FTIR Protocol steps used in preparing any non-EPA reference spectra shall be included in each test report submitted by the source.

2.3 Operator Requirements. The analyst must have some knowledge of source sampling and of infrared spectral patterns to operate the sampling system and to choose a suitable instrument configuration. The analyst should also understand FTIR instrument operation well enough to choose an instrument configuration consistent with the data quality objectives.

3.0 *Definitions*

See Appendix A of the *FTIR* Protocol.

4.0 *Interferences*

4.1 Analytical (or Spectral) Interferences. Water vapor. High concentrations of ammonia (hundreds of ppm) may interfere with the analysis of low concentrations of methanol (1 to 5 ppm). For CO, carbon dioxide and water may be interferants. In cases where COS levels are low relative to CO levels, CO and water may be interferants.

4.2 Sampling System Interferences. Water, if it condenses, and ammonia, which reacts with formaldehyde.

5.0 *Safety*

5.1 Formaldehyde is a suspected carcinogen; therefore, exposure to this compound must be limited. Proper monitoring and safety precautions must be practiced in any atmosphere with potentially high concentrations of CO.

5.2 This method may involve sampling at locations having high positive or negative pressures, high temperatures, elevated heights, high concentrations of hazardous or toxic pollutants, or other diverse sampling conditions. It is the responsibility of the tester(s) to ensure proper safety and health practices, and to determine the applicability of regulatory limitations before performing this test method.

6.0 *Equipment and Supplies*

The equipment and supplies are based on the schematic of a sampling train shown in Figure 1. Either the evacuated or purged sampling technique may be used with this sampling train. Alternatives may be used, provided that the data quality objectives of this method are met.

6.1 Sampling Probe. Glass, stainless steel, or other appropriate material of sufficient length and physical integrity to sustain heating, prevent adsorption of analytes, and to reach gas sampling point.

6.2 Particulate Filters. A glass wool plug (optional) inserted at the probe tip (for large particulate removal) and a filter rated at 1-micron (e.g., Balston™) for fine particulate removal, placed immediately after the heated probe.

6.3 Sampling Line/Heating System. Heated (maintained at 250 ± 25 degrees F) stainless steel, Teflon™, or other inert material that does not adsorb the analytes, to transport the sample to analytical system.

6.4 Stainless Steel Tubing. Type 316, e.g., ⅜ in. diameter, and appropriate length for heated connections.

6.5 Gas Regulators. Appropriate for individual gas cylinders.

BILLING CODE 6560-50-P

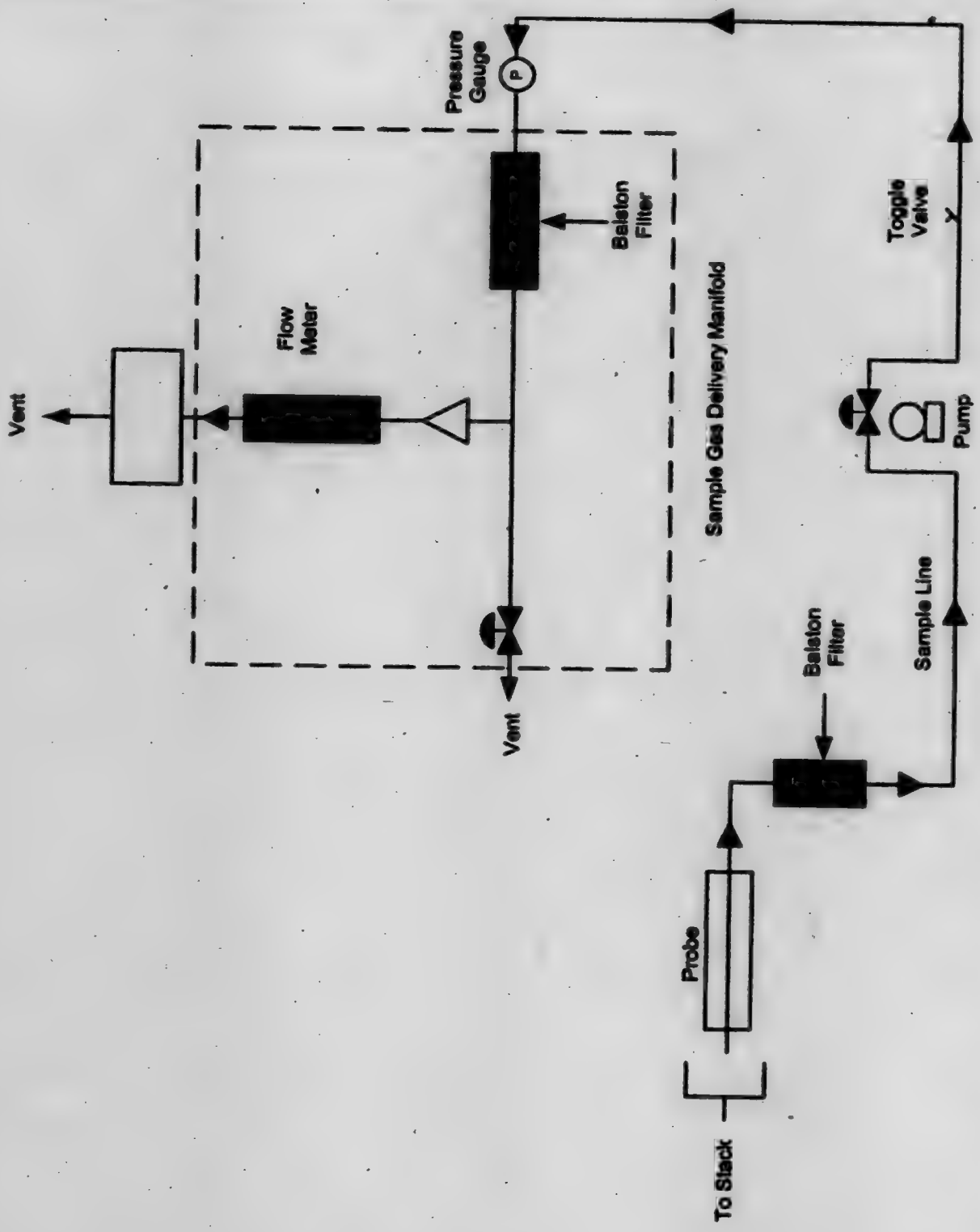

Figure 1. The extractive FTIR sampling system.

BILLING CODE 6560-50-C

6.6 Teflon™ Tubing. Diameter (e.g., ⅜ in.) and length suitable to connect cylinder regulators.

6.7 Sample Pump. A leak-free pump (e.g., KNF™), with by-pass valve, capable of pulling sample through entire sampling system at a rate of about 10 to 20 L/min. If placed before the analytical system, heat the pump and use a pump fabricated from materials non-reactive to the target pollutants. If the pump is located after the instrument, systematically record the sample pressure in the gas cell.

6.8 Gas Sample Manifold. A heated manifold that diverts part of the sample stream to the analyzer, and the rest to the by-pass discharge vent or other analytical instrumentation.

6.9 Rotameter. A calibrated 0 to 20 L/min range rotameter.

6.10 FTIR Analytical System. Spectrometer and detector, capable of measuring formaldehyde, phenol, methanol, COS and CO to the predetermined minimum detectable level. The system shall include a personal computer with compatible software that provides real-time updates of the spectral profile during sample collection and spectral collection.

6.11 FTIR Cell Pump. Required for the evacuated sampling technique, capable of evacuating the FTIR cell volume within 2 minutes. The FTIR cell pump should allow the operator to obtain at least 8 sample spectra in 1 hour.

6.12 Absolute Pressure Gauge. Heatable and capable of measuring pressure from 0 to 1000 mmHg to within ±2.5 mmHg (e.g., Baratron™).

6.13 Temperature Gauge. Capable of measuring the cell temperature to within ±2°C.

7.0 *Reagents and Standards*

7.1 Ethylene (Calibration Transfer Standard). Obtain NIST traceable (or Protocol) cylinder gas.

7.2 Nitrogen. Ultra high purity (UHP) grade.

7.3 Reference Spectra. Obtain reference spectra for the target pollutants at concentrations that bracket (in ppm-meter/K) the emission source levels. Also, obtain reference spectra for SF_6 and ethylene. Suitable concentrations are 0.0112 to 0.112 (ppm-meter)/K for SF_6 and 5.61 (ppm-meter)/K or less for ethylene. The reference spectra shall meet the criteria for acceptance outlined in Section 2.2.2. The optical density (ppm-meters/K) of the reference spectrum must match the optical density of the sample spectrum within (less than) 25 percent.

8.0 *Sample Collection, Preservation, and Storage*

Sampling should be performed in the following sequence: Collect background, collect CTS spectrum, collect samples, collect post-test CTS spectrum, verify that two copies of all data were stored on separate computer media.

8.1 Pretest Preparations and Evaluations. Using the procedure in Section 4.0 of the *FTIR Protocol*, determine the optimum sampling system configuration for sampling the target pollutants. Table 2 gives some example values for AU, DL, and MAU. Based on a study (Reference 1), an FTIR system using 1 cm^{-1} resolution, 22 meter path length, and a broad band MCT detector was suitable for meeting the requirements in Table 2. Other factors that must be determined are:

a. Test requirements: AU_i, $CMAX_i$, DL_i, OFU_i, and t_{AN} for each.

b. Interferants: See Table 1.

c. Sampling system: L_S', P_{min}, P_S', T_S', t_{ss}, V_{SS}; fractional error, MIL.

d. Analytical regions: 1 through N_m, FL_m, FC_m, and FU_m, plus interferants, FFU_m, FFL_m, wavenumber range FNU to FNL. See Tables 1 and 2.

8.1.1 If necessary, sample and acquire an initial spectrum. Then determine the proper operational pathlength of the instrument to obtain non-saturated absorbances of the target analytes.

8.1.2 Set up the sampling train as shown in Figure 1.

8.2 Sampling System Leak-check. Leak-check from the probe tip to pump outlet as follows: Connect a 0- to 250-mL/min rate meter (rotameter or bubble meter) to the outlet of the pump. Close off the inlet to the probe, and note the leakage rate. The leakage rate shall be ≤200 mL/min.

8.3 Analytical System Leak-check.

8.3.1 For the evacuated sample technique, close the valve to the FTIR cell, and evacuate the absorption cell to the minimum absolute pressure P_{min}. Close the valve to the pump, and determine the change in pressure ΔP_v after 2 minutes.

8.3.2 For both the evacuated sample and purging techniques, pressurize the system to about 100 mmHg above atmospheric pressure. Isolate the pump and determine the change in pressure ΔP_p after 2 minutes.

8.3.3 Measure the barometric pressure, P_b in mmHg.

8.3.4 Determine the percent leak volume $\%V_L$ for the signal integration time t_{ss} and for ΔP_{max}, i.e., the larger of ΔP_v or ΔP_p, as follows:

$$\%V_L = 50\, t_{SS} \frac{\Delta P_{max}}{P_{SS}} \qquad (2)$$

Where:

50 = 100% divided by the leak-check time of 2 minutes.

8.3.5 Leak volumes in excess of 4 percent of the sample system volume V_{SS} are unacceptable.

8.4 Background Spectrum. Evacuate the gas cell to ≤5 mmHg, and fill with dry nitrogen gas to ambient pressure. Verify that no significant amounts of absorbing species (for example water vapor and CO_2) are present. Collect a background spectrum, using a signal averaging period equal to or greater than the averaging period for the sample spectra. Assign a unique file name to the background spectrum. Store the spectra of the background interferogram and processed single-beam background spectrum on two separate computer media (one is used as the back-up). If continuous sampling will be used during sample collection, collect the background spectrum with nitrogen gas flowing through the cell at the same pressure and temperature as will be used during sampling.

8.5 Pre-Test Calibration Transfer Standard. Evacuate the gas cell to ≤5 mmHg absolute pressure, and fill the FTIR cell to atmospheric pressure with the CTS gas. Or, purge the cell with 10 cell volumes of CTS gas. Record the spectrum. If continuous sampling will be used during sample collection, collect the CTS spectrum with CTS gas flowing through the cell at the same pressure and temperature as will be used during sampling.

8.6 Samples

8.6.1 Evacuated Samples. Evacuate the absorbance cell to ≤5 mmHg absolute pressure. Fill the cell with flue gas to ambient pressure and record the spectrum. Before taking the next sample, evacuate the cell until no further evidence of absorption exists. Repeat this procedure to collect at least 8 separate spectra (samples) in 1 hour.

8.6.2 Purge Sampling. Purge the FTIR cell with 10 cell volumes of flue gas and at least for about 10 minutes. Discontinue the gas cell purge, isolate the cell, and record the sample spectrum and the pressure. Before taking the next sample, purge the cell with 10 cell volumes of flue gas.

8.6.3 Continuous Sampling. Spectra can be collected continuously while the FTIR cell is being purged. The sample integration time, t_{ss}, the sample flow rate through the FTIR gas cell, and the total run time must be chosen so that the collected data consist of at least 10 spectra with each spectrum being of a separate cell volume of flue gas. More spectra can be collected over the run time and the total run time (and number of spectra) can be extended as well.

8.7 Sampling QA, Data Storage and Reporting

8.7.1 Sample integration times should be sufficient to achieve the required signal-to-noise ratios. Obtain an absorbance spectrum by filling the cell with nitrogen. Measure the RMSD in each analytical region in this absorbance spectrum. Verify that the number of scans is sufficient to achieve the target MAU (Table 2).

8.7.2 Identify all sample spectra with unique file names.

8.7.3 Store on two separate computer media a copy of sample interferograms and processed spectra. The data shall be available to the Administrator on request for the length of time specified in the applicable regulation.

8.7.4 For each sample spectrum, document the sampling conditions, the sampling time (while the cell was being filled), the time the spectrum was recorded, the instrumental conditions (path length, temperature, pressure, resolution, integration time), and the spectral file name. Keep a hard copy of these data sheets.

8.8 Signal Transmittance. While sampling, monitor the signal transmittance through the instrumental system. If signal transmittance (relative to the background) drops below 95 percent in any spectral region where the sample does not absorb infrared energy, obtain a new background spectrum.

8.9 Post-run CTS. After each sampling run, record another CTS spectrum.

8.10 Post-test QA

8.10.1 Inspect the sample spectra immediately after the run to verify that the

gas matrix composition was close to the expected (assumed) gas matrix.

8.10.2 Verify that the sampling and instrumental parameters were appropriate for the conditions encountered. For example, if the moisture is much greater than anticipated, it will be necessary to use a shorter path length or dilute the sample.

8.10.3 Compare the pre and post-run CTS spectra. They shall agree to within −5 percent. See FTIR Protocol, Appendix E.

9.0 *Quality Control*

Follow the quality assurance procedures in the method, including the analysis of pre and post-run calibration transfer standards (Sections 8.5 and 8.9) and the post-test quality assurance procedures in Section 8.10.

10.0 *Calibration and Standardization*

10.1 Signal-to-Noise Ratio (S/N). The S/N shall be sufficient to meet the MAU in each analytical region.

10.2 Absorbance Pathlength. Verify the absorbance path length by comparing CTS spectra to reference spectra of the calibration gas(es). See FTIR Protocol, Appendix E.

10.3 Instrument Resolution. Measure the line width of appropriate CTS band(s) and compare to reference CTS spectra to verify instrumental resolution.

10.4 Apodization Function. Choose appropriate apodization function. Determine any appropriate mathematical transformations that are required to correct instrumental errors by measuring the CTS. Any mathematical transformations must be documented and reproducible.

10.5 FTIR Cell Volume. Evacuate the cell to ≤5 mmHg. Measure the initial absolute temperature (T_i) and absolute pressure (P_i). Connect a wet test meter (or a calibrated dry gas meter), and slowly draw room air into the cell. Measure the meter volume (V_m), meter absolute temperature (T_m), and meter absolute pressure (P_m), and the cell final absolute temperature (T_f) and absolute pressure (P_f). Calculate the FTIR cell volume V_{ss}, including that of the connecting tubing, as follows:

$$V_{SS} = \frac{V_m \frac{P_m}{T_m}}{\left[\frac{P_f}{T_f} - \frac{P_i}{T_i}\right]} \qquad (8)$$

As an alternative to the wet test meter/calibrated dry gas meter procedure, measure the inside dimensions of the cell cylinder and calculate its volume.

11.0 *Procedure*

Refer to Sections 4.6–4.11, Sections 5, 6, and 7, and the appendices of the FTIR Protocol.

12.0 *Data Analysis and Calculations*

a. Data analysis is performed using appropriate reference spectra whose concentrations can be verified using CTS spectra. Various analytical programs are available to relate sample absorbance to a concentration standard. Calculated concentrations should be verified by analyzing spectral baselines after mathematically subtracting scaled reference spectra from the sample spectra. A full description of the data analysis and calculations may be found in the FTIR Protocol (Sections 4.0, 5.0, 6.0 and appendices).

b. Correct the calculated concentrations in sample spectra for differences in absorption pathlength between the reference and sample spectra by:

$$C_{corr} = \left[\frac{L_r}{L_s}\right]\left[\frac{T_s}{T_r}\right]C_{calc} \qquad (9)$$

Where:

C_{corr} = The pathlength corrected concentration.

C_{calc} = The initial calculated concentration (output of the Multicomp program designed for the compound).

L_r = The pathlength associated with the reference spectra.

L_s = The pathlength associated with the sample spectra.

T_s = The absolute temperature (K) of the sample gas.

T_r = The absolute gas temperature (K) at which reference spectra were recorded.

13.0 *Reporting and Recordkeeping*

All interferograms used in determining source concentration shall be stored for the period of time required in the applicable regulation. The Administrator has the option of requesting the interferograms recorded during the test in electronic form as part of the test report.

14.0 *Method Performance*

Refer to the FTIR Protocol.

15.0 *Pollution Prevention.* [Reserved]

16.0 *Waste Management*

Laboratory standards prepared from the formaldehyde and phenol are handled according to the instructions in the materials safety data sheets (MSDS).

17.0 *References*

(1) "Field Validation Test Using Fourier Transform Infrared (FTIR) Spectrometry To Measure Formaldehyde, Phenol and Methanol at a Wool Fiberglass Production Facility." Draft. U.S. Environmental Protection Agency Report, Entropy, Inc., EPA Contract No. 68D20163, Work Assignment I–32, December 1994 (docket item II–A–13).

(2) "Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media," 40 CFR part 63, appendix A.

[FR Doc. 99–12758 Filed 6–11–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

[FPMR Amendment H–203]

RIN 3090–AG39

Utilization and Disposal of Real Property Appraisal

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal Property Management Regulations to clarify and strengthen agency responsibilities for conducting appraisals on real property that is available for disposal. It ensures the reliability, integrity, and confidentiality of those appraisals.

EFFECTIVE DATE: June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John Q. Martin, Director, Redeployment Services Division at (202) 501–0084.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501 *et seq.*

D. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–47

Administrative practice and procedure, Government property management, Homeless, Surplus Government property.

For the reasons stated in the preamble, 41 CFR part 101–47 is amended as follows:

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101–47 is revised to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 101–47.303–4 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 101–47.303–4 Appraisal.

* * * * *

(c) The disposal agency shall have the property appraised by experienced and qualified persons familiar with the types of property to be appraised by them. If the property is included in or eligible for inclusion on the National Register of Historic Places, the appraisal should consider the effect of historic covenants on fair market value.

(d) *Appraisal confidentiality.* Appraisals, appraisal reports, appraisal analyses, and other pre-decisional documents obtained in accordance with this subpart are confidential and for the use of authorized personnel of Government agencies having a need for such information. Further, such information shall not be divulged prior to the delivery and acceptance of the deed. Any person engaged to collect or evaluate information pursuant to this paragraph shall certify that there is no interest, direct or indirect, in the property which would conflict in any manner with the preparation and submission of an impartial appraisal report.

Dated: April 20, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–15024 Filed 6–11–99; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF DEFENSE

48 CFR Part 207

[DFARS Case 99–D012]

Defense Federal Acquisition Regulation Supplement; Contract Actions for Leased Equipment

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add guidance pertaining to funding of contract actions for leased equipment. The guidance emphasizes that capital leases are essentially installment purchases of property and, therefore, must use procurement funding.

EFFECTIVE DATE: June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 99–D012.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds a new section at DFARS 207.471 to address funding of contract actions for leased equipment. The new text provides a reference to DoD Financial Management Regulation 7000.14–R and specifies that procurement funds must be used for capital leases.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D012.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 207

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 207 is amended as follows:

1. The authority citation for 48 CFR Part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 207—ACQUISITION PLANNING

2. Section 207.471 is added to read as follows:

207.471 Funding requirements.

(a) Fund leases in accordance with DoD Financial Management Regulation (FMR) 7000.14–R, Volume 2A, Chapter 1.

(b) DoD leases are either capital leases or operating leases. The difference between the two types of leases is described in FMR 7000.14–R, Volume 4, Chapter 7, Section 070308.

(c) Capital leases are essentially installment purchases of property. Use procurement funds for capital leases.

[FR Doc. 99–15029 Filed 6–11–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 209

[DFARS Case 98–D304]

Defense Federal Acquisition Regulation Supplement; Congressional Medal of Honor

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8118 of the National Defense Appropriations Act for Fiscal Year 1999. Section 8118 prohibits the award of a contract to, extension of a contract with, or approval of the award of a subcontract to any entity that, within the past 15 years, has been convicted of the unlawful manufacture or sale of the Congressional Medal of Honor.

DATES: *Effective date:* June 14, 1999.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 13, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 98–D304 in all correspondence related to this rule. E-mail comments should cite DFARS Case 98–D304 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds a new section at DFARS 209.471 to implement Section 8118 of the National Defense

Appropriations Act for Fiscal Year 1999 (Public Law 105–262). Section 8118 prohibits the award of a contract to, extension of a contract with, or approval of the award of a subcontract to any entity that, within the past 15 years, has been convicted under 18 U.S.C. 704 of the unlawful manufacture or sale of the Congressional Medal of Honor.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to entities that have been convicted of the unlawful manufacture or sale of the Congressional Medal of Honor. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D304 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 8118 of the National Defense Appropriations Act for Fiscal Year 1999 Pub. L. 105–262). Section 8118 became effective on October 17, 1998. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 209

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 209 is amended as follows:

1. The authority citation for 48 CFR Part 209 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.471 is added to read as follows:

209.471 Congressional Medal of Honor

In accordance with Section 8118 of Pub. L. 105–262, do not award a contract to, extend a contract with, or approve the award of a subcontract to any entity that, within the preceding 15 years, has been convicted under 18 U.S.C. 704 of the unlawful manufacture or sale of the Congressional Medal of Honor. Any entity so convicted will be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration.

[FR Doc 99–15030 Filed 6–11–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 060899C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal apportionment of pollock total allowable catch (TAC) in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 10, 1999, until 1200 hours, A.l.t., September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of pollock TAC is equal to 20 percent of the annual TAC (§ 679.20(a)(5)(ii)(C)). The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that any amount of unharvested first seasonal apportionment of TAC or any amount of TAC harvested in excess of the first seasonal apportionment shall be proportionately added to or subtracted from subsequent seasonal apportionments throughout the remainder of the fishing year, with the provision that no seasonal apportionment shall exceed 30 percent of the annual TAC (§ 679.20(a)(5)(ii)(C)). This action is consistent with the manner in which underages and/or overages of seasonal apportionments of pollock TAC have been managed in previous years. The pollock TAC in Statistical Area 630 was established by the Final 1999 Harvest Specifications for Groundfish (64 FR 12094, March 11, 1999) as 30,520 metric tons (mt) for the entire 1999 fishing year. In accordance with § 679.20(a)(5)(ii)(C), the second seasonal apportionment of pollock TAC in the Statistical Area 630 is 5,660 mt. This is 444 mt less than the 1999 allocation of 6,104 mt because a 17 percent overage in the previous season's catch has been deducted for this seasonal allowance.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the second seasonal apportionment of pollock TAC in Statistical Area 630 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,160 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the second seasonal TAC limitations and other restrictions on the fisheries established in the final 1999 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the second seasonal apportionment of pollock TAC in Statistical Area 630 of the GOA. A delay

in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 8, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15003 Filed 6–9–99; 4:29 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 113
Monday, June 14, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN: 3206–AI71

Absence and Leave; Use of Restored Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to aid agencies and employees involved inYear 2000 (Y2K) computer conversion efforts. The regulations provide that excess annual leave forfeited by employees who are unable to schedule and use their leave as a result of Y2K computer conversion efforts will be deemed to have been scheduled in advance and therefore eligible for restoration.

DATES: Comments must be received on or before July 14, 1999.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, FAX (202) 606–0824, or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Section 6304 of title 5, United States Code, establishes limitations on the amount of annual leave that an employee may carry over from one leave year to the next. Most employees can carry over no more than 240 hours of annual leave to the next leave year. However, 5 U.S.C. 6304(d)(1)(b) also provides that excess annual leave lost as a result of "exigencies of the public business when the annual leave was scheduled in advance" may be restored to the affected employee.

For the purpose of Federal leave administration, an exigency of the public business occurs when there is a pressing need for an employee's service and his or her pre-approved annual leave must be canceled because there are no other practical alternatives available to accomplish the work by a given deadline. This situation may present itself later this year for Federal employees who are carrying out their agencies' efforts to address Year 2000 (Y2K) computer conversion problems. Many of these employees will be faced with the possible forfeiture of "use or lose" annual leave because they must remain on the job until the Y2K computer conversions have been implemented and thoroughly tested. Under the normal rules, agencies would be faced with the administrative burden of scheduling, canceling, and restoring such leave for these employees at a time when all available attention and energy should be focused on Y2K conversion efforts.

The Office of Personnel Management (OPM) believes the Government's efforts to address Y2K computer conversion problems constitute an exigency of the public business under 5 U.S.C. 6304(d)(1)(b), which justifies the restoration of any forfeited annual leave in excess of the maximum allowable limits. Since it is known in advance that it is not possible for employees affected by the Y2K exigency to be absent on leave, the scheduling and canceling of such leave places an unnecessary administrative burden on the employees and agencies involved.

Consistent with OPM's commitment to provide agencies with the human resources management tools they need to address Y2K computer conversion problems, we propose to simplify the procedures for restoring annual leave forfeited as a result of the Y2K exigency. Section 630.310(a) of title 5, Code of Federal Regulations, would deem the Y2K computer conversion project an exigency of the public business and establish January 31, 2000, as the Governmentwide termination date for the Y2K exigency. In addition, under § 630.310(b), annual leave forfeited as a result of the Y2K exigency would be deemed to have been scheduled in advance for the purpose of satisfying the requirements in 5 U.S.C. 6304(d) and 5 CFR 630.308. Therefore, annual leave forfeited as a result of the Y2K exigency would be restored under 5 U.S.C. 6304 and placed in a separate restored leave account. The procedures established by these proposed regulations are similar to those established for employees of Department of Defense installations undergoing closure or realignment.

Time Limit for Use of Restored Leave

The existing regulations at § 630.306 provide that annual leave restored as a result of an exigency of public business must be scheduled and used not later than the end of the leave year ending 2 years after the termination date of the exigency. The Governmentwide termination date for the Y2K exigency would be January 31, 2000. Therefore, consistent with the current regulations, § 630.310(c) would provide that annual leave restored because of the Y2K computer conversion exigency must be scheduled and used not later than the end of leave year 2002.

Treatment of Current Restored Leave Accounts

Many employees currently involved in Y2K computer conversion efforts have an "active" restored leave account—i.e., an account of restored annual leave that was established under other conditions permitting restoration of annual leave under 5 U.S.C. 6304(d). Since there is no authority to restore previously restored annual leave, employees (and agencies) have little option but to use (or permit the use of) the leave in the "active" restored leave account to avoid the forfeiture of annual leave, even though the employees are needed to work on Y2K conversions. The proposed regulations at § 630.310(d) would alleviate this problem because the time limitation for using active restored annual leave would be canceled for the entire period during which employees' services are determined to be necessary for the completion of Y2K computer conversion efforts. As of January 31, 2000, a new time limit would be established under § 630.310(b) for using all restored leave available to the employee under 5 U.S.C. 6304(d). The new time limit for using restored annual leave would be not later than the end of leave year 2002.

Employees Who Transfer to Another Position

As noted earlier, § 630.308 currently requires that before forfeited annual

leave may be considered for restoration, it must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. We are concerned about the possible consequences of requiring advance scheduling for an employee who transfers from a position deemed necessary for Y2K conversion efforts to another position during the latter portion of leave year 1999. It is possible that such employees would have leave in excess of the maximum limitation, but would still be unable to schedule it. Therefore, § 630.310(e) would allow an agency to consider restoration of annual leave forfeited at the end of leave year 1999 to an employee whose involvement in Y2K conversion efforts ends during the leave year if the agency determines that there is a correlation between the lack of advance scheduling and the employee's Y2K conversion efforts.

OPM believes such annual leave may be considered for restoration. Section 630.310(e) would require affected employees to make a reasonable effort to comply with the advance scheduling requirement in § 630.308(a). However, the head of an agency could exempt an employee from the advance scheduling requirement if the employee could show that he or she was involved in Y2K conversion efforts during the leave year and was unable to comply with the scheduling requirement due to circumstances beyond his or her control. Since the agency may determine that there was sufficient time for the employee to schedule and use annual leave before the end of leave year 1999, this provision would not guarantee that excess annual leave would be restored.

Annual leave restored to an employee in leave year 2000 as a result of the Y2K conversion exigency, but unused by the end of leave year 2002, will be forfeited, with no possibility of further restoration.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects 5 in CFR Part 630

Government employees.

Office of Personnel Management.

Janice Lachance,

Director.

Accordingly, OPM is proposing to amend part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

Subpart C—Annual Leave

2. In § 630.308, paragraph (a) is revised to read as follows:

§ 630.308 Scheduling of annual leave.

(a) Except as provided in paragraph (b) of this section and § 630.310, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

* * * * *

3. A new § 630.310 is added to read as follows:

§ 630.310 Scheduling of annual leave by employees determined necessary for Year 2000 computer conversion efforts.

(a) Year 2000 computer conversion efforts are deemed to be an exigency of the public business for the purpose of restoring annual leave forfeited under 5 U.S.C. 6304. This exigency terminates on January 31, 2000.

(b) For any employee who forfeits annual leave under 5 U.S.C. 6304 at the beginning of leave year 2000 because the agency determined the employee's services were required during the Year 2000 computer conversion exigency, the forfeited annual leave is deemed to have been scheduled in advance for the purpose of 5 U.S.C. 6304(d)(1)(B) and § 630.208.

(c) Annual leave restored under 5 U.S.C. 6304(d) because of the Year 2000 computer conversion exigency must be scheduled and used not later than the end of leave year 2002.

(d) The time limits established under paragraphs (a) and (b) of § 630.308 for using previously restored annual leave do not apply for the period during which an employee's services were determined necessary for the completion of Year 2000 computer conversion efforts. On January 31, 2000, a new time limit will be established under paragraph (c) of this section for all annual leave restored to such an employee.

(e) An employee whose services were determined necessary during the Year 2000 computer conversion exigency for a portion of leave year 1999, but who subsequently moves to a position not involving Year 2000 computer conversion efforts, must make a reasonable effort to comply with the scheduling requirement in § 630.308(a). The head of the agency or his or her designee may exempt such an employee from the advance scheduling requirement in § 630.308(a) if coverage under paragraphs (a) and (b) of this section terminated during leave year 1999 and the employee can demonstrate that he or she was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.

[FR Doc. 99–14999 Filed 6–11–99; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–98–702–PR3]

Peanut Promotion, Research, and Information Order; Extension of Voting Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order; Amendment to referendum Order.

SUMMARY: This action extends the voting period for the referendum during which peanut producers will vote on whether the Peanut Promotion, Research, and Information Order will become effective. The voting period has been extended an additional 21 days to conclude on July 2, 1999, rather than June 11, 1999. This extension will better facilitate full voter participation.

DATES: In Order to be eligible to vote, peanut producers must have produced

peanuts during the period from August 1, 1997, through July 30, 1998 (representative period). The voting period for the referendum will be May 10 through July 2, 1999.

ADDRESSES: Daniel R. Williams II, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop 0244, Washington, DC 20250–0244.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II at the above address or telephone toll free (888) 720–9917.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Proposed Rule published in the November 6, 1998, issue of the **Federal Register** [63 FR 59893]; and Proposed Rule and Referendum Order published in the April 23, 1999, issue of the **Federal Register** [64 FR 20107] and Referendum Procedures published on the same day [64 FR 20102].

The April 23, 1999, referendum order [64 FR 20107] specified that the voting period would be from May 24, 1999, through June 11, 1999. However, the mailing list used for the referendum consisted of a large amount of rural route deliveries. This has resulted in a large amount of the ballots arriving later than expected or not all of the referendum ballot packages have been delivered to potentially eligible voters. In addition, the U.S. Department of Agriculture (USDA) has received numerous telephone calls from potentially eligible voters who did not receive ballots. Therefore, in order to better facilitate full voter participation in the referendum, USDA is extending the voting period through July 2, 1999. In addition, USDA will continue to mail ballots to those potentially eligible voters who request a ballot and others as they become known.

Section 518 of the Commodity Promotion, Research, and Information Act of 1996 (Act) requires that a referendum be conducted among eligible peanut producers as to whether they favor the Order. The proposed Order [64 FR 20107] would become effective if it is approved by a majority of producers voting in the referendum, which is currently ongoing.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known peanut producers. Should any eligible producer not receive a ballot and related material, such producer should immediately contact the referendum agents at the telephone number that follows.

Amended Referendum Order

It is hereby directed that a referendum be conducted among peanut producers to determine whether they favor implementation of the Peanut Promotion, Research, and Consumer Information Order.

The referendum shall be conducted from May 24 through July 2, 1999. Ballots were mailed to all known eligible peanut producers on or before May 17, 1999. Eligible voters who do not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1 (888) 720–9917. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than July 2, 1999, to be counted.

Daniel R. Williams II and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop 0244, Washington, DC 20250–0244, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum. The Procedure for the Conduct of the Referenda in Connection with the Peanut Promotion, Research, and Consumer Information Order, 7 CFR 1216.101–1216.107, which were published separately in the **Federal Register** [64 FR 20102], shall be used to conduct the referendum.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Peanuts, Reporting and record keeping requirements.

Authority: U.S.C. 7401–7425.

Dated: June 9, 1999.

Enrique E. Figueroa,

Administrator.

[FR Doc. 99–15112 Filed 6–11–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG11

Consideration of Potassium Iodide in Emergency Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its emergency planning regulations governing the domestic licensing of production and utilization facilities. The proposed rule would amend the current regulations to require that consideration shall be given to including potassium iodide (KI), as a protective measure for the general public that would supplement sheltering and evacuation. KI would help prevent thyroid cancers in the unlikely event of a major release of radioactivity from a nuclear power plant. The proposed rule responds to petitions for rulemaking submitted by Mr. Peter G. Crane concerning the use of KI in emergency plans.

DATES: Submit comments by September 13, 1999. Comments received after this date will be considered if practical to do so, but only those comments received on or before this date can be assured of consideration.

ADDRESSES: Comments may be sent to the Secretary of the Commission, Attention: Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. Copies of comments received may be examined at the Commission's Public Document Room at 2120 L Street NW (Lower Level), Washington, DC.

You may also provide comment via the NRC's interactive rulemaking web site on the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files in any format that the NRC web browser supports. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–3224. Internet: MTJ1@NRC.GOV.

SUPPLEMENTARY INFORMATION: By undertaking this rulemaking, the Commission, while not adopting the exact language suggested by the petitioner, is proposing to grant a petition for rulemaking (PRM–50–63A) submitted by Mr. Peter Crane on November 11, 1997. That petition is a revision of a petition (PRM–50–63) that he submitted on September 9, 1995.

Considering all public comments received, the information available in the literature, 20 years of experience gained in evaluating licensee emergency preparedness plans, and the arguments presented by the petitioner, the Commission has decided to grant the petition for rulemaking and to proceed

with rulemaking to amend 10 CFR 50.47(b)(10) by inserting the following sentence, after the first sentence: "In developing this range of actions, consideration has been given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of potassium iodide (KI), as appropriate." In addition, the preamble for this proposed rule includes a statement to the effect that State and local decision makers, provided with proper information, may find that the use of KI as a protective supplement is reasonable and prudent for specific local conditions. When the Commission amended its emergency planning regulations on November 3, 1980, it stated that "any direct funding of State or local governments solely for emergency preparedness purposes by the Federal government would come through FEMA." In its decision on June 30, 1997, the Commission also noted that, the Federal government (most likely the NRC) is prepared to fund the purchase of a stockpile of KI for the States, upon request. The Commission has determined that notwithstanding the June 30, 1997, intention that "most likely the NRC" would fund the purchase of State stockpiles of KI, the NRC budget has continued to decrease and offers little margin for the Commission to divert resources to new initiatives. Historically, funding for State and local emergency response planning has been the responsibility of those governments usually working with licensees. The Commission notes that the Petitioner has not requested the Federal funding of stockpiles of KI. In the alternative, the NRC will work with other relevant agencies to ensure that there are established robust, pre-positioned regional stockpiles of KI, to be effectively and timely used by states that have not established local stockpiles and wish to make use of the regional stockpiles in the event of a severe nuclear power plant accident.

On November 27, 1995 (60 FR 58256), the Nuclear Regulatory Commission (NRC) published a Notice of Receipt of a petition for rulemaking (PRM–50–63) filed by Mr. Peter G. Crane on his own behalf. The petitioner requested that the NRC amend its regulations concerning emergency planning to include a requirement that emergency planning protective actions include the prophylactic use of potassium iodide (KI), which the petitioner notes prevents thyroid cancer after nuclear accidents.

On November 11, 1997, the petitioner submitted a revision to his original petition (PRM–50–63A). The NRC published a Notice of Receipt of the amended petition on December 17, 1997 (62 FR 66038). In the amended petition, the petitioner requested that:

A statement [be made] clearly recommending stockpiling of KI as a "reasonable and prudent" measure, and;

A proposed rule change to 10 CFR 50.47(b)(10) which would be accomplished by inserting the following sentence after the first sentence: "In developing this range of actions, consideration has been given to evacuation, sheltering, and the prophylactic use of potassium iodide (KI), as appropriate."

The petitioner also provided a marked-up version of the NRC staff's proposed Federal Radiological Preparedness Coordinating Committee (FRPCC) **Federal Register** notice concerning Federal policy relating to the use of KI for the general public.

On June 26, 1998 (SRM 98–061), the Commission decided to grant the portion of the petition for rulemaking PRM–50–63A regarding the requested amendment to 10 CFR 50.47(b)(10). The Commission also directed that the preamble for the proposed rule include a statement to the effect that State and local decision makers, provided with proper information, may find that the use of KI as a protective supplement is reasonable and prudent for specific local conditions. The NRC staff is also preparing a technical report and an information brochure to enable State and local decision makers to make an informed decision in this matter.

Petitioner's Basis for Requesting Potassium Iodide

The petitioner stated that potassium iodide (KI) protects the thyroid gland, which is highly sensitive to radiation from the radioactive iodine that would be released in extremely serious nuclear accidents. By saturating the gland with iodine in a harmless form, KI prevents any inhaled or ingested radioactive iodine from lodging in the thyroid gland, where it could lead to thyroid cancer or other illnesses. The petitioner stated that the drug itself has a long shelf-life, at least 5 years, and causes negligible side effects.

The petitioner further stated that, in addition to preventing deaths from thyroid cancer, KI prevents radiation-caused illnesses. The petitioner notes that thyroid cancer generally means surgery, radiation treatment, and a lifetime of medication and monitoring. The petitioner asserted that the changes in medication that go with periodic scans put many patients on a physiological and psychological roller coaster. The petitioner stated that hypothyroidism can cause permanent retardation in children and, if undiagnosed, can condemn adults to a lifetime of fatigue, weakness, and chills.

The Petitioner's Discussion of the Three Mile Island Accident (TMI)

The petitioner noted that in December 1978, the Food and Drug Administration (FDA) announced that it had determined that KI was safe and effective for thyroid protection in nuclear accidents. The petitioner stated that the issue attracted little attention, that the NRC and the Federal Government as a whole took no public position on the drug, and that three months after the FDA announcement, on March 28, 1979, the TMI accident began to unfold. The petitioner stated that Federal and State officials, searching for supplies of KI in case it should be needed, discovered that none was to be had and that a supply had to be manufactured, literally overnight. The petitioner indicated that at 3:00 a.m. on Saturday, March 31, 1979, an FDA official arranged with the Mallinckrodt Chemical Company for the immediate production of 250,000 doses of KI.

The petitioner also discussed the Report of the President's Commission on the Accident at Three Mile Island (the Kemeny Commission report), issued in October 1979, and stated that the report was strongly critical of the failure to stockpile KI. The petitioner noted that among the Kemeny Commission's major recommendations was that an adequate supply of the radiation protective agent, KI for human use, should be available regionally for distribution to the general population and workers affected by a radiological emergency.

The Petitioner's Discussion of the Potassium Iodide Policy

The petitioner stated that in NUREG–0632, "NRC Views and Analysis of the Recommendations of the President's Commission on the Accident at TMI," issued in November 1979, the NRC agreed with the findings of the Kemeny Commission and planned to require nuclear power plant licensees to have adequate supplies of KI available for nuclear power plant workers and the general public as part of State emergency response plans.

According to the petitioner, the three agencies most concerned, the FDA, the NRC, and the Federal Emergency Management Agency (FEMA), favored the stockpiling of KI for the next several years. The petitioner stated that the Atomic Industrial Forum, a nuclear industry trade association, declared itself against the stockpiling of KI in May 1982.

The petitioner indicated that the NRC staff was strongly in favor of KI

stockpiling as late as September 27, 1982, when the NRC staff submitted a memorandum to the Commissioners proposing that the Commission agree with a draft interagency policy statement supporting KI stockpiling. The petitioner further stated that on October 15, 1982, less than 3 weeks after sending the draft policy statement to the Commission for approval, the NRC staff sent a supplementary memorandum withdrawing the memorandum of September 27. The later memorandum informed the Commissioners that NRC's Office of Nuclear Regulatory Research (RES) could, by January 1, 1983, produce a paper showing that KI was significantly less cost-beneficial than previously assumed. The NRC staff proposed sending this document to the FDA and FEMA with the recommendation not to stockpile and distribute KI. The petitioner indicated that the NRC staff briefed the Commission in November 1983 on the NRC staff's proposal to take a strong position against KI. A policy statement was later issued that disposed of the Kemeny Commission's recommendation which favored stockpiling KI. According to the petitioner, only a year later, the Chernobyl accident would give tangible proof of the value of the drug in radiological emergencies.

The Petitioner's Discussion of the Effects of Chernobyl

The petitioner stated that during the Chernobyl accident of 1986, the damaged reactor spewed radioactive iodine over a wide area of what was then the Soviet Union and Poland. The petitioner further stated that in Russia, the Ukraine, and Belarus, where the distribution of KI was inadequate and untimely, the population in these countries is now experiencing extraordinarily high levels of childhood thyroid cancer. However, in Poland, where KI was administered to 97 percent of the nation's children, there has been no similar increase in thyroid cancer. The petitioner noted that Poland is a proof-positive example of the benefits of a well-prepared KI program.

The petitioner stated that the U.S. Government is spending money to study radiation-caused thyroid cancer in the Ukraine and Belarus, and the Department of Energy (DOE) announced a $15 million, 15-year program that will follow 70,000 children in the Ukraine, to understand the thyroid cancer risk of exposure to radio iodine. The petitioner further stated that the U.S. Government has spent generously to bring Ukrainian doctors to the United States for training in thyroid surgery because mishandled operations can result in damaged nerves and larynxes, rendering patients permanently mute.

The petitioner discussed post-Chernobyl developments on KI policy. He stated that the Chernobyl accident demonstrated that KI worked and that countries that failed to stockpile and distribute it are experiencing serious public health problems.

The Petitioner's Discussion of the NRC's Reconsideration of Potassium Iodide

The petitioner notes that in June 1989, the NRC reconsidered the KI issue after the petitioner filed a Differing Professional Opinion urging a change in policy. On November 27, 1989, the American Thyroid Association wrote to the NRC urging KI stockpiling on a nationwide basis and, in 1990, the NRC announced that it was reconsidering the existing Federal policy. In April 1992, a contractor under the sponsorship of the NRC Office of Nuclear Regulatory Research issued a report that included a revised cost-benefit analysis of the use of KI. The petitioner described the report as concluding that stockpiling KI continued to be not cost-effective, but that the difference between costs and benefits was narrower than had been calculated by the NRC staff in the early 1980s. The petitioner further indicated that, in December 1993, an industry trade group, the Nuclear Utility Management and Resources Council, sent a report entitled "Review of Federal Policy on Use of Potassium Iodide," to the Commission arguing against any change in current KI policy.

The petitioner noted that, in March 1994, the NRC staff declared its support for KI stockpiling. However, the NRC staff proposal for a change in policy was not adopted, the Commissioners having voted 2 to 2 on the staff's proposal in May 1994. (Under Commission procedures, a tie vote means that a proposal fails.)

The Petitioner's Discussion of Additional Support for Granting the Petition for Rulemaking

The petitioner described a September 1994, FEMA publication proposing a "Federal Radiological Emergency Response Plan" that envisioned the use of KI during radiological emergencies. Under the plan, the NRC would be the lead Federal agency during emergencies at nuclear power plants and would advise State and local governments whether or not to distribute KI (based on advice received from an interagency panel). The States and localities would then administer the KI, if necessary.

The petitioner also indicated that the Board of Governors of the International Atomic Energy Agency, with U.S. Government support, adopted new International Basic Safety Standards in 1994. The petitioner stated that these standards represented the consensus of the world's experts on radiation safety and the standards provide, among other things, that intervention levels of immediate protective actions, including sheltering, evacuation, and iodine prophylaxis, shall be specified in emergency plans. Thus, the petitioner stated, the international radiation protection community, like the Kemeny Commission in 1979 and the short-lived draft Federal policy statement of 1982, recognized that effective preparedness for radiological emergencies means having three actions to consider [evacuation, sheltering and iodine prophylaxis].

The Petitioner's Discussion of the Merits of the Petition for Rulemaking

The petitioner believes the NRC should implement the recommendation of the Kemeny Commission and that the United States should maintain the option of using the drug KI for public thyroid protection during nuclear accidents. The petitioner requested that the Commission definitively review and decide on the issue rather than simply having the NRC staff decide not to propose it to the Commission.

The petitioner stated that evacuation is not necessarily the protective measure of choice in every emergency, and even when it is the preferred option, it is not always feasible. The Kemeny Commission report explained that different types of accidents, and the particular circumstances presented, may call for different protective measures. The petitioner notes that maintaining a KI option ensures that responsible authorities have the option of additional protection at their disposal.

The petitioner indicated that NRC has made it clear that a finding of adequate emergency planning does not translate into a guarantee that the entire affected public can be evacuated, but that evacuation is generally feasible.

The petitioner believes that sometimes, either by choice or necessity, authorities may decide to shelter people or tell them to remain indoors rather than evacuate them. The petitioner points out that it may be desirable to administer KI any time people are sheltered or told to stay indoors, when evacuation routes would take people through areas of radiological contamination, and when there has been a large airborne release of radioactive iodine to the atmosphere.

The petitioner believes that the decision on stockpiling KI should turn on whether, given the enormous

consequences of being without it in a major accident, the drug is a prudent measure; not on whether it will necessarily pay for itself over time. The petitioner further believes that KI represents a kind of catastrophic-coverage insurance policy offering protection for events which, while they occur only rarely, have such enormous consequences that it is sensible to take special precautions.

The petitioner stated that the estimates of KI's cost-effectiveness depend on estimates that are no more than informed guesses about the probability of severe accidents and that the NRC's cost-benefit analysis of the early 1980s was based on the assumption that a severe accident with a major release of radioactivity could occur in this country only once every 1 or 2 thousand years.

The petitioner believes that if it were really true that serious accidents with a release of radioactivity were so unlikely, there would be good reason not only to reject stockpiling of KI but also to dispense with all emergency planning. The petitioner also stated that if KI is not cost-effective, then the rest of nuclear emergency planning is probably not cost-effective either.

The petitioner believes that cost-benefit analysis is a technique that should be applied with good sense, especially where public health measures are concerned. According to the petitioner, the cost-benefit analysis of KI proceeded from the assumption that there was no difference in desirability between prevention of radiation-caused thyroid disease and cure. Thus, the only factor to be considered in evaluating KI was the cost. The petitioner also believes that the U.S. Government determined that instead of spending money to prevent radiation-caused thyroid disease, society should spend its money treating the disease if and when it occurs.

The petitioner believes that the existing policy on KI was defective from the start because it was based, in part, on inaccurate information provided to the NRC Commissioners. He stated that the information provided to the NRC Commissioners seriously understated the significance of radiation-caused thyroid disease and thereby understated to an equal degree the value of KI.

The petitioner also believes that it was not clear that the Commission had any idea of the real nature of post-accident thyroid disease at the time it adopted an anti-KI position.

The petitioner stated that existing policy left the judgment on stockpiling KI to the States. The petitioner asserts that this policy also ensures that the States do not have an adequate basis for making informed decisions. He believes that the Federal Government, and NRC in particular, has failed to provide the States with sound technical advice on the subject. The petitioner also believes that without accurate and current information on KI—including the Chernobyl experience and the consensus of international experts—States cannot make an informed judgment.

The petitioner believes that no State or local official or member of the public could imagine that in a real emergency, there would be no KI to administer. The petitioner raised the question: If KI stockpiling is not worthwhile, why is the administration of the drug one of the protective measures identified in the 1994 Federal Emergency Response Plan? He also asked why, if KI is worthwhile, as the plan implies, something is not being done to make sure that it is available.

The petitioner believes that the Federal Government should either change the 1985 policy and make the use of KI a viable option in a real emergency, or it should explain why the United States has decided that KI will not be an option.

The Petitioner's Proposed Amendment to the NRC Regulations

In the original petition (PRM–50–63) that was submitted on September 9, 1995, the petitioner requested that 10 CFR Part 50 be amended to include language taken from FEMA's Federal Radiological Emergency Response Plan of September 1994, and recommended the following revision to the regulations.

The petitioner proposed that Section 50.47(b)(10) be amended to read as follows:

(10) A range of protective actions including sheltering, evacuation and prophylactic use of iodine have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidelines, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

In the revised petition (PRM–50–63A) that was submitted on November 11, 1997, the petitioner requested that 10 CFR 50.47(b) (10) be revised to read:

(10) A range of protective action have been developed for the plume exposure EPZ for emergency workers and the public. In developing this range of actions, consideration has been given to evacuation, sheltering, and the prophylactic use of potassium iodide (KI), as appropriate. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidelines, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

The petitioner believes that if this revised change is adopted, the plan will become an accurate description of emergency preparedness for radiological emergencies; the recommendation of the Kemeny Commission will at last be implemented; and the United States will be in compliance with the International Basic Safety Standards.

The petitioner suggested that the NRC, either on its own or jointly with other agencies, issue a policy statement declaring that KI stockpiling is a reasonable and prudent measure that is necessary to ensure that the drug will be available in the event of a major accident. The petitioner believes that this statement would clarify that KI can be used in conjunction with evacuation and sheltering to maximize protection to the public.

The petitioner also believes that the policy statement would show the willingness of the NRC to provide a stockpile of the drug to States and localities upon request, and would support the Kemeny Commission's recommendation to create regional stockpiles of the drug as a backup for emergencies.

Discussion

Stockpile of Medicinal Supplies for Nuclear, Biological, and Chemical Agents (1995)

In June 1995, the President issued Presidential Decision Directive 39 (PDD–39) on U.S. Policy on Counter Terrorism. The PDD–39 directed Federal agencies to take a number of measures to reduce vulnerability to terrorism, to deter and respond to such acts, and to strengthen capabilities to prevent and manage the consequences of terrorist use of nuclear, biological, and chemical (NBC) weapons, including weapons of mass destruction. The PDD–39 assigned to FEMA the task of ensuring that the Federal Response Plan (FRP) was adequate to respond to the consequences of terrorism.

FEMA, in coordination with the Catastrophic Disaster Response Group (CDRG) [1], developed a draft report to the President entitled, "An Assessment of Federal Consequence Management

[1] The CDRG is the headquarters senior-level coordinating group which addressees policy issues regarding the Federal Response Plan (FRP). The CDRG is chaired by FEMA and comprises of representatives of Federal departments and agencies with responsibilities under the FRP. The NRC is represented by the Incident Response Division Director, AEOD.

Capabilities for Response to Nuclear, Biological or Chemical (NBC) Terrorism," dated June 12, 1996. The report recommended, among other things, that the Federal Government purchase and stockpile thyroid blocking agents (KI) for the general public that could be used in the event of a nuclear terrorist event. The NRC was a member of the Core Group which generated the recommendations and was instrumental in adding KI to the list of medical supplies to be stockpiled nationally.

The Core Group concluded that as the result of recent events, significant threats over the past few years, and the increased availability and proliferation of NBC materials, there is an increasing concern for the potential of terrorist incidents. NBC events, the report continued, may occur as a local event with potentially profound national implications. In responding to these events, the first responders must be able to provide critical resources to the victims. These include, but are not limited to, chemical nerve antidotes, vaccines for anthrax, and antibiotics. The Core Group identified the need to purchase and preposition stockpiles of adequate medical supplies at the Federal, State, and local level. While KI was not considered as vital as chemical nerve antidotes and vaccines, the NRC staff was successful in getting KI included with other medical supplies for NBC events because of the unusual characteristics of these events.

Because of the special characteristics of NBC events, the Core Group recommended a broader range of protective actions. The NRC concurred in the findings of the report in a letter dated September 25, 1996, from the Director of NRC's Office of Analysis and Evaluation of Operational Data to FEMA's Director. The report was subsequently presented to the President in February 1997, and approved for distribution in May 1997. However, FEMA recently reported that the federal stockpiles of KI are few and stocked only for first responders to terrorist action. As things stand now, needs of members of the public for KI on an ad hoc basis would have to be supplied from other sources. As stated above, the Commission intends to work with FEMA to assure that stockpiles contain adequate supplies of KI.

FRPCC Subcommittee on KI (1996)

Along with petitioning the NRC, Mr. Crane also requested that FEMA review his petition and reconsider the Federal policy. In early 1996, the FRPCC convened an Ad-Hoc Subcommittee on Potassium Iodide to request and review new information on this matter from interested parties. The subcommittee conducted a public meeting on June 27, 1996. The subcommittee evaluated all comments from the June 27 public meeting and made the following recommendation regarding the Federal KI policy:

1. Without changing the Federal policy by interceding in the State's prerogative to make its own decisions on whether to use KI, the Federal Government (NRC, or through FEMA) should fund the purchase of a stockpile for a State that decides to incorporate KI as a protective measure for the general public;

2. The Subcommittee believes the language in the 1985 policy should be softened to be more flexible and balanced. For example, the problem many interveners observe with the Federal policy is the italicized statement "The Federal position with * * * potassium iodide for use by the general public is that it should not be required." It would not be as negative if the last phrase were reworded to state "it [potassium iodide for use by the general public] is not required, but may be selected as a protective measure at the option of the State or, in some cases, local governments."

3. The subcommittee recommends that local jurisdictions that wish to incorporate KI as a protective action for the general public should consult with the State to determine if these arrangements are appropriate. If local governments have the authority or secure the approval to incorporate KI as a protective measure for the general public, they would need to include this measure in their emergency plans.

Analysis of Issues Raised by Public Comments

The Commission has considered the KI policy question on numerous occasions since 1984. The voting history of the Commission shows that reaching consensus on this policy question has been an elusive goal. An important reason for this historical lack of consensus is that this policy question is not a clear cut one. Individual Commissioners, past and present, have differed in their views with respect to the relative importance to be given to factors bearing on the KI issue. These honest differences have led to divided Commission views on how to resolve the policy question. The Commission is agreed that its historical difficulty to reach consensus on the KI policy question underscores the reality that this policy question is not a simple one, is not one that is easily resolved and, as a result, has been the subject of protracted deliberation.

On November 5, 1997, the Commission held a public meeting with its staff, FEMA representatives, and the author of the 1995 rulemaking petition to consider the petition and proposed changes to the Federal policy on the use of KI. In part as a result of the meeting, the petitioner amended his petition to ask for a rule that would require that consideration would be given in the formulation of emergency plans to the use of KI as a supplement to evacuation or sheltering, and on June 26, 1998, the Commission granted the amended petition, and directed the NRC staff to initiate the requested rulemaking. The Commissioners also decided that the FRPCC **Federal Register** notice on Federal KI policy should include a statement to the effect that the State and local decision makers, provided with proper information, may find that the use of KI as a protective supplement is reasonable and prudent for specific local conditions. On September 30, 1998, the Commission approved a draft **Federal Register** notice and directed that it be sent to the FRPCC.

On November 27, 1995 (60 FR 58256), a Notice of Receipt of the Petition for Rulemaking was published in the **Federal Register** requesting public comment. A total of 63 comment letters were received, of which 20 utilities, 9 State governmental agencies, 2 utility interest organizations, 1 letter signed by 12 health physicists, 2 State universities and 1 member of the public were against the granting of the petition for rulemaking. Those letters in favor of granting the petition came from 5 environmental groups, 22 members of the public (including 1 from the petitioner), and the American Thyroid Association.

On December 17, 1997 (62 FR 66038), the Commission published a request for public comment on the revised petition in the **Federal Register**. In response to several requests, the comment period was extended until February 17, 1998, by a **Federal Register** notice published on January 21, 1998 (63 FR 3052). A total of 82 comment letters were received, of which 13 utilities, 3 State governmental agencies, 1 utility interest association, and 1 member of the public were against granting the petition for rulemaking. The letters in favor of granting the petition came from 8 public interest groups, 46 members of the public (including 1 from the petitioner), 3 physicians, 2 U.S. Senators, and 1 State Representative. The following issues were raised by the public commenters with an accompanying NRC staff response:

Issue 1: Nearly all nations with nuclear power protect their citizens by having KI readily available and the logistics of distribution do not seen to pose any significant problems. Would implementing a policy of using KI for the general public be so difficult?

Staff Response: At the November 5, 1997, Commission meeting, senior NRC

staff members told the Commission: "We recognize that there are difficulties in distribution, but they are not insurmountable. If a decision is made by the State to do it [stockpile and/or predistribute KI] we can figure out a way to do it." It is the staff's perception that if the State decides to include KI as a supplemental protective measure for the general public, one possible method of implementation could be that the State could make KI readily available where other over-the-counter drugs can be purchased. The public could be informed of the drug's availability through the yearly emergency preparedness information brochure that is mailed out to all residents throughout the 10 mile EPZ. It would then be up to individual members of the public to obtain and store this supply of KI, which should then be available for use in the event of an emergency. The administration of the KI could be at the direction of the State Medical Officer.

Issue 2: It is "factual that the 1986 Chernobyl accident clearly demonstrated the benefit of having KI readily available. In Poland, where authorities expediently administered 18 million doses of KI, 97 percent of all Polish children were protected from thyroid disease. In contrast, there are soaring rates of childhood thyroid cancer, 200 times pre-Chernobyl levels, in the former Soviet republics of Russia, Belarus, and the Ukraine because very little KI was administered, too long after exposure."

Staff Response: The Chernobyl reactor (a RBMK–1000 design) is located in the Ukraine close to Belarus. The accident occurred at 01:23 on Saturday, 26 April 1986, when explosions destroyed the reactor core and reactor building. The explosions sent debris from the core flying into the air and exposed the reactor core to the atmosphere. The heavier debris from the plume was deposited close to the site. In general, the initial release is thought to have risen to over 1 km in altitude, thereby resulting in much lower doses close to the site than those expected from a ground level release. The major release lasted 10 days, during which most of the noble gases and more than 40 percent of the iodines are estimated to have been released. The varying meteorological conditions, release rates, and release heights resulted in very complex dose and ground deposition patterns.

It is often assumed that ingestion was the major source of thyroid dose early in the accident. However, the contribution of inhalation cannot be assessed because air sampling was not effectively conducted early in the accident. As of 1996, except for thyroid cancer, there has been no confirmed increase in the rates of other cancers, including leukemia, among the first responders, liquidators,[2] or the public, that have been attributed to release from the accident.

Belarus Experience. With the Chernobyl plant located only 4 miles (7 km) away, Belarus was heavily impacted by the accident. This impact was heightened by the fact that protective actions were not implemented in Belarus during the first six days after the accident. Several authors have stated that KI was distributed to the population in Belarus during the first week following the accident.[3] However, there is no confirmed published data on the dosage, coverage, or other details concerning the implementation of the thyroid blocking in Belarus.[4] In addition, cows typically grazed in Belarus at the time of year when the accident occurred, and yet no efforts were taken to restrict the consumption of contaminated milk for the first 10 days following the accident.

On May 2 (day 7 following the accident) the decision was made to evacuate the areas of Belarus and Ukraine within 18 miles (30 km) of the plant (30 km zone). The evacuation was completed on May 5, 1986.

Since 1990, a rapid increase has been observed in the incidence in thyroid cancer among Belarus children who were 0 to 14 years old at the time of the accident. Before the accident, the rate of thyroid cancer among this cohort was about 0.4 per 100,000; by 1996, this rate had risen to 3.9 per 100,000.[5,6] This included approximately 3,000 children, 0 to 18 years old, that were evacuated from the 30-km zone within Belarus. Among this group, four thyroid cancer cases have been detected since the accident. All of these cases were registered after the end of the latent period for radiation-induced thyroid cancer. Taking into account the spontaneous rate of this disease in this age group and the number of evacuated persons, all of these cases are considered accident-induced.

The total number of excess thyroid cancers in Belarus children is currently about 750, and is estimated to reach a maximum of more than 3500 over the lifetime of this cohort.3, 4, 6 The vast majority of the thyroid cancers were diagnosed among those living more than 50 km (31 miles) from the site.

The increase in the rate of thyroid cancers in Belarus is concentrated among those who were youngest at the time of the accident. Fortunately, these cancers respond favorably to early treatment; to date, two or three of the Belarus children diagnosed with thyroid cancer have died as a result of that disease.[6]

Poland Experience. Poland detected increased levels of airborne radioactive contamination on the night of April 27, 1986 (day 2). Although there was no official notification of the accident by the USSR, it was assumed, on the basis of Tass News Agency reports, that the increases were attributable to the accident at Chernobyl. On April 28 (day 3), the country formed a governmental commission to recommend protective actions. Among these actions, the commission recommended intervention levels for taking protective actions on the morning of April 29 (day 4).[7]

On April 29, Poland's Minister of Health gave orders to prepare and distribute KI to the 11 provinces most affected. KI was to be made available through hospitals, public health centers, schools, and kindergartens. The country used its mass media to announce the protective action and to appeal for volunteers to assist in the nationwide distribution.

The Commission then instituted the following additional protective measures:[8]

- Feeding of cows on pastures or with fresh fodder was banned countrywide until May 15, 1986.
- Fresh milk with radioactivity concentration above 1,000 Bq/L was banned for consumption by children and pregnant or lactating women.
- All children under the age of 4 were given powdered milk through numerous distribution centers.
- Children and pregnant or lactating women were advised to eat a minimum of fresh leafy vegetables (until May 16, 1986).

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[2] Liquidators are a large number (about 200,000) of workers and military personnel who performed cleanup, construction of the sarcophagus, and other operations in the contaminated zones following the accident.

[3] Personal communication, E. Buglova M.D., Head Laboratory of Radiation Hygiene and Risk Analysis, Ministry of Health, Republic of Belarus, December 1997.

[4] "Thyroid Cancer in Children Living Near Chernobyl, Expert Panel Report on the Consequences of the Chernobyl Accident"—Williams D. et al., K.H. ECSL–EAEC, Report EUR 15248 EN, Brussels-Luxembourg, 1993, p. 108.

[5] E. Buglova et al., "Thyroid Cancer in Belarus After the Chernobyl Accident; Incidence, Prognosis, Risk Assessment." Low Doses of Ionizing Radiation: Biological Effects and Regulator Control, Spain, November 1997, Contributed Paper, pp. 280–284.

[6] "Thyroid Cancer Incidence Rate in the Republic of Belarus." Okeanov A. et al., Radiation and Risk Bulletin of National Radio-Epidemiological Registry, Obninsk., 1995, Issue 6, pp. 236, 239.

[7] The Implementation of Short-term Countermeasures After a Nuclear Accident, Proceeding of an NEA Workshop Stockholm," Sweden, 1–3 June 1994, OECD 1995.

[8] Manual on Public Health Actions in Radiation Emergencies, WHO, European Center of Environmental and Health, Rome Division, 1995.

The distribution of KI was initiated on April 29 (day 4) and was virtually completed by May 2 (day 7). This included the distribution of KI to more than 90 percent of the children under the age of 16 and about a quarter of the adults. A total of 10.5 million doses of KI were given to children and 7 million doses were given to adults. Multiple doses, although not recommended, were taken in a number of cases. Because of diminishing air contamination, the KI prophylaxis was not repeated. In the second phase of the response, powdered milk was made available to all children less than 4 years of age. This program effectively started on May 3 (day 8).

It is estimated that approximately a 40–45 percent reduction in thyroid burden was achieved by thyroid blocking and milk restrictions in the 11 provinces treated.[7] Had the Russian authorities given prompt warning, the 24- or 48-hour gain in time might have improved the effectiveness of their response.

There were no reported serious adverse reactions except for two adults with known iodide sensitivity. About 36,000 medically significant reactions were also reported (mostly nausea).[9] Because of the low iodine concentrations in Poland it is doubtful that epidemiological studies could detect excess cancers resulting from intake of radio iodine.[8]

International Practices—During this assessment, the NRC staff examined the current policies and practices regarding the use of thyroid blocking during Nuclear Power Plant accidents for a number of countries. The NRC staff accomplished this task primarily through personal communication with colleagues in each country. In general, the countries either are following or intend to implement systems that are consistent with the guidance promulgated by the World Health Organization (WHO). Specifically, the WHO recommends predistribution of stable iodine close to the site and stockpiles further from the site. These stocks should be strategically stored at points such as schools, hospitals, pharmacies, fire stations, or police stations, thereby allowing prompt distribution. A further description of the WHO guidance is provided below, followed by a discussion of the guidance promulgated by IAEA and a comparison between U.S. and international practice.

World Health Organization (WHO) Guidance. The main points of the WHO Guidelines[10, 11] regarding the use of stable iodine are as follows:

- *Near field:* Stable iodine should be available for immediate distribution to all groups if the predicted thyroid dose is likely to exceed national reference levels. Close to nuclear installations iodine tablets should be stored or predistributed to facilitate prompt utilization.
- *Far field:* Stable iodine should be available for distribution to pregnant women, neonates, infants, and children if the predicted dose is likely to exceed reference levels.

Conclusion from Polish Experience. In Poland (1) Small amounts of radioactive iodine were deposited as a result of the Chernobyl accident, (2) no protective actions were taken for the first 2 days of the accident, and (3) protective actions (except sheltering or evacuation) were taken after the first 2 days of the accident. Because of the low iodine concentrations in Poland and the protective actions implemented, Poland has not detected excess cancers resulting from intake of radio iodines.

Overall Chernobyl Conclusion. The World Health Organization, almost every industrial country in the world with nuclear power plants, and the American Thyroid Association, believe that the low iodine concentrations, the banning of the consumption of fresh milk and the distribution and administration of 90 million doses of KI contributed to the observed lack of increase of childhood thyroid cancers in Poland. Most industrial nations with nuclear power plants have decided to stockpile KI around nuclear power for use by the general public.

In contrast to the Chernobyl experience, in the event of an accident in the United States, our emergency planning calls for protective actions, sheltering, evacuation, and removal of contaminated food from consumption all of which significantly reduce the risk of exposure of the public to all radionuclides. Making KI available to the public for use during evacuation or especially sheltering could, under certain conditions, reduce the risk resulting from exposure to one important group of radionuclides, the radioiodines. That is why current NRC guidance discusses KI for plant personnel, emergency workers, and institutionalized persons unlikely to be evacuated promptly.

In this light the Commission agrees that the use of KI may be determined by State and local emergency response planners to be a supplementary protective measure.

Issue 3: "Stockpiling or predistribution of potassium iodide (KI) as a protective action would not add any significant public health and safety benefit to the current level of protection provided by existing emergency plans for commercial nuclear power plants. Our emergency plans focus on evacuation as the key protective action to prevent exposure since it protects against exposure to all radionuclides, not just iodine. In addition, the potential for misadministration of KI is present when predistributed to the general public, and incidents of misadministration have been informally reported at industry meetings by states which predistributed KI to the public."

Staff Response: The Commission agrees that it is the State's prerogative to decide to include stockpiling or predistribution of KI as a protective action for the general public. The FDA concluded that risks from short term use of relatively low doses of KI are out weighed by the radiologically induced thyroid nodules or cancers at a projected dose to the thyroid gland of 25 rem or greater. In so doing, the FDA approved KI as an over-the-counter drug. The American Thyroid Association fully endorses the use of KI and, as previously discussed, there were only 2 significant adverse reactions and 36,000 medically significant reactions (nausea) in 90 million doses of KI after the Chernobyl accident. The taking of KI should require precautions similar to those associated with any other over-the counter drug, and, of course, the packaging instructions should be followed.

Issue 4: "Evacuation is more feasible and practicable. Stockpiling of KI has logistical problems which we feel renders this idea impracticable and unmanageable."

Staff Response: The staff agrees that evacuation is usually "feasible and practicable" and is the most effective protective action. If the State decides to include KI as a supplemental protective measure for the general public, one possible method of implementation could be that the State could make KI readily available such as by making it available where other over-the-counter

[9] A "medically significant" reaction was one for which the person suffering the reaction consulted a physician more than once. Nauman and Wolff, "Iodide Prophylaxis in Poland After the Chernobyl Reactor Accident: Benefits and Risks," The American Journal of Medicine, Vol. 94, May 1993, p. 530. About .2% of the population that received KI had "medically significant" adverse reactions to KI. Id. However, "[i]t should be pointed out that control values for these side effects in a population not receiving KI are not available." Id. That is, it is not known what the incidence of such reactions would be in a population under similar stress, but not receiving KI, and thus it is not known to what extent these adverse reactions were the result of KI.

[10] International Basic Safety Standards for Protection Against Ionizing Radiation and for Safety of Radiation Sources, Safety Series No. 115, IAEA, 1996.

[11] "Method for the Development of Emergency Response Preparedness for Nuclear or Radiological Accident," Tecdoc–953, IAEA, July 1997.

drugs can be purchased. The public could be informed of the drug's availability through the yearly emergency preparedness information brochure that is mailed out to all residents throughout the 10 mile EPZ. Individual members of the public would be responsible for obtaining and storing this supply of KI, which could then be available for use in the event of an emergency. Another approach to predistribution is to include stockpiling at reception centers for distribution during an evacuation. Other countries have found ways to effectively distribute KI when needed and the distribution issue is certainly not unsurmountable. The administration of the KI should be at the direction of the State Medical Officer.

Issue 5: The Three Mile Island experience has shown us that it is not easy to obtain an adequate supply of KI in an emergency.

Staff Response: The commenter is correct, in that it was difficult to obtain KI after the Three Mile Island accident. That is one reason why the Commission believes that planners should consider stockpiling KI, and why the Commission supports Federal stockpiles, so that States that have chosen not to stockpile KI could have access, albeit *ad hoc* and delayed, to an adequate supply in a radiological emergency at a nuclear power plant. As noted elsewhere in this notice, the Commission will work with other agencies to assure that there are Federal regional stockpiles that contain adequate supplies of KI. Moreover, the general availability of KI is greater now than at the time of the TMI accident, partly because of the FDA's approval of KI as an over the counter drug. Some States have elected to incorporate KI into the emergency response plans and have obtained adequate supplies for this purpose. The Commission is not aware of any factors that would constrain the availability of KI for stockpiling purposes. The Commission believes that an adequate supply of KI could be obtained.

Issue 6: Even though KI administration before any exposure is ideal, the Chernobyl experience also has shown that the exposure can continue for days. Is the institution of KI blockade at any time in this period beneficial?

Staff Response: The administration of KI is most effective if done before or immediately after (within 2 to 4 hours) a release. Nonetheless, during a chronic exposure of several days, the administration of KI any time during the exposure period may block some uptake of radioactive iodine. However, the benefit diminishes quickly over time and may be very small if administered late. If a release is expected to continue for several days, the NRC anticipates that the public would be evacuated or other protective action would be taken, depending on the level of release. KI could nevertheless serve as a useful supplemental and complement to these primary protective actions.

Issue 7: KI is an effective thyroid blocking agent only when administered immediately before or after an exposure to radioactive iodine (that is, within one to two hours). Distribution of KI in a timely fashion to the general public following an accident could further complicate and decrease the effectiveness of implementing evacuation or residential sheltering.

Staff Response: The staff disagrees with this position. If a State chooses to include KI as an additional protective measure, it is anticipated that the State could make KI readily available to the public where other over-the-counter medicines are available or by other distribution means and that the public be made aware of its (the KI) availability, not at the time of an emergency, but KI could be made available year round.

Issue 8: One of the major impediments to distribution of KI to school children is coordination and administration of the program, e.g., the actual decision making process to administer KI or evacuate, parental approval and recordkeeping, identification and documenting allergic reactions, and the availability of a qualified medical professional to administer the potassium iodide.

Staff Response: The staff disagrees. Upon declaration of a general emergency there should be NO decision "to administer KI or evacuate." The preferred protective action for the close-in population should be evacuation. The administration of KI should be treated in the same fashion as any other over-the-counter medication that might be given to children while away from home, after observing the instructions provided with the KI packaging. Prior parental approval to administer KI in the event of an emergency can and should be addressed in the planning process for any State that decides to use KI. The individual State may provide the appropriate guidance and establish a system for obtaining parental approval before the taking of other protective actions that are currently being followed in the EPZ around nuclear power plants.

Issue 9: Does the post-Chernobyl Polish experience show that large-scale deployment of KI is safe?

Staff Response: Approximately 18 million doses of KI were distributed primarily, but not exclusively, to children. The bulk of the distribution took about three days. There were no reported serious adverse reactions except for two adults with known iodide sensitivity. The rate of serious side effects (10^{-7}) is consistent with the frequency seen during routine use of KI for medical treatment of respiratory disease. The incidence of medically significant, but not serious, reactions to this single dose of KI was also very low (0.2 percent). In addition, no detectable long-term disturbance in children's thyroid function was detected as of 1989. Additionally, the FDA has approved KI for over-the-counter distribution. The staff, therefore, agrees that the post-Chernobyl experience has shown that large-scale deployment of KI is relatively safe.

Issue 10: Several comments raised the question of liability: "Is the NRC prepared to address the number of legal implications should a member of the general public be given KI at their directive or recommendation and the individual have an extreme allergic reaction, possibly death?"; "The **Federal Register** Notice does not address legal issues for states who decide to adopt KI and states who do not decide to adopt or administer KI to the public."; "The issue of legal liability should not be dismissed lightly. If the NRC decides to require stockpiling of KI for the general public, has NRC considered what liability may arise from any adverse health effects? No initiative such as this should be undertaken without resolution of this issue."; "Who would assume liability if the KI was used prior to the Governor ordering its use?'

Staff Response: The comments focus principally on concerns that State and local governments involved in distribution and administration of KI may be liable in tort if an individual receiving the KI has a significant adverse medical reaction to the KI. To the extent that commenters are raising the potential for federal government liability for the promulgation of this proposed rule, the NRC believes that whether the Commission may be subject to tort liability through the implementation of a KI program depends upon a number of factors. However, it would appear that a Commission decision to require state and local emergency planning officials to consider stockpiling KI for public distribution should be subject to the "discretionary function" exception to the Federal Tort Claims Act, 28 USC

2671, *et seq.*,[12] which protects the Federal Government from liability. The question of whether a State or locality might be liable for involvement with administration of KI to the general public can only be answered by reference to the laws and precedents of particular States. The NRC presumes that this would be part of the "consideration" that States and localities will undertake if this rule is promulgated. The NRC has not undertaken this analysis.

Issue 11: Does the Commission consider stockpiling and using KI as a reasonable and prudent protective measure for the general public?

Staff Response: The Commission believes that State and local decision makers, provided with proper information, may find that the use of KI as a protective supplement to evacuation and sheltering is reasonable and prudent for specific local conditions.

Commission Decision

KI is a reasonable, prudent, and inexpensive supplement to evacuation and sheltering for specific local conditions. Therefore, the Commission's guidance on emergency planning has long taken KI into consideration (NUREG–0654/FEMA–REP–1, Rev. 1, p. 63, items e and f.). However, since the last revision of that guidance, there has been experience with the mass distribution of KI during a radiological emergency, and though the record on that distribution is not complete, the indications thus far are that mass distribution is effective in preventing thyroid cancer and causes remarkable few threatening side effects. Moreover, many nations in Europe and elsewhere, nations as different in their circumstances, politics, and regulatory structures as France, Canada, and Japan, have stockpiled KI and planned for its use. So have some U.S. States. The World Health Organization and the International Atomic Energy Agency recommend its use. Therefore, in order to achieve greater assurance that KI will receive due attention by planners, it seems reasonable to take a small further step and, continuing to recognize the authority of the States in matters of emergency planning, explicitly require that planners consider the use of KI.

The proposed rule change should not be taken to imply that the NRC believes that the present generation of nuclear power plants is any less safe than previously thought. On the contrary, present indications are that nuclear power plant safety has improved since the current emergency planning requirements were put in place after the Three Mile Island accident.

The use of potassium iodide is intended to supplement, not to replace, other protective measures. This rule change thus represents no alteration in the NRC's view that the primary and most desirable protective action in a radiological emergency is evacuation of the population before any exposure to radiation occurs, whenever that is feasible. (Evacuation protects the whole body, whereas potassium iodide protects only a single gland, the thyroid.) Depending on the circumstances, KI may offer additional protection if used in conjunction with evacuation and/or sheltering.

The NRC recognizes that the decision to stockpile KI presents issues of how best to position and distribute the medicine, to ensure, e.g., that optimal distribution takes place in an emergency, with first priority given to protecting children; that persons with known allergies to iodine not take it; that members of the public understand that KI is not a substitute for measures that protect the whole body; etc. To date, these issues have been addressed in different ways in the numerous countries that currently stockpile KI. The NRC is working with States and localities to develop guidance on these and other points relating to the use of KI. The NRC believes that these implementation issues can be solved, given the level of expertise in the relevant Federal and State agencies, and the experience of numerous nations that have built KI into their emergency plans.

It is expected that States will inform FEMA and the NRC of the results of their consideration of whether to opt for stockpiling. This will enable the Federal government to engage in better contingency planning for States that decide against stockpiling KI.

The Commission decision is implemented by publication of this proposed rule that would change 10 CFR 50.47(b)(10) with a 90-day public comment period. If the proposed rule is adopted in final form, the petition would be granted in part and denied in part and NRC action would be completed on PRM 50–63 and PRM 50–63A.

Commission Conclusions or Issues Raised by the Petitioner and Public Commenters

The Commission having reviewed the issues raised by the petitioner and the public commenters, has reached the following conclusions:

A. The Commission agrees that KI, when determined by State and local emergency response planners and if administered in a timely fashion, could protect the thyroid gland from exposure to radioiodines inhaled or ingested following a major radiological accident. This is the basis for stockpiling it and distributing it to emergency workers and institutionalized persons during radiological emergencies. The petitioner believes that the distribution of KI was inadequate and untimely in the Ukraine and Belarus after the Chernobyl accident in 1986 and that this accounts for the increased incidence of thyroid cancer in these areas. He also argues that distribution of KI in Poland was timely and effective and that no similar increase in the incidence of thyroid cancer was seen. The Commission considered all of the above information in deciding to grant the petitioner's requested actions.

B. The Kemeny Commission criticized the failure to stockpile KI and recommended that regional stockpiles be established. The Kemeny Commission's report recognized that evacuation was not invariably the preferred response to an emergency and that even when evacuation was desirable, it might not be feasible. The Commission believes that prompt evacuation and/or sheltering are the generally preferred protective measures for severe reactor accidents. In developing the range of public protective actions for severe accidents at commercial nuclear power plants, evacuation and in-place sheltering provide adequate protection for the general public. The Commission believes that KI for the general public should not replace evacuation and sheltering, but supplement them.

C. The Federal Radiological Emergency Response Plan (FRERP) is the plan that would be used by the Federal Government to support State and local officials in responding to any peacetime radiological emergency. Such emergencies range from transportation accidents involving radioactive materials to terrorist events involving nuclear materials. The FRERP includes a range of protective actions commensurate with the risks associated with the range of emergencies for the

[12] This exception from waiver of sovereign immunity provides that:

Any claims based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

28 USC 2680(a). *United States* v. *Varig Airlines*, 467 U.S. 797, 808 (1984); *Berkovitz* v. *United States*, 486 U.S. 531 (1988).

general public and emergency workers. These protective actions include evacuation, sheltering, and the prophylactic use of stable iodine. With respect to protective actions for nuclear power plants, the NRC and FEMA have issued Draft Supplement 3 to NUREG–0654/FEMA–REP–1, Rev. 1, to provide updated guidance for the development of protective action recommendations for severe reactor accidents. This document emphasizes that prompt evacuation is the preferred protective action for actual or projected severe core damage accidents.

D. The Commission recognizes that in 1994 the Board of Governors of the IAEA adopted new International Basic Safety Standards. With respect to emergency planning, these standards provide, among other things, "intervention levels for immediate protective action, including sheltering, evacuation, and iodine prophylaxis." It is important to note that each country bases its response plans on local and regional characteristics. For example, Italy and France, using the same international standards and guidelines, implement them differently.

E. Although the cost of KI tablets has doubled, the Commission agrees with the NRC staff estimate and other nations' experience, that the purchase of KI tablets is relatively inexpensive. KI-related costs increase when the cost of maintenance, distribution, and public education are considered. However, the overall cost is minimal when placed in the context of emergency planning and should not be a deterrent to stockpiling KI for use by the general public should State and local decision makers determine that the prophylactic use of KI as a supplement to evacuation and sheltering is appropriate.

F. The Commission believes that robust regional stockpiles should be established to enable use by States that have not established local stockpiles and wish to make use of KI in the event of a severe nuclear power plant accident.

Commission Decision To Fund KI

On June 30, 1997, the Commission voted to approve the NRC staff recommendation to endorse the FRPCC recommendations for the Federal Government to fund the purchase of potassium iodide (KI) for States at their request and endorsed the FRPCC recognition of the availability of the Federal stockpile of KI to State and local governments for purposes of mitigating the consequences of terrorist use of nuclear, biological, or chemical (NBC) weapons. At that time it was believed that the NRC was the likely Federal agency to fund the stockpiling. Historically, funding for State and local; emergency response planning has been the responsibility of those governments usually working with licensees and, absent Congressional funding specifically for this purpose, NRC is not prepared to fund stockpiling of KI.

Findings

Metric Policy

On October 7, 1992, the Commission published its final Policy Statement on Metrication. According to that policy, after January 7, 1993, all new regulations and major amendments to existing regulations were to be presented in dual units. The amendment to the regulations contains no units.

Environmental Assessment and Finding of No Significant Impact for Granting the Petition for Rulemaking Relating To the Use of Potassium Iodide (KI)

I. Introduction

On September 9, 1995, a petition for rulemaking (PRM 50–63) was filed with the NRC by Mr. Peter Crane. The petitioner requested that the NRC amend its emergency planning regulations to require that emergency plans specify a range of protective actions to include sheltering, evacuation, and the prophylactic use of KI.

In SECY 97–245, dated October 23, 1997, the staff provided three options for the Commission's consideration in order to resolve PRM 50–63.

On November 5, 1997, the Commission was briefed by the NRC staff, the Federal Emergency Management Agency (FEMA), and the petitioner regarding the options available for resolving the petition for rulemaking. During the meeting, the Commission invited the petitioner to submit a modification to his petition in order to address views he discussed during the meeting.

On November 11, 1997, the petitioner submitted a revision to his petition PRM 50–63A, which requested two things:

1. A statement clearly recommending stockpiling of KI as a "reasonable and prudent" measure, and
2. A proposed rule change to 10 CFR 50.47(b)(10) which would be accomplished by inserting the following sentence after the first sentence: "In developing this range of actions, consideration has been given to evacuation, sheltering, and the prophylactic use of potassium iodide (KI), as appropriate."

On June 26, 1998, the Commission disagreed with the staff recommendation to deny the petition for rulemaking PRM 50–63A by revising 10 CFR Part 50.47 (b)(10). This proposed rulemaking is in response to this directive.

Alternatives were essentially considered in previous documents. In SECY–97–124 (June 16, 1997), on the "Proposed Federal Policy Regarding Use of Potassium Iodide after a Severe Accident at a Nuclear Power Plant." The staff identified three options, one of which contained three sub-options, concerning a proposed change in the Federal policy regarding the use of potassium iodide (KI) as a protective measure for the general public during severe reactor accidents. Next, in an SRM dated June 30, 1997, the Commission approved an option that endorsed the Federal offer to fund the purchase of KI for States at their request and endorsed the Federal Radiological Preparedness Coordinating Committee (FRPCC) recognition of the availability to State and local governments of the Federal stockpiling of KI.

II. Need for Action

In SECY–97–245, the staff proposed options for resolving the referenced petition for rulemaking. In SRM 98–061, the Commission directed the staff to proceed with the rulemaking.

III. Environmental Impact of the Proposed Action

The environmental impacts of the proposed action and its alternative are considered negligible by the NRC staff. Given the proposed action would only add the sentence: "In developing this range of actions, consideration has been given to evacuation, sheltering, and the prophylactic use of potassium iodide (KI), as appropriate." The staff is not aware of any environmental impact as a result of this proposed action.

IV. Alternative to the Proposed Action

The alternative to the proposed action at this time is to deny the petitions and take no action with respect to the use of KI by the public. Should this no-action alternative be pursued, the staff is not aware of any resulting environmental impact.

V. Agencies and Persons Consulted

Cognizant personnel from the Federal Emergency Management Agency were consulted, as was the petitioner, as part of this rulemaking activity.

VI. Finding of No Significant Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that the amendment is not a major Federal action

significantly affecting the quality of human environment, and therefore, an environmental impact statement is not required. This amendment will require that emergency plans specify a range of protective actions to include sheltering, evacuation, and the prophylactic use of KI. This action will not have a significant impact upon the environment.

Paperwork Reduction Act Statement

This proposal rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OBM) approval numbers 3150–0009 and 3150–0011.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis of the Proposed Rulemaking Granting In Part A Petition for Rulemaking (PRM 50–63A) Relating to the Use of Potassium Iodide (KI)

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In SECY 97–245, dated October 23, 1997, the staff provided three options for the Commission's consideration in order to resolve PRM 50–63.

On November 5, 1997, the Commission was briefed by the NRC staff, the Federal Emergency Management Agency (FEMA), and the petitioner regarding the options available for resolving the petition for rulemaking. During the meeting, the Commission invited the petitioners to submit a modification to his petition in order to address views he discussed during the meeting.

On November 11, 1997, the petitioner submitted a revision to his petition PRM 50–63A, which requested two things:

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A proposed rule change to 10 CFR 50.47(b)(10) which would be accomplished by inserting the following sentence after the first sentence: "In developing this range of actions, consideration has been given to evacuation, sheltering, and the prophylactic use of potassium iodide (KI), as appropriate."

On June 26, 1998, the Commission directed the staff in SRM 98–061 to revise 10 CFR Part 50.47 (b)(10). This proposed rulemaking is in response to this directive.

Alternatives were essentially considered in previous documents. In SECY–97–124 (June 16, 1997), titled "Proposed Federal Policy Regarding Use of Potassium Iodide after a Severe Accident at a Nuclear Power Plant," the staff identified three options, one of which contained three sub-options, concerning a proposed change in the Federal policy regarding the use of potassium iodide (KI) as a protective measure for the general public during severe reactor accidents. Next, in an SRM dated June 30, 1997, the Commission approved an option that endorsed the Federal offer to fund the purchase of KI for States at their request and endorsed Federal Radiological Preparedness Coordinating Committee (FRPCC) recognition of the availability to State and local governments of the Federal stockpiling of KI.

In SECY–97–245, the staff proposed options for resolving the referenced petition for rulemaking. In SRM 98–06, the Commission directed the staff to proceed with the rulemaking.

Given that the Commission considered the options and directed the staff to grant the petition, the only alternatives considered here are the Commission approved option and the baseline, no-action alternative.

The proposed rulemaking does not "require" anything of licensees, but States are to have shown "consideration" of the use of KI along with evacuation and sheltering as protective actions. It is estimated that 30 States will need to make this consideration. Further, the staff estimates that the labor needed by the States could range from a staff-week, to a half staff-year. The latter being the case if a State decided to hold hearings on the issue.

If one assumes an average hourly salary of $70 (this estimate includes benefits, pro-rated secretarial and managerial assistance, but not overhead), the range of estimates would be from $2800 to $63,000. Again using a base of 30 States, the range is from $84,000 to $1.9 million.

The Commission notes that when it amended its emergency planning regulations on November 3, 1980, the regulatory standards for emergency planning were a restatement of basic joint NRC–FEMA guidance to licensees and to State and local governments incorporated in NUREG–0654; FEMA–REP–1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment." This guidance was cited in the regulation and speaks to radioprotective drugs including their use by the general public including quantities, storage and means of distribution and State and local plans for decision making with respect to their use. The Commission removed the citations of the guidance from the regulation in 1987 but the guidance has continued in use for planning purposes and by the Federal agencies for evaluating emergency plans. As a result, it is believed that all of the affected States have at some point considered the use of KI. Some States have made the decision to stockpile KI. Thus, in practical terms, the projected costs will occur only in those States that have not elected to stockpile KI and choose stockpiling in light of the Chernobyl accident, recent international practice, and the NRC requirement to consider the use of KI.

It is difficult to estimate the benefit of a State's consideration to stockpile KI. However, we believe the benefit of such an action by the States is summed up by the petitioner who stated that the decision to stockpile KI should turn on whether, given the enormous consequences of being without KI in a major accident, the drug is a prudent measure; not on whether it will necessarily pay for itself over time. As the petitioner further noted, KI represents a kind of catastrophic-coverage insurance policy offering protection for events which, while they occur only rarely, can have such enormous consequences that it is sensible to take special precautions, especially where, as here, the cost of such additional precautions is relatively low.

As stated above, this analysis focuses on the rule being proposed as the result of a petition. Also, since the Commission has directed the staff to pursue the FRPCC results with respect to KI and has directed the staff to pursue the rulemaking, the regulatory analysis presented here is for the edification of the decision makers so they can make an informed decision on the proposed rule.

The above constitutes the regulatory analysis for this action.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only

the licensees of nuclear power plants. These licensees, do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act. 5 U.S.C. 601, or the size standards adopted by the NRC (10 CFR 2.810).

Backfit Analysis

The definition of backfit, as set forth in 10 CFR 50.109(a)(1), is clearly directed at obligations imposed upon licensees (and applicants) and their facilities and procedures. Section 50.109(a)(1) defines a backfit as:

> * * * the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility, any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position * * *.

Section 50.109 is replete with references to "facilities" and "licensees," which in their totality make clear that the rule is intended to apply to actions taken with respect to nuclear power plant licensees and the facilities they operate. *See* Section 50.109(a)(7), "If there are two or more ways to achieve compliance with a license or the rules or orders of the Commission, or with written *licensee* commitments * * * then ordinarily the applicant or *licensee* is free to choose the way that best suits its purposes [emphasis added]." This focus on licensees and their facilities is further confirmed by the Statement of Considerations accompanying the backfit rule, 53 FR 20603 (June 6, 1988), where the Commission stated that backfitting "means measures which are intended to improve the safety of nuclear power reactors * * *." 53 FR at 20604. The nine factors to be considered under 10 CFR 50.109(c) further make clear that the rule is aimed at requirements on licensees and facilities. These include: "(2) General description of the activity that would be required by the *licensee* or *applicant* in order to complete the backfit; * * * (5) Installation and continuing costs associated with the backfit, including the cost of *facility* downtime or the cost of construction delay; [and] (6) The potential safety impact of changes in plant or operational complexity. * * * [emphasis added]"

The proposed rule imposes no new requirements on licensees, nor does it alter procedures at nuclear facilities. Rather, it is directed to States or local governments—the entities with the authority to determine the appropriateness of the use of KI for their citizens—calling upon the governments to "consider" KI as one of the elements of their offsite emergency planning. Even as to states or local governments, it imposes no binding requirement to alter plans and procedures. Furthermore, the basic standard that emergency planning must include consideration of a range of protective actions, is already set forth in the existing wording of section 50.47(b)(10). On this basis, the proposed rule in reality does not impose new requirements on anyone. On a consideration of all of the above factors, no backfit is involved and no backfit analysis is required.

Commission precedent also makes clear that the proposed rule change does not constitute a backfit. The Commission's position was stated explicitly in 1987, when the last major change took place in emergency planning regulations. 52 FR 42078 (Nov. 3, 1987). The Commission's final notice of rulemaking on this rule involving the "Evaluation of the Adequacy of Off-Site Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and Local Governments Decline to Participate in Off-Site Emergency Planning" stated that the emergency planning rule change in question "does not impose any new requirements on production or utilization facilities; it only provides an alternative method to meet the Commission's emergency planning regulations. The amendment therefore is not a backfit under 10 CFR 50.109 and a backfit analysis is not required." 52 FR at 42084. Likewise, when the Commission altered its emergency planning requirements in 1987 to change the timing requirements for full participation emergency exercises (a change that, as a practical matter, could be expected to result in licensees' modifying emergency preparedness-related procedures to accommodate exercise frequency changes), it stated: "The final rule does not modify or add to systems, structures, components or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109 is required for this final rule." 52 FR 16828 (May 6, 1987). The proposed emergency planning rule change is of a similar nature and similarly does not involve a backfit.

It has been argued by at least one commenter on the petition for rulemaking that, although licensees are not directly burdened by the proposed rule, they would be indirectly burdened because they would feel called upon to explain the new policy to their customers. By this logic, almost any Commission action that led an NRC licensee to issue a press release could be considered a backfit. Such a position would represent unsound law and policy. Here, the burden of public information on licensees or applicants, if any, appears *de minimis*. It plainly does not rise to the level of the type of concrete burden contemplated by the Commission when it enacted the backfit rule. It might also be argued that, if a State or local government were to decide to stockpile and use KI for the general public, it would undertake interactions with the affected licensee to coordinate offsite emergency planning. Although this could result in some voluntary action by the licensee to coordinate its planning, the proposed rule itself does not impose any requirement or burden on the licensee. Accordingly, the Commission concludes that the proposed rule, if adopted, would not impose any backfits as defined in 10 CFR 50.109.

List of Subjects in 10 CFR Part 50

Antitrust, Classified Information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act for 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stats. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 State. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102,

Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Section 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80, 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.47, paragraph (b)(10) is revised to read as follows:

§ 50.47 Emergency plans.

* * * * * *

(b) * * *

(10) A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. In developing this range of actions, consideration has been given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of potassium iodide (KI), as appropriate. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

* * * * * *

Dated at Rockville, Maryland, this 3rd day of June, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–14584 Filed 6–11–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 5, and 7

[Docket No. 99–08]

RIN 1557–AB61

Investment Securities; Rules, Policies, and Procedures for Corporate Activities; and Interpretive Rulings

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to update and clarify its rules regarding Investment Securities, Corporate Activities, and Interpretive Rulings. Most of the proposed changes amend the OCC's regulation codifying interpretive rulings. These proposed amendments clarify certain existing interpretive rulings and add new interpretive rulings based on recent statutory changes, judicial rulings, OCC decisions, and other developments. The remaining proposed changes would clarify in the OCC's regulation on investment securities its long-standing treatment of instruments secured by Type I securities, and make technical amendments to the OCC's regulation on corporate activities to update the names of offices within the OCC, to clarify certain definitions, and to amend references to the CAMEL rating system to reflect the addition of the sixth element for sensitivity to market risk. This proposal reflects the OCC's continuing commitment to assess the effectiveness of our rules and to make further changes where necessary.

DATES: You should submit written comments by August 13, 1999.

ADDRESSES: You should direct written comments to the Communications Division, Attention: Docket No. 99–08, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information on this proposal by calling Jacqueline Lussier, Senior Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090. You can inspect and photocopy the comments at the OCC's Public Disclosure Room, First Floor, 250 E Street, SW, Washington, DC 20019, between 9:00 am and 5:00 pm on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

SUPPLEMENTARY INFORMATION:

Section-by-Section Analysis of Proposed Changes

As previously noted, most of the changes proposed amend part 7. The OCC proposes to amend part 7 to clarify and supplement its provisions where necessary. In addition, the OCC proposes to add new interpretive rulings, based on recent statutory changes, judicial rulings, OCC decisions, and other developments. These changes are described below, followed by a discussion of the proposed changes to parts 1 and 5.

Part 7—Interpretive Rulings

Messenger Service (§ 7.1012)

Under 12 U.S.C. 36(j), a "branch" of a bank is defined to include any branch bank where deposits are received, or checks paid, or money lent. Current § 7.1012(c) sets forth circumstances under which a national bank and its customers may use a messenger service for various purposes without the messenger service being deemed a "branch" under section 36. These criteria are derived from caselaw. However, the criteria do not reflect two recent federal court decisions.[1] This proposal amends § 7.1012(c) to reflect these recent cases.

Under the current rule, in order to avoid being treated as a bank branch, a messenger service, including both a messenger service affiliated with a bank and a service that is independent of a bank, generally must *both* make its services available to the public, including other depository institutions, *and* retain the ultimate discretion to determine which customers and geographic areas it will serve. 12 CFR 7.1012(c)(2)(ii)(A) and (B). The recent cases indicate that this test should apply differently depending on whether the service is affiliated with a bank. Pursuant to these cases, a nonaffiliated service need show only that it has the discretion to determine, in its own business judgment, which customers it will serve and where. In contrast, an affiliated service, because it may be more likely to favor its affiliates as a result of its common ownership or control, must show that it actually serves the public generally, including nonaffiliated depository institutions.

The OCC concludes that this analysis is appropriate when determining if a messenger service is a bank branch. Accordingly, the proposal combines the criteria in § 7.1012(c)(2)(ii)(A) and (c)(2)(ii)(B) into one new paragraph and applies the resulting criteria differently depending on whether or not the messenger service is affiliated with the bank. This means that a nonaffiliated messenger service need only demonstrate that it has the discretion to determine, in its own business judgment, whom it will serve and where. In contrast, since the operations of a messenger service that is affiliated

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[1] *See Cades* v. *H & R Block*, 43 F.3d 869 (4th Cir. 1994), *cert. denied*, 515 U.S. 1103 (1995); *Christiansen* v. *Beneficial Nat'l Bank*, 972 F. Supp. 681 (S.D. Ga. 1997). These cases addressed the issue of whether a third party should be considered to be a branch of a national bank where a tax preparation company originated tax refund anticipation loans between a national bank and taxpayers and conveyed the loan proceeds to the customers.

with a bank could be influenced by that bank, an affiliated messenger service must continue to demonstrate both that it actually provide services to the general public, including nonaffiliated depository institutions, and that it has the discretion to determine whom it will serve and where.

The proposal also makes a stylistic amendment to § 7.1012(c)(2)(i) to state the rule more economically.

Independent Undertakings To Pay Against Documents (§ 7.1016)

Section 7.1016 codifies interpretations concerning the issuance by national banks of letters of credit and other independent undertakings. The proposal makes five technical amendments to update this section.

The first amendment changes footnote 1 by clarifying that the United Nations Convention on Independent Guarantees and Standby Letters of Credit was adopted by the U.N. General Assembly in 1995 and signed by the United States in 1997. The second amends footnote 1 by adding the recently finalized International Standby Practices (ISP–98) to the footnote as another important source of applicable laws or rules of practice recognized by law related to independent undertakings. The third amendment replaces the terms "account party" and "customer" in the text (which refer to the party for whose account an independent undertaking is issued) with the term "applicant" (which is the term used in the laws and rules of practice cited in the footnote) in § 7.1016(a), (b)(1)(iii)(C), and (b)(1)(iv). The fourth clarifies, in § 7.1016(b)(2)(ii), that the precautions taken when an independent undertaking is renewed apply only to automatic renewals. Renewals that are within a bank's discretion necessarily allow the bank to make a credit assessment before renewing. Finally, the fifth amendment updates one of the telephone numbers in the footnote.

National Bank as Guarantor or Surety on Indemnity Bond (§ 7.1017)

In recent rulemakings[2] that amended part 7 and part 28 (the OCC's rule on international banking activities), the provision on a national bank's guarantees of its foreign operations was relocated from former § 7.7012 to § 28.4(c) in order to consolidate the regulations governing international banking activities in one part of the OCC's regulations. No substantive change was made to the section relocated. However, because part 7 still has a section on national banks acting as guarantors (current § 7.1017) and because this section no longer addresses guarantees abroad, several people have asked whether a national bank still may guarantee the liabilities of its foreign operations. The answer is yes, and, to alleviate this apparent confusion, the proposal adds a cross-reference in § 7.1017 to § 28.4(c).

Ownership of Stock Necessary To Qualify as Director (§ 7.2005)

A national bank director must own a qualifying equity interest (qualifying shares) in a national bank or the company that controls that national bank. 12 U.S.C. 72; 12 CFR 7.2005. Current § 7.2005 codifies the OCC's guidance about the various ways in which a director may comply with the requirement.

The proposed revisions to § 7.2005(b)(4) codify guidance provided in OCC interpretive letters[3] approving buyback or repurchase agreements between shareholders and prospective directors. Generally, under a buyback agreement, the transferring shareholder sells shares of the bank or its holding company to a director subject to an agreement that the director will sell the shares back to the transferring shareholder when the director's service ends. This enables the director to own qualifying shares while permitting the transferring shareholder to prevent the transfer of the shares to unknown parties.

Consistent with these interpretive letters, proposed new paragraphs (b)(4)(ii), (iii), and (iv) of § 7.2005 state that a buyback agreement may give a director the option of transferring shares back to the transferring shareholder if the director no longer needs those shares to satisfy the ownership requirement. The transferring shareholder may retain a right of first refusal to reacquire the shares if the director seeks to transfer ownership to a third person. Further, a director may assign the right to receive dividends or distributions on the shares back to the original shareholder and execute an irrevocable proxy authorizing the original shareholder to vote the shares. This change will make it easier for banks, including community banks in particular, to attract qualified people to serve on bank boards.

Oath of Directors (§ 7.2008)

Current § 7.2008 provides guidance on the methods by which the oath of directors may be administered. However, this section does not provide instructions for the filing or retention of executed oaths, prompting questions about what a national bank should do with the executed oaths once they are obtained.

To respond to these requests for guidance, the proposal amends paragraph (c) of § 7.2008 so that it informs national banks to file the original executed oaths with the OCC and retain a copy in the bank's records in accordance with the instructions set forth in the Comptroller's Corporate Manual. This guidance is consistent with 12 U.S.C. 73, which states that each director's executed and subscribed oath must be transmitted to the Comptroller of the Currency and filed and preserved in the Comptroller's office for a period of 10 years.

The proposal also amends the last sentence in § 7.2008(b) to reflect the name for the manual currently in use, namely, the "Comptroller's Corporate Manual."

Acquisition and Holding of Shares as Treasury Stock (§ 7.2020)

Current § 7.2020 provides that a national bank has authority under 12 U.S.C. 24(Seventh) to acquire its outstanding shares and hold them as treasury stock to fulfill a legitimate corporate purpose, as long as the bank complies with the restrictions and procedures specified in 12 U.S.C. 59. The only guidance contained in current § 7.2020 on what qualifies as a legitimate corporate purpose is the statement that it is impermissible to acquire or hold treasury stock for speculation.

Several OCC interpretive letters[4] explain the term further, providing that "legitimate corporate purpose" includes: (a) holding shares in connection with an officer or employee stock option, bonus or repurchase plan; (b) holding shares for sale to a potential director to meet "qualifying share" requirements; (c) purchasing a director's qualifying shares upon his or her resignation or death if there is no ready

[2] 61 FR 4862 (Feb. 9, 1996) (amending part 7); 61 FR 19524 (May 2, 1996) (amending 12 CFR part 28).

[3] *See, e.g.*, Letter from Julie L. Williams, Chief Counsel (Mar. 31, 1997) (unpublished); Letter from Jonathan Rushdoony, Attorney (Mar. 27, 1986) (unpublished); Letter from Leslie G. Linville, Senior Attorney (Jan. 9, 1986) (unpublished). You can inspect and photocopy the unpublished OCC staff interpretive letters cited in this preamble (in redacted form) at the OCC's Public Disclosure Room, First Floor, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the letters by calling (202) 874–5043.

[4] *See, e.g.*, Interpretive Letter No. 825 (Mar. 16, 1998), *reprinted in* [1997–98 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–274; Interpretive Letter No. 786 (June 9, 1997), *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–213 (IL 786); Interpretive Letter No. 660 (Dec. 19, 1994), *reprinted in* [1994–95 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,608 (IL 660).

market for the shares; (d) reducing the number of shareholders in order to qualify the bank for reorganization as a Subchapter S corporation; and (e) reducing the number of shareholders to lower the bank's costs associated with shareholder communications and meetings.

The proposal revises § 7.2020 to include these examples of legitimate corporate purposes. The examples listed are not exclusive. There may be additional circumstances under which a national bank's acquisition and holding of its shares as treasury stock will serve a legitimate corporate purpose. While the OCC expects that this guidance on what is a legitimate corporate purpose will benefit all national banks, certain of the examples listed as legitimate purposes (namely, the purchasing of shares upon a director's resignation or death if there is no ready market for the shares and qualifying the bank for treatment under the tax laws as a Subchapter S corporation) are expected to provide a particular benefit to community banks.

Reverse Stock Splits (Proposed New § 7.2023)

In IL 786, the OCC considered the appropriateness of a reverse stock split, a restructuring of ownership interests in which a national bank reduces the number of its outstanding shares of stock by, for instance, replacing outstanding shares with fewer shares of a new issuance and paying cash to the minority shareholders for their interests. That opinion determined that the national banking laws permit a reverse stock split, as long as the bank provides adequate protection for dissenting shareholders' rights and the transaction serves a legitimate corporate purpose.

Because the reverse stock split is a device that post-dates most corporate governance provisions in the national banking laws, those laws do not explicitly address the authority of a national bank to effect a reverse stock split. Several provisions of the banking laws—including 12 U.S.C. 59, 83, 214a, 215, and 215a—authorize components of a reverse stock split that, when read together, permit the transaction. One provision (12 U.S.C. 59) permits a national bank to reduce its capital upon the vote of shareholders holding two-thirds of its capital stock and OCC approval. Other provisions (12 U.S.C. 214a, 215, and 215a) authorize a national bank to engage in corporate combinations, including mergers and consolidations, although the bank must provide rights to shareholders dissenting to these transactions. Another provision (12 U.S.C. 83) allows national banks to hold treasury stock for legitimate corporate purposes after obtaining OCC approval pursuant to section 59.[5] The OCC also recognizes that a bank may acquire its outstanding shares and hold them as treasury stock in connection with a reverse stock split.

In light of this statutory authority, IL 786 concluded that a reverse stock split is permissible if the action serves a legitimate corporate purpose (in the case discussed in IL 786, a desire to reduce the number of shareholders to qualify for Subchapter S status) and dissenters' rights are adequately protected.[6] The proposal codifies this conclusion in new § 7.2023. This conclusion is expected to benefit all national banks by clarifying the extent of their flexibility in restructuring their ownership interests, but it is expected to provide particular benefit to community banks that desire, for instance, to restructure in order to qualify as a Subchapter S corporation.

Visitorial Powers (§ 7.4000)

The proposal revises § 7.4000, "Books and records of national banks," to clarify the extent of the OCC's visitorial powers under 12 U.S.C. 484 and other federal statutes. Section 484 provides, in relevant part, that no national bank is subject to any visitorial powers except as authorized by federal law. 12 U.S.C. 484(a).[7] Congress vested the OCC with exclusive visitorial powers to ensure the cohesive, uniform supervision of national banks.

Courts have defined "visitation" expansively to include the inspection, regulation, or control of the operations of a bank to enforce the bank's observance of the law. *See First National Bank of Youngstown* v. *Hughes*, 6 F. 737, 740 (6th Cir. 1881), *appeal dismissed*, 106 U.S. 523 (1883). *See also Peoples Bank* v. *Williams*, 449 F. Supp. 254 (W.D. Va. 1978) (visitorial powers involve the exercise of the right of inspection, superintendence, direction, or regulation over a bank's affairs).[8]

Proposed § 7.4000 codifies the definition of visitorial powers and illustrates what visitorial powers include by providing a non-exclusive list of these powers. They include: (a) examination of a bank; (b) inspection of a bank's books and records; (c) regulation and supervision of activities authorized or permitted under federal banking law; and (d) enforcing compliance with any applicable federal or state laws concerning those activities. The proposal also retitles § 7.4000 as "Visitorial powers" to reflect the rule's intended focus.

The proposal also reorganizes § 7.4000 by grouping together, in proposed paragraph (b), the exceptions noted in several different places in the current rule that are explicitly provided by federal law to the OCC's exclusive visitorial powers. These exceptions do not preclude the OCC from exercising its concurrent authority to inspect a national bank's books and records in the instances listed. This reorganization of the exceptions in the current rule is done solely for ease of reference. None of the exceptions listed is new, and the list is not exclusive.[9]

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[5] *See* IL 660.

[6] This conclusion is consistent with the most recent applicable court decision, *NoDak Bancorp.* v. *Clarke*, 998 F.2d 1416 (8th Cir. 1993), in which the court upheld the OCC's approval of a cash-out merger in which the OCC found that there was a valid corporate purpose for the transaction and that minority shareholders were entitled to dissenters' rights. In an earlier decision, the Eleventh Circuit found in *Lewis* v. *Clark*, 911 F.2d 1558 (11th Cir. 1990), reh'g denied, 972 F.2d 1351 (1991), that the OCC lacked the authority to approve a bank merger that required minority shareholders to accept cash for their shares while the majority shareholders were eligible to receive stock in the resulting bank, even where the minority shareholders had appraisal rights. The *NoDak* court distinguished *Lewis* v. *Clark*, finding that a national bank could cash out minority shareholders under the National Bank Act, as long as there is a valid business purpose and the minority shareholders are entitled to dissenters' rights.

In *Bloomington Nat'l Bank* v. *Telfer*, 916 F.2d 1305 (7th Cir. 1990), the court reversed the OCC's approval of a reverse stock split. The court held that the reverse stock split plan violated 12 U.S.C. 83 and 214a-215a, after concluding that the transaction had no legitimate business purpose and failed to provide for dissenters' right. The court expresaly declined to answer whether section 83 prohibits all reverse stock split transactions, noting that its opinion was limited to the facts of the case. Id. at 1308 n.4, 1309. To clarify how the OCC applies the governing law in light of these decisions, the proposal reflects the OCC's position that the better reasoned view in the federal courts is that reverse stock splits will be approved if there is a legitimate corporate purpose and if shareholders are provided adequate dissenters' rights.

[7] The term "visitorial," as used in section 484, derives from English common law, which used the term "visitation" to refer to the act of a superintending officer who visits a corporation to examine its manner of conducting business and enforce observance of the laws and regulations. *Guthrie* v. *Harkness*, 199 U.S. 148, 158 (1905) (*quoting First National Bank of Youngstown* v. *Hughes*, 6 F. 737 (6th Cir. 1881)). The *Guthrie* court noted that visitors "have power to keep [corporations] within the legitimate sphere of their operations, and to correct all abuses of authority, and to nullify all irregular proceedings." *Id.* For purposes of section 484, the term has been construed broadly, as discussed in the text following this footnote.

[8] Recently, a federal district court upheld the OCC's right to exercise exclusive regulatory authority to enforce applicable state law against national banks when it enjoined a state banking authority's administrative enforcement proceeding against two national banks. Ruling on Motion for Preliminary Injunction, *First Union Nat'l Bank* v. *Burke*, No. 3:98cv2171 (D. Ct. Apr. 7, 1999) (appeal pending).

[9] The exceptions listed in the rule are those where federal statutory law explicitly provides for another

Continued

Establishment and Operation of Remote Service Units (Proposed New § 7.4003)

The authority of national banks to establish "branches" in a state is linked to the extent that state law authorizes state banks to establish branches. *See* 12 U.S.C. 36(c)–(g). Branches are the only national bank facilities that are subject to state geographic restrictions or related approval requirements under 12 U.S.C. 36. The national bank branching statute, at 12 U.S.C. 36(j), defines a "branch" to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any state at which deposits are received, checks paid, or money lent. Section 36(j) explicitly excludes, however, an automated teller machine (ATM) or remote service unit (RSU) [10] from the definition of "branch." [11] In light of the exclusion of ATMs and RSUs from 12 U.S.C. 36(j), the OCC has concluded in recent interpretive letters [12] that ATMs and RSUs established and operated by national banks are not subject to any state-imposed geographic or operational restrictions or licensing laws.

Proposed new § 7.4003 codifies the principle, reflected in those interpretive letters and other OCC interpretations [13] that automated loan machines (ALMs) and automated devices for receiving deposits are appropriately considered to be RSUs and, accordingly, are not subject to any state-imposed geographic or operational restrictions or licensing laws. As previously noted, RSUs are automated facilities, operated by customers of a bank, that receive deposits, pay withdrawals, or lend money. Similarly, ALMs and automated deposit-receiving devices are automated facilities, operated by bank customers, that permit a customer, in the case of an ALM, to apply for a loan and receive the loan proceeds or have them deposited into the customer's existing account or, in the case of the deposit-receiving device, make deposits. ALMs and automated deposit-receiving devices qualify under this standard as RSUs and, therefore, are regulated in the same way as other RSUs.

Deposit Production Offices (Proposed New § 7.4004)

A national bank facility that does not receive deposits, pay checks, or lend money is not a branch for purposes of 12 U.S.C. 36(j). The OCC has determined that a national bank deposit production office (DPO), which merely assists bank customers in making deposits, is not a branch because it does not engage in any of the core banking functions that would cause it to be a branch under 12 U.S.C. 36.[14]

Proposed new § 7.4004 codifies this interpretation. Paragraph (a) states that a DPO must not receive deposits in order for it to be excluded from 12 U.S.C. 36(j)'s definition of "branch," and that all deposit and withdrawal transactions by customers using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer. Paragraph (b) states that a national bank may use the services of, and compensate, persons not employed by the bank for its deposit production activities. This flexibility to operate a DPO with people other than bank employees is consistent with the approach taken with respect to national bank loan production offices (LPOs). *See* 12 CFR 7.1004.

Combination of LPO, DPO, and RSU (Proposed New § 7.4005)

When a facility combines the non-branch functions of an LPO, DPO, and RSU, the OCC has concluded that the facility is not a branch by virtue of that combination.[15] Since an LPO, DPO, or RSU is not, individually, a branch under 12 U.S.C. 36(j), it follows that any combination of these facilities at one location also would not be a branch. The proposal adds this interpretation in new § 7.4005.

Part 1—Investment Securities

The OCC proposes to amend 12 CFR 1.3(e)(1) to clarify a provision that has led to some confusion. Current § 1.3(e)(1) sets forth the regulatory treatment of Type IV securities that are fully secured by Type I securities. The OCC proposes to eliminate the statement in § 1.3(e)(1) that a national bank may deal in Type IV securities that are fully secured by Type I securities. This language has led to confusion about the treatment of Type V securities and about the relationship of the current provision with § 1.3(g) regarding securitization. Consistent with previous judicial rulings and OCC decisions,[16] the OCC will continue to apply its long-standing regulatory treatment of asset-backed instruments that are fully secured by Type I securities and treat those instruments as Type I securities.

Part 5—Rules, Policies, and Procedures for Corporate Activities

In 1996, the interagency Uniform Financial Institutions Rating System—

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agency to inspect a national bank's books and records. In addition, the OCC does not object to state insurance regulators inspecting the records of national banks related to their insurance activities that are regulated under applicable state law.

[10] An RSU is an automated facility, operated by a customer of a bank, that engages in one or more of the core banking functions of receiving deposits, paying withdrawals, or lending money. An RSU includes ATMs, automated loan machines, and automated devices for receiving deposits, and may be equipped with a telephone or televideo device that allows contact with bank personnel.

[11] This exclusion was added to section 36(j) by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), Pub. L. 104–208, sec. 2205, enacted Sept. 30, 1996 (110 Stat. 3009).

[12] *See, e.g.*, Interpretive Letter No. 789 (June 27, 1997), *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–216 (IL 789); Interpretive Letter No. 772 (Mar. 6, 1997), *reprinted in* [1996–97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–136 (IL 772).

[13] Interpretive Letter No. 838 (April 15, 1998), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–293; Interpretive Letter No. 821 (Feb. 17, 1998), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–271; IL 789; IL 772. Despite the plain language of section 36(j), one federal district court case, *Bank One, Utah* v. *Guttau*, Civil No. 4–98–CV–10247 (D. Iowa July 24, 1998), has held that Iowa ATM law is not preempted by the National Bank Act. This holding is on appeal to the Eighth Circuit.

[14] Interpretive Letter No. 691 (Sept. 25, 1995), *reprinted in* [1995–96 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–006 (deposit production offices are not branches as long as deposits are not accepted at the DPO but rather are mailed by the customer to the bank after filling out preliminary forms at the DPO); Interpretive Letter No. 638 (Jan. 6, 1994), *reprinted in* [1993–94 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,525 (a non-branch facility may perform deposit origination functions such as providing information on deposit products or handling application forms, as long as the activity stops short of actually receiving deposits).

[15] Interpretive Letter No. 843 (Sept. 29, 1998), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–298 (IL 843). The proposal also reflects the position the OCC has taken as *amicus curiae* in litigation pending in the Federal District Court of Colorado in a case with substantially similar facts as those in IL 843. *See* OCC's Brief *Amicus Curiae* filed in *First Nat'l Bank of McCook* v. *Fulkerson*, Civil Action No. 98– D–1024 (filed Jan. 4, 1999).

[16] *See Security Pacific* v. *Clarke*, 885 F.2d 1034 (2d Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990) (national bank authority to securitize assets); Interpretive Letter No. 514 (May 5, 1990), *reprinted in* [1990–91 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (bonds collateralized by Gov't Nat'l Mortgage Ass'n (GNMA), Fed. Nat'l Mortgage Ass'n (FNMA) and Fed. Home Loan Mortgage Ass'n (FHLMC) pass-through certificates); Interpretive Letter No. 362 (May 22, 1986), *reprinted in* [1985–87 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (issuing, underwriting and dealing in evidences of indebtedness collateralized by GNMA, FNMA or FHLMC certificates); Interpretive Letter No. 378 (April 24, 1987), *reprinted in* [1988–89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,602 (issuance and sale of collateralized mortgage obligations—bonds representing interests in pools of mortgages or mortgage-related obligations); Interpretive Letter No. 257 (April 12, 1983), *reprinted* in [1983–84 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,421 (underwriting and dealing in mortgage-backed pass-through certificates evidencing undivided interests in Fed. Housing Admin. insured mortgage pools purchased by the bank from GNMA); Investment Securities Letter No. 29 (Aug. 3, 1988), *reprinted in* [1988–89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,899 (investment limits for asset-backed securities consisting of General Motors Acceptance Corp. receivables).

then commonly referred to as the CAMEL rating system [17]—was updated to add a sixth component, addressing sensitivity to market risk. [18] To reflect the addition of that sixth component, the acronym CAMEL was changed to CAMELS. In a recent rulemaking [19] that amended 12 CFR part 3 (the OCC's rule on minimum capital ratios), the OCC made the conforming amendment by changing "CAMEL" to "CAMELS" in § 3.6(c). However, the other OCC regulation in which the term CAMEL is used, part 5, was not updated concurrently.

This proposal changes the references to CAMEL in several sections of part 5 to CAMELS, reflecting, as discussed in the preceding paragraph, the recent addition of "sensitivity to market risk" to the Uniform Financial Institutions Rating System. The proposal also contains technical amendments to several sections in part 5 to conform them to provisions in the Comptroller's Corporate Manual that have been revised since part 5 last was amended. Finally, the proposal makes a technical amendment to § 5.35(g)(3) to correct an error in a reference to another paragraph of § 5.35.

Request for Comments

The OCC invites comment on any of the proposed changes.

The OCC also seeks comments on the impact of each proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of each proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. As is discussed more fully in the preamble to this proposal, the proposal clarifies and updates 12 CFR parts 1, 5, and 7. The proposal imposes no new requirements on national banks. Accordingly, a regulatory flexibility analysis for the proposal is not required.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule.

The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. The proposal is clarifying in nature and imposes no new requirements on national banks.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INVESTMENT SECURITIES

1. The authority citation for part 1 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

2. In § 1.3, paragraph (e)(1) is revised to read as follows:

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

* * * * *

(e) *Type IV securities*—(1) *General.* A national bank may purchase and sell Type IV securities for its own account. Except as described in paragraph (e)(2) of this section, the amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus.

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

3. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

4. In § 5.3, paragraph (c) is revised and paragraph (g)(2) is amended by revising the term "(CAMEL)" to read "(CAMELS)", to read as follows:

§ 5.3 Definitions.

* * * * *

(c) *Appropriate district office* means:

(1) Bank Organization and Structure for all national bank subsidiaries of certain holding companies assigned to the Washington, D.C., licensing unit;

(2) The appropriate OCC district office for all national bank subsidiaries of certain holding companies assigned to a district office licensing unit;

(3) The OCC's district office where the national bank's supervisory office is located for all other banks; or

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[17] The rating system was referred to as the CAMEL rating system because it assessed five components of a bank's performance: capital adequacy, asset quality, management administration, earnings, and liquidity.

[18] 61 FR 67021 (Dec. 19, 1996).

[19] 64 FR 10194 (Mar. 2, 1999).

(4) The OCC's International Banking and Finance Department for federal branches and agencies of foreign banks.

* * * * *

§ 5.11 [Amended]

5. In § 5.11, paragraph (i)(1) is amended by revising the phrase "a representative of the OCC" to read "presiding officer".

6. In § 5.33, paragraph (d)(2)(i) is revised to read as follows:

§ 5.33 Business combinations.

* * * * *

(d) * * *

(2) * * *

(i) A business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company or that will be controlled by the same holding company prior to the combination; or

* * * * *

§ 5.35 [Amended]

7. In § 5.35, paragraph (g)(3) is amended by revising the term "paragraph (h)" to read "paragraph (i)".

§ 5.37 [Amended]

8. In § 5.37, paragraphs (d)(1)(i) and (d)(3) are amended by revising the term "district" to read "supervisory", and paragraph (d)(3) is amended further by revising the term "(CAMEL)" to read "(CAMELS)".

§ 5.51 [Amended]

9. In § 5.51, paragraph (c)(6)(i) is amended by revising the term "(CAMEL)" to read "(CAMELS)".

§ 5.64 [Amended]

10. In § 5.64, paragraph (b) is amended by revising the term "district" to read "supervisory".

PART 7—INTERPRETIVE RULINGS

11. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

12. In § 7.1012, paragraphs (c)(2)(i) and (c)(2)(ii) are revised and paragraphs (c)(2)(iii), (c)(2)(iv), (c)(2)(v), and (c)(2)(vi) are added to read as follows:

§ 7.1012 Messenger service.

* * * * *

(c) * * *

(2) * * *

(i) A party other than the national bank owns or rents the messenger service and its facilities and employs the persons who provide the service;

(ii)(A) The messenger service retains the discretion to determine in its own business judgment which customers and geographic areas it will serve; or

(B) If the messenger service and the bank are under common ownership or control, the messenger service actually provides its services to the general public, including other depository institutions, and retains the discretion to determine in its own business judgment which customers and geographic areas it will serve;

(iii) The messenger service maintains ultimate responsibility for scheduling, movement, and routing;

(iv) The messenger service does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one or more third party messenger services to transact business with the bank;

(v) The messenger service assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; and

(vi) The messenger service acts as the agent for the customer when the items are in transit. The bank deems items intended for deposit to be deposited when credited to the customer's account at the bank's main office, one of its branches, or another permissible facility, such as a back office facility that is not a branch. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

* * * * *

13. In § 7.1016, paragraphs (a) including the footnote, (b)(1)(iii)(C), (b)(1)(iv), and (b)(2)(ii) are revised to read as follows:

§ 7.1016 Independent undertakings to pay against documents.

(a) *General authority.* A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law.[1] Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) * * *

(1) * * *

(iii) * * *

(C) Entitle the bank to cash collateral from the applicant on demand (with a right to accelerate the applicant's obligations, as appropriate); and

(iv) The bank either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if the bank's undertaking is to purchase documents of title, securities, or other valuable documents, the bank should obtain a first priority right to realize on the documents if the bank is not otherwise to be reimbursed.

(2) * * *

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should be consistent with the bank's ability to make any necessary credit assessments prior to renewal;

* * * * *

14. In § 7.1017, the introductory text is revised to read as follows:

§ 7.1017 National bank as guarantor or surety on indemnity bond.

A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor (including, pursuant to 12 CFR 28.4, guaranteeing the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries), if:

* * * * *

15. In § 7.2005, paragraph (b)(4) is revised to read as follows:

§ 7.2005 Ownership of stock necessary to qualify as director.

* * * * *

(b) * * *

(4) *Other arrangements*—(i) *Shares held through retirement plans and similar arrangements.* A director may

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[1] Samples of such laws or rules of practice include, but are not limited to: the applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/328–4880); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 500) (available from ICC Publishing, Inc., 212/206–1150); the International Standby Practices (ISP–98) (available from the Institute of International Banking Law & Practice, 301/869–9840); the United Nations Convention on Independent Guarantees and Standby Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963–5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206–1150); as any of the foregoing may be amended from time to time.

hold his or her qualifying interest through a profit-sharing plan, individual retirement account, retirement plan, or similar arrangement, if the director retains beneficial ownership and legal control over the shares.

(ii) *Shares held subject to buyback agreements.* A director may acquire and hold his or her qualifying interest pursuant to a stock repurchase or buyback agreement with a transferring shareholder under which the director purchases the qualifying shares subject to an agreement that the transferring shareholder will repurchase the shares when, for any reason, the director ceases to serve in that capacity. The agreement may give the transferring shareholder a right of first refusal to repurchase the qualifying shares if the director seeks to transfer ownership of the shares to a third person.

(iii) *Assignment of right to dividends or distributions.* A director may assign the right to receive all dividends or distributions on his or her qualifying shares to another, including a transferring shareholder, if the director retains beneficial ownership and legal control over the shares.

(iv) *Execution of proxy.* A director may execute a revocable or irrevocable proxy authorizing another, including a transferring shareholder, to vote his or her qualifying shares, provided the director retains beneficial ownership and legal control over the shares.

* * * * *

16. In § 7.2008, the last sentence of paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 7.2008 Oath of directors.

* * * * *

(b) *Execution of the oath.* * * * Appropriate sample oaths are located in the "Comptroller's Corporate Manual."

(c) *Filing and recordkeeping.* A national bank must file the original executed oaths of directors with the OCC and retain a copy in the bank's records in accordance with the Comptroller's Corporate Manual filing and recordkeeping instructions for executed oaths of directors.

17. Section 7.2020 is revised to read as follows:

§ 7.2020 Acquisition and holding of shares as treasury stock.

(a) *Acquisition of outstanding shares.* Under 12 U.S.C. 59, a national bank may acquire its outstanding shares and hold them as treasury stock, if the acquisition and retention of the shares is, and continues to be, for a legitimate corporate purpose.

(b) *Legitimate corporate purpose.* Examples of legitimate corporate purposes include the acquisition and holding of treasury stock to:

(1) Have shares available for use in connection with employee stock option, bonus, purchase, or similar plans;

(2) Sell to a director for the purpose of acquiring qualifying shares;

(3) Purchase a director's qualifying shares upon the cessation of the director's service in that capacity if there is no ready market for the shares;

(4) Reduce the number of shareholders in order to qualify as a Subchapter S corporation; or

(5) Reduce costs associated with shareholder communications and meetings.

(c) *Other purposes.* Purposes other than those enumerated in paragraph (b) of this section may satisfy the legitimate corporate purpose test.

(d) *Prohibition.* It is not a legitimate corporate purpose to acquire or hold treasury stock on speculation about changes in its value.

18. A new § 7.2023 is added to subpart B to read as follows:

§ 7.2023 Reverse stock splits.

(a) *Authority to engage in reverse stock splits.* A national bank may engage in a reverse stock split if the transaction serves a legitimate corporate purpose and provides adequate dissenting shareholders' rights.

(b) *Legitimate corporate purpose.* Examples of legitimate corporate purposes include a reverse stock split to:

(1) Reduce the number of shareholders in order to qualify as a Subchapter S corporation; or

(2) Reduce costs associated with shareholder communications and meetings.

19. In § 7.4000, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 7.4000 Visitorial powers.

(a) *General rule.* (1) Only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks, except as otherwise expressly provided by federal law. State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law. Production of records may, however, be required under normal judicial procedures.

(2) For purposes of this section, visitorial powers include:

(i) Examination of a bank;

(ii) Inspection of a bank's books and records;

(iii) Regulation and supervision of activities authorized or permitted pursuant to federal banking law; or

(iv) Enforcing compliance with any applicable federal or state laws concerning those activities.

(b) *Exceptions to the general rule.* Federal law expressly provides special authority for state or other federal officials to:

(1) Inspect the list of shareholders, provided the official is authorized to assess taxes under state authority (12 U.S.C. 62; this section also authorizes inspection of the shareholder list by shareholders and creditors of a national bank);

(2) Review, at reasonable times and upon reasonable notice to a bank, the bank's records solely to ensure compliance with applicable state unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with those laws (12 U.S.C. 484(b));

(3) Verify payroll records for unemployment compensation purposes (26 U.S.C. 3305(c));

(4) Ascertain the correctness of federal tax returns (26 U.S.C. 7602); or

(5) Enforce the Fair Labor Standards Act (29 U.S.C. 211).

* * * * *

20. A new § 7.4003 is added to read as follows:

§ 7.4003 Establishment and operation of a remote service unit by a national bank.

A remote service unit (RSU) is an automated facility, operated by a customer of a bank, that conducts banking functions, such as receiving deposits, paying withdrawals, or lending money. A national bank may establish and operate an RSU pursuant to 12 U.S.C. 24 (Seventh). An RSU includes an automated teller machine, automated loan machine, and automated device for receiving deposits. An RSU may be equipped with a telephone or televideo device that allows contact with bank personnel. An RSU is not considered a "branch" within the meaning of 12 U.S.C. 36(j), and is not subject to state geographic or operational restrictions or licensing laws.

21. A new § 7.4004 is added to read as follows:

§ 7.4004 Establishment and operation of a deposit production office by a national bank.

(a) *General rule.* A national bank or its operating subsidiary may engage in deposit production activities at a site

other than the main office or a branch of the bank. A deposit production office (DPO) may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. A DPO is not a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30(d)(1) so long as it does not receive deposits, pay withdrawals, or make loans. All deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its deposit production activities.

22. A new § 7.4005 is added to read as follows:

§ 7.4005 Combination of loan production office, deposit production office, and remote service unit.

A location at which a national bank operates a loan production office (LPO), a deposit production office (DPO), and a remote service unit (RSU) is not a "branch" within the meaning of 12 U.S.C. 36(j) by virtue of that combination. Since an LPO, DPO, or RSU is not, individually, a branch under 12 U.S.C. 36(j), any combination of these facilities at one location does not create a branch.

Dated: May 11, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–14256 Filed 6–11–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HOUSING AND URBAN DVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA02

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule; extension of public comment period for the second notice of proposed rulemaking.

SUMMARY: On April 13, 1999, the Office of Federal Housing Enterprise Oversight (OFHEO) published a notice of proposed rulemaking entitled "Risk-Based Capital" in the **Federal Register** (64 FR 18083), the second of such proposals related to the development of a regulation to establish risk-based capital standards for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. An earlier proposal, published on June 11, 1996, (61 FR 29592) set forth a methodology for identifying the benchmark credit loss experience specified by the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (1992 Act) and proposed the use of a House Price Index developed by OFHEO in the development of the stress test required by the 1992 Act. The second proposal (NPR 2) set forth the specifications for the stress test, completing OFHEO's risk-based capital proposal.

OFHEO has received several requests for an extension of the August 11, 1999, deadline for comments on NPR 2 to permit adequate time for interested parties to replicate and analyze the stress test and to understand the test as applied to a variety of possible starting points. In recognition of the complexity that necessarily attends this method of setting capital standards, the importance of a careful evaluation of the implications of this precedent-setting approach, and the value of meaningful comment in the rulemaking process, OFHEO is extending the comment period for NPR 2 from August 11, 1999, to November 10, 1999. This will insure that all interested parties have ample opportunity to participate in the rulemaking process by providing meaningful comment on the various technical and policy issues involved in the development of the risk-based capital regulation.

DATES: The comment period is extended until November 10, 1999.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Written comments may also be sent by electronic mail to RegComments@OFHEO.gov.

FOR FURTHER INFORMATION CONTACT: Patrick J. Lawler, Director of Policy Analysis and Chief Economist; David J. Pearl, Director, Research, Analysis and Capital Standards; or Gary L. Norton, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

Dated: June 9, 1999.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 99–15002 Filed 6–11–99; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–20–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed AD would require replacing all flap drive shafts with flap drive shafts of improved design, installing additional gaskets on the power drive unit, and modifying the attachment and supporting hardware. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent the flap drive shafts from corroding to the point where the flexible shafts in the flap drive system rupture, which could result in the inability to utilize the flap system with reduced airplane control.

DATES: Comments must be received on or before July 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer,

FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA of Switzerland reports several incidents of corroded inner drive cables of the flap flexible drive shafts.

Investigation of these incidents shows that moisture from the pressurized cabin can enter the flap drive shafts through the unsealed areas of the flap drive shaft attachments and the shaft casings. Over time, this moisture leads to corroded flap drive shafts.

This condition, if not corrected in a timely manner, could result in the flexible shafts in the flap drive system rupturing with possible reduced airplane control if the pilot lost the ability to utilize the flap system.

Relevant Service Information

Pilatus has issued Service Bulletin No. 27–003, dated March 8, 1999, which specifies procedures for replacing all flap drive shafts with flap drive shafts of improved design, installing additional gaskets on the power drive unit, and modifying the attachment and supporting hardware.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 99–241, dated May 8, 1999, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing all flap drive shafts with flap drive shafts of improved design, installing additional gaskets on the power drive unit, and modifying the attachment and supporting hardware.

Accomplishment of the proposed action would be required in accordance with Pilatus Service Bulletin No. 27–003, dated March 8, 1999.

Compliance Time of the Proposed AD

The unsafe condition specified by the proposed AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is being operated. For example, corrosion could develop on one of the affected airplanes at a certain time; then, if allowed to go undetected, the corrosion could develop into a more serious problem even if the airplane is in storage. Therefore, to assure that the unsafe condition specified in the proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS).

Cost Impact

The FAA estimates that 69 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 19 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided to the owners/operators of the affected aircraft free-of-charge. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $78,660, or $1,140 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft LTD.: Docket No. 99–CE–20–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial number (MSN) 101 through MSN 239, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the flap drive shafts from corroding to the point where the flexible shafts in the flap drive system rupture, which could result in the inability to utilize the flap system with reduced airplane control, accomplish the following:

(a) Within the next 4 calendar months after the effective date of this AD, accomplish the following in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 27–003, dated March 8, 1999:

(1) Replace all flap drive shafts with flap drive shafts of improved design (part numbers as specified in paragraphs (b)(1) and (b)(2) of this AD);

(2) Install additional gaskets on the power drive unit; and

(3) Modify the attachment and supporting hardware.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a flap drive shaft assembly that is not of the following part numbers (or FAA-approved equivalent part numbers):

(1) Part number 945.02.02.201: Flap Drive Shaft 953D100–5 (Inboard); and

(2) Part-number 945.02.02.202: Flap Drive Shaft 953D100–7 (Outboard).

Note 2: The FAA recommends that the owner/operator of the affected airplanes insert Pilatus Temporary Revision No.27–07, dated January 8, 1999, into the PC12 Maintenance Manual at the same time this AD is accomplished to assure that the maintenance procedures for the improved design parts are current.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No: 27–003, dated March 8, 1999, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Swiss AD HB 99–241, dated May 8, 1999.

Issued in Kansas City, Missouri, on June 4, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14937 Filed 6–11–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed AD would require modifying the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent damage to electrical components if the generator 2 is not switched off prior to engine shutdown and it overheats, which could result in loss of electrical power to certain critical airplane components.

DATES: Comments must be received on or before July 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–10–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA of Switzerland reports two instances of the generator 2 not coming on-line during a normal start-up procedure. When re-attempting to start-up the generator 2, smoke was noticed in the area of the flight compartment floor.

The generator 2 control unit is not designed to prevent electrical feedback from the generator 2 field excitation on engine shut-down. If the pilot does not switch off the generator 2 prior to engine shutdown, voltage spikes are created at relay K234. Consequent overheating and damage to electrical components of the generator control circuit could then occur.

This condition could exist on airplanes with one of the following generators installed:

—a BOSCH Generator 2, part number (P/N) 524.32.12.158. This generator is installed at the factory on Pilatus Models PC–12 and PC–12/45 airplanes beginning with manufacturer serial number 231 and could be installed on airplanes with a manufacturer serial number in the range of 101 through 230 by incorporating Pilatus Service Bulletin No. 24–010, dated September 28, 1998; or

—an ELECTRO SYSTEMS Generator 2, P/N 978.87.24.121, with Pilatus Service Bulletin No. 24–009 (installation of support bracket and cut-out relay) incorporated. This generator is installed at the factory on Pilatus Models PC–12 and PC–12/45 airplanes with a manufacturer serial number in the range of 101 through 230. AD 99–06–17, Amendment 39–11081 (64 FR 13882, March 23, 1999), requires installing the support bracket and cut-out relay specified in Pilatus Service Bulletin No. 24–009, dated September 23, 1998, on Pilatus Models PC–12 and PC–12/45 airplanes with a manufacturer serial number in the range of 101 through 180. This service bulletin is incorporated at the factory on airplanes with a manufacturer serial number in the range of 181 through 230.

This condition, if not corrected, could result in the generator 2 not going on-line with consequent loss of electrical power to certain critical airplane components.

Relevant Service Information

Pilatus has issued Service Bulletin No. 24–012, dated February 19, 1999, which specifies procedures for modifying the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 99–143, dated February 19, 1999, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter.

Accomplishment of the proposed action would be required in accordance with Pilatus Service Bulletin No. 24–012, dated February 19, 1999.

Cost Impact

The FAA estimates that 69 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost to the owners/operators of the affected aircraft. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $20,700, or $300 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 99–CE–10–AD. Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers 101 through MSN 260, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent damage to electrical components if the generator 2 is not switched off prior to engine shutdown and it overheats, which could result in loss of electrical power to certain critical airplane components, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, modify the generator 2 excitation by removing certain diodes and installing a new 5-amp circuit breaker and suppression filter. Perform these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin No. 24–012, dated February 19, 1999.

Note 2: The affected airplanes incorporate one of the following generators:

—a BOSCH Generator 2, part number (P/N) 524.32.12.158. This generator is installed at the factory on Pilatus Models PC–12 and PC–12/45 airplanes beginning with manufacturer serial number 231 and could be installed on airplanes with a manufacturer serial number in the range of 101 through 230 by incorporating Pilatus Service Bulletin No. 24–010, dated September 28, 1998; or

—an ELECTRO SYSTEMS Generator 2, P/N 978.87.24.121, with Pilatus Service Bulletin No. 24–009 (installation of support bracket and cut-out relay) incorporated. This generator is installed at the factory on Pilatus Models PC–12 and PC–12/45 airplanes with a manufacturer serial number in the range of 101 through 230. AD 99–06–17, Amendment 39–11081 (64 FR 13882, March 23, 1999), requires installing the support bracket and cut-out relay specified in Pilatus Service Bulletin No. 24–009, dated September 23, 1998, on Pilatus Models PC–12 and PC–12/45 airplanes with a manufacturer serial number in the range of 101 through 180. This service bulletin is incorporated at the factory on airplanes with a manufacturer serial number in the range of 181 through 230.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a generator 2 that does not have the modification referenced in paragraph (a) of this AD incorporated.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Pilatus Service Bulletin No. 24–012, dated February 19, 1999, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Swiss AD HB 99–143, dated February 19, 1999.

Issued in Kansas City, Missouri, on June 4, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14936 Filed 6–11–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–16–AD]

RIN 2120–AA64

Airworthiness Directives; LET Aeronautical Works Model L–13 "Blanik" Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all LET Aeronautical Works (LET) Model L–13 "Blanik" sailplanes. The proposed AD would require painting (using a contrasting color, i.e., red paint) the left hand elevator drive mechanism in order to not have the elevator drive bellcrank inadvertently installed backwards. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by the proposed AD are intended to prevent the elevator drive bellcrank from being installed backwards, which could result in an incorrect rigging of the elevator flight control with potential reduced or loss of control of the sailplane.

DATES: Comments must be received on or before July 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 611 26. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–16–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Authority of the Czech Republic (CAA CZ), which is the airworthiness authority for the Czech Republic, notified the FAA that an unsafe condition may exist on certain LET Model L–13 "Blanik" sailplanes. The CAA CZ reports a recent accident of one of the affected sailplanes where the elevator drive bellcrank was incorrectly installed.

Improper installation of the elevator drive bellcrank, if not corrected, could result in an incorrect rigging of the elevator flight control with potential reduced or loss of control of the sailplane.

Relevant Service Information

LET has issued Mandatory Bulletin No. L13/082a, dated December 10, 1998, which specifies procedures for painting (using red paint) the left hand elevator drive mechanism in order to not have the elevator drive bellcrank inadvertently installed backwards. This includes procedures for dismantling and reassembling the elevator drive bellcrank.

The CAA CZ classified this service bulletin as mandatory and issued Czech Republic AD Number : CAA–AD–4–099/98, dated December 30, 1998, in order to assure the continued airworthiness of these sailplanes in the Czech Republic.

The FAA's Determination

This sailplane model is manufactured in the Czech Republic and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA CZ has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA CZ; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other LET Model L–13 "Blanik" sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require painting (using a contrasting color, i.e., red paint) the left hand elevator drive mechanism in order to not have the elevator drive bellcrank inadvertently installed backwards. Accomplishment of the proposed action would be in accordance with LET Mandatory Bulletin No. L13/082a, dated December 10, 1998.

Compliance Time of the Proposed AD

Although flight control problems caused by improper installation of the elevator drive bellcrank are only unsafe while the affected sailplanes are in flight, the condition could occur after any time the elevator drive bellcrank is reinstalled on the sailplane. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it is for a sailplane with 500 hours TIS. For this reason, the FAA is utilizing a compliance based on calendar time instead of hours TIS in the proposed AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Cost Impact

The FAA estimates that 140 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,100, or $65 per sailplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

LET Aeronautical Works: Docket No. 99–CE–16–AD.

Applicability: Model L–13 "Blanik" sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the elevator drive bellcrank from being installed backwards, which could result in an incorrect rigging of the elevator flight control with potential reduced or loss of control of the sailplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, paint (using a contrasting color, i.e., red paint) the elevator drive mechanism to prevent the elevator drive bellcrank from being inadvertently installed backwards. Accomplish this action in accordance with the Work Procedure section, including Figure 1, of LET Mandatory Bulletin No. L13.082a, dated December 10, 1998.

(b) As of the effective date of this AD, no person may install, on any affected sailplane, an elevator drive bellcrank where the following has not been accomplished:

(1) The elevator bellcrank inspected to assure that it is not installed backwards; and

(2) The elevator drive bellcrank painted as required by paragraph (a) of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to LET Mandatory Bulletin No. L13/082a, dated December 10, 1998, should be directed to LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 611 26. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Czec Republic AD Number: CAA–AD–4–099/98, dated December 30, 1998.

Issued in Kansas City, Missouri, on June 4, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14935 Filed 6–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–47–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. For certain airplanes, this proposal would require installation of a transient suppression diode in the wiring circuit of the refueling valve-to-float switch of each fuel tank. For certain other airplanes, this proposal would require replacement of the existing transient suppression diode with an improved diode. This proposal also would require a functional test to verify proper installation of each diode, and corrective action, if necessary. This proposal is prompted by incidents of electrical fire during fueling of the airplane, due to a short circuit and overheating of a transient suppression diode. The actions specified by the proposed AD are intended to prevent such conditions, which could result in electrical arcing and ignition of fuel vapors at the refueling receptacle for the fuel tanks, and consequent fire during airplane fueling.

DATES: Comments must be received by July 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that electrical fires have been detected during fueling of two Boeing Model 737 series airplanes. The affected airplanes have transient suppression diodes installed in the wiring circuit of the refueling valve-to-float switch of the fuel tanks to prevent electrical transients from entering the fuel tanks.

Investigation revealed that a short circuit in the transient suppression diode of the number 1 fuel tank caused electrical arcing, and consequent fire. The diode is located 17 inches from the P15 pressure fueling panel. In the event

of a short circuit of a transient suppression diode and consequent electrical fire, the proximity of the diode to the pressure fueling panel could result in ignition of fuel vapors at the fueling receptacle during fueling. The fuel valve circuit, of which the diode is part, is powered only during pressure fueling on the ground; therefore, the diode is most likely to short circuit and overheat during airplane fueling.

Inspection of production diodes by the manufacturer revealed that the manufacturing process may be the cause of the failure of the diodes during normal operation of the airplane. The failures appear to be caused by stresses on the internal leads and end caps of the diode by the placement of the wire crimps next to the glass body of the diode. The manufacturer replaced the deficient diodes with improved diodes during production of Model 737 series airplanes having line numbers 3017 and subsequent.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–28–1115, dated March 4, 1999, which describes procedures for installation of a transient suppression diode in the wiring circuit of the refueling valve-to-float switch of each fuel tank on certain airplanes, and replacement of the existing transient suppression diode with an improved diode, on certain other airplanes. The service bulletin also describes procedures for a functional test to verify proper installation of each diode. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends installation of the improved diodes as soon as manpower and materials are available, the FAA has determined that a 12-month compliance time would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a 12-month compliance time for completion of the proposed replacement to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletin does not specify corrective action if any discrepancy is detected during the functional test of the transient suppression diode, this proposal would require replacement of the discrepant diode to be accomplished in accordance with the procedures specified in the service bulletin.

Cost Impact

There are approximately 2,897 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,126 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes, it would take approximately 7 work hours per airplane to accomplish the proposed replacement or installation (as applicable), and the functional test to verify proper installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $50 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $529,220, or $470 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–47–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes, line numbers 1 through 3016 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit and overheating of the transient suppression diode, which could result in electrical arcing and ignition of fuel vapors at the fueling receptacle for the fuel tanks, and consequent fire during airplane fueling, accomplish the following:

Corrective Action

(a) For Group 1 airplanes, as identified in Boeing Service Bulletin 737–28–1115, dated March 4, 1999: Within 12 months after the

effective date of this AD, install a transient suppression diode, part number (P/N) 69–58806–4, in the wire bundle (W264) of the refueling valve-to-float switch of each fuel tank, in accordance with the service bulletin.

(b) For Groups 2, 3, and 4 airplanes, as identified in Boeing Service Bulletin 737–28–1115, dated March 4, 1999: Within 12 months after the effective date of this AD, replace the existing transient suppression diode, P/N 69–58806–1 or 69–58806–3, installed in the wire bundle (W264) of the refueling valve-to-float switch of each fuel tank, with an improved diode, P/N 69–58806–4, in accordance with the service bulletin.

(c) Prior to further flight following accomplishment of the actions requied by paragraph (a) or (b) of this AD, perform a functional test to verify proper installation of each diode in accordance with Boeing Service Bulletin 737–28–1115, dated March 4, 1999. If any discrepancy is detected during any functional test, prior to further flight, replace the discrepant diode and repeat the functional test, in accordance with the service bulletin.

Spares Paragraph

(d) As of the effective date of this AD, no person shall install a transient suppression diode having P/N 69–58806–1 or 69–58806–3 on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 7, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14934 Filed 6–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–231–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires tests, inspections, and adjustments of the thrust reverser system. That AD also requires installation of a terminating modification, and repetitive follow-on actions. This action would reduce the repetitive intervals for the follow-on actions. This proposal is prompted by reports indicating that several center drive units (CDU's) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by July 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–231–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 22, 1995, the FAA issued AD 95–13–12, amendment 39–9292 (60 FR 36976, July 19, 1995), as revised by AD 95–13–12 R1, amendment 39–9528 (61 FR 9092, March 7, 1996), applicable to certain Boeing Model 767 series airplanes, to require tests, inspections, and adjustments of the thrust reverser system. That AD also requires installation of a terminating modification, and repetitive operational checks of the electro-mechanical brake and the cone brake of the center drive unit (CDU) following accomplishment of the modification. That action was prompted by the identification of a modification that ensures that the level of safety inherent in the original type

design of the thrust reverser system is further enhanced. The requirements of that AD are intended to prevent possible discrepancies in the thrust reverser control system, which could result in inadvertent deployment of a thrust reverser during flight. The revision of the AD clarifies the requirements of AD 95–13–12 by specifying a revised number of pound-inches of torque that operators should use when performing the torque check of the cone brake of the CDU.

Actions Since Issuance of Previous Rule

Since the issuance of AD 95–13–12 R1, the FAA has received reports indicating that several thrust reverser CDU's were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. This possible failure condition was not included in any previous safety assessment of the thrust reverser by the manufacturer. The returned CDU's had accumulated between 3,400 and 3,600 total flight hours. The cause of the low holding torque is a combination of cone brake wear, overrunning clutch wear, and grease contamination of the cone brake. Such a low torque condition could result in failure of the cone brake of the CDU, which could disable one of the fail safe features of the thrust reverser system that prevent deployment of a thrust reverser during flight.

As a result of this failure condition, the manufacturer has submitted a revised safety analysis of the thrust reverser system and has defined specific intervals for accomplishing functional tests of the CDU cone brake and operational checks of the electro-mechanical brake, which occur more frequently than those defined in AD 95–13–12 R1. The recommended intervals have been published in the Boeing 767 Maintenance Planning Document.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997, which describes procedures for a repetitive functional test of the CDU cone brake on each thrust reverser, and correction of any discrepancy detected. The procedures for the functional test of the cone brake are essentially the same as those described in Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994 (which was referenced as an appropriate source of service information in AD 95–13–12) for Model 767 series airplanes equipped with General Electric CF6–80C2 series engines. However, Boeing Service Bulletin 767–78A0081, Revision 1, specifies a shorter repetitive interval for the functional test (650 flight hours) than was specified in Boeing Service Bulletin 767–78–0047, Revision 3 (1,000 flight hours).

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–13–12 R1 to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This proposed AD would reduce the repetitive intervals for the functional test of the CDU cone brake and the operational check of the electro-mechanical brake. The functional test of the CDU cone brake would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and This Proposed AD

Operators should note that Boeing Service Bulletin 767–78A0081, Revision 1, specifies that the functional test of the CDU cone brake described in that service bulletin is not necessary for Model 767 series airplanes that are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 767–78–0063 (or production equivalent). Boeing Model 767 series airplanes having line numbers 475 and higher are equipped with such modified thrust reversers; therefore, the effectivity listing of Boeing Service Bulletin 767–78A0081, Revision 1, includes only Model 767 series airplanes equipped with General Electric Model CF6–80C2 engines having line numbers prior to 475.

This proposed AD, however, would require that the cone brake functional test be performed on Model 767 series airplanes equipped with General Electric Model CF6–80C2 engines regardless of whether they are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 767–78–0063. The FAA has determined that an inspection interval of 1,000 hours time-in-service (for both the CDU cone brake and the electro-mechanical brake) provides a sufficient level of safety for the modified thrust reversers, and that 650 hours time-in-service (for the CDU cone brake) provides a sufficient level of safety for the unmodified thrust reversers, given the low holding torque condition that has been identified for the CDU cone brake.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 143 Boeing Model 767 series airplanes equipped with General Electric CF6–80C2 series engines in the worldwide fleet. The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD.

The tests, inspections, and adjustments that are currently required by AD 95–13–12, and retained in this proposed AD, take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the currently required tests, inspections, and adjustments that are retained in this proposed AD is estimated to be $81,000, or $1,800 per airplane, per inspection cycle.

The terminating modification currently required by AD 95–13–12, and retained in this proposed AD, take approximately 786 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the terminating modification required by this proposed AD is estimated to be $2,122,200, or $47,160 per airplane.

The repetitive operational checks required by AD 95–13–12, and retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the repetitive operational checks required by this proposed AD is estimated to be $5,400, or $120 per airplane, per operational check cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA has been advised that the terminating modification has been accomplished in accordance with the

requirements of this AD on 45 U.S.-registered airplanes. Therefore, the future economic cost impact of this rule on U.S. operators is now only the cost associated with the repetitive operational checks required by this AD.

The number of required work hours for each requirement of AD 95–13–12 R1, as indicated above, is presented as if the accomplishment of the actions were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9528 (61 FR 9092, March 7, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–231–AD. Supersedes AD 95–13–12 R1, Amendment 39–9528.

Applicability: Model 767 series airplanes equipped with General Electric CF6–80C2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 95–13–12 R1, Amendment 39–9528:

(a) Within 30 days after August 18, 1995 (the effective date of AD 95–13–12 R1, amendment 39–9528), perform tests, inspections, and adjustments of the thrust reverser system in accordance with Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994.

(1) Except as provided by paragraph (a)(2) of this AD, repeat all tests and inspections thereafter at intervals not to exceed 3,000 flight hours until the modification required by paragraph (c) of this AD is accomplished.

(2) Repeat the check of the grounding wire for the Directional Pilot Valve (DPV) of the thrust reverser in accordance with the service bulletin at intervals not to exceed 1,500 flight hours, and whenever maintenance action is taken that would disturb the DPV grounding circuit, until the modification required by paragraph (c) of this AD is accomplished.

(b) If any of the tests and/or inspections required by paragraph (a) of this AD cannot be successfully performed, or if those tests and/or inspections result in findings that are unacceptable in accordance with Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994; accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–31–1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991; or Revision 10, dated September 1, 1992. After August 18, 1995, this action shall be accomplished only in accordance with Revision 10 of the Boeing document. No more than one reverser on any airplane may be deactivated under the provisions of this paragraph.

(2) Within 10 days after deactivation of any thrust reverser in accordance with this paragraph, the thrust reverser must be repaired in accordance with Boeing Service Bulletin 767–78–0047, Revision 3, dated July 28, 1994. Additionally, the tests and/or inspections required by paragraph (a) of this AD must be successfully accomplished; once this is accomplished, the thrust reverser must then be reactivated.

(c) Within 3 years after August 18, 1995, install a third locking system on the left-and right-hand engine thrust reversers in accordance with Boeing Service Bulletin 767–78–0063, Revision 2, dated April 28, 1994.

New Requirements of this AD

Note 2: Boeing Service Bulletin 767–78–0063, references General Electric (GE) Service Bulletin 78–135 as an additional source of service information for accomplishment of the third locking system on the thrust reversers. However, the Boeing Service Bulletin does not specify the appropriate revision level, and the GE service bulletin has a new Lockheed Martin title for the same service bulletin: Lockheed Martin Service Bulletin 78–135, Revision 4, dated September 30, 1996. The appropriate revision level for the GE Service Bulletin is Revision 3, dated August 2, 1994. The GE and Lockheed Martin service bulletins are identical, and either may be used for accomplishment of the action described previously.

Note 3: The actions specified in Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997; and Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997; may be accomplished simultaneously in conjunction with Boeing Service Bulletin 767–78–0063 for accomplishment of the installation of the thrust reverser bracket and the thrust reverser lock. (Accomplishment of these two service bulletins together achieves the same results as Lockheed Martin Service Bulletin 78–135, Revision 4, and is acceptable for compliance with Boeing Service Bulletin 767–78–0063.)

(d) Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after the effective date of this AD, whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 767–78A0081, Revision 1, dated October 9, 1997, or Appendix 1 (including Figure 1), sections 1.A.(2), 2.A., 2.C., and 2.D of this AD.

(1) For Model 767 series airplanes, line numbers up to and including 474, equipped with thrust reversers that have not been

modified in accordance with Boeing Service Bulletin 767–78–0063: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 650 hours time-in-service.

(2) For Model 767 series airplanes, line numbers 475 and subsequent; and Model 767 series airplanes equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 767–78–0063: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 1,000 hours time-in-service.

(e) Within 1,000 flight hours after accomplishing the modification required by paragraph (c) of this AD, or within 1,000 flight hours after the effective date of this AD, whichever occurs later: Perform operational checks of the electro-mechanical brake in accordance with Appendix 1 (including Figure 1), sections 1.A.(1), 2.A., 2.B., and 2.D of this AD. Repeat the operational checks thereafter at intervals not to exceed 1,000 flight hours.

Terminating Action

(f) Accomplishment of the modification and periodic operational checks required by paragraphs (c), (d), and (e) of this AD constitutes terminating action for the tests, inspections, and adjustments required by paragraph (a) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(g)(2) Alternative methods of compliance, approved previously in accordance with AD 95–13–12, amendment 39–9292, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Appendix 1—Thrust Reverser Electro-Mechanical Brake and CDU Cone Brake Test

1. General

A. This procedure contains steps to do two checks:

(1) A check of the holding torque of the electro-mechanical brake.

(2) A check of the holding torque of the CDU cone brake.

2. Electro-Mechanical Brake and CDU Cone Brake Torque Check (Fig. 1)

A. Prepare to do the checks:

(1) Open the fan cowl panels.

B. Do a check of the torque of the electro-mechanical brake:

(1) Do a check of the running torque of the thrust reverser system:

(a) Manually extend the thrust reverser six inches and measure the running torque.

(1) Make sure the torque is less than 10 pound-inches.

(2) Do a check of the electro-mechanical brake holding torque:

(a) Make sure the thrust reverser translating cowl is extended at least one inch.

(b) Make sure the CDU lock handle is released.

(c) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip.

Note: This will lock the electro-mechanical brake.

(d) With the manual drive lockout cover removed from the CDU, install a ¼-inch extension tool and dial-type torque wrench into the drive pad.

Note: You will need a 24-inch extension to provide adequate clearance for the torque wrench.

(e) Apply 90 pound-inches of torque to the system.

(1) The electro-mechanical brake system is working correctly if the torque is reached before you turn the wrench 450 degrees (1–1/4 turns).

(2) If the flexshaft turns more than 450 degrees before you reach the specified torque, you must replace the long flexshaft between the CDU and the upper angle gearbox.

(3) If you do not get 90 pound-inches of torque, you must replace the electro-mechanical brake.

(f) Release the torque by turning the wrench in the opposite direction until you read zero pound-inches.

(1) If the wrench does not return to within 30 degrees of initial starting point, you must replace the long flexshaft between the CDU and upper angle gearbox.

(3) Fully retract the thrust reverser.

C. Do a check of the CDU cone brake:

(1) Pull up on the manual release handle to unlock the electro-mechanical brake.

(2) Pull the manual brake release lever on the CDU to release the cone brake.

Note: This will release the pre-load tension that may occur during a stow cycle.

(3) Return the manual brake release lever to the locked position to engage the cone brake.

(4) Remove the two bolts that hold the lockout plate to the CDU and remove the lockout plate.

(5) Install a ¼-inch drive and a dial type torque wrench into the CDU drive pad.

CAUTION: DO NOT USE MORE THAN 100 POUND-INCHES OF TORQUE WHEN YOU DO THIS CHECK. EXCESSIVE TORQUE WILL DAMAGE THE CDU.

(6) Turn the torque wrench to try to manually extend the translating cowl until you get at lease 15-pound inches.

Note: The cone brake prevents movement in the extend direction only. If you try to measure the holding torque in the retract direction, you will get a false reading.

(a) If the torque is less than 15-pound-inches, you must replace the CDU.

D. Return the airplane to its usual condition:

(1) Fully retract the thrust reverser (unless already accomplished).

(2) Pull down on the manual release handle on the electro-mechanical brake until the handle fully engages the retaining clip (unless already accomplished).

Note: This will lock the electro-mechanical brake.

(3) Close the fan cowl panels.

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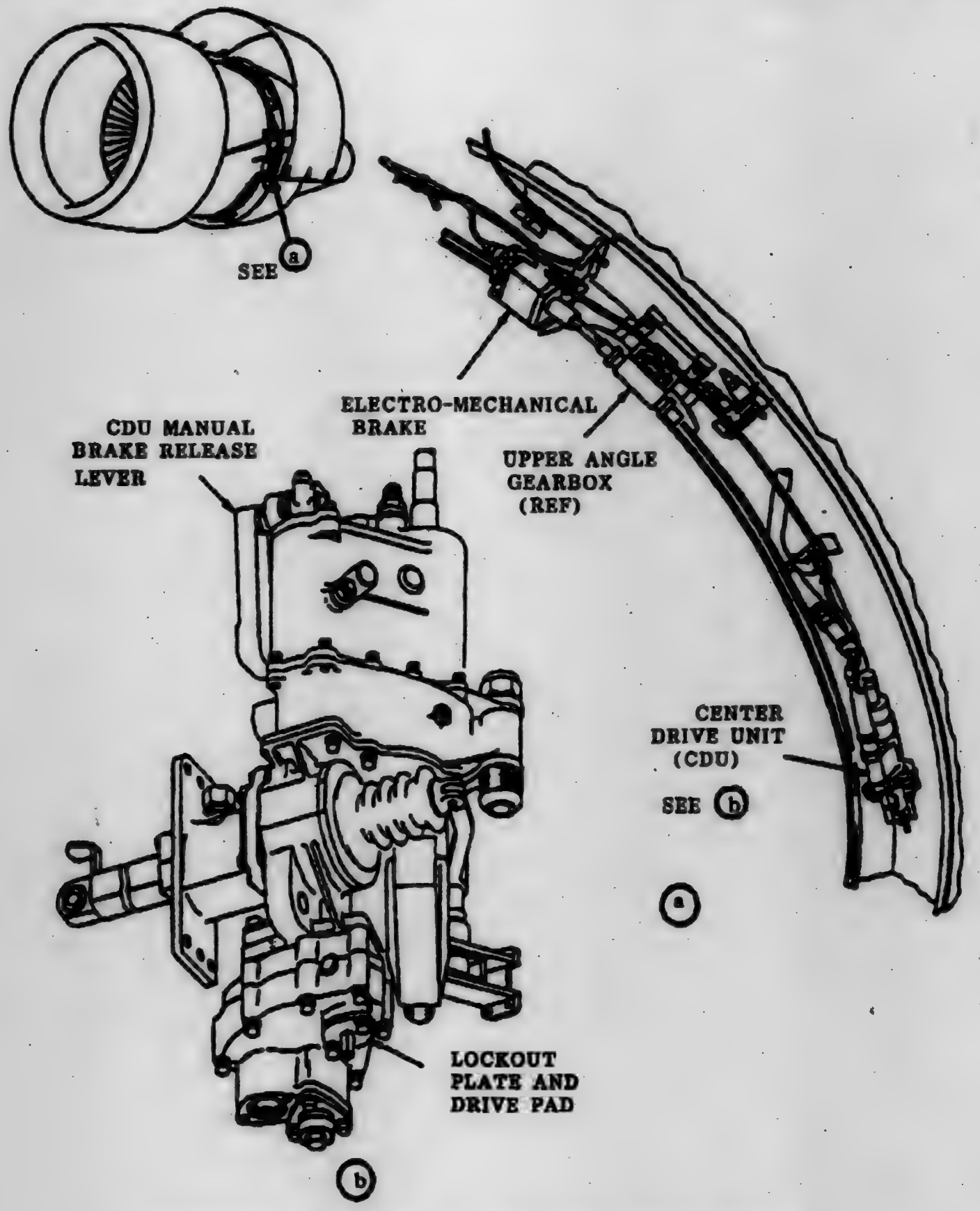

Electro-Mechanical Brake and CDU Cone Brake Torque Check
Figure 1

Issued in Renton, Washington, on June 4, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–14818 Filed 6–11–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115086–98]

RIN 1545–AW55

The Solely for Voting Stock Requirement in Certain Corporate Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the solely for voting stock requirement in certain corporate reorganizations under section 368(a)(1)(C) of the Internal Revenue Code. The proposed regulations provide that prior ownership of a portion of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a "C" reorganization of the target corporation and the acquiring corporation from being satisfied. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 13, 1999. Requests to speak and outlines of topics to be discussed at the hearing scheduled for October 5, 1999, must be received by September 13, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–115086–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–115086–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax—regs/regslist.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Marnie Rapaport, (202) 622–7550; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. General Information

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 368(a)(1)(C) relating to the definition of a "C" reorganization. A "C" reorganization is described as the acquisition by one corporation of substantially all of the properties of a target corporation in exchange solely for voting stock of the acquiring corporation (or solely for voting stock of its parent). See section 368(a)(1)(C). The use of money or other property will not prevent an exchange from qualifying under section 368(a)(1)(C) if at least 80 percent of the gross fair market value of all of the property of the target corporation is acquired for voting stock (the so-called boot relaxation rule). See section 368(a)(2)(B). The proposed regulations provide that prior ownership of a portion of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a "C" reorganization of the target corporation and the acquiring corporation from being satisfied. These regulations propose to reverse the IRS's longstanding position that the acquisition of assets of a partially controlled subsidiary does not qualify as a tax-free reorganization under section 368(a)(1)(C).

B. The Bausch & Lomb Doctrine

The IRS's position that the acquisition of assets of a partially controlled subsidiary does not qualify as a tax-free reorganization under section 368(a)(1)(C) is articulated in Rev. Rul. 54–396 (1954–2 C.B. 147). This position subsequently was sustained in litigation in *Bausch & Lomb Optical Co.* v. *Commissioner*, 30 T.C. 602 (1958), *aff'd*, 267 F.2d 75 (2d Cir.), *cert. denied*, 361 U.S. 835 (1959) (the *Bausch & Lomb* doctrine). In Rev. Rul. 54–396, a parent corporation owning 79 percent of the stock of a subsidiary as the result of a prior unrelated cash purchase acquires all of the assets of the subsidiary in exchange for a block of the parent's voting stock. The block of the parent's stock that has been transferred to the subsidiary is then distributed in liquidation pro rata to its shareholders. The ruling concludes that the transaction does not qualify as a "C" reorganization under the 1939 Internal Revenue Code, but rather is a taxable liquidation of the subsidiary. The rationale of the revenue ruling is that the acquisition violates the solely for voting stock requirement, because the parent corporation acquires only 21 percent of the subsidiary's assets in exchange for the parent's voting stock, while the remaining 79 percent of the subsidiary's assets is acquired as a liquidating distribution in exchange for the previously held stock of the subsidiary.

In *Bausch & Lomb* (which had nearly identical facts to Rev. Rul. 54–396), the parent corporation, Bausch & Lomb, owned 79.9 percent of the stock of Riggs Optical Company. In order to acquire the assets of Riggs, Bausch & Lomb exchanged shares of its voting stock for all of the Riggs assets. Pursuant to a prearranged plan, Riggs subsequently was dissolved and distributed its only asset, the Bausch & Lomb shares, pro rata to its shareholders. The Tax Court and the Second Circuit Court of Appeals sustained the Commissioner's contention that the acquisition of the Riggs assets and the dissolution of Riggs should be viewed together as part of a single plan, and that the surrender by Bausch & Lomb of its Riggs stock constituted nonstock consideration in violation of the "C" reorganization requirements.

C. The Solely for Voting Stock Requirement

The "C" reorganization first appeared in 1921 when a tax-free reorganization was defined as a merger or consolidation "including the acquisition by one corporation * * * of substantially all of the properties of another corporation." Revenue Act of 1921, section 202(c)(2), 42 Stat. 227, 230. The statutory language failed to limit the type of permissible consideration, arguably allowing an acquisition for cash to qualify as a merger.

In 1934, Congress restricted the permissible consideration in an acquisition of a target's stock or assets (in other than a statutory merger or consolidation) to voting stock. Revenue Act of 1934, section 112(g)(1), 48 Stat. 680, 705. The stated purpose for this limitation was to "remove the danger that taxable sales [could] be cast into the form of a reorganization." See H.R. Rep. No. 704, 73d Cong., 2d Sess. 12–14 (1934), 1939–1 C.B. (Part 2) 554, 563–565; S. Rep. No. 558, 73d Cong., 2d Sess. 16–17 (1934), 1939–1 C.B. (Part 2) 586, 598–599.

D. Reasons for Change

The legislative history of the "C" reorganization provisions provides that the purpose of the solely for voting

stock requirement in section 368(a)(1)(C) is to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. The IRS and Treasury Department have concluded that a transaction in which the acquiring corporation converts an indirect ownership interest in assets to a direct interest in those assets does not resemble a sale and, thus, have concluded that Congress did not intend to disqualify a transaction from qualifying under section 368(a)(1)(C) merely because the acquiring corporation has prior ownership of a portion of a target corporation's stock. Because the judicial doctrine of continuity of interest arose from similar concerns, the regulations under § 1.368–1(e)(1)(i) reach a similar conclusion with respect to the continuity of interest doctrine.

Moreover, the taxable treatment of the "upstream" "C" reorganization under the *Bausch & Lomb* doctrine contrasts with the tax-free treatment of the "upstream" "A" reorganization under section 368(a)(1)(A). See also Rev. Rul. 57–278 (1957–1 C.B. 124) (*Bausch & Lomb* does not apply to an asset acquisition by a newly formed corporation in exchange for its parent's stock, even though prior to the acquisition the parent already owned 72 percent of the transferor's stock). In the "upstream" "A" reorganization, the indirect interest of the parent in the assets of its subsidiary (i.e., the target corporation) is converted into a direct interest in the subsidiary's assets. An exchange is deemed to occur for purposes of section 354 even if, in form, one does not occur. The IRS and Treasury Department have concluded that the "upstream" reorganization under section 368(a)(1)(C) (i.e., the *Bausch & Lomb* transaction) should not be treated differently from the "upstream" "A" reorganization solely because the acquiring corporation already owns stock in the target corporation. Accordingly, the IRS and Treasury Department have concluded that the *Bausch & Lomb* doctrine does not further the principles of reorganization treatment.

Explanation of Provisions

The proposed regulations provide that preexisting ownership of a portion of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a "C" reorganization from being satisfied. If the boot relaxation rule applies, the sum of (i) the money or other property that is distributed in pursuance of the plan of reorganization to the shareholders of the target corporation other than the acquiring corporation and to the creditors of the target corporation pursuant to section 361(b)(3), and (ii) the assumption of all the liabilities of the target corporation (including liabilities to which the properties of the target corporation are subject), cannot exceed 20 percent of the value of all of the properties of the target corporation. In this regard, the proposed regulations provide that if, in connection with a potential "C" reorganization of a target corporation into an acquiring corporation, the acquiring corporation acquires the target corporation's stock for consideration other than its own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties), whether from a shareholder of the target corporation or from the target corporation itself, such consideration will be treated as money or other property exchanged by the acquiring corporation for the target corporation's assets. Accordingly, the requirements of section 368(a)(1)(C) will not be satisfied unless the transaction can qualify under the boot relaxation rule of section 368(a)(2)(B). The determination of whether there has been an acquisition in connection with a potential "C" reorganization of a target corporation's stock for consideration other than an acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties) will be made on the basis of all of the facts and circumstances.

Rev. Rul. 54–396 (1954–2 C.B. 147) will become obsolete when the proposed regulations are issued in final form.

The regulations are proposed to apply to transactions occurring after the date that a Treasury decision adopting these rules is published in the **Federal Register**, except that they do not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations and, because the proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 5, 1999, beginning at 10:00 a.m. in Room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must request to speak, and submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 13, 1999. A period of ten minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Marnie Rapaport of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.368–2 is amended by adding paragraph (d)(4) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(d) * * *

(4) (i) For purposes of paragraphs (d)(1) and (2)(ii) of this section, prior ownership of a portion of the stock of the target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of such paragraphs from being satisfied. In a transaction in which the acquiring corporation has prior ownership of a portion of the stock of the target corporation, the requirement of paragraph (2)(ii) is satisfied only if the sum of the money or other property that is distributed in pursuance of the plan of reorganization to the shareholders of the target corporation other than the acquiring corporation and to the creditors of the target corporation pursuant to section 361(b)(3), and all of the liabilities of the target corporation assumed by the acquiring corporation (including liabilities to which the properties of the target corporation are subject), does not exceed 20 percent of the value of all of the properties of the target corporation. If, in connection with a potential acquisition by an acquiring corporation of substantially all of a target corporation's properties, the acquiring corporation acquires the target corporation's stock for consideration other than the acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties), whether from a shareholder of the target corporation or the target corporation itself, such consideration is treated, for purposes of paragraphs (d)(1) and (2) of this section, as money or other property exchanged by the acquiring corporation for the target corporation's properties. Accordingly, the transaction will not qualify under section 368(a)(1)(C) unless, treating such consideration as money or other property, the requirements of section 368(a)(2)(B) and paragraph (d)(2)(ii) of this section are met. The determination of whether there has been an acquisition in connection with a potential reorganization under section 368(a)(1)(C) of a target corporation's stock for consideration other than an acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties) will be made on the basis of all of the facts and circumstances.

(ii) The following examples illustrate the principles of this paragraph (d)(4):

Example 1. Corporation P (P) holds 60 percent of the Corporation T (T) stock that P purchased several years ago in an unrelated transaction. T has 100 shares of stock outstanding. The other 40 percent of the T stock is owned by Corporation X (X), an unrelated corporation. T has properties with a fair market value of $110 and liabilities of $10. T transfers all of its properties to P. In exchange, P assumes the $10 of liabilities, and transfers to T $30 of P voting stock and $10 of cash. T distributes the P voting stock and $10 of cash to X and liquidates. The transaction satisfies the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because the sum of $10 of cash paid to X and the assumption by P of $10 of liabilities does not exceed 20% of the value of the properties of T.

Example 2. The facts are the same as in *Example 1* except that P purchased the 60 shares of T for $60 in cash in connection with the acquisition of T's assets. The transaction does not satisfy the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because P is treated as having acquired all of the T assets for consideration consisting of $70 of cash, $10 of liability assumption and $30 of P voting stock, and the sum of $70 of cash and the assumption by P of $10 of liabilities exceeds 20% of the value of the properties of T.

(iii) This paragraph (d)(4) applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**, except that this paragraph (d)(4) does not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–14889 Filed 6–11–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6358–4]

RIN 2060–AH99

Protection of Stratospheric Ozone: Reconsideration of the 610 Nonessential Products Ban

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking proposes changes to the current regulations that implement the statutory ban on nonessential products that release class I ozone-depleting substances under section 610 of the Clean Air Act, as amended. This proposed rulemaking was developed by EPA based on new and compelling information that has been gathered and indicates that some sectors continue to use class I substances in products where the use of those substances today should be considered a "nonessential use of class I substances in a product." The products affected by this rulemaking are aerosol products, pressurized dispensers, plastic foam products, and air-conditioning and refrigeration products that contain or are manufactured with chlorofluorocarbons.

DATES: Comments must be received by August 13, 1999 unless a public hearing is held. A public hearing, *if requested,* will be held in Washington, D.C. If such a hearing is requested, it will be held on June 29, 1999. Anyone who wishes to request a hearing should call Cindy Newberg at 202/564–9729 by 5 pm Eastern Time June 21, 1999. Ater that time, interested parties may contact the Stratospheric Protection hotline regarding if a hearing will be held as well as the time and place of such a hearing. If a public hearing is held, the comment period will be extended until August 30, 1999.

ADDRESSES: Comments on this action should be addressed to Public Docket No, A–98–31 at the address below. Comments and materials supporting this rulemaking are contained in Public Docket No. A–98–31 Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric

Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, D.C. 20460, (202)564–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information. Interested persons may contact the Stratospheric Protection Hotline to learn if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Regulated Entities
II. Background
A. Class I Ban
1. Reconsideration
2. Determinations Under 610
3. The Purpose or Intended Use of the Product
4. The Technological Availability of Substitutes
5. Safety and Health
6. Medical Devices
7. Other Products
8. Reconsidering Nonessential Determinations
B. Class II Ban
1. Reconsideration
2. Determinations Under Section 610(d)
3. Future Notice of Proposed Rulemaking
III. Today's Action
A. Foam Products
B. Aerosol Products and Pressurized Dispensers
C. Air-conditioning and Refrigeration Appliances
IV. Proposed Effective Dates and Grandfathering
V. Summary of Supporting Analysis
A. Executive Order 12866
B. Regulatory Flexibility
C. Unfunded Mandates Act
D. Paperwork Reduction Act
E. Executive Order 12875: Enhancing the Intergovernmental Partnership
F. National Technology Transfer and Advancement Act
G. Applicability of Executive Order 13045
H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

I. Regulated Entities

Entities potentially regulated by this action are those that wish to sell and/or distribute in interstate commerce aerosols, pressurized dispensers, plastic foam products, refrigerators and air-conditioning equipment that contain chlorofluorocarbons (CFCs). Regulated categories and entities include:

Category	Example of regulated entities
Industry	Aerosol packagers.
	Aerosol manufacturers.
	Air-conditioning and refrigeration equipment manufacturers.
	Specialty chemical manufacturers.
	Foam manufacturers.
	Air conditioning and refrigeration distributors.
	Air conditioning and refrigeration retailers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in Section 610 of the Clean Air Amendments of 1990, discussed in regulations codified at 40 CFR Part 82, subpart C and published on January 15, 1993 (58 FR 4768); December 30, 1993 (58 FR 69672) and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Title VI of the Act divides ozone-depleting chemicals into two distinct classes. Class I is comprised of chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform, methyl bromide and hydrobromofluorocarbons. Class II is comprised of hydrochlorofluorocarbons (HCFCs). (See listing notice January 22, 1991; 56 FR 2420.) Section 610(b) of the Act, as amended, requires EPA to promulgate regulations banning nonessential products releasing class I substances. EPA published a final rule for the Class I Nonessential Products Ban on January 15, 1993 (58 FR 4768). A final rule establishing regulations that implemented the statutory ban on nonessential products containing or manufactured with class II ozone-depleting substances under section 610(d) of the Clean Air Act, as amended, was issued December 30, 1993 (58 FR 69637). That final rule was developed to clarify definitions and provide exemptions, as authorized under section 610(d). All of the regulations are codified at 40 CFR Part 82 subpart C. Comments and materials supporting those rulemakings are contained in Public Dockets A–91–39 and in A–93–20.

A. Class I Ban

Section 610(b) of the Act directs EPA to identify nonessential products that "release Class I substances into the environment (including any release during manufacture, use, storage, or disposal)" and to "prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce."

Section 610(b)(1) and (2) specify products to be prohibited under this requirement, including "chlorofluorocarbon-propelled plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment."

Section 610(b)(3) extends the prohibition to other products determined by EPA to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is to consider the following criteria: "the purpose or intended use of the product, the technological availability of substitutes for such product and for such Class I substance, safety, health, and other relevant factors."

The regulatory Class I Ban currently identifies as nonessential, and therefore subject to the prohibitions:

(A) plastic party streamers and noise horns propelled by chlorofluorocarbons;

(B) cleaning fluids for electronic and photographic equipment which contain a chlorofluorocarbon, including but not limited to liquid packaging, solvent wipes, solvent sprays, and gas sprays, except for those sold or distributed to a commercial purchaser;

(C) plastic flexible or packaging foam product which is manufactured with or contains a chlorofluorocarbon, including but not limited to,

- Open cell polyurethane flexible slabstock foam,
- Open cell polyurethane flexible molded foam,
- Open cell rigid polyurethane poured foam,
- Closed cell extruded polystyrene sheet foam,
- Closed cell polyethylene foam, and
- Closed cell polypropylene foam,

except flexible or packaging foam used in coaxial cable; and

(D) any aerosol product or other pressurized dispenser which contains a chlorofluorocarbon, *except:*

- Medical devices listed in 21 CFR 2.125(e),
- Lubricants for pharmaceutical and tablet manufacture,
- Gauze bandage adhesives and adhesive removers,

- Topical anesthetic and vapocoolant products,
- Lubricants, coatings or cleaning fluids for electrical or electronic equipment, which contain CFC–11, CFC–12, or CFC–113 for solvent purposes, but which contain no other CFCs,
- Lubricants, coatings or cleaning fluids used for aircraft maintenance, which contain CFC-11 or CFC–113, but which contain no other CFCs,
- Mold release agents used in the production of plastic and elastomeric materials, which contain CFC–11 or CFC–113, but which contain no other CFCs,
- Spinnerette lubricant/cleaning sprays used in the production of synthetic fibers, which contain CFC–114, but which contain no other CFCs,
- Containers of CFCs used as halogen ion sources in plasma etching,
- Document preservation sprays which contain CFC–113, but which contain no other CFCs, and
- Red pepper bear repellent sprays which contain CFC–113, but which contain no other CFCs.

Verification and public notice requirements have been established for distributors of certain products intended exclusively for commercial use.

The preamble to the 1993 rulemaking established that EPA should in the future reconsider exceptions granted and limitations of the ban under that rulemaking based on new and compelling information regarding the availability of substitutes for class I substances. In 1993 EPA limited consideration of banned products to aerosols, pressurized dispensers, and foams. These sectors traditionally used ozone-depleting substances and were subject to the Class I Ban. Since that rulemaking was issued, the phaseout of production and consumption of class I substances has become effective and the Significant New Alternatives Policy (SNAP) program established under Section 612 of the Act has been promulgated. The phaseout of newly manufactured class I substances and the identification of acceptable substitutes provide compelling reasons to reconsider the initial decisions regarding both product-specific exemptions and the decision to limit the ban's effect to major sectors that traditionally used ozone-depleting substances. Therefore, it is appropriate now to reconsider the applicability of the Class I Ban to both specific products and product categories.

1. Reconsideration

The regulations implementing the Class I Ban provide for EPA to reconsider decisions that were made regarding specific products and product categories. EPA indicated in 1993 that the Agency would reconsider decisions in the future based on developments of product substitutes not containing class I substances. EPA has previously reconsidered specific decisions. In December 1993 (58 FR 69672), EPA reconsidered the application of the Class I Ban to replacement parts that were previously manufactured and stored for future use, such as car seats designed and manufactured for a particular model vehicle.

Based on development of new substitutes and the characterization of the criteria for nonessentiality discussed below, particularly as applied to the use of class I substances in products that are themselves not nonessential, EPA believes that it is now appropriate for EPA to reconsider previous determinations. Specifically, it is appropriate to reconsider the determinations for the air-conditioning and refrigeration, solvents, and foam-blowing sectors.

2. Determinations Under 610

As stated above, Section 610(b)(3) extends the prohibition to other products determined by EPA to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is to consider the following criteria: "the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors." The statute requires EPA to consider each criterion but did not outline either a ranking or a methodology for comparing their relative importance, nor does it require that any minimum standard within each criterion be met. To develop the initial rulemaking, EPA considered all of these criteria in determining whether a product was nonessential. In addition, EPA reviewed the criteria used in the development of its 1978 ban on aerosol propellant uses of CFCs under the Toxic Substances Control Act (TSCA). Today's action follows the same methodology of that rulemaking.

3. The Purpose or Intended Use of the Product

This criterion relates to the importance of the product, specifically whether the product is sufficiently important that the benefits of its continued production outweigh the associated danger from the continued use of a class I ozone-depleting substance in it, or alternatively, whether the product is so unimportant that even a lack of available substitutes might not prevent the product from being considered nonessential. The initial class I final rulemaking includes a discussion about the contributions of a product to the quality of life.

The distinction between a "nonessential product" and a "nonessential use of class I substances in a product" is a relevant criterion. For example, while foam cushioning products for beds and furniture are not "frivolous," the use of a class I substance in the manufacturing process for foam cushioning where substitutes are readily available is considered nonessential. The ability of manufacturers to switch from using a class I substance is a relevant indicator for this criterion. The class I final rule states that "the Agency believes that in sectors where the great majority of manufacturers had already shifted to substitutes, the use of a class I substance in that product may very well be nonessential." Consequently, EPA believes it is appropriate under this criteria to examine sectors where most of the market has previously switched out of CFCs.

4. The Technological Availability of Substitutes

EPA has previously interpreted this criterion to mean the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing class I substances. EPA believes that the phrase "technological availability" includes both currently available substitutes (i.e., presently produced and sold in commercial quantities) and potentially available substitutes (i.e., determined to be technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities). However, EPA considered the current availability of substitutes more compelling than the potential availability of substitutes in determining whether a product was nonessential.

The corresponding criterion from the 1978 aerosol ban is the "nonavailability of alternative products." In its supporting documentation, EPA stated that this was the primary criterion for determining if a product had an "essential use" under the 1978 rule. EPA emphasized, however, that the absence of an available alternative did not alone disqualify a product from being banned as nonessential.

The availability of substitutes is clearly a critical criterion for determining if a product containing a class I substance is nonessential. In certain cases, a substitute that is

technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities, may meet this criterion with respect to certain products. However, EPA believes that, where substitutes are readily available, the use of controlled substances could be considered nonessential even in a product that is extremely important. It should be noted, however, that EPA does not necessarily advocate all substitutes that are currently being used in place of CFCs in the products EPA identifies as nonessential. In many cases potential substitutes are subject to other regulatory programs. For example, the SNAP program promulgated under CAA 612 carefully considers the relative risks and merits of different substitutes for ozone-depleting substances. Substitutes are listed under that regulatory program as acceptable, unacceptable, or acceptable subject to use restrictions for specific uses. Within the limited purposes of the nonessential products bans, EPA considers the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing class I substances. Any future use of such substitutes must comport with any conditions of the SNAP program, if applicable.

5. Safety and Health

EPA interprets these two criteria to mean the effects on human health and the environment of the products releasing class I substances or their substitutes. In evaluating these criteria, EPA considered the direct and indirect effects of product use, and the direct and indirect effects of alternatives, such as ozone depletion potential, flammability, toxicity, corrosiveness, energy efficiency, ground level air hazards, and other environmental factors.

If any safety or health issues prevented a substitute from being used in a given product, EPA then considered that substitute to be "unavailable" at the time for that specific product or use. EPA noted in the initial rulemaking that as new information becomes available on the health and safety effects of possible substitutes, EPA could reevaluate determinations made regarding the nonessentiality of products.

6. Medical Devices

Section 610(e) states that "nothing in this section shall apply to any medical devices as defined in section 601(8)." Section 601(8) defines "medical device" as "any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—(A) if such device, product, drug, or drug delivery system utilizes a Class I or Class II substance for which no safe and effective alternative has been developed and, where necessary, approved by the Commissioner of the Food and Drug Administration (FDA); and (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator."

The FDA currently is reviewing its determinations under 21 CFR 2.125(e). At this time, the FDA lists 12 medical devices for human use as essential uses of CFCs in 21 CFR 2.125(e). These devices consist of certain metered dose inhalers (MDIs), contraceptive vaginal foams, intra-rectal hydrocortisone acetate, polymyxin B sulfate-bacitracin-zinc-neomycin sulfate soluble antibiotic powder without excipient for topical use, and anesthetic drugs for topical use on accessible mucous membranes where a cannula is used for application. For additional information regarding FDA determinations and plans for potential regulatory changes, see 62 FR 10242 (March 6, 1997).

Medical products as determined by FDA and listed as essential at 21 CFR 2.125(e) are exempt from the Class I Ban at 40 CFR part 82, subpart C. This notice does not propose any changes to this current exemption. However, other medical related products not contained in the FDA's list of essential uses (21 CFR 2.125(e)), and therefore not subject to 610(e), that were considered in the initial Class I Ban rulemaking, and given exemptions, under 610(b) are reconsidered in this action. Those products are gauze bandage adhesives and adhesive removers, lubricants for pharmaceutical and tablet manufacture, and topical anesthetic and vapocoolant products.

7. Other Products

In drafting the initial rulemaking to prohibit certain products under section 610(b)(3), the Agency considered every major use sector that used class I substances including: refrigeration and air-conditioning, solvent use, fire extinguishing, foam blowing, and aerosol use. Based on that review, EPA identified three broadly defined product categories for further evaluation: aerosol products and pressurized dispensers containing CFCs or halons, plastic flexible and packaging foams, and halon fire extinguishers for residential use.

EPA believed that in each of these sectors two important conditions existed: substitutes were already available for the product or the class I substance used or contained in that product; and, either the affected industry had, for the most part, moved out of the use of class I substances or the market share of products using or containing class I substances was small and shrinking. In addition, in the case of aerosols and plastic flexible and packaging foams, section 610(d) imposed a self-effectuating ban on the sale or distribution of such products containing or produced with class II substances after January 1, 1994.

The 1993 rulemaking specifically discussed the other sectors and provided information regarding the Agency's determinations. Refrigeration and air-conditioning, including mobile air-conditioning, represented the largest total use of class I substances in the United States in 1993. At the time the initial rulemaking was promulgated, substitutes were available for some refrigeration and air-conditioning products. For example, the automotive manufacturers were in the process of switching to HFC–134a for new models rather than CFC–12 in their air-conditioning systems. However, potential substitutes for other refrigeration and air-conditioning uses were still being evaluated.

EPA did not include prohibitions on the use of class I substances in refrigeration or air-conditioning in the 1993 rulemaking because determinations regarding substitutes for all such uses were not anticipated to be available within the time-frame of that rulemaking. Accordingly, EPA could not conclude that the use of class I refrigerants in any refrigeration or air-conditioning uses were nonessential at the time of that rulemaking. Furthermore, at that time, EPA had not yet issued final regulations that specifically addressed non-automotive refrigeration and air-conditioning uses of class I substances (subsequently promulgated under CAA Section 608 and codified at 40 CFR part 82, subpart F). These regulations addressed standards for the recovery and reuse of refrigerants.

Solvent uses of class I substances, including commercial electronics de-fluxing, precision cleaning, metal cleaning and dry cleaning also represented a significant use in 1993. Industry had already identified potentially available substitutes for nearly all of the thousands of products then manufactured with class I solvents,

and many companies had already phased out the use of CFCs in certain products. EPA did not address solvent use in that rulemaking (accept where the solvent application was within an aerosol or pressurized dispenser) because the sheer number of products and the range of potential substitutes made it impossible for EPA to conclude definitively that substitutes were available for any of these specific uses, and thus that such uses were nonessential, within the short statutory time-frame for the Class I Ban rulemaking. However, EPA believed a ban on such uses would be unnecessary as most manufacturers were phasing out use as particular substitutes became available, in anticipation of the impending production phaseout.

EPA considered the use of class I substances in fire extinguishing applications in its initial review as well. Halons were widely used in fire extinguishing systems. These fire extinguishing systems include both total flooding systems (such as stationary fire suppression systems in large computer facilities) and streaming systems (such as hand-held fire extinguishers). In evaluating possible nonessential uses of halons in fire fighting, the Agency divided the fire protection sector into six broad end uses: (1) Residential/ Consumer Streaming Agents, (2) Commercial/Industrial Streaming Agents, (3) Military Streaming Agents, (4) Total Flooding Agents for Occupied Areas, (5) Total Flooding Agents for Unoccupied Areas, and (6) Explosion Inertion. Substitutes for halons, whether other halocarbons or alternatives such as water, should meet four general criteria to provide a basis for determining that the use of halon in residential fire extinguishers is nonessential. They must be effective fire protection agents, they must have an acceptable environmental impact, they must have a low toxicity, and they must be relatively clean or volatile. In addition, they must be commercially available as a halon replacement in the near future. EPA concluded that while satisfactory substitutes were not yet available in most commercial and military applications within the short statutory time-frame of the rulemaking, certain substitutes were already commercially available for hand-held halon fire extinguishers in residential settings. Consequently, the Agency decided to evaluate this application more closely in order to determine whether residential fire extinguishers containing halon should be designated nonessential products, or whether the continued use of halons, despite the imposition of the excise tax and the impending production phaseout, indicated that this application did not meet the criteria for nonessentiality. Ultimately, after reviewing the issue and soliciting comment, the final rulemaking did establish a ban on the use of halon in residential streaming applications. Furthermore, the use of CFCs in fire extinguishing equipment was also restricted.

EPA considered aerosols and pressurized dispensers likely candidates for designation as nonessential products in 1993 because a great deal of information on substitutes for CFCs in these applications already existed. Research on substitutes for CFCs in aerosol applications began in the 1970s in response to the early studies on stratospheric ozone depletion and the 1978 ban on the use of CFCs as aerosol propellants. Consequently, extensive data already existed on possible substitutes for most remaining aerosol uses.

The 1978 aerosol ban prohibited the manufacture of aerosol products using CFCs as propellants. Other uses of CFCs in aerosols (such as solvents, active ingredients, or sole ingredients) were not included in the ban. In addition, certain "essential uses" of CFCs as aerosol propellants were exempted from the ban because no adequate substitutes were available at the time. Consequently, although the use of CFCs in aerosols was reduced dramatically by the 1978 ban, the production of a number of specific aerosol products containing CFCs were still legal including: metered dose inhalant drugs; medical solvents such as bandage adhesives and adhesive removers; skin chillers for medical purposes; aerosol tire inflators; mold release agents; lubricants, coatings, and cleaning fluids for industrial/institutional applications to electronic or electrical equipment; special-use pesticides; aerosols for the maintenance and operation of aircraft; diamond grit spray; single-ingredient dusters and freeze sprays; noise horns; mercaptan stench warning devices; pressurized drain openers; aerosol polyurethane foam dispensers; and whipped topping stabilizers. In 1993, EPA concluded that satisfactory substitutes were available for most uses of CFCs in aerosols and pressurized dispensers. As a result, the Agency banned all uses of CFCs in aerosols and pressurized dispensers except for certain products, such as medical devices, that it specifically exempted. EPA further concluded that the implementation of the production phaseout of CFCs on January 1, 1996, would serve to eliminate the continued use of CFCs in all but the most essential applications, such as the permitted production for metered dose inhalant drugs.

8. Reconsidering Nonessential Determinations

New and compelling information has been gathered recently by EPA that indicates that some sectors continue to use class I substances in products where the use of the substance today should be considered a "nonessential use of class I substances in a product." Since the promulgation of the initial regulations under Section 610, the SNAP program has been established and now provides information regarding acceptable substitutes for various applications. While the SNAP program does not consider the efficacy of the substitute substance as a replacement for the ozone-depleting substances, for most applications there are sources of information regarding the effectiveness of the substitutes, such as laboratory testing and information provided by major users and trade associations. For example, many substitutes have been listed by SNAP as acceptable for various refrigeration applications. Domestically, newly manufactured refrigerators for residential use are employing these available substitutes. Therefore, it is reasonable for the Agency at this time to reconsider applying the 610 Class I ban to include refrigeration applications by determining if the use of a class I substance in refrigeration applications now meets the definition of nonessentiality, as described in this notice.

Today's action proposes to amend the class I ban to meet the Agency's obligations to eliminate the nonessential uses of class I substances. Specifically, EPA has determined that it is appropriate to reconsider the determinations for the air-conditioning and refrigeration, foam-blowing, aerosols, and pressurized dispensers product categories. Today's action proposes amending the class I ban to include additional nonessential uses of CFCs for these end-use applications.

B. Class II Ban

On December 30, 1993, EPA published a final rulemaking (58 FR 69637) addressing issues related to the statutory prohibition against the sale or distribution, or offer for sale or distribution in interstate commerce of nonessential products containing or manufactured with a class II substance, imposed by Section 610(d) of the Act. Section 610(d)(1) states that after January 1, 1994, "it shall be unlawful for any person to sell or distribute, or

offer for sale or distribution, in interstate commerce—(A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance." Section 610(d)(2) authorizes EPA to grant certain exceptions and Section 610(d)(3) creates exclusions from the Class II Ban in certain circumstances.

Section 610(d)(2) authorizes the Administrator to grant exceptions from the Class II Ban for aerosols and other pressurized dispensers where "the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flammability or worker safety concerns," and where "the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance."

Section 610(d)(3) states that the ban of class II substances in plastic foam products shall not apply to "foam insulation products" or "an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such standards." Unlike the Class I Ban, the Class II Ban was self-executing. Section 610(d) bans the sale of the specified class II products by its own terms, without any reference to required EPA regulations. However, EPA did issue regulations implementing the Class II Ban in order to better define the products banned under Section 610(d) and to grant authorized exceptions under Section 610(d)(2). Section 301(a) of the Act gives EPA the authority to promulgate such regulations as are necessary to carry out its functions under the Act, and EPA determined that it was necessary to issue the Class II Ban regulations for those purposes.

1. Reconsideration

Since the issuance of the final rule providing exemptions from the statutory Class II Ban, EPA amended the final rule with regards to fire suppression based on compelling information that the Agency received. That amended regulation was issued in the **Federal Register** on December 4, 1996 (61 FR 64424) and subsequently codified at 40 CFR Part 82, subpart C.

EPA has received information indicating that it may be appropriate to reconsider the continued relevance of the current list of exemptions for specific aerosol products and pressurized dispensers. The Agency is aware that since the issuance of that initial final rulemaking, there has been further substitution away from ozone-depleting substances for a variety of aerosol products and pressurized dispensers.

2. Determinations Under Section 610(d)

The statutory criteria for providing an exemption from the Class II Ban are explicit. For any potential exemption the use of the aerosol product or pressurized dispenser must be found to be essential based on flammability or worker safety concerns and EPA must find that the only available alternative to use of a class II substance is use of a class I substance which could legally be substituted for such class II substance.

The initial final rulemaking regarding the Class II Ban provided exemptions for:

- Lubricants, coatings, or cleaning fluids for aircraft maintenance containing HCFCs as solvents;
- Lubricants, coatings, or cleaning fluids for electrical, electronic or photographic equipment containing HCFCs as solvents;
- Aircraft pesticides; • Mold release agents containing HCFCs as solvents;
- Mold release agents containing HCFC–22 as a propellant, for use where no alternative, including an alternative formulation, is available and where the seller must notify purchaser about the restriction;
- Spinnerette lubricant/cleaning sprays containing HCFCs as solvents and/or propellants;
- Document preservation sprays containing HCFCs as solvents;
- Document preservation sprays containing HCFCs as propellants, for use on thick books, books with coated or dense paper, and tightly bound documents, only;
- Portable fire extinguishing equipment containing HCFCs as fire extinguishants, for use in non-residential applications only; and
- Wasp and hornet sprays, for use near high-tension power lines only and where the seller must notify purchaser about restrictions.

3. Future Notice of Proposed Rulemaking

EPA is currently reviewing information concerning the above aerosol products and pressurized dispensers given exemptions in the December 1993 rulemaking. In particular, the Agency is evaluating whether there are technologically available substitutes for the HCFCs used in these products. Since the implementation of the Class II Ban on January 1, 1994, progress has been made to further identify substitutes for various applications. In addition, as stated above, the SNAP program has been established and provides lists of acceptable substitutes for various applications, including applications affected by the Class II Ban. When EPA completes its evaluation of the existing exemptions for HCFCs in pressurized dispensers and aerosol products, the Agency plans to issue a notice of proposed rulemaking and request comments, should the Agency determine that any rule revisions are appropriate.

III. Today's Action

Today, EPA is proposing to revise the Class I Ban to include additional products and to eliminate exemptions. EPA is proposing to expand the scope of the Class I Ban to include additional categories of products.

A. Foam Products

Today, EPA is proposing to ban the sale and distribution and offer of sale or distribution in interstate commerce of all foam products (both insulating and non-insulating) that release class I substances into the environment (including any release during manufacture, use, storage, or disposal). EPA believes there are acceptable substitutes available for replacing any continued use of class I substances as blowing agents for foam products. For example, the SNAP program lists exemptions for various foam applications by providing lists that are specific to the type of foam for which the particular substitute has been listed as acceptable. These categories are rigid polyurethane used in appliances and commercial applications, flexible polyurethane, integral skin polyurethane, polyurethane extruded sheet foam, polyolefin, rigid polyurethane slabstock, polystyrene, extruded boardstock & billet, rigid polyurethane and polyisocyanurate laminated boardstock, and phenolic insulation board and bunstock. The SNAP program does not consider the efficacy of the substitute substance as a replacement for the ozone-depleting substances in each application. However, given the phaseout of production for the class I substances previously used in these products, and the information gathered through trade associations, newsletters, media articles, technical publications, and United Nations Environmental Programme (UNEP) Technical Options Committee reports, it appears that for all foam products, there are currently sufficient

technically available substitutes for the use of a class I substance. EPA requests comments on revising the Class I Ban to ban the sale and distribution or offer of sale and distribution in interstate commerce of *any* foam plastic product or plastic foam product that releases class I substances into the environment (including any release during manufacture, use, storage, or disposal). EPA will consider any specific data indicating that substitutes are not available for certain foam products.

B. Aerosol Products and Pressurized Dispensers

As stated above, EPA initially provided exemptions for a narrow list of aerosol products and pressurized dispensers that release class I substances into the environment. EPA today, is proposing to eliminate exemptions for: gauze bandage adhesives & adhesive removers, topical anesthetic and vapocoolant products, lubricants for pharmaceutical tablet manufacture, containers of CFCs used as halogen ion sources in plasma etching, and red pepper bear repellent sprays containing CFC–113 as a solvent. EPA believes that substitutes are available for such uses of class I products and therefore that such use is no longer essential. EPA is not proposing any changes to the exemption for medical devices that are determined to be essential by the Food and Drug Administration and are listed at 21 CFR 2.125(e). Products such as metered dose inhalers (MDIs) are listed at 21 CFR 2.125(e). The Class I Ban will continue to provide an exemption for the sale and distribution or offer of sale or distribution in interstate commerce of MDIs that release class I substances into the environment, as well as any other essential medical device listed at 21 CFR 2.125(e).

Given the statutory links established between the Class I and Class II Bans for aerosol products and pressurized dispensers, namely the criterion in 610(d) that states that the alternative to the use of a class II substance is the legal use of a class I substance, at this time EPA is not proposing to eliminate exemptions for aerosol products or pressurized dispensers from the Class I Ban that are also exempted from the Class II Ban. However, if and when EPA subsequently issues a proposed rulemaking reconsidering those exemptions from the Class II Ban, that notice will also include the reconsideration for the remaining aerosol products and pressurized dispensers under the Class I Ban as well.

EPA requests comments on the proposed changes to the list of exemptions for aerosol and pressurized dispensers that release class I substances into the environment, and specifically any data indicating that such uses are still essential.

C. Air-Conditioning and Refrigeration Appliances

The initial rulemaking implementing the Class I Ban specifically considered refrigeration and air-conditioning. As noted above, at the time the initial rulemaking was promulgated, substitutes were available for some refrigeration and air-conditioning products; however, potential substitutes for other refrigeration and air-conditioning applications were still under development and evaluation. Thus EPA did not include prohibitions on the use of class I substances in refrigeration or air-conditioning in that rulemaking.

Currently there are substitutes identified for a variety of refrigeration and air-conditioning applications. While substitutes continue to be developed and evaluated for these applications, the Agency is confident that there are sufficient technologically available substitutes for the use of class I substances in all refrigeration and air-conditioning applications as documented in the docket for this rulemaking. The SNAP program also provides lists of acceptable substitutes for various applications.

Since the production and importation of CFCs ceased January 1, 1996, EPA believes it is highly unlikely that there would be continued domestically manufactured air-conditioning and refrigeration appliances with CFCs. EPA has raised this question at industry stakeholder meetings and other forums with representatives from the air-conditioning and refrigeration manufacturing community, as well as with the refrigerant suppliers for these manufacturers. EPA recognizes that there may be a limited number of products manufactured abroad and imported into the United States as well as some potential domestic manufacturing of refrigeration and air-conditioning products containing class I substances that EPA is not aware of; however, given the criteria for nonessentiality discussed above, EPA believes that air-conditioning and refrigeration appliances that contain CFCs meet the criteria for nonessential uses of a class I substance. Therefore, it is reasonable for the Agency to consider broadening the applicability of the Class I Ban to include refrigeration applications. EPA is today proposing to amend § 82.66 to add a provision banning the sale and distribution or offer for sale or distribution of air-conditioning and/or refrigeration appliances that contain class I substances.

EPA heard from two manufacturers regarding potential economic impacts of this proposal. A manufacturer has stated that well over 90% of the compact refrigerators are sold by large retailers and very small quantities are sold by small dealers. Another manufacturer reported that several foreign manufacturers have exported compact refrigerators containing CFCs and non-CFC containing compact refrigerators into the U.S. during 1998. Since they are able to produce both types of refrigerators, the use of CFCs should be considered a "nonessential use of class I substances in a product." One manufacturer believed that the differential in manufacturing costs is between $2.00 and $3.00 per unit, which might translate into a $5.00 price differential if the costs are passed on to the consumer. EPA requests comments regarding the costs and sales of these refrigerators.

EPA would like to clarify that consistent with all other products subject to the nonessential products bans, this proposed addition of air-conditioning and refrigeration appliances covers the sale and distribution of new products, not used products. Furthermore, this proposal would not affect the servicing of existing products with class I refrigerants.

EPA requests comments on expanding the Class I Ban to include air-conditioning and refrigeration appliances. In particular, EPA requests comments regarding whether there are sufficient technologically available substitutes for the use of class I substances in all new air-conditioning and refrigeration appliances.

IV. Proposed Effective Dates and Grandfathering

EPA is proposing that the effective date for the proposed changes to this rulemaking 60 days from the date of publication of a final rule in the **Federal Register**. Given the potential harm releases of class I substances represent and given that most products affected by these proposed changes to the ban no longer use class I substances, EPA believes this is an appropriate effective date. The Agency also considered the potential for a longer implementation date for these proposed regulatory changes, such as 6 months from the date of publication of the final rule in the **Federal Register**; however, as stated

above, this additional time did not seem necessary and thus is not the Agency's lead option. However, EPA requests comments and rationale regarding both the proposed 60-day effective date and alternative effective dates for the proposed changes discussed in this notice.

V. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this proposed regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis for this proposed rule. EPA believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. EPA has received a letter from a manufacturer citing market research from import reports by the Department of Commerce. This manufacturer stated that well over 90% of the compact refrigerators are sold by large retailers and very small quantities are sold by small dealers. Another manufacturer reported that several foreign manufacturers have exported compact refrigerators containing CFCs and non-CFC containing compact refrigerators into the U.S. during 1998. Since they are able to produce both types of refrigerators, the use of CFCs should be considered a "nonessential use of class I substances in a product." Our assessment indicates that replacing the CFC portion of the import market with more non-CFC refrigerators is economically and technically feasible. One manufacturer believes that the differential in manufacturing costs is between $2.00 and $3.00 per unit, which might translate into a $5.00 price differential if the costs are passed on to the consumer.

In light of the ready supply, coupled with a low price differential, EPA certifies that very little if any negative impact would be felt by the small distributors.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any action containing a significant Federal intergovernmental mandate. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments. Finally, because this NPRM does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials.

D. Paperwork Reduction Act

This action requires no information collection subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore no information collection request will be submitted to OMB for review.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may

elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

G. Applicability of Executive Order 13045

This proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined in E.O. 12866 and because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce.

Dated: June 4, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations, is proposed to be amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart C—[Amended]

2. Section 82.66 is amened by removing paragraphs (d)(2)(ii), (iii), (iv),(ix), and (xi); by redesignating (d)(2)(v) through (d)(2)(viii) as (d)(2)(ii) through (d)(2)(v); by redesignating (d)(2)(x) as (d)(2)(vi); by revising paragraph (c); and by adding paragraph (e) to read as follows:

§ 82.66 Nonessential Class I Products and Exceptions.

* * * * *

(c) Any plastic foam product which is manufactured with or contains a class I substance.

* * * * *

(e) Any air-conditioning or refrigeration appliance which contains a class I substance used as a refrigerant.

[FR Doc. 99–15014 Filed 6–11–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, and 69

[CC Docket Nos. 96–45 and 97–160; FCC 99–120]

Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service proposes input values for the forward-looking mechanisms cost model for determining support for non-rural high-cost carriers. Comments are sought to supplement the record so that the Commission can select final input values.

DATES: Comments are due on or before July 2, 1999 and reply comments are due on or before July 16, 1999.

Written comments by the public on the modified information collections are due on or before July 2, 1999 and reply comments are due on or before July 16, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the modified information collections on or before August 13, 1999.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725__17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Richard Smith, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400. For additional information concerning the information collections contained in this Further Notice of Proposed Rulemaking contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554.

Initial Paperwork Reduction Act Analysis

1. This Further Notice of Proposed Rulemaking contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Further Notice of Proposed Rulemaking, as required by

the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice of Proposed Rulemaking; OMB notification of action is due August 13, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

OMB Approval Number: 3060–0793.

Title: Procedures for States Regarding Lifeline Consents. Adoption of Intrastate Discount Matrix, and Designation of Eligible Telecommunications Carriers.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit.

	Number of respondents	Estimate time per response (hours)	Total annual burden (hours)
Self-Certification as a rural company for companies serving less than 100,000 access lines	5	1	5
Self-Certification as a rural company for companies serving more than 100,000 access lines	20	1	20

Total Annual Burden: 25 hours.

Estimated costs per respondent: $0.

Needs and Uses: All the requirements contained herein are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support. In this document the Commission is proposing to change the way in which LECs file rural certification letters. The Commission proposes that once it has clarified the meaning of "local exchange operating entity" and "communities of more than 50,000" in section 153(37), it should require carriers with more than 100,000 access lines that seek rural status to file certifications for the period beginning January 1, 2000, consistent with the Commission's interpretation of the "rural telephone company" definition.

I. Introduction

2. In the Telecommunications Act of 1996 (1996 Act), Congress directed this Commission and the states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans. In response to this directive, the Commission has taken action to put in place a universal service support system that will be sustainable in an increasingly competitive marketplace. *In the Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission adopted a plan for universal service support for rural, insular, and high cost areas to replace longstanding federal subsidies to incumbent local telephone companies with explicit, competitively neutral federal universal service support mechanisms. The Commission adopted the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) that an eligible carrier's level of universal service support should be based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the services supported by the federal universal service support mechanisms.

3. Our plan to adopt a mechanism to estimate forward-looking cost has proceeded in two stages. On October 28, 1998, with the release of the *Platform Order,* 63 FR 63993 (November 18, 1998), the Commission completed the first stage of this proceeding: the selection of the model platform. The platform encompasses the aspects of the model that are essentially fixed, primarily the assumptions about the design of the network and network engineering. In this document, we move toward completion of the second stage of this proceeding, by proposing input values for the model, such as the cost of cables, switches, and other network components, in addition to various capital cost parameters. For the most important inputs, we provide a description of the methodology we have used to arrive at the proposed values. In addition, we seek to supplement the record regarding certain inputs to the model.

4. The forward-looking cost of providing supported services estimated by the model will be used to determine high cost support for non-rural carriers beginning January 1, 2000. The Commission is adopting a companion Order and Further Notice that establishes the framework for determining federal high cost support levels and seeks comment on the details of that mechanism.

II. Estimating Forward-Looking Economic Cost

A. Designing a Forward-Looking Wireline Local Telephone Network

5. To understand the assumptions made in the mechanism, it is necessary to understand the layout of the current wireline local telephone network. In general, a telephone network must allow any customer to connect to any other customer. In order to accomplish this, a telephone network must connect customer premises to a switching facility, ensure that adequate capacity exists in that switching facility to process all customers' calls that are expected to be made at peak periods, and then interconnect that switching facility with other switching facilities to route calls to their destinations. A *wire center* is the location of a switching facility. The wire center boundaries define the area in which all customers are connected to a given wire center. The *Universal Service Order* required the models to use existing incumbent LEC wire center locations in estimating forward-looking cost.

6. Within the boundaries of each wire center, the wires and other equipment that connect the central office to the customers' premises are known as *outside plant.* Outside plant can consist of either copper cable or a combination of optical fiber and copper cable, as well as associated electronic equipment. Copper cable generally carries an analog signal that is compatible with most customers' telephone equipment, but thicker, more expensive cables or loading coils must be used to carry signals over greater distances. Optical fiber cable carries a digital signal that is incompatible with most customers' telephone equipment, but the quality of a signal carried on optical fiber cable is superior at greater distances when compared to a signal carried on copper

wire. Generally, when a neighborhood is located too far from the wire center to be served with copper cables alone, an optical fiber cable will be deployed to a point within the neighborhood, where a piece of equipment will be placed that converts the digital light signal carried on optical fiber cable to an analog, electrical signal that is compatible with customers' telephones. This equipment is known as a digital loop carrier remote terminal, or DLC. From the DLC, copper cables of varying gauge extend to all of the customer premises in the neighborhood. Where the neighborhood is close enough to the wire center to serve entirely on copper cables, a copper trunk connects the wire center to a central point in the serving area, called the serving area interface (SAI), and copper cables will then connect the SAI to the customers in the serving area. The portion of the loop plant that connects the central office with the SAI or DLC is known as the *feeder plant*, and the portion that runs from the DLC or SAI throughout the neighborhood is known as the *distribution plant*.

7. The model's estimate of the cost of serving the customers located within a given wire center's boundaries includes the calculation of switch size, the lengths, gauge, and number of copper and fiber cables, and the number of DLCs required. These factors depend, in turn, on how many customers the wire center serves, where the customers are located within the wire center boundaries, and how they are distributed within neighborhoods. Particularly in rural areas, some customers may not be located in neighborhoods at all but, instead, may be scattered throughout outlying areas. In general, the model divides the area served by the wire center into smaller areas known as *serving areas*. For serving areas sufficiently close to the wire center, copper feeder cable extends from the wire center to a SAI where it is cross-connected to copper distribution cables. If the feeder is fiber, it extends to a DLC terminal in the serving area, which converts optical digital signals to analog signals. Individual circuits from the DLC are cross-connected to copper distribution cables at the adjacent SAI.

8. The model assumes that wire centers are interconnected with one another using optical fiber networks known as Synchronous Optical Network (SONET) rings. The infrastructure to interconnect the wire centers is known as the *interoffice* network, and the carriage of traffic among wire centers is known as *transport*. In cases where a number of wire centers with relatively few people within their boundaries are located in close proximity to one another, it may be more economical to use the processor capacity of a single switch to supervise the calls of the customers in the boundaries of all the wire centers. In that case, a full-capacity switch (known as a *host*) is placed in one of the wire centers and less expensive, more limited-capacity switches (known as *remotes*) are placed in the other wire centers. The remotes are then connected to the host with interoffice facilities. Switches that are located in wire centers with enough customers within their boundaries to merit their own full-capacity switches and that do not serve as hosts to any other wire centers are called stand-alone switches.

9. There are also a number of expenses and general support facilities (GSF) costs associated with the design of a forward-looking wireline telephone network. GSF costs include the investment related to vehicles, land, buildings, and general purpose computers. Expenses include: plant specific expenses, such as maintenance of facilities and equipment expenses; plant non-specific expenses, such as engineering, network operations, and power expenses; customer service expenses, such as marketing, billing, and directory listing expenses; and corporate operations expenses, such as administration, human resources, legal, and accounting expenses.

B. Synthesis Model

10. The "synthesis" model adopted in the *Platform Order* allows the user to estimate the cost of building a telephone network to serve subscribers in their actual geographic locations, to the extent these locations are known. To the extent that the actual geographic locations of customers are not available, the Commission determined that the synthesis model should assume that customers are located near roads.

11. Once the customer locations have been determined, the model employs a clustering algorithm to group customers into serving areas in an efficient manner that takes into consideration relevant engineering guidelines. After identifying efficient serving areas, the model designs outside plant to the customer locations. In doing so, the model employs a number of cost minimization principles designed to determine the most cost-effective technology to be used under a variety of circumstances, such as varying terrain and density.

12. The Commission concluded that the federal universal service mechanism should incorporate, with certain modifications, the HAI 5.0a switching and interoffice facilities module to estimate the cost of switching and interoffice transport. The Commission noted that it would consider adopting the LERG at the inputs stage of this proceeding to determine the deployment of host and remote switches. In addition, the Commission adopted the HAI platform module for calculating expenses and capital costs, such as depreciation.

13. The Commission noted that technical improvements to the cost model will continue, both before implementation of the model for non-rural carriers and on an ongoing basis, as necessary. The Commission therefore delegated to the Bureau the authority to make changes or direct that changes be made to the model platform as necessary and appropriate to ensure that the platform of the federal mechanism operates as described in the *Platform Order*. As contemplated in the *Platform Order*, Commission staff and interested parties have continued to review the model platform to ensure that it operates as intended. As a result, some refinements have been made to the model platform adopted in the *Platform Order*.

C. Selecting Forward-Looking Input Values

14. In the *Universal Service Order*, the Commission adopted ten criteria to be used in determining the forward-looking economic cost of providing universal service in high cost areas. These criteria provide specific guidance for our selection of input values for use in the synthesis model. Rather than reflecting existing incumbent LEC facilities, the technology assumed in the model "must be the least-cost, most-efficient, and reasonable technology for providing the supported services that is currently being deployed." As noted, existing LEC plant does not necessarily, or even likely, reflect forward-looking technology or design choices. Similarly, the input values we tentatively select in this Notice are not intended to replicate any particular company's embedded or book costs. Criterion three directs that "costs must not be the embedded cost of the facilities, functions, or elements." Rather, the model "must be based upon an examination of the current cost of purchasing facilities and equipment."

15. As discussed, we generally have proposed using nationwide, rather than company-specific input values in the federal mechanism. In many cases, the only data for various inputs on the record in this proceeding are embedded cost, company-specific data. We have used various techniques to convert these data to forward-looking values. For example, we propose modifying the

switching data to adjust for the effects of inflation and the cost changes unique to the purchase and installation of digital switches. We propose nationwide averages, rather than company-specific values, to mitigate the rewards to less efficient companies.

16. Although the BCPM sponsors have provided nationwide default values, they and other LECs generally advocate company-specific input values. For purposes of determining federal universal service support amounts, we believe that nationwide default values generally are more appropriate than company-specific values. Under the new mechanism, support is based on the estimated costs that an efficient carrier would incur to provide the supported services, rather than on the specific carrier's book costs. There may be some categories of inputs, however, where company-specific or state specific input values might be appropriate for use in the federal mechanism. We seek comment on specific alternatives to nationwide values for certain input values, as discussed. We make no finding with respect to whether nationwide values would be appropriate for purposes other than determining federal universal service support.

III. Determining Customer Locations

A. Issues for Comment

1. Geocode Data

17. While we affirm our conclusion in the *Platform Order* that geocode data should be used to locate customers in the federal mechanism, we tentatively conclude that at this time we cannot adopt any particular source of geocode data because interested parties have not had adequate access or time to review such data. We tentatively conclude that a road surrogate algorithm will be used to locate customers in the federal mechanism until a source of geocode data is selected by the Commission. We reiterate our expectation, however, that we will identify and select a source of accurate and verifiable geocode data in the future for use in the federal mechanism.

18. In the *Platform Order*, we concluded that a model is most likely to select the least-cost, most-efficient outside plant design if it uses the most accurate data for locating customers within wire centers, and that the most accurate data for locating customers within wire centers are precise latitude and longitude coordinates for those customers' locations. We noted that commenters generally support the use of accurate geocode data in the federal mechanism where available. We further noted that the only geocode data in the record were those prepared for HAI by PNR Associates (PNR), but that "our conclusion that the model should use geocode data to the extent that they are available is not a determination of the accuracy or reliability of any particular source of the data." Although commenters support the use of accurate geocode data, several commenters question whether the PNR geocode data are adequately available for review by interested parties.

19. In the *Universal Service Order*, the Commission required that the "model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment." In an effort to comply with this requirement, the Commission has made significant efforts to encourage parties to submit geocode data on the record in this proceeding. PNR took initial steps to comply with this requirement in December 1998 by making available the "BIN" files derived from the geocoded points to interested parties pursuant to the *Protective Order*, 63 FR 42753 (August 11, 1998). In addition, PNR has continued to provide access to the underlying geocode data at its facility in Pennsylvania. Several commenters, in petitions for reconsideration of the *Platform Order*, have argued that the availability of the BIN data alone is not sufficient to comply with the requirements of criterion eight, particularly in light of the expense and conditions imposed by PNR in obtaining access to the geocode point data.

20. We tentatively conclude that interested parties have not had an adequate opportunity to review and comment on the accuracy of the PNR geocode data. We note that a nationwide customer location database will, by necessity, be voluminous, relying on a variety of underlying data sources. In order to comply with criterion eight, all underlying data must be reasonably available to interested parties for review. In light of the concerns expressed by several commenters relating to the conditions and expense in obtaining data from PNR, we find that no source of geocode data has been made adequately available for review. We anticipate that a source of accurate and verifiable geocode data can be selected for use in the federal mechanism in the future and we encourage parties to make continued efforts to ensure that all underlying geocode data are available for review. For example, we note that PNR has contacted its data vendors for the purpose of making additional underlying data more freely available to parties in this proceeding. As noted in the *Platform Order*, we recognize that more comprehensive geocode data are likely to be available in the future and encourage parties to continue development of a data source that complies with the criteria outlined in the *Universal Service Order* for use in the federal mechanism. We therefore seek further comment on a source of geocode customer locations that will comply with the Commission's criteria for use in the federal mechanism. In addition, we seek comment on the availability for review of the PNR geocode data, including any further measures necessary to ensure that the PNR geocode data are sufficiently available for review by the public.

2. Road Surrogate Customer Locations

21. We tentatively conclude that the road surrogating algorithm proposed by PNR should be used to develop road surrogate customer locations for the federal universal service mechanism. In the *Platform Order*, we concluded that, in the absence of actual geocode customer location data, BCPM's rationale of associating road networks and customer locations provides the most reasonable approach for determining customer locations. As anticipated in the *Platform Order*, once a source of geocode data has been selected, the road surrogate customer locations will be used only in the absence of geocode customer location data.

22. As noted in the *Platform Order*, "associating customers with the distribution of roads is more likely to correlate to actual customer locations than uniformly distributing customers throughout the Census Block, as HCPM proposes, or uniformly distributing customers along the Census Block boundary, as HAI proposes." We therefore concluded in the *Platform Order* that the selection of a precise algorithm for placing road surrogates should be conducted in the inputs stage of this proceeding.

23. Currently, there are two road surrogating algorithms on the record in this proceeding—those proposed by PNR and Stopwatch Maps. On March 2, 1998, the HAI proponents provided a description of the road surrogate methodology developed by PNR for locating customers. On January 27, 1999, PNR made available for review by the Commission and interested parties, pursuant to the terms of the *Protective Order*, the road surrogate point data for all states except Alaska, Iowa, Virginia, Puerto Rico and eighty-four wire centers in various other states. On February 22, 1999, PNR filed a more detailed

description of its road surrogate algorithm.

24. In general, the PNR road surrogate algorithm utilizes the Census Bureau's Topologically Integrated Geographic Encoding and Referencing (TIGER) files, which contain all the road segments in the United States. For each Census Block, PNR determines how many customers and which roads are located within the Census Block. For each Census Block, PNR also develops a list of road segments. The total distance of the road segments within the Census Block is then computed. Roads that are located entirely within the interior of the Census Block are given twice the weight as roads on the boundary. This is because customers are assumed to live on both sides of a road within the interior of the Census Block. In addition, the PNR algorithm excludes certain road segments along which customers are not likely to reside. For example, PNR excludes highway access ramps, alleys, and ferry crossings. The total number of surrogate points is then divided by the computed road distance to determine the spacing between surrogate points. Based on that distance, the surrogate customer locations are uniformly distributed along the road segments.

25. Stopwatch Maps has compiled road surrogate customer location files for six states suitable for use in the federal mechanism. We tentatively conclude, however, that until a more comprehensive data set is made available, the Stopwatch data set will not comply with the *Universal Service Order's* criterion that the underlying data are available for review by the public. In addition, we note that the availability of only six states is of limited utility in a nationwide model.

26. We tentatively conclude that the PNR road surrogate algorithm is a reasonable method for locating customers in the absence of actual geocode data. We note that PNR's methodology of excluding certain road segments is consistent with the Commission's conclusion in the *Platform Order* that certain types of roads and road segments should be excluded because they are unlikely to be associated with customer locations. In addition, we note that PNR's reliance on the Census Bureau's TIGER files ensures a degree of reliability and availability for review of much of the data underlying PNR's road surrogate algorithm, in compliance with criterion eight of the *Universal Service Order*. We note that the HAI proponents contend that use of a surrogate algorithm may overstate the amount of plant necessary to provide supported services. We seek comment on the validity of this contention. We also note that PNR has indicated that it intends to finalize a number of improvements to the road surrogate algorithm and data. For example, PNR states that the new release will incorporate any new input requirements relating to an authoritative wire center list, housing units versus households, and treatment of phone penetration rates. In addition, the new release will include data for all fifty states, Washington, D.C., and Puerto Rico. We seek comment on our tentative conclusion to adopt the PNR road surrogate algorithm to determine customer locations, and to adopt the PNR road surrogate data set for use in the model beginning on January 1, 2000. We also seek comment on any changes that should be made to the PNR methodology to improve the accuracy of the customer locations it generates.

3. Methodology for Estimating the Number of Customer Locations

27. In addition to selecting a source of customer data, we also must select a methodology for estimating the number of customer locations within the geographic region that will be used in developing the customer location data. We also must determine how demand for service at each location should be estimated and how locations should be allocated to each wire center.

28. In the *Universal Service Order*, the Commission concluded that a "model must estimate the cost of providing service for all businesses and households within a geographic region." In the *Inputs Public Notice*, 63 FR 28339 (May 22, 1998), the Bureau sought comment on the appropriate method for defining "households," or residential locations, for the purpose of calculating the forward-looking cost of providing supported services. Model proponents and interested parties have proposed alternative methods to comply with this requirement.

29. The HAI sponsors propose that we use the methodology devised by PNR, which is based upon the number of households in each Census Block, while the BCPM sponsors propose that we use a methodology based upon the number of housing units in each Census Block. A household is an occupied residence, while housing units include all residences, whether occupied or not.

30. Specifically, the HAI sponsors advocate the use of the PNR National Access Line Model to estimate the number of customer locations within Census Blocks and wire centers. The PNR National Access Line Model uses a variety of information sources, including: survey information, the LERG, Business Location Research (BLR) wire center boundaries, Dun & Bradstreet's business database, Metromail's residential database, Claritas' demographic database, and U.S. Census estimates. PNR's model uses these sources to estimate the number of residential and business locations, and the number of access lines demanded at each location. The model makes these estimations for each Census Block, and for each wire center in the United States.

31. At the conclusion of PNR's process for estimating the number of customer locations: (1) PNR's estimate of residential locations is greater than or equal to the Census Bureau's estimate of households, by Census Block Group, and its estimate is disaggregated to the Census Block level, (2) PNR's estimate of demand for both residential and business lines in each study area is greater than or equal to the number of access lines in the Automated Reporting and Management Information System (ARMIS) for that study area, and the estimates are available by location at the Block level, and (3) each customer location is associated with a particular wire center.

32. The BCPM sponsors rely on many of the same data sources as those used in PNR's National Access Line Model. For example, BCPM 3.1 uses wire center data obtained from BLR and business line data obtained from PNR. In estimating the number of residential locations, however, the BCPM sponsors use Census data that include household and housing unit counts from the 1990 Census, updated based upon 1995 Census statistics regarding household growth by county. In addition, rather than attempting to estimate demand by location at the Block level, the BCPM model builds two lines to every residential location and at least six lines to every business.

33. The synthesis model currently calculates the average cost per line by dividing the total cost of serving customer locations by the current number of lines. Because the current number of lines is used in this average cost calculation, the HAI sponsors argue that the total cost should be determined by using the current number of customer locations. The HAI sponsors contend that "the key issue is the consistency of the numerator and denominator" in the average cost calculation. The HAI sponsors argue that other approaches are inconsistent because they select the highest possible cost numerator and divide by the lowest possible line denominator, and therefore result in larger than necessary support levels. The HAI sponsors argue that, in

order to be consistent, housing units must be used in the determination of total lines if they are used in the determination of total costs. The HAI sponsors contend that "[i]f used consistently in this manner, building to housing units as GTE proposes is unlikely to make any difference in cost per line."

34. In contrast, the BCPM sponsors and other commenters contend that the total cost should include the cost of providing service to all possible customer locations, even if some locations currently do not receive service. Furthermore, the BCPM sponsors contend that if total cost is based on a smaller number of locations, support will not be sufficient to enable carriers to meet their carrier-of-last-resort obligations. The BCPM sponsors also argue that basing the estimate of residential locations on households instead of housing units will underestimate the cost of building a network that can provide universal service. The BCPM sponsors, as well as some other commenters, contend that residential locations should be based on the number of housing units—whether occupied or unoccupied. These commenters contend that only this approach reflects the obligation to provide service to any residence that may request it in the future.

35. We tentatively conclude that PNR's process for estimating the number of customer locations should be used for developing the customer location data. We also tentatively conclude that we should use PNR's methodology for estimating the demand for service at each location, and for allocating customer locations to wire centers. We believe that the PNR methodology is a reasonable method for determining the number of customer locations to be served in calculating the cost of providing supported services. To the extent that the PNR methodology includes the cost of providing service to all currently served households, we tentatively conclude that this is consistent with a forward-looking cost model, which is designed to estimate the cost of serving current demand. As noted by the HAI sponsors, adopting housing units as the standard would inflate the cost per line by using the highest possible numerator (all occupied and unoccupied housing units) and dividing by the lowest possible denominator (the number of customers with telephones).

36. In addition, we do not believe that including the cost of providing service to all housing units will promote universal service to unserved customers or areas. We note that there is no guarantee that carriers would use any support derived from the cost of serving all housing units to provide service to these customers. Many states permit carriers to charge substantial line extension or construction fees for connecting customers in remote areas to their network. If that fee is unaffordable to a particular customer, raising the carrier's support level by including the costs of serving that customer in the model's calculations would have no effect on whether the customer actually receives service. In fact, as long as the customer remains unserved, the carriers would receive a windfall. We recognize that serving unserved customers in such circumstances is an important universal service goal. As discussed in the companion Order and Further Notice adopted on May 28, 1999, we will initiate a separate proceeding in July 1999 to investigate the issue of unserved areas.

37. If we were to calculate the costs of a network that would serve all potential customers, it would not be consistent to calculate the cost per line by using current demand. In other words, it would not be consistent to estimate the cost per line by dividing the total cost of serving all potential customers by the number of lines currently served. We note, however, that the level and source of future demand is uncertain. Future demand might include not only demand from currently unoccupied housing units, but also demand from new housing units, or potential increases in demand from currently subscribing households. We also recognize that population or demographic changes may cause future demand levels in some areas to decline. Given the uncertainty of future demand, we are concerned that including such costs may not reflect forward-looking costs and may perpetuate the system of implicit support.

38. We recognize, however, that additional comment would be helpful with regard to certain issues. For example, if a currently vacant unit will again receive service in the near future, one might argue that it should be included in the calculation of total cost. It is also possible that housing stock is subject to a type of churn that could inflate the number of households used in determining total cost without affecting the total number of lines. That is, a certain percentage of housing units may be repeatedly vacated and then reoccupied, with the specific households involved constantly changing. At any given time, a certain number of housing units might be unoccupied as a result. Under the Census definition, such units are not considered households and therefore may not be included in the number of residential locations estimated by PNR. We seek comment on whether the costs associated with providing service to these housing units should be included in the total cost by identifying an additional number of unoccupied units. The PNR methodology may provide an estimate of the number of residential locations that is greater than the number that currently receive telephone service, however. Therefore PNR's methodology may already account for at least some portion of housing units subject to this type of churn. We seek comment on this issue.

39. We also note that locations outside of existing wire centers will not be included under the PNR methodology. Therefore the accuracy of the wire center boundaries is of importance in estimating the number of customer locations. PNR currently uses BLR wire center information to estimate wire center boundaries. As noted, the BCPM model also uses BLR wire center boundaries, as does Stopwatch Maps in its road surrogate customer location files. PNR has indicated its intent to evaluate alternative sources of wire center boundaries to be used in the customer location data. We therefore seek comment on the accuracy of the BLR wire center boundaries and any possible alternatives to establish more accurate wire center boundaries.

IV. Outside Plant Input Values

A. Copper and Fiber Cable

1. Issues for Comment

40. We now examine the inputs needed to determine outside plant cable costs in the synthesis model. The synthesis model uses several tables to calculate cable costs, based on the cost per foot of cable, which may vary by cable size (*i.e.*, gauge and pair size) and the type of plant (*i.e.*, underground, buried, or aerial). There are four separate tables for copper distribution and feeder cable of two different gauges, and one table for fiber cable. The engineering assumptions and optimizing routines in the model, in conjunction with the input values in the tables, determine which type of cable is used.

41. After the synthesis model has grouped customer locations in clusters, it determines, based on cost minimization and engineering considerations, the appropriate technology type for the cluster and the correct size of cables in the distribution network. Every customer location is connected to the closest SAI by copper cable. The copper cable used in the

local loop typically is either 24-or 26-gauge copper. Twenty-four gauge copper is thicker and therefore is expected to be more expensive than 26-gauge copper. Twenty-four gauge copper also can carry signals greater distances without degradation than 26-gauge copper and, therefore, is used in longer loops. In the synthesis model, if the maximum distance from the customer to the SAI is less than or equal to the copper gauge crossover point, then 26-gauge cable is used. Feeder cable is either copper or fiber. Fiber is used for loops that exceed 18,000 feet, the maximum copper loop length permitted in the model, as determined in the *Platform Order*. When fiber is more cost effective, the model will use it to replace copper for loops that are shorter than 18,000 feet.

a. Engineering Assumptions and Optimizing Routines. 42. Before we consider our proposed input values for cable costs, we discuss certain input values related to the engineering assumptions and optimizing routines in the synthesis model that affect outside plant costs. Specifically, we must determine: (1) whether optimization in the synthesis model should be turned on or off; (2) whether the model should use T–1 technology; and (3) whether the model should use rectilinear or airline distances and the value of the corresponding "road factor."

i. Optimization. 43. In the synthesis model, the user has the option of optimizing distribution plant routing via a minimum cost spanning tree algorithm discussed in the model documentation. The algorithm functions by first calculating distribution routing using an engineering "rule of thumb" and then comparing the cost with the spanning tree result, choosing the routing that minimizes annualized cost. The user also has the option of not using the distribution optimization feature, thereby saving a significant amount of computation time, but reporting network costs that may be significantly higher than with the optimization. In addition, the user has the option of using the distribution optimization feature only in the lowest density zones.

44. We tentatively conclude that the synthesis model should be run with the optimization turned on when the model is used to calculate the forward looking cost of providing the services supported by the federal mechanism. We point out that the optimization approach represents what a network planning engineer would attempt to accomplish in developing a forward-looking network. This approach also complies with criterion one's requirement that the model must assume the least-cost, most efficient, and reasonable technology for providing the supported service that is currently being deployed. We note, however, that the optimization can substantially increase the model's run time. Preliminary staff analysis of comparison runs with full optimization versus runs with no optimization indicate that, for clusters with line density greater than 500, the rule of thumb algorithm results in the same or lower cost for nearly all clusters. We seek comment on whether an acceptable compromise to full optimization would be to set the optimization factor at "–p500," as described in the model documentation. With this setting the model will optimize distribution plant whenever the density of a cluster is less than or equal to 500 lines per square mile. For purposes of further analysis of the proposed input values, we also anticipate that parties may wish to run the model without optimization turned on to save computing time. After staff has completed its analysis of comparison runs, we intend to make available a spreadsheet showing the estimated percentage change, for each non-rural study area, between running the model with the distribution optimization disabled and running the model with the distribution optimization enabled.

ii. T–1 Technology. 45. A user of the synthesis model also has the option of using T–1 technology as an alternative to copper feeder or fiber feeder in certain circumstances. T–1 is a technology that allows digital signals to be transmitted on two pairs of copper wires at 1.544 Megabits per second (Mbps). If the T–1 option is enabled, the optimizing routines in the model will choose the least cost feeder technology among three options: analog copper, T–1 on copper, and fiber. For serving clusters with loop distances below the maximum copper loop length, the model could choose among all three options; between 18,000 feet and the fiber crossover point, which earlier versions of HCPM set at 24,000 feet, the model could choose between fiber and T–1; and above the fiber crossover point, the model would always use fiber. In the HAI model, T–1 technology is used to serve very small outlier clusters in locations where the copper distribution cable would exceed 18,000 feet. The BCPM sponsors and other LECs contend that T–1 is not a forward looking technology and, therefore should not be used in the synthesis model. The HAI sponsors contend that current advertisements show that T–1 is being used currently.

46. As noted, a number of parties contend that the T–1 on copper technology is not forward looking. Other sources indicate that advanced technologies, like HDSL, potentially can be used on T–1 technology to transmit information at T–1 or higher rates. We seek comment on this issue. We also seek comment on the extent to which HDSL technology presently is being used on T–1.

47. The only input values for T–1 costs on the record in this proceeding are the HAI default values. Because the synthesis model and the HAI model use T–1 differently, we tentatively find that the HAI default values would not be appropriate for use in the synthesis model. In light of the fact that T–1 may not be a forward looking technology and the lack of appropriate input values, we tentatively conclude that we should not use the T–1 option in the synthesis model. We seek comment on our tentative conclusion. We ask that parties who disagree with our tentative conclusion and recommend that the T–1 function be used in the synthesis model propose input values that will accurately estimate the cost of this technology, including what values are needed for the costs of shielded copper, repeaters, and terminals.

iii. Distance Calculations and Road Factor. 48. We tentatively conclude that the synthesis model should use rectilinear distance, rather than airline distance, in calculating outside plant distances, because this more accurately reflects the routing of telephone plant along roads and other rights of way. In fact, research suggests that, on average, rectilinear distance closely approximates road distances. As a result, we tentatively conclude that the road factor in the model, which reflects the ratio between route distance and road distance, should be set equal to 1. We seek comment on these tentative conclusions.

49. We also note that airline distance could be used in the model, if we were to derive accurate road factors. We seek comment on this alternative. Specifically, we seek comment on whether we should use airline miles with wire center specific road factors. Research has shown that the airline distance metric with an appropriate road factor is more accurate than the rectilinear metric. We seek comment on this alternative approach.

b. Cost of Copper Cable. i. Preliminary Issues. 50. The synthesis model uses tables that show the cost per foot of copper cable, by pair size. In selecting input values for the cost of copper cables, we must first address a number of preliminary issues: the extent to which 24- and 26-gauge copper cable should be used in the synthesis model; whether cable installation costs should

differ between feeder and distribution cable; and whether cable installation costs should vary for underground, buried, and aerial cable.

51. *Use of 24- and 26-Gauge Copper.* The HAI default values assume that all copper cable below 400 pairs in size is 24-gauge and all copper cable of 400 pairs and larger is 26-gauge. The BCPM default values include separate costs for 24- and 26-gauge copper of all sizes. We tentatively reject the HAI sponsors' argument that 26-gauge copper costs should be used for all larger pair sizes of copper cable. We tentatively conclude that the model should use both 24-gauge and 26-gauge copper in all available pair-sizes. Based on a preliminary analysis of the results of the structure and cable cost survey, it appears that a significant amount of 24-gauge copper cable in larger pair sizes currently is being deployed. We seek comment on these tentative conclusions.

52. *Distinguishing Feeder and Distribution Cable Costs.* We reaffirm the Commission's tentative conclusion in the *1997 Further Notice,* 62 FR 424572 (August 7, 1997), that the same input values should be used for copper cable whether it is used in feeder or in distribution plant. Although the BCPM sponsors previously disagreed with this tentative conclusion, they have not provided persuasive data for this position. We seek comment on this tentative conclusion.

53. *Distinguishing Underground, Buried, and Aerial Installation Costs.* The HAI and BCPM sponsors both claim that their proposed values for cable costs include the cost of installation. The BCPM defaults provide separate cost estimates for aerial, buried, and underground cable. The HAI default cable costs do not vary by type of plant and, therefore, appear to assume that installation costs are the same for aerial, underground, and buried cable. For buried copper cable, the HAI defaults include a multiplier to estimate the additional cost of the filling compound used in buried cable to protect the cable from moisture. For underground cable, HAI adds a per foot material cost for the conduit material.

54. We tentatively conclude that we should adopt separate input values for the cost of aerial, underground, and buried cable. Based on our analysis of cable cost data, we have found considerable differences in the per foot cost of cable, depending upon whether the cable was strung on poles, pulled through conduit, or buried. We seek comment on this tentative conclusion.

ii. Cost Per Foot of Copper Cable. 55. We now turn to the cost per foot of 24- and 26-gauge copper cable. Both the HAI and BCPM sponsors provide default input values for copper cable costs that are based upon the opinions of their respective experts, but without data that enable us to substantiate those opinions. In addition, the Commission received cable cost data from a number of LECs, including data received in response to the structure and cable cost survey developed by staff, which staff is continuing to analyze, as noted.

56. At the December 11, 1998 workshop, Commission staff described how they had estimated the preliminary copper cable costs, by pair size and by plant type (i.e., aerial, buried, or underground), that had been posted on the Commission's Web site prior to the workshop. For copper cable, the staff estimated high and low values for the cost of the smallest pair size of 26-gauge copper cable based on an analysis of the HAI default values and the values submitted by states filing cost models in this proceeding. These estimates were adjusted for larger pair sizes of 26-gauge cable and different structure types using estimates in Gabel and Kennedy's analysis of RUS data, which was published by the National Regulatory Research Institute (NRRI Study). The cost of 24-gauge copper cable was estimated by applying a multiplier to the 26-gauge estimates based on the relative weight of the copper in these two gauges.

57. While the HAI sponsors support using the publicly available RUS data in the NRRI Study to estimate cable costs, Sprint questions the reliability and suitability of this data, and urges us instead to use the cable cost data provided by incumbent LECs. As Sprint points out, the RUS data contain information from only the two lowest density zones. Because loops are longer in sparsely populated areas, lower gauge copper often is used.

58. We tentatively conclude that we should use, with certain modifications, the estimates in the NRRI Study for the per foot cost of aerial, underground, and buried 24-gauge copper cable. As described, we also tentatively conclude that we should estimate the cost of 26-gauge copper cable by adjusting our 24-gauge estimates with ratios derived from cost data submitted by several non-rural LECs. We seek comment on these tentative conclusions and proposed values.

59. Although the RUS data were collected from the two lowest density zones, we note that none of the models considered by the Commission has the capability of varying cable costs by density zones. Nor have parties proposed cable cost values that vary by density zone. We also believe that Sprint has mischaracterized the analysis of the RUS data in the NRRI Study. For example, Sprint challenges the validity of the study because some of the observations have zero values for labor or material, while failing to recognize that these values were excluded from Gabel and Kennedy's regression analysis. Similarly, Sprint's complaint that Gabel and Kennedy do not analyze the components of total cable costs, labor and material, separately overlooks that Gabel and Kennedy's regression analysis is designed to explain the variation in total costs.

60. The NRRI Study provides estimates for outside plant structure and cable costs using cost data derived from construction contracts supplied by the RUS for a sample of companies that operate under various soil, weather, and population density conditions. In generating these estimates, Gabel and Kennedy used standard regression techniques to measure the effect of geological and density conditions on cable and structure costs. In general, the econometric formulations that Gable and Kennedy developed to estimate cable costs measure the effect on these costs of cable size and the placement of two or more cables on the same route.

61. We tentatively conclude that one substantive change should be made to Gabel and Kennedy's analysis. Gabel and Kennedy used the ordinary least squares statistical technique to estimate the cost of structure and cables. The ordinary least squares technique fits a straight line to the data by minimizing the sum of squared prediction errors. The ordinary least squares technique is efficacious, however, only for a data set lacking statistical outliers. Such outliers have an undue influence on regression results, since the residual associated with each outlier is squared in calculating the regression. In order to mitigate the influence of such outlier values, statisticians have developed so-called robust regression techniques for estimating regression equations. We tentatively conclude that a robust regression technique should be used for analyzing the RUS data. We seek comment on this tentative conclusion.

62. Specifically, we tentatively conclude that the robust regression technique proposed by Huber should be applied to the RUS data. Essentially, this algorithm uses a standard statistical criterion to determine the most extreme outliers, and excludes them. Thereafter, as suggested by Huber, it iteratively performs a regression, then for each observation calculates an observation weight based on the absolute value of the observation residual. Finally, the

procedure performs a weighted least squares regression using the calculated weights. This process is repeated until the values of the weights effectively stop changing. We have used the robust regression parameter estimates for cable, conduit, and buried structure. The use of robust estimation did not improve the statistical properties of the estimators for pole costs, so we tentatively conclude that the ordinary least squares technique is appropriate for pole costs. We seek comment on these tentative conclusions and analysis.

63. *24-Gauge Aerial Copper Cable.* We tentatively conclude that we should use the regression equation in the NRRI Study, as modified by the Huber methodology described, to estimate the cost of 24-gauge aerial copper cable, with three adjustments.

64. First, we propose to adjust the equation to reflect the superior buying power that non-rural LECs may have in comparison to the LECs represented in the RUS data. We seek comment on whether an adjustment for superior bargaining power is necessary, and, if so, how such an adjustment should be made.

65. Based on data entered into the record in a proceeding before the Maine Public Utilities Commission, Gabel and Kennedy determined that Bell Atlantic's material costs for aerial copper cable are approximately 15.2 percent less than these costs for the RUS companies. We tentatively conclude that this figure represents a reasonable estimate of the difference in the material costs that non-rural LECs pay in comparison to those that the RUS companies pay. To reflect this degree of buying power in the cable cost estimates that we derive for non-rural LECs, we propose to reduce the regression coefficient for the number of copper pairs by 15.2 percent for aerial copper cable. This coefficient measures the incremental or additional cable cost associated with one additional copper pair and therefore largely reflects the material cost of the cable. We seek comment on this proposed adjustment. We also invite parties to suggest alternative methods for capturing the impact of superior buying power.

66. Second, we propose to adjust the equation in the NRRI Study to account for LEC engineering costs, which were not included in the RUS cable data. The BCM2 default values include a loading of five percent for engineering. The HAI sponsors claim that engineering constitutes approximately 15 percent of the cost of installing outside plant cables. This percentage includes both contractor engineering and LEC engineering. The cost of contractor engineering already is reflected in the RUS cable cost data. Based on the record, we tentatively conclude that we should add a loading of 10 percent to the material and labor cost of the cable (net of LEC engineering and splicing costs) to approximate the cost of LEC engineering. We seek comment on this tentative conclusion and invite commenters to justify an alternative loading factor for LEC engineering.

67. Third, we propose to adjust the equation to account for splicing costs, which also were not included in the RUS data. In the NRRI Study, Gabel and Kennedy determined that the ratio of splicing costs to copper cable costs (excluding splicing and LEC engineering costs) is 9.4 percent for RUS companies. We tentatively conclude that we should adopt a loading of 9.4 percent for splicing costs. We seek comment on this tentative conclusion.

68. *24-Gauge Underground Copper Cable.* We tentatively conclude that we should use the regression equation in the NRRI Study, as modified by the Huber methodology described, to estimate the cost of 24-gauge underground copper cable. We also tentatively conclude that we should use the same three adjustments proposed for 24-gauge aerial copper cable, with one exception. We tentatively conclude that we should reduce the regression coefficient for the number of copper pairs by 16.3 percent, to reflect superior buying power, based on the analysis in the NRRI study. We seek comment on the use of this equation and the proposed adjustments.

69. *24-Gauge Buried Copper Cable.* We tentatively conclude that it is necessary to modify the regression equation in the NRRI Study, as modified by the Huber methodology described, to estimate the cost of a 24-gauge buried copper cable, because the equation in the study includes labor and material costs for both buried cable and structure. We seek comment on this tentative conclusion and proposed equation.

70. We propose to make the same three adjustments to this equation as we proposed for 24-gauge aerial and underground cables, with the exception of the adjustment for superior buying power. Because the NRRI Study does not include a recommendation for such an adjustment for buried cable, we tentatively conclude we should use 15.2 percent, which is the lower of the reductions used for aerial and underground cable. We seek comment on the use of these adjustments for 24-gauge buried cable.

71. *26-Gauge Copper Cable.* Because the NRRI Study did not provide estimates for 26-gauge copper cable, we must either use another data source or find a method to derive these estimates from those for 24-gauge. The HAI sponsors support the proposal presented by Commission staff at the workshop to use the relative weight of copper to adjust the 24-gauge copper costs to derive 26-gauge copper costs, although they would make further adjustments to reflect the cost of 26-gauge copper for cable sizes of 400 pairs and larger. The BCPM sponsors challenge the assumption that the cost of copper cable is closely tied to the relative weight of the copper in the cable. Both the HAI sponsors and the BCPM sponsors argue that the cost of splicing is not directly a function of investment, but rather is primarily a function of the number of pairs to be spliced, and the distance between splices. Although they agree that splicing costs should be estimated using the average cost per pair-foot, they disagree over what those costs should be.

72. We tentatively conclude that we should derive cost estimates for 26-gauge cable by adjusting our estimates for 24-gauge cable. We agree with the BCPM sponsors that the cost of copper cable should not be estimated based solely on the relative weight of the cable. Instead, we propose to use the ordinary least squares regression technique to estimate the ratio of the cost of 26-gauge to 24-gauge cable for each plant type (*i.e.*, aerial, underground, buried). We propose to estimate these ratios using data on 26-gauge and 24-gauge cable costs submitted by Aliant and Sprint and the BCPM default values for these costs. While we would prefer to develop these ratios based on data from more than these three sources, we tentatively conclude that these are the best data available on the record for this purpose. We seek comment on these tentative conclusions and proposed analysis, including the regression techniques described. We invite parties to propose alternative methods of deriving cost estimates for 26-gauge cable.

c. Cost of Fiber Cable. 73. In selecting input values for fiber cable costs, we must determine values for the cost per foot of fiber for various strand sizes for aerial, underground, and buried cable. Both the HAI and BCPM sponsors provide default input values for fiber cable costs that are based upon the opinions of their respective experts, without data enabling us to substantiate those opinions. In addition, the Commission received cable cost data from a number of LECs, including data received in response to the structure and cable cost survey, which staff is continuing to analyze, as noted.

74. At the December 11, 1998 workshop, Commission staff described how they had computed the preliminary fiber cable costs, by pair size and by plant type (aerial, buried, or underground) that had been posted on the Commission's Web site prior to the workshop. Using a methodology similar to the one used for copper cable, staff estimated the cost of the smallest size fiber cable based on an analysis of proposed values and used the analysis in the NRRI Study to derive costs for larger sizes.

75. We tentatively conclude that we should use the RUS data and the analysis in the NRRI Study, with certain adjustments, to estimate fiber cable costs. For the reasons discussed for copper cable, we also tentatively conclude that the cost of fiber cable will vary for aerial, underground, and buried plant. We tentatively select the input values for the per foot cost of aerial, underground, and fiber cable in various strand sizes, as shown. We seek comment on these tentative conclusions and proposed values.

76. *Aerial Fiber Cable.* We tentatively conclude that we should use the regression equation in the NRRI Study, as modified by the Huber methodology described, to estimate the cost of aerial fiber cable, with three adjustments similar to those made for copper cable. We seek comment on this tentative conclusion.

77. As noted, we propose three adjustments to the equation used in the NRRI Study to estimate the cost of aerial fiber cable. First, based on the NRRI Study, we propose to reduce by 33.8 percent the regression coefficient for the number of fiber strands, to reflect the superior buying power of non-rural LECs. Second, for the reasons described earlier, we tentatively conclude that we should add a loading of 10 percent to the material and labor cost of the cable (net of LEC engineering and splicing costs) to approximate the cost of LEC engineering. Finally, we tentatively conclude that we should add a loading for splicing costs of 4.7 percent to the material and labor cost of the cable (net of LEC engineering and splicing costs), based on the estimates in the NRRI Study. We seek comment on these tentative conclusions and proposed adjustments.

78. *Underground Fiber Cable.* We tentatively conclude that we should use the regression equation in the NRRI Study, as modified by the Huber methodology described, to estimate the cost of underground fiber cable, with three adjustments similar to those made for aerial fiber cable. We seek comment on this tentative conclusion.

79. As noted, we propose three adjustments to the NRRI equation for the cost of underground fiber cable. First, based on the NRRI Study, we propose to adjust downward by 27.8 percent the regression coefficient for the number of fiber strands, to reflect the superior buying power of non-rural LECs. Second, for the reasons described earlier, we tentatively conclude that we should add a loading of 10 percent to the material and labor cost of the cable (net of LEC engineering and splicing costs) to approximate the cost of LEC engineering. Finally, we tentatively conclude that we should add a loading for splicing costs of 4.7 percent to the material and labor cost of the cable (net of LEC engineering and splicing costs), based on the estimates in the NRRI Study. We seek comment on these tentative conclusions and proposed adjustments.

80. *Buried Fiber Cable.* We tentatively conclude that it is necessary to modify the regression equation in the NRRI Study, as modified by the Huber methodology described, to estimate the cost of a buried fiber cable, because the equation in the study includes labor and material costs for both buried fiber cable and structure. We seek comment on this tentative conclusion and proposed equation.

81. We also propose three adjustments to the proposed equation. First, based on the NRRI Study, we propose to reduce by 27.8 percent the regression coefficient for the number of fiber strands, to reflect the superior bargaining power of non-rural LECs. Second, for the reasons described earlier, we tentatively conclude that we should add a loading of 10 percent to the material and labor cost of the cable (net of LEC engineering and splicing costs) to approximate the cost of LEC engineering. Finally, we tentatively conclude that we should add a loading for splicing costs of 4.7 percent to the material and labor cost of the cable (net of LEC engineering and splicing costs), based on the estimates in the NRRI Study. We seek comment on these tentative conclusions and proposed adjustments.

c. Cable Fill Factors. 82. In determining appropriate cable sizes, network engineers include a certain amount of spare capacity to accommodate administrative functions, such as testing and repair, and some expected amount of growth. The percentage of the total usable capacity of cable that is expected to be used to meet anticipated demand is referred to as the cable fill factor. If cable fill factors are set too high, the cable will have insufficient capacity to accommodate small increases in demand or service outages. In contrast, if cable fill factors are set too low, the network could have considerable excess capacity for many years. While carriers may choose to build excess capacity for a variety of reasons, we must determine the appropriate cable fill factors to use in the federal mechanism. If the fill factors are too low, the resulting excess capacity will increase the model's cost estimates to levels higher than an efficient firm's costs, potentially resulting in excessive universal service support payments.

83. *Variance Among Density Zones.* In general, both the HAI and BCPM sponsors provide default fill factors for copper cable that vary by density zone, and they agree that fill factors should be lower in the lowest density zones. HAI sponsors claim that an outside plant engineer is more interested in providing a sufficient number of spares than in the ratio of working pairs to spares, so the appropriate fill factor will vary with cable size. For example, 75 percent fill in a 2400 pair cable provides 600 spares, whereas a 50 percent fill in a six pair cable provides only three spares. Because smaller cables are used in lower density zones, HAI recommends that lower fill factors be used in the lowest density zones to ensure there will be enough spares available. The BCPM sponsors claim that less dense areas require lower fill ratios because the predominant plant type is buried and it is costly to add additional capacity after installation. We tentatively agree with the HAI and BCPM sponsors that fill factors for copper cable should be lower in the lowest density zones, which is reflected in the fill factors that we propose in this Notice. We seek comment of this tentative finding.

84. *Distribution Fill Factors.* The fill factors proposed by the HAI sponsors for distribution cable are somewhat lower than for copper feeder cable. The BCPM default fill factors for distribution cable, on the other hand, currently are set at 100 percent for all density zones. This difference is related to the differences between certain assumptions that were made in the HAI and BCPM models. The HAI proponents claim that the level of spare capacity provided by their default values is sufficient to meet current demand plus some amount of growth. This is consistent with the HAI model's approach of designing plant to meet current demand, which on average is 1.2 lines per household. BCPM, on the other hand, designs outside plant with the assumption that every residential location has two lines, which is more than current demand. Because

it is costly to add distribution plant at a later point in time, incumbent LECs typically build enough distribution plant to meet not only current demand, but also anticipated future demand. BCPM adopts this convention. Setting the fill factor at 100 percent in BCPM offsets BCPM's assumption that every household has two lines and the resulting estimation of appropriate cable sizes is sufficient to meet current demand, rather than long term growth.

85. In a meeting with Commission staff, Ameritech raised the issue of whether industry practice is the appropriate guideline for determining fill factors to use in estimating the forward-looking economic cost of providing the services supported by the federal mechanism. Ameritech claims that forward-looking fill factors should reflect enough capacity to provide service for new customers for a few years until new facilities are built, and should account for the excess capacity required for maintenance and testing, defective copper pairs, and churn.

86. We tentatively conclude that the fill factors selected for use in the federal mechanism generally should reflect current demand, and not reflect the industry practice of building distribution plant to meet "ultimate" demand. The fact that industry may build distribution plant sufficient to meet demand for ten or twenty years does not necessarily suggest that these costs should be supported by universal service support mechanisms. This also appears to reflect the assumptions underlying the HAI and BCPM default fill factors. Because the synthesis model designs outside plant to meet current demand in the same manner as the HAI model, we believe the fill factors should be set at less than 100 percent. We tentatively select the HAI defaults for distribution fill factors and tentatively conclude that they reflect the appropriate fill needed to meet current demand. We seek comment on these tentative conclusions.

87. *Feeder Fill Factors.* In contrast to distribution plant, feeder plant typically is designed to meet only current and short term capacity needs. The BCPM copper feeder default fill factors are slightly higher than HAI's, but both the HAI and BCPM default values appear to reflect current industry practice of sizing feeder cable to meet current, rather than long term, demand. Because both the HAI and BCPM default values assume that copper feeder fill reflects current demand, we tentatively select copper feeder fill factors that are the average of the HAI and BCPM default values. We seek comment on these tentative selections.

88. *Fiber Fill Factors.* Because of differences in technology, fiber fill factors typically are higher than copper feeder fill factors. Standard fiber optic multiplexers operate on four fiber strands: primary optical transmit, primary optical receive, redundant optical transmit, and redundant optical receive. In determining appropriate fiber cable sizes, network engineers take into account this 100 percent redundancy in determining whether excess capacity is needed that would warrant application of a fill factor. Both the HAI and BCPM models use the standard practice of providing 100 percent redundancy for fiber and set the default fiber fill factors at 100 percent. We tentatively conclude that the input value for fiber fill in the federal mechanism should be 100 percent. We seek comment on this tentative conclusion.

B. Structure Costs

1. Issues for Comment

89. The synthesis model uses structure cost tables that identify the per foot cost of structure by type (aerial, buried, or underground), loop segment (distribution or feeder), and terrain conditions (normal, soft rock, or hard rock), for each of the nine density zones. For aerial structure, the cost per foot that is entered in the model is calculated by dividing the total installed cost per telephone pole by the distance between poles. As described, we tentatively conclude that we should use, with certain modifications, the estimates in the NRRI Study for the per foot cost of aerial, underground, and buried structure. In general, these estimates are derived from regression equations that measure the effect on these costs of density, water, soil, and rock conditions.

a. Cost of Aerial Structure. 90. We tentatively conclude that we should use the regression equation for aerial structure in the NRRI Study as a starting point. We propose to use this equation to develop proposed input values for the labor and material cost for a 40-foot, class four telephone pole. We develop separate pole cost estimates for normal bedrock, soft bedrock, and hard bedrock. The regression coefficients estimate the combined cost of material and supplies. The NRRI Study reports that the average material price for a 40-foot, class four pole is $213.94. We note that this estimate is very close to results obtained from the data submitted in response to the *1997 Data Request.* According to the Commission staff's analysis of these data, the unweighted average material cost of a 40-foot, class four pole is $213.97, and the weighted average, by line count, is $228.22. We seek comment on this tentative conclusion and analysis.

91. We tentatively conclude that we should add to these estimates the cost of anchors, guys, and other materials that support the poles, because the RUS data from which this regression equation was derived do not include these costs. In the NRRI Study, Gabel and Kennedy used the RUS data to develop the following cost estimates for anchors, guys and other pole-related items: $32.98 in rural areas, $49.96 in suburban areas, and $60.47 in urban areas. We tentatively conclude that these are reasonable estimates for the cost of anchors, guys, and other pole-related items. We seek comment on these tentative conclusions and proposed values.

92. We also tentatively add an estimate for the cost of LEC engineering, which is not reflected in the data from which Gabel and Kennedy derived cost estimates for poles and anchors, guys, and pole-related materials. For the reasons described for copper and fiber cable, we tentatively conclude that we should add a loading of 10 percent to the material and labor cost (net of LEC engineering) for poles, anchors, guys, and other pole-related items. We seek comment on these tentative conclusions and invite proposals justifying an alternative loading factor for LEC engineering.

93. In order to obtain proposed input values that can be used in the model, we must convert the estimated pole costs into per foot costs for each of the nine density zones. For purposes of this computation, we propose to use for density zones 1 and 2 the per pole cost that we have estimated for rural areas, based on the NRRI Study; for density zones 3 through 7 the per pole cost for suburban areas; and for density zones 8 and 9 the per pole cost for urban areas. We then divide the estimated cost of a pole by the estimated distance between poles. We propose to use the following values for the distance between poles: 250 feet for density zones 1 and 2; 200 feet for zones 3 and 4; 175 feet for zones 5 and 6; and 150 feet for zones 7, 8, and 9. For the most part, these values are consistent with both the HAI and BCPM defaults. We seek comment on these proposals.

b. Cost of Underground Structure. 94. We tentatively conclude that we should adopt a similar methodology to estimate the cost of underground structure, as we proposed for the cost of aerial structure. We tentatively conclude that we should use the equation set forth as a starting point for this estimate. We propose to use this equation to develop proposed

input values for the labor and material cost for underground cable structure. We develop separate cost estimates for underground structure in normal bedrock, soft bedrock, and hard bedrock for density zones 1 and 2. As we did for aerial structure, we tentatively conclude that we should add a loading factor of 10 percent for LEC engineering. We seek comment on these tentative conclusions.

95. We are able to develop directly from the regression equation cost estimates for underground structure only in density zones 1 and 2, because the RUS data is from companies that operate only in those density zones. We tentatively conclude that we should derive cost estimates for density zones 3 through 9 by extrapolating from the estimates for density zone 2. We further tentatively conclude that we should perform such extrapolation based on the growth rate between density zones in the BCPM and HAI default values for underground and buried structure. Although we would prefer to rely on data specific to the density zone, rather than extrapolated, we tentatively conclude that, based on our current analysis, this is the best data currently available for this purpose. We seek comment on these tentative conclusions. We seek comment on this proposed method and invite parties to suggest alternative methods for estimating costs in density zones 3 through 9.

c. Cost of Buried Structure.

96. We tentatively conclude that we should use the modified equation for estimating the cost of 24-gauge buried copper cable and structure to estimate the cost of buried structure. It is necessary to modify this equation because estimates derived from it include labor and material costs for both buried cable and structure. We seek comment on this tentative conclusion.

97. For the reasons described, we tentatively conclude that we should add a loading of 10 percent for LEC engineering to the estimates generated by the modified equation. We seek comment on this tentative conclusion.

98. We are able to develop directly from the regression equation cost estimates for buried structure only in density zones 1 and 2, because the RUS data is from companies that operate only in those density zones. We tentatively conclude that we should derive cost estimates for density zones 3 through 9 by extrapolating from the estimates for density zone 2. We further tentatively conclude that we should perform such extrapolation based on the same method proposed for estimating the cost of underground structure. We seek comment on these tentative conclusions.

d. Plant Mix. 99. As discussed, we have tentatively selected input values for the costs of cable and outside plant structure that differ for aerial, buried, and underground cable and structure. Because these cost differences can be significant, the relative amount of plant type in any given area, *i.e.*, the plant mix, plays a significant part in determining total outside plant investment. The synthesis model provides three separate plant mix tables, for distribution, copper feeder, and fiber feeder, which can accept different percentages for each of the nine density zones. Although we tentatively propose using nationwide input values for plant mix, as we have for other input values, we seek comment on an alternative to nationwide plant mix input values, as discussed.

100. The BCPM sponsors claim that in low densities there generally is a greater percentage of buried plant than underground plant, and conversely, in higher densities there is more underground than buried plant. The BCPM default plant mix values reflect these assumptions. Although the HAI default plant mix values for feeder plant also reflect these assumptions, HAI's assumptions with respect to distribution plant mix are quite different than BCPM's, as discussed. The HAI sponsors suggest that aerial plant is still the most prevalent plant type, but claim that their default plant mix values reflect an increasing trend toward the use of buried cable in new subdivisions. The HAI default values generally assume that there is more aerial plant than the BCPM default values. The BCPM defaults have separate values for plant mix in hard rock terrain, which generally assume there is slightly more aerial and less buried plant than the normal and soft rock terrain defaults.

101. *Distribution Plant.* The BCPM default values for distribution plant assume that there is no underground plant in the lowest density zone and the percentage increases with each density zone to 90 percent underground distribution plant in the highest density zone. In contrast, the HAI default values for distribution plant mix place no underground structure in the six lowest density zones and assume that only 10 percent of the structure in the highest density zone is underground. The BCPM default values assume there is no aerial plant in the highest density zone in normal and soft rock terrain, and 10 percent aerial plant in hard rock terrain. In contrast, the HAI default values assume that there is significantly more aerial cable, 85 percent, in the highest density zone, but notes that this includes riser cable within multi-story buildings and "block cable" attached to buildings, rather than to poles.

102. We tentatively select input values for distribution plant mix that more closely reflect the assumptions underlying BCPM's default values than HAI's default values for several reasons. The synthesis model does not design outside plant that contains either riser cable or block cable, so we do not believe it would be appropriate to assume that there is as high a percentage of aerial plant in densely populated areas as the HAI default values assume. Although our proposed plant mix values assume somewhat less underground structure in the lower density zones than the BCPM default values, we disagree with HAI's assumption that there is very little underground distribution plant and none in the six lowest density zones. We tentatively select the distribution plant mix values set forth, and seek comment on our tentative conclusions. We tentatively propose input values, for the lowest to the highest density zones, that range from zero percent to 90 percent for underground plant; 60 to zero percent for buried plant; and 40 to ten percent for aerial plant.

103. *Feeder Plant.* The default plant mix percentages for feeder plant are generally similar in the BCPM and the HAI models. Although the BCPM default values vary between normal or soft rock terrain and hard rock terrain, as noted, and the HAI default values differ between copper and fiber feeder, the plant mix ratios across density zones are similar. For example, both the BCPM default values and the HAI default values assume that there is only five or ten percent of underground feeder plant in the lowest density zone. The HAI defaults assume there is somewhat more aerial feeder cable than the BCPM defaults, except for fiber feeder cable in the four lowest density zones. The BCPM defaults assume there is no aerial feeder plant in the three highest density zones, except in hard rock terrain. Despite these differences, the relative amounts of aerial and buried plant across density zones are generally similar.

104. We tentatively select input values for feeder plant mix, set forth, that generally reflect the assumptions underlying the BCPM and HAI default plant mix percentages, with certain modifications. We tentatively propose input values, for the lowest to the highest density zones, that range from five percent to 95 percent for underground plant; 50 to zero percent for buried plant; and 45 to five percent

for aerial plant. Based on the Commission staff's preliminary review of the structure and cable survey data, the proposed values, unlike the HAI and the BCPM (for normal and soft rock) default values, assume that there is no buried plant in the highest density zone. In contrast to the BCPM defaults, the proposed values assume there is some aerial plant in the three highest density zones. We tentatively find that it is reasonable to assume that there is some aerial feeder plant in all density zones, as HAI does, particularly in light of our assumption that there is no buried feeder in the highest density zone, where aerial placement would be the only alternative to underground plant. Although the HAI sponsors have proposed plant mix values that vary between copper feeder and fiber feeder, they have offered no convincing rationale for doing so. We tentatively conclude that, like the BCPM defaults, our proposed plant mix ratios should not vary between copper feeder and fiber feeder. We seek comment on our tentative conclusions.

105. *Alternatives to Nationwide Plant Mix Values.* In the 1997 Further Notice, the Commission tentatively concluded that plant mix ratios should vary with terrain as well as density zones. Because the synthesis model does not provide separate plant mix tables for different terrain conditions, the proposed nationwide plant mix values do not vary by terrain. One method of varying plant mix by terrain would be to add separate plant mix tables, as there are in BCPM, to the synthesis model. We observe that, while the BCPM model provides separate plant mix tables, the BCPM default values reflect only slightly more aerial and less buried plant in hard rock terrain than in normal and soft rock terrain. Another method of varying plant mix would be to use company specific or state specific input values for plant mix as advocated by the BCPM sponsors and other LECs.

106. We generally have chosen not to use study area specific input values in the federal mechanism, and recognize that historical plant mix ratios may not reflect an efficient carrier's plant type choice today. On the other hand, historical plant mix also may reflect terrain conditions that will not change over time. For example, because it is costly to bury cable in hard rock, a carrier serving a very rocky area would tend to use more aerial than buried plant. The Commission staff's analysis of current ARMIS data reveals a great deal of variability in plant mix ratios among the states. In certain state proceedings, U S West has proposed an algorithm for adjusting plant mix to reflect its actual sheath miles as reported in ARMIS. We seek comment on a modified version of this algorithm as an alternative method of determining plant mix percentages.

107. The proposed algorithm uses ARMIS 43–08 data on buried and aerial sheath distances and trench distances to allocate model determined structure distance between aerial, buried, and underground structures. The first step is to set the underground structure distance equal to the ARMIS trench distance and to allocate that distance among the density zones on the basis of the nationwide plant mix defaults. Then an initial estimate of aerial plant is calculated as the sum of the synthesis model structure distances by density zone multiplied by the nationwide aerial plant mix defaults. A second estimate of aerial plant is calculated by multiplying structure distance less trench miles by the aerial percentage of total ARMIS sheath miles. Then an adjustment ratio is calculated by dividing the second estimate by the initial estimate. This adjustment ratio is then applied to each density zone to adjust the nationwide default so that the final synthesis model plant mix reflects the study area specific plant mix. The buried plant mix percentage is determined as a residual equal to one minus sum of the underground and aerial percentages. We seek comment on this alternative to nationwide plant mix values. We also invite parties to suggest other alternatives to determine plant mix in the synthesis model.

108. We also seek comment on whether we should allow the synthesis model to choose the plant mix on the basis of minimum annual cost. We note that this optimization would be constrained to reflect the embedded underground plant percentage, because underground plant is typically deployed in relatively dense areas for reasons of public safety. Embedded percentages of aerial and buried plant, on the other hand, may reflect zoning ordinances but we note that these ordinances in turn may reflect purely aesthetic concerns rather than public safety. If we were to determine that we should use study area specific plant mix input values, we seek comment on whether the synthesis model should be permitted to use its optimization feature for percentages of aerial and buried plant.

C. Structure Sharing

1. Issues for Comment

109. We tentatively adopt the following structure sharing percentages that represent the percentage of structure costs to be assigned to the LEC. For aerial structure, we tentatively assign 50 percent of structure cost in density zones 1–6 and 35 percent of the costs in density zones 7–9 to the LEC. For underground and buried structure, we tentatively assign 90 percent of the cost in density zones 1–2, 85 percent of the cost in density zone 3, 65 percent of the cost in density zones 4–6, and 55 percent of the cost in density zones 7–9 to the LEC.

110. We believe that the structure sharing percentages that we tentatively adopt reflect a reasonable percentage of the structure costs that should be assigned to the LEC. We note that our tentative conclusions reflect the general consensus among commenters that structure sharing varies by structure type and density. While disagreeing on the extent of sharing, the majority of commenters agree that sharing occurs most frequently with aerial structure and in higher density zones. For example, no commenter attributes more than 50 percent of the cost of aerial structure to the LEC. The sharing values that we tentatively adopt reflect these guidelines. In addition, we note that the Washington Utilities and Transportation Commission has adopted structure sharing values that are similar to those that we tentatively adopt. We also note that the sharing values that we tentatively adopt fall within the range of values proposed by HAI and BCPM.

111. In addition, we agree with the Nebraska Public Service Commission that there are some opportunities for sharing even in the lowest density zones. As noted by the Nebraska Commission, "[e]ven in these more remote regions of the state, there will be some opportunities for sharing as new homes and businesses are constructed." We therefore do not assign 100 percent of the cost of buried or underground structure to the LEC in the lowest density areas, as suggested by the BCPM proponents.

112. We seek comment on the tentative conclusions set forth in this section. In addition, we seek comment on AT&T's contention that the structure sharing percentages should reflect the potential for sharing, rather than the LEC's embedded sharing practice.

D. Serving Area Interfaces

1. Issues for Comment

a. Cost of a 7200 Pair SAI.

113. Our proposed approach takes into account the cost of the following SAI components for a 7200 pair indoor SAI: building entrance splicing and distribution splicing; protectors; tie cables; placement of feeder blocks; placement of cross-connect jumpers/

punch down; and placement of distribution blocks. Of these, we tentatively conclude that protector and splicing costs are the main drivers of SAI costs, and cross-connect costs and feeder block and distribution block installation costs greatly contribute to the difference in Sprint's and the HAI proponents' indoor SAI costs. Based upon the following analysis of the record regarding these costs, we propose a total cost of $21,708 for the 7200 pair indoor SAI. We seek comment on this tentative analysis.

114. *Protector Costs.* The cost of the protector is the single greatest contributor to the difference in Sprint's and HAI's indoor SAI costs. HAI proposes a cost of $2.00 per pair for protector material, and Sprint initially proposed a $6.62 cost per pair for protector material. In its review of Sprint's proposed cost, staff concluded that all of the parts identified in Sprint's proposal may not be necessary for SAI construction. Staff also believed, however, that HAI's proposal was for less than a fully functional SAI, and found HAI's proposed cost to be too low. Having analyzed the *ex parte* submissions, staff proposed a cost of $4.00 per pair for protector material. In its February 4, 1999, *ex parte* submission, Sprint agreed that $4.00 is a reasonable estimate of the cost. We tentatively adopt this proposed value and seek comment.

115. *Splicing and Labor Rates.* HAI and Sprint propose different splicing rates, but do not dispute splice set-up time. The HAI sponsors propose a splicing rate of 300 pairs per hour, while Sprint argues for a splicing rate of 100 pairs per hour. We believe that HAI's proposed rate is a reasonable splicing rate under optimal conditions, and therefore, we tentatively conclude that Sprint's proposed rate is too low. We note that the HAI sponsors have submitted a letter from AMP Corporation, a leading manufacturer of wire connectors, in support of the HAI rate. We recognize, however, that splicing under average conditions does not always offer the same achievable level of productivity as suggested by the HAI sponsors. For example, splicing is not typically accomplished under controlled lighting or on a worktable. Having accounted for such variables, we propose to adjust the splicing rate to 250 pairs per hour. We also propose a $60.00 per hour labor rate for splicing, which is within the range of filings on the record. We seek comment on these proposed values.

116. *Cross-Connect Costs.* The cross-connect is the physical wire in the SAI that connects the feeder and distribution cable. Sprint asserts that the "jumper" method generally will be employed to cross-connect in a SAI. In contrast, HAI suggests that the "punch down" method is generally used to cross-connect. We tentatively conclude that neither the jumper method nor the punch down method is used exclusively in SAIs. In buildings with high churn rates, such as commercial buildings, carriers may be more likely to use the jumper method. On the other hand, in residential buildings, where changes in service are less likely, carriers may be more likely to use the less expensive punch down method. Based on the record, it appears that both methods are commonly used, and that neither is used substantially more than the other. Therefore, we tentatively conclude that we should assume that each method will be used half the time. We seek comment on this tentative conclusion. In particular, we invite parties to justify a particular allocation between the jumper and punch down methods.

117. *Feeder Block and Distribution Block Installation Rates.* Sprint proposes an installation rate of 60 pairs per hour, while the HAI sponsors propose 400 pairs per hour. Because neither feeder block installation nor distribution block installation is a complicated procedure, we tentatively conclude that Sprint's rate of 60 pairs per hour is too low. We recognize, however, that installation conditions are not always ideal. Like splicing, feeder block and distribution block installations are not typically accomplished under controlled lighting or on a worktable. Having accounted for such variables, we propose a rate of 200 pairs per hour. We seek comment on this proposed value.

b. Cost of Other SAI Sizes. 118. Because we currently do not have similar component-by-component data for other SAI sizes, we propose to determine the costs of the other SAI sizes by extrapolating from the cost of the 7200 pair indoor SAI. We believe that this is a reasonable approach because there is a linear relationship between splicing and protection costs, which are the main drivers of cost, and the number of pairs in the SAI. We look to the HAI data to determine the relationship in cost among the various sizes of SAI. Specifically, we develop a ratio of our proposed cost for a 7200 pair indoor SAI to the cost proposed by HAI. We then propose to apply this ratio, 2.25, to the values submitted by the HAI sponsors for other sizes of indoor and outdoor SAIs. Applying this factor, we tentatively adopt the cost estimates for indoor and outdoor SAIs. We propose to use the HAI, rather than BCPM data, in this manner because BCPM has not submitted estimates for all of the SAI sizes used in the model. We note that using the BCPM data in this way would result in roughly the same estimates. We seek comment on these tentative conclusions and proposed values.

E. Digital Loop Carriers

1. Issues for Comment

119. Both the sponsors of BCPM and HAI have submitted default values for DLC costs. Because these values are based on the opinions of experts without data to enable us to substantiate these opinions, however, we tentatively conclude that we should not rely on these data. We also tentatively conclude that the most reliable data on DLC costs available to the Commission at this time are the contract data submitted to the Commission in response to the *1997 Data Request*, and in *ex parte* submissions following the December 11, 1998 workshop. We seek comment on these tentative conclusions.

120. Following their submission of DLC data to the Commission in response to the *1997 Data Request*, US West, Bell South, and ATU resubmitted their data on the record in this proceeding. At the December 11, 1998 workshop, staff of the Common Carrier Bureau discussed the DLC costs data on the record in this proceeding. In an effort to elicit further discussion of DLC input values, staff presented a template of the components of a typical DLC. The HAI sponsors, GTE, and Aliant submitted data using the template of DLC costs. Staff found the data submitted by the HAI sponsors to be significantly lower than the contract data on the record, and staff concluded that it would be inappropriate to use it, especially as no support was provided in justification. Because the data submitted by the companies are based on actual costs incurred in purchasing DLCs, we tentatively conclude that they are more reliable than the opinions proffered, and, therefore, should be used to estimate the cost of DLCs. Although we would prefer to have a larger sampling of data, we note that the data represent the costs incurred by several of the largest non-rural carriers, as well as two of the smallest non-rural carriers. We also note that, throughout this proceeding, the Commission has repeatedly requested cost data on DLCs. We believe that we are using the best data available on the record to determine the cost of DLCs.

121. We note that ATU asserts that material handling and shipping costs should be added to the DLC prices

reflected in the contract it submitted. ATU suggests that these costs could represent up to 10 percent of the material cost of a DLC. It is unclear whether the DLC data submitted by other parties include these costs. We seek comment on the extent, if any, to which we should increase our proposed estimates for DLCs to reflect material handling and shipping costs.

122. We recognize that the cost of purchasing and installing a DLC changes over time. Such changes occur because of improvements in the methods and components used to produce DLCs, changes in both capital and labor costs, and changes in the functionality requirements of DLCs. Thus, we believe it is appropriate to adjust the contract data to reflect 1999 prices. In order to capture changes in the cost of purchasing and installing DLCs over time, we propose a 2.6 percent annual reduction in both fixed DLC cost and per line DLC cost. This proposed rate is based on the change in cost calculated for electronic digital switches over a four year period. We believe that the change in the cost of these switches over time is a reasonable proxy for changes in DLC cost, because they are both types of digital telecommunications equipment. We also note that the 2.6 percent figure is a conservative estimate, based on the change in cost of remote switches. Our analysis suggests that the change in cost of host switches over the past four years is much higher. Finally, we note that use of the current consumer price index results in a similar figure over four years. The indexed amount is based on the effective date of the contracts. Based upon an average of the contract data submitted on the record, adjusted for cost changes over time, we tentatively adopt the cost estimates for DLCs. We seek comment on this proposed analysis and the proposed values.

V. Switching and Interoffice Facilities

A. Issues for Comment

1. Switch Costs

123. We now examine the inputs associated with the purchase and installation of new switches. Specifically, we must select values for the fixed and per-line cost of host and remote switches, respectively.

124. *Switch Cost Data.* Both the sponsors of BCPM and HAI have submitted default values for switch costs. To a large extent, however, these values are based on non-public information or opinions of their experts, but without data that enable us adequately to substantiate those opinions. Consistent with the recommendation of the Joint Board and criterion eight in the *Universal Service Order*, we tentatively conclude that we should not rely on these submissions because the underlying data are not sufficiently open and available to the public. We also tentatively conclude that it is not necessary to rely on this information, because the Commission, in conjunction with the work of Gabel and Kennedy, the Bureau of Economic Analysis (BEA) of the Department of Commerce, and the U.S. Department of Agriculture Rural Utility Service (RUS), has compiled publicly available data on the cost of purchasing and installing switches. This information was gathered from depreciation reports filed by LECs at the Commission and from reports made by LECs to RUS.

125. The depreciation data contains, for each switch reported: the model designation of the switch; the year the switch was first installed; and the lines of capacity and book-value cost of purchasing and installing each switch at the time the depreciation report was filed with the Commission. The RUS data contains, for each switch reported: the switch type (i.e., host or remote); the number of equipped lines; cost at installation; and year of installation.

126. The sample that we propose to use to estimate switch costs includes 1,060 observations. The sample contains 921 observations selected from the depreciation data, which provide information on the costs of purchasing and installing switches gathered from 20 states. The sample also contains 139 observations selected from the RUS data, which provide information from across the nation on the costs of small switches purchased and installed by rural carriers. The combined sample represents purchases of both host and remote switches, with information on 468 host switches and 592 remote switches, and covers switches installed between 1989 and 1996. This set of data represents the most complete public information available to the Commission on the costs of purchasing and installing new switches.

127. In response to the *1997 Data Request*, the Commission received a second set of information pertaining to 1,486 switches. Upon analysis, however, Commission staff identified one or more problems with most of the data submitted: missing switch costs; zero or negative installation costs; zero or blank line counts; unidentifiable switches; or missing or inconsistent Common Language Local Identification (CLLI) codes. After excluding these corrupted observations, 302 observations remained. The remaining observations represented switches purchased by only four companies. We tentatively conclude that the data set we propose to use is superior to the data set obtained in response to the *1997 Data Request*, both in terms of the number of usable observations and the number of companies represented in the data set. We seek comment on this tentative conclusion.

128. Following the December 1, 1999 workshop, three companies voluntarily submitted further data regarding the cost of purchasing and installing switches. Because these submissions were received late in the process, Commission staff has not had sufficient time to analyze the quality and content of the information. We seek comment on the use of this data set as a substitute or complement to the data set we propose.

129. *Adjustments to the Data.* The cost figures reported in the depreciation information reflect the costs of purchasing and installing new switches. While the RUS cost data also contain information on purchasing and installing new switches, they do not include: (1) the cost associated with purchasing and installing the main distribution frame (MDF); (2) the cost associated with purchasing and installing power equipment; (3) the cost of connecting each remote switch to its respective host switch; and (4) LEC engineering costs. In order to make the depreciation and RUS information comparable, we propose to add estimates of these four components to the switch costs reported in the RUS information. These additions are discussed. We seek comment on this proposed approach.

130. In order to account for the cost of MDF equipment omitted from the RUS information, AT&T recommends using the HAI 5.0a default value of $12 per line for MDF. We tentatively conclude that $12 per line is a reasonable cost for purchasing and installing MDF equipment. No party contests this value. We seek comment on this tentative conclusion and invite commenters to submit alternative values.

131. In order to account for the cost of central office power equipment omitted from the RUS information, AT&T recommends using the HAI 5.0a default values for these inputs. We tentatively use the following input values for power equipment: $12,000 for switches with 0–999 lines; $40,000 for switches with 1,000–4,999 lines; and $74,500 for switches with 5,000–25,000 lines. These values are derived from a range of values on the record in this proceeding, including state cost studies. We seek comment on the values we

tentatively adopt and invite commenters to submit alternative values.

132. Gabel and Kennedy estimate that the average cost of terminating a remote on a host switch is $27,598. Relying on this estimate, we tentatively conclude that $27,598 should be added to the cost of each remote switch reported in the RUS data. We seek comment on this tentative conclusion and invite commenters to submit alternative values.

133. Gabel and Kennedy also recommend, based on a data analysis undertaken by RUS, that the cost of switches reported in the RUS data should be increased by 8 percent in order to account for the cost of LEC engineering. Relying on those estimates, we tentatively conclude that 8 percent should be added to the total cost, including MDF, power, and remote connection costs, of each switch reported in the RUS data. We note that the proposed value is based on the only information on the record on this issue. We seek comment on this tentative conclusion and invite commenters to submit alternative values.

134. We tentatively conclude that switch costs should be estimated based on a sample of public data that includes both RUS and depreciation data. As noted, this information represents the broadest range of data publicly available for both small and large switches. We seek comment on the appropriateness of merging the two data sets.

135. *Methodology.* In order to determine the reasonable forward-looking cost of switches, based on the selected data set, we propose to employ regression analysis. In the process of estimation, we propose, where appropriate, to make adjustments to the information compiled by the parties. These proposed modifications to the data and estimation techniques used by the Commission are discussed.

136. We tentatively conclude that the cost of a switch should be estimated as a linear function of the number of lines connected to the switch, the type of switch installed (i.e., host or remote), and the date of installation. We adopt a linear function based on examination of the data and statistical evidence. Sprint recommends using a non-linear function, such as the log-log function, to take into account the declining marginal cost of a switch as the number of lines connected to it increases. We tentatively conclude that the linear function we adopt provides a better fit with the data than the log-log function. A discussion of the effect of time and type of switch on switch cost is presented. We seek comment on these tentative conclusions.

137. Based upon an analysis of the data and the record, we tentatively conclude that the fixed cost (i.e., the base getting started cost of a switch, excluding costs associated with connecting lines to the switch) of host switches and remote switches differ, but the per-line variable cost (i.e., the costs associated with connecting additional lines to the switch) of host and remote switches are approximately the same. This is consistent with statistical evidence and the comments of the HAI sponsors. We seek comment on this tentative conclusion.

138. *Accounting for Changes in Cost Over Time.* We recognize that the cost of purchasing and installing switching equipment changes over time. Such changes result, for example, from improvements in the methods used to produce switching equipment, changes in both capital and labor costs, and changes in the functional requirements that switches must meet for basic dial tone service. In order to capture changes in the cost of purchasing and installing switching equipment over time, we propose to modify the data to adjust for the effects of inflation, and explicitly incorporate variables in the regression analysis that capture cost changes unique to the purchase and installation of digital switches. We describe this process.

139. To the extent that the general level of prices in the economy change over time, the purchasing power of a dollar, in terms of the volume of goods and services it can purchase, will change. In order to account for such economy-wide inflationary effects, we propose to multiply the cost of purchasing and installing each switch in the data set by the gross-domestic-product chain-type price index for 1997 and then divide by the gross-domestic-product chain-type price index for the year in which the switch was installed, thereby converting all costs to 1997 values.

140. In order to account for cost changes unique to switching equipment, we propose to enter time terms directly into the regression equation. GTE expresses concern that, under certain specifications of time, the regression equation produces investments for remote switch "getting started" costs that are negative and that such specifications overstate the decline in switch costs. The HAI sponsors also caution that the historical large percentage price declines seen in recent years may not continue. We tentatively conclude that the reciprocal form of time in the regression equation proposed would satisfy these concerns by yielding projections of switch purchase and installation costs that are positive yet declining over time.

141. Ameritech and GTE advocate the use of the Turner Price Index, which is an index designed to measure the changing cost of telecommunications plant, to convert the embedded cost information contained in the depreciation data to costs measured in current dollars. We note, however, that this index and the data underlying it are not on the public record. We prefer to rely on public data when available. Moreover, we tentatively conclude it is not necessary to rely on this index to convert switch costs to current dollars. As described in the preceding paragraph, the Commission has proposed to account for costs explicitly in the estimation process, rather than adopt a surrogate such as the Turner Price Index. We seek comment on this proposed approach. In addition, we seek comment on the potential impact of increased use of packet switches, including the possibility that manufacturers will reduce the price of circuit switches to maintain market share.

142. *Treatment of Switch Upgrades.* The book-value costs recorded in the depreciation data include both the cost of purchasing and installing new equipment and the cost associated with installing and purchasing subsequent upgrades to the equipment over time. Upgrades costs will be a larger fraction of reported book-value costs in instances where the book-value costs of purchasing and installing switching equipment are reported well after the initial installation date of the switch. In order to estimate the costs associated with the purchase and installation of new switches, and exclude the costs associated with upgrading switches, we propose to remove from the data set those switches installed more than three years prior to the reporting of their associated book-value costs. We believe that this restriction would eliminate switches whose book values contain a significant amount of upgrade costs, and recognizes that, when ordering new switches, carriers typically order equipment designed to meet short-run demand.

143. We tentatively conclude that we should reject the suggestion of Ameritech, GTE, and Sprint that the costs associated with purchasing and installing switching equipment upgrades should be included in our cost estimates. The model platform we adopted is intended to use the most cost-effective forward-looking technology available at a particular period of time. The installation costs of switches, as configured by us, reflect the

most cost-effective forward-looking technology for meeting industry performance requirements. Switches, augmented by upgrades, may provide carriers the ability to meet performance requirements, but do so at greater costs. Therefore, such augmented switches do not constitute cost-effective forward-looking technology. In addition, as industry performance requirements change over time, so will the costs of purchasing and installing new switches. The historical cost data employed in this proposed analysis reflect such changes over time, as do the time-trended cost estimates. We seek comment on this tentative conclusion.

144. *Additional Variables.* Several parties contend that additional independent variables should be included in our regression equation. Some of the recommended variables include minutes of use, calls, digital line connections, vertical features, and regional, state, and vendor-specific identifiers. For the purposes of this analysis, our proposed model specification is limited to include information that is in both the RUS and depreciation data sets. Neither data set includes information on minutes of use, calls, digital line connections, vertical features, or differences between host and stand-alone switches. Nor do they contain detail sufficient to allow us to obtain such information from other sources. State and regional identifiers are not included in the proposed regression because we only have depreciation data on switches from 20 states. Thus, we could not accurately estimate region-wide or state-wide differences in the cost of switching. Our proposed model specification also does not include vendor-specific variables or variables distinguishing host switches from stand-alone switches because the model platform does not distinguish between different types of switches.

145. *Switch Cost Estimates.* Using the regression analysis discussed, we tentatively adopt the fixed cost (in 1999 dollars) of a remote switch as $186,400 and the fixed cost (in 1999 dollars) of both host and stand-alone switches as $447,000. We tentatively adopt the additional cost per line (in 1999 dollars) for remote, host, and stand-alone switches as $83. We seek comment on these tentative conclusions.

2. Use of the Local Exchange Routing Guide (LERG)

146. We tentatively conclude that the Local Exchange Routing Guide (LERG) database should be used to determine host-remote switch relationships in the federal universal service mechanism. In the *1997 Further Notice*, the Commission requested "engineering and cost data to demonstrate the most cost-effective deployment of switches in general and host-remote switching arrangements in particular." In the *Switching and Transport Public Notice*, the Bureau concluded that the model should permit individual switches to be identified as host, remote, or stand-alone switches. The Bureau noted that, although stand-alone switches are a standard component of networks in many areas, current deployment patterns suggest that host-remote arrangements are more cost-effective than stand-alone switches in certain cases. No party has placed on the record in this proceeding an algorithm that will determine whether a wire center should house a stand-alone, host, or remote switch.

147. In the *Platform Order*, we concluded that the federal mechanism should incorporate, with certain modifications, the HAI 5.0a switching and interoffice facilities module. In its default mode, HAI assumes a blended configuration of switch technologies to develop switching cost curves. HAI also allows the user the option of designating, in an input table, specific wire center locations that house host, remote, and stand-alone switches. When the host-remote option is selected, switching curves that correspond to host, remote, and stand-alone switches are used to determine the appropriate switching investment. The LERG database could be used as a source to identify the host-remote switch relationships. In the *Platform Order*, we stated that "[i]n the inputs stage of this proceeding we will weigh the benefits and costs of using the LERG database to determine switch type and will consider alternative approaches by which the selected model can incorporate the efficiencies gained through the deployment of host-remote configurations."

148. The majority of commenters support the use of the LERG database as a means of determining the deployment of host and remote switches. These commenters contend that the use of the LERG to determine host-remote relationships will incorporate the accumulated knowledge and efficiencies of many LECs and engineering experts in deploying the existing switch configurations. Commenters also contend that an algorithm that realistically predicts this deployment pattern is not feasible using publicly available data and would be "massive and complex." The HAI proponents argue, however, that use of the LERG to identify host-remote relationships may reflect the use of embedded technology, pricing, and engineering practices. Although the HAI proponents oppose the use of the LERG, they have taken steps to ensure that the LERG database is compatible with use in the switching module in the synthesis model.

149. We tentatively conclude that the LERG database is the best source currently available to determine host-remote switch relationships in the federal universal service mechanism. As noted, no algorithm has been placed on the record to determine whether a wire center should house a stand-alone, host, or remote switch. In addition, a majority of commenters agree that development of such an algorithm would be difficult using publicly available data. We tentatively conclude that the use of the LERG to identify the host-remote switch relationships is superior to HAI's averaging methodology which may not, for example, accurately reflect the fact that remote switches are more likely to be located in rural rather than urban areas. We therefore tentatively agree with the BCPM proponents and other commenters that use of the LERG is the most feasible alternative currently available to incorporate the efficiencies of host-remote relationships in the federal universal service mechanism. We seek comment on these tentative conclusions. In particular, we encourage parties to comment on any alternative source or methodology that will identify host-remote switch relationships on a forward-looking basis.

3. Other Switching and Interoffice Transport Inputs

150. *General.* Several commenters assert that the depreciation studies on which the Commission relied to develop switch costs include all investments necessary to make a switch operational. These investments include telephone company engineering and installation, the main distribution frame (MDF), the protector frame (often included in the MDF), and power costs. To avoid double counting these investments, both as part of the switch and as separate input values, the model proponents agree that the MDF/Protector investment per line and power input values should be set at zero. In addition, commenters agree that the Switch Installation Multiplier should be set at 1.0. We agree that including these investments both as part of the switch cost and as separate investments would lead to double counting of these costs. We therefore tentatively conclude that the MDF/Protector investment per line and power input values should be set at zero. We further tentatively conclude that the Switch Installation Multiplier should be

set at 1.0. We seek comment on these tentative conclusions.

151. *Analog Line Offset.* We tentatively conclude that the "Analog Line Circuit Offset for Digital Lines" input should be set at zero. The HAI proponents contend that the switch investment in the model should be adjusted downward to reflect the cost savings associated with terminating digital, rather than analog, lines. The HAI proponents assert that this cost savings is due primarily to: (1) the elimination of a MDF and protector frame termination; and (2) the economic efficiencies of terminating multiple lines on a DS–1 trunk termination instead of individual analog line terminations. Further, HAI contends that the depreciation data on which the Commission relied in developing switch investments do not reflect adequately the cost savings that would be realized if "60+% of lines are terminated on DLC—as occurs in the TELRIC models." HAI contends that the depreciation data used to determine costs reflect the use of only approximately 15 percent digital lines.

152. The HAI proponents suggest that the analog line offset input should be set to $15.00 per line to reflect additional savings in switch investment for terminating digital lines in the model. The BCPM proponents and GTE recommend setting the analog line offset to zero. Sprint contends that the analog line offset is inherent in the switching curve in the model, thus making this input unnecessary. Sprint argues that an unknown mixture of analog and digital lines are taken into consideration in developing the switch curve. GTE asserts that the analog offset must be set to zero to "track with the switching inputs."

153. We note that the record contains no basis on which to quantify savings beyond those taken into consideration in developing the switch cost. We also note that the depreciation data used to determine the switch costs reflect the use of digital lines. The switch investment value will therefore reflect savings associated with digital lines. We also note that HAI's proposed analog line offset of $15.00 per line is based on assumptions that are neither supported by the record nor easily verified. For example, it is not possible to determine from the depreciation data the percentage of lines that are served by digital connections. It is therefore not possible to verify HAI's estimate of the digital line usage in the "historical" data. In addition, HAI provides little support for its conclusion that there is a $20.00 per line cost savings using digital lines. HAI merely attributes a portion of this estimate to certain "efficiencies" realized from terminating digital rather than analog lines. In the absence of more explicit support of HAI's position, we tentatively conclude that the Analog Line Circuit Offset for Digital Lines should be set at zero. We seek comment on this tentative conclusion.

154. *Switch Capacity Constraints.* We tentatively adopt the HAI default switch capacity constraint inputs as proposed in the HAI 5.0a model documentation. The forward-looking cost mechanism contains switch capacity constraints based on the maximum line and traffic capabilities of the switch. The HAI proponents now recommend increasing the switch line and traffic capacity constraints above the HAI input default values for those inputs. HAI contends that the default input values no longer reflect the use of the most current technology. For example, HAI contends that the maximum equipped line size per switch should be increased from 80,000 to 100,000 lines.

155. We tentatively conclude that the original HAI switch capacity constraint default values are reasonable for use in the federal mechanism. We note that commenters have reviewed these values and are in general agreement with the HAI default values. For example, we note that the HAI and BCPM default values for maximum equipped lines per switch are identical at 80,000 lines per switch. We also note that the HAI model documentation indicates that the 80,000 line assumption was based on a conservative estimate "recognizing that planners will not typically assume the full capacity of the switch can be used." The HAI proponents therefore selected the 80,000 line limitation as the maximum equipped line size value with the knowledge that the full capacity of the switch may be higher. We seek comment on our tentative conclusion.

156. *Switch Port Administrative Fill.* We tentatively adopt a switch port administrative fill factor of 94 percent. HAI defines the switch port administrative fill as "the percent of lines in a switch that are assigned to subscribers compared to the total equipped lines in a switch." HAI assigns a switch port administrative fill factor of 98 percent in its default input values. The BCPM default value for the switch percent line fill is 88 percent.

157. The BCPM proponents contend that switches have significant unassigned capacity due to the fact that equipment is installed at intervals to handle one to three years' growth. BCPM most recently contends that U S WEST and BellSouth have company-wide average fills in the range of 76 percent. Sprint, on behalf of the BCPM proponents, now recommends an average fill factor of 80 percent.

158. We note that the switch port administrative fill factor of 94 percent has been adopted in several state universal service proceedings and is supported by the Georgetown Consulting Group, a consultant of BellSouth. We also note that this value falls within the range established by the HAI and BCPM default input values. The BCPM model documentation established a switch line fill default value of 88 percent that included "allowances for growth over an engineering time horizon of several years." BCPM has provided no additional evidence to support its revised value of 80 percent. We therefore tentatively adopt a switch port administrative fill factor of 94 percent. We seek comment on this tentative value.

159. *Trunking.* We tentatively conclude that the switch module should be modified to disable the computation that reduces the end office investment by the difference in the interoffice trunks and the 6:1 line to trunk ratio. In addition, we tentatively adopt the HAI suggested input value of $100.00 for the trunk port investment, per end.

160. The HAI switching and interoffice module developed switching cost curves using the Northern Business Information (NBI) publication, "U.S. Central Office Equipment Market: 1995 Database." These investment figures were then reduced per line to remove trunk port investment based on NBI's implicit line to trunk ratio of 6:1. The actual number of trunks per wire center is calculated in the transport calculation, and port investment for these trunks is then added back into the switching investments.

161. The BCPM proponents contend that, under the HAI trunk investment approach, raising the per-trunk investment leads to a decrease in the switch investment per line under the HAI approach, "despite a reasonable and expected increase" in the investment per line. The BCPM proponents argue that the trunk port input value should be set at zero to avoid producing "contradictory" results. GTE also notes that the selection of the trunk port input value creates a dilemma in that it is used to reduce the end office investment, as noted, and to develop a tandem switch investment. GTE recommends that the switch module be modified by disabling the computation that reduces the end office investment by the difference in the computed interoffice trunks and the 6:1 line to trunk ratio. The HAI sponsors

agree that the trunk port calculation should be deactivated in the switching module.

162. We agree with commenters that the trunk port input creates inconsistencies in reducing the end office investment. We do not, however, agree with the suggestion of the BCPM sponsors to simply set this input value at zero. As noted by GTE, this input value is also used to calculate the tandem switch investment. Consistent with the suggestions by GTE and the HAI sponsors, we tentatively conclude that the switch module should be modified to disable the computation that reduces the end office investment by the difference in the computed interoffice trunks and the 6:1 line to trunk ratio.

163. Because the trunk port input value is also used to determine the tandem switch investment, we must determine the trunk port, per end investment. The HAI input value for trunk port investment per end is $100.00. GTE and Sprint contend that this value should be much higher—ranging from $200.00 to $500.00. BellSouth notes that four states have issued orders addressing the cost of the trunk port for universal service. These states estimate the cost of the trunk port ranging from $62.73 to $110.77. We tentatively conclude that the record supports the adoption of a trunk port investment per end of $100.00, as suggested by the HAI sponsors. As noted, this value is consistent with the findings of several states and BellSouth. In addition, GTE and Sprint provide no data to support their proposed trunk port investment value. We therefore tentatively adopt the HAI suggested input value of $100.00 for the trunk port investment, per end. We seek comment on our tentative conclusions.

VI. Expenses

164. We address the inputs in the model related to expenses, including general support facilities (GSF) expenses. In light of the criteria identified in the *Universal Service Order*, the Commission intends to select inputs that will result in a reasonable allocation of joint and common costs for non-networked related costs such as GSF, plant specific and non-specific expenses, and corporate and customer operations. The Commission seeks to develop an appropriate methodology for estimating these types of expenses to "ensure that the forward-looking economic cost [calculated by the federal mechanism] does not include an unreasonable share of the joint and common costs for non-supported services."

A. Issues for Comment

1. Plant Specific Operations Expenses

165. We first address the inputs related to plant specific operations. Plant specific operations expenses are the expense costs related to the maintenance of specific kinds of telecommunications plant.

166. *Nationwide Estimates.* We tentatively conclude that we should adopt input values that reflect the average expenses that will be incurred by non-rural carriers, rather than a set of company-specific maintenance expense estimates. We make this tentative conclusion for a number of reasons. First, we note that this tentative conclusion is consistent with a recommendation of the state Joint Board members. Second, we have not been able to obtain current cost-to-book cost ratios for each ARMIS reporting firm, which would be necessary to calculate company or study area specific expense-to-investment ratios in the proposed methodology described. Further, we tentatively conclude that the use of national or regional averages for input factors is more consistent with the forward-looking nature of the high cost model because it mitigates the rewards to less efficient companies. We seek comment on these tentative conclusions. Parties advocating the use of company-specific values or other alternatives to nationwide or regional estimates should identify the method and data readily available to firms that would be used to estimate plant-specific expenses. Commenters should also indicate how their proposal is consistent with the goal of estimating forward-looking costs. We note that the proposed expense estimates are nationwide averages.

167. In support of the use of company-specific factors, a number of commenters and workshop participants argue that maintenance expenses vary widely by geographic area and the type of plant installed. Others contend that plant-specific expenses are highly dependent on regional wage rate differentials. At this time, we have been unable to verify significant regional differences among study areas or between companies based solely on labor rate variations using the publicly available ARMIS expense account data for plant-specific maintenance costs. Nonetheless, we believe that expenses vary by the type of plant installed. The synthesis model takes this variance into account because, as investment in a particular type of plant varies, the associated expense cost also varies. We seek comment on the degree to which regional wage rate differentials exist and are significant. We ask parties to suggest independent data sources on variations of wage rates between regions. We seek comment on a methodology that permits such distinctions without resorting to self-reported information from companies.

168. One possible approach would be to use indexes calculated by the President's Pay Agent for calculating locality pay differentials for Federal employees. Under this methodology, we would first calculate a baseline expense factor for the labor-related portion of each plant-specific expense account according to a formula which is based on the sum of an expense factor for that category by study area, a weight representing the total investment in a study area, and the regional wage differential deflator calculated in the Pay Agent's report applicable to the study area. The baseline expense would then be disaggregated to each wire center or study area using the deflator. We seek comment both on the validity of this approach as well as on the specific implementation.

169. We also tentatively conclude that we should not adopt different expense estimates for small, medium, and large non-rural companies on a per line basis. In order to determine if economies of scale should be a factor in plant-specific expenses, Commission staff tested whether significant differences in maintenance expenses per line could be discerned from segmenting companies into small carriers with less than 500,000 access lines, medium carriers with between 500,000 and 5,000,000 access lines, and those large carriers with over 5,000,000 access lines. We have found no significant differences in the expense factor per-line or per-investment estimates based on these criteria. Therefore, to estimate costs associated with an efficient network as determined by the forward-looking mechanism, we tentatively conclude that plant-specific maintenance factors should be estimated on a national basis. We seek comment on these tentative conclusions.

170. *Methodology.* Commenters advocate two methods of estimating plant specific operations expenses. The BCPM sponsors contend that all expenses should be calculated on a per-line basis. The BCPM default estimates for these accounts are based on a survey of companies. The HAI sponsors argue that expenses should be calculated as a percentage of investment. Specifically, the HAI sponsors assert that plant specific operations expenses should be calculated as a fixed percentage of investment.

171. Although we agree with the HAI sponsors that plant specific operations expenses should be estimated as a percentage of investment, we tentatively decline to adopt the flat percentages they advocate. By using ARMIS investment values that are not converted to current levels, the flat-rate method proposed by the HAI sponsors does not attempt to use forward-looking estimates. We also tentatively decline to adopt the per-line BCPM default estimates. Based on a private survey of companies, the BCPM values fail to comply with criterion eight identified in the *Universal Service Order*, because the underlying data for these values are not open to and verifiable by the public nor made available under the *Protective Order*. In contrast to the BCPM proposal, the methodology that we tentatively adopt here is primarily based on readily identifiable and publicly available ARMIS data. Although ARMIS data reflect the embedded costs incurred by incumbent LECs, we take steps in our proposed methodology to convert these costs to forward-looking estimates, as described. We note that this methodology was proposed by Commission staff in the public workshop on maintenance expenses on December 10, 1998.

172. In order to estimate forward-looking plant specific operations expenses, we have considered the requirements set forth in the *Platform Order*, and information provided in workshops, comments and *ex-partes*. We tentatively conclude that the input values for each plant specific operations expense account should be calculated as the ratio of booked expense to current investment. These expense-to-investment ratios would then be multiplied in the model by the model-derived investment for each investment account or group of accounts, to produce an estimate of the plant specific operations expenses.

173. Our proposed methodology for estimating expense to investment ratios consists of four steps. First, staff obtained from some of the ARMIS-filing companies, account-specific current cost to book cost (current-to-book) ratios for the related investment accounts. The current-to-book ratio is a tool that is used to restate the historic, financial account balance on a company's books, which reflects investment decisions made over many years, to present day replacement cost. For each account or sub-account, a current-to-book ratio is developed by first revaluing each type of equipment at its current replacement cost. The sum of these current costs are then divided by the total, embedded cost account balance. The resulting current-to-book ratio will be greater than one if current costs are rising relative to the historic costs and less than one if current costs are declining. Current-to-book ratios for the years ending 1995 and 1996 were provided by the following five holding companies: Ameritech, Bell Atlantic, Bell South, GTE, and Southwestern Bell. Although we would prefer to have data from more companies, the other ARMIS-filing carriers informed us that, they either no longer maintain this type of information, or never used current-to-book ratios for accounting purposes.

174. Second, staff calculated composite current-to-book ratios for each account. For each study area of the five holding companies that provided current-to-book ratios, we obtained year-end 1995 and 1996 investment balances from ARMIS for the plant accounts consistent with the aforementioned plant-specific expense accounts. Study area-specific current-to-book ratios for the two periods were multiplied by the 1995 and 1996 ARMIS investments in each account to derive the forward-looking, "current," year-end 1995 and 1996 investment levels by account and by study area. The ARMIS and current investments were then summed separately, by year and by account, for all study areas of the five holding companies. The resulting total current investment (by year and by account for the sum of all study areas) was then divided by the total ARMIS investment (by year and by account for the sum of all study areas) producing two sets of composite current-to-book ratios (year end 1995 and 1996).

175. Third, to calculate the expense-to-investment ratios for the plant-specific operations expense accounts, staff obtained total, year-end 1995 and 1996 investment account balances from the ARMIS 43–03 reports for all ARMIS-filing companies. To make these embedded account balances forward-looking, staff next multiplied each investment account balance for each year by the current-to-book ratios for the same year developed earlier. The 1995 and 1996 "current" balances for each account were then averaged by adding the two years together and dividing by two.

176. Finally, from the 1996 ARMIS 43–03 report, staff obtained the 1996 balances for each plant-specific operations expense account for all ARMIS-filing companies. The expense account balances were divided by their respective average "current" investment to obtain expense-to-investment ratios. We tentatively conclude that these expense-to-investment ratios should be applied in the mechanism to the model-derived investment balances to obtain forward-looking plant-specific operations expense estimates. The industry-wide expense-to-investment ratios are listed. We seek comment on these proposed input values, tentative conclusions, and the proposed methodology outlined.

177. *Converting Expense Estimates to Current Values.* We recognize that plant specific expenses will change over time. Because we initially used data from 1996 in the methodology described, we tentatively conclude that it is appropriate to adjust this data to account for inflation and changes in productivity by obtaining revised 1997 current-to-book ratios from those companies providing data. In addition, we tentatively conclude that we should use the most current ARMIS data available necessary for the maintenance factor methodology. Because expense and investment balances for 1998 are not available from ARMIS at this time, we have also not been able to include them in calculating the plant-specific maintenance factors. We tentatively conclude that we should use these data in the final computation of expense estimates. We seek comment on these tentative conclusions.

178. *GSF Investment.* GSF investment includes buildings, motor vehicles, and general purpose computers. The synthesis model uses a three-step algorithm to estimate GSF for each study area. First, the model calculates a GSF investment ratio for each GSF account by dividing the ARMIS investment for the account by the ARMIS total plant in service (TPIS). Second, the model calculates a preliminary estimate GSF investment for each account by multiplying the GSF investment ratio for that account times the model's estimate of TPIS. Finally, the model reduces each of the preliminary GSF investment estimates by multiplying by one of two factors, which are the same as those used in the HAI model.

179. We tentatively conclude that the model's preliminary estimate of GSF investment should be reduced, because only a portion of GSF investment is related to the cost of providing the services supported by the federal mechanism. We also tentatively conclude that the synthesis model should not use the same factors as those used in the HAI model. The HAI sponsors, who developed the expense module in the synthesis model, have not shown why these particular factors should be used for this purpose. Instead, we tentatively conclude that total GSF investment should be reduced by factors that reflect the percentage of customer

operations, network operations, and corporate operations used to provide the supported services. We seek comment on these tentative conclusions.

2. Common Support Service Expenses

180. We next address common support service expenses, which are comprised of corporate operations, customer service expenses, and plant non-specific expenses. Corporate operations expenses are those costs associated with general administrative, executive planning, human resources, legal, and accounting expenses for total company operations. Customer service expenses include marketing, billing, operator services, directory listing, and directory assistance costs. Plant non-specific expenses are common network operations and maintenance type of expenses, including engineering, network operations, power and testing expenses, that are considered general or administrative overhead to plant operations. Commission staff held public workshops where they sought comment on various paradigms and econometric estimation techniques used to calculate these factors. Commission staff also discussed possible methods for subtracting non-recurring costs from expense estimates and for adjusting estimates for inflation and potential wage differentials.

181. *Per-Line Basis.* Common support services are costs that cannot readily be associated with any particular maintenance expense or investment account. As a result, we tentatively conclude that these expenses (unlike plant-specific expenses) should be estimated on a per-line basis, as advocated by the BCPM sponsors. We tentatively conclude that the HAI sponsors have failed to justify their proposal that expense estimates for certain accounts be based on a percentage of ARMIS-reported expenses or a percentage of total capital costs and operations expenses. We seek comment on these tentative conclusions.

182. *Nationwide Estimates.* Commenters such as Aliant, Sprint, GTE, and Bell South have argued for the inclusion of all accounts, and have argued further that these types of corporations and customer service expenses are inherently company specific in nature and should be evaluated in this manner. We tentatively conclude that inputs for corporate operations, customer services, and plant non-specific expenses should also be estimated on a nationwide basis rather than a more disaggregated basis. We seek comment on this tentative conclusion.

183. Costs associated with plant non-specific expenses used to supply and run network operations by definition cannot be directly allocated to individual maintenance or investment accounts. Commenters have suggested that these types of expenses may vary among carriers and between study areas. They argue that these differences may be a result of company specific plant configurations, geographic and labor demographic variables, one-time exogenous costs, and non-recurring adjustments such as re-engineering expenses. They further argue that administrative support expense differences are also a function of regional wage differentials and plant specifications. As stated earlier, we cannot at this time distinguish significant differences in regional wage differentials for administrative services based solely on ARMIS expense data for these accounts. Further, costs associated with corporate overhead and customer services accounts are not directly linked to specific company investment levels. We tentatively conclude that, for forward-looking cost estimates, these types of administrative and service expenses are less dependent on carrier physical plant or geographic differentials than those that also correlate to company size (number of lines) and demand (minutes of use), which were used as estimation variables to develop the model inputs. We seek further comment on this analysis.

184. We also tentatively conclude that we should not adopt different estimates for small, medium, and large high cost non-rural companies for common support service expenses. As with plant specific expenses, Commission staff tested whether statistically significant differences in common support service expenses per line could be determined from segmenting companies into small carriers with less than 500,000 access lines, medium carriers with between 500,000 and 5,000,000 access lines, and those large carriers with over 5,000,000 access lines. We have further reviewed whether expense estimates varied due to the total number of Dial Equipment Minutes (DEMs) reported by companies in addition to the number of lines. As with the plant-specific accounts, we could find no significant differences in the expense factor per-line based on these criteria. Therefore, consistent with the forward looking costs associated with an efficient network as determined by the federal mechanism, we tentatively conclude that we should estimate these non-specific network operations expenses on a nationwide, per-line basis. We seek comment on this tentative conclusion.

185. *Data Source.* Following standard economic analysis and forecasting methods, we propose to use publicly available 1996 ARMIS expense data and minutes of use information from NECA, by study area, to estimate the portion of these company-wide expenses to be covered by universal service support. We believe that consolidation of this data produces a sufficient number of observations by study area for each of these accounts. Public data for 1996 was used in this analysis in order to compare the estimates obtained with proprietary information received from a previous data request. We note that this methodology was proposed by Commission staff in a public workshop on December 1, 1998. We seek comment on this proposal.

186. *Regression Methodology.* Using standard multi-variate regression analysis, we developed two different specifications to determine the portion of corporate and customer operations and plant non-specific expenses subject to universal service support. Each equation estimates total expenses per total lines as a function of switched lines per total lines, special lines per total lines, and toll minutes per total lines, either in combination (Specification 1) or separated between intrastate toll and interstate toll minutes per total lines (Specification 2).

187. Each specification has been chosen to separate the portion of expenses that could be estimated as attributable to special access lines and toll usage, which are not supported by the high cost mechanism, rather than switched lines and local usage. Commission staff found from an earlier formulation that, when the model included both a switched line component and a local usage component, the number of switched lines and local DEMs were so highly correlated that it did not increase the explanatory power of the model to include both variables. As a result, we tentatively conclude that we should not include local dial equipment minutes per total lines as an explanatory variable, despite suggestions by a number of workshop participants and commenters. Because both regression equations produce reasonable estimates, and in order to prevent any potential advantage to firms which might have a different mix of toll minutes, we propose to use the average of the estimates from the two specifications. We seek further comment on this proposed regression methodology.

188. *Removal of One-Time and Non-Supported Expenses.* In order to

eliminate the impact of one-time non-recurring expenses on forward-looking estimates, we have sought verifiable public information on exogenous costs and those that are recovered through non-recurring charges and tariffs. These include specific one time charges for the cost of mergers, acquisitions, and process re-engineering. We also sought to estimate the cost of providing permanent number portability, network and interexchange carrier connection, disconnection, and re-connection (i.e., churn) costs. Other recurring functions that we have attempted to identify include vertical features expenses, billing and collection expense not related to supported services, operational support systems and other expenses associated with providing unbundled network elements and wholesale services to competitive local exchange carriers, collocation expenses, and costs associated with SS7 services.

189. Without obtaining proprietary information from carriers, we have been unable to find an objective public data source or discern a systematic method for excluding many of these costs from the expense data used to calculate the input factors. AT&T and MCI WorldCom presented an analysis to Commission staff on January 14, 1999, proposing a method to estimate, non-supported, non-recurring, or one-time expenses for customer, network, and corporate operations expenses. Averaging data for five years (1993–1997) of corporate Security and Exchange Commission (SEC) 10–K and 10–Q filings, a percentage of corporate and network operations identified as one-time charges were estimated for the BOCs and all Tier One companies. Because the SEC reports do not specifically indicate whether the one-time expenses were actually made during the year(s) indicated, we tentatively conclude that we should not use these figures to adjust the 1996 ARMIS data used in estimating the expense input values. The analysis does indicate, however, that one-time expenses for corporate operations can be significant and should be estimated, if possible. Because this type of data detail is not publicly available from ARMIS or easily reconcilable from other public company financial reports to individual account expenses for a specific year, we invite comment on how to identify and estimate these expenses.

190. We tentatively conclude that, if it is determined that expense estimates to be used as inputs in the high-cost mechanism are to be revised annually, as suggested by various parties, one-time non-recurring costs should be systematically excluded. We further recommend that, to the extent possible, efforts be made to use current information supplied and verified by the companies, if none can be found independently, to more accurately reflect forward-looking expenses. We seek comment on this tentative conclusion and recommendation.

191. *Removal of Non-Supported Expenses.* Cost reductions were made for continuous non-supportable services which could be identified and estimated from publicly available (ARMIS) expense data. Expense adjustments were made to calculated input values for marketing expenses. Though the HAI sponsors and state Joint Board members suggested that marketing expenses be excluded entirely, commenters and workshop participants noted that Section 214 of the Communications Act requires eligible telecommunications carriers to advertise the availability of residential local exchange and universal service supported services.

192. We tentatively conclude that an analysis made by Economics and Technology, Inc., regarding the disaggregation of marketing and advertising expenses made by companies for basic telephone service, is the most accurate method on the record for apportioning marketing expenses between supported and non-supported services. This analysis attributes an average of 95.6 percent of company marketing costs to non-supported customers or activities, such as vertical and new services. We seek comment on this proposed analysis for estimating marketing expenses.

193. We also propose adjustments for non-supported service costs related to coin operations and collection, published directory, access billing, interexchange carrier office operation, and service order processing, which are associated with specific expense accounts used in the regression analysis. Under this methodology, percentage reductions would be made to the estimated coefficients for those accounts using calculations based on a time trend analysis of average ARMIS 43–04 expense data for five years (1993–1997). We seek comment on this proposed methodology.

194. *Converting Expenses to 1999 Values.* In order to bring forward the 1996 data relied upon for estimating common support service expenses, we propose to use a 6.0 percent productivity factor for each year (1997 and 1998) to reduce the estimated input values for each account. The 6.0 percent productivity factor is based on the 6.5 percent "X-factor" used in the Commission's price cap methodology. We note that the D.C. Circuit Court of Appeals recently reversed and remanded for further explanation the Commission's decision to select 6.0 percent as the first component of the X-factor. In light of that remand, we seek comment on whether we should continue to adjust our expense input values to reflect productivity gains. If we determine that such adjustment is appropriate, we may want to use an alternative method of estimating productivity. We seek comment on what other measures we could use to adjust our expense data for gains in productivity. We further propose to add an inflation factor for each year based on the fixed weighted Gross Domestic Product Price Index (GDP-PI) for 1997 (2.1120 percent) and for 1998 (2.1429 percent). Thus, we propose a net reduction of 3.888 percent for 1997 and 3.8571 percent for 1998 when using the 6.0 percent productivity factor. We seek comment on this method for converting expenses to 1999 values.

195. *Estimates of Corporate Operations, Customer Operations, and Plant Non-Specific Expenses.* This Further Notice contains a summary of the proposed per-line, per-month input figures for both plant non-specific expenses, corporate operations, and customer operations adjusted expenses as calculated using the aforementioned methodology. We seek comment on these proposed values.

VII. Capital Costs

196. We address the inputs in the model related to capital costs: depreciation, cost of capital, and annual charge factors.

A. Depreciation

1. Issues for Comment

a. Method of Depreciation.

197. Before selecting values for projected life and future net salvage value, we first tentatively adopt the method of depreciation that should be used in the model, that is, how depreciation allowances should be allocated over the life of an asset. The Commission's depreciation accounting rules require carriers to use straight-line equal-life group depreciation. Both the HAI and BCPM proponents advocate the use of straight-line depreciation in calculating depreciation expenses. Ameritech suggests that the depreciation method used for a specific geographic area should be consistent with any studies that underlie the development of economic lives or net salvage values for that same area. GTE proposes that incumbent LECs be allowed to use depreciation lives based on the expected economic life of the asset. Because the Commission's rules require the use of straight-line

depreciation, rather than a more accelerated depreciation method, we tentatively conclude that this method, which is used for all Commission-proposed depreciation, is also appropriate for use in the high cost support mechanism. We seek comment on this tentative conclusion.

b. Depreciation Lives and Future Net Salvage Percentages.

198. In estimating depreciation expenses, the model uses the projected lives and future net salvage percentages for the asset accounts in Part 32 of the Commission's rules. Traditionally, the projected lives and future net salvage values used in setting a carrier's rates have been determined in a triennial review process involving the state commission, the Commission, and the carrier. In order to simplify this process, the Commission has prescribed ranges of acceptable values for projected lives and future net salvage percentages. The Commission's prescribed ranges reflect the weighted average asset life for regulated telecommunications providers. These ranges are treated as safe harbors, such that carriers that incorporate values within the ranges into their depreciation filings will not be challenged by the Commission. Carriers that submit life and salvage values outside of the prescribed range must justify their submissions with additional documentation and support. Commission authorized depreciation lives are not only estimates of the physical lives of assets, but also reflect the impact of technological obsolescence and forecasts of equipment replacement. We believe that this process of combining statistical analysis of historical information with forecasts of equipment replacement generates forward-looking projected lives that are reasonable estimates of economic lives and, therefore, are appropriate measures of depreciation.

199. In the *1997 Further Notice*, the Commission tentatively concluded that it should adopt depreciation expenses that reflect a weighted average of the rates authorized for carriers that are required to submit their rates to us. The values submitted by the HAI sponsors essentially reflect such a weighted average. The HAI values represent the weighted average depreciation lives and net salvage percentages from 76 study areas. According to the HAI sponsors, these depreciation lives and salvage values reflect the experience of the incumbent LEC in each of these study areas in retiring plant, and its projected plans for future retirements.

200. We tentatively conclude that HAI's values represent the best forward-looking estimates of depreciation lives and net salvage percentages. We seek comment on this tentative conclusion. Generally, these values fall within the ranges prescribed by the Commission for projected lives and net salvage percentages. Although the HAI values for four account categories fall outside of the Commission's prescribed ranges, these values still reflect the weighted average of projected lives and net salvage percentages that were approved by the Commission and therefore are consistent with the approach proposed in the *1997 Further Notice*. As noted, the fact that an approved value falls outside of the prescribed range simply means that the carrier that proposed the value was required to provide additional justification to the Commission for this value. We are satisfied that HAI calculated its proposed rates using the proper underlying depreciation factors and that HAI's documentation supports the selection of these values.

201. We disagree with the BCPM sponsors and other incumbent LECs that the Commission's prescribed ranges are not appropriate for determining depreciation rates in a competitive environment. These parties argue that rapid changes in technology and the opening of local telecommunications markets to competition shorten asset lives significantly beyond what the Commission has prescribed. The BCPM sponsors claim that these factors cause existing equipment to become obsolete at a faster pace, thus reducing the overall economic value of the assets more quickly. We agree with the HAI sponsors that there is no evidence to support the claim that increased competition or advances in technology require the use of shorter depreciation lives in the model than are currently prescribed by the Commission. The Commission's prescribed lives are not based solely on the engineered life of an asset, but also consider the impacts of technological change and obsolescence. We note that the depreciation values we tentatively adopt are generally at the lower end of the prescribed range. We further note that although the average depreciation rate for an incumbent LEC's Total Plant in Service is approximately seven percent, incumbent LECs are retiring plant at a four percent rate. This difference has allowed depreciation reserves to increase so that the depreciation reserve-ratio is greater than 50 percent. We tentatively conclude that the existence of this difference implies that the prescribed lives are shorter than the engineered lives of these assets. In addition, this difference provides a buffer against technological change and competitive risk for the immediate future. We therefore tentatively conclude that the Commission's prescribed ranges are appropriate to determine depreciation rates for the model. We seek comment on these tentative conclusions.

202. We tentatively decline to adopt the values for projected lives and net salvage percentages submitted by the BCPM proponents. The BCPM proponents based their default values for projected lives and salvage on a LEC industry data survey requesting forward-looking values. With regard to projected lives, the BCPM values generally fall outside of the Commission's prescribed ranges. Because the BCPM sponsors fail to introduce sufficient evidence supporting their values, we tentatively decline to accept their approach. The BCPM proponents submitted values for projected life that are significantly shorter than the already shortened Commission's prescribed life ranges. This is significant because BCPM's values that fall outside of the prescribed ranges represent accounts that reflect the overwhelming majority of plant investment, thus potentially triggering a dramatic increase in support. We seek comment on this assessment.

B. Cost of Capital

203. The cost of capital represents the annual percentage rate of return that a company's debtholders and equity holders require as compensation for providing the debt and equity capital that a company uses to finance its assets. In the *Universal Service Order*, the Commission concluded that the current federal rate of return of 11.25 percent is a reasonable rate of return by which to determine forward-looking costs.

204. The HAI proponents have submitted data indicating that the incumbent LEC's cost of capital is 10.01 percent, not the current 11.25 percent federal rate of return. The HAI proponents also contend that certain state commissions have determined that even lower costs of capital are appropriate. The BCPM proponents advocate a cost of capital rate of 11.36 percent.

205. We find that both BCPM and HAI proponents have failed to make an adequate showing to justify rates that differ from the current 11.25 percent federal rate of return. We tentatively conclude, therefore, that the current rate is reasonable for determining the cost of universal service. If the Commission, in a rate represcription order, adopts a different rate of return, we tentatively

conclude the model should use the more recently determined rate of return. We seek comment on these tentative conclusions.

C. Annual Charge Factors

206. Incumbent LECs develop cost factors, called "annual charge factors," to determine the dollar amount of recurring costs associated with acquiring and using particular pieces of investment for a period of one year. Incumbent LECs develop these annual charge factors for each category of investment required. The annual charge factor is the sum of depreciation, cost of capital, adjustments to include taxes on equity, and maintenance costs.

207. To develop annual charge factors, the BCPM proponents propose a model with user-adjustable inputs to calculate the depreciation and cost of capital rates for each account. The BCPM proponents state that this account-by-account process was designed to recognize that all of the major accounts have, *inter alia*, differing economic lives and salvage values that lead to distinct capital costs. HAI's model is also user adjustable and reflects the sum for the three inputs: depreciation, cost of capital, and maintenance costs.

208. Because the synthesis model uses HAI's expense module, with modifications, we tentatively conclude that HAI's annual charge factor should be used. We believe that HAI's annual charge factor is consistent with other inputs used in the model adopted by the Commission, and therefore easier to implement. We seek comment on this analysis and our tentative decision to use HAI's annual charge factor.

VIII. Other Issues Related to the High Cost Mechanism

A. Alternatives to the Forward-Looking Cost Model

209. It is our expectation that the model outputs will be fully verified in time for implementation on January 1, 2000, and we remain firmly committed to the idea that support based on forward-looking costs will provide the best assurance of predictable, specific, and sufficient support as competition develops. In the unlikely event that the model is not ready for timely implementation, however, we seek comment on how the Commission might determine support levels without resort to a forward-looking cost model. Commenters addressing this issue should specifically describe how their proposal will generate sufficient support to meet the goals of section 254, even as competition develops in the local exchange.

B. Proposed Modification to Procedures for Distinguishing Rural and Non-Rural Companies

1. Issues for Comment

210. On June 22, 1998, the Accounting Policy Division released a Public Notice with a list of the approximately 1,400 carriers that had certified as rural carriers as of April 30, 1998. Because a vast majority of the carriers certifying as rural serve under 100,000 access lines, we tentatively conclude that we should adopt new filing requirements for carriers filing rural self-certification letters. We propose that carriers who serve under 100,000 access lines should not have to file the annual rural certification letter unless their status has changad since their last filing. We believe that this is a better approach because the overwhelming majority of the companies that filed rural certification letters qualified as rural telephone companies because they provide service to fewer access lines than either the 50,000 or 100,000 line thresholds identified in the statute. Access line counts can be verified easily with publicly-available data. Further, this relaxation in filing requirements would lessen the burden on many rural carriers and Commission staff. We estimate that this change will eliminate the filing requirement for approximately 1,380 of the carriers that filed this year. We seek comment on this proposal.

211. As noted, the Commission can easily determine whether a carrier satisfies criteria (B) or (C) of the rural telephone company definition, because these criteria are based on information that can be verified easily with publicly available data—the number of access lines served by a carrier. In contrast, criteria (A) and (D) require additional information and analysis to verify a carrier's self-certification as a rural company. Specifically, under criterion (A) a carrier is rural if its study area does not include "any incorporated place of 10,000 inhabitants or more" or "any territory * * * in an urbanized area," based upon Census Bureau statistics and definitions. Under criterion (D) a carrier is rural if it had "less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the [1996 Act]."

212. We tentatively conclude that, once we have clarified the meaning of "local exchange operating entity" and "communities of more than 50,000" in section 153(37), we should require carriers with more than 100,000 access lines that seek rural status to file certifications for the period beginning January 1, 2000, consistent with the Commission's interpretation of the rural telephone company definition. We seek comment on this tentative conclusion. We also seek comment on whether we should require these carriers to re-certify each year (after the filing for January 1, 2000) or, in the alternative, whether they should be required to re-certify only if their status has changed.

213. Most of the carriers asserting rural status under criterion (A) or (D) also claim rural status under the access line thresholds in criterion (B) or (C). In these cases, the Commission does not need additional information to verify the carrier's rural status. If a carrier serves a local exchange study area with more than 100,000 access lines, however, the Commission needs additional information about the study area to determine whether criterion (A) or (D) is met. Based on the certifications we have received, we believe that carriers have adopted differing interpretations of criterion D. We tentatively conclude that criterion A, on the other hand, by referencing Census Bureau sources, can be applied consistently without further interpretation by the Commission. We seek comment on this tentative conclusion.

214. We have identified at least two issues in the rural telephone company definition for which carriers have adopted different interpretations that affect the determination of whether a carrier satisfies the requirements of criterion D. Specifically, carriers differ on whether criterion (D) should be applied on a holding company or study area-by-study area basis. For example, while most carriers have asserted that they meet the 15 percent/50,000 test in criterion (D) for a particular study area because less than 15 percent of its access lines within that study area are in communities of more than 50,000, at least one carrier claims it meets this criterion for all of its study areas, because less than 15 percent of its access lines nationwide are in such communities. In order to resolve these differences, we must interpret the phrase "local exchange operating entity" in the introductory text of section 153(37).

215. We therefore seek comment on how we should interpret the phrase "local exchange operating entity" in section 153(37) of the Communications Act. Specifically, we seek comment on whether that term refers to an entity operating at the study area level or at the holding company level. Although most of the carriers certifying under

subparagraph (D) have construed the term to refer to an entity at the study area level, we note that at least one state commission, in denying a carrier's request for an exemption under section 251(f)(1) of the Communications Act, viewed the exemption claim from the perspective of the national operating entity. We also request information on how states have construed the rural telephone company definition in exercising their authority under section 251(f)(1) and section 214(e)(2) of the Act.

216. Carriers also have used different interpretations of the phrase "communities of more than 50,000" in criteria (D) of the rural telephone company definition. Some carriers have used Census Bureau statistics for legally incorporated localities, consolidated cities, and census-designated places, to identify communities of more than 50,000. Other carriers have provided lists of communities without identifying the source of the designation or the population information. Some carriers have attempted to distinguish between rural communities and communities that may be characterized as urban or suburban. One carrier, for example, based its analysis of its service territories on the Commission's definition of "rural area" in section 54.5 of the Commission's rules. The carrier calculated its percentage of rural/non-rural lines by determining whether each of its wire centers is associated with a metropolitan statistical area (MSA). If so, these lines were considered to be urban, unless the wire center has rural pockets, as defined by the most recent Goldsmith Modification.

217. We seek comment on how we should interpret the phrase "communities of more than 50,000" in section 153(37) of the Act. We seek comment on whether we should define communities of more than 50,000 by using Census Bureau statistics for legally incorporated localities, consolidated cities, and census-designated places. In the alternative, we seek comment on whether we should distinguish between rural and non-rural communities in applying criterion D of section 153(37). Specifically, we seek comment on whether we should use the methodology in section 54.5 of the Commission's rules to determine whether a community is in a rural area. We also seek comment on other methods of defining communities with populations greater than 50,000 for purposes of applying criterion D.

218. As noted, states apply the definition of rural telephone company in determining whether a rural telephone company is entitled to an exemption under section 251(f)(1) of the Act and in determining, under section 214(e)(2) of the Act, whether to designate more than one carrier as an eligible telecommunications carrier in an area served by a rural telephone company. Although the Commission used the rural telephone company definition to distinguish between rural and non-rural carriers for purposes of calculating universal service support, there is no statutory requirement that it do so. The Commission adopted the Joint Board's recommendation to allow rural carriers to receive support based on embedded cost for at least three years, because, as compared to large LECs, rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit as much from economies of scale and scope. The Commission also noted that for many rural carriers, universal service support provides a large share of the carriers' revenues, and thus, any sudden change in the support mechanisms may disproportionately affect rural carriers' operations. We seek comment on whether the Commission should reconsider its decision to use the rural telephone company definition to distinguish between rural and non-rural carriers for purposes of calculating universal service support. That is, we seek comment on whether there are differences between our universal service policies and the competitive policies underlying sections 251(f)(1) and 214(e)(2) that would justify definitions of "rural telephone company" and "rural carrier" that differ.

219. Finally, we address a necessary procedural matter. Currently, carriers are required to file rural certifications by July 1, 1999 to be classified as rural for January 1, 2000. Given our tentative conclusions that we should modify the current filing requirements for rural certification, including eliminating the filing requirement for most carriers that have filed previously, we move the July 1, 1999 filing deadline to October 15, 1999.

IX. Procedural Matters and Ordering Clause

A. Ex Parte Presentations

220. This is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules.

B. Initial Regulatory Flexibility Act

221. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals in this Further Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of this Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

222. *Need for and Objectives of Proposed Rules.* In the *Universal Service Order*, the Commission adopted a plan for universal service support for rural, insular, and high cost areas to replace longstanding federal subsidies to incumbent local telephone companies with explicit, competitively neutral federal universal service mechanisms. In doing so, the Commission adopted the recommendation of the Joint Board that an eligible carrier's support should be based upon the forward-looking economic cost of constructing and operating the networks facilities and functions used to provide the services supported by the federal universal service mechanism.

223. Our plan to adopt a mechanism to estimate forward-looking cost has proceeded in two stages. On October 28, 1998, the Commission completed the first stage of this proceeding: the selection of the model platform. The platform encompasses the aspects of the model that are essentially fixed, primarily assumptions about the design of the network and network engineering. In this Further Notice we move toward completion of the second stage of this proceeding, by proposing input values for the cost model, such as the cost of cables, switches and other network components, in addition to various capital cost parameters. In addition, we propose adoption of a road surrogate algorithm to determine the location of customers and a data set of customer locations. This Further Notice also seeks comment on other issues related to the federal high cost mechanism, including alternatives to the forward-looking cost model and modifications to the procedures for distinguishing rural and non-rural companies.

224. *Legal Basis:* The proposed action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

225. *Description and Estimate of the Number of Small Entities to which the Further Notice will Apply.*

226. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small government jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications Except Radiotelephone) to be small entities when they have no more than 1,500 employees.

227. The most reliable source of information regarding the total number of certain common carriers appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).

228. Although some affected incumbent LECs may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms, "small entities" and "small businesses" does not encompass incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LEC that arguably might be defined by the SBA as "small business concerns."

229. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be data that we collect annually in connection with the TRS. According to our most recent data, there are 1,410 LECs. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs that may be affected by the proposals adopted in this Further Notice. We also note that, with the exception of a modification in reporting requirements, the proposals in this Further Notice apply only to larger "non-rural" LECs.

230. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.*

231. On June 22, 1998, the Accounting Policy Division released a Public Notice with a list of the approximately 1,400 carriers that had certified as rural carriers as of April 30, 1998. Because a vast majority of the carriers certifying as rural serve under 100,000 access lines, we tentatively conclude that we should adopt new filing requirements for carriers filing rural self-certification letters. We propose that carriers who serve under 100,000 access lines should not have to file the annual rural certification letter unless their status has changed since their last filing. We believe that this is a better approach because the overwhelming majority of the companies that filed rural certification letters qualified as rural telephone companies because they provide service to fewer access lines than either the 50,000 or 100,000 line thresholds identified in the statute. Access line counts can be verified easily with publicly-available data. Further, this relaxation in filing requirements would lessen the burden on many rural carriers and Commission staff. We estimate that this change will eliminate the filing requirement for approximately 1,380 of the carriers that filed this year.

232. We tentatively conclude that, once we have clarified the meaning of "local exchange operating entity" and "communities of more than 50,000" in section 153(37), we should require carriers with more than 100,000 access lines that seek rural status to file certifications for the period beginning January 1, 2000, consistent with the Commission's interpretation of the rural telephone company definition. We also seek comment on whether we should require these carriers to re-certify each year (after the filing for January 1, 2000) or, in the alternative, whether they should be required to re-certify only if their status has changed.

233. In addition, we address a necessary procedural matter. Currently, carriers are required to file rural certifications by July 1, 1999 to be classified as rural for January 1, 2000. Given our tentative conclusions that we should modify the current filing requirements for rural certification, including eliminating the filing requirement for most carriers that have filed previously, we propose moving the July 1, 1999 filing deadline to October 15, 1999.

234. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* Throughout the Further Notice, we seek comment on the tentative conclusions that we propose. In addition, we believe that the reporting modifications that are proposed will reduce the burden on rural LECs. As noted, we propose that carriers serving fewer access lines than either the 50,000 or 100,000 line thresholds should not be required to file annual rural certification letters unless their status has changed since their last filing.

235. *Federal Rules That May Overlap, Duplicate or Conflict with the Proposed Rule.* None.

C. Initial Paperwork Reduction Act Analysis

236. This Further Notice contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from date of publication of this Further Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the

respondents, including the use of automated collection techniques or other form of information technology.

D. Deadlines and Instructions for Filing Comments

237. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before July 2, 1999 and reply comments on or before July 16, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 Fed. Reg. 24,121 (1998).

238. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554.

239. Parties must also send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, 445 Twelfth Street S.W., 5–A523, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

E. Ordering Clauses

240. *It is ordered,* pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254, and 403 that this Further Notice of Proposed Rulemaking is hereby adopted and comments are requested as described.

241. *It is further ordered* That the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carrier.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15025 Filed 6–11–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990324081–9081–01; I.D. 072098G]

RIN 0648–AI85

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule; request for comments and notice of public hearings.

SUMMARY: NMFS proposes regulations to implement provisions of the International Dolphin Conservation Program Act (IDCPA). These regulations would allow the entry of yellowfin tuna into the United States under certain conditions from nations signatory to the International Dolphin Conservation Program (IDCP) that otherwise would be under embargo. It would also allow U.S. fishing vessels to participate in the fishery in the ETP on equivalent terms with the flag vessels of other IDCP signatory nations. A U.S. citizen employed on a purse seine vessel of another IDCP signatory nation with an affirmative finding would not be in violation of U.S. prohibitions on the taking of marine mammals if that vessel takes marine mammals incidentally during fishing operations outside the U.S. exclusive economic zone (EEZ) in compliance with the requirements of the IDCP. The standard for use of "dolphin-safe" labels for tuna products would also change. General requirements also are proposed to ensure adequate tracking and verification of tuna imports from the ETP.

DATES: Comments on the proposed regulations must be received on or before July 14, 1999. Public hearings on this proposed rule will be held on Thursday, July 8, 1999, in Long Beach, CA, at 10:00 a.m.- 1:00 p.m. and on Wednesday, July 14, 1999, in Silver Spring, MD, at 1:00 p.m.- 4:00 p.m.

ADDRESSES: Send comments to J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. The locations of the public hearings on this proposed rule are: (1) Room 3400, 501 W. Ocean Blvd., Long Beach, CA 90802–4213; and (2) NOAA Building, SSMC IV, Room 1W611, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, (562) 980–4020. For additional information about the public hearing in Long Beach, CA, contact J. Allison Routt. For additional information about the public hearing in Silver Spring, MD, contact Cathy Eisele, NMFS, Headquarters, Marine Mammal Division,(301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

In 1992, nations fishing for tuna in the ETP, including the United States, reached a non-binding international agreement (referred to as the La Jolla Agreement) that included, among other measures, a dolphin mortality reduction schedule providing for significant reductions in dolphin mortalities. By 1995, nations fishing in the ETP under the La Jolla Agreement had reduced dolphin mortality to less than 5,000 dolphins annually, two years ahead of the schedule established in that Agreement. In October 1995, the success of the La Jolla Agreement led the United States, Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela to sign the Panama Declaration to strengthen and enhance the IDCP.

The program outlined in the Panama Declaration will provide greater

protection for dolphins, and enhance the conservation of yellowfin tuna and other living marine resources in the ETP ecosystem. The Panama Declaration anticipated that the United States would change the provisions of the Marine Mammal Protection Act (MMPA) to allow import of yellowfin tuna into the United States from nations that are participating in, and are in compliance with, the IDCP. Implementation of the Panama Declaration by the United States was also anticipated in order to allow U.S. vessels to participate in the ETP fishery on an equal basis with the vessels of other nations. Under the Declaration, signatory nations agreed to develop a legally binding, international agreement. In May 1998, eight nations, including the United States, signed such a binding, international agreement to implement the IDCP. This Agreement will go into force after either ratification, acceptance, or approval by four nations.

The IDCPA was signed into law on August 15, 1997, to recognize and implement the IDCP and to address related issues. The IDCPA was the domestic endorsement of an international management regime adopted during the last 20 years under the auspices of the Inter-American Tropical Tuna Commission (IATTC). The IDCPA primarily amends provisions in the MMPA governing marine mammal mortality in the U.S. ETP tuna purse seine fishery and the importation of yellowfin tuna and yellowfin tuna products from other nations with vessels engaged in the ETP tuna purse seine fishery. Key provisions of the IDCPA will become effective when two certifications are made. The Secretary of State must certify to Congress that a binding legal instrument establishing the IDCP has been adopted and is in force (i.e., Agreement on the IDCP). In addition, the Secretary of Commerce must certify that a study has commenced on the effects of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the ETP, and that funds are available to complete the first year of this study. On July 27, 1998, the Secretary of Commerce provided the required certification to Congress on the research study.

The Agreement on the IDCP becomes effective when four countries have deposited their instruments of either ratification, acceptance, or adherence with the United States. The United States, Panama, Ecuador, and Mexico have deposited their instruments of either ratification, acceptance, or adherence with the Depositary. The Agreement on the IDCP became effective on February 15, 1999. On March 3, 1999, the Secretary of State provided the required certification to Congress that the Agreement on the IDCP has been adopted and is in force. The IDCPA became effective on this date. Provisions to implement the IDCPA and the new international agreement for dolphin conservation in the ETP are the subject of these proposed regulations.

Section 7 of the IDCPA amends the Tuna Conventions Act regarding a General Advisory Committee and a Scientific Advisory Committee, and provisions are proposed to address these changes. Section 6(c) of the IDCPA amends the permit sanction provisions in the MMPA applicable to permits issued to U.S. purse seine vessels in the ETP and their operators, and these changes will be addressed in a separate rulemaking.

Definitions

Definitions are added for "Administrator, Southwest Region," "Agreement on the International Dolphin Conservation Program," "Declaration of Panama," "Force majeure," "International Dolphin Conservation Program," "International Dolphin Conservation Program Act," "International Review Panel," and "Per-stock per-year dolphin mortality limit." In addition, the definitions of "ABI," "Director, Southwest Region," "ETP Fishing Area 1," " ETP Fishing Area 2," "ETP Fishing Area 3," "Fishing season," "Kill-per-set," "Kill-per-ton," and "Purse seine set on common dolphins" are removed because they are no longer necessary.

Although the Agreement on the IDCP applies in the Pacific Ocean west only to 150° W. meridian, the current definition of ETP is out to 160° W. meridian. This definition is not proposed to be changed because the existing definition is set by the Dolphin Protection Consumer Information Act (DPCIA) (16 U.S.C. 1305). This difference is expected to only affect a relatively small number of trips by U.S. purse seine vessels, when they extend their fishing activities under the Treaty that governs their fishing in the South Pacific into waters that overlap with the waters covered by the Agreement on the IDCP. This overlap will require these vessels to comply with the dolphin-safe requirements of the MMPA applicable to the ETP for fishing in the overlap area west of 150° W. meridian even though the Agreement on the IDCP has determined that fishing on dolphins does not occur in this area.

Requirements for U.S. Vessels

The certificate of inclusion process for U.S. vessel owners and operators under a general permit issued to the American Tunaboat Association would be replaced with a system of issuing permits directly to vessel owners and operators. Two permit categories would be retained for tuna purse seine vessels of greater than 400 short tons (362.8 metric tons (mt)) carrying capacity. One category would apply to purse seining involving the intentional taking of marine mammals, and the other category would apply to purse seining not involving the intentional taking of marine mammals. As mandated by the IDCPA, the latter category of permits would not require that the vessel be equipped with special equipment or gear. The terms and conditions for both categories of permits would be modified to require that observers be carried on every trip. Existing dolphin stock and species prohibitions would be replaced with a provision prohibiting sets on a stock when the mortality limit for that stock has been reached or exceeded. The authorization to take marine mammals during a set to protect catch or gear would be eliminated, retaining only the authorization to take marine mammals if necessary during a set to prevent personal injury. The authorizations proposed for elimination are no longer justified based upon the experience of the U.S. fleet and the low levels of dolphin mortality allowed under the IDCP.

The operator performance requirements are proposed to be removed and a subsection reserved for this subject. Because U.S. vessels have not been making intentional sets on dolphins in recent years, the existing performance requirements based upon older data do not reflect improvements in performance that should be expected from the U.S. operators based upon the performance of the international fleet in recent years. A subsection for operator performance requirements would be reserved to implement operator performance requirements when they are developed under the IDCP. Even without the performance requirements in effect now, the dolphin mortality limit (DML) system provides an effective incentive to both vessel owners and operators to achieve low dolphin mortalities, as demonstrated by the results since 1992. The implementation of operator performance standards under the IDCP is the best way to prevent substandard operators from moving among the vessels of various nations.

Implementing a provision in the Agreement on the IDCP, purse seine vessels of 400 st (362.8 mt) or less carrying capacity would be prohibited from intentionally deploying a net on or encircling dolphins. The U.S. vessels that are in this size range have not been obtaining certificates of inclusion to intentionally set on dolphins, so this new provision is not anticipated to affect the operations of any U.S. vessels.

The DML provisions are proposed to be revised to incorporate changes arising from the Agreement on the IDCP. These revisions include the following: adding a procedure for vessels that normally do not fish in the ETP to apply for a DML; removing the 15–percent limitation on adjusting DMLs as allocated by the IDCP; incorporating the DML re-allocation criteria in Annex IV of the Agreement on the IDCP; and reducing the allocation for a DML for the second half of a year to one-third of a full-year DML instead of the one-half of a full-year allocation previously provided.

The regulations would preclude a vessel that fails in two consecutive years to make at least one intentional set on dolphins by April 1 from obtaining a DML in the subsequent year. Similarly, a vessel with a second-semester DML that fails to make at least one intentional set on dolphins by December 31 of that year, or a vessel with a per-trip DML that fails to make at least one intentional set on dolphins during that trip, would lose its DML. After two consecutive losses of its DML, a vessel would not be eligible to receive a DML for the following year. Exceptions might be granted for *force majeure* or extraordinary circumstances.

The observers' access to certain vessel equipment and the working needs of observers on U.S. vessels would be elaborated upon in conformity with the Agreement on the IDCP.

The sections on permits for "Stationary gear," "Other gear," and "Commercial passenger fishing vessels" would be removed because the take of marine mammals incidental to these fisheries is now regulated by 50 CFR part 229.

Imports of Yellowfin Tuna and Yellowfin Tuna Products

The existing § 216.24(e) on imports would be revised for clarity, and would be redesignated as § 216.24(f). The observer provisions would be redesignated from § 216.24(f) to § 216.24(e) so that they would immediately follow the other sections applicable to U.S. vessels.

Harmonized Tariff Schedule (HTS) Numbers

Reflecting changes in the U.S. HTS, the list of HTS numbers in newly designated § 216.24(f)(2) would be updated.

All shipments, regardless of port of entry, identified by an HTS number in § 216.24, must be accompanied by a Fisheries Certificate of Origin (FCO). Unfortunately, the existing regulations are incorrect and appear to apply the MMPA § 101(a)(2) tuna embargo to encompass all shipments covered by these HTS numbers. Actually, the MMPA tuna embargos (for primary nations) cover only yellowfin tuna harvested by purse seines in the ETP. For instance, a shipment of skipjack harvested by longline may require an FCO because the importer has identified it with one of the HTS numbers listed under § 216.24(e). Such a shipment would not be subject to the MMPA embargo.

A provision would be added stating that no tuna or tuna products may be imported into the United States, even if there is an affirmative finding in place, if these tuna or tuna products were banned from importation under the MMPA before the effective date of section 4 of the IDCPA. The scope of the intermediary nation embargo on ETP yellowfin tuna and tuna products would be made the same as the scope of the embargo that applies to harvesting nations, conforming the regulations to changes made in the MMPA since the existing regulations were last changed. Dates related to tuna caught in large-scale driftnet fisheries, which are no longer relevant, would be removed.

Affirmative Findings

Yellowfin tuna or yellowfin tuna products imported from the ETP tuna purse seine fishery must meet the new standards established by the IDCPA. The finding section of the regulations, which would be redesignated as § 216.24(f)(9), would be revised to conform to the new standards and requirements of the IDCPA. No harvesting nation could export yellowfin tuna harvested by purse seine in the ETP into the United States unless the nation provided NMFS documentary evidence that it (1) participates in the IDCP; (2) is a member or applicant member of, and meeting the financial obligations of membership in, the IATTC; (3) keeps its fleet's stock-specific dolphin mortality within the IDCP's prescribed limits; and (4) keeps its fleet's annual dolphin mortality within the aggregate DMLs assigned to the fleet. The former two items are explicit in the IDCPA. The third item does not have much relevance until the IDCP nations allocate per-stock mortality limits between nations. The fourth item is NMFS' proposed interpretation of ambiguous statutory language in § 101(a)(2)(B)(iii) of the MMPA as revised by the IDCPA:

> ...the total dolphin mortality limits * * * permitted for that nation's vessels under the [IDCP] do not exceed the limits determined for 1997, or for any year thereafter ...

NMFS considered, but rejected, three alternative interpretations of § 101(a)(2)(B)(iii) of the MMPA: (1) the aggregate of the DMLs assigned to each of the harvesting nation's vessels ("fleet DML") for the upcoming year could not exceed the nation's fleet DML in 1997 or subsequent years; (2) the overall, international dolphin mortality cap set by the IDCP for the upcoming year could not exceed the cap in 1997 [i.e., 7,500 dolphins] or subsequent years [e.g., 6,500 dolphins in 1998]; and (3) the DML assigned to each vessel in the international fishery could never exceed the limit assigned in 1997 [i.e., 94 dolphins/vessel] or subsequent years [e.g., 66 dolphins/vessel in 1998, and 39.68 dolphins/vessel in 1999].

The first rejected alternative conforms best with the wording of § 101(a)(2)(B)(iii): "the total dolphin mortality limits ...for that nation's vessels...do not exceed the limits determined for 1997, or for any year thereafter * * *." However, comparing a nation's aggregate (fleet) mortality limits to the nation's earlier limits would prejudge decisions under the IDCP. In the Panama Declaration, the United States pledged to lift embargoes against nations participating in accordance with the international program. While the international program intended to reduce overall dolphin mortality, the parties to the Panama Declaration and the IDCP did not contemplate limiting the size of any nation's fleet (at least not for the purpose of dolphin protection) or the size of any nation's aggregate DML. The IDCP has always allocated the annual international cap on a per-vessel basis, not on a per-nation basis. Under this rejected alternative, a nation could fish in strict compliance with the program but be embargoed by the United States if its fleet happened to be relatively large in the upcoming year and therefore receive a relatively large aggregate (fleet) DML. Penalizing a nation whose fleet has grown could discourage efficient utilization of resources (fishing vessels transferring between nations) without affecting overall international dolphin mortality. Harvesting nations that adopted good

dolphin conservation programs because of the IDCP might quit the IDCP if subjected to this type of embargo.

The second alternative interpretation was rejected because the statutory placement of an item relating to international management would not be logical or appropriate among a list of standards applicable to individual harvesting nations. While each IATTC participant could block a larger international cap (because the IATTC operates by consensus), imposing trade restrictions to penalize fellow harvesting nations would not be logical for the following reasons. First, the United States also participates in the IDCP, which operates by consensus. Therefore, this standard would only have significance (and result in an embargo) if the United States itself approved raising the international cap. In the statutory context, Congress certainly intended these importation standards to induce compliance with the IDCP by harvesting nations. Second, this is not the type of documentary evidence that the United States would require an individual harvesting nation to provide since the United States knows the international cap by virtue of our participation in the IDCP.

The third rejected alternative is not logical for the same reasons as the second alternative; vessel DMLs are set by consensus, so the United States could unilaterally prevent this standard from being violated; and since we participate in the IDCP also, the United States need not rely upon documentary evidence from harvesting nations.

The proposed interpretation makes the most sense in the context of § 101(a)(2)(B) of the MMPA because it focuses on a nation's compliance with the international regime. Only a nation that failed to keep its own fleet's annual dolphin mortality within the aggregate DMLs assigned to the fleet would be embargoed. That is the type of documentary evidence that the United States would not necessarily have without a submission from the harvesting nation. In the embargo context, this interpretation focuses NMFS' attention on a fleet's results in protecting dolphin, which should reflect on the success of the harvesting nation's management and enforcement program, rather than decisions by other parties to the IDCP. This encourages other harvesting nations to comply with the IDCP and threatens economic sanctions only against nations that do not control or manage their own fleets.

Although currently the IDCP does not assign per-stock dolphin mortality limits to individual nations, fleets, or vessels, if the IDCP assigns per-stock limits in the future, we would compare the total per-stock dolphin mortality of a harvesting nation's fleet in a calendar year to the combined allocated annual per-stock mortality limits assigned to the fleet for that year. If the mortality exceeded the assigned limits, the United States would impose an ETP embargo against that nation for the subsequent April through March period.

While the existing concept of nations applying for and renewing annual affirmative findings is retained, the proposed regulations reflect the reality that the documentary evidence used to make findings may be provided by a combination of the exporting nation, the harvesting nation (if different from the exporting nation), and the IDCP and IATTC. In addition, to reflect the fact that the IDCP principally uses the calendar year as the basis for management, including the calculation and monitoring of annual DMLs, the period of validity of a finding in the regulations is proposed to be from April 1 through March 31 of the following year, relying upon data from the previous calendar year. To work effectively within this schedule, NMFS will reduce the processing time for complete applications from 120 days to 60 days. NMFS is considering a multi-year affirmative finding process and is seeking comments on this concept.

Dolphin-safe Requirements

As mandated by section 6(d) of the IDCPA, the proposed regulations would exclude yellowfin tuna and yellowfin tuna products harvested by vessels of a nation which is in compliance with the IDCP, and which also has met the IATTC application and membership requirements specified in the IDCPA, from the prohibition on the sale, purchase, offer for sale, transport or shipment of tuna products in the United States which is not dolphin-safe.

Observers

The language in redesignated § 216.24(e)(1) would be revised to clarify that all permitted vessels are required to carry observers on every trip. In addition, the section providing for an application and waiver process regarding women observers is removed because the time period has expired for its use.

U.S. Citizens on Foreign Flag Vessels in the ETP

A U.S. citizen employed on a foreign tuna purse seine vessel of a nation with an affirmative finding would not be subject to the MMPA's prohibitions on taking marine mammals while the vessel is engaged in fishing operations outside the U.S. EEZ. Use of an affirmative finding determination for this purpose is the most effective way for a U.S. citizen to determine that a nation is qualified under the IDCPA's criteria.

Dolphin-safe Labeling Requirements

The labeling standard for use of the term "dolphin-safe" on the labels of tuna products would change under the proposed regulation. Currently, tuna products may be labeled "dolphin-safe" only if no intentional setting on dolphins occurred during the fishing trip. Under the IDCPA, the Secretary of Commerce (Secretary) would revise the labeling standard based upon the initial and final findings of a study mandated by the IDCPA on whether the intentional deployment on, or encirclement of, dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP. Dolphin stocks in the ETP now designated as depleted under the MMPA are the eastern spinner dolphin, northeastern offshore spotted dolphin, and the coastal spotted dolphin. The initial finding is due between March 1, 1999, and March 31, 1999, and the final finding is due between July 1, 2001, and December 31, 2002. Under the proposed regulations, a "default standard" will be established before the Secretary makes an initial finding. Under the default standard, tuna products can only be labeled "dolphin-safe" if no dolphins are intentionally encircled during the entire fishing trip *and* no dolphin is killed or seriously injured during the set. After the initial finding, unless the Secretary *initially* finds a "significant adverse impact," the Assistant Administrator will apply the definition of "dolphin-safe" specified in paragraph (h)(1) of the Dolphin Consumer Protection Information Act (DCPIA)(16 U.S.C. 1385(h)(1)), i.e., that no dolphins were killed or seriously injured during the sets in which the tuna were caught. Similarly, if the Secretary's *final* finding by December 31, 2002, concludes that a significant adverse impact is either not occurring or has not been detected, the definition of "dolphin-safe" under paragraph (h)(1) of the DCPIA will apply. Alternatively, if the Secretary finds a "significant adverse impact," the definition would revert to the default standard. The proposed regulations provide that, by notification in the **Federal Register**, the Assistant Administrator will implement any required change in the labeling standard without additional rulemaking.

Sundown Sets

Under a 1988 amendment to the MMPA (Pub. L. 100–711), the backdown procedure must be completed no later than one-half hour *after* sundown. Moreover, the La Jolla Agreement and the IDCP both specified that this procedure must be completed no later than one-half hour *after* sundown. In contrast, apparently due to a typographical error, section 303(a)(2)(B)(5) of the IDCPA states that backdown procedures must be completed no later than one-half hour *before* sundown. No Congressional reports or colloquy indicate that this "revision" was adopted purposefully. Furthermore, under the May 1998 Agreement on the IDCP, signatory nations agreed that the backdown procedure must be completed no later than one-half hour *after* sundown. Since the purpose of the May 1998 Agreement on the IDCP is to implement the IDCP, NMFS proposes that requiring the backdown procedure to be completed no later than one-half hour *after* sundown, best represents the language of the May 1998 Agreement on the IDCP and the spirit of the IDCP. Therefore, the proposed rule requires the backdown procedure be completed no later than one-half hour after sundown for every set encircling dolphin.

Official Mark

The DPCIA, as revised by the IDCPA, requires the Secretary to develop an official mark that can be used to indicate a tuna product is "dolphin-safe." The Secretary is considering designating a commonly used "dolphin-safe" logo as the official mark and will make this designation in a later rulemaking. In the meantime, this rule would only "reserve" 50 CFR 216.96 as the section of the regulations that NMFS will use in the future to describe the official mark.

The DPCIA does not mandate the use of the official mark, or prohibit the use of a mark or label other than the official mark that suggests processed tuna is "dolphin-safe" ("alternative mark"). Although the DPCIA does not prohibit the use of alternative marks, paragraphs (d)(3)(C)(i)-(iii) of the DPCIA appear to establish standards applicable only to processed tuna labeled with alternative marks or labels that refer to marine mammals. Those apparently separate standards are (1) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; (2) the mark is supported by a tracking and verification program comparable in effectiveness to the program established by NMFS regulations; and (3) the mark comports with applicable laws and regulations of the Federal Trade Commission.

Upon analysis, DPCIA paragraph (d)(3)(C) does not require a separate set of standards in these regulations. First, the labeling standards in paragraphs (d)(1) and (2) of the DPCIA apply to all processed tuna whether labeled with the official mark or with an alternative mark. Second, the DPCIA paragraphs (d)(3)(C)(i) and (iii) standards applicable to processed tuna labeled with alternative marks are either less stringent or identical to the standards that apply to processed tuna labeled with the official mark. Third, the standard described in DPCIA paragraph (d)(3)(C)(ii) would only be applicable if an alternative mark were supported by an alternative tracking and verification program. Instead of determining whether alternative tracking and verification programs meet the NMFS standards, NMFS proposes to require that anyone who imports, exports, or sells tuna in the United States that was harvested in the ETP comply with the tracking and verification program described in this rule. In other words, an alternative mark would be required to be supported by the official tracking and verification program. Therefore, NMFS need not determine that an alternative program is "comparable in effectiveness" to the official program. While nothing in these regulations is intended to inhibit a company or group from establishing an alternative tracking and verification program, such a program would not be a substitute for the program described here.

Therefore, NMFS proposes to establish a single standard for the use of labels on tuna product that refers to a marine mammal or suggests that the processed tuna was harvested by a method not injurious to dolphin. That standard would be the same, regardless of whether the label was the official mark that will be promulgated by the Secretary or an alternative mark.

Tracking and Verification

Paragraph (f) of the DPCIA (16 U.S.C. 1385(f)), as revised by the IDCPA, requires the Secretary to issue regulations for a domestic program to track and verify tuna labeled "dolphin-safe." At the same time as NMFS is developing a U.S. domestic program, parties to the May 1998 Agreement on the IDCP are working together to develop an international tracking and verification system for tuna landed by purse seine vessels fishing in the ETP. Section 216.94 of the proposed regulations is intended to implement paragraph (f) of the DPCIA, while, to the greatest extent practicable, keeping the domestic program in line with the still-developing international program.

The proposed domestic tracking and verification program provides for effective tracking of tuna harvested from the ETP by U.S. and foreign vessels. The proposed program would track tuna caught by U.S. purse seine vessels in the ETP from capture, to well, to processing, to final sale, while noting which tuna was "dolphin-safe" and which tuna was "non-dolphin-safe."

The fishing vessel observer will designate each well into which tuna is loaded as either "dolphin-safe," "non-dolphin-safe," or "mixed." The vast majority of wells are expected to be either "dolphin-safe" or "non-dolphin-safe." "Mixed" wells should be a rare occurrence. Under the interim labeling standard, the fishing vessel observer will designate a well "non-dolphin-safe" if any tuna loaded into the well was harvested (1) on a trip in which purse seines were intentionally set on dolphin, or (2) in a set in which any dolphin died or was seriously injured. The observer will designate a well as "dolphin-safe" if all the tuna loaded into the well was harvested during a trip without intentional sets on dolphins and during sets in which dolphins were intentionally encircled but no mortality or serious injury of dolphin was observed. If the labeling standard changes after March 1999, the observer would designate a well "non-dolphin-safe" if tuna is loaded into the well that was harvested during a set in which a dolphin died or was seriously injured. Conversely, the observer would designate a well "dolphin-safe" if all tuna loaded into that well was harvested during sets in which no dolphin died or was seriously injured.

Regardless of which labeling standard is in effect, if a "dolphin-safe" well, containing some amount of "dolphin-safe" tuna, is later loaded with tuna caught in a set in which a dead or seriously injured dolphin was discovered late in the loading process, that well would then be designated "mixed." The observer will record the estimated weight of the "dolphin-safe" tuna already in the well. The tuna already in the well will retain its status as "dolphin-safe" tuna even though "non-dolphin-safe" tuna is stored in the same well. Subsequently, only "non-dolphin-safe" tuna could be loaded into that well.

At least 48 hours before a scheduled arrival in port, including ports outside the United States, U.S. purse seine vessels would be required to report to NMFS the scheduled place and time of arrival. The purpose of this report

would be to give NMFS an opportunity to send a representative to meet the vessel and verify the contents of the wells and the "dolphin-safe" status of the tuna. The Captain would be required to submit a written report of each set made during the fishing trip to NMFS detailing the weights by species composition, estimated tons loaded, the dates of loading into the well, the "dolphin-safe" "non-dolphin-safe" or "mixed" designation of each well, set number, the trip number, the observer name, the captain name, the vessel name, and the trip dates.

Likewise, when tuna harvested in the ETP is scheduled to be delivered to a tuna canning company, the company would be required to provide 48–hour advance notice to NMFS of the location and arrival time of such shipment.

After unloading from the fishing vessel and throughout processing, "dolphin-safe" and "non-dolphin-safe" tuna would be strictly segregated. Can codes (that is, the unique number pressed onto each can of processed tuna) could be used to trace the tuna to a particular fishing trip by a particular vessel and, indirectly, to a particular well on the vessel. Fishing companies, importers, and canners would all be required to maintain relevant FCO and other records of the tuna for three years. NMFS would have the authority to request copies of relevant documents for inspection and could conduct audits and spot-checks of facilities.

In these tracking and verification regulations and the Environmental Assessment analyzing this program, NMFS has addressed each subsection of section (f) of the DPCIA, as follows: (1) Weight calculations of the amount of "dolphin-safe" and "non-dolphin-safe" tuna loaded into segregated wells after each set will be a required part of observers' reporting on forms to be revised by the IATTC in accordance with the international tracking and verification program. Tuna processors will use weight calculations to report "dolphin-safe" and "non-dolphin-safe" tuna received for immediate processing or cold storage and also for tuna being removed from cold storage for sale or processing; (2) the U.S. observer program has not been used in this fishery for years so these regulations do not propose changes to our domestic program, but the parties to the IDCP are working to improve the training, monitoring, and reporting components of the existing IATTC and other national observer programs; (3) the observer reports would indicate the "dolphin-safe" or "non-dolphin-safe" status of each well aboard the fishing vessel; however, NMFS is not proposing to require wells be "sealed" because sealing wells effectively is not practicable and furtively moving significant quantities of frozen blocks of large tuna from well to well during a trip is very unlikely; (4) tracking and storage of radio and facsimile communications from vessels would not be useful to track or verify tuna products, but NMFS proposes to mandate the creation or maintenance of such records if the industry keeps the records anyway (for its own purposes); (5) shore-based verification coupled with IATTC records and other reports required by these regulations form the backbone of the proposed tracking and verification program; (6) as indicated in proposed § 216.94, NMFS would conduct periodic spot-checks and audits of tuna facilities; (7) negotiations with other ETP harvesting nations are expected to result in a cooperative, international tracking program under which participating nations will share data and inspect fish processing facilities under mutually agreeable protocols.

Public Comments Solicited; Public Hearings

NMFS is soliciting comments on this proposed rule. Oral comments, as well as written comments, may be presented at public hearings on the proposed rule (see **ADDRESSES** and **DATES**). Written comments on the proposed rule may also be submitted to J. Allison Routt (see **ADDRESSES** and **DATES**).

Special Accommodations

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to J. Allison Routt at least 10 days prior to the hearing date (see **ADDRESSES**).

Classification

Executive Order 12866

Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget (OMB) has determined that this rule is significant.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. There are 15 to 17 small vessels in the U.S. purse seine fleet that fish most years; these have 363 mt or less carrying capacity. These vessels are small business entities generating less than $3 million in gross revenues each year from all landings. The only action in the proposed rule specifically intended to restrict small vessels is the formal prohibition of setting on dolphin. However, these vessels have not set on dolphin in the past. There would be no substantial compliance costs or paperwork burdens imposed on small vessels. Finally, while the proposed actions may result in increased supply of raw tuna to U.S. and foreign processors, it is not expected to result in lower prices being paid to fishing vessels, regardless of their size. With respect to the U.S. processing sector, there are no small processing firms. With respect to the wholesale and broker sectors, there are no known small U.S. firms involved in these sectors handling ETP-origin tuna or tuna products. Even if there were small entities involved in the business of brokering or wholesaling, they would be affected only minimally by recordkeeping requirements associated with tracking "dolphin-safe" tuna product. None of the other actions in this proposed rule would impose any costs nor affect revenues of such businesses.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). One existing requirement is repeated: exporters from all countries importing tuna and tuna products, except some fresh products, into the United States must provide information about the shipment to U.S. Customs using the Fisheries Certificates of Origin (NOAA Form 370). Approved by the OMB under control number 0648–0335, the public reporting burden for this collection is estimated to average 20 minutes per submission.

This proposed rule also contains new collection-of-information requirements which have been submitted to OMB for review and approval. The estimated burden for these requirements are as follows: 30 minutes for an application for a vessel permit; 10 minutes for an application for an operator permit; 30 minutes for a request for a waiver to transit the ETP without a permit; 10 minutes for a notification by a vessel

permit holder 5 days prior to departure on a fishing trip; 10 minutes for the requirement that vessel permit holders who intend to make intentional sets on marine mammals must notify NMFS at least 48 hours in advance if there is a vessel operator change or within 72 hours if the change was made due to an emergency; 10 minutes for a notification by a vessel permit holder of any net modification at least 5 days prior to departure of the vessel; 15 minutes for a request for a DML; 20 hours for an experimental fishing operation waiver; 10 minutes for a notification by a captain; managing owner; or vessel agent 48 hours prior to arrival to unload; 1 hour for a captain to complete the tuna tracking form; 5 minutes for a captain to complete the dolphin-safe certification; 10 minutes for a notification by a cannery 24 hours prior to receiving a shipment of domestic or imported ETP caught tuna; 10 minutes for a cannery to provide the processor's receiving report; 10 minutes for a cannery to provide the processor's storage removal report; 1 hour for a cannery to provide the monthly cannery receipt report; 30 minutes for an exporter; transshipper; importer; or processor to produce records if requested by the Administrator, Southwest Region.

The preceding public reporting burden estimates for collections of information include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility; and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Administrator, Southwest Region at the address above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: June 8, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216–REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, definitions of "ABI", "Director, Southwest Region", "ETP Fishing Area 1", "ETP Fishing Area 2", "ETP Fishing Area 3", "Fishing season", "Kill-per-set", "Kill-per-ton", and "Purse seine set on common dolphins" are removed, and definitions for "Administrator, Southwest Region", "Agreement on the International Dolphin Conservation Program", "Declaration of Panama", "Force majeure", "International Dolphin Conservation Program", "International Dolphin Conservation Program Act", "International Review Panel", and "Per-stock per-year dolphin mortality limit" are added in alphabetical order to read as follows:

§ 216.3 Definitions.

* * * * *

Administrator, Southwest Region means the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or his or her designee.

Agreement on the International Dolphin Conservation Program (Agreement on the IDCP) means the Agreement establishing the formal binding IDCP that was signed in Washington, DC on May 21, 1998.

* * * * *

Declaration of Panama means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

* * * * *

Force majeure means forces outside the vessel operator's or vessel owner's control that could not be avoided by the exercise of due care.

* * * * *

International Dolphin Conservation Program (IDCP) means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama and the Agreement on the IDCP.

International Dolphin Conservation Program Act (IDCPA) means Public Law 105–42, enacted into law on August 15, 1997.

International Review Panel (IRP) means the International Review Panel established by the Agreement on the IDCP.

* * * * *

Per-stock per-year dolphin mortality limit means the maximum allowable number of incidental dolphin mortalities and serious injuries from a specified stock per calendar year, as established under the IDCP.

* * * * *

3. In § 216.24, the introductory Note to § 216.24 and paragraphs (e)(9), (f)(4), and (f)(7) are removed; paragraphs (e) and (f) are redesignated as paragraphs (f) and (e) respectively; newly designated paragraphs (e)(5) and (e)(6) are redesignated as paragraphs (e)(4) and (e)(5) respectively; newly designated paragraphs (f)(6) and (f)(8) are redesignated as paragraphs (f)(10) and (f)(11) respectively; and the section heading, paragraphs (a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (b) through (d), newly designated paragraphs (e)(1) through (e)(3), (f)(2), (f)(3) through (f)(5), and paragraph (g) are revised; and paragraphs (f)(6) through (f)(9), and (f)(12) are added to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a United States purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in § 216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a United States purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less intentionally to deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a United States purse seine fishing vessel of greater than 400 short tons (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna if any part of the vessel's fishing trip is in the ETP.

* * * * *

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(i) and (a)(2)(ii) of this section may be waived by the Administrator, Southwest

Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report by radio to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area, in order to transit the area with more than two speedboats.

(b) *Permits*—(1) *Vessel permit.* The owner or managing owner of a United States purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that participates in commercial fishing operations in the ETP must possess a valid vessel permit issued under this paragraph (b) of this section. This permit is not transferable and must be renewed annually. If a vessel permit holder surrenders his/her permit to the Administrator, Southwest Region, the permit will not be returned and a new permit will not be issued before the end of the calendar year, except that a permit may be transferred to the new owner when the vessel ownership changes. Vessel permits will be valid through December 31 of each year.

(2) *Operator permit.* The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a United States purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under this paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under (c)(4) of this section. The operator's permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

(3) *Possession and display.* A valid vessel permit issued pursuant to paragraph (b)(1) of this section must be on board the vessel while engaged in fishing operations, and a valid operator permit issued pursuant to paragraph (b)(2) of this section must be in the possession of the operator to whom it was issued. Permits must be shown upon request to NMFS enforcement agents, or to U.S. Coast Guard officers, and to designated agents of NMFS and IATTC (including observers). A vessel owner or operator who is at sea on a fishing trip when his or her permit expires and to whom a permit for the next year has been issued may take marine mammals under the terms of the new permit without having to display it on board the vessel until the vessel returns to port.

(4) *Application for vessel permit.* The owner or managing owner of a purse seine vessel may apply for a permit from the Administrator, Southwest Region, allowing at least 45 days for processing. An application must contain:

(i) The name, official number, tonnage, carrying capacity in short or metric tons, maximum speed in knots, processing equipment, and type and quantity of gear, including an inventory of equipment required under paragraph (c)(2) of this section if the application is for purse seining involving the intentional taking of marine mammals, of the vessel that is to be covered under the permit;

(ii) A statement of whether or not the vessel will make sets involving the intentional taking of marine mammals;

(iii) The type and identification number(s) of Federal, State, and local commercial fishing licenses under which vessel operations are conducted, and the dates of expiration;

(iv) The name(s) of the operator(s) anticipated to be used; and

(v) The name and signature of the applicant, whether he/she is the owner or the managing owner, his/her address, telephone and fax numbers, and, if applicable, the name, address, telephone and fax numbers of the agent or organization acting on behalf of the vessel.

(5) *Application for operator permit.* An applicant for an operator permit must provide the following information to the Administrator, Southwest Region, allowing at least 45 days for processing:

(i) The name, address, telephone and fax numbers of the applicant;

(ii) The type and identification number(s) of any Federal, state, and local fishing licenses held by the applicant;

(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator;

(iv) The date, location, and provider of any training for the operator permit; and

(v) The applicant's signature or the signature of the applicants representative, if any.

(6) *Fees.* An application for a permit under paragraph (b)(1) of this section must include a fee of $200.00 for each vessel. There is no fee for the operator certificate. The Assistant Administrator may change the amount of these fees required at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form. Notification of such change will be published in the **Federal Register**. The vessel permit holder will submit the fee for the placement of observers, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, by September 1 of the year prior to the year in which the vessel will be operated in the ETP, for transmittal by the date the application for a vessel permit is due.

(7) The Administrator, Southwest Region, will determine the adequacy and completeness of an application and, upon determining that an application is adequate and complete, will approve that application and issue the appropriate permit, except for applicants having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a legal proceeding.

(8) *Conditions applicable to all permits*— (i) *General conditions.* Failure to comply with the provisions of a permit or with these regulations may lead to suspension, revocation, modification, or denial of a permit. The permit holder, vessel, vessel owner, operator, or master may be subject, jointly and severally, to the penalties provided for under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(ii) *Observer placement.* By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement to the IATTC or other designated international organization. The observers may be placed under an observer program of NMFS or of the IATTC, or under another international observer program approved by the IDCP and the Administrator, Southwest Region.

(iii) *Explosives.* The use of explosive devices is prohibited in all tuna purse seine operations that involve marine mammals.

(iv) *Reporting requirements.* In accordance with paragraph (e) of this section, the vessel permit holder of each permitted vessel will notify the Administrator, Southwest Region or the IATTC contact designated by the Administrator, Southwest Region, at least 5 days in advance of the vessel's departure on a fishing voyage to allow for observer placement on every voyage. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel completes its voyage. A vessel that fails to carry an observer in accordance with these observer placement requirements must not engage in fishing operations for which a vessel permit is required.

(v) *Data release.* By using a permit, the permit holder authorizes the release

to NMFS of all data collected by observers aboard purse seine vessels during fishing trips under the IATTC observer program or another international observer program approved by the Administrator, Southwest Region. The permit holder must furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS. Data obtained under such releases will be used for the same purposes as would data collected directly by observers placed by NMFS and will be subject to the same standards of confidentiality.

(vi) *Protection from personal injury.* A permit holder must take all necessary steps to protect a person from personal injury without killing or injuring a marine mammal.

(vii) *Protection from personal injury.* Only if there are no alternative means to deter a marine mammal from causing personal injury, may a permit holder injure or kill the animal causing or about to cause immediate personal injury.

(viii) *Retention ermit.* Marine mammals taken in the course of commercial fishing operations will be subject to the provisions of § 216.3 with respect to "incidental catch," and must not be retained except where a specific permit has been obtained authorizing the retention.

(9) *Mortality and serious injury reports.* The Administrator, Southwest Region, will provide to the public periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels of individual species and stocks.

(c) *Purse seining by vessels with DMLs.* In addition to the terms and conditions set forth in paragraph (b) of this section, any permit for a vessel to which a DML has been assigned under paragraph (c)(8) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

(1) *General conditions.* (i) A vessel may be used to take marine mammals only if the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations and the fishing operations are under the immediate direction of the holder of a valid operator's permit.

(ii) Except as otherwise authorized by a specific permit, marine mammals incidentally taken must be immediately returned to the environment where captured without further injury. The operator of a purse seine vessel must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals must not be brailed, sacked up, or hoisted onto the deck during ortza retrieval.

(iii) The vessel permit holder will notify the Administrator, Southwest Region, or the IATTC contact designated by the Administrator, Southwest Region, of any change of vessel operator at least 48 hours prior to departing on a trip. In the case of a change in operator due to an emergency, notification must be made within 72 hours of the change.

(2) *Gear, equipment, and release procedures required for valid permit.* A vessel possessing a vessel permit for purse seining involving the intentional taking of marine mammals may not engage in fishing operations involving the intentional deployment of the net on or encirclement of dolphins unless it is equipped with a dolphin safety panel in its purse seine, has the other required gear and equipment, and uses the required procedures.

(i) *Dolphin safety panel.* The dolphin safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The dolphin safety panel must consist of small mesh webbing not to exceed 1 1/4 inches (3.18 centimeter (cm)) stretch mesh extending downward from the corkline and, if present, the base of the dolphin apron to a minimum depth equivalent to two strips of 100 meshes of 4 1/4 inches (10.80 cm) stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(ii) *Dolphin safety panel markers.* Each end of the dolphin safety panel and dolphin apron must be identified with an easily distinguishable marker.

(iii) *Dolphin safety panel hand holds.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, hand hold openings must be secured so that they will not allow the insertion of a 1 3/8 inch (3.50 cm) diameter cylindrical-shaped object.

(iv) *Dolphin safety panel corkline hangings.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, corkline hangings will be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1 3/8 inch (3.50 cm) diameter can be inserted between the cork and corkline hangings, must be tightened so as not to allow the insertion of a cylindrical object with a 1 3/8 inch (3.50 cm) diameter.

(v) *Speedboats.* A minimum of three speedboats in operating condition must be carried. All speedboats carried aboard purse seine vessels and in operating condition must be rigged with tow lines and towing bridles or towing posts. Speedboat hoisting bridles must not be substituted for towing bridles.

(vi) *Raft.* A raft suitable to be used as a dolphin observation-and-rescue platform must be carried.

(vii) *Facemask and snorkel, or viewbox.* At least two facemasks and snorkels or viewboxes must be carried.

(viii) *Lights.* The vessel must be equipped with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(3) *Vessel inspection*—(i) *Annual.* At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit.

(ii) *Reinspection.* Purse seine nets and other gear and equipment required by these regulations must be made available for reinspection by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region. The vessel permit holder must notify the Administrator, Southwest Region, of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set/net alignment is required.

(iii) Upon failure to pass an inspection or reinspection, a vessel may not engage in purse seining involving the intentional taking of marine mammals until the deficiencies in gear or equipment are corrected as required by NMFS.

(4) *Operator permit holder training requirements.* An operator will maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session an attendee will be

instructed concerning the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for, or will contribute to, reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing gear and techniques. Additional training may be required for any operator who is found by the Administrator, Southwest Region, to lack proficiency in the required fishing procedures or familiarity with the relevant provisions or regulations of the MMPA or the IDCP.

(5) *Marine mammal release requirements.* All operators must use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(i) *Backdown procedure.* Backdown must be performed following a purse seine set in which dolphins are captured in the course of catching tuna, and must be continued until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewman must be deployed during backdown to aid in the release of dolphins. Thereafter, other release procedures required will be continued so that all live dolphins are released prior to the initiation of the sack-up procedure.

(ii) *Prohibited use of sharp or pointed instrument.* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(iii) *Sundown sets prohibited.* On every set encircling dolphin, the backdown procedure must be completed no later than one-half hour after sundown, except as provided here. For the purpose of this section, sundown is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Administrator, Southwest Region. A sundown set is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system. In the event a sundown set occurs where the seine skiff was let go sufficiently in advance of sundown that the vessel should have been able to comply with the sundown set prohibition, and an earnest effort to rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that in the view of the International Review Panel, prosecution by the United Sates is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

(iv) *Dolphin safety panel.* During backdown, the dolphin safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point.

(6) *Experimental fishing operations.* The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations. The Administrator, Southwest Region, may waive, as appropriate, any requirements of this section except DMLs and the obligation to carry an observer.

(i) A vessel permit holder may apply for an experimental fishing operation waiver by submitting the following information to the Administrator, Southwest Region, no less than 90 days before the date the proposed operation is intended to begin:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;

(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(D) A description of the applicability of this modification to other purse seine vessels;

(E) The planned design, time, duration, and general area of the experimental operation;

(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment; and

(G) A statement of the qualifications of the individual or company doing the analysis of the research.

(ii) The Administrator, Southwest Region, will acknowledge receipt of the application and, upon determining that it is complete, will publish a notice in the **Federal Register** summarizing the application, making the full application available for inspection and inviting comments for a minimum period of 30 days from the date of publication.

(iii) The Administrator, Southwest Region, after considering the information identified in paragraph (c)(6)(i) of this section and the comments received, will either issue a waiver to conduct the experiment which includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

(iv) A waiver for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer designated by the Administrator, Southwest Region, when all the terms and conditions of the permit are met.

(v) The Administrator, Southwest Region, may suspend or revoke an experimental fishing waiver in accordance with 15 CFR part 904 if the terms and conditions of the waiver or the provisions of the regulations are not followed.

(7) *Operator permit holder performance requirements.* [Reserved]

(8) *Vessel permit holder dolphin mortality limits.* For purposes of this paragraph, the term "vessel permit holder" includes both the holder of a current vessel permit and also the holder of a vessel permit for the following year.

(i) By September 1 each year, a vessel permit holder desiring a DML for the following year must provide to the Administrator, Southwest Region, the name of the United States purse seine fishing vessel(s) of carrying capacity greater than 400 st (362.8 mt) that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following

year under the provisions of Annex IV of the Agreement on the IDCP.

(ii) Each vessel permit holder who desires a DML for the period July 1 to December 31 for a vessel that has not previously had a DML assigned for the year must provide the Administrator, Southwest Region, by September 1 of the prior year, the name of the United States purse seine fishing vessel(s) of greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before April 1, or as otherwise required under the IDCP, for possible assignment of a DML for the 6-month period July 1 to December 31. Under the IDCP, the DML will be calculated by the IDCP from any unutilized pool of DMLs in accordance with the procedure described in Annex IV of the Agreement on the IDCP and will not exceed one-third of an unadjusted full-year DML as calculated by the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.

(B) The Administrator, Southwest Region, may adjust the DMLs in accordance with Annex IV of the Agreement on the IDCP. All adjustments of full-year DMLs will be made before January 1, and the Administrator, Southwest Region, will notify the Director of the IATTC of any adjustments prior to a vessel departing on a trip using its adjusted DML. The notification will be no later than February 1 in the case of adjustments to full-year DMLs, and no later than May 1 in the case of adjustments to DMLs for the second half of the year.

(C) Within the requirements of Annex IV of the Agreement on the IDCP, the Administrator, Southwest Region, may adjust a vessel's DML if it will further scientific or technological advancement in the protection of marine mammals in the fishery or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits will be considered a basis for adjustments.

(iv)(A) A vessel assigned a full-year DML that does not make a set on dolphins by April 1 or that leaves the fishery will lose its DML for the remainder of the year, unless the failure to set on dolphins is due to *force majeure* or other extraordinary circumstances as determined by the International Review Panel.

(B) A vessel assigned a DML for the second half of the year will be considered to have lost its DML if the vessel has not made a set on dolphins before December 31, unless the failure to set on dolphins is due to *force majeure* or extraordinary circumstances as determined by the International Review Panel.

(C) Any vessel that loses its DML for 2 consecutive years will not be eligible to receive a DML for the following year.

(D) NMFS will determine, based on available information, whether a vessel has left the fishery.

(*1*) A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates will no longer be conducting purse seine operations in the ETP for the remainder of the period covered by the DML will be determined to have left the fishery.

(*2*) NMFS will make all reasonable efforts to determine the intentions of the vessel owner, and the owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and given the opportunity to provide information on whether the vessel has left the fishery prior to NMFS making a final determination under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(8)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel.

(vi) A vessel that is covered by a valid vessel permit and that does not normally fish for tuna in the ETP but desires to participate in the fishery on a limited basis may apply for a per-trip DML from the Administrator, Southwest Region, at any time, allowing at least 60 days for processing. The request must state the expected number of trips involving sets on dolphins and the anticipated dates of the trip or trips. The request will be forwarded to the Director of the IATTC for processing in accordance with Annex IV of the Agreement on the IDCP. A per-trip DML will be assigned if one is made available in accordance with the terms of Annex IV of the IDCP. If a vessel assigned a per-trip DML does not set on dolphins during that trip, the vessel will be considered to have lost its DML unless this was a result of *force majeure* or other extraordinary circumstances as determined by the International Review Panel. After two consecutive losses of a DML, a vessel will not be eligible to receive a DML for the next fishing year.

(vii) Observers will make their records available to the vessel operator at any reasonable time, including after each set, in order for the operator to monitor the balance of the DML(s) remaining for use.

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle any school of dolphins containing individuals of a particular stock of dolphins:

(A) when the applicable per-stock per-year dolphin mortality limit for that stock of dolphins for that vessel, if so assigned, has been reached or exceeded; or

(B) after the time and date provided in actual notification or notification in the **Federal Register** by the Administrator, Southwest Region, based upon the best available evidence, stating when any applicable per-stock per-year dolphin mortality limit has been reached or exceeded, or is expected to be reached in the near future.

(ix) If individual dolphins belonging to a stock that is prohibited from being taken are not reasonably observable at the time the net skiff attached to the net is released from the vessel at the start of a set, the fact that individuals of that stock are subsequently taken will not be cause for enforcement action provided that all procedures required by the applicable regulations have been followed.

(x) Vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins intentionally:

(A) when the vessel's DML, as adjusted, is reached or exceeded; or

(B) after the date and time provided in actual notification or notice in the **Federal Register** by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future in the absence of the notification to cease intentional sets on dolphins.

(xi) Sanctions recommended by the International Review Panel for any violation of these rules will be considered by NMFS and NOAA in enforcement actions brought under these regulations.

(xii) Intentionally deploying a purse seine net on, or to encircle, dolphins after a vessel's DML, as adjusted, has been reached will disqualify the vessel from consideration for a DML for the

following year. If already assigned, the DML for the following year will be withdrawn, and the Director of the IATTC will be notified by NMFS that the DML assigned to that vessel will be unutilized. Procedures found at 15 CFR part 904 apply to the withdrawal of the permit.

(d) *Purse seining by vessels without assigned DMLs.* In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator's permit when used on such a vessel are subject to the following terms and conditions: a permit holder may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations will be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, and aborting the set at the earliest effective opportunity; the use of one or more rafts and facemasks or viewboxes to aid in the rescue of dolphins is recommended.

(e) *Observers*—(1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties will be carried out in such a manner as to minimize interference with commercial fishing operations. Observers must be provided access to vessel personnel and to dolphin safety gear and equipment, electronic navigation equipment, radar displays, high powered binoculars, and electronic communication equipment. The navigator must provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. Observers must be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties. No vessel owner, master, operator, or crew member of a permitted vessel may impair, or in any way interfere with, the research or observations being carried out. Masters must allow observers to report, in coded form, information by radio concerning the take of marine mammals and other observer collected data upon request of the observer.

(3) Any marine mammals killed during fishing operations that are accessible to crewmen and requested from the permit holder or master by the observer must be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals or marine mammal parts designated as biological specimens by the observer must be retained in cold storage aboard the vessel until retrieved by authorized personnel of NMFS or the IATTC when the vessel returns to port for unloading.

* * * * *

(f) * * *

(2)(i) *HTS numbers requiring a fisheries certificate of origin, subject to yellowfin tuna embargo.* The following U.S. Harmonized Tariff Schedule (HTS) numbers identify yellowfin tuna or yellowfin tuna products that are harvested in the ETP purse seine fishery and imported into the United States. All shipments containing tuna or tuna products imported into the United States under these HTS numbers must be accompanied by a Fisheries Certificate of Origin (FCO), NOAA Form 370. Yellowfin tuna harvested using a purse seine in the ETP, if exported from a nation with purse seine vessels that fish for tuna in the ETP, may not be imported into the United States unless the nation has an affirmative finding under paragraph (f)(9) of this section.

(A) *Frozen*:

0303.42.00.20 Yellowfin tuna, whole, frozen.

0303.42.00.40 Yellowfin tuna, eviscerated, head on, frozen.

0303.42.00.60 Yellowfin tuna, other, frozen.

(B) *Canned*:

1604.14.10.00 Tuna, non-specific, in airtight containers, in oil.

1604.14.20.40 Tuna, other than albacore, not over 7kg, in airtight containers.

1604.14.30.40 Tuna, other than albacore, in airtight containers, not in oil, over quota.

(C) *Loins*:

1604.14.40.00 Tuna, not in airtight containers, not in oil, over 6.8 kg.

1604.14.50.00 Tuna, other, not in airtight containers.

(D) *Other (only if the product contains tuna)*:

0304.10.40.99 Other fish, fillets and other fish meat, fresh or chilled.

0304.20.20.66 Other fish, fillets, skinned, in blocks weighing over 4.5kg, frozen.

0304.20.60.99 Other fish, fillets, frozen.

0304.90.10.89 Other fish meat, in bulk or immediate containers, fresh or chilled.

0304.90.90.92 Other fish meat, fresh or chilled.

(ii) *HTS numbers requiring a fisheries certificate of origin, not subject to yellowfin tuna embargo.* The following HTS numbers identify tuna or tuna products, other than fresh tuna or tuna identified in paragraph (f)(2)(i) of this section, known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by a Fisheries Certificate of Origin (FCO), NOAA Form 370. The shipment may not be imported into the United States if harvested by a large-scale driftnet nation, unless accompanied by the official statement described in paragraph (f)(5)(x) of this section.

(A) *Frozen*:

0303.41.00.00 Albacore or longfinned tunas, frozen.

0303.43.00.00 Skipjack, frozen.

0303.49.00.20 Bluefin, frozen.

0303.49.00.40 Other tuna, frozen.

(B) *Canned*:

1604.14.20.20 Albacore tuna, in airtight containers, not in oil, not over 7kg, in quota.

1604.14.30.20 Albacore tuna, in airtight containers, not in oil, not in quota.

(iii) *Exports from driftnet nations only: HTS numbers requiring a fisheries certificate of origin and official certification.* The following HTS numbers identify categories of fish and shellfish, other than those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation and imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section must be accompanied by an FCO and the official statement described in paragraph (f)(5)(x) of this section.

(A) *Frozen*:

0303.10.00.12 Salmon, chinook, frozen.
0303.10.00.22 Salmon, chum, frozen.
0303.10.00.32 Salmon, pink, frozen.
0303.10.00.42 Salmon, sockeye, frozen.
0303.10.00.52 Salmon, coho, frozen.
0303.10.00.62 Salmon, Pacific, non-specific, frozen.
0303.21.00.00 Trout, frozen.
0303.22.00.00 Salmon, Atlantic and Danube, frozen.
0303.29.00.00 Salmonidae, other, frozen.
0303.75.00.10 Dogfish, frozen.
0303.75.00.90 Other sharks, frozen.
0303.79.20.41 Swordfish steaks, frozen
0303.79.20.49 Swordfish, other, frozen.
0303.79.40.96 Fish, other, frozen.
0304.20.20.66 Fish, fillet, skinned, in blocks frozen over 4.5 kg.

0304.20.60.08 Salmonidae, salmon fillet, frozen.
0304.20.60.99 Fish, fillet, frozen.
0307.49.00.10 Squid, other, fillet, frozen.

(B) *Canned*:

1604.11.20.20 Salmon, pink, canned in oil, in airtight containers.
1604.11.20.30 Salmon, sockeye, canned in oil, in airtight containers.
1604.11.20.90 Salmon, other, canned in oil, in airtight containers.
1604.11.40.10 Salmon, chum, canned, not in oil.
1604.11.40.20 Salmon, pink, canned, not in oil.
1604.11.40.30 Salmon, sockeye, canned, not in oil.
1604.11.40.40 Salmon, other, canned, not in oil.
1604.11.40.50 Salmon, other, canned, not in oil.
1604.19.20.00 Fish, other, in airtight containers, not in oil.
1604.19.30.00 Fish, other, in airtight containers, in oil.
1605.90.60.55 Squid, loligo, prepared/preserved.

(C) *Other*:

0304.10.40.99 Other fish, fillets and other fish meat, fresh or chilled.
0304.20.20.66 Other fish, fillets, skinned, in blocks weighing over 4.5kg, frozen.
0304.20.60.98 Other fish, fillets, frozen.
0304.90.10.89 Other fish, fillets and fish meat, in bulk or in immediate containers, fresh or chilled.
0304.90.90.92 Other fish meat, fresh or chilled.
0305.30.60.80 Fish, non-specific, fillet. dried/salted/brine.
0305.49.40.40 Fish, non-specific, smoked.
0305.59.20.00 Shark fins.
0305.59.40.00 Fish, non-specific, dried.
0305.69.40.00 Salmon, non-specific, salted.
0305.69.50.00 Fish, non-specific, in immediate containers, salted, not over 6.8kg.
0305.69.60.00 Fish, non-specific, salted, other.
0307.49.00.50 Squid, non-specific, frozen/dried/salted/brine.
0307.49.00.60 Squid, non-specific, & cuttle fish frozen/dried/salted/brine.

(3) *Imports requiring a fisheries certificate of origin.*

Shipments containing the following may not be imported into the United States unless a completed FCO is filed with the Customs Service at the time of importation:

(i) Tuna classified under an HTS number listed in paragraphs (f)(2)(i) or (f)(2)(ii) of this section, or

(ii) Fish classified under an HTS number listed in paragraph (f)(2) of this section that was harvested by a vessel of a large-scale driftnet nation, as identified under paragraph (f)(8) of this section.

(4) *Disposition of fisheries certificates of origin.* The FCO form described in paragraph (f)(5) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at http://swr.ucsd.edu/noaa370.htm. The FCO required under paragraph (f)(3) of this section must accompany the tuna or tuna products from entry into the United States, through final processing for wholesale or retail sale, and it must be endorsed at each change in ownership. FCOs that require multiple endorsements must be submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed. An invoice must accompany the shipment at the time of importation or, in the alternative, must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region, to produce the invoice.

(5) *Contents of fisheries certificate of origin.* An FCO, certified to be accurate by the first exporter of the accompanying shipment, must include the following information:

(i) Exporter's full name and complete address;

(ii) Consignee's full name and complete address;

(iii) Species description (common and scientific names), product form, and HTS number;

(iv) Quantity in kilograms of the fish or fish products;

(v) Ocean area where the fish were harvested (ETP, Western Pacific Ocean, South Pacific Ocean, Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);

(vi) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, trawl, pole and line, or other);

(vii) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;

(viii) Dates on which the fishing trip began and ended;

(ix) If the shipment includes tuna or products from tuna harvested with a purse seine net in the eastern tropical Pacific, the name of the harvesting vessel; and

(x) For shipments harvested by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(8) of this section, a statement must be included on the Fisheries Certificate of Origin, or by separate attachment, that is dated and signed by a responsible government official of the harvesting nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet.

(6) *Dolphin-safe label.* Tuna or tuna products sold in or exported from the United States that include on the label the term "dolphin-safe" or any other term or symbol that claims or suggests the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of subpart H of this part.

(7) *Scope of embargoes*—(i) *ETP yellowfin tuna embargo.* Yellowfin tuna or yellowfin tuna products harvested using a purse seine in the ETP identified by an HTS number listed in paragraph (f)(2)(i) of this section may not be imported into the United States if such tuna or tuna products were:

(A) Harvested on or after the effective date of section 4 of the IDCPA by, or exported from, a nation that the Assistant Administrator has determined has purse seine vessels of greater than 400 st (362.8 mt) carrying capacity harvesting tuna in the ETP, unless the Assistant Administrator has made an affirmative finding required for importation for that nation under paragraph (f)(9) of this section;

(B) Exported from an intermediary nation, as defined in section 3 of the MMPA, and a ban is currently in force prohibiting the importation from that nation under paragraph (f)(9)(viii) of this section; or

(C) Harvested before the effective date of section 4 of the IDCPA and would have been banned from importation under the section 101 (a)(2) of the MMPA at the time of harvest.

(ii) *Driftnet embargo.* A shipment containing an item listed in paragraph (f)(2) of this section may not be imported into the United States that:

(A) Was exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless the FCO is accompanied by an original statement by a responsible government official of the harvesting nation, signed and dated by that official, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; or

(B) Is identified on the FCO as harvested by a large-scale driftnet.

(8) *Large-scale driftnet nation: determination.* Based upon the best information available, the Assistant Administrator will determine which nations have registered vessels that engage in fishing using large-scale driftnets. Such determinations will be published in the **Federal Register**. A responsible government official of any such nation may certify to the Assistant Administrator that none of the nation's vessels use large-scale driftnets. Upon receipt of the certification, the Assistant

Administrator may find, and publish such finding in the **Federal Register**, that none of that nation's vessels engage in fishing with large-scale driftnets.

(9) *Affirmative finding procedure for yellowfin tuna harvested using a purse seine in the ETP.* (i) The Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the exporting nation, by the government of the harvesting nation, if different, and by the IDCP and the IATTC, and will publish the finding in the **Federal Register**. An affirmative finding applies to tuna and tuna products that were harvested by vessels of the nation after the effective date of section 4 of the IDCPA. To make an affirmative finding, the Assistant Administrator must find that:

(A) The harvesting nation participates in the IDCP and is either a member of the IATTC or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3, of the Convention establishing the IATTC, to become a member of that organization;

(B) The nation is meeting its obligations under the IDCP and its obligations of membership in the IATTC, including all financial obligations; and

(C) The annual total dolphin mortality and the annual per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels for the year preceding the year in which the finding would start.

(ii) *Documentary evidence and compliance with the IDCP.*—(A) *Documentary evidence.* The Assistant Administrator will make an affirmative finding under paragraph (f)(9)(i) of this section only if the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the harvesting nation is meeting the obligations of the IDCP, and whether ETP-harvested tuna imported from such nation comports with the tracking and verification regulations of subpart H of this part.

(B) *Revocation.* After considering the information provided under paragraph (f)(9)(ii)(A) of this section, each party's funding of the IATTC, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP, the Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iii) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required in paragraphs (f)(9)(i) and (f)(9)(ii) of this section, allowing at least 60 days from the submission of complete information to NMFS for processing.

(iv) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31, or portion thereof, if the harvesting nation has provided all the information and authorizations required by paragraphs (f)(9)(i) and (f)(9)(ii) of this section, and met the requirements of paragraphs (f)(9)(i) and (f)(9)(ii) of this section.

(v) *Period of validity.* A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator determines that the requirements of this paragraph are no longer being met.

(vi) *Reconsideration of finding.* The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under paragraphs (f)(9)(i) and (f)(9)(ii) of this section.

(vii) *Verification.* The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations.

(viii) *Intermediary nation.* Except as authorized under this paragraph (f)(9)(viii), any tuna or tuna products in the classifications listed in paragraph (f)(2)(i) of this section from any intermediary nation, as that term is defined in section 3 of the MMPA, may not be imported into the United States, unless shown not to be yellowfin tuna or yellowfin tuna products harvested by purse seine in the ETP. Imports from an intermediary nation of tuna and tuna products in these classifications may be imported into the United States if the Assistant Administrator determines and publishes in the **Federal Register** that the intermediary nation has provided certification and reasonable proof that it has not imported in the preceding 6 months yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under section 101(a)(2)(B) of the MMPA. Shipments of yellowfin tuna or yellowfin tuna products through a nation on a through bill of lading or in another manner that does not enter the shipments into that nation as an importation do not make that nation an intermediary nation. The Assistant Administrator will review decisions under this paragraph (f)(9)(viii) upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. For purposes of this paragraph (f)(9)(viii), the term "certification and reasonable proof" means the submission to the Assistant Administrator by a responsible government official from the nation of a document reflecting the nation's customs records for the preceding 6 months, together with a certification attesting that the document is accurate.

(ix) *Pelly certification.* After 6 months of an embargo being in place against a nation under this section, that fact will be certified to the President for purposes of certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as the embargo remains in effect.

(x) *Coordination.* The Assistant Administrator will promptly advise the Department of State and the Department of the Treasury of embargo decisions, actions and finding determinations.

* * * * *

(12) *Dolphin-safe requirements.*—(i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either dolphin-safe or otherwise are covered by an affirmative finding made under paragraphs (f)(9)(i) through (f)(9)(v) of this section.

(ii) For purposes of this section, tuna or tuna products are dolphin-safe if they are dolphin-safe under subpart H of this part.

(g) *Penalties.* Any person or vessel subject to the jurisdiction of the United States will be subject to the penalties provided for under the MMPA for the conduct of fishing operations in violation of these regulations.

4. In Subpart D, a new § 216.46, is added to read as follows:

§ 216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.

The MMPA's provisions will not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP which are outside the U.S. exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1802)), while employed on a fishing vessel of a harvesting nation that has an affirmative finding under § 216.24(f) based upon the harvesting nation's participation in, and compliance with, the IDCP.

5. Sections 216.90 through 216.94 are revised to read as follows:

§ 216.90 Purpose.

This subpart governs the requirements for labeling tuna or tuna products offered for sale in or exported from the United States that uses the term "dolphin-safe" or that suggests the tuna were harvested in a manner not injurious to dolphins, or that uses any label or mark that refers to dolphins, porpoises, or marine mammals other than the official mark described in § 216.96.

§ 216.91 Labeling requirements.

(a) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna products that are exported from or offered for sale in the United States to include on the label of those products the term "dolphin-safe" or any other term or symbol that claims or suggests that the tuna contained in the products were harvested using a method of fishing that is not harmful to dolphins if the products contain tuna harvested:

(1) By a vessel engaged in large-scale driftnet fishing;

(2) Outside the ETP by a vessel using a purse seine net:

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

(3) In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity unless the tuna meets the requirements for being considered dolphin-safe under §§ 216.92 and 216.94; or

(4) By a vessel in a fishery other than one described in paragraphs (a)(1), (a)(2), or (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

(b) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to willingly and knowingly use a label referred to in this section in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the IDCP.

§ 216.92 Tuna products harvested in the ETP by purse seine vessels greater than 400 st (362.8 mt) carrying capacity.

(a) For purposes of § 216.91(a)(3), tuna products that contain tuna harvested in the ETP by a purse seine vessel greater than 400 st (362.8 mt) carrying capacity are dolphin-safe if accompanied by:

(1) A completed FCO;

(2) A written statement executed by the captain providing the certification required under paragraph (b) of this section;

(3) A written statement certifying that an observer approved by the IDCP was on board the vessel during the entire trip and that such observer provided the certification required under paragraph (b) of this section. The statement must be signed by:

(i) The Assistant Administrator or his/her designee; or

(ii) A representative of the IATTC; or

(iii) An authorized representative of a nation participating in the IDCP whose national observer program meets the requirements of the IDCP; or

(iv) An authorized representative of an international organization's observer program approved by the IDCP; and

(4) An endorsement on the FCO by each exporter, importer, and processor certifying that, to the best of his or her knowledge and belief, the FCO and attached documentation are complete and accurate.

(b) *Certifications.* (1) Both the written certifications of the captain and the observer must state that:

(i) No tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins; or

(ii) No dolphins were killed or seriously injured during the sets in which the tuna were caught.

(2) After the date set by the Assistant Administrator in a notice in the **Federal Register** announcing an initial finding that does not conclude that the intentional deployment of purse seine nets on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock, the written certifications of the captain and the observer need only provide the statement required in paragraph (b)(1)(ii) of this section.

(3) If, after publishing notification under paragraph (b)(2) of this section, the Assistant Administrator publishes notification in the **Federal Register** announcing a subsequent finding that the intentional deployment of purse seine nets on or encirclement of dolphins is having a significant adverse impact on any depleted stock, the written certifications of the captain and the observer must provide all of the statements set forth in paragraph (b)(1) of this section commencing with the effective date provided in the notice.

§ 216.93 Submission of documentation.

The documents required by § 216.91 and § 216.92 must accompany the tuna product whenever it is offered for sale or export, except that these documents need not accompany the product when offered for sale if:

(a) The documents do not require further endorsement by any importer or processor, and are submitted to officials of the U.S. Customs Service at the time of import; or

(b) the documents are endorsed as required by § 216.92 (a)(4) and the final processor must deliver the endorsed documents to the Administrator, Southwest Region, or to U.S. Customs as required.

§ 216.94 Tracking and verification program.

The Administrator, Southwest Region, has established a tracking and

verification program to accurately document the "dolphin-safe" condition of tuna as it is fished, processed, and sold to wholesale and retail markets in the United States and throughout the world. The tracking program includes procedures and reports for use when importing tuna into the U.S. and during domestic purse seine fishing, processing, and marketing in the U.S. and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements.

(a) *Tracking fishing operations.* (1) During ETP fishing trips by purse seine vessels, tuna caught in sets designated as "dolphin-safe" by the vessel observer must be stored separately from tuna caught in "non-dolphin-safe" sets from the time of capture through unloading, except as provided in paragraph (a)(2) of this section. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is "dolphin-safe" or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as "dolphin-safe" if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as "non-dolphin-safe" if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated "non-dolphin-safe" or "mixed well" is considered "non-dolphin-safe" tuna. Except as provided for in paragraph (a)(2) of this section, the observer will change the designation of a "dolphin-safe" well to "non-dolphin-safe" if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured. The well designation "dolphin-safe" may change during a trip; however, a well designation of "non-dolphin-safe" cannot be changed for the duration of the trip.

(2) In the event that a set has been designated "dolphin-safe" by the observer, but late in the loading process dolphin mortality or serious injury is identified, the "dolphin-safe" designation of the set will change to "non-dolphin-safe." If one or more of the wells into which the newly designated "non-dolphin-safe" tuna are loaded already contains "dolphin-safe" tuna loaded during a previous set, the observer will note in his or her trip records the well numbers and the estimated weight of such "dolphin-safe" tuna and designate such well(s) as "mixed well(s)." Once a well has been identified as "non-dolphin-safe" or "mixed" all tuna subsequently loaded into that well will be designated as "non-dolphin-safe." When the contents of such a "mixed well" are received by a processor, the tuna will be weighed and separated according to the observer's report of the estimated weight of "dolphin-safe" and "non-dolphin-safe" tuna contained in that well.

(3) *Tuna tracking form.* The observer will keep an IATTC tuna tracking form upon which an entry will be made for each set that includes identification by well number of "dolphin-safe," "non-dolphin-safe," and "mixed" wells; weights by species composition, estimated tons loaded, set number, date of loading, trip number and dates, observer name, captain name, vessel name.

(i) The Captain, managing owner, or vessel agent of a purse seine vessel returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel's intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(ii) A NMFS representative may meet the vessel to receive the IATTC tuna tracking form(s) from the vessel captain and to monitor the handling of "dolphin-safe" and "non-dolphin-safe" tuna.

(iii) The Captain must submit the completed, signed IATTC tuna tracking form that covers all tuna on board to the NMFS representative in person, or by mail to the Administrator, Southwest Region, within 5 working days of the end of the trip.

(4) Tuna off-loaded to trucks, storage facilities or carrier vessels must be loaded or stowed in such a way as to maintain and safeguard the identification of the "dolphin-safe" or "non-dolphin-safe" designation of the tuna as it left the fishing vessel.

(b) *Tracking cannery operations.* (1) Whenever a tuna canning company is scheduled to receive a domestic or imported shipment of ETP-caught tuna for processing, the company must provide at least 48 hours notice of the location and arrival date and time of such a shipment, to the Administrator, Southwest Region, so that a NMFS representative can be present to monitor delivery and verify that "dolphin-safe" and "non-dolphin-safe" tuna are clearly identified and remain segregated.

(2) At the close of delivery activities, which may include weighing, boxing or containerizing, and transfer to cold storage or processing, the company must provide a copy of the processor's receiving report to the NMFS representative, if present. If a NMFS representative is not present, the company must submit a copy of the processor's receiving report to the Administrator, Southwest Region, by mail or fax within 5 working days. The processor's receiving report must contain, at a minimum: date of delivery, catcher vessel name and flag, trip number and dates, storage container number(s), "dolphin-safe" or "non-dolphin-safe" designation of each container, species, fish condition, and weight of tuna in each container.

(3) Tuna canning companies will report on a monthly basis the amounts of ETP-caught tuna that are removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (b)(5) of this section. This report must contain:

(i) The date of removal;

(ii) Storage container number(s) and "dolphin-safe" or "non-dolphin-safe" designation of each container; and

(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, "non-dolphin-safe" tuna may not be mixed in any manner or at any time in its processing with any "dolphin-safe" tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(5) Canned tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the month following the month being reported. Monthly reports must contain the following information:

(i) Domestic receipts: species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to the fourth decimal, ocean area of capture (eastern tropical Pacific, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, trip dates, carrier name, unloading dates, and location of unloading.

(ii) Import receipts: In addition to the information required in paragraph (b)(5)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(c) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by § 216.24(f).

(d) *Verification requirements.*—(1) *Record maintenance.* Any exporter,

transshipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must maintain records related to that tuna for at least 3 years. These records include, but are not limited to: FCO and required certifications, any report required in paragraphs (a) and (b) of this section, invoices, other import documents, and trip reports.

(2) *Record submission.* Within 30 days of receiving a written request from the Administrator, Southwest Region, any exporter, transshipper, importer, or processor of any tuna or tuna products containing tuna harvesting in the ETP must submit to the Administrator any record required to be maintained under paragraph (d)(1) of this section.

(3) *Audits and spot-checks.* Upon request of the Administrator, Southwest Region, any such exporter, transshipper, importer, or processor must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, and processed tuna.

(e) *Confidentiality of proprietary information.* Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216–100 "Protection of Confidential Fisheries Statistics."

6. In subpart H, § 216.96 is added and reserved as follows:

§ 216.96 Official mark. [Reserved]

[FR Doc. 99–15004 Filed 6–9–99; 5:05 pm]

BILLING CODE 3510–33–F

Notices

Federal Register
Vol. 64, No. 113
Monday, June 14, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Hartford, Connecticut, June 24–26, 1999. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held June 24–26, 1999.

ADDRESSES: The meeting will be held at the Hilton Hartford Hotel, 315 Trumbull Street, Hartford, Connecticut. A tour of local projects will be given on June 24 from 9:00 a.m. to 3:00 p.m.

Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The Challenge Cost-Share grant categories, identified by the Council, are advertised annually to solicit proposals for projects which would advance the knowledge of, and promote interest in, urban and community forestry. Pursuant to 5 U.S.C. 552b(c)(9)(B), the meeting will be closed from approximately 8:30 a.m. to 10:00 a.m. on June 26, in order for the Council to determine the categories for the 2000 Challenge Cost-Share grant program. Otherwise, the meeting is open to the public.

Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 11 will have the opportunity to address the Council at those sessions. Council discussion is limited to Forest Service staff and Council members.

Dated: June 8, 1999.

Dan Glickman,

Secretary.

[FR Doc. 99–15097 Filed 6–10–99; 3:14 pm]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Offsets in Military Reports

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, BXA Administration, Room 6881, 14th & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act Amendments of 1992, Section 123 (P.L. 102–558), which amended Section 309 or the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

II. Method of Collection

Annual written report.

III. Data

OMB Number: 0694–0084.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 10 hours per response.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost: $0—no capital expenditures required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–14983 Filed 6–11–99; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Chemical Weapons Convention, Amendment to the Export Administration Regulations (End-Use Certificates and Advanced Notifications and Annual Reports)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Bureau of Export Administration Liaison, Room 6881, Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC was signed by the United States in Paris on January 13, 1993, and was submitted by President Clinton to the United States Senate on November 23, 1993, for its advice and consent to ratification. The CWC prohibits, *inter alia*, the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons.

Schedule 1 Notification and Report

Under part VI of the CWC Verification Annex, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to implement the CWC, at least 30 days before any transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit annual reports to the OPCW on all transfers of Schedule 1 Chemicals.

End-Use Certificates

Under parts VII and VIII of the CWC Verification Annex, the United States is required to obtain End-Use Certificates for transfers of Schedule 2 and 3 chemicals to Non-States Parties to ensure the transferred chemicals are only used for the purposes not prohibited under the Convention.

II. Method of Collection

Written Reports.

III. Data

OMB Number: 0694–0117.

Form Number: N/A.

Type of Review: Renewal of collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 134.

Estimated Time Per Response: 60 to 90 minutes per response.

Estimated Total Annual Burden Hours: 178 hours.

Estimated Total Annual Cost: $0—No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–14984 Filed 6–11–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 25–99]

Foreign-Trade Zone 219—Yuma, AZ, Application for Subzone, Gowan Company, Yuma, AZ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Yuma County Airport Authority, Inc., grantee of FTZ 219, requesting special-purpose subzone status for the manufacturing and warehousing facilities of Gowan Company (Gowan), located in Yuma, Arizona. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 27, 1999.

The Gowan Company has two sites with 450 employees in Yuma County, Arizona. The manufacturing facility (45.25 acres) is located at 12300 E. County 8th Street in Yuma, Arizona. The warehouse facility (26.96 acres) is located at 10760 South Avenue 7E in Yuma, Arizona. The Gowan plant is used for the manufacturing, processing and packaging of agrichemicals for crop protection in commercial agriculture, including insecticides, fungicides and insect growth regulators (primarily HTS 3808, duty rate ranges from duty-free to 6.5%). Components and materials sourced from abroad (representing about 80% of all parts consumed in manufacturing) include: esters of inorganic acids and organo-sulfur compounds (HTS 2920, 2930, 2940, duty rate ranges from duty-free to 10.7%). Some 25 percent of the plant's shipments are exported. FTZ procedures would exempt Gowan from Customs duty payments on the foreign components used in export production. On its domestic sales, Gowan would be able to choose the duty rates during Customs entry procedures that apply to finished agrichemicals (duty free to 6.5%) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their

receipt is August 13, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 30, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Port of Entry—San Luis, Highway 95 and International Border, San Luis, Arizona 85364

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

Dated: May 28, 1999.

Dennis Puccinelli,

Acting Executive Secretary

[FR Doc. 99–15027 Filed 6–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Surveys, Focus Groups, and Other Customer Service Data Collections

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Phyllis Boyd, National Institute of Standards and Technology, 100 Bureau Drive, Stop 3220, Gaithersburg, MD, 20899–3220, (301) 975–4062.

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys—both quantitative and qualitative—designed to determine the kind and the quality of products, services, and information our key customers want and expect, as well as their satisfaction with and awareness of existing products, services, and information. In addition, NIST proposes other customer service satisfaction data collection that include, but may not be limited to focus groups, reply cards that accompany product distributions, and web-based surveys and dialogue boxes that offer customers the opportunity to express their level of satisfaction with NIST products, services, and information and for ongoing dialogue with NIST. NIST will limit its inquiries to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated. Steps will be taken to assure anonymity of respondents in each activity covered under this request. NIST is requesting generic approval for fiscal years FY2000, FY2001, and FY2002.

II. Method of Collection

NIST will collect this information by electronic means, as well as by mail, fax, telephone, and person-to-person.

III. Data

OMB Number: N/A.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: NIST customers, which may include businesses, academic institutions, associations, researchers, and other individuals, organizations, or institutions that deal with or wish to express an opinion about NIST products, services, or information.
Estimated Number of Respondents: Annually, approximately 12,000.
Estimated Time Per Response: Varied, dependent upon the data collection. The response time may vary from less than two minutes for a response card to up to two hours for focus group participation. The average response time is expected to be less than 30 minutes.
Estimated Total Annual Burden Hours: FY 2000—3,200 hours, FY 2001—3,067, FY 2002—2,800 hours.
Estimated Total Annual Cost: The cost to the respondent for FY 2000 is estimated to be $64,736, for FY 2001 is estimated to be $62,045, and for FY 2002 is estimated to be $56,644, based on a median hourly salary $20.23. (Occupational Employment Statistics—Bureau of Labor Statistics 1997 National Occupational Employment and Wage Data Professional, Paraprofessional, and Technical Occupations, $20.23 represents the median hourly wage when averaging the full-time wage and salary earnings for OES 24199—All Other Physical Scientists-median hourly wage: $22.85—http://stats.bls.gov/oes/national/oes24199.htm and OES 21999 All Other Management Support Workers—median hourly wage: $17.61—http://stats.bls.gov/oes/national/oes21999.htm, two categories of individuals most likely to respond to information requests). No capital expenditures are required.
Respondent's Obligation: Voluntary.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: June 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–14982 Filed 6–11–99; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0214]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Special Contracting Methods

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and

seeks public comment on the provisions thereof. We invite comments on: (a) Whether the proposed collection of information is necessary for the paper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through January 31, 2000. DoD proposes that OMB extend its approval for use through January 31, 2003.

DATES: We will consider all comments received by August 13, 1999.

ADDRESSES: Send written comments and recommendations on the proposed information collection requirement to: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite OMB Control Number 0704–0214 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0214 in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, at (703) 602–0131. A copy of this information collection requirement is available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html.

You may obtain paper copies from Mr. Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title Associated from, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 217, Special Contracting Methods, and related provisions and clauses at DFARS 252.217–7012, Liability and Insurance, DFARS 252.217–7018, Change in Plant Location-Bakery and Dairy Products, DFARS 252.217–7026, Identification of Sources of Supply, and 252.217–7028, Over and Above Work; OMB Control Number 0704–0214.

Needs and Uses: DFARS Part 217 prescribes policies and procedures for acquiring supplies and services by special contracting methods. Contracting officers use the required information as follows:

The clause at DFARS 252.217–7012 is used in master agreements for repair and alternation of vessels. Contracting officers use the information required by paragraph (d) of the clause of determine that the contractor is adequately insured. This requirement supports prudent business practice because it limits the Government's liability as a related party to the work the contractor performs. Contracting officers use the information required by paragraphs (f) and (g) of the clause to keep informed of lost or damaged property for which the Government is liable, and to determine the appropriate course of action for replacement or repair of the property.

Contracting officers use the information required by the clause at DFARS 252.217–7018 to determine the place of performance under contracts for bakery and dairy products. This represents prudent business practice because it helps to ensure that food products are manufactured and processed in sanitary facilities.

Contracting officers use the information required by the provision at DFARS 252.217–7026 to identify the apparently successful offeror's sources of supply so that competition can be enhanced in future acquisitions. This collection complies with 10 U.S.C. 2384, Supplies: identification of supplier and sources, which requires the contractor to identify the actual manufacturer or all sources of supply for supplies furnished under contract to DoD.

Contracting officers use the information required by the clause at 252.215–7028 to determine the extent of "over and above" work before the work commences. This requirement supports prudent business practice because it allows the Government to review the need for pending work before the contractor begins performance

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,372,401.

Number of Responses: 95,520.

Responses Per Respondent: 1.3.

Average Burden Per Response: 14.4 hours.

Frequency: On occasion.

Summary of Information Collection

Each provision or clause requires the offeror or contractor to submit certain information:

a. Paragraph (d)(3) of the clause at DFARS 252.217–7012 requires the contractor to show evidence of insurance under a master agreement for vessel repair and alteration.

b. Paragraphs (f) and (g) of the clause at DFARS 252.217–7018 require the contractor to notify the contracting officer of any property loss or damage for which the Government is liable, and to submit to the contracting officer a request for reimbursement of the cost of replacement or repair with supporting documentation.

c. Paragraphs (b) and (c) of the clause at DFARS 252.217–7018 require the offeror or contractor to obtain contracting officer approval before changing the place of performance of a contract for bakery or dairy products.

d. The provision at 252.217–7026 requires the apparently successful offeror to identify its sources of supply.

e. Paragraphs (c) and (e) of the clause at DFARS 252.217–7028 require the contractor to submit to the contracting officer a work request and a proposal for "over and above" work.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–15031 Filed 6–11–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: TRICARE Senior Prime Enrollment Application Form; OMB Number 0720–0018.

Type of Request: Reinstatement.

Number of Respondents: 12,000.

Responses Per Respondent: 1.

Annual Responses: 12,000.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 4,000.

Needs and Uses: This information collection is a requirement for TRICARE Senior Prime, a joint demonstration project of military managed health care conducted by the Department of Defenses (DoD) and the Department of Health and Human Services (HHS). Under this demonstration, authorized by the Balanced Budget Act of 1997, DoD will offer Medicare-eligible military retirees and their dependents enrollment in a DoD-operated managed health care program. Medicare-eligible beneficiaries will be offered the

opportunity to enroll at selected Medical Treatment Facilities (MTFs) in a managed care program modeled after the existing TRICARE Prime benefit. Medicare will reimburse DoD on a capitated basis for health care services it provides to the enrolled beneficiaries. Dual-eligible beneficiaries seeking enrollment in the program will be required to fill out an enrollment application which will provide information pertaining to eligibility for the program, personal information for identification purposes, and information on other health insurance.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Allison Eydt.

Wrtten comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 7, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14939 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: CCAF Alumni Survey; OMB Number 0701–0136.

Type of Request: Reinstatement.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 167.

Needs and Uses: The information collection is necessary to determine how effectively the Community College of the Air Force (CCAF) is meeting its mission and also identify areas needing improvement. Survey results will provide data on the usefulness and acceptance of the CCAF degree in the civilian sector. Documenting the institution's effectiveness is also required to maintain CCAF's regional accreditation. Respondents will be separated and retired CCAF graduates. Survey results will be compiled and evaluated at the CCAF Administrative Center at Maxwell Air Force Base, Alabama. While results will be used primarily in-house to make program improvements, findings may be publicized in the Air Force and civilian education communities.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 8, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14945 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: DoD Request for Personnel Security Investigation; DD Form 1879; OMB Number 0704–0384.

Type of Request: Reinstatement.

Number of Respondents: 32,164.

Responses per Respondent: 1.

Annual Responses: 32,164.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 8,041.

Needs and Uses: The information is used to request Single Scope Background Investigations (SSBIs), Expanded National Agency Checks (ENACs), SSBI Periodic Reinvestigations (PRs), or Special Investigative Inquiries (SIIs). It will accompany the Standard Form 85–P, "Questionnaire for Public Trust Position," or Special Investigative Inquiries (SIIs). It will accompany the Standard Form 85–P, "Questionnaire for Public Trust Position," or Standard Form 85–P, "questionnaire for National Security Position," which will be used by the Defense Security Service for the purpose of conducting SSBIs, ENACs, PRs, and SIIs. These provide the basis for determination of a person's eligibility for access to classified information, appointment to a sensitive position, assignment to duties that require a personnel security or trustworthiness determination, continuing eligibility for retention of a security clearance, or assignment to other sensitive duties.

Affected Public: Individuals or houseloles; business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 8, 1999.

Patricia L. Toppings,

Alternate OSB Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14946 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Candidate Procedures; USMA Forms 21–26, 21–23, 21–25, 21–16, 5–520, 5–518, 5–497, FL 481, FL 546, FL 5–2, FL 5–26, FL 480–1, FL 520, 21–14, 21–6; OMB Number 0702–0061.

Type of Request: Reinstatement.

Number of Respondents: 85,225.

Responses Per Respondent: 1.

Annual Responses: 85,225.

Average Burden Per Response: 12.4 minutes (average).

Annual Burden Hours: 17,603.

Needs and Uses: West Point candidates provide personal background information which allows the West Point Admissions Committee to make subjective on academic and non-academic experiences to determine qualification for admission to West Point. Approximately 12,000 to 13,000 applicant files are opened each year and about 4,500 are evaluated by the Admissions Committee during each admissions cycle. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 8, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14947 Filed 6–11–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–18, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 7, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 MAY 1999
In reply refer to:
I-99/06053

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-18, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office for defense articles and services estimated to cost $23 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 22 million
Other	$ 1 million
TOTAL	$ 23 million

(iii) Description of Articles or Services Offered: Two hundred forty AGM-114K3 HELLFIRE II Air-to-Surface Anti-Armor missiles, containers, spare parts, support equipment, publications, and other related elements of logistics support.

(iv) Military Department: Army YVF

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 26 MAY 1999

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - HELLFIRE II Air-to-Surface Anti-Armor Missiles

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested a possible sale of 240 AGM-114K3 HELLFIRE II Air-to-Surface Anti-Armor missiles, containers, spare parts, support equipment, publications, and other related elements of logistics support. The estimated cost is $23 million.

This proposed sale is consistent with United States law and policy, as expressed in Public Law 96-8.

The recipient will use these missiles on its AH-1W Super Cobra helicopters and OH-58D KIOWA helicopters. The missiles will enhance the recipient's anti-armor capabilities. The recipient, which already has HELLFIRE missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Electronics and Missiles, Orlando, Florida. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-18

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AGM-114K3 HELLFIRE air-to-surface missile hardware and documentation are unclassified. Missile performance parameters and characteristics, including susceptibility to countermeasures, are classified up to Secret and considered very sensitive. Missile hardware is considered sensitive and knowledge of the warhead timing mechanism would be useful in development of countermeasures. Technology contained within the missile is sensitive and Unclassified. The sensitivity of the system is primarily in the software programs which enable the missile to operate in a countermeasures environment. Training, maintenance, operations and related documentation are unclassified and not considered sensitive.

2. Missile design features minimize the possibility of reverse engineering U.S. capabilities.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

4. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 99–14949 Filed 6–11–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–19]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–19, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 7, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 MAY 1999
In reply refer to:
I-99/06054

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-19, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office for defense articles and services estimated to cost $64 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 1 million
Other	$ 63 million
TOTAL	$ 64 million

(iii) Description of Articles or Services Offered: Five exportable AN/VRC-92E SINCGARS radio systems, five Commercial Off-the Shelf/Non-Developmental Item (COTS/NDI) Intelligence Electronic Warfare (IEW) systems (a mobile intercept direction finding system with high frequency skywave intercept, direction finding and jamming capability that is shelter configured on a High Mobility Multi-purpose Wheeled Vehicles (HMMWV)) to be provided by a commercial contractor, five HMMWV, spare and repair parts, support equipment, publications, personnel training and training equipment, U.S. Government and contractor engineering and technical services, Quality Assurance Teams, and other related elements of logistics support.

(iv) Military Department: Army (YVD)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 26 MAY 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - SINCGARS Radio Systems and Commercial Off-the-Shelf/Non-Developmental Item Intelligence Electronic Warfare Systems

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested a possible sale of five exportable AN/VRC-92E SINCGARS radio systems, five Commercial Off-the Shelf/Non-Developmental Item (COTS/NDI) Intelligence Electronic Warfare (IEW) systems (a mobile intercept direction finding system with high frequency skywave intercept, direction finding and jamming capability that is shelter configured on a High Mobility Multi-purpose Wheeled Vehicles (HMMWV)) to be provided by a commercial contractor, five HMMWV, spare and repair parts, support equipment, publications, personnel training and training equipment, U.S. Government and contractor engineering and technical services, Quality Assurance Teams, and other related elements of logistics support. The estimated cost is $64 million.

This proposed sale is consistent with United States law and policy, as expressed in Public Law 96-8.

The proposed sale of this equipment will enable the recipient to intercept and jam offensive communications and to protect their own communications from being compromised. The recipient will use the COTS/NDI as well as the IEW leased equipment to equip an experimental IEW ground force units. The recipient will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

At this time, a contractor has not been selected for the COTS/NDI system. There are no offset agreements proposed to be entered into in connection with this potential sale.

The number of U.S. Government personnel and contractor representatives required in-country to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Commercial Off-the-Shelf/Non-Developmental Item (COTS/NDI) multi-station, ground based, electronic attack, intercept and Direction Finding system will be integrated in accordance to the classified Performance Specification for ACEWS to support a Foreign Military Sales requirement. The COTS/NDI Intelligence and Electronic Warfare (IEW) system will consist of Communications Intelligence/Direction Finding subsystems and jamming subsystems. All subsystems will be ground based. A High Frequency antenna array and the OE-317A antenna will also be part of the COTS/NDI IEW system. This system will be a non-standard procurement. The system does not have an assigned National Stock Number and is not used by the U.S. Armed Forces.

2. There will be no U.S. Government COMSEC equipment in the COTS/NDI IEW system. An exportable version of AN/VRC-92E SINCGARS, will be integrated into the COTS/NDI IEW system. The exportable SINCGARS receiver-transmitter, contains commercial encryption algorithms, not the same COMSEC that is used for the U.S. Army version SINCGARS. Other exportable commercial encryption devices may be utilized for the data link communications in the COTS/NDI IEW system.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–14950 Filed 6–11–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee Panel on Commercialization and Globalization in the U.S. Defense Establishment

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee Panel on Commercialization and Globalization in the U.S. Defense Establishment will meet in closed session at the Pentagon on June 23, 1999, from 0900 to 1200. The purpose of the meeting is to provide the Secretary of Defense with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: CDR Randall Lovdahl, USN, 703–697–4557.

Dated: June 7, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14952 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, July 1, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: June 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14940 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary.

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, July 20, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. Section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: June 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14941 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, July 22, 1999.

ADDRESSES: The meeting will be held Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Doyle, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of

Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in (5 U.S.C. § 552b(c)(1) 1994)), and that accordingly, this meeting will be closed to the public.

Dated: June 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14942 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, July 21, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. Section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: June 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14943 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Cancellation of DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces the cancellation of the DoD Advisory Group on Electron Devices meeting originally scheduled for June 15, 1999.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: On April 26, 1999 (64 FR 20279), the Department of Defense published the notice announcing the meeting of the DoD Advisory Group on Electron Device.

Dated: June 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14944 Filed 6–11–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Service Committee on Military Justice: Public Meeting

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a public meeting of the JSC. This notice also describes the functions of the JSC.

DATES AND TIMES: Wednesday, July 21, 1999, at 2:00 p.m.

ADDRESSES: Room 808, 1501 Wilson Blvd., Arlington,VA 22209–22403.

FUNCTION: The JSC was established by the Judge Advocates General in 1972. The JSC currently operates under Department of Defense Directive 5500.17, May 8, 1996. The function of the JSC is to improve military justice through preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the Manual for Courts-Martial.

AGENDA: The JSC will receive public comment concerning its 1999 draft review of the proposed amendments to the Manual for Courts-Martial as published on May 21, 1999. This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

FOR FURTHER INFORMATION CONTACT: Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

Dated: June 7, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14951 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal

Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on July 6, 1999, July 13, 1999, July 20, 1999, and July 27, 1999 at 10:00 a.m. in Room A105, the Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

June 7, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–14938 Filed 6–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates.

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 208. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 208 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 1999.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 207. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates; please contact your local travel office. The text of the Bulletin follows:

Dated: June 7, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/30	161		63		224	03/01/1999
10/01 - 04/30	89		56		145	03/01/1999
BARROW	115		73		188	03/01/1999
BETHEL	105		60		165	03/01/1999
CLEAR AB	80		57		137	03/01/1999
COLD BAY	110		68		178	03/01/1999
CORDOVA	85		62		147	03/01/1998
CRAIG						
05/01 - 08/31	95		66		161	10/01/1998
09/01 - 04/30	79		64		143	10/01/1998
DEADHORSE	80		67		147	03/01/1999
DENALI NATIONAL PARK						
06/01 - 08/31	115		52		167	03/01/1998
09/01 - 05/31	90		50		140	03/01/1998
DILLINGHAM	95		59		154	10/01/1998
DUTCH HARBOR-UNALASKA	110		71		181	03/01/1999
EARECKSON AIR STATION	80		57		137	03/01/1999
EIELSON AFB						
05/15 - 09/15	118		58		176	03/01/1999
09/16 - 05/14	81		54		135	03/01/1999
ELMENDORF AFB						
05/01 - 09/30	161		63		224	03/01/1999
10/01 - 04/30	89		56		145	03/01/1999
FAIRBANKS						
05/15 - 09/15	118		58		176	03/01/1999
09/16 - 05/14	81		54		135	03/01/1999
FT. RICHARDSON						
05/01 - 09/30	161		63		224	03/01/1999
10/01 - 04/30	89		56		145	03/01/1999
FT. WAINWRIGHT						
05/15 - 09/15	118		58		176	03/01/1999
09/16 - 05/14	81		54		135	03/01/1999
GLENNALLEN	90		52		142	10/01/1998
HEALY						
06/01 - 08/31	115		52		167	03/01/1998
09/01 - 05/31	90		50		140	03/01/1998
HOMER						
05/15 - 09/15	115		58		173	03/01/1999
09/16 - 05/14	98		57		155	03/01/1999
JUNEAU	105		68		173	03/01/1999
KARTOVIK	175		74		249	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+ M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
05/01 - 09/30	114	63	177	03/01/1999
10/01 - 04/30	76	59	135	03/01/1999
KENNICOTT	149	68	217	10/01/1998
KETCHIKAN				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
KING SALMON	101	70	171	03/01/1999
KLAWOCK				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
KODIAK	99	67	166	03/01/1999
KOTZEBUE				
05/01 - 08/31	137	75	212	03/01/1999
09/01 - 04/30	73	61	134	03/01/1999
KULIS AGS				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
MCCARTHY	149	68	217	10/01/1998
METLAKATLA				
05/30 - 10/01	85	52	137	03/01/1999
10/02 - 05/29	78	51	129	03/01/1999
MURPHY DOME				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
NOME				
03/01 - 03/31	117	58	175	03/01/1999
04/01 - 02/29	92	56	148	03/01/1999
NUIQSUT	120	69	189	03/01/1999
PETERSBURG	87	57	144	03/01/1999
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/01 - 09/30	122	65	187	03/01/1999
10/01 - 04/30	86	61	147	03/01/1999
SITKA-MT. EDGECOMBE				
09/05 - 03/31	83	59	142	10/01/1998
04/01 - 09/04	101	60	161	03/01/1998
SKAGWAY				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
SPRUCE CAPE	99	67	166	03/01/1999
TANANA				
03/01 - 03/31	117	58	175	03/01/1999
04/01 - 02/29	92	56	148	03/01/1999
UMIAT	107	33	140	03/01/1999
VALDEZ				
05/15 - 10/01	110	63	173	03/01/1999
10/02 - 05/14	84	60	144	03/01/1999
WAINWRIGHT	127	82	209	03/01/1999
WRANGELL				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	57	137	03/01/1999
AMERICAN SAMOA				
AMERICAN SAMOA	73	53	126	03/01/1997
GUAM				
GUAM (INCL ALL MIL INSTAL)	150	79	229	10/01/1998
HAWAII				
CAMP H M SMITH	110	61	171	10/01/1998
EASTPAC NAVAL COMP TELE AREA	110	61	171	10/01/1998
FT. DERUSSEY	110	61	171	10/01/1998
FT. SHAFTER	110	61	171	10/01/1998
HICKAM AFB	110	61	171	10/01/1998
HONOLULU NAVAL & MC RES CTR	110	61	171	10/01/1998
ISLE OF HAWAII: HILO	80	52	132	06/01/1998
ISLE OF HAWAII: OTHER	100	54	154	10/01/1998
ISLE OF KAUAI				
12/01 - 04/30	145	64	209	06/01/1999
05/01 - 11/30	115	62	177	06/01/1998
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	112	64	176	10/01/1998
ISLE OF OAHU	110	61	171	10/01/1998
KANEOHE BAY MC BASE	110	61	171	10/01/1998
KEKAHA PACIFIC MISSILE RANGE FAC				
12/01 - 04/30	145	64	209	06/01/1999
05/01 - 11/30	115	62	177	06/01/1998
KILAUEA MILITARY CAMP	80	52	132	06/01/1998
LUALUALEI NAVAL MAGAZINE	110	61	171	10/01/1998
NAS BARBERS POINT	110	61	171	10/01/1998
PEARL HARBOR [INCL ALL MILITARY]	110	61	171	10/01/1998
SCHOFIELD BARRACKS	110	61	171	10/01/1998
WHEELER ARMY AIRFIELD	110	61	171	10/01/1998

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	79	62	141	06/01/1993
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	9	22	10/01/1998
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	65	41	106	05/01/1999
NORTHERN MARIANA ISLANDS				
ROTA	88	69	157	06/01/1999
SAIPAN	154	88	242	06/01/1999
[OTHER]	61	62	123	06/01/1999
PUERTO RICO				
BAYAMON				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
CAROLINA				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
FAJARDO [INCL CEIBA & LUQUILLO]	82	60	142	03/01/1998
FT. BUCHANAN [INCL GSA SVC CTR,				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
HUMACAO	82	60	142	03/01/1998
LUIS MUNOZ MARIN IAP AGS				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
MAYAGUEZ	94	60	154	06/01/1998
PONCE	101	67	168	09/01/1998
ROOSEVELT RDS & NAV STA	82	60	142	03/01/1998
SABANA SECA [INCL ALL MILITARY]				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
SAN JUAN & NAV RES STA				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
[OTHER]	66	57	123	09/01/1998
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	107	75	182	08/01/1998
12/15 - 04/14	131	78	209	08/01/1998
ST. JOHN				
04/15 - 12/14	286	89	375	10/01/1998
12/15 - 04/14	413	102	515	08/01/1998

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. THOMAS				
04/15 - 12/14	171	75	246	08/01/1998
12/15 - 04/14	285	87	372	08/01/1998
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 99–14948 Filed 6–11–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.
ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the qualify, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 13, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Army Cadet Command, Accessions Management and Scholarship Division, Building 56 Patch Road, ATTN: ATCC–PS, (Mary Lou Stoddard) Fort Monroe, Virginia 23651–5238. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Application for the U.S. Army ROTC 2-Year and 3-Year Scholarship, ROTC Cadet Command Form 166–R; OMB Number 0702–0083.

Needs and Uses: The application is one of the tools used in the selection process for the 2-year and 3-year ROTC scholarships. The Army ROTC Program produces approximately 80 percent of the newly commissioned officers for the U.S. Army. The ROTC scholarship is an incentive to attract men and women to pursue educational degrees in the academic disciplines required by the Army

Affected Public: Individuals or households.

Annual Burden Hours: 1,935.

Number of Respondents: 3,870.

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: The applications are available to universities and colleges that host Army ROTC. After the applications are completed, they are submitted to HQ Cadet Command for review, screening, and selection of scholarship recipients. If the academic, educational and extracurricular background were not collected, a more burdensome academic examination would be required to screen to voluminous applications for quality recipients.

Gregory D. Showalter,
Army Federal Register, Liaison Officer.
[FR Doc. 99–14997 Filed 6–11–99; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.
ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454

Title, Associated Form, and OMB Number: Army ROTC 4-Year Scholarship Application; ROTC Cadet Command Form 114; OMB Number 0702–0073.

Needs and Uses: The ROTC scholarship provides the Army with highly qualified men and women who desire to pursue a commission in the U.S. Army. The application and information provides the basis for the scholarship award. An Army ROTC scholarship is the major incentive for attracting and retaining outstanding students into Army ROTC.

Affected Public: Individuals or Households.

Annual Burden Hours: 5,625.

Number of Respondents: 7,500.

Responses Per Respondent: 1.

Average Burden Per Response: 45 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: The Army ROTC Programs produces over 80 percent of the newly commissioned officers for the U.S. Army. The education, physical and academic potential of a ROTC are critical factors in his or her overall evaluation. There approximately 7,500 applicants who apply annually for the 4-Year ROTC scholarship program. Approximately 750 applicants are awarded a 4-Year scholarship annually.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 99–14998 Filed 6–11–99; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such

inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, June 14, 1999 from 8:30 a.m. to 10:00 p.m. The closed Executive Session will be from 09:30 a.m. to 10:00 p.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the U.S. Naval Academy, Annapolis MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerral K. David, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: May 26, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–15136 Filed 6–11–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–541–000, CP99–542–000, and CP99–543–000]

Cotton Valley Compression, L.L.C.; Application

June 8, 1999.

Take notice that on June 1, 1999, Cotton Valley Compression, L.L.C. (CVC), 301 S.E. Adams Boulevard, Bartlesville, Oklahoma 74003 filed in Docket No. CP99–541–000, an application pursuant to Section 7(c) of the Natural Gas Act. CVC states its application is being filed at the direction of the Commission,[1] where the Commission found that CVC was engaged in interstate transportation of natural gas and directed CVC to file "an application for certificate authorization, under Section 7(c) of the NGA, and Part 157 of the Commission's regulations, to continue utilizing the facilities for the transportation of gas in interstate commerce, or to abandon those facilities."

In Docket No. CP99–542–000, CVC seeks a blanket certificate pursuant to Subpart G of Part 284 of the Commission's Regulations in order to provide open access transportation of natural gas for others. Finally, in Docket No. CP99–543–000, CVC requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations in order to perform certain routine activities and operations.

These requests are more fully set forth in the June 1st application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http:/// www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

CVC states that the facilities to be certificated, all of which already exist in Washington County, Oklahoma, consist of approximately 700 feet of dual 4" diameter natural gas pipe, running between two different interstate pipelines (low pressure Hogshooter and high pressure Quapaw pipelines) of Williams Gas Pipelines Central, Inc. (Williams), 1,200 horsepower of leased compression at the downstream delivery point into Williams, and appurtenant facilities.

CVC requests authority to provide firm and interruptible transportation services on a non-discriminatory, open-access basis, consistent with the Commission's Part 284 policy. CVC's FT Rate Schedule will consist of a monthly reservation charge of $1.99 per Dth; its IT Rate Schedule rate is 6.5 cents per Dth; and the fuel retention is at 2%.

CVC states that based on upstream gas production increases projected by the five CVC producer-owners, CVC also requests that the Commission certificate, on a blanket basis, the net increase of 1,800 horsepower of compression, to add 18,000 Dth/d of delivery capacity into Williams' Quapaw pipeline, under specified conditions.

CVC has included a pro forma FERC Gas Tariff, proposing to rely in large part on the Williams' FERC Gas Tariff, with changes only to reflect CVC's circumstances. Within six months of certification, CVC proposes to operate a website on the Internet, which will contain three basis elements: (1) Printed text of the basic elements of a tariff specified in Part 154, Subpart B; (2) electronic "link" directly to FERC's FASTR website for Williams' General Terms and Conditions, which are incorporated by CVC; and (3) e-mail link directly to CVC for purposes of asking questions or relaying operational instructions.

CVC seeks waivers of various reporting and regulatory requirements, due to its small size and unique circumstances.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing

[1] Williams Natural Gas Company, Docket No. CP97–706–000, 86 FERC ¶ 61,213 (1999).

it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that granting the certificates is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CVC to appear to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14957 Filed 6–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–15–000]

Louisiana State Gas, LLC; Petition for Rate Approval

June 8, 1999.

Take notice that on May 28, 1999, Louisiana State Gas, LLC (Louisiana State), filed a petition for rate approval to reduce the existing maximum rate for interruptible transportation on its South Louisiana Pipeline System from $0.0642 per MMBtu to $0.0597 per MMBtu. The rate pertains to transportation performed under Section 311 of the Natural Gas Policy Act of 1978. The filing was made to comply with the Commission's October 20, 1997, order in Docket No. PR96–9–000.

Louisiana State is a subsidiary of LEDCO, LLC. Louisiana State states that its South Louisiana Pipeline System consists of approximately 34 miles of mainly 12-inch pipeline extending westward from a point near Buras, Louisiana, to the Barateria Waterway near Grand Isle, Louisiana, to the Barateria Waterway near Grand Isle, Louisiana. Louisiana adds that all piping and related facilities in the system are located in Bastion Bay, which is a coastal salt marsh accessible only by plane or boat. Louisiana State's only Section 311 shipper is LEDCO.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rate for transportation service will be deemed fair and equitable. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data, and arguments. Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before June 28, 1999. The petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14959 Filed 6–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–2–000]

Transok, LLC; Informal Settlement Conference

June 8, 1999.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Thursday, June 17, 1999, at 10:00 A.M. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

Attendance will be limited to the parties and staff. For additional information, please contact Louis Lieb at (202) 208–0012.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14958 Filed 6–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–330–000]

United Gas Services v. K N Interstate Gas Transmission Co. and K N Energy, Inc; Complaint

June 8, 1999.

Take notice that on June 4, 1999, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, Consumer Services Association, Inc. d/b/a United Gas Services (United) tendered for filing a complaint against K N Interstate Gas Transmission Co. (KNI) and K N Energy Inc. (KNE).

United States that on December 16, 1998, KNI declared a "unauthorized overrun period." The period extended from December 18, 1998 through December 27, 1998. A second unauthorized overrun period was declared for January 2–5, 1999.

United asserts that at about the time NKI declared the December unauthorized overrun period, Mr. Will Meehl of KNE contacted United about an anticipated temperature-induced

increase in demand for "Type I Customers" under KNE's Supplier Choice Program in Nebraska. KNE requested United to increase to "75% of peak load" United's nominated volumes to delivery points on the KNI system connection to local distribution facilities of KNE. United indicates that it promptly complied with this request, and Mr. Meehl subsequently advised United that KNE was "satisfied" with United's response and with the level of United's nominations.

United asserts that in January 1999, in the ordinary billing cycle, United received from KNI an invoice for December 1998 transportation service. Subsequently, United asserts that it received an invoice in February 1999 KNI for $199,182.00 in unauthorized overrun penalties plus additional authorized overrun penalties and out-of-path penalty charges for allegedly overdelivering volumes during the designated unauthorized overrun periods in December 1998 and January 1999. United asserts these charges were unjust and unreasonable, since they were based on after-the-fact allocations made by the point operator, KNE, which is a KNI affiliate, and were pursuant to an allocation agreement that United had no notice of. United also assert that the doctrine of estoppel should bar these penalties in any event, since assurance and been given that United's nominations during the overrun period were satisfactory.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211, All such motions or protests should be filed on or before June 24, 1999. Protests will be considered by the Commission to determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to this compliant shall be due on or before June 24, 1999.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 99–14985 Filed 6–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

June 8, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI99–7–000.

c. *Date Filed:* May 13, 1999.

d. *Applicant:* Great Northern Adventure, L.L.C.

e. *Name of Project:* Ching Creek Project.

f. *Location:* On Ching Creek, in Clark County, ID (T. 13 N., R. 39 E., sec. 3, Boise Meridian). The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Peck, Great Northern Adventure L.L.C., 2633 E. 105 N., Idaho Falls, ID 83401 (208) 523–5306.

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 219–2679, or e-mail address: etta.foster@ferc.fed.us.

j. *Deadline for filing comments and or motions:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the docket number DI99–7–000) on any comments or motions filed.

k. *Description of Project:* The proposed project will consist of a 660-foot-long, 12-inch diameter penstock drawing water from the creek; a powerhouse containing a 10-kW generator; and appurtenant facilities. The power will be used to provide power for ranch operations. The nearest power distribution line is 7.5 miles.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, or protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service for Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14960 Filed 6–11–99; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; The Following Notice of Meeting is Published Pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B

June 9, 1999.

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: JUNE 16, 1999 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA. *NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: DAVID P. BOERGERS, SECRETARY, TELEPHONE (202) 208–0400. FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

Consent Agenda—Hydro; 721th Meeting—June 16, 1999; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–2213, 001, PUBLIC UTILITY DISTRICT NO. 1 OF COWLITZ COUNTY, WASHINGTON

CAH–2.
OMITTED

CAH–3.
DOCKET# P–10703, 005, CITY OF CENTRALIA (WASHINGTON) LIGHT DEPARTMENT

CAH–4.
DOCKET# P–11452, 002, NORTHERN CALIFORNIA POWER AGENCY
OTHER#S P–11477, 002, NORTHERN CALIFORNIA POWER AGENCY

CAH–5.
DOCKET# P–UL96–1, 002, BLACKSTONE RIVER DEPOT STREET TRUST

CAH–6.
DOCKET# P–710, 014, WISCONSIN POWER & LIGHT DEPARTMENT

CAH–7.
DOCKET# 2569, 037, NIAGARA MOHAWK POWER CORPORATION

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–2300, 000, CLECO TRADING & MARKETING LLC
OTHER#S ER99–2541, 000, CARTHAGE ENERGY, LLC
ER99–2602, 000/ LSP-KENDALL ENERGY, LLC
ER99–2769, 000, FOOTE CREEK III, LLC
ER99–2858, 000, MEP PLEASANT HILL, LLC
ER99–2895, 000, AMOCO ENERGY TRADING CORPORATION

CAE–2.
DOCKET# ER99–2340, 000, PJM INTERCONNECTION, L.L.C.

CAE–3.
DOCKET# ER99–2730, 000 CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S EL99–67, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–4.
DOCKET# ER99–2915, 000, INDECK-OLEAN LIMITED PARTNERSHIP

CAE–5.
DOCKET# ER99–2738, 000, NORTHEAST UTILITIES SERVICE COMPANY

CAE–6.
DOCKET# ER99–1473, 000, SEMPRA ENERGY TRADING CORPORATION

CAE–7.
DOCKET# ER99–2763, 000, WESTERN SYSTEMS POWER POOL

CAE–8.
DOCKET# ER99–2770, 000, FLORIDA POWER & LIGHT COMPANY
OTHER#S EL99–69, 000, FLORIDA POWER & LIGHT COMPANY

CAE–9.
DOCKET# ER99–2649, 000, MID-CONTINENT AREA POWER POOL

CAE–10.
DOCKET# EL95–71, 000, PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE V. NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.

CAE–11.
DOCKET# ER99–2668, 000, AUTOMATED POWER EXCHANGE, INC.

CAE–12.
DOCKET# ER98–3853, 001, NEW ENGLAND POWER POOL

CAE–13.
DOCKET# EF99–5191, 000, UNITED STATES DEPARTMENT OF ENERGY—WESTERN AREA POWER ADMINISTRATION (PACIFIC NORTHWEST—PACIFIC INTERTIE PROJECT)

CAE–14.
DOCKET# EC99–34, 000, NIAGARA MOHAWK POWER CORPORATION AND ERIE BOULEVARD HYDROPOWER, L.P.
OTHER#S ER99–1764, 000, ERIE BOULEVARD HYDROPOWER, L.P.

CAE–15.
DOCKET# EC99–49, 000, NEW ENGLAND POWER COMPANY, MASSACHUSETTS ELECTRIC COMPANY, THE NARRAGANSETT ELECTRIC COMPANY, NEW ENGLAND ELECTRIC TRANSMISSION CORPORATION, NEW ENGLAND HYDRO-TRANSMISSION CORPORATION, NEW ENGLAND HYDRO-TRANSMISSION ELECTRIC COMPANY, INC., ALLENERGY MARKETING COMPANY, L.L.C., AND NGG HOLDINGS LLC

CAE–16.
DOCKET# OA96–153, 000, ARIZONA PUBLIC SERVICE COMPANY
OTHER#S ER96–2401, 000, ARIZONA PUBLIC SERVICE COMPANY

CAE–17.
DOCKET# ER99–1663, 000, MONTAUP ELECTRIC COMPANY

CAE–18.
DOCKET# ER99–1770, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–19.
OMITTED

CAE–20.
DOCKET# ER97–1165, 000, DUQUESNE LIGHT COMPANY
OTHER#S ER97–1167, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY AND TOLEDO EDISON COMPANY
ER97–1169, 000, OHIO EDISON COMPANY AND PENNSYLVANIA POWER COMPANY
OA97–221, 000, DUQUESNE LIGHT COMPANY

CAE–21.
DOCKET# EC99–36, 000, MONTANA POWER COMPANY AND PP&L MONTANA, LLC
OTHER#S ER99–1799, 000, MONTANA POWER COMPANY AND PP&L MONTANA, LLC

CAE–22.
DOCKET# EC99–40, 000, CENTRAL ILLINOIS LIGHT COMPANY AND THE AES CORPORATION

CAE–23.
DOCKET# ER99–2781, 000, DELMARVA POWER & LIGHT COMPANY AND ATLANTIC CITY ELECTRIC COMPANY
OTHER#S ER99–1345, 000, DELMARVA POWER & LIGHT COMPANY AND ATLANTIC CITY ELECTRIC COMPANY

CAE–24.
DOCKET# EC99–50, 000, PACIFICORP

CAE–25.
DOCKET# ER99–1142, 000, NEW ENGLAND POWER POOL

CAE–26.
DOCKET# ER98–3274, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY

CAE–27.
DOCKET# ER99–1132, 000, DUQUESNE LIGHT COMPANY

CAE–28.
DOCKET# ER98–2179, 002, NEW YORK STATE ELECTRIC & GAS CORPORATION AND NGE GENERATION, INC.
OTHER#S ER98–4040, 003, PG&E ENERGY TRADING-POWER, L.P.
ER98–4176, 003, EL PASO POWER SERVICES COMPANY

ER98–4275, 002, VITOL GAS AND ELECTRIC LLC
ER98–4348, 002, COOK INLET ENERGY SUPPLY, L.P.

CAE–29.
DOCKET# EL99–62, 000, AQUILA ENERGY MARKETING CORPORATION V. NIAGARA MOHAWK POWER CORPORATION AND NIAGARA MOHAWK ENERGY MARKETING, INC.

CAE–30.
DOCKET# EL99–49, 000, UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION
OTHER#S EL99–51, 000, ENRON POWER MARKETING, INC. V. UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION
NJ97–3, 006, UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION

CAE–31.
DOCKET# EL96–70, 000, PACIFIC GAS & ELECTRIC COMPANY V. RED TOP COGENERATION, L.P.
OTHER#S EL96–70, 001, PACIFIC GAS & ELECTRIC COMPANY V. RED TOP COGENERATION, L.P.
EL96–70, 002, PACIFIC GAS & ELECTRIC COMPANY V. RED TOP COGENERATION, L.P.
QF84–329, 001, PACIFIC GAS & ELECTRIC COMPANY V. RED TOP COGENERATION, L.P.
QF94–329, 002, PACIFIC GAS & ELECTRIC COMPANY V. RED TOP COGENERATION, L.P.

CAE–32.
DOCKET# EL99–56, 000, TOWN OF NORWOOD, MASSACHUSETTS

CAE–33.
DOCKET# EL98–55, 000, INDIANA MUNICIPAL POWER AGENCY V. PSI ENERGY, INC.

CAE–34.
DOCKET# EL99–44, 000, ARIZONA PUBLIC SERVICE COMPANY V. IDAHO POWER COMPANY

CAE–35.
DOCKET# EL99–58, 000, VILLAGE OF FREEPORT, NEW YORK V. CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

CAE–36.
DOCKET# OA97–418, 004, DAYTON POWER & LIGHT COMPANY
OTHER#S OA97–130, 003, MINNESOTA POWER & LIGHT COMPANY
OA97–185, 002, OKLAHOMA GAS AND ELECTRIC COMPANY
OA97–400, 003, SOUTHWESTERN PUBLIC SERVICE COMPANY
OA97–406, 004, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OA97–423, 003, PP&L, INC.
OA97–455, 004, IDAHO POWER COMPANY
OA97–515, 003, PACIFIC GAS AND ELECTRIC COMPANY
OA97–590, 003, IDAHO POWER COMPANY
OA97–594, 003, PP&L, INC.

CAE–37.
DOCKET# ER98–11, 000, LONG ISLAND LIGHTING COMPANY
OTHER#S EL98–22, 000, LONG ISLAND LIGHTING COMPANY

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# SA99–16, 000, THE MONTANA POWER COMPANY

CAG–2.
DOCKET# RP99–271, 001, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S RP89–183, 092, WILLIAMS GAS PIPELINES CENTRAL, INC.

CAG–3.
DOCKET# RP99–282, 000, RELIANT ENERGY GAS TRANSMISSION COMPANY

CAG–4. OMITTED

CAG–5.
DOCKET# PR99–6, 000, PG&E GAS TRANSMISSION TECO INC.

CAG–6.
DOCKET# PR99–8, 000, PROVIDENCE GAS COMPANY

CAG–7.
DOCKET# PR99–5, 000, DOW PIPELINE COMPANY
OTHER#S PR99–5, 001, DOW PIPELINE COMPANY

CAG–8.
DOCKET# RP98–364, 002, SOUTH GEORGIA NATURAL GAS COMPANY
OTHER#S RP99–251, 002, SOUTH GEORGIA NATURAL GAS COMPANY

CAG–9.
DOCKET# RP99–159, 000, SOUTHERN NATURAL GAS COMPANY
OTHER#S RP99–159, 001, SOUTHERN NATURAL GAS COMPANY

CAG–10.
DOCKET# RP99–252, 002, SEA ROBIN PIPELINE COMPANY

CAG–11.
DOCKET# RP99–253, 003, SOUTHERN NATURAL GAS COMPANY
OTHER#S RP98–363, 002, SOUTHERN NATURAL GAS COMPANY

CAG–12.
DOCKET# RP99–254, 001, DESTIN PIPELINE COMPANY, L.L.C.

CAG–13.
DOCKET# RP99–298, 000, ANR PIPELINE COMPANY

CAG–14.
DOCKET# RP98–117, 005, K N INTERSTATE GAS TRANSMISSION COMPANY

CAG–15.
DOCKET# RP98–203, 006, NORTHERN NATURAL GAS COMPANY
OTHER#S RP98–203, 005, NORTHERN NATURAL GAS COMPANY

CAG–16.
DOCKET# RP96–348, 008, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP96–348, 007, PANHANDLE EASTERN PIPE LINE COMPANY

CAG–17.
DOCKET# RP98–52, 022, WILLIAMS GAS PIPELINES CENTRAL, INC.

CAG–18.
DOCKET# RP99–227, 001, HIGH ISLAND OFFSHORE SYSTEM, L.L.C.

CAG–19.
DOCKET# RP97–375, 007, WYOMING INTERSTATE COMPANY, LTD

CAG–20.
DOCKET# CP95–376, 002, MISSISSIPPI RIVER TRANSMISSION CORPORATION AND NORAM FIELD SERVICES CORPORATION

CAG–21.
DOCKET# CP96–152, 013, KANSAS PIPELINE COMPANY
OTHER#S CP96–152, 014, KANSAS PIPELINE COMPANY

CAG–22.
DOCKET# CP98–159, 002, PHELPS DODGE CORPORATION V. EL PASO NATURAL GAS COMPANY

CAG–23.
DOCKET# CP99–113, 000, ALGONQUIN LNG, INC.
OTHER#S PR99–8, 000, PROVIDENCE GAS COMPANY

CAG–24.
DOCKET# CP96–606, 001, TEXAS EASTERN TRANSMISSION CORPORATION

CAG–25.
DOCKET# CP99–96, 000, CNG TRANSMISSION CORPORATION
OTHER#S CP99–96, 001, CNG TRANSMISSION CORPORATION

CAG–26.
DOCKET# CP99–152, 000, CANADIAN-MONTANA PIPE LINE CORPORATION

CAG–27.
DOCKET# PR99–9, 000, THE UNION LIGHT, HEAT AND POWER COMPANY
OTHER#S PR99–9, 001, THE UNION LIGHT, HEAT AND POWER COMPANY

CAG–28.
OMITTED

CAG–29.
DOCKET# RP97–278, 002, MIDCOAST INTERSTATE TRANSMISSION, INC.

CAG–30.
DOCKET# RP94–72, 009, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
OTHER#S FA92–59, 007, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
RP97–126, 000, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS

PR–1.
RESERVED

II.
PIPELINE CERTIFICATE MATTERS

PC–1.
OMITTED

David P. Boergers,

Secretary.

[FR Doc. 99–15087 Filed 6–10–99; 11:30 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Notice of Oxygenate Use in Gasoline Panel Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On November 30, 1998, U.S. Environmental Protection Agency Administrator Carol M. Browner announced the creation of a blue-ribbon panel of leading experts from the public health and scientific communities, automotive fuels industry, water utilities, and local and State government to review the important issues posed by the use of methyl tertiary butylether (MTBE) and other oxygenates in gasoline. EPA created the panel to gain a better understanding of the public health concerns raised by the discovery of MTBE in some water supplies. The panel is chaired by Mr. Daniel Greenbaum, President of the Health Effects Institute (HEI) of Cambridge, Massachusetts.

This notice announces the time and place for the next meeting of the panel.

DATES: The blue-ribbon panel reviewing the use of oxygenates in gasoline will conduct its final meeting on Thursday and Friday, June 24 and 25, 1999, in Arlington, VA. The meeting will be held from noon to approximately 8:00 p.m. on Thursday, June 24th and from 8:30 a.m. until approx. 5:30 p.m. on Friday, June 25th.

ADDRESSES: The meeting will be held at the Hilton Crystal City at National Airport, 2399 Jefferson Davis Hwy, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Karen Smith at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 564–9674, or John Brophy at (202) 564–9068. Information can also be found at *www.epa.gov/oms/consumer/fuels/oxypanel/blueribb.htm*.

SUPPLEMENTARY INFORMATION: This is the sixth and final meeting in a series of meetings at locations around the country to hear from regional and national experts on the facts concerning oxygenate use in fuel. There will be no open public comment period during this meeting. Written comments to the panel can be mailed to US EPA, 401 M Street, SW, Mail Code 6406J (Attn: Blue-Ribbon Panel), Washington, DC 20460. Panel members will be provided with copies of all written submissions.

Dated: June 8, 1999.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 99–15001 Filed 6–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6359–1]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public teleconference meeting on Wednesday, June 30, 1999, between the hours of, 11:00 a.m. and 2:00 p.m., Eastern Time.

The meeting will be coordinated through a conference call connection in Room 3709 of the Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 260–4126, and via e-mail at: <tillery-priscilla@epa.gov> by June 21, 1999.

During this meeting the Executive Committee plans to review draft reports from its Committees. Anticipated drafts include: (a) Advisory on the White Paper on the Nature and Scope of Issues on Adoption of Model Use Acceptability Criteria (Environmental Models Subcommittee of the Science Advisory Board); (b) Review of the Wet Weather Flows and Urban Infrastructure Research Plans (Environmental Engineering Committee); (c) Review of the Environmental Endocrine Disruptors Screening Program (Executive Committee Subcommittee); and (d) Review of the Comparative Risk Framework Method (Drinking Water Committee). It is possible that other draft reports may be available for review at this meeting as well. Please check with Ms. Tillery-Gadson prior to the meeting to confirm any changes in the planned review schedule.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington, DC 20460; telephone (202) 260–4126; FAX (202) 260–9232; and via e-mail at: barnes.don@epa.gov. Copies of the draft reports are available from the same source, or from the SAB Website (http://www.epa.gov/sab) at least one week prior to the meeting.

General Information on Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Meeting Access

Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 8, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–15016 Filed 6–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51929; FRL–6085–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 1, 1999, to May 14, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51929. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

C. *By phone.* If you need additional information about this action, you may also contact the person identified in the "FOR FURTHER INFORMATION CONTACT " section.

III. Why is EPA taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME, and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 1, 1999, to May 15, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 47 Premanufacture Notices Received From: 05/01/99 to 05/15/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0762	05/03/99	08/01/99	CBI	(S) Base resin for uv/eb (ultraviolet light/electron beam) cured coating formulations	(G) Polyetherdiol polymer with an aliphatic isocyanate and hydroxyethyl methacrylate
P–99–0763	05/03/99	08/01/99	CBI	(G) Base resin for free-radical cured formulations for adhesives	(G) Polyether polyol polymer with an aromatic isocyanate and hydroxyethyl methacrylate
P–99–0772	05/04/99	08/02/99	Condea Servo LLC	(S) Dispersing agent in solvent-borne paints; dispersing agent in solvent-borne paint pigment paste	(S) 2-propenoic acid, 2-methyl-, methyl ester, telomer with 1,6-diisocyanatohexane, 2-ethylhexyl 2-propenoate and 2-mercaptoethanol*
P–99–0773	05/04/99	08/02/99	Purac America, Inc.	(S) Metal scavenger	(S) Propanoic acid, 2-hydroxy-, monopotassium salt, (2s)-*

I. 47 Premanufacture Notices Received From: 05/01/99 to 05/15/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0774	05/06/99	08/04/99	Dupont Dow Elastomers, L.L.C.	(G) Molding resin	(G) Vinylidene fluoride copolymer
P–99–0775	05/06/99	08/04/99	CBI	(G) Gear oil viscosity index improver	(G) Alkyl methacrylate copolymer
P–99–0776	05/06/99	08/04/99	CBI	(G) Gear oil viscosity index improver	(G) Alkyl methacrylate copolymer
P–99–0777	05/06/99	08/04/99	CBI	(G) Gear oil viscosity index improver	(G) Alkyl methacrylate copolymer
P–99–0778	05/07/99	08/05/99	CBI	(G) Open non-dispersive (coatings material)	(G) Fatty acid modified polyurethane resin
P–99–0779	05/07/99	08/05/99	Rahn USA Corporation	(S) Uv/eb inks; uv/eb coatings; uv/eb adhesive; uv/eb fillers	(G) Polyester acrylate
P–99–0780	05/07/99	08/05/99	Air Products and Chemicals Inc.	(G) Use as a component of water-based adhesives	(G) Carboxylated, acrylate vinyl ester copolymer
P–99–0781	05/07/99	08/05/99	CBI	(S) Negative charge control agent	(G) Aluminate, bis[[(substituted)azo][hydroxyphenylbenzenesulfonamidato] hydrogen compound with tetramethylpiperidinamine
P–99–0782	05/07/99	08/05/99	Rikamerica Incorporated	(S) Nucleating agent for polymers	(G) Naphthalene dicarboxaminde
P–99–0783	05/10/99	08/08/99	Dystar L. P.	(S) Dyeing of wood fiber	(G) Chromate(2-), [3-hydroxy-4-[(2-hydroxy-1-naphthalenyl) azo]-7-nitro-1-substituted] [*n*-[7-hydroxy-8-[(2-hydroxy-5-nitrophenyl)azo]-1-substituted]-, salt
P–99–0784	05/10/99	08/08/99	CBI	(S) Industrial coatings	(G) Polyurethane polyol
P–99–0785	05/10/99	08/08/99	CBI	(G) Industrial coating binder component	(G) Aromatic polyester modified with an aliphatic epoxide
P–99–0786	05/10/99	08/08/99	Cytec Industries Inc.	(G) Flocculant	(G) Liquid cationic polymer
P–99–0787	05/10/99	08/08/99	CBI	(G) Viscosity index improver	(G) Alkyl methacrylate copolymer
P–99–0788	05/12/99	08/10/99	CBI	(G) Componenet of foam	(G) Polyester polyol
P–99–0789	05/12/99	08/10/99	CBI	(G) Componenet of foam	(G) Polyester polyol
P–99–0790	05/12/99	08/10/99	CBI	(G) Componenet of foam	(G) Polyester polyol
P–99–0791	05/12/99	08/10/99	CBI	(G) Componenet of foam	(G) Polyester polyol
P–99–0792	05/12/99	08/10/99	CBI	(G) Componenet of foam	(G) Polyester polyol
P–99–0793	05/12/99	08/10/99	CBI	(G) Componenet of foam	(G) Polyester polyol
P–99–0794	05/12/99	08/10/99	CBI	(G) Coating component	(G) Acrylic acid, polymer with alkyl acrylates and substituted ethene
P–99–0795	05/11/99	08/09/99	CBI	(G) Destructive use as a fuel additive	(G) Alkyl butanedioic acid, metal salt
P–99–0796	05/12/99	08/10/99	Percy International ltd.	(S) Diluent for polyurethane coatings	(S) Carbonic acid, methyl 2-[2-(1-methylethyl)-3-oxazolidinyl]ethyl ester*
P–99–0797	05/12/99	08/10/99	CBI	(G) Ink component	(G) Cycloaliphatic olefin distillate stream polymerized with substituted alkyl phenol
P–99–0798	05/12/99	08/10/99	CBI	(G) Component of foam	(G) Polyester polyol
P–99–0799	05/12/99	08/10/99	CBI	(G) Component of foam	(G) Polyester polyol
P–99–0800	05/12/99	08/10/99	CBI	(G) Component of foam	(G) Polyester polyol
P–99–0801	05/12/99	08/10/99	CBI	(G) Component of foam	(G) Polyester polyol
P–99–0802	05/12/99	08/10/99	CBI	(G) Component of foam	(G) Polyester polyol
P–99–0803	05/12/99	08/10/99	CBI	(G) Component of foam	(G) Polyester polyol
P–99–0804	05/12/99	08/10/99	H.B. Fuller Company	(S) Panel assembly adhesive; volumes are a total for all substances combined	(G) Modified polyester isocyanate prepolymer
P–99–0805	05/12/99	08/10/99	H.B. Fuller Company	(S) Panel assembly adhesive; volumes are a total for all substances combined	(G) Modified polyester isocyanate prepolymer
P–99–0806	05/12/99	08/10/99	H.B. Fuller Company	(S) Panel assembly adhesive; volumes are a total for all substances combined	(G) Modified polyester isocyanate prepolymer
P–99–0807	05/12/99	08/10/99	H.B. Fuller Company	(S) Panel assembly adhesive; volumes are a total for all substances combined	(G) Modified polyester isocyanate prepolymer
P–99–0808	05/12/99	08/10/99	E. I. Dupont de Nemours & Company, Inc.	(G) Molding and adhesive resin	(G) Ethylene interpolymer
P–99–0809	05/12/99	08/10/99	E. I. Dupont de Nemours & Company, Inc.	(G) Molding and adhesive resin	(G) Ethylene interpolymer
P–99–0810	05/12/99	08/10/99	E. I. Dupont de Nemours & Company, Inc.	(G) Molding and adhesive resin	(G) Ethylene interpolymer

I. 47 Premanufacture Notices Received From: 05/01/99 to 05/15/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0811	05/12/99	08/10/99	E. I. Dupont de Nemours & Company, Inc.	(G) Molding and adhesive resin	(G) Ethylene interpolymer
P–99–0812	05/12/99	08/10/99	E. I. Dupont de Nemours & Company, Inc.	(G) Molding and adhesive resin	(G) Ethylene interpolymer
P–99–0813	05/12/99	08/10/99	E. I. Dupont de Nemours & Company, Inc.	(G) Molding and adhesive resin	(G) Ethylene interpolymer
P–99–0814	05/13/99	09/11/99	CBI	(S) Base resin for uv/eb (ultraviolet light/electron beam) curable coatings and adhesives	(G) Poly(oxy-1,4-butanediyl), α-hydro-omega-hydroxy-polymer with a substituted alcohol and 1,1'-methylenebis[4-isocyanatocyclohexane], 2-hydroxyethyl acrylate-blocked
P–99–0815	05/13/99	09/11/99	CBI	(G) Corrosion inhibitor	(G) Complex acids/amine condensation products
P–99–0817	05/13/99	08/11/99	CBI	(G) Quality control additive	(G) Salt of an acrylic acid-acrylamide terpolymer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 2, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–15007 Filed 6–11–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51928; FRL–6079–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 1, to April 30, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51928. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

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III. Why is EPA taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on

the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME, and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 1, to April 30, 1999, consists of the PMNs and TMEs, both pending or expired, and the noticesof commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 82 Premanufacture Notices Received From: 04/01/99 to 04/30/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0651	04/01/99	06/30/99	CBI	(G) Processing additive	(G) Polymer of acrylamide and substituted acrylates
P–99–0655	04/01/99	06/30/99	CIBA Specialty Chemicals Corp.-Colors Div.	(G) Texile dye	(G) 2-anthracenesulfonic acid, 4-[[4-(acetylamino)phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-, compd. with alkanol amine-alkylene oxide polymer
P–99–0657	04/01/99	06/30/99	CBI	(S) Neutralization agent	(G) Sodium alkoxide
P–99–0661	04/01/99	06/30/99	Shell Chemical Company	(S) Paint; other coatings/ industrial applications	(G) High molecular weight epoxy functional nonionic dispersant
P–99–0684	04/02/99	07/01/99	CBI	(G) Additive, open, non-dispersive use	(G) Fluorinated polyurethane
P–99–0685	04/02/99	07/01/99	CBI	(G) Dye	(G) Sodium salt of a triazinyl monoazo dyestuff
P–99–0686	04/05/99	07/04/99	Huntsman Corporation	(S) Curing accelerator in epoxies; viscosity reducer in epoxies and diluents; plasticizer for urethanes; chain extender for coatings; raw material for urethanes w/o phosgene as reactant	(S) 1,3-dioxolan-2-one, 4-(hydroxymethyl)-*
P–99–0687	04/06/99	07/05/99	CBI	(S) For flexible industrial coatings	(G) Flexible acrylic polymer
P–99–0688	04/06/99	07/05/99	CBI	(S) For flexible industrial coatings	(G) Flexible acrylic polymer
P–99–0689	04/06/99	07/05/99	CBI	(S) For flexible industrial coatings	(G) Flexible acrylic polymer
P–99–0690	04/06/99	07/05/99	CBI	(S) For flexible industrial coatings	(G) Flexible acrylic polymer
P–99–0691	04/05/99	07/04/99	CBI	(G) Coating agent	(G) Cyclodecane ester
P–99–0692	04/05/99	07/04/99	CBI	(G) Liquid detergent additive	(G) Modified polyacrylic acid, partial sodium salt
P–99–0693	04/05/99	07/04/99	CBI	(G) Liquid detergent additive	(G) Modified polyacrylic acid, partial sodium salt
P–99–0694	04/06/99	07/05/99	CBI	(G) Lubricant	(G) Neopentyl polyols, mixed esters with caroboxylic acids
P–99–0695	04/05/99	07/04/99	CBI	(G) Additives for plastics	(G) Polyester
P–99–0696	04/06/99	07/05/99	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use	(G) Aliphatic, aromatic polyol
P–99–0697	04/06/99	07/05/99	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use	(G) Aliphatic, aromatic polyol
P–99–0698	04/06/99	07/05/99	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use	(G) Aliphatic, aromatic polyol
P–99–0699	04/06/99	07/05/99	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use	(G) Aliphatic, aromatic polyol
P–99–0700	04/06/99	07/05/99	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use	(G) Aliphatic, aromatic polyol
P–99–0701	04/06/99	07/05/99	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use	(G) Aliphatic, aromatic polyol
P–99–0702	04/06/99	07/05/99	CBI	(G) Packing	(G) Acrylate copolymer
P–99–0703	04/06/99	07/05/99	CBI	(S) Coating	(G) Oil modified waterborne polyurethane
P–99–0704	04/06/99	07/05/99	CBI	(G) Packing	(G) Acrylate copolymer

I. 82 Premanufacture Notices Received From: 04/01/99 to 04/30/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0705	04/06/99	07/05/99	CIBA Specialty Chemicals Div./Colors Div.	(S) Reactive dye for cellulose, scarlet; reactive dye for cellulose, black	(G) Naphthalenesulfonic acid, -amino-hydroxy-, coupled with diazotized 2-[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino-[[2-(sulfoox-y)ethyl]sulfonyl]benzenesulfonic acid, potassium sodium salts
P–99–0706	04/07/99	07/06/99	CBI	(S) Intermediate	(G) Alkoxy chlorosilane ester
P–99–0707	04/07/99	07/06/99	3M Company	(G) Coating for film	(G) Silicone polymer
P–99–0708	04/07/99	07/06/99	The Dow Chemical Company	(G) Epoxy resin additive; epoxy resin adhesive coating; exopy resin film adhesive	(G) Epoxy-isocyanate co-polymer
P–99–0709	04/06/99	07/05/99	CBI	(G) Component of coating with open use	(G) Water dispersible polyester
P–99–0710	04/06/99	07/05/99	CBI	(G) Component of coating with open use	(G) Water dispersible polyester
P–99–0711	04/06/99	07/05/99	CBI	(G) Component of coating with open use	(G) Water dispersible polyester
P–99–0712	04/06/99	07/05/99	CBI	(G) Component of coating with open use	(G) Water dispersible polyester
P–99–0713	04/06/99	07/05/99	CBI	(G) Component of coating with open use	(G) Water dispersible polyester
P–99–0714	04/06/99	07/05/99	CBI	(G) Component of coating with open use	(G) Water dispersible polyester
P–99–0715	04/09/99	07/08/99	Wacker Silicones Corp.	(S) Crosslinking agent for papercoating	(G) Branched hydrogen-functional polydimethysiloxane
P–99–0716	04/08/99	07/07/99	S C Johnson & Company	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–99–0717	04/08/99	07/07/99	CBI	(G) Additive, open, non-dispersive use	(G) Polyester modified polydimethylsiloxane, hydroxy functional
P–99–0718	04/09/99	07/08/99	Bedoukian Research, Inc.	(S) Agricultural pheromone for use as sole active ingredient in monitoring traps. 40 CFR 152.10(b). (not a pesticide); agricultural pheromone for use as sole active ingredient in traps to achieve pest control 40 CFR 152.25(b)(4).	(S) 5-nonanol, 4-methyl-*
P–99–0719	04/13/99	07/12/99	CBI	(S) Wood finishes & parquet laquers	(G) Copolymer of acrylic acrylates, methacrylates and acid
P–99–0720	04/13/99	07/12/99	Creanova Inc.	(S) Reactive hot melt for automobile industry	(G) Polyester of aromatic and aliphatic carboxylic acids with alkane diols.
P–99–0721	04/12/99	07/11/99	CBI	(G) Polyurethane moisture cure adhesive	(G) Polyurethane prepolymer
P–99–0722	04/12/99	07/11/99	Zeon Chemicals L.P.	(S) Pressure sensitive adhesives; hot melt adhesives; rubber compounds; road markings	(S) Cyclopentene, polymer with 1-butene, (2e)-2-butene, (2z)-2-butene, 2-methyl-1-propene and 1,3-pentadiene*
P–99–0723	04/12/99	07/11/99	Dystar L. P.	(S) Basic dye for dyeing cationic dyeable polyester fibers	(G) Phenoxazin-5-ium, 3-substituted-7-substituted, salt
P–99–0724	04/12/99	07/11/99	CBI	(G) Material for lithography	(G) Polymer of hydroxybenzaldehyde and crezol etc.
P–99–0725	04/12/99	07/11/99	Shell Chemical Company	(S) Paint other coating/industrial apps.	(G) Polymeric alkyl amine adduct for curing epoxy resins
P–99–0726	04/15/99	07/14/99	Arch Chemicals, Inc.	(S) Captive chemical intermediate for photoresist	(G) Naphthoquinone diazide sulfonate ester
P–99–0727	04/15/99	07/14/99	CBI	(S) Laminating adhesive	(G) Aromatic polyurethane
P–99–0728	04/15/99	07/14/99	CBI	(S) Laminating adhesive	(G) Aromatic polyester polyurethane
P–99–0729	04/15/99	07/14/99	CBI	(G) Dye	(G) Sodium salt of substituted nickel phthalocyanine derivative
P–99–0730	04/15/99	07/14/99	CBI	(G) Solvent; heat transfer agent	(G) Octafluorotetrahydrofuran and related chemicals
P–99–0731	04/16/99	07/15/99	CBI	(G) Copy toner industry chemical	(G) Aluminate, bis[[(substituted)azo][hydroxyphenylbenzenesulfonamidato]hydrogen compound with tetramethylpiperidinamine

I. 82 Premanufacture Notices Received From: 04/01/99 to 04/30/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0732	04/16/99	07/15/99	CIBA Specialty Chemicals Corporation	(S) A dye for engineering plastics; a dye for pes fibers; a dye for waxes, candles, and mineral oils	(G) Benzofuranone, [alkylsubstituted]-2-substituted-benzofuranylidene-[alkylsubstituted]
P–99–0733	04/21/99	07/20/99	Ashland Inc.	(G) Adhesive	(G) Modified isocyanate
P–99–0734	04/21/99	07/20/99	CBI	(S) Friction modifier and lubricity additive in industrial and automotive lubricants	(G) 9-octadecenoic acid, 12-hydroxy-, [*r*-(*z*)]-, ester with aliphatic alcohol
P–99–0735	04/21/99	07/20/99	CBI	(S) Friction modifier and lubricity additive in industrial and automotive lubricants	(G) 9-octadecenoic acid, 12-hydroxy-, [*r*-(*z*)]-, ester with aliphatic alcohol
P–99–0736	04/21/99	07/20/99	CBI	(S) Friction modifier and lubricity additive in industrial and automotive lubricants	(G) 9-octadecenoic acid, 12-hydroxy-, [*r*-(*z*)]-, ester with aliphatic alcohol
P–99–0737	04/19/99	07/18/99	CBI	(G) Cleaning additive	(G) Acrylic polymer
P–99–0738	04/21/99	07/20/99	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–99–0739	04/21/99	07/20/99	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–99–0740	04/21/99	07/20/99	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–99–0741	04/21/99	07/20/99	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–99–0742	04/21/99	07/20/99	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–99–0743	04/21/99	07/20/99	CBI	(G) Component of coating with open use	(G) Acrylic copolymer
P–99–0744	04/19/99	07/18/99	CIBA Specialty Chemicals Div./Colors Div.	(G) Textile dye	(G) 2,7-naphthalenedisulfonic acid, 3-amino-4–[[4–[[4–[[2–[2-(substituted)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-5-hydroxy-, trisodium salt
P–99–0745	04/19/99	07/18/99	Cytec Industries Inc.	(S) Catalyst in preparation of specialty olefins	(S) Phosphine, tricyclopenyl*
P–99–0746	04/19/99	07/18/99	CBI	(G) Suface size paper additive; water resistant starch	(G) Amylopectin, alkenyl, butanedioate, sodium salt
P–99–0747	04/19/99	07/18/99	CBI	(G) Suface size paper additive; water resistant starch	(G) Amylopectin, alkenyl, butanedioate, calcium salt
P–99–0748	04/19/99	07/18/99	CBI	(G) Suface size paper additive; water resistant starch	(G) Starch, alkenyl, butanedioate, sodium salt
P–99–0749	04/19/99	07/18/99	CBI	(G) Suface size paper additive; water resistant starch	(G) Starch, alkenyl, butanedioate, calcium salt
P–99–0750	04/21/99	07/20/99	CBI	(G) Coating binder	(G) Acrylic polymer
P–99–0751	04/22/99	07/21/99	CBI	(G)	(G) Polyester tetrafunctional acrylate
P–99–0752	04/19/99	07/18/99	CBI	(G) Colorant	(G) Sulfonated copper phthalocyanine, substituted with aromatic sulfonamid, sodium salt
P–99–0753	04/22/99	07/21/99	Eastman Kodak Company	(G) Contained use in imaging products	(G) Substituted heterocyclic pyrazole carboxylic acid salt
P–99–0754	04/22/99	07/21/99	Cytec Industries Inc.	(G) Catalyst	(S) 9-phosphabicyclo[3.3.1]nonane, 9,9′-(1,2-ethanediyl)bis- (9ci)*
P–99–0755	04/23/99	07/22/99	Far Research, Inc	(G) Chemical intermediate, polymer additive	(G) Alkyne
P–99–0756	04/23/99	07/22/99	CBI	(G) Open non-dispersive (coating material)	(G) Aqueous polyurethane dispersion
P–99–0757	04/26/99	07/25/99	CBI	(S) Road paving material	(S) Asphalt, reaction products with butadiene-styrene polymer*
P–99–0758	04/22/99	07/21/99	CBI	(G) Open destructive use as a gas generant for automotive inflators	(G) Gas generant
P–99–0759	04/27/99	07/26/99	CBI	(G) Non-reactive additive, vehicle, dilulent, and functional liquid for multiple purposes - contained; open, non-dispersive; and dispersive uses	(G) Modified polyether (generic chemical name for both substance)
P–99–0760	04/27/99	07/26/99	CBI	(G) Non-reactive additive, vehicle, dilulent, and functional liquid for multiple purposes - contained; open, non-dispersive; and dispersive uses	(G) Modified polyether (generic chemical name for both substance)

I. 82 Premanufacture Notices Received From: 04/01/99 to 04/30/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0761	04/28/99	07/27/99	CBI	(S) Phosphoric acid clean-up enzyme immobilization metals removal in electroplating and automotive industries	(G) 4, phosphoric methyl styrene and divinylbenzene polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 27 Notices of Commencement From: 04/01/99 to 04/30/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–95–0110	04/13/99	03/09/99	(G) Substituted pyrimidine
P–96–1641	04/12/99	04/05/99	(G) Trisubstituted naphthylene sulfonic acid salt
P–97–1000	04/06/99	03/26/99	(G) Polycycloamide
P–98–0254	04/06/99	03/19/99	(G) Trisubstituted aliphatic aldehyde
P–98–0462	04/05/99	03/24/99	(G) Alkoxylated alkynol
P–98–0539	04/12/99	04/05/99	(G) Naphthalenedisulfonic acid, 2-[substituted]-5-hydroxy-6-[substituted]phenyl]azo]-salt*
P–98–0550	04/01/99	03/18/99	(G) 2-propenoic acid, polymer with vinyl monomer, sodium salt, disodium disulfite and peroxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt initiated
P–98–0651	04/06/99	03/26/99	(G) Siloxyacrylate polymer
P–98–0806	04/06/99	03/22/99	(G) Isocyanate-functionalized polyurethane polymer
P–98–1028	04/02/99	03/08/99	(G) Cyclic peroxy ketone
P–98–1152	04/01/99	03/15/99	(S) 2-propene-1-aminium, *n,n*-dimethyl-*n*-2-propenyl-, chloride, polymer with 2-propenamide and *n,n,n*-trimethyl-2-[(1-oxo-2-propenyl)oxy]ethanaminium chloride*
P–98–1213	04/13/99	03/31/99	(G) Epoxidized polyol
P–99–0019	04/15/99	03/26/99	(G) Benzenesulfonic acid, diamino-3–[[4–2-sulfooxyethyl]sulfonyl]phenyl]azo]-5–4–[[2-(sulfooxy)ethyl]sulfonyl]-sulfonylphenyl]azo]-, sodium salt
P–99–0075	04/16/99	03/29/99	(G) Modified polyethyleneimine
P–99–0083	04/08/99	03/29/99	(G) Ammonium salt of an acidic polymer
P–99–0126	04/12/99	04/01/99	(G) Silicone polymer
P–99–0128	04/01/99	03/04/99	(G) Alkyl ammonium-salt of a high-molecular weight carboxylic acid
P–99–0133	04/13/99	03/31/99	(G) Hot melt polyurethane adhesive
P–99–0162	04/12/99	03/24/99	(G) Alkyl-crosslinked polymethylsiloxane
P–99–0186	04/05/99	03/29/99	(G) Polyester polyurethane methacrylic graft copolymer
P–99–0205	04/01/99	03/10/99	(G) Alkyd resin
P–99–0220	04/15/99	03/31/99	(G) Propietary carboxylated styrene/acrylated polymer
P–99–0222	04/06/99	03/26/99	(G) Polyester-polyether acrylate
P–99–0223	04/06/99	03/26/99	(G) Polyester acrylate
P–99–0248	04/15/99	03/24/99	(G) Polyurethane laminating adhesive
P–99–0253	04/14/99	03/24/99	(G) Acrylic polymer
P–99–0327	04/06/99	03/22/99	(G) Aliphatic acid salt

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 2, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–15008 Filed 6-11-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51927; FRL–6077–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 22, to March 31, 1999, consists of the PMNs

and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51927. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

C. *By phone.* If you need additional information about this action, you may also contact the person identified in the "FOR FURTHER INFORMATION CONTACT " section.

III. Why is EPA taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME, and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 22, to March 31, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 55 Premanufacture Notices Received From: 03/22/99 to 03/31/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0615	03/22/99	06/20/99	CBI	(G) Thermosetting resins	(G) Allyl ester oligomer; allyl ester resin
P–99–0616	03/23/99	06/21/99	CBI	(G) Cleaning agent	(G) Fatty alcohol alkoxylate
P–99–0618	03/22/99	06/20/99	CBI	(G) Processing aid	(G) Polyamine chloride salt
P–99–0619	03/23/99	06/21/99	Daicolor-Pope, Inc.	(G) The new substance is used as an additive in manufacturing water base paints and inks	(G) Water-reducible methacryl-styrene copolymer
P–99–0620	03/23/99	06/21/99	Daicolor-Pope, Inc.	(G) The new substance is used as an additive in manufacturing water base paints and inks	(G) Water-reducible acrylic-styrene copolymer
P–99–0621	03/24/99	06/22/99	H. B. Fuller Company	(G) Adhesion Promotor for Automobile windshield Adhesives	(G) Isocyanate-functionalized prepolymer
P–99–0622	03/25/99	06/23/99	CIBA Specialty Chemicals Corp. - Colors Div.	(G) Textile dye	(G) Propanenitrile, 3-[[4-[[-dichloro-2-benzothiazoly-l]azo]phenyl]ethylamino]-
P–99–0632	03/25/99	06/23/99	H. B. Fuller Company	(S) Adhesive for automobile windshield; volumes are total of all pmn substance	(G) Isocyanate-functionalized prepolymer
P–99–0633	03/25/99	06/23/99	H. B. Fuller Company	(S) Adhesive for automobile windshield; volumes are total of all pmn substance	(G) Isocyanate-functionalized prepolymer

I. 55 Premanufacture Notices Received From: 03/22/99 to 03/31/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0634	03/25/99	06/23/99	H. B. Fuller Company	(S) Adhesive for automobile windshield; volumes are total of all pmn substance	(G) Isocyanate-functionalized prepolymer
P–99–0635	03/25/99	06/23/99	H. B. Fuller Company	(S) Adhesive for automobile windshield; volumes are total of all pmn substance	(G) Isocyanate-functionalized prepolymer
P–99–0636	03/24/99	06/20/99	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–99–0637	03/24/99	06/20/99	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–99–0638	03/25/99	06/23/99	CIBA Specialty Chemicals Corp. - Colors Div.	(G) Textile dye	(G) Alanine, *N*-[5-(acetylamino)-4-[(2-chloro-6-cyano-4-nitrophenyl)azo]-2-methoxyphenyl]-*N*-(substituted alkoxy)-, methyl ester
P–99–0639	03/30/99	06/28/99	CBI	(S) Cationic dye for coloring of leather	(G) Chlorohydroxy substituted amine reaction products with leuco sulphur dye
P–99–0640	03/29/99	06/27/99	Goldschmidt Chemical Corp.	(G) Resin coating	(G) Organomodified polysiloxane resin
P–99–0641	03/29/99	06/27/99	Goldschmidt Chemical Corp.	(G) Polymer intermediate	(G) Hydroxyalkylmodified polysiloxane
P–99–0642	03/29/99	06/27/99	Goldschmidt Chemical Corp.	(G) Resin coating	(G) Organomodified polysiloxane resin
P–99–0643	03/29/99	06/27/99	Goldschmidt Chemical Corp.	(G) Defoamer	(G) Polyether modified polysiloxane
P–99–0644	03/29/99	06/27/99	CBI	(G) Automotive interior parts	(G) Polyester polyurethane polymer
P–99–0645	03/30/99	06/28/99	Shell Chemical Company	(S) Surfactant	(G) Amidoamine modified polyethylene glycol
P–99–0646	03/29/99	06/27/99	CBI	(G) Synthetic industrial lubricant for contained use	(G) Pentaerythritol, mixed esters with fatty acids, c8–9, branched.
P–99–0647	03/31/99	06/29/99	RAHN USA Corporation	(S) Uv/eb inks; uv/eb coatings; uv/eb adhesives; uv/eb fillers	(G) Polyester acrylate
P–99–0648	03/29/99	06/27/99	E. I. Dupont De Nemours & Company, Inc.	(G) Polymer intermediate	(G) Ethylene terpolymer
P–99–0649	03/29/99	06/27/99	E. I. Dupont De Nemours & Company, Inc.	(G) Polymer intermediate	(G) Ethylene terpolymer
P–99–0650	03/31/99	06/29/99	Goldschmidt Chemical Corp.	(G) Resin coating	(G) Organomodified polysiloxane resin
P–99–0652	03/24/99	06/20/99	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–99–0653	03/24/99	06/20/99	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–99–0654	03/30/99	06/28/99	CBI	(G) Open, non-dispersive (intermediate)	(G) Thiocarbonate
P–99–0656	03/30/99	06/28/99	CBI	(G) Additive, open, non-dispersive use	(G) Fluorinated polyurethane, modified with acrylate groups
P–99–0658	03/30/99	06/28/99	CBI	(G) Open, non-dispersive (intermediate)	(G) Isothiocyanate
P–99–0659	03/26/99	06/24/99	CBI	(G) Coagulant	(G) *N,N,N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy] ethanium chloride, copolymer with cationic monomer
P–99–0660	03/30/99	06/28/99	Goldschmidt Chemical Corp.	(G) Release coating agent	(G) Acrylmodified polysiloxane
P–99–0662	03/30/99	06/28/99	CBI	(G) Resin coating	(S) Rosin, fumarated, polymer with acrylic acid, bisphenol a, diethylene glycol, epichlorohydrin, pentaerythritol and 1,2,3-propanetriyl tris [12-(oxiranylmethyoxy)-9-octadecenoate]*
P–99–0663	03/26/99	06/24/99	CBI	(S) Protective colloid for aqueous latex adhesives; protective colloid for aqueous lates paints; protective colliod for architectural coatings	(S) Poly(oxy-1,2-ethanediyl), α-hydro-omega-hydroxy-, polymer with 1,3-bis(1-isocyanato-1-methylethyl)benzene*

I. 55 Premanufacture Notices Received From: 03/22/99 to 03/31/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0664	03/26/99	06/24/99	CBI	(S) Protective colloid for aqueous latex adhesives; protective colloid for aqueous lates paints; protective colliod for architectural coatings	(S) 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with 1,3-bis(1-isocyanato-1-methylethyl)benzene and α-hydro-omega-hydroxypoly (oxy-1,2-ethanediyl)*
P–99–0665	03/30/99	06/28/99	Goldschmidt Chemical Corp.	(G) Resin coating	(G) Organomodified polysiloxane resin
P–99–0666	03/30/99	06/28/99	CBI	(G) Open, non-dispersive (intermediate)	(G) Sulfonyl urea
P–99–0667	03/30/99	06/28/99	CBI	(G) Open, non-dispersive (intermediate)	(G) Triazolinone
P–99–0668	03/30/99	06/28/99	CBI	(G) Open, non-dispersive (reactant)	(G) Substituted sulfonyl isocyanate
P–99–0669	03/30/99	06/28/99	Goldschmidt Chemical Corp.	(G) Wetting agent	(G) Alcohol alkoxylated
P–99–0670	03/29/99	06/27/99	E. I. Dupont De Nemours & Co, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0671	03/29/99	06/27/99	E. I. Dupont De Nemours & Co, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0672	03/29/99	06/27/99	E. I. Dupont De Nemours & Co, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0673	03/29/99	06/27/99	E. I. Dupont De Nemours & Co, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0674	03/29/99	06/27/99	E. I. Dupont De Nemours & Co, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0675	03/29/99	06/27/99	E. I. Dupont De Nemours & Company, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0676	03/29/99	06/27/99	E. I. Dupont De Nemours & Company, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0677	03/29/99	06/27/99	E. I. Dupont De Nemours & Company, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0678	03/29/99	06/27/99	E. I. Dupont De Nemours & Company, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0679	03/29/99	06/27/99	E. I. Dupont De Nemours & Company, Inc.	(G) Polymer modifier	(G) Ethylene interpolymer
P–99–0680	03/30/99	06/27/99	CBI	(G) Resin coating	(S) 1,3-isobenzofurandione, polymer with (chloromethyl)oxirane and 4,4•-(1-methylethylidene)bis[phenol], ester with 2-oxepanone homopolymer 2-[(1-oxo-2-propenyl)oxy)ethyl ester*
P–99–0681	03/30/99	06/28/99	Shell Chemical Company	(S) Surfactant	(G) Carboxylated polyethylene glycol
P–99–0682	03/26/99	06/24/99	Allied Signal Inc.	(S) Foam blowing agent; refrigerant for commercial chillers solvent	(S) 1,1,1,3,3-pentafluoropropane*
P–99–0683	03/30/99	06/28/99	CBI	(G) Open, non-dispersive (intermediate)	(G) Triazolinone

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 Test Marketing Exemption Notice Received From: 03/22/99 to 03/31/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–99–0002	03/25/99	05/06/99	Ilford imaging	(S) Dye for aqueous inkjet ink for commercial printer	(S) 1,5-naphthalenesulfonic acid, 3–[[4–[[4,6-bis[(2-sulfoethyl)amino]-1,3,5-triazin-2-yl]amino]-2,5-dimethoxyphenyl]azo]-, tetrasodium salt*

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 22 Notice of Commencement From: 03/22/99 to 03/31/99

Case No.	Received Date	Commencement/ Import Date	Chemical
P–92–0199	03/30/99	03/02/99	(G) Polyurethane polyol
P–95–1956	03/23/99	03/01/99	(G) Oil free isophthalic polyester
P–96–0756	03/30/99	03/17/99	(G) 1-piperidinecarboxylic acid, 2-[(dichloro-hydroxy-carbomonocycle)hydrazono]-,methyl ester
P–96–1623	03/22/99	03/02/99	(G) Quaternary ammonium chloride
P–97–0560	03/22/99	02/24/99	(G) Quaternary ammonium chloride intermediate
P–97–0620	03/29/99	03/25/99	(G) Isocyanate-terminate polyether polyester polymer
P–97–0995	03/29/99	03/23/99	(G) Polybutadiene diacrylate
P–98–0388	03/25/99	03/10/99	(G) Polyester polyol
P–98–0550	04/01/99	03/18/99	(G) 2-propenoic acid, polymer with vinyl monomer, sodium salt, disodium disulfite and peroxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt initiated
P–98–0757	03/29/99	03/23/99	(G) Polyphenylene
P–99–0020	03/30/99	03/10/99	(G) Modified polymeric succinimide disperant
P–99–0030	03/30/99	03/11/99	(G) Modified polymeric succinimide dispersant
P–99–0076	03/29/99	01/23/99	(G) Acrylic polymer
P–99–0084	03/25/99	03/16/99	(G) Aryl phosphoryl chloride
P–99–0106	03/25/99	03/19/99	(G) Polycarbonate resin
P–99–0128	04/01/99	03/04/99	(G) Alkyl ammonium salt of a high-molecular weight carboxylic acid
P–99–0152	03/30/99	03/16/99	(G) Thermoplastic polyurethane resin
P–99–0154	03/23/99	02/25/99	(G) Aryl phosphonic acid salt
P–99–0174	03/25/99	03/19/99	(G) Methyl propyl ether
P–99–0176	03/29/99	03/16/99	(G) Fatty acid modified acrylate
P–99–0205	04/01/99	03/10/99	(G) Alkyd resin
P–99–0259	03/23/99	03/16/99	(G) Cycloaliphatic amine adducts

Environmental protection, Premanufacture notices.

Dated: June 2, 1999,

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–15009 Filed 6-11-99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 4, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 13, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0714

Title: Antenna Registration Number Required as Supplement to Application Forms.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit; State, Local or Tribal Government; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 516,000.

Estimated Time Per Response: 5 minutes

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 43,344 hours.

Needs and Uses: Effective July 1, 1996, the current antenna clearance procedures were replaced with a uniform registration procedure that applied to antenna structure owners. Structure owners receive an Antenna Structure Registration Number which is a unique number that identifies an antenna structure. Once obtained, this number must be used on all filings related to the antenna structure. The Commission requires this Registration Number to be submitted with any of the applications for licensing.

This clearance was required in order to allow time for the Commission to update it's application forms to include collection of Antenna Structure

Registration Number. While we have accomplished this task, we continue to accept older versions of the forms with the registration number as an attachment, merely as a customer convenience until radio services are fully implemented in ULS.

There is no change to the number of respondents or total annual burden and there are no additional costs to respondents.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14929 Filed 6–11–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Being Reviewed by the Federal Communications Commission

June 8, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 13, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0436.

Title: Equipment Authorization—Cordless Telephone Security Coding.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 200.

Estimated time per response: 1 hour.

Total Annual Burden: 200 hours.

Total Annual Cost: $2,800.

Needs and Uses: Cordless telephone security features protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dialing of calls in response to signals other than those from the owner's handset and the unintentional ringing of a cordless telephone handset. Use of the cordless telephone security features reduces the harm caused by some cordless telephones to the "911" Emergency Service Telephone System and the telephone network in general.

OMB Control Number: 3060–0387.

Title: On-Site Verificaton of Field Disturbance Sensors—Section 15.201(d).

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 200.

Estimated time per response: 18 hours.

Total Annual Burden: 3,600 hours.

Total Annual Cost: $40,000.

Needs and Uses: Commission rules permit the operation of field disturbance sensors in the low VHF region of the spectrum. In order to monitor non-licensed field disturbance sensors operating in the low VHF television bands, a unique procedure for on-site equipment testing of the systems is required to ensure suitable safeguards for the operation of these devices. Data is retained by the holder of the equipement authorized issued by the Commssion and made available only at the request of the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14980 Filed 6–11–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

June 4, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 13, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0326.

Title: Section 73.69 Antenna Monitors.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 20 AM Licensees.

Estimated Time Per Response: 1 hour per 73.69(d)(1); 2 hours per 73.69(d)(5).

Frequency of Response: On occasion.

Total Annual Burden: 30.

Total Annual Costs: None.

Needs and Uses: Section 73.69(c) requires AM station licensees with directional antennas to file an informal request to operate without required monitors with the Mass Media Bureau in Washington, DC, when conditions beyond the control of the licensee prevent the restoration of an antenna monitor to service within a 120 day period. Section 73.69(d)(1) requires that AM licensees with directional antennas request and obtain temporary authority to operate with parameters at variance with licensed values when an authorized antenna monitor is replaced pending issuance of a modified license specifying new parameters. Section 73.69(d)(5) requires AM licensees with directional antennas to submit an informal request for modification of license to the FCC within 30 days of the date of antenna monitor replacement. Station licensees must operate in accordance with station licenses. The data collected by Section 73.69(c) is used by the FCC Engineer to grant continued approval to operate without the required monitors. The data collected by Section 73.69(d)(1) is used by FCC staff to grant interim authority to licensees to operate in variance of the station license. The data collected by Section 73.69(d)(5) is used by FCC staff to issue a modified license.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14981 Filed 6–11–99; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 28, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Marlene Ensrud, McVille, North Dakota, and Alfred and Virginia Haugen, McVille, North Dakota; to acquire voting shares of McVille Financial Services, Inc., McVille, North Dakota, and thereby indirectly acquire voting shares of McVille State Bank, McVille, North Dakota.

Board of Governors of the Federal Reserve System, June 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14961 Filed 6-11-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Third Street Bancshares, Inc., Marietta, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Settlers Bank, Marietta, Ohio.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to acquire shares of United Bankshares, Inc., Philadelphia, Pennsylvania, and thereby indirectly acquire United Bank of Philadelphia, Philadelphia, Pennsylvania.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Premier Bancshares, Inc., Atlanta, Georgia; to merge with North Fulton Bancshares, Inc., Roswell, Georgia, and thereby indirectly acquire Milton National Bank, Roswell, Georgia.

Board of Governors of the Federal Reserve System, June 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14962 Filed 6-11-99; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–14–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Health Assessment of Persian Gulf War Veterans From Iowa: Follow-up on Asthma (0920–0425)—Revision—

National Center for Environmental Health (NCEH). The purpose of this proposed study is to collect additional data to validate health outcomes reported by participants in the Health Assessment of Persian Gulf War Veterans From Iowa. The original data collection consisted of a telephone survey of 3,695 military personnel who served during the time of the Persian Gulf War and listed Iowa as their home of residence. Data will be collected from subjects who participated in the telephone survey to validate the self-report of asthma. Lung function assessment, tests of airways hyperactivity, and standard respiratory health questionnaires will be administered. Review of medical records, standard physical examination, and laboratory evaluation will be conducted to validate multi systemic conditions, including chronic fatigue syndrome and fibromyalgia. The total annual burden hours are 1,394.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs)
Introductory Call	264	1	0.1666
Scheduling of Appointment	150	1	0.0833
Travel To and From Iowa	150	1	3
Consent Procedures	150	1	0.1666
Medical Questionnaire	150	1	0.25
Occupational and Exposure History	150	1	0.25
Mental Health and Social Support History	150	1	1.583
American Thoracic Society Questionnaire	150	1	0.1666
Iowa Persian Gulf Study Questions (Selected questions on Asthma)	150	1	1.583
Iowa Persian Gulf Study Questions (Selected questions on health related quality of life—SF36)	150	1	0.1666
Physical Examination	150	1	0.50
Lung Functioning Testing	150	1	1.25

Dated: June 8, 1999.

Charles Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14965 Filed 6–11–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER).

Time and Date: 4 p.m.–5 p.m. EDT, June 28, 1999.

Place: The conference call will originate from the National Center for Environmental Health (NCEH), CDC, in Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: This committee is charged with providing advice and recommendations to the Secretary, Health and Human Services (HHS); the Assistant Secretary for Health, HHS; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry, on establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies.

Background: ACERER's history began with a 1991 Memorandum of Understanding (MOU), which transferred epidemiologic studies from the Department of Energy (DOE) to HHS. Two related advisory committees were created: the Environmental Safety and Health Advisory Committee at DOE, which was later terminated, and the ACERER at HHS. Upon completion of the transferred studies, funding was available to expand the research program. In 1996, the MOU's scope was broadened to address general public health issues rather than the initial focus on analytic epidemiologic research.

Matters to be Discussed: The conference call agenda is to consolidate ACERER recommended revisions to the current (MOU) between HHS and DOE.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled to begin at 4 p.m., EDT. To participate in the conference call, please dial 1–888–422–7105 and enter conference code 690104. You will then be automatically connected to the call.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Contact Person for More Information: Michael J. Sage, Executive Secretary, ACERER, and Deputy Director, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: June 7, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–15081 Filed 6–11–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission of OMB Review; Comment Request

Title: National Survey of Child and Adolescent Well-Being (NSCAW).

OMB No.: New.

Description: Title V, Section 429A, in the amendments to Title IV–B of the Social Security Act authorizes the Secretary of Health and Human Services to conduct a national random sample study of child welfare. The NSCAW fulfills the intent of that legislation, and responds to a growing need for better understanding of the child welfare system and the children and families who come into contact with it. The survey will collect data through interviews and assessments with a national sample of 6,700 children along with their parents, caregivers (such as foster parents), teachers, and caseworkers and other agency personnel to assess the characteristics of children and families who come into contact with the child welfare system, the services they need and receive, and the

outcomes for those children and families. Information will be collected from all respondents at the time the child enters the child welfare system, with three subsequent annual follow-ups. In addition, some information will be collected from parents or caregivers and caseworkers midway between the annual collections. The information will provide national estimates on characteristics of children and families in the child welfare system, and will be used to guide child welfare policy and practice, as well as to provide new insights into the antecedents and consequences of child maltreatment.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NSCAW	19,339	2	.914	35,350

Estimate Total Annual Burden Hours: 35,350.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: ACF Desk Officer.

Dated: June 8, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–14956 Filed 6–11–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting; SAMHSA Special Emphasis Panel II

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in June.

A summary of the meeting may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Date: SAMHSA Special Emphasis Panel II.

Meeting Date: June 17–18, 1999.

Place: Bethesda Marriott 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: June 17, 1999, 8:30 a.m.–5:00 p.m.; June 18, 1999, 8:30 a.m.–Adjournment.

Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: June 1, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–15005 Filed 6–11–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meetings, SAMHSA Special Emphasis Panel I

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in July 1999.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, Section 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: July 7, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: July 7, 1999, 8:30 a.m.–adjournment.

Panel: Adolescent Treatment Models TI 99–001.

Contact: Danielle Johnson, Room 17–89, Parklawn Building, Telephone: 301–443–2683 and FAX: 301–443–3437

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: July 12–14, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: July 12–13, 1999, 8:30 a.m.–5:00 p.m.; July 14, 1999, 8:30 a.m.–adjournment.

Panel: Community Action Grants TI 99–003.

Contact: Peggy Riccio, Room 17–89, Parklawn Building, Telephone: 301–443–9996 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 16, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: July 16, 1999, 8:30 a.m.–adjournment.
Panel: Coal Miners Supplement SM 99–010.
Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: 301–443–9919 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 19–22, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: July 19–21, 1999, 8:30 a.m.–5:00 p.m.; July 22, 1999, 8:30 a.m.–adjournment.
Panel: HIV/AIDS Outreach Program TI 99–005.
Contact:
Michael J. Koscinski, Room 17–89, Parklawn Building, Telephone: 301–443–6094 and FAX: 301–443–3437 and
Brian Richmond, Room 17–89, Parklawn Building, Telephone: 301–443–6133 and FAX: 301–443–3437

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 19–22, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: July 19–21, 1999, 8:30 a.m.–5:00 p.m.; July 22, 1999, 8:30 a.m.–adjournment.
Panel: Community Treatment Programs PA 99–050.
Contact:
Danielle Johnson, Room 17–89, Parklawn Building, Telephone: 301–443–2683 and FAX: 301–443–3437 and
Stan Kusnetz, Room 17–89, Parklawn Building, Telephone: 301–443–3042 and FAX: 301–443–3437

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 19–22, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: July 19–21, 1999, 8:30 a.m.–5:00 p.m.; July 22, 1999, 8:30 a.m.–adjournment.
Panel: School Action Grants SM 99–009.
Contact:
Boris Aponte, Room 17–89, Parklawn Building, Telephone: 301–443–2290 and FAX: 301–443–3437 and
Allen Smith, Room 17–89, Parklawn Building, Telephone: 301–443–7025 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 26–30, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: July 26–29, 1999, 8:30 a.m.–5:00 p.m.; July 30, 1999, 8:30 a.m.–adjournment.
Panel: School Action Grants SM 99–009.
Contact: Peggy Riccio, Room 17–89, Parklawn Building, Telephone: 301–443–9996 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: July 26–29, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: July 26–28, 1999, 8:30 a.m.–5:00 p.m.; July 29, 1999, 8:30 a.m.–adjournment.
Panel: Targeted Capacity Expansion TI 99–002.
Contact:
Raquel Crider, Ph.D., Room 17–89, Parklawn Building, Telephone: 301–443–5063 and FAX: 301–443–3437 and
Amie Rogal, Room 17–89, Parklawn Building, Telephone: 301–443–8216 and FAX: 301–443–3437 and
Anora Sutherland, Room 17–89, Parklawn Building, Telephone: 301–443–8548 and FAX: 301–443–3437

Dated: June 1, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–15006 Filed 6–11–99; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4447–N–02]

Proposed Information Collection: Comment Request; Master Agreement for Servicer's Custodial Account

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due August 13, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Policy, Planning and Risk Management, Department of Housing & Urban Development, 451 7th Street, SW., Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 25, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information: *Title of Proposal:* (1) Request for Release of Documents; (2) ACH Debit Authorization; (3) Master Agreement for Servicer's Principal and Interest Custodial Account; (4) Master Agreement for Servicer's Escrow Custodial Account; and (5) Master Custodian Agreement.

OMB Control Number, if applicable: 2503–0017.

Description of the need for the information and proposed use: Form 11708 provides issuers access to the documents held by the document custodian. Forms 11709 and 11720 provide evidence to Ginnie Mae that the issuer has executed an agreement with a document custodian to maintain the principal, interest and escrow funds used to pay securities holders. Form 11709–A provides evidence to Ginnie Mae that the issuer has authorized a Central Paying and Transfer Agent to make Automated Clearing house debits to an issuer's central principal and interest account to disburse Ginnie Mae II payments to securities holders. Form 11715 provides the name of the document custodian institution holding the issuer's documents on behalf of Ginnie Mae.

Agency form numbers, if applicable: HUD forms 11708, 11709, 11709–A, 11715, and 11720.

Members of affected public: For-profit businesses (mortgage companies, thrifts, savings & loans, etc.).

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

HUD Forms	Respondents	Frequency of Response	Hours of response*
11708	556	1	9.5
11709	556	1	9.5
11709–A	50	1	1
11715	556	1	9.5
11720	556	1	9.5
Total Hours			39

*Respondents × .017 hours = Hours of Response.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 2, 1999.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 99–14931 Filed 6–11–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Relocation of Jeanne d'Arc Statue, Place de France, New Orleans, Louisiana

AGENCY: Office of the Secretary, Interior.

ACTION: Notice—Record of Decision.

SUMMARY: The Mayor of the City of New Orleans, Marc. H. Morial, requested that the Secretary of the Interior approve the relocation of the Place de France, including a statue of Jeanne d'Arc and two bronze cannons, now located between the International Trade Mart Building and the former Rivergate, to a new location in the Vieux Carre (the French Quarter), a National Historic Landmark District. After carefully reviewing the effects of this request, the Secretary of the Interior, pursuant to Section 705 of the Housing and Urban Development Act of 1970, Public Law 91–609 (the Act), approved this request on June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, Louisiana 70130–1142. (504) 589–3882.

SUPPLEMENTARY INFORMATION:

Background

In 1971, the City applied for grant funds to develop the park currently known as the Place de France (and also the Joan of Arc Plaza) under the Act. The Place contains a gilded bronze statue of Jeanne d'Arc and two bronze cannons manufactured during the Napoleonic Empire donated to the City by the French Government. The City constructed the Place de France in 1972 with these grant funds. Section 705 of the Act states, "[n]o open-space land involving historic or architectural purposes for which assistance has been granted under this title shall be converted to use for any other purpose without the prior approval of the Secretary of the Interior." In *Louisiana Landmarks Society, Inc.* v. *City of New Orleans,* No. 94–3880 (E.D. La. 1995), *rev'd on other grounds,* 85 F.3d 1119 (5th Cir. 1996), the Court found that Section 705 applied to the Place de France. Therefore, the approval of the Secretary must be granted prior to change of use of the Place de France.

The question of what regulatory framework must be applied to the request for approval of the Secretary of the relocation was raised by the Louisiana Landmarks Society (letter dated April 17, 1999). No regulations presently exist that implement Section 705 of the Act. In deleting regulations that existed prior to 1982, HUD explained that "[to] the extent that there are still ongoing projects remaining under these programs, they continue to be governed by the requirements of the enabling legislation under which they were funded since those statutes remain in effect, as well as the obligations under the respective grant and/or loan contracts with HUD." 47 FR 1117 (January, 1982), see also, *Louisiana Landmarks Society, Inc.* v. *City of New Orleans, Etc.* Civ. No. 94–3880 (E.D. La 1994), rev. on other grounds *Louisiana Landmarks Society, Inc.* v. *City of New Orleans, Etc.* 85 F.3d 1119 (5th Cir. 1996).

The Louisiana Landmarks Society suggests that the Secretary look to HUD's repealed regulations for guidance on what issues the Secretary must consider, prior to making his decision. However, the repealed regulations did not set forth any standard that the Secretary should follow in making his decision under the Act. Therefore, the repealed regulations provide no guidance to the Secretary.

The Louisiana Landmarks Society suggests, in the alternative, that the Secretary should look to the Land and Water Conservation Act (LWCF) rules on conversion and apply those standards in making his decision. However, the LWCF rules are not applicable in this situation. The LWCF specifically requires the Secretary to consider specific issues prior to making his determination approving or denying a conversion request for conversion of properties funded by that particular program. See, 16 U.S.C. 460l–8(f)(3) ("No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and locations * * *") However, the Act is a distinct funding statute with a unique statutory framework. Applying the recreational standards of the LWCF to this HUD urban grant program would be inappropriate.

The plain language of the Act grants the Secretary the authority to make his approval decision in his discretion. Further, this decision is informed by compliance with all other applicable laws. Specifically, the Secretary considers the effects of the relocation on the environment, the Vieux Carre Historic District, and the Place itself.

Although the Secretary has noted the local planning process, the Secretary's

decision is not based on an evaluation of the appropriateness of that process or on any other decisions made at the local level, nor does it purport to comply with the mandates or responsibilities of any other federal agency. This decision merely responds to a specific request made by the City, and is made solely in accordance with Section 705 of the Act.

In making this decision, the Secretary considered the effects of the relocation on the environment, the historic district, and the Place itself. Due to construction adjacent to the Place de France, the City, by letter dated October 29, 1998 from Mayor Marc H. Morial, requested that the Secretary approve relocation of the Place, the statue and the cannons from the current location to the Decatur Street/North Peters Street Triangle in the French Quarter.

On February 18, 1999, although not required by law, the Department of the Interior published notice of the request of the City of New Orleans for the Secretary's approval of the proposed relocation for a thirty day public comment period. 64 FR 8110. In response to a request from the public, the Department extended the public comment period by fifteen days through April 6, 1999. 64 FR 14936. Approximately 220 individuals, organizations or public bodies responded. Of these responses, 191 were from individuals who signed or drafted identical petitions.

Summary of Comments Received

Historic Preservation Issues

Several of the commentators raised questions as to the eligibility of the Place, including the Jeanne d'Arc statue, for inclusion on the National Register of Historic Places. To address this concern, the Department made a request to the Keeper of the National Register for a determination of eligibility of the Place, including the Jeanne d'Arc statute, in compliance with the National Historic Preservation Act of 1966, as amended.

On April 12, 1999, the Keeper determined that neither the Place de France, nor the Jeanne d'Arc statue, was eligible for inclusion in the National Register. The Keeper noted that the Place is associated with the special relationship between New Orleans and France, and that the statue itself "is clearly an important work of art." However, neither the relationship, nor the statue met the basic requirements for Register eligibility. The Keeper's decision addresses an issue that was not resolved in the underlying litigation. In *Louisiana Landmarks Society, Inc.* v. *City of New Orleans,* No.94–3880 (E.D. La. 1995), rev'd on other grounds, 85 F.3d 1119 (5th Cir. 1996), the court found only that the property had "historic purposes" under the Act.

The Keeper additionally noted that "the integrity of both the Place de France and the Jeanne d'Arc statue has been compromised by recent changes" and that the Place de France has been "seriously impacted by the adjacent construction."

According to the Mayor, the relocation site for the Place was identified by the staff of the City Planning Commission in consultation with the staff of the City's Arts Council. In selecting this site, the City took into consideration the following seven factors: (1) urban prominence; (2) scale/urban context; (3) visibility as a deterrent to potential vandalism; (4) pedestrian and vehicular safety; (5) suitability for designated functions; (6) stated wishes of identified interest groups; and (7) favorable comparison to the previous installation. In selecting this site, the City consulted with the French community in the City, with Consul General Mme. Lenoir-Bertrand and with Ambassador Francois Bujon de L'Estang. Additionally, the Vieux Carre Commission, with review and approval authority of all architectural and design actions in the Vieux Carre, unanimously approved the proposed relocation site at a public meeting on March 16, 1999.

Because the City's identified relocation site for the Place, including the Jeanne d'Arc statue, was within the Vieux Carre Historic District, the Department evaluated the effect of the relocation on the District. The Department consulted with the Advisory Council on Historic Preservation as required by Section 106 of the National Historic Preservation Act of 1966, as amended, and 36 CFR Part 800. The National Park Service determined that the effect of the project on the District would not be adverse. Both the Louisiana State Historic Preservation Officer (by letter dated April 28, 1999) and the Advisory Council on Historic Preservation (by letter dated May 4, 1999) concurred with this determination.

Environmental Issues

To identify and analyze potential environmental effects of the proposed action, the Department prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act. On April 30, 1999, a notice of availability of the EA was published in the **Federal Register**. 64 FR 23354. A notice of the availability of the EA was published in the local New Orleans newspaper, the Times-Picayune, beginning Tuesday, May 4, 1999 and running for three days. And the Department additionally sent notice directly to individuals who provided comments to the Secretary earlier. Interested parties were given the opportunity to submit any comments on the EA for thirty days from publication of availability of the EA. The last day for comments on the Environmental Assessment was June 1, 1999. The National Park Service received less than 10 comments on the EA.

The comments received and considered by the National Park Service included those comments received in response to the **Federal Register** notices of February 18 (the petitioners) and April 28, 1999 (the respondents). These comments or concerns fell into several general categories: (1) Cultural resources; (2) the current Place de France location; (3) the proposed Place de France location; (4) Harrah's Casino; and (5) general comments.

With reference to the cultural resources there was one comment to the April 28 **Federal Register** notice which asked about the status of the current Place de France and the Jeanne d'Arc statue for listing in the National Register. The Keeper of the National Register of Historic Places issued a formal determination that neither the current Place de France nor the statue were eligible for the National Register.

The current Place de France location drew comments from the petitioners and three respondents to the April 28 notice in the **Federal Register**. The petitioners expressed a preference for the current Place de France because of the contributions of Samuel Wilson, a New Orleans architect and preservationist. The Keeper of the National Register said that notwithstanding the importance of Mr. Wilson, properties less than fifty years old, which this property is, must be shown to be exceptionally important to be eligible for listing in the National Register. The Place de France does not meet this test. Three respondents to the April 28 notice opined that the current Place de France is a better location to commemorate international trade and commerce. However, no supporting data was presented to support this position and the National Park Service found this position unpersuasive.

The proposed Place de France generated the most comments. Five respondents to the April 28 notice in the **Federal Register** found the proposed location in the Vieux Carre to be more aesthetically pleasing for display of the statue. One respondent said that there were multiple locations in the Vieux Carre, including the proposed location, that would be preferable to the current

location. Six respondents found the Vieux Carre preferable to commemorate the French heritage of New Orleans. Additionally in a letter prior to the February 18 notice in the **Federal Register** the French Ambassador expressed the same opinion. One respondent was concerned about the possible deleterious effects of air pollution on the statue. The National Park Service has no substantive information indicating that the Vieux Carre location would be more damaging than the current location. It was also noted that New Orleans currently meets all National Ambient Air Quality Standards. Finally, the petitioners and six respondents raised concerns about safety at the proposed location. However, no evidence was presented that suggested that the relocated Place would attract large crowds of visitors, causing significant impacts to the new location. Furthermore, the City has committed to taking appropriate safety measures on those days that large crowds may be anticipated, such as Bastille Day. Thus, the National Park Service found these concerns to be adequately addressed if large crowds of visitors were ever to occur.

Harrah's Casino was also a topic that generated comment by both the petitioners and four respondents. These parties expressed dissatisfaction with the location of the casino and the role it has played in the proposed relocation of the Place de France. The National Park Service properly noted that the role of the casino on decisions of the city of New Orleans is not an issue before the Department of the Interior. Likewise the location of the casino is not a consideration of the Department of the Interior. We do note, however, that the casino has agreed to pay all costs associated with relocation of the Place de France, the statue and cannon to the Vieux Carre.

Finally, there were numerous comments that are difficult to categorize. First, the petitioners and two respondents expressed concern that the current Place de France had already been badly damaged during the demolition of the Rivergate complex. The National Park Service acknowledged the fact that the site was partially demolished when the city of New Orleans attempted to move the statue in 1994 but noted that the cannon and were not damaged. Also the National Park Service pointed out that nothing was damaged that cannot be replaced or redesigned at the Vieux Carre location. Second the petitioners and three respondents challenged the adequacy of the City's rationale to relocate Place de France. The National Park Service correctly pointed out that the only question before the Department of the Interior is the proposed move, not the rationale for the move. Third, there were questions about the regulatory framework under which the Secretary would make a decision on the City's request. The National Park Service's response was similar to the discussion on this same issue provided earlier in this Record of Decision. Lastly, nine respondents asked about reviews and approvals by various local agencies. The National Park Service referenced the respondents to the site selection process employed by the New Orleans Planning Commission and Arts Council and the approval of the Vieux Carre Commission.

The National Park Service issued a Finding of No Significant Impact (FONSI) on the proposed relocation on June 3, 1999, finding that the Secretary's approval of the request of the City does not constitute a major Federal action significantly affecting the human environment.

Dated: June 4, 1999.

Robert J. Lamb,

Acting Assistant Secretary for Policy Management and Budget.

[FR Doc. 99–15018 Filed 6–11–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Intent To Clarify the Role of Habitat in Endangered Species Conservation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We (the U.S. Fish and Wildlife Service) announce our intent to develop policy or guidance and/or to revise regulations, if necessary, to clarify the role of habitat in endangered species conservation. Identification of the habitat needs of listed species and the conservation of such habitat is the key to recovering endangered and threatened species. We will examine all the tools available to identify and conserve the habitat of listed and threatened species including critical habitat determinations (prudency and determinability) and designations under section 4 of the Endangered Species Act of 1973, as amended (Act). We intend to streamline the processes involved in completing critical habitat determinations and designations. Our goal is to achieve the greatest conservation benefit in the most cost effective manner for imperilled species. We solicit public comments, and we will incorporate comments into the new proposed guidance as appropriate.

DATES: We will accept comments on this guidance until August 13, 1999.

ADDRESSES: Address comments regarding this guidance to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ–420, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Importance of Habitat for Species Conservation

The process of habitat protection through the designation of critical habitat is properly examined in the broad context of the importance of habitat in endangered and threatened species conservation. Virtually every study of the conservation of imperilled species considers habitat as a major component in a species' conservation and eventual recovery. The very purpose of the Act is "to provide a means whereby the ecosystems upon which endangered species depend may be conserved." The National Research Council recognized the importance of habitat in its 1995 book, Science and the Endangered Species Act: "habitat protection is a prerequisite for conservation of biological diversity and protection of endangered and threatened species." The National Research Council further noted: "the Endangered Species Act, in emphasizing habitat, reflects the current scientific understanding of the crucial role that habitat plays for species' (National Research Council 1995).

Habitat considerations are a key part of virtually every process called for in the Act. We describe the habitat needs of species, and threats to habitat, in detail in all listing rules. In fact, Factor A of the "Summary of Factors Affecting the Species" section of all proposed and final listing rules discusses "The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range" of the species. For most species, the threats to habitat are the most important consideration when determining if a species qualifies for protection under the Act. Habitat considerations are prominent in all recovery plans, and recovery plans include maps and descriptions of the

habitat needed to recover the species. The section 7 consultation process addresses the dynamic and seasonal characteristics of the habitat needs of listed species. New information concerning species' habitat use becomes available throughout the listing, consultation, habitat conservation planning, and recovery processes. It is essential that we consider current and complete habitat information in these processes. The analysis of habitat alteration and/or destruction is the cornerstone of the Act's section 7 consultation process and the section 10 habitat conservation planning process; this is true for species that have designated critical habitat, as well as for those species that do not. Habitat is identified, communicated to affected parties, protected, and conserved through all phases of applying the Act's protections. The conservation and recovery of imperilled species is dependent upon habitat protection and restoration. When species are listed as threatened or endangered, the habitats or ecosystems upon which they depend are recognized. Conservation and recovery actions are directed not only to the imperilled species, but to the species' habitat, as well.

Role of Critical Habitat in the Act

Critical habitat is defined in the Act as—(i) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Critical habitat, if prudent and determinable, must be proposed and designated by regulation and thus codified in the Code of Federal Regulations (CFR).

A designation of critical habitat is not prudent under the current regulations when one or both of the following situations exist: (i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). Critical habitat is not determinable when one or both of the following situations exist: (i) information sufficient to perform required analyses of the impacts of the designation is lacking, or (ii) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

Once designated, critical habitat has only one regulatory impact: under section 7(a)(2), Federal agencies must, in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. As discussed below, section 7(a)(2) likewise prohibits agency actions that are likely to jeopardize the continued existence of any listed species. Section 7(b)–(d) of the Act and 50 CFR part 402 describe in detail the process by which agencies consult with us regarding possible jeopardy to listed species and destruction or adverse modification of critical habitat. According to our interpretation of the regulations, by definition, the adverse modification of critical habitat consultation standard is nearly identical to the jeopardy consultation standard.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have long believed that, in most circumstances, the designation of "official" critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) discussed the practical role of critical habitat designation and posed the question, "can the jeopardy standard alone adequately protect species?" Several examples were provided and the conclusion was very clearly stated, "it is likely that, for listed species endemic to a small area, critical habitat is not often necessary." Because there are so many varying opinions, the Service is seeking input on various aspects of critical habitat.

Currently, critical habitat is linked only to the section 7 process and is only enforceable when a Federal nexus (such as Clean Water Act permits, Federal Housing Authority clearances and funding, Environmental Protection Agency authorities, etc.) sufficient to trigger a section 7 consultation exists. Many activities carried out on private, Tribal, State, and Federal lands have Federal involvement, and would be subject to section 7. However, on private land, where no Federal involvement exists, a critical habitat designation has no regulatory impact.

Moreover, we have long believed that separate protection of critical habitat is duplicative for most species. Section 7 prohibits Federal agencies from taking actions that jeopardize the continued existence of a listed species or actions that adversely modify critical habitat. To jeopardize the continued existence of a species is to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of species. Destruction or adverse modification is a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. For almost all species, the adverse modification and jeopardy standards are the same., resulting in critical habitat being an expensive regulatory process that duplicates the protection already provided by the jeopardy standard. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 113 species or 9% of the 1179 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1179 listed species through the conservation mechanisms discussed above, such as listing, section 7 consultation, and the recovery planning process. For most species, the duplication between the jeopardy standard and the adverse modification standard exists because unoccupied habitat is not involved. When unoccupied habitat is designated as critical habitat, the duplication ceases because consultation under section 7 of the Act must then be completed on an area not previously included in the analysis. The Service is interested in your opinion; do the unoccupied habitat aspects of critical habitat designation provide significant conservation benefit for imperilled species?

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with citizen lawsuits for our failure to complete the process described above, and we have been challenged on numerous "not prudent" critical habitat determinations (meaning that the designation of critical habitat was determined to be not prudent for that species).

We believe that the present system for determining and designating critical habitat is not working. Many conservation organizations, affected landowners, and industry groups also recognize that the present system is not working. Perception of the value and

purpose of critical habitat varies widely. Many environmental groups view critical habitat as providing additional regulatory protection, hence the large number of lawsuits to prompt critical habitat designations. Some industry groups view critical habitat as the only way economic impacts are addressed in the conservation of imperilled species.

The consequence of the critical habitat litigation activity is that we are utilizing much of our very limited listing program resources in litigation support defending active lawsuits and Notices of Intent (NOIs) to sue relative to critical habitat, and complying with the growing number of adverse court orders. In the meantime, our efforts to respond to listing petitions, to propose listing of critically imperilled species, and to make final listing determinations on existing proposals are being significantly delayed. There are species not yet listed in Regions or geographic locations where litigation support has and will continue to consume much of our funding resources. For example in Hawaii, a single court order remanded 245 "not prudent" critical habitat determinations. There are other species in Hawaii that are literally facing extinction while precious resources are being depleted on critical habitat litigation support and the reexaminations of critical habitat prudency determinations for species already listed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

Economic analysis done for critical habitat designation can be expensive, in the past, total costs for such analyses for critical habitat designations have cost as much as $500,000, against a total listing budget of a few million dollars. The National Research Council's research committee "recognizes that because of public concern over economic consequences, the designation of critical habitat is often controversial and arduous, delaying or preventing the protection it was intended to afford" (National Research Council 1995).

An additional costly consequence (both in terms of staff time and funding) of designating critical habitat is where designation triggers compliance with the National Environmental Policy Act (NEPA). The circuit courts are split on the issue of whether critical habitat designation triggers NEPA. Within the jurisdiction of the Court of Appeals for the Tenth Circuit (the states of NM, CO, NE, UT, WY, OK, and KS) NEPA is required (see *Catron County Board of Commissioners* v. *USFWS*, 75 F.3d 1429 (10th Cir. 1996)). The Ninth Circuit does not view the designation of critical habitat as a major Federal action under NEPA (*Douglas County* v. *Babbitt*, 48 F 3d 1495, 1507–08, (9th Cir. 1995), *cert. denied*).

Our Current Policy on Setting Priorities to Maximize Conservation Benefit

Because we do not have unlimited resources, we believe we must set priorities in order to use our funds in the manner most beneficial to imperilled species. In the past we have established priorities for the use of funds through our Listing Priority Guidance (LPG). The FY 1998–1999 Listing Priority Guidance consists of three tiers or categories of listing activities. Emergency listing actions are the highest priority (Tier 1); followed by Tier 2, which comprises final rules, proposed rules, and petition findings; and critical habitat actions constitute Tier 3. This system and its predecessor LPGs have allowed us to manage our listing program for maximum conservation benefit following the FY 1995–1996 moratorium and funding rescission that created large backlogs. When the moratorium was lifted on April 26, 1996, 243 proposed species awaited final determinations. Currently, there are only two proposed species that were included in that very large backlog. Our own system for prioritizing listing actions has enabled us to provide the full protection of the Act to more than 250 species since April 26, 1996. This was possible by foregoing low priority listing actions such as critical habitat designations. Now however, we are being faced with numerous court orders that require us to complete critical habitat designations and reconsider not prudent findings for listed species.

Because of our reducing the listing backlogs, the LPG is evolving. The proposed FY 1999/2000 LPG was published in the **Federal Register** on May 20, 1999. That guidance no longer prioritizes critical habitat actions with other section 4 actions. Critical habitat actions are funded separately (funding still is allocated through the listing subactivity), and critical habitat actions will be prioritized on an annual basis. For example, in FY 1999, 17% of the listing subactivity funds were allocated for critical habitat actions. Court ordered critical habitat actions and Regional priorities received funding for FY 1999 activity. The LPG will continue to evolve as we continue to balance our national listing program.

Proposals for Public Comment

The Service intends to reexamine our existing approach to designation of critical habitat. The legal debate over critical habitat prudency determinations involves two key areas of the "no net benefit" argument to attain a not prudent critical habitat determination—(a) the contention that the adverse modification standard for the same species with designated critical habitat is equivalent to the jeopardy standard for species without designated critical habitat; and (b) the treatment of unoccupied habitat in prudency determinations. We particularly solicit comments relative to when the designation of critical habitat will provide additional benefit (beyond that of listing) and what considerations should be included in our prudency determinations.

In order to reduce the costs of accomplishing critical habitat actions, we are considering developing a new streamlined and cost-effective process for critical habitat determinations and designation. As mentioned previously in this notice, the current designation process is inefficient, and should be redesigned to be more cost-effective and in line with the amount of conservation benefit provided to the species. Under the current process designating critical habitat for multiple species could devastate the listing program, and result in scarce funds being spent on activities that have a lower benefit to species relative to other activities .

We believe that describing the areas proposed for designation as critical habitat needs to be a much less labor intensive process. We suggest that suitable habitat is best described in broader terms. We encourage views on whether pinpointing small areas of species occurrence and drawing precise small circles around habitat on maps is the methodology we should be employing to identify and describe critical habitat, or whether instead more general habitat location delineations and broad descriptions of habitat types are the most efficient descriptors to be used in the designation of critical habitat. Very specific lines drawn on a map may not be the most efficient way to identify areas that may be important in the recovery of rare species. We would encourage commentators to discuss better ways to describe habitat and species occurrence. We would suggest that commentators consider how a more descriptive approach might be employed, rather than a map-based approach. Descriptions might be linked to habitat types, elevation, and riparian areas, for example. We would also be interested in comments relating to how the Service could, at the stage of developing a recovery plan, when much more may be known about the needs of

the species than at the time of critical habitat designation, be more specific about the extent of habitat protection necessary for recovery.

We also intend to redesign other aspects of the process for designating critical habitat. We encourage comments on how economic analyses can evolve into a streamlined and cost-effective process. We also solicit comments on how NEPA compliance, when required, may be conducted in a simple and efficient manner. Completing programmatic assessments and analyses, for example, may be an efficiency mechanism. Perhaps multispecies/geographic species groupings to reduce and eliminate administrative redundancy should be more common. We request comments and suggestions relative to how we can effectively streamline the process and specifically whether and how our existing regulations might or should be changed to accomplish this. We also request comments and suggestions on possible legislative corrections that might improve the effectiveness and efficiency of the critical habitat process.

Public Comments Solicited

We intend that any actions resulting from this notice and subsequent proposed guidance be as accurate and as effective as possible. Therefore, we solicit any suggestions from the public, concerned governmental agencies, the scientific community, environmental groups, industry, commercial trade entities, or any other interested party concerning any aspect of this notice. We will take into consideration any comments and additional information received and will announce proposed guidance after the close of the public comment period and as promptly as possible after all comments have been reviewed and analyzed. We will make available for your review and comment any critical habitat guidance, policy, or regulatory changes that are developed.

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

References Cited

National Research Council. 1995. Science and the Endangered Species Act. National Academy Press, Washington, D.C. 271 pp.

Sidle, J.G. 1987. Critical Habitat Designation: Is it Prudent? Environmental Management 11(4):429–437.

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: May 3, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–15080 Filed 6–11–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Chiricahua National Monument, Arizona

AGENCY: National Park Service.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Chiricahua National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Chiricahua National Monument. This statement will be approved by the Regional Director, Intermountain Region. The plan is needed to guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following:

To clearly describe specific resource conditions and visitor experiences in various management units throughout the park and

To identify the kinds of management, use, and development that will be appropriate to achieving and maintaining those conditions.

Ongoing scoping was started with an Environmental Assessment process in 1992. A list of topics considered is available upon request from the park. Comments on this notice must be received by July 10, 1999.

FOR FURTHER INFORMATION CONTACT: Superintendent Alan Cox Chiricahua National Monument, Dos Cabezas Rt., Box 6500 Willcox, AZ 85643–9737 (520) 824–3560.

Dated: June 7, 1999.

Ron Everhart,

Regional Director, Intermountain Region.

[FR Doc. 99–14969 Filed 6–11–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Fort Bowie National Historic Site, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Fort Bowie National Historic Site.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Fort Bowie National Historic Site. This statement will be approved by the Regional Director, Intermountain Region.

The plan is needed to guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources.

Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following questions:

To clearly describe specific resource conditions and visitor experiences in various management units throughout the park and

To identify the kinds of management, use, and development that will be appropriate to achieving and maintaining those conditions.

Ongoing scoping was started with an Environmental Assessment process in 1992. A list of topics considered is available upon request from the park. Comments on this notice must be received by July 10, 1999.

FOR FURTHER INFORMATION: Contact Superintendent Alan Cox Fort Bowie National Historic Site, Dos Cabezas Rt., Box 6500 Willcox, AZ 85643–9737 (520) 824–3560.

Dated: June 7, 1999.

Ron Everhart,

Regional Director, Intermountain Region.

[FR Doc. 99–14970 Filed 6–11–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 5, 1999.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 29, 1999.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Fairbanks North Star Borough-Census Area

F.E. Company Dredge No. 2, Fairbanks Creek, Fairbanks vicinity, 99000763

ARKANSAS

Pulaski County

Hopkins—Grace House, 1310 Summit, Little Rock, 99000764

CALIFORNIA

Los Angeles County

Los Altos Apartments, 4121 Wilshire Blvd., Los Angeles, 99000765

COLORADO

Denver County

Rocky Mountain Bank Note Company Building, 1080 Delaware St., Denver, 99000766

FLORIDA

Indian River County

Indian River County Courthouse, 2145 14th Ave., Vero Beach, 99000768

Orange County

Polasek, Albin, House and Studio, 633 Osceola Ave., Winter Park, 99000767

MAINE

Cumberland County

Prince, Cushing and Hannah, House, 189 Greely Rd., Yarmouth vicinity, 99000772

Hancock County

Church of Our Father, ME 3, 0.5 mi. No of Crooked Rd., Hulls Cove, 99000770

Lincoln County

Jefferson Town House, Jct. of ME 126 amd ME 213, Jefferson vicinity, 99000771

York County

Libby's Colonial Tea Room, Jct. of US 1 and Harrisecket Rd., Wells vicinity, 99000769

St. Peter's By-The-Sea Protestant Episcopal Church, 529 Shore Rd., Cape Neddick vicinity, 99000773

Minnesota

Becker County

Graystone Hotel, 119 Pioneer St., Detroit Lakes, 99000774

Montana

Flathead County

Cattle Queen Snowshoe Cabin (Glacier National Park MPS), McDonald Subdistrict, West Glacier vicinity, 99000778

Coal Creek Patrol Cabin (Glacier National Park MPS), US 2, West Glacier vicinity, 99000777

Glacier County

Kootenai Creek Snowshoe Cabin (Glacier National Park MPS), Flattop Mtn., along Kootenai Creek, St. Mary vicinity, 99000775

Sun Camp Fireguard Cabin (Glacier National Park MPS), Going-to-the-Sun Rd., St. Mary vicinity, 99000776

North Carolina

Cumberland County

Fayetteville Downtown Historic District, Roughly along Hay, Person, Green, Gillespie, Bow, Old, W. Russell and Cool Spring Sts., Fayetteville, 99000779

Oregon

Linn County

Aegerter, David and Maggie, Barn (Barns of Linn County, Oregon MPS), 41915 Ridge Dr., Scio vicinity, 99000780

Cochran, William, Barn (Barns of Linn County, Oregon MPS), 28485 Brownsville Rd., Brownsville vicinity, 99000782

Macpherson, Hector and Margaret, Barn (Barns of Linn County, Oregon MPS), 29780 Church Dr., Albany vicinity, 99000781

Milde, Gottlieb and Della, Barn (Barns of Linn County, Oregon MPS), 36898 Northern Dr., Brownsville vicinity, 99000785

Ryan, Michael and Mary, Barn (Barns of Linn County, Oregon MPS), 40363 Huntley Rd., Scio vicinity, 99000784

Smith, James Alexander, and Elmarion, Barn and Lame—Smith House (Barns of Linn County, Oregon MPS), 28020 Powerline Rd., Halsey vicinity, 99000783

Tennessee

Hamilton County

Stone Fort Land Company Historic District, 10th, Newby, E. 11th and Market Sts., Chattanooga, 99000786

West Virginia

Monongalia County

Hackney House, 89 Kingwood St., Morgantown, 99000789

Preston County

Virginia Furnace, WV 26, along Muddy Creek, Albright vicinity, 99000790

Wisconsin

Marathon County

Wright, Duey and Julia, House, 904 Grand Ave., Wausau, 99000787

Rock County

Fulton Street Historic District, Along Fulton St., roughly bounded by Main ans Albion Sts.; 11–21 Swift St., Edgerton, 99000788

[FR Doc. 99–15017 Filed 6–11–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss key issues in addressing CALFED critical issues, focusing on Finance, Governance and Restoration Coordination. There will also be a site tour of the southern California Water Reclamation facilities and a tentatively scheduled evening reception. This meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council will tour southern California Water Reclamation facilities on Thursday, July 8, 1999. The tour will run from 1:30 p.m.–5 p.m. leaving from and returning to the Town and Country Resort and Hotel. The evening reception, if held, will be on July 8, 1999 at the Town and Country Resort and Hotel. BDAC will meet from 8:30 a.m.–5 p.m. on Friday,

July 9, 1999 at the Town and Country Resort and Hotel.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Town and Country Resort and Hotel, 500 Hotel Circle North, San Diego, CA 92108 (619) 291–7131.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFRED to provide policy direction and oversight for the process

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFRED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFRED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFRED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 8, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–14967 Filed 6–11–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1235]

RIN 1121–ZB69

National Institute of Justice Announcement of the Sixth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the sixth meeting of the National Commission on the Future of DNA Evidence.

SUPPLEMENTARY INFORMATION: The sixth meeting of the National Commission on the Future of DNA Evidence will take place beginning on Sunday, July 25, 1999, 1:00 PM–5:00 PM Eastern Daylight Time and will continue on Monday, July 26, 1999, 9:00 AM–5:00 PM, Eastern Daylight Time. The meeting will take place at the Ritz-Carlton, 15 Arlington Street, Boston, Massachusetts 02117, Phone 617–536–5700.

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director (202) 616–8123.

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the Crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–14993 Filed 6–11–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

International Child Labor Program; Solicitation for Grant Application: Develop and Publicize Factual Information About Child Labor, Its Use and Solutions to the Problem of Child Labor Worldwide

AGENCY: Bureau of International Labor Affairs (ILAB) International Child Labor Program.

ACTION: Notice.

SUMMARY: The purpose of this SGA is to award grants to one or more private, nonprofit organizations for the purpose of developing and publicizing factual information about the use of child labor, creating innovative partnerships to address child labor, and organizing a public dialogue about best-practice

solutions to the problem of child labor worldwide. The grant or grants will be administered by the International Child Labor Program (ICLP) of the Bureau of International Labor Affairs (ILAB).

DATES: The closing date for receipt of a completed application in response to the SGA will be no later than 4:45 p.m. on July 15, 1999.

FOR COMPLETE APPLICATION SEND WRITTEN REQUEST TO: Lisa Harvey, Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone Number (202) 219–9335.

Signed at Washington, DC this 8th day of June, 1999.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 99–14963 Filed 6–11–99; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Unemployment Insurance Benefit Accuracy Measurement Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. This notice by the Employment and Training Administration is to solicit comments concerning the proposed extension of the collection of the Unemployment Insurance Benefit Accuracy Measurement program data (OMB control number 1205–0245) now authorized through 9/30/99. A copy of the proposed changes to the information collection Handbook (ETA Handbook 395) can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before August 13, 1999.

ADDRESSES: Comments may be submitted to: Grace A. Kilbane, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, N.W., Washington, DC 20210, 202–219–7831, ext. 167 (this is not a toll-free number); FAX, 202–219–8506; Internet: <gkilbane@doleta.gov>.

FOR FURTHER INFORMATION CONTACT: William N. Coyne, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4522, 200 Constitution Avenue, N.W., Washington, DC 20210, 202–219–5223, ext. 142 (this is not a toll-free number); FAX, 202–219–8506; Internet: <wcoyne@doleta.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all State Employment Security Agencies (SESAs) except in the U.S. Virgin Islands have been required by regulation at 20 CFR Part 602 to operate Benefit Accuracy Measurement (BAM) programs to assess the accuracy of their Unemployment Insurance (UI) benefit payments. The Department's statutory authority for those regulations is found at Sections 303(a)(1), 303(a)(6), and 303(b) of the Social Security Act. The BAM programs operate as follows: each State draws a weekly sample of payments made for intrastate claims made in the State UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-Service Members programs. States are required to draw minimum annual samples. The ten States with the smallest claims loads must draw at least 360 payments; all other States must draw at least 480, although several voluntarily draw longer samples. In calendar years 1998, annual samples averaged slightly over 500 cases per State, and ranged from 360 to 1730. A specially trained staff of State investigators reviews agency records and contacts the claimant, employers, and third parties to verify all the information pertinent to the benefit amount for the sampled week. Although contacts originally had to be made in person, since July 1993, investigators have been able to use a mix of in-person, mail, and telephone/fax contacts to verify information. Using the verified information, they determined what the benefit payment should have been to accord fully with State law and policy. Any differences between the actual and reconstructed payment are underpayment or overpayment errors. States code the results of each case investigated to a database on a computer provided by the Department of Labor. Data on each case include the type and causes of, and parties responsible for, any error, and a variety of demographic, labor market, and UI program information considered critical to developing program improvements and useful to the States and the Department for other analytical purposes. The States and the Department of Labor use BAM information to estimate the extent of mispayments, to monitor program quality, guide possible future program improvements, inform system stakeholders, and perform various policy analyses. Because of the extent of the BAM data record and its representatives of the population of payments, the Department uses the data extensively to produce information on State program operations (e.g., how many claims are filed electronically, how many claimants receive eligibility reviews) and characteristics of the claimant population. It is an invaluable resource for producing measures such as the percent of wages which UI benefits replace for those actually receiving a benefit. The program costs approximately $22 million each year to operate.

The typical investigation requires about 7.5 hours per case and in total the allocated 23,760 cases are estimated to impose a paperwork burden of 75,319 hours. The program is operated under OMB control number 1205–0245; approval under this number expires 9/30/99.

II. Review Focus

The Department of Labor is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

This is a request for OMB approval (under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) to extend an existing collection of information previously approved and assigned OMB Control No. 1205–0245. Burden hours would remain the same at 75,319.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Benefit Accuracy Measurement Program.

OMB Number: 1205–0245.

Frequency: Weekly.

Recordkeeping: States are required to follow their State laws regarding public record retention in retaining BAM records.

Affected Public: Individuals; businesses; other for-profit/not-for-profit institutions; farms; Federal, State, Local, or Tribal Governments.

Number of Respondents: 52.

Estimated Time Per Response: 3.17 hours.

Total Estimated Cost: $22 million.

Total Burden Hours: 75,319 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 7, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–14964 Filed 6–11–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [99–081]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee.

DATES: Tuesday, July 13, 1999, 9:00 a.m. to 5:00 p.m.; and Wednesday, July 14, 1999, 8:00 a.m. to 12:00 noon.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aero-Space Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aero-Space Technology Overview
—National Transonic Facility Productivity Report
—Role of the ASTAC in the Government Performance and Results Act
—Subcommittee Reports
—FAA/NASA Partnership Agreement
—FAA/NASA Executive Committee Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: June 2, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–15035 Filed 6–11–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service Performance Board Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate, and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service (SES). The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES performance awards, ranks and bonuses, and recertification. Section 4314 (c) (4) requires that notice of appointment of Performance Review Board Members be published in the **Federal Register**. The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Stephen E. Crable, Patricia Cornwell-Johnson, Solly Thomas, and Gloria J. Joseph, from May 20, 1999 to May 20, 2001.

FOR FURTHER INFORMATION CONTACT: Connie M. Harshaw, Assistant Executive Director (Management), National Capital Planning Commission, 801 Pennsylvania Avenue, N.W., Suite 301, Washington, DC 20576 (202) 482–7200.

Dated: June 8, 1999.

Sandra H. Shapiro,

General Counsel, National Capital Planning Commission

[FR Doc. 99–15026 Filed 6–11–99; 8:45 am]

BILLING CODE 7520–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (Dance Section) to the National Council on the Arts will be held on June 18, 1999. The panel will meet from 3:00 p.m. to 4:00 p.m. via teleconference from room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: June 10, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99–15134 Filed 6–11–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Company; Toledo Edison Company; Ohio Edison Company; OES Nuclear, Inc.; Pennsylvania Power Company; Duquesne Light Company and Firstenergy Nuclear Operating Company; Perry Nuclear Power Plant, Unit 1; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Issuance of Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of certain interests in Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit 1 (PNPP) currently held by the Cleveland Electric Illuminating Company (CEI), Toledo Edison Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Duquesne Light Company (DLC), as owners of PNPP, and FirstEnergy Nuclear Operating Company (FENOC) as the licensed operator of PNPP. The proposed action would consent to the transfer of DLC's ownership interests in PNPP to CEI. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application filed by CEI, DLC, and FENOC, the proposed transfer is being undertaken pursuant to a DLC restructuring plan and agreements to exchange generating assets between DLC and FirstEnergy Corporation, the parent of CEI and FENOC and other co-licensees of Perry. The amendment requested in the application would delete DLC as an owner of PNPP to reflect the transfer. No physical changes to the PNPP facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By July 6, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Mary E. O'Reilly, counsel for CEI, at FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308 (tel: 303–384–5224; fax: 330–384–3875; e-mail: *meoreilly@firstenergycorp.com*), Roy P. Lessy, counsel for CEI, at Akin, Gump, Strauss, Hauer, & Feld, LLP, 1333 New Hampshire Ave., N.W., Suite 400, Washington, DC 20036 (tel: 202–887–4500; fax: 202–887–4288; e-mail: *rlessy@akingump.com*), Larry R. Crayne, counsel for DLC, at Duquesne Light Company, 411 Seventh Ave., Pittsburgh, PA 15219 (tel: 412–293–6049; fax: 412–393–6645; e-mail: *larry r crayne@dlc.dqe.com*), and John E. Matthews, counsel for DLC, at Morgan, Lewis & Bockius, LLP, 1800 M Street, N.W., Washington, DC 20036 (tel: 202–467–7524; fax: 202–467–7176; e-mail: *matt7524@mlb.com*); and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by July 14, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated May 5, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland this 8th day of June 1999.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15022 Filed 6–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Company, The Toledo Edison Company, and Beaver Valley Power Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Issuance of Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of the interests held by Duquesne Light Company (DLC) in Facility Operating Licenses Nos. DPR–66 and NPF–73 for the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2), located in Beaver County, Pennsylvania, as part owner and exclusive licensed operator of BVPS–1 and BVPS–2. The Commission is also considering issuance of conforming amendments to the licenses under 10 CFR 50.90.

According to an application for approval filed by DLC and FirstEnergy Nuclear Operating Company (FENOC), Pennsylvania Power Company (Penn Power), which currently owns 17.5% of BVPS–1, is to acquire DLC's 47.5 % ownership interest, resulting in 65% ownership, in BVPS–1, and DLC's 13.74% ownership interest in BVPS–2 pursuant to a DLC restructuring plan and agreements between DLC and FirstEnergy Corporation of which FENOC and Penn Power are subsidiaries. Additionally, FENOC would become the exclusive licensed operator responsible for the operation, maintenance, and eventual decommissioning of BVPS–1 and BVPS–2. No physical changes to the BVPS–1 and BVPS–2 facility or operational changes are being proposed in the application.

The proposed conforming amendments would replace references to DLC in the licenses with references to Penn Power and FENOC, as appropriate, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By July 6, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Mary E. O'Reilly, Counsel for FENOC, at FirstEnergy, 76 South Main Street, Akron, OH 44308 (tel: 330–384–5224; fax: 330–384–3875; e-mail: *meoreilly@firstenergycorp.com*); Roy P. Lessy, Counsel for FENOC, at Akin, Gump, Stauss, Hauer & Feld, L.L.P.; 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC 20036 (tel: 202–887–4500; fax: 202–887–4288; e-mail: *rlessy@akingump.com*); Larry R. Crayne, Assistant General Counsel, Duquesne Light Company, 411 Seventh Avenue, Pittsburgh, PA 15219 (tel: 412–393–6049; fax: 412–393–6645; e-mail: *larryrcrayne@dlc.dqe.com*); John E. Mathews, Counsel for DLC, at Morgan, Lewis & Bockius, LLP; 1800 M Street, NW, Washington, DC 20036–5869 (tel: 202–467–7524, fax: 202–467–7176, e-mail: *matt7524@mlb.com*); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer case only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by July 14, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated May 5, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland this 8th day of June 1999.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15021 Filed 6–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 446]

Texas Utilities Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF–87 and Facility Operating License No. NPF–89 issued to Texas Utilities Electric Company (the licensee, or TU), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively, located in Somervell County, Texas.

The proposed amendments would add a footnote to Technical Specification (TS) 4.8.2.1e, "D.C. Sources—Operating," which would, on a one-time basis for Unit 1 Battery BT1ED2, allow the licensee to substitute a performance discharge test "* * *" in lieu of the battery service test required by Specification 4.8.2.1d, twice within a 60 month interval." The footnote further states that "[t]his one time exception expires prior to entry into MODE 4 following the next Unit 1 outage of sufficient duration to perform a service test." The proposed amendments would also add a footnote to the comparable Improved TS (ITS) that were issued by the NRC staff as License Amendments 54 and 64, to the CPSES, Units 1 and 2, Facility Operating Licenses on February 26, 1999, but not as yet implemented by the licensees. In this regard, ITS Surveillance Requirement 3.8.4.7 would receive the same footnote added to TS 4.8.2.1e with a minor grammatical change.

In the licensee's letter dated May 28, 1999, the licensee explained the exigent circumstances associated with its May 27, 1999, application. The licensee noted that the normal 30-day **Federal Register** notice period could not be utilized because the application results from the issuance of an enforcement discretion. The NRC responded to the licensee's May 26, 1999, request for an enforcement discretion by issuing a Notice of Enforcement Discretion (NOED) on June 2, 1999. The subject NOED indicated that the NRC staff plans to complete its review and issue the license amendments within 4 weeks of the date of the NOED, which is less time than permitted by the normal 30-day **Federal Register** notice period.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Crediting the battery performance discharge test in lieu of the required service test will not impact the ability of the battery to perform its safety functions. Therefore, this change will not increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Crediting the performance discharge test in lieu of the required service test will not create a new or different kind of accident.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Crediting the performance discharge test in lieu of the required service test does not create any new failure scenarios and no margin is expected to be reduced. As such, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below. By July 14, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O.

Box 19497, Arlington, Texas. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated May 27, 1999, as supplement by letter dated May 28, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P. O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 7th day of June 1999.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Acting Chief, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15020 Filed 6–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–151]

Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission University of Illinois at Urbana-Champaign University of Illinois Advanced Triga Research Reactor

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the University of Illinois at Urbana-Champaign dated November 13, 1998, as supplemented on May 11, 1999, for a license amendment approving its proposed decommissioning plan for the University of Illinois Advanced TRIGA Research Reactor (Facility License No. R–115) located in the Nuclear Reactor Laboratory on the campus of the University of Illinois at Urbana-Champaign in Urbana, Illinois.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which requires publication in the **Federal Register** and in a forum such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice to Ledyard Marsh, Chief, Events

Assessment, Generic Communications and Non-Power Reactors Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street NW., Washington, D.C. 20003.

Dated at Rockville, Maryland, this 7th day of June 1999.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15019 Filed 6–11–99; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Public Health Service Hospital Complex, The Presidio of San Francisco, California; Notice of Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: The Presidio Trust.

ACTION: Notice of intent to prepare a supplemental environmental impact statement for the proposed leasing and redevelopment or rehabilitation of approximately 412,000 square feet of building space located on the site of the Public Health Service Hospital (PHSH) Complex, The Presidio of San Francisco (Presidio).

Description of Proposed Action and Alternatives

The Presidio Trust (Trust) will prepare a supplemental environmental impact statement (EIS) for the redevelopment of the site of the former PHSH Complex, located near the 15th Avenue entrance in the southern area of the Presidio. The site encompasses approximately 36 acres and approximately 412,000 square feet of building space within 17 existing structures. The largest structure is the former PHSH, totalling approximately 314,000 square feet. The supplemental EIS will tier from the 1994 Presidio General Management Plan Amendment (GMPA) final EIS pursuant to 40 CFR 1508.28. The GMPA EIS analyzed alternative development concepts for the future of the Presidio, including a specific proposal for the PHSH Complex. Because the proposed development within the PHSH Complex would involve rehabilitation of historic buildings or development of new replacement construction and potential uses that were not previously examined in the GMPA EIS, the Trust has concluded that additional analysis is appropriate and will further the purposes of the National Environmental Policy Act of 1969. Alternatives currently being considered for the site include residential/educational conference facilities, various senior housing concepts, health care and medical research. These alternatives arose in part based on feedback received during public meetings and proposals received by the Trust in response to its Request for Qualifications for use of the site. The Trust will identify a preferred alternative following its review of the draft supplemental EIS and other information.

Public Comment

The Trust is inviting the public to participate in two public workshops to comment on the range of alternatives and the specific impacts to be evaluated in the supplemental EIS. The public workshops will be held on July 14, 1999 and July 21, 1999, from 6:00 to 9:00 p.m., at the Presidio Golden Gate Club, Fisher Loop, the Presidio, California. Notice of the workshops is being given in a timely manner through this announcement, announcements in the Trust's monthly newsletter and other local media, direct mailing to nearby property owners, posting on the Trust's website (www.presidiotrust.gov) and other means. Written comments concerning this notice must be sent to John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Fax: 415–561–5315. E-mail: jpelka@presidiotrust.gov. Comments must be received by August 13, 1999.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: June 8, 1999.

Karen A. Cook,

General Counsel.

[FR Doc. 99–14968 Filed 6–11–99; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and, Information Service, Washington, D.C. 20549–0007

Extension:

Rule 17f–4 [17 CFR 270.17f–4] SEC File No. 270–232 OMB Control No. 3235–025

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collection of information described below.

Section 17(f)[1] of the Investment Company Act of 1940[2] (the "Act") permits registered management investment companies ("funds") and their custodians to maintain fund assets in a system for the central handling of securities, subject to Commission rules. Rule 17f–4[3] under the Act defines this type of system as a "securities depository." The rule sets conditions for the use of certain depositories, including U.S.-registered clearing agency that acts as a depository, and the federal book-entry system for government securities.[4]

Certain information collection requirements apply to the fund's custodian when, as in the usual case, a fund uses a depository through its custodian. Rule 17f–4 requires the custodian to send the fund a written confirmation of each transfer of securities to or from the fund's account with the custodian. When securities are transferred to the fund's account, the custodian also must identify as belonging to the fund (or "earmark") an appropriate quantity of securities that the custodian holds in a fungible bulk with the depository (or with any agent through which the custodian uses the depository). In addition, the custodian or its agent must send the fund reports it receives concerning the depository's internal accounting controls, and reports on the custodian's or agent's own controls as the fund may reasonably request.

[1] 15 U.S.C. 80a–17(f).

[2] 15 U.S.C. 80a.

[3] 17 CFR 270.17f–4.

[4] Rule 17f–4 does not regulate the use of foreign securities depositories. Funds that maintain securities in foreign depositories must comply with rule 17f–5 under the Act [17 CFR 270.17f–5].

Other information collection requirements apply to the fund. The fund's board of directors must approve by resolution the custodian's arrangement with each depository, and material changes in any arrangement. In the unusual case when a fund deals directly with a depository, the fund board must approve the arrangement with the depository, and the fund must establish a system that is reasonably designed to prevent unauthorized officer's instructions.[5]

Rule 17f–4 facilitates the safe use of depositories, which can simplify the clearance and settlement of securities transactions and reduce risks of loss, theft, and destruction of securities. The rule's requirements that the custodian confirm transactions and earmark a portion of its holdings for the fund help to document the fund's transactions, and provide evidence of the fund's interest in "omnibus" depository accounts that may contain the pooled assets of multiple owners. The requirement that the custodian and its agent send the fund reports on internal controls helps the fund and its auditors to evaluate the reliability of the custodian, its agent, and the depository. The requirement that the fund board approve depository arrangements and material changes encourages directors to review periodically the safety of these arrangements. The requirement that the fund have a system to prevent unauthorized officer's instructions helps to protect fund assets from misappropriation.

The Commission staff estimates that 3,400 respondents (including 3,300 funds, 50 bank custodians, and 50 agents of the custodians) make approximately 25,750 responses under the rule each year. The staff estimates that on average, 50 custodians spend 500 hours each year in transmitting daily confirmations to funds and 250 hours in earmarking holdings for funds, and 100 custodians and agents spend 16 hours annually in transmitting reports to funds. The staff estimates that on average, 500 funds spend 6 hours each year in approving new depository arrangements or changes in existing arrangements, and 50 funds spend 10 hours each year in implementing systems to prevent unauthorized officer's instructions. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 42,600 hours ((50 custodians × 750 hours) + (100 custodians and agents × 16 hours) + (500 funds × 6 hours) + (50 funds × 10 hours)).[6]

The estimated annual burden of 42,600 burden hours represents an increase of 17,344 hours over the prior estimate of 25,256 hours. The increase in annual burden hours is attributable to the staff's recognition that the rule imposes information collection requirements of funds as well as custodians, and to increases in the estimated time spent by custodians and agents in collecting information relating to an increasing number of fund transactions.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0004. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 2, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14986 Filed 6–11–99; 8:45 am]

BILLING CODE 8010–01–M

[5] Officer's instructions are directions to the depository by authorized personnel of the fund.

[6] The estimated average burden hours do not reflect the costs of operating computer systems used by custodians to provide confirmations and earmark assets, and used by funds to help prevent unauthorized officer's instructions.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 236; SEC File No. 270–118; OMB Control No. 3235–0095.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 236 under the Securities Act of 1933 ("Securities Act") requires issuers wishing to rely upon an exemption from the Securities Act registration for the issuance of fractional shares, script certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction to furnish specified information to the Commission in writing at least ten days prior to the offering. The information is needed to provide notice that an issuer is relying on the exemption. Public companies are the likely respondents. An estimated ten submissions are made pursuant to Rule 236 annually, resulting in an estimated annual total burden of 15 hours.

The information is needed to establish qualification for reliance on the exemption. The information provided by Rule 236 is required to obtain or retain benefits. All information provided to the Commission is available to the public for review upon request.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 4, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14987 Filed 6–11–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–11, SEC File No. 270–94, OMB Control No. 3235–0085

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17a–11 (17 CFR 240.17a–11) requires broker-dealers to give notice when certain specified events occur. Specifically, the rule requires a broker-dealer to give notice of a net capital deficiency on the same day that the net capital deficiency is discovered or a broker-dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of its minimum requirement under Rule 15c3–1 (17 CFR 240.15c3–1) of the Securities Exchange Act of 1934 ("Exchange Act").

Rule 17a–11 also requires a broker-dealer to send notice promptly (within 24 hours) after the broker-dealer's aggregate indebtedness is in excess of 1,200 percent of its net capital, its net capital is less than 5 percent of aggregate debit items, or its total net capital is less than 120 percent of its required minimum net capital. In addition, a broker-dealer must give notice if it fails to make and keep current books and records required by Rule 17a–3 (17 CFR 240.17a–3), if any material inadequacy is discovered as defined in Rule 17a–5(g) (17 CFR 240.17a–5(g)), and if backtesting exceptions are identified pursuant to Appendix F of Rule 15c3–1 (17 CFR 15c3–1f) for a broker-dealer registered as an OTC derivatives dealer.

The notice required by the rule alerts the Commission, self-regulatory organizations ("SROs"), and the Commodity Futures Trading Commission ("CFTC") if the broker-dealer is registered as a futures commission merchant, which have oversight responsibility over broker-dealers, to those firms having financial or operational problems.

Because broker-dealers are required to file pursuant to Rule 17a–11 only when certain specified events occur, it is difficult to develop a meaningful figure for the cost of compliance with Rule 17a–11. The Commission receives approximately 656 notices under this rule each year from approximately 362 broker-dealers. Each broker-dealer will spend approximately one hour per year complying with Rule 17a–11. Accordingly, the aggregate burden is estimated to be approximately 656 hours. With respect to those broker-dealers that must give notice under Rule 17a–11, the cost is approximately $10 per response for a total annual expense for all broker-dealers of $6,560.

Broker-dealers providing notice and reports under Rule 17a–11 are required to preserve such records under rule 17a–4 (17 CFR 240.17a–4) for a period of not less than three years, the first two years in an accessible place. Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notice or reports received pursuant to Rule 17a–11. The Commission believes that information obtained under Rule 17a–11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 7, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14988 Filed 6–11–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Application To Withdraw From Listing and Registration; (The Midland Company, Common Stock, No Par Value Per Share) File No. 1–6026

June 7, 1999.

The Midland Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex or "Exchange".

The Security has been listed for trading on the Amex and became designated for quotation on the Nasdaq National Market ("Nasdaq") on June 2, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Board of Directors of the Company authorizing the withdrawal of the Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the determination to withdraw the Security from listing on the Amex in conjunction with its designation for quotation on the Nasdaq, the Company sought to avoid the direct and indirect costs, as well as a division of the market for its Security, which would have resulted from the simultaneous trading of the Security on both the Amex and the Nasdaq.

The Amex has informed the Company that it will not interpose any objection to the Company's application to withdraw its Security from listing and registration on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security on the Amex and shall have no effect upon the continued designation of the Security for quotation on the Nasdaq. By reason of Section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before June 28, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–14955 Filed 6–11–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41483]

Y2K EDGAR Testing for Filers

June 7, 1999.

The Securities and Exchange Commission has announced it will provide filers the opportunity to voluntarily test their systems' Y2K compliance by submitting test filings to the EDGAR test system.

When

We will make the EDGAR test system available for voluntary Y2K testing from July 12 through July 30, 1999. Starting at 8:00 a.m. Monday, July 12, we will set the EDGAR test system clock to February 21, 2000. The test will continue until the EDGAR test system clock reaches 10:00 p.m. March 10, 2000 on July 30, 1999.

During the test period, you may submit Y2K test filings from 8:00 a.m. until 10:00 p.m. on weekdays, although only limited filer support will be available after 7:00 p.m. The EDGAR test system will also be available from 9:00 a.m. until 5:30 p.m. on Saturdays and Sundays.

What To Test

We encourage filers who wish to perform Y2K testing to send any submission. We encourage filing agents and other large volume filers to choose a representative sampling of companies and submission types for Y2K testing. Since this test system has less capacity than the production system, we ask filers to consider limiting multiple tests, particularly on or about test-day February 29, 2000 (Tuesday, July 20, 1999).

Where To Submit

Submit Y2K test filings to the EDGAR test system. We will publish the telephone number for the test system on our web site (<*http://www.sec.gov*>, under Current News) no later than June 15, 1999, but please remember this telephone number will only be active during the test filing period. You must change both the primary number and the secondary number in your EDGARLink software package to this telephone number to successfully connect to the EDGAR test system. If you do not change both numbers, you may connect to the live production system and not the Y2K test environment. The live production system will not be prepared to accept Y2K test files or to limit dissemination of filings submitted.

Include a Test Tag

You must include in the submission header of each Y2K test submission a <TEST> tag OR specify that the submission is a TEST from the EDGARLink main menu or the dial up interface. Including the <TEST> tag will ensure that your Y2K test submission is not disseminated in the event that you incorrectly submit it to the operational EDGAR system.

We will deem all live submissions sent to the test site as test submissions, and we will discard them. Filings sent to EDGAR test system will not be disseminated.

Messages

Once the EDGAR test system receives your Y2K test submission, EDGAR will send you an acceptance or suspension message through CompuServe or the Internet. All messages from the EDGAR test system will state that the filing was a Y2K test filing.

Modules/Segments

If you want to reference a module or segment in your Y2K test filing, you must submit the module or segment to the EDGAR test system as a LIVE submission. However, you will not be able to refer to modules and segments sent to the EDGAR test system later in live filings on the production system.

Fee Payments

No fees are required for EDGAR Y2K Test Filings, nor will the testing include fee payment, processing, and posting. All test filings or form types ordinarily requiring fees will assume the fee has been paid. Filers and their banks are responsible for assuring that they have a Y2K compliant means of transferring money for payment of SEC filing fees.

For Help

EDGAR filer support staff will be available to assist you with EDGAR Y2K issues. Contact EDGAR Filer Support at (202) 942–8900 and select Y2K assistance from the telephone menu.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14954 Filed 6–11–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41488; File No. SR–AMEX–98–42]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding the Confirmation and Affirmation of Securities Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 27, 1998, the American Stock Exchange, Inc. ("AMEX") filed with the Securities and Exchange Commission ("Commission") and on may 21, 1999, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by AMEX.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the rule change, AMEX will amend Rule 423 to permit electronic confirmation/affirmation of depository eligible COD transactions [3] by a qualified vendor or by an entity that has obtained an exemption from registration as a clearing agency.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, AMEX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. AMEX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] Since the filing of the proposed rule change, AMEX has merged with the National Association of Securities Dealers and as a result has changed its full name from American Stock Exchange, Inc. to American Stock Exchange LLC.

[3] COD transaction are those in which a member firm extends receipt versus payment or delivery versus payment privileges to a customer.

[4] The text of the amendments is attached as Exhibit A to this notice.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

AMEX Rule 423 ("COC Orders") currently requires that the facilities of a Commission registered clearing agency be used by AMEX member organizations for the confirmation, affirmation, and book-entry settlement of COD transactions in depository eligible securities. Certain vendors of electronic trade confirmation ("ETC") services have requested that they be allowed to provide confirmation/affirmation services for institutional trades (*i.e.*, COD transaction) even though they are not registered clearing agencies. Under the proposed rule change, AMEX will amend Rule 423 to allow its broker-dealer members to use a qualified vendor for the confirmation and affirmation of institutional trades. In addition, Rule 423 is being amended to allow AMEX's broker-dealer members to use the confirmation/affirmation services of any entity that has obtained an exemption from registration as a clearing agency specifically so that it can provide confirmation/affirmation services for institutional trades.

In order to become a qualified vendor under the rule change, and ETC vendor will be required to certify to its customers that:

(1) With respect to its electronic trade confirmation/affirmation system, it has a capacity requirements, evaluation, and monitoring process that allows it to formulate current and anticipated estimated capacity requirements;

(2) Its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year;

(3) Its electronic trade confirmation/affirmation system has formal contingency procedures, the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and the contingency protocols are reviewed and updated on a regular basis;

(4) Its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures and its procedures designed to protect against security breaches are followed; and

(5) Its current assets exceed its current liabilities by at least $500,000.

In addition, a qualified vendor will be required initially and annually to submit to AMEX and to the Commission staff a report prepared by independent audit personnel (referred to in the rule change as "Auditor's Report"). Each Auditor's Report must: (1) verify the certifications described above; (2) contain a risk analysis of all of the entity's information technology systems; and (3) contain the written response of the entity's management to the Auditor's Report's verifications and risk analysis. The Auditor's Report must be deemed not unacceptable by Commission staff.[5]

Qualified vendors will be subject to ongoing requirements under the rule change. For each transaction in which it provides confirmation/affirmation services, a qualified vendor will be required to: (1) Deliver a trade record to a registered clearing agency in the clearing agency's format; (2) obtain a control number for the trade record from the clearing agency; (3) cross reference the control number to the confirmation and subsequent affirmation of the trade; and (4) include the control number when delivering the affirmation of the trade to the clearing agency. A qualified vendor will be required to notify AMEX and the Commission staff in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation system. In addition, a qualified vendor will be required to supply supplemental information regarding its confirmation/affirmation system as requested by AMEX or by the Commission staff. If a qualified vendor intends to cease providing confirmation/affirmation services as requested by AMEX or by the Commission staff. If a qualified vendor intends to cease providing confirmation/affirmation services, it must notify AMEX and the Commission staff in writing.

The Municipal Securities Rulemaking Board ("MSRB"), the National Association of Securities Dealers ("NASD"), and the New York Stock Exchange ("NYSE") have made amendments to their rules similar to those being proposed here by AMEX.[6] The proposed Rule 423 amendments are responsive to the Commission staff's request that the self-regulatory organizations have uniform rules with respect to qualified vendors providing confirmation/affirmation services.

[5] At this time, the Commission staff intends to indicate that an entity's initial Auditor's Report is not unacceptable by issuing a letter to the entity stating that it will not recommend enforcement action against any of AMEX's member organizations that elect to use the confirmation/affirmation systems of the entity. Subsequent Auditor's Reports submitted to the Commission staff by the qualified vendor will be considered acceptable unless the Commission staff otherwise informs the qualified vendor.

[6] Securities Exchange Act Release No. 41378 (May 7, 1999), 64 FR 25940 [File Nos. SR–MSRB–98–06, SR–NASD–98–20, SR–NYSE–98–07 (order approving proposed rule changes).

(2) Statutory Basis

AMEX believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

AMEX believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 6(b)(5) of the Act[8] requires, among other things, that AMEX's rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. In addition, Section 6(b)(8) of the Act[9] requires that AMEX's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that AMEX's proposed rule change is consistent with its obligations under the Act because it will require unregulated entities that wish to provide confirmation/affirmation services to establish links and interfaces with a registered clearing agency. This requirement should increase cooperation and coordination among AMEX's members, registered clearing agencies, and entities that become qualified vendors under the rule change.

In addition, in reviewing the proposed rule change the Commission has considered whether the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the rule change has been carefully designed to allow unregistered ETC vendors to provide confirmation/affirmation services for institutional

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(8).

trades in a manner which is not unduly burdensome for ETC vendors and which preserves the safety and soundness of the national system for the clearance and settlement of securities transactions. Therefore, the Commission believes that AMEX's proposed rule change should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow AMEX to immediately conform its Rule 423 to the recently amended confirmation/affirmation rules of the MSRB, NASD, and NYSE.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of AMEX. All submissions should refer to File No. SR–AMEX–98–42 and should be submitted by July 6, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–AMEX–98–42) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Proposed Amendments to Rule 423

Additions *Italicized*
Deletions [bracketed]

COD Orders

Rule 423. No member or member organization shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased is to be made to the member or member organization upon delivery of the securities to an agent of the customer, or whereby payment for securities sold is to be made by the member or member organization to an agent of the customer upon receipt of the securities from such agent, unless all of the following procedures are followed:

(1) through (4) No change.

[(5) The customer or its agent shall utilize the facilities of a securities depository for the confirmation, acknowledgment and book entry settlement of all depository eligible transactions.]

(5) The facilities of a Clearing Agency shall be utilized for the book-entry settlement of all depository eligible transactions. The facilities of either a Clearing Agency or a Qualified Vendor shall be utilized for the electronic confirmation and affirmation of all depository eligible transactions.

Commentary

.01 through .03 No change.

[.04 The following transactions shall be exempt from the provisions of paragraph (5) of this Rule:

(1) Transactions that are to be settled outside of the United States.

(2) Transactions wherein both a member organization and its agent are not participants in a securities depository.

(3) Transactions wherein both a customer and its agent are not participants in a securities depository.]

.04 Transactions that are to be settled outside of the United States shall be exempt from the provisions of paragraph (5) of this rule.

.05 No Change.

.06 For the purposes of this rule, a ["securities depository"] *"Clearing Agency"* shall mean a Clearing Agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934, that is registered with the Securities and Exchange Commission (*"Commision"*) pursuant to Section 17A(b)(2) of the Act *or has obtained from the Commission and exemption from registration granted specifically to allow the Clearing Agency to provide confirmation and affirmation services.*

07. For the purposes of this rule, "depository eligible transactions" shall mean transactions in those securities for which confirmation, [acknowledgment] *affirmation,* and book-entry settlement can be performed through the facilities of a [securities depository] *Clearing Agency* as defined in Commentary .06 of this rule.

[.08 Rule 423(5) and Commentary .04, .05, .06, and .07 shall become effective January 1, 1983.]

.08 "Qualified Vendor" shall mean a vendor of electronic confirmation and affirmation services that:

(A) shall, for each transaction subject to this rule; (i) deliver a trade record to a Clearing Agency in the Clearing Agency's format; (ii) obtain a control number for the trade record from the Clearing Agency; (iii) cross-reference the control number to the confirmation and subsequent affirmation of the trade; and (iv) include the control number when delivering the affirmation of the trade to the Clearing Agency;

(B) certifies to its customers: (i) with respect to its electronic trade confirmation/affirmation system, that it has a capacity requirements, evaluation, and monitoring process that allows the vendor to formulate current and anticipated estimated capacity requirements; (ii) that its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year; (iii) that is electronic trade confirmation/affirmation system has formal contingency procedures, that the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed and updated on a regular basis; (iv) that its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures, and its procedures designed to protect against security breaches are followed; and (v) that its current assets exceed its current liabilities by the lease five hundred thousand dollars;

(C) has submitted, and shall continue to submit on an annual basis, an Auditor's Report to the Commission staff which is not deemed unacceptable by the Commission staff. An Auditor's Report will be deemed unacceptable if it contains any findings of material weakness;

(D) notifies the Commission staff immediately in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation systems including, without limitation, changes that: (i) affect or potentially affect the capacity or security of its electronic trade confirmation/affirmation system; (ii) rely on new or substantially different technology; or (iii) provide a new service to the Qualified Vendor's electronic trade confirmation/affirmation system;

(E) immediately notified the Commission staff in writing if it intends to cease providing services;

(F) provides the Exchange with copies of any submissions to the Commission staff made pursuant to .08 (B), (C), (D) and (E) of this rule within ten business days; and

(G) supplies supplemental information regarding their electronic trade confirmation/

[10] *Supra* note 4.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR. 200.30–3(a)(12).

affirmation services as requested by the Exchange or the Commission staff.

.09 "Auditor's Report" shall mean a written report which is prepared by competent, independent, external audit personnel in accordance with the standards of the American Institute of Certified Public Accountants and the Information Systems Audit and Control Association and which (i) verifies the certifications contained in .08(B) above; (ii) contains a risk analysis of all aspects of the entity's information technology systems including, without limitation, computer operations, telecommunications, data security, systems development, capacity planning and testing, and contingency planning and testing; and (iii) contains the written response of the entity's management to the information provided pursuant to (i) and (ii) above.

[FR Doc. 99–14990 Filed 6–11–99; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41486; SR–OCC–99–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Acceptance of Letters of Credit for Margin Purposes

June 7, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 22, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify OCC's rules with respect to letters of credit accepted for margin purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will conform OCC's Rule 604(c) to the terms of the Uniform Letter of Credit ("ULC") created by the Unified Clearing Group ("UCG"). The UCG is an organization composed of all major securities and futures clearing organizations and depositories in the United States.[3] The ULC was developed to foster uniformity among the various U.S. securities and futures clearing organizations with respect to the acceptable terms of letters of credit that are deposited as margin.[4] All UCG member that accept letters of credit as margin are expected to use the ULC and to convert to the ULC during calendar year 1999.

Under the terms of the ULC, clearing corporations can continue to present a demand for payment by hand delivery and/or SWIFT message.[5] The ULC also permits a demand for payment by facsimile transmission. However, unlike the current letters of credit accepted by OCC, the ULC does not permit a demand by tested telex.

The rule change proposes to make several amendments to Rule 604(c). First, it will require the issuing bank to make payment against the letter of credit within sixty minutes of presentment for payment if the demand is made by a preset cutoff time on a business day, which OCC specifies in its rules as 3:00 p.m. Central Time. Demands submitted to the bank after the cut-off time or on a day when the bank is closed must be honored within sixty minutes of the opening of business on the next business day. Certain exceptions will be made in the case of foreign currency letters of credit.

Second, the rule change will permit OCC flexibility in specifying acceptable expiration dates for letters of credit. Currently OCC requires that a letter expire no later than the first day of the next calendar quarter but is considering permitting letters of credit to be issued with expiration dates more than one calendar quarter in the future. In order to simplify recordkeeping, OCC presently anticipates that it will continue to require the replacement of outstanding letters of credit with newly issued letters of credit on an annual basis.

Third, the rule change will eliminate provisions that permit a clearing member to issue instructions to OCC that restrict a previously unrestricted letter of credit or a portion thereof to serve as margin only for the clearing member's customers' accounts. These provisions have generally not been used, and clearing members who need to restrict letters of credit to the customers' accounts for regulatory compliance purposes may do so by placing such restriction on the letter itself. OCC believes that a restriction on the face of the letter will provide better notice of the restriction and should reduce the likelihood of confusion over which letters are intended to be restricted and which are not.

Finally, the proposed rule deletes the final sentence of Rule 604(c), which allows members to deposit letters of credit denominated in any foreign currency that is a trading currency, because it is unnecessary in light of other provisions proposed for Rule 604 that specify letters of credit may be denominated in any currency approved by OCC for that purpose.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because, among other things, it will promote the prompt and accurate clearance and settlement of transactions in securities by requiring issuing banks to make payment against letters of credit within sixty minutes of a demand for payment rather than by the close of the third banking day following presentation of a demand for payment as is presently the case.

(B) Self-Regulatory Organization's Statement on Burden on Completion

OCC does not believe that the proposed rule change will impose any burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, MBS Clearing Corporation, National Securities Clearing Corporation, OCC, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

[4] In developing the ULC, UCG consulted with several letter of credit issuing banks and the National Standby Letter of Credit Committee of the International Financial Service Association (formerly known as the U.S. Council on International Banking). In addition, various regulatory agencies, including the staffs of the Securities and Exchange Commission, the Commodity Futures Trading Commission, and Board of Governors of the Federal Reserve System attended the UCG meetings where the ULC was discussed.

[5] SWIFT messages are secured, electronic transmissions.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received. OCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–01 and should be submitted by July 6, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14991 Filed 6–11–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41487; File No. SR–PCX–98–35)

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding the Confirmation and Affirmation of Securities Transactions

June 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 30, 1998, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") and on November 16, 1998, and May 28, 1999, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by PCX. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit PCX members to use the facilities of a qualified vendor or an entity that has obtained an exemption from registration as a clearing agency for the electronic confirmation and affirmation of depository eligible transactions.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCX is proposing to amend Rule 9.12 to allow qualified vendors of electronic trade confirmation ("FTC") services that are not registered clearing agencies to provide electronic trade confirmation/affirmation services for institutional trades. The rule is also being amended to allow entities that have obtained exemptions from clearing agency registration specifically so that they can offer confirmation/affirmation services to provide such services for institutional trade.

Rule 9.12 was originally adopted to protect broker-dealers form problems relating to financial exposure associated with inaccurate and filed institutional transactions. Financial exposure results from institutional customers that settle their trades on a receipt versus payment ("RVP") or delivery versus payment ("DVP") basis. This permits them to delay payment for securities until the securities are delivered to their custodian and to delay delivery of securities until payment is received. Additional financial exposure results when the broker-dealer sells or purchases securities on behalf of an institutional customer from another broker-dealer. In such a situation the broker-dealer is subject to financial exposure until the institution's custodian delivers securities or makes payment that the borker-dealer will use to cover its trade with the other broker-dealer. If ther is a delay in settlement with the institution or the institution refuses to recognize and settle the trade, the broker-dealer is still obligated to settle its trade with the other broker-dealer.

Certain vendors of ETC services have requested that they be allowed to provide confirmation/affirmation services for institutional trades even though they are not registered clearing agencies. PCX is proposing to amend Rule 9.12 so that either a clearing agency[3] or a qualified vendor may provide electronic conformation and affirmation of all depository eligible transactions to be settled on an RVP/DVP basis. In order to become a qualified vendor under the rule change, an ETC vendor will be required to certify to its customers that:

(1) With respect to its electronic trade confirmation/affirmation system, it has a capacity requirements, evaluation, and monitoring process that allows it to formulate current and anticipated estimated capacity requirements;

(2) Its electronic trade conformation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the amendments is attached as Exhibit A to this notice.

[3] For purposes of Rule 9.12, clearing agency means a clearing agency as defined in Section 3(a)(23) of the Act that is registered with the Commission or that has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation/affirmation services.

electronic trade confirmation/affirmation service during the upcoming year;

(3) Its electronic trade confirmation/affirmation system has formal contingency procedures, the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and the contingency protocols are reviewed and updated on a regular basis;

(4) Its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures and its procedures designed to protect against security breaches are followed; and

(5) Its current assets exceed its current liabilities by at least $500,000.

In addition, a qualified vendor will be required initially and annually to submit to PCX and to the Commission staff a report prepared by independent audit personnel (referred to in the rule change as "Auditor's Report"). Each Auditor's Report must: (1) verify the certifications described above; (2) contain a risk analysis of all of the entity's information technology systems; and (3) contain the written response of the entity's management to the Auditor's Report's verifications and risk analysis. The Auditor's Report must be deemed not unacceptable by Commission staff.[4]

Qualified vendors will be subject to ongoing requirements under the rule change. For each transaction in which it provides confirmation/affirmation services, a qualified vendor will be required to: (1) deliver a trade record to a registered clearing agency in the clearing agency's format; (2) obtain a control number for the trade record from the clearing agency; (3) cross reference the control number to the confirmation and subsequent affirmation of the trade; and (4) include the control number when delivering the affirmation of the trade to the clearing agency. A qualified vendor will be required to notify the PCX and the Commission staff in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation system. In addition, a qualified vendor will be required to supply supplemental information regarding its confirmation/affirmation system as requested by PCX or by the Commission staff. If a qualified vendor intends to cease providing confirmation/affirmation services, it must notify PCX and the Commission staff in writing.

PCX believes that the proposal is consistent with Section 6(b) of the Act[5] in general and with Section 6(b)(5) of the Act[6] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protest investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 6(b)(5) of the Act[7] requires, among other things, that PCX's rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. In addition, Section 6(b)(8) of the Act[8] requires that PCX's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that PCX's proposed rule change is consistent with its obligations under the Act because it will require unregulated entities that wish to provide confirmation/affirmation services to establish links and interfaces with a registered clearing agency. This requirement should increase cooperation and coordination among PCX's members, registered clearing agencies, and entities that become qualified vendors under the rule change.

In addition, in reviewing the proposed rule change the Commission has considered whether the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the rule change has been carefully designed to allow unregistered ETC vendors to provide confirmation/affirmation services for institutional trades in a manner which is not unduly burdensome for ETC vendors and which preserves the safety and soundness of the national system for the clearance and settlement of securities transactions. Therefore, the Commission believes that PCX's proposed rule change should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow PCX to immediately conform its Rule 9.12 to the recently amended confirmation/affirmation rules of the Municipal Securities Rulemaking Board ("MSRB"), National Association of Securities Dealers ("NASD"), and New York Stock Exchange ("NYSE").[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. SR–PCX–98–35 and should be submitted by July 6, 1999.

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[4] At this time, the Commission staff intends to indicate that an entity's initial Auditor's Report is not unacceptable by issuing a letter to the entity stating that it will not recommend enforcement action against any of PCX's member organizations that elect to use the confirmation/affirmation systems of the entity. Subsequent Auditor's Reports submitted to the Commission staff by the qualified vendor will be considered acceptable unless the Commission staff otherwise informs the qualified vendor.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

[9] Securities Exchange Act Release No. 41378 (May 7, 1999), 64 FR 25940 [File Nos. SR–MSRB–98–06, SR–NASD–98–20, SR–NYSE–98–07.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–PCX–98–35) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Additions *italicized*
Deletions [bracketed]

Text of the Proposed Rule Change: COD Orders—Partial Delivery

Rule 9.12*(a)*(1)–(3) No change.
(4) No change.
(A)–(B)(i)–(ii) No change.
(5) [The customer or its agent shall utilize the facilities of a securities depository for the confirmation, acknowledgement, and book entry settlement of all depository eligible transactions.] *The facilities of a Clearing Agency must be utilized for the book-entry settlement of all Depository Eligible Transactions except for transactions that are to be settled outside the United States. The facilities of either a Clearing Agency or a Qualified Vendor must be utilized for the electronic confirmation and affirmation of all Depository Eligible Transaction.*

(A) For the purpose of this rule, "securities depository" [shall] means a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act.

(B) For the purpose of this rule "depository eligible transactions" [shall] means transactions in those securities for which confirmation, *affirmation* [acknowledgment] and book entry settlement can be performed through the facilities of a securities depository as defined in Rule 9.12(a)(5)(A).

(C) For the purpose of this rule "Clearing Agency" means a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act or that has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation/affirmation services.

(D) "Qualified Vendor" means a vendor of electronic confirmation and affirmation services that:

(i) will, for each transaction subject to this rule: (a) deliver a trade record to a Clearing Agency in the Clearing Agency's format; (b) obtain a control number for the trade record from the Clearing Agency; (c) cross-reference the control number to the confirmation and subsequent affirmation of the trade; and (d) include the control number when delivering the affirmation of the trade to the Clearing Agency;

(ii) certifies to its customers: (a) with respect to its electronic trade confirmation/affirmation system, that it has a capacity requirements, evaluation, and monitoring processes that allow the vendor to formulate current and anticipated estimated capacity requirements; (b) that its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year; (c) that its electronic trade confirmation/affirmation system has formal contingency procedures, that the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed and updated on a regular basis; (d) that its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures, and its procedures designed to protect against security breaches are followed; and (e) that its current assets exceed its current liabilities by at least five hundred thousand dollars;

(iii) has submitted and will continue to submit on an annual basis an Auditor's Report to the Exchange and to the Commission Staff which is not deemed unacceptable by the Commission Staff. An Auditor's Report will be deemed unacceptable if it contains any findings of material weakness;

(iv) notifies the Exchange and the Commission Staff immediately in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation systems including, without limitation, changes that: (a) affect or potentially affect the capacity or security of its electronic trade confirmation/affirmation system; (b) rely on new or substantially different technology; or (c) provide a new service to the Qualified Vendors' electronic trade confirmation/affirmation system;

(v) immediately notifies the Exchange and Commission Staff, in writing, if it intends to cease providing services;

(vi) provides the Exchange with copies of any submission to the Commission Staff made pursuant to Sections (a)(5)(D)(ii), (iii), (iv), or (v) of the Rule within ten business days; and

(vii) supplies supplemental information regarding their electronic trade confirmation/affirmation services as requested by the Exchange or the Commission.

(E) "Auditor's Report" means a written report that is prepared by competent, independent, external audit personnel in accordance with the standards of the American Institute of Certified Public Accountants and the Information Systems Audit and Control Association and that (i) verifies the certifications contained in subsection (a)(5)(D)(ii) above; (ii) contains a risk analysis of all aspects of the entity's information technology systems including, without limitation, computer operations, telecommunications, data security, systems development, capacity planning and testing, and contingency planning and testing; and (iii) contains the written response of the entity's management to the information provided pursuant to (i) and (ii) above.

Rule 9.12(b), No Change.

[FR Doc. 99–14989 Filed 6–11–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3186]

State of Georgia

Fulton County and the contiguous counties of Carroll, Douglas, Cobb, Cherokee, Forsyth, Gwinnett, DeKalb, Clayton, Fayette and Coweta in the State of Georgia constitute a disaster area as a result of damages caused by an apartment complex fire that occurred on May 3, 1999. Applications for loans for physical damages may be filed until the close of business on August 2, 1999 and for economic injury until the close of business on March 3, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 318805 for physical damage and 9C9800 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 3, 1999.

Mary Kristine Swedin,

Acting Administrator.

[FR Doc. 99–14972 Filed 6–11–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3187]

State of Illinois

As a result of the President's major disaster declaration on May 28, 1999, I find that Jo Daviess County in the State of Illinois constitutes a disaster area due to damages caused by severe storms and flash flooding that occurred on May 16–17, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 26, 1999 and for economic injury until the close of business on February 28, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Carroll and Stephenson Counties in Illinois, and Grant and Lafayette Counties in Wisconsin. Any counties contiguous to the above-named primary county and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 318706. For economic injury the numbers are 9C9600 for Illinois and 9C9700 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14973 Filed 6–11–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3186]

State of Iowa (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated May 29 and June 1, 1999, the above-numbered Declaration is hereby amended to include Butler, Clinton, and Crawford Counties in the State of Iowa as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes. This Declaration is further amended to establish the incident period for this disaster as beginning on May 16 and continuing through May 29, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Audubon, Carroll, Cerro Gordo, Franklin, Hardin, Ida, Sac, Scott, and Woodbury Counties in Iowa, and Whiteside County, Illinois. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 19, 1999, and for economic injury the deadline is February 22, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14974 Filed 6–11–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3182]

State of Texas (Amendment #3)

In accordance with a notice received from the Federal Emergency Management Agency dated June 2, 1999, the above-numbered Declaration is hereby amended to include Gregg County, Texas as a disaster area as a result of damages caused by severe storms and tornadoes that occurred on May 4, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Harrison, Rusk, Smith, and Upshur in the State of Texas may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 4, 1999, and for economic injury the deadline is February 7, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14975 Filed 6–11–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Rocky Mountain States Regional Fairness Board Public Hearing

The U.S. Small Business Administration Rocky Mountain States Regional Fairness Board Strategy Meeting, to be held on August 4, 1999, starting at 12:30 pm at 123 West E Street Casper, WY 82601 to receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact Gary P. Peele, telephone (312) 353–0880.

Andrew A. Rivera,

Deputy Director of External Affairs.

[FR Doc. 99–14976 Filed 6–11–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

South Atlantic States Regional Fairness Board Public Hearing

The South Atlantic States Regional Fairness Board Public Hearing, to be held on August 19, 1999 starting at 9:30 a.m. at Duquesne Club 325 Sixth Avenue, Pittsburgh, PA 15222. To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information, contact Gary P. Peele, telephone (312) 353–0880.

Andrew A. Rivera,

Deputy Director of External Affairs.

[FR Doc. 99–14978 Filed 6–11–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Small Business Administration, Region IV, North Florida District, Jacksonville, Florida, Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2 p.m., July 15, 1999, at the NationsBank Tower, 50 N. Laura Street, 12th Floor, Large Conference Room, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present.

For further information, write or call Claudia D. Taylor, U. S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Andrew A. Rivera,

Deputy Director of External Affairs.

[FR Doc. 99–14977 Filed 6–11–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Wisconsin State Advisory Council Public Hearing

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:00 p.m. June 17, 1999 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Yolanda Lassiter, U.S. Small Business Administration, 310 West Wisconsin Avenue Milwaukee, Wisconsin 53203; Fax (414) 297–3928.

Andrew A. Rivera,

Deputy Director of External Affairs.

[FR Doc. 99–14979 Filed 6–11–99; 8:45 am]

BILLING CODE 8025–01–P

Corrections

Federal Register
Vol. 64, No. 113
Monday, June 14, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No 981231333-9127-03; I.D. 122898E]

RIN 0648-AM12

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Final 1999 ABC, OY, and Tribal and Nontribal Allocations for Pacific Whiting

Correction

In rule document 99–13037, beginning on page 27928, in the issue of Monday, May 24, 1999, make the following correction:

On page 27933, in the first column, in the fifth line "42°" should read "42°".

[FR Doc. C9–13037 Filed 6–11–99; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2704

Implementation of Amendments to the Equal Access to Justice Act in Commission Proceedings

Correction

In rule document 98–29680 beginning on page 63172 in the issue of Thursday, November 12, 1998, make the following correction:

On page 63176, second column, amendatory instruction six is corrected to read as follows:

"6. Section 2704.106(b) is revised to read as follows:".

[FR Doc. C8–29680 Filed 6–11–99; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6344–7]

RIN 2060–AE–86

National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production

Correction

In rule document 99–12479, beginning on page 29420 in the issue of Tuesday, June 1, 1999, make the following corrections:

§ 63.1427 [Corrected]

On page 29457, in the second column, in § 63.1427(e)(2), Equation 11 should be set out before "Where:" as set forth below:

$$R_{batchcycle} = \left[1 - \frac{P_{epox,f}}{P_{epox,i}}\right] * 100 \qquad \text{[Equation 11]}$$

[FR Doc. C9–12479 Filed 6–11–99; 8:45 am]
BILLING CODE 1505–01–D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories; Portland Cement Manufacturing Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6347–2]

RIN 2060–AE78

National Emission Standards for Hazardous Air Pollutants for Source Categories; Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in the portland cement manufacturing industry. This action also adds Method 320 for the measurement of vapor phase organic and inorganic emissions by extractive Fourier Transform Infrared (FTIR) spectroscopy and Method 321 for the measurement of gaseous hydrogen chloride emissions from portland cement kilns by FTIR spectroscopy to appendix A of part 63.

Some of the hazardous air pollutants (HAPs) released from portland cement manufacturing facilities include, but are not limited to, acetaldehyde, arsenic, benzene, cadmium, chromium, chlorobenzene, dibenzofurans, formaldehyde, hexane, hydrogen chloride, lead, manganese, mercury, naphthalene, nickel, phenol, polycyclic organic matter, selenium, styrene, 2,3,7,8-tetrachlorodibenzo-p-dioxin, toluene, and xylenes. Exposure to these HAPs can cause reversible or irreversible health effects including carcinogenic, respiratory, nervous system, developmental, reproductive and/or dermal health effects. The EPA estimates that this final rule will reduce nationwide emissions of HAPs from portland cement manufacturing facilities by approximately 82 megagrams per year (Mg/yr) [90 tons per year (tpy)], and particulate matter (PM) by approximately 4,700 Mg/yr (5,200 tpy).

These standards implement section 112(d) of the Clean Air Act (CAA) and are based on the Administrator's determination that portland cement manufacturing facilities may reasonably be anticipated to emit several of the 188 HAPs listed in section 112(b) of the CAA from the various process operations found within the industry. The final rule provides protection to the public by requiring portland cement manufacturing plants to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

EFFECTIVE DATE: June 14, 1999. See the **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A–92–53, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street S.W., Washington, DC 20460, telephone number (202) 260–7548. The docket is located at the above address in room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in the Supplementary Information section of this preamble. For information concerning the analyses performed in developing this rule, contact Mr. Joseph Wood, P. E., Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address "wood.joe@epamail.epa.gov". For information regarding Methods 320 and 321 contact Ms. Rima Dishakjian, Emission Measurement Center, Emissions, Monitoring and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0443.

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities shown in Table 1.

TABLE 1.—REGULATED ENTITIES

Category	NAICS Code	SIC Code	Examples of Regulated Entities
Industry	32731	3241	Owners or operators of portland cement manufacturing plants.
State	32731	3241	Owners or operators of portland cement manufacturing plants.
Tribal associations	32731	3241	Owners or operators of portland cement manufacturing plants.
Federal agencies	(1)	(1)	None.

[1] None.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business organization, etc. is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate regional representative:

Region 1—Janet Bowen, Office of Ecosystem Protection, U.S. EPA, Region I, CAP, JFK Federal Building, Boston, MA 02203, (617) 565–3595.

Region II—Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866 (212) 637–4000.

Region III—Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III (3AT10), 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2110.

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Judicial Review. The NESHAP for portland cement manufacturing was proposed on March 24, 1998 (63 FR 14182). Today's **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Act, judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Technology Transfer Network. In addition to being available in the docket, an electronic copy of today's document, which includes the regulatory text, is available through the Technology Transfer Network (TTN) at the Office of Air and Radiation Policy and Guidance website. Following promulgation, a copy of the rule will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). A copy of the Response to Comments document for this rule will be posted on the TTN at http://www.epa.gov/ttn/oarpg/t3bid.html. The TTN provides information from EPA in various areas of air pollution technology or policy. If more information on the TTN is needed, call the TTN help line at (919) 541–5384.

Outline. The following outline is provided to aid in reading this preamble to the final rule.

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I. Statutory Authority

The statutory authority for this rule is provided by sections 101, 112, 113, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7413, 7414, 7416, and 7601). This rule is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

II. Background and Public Participation

The Clean Air Act was created in part "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." (Clean Air Act, section 101(b)(1)) Section 112(b), as revised in 61 FR 30816 (June 18, 1996), lists 188 HAPs believed to cause adverse health or environmental effects. Section 112(d) requires that emission standards be promulgated for all categories and subcategories of "major" sources of these HAP and for "area" sources listed for regulation, pursuant to section 112(c). Major sources are defined as those that emit or have the potential to emit (from all emission points in all source categories within the facility) at least 10 tons per year of any single HAP or 25 tons per year of any combination of HAP. Area sources are stationary sources of HAP that are not major sources.

On July 16, 1992 (57 FR 31576), the EPA published a list of categories of sources slated for regulation. This list included the portland cement source category regulated by the standards being promulgated today. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On June 4, 1996, the EPA published a schedule for promulgating these standards (61 FR 28197). Standards for the portland cement manufacturing source category covered by this rule were proposed on March 24, 1998 (63 FR 14182).

As in the proposal, the final standards give existing sources 3 years from the date of promulgation to comply. New sources are required to comply with the standard upon initial startup. The EPA believes these standards to be achievable for affected sources within the time provided.

Operating limits, methods for determining initial compliance, as well as monitoring, recordkeeping, and reporting requirements are included in the final rule. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule.

The amended Clean Air Act requires the EPA to promulgate national emission standards for sources of HAPs. Section 112(d) provides that these standards must reflect:

"* * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * *" [42 U.S.C. 7412(d)(2)].

This level of control is referred to as MACT. The Clean Air Act goes on to establish the least stringent level of control for MACT; this level is termed the "MACT floor."

For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" [section 112(d)(3)]. Existing source

standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for source categories and subcategories with 30 or more sources, or the average emission limitation achieved by the best performing 5 sources for sources or subcategories with fewer than 30 sources [section 112(d)(3)]. These two minimum levels of control define the MACT floor for new and existing sources.

The standards were proposed in the **Federal Register** on March 24, 1998 (63 FR 14182). The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested individuals the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing and, therefore, one was not held. The public comment period, which was extended by thirty days in response to requests from commenters, was from March 24, 1998 to June 26, 1998. A total of 28 comment letters were received. Commenters included industry representatives, State and local agencies, and environmental groups. Today's final rule reflects the EPA's full consideration of all of the comments. These public comments along with the EPA's responses to comments on the proposed rule are summarized in this preamble. A more detailed discussion of public comments and the EPA's responses can be found in the Response to Comment Document (Docket No. A–92–53, Item V–C–1).

III. Summary of Final Rule

A. Applicability

The standards apply to each portland cement manufacturing plant at any facility which is a major source or an area source, with the following exception. Some portland cement plants fire hazardous wastes in the kiln to provide part or all of the fuel requirement for clinker production. Portland cement kilns and in-line kiln/raw mills subject to the NESHAP for hazardous waste combustors (HWC), 40 CFR 63, subpart EEE, are not subject to this standard; however other affected sources at portland cement plants where hazardous waste is burned in the kiln are subject to this standard. HW kilns and HW in-line kiln/raw mills that temporarily or permanently stop burning hazardous waste may be subject to the emission standards, notification, testing, and monitoring requirements of today's rule, as provided by subpart EEE of this part.

Except for hazardous waste burning (HW) cement kilns and HW in-line kiln/raw mills, these standards apply to all cement kilns and in-line kiln/raw mills regardless of the material being combusted in the kiln. Currently, cement kilns which combust municipal solid waste, medical waste, or other waste materials (other than HW) are subject to today's rule. Since these devices currently are not subject to section 129 standards, EPA is including them in this rule to avoid a situation where they aren't regulated at all. This measure, however, is potentially an interim step. EPA could determine that cement kilns combusting solid waste materials should be regulated under section 129 of the Clean Air Act, 42 U.S.C. § 7429, and if so, EPA would revise the applicability section of these regulations accordingly at the time section 129 regulations applicable to cement kilns are promulgated.

EPA also considered but rejected the possibility of subcategorizing cement kilns based on the nature of feed preparation for the kiln. As discussed in the proposal preamble, there are two types of portland cement manufacturing processes differentiated on the basis of feed preparation: wet process, and dry process (which includes the long kiln dry process, preheater process, and preheater/precalciner process). The wet process kilns and all variations of the dry process kilns use the same raw materials and use the same types of air pollution controls. Therefore, if subcategories were defined based on process type, the MACT floor technology would be identical (docket item II–B–73). For this reason, the EPA is not promulgating separate rules based on process (kiln) type.

For portland cement plants with on-site non-metallic minerals processing facilities, the first affected source in the sequence of materials handling operations subject to this NESHAP is the raw material storage, which is just prior to the raw mill. The primary and secondary crushers and any other equipment in the non-metallic minerals processing plant, which precede the raw material storage are not affected sources under this NESHAP. The first conveyor system transfer point subject to this NESHAP is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

This regulation does not apply to the emissions from cement kiln dust (CKD) storage facilities (e.g., CKD piles or landfills). A separate rulemaking will be forthcoming utilizing RCRA authority that will apply to air emissions associated with CKD management and disposal facilities.

B. Emission Limits and Operating Limits

In today's notice, the EPA is establishing emission limitations for particulate matter (as a surrogate for HAP metals), dioxins/furans (D/F), and total hydrocarbons (as a surrogate for organic HAPs, including polycyclic organic matter). The NESHAP for portland cement manufacturing applies to both major and area sources of HAPs. The affected sources for which emission limits are established include the non-hazardous waste (NHW) kiln, NHW in-line kiln/raw mill, clinker cooler, raw material dryer, and materials handling processes that include the raw mill, finish mill, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems (hereafter referred to as materials handling processes).

The NESHAP limits PM (surrogate for HAP metals) emissions, as well as opacity, from new and existing NHW kilns, NHW in-line kiln/raw mills, and clinker coolers, and limits opacity from raw material dryers and materials handling processes, at portland cement plants which are major sources. The rule also limits D/F emissions from new and existing NHW kilns and NHW in-line kiln/raw mills located at portland cement plants which are major or area sources of HAPs. In addition, the rule limits total hydrocarbon (THC) as a surrogate for organic HAP emissions from new greenfield NHW kilns, new greenfield NHW in-line kiln/raw mills, and new greenfield raw material dryers at portland cement plants which are major or area sources. Tables 2 and 3 present a summary of the emission limits for new and existing portland cement affected sources.

TABLE 2.—SUMMARY OF EMISSION LIMITS [a,b] FOR AFFECTED SOURCES AT PORTLAND CEMENT PLANTS
(Metric units)

Affected source and pollutant	Emission limit for existing sources	Emission limit for new sources
NHW kiln and NHW in-line kiln/raw mill [c] PM	0.15 kg/Mg dry feed [e] and opacity level [c] no greater than 20 percent	0.15 kg/Mg dry feed [e] and opacity level [c] no greater than 20 percent
NHW kiln and NHW in-line kiln/raw mill D/F [c,d]	0.2 ng TEQ/dscm or 0.4 ng TEQ/dscm with PM control device operated at ≤204°C [g]	0.2 ng TEQ/dscm or 0.4 ng TEQ/dscm with PM control device operated at ≤204°C [g]
NHW kiln and NHW in-line kiln/raw mill THC [d]	none	50 ppmvd [f] (as propane)
Clinker cooler PM	0.05 kg/Mg dry feed and opacity level no greater than 10 percent	0.05 kg/Mg dry feed and opacity level no greater than 10 percent
Raw material dryer and materials handling processes (raw mill system, finish mill system, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) PM.	10 percent opacity	10 percent opacity
Raw material dryer THC [d]	none	50 ppmvd [f] (as propane)

[a] All concentration limits at 7 percent oxygen.
[b] Applies to major sources only, except as noted.
[c] Includes main and alkali bypass stacks.
[d] Applies to both major and area source portland cement plants.
[e] If there is an alkali bypass stack associated with the kiln or in-line kiln/raw mill, the combined PM emission from the kiln or in-line kiln/raw mill and the alkali bypass must be less than 0.15 kg/Mg dry feed.
[f] Applies only to new greenfield affected sources.
[g] The average temperature of the test run averages during performance test must be less than or equal to 204 degrees C.

TABLE 3.—SUMMARY OF EMISSION LIMITS [a,b] FOR AFFECTED SOURCES AT PORTLAND CEMENT PLANTS
(English units)

Affected source and pollutant	Emission limit for existing sources	Emission limit for new sources
NHW kiln and NHW in-line kiln/raw mill [c] PM	0.30 lb/ton dry feed [e] and opacity level [c] no greater than 20 percent	0.30 lb/ton dry feed [e] and opacity level [c] no greater than 20 percent
NHW kiln and NHW in-line kiln/raw mill D/F [c,d]	8.7×10^{-11} gr TEQ/dscf or 1.7×10^{-10} gr TEQ/dscf with PM control device operated at ≤400°F [g]	8.7×10^{-11} gr TEQ/dscf or 1.7×10^{-10} gr TEQ/dscf with PM control device operated at ≤400°F [g]
NHW kiln and NHW in-line kiln/raw mill THC [d]	none	50 ppmvd [f] (as propane)
Clinker cooler PM	0.10 lb/ton dry feed and opacity level no greater than 10 percent	0.10 lb/ton dry feed and opacity level no greater than 10 percent
Raw material dryer and materials handling processes (raw mill system, finish mill system, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) PM.	10 percent opacity	10 percent opacity
Raw material dryer THC [d]	none	50 ppmvd [f] (as propane)

[a] All concentration limits at 7 percent oxygen.
[b] Applies to major sources only, except as noted.
[c] Includes main and alkali bypass stacks.
[d] Applies to both major and area source portland cement plants.
[e] If there is an alkali bypass stack associated with the kiln or in-line kiln/raw mill, the combined PM emission from the kiln or in-line kiln/raw mill and the alkali bypass must be less than 0.30 lb/ton dry feed.
[f] Applies only to new greenfield affected sources.
[g] The average temperature of the test run averages during performance test must be less than or equal to 400 degrees F.

The NESHAP imposes operating limits on affected sources that are subject to D/F emission limits. These operating limits are summarized in Table 4.

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TABLE 4.—SUMMARY OF OPERATING LIMITS FOR AFFECTED SOURCES AT PORTLAND CEMENT PLANTS

Affected Source/Pollutant	Pollutant	Operating Limits
All kilns and in-line kiln raw mills at major and area sources (including alkali bypasses).	D/F	Operate such that the 3-hour rolling average particulate matter control device (PMCD) inlet temperature is no greater than temperature established at performance test. Operate such that the three-hour rolling average activated carbon injection rate is no less than the rate established at performance test (if applicable). Operate such that the three-hour rolling average activated carbon injection nozzle pressure drop or carrier fluid flow rate is no less than that specified by manufacturer (if applicable).

The rule requires the owner or operator to operate such that the temperature at the inlet to the kiln or in-line kiln raw mill particulate matter control device (PMCD) is at a level no greater than the level established during the successful Method 23 performance test. The three-hour rolling average temperature limit is established by taking the average of the one-minute average temperatures for each test run conducted during the successful Method 23 performance test, then averaging each test run average. Further, sources may petition the Administrator for an alternate averaging period or method for establishing operating parameter limits.

Owners or operators of in-line kiln/raw mills are required to establish separate PMCD inlet temperatures applicable to periods when the raw mill is operating and periods when the raw mill is not operating. The appropriate "raw mill operating status dependent" PMCD inlet temperature shall not be exceeded. Owners or operators of kilns or in-line kiln/raw mills equipped with alkali bypasses are required to establish a separate temperatures for the inlet to the kiln or in-line kiln raw mill PMCD and the kiln or in-line kiln/raw mill alkali bypass PMCD. The applicable temperature limit for the alkali bypass is established during the performance test in which the raw mill is operating.

After a transition period in which the status of the raw mill was changed from "off" to "on" or from "on" to "off", compliance with the operating limits for the new mode of operation begins, and the three-hour rolling average is established anew, i.e., without considering previous recordings.

If carbon injection is used for D/F control, the carbon injection system must be operated such that the carbon injection rate shall be maintained at a level equaling or exceeding the rate which existed during the successful Method 23 performance test. The three-hour rolling average carbon injection rate limit is established in the same way as the temperature limit, as described above. The injection nozzle pressure drop or carrier fluid flow rate must also be monitored, and the minimum levels for these parameters are established based on manufacturers specifications. The nozzle pressure drop or carrier fluid flow rate is monitored with a 3-hour rolling averaging period.

C. Performance Test Provisions

A performance test is required to demonstrate initial compliance with each applicable numerical limit. The rule requires the owner or operator to use EPA Method 5, "Determination of Particulate Emissions from Stationary Sources" to measure PM emissions from kilns, in-line kiln/raw mills and clinker coolers. These tests will be repeated every 5 years. Kilns and in-line kiln/raw mills equipped with alkali bypasses are required to meet the particulate standard based on combined emissions from the kiln exhaust and the alkali bypass. Owners or operators of in-line kiln/raw mills are required to conduct a Method 5 performance test while the raw mill is operating and a separate Method 5 performance test while the raw mill is not operating. In conducting the Method 5 tests, a determination of the particulate matter collected in the impingers ("back half") of the particulate sampling train is not required to demonstrate initial compliance with the standard, however the permitting authority may require a "back half" for permitting, determination of emission fees, particulate matter monitoring or other purposes. Owners or operators are also required to determine the kiln or in-line kiln/raw mill dry feed rate, because the PM emission standards for kilns, in-line kiln/raw mills and clinker coolers are expressed as lb PM/ton (kg PM/Mg) dry feed.

The opacity exhibited during the period of the initial Method 5 performance test shall be determined, if feasible, through the use of a continuous opacity monitor (COM). Where the control device exhausts through a monovent or where the use of a COM in accordance with the installation specifications of EPA Performance Specification (PS)–1 of appendix B to 40 CFR part 60, is not feasible, EPA Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources" shall be used. Where the control device discharges through a fabric filter (FF) with multiple stacks or an electrostatic precipitator (ESP) with multiple stacks, the owner or operator has the option of conducting an opacity test in accordance with Method 9, in lieu of installing a COM.

The rule requires the owner or operator to use EPA Method 23, "Determination of Polychlorinated Dibenzo-p-dioxins and Polychlorinated Dibenzofurans from Stationary Sources" to measure D/F emissions from kilns and in-line kiln/raw mills. These D/F tests shall be repeated every 2 and one-half years. The temperature at the inlet to the particulate matter control device (PMCD) during the period of the Method 23 performance test shall be continuously recorded. One minute average temperatures must be calculated for each minute of each run of the test. The average of the one-minute averages must be calculated for each test run and included in the performance test report. The average of one-minute averages for each test run is averaged for all test runs, and this is the operating temperature limit not-to-be-exceeded by any 3-hour rolling average temperature during subsequent operations of the affected source. If carbon injection is used for D/F control, the carbon injection rate and other associated operating parameters must be measured during the period of each run of the Method 23 performance tests. The average carbon injection rate and other associated operating parameters measured for the three runs must be determined and included in the test report.

Owners or operators of in-line kiln/raw mills are required to conduct a Method 23 performance test, and record the temperature at the inlet to the PMCD

while the raw mill is operating, and a separate Method 23 performance test with PMCD inlet temperature recording while the raw mill is not operating. If applicable, the carbon injection rate shall be determined during both performance tests. Where applicable, the exhausts from both the kiln or in-line kiln/raw mill and the alkali bypass are required to meet the D/F standard.

The owner or operator is required to repeat the performance tests for opacity, PM, and D/F emissions from kilns and in-line kiln/raw mills within 90 days of any significant change in the raw material components or fuels fed to the kiln (e.g, when there is an increase in the input rate of municipal solid waste, tire-derived fuel, medical waste, or other solid wastes to the kiln or in-line kiln/raw mill, above the rate used in the previous performance test.) Under the standard, the owner or operator shall use a THC continuous emission monitor (CEM) to conduct a performance test of THC emissions from new greenfield kilns, new greenfield in-line kiln/raw mills, and new greenfield raw material dryers. Owners or operators of new greenfield in-line kiln/raw mills are required to demonstrate initial compliance by measuring THC emissions while the raw mill is operating and while the raw mill is not operating. The standard for THC does not apply to the exhaust from the alkali bypass of kilns or the alkali bypass of in-line kiln/raw mills, and these streams are not subject to a performance test for THC. Each THC CEM is required to be designed, installed, and operated in accordance with EPA Performance Specification (PS)–8A of 40 CFR part 60, appendix B.

Under the standard, the owner or operator shall use EPA Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources" to measure the opacity of gases discharged from raw mills, finish mills, raw material dryers and materials handling processes. These tests would be repeated every five years. A summary of performance test requirements is given in Table 5.

TABLE 5.—SUMMARY OF PERFORMANCE TEST REQUIREMENTS

Affected source and pollutant	Performance Test
New and existing NHW kiln and NHW in-line kiln/raw mill[b c] PM	EPA Method 5[a]
New and existing NHW kiln and NHW in-line kiln/raw mill[b c] Opacity	COM if feasible[d e] or EPA Method 9 visual opacity readings.
New and existing NHW kiln and NHW in-line kiln/raw mill[b c f g] D/F	EPA Method 23[j]
New greenfield NHW kiln and NHW in-line kiln/raw mill THC	THC CEM (EPA PS–8A)[h]
New and existing clinker cooler PM	EPA Method 5[a]
New and existing clinker cooler opacity	COM[d i] or EPA Method 9 visual opacity readings
New and existing raw and finish mill PM	EPA Method 9[a i]
New and existing raw material dryer and materials handling processes (raw material storage, clinker storage, finished product storage, conveyor transfer points, begging, and bulk loading and unloading systems) PM.	EPA Method 9[a i]
New greenfield raw material dryer THC	THC CEM (EPA PS–8A)[h]

[a] Required initially and every 5 years thereafter.
[b] Includes main exhaust and alkali bypass.
[c] In-line kiln/raw mill to be tested with and without raw mill in operation.
[d] Must meet COM performance specification criteria. If the fabric filter or electrostatic precipitator has multiple stacks, daily EPA Method 9 visual opacity readings may be taken instead of using a COM.
[e] Opacity limit is 20 percent.
[f] Alkali bypass is tested with the raw mill on.
[g] Temperature parameters determined separately with and without the raw mill operating.
[h] EPA Performance Specification (PS)-8A of appendix B to 40 CFR part 60.
[i] Opacity limit is 10 percent.
[j] Required initially and every 2.5 years thereafter.

D. Monitoring Requirements

The owner or operator of each portland cement manufacturing plant shall prepare for each affected source subject to the rule, a written operations and maintenance plan. The plan shall be submitted to the Administrator for review and approval as part of the application for a part 70 permit. The operations and maintenance plan shall include procedures for proper operation and maintenance of the affected source and air pollution control devices in order to meet the emission limits of the rule. The operations and maintenance plan shall also include procedures to be used during an inspection of the components of the combustion system of each kiln and each in-line kiln/raw mill. This inspection must be conducted at least once per year. Additionally, the operations and maintenance plan shall include corrective action procedures for the raw mill and finish mill, and associated particulate matter control devices (PMCDs), which must be implemented when required by the rule. The operations and maintenance plan shall also include provisions for monitoring opacity from materials handling sources, and to conduct M. 9 tests if visible emissions are observed. (Further details of this are discussed in the preamble section "Summary of Changes Since Proposal".) Finally, failure to implement procedures consistent with the operations and maintenance plan will be a violation of this subpart.

The rule requires owners or operators to monitor the opacity of gases discharged from kilns, in-line kiln/raw mills, alkali bypasses and clinker coolers using a COM, if a COM can be feasibly installed in accordance with PS–1 of appendix B to 40 CFR part 60. Where it is not feasible to install a COM, e.g. where the control device discharges through a monovent, the owner or operator is required to monitor emissions by conducting daily Method 9 tests. Where the control device discharges through a FF with multiple stacks or an ESP with multiple stacks, the owner or operator has the option of conducting daily tests in accordance with Method 9, in lieu of installing a COM. The duration of the Method 9 tests is 30 minutes.

The rule requires that kilns and in-line kiln raw mills subject to the particulate matter (PM) standards must install, correlate, and operate PM continuous emission monitors (CEMs). However, the compliance date for

installing PM CEMs is deferred pending further rulemaking. Further discussion of this issue is found in the preamble sections "Summary of Changes Since Proposal" and "Summary of Responses to Major Comments."

The owner or operator of a kiln or in-line kiln raw mill must install, calibrate, maintain and continuously operate a device to monitor and record the temperature of the exhaust gases from the kiln, in-line kiln/raw mill, and/or alkali bypass (if applicable), at the inlet to or upstream of the kiln, in-line kiln/raw mill, and alkali bypass PMCD. The calibration of the thermocouple or other temperature sensor must be verified at least once every three months.

If activated carbon injection is used for D/F control, the owner or operator must install, operate, calibrate and maintain a device to continuously monitor and record the weight of activated carbon injected and record the weight in 1 minute rolling averages. The accuracy of the weight measurement device must be ± 1 percent of the weight being measured. The calibration of the device must be verified at least once every three months. The owner or operator must record the feeder setting at least once per day and determine the mass of carbon injected for every three-hour rolling average period. In addition, the carbon injection nozzle pressure drop or activated carbon carrier fluid flow rate must be monitored and recorded. Further, the activated carbon specifications must be the same as or better than the specifications of the carbon used during the previous performance test.

To clarify how the three-hour rolling average is calculated at initial start-up, operating parameter limits will not become effective on the compliance date until enough data have been accumulated to calculate the rolling average for the limit. For example, given that compliance with the standards begins nominally at 12:01 am on the compliance date, the three-hour rolling average temperature limit does not become effective as a practical matter until 3:01 am on the compliance date. This approach is adopted for all continuous monitoring systems, including CEMs.

During intermittent operations, however, periods of time when operating parameters are not recorded for any reason (e.g., source shutdown) are to be ignored when calculating rolling averages. For example, consider how the three-hour rolling average for a parameter would be calculated if a source shuts down for yearly maintenance for a three week period. The first one-minute average value recorded for the parameter for the first minute of renewed operations is added to the last 179 one-minute averages before the source shut down, to calculate the three-hour rolling average. This approach is adopted for all continuous monitoring systems, including CEMs. This approach would inhibit a source from intentionally interrupting the monitoring system to avoid unwanted parameter values.

The rule requires the owner or operator to monitor THC emissions from the main exhaust of greenfield kilns; the main exhaust of greenfield in-line kiln/raw mills; and greenfield raw material dryers using a CEM installed in accordance with PS–8A in 40 CFR part 60, appendix B.

The rule requires the owner or operator to monitor the opacity from raw mills and finish mills by conducting a daily six-minute test in accordance with Method 22, "Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares."

Owners or operators of raw mills and finish mills are required to initiate corrective action within one hour of a Method 22 test during which visible emissions are observed. A 30-minute Method 9 opacity test must be started within 24 hours of observing visible emissions.

A summary of monitoring requirements is given in Table 6.

TABLE 6.—SUMMARY OF MONITORING REQUIREMENTS

Affected source and pollutant or opacity	Monitor/Type/Operation/Process	Monitoring requirement
All affected sources	Operations and maintenance plan	Prepare written plan for all affected sources and control devices.
All kilns and in-line kiln raw mills at major sources (including alkali bypass)/opacity.	COM, if applicable	Install, calibrate, maintain and operate in accordance with general provisions and with PS–1.
	Method 9 opacity test, if applicable	Daily test of at least 30-minutes, while kiln is at highest load or capacity level.
All kilns and in-line kiln raw mills at major sources (including alkali bypass)/PM.	PM CEM	The compliance date is deferred until a future rulemaking, at which time EPA will consider what performance specification requirements should be established.
All kilns and in-line kiln raw mills at major and area sources (including alkali bypass)/D/F.	Combustion system inspection	Conduct annual inspection of components of combustion system.
	Continuous temperature monitoring at PMCD inlet.	Install, operate, calibrate and maintain continuous temperature monitoring and recording system; calculate 3-hour rolling average; verify temperature sensor calibration at least quarterly.
	Activated carbon injection rate, nozzle pressure drop or carrier fluid flow rate, and carbon type/brand, if applicable.	Install, operate, calibrate and maintain continuous activated carbon injection rate monitor; verify calibration at least quarterly; record feeder setting daily; calculate average injection rate for each 3-hour rolling average. Monitor nozzle pressure drop or carrier fluid flow rate according to manufacturers specifications, and calculate rolling 3-hour averages.
New greenfield kilns and in-line raw mills at major and area sources/THC.	THC CEM	Install, operate, and maintain THC CEM in accordance with PS–8A; calculate 30-day block average THC concentration.
All clinker coolers at major sources/opacity.	COM, if applicable	Install, calibrate, maintain and operate in accordance with general provisions and with PS–1.
	Method 9 opacity test, if applicable	Daily test of at least 30-minutes, while kiln is at highest load or capacity level.

TABLE 6.—SUMMARY OF MONITORING REQUIREMENTS—Continued

Affected source and pollutant or opacity	Monitor/Type/Operation/Process	Monitoring requirement
All materials handling operations (MHO) at major sources/opacity.	M. 22 visible emissions test as part of operations and maintenance plan.	For each MHO, conduct monthly 1-minute Method 22 visible emissions test; if visible emissions are observed, initiate corrective action within one hour and conduct 30-minute Method 9 test within 10 minutes. For each MHO, if no visible emissions are observed after first 6 months, reduce monitoring to semi-annual. If no VE are observed thereafter, reduce monitoring to annual basis. If VE are observed for a MHO, revert back to conducting VE tests on a monthly basis.
All raw mills and finish mills at major sources/opacity.	Method 22 visible emissions test ..	Conduct daily 6-minute Method 22 visible emissions test while mill is operating at highest load or capacity level; if visible emissions are observed, initiate corrective action within one hour and conduct 30-minute Method 9 test within 24 hours.
New greenfield raw material dryers at major and area sources/THC.	THC CEM	Install, operate, and maintain THC CEM in accordance with PS–8A; calculate 30-day block average THC concentration.

E. Notification, Recordkeeping, and Reporting Requirements

All notification, recordkeeping, and reporting requirements in the general provisions (40 CFR part 63, subpart A) apply to portland cement manufacturing plants. These include: (1) Initial notification(s) of applicability, notification of performance test, and notification of compliance status; (2) a report of performance test results; (3) a startup, shutdown, and malfunction plan with semiannual reports of reportable events (if they occur); and (4) semiannual reports of excess emissions. If excess emissions are reported, the owner or operator shall report quarterly until a request to return the reporting frequency to semiannual is approved.

The NESHAP general provisions (40 CFR part 63, subpart A) require that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records onsite for at least 2 years but may retain the records offsite the remaining 3 years. The files may be retained on microfilm, microfiche, on a computer disk, or on magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

IV. Summary of Changes Since Proposal

In response to comments received on the proposed standards, changes have been made to the final standards. These changes include clarifications designed to make the EPA's intent clearer as well as changes to the requirements of the proposed standards. A summary of the substantive changes made since the proposal is given in the following sections, along with the rationales for these changes. Further details on the rationales for these changes can be found in Section VI of the preamble: Summary of Responses to Major Comments.

A. Designation of Affected Sources

The section of the rule on designated affected sources is being clarified to include new greenfield raw material dryers that are located at facilities that are area sources. The EPA is clarifying today that these affected sources are subject to limitations on THC. The preamble for the proposed rule stated that polycyclic organic matter (POM) emissions (using THC as a surrogate) from portland cement NHW kiln area sources would be subject to MACT standards under EPA's interpretation of section 112(c)(6). The EPA proposed to use THC as a surrogate for organic HAPs, and today it is clarifying that POM is an organic HAP for which THC is a surrogate. Since POM was a listed HAP from portland cement NHW cement kilns (at both area and major source portland cement plants) in the section 112(c)(6) listing (63 FR 17838, April 10, 1998), the EPA is clarifying that the limitation of emissions of THC applies to new greenfield cement kilns, in-line kiln raw mills and raw material dryers at major and area source cement plants in the portland cement industry. Further discussion of this change is found below in the discussion of standards.

B. Definitions

The definitions of "alkali bypass" and "feed" have been expanded to reflect cement industry practices. Definitions of "greenfield" and new "brownfield" affected sources have been added to the final rule to clarify the applicability of the final THC standards to specific affected sources. A definition of "one-minute average" has been added to clarify the monitoring provisions of the final rule. A definition of rolling average has been added to clarify and maintain consistency with the requirements for HW kilns.

C. Emission Standards and Operating Limits

Based on comments received, the EPA is clarifying today that the THC limitation applicable to new kilns, new in-line kiln/raw mills, and new raw material dryers is restricted to greenfield sources, in recognition of the difficulty that owners or operators of reconstructed and new brownfield affected sources might have in obtaining suitable kiln feed materials while remaining competitive. The selection of a site tied to feed materials with relatively low levels of naturally occurring organic matter is the basis for the MACT standard and is an option only available to greenfield sources. Further, as discussed above, the EPA is clarifying that this THC limitation applies to new greenfield kilns, new greenfield in-line kiln/raw mills, and greenfield raw material dryers located at facilities that are area, as well as major, sources.

The requirements in the proposal for initiating a site-specific operating and maintenance plan, and implementation of a quality improvement plan, due to stipulated exceedences of a 15 percent kiln opacity limit, have been removed. The EPA agrees with commenters who questioned this tiered approach, and so the final rule will retain only a 20 percent opacity limit for the kiln and in-line kiln/raw mill.

In response to a comment, the EPA is clarifying that the opacity limitation on gases discharged from raw mills and finish mills is restricted to the mill sweep and air separator air pollution control devices. This is consistent with the MACT floor technology for control of gases from these affected sources.

The final rule has been reformatted to provide a separate section for operating

limits. Control of temperature at the inlet to kiln and in-line kiln/raw mill PMCDs and control of the activated carbon injection parameters (if applied as a D/F control technique) are provisions promulgated as operating limits.

The averaging period for the operating limit for the inlet kiln and in-line kiln/raw mill PM control device temperature (to demonstrate compliance with the D/F emission limits) has been changed from a 9-hour block average period to a three-hour rolling average period. Comments were received that the averaging period should be shorter. In addition, the rule has been clarified to include data reduction procedures to be followed to demonstrate compliance. Furthermore, sources may petition the Administrator for an alternate averaging period or method for establishing operating parameter limits.

The provisions for establishing the PM control device inlet temperature limit based on the D/F performance test have been changed to correct an error in drafting the proposal. A commenter pointed out that the proposal would allow a source to conduct its D/F performance test with an inlet PM control device temperature below 400 degrees F, but after the performance test, the source would be allowed to operate its PM control device with an inlet temperature up to 400 degrees F. In drafting the proposal, the EPA did not intend to allow a source to operate its PM control device at a temperature higher than the temperature during the performance test, and so the EPA is clarifying today that the inlet temperature limit is established as and capped at the average temperature during the D/F performance test. To further achieve consistency with the D/F temperature requirements for HW kilns and to better assure that the standard reflects MACT, the EPA is dropping the proposed provision which would have allowed the temperature limit to be established as the average temperature during the performance test plus 25 degrees F if the D/F level was below 0.15 ng/dscm. To clarify and maintain consistency with the requirements for HW kilns (and to best implement standards representing MACT), if the source complies with the 0.4 ng TEQ/dscm D/F limit, the average temperature of the test run averages during the performance test must be below 400 degrees F. To further achieve consistency with the requirements for HW kilns, additional operating parameter limits associated with the use of activated carbon injection must be established and these parameters must be monitored continuously. The averaging period for the activated carbon injection rate and other operating parameters has been changed from a 9-hour period to a 3-hour rolling average period. Further details on the establishment of the temperature and other operating parameter limits are discussed in section VI. of this preamble.

D. Performance Test Requirements

In response to comment, the EPA is clarifying that both during the performance test and to demonstrate continuous compliance, opacity limitations for the kiln and clinker cooler must be met for each 6-minute block period. (The proposal incorrectly required a 30-minute averaging time.) This is consistent with the requirements of the NSPS, which is the basis for the MACT floor for PM/metals and opacity.

Based on comments received that there should be consistency with the requirements for HW kilns, the performance tests for D/F must be conducted every 2 and one-half years. (The proposal would have required that the D/F emissions tests be conducted every 5 years.) To further achieve consistency, and to assure that the kiln continues to achieve the requisite emissions reductions reflected in the standard, the EPA is also clarifying today that in addition to repeating performance tests every five years (or 2.5 years for the D/F performance tests), performance tests for kilns or in-line kiln/raw mills must be repeated within 90 days of initiating any significant change in the feed materials or fuels fed to the kilns (e.g., an increase in the input rate of municipal solid waste, tire-derived fuel, or medical waste to the kiln or in-line kiln/raw mill above the rate used in the previous performance test; or a switch from burning natural gas to coal). Such changes in fuel or feeds could result in changes to emissions.

E. Monitoring Requirements

In response to a comment, clarification has been added to the final rule to establish that any required Method 9 and Method 22 tests must be conducted while the affected source is operating at the highest load or capacity level reasonably expected to occur within the day that the test is performed.

The option for use of triboelectric bag leak detection systems for monitoring raw mill and finish mill fabric filter performance is not being promulgated at this time. Numerous commenters expressed concern regarding installation, operation, calibration and maintenance, and that the lack of clear-cut specifications would lead to open-ended liability for owners/operators. Those owners or operators who want to use bag leak detection systems may petition the Administrator for approval of alternative monitoring requirements under the General Provisions.

Requirements for temperature monitoring devices (including range and reference standard) have been added to the final rule. In response to a comment, monitoring requirements for activated carbon injection system accuracy, calibration frequency, and data recording and reduction have also been added to the final rule. To achieve consistency with the requirements for HW kilns, activated carbon injection nozzle pressure drop or carrier fluid flow rate, and carbon specifications, must also be monitored and recorded.

An explicit monitoring requirement for an inspection of the components of the combustion system of each kiln or in-line kiln/raw mill has been added to the rule. This inspection must be conducted at least once per year, in accordance with the procedures specified in the operation and maintenance plan for the affected source. This change was made in response to several comments that were received suggesting that provisions (such as limitations on and monitoring of carbon monoxide) be added to the final rule to ensure good combustion and thus minimize formation of D/F.

The operations and maintenance plan requirement has been changed to explain that the plan must also include provisions for observing opacity from materials handling sources, and for conducting a M. 9 test if visible emissions (VE) are observed. Specifically, materials handling sources' VE shall be monitored via M. 22 once per month. After 6 months without VE for each individual source, the monitoring frequency would be reduced to a semi-annual basis. If there are no VE in the next 6 month period for a particular source, the monitoring frequency would be reduced to an annual basis. If VE occurs during the annual inspection, the frequency would revert back to once per month. If VE are observed during one of these inspections, a Method 9 test is required. This change was made to provide greater assurance that these units are in compliance with the opacity limit and to meet the Agency's commitment to incorporate enhanced monitoring in all MACT standards.

Finally, the final rule is being clarified that failure to implement procedures consistent with the operations and maintenance plan will be a violation of this subpart.

In the preamble to the proposal, the EPA noted its intent to include a requirement for PM continuous emission monitors (CEMs) in the final rule, unless the analyses of new information and data showed that it is not appropriate. (See 63 FR at 14205). Based on successful testing on an incinerator, as well as extensive use of these monitors in Europe, EPA believes there is sound evidence the PM CEMs should work at cement kilns. Accordingly, the final rule contains a requirement to install PM CEMs. However, we are deferring the effective date of this requirement pending further testing and additional rulemaking. Please see the preamble section "Summary of Responses to Major Comments" for further details on this issue.

F. Additional Test Methods

The final rule has been changed to permit the use of either Method 320 or Method 321 for the determination of hydrogen chloride (HCl) for the purpose of making an applicability determination. These methods are being promulgated as part of this rulemaking.

Since proposal of Method 322 for the measurement of HCl along with the portland cement NESHAP, the EPA attempted to utilize Method 322 to gather data from lime kilns (which have a matrix similar to portland cement sources) and encountered technical problems with the gas filter correlation infrared spectroscopy (GFCIR). Many of these problems were adequately identified by the data quality indicators in the method. However, as a backup option, the Agency collected data sets at lime kilns using both GFCIR and Fourier transform infrared spectroscopy (FTIR). These paired data sets provide unexpected contradictory results.

The dynamic spiking results of the GFCIR would indicate that Method 322 results should be biased by overpredicting the true value (the spike recovery consistently showed greater than 100 percent recovery). However, FTIR data collected nearly simultaneously with the GFCIR data show that the GFCIR results were significantly lower than FTIR results. Since the Agency applied statistical methods to analyze the FTIR data and concluded that the FTIR method did not have a significant bias, the Agency is confident in the values reported by the FTIR instrument. Therefore, this leads to a paradox with the GFCIR data; the results are contradictory for the GFCIR. At this point, the Agency has not determined the cause of the paradox, which has led to the decision to postpone promulgation of Method 322 as an alternative method for measurement of HCl from portland cement kilns.

The EPA will continue to investigate the reasons for the differences in the two methods, and if a satisfactory solution is found to correct the problem, may consider further action on this method if additional evaluation data are available. For this reason proposed Method 322 is not being promulgated at this time and may not be used in applicability determinations for portland cement plants. (A more detailed discussion of this can be found in comment 2.5.1 in the Response to Comment Document.)

In the proposal, we stated that Methods 26 and 26A may be used in applicability determinations provided that these methods are validated concurrently using M. 321 or 322. Several comments were received stating that EPA is restricting M. 26 and M. 26A use by requiring that they be validated each time they are used, and that Method 26 has long been an approved EPA test method. Based on these comments, this requirement has been changed such that Methods 26 and 26A may be used to confirm a source is a major source without concurrent validation with M. 321 or M. 322. However, M. 26 or 26A may not be used to make the assertion that the source is an area source. Only the FTIR methods may be used for the measurement of HCl if the source wishes to claim it is not a major source. See the preamble section "Summary of Responses to Major Comments" for further discussion of this issue about how a source should determine whether it is a major or area source.

G. Reporting

A provision has been added to the final rule requiring that the semi-annual summary report for the period in which the annual combustion system component inspection was conducted include the results of the inspection.

H. Exemption from New Source Performance Standards

To eliminate overlap or duplicate coverage of NSPS and MACT standards for portland cement facilities, affected sources subject to requirements under this NESHAP are exempted from requirements under 40 CFR 60, subpart F, the New Source Performance Standards. However, there are two exceptions to this: kiln and in-line kiln/raw mills, and greenfield raw material dryers, that are new or reconstructed sources under the definition in Subpart F, and are located at area source cement plants, would still be subject to applicable PM limits, opacity limits, and recordkeeping and reporting requirements of the NSPS. The reason for this is that these "NSPS" kilns and in-line kiln/raw mills, and greenfield raw material dryers that are located at area source cement plants would be subject to the NESHAP's D/F and/or THC limits, but would not be subject to the NESHAP's PM limits, because they are located at area source cement plants.

I. Delegation of Authority

The final rule reserves authority for approval of alternate emission standards, major alternatives to test methods, major alternatives to monitoring procedures and waivers of recordkeeping.

J. Test Methods 320, 321, and 322

Test Methods 320 and 321 are being promulgated with minor corrections to clarify and improve test procedures, and correct equations incorrectly stated in the proposal notice. Proposed Test Method 322 is not being promulgated at this time as noted in Section F above.

V. Summary of Impacts

A. Air Quality Impacts

The air quality impacts of the final rule are identical to those of the proposed rule. Nationwide baseline HAP emissions from portland cement manufacturing plants are estimated to be 260 Mg/yr (290 tpy) at the current level of control. This rule will reduce emissions of HAPs by 82 Mg/yr (90 tpy) from baseline levels. Estimates of annual emissions of HAPs and expected reductions from implementation of this rule are given in metric and English units in Tables 7 and 8. The following text reviews the information provided in Tables 7 and 8.

TABLE 7.—NATIONWIDE ANNUAL EMISSION REDUCTIONS OF HAPS AND OTHER POLLUTANTS FROM PORTLAND CEMENT MANUFACTURING PLANTS

(Metric units)

Source	Pollutant	Baseline emissions (Mg/yr)	Emission reduction [Mg/yr]
Kilns, in-line kiln/raw mills, and alkali bypasses	HAP Metals[a]	150	35
	PM[a]	14,000	3,400
	D/F (TEQ)[b]	44 g/yr	16 g/yr
	Organic HAPs[c]	120	47
	THC[c]	530	200
Clinker coolers	HAP Metals[a]	1.1	0.18
	PM[a]	8,100	1,300

[a] These numbers pertain to existing sources only.
[b] These numbers pertain to both new and existing NHW kilns.
[c] These numbers pertain to new greenfield NHW kilns only.

TABLE 8.—NATIONWIDE ANNUAL EMISSION REDUCTIONS OF HAPS AND OTHER POLLUTANTS FROM PORTLAND CEMENT MANUFACTURING PLANTS

[English units]

Source	Pollutant	Baseline emissions (tpy)	Emission reduction (tpy)
Kilns, in-line kiln/raw mills, and alkali bypasses	HAP Metals[a]	160	38
	PM[a]	16,000	3,800
	D/F (TEQ)[b]	0.096 lbs/yr	0.035 lbs/yr
	Organic HAPs[c]	130	52
	THC[c]	580	220
Clinker coolers	HAP Metals[a]	1.2	0.2
	PM[a]	8,800	1,400

[a] These numbers pertain to existing sources only.
[b] These numbers pertain to both new and existing NHW kilns.
[c] These numbers pertain to new greenfield NHW kilns only.

This rule will reduce PM emissions from the existing NHW cement kilns and in-line kiln/raw mills by 3,400 Mg/yr (3,800 tpy) from the baseline level, a reduction of 24 percent. Emissions of HAP metals from the affected existing NHW cement kilns and in-line kiln/raw mills will be reduced by 35 Mg/yr (38 tpy), a reduction of 24 percent from the baseline level. Emissions of D/F TEQ will be reduced by 15 grams (g)/yr (0.033 lb/yr), a reduction of 36 percent from the baseline level, at existing NHW cement kilns and in-line kiln/raw mills located at major source and area source facilities.

For new NHW cement kilns and in-line kiln/raw mills, the MACT standards are projected to reduce emissions of D/F TEQ by an average of 0.6 g/yr (0.001 lb/yr) over the next 5 years (from major and area sources), a 36 percent reduction from projected baseline emissions. For new kilns, the MACT standards will also reduce projected emissions of THC by an average of 200 Mg/yr (220 tpy) and organic HAPs by an average of 47 Mg/yr (52 tpy) over the next 5 years, an emissions reduction for each of 39 percent from corresponding estimated nationwide baseline emissions.

The MACT standards will reduce PM emissions from 35 percent of the existing clinker coolers by 1,300 Mg/yr (1,400 tpy) from the baseline level, a reduction of 16 percent. Emissions of HAP metals from affected existing clinker coolers will be decreased by 0.18 Mg/yr (0.2 tpy), a reduction of 16 percent from the baseline level.

Additional reductions of THC and organic HAPs will result from the MACT standards for new greenfield raw material dryers. However, information on THC emission rates from raw material dryers and a projection of the number of such affected sources is not currently available, so nationwide reductions cannot be estimated.

B. Water Impacts

The impacts of the final rule are identical to those of the proposed rule. Control of D/F emissions using water injection for temperature reduction will result in an estimated increased water consumption (evaporated into the kiln exhaust gas for cooling) of 190 million gallons per year for existing NHW kilns and NHW in-line kiln/raw mills and 8 million gallons per year for new NHW kilns and NHW in-line kiln/raw mills.

C. Solid Waste Impacts

The impacts of the final rule are identical to those of the proposed rule. The amount of solid waste from existing NHW kilns, in-line kiln/raw mills, and clinker coolers (located at major sources) will increase by an estimated 4,700 Mg/yr (5,200 tpy) due to the requirements for PM control in the final rule.

D. Energy Impacts

The impacts of the final rule are identical to those of the proposed rule. For existing NHW kilns and NHW in-line kiln/raw mills the MACT standards for PM and D/F will increase energy consumption by an estimated 11 million kilowatt hours (KWh)/yr [38 billion British thermal units (Btu)/yr]. For new NHW kilns and NHW in-line kiln/raw mills the MACT standards for D/F will increase energy consumption by an estimated 10,600 KWh/yr (36 million Btu/yr).

E. Nonair Health and Environmental Impacts

The reduction in HAP emissions will have a beneficial effect on nonair health and environment impacts. Dioxin/furan and HAP metals have been found in the Great Lakes and other water bodies and

have been listed as pollutants of concern due to their persistence in the environment, potential to bioaccumulate, and toxicity to humans and the environment. Implementation of the NESHAP will aid in reducing aerial deposition of these emissions.

Occupational exposure limits under 29 CFR part 1910 are in place for some of the regulated HAPs (and surrogates) not including D/F. The National Institute for Occupational Safety and Health recommends an exposure level for D/F at the lowest feasible concentration. The final rule will reduce emissions, and consequently, occupational exposure levels for plant employees.

F. Cost Impacts

For new and existing NHW kilns, NHW in-line kilns/raw mills, clinker coolers, raw and finish mills, and materials handling facilities, the projected overall total capital costs of the final rule for controlling and monitoring emissions of D/F, PM (includes opacity), and THC are $108 million. The overall projected annual costs of the rule, for controlling and monitoring for D/F, PM (includes opacity), and THC, are $37 million. For new and existing NHW kilns and NHW in-line kiln/raw mills, the projected total capital and annual costs of complying with the MACT standard for D/F (includes controls and monitoring) are $15 million and $3.6 million, respectively. For new and existing sources subject to PM and/or opacity limits, the projected total capital and annual costs of complying with the MACT standards for PM and opacity (including PM controls, PM CEMs, and continuous opacity monitors) are $92 million and $33 million, respectively. With respect to PM CEMs costs only, the projected total capital and annual costs of PM CEMs are $15 million and 7.6 million, respectively. The THC emissions limit for new greenfield NHW kilns, NHW in-line kiln/raw mills and raw material dryers can be met by processing materials with typical levels of organic content, without installing and operating add-on pollution control systems that would be relatively costly. Feed materials that have sufficiently low levels of organic matter are widespread across the U.S., and the siting of new greenfield kilns is not expected to be significantly limited by the emission limit. The projected fifth-year national capital and annual costs of monitoring THC with a continuous emission monitor for new greenfield NHW kilns, in-line kiln/raw mills and raw material dryers are $0.75 million and $0.45 million, respectively (based on an estimated four new affected sources).

G. Economic Impacts

EPA conducted an economic analysis of the proposed NESHAP, and has reconducted its analysis to include the costs of PM CEMs and the monitoring of materials handling sources. The economic impacts of the final rule are slightly greater than those of the rule as proposed. Because the final standards may potentially include costs associated with PM CEMs and the monitoring of materials handling sources, EPA reconducted its economic analysis. This revised analysis evaluates a regulatory option that is more stringent than the final standards. Analyzing this more stringent option, which overstates the expected compliance costs, causes the economic impacts presented here to over estimate the expected impacts of the final standards. However, these economic impacts are only slightly greater than those of the proposal analysis.

The EPA estimates that regional market price increases of portland cement will be between 0.3 and 2.6 percent. The national average price increase is estimated to be 1.1 percent. The related decreases in quantity demanded of portland cement are estimated to range from 0.3 to 2.3 percent, with a national average of 1.0 percent. Domestic production of portland cement is estimated to decrease more than consumption (2.2 percent compared to 1.0 percent nationally because imports are estimated to increase by 5.5 percent). The decreases in domestic production may lead to the loss of approximately 334 jobs in the United States. No plants are expected to close; four kilns are expected to cease operating.

VI. Summary of Responses to Major Comments

A complete summary of all of the public comments on the proposal, and responses to these comments is provided in the "Response to Comments" document available in the docket and from EPA's Technology Transfer Network. The responses to major comments are given in this section.

Portland Cement Source Category

Comment: Commenters raised objections to splitting the portland cement category for cement kilns by the type of fuel (hazardous waste vs. fossil fuels) burned in the kiln. The commenters stated that splitting the industry by fuel type deviates from EPA's original source category list (July 16, 1992 FR) which included only a portland cement manufacturing category, and that no distinction is made regarding fuel type under the New Source Performance Standards (NSPS) for portland cement plants. The commenters were concerned that EPA's decision not to use the NSPS category will result in what Congress hoped to avoid (through section 112(c)(1)) by causing unnecessary costs and dislocations in the cement industry.

Response: Section 112(d)(1) of the Clean Air Act specifically provides that "the Administrator may distinguish among classes, types and sizes of sources within a category or subcategory in establishing standards. . . .". With regard to having separate categories/subcategories, the EPA believes that there can be significant differences in emissions due to hazardous waste burning that warrant separate classes for these devices. The types of HAPs found in emissions from hazardous waste-burning kilns are different from, and more numerous than, those from NHW kilns. Hazardous wastes can contain virtually any HAP, which in turn can be in stack emissions. The fact that hazardous waste-burning kilns are dealt with separately under a different statute (RCRA section 3004(q)(special standards for industrial furnaces which burn hazardous waste fuels)) likewise indicates that hazardous waste-burning cement kilns can be dealt with legitimately as a separate class. Indeed, this existing RCRA regulatory regime has created a different data base, and system of existing controls, which can result in different analyses, different floor controls and standards under the section 112 MACT process, again indicating that these sources can reasonably be classified as a distinct class. To summarize, this NESHAP for portland cement manufacturing covers NHW kilns and NHW in-line kiln raw mills; it does not apply to HW cement kilns which are subject to subpart EEE of this part. This NESHAP also covers affected sources located at portland cement manufacturing plants (such as clinker coolers, raw material dryers, and materials handling processes), regardless of whether the plant operates HW kilns.

Comment: Two commenters stated that EPA has not met its legal burden to be consistent when regulating HW and NHW cement kilns. The commenters stated that the EPA has not used consistent rationales and approaches to develop emission limitations for the same pollutants.

Response: There are a number of differences between kilns that burn hazardous waste and those that do not

in terms of process feed/fuel, process operation, pollutants and pollutant quantities generated, existing regulations that impact MACT floor determinations, and the economics of their operations. These differences provide the bases for differences in determinations of MACT floors, emission limits, and other regulatory requirements. When there is no rational reason for differences between the two standards, EPA has changed the two sets of rules (see section IV. of this preamble for a discussion of changes made to this rule since proposal) to make them more consistent.

Regulation of Cement Kilns Under Section 129

Comment: According to one commenter, the EPA is required to regulate any facility that combusts any solid waste under section 129 of the Clean Air Act. However, EPA's current section 129 regulations either: (1) Exempt portland cement kilns that burn any amount of hospital waste, medical waste, and infectious waste from the medical waste incinerator (MWI) rule, (2) exempt cement kilns that burn less than thirty percent waste from the municipal waste combustor (MWC) rule, or (3) have yet to be promulgated as the commercial and industrial waste rule. The commenter asserts that the EPA cannot fail to promulgate section 129 regulations for cement kilns that burn non-hazardous solid waste by suggesting that it may promulgate section 129 regulations in the future. Cement kilns would then be permitted to combust any of these wastes without complying with section 129, despite the fact that the Clean Air Act expressly mandates that any unit burning any solid waste must comply with section 129. Therefore, the commenter asserts that the EPA must promulgate section 129 standards for cement kilns that burn any solid waste now. If EPA cannot promulgate section 129 standards immediately, the commenter asserts that EPA must, at a minimum, include numerical emission standards for the pollutants listed in section 129 (including mercury, cadmium, and lead) in its proposed regulations under section 112.

Response: EPA does not read section 129 as precluding EPA from promulgating an interim section 112 (d) standard for portland cement kilns which burn non-hazardous solid waste. The interim alternative is to have no regulation at all for HAP emissions. This is because the only rules implementing section 129 explicitly do not apply to waste-burning cement kilns (see 40 CFR sections 60.50b(p), 60.32b(m), 60.50c(g) and 60.32e(g)) and the explanation for these provisions in 62 FR at 45117 (Aug. 25, 1997) and 62 FR at 48538 (Sept. 15, 1997)). Neither the commenter or any other person challenged these provisions, and EPA is not reopening the section 129 rules for consideration here.

EPA does not regard interim non-regulation of non-hazardous waste burning cement kilns as a reasonable alternative to including them within the scope of these portland cement MACT regulations. Indeed, were the Agency to exempt waste burning cement kilns from these MACT standards, it would create a strong incentive for cement kilns to burn waste to escape MACT regulation. EPA emphasizes, however, as we did at proposal, that the standards in today's rule do not represent EPA's final determination that only section 112 (d) standards are appropriate or required for solid non-hazardous waste-burning cement kilns. Today's action does not in any way foreclose an eventual section 129 standard.[1]

With regard to the commenter's suggestion that EPA adopt specific emission limits in this MACT rule for mercury, lead, and cadmium—which are pollutants identified in Section 129 for regulation—as EPA discussed at proposal, emission limits were considered in the MACT rule for these pollutants. As discussed at proposal, EPA was unable to identify a MACT floor for mercury. As a result, there is no mercury emission limit which can be associated with a MACT floor. The use of activated carbon injection (ACI) was considered by EPA as a "beyond the floor" alternative. However, as also discussed at proposal, based on the relatively low levels of existing mercury emissions from individual NHW cement kilns and the costs of reducing these emissions by ACI, EPA does not consider this beyond the floor alternative justified. Thus, no mercury emission limit is included in the final MACT rule, and thus would not be included even if this was a section 129 rule. Finally, as also discussed at proposal, EPA considers PM a surrogate for semi-volatile metals (e.g., lead, cadmium, etc.). The proposed rule and the final rule include a PM emission limit based on the use of MACT. As a result, the final rule achieves reductions in emissions of these pollutants consistent with MACT. Furthermore, sufficient data do not exist to identify emission limits for lead and/or cadmium associated with MACT and EPA is unable to establish emission limits for these pollutants in this rule. See *Sierra Club* v. *EPA*, no. 97–1686 (D.C. Cir. 1999) slip op. at 15 (EPA is not obliged to establish a MACT standard for HAPs for which the Agency is unable to quantify emission reductions). Even if such emission limits could be developed, however, they would not result in any further reduction in emissions beyond that achieved by the MACT rule, given the PM standard.

Comment: Other commenters believe that cement kilns, irrespective of their fuel or raw material mix, should be regulated under the portland cement NESHAP and not under section 129 of the Clean Air Act. Commenters stated that the EPA's discussion of its authority under section 129 is irrelevant to, and inappropriate in, the proposed portland cement NESHAP. They said that if EPA intends to regulate cement kilns that burn solid waste materials under section 129, the proper venue would be in a proposal pursuant to section 129. Commenters stated that, based on the discussion of section 129, EPA has apparently already determined how it intends to treat solid waste burning cement kilns in the section 129 rulemaking. Ten commenters were concerned that cement kilns could be subject to different regulations from year-to-year (or day-to-day) depending on whether they trigger the section 129 applicability thresholds. The commenters believe that such a regulatory structure is confusing, burdensome, inappropriate, and raises serious legal issues. Commenters noted that the EPA's proposed regulation of solid waste burning cement kilns under section 129 could lead to increased fuel consumption and emissions of greenhouse gases as cement kilns try to avoid triggering section 129 regulation by not burning alternative fuels like solid waste.

Response: The EPA acknowledges all the comments dealing with the potential future regulation under section 129 of the CAA of air emissions from cement kilns that burn solid waste (other than hazardous waste). Both the proposed and final promulgated portland cement NESHAP apply to cement kilns which burn solid waste (other than hazardous waste). If the EPA decides in the future that emission standards developed under the authority of section 129 of the CAA are warranted for cement kilns that burn solid waste, a separate rule will be proposed to allow for public comment. The commenters' concerns regarding duplicative regulations are misplaced, however. See CAA section 129(h)(2)

[1] Any waste burning cement kiln subject to a section 129 standard would no longer be subject to these section 112 (d) MACT standards. See CAA section 129 (h) (2).

(units can't be regulated simultaneously under both sections 129 and 112(d)(2)).

Regulation Under 112(c)(6)

Comment: Commenters stated that the EPA should not exercise its authority under section 112(c)(6) to regulate dioxin/furan emissions from area sources since the area sources have *de minimis* dioxin/furan emissions and regulating them under section 112 will impose significant burdens (for reporting, recordkeeping, monitoring, and control technology) while providing negligible environmental benefits. These commenters further state that EPA's own estimates indicate D/F emissions from NHW kilns contribute only 0.8 percent of total nationwide D/F emissions. The commenters do not believe that Congress intended such a result in drafting section 112(c)(6).

Response: Regarding the above comments about regulation of D/F under section 112(c)(6), the EPA is required by section 112(c)(6) to "list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section." The method for identifying and selecting sources for listing and regulation under these subsections was discussed at length in **Federal Register** notices published on June 20, 1997 (62 FR 33625) and April 10, 1998 (63 FR 17838). Section 112(c)(6) does not provide for de minimis exemptions for source categories, but rather directs EPA to make findings on the basis of what is necessary to meet the requirement to assure that sources accounting for 90 percent of the emissions of these pollutants are subject to standards. Moreover, because the pollutants addressed by section 112(c)(6) are persistent, that is, they remain in the environment for extremely long periods of time without breaking down, the EPA believes that any claims of de minimis contributions should be considered with great caution, and granted in only very exceptional circumstances. Consequently, the EPA believes that its decisions in response to section 112(c)(6) represent a reasonable exercise of its discretion within the constraints of that subsection.

Comment: Several commenters stated that EPA's proposed action to regulate cement kiln "area sources" under CAA section 112(c)(6) violates the CAA and is arbitrary and capricious. They stated that the EPA has improperly proposed to apply the MACT standards to area source cement kilns and other HWCs before deciding upon listing criteria and preparing the overall list or lists of sources required by that provision. In referring to EPA's proposal to regulate area sources of 112(c)(6) pollutants, they stated their view that only those 112(c)(6) pollutants for which a source category is listed under 112(c)(6) should be regulated.

Response: Regarding the initial portion of the above comment, the notice of the final source category listing for section 112(d)(2) rulemaking pursuant section 112(c)(6) requirements was published April 10, 1998, in 63 FR 17838–17855. The referenced notice provides the required listing of area sources, and therefore the commenter's point is moot.

The proposed rules for NHW kiln portland cement manufacturing would only have regulated area sources for D/F emissions, which is one of the pollutants for which these plants are listed as area sources. The pollutants for which portland cement NHW kilns were listed under 112(c)(6) are polycyclic organic matter (POM), D/F, and mercury. At proposal, the EPA had conducted an analysis under section 112(d)(2) for D/F and mercury with respect to establishing emission standards, and concluded that area sources of D/F should be regulated. The analysis for mercury showed that the MACT floor for new and existing sources was no control. The BTF technology, use of activated carbon injection, was determined not to be cost-effective. Therefore, no emission standard was proposed for mercury.

The preamble for the proposed rule stated that POM emissions (using THC as a surrogate) from portland cement NHW kiln area sources would be subject to MACT standards under EPA's interpretation of section 112(c)(6). A THC emission standard was proposed for new raw material dryers and new NHW in-line kiln/raw mill main exhausts at cement plants that are major sources. At proposal, THC was identified as a surrogate for organic HAP emissions, which would include POM. The final rule's limits on THC emissions are applicable only to new greenfield kilns, in-line kiln raw mills, and raw material dryers, for reasons discussed in section IV.C. of this preamble. EPA is clarifying today that since THC is a surrogate for POM, the THC emission limits are applicable to new greenfield kilns and raw material dryers at cement plants that are major and area sources.

Comment: Several commenters stated their support for an alternative interpretation of regulating area sources emitting HAPs listed under 112(c)(6). They stated that section 112(d)(5) does not exclude area source categories listed pursuant to section 112(c)(6) from the Agency's discretionary authority to apply GACT standards nor does section 112(c)(6) prohibit EPA from exercising its discretionary authority under section 112(d)(5). According to the commenters, section 112(d)(5) grants the Administrator authority to establish GACT standards for any area sources listed pursuant to section 112(c), whether such sources are listed pursuant to section 112(c)(3) or (c)(6). They contended that had Congress intended to exclude section 112(c)(6) area sources from the GACT standards under section 112(d)(5), Congress would have stated this exclusion in section 112(d)(5).

Another commenter argued against the alternative interpretation owing to the bioaccumulation potential of the 112(c)(6) pollutants and the fact that the GACT approach would include no floor analysis or residual risk assessment.

Response: Section 112(c)(6) specifically states that EPA is to assure that sources of the pollutants to which this subsection applies be subject to standards under subsections (d)(2) or (d)(4). These subsections refer, respectively, to MACT and standards for pollutants for which a health threshold has been established (a null set of purposes for this rule). The natural reading of the provision (and at the least, a permissible one) is to say that MACT standards apply to emissions of 112(c)(6) HAPs from all sources. The alternative reading, that GACT requirements could apply because GACT requirements apply in lieu of section 112d(2) MACT requirements reads language into section 112c(6) not apparent on its face. Moreover, where Congress wished to reference subsection (d) without limitation, it omitted references to specific paragraphs. Compare the language of section 112(c)(6), which refers to standards under subsection (d)(2) or (d)(4), with the language of section 112(k)(3)(B)(ii), which refers to standards under subsection (d). In addition, the reading suggested by the industry commenters goes against the natural purpose of section 112c(6), namely, to assure that the maximum available control technology is applied to control the emission of the most dangerous HAPs. (This is also the thrust of the comment summarized above criticizing the reading suggested by industry commenters. EPA agrees with this comment.) The Agency has therefore concluded that none of the comments provided compelling facts or arguments to overcome the interpretation that section 112(d)(2) specifically refers to MACT standards.

Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act

Comment: Several commenters stated or supported the belief that the proposed rulemaking was incorrectly certified, contending that no factual basis was provided for the Agency's certification of no significant impact on a substantial number of small entities, and thus, EPA is not in compliance with provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* They stated that EPA needs to review its certification and provide a factual basis for it or complete an initial regulatory flexibility analysis, as required by the RFA.

The commenters contended the certification was deficient in that the Agency's guidance allows regulators to bypass a regulatory flexibility analysis if the industry has fewer than 100 firms. Furthermore, the seven small companies, representing 16 percent of the total number of affected companies, constitutes a "substantial number." Some commenters also stated their concern that even at a less than one percent cost-to-sales ratio effect on small businesses there could be a significant economic impact. Another commenter stated that EPA had not evaluated "reasonable worst case" impacts for any single plant. Several commenters requested more information regarding EPA's assessment of small business impacts and steps taken to minimize the impacts.

Response: The following discussion responds to the small business impact issues raised by the commenters. In accordance with the RFA, the Agency conducted a small business assessment and based its finding of "no significant impact on a substantial number of small entities" on the reported impacts of the proposed NESHAP on small businesses within the cement industry (Docket Item II–A–46, Table 4–7; Docket Item IV–C–15). The Agency did not intend to suggest that this certification was based solely upon the number of small businesses potentially affected by the rule, nor that the Agency sets thresholds for determining whether a particular number of businesses is a substantial number or a particular impact is a significant impact. The EPA did not certify that the rule would have no significant impact on a substantial number of small firms based solely on there being less than 100 firms subject to the rulemaking (Docket Item II–C–14). To clarify the factual basis of EPA's determination and address subsequent comments, a summary of the Agency's small business assessment is provided below.

Based on SBA-defined small business criteria, the Agency originally identified nine of the 44 companies within the U.S. cement industry as small businesses, or roughly 20 percent of total. However, based on updated information and changes in ownership since 1993, the Agency determined that four of these companies should not be considered small businesses. The APCA indicated that there are currently seven small businesses within this industry. This list includes the remaining five identified by the Agency plus Dacotah Cement and Royal Cement Company. Dacotah Cement is owned by the State of South Dakota and, thus, was not considered a small business by the Agency. Royal Cement Company began operations in 1995 after the Agency had completed its small business assessment and, thus, was not included in the Agency's small business assessment because EPA's engineering and economic data base did not contain information on this relatively new facility.

The Agency typically uses the cost-to-sales ratio as a measure of impact on small businesses. This ratio refers to the change in the annual control cost divided by the annual revenue generated from sales of the particular good or goods being produced in the process for which additional pollution control is required. It can be estimated for either individual firms or as an average for some set of firms such as affected small companies. While it has different significance for different market situations, it is a good rough gage of potential impact. In this case, to develop the cost-to-sales ratios, the Agency used the estimated control costs specific to the kilns operating at each manufacturing plant owned by a small business divided by their baseline cement sales. Contrary to industry's comments, the cost-to-sales measure of impact used by the Agency is a conservative approach and may, in fact, overstate the regulatory burden on small businesses for two reasons: (1) The Agency's sales estimate understates company sales because it only reflects cement operations and most companies have other vertical or horizontal business lines; and (2) this measure does not account for the expected market adjustments, i.e., increase in market prices that can potentially offset a portion of the regulatory costs.

For the economic impact analyses, the regulatory control costs were input to an economic model to predict outcomes at the market and plant level, including the impacts for markets served by manufacturing plants owned by small businesses. As shown in Table 4–7 of the EIA report (Docket Item II–A–46), the Agency did not project any plants or kilns owned by the original nine small businesses to close as a result of the proposed NESHAP.

As summarized in the Agency's June 10, 1998, letter to industry (Docket Item IV–C–15), a second small business assessment was conducted for the small businesses identified by the APCA. The weighted average cost-to-sales ratio for these small businesses was 0.93 percent with no plants or kilns projected to cease operations (Docket Item IV–B–5).

A third small business assessment was conducted to include the cost of PM CEMs and the monitoring of materials handling operations. (The promulgated rule requires the installation of PM CEMs, and more frequent monitoring of materials handling operations than included in the proposed rule. See Section IV and this section for further discussion of these requirements). The new weighted average cost-to-sales ratio for the small businesses was 1.4 percent with no plants or kilns projected to cease operations. See Docket Item IV–B–11 for the resulting company-specific cost-to-sales ratios for this third analysis. Further, to measure the relative regulatory burden on small businesses, these impacts at small businesses can be compared to those for the whole industry. See Docket Item IV–A–4 for this comparison.

As discussed above, based on the Agency's revised small business impacts assessments, which now include the cost of PM CEMs and other monitoring costs not considered at proposal, the Agency concludes that this NESHAP as promulgated today will not have a significant impact on a substantial number of small businesses. Nevertheless, EPA will reassess, as appropriate, small business impacts in the future proposed rulemaking that will establish the date that PM CEMs must be installed on NHW cement kilns.

Comment: One commenter stated that EPA must have objective, reasonable certainty that there will be no pertinent impacts on small entities or it cannot validly certify. The EPA must create a testable record against which the validity of certifications could be judicially reviewed. 5 U.S.C. 611(a) and (b). The commenter further claimed that EPA's SBREFA Guidance states that when EPA "cannot or does not certify that a proposed rule will not have a significant impact on a substantial number of small entities, it must prepare a regulatory flexibility analysis for the proposed rule." The commenter

does not believe EPA has met this burden for the proposed rule.

Response: Section 605(b) provides an exemption from the requirements in sections 603 and 604 to conduct a regulatory flexibility analysis when the Agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The EPA has made this certification for the rulemaking. The EPA believes its interpretation of the requirements of the RFA is reasonable and that its factual basis for certification is also reasonable.

To the extent that the commenter is suggesting that the RFA requires more than a reasonable basis for its decision to certify, the EPA disagrees. Courts review compliance with the RFA in accordance with Chapter 7 of the Administrative Procedure Act (APA), 5 U.S.C. 701, *et seq.* See 5 U.S.C. 611(a)(1) and (2). Under the APA, courts generally provide substantial deference to agency decisionmaking and will only set aside administrative actions or findings if the court concludes that the agency's action or finding was arbitrary, capricious, or otherwise contrary to law. 5 U.S.C. 706(2)(A). The Supreme Court has explained, "To make this finding the court must consider whether the decision was based on consideration of the relevant factors and whether there has been a clear error of judgement." *Citizens to Preserve Overton Park* v. *Volpe,* 401 U.S. 415 (1971). The EPA believes that its detailed economic analysis more than adequately supports its conclusion that the rule will not result in a significant impact on a substantial number of small entities.

Comment: The same commenter believes SBREFA can only be interpreted to allow numerical cutoffs based on the percentage of all small entities in the regulated universe that experience any impact. The commenter contends that when a rule impacts all the small entities in an industry, the statute a fortiori requires an analysis of whether those impacts are significant, and precludes a certification based solely on any absolute number of small entities impacted. By the same token, if the percentage of small entities experiencing any impact is more than *de minimis,* a similar analysis appears required. The commenter contends that this concept has been repeatedly recognized by EPA findings that impacts on more than 20 percent of the small entities within a universe proposed to be regulated constitute a "significant number." 61 FR 48206, 48228 (September 12, 1996); 59 FR 62585, 62588 (December 6, 1994). It also lies at the heart of the "impacts" matrix in EPA's SBREFA Guidance. The commenter notes that under that matrix, greater "impact" priority is assigned to rules that will impact a larger percentage of small entities, even if the impacts are relatively low.

Response: Other than small entities, the RFA does not define the term, or any part of the term, "significant impact on a substantial number of small entities." Thus, the statute does not specify whether an agency may properly certify a rule either because there is not a significant impact on small entities, or because, even if the impact is significant, there are not a substantial number of small entities affected. In any event, the EPA has chosen not to establish any mechanistic approach for determining when an impact is significant or when the number of small entities is substantial. Instead the EPA considers a variety of approaches depending on the particular circumstances of the rulemaking. In general, the EPA looks at both the extent of the potential impact and the number of small entities impacted to decide whether a more detailed regulatory flexibility analysis pursuant to sections 603 and 604 of the RFA is warranted. The EPA's Guidance repeatedly explains that the criteria offered in the Guidance cannot be applied mechanistically and that rule writers should consider other relevant information in deciding whether or not to certify a rule.

EPA's analysis of both the number of small entities impacted and the extent of that impact are described in previous responses in this section of this preamble, and as indicated above, the EPA has not certified this rulemaking based solely on the number (or percentage) of small entities.

Economic Impact Analysis

Comment: Several commenters believe that the final EPA economic analysis at proposal was inaccurate and should be either revised to reflect industry's comments (in Attachment G to docket item IV–D–26) or withdrawn. Another commenter stated that EPA's model economic impacts data are seriously flawed because:

1. The model would not detect company-level impacts.

2. The economic analysis is not based on any estimate or analysis of actual small-entity impacts but is based on an aggregated industry wide economic model based on theoretically constructed model kilns.

3. The model predicts that older smaller dry kilns will close, which is counterintuitive because wet kilns are substantially more costly to operate per unit of product.

4. Flaws in the market-specific part of the model which lead directly to the modeled conclusion that profits will increase with more stringent control.

Response: The EPA disagrees with the preceding comments suggesting the analysis is inaccurate and should be withdrawn. The Agency developed its economic analysis based on the best available information using an accepted approach firmly rooted in economic theory to provide the necessary impact results to satisfy legislative and administrative requirements. Furthermore, the Agency conducted a revised economic impact analysis in response to the additional monitoring requirements for cement kilns and materials handling operations at major source cement plants (as fully described in Appendix G recently added to the July 1996 EIA report, Docket Item II–A–46). In conducting this revised analysis, the Agency also updated the original 1993 baseline information that supported the economic analysis for proposal to 1995 and is thereby consistent with the baseline used by the Agency for the Cement Kiln Dust (CKD) rulemaking and Hazardous Waste Combustion MACT Standards. This adjustment to the baseline characterization results in some differences in the projected economic impacts from the proposal analysis. In particular, under 1995 baseline conditions, the model predicts an aggregate loss in industry profits because of the sharp reduction in excess U.S. cement capacity from 1993 to 1995. This increase in capacity utilization to roughly 94 percent in 1995 severely limits the ability of unaffected (and slightly affected) domestic producers to offset production declines at affected cement plants. As a result, the potential profit gains to these producers from offsetting these reductions is no longer present in 1995 as in 1993 and the economic model predicts an aggregate loss in pre-tax earning of the U.S. industry, which is consistent with the expectations of the commenter. However, this occurs through the difference in baseline characterization rather than flaws in the Agency economic model and approach.

The following responses address the above comments that are specific to the economic analysis conducted for the regulation as originally proposed. First, the comments are specific to a draft version of the EIA report that has been revised. Comments were addressed in changes to the analysis prior to proposal as follows:

1. As the commenter suggested, the economic model incorporated a more realistic assumption for the elasticity of supply from foreign imports.

2. According to the commenter the draft EIA report did not adequately describe the basis for defining the regional markets used in the economic analysis and led to some confusion and/or misinterpretation by the industry as reflected in its comments. Contrary to assertions, the Agency's economic model does not omit any market areas as all U.S. production and consumption of cement is accounted for within the 20 regional markets as defined by the Agency. The Agency utilized the best available information in defining regional markets to better account for the regional competition within the industry.

3. The commenter claimed the draft EIA report did not adequately describe the basis for selecting the imperfectly competitive market structure for the cement industry and the implications of this selection of the economic impact results. The Agency's selection of market structure was not an attempt to distort the economic impact results or to infer that the industry is collusive and lacks any competition. Rather it was selected to provide better estimates given well-known characteristics of the industry. The Agency has appropriately modeled the competitive interaction between domestic producers of cement as well as foreign imports (where applicable) within each regional market in a manner that is consistent with the empirical evidence for cement markets and economic theory.

In regard to the statement that the economic impact data are flawed and accompanying reasons, the Agency responds as follows:

1. The economic impact analysis does allow the Agency to detect company-level impacts by aggregating the estimated control costs and related economic impacts at all manufacturing plants owned by each company, both large and small. Although the issue of capital availability is an important consideration for small businesses, it is not typically addressed in EPA economic analyses of regulatory actions as it requires company-specific information not available to the Agency and, moreover, there is not a generally accepted method with which to model and analyze this complex issue in the context of environmental regulation.

2. The Agency's characterization of costs at individual kilns was based on the econometric estimation of cost functions for cement kilns by Das (1991 and 1992). Using the best information available, the EPA made adjustments to these cost functions to better reflect the operating costs of kilns by process type and capacity (as fully described in Appendix C, Docket Item II–A–46). However, in accounting for size or economies of scale in estimating baseline operating costs, the Agency was limited by the two capacity size classifications of less than and greater than 500,000 short tons per year for which labor productivity and fuel consumption were reported by the Portland Cement Association. This data limitation prevents the EPA from developing baseline cost functions for very small kilns and, effectively, "lumps smaller kilns in with mid-size kilns into a larger class" of all kilns as stated by industry. Therefore, it is possible that the EPA's economic model understates the baseline operating costs at very small kilns. However, the Agency is able to estimate the incremental compliance costs for many categories of kiln capacity below 500,000 short tons per year ranging from 55,000 to 450,000 short tons per year. This more detailed classification scheme for estimating the regulatory compliance costs reduces the uncertainty related to the Agency's estimates of kiln closures.

3. The Agency agrees with the industry comment that wet kilns are generally more costly to operate, which has contributed to their use of hazardous waste to reduce their fuel costs and remain competitive with the dry process kilns, especially those using precalciner and/or preheater technologies. However, the economic impacts of the proposed NESHAP depend not only on the baseline costs of cement production but also on the incremental costs of compliance for each kiln. The proposed NESHAP largely impacts non-hazardous waste burning kilns as opposed to hazardous waste kilns that are most often wet process kilns. As stated in the EIA report, it is the higher relative incremental cost impact compared to that for its competitors that causes the Agency's model to project closure for two dry process kilns under the proposed NESHAP. Furthermore, the baseline costs of cement production were high for these kilns because they were each older and smaller than average. Thus, the projected closures are actually consistent with the commenter's statement that older and smaller kilns are more vulnerable to closure with regulation. Moreover, in the final EIA report, the Agency provides closure estimates for additional regulatory alternatives and, for more stringent "above-the-floor" alternatives, the economic model projects up to 10 kilns to close including 5 wet process kilns. Thus, the Agency believes that its economic model produces closure estimates that are consistent with the commenter's characterizations.

4. Although the Agency projects a net increase in profits for the cement industry as a whole in response to regulation, there is a "social cost" to reducing hazardous air emissions from the manufacture of cement. As shown in the final report, the Agency estimates that society must give up $34.5 million per year for the expected environmental benefits (as compared to the $28.8 million in regulatory compliance costs incurred by industry after market adjustments). Furthermore, factors cited by industry are not the reason for the model's prediction of a net increase in profits for the industry as a whole. The Agency believes that it has appropriately modeled the competitive interaction between domestic producers of cement as well as foreign imports (where applicable) within each regional market in a manner that is consistent with the empirical evidence for cement markets and economic theory.

Related to the net increase in profits for the industry as a whole, several commenters were surprised that the economic analysis predicts an increase in cement plants' pretax earnings. They interpreted this as applying to individual plants, which is a misinterpretation. The economic analysis projects a net increase in the U.S. cement industry's pre-tax earnings, which reflects profit gains at unaffected or relatively less affected cement plants and profit losses at affected plants that incur higher relative compliance costs. Thus, the commenter's statement that each cement plant's pre-tax earnings will increase by X dollars for every dollar spent on compliance is incorrect as these impacts are distributed across different plants. Also, the estimated price increase applies to all cement produced by U.S. manufacturing plants whereas the MACT compliance costs apply only to cement produced at affected plants. Therefore, the commenter's calculation of the projected price increase as a share of MACT compliance costs is also incorrect as the commenter is understating the relevant change in cost by dividing the MACT compliance costs by all cement produced rather than only the affected share of cement production. The projected increase in pre-tax earnings is a net result for the industry that results from losses at some cement plants that are offset by gains at other cement plants.

PM CEMs

Comment: Numerous comments were received stating that the EPA has not fully considered the impacts of a potential requirement for PM CEMS applied to NHW kilns, and that PM CEMs have not been adequately demonstrated on cement kilns.

Response: In the preamble to the proposal, EPA noted its intent to include a requirement for PM continuous emission monitoring system (CEMS) in the final rule, unless the analysis of existing or newly acquired data and information showed that it is not appropriate (see 63 FR at 14205). Based on successful testing on an incinerator conducted in the interim, as well as extensive use of these monitors in Europe, EPA believes there is sound evidence that PM CEMS should work at cement kilns. In addition, preliminary analyses of the cost of PM CEMS applied to cement kilns (docket items IV–C–1 and IV–C–21) and hazardous waste combustors (HWC) suggest that these costs are reasonable. Accordingly, the final rule contains a requirement to install PM CEMS. However, we agree with comments that indicate a need to develop cement kiln-specific performance requirements for CEMS and to resolve other outstanding technical issues. These issues include all questions related to implementation of the CEM requirement (i.e. relation to all other testing, monitoring, notification, and recordkeeping), relation of the CEM requirement to the PM emission standard, as well as technical issues involving performance, maintenance and correlation of the CEM itself. These issues will be addressed in a subsequent rulemaking. Therefore, we are deferring the effective date of this requirement pending further testing and additional rulemaking. As a result, in today's final rule, EPA is requiring that particulate matter continuous emission monitoring systems (PM CEMS) be installed at cement kilns. However, since the Agency has not finalized the performance specifications for the use of these instruments at cement kilns or resolved some of the technical issues noted above, we are deferring the effective date of the requirement to install, correlate, maintain and operate PM CEMS until these actions can be completed. The PM CEMS installation deadline will be established through future rulemaking, along with other pertinent requirements, such as final Performance Specification 11, Appendix F Procedure 2. It should finally be noted that EPA has a concurrent rulemaking process underway for hazardous waste combustors (HWC) and plans to adopt the same approach in that rule.

EPA also is taking action now to avoid facilities being in violation of the PM standard during CEM correlation testing. Commenters properly observed that CEM correlation testing would require sources to manipulate their PM control device during correlation tests to obtain higher PM emissions levels than the emission limit. It is necessary to do so because a good PM CEMS correlation must include CEMS and manual method data above the stated emission standard in order to have a wide enough range of data to meet the correlation coefficiency statistical requirement and to assure that calibrated readings above the level of the emission standard can be properly interpreted. Such data, however, could be misconstrued by state or local enforcement authorities or citizens as violations of the PM standard. It is important to address this issue now to encourage the development of additional PM CEMS data, and not to discourage facilities from choosing to install a CEM before the deferred effective date.

We are addressing this concern here in the same manner we plan to address it in the HWC MACT rule by providing that the particulate matter and opacity standards of parts 60, 61, 63 (i.e., all applicable Parts of Title 40) do not apply during particulate matter CEMS correlation testing, provided that you comply with certain provisions discussed below that ensure that the provision is not abused. EPA is also making this provision effective immediately, so that sources need not wait for the compliance date to take advantage of this particulate matter CEMS correlation test provision. We believe this approach adequately addresses commenters' concerns.

The temporary exemption from particulate matter and opacity standards is conditioned on several requirements. Sources are required to develop and submit to permitting officials a PM CEMS correlation test plan along with a statement of when and how any excess emissions will occur during the correlation tests (*i.e.*, how you will modify operating conditions to ensure a wide range of particulate emissions, and thus a valid correlation test). If the permitting officials fail to respond to the test plan in 30 days, the source may proceed with the tests as described in the test plan. If the permitting officials comment on the plan, the source must address those comments and resubmit the plan for approval. In addition, runs that exceed any PM or opacity emission standard are limited to no more than a total of 96 hours per correlation test. This 96 hours is sufficient time for a source to increase emissions to the desired level and reach system equilibrium, conduct testing at the equilibrium condition followed by a return to normal settings indicative of compliance with emissions standard(s) after those higher emissions data have been obtained, and return to equilibrium at normal conditions. Finally, to ensure these periods of high emissions are due to the bona fide need described here, a manual method test crew must be on-site and making measurements (or in the event some unforeseen problem develops, prepared to make measurements) at least 24 hours after you make equipment or workplace modifications to increase PM emissions to levels of the high correlation runs.

Selection of Emission Limits in General

Comment: One commenter stated that according to section 112(d) EPA may not base the floors of its emission standards on a particular technology. Instead, emission standards for existing sources must be no less stringent than "the average emission limitation achieved by the best performing twelve percent of the existing sources" (for which EPA has data). The commenter further stated that for new sources, standards must be based on the emission control that is achieved in practice by the best controlled similar source. Thus, the standards proposed for emissions of dioxins, mercury, total hydrocarbons, and hydrogen chloride are not valid.

Response: First, it should be noted most of the commenter's points were recently rejected by the DC Circuit in *Sierra Club* v. *EPA* (March 2, 1999). That case holds that because MACT standards must be achievable in practice, EPA must assure that the standards are achievable "under most adverse circumstances which can reasonably be expected to recur" (assuming proper design and operation of control technology). Slip op. p. 13. The case further holds that EPA can reasonably interpret the MACT floor methodology language so long as the Agency's methodology in a particular rule allows it to "make a reasonable estimate of the performance of the top 12 percent of units", slip op. p. 7; that evaluating how a given MACT technology performs is a permissible means estimating this performance, id. at 13; and that new source standards need not be based on performance of a single source, id.

Second, the commenter provided no additional emissions data for any pollutant. The EPA has selected emission limits at the floor level of

control. Section 112(d) requires EPA to promulgate emission standards based on what is determined to be achievable through the application of techniques, methods, etc. The rule does not require the use of any specific technology to meet the emission standard. The emission standards are based on the emissions levels achieved through the application of MACT floor technologies and account for variation in the process and in the air pollution control device effectiveness.

Although the commenter did not specifically mention PM, the following discussion using PM as an example will help clarify EPA's approach in setting MACT standards for this source category. The EPA evaluated the PM MACT floor technology for both existing and new sources at proposal and determined that the MACT floor technology is properly designed and operated FFs and ESPs. Commenters provided no data to suggest that a particular design or operating mode, or an alternative technology could achieve a lower level of PM emissions on a consistent basis. Nor did EPA identify other technologies for existing or new kilns or in-line kiln/raw mills that would consistently achieve lower emission levels of PM than the NSPS limit.

As discussed in docket item number IV–B–10, the data upon which the MACT floor was based were obtained from EPA Method 5 compliance tests on kilns subject to the NSPS and represent performance of PMCDs associated with new kilns over a relatively short period (typically three 1-hour test runs). These test data were obtained at kilns equipped with well designed and operated ESPs and FFs representative of the MACT floor, which is also represented by the NSPS emission level. Method 5 testing of these cement kilns equipped with MACT floor technology showed a range of emissions up to the NSPS level. Additional Method 5 tests performed on some of the same kilns included in the MACT floor analysis showed PM variations after control as plotted in docket item IV–B–10. EPA believes that the data base—which shows cement kilns with properly designed and operated fabric filters and electrostatic precipitators achieving levels up to and including the NSPS level—adequately accounts for the variability inherent in the air pollution control technologies, and indicates what PM levels are consistently achievable in practice. See Sierra Club, slip op. p. 13. In summary, the PM emission limit reflects an emission level consistently achievable with the use of well designed and operated MACT floor technology.

The emission standard for dioxin is based on the emission level achievable through the application of the MACT floor control technology, which is exhaust gas temperature control at the inlet to the PM control device to less than 400° F, and efficient combustion. Based on data evaluated at proposal, the technology can be represented by the dual standard of 0.2 ng TEQ/dscm or 0.4 ng TEQ/dscm with a PM control device inlet temperature of 400° F or less. Since the commenter provided no additional data, the EPA has reviewed, in response to this comment, the existing test data and literature on D/F formation and concluded that the selected emission limits are consistently achievable and represent the MACT floor. Similar to the discussion above regarding the PM data, the D/F performance test data are based on short-term tests of facilities using the MACT floor technology. Thus the proposed emission limits are retained and account for normal, inherent process and air pollution control operating variability, including the use of various fuels.

As discussed in the proposal preamble, there are no standards for THC emissions from existing sources because the MACT floor for control of THC for existing sources is no control. Further, the BTF control technique for existing sources, and a floor control for new sources, would be based on the performance of precalciner/no preheater technology. However, as discussed in the proposal, EPA rejected this technology as a basis for setting THC emission limits because of the technology's negative environmental and energy impacts. The basis for the THC limit for new greenfield kilns is site selection to ensure low hydrocarbon content in feed materials. (In the proposal, the THC limit applied to all new kilns, but based on comments received, the rule has been changed such that the THC limit will only apply to new greenfield kilns. See comment responses regarding this issue for more detail.) As discussed in the proposal, this option is not available to existing (and new brownfield) kilns, in that facilities are generally tied to existing raw material sources in close proximity to the facility, so that raw material proximity (*i.e.*, transportation cost) is usually a major (indeed, critical) factor in plant site selection.

As discussed in the proposal preamble, no standards are being adopted for Hg and HCl because the MACT floor has been determined to be no control and the BTF controls were not cost effective (docket item II–B–67).

This standard was developed under section 112, not section 129, so there is no statutory requirement to establish standards for individual HAP metals. However, control of cadmium, lead, and other non-volatile and semi-volatile metal HAPs is achieved via the floor level-based emission limit for PM, which serves as a surrogate for the non-volatile and semi-volatile metals. This is supported by data from coal-fired electric utility boilers which show relatively high HAP metals (except mercury) removal with fabric filters and electrostatic precipitators. (Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress, volume 1, 453/R–98–004a, February 1998, p. 13–23 and 13–26).

PM Limits

Comment: Numerous commenters supported the use of PM as a surrogate for non-volatile HAP metals. One commenter questioned the use of PM as a surrogate for HAP metals, and suggested that the EPA require stack testing for specific metal content.

Response: The final rule retains the use of PM as a surrogate for HAP metals because the MACT floor equipment and level of control for HAP metals, *i.e.*, properly designed and operated fabric filters (FFs) and electrostatic precipitators (ESPs), is identical to that for PM. Using PM as a surrogate for specific HAP metals eliminates the cost of performance testing to comply with numerous standards for individual metals, and achieves exactly the same level of HAP metal emissions limitation.

Comment: Although many commenters were in favor of the MACT floor determination and associated emission limit for PM (see docket item, number to be assigned), several other commenters suggested that more stringent PM standards were required in recognition of the performance test data presented in the preamble showing that many affected sources achieved lower levels of PM emissions than the proposed standard.

Response: The proposed PM standards have been retained in the final rule. EPA evaluated the MACT floor technology for both existing and new sources at proposal and determined that the MACT floor technology is properly designed and operated FFs and ESPs. Commenters provided no data to support that an alternative design or technology represents a floor that could achieve a lower level of PM emissions on a consistent basis. The EPA did not identify other technologies for existing or new kilns or in-line kiln/raw mills that would consistently achieve lower emission levels of PM than the NSPS limit.

As discussed in the proposal preamble, the data upon which the MACT floor was based were obtained from EPA Method 5 compliance tests on kilns subject to the NSPS and represent performance of PMCDs associated with new kilns over a relatively short period (typically three 1-hour test runs). These test data were obtained at kilns equipped with well designed and operated ESPs and FFs representative of the MACT floor, which is also represented by the NSPS emission level. Method 5 testing of these cement kilns equipped with MACT floor technology showed a range of emissions up to the NSPS level. Additional Method 5 tests performed on some of the same kilns included in the MACT floor analysis showed PM variations after control as plotted in the reference, confirming that some operating variability is inherent. EPA believes that these data reasonably represent levels achievable in practice by the average of the best performing 12 percent of sources, and by accounting adequately for variability, further assure that the standard will be achievable under the worst forseeable circumstances consistent with proper design and operation. Sierra Club, slip. op. p. 13. In summary, the PM emission limit reflects an emission level consistently achievable with the use of well designed and operated MACT floor technology.

Comment: One commenter stated that it is feasible, both technically and economically, for portland cement kilns to use fuels and raw materials with low metals content. Because feed limits are an achievable measure that would further reduce emissions, EPA must require them.

Response: Feed and/or fossil-fuel switching has not been undertaken by any NHW kilns to reduce metals emissions, and therefore this is not a MACT floor option.

The use of feed material selection and feed material blending to achieve lower metals emissions thus is a potential beyond-the-floor technology. Cost is a consideration in the decision to go beyond-the-floor. The ability of a facility to remain cost competitive typically depends on the use of raw materials mined in close proximity to the facility. Several commenters described the economic difficulties in locating, purchasing, and transporting feed materials to existing sites; the comment to the contrary stated the opposite categorically, but provided no supporting cost, economic or technical data. See Sierra Club, slip op. p. 13 (rejecting argument that pollution prevention measures had to be included as part of a standard where costs were not adequately quantified). EPA disagrees with this comment. Cement kilns require enormous amounts of raw material, and the costs of transporting the raw material are enormous, given the volumes involved. Finding a new source of raw material will often (if not invariably) entail more costs because the source of the raw materials will be further from the facility. The Agency believes that in many cases a facility could not even remain economically viable were existing sources of raw material to become unavailable. In many cases, costs of the change in raw material would exceed air pollution benefits.[2]

In the case of NHW kilns, fuel switching is not a demonstrated metals control technology. There are no data available to EPA that indicate that this technology can or has achieved metals emission reductions from NHW kilns. A HW kiln operator can control metals via the hazardous waste fuel, but this is not an option available to NHW kiln operations.

D/F Limits

Comment: Several comments were received regarding the D/F limits in the proposed rule, which were based on the MACT floor. Some commenters suggested that a lower D/F emission limit was appropriate for both new and existing sources, based on the performance test data reported in the proposal preamble. Other commenters felt that the proposed emission limit was too stringent and unjustified, and was not representative of the MACT floor technology. Many other commenters supported the proposed standards.

Response: In response to these comments, the EPA has reviewed the existing test data and literature on D/F formation and concluded that the selected emissions limits represent the MACT floor and are consistently achievable. Again, EPA is influenced by the fact that cement kilns using the floor control technology achieved different D/F levels in their performance tests—indicating that different levels reflect normal variability of the process and control technology. Consequently, EPA is retaining the proposed standard for D/F emissions from kilns and in-line kiln/raw mills in the final rule.

In order to establish a more stringent emission limit for new kilns, it is necessary to identify a different technology to which better performance is attributable. Since EPA could not identify a different technology for new kilns, the standard is based on the range of available data, considering process and control variability.

The EPA determined that the MACT floor technology for both existing and new sources was inlet PM control device temperature control to 400° F accompanied by good combustion and process control. Based on data evaluated at proposal, the technology can be represented by the dual standard of 0.2 ng TEQ/dscm or 0.4 ng TEQ/dscm with a PM control device inlet temperature of 400° F or less. The performance test data are based on short-term tests but do indicate that all kilns will achieve the numerical emission limit of 0.4 ng TEQ/dscm with the application of the floor technology. Thus the 0.4 ng TEQ/dscm emission limit is retained to account for normal inherent process and air pollution control operating variability, including the use of various fuels, such as tires.

THC Limit

Comment: Several comments were received questioning the specification of a THC standard for reconstructed kilns or new kilns built at existing sites. Commenters asserted that these facilities could not economically locate, purchase and transport suitable feed materials to meet this standard.

Response: In recognition of these comments, the final rule has been changed to make the THC limitation applicable only to greenfield kilns, greenfield in-line kiln/raw mills and greenfield raw material dryers. EPA agrees that only greenfield sources would be able to apply MACT, which is the site selection of feed materials with low levels of naturally occurring organic material. The EPA considered the use of precalciner/no preheater kilns for THC control, (docket items II–B–47, II–B–48, II–B–67, and II–B–76), but concluded that because of negative energy impacts and increased emissions of criteria pollutants these did not provide the maximum achievable control technology for either existing or new sources. Further discussion of this technology is provided in the response to the next comment.

[2] As discussed above, EPA considered control of feed materials as a potential beyond the floor technology. EPA is aware of the Conference Report to the 1990 amendments which state that controls on feed materials are not to be part of MACT for mineral processing facilities. H.R. Rep. No. 952, 101st Cong., 2d sess. 339. However, the text of the statute does not reflect this legislative history, stating unambiguously that MACT for all sources includes eliminating HAP emissions through "substitution of materials". Section 112 (d) (2) (A). EPA is following the explicit statutory text in considering (albeit rejecting) feed control as a potential beyond the floor technology in this rule. At the very least, this is a permissible interpretation of the statute, given the statutory goal of protecting and enhancing of the Nation's air resources. Section 101 (b)(1).

Comment: Commenters stated that the proposed rulemaking provides no justification or insufficient support for the selection of 50 ppmvd as the total hydrocarbon (THC) standard for new or modified kilns. Another commenter noted that EPA has recognized that portland cement kilns use a variety of methods and technologies to control their THC emissions, including precalciner/no preheater technology and a combination of feed material selection, site location, and feed material blending. All of these methods and technologies are reflected in existing sources' actual performance, on which EPA must base the floors for its THC standard. That commenter stated that under section 112(d) the THC emission standard would be much lower than 50 ppmvd.

Response: First, with regard to the methods and technologies determined to be the MACT floor, the "precalciner, no preheater" kiln is not considered maximum achievable control technology when other considerations such as energy impacts and NO_x emissions are taken into account. As explained in the preamble to the proposed rule, EPA believes that use of these technologies would not be MACT for new or existing sources because of the adverse environmental impacts associated with these technologies' use, in particular increased emissions of certain criteria pollutants. See *Portland Cement Assn* v. *Ruckelshaus*, 486 F. 2d 375, 385–96 (D.C. Cir. 1973) (if use of a particular technology results in other, adverse environmental consequences, that technology need not be considered the "best"). The proposal preamble also addressed consideration of feed material selection for existing sources as a MACT floor technology and concluded that this option is not available to existing (and new brownfield) kilns, in that facilities are generally tied to existing raw material sources in close proximity to the facility, and that raw material proximity (*i.e.*, transportation cost) is usually a major factor in plant site selection. This conclusion was supported by several commenters. The commenters described the economic difficulties in locating, purchasing, and transporting low organic feed materials to existing sites. However, for new "greenfield" kilns, feed material selection as achieved through appropriate site selection and feed material blending is considered new source MACT.

With regard to the level of standard, it is based upon data available to the Administrator and no data were provided after proposal which would justify a different standard. Based on a review of available information (docket item II–B–62, docket item II–B–75, docket item II–D–195) the EPA believes that a THC concentration of 50 ppmvd represents a level that is achievable nationwide across a broad spectrum of feed materials. This level has been retained in the final rule.

Comment: Comments were received concerning the suitability of THC as a surrogate for organic HAP, in light of the high variability in the ratio of organic HAP to THC in cement kiln exhaust gas.

Response: The EPA recognizes the variability of the data but concludes that when speciated analyses of THC were undertaken organic HAPs were found to be present. No attempt was made to correlate organic HAP emissions with THC emissions. Because of the cost savings to industry in conducting performance tests to establish compliance with a THC standard, EPA has chosen not to set standards for individual speciated organic HAPs. Further, since the source of organic HAPs is the same source as for THC (feed materials), using MACT will also control organic HAP emissions. Adopting THC as a surrogate will result in cost savings to the cement industry and to the EPA during compliance testing and monitoring.

The EPA notes further that the same issue was presented when EPA adopted standards for boilers and industrial furnaces burning hazardous waste, and in the course of that rulemaking, not only the Agency but the Science Advisory Board concluded that THC was indeed a reasonable surrogate for toxic organic emissions from cement kilns. [See 56 FR at 7153–54 (Feb. 21, 1991).]

The proposal preamble stated that POM, one of the seven pollutants listed in section 112(c)(6), would be regulated using THC as a surrogate. The final source category listing notice for section 112(d) rulemaking pursuant to section 112(c)(6) requirements shows the NHW kiln facilities portion of the portland cement source category to be a significant source of POM (63 FR 17838, April 10,1998). For this reason, and to control other THC HAPs, the final rule limits emissions of THC from new greenfield raw material dryers and new greenfield kilns and greenfield in-line kiln/raw mills at area sources as well as major sources.

Mercury Limit

Comment: Comments were received concerning the need for an emission standard to limit the emissions of mercury from NHW cement kilns. Other commenters suggested that a mercury standard be established based on a presumed floor or beyond the floor basis of fuel and/or feed material control, referring to the proposed Hazardous Waste Combustor rules and research on clean coal to reduce mercury emissions in the electric utility industry. Other commenters agreed with EPA's determination for no mercury emission limit.

Response: The EPA determined, at proposal, that the MACT floor for both new and existing sources was no control. The EPA evaluated activated carbon injection as a beyond the floor alternative for control of mercury emission from NHW kilns and in-line kiln/raw mills, and this technology was not found to be cost effective. Feed and/or fossil-fuel switching or cleaning has not been undertaken by any NHW kilns in order to reduce mercury emissions, and therefore these are not MACT floor options. For this reason feed and/or fossil-fuel switching or cleaning would be considered a beyond the MACT floor option but the EPA does not have data, nor did commenters provide data, that show that this option would consistently decrease mercury emissions. Moreover, as noted earlier, raw material feed control is prohibitively costly for this industry.

The proposed rule for Hazardous Waste Combustors included a standard of mercury. However, control of mercury in that rule would be based on controlling the amount of mercury in the hazardous waste fuel, not controlling raw material or fossil fuel. This approach is thus not available to NHW kilns. In addition, based on the Electric Utility Report to Congress on HAP emissions, EPA believes that fuel switching among different coals and from coal to oil would not consistently reduce HAP metal emissions from cement manufacturing plants. (Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress, volume 1, 453/R–98–004a, February 1998, pp. 13–1 through 13–5.) Therefore, this final rule establishes MACT for mercury as no control. However, EPA will be performing research and development work with the objective of finding more cost effective methods to reduce mercury air emissions from fossil-fuel fired electric utilities, and EPA will in the future consider whether any more cost effective methods may be appropriate as a basis for reducing mercury emissions from NHW cement kilns.

Hydrogen Chloride Limit

Comment: Comments were received stating the need for an emission standard for HCl emissions from kilns

because EPA did not provide data to show that HCl emissions pose no threat to public health and that HCl is emitted in large quantities from new and existing NHW kilns. Other commenters stated that EPA appropriately concluded that there is no basis for a MACT standard for HCl.

Response: With regard to the threat to public health comment, the EPA is conducting this rulemaking under section 112(d)(2) and therefore the decision on an emission standard is not based on health risk. Impacts to public health will be studied and addressed later under section 112(f) of the Act. The EPA determined, at proposal, that the MACT floor for both new and existing sources was no control. Further, no cost effective beyond the floor alternatives were identified. The commenters provided no new information on the use of any control technologies to limit emissions of HCl from NHW kilns. For this reason no emission standard is being established for HCl.

Opacity Limit

Comment: One commenter requested that EPA clarify the duration of both the performance test and continuous compliance demonstrations for opacity emissions.

Response: The opacity requirements in the final rule have been changed to provide for compliance on the basis of average opacity for each and every 6-minute block of operating time. This is consistent with the NSPS which is the MACT floor level of PM control upon which the standard is based. (The proposed rule incorrectly required a thirty-minute averaging time for demonstrating continuous compliance.)

Comment: Commenters expressed concern regarding the requirement to initiate a Quality Improvement Plan (QIP) and the need to track and statistically analyze opacities at levels below the standards. One commenter stated that a violation triggered by not initiating a QIP when the source was not violating an emission standard was extreme.

Response: The requirements for developing and implementing a QIP in response to a 15 percent kiln and in-line kiln/raw mill opacity trigger have been removed from the final rule. The final rule retains the opacity limit of 20 percent which if exceeded during any 6-minute period is a violation.

Comment: One commenter requested that EPA specify the scope of monitoring opacity from raw and finish mills.

Response: The EPA has clarified that the opacity limitation on gases discharged from raw mills and finish mills is restricted to the mill sweep and air separator air pollution control devices. This is consistent with the MACT floor technology for control of gases from these affected sources.

Comment: A commenter noted that the proposed rule did not specify under what conditions visual opacity monitoring should be conducted.

Response: The final rule clarifies that Method 9 (and Method 22) tests must be conducted under the highest load or capacity level reasonably expected to occur.

Comment: Numerous commenters expressed concern regarding installation, operation, calibration and maintenance of triboelectric bag leak detection systems, and that the lack of clear-cut specifications would lead to open-ended liability for owners/operators.

Response: The option for use of triboelectric bag leak detection systems for monitoring fabric filter performance is not being promulgated at this time. The EPA is presently considering this issue and may propose revised bag leak detector requirements for some source categories. Those owners or operators who want to use bag leak detection systems may petition the Administrator for approval of alternative monitoring requirements under the General Provisions.

The rule requires the owner or operator to monitor the opacity from raw mills and finish mills by conducting a daily six-minute test in accordance with Method 22, "Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares."

Owners or operators of raw mills and finish mills are required to initiate corrective action within one hour of a Method 22 test during which visible emissions are observed. A 30-minute Method 9 opacity test must be started within 24 hours of observing visible emissions.

D/F Monitoring

Comment: Several commenters suggested averaging periods for temperature limits shorter than 9 hours as proposed. One commenter preferred one-hour rolling averages. Two commenters preferred ten-minute averages as rationalized in the proposed Hazardous Waste Combustor Rule.

Response: As noted in section IV. Summary of Changes Since Proposal, the final rule, in response to these comments, has been changed to a shorter averaging period. The nine-hour block average period used for the monitoring of temperature (as well as the activated carbon injection rate, if applicable) has been changed to a three-hour rolling average period. The three-hour averaging time will help to limit disproportionate increases in D/F emissions that could be caused by very short periods of higher temperatures. A three-hour averaging time is reasonable because it is within the range of values the Agency could have selected, ranging from an instantaneous limit (i.e., no averaging period) up to a nine-hour averaging period.

The enforceable operating limit for gas stream temperature is derived from the temperature measured during 3 three-hour measurements of D/F emission. The three-hour rolling average temperature limit is established by taking the average of the one-minute average temperatures for each test run conducted during the successful Method 23 performance test, then averaging each test run average. Further, sources may petition the Administrator for an alternative averaging period or an alternative method for establishing operating parameter limits.

Comment: A commenter pointed out that the proposal would allow a source to conduct its D/F performance test with an inlet PM control device temperature below 400 degrees F, but after the performance test, the source would be allowed to operate its PM control device with an inlet temperature up to 400 degrees F.

Response: In drafting the proposal, the EPA did not intend to allow a source to operate its PM control device at a temperature higher than the temperature during the performance test, and so the EPA has clarified that the inlet temperature limit is established as and capped at the average temperature during the D/F performance test.

Comment: One commenter stated that the D/F standard should be coordinated with the rule for hazardous waste combustors.

Response: As was previously noted, the EPA has adopted a shorter temperature averaging time. To further achieve consistency with the D/F temperature requirements for HW kilns, the EPA is dropping the proposed provision which would have allowed the temperature limit to be established as the average temperature during the performance test plus 25 degrees F if the D/F level (during compliance testing) was below 0.15 ng/dscm. Further, new activated carbon injection operating parameters (nozzle pressure drop or carrier fluid flow rate) and averaging time have been added and changed, respectively, to be consistent with the requirements for the HW kilns.

Comment: A comment was received requesting a clarification of the

procedure for demonstrating compliance for in-line kiln/raw mills during time periods which span a change in raw mill operating status.

Response: After a transition period in which the status of the raw mill was changed from "off" to "on" or from "on" to "off", compliance with the operating limits for the new mode of operation begins, and the three-hour rolling average is established anew, i.e., without considering previous recordings.

Comment: Comments were received suggesting that combustion parameters (e.g., CO and THC) should be monitored to demonstrate compliance with the D/F standard.

Response: The final rule does not require monitoring of these parameters as a means of monitoring combustion because the EPA believes that THC and CO emissions from NHW cement kilns are largely due to formation outside of the combustion zone, i.e., due to the feed materials. Therefore THC and carbon monoxide emissions might not accurately reflect combustion conditions, therefore the EPA has not included CO monitoring requirements to ensure good combustion. However, the final rule has been changed to include a monitoring requirement for an inspection of combustion system components to be conducted at least annually.

THC Monitoring

Comment: The EPA received comments related to the use of THC monitoring as a means of controlling combustion related pollutants and, therefore, organic HAPs (see comment 6.4.1 in the Response to Comments Document).

Response: Stack THC emissions from kilns, in-line kiln raw mills, and raw material dryers result mainly from organic material within the feed and not from incomplete combustion. As a result, the suggested combustion monitoring alternatives are not relevant.

Performance Testing Frequency

Comment: The EPA received a comment requesting that performance tests be required more frequently than once every five years, citing other rules with more frequent testing requirements.

Response: The EPA selected the five year testing interval to synchronize the testing schedule with Title V permit renewals. The testing frequency for NHW cement kilns and other affected sources at portland cement manufacturing facilities has not been changed. The exception to this is the D/F performance tests. To maintain consistency with the requirements for HW kilns, the D/F performance testing frequency has been changed to every 2 and one half years.

Definitions

Comment: Commenters requested various changes to the definitions, including those of "alkali bypass" and "feed" to reflect cement industry practices.

Response: The final rule expands the definition of "alkali bypass", and defines "kiln exhaust gas bypass" as a synonym for alkali bypass. The final rule clarifies the definition of "feed" to include recycled cement kiln dust, consistent with past practice in enforcement of the NSPS.

Major Source Determination

Comment: Numerous comments were received regarding the use of emissions test data and emission factors (based on data provided in the proposal docket) in determining whether a source is major for hazardous air pollutants.

Response: The need for HAP-specific test methods and the validity of data obtained by various means to determine major source status are closely related. Hence this discussion covers both aspects under the overall title of major source determination.

Although emission standards are being promulgated for PM as a surrogate for semi-volatile and non-volatile HAP metals; THC as a surrogate for organic HAPs; and D/F, each facility owner/operator must make a major source determination that requires an estimate of the facility's potential to emit all HAPs from all emission sources. HCl and organic HAP emissions such as (but not limited to) benzene, toluene, hexane, formaldehyde, hexane, naphthalene, phenol, styrene, and xylenes are the main HAPs from the kiln that may cause facilities to be major sources, but HAPs emitted from all sources at the plant site should be accounted for in making a major source determination.

Comment: Some commenters questioned the need for accurate HCl measurements, since there is no HCl emission standard. Others stated that EPA should provide industry the choice of conducting testing for HCl with either Method 26, 321, or 322. They objected to the restriction that Method 26 could be used only if validated by Method 321 or 322. They also stated their belief that the Agency's decision regarding the negative bias of Method 26 was based on a limited set of test results and an insufficient investigation of the potential cause. Additional comments noted that Method 26 may actually give false positives due to inclusion of chloride salts in the calculation of measured results.

Response: As discussed above, HCl and organic HAPs emissions are the main HAPs from the kiln that will cause a source to be a major source, but HAPs emitted from all sources at the plant site, including metals emissions (discussed below) should be accounted for in making a major source determination. Accurate measurements of HCl in the kiln exhaust gases are necessary for major source determination. The EPA agrees with commenters that Method 26 may have positive biases attributable to chloride salts rather than to HCl; and negative biases due to condensation and/or removal of HCl on the filter and/or in the sampling probe. Therefore, the Agency has decided that Method 26 and 26A use without concurrent validation with M. 321 or M. 322 will only be acceptable for measuring HCl from NHW kilns to confirm that the portland cement plant is a major source. M. 26 or 26A may not be used to measure HCl in the determination that the source is an area source. Only the FTIR methods may be used in the measurement of HCl if the source claims it is not a major source.

Further, as a result of technical problems encountered by the Agency with the use of draft Method 322 (based on gas filter correlation/infrared technology) in the emission testing of lime kilns (which have a matrix similar to portland cement sources) [See Section IV.F. on Additional Test Methods for a description of the technical problems], and in response to concerns expressed by the commenters, the EPA is modifying its position regarding HCl measurements using this method in promulgating the final rule.

For the above reasons, the Agency has decided that only Methods 320 and 321 will be acceptable for measuring HCl from NHW kilns if the owner/operator wishes to claim its portland cement facility is not a major source. These methods are being promulgated as part of this rulemaking.

Comment: Commenters also requested that EPA allow cement manufacturers the option of using Method 25 (in addition to Method 18 or Method 320) for testing emissions of organic HAPs. The commenters suggest that the relatively inexpensive Method 25 could be used by cement plants that have low concentrations of organic matter in the raw material mix to verify that the plant's THC emissions are less than 10 tons/year.

Response: The focus of these commenters' point is alternatives to

measurement of organic HAPs in the process of making a major source determination. However, all HAPs (organic, HCl, metals, etc.) from all sources must be included in that determination, so it is necessary to obtain data that will allow summation of all HAP emissions to compare to the 10/25 ton per year thresholds specified in section 112 of the Clean Air Act. Depending on site-specific circumstances, EPA Method 25 may not provide sufficient information to make an accurate summation. For example, a source's determination that its THC emissions based on Method 25 or 25A are less than 10 tons per year does not necessarily signify that it is an area source; the source may be a major source based on the 25 ton per year criterion when all other HAP emissions are summed with the THC. If the source's THC emissions are over 10 tons per year, the source may choose to conduct emissions tests using EPA Method 320 to make a determination of actual organic HAP emissions. However, in lieu of conducting Method 320 emissions tests, the source could use Method 25A, but the source would have to assume that the mass emission rate (as propane) from all combustion sources combined at the site is attributed to one organic HAP. This amount would then have to be compared to the 10 ton per year threshold for one HAP. To summarize, in addition to accounting for organic HAPs (either through Method 320 testing or assuming all THC is one organic HAP), accurate measurements of HCl in the kiln exhaust gases would be necessary for major source determination, as well as measurements of HAP metals (see below), to obtain data that will allow summation of all HAP emissions to compare to the 10/25 ton per year thresholds.

Comment: Another commenter requested that EPA allow the use of an alternative to what they perceived as an EPA-suggested emission factor for metal emissions, of one percent of PM emissions, to determine major source status.

Response: If after the source determines that it is not major because it does not meet either the 10/25 ton per year thresholds based on the summation of HCl and organic HAP emissions from all sources at the plant, the source would need to determine its HAP metals emissions from all sources at the facility as well, to make a determination that it is not a major source. The use of a "one percent HAP metals in PM" emission factor assumption will not provide definitive evidence that the source is an area source. However, the Agency would allow sources to forego the speciated HAP metals emission tests (through the use of Method 29) if it is assumed that 1 percent of the total PM emissions from all sources at the site are metal HAPs. This assumed amount of metal HAPs emissions would be added to the amount of HCl and organic HAPs emitted (determined as described above), and this total amount would then be compared to the 25 ton per year threshold for all HAPs combined. To reiterate, each facility owner/operator must make a major source determination that requires an estimate of the facility's potential to emit all HAPs from all emission sources, accounting for HCl, organic HAPs (either through speciation of organic HAPs or assuming all THC is one organic HAP), and metals (either through speciation of metal HAPs or assuming 1 percent of PM is metal HAP), to allow summation of all HAP emissions to compare to the 10/25 ton per year thresholds.

Voluntary Consensus Standards

Comment: One commenter (IV–D–17) stated that EPA's actions (in developing and proposing the precursor to EPA Fourier Transform Infrared Spectroscopy [FTIR] test method 320) directly conflict with the guidance of and directives of the 1995 National Technology Transfer and Advancement Act and the Office of Management and Budget (OMB) Circular A–119 because: (1) the American Society of Testing and Materials (ASTM) FTIR consensus based test method is available, and (2) the EPA Emission Measurement Center (EMC) representatives were made aware of the development of the ASTM method and chose duplicative measures in developing and proposing the precursor to EPA FTIR test method 320. (The OMB Circular states specifically that "If a voluntary consensus standards body is in the process of developing or adopting a voluntary consensus standard that would likely be lawful and practical for an agency to use, and would be developed on a timely basis, an agency should not be developing its own government unique standard and instead should be participating in the activities of the voluntary consensus standards body.")

Response: The Agency has been actively developing extractive FTIR-based methods for HAPs since 1992. Methods 320 and 321 are direct products of this long-term effort to apply an innovative approach to emissions measurement in the form of extractive FTIR. The Agency has tested these methods in the laboratory and in the field extensively (conducting testing at two portland cement facilities), and has conducted multiple validation tests of these methods. The Portland Cement Association (PCA), in representing various members of the regulated industry, has conducted its own series of validation tests of these methods. Actually, Method 321 was developed and validated by PCA, and has been adopted by the Agency as Method 321. Agency personnel informed ASTM in 1996 that the Agency methods were in active development, and an ASTM standard seemed redundant. Additionally, the ASTM standard has not undergone field validation, which is essential in establishing the precision and accuracy of any test method.

The Agency has conducted a review of the ASTM method. While the ASTM method is in some ways similar to Method 320, the ASTM method is not sufficiently detailed to document proper application, and does not contain the quality assurance procedures the Agency requires in compliance methods. Specifically, the ASTM method does not address specific calibration transfer standards, nor does it address the preparation of reference spectra. Therefore, EPA has determined that it is impractical to adopt the ASTM method at this time and is promulgating Method 320.

Pollution Prevention

Comment: Comments were received stating that the proposed rule did not contain measures that prevent pollution or reduce energy requirements, and suggested specific pollution prevention measures, including process modifications, taken by specific facilities.

Response: The NESHAP is written in terms of emissions standards based on MACT floor technologies and allows pollution prevention techniques to achieve compliance. The EPA considered pollution prevention options available and the basis for the standard for THC for new greenfield sites, feed material selection, is a pollution prevention measure. In addition, the final standard includes a monitoring requirement for inspection of the combustion system components of kilns and in-line kiln raw mills (an energy efficiency and pollution prevention measure) and standards for PM from product handling affected sources (which leads to improved recovery of salable product and pollution prevention). Furthermore, the final standard clarifies that recovered cement kiln dust can be included in the calculation of kiln feed (encouraging recycling, improved PM control and pollution prevention).

Control Cost Impacts and Data Evaluation

Comment: Comments were received concerning the EPA's control cost estimates, including the assumptions regarding the number of sources requiring upgrades to meet the standards for PM and D/F, and the capital expenditures necessary to meet the standard. In particular one commenter projected that capital costs would exceed the threshold which triggers Executive Order 12866. Another commenter questioned the lack of cost data on upgrades to PMCDs for material handling affected sources.

Response: The costs to achieve compliance are expected to be highly site-specific and vary significantly. The commenters did not provide any details regarding their estimates of the cost to comply, so the EPA is unable to determine whether the commenters' cost estimates were limited to those costs necessary to comply with the provisions of the NESHAP.

The EPA has reviewed cost data provided by the Portland Cement Association prior to proposal. The foundation for the cost estimates, and initial point of criticism of EPA's cost estimates, is the model plant characteristics. For example, the APCA report provided a review of the model plant characteristics and suggested that the design characteristics for each model be 20 to 25 percent higher than the annual average production rate basis for the model. In particular, the APCA report stated that the EPA model plant gas flows for wet process and long dry kilns were 25 to 30 percent too low, based on their consultant's design practice.

The EPA developed design characteristics for the model plants based on data provided to the Agency in ICRs and test reports (docket items II–B–24 and II–B–37). For a kiln with a given nominal production rate that might be found in several different plants, variations in gas flow rates would be expected. The EPA used the flow rate and production data from actual installations to develop production rate versus gas flow graphs to establish the model plant characteristics. Owners may elect to design their upgrades or new equipment to accommodate higher production rates, but those costs and other impacts are not attributable to compliance with the MACT standards. EPA did not include costs associated with upgrading equipment used to control emissions from materials handling affected sources, as these affected sources have been subject to the NSPS for many years (a longer period than the expected life of these affected sources), and compliance with the NESHAP, which is equivalent to the NSPS for these affected sources would not impose additional costs.

The basis of the control costs for model plants estimated in the docket memoranda and proposal preamble is the Office of Air Quality Planning and Standards Cost Manual. The cost algorithms in the manual were derived from control equipment vendor quotes, standard cost estimating factors, and contractor experience. Installation costs, utilities, maintenance, and other operating costs were estimated and included for impact estimation. The EPA maintains that the costs provided in the proposal preamble are a reasonable basis for projecting the national impacts of the these rules.

VII. Administrative Requirements

A. Docket

A record has been established for this rulemaking under docket number A–92–53. This record includes information considered by the EPA in the development of the promulgated standards. A public version of this record, which does not include any information included as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m. Monday-Friday, excluding legal holidays. The public record is located in the Air & Radiation Docket & Information Center, Room M1500, 401 M Street S.W., Washington, D.C. 20460.

Response-to-Comment Document

The response-to-comment document for the promulgated standards contains a summary of all public comments received following proposal of the rule and the EPA's response to these comments. This document is located in the docket (Docket Item No. V–C–1) and is available for downloading from the Technology Transfer Network (TTN). The TTN is one of the EPA's electronic bulletin boards. The TTN provides information from EPA in various areas of air pollution technology or policy. The service is free except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem, or connect through the internet to the following address: "www.epa.gov/ttn/oarpg". If more information on the Technology Transfer Network is needed, call the HELP line at (919) 541–5384.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the projected annual costs (including monitoring) for this NESHAP are $37 million, a regulatory impact analysis has not been prepared. However this action is considered a "significant regulatory action" within the meaning of Executive Order 12866 (primarily due to this action's overlap with the Hazardous Waste Combustor MACT standard), and the promulgated regulation presented in this notice was submitted to the OMB for review. Any written comments are included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

C. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any one year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

E. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. As discussed earlier in the response to comments section of the preamble, the EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Although the rule will not have a significant impact on a substantial number of small entities, the EPA worked with portland cement small entities throughout the rulemaking process. Meetings were held on a regular basis with the Portland Cement Association (PCA) and industry representatives, including both small and large firms, to discuss the development of the rule, exchange information and data, solicit comments on draft rule requirements, and provide a list of the small firms. In addition, some cement industry representatives formed a group called the "Small Cement Company MACT Coalition", which designated the PCA as its representative in meetings with the EPA concerning the rulemaking for the portland cement industry.

The promulgated emission standards are representative of the floor level of emision control, which is the minimum level of control allowed under the Act. Further, the costs of required performance testing and monitoring have been minimized by specifying emission limits and monitoring parameters in terms of surrogates for HAP emissions, which are less costly to measure. The Agency has also tried to make the rule "user friendly," with language that is easy to understand by all of the regulated community. EPA is also allowing affected firms up to 3 years from the effective date of the final rule to comply, which could lessen capital availability concerns. An extra year may be granted by the Administrator or delegated regulatory authority if necessary to install controls. Further, EPA has deferred the compliance date for installing PM CEMs pending a future proposed rulemaking.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

G. Paperwork Reduction Act

The information collection requirements in this rule are being submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1801.02) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The EPA is required under section 112 (d) of the Clean Air Act to regulate emissions of HAPs listed in section 112 (b). The requested information is needed as part of the overall compliance and enforcement program. The ICR requires that portland cement manufacturing plants retain records of parameter and emissions monitoring data at facilities for a period of 5 years, which is consistent with the General Provisions to 40 CFR part 63 and the permit requirements under 40 CFR part 70. All sources subject to this rule will be required to obtain operating permits either through the State-approved permitting program or, if one does not exist, in accordance with the provisions of 40 CFR part 71, when promulgated.

The public reporting burden for this collection of information is estimated to average 2148 hours per respondent per year for an estimated 36 respondents. This estimate includes performance tests and reports (with repeat tests where needed); one-time preparation of an operation and maintenance plan with semiannual reports of any event where the procedures in the plan were not followed; semiannual excess emissions reports; notifications; and

recordkeeping. The total annualized capital costs associated with monitoring requirements over the three-year period of the ICR is estimated at $750,000. This estimate includes the capital and startup costs associated with installation of required continuous monitoring equipment for those affected sources subject to the standard. The total operation and maintenance cost is estimated at $682,000 per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

H. Pollution Prevention Act

During the development of this rule, the EPA explored opportunities to eliminate or reduce emissions through the application of new processes or work practices. This NESHAP includes a monitoring requirement for an inspection of the components of the combustion system of each kiln and in-line kiln raw mill to be conducted at least once per year. Such an inspection will promote fuel efficiency and decrease the formation of combustion related pollutants.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) directs all Federal agencies to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted a search to identify voluntary consensus standards. The search identified 21 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 14 of the candidate consensus standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Six of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

One consensus standard, ASTM D6216–98, appears to be practical for EPA use in lieu of EPA Performance Specification 1 (See 40 CFR Part 60, Appendix B). On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. EPA plans to complete this action in the near future. For these reasons, EPA defers taking action in this rulemaking that would adopt D6216–98 in lieu of PS–1 requirements as it would be impractical for EPA to act independently from other rulemaking activity already undergoing notice and comment.

Additionally, EPA received comments that ASTM FTIR Standard D6348 should be used in lieu of EPA's proposed Fourier transform infrared spectroscopy (FTIR) emission test methods. EPA has determined for a number of reasons that the ASTM Standard D6348 is one of the 14 standards determined to be impractical to adopt for the purposes of this rulemaking. EPA review comments on ASTM Standard D6348 are included in the docket for this rulemaking and summarized in the response to comments section of this preamble. ASTM has also been advised of the reasons for impracticality and ASTM Subcommittee D22–03 is now undertaking a revision of the ASTM standard. Upon demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability at a later date.

This rule requires standard EPA methods known to the industry and States. Approved alternative methods also may be used with prior EPA approval.

J. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

K. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that

significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Portland cement manufacturing, Reporting and recordkeeping requirements.

Dated: May 14, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding a new subpart LLL, consisting of §§ 63.1340 through 63.1359 to read as follows:

Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

General

Sec.

63.1340 Applicability and designation of affected sources.
63.1341 Definitions.

Emission Standards and Operating Limits

63.1342 Standards: General.
63.1343 Standards for kilns and in-line kiln/raw mills.
63.1344 Operating limits for kilns and in-line kiln/raw mills.
63.1345 Standards for clinker coolers.
63.1346 Standards for new and reconstructed raw material dryers.
63.1347 Standards for raw and finish mills.
63.1348 Standards for affected sources other than kilns; in-line kiln raw mills; clinker coolers; new and reconstructed raw material dryers; and raw and finish mills.

Monitoring and Compliance Provisions

63.1349 Performance testing requirements.
63.1350 Monitoring requirements.
63.1351 Compliance dates.
63.1352 Additional test methods.

Notification, Reporting and Recordkeeping

63.1353 Notification requirements.
63.1354 Reporting requirements.
63.1355 Recordkeeping requirements.

Other

63.1356 Exemption from new source performance standards.
63.1357 Temporary, conditioned exemption from particulate and opacity standards.
63.1358 Delegation of authority.
63.1359 [Reserved]

Table 1 to Subpart LLL of Part 63—Applicability of General Provisions

Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

General

§ 63.1340 Applicability and designation of affected sources.

(a) Except as specified in paragraphs (b) and (c) of this section, the provisions of this subpart apply to each new and existing portland cement plant which is a major source or an area source as defined in § 63.2.

(b) The affected sources subject to this subpart are:

(1) Each kiln and each in-line kiln/raw mill at any major or area source, including alkali bypasses, except for kilns and in-line kiln/raw mills that burn hazardous waste and are subject to and regulated under subpart EEE of this part;

(2) Each clinker cooler at any portland cement plant which is a major source;

(3) Each raw mill at any portland cement plant which is a major source;

(4) Each finish mill at any portland cement plant which is a major source;

(5) Each raw material dryer at any portland cement plant which is a major source and each greenfield raw material dryer at any portland cement plant which is a major or area source;

(6) Each raw material, clinker, or finished product storage bin at any portland cement plant which is a major source;

(7) Each conveying system transfer point at any portland cement plant which is a major source;

(8) Each bagging system at any portland cement plant which is a major source; and

(9) Each bulk loading or unloading system at any portland cement plant which is a major source.

(c) For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. The primary and secondary crushers and any other equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

(d) The owner or operator of any affected source subject to the provisions of this subpart is subject to title V permitting requirements.

§ 63.1341 Definitions.

All terms used in this subpart that are not defined in this section have the meaning given to them in the CAA and in subpart A of this part.

Alkali bypass means a duct between the feed end of the kiln and the preheater tower through which a portion of the kiln exit gas stream is withdrawn and quickly cooled by air or water to avoid excessive buildup of alkali, chloride and/or sulfur on the raw feed. This may also be referred to as the "kiln exhaust gas bypass".

Bagging system means the equipment which fills bags with portland cement.

Clinker cooler means equipment into which clinker product leaving the kiln is placed to be cooled by air supplied by a forced draft or natural draft supply system.

Continuous monitor means a device which continuously samples the regulated parameter specified in § 63.1350 of this subpart without interruption, evaluates the detector response at least once every 15 seconds, and computes and records the average value at least every 60 seconds, except during allowable periods of calibration and except as defined otherwise by the continuous emission monitoring system performance specifications in appendix B to part 60 of this chapter.

Conveying system means a device for transporting materials from one piece of equipment or location to another location within a facility. Conveying systems include but are not limited to the following: feeders, belt conveyors, bucket elevators and pneumatic systems.

Conveying system transfer point means a point where any material including but not limited to feed material, fuel, clinker or product, is transferred to or from a conveying system, or between separate parts of a conveying system.

Dioxins and furans (D/F) means tetra-, penta-, hexa-, hepta-, and octa-chlorinated dibenzo dioxins and furans.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

Feed means the prepared and mixed materials, which include but are not limited to materials such as limestone, clay, shale, sand, iron ore, mill scale, cement kiln dust and flyash, that are fed to the kiln. Feed does not include the fuels used in the kiln to produce heat to form the clinker product.

Finish mill means a roll crusher, ball and tube mill or other size reduction equipment used to grind clinker to a fine powder. Gypsum and other materials may be added to and blended with clinker in a finish mill. The finish mill also includes the air separator associated with the finish mill.

Greenfield kiln, in-line kiln/raw mill, or raw material dryer means a kiln, in-line kiln/raw mill, or raw material dryer for which construction is commenced at a plant site (where no kilns and no in-line kiln/raw mills were in operation at any time prior to March 24, 1998) after March 24, 1998.

Hazardous waste is defined in § 261.3 of this chapter.

In-line kiln/raw mill means a system in a portland cement production process where a dry kiln system is integrated with the raw mill so that all or a portion of the kiln exhaust gases are used to perform the drying operation of the raw mill, with no auxiliary heat source used. In this system the kiln is capable of operating without the raw mill operating, but the raw mill cannot operate without the kiln gases, and consequently, the raw mill does not generate a separate exhaust gas stream.

Kiln means a device, including any associated preheater or precalciner devices, that produces clinker by heating limestone and other materials for subsequent production of portland cement.

Kiln exhaust gas bypass means alkali bypass.

Monovent means an exhaust configuration of a building or emission control device (e. g. positive pressure fabric filter) that extends the length of the structure and has a width very small in relation to its length (i. e., length to width ratio is typically greater than 5:1). The exhaust may be an open vent with or without a roof, louvered vents, or a combination of such features.

New brownfield kiln, in-line kiln raw mill, or raw material dryer means a kiln, in-line kiln/raw mill or raw material dryer for which construction is commenced at a plant site (where kilns and/or in-line kiln/raw mills were in operation prior to March 24, 1998) after March 24, 1998.

One-minute average means the average of thermocouple or other sensor responses calculated at least every 60 seconds from responses obtained at least once during each consecutive 15 second period.

Portland cement plant means any facility manufacturing portland cement.

Raw material dryer means an impact dryer, drum dryer, paddle-equipped rapid dryer, air separator, or other equipment used to reduce the moisture content of feed materials.

Raw mill means a ball and tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

Rolling average means the average of all one-minute averages over the averaging period.

Run average means the average of the one-minute parameter values for a run.

TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in U.S. EPA, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs) and 1989 Update, March 1989.

Emission Standards and Operating Limits

§ 63.1342 Standards: General.

(a) Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to subpart LLL.

(b) Table 1 of this section provides a summary of emission limits and operating limits of this subpart.

TABLE 1 TO § 63.1342.—EMISSION LIMITS AND OPERATING LIMITS

Affected source	Pollutant or opacity	Emission and operating limit
All kilns and in-line kiln/raw mills at major sources (including alkali bypass).	PM	0.15 kg/Mg of feed (dry basis).
	Opacity	20 percent.
All kilns and in-line kiln/raw mills at major and area sources (including alkali bypass).	D/F	0.20 ng TEQ/dscm or 0.40 ng TEQ/dscm when the average of the performance test run average particulate matter control device (PMCD) inlet temperatures is 204° C or less. [Corrected to 7 percent oxygen] Operate such that the three-hour rolling average PMCD inlet temperature is no greater than the temperature established at performance test. If activated carbon injection is used: Operate such that the three-hour rolling average activated carbon injection rate is no less than rate established at performance test. Operate such that either the carrier gas flow rate or carrier gas pressure drop exceeds the value established at performance test. Inject carbon of equivalent specifications to that used at performance test.
New greenfield kilns and in-line kiln/raw mills at major and area sources.	THC	50 ppmvd, as propane, corrected to 7 percent oxygen.
All clinker coolers at major sources	PM	0.050 kg/Mg of feed (dry basis)
	Opacity	10 percent.
All raw mills and finish mills at major sources	Opacity	10 percent.
New greenfield raw material dryers at major and area sources.	THC	50 ppmvd, as propane, corrected to 7 percent oxygen.
All raw material dryers and material handling points at major sources.	Opacity	10 percent.

§ 63.1343 Standards for kilns and in-line kiln/raw mills.

(a) *General.* The provisions in this section apply to each kiln, each in-line kiln/raw mill, and any alkali bypass associated with that kiln or in-line kiln/raw mill.

(b) *Existing, reconstructed, or new brownfield/major sources.* No owner or operator of an existing, reconstructed or new brownfield kiln or an existing, reconstructed or new brownfield in-line kiln/raw mill at a facility that is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources, any gases which:

(1) Contain particulate matter (PM) in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the alkali bypass are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ) corrected to seven percent oxygen; or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) corrected to seven percent oxygen, when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(c) *Greenfield/major sources.* No owner or operator that commences construction of a greenfield kiln or greenfield inline kiln/raw mill at a facility which is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain particulate matter in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the bypass stack are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ) corrected to seven percent oxygen; or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) corrected to seven percent oxygen, when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(4) Contain total hydrocarbon (THC), from the main exhaust of the kiln or in-line kiln/raw mill, in excess of 50 ppmvd as propane, corrected to seven percent oxygen.

(d) *Existing, reconstructed, or new brownfield/area sources.* No owner or operator of an existing, reconstructed, or new brownfield kiln or an existing, reconstructed or new brownfield in-line kiln/raw mill at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which contain D/F in excess of:

(1) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ) corrected to seven percent oxygen; or

(2) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) corrected to seven percent oxygen, when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(e) *Greenfield/area sources.* No owner or operator of a greenfield kiln or a greenfield in-line kiln/raw mill at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ) corrected to seven percent oxygen; or

(ii) 0.40 ng per dscm (1.7×10^{-11} gr per dscf) (TEQ) corrected to seven percent oxygen, when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less.

(2) Contain THC, from the main exhaust of the kiln or in-line kiln/raw mill, in excess of 50 ppmvd as propane, corrected to seven percent oxygen.

§ 63.1344 Operating limits for kilns and in-line kiln/raw mills.

(a) The owner or operator of a kiln subject to a D/F emission limitation under § 63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln particulate matter control device (PMCD) and alkali bypass PMCD, if applicable, does not exceed the applicable temperature limit specified in paragraph (b) of this section. The owner or operator of an in-line kiln/raw mill subject to a D/F emission limitation under § 63.1343 must operate the in-line kiln/raw mill, such that:

(1) When the raw mill of the in-line kiln/raw mill is operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was operating is not exceeded.

(2) When the raw mill of the in-line kiln/raw mill is not operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was not operating, is not exceeded.

(3) If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass, specified in paragraph (b) of this section and established during the performance test when the raw mill was operating, is not exceeded.

(b) The temperature limit for affected sources meeting the limits of paragraph (a) of this section or paragraphs (a)(1) through (a)(3) of this section is determined in accordance with § 63.1349(b)(3)(iv).

(c) The owner or operator of an affected source subject to a D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique must operate the carbon injection system in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) The three-hour rolling average activated carbon injection rate shall be equal to or greater than the activated carbon injection rate determined in accordance with § 63.1349(b)(3)(vi).

(2) The owner or operator shall either:

(i) Maintain the minimum activated carbon injection carrier gas flow rate, as a three-hour rolling average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c), or

(ii) Maintain the minimum activated carbon injection carrier gas pressure drop, as a three-hour rolling average, based on the manufacturer's specifications. These specifications must be documented in the test plan developed in accordance with § 63.7(c).

(d) Except as provided in paragraph (e) of this section, the owner or operator of an affected source subject to a D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique must specify and use the brand and type of activated carbon used during the performance test until a subsequent performance test is conducted, unless the site-specific performance test plan contains documentation of key parameters that

affect adsorption and the owner or operator establishes limits based on those parameters, and the limits on these parameters are maintained.

(e) The owner or operator of an affected source subject to a D/F emission limitation under § 63.1343 that employs carbon injection as an emission control technique may substitute, at any time, a different brand or type of activated carbon provided that the replacement has equivalent or improved properties compared to the activated carbon specified in the site-specific performance test plan and used in the performance test. The owner or operator must maintain documentation that the substitute activated carbon will provide the same or better level of control as the original activated carbon.

§ 63.1345 Standards for clinker coolers.

(a) No owner or operator of a new or existing clinker cooler at a facility which is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from the clinker cooler any gases which:

(1) Contain particulate matter in excess of 0.050 kg per Mg (0.10 lb per ton) of feed (dry basis) to the kiln.

(2) Exhibit opacity greater than ten percent.

(b) [Reserved].

§ 63.1346 Standards for new and reconstructed raw material dryers.

(a) *Brownfield/major sources.* No owner or operator of a new or reconstructed brownfield raw material dryer at a facility which is a major source subject to this subpart shall cause to be discharged into the atmosphere from the new or reconstructed raw material dryer any gases which exhibit opacity greater than ten percent.

(b) *Greenfield/area sources.* No owner or operator of a greenfield raw material dryer at a facility which is an area source subject to this subpart shall cause to be discharged into the atmosphere from the greenfield raw material dryer any gases which contain THC in excess of 50 ppmvd, reported as propane, corrected to seven percent oxygen.

(c) *Greenfield/major sources.* No owner or operator of a greenfield raw material dryer at a facility which is a major source subject to this subpart shall cause to be discharged into the atmosphere from the greenfield raw material dryer any gases which:

(1) Contain THC in excess of 50 ppmvd, reported as propane, corrected to seven percent oxygen.

(2) Exhibit opacity greater than ten percent.

§ 63.1347 Standards for raw and finish mills.

The owner or operator of each new or existing raw mill or finish mill at a facility which is a major source subject to the provisions of this subpart shall not cause to be discharged from the mill sweep or air separator air pollution control devices of these affected sources any gases which exhibit opacity in excess of ten percent.

§ 63.1348 Standards for affected sources other than kilns; in-line kiln/raw mills; clinker coolers; new and reconstructed raw material dryers; and raw and finish mills.

The owner or operator of each new or existing raw material, clinker, or finished product storage bin; conveying system transfer point; bagging system; and bulk loading or unloading system; and each existing raw material dryer, at a facility which is a major source subject to the provisions of this subpart shall not cause to be discharged any gases from these affected sources which exhibit opacity in excess of ten percent.

Monitoring and Compliance Provisions

§ 63.1349 Performance testing requirements.

(a) The owner or operator of an affected source subject to this subpart shall demonstrate initial compliance with the emission limits of § 63.1343 and §§ 63.1345 through 63.1348 using the test methods and procedures in paragraph (b) of this section and § 63.7. Performance test results shall be documented in complete test reports that contain the information required by paragraphs (a)(1) through (a)(10) of this section, as well as all other relevant information. The plan to be followed during testing shall be made available to the Administrator prior to testing, if requested.

(1) A brief description of the process and the air pollution control system;

(2) Sampling location description(s);

(3) A description of sampling and analytical procedures and any modifications to standard procedures;

(4) Test results;

(5) Quality assurance procedures and results;

(6) Records of operating conditions during the test, preparation of standards, and calibration procedures;

(7) Raw data sheets for field sampling and field and laboratory analyses;

(8) Documentation of calculations;

(9) All data recorded and used to establish parameters for compliance monitoring; and

(10) Any other information required by the test method.

(b) Performance tests to demonstrate initial compliance with this subpart shall be conducted as specified in paragraphs (b)(1) through (b)(4) of this section.

(1) The owner or operator of a kiln subject to limitations on particulate matter emissions shall demonstrate initial compliance by conducting a performance test as specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section. The owner or operator of an in-line kiln/raw mill subject to limitations on particulate matter emissions shall demonstrate initial compliance by conducting separate performance tests as specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a clinker cooler subject to limitations on particulate matter emissions shall demonstrate initial compliance by conducting a performance test as specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section. The opacity exhibited during the period of the Method 5 of Appendix A to part 60 of this chapter performance tests required by paragraph (b)(1)(i) of this section shall be determined as required in paragraphs (b)(1)(v) through (vi) of this section.

(i) EPA Method 5 of appendix A to part 60 of this chapter shall be used to determine PM emissions. Each performance test shall consist of three separate runs under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. Each run shall be conducted for at least one hour, and the minimum sample volume shall be 0.85 dscm (30 dscf). The average of the three runs shall be used to determine compliance. A determination of the particulate matter collected in the impingers ("back half") of the Method 5 particulate sampling train is not required to demonstrate initial compliance with the PM standards of this subpart. However this shall not preclude the permitting authority from requiring a determination of the "back half" for other purposes.

(ii) Suitable methods shall be used to determine the kiln or inline kiln/raw mill feed rate, except for fuels, for each run.

(iii) The emission rate, E, of PM shall be computed for each run using equation 1:

$$E = (C_s Q_{sd})/P \qquad \text{(Eq. 1)}$$

Where:

E = emission rate of particulate matter, kg/Mg of kiln feed.
c_s = concentration of PM, kg/dscm.
Q_{sd} = volumetric flow rate of effluent gas, dscm/hr.
P = total kiln feed (dry basis), Mg/hr.

(iv) When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the main exhaust and alkali bypass of the kiln or in-line kiln/raw mill shall be tested simultaneously and the combined emission rate of particulate matter from the kiln or in-line kiln/raw mill and alkali bypass shall be computed for each run using equation 2,

$$E_c = (C_{sk}Q_{sdk} + C_{sb}Q_{sdb})/P \quad \text{(Eq. 2)}$$

Where:

E_c = the combined emission rate of particulate matter from the kiln or in-line kiln/raw mill and bypass stack, kg/Mg of kiln feed.
c_{sk} = concentration of particulate matter in the kiln or in-line kiln/raw mill effluent, kg/dscm.
Q_{sdk} = volumetric flow rate of kiln or in-line kiln/raw mill effluent, dscm/hr.
c_{sb} = concentration of particulate matter in the alkali bypass gas, kg/dscm.
Q_{sdb} = volumetric flow rate of alkali bypass gas, dscm/hr.
P=total kiln feed (dry basis), Mg/hr.

(v) Except as provided in paragraph (b)(1)(vi) of this section the opacity exhibited during the period of the Method 5 performance tests required by paragraph (b)(1)(i) of this section shall be determined through the use of a continuous opacity monitor (COM). The maximum six-minute average opacity during the three Method 5 test runs shall be determined during each Method 5 test run, and used to demonstrate initial compliance with the applicable opacity limits of § 63.1343(b)(2), § 63.1343(c)(2), or § 63.1345(a)(2).

(vi) Each owner or operator of a kiln, in-line kiln/raw mill, or clinker cooler subject to the provisions of this subpart using a fabric filter with multiple stacks or an electrostatic precipitator with multiple stacks may, in lieu of installing the continuous opacity monitoring system required by paragraph (b)(1)(v) of this section, conduct an opacity test in accordance with Method 9 of appendix A to part 60 of this chapter during each Method 5 performance test required by paragraph (b)(1)(i) of this section. If the control device exhausts through a monovent, or if the use of a COM in accordance with the installation specifications of Performance Specification 1 (PS–1) of appendix B to part 60 of this chapter is not feasible, a test shall be conducted in accordance with Method 9 of appendix A to part 60 of this chapter during each Method 5 performance test required by paragraph (b)(1)(i) of this section. The maximum six-minute average opacity shall be determined during the three Method 5 test runs, and used to demonstrate initial compliance with the applicable opacity limits of § 63.1343(b)(2), § 63.1343(c)(2), or § 63.1345(a)(2).

(2) The owner or operator of any affected source subject to limitations on opacity under this subpart that is not subject to paragraph (b)(1) of this section shall demonstrate initial compliance with the affected source opacity limit by conducting a test in accordance with Method 9 of appendix A to part 60 of this chapter. The performance test shall be conducted under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. The maximum six-minute average opacity exhibited during the test period shall be used to determine whether the affected source is in initial compliance with the standard. The duration of the Method 9 performance test shall be 3-hours (30 6-minute averages), except that the duration of the Method 9 performance test may be reduced to 1-hour if the conditions of paragraphs (b)(2)(i) through (ii) of the section apply:

(i) There are no individual readings greater than 10 percent opacity;

(ii) There are no more than three readings of 10 percent for the first 1-hour period.

(3) The owner or operator of an affected source subject to limitations on D/F emissions shall demonstrate initial compliance with the D/F emission limit by conducting a performance test using Method 23 of appendix A to part 60 of this chapter. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a kiln or in-line kiln/raw mill equipped with an alkali bypass shall conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass, however the owner or operator of an in-line kiln/raw mill is not required to conduct a performance test of the alkali bypass exhaust when the raw mill of the in-line kiln/raw mill is not operating.

(i) Each performance test shall consist of three separate runs; each run shall be conducted under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. The duration of each run shall be at least three hours and the sample volume for each run shall be at least 2.5 dscm (90 dscf). The concentration shall be determined for each run and the arithmetic average of the concentrations measured for the three runs shall be calculated and used to determine compliance.

(ii) The temperature at the inlet to the kiln or in-line kiln/raw mill PMCD, and where applicable, the temperature at the inlet to the alkali bypass PMCD, must be continuously recorded during the period of the Method 23 test, and the continuous temperature record(s) must be included in the performance test report.

(iii) One-minute average temperatures must be calculated for each minute of each run of the test.

(iv) The run average temperature must be calculated for each run, and the average of the run average temperatures must be determined and included in the performance test report and will determine the applicable temperature limit in accordance with § 63.1344(b).

(v) If activated carbon injection is used for D/F control, the rate of activated carbon injection to the kiln or in-line kiln/raw mill exhaust, and where applicable, the rate of activated carbon injection to the alkali bypass exhaust, must be continuously recorded during the period of the Method 23 test, and the continuous injection rate record(s) must be included in the performance test report. In addition, the performance test report must include the brand and type of activated carbon used during the performance test and a continuous record of either the carrier gas flow rate or the carrier gas pressure drop for the duration of the test. Activated carbon injection rate parameters must be determined in accordance with paragraphs (b)(3)(vi) of this section.

(vi) The run average injection rate must be calculated for each run, and the average of the run average injection rates must be determined and included in the performance test report and will determine the applicable injection rate limit in accordance with § 63.1344(c)(1).

(4) The owner or operator of an affected source subject to limitations on emissions of THC shall demonstrate initial compliance with the THC limit by operating a continuous emission monitor in accordance with Performance Specification 8A of appendix B to part 60 of this chapter. The duration of the performance test shall be three hours, and the average THC concentration (as calculated from the one-minute averages) during the three hour performance test shall be

calculated. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating.

(c) Except as provided in paragraph (e) of this section, performance tests required under paragraphs (b)(1) and (b)(2) of this section shall be repeated every five years, except that the owner or operator of a kiln, in-line kiln/raw mill or clinker cooler is not required to repeat the initial performance test of opacity for the kiln, in-line kiln/raw mill or clinker cooler.

(d) Performance tests required under paragraph (b)(3) of this section shall be repeated every 30 months.

(e) The owner or operator is required to repeat the performance tests for kilns or in-line kiln/raw mills as specified in paragraphs (b)(1) and (b)(3) of this section within 90 days of initiating any significant change in the feed or fuel from that used in the previous performance test.

(f) Table 1 of this section provides a summary of the performance test requirements of this subpart.

TABLE 1 TO § 63.1349.—SUMMARY OF PERFORMANCE TEST REQUIREMENTS

Affected source and pollutant	Performance test
New and existing kiln and in-line kiln/raw mill[b c] PM	EPA Method 5.[a]
New and existing kiln and in-line kiln/raw mill[b c] Opacity	COM if feasible[d e] or EPA Method 9 visual opacity readings.
New and existing kiln and in-line kiln/raw mill[b c f g] D/F	EPA Method 23[h].
New greenfield kiln and in-line kiln/raw mill[c] THC	THC CEM (EPA PS–8A)[i].
New and existing clinker cooler PM	EPA Method 5[a].
New and existing clinker cooler opacity	COM[d j] or EPA Method 9 visual opacity readings.
New and existing raw and finish mill opacity	EPA Method 9.[a j]
New and existing raw material dryer and materials handling processes (raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) opacity.	EPA Method 9.[a j]
New greenfield raw material dryer THC	THC CEM (EPA PS–8A).[i]

[a] Required initially and every 5 years thereafter.
[b] Includes main exhaust and alkali bypass.
[c] In-line kiln/raw mill to be tested with and without raw mill in operation.
[d] Must meet COM performance specification criteria. If the fabric filter or electrostatic precipitator has multiple stacks, daily EPA Method 9 visual opacity readings may be taken instead of using a COM.
[e] Opacity limit is 20 percent.
[f] Alkali bypass is tested with the raw mill on.
[g] Temperature and (if applicable) activated carbon injection parameters determined separately with and without the raw mill operating.
[h] Required initially and every 30 months thereafter.
[i] EPA Performance Specification (PS)–8A of appendix B to 40 CFR part 60.
[j] Opacity limit is 10 percent.

§ 63.1350 Monitoring requirements.

(a) The owner or operator of each portland cement plant shall prepare for each affected source subject to the provisions of this subpart, a written operations and maintenance plan. The plan shall be submitted to the Administrator for review and approval as part of the application for a part 70 permit and shall include the following information:

(1) Procedures for proper operation and maintenance of the affected source and air pollution control devices in order to meet the emission limits and operating limits of §§ 63.1343 through 63.1348;

(2) Corrective actions to be taken when required by paragraph (e) of this section;

(3) Procedures to be used during an inspection of the components of the combustion system of each kiln and each in-line kiln raw mill located at the facility at least once per year; and

(4) Procedures to be used to periodically monitor affected sources subject to opacity standards under §§ 63.1346 and 63.1348. Such procedures must include the provisions of paragraphs (a)(4)(i) through (a)(4)(iv) of this section.

(i) The owner or operator must conduct a monthly 1-minute visible emissions test of each affected source in accordance with Method 22 of Appendix A to part 60 of this chapter. The test must be conducted while the affected source is in operation.

(ii) If no visible emissions are observed in six consecutive monthly tests for any affected source, the owner or operator may decrease the frequency of testing from monthly to semi-annually for that affected source. If visible emissions are observed during any semi-annual test, the owner or operator must resume testing of that affected source on a monthly basis and maintain that schedule until no visible emissions are observed in six consecutive monthly tests.

(iii) If no visible emissions are observed during the semi-annual test for any affected source, the owner or operator may decrease the frequency of testing from semi-annually to annually for that affected source. If visible emissions are observed during any annual test, the owner or operator must resume testing of that affected source on a monthly basis and maintain that schedule until no visible emissions are observed in six consecutive monthly tests.

(iv) If visible emissions are observed during any Method 22 test, the owner or operator must conduct a 6-minute test of opacity in accordance with Method 9 of appendix A to part 60 of this chapter. The Method 9 test must begin within one hour of any observation of visible emissions.

(b) Failure to comply with any provision of the operations and maintenance plan developed in accordance with paragraph (a) of this section shall be a violation of the standard.

(c) The owner or operator of a kiln or in-line kiln/raw mill shall monitor opacity at each point where emissions are vented from these affected sources including alkali bypasses in accordance with paragraphs (c)(1) through (c)(3) of this section.

(1) Except as provided in paragraph (c)(2) of this section, the owner or operator shall install, calibrate, maintain, and continuously operate a

continuous opacity monitor (COM) located at the outlet of the PM control device to continuously monitor the opacity. The COM shall be installed, maintained, calibrated, and operated as required by subpart A, general provisions of this part, and according to PS–1 of appendix B to part 60 of this chapter.

(2) The owner or operator of a kiln or in-line kiln/raw mill subject to the provisions of this subpart using a fabric filter with multiple stacks or an electrostatic precipitator with multiple stacks may, in lieu of installing the continuous opacity monitoring system required by paragraph (c)(1) of this section, monitor opacity in accordance with paragraphs (c)(2)(i) through (ii) of this section. If the control device exhausts through a monovent, or if the use of a COM in accordance with the installation specifications of PS–1 of appendix B to part 60 of this chapter is not feasible, the owner or operator must monitor opacity in accordance with paragraphs (c)(2)(i) through (ii) of this section.

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A of part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the highest load or capacity level reasonably expected to occur within the day. The duration of the Method 9 test shall be at least 30 minutes each day.

(ii) Use the Method 9 procedures to monitor and record the average opacity for each six-minute period during the test.

(3) To remain in compliance, the opacity must be maintained such that the 6-minute average opacity for any 6-minute block period does not exceed 20 percent. If the average opacity for any 6-minute block period exceeds 20 percent, this shall constitute a violation of the standard.

(d) The owner or operator of a clinker cooler shall monitor opacity at each point where emissions are vented from the clinker cooler in accordance with paragraphs (d)(1) through (d)(3) of this section.

(1) Except as provided in paragraph (d)(2) of this section, the owner or operator shall install, calibrate, maintain, and continuously operate a COM located at the outlet of the clinker cooler PM control device to continuously monitor the opacity. The COM shall be installed, maintained, calibrated, and operated as required by subpart A, general provisions of this part, and according to PS–1 of appendix B to part 60 of this chapter.

(2) The owner or operator of a clinker cooler subject to the provisions of this subpart using a fabric filter with multiple stacks or an electrostatic precipitator with multiple stacks may, in lieu of installing the continuous opacity monitoring system required by paragraph (d)(1) of this section, monitor opacity in accordance with paragraphs (d)(2)(i) through (ii) of this section. If the control device exhausts through a monovent, or if the use of a COM in accordance with the installation specifications of PS–1 of appendix B to part 60 of this chapter is not feasible, the owner or operator must monitor opacity in accordance with paragraphs (d)(2)(i) through (ii) of this section.

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A of part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the highest load or capacity level reasonably expected to occur within the day. The duration of the Method 9 test shall be at least 30 minutes each day.

(ii) Use the Method 9 procedures to monitor and record the average opacity for each six-minute period during the test.

(3) To remain in compliance, the opacity must be maintained such that the 6-minute average opacity for any 6-minute block period does not exceed 10 percent. If the average opacity for any 6-minute block period exceeds 10 percent, this shall constitute a violation of the standard.

(e) The owner or operator of a raw mill or finish mill shall monitor opacity by conducting daily visual emissions observations of the mill sweep and air separator PMCDs of these affected sources, in accordance with the procedures of Method 22 of appendix A of part 60 of this chapter. The Method 22 test shall be conducted while the affected source is operating at the highest load or capacity level reasonably expected to occur within the day. The duration of the Method 22 test shall be six minutes. If visible emissions are observed during any Method 22 visible emissions test, the owner or operator must:

(1) Initiate, within one-hour, the corrective actions specified in the site specific operating and maintenance plan developed in accordance with paragraphs (a)(1) and (a)(2) of this section; and

(2) Within 24 hours of the end of the Method 22 test in which visible emissions were observed, conduct a visual opacity test of each stack from which visible emissions were observed in accordance with Method 9 of appendix A of part 60 of this chapter. The duration of the Method 9 test shall be thirty minutes.

(f) The owner or operator of an affected source subject to a limitation on D/F emissions shall monitor D/F emissions in accordance with paragraphs (f)(1) through (f)(6) of this section.

(1) The owner or operator shall install, calibrate, maintain, and continuously operate a continuous monitor to record the temperature of the exhaust gases from the kiln, in-line kiln/raw mill and alkali bypass, if applicable, at the inlet to, or upstream of, the kiln, in-line kiln/raw mill and/or alkali bypass PM control devices.

(i) The recorder response range must include zero and 1.5 times either of the average temperatures established according to the requirements in §63.1349(b)(3)(iv).

(ii) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

(2) The owner or operator shall monitor and continuously record the temperature of the exhaust gases from the kiln, in-line kiln/raw mill and alkali bypass, if applicable, at the inlet to the kiln, in-line kiln/raw mill and/or alkali bypass PMCD.

(3) The three-hour rolling average temperature shall be calculated as the average of 180 successive one-minute average temperatures.

(4) Periods of time when one-minute averages are not available shall be ignored when calculating three-hour rolling averages. When one-minute averages become available, the first one-minute average is added to the previous 179 values to calculate the three-hour rolling average.

(5) When the operating status of the raw mill of the in-line kiln/raw mill is changed from off to on, or from on to off the calculation of the three-hour rolling average temperature must begin anew, without considering previous recordings.

(6) The calibration of all thermocouples and other temperature sensors shall be verified at least once every three months.

(g) The owner or operator of an affected source subject to a limitation on D/F emissions that employs carbon injection as an emission control technique shall comply with the monitoring requirements of paragraphs (f)(1) through (f)(6) and (g)(1) through (g)(6) of this section to demonstrate continuous compliance with the D/F emission standard.

(1) Install, operate, calibrate and maintain a continuous monitor to record the rate of activated carbon injection. The accuracy of the rate measurement device must be ±1 percent of the rate being measured.

(2) Verify the calibration of the device at least once every three months.

(3) The three-hour rolling average activated carbon injection rate shall be calculated as the average of 180 successive one-minute average activated carbon injection rates.

(4) Periods of time when one-minute averages are not available shall be ignored when calculating three-hour rolling averages. When one-minute averages become available, the first one-minute average is added to the previous 179 values to calculate the three-hour rolling average.

(5) When the operating status of the raw mill of the in-line kiln/raw mill is changed from off to on, or from on to off the calculation of the three-hour rolling average activated carbon injection rate must begin anew, without considering previous recordings.

(6) The owner or operator must install, operate, calibrate and maintain a continuous monitor to record the activated carbon injection system carrier gas parameter (either the carrier gas flow rate or the carrier gas pressure drop) established during the D/F performance test in accordance with paragraphs (g)(6)(i) through (g)(6)(iii) of this section.

(i) The owner or operator shall install, calibrate, operate and maintain a device to continuously monitor and record the parameter value.

(ii) The owner or operator must calculate and record three-hour rolling averages of the parameter value.

(iii) Periods of time when one-minute averages are not available shall be ignored when calculating three-hour rolling averages. When one-minute averages become available, the first one-minute average shall be added to the previous 179 values to calculate the three-hour rolling average.

(h) The owner or operator of an affected source subject to a limitation on THC emissions under this subpart shall comply with the monitoring requirements of paragraphs (h)(1) through (h)(3) of this section to demonstrate continuous compliance with the THC emission standard:

(1) The owner or operator shall install, operate and maintain a THC continuous emission monitoring system in accordance with Performance Specification 8A, of appendix B to part 60 of this chapter and comply with all of the requirements for continuous monitoring systems found in the general provisions, subpart A of this part.

(2) The owner or operator is not required to calculate hourly rolling averages in accordance with section 4.9 of Performance Specification 8A.

(3) Any thirty-day block average THC concentration in any gas discharged from a greenfield raw material dryer, the main exhaust of a greenfield kiln, or the main exhaust of a greenfield in-line kiln/raw mill, exceeding 50 ppmvd, reported as propane, corrected to seven percent oxygen, is a violation of the standard.

(i) The owner or operator of any kiln or in-line kiln/raw mill subject to a D/F emission limit under this subpart shall conduct an inspection of the components of the combustion system of each kiln or in-line kiln raw mill at least once per year.

(j) The owner or operator of an affected source subject to a limitation on opacity under § 63.1346 or § 63.1348 shall monitor opacity in accordance with the operation and maintenance plan developed in accordance with paragraph (a) of this section.

(k) The owner or operator of an affected source subject to a particulate matter standard under § 63.1343 shall install, calibrate, maintain and operate a particulate matter continuous emission monitoring system (PM CEMS) to measure the particulate matter discharged to the atmosphere. The compliance deadline for installing the PM CEMS and all requirements relating to performance of the PM CEMS and implementation of the PM CEMS requirement is deferred pending further rulemaking.

(l) An owner or operator may submit an application to the Administrator for approval of alternate monitoring requirements to demonstrate compliance with the emission standards of this subpart, except for emission standards for THC, subject to the provisions of paragraphs (l)(1) through (l)(6) of this section.

(1) The Administrator will not approve averaging periods other than those specified in this section, unless the owner or operator documents, using data or information, that the longer averaging period will ensure that emissions do not exceed levels achieved during the performance test over any increment of time equivalent to the time required to conduct three runs of the performance test.

(2) If the application to use an alternate monitoring requirement is approved, the owner or operator must continue to use the original monitoring requirement until approval is received to use another monitoring requirement.

(3) The owner or operator shall submit the application for approval of alternate monitoring requirements no later than the notification of performance test. The application must contain the information specified in paragraphs (l)(3)(i) through (l)(3)(iii) of this section:

(i) Data or information justifying the request, such as the technical or economic infeasibility, or the impracticality of using the required approach;

(ii) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach and technique, the averaging period for the limit, and how the limit is to be calculated; and

(iii) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard.

(4) The Administrator will notify the owner or operator of the approval or denial of the application within 90 calendar days after receipt of the original request, or within 60 calendar days of the receipt of any supplementary information, whichever is later. The Administrator will not approve an alternate monitoring application unless it would provide equivalent or better assurance of compliance with the relevant emission standard. Before disapproving any alternate monitoring application, the Administrator will provide:

(i) Notice of the information and findings upon which the intended disapproval is based; and

(ii) Notice of opportunity for the owner or operator to present additional supporting information before final action is taken on the application. This notice will specify how much additional time is allowed for the owner or operator to provide additional supporting information.

(5) The owner or operator is responsible for submitting any supporting information in a timely manner to enable the Administrator to consider the application prior to the performance test. Neither submittal of an application, nor the Administrator's failure to approve or disapprove the application relieves the owner or operator of the responsibility to comply with any provision of this subpart.

(6) The Administrator may decide at any time, on a case-by-case basis that additional or alternative operating limits, or alternative approaches to establishing operating limits, are necessary to demonstrate compliance with the emission standards of this subpart.

(m) A summary of the monitoring requirements of this subpart is given in Table 1 to this section.

TABLE 1 TO § 63.1350.—MONITORING REQUIREMENTS

Affected source/pollutant or opacity	Monitor type/operation/process	Monitoring requirements
All affected sources	Operations and maintenance plan	Prepare written plan for all affected sources and control devices.
All kilns and in-line kiln raw mills at major sources (including alkali bypass)/opacity.	Continuous opacity monitor, if applicable	Install, calibrate, maintain and operate in accordance with general provisions and with PS–1.
	Method 9 opacity test, if applicable	Daily test of at least 30-minutes, while kiln is at highest load or capacity level.
Kilns and in-line kiln raw mills at major sources (including alkali bypass)/particulate matter.	Particulate matter continuous emission monitoring system.	Deferred.
Kilns and in-line kiln raw mills at major and area sources (including alkali bypass)/ D/F.	Combustion system inspection	Conduct annual inspection of components of combustion system.
	Continuous temperature monitoring at PMCD inlet.	Install, operate, calibrate and maintain continuous temperature monitoring and recording system; calculate three-hour rolling averages; verify temperature sensor calibration at least quarterly.
Kilns and in-line kiln raw mills at major and area sources (including alkali bypass)/ D/F (continued).	Activated carbon injection rate monitor, if applicable.	Install, operate, calibrate and maintain continuous activated carbon injection rate monitor; calculate three-hour rolling averages; verify calibration at least quarterly; install, operate, calibrate and maintain carrier gas flow rate monitor or carrier gas pressure drop monitor; calculate three-hour rolling averages; document carbon specifications.
New greenfield kilns and in-line kiln raw mills at major and area sources/THC.	Total hydrocarbon continuous emission monitor.	Install, operate, and maintain THC CEM in accordance with PS–8A; calculate 30-day block average THC concentration.
Clinker coolers at major sources/opacity	Continuous opacity monitor, if applicable	Install, calibrate, maintain and operate in accordance with general provisions and with PS–1.
	Method 9 opacity test, if applicable	Daily test of at least 30-minutes, while kiln is at highest load or capacity level.
Raw mills and finish mills at major sources/ opacity.	Method 22 visible emissions test	Conduct daily 6-minute Method 22 visible emissions test while mill is operating at highest load or capacity level; if visible emissions are observed, initiate corrective action within one hour and conduct 30-minute Method 9 test within 24 hours.
New greenfield raw material dryers at major and area sources/THC.	Total hydrocarbon continuous emission monitor.	Install, operate, and maintain THC CEM in accordance with PS–8A; calculate 30-day block average THC concentration.
Raw material dryers; raw material, clinker, finished product storage bins; conveying system transfer points; bagging systems; and bulk loading and unloading systems at major sources/opacity.	Method 22 visible emissions test	As specified in operation and maintenance plan.

§ 63.1351 Compliance dates.

(a) The compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is June 10, 2002.

(b) The compliance date for an owner or operator of an affected source subject to the provisions of this subpart that commences new construction or reconstruction after March 24, 1998 is June 9, 1999 or immediately upon startup of operations, whichever is later.

§§ 63.1352 Additional test methods.

(a) Owners or operators conducting tests to determine the rates of emission of hydrogen chloride (HCl) from kilns, in-line kiln/raw mills and associated bypass stacks at portland cement manufacturing facilities, for use in applicability determinations under § 63.1340 are permitted to use Method 320 or Method 321 of appendix A of this part.

(b) Owners or operators conducting tests to determine the rates of emission of hydrogen chloride (HCl) from kilns, in-line kiln/raw mills and associated bypass stacks at portland cement manufacturing facilities, for use in applicability determinations under § 63.1340 are permitted to use Methods 26 or 26A of appendix A to part 60 of this chapter, except that the results of these tests shall not be used to establish status as an area source.

(c) Owners or operators conducting tests to determine the rates of emission of specific organic HAP from raw material dryers, kilns and in-line kiln/raw mills at portland cement manufacturing facilities, for use in applicability determinations under § 63.1340 of this subpart are permitted to use Method 320 of appendix A to this part, or Method 18 of appendix A to part 60 of this chapter.

Notification, Reporting and Recordkeeping

§ 63.1353 Notification requirements.

(a) The notification provisions of 40 CFR part 63, subpart A that apply and those that do not apply to owners and operators of affected sources subject to this subpart are listed in Table 1 of this subpart. If any State requires a notice that contains all of the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(b) Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in § 63.9 as follows:

(1) Initial notifications as required by § 63.9(b) through (d). For the purposes of this subpart, a Title V or 40 CFR part 70 permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA. Permit applications shall be submitted by the same due dates as those specified for the initial notification.

(2) Notification of performance tests, as required by §§ 63.7 and 63.9(e).

(3) Notification of opacity and visible emission observations required by § 63.1349 in accordance with §§ 63.6(h)(5) and 63.9(f).

(4) Notification, as required by § 63.9(g), of the date that the continuous emission monitor performance evaluation required by § 63.8(e) is scheduled to begin.

(5) Notification of compliance status, as required by § 63.9(h).

§ 63.1354 Reporting requirements.

(a) The reporting provisions of subpart A of this part that apply and those that do not apply to owners or operators of affected sources subject to this subpart are listed in Table 1 of this subpart. If any State requires a report that contains all of the information required in a report listed in this section, the owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(b) The owner or operator of an affected source shall comply with the reporting requirements specified in § 63.10 of the general provisions of this part 63, subpart A as follows:

(1) As required by § 63.10(d)(2), the owner or operator shall report the results of performance tests as part of the notification of compliance status.

(2) As required by § 63.10(d)(3), the owner or operator of an affected source shall report the opacity results from tests required by § 63.1349.

(3) As required by § 63.10(d)(4), the owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under § 63.6(i) shall submit such reports by the dates specified in the written extension of compliance.

(4) As required by § 63.10(d)(5), if actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan specified in § 63.6(e)(3), the owner or operator shall state such information in a semiannual report. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report may be submitted simultaneously with the excess emissions and continuous monitoring system performance reports; and

(5) Any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures in the startup, shutdown, and malfunction plan, the owner or operator shall make an immediate report of the actions taken for that event within 2 working days, by telephone call or facsimile (FAX) transmission. The immediate report shall be followed by a letter, certified by the owner or operator or other responsible official, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred.

(6) As required by § 63.10(e)(2), the owner or operator shall submit a written report of the results of the performance evaluation for the continuous monitoring system required by § 63.8(e). The owner or operator shall submit the report simultaneously with the results of the performance test.

(7) As required by § 63.10(e)(2), the owner or operator of an affected source using a continuous opacity monitoring system to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall report the results of the continuous opacity monitoring system' performance evaluation conducted under § 63.8(e).

(8) As required by § 63.10(e)(3), the owner or operator of an affected source equipped with a continuous emission monitor shall submit an excess emissions and continuous monitoring system performance report for any event when the continuous monitoring system data indicate the source is not in compliance with the applicable emission limitation or operating parameter limit.

(9) The owner or operator shall submit a summary report semiannually which contains the information specified in § 63.10(e)(3)(vi). In addition, the summary report shall include:

(i) All exceedences of maximum control device inlet gas temperature limits specified in § 63.1344(a) and (b);

(ii) All failures to calibrate thermocouples and other temperature sensors as required under § 63.1350(f)(7) of this subpart; and

(iii) All failures to maintain the activated carbon injection rate, and the activated carbon injection carrier gas flow rate or pressure drop, as applicable, as required under § 63.1344(c).

(iv) The results of any combustion system component inspections conducted within the reporting period as required under § 63.1350(i).

(v) All failures to comply with any provision of the operation and maintenance plan developed in accordance with § 63.1350(a).

(10) If the total continuous monitoring system downtime for any CEM or any continuous monitoring system (CMS) for the reporting period is ten percent or greater of the total operating time for the reporting period, the owner or operator shall submit an excess emissions and continuous monitoring system performance report along with the summary report.

§ 63.1355 Recordkeeping requirements.

(a) The owner or operator shall maintain files of all information (including all reports and notifications) required by this section recorded in a form suitable and readily available for inspection and review as required by § 63.10(b)(1). The files shall be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent two years of data shall be retained on site. The remaining three

years of data may be retained off site. The files may be maintained on microfilm, on a computer, on floppy disks, on magnetic tape, or on microfiche.

(b) The owner or operator shall maintain records for each affected source as required by § 63.10(b)(2) and (b)(3) of this part; and

(1) All documentation supporting initial notifications and notifications of compliance status under § 63.9;

(2) All records of applicability determination, including supporting analyses; and

(3) If the owner or operator has been granted a waiver under § 63.8(f)(6), any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements.

(c) In addition to the recordkeeping requirements in paragraph (b) of this section, the owner or operator of an affected source equipped with a continuous monitoring system shall maintain all records required by § 63.10(c).

Other

§ 63.1356 Exemption from new source performance standards.

(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, any affected source subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR part 60, subpart F.

(1) Kilns and in-line kiln/raw mills, as applicable under 40 CFR 60.60(b), located at area sources are subject to PM and opacity limits and associated reporting and recordkeeping, under 40 CFR part 60, subpart F.

(2) Greenfield raw material dryers, as applicable under 40 CFR 60.60(b), located at area sources are subject to opacity limits and associated reporting and recordkeeping under 40 CFR part 60, subpart F.

§ 63.1357 Temporary, conditioned exemption from particulate matter and opacity standards.

(a) Subject to the limitations of paragraphs (b) through (f) of this section, an owner or operator conducting PM CEMS correlation tests (that is, correlation with manual stack methods) is exempt from:

(1) Any particulate matter and opacity standards of part 60 or part 63 of this chapter that are applicable to cement kilns and in-line kiln/raw mills.

(2) Any permit or other emissions or operating parameter or other limitation on workplace practices that are applicable to cement kilns and in-line kiln raw mills to ensure compliance with any particulate matter and opacity standards of this part or part 60 of this chapter.

(b) The owner or operator must develop a PM CEMS correlation test plan. The plan must be submitted to the Administrator for approval at least 90 days before the correlation test is scheduled to be conducted. The plan must include:

(1) The number of test conditions and the number of runs for each test condition;

(2) The target particulate matter emission level for each test condition;

(3) How the operation of the affected source will be modified to attain the desired particulate matter emission rate; and

(4) The anticipated normal particulate matter emission level.

(c) The Administrator will review and approve or disapprove the correlation test plan in accordance with § 63.7(c)(3)(i) and (iii). If the Administrator fails to approve or disapprove the correlation test plan within the time period specified in § 63.7(c)(3)(iii), the plan shall be considered approved, unless the Administrator has requested additional information.

(d) The stack sampling team must be on-site and prepared to perform correlation testing no later than 24 hours after operations are modified to attain the desired particulate matter emissions concentrations, unless the correlation test plan documents that a longer period is appropriate.

(e) The particulate matter and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for a correlation test, including all runs and conditions.

(f) The owner or operator must return the affected source to operating conditions indicative of compliance with the applicable particulate matter and opacity standards as soon as possible after correlation testing is completed.

§ 63.1358 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under subpart E of this part, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States:

(1) Approval of alternative non-opacity emission standards under § 63.6(g).

(2) Approval of alternative opacity standards under § 63.6(h)(9).

(3) Approval of major changes to test methods under §§ 63.7(e)(2)(ii) and 63.7(f). A major change to a test method is a modification to a federally enforceable test method that uses unproven technology or procedures or is an entirely new method (sometimes necessary when the required test method is unsuitable).

(4) Approval of major changes to monitoring under § 63.8(f). A major change to monitoring is a modification to federally enforceable monitoring that uses unproven technology or procedures, is an entirely new method (sometimes necessary when the required monitoring is unsuitable), or is a change in the averaging period.

(5) Waiver of recordkeeping under § 63.10(f).

§ 63.1359 [Reserved]

TABLE 1 TO SUBPART LLL.—APPLICABILITY OF GENERAL PROVISIONS

General Provisions 40 CFR Citation	Requirement	Applies to Subpart LLL	Comment
63.1(a)(1) through (4)	Applicability	Yes.	
63.1(a)(5)		No	[Reserved].
63.1(a)(6) through (a)(8)	Applicability	Yes.	
63.1(a)(9)		No	[Reserved].
63.1(a)(10) through (14)	Applicability	Yes.	
63.1(b)(1)	Initial Applicability Determination	No	§ 63.1340 specifies applicability.
63.1(b)(2) and (3)	Initial Applicability Determination	Yes.	
63.1(c)(1)	Applicability After Standard Established	Yes.	
63.1(c)(2)	Permit Requirements	Yes	Area sources must obtain Title V permits.

TABLE 1 TO SUBPART LLL.—APPLICABILITY OF GENERAL PROVISIONS—Continued

General Provisions 40 CFR Citation	Requirement	Applies to Subpart LLL	Comment
63.1(c)(3)		No	[Reserved].
63.1(c)(4) and (5)	Extensions, Notifications	Yes.	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions	Yes.	Additional definitions in § 63.1341.
63.3(a) through (c)	Units and Abbreviations	Yes.	
63.4(a)(1) through (a)(3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)	Compliance date	Yes.	
63.4(b) and (c)	Circumvention, Severability	Yes.	
63.5(a)(1) and (2)	Construction/Reconstruction	Yes.	
63.5(b)(1)	Compliance Dates	Yes.	
63.5(b)(2)		No	[Reserved].
63.5(b)(3) through (6)	Construction Approval, Applicability	Yes.	
63.5(c)		No	[Reserved].
63.5(d)(1) through (4)	Approval of Construction/Reconstruction	Yes.	
63.5(e)	Approval of Construction/Reconstruction	Yes.	
63.5(f)(1) and (2)	Approval of Construction/Reconstruction	Yes.	
63.6(a)	Compliance for Standards and Maintenance.	Yes.	
63.6(b)(1) through (5)	Compliance Dates	Yes.	
63.6(b)(6)		No	[Reserved].
63.6(b)(7)	Compliance Dates	Yes.	
63.6(c)(1) and (2)	Compliance Dates	Yes.	
63.6(c)(3) and (c)(4)		No	[Reserved].
63.6(c)(5)	Compliance Dates	Yes.	
63.6(d)		No	[Reserved].
63.6(e)(1) and (e)(2)	Operation & Maintenance	Yes.	
63.6(e)(3)	Startup, Shutdown Malfunction Plan	Yes.	
63.6(f)(1) through (3)	Compliance with Emission Standards	Yes.	
63.6(g)(1) through (g)(3)	Alternative Standard	Yes.	
63.6(h)(1) and (2)	Opacity/VE Standards	Yes.	
63.6(h)(3)		No	Reserved
63.6(h)(4) and (h)(5)(i)	Opacity/VE Standards	Yes.	
63.6(h)(5)(ii) through (iv)	Opacity/VE Standards	No	Test duration specified in Subpart LLL.
63.6(h)(6)	Opacity/VE Standards	Yes.	
63.6(i)(1) through (i)(14)	Extension of Compliance	Yes.	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)	Extension of Compliance	Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)(1) through (a)(3)	Performance Testing Requirements	Yes	§ 63.1349 has specific requirements.
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)(1) through (4)	Conduct of Tests	Yes.	
63.7(f)	Alternative Test Method	Yes.	
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	
63.8(a)(1)	Monitoring Requirements	Yes.	
63.8(a)(2)	Monitoring	No	§ 63.1350 includes CEM requirements.
63.8(a)(3)		No	[Reserved].
63.8(a)(4)	Monitoring	No	Flares not applicable.
63.8(b)(1) through (3)	Conduct of Monitoring	Yes.	
63.8(c)(1) through (8)	CMS Operation/ Maintenance	Yes.	Performance specification supersedes requirements for THC CEM. Temperature and activated carbon injection monitoring data reduction requirements given in subpart LLL.
63.8(d)	Quality Control	Yes.	
63.8(e)	Performance Evaluation for CMS	Yes	Performance specification supersedes requirements for THC CEM.
63.8(f)(1) through (f)(5)	Alternative Monitoring Method	Yes	Additional requirements in § 1350(l).
63.8(f)(6)	Alternative to RATA Test	Yes.	
63.8(g)	Data Reduction	Yes.	
63.9(a)	Notification Requirements	Yes.	
63.9(b)(1) through (5)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
63.9(f)	Notification of VE/Opacity Test	Yes	Notification not required for VE/ opacity test under § 63.1350(e) and (j).

TABLE 1 TO SUBPART LLL.—APPLICABILITY OF GENERAL PROVISIONS—Continued

General Provisions 40 CFR Citation	Requirement	Applies to Subpart LLL	Comment
63.9(g)	Additional CMS Notifications	Yes.	
63.9(h)(1) through (h)(3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No	[Reserved].
63.9(h)(5) and (h)(6)	Notification of Compliance Status	Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting	Yes	Yes.
63.10(b)	General Requirements	Yes.	
63.10(c)(1)	Additional CMS Recordkeeping	Yes	PS–8A applies.
63.10(c)(2) through (c)(4)		No	Reserved]
63.10(c)(5) through (c)(8)	Additional CMS Recordkeeping	Yes	PS–8A applies instead of requirements for THC CEM.
63.10(c)(9)		No	[Reserved]
63.10(c)(10) through (15)	Additional CMS Recordkeeping	Yes	PS–8A applies instead of requirements for THC CEM.
63.10(d)(1)	General Reporting Requirements	Yes.	
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	Yes.	
63.10(d)(4)	Progress Reports	Yes.	
63.10(d)(5)	Startup, Shutdown, Malfunction Reports	Yes.	
63.10(e)(1) and (e)(2)	Additional CMS Reports	Yes.	
63.10(e)(3)	Excess Emissions and CMS Performance Reports.	Yes	Exceedences are defined in subpart LLL.
63.10(f)	Waiver for Recordkeeping/ Reporting	Yes.	
63.11(a) and (b)	Control Device Requirements	No	Flares not applicable.
63.12(a)–(c	)State Authority and Delegations	Yes.	
63.13(a)–(c)	State/Regional Addresses	Yes.	
63.14(a) and (b)	Incorporation by Reference	Yes.	
63.15(a) and (b)	Availability of Information	Yes.	

3. Appendix A of part 63 is amended by adding, in numerical order, Methods 320 and 321 to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Test Method 320—Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy

1.0 *Introduction.*

Persons unfamiliar with basic elements of FTIR spectroscopy should not attempt to use this method. This method describes sampling and analytical procedures for extractive emission measurements using Fourier transform infrared (FTIR) spectroscopy. Detailed analytical procedures for interpreting infrared spectra are described in the "Protocol for the Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry in Analyses of Gaseous Emissions from Stationary Sources," hereafter referred to as the "Protocol." Definitions not given in this method are given in appendix A of the Protocol. References to specific sections in the Protocol are made throughout this Method. For additional information refer to references 1 and 2, and other EPA reports, which describe the use of FTIR spectrometry in specific field measurement applications and validation tests. The sampling procedure described here is extractive. Flue gas is extracted through a heated gas transport and handling system. For some sources, sample conditioning systems may be applicable. Some examples are given in this method.

Note: sample conditioning systems may be used providing the method validation requirements in Sections 9.2 and 13.0 of this method are met.

1.1 *Scope and Applicability.*

1.1.1 *Analytes.* Analytes include hazardous air pollutants (HAPs) for which EPA reference spectra have been developed. Other compounds can also be measured with this method if reference spectra are prepared according to section 4.6 of the protocol.

1.1.2 *Applicability.* This method applies to the analysis of vapor phase organic or inorganic compounds which absorb energy in the mid-infrared spectral region, about 400 to 4000 cm^{-1} (25 to 2.5 μm). This method is used to determine compound-specific concentrations in a multi-component vapor phase sample, which is contained in a closed-path gas cell. Spectra of samples are collected using double beam infrared absorption spectroscopy. A computer program is used to analyze spectra and report compound concentrations.

1.2 *Method Range and Sensitivity.* Analytical range and sensitivity depend on the frequency-dependent analyte absorptivity, instrument configuration, data collection parameters, and gas stream composition. Instrument factors include: (a) spectral resolution, (b) interferometer signal averaging time, (c) detector sensitivity and response, and (d) absorption path length.

1.2.1 For any optical configuration the analytical range is between the absorbance values of about .01 (infrared transmittance relative to the background = 0.98) and 1.0 (T = 0.1). (For absorbance > 1.0 the relation between absorbance and concentration may not be linear.)

1.2.2 The concentrations associated with this absorbance range depend primarily on the cell path length and the sample temperature. An analyte absorbance greater than 1.0, can be lowered by decreasing the optical path length. Analyte absorbance increases with a longer path length. Analyte detection also depends on the presence of other species exhibiting absorbance in the same analytical region. Additionally, the estimated lower absorbance (A) limit (A = 0.01) depends on the root mean square deviation (RMSD) noise in the analytical region.

1.2.3 The concentration range of this method is determined by the choice of optical configuration.

1.2.3.1 The absorbance for a given concentration can be decreased by decreasing the path length or by diluting the sample. There is no practical upper limit to the measurement range.

1.2.3.2 The analyte absorbance for a given concentration may be increased by increasing the cell path length or (to some extent) using a higher resolution. Both modifications also cause a corresponding increased absorbance for all compounds in the sample, and a decrease in the signal throughput. For this reason the practical lower detection range (quantitation limit) usually depends on sample characteristics such as moisture content of the gas, the presence of other interferants, and losses in the sampling system.

1.3 *Sensitivity.* The limit of sensitivity for an optical configuration and integration time is determined using appendix D of the Protocol: Minimum Analyte Uncertainty, (MAU). The MAU depends on the RMSD noise in an analytical region, and on the absorptivity of the analyte in the same region.

1.4 *Data Quality.* Data quality shall be determined by executing Protocol pre-test procedures in appendices B to H of the protocol and post-test procedures in appendices I and J of the protocol.

1.4.1 Measurement objectives shall be established by the choice of detection limit (DL_i) and analytical uncertainty (AU_i) for each analyte.

1.4.2 An instrumental configuration shall be selected. An estimate of gas composition shall be made based on previous test data, data from a similar source or information gathered in a pre-test site survey. Spectral interferants shall be identified using the selected DL_i and AU_i and band areas from reference spectra and interferant spectra. The baseline noise of the system shall be measured in each analytical region to determine the MAU of the instrument configuration for each analyte and interferant (MIU_i).

1.4.3 Data quality for the application shall be determined, in part, by measuring the RMS (root mean square) noise level in each analytical spectral region (appendix C of the Protocol). The RMS noise is defined as the RMSD of the absorbance values in an analytical region from the mean absorbance value in the region.

1.4.4 The MAU is the minimum analyte concentration for which the AU_i can be maintained; if the measured analyte concentration is less than MAU_i, then data quality are unacceptable.

2.0 *Summary of Method*

2.1 *Principle.* References 4 through 7 provide background material on infrared spectroscopy and quantitative analysis. A summary is given in this section.

2.1.1 Infrared absorption spectroscopy is performed by directing an infrared beam through a sample to a detector. The frequency-dependent infrared absorbance of the sample is measured by comparing this detector signal (single beam spectrum) to a signal obtained without a sample in the beam path (background).

2.1.2 Most molecules absorb infrared radiation and the absorbance occurs in a characteristic and reproducible pattern. The infrared spectrum measures fundamental molecular properties and a compound can be identified from its infrared spectrum alone.

2.1.3 Within constraints, there is a linear relationship between infrared absorption and compound concentration. If this frequency dependent relationship (absorptivity) is known (measured), it can be used to determine compound concentration in a sample mixture.

2.1.4 Absorptivity is measured by preparing, in the laboratory, standard samples of compounds at known concentrations and measuring the FTIR "reference spectra" of these standard samples. These "reference spectra" are then used in sample analysis: (1) Compounds are detected by matching sample absorbance bands with bands in reference spectra, and (2) concentrations are measured by comparing sample band intensities with reference band intensities.

2.1.5 This method is self-validating provided that the results meet the performance requirement of the QA spike in sections 8.6.2 and 9.0 of this method, and results from a previous method validation study support the use of this method in the application.

2.2 *Sampling and Analysis.* In extractive sampling a probe assembly and pump are used to extract gas from the exhaust of the affected source and transport the sample to the FTIR gas cell. Typically, the sampling apparatus is similar to that used for single-component continuous emission monitor (CEM) measurements.

2.2.1 The digitized infrared spectrum of the sample in the FTIR gas cell is measured and stored on a computer. Absorbance band intensities in the spectrum are related to sample concentrations by what is commonly referred to as Beer's Law.

$$A_i = a_i b c_i \qquad (1)$$

Where:

A_i = absorbance at a given frequency of the ith sample component.
a_i = absorption coefficient (absorptivity) of the ith sample component.
b = path length of the cell.
c_i = concentration of the ith sample component.

2.2.2 Analyte spiking is used for quality assurance (QA). In this procedure (section 8.6.2 of this method) an analyte is spiked into the gas stream at the back end of the sample probe. Analyte concentrations in the spiked samples are compared to analyte concentrations in unspiked samples. Since the concentration of the spike is known, this procedure can be used to determine if the sampling system is removing the spiked analyte(s) from the sample stream.

2.3 *Reference Spectra Availability.* Reference spectra of over 100 HAPs are available in the EPA FTIR spectral library on the EMTIC (Emission Measurement Technical Information Center) computer bulletin board service and at internet address http://info.arnold.af.mil/epa/welcome.htm. Reference spectra for HAPs, or other analytes, may also be prepared according to section 4.6 of the Protocol.

2.4 *Operator Requirements.* The FTIR analyst shall be trained in setting up the instrumentation, verifying the instrument is functioning properly, and performing routine maintenance. The analyst must evaluate the initial sample spectra to determine if the sample matrix is consistent with pre-test assumptions and if the instrument configuration is suitable. The analyst must be able to modify the instrument configuration, if necessary.

2.4.1 The spectral analysis shall be supervised by someone familiar with EPA FTIR Protocol procedures.

2.4.2 A technician trained in instrumental test methods is qualified to install and operate the sampling system. This includes installing the probe and heated line assembly, operating the analyte spike system, and performing moisture and flow measurements.

3.0 *Definitions*

See appendix A of the Protocol for definitions relating to infrared spectroscopy. Additional definitions are given in sections 3.1 through 3.29.

3.1 *Analyte.* A compound that this method is used to measure. The term "target analyte" is also used. This method is multi-component and a number of analytes can be targeted for a test.

3.2 *Reference Spectrum.* Infrared spectrum of an analyte prepared under controlled, documented, and reproducible laboratory conditions according to procedures in section 4.6 of the Protocol. A library of reference spectra is used to measure analytes in gas samples.

3.3 *Standard Spectrum.* A spectrum that has been prepared from a reference spectrum through a (documented) mathematical operation. A common example is de-resolving of reference spectra to lower-resolution standard spectra (Protocol, appendix K to the addendum of this method). Standard spectra, prepared by approved, and documented, procedures can be used as reference spectra for analysis.

3.4 *Concentration.* In this method concentration is expressed as a molar concentration, in ppm-meters, or in (ppm-meters)/K, where K is the absolute temperature (Kelvin). The latter units allow the direct comparison of concentrations from systems using different optical configurations or sampling temperatures.

3.5 *Interferant.* A compound in the sample matrix whose infrared spectrum overlaps with part of an analyte spectrum. The most accurate analyte measurements are achieved when reference spectra of interferants are used in the quantitative analysis with the analyte reference spectra. The presence of an interferant can increase the analytical uncertainty in the measured analyte concentration.

3.6 *Gas Cell.* A gas containment cell that can be evacuated. It is equipped with the optical components to pass the infrared beam through the sample to the detector. Important cell features include: path length (or range if variable), temperature range, materials of construction, and total gas volume.

3.7 *Sampling System.* Equipment used to extract the sample from the test location and transport the sample gas to the FTIR analyzer. This includes sample conditioning systems.

3.8 *Sample Analysis.* The process of interpreting the infrared spectra to obtain sample analyte concentrations. This process is usually automated using a software routine employing a classical least squares (cls), partial least squares (pls), or K- or P-matrix method.

3.9 *One hundred percent line.* A double beam transmittance spectrum obtained by combining two background single beam spectra. Ideally, this line is equal to 100 percent transmittance (or zero absorbance) at every frequency in the spectrum. Practically, a zero absorbance line is used to measure the baseline noise in the spectrum.

3.10 *Background Deviation.* A deviation from 100 percent transmittance in any region

of the 100 percent line. Deviations greater than ±5 percent in an analytical region are unacceptable (absorbance of 0.021 to −0.022). Such deviations indicate a change in the instrument throughput relative to the background single beam.

3.11 *Batch Sampling.* A procedure where spectra of discreet, static samples are collected. The gas cell is filled with sample and the cell is isolated. The spectrum is collected. Finally, the cell is evacuated to prepare for the next sample.

3.12 *Continuous Sampling.* A procedure where spectra are collected while sample gas is flowing through the cell at a measured rate.

3.13 *Sampling resolution.* The spectral resolution used to collect sample spectra.

3.14 *Truncation.* Limiting the number of interferogram data points by deleting points farthest from the center burst (zero path difference, ZPD).

3.15 *Zero filling.* The addition of points to the interferogram. The position of each added point is interpolated from neighboring real data points. Zero filling adds no information to the interferogram, but affects line shapes in the absorbance spectrum (and possibly analytical results).

3.16 *Reference CTS.* Calibration Transfer Standard spectra that were collected with reference spectra.

3.17 *CTS Standard.* CTS spectrum produced by applying a de-resolution procedure to a reference CTS.

3.18 *Test CTS.* CTS spectra collected at the sampling resolution using the same optical configuration as for sample spectra. Test spectra help verify the resolution, temperature and path length of the FTIR system.

3.19 *RMSD.* Root Mean Square Difference, defined in EPA FTIR Protocol, appendix A.

3.20 *Sensitivity.* The noise-limited compound-dependent detection limit for the FTIR system configuration. This is estimated by the MAU. It depends on the RMSD in an analytical region of a zero absorbance line.

3.21 *Quantitation Limit.* The lower limit of detection for the FTIR system configuration in the sample spectra. This is estimated by mathematically subtracting scaled reference spectra of analytes and interferences from sample spectra, then measuring the RMSD in an analytical region of the subtracted spectrum. Since the noise in subtracted sample spectra may be much greater than in a zero absorbance spectrum, the quantitation limit is generally much higher than the sensitivity. Removing spectral interferences from the sample or improving the spectral subtraction can lower the quantitation limit toward (but not below) the sensitivity.

3.22 *Independent Sample.* A unique volume of sample gas; there is no mixing of gas between two consecutive independent samples. In continuous sampling two independent samples are separated by at least 5 cell volumes. The interval between independent measurements depends on the cell volume and the sample flow rate (through the cell).

3.23 *Measurement.* A single spectrum of flue gas contained in the FTIR cell.

3.24 *Run.* A run consists of a series of measurements. At a minimum a run includes 8 independent measurements spaced over 1 hour.

3.25 *Validation.* Validation of FTIR measurements is described in sections 13.0 through 13.4 of this method. Validation is used to verify the test procedures for measuring specific analytes at a source. Validation provides proof that the method works under certain test conditions.

3.26 *Validation Run.* A validation run consists of at least 24 measurements of independent samples. Half of the samples are spiked and half are not spiked. The length of the run is determined by the interval between independent samples.

3.27 *Screening.* Screening is used when there is little or no available information about a source. The purpose of screening is to determine what analytes are emitted and to obtain information about important sample characteristics such as moisture, temperature, and interferences. Screening results are semi-quantitative (estimated concentrations) or qualitative (identification only). Various optical and sampling configurations may be used. Sample conditioning systems may be evaluated for their effectiveness in removing interferences. It is unnecessary to perform a complete run under any set of sampling conditions. Spiking is not necessary, but spiking can be a useful screening tool for evaluating the sampling system, especially if a reactive or soluble analyte is used for the spike.

3.28 *Emissions Test.* An FTIR emissions test is performed according specific sampling and analytical procedures. These procedures, for the target analytes and the source, are based on previous screening and validation results. Emission results are quantitative. A QA spike (sections 8.6.2 and 9.2 of this method) is performed under each set of sampling conditions using a representative analyte. Flow, gas temperature and diluent data are recorded concurrently with the FTIR measurements to provide mass emission rates for detected compounds.

3.29 *Surrogate.* A surrogate is a compound that is used in a QA spike procedure (section 8.6.2 of this method) to represent other compounds. The chemical and physical properties of a surrogate shall be similar to the compounds it is chosen to represent. Under given sampling conditions, usually a single sampling factor is of primary concern for measuring the target analytes: for example, the surrogate spike results can be representative for analytes that are more reactive, more soluble, have a lower absorptivity, or have a lower vapor pressure than the surrogate itself.

4.0 *Interferences*

Interferences are divided into two classifications: analytical and sampling.

4.1 *Analytical Interferences.* An analytical interference is a spectral feature that complicates (in extreme cases may prevent) the analysis of an analyte. Analytical interferences are classified as background or spectral interference.

4.1.1 *Background Interference.* This results from a change in throughput relative to the single beam background. It is corrected by collecting a new background and proceeding with the test. In severe instances the cause must be identified and corrected. Potential causes include: (1) Deposits on reflective surfaces or transmitting windows, (2) changes in detector sensitivity, (3) a change in the infrared source output, or (4) failure in the instrument electronics. In routine sampling throughput may degrade over several hours. Periodically a new background must be collected, but no other corrective action will be required.

4.1.2 *Spectral Interference.* This results from the presence of interfering compound(s) (interferant) in the sample. Interferant spectral features overlap analyte spectral features. Any compound with an infrared spectrum, including analytes, can potentially be an interferant. The Protocol measures absorbance band overlap in each analytical region to determine if potential interferants shall be classified as known interferants (FTIR Protocol, section 4.9 and appendix B). Water vapor and CO_2 are common spectral interferants. Both of these compounds have strong infrared spectra and are present in many sample matrices at high concentrations relative to analytes. The extent of interference depends on the (1) interferant concentration, (2) analyte concentration, and (3) the degree of band overlap. Choosing an alternate analytical region can minimize or avoid the spectral interference. For example, CO_2 interferes with the analysis of the 670 cm_{-1} benzene band. However, benzene can also be measured near 3000 cm^{-1} (with less sensitivity).

4.2 *Sampling System Interferences.* These prevent analytes from reaching the instrument. The analyte spike procedure is designed to measure sampling system interference, if any.

4.2.1 *Temperature.* A temperature that is too low causes condensation of analytes or water vapor. The materials of the sampling system and the FTIR gas cell usually set the upper limit of temperature.

4.2.2 *Reactive Species.* Anything that reacts with analytes. Some analytes, like formaldehyde, polymerize at lower temperatures.

4.2.3 *Materials.* Poor choice of material for probe, or sampling line may remove some analytes. For example, HF reacts with glass components.

4.2.4 *Moisture.* In addition to being a spectral interferant, condensed moisture removes soluble compounds.

5.0 *Safety*

The hazards of performing this method are those associated with any stack sampling method and the same precautions shall be followed. Many HAPs are suspected carcinogens or present other serious health risks. Exposure to these compounds should be avoided in all circumstances. For instructions on the safe handling of any particular compound, refer to its material safety data sheet. When using analyte standards, always ensure that gases are properly vented and that the gas handling system is leak free. (Always perform a leak check with the system under maximum vacuum and, again, with the system at greater than ambient pressure.) Refer to section 8.2 of this method for leak check procedures. This method does not address all of the potential safety risks associated with its use. Anyone performing this method must follow

safety and health practices consistent with applicable legal requirements and with prudent practice for each application.

6.0 *Equipment and Supplies*

Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

The equipment and supplies are based on the schematic of a sampling system shown in Figure 1. Either the batch or continuous sampling procedures may be used with this sampling system. Alternative sampling configurations may also be used, provided that the data quality objectives are met as determined in the post-analysis evaluation. Other equipment or supplies may be necessary, depending on the design of the sampling system or the specific target analytes.

6.1 *Sampling Probe.* Glass, stainless steel, or other appropriate material of sufficient length and physical integrity to sustain heating, prevent adsorption of analytes, and to transport analytes to the infrared gas cell. Special materials or configurations may be required in some applications. For instance, high stack sample temperatures may require special steel or cooling the probe. For very high moisture sources it may be desirable to use a dilution probe.

6.2 *Particulate Filters.* A glass wool plug (optional) inserted at the probe tip (for large particulate removal) and a filter (required) rated for 99 percent removal efficiency at 1-micron (e.g., Balston™) connected at the outlet of the heated probe.

6.3 *Sampling Line/Heating System.* Heated (sufficient to prevent condensation) stainless steel, polytetrafluoroethane, or other material inert to the analytes.

6.4 *Gas Distribution Manifold.* A heated manifold allowing the operator to control flows of gas standards and samples directly to the FTIR system or through sample conditioning systems. Usually includes heated flow meter, heated valve for selecting and sending sample to the analyzer, and a by-pass vent. This is typically constructed of stainless steel tubing and fittings, and high-temperature valves.

6.5 *Stainless Steel Tubing.* Type 316, appropriate diameter (e.g., 3/8 in.) and length for heated connections. Higher grade stainless may be desirable in some applications.

6.6 *Calibration/Analyte Spike Assembly.* A three way valve assembly (or equivalent) to introduce analyte or surrogate spikes into the sampling system at the outlet of the probe upstream of the out-of-stack particulate filter and the FTIR analytical system.

6.7 *Mass Flow Meter (MFM).* These are used for measuring analyte spike flow. The MFM shall be calibrated in the range of 0 to 5 L/min and be accurate to ± 2 percent (or better) of the flow meter span.

6.8 *Gas Regulators.* Appropriate for individual gas standards.

6.9 *Polytetrafluoroethane Tubing.* Diameter (e.g., ⅜ in.) and length suitable to connect cylinder regulators to gas standard manifold.

6.10 *Sample Pump.* A leak-free pump (e.g., KNF™), with by-pass valve, capable of producing a sample flow rate of at least 10 L/min through 100 ft of sample line. If the pump is positioned upstream of the distribution manifold and FTIR system, use a heated pump that is constructed from materials non-reactive to the analytes. If the pump is located downstream of the FTIR system, the gas cell sample pressure will be lower than ambient pressure and it must be recorded at regular intervals.

6.11 *Gas Sample Manifold.* Secondary manifold to control sample flow at the inlet to the FTIR manifold. This is optional, but includes a by-pass vent and heated rotameter.

6.12 *Rotameter.* A 0 to 20 L/min rotameter. This meter need not be calibrated.

6.13 *FTIR Analytical System.* Spectrometer and detector, capable of measuring the analytes to the chosen detection limit. The system shall include a personal computer with compatible software allowing automated collection of spectra.

6.14 *FTIR Cell Pump.* Required for the batch sampling technique, capable of evacuating the FTIR cell volume within 2 minutes. The pumping speed shall allow the operator to obtain 8 sample spectra in 1 hour.

6.15 *Absolute Pressure Gauge.* Capable of measuring pressure from 0 to 1000 mmHg to within ± 2.5 mmHg (e.g., Baratron™).

6.16 *Temperature Gauge.* Capable of measuring the cell temperature to within ± 2°C.

6.17 *Sample Conditioning.* One option is a condenser system, which is used for moisture removal. This can be helpful in the measurement of some analytes. Other sample conditioning procedures may be devised for the removal of moisture or other interfering species.

6.17.1 The analyte spike procedure of section 9.2 of this method, the QA spike procedure of section 8.6.2 of this method, and the validation procedure of section 13 of this method demonstrate whether the sample conditioning affects analyte concentrations. Alternatively, measurements can be made with two parallel FTIR systems; one measuring conditioned sample, the other measuring unconditioned sample.

6.17.2 Another option is sample dilution. The dilution factor measurement must be documented and accounted for in the reported concentrations. An alternative to dilution is to lower the sensitivity of the FTIR system by decreasing the cell path length, or to use a short-path cell in conjunction with a long path cell to measure more than one concentration range.

7.0 *Reagents and Standards*

7.1 *Analyte(s) and Tracer Gas.* Obtain a certified gas cylinder mixture containing all of the analyte(s) at concentrations within ± 2 percent of the emission source levels (expressed in ppm-meter/K). If practical, the analyte standard cylinder shall also contain the tracer gas at a concentration which gives a measurable absorbance at a dilution factor of at least 10:1. Two ppm SF_6 is sufficient for a path length of 22 meters at 250 °F.

7.2 *Calibration Transfer Standard(s).* Select the calibration transfer standards (CTS) according to section 4.5 of the FTIR Protocol. Obtain a National Institute of Standards and Technology (NIST) traceable gravimetric standard of the CTS (± 2 percent).

7.3 *Reference Spectra.* Obtain reference spectra for each analyte, interferant, surrogate, CTS, and tracer. If EPA reference spectra are not available, use reference spectra prepared according to procedures in section 4.6 of the EPA FTIR Protocol.

8.0 *Sampling and Analysis Procedure*

Three types of testing can be performed: (1) Screening, (2) emissions test, and (3) validation. Each is defined in section 3 of this method. Determine the purpose(s) of the FTIR test. Test requirements include: (a) AU_i, DL_i, overall fractional uncertainty, OFU_i, maximum expected concentration ($CMAX_i$), and t_{AN} for each, (b) potential interferants, (c) sampling system factors, e.g., minimum absolute cell pressure, (P_{min}), FTIR cell volume (V_{SS}), estimated sample absorption pathlength, L_S', estimated sample pressure, P_S', T_S', signal integration time (t_{SS}), minimum instrumental linewidth, MIL,* fractional error, and (d) analytical regions, e.g., m = 1 to M, lower wavenumber position, FLm, center wavenumber position, FC_m, and upper wavenumber position, FU_m, plus interferants, upper wavenumber position of the CTS absorption band, FFU_m, lower wavenumber position of the CTS absorption band, FFL_m, wavenumber range FNU to FNL. If necessary, sample and acquire an initial spectrum. From analysis of this preliminary spectrum determine a suitable operational path length. Set up the sampling train as shown in Figure 1 or use an appropriate alternative configuration. Sections 8.1 through 8.11 of this method provide guidance on pre-test calculations in the EPA protocol, sampling and analytical procedures, and post-test protocol calculations.

8.1 *Pretest Preparations and Evaluations.* Using the procedure in section 4.0 of the FTIR Protocol, determine the optimum sampling system configuration for measuring the target analytes. Use available information to make reasonable assumptions about moisture content and other interferences.

8.1.1 *Analytes.* Select the required detection limit (DL_i) and the maximum permissible analytical uncertainty (AU_i) for each analyte (labeled from 1 to i). Estimate, if possible, the maximum expected concentration for each analyte, $CMAX_i$. The expected measurement range is fixed by DL_i and $CMAX_i$ for each analyte (i).

8.1.2 *Potential Interferants.* List the potential interferants. This usually includes water vapor and CO_2, but may also include some analytes and other compounds.

8.1.3. *Optical Configuration.* Choose an optical configuration that can measure all of the analytes within the absorbance range of .01 to 1.0 (this may require more than one path length). Use Protocol sections 4.3 to 4.8 for guidance in choosing a configuration and measuring CTS.

8.1.4 *Fractional Reproducibility Uncertainty (FRU_i).* The FRU is determined for each analyte by comparing CTS spectra taken before and after the reference spectra were measured. The EPA para-xylene reference spectra were collected on 10/31/91 and 11/01/91 with corresponding CTS spectra "cts1031a," and

"cts1101b." The CTS spectra are used to estimate the reproducibility (FRU) in the system that was used to collect the references. The FRU must be < AU. Appendix E of the protocol is used to calculate the FRU from CTS spectra. Figure 2 plots results for 0.25 cm^{-1} CTS spectra in EPA reference library: S_3 (cts1101b − cts1031a), and S_4 [(cts1101b+cts1031a)/2]. The RMSD (SRMS) is calculated in the subtracted baseline, S_3, in the corresponding CTS region from 850 to 1065 cm^{-1}. The area (BAV) is calculated in the same region of the averaged CTS spectrum, S_4.

8.1.5 *Known Interferants.* Use appendix B of the EPA FTIR Protocol.

8.1.6 Calculate the Minimum Analyte Uncertainty, MAU (section 1.3 of this method discusses MAU and protocol appendix D gives the MAU procedure). The MAU for each analyte, i, and each analytical region, m, depends on the RMS noise.

8.1.7 *Analytical Program.* See FTIR Protocol, section 4.10. Prepare computer program based on the chosen analytical technique. Use as input reference spectra of all target analytes and expected interferants. Reference spectra of additional compounds shall also be included in the program if their presence (even if transient) in the samples is considered possible. The program output shall be in ppm (or ppb) and shall be corrected for differences between the reference path length, L_R, temperature, T_R, and pressure, P_R, and the conditions used for collecting the sample spectra. If sampling is performed at ambient pressure, then any pressure correction is usually small relative to corrections for path length and temperature, and may be neglected.

8.2 *Leak-Check*

8.2.1 *Sampling System.* A typical FTIR extractive sampling train is shown in Figure 1. Leak check from the probe tip to pump outlet as follows: Connect a 0-to 250-mL/min rate meter (rotameter or bubble meter) to the outlet of the pump. Close off the inlet to the probe, and record the leak rate. The leak rate shall be ≤200 mL/min.

8.2.2 *Analytical System Leak check.* Leak check the FTIR cell under vacuum and under pressure (greater than ambient). Leak check connecting tubing and inlet manifold under pressure.

8.2.2.1 For the evacuated sample technique, close the valve to the FTIR cell, and evacuate the absorption cell to the minimum absolute pressure P_{min}. Close the valve to the pump, and determine the change in pressure ΔP_v after 2 minutes.

8.2.2.2 For both the evacuated sample and purging techniques, pressurize the system to about 100 mmHg above atmospheric pressure. Isolate the pump and determine the change in pressure ΔP_p after 2 minutes.

8.2.2.3 Measure the barometric pressure, P_b in mmHg.

8.2.2.4 Determine the percent leak volume $\%V_L$ for the signal integration time t_{SS} and for ΔP_{max}, i.e., the larger of ΔP_v or ΔP_p, as follows:

$$\%V_L = 50 t_{SS} \frac{\Delta P_{max}}{P_{SS}} \qquad (2)$$

where 50 = 100% divided by the leak-check time of 2 minutes. 8.2.2.5 Leak volumes in excess of 4 percent of the FTIR system volume V_{SS} are unacceptable.

8.3 *Detector Linearity.* Once an optical configuration is chosen, use one of the procedures of sections 8.3.1 through 8.3.3 to verify that the detector response is linear. If the detector response is not linear, decrease the aperture, or attenuate the infrared beam. After a change in the instrument configuration perform a linearity check until it is demonstrated that the detector response is linear.

8.3.1 Vary the power incident on the detector by modifying the aperture setting. Measure the background and CTS at three instrument aperture settings: (1) at the aperture setting to be used in the testing, (2) at one half this aperture and (3) at twice the proposed testing aperture. Compare the three CTS spectra. CTS band areas shall agree to within the uncertainty of the cylinder standard and the RMSD noise in the system. If test aperture is the maximum aperture, collect CTS spectrum at maximum aperture, then close the aperture to reduce the IR throughput by half. Collect a second background and CTS at the smaller aperture setting and compare the spectra again.

8.3.2 Use neutral density filters to attenuate the infrared beam. Set up the FTIR system as it will be used in the test measurements. Collect a CTS spectrum. Use a neutral density filter to attenuate the infrared beam (either immediately after the source or the interferometer) to approximately ½ its original intensity. Collect a second CTS spectrum. Use another filter to attenuate the infrared beam to approximately ¼ its original intensity. Collect a third background and CTS spectrum. Compare the CTS spectra. CTS band areas shall agree to within the uncertainty of the cylinder standard and the RMSD noise in the system.

8.3.3 Observe the single beam instrument response in a frequency region where the detector response is known to be zero. Verify that the detector response is "flat" and equal to zero in these regions.

8.4 *Data Storage Requirements.* All field test spectra shall be stored on a computer disk and a second backup copy must stored on a separate disk. The stored information includes sample interferograms, processed absorbance spectra, background interferograms, CTS sample interferograms and CTS absorbance spectra. Additionally, documentation of all sample conditions, instrument settings, and test records must be recorded on hard copy or on computer medium. Table 1 gives a sample presentation of documentation.

8.5 *Background Spectrum.* Evacuate the gas cell to ≤5 mmHg, and fill with dry nitrogen gas to ambient pressure (or purge the cell with 10 volumes of dry nitrogen). Verify that no significant amounts of absorbing species (for example water vapor and CO_2) are present. Collect a background spectrum, using a signal averaging period equal to or greater than the averaging period for the sample spectra. Assign a unique file name to the background spectrum. Store two copies of the background interferogram and processed single-beam spectrum on separate computer disks (one copy is the back-up).

8.5.1 *Interference Spectra.* If possible, collect spectra of known and suspected major interferences using the same optical system that will be used in the field measurements. This can be done on-site or earlier. A number of gases, e.g. CO_2, SO_2, CO, NH_3, are readily available from cylinder gas suppliers.

8.5.2 Water vapor spectra can be prepared by the following procedure. Fill a sample tube with distilled water. Evacuate above the sample and remove dissolved gasses by alternately freezing and thawing the water while evacuating. Allow water vapor into the FTIR cell, then dilute to atmospheric pressure with nitrogen or dry air. If quantitative water spectra are required, follow the reference spectrum procedure for neat samples (protocol, section 4.6). Often, interference spectra need not be quantitative, but for best results the absorbance must be comparable to the interference absorbance in the sample spectra.

8.6 *Pre-Test Calibrations.*

8.6.1 *Calibration Transfer Standard.* Evacuate the gas cell to ≤5 mmHg absolute pressure, and fill the FTIR cell to atmospheric pressure with the CTS gas. Alternatively, purge the cell with 10 cell volumes of CTS gas. (If purge is used, verify that the CTS concentration in the cell is stable by collecting two spectra 2 minutes apart as the CTS gas continues to flow. If the absorbance in the second spectrum is no greater than in the first, within the uncertainty of the gas standard, then this can be used as the CTS spectrum.) Record the spectrum.

8.6.2 *QA Spike.* This procedure assumes that the method has been validated for at least some of the target analytes at the source. For emissions testing perform a QA spike. Use a certified standard, if possible, of an analyte, which has been validated at the source. One analyte standard can serve as a QA surrogate for other analytes which are less reactive or less soluble than the standard. Perform the spike procedure of section 9.2 of this method. Record spectra of at least three independent (section 3.22 of this method) spiked samples. Calculate the spiked component of the analyte concentration. If the average spiked concentration is within 0.7 to 1.3 times the expected concentration, then proceed with the testing. If applicable, apply the correction factor from the Method 301 of this appendix validation test (not the result from the QA spike).

8.7 *Sampling.* If analyte concentrations vary rapidly with time, continuous sampling is preferable using the smallest cell volume, fastest sampling rate and fastest spectra collection rate possible. Continuous sampling requires the least operator intervention even without an automated sampling system. For continuous monitoring at one location over long periods, Continuous sampling is preferred. Batch sampling and continuous static sampling are used for screening and performing test runs of finite duration. Either technique is preferred for sampling several

locations in a matter of days. Batch sampling gives reasonably good time resolution and ensures that each spectrum measures a discreet (and unique) sample volume. Continuous static (and continuous) sampling provide a very stable background over long periods. Like batch sampling, continuous static sampling also ensures that each spectrum measures a unique sample volume. It is essential that the leak check procedure under vacuum (section 8.2 of this method) is passed if the batch sampling procedure is used. It is essential that the leak check procedure under positive pressure is passed if the continuous static or continuous sampling procedures are used. The sampling techniques are described in sections 8.7.1 through 8.7.2 of this method.

8.7.1 *Batch Sampling.* Evacuate the absorbance cell to ≤5 mmHg absolute pressure. Fill the cell with exhaust gas to ambient pressure, isolate the cell, and record the spectrum. Before taking the next sample, evacuate the cell until no spectral evidence of sample absorption remains. Repeat this procedure to collect eight spectra of separate samples in 1 hour.

8.7.2 *Continuous Static Sampling.* Purge the FTIR cell with 10 cell volumes of sample gas. Isolate the cell, collect the spectrum of the static sample and record the pressure. Before measuring the next sample, purge the cell with 10 more cell volumes of sample gas.

8.8 *Sampling QA and Reporting*

8.8.1 Sample integration times shall be sufficient to achieve the required signal-to-noise ratio. Obtain an absorbance spectrum by filling the cell with N2. Measure the RMSD in each analytical region in this absorbance spectrum. Verify that the number of scans used is sufficient to achieve the target MAU.

8.8.2 Assign a unique file name to each spectrum.

8.8.3 Store two copies of sample interferograms and processed spectra on separate computer disks.

8.8.4 For each sample spectrum, document the sampling conditions, the sampling time (while the cell was being filled), the time the spectrum was recorded, the instrumental conditions (path length, temperature, pressure, resolution, signal integration time), and the spectral file name. Keep a hard copy of these data sheets.

8.9 *Signal Transmittance.* While sampling, monitor the signal transmittance. If signal transmittance (relative to the background) changes by 5 percent or more (absorbance = -.02 to .02) in any analytical spectral region, obtain a new background spectrum.

8.10 *Post-test CTS.* After the sampling run, record another CTS spectrum.

8.11 *Post-test QA*

8.11.1 Inspect the sample spectra immediately after the run to verify that the gas matrix composition was close to the expected (assumed) gas matrix.

8.11.2 Verify that the sampling and instrumental parameters were appropriate for the conditions encountered. For example, if the moisture is much greater than anticipated, it may be necessary to use a shorter path length or dilute the sample.

8.11.3 Compare the pre- and post-test CTS spectra. The peak absorbance in pre- and post-test CTS must be ±5 περψεντ οφ της μεαν ωαλθε. Σεε αππενδιχ Ε οφ της ΦΤΙΡ Προτοψολ.

9.0 *Quality Control.*

Use analyte spiking (sections 8.6.2, 9.2 and 13.0 of this method) to verify that the sampling system can transport the analytes from the probe to the FTIR system.

9.1 *Spike Materials.* Use a certified standard (accurate to ±2 percent) of the target analyte, if one can be obtained. If a certified standard cannot be obtained, follow the procedures in section 4.6.2.2 of the FTIR Protocol.

9.2 *Spiking Procedure.* QA spiking (section 8.6.2 of this method) is a calibration procedure used before testing. QA spiking involves following the spike procedure of sections 9.2.1 through 9.2.3 of this method to obtain at least three spiked samples. The analyte concentrations in the spiked samples shall be compared to the expected spike concentration to verify that the sampling/analytical system is working properly. Usually, when QA spiking is used, the method has already been validated at a similar source for the analyte in question. The QA spike demonstrates that the validated sampling/analytical conditions are being duplicated. If the QA spike fails then the sampling/analytical system shall be repaired before testing proceeds. The method validation procedure (section 13.0 of this method) involves a more extensive use of the analyte spike procedure of sections 9.2.1 through 9.2.3 of this method. Spectra of at least 12 independent spiked and 12 independent unspiked samples are recorded. The concentration results are analyzed statistically to determine if there is a systematic bias in the method for measuring a particular analyte. If there is a systematic bias, within the limits allowed by Method 301 of this appendix, then a correction factor shall be applied to the analytical results. If the systematic bias is greater than the allowed limits, this method is not valid and cannot be used.

9.2.1 Introduce the spike/tracer gas at a constant flow rate of ≤10 percent of the total sample flow, when possible.

Note: Use the rotameter at the end of the sampling train to estimate the required spike/tracer gas flow rate.

Use a flow device, e.g., mass flow meter (± 2 percent), to monitor the spike flow rate. Record the spike flow rate every 10 minutes.

9.2.2 Determine the response time (RT) of the system by continuously collecting spectra of the spiked effluent until the spectrum of the spiked component is constant for 5 minutes. The RT is the interval from the first measurement until the spike becomes constant. Wait for twice the duration of the RT, then collect spectra of two independent spiked gas samples. Duplicate analyses of the spiked concentration shall be within 5 percent of the mean of the two measurements.

9.2.3 Calculate the dilution ratio using the tracer gas as follows: where:

$$DF = \frac{SF_{6(spk)}}{SF_{6(dir)}} \qquad (3)$$

Where:

$$CS = DF * Spike_{dir} + Unspike\,(1 - DF) \qquad (4)$$

DF=Dilution factor of the spike gas; this value shall be ≥10.

$SF_{6(dir)}$=SF_6 (or tracer gas) concentration measured directly in undiluted spike gas.

$SF_{6(spk)}$=Diluted SF_6 (or tracer gas) concentration measured in a spiked sample.

$Spike^{dir}$=Concentration of the analyte in the spike standard measured by filling the FTIR cell directly.

CS=Expected concentration of the spiked samples.

Unspike=Native concentration of analytes in unspiked samples.

10.0 Calibration and Standardization

10.1 *Signal-to-Noise Ratio (S/N).* The RMSD in the noise must be less than one tenth of the minimum analyte peak absorbance in each analytical region. For example if the minimum peak absorbance is 0.01 at the required DL, then RMSD measured over the entire analytical region must be ≤0.001.

10.2 *Absorbance Path length.* Verify the absorbance path length by comparing reference CTS spectra to test CTS spectra. See appendix E of the FTIR Protocol.

10.3 *Instrument Resolution.* Measure the line width of appropriate test CTS band(s) to verify instrument resolution. Alternatively, compare CTS spectra to a reference CTS spectrum, if available, measured at the nominal resolution.

10.4 *Apodization Function.*In transforming the sample interferograms to absorbance spectra use the same apodization function that was used in transforming the reference spectra.

10.5 *FTIR Cell Volume.* Evacuate the cell to ≤5 mmHg. Measure the initial absolute temperature (T_i) and absolute pressure (P_i). Connect a wet test meter (or a calibrated dry gas meter), and slowly draw room air into the cell. Measure the meter volume (V_m), meter absolute temperature (T_m), and meter absolute pressure (P_m); and the cell final absolute temperature (T_f) and absolute pressure (P_f). Calculate the FTIR cell volume VSS, including that of the connecting tubing, as follows:

$$V_{ss} = \frac{V_m \frac{P_m}{T_m}}{\left[\frac{P_f}{T_f} - \frac{P_i}{T_i}\right]} \quad (5)$$

11.0 Data Analysis and Calculations

Analyte concentrations shall be measured using reference spectra from the EPA FTIR spectral library. When EPA library spectra are not available, the procedures in section 4.6 of the Protocol shall be followed to prepare reference spectra of all the target analytes.

11.1 *Spectral De-resolution.* Reference spectra can be converted to lower resolution standard spectra (section 3.3 of this method) by truncating the original reference sample and background interferograms. Appendix K of the FTIR Protocol gives specific deresolution procedures. Deresolved spectra shall be transformed using the same apodization function and level of zero filling as the sample spectra. Additionally, pre-test FTIR protocol calculations (e.g., FRU, MAU, FCU) shall be performed using the de-resolved standard spectra.

11.2 *Data Analysis.* Various analytical programs are available for relating sample absorbance to a concentration standard. Calculated concentrations shall be verified by analyzing residual baselines after mathematically subtracting scaled reference spectra from the sample spectra. A full description of the data analysis and calculations is contained in the FTIR Protocol (sections 4.0, 5.0, 6.0 and appendices). Correct the calculated concentrations in the sample spectra for differences in absorption path length and temperature between the reference and sample spectra using equation 6,

$$C_{corr} = \left(\frac{L_r}{L_s}\right)\left(\frac{T_s}{T_r}\right)\left(\frac{P_r}{P_s}\right)C_{calc} \quad (6)$$

Where:

C_{corr}=Concentration, corrected for path length.
C_{calc}=Concentration, initial calculation (output of the analytical program designed for the compound).
L_r=Reference spectra path length.
L_s=Sample spectra path length.
T_s=Absolute temperature of the sample gas, K.
T_r=Absolute gas temperature of reference spectra, K.
P_s=Sample cell pressure.
P_r=Reference spectrum sample pressure.

12.0 *Method Performance*

12.1 *Spectral Quality.* Refer to the FTIR Protocol appendices for analytical requirements, evaluation of data quality, and analysis of uncertainty.

12.2 *Sampling QA/QC.* The analyte spike procedure of section 9 of this method, the QA spike of section 8.6.2 of this method, and the validation procedure of section 13 of this method are used to evaluate the performance of the sampling system and to quantify sampling system effects, if any, on the measured concentrations. This method is self-validating provided that the results meet the performance requirement of the QA spike in sections 9.0 and 8.6.2 of this method and results from a previous method validation study support the use of this method in the application. Several factors can contribute to uncertainty in the measurement of spiked samples. Factors which can be controlled to provide better accuracy in the spiking procedure are listed in sections 12.2.1 through 12.2.4 of this method.

12.2.1 *Flow meter.* An accurate mass flow meter is accurate to ±1 percent of its span. If a flow of 1 L/min is monitored with such a MFM, which is calibrated in the range of 0–5 L/min, the flow measurement has an uncertainty of 5 percent. This may be improved by re-calibrating the meter at the specific flow rate to be used.

12.2.2 *Calibration gas.* Usually the calibration standard is certified to within ± 2 percent. With reactive analytes, such as HCl, the certified accuracy in a commercially available standard may be no better than ± 5 percent.

12.2.3 *Temperature.* Temperature measurements of the cell shall be quite accurate. If practical, it is preferable to measure sample temperature directly, by inserting a thermocouple into the cell chamber instead of monitoring the cell outer wall temperature.

12.2.4 *Pressure.* Accuracy depends on the accuracy of the barometer, but fluctuations in pressure throughout a day may be as much as 2.5 percent due to weather variations.

13.0 *Method Validation Procedure*

This validation procedure, which is based on EPA Method 301 (40 CFR part 63, appendix (A), may be used to validate this method for the analytes in a gas matrix. Validation at one source may also apply to another type of source, if it can be shown that the exhaust gas characteristics are similar at both sources.

13.1 Section 5.3 of Method 301 (40 CFR part 63, appendix A), the Analyte Spike procedure, is used with these modifications. The statistical analysis of the results follows section 6.3 of EPA Method 301. Section 3 of this method defines terms that are not defined in Method 301.

13.1.1 The analyte spike is performed dynamically. This means the spike flow is continuous and constant as spiked samples are measured.

13.1.2 The spike gas is introduced at the back of the sample probe.

13.1.3 Spiked effluent is carried through all sampling components downstream of the probe.

13.1.4 A single FTIR system (or more) may be used to collect and analyze spectra (not quadruplicate integrated sampling trains).

13.1.5 All of the validation measurements are performed sequentially in a single "run" (section 3.26 of this method).

13.1.6 The measurements analyzed statistically are each independent (section 3.22 of this method).

13.1.7 A validation data set can consist of more than 12 spiked and 12 unspiked measurements.

13.2 *Batch Sampling.* The procedure in sections 13.2.1 through 13.2.2 may be used for stable processes. If process emissions are highly variable, the procedure in section 13.2.3 shall be used.

13.2.1 With a single FTIR instrument and sampling system, begin by collecting spectra of two unspiked samples. Introduce the spike flow into the sampling system and allow 10 cell volumes to purge the sampling system and FTIR cell. Collect spectra of two spiked samples. Turn off the spike and allow 10 cell volumes of unspiked sample to purge the FTIR cell. Repeat this procedure until the 24 (or more) samples are collected.

13.2.2 In batch sampling, collect spectra of 24 distinct samples. (Each distinct sample consists of filling the cell to ambient pressure after the cell has been evacuated.)

13.2.3 Alternatively, a separate probe assembly, line, and sample pump can be used for spiked sample. Verify and document that sampling conditions are the same in both the spiked and the unspiked sampling systems. This can be done by wrapping both sample lines in the same heated bundle. Keep the same flow rate in both sample lines. Measure samples in sequence in pairs. After two spiked samples are measured, evacuate the FTIR cell, and turn the manifold valve so that spiked sample flows to the FTIR cell. Allow the connecting line from the manifold to the FTIR cell to purge thoroughly (the time depends on the line length and flow rate). Collect a pair of spiked samples. Repeat the procedure until at least 24 measurements are completed.

13.3 Simultaneous Measurements With Two FTIR Systems. If unspiked effluent concentrations of the target analyte(s) vary significantly with time, it may be desirable to perform synchronized measurements of spiked and unspiked sample. Use two FTIR systems, each with its own cell and sampling system to perform simultaneous spiked and unspiked measurements. The optical configurations shall be similar, if possible. The sampling configurations shall be the same. One sampling system and FTIR analyzer shall be used to measure spiked effluent. The other sampling system and FTIR analyzer shall be used to measure unspiked flue gas. Both systems shall use the same sampling procedure (i.e., batch or continuous).

13.3.1 If batch sampling is used, synchronize the cell evacuation, cell filling, and collection of spectra. Fill both cells at the same rate (in cell volumes per unit time).

13.3.2 If continuous sampling is used, adjust the sample flow through each gas cell so that the same number of cell volumes pass through each cell in a given time (i.e. $TC_1 = TC_2$).

13.4 *Statistical Treatment.* The statistical procedure of EPA Method 301 of this appendix, section 6.3 is used to evaluate the bias and precision. For FTIR testing a validation "run" is defined as spectra of 24 independent samples, 12 of which are spiked with the analyte(s) and 12 of which are not spiked.

13.4.1 *Bias.* Determine the bias (defined by EPA Method 301 of this appendix, section 6.3.2) using equation 7:

$$B = S_m - CS \qquad (7)$$

Where:

B = Bias at spike level.
S_m = Mean concentration of the analyte spiked samples.
CS = Expected concentration of the spiked samples.

13.4.2 *Correction Factor.* Use section 6.3.2.2 of Method 301 of this appendix to evaluate the statistical significance of the bias. If it is determined that the bias is significant, then use section 6.3.3 of Method 301 to calculate a correction factor (CF). Analytical results of the test method are multiplied by the correction factor, if $0.7 \leq CF \leq 1.3$. If is determined that the bias is significant and CF > ± 30 percent, then the test method is considered to "not valid."

13.4.3 If measurements do not pass validation, evaluate the sampling system, instrument configuration, and analytical system to determine if improper set-up or a malfunction was the cause. If so, repair the system and repeat the validation.

14.0 *Pollution Prevention.*

The extracted sample gas is vented outside the enclosure containing the FTIR system and gas manifold after the analysis. In typical method applications the vented sample volume is a small fraction of the source volumetric flow and its composition is identical to that emitted from the source. When analyte spiking is used, spiked pollutants are vented with the extracted sample gas. Approximately 1.6×10^{-4} to 3.2×10^{-4} lbs of a single HAP may be vented to the atmosphere in a typical validation run of 3 hours. (This assumes a molar mass of 50 to 100 g, spike rate of 1.0 L/min, and a standard concentration of 100 ppm). Minimize emissions by keeping the spike flow off when not in use.

15.0 *Waste Management.*

Small volumes of laboratory gas standards can be vented through a laboratory hood. Neat samples must be packed and disposed according to applicable regulations. Surplus materials may be returned to supplier for disposal.

16.0 *References.*

1. "Field Validation Test Using Fourier Transform Infrared (FTIR) Spectrometry To Measure Formaldehyde, Phenol and Methanol at a Wool Fiberglass Production Facility." Draft. U.S. Environmental Protection Agency Report, EPA Contract No. 68D20163, Work Assignment I–32, September 1994.

2. "FTIR Method Validation at a Coal-Fired Boiler". Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. Publication No.: EPA–454/R95–004, NTIS No.: PB95–193199. July, 1993.

3. "Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media," 40 CFR part 63, appendix A.

4. "Molecular Vibrations; The Theory of Infrared and Raman Vibrational Spectra," E. Bright Wilson, J. C. Decius, and P. C. Cross, Dover Publications, Inc., 1980. For a less intensive treatment of molecular rotational-vibrational spectra see, for example, "Physical Chemistry," G. M. Barrow, chapters 12, 13, and 14, McGraw Hill, Inc., 1979.

5. "Fourier Transform Infrared Spectrometry," Peter R. Griffiths and James de Haseth, Chemical Analysis, 83, 16–25,(1986), P. J. Elving, J. D. Winefordner and I. M. Kolthoff (ed.), John Wiley and Sons.

6. "Computer-Assisted Quantitative Infrared Spectroscopy," Gregory L. McClure (ed.), ASTM Special Publication 934 (ASTM), 1987.

7. "Multivariate Least-Squares Methods Applied to the Quantitative Spectral Analysis of Multicomponent Mixtures," Applied Spectroscopy, 39(10), 73–84, 1985.

TABLE 1.—EXAMPLE PRESENTATION OF SAMPLING DOCUMENTATION.

Sample time	Spectrum file name	Background file name	Sample conditioning	Process condition

Sample time	Spectrum file	Interferogram	Resolution	Scans	Apodization	Gain	CTS Spectrum

BILLING CODE 6560–50–P

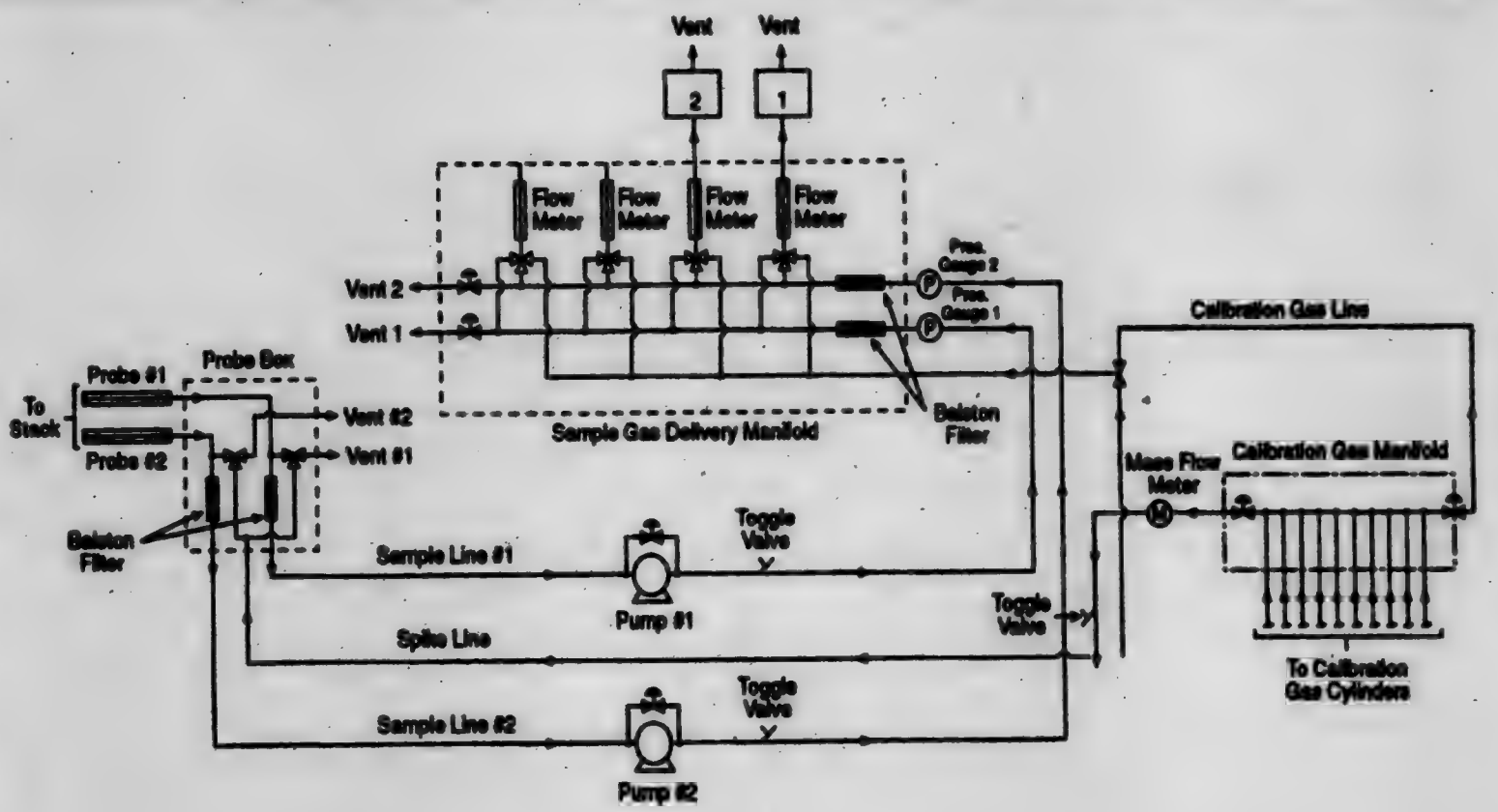

Figure 1. Extractive FTIR sampling system.

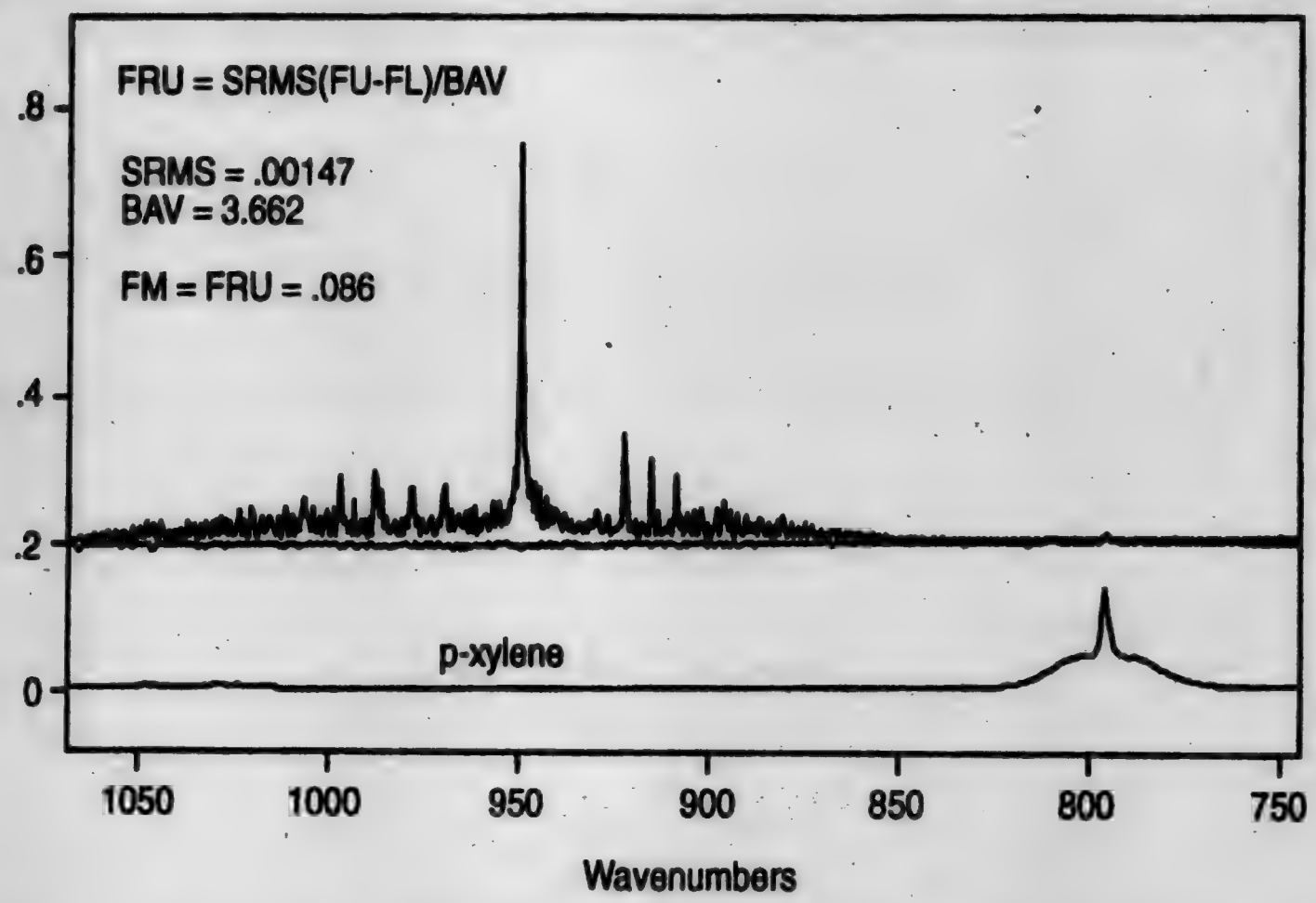

Figure 2. Fractional Reproducibility. Top: average of cts1031a and cts1101b. Bottom: Reference spectrum of p-xylene.

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Addendum to Test Method 320—Protocol for the Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry for the Analyses of Gaseous Emissions from Stationary Sources

1.0 *Introduction*

The purpose of this addendum is to set general guidelines for the use of modern FTIR spectroscopic methods for the analysis of gas samples extracted from the effluent of stationary emission sources. This addendum outlines techniques for developing and evaluating such methods and sets basic requirements for reporting and quality assurance procedures.

1.1 *Nomenclature*

1.1.1 Appendix A to this addendum lists definitions of the symbols and terms used in this Protocol, many of which have been taken directly from American Society for Testing and Materials (ASTM) publication E 131–90a, entitled "Terminology Relating to Molecular Spectroscopy."

1.1.2 Except in the case of background spectra or where otherwise noted, the term "spectrum" refers to a double-beam spectrum in units of absorbance vs. wavenumber (cm^{-1}).

1.1.3 The term "Study" in this addendum refers to a publication that has been subjected to EPA- or peer-review.

2.0 *Applicability and Analytical Principle*

2.1 *Applicability.* This Protocol applies to the determination of compound-specific concentrations in single- and multiple-component gas phase samples using double-beam absorption spectroscopy in the mid-infrared band. It does not specifically address other FTIR applications, such as single-beam spectroscopy, analysis of open-path (non-enclosed) samples, and continuous measurement techniques. If multiple spectrometers, absorption cells, or instrumental linewidths are used in such analyses, each distinct operational configuration of the system must be evaluated separately according to this Protocol.

2.2 *Analytical Principle*

2.2.1 In the mid-infrared band, most molecules exhibit characteristic gas phase absorption spectra that may be recorded by FTIR systems. Such systems consist of a source of mid-infrared radiation, an interferometer, an enclosed sample cell of known absorption pathlength, an infrared detector, optical elements for the transfer of infrared radiation between components, and gas flow control and measurement components. Adjunct and integral computer systems are used for controlling the instrument, processing the signal, and for performing both Fourier transforms and quantitative analyses of spectral data.

2.2.2 The absorption spectra of pure gases and of mixtures of gases are described by a linear absorbance theory referred to as Beer's Law. Using this law, modern FTIR systems use computerized analytical programs to quantify compounds by comparing the absorption spectra of known (reference) gas samples to the absorption spectrum of the sample gas. Some standard mathematical techniques used for comparisons are classical least squares, inverse least squares, cross-correlation, factor analysis, and partial least squares. Reference A describes several of these techniques, as well as additional techniques, such as differentiation methods, linear baseline corrections, and non-linear absorbance corrections.

3.0 *General Principles of Protocol Requirements*

The characteristics that distinguish FTIR systems from gas analyzers used in instrumental gas analysis methods (e.g., Methods 6C and 7E of appendix A to part 60 of this chapter) are: (1) Computers are necessary to obtain and analyze data; (2) chemical concentrations can be quantified using previously recorded infrared reference

spectra; and (3) analytical assumptions and results, including possible effects of interfering compounds, can be evaluated after the quantitative analysis. The following general principles and requirements of this Protocol are based on these characteristics.

3.1 *Verifiability and Reproducibility of Results.* Store all data and document data analysis techniques sufficient to allow an independent agent to reproduce the analytical results from the raw interferometric data.

3.2 *Transfer of Reference Spectra.* To determine whether reference spectra recorded under one set of conditions (e.g., optical bench, instrumental linewidth, absorption pathlength, detector performance, pressure, and temperature) can be used to analyze sample spectra taken under a different set of conditions, quantitatively compare "calibration transfer standards" (CTS) and reference spectra as described in this Protocol. (**Note:** The CTS may, but need not, include analytes of interest). To effect this, record the absorption spectra of the CTS (a) immediately before and immediately after recording reference spectra and (b) immediately after recording sample spectra.

3.3 *Evaluation of FTIR Analyses.* The applicability, accuracy, and precision of FTIR measurements are influenced by a number of interrelated factors, which may be divided into two classes:

3.3.1 *Sample-Independent Factors.* Examples are system configuration and performance (e.g., detector sensitivity and infrared source output), quality and applicability of reference absorption spectra, and type of mathematical analyses of the spectra. These factors define the fundamental limitations of FTIR measurements for a given system configuration. These limitations may be estimated from evaluations of the system before samples are available. For example, the detection limit for the absorbing compound under a given set of conditions may be estimated from the system noise level and the strength of a particular absorption band. Similarly, the accuracy of measurements may be estimated from the analysis of the reference spectra.

3.3.2 *Sample-Dependent Factors.* Examples are spectral interferants (e.g., water vapor and CO_2) or the overlap of spectral features of different compounds and contamination deposits on reflective surfaces or transmitting windows. To maximize the effectiveness of the mathematical techniques used in spectral analysis, identification of interferants (a standard initial step) and analysis of samples (includes effect of other analytical errors) are necessary. Thus, the Protocol requires post-analysis calculation of measurement concentration uncertainties for the detection of these potential sources of measurement error.

4.0 *Pre-Test Preparations and Evaluations*

Before testing, demonstrate the suitability of FTIR spectrometry for the desired application according to the procedures of this section.

4.1 *Identify Test Requirements.* Identify and record the test requirements described in sections 4.1.1 through 4.1.4 of this addendum. These values set the desired or required goals of the proposed analysis; the description of methods for determining whether these goals are actually met during the analysis comprises the majority of this Protocol.

4.1.1 Analytes (specific chemical species) of interest. Label the analytes from i = 1 to I.

4.1.2 Analytical uncertainty limit (AU_i). The AU_i is the maximum permissible fractional uncertainty of analysis for the i^{th} analyte concentration, expressed as a fraction of the analyte concentration in the sample.

4.1.3 Required detection limit for each analyte (DL_i, ppm). The detection limit is the lowest concentration of an analyte for which its overall fractional uncertainty (OFU_i) is required to be less than its analytical uncertainty limit (AU_i).

4.1.4 Maximum expected concentration of each analyte ($CMAX_i$, ppm).

4.2 *Identify Potential Interferants.* Considering the chemistry of the process or results of previous studies, identify potential interferants, i.e., the major effluent constituents and any relatively minor effluent constituents that possess either strong absorption characteristics or strong structural similarities to any analyte of interest. Label them 1 through N_j, where the subscript "j" pertains to potential interferants. Estimate the concentrations of these compounds in the effluent ($CPOT_j$, ppm).

4.3 *Select and Evaluate the Sampling System.* Considering the source, e.g., temperature and pressure profiles, moisture content, analyte characteristics, and particulate concentration), select the equipment for extracting gas samples. Recommended are a particulate filter, heating system to maintain sample temperature above the dew point for all sample constituents at all points within the sampling system (including the filter), and sample conditioning system (e.g., coolers, water-permeable membranes that remove water or other compounds from the sample, and dilution devices) to remove spectral interferants or to protect the sampling and analytical components. Determine the minimum absolute sample system pressure (P_{min}, mmHg) and the infrared absorption cell volume (V_{ss}, liter). Select the techniques and/or equipment for the measurement of sample pressures and temperatures.

4.4 *Select Spectroscopic System.* Select a spectroscopic configuration for the application. Approximate the absorption pathlength (L_s', meter), sample pressure (P_s', kPa), absolute sample temperature T_s', and signal integration period (t_{ss}, seconds) for the analysis. Specify the nominal minimum instrumental linewidth (MIL) of the system. Verify that the fractional error at the approximate values P_s' and T_s' is less than one half the smallest value AU_i (see section 4.1.2 of this addendum).

4.5 Select Calibration Transfer Standards (CTS's). Select CTS's that meet the criteria listed in sections 4.5.1, 4.5.2, and 4.5.3 of this addendum.

Note: It may be necessary to choose preliminary analytical regions (see section 4.7 of this addendum), identify the minimum analyte linewidths, or estimate the system noise level (see section 4.12 of this addendum) before selecting the CTS. More than one compound may be needed to meet the criteria; if so, obtain separate cylinders for each compound.

4.5.1 The central wavenumber position of each analytical region shall lie within 25 percent of the wavenumber position of at least one CTS absorption band.

4.5.2 The absorption bands in section 4.5.1 of this addendum shall exhibit peak absorbances greater than ten times the value RMS_{EST} (see section 4.12 of this addendum) but less than 1.5 absorbance units.

4.5.3 At least one absorption CTS band within the operating range of the FTIR instrument shall have an instrument-independent linewidth no greater than the narrowest analyte absorption band. Perform and document measurements or cite Studies to determine analyte and CTS compound linewidths.

4.5.4 For each analytical region, specify the upper and lower wavenumber positions (FFU_m and FFL_m, respectively) that bracket the CTS absorption band or bands for the associated analytical region. Specify the wavenumber range, FNU to FNL, containing the absorption band that meets the criterion of section 4.5.3 of this addendum.

4.5.5 Associate, whenever possible, a single set of CTS gas cylinders with a set of reference spectra. Replacement CTS gas cylinders shall contain the same compounds at concentrations within 5 percent of that of the original CTS cylinders; the entire absorption spectra (not individual spectral segments) of the replacement gas shall be scaled by a factor between 0.95 and 1.05 to match the original CTS spectra.

4.6 *Prepare Reference Spectra*

Note: Reference spectra are available in a permanent soft copy from the EPA spectral library on the EMTIC (Emission Measurement Technical Information Center) computer bulletin board; they may be used if applicable.

4.6.1 Select the reference absorption pathlength (L_R) of the cell.

4.6.2 Obtain or prepare a set of chemical standards for each analyte, potential and known spectral interferants, and CTS. Select the concentrations of the chemical standards to correspond to the top of the desired range.

4.6.2.1 *Commercially-Prepared Chemical Standards.* Chemical standards for many compounds may be obtained from independent sources, such as a specialty gas manufacturer, chemical company, or commercial laboratory. These standards (accurate to within ±2 percent) shall be prepared according to EPA Traceability Protocol (see Reference D) or shall be traceable to NIST standards. Obtain from the supplier an estimate of the stability of the analyte concentration. Obtain and follow all of the supplier's recommendations for recertifying the analyte concentration.

4.6.2.2 *Self-Prepared Chemical Standards.* Chemical standards may be prepared by diluting certified commercially prepared chemical gases or pure analytes with ultra-pure carrier (UPC) grade nitrogen according to the barometric and volumetric techniques generally described in Reference A, section A4.6.

4.6.3 Record a set of the absorption spectra of the CTS {R1}, then a set of the reference spectra at two or more concentrations in duplicate over the desired range (the top of the range must be less than 10 times that of the bottom), followed by a second set of CTS spectra {R2}. (If self-prepared standards are used, see section 4.6.5 of this addendum before disposing of any of the standards.) The maximum accepted standard concentration-pathlength product (ASCPP) for each compound shall be higher than the maximum estimated concentration-pathlength products for both analytes and known interferants in the effluent gas. For each analyte, the minimum ASCPP shall be no greater than ten times the concentration-pathlength product of that analyte at its required detection limit.

4.6.4 Permanently store the background and interferograms in digitized form. Document details of the mathematical process for generating the spectra from these interferograms. Record the sample pressure (P_R), sample temperature (T_R), reference absorption pathlength (L_R), and interferogram signal integration period (t_{SR}). Signal integration periods for the background interferograms shall be $\geq t_{SR}$. Values of P_R, L_R, and t_{SR} shall not deviate by more than ±1 percent from the time of recording {R1} to that of recording {R2}.

4.6.5 If self-prepared chemical standards are employed and spectra of only two concentrations are recorded for one or more compounds, verify the accuracy of the dilution technique by analyzing the prepared standards for those compounds with a secondary (non-FTIR) technique in accordance with sections 4.6.5.1 through 4.6.5.4 of this addendum.

4.6.5.1 Record the response of the secondary technique to each of the four standards prepared.

4.6.5.2 Perform a linear regression of the response values (dependant variable) versus the accepted standard concentration (ASC) values (independent variable), with the regression constrained to pass through the zero-response, zero ASC point.

4.6.5.3 Calculate the average fractional difference between the actual response values and the regression-predicted values (those calculated from the regression line using the four ASC values as the independent variable).

4.6.5.4 If the average fractional difference value calculated in section 4.6.5.3 of this addendum is larger for any compound than the corresponding AU_i, the dilution technique is not sufficiently accurate and the reference spectra prepared are not valid for the analysis.

4.7 *Select Analytical Regions.* Using the general considerations in section 7 of Reference A and the spectral characteristics of the analytes and interferants, select the analytical regions for the application. Label them m = 1 to M. Specify the lower, center and upper wavenumber positions of each analytical region (FL_m, FC_m, and FU_m, respectively). Specify the analytes and interferants which exhibit absorption in each region.

4.8 *Determine Fractional Reproducibility Uncertainties.* Using appendix E of this addendum, calculate the fractional reproducibility uncertainty for each analyte (FRU_i) from a comparison of {R1} and {R2}. If $FRU_i > AU_i$ for any analyte, the reference spectra generated in accordance with section 4.6 of this addendum are not valid for the application.

4.9 *Identify Known Interferants.* Using appendix B of this addendum, determine which potential interferants affect the analyte concentration determinations. Relabel these potential interferant as "known" interferants, and designate these compounds from k = 1 to K. Appendix B to this addendum also provides criteria for determining whether the selected analytical regions are suitable.

4.10 *Prepare Computerized Analytical Programs*

4.10.1 Choose or devise mathematical techniques (e.g, classical least squares, inverse least squares, cross-correlation, and factor analysis) based on equation 4 of Reference A that are appropriate for analyzing spectral data by comparison with reference spectra.

4.10.2 Following the general recommendations of Reference A, prepare a computer program or set of programs that analyzes all of the analytes and known interferants, based on the selected analytical regions (section 4.7 of this addendum) and the prepared reference spectra (section 4.6 of this addendum). Specify the baseline correction technique (e.g., determining the slope and intercept of a linear baseline contribution in each analytical region) for each analytical region, including all relevant wavenumber positions.

4.10.3 Use programs that provide as output [at the reference absorption pathlength (L_R), reference gas temperature (T_R), and reference gas pressure (P_R)] the analyte concentrations, the known interferant concentrations, and the baseline slope and intercept values. If the sample absorption pathlength (L_S), sample gas temperature (T_S), or sample gas pressure (P_S) during the actual sample analyses differ from L_R, T_R, and P_R, use a program or set of programs that applies multiplicative corrections to the derived concentrations to account for these variations, and that provides as output both the corrected and uncorrected values. Include in the report of the analysis (see section 7.0 of this addendum) the details of any transformations applied to the original reference spectra (e.g., differentiation), in such a fashion that all analytical results may be verified by an independent agent from the reference spectra and data spectra alone.

4.11 *Determine the Fractional Calibration Uncertainty.* Calculate the fractional calibration uncertainty for each analyte (FCUi) according to appendix F of this addendum, and compare these values to the fractional uncertainty limits (AU_i; see section 4.1.2 of this addendum). If $FCU_i > AU_i$, either the reference spectra or analytical programs for that analyte are unsuitable.

4.12 *Verify System Configuration Suitability.* Using appendix C of this addendum, measure or obtain estimates of the noise level (RMS_{EST}, absorbance) of the FTIR system. Alternatively, construct the complete spectrometer system and determine the values RMS_{Sm} using appendix G of this addendum. Estimate the minimum measurement uncertainty for each analyte (MAU_i, ppm) and known interferant (MIU_k, ppm) using appendix D of this addendum. Verify that (a) $MAU_i < (AU_i)(DL_i)$, $FRUi < AU_i$, and $FCUi < AU_i$ for each analyte and that (b) the CTS chosen meets the requirements listed in sections 4.5.1 through 4.5.5 of this addendum.

5.0 *Sampling and Analysis Procedure*

5.1 *Analysis System Assembly and Leak-Test.* Assemble the analysis system. Allow sufficient time for all system components to reach the desired temperature. Then, determine the leak-rate (L_R) and leak volume (V_L), where $V_L = L_R t_{SS}$. Leak volumes shall be ≤4 percent of V_{SS}.

5.2 *Verify Instrumental Performance.* Measure the noise level of the system in each analytical region using the procedure of appendix G of this addendum. If any noise level is higher than that estimated for the system in section 4.12 of this addendum, repeat the calculations of appendix D of this addendum and verify that the requirements of section 4.12 of this addendum are met; if they are not, adjust or repair the instrument and repeat this section.

5.3 *Determine the Sample Absorption Pathlength*

Record a background spectrum. Then, fill the absorption cell with CTS at the pressure P_R and record a set of CTS spectra {R3}. Store the background and unscaled CTS single beam interferograms and spectra. Using appendix H of this addendum, calculate the sample absorption pathlength (L_S) for each analytical region. The values L_S shall not differ from the approximated sample pathlength L_S' (see section 4.4 of this addendum) by more than 5 percent.

5.4 *Record Sample Spectrum.* Connect the sample line to the source. Either evacuate the absorption cell to an absolute pressure below 5 mmHg before extracting a sample from the effluent stream into the absorption cell, or pump at least ten cell volumes of sample through the cell before obtaining a sample. Record the sample pressure P_S. Generate the absorbance spectrum of the sample. Store the background and sample single beam interferograms, and document the process by which the absorbance spectra are generated from these data. (If necessary, apply the spectral transformations developed in section 5.6.2 of this addendum). The resulting sample spectrum is referred to below as S_S.

Note: Multiple sample spectra may be recorded according to the procedures of section 5.4 of this addendum before performing sections 5.5 and 5.6 of this addendum.

5.5 *Quantify Analyte Concentrations.* Calculate the unscaled analyte concentrations RUA_i and unscaled interferant concentrations RUI_K using the programs developed in section 4 of this addendum. To correct for pathlength and pressure variations between the reference and sample spectra, calculate the scaling factor, R_{LPS} using equation A.1,

$$R_{LPS} = (L_R P_R T_S)/(L_S P_S T_R) \quad \text{(A.1)}$$

Calculate the final analyte and interferant concentrations RSA_i and RSI_k using equations A.2 and A.3,

$$RSA_i = R_{LPS} RUA_i \quad (A.2)$$

$$RSI_k = R_{LPS} RUI_k \quad (A.3)$$

5.6 *Determine Fractional Analysis Uncertainty.* Fill the absorption cell with CTS at the pressure P_S. Record a set of CTS spectra {R4}. Store the background and CTS single beam interferograms. Using appendix H of this addendum, calculate the fractional analysis uncertainty (FAU) for each analytical region. If the FAU indicated for any analytical region is greater than the required accuracy requirements determined in sections 4.1.1 through 4.1.4 of this addendum, then comparisons to previously recorded reference spectra are invalid in that analytical region, and the analyst shall perform one or both of the procedures of sections 5.6.1 through 5.6.2 of this addendum.

5.6.1 Perform instrumental checks and adjust the instrument to restore its performance to acceptable levels. If adjustments are made, repeat sections 5.3, 5.4 (except for the recording of a sample spectrum), and 5.5 of this addendum to demonstrate that acceptable uncertainties are obtained in all analytical regions.

5.6.2 Apply appropriate mathematical transformations (e.g., frequency shifting, zero-filling, apodization, smoothing) to the spectra (or to the interferograms upon which the spectra are based) generated during the performance of the procedures of section 5.3 of this addendum. Document these transformations and their reproducibility. Do not apply multiplicative scaling of the spectra, or any set of transformations that is mathematically equivalent to multiplicative scaling. Different transformations may be applied to different analytical regions. Frequency shifts shall be less than one-half the minimum instrumental linewidth, and must be applied to all spectral data points in an analytical region. The mathematical transformations may be retained for the analysis if they are also applied to the appropriate analytical regions of all sample spectra recorded, and if all original sample spectra are digitally stored. Repeat sections 5.3, 5.4 (except the recording of a sample spectrum), and 5.5 of this addendum to demonstrate that these transformations lead to acceptable calculated concentration uncertainties in all analytical regions.

6.0 Post-Analysis Evaluations

Estimate the overall accuracy of the analyses performed in accordance with sections 5.1 through 5.6 of this addendum using the procedures of sections 6.1 through 6.3 of this addendum.

6.1 *Qualitatively Confirm the Assumed Matrix.* Examine each analytical region of the sample spectrum for spectral evidence of unexpected or unidentified interferants. If found, identify the interfering compounds (see Reference C for guidance) and add them to the list of known interferants. Repeat the procedures of section 4 of this addendum to include the interferants in the uncertainty calculations and analysis procedures. Verify that the MAU and FCU values do not increase beyond acceptable levels for the application requirements. Re-calculate the analyte concentrations (section 5.5 of this addendum) in the affected analytical regions.

6.2 *Quantitatively Evaluate Fractional Model Uncertainty (FMU).* Perform the procedures of either section 6.2.1 or 6.2.2 of this addendum:

6.2.1 Using appendix I of this addendum, determine the fractional model error (FMU) for each analyte.

6.2.2 Provide statistically determined uncertainties FMU for each analyte which are equivalent to two standard deviations at the 95 percent confidence level. Such determinations, if employed, must be based on mathematical examinations of the pertinent sample spectra (not the reference spectra alone). Include in the report of the analysis (see section 7.0 of this addendum) a complete description of the determination of the concentration uncertainties.

6.3 *Estimate Overall Concentration Uncertainty (OCU).* Using appendix J of this addendum, determine the overall concentration uncertainty (OCU) for each analyte. If the OCU is larger than the required accuracy for any analyte, repeat sections 4 and 6 of this addendum.

7.0 Reporting Requirements

[Documentation pertaining to virtually all the procedures of sections 4, 5, and 6 will be required. Software copies of reference spectra and sample spectra will be retained for some minimum time following the actual testing.]

8.0 References

(A) Standard Practices for General Techniques of Infrared Quantitative Analysis (American Society for Testing and Materials, Designation E 168–88).

(B) The Coblentz Society Specifications for Evaluation of Research Quality Analytical Infrared Reference Spectra (Class II); Anal. Chemistry 47, 945A (1975); Appl. Spectroscopy 444, pp. 211–215, 1990.

(C) Standard Practices for General Techniques for Qualitative Infrared Analysis, American Society for Testing and Materials, Designation E 1252–88.

(D) "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," U.S. Environmental Protection Agency Publication No. EPA/600/R–93/224, December 1993.

Appendix A to Addendum to Method 320—Definitions of Terms and Symbols

A.1 *Definitions of Terms.* All terms used in this method that are not defined below have the meaning given to them in the CAA and in subpart A of this part.

Absorption band means a contiguous wavenumber region of a spectrum (equivalently, a contiguous set of absorbance spectrum data points) in which the absorbance passes through a maximum or a series of maxima.

Absorption pathlength means the distance in a spectrophotometer, measured in the direction of propagation of the beam of radiant energy, between the surface of the specimen on which the radiant energy is incident and the surface of the specimen from which it is emergent.

Analytical region means a contiguous wavenumber region (equivalently, a contiguous set of absorbance spectrum data points) used in the quantitative analysis for one or more analytes.

Note: The quantitative result for a single analyte may be based on data from more than one analytical region.

Apodization means modification of the ILS function by multiplying the interferogram by a weighing function whose magnitude varies with retardation.

Background spectrum means the single beam spectrum obtained with all system components without sample present.

Baseline means any line drawn on an absorption spectrum to establish a reference point that represents a function of the radiant power incident on a sample at a given wavelength.

Beers's law means the direct proportionality of the absorbance of a compound in a homogeneous sample to its concentration.

Calibration transfer standard (CTS) gas means a gas standard of a compound used to achieve and/or demonstrate suitable quantitative agreement between sample spectra and the reference spectra; see section 4.5.1 of this addendum.

Compound means a substance possessing a distinct, unique molecular structure.

Concentration (c) means the quantity of a compound contained in a unit quantity of sample. The unit "ppm" (number, or mole, basis) is recommended.

Concentration-pathlength product means the mathematical product of concentration of the species and absorption pathlength. For reference spectra, this is a known quantity; for sample spectra, it is the quantity directly determined from Beer's law. The units "centimeters-ppm" or "meters-ppm" are recommended.

Derivative absorption spectrum means a plot of rate of change of absorbance or of any function of absorbance with respect to wavelength or any function of wavelength.

Double beam spectrum means a transmission or absorbance spectrum derived by dividing the sample single beam spectrum by the background spectrum.

Note: The term "double-beam" is used elsewhere to denote a spectrum in which the sample and background interferograms are collected simultaneously along physically distinct absorption paths. Here, the term denotes a spectrum in which the sample and background interferograms are collected at different times along the same absorption path.

Fast Fourier transform (FFT) means a method of speeding up the computation of a discrete FT by factoring the data into sparse matrices containing mostly zeros.

Flyback means interferometer motion during which no data are recorded.

Fourier transform (FT) means the mathematical process for converting an amplitude-time spectrum to an amplitude-frequency spectrum, or vice versa.

Fourier transform infrared (FTIR) spectrometer means an analytical system that

employs a source of mid-infrared radiation, an interferometer, an enclosed sample cell of known absorption pathlength, an infrared detector, optical elements that transfer infrared radiation between components, and a computer system. The time-domain detector response (interferogram) is processed by a Fourier transform to yield a representation of the detector response vs. infrared frequency.

Note: When FTIR spectrometers are interfaced with other instruments, a slash should be used to denote the interface; e.g., GC/FTIR; HPCL/FTIR, and the use of FTIR should be explicit; i.e., FTIR not IR.

Frequency, ν means the number of cycles per unit time.

Infrared means the portion of the electromagnetic spectrum containing wavelengths from approximately 0.78 to 800 microns.

Interferogram, I(σ) means record of the modulated component of the interference signal measured as a function of retardation by the detector.

Interferometer means device that divides a beam of radiant energy into two or more paths, generates an optical path difference between the beams, and recombines them in order to produce repetitive interference maxima and minima as the optical retardation is varied.

Linewidth means the full width at half maximum of an absorption band in units of wavenumbers (cm^{-1}).

Mid-infrared means the region of the electromagnetic spectrum from approximately 400 to 5000 cm^{-1}.

Reference spectra means absorption spectra of gases with known chemical compositions, recorded at a known absorption pathlength, which are used in the quantitative analysis of gas samples.

Retardation, σ means optical path difference between two beams in an interferometer; also known as "optical path difference" or "optical retardation."

Scan means digital representation of the detector output obtained during one complete motion of the interferometer's moving assembly or assemblies.

Scaling means application of a multiplicative factor to the absorbance values in a spectrum.

Single beam spectrum means Fourier-transformed interferogram, representing the detector response vs. wavenumber.

Note: The term "single-beam" is used elsewhere to denote any spectrum in which the sample and background interferograms are recorded on the same physical absorption path; such usage differentiates such spectra from those generated using interferograms recorded along two physically distinct absorption paths (see "double-beam spectrum" above). Here, the term applies (for example) to the two spectra used directly in the calculation of transmission and absorbance spectra of a sample.

Standard reference material means a reference material, the composition or properties of which are certified by a recognized standardizing agency or group.

Note: The equivalent ISO term is "certified reference material."

Transmittance, T means the ratio of radiant power transmitted by the sample to the radiant power incident on the sample. Estimated in FTIR spectroscopy by forming the ratio of the single-beam sample and background spectra.

Wavenumber, $\tilde{\nu}$ means the number of waves per unit length.

Note: The usual unit of wavenumber is the reciprocal centimeter, cm^{-1}. The wavenumber is the reciprocal of the wavelength, λ, when λ is expressed in centimeters.

Zero-filling means the addition of zero-valued points to the end of a measured interferogram.

Note: Performing the FT of a zero-filled interferogram results in correctly interpolated points in the computed spectrum.

A.2 *Definitions of Mathematical Symbols.* The symbols used in equations in this protocol are defined as follows:

(1) A, absorbance = the logarithm to the base 10 of the reciprocal of the transmittance (T).

$$A = \log_{10}\left(\frac{1}{T}\right) = -\log_{10} T$$

(2) AAI_{im} = band area of the i^{th} analyte in the m^{th} analytical region, at the concentration (CL_i) corresponding to the product of its required detection limit (DL_i) and analytical uncertainty limit (AU_i) .

(3) AAV_{im} = average absorbance of the i^{th} analyte in the m^{th} analytical region, at the concentration (CL_i) corresponding to the product of its required detection limit (DL_i) and analytical uncertainty limit (AU_i) .

(4) ASC, accepted standard concentration = the concentration value assigned to a chemical standard.

(5) ASCPP, accepted standard concentration-pathlength product = for a chemical standard, the product of the ASC and the sample absorption pathlength. The units "centimeters-ppm" or "meters-ppm" are recommended.

(6) AU_i, analytical uncertainty limit = the maximum permissible fractional uncertainty of analysis for the i^{th} analyte concentration, expressed as a fraction of the analyte concentration determined in the analysis.

(7) AVT_m = average estimated total absorbance in the m^{th} analytical region.

(8) $CKWN_k$ = estimated concentration of the k^{th} known interferant.

(9) $CMAX_i$ = estimated maximum concentration of the i^{th} analyte.

(10) $CPOT_j$ = estimated concentration of the j^{th} potential interferant.

(11) DL_i, required detection limit = for the i^{th} analyte, the lowest concentration of the analyte for which its overall fractional uncertainty (OFU_i) is required to be less than the analytical uncertainty limit (AU_i).

(12) FC_m = center wavenumber position of the m^{th} analytical region.

(13) FAU_i, fractional analytical uncertainty = calculated uncertainty in the measured concentration of the i^{th} analyte because of errors in the mathematical comparison of reference and sample spectra.

(14) FCU_i, fractional calibration uncertainty = calculated uncertainty in the measured concentration of the i^{th} analyte because of errors in Beer's law modeling of the reference spectra concentrations.

(15) FFL_m = lower wavenumber position of the CTS absorption band associated with the m^{th} analytical region.

(16) FFU_m = upper wavenumber position of the CTS absorption band associated with the m^{th} analytical region.

(17) FL_m = lower wavenumber position of the m^{th} analytical region.

(18) FMU_i, fractional model uncertainty = calculated uncertainty in the measured concentration of the i^{th} analyte because of errors in the absorption model employed.

(19) FN_L = lower wavenumber position of the CTS spectrum containing an absorption band at least as narrow as the analyte absorption bands.

(20) FN_U = upper wavenumber position of the CTS spectrum containing an absorption band at least as narrow as the analyte absorption bands.

(21) FRU_i, fractional reproducibility uncertainty = calculated uncertainty in the measured concentration of the i^{th} analyte because of errors in the reproducibility of spectra from the FTIR system.

(22) FU_m = upper wavenumber position of the m^{th} analytical region.

(23) IAI_{jm} = band area of the j^{th} potential interferant in the m^{th} analytical region, at its expected concentration ($CPOT_j$).

(24) IAV_{im} = average absorbance of the i^{th} analyte in the m^{th} analytical region, at its expected concentration ($CPOT_j$).

(25) $ISC_{i\ or\ k}$, indicated standard concentration = the concentration from the computerized analytical program for a single-compound reference spectrum for the i^{th} analyte or k^{th} known interferant.

(26) kPa = kilo-Pascal (see Pascal).

(27) L_S' = estimated sample absorption pathlength.

(28) L_R = reference absorption pathlength.

(29) L_S = actual sample absorption pathlength.

(30) MAU_i = mean of the MAU_{im} over the appropriate analytical regions.

(31) MAU_{im}, minimum analyte uncertainty = the calculated minimum concentration for which the analytical uncertainty limit (AU_i) in the measurement of the i^{th} analyte, based on spectral data in the m^{th} analytical region, can be maintained.

(32) MIU_j = mean of the MIU_{jm} over the appropriate analytical regions.

(33) MIU_{jm}, minimum interferant uncertainty = the calculated minimum concentration for which the analytical uncertainty limit $CPOT_j/20$ in the measurement of the j^{th} interferant, based on spectral data in the m^{th} analytical region, can be maintained.

(34) MIL, minimum instrumental linewidth = the minimum linewidth from the FTIR system, in wavenumbers.

Note: The MIL of a system may be determined by observing an absorption band known (through higher resolution examinations) to be narrower than indicated by the system. The MIL is fundamentally limited by the retardation of the interferometer, but is also affected by other operational parameters (e.g., the choice of apodization).

(35) N_i = number of analytes.
(36) N_j = number of potential interferants.
(37) N_k = number of known interferants.
(38) N_{scan} = the number of scans averaged to obtain an interferogram.
(39) OFU_i = the overall fractional uncertainty in an analyte concentration determined in the analysis (OFU_i = MAX{FRU_i, FCU_i, FAU_i, FMU_i}).
(40) Pascal (Pa) = metric unit of static pressure, equal to one Newton per square meter; one atmosphere is equal to 101,325 Pa; 1/760 atmosphere (one Torr, or one millimeter Hg) is equal to 133.322 Pa.
(41) P_{min} = minimum pressure of the sampling system during the sampling procedure.
(42) P_S' = estimated sample pressure.
(43) P_R = reference pressure.
(44) P_S = actual sample pressure.
(45) RMS_{Sm} = measured noise level of the FTIR system in the m^{th} analytical region.
(46) RMSD, root mean square difference = a measure of accuracy determined by the following equation:

$$RMSD = \sqrt{\left(\frac{1}{n}\right)\sum_{i=1}^{n} e_i^2}$$

Where:
n = the number of observations for which the accuracy is determined.
e_i = the difference between a measured value of a property and its mean value over the n observations.

Note: The RMSD value "between a set of n contiguous absorbance values (A_i) and the mean of the values" (A_M) is defined as

$$RMSD = \sqrt{\left(\frac{1}{n}\right)\sum_{i-1}^{n}\left(A_i - A_M\right)^2}$$

(47) RSA_i = the (calculated) final concentration of the i^{th} analyte.
(48) RSI_k = the (calculated) final concentration of the k^{th} known interferant.
(49) t_{scan}, scan time = time used to acquire a single scan, not including flyback.
(50) t_S, signal integration period = the period of time over which an interferogram is averaged by addition and scaling of individual scans. In terms of the number of scans N_{scan} and scan time t_{scan}, $t_S = N_{scan}t_{scan}$.
(51) t_{SR} = signal integration period used in recording reference spectra.
(52) t_{SS} = signal integration period used in recording sample spectra.
(53) T_R = absolute temperature of gases used in recording reference spectra.
(54) T_S = absolute temperature of sample gas as sample spectra are recorded.
(55) TP, Throughput = manufacturer's estimate of the fraction of the total infrared power transmitted by the absorption cell and transfer optics from the interferometer to the detector.
(56) V_{SS} = volume of the infrared absorption cell, including parts of attached tubing.
(57) W_{ik} = weight used to average over analytical regions k for quantities related to the analyte i; see appendix D of this addendum.

Appendix B to Addendum to Method 320—Identifying Spectral Interferants

B.1 *General*

B.1.1 Assume a fixed absorption pathlength equal to the value L_S'.

B.1.2 Use band area calculations to compare the relative absorption strengths of the analytes and potential interferants. In the m^{th} analytical region (FL_m to FU_m), use either rectangular or trapezoidal approximations to determine the band areas described below (see Reference A, sections A.3.1 through A.3.3). Document any baseline corrections applied to the spectra.

B.1.3 Use the average total absorbance of the analytes and potential interferants in each analytical region to determine whether the analytical region is suitable for analyte concentration determinations.

Note: The average absorbance in an analytical region is the band area divided by the width of the analytical region in wavenumbers. The average total absorbance in an analytical region is the sum of the average absorbances of all analytes and potential interferants.

B.2 *Calculations*

B.2.1 Prepare spectral representations of each analyte at the concentration CL_i = (DL_i)(AU_i), where DL_i is the required detection limit and AU_i is the maximum permissible analytical uncertainty. For the m^{th} analytical region, calculate the band area (AAI_{im}) and average absorbance (AAV_{im}) from these scaled analyte spectra.

B.2.2 Prepare spectral representations of each potential interferant at its expected concentration ($CPOT_j$). For the m^{th} analytical region, calculate the band area (IAI_{jm}) and average absorbance (IAV_{jm}) from these scaled potential interferant spectra.

B.2.3 Repeat the calculation for each analytical region, and record the band area results in matrix form as indicated in Figure B.1.

B.2.4 If the band area of any potential interferant in an analytical region is greater than the one-half the band area of any analyte (i.e., $IAI_{jm} > 0.5\ AAI_{im}$ for any pair ij and any m), classify the potential interferant as a known interferant. Label the known interferants k = 1 to K. Record the results in matrix form as indicated in Figure B.2.

B.2.5 Calculate the average total absorbance (AVT_m) for each analytical region and record the values in the last row of the matrix described in Figure B.2. Any analytical region where $AVT_m > 2.0$ is unsuitable.

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FIGURE B.1 Presentation of Potential Interferant Calculations.

	Analytical Regions 1 . . . . . M
Analyte Labels	
1	AAI_{11} . . . . AAI_{1M}
.	. .
.	. .
I	AAI_{I1} . . . AAI_{IM}
Potential Interferant Labels	
1	IAI_{11} . . . IAI_{1M}
.	. .
.	. .
J	IAI_{J1} . . . IAI_{JM}

FIGURE B.2 Presentation of Known Interferant Calculations

	Analytical Regions 1 . . . . . M
Analyte Labels	
1	AAI_{11} . . . . AAI_{1M}
.	. .
.	. .
I	AAI_{I1} . . . . AAI_{IM}
Known Interferant Labels	
1	IAI_{11} . . . . IAI_{1M}
.	. .
.	. .
K	IAI_{K1} . . . . IAI_{KM}
Total Average Absorbance	AVT_1 . . . AVT_M

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Appendix C to Addendum to Method 320—Estimating Noise Levels

C.1 *General*

C.1.1 The root-mean-square (RMS) noise level is the standard measure of noise in this addendum. The RMS noise level of a contiguous segment of a spectrum is defined as the RMS difference (RMSD) between the absorbance values which form the segment and the mean value of that segment (see appendix A of this addendum).

C.1.2 The RMS noise value in double-beam absorbance spectra is assumed to be inversely proportional to: (a) the square root of the signal integration period of the sample single beam spectra from which it is formed, and (b) the total infrared power transmitted through the interferometer and absorption cell.

C.1.3 Practically, the assumption of C.1.2 allows the RMS noise level of a complete system to be estimated from the quantities described in sections C.1.3.1 through C.1.3.4:

C.1.3.1 RMS_{MAN}, the noise level of the system (in absorbance units), without the absorption cell and transfer optics, *under those conditions necessary to yield the specified minimum instrumental linewidth,* e.g., Jacquinot stop size.

C.1.3.2 t_{MAN}, the manufacturer's signal integration time used to determine RMS_{MAN}.

C.1.3.3 t_{ss}, the signal integration time for the analyses.

C.1.3.4 TP, the manufacturer's estimate of the fraction of the total infrared power transmitted by the absorption cell and transfer optics from the interferometer to the detector.

C.2 *Calculations*

C.2.1 Obtain the values of RMS_{MAN}, t_{MAN}, and TP from the manufacturers of the equipment, or determine the noise level by direct measurements with the completely constructed system proposed in section 4 of this addendum.

C.2.2 Calculate the noise value of the system (RMS_{EST}) using equation C.1.

$$RMS_{EST} = RMS_{MAN}\ TP\sqrt{\frac{t_{ss}}{t_{MAN}}} \qquad (C.1)$$

Appendix D to Addendum to Method 320—Estimating Minimum Concentration Measurement Uncertainties (MAU and MIU)

D.1 *General*

Estimate the minimum concentration measurement uncertainties for the i^{th} analyte (MAU_i) and j^{th} interferant (MIU_j) based on the spectral data in the m^{th} analytical region by comparing the analyte band area in the analytical region (AAI_{im}) and estimating or measuring the noise level of the system (RMS_{EST} or RMS_{SM}).

Note: For a single analytical region, the MAU or MIU value is the concentration of the analyte or interferant for which the band area is equal to the product of the analytical region width (in wavenumbers) and the noise level of the system (in absorbance units). If data from more than one analytical region are used in the determination of an analyte concentration, the MAU or MIU is the mean of the separate MAU or MIU values calculated for each analytical region.

D.2 *Calculations*

D.2.1 For each analytical region, set RMS = RMS_{SM} if measured (appendix G of this addendum), or set RMS = RMS_{EST} if estimated (appendix C of this addendum).

D.2.2 For each analyte associated with the analytical region, calculate MAU_{im} using equation D.1,

$$MAU_{im} = (RMS)\,(DL_i)\,(AU_i)\frac{(FU_m - FL_m)}{AAI_{im}} \qquad (D.1)$$

D.2.3 If only the m^{th} analytical region is used to calculate the concentration of the i^{th} analyte, set $MAU_i = MAU_{im}$.

D.2.4 If more than one analytical region is used to calculate the concentration of the i^{th} analyte, set MAU_i equal to the weighted mean of the appropriate MAU_{im} values calculated above; the weight for each term in the mean is equal to the fraction of the total wavenumber range used for the calculation represented by each analytical region. Mathematically, if the set of analytical regions employed is {m'}, then the MAU for each analytical region is given by equation D.2.

$$MAU_i = \sum_{k\in\{m'\}} W_k MAU_{ik} \qquad (D.2)$$

where the weight W_{ik} is defined for each term in the sum as

$$W_{ik} = (FM_k - FL_k)\left(\sum_{p\in\{m'\}}\left[FM_p - FL_p\right]\right)^{-1} \qquad (D.3)$$

D.2.5 Repeat sections D.2.1 through D.2.4 of this appendix to calculate the analogous values MIU_j for the interferants j = 1 to J. Replace the value (AU_i) (DL_i) in equation D.1 with $CPOT_j/20$; replace the value AAI_{im} in equation D.1 with IAI_{jm}.

Appendix E to Addendum to Method 320—Determining Fractional Reproducibility Uncertainties (FRU)

E.1 *General*

To estimate the reproducibility of the spectroscopic results of the system, compare the CTS spectra recorded before and after preparing the reference spectra. Compare the difference between the spectra to their average band area. Perform the calculation for each analytical region on the portions of the CTS spectra associated with that analytical region.

E.2 *Calculations*

E.2.1 The CTS spectra {R1} consist of N spectra, denoted by S_{1i}, i=1, N. Similarly, the CTS spectra {R2} consist of N spectra, denoted by S_{2i}, i=1, N. Each S_{ki} is the spectrum of a single compound, where i denotes the compound and k denotes the set {Rk} of which S_{ki} is a member. Form the spectra S_3 according to $S_{3i} = S_{2i} - S_{1i}$ for each i. Form the spectra S_4 according to $S_{4i} = [S_{2i}+S_{1i}]/2$ for each i.

E.2.2 Each analytical region m is associated with a portion of the CTS spectra S_{2i} and S_{1i}, for a particular i, with lower and upper wavenumber limits FFL_m and FFU_m, respectively.

E.2.3 For each m and the associated i, calculate the band area of S_{4i} in the wavenumber range FFU_m to FFL_m. Follow the guidelines of section B.1.2 of this addendum for this band area calculation. Denote the result by BAV_m.

E.2.4 For each m and the associated i, calculate the RMSD of S_{3i} between the absorbance values and their mean in the wavenumber range FFU_m to FFL_m. Denote the result by $SRMS_m$.

E.2.5 For each analytical region m, calculate FM_m using equation E.1,

$$FM_{m'} = SRMS_m(FFU_m - FFL_m)/BAV_m \qquad (E.1)$$

E.2.6 If only the m^{th} analytical region is used to calculate the concentration of the i^{th} analyte, set $FRU_i = FM_m$.

E.2.7 If a number p_i of analytical regions are used to calculate the concentration of the i^{th} analyte, set FRU_i equal to the weighted mean of the appropriate FM_m values calculated according to section E.2.5. Mathematically, if the set of analytical regions employed is {m'}, then FRU_i is given by equation E.2,

$$FRU_i = \sum_{k \in \{m'\}} W_{ik} FM_k \qquad (E.2)$$

where the W_{ik} are calculated as described in appendix D of this addendum.

Appendix F of Addendum to Method 320—Determining Fractional Calibration Uncertainties (FCU)

F.1 *General*

F.1.1 The concentrations yielded by the computerized analytical program applied to each single-compound reference spectrum are defined as the indicated standard concentrations (ISC's). The ISC values for a single compound spectrum should ideally equal the accepted standard concentration (ASC) for one analyte or interferant, and should ideally be zero for all other compounds. Variations from these results are caused by errors in the ASC values, variations from the Beer's law (or modified Beer's law) model used to determine the concentrations, and noise in the spectra. When the first two effects dominate, the systematic nature of the errors is often apparent and the analyst shall take steps to correct them.

F.1.2 When the calibration error appears non-systematic, apply the procedures of sections F.2.1 through F.2.3 of this appendix to estimate the fractional calibration uncertainty (FCU) for each compound. The FCU is defined as the mean fractional error between the ASC and the ISC for all reference spectra with non-zero ASC for that compound. The FCU for each compound shall be less than the required fractional uncertainty specified in section 4.1 of this addendum.

F.1.3 The computerized analytical programs shall also be required to yield acceptably low concentrations for compounds with ISC = 0 when applied to the reference spectra. The ISC of each reference spectrum for each analyte or interferant shall not exceed that compound's minimum measurement uncertainty (MAU or MIU).

F.2 *Calculations*

F.2.1 Apply each analytical program to each reference spectrum. Prepare a similar table to that in Figure F.1 to present the ISC and ASC values for each analyte and interferant in each reference spectrum. Maintain the order of reference file names and compounds employed in preparing Figure F.1.

F.2.2 For all reference spectra in Figure F.1, verify that the absolute values of the ISC's are less than the compound's MAU (for analytes) or MIU (for interferants).

F.2.3 For each analyte reference spectrum, calculate the quantity (ASC–ISC)/ASC. For each analyte, calculate the mean of these values (the FCU_i for the i^{th} analyte) over all reference spectra. Prepare a similar table to that in Figure F.2 to present the FCU_i and analytical uncertainty limit (AU_i) for each analyte.

FIGURE F.1.—PRESENTATION OF ACCEPTED STANDARD CONCENTRATIONS (ASC'S) AND INDICATED STANDARD CONCENTRATIONS (ISC'S)

Compound name	Reference spectrum file name	ASC (ppm)	ISC (ppm)					
			Analytes i=1 j=1			Interferants I J		

FIGURE F.2—PRESENTATION OF FRACTIONAL CALIBRATION UNCERTAINTIES (FCU'S) AND ANALYTICAL UNCERTAINTIES (AU'S)

Analyte name	FCU (%)	AU (%)

Appendix G to Addendum to Method 320—Measuring Noise Levels

G.1 *General*

The root-mean-square (RMS) noise level is the standard measure of noise. The RMS noise level of a contiguous segment of a spectrum is the RMSD between the absorbance values that form the segment and the mean value of the segment (see appendix A of this addendum).

G.2 *Calculations*

G.2.1 Evacuate the absorption cell or fill it with UPC grade nitrogen at approximately one atmosphere total pressure.

G.2.2 Record two single beam spectra of signal integration period t_{ss}.

G.2.3 Form the double beam absorption spectrum from these two single beam spectra, and calculate the noise level RMS_{Sm} in the M analytical regions.

Appendix H of Addendum to Method 320—Determining Sample Absorption Pathlength (L_S) and Fractional Analytical Uncertainty (FAU)

H.1 *General*

Reference spectra recorded at absorption pathlength (L_R), gas pressure (P_R), and gas absolute temperature (T_R) may be used to determine analyte concentrations in samples whose spectra are recorded at conditions

different from that of the reference spectra, i.e., at absorption pathlength (L_S), absolute temperature (T_S), and pressure (P_S). This appendix describes the calculations for estimating the fractional uncertainty (FAU) of this practice. It also describes the calculations for determining the sample absorption pathlength from comparison of CTS spectra, and for preparing spectra for further instrumental and procedural checks.

H.1.1 Before sampling, determine the sample absorption pathlength using least squares analysis. Determine the ratio L_S/L_R by comparing the spectral sets {R1} and {R3}, which are recorded using the same CTS at L_S and L_R, and T_S and T_R, but both at P_R.

H.1.2 Determine the fractional analysis uncertainty (FAU) for each analyte by comparing a scaled CTS spectral set, recorded at L_S, T_S, and P_S, to the CTS reference spectra of the same gas, recorded at L_R, T_R, and P_R. Perform the quantitative comparison after recording the sample spectra, based on band areas of the spectra in the CTS absorbance band associated with each analyte.

H.2 *Calculations*

H.2.1 *Absorption Pathlength Determination.* Perform and document separate linear baseline corrections to each analytical region in the spectral sets {R1} and {R3}. Form a one-dimensional array A_R containing the absorbance values from all segments of {R1} that are associated with the analytical regions; the members of the array are A_{Ri}, i = 1, n. Form a similar one-dimensional array A_S from the absorbance values in the spectral set {R3}; the members of the array are A_{Si}, i = 1, n. Based on the model $A_S = rA_R + E$, determine the least-squares estimate of r', the value of r which minimizes the square error E^2. Calculate the sample absorption pathlength, L_s, using equation H.1,

$$L_s = r'\left(T_s/T_R\right)L_R \qquad \text{(H.1)}$$

H.2.2 *Fractional Analysis Uncertainty.* Perform and document separate linear baseline corrections to each analytical region in the spectral sets {R1} and {R4}. Form the arrays A_S and A_R as described in section H.2.1 of this appendix, using values from {R1} to form A_R, and values from {R4} to form A_S. Calculate $NRMS_E$ and IA_{AV} using equations H.2 and H.3,

$$NRMS_E = \sqrt{\sum_{i=1}^{n}\left[A_{Si} - \left(\frac{T_R}{T_S}\right)\left(\frac{L_S}{L_R}\right)\left(\frac{P_S}{P_R}\right)A_{Ri}\right]} \qquad \text{(H.2)}$$

$$IA_{AV} = \frac{1}{2}\sum_{i=1}^{n}\left[A_{Si} + \left(\frac{T_R}{T_S}\right)\left(\frac{L_S}{L_R}\right)\left(\frac{P_S}{P_R}\right)A_{Ri}\right] \qquad \text{(H.3)}$$

The fractional analytical uncertainty, FAU, is given by equation H.4,

$$FAU = \frac{NRMS_E}{IA_{AV}} \qquad \text{(H.4)}$$

Appendix I to Addendum to Method 320—Determining Fractional Model Uncertainties (FMU)

I.1 *General*

To prepare analytical programs for FTIR analyses, the sample constituents must first be assumed. The calculations in this appendix, based upon a simulation of the sample spectrum, shall be used to verify the appropriateness of these assumptions. The simulated spectra consist of the sum of single compound reference spectra scaled to represent their contributions to the sample absorbance spectrum; scaling factors are based on the indicated standard concentrations (ISC) and measured (sample) analyte and interferant concentrations, the sample and reference absorption pathlengths, and the sample and reference gas pressures. No band-shape correction for differences in the temperature of the sample and reference spectra gases is made; such errors are included in the FMU estimate. The actual and simulated sample spectra are quantitatively compared to determine the fractional model uncertainty; this comparison uses the reference spectra band areas and residuals in the difference spectrum formed from the actual and simulated sample spectra.

I.2 *Calculations*

I.2.1 For each analyte (with scaled concentration RSA_i), select a reference spectrum SA_i with indicated standard concentration ISC_i. Calculate the scaling factors, RA_i, using equation I.1,

$$RA_i = \frac{T_R\, L_S\, P_S\ RSA_i}{T_S\, L_R\, P_R\ ISC_i} \qquad \text{(I.1)}$$

Form the spectra SAC_i by scaling each SA_i by the factor RA_i.

I.2.2 For each interferant, select a reference spectrum SI_k with indicated standard concentration ISC_k. Calculate the scaling factors, RI_k, using equation I.2,

$$RI_k = \frac{T_R\, L_S\, P_S\, RSI_k}{T_S\, L_R\, P_R\, ISC_k} \qquad \text{(I.2)}$$

Form the spectra SIC_k by scaling each SI_k by the factor RI_k.

I.2.3 For each analytical region, determine by visual inspection which of the spectra SAC_i and SIC_k exhibit absorbance bands within the analytical region. Subtract each spectrum SAC_i and SIC_k exhibiting absorbance from the sample spectrum S_S to form the spectrum SUB_S. To save analysis time and to avoid the introduction of unwanted noise into the subtracted spectrum, it is recommended that the calculation be made (1) only for those spectral data points within the analytical regions, and (2) for each analytical region separately using the original spectrum S_S.

I.2.4 For each analytical region m, calculate the RMSD of SUB_S between the absorbance values and their mean in the region FFU_m to FFL_m. Denote the result by $RMSS_m$.

I.2.5 For each analyte i, calculate FM_m, using equation I.3,

$$FM_m = \frac{RMSS_m\left(FFU_m - FFL_m\right)AU_i DL_i}{AAI_i\, RSA_i} \qquad \text{(I.3)}$$

for each analytical region associated with the analyte.

I.2.6 If only the m^{th} analytical region is used to calculate the concentration of the i^{th} analyte, set $FMU_i = FM_m$.

I.2.7 If a number of analytical regions are used to calculate the concentration of the i^{th} analyte, set FM_i equal to the weighted mean of the appropriate FM_m values calculated using equation I–3. Mathematically, if the set of analytical regions employed is {m'}, then the fractional model uncertainty, FMU, is given by equation I.4,

$$FMU_i = \sum_{k\in\{m'\}} W_{ik} FM_k \qquad \text{(I.4)}$$

where W_{ik} is calculated as described in appendix D of this addendum.

Appendix J of Addendum to Method 320—Determining Overall Concentration Uncertainties (OCU)

The calculations in this addendum estimate the measurement uncertainties for various FTIR measurements. The lowest possible overall concentration uncertainty (OCU) for an analyte is its MAU value, which is an estimate of the absolute concentration uncertainty when spectral noise dominates the measurement error. However, if the product of the largest fractional concentration uncertainty (FRU, FCU, FAU, or FMU) and the measured concentration of an analyte exceeds the MAU for the analyte, then the OCU is this product. In mathematical terms, set $OFU_i = MAX\{FRU_i, FCU_i, FAU_i, FMU_i\}$ and $OCU_i = MAX\{RSA_i * OFU_i, MAU_i\}$.

Test Method 321—Measurement of Gaseous Hydrogen Chloride Emissions At Portland Cement Kilns by Fourier Transform Infrared (FTIR) Spectroscopy

1.0 *Introduction*

This method should be performed by those persons familiar with the operation of Fourier Transform Infrared (FTIR) instrumentation in the application to source sampling. This document describes the sampling procedures for use in the application of FTIR spectrometry for the determination of vapor phase hydrogen chloride (HCl) concentrations both before and after particulate matter control devices installed at portland cement kilns. A procedure for analyte spiking is included for quality assurance. This method is considered to be self validating provided that the requirements listed in section 9 of this method are followed. The analytical procedures for interpreting infrared spectra from emission measurements are described in the "Protocol For The Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry in Analyses of Gaseous Emissions From Stationary Industrial Sources", included as an addendum to proposed Method 320 of this appendix (hereafter referred to as the "FTIR Protocol)". References 1 and 2 describe the use of FTIR spectrometry in field measurements. Sample transport presents the principal difficulty in directly measuring HCl emissions. This identical problem must be overcome by any extractive measurement method. HCl is reactive and water soluble. The sampling system must be adequately designed to prevent sample condensation in the system.

1.1 *Scope and Application*

This method is specifically designed for the application of FTIR Spectrometry in extractive measurements of gaseous HCl concentrations in portland cement kiln emissions.

1.2 *Applicability*

This method applies to the measurement of HCl [CAS No. 7647–01–0]. This method can be applied to the determination of HCl concentrations both before and after particulate matter control devices installed at portland cement manufacturing facilities. This method applies to either continuous flow through measurement (with isolated sample analysis) or grab sampling (batch analysis). HCl is measured using the mid-infrared spectral region for analysis (about 400 to 4000 cm^{-1} or 25 to 2.5 μm). Table 1 lists the suggested analytical region for quantification of HCl taking the interference from water vapor into consideration.

TABLE 1.—EXAMPLE ANALYTICAL REGION FOR HCL

Compound	Analytical region (cm^{-1})	Potential interferants
Hydrogen chloride	2679–2840	Water.

1.3 *Method Range and Sensitivity*

1.3.1 The analytical range is determined by the instrumental design and the composition of the gas stream. For practical purposes there is no upper limit to the range because the pathlength may be reduced or the sample may be diluted. The lower detection range depends on (1) the absorption coefficient of the compound in the analytical frequency region, (2) the spectral resolution, (3) the interferometer sampling time, (4) the detector sensitivity and response, and (5) the absorption pathlength.

1.3.2 The practical lower quantification range is usually higher than the instrument sensitivity allows and is dependent upon (1) the presence of interfering species in the exhaust gas including H_2O, CO_2, and SO_2, (2) analyte losses in the sampling system, (3) the optical alignment of the gas cell and transfer optics, and (4) the quality of the reflective surfaces in the cell (cell throughput). Under typical test conditions (moisture content of up to 30% and CO_2 concentrations from 1 to 15 percent), a 22 meter path length cell with a suitable sampling system may achieve a lower quantification range of from 1 to 5 ppm for HCl.

1.4 *Data Quality Objectives*

1.4.1 In designing or configuring the analytical system, data quality is determined by measuring of the root mean square deviation (RMSD) of the absorbance values within a chosen spectral (analytical) region. The RMSD provides an indication of the signal-to-noise ratio (S/N) of the spectral baseline. Appendix D of the FTIR Protocol (the addendum to Method 320 of this appendix) presents a discussion of the relationship between the RMSD, lower detection limit, DL_i, and analytical uncertainty, AU_i. It is important to consider the target analyte quantification limit when performing testing with FTIR instrumentation, and to optimize the system to achieve the desired detection limit.

1.4.2 Data quality is determined by measuring the root mean square (RMS) noise level in each analytical spectral region (appendix C of the FTIR Protocol). The RMS noise is defined as the root mean square deviation (RMSD) of the absorbance values in an analytical region from the mean absorbance value in the same region. Appendix D of the *FTIR Protocol* defines the minimum analyte uncertainty (MAU), and how the RMSD is used to calculate the MAU. The MAU_{im} is the minimum concentration of the ith analyte in the mth analytical region for which the analytical uncertainty limit can be maintained. Table 2 presents example values of AU and MAU using the analytical region presented in Table 1.

TABLE 2.—EXAMPLE PRE-TEST PROTOCOL CALCULATIONS FOR HYDROGEN CHLORIDE

	HCl
Reference concentration (ppm-meters)/K	11.2
Reference Band area	2.881

TABLE 2.—EXAMPLE PRE-TEST PROTOCOL CALCULATIONS FOR HYDROGEN CHLORIDE—Continued

	HCl
DL (ppm-meters)/K	0.1117
AU	0.2
CL (DL × AU)	0.02234
FL (cm^{-1})	2679.83
FU (cm^{-1})	2840.93
FC (cm^{-1})	2760.38
AAI (ppm-meters)/K	0.06435
RMSD	2.28E–03
MAU (ppm-meters)/K	1.28E–01
MAU ppm at 22 meters and 250 °F	.0.2284

2.0 *Summary of Method*

2.1 *Principle*

See Method 320 of this appendix. HCl can also undergo rotation transitions by absorbing energy in the far-infrared spectral region. The rotational transitions are superimposed on the vibrational fundamental to give a series of lines centered at the fundamental vibrational frequency, 2885 cm^{-1}. The frequencies of absorbance and the pattern of rotational/vibrational lines are unique to HCl. When this distinct pattern is observed in an infrared spectrum of an unknown sample, it unequivocally identifies HCl as a component of the mixture. The infrared spectrum of HCl is very distinctive and cannot be confused with the spectrum of any other compound. See Reference 6.

2.2 *Sampling and Analysis.* See Method 320 of this appendix.

2.3 *Operator Requirements.* The analyst must have knowledge of spectral patterns to choose an appropriate absorption path length or determine if sample dilution is necessary. The analyst should also understand FTIR instrument operation well enough to choose instrument settings that are consistent with the objectives of the analysis.

3.0 *Definitions*

See appendix A of the FTIR Protocol.

4.0 *Interferences*

This method will not measure HCl under conditions: (1) where the sample gas stream can condense in the sampling system or the instrumentation, or (2) where a high moisture content sample relative to the analyte concentrations imparts spectral interference due to the water vapor absorbance bands. For measuring HCl the first (sampling) consideration is more critical. Spectral interference from water vapor is not a significant problem except at very high moisture levels and low HCl concentrations.

4.1 *Analytical Interferences.* See Method 320 of this appendix.

4.1.1 *Background Interferences.* See Method 320 of this appendix.

4.1.2 *Spectral interferences.* Water vapor can present spectral interference for FTIR gas analysis of HCl. Therefore, the water vapor in the spectra of kiln gas samples must be accounted for. This means preparing at least one spectrum of a water vapor sample where the moisture concentration is close to that in the kiln gas.

4.2 *Sampling System Interferences.* The principal sampling system interferant for measuring HCl is water vapor. Steps must be taken to ensure that no condensation forms anywhere in the probe assembly, sample lines, or analytical instrumentation. Cold spots anywhere in the sampling system must be avoided. The extent of sampling system bias in the FTIR analysis of HCl depends on concentrations of potential interferants, moisture content of the gas stream, temperature of the gas stream, temperature of sampling system components, sample flow rate, and reactivity of HCl with other species in the gas stream (e.g., ammonia). For measuring HCl in a wet gas stream the temperatures of the gas stream, sampling components, and the sample flow rate are of primary importance. Analyte spiking with HCl is performed to demonstrate the integrity of the sampling system for transporting HCl vapor in the flue gas to the FTIR instrument. See section 9 of this method for a complete description of analyte spiking.

5.0 *Safety*

5.1 Hydrogen chloride vapor is corrosive and can cause irritation or severe damage to respiratory system, eyes and skin. Exposure to this compound should be avoided.

5.2 This method may involve sampling at locations having high positive or negative pressures, or high concentrations of hazardous or toxic pollutants, and can not address all safety problems encountered under these diverse sampling conditions. It is the responsibility of the tester(s) to ensure proper safety and health practices, and to determine the applicability of regulatory limitations before performing this test method. Leak-check procedures are outlined in section 8.2 of Method 320 of this appendix.

6.0 *Equipment and Supplies*

Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

6.1 *FTIR Spectrometer and Detector.* An FTIR Spectrometer system (interferometer, transfer optics, gas cell and detector) having the capability of measuring HCl to the predetermined minimum detectable level required (see section 4.1.3 of the FTIR Protocol). The system must also include an accurate means to control and/or measure the temperature of the FTIR gas analysis cell, and a personal computer with compatible software that provides real-time updates of the spectral profile during sample and spectral collection.

6.2 *Pump.* Capable of evacuating the FTIR cell volume to 1 Torr (133.3 Pascals) within two minutes (for batch sample analysis).

6.3 *Mass Flow Meters/Controllers.* To accurately measure analyte spike flow rate, having the appropriate calibrated range and a stated accuracy of ±2 percent of the absolute measurement value. This device must be calibrated with the major component of the calibration/spike gas (e.g., nitrogen) using an NIST traceable bubble meter or equivalent. Single point calibration checks should be performed daily in the field. When spiking HCl, the mass flow meter/controller should be thoroughly purged before and after introduction of the gas to prevent corrosion of the interior parts.

6.4 *Polytetrafluoroethane tubing.* Diameter and length suitable to connect cylinder regulators.

6.5 *Stainless Steel tubing.* Type 316 of appropriate length and diameter for heated connections.

6.6 *Gas Regulators.* Purgeable HCl regulator.

6.7 *Pressure Gauge.* Capable of measuring pressure from 0 to 1000 Torr (133.3 Pa=1 Torr) within ±5 percent.

6.8 *Sampling Probe.* Glass, stainless steel or other appropriate material of sufficient length and physical integrity to sustain heating, prevent adsorption of analytes and capable of reaching gas sampling point.

6.9 *Sampling Line.* Heated 180 °C (360 °F) and fabricated of either stainless steel, polytetrafluoroethane or other material that prevents adsorption of HCl and transports effluent to analytical instrumentation. The extractive sample line must have the capability to transport sample gas to the analytical components as well as direct heated calibration spike gas to the calibration assembly located at the sample probe. It is important to minimize the length of heated sample line.

6.10 *Particulate Filters.* A sintered stainless steel filter rated at 20 microns or greater may be placed at the inlet of the probe (for removal of large particulate matter). A heated filter (Balston® or equivalent) rated at 1 micron is necessary for primary particulate matter removal, and shall be placed immediately after the heated probe. The filter/filter holder temperature should be maintained at 180 °C (360 °F).

6.11 *Calibration/Analyte Spike Assembly.* A heated three-way valve assembly (or equivalent) to introduce surrogate spikes into the sampling system at the outlet of the probe before the primary particulate filter.

6.12 *Sample Extraction Pump.* A leak-free heated head pump (KNF® Neuberger or equivalent) capable of extracting sample effluent through entire sampling system at a rate which prevents analyte losses and minimizes analyzer response time. The pump should have a heated by-pass and may be placed either before the FTIR instrument or after. If the sample pump is located upstream of the FTIR instrument, it must be fabricated from materials non-reactive to HCl. The sampling system and FTIR measurement system shall allow the operator to obtain at least six sample spectra during a one-hour period.

6.13 *Barometer.* For measurement of barometric pressure.

6.14 *Gas Sample Manifold.* A distribution manifold having the capabilities listed in sections 6.14.1 through 6.14.4;

6.14.1 Delivery of calibration gas directly to the analytical instrumentation;

6.14.2 Delivery of calibration gas to the sample probe (system calibration or analyte spike) via a heated traced sample line;

6.14.3 Delivery of sample gas (kiln gas, spiked kiln gas, or system calibrations) to the analytical instrumentation;

6.14.4 Delivery (optional) of a humidified nitrogen sample stream.

6.15 *Flow Measurement Device.* Type S Pitot tube (or equivalent) and Magnahelic® set for measurement of volumetric flow rate.

7.0 *Reagents and Standards*

HCl can be purchased in a standard compressed gas cylinder. The most stable HCl cylinder mixture available has a concentration certified at ±5 percent. Such a cylinder is suitable for performing analyte spiking because it will provide reproducible samples. The stability of the cylinder can be monitored over time by periodically performing direct FTIR analysis of cylinder samples. It is recommended that a 10–50 ppm cylinder of HCl be prepared having from 2–5 ppm SF6 as a tracer compound. (See sections 7.1 through 7.3 of Method 320 of this appendix for a complete description of the use of existing HCl reference spectra. See section 9.1 of Method 320 of this appendix for a complete discussion of standard concentration selection.)

8.0 *Sample Collection, Preservation and Storage*

See also Method 320 of this appendix.

8.1 *Pretest.* A screening test is ideal for obtaining proper data that can be used for preparing analytical program files. Information from literature surveys and source personnel is also acceptable. Information about the sampling location and gas stream composition is required to determine the optimum sampling system configuration for measuring HCl. Determine the percent moisture of the kiln gas by Method 4 of appendix A to part 60 of this chapter or by performing a wet bulb/dry bulb measurement. Perform a preliminary traverse

of the sample duct or stack and select the sampling point(s). Acquire an initial spectrum and determine the optimum operational pathlength of the instrument.

8.2 *Leak-Check.* See Method 320 of this appendix, section 8.2 for direction on performing leak-checks.

8.3 *Background Spectrum.* See Method 320 of this appendix, section 8.5 for direction in background spectral acquisition.

8.4 *Pre-Test Calibration Transfer Standard (Direct Instrument Calibration).* See Method 320 of this appendix, section 8.3 for direction in CTS spectral acquisition.

8.5 *Pre-Test System Calibration.* See Method 320 of this appendix, sections 8.6.1 through 8.6.2 for direction in performing system calibration.

8.6 *Sampling*

8.6.1 *Extractive System.* An extractive system maintained at 180 °C (360 °F) or higher which is capable of directing a total flow of at least 12 L/min to the sample cell is required (References 1 and 2). Insert the probe into the duct or stack at a point representing the average volumetric flow rate and 25 percent of the cross sectional area. Co-locate an appropriate flow monitoring device with the sample probe so that the flow rate is recorded at specified time intervals during emission testing (e.g., differential pressure measurements taken every 10 minutes during each run).

8.6.2 *Batch Samples.* Evacuate the absorbance cell to 5 Torr (or less) absolute pressure before taking first sample. Fill the cell with kiln gas to ambient pressure and record the infrared spectrum, then evacuate the cell until there is no further evidence of infrared absorption. Repeat this procedure, collecting a total of six separate sample spectra within a 1-hour period.

8.6.3 *Continuous Flow Through Sampling.* Purge the FTIR cell with kiln gas for a time period sufficient to equilibrate the entire sampling system and FTIR gas cell. The time required is a function of the mechanical response time of the system (determined by performing the system calibration with the CTS gas or equivalent), and by the chemical reactivity of the target analytes. If the effluent target analyte concentration is not variable, observation of the spectral up-date of the flowing gas sample should be performed until equilibration of the sample is achieved. Isolate the gas cell from the sample flow by directing the purge flow to vent. Record the spectrum and pressure of the sample gas. After spectral acquisition, allow the sample gas to purge the cell with at least three volumes of kiln gas. The time required to adequately purge the cell with the required volume of gas is a function of (1) cell volume, (2) flow rate through the cell, and (3) cell design. It is important that the gas introduction and vent for the FTIR cell provides a complete purge through the cell.

8.6.4 *Continuous Sampling.* In some cases it is possible to collect spectra continuously while the FTIR cell is purged with sample gas. The sample integration time, t_{si}, the sample flow rate through the gas cell, and the sample integration time must be chosen so that the collected data consist of at least 10 spectra with each spectrum being of a separate cell volume of flue gas. Sampling in this manner may only be performed if the native source analyte concentrations do not affect the test results.

8.7 *Sample Conditioning*

8.7.1 *High Moisture Sampling.* Kiln gas emitted from wet process cement kilns may contain 3- to 40 percent moisture. Zinc selenide windows or the equivalent should be used when attempting to analyze hot/wet kiln gas under these conditions to prevent dissolution of water soluble window materials (e.g., KBr).

8.7.2 *Sample Dilution.* The sample may be diluted using an in-stack dilution probe, or an external dilution device provided that the sample is not diluted below the instrument's quantification range. As an alternative to using a dilution probe, nitrogen may be dynamically spiked into the effluent stream in the same manner as analyte spiking. A constant dilution rate shall be maintained throughout the measurement process. It is critical to measure and verify the exact dilution ratio when using a dilution probe or the nitrogen spiking approach. Calibrating the system with a calibration gas containing an appropriate tracer compound will allow determination of the dilution ratio for most measurement systems. The tester shall specify the procedures used to determine the dilution ratio, and include these calibration results in the report.

8.8 *Sampling QA, Data Storage and Reporting.* See the FTIR Protocol. Sample integration times shall be sufficient to achieve the required signal-to-noise ratio, and all sample spectra should have unique file names. Two copies of sample interferograms and processed spectra will be stored on separate computer media. For each sample spectrum the analyst must document the sampling conditions, the sampling time (while the cell was being filled), the time the spectrum was recorded, the instrumental conditions (path length, temperature, pressure, resolution, integration time), and the spectral file name. A hard copy of these data must be maintained until the test results are accepted.

8.9 *Signal Transmittance.* Monitor the signal transmittance through the instrumental system. If signal transmittance (relative to the background) drops below 95 percent in any spectral region where the sample does not absorb infrared energy, then a new background spectrum must be obtained.

8.10 *Post-test CTS.* After the sampling run completion, record the CTS spectrum. Analysis of the spectral band area used for quantification from pre- and post-test CTS spectra should agree to within ±5 percent or corrective action must be taken.

8.11 *Post-test QA.* The sample spectra shall be inspected immediately after the run to verify that the gas matrix composition was close to the assumed gas matrix, (this is necessary to account for the concentrations of the interferants for use in the analytical analysis programs), and to confirm that the sampling and instrumental parameters were appropriate for the conditions encountered.

9.0 *Quality Control*

Use analyte spiking to verify the effectiveness of the sampling system for the target compounds in the actual kiln gas matrix. QA spiking shall be performed before and after each sample run. QA spiking shall be performed after the pre- and post-test CTS direct and system calibrations. The system biases calculated from the pre- and post-test dynamic analyte spiking shall be within ±30 percent for the spiked surrogate analytes for the measurements to be considered valid. See sections 9.3.1 through 9.3.2 for the requisite calculations. Measurement of the undiluted spike (direct-to-cell measurement) involves sending dry, spike gas to the FTIR cell, filling the cell to 1 atmosphere and obtaining the spectrum of this sample. The direct-to-cell measurement should be performed before each analyte spike so that the recovery of the dynamically spiked analytes may be calculated. Analyte spiking is only effective for assessing the integrity of the sampling system when the concentration of HCl in the source does not vary substantially. Any attempt to quantify an analyte recovery in a variable concentration matrix will result in errors in the expected concentration of the spiked sample. If the kiln gas target analyte concentrations vary by more than ±5 percent (or 5 ppm, whichever is greater) in the time required to acquire a sample spectrum, it may be necessary to: (1) Use a dual sample probe approach, (2) use two independent FTIR measurement systems, (3) use alternate QA/QC procedures, or (4) postpone testing until stable emission concentrations are achieved. (See section 9.2.3 of this method). It is recommended that a laboratory evaluation be performed before attempting to employ this method under actual field conditions. The laboratory evaluation shall include (1) performance of all applicable calculations in section 4 of the FTIR Protocol; (2) simulated analyte spiking experiments in dry (ambient) and humidified sample matrices using HCl; and (3) performance of bias (recovery) calculations from analyte spiking experiments. It is not necessary to perform a laboratory evaluation before every field test. The purpose of the laboratory study is to demonstrate that the actual instrument and sampling system configuration used in field testing meets the requirements set forth in this method.

9.1 *Spike Materials.* Perform analyte spiking with an HCl standard to demonstrate the integrity of the sampling system.

9.1.1 An HCl standard of approximately 50 ppm in a balance of ultra pure nitrogen is recommended. The SF_6 (tracer) concentration shall be 2 to 5 ppm depending upon the measurement pathlength. The spike ratio (spike flow/total flow) shall be no greater than 1:10, and an ideal spike concentration should approximate the native effluent concentration.

9.1.2 The ideal spike concentration may not be achieved because the target concentration cannot be accurately predicted prior to the field test, and limited calibration standards will be available during testing. Therefore, practical constraints must be applied that allow the tester to spike at an anticipated concentration. For these tests, the analyte concentration contributed by the HCl standard spike should be 1 to 5 ppm or should more closely approximate the native concentration if it is greater.

9.2 *Spike Procedure*

9.2.1 A spiking/sampling apparatus is shown in Figure 2. Introduce the spike/tracer gas mixture at a constant flow (±2 percent) rate at approximately 10 percent of the total sample flow. (For example, introduce the surrogate spike at 1 L/min 20 cc/min, into a total sample flow rate of 10 L/min). The spike must be pre-heated before introduction into the sample matrix to prevent a localized condensation of the gas stream at the spike introduction point. A heated sample transport line(s) containing multiple transport tubes within the heated bundle may be used to spike gas up through the sampling system to the spike introduction point. Use a calibrated flow device (e.g., mass flow meter/controller), to monitor the spike flow as indicated by a calibrated flow meter or controller, or alternately, the SF_6 tracer ratio may be calculated from the direct measurement and the diluted measurement. It is often desirable to use the tracer approach in calculating the spike/total flow ratio because of the difficulty in accurately measuring hot/wet total flow. The tracer technique has been successfully used in past validation efforts (Reference 1).

9.2.2 Perform a direct-to-cell measurement of the dry, undiluted spike gas. Introduce the spike directly to the FTIR cell, bypassing the sampling system. Fill cell to 1 atmosphere and collect the spectrum of this sample. Ensure that the spike gas has equilibrated to the temperature of the measurement cell before acquisition of the spectra. Inspect the spectrum and verify that the gas is dry and contains negligible CO_2. Repeat the process to obtain a second direct-to-cell measurement. Analysis of spectral band areas for HCl from these duplicate measurements should agree to within ±5 percent of the mean.

9.2.3 *Analyte Spiking.* Determine whether the kiln gas contains native concentrations of HCl by examination of preliminary spectra. Determine whether the concentration varies significantly with time by observing a continuously up-dated spectrum of sample gas in the flow-through sampling mode. If the concentration varies by more than ±5 percent during the period of time required to acquire a spectra, then an alternate approach should be used. One alternate approach uses two sampling lines to convey sample to the gas distribution manifold. One of the sample lines is used to continuously extract unspiked kiln gas from the source. The other sample line serves as the analyte spike line. One FTIR system can be used in this arrangement. Spiked or unspiked sample gas may be directed to the FTIR system from the gas distribution manifold, with the need to purge only the components between the manifold and the FTIR system. This approach minimizes the time required to acquire an equilibrated sample of spiked or unspiked kiln gas. If the source varies by more than ±5 percent (or 5 ppm, whichever is greater) in the time it takes to switch from the unspiked sample line to the spiked sample line, then analyte spiking may not be a feasible means to determine the effectiveness of the sampling system for the HCl in the sample matrix. A second alternative is to use two completely independent FTIR measurement systems. One system would measure unspiked samples while the other system would measure the spiked samples. As a last option, (where no other alternatives can be used) a humidified nitrogen stream may be generated in the field which approximates the moisture content of the kiln gas. Analyte spiking into this humidified stream can be employed to assure that the sampling system is adequate for transporting the HCl to the FTIR instrumentation.

9.2.3.1 Adjust the spike flow rate to approximately 10 percent of the total flow by metering spike gas through a calibrated mass flowmeter or controller. Allow spike flow to equilibrate within the sampling system before analyzing the first spiked kiln gas samples. A minimum of two consecutive spikes are required. Analysis of the spectral band area used for quantification should agree to within ±5 percent or corrective action must be taken.

9.2.3.2 After QA spiking is completed, the sampling system components shall be purged with nitrogen or dry air to eliminate traces of the HCl compound from the sampling system components. Acquire a sample spectra of the nitrogen purge to verify the absence of the calibration mixture.

9.2.3.3 Analyte spiking procedures must be carefully executed to ensure that meaningful measurements are achieved. The requirements of sections 9.2.3.3.1 through 9.2.3.3.4 shall be met.

9.2.3.3.1 The spike must be in the vapor phase, dry, and heated to (or above) the kiln gas temperature before it is introduced to the kiln gas stream.

9.2.3.3.2 The spike flow rate must be constant and accurately measured.

9.2.3.3.3 The total flow must also be measured continuously and reliably or the dilution ratio must otherwise be verified before and after a run by introducing a spike of a non-reactive, stable compound (i.e., tracer).

9.2.3.3.4 The tracer must be inert to the sampling system components, not contained in the effluent gas, and readily detected by the analytical instrumentation. Sulfur hexafluoride (SF_6) has been used successfully (References 1 and 2) for this purpose.

9.3 *Calculations*

9.3.1 *Recovery.* Calculate the percent recovery of the spiked analytes using equations 1 and 2.

$$\%R = 100 \times \frac{S_m - S_u(1 - DF)}{DF \times C_s} \quad (1)$$

S_m = Mean concentration of the analyte spiked effluent samples (observed).

$$C_e = DF \times C_s + S_u(1 - DF) \quad (2)$$

C_e = Expected concentration of the spiked samples (theoretical).

D_f = dilution Factor (Total flow/Spike flow). total flow = spike flow plus effluent flow.

C_s = cylinder concentration of spike gas.

S_u = native concentration of analytes in unspiked samples.

The spike dilution factor may be confirmed by measuring the total flow and the spike flow directly. Alternately, the spike dilution can be verified by comparing the concentration of the tracer compound in the spiked samples (diluted) to the tracer concentration in the direct (undiluted) measurement of the spike gas.
If SF_6 is the tracer gas, then

$$D_f = [SF_6]_{spike} / [SF_6]_{direct} \quad (3)$$

$[SF_6]_{spike}$ = the diluted SF_6 concentration measured in a spiked sample.

$[SF_6]_{direct}$ = the SF_6 concentration measured directly.

9.3.2 Bias. The bias may be determined by the difference between the observed spike value and the expected response (i.e., the equivalent concentration of the spiked material plus the analyte concentration adjusted for spike dilution). Bias is defined by section 6.3.1 of EPA Method 301 of this appendix (Reference 8) as,

$$B = S_m - C_e \quad (4)$$

Where:

B = Bias at spike level.

S_m = Mean concentration of the analyte spiked samples.

C_e = Expected concentration of the analyte in spiked samples.

Acceptable recoveries for analyte spiking are ±30 percent. Application of correction factors to the data based upon bias and recovery calculations is subject to the approval of the Administrator.

10.0 *Calibration and Standardization*

10.1 *Calibration transfer standards (CTS).* The EPA Traceability Protocol gases or NIST traceable standards, with a minimum accuracy of ±2 percent shall be used. For other requirements of the CTS, see the FTIR Protocol section 4.5.

10.2 *Signal-to-Noise Ratio (S/N).* The S/N shall be less than the minimum acceptable measurement uncertainty in the analytical regions to be used for measuring HCl.

10.3 *Absorbance Pathlength.* Verify the absorbance path length by comparing CTS spectra to reference spectra of the calibration gas(es).

10.4 *Instrument Resolution.* Measure the line width of appropriate CTS band(s) to verify instrumental resolution.

10.5 *Apodization Function.* Choose the appropriate apodization function. Determine any appropriate mathematical transformations that are required to correct instrumental errors by measuring the CTS. Any mathematical transformations must be documented and reproducible. Reference 9 provides additional information about FTIR instrumentation.

11.0 *Analytical Procedure*

A full description of the analytical procedures is given in sections 4.6–4.11, sections 5, 6, and 7, and the appendices of the FTIR Protocol. Additional description of quantitative spectral analysis is provided in References 10 and 11.

12.0 *Data Analysis and Calculations*

Data analysis is performed using appropriate reference spectra whose concentrations can be verified using CTS spectra. Various analytical programs (References 10 and 11) are available to relate sample absorbance to a concentration standard. Calculated concentrations should be verified by analyzing spectral baselines after mathematically subtracting scaled reference spectra from the sample spectra. A full description of the data analysis and calculations may be found in the FTIR Protocol (sections 4.0, 5.0, 6.0 and appendices).

12.1 Calculated concentrations in sample spectra are corrected for differences in absorption pathlength between the reference and sample spectra by

$$C_{corr} = (L_r / L_s) \times (T_s / T_r) \times (C_{calc}) \quad (5)$$

Where:

C_{corr} = The pathlength corrected concentration.

C_{calc} = The initial calculated concentration (output of the multicomponent analysis program designed for the compound).

L_r = The pathlength associated with the reference spectra.

L_s = The pathlength associated with the sample spectra.

T_s = The absolute temperature (K) of the sample gas.

T_r = The absolute temperature (K) at which reference spectra were recorded.

12.2 The temperature correction in equation 5 is a volumetric correction. It does not account for temperature dependence of rotational-vibrational relative line intensities. Whenever possible, the reference spectra used in the analysis should be collected at a temperature near the temperature of the FTIR cell used in the test to minimize the calculated error in the measurement (FTIR Protocol, appendix D). Additionally, the analytical region chosen for the analysis should be sufficiently broad to minimize errors caused by small differences in relative line intensities between reference spectra and the sample spectra.

13.0 *Method Performance*

A description of the method performance may be found in the FTIR Protocol. This method is self validating provided the results meet the performance specification of the QA spike in sections 9.0 through 9.3 of this method.

14.0 *Pollution Prevention*

This is a gas phase measurement. Gas is extracted from the source, analyzed by the instrumentation, and discharged through the instrument vent.

15.0 *Waste Management*

Gas standards of HCl are handled according to the instructions enclosed with the material safety data sheet.

16.0 *References*

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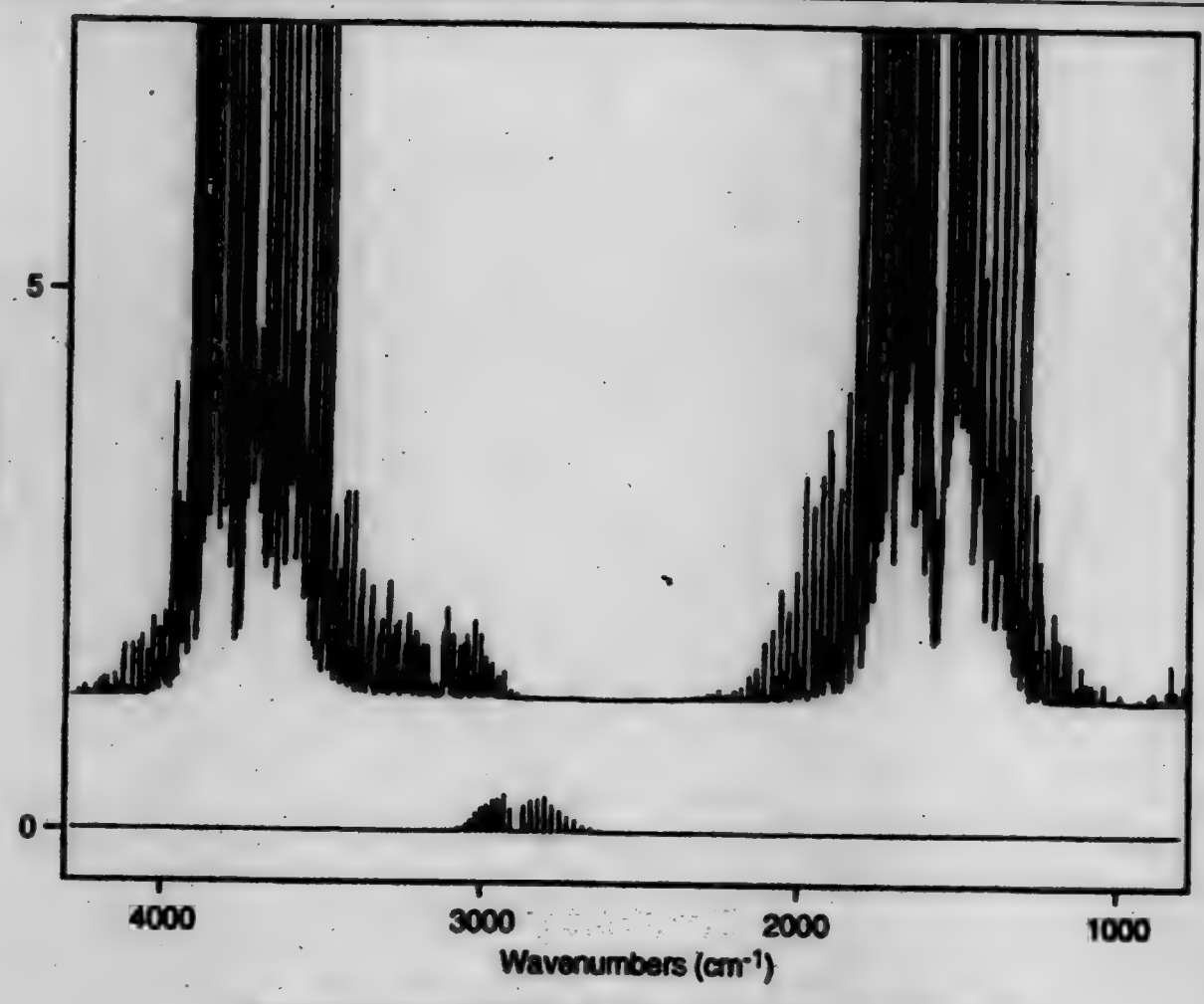

Figure 1. FTIR Spectra of HCl and Water.

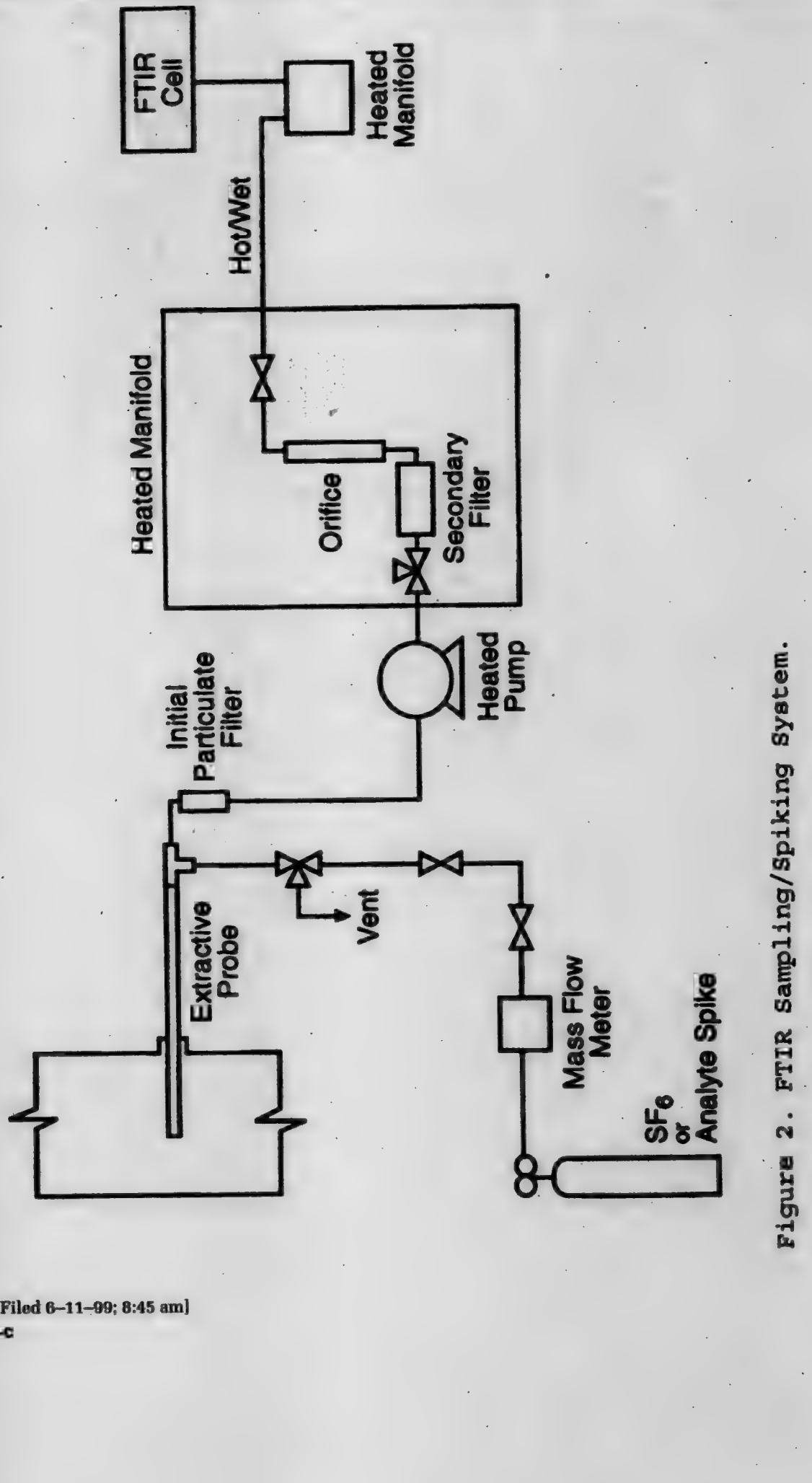

Figure 2. FTIR Sampling/Spiking System.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1121/P.L. 106–33

To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the "Lewis R. Morgan Federal Building and United States Courthouse". (June 7, 1999; 113 Stat. 117)

H.R. 1183/P.L. 106–34

Fastener Quality Act Amendments Act of 1999 (June 8, 1999; 113 Stat. 118)

Last List June 3, 1999

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1, 2 (2 Reserved)	(869-034-00001-1)	5.00	[5] Jan. 1, 1999
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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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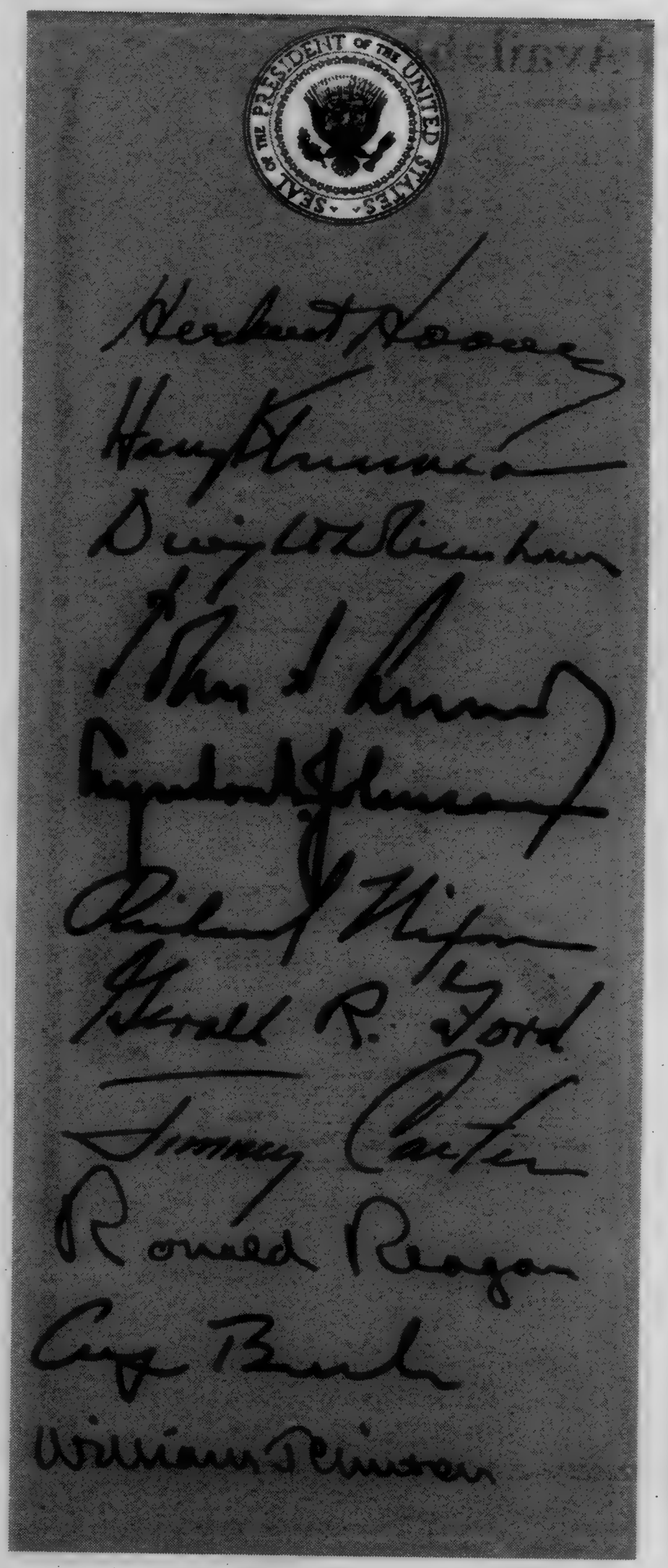

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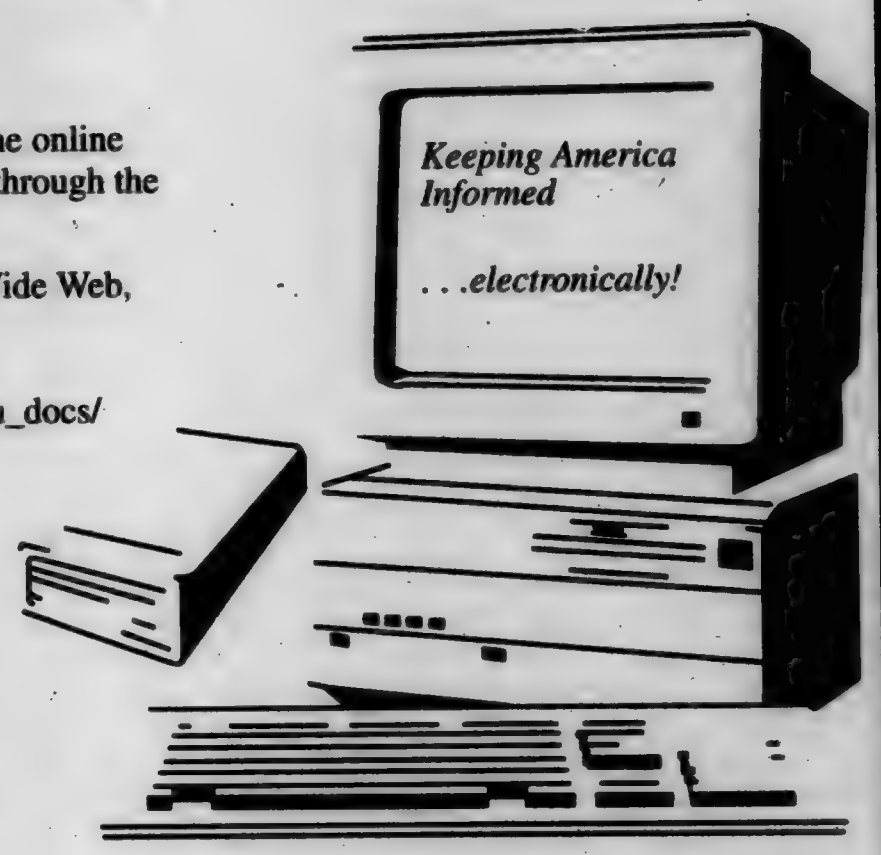

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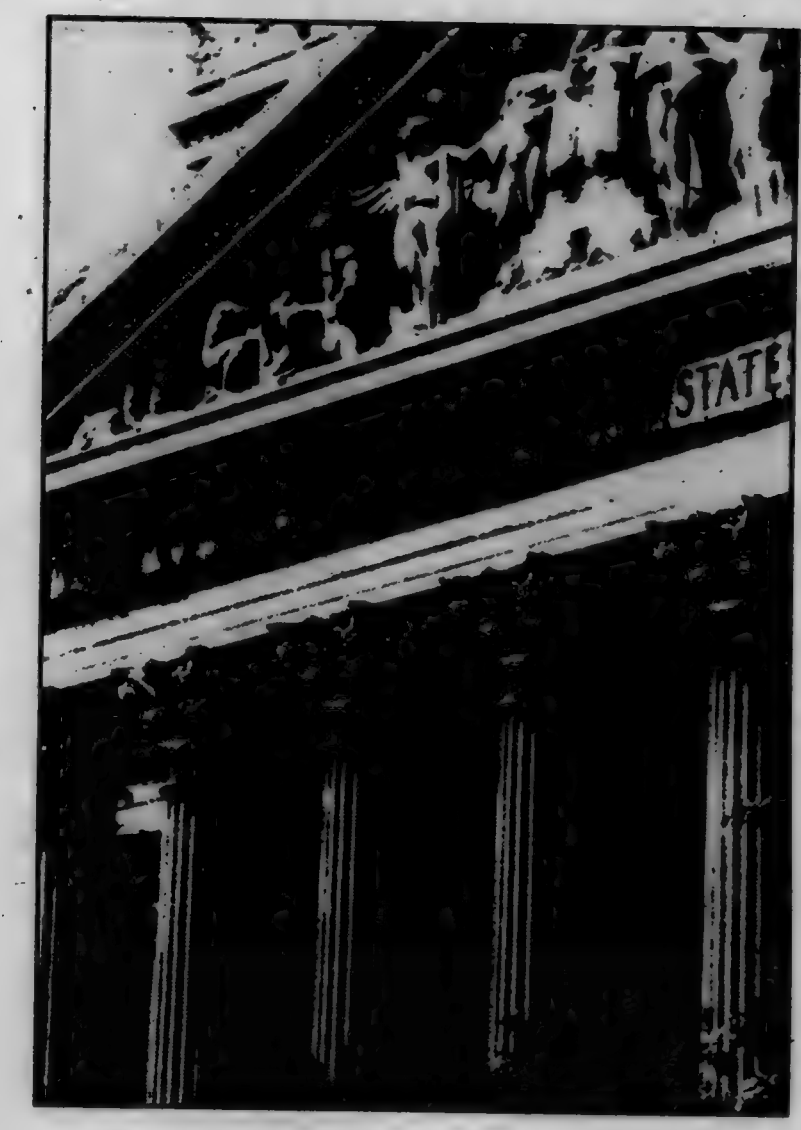

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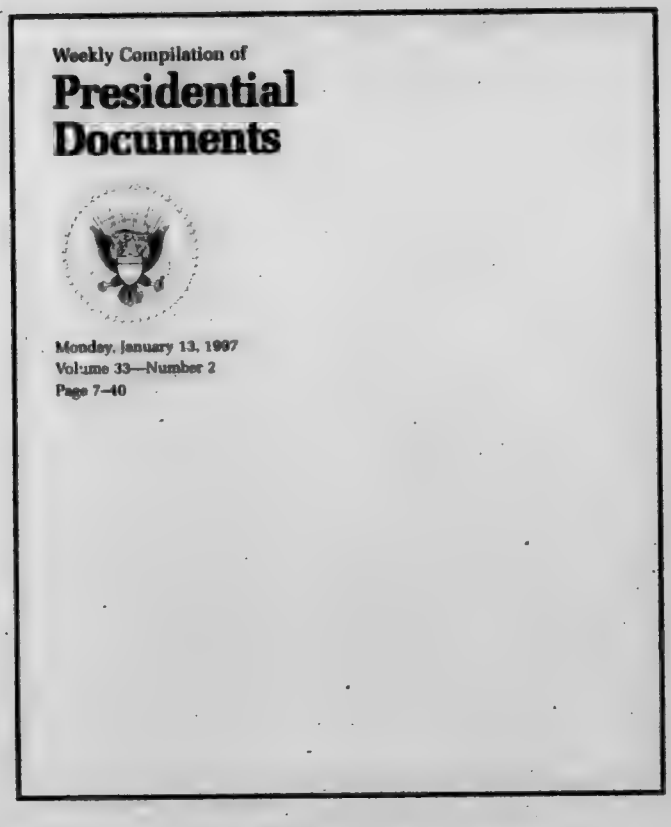

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Tuesday, June 15, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–044–1]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of Hillsborough County, FL, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective June 9, 1999. We invite you to comment on this docket. We will consider all comments that we receive by August 16, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–044–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–044–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) reveal that a portion of Hillsborough County, FL, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

State agencies in Florida have begun an intensive Oriental fruit fly eradication program in the quarantined area in Hillsborough County. Also, Florida has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly to other States, we are amending the regulations in § 301.93–3 by designating as a quarantined area a portion of Hillsborough County, FL. The resulting quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the Oriental fruit fly regulations by adding a portion of Hillsborough County, FL, to the list of quarantined areas. The regulations

restrict the interstate movement of regulated articles from the quarantined areas.

Within the quarantined portion of Hillsborough County, there are approximately 125 entities that will be affected by this rule. All would be considered small entities. These include 1 transportation terminal, 75 fruit stands, 15 mobile vendors, 20 food stores, 1 common carrier, and 13 nurseries. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of Florida. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site specific environmental assessment provides a basis for the conclusion that implementation of integrated pest management to achieve eradication of the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 am. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

Florida

Hillsborough County. That portion of the county beginning at the point where the Hillsborough River meets Hillsborough Bay; then north along the Hillsborough River to Interstate Highway 275; then west along Interstate Highway 275 to the point where the Howard Franklin Bridge meets the shoreline of Old Tampa Bay; then south along the shoreline of Old Tampa Bay to the shoreline of Hillsborough Bay; then north along the shoreline of Hillsborough Bay, including Davis Islands and the Seddon Channel, to the point of beginning.

Done in Washington, DC, this 9th day of June 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–15109 Filed 6–14–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–082–4]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by removing the quarantined portion of the El Cajon area in San Diego County, CA, from the list of regulated areas. We have determined that the Mexican fruit fly has been eradicated from the El Cajon area of San Diego County, CA, and that restrictions on the interstate movement of regulated articles from the El Cajon area of San Diego County, CA, are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: This interim rule was effective June 9, 1999. We invite you to comment on this docket. We will consider all comments that we receive by August 16, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–082–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, Please state that your comment refers to Docket No. 98–082–4.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building,

14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of specified fruits and other regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Quarantined States are listed in—301.64(a) and regulated areas are listed in—301.64–3(c).

In an interim rule effective August 10, 1998, and published in the **Federal Register** on August 14, 1998 (63 FR 43603–43604, Docket No. 98–082–1), we amended the Mexican fruit fly regulations by designating a portion of the El Cajon area of San Diego County, CA, as a regulated area. In a second interim rule effective October 16, 1998, and published in the **Federal Register** on October 22, 1998 (63 FR 56537–56539, Docket No. 98–082–2), we designated a portion of the San Diego area of San Diego County, CA, as a regulated area. In a third interim rule effective November 16, 1998, and published in the **Federal Register** on November 20, 1998 (63 FR 64409–64411, Docket No. 98–082–3), we expanded the regulated area in the San Diego area of San Diego County, CA.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from the El Cajon area of San Diego County, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on September 8, 1998.

Since then no evidence of Mexican fruit fly infestations has been found in this area. Therefore, we are removing this area from the list of areas in § 301.64–3(c) that are regulated because of the Mexican fruit fly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the public. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could be spread to noninfested areas of the United States. Since this situation no longer exists, the continued regulated status of this area would impose unnecessary restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective on June 9, 1999. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule removes restrictions on the interstate movement of regulated articles from the El Cajon area of San Diego County, CA. Within this regulated area, there are approximately 183 small entities that may be affected by this rule. These include 67 fruit sellers, 1 swapmeet, 71 nurseries, 43 growers, and 1 farmer's market. These 183 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the distribution of these articles was not affected by the regulatory provisions we are removing. Many of these entities also handle other items in addition to the previously regulated articles. The effect on those few entities that move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost. Therefore, the effect, if any, of this rule on these entities appears to be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–3 [Amended]

2. In—301.64–3, paragraph (c), the entry for California is amended by

removing the entry for the El Cajon area of San Diego County.

Done in Washington, DC, this 9th day of June 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–15108 Filed 6–14–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 98–069–2]

Horses From Australia and New Zealand; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of horses to exempt horses imported from Australia and New Zealand from testing for dourine and glanders during the quarantine period. This action is warranted because neither country has ever had a reported case of dourine, New Zealand has never had a reported case of glanders, and Australia has not had a reported case of glanders since 1891. It appears that horses imported from Australia and New Zealand will pose a negligible risk of introducing dourine and glanders into the United States.

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD, 20737–1231; (301)734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including dourine and glanders. Dourine and glanders are potentially fatal equine diseases that are not known to exist in the United States.

Under § 93.308(a)(3) of the regulations, horses imported from any part of the world must, in order to qualify for release from quarantine, test negative to official tests for dourine, glanders, equine piroplasmosis, equine infectious anemia, and any other tests and procedures that may be required by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to determine their freedom from communicable diseases.

On November 30, 1998, we published in the **Federal Register** (63 FR 65712–65714, Docket No. 98–069–1) a proposal to amend the regulations to exempt horses imported from Australia and New Zealand from testing for dourine and glanders during the quarantine period. This proposed action was based on information received from the Governments of Australia and New Zealand.

We solicited comments concerning our proposal for 60 days ending January 29, 1999. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves restrictions that require the testing of horses imported from Australia and New Zealand for dourine and glanders. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after the date of publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule will exempt horses imported into the United States from Australia and New Zealand from the requirement for testing for dourine and glanders during the quarantine period. We believe that there is a negligible risk of horses imported from Australia and New Zealand introducing dourine and glanders into the United States.

U.S. importers of horses from Australia and New Zealand will be affected by this rule. These importers will no longer be required to have horses that are imported from Australia and New Zealand tested for dourine and glanders during the quarantine period. As a consequence, U.S. importers will save $18 for the cost of both tests. However, horses imported from Australia and New Zealand will still have to be tested for equine piroplasmosis, equine infectious anemia, and undergo any other tests and procedures that may be required by APHIS to determine their freedom from communicable diseases.

According to the 1992 Census of Agriculture, the United States had a total population of at least 2,049,522 horses. The United States is a net exporter of horses. In 1997, the United States exported 56,953 horses valued at $271 million, and imported 23,794 horses valued at $134 million. However, only 45 of the horses were imported from Australia, and 130 of the horses were imported from New Zealand. The total number of horses imported into the United States from Australia and New Zealand is small due to the distances the horses must travel and the high transportation costs, which are reflected in the prices of the horses. For example, horses imported from Canada have an average price of $1,490, while horses imported from Australia and New Zealand have an average price of $20,682, and $13,781, respectively. Given these relatively high prices and the rather small expected savings of $18 per horse imported, we do not expect this action will result in an increase in the number of horses imported into the United States from Australia and New Zealand, nor do we expect this action will have a significant economic impact on U.S. importers of horses from Australia and New Zealand, regardless of their size.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products,

Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 93.308, paragraph (a)(3) is revised to read as follows:

§ 93.308 Quarantine requirements.

(a) * * *

(3) To qualify for release from quarantine, all horses must test negative to official tests for dourine, glanders, equine piroplasmosis, and equine infectious anemia.[14] However, horses imported from Australia and New Zealand are exempt from testing for dourine and glanders. In addition, all horses must undergo any other tests, inspections, disinfections, and precautionary treatments that may be required by the Administrator to determine their freedom from communicable diseases.

* * * * *

Done in Washington, DC, this 8th day of June 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–15107 Filed 6–14–99; 8:45 am]

BILLING CODE 3410–34–P

[14] Because the official tests for dourine and glanders are performed only at the National Veterinary Services Laboratories in Ames, IA, the protocols for those tests have not been published and are, therefore, not available; however, copies of "Protocol for the Complement-Fixation Test for Equine Piroplasmosis" and "Protocol for the Immuno-Diffusion (Coggins) Test for Equine Infectious Anemia" may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–37–AD; Amendment 39–11194; AD 99–13–01]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG V2500–A1 and V2500–A5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain International Aero Engines AG (IAE) V2500–A1 and V2500–A5 series turbofan engines. This action requires determining the need for a special borescope inspection of the high pressure turbine (HPT) stage 1 inner rotating airseal (TOBI ID seal) for oil wetting after an in-flight shutdown (IFSD). It also requires, if necessary, the tear down and inspection of HPT hardware. This amendment is prompted by reports of overheat damage to the HPT hardware caused by ignition of oil that leaked into the HPT from the No. 4 bearing compartment during an IFSD. The actions specified in this AD are intended to prevent failure of the HPT hardware due to ignition of oil trapped by the HPT TOBI ID seal, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective June 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from International Aero Engines, 400 Main Street, East Hartford, CT 06108; telephone (860) 565–5515; fax (860) 565–5510. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of overheat damage to the high pressure turbine (HPT) hardware from two International Aero Engines AG (IAE) V2500–A1 series turbofan engines. The investigation of these engines revealed overheat damage to the HPT hardware was caused by ignition of oil that leaked from the No. 4 bearing compartment during an IFSD into the HPT and became trapped by the stage 1 inner rotating airseal (TOBI ID seal). The oil ignited during subsequent operation. The results of the investigation show that the probable cause of oil entering the TOBI ID seal is due to insufficient oil scavenging capability of the No. 4 bearing compartment during windmilling. The investigation has also concluded that V2500 engines that incorporate a redesigned scavenge tube and a redesigned or reworked TOBI ID seal have sufficient No. 4 bearing compartment oil scavenging capability and do not require any special actions following an IFSD. This condition, if not corrected, could result in failure of the HPT hardware due to ignition of oil trapped by the HPT TOBI ID seal, which could result in an uncontained engine failure and damage to the airplane.

The FAA has reviewed and approved the technical contents of IAE All Operator Wire (AOW) 1046, Issue 2, dated May 21, 1999, that describes procedures for determining which actions must be accomplished within five cycles after the IFSD. The actions are determined in AOW Attachments I, II, and III by the engine model, engine serial number, and whether the scavenge tube and TOBI ID seal have been replaced by new or reworked designs. The FAA has also reviewed and approved the technical contents of IAE service bulletins (SB's) V2500–ENG–72–0120, revision 2, dated October 30, 1992 or revision 3, dated May 14, 1999, that describe the requirements for replacing the No. 4 bearing scavenge tube assembly; and V2500–ENG–72–0190, revision 2, dated September 26, 1996, and V2500–ENG–72–0351, dated May

31, 1999, that describe requirements for replacing or reworking the TOBI ID seal.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent failure of the HPT hardware due to ignition of oil trapped by the HPT TOBI ID seal, which could result in an uncontained engine failure and damage to the airplane. This AD requires determining the need for a special borescope inspection of the TOBI ID seal for oil wetting or overheat damage within five cycles after an IFSD, and if necessary, tear down and inspection of the HPT module. Because of the complex nature of the borescope inspection, only IAE is currently authorized to perform the borescope inspection. IAE will provide training to perform the borescope inspections for those operators who want to perform the borescope inspections themselves. In the event of HPT damage, this AD requires removing affected parts from service and replacing with serviceable parts. Accomplish the actions in accordance with the AOW and SB's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–37–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–13–01 International Aero Engines AG: Amendment 39–11194. Docket 99–NE–37–AD.

Applicability: International Aero Engines AG (IAE) V2500–A1 turbofan engines, all serial numbers (S/Ns), and V2500–A5 turbofan engines, with S/Ns V10079 and below, installed on, but not limited to, Airbus Industries A319, A320, and A321 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the high pressure turbine (HPT) hardware due to ignition of oil trapped by the HPT stage 1 inner rotating airseal (TOBI ID seal), which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within five cycles after an in-flight shutdown (IFSD), accomplish the actions specified in the following Attachments of IAE All Operators Wire (AOW) 1046, Issue 2, dated May 21, 1999:

(1) For V2500–A1 engines with S/N's below V0313, accomplish the actions specified in Attachment III, V2500 No.4 Compartment Oil Loss Risk Elimination Flow Chart; or

(2) For V2500–A1 engines with S/N's V0313 and above, accomplish the actions specified in Attachment II, V2500 No.4 Compartment Oil Loss Risk Elimination Flow Chart; or

(3) For V2500–A5 engines with S/N's V10079 or below, accomplish the actions specified in Attachment I, V2500 No.4 Compartment Oil Loss Risk Elimination Flow Chart.

(4) For the purpose of this AD, engines that have been restarted in flight using normal procedures following an IFSD have used 1 cycle since the IFSD.

(b) This AD has no further requirements if no special actions are identified in accordance with the instructions given in IAE AOW 1046, Issue 2, dated May 21, 1999.

(c) If a borescope inspection of the HPT TOBI ID seal is required, have IAE inspect in accordance with IAE AOW 1046, Issue 2, dated May 21, 1999.

(d) If any evidence of oil wetness or overheat damage is seen with the borescope, disassemble the HPT module, remove from

service any part with overheat damage, and replace with a serviceable part.

(e) For V2500–A1 engines with S/N's below V0313, incorporation of service bulletins (SB's) V2500–ENG–72–0120, revision 2, dated October 30, 1992 or revision 3, dated May 14, 1999, and V2500–ENG–72–0351, dated May 31, 1999, constitute terminating action for the requirements specified in paragraph (a) and paragraph (c) of this AD.

(f) For V2500–A1 engines with S/N's V0313 and above, incorporation of SB V2500–ENG–72–0351, dated May 31, 1999, constitutes terminating action for the requirements specified in paragraph (a) and paragraph (c) of this AD.

(g) For V2500–A5 engines with S/N's V10079 and below, incorporation of SB V2500–ENG–72–0190, revision 2, dated September 26, 1996, constitutes terminating action for the requirements specified in paragraph (a) and paragraph (c) of this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(j) The inspection and optional terminating actions must be done in accordance with the following International Aero Engines AG AOW and SB's:

Document No.	Pages	Revision	Date
AOW 1046	All	Issue 2	May 21, 1999.
Total pages: 6.			
SB V2500–ENG–72–0120	All	2	October 30, 1992.
Total pages: 10.			
SB V2500–ENG–72–0120	1	3	May 14, 1999.
	2	2	October 30, 1992.
	3	3	May 14, 1999.
	4 to 7	2	October 30, 1992.
	8 to 9	3	May 14, 1999.
	10	2	October 30, 1992.
Total pages: 10.			
SB V2500–ENG–72–0190	1	2	September 26, 1996.
	2 to 18	1	April 30, 1994.
	19	2	September 26, 1996.
	20 to 21	1	April 30, 1994.
Total pages: 21.			
SB V2500–ENG–72–0351	All	Original	May 31, 1999.
Total pages: 14.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from International Aero Engines, 400 Main Street, East Hartford, CT 06108; telephone (860) 565–5515; fax (860) 565–5510. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(k) This amendment becomes effective on June 25, 1999.

Issued in Burlington, Massachusetts, on June 4, 1999.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–14933 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AE71

Effective Date of Application for Supplemental Security Income (SSI) Benefits

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final rules revise our regulations to reflect and implement section 204 of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Section 204 changed the date an SSI application is effective so that the earliest month for which benefits can be paid is the month following the month in which the application is filed. Section 204 also made related changes concerning emergency advance payments (EAPs), interim assistance reimbursements (IARs) and in the definition of "eligible spouse."

EFFECTIVE DATE: These final regulations are effective August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Loretta Tabacca, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 3–R–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–9881 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

These final regulations reflect and implement section 204 of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which applies to applications for SSI benefits filed on or after August 22, 1996.

Section 204(a), which amended section 1611(c)(7)(A) and (B) of the Social Security Act (the Act), changed the effective date of a SSI application. For applications for SSI benefits filed on or after August 22, 1996, the effective date of an SSI application is the first day of the month following the later of: the date the application is filed; or, the date the individual becomes eligible for such

benefits with respect to such application. The change in law affects the point at which SSI benefits can begin. Before the change in law, an individual could receive SSI benefits for the month in which an application for benefits was filed, and the amount of benefits for that month was prorated based on the number of days in that month the individual met all factors of eligibility. Under section 204(a), the first month for which benefits can be paid is the month following the month that all eligibility requirements, including filing an application, are met. In view of this era of heightened fiscal responsibility, Congress enacted the change to the SSI application effective date, which has a minimal (less than 30 days of benefits) effect on an individual's benefit amount.

Effective August 22, 1996, section 204(b) of Public Law 104–193, which amended section 1631(a)(4)(A) of the Act, made some changes to the EAP process. It added the authority to make EAPs in the month of application to individuals who would be at least presumptively eligible for benefits the month following the date that the application is filed. Section 204(b) also provided that these EAPs are to be repaid through proportional deductions in SSI benefit payments over a period of not more than 6 months.

Since January 1974, when it first became effective, title XVI of the Act has authorized issuance of EAPs in situations of marked financial need among new claimants. These EAPs are expedited payments of funds based upon an applicant's status as presumptively meeting all of the requirements for eligibility. These EAPs will continue to be recovered from any retroactive SSI benefit payments.

Section 204(c)(1) of Public Law 104–193, which amended section 1614(b) of the Act, made a conforming change in the definition of an "eligible spouse" to conform to the change made by section 204(a) with respect to the effective date of an application. Under this change, in order for couple computation rules to apply in determining the amount of benefits to be paid in the first month that both members of a couple are eligible for payment of SSI benefits, the couple must be living in the same household on the first day of the month following the date the application for benefits was filed. Prior to this change, the couple had to be living in the same household on the date the application was filed in order for the couple computation rules to apply to the first month both members of the couple were eligible for payment.

Section 204(c)(2) also made a conforming amendment to section 1631(g)(3) of the Act concerning reimbursement of States under IAR agreements. Consistent with the change made by section 204(a) in the effective date of an application for SSI benefits, States may continue to be reimbursed for interim assistance furnished for meeting basic needs during the period beginning with the month the individual becomes eligible for payment of SSI benefits.

Explanation of Revisions

To reflect and implement section 204(a), we are amending §§ 416.200, 416.203, 416.211, 416.262, 416.305, 416.315, 416.330, 416.335, 416.420, 416.421, 416.501, 416.502, 416.1160, 416.1163, 416.1165, 416.1245 and 416.1335 as follows:

We are revising §§ 416.200 and 416.203 to reflect the statutory change made by section 204(a) under which the first month for which an individual who meets all the basic eligibility requirements listed in § 416.202 may receive SSI benefits is the month after the month he or she meets these eligibility requirements (see § 416.501). An individual cannot become eligible for payment of SSI benefits until the month after the month in which the individual first becomes eligible for SSI benefits. We also are amending the last sentence of § 416.200 to update a cross-reference.

We also are making conforming amendments to paragraph (a)(1) of § 416.211. As a result of the statutory change, an individual who is a resident of a public institution at the time he or she first applies for and meets all other eligibility factors for SSI benefits, will be ineligible for payment of SSI benefits until the first day of the month following the day of the individual's release from the institution.

We are revising § 416.262 to clarify, consistent with section 1619 of the Act, that in order for an individual to be eligible for special SSI cash benefits, the individual must have been eligible for payment of a regular SSI benefit in a prior month. As noted previously, the earliest month in which an individual can become eligible for payment of SSI benefits is the month after the month in which the application for benefits was filed.

We are revising § 416.305(a) to clarify that filing an application assures that the individual receives benefits for any months that individual is determined eligible to receive payment. This clarification reflects the statutory change that ended payment of benefits for the first month in which an individual becomes eligible for benefits.

We also are revising the example in paragraph (c) of § 416.315 to illustrate that the earliest month for which benefits can be paid is the month following the month in which the individual first becomes eligible for benefits.

We also are amending our regulations at § 416.330(a) to reflect the statutory change affecting the first month for which benefits can be paid. We are revising § 416.330(a) to state that when an individual files an application before all the requirements for eligibility are met, the earliest month for which the application can be effective for payment is the month following the month that all requirements are met. We also are deleting the language describing proration of benefits in the first month of eligibility to reflect the fact that section 204 ended such proration. In addition, we also are amending § 416.330(b) to state that if an individual meets all the requirements for eligibility after the period for which the application was in effect and a new application is filed, the earliest month for which benefits can be paid is the first month following the month that all the eligibility requirements are met based on the filing of the new application.

We are revising § 416.335 to state that when an individual files an application in or after the month all the other requirements for eligibility are met, the application cannot be the basis for payment before the first day of the month following the month that the application was filed. We also are deleting the language that pertains to proration of benefits in the first month of eligibility.

We also are amending §§ 416.420 and 416.421 to clearly state the different policies on when SSI benefits can be paid based on the filing of an application and a resumption of benefits after at least one month of ineligibility. The change in law that is effective for applications filed on or after August 22, 1996, effectively ends the proration of SSI benefits based on the day of the month that an application was filed. Proration of benefits continues to apply to resumption of benefits in posteligibility situations.

Additionally, we are revising §§ 416.501 and 416.502 to clarify that when an individual files an application for SSI benefits, the earliest month for which payment can be made is the month following the month of initial eligibility. When eligibility is reestablished after at least one month of ineligibility, benefits can be prorated for the first month of reeligibility.

We are revising §§ 416.1160(b)(2), 416.1163(e), and 416.1165(f) to clarify that, in initial claims situations, the first month in which deeming applies for purposes of determining the amount of a benefit is the month an individual is first eligible for payment. These revisions conform to the legislative change affecting the date a SSI application is effective for payment. We also are correcting the cross-references in § 416.1166(d) to accurately reflect the current reference in the regulations.

We are revising § 416.1245(b) to conform to the legislative change affecting the date an individual can receive SSI payments, specifically conditional benefits, following the application effective date. As a result of the legislative change, the months of payment eligibility may not coincide with the months of the conditional benefits disposal period. Additionally, the payment period, and thus the resulting overpayment, may be different for initial claims and posteligibility situations. Therefore, we are eliminating references to 9 months of conditional benefit payments and are revising the regulations to refer only to benefits received during the conditional benefits period.

Finally, in order to implement section 204(a), we are amending § 416.1335 to reflect the fact that, as a result of the statutory change, a period of benefit suspension can begin when an individual is no longer eligible for SSI benefits even though that person had not received any SSI benefits because the person's only month of eligibility was prior to the effective date of the application.

To reflect the provisions of section 204(b) which expanded the authority of SSA to issue EAPs, we are amending § 416.520(a), (b), and (c) to clarify that we have the authority to issue an EAP in the month that an application is filed even though that month is prior to the effective date of the application and prior to when the individual can be eligible to receive SSI benefits. We also are revising § 416.520(d) to reflect the amendment made by section 204(b) providing that an EAP shall be repaid through proportional reduction in benefits payable over a period of not more than 6 months. Consistent with our longstanding policy and this new statutory provision, if past-due SSI benefits awarded to the individual exceed the amount of the EAP, the entire amount of the EAP will be deducted from the past-due benefits. Finally, we are amending the definition of "presumptively eligible" in § 416.520(b)(4) to clarify that all of the requirements for eligibility are involved.

To reflect the changes made by section 204(c)(1), we are revising the definition of "eligible spouse" in § 416.1801(c). The law changed the point at which SSA determines whether an eligible individual and eligible spouse are an eligible couple. Eligible couple determinations in these situations previously were made when an application was filed but now are made as of the first day of the month following the date the application is filed. In addition, we are amending § 416.1801(c) to correct an erroneous cross-reference in the definition of "spouse."

To reflect the conforming amendment made by section 204(c)(2), we are amending the definition of interim assistance in § 416.1902 to state that interim assistance begins with the first month of eligibility for payment of SSI benefits.

These regulatory provisions were published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 10, 1998 (63 FR 42601). We provided a 60-day period for interested individuals and organizations to comment. We did not receive any comments. Therefore, we are publishing the text of these final rules substantively unchanged from the proposed rules.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Executive Order 12866

These final rules reflect and implement the provisions of sections 204(a), (b) and (c) of Pubic Law 104–193. The Office of Management and Budget (OMB) has reviewed these rules and determined that they meet the criteria for an economically significant regulatory action under Executive Order 12866. These regulations also meet the definition of a "major rule" under 5 U.S.C. 801 ff., and the following cost and benefit assessment fulfills the requirements of those provisions as well. In addition, SSA has determined, as required under the aforementioned statute, that these regulations do not create any unfunded mandates for State or local entities pursuant to sections 202–205 of the Unfunded Mandates Act of 1995.

Projected Costs

Under the statutory change, individuals who file a SSI application on or after August 22, 1996 cannot receive SSI benefits for the first month of eligibility; therefore, benefits will begin later. The cost to individuals is illustrated in the following example: Assuming section 204(a) had not been enacted, an individual who filed an SSI application on August 22, 1996, having met all the requirements for eligibility in that month, could have received an August 1996 SSI benefit amount of $121.80. (The SSI benefit amount was computed using the national average SSI monthly payment amount for the total SSI population for August 1996 of $377.58 and prorating that amount for 10 days (August 22 through August 31).) Since section 204(a) was enacted, the same individual receives no payment for August 1996, the first month of eligibility. The cost to this individual is $121.80.

Potential Benefits

Since these final rules reflect statutory changes which delay the effective date of payment of SSI benefits, we project that there will be reduced outlays from general revenues.

Program Costs

There are no program costs associated with these final rules.

Program Savings

It is estimated that due to the legislation there will be reduced program outlays resulting in the following savings (in millions of dollars) to the SSI program ($785 million in a 6 year period):

FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	Total
$125	$125	$130	$130	$135	$140	$785

The NPRM stated, based on information provided by the Health Care Financing Administration (HCFA), that there would be no cost or savings to the Medicaid program as a result of the change to the application effective date.

In discussing this projection, the NPRM explained that, although HCFA had initially projected Medicaid savings from this provision due to the loss of coverage resulting from the elimination of payment of SSI benefits for the month in which the SSI application is filed, subsequent manual guidance from HCFA allowed States to provide Medicaid coverage during this month (as well as the usual 3-month retroactive period).

HCFA has determined that there is a need to clarify this statement in the NPRM. While in most States the change to the SSI application effective date will not affect Medicaid eligibility, there are a few States where there could be a potential loss to individuals of no more than one month of Medicaid eligibility. HCFA now believes that, even with this effect in these States, the overall Medicaid program savings will be negligible.

Administrative Costs

We anticipate negligible administrative costs (i.e., less than $1 million and 30 workyears). The administrative costs are the additional workyears related to systems changes to reflect the point at which benefits can now begin.

Administrative Savings

We do not anticipate any administrative savings to result from these final regulations since eligibility must be determined from the filing date as was the case before the effective date of these rules.

Policy Alternatives

There are no discretionary policies involved in implementing section 204(a), (b) and (c). Therefore, we find no need to consider alternative policies.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: March 1, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending subparts B, C, D, E, K, L, M, R, and S of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—[Amended]

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h note).

2. Section 416.200 is revised to read as follows:

§ 416.200 Introduction.

You are eligible for SSI benefits if you meet all the basic requirements listed in § 416.202. However, the first month for which you may receive SSI benefits is the month after the month in which you meet these eligibility requirements. (See § 416.501.) You must give us any information we request and show us necessary documents or other evidence to prove that you meet these requirements. We determine your eligibility for each month on the basis of your countable income in that month. You continue to be eligible unless you lose your eligibility because you no longer meet the basic requirements or because of one of the reasons given in §§ 416.210 through 416.216.

3. Section 416.203 is amended by revising paragraph (b) to read as follows:

§ 416.203 Initial determinations of SSI eligibility.

* * * * *

(b) *How we determine your eligibility for SSI benefits.* We determine that you are eligible for SSI benefits for a given month if you meet the requirements in § 416.202 in that month. However, you cannot become eligible for payment of SSI benefits until the month after the month in which you first become eligible for SSI benefits (see § 416.501). In addition, we usually determine the amount of your SSI benefits for a month based on your income in an earlier month (see § 416.420). Thus, it is possible for you to meet the eligibility requirements in a given month but receive no benefit payment for that month.

4. Section 416.211 is amended by revising paragraph (a)(1) to read as follows:

§ 416.211 You are a resident of a public institution.

(a) *General rule.* (1) Subject to the exceptions described in paragraphs (b), (c), and (d) of this section and § 416.212, you are not eligible for SSI benefits for any month throughout which you are a resident of a public institution as defined in § 416.201. In addition, if you are a resident of a public institution when you apply for SSI benefits and meet all other eligibility requirements, you cannot be eligible for payment of benefits until the first day of the month following the day of your release from the institution.

* * * * *

5. Section 416.262 is amended by revising paragraph (a) to read as follows:

§ 416.262 Eligibility requirements for special SSI cash benefits.

* * * * *

(a) You were eligible to receive a regular SSI benefit or a federally administered State supplementary payment (see § 416.2001) in a month before the month for which we are determining your eligibility for special SSI cash benefits as long as that month was not in a prior period of eligibility which has terminated according to §§ 416.1331 through 416.1335;

* * * * *

Subpart C—[Amended]

6. The authority citation for subpart C of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, and 1631(a), (d), and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382, and 1383(a), (d), and (e)).

7. Section 416.305 is amended by revising paragraph (a) (2) to read as follows:

§ 416.305 You must file an application to receive supplemental security income benefits.

(a) * * *

(2) Assure that you receive benefits for any months you are eligible to receive payment; and

* * * * *

8. Section 416.315 is amended by revising the example in paragraph (c) to read as follows:

§ 416.315 Who may sign an application.

* * * * *

(c) * * *

Example: Mr. Smith comes to a Social Security office to file an application for SSI disability benefits for Mr. Jones. Mr. Jones, who lives alone, just suffered a heart attack and is in the hospital. He asked Mr. Smith, whose only relationship is that of a neighbor and friend, to file the application for him. We

will accept an application signed by Mr. Smith since it would not be possible to have Mr. Jones sign and file the application at this time. SSI benefits can be paid starting with the first day of the month following the month the individual first meets all eligibility requirements for such benefits, including having filed an application. If Mr. Smith could not sign an application for Mr. Jones, a loss of benefits would result if it is later determined that Mr. Jones is in fact disabled.

9. Section 416.330 is revised to read as follows:

§ 416.330 Filing before the first month you meet the requirements for eligibility.

If you file an application for SSI benefits before the first month you meet all the other requirements for eligibility, the application will remain in effect from the date it is filed until we make a final determination on your application, unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

(a) If you meet all the requirements for eligibility while your application is in effect, the earliest month for which we can pay you benefits is the month following the month that you first meet all the requirements.

(b) If you first meet all the requirements for eligibility after the period for which your application was in effect, you must file a new application for benefits. In this case, we can pay you benefits only from the first day of the month following the month that you meet all the requirements based on the new application.

10. Section 416.335 is revised to read as follows:

§ 416.335 Filing in or after the month you meet the requirements for eligibility.

When you file an application in the month that you meet all the other requirements for eligibility, the earliest month for which we can pay you benefits is the month following the month you filed the application. If you file an application after the month you first meet all the other requirements for eligibility, we cannot pay you for the month in which your application is filed or any months before that month. See §§ 416.340, 416.345 and 416.350 on how a written statement or an oral inquiry made before the filing of the application form may affect the filing date of the application.

Subpart D—[Amended]

11. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

12. Section 416.420 is amended by revising paragraphs (b)(1) through (3) to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(b) *Exceptions to the general rule*—(1) *First month of initial eligibility for payment or the first month of eligibility after a month of ineligibility.* We use your countable income in the current month to determine your benefit amount for the first month you are initially eligible for payment of SSI benefits (see § 416.501) or for the first month you again become eligible for SSI benefits after at least a month of ineligibility. Your payment for a first month of reeligibility after at least one-month of ineligibility will be prorated according to the number of days in the month that you are eligible beginning with the date on which you reattain eligibility.

Example: Mrs. Y applies for SSI benefits in September and meets the requirements for eligibility in that month. (We use Mrs. Y's countable income in September to determine if she is eligible for SSI in September.) The first month for which she can receive payment is October (see § 416.501). We use Mrs. Y's countable income in October to determine the amount of her benefit for October. If Mrs. Y had been receiving SSI benefits through July, became ineligible for SSI benefits in August, and again became eligible for such benefits in September, we would use Mrs. Y's countable income in September to determine the amount of her benefit for September. In addition, the proration rules discussed above would also apply to determine the amount of benefits in September in this second situation.

(2) *Second month of initial eligibility for payment or second month of eligibility after a month of ineligibility.* We use your countable income in the first month prior to the current month to determine how much your benefit amount will be for the current month when the current month is the second month of initial eligibility for payment or the second month of reeligibility following at least a month of ineligibility. However, if you have been receiving both an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your Social Security benefit in January exceeds the amount of your Social Security benefit in December.

Example: Mrs. Y was initially eligible for payment of SSI benefits in October. Her benefit amount for November will be based on her countable income in October (first prior month).

(3) *Third month of initial eligibility for payment or third month of eligibility after a month of ineligibility.* We use your countable income according to the rule set out in paragraph (a) of this section to determine how much your benefit amount will be for the third month of initial eligibility for payment or the third month of reeligibility after at least a month of ineligibility.

Example: Mrs. Y was initially eligible for payment of SSI benefits in October. Her benefit amount for December will be based on her countable income in October (second prior month).

* * * * *

§ 416.421 [Amended]

13. Section 416.421 is amended by removing the first sentence of paragraph (a) and by removing the example at the end of paragraph b.

Subpart E—[Amended]

14. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 372OA.

15. Section 416.501 is revised to read as follows:

§ 416.501 Payment of benefits: General.

Payment of SSI benefits will be made for the month after the month of initial eligibility and for each subsequent month provided all requirements for eligibility (see § 416.202) and payment (see § 416.420) are met. In the month the individual re-establishes eligibility after at least a month of ineligibility, benefits are paid for such a month beginning with the date in the month on which the individual meets all eligibility requirements. In some months, while the factors of eligibility based on the current month may be established, it is possible to receive no payment for that month if the factors of eligibility for payment are not met. Payment of benefits may not be made for any period that precedes the first month following the date on which an application is filed or, if later, the first month following the date all conditions for eligibility are met.

16. Section 416.502 is amended by revising the first sentence to read as follows:

§ 416.502 Manner of payment.

For the month an individual reestablishes eligibility after a month of ineligibility, an SSI payment will be made on or after the day of the month on which the individual becomes reeligible to receive benefits. * * *

17. Section 416.520 is amended by revising the first two sentences in paragraph (a) and by revising paragraphs (b)(1) and (b)(4), (c) introductory text, (c)(1) and (d) to read as follows:

§ 416.520 Emergency advance payments.

(a) *General.* We may pay a one-time emergency advance payment to an individual initially applying for benefits who is presumptively eligible for SSI benefits and who has a financial emergency. The amount of this payment cannot exceed the Federal benefit rate (see §§ 416.410 through 416.414) plus the federally administered State supplementary payment, if any (see § 416.2020), which apply for the month for which the payment is made. * * *

(b) * * *

(1) *Emergency advance payment* means a direct, expedited payment by a Social Security Administration field office to an individual or spouse who is initially applying (see paragraph (b)(3) of this section), who is at least presumptively eligible (see paragraph (b)(4) of this section), and who has a financial emergency (see paragraph (b)(2) of this section). * * *

* * * * *

(4) *Presumptively eligible* is the status of an individual or spouse who presents strong evidence of the likelihood of meeting all of the requirements for eligibility including the income and resources tests of eligibility (see subparts K and L of this part), categorical eligibility (age, disability, or blindness), and technical eligibility (United States residency and citizenship or alien status—see subpart P of this part).

(c) *Computation of payment amount.* To compute the emergency advance payment amount, the maximum amount described in paragraph (a) of this section is compared to both the expected amount payable for the month for which the payment is made (see paragraph (c)(1) of this section) and the amount the applicant requested to meet the emergency. The actual payment amount is no more than the least of these three amounts.

(1) In computing the emergency advance payment amount, we apply the monthly income counting rules appropriate for the month for which the advance is paid, as explained in § 416.420. Generally, the month for which the advance is paid is the month in which it is paid. However, if the advance is paid in the month the application is filed, the month for which the advance is paid is considered to be the first month of expected eligibility for payment of benefits.

* * * * *

(d) *Recovery of emergency advance payment where eligibility is established.* When an individual or spouse is determined to be eligible and retroactive payments are due, any emergency advance payment amounts are recovered in full from the first payment(s) certified to the United States Treasury. However, if no retroactive payments are due and benefits are only due in future months, any emergency advance payment amounts are recovered through proportionate reductions in those benefits over a period of not more than 6 months. (See paragraph (e) of this section if the individual or spouse is determined to be ineligible.)

* * * * *

Subpart K—[Amended]

18. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

19. Section 416.1160 is amended by revising paragraph (b)(2)(i), and redesignating paragraphs (b)(2)(ii) and (b)(2)(iii) as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively, and adding a new paragraph (b)(2)(ii) to read as follows:

§ 416.1160 What is deeming of income.

* * * * *

(b) * * *

(2) * * *

(i) We use the income from the first month you are initially eligible for payment of SSI benefits (see § 416.501) to determine your benefit amount for that month. In the following month (the second month you are eligible for payment), we use the same countable income that we used in the preceding month to determine your benefit amount.

(ii) To determine your benefit amount for the first month you again become eligible after you have been ineligible for at least a month, we use the same countable income that we use to determine your eligibility for that month. In the following month (the second month of reeligibility), we use the same countable income that we used in the preceding month to determine your benefit amount.

* * * * *

20. Section 416.1163 is amended by revising paragraph (e)(1) to read as follows:

§ 416.1163 How we deem income to you from your ineligible spouse.

* * * * *

(e) *Determining your SSI benefit.* (1) In determining your SSI benefit amount, we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for payment of an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility for payment (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

* * * * *

21. Section 416.1165 is amended by revising paragraph (f) to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent(s).

* * * * *

(f) *Determining your SSI benefit.* In determining your SSI benefit amount, we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible parents' income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for payment of an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility for payment (or re-eligibility) we deem your ineligible parents' income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month we deem your ineligible parents' income in that month to determine whether you are eligible for a benefit but we again use your countable income (including any that was deemed to you) in the first

month to determine the amount of your benefit.

* * * * *

22. Section 416.1166 is amended by revising paragraph (d) to read as follows:

§ 416.1166 How we deem income to you and your eligible child from your ineligible spouse.

* * * * *

(d) *Determining your eligibility for SSI benefits and benefit amount.* We then follow the rules in § 416.1163(c) to find out if any of your ineligible spouse's current monthly income is deemed to you and, if so, to determine countable income for a couple. Next, we follow paragraph (e) of this section to determine your child's eligibility. However, if none of your spouse's income is deemed to you, none is deemed to your child. Whether or not your spouse's income is deemed to you in determining your eligibility, we determine your benefit amount as explained in § 416.1163(e).

* * * * *

Subpart L—[Amended]

23. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

24. Section 416.1245 is amended by revising paragraphs (b)(1), (b)(2)(v) and (b)(5) to read as follows:

§ 416.1245 Exceptions to required disposition of real property.

* * * * *

(b) *Reasonable efforts to sell.* (1) Excess real property is not included in countable resources for so long as the individual's reasonable efforts to sell it have been unsuccessful. The basis for determining whether efforts to sell are reasonable, as well as unsuccessful, will be a 9-month disposal period described in § 416.1242. If it is determined that reasonable efforts to sell have been unsuccessful, further SSI payments will not be conditioned on the disposition of the property and only the benefits paid during the 9-month disposal period will be subject to recovery. In order to be eligible for payments after the conditional benefits period, the individual must continue to make reasonable efforts to sell.

(2) * * *

(v) The 9-month disposal period has expired.

* * * * *

(5) An individual who has received conditional benefits through the expiration of the 9 month disposal period and whose benefits have been suspended as described at § 416.1321 for reasons unrelated to the property excluded under the conditional benefits agreement, but whose eligibility has not been terminated as defined at §§ 416.1331 through 416.1335, can continue to have the excess real property not included in countable resources upon reinstatement of SSI payments if reasonable efforts to sell the property resume within 1 week of reinstatement. Such an individual will not have to go through a subsequent conditional benefits period. However, the individual whose eligibility has been terminated as defined at §§ 416.1331 through 416.1335 and who subsequently reapplies would be subject to a new conditional benefits period if there is still excess real property.

Subpart M—[Amended]

25. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, and 1383).

26. Section 416.1335 is amended by revising the second sentence to read as follows:

§ 416.1335 Termination due to continuous suspension.

* * * We will count the 12-month suspension period from the start of the first month that you are no longer eligible for SSI benefits (see § 416.1321(a)) or the start of the month after the month your special SSI eligibility status described in § 416.265 ended. * * *

Subpart R—[Amended]

27. The authority citation for subpart R of part 416 continues to read as follows:

Authority: Secs 702(a)(5), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382c(b), (c), and (d), and 1383(d)(1) and (e)).

28. Section 416.1801(c) is amended in the definition of "spouse" by removing the words "and 416.1811" and by revising paragraph (3)(i) in the definition of "eligible spouse" to read as follows:

§ 416.1801 Introduction.

* * * * *

(c) * * *

Eligible spouse * * *

(3) * * *

(i) The first day of the month following the date the application is filed (for the initial month of eligibility for payment based on that application);

* * * * *

Subpart S—[Amended]

29. The authority citation for subpart S of part 416 continues to read as follows:

Authority: Secs. 702(a)(5) and 1631 of the Social Security Act (42 U.S.C. 902(a)(5) and 1383).

30. Section 416.1902 is amended by revising the definition of "interim assistance" to read as follows:

§ 416.1902 Definitions.

* * * * *

Interim assistance means assistance the State gives you, including payments made on your behalf to providers of goods or services, to meet your basic needs, beginning with the first month for which you are eligible for payment of SSI benefits and ending with, and including, the month your SSI payments begin, or assistance the State gives you beginning with the day for which your eligibility for SSI benefits is reinstated after a period of suspension or termination and ending with, and including, the month the Commissioner makes the first payment of benefits following the suspension or termination if it is determined subsequently that you were eligible for benefits during that period. It does not include assistance the State gives to or for any other person. If the State has prepared and cannot stop delivery of its last assistance payment to you when it receives your SSI benefit payment from us, that assistance payment is included as interim assistance to be reimbursed. Interim assistance does not include assistance payments financed wholly or partly with Federal funds.

* * * * *

[FR Doc. 99–15055 Filed 6–14–99; 8:45 am]
BILLING CODE 4190–29–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in July 1999. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during July 1999.

For annuity benefits, the interest assumptions will be 6.00 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent an increase (from those in effect for June 1999) of 0.30 percent for the first 20 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent an increase (from those in effect for June 1999) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during July 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 69 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used To Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
July 1999	.0600	1–20	.0525	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
69	07–1–99	08–1–99	4.50	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 7th day of June 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–14995 Filed 6–14–99; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–037]

RIN 2115–AE46

Special Local Regulations for Marine Events; Sharptown Outboard Regatta, Nanticoke River, Sharptown, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Sharptown Outboard Regatta, to be held on the waters of the Naticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN–24175). These regulations are needed to protect spectator craft and other vessels transiting the event area from the dangers associated with the event. This action is intended to enhance the safety of life and property during the event.

DATES: This temporary final rule is effective from 12 p.m. EDT (Eastern Daylight Time) to 6 p.m. EDT on June 26 and 27, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NRPM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Following normal rulemaking procedures would have been impractical since there is not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date. Immediate action is needed to protect vessel traffic from the potential hazards associated with this event.

Background and Purpose

The North-South Racing Association will sponsor the Sharptown Outboard Regatta on June 26 and 27, 1999. The event will consist of 150 hydroplane and runabout outboard powerboats conducting a high speed competitive race on the waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN–24175). A fleet of spectator vessels is anticipated for the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local Regulations on specified waters of the Nanticoke River. The temporary special local regulations will be in effect from 12 p.m. EDT to 6 p.m. EDT on June 26 and 27, 1999 and will restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

considers whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because this temporary rule will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, the Coast Guard expects the impact of this temporary rule to be minimal.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this temporary final rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this temporary rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If you believe your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please submit a comment (see **ADDRESSES**) explaining your concerns.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this temporary final rule on State, local and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1531) because it will not result in the expenditure of $100,000,000 in any one year by State, local and tribal governments, in the aggregate, or the private sector.

Collection of Information

This temporary rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a marine event are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T05–037 is added to read as follows:

§ 100.35–T05–037 Sharptown Outboard Regatta, Nanticoke River, Sharptown, Maryland

(a) *Definitions.* (1) *Regulated area.* All waters of the Nanticoke River, Sharptown, Maryland, between Maryland S.R. 313 bridge and Nanticoke River Light 43 (LLN–14175), bounded by a line drawn southeasterly from latitude 38° 32′ 47″ N, longitude 075° 43′ 15″ W, to latitude 38° 32′ 42″ N, longitude 075° 43′ 09″ W, thence northeasterly to latitude 38° 33′ 07″ N, longitude 075° 42′ 27″ W, thence northwesterly to latitude 38° 33′ 10″ N, longitude 075° 42′ 46″ W, thence southwesterly to latitude 38° 32′ 47″ N, longitude 075° 43′ 15″ W. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special local regulations.* (1) All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates.* The regulated area is effective from 12 p.m. EDT (Eastern Daylight Time) to 6 p.m. EDT on June 26 and 27, 1999.

Thomas E. Bernard,

Captain, U.S. Coast Guard Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–15048 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–99–035]

RIN 2115–AE46

Special Local Regulations: Independence Day Celebration, Cumberland River Mile 190.0–191.0, Nashville, TN

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Independence Day Celebration on the Cumberland River. This event will be held on July 4, 1999 from 12:00 noon until 11:00 p.m. at the riverfront in Nashville, TN. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 12:00 noon until 11:00 p.m. on July 4, 1999.

FOR FURTHER INFORMATION CONTACT: MST3 Christine Mow, Marine Safety Detachment Nashville, TN. Tel: (615) 736–5421.

SUPPLEMENTARY INFORMATION:

Drafting information. The drafters of this regulation are MST3 Christine Mow, Project Officer, Marine Safety Detachment Nashville, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The details of the event were not finalized until May 19, 1999 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a fireworks display. The Metropolitan Board of Parks and Recreation sponsors the event. Event activities include a fireworks display and various waterside concerts and exhibits. Spectators will be able to view the event from areas designated by the sponsor.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T08–036 is added to read as follows:

§ 100.35–T08–036 Cumberland River at Nashville, Tennessee

(a) *Regulated area.* Cumberland River Mile 190.0–191.0.

(b) *Special local regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given: failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign "PATCOM".

(c) Effective date. These regulations will be effective from 12:00 noon until 11:00 p.m. on July 4, 1999.

Dated: May 24, 1999.

A.L. Gerein, Jr.,

Captain, U.S. Coast Guard Acting Commander, 8th Coast Guard District.

[FR Doc. 99–15047 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–99–038]

RIN 2115–AE46

Special Local Regulations: Riverfest '99, Tennessee River, Mile Market 140.0–141.0, Parsons, TN

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Riverfest '99 on the Tennessee River. This event will be held on June 20, 1999 from 2:00 p.m. until 5:00 p.m. at the Gumdale Marina in Parsons, TN. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 2:00 p.m, until 5:00 p.m. on June 20, 1999.

FOR FURTHER INFORMATION CONTACT: MST3 Christine Mow, Marine Safety Detachment, Nashville, TN. Tel: (615) 736–5421.

SUPPLEMENTARY INFORMATION:

Drafting information. The drafters of this regulation are MST3 Christine Mow, Project Officer, Marine Safety Detachment, Nashville, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The details of the event were not finalized until April 30, 1999 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is the Riverfest '99. The event is sponsored by the Decatur County Education Foundation. Event activities include a timed obstacle course race to be run on Jet Skis. Approximately 100 participants will take part in the race. Spectators will be able to view the event from areas designated by the sponsor.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and Record Keeping requirements.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T08–038 is added to read as follows:

§ 100.35–T08–038 Tennessee River at Parsons, Tennessee

(a) *Regulated area.* Tennessee River Mile 140.0–141.0.

(b) *Special local regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given: failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign "PATCOM".

(c) Effective date. These regulations will be effective from 2:00 p.m. until 5:00 p.m. on June 20, 1999.

Dated: May 24, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard Acting Commander, 8th Coast Guard Dist.

[FR Doc. 99–15046 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–99–037]

RIN 2115–AE46

Special Local Regulations: Riverbend Festival, Tennessee River Mile 463.5 to 464.5, Chattanooga, TN

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Riverbend Festival on the Tennessee River. This event will be held from 5:30 p.m. on June 19, 1999 until 12:00 midnight on June 20, 1999, at the riverfront in Chattanooga, TN. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 5:30 p.m. on June 19, 1999 until 12:00 midnight on June 20, 1999.

FOR FURTHER INFORMATION CONTACT: MST3 Christine Mow, Marine Safety Detachment Nashville, TN. Tel: (615) 736–5421.

SUPPLEMENTARY INFORMATION:

Drafting information. The drafters of this regulation are MST3 Christine Mow, Project Officer, Marine Safety Detachment Nashville, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The details of the event were not finalized until April 30, 1999 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is the Riverbend Festival. The Friends of the Festival sponsor the event. Event activities include a fireworks display and concerts on a floating stage. Spectators will be able to view the event from areas designated by the sponsor.

Regulatory Evaluation

This rule is not a signficiant regulatory action under section 3(f) of

Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T08–037 is added to read as follows:

§ 100.35–T08–037 Tennessee River at Chattanooga, Tennessee.

(a) *Regulated area.* Tennessee River Mile 463.5 to 464.5.

(b) *Special local regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sing "PATCOM".

(c) Effective date. These regulations will be effective from 5:30 p.m. on June 19, 1999 until 12:00 midnight on June 20, 1999.

Dated: May 21, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 99–15043 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–98–049]

RIN 2115–AE47

Drawbridge Operations Regulation; Back Bay of Biloxi, MS

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: On February 9, 1999, the Coast Guard published an interim rule to change the drawbridge operating regulation for the Popps Ferry Road bascule span bridge across the Back Bay of Biloxi, mile 8.0, at Biloxi, Harrison County, Mississippi. The interim rule permitted the draw of the bridge to remain closed to navigation from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. This schedule facilitates the movement of vehicular traffic crossing the bridge during peak rush hour traffic periods. The Coast Guard is adopting the interim rule as final without change.

DATES: This final rule becomes effective on July 15, 1999.

ADDRESSES: Documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396, room 1313 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 9, 1999, the Coast Guard published an interim rule in (64 FR 6220) to change the drawbridge operating regulation for the Popps Ferry Road bascule span bridge across the Back Bay of Biloxi, mile 8.0, at Biloxi, Harrison County, Mississippi. The interim rule permitted the draw of the bridge to remain closed to navigation from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

The schedule in the interim rule facilitates the movement of vehicular traffic crossing the bridge during peak rush hour traffic periods which has increased significantly during recent years. Because the Popps Ferry Road Bridge bisects the City of Biloxi, openings of the draw span, during rush hour traffic periods, paralyze vehicular traffic movement. This is the only route available to mid-city commuters without taking a 15-mile detour. This rule allows the free flow of vehicular traffic while still meeting the reasonable needs of navigation.

The Coast Guard published a notice of proposed rulemaking on November 20, 1996 (61 FR 59047). The proposed rule would have permitted the draw to remain closed to navigation from 7:30 a.m. to 9 a.m., 11:30 a.m. to 1:30 p.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Comments prompted the Coast Guard to reevaluate the proposal. Objections to

the proposal were primarily based on the previous poor condition of the bridge that resulted in only one bascule leaf being operable, thereby restricting navigation to daytime transits only. After the bridge had been restored to its fully operable condition, the Coast Guard published a supplemental notice of proposed rulemaking on September 23, 1998 (63 FR 50821). The supplemental notice of proposed rulemaking proposed the same schedule, but was published so that interested parties could have another opportunity to comment on the proposed change before a final decision was made.

Four letters were received in response to the supplemental notice of proposed rulemaking. Some of the comments objected to the mid-day closed period because it would interfere with coal deliveries to the Power Company.

The Coast Guard agreed that the change would be less disruptive to coal deliveries to the power plant and that the two remaining closure periods in the morning and afternoon will provide relief for vehicular traffic during rush hours. This change was published as an interim rule to allow the public to comment on the change before the final rule was issued.

One letter was received in response to the interim rule. An individual motorist suggested that the draw of the bridge remain closed to navigation weekdays from 7 a.m. to 8:30 a.m. and from 3:30 p.m. until 5 p.m. instead of from 7:30 a.m. to 9 a.m. and from 4:30 to 6 p.m. as proposed. Based on data originally provided by the Harrison County Board of Supervisors, the Coast Guard does not feel that this suggested change would enhance the movement of vehicular traffic to any greater degree than the change as proposed. Since no other comments or objections to the interim rule or the initial implementation of the new schedule were received, the Coast Guard is adopting the interim rule without change.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the number of vessels impaired during the proposed closed-to-navigation periods is minimal. Commercial fishing vessels and tugs with tows still have ample opportunity to transit this waterway before and after the peak vehicular traffic periods as is their customary practice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

This final rule considers the needs of local commercial fishing vessels, as the study of vessels passing the bridge included such commercial vessels. These local commercial fishing vessels will still have the ability to pass the bridge in the early morning, early afternoon and evening hours. Thus, the economic impact is expected to be minimal. Additionally, there is no indication that other waterway users would suffer any type of economic hardship if they are precluded from transiting the waterway during the hours that the draw is scheduled to remain in the closed-to-navigation position. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this final rule will have a significant impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this final rule will economically affect it.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and have determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this final rule is categorical excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Accordingly, the interim rule amending 33 CFR Part 117 which was published in 64 FR 6220 on February 9, 1999, is adopted as a final rule without change.

Dated: May 25, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 99–15049 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–175]

RIN 2115–AA97

Safety Zone: New York Super Boat Race, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone that will be enacted annually for the New York Super Boat Race. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the lower Hudson River, New York.

DATES: This final rule is effective July 15, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 12, 1999, the Coast Guard published a notice of proposed rulemaking entitled Safety Zone: New York Super Boat Race, Hudson River, New York in the **Federal Register** (64 FR 7147). The Coast Guard received one comment on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

Super Boat International Productions sponsors this annual high-speed powerboat race with approximately 40 powerboats, 24 to 50 feet in length, racing on an 8-mile oval course at speeds in excess of 100 mph. An average of 100 spectator craft view this event each year. The safety zone encompasses all waters of the Lower Hudson River south of a line drawn from the northwest corner of Pier 76 in Manhattan to a point in Weehawken, New Jersey at approximate position 40°45′52″N 074°01′01″W (NAD 1983) and north of a line connecting the following points (all coordinates are NAD 1983):

Latitude	Longitude
40°42′16.0″N	074°01′09.0″W, then south to
40°41′55.0″N	074°01′16.0″W, then southwest to
40°41′47.0″N	074°01′36.0″W, then northwest to
40°41′55.0″N	074°01′59.0″W, then to shore at
40°42′20.5″N	074°02′06.0″W.

The safety zone area encompasses approximately four nautical miles of the Lower Hudson River from Pier 76, Manhattan to approximately 650 yards northwest of the Governors Island Light (LLNR 35010) in approximate position 40°42′20.5″N, 074°01′11″W (NAD 1983).

The final rule is effective annually from 10 a.m. until 4 p.m. on the Sunday following Labor Day. The race boats will be competing at high speeds with numerous spectator crafts in the area, creating an extra or unusual hazard in the navigable waterway. The final rule prohibits all vessels not participating in the event, swimmers, and personal watercraft from transiting this portion of the Lower Hudson River during the race. It is needed to protect the waterway users from the hazards associated with high-speed powerboats racing in confined waters.

Discussion of Comments and Changes

The Coast Guard received one comment on the proposed rule. This final rule is the same as the proposed rule except that the starting time for the event has been moved from 11:30 a.m. to 10 a.m. This change was made to provide for a Super Boat Limited race beginning at 11 a.m. This will be followed by the Super Boat Race beginning at 1 p.m. The Coast Guard is not publishing a Supplemental NPRM (SNPRM) for this change. A SNPRM is not necessary because the final rule is not materially different from the proposed rule, therefore the notice provided for the NPRM was sufficient for this final rule. This conclusion is based upon the following factors: the minimal extra time requested, the minimal amount of commercial traffic affected, pleasure craft can take an alternate route through the East River and the Harlem River, and commercial ferry traffic will be authorized to transit around the perimeter of the safety zone for their scheduled operations at the direction of the Patrol Commander.

The Coast Guard received one comment regarding the location of spectator craft at the southwest corner of the safety zone during 1998's event. This location is in the vicinity of Liberty State Parks, Jersey City, New Jersey and Ellis Island. Commercial charters, which were authorized to transit between Liberty State Park and Ellis Island during the event, experienced difficulty navigating safely through this area due to spectator craft infringing on the safety zone. The charter boats experienced difficulty when entering and departing from their berth at Liberty State Park. The charter boats were also forced to transit further into the safety zone than had originally been planned. The Coast Guard will maintain a clear lane at the southwest corner of the safety zone for the charter boats to transit through. There is still sufficient room around the remaining southern boundary of the safety zone for the expected spectator craft to view this event.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the lower Hudson River Hudson River during the race, the effect of this regulation will not be significant for several reasons: it is an annual event with local support, the volume of commercial vessel traffic transiting the Lower Hudson River on a Sunday is less than half of the normal daily traffic volume; pleasure craft desiring to view the event will be directed to designated spectator viewing areas outside the safety zone; pleasure craft can take an alternate route through the East River and the Harlem River; the duration of the event is limited to six hours; the extensive advisories which will be made to the affected maritime community by Local Notice to Mariners, Safety Voice Broadcast, and facsimile notification. Additionally, commercial ferry traffic will be authorized to transit around the perimeter of the safety zone for their scheduled operations at the direction of the Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal

agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable jury imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in a aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Other Executive Orders on the Regulatory Process

In addition to the statues and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal Government.

E.O. 12988, Civil Justice Reform. This rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern and environmental risk to safety disproportionately affecting children.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of sec. 311, Pub. L. 105–383.

2. Add § 165.162 to read as follows:

§ 165.162 Safety Zone: New York Super Boat Race, Hudson River, New York.

(a) *Regulated area.* The following area is a safety zone: All waters of the Lower Hudson River south of a line drawn from the northwest corner of Pier 76 in Manhattan to a point on the New Jersey shore in Weehawken, New Jersey at approximate position 40°45′52″N 074°01′01″W (NAD 1983) and north of a line connecting the following points (all coordinates are NAD 1983):

Latitude	Longitude
40°42′16.0″N	074°01′09.0″W, then south to
40°41′55.0″N	074°01′16.0″W, then west to
40°41′47.0″N	074°01′36.0″W, then northwest to
40°41′55.0″N	074°01′59.0″W, then to shore at
40°42′20.5″N	074°02′06.0″W.

(b) *Regulations.*

(1) Vessels not participating in this event, swimmers, and personal watercraft of any nature are prohibited from entering or moving within the regulated area unless authorized by the Patrol Commander.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designed on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* This section is in effect annually from 10 a.m. until 4 p.m. on the Sunday following Labor Day.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–15045 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–057]

RIN 2115–AA97

Safety Zone: 4th of July Fireworks, Charles River Esplanade, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the 4th of July Fireworks on the Esplanade, Boston, MA. This regulation establishes a two-stage safety zone on waters of the Charles River, around the firework barges moored on the Charles River between the Longfellow Bridge and the Harvard Bridge, Boston, MA. The first stage is in effect from 12:01 a.m. on 28 June 1999 until 12:01 a.m. on 3 July 1999 and establishes a safety zone one hundred (100) yards around the firework barges moored on the Charles River between the Longfellow Bridge and the Harvard Bridge, Boston, MA. The second stage is in effect from 12:01 a.m. on 3 July 1999 until 11:00 p.m. on 5 July 1999 unless canceled earlier by the Captain of the Port; and establishes a safety zone four hundred (400) yards around the firework barges moored on the Charles River between the Longfellow Bridge and the Harvard Bridge, Boston, MA. This safety zone prevents entry into or movement within this portion of the Charles River, and it is needed to protect the boating public viewing this display from the dangers posed by the loading of the fireworks and the fireworks display. The two-stage approach is needed due to the risks posed first by the loading of the fireworks, then the expanded risks posed by the firework display event.

DATES: This rule is effective from 12:01 a.m., Monday, 28 June 1999 until 11:00 p.m., Monday, 5 July 1999 unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Conclusive information

about this event was not provided to the Coast Guard until March 9, 1999, making it impossible to publish a NPRM or a final rule 30 days in advance. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

On March 9, 1999 the organization Boston's Fourth of July, Boston, Massachusetts filed a marine event permit with the Coast Guard to hold a fireworks program on the waters of the Charles River, Boston, MA. This regulation establishes a two-stage safety zone on all waters of the Charles River around the fireworks barges moored on the Charles River between the Longfellow Bridge and the Harvard Bridge, Boston, MA. The first stage is in effect from 12:01 a.m. on 28 June 1999 until 12:01 on 3 July 1999 and establishes a safety zone one hundred (100) yards around the firework barges moored on the Charles River between the Longfellow Bridge and the Harvard Bridge, Boston, MA. The second stage is in effect from 12:01 a.m. on 3 July 1999 until 11:00 p.m. on 5 July 1999 unless canceled earlier by the Captain of the Port; and establishes a safety zone four hundred (400) yards around the firework barges moored in the Charles River between the Longfellow Bridge and the Harvard Bridge, Boston, MA. This safety zone prevents entry into or movement within this portion of the Charles River, and it is needed to protect the boating public viewing this display from the dangers posed by the loading of the fireworks and the fireworks display. The two-stage approach is needed due to the risks posed first by the loading of the fireworks, then the expanded risks posed by the firework display event.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Due to the limited duration of the safety zone, the fact that the safety zone will not restrict the entire harbor, allowing traffic to continue without obstruction, and the advance maritime advisories that will be made, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination;; is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–057 to read as follows:

§ 165.T01–057 Safety Zone: 4th of July Fireworks, Charles River Esplenade, Boston, MA.

(a) *Location.* The following area is a safety zone: this regulation establishes a two-stage safety zone on all waters of the Charles River around the fireworks barges moored on the Charles River between the Longfellow Bridge and the Harvard Bridge. The first stage is in effect from 12:01 a.m. on 28 June 1999 until 12:01 a.m. on 3 July 1999 and establishes a safety zone hundred (100) yards around the firework barges moored on the Charles River between the Longfellow Bridge and the Harvard Bridge, Boston, MA. The second stage is in effect from 12:01 a.m. on 3 July 1999 until 11:00 p.m. on 5 July 1999 unless canceled earlier by the Captain of the Port; and establishes a safety zone four hundred (400) yards around the firework barges moored on the Charles River between the Longfellow Bridge and the Harvard Bridge, Boston, MA

(b) *Effectuve date.* This section is effective from 12:01 a.m. Monday, 28 June 1999 until 11:00 p.m., Monday, 5 July 1999 unless canceled earlier by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: May 27, 1999.

J.L. Grenier,

Captain, U.S. Coast Guard Captain of the Port Boston, Massachusetts.

[FR Doc. 99–15[illegible]4 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6359–6]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Technical Amendment

AGENCY: Environmental Protection Agency.

ACTION: Technical amendment.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending 40 CFR part 261, appendix IX to delete two facilities that were granted exclusions for their wastes and no longer produce these wastes. The following facilities have been deleted: Tricil Environmental Systems, Inc., Hilliard, Ohio; and Tricil Environmental Systems, Inc., Muskegon, Michigan. Today's amendment documents these changes.

EFFECTIVE DATE: June 15, 1999.

ADDRESSES: The regulatory docket for this rule is located at U.S. EPA, Crystal Gateway I, 1235 Jefferson Davis Highway, ground floor outside main lobby, Arlington, VA 22202, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The Docket Office can be reached at (703) 603–9230. The reference number for this docket is F–86–TRFE–FFFFF. The public may copy material from the regulatory docket free for the first 100 pages and $0.15 for additional pages.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or at (703) 412–9810. For technical information contact Mr. Jim Kent, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308–0461.

SUPPLEMENTARY INFORMATION:

I. The Technical Amendment

On February 8, 1994, EPA published a final rule (59 FR 5725, February 8, 1994) to delete Tricil Environmental Systems, Inc., Hilliard, Ohio; and Tricil Environmental Systems, Inc., Muskegon, Michigan from 40 CFR part 261, appendix IX. EPA inadvertently did not include deleting the two Tricil Environmental Systems, Inc. facilities from Table 2 of appendix IX of 40 CFR part 261; EPA corrects this omission in today's technical amendment by promulgating the appropriate regulatory text.

II. Background

Under 40 CFR 260.20 and 260.22 a person may petition EPA to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. Based on waste specific information provided by petitioner, EPA granted exclusions to Tricil Environmental Systems, Inc., Hilliard, Ohio (51 FR 41494, November 17, 1986); and Tricil Environmental Systems, Inc., Muskegon, Michigan (51 FR 41494, November 17, 1986).

EPA decided to delete these two facilities from Appendix IX because these facilities notified EPA that they had ceased operations that generate the excluded waste. Tricil Environmental Systems, Inc., Hilliard, Ohio, ceased generation of the excluded waste on June 30, 1991; and Tricil Environmental Systems, Inc., Muskegon, Michigan, ceased generation of the excluded waste on September 1, 1992.

In 1993, the above generators confirmed in writing that they no longer generate the delisted waste at their facilities. On October 15, 1993, the Agency notified these facilities of the proposed action and solicited their comments. No comments were received disputing the Agency's intended action. These changes to appendix IX of 40 CFR part 261 are effective June 15, 1999. These facilities would need to submit new delisting petitions if they wish to generate the excluded waste at any time in the future.

III. Effective Date

This technical amendment is effective June 15, 1999. EPA has determined that there is good cause for making today's technical amendment final without prior proposal and opportunity for comment because EPA is merely correcting a technical omission in a previously issued rule to delete two facilities from appendix IX, Table 2 that have stopped production of the excluded waste. Thus, notice and public comment are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This action also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

IV. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, etc. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3). This rule will become effective on June 15, 1999.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921 (f).

Dated: June 2, 1999

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6922, and 6938.

Appendix IX to Part 261 [Amended]

2. Table 2 of Appendix IX of Part 261 is amended by removing the entries for "Tricil Environmental Systems, Inc., Hilliard, Ohio"; and "Tricil Environmental Systems, Inc., Muskegon Michigan."

[FR Doc. 99–15170 Filed 6–14–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 723

[OPPT–50636; FRL–6068–5]

Recordkeeping Requirements for Low Volume Exemption and Low Release and Exposure Exemption; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; technical correction.

SUMMARY: This technical correction re-establishes recordkeeping requirements that were previously inadvertently deleted from the Low Volume Exemption (LVE) and Low Release and Exposure Exemption (LOREX) rule codified at 40 CFR § 723.50, that authorizes exemption from the pre-manufacture notice (PMN) requirement of section 5 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604. The deletion resulted from a mistake in a "non-substantive procedural change" to update addresses in several TSCA regulations.

DATES: This technical correction is effective June 15, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Roy Seidenstein, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 202–260–2252, fax: 202–260–0118, e-mail: seidenstein.roy@epa.gov. For general information contact: Joseph S. Carra, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 202–554–1404, TDD: 202–554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You are governed by this rule if you submit or have submitted, on or after May 30, 1995, a LVE or LOREX notice to EPA pursuant to 40 CFR 723.50. Thus, you may be affected by this action if you manufacture (defined by statute to include import) chemical substances. Entities potentially affected by this action may include, but are not limited to:

Type of Entity	SIC	NAICS	Examples of Potentially Affected Entities
Chemical Manufacturers or Importers.	28 2911	325 32411	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

The chart above is not intended to be exhaustive, but rather provides a guide for readers regarding entities that may be affected by this action. Other types of entities not listed could also be affected. The Standard Industrial Classification (SIC) codes or the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the provisions in 40 CFR 723.50. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/homepage/fedrgstr/.

B. In person or by phone

If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–50636]. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE-B607, Waterside Mall, 401 M St., SW., Washington, DC, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Nonconfidential Information Center telephone number is 202–260–7099.

III. Why is this Technical Correction Necessary?

This notice re-establishes recordkeeping requirements at 40 CFR 723.50(n) that were previously deleted inadvertently. The deletion resulted from a mistake in a "non-substantive procedural change" to update addresses in several TSCA rules. The details of how this error occured are as follows:

On April 26, 1985, EPA published a final rule entitled "Exemption for Chemical Substances Manufactured in Quantities of 1,000 Kg or Less Per Year" (50 FR 16477). That rule was promulgated under section 5(h)(4) of the Toxic Substances Control Act (TSCA) and creates an exemption from the premanufacture notice (PMN) requirement of TSCA section 5(a)(1)(A) and 40 CFR part 720. The exemption is based on a determination by EPA that those chemical substances that satisfy the requirements of the exemption will not present an unreasonable risk of injury to human health or the environment. The exemption, commonly called the Low Volume Exemption (LVE) Rule, was codified at 40 CFR 723.50. The original LVE rule contained "Submission of information" requirements at 723.50(n) and "Recordkeeping" requirements at 723.50(o).

On March 29, 1995, at 60 FR 16336, EPA published a final rule which amended the LVE rule at 40 CFR 723.50, effective May 30, 1995. The new title of § 723.50 became "Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures." Among

other things, the March 1995 amendment increased the low volume limit from 1,000 kilograms per year to 10,000 kilograms per year (see § 723.50(c)(1)) and added a new exemption (at § 723.50(c)(2)) for chemicals with low environmental release and low human exposure, commonly called the LOREX exemption. The March 1995 amendment did not contain a separate "Submission of information" paragraph, and moved the "Recordkeeping" requirements to § 723.50(n). (In the amended LVE/LOREX rule, § 723.50(e) includes directions on the address to which notices must be submitted.)

On July 3, 1995, at 60 FR 34462, EPA published an immediately effective final rule entitled "Technical Amendments to TSCA Regulations to Update Addresses." That amendment was intended to revise address information in several different TSCA regulations, including § 723.50. The preamble to the July 3, 1995 technical amendment states "Because these changes are non-substantive procedural changes, notice and public comment are not necessary. These changes are effective immediately."

It is quite clear from the text of the July 3, 1995 technical amendment that it contained a significant error. In particular, it appears that the July 3, 1995 technical amendment was written without knowledge or consideration of the March 1995 LVE/LOREX amendments, which had changed the title and text of the paragraph at § 723.50(n) from a provision entitled "Submission of information" to a provision entitled "Recordkeeping." The July 3, 1995 technical amendment incorrectly refers to the title of the rule at § 723.50 as "Chemical substances manufactured in quantities of 1,000 kilograms or less per year," rather than the title that became legally effective on May 30, 1995, i.e., "Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures." Moreover, the supposedly updated address inserted at § 723.50(n) by the July 3, 1995 technical amendment is virtually identical to the address that was already present in the LVE/LOREX rule at § 723.50(e) at that time. The only difference in address is that the July 3, 1995 amendment included "Room G–099" and the LVE/LOREX rule at § 723.50(e) does not state a room number. Today's technical correction retains the room number provided in the July 3, 1995 technical amendment, but relocates the address information to § 723.50(e).

More importantly, because the July 3, 1995 technical amendment accidentally inserted provisions entitled "Submission of information" in the wrong place in the LVE/LOREX rule, i.e., at § 723.50(n), the July 3, 1995 rulemaking unintentionally deleted the recordkeeping requirements then-existing at § 723.50(n). Today's technical correction restores the LVE/LOREX recordkeeping requirements at § 723.50(n) that were unintentionally deleted.

IV. Why Is this Technical Correction Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As explained above, the corrections contained in this action will simply reverse an inadvertent deletion that occurred when a previous technical amendment that purported merely to correct a submission address failed to consider a recent amendment that relocated that address provision. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) to make this amendment without prior notice and comment.

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. EPA has made such a good cause finding for this final rule, and established an effective date of June 15, 1999. Pursuant to 5 U.S.C 808(2), this determination is supported by the brief statement in Unit IV. of this preamble. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Reporting and recordkeeping requirements.

Dated: May 21, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 723 is amended as follows:

PART 723—[AMENDED]

1. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

2. In § 723.50, revise the second sentence of paragraph (e)(1) and revise paragraph (n) to read as follows:

§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

* * * * *

(e) * * * (1) * * * The notice must be sent in writing to: TSCA Document Control Officer (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Room G–099, 401 M St., SW., Washington, DC 20460. * * *

* * * * *

(n) *Recordkeeping.* (1) A manufacturer of a new chemical substance under paragraph (c) of this section must maintain the records described in this paragraph at the manufacturing site or site of importation for a period of 5 years after their preparation.

(2) The records must include the following to demonstrate compliance with this section:

(i) Records of annual production volume and import volume.

(ii) Records documenting compliance with the applicable requirements and restrictions of paragraphs (c), (e), (f), (h), (i), (j), and (k) of this section.

(3) Any person who manufactures a new chemical substance under the terms of this section must, upon request of a duly designated representative of EPA, permit such person at all reasonable times to have access to and to copy records kept under paragraph (n)(2) of this section.

(4) The manufacturer must submit the records listed in paragraph (n)(2) of this section to EPA upon request. Manufacturers must provide these records within 15 working days of receipt of such request.

* * * * *

[FR Doc. 99–15174 Filed 6–14–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[USCG–1998–4469]

RIN 2115–AF67

Management Information System (MIS) Requirements

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule (USCG–1998–4469) which was published April 27, 1999. The rule changed the Management Information System (MIS) annual reporting requirements for chemical drug testing.

EFFECTIVE DATE: This correction notice is effective June 15, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1998–4469), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001. You may also access docket materials over the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Jennifer Ledbetter, Coast Guard, telephone 202–267–0684. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background

The Office of Management and Budget (OMB) requested that the Coast Guard reduce the amount of information collected under the Management Information System (MIS) annual reporting requirements for chemical testing data. The required reports provide drug and alcohol testing information from marine employer chemical testing programs. The Coast Guard and OMB discussed how to reduce the annual reporting requirements for chemical drug testing information. The reductions discussed with OMB were set out in the final rule.

Need for Correction

As published, the final rule contains an inaccurate website address that may prove to be misleading and therefore needs to be corrected.

Correction of Publication

Accordingly, the publication on April 27, 1999 of the final rule (USCG–1998–4469), which is the subject of (FR Doc. 99–10553) is corrected as follows:

§ 16.500 [Corrected]

1. On page 22559, in the second column, line 10, the website address "http://www.uscg.mil/hq/g-m.html" is corrected to read "http://www.uscg.mil/hq/g-m/nmc/genpub.htm".

Dated: June 4, 1999.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–15042 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AF58

Amendment by Mexico to Appendix III Listing of Bigleaf Mahogany Under the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule announces an amendment to the Appendix III listing of bigleaf mahogany (Swietenia macrophylla) under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention). The species in the Americas and its logs, sawn wood, and veneer sheets have been included in Appendix III since November 1995, based on an action by the Government of Costa Rica. The Government of Mexico has supplied information to the CITES Secretariat to independently include the species in Appendix III to support its national legislation for the species and the need for cooperation of other CITES countries in controlling the international trade. We will consider any comments received on whether to enter a reservation on Mexico's action for this species.

DATES: This rule is effective on June 15, 1999. The change to the Appendix III listing for the Mexican population of the species as set forth in this rule entered into force on April 29, 1999, under the terms of the Convention.

ADDRESSES: Please send correspondence concerning the amendment announced in this rule to Chief, Office of Scientific

Authority, ARLSQ 750; U.S. Fish and Wildlife Service; Washington, DC 20240; fax number 703–358–2276. Express and messenger deliveries should be addressed to Chief, Office of Scientific Authority, Room 750; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Arlington, Virginia 22203.

You may obtain the text of the Appendix III Notification from the Convention's Secretariat on request, and related materials are available for public inspection by appointment from 8 a.m. to 4 p.m. Monday through Friday, at the above address in Arlington, Virginia.

Please send certificate/permit questions or any applications concerning this regulation to Chief, Office of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Room 700; Arlington, Virginia 22203; fax number 703–358–2281. Express and messenger deliveries should be addressed to Chief, Office of Management Authority, at that Arlington address.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, phone 703–358–1708, fax 703–358–2276, E-mail: r9osa@mail.fws.gov; or the Office of Management Authority, telephone 800–358–2104, E-mail: r9oma_cites@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249) regulates international trade in certain animal and plant species. The species for which trade in particular specimens is controlled are listed in one of three appendices. Appendix III is comprised of species that any Party country informs the CITES Secretariat are subject to regulation within its jurisdiction for purposes of restricting or preventing exploitation, and for which it needs the cooperation of other Parties to regulate international trade in specimens of the species. Resolution Conf. 9.25 (Rev.) provides guidance to assist Party countries in determining individually whether a species would qualify for inclusion in Appendix III.

Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless the trade in specimens is strictly controlled. Appendix II also can include species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other traded species). Resolution Conf. 9.24 provides criteria and guidance to assist the Parties in determining together (usually at a Conference of the Parties or COP) whether a species would qualify for inclusion in Appendix I or Appendix II. Under CITES, only those species included in Appendix I are banned from international trade for primarily commercial purposes in specimens from the wild.

This rule updates the list of CITES species that is reproduced in the U.S. Code of Federal Regulations (CFR) at 50 CFR 23.23(f). We published the current information regarding CITES-listed species following COP10 (see below) in the **Federal Register** of August 22, 1997 (62 FR 44627). As advanced by the Government of Mexico pursuant to Article XVI paragraph 1 of the Convention, this notice acknowledges that now Mexico, Brazil, Bolivia, and Costa Rica have added Swietenia macrophylla (bigleaf mahogany (also respectively called mogno, mara, or caoba)) to Appendix III in support of their domestic conservation measures and need for cooperation of other Parties.

Therefore, bigleaf mahogany populations in the Americas (i.e., South America, Central America, the Caribbean, and North America) continue to be included in CITES Appendix III, including only logs, sawn wood, and veneer sheets of the species as the parts or derivatives covered by the provisions of the Convention. Thus, products such as finished furniture are excluded. Moreover, export of specimens from plantations located outside the Americas is not regulated. (At COP10 in June 1997, the categories saw-logs, sawn wood, and veneers were revised slightly to the above for several such listings; 62 FR 44627.)

The CITES Secretariat notified the Party countries on January 29, 1999 (in an unnumbered Notification), of this addition to Appendix III by Mexico of this species. In accordance with Article XVI paragraph 2, such an amendment becomes effective 90 days after notification, in this case on April 29, 1999. Appropriate documentation as required by CITES (usually an export permit) must accompany all the shipments of bigleaf mahogany originating from Mexico that are exported on or after that date. The importer must present the documentation upon import to the Party countries.

International trade in Appendix III species and their parts and derivatives that are specified as being included requires the issuance of either an export permit, a certificate of origin, a re-export certificate, or a pre-Convention certificate, by the exporting or the re-exporting Party. An export permit, which signifies that the specimens were not obtained in contravention of the laws of that country for conservation, is required if the shipment originates from the Party that added the species to Appendix III. In the case of bigleaf mahogany, the effective dates for countries including the species in Appendix III are: Mexico—April 29, 1999; Brazil—July 26, 1998 (see **Federal Register** October 30, 1998, 63 FR 58325–58327); Bolivia—March 19, 1998 (see **Federal Register** of May 14, 1998, 63 FR 26739–26741); and Costa Rica—November 16, 1995 (see **Federal Register** of February 22, 1996, 61 FR 6793–6795).

Export from the other countries in the Americas requires the issuance of either a certificate of origin that verifies the specimens originated in a non-listing country, or a pre-Convention certificate that verifies the specimens were acquired before the provisions of the Convention applied to them (i.e., November 16, 1995). Re-export—the export of specimens that originated in the Americas that were previously imported—requires the issuance of a re-export certificate by all countries. All the countries of South America, Central America, and North America and some countries in the Caribbean are Parties to the Convention and must issue CITES documents that contain standard information (Resolution Conf. 10.2). Countries not party to the treaty must issue comparable documentation as specified in Article X of CITES and Resolution Conf. 9.5.

The Convention's Secretariat and the U.S. Office of Management Authority in 1995 (and other times since) have inquired about certificates of origin or permits that exporting range countries issue for shipments of the specimens of this species (i.e., logs, sawn wood, and veneer sheets). We received responses from Guatemala, Belize, Honduras, Nicaragua, Venezuela, and Peru (cf. Secretariat's April 27, 1998, Notification No. 1998/15). Costa Rica, Bolivia, Brazil, and Mexico, as Parties listing the species in Appendix III, use their regular documents (e.g., permits). Importation or exportation of CITES-regulated plant specimens must be through particular designated U.S. Department of Agriculture ports (50 CFR 24.12), which includes additional ports designated for logs and lumber. For

information on the types of documents required for such mahogany importation into the United States, as well as requests for any documents needed for such re-export or export from the United States, you should contact the Office of Management Authority (address and phone number above).

Any Party country may at any time enter a reservation on a species (or pertinent population) added to Appendix III. A Party that has entered a reservation is treated as a country that is not party to the Convention with respect to the trade in the species concerned (until such time as that Party withdraws its reservation). We thoroughly discussed the limited effects of a reservation in alleviating importers and exporters from documentation requirements with the other CITES Parties in a **Federal Register** notice on November 17, 1987 (52 FR 43924). In a subsequent **Federal Register** notice of March 28, 1988 (53 FR 9945; see also 53 FR 12497, April 14, 1988), we made a procedural change in requesting comments about such reservations for species added to Appendix III. Because the effects of such a reservation are limited, and there is also no time limit for reserving on a species or a population added to Appendix III, a proposed rule is not published at the time the list in § 23.23 is amended. Regardless of any U.S. decision to enter a reservation, this particular amendment to Appendix III enters into force on April 29, 1999, under the terms of the Convention. We publish this document to inform the public of this international action, while still affording those interested the opportunity and time to assess the merits of entering a reservation. Therefore, this document is not a rule under 5 U.S.C. 553, and good cause exists to omit the proposed-rule notice and public-comment process since it is unnecessary and contrary to the public interest (5 U.S.C. 553(b)). Because bigleaf mahogany in the Americas was added to Appendix III of the Convention effective on November 16, 1995, and because of the April 29, 1999 effective date of Mexico's action and other reasons stated in this notice, the Service finds that good cause exists for making this rule effective upon its date of publication (5 U.S.C. 553(d)).

The Department of the Interior has determined that changes to the Convention Appendices, which result from actions of the Parties to the treaty, do not require preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). This notice recognizes Mexico's decision to include one of their native species in CITES Appendix III and serves as public notice of their decision to potential importers and exporters, as well as other persons who may have a need to know of this Appendix III amendment. Because this amendment to 50 CFR § 23.23 is simply a notification to the public on an action that has been taken by Mexico under the terms of CITES, this notice does not constitute a "rule" for purposes of the Administrative Procedure Act (5 U.S.C. 551). Accordingly, the provisions of Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Small Business Regulatory Enforcement Fairness Act of 1966 do not apply to this notice.

No information collection requirements requiring Office of Management and Budget approval is contained in this action. For any permits or certificates required for re-export from the United States of this or any other CITES-listed species (see 50 CFR 23), the Office of Management and Budget has approved the collection of information under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1018–0093 and 1018–0012.

At the tenth meeting of the Conference of the Parties to the Convention (COP10) in June 1997, the United States was among 67 of 112 Parties that voted to include this species in Appendix II; this 60 percent of the Parties in favor, however, fell short of the two-thirds majority needed for adoption of the proposal (see the **Federal Register** notice of August 22, 1997 (62 FR 44627)). After the vote, Mexico in Plenary stated its intention to include the species in Appendix III. We do not recommend entering a reservation on this enhanced status in Appendix III for the Mexican population of the species. We could consider doing so only if valid and compelling reasons are shown that implementation of this listing would be contrary to the interests or laws of the United States. We now solicit comments on whether to enter a reservation, and we are seeking any new information that becomes available.

This document was prepared by Ms. Julie Lyke, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Regulation Promulgation

Accordingly, for the reasons set out above in this document, the Service amends part 23 of title 50 (chapter I, subchapter B) of the Code of Federal Regulations as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

2. Section 23.23(f) is amended by revising the entry for *Swietenia macrophylla* under the plant family Meliaceae to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
* * * * * * *			
PLANT KINGDOM:	PLANTS:		
* * * * * * *			
Family Meliaceae:	Mahogany family:		

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* * *	* * *	*
Swietenia macrophylla populations in the Americas (including logs, sawn wood, and veneer sheets, but no other parts or derivatives, e.g., products).	Bigleaf mahogany	III (Bolivia, Brazil, Costa Rica, Mexico) ...	11/16/95
* * *	* * *	* * *	*

Dated: June 3, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–14928 Filed 6–14–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 635

[I.D. 060399A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Retention limit adjustment.

SUMMARY: NMFS adjusts the daily retention limit for the Angling category fishery for Atlantic bluefin tuna (BFT) in all areas to two school BFT (measuring 27 to less than 47 inches curved fork length) and one large school or small medium BFT (measuring 47 to less than 73 inches curved fork length) per vessel. This daily retention limit adjustment is effective June 25 through July 25, 1999, after which it will revert to one large school or small medium BFT per vessel. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of this category.

DATES: The daily retention limit adjustment is effective 1 a.m., local time, June 25, 1999, until 11:30 p.m., local time, July 25, 1999.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*), governing the harvest of Atlantic highly migratory species by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285 and are to be replaced by consolidated regulations at 50 CFR part 635 effective July 1, 1999 (64 FR 29090, May 28, 1999).

Implementing regulations for the Atlantic tuna fisheries at § 285.24 (consolidated at 50 CFR 635.23 effective July 1, 1999) allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or the per boat limit to a per angler limit.

NMFS is responsible for implementing a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to limit the catch of school BFT to no more than 8 percent by weight of the total domestic quota over each 4-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT landings and school BFT reserve categories, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). The recent ICCAT recommendation allows NMFS more flexibility to make interannual adjustments for overharvests and underharvests, provided that the 8-percent landings limit is not exceeded over the applicable 4-consecutive-year-period. This approach provides NMFS with the flexibility to enhance fishing opportunities and the collection of information on a broad range of BFT size classes and responds to requests from the recreational fishing community for more advance notice of retention limit adjustments and greater certainty in planning for the fishing season.

This daily retention limit adjustment is effective June 25 through July 25, 1999, after which it will revert to one large school or small medium BFT per vessel. NMFS will consider adjusting the daily retention limit once again during late summer and early fall season if BFT have moved father north to the waters off Rhode Island, New York, and northern New Jersey, provided that BFT Angling category quota remains available.

The daily retention limit and the duration of daily retention limit adjustment have been selected based on an examination of past catch and effort rates. NMFS will continue to monitor the Angling category fishery closely through the Automated Catch Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or an additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 888–USA–TUNA (888–872–8862) or 978–281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Catch Reporting System by calling 888–USA–TUNA (888–872–8862) or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

Classification

This action is taken under 50 CFR 285.24(d)(3), and, after June 30, 1999, shall continue in effect under 50 CFR 635.23(b)(3). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15132 Filed 6–14–99; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 64, No. 114
Tuesday, June 15, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Advance notice of proposed rulemaking; invitation to submit comments.

SUMMARY: This document gives advance notice of proposed rulemaking to amend the Regulations of the Secretary of the Treasury governing practice before the IRS, which appear in the Code of Federal Regulations and in pamphlet form as Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers Before the Internal Revenue Service. This document also invites individuals and organizations to submit comments regarding necessary amendments.

DATES: Submit comments on or before July 15, 1999.

ADDRESSES: Mail comments to: Internal Revenue Service; Office of Director of Practice, 1111 Constitution Ave., NW., Washington DC 20224; Attn: C:AP:P.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice, 202–694–1891.

SUPPLEMENTARY INFORMATION:

Proposed Rulemaking

Section 330 of 31 U.S.C. authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department and, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Department those representatives who are incompetent, disreputable, or dishonest. Pursuant to section 330, the Secretary has promulgated the regulations in Circular 230 (31 CFR part 10). Those regulations authorize the Director of Practice to act upon application for enrollment to practice before the IRS, to institute proceedings for suspension or disbarment from practice before the IRS, to make inquiries with respect to matters under his jurisdiction, and to perform such other duties as are necessary to carry out his functions.

The regulations have been amended from time to time to address various specific issues in need of resolution. For example, the impetus behind the most recent amendments, those promulgated in 1994, was to make the regulations reflect more closely the standards for tax return preparation under both section 6694 of the Internal Revenue Code and professional guidelines.

In contrast, the proposed rulemaking contemplates a general review of the regulations. The Director of Practice has established a working group, composed of Treasury Department and IRS officials, which will evaluate the regulations from several standpoints: legal developments; the integrity of the profession of IRS practitioner; service to taxpayers; fairness to practitioners; and efficient administration of the tax laws.

Invitation To Submit Comments

The Director of Practice invites individuals and organizations to submit comments regarding necessary amendments to Circular 230. Comments may be in any format and may address substantive matters as well as drafting changes that would improve the clarity and organization of the regulations.

Dated: May 27, 1999.

Patrick W. McDonough,

Director of Practice, Department of the Treasury.

[FR Doc. 99–13964 Filed 6–14–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[USCG–1998–4354]

RIN 2115–AE88

Tank Vessel Response Plans for Hazardous Substances

AGENCY: Coast Guard, DOT,

ACTION: Notice of public meeting and extension of comment period.

SUMMARY: The Coast Guard announces a public meeting on its proposed rules on Tank Vessel Response Plans for Hazardous Substances. The meeting will provide the public with an opportunity to comment on the proposed rule. We are also extending the comment period for the notice of proposed rulemaking (NPRM) for Tank Vessel Response Plans for Hazardous Substances to August 30, 1999, to allow additional time for public comment.

DATES: The meeting will be held on Thursday, August 12, 1999, from 1 p.m. to 5 p.m. and Friday, August 13, 1999, from 9 a.m. to 5 p.m. The meeting may close early if all business is finished. Written comments and related material must reach the Docket Management Facility on or before August 30, 1999.

ADDRESSES: The meeting will be held at The Hilton—University of Houston Hotel and Conference Center, 4800 Calhoun Street, Houston, TX 77204. The conference center is located at Entrance 1# to the Central University of Houston campus.

To make sure your written comments and related material are not entered more than once in the docket, please submit them by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1998–4354), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the

public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: LT Michael Roldan, Office of Operating and Environmental Standards (G–MSO), telephone 202–267–0106: e-mail: *mroldan1@comdt.uscg.mil* or LT Claudia Gelzer, Office of Response, (G–MOR), telephone 202–267–1983; email: cgelzer@comdt.uscg.mil. These telephones are equipped to record messages on a 24-hour basis. For questions on viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On March 22, 1999, we published an NPRM entitled "Tank Vessel Response Plans for Hazardous Substances" in the **Federal Register** (64 FR 13734). In response to requests, we will hold this public meeting to receive comments on the vessel response plan requirements as proposed in the NPRM.

Request for Comments

The Coast Guard encourage you to participate by attending this public meeting. The Coast Guard also encourage you to submit written comments on our NPRM entitled "Tank Vessel Response Plans for Hazardous Substances." if you submit written comment or related material, please include your name and address, identify the docket number for this rulemaking (USCG–1998–4354), indicate the specific section of the NPRM to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelop. We will consider all comments and material received during the comment period.

Information on Service for Individual With Disabilities

For information of facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Michael Roldan at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: June 9, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–15138 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Outdoor Developed Areas; Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Regulatory negotiation committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet from Thursday, July 15, 1999 to Friday, July 16, 1999, 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The committee will meet at the National Highway Institute, Training and Conference Center, 4600 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (http://www.access-board.gov/rules/outdoor.htm).

SUPPLEMENTARY INFORMATION: In June 1997, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62 FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by July 2, 1999, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–15135 Filed 6–14–99; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 483, and 485

[HCFA–1053–CN]

RIN 0938–AJ50

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction notice.

SUMMARY: In the May 7, 1999 issue of the **Federal Register** (64 FR 24716), we published a proposed rule to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. This document corrects errors made in that document.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips (410) 786–4531.

SUPPLEMENTARY INFORMATION: In publishing Table 3C of the Addendum to the May 7, 1999 proposed rule (64 FR 24765 through 24793), which lists each hospital's case mix index and adjusted average hourly wage, we inadvertently omitted some hospitals and we listed other hospitals more than once with different data.

However, the table as published in the May 7,1999 **Federal Register** showed correct figures for the vast majority of hospitals. The corrected Table 3C is as follows. The average hourly wages shown in the corrected Table 3C reflect corrections only for a limited number of hospitals and are based on data on file at HCFA as of February 22, 1999. They do not reflect any changes processed after that date. Hospitals should review their final wage data (available on

HCFA's Internet-home page http://www.hcfa.gov) to verify the data HCFA is using to calculate the Federal fiscal year (FY) 2000 wage index. The corrections in Table 3C do not affect the calculations of area average hourly wages.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX

Prov.	Case mix index	Avg. hour. wage
010001	1.4554	15.85
010004	0.9916	15.02
010005	1.1743	16.26
010006	1.4464	17.31
010007	1.1415	14.80
010008	1.1818	17.65
010009	1.0947	17.53
010010	1.0813	15.91
010011	1.5845	20.63
010012	1.2638	19.30
010015	1.0478	18.35
010016	1.2449	16.13
010018	0.9705	18.96
010019	1.2752	15.49
010021	1.2478	14.63
010022	0.9572	20.51
010023	1.6841	16.26
010024	1.4253	16.03
010025	1.3495	14.53
010027	0.8128	14.93
010029	1.5973	16.41
010031	1.4197	18.02
010032	0.8709	12.65
010033	1.9994	19.23
010034	1.0469	14.73
010035	1.2391	17.48
010036	1.0924	22.58
010038	1.2343	18.33
010039*	1.6327	18.81
010040	1.4992	19.10
010043	1.0500	16.20
010044	1.0251	17.02
010045	1.1784	15.01
010046	1.4732	17.18
010047	0.9281	16.38
010049	1.1802	14.48
010050	1.0767	15.42
010051	0.8974	9.94
010052	1.0154	13.86
010053	1.0510	13.18
010054	1.1343	17.12
010055	1.4214	18.19
010056	1.3310	19.08
010058	1.0341	12.78
010059	1.0571	18.19
010061	1.1108	15.92
010062	1.0103	13.57
010064	1.7507	20.90
010065	1.3275	15.64
010066	0.8965	12.07
010068	1.3058	18.74
010069	1.1341	13.57
010072	1.0767	14.35
010073	0.8779	12.83
010078	1.2917	17.71
010079	1.1849	16.87
010080	.....	13.85
010081	1.6352	10.92
010083	1.0573	16.21
010084	1.5014	18.78
010085	1.3174	23.43
010086	1.0101	14.93
010087	1.7240	18.39
010089	1.2016	16.61
010090	1.6543	18.11
010091	0.9852	16.36
010092	1.4229	16.25
010094	1.1553	18.56
010095	1.0478	11.90
010097	0.8058	12.90
010098	0.9903	14.28
010099	1.1704	15.93
010100	1.2946	15.48
010101	1.0189	15.42
010102	0.9304	12.73
010103	1.8373	19.09
010104	1.6940	17.84
010108	1.1487	8.43
010109	1.0505	14.09
010110	0.9677	15.91
010112	1.1430	15.11
010113	1.6124	17.24
010114	1.2547	17.26
010115	0.8486	13.75
010118	1.2460	17.93
010119	0.8454	18.17
010120	0.9867	17.03
010121	1.2837	15.18
010123	1.1677	18.16
010124	1.2293	16.27
010125	1.0592	14.42
010126	1.1226	17.64
010127	1.3140	19.61
010128	0.9181	12.57
010129	1.0657	14.43
010130	1.0438	16.35
010131	1.3316	17.91
010134	0.8091	10.78
010137	1.2679	15.93
010138	0.9201	12.13
010139	1.6352	19.95
010143	1.2331	15.67
010144	1.4122	17.12
010145	1.3320	19.99
010146	1.1893	16.86
010148	0.9793	14.64
010149	1.2499	17.08
010150	1.0444	16.87
010152	1.2458	15.08
010155	1.0820	16.70
020001	1.5225	27.97
020002	1.0518	26.91
020004	1.1822	26.40
020005	0.8955	29.01
020006	1.1279	26.77
020007	0.8238	24.96
020008	1.0784	30.51
020009	0.8160	23.18
020010	0.9401	18.64
020011	0.9160	29.47
020012	1.2784	23.92
020013	0.9595	25.82
020014	1.1175	24.09
020017	1.4913	24.97
020018	0.9175	
020019	0.7991	
020021	0.7633	
020024	1.1070	22.73
020025	0.8911	27.15
020026	1.2510	
020027	0.9446	
030001	1.2609	19.47
030002	1.8047	21.41
030003	2.2773	23.68
030004	0.9879	17.73
030006	1.5274	17.64
030007	1.2554	18.56
030008	2.1835	
030009	1.2480	17.93
030010	1.3865	18.80
030011	1.4370	20.08
030012	1.2400	19.28
030013	1.2707	21.02
030014	1.5090	19.47
030016	1.2344	20.56
030017	1.4184	19.80
030018	1.8588	18.81
030019	1.2360	19.91
030022	1.4920	15.79
030023	1.4956	22.44
030024*	1.7461	21.86
030025	0.9555	17.67
030027	0.9637	17.56
030030	1.6444	21.62
030033	1.2359	16.84
030034	0.9867	19.09
030035	1.1565	19.72
030036	1.2807	18.94
030037	2.0840	21.43
030038	1.6154	22.06
030040	1.0766	17.97
030041	0.8876	17.44
030043	1.2210	20.56
030044	0.8783	16.47
030047	0.8953	19.69
030049	0.8732	19.09
030054	0.8646	14.49
030055	1.2321	18.28
030059	1.2861	21.05
030060	1.1438	16.77
030061	1.6876	17.35
030062	1.1773	17.48
030064	1.7545	18.54
030065	1.8106	19.93
030067	1.0273	15.62
030068	1.0196	17.35
030069	1.3658	19.00
030071	0.9615	
030072	0.8749	
030073	1.0330	
030074	0.8723	
030075	0.8002	
030076	0.8839	
030077	0.8563	
030078	1.1466	
030079	0.9065	
030080	1.3765	19.99
030083	1.2782	23.64
030084	1.1334	
030085	1.4665	17.84
030086	1.4452	18.50
030087	1.6818	20.39

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
030088	1.3654	19.58
030089	1.6757	19.50
030092	1.5829	21.56
030093	1.4182	19.47
030094	1.2704	19.78
030095	1.1383	14.25
030099	0.9405	18.07
030100	2.0377	
030101	1.4091	
030102	2.6049	
040001	1.0898	15.57
040002	1.1548	14.09
040003	1.1009	14.00
040004	1.6240	17.29
040005	1.0392	12.88
040007	1.6923	19.52
040008	1.0369	12.70
040010	1.3439	17.62
040011	0.9437	12.27
040014	1.3239	15.39
040015	1.2153	14.60
040016	1.6757	17.54
040017	1.1681	14.95
040018	1.2213	17.56
040019	1.0343	25.71
040020	1.6155	14.81
040021	1.1803	16.28
040022	1.4732	16.00
040024	0.9957	15.73
040025	0.9089	10.95
040026	1.5803	18.24
040027	1.2533	14.54
040028	1.0058	12.84
040029	1.2994	17.78
040030	0.8774	14.15
040032	0.9640	13.33
040035	0.9449	11.21
040036	1.4553	17.91
040037	1.0573	13.48
040039	1.2280	13.84
040040	0.9016	17.43
040041	1.2600	13.36
040042	1.1970	14.66
040044	1.0386	11.44
040045	1.0120	18.77
040047	1.0272	16.39
040048		15.82
040050	1.1538	11.79
040051	1.0863	16.28
040053	1.0741	15.82
040054	0.9793	15.04
040055	1.4239	16.10
040058	1.0515	15.67
040060	0.9756	11.47
040062	1.6588	17.28
040064	1.0572	12.40
040066	1.0456	17.64
040067	1.0993	13.49
040069	1.0282	16.11
040070	0.9322	15.48
040071	1.6635	16.12
040072	1.0381	15.84
040074	1.2312	17.38
040075	1.0116	12.75
040076	1.0811	18.55
040077	1.0517	12.46
040078	1.5208	17.86
040080	1.0062	15.74
040081	0.8655	10.68
040082	1.0845	16.51
040084	1.1071	17.25
040085	1.1521	15.78
040088	1.3888	15.67
040090	0.8936	17.55
040091	1.1718	17.04
040093	0.9205	12.90
040100	1.1466	14.97
040105	0.9914	14.24
040106	0.9670	15.40
040107	1.0684	19.62
040109	1.1501	13.98
040114	1.8325	18.31
040116	1.1343	19.57
040118	1.4187	17.43
040119	1.1546	14.62
040124	1.0493	17.25
040126	0.9485	11.68
040132		13.18
040134	2.7108	
040135	2.3711	
050002	1.4956	27.80
050006	1.4137	19.53
050007	1.4826	29.54
050008	1.4218	25.86
050009	1.6817	26.25
050013	1.9898	24.85
050014	1.2086	24.53
050015	1.4488	25.38
050016	1.1530	20.15
050017 *	2.0931	23.63
050018	1.3662	14.66
050021		28.50
050022	1.6635	22.55
050024	1.3224	20.34
050025 *	1.7835	20.30
050026 *	1.5148	28.57
050028	1.3534	16.45
050029	1.4007	23.29
050030	1.3133	21.01
050032	1.3395	22.59
050033	1.4634	24.56
050036	1.7263	20.47
050038	1.3484	27.83
050039	1.6233	22.25
050040	1.1965	30.67
050042	1.2702	22.23
050043	1.4929	33.51
050045	1.2651	20.73
050046	1.1767	26.35
050047	1.5561	29.44
050051	1.1204	17.84
050054	1.1916	19.37
050055	1.2420	29.09
050056	1.3412	23.82
050057	1.6051	21.27
050058	1.4966	25.37
050060	1.5503	20.92
050061	1.4118	23.74
050063 *	1.3493	23.07
050065	1.6823	21.18
050066	1.3020	21.42
050067	1.2472	21.30
050068	1.1039	28.48
050069	1.6089	29.30
050070	1.2353	32.60
050071	1.3248	33.14
050072	1.3875	32.97
050073	1.2629	34.61
050074	0.8073	
050075	1.3484	33.52
050076	2.0314	33.88
050077	1.5621	23.22
050078	1.2974	25.98
050079	1.4850	30.03
050082	1.6712	21.70
050084	1.6107	23.10
050085	0.9686	24.06
050089	1.3384	19.12
050090	1.2640	23.81
050091	1.0925	22.22
050092	0.8469	15.38
050093	1.5659	24.09
050095		33.38
050096	1.1356	21.67
050097	1.5113	22.61
050099	1.4590	23.66
050100	1.6407	30.06
050101	1.3575	30.01
050102	1.3583	21.29
050103 *	1.5762	25.38
050104	1.4490	25.44
050107	1.4605	21.76
050108	1.8355	26.46
050109		26.48
050110	1.2159	20.18
050111	1.2944	21.74
050112	1.3823	26.31
050113	1.3163	27.73
050114	1.3768	25.91
050115	1.4961	20.94
050116	1.5241	24.61
050117	1.3978	20.44
050118	1.1846	23.94
050121	1.2928	18.94
050122	1.5655	
050124	1.2796	23.02
050125	1.3863	24.04
050126	1.4556	23.64
050127	1.2518	19.76
050128	1.6084	24.18
050129	1.7494	13.56
050131	1.2640	29.06
050132	1.3640	22.91
050133	1.2704	24.40
050135	1.4808	27.03
050136	1.3536	24.43
050137	1.2990	30.07
050138	2.0444	37.41
050139	1.2535	31.38
050140	1.3204	33.66
050144	1.4207	25.75
050145	1.3756	30.06
050146	1.5841	
050148	1.1044	21.06
050149	1.4969	21.91
050150	1.2679	23.45
050152	1.3293	26.42
050153	1.6402	29.59
050155	1.0988	22.94
050158	1.2998	27.67
050159	1.3323	25.21
050167	1.3726	21.68
050168	1.5375	24.56
050169	1.4739	24.64
050170	1.4500	22.20
050172	1.2520	17.70
050173	1.3744	23.33

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
050174	1.7006	31.21
050175	1.2719	27.38
050177	1.1869	20.25
050179	1.2306	19.29
050180	1.5813	32.19
050183	1.2743	19.98
050186	1.3455	21.91
050188	1.4391	27.44
050189	0.9661	23.24
050191	1.4683	19.96
050192	1.1474	17.81
050193	1.1582	23.73
050194	1.2312	28.27
050195	1.5639	34.54
050196	1.2815	16.69
050197	1.9562	31.26
050204	1.5299	24.39
050205	1.2841	24.02
050207	1.2602	20.86
050211	1.3183	31.15
050213	1.5713	20.73
050214	1.5448	20.87
050215	1.5700	29.63
050217	1.2876	19.89
050219	1.1425	25.47
050222	1.5157	27.04
050224	1.5832	23.79
050225	1.5625	20.93
050226	1.3274	24.24
050228	1.3089	30.16
050230	1.4112	25.30
050231	1.6440	25.63
050232	1.5636	23.38
050233	.....	31.40
050234	1.1512	27.98
050235	1.5544	25.86
050236	1.5146	26.27
050238	1.5288	24.00
050239*	1.5967	20.55
050240	1.5246	25.18
050241	1.1378	27.22
050242	1.4446	30.14
050243	1.5312	22.91
050245	1.5041	22.10
050248	1.2054	25.99
050251	1.1113	18.50
050253	1.4184	19.76
050254	1.1991	19.69
050256	1.7681	21.74
050257	0.9509	19.59
050260	0.9690	23.52
050261	1.2103	20.45
050262	1.8148	28.30
050264	1.3466	29.45
050267	1.6936	24.75
050270	1.3630	23.83
050272	1.3986	21.44
050274	0.9467	21.19
050276	1.1725	28.51
050277	1.4815	22.31
050278	1.5070	23.84
050279	1.2886	21.06
050280	1.6534	24.46
050281	1.3882	18.11
050282	1.3492	23.98
050283	1.5070	27.88
050286	0.9172	17.80
050289	1.7279	28.87
050290	1.6741	26.37
050291	1.1709	26.49
050292	1.1236	22.38
050293	1.0656	19.18
050295	1.4569	20.28
050296	1.2171	25.32
050298	1.3268	20.52
050299	1.3252	25.26
050300	1.4143	22.46
050301	1.2326	26.03
050302	.....	29.19
050305	1.5862	32.71
050307	1.2747	24.39
050308	1.5099	28.40
050309	1.2834	24.40
050310	.....	20.62
050312	1.9686	23.79
050313	1.1560	23.10
050315	1.3473	21.92
050317	.....	19.45
050320	1.2371	30.56
050324	2.0030	26.27
050325	1.2334	23.00
050327	1.6651	22.32
050328	.....	26.32
050329	1.2991	19.54
050331	1.3646	25.53
050333	1.0612	20.15
050334	1.7493	32.02
050335	1.4570	21.04
050336	1.3561	20.10
050342	1.2512	21.90
050343	0.9711	17.24
050348	1.7865	20.71
050349	0.8866	15.05
050350	1.4046	23.77
050351	1.4821	24.94
050352	1.3151	23.59
050353	1.6183	23.25
050355	0.8315	17.16
050357	1.3583	23.64
050359	1.2481	20.40
050360	1.4309	31.76
050366	1.3334	21.40
050367	1.2586	29.48
050369	1.3031	19.87
050373	1.4037	21.92
050376	1.4260	25.30
050377	1.0300	25.64
050378	1.0916	22.24
050379	1.0223	16.90
050380	1.6105	30.58
050382	1.3610	21.00
050385	1.3408	25.92
050388	0.8708	13.20
050390	1.1966	22.39
050391	1.3438	22.42
050392	0.9321	21.93
050393	1.4351	23.14
050394	1.5689	22.32
050395	1.6448	23.63
050397	0.9378	20.77
050401	1.1055	17.78
050404	1.0623	19.28
050406	1.0266	17.12
050407	1.2842	30.12
050410	1.0721	16.47
050411	1.3571	32.24
050414	1.3002	24.34
050417	1.3224	21.89
050419	1.3788	23.12
050420	1.3048	22.68
050421	1.2343	
050423	1.0115	22.33
050424	1.8351	23.78
050425	1.2290	33.69
050426	1.3912	23.71
050427	0.9378	20.07
050430	1.0036	21.14
050432	1.5223	21.50
050433	0.9711	16.80
050434	1.0630	15.63
050435	1.1647	32.99
050436	1.0075	16.36
050438	1.7365	24.08
050440	1.2718	30.82
050441	1.9387	29.05
050443	0.8693	16.43
050444	1.3199	24.67
050446	0.8088	20.54
050447	1.0794	18.34
050448	1.1060	20.08
050449	1.2685	22.13
050454*	1.7746	28.69
050455	1.7950	19.92
050456	1.2213	17.62
050457	1.9135	31.18
050459	1.5161	37.09
050464	1.7088	22.31
050468	1.5610	23.17
050469	1.1462	19.84
050470	1.1450	17.03
050471	1.8998	24.29
050476	1.3673	23.14
050477	1.4363	27.71
050478	0.9815	23.05
050481	1.3946	22.95
050482	1.0697	16.93
050483	2.2575	21.60
050485	1.6061	23.70
050486	.....	24.50
050488	1.3254	32.86
050491	1.1970	24.15
050492	1.4174	21.42
050494	1.2385	25.41
050496	1.7580	33.02
050497	0.8256	
050498	1.2265	24.87
050502	1.7255	22.63
050503	1.3465	23.59
050506	1.3628	21.22
050510	1.2780	33.46
050512	1.4414	34.31
050515	1.3431	35.04
050516	1.5018	25.14
050517	1.2038	20.37
050522	1.1580	31.73
050523	1.2445	28.42
050526	1.2949	23.19
050528	1.1898	18.69
050531	1.1101	20.73
050534	1.2830	23.31
050535	1.5228	24.23
050537	1.3702	22.21
050539	1.3242	22.78
050541	1.5636	34.62
050542	0.9778	19.06
050543	0.8445	20.38
050545	0.7605	27.57

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
050546	0.6981	27.76
050547	0.9021	27.08
050548	.....	26.59
050549	1.6004	27.34
050550	1.3676	25.54
050551	1.3528	24.05
050552	1.2749	22.87
050557	1.5186	21.92
050559	1.2852	24.67
050561	1.2134	33.93
050564	1.3221	24.51
050565	1.3123	22.88
050566	0.9233	18.33
050567	1.5510	24.23
050568	1.3424	20.73
050569	1.2039	24.94
050570	1.6495	24.50
050571	1.3940	24.37
050573	1.5642	25.14
050575	1.1445	
050577	1.3610	20.52
050578	1.2810	30.24
050579	1.4312	30.07
050580	1.2816	23.39
050581	1.4505	23.58
050583	1.6150	23.36
050584	1.2149	23.16
050585	1.2567	26.50
050586	1.3530	23.84
050588	1.2804	30.39
050589	1.2419	24.35
050590	1.3223	
050591	1.3152	22.29
050592	1.2657	26.05
050594	1.6258	22.78
050597	1.2269	22.76
050598	1.3408	28.11
050599	1.5954	26.32
050601	1.6473	32.67
050603	1.4112	22.61
050604	1.4593	33.32
050607	.....	24.10
050608	1.2805	16.15
050609	1.4876	31.93
050613	1.1408	22.73
050615	1.5445	23.61
050616	1.3408	22.60
050618	1.0867	21.70
050623	1.6040	30.32
050624	1.3287	20.68
050625	1.6313	24.43
050630	1.2732	24.10
050633	1.2945	21.98
050635	.....	37.85
050636	1.4342	20.83
050638	1.1056	23.63
050641	1.2985	21.30
050643	0.9493	
050644	1.0737	23.12
050660	1.4981	
050661	.....	20.48
050662	0.8152	28.29
050663	1.1713	23.71
050667	1.0811	24.11
050668	1.1187	39.90
050670	0.7555	21.88
050674	1.2384	36.24
050675	2.2195	15.84
050676	1.0018	17.53
050677	1.3671	33.71
050678	1.2889	19.79
050680	1.1161	27.32
050682	0.9235	17.97
050684	1.2411	21.81
050685	1.1904	32.13
050686	1.2873	33.25
050688	1.1889	30.00
050689	1.4877	34.19
050690	1.4194	33.83
050693	1.3143	33.90
050694	1.3859	22.23
050695	1.0637	23.52
050696	2.1089	26.41
050697	1.3282	21.47
050699	0.5913	28.48
050700	.....	28.45
050701	1.3166	27.62
050702	.....	12.25
050704	1.0850	20.76
050707	0.9714	27.51
050708	1.4521	21.91
050709	1.2542	19.42
050710	1.3362	26.61
050713	0.7909	15.30
050714	1.3545	
050715	.....	19.12
050717	1.2615	
050718	0.7586	
050719	3.1984	
050720	0.9144	
060001	1.6827	19.61
060003	1.2712	19.32
060004	1.2022	21.79
060006	1.2559	17.86
060007	1.1616	16.38
060008	1.0845	17.09
060009	1.5000	21.18
060010	1.6680	22.72
060011	1.3912	22.01
060012	1.3799	19.77
060013	1.3198	19.14
060014	1.8158	20.45
060015	1.6295	23.57
060016	1.1644	15.96
060018	1.2890	22.76
060020	1.6161	17.73
060022	1.5680	19.65
060023	1.6349	19.68
060024	1.7013	21.98
060027	1.6853	21.67
060028	1.5673	22.25
060029	0.8934	21.41
060030	1.3522	20.03
060031	1.5399	19.40
060032	1.4830	22.37
060033	1.1419	13.82
060034	1.5815	21.41
060036	1.1374	19.24
060037	1.0041	14.05
060038	0.9494	14.31
060041	0.9290	14.83
060042	1.0390	20.08
060043	0.8765	13.05
060044	1.1677	18.54
060046	1.0277	20.44
060047	0.9573	15.12
060049	1.3269	20.83
060050	1.2499	16.80
060052	1.0358	12.55
060053	1.0148	14.94
060054	1.4104	19.39
060056	0.9009	17.05
060057	1.0271	23.38
060058	0.9425	16.91
060060	0.9192	14.89
060062	0.8572	14.94
060063	.....	15.09
060064	1.4858	20.90
060065	1.2927	24.30
060066	0.9930	14.07
060068	.....	19.64
060070	1.1240	16.58
060071	1.2070	16.95
060073	0.9583	15.84
060075	1.2385	22.85
060076	1.4334	19.29
060085	0.8865	13.48
060087	.....	21.03
060088	1.0054	16.67
060090	0.9024	14.51
060096	1.1102	23.11
060100	1.5342	22.00
060103	1.3190	22.34
060104	1.2281	22.30
060107	1.1971	13.64
060109	1.0979	
070001	1.7556	26.51
070002	1.8370	25.46
070003	1.1151	26.09
070004	1.2021	17.57
070005	1.4405	25.57
070006	1.3841	28.71
070007	1.3504	20.18
070008	1.2547	26.03
070009	1.2659	23.47
070010	1.6964	25.94
070011	1.3837	18.74
070012	1.1748	23.54
070015	1.3856	21.37
070016	1.4249	26.23
070017	1.3692	25.33
070018	1.3688	28.68
070019	1.1852	24.70
070020	1.3279	25.66
070021	1.2354	27.20
070022	1.8624	25.08
070024	1.3266	24.98
070025	1.8697	21.03
070026	.....	18.79
070027	1.3119	23.11
070028	1.5539	24.76
070029	1.3338	22.75
070030	1.2872	25.55
070031	1.2430	21.66
070033	1.4104	28.06
070034	1.3890	27.67
070035	1.4195	23.06
070036	1.7249	26.95
070038	0.7820	
070039	0.9541	29.07
080001	1.7050	25.28
080002	.....	15.60
080003	1.3859	22.40
080004	1.2655	19.76
080005	.....	14.43
080006	1.2940	22.26
080007	1.4146	20.38

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
090001	1.6083	25.87
090002	1.3508	19.70
090003*	1.3694	26.74
090004	1.7901	24.54
090005	1.3708	24.88
090006	1.3157	20.08
090007	1.3060	21.66
090008	1.5079	21.25
090010	1.0721	15.87
090011	2.1212	27.37
100001*	1.5321	17.59
100002	1.4384	21.32
100004	1.0139	15.25
100006	1.6140	20.63
100007	1.8868	21.89
100008	1.6004	20.72
100009	1.4674	24.29
100010	1.5057	21.91
100012	1.6358	18.17
100014	1.4840	19.83
100015	1.4801	18.24
100017	1.5926	17.77
100018	1.5487	21.46
100019	1.5570	19.81
100020	1.3913	26.18
100022*	1.7896	25.89
100023	1.3582	21.11
100024	1.3508	20.78
100025	1.7579	19.12
100026	1.5828	20.78
100027	1.0140	12.94
100028	1.2109	19.75
100029	1.3427	19.18
100030	1.2532	18.82
100032	1.8549	19.32
100034	1.7609	18.23
100035	1.5876	19.58
100038	1.6639	24.78
100039	1.5294	20.25
100040	1.7522	18.37
100043	1.3301	17.46
100044	1.3902	21.14
100045	1.3907	20.04
100046	1.4313	
100047	1.8501	18.89
100048	0.9391	13.50
100049	1.2657	18.57
100050	1.1486	16.60
100051	1.2376	18.84
100052	1.3877	16.19
100053	1.2157	18.71
100054	1.2782	18.19
100055	1.3757	17.62
100056	1.4971	23.65
100057	1.3578	18.92
100060	1.8350	22.39
100061	1.4669	21.79
100062	1.7286	17.96
100063	1.1599	16.23
100067	1.3589	17.40
100068	1.3616	18.65
100069	1.3001	16.14
100070	1.4351	20.33
100071	1.2326	16.48
100072	1.2524	19.22
100073	1.7197	18.16
100075	1.5960	18.05
100076	1.3003	16.25
100077	1.3909	19.62
100078	1.0296	18.15
100079	1.3325	
100080	1.6003	21.16
100081	1.1021	13.83
100082	1.4970	19.80
100084	1.3481	20.40
100085	1.4397	21.08
100086	1.2342	21.16
100087	1.8333	22.84
100088	1.6475	19.90
100090	1.3787	17.88
100092	1.5757	18.19
100093	1.5959	16.63
100098	1.0964	19.03
100099	1.2201	15.30
100102	1.0153	19.33
100103	0.9381	18.10
100105	1.4533	21.50
100106	1.0265	19.31
100107	1.3135	18.01
100108	0.9981	11.47
100109	1.3849	22.76
100110	1.3691	19.64
100112	0.9729	9.77
100113	1.9447	22.26
100114	1.3410	23.45
100117	1.1881	18.73
100118	1.2985	19.76
100121	1.1822	19.34
100122	1.2062	18.06
100124	1.2948	16.95
100125	1.2606	17.33
100126	1.4687	17.90
100127	1.6571	19.87
100128	2.2008	21.37
100129	1.2934	18.57
100130	1.1799	19.10
100131	1.3441	22.17
100132	1.2951	16.90
100134	0.9749	13.47
100135	1.5963	18.14
100137	1.2769	19.05
100138	1.0055	11.01
100139	1.0923	15.64
100140	1.2176	17.39
100142	1.2184	18.68
100144	1.1622	15.02
100145		19.11
100146	0.9700	17.87
100147	1.0087	14.68
100150	1.3244	21.02
100151	1.7633	19.41
100154	1.5916	19.85
100156	1.1116	17.13
100157	1.5612	21.03
100159	0.9804	16.38
100160	1.2033	21.63
100161	1.7011	21.50
100162	1.3957	19.52
100165	1.1517	15.32
100166	1.4343	19.96
100167	1.3554	21.81
100168	1.3364	20.13
100169	1.7635	20.78
100170*	1.4176	15.12
100172	1.4427	15.18
100173	1.6517	17.34
100174	1.3757	20.51
100175	1.1552	16.74
100176	2.0762	24.70
100177	1.2940	22.00
100179	1.7112	20.91
100180	1.4416	18.48
100181	1.1072	24.57
100183	1.1925	20.84
100187	1.4354	20.69
100189	1.3293	21.01
100191	1.3183	18.47
100199	1.3519	23.37
100200	1.2394	22.26
100203		18.86
100204	1.6275	19.93
100206	1.3738	20.31
100207		15.92
100208	1.3742	20.83
100209	1.4794	19.73
100210	1.5725	19.16
100211	1.3995	25.53
100212	1.6223	25.34
100213	1.5101	19.12
100217	1.2750	19.87
100220	1.6359	19.82
100221	1.8123	27.48
100222	0.9440	21.20
100223	1.4649	18.76
100224	1.3348	24.70
100225	1.3371	20.64
100228	1.3524	24.83
100228	1.2825	23.70
100229	1.3301	18.21
100230	1.3524	20.60
100231	1.6807	17.40
100232	1.2520	17.32
100234	1.2585	21.58
100235		17.66
100236	1.3919	15.54
100237	2.1914	22.93
100238	1.5456	17.63
100239	1.4273	19.76
100240	1.0888	17.93
100241	0.8966	13.83
100242	1.4285	17.12
100243	1.4061	20.24
100244	1.3741	17.41
100246	1.3684	21.10
100248	1.5873	31.66
100249	1.3080	19.02
100252	1.2004	17.87
100253	1.4328	20.60
100254	1.5393	20.91
100255	1.2547	21.02
100256	2.0100	24.26
100258	1.6900	21.88
100259	1.3406	19.86
100260	1.4566	21.20
100262	1.3401	19.59
100263		16.90
100264	1.3627	17.61
100265	1.2933	19.90
100266	1.3562	17.73
100267	1.3062	17.10
100268	1.1954	23.59
100269	1.4338	21.20
100270	1.0126	19.86
100271	1.7709	19.92
100275	1.3951	21.33
100276	1.2359	21.98
100277	1.0352	16.14

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1998 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
100279	1.2735	21.84
100280	1.2949	16.58
100281	1.2798	22.02
100282	1.0837	18.66
100284	1.0788	
110001	1.2556	17.87
110002	1.2532	17.37
110003	1.3858	16.02
110004	1.3570	20.11
110005	1.1963	19.26
110006	1.4200	20.13
110007	1.6126	14.39
110008	1.2429	18.26
110009	1.1300	14.82
110010	2.1702	24.55
110011	1.1632	18.26
110013	1.0596	16.03
110014	0.9440	16.12
110015	1.1403	19.46
110016	1.2276	15.77
110017	0.9321	10.54
110018	1.1980	21.04
110020	1.1927	18.44
110023	1.3373	18.54
110024	1.3655	19.75
110025	1.3797	18.65
110026	1.1361	16.14
110027	1.1146	14.83
110028	1.7778	19.89
110029	1.3534	20.05
110030	1.2999	17.66
110031	1.2251	21.56
110032	1.2506	16.19
110033	1.4221	22.19
110034	1.5852	18.24
110035	1.3916	20.98
110036	1.8560	23.76
110038	1.4425	16.36
110039	1.4188	20.77
110040	1.0642	16.40
110041	1.1822	16.69
110042	1.1544	20.55
110043	1.8078	17.16
110044	1.1887	19.60
110045	1.1388	19.94
110046	1.2456	19.23
110048	1.2374	15.65
110049	1.0998	14.21
110050	1.1806	18.76
110051	1.0250	15.75
110052	.....	15.06
110054	1.3606	19.32
110056	1.0843	16.50
110059	1.2164	17.70
110061	1.0960	13.72
110062	0.9058	12.21
110063	1.0542	17.97
110064	1.4639	18.24
110065	1.0322	13.32
110066	1.4496	20.65
110069	1.2569	18.35
110070	1.1398	18.23
110071	1.0981	14.83
110072	0.9722	12.43
110073	1.1437	15.14
110074	1.4973	20.04
110075	1.3226	17.01
110076	1.4639	20.40
110078	1.7586	24.70

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
110079	1.4465	20.14
110080	1.3579	23.43
110082	2.0915	22.01
110083*	1.7615	21.27
110086	1.2837	14.98
110087	1.3551	20.54
110089	1.2041	16.58
110091	1.2791	21.36
110092	1.0878	15.09
110093	0.9940	14.80
110094	0.9920	13.87
110095	1.3537	15.95
110096	1.0806	16.32
110097	1.0653	15.62
110098	0.9870	14.04
110100	1.0556	20.36
110101	1.1014	11.73
110103	0.9309	11.94
110104	1.0963	15.32
110105	1.2997	16.52
110107	1.8897	17.41
110108	0.9511	15.14
110109	1.1060	20.99
110111	1.2038	17.37
110112	0.9917	19.13
110113	1.0478	15.19
110114	1.0441	15.13
110115	1.7526	24.79
110118	1.1376	15.40
110120	1.0386	16.06
110121	1.2784	15.58
110122	1.3618	18.82
110124	1.2091	17.13
110125	1.2562	17.33
110127	0.8873	13.76
110128	1.1933	18.97
110129	1.0606	16.12
110130	1.0064	13.06
110132	1.1478	15.02
110134	0.9656	11.56
110135	1.3363	17.07
110136	1.0986	16.17
110140	1.0445	17.88
110141	0.9996	12.51
110142	0.9525	12.30
110143	1.4339	21.45
110144	1.0712	17.98
110146	1.0854	17.61
110149	1.1792	22.23
110150	1.4073	18.77
110152	1.0430	14.77
110153	1.0912	18.69
110154	0.9773	14.81
110155	1.1399	17.14
110156	1.0511	15.14
110161	1.3149	20.87
110162	0.7514	
110163	1.4628	16.99
110164	1.4190	19.40
110165	1.4270	19.00
110166	1.4482	19.85
110168	1.6676	19.82
110169	1.2029	18.72
110171	1.6118	20.18
110172	1.3576	25.44
110174	0.9161	14.30
110176	3.7291	22.39
110177	1.5099	19.66
110178	.....	16.92

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
110179	1.1507	20.38
110181	0.9038	13.72
110183	1.3120	21.44
110184	1.2434	20.72
110185	1.1874	16.25
110186	1.2548	17.21
110187	1.2726	21.45
110188	1.3545	19.95
110189	1.1692	18.04
110190	1.0644	19.43
110191	1.3076	19.11
110192	1.4458	20.77
110193	1.2436	18.76
110194	0.8938	15.09
110195	1.0992	10.52
110198	1.2684	26.19
110200	1.8155	17.14
110201	1.5094	19.24
110203	0.9314	20.30
110204	0.8249	20.57
110205	1.0578	26.12
110207	1.0103	12.67
110208	0.9617	14.89
110209	0.7100	20.46
110210	.....	11.07
110211	0.9611	21.82
110212	1.0043	12.66
110213	.....	13.20
110215	1.0941	
110216	2.1653	
110217	2.6336	
120001*	1.8196	26.74
120002	1.2037	24.38
120003	1.1393	23.65
120004	1.2630	24.05
120005	1.2464	20.54
120006	1.2735	23.72
120007	1.7320	23.27
120009	0.9632	19.02
120010*	1.8265	25.40
120011	1.3581	33.55
120012	0.8391	22.52
120014	1.2760	24.05
120015	1.0475	29.07
120016	1.0574	29.41
120018	.....	25.61
120019	1.3200	21.92
120021	0.9290	19.42
120022*	1.6850	17.94
120024	1.0727	22.28
120025	.....	19.02
120026	1.2644	23.22
120027	1.4120	24.55
120028	1.2471	22.64
130001	0.9699	24.95
130002	1.3252	16.19
130003	1.3332	19.97
130005	1.4390	20.19
130006	1.8346	18.87
130007	1.6708	19.84
130008	0.9590	12.92
130009	0.9294	18.30
130010	0.8911	21.43
130011	1.2864	19.08
130012	0.8929	22.62
130013	1.3310	15.22
130014	1.3257	17.98
130015	0.8827	15.27
130016	1.0155	17.00

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
130017	1.1012	16.88
130018	1.6256	17.97
130019	1.1193	17.23
130021	0.9513	12.26
130022	1.2324	19.50
130024	1.1558	18.38
130025	1.0970	15.27
130026	1.1726	20.55
130027	0.9243	20.70
130028	1.2885	18.21
130029	1.0707	19.87
130030	0.8409	18.40
130031	1.0121	17.65
130034	1.0325	18.82
130035	1.1048	20.47
130036	1.3946	13.79
130037	1.3076	17.74
130043	0.9605	16.07
130044	0.9724	13.18
130045	0.9752	16.47
130048	0.9815	15.09
130049	1.2325	20.05
130054	0.9560	17.78
130056	0.8528	15.66
130058		17.75
130060	1.2796	20.85
130061	1.2950	16.78
130062	0.6352	15.11
130063	1.3116	
140001	1.2277	15.44
140002	1.2578	19.26
140003	1.0026	16.59
140004	1.1657	17.52
140005	0.9695	10.87
140007	1.4700	22.40
140008	1.4683	20.79
140010	1.3722	24.43
140011	1.2029	17.28
140012	1.2779	20.11
140013	1.5702	17.35
140014	1.1734	20.75
140015	1.2861	15.02
140016	1.0382	12.54
140018	1.2551	20.84
140019	1.1122	15.34
140024	0.9579	14.67
140025	1.0822	16.43
140026	1.2230	15.96
140027	1.2700	17.50
140029	1.3389	21.03
140030	1.8231	22.44
140031	1.2022	15.82
140032	1.3343	17.34
140033	1.2879	22.56
140034	1.1842	16.96
140035	0.9867	13.00
140036	1.2425	17.04
140037	1.0365	12.50
140038	1.1040	16.59
140040	1.2562	16.25
140041	1.1609	17.28
140042	1.0170	15.61
140043	1.1892	18.95
140045	1.0337	20.65
140046	1.3056	16.46
140047	1.0942	15.68
140048	1.3053	20.58
140049	1.6549	18.31
140051	1.5123	21.59
140052	1.3010	19.60
140053	2.0144	17.82
140054	1.3340	26.64
140055	1.0128	14.60
140058	1.2361	17.27
140059	1.1346	15.39
140061	1.0918	15.96
140062	1.2453	27.09
140063	1.4369	22.39
140064	1.3182	19.26
140065	1.4623	22.75
140066	1.1771	16.14
140067	1.8152	18.40
140068	1.2906	18.87
140069	1.0478	17.29
140070	1.2528	19.30
140074	1.0780	19.01
140075	1.3678	22.51
140077	1.2460	16.64
140079	1.2949	24.08
140080	1.5824	20.72
140081	1.0822	15.51
140082	1.3677	22.62
140083	1.2487	18.13
140084	1.2530	19.97
140086	1.1145	17.32
140087	1.3481	18.36
140088	1.7061	24.19
140089	1.2734	17.21
140090*	1.5241	22.31
140091	1.9064	20.70
140093	1.1684	19.15
140094	1.3427	19.89
140095	1.4015	21.54
140097	0.9518	16.90
140100	1.3290	19.06
140101	1.2258	26.09
140102	1.0431	15.13
140103	1.4249	17.86
140105	1.2912	22.56
140107	1.0115	12.76
140108	1.3343	30.11
140109	1.1455	15.47
140110	1.2406	18.68
140112	1.1571	16.24
140113	1.5610	17.92
140114	1.3330	20.11
140115	1.3076	18.47
140116	1.2349	21.83
140117	1.5621	19.72
140118	1.7257	23.06
140119	1.7733	26.00
140120	1.3738	14.84
140121	1.3603	9.53
140122	1.5424	23.75
140124	1.1031	25.40
140125	1.3486	17.10
140127	1.4176	19.42
140128	1.0297	17.67
140129	1.1653	15.25
140130	1.2502	23.77
140132	1.4907	22.86
140133	1.4008	19.88
140135	1.2769	17.69
140137	1.0216	16.51
140138	1.0656	14.59
140139	1.1054	16.58
140140	1.1358	15.30
140141	1.2625	15.18
140143	1.0965	18.76
140144	0.9972	20.02
140145	1.1515	16.61
140146	1.0726	23.74
140147	1.2513	24.82
140148	1.8284	19.50
140150	1.6430	27.88
140151	1.0622	19.30
140152	1.1938	20.67
140155	1.3261	17.52
140158	1.3600	22.27
140160	1.1729	17.68
140161	1.2205	19.04
140162	1.6991	16.42
140164	1.4369	18.09
140165	1.0868	15.42
140166	1.1672	17.58
140167	1.0995	16.17
140168	1.1300	16.46
140170	1.1305	14.14
140171	0.9892	14.73
140172	1.5894	20.07
140173	0.8708	18.48
140174	1.6068	19.89
140176	1.2498	21.41
140177	1.2111	18.17
140179	1.3636	20.88
140180	1.4489	23.25
140181	1.4225	19.95
140182	1.3614	20.45
140184	1.2130	15.88
140185	1.4936	17.36
140186	1.3433	17.49
140187	1.5860	17.72
140188	0.9891	14.84
140189	1.2539	19.08
140190	1.0732	15.88
140191	1.4402	24.74
140193	1.0284	15.52
140197	1.2538	17.98
140199	1.0796	16.83
140200	1.4770	21.65
140202	1.3268	22.18
140203	1.1563	20.78
140205	0.9505	17.24
140206	1.2043	20.39
140207	1.2975	20.20
140208	1.7189	23.94
140209	1.6299	17.79
140210	1.1139	12.66
140211	1.2088	21.49
140213	1.2799	26.20
140215	0.9874	14.45
140217	1.3239	22.26
140218	0.9885	15.08
140220	1.1219	16.73
140223	1.5500	21.28
140224	1.4304	22.99
140228	1.6774	18.67
140230	0.9369	16.60
140231	1.5601	21.61
140233	1.7821	18.39
140234	1.2228	18.72
140236	1.0843	13.13
140239	1.7286	18.88
140240	1.3944	21.83
140242	1.6388	22.64
140245	1.1990	15.56
140246	1.0612	12.82

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
140250	1.3284	23.41
140251	1.3090	20.54
140252	1.4991	24.55
140253	1.1636	16.74
140258	1.5756	16.51
140271	0.9729	15.36
140275	1.2733	17.96
140276	2.0648	25.46
140280	1.3777	18.04
140281	1.6485	23.03
140285	1.2740	14.71
140286	1.1868	19.84
140288	1.6194	20.59
140289	1.3449	16.45
140290	1.3397	25.88
140291	1.3337	22.44
140292	1.2935	22.71
140294	1.1331	17.52
140297	.....	21.47
140300	1.4604	23.46
150001	1.1062	21.70
150002	1.4495	18.66
150003	1.7952	19.31
150004	1.5197	19.70
150005	1.1497	19.00
150006	1.2614	20.04
150007	1.1968	19.53
150008	1.4377	20.97
150009	1.3657	17.53
150010	1.3618	18.48
150011	1.2157	19.19
150012	1.8189	20.52
150013	1.1006	16.00
150014	1.6067	21.26
150015	1.2931	22.06
150017	1.9040	18.89
150018	1.4570	18.62
150019	1.0936	15.29
150020	1.1517	14.46
150021	1.8877	
150022	1.0903	17.92
150023	1.5766	18.71
150024	1.3391	17.83
150025	1.4398	18.15
150026	1.2090	20.51
150027	1.0058	16.46
150029	1.3389	21.74
150030	1.2446	17.33
150031	1.0811	18.01
150032	.....	20.84
150033	1.5737	21.69
150034	1.4854	21.29
150035	1.4921	19.82
150036	0.9960	20.36
150037	1.2881	17.79
150038	1.2939	20.25
150039	1.0016	17.42
150042	1.2830	17.12
150043	1.1042	17.96
150044	1.2825	17.64
150045	1.0927	17.04
150046	1.3943	17.32
150047	1.5983	20.57
150048	1.1912	16.96
150049	1.2166	16.85
150050	1.1659	17.14
150051	1.5099	18.20
150052	1.0909	15.36
150053	0.9867	18.75
150054	1.1350	17.33
150056	1.8874	23.30
150057	2.2401	16.86
150058	1.7056	20.94
150059	1.3586	20.80
150060	1.1860	16.01
150061	1.2108	17.21
150062	1.1076	18.41
150063	1.0891	21.09
150064	1.1810	16.68
150065	1.1695	19.01
150066	1.0226	14.60
150067	1.1260	17.08
150069	1.2233	17.39
150070	0.9579	17.20
150071	1.0955	14.73
150072	1.1997	16.11
150073	1.0823	19.03
150074	1.5321	16.60
150075	1.1204	14.98
150076	1.1815	22.34
150077	0.8126	17.58
150078	1.0515	19.01
150079	1.1737	15.45
150082	1.5261	17.88
150084	1.9911	22.92
150086	1.2506	17.34
150088	1.3443	19.45
150089	1.4584	22.79
150090	1.3311	19.06
150091	1.0358	19.89
150092	1.0071	15.92
150094	0.9754	18.34
150095	1.0873	17.12
150096	1.0067	20.03
150097	1.0922	18.31
150098	1.1583	14.30
150099	.....	19.05
150100	1.6560	17.45
150101	1.0932	17.56
150102	1.0786	11.50
150103	0.9709	17.31
150104	1.1262	17.26
150105	1.3363	19.17
150106	1.0512	18.91
150109	1.3950	18.23
150110	0.9833	18.58
150111	1.1623	16.17
150112	1.2432	19.62
150113	1.2363	19.30
150114	0.9759	16.96
150115	1.3360	17.06
150122	1.1564	19.35
150123	1.1155	15.16
150124	1.0883	15.07
150125	1.4626	20.31
150126	1.4875	20.33
150127	1.0281	22.81
150128	1.2466	18.32
150129	1.1879	23.39
150130	1.3446	16.19
150132	1.4200	19.37
150133	1.1908	16.49
150134	1.1960	17.06
150136	0.9556	19.28
160001	1.2605	19.03
160002	1.0936	15.37
160003	0.9983	15.77
160005	1.0816	15.23
160007	1.0218	15.86
160008	1.1414	14.97
160009	1.2218	16.09
160012	1.0466	16.54
160013	1.1370	17.06
160014	1.0250	15.09
160016	1.1679	18.37
160018	0.9632	14.16
160020	1.0694	13.91
160021	1.1170	15.49
160023	1.0868	14.20
160024	1.6094	18.95
160026	1.0266	18.66
160027	1.0851	15.74
160028	1.2340	20.44
160029	1.5289	20.40
160030	1.3882	17.99
160031	1.1181	15.28
160032	1.1544	16.18
160033	1.9173	18.37
160034	1.1493	14.51
160035	0.8438	15.92
160036	1.0544	18.91
160037	1.0584	18.40
160039	1.0389	17.63
160040	1.2661	16.83
160041	1.0848	15.58
160043	0.9693	15.63
160044	1.2182	16.04
160045	1.8186	20.12
160046	1.0239	14.77
160047	1.3703	16.93
160048	1.2473	13.14
160049	0.9262	13.36
160050	1.0709	16.42
160051	0.8978	14.27
160052	0.9936	17.55
160054	1.0281	15.71
160055	0.9846	14.06
160056	1.0679	15.38
160057	1.2435	17.41
160058	1.8383	20.34
160060	1.0430	15.95
160061	1.0815	17.57
160062	0.9950	14.44
160063	1.1620	16.30
160064	1.5348	19.94
160065	1.0510	16.51
160066	1.1016	16.26
160067	1.4226	17.85
160068	1.0237	15.85
160069	1.5362	18.49
160070	0.9937	15.66
160072	1.0339	14.19
160073	0.9954	15.05
160074	1.0382	15.85
160075	1.0796	17.89
160076	1.0993	17.31
160077	1.1152	11.40
160079	1.4125	17.71
160080	1.2100	17.81
160081	1.1531	16.51
160082	1.9254	18.80
160083	1.6684	18.41
160085	1.0030	18.55
160086	0.9493	16.46
160088	1.1546	17.53
160089	1.1915	16.74
160090	1.0124	16.60

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
160091	1.0383	12.19
160092	1.0124	15.80
160093	1.0155	15.95
160094	1.1043	16.56
160095	1.0321	14.26
160097	1.0774	15.21
160098	0.9397	15.54
160099	0.9650	13.79
160101	1.0852	17.87
160102	1.3435	18.36
160103	0.9416	17.15
160104	1.3010	19.76
160106	1.1069	16.66
160107	1.1506	16.56
160108	1.0237	15.42
160109	1.0167	16.49
160110	1.5117	19.93
160111	0.9983	13.17
160112	1.3773	16.28
160113	1.0930	14.58
160114	0.9786	14.95
160115	0.9774	15.76
160116	1.1196	16.69
160117	1.4123	17.29
160118	0.9961	15.84
160120	0.9936	12.56
160122	1.1131	18.52
160124	1.2998	17.16
160126	0.9654	17.74
160129	0.9727	15.89
160130	1.1286	15.45
160131	1.0444	14.69
160134	0.9506	13.32
160135	1.0170	16.33
160138	1.0149	15.71
160140	1.1324	16.80
160142	1.0194	16.14
160143	1.1242	15.92
160145	1.0697	15.17
160146	1.4409	13.50
160147	1.2762	18.39
160151	1.0545	15.74
160152	0.9384	15.22
160153	1.7613	19.69
170001	1.2074	17.52
170004	1.0753	13.06
170006	1.1961	19.31
170008	1.0034	13.90
170009	1.1438	19.59
170010	1.3587	17.90
170012	1.4141	16.76
170013	1.2829	17.89
170014	1.0333	17.34
170015	0.9812	16.34
170016	1.7067	18.60
170017	1.2014	17.87
170018	1.1012	14.36
170019	1.2360	16.56
170020	1.4017	16.15
170022	1.0526	17.85
170023	1.4684	19.36
170024	1.0663	13.06
170025	1.1917	16.37
170026	1.0818	13.89
170027	1.3172	16.39
170030	1.0591	15.24
170031	0.8922	13.47
170032	1.0128	14.48
170033	1.4150	16.05
170034	1.0335	15.02
170035	0.8966	15.62
170036	.....	14.17
170038	0.8998	14.21
170039	1.0943	14.30
170040	1.5837	17.97
170041	1.0521	11.47
170044	0.9951	14.76
170045	1.0689	12.11
170049	1.3499	18.84
170051	0.9890	14.16
170052	1.0435	14.62
170053	0.9336	9.03
170054	1.0324	12.77
170055	0.9801	14.99
170056	0.8854	14.87
170057	.....	15.09
170058	1.1572	18.17
170060	1.0218	17.23
170061	1.1583	14.14
170063	0.8974	11.49
170064	.....	12.42
170066	0.9451	14.48
170067	0.9967	12.71
170068	1.2647	15.82
170070	1.0543	13.37
170072	0.9012	13.34
170073	1.0417	16.47
170074	1.2016	14.40
170075	0.9266	11.26
170076	1.0220	13.58
170077	0.9136	13.11
170079	0.9666	14.21
170080	0.9657	12.20
170081	0.9118	12.51
170082	0.9428	12.39
170084	0.8978	12.16
170085	0.8828	14.51
170086	1.6770	19.85
170089	0.9319	11.37
170089	0.9738	15.08
170090	0.9616	11.27
170092	.....	12.85
170093	0.8913	12.79
170094	0.9571	17.71
170095	1.0123	15.75
170097	0.9071	15.66
170098	1.1366	14.10
170099	1.1582	13.55
170100	.....	14.47
170101	0.9709	13.16
170102	0.9675	13.35
170103	1.3238	16.66
170104	1.4841	19.76
170105	1.0598	15.93
170106	0.9341	14.68
170109	0.9347	16.87
170110	0.9651	15.55
170112	1.1373	13.39
170113	1.0737	13.25
170114	0.9511	14.51
170115	0.9965	13.03
170116	1.0601	15.76
170117	0.9782	15.28
170119	0.9547	13.97
170120	1.2724	15.91
170122	1.7580	18.62
170123	1.7220	21.43
170124	0.9913	10.21
170126	0.9315	12.13
170128	0.9622	14.99
170131	.....	13.10
170133	1.1289	16.90
170134	0.8746	12.90
170137	1.1809	17.42
170139	0.9898	13.28
170142	1.3140	17.32
170143	1.1148	15.88
170144	1.5078	16.09
170145	1.1143	16.75
170146	1.4429	19.97
170147	1.1965	16.28
170148	1.3707	17.25
170150	1.1488	15.43
170151	0.9361	13.37
170152	1.0039	13.66
170160	0.9959	13.31
170164	0.9827	15.25
170166	1.1079	17.57
170171	1.0545	13.81
170175	1.3046	16.80
170176	1.6707	20.32
170182	1.4297	14.20
170183	1.9806	19.09
170184	.....	27.01
180001	1.3847	19.52
180002	1.0822	18.13
180004	1.1128	15.99
180005	1.1971	20.63
180006	0.9090	11.23
180007	1.4645	17.20
180009	1.3630	20.81
180010	1.9327	17.55
180011	1.3163	16.93
180012	1.4400	18.74
180013	1.4541	17.35
180014	1.6943	19.54
180016	1.3332	18.84
180017	1.3056	15.17
180018	1.2982	16.92
180019	1.1910	16.76
180020	1.1105	17.78
180021	1.0495	15.16
180023	0.9502	15.22
180024	1.4092	15.33
180025	1.2023	17.17
180026	1.2026	14.16
180027	1.2506	14.89
180028	1.0909	19.35
180029	1.2271	18.02
180030	1.1726	17.02
180031	1.1189	13.79
180032	1.0597	16.09
180033	1.0978	13.77
180034	1.0888	17.32
180035	1.6441	19.45
180036	1.1589	19.12
180037	1.3126	19.85
180038	1.4604	16.19
180040*	1.9257	19.33
180041	1.1796	15.17
180042	1.1689	16.29
180043	1.1236	16.76
180044	1.1974	17.82
180045	1.4022	17.73
180046	1.0438	17.91
180047	0.9987	15.04
180048	1.2470	19.58

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
180049	1.3488	16.08
180050	1.2186	18.48
180051	1.3835	15.68
180053	1.0555	14.63
180054	1.0903	16.39
180055	1.2207	14.64
180056	1.1035	16.62
180058	1.0460	14.36
180059	0.8719	14.25
180060	.....	7.21
180063	1.0712	11.91
180064	1.1788	14.49
180065	1.0768	14.41
180066	1.0776	18.56
180067	1.8904	18.53
180069	1.1224	17.30
180070	1.1057	13.84
180072	1.1158	17.85
180075	.....	15.07
180078	1.0782	19.16
180079	1.1805	13.41*
180080	1.0799	16.48
180087	1.2301	14.97
180088	1.6075	21.86
180092	1.2224	16.31
180093	1.4101	16.70
180094	1.0258	12.51
180095	1.1318	13.40
180099	1.0392	13.29
180101	1.1741	19.56
180102	1.4371	17.88
180103	2.3154	19.79
180104	1.5469	19.20
180105	0.8827	14.00
180106	0.8756	13.61
180108	0.8257	14.62
180115	0.9594	17.11
180116	1.2331	16.94
180117	1.1147	18.38
180118	0.9643	12.15
180120	1.0167	17.81
180121	1.1698	14.51
180122	1.0642	16.97
180123	1.3539	18.53
180124	1.3287	18.41
180125	1.1259	19.73
180126	1.1152	12.40
180127	1.2902	17.35
180128	1.0669	17.05
180129	0.9616	17.86
180130	1.4359	19.11
180132	1.2721	17.26
180133	1.3322	21.66
180134	1.0685	13.63
180136	1.8166	17.71
180138	1.1992	18.51
180139	1.0560	18.77
180140	0.9768	20.40
180141	1.8575	19.04
180142	1.7800	
190001	0.8866	16.91
190002	1.6874	18.84
190003	1.3295	22.15
190004	1.4230	17.54
190005	1.5174	16.71
190006	1.4856	17.73
190007	1.0552	13.60
190008	1.6186	16.89
190009	1.2882	14.21
190010	1.2081	17.02
190011	1.1424	15.17
190013	1.3002	16.57
190014	1.1875	17.02
190015	1.2666	17.44
190017	1.3391	15.79
190018	1.1056	16.98
190019	1.7887	17.40
190020	1.1956	17.31
190025	1.3078	16.07
190026	1.5552	17.21
190027	1.5165	16.19
190029	1.1492	17.11
190033	0.9722	10.74
190034	1.1705	16.66
190036*	1.6847	19.96
190037	0.9649	12.02
190039	1.4112	17.17
190040	1.3287	20.32
190041	1.6088	17.90
190043	1.0328	12.57
190044	1.1661	17.20
190045	1.4138	21.09
190046	1.4251	19.35
190048	1.1957	16.34
190049	0.9392	16.42
190050	1.0736	15.36
190053	1.1486	12.50
190054	1.2942	16.47
190059	0.8905	15.84
190060	1.3931	18.37
190064	1.5246	19.90
190065	1.4989	19.39
190071	0.8369	13.59
190077	0.8858	12.83
190078	1.1110	13.50
190079	1.3557	17.29
190081	0.8865	12.02
190083	1.0658	16.14
190086	1.3284	14.93
190088	1.2141	19.53
190089	1.1099	12.79
190090	1.0416	16.56
190092	.....	18.07
190095	0.9939	15.73
190098	1.5397	19.22
190099	1.1795	18.92
190102	1.6352	15.80
190103	0.9074	15.57
190106	1.1251	17.75
190109	1.2494	14.53
190110	0.9774	11.06
190111*	1.5870	20.05
190112	1.6970	19.21
190113	1.3935	18.99
190114	1.0147	12.91
190115	1.2775	20.49
190116	1.1972	12.59
190118	0.9963	12.95
190120	0.9962	13.69
190122*	1.2965	14.84
190124	1.6278	22.38
190125	1.4991	18.63
190128	1.1982	19.71
190130	0.9925	12.43
190131	1.2614	19.60
190133	1.0847	13.48
190134	1.0023	12.56
190135	1.4331	20.93
190136	0.9971	11.33
190138	.....	22.71
190140	0.8519	12.03
190142	0.9232	14.98
190144	1.1836	16.84
190145	0.9751	13.99
190146	1.5282	20.09
190147	0.9769	14.32
190148	0.9448	14.02
190149	0.9966	15.19
190151	1.0782	11.92
190152	1.5096	20.40
190155	.....	11.08
190156	0.9565	12.48
190158	1.2674	19.62
190160	1.2596	16.47
190161	1.0853	12.58
190162	1.2971	17.97
190164	1.1850	16.33
190167	1.1284	16.29
190170	0.9050	13.56
190173	1.3272	18.83
190175	1.4238	20.69
190176	1.6021	16.67
190177	1.7143	20.32
190178	0.9276	10.49
190182	1.3004	20.03
190183	1.1923	16.11
190184	0.9965	14.86
190185	1.3089	19.37
190186	0.9403	16.36
190189	.....	26.54
190190	0.9141	16.68
190191	1.1473	16.14
190196	0.9516	14.87
190197	1.1818	17.92
190199	1.0597	12.56
190200	1.4899	19.41
190201	1.0997	19.14
190202	1.1256	17.90
190203	1.4061	21.43
190204	1.4939	21.21
190205	1.9206	18.10
190206	1.6291	19.82
190207	1.2579	17.67
190208	0.8059	14.61
190218	1.0606	18.16
190223	.....	19.26
190227	1.0049	12.11
190231	1.5614	16.69
190235	.....	15.80
190236	1.4216	22.16
190237	2.4934	
190238	1.6330	
190239	1.1544	
190240	0.9642	
200001	1.3472	17.49
200002	1.1142	18.77
200003	1.0982	16.74
200006	1.0668	15.34
200007	1.0197	17.62
200008	1.2216	20.50
200009	1.8812	20.62
200012	1.1783	17.01
200013	1.1139	16.49
200015	.....	20.11
200016	1.0407	17.66
200017	.....	19.70
200018	1.2072	17.24

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
200019	1.2519	16.48
200020	1.1541	20.60
200021	1.1958	18.88
200023	0.8402	14.92
200024	1.4798	16.65
200025	1.2493	19.07
200026	0.9915	17.28
200027	1.2369	18.28
200028	0.9205	16.93
200031	1.2258	15.90
200032	1.3282	17.92
200033	1.7813	21.40
200034	1.2763	19.13
200037	1.2272	18.24
200038	1.1414	19.21
200039	1.2559	20.29
200040	1.1170	19.13
200041	1.1252	17.66
200043	0.8031	16.54
200050	1.2072	18.08
200051	0.9896	19.48
200052	0.9958	15.12
200055	1.0875	17.13
200062	0.9507	16.51
200063	1.2430	19.67
200066	1.1419	16.32
210001	1.4438	18.73
210002	2.0439	22.84
210003	1.6821	25.37
210004	1.3607	23.44
210005	1.2933	19.62
210006	1.1140	17.77
210007	1.8016	21.54
210008	1.3069	19.50
210009	1.8548	21.81
210010	1.1378	26.83
210011	1.3632	21.24
210012	1.6193	23.43
210013	1.3591	18.85
210015	1.3063	16.69
210016	1.8523	22.01
210017	1.2499	17.17
210018	1.2636	21.41
210019	1.6163	19.09
210022	1.4875	21.32
210023	1.4502	21.80
210024	1.6941	19.56
210025	1.3279	19.57
210026	1.3217	11.64
210027	1.2802	18.49
210028	1.1693	18.86
210029	1.2777	21.43
210030	1.2555	21.02
210031	1.3110	15.59
210032	1.1730	18.50
210033	1.2407	19.91
210034	1.3165	16.12
210035	1.3414	20.61
210037	1.2643	18.74
210038	1.4181	23.26
210039	1.1915	20.73
210040	1.3180	25.08
210043	1.2815	40.60
210044	1.3645	22.24
210045	1.0892	9.88
210048	1.2893	22.39
210049	1.1702	17.67
210051	1.4024	20.76
210054	1.3673	23.51
210055	1.3658	20.09
210056	1.3928	20.94
210057	1.3587	22.57
210058	1.5007	21.37
210059	1.1847	23.13
210060	1.2753	
210061	1.1313	20.02
220001	1.2879	26.32
220002	1.4678	22.58
220003	1.1104	19.14
220004		20.01
220006	1.3867	22.04
220008	1.2973	21.89
220010	1.3481	22.06
220011	1.0947	23.85
220012	1.3117	28.24
220015	1.1691	21.73
220016	1.3445	21.30
220017	1.3512	24.90
220019	1.1561	19.13
220020	1.2448	20.00
220021		23.70
220023	0.6351	18.76
220024	1.2167	21.59
220025	1.1442	19.94
220028*	1.4573	22.16
220029	1.1595	21.19
220030	1.1073	14.54
220031	1.9074	22.82
220033	1.2602	20.83
220035	1.3063	22.00
220036	1.6289	24.16
220038	1.3130	23.31
220041	1.1893	22.83
220042	1.2662	25.28
220046	1.3199	23.90
220049	1.2823	17.27
220050	1.1667	20.83
220051	1.1784	20.48
220052	1.2993	23.01
220053	1.1637	21.27
220055	1.2850	21.57
220057	1.3594	21.93
220058	1.1555	26.09
220060	1.2295	26.38
220062	0.5638	20.06
220063	1.2671	20.91
220064	1.2833	17.90
220065	1.3711	20.10
220066	1.3459	19.43
220067	1.2569	25.74
220068		5.45
220070	1.2165	16.72
220071	1.9239	24.67
220073	1.3015	26.08
220074	1.3358	15.22
220075	1.7972	19.96
220076	1.2501	20.63
220077	1.8283	24.48
220079	1.0997	21.01
220080	1.3044	17.16
220081	0.9163	25.77
220082	1.2658	20.02
220083	1.1887	20.93
220084	1.2481	24.66
220085	1.7933	30.00
220088	1.6455	22.71
220089	1.2583	21.81
220090	1.2250	21.42
220092	1.1838	17.04
220094		21.99
220095	1.1894	21.45
220098	1.3175	20.34
220100	1.3674	25.39
220101	1.4449	24.15
220104	1.4666	26.76
220105	1.2706	21.69
220106	1.2167	24.34
220107		20.14
220108	1.1915	22.52
220110	2.1015	29.15
220111	1.2455	23.07
220116	1.9143	27.64
220118		30.02
220119	1.2616	22.78
220123	1.0317	17.74
220126	1.2498	20.96
220128		21.92
220133	0.7187	24.34
220135*	1.2824	25.08
220153	1.0071	15.97
220154	0.9023	14.84
220162	1.4831	
220163	2.0302	27.35
220171	1.6811	23.43
230001	1.1539	19.20
230002	1.2731	21.91
230003	1.1409	19.61
230004	1.6874	22.42
230005	1.2532	19.40
230006	1.0501	18.47
230007		19.43
230012	0.9650	18.67
230013	1.3748	20.12
230015	1.0768	20.43
230017	1.6133	20.40
230019	1.5299	19.05
230020	1.7464	21.04
230021	1.5000	18.57
230022	1.2703	19.76
230024	1.4282	27.95
230027	1.0357	18.03
230029	1.5743	21.12
230030	1.3405	17.29
230031	1.4291	17.00
230032*	1.7456	20.08
230034	1.2673	17.23
230035	1.0750	17.56
230036	1.2559	21.76
230037	1.1615	19.07
230038	1.7574	23.40
230040	1.1346	20.39
230041	1.2536	19.03
230042	1.2327	19.49
230046	1.9231	25.91
230047	1.3568	20.64
230053	1.5887	22.22
230054	1.8405	19.54
230055	1.1698	19.84
230056	0.8968	16.41
230058	1.1023	18.23
230059	1.4582	18.96
230060	1.3307	17.87
230062	0.9542	16.30
230063	1.2587	20.22
230065	1.3139	21.26
230066	1.3669	21.51
230069	1.1982	22.49

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
230070	1.6490	20.06
230071	1.1156	22.16
230072	1.2347	20.43
230075	1.5045	19.43
230076	1.4082	23.82
230077	2.0553	20.39
230078	1.1150	16.25
230080	1.2452	18.91
230081	1.2102	18.04
230082	1.1207	17.74
230085	1.2359	17.54
230086	0.9482	16.98
230087	1.0847	15.77
230089	1.2858	21.39
230092	1.3590	18.96
230093	1.2299	19.99
230095	1.1731	16.78
230096	1.1072	22.56
230097	1.8199	20.10
230099	1.1231	20.25
230100	1.1427	13.11
230101	1.0672	18.61
230103	1.0527	20.76
230104	1.5554	23.47
230105	1.7966	20.88
230106	1.1826	18.35
230107	0.9423	14.67
230108	1.2079	17.42
230110	1.3163	17.65
230113	0.8490	11.17
230115	1.0560	16.87
230116	0.8654	16.36
230117	1.9036	23.94
230118	1.1403	21.71
230119	1.3594	23.96
230120	1.1248	19.64
230121	1.2279	19.37
230122	1.3518	18.09
230124	1.1691	18.89
230125	.....	15.35
230128	1.4028	23.58
230130	1.6932	22.52
230132	1.3334	26.17
230133	1.2298	17.57
230134	.....	15.32
230135	1.2320	22.74
230137	.....	18.34
230141	1.6288	23.05
230142	1.2837	20.04
230143	1.2803	16.45
230144	1.1223	21.00
230145	1.1219	16.60
230146	1.2603	18.53
230147	1.4098	20.40
230149	1.1317	14.17
230151	1.4140	20.89
230153	1.0658	17.33
230154	0.8896	14.59
230155	1.0296	16.99
230156	1.7470	23.28
230157	1.1677	19.72
230159	1.0227	18.61
230162	0.9532	17.77
230165	1.9359	23.23
230167	1.7502	20.32
230169	1.3613	22.75
230171	1.0817	14.96
230172	1.1873	20.22
230174	1.3724	20.95
230175	2.3801	21.81
230176	1.2168	21.86
230178	0.9485	16.08
230180	1.1229	15.48
230184	1.2534	17.29
230186	1.1358	15.56
230188	1.1197	15.56
230189	0.9484	15.91
230190	0.6801	23.71
230191	0.9321	17.12
230193	1.3023	20.18
230195	1.3569	22.37
230197	1.4043	21.52
230199	1.0833	18.40
230201	1.2527	15.32
230204	1.3728	21.89
230205	0.9894	13.89
230207	1.2522	20.46
230208	1.3046	17.15
230211	0.9159	17.51
230212	1.0559	22.18
230213	0.9300	15.32
230216	1.5737	19.59
230217	1.2657	20.95
230219	0.8632	20.70
230221*	.....	21.55
230222	1.3904	20.79
230223	1.2692	21.50
230227	1.4206	21.21
230230	1.5877	22.53
230232	.....	12.64
230235	1.0880	15.95
230236*	1.3245	23.22
230239	1.1705	19.23
230241	1.1942	18.85
230244	1.4114	21.06
230253	0.9600	21.95
230254	1.2926	21.28
230257	0.9141	20.47
230259	1.1398	21.15
230264	1.6552	15.18
230269	1.3095	22.81
230270	1.2029	20.08
230273	1.5232	23.40
230275	0.5244	17.60
230276	0.5657	18.55
230277	1.2488	22.50
230278	.....	16.56
230279	0.6536	16.04
230280	1.0965	14.22
230283	2.2297	
240001	1.5271	22.84
240002	1.7570	23.02
240004*	1.5922	16.53
240005	0.8861	16.96
240006	1.1644	27.11
240007	1.0673	16.96
240008	1.1466	21.81
240009	0.9419	16.69
240010	1.9784	22.62
240011	1.1515	18.96
240013	1.2854	18.97
240014	1.0968	21.86
240016	1.3901	19.86
240017	1.1526	17.23
240018	1.2687	19.07
240019	1.1859	21.13
240020	1.1172	19.57
240021	0.9884	17.40
240022	1.1049	19.16
240023	0.9789	20.39
240025	1.0980	17.25
240027	1.0711	16.25
240028	1.1581	19.38
240029	1.1501	17.99
240030	1.2802	18.44
240031	0.9276	18.07
240036	1.5871	20.12
240037	1.0154	18.46
240038	1.5017	26.35
240040	1.2584	19.90
240041	1.1728	19.21
240043	1.2228	17.91
240044	1.1357	18.92
240045	1.1584	20.99
240047*	1.5726	21.86
240048	.....	23.31
240049	.....	22.13
240050	1.2114	24.50
240051	0.9654	18.23
240052	1.3024	19.22
240053	1.4855	21.29
240056	1.2541	22.29
240057	1.6364	23.24
240058	0.9292	14.91
240059	1.0456	21.96
240061	1.7666	24.44
240063	1.4484	23.54
240064	1.3259	20.76
240065	1.1496	12.55
240066	1.2838	22.05
240069	1.1917	19.18
240071	1.1069	19.19
240072	1.0236	18.00
240073	0.9003	15.63
240075	1.2015	21.19
240076	1.0725	21.07
240077	0.9002	14.95
240078	1.5426	22.71
240079	0.9545	17.82
240080*	1.6152	23.73
240082	1.1235	18.03
240083	1.2898	19.29
240084	1.3236	19.61
240085	1.0306	18.02
240086	1.0482	15.33
240087	1.1607	17.06
240088	1.4006	21.02
240089	0.9225	18.42
240090	1.1288	18.05
240093	1.2970	18.62
240094	0.9639	20.57
240096	0.9900	18.34
240097	1.1145	23.62
240098	0.9270	20.60
240099	1.0725	14.36
240100	1.2867	19.19
240101	1.2099	17.75
240102	0.9273	15.56
240103	1.2125	16.88
240104	1.1691	24.02
240105	.....	14.79
240106	1.3931	25.05
240107	0.9756	19.03
240108	0.9776	16.46
240109	0.9814	13.15
240110	0.9369	17.26
240111	0.9906	17.04

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
240112	0.9763	15.31
240114	0.9379	15.49
240115	1.6118	22.16
240116	0.9248	15.18
240117	1.1441	17.57
240119	0.8604	22.50
240121	0.9071	21.37
240122	1.0827	18.04
240123	1.0205	15.60
240124	0.9613	19.05
240125	0.9698	13.15
240127	1.0079	14.77
240128	1.1138	16.08
240129	0.9949	15.42
240130	0.9322	15.65
240132	1.2724	24.50
240133	1.2207	18.52
240135	0.9181	13.60
240137	1.1748	19.18
240138	0.9322	13.74
240139	0.9615	17.02
240141	1.1553	21.99
240142	1.0125	20.61
240143	0.9883	14.28
240144	1.0451	15.87
240145	0.9125	15.00
240146*	0.9085	16.79
240148	1.0240	11.48
240150	0.8795	12.83
240152	1.0247	20.20
240153	1.0015	15.61
240154	1.0211	17.06
240155	0.9166	20.42
240157	1.0227	14.69
240160	1.0601	16.60
240161	1.0376	15.42
240162	1.0746	19.04
240163	0.9706	17.87
240166	1.1526	16.39
240169	0.9599	18.62
240170	1.1056	17.65
240171	1.0083	16.72
240172	0.9741	14.91
240173	0.9979	16.74
240179	1.0343	16.65
240184	0.9677	14.40
240187	1.2492	17.51
240193	1.0038	16.30
240196	0.6772	23.27
240200	0.8955	14.73
240205	0.9180	
240206	0.8312	
240207	1.2640	23.33
240210*	1.2515	24.03
240211	0.9639	20.55
250001	1.6247	18.12
250002	0.8834	15.58
250003	0.9935	15.66
250004	1.5311	16.96
250005	0.9475	12.00
250006	0.9628	15.70
250007	1.2280	19.16
250008	1.0292	13.32
250009	1.2659	16.18
250010	1.0112	13.34
250012	0.9335	18.48
250015	1.0386	11.07
250017	1.0281	17.30
250018	0.9366	13.47
250019	1.4832	17.15
250020	0.9513	13.88
250021	0.8379	9.08
250023	0.8948	13.54
250024	0.8937	11.59
250025	1.1497	17.72
250027	0.9761	12.42
250029	0.8705	14.85
250030	0.9210	13.63
250031	1.2477	18.77
250032	1.2190	17.26
250033	1.0137	15.76
250034	1.5454	18.13
250035	0.8065	17.41
250036	0.9962	13.79
250037	0.8845	10.32
250038	0.9382	13.62
250039	0.9970	16.51
250040	1.3147	15.64
250042	1.2629	16.47
250043	0.8997	13.65
250044	0.9881	16.75
250045	1.2675	19.48
250047	0.9058	31.60
250048	1.5277	15.71
250049	0.8840	10.76
250050	1.2689	13.92
250051	0.9264	9.60
250057	1.1777	13.76
250058	1.1857	15.42
250059	1.0828	14.23
250060	0.7514	7.99
250061	0.8571	13.97
250063	0.8311	14.97
250065	0.8934	12.68
250066	0.9138	14.33
250067	1.1596	15.29
250068	0.8244	11.43
250069	1.2682	15.77
250071	0.8972	11.21
250072	1.4321	16.93
250077	0.9343	11.41
250078	1.5470	15.50
250079	0.8546	19.06
250081	1.2791	28.31
250082	1.4189	13.84
250083	0.9426	9.20
250084	1.0988	19.74
250085	0.9829	13.85
250088	0.9803	16.69
250089	1.0904	13.05
250093	1.1718	15.09
250094	1.3373	17.85
250095	0.9932	16.36
250096	1.2105	17.07
250097	1.2848	18.41
250098	0.9421	14.30
250099	1.2923	14.41
250100	1.2687	16.60
250101	0.8831	16.31
250102	1.5195	20.02
250104	1.4439	17.54
250105	0.9369	14.60
250107	0.8803	13.63
250109	0.8900	14.55
250112	0.9912	14.20
250117	1.0628	14.52
250119	1.0603	12.74
250120	1.0638	14.41
250122	1.1763	17.72
250123	1.2209	17.41
250124	0.9344	12.67
250125	1.2793	14.49
250126	0.9351	14.71
250127	0.9230	
250128	1.0367	13.00
250131	1.0826	10.28
250134	0.9667	17.96
250136	0.9182	18.05
250138	1.2054	17.60
250141	1.2067	17.12
250145	0.8696	11.40
250146	0.9386	13.28
250148	1.2354	11.98
250149	0.9690	12.98
250150	1.2560	
260001	1.6327	17.55
260002	1.4385	20.59
260003	1.1303	14.33
260004	0.9725	13.75
260005	1.6478	19.71
260006	1.5184	18.53
260008	0.9887	16.25
260009	1.2916	17.94
260011	1.5348	16.32
260012	1.0036	14.46
260013	1.1872	15.54
260015	1.1793	21.33
260017	1.1724	15.80
260018	0.8885	12.23
260019	1.1438	23.67
260020	1.8100	21.86
260021	1.4386	17.57
260022	1.2556	19.35
260023	1.4179	15.82
260024	0.9716	13.47
260025	1.3037	14.94
260027	1.6145	21.01
260029	1.1888	17.47
260030	1.1362	11.24
260031	1.5358	18.30
260032	1.7220	20.92
260034	1.0233	17.22
260035	1.0045	12.59
260036	1.0042	18.31
260039	1.0672	14.20
260040	1.6796	15.08
260042	1.2519	17.44
260044	1.0069	17.12
260047	1.6390	17.28
260048	1.2487	21.43
260050	1.0545	18.74
260052	1.3663	17.86
260053	1.1247	12.01
260054	1.3540	17.37
260055	0.9667	17.76
260057	1.0072	15.33
260059	1.2431	15.79
260061	1.1196	15.01
260062	1.1845	20.26
260063	1.0723	16.85
260064	1.3319	16.50
260065	1.7757	18.47
260066	1.0139	14.42
260067	0.8926	12.16
260068	1.6802	19.83
260070	1.0377	21.69
260073	1.0843	13.01

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
260074	1.2962	15.42
260077	1.7288	18.26
260078	1.1814	15.48
260079	1.0620	14.83
260080	0.9867	12.56
260081	1.6519	18.96
260082	1.1478	15.79
260085	1.5799	19.51
260086	0.9285	14.87
260091	1.6909	19.61
260094	1.1873	15.87
260095	1.3659	19.77
260096	1.5613	21.72
260097	1.1415	15.79
260100	1.0128	15.73
260102	0.9990	16.37
260103	1.3189	17.35
260104	1.7127	19.02
260105	1.8623	20.80
260107	1.4534	18.46
260108	1.8507	20.92
260109	0.9915	13.44
260110	1.6688	15.72
260113	1.2254	14.79
260115	1.2279	17.90
260116	1.1034	14.57
260119	1.2149	16.20
260120	1.1954	17.13
260122	1.0917	14.54
260123	1.0482	14.00
260127	1.0625	15.95
260128	1.0367	11.27
260129	.....	14.64
260131	1.2658	19.75
260134	1.1709	16.58
260137	1.7105	15.22
260138	1.9075	21.41
260141	1.9978	17.96
260142	1.1255	16.03
260143	0.9900	11.94
260147	0.9530	13.66
260148	0.9021	10.34
260158	1.0544	12.40
260159	1.0116	18.22
260160	1.1476	16.19
260162	1.5659	20.71
260163	1.2449	14.81
260164	0.9182	14.31
260166	1.2191	19.53
260172	0.9615	12.49
260173	1.0061	11.98
260175	1.1279	16.29
260176*	1.7243	19.59
260177	1.3381	20.75
260178	1.4653	21.20
260179	1.6090	20.76
260180	1.6591	18.54
260183	1.6570	17.65
260186	1.5847	18.06
260188	1.2749	18.58
260189	0.9425	10.75
260190	1.1964	16.16
260191	1.2874	19.34
260193	1.2224	20.51
260195	1.2469	15.95
260197	1.0913	16.37
260198	1.2980	17.64
260200	1.2109	16.88
260205	1.1102	

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
260206	2.6705	
270002	1.2837	17.19
270003	1.2133	22.13
270004	1.6933	29.26
270006	0.8808	16.19
270007	1.0011	13.17
270009	1.0272	17.75
270011	1.0451	19.82
270012	1.6015	23.08
270013	.....	20.40
270014	1.8492	18.48
270016	0.9184	19.77
270017	1.2649	19.58
270019	1.0264	12.78
270021	1.1688	16.65
270023	1.2657	20.40
270026	0.9058	16.07
270027	1.0591	9.78
270028	1.1731	17.21
270029	0.9220	17.89
270032	1.1300	17.03
270033	0.8642	16.46
270035	1.0008	17.65
270036	0.9192	14.08
270039	1.0442	15.35
270040	1.1242	19.19
270041	1.0456	16.78
270044	1.1398	13.46
270046	.....	17.10
270048	1.0107	15.84
270049	1.7664	21.17
270050	0.9917	18.04
270051	1.3153	20.23
270052	1.0056	14.80
270057	1.2886	20.01
270058	0.9229	14.07
270059	0.7512	15.60
270060	0.9524	14.02
270063	0.9338	14.23
270073	1.0809	15.53
270074	0.8747	
270075	0.8274	
270079	0.9338	17.80
270080	1.1410	11.35
270081	0.9579	15.52
270082	1.1020	16.13
270083	1.0098	20.62
270084	0.9151	16.66
280001	1.0632	17.89
280003	2.1214	22.00
280005	1.3518	18.75
280009	1.7680	18.70
280010	0.8073	16.54
280011	0.8552	13.96
280012	.....	16.41
280013	1.7249	22.10
280014	0.9006	15.24
280015	1.0730	14.64
280017	1.0693	14.19
280018	1.0539	14.85
280020	1.8118	19.40
280021	1.1765	16.69
280022	0.9681	15.71
280023	1.3951	21.30
280024	0.9612	13.91
280025	0.9725	14.27
280026	1.0478	16.06
280028	1.0763	15.89
280029	1.2096	19.46

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
280030*	1.7685	33.25
280031	0.9937	13.22
280032	1.3465	19.18
280033	1.0807	14.93
280034	.....	15.28
280035	0.9131	15.33
280037	1.0308	16.17
280038	1.0506	16.47
280039	1.0637	15.19
280040	1.7299	18.97
280041	0.9617	13.39
280042	1.0305	15.30
280043	0.9752	15.79
280045	1.0415	14.23
280046	1.0475	13.72
280047	1.1206	18.37
280048	1.1137	14.07
280049	1.0856	15.63
280050	0.9924	15.34
280051	1.1386	15.85
280052	1.0652	13.65
280054	1.2488	17.58
280055	0.9146	12.99
280056	0.9322	14.02
280057	0.9635	15.76
280058	1.2363	17.88
280060	1.6236	28.81
280061	1.4119	17.95
280062	1.1814	13.67
280064	1.0153	15.51
280065	1.2669	18.53
280066	1.0217	11.64
280068	0.9304	10.13
280070	0.9912	13.74
280073	0.9848	14.79
280074	0.9716	15.22
280075	1.1052	13.79
280076	1.0343	13.92
280077	1.3025	19.01
280079	1.0819	9.91
280080	1.0579	14.35
280081	1.7240	20.92
280082	1.0785	13.13
280083	1.0611	17.55
280084	0.9595	11.69
280085	0.8106	21.58
280088	.....	21.64
280089	0.8837	17.16
280090	0.8017	14.72
280091	1.0928	15.15
280092	0.9075	14.20
280094	0.9956	15.89
280097	1.0876	14.30
280098	0.8804	10.17
280101	1.0046	17.42
280102	.....	12.94
280104	0.9207	13.38
280105	1.2360	18.78
280106	1.0160	15.54
280107	1.1351	13.46
280108	1.0618	17.22
280109	0.9496	11.06
280110	0.9845	12.30
280111	1.2660	23.10
280114	0.9215	13.56
280115	0.9779	16.43
280117	1.0965	16.82
280118	0.9029	16.92
280119	0.9435	

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1998 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
280123		20.77
280125	1.2266	
290001	1.6951	22.42
290002	0.9418	16.63
290003	1.6685	23.40
290005	1.3281	17.80
290006	1.2282	19.88
290007	1.6911	29.69
290008	1.2553	20.25
290009	1.6213	22.74
290010	1.1253	14.48
290011	1.0959	16.44
290012	1.3501	21.17
290013	0.9996	17.09
290014	1.0289	18.38
290015	0.9745	17.83
290016	1.1219	12.81
290019	1.3294	20.93
290020	0.9828	26.15
290021	1.6752	21.13
290022	1.5923	24.08
290027	0.8876	16.43
290029	0.9227	
290032	1.4102	22.79
290036	0.5760	18.61
290038	0.9313	23.14
290039	1.3278	25.80
290041	1.2669	
300001	1.4837	21.40
300003	2.0054	23.25
300005	1.3435	19.99
300006	1.1762	18.93
300007	1.0889	19.34
300008	1.2468	16.46
300009	1.0545	20.01
300010	1.2618	19.38
300011	1.3250	21.24
300012	1.3234	23.89
300013	1.1145	18.97
300014	1.2417	19.80
300015	1.1214	19.92
300016	1.2108	18.50
300017	1.3267	22.34
300018	1.3658	20.89
300019	1.2426	20.61
300020	1.3820	21.65
300021	1.0741	17.35
300022	1.1274	17.19
300023	1.3989	20.39
300024	1.2667	17.95
300028	1.2859	18.05
300029	1.3196	20.90
300033	1.0986	19.85
300034	2.1601	23.52
310001	1.7852	26.81
310002	1.8508	26.61
310003	1.2974	26.83
310005	1.2946	23.05
310006	1.2111	21.50
310008	1.3295	24.95
310009	1.3229	23.19
310010	1.2488	21.11
310011	1.2569	23.22
310012	1.6481	26.32
310013	1.3697	22.11
310014	1.6478	28.70
310015	2.0223	27.58
310016	1.2866	25.72
310017	1.3522	26.07
310018	1.0775	24.53
310019	1.6742	22.82
310020	1.3766	19.27
310021	1.5395	14.69
310022	1.3224	20.73
310024	1.3248	22.78
310025	1.1869	22.58
310026	1.2370	23.87
310027	1.3153	21.77
310028	1.2506	23.52
310029	1.9412	23.20
310031	2.7731	25.18
310032	1.3215	23.30
310034	1.2861	21.69
310036	1.1416	19.82
310037	1.3994	27.44
310038*	2.0125	25.33
310039	1.2510	22.03
310040	1.2033	24.30
310041	1.3451	23.78
310042	1.2924	24.27
310043	1.1890	22.09
310044	1.3276	20.43
310045	1.4835	28.21
310047	1.3317	24.52
310048	1.2890	23.33
310049	1.2304	24.76
310050	1.2126	22.59
310051	1.3939	25.27
310052	1.3013	22.58
310054	1.3465	24.38
310057	1.3027	20.45
310058	1.1447	26.10
310060	1.1968	19.11
310061	1.2042	20.80
310062		19.27
310063*	1.3466	21.90
310064	1.3576	22.05
310067	1.3003	22.27
310069	1.2634	24.17
310070	1.4213	25.04
310072	1.3710	22.22
310073	1.6733	25.62
310074	1.3502	24.46
310075	1.4191	26.46
310076	1.4966	28.90
310077	1.6653	25.06
310078	1.4152	23.48
310081	1.3497	23.89
310083	1.2748	23.68
310084	1.3299	24.09
310086	1.2171	21.44
310087	1.3363	20.89
310088	1.1986	22.34
310090	1.3887	24.24
310091	1.2672	21.64
310092	1.3184	22.34
310093	1.1947	21.23
310096	1.9874	26.30
310105	1.2351	24.49
310108	1.4307	23.23
310110	1.2698	20.05
310111	1.2535	21.72
310112	1.3035	22.52
310113	1.2809	22.95
310115	1.2997	20.07
310116	1.2877	25.24
310118	1.2498	23.69
310119	1.7347	37.99
310120	1.2025	21.69
310121		18.74
320001	1.5282	17.85
320002	1.3475	18.74
320003	1.0738	15.35
320004	1.2912	17.12
320005	1.3136	19.87
320006*	1.3522	19.34
320009	1.5961	17.68
320011	1.1434	21.09
320012	1.0462	16.00
320013	1.1399	22.59
320014	1.0829	15.97
320016	1.1832	18.78
320017	1.1293	18.15
320018	1.5187	17.94
320019	1.5028	19.26
320021	1.8076	15.29
320022	1.2332	17.66
320023	1.0237	15.42
320030	1.1556	13.86
320031	0.9451	13.99
320032	0.9020	16.45
320033	1.1699	20.31
320035	1.0265	24.07
320037	1.1663	17.08
320038	1.2324	18.29
320046	1.4430	20.43
320048	1.4178	19.17
320057	0.9720	
320058	0.8862	
320059	1.0641	
320060	0.9268	
320061	1.1304	
320062	0.8542	
320063	1.2511	19.83
320065	1.2158	16.10
320067	0.8657	57.24
320068	0.8982	18.60
320069	0.9785	11.31
320070	0.9556	
320074	1.0897	18.65
320079	1.2128	19.42
330001	1.1867	25.21
330002	1.4494	28.92
330003	1.3431	17.65
330004	1.2951	19.59
330005	1.6834	24.28
330006	1.3333	25.46
330007	1.3686	18.65
330008	1.1791	17.76
330009	1.3308	30.42
330010	1.2833	14.74
330011	1.2963	17.63
330012	1.7216	29.82
330013	2.0344	19.11
330014	1.3868	27.44
330016	0.9933	17.41
330019	1.3823	32.45
330020	1.0286	14.55
330023	1.3016	24.27
330024	1.8309	33.55
330025	1.1142	16.03
330027	1.4665	32.50
330028	1.4110	27.06
330029	1.1574	16.56
330030	1.4176	15.06
330033	1.3126	16.75

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
330034	0.5350	30.78
330036	1.2759	24.32
330037	1.2231	16.00
330038	1.1805	16.01
330039	.....	12.47
330041	1.2877	30.42
330043	1.3072	27.15
330044	1.2664	18.70
330045	1.3750	27.17
330046	1.4572	31.91
330047	1.1976	17.53
330048	1.2590	17.62
330049	1.2589	19.31
330053	1.2232	15.67
330055	1.5716	28.99
330056	1.4640	30.21
330057	1.6852	18.34
330058	1.3123	16.98
330059	1.6000	31.58
330061	1.2768	25.07
330062	1.0880	15.28
330064	1.4278	32.67
330065	1.2356	18.37
330066	1.2664	19.12
330067	1.3300	20.94
330072	1.4065	30.35
330073	1.1715	15.88
330074	1.2624	18.18
330075	1.0926	17.26
330078	1.4535	17.49
330079	1.2821	16.76
330080	1.2129	24.70
330084	1.0650	23.03
330085	1.2897	18.78
330086	1.2267	30.69
330088	1.0497	25.62
330090	1.5603	18.68
330091	1.3782	18.53
330092	0.9905	12.65
330094	1.2369	17.72
330095	1.3277	18.34
330096	1.1197	16.60
330097	1.2448	16.96
330100	0.9996	26.11
330101	1.7924	29.22
330102	1.2990	17.25
330103	1.2013	16.48
330104	1.4136	28.77
330106	1.7000	35.87
330107	1.2746	28.08
330108	1.2381	17.08
330111	1.0714	15.20
330114	0.9051	18.24
330115	1.1308	16.56
330116	0.8451	24.23
330118	1.6337	20.76
330119	1.7045	34.75
330121	1.0146	14.77
330122	1.0120	21.20
330125	1.8884	22.57
330126	1.1358	22.70
330127	1.3758	28.67
330128	1.3080	26.63
330132	1.1899	14.70
330133	1.3624	32.28
330135	1.1989	18.33
330136	1.3313	17.26
330140	1.5200	19.50
330141	1.3317	25.14
330144	0.9679	12.52
330148	1.0686	15.04
330151	1.0943	13.97
330152	1.4603	29.48
330153	1.7146	17.40
330154	1.7635	
330157	1.3770	20.82
330158	1.4480	28.05
330159	1.2596	17.87
330160	1.4253	30.17
330162	1.2101	27.72
330163	1.2553	20.46
330164	1.3684	19.48
330166	1.0688	14.18
330167	1.7206	30.07
330169	1.4402	25.15
330171	1.3082	25.43
330175	1.1864	16.51
330177	0.9538	14.54
330179	0.8481	12.89
330180	1.2145	14.94
330181	1.3234	32.47
330182	2.5161	31.33
330183	1.4621	20.00
330184	1.3694	27.49
330185	1.2686	26.89
330188	1.2751	18.72
330189	1.1706	17.66
330191	1.3142	18.85
330193	1.3060	29.82
330194	1.8125	35.57
330195	1.6150	31.20
330196	1.2593	26.62
330197	1.1217	17.00
330198	1.3920	23.63
330199	1.3788	27.66
330201	1.6461	30.33
330202	1.3273	31.24
330203*	1.3894	19.24
330204	1.3574	26.81
330205	1.2183	19.46
330208	1.2533	25.82
330209	1.2122	24.88
330211	1.1003	19.10
330212	1.1260	21.18
330213	1.1307	18.51
330214	1.8224	32.20
330215	1.2141	17.58
330218	1.0787	21.71
330219	1.6427	20.48
330221	1.2963	30.00
330222	1.2742	17.71
330223	1.0460	17.28
330224	1.2634	20.89
330225	1.1993	25.80
330226	1.2803	17.67
330229	1.2988	16.25
330230	1.3375	26.86
330231	1.0207	26.61
330232	1.2609	19.50
330233	1.4709	33.48
330234	2.3386	32.95
330235	1.1656	19.45
330236	1.3899	29.54
330238	1.2178	14.90
330239	1.2090	17.28
330240	1.3693	29.22
330241	2.0171	22.60
330242	1.2839	24.74
330245	1.4700	17.28
330246	1.3232	26.51
330247*	0.8513	27.71
330249	1.1964	16.48
330250	1.2370	19.20
330252	.....	17.04
330254	1.1706	16.73
330256	1.2549	30.47
330259	1.4768	23.67
330261	1.3026	26.17
330263	1.0017	19.64
330264	1.1964	23.14
330265	1.3296	15.62
330267	1.3404	23.56
330268	0.9582	14.62
330270	2.0235	28.24
330273	1.2927	25.89
330275	1.3100	17.41
330276	1.1583	17.75
330277	1.1061	17.16
330279	1.2903	19.91
330285	1.6544	22.47
330286	1.3310	25.09
330290	1.7051	31.84
330293	1.1270	15.38
330304	1.2324	25.51
330306	1.3441	27.62
330307	1.3062	20.74
330308	.....	36.84
330314	1.3303	24.74
330316	1.2609	26.79
330327	0.8784	16.97
330331	1.3609	31.04
330332	1.2164	27.16
330333	1.2125	36.77
330336	1.3036	30.17
330338	1.2490	22.14
330339	0.9024	19.67
330340	1.1793	26.92
330350	1.7306	30.38
330353	1.3031	33.55
330354	1.5849	
330357	1.3385	34.66
330359	.....	29.29
330372	1.2176	22.50
330381	1.2997	29.24
330385	1.1314	26.39
330386	1.1741	24.67
330387	0.7617	
330389	1.7689	30.82
330390	1.3621	29.79
330393	1.7194	27.99
330394	1.5580	18.54
330395	1.3507	36.12
330396	1.1230	26.11
330397	1.3749	31.00
330398	1.3883	30.32
330399	1.2641	35.55
330400	0.8760	
340001	1.4552	18.47
340002	1.8350	18.79
340003	1.1378	21.97
340004	1.5051	17.89
340005	1.1264	14.09
340006	1.0454	15.57
340007	1.1632	17.17
340008	1.1038	18.38
340009	.....	20.50
340010	1.3066	17.65

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
340011	1.1008	14.92
340012	1.1768	16.66
340013	1.2426	17.43
340014	1.5356	19.86
340015	1.2423	19.01
340016	1.1688	16.40
340017	1.2562	19.22
340018	1.1436	15.16
340019	0.9955	11.80
340020	1.2435	16.75
340021	1.2560	19.67
340022	1.1245	16.72
340023	1.3399	15.75
340024	1.1416	16.64
340025	1.2473	16.82
340027	1.2113	17.30
340028	1.5329	17.72
340030	2.0492	20.05
340031	0.9575	12.39
340032	1.3541	20.47
340035	1.0956	16.10
340036	1.1309	16.97
340037	1.0053	15.53
340038	1.1024	17.01
340039	1.2595	20.01
340040	1.7834	20.07
340041	1.2546	16.97
340042	1.1890	16.63
340044	1.1035	16.37
340045	1.0223	12.42
340047*	1.8843	19.30
340048	0.6134	13.11
340049	0.7590	16.50
340050	1.1649	18.57
340051	1.2900	18.60
340052	0.9875	21.37
340053	1.6323	19.49
340054	1.1763	14.47
340055	1.2604	18.18
340060	1.0860	17.83
340061	1.7099	20.76
340063	1.0057	17.19
340064	1.1560	17.26
340065	1.3378	18.32
340067	1.0061	18.61
340068	1.2336	16.70
340069	1.8138	20.05
340070	1.2544	18.38
340071	1.1438	16.37
340072	1.1338	15.60
340073	1.3879	20.69
340075	1.2367	18.21
340080	0.9631	16.85
340084	1.1281	21.78
340085	1.1702	16.24
340087	1.1121	16.70
340088	1.2513	19.83
340089	0.9805	13.86
340090	1.1718	17.47
340091	1.6766	19.97
340093	1.0391	15.16
340094	1.3870	18.39
340096	1.1754	17.98
340097	1.1310	18.42
340098	1.5829	20.17
340099	1.1295	15.09
340101	1.0709	15.36
340104	0.8581	15.87
340105	1.3491	18.91
340106	1.1393	18.08
340107	1.2314	16.95
340109	1.3469	17.96
340111	1.1160	14.49
340112	0.9964	14.52
340113	1.8531	21.03
340114	1.6133	20.82
340115	1.5465	18.67
340116	1.8578	19.23
340119	1.2151	16.85
340120	1.1381	14.38
340121	1.0491	15.97
340123	1.1262	16.22
340124	1.1113	14.05
340125	1.4577	19.63
340126	1.3187	17.72
340127	1.3001	17.28
340129	1.2347	19.73
340130	1.3606	19.40
340131	1.5381	18.94
340132	1.2828	16.94
340133*	1.0724	14.35
340137	1.2697	
340138	1.0673	19.28
340141	1.7101	22.23
340142	1.1894	16.09
340143	1.4503	20.95
340144	1.2523	15.98
340145	1.3242	19.20
340146	1.0434	13.01
340147	1.2397	19.11
340148	1.3626	19.61
340151	1.2105	16.57
340153	1.8432	20.66
340155	1.3964	20.42
340156	0.7272	
340158	1.0734	17.26
340159	1.1779	16.80
340160	1.1654	15.53
340162		16.64
340164	1.3649	19.68
340166	1.3051	19.22
340168	0.4822	14.75
340171	1.1342	20.05
340173	1.2028	20.21
350001	0.9646	15.10
350002	1.8458	17.28
350003	1.2077	17.43
350004	1.9288	17.90
350005	1.0697	16.03
350006	1.3848	16.62
350007	0.9036	13.28
350008	0.9721	21.70
350009	1.1842	18.28
350010	1.1308	15.28
350011	1.9255	18.49
350012	1.0794	12.73
350013	1.0590	16.66
350014	1.0303	15.79
350015	1.7237	15.87
350016		11.63
350017	1.3344	17.78
350018	1.0338	13.64
350019	1.7223	19.40
350021	0.9859	12.69
350023	0.9505	13.34
350024	1.0054	14.37
350025	0.9807	16.24
350027	1.0099	17.12
350029	0.8409	12.80
350030	1.0670	17.35
350033	0.8292	14.90
350034	0.8296	16.32
350035	0.8734	10.16
350038	1.0785	18.74
350039	1.0406	17.31
350041	0.9448	14.68
350042	1.0516	16.75
350043	1.6090	17.16
350044	0.9038	10.53
350047	1.1408	17.93
350049	1.2037	14.53
350050	0.9242	10.57
350051	0.9872	17.53
350053	1.0058	13.94
350055	0.9910	12.37
350056	0.9210	14.67
350058	0.9553	14.35
350060	0.8826	9.60
350061	1.0444	14.59
350063	0.8913	
350064	0.8850	
350068	2.5336	
350069	1.1398	
360001	1.3040	17.61
360002	1.1823	17.40
360003	1.7502	22.03
360006	1.9071	22.09
360007	1.0921	17.10
360008	1.2559	18.28
360009	1.5436	17.53
360010	1.2815	18.09
360011	1.2938	18.95
360012	1.3003	19.22
360013	1.1471	20.81
360014	1.1215	19.86
360016	1.6714	18.71
360017	1.9258	22.50
360018*	1.6881	21.13
360019	1.2251	20.17
360020	1.4563	22.96
360024	1.3152	18.54
360025	1.3536	19.19
360026	1.3138	17.04
360027	1.4730	20.43
360028	1.4907	17.27
360029	1.1938	18.22
360030	1.3469	15.35
360031	1.1971	19.90
360032	1.1591	17.93
360034	1.3273	15.56
360035	1.6456	18.97
360036	1.3111	19.14
360037*	2.1426	22.52
360038	1.6235	19.09
360039	1.2937	17.52
360040	1.2913	18.12
360041	1.2871	18.42
360042	1.1662	16.12
360044	1.1478	16.79
360045	1.4244	21.18
360046	1.1481	19.32
360047	1.1315	15.34
360048*	1.6813	21.29
360049	1.2245	18.61
360050	1.2304	12.69
360051	1.6220	20.71
360052*	1.6960	19.75

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1998 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
360054	1.2429	16.19
360055	1.3166	23.27
360056	1.3960	18.36
360057	1.0590	13.81
360058	1.1936	17.92
360059	1.6088	20.39
360062	1.4087	20.31
360063	1.1347	22.79
360064	1.6113	20.64
360065	1.2531	19.45
360066	1.6390	20.03
360067	1.1463	14.57
360068	1.7916	21.92
360069	1.1347	17.08
360070	1.7820	17.55
360071	1.4177	23.80
360072	1.2731	17.97
360074*	1.2996	18.32
360075	1.3460	19.25
360076	1.3579	19.59
360077	1.6157	20.82
360078	1.2427	20.79
360079*	1.8438	22.00
360080	1.1427	16.66
360081	1.3387	19.54
360082	1.2779	22.86
360083	.....	18.46
360084	1.6077	20.09
360085	1.8767	20.73
360086	1.4308	17.04
360087	1.4296	20.04
360088	1.3224	22.31
360089	1.1349	20.56
360090	1.2682	20.40
360091	1.3213	21.03
360092	1.1373	15.91
360093	1.1774	16.57
360094	1.3412	18.31
360095	1.2596	16.71
360096	1.0736	17.16
360098	1.4620	18.34
360099	0.9911	16.43
360100	1.2362	17.66
360101	1.3303	22.31
360102	1.2046	16.41
360103	.....	22.66
360104	1.1889	
360106	1.1909	16.18
360107	1.2449	14.54
360108	1.0519	16.51
360109	1.1015	19.52
360112	1.9154	22.68
360113	1.3257	22.27
360114	1.0880	17.13
360115	1.3591	18.19
360116	1.1091	18.08
360118	1.3515	16.60
360121	1.2071	21.42
360123	1.2382	19.13
360125	1.1479	18.17
360126	1.2125	20.46
360127	1.1473	16.92
360128	1.1568	15.58
360129	0.9446	15.42
360130	1.0122	15.34
360131	1.3308	18.29
360132	1.4132	16.27
360133	1.6508	19.03
360134	1.7520	20.24
360136	1.0180	17.85
360137	1.7424	20.26
360140	0.9460	19.13
360141	1.6432	22.85
360142	1.0527	17.32
360143	1.3343	20.44
360144	1.2946	21.92
360145	1.6897	19.39
360147	1.2436	16.59
360148	1.1482	18.89
360149	1.2611	16.79
360150	1.3025	20.63
360151	1.3908	17.49
360152	1.5270	22.00
360153	1.1281	14.89
360154	1.0435	13.76
360155	1.3677	20.90
360156	1.2714	17.92
360159	1.1769	20.71
360161*	1.3552	19.43
360162	1.0718	16.32
360163	1.8472	20.36
360164	.....	16.16
360165	1.1740	19.48
360166	.....	16.96
360170	1.4424	17.18
360172	1.3450	18.47
360174	1.2393	19.09
360175	1.1888	20.41
360176	1.1416	15.55
360177	1.3276	19.41
360178	1.3155	17.40
360179	1.4147	18.82
360180	2.1660	22.09
360184	0.5560	19.35
360185	1.2279	18.67
360186	1.0613	20.66
360187	1.4008	18.02
360188	0.9300	17.53
360189	1.0999	17.37
360192	1.3351	21.00
360193	.....	17.67
360194	1.1660	17.69
360195	1.1446	19.02
360197	1.1572	19.42
360200	0.9135	17.76
360203	1.1642	15.61
360204	1.2012	19.35
360210	1.1881	20.28
360211	1.2583	19.58
360212	1.3502	20.23
360213	1.2562	18.33
360218	1.3312	18.41
360230	1.5295	21.44
360231	1.1521	13.56
360234	1.3657	22.06
360236	1.2693	19.57
360239	1.2655	19.86
360241	0.4070	22.06
360242	1.8377	
360243	0.6871	13.58
360244	.....	10.55
360245	0.7435	15.06
360247	0.4015	16.11
360248	.....	21.85
370001	1.7396	21.23
370002	1.2252	14.06
370004	1.1874	16.77
370005	0.9385	17.38
370006	1.1886	12.54
370007	1.1476	17.00
370008	1.3755	17.30
370011	1.0368	14.64
370012	0.8370	10.80
370013	1.8507	18.04
370014	1.1884	19.63
370015	1.1919	17.91
370016	1.3306	16.64
370017	1.1140	12.96
370018	1.3486	14.24
370019	1.3158	16.86
370020	1.2742	13.48
370021	0.8813	11.26
370022	1.3170	17.90
370023	1.2564	16.82
370025	1.3094	16.40
370026	1.4938	16.90
370028	1.8978	19.71
370029	1.1615	13.69
370030	1.1993	15.47
370032	1.5960	16.70
370033	1.0434	12.39
370034	1.2300	14.51
370035	1.7244	18.96
370036	1.0594	11.46
370037	1.7347	17.75
370038	0.9501	12.81
370039	1.1556	16.27
370040	1.0121	14.34
370041	0.9415	17.41
370042	0.8490	14.61
370043	0.9307	16.08
370045	1.0379	12.44
370046	0.9834	18.15
370047	1.4255	15.67
370048	1.2037	17.44
370049	1.3145	19.84
370051	0.9449	12.18
370054	1.3030	16.56
370056	1.5715	18.66
370057	1.0250	14.66
370059	1.1266	16.46
370060	1.0540	15.12
370063	1.1044	17.06
370064	0.9378	9.76
370065	0.9996	16.56
370071	1.0274	14.95
370072	0.8645	26.05
370076	1.2553	12.66
370077	.....	17.62
370078	1.6857	17.24
370079	0.9312	13.60
370080	0.9515	14.34
370082	0.8548	13.57
370083	0.9652	11.49
370084	1.0191	21.75
370085	0.8886	11.88
370086	1.1148	13.56
370089	1.2157	14.50
370091	1.6647	17.58
370092	0.9950	14.68
370093	1.7953	18.57
370094	1.4453	18.38
370095	0.9872	14.13
370097	1.3456	15.72
370099	1.1231	16.17
370100	0.9784	17.10
370103	0.9071	15.90

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
370105	1.9580	21.06
370106	1.5282	18.62
370108	0.9670	12.24
370112	1.0284	15.25
370113	1.2334	16.20
370114	1.6444	15.98
370121	1.0409	19.55
370122	1.0451	12.15
370123	1.4513	16.36
370125	0.9024	13.55
370126	0.9646	18.24
370131	0.9766	16.24
370133	1.0621	10.47
370138	1.0490	16.02
370139	1.0965	13.30
370140	1.0464	15.23
370141	1.3716	6.09
370146	1.0935	12.56
370148	1.4521	
370149	1.3479	16.72
370153	1.1151	15.32
370154	1.0475	16.29
370156	1.1035	13.64
370158	1.0197	15.09
370159	1.2547	15.49
370163	0.9790	14.56
370165	1.2623	13.22
370166	1.0457	17.82
370169	1.0462	11.80
370170	1.0246	
370171	1.0343	
370172	0.8992	
370173	1.0625	
370174	0.7213	
370176	1.2190	16.03
370177	0.9910	11.88
370178	0.9838	11.64
370179	0.9498	19.27
370180	0.9870	
370183	1.0383	7.62
370186	0.9785	13.35
370190	1.4695	13.70
370192	1.4803	16.74
370196	0.8822	
370197		21.57
370198	1.4366	
370199	1.0307	
370200	1.1673	
380001	1.3046	22.03
380002	1.2175	19.48
380003	1.1750	24.74
380004	1.7385	23.16
380005	1.1745	23.24
380006	1.2246	20.54
380007	1.6509	24.16
380008	1.0680	21.19
380009	1.7977	25.28
380010	1.0413	19.75
380011	1.1006	21.14
380013	1.1883	20.10
380014	1.6527	23.48
380017	1.9295	23.68
380018	1.8300	22.08
380019	1.2442	20.77
380020	1.4525	21.35
380021	1.2077	20.64
380022	1.1107	21.61
380023	1.1378	19.24
380025	1.2975	24.57

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
380026	1.1414	19.27
380027	1.2810	20.16
380029	1.1411	18.57
380031	0.9370	22.83
380033	1.7968	22.62
380035	1.3525	21.65
380036	1.0658	19.33
380037	1.2271	21.23
380038	1.2457	25.58
380039	1.2601	22.12
380040	1.2922	21.64
380042	1.0121	19.81
380047	1.6765	21.95
380048	1.0418	18.38
380050	1.4266	18.25
380051	1.6342	21.24
380052	1.2506	17.77
380055		21.25
380056	1.0970	17.16
380060	1.4584	23.48
380061	1.5207	22.63
380062	1.2197	18.52
380063		19.36
380064	1.3207	19.87
380065	1.3101	22.17
380066	1.3211	20.42
380068		22.76
380069	1.0679	19.58
380070	1.3454	24.71
380071	1.2327	20.47
380072	0.9951	16.32
380075	1.4249	22.17
380078	1.1368	19.10
380081	1.0229	20.59
380082	1.2627	22.58
380083	1.1660	21.81
380084	1.2367	23.64
380087	1.2347	16.75
380088	1.0722	19.52
380089	1.2780	23.74
380090	1.2983	27.09
380091	1.2616	22.83
390001	1.5197	16.39
390002	1.3158	18.08
390003	1.2403	17.24
390004	1.3978	18.82
390005	1.0949	15.36
390006*	1.8485	18.13
390007	1.2503	21.41
390008	1.2027	16.74
390009*	1.7387	20.16
390010	1.2504	17.42
390011	1.2787	18.07
390012	1.2197	20.00
390013	1.2401	19.33
390015	1.1331	12.94
390016	1.2482	17.95
390017	1.1848	16.22
390018	1.2431	18.96
390019	1.0762	16.40
390022	1.3535	22.86
390023	1.2270	19.56
390024	1.1793	25.03
390025	0.4286	15.65
390026	1.2757	22.18
390027	1.7878	27.37
390028*	1.8892	18.48
390029	2.0422	19.54
390030	1.2187	18.40

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
390031	1.2151	18.69
390032	1.2603	18.15
390035	1.2652	18.51
390036	1.5396	18.78
390037	1.3706	22.24
390039	1.1414	16.54
390040	0.9484	15.12
390041	1.2691	19.58
390042	1.5798	21.10
390043	1.1762	16.36
390044	1.6420	19.50
390045	1.7171	18.75
390046	1.6108	20.42
390047*	1.7435	23.61
390048	1.1520	18.38
390049	1.6125	21.02
390050	2.1150	21.43
390051	2.1342	26.05
390052	1.1532	17.10
390054	1.2344	17.50
390055	1.8882	25.85
390056	1.1202	17.17
390057	1.3145	19.74
390058	1.2840	19.25
390060	1.2068	13.63
390061	1.4935	16.95
390062	1.2449	16.45
390063	1.8347	19.51
390065	1.2323	20.00
390066	1.2608	18.70
390067	1.8041	20.18
390068	1.3029	17.55
390069	1.2663	19.76
390070	1.4168	20.07
390071	1.1082	16.23
390072	1.0501	15.56
390073	1.6868	20.64
390074	1.2477	16.60
390075	1.3927	17.27
390076	1.2793	21.43
390078	1.1506	18.23
390079	1.7570	17.76
390080	1.2902	16.82
390081	1.2995	23.99
390083	1.2055	
390084	1.2684	16.35
390086	1.1376	17.25
390088	1.3701	22.85
390090	1.8017	20.68
390091	1.1279	18.36
390093	1.1549	16.61
390095	1.2035	13.05
390096	1.4931	19.25
390097	1.2755	21.52
390100	1.6538	19.89
390101	1.2027	17.10
390102	1.3963	19.51
390103	1.0916	17.71
390104	1.0666	16.17
390106	1.1160	16.28
390107	1.3258	19.18
390108	1.4022	21.43
390109	1.2016	14.66
390110	1.5961	19.51
390111	1.9406	26.03
390112	1.2965	14.04
390113	1.2515	17.53
390114	1.2347	23.03
390115	1.3973	24.42

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
390116	1.2899	20.60
390117	1.1722	16.90
390118	1.2135	16.90
390119*	1.3898	18.48
390121	1.3957	18.64
390122	1.0603	17.46
390123	1.2758	20.44
390125	1.2067	15.94
390126	1.2899	20.94
390127	1.2286	21.88
390128	1.2202	19.99
390130	1.1343	17.33
390131	1.3302	16.83
390132	1.2635	21.10
390133	1.7948	24.39
390135	1.2293	20.86
390136	1.1431	17.61
390137	1.5156	16.54
390138	1.3212	18.86
390139	1.5084	22.94
390142*	1.6068	27.22
390145	1.3880	20.34
390146	1.2154	17.70
390147	1.2654	21.11
390150	1.1815	19.66
390151	1.2305	20.51
390152	1.1114	19.15
390153	1.2214	23.14
390154	1.2689	15.85
390156	1.4094	20.88
390157	1.3940	19.83
390158	.....	21.69
390160	1.2380	20.67
390161	1.1893	12.37
390162	1.5191	21.01
390163	1.2262	15.64
390164*	2.1709	21.74
390166	1.1125	19.96
390167	.....	22.91
390168	1.2596	18.99
390169	1.3383	18.99
390170	1.8481	22.99
390173	1.2222	17.62
390174*	1.6754	23.61
390176	1.1817	17.36
390178	1.3114	17.47
390179	1.3111	21.16
390180	1.4554	25.02
390181	1.0732	17.09
390183	1.1620	18.28
390184	1.1309	20.75
390185	1.2171	17.65
390189	1.1411	18.67
390191	1.1707	16.20
390192	1.1740	16.32
390193	1.1938	16.50
390194	1.1395	20.15
390195	1.8245	23.69
390196	1.5792	
390197	1.2825	18.99
390198*	1.2667	15.51
390199	1.2670	16.66
390200	0.9701	13.59
390201	1.2646	20.50
390203	1.3562	22.06
390204	1.2728	20.85
390206	1.4000	16.76
390209	1.0611	16.96
390211	1.2184	17.86
390213	1.1284	17.17
390215	1.2563	20.84
390217	1.2232	19.29
390219	1.3072	22.71
390220	1.1652	18.52
390222	1.3140	20.91
390223	1.7334	22.13
390224	0.8802	15.91
390225	1.1951	18.17
390226	1.6039	22.46
390228	1.2976	19.81
390231	1.5675	22.40
390233	1.3507	18.20
390235	1.4144	23.54
390236	1.2254	17.03
390237	1.5705	19.89
390238	1.2725	1.27
390242	.....	18.10
390244	0.9245	14.41
390245	1.3199	20.15
390246	1.1920	17.75
390247	1.0511	20.67
390249	0.9293	10.73
390256	1.8901	23.84
390258	1.4575	21.36
390260	1.0990	21.19
390262	1.9276	18.62
390263	1.4224	23.62
390265	1.2935	19.51
390266	1.2118	16.24
390267	1.2589	20.79
390268	1.3375	21.02
390270	1.3851	17.83
390272	0.4768	
390277	0.4015	27.10
390278	0.6660	18.99
390279	1.0550	13.79
390283	1.2887	
390284	1.3639	
400001	1.2182	9.86
400002	1.0803	9.31
400003	1.3589	10.13
400004	1.1421	8.48
400005	1.1211	7.85
400006	1.1593	8.22
400007	1.2021	7.86
400009	1.0530	8.37
400010	0.6902	11.66
400011	1.0733	7.44
400012	1.3429	7.81
400013	1.2616	8.21
400014	1.3935	9.54
400015	1.3307	10.33
400016	1.3663	12.07
400017	1.1570	8.57
400018	1.2817	9.45
400019	1.6576	10.13
400021	1.4432	11.68
400022	1.3365	11.12
400024	0.9500	7.56
400026	0.9640	7.12
400027	1.1026	8.49
400028	1.2500	8.40
400031	1.2515	9.78
400032	1.2212	9.42
400044	1.2450	11.66
400048	1.0249	9.47
400061	1.7094	16.08
400079	1.2218	
400087	1.4156	9.83
400094	0.9947	5.15
400098	1.3998	8.17
400102	1.1591	7.73
400103	1.3870	10.59
400104	1.2767	9.68
400105	1.2171	10.06
400106	1.2574	8.51
400109	1.4773	10.18
400110	1.1292	10.52
400111	1.1916	9.56
400112	1.0540	9.97
400113	1.1575	9.48
400114	1.0784	6.41
400115	1.0386	9.13
400117	1.1545	10.04
400118	1.2392	8.70
400120	1.2554	9.74
400121	0.9964	7.11
400122	1.0235	8.48
400123	1.2031	9.00
400124	2.6358	11.16
400125	1.0022	
410001	1.3348	22.53
410004	1.2575	22.06
410005	1.3735	21.26
410006	1.3057	21.68
410007	1.6365	20.98
410008	1.2136	22.62
410009	1.2941	24.08
410010	1.1611	27.14
410011	1.2705	24.37
410012	1.9068	21.33
410013	1.2961	25.01
420002	1.5015	20.20
420004	1.8164	19.41
420005	1.1323	15.99
420006	1.1199	18.24
420007	1.5710	17.43
420009	1.1697	17.25
420010*	1.1774	17.91
420011	1.2438	14.99
420014	1.0197	16.72
420015	1.3348	17.18
420016	0.9571	18.15
420018	1.8110	19.73
420019	1.2145	15.55
420020	1.1846	20.16
420023	1.4298	20.97
420026	1.8901	21.90
420027	1.3308	16.08
420030	1.2081	17.82
420031	0.8622	13.07
420033	1.1653	21.09
420036	1.2907	19.80
420037	1.1948	21.96
420038	1.3155	16.15
420039	1.0701	16.96
420042	.....	14.66
420043	1.1867	18.36
420048	1.2386	29.62
420049	1.2046	19.23
420051	1.6466	18.25
420053	1.1427	16.48
420054	1.2398	16.55
420055	1.0585	16.18
420056	1.1158	14.85
420057	1.1156	14.50
420059	0.9738	19.13

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
420061	1.1761	17.78
420062	1.1904	18.92
420064	1.1038	16.15
420065	1.3912	19.06
420066	0.9634	15.52
420067	1.2163	18.30
420068	1.3854	17.21
420069	1.0602	16.40
420070	1.2331	17.45
420071	1.3510	18.29
420072	0.9129	12.34
420073	1.2802	19.20
420074	1.0257	13.80*
420075	0.9395	16.29
420078*	1.8578	20.68
420079	1.5179	18.77
420080	1.3722	24.83
420082	1.5853	18.85
420083	1.3596	20.41
420085	1.4116	18.33
420086	1.4340	19.31
420087	1.5959	17.43
420088	1.0878	17.09
420089	1.2941	21.86
420091	1.2732	18.57
420093	1.0353	16.77
420094	.....	32.68
430004	0.9973	17.85
430005	1.3588	15.92
430007	1.0895	14.06
430008	1.0971	16.54
430010	1.1605	16.11
430011	1.2930	16.42
430012	1.3230	17.56
430013	1.2073	17.24
430014	1.3653	18.56
430015	1.2134	16.41
430016	1.8711	18.97
430018	0.8815	15.15
430022	0.8616	12.95
430023	0.8729*	11.64
430024	0.9364	13.99
430026	.....	10.85
430027	1.7681	18.32
430028	1.0724	16.78
430029	0.9602	15.10
430031	0.9138	12.46
430033	0.9935	14.64
430034	0.9461	12.85
430036	0.9551	13.78
430037	0.9633	15.95
430038	1.0095	11.94
430040	1.0511	13.37
430041	0.9140	12.62
430043	1.1323	13.43
430044	0.9084	16.45
430047	1.0274	17.06
430048	1.2378	17.26
430049	0.8812	14.44
430051	0.9318	17.03
430054	0.9648	13.50
430056	0.8301	10.74
430057	0.8972	15.15
430060	1.0902	8.64
430062	.....	10.89
430064	1.0191	12.74
430065	.....	12.77
430066	0.9635	13.44
430073	1.0646	14.98
430076	0.9475	12.25
430077	1.6605	17.72
430079	1.0029	12.98
430081	0.8954	
430082	0.8549	
430083	0.9273	
430084	0.8155	
430085	0.7910	
430087	.....	10.45
430089	0.8033	17.01
430090	1.3320	
430091	1.4528	
430092	2.2007	
430093	0.9966	
440001	1.1722	15.01
440002	1.6649	24.36
440003	1.2128	17.47
440006	1.4058	20.39
440007	1.0032	7.77
440008	0.9784	14.04
440009	1.1552	15.46
440010	0.9307	13.59
440011	1.3832	17.16
440012	1.7143	18.79
440014	1.0046	14.61
440015	1.7923	21.09
440016	1.0334	14.94
440017	1.7422	20.93
440018	1.2965	18.21
440019	1.7372	28.22
440020	1.1314	14.70
440022	.....	19.02
440023	1.1030	14.14
440024	1.2947	18.10
440025	1.1538	15.28
440026	0.8073	22.92
440029	1.2585	18.52
440030	1.2098	15.57
440031	1.0300	14.30
440032	1.0046	13.60
440033	1.1602	14.04
440034	1.5621	17.93
440035	1.2301	18.16
440039	1.8871	18.52
440040	0.9687	17.50
440041	1.0284	13.63
440046	1.2336	18.83
440047	0.9254	17.00
440048	1.8710	18.14
440049	1.6835	15.23
440050	1.3867	15.76
440051	0.9145	14.91
440052	1.0633	16.27
440053	1.3201	17.69
440054	1.1349	12.31
440056	1.1422	14.25
440057	1.0340	12.72
440058	1.2124	18.86
440059	1.4182	17.53
440060	1.1653	15.86
440061	1.1496	16.48
440063	1.6724	18.29
440064	1.0863	17.38
440065	1.2816	18.69
440067	1.2422	28.28
440068	1.2251	17.45
440070	1.0077	15.04
440071	1.3615	16.17
440072	1.3562	15.61
440073	1.2785	18.56
440078	1.0266	13.09
440081	1.0950	17.97
440082	2.0471	19.61
440083	0.9670	59.16
440084	1.2064	13.37
440091	1.6371	19.72
440100	1.0085	13.95
440102	1.1313	13.96
440103	1.1144	19.21
440104	1.7388	22.39
440105	1.7270	16.03
440109	1.0689	14.25
440110	1.1002	15.92
440111*	1.4426	21.12
440114	1.0554	13.61
440115	1.0675	12.97
440120	1.6404	18.30
440125	1.5564	16.11
440130	1.1384	16.67
440131	1.1174	14.68
440132	1.1314	15.91
440133	1.5479	21.70
440135	1.2196	35.34
440137	1.0844	14.70
440141	0.9706	12.48
440142	1.0003	13.01
440143	1.0461	17.33
440144	1.2139	16.67
440145	0.9559	13.66
440147	1.7001	22.01
440148	1.1231	17.64
440149	1.0945	13.89
440150	1.3319	13.04
440151	1.1148	15.43
440152	2.0165	17.84
440153	1.1547	16.10
440156	1.5024	19.61
440157	1.0819	9.02
440159	1.1218	17.62
440161	1.8684	20.39
440162	.....	14.41
440166	1.6849	18.14
440168	1.0561	17.15
440173	1.8008	18.47
440174	1.0302	17.01
440175	1.0716	17.29
440176	1.3816	18.75
440180	1.2237	17.01
440181	0.9662	11.85
440182	0.9596	18.91
440183	1.5917	19.43
440184	1.2536	18.06
440185	1.1857	18.73
440186	1.0479	18.28
440187	1.1048	14.46
440189	1.4799	16.19
440192	1.0810	19.97
440193	1.2265	18.40
440194	1.2532	19.21
440197	1.3616	23.00
440200	1.0421	15.85
440203	0.9727	16.61
440206	0.9488	13.75
440209	.....	14.75
440210	0.6584	12.33
440211	0.7073	
440212	1.3679	
440213	2.6309	

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
440214	1.3285	
440215	3.2594	
450002*	1.5334	19.92
450004	1.1433	15.26
450005	1.1877	15.86
450007	1.2689	15.75
450008	1.2584	15.75
450010	1.4340	16.08
450011	1.5214	17.66
450014	1.1172	18.22
450015*	1.6355	16.44
450016	1.6644	17.31
450018	1.4434	19.81
450020	0.9801	16.97
450021	1.8595	22.03
450023	1.4538	16.64
450024	1.4525	16.10
450025	1.7316	16.44
450028	1.5003	16.28
450029	1.6807	17.69
450031	1.4829	20.90
450032	1.3571	15.24
450033	1.7144	20.86
450034	1.5651	16.91
450035	1.4731	16.91
450037	1.5577	16.65
450039*	1.4262	16.83
450040	1.5483	17.52
450042	1.7715	17.01
450044	1.6187	17.61
450046*	1.3251	16.99
450047	1.1488	12.50
450050	0.9407	13.00
450051	1.5714	20.06
450052	1.0002	13.53
450053	1.1028	17.31
450054*	1.6343	21.98
450055	1.1125	14.81
450056	1.6257	19.22
450058	1.6338	16.98
450059	1.3021	14.21
450063	0.9097	13.81
450064	1.4200	15.43
450065	1.0265	19.61
450068	1.9331	22.90
450072	1.1764	17.34
450073	1.1207	16.62
450076	1.7329	
450078	0.8770	13.49
450079	1.5311	19.49
450080	1.1778	16.19
450081	1.0574	16.17
450082	0.9688	13.30
450083	1.8071	20.18
450085	1.0524	14.22
450087	1.4467	21.44
450090	1.1231	13.91
450092	1.2254	15.68
450094	1.3268	19.20
450096	1.4156	16.63
450097	1.3392	18.27
450098	1.0661	15.48
450099	1.1515	22.88
450101	1.4797	15.29
450102	1.7275	17.15
450104	1.1833	15.96
450107	1.5329	20.74
450108	1.0388	13.53
450109	0.9217	12.77
450110		21.44
450111	1.2306	19.27
450112	1.2588	12.04
450113	1.3241	15.15
450118	1.6810	15.83
450119	1.4076	18.32
450121	1.5363	17.37
450123	1.1893	19.19
450124	1.6632	20.61
450126	1.3278	17.45
450128	1.1963	15.62
450130	1.5006	17.86
450131	1.2640	17.62
450132	1.6184	14.38
450133	1.6016	19.64
450135	1.6146	15.16
450137	1.5728	23.96
450140	0.9222	18.07
450143	1.0314	13.28
450144	1.0945	16.30
450145	0.8569	14.84
450146	0.9518	13.75
450147	1.3039	14.90
450148	1.2199	16.91
450149	1.4914	24.00
450150	0.9050	12.56
450151	1.1034	14.84
450152	1.2307	17.33
450153	1.5443	24.00
450154	1.1796	11.36
450155	1.0303	23.77
450157	1.0679	14.62
450160	0.9623	9.75
450162	1.2163	22.12
450163	1.0057	16.98
450164	1.1844	19.21
450165	1.0389	15.16
450166	0.9373	10.28
450169		15.88
450170	0.9628	13.96
450176	1.2927	16.30
450177	1.2044	15.98
450178	1.0248	16.76
450181	1.0084	14.02
450184	1.4589	19.47
450185	1.0264	13.06
450187	1.1969	17.14
450188	0.9950	13.78
450191	1.0176	16.80
450192	1.1764	21.53
450193	2.0194	22.73
450194	1.3017	19.15
450196	1.4365	16.49
450200	1.4455	17.38
450201	1.0178	17.05
450203	1.1592	18.66
450209	1.5655	16.66
450210	1.0520	14.23
450211	1.3626	16.69
450213	1.7288	17.44
450214	1.3280	17.25
450217	0.9354	11.69
450219	1.0891	15.42
450221	1.1920	16.99
450222	1.4941	18.36
450224	1.3678	22.83
450229	1.5725	16.39
450231	1.6282	13.25
450234	1.0450	13.26
450235	1.0661	13.42
450236	1.1453	15.66
450237	1.5262	17.40
450239	1.0060	13.64
450241	0.9562	13.66
450243	0.9422	12.31
450246	1.0110	18.31
450249	1.0667	11.63
450250	0.9906	14.91
450253	1.1234	15.35
450258	1.0358	13.23
450259		17.85
450264	0.8607	13.89
450269	0.9963	14.16
450270	1.0793	9.86
450271	1.2394	15.39
450272	1.2614	17.91
450276	1.0966	12.71
450278	0.8254	13.79
450280	1.5815	19.01
450283	1.0413	13.69
450286		12.12
450288	1.1566	15.67
450289	1.4681	18.08
450292	1.1877	12.64
450293	0.9461	14.43
450296	1.3456	20.66
450299	1.5412	17.97
450303	0.9624	11.59
450306	1.0914	13.32
450307	0.7995	16.23
450309	1.0981	11.91
450315	0.9788	20.80
450320	1.2431	19.63
450321	0.9220	13.09
450322	0.5973	12.33
450324	1.5343	17.87
450327	0.9680	15.98
450330	1.1267	18.42
450334	0.9752	12.27
450337	0.9932	17.42
450340	1.4589	15.85
450341	1.0144	19.27
450346	1.5017	14.22
450347	1.2197	17.54
450348	1.1296	12.94
450351	1.2160	15.98
450352	1.1887	17.50
450353	1.1374	15.00
450355	1.0444	14.32
450358	2.0739	18.73
450362	1.0903	14.71
450369	1.0535	15.17
450370	1.2082	15.44
450371	1.2448	11.90
450372	1.2359	16.76
450373	1.1042	17.60
450374	0.8698	12.69
450378	1.1823	23.06
450379	1.5578	20.28
450381	0.8504	13.57
450388	1.7801	17.56
450389	1.2887	18.15
450393	1.2516	15.73
450395	1.0414	12.48
450399	0.9440	15.10
450400	1.3751	11.53
450403	1.2457	21.27
450411	0.9314	13.56

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1998 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
450417	1.0236	13.85
450418	1.3841	20.58
450419	1.2162	14.50
450422	1.0412	24.33
450423	1.5371	19.44
450424	1.2463	17.09
450429	1.1179	10.12
450431	1.5626	34.88
450436	1.1330	14.95
450446	0.7612	21.97
450447	1.3910	16.35
450451	1.1844	18.35
450457	1.8463	19.35
450460	1.0034	16.62
450462	1.7354	19.83
450464	0.9328	10.87
450465	1.3057	15.22
450467	1.0766	15.02
450469	1.3918	22.10
450473	1.0190	14.19
450475	1.0903	16.25
450484	1.4886	19.59
450488	1.3273	18.73
450489	0.9699	12.93
450497	1.1168	11.89
450498	0.9736	0.87
450508	1.3853	19.37
450514	1.0764	22.28
450517	0.9583	12.86
450518	1.5216	18.98
450523	1.4806	20.26
450530	1.1943	22.91
450534	0.9671	22.77
450535	1.2284	21.26
450537	1.3420	20.83
450538	.....	19.69
450539	1.2651	14.25
450544*	1.1442	19.38
450545	1.3928	16.97
450547	1.0633	13.81
450551	1.1045	24.23
450558	1.7912	20.15
450559	.....	11.50
450561	.....	16.82
450563	1.2647	30.37
450565	1.2567	16.45
450570	1.1346	17.71
450571	1.4908	16.80
450573	0.9885	15.61
450574	0.9302	14.24
450575	1.1445	19.06
450578	0.9365	16.87
450580	1.1534	15.36
450583	1.0350	15.50
450584	1.1771	12.42
450586	1.0584	12.79
450587	1.1745	17.11
450591	1.1460	17.92
450596	1.2182	14.82
450597	0.9687	16.18
450603	0.7880	12.77
450604	1.3023	14.47
450605	1.1873	20.15
450609	0.8938	10.73
450610	1.4674	16.49
450614	0.9889	13.25
450615	1.0755	14.75
450617	1.3306	19.54
450620	1.1230	12.27

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
450623	1.1390	21.83
450626	1.0109	18.56
450628	1.0152	16.83
450630	1.5199	19.19
450631	1.6593	17.56
450632	0.9391	11.63
450633	1.5493	19.26
450634	1.5955	20.29
450638	1.5280	21.11
450639	1.4600	20.14
450641	1.0511	13.50
450643	1.2200	17.43
450644	1.4350	20.79
450646	1.4571	19.99
450647	1.8915	22.10
450648	1.0015	12.59
450649	1.0322	15.37
450651	1.6801	20.31
450652	0.9063	15.24
450653	1.0088	19.28
450654	0.9486	13.41
450656	1.3894	18.56
450658	0.9605	15.15
450659	1.4874	20.56
450661	1.1066	20.22
450662	1.4702	18.42
450665	0.8639	13.60
450666	1.3180	19.35
450668	1.6257	18.50
450669	1.3474	22.28
450670	1.3446	18.20
450672	1.5857	21.04
450673	1.0157	13.84
450674	1.1515	20.62
450675	1.3677	23.26
450677	1.3317	18.71
450678	1.4729	20.75
450681	1.3177	
450683	1.2745	19.95
450684	1.2398	22.85
450686	1.5933	14.85
450688	1.3163	20.90
450690	1.3862	16.37
450694	1.1409	18.03
450696	1.3358	17.57
450697	1.3692	15.93
450698	0.9124	14.40
450700	0.9465	15.12
450702	1.5056	21.01
450703	1.1321	16.80
450704	1.2418	21.62
450705	0.8800	22.32
450706	1.1976	21.38
450709	1.1858	17.96
450711	1.6329	17.93
450712	0.5447	16.89
450713	1.4868	23.11
450715	1.4311	19.11
450716	1.2675	19.99
450717	1.2910	19.45
450718	1.1993	19.07
450723	1.4195	20.55
450724	1.2576	20.07
450725	.....	19.56
450727	1.0735	17.75
450728	0.8255	12.93
450730	1.3987	20.88
450733	1.4711	20.37
450735	0.8297	8.00

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
450742	1.2724	20.74
450743	1.4594	14.65
450746	0.9225	18.45
450747	1.3312	17.38
450749	1.0333	12.95
450750	1.0162	14.72
450751	1.2148	22.25
450754	0.9405	14.89
450755	1.1078	14.71
450757	0.8760	13.98
450758	1.8171	18.65
450760	1.2078	17.67
450761	0.9449	11.14
450763	1.0029	17.56
450766	2.0829	18.19
450769	0.8529	13.62
450770	0.9940	15.51
450771	1.9141	17.74
450774	1.6687	16.52
450775	1.3635	19.97
450776	1.0096	10.19
450777	0.9775	19.59
450779	1.2926	22.97
450780	1.7465	15.28
450785	0.9697	18.55
450788	1.5030	20.78
450794	.....	18.40
450795	0.9920	14.17
450796	3.3683	
450797	0.7701	18.59
450798	0.7062	9.22
450801	1.4574	16.35
450802	1.4444	18.90
450803	1.0998	16.20
450804	1.7558	20.19
450807	0.8919	13.23
450808	1.9103	45.47
450809	1.5476	12.09
450810	0.9739	
450811	2.4111	18.38
450812	.....	20.74
450813	0.9720	
450815	2.5623	
450817	0.6826	
450818	1.1788	
450819	1.2321	
450820	1.0337	
450822	1.2194	
460001	1.7791	20.63
460003	1.6039	20.60
460004	1.7726	20.82
460005	1.6610	17.58
460006	1.3361	19.65
460007	1.3066	20.57
460008	1.3892	23.97
460009*	1.8478	21.14
460010	2.0938	21.25
460011	1.3205	16.71
460013	1.4314	18.21
460014	1.2150	16.70
460015	1.2389	19.99
460016	0.9921	18.08
460017	1.4000	6.88
460018	0.9273	16.86
460019	1.0515	16.83
460020	0.9556	17.03
460021	1.3838	20.26
460022	0.9569	18.21
460023	1.1748	21.33

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
460024	.....	13.03
460025	0.8253	12.51
460026	1.0648	17.34
460027	0.9545	20.85
460029	1.0958	17.45
460030	1.1965	17.22
460032	0.9612	19.55
460033	0.9710	15.72
460035	0.9482	10.14
460036	1.0012	22.38
460037	0.9093	18.77
460039	1.0603	24.48
460041	1.2034	21.69
460042	1.0720	17.85
460043	0.9896	23.90
460044	1.1363	20.69
460046	.....	17.11
460047	1.6725	20.94
460049	1.9835	18.82
460051	1.1533	20.98
460052	1.4619	
470001	1.3024	19.61
470003	1.8178	22.10
470004	1.0690	18.10
470005	1.2501	21.51
470006	1.2402	18.39
470008	1.2583	19.41
470010	1.0674	19.47
470011	1.1523	21.20
470012	1.2771	18.52
470015	1.2008	19.26
470018	1.2257	20.77
470020	0.9900	18.99
470023	1.3178	20.34
470024	1.1530	20.41
490001	1.1947	24.76
490002	1.0751	12.74
490003	0.8419	18.00
490004	1.2734	18.67
490005	1.5964	16.91
490006	1.2135	15.23
490007	2.0980	18.43
490009	1.9433	22.95
490010	1.0335	18.58
490011	1.4669	18.20
490012	1.1951	13.78
490013	1.2469	16.93
490014	1.5363	24.56
490015	1.5153	19.36
490017	1.3909	15.07
490018	1.3011	17.67
490019	1.1928	16.93
490020	1.2250	17.67
490021	1.3802	19.45
490022	1.5525	21.01
490023	1.2187	18.87
490024	1.6719	16.89
490027	1.1135	14.48
490030	1.1907	10.50
490031	1.0746	15.82
490032*	1.7258	25.58
490033	1.1993	18.33
490037	1.2001	15.97
490038	1.2145	15.71
490040	1.4731	22.35
490041	1.2784	16.55
490042	1.2285	15.27
490043	1.3526	20.68
490044	1.3206	17.63
490045	1.2191	19.63
490046	1.5460	18.61
490047	1.1059	17.16
490048	1.5709	17.89
490050	1.4272	22.71
490052	1.6374	16.94
490053	1.3173	15.69
490054	1.0322	15.55
490057	1.5692	19.07
490059	1.5895	20.22
490060	1.0846	19.20
490063	1.7720	27.25
490066	1.3206	17.88
490067	1.2570	17.19
490069	1.4162	13.29
490071	1.4080	19.47
490073	1.4736	25.90
490074	.....	13.34
490075	1.3603	19.19
490077	1.2281	19.79
490079	1.3125	16.44
490083	.....	16.64
490084	1.1288	16.38
490085	1.1577	16.40
490088	1.1207	20.76
490089	1.0686	15.86
490090	1.1204	16.35
490091	1.2337	19.83
490092	1.2211	12.97
490093	1.4392	16.48
490094	1.0907	16.79
490095	.....	18.25
490097	1.2114	15.86
490098	1.2065	14.70
490099	0.9582	16.68
490100	.....	17.22
490101	1.2299	24.85
490104	0.6981	28.49
490105	0.5822	18.25
490106	0.8713	16.91
490107	1.3325	22.41
490108	0.8876	19.75
490109	0.8779	21.16
490110	1.3090	15.84
490111	1.2008	17.34
490112	1.6550	20.52
490113	1.3250	23.08
490114	1.1579	16.91
490115	1.1607	17.10
490116	1.1694	16.44
490117	1.1533	13.84
490118	1.7085	20.87
490119	1.3405	17.87
490120	1.3101	19.96
490122	1.3806	23.62
490123	1.1354	16.85
490124	1.0869	19.36
490126	1.3233	17.07
490127	1.0414	14.45
490129	1.0562	27.47
490130	1.3109	16.26
490132	1.0184	17.02
500001	1.4539	21.30
500002	1.4064	21.04
500003	1.3996	24.31
500005	1.7494	23.48
500007	1.3375	22.43
500008	1.9429	24.19
500011	1.3347	25.18
500012	1.5545	22.26
500014	1.5643	20.93
500015	1.3297	23.24
500016	1.4989	23.90
500019	1.3825	22.37
500021	1.4811	24.46
500023	1.2084	27.19
500024	1.6906	26.85
500025	1.9076	23.96
500026	1.4496	23.35
500027*	1.6837	25.11
500028	1.0717	18.66
500029	0.9116	17.15
500030	1.4523	24.13
500031	1.2466	23.37
500033	1.3324	21.39
500036	1.3903	21.89
500037	1.1389	19.69
500039	1.3777	23.32
500041	1.3236	23.38
500042	1.4121	22.13
500043	1.0020	20.25
500044	1.9365	23.11
500045	1.0116	22.10
500048	0.9588	19.01
500049	1.4726	22.95
500050	1.3485	20.97
500051	1.6734	24.48
500052	1.1378	
500053	1.3294	22.05
500054	1.8773	22.90
500055	1.1299	22.88
500057	1.3026	18.04
500058	1.4858	23.40
500059	1.0767	22.54
500060	1.3734	23.58
500061	1.0038	20.40
500062	1.0655	19.46
500064	1.6399	24.53
500065	1.2448	21.42
500068	1.0553	18.70
500069	1.1143	20.63
500071	1.2830	19.36
500072	1.2022	24.46
500073	0.9491	21.43
500074	1.1040	17.83
500077	1.3318	22.93
500079	1.3197	22.98
500080	0.8124	13.80
500084	1.2783	17.76
500085	0.9278	28.61
500086	1.2505	32.31
500088	1.2964	23.71
500089	1.0388	17.94
500090	0.8380	16.33
500092	1.0142	17.40
500094	0.8826	18.11
500096	0.9385	20.96
500097	1.0796	19.71
500098	1.0464	16.36
500101	1.0136	19.45
500102	0.9022	20.33
500104	1.2658	22.58
500106	0.9351	18.71
500107	1.2050	17.30
500108	1.7377	27.24
500110	1.2039	21.41
500118	1.1500	22.92
500119	1.3585	21.57

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
500122	1.2754	21.91
500123	0.9512	19.58
500124	1.3682	24.15
500125	1.0542	16.63
500129	1.6395	23.60
500132	0.9695	19.42
500134	0.6470	20.96
500138	3.6799	
500139	1.4685	20.88
500140	.....	1.00
500141	1.3697	22.94
500143	0.5986	17.60
500146	.....	17.85
510001	1.9505	17.87
510002	1.2866	17.34
510005	1.0195	14.43
510006	1.2718	17.53
510007*	1.5744	20.25
510008	1.2176	17.29
510012	1.0090	20.21
510013	1.1010	16.62
510015	0.9623	14.56
510016	.....	14.52
510018	1.0667	16.48
510020	1.0824	12.65
510022	1.8964	19.84
510023	1.2383	15.94
510024	1.5822	18.80
510026	1.0565	13.46
510027	0.9592	17.58
510028	1.0482	20.73
510029	1.2825	17.05
510030	1.0525	18.31
510031	1.4148	18.49
510033	1.2896	18.81
510035	1.2262	18.65
510036	0.9851	13.20
510038	1.0644	14.34
510039	1.3991	16.04
510043	0.9349	14.29
510046	1.2728	17.73
510047	1.2608	19.12
510048	1.1326	20.37
510050	1.7469	16.57
510053	1.0811	15.59
510055	1.2272	22.84
510058	1.2791	17.98
510059	1.9378	16.77
510060	1.0503	15.66
510061	1.0234	14.22
510062	1.2784	17.63
510065	.....	13.72
510066	.....	12.72
510067	1.2058	16.11
510068	1.2072	16.29
510070	1.2956	16.36
510071	1.3310	16.24
510072	1.0568	17.66
510077	1.1382	16.41
510080	1.1488	14.80
510081	1.0777	13.00
510082	1.1599	13.38
510084	1.0387	12.48
510085	1.2775	18.64
510086	1.1038	13.79
510088	1.0373	
520002	1.2716	16.35
520003	1.0889	16.43
520004	1.1781	18.17
520006	1.0164	20.44
520007	1.0498	13.11
520008	1.6388	23.11
520009	1.6963	18.51
520010	1.1567	20.34
520011	1.1930	20.38
520013	1.3708	21.64
520014	1.1081	16.40
520015	1.1985	18.32
520016	0.9785	13.29
520017	1.1935	19.32
520018	1.1169	18.64
520019	1.3094	18.31
520021	1.4602	19.46
520024	1.0420	14.61
520025	1.0655	18.11
520026	1.0229	19.81
520027	1.2629	18.86
520028	1.3300	19.14
520029	0.8925	16.75
520030	1.7397	20.01
520031	1.0727	18.71
520032	1.2635	17.84
520033	1.2390	18.77
520034	1.1068	16.69
520035	1.3242	17.10
520037	1.7020	20.05
520038	1.3352	17.71
520039	0.9971	19.60
520040	1.5273	20.48
520041	1.1570	15.37
520042	1.1257	17.66
520044	1.4160	17.79
520045	1.6446	19.67
520047	0.9370	17.87
520048	1.4946	18.61
520049	2.0474	19.57
520051*	1.8401	19.06
520053	1.1887	16.49
520054	1.0540	15.99
520057	1.1966	18.32
520058	1.1064	18.13
520059	1.4353	19.85
520060	1.4753	17.05
520062	1.2495	17.80
520063	1.1851	20.77
520064	1.5705	21.46
520066	1.4688	22.24
520068	0.9622	16.08
520069	1.2302	17.00
520070	1.5249	17.82
520071	1.2534	18.75
520074	1.0579	19.57
520075	1.4850	19.09
520076	1.1802	16.51
520077	0.9304	15.54
520078	1.6347	20.13
520082	1.1943	16.74
520083	1.7211	25.85
520084	1.0805	16.95
520087	1.6998	19.39
520088	1.2750	20.15
520089	1.4730	20.61
520090	1.2589	18.00
520091	1.2781	20.07
520092	1.0851	17.56
520094	0.7814	19.78
520095	1.2912	18.51
520096	1.3837	19.30
520097	1.3186	19.57
520098*	1.7679	20.03
520100	1.2558	18.38
520101	1.0673	17.85
520102	1.1747	19.83
520103	1.3291	21.23
520107	1.2651	20.54
520109	1.0080	18.63
520110	1.2429	20.03
520111	1.0771	17.24
520112	1.1370	18.18
520113	1.2753	20.59
520114	1.0715	17.38
520115	1.2443	17.38
520116	1.2746	18.57
520117	1.0104	17.42
520118	0.9267	12.44
520120	0.9639	15.62
520121	0.9809	17.56
520122	0.9964	16.76
520123	0.9687	17.41
520124	1.0565	16.39
520130	1.0658	14.49
520131	1.0212	18.80
520132	1.2099	17.28
520134	1.1056	17.61
520135	0.9896	14.47
520136*	1.5145	19.85
520138	1.8811	20.56
520139	1.2600	21.26
520140	1.6657	20.99
520141	.....	16.95
520142	0.8561	17.70
520144	1.0159	16.62
520145	0.9104	17.24
520146	1.0606	15.73
520148	1.1740	16.93
520149	0.8682	13.30
520151	1.0569	18.08
520152	1.1284	21.33
520153	0.9014	15.45
520154	1.1279	17.92
520156	1.1295	19.84
520157	1.1386	17.28
520159	0.9313	18.74
520160	1.7788	18.84
520161	0.9970	18.57
520170	1.1959	22.45
520171	0.9550	15.73
520173	1.1310	19.81
520177	1.7167	21.29
520178	1.0405	17.04
520187	0.6853	
530002	1.1871	17.59
530003	0.8651	15.78
530004	0.9408	16.19
530005	1.1117	15.15
530006	1.1073	19.34
530007	1.0694	18.06
530008	1.2168	19.71
530009	0.9868	19.45
530010	1.2449	18.93
530011	1.1582	17.44
530012	1.6193	19.48
530014	1.4152	17.32
530015	1.2824	22.65
530016	1.2295	17.71
530017	0.9391	13.71
530018	0.9886	17.87

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet A, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour. wage
530019	0.9196	16.76
530022	1.1517	17.80
530023	0.8312	20.75
530025	1.3777	20.32
530026	1.1298	16.92
530027	0.8284	29.77
530029	1.0012	17.97
530031	0.8249	13.38
530032	0.9896	20.21

The May 7, 1999 proposed rule also contained other technical and typographical errors. Therefore, we are making the following corrections:

1. On page 24718, third column, last paragraph, last line, the phrase "and Psychological Dysfunction" is corrected to read "and Psychosocial Dysfunction".

2. On page 24736, first column, lines 18 through 21, the phrase "constructed hospital's cap would be the number of residents training in the third year of the first of those programs begun at the a temporary training site" is corrected to read "constructed hospital's cap would be based on the number of residents training in the third year of the first of those programs begun at the temporary training site".

3. On page 24759, in Table 1—HCFA's FY 2000 Update Factor and MedPAC's Recommendation, in the second column labeled "HCFA's update factor", the figure for "Effect of FY 1998 Reclassification and Recalibration" of "0.7" is corrected to read "–0.7".

4. On page 24764, first column, line 21, the figure "$11,076" is corrected to read "$11,067".

5. On page 24812, in Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric and Arithmetic Mean Length of Stay, fourth column, twentieth line from the bottom, the DRG title for DRG 425 "Acute Adjustment Reaction & Psychological Dysfunction" is corrected to read "Acute Adjustment Reaction & Psychosocial Dysfunction".

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: June 7, 1999.

Kerry Weems,

Acting, Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 99–15066 Filed 6–14–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 051899C]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Availability of 1999 Revised Final Regulatory Flexibility Analysis (FRFA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a revised 1999 final FRFA.

SUMMARY: NMFS announces that a revised FRFA for the final specifications for the 1999 summer flounder, scup, and black sea bass fisheries has been prepared. This document is intended to advise appropriate persons that copies of the revised FRFA are available upon request.

ADDRESSES: Requests for copies of the revised FRFA should be directed to Northeast Regional Administrator, National Marine Fisheries Service, NOAA, 1 Blackburn Drive, Gloucester, MA 01930–2298, Attention: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, (978) 281–9273.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the **Federal Register** of December 31, 1998 (63 FR 72203), establishing the final specifications for the 1999 summer flounder, scup, and black sea bass fisheries. Individuals were notified that copies of the Environmental Assessment, Regulatory Impact Review, and FRFA were available from the Northeast Regional Administrator (see **ADDRESSES**).

After receiving a query from the North Carolina Department of Environment, Health and Natural Resources, NMFS' Northeast Fisheries Science Center staff reviewed the FRFA. This review led to the discovery of an error in the programs that were used to estimate the proportion of summer flounder landings that have historically been landed where summer flounder was 10 percent or less of the total weight of fish on board. The error was in the analysis of existing summer flounder data, not in the data itself. Therefore, it will not affect the stock assessment or the final 1999 specifications. Section 5.1.1.3 of the FRFA, Table 21 (Proportion of total summer flounder landings from trips where summer flounder was less than or equal to 10 percent of total weight of fish on board), was revised to correct the error. The revisions show that the proportion of summer flounder landings on trips comprised primarily of other species is lower than originally estimated in most states. However, NMFS maintains the recommendation for states to allocate 32.7 percent of their commercial quota for incidental landings to reduce discard because, as the biomass continues to increase, incidental catches will also increase.

NMFS has notified the Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission, and state fisheries directors by letter of the error in the FRFA and reiterated NMFS' recommendation for states to continue to allocate 32.7 percent of their summer flounder commercial quota for incidental landings.

Dated: June 8, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15133 Filed 6–14–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 114
Tuesday, June 15, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, June 25, 1999. The meeting will be held at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Room Hemisphere A, Washington, DC, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Swearing-In Ceremony
III. Chairman's Report
IV. Millennium Discussion
  A. Follow up from Thursday's Discussion—Action
  B. Heritage Stewardship Committee Proposal—Report and possible action
  C. Save America's Treasures Grants—Report and possible action
V. Section 106 Cases
  A. Gettysburg Cyclorama Building—Report
  B. Imperial Mine—Report and possible action
  C. Philadelphia Naval Hospital—Report and possible action
  D. Pearl Harbor/Fort Island—Report
VI. Principles for Tribal Section 106 Agreements—Discussion and action
VII. Executive Director's Report
  A. Implementation of Revised Section 106 Regulations—Report and action
  B. HUD Abandoned Buildings Program—Report and possible action
  C. Legislation—Update
VIII. New Business
  A. Meeting schedule for 2000
IX. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW, Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW, #809, Washington, DC 20004.

Dated: June 9, 1999.

John M. Fowler,

Executive Director.

[FR Doc. 99–15054 Filed 6–14–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Buffalo Creek Subchannel Extension, Marion County, WV

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Buffalo Creek Subchannel Extension, Marion County, West Virginia.

FOR FURTHER INFORMATION CONTACT: William J. Hartman, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone 304–291–4153.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, William J. Hartman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to provide an adequate outlet for the existing subchannel in order to decrease siltation, maintain fish habitat benefits of the subchannel, lower project operation and maintenance costs, and permit proper maintenance of sewer manholes along the stream. The planned works of improvement include excavation of a subchannel extension at three sites totaling 1,157 linear feet.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William J. Hartman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of the publication in the **Federal Register.**

(* This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

William J. Hartman,

State Conservationist.

[FR Doc. 99–15082 Filed 6–14–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–99]

Foreign-Trade Zone 146—Lawrence County, Illinois, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Bi-State Authority, grantee of FTZ 146, Lawrence County (Lawrenceville), Illinois, requesting authority to expand its zone to include a site in Effingham, Illinois, adjacent to the St. Louis, Missouri, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 2, 1999.

FTZ 146 was approved on February 11, 1988 (Board Order 371, 53 FR 5436, 2/24/88). The zone project currently consists of *Site 1* (43 acres)—within the 3,000-acre Mid-America Air Center/ Industrial Park complex, Route 50, Lawrence County (Lawrenceville), Illinois.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (*Proposed Site 2*—62 acres, 3 parcels)—Effingham Industrial Park, Effingham, Illinois. The site consists of a 177,994 square foot warehouse (9 acres), owned by Agracel, Inc.; a railroad intermodal facility which includes a proposed 100,000 square foot dock and warehouse and distribution facility (22 acres), owned by Agracel, Inc. and Effingham Railroad; and, undeveloped land (31 acres) which is available for future development, owned by American Way Enterprise Park Partners. The site will be operated by Total Quality Warehouse (a subsidiary of Agracel, Inc.). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 16, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 30, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Lawrence County Industrial Development Council, 718 11th Street, Suite 2, Upper Level, Lawrenceville, IL 62439.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 7, 1999.

Pierre Duy,

Acting Executive Secretary.

[FR Doc. 99–15178 Filed 6–14–99; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–99]

Foreign-Trade Zone 46—Cincinnati, OH, Area Application for Zone Expansion and Request for Manufacturing Authority Milacron, Inc. (Plastics Processing Machinery)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 46, requesting authority to expand its zone, and requesting, on behalf of Milacron, Inc., authority to manufacture plastics processing machinery and related parts under FTZ procedures within FTZ 46, Cincinnati, Ohio, area, adjacent to the Cincinnati Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 3, 1999.

FTZ 46 was approved in 1979 (Board Order 141, 44 FR 4003, 1–19–79) and relocated in 1994 (Board Order 720, 59 FR 66891, 12–28–94) to a 35-acre site at 175 Progress Place, Springdale (Hamilton County), Ohio. In 1997 the zone was expanded to include a second, non-contiguous 122-acre site located at 4701 Marburg Avenue in Cincinnati (Board Order 943, 62 FR 67044, 12–23–97).

The applicant is now requesting authority to expand the zone by adding three sites: proposed Site 3 (460 acres, manufacturing, warehouse)—Milacron, Inc., Clermont County Industrial Park, 4165 Half Acre Road, Batavia (Clermont County), Ohio, about 25 miles east of Cincinnati; proposed Site 4 (490 acres, manufacturing)—Milacron, Inc., Brown County Industrial Park, 416 West Main Street, Mt. Orab (Brown County), Ohio, about 10 miles east of proposed Site 3; and, proposed Site 5 (160 undeveloped acres)—West Hamco Industrial Park, 4160 Half Acre Road, Batavia.

The application also requests authority on behalf of Milacron, Inc. (Plastics Technology Group) to manufacture plastic products processing machinery under FTZ procedures within proposed expansion Sites 3 and 4 of FTZ 46. The facilities (1,200 employees) are used to produce computer-numerically-controlled plastic products processing/manufacturing machinery, including injection molding, extrusion, blow molding, mold tooling, and auxiliary equipment, as well as related parts. Components to be sourced from abroad (up to 40% of the finished machines' value): seals/rings, gaskets, belts, glass, chain, couplings/fittings, fasteners, keys, rollers, brackets, pins, rings, cables, cylinders, pumps, electric motors, heat exchangers, filters, monitors, lock snaps, fiber optic adapters, parts of machinery (HTS Heading 8477), accumulators, valves, bearings, elbows/fittings, shafts, bushings, gear boxes, sprockets, pulleys, idler assemblies, inductors, electronic control units, batteries, servos, lamps, resistors, capacitors, fuses, circuit breakers, relays, diodes, switches, CPU/ printed circuit/memory boards, integrated circuits, EPROM, numerical process controllers, automatic data processing equipment, cable, liquid crystal displays, thermocouplers, gauges, sensors, hour counters, pulse coders, encoder, transducers, ballscrews, and monitors (duty rates: free-9.0%).

FTZ procedures would exempt Milacron from Customs duty payments on the foreign components used in production for export. On its domestic sales, Milacron would be able to elect the 3.1 percent duty rate applicable to the finished plastics processing machinery for the foreign inputs noted above. The company would also defer payments on foreign-origin finished plastics processing machinery admitted to the proposed expansion sites. FTZ procedures would also exempt certain merchandise held in the expansion sites from state/local ad valorem inventory taxes. The application indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 16, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 30, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Suite 2650, 36 East 7th Street, Cincinnati, OH 45202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 3, 1999.

Diane Finver,

Acting Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 99–15179 Filed 6–14–99; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15–99]

Foreign-Trade Zone No. 122—Corpus Christi, TX, Application for Subzone, Equistar Chemicals, LP (Oil Refinery), Nueces County, TX; Correction

The **Federal Register** notice (64 FR 25477, 5/12/99) describing the application submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special purpose subzone status for the petrochemical complex of Equistar Chemicals, LP, located in Nueces County, Texas, is corrected as follows: the word "leased" should be deleted from that portion of paragraph 2, sentence 1, describing the tanks at Site 2.

Dated: June 2, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–15180 Filed 6–14–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–824]

Polyvinyl Alcohol From Taiwan: Final Results of Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On February 8, 1999, the Department of Commerce published in the **Federal Register** the preliminary results of the second administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan (64 FR 6042). The review covers two manufacturers/exporters of the subject merchandise to the United States, Chang Chun Petrochemical and E.I. duPont de Nemours & Co. The period of review is May 1, 1997, through April 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have made certain changes as described below in the "Interested Party Comments" section of this notice, but those changes did not result in final margins that were different from those calculated in our preliminary results. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: June 15, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith at (202) 482–1766 or Brian Ledgerwood at (202) 482–3836, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1999, the Department of Commerce ("the Department") published in the **Federal Register** its preliminary results of the 1997–1998 administrative review of the antidumping duty order on polyvinyl alcohol ("PVA") from Taiwan (64 FR 6042) ("*Preliminary Results*"). The period of review ("POR") for this administrative review is May 1, 1997, through April 30, 1998.

On February 18, 1999, E.I. duPont de Nemours & Co. ("DuPont") withdrew its request that the Department apply the special rule for value added in this case. On March 10, 1999, the Department requested Chang Chun Petrochemical Co., Ltd. ("Chang Chun") to provide information clarifying the methodology it used to allocate production costs between acetic acid and PVA. Chang Chun provided this data on March 17, 1999. The petitioner, Air Products and Chemicals Inc., and DuPont submitted case briefs on April 8, 1999. Chang Chun did not submit a case brief. Chang Chun submitted a rebuttal brief on April 15, 1999. Since the petitioner did not comment on DuPont in its case brief, DuPont did not submit a rebuttal brief. Neither the petitioner nor the respondents requested a hearing in this case. On May 19, 1999, we placed on the record of this review information from the record of the first administrative review pertaining to the allocation of joint production costs between acetic acid and PVA. On May 24, 1999, the petitioner submitted comments on the use of this information in this review.

The Department has now completed this administrative review, in accordance with section 751(a) of the Act.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.0000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Changes Since the Preliminary Results

We have made changes in these final results only to the margin calculation for Chang Chun. For Chang Chun, we adjusted its joint production costs between PVA and acetic acid using the relative sales value of each product

calculated on the basis of a two-year period prior to the period of the less-than-fair-value investigation ("LTFV investigation") (*see* Comment 1 in the "Interested Party Comments" section of this notice, Memorandum to the File dated May 19, 1999, and Final Results - Calculation Memorandum dated June 8, 1999, for further discussion).

Interested Party Comments

Chang Chun

Comment 1: Cost Allocation Methodology

The petitioner contends that Chang Chun's cost methodology produces inexplicable and unreasonable results because the sales quantities of acetic acid and PVA were less than their production quantities. In particular, the petitioner maintains that unless Chang Chun made significant changes to its production process, Chang Chun's average annual yield ratio of acetic acid to PVA for the POR should be representative of the average three-year yield ratio of acetic acid and PVA for which Chang Chun reported sales data (*see* Exhibit 7 of Chan Chun's January 19, 1999, submission). The petitioner goes on to state that because Chan Chun has sold PVA and acetic acid in unequal quantities, Chang Chun must have over-allocated its production costs to acetic acid. Finally, the petitioner maintains that although Chang Chun has used a unit value ratio to allocate costs in the prior antidumping duty administrative review, the Department is not precluded from examining the reasonableness of Chang Chun's methodology in subsequent reviews.

Chang Chun states that its sales quantities are lower than its production quantities because Chang Chun excluded the internal transfers of acetic acid and PVA from the weighted-average sales prices of acetic acid and PVA as internal transfers do not reflect any revenue raised by these products, thereby refuting the petitioner's claim that the difference which exists between sales and production quantities has a distortive impact when applying the cost allocation methodology. In addition, Chang Chun maintains that most of the sales and production data the petitioner is questioning was verified by the Department in the first administrative review. Therefore, Chang Chun contends that its reported sales and production data should be accepted by the Department in this review. Chang Chun maintains that its value-based cost allocation methodology is appropriate and requests that the Department confirm this fact, as well as confirm that the cost allocation methodology correctly reflects the Department's prior determinations. Finally, Chang Chun states that the petitioner has offered no evidence which would warrant the Department to reexamine the reasonableness of Chang Chun's value-based allocation methodology in future reviews.

DOC Position: We agree with Chang Chun, in part. The Department confirms, generally, that it is appropriate and in accordance with the Department's practice for Chang Chun to maintain a value-based methodology for allocating joint production costs between PVA and acetic acid. However, the Department has not adopted Chang Chun's particular value-based cost allocation methodology in its entirety. Our review of Chang Chun's allocation methodology indicates that Chang Chun relied upon POR sales prices of PVA as a basis for allocating costs between PVA and acetic acid. While we determined in the LTFV investigation that a relative-sales-value-based allocation methodology is appropriate, we expressed concern that the sales value for PVA, used in our calculation, be representative of a period prior to allegations of dumping for the subject merchandise (*see Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064, 14071 (March 29, 1996) (*"PVA Final Determination"*). In the final determination of the LTFV investigation and first administrative review of the antidumping duty order on PVA from Taiwan, we allocated joint production costs between PVA and acetic acid using each product's relative sales value from a two-year period prior to the initial period of investigation ("POI") (*see Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Duty Administrative Review*, 63 FR 32810, 32815 (June 16, 1998) (*"PVA 1st Admin Review"*)).

Consistent with our methodology established in the LTFV determination and first administrative review, we consider it inappropriate in this review to rely exclusively on PVA sales prices relevant during a period of alleged dumping as a basis to allocate costs to PVA, particularly when these allocated costs are used as a means to measure the fairness of the selling prices for the same product. We believe that by adjusting the POR sales figures with sales of PVA and acetic acid over an extended period prior to the original investigation, the total relative sales value can reasonably be relied upon to form the basis for allocating joint production costs, particularly in this case where acetic acid and PVA are commodity products, and their selling prices are influenced by world market forces of supply and demand. In order to reallocate Chang Chun's joint production costs in the manner discussed above, we adjusted Chang Chun's POR sales values to reflect the relative sales values for the two-year period prior to the POI based on data obtained from the record of the first administrative review which has been placed on the record of this proceeding (*see* Memorandum to the File, dated May 19, 1999).

Chang Chun defends its use of POR sales values for acetic acid and PVA as the basis for allocating its costs between these two products based on the fact that the Department found no sales below the cost of production in the first administrative review. Although the Department found no below-cost sales of PVA during the first administrative review for Chang Chun, we continue to find it appropriate to adjust the POR relative sales values to reflect the relative sales values for the two-year period prior to the POI as we did in the first administrative review. This adjustment is appropriate because the manipulation of pricing patterns, even slight in nature as a result of future antidumping duty proceedings, still may result.

Accordingly, for this second administrative review, we continue to accept Chang Chun's relative-sales-value-based cost allocation methodology in general. However, we have applied the same adjustment methodology as that in first administrative review in order to allocate Chang Chun's joint production costs between PVA and acetic acid (*see* "Final Calculation Memorandum for Chang Chun" dated June 8, 1999).

Comment 2: PVA and Acetic Acid Calculated Profitability Margins

The petitioner contends that Chang Chun's methodology used for allocating production cost between PVA and acetic acid produces distortive results because the profit margins for PVA and acetic acid are not the same.

Chang Chun maintains that its methodology correctly allocates its production costs between acetic acid and PVA based on relative sales value. Chang Chun states that the Department has never specified that the profit margins be exactly the same for PVA and acetic acid for the methodology to be acceptable. In fact, Chang Chun contends that the Department has specified only that the methodology should yield "approximately the same" profit margins for PVA and acetic acid. In this review, Chang Chun maintains that the profit rates for PVA and acetic acid are "approximately the same."

Therefore, Chang Chun requests the Department to dismiss the petitioner's argument and find that Chang Chun's methodology correctly allocates its production costs between acetic acid and PVA based on the respective sales values of each product. Chang Chun cites to *PVA 1st Admin Review*, 63 FR at 32815 in support of its argument.

DOC Position: We agree, in part, with Chang Chun. We have re-examined Chang Chun's methodology for the calculation of the profit rate for acetic acid and PVA and found that the sales revenues upon which those profitability margins were based generally reflect relative sales values for acetic acid and PVA. As discussed in Comment 1 above, in the LTFV investigation and first administrative review, application of a relative-sales-value-based allocation methodology was considered appropriate (*see PVA Final Determination*, 61 FR at 14071 and *PVA 1st Admin Review*, 63 FR at 32815). Accordingly, in this review we find that Chang Chun's general methodology is appropriate.

Furthermore, we agree with Chang Chun's argument that its profit rates for acetic acid and PVA are approximately the same. As the Department stated in the first administrative review, a relative-sales-value-based allocation should yield approximately the same profit rates for acetic acid and PVA (*see PVA 1st Admin Review*, 63 FR 32815). However, for the reasons stated in the LTFV determination, the first administrative review, and Comment 1 above, the Department has adjusted Chang Chun's production costs by relative sale values representative of a two-year period prior to the POI. We note that any differences in the resulting POR profit rates for PVA and acetic acid are effectively compensated through the Department's adjustment of the POR cost data on the basis of the relative sales values representative of a two-year period prior to the POI in which there was no allegation of dumping for the subject merchandise (*see* Attachment 2 of the "Final Calculation Memorandum for Chang Chun" dated June 8, 1999). This adjustment is appropriate for allocating joint production costs and calculating the profit rates between PVA and acetic acid (*see PVA Final Determination*, 61 FR at 14071, and *PVA 1st Admin Review*, 63 FR at 32815).

Comment 3: Acetic Acid Sales Prices and the Major Input Rule

The petitioner alleges that Chang Chun's reported acetic acid sales prices are problematic. Based on a comparison of acetic acid sales prices contained in Exhibits 5 and 7 of Chang Chun's January 19, 1999, supplemental section D response, the petitioner purports that Chang Chun under-reported its average sales price of acetic acid to unaffiliated purchasers of acetic acid. Furthermore, the petitioner argues that these sales prices warrant close scrutiny in future administrative reviews because Chang Chun uses these prices for the allocation of costs between PVA and acetic acid. Finally, the petitioner questions whether Dairen, Chang Chun's affiliated vinyl acetate monomer ("VAM") supplier, has properly reported its costs for producing VAM, which is a major input used in the production of PVA. Specifically, the petitioner takes issue with the acetic acid price that Dairen paid Chang Chun and included in its reported VAM production costs.

Chang Chun urges the Department to reject the petitioner's arguments because they are untimely and are not supported by record evidence. Chang Chun notes that the petitioner's argument for applying the major input rule to VAM production was untimely under 19 CFR 351.301(d)(3). Moreover, Chang Chun maintains that the major input rule under section 773(f)(3) of the Act does not apply to acetic acid sales transactions between Chang Chun and Dairen because acetic acid is not a major input of the subject merchandise; rather, the major input to PVA in this case is the VAM produced by Dairen. Specifically, Chang Chun maintains that the Department verified the sales prices of acetic acid reported in Chang Chun's submission in the first administrative review of PVA. Furthermore, in support of its argument that the Department may rely on knowledge of a respondent's records and data acquired from past reviews in determining the reasonableness of its reporting methodologies used in a current review, Chang Chun cites to *Timken Co.* v. *United States*, 16 F. Supp. 2d 1102 (CIT 1998).

DOC Position: We agree with petitioner, in that Chang Chun's acetic acid prices may be problematic. However, because this issue was raised for the first time in the petitioner's case brief, there is insufficient information on the record that would allow the Department to address the differences that exist among Chang Chun's per-unit market price for acetic acid, Chang Chun's per-unit transfer price for acetic acid, or Chang Chun's per-unit COP for acetic acid. Based on the record of the current review, we are unable to determine what impact, if any, this issue may have on the final margin calculation. However, we will consider this issue, if raised in a timely manner, in future reviews as appropriate.

With respect to Chang Chun's untimeliness argument under 19 CFR 351.301(d)(3), we note that application of this regulation is inappropriate because we conducted a cost investigation in this review. Specifically, the Department's normal practice is to analyze an affiliated supplier's production cost data for major inputs whenever it conducts a cost investigation. Thus, the cited regulation is only applicable where the Department has determined to base normal value on constructed value, but there is no cost investigation (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR at 27296, 27336 (May 19, 1997)).

Comment 4: U.S. Customs Investigation

The petitioner requests that the Department obtain and review the results of an investigation conducted by the U.S. Customs Service ("Customs Service") which involved examining shipments of PVA to the U.S. market to determine whether sales of merchandise claimed to be outside the scope of the antidumping duty order were properly classified.

Chang Chun claims that, since it has reported all of its U.S. sales of subject merchandise during this review period, the Department should reject the petitioner's request.

DOC Position: To establish the accuracy of the petitioner's allegation regarding whether Chang Chun or DuPont properly reported all sales of PVA during the POR, we would have had to conduct verifications of the two firms' sales data. Because the petitioner did not raise the allegation until it presented its case brief on April 8, 1999, we could not verify in this administrative review.

In accordance with the petitioner's suggestion, we made a request that the Customs Service provide us with the status of any investigation into whether imports of subject PVA had been declared improperly as being outside the scope of the antidumping duty order (*see* Memorandum to the Customs Service dated April 16, 1999). In a May 13, 1999, reply to our request, the Customs Service stated it had "conducted an analysis of shipments of PVA," but it could not disclose whether any shipments of PVA were found to be non-compliant with the antidumping duty order (*see* Memorandum to the file dated May 13, 1999). Instead, the Customs Service said that if there were any shipments of PVA found to be non-compliant, it would have notified the importer and corrective action would have been taken. Based on the record of this proceeding, we cannot conclude

that the respondents have improperly reported sales of PVA during the POR. We will review this issue, if it is raised in a timely manner, in a future administrative review.

DuPont

Comment 1: Application of the Special Rule for Value Added

DuPont withdrew its request that the Department apply the special rule for value added in this case and therefore exclude its sales of further manufactured PVA from the analysis. However, DuPont maintains that although it has withdrawn its request in this particular review, applying the special rule is an important issue in the calculation of DuPont's dumping margin and should be considered without prejudice in future reviews.

The petitioner did not comment on this issue.

DOC Position: Because DuPont withdrew its request that the Department apply the special rule in this case shortly after the preliminary results, the Department has not considered further application of the special rule for these final results. However, if DuPont should request in a timely manner that the Department apply the special rule in a subsequent proceeding, the Department will again give DuPont's request full consideration.

Final Results of the Review

As a result of our review, we have determined that the following weighted-average margins exist for the period May 1, 1997, through April 30, 1998:

Manufacturer/producer/exporter	Margin (percent)
Chang Chun Petrochemical Co. Ltd.	0.00
E.I. DuPont de Nemours & Co.	0.00

Cash Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for Chang Chun and DuPont will be the rates indicated above (*i.e.*, the cash deposit rate will be zero); (2) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will be 19.21 percent, the "All Other" rate made effective by the LTFV investigation. These requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For duty assessment purposes, we have calculated importer-specific assessment rates for the subject merchandise. Pursuant to 19 CFR 351.212(b)(1), we have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we have subtracted international movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

Notification to Importers and Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 8, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–15177 Filed 6–14–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

RIN 0651–AB02

Official Insignia of Native American Tribes; Statutorily Required Study

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearings; corrections.

SUMMARY: This document contains corrections to the starting times for the hearings scheduled for July 8, 1999, and July 12, 1999, and provides starting and ending times for the hearing scheduled for July 15, 1999.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office published a notice of hearings in the **Federal Register** of June 3, 1999 (64 FR 29841). The starting times for the hearings scheduled July 8, 1999, and July 12, 1999, were incorrect. This document provides the correct times.

The July 8, 1999 hearing in Albuquerque, New Mexico, will start at 9:00 a.m. and the July 12, 1999 hearing in San Francisco, California, will start at 10:00 a.m. The July 15, 1999 hearing in Arlington, Virginia, will start at 9:00 a.m. and end no later than 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Eleanor K. Meltzer by telephone: 703–306–2960; by e-mail: *eleanor.meltzer@uspto.gov;* or by facsimile transmission: 703–305–9885.

Dated: June 10, 1999.

Nancy C. Slutter,

Acting Deputy Solicitor.

[FR Doc. 99–15158 Filed 6–14–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Youth Attitude Tracking Study (YATS); OMB Number 0704–0069.

Type of Request: Extension.

Number of Respondents: 13,050.

Responses Per Respondents: 1.

Annual Responses: 13,050.

Average Burden per Response: 25.83 minutes.

Annual Burden Hours: 5,618.

Needs and Uses: To recruit effectively from the youth population, the Department of Defense (DoD) has a continuing need for reliable, valid, and timely recruit market data that describe the propensity, attitudes, and motivation of young men and women towards serving in the military. These data used by DoD to track propensity for military service, to evaluate recruiting efforts, to assess the impact of recruiting incentives, and to allocate recruiting resources. The information is used to support Congressional testimony and special studies of recruiting issues.

Affected Public: Individuals or household.

Frequency: On occasion; annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations of the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 9, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15052 Filed 6–14–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 24 June 1999 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill BLVD, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: June 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15050 Filed 6–14–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, As amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:.

DATES: 22 June 1999, (900am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Armed Forces Medical Intelligence Center (AFMIC) 1607 Porter St, Ft. Detrick, Frederick, MD 21702–5004.

DATES: 23 June 1999 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Cup;, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: June 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15051 Filed 6–14–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting To Discuss Gulf War Illnesses

AGENCY: Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, Department of Defense.

ACTION: Notice.

SUMMARY: The Board will conduct a one-day public meeting to discuss its interim report, and obtain information from veterans, the Office of the Special Assistant for Gulf War Illnesses, other Federal agencies, and outside experts regarding the causes of Gulf War Illnesses. The meeting will begin at 9:00 a.m. EDT.

DATES: July 13, 1999.

ADDRESSES: Dorothy Betts Marvin Theater, Marvin Center, The George Washington University, 800 21st Street, NW, Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Kaplan, Deputy Executive Director, Special Oversight Board, 1401 Wilson Blvd, Suite 401, Arlington, VA 22209, phone (703) 696–9470, fax (703) 696–4062, or via Email at *Gulfsyn@osd.pentagon.mil* Requests for oral comments must be sent in writing to Mr. Kaplan and be received no later than noon EDT Friday July 2, 1999. Written comments must be received no later than Monday July 12, 1999. Copies of the draft meeting agenda can be obtained by contacting Ms. Sandra Simpson at (703) 696–9464 or at the above fax number or above email.

SUPPLEMENTARY INFORMATION: Seating in the Dorothy Betts Marvin Theater is limited, and spaces will be reserved only for scheduled speakers. The remaining seats will be available on a first-come, first-served basis beginning at 8:30 a.m. No teleconference lines will be available. The Special Oversight

Board expects that public statements presented at its meetings will deal only with potential chemical, environmental, and other exposures. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments may be mailed to Board members if at least 20 copies are received in the Special Oversight Board Staff Office no later than noon EDT July 2, 1999. Comments received during July 3–9 will be provided to Board members upon their arrival in Washington. Written comments received after July 9 will be mailed to Board members after the adjournment of the July 1999 meeting.

Dated: June 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15053 Filed 6–14–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy, Office of Naval Research

Notice of Intent To Prepare an Environmental Impact Statement for Continued Operation of the Sound Source Installed by the Acoustic Thermometry of Ocean Climate (ATOC) Project North of Kauai

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA), the Office of Naval Research (ONR) is announcing its intent to prepare an Environmental Impact Statement (EIS) to continue operation of the sound source installed by the ATOC Project north of Kauai.

DATES: Public scoping meetings will be held in: (1) Hanalei, Kauai on June 29, 1999 at 7 PM at the Wai'oli Hui'ia Church, Mission Hall, 5–5363 Kuhio Highway; (2) Lihue, Kauai on June 30, 1999 at 7 PM at the Kauai Community College Dining Room, 3–1901 Kaumualii Highway; and (3) Honolulu, Hawaii on July 1, 1999 at 7 PM at the Hawaii Imin Intl. Conference Center, East-West Center, 2nd Floor, Pacific Room, 1777 East-West Road. Written comments regarding the scope of this environmental document must be submitted by 08/15/99.

ADDRESSES: Comments and requests for additional information should be addressed to ATTN: Office of Naval Research, c/o Kathleen J. Vigness, (703) 465–8404, Marine Acoustics, Inc., 901 N. Stuart St., Suite 708, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: The Kauai ATOC Feasibility Study began in October 1997, and included a Marine Mammal Research Program (MMRP) for which a Scientific Research Permit was obtained. The sound source installed by the ATOC Project is located approximately 14.7 km (8 nm) north of Kauai at 22° 20.94 N, 159° 34.18 W at a depth of 807 m (2648 ft). During the ATOC Project, a team of marine mammal researchers utilized transmissions of the sound source to conduct simultaneous observations of marine mammal behavior. The acoustic objectives of the ATOC Feasibility Study were to determine the precision with which acoustic methods could be used to measure large-scale changes in ocean temperature and heat content, thereby refining climate models and gaining a better understanding of the potential for global warming. The objectives of the MMRP were to determine the potential effects of the sound source on marine animals.

The results of the ATOC Project demonstrate that acoustic travel times can be measured much more accurately than expected. These travel times can then be used to estimate range- and depth-averaged temperatures with a precision of about 0.006°C at ranges of 3,000 to 5,000 km. The marine mammal research indicates that transmissions by the sound source do not affect the abundance, distribution or singing behavior of humpback whales in the vicinity of the sound source, and that there were no biologically significant short-term effects observed in conjunction with the transmissions. The MMRP found that the distance and time between successive whale surfacings increased slightly with increasing sound levels.

With these positive results, the Office of Naval Research will prepare an EIS to continue operation of the sound source installed by the ATOC Project. The sound source would remain at its present location, and transmissions would continue with the same signal parameters and approximately the same transmission schedule. The current schedule maintains six 20-minute transmissions (one every four hours), every fourth day, with each transmission preceded by a 5-minute ramp-up period, representing an average duty cycle of 2%. With the possible exception of equipment failures or short duration testing, this schedule would continue for a period of five years. The signals transmitted by the source have a center frequency of 75 Hz and a bandwidth of approximately 35 Hz (i.e., sound transmissions are in the frequency band of 57.5–92.5 Hz). Approximately 260 watts of acoustic power are radiated during transmission. At 1 m (3.28 ft) from the source, the sound intensity is about 195 dB referenced to the intensity of a signal with a sound pressure level of 1 microPascal (on a "water standard" basis). These signal parameters and source level have been found to provide adequate, but not excessive, signal-to-noise ratios at the receiver ranges of interest.

The EIS will address the potential effects of the transmissions on the marine environment, including potential auditory, behavioral, and physiological effects on marine mammals and other marine creatures. Alternatives will be studied, including the no action alternative.

Dated: June 8, 1999.

Jeffrey Simmen,

Ocean Acoustics Program, Office of Naval Research.

[FR Doc. 99–15157 Filed 6–14–99; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 15, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Joseph Schubart, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Joe__Schubart@ed.gov or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Joseph Schubart at the address specified above.

Dated: June 9, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Title I State Plan for Vocational Rehabilitation Services and Title VI—Part B Supplement for Supported Employment Services.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 82

Burden Hours: 1,002,050

Abstract: The Workforce Investment Act of 1998 (WIA) requires the submittal of a Title I State plan for vocational rehabilitation services and a supplement to the plan for supported employment services on the same date that the State submits its State plan under WIA. Some States submitted WIA plans as early as April 1, 1999; other States can submit WIA plans anytime up to and including April 1, 2000. Program funding is contingent on Departmental approval of the plan and its supplement.

[FR Doc. 99–15079 Filed 6–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on May 21, 1998, an arbitration panel rendered a decision in the matter of *Louisiana Department of Social Services, Rehabilitation Services* v. *U.S. Department of Defense, Department of the Air Force (Case No. R–S/97–3.* This panel was convened by the U. S. Department of Education pursuant to 20 U.S.C. 107d–1(b), upon receipt of a complaint filed by petitioner, Louisiana Department of Social Services, Rehabilitation Services.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged failure of the United States Department of Defense, Department of the Air Force (Air Force) to renew an expiring food service contract with the Louisiana Department of Social Services, Rehabilitation Services, the State licensing agency (SLA).

The Air Force operates Barksdale Air Force Base (Barksdale) in Louisiana. On March 29, 1994, the Air Force awarded a food service attendant services contract to the SLA. The contract was awarded on a non-competitive basis pursuant to the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) The contract was for a six-month period with two one-year options. A blind licensee was chosen to manage the facility.

By memorandum dated July 8, 1996 the Air Force proposed "to offer the reprocurement solicitation" for the food service attendant services contract to the SLA as a non-competitive acquisition. The period for this reprocurement was from October 1, 1996 through September 30, 1997 with four one-year options. However, on August 23, 1996, the Contracting Officer for the Air Force sent the blind licensee a memorandum stating that the Air Force viewed the priority provisions of the Randolph-Sheppard Act (the Act) as not being applicable to the contract. The Air Force further stated that the solicitation for the contract would be issued as a competitive acquisition set-aside for small businesses.

Thereafter, the SLA's current contract was extended for an additional six-month period until March 31, 1997 to allow a solicitation for the contract to be issued on a competitive basis, with a set-aside for small businesses. The SLA filed a protest of this action with the Air Force. The Air Force rejected the protest by memorandum dated September 24, 1996. The Air Force's objection stated in part that the contract merely supported the Air Force's operation of the dining facility. The Air Force concluded that the operation of the dining hall resided with the Air Force. The Air Force's position was that the Randolph-

Sheppard Act did not apply to food service mess attendant services. Specifically, the Air Force said that individual tasks such as mess attendant, janitorial services, or grounds maintenance that support the Air Force's operation of a dining facility are not covered by the Randolph-Sheppard Act.

On October 4, 1996, the SLA lodged a protest with the General Accounting Office. The Air Force responded to this protest on October 9, 1996 seeking its dismissal. The General Accounting Office dismissed the protest on the basis that the appropriate method for resolution of the SLA's dispute was through the arbitration process pursuant to section 107d–2 of the Randolph-Sheppard Act and its implementing regulations in 34 CFR part 395.

Subsequently, the SLA requested that a Federal arbitration panel be convened to hear this dispute. A hearing of this matter was held on December 17, 1997.

Arbitration Panel Decision

The issue before the arbitration panel was whether the contract for the food service attendant services at Barksdale represented a contract for the operation of a cafeteria pursuant to the Randolph-Sheppard Act and implementing regulations.

The arbitration panel ruled in a majority opinion that the contract was not for the operation of a cafeteria. Referencing the language in the priority section of the Act, and applying a plain meaning approach to the word "operation," the arbitration panel reasoned that the issue should be based on a determination of who controls food cost and food quality. The panel determined that this must be done on a case-by-case basis. Therefore, after careful and detailed comparison of the responsibilities of the blind licensee and of the Air Force, the panel concluded that the Air Force was operator of the cafeteria at Barksdale and that the priority provisions under the Act did not apply.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 9, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–15063 Filed 6–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on June 25, 1998, an arbitration panel rendered a decision in the matter of *Michael R. Underhill* v. *Texas Commission for the Blind (Docket No. R–S/97–16)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Michael Underhill.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (the Act) (20 U.S.C. 107d–2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper application by the Texas Commission for the Blind, the State licensing agency (SLA), of its transfer and promotion policies. Specifically, the complainant, Michael Underhill, alleges that he was denied an opportunity to bid on a military base food service contract under the SLA's special assignment process.

A summary of the facts is as follows. Complainant is a licensed manager under the SLA's Randolph-Sheppard vending facility program. In March, 1995, complainant was selected to receive a prospective military base food service assignment. Complainant ranked fourth on a list of five managers who qualified for such an assignment based on a special selection process to receive military base food service contracts. This special selection process was developed by the SLA in conjunction with the Elected Committee of Blind Managers.

In January 1997, the SLA allegedly ended the special assignment process for these military base contracts over the objections of the Elected Committee of Blind Managers, thus terminating complainant's eligibility to bid on the next available military base contract.

The SLA alleged that it had the authority to end the special assignment process because the unusual circumstances that merited use of the special assignment process no longer existed.

The complainant requested and received a full evidentiary hearing, which was held on May 19, 1997. In a decision dated June 2, 1997, the Administrative Law Judge (ALJ) ruled that the SLA's decision to end the special assignment process for the military base contract should be reversed and that the special assignment process should be reinstated until all of the licensed managers who qualified for such an assignment received a military base assignment or withdrew from consideration.

In a letter dated June 23, 1997, to the complainant, the SLA adopted the ALJ's decision in part by reinstating the special assignment process for Fort Bliss, Reese Air Force Base, and Fort Hood and stipulated that this process would remain in effect until one of the military base contracts was available. At that time, the SLA would determine whether it was in the best interest of the Randolph-Sheppard vending program to eliminate this special assignment process. In addition, the SLA affirmed

that the original selection list would remain in effect.

The complainant requested review of the SLA's stipulated decision by a Federal arbitration panel. The panel was convened on April 17, 1998.

Arbitration Panel Decision

The issue before the arbitration panel was whether the SLA's stipulated decision to make a determination concerning the continuation of the special assignment process at the time a military base became available was inconsistent with the ALJ's determination.

The arbitration panel ruled that, at the time a military base contract became available, there may be a compelling reason that would benefit both the program and the complainant that would justify not assigning complainant to a military base food service facility.

The panel further ruled that the SLA had the authority to end an exceptional practice promulgated under the Business Enterprise Program (BEP) Manual and pursuant to the Act and implementing regulations. However, the panel found that complainant's reliance on this exception entitled him to special consideration when the next military base facility becomes available. If he applies for such an assignment and is not selected, but is determined to be qualified to successfully operate the facility, the SLA will use the authority granted to it under the special assignment provision of the BEP Manual to assign Mr. Underhill to the facility. The panel ruled that complainant need not be provided this priority if he applies for a new facility under the regular selection process.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 9, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–15064 Filed 6–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Public Hearing on the Supplement to the Draft Surplus Plutonium Disposition Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) will hold a public hearing on the Supplement to the Surplus Plutonium Disposition Draft Environmental Impact Statement (Draft SPD EIS). The hearing will be held on June 15, 1999, in Washington, DC, and will focus on issues associated with the analysis of the specific commercial reactors that the Department proposes to use for the irradiation of mixed oxide fuel in addition to other changes to the Draft SPD EIS presented in the Supplement. The purpose of this hearing is to facilitate an exchange of information and to provide a forum for receiving public comments on the supplement. Members of the public are invited to attend.

DATES: The hearing will be held on June 15, 1999, in Washington, DC.

ADDRESSES: Questions about the hearing should be addressed to: Bert Stevenson (202–586–5368; bert.stevenson@hq.doe.gov); by mail to DOE, Office of Fissile Materials Disposition, P.O. Box 23786, Washington, DC 20026–3786; or through the program web site at www.doe-md.com. Preregistration for the hearing is available by calling 1–800–820–5134 or by fax at 1–800–820–5156. The hearing will be held at the Hotel Washington, 15th St. and Pennsylvania Ave. NW, Washington, DC, (202) 638–5900.

FOR FURTHER INFORMATION CONTACT: Bert Stevenson, NEPA Compliance Officer, Office of Fissile Materials Disposition, Department of Energy. (202) 586–5368.

SUPPLEMENTARY INFORMATION: The Draft Surplus Plutonium Disposition EIS (DOE/EIS–0283–D) was prepared in accordance with the National Environmental Policy Act (NEPA) and issued in July 1998. It identified the potential environmental impacts of reasonable alternatives for the proposed siting, construction and operation of three facilities for plutonium disposition. The draft also included the potential environmental impacts of using from three to eight commercial nuclear reactors to irradiate mixed oxide fuel. The potential impacts were based on a generic reactor analysis that used actual reactor data and a range of potential site conditions. Subsequently, six specific reactors at three sites have been selected through a competitive procurement process that included an environmental review specified in DOE's NEPA Regulations (10 CFR 1021.216). The Supplement describes the potential environmental impacts of irradiating mixed oxide fuel in these specific reactors. The proposed reactors are the Catawba Nuclear Station near York, South Carolina; the McGuire Nuclear Station near Huntersville, North Carolina; and the North Anna Power Station near Mineral, Virginia. Each of the proposed sites has two operating nuclear reactors that would be used to irradiate mixed oxide fuel assemblies.

The public hearing will provide the public the opportunity to present comments, ask questions, and discuss concerns related to plutonium disposition by the irradiation of the surplus plutonium as mixed oxide fuel in the six commercial reactors at the three sites. The Department will receive oral and written comments on the Supplement to the Draft SPD EIS. Written and oral comments will be given equal weight in preparing the final SPD EIS. Input from this hearing along with comments received by other means (phone, mail, fax, website) will be used by the Department in preparing the final SPD EIS. The public hearing will be held in the Washington Room of the Hotel Washington, 15th St. and Pennsylvania Ave. NW, Washington, DC. Two sessions will be held on that date. The first session will start at 9 am and the second session will begin at 1:30 pm. Advanced registration for the hearing is requested but not required. Please call 1–800–820–5134 and leave your name and the session or sessions you plan to attend. This information will be used to determine the size and number of rooms needed for the hearing.

Issued in Washington, DC on this 4th day of June 1999, for the United States Department of Energy.

Laura S.H. Holgate,

Director, Office of Fissile Materials Disposition.

[FR Doc. 99–15125 Filed 6–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed extension to the "Recordkeeping Requirements of DOE's General Allocation and Price Rules," ERA–766R.

DATES: Written comments must be submitted on or before August 16, 1999. If you anticipate difficulty in submitting

comments within that period, contact the person identified below as soon as possible.

ADDRESSES: Send comments to Mr. John D. Bullington, Office of General Counsel, GC–90, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585–0103. Alternatively, he may be reached by phone at (202) 586–7364, by e-mail, *dan.bullington@hq.doe.gov,* or by FAX at (202) 586–6191.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Bullington at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization (DOE) Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*), require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy data information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

The recordkeeping requirements are authorized by section 203(a)(1) of the Economic Stabilization Act (ESA) of 1970, as amended (Pub. L. 92–210, 85 State. 743) and by section 13(g) of the Federal Energy Administration Act (FEAA) of 1974, as amended (Pub. L. 93–275). DOE proposes to extend for three years the limited recordkeeping requirements presently contained in 10 CFR 210.1. The antecedent regulation was narrowed by amendment in January 1985.

The record retention requirements of 10 CFR 210.1 do not mandate the creation or retention of any new records. Instead, they require firms to preserve only historical records relating to compliance with the petroleum regulations.

The proposed extension of 10 CFR 210.1 will enable DOE to continue its efforts to complete the enforcement program with respect to prior petroleum price and allocation regulations.

II. Current Actions

This is an extension with no change of the existing requirements. The requirements are proposed to be extended for a period of three years, from December 31, 1999 to December 31, 2002.

III. Request for Comments

Prospective respondents and other interested persons are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. EIA is interested in receiving comments from persons regarding whether the proposed recordkeeping requirements are necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions regarding the recordkeeping requirements clear and sufficient? If not, which instructions require clarification?

B. Can information be maintained as specified in the recordkeeping requirements?

C. Public reporting burden for the recordkeeping requirements are estimated to average 4 hours per respondent. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information.

Please comment on (1) The accuracy of the agency's estimate and (2) how the agency could minimize the burden of this requirement, including the use of information technology.

D. The agency estimates respondents will incur no additional costs other than the hours required to maintain the records. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with these recordkeeping requirements?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, June 8, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–15127 Filed 6–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–034]

El Paso Natural Gas Company; Notice of Compliance Filing

June 9, 1999.

Take notice that on June 2, 1999, El Paso Natural Gas Company (EL Paso) tendered for filing two contracts between El Paso and Dynegy Marketing and Trade.

El Paso states that the contracts are being filed to comply with the Commission's order, issued May 28, 1999 at Docket Nos. RP97–287–032, that accepted tariff sheets reflecting the contracts, subject to the contracts being filed for further review.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15092 Filed 6–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–545–000]

Northern Natural Gas Company; Notice of Request To Modify Operation of Compressor Station

June 9, 1999.

Take notice that Northern Natural Gas Company (Northern Natural) 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed on June 3, 1999, for certificate authorization to modify the operation of its Earlville Compressor station. Northern Natural seeks to operate this compressor station at 15,000 horse power (hp) rather than 14,000 hp at which it is currently operated. Northern Natural states that the proposed modification will increase operational flexibility and capacity on the East Leg segment of its pipeline system. Northern estimates that the cost of this proposal will be $25,000, to be financed with internally generated funds. Northern Natural's proposal is more fully set forth in its application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm. Call 202–208–2222 for assistance.

Any person desiring to be heard or to make any protest with reference to this application should on or before June 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a protest or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the Certificate is required by the public convenience and necessity. If a protest or motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Northern Natural to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–15090 Filed 6–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–306–001]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 9, 1999.

Take notice that on June 4, 1999 Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to its FERC Gas Tariff, Original Volume No. 2, Substitute Forty-Sixth Revised Sheet No. 5, proposed to be effective July 1, 1999.

Northwest Alaskan states that the instant filing is being submitted to correct errors in the calculation of the demand charge adjustment for Rate Schedule X–1 filed on May 17, 1999 to be effective for the period of July 1, 1999 through December 31, 1999. Specifically, Northwest Alaskan is submitting this filing to correct errors in the calculation of the "Seller's Costs Allocable to Alberta Gas Purchased for resale to PAGUS I" on page 7 line 2 of Exhibit I and in the calculation of the "Actual PAGUS I NOVA Charge" on page 9 line 2 of Exhibit I. In both instances an incorrect Daily Contract Quality was used in the calculations.

Included in Appendix B attached to the filing are the workpapers supporting the derivation of the revised demand charge and demand charge adjustment reflected on the tariff sheet included therein.

Northwest Alaskan states that it is serving copies of the instant filing to its affected customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15093 Filed 6–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–236–002]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

June 9, 1999.

Take notice that on June 4, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Eighteenth Revised Sheet No. 1 and Second Revised Sheet No. 859. Such tariff sheets are proposed to be effective June 4, 1999.

Transco states that the purpose of the instant filing is to terminate Transco's Rate Schedules X–94 in compliance with the Commission's order issued May 4, 1999 in Docket No. CP98–236–000. Such order authorized among other things, the abandonment of the exchange service performed under Transco's Rate Schedule X–94. Additionally, the Table of Contents in Transco's Original Volume No. 2 Tariff has been updated to reflect the termination of Rate Schedule X–94.

Transco respectfully requests that the Commission grant a waiver of the notice requirements in Section 154.207 of its Regulations, and any other waivers that may be necessary, in order that the enclosed tariff sheets be made effective as proposed herein.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15089 Filed 6–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–109–016]

Williams Gas Pipelines Central, Inc.; Notice of Refund Report

June 9, 1999.

Take notice on June 3, 1999, that Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a refund report in Docket No. RP93–109.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15091 Filed 6–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1957–001, et al.]

Northeast Power Coordinating Council, et al.; Electric Rate and Corporate Regulation Filings

June 8, 1999.

Take notice that the following filings have been made with the Commission:

1. Northeast Power Coordinating Council

[Docket Nos. ER99–1957–001, *et al.*]

Take notice that on June 1, 1999, Northeast Power Coordinating Council (NPCC) filed on behalf of the Member Systems of the New York Power Pool and joined by Allegheny Energy, Inc., Consumers Energy Co., and the Detroit Edison Company, and with the support of Ontario's Independent Electricity Market Operations, tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's order issued on May 12, 1999 in Docket No. EL98–52–000.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Thicksten Grimm Burgum, Incorporation, Monterey Consulting Associates, Incorporated, and Dartmouth Power Associates Limited Partnership

[Docket Nos. ER96–2241–011, ER96–2143–010, and ER96–149–005]

Take notice that on May 27, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. PowerSource Corp.

[Docket Nos. ER98–3052–003 and ER98–3052–004]

Take notice that on May 28, 1999, the above-mentioned power marketer filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. AIE Energy Inc. and Jpower Inc.

[Docket Nos. ER98–3164–001, ER98–3164–002, ER98–3164–003 and ER95–1421–012]

Take notice that on June 1, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Avista Corporation

[Docket No. ER99–2389–000]

Take notice that on June 3, 1999, Avista Corporation (Avista Corp.), tendered for filing a response to the deficiency letter issued in this docket on May 7, 1999.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket Nos. ER99–2470–000 and ER99–2515–000]

Take notice that on June 3, 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a request for a deferral of Commission action in the above FERC Docket Numbers.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Alliant Energy Corporate Services Inc.

[Docket No. ER99–3113–000]

Take notice that on June 1, 1999, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Wisconsin Public Service Corporation (WPS).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 26, 1999.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy Corporation

[Docket No. ER99–3114–000]

Take notice that on June 1, 1999, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with PP&L EnergyPlus Co., for Firm Point-To-Point Transmission Service under Duke's Open Access Transmission Tariff.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Corporation

[Docket No. ER99–3115–000]

Take notice that on June 1, 1999, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with PP&L EnergyPlus Co. for Non-Firm Point-To-Point Transmission Service under Duke's Open Access Transmission Tariff.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company)

[Docket No. ER99–3116–000]

Take notice that on June 1, 1999, Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 1, 1999 for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER99–3117–000]

Take notice that on June 1, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as GPU Energy) filed a Restated Composite Power Pooling Agreement among the GPU Energy companies (Restated Agreement). The Restated Agreement governs the integrated operation of the three GPU Energy companies.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy St. Francis LLC

[Docket No. ER99–3118–000]

Take notice that on June 1, 1999, Duke Energy St. Francis LLC (DESF) tendered for filing an Application for Approval of Market-Based Power Sales Tariff, For Waivers of Commission Regulations, and to Reassign Transmission Capacity.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Alliant Energy Corporate Services Inc.

[Docket No. ER99–3119–000]

Take notice that on June 1, 1999, Alliant Energy Corporate Services Inc., (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Cargill-Alliant, LLC.

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 28, 1999.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER99–3120–000]

Take notice that on June 1, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the fully executed Generation Control/Storage/Delivery Agreement between PacifiCorp and Public Service Company of Colorado (PSCO) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12. Also filed was PSCO's Certificate of Concurrence.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER99–3121–000]

Take notice that on June 1, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and TransCanada Power Marketing Ltd. (TransCanada) for Non-firm Point-To-Point Transmission Service. This Transmission Service Agreement specifies that TransCanada has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and TransCanada to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for TransCanada as the parties may mutually agree.

Niagara Mohawk requests an effective date of May 26, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and TransCanada.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. New York State Electric & Gas Corporation

[Docket No. ER99–3122–000]

Take notice that on June 1, 1999, New York State Electric & Gas Corporation (NYSEG) filed a Notice of Termination of executed Network Service and Network Operating Agreements between NYSEG and the energy service companies participating in NYSEG's retail access program (the Transmission Customers). The Transmission Customers are listed in an attachment to the filing. The Agreements contain notification that the NYSEG Open Access Transmission Tariff may be superseded in whole or in part by the proposed tariff of the New York State Independent System Operator (NYISO).

NYSEG requests waiver of the Commission's notice requirements, expedited resolution, and that the termination be made effective as of the effective date of the NYISO tariff.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customers listed in an attachment to the filing.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–3123–000]

Take notice that on June 1, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Northwestern Wisconsin Electric Company and its affiliate North Central Power Company.

NSP requests that the Commission accept the agreement effective May 1, 1999, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER99–3124–000]

Take notice that on June 1, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Minnesota Power, Inc. under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of June 1, 1999.

Copies of the filing were served upon Minnesota Power, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Minergy Neenah, L.L.C.

[Docket No. ER99–3125–000]

Take notice that on June 1, 1999, Minergy Neenah, L.L.C. (Minergy), a Wisconsin limited liability company, tendered for filing an application for authorization to sell power at market-based rates, a proposed market-based tariff for the sale of capacity and energy pursuant to negotiated agreement, a form of service agreement, and a code of conduct.

Minergy requests that the Commission accept the tariff and code of conduct for filing and grant such waivers of its regulations and blanket authorizations as the Commission has granted to other power marketers.

Minergy requests that the Commission permit the tariff to become effective no later than July 1, 1999.

Copies of the filing have been served upon the Wisconsin Public Service Commission.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER99–3138–000]

Take notice that on June 3, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and Crown Paper Company d/b/a Crown Vantage.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. West Texas Utilities Company

[Docket No. ER99–3139–000]

Take notice that on June 3, 1999, West Texas Utilities Company (WTU), tendered for filing a service agreement with Big Country Electric Cooperative, Inc. (Big Country) for interruptible service under WTU's WPC Tariff.

WTU requests an effective date of June 3, 1999. Accordingly, WTU requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Big Country and the Public Utility Commission of Texas.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3140–000]

Take notice that on June 3, 1999, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing an unexecuted network integration transmission service and network operating agreements for Letterkenny Industrial Development Authority.

The proposed effective date agreed to be the Parties is May 3, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Consumers Energy Company

[Docket No. ER99–3141–000]

Take notice that on June 3, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for unbundled wholesale power service with Northern Indiana Public Service Company pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

The service agreement has an effective date of May 5, 1999.

Copies of the filing have been served on the Michigan Public Service Commission and Northern Indiana Public Service Company.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. FPH Electric, L.L.C., doing business as Energy Risk Solutions

[Docket No. ER99–3142–000]

Take notice that on June 3, 1999, FPH Electric, L.L.C., FPH Electric, L.L.C., doing business as Energy Risk Solutions (FPH) petitioned the Commission for acceptance of FPH Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

FPH intends to engage in wholesale electric power and energy purchases and sales as a marketer. FPH is not in the business of generating or transmitting electric power. FPH has no members who own or control any electric generation, transmission, franchised retail service territories, generation sites, natural gas fuel supplies, or any other potential barriers to entry.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Reliant Energy Indian River, LLC

[Docket No. ER99–3143–000]

Take notice that on June 3, 1999, Reliant Energy Indian River, LLC (Reliant Indian River), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 authorizing Reliant Indian River to make sales at market-based rates.

Reliant Indian River intends to sell electric power at wholesale. In transactions where Reliant Indian River sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Reliant Indian River's Rate Schedule provides for the sale of energy and capacity at agreed prices.

Reliant Indian River has requested waiver of the Commission's Regulations to permit this rate schedule to become effective on the date Reliant Indian River acquires the Indian River Facility.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Alliance Companies

[Docket No. ER99–3144–000]

Take notice that on June 3, 1999, the Alliance Companies (American Electric Power Service Corporation, Consumers Energy Company, The Detroit Edison Company, FirstEnergy Corp., and Virginia Electric and Power Company) on behalf of themselves and their public utility operating company subsidiaries tendered for filing an application under Section 205 of the Federal Power Act for approval of the proposed Alliance Regional Transmission Organization (Alliance RTO).

The application seeks approval to create the Alliance RTO which could be formed initially as either the Alliance Transco or the Alliance ISO. The proposal would permit the Alliance ISO, if formed initially, to be replaced by the Alliance Transco under conditions specified in the Alliance Agreement filed as part of the application. The application also includes a proposed Alliance RTO open access transmission tariff that would provide service into, from and through the Alliance RTO. The Applicants request that the Alliance RTO open access transmission tariff become effective upon the transmission service date of the Alliance RTO and that it supersede the open access transmission tariffs of the respective Alliance Companies and their operating companies at that time.

Comment date: June 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Air Products and Chemicals, Inc.

[Docket No. QF99–84–000]

Take notice that on May 28, 1999, Air Products and Chemicals, Inc. (Air Products) filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility consists of a hydrogen steam methane reformer integrated with a combined cycle cogeneration plant and portions of the Clark Refining & Marketing, Inc. (Clark Refining) petroleum refinery at Port Arthur, Texas that will take steam and electricity produced by the cogeneration plant. The hydrogen steam methane reformer and cogeneration plant will be owned and operated by Air Products and will be installed at the petroleum refinery owned by Clark Refining. Air Products intends to include both the producing and consuming components as part of the qualifying facility.

Comment date: June 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15088 Filed 6–14–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1473–000, et al.]

Sempra Energy Trading Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 7, 1999.

Take notice that the following filings have been made with the Commission:

1. Sempra Energy Trading Corporation

[Docket No. ER99–1473–000]

Take notice that on June 1, 1999, Sempra Energy Trading, Corporation, tendered for filing an addendum to Ms. Sloan's supplemental affidavit filed on April 26, 1999, in the above-referenced docket.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket No. ER99–2687–000]

Take notice that on June 2, 1999, Northeast Utilities Service Company filed a letter withdrawing their quarterly market-based rate summary for long-term transactions that was filed on April 30, 1999 in the above-referenced proceeding.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Front Range Energy Associates L.L.C.

[Docket No. ER99–2879–000]

Take notice that on June 2, 1999, Front Range Energy Associates, L.L.C. (Front Range), tendered for filing a supplement to its May 7, 1999, petition for authority to sell power at market-based rates and related waivers, filed in the proceeding captioned above. Specifically, Front Range filed on a public basis certain information it had previously filed under seal and for which it had requested confidential treatment.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER99–3111–000]

Take notice that on June 1, 1999, the above-mentioned public utility filed their quarterly report for the quarter ending March 31, 1999.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3112–000]

Take notice that on June 1, 1999, Alliant Energy Corporate Services, Inc. tendered for filing an executed Service Agreement for Non-Firm Point-to-Point Transmission Service, establishing *Avista Energy, Inc.* as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of May 21, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: June 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Power Service Corp., on behalf of Monongahela Power Co.; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3126–000]

Take notice that on June 2, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 57 to add American Municipal Power—Ohio, Inc., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission.

The proposed effective date under the Service Agreement is May 27, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Bishop Power Company, Inc.

[Docket No. ER99–3127–000]

Take notice that on June 2, 1999, Bishop Power Company, Inc. (Bishop Power), petitioned the Commission for acceptance of Bishop Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Bishop Power intends to engage in wholesale electric power and energy purchases and sales as a marketer. Bishop Power is not in the business of generating or transmitting electric power. Bishop Power is a wholly-owned subsidiary of The Bishop Group, Ltd. The Bishop Group, Ltd., owns certain subsidiaries which are engaged primarily in the ownership and operation of an interstate natural gas pipeline in Kansas, Missouri and Oklahoma.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consumers Energy Company and The Detroit Edison Company

[Docket No. ER99–3128–000]

Take notice that on June 2, 1999, Consumers Energy Company and The Detroit Edison Company tendered for filing an executed Amendment No. 4, to the Electric Coordination Agreement between Consumers Energy Company and The Detroit Edison Company and an amendment to related Coordinated Operating Practice No. 12. The filing companies also tendered for filing service agreements enabling each filing company to take service under the other company's market-based power sales tariff.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy Operating Companies

[Docket No. ER99–3129–000]

Take notice that on June 2, 1999, Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (collectively, the FE Operating Companies), tendered for filing a Service Agreement under their FERC Electric Tariff, Original Volume No. 2, for sales of Capacity Resources to FirstEnergy Services Corp. and Penn Power Energy Inc., (collectively, the Retail Affiliates). The FE Operating Companies state that the Retail Affiliates may need to purchase Capacity Resources from them from time to time in order to comply with the PJM Reliability Assurance Agreement.

The FE Operating Companies have asked that the Service Agreement be permitted to become effective on June 3, 1999.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. International Energy Consultants, Inc.

[Docket No. ER99–3130–000]

Take notice that on June 2, 1999, International Energy Consultants, Inc. (International), petitioned the Commission for acceptance of International Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

International intends to engage in wholesale electric power and energy purchases and sales as a marketer. International is not in the business of generating or transmitting electric power. International does not have any affiliates.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Carolina Power & Light Company

[Docket No. ER99–3131–000]

Take notice that on June 2, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission

and the South Carolina Public Service Commission.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER99–3132–000]

Take notice that on June 2, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated April 23, 1999, between KCPL and Enserch Energy Services. This Agreement provides for the rates and charges for Non-Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

KCPL proposes an effective date of May 11, 1999, and requests waiver of the Commission's notice requirement.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER99–3133–000]

Take notice that on June 2, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (EGSI), tendered for filing a Generator Imbalance Agreement with Dow Chemical Company.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Kansas City Power & Light Company

[Docket No. ER99–3134–000]

Take notice that on June 2, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 10, 1999, between KCPL and Enserch Energy Services.

This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of May 11, 1999, and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER99–3135–000]

Take notice that on June 2, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 10, 1999, between KCPL and Kansas Municipal Energy Agency. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of May 17, 1999, and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Consumers Energy Company

[Docket No. ER99–3137–000]

Take notice that on June 2, 1999, Consumers Energy Company (Consumers) tendered for filing a revision to the annual charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Energy Company Electric Rate Schedule FERC No. 44).

The revised charges are provided for in Subsection 1.043 of the Agreement, which provides that the annual charges may be redetermined effective May 1, 1999 using year-end 1998 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were decreased from $15,525 to $14,923.

Consumers requests an effective date of May 1, 1999, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Northern, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Pacific Gas & Electric Company

[Docket No. ER99–3145–000]

Take notice that on June 2, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing an Interconnection Agreement Between Pacific Gas and Electric Company and the Laguna Irrigation District, dated May 28, 1999 (Agreement). PG&E explains that the Agreement initially was negotiated, and is now being filed, pursuant to the Commission's "Proposed Order Directing Interconnection and Establishing Further Procedures, issued September 16, 1998, in the above-captioned docket (Proposed Order), 84 FERC ¶ 61,226 (1998). PG&E previously had filed an unexecuted copy of the Agreement. At the request of PG&E and Laguna, the Commission also previously had ordered that the proceedings in this Docket be held in abeyance pending the outcome of settlement discussions between PG&E and Laguna. In the current filing, PG&E requests, on behalf of itself and Laguna, that the Commission: (I) accept the Agreement for filing, as directed by the Proposed Order in this case; (ii) provide guidance as to whether the filing of the Interconnection Agreement should be treated as a Section 205 filing and, if so, grant any necessary waivers to allow the Agreement to become effective as of May 28, 1999; and (iii) cease holding the case in abeyance, and instead reinstate its active consideration of the issues presented by Laguna's Application in this case.

Copies of this filing have been served upon Laguna, and the California Public Utilities Commission and other intervenors in FERC Docket No. EL98–46–000.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests shquld be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15062 Filed 6–14–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Record of Decision for the Interconnection of the Sutter Power Project With the Western Area Power Administration's Keswick-Elverta/ Olinda-Elverta 230-Kilovolt Double-Circuit Transmission Line

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of decision.

SUMMARY: The Western Area Power Administration (Western) prepared this Record of Decision in response to a request submitted to Western for a direct interconnection of Calpine Corporation's (Calpine) proposed Sutter Power Project (SPP) with Western's electric transmission system. In response to this request, Western completed an Interconnection Feasibility Study that determined that Western would need to build certain direct interconnection facilities, and make modifications of associated facilities and operational adjustments to its transmission system to accommodate the SPP generation. Western has decided to move forward on an Interconnection Agreement with Calpine for the SPP including agreements for making the necessary modifications to Western's transmission system. Western has determined that no significant environmental impacts will result from the construction, operation, and maintenance of the SPP or its ancillary facilities. These facilities include a natural gas pipeline, a new switching station, and approximately 4 miles of new 230-kilovolt (kV) transmission line. This transmission line will act as a generation tie line. Western prepared this Record of Decision in accordance with the Council Envrionmental Quality regulations for implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508), and Department of Energy Procedures for Implementing NEPA (10 CFR part 1021).

FOR FURTHER INFORMATION CONTACT: Ms. Loreen McMahon, Environmental Project Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4460, email: *mcmahon@wapa.gov.*

SUPPLEMENTARY INFORMATION: Western is the lead federal agency under NEPA for the SPP. The California Energy Commission (CEC), a regulatory agency of the State of California, has the statutory authority to license thermal powerplants of 50 megawatts (MW) or more and is the State lead agency for the SPP. CEC prepares environmental documentation equivalent to the California Environmental Quality Act. Western and CEC determined that joining the two processes would provide many benefits to the public. The CEC and Western released a joint Draft Environmental Impact Statement (EIS)/ Final Staff Assessment (FSA) in October 1998, and subsequently held joint hearings on that document in November and December 1998. Following the release of Western's Draft EIS, Western determined that the next document in the CEC process, the Presiding Member's Proposed Decision (PMPD), would be an inappropriate vehicle for Western to present responses to comments on the Draft EIS. Western was concerned that this may appear that Western had predetermined the outcome of the review process. Therefore, Western prepared its own Final EIS, with input from the CEC.

Western released the Final EIS in April 1999 (DOE/EIS–0294). Western identified Calpine's proposal as the preferred alternative. Calpine proposes to construct the SPP in Sutter County, California, on a portion of a 77-acre parcel of land owned by Calpine. The SPP project would consist of a nominal 500 MW net electrical output natural gas-fired, combined cycle generating facility. The powerplant and Western's Keswick-Elverta and Olinda-Elverta double-circuit 230-kV transmission lines would be interconnected by a generation tie line consisting of approximately 4 miles of 230-kV transmission line and a 230-kV switching station at some point south and west of the plant. This generation tie line would be constructed as a double circuit transmission line, but initially operated as a single circuit. A new 12-mile natural gas pipeline would be constructed to provide fuel for the project. SPP would be a "merchant plant", selling power on a short-term and midterm basis to customers, and on the spot market. Calpine will assume all economic costs. Power produced by this plant would be sold at the market price and made available to all market participants.

Description of Alternatives

During the environmental analysis, the CEC siting process developed 11 siting alternatives to the proposed location. Seven locations were dismissed as infeasible alternatives using selective factors included zoning issues, economic factors (whether it appeared feasible that Calpine could acquire the alternative site), and other environmental factors. The four remaining alternate sites were compared to the unmitigated impacts of the proposed SPP location. The potential impacts to each sensitive issue (water, air, natural resources, cultural resources, visual, noise, etc.) were analyzed and discussed in some detail in the Draft EIS/FSA.

System alternatives were also proposed and developed as mitigative measures to the original proposal. The greatest potential for significant impacts in the original proposal was to water resources and associated biological impacts to aquatic dependent species. The project was originally planned to draw an average of 3,000 gallons of water per hour, cycle it 2.5 times through the plant for cooling and steam generation, then discharge the effluent into the surface drainage system currently used for agricultural irrigation runoff which drains into the Sutter Bypass. This discharge had the potential to have an adverse biological effect to species that use the Sutter National Wildlife Refuge. In response, Calpine agreed to design the plant with a 100 percent dry cooling system. This alternative would reduce water usage by 95 percent and discharge no water to the surface drainage system. This would alleviate the impacts of the plant on aquatic resources and on sensitive species.

A second system alternative was proposed to mitigate air pollution associated with the plant. Under the original alternative, the SPP would have an increased impact on ozone precursors including nitrous oxide (NO_X) and airborne particulate matter (PM_{10}). Sutter County is currently in a non-attainment area for PM_{10}. Calpine proposed a series of mitigative measures to satisfy the concerns of the CEC, the U.S. Environmental Protection Agency (EPA), the California Air Resources Board, and the Feather River Air Quality Management District. These included measures such as the dry cooling design that reduces the production of PM_{10} by plant operations to near zero. Calpine also has agreed to adhere to stringent EPA control technology recommendations for ozone precursors (including NO_X), and has developed a strategy to utilize emission offsets (Emission Reduction Credits) to fully mitigate the remaining releases of pollutants.

The Draft EIS/FSA identified one issue as having a significant adverse impact that could not be mitigated. Based upon the analysis of the CEC staff, it was believed that the plant site and the transmission lines would have an adverse impact on the visual

resources of the project area. The analysis concluded the impact to a very few individuals at one particular location were great enough to raise the level of the visual impacts to significant. However, the CEC concluded in its PMPD that the Draft EIS/FSA analysis did not take into account the larger viewshed of the area and determined that the visual impacts were, therefore, not significant. Western agrees with this conclusion.

A final issue concerned the impacts to existing wetlands at the proposed site location. Region IX of the EPA expressed concerns over the wetland impacts of the project proposal. These wetlands are within the original 77-acre parcel owned by Calpine. This parcel had been a seasonally flooded rice field when the existing Greenleaf I plant was constructed in 1985, but the portion of the parcel not built upon had been left fallow. The SPP will fill 5.83 acres of these former rice fields. The EPA pointed out that there was an alternative presented in the Draft EIS/FSA that would avoid impacts to all wetlands. However, that alternative was considered infeasible because Sutter County would not likely permit a conversion of currently cultivated agricultural land to industrial use, the landowners stated their strong opposition to selling to Calpine for any reason, and this location had the likelihood of impacting the nearby Sutter National Wildlife Refuge.

Western has determined that the proposed action, with the system alternatives discussed above, is the environmentally preferable alternative. This alternative, with the mitigative measures outlined below, will not have a significant effect on any portion of the human environment.

Mitigation Measures

Western and the CEC have detailed 165 different Conditions of Certification, or mitigative measures, to reduce the impacts of the SPP. Not all of these conditions are included to reduce significant environmental impacts, some are merely intended to apply to the SPP as standard operating procedures. These conditions of certification are part of the standard certification process of the CEC. However, the following presents an overview of the mitigative measures that Calpine will adopt to reduce the environmental impacts of the SPP.

In terms of impacts to air resources, 44 separate conditions will apply to the construction and operation of the SPP. The plant itself will use the air-cooling alternative. Calpine must take a number of measures to reduce or avoid fugitive dust emissions during the construction phase of the project, such as paving roads, wetting open excavations, washing vehicles, and others. Calpine must obtain Emission Reduction Credits greater than 100 percent of the plant's emissions for all criteria pollutants. Other control technologies will reduce emissions to the lowest levels according to the best available control technology. Any potential for air emissions beyond the agreed upon levels, such as shutting down control equipment, or breaking or repairing this equipment, requires notification to the local air quality control district. Calpine must mitigate land use issues by construction and operation controls, such as using earth berms, vegetation screening, and lighting controls to reduce the impacts on the surrounding residents. Calpine must place the transmission lines to reduce to the greatest degree impacts to local farming practices. Calpine must also provide a new aircraft landing strip for use by the local farmers.

Calpine has agreed to carry out certain measures to lessen the impacts to the socioeconomic resources. These include payments to the local fire protection district for new equipment and training for firefighters.

The analysis in the Final EIS concluded that there was not a significant visual impact imposed by the project provided that certain measures were taken to lessen some of the impacts. Calpine must paint the existing plant, the new plant, and any other structures such as tanks, stacks, and fences with non-reflective colors so that they blend into the surroundings better. They must hood or direct exterior lighting onto surfaces to minimize light pollution, including fixes to the existing plant. They must landscape property to screen most of the plants from outside viewers. Finally, to the extent possible, they must not place transmission line structures directly in front of residences or in direct line-of-sight from a residence to the Sutter Buttes.

Though the impacts to biological resources are expected to be minimal, Calpine must provide a biological monitor on site during all construction phases, and provide environmental awareness training for all employees. Certain restrictions must be observed, such as timing and monitoring of activities to minimize impacts to the giant garter snake, Swainson's hawk, and migratory birds. Finally, Calpine must provide funding to Wildlands, Incorporated, to acquire and manage lands to compensate for loss of habitat.

Using the dry-cooling alternative will minimize overall impacts to water resources, and the plant must not discharge any wastewater into streams or surface water. The plant will provide sufficient on site stormwater retention to control a 10-year, 24-hour storm event so that the plant does not contribute to drainage problems. Calpine must mitigate impacted wetlands by purchasing land through Wildlands, Incorporated, at a ratio of one acre of compensatory wetlands for every acre disturbed.

Qualified professionals must monitor all construction-related activities in all areas determined to be sensitive for cultural and paleontological resources.

Specific mitigative measures have been proposed for the actions needed to accommodate the interconnection with Western's transmission system. The Mitigation Action Plan, prepared under 10 CFR 1021.331 and adopted as part of this Record of Decision, details the specific mitigation needed for the interconnection. These include the conditions placed upon the siting of the transmission line, which are discussed above. Also adopted as part of the environmentally preferred alternative, is the transmission line route with the switching station at the end of O'Banion Road.

All practicable means have been taken to avoid or minimize the environmental harm of the environmentally preferred alternative. No significant environmental impacts will result from the construction, operation, and maintenance of the SPP or its ancillary facilities.

Dated: May 25, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 99–15126 Filed 6–14–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6358–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Agricultural Health Study: Pesticide Exposure Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB) entitled: "Agricultural Health Study: Pesticide Exposure Study" EPA ICR Number: 1906.01. Before submitting this

ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 16, 1999.

ADDRESSES: Public comments should be submitted to: Ms. Dianne Dean, US EPA (MD–56), Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of this ICR without charge by contacting Ms. Dianne Dean, 919–541–3085. Fax: 919–541–1486. E-mail: dean.dianne@epamail.epa.gov. For technical information on the proposed study, contact Mr. Gary Evans, 919–541–3124. FAX: 919–541–4046. E-mail: evans.gary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are private pesticide applicators in the Agricultural Health Study epidemiological cohort, their spouses, and children.

Title: Agricultural Health Study: Pesticide Exposure Study, EPA ICR Number: 1906.01.

Abstract: The National Cancer Institute (NCI), the National Institute of Environmental Health Sciences (NIEHS) and the U.S. Environmental Protection Agency (U.S. EPA) have agreed through a Memorandum of Understanding to perform a prospective epidemiological study of the risk of cancer and other diseases for 90,000 registered pesticide applicators and their spouses in the states of Iowa and North Carolina. Information Collection Requests prepared by NCI for survey data collection in the AHS epidemiological study have received OMB approval (current OMB #0925–04–06, expires November 30, 2001). The U.S. EPA will support the AHS by performing an exposure measurement study of private pesticide applicators in the cohort. The exposure measurement study is the subject of the information collection request cited in this notice.

Study respondents will be registered private pesticide applicators in the AHS prospective epidemiological cohort, their spouses, and up to two children (between the ages of 3–18 years old) selected from each home. An estimated total of 160 applicators will be selected into the study. Approximately 24 of these applicators will be asked to participate in the exposure study in each of two years. Participation will be entirely voluntary.

Applicator exposures will monitored around their application of a target pesticide. Observations of applicator pesticide handling, mixing, loading, and application (HMLA) work practices will be performed. A sample of the pesticide formulation will be collected. Measurements of applicator exposure will be obtained through collection of personal, environmental, and urinary biomarker samples. Urine samples will be collected from participating spouses and children to measure urinary biomarkers of exposure to the applied pesticide.

A screening questionnaire will be administered to cohort pesticide applicators to determine their eligibility for participation in the exposure study. A modified version of the NCI AHS Private Pesticide Applicator Followup Questionnaire (OMB #0925–04–06) will be administered to the applicator immediately after the observed HMLA activity. A Biomarker Questionnaire will be administered to the applicator at the end of the monitoring period to collect data for interpreting the measurements and to provide additional information about applicator and farm family exposure to pesticides. Spouse and child components of the Biomarker Questionnaire will be administered to participating spouses and up to two participating children in the applicator's family. The full NCI AHS Private Pesticide Applicator Followup Questionnaire (OMB ı0925–04–06) will be administered to the pesticide applicator several months after the observed application event.

The data will be used by scientists within ORD and the Agencies collaborating on AHS. Data will be used to:

(i) Assess the magnitude of cohort applicator exposures to applied target pesticides;

(ii) Assess the classification of cohort applicator exposures using data from AHS epidemiological study questionnaires and provide data for refining exposure classification algorithms;

(iii) Identify key exposure factors;

(iv) Assess the association between the application of target pesticides and potential exposure for the applicator's spouse and child.

The information will appear in the form of final EPA reports, journal articles, and will also be made publicly available.

The total cost of the study is estimated to be $1.8 M over a period of three years.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Screening questionnaires will be administered by telephone to determine eligibility to participate in the study. It is estimated that 800 AHS cohort applicators will be screened to identify eligible pesticide applicators. Average respondent burden for screening is estimated to be 10 minutes. The total burden for the screening questionnaire is estimated to be 133 hours.

Average respondent burden for applicators participating in the exposure measurement study is estimated to be 4 hours for pesticide applicators, 60 minutes for applicator spouses and children providing urine samples, and 30 minutes for children only responding to the questionnaire. This time includes recruitment, training time, time the respondent will spend collecting or assisting collection of samples, and time spent completing interviewer-administered questionnaires. Approximately 24 of the 160 pesticide applicators will be monitored two times. It is estimated that 115 spouses and 96 children will provide urine samples and answer the questionnaire. An estimated additional 64 children will participate by answering the questionnaire only. The total burden for participating in the exposure study is estimated to be 983 hours.

The overall total estimated burden for screening and for participation in the exposure study is estimated to be 1116 hours. Data collection is scheduled to occur over a two-year period with work approximately 60 applicators in the first year, and the remainder of the applicators and repeat visits in the second year. Therefore, the annual

burden is estimated to be 410 hours for respondents for the first year, and 706 hours in the second year.

There are no direct respondent costs for this data collection. An incentive payment of $100 will be offered to defray the burden for pesticide applicators participating in the exposure measurement study. An incentive payment of $20 will be offered to spouses and children providing urine samples, and $5 to children responding to the questionnaire only.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 27, 1999.

Gary J. Foley,

Director, National Exposure Research Laboratory.

[FR Doc. 99–15168 Filed 6–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6359–5]

Agency Information Collection Activities; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; Submission of ICR No. 0161.08 to OMB for Review and Approval; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB; request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) entitled: "Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides" (EPA No. 0161.08, OMB No. 2070–0027) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. This ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on June 30, 1999. Before submitting this ICR to OMB, EPA issued a **Federal Register** document announcing the Agency's intent to seek OMB approval for this ICR and providing a 60-day public comment opportunity (64 FR 3083, January 20, 1999). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments, identified by ICR numbers EPA No. 0161.08 and OMB No. 2070–0027, must be received on or before July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260-2740, by e-mail: "farmer.sandy@epa.gov." You may also obtain copies of the ICR document from the EPA Internet Home Page at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 0161.08.

ADDRESSES: Send comments, referencing EPA ICR No. 0161.08 and OMB Control No. 2070-0027, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, S.W., Washington, DC 20460;
and to:
Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 0161.08; OMB Control No. 2070–0027.

Current Expiration Date: Current OMB approval expires on June 30, 1999.

Title: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides.

Abstract: This data collection program is designed to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in the United States and cannot be sold in the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted in the form of annual or per-shipment statements to the EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticides. The burden for this information collection has been constant since the implementation of the 1993 pesticide export policy governing the export of pesticides, devices, and active ingredients used in producing pesticides.

A detailed description of the collection activity covered by this ICR is provided in the ICR. The other activities related to pesticide registration, e.g., labeling and recordkeeping, are covered by a separate ICR (EPA ICR No. 0277; OMB Control No. 2070–0060). In general, the records that are required to be maintained under section 8 of FIFRA are already covered by the Pesticide Registration ICR. In addition, this ICR does not include any estimated burden or costs related to pesticide product labeling, which is not considered to be a collection of information subject to approval under the PRA because the information that must be included as the product labeling has been approved and provided by EPA. In 1995, in the context of the Pesticide Registration ICR, OMB determined that the Agency does not need to estimate burden or costs for the third party disclosure requirement involving the registrant's disclosure of product specific information to potential users and the general public through the pesticide labeling is not considered to be a collection of information subject to approval under the PRA because the information that must be included as the product labeling has been approved and provided to the registrant by EPA. (5 CFR 1320.3(c)(2)). This ICR, therefore, only accounts for the incremental burden of maintaining records related to the foreign labeling, and providing appropriate translations of certain required labeling statements.

Burden Statement: The annual respondent burden for this information collection, which is based on a response

consisting of the submission of an FPAS and use of multi-lingual labeling, and varies slightly according to the registration status of the product, is estimated to average about 6.2 hours per response for registered products (1.081 hours for the FPAS+5.083 hours for multi-lingual labeling), and about 6.7 hours per response for unregistered products (1.081 hours for the FPAS+5.583 hours for multi-lingual labeling). The annual respondent cost for this information collection is estimated to average about $492.49 per response for registered products ($74.33 for the FPAS+$418.16 for multi-lingual labeling), and about $553.99 per response for unregistered products ($74.33 for the FPAS+$479.66 for multi-lingual labeling). Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. No person is required to respond to a collection of information subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations, after initially appearing in the Final Rule, are displayed in 40 CFR part 9, and on any applicable information collection instrument.

The following is a brief summary of the estimates presented in this ICR:

Respondents/Affected Entities: Exporters of pesticide products.

Estimated total number of potential Respondents: 2,500.

Frequency of Response: As determined by the exporter.

Estimated total annual burden hours: 21,451.3.

Estimated total annual burden costs: $1,746,536.

Changes in Burden Estimates: The change in respondent burden is due to three factors: (1) EPA has revised the burden estimate for the purchaser acknowledgment requirement to reflect the numbers of FPASs submitted to EPA under the revised policy; (2) EPA has also adjusted the estimated burden imposed by the multi-lingual export labeling requirement, which requires exporters to translate the approved label provided by EPA, and (3) the estimated costs have increased significantly due to the use of the labor rates recently supplied by the Bureau of Labor Statistics. However, no changes have been made to the requirements for foreign purchaser acknowledgments.

Next Step in the process for this ICR: After providing a 30 day opportunity for additional comments from the public, OMB will review and take action on the Agency's request. If this ICR involves the renewal of a currently approved collection activity for which the renewal request was submitted to OMB before the current approval expires, then the current approval will be extended month-to-month until OMB takes an action on the pending request (see 5 CFR 1320.10(e)(2) and 1320.12(b)(2)). Periodically, EPA publishes a notice in the **Federal Register** listing recent OMB actions on the Agency's ICR submittals. If you have any questions about this ICR or the approval process, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: June 9, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–15171 Filed 6–14–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140250; FRL–6062–8]

Access to Confidential Business Information by Versar Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Versar, Incorporated, of Springfield, Virginia for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data by Versar occurred as a result of an approved waiver dated May 4, 1999, which requested granting Versar immediate access to TSCA CBI. This waiver was necessary to allow Versar to provide exposure assessment support for both new and existing chemicals.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W–99–041, contractor Versar Incorporated, of 6850 Versar Center, Springfield, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing exposure assessment support for both new and existing chemicals submitted under sections 4, 5, 6, and 8 of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–99–041, Versar will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. Versar personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Versar access to these CBI materials on a need-to-know basis only.

All access to TSCA CBI under this contract will take place at U.S. EPA Headquarters and Versar's Springfield, VA site.

Versar will be authorized access to TSCA CBI at their office under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at Versar's office site, EPA will perform the required inspection of its facility and ensure that the facility is in compliance with the Manual. Upon completing review of the CBI materials, Versar will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until April 30, 2004.

Versar personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: June 6, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution and Prevention and Toxics.

[FR Doc. 99–15175 Filed 6–14–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6359–8]

Exposure Factors Handbook

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of final document and CD–ROM.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the availability of a final document, Exposure Factors Handbook, Volumes I–III (EPA/600/P–95/002Fa, EPA/600/P–95/002Fb, and EPA/600/P–95/002Fc; August 1997) and Exposure Factors Handbook CD–ROM (EPA/600/C–99/001, February 1999), prepared by the National Center for Environmental Assessment-Washington (NCEA–W), within the Office of Research and Development of the EPA. The purpose of the document and CD–ROM is to provide a summary of the available statistical data on various factors used in assessing human exposure. This Handbook will serve as a resource for exposure assessors inside the Agency as well as outside, who need to obtain data on standard factors to calculate human exposure to toxic chemicals. These factors include: Drinking water consumption; soil ingestion; inhalation rates; dermal factors including skin area and soil adherence factors; consumption of fruits and vegetables, fish, meats, dairy products, and home-grown foods; breast milk intake; human activity factors; consumer product use; and residential characteristics. Recommended values are for the general population and also for various segments of the population who may have characteristics different from the general population. NCEA has strived to include full discussions of the issues that assessors should consider in deciding how to use these data and recommendations. The CD–ROM contains an interactive version of the Exposure Factors Handbook. The CD–ROM has word search capabilities, down-loadable tables, hypertext links to various chapters in the document, and key references.

ADDRESSES: The document is being made available electronically from the NCEA web site at http://www.epa.gov/ncea/exposfac.htm. A limited number of copies of both the printed and CD–ROM versions of the Handbook will be available from EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, Ohio (telephone: 1–800–490–9198, or 513–489–8190; facsimile 513–489–8695). Please provide the title and EPA number when ordering from NSCEP. Documents may also be ordered via the internet at www.epa.gov/NCEPIhome/orderpub.html. Paper copies may be purchased from the National Technical Information Service (NTIS) in Springfield, VA (1–800–553–NTIS(6847) or 703–605–6000; facsimile 703–321–8547). Please provide the following numbers when ordering from NTIS: Vol. I—PB98–124225, Vol. II—PB98–124233, Vol. III—PB98–124241, and the Set—PB98–124217.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Jacqueline Moya (202–564–3245): mailing address: NCEA–W (8623D), U.S. Environmental Protection Agency, Washington, D.C. 20460; facsimile: 202–565–0079; e-mail moya.jacqueline@epa.gov.

Dated: June 7, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–15173 Filed 6–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6359–9]

Proposed CERCLA Administrative Cost Recovery Settlement; Circle Finishing Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the M&V Electroplating Corporation Superfund site in Newburyport, Massachusetts with the following settling party: Circle Finishing Corporation. The settlement requires the settling party to pay $1,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the Agency the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency United States' response to any comments received will be available for public inspection at the Newburyport Public Library, Newburyport, Massachusetts, and U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Boston, MA 02114.

DATES: Comments must be submitted on or before July 15, 1999.

ADDRESSES: The proposed settlement is available for public inspection at U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Boston, MA 02114. A copy of the proposed settlement may be obtained from Sharon C. Fennelly, Site Evaluation and Response Section II, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBR), Boston, MA 02114, (617) 918–1263. Comments should reference the M&V Electroplating Corporation Superfund Site, Newburyport, Massachusetts and EPA Docket No. CERCLA I–99–0022 and should be addressed to Sharon C. Fennelly, Site Evaluation and Response Section II, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBR), Boston, MA 02114.

FOR FURTHER INFORMATION CONTACT: Sharon C. Fennelly, Site Evaluation and Response Section II, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBR), Boston, MA 02114, (617) 918–1263.

Dated: June 3, 1999.

Dennis Huebner,

Acting Director, Office of Site Remediation and Restoration, U.S. EPA, Region 1.

[FR Doc. 99–15169 Filed 6–14–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for renewal of license of station WTVE(TV), Channel 51, Reading, Pennsylvania, and for a construction permit for a new television station on Channel 51 at Reading. [MM Docket No. 99–153; DA 99–865].

Applicant	City/State	File No.
A. Reading Broadcasting, Inc.	Reading, Pennsylvania	BRCT–940407KF
B. Adams Communications Corp.	Reading, Pennsylvania	BPCT–940830KG

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest; and

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications should be granted.

3. A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 Twelfth Street, S.W., Washington, D.C. 20554. The complete text may also be purchased from the Commission's duplicating contractor, ITS, 445 Twelfth Street, S.W. (telephone 202–875–8324).

Federal Communications Commission.

James J. Brown,

Deputy Division Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–15085 Filed 6–14–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2337]

Petitions for Reconsideration of Action in Rulemaking Proceeding

June 9, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 30, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–128).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15176 Filed 6–14–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Summary of Deposits.

OMB Number: 3064–0061.

Annual Burden:

Estimated annual number of respondents: 6,400.

Estimated time per response: 3 hours.

Average annual burden hours: 19,200 hours.

Expiration Date of OMB Clearance: July 31, 1999.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before July 15, 1999 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The Summary of Deposits annual survey obtains data regarding the amount of deposits held at each office of all banks in the United States. The survey data provides a basis for measuring the competitive impact of bank mergers and has additional use in banking research.

Federal Deposit Insurance Corporation.

Dated: June 8, 1999.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–15069 Filed 6–15–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Pan-World Express, Inc., 5359 W. Valley Boulevard, Los Angeles, CA 90032, Officer: Adam D. Lam, President, (Qualifying Individual)

MC Trans USA Inc., 2908 Oregon Court, I–10, Torrance, CA 90503, Officers: Haruo Katono, President, Fusao Kiuchi, Exec. Vice President, (Qualifying Individual)

Neptune Shipping Company, Parker Plaza, 400 Kelby Street, PO Box #39, Fort Lee, NJ 07024, Officers: Jane J. Dong, President, Sammy Xiaoming Sheng, Managing Director, (Qualifying Individual)

American President Shipping, Ltd., 245 Dolphin Drive, Hewlett Neck, NY 11598, Officers: Vincent Icolari, President, (Qualifying Individual), Milton Heid, Vice President

Rical Logistics (SFO) Inc., 242–A Lawrence Avenue, South San Francisco, CA 94080, Officer: William Hom, Vice President, (Qualifying Individual)

Delmar Logistics, Inc., 8939 S. Sepulveda Blvd., Suite 302, Los Angeles, CA 90045, Officer: Vincent Iacopella, President, (Qualifying Individual)

Rical Air Express, Inc. d/b/a/ Rical Logistics, 147–29 182nd Street, Jamaica, NY 11413, Officers: Gabriel

Lee, President, (Qualifying Individual), Michael Ma, Vice President

U.S. Marine Lines Inc., 1333 Broadway, #1222, New York, NY 10018, Officers: Jacob T. Puthenparambil, President, (Qualifying Individual), Shantiial Fernado, Secretary

Rical Air Express Inc. d/b/a Rical Logistics, 9100 S. Sepulveda Blvd., Suite 117, Los Angeles, CA 90045, Officers: Gabriel Lee, President, Charles Cheung, Vice President, (Qualifying Individual)

EMO Trans L.A. Inc., 11100 Hindry Avenue, Los Angeles, CA 90045, Officers: Jo Frigger, President, Marco Rohrer, Exec. Vice President, (Qualifying Individual)

Japan Express America Inc. d/b/a, Japan Express, 18 Essex Road, Paramus, NJ 07652, Officers: Minoru Kawabata, President, Minoru Wada, Exec. Vice President, (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Milana Holdings, Inc d/b/a M&M International Logistics, 472 Plaza Drive, Suite E & F, Atlanta, GA 30349, Officers: Peter D. Milana, President, (Qualifying Individual), Nara R. Milana, Secretary.

Dated: June 10, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–15116 Filed 6–14–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. AmericasBank Corp, Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of AmericasBank, Baltimore, Maryland.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. First Bancshares Corporation, Gladstone, Michigan; to acquire an additional 5.84 percent, for a total of 10.84 percent of the voting shares of Baybank Corporation, Gladstone, Michigan, and thereby acquire Baybank, Gladstone, Michigan.

Board of Governors of the Federal Reserve System, June 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15077 Filed 6–14–99; 8:45 am]

BILLING CODE 6210–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 21, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15328 Filed 6–11–99; 3:41 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Management Services, Administrative Policy and Information Management Division; Cancellation of an Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Administrative Policy and Information Management Division eliminated the need for Optional Form 121, Communications Control because of low usage. Therefore, OF 121 is cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, (202) 501–0581.

DATES: Effective June 15, 1999.

Dated: June 7, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99–15059 Filed 6–14–99; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Automation of Medical Standard Form 602

AGENCY: General Services Administration.

ACTION: Guideline on automating medical standard forms.

BACKGROUND: The Interagency Committee on Medical Records (ICMR) is aware of numerous activities using computer-generated medical forms, many of which are not mirror-like images of the genuine paper Standard/

Optional Form. With GSA's approval the ICMR eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The committee proposes to set required fields standards and that activities developing computer-generated versions adhere to the required fields but not necessarily to the image. The ICMR plans to review medical Standard/Optional forms which are commonly used and/or commonly computer-generated. We will identify those fields which are required, those (if any) which are optional, and the required form (if necessary). Activities may not add data elements that would change the meaning of the form. This would require written approval from the ICMR. Using the process by which overprints are approved for paper Standard/Optional forms, activities may add other data entry elements to those required by the committee. With this decision, activities at the local or headquarters level should be able to develop electronic versions which meet the committee's requirements. This guideline controls the "image" or required fields but not the actual data entered into the field.

SUMMARY: With GSA's approval, the Interagency Committee on Medical Records (ICMR) eliminated the requirement that every electronic version of a medical Standard/Option form be reviewed and granted an exception. The following fields must appear on the electronic version of the following form:

ELECTRONIC ELEMENTS FOR SF 602

Item	Placement*
TEXT:	
Title Serology Record	Top of form.
Form ID: Standard Form 602 (Rev. 8–98)	Bottom right corner of form.
Section I—History of Present Infection	Top of form.
I have been informed by the medical officer that I have been diagnosed as a having sexually transmitted disease as indicated above; the nature of this disease has been explained to me; I understand that my cooperation is necessary in the treatment and prolonged observation (including certain prescribed tests) for the care of this disease. Disclosure of this information is required by law.	Before patient's signature.
Section II—History of Past Sexually Transmitted Infections or Treatments	
Section III—Treatment	
Section IV—Laboratory Summary	
*Satisfactory result cannot be reported without normal spinal fluid findings	Below Section V—Evaluation of Therapy—Result—Satisfactory.*
**Specify: Infectious Relapse: Sero-Relapse, Neuro-Relapse, Incomplete data on Spinal Fluid, Other (Specify.	Below Section V—Evaluation of Therapy—Result—Unsatisfactory.**
DATA ENTRY FIELDS:	
Source of Referral—Voluntary (Check box)	
Source of Referral—Contact Report (Check box)	
Source of Referral—Physical Inspection (Check box)	
Source of Referral—Blood Transfusion (Check box)	
Incident To—Hospitalization (Check box)	
Incident To—Premarital (Check box)	
Incident To—Prenatal (Check box)	
Incident To—Other (Check box)	
Incident To—Other (Specify)	
Dates—Onset Symptoms	
Dates—Requested Treatment	
Dates—Diagnosis Established	
Diagnostic (include stage and diagnosis number)	
Diagnostic Criteria—Darkfield (Results of test)	
Diagnostic Criteria—S.T.S. (Results of test)	
Diagnostic Criteria—Spinal Fluid (If indicated)	
Diagnostic Criteria—Other (List)	
Clinical Data (Include chief complaint, physical findings—eye, cardiovascular and nervous system, even in early syphilis)	
STD Contact Form Serial Numbers (allow for up to 3 numbers)	
Recommended Treatment	
Recommended Follow-up	
Signature of Physician	
Name of Physician	
Date (Signed by Physician)	
Signature of Patient	
Date (Patient Signed)	
Date (Of Treatment) (Allow at least 3 entries)	
Disease (Give state) (Allow at least 3 entries)	
Prior to Federal Service—Yes (Check box) (Allow at least 3 entries)	
Prior to Federal Service—No (Check box) (Allow at least 3 entries)	
History * * *—Treatment (Give type, amount and dates) (Allow at least 3 entries)	
Treating Agency (Allow at least 3 entries)	
Place (Institution and City) (Allow at least 3 entries)	
Treatment—Treatment (Allows for at least 3 entries)	
Treatment—Date Started (Allow for at least 3 entries)	
Treatment—Date Ended (Allow for at least 3 entries)	
Treatment—Signature of Physician (Allow for at least 3 entries)	
Relationship to Sponsor	

ELECTRONIC ELEMENTS FOR SF 602—Continued

Item	Placement*
Sponsor's Name—Last	
Sponsor's Name—First	
Sponsor's Name—MI	
Sponsor's ID Number (SSN or other)	
Depart./Service	
Hospital or Medical Facility	
Records Maintained At	
Darkfield Examination—Date (Allow for at least 2 entries)	
Darkfield Examination—Results (Allow for at least 2 entries)	
Darkfield Examination—Source of Speciment (Allow for at least 2 entries)	
Darkfield Examination—Laboratory (Allow for at least 2 entries)	
Darkfield Examination—Name of Confirming Officer (Allow for at least 2 entries)	
Nonspecific Treponenal Tests (VDRL, RPR, ART)—Date (Allow for at least 6 entries)	
Nonspecific Treponenal Tests (VDRL, RPR, ART)—Type (Allow for at least 6 entries)	
Nonspecific Treponenal Tests (VDRL, RPR, ART)—Result (Include titer value) (Allow for at least 6 entries)	
Nonspecific Treponenal Tests (VDRL, RPR, ART)—Laboratory (Allow for at least 6 entries)	
Specific Treponenal Tests (FTA–ABS, MHA–TP, TPHA, TPI)—Date (Allow for at least 2 entries)	
Specific Treponenal Tests (FTA–ABS, MHA–TP, TPHA, TPI)—Test Type (Allow for at least 2 entries)	
Specific Treponenal Tests (FTA–ABS, MHA–TP, TPHA, TPI)—Results (Allow for at least 2 entries)	
Spinal Fluid Examinations—Date (Allow for at least 2 entries)	
Spinal Fluid Examinations—Cells (Allow for at least 2 entries)	
Spinal Fluid Examinations—Total Protein (Allow for at least 2 entries)	
Spinal Fluid Examinations—Nonspecific And/Or Specific Tests (Including titer) (Allow for at least 2 entries)	
Spinal Fluid Examinations—Laboratory Where Done (Allow for at least 2 entries)	
Section V—Evaluation of Therapy—Date (Allow for at least 3 entries)	
Section V—Evaluation of Therapy—Facility Where Evaluated (Allow for at least 3 entries)	
Section V—Evaluation of Therapy—Result—Satisfactory* (Check box) (Allow for at least 3 entries)	
Section V—Evaluation of Therapy—Result)—Unsatisfactory* (Allow for at least 3 entries)	
Section V—Evaluation of Therapy—Result—Date of Retreatment (Allow for at least 3 entries)	
Section V—Evaluation of Therapy—Result—Physician's Signature (Allow for at least 3 entries)	
Reason for Incomplete Follow-Up—Date	
Reason for Incomplete Follow-Up—Place	
Reason for Incomplete Follow-Up—Type of Separation	
Reason for Incomplete Follow-Up—Authority For Discharge	
Reason for Incomplete Follow-Up—Civilian Health Department to Which Case Resume Was Sent	
Patient's Home Address on Separation—Street Address	
Patient's Home Address on Separation—City	
Patient's Home Address on Separation—State	
Patient's Home Address on Separation—ZIP Code	
Reinfection (Give date new record was opened)	
Remarks (Include significant post-treatment clinical findings)	
Section VI—Medical Officer Closing This Record—Name (Typed or printed)	
Section VI—Medical Officer Closing This Record—Signature	
Section VI—Medical Officer Closing This Record—Station	
Section VI—Medical Officer Closing This Record—Date	
Section VII—Medical Officer Sending Abstract to Department of Veterans Affairs on Discharge—Name (Typed or printed)	
Section VII—Medical Officer Sending Abstract to Department of Veterans Affairs on Discharge—Signature	
Section VII—Medical Officer Sending Abstract to Department of Veterans Affairs on Discharge—Station	
Section VII—Medical Officer Sending Abstract to Department of Veterans Affairs on Discharge—Date	
Patient's Name—last, first, middle)	Bottom left corner of form.
Patient's ID No. or SSN	Do.
Patient's Rank/Grade	Do.
Patient's Date of Birth	Do.
Register No.	Do.
Ward No.	Do.

*If no placement indicated, items can appear anywhere on the form.

FOR FURTHER INFORMATION CONTACT: CDR Steven S. Kerrick, National Naval Medical Center, Department of Ophthalmology, Bethesda, MD 20889–5000 or E-Mail at StevenK966@aol.com.

Dated: May 12, 1999.

Steven S. Kerrick,

Chairperson, Interagency Committee on Medical Records.

[FR Doc. 99–15060 Filed 6–14–99; 8:45 am]

BILLING CODE 8820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: This Notice is to inform potential applicants of recent legislation affecting the availability of grant funding for Adolescent Family Life (AFL) demonstration projects under Title XX of the Public Health Service Act. Notices published on May 12, 1999 at 64 FR 25776 and 64 FR 25782 advised that the availability of funding for different types of new AFL demonstration projects was contingent upon the enactment of a proposed amendment to the Fiscal Year (FY) 1999 appropriation for Title XX. In order to continue to fund a larger number of prevention projects than is allowable under the statute, the Department had asked Congress to amend the FY 1999 appropriation for Title XX to include a waiver of the statutory provision which requires that not more than one-third of the funds appropriated for demonstration projects shall be used for prevention demonstration projects. That amendment was recently enacted as part of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31). Thus, FY 1999 funding is now available only for new abstinence education prevention projects, as announced at 64 FR 25782. FY 1999 funds are *not* available for new care, prevention and combination care/prevention projects, as announced at 64 FR 25776. Any applications received under that announcement will be held for review and consideration in the following fiscal year, although the availability of funding for FY 2000 is uncertain.

DATES: The 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31) was enacted on May 21, 1999. Thus funds became available only for new AFL prevention projects, and not for new care, prevention and combination care/prevention projects, as of that date.

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594–4004.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and non-pregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 93.995). Title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only; (2) projects which provide "prevention services" only; and (3) projects which provide a combination of "care" and "prevention" services.

The Title XX statute contains a provision limiting the amount of AFL funding which may be used for prevention projects to not more than one-third of the overall monies available for demonstration projects. In the FY 1997 and 1998 appropriations for Title XX, as amended, Congress waived this limitation by enacting legislation which earmarked the majority of AFL demonstration funding for prevention grants, specifically abstinence education projects as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to continue to fund a larger number of prevention projects than is allowable under the statute, the Department asked Congress to amend the FY 1999 appropriation for Title XX to include a waiver of the "not more than one-third for prevention" restriction. On May 21, 1999, Congress enacted the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31), which includes that amendment in a provision which states, in pertinent part, that appropriated funds shall be used for abstinence education prevention projects "without application of the [not more than one-third for prevention] limitation of section 2010(c) of said title XX."

Pending final action on the requested amendment, in order to ensure that there were adequate applications which could be funded, two separate notices regarding the availability of grants for AFL demonstration projects were published on May 12, 1999. A Notice at 64 FR 25776 requested applications for new care, prevention and combination care/prevention projects. The announcement advised potential applicants that funding for these projects would be available only if the requested amendment to the FY 1999 appropriations act did not pass. With the enactment of the amendment to the FY 1999 appropriation for Title XX, funds are not available to support new care, prevention and combination care/prevention projects, as announced at 64 FR 25776. Any applications received under that announcement will be held for review and consideration in the following fiscal year, although the availability of funding in FY 2000 is uncertain. A separate Notice at 64 FR 25782 requested applications for prevention projects. This announcement advised potential applicants that funding for these projects would be available only if the amendment to the FY 1999 appropriations act did pass. With the enactment of the amendment to the FY 1999 appropriation for Title XX, funding is available only for new abstinence education prevention projects, as announced at 64 FR 25782.

Dated: June 7, 1999.

Samuel Taylor,

Acting Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–15065 Filed 6–14–99; 8:45 am]

BILLING CODE 4150–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice Inverting Applications for New Award for Fiscal Year 1999 Grants To Determine Trends in Demand for Emergency Services

AGENCY: Office of the Secretary, The Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS.

ACTION: Announcement of the availability of funds and request for applications from State, local, non-profit or for-profit (provided that grant funds may not be paid as profit) research institutions to determine the trends in and status of demand for emergency assistance services during the period of falling welfare caseloads since 1993 and any impact on that demand from implementation of Temporary Assistance to Needy Families (TANF).

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the availability of funds and invites applications for research to determine the trends in and status of demand for emergency assistance services (e.g., emergency and transitional shelters, soup kitchens, food pantries) during the period of falling

welfare caseloads and TANF implementation. Grant applicants are expected to conduct empirical analyses using existing provider-level data sources (e.g., homeless and other emergency provider management information systems) in conjunction with socio-economic (e.g., average income, unemployment rates) and caseload data (e.g., number of TANF recipients, number of Food Stamp recipients) to explore trends and relationships in the data associated with the demand for emergency assistance services. Applicants are expected to provide local descriptive data (e.g., labor markets, housing availability) to provide a context for their analyses. Applicants also may propose additional methods for supplementary studies, including surveys, qualitative analyses, or other methods as appropriate to explore particular trends identified in historical data. The funds could either support a newly designed project or could be used to add new data sources and analyses to an existing project.

CLOSING DATE: The deadline for submission of applications under this announcement is July 30, 1999.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and administrative questions will be accepted and responded to up to ten (10) working days prior to the closing date.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: hppt://aspe.hhs.gov (see section on available grants and contracts.) You may fax your request to the attention of the Grants Officer at (202) 690–6518. Application submissions may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the file on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the Grants Officer at the address or phone number listed above. Technical questions should be directed to Davy Norris or Mary Ellen O'Connell, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 404E, Hubert H. Humphrey Building, 200 Independence Avenue, SE, Washington, DC 20201. Telephone: 202–401–6643 (Davy) or 202–260–0391 (Mary Ellen). Questions may be faxed to 202–690–6562 or e-mailed to dnorris@osaspe.dhhs.gov and *moconnel@osaspe.dhhs.gov.*

SUPPLEMENTARY INFORMATION:

Legislative Authority

This grant is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Pub. L. 105–277, Department of Health and Human Services Appropriations Act, 1999.

Eligible Applicants

Eligible applicants include state or local units of local government, and public or private nonprofit organizations, including universities and other institutions of higher education Private for-profit organizations may apply, with the recognition that grant funds may not be paid as profit (any amount in excess of allowable direct or indirect costs of the recipient) to any recipient of a grant or subgrant.

Available Funds

Approimately $310,000 is available from ASPE, in funds appropriate for fiscal year 1999. ASPE anticipate providing two to four grant awards. If additional funding becomes available in fiscal years 1999 or 2000, further projects may be funded. Applications for funding under this announcement should projects that can be completely carried to with fifteen months of funding at the above anticipated level. No federal funds received as a result of this announcement can be used to purchase computer equipment.

Background

Welfare caseload have declined precipitously in recent years. Since January 1993, the number of people receiving federally funded assistance under Title IV–A of the Social Security Act has fallen from 14.1 million to just under 8 million recipients, a reduction of 44 percent. This decline has occurred partly in response to the strong economy, the Administration's grants of Federal waivers to 43 States, and the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). In response to the demand from the public and policymakers, many studies have been and are currently being carried out to study the circumstances of the large numbers of people who have left welfare. However, significantly fewer projects are underways to investigate the impact that declining caseloads and welfare reform may have on the demand for and utilization of services from the perspective of community-level emergency assistance providers, and reasons for any changes in the composition of clients using such services. Clients served by these programs are those most likely to be missed by studies which track current or former TANF recipients. This grant announcement contributes to a triangulation approach to the Department's portfolio of welfare research. ASPE-sponsored data-linkage or research efforts in this area include projects involving linking of administrative data, research on state diversion programs, and two rounds of grants to States and large counties to study the outcomes of welfare reform.

Homeless shelters, soup kitchens and food pantries are among the most prevalent emergency assistance providers. Administrators of these programs, local and national coalitions whose members include these providers, and to a lesser extent, researchers, have reported that provisions of the TANF program, and other recent changes to welfare programs, have led to an increase in the number of people requesting services from emergency assistance providers, an increase in the number of people requesting services who report recent loss of benefits, and related signs of hardship. In other cases, providers have identified changes in the case-mix of their clients and have attributed it to changes in TANF policies. For example, Milwaukee has witnessed an increased in the number of women requesting emergency shelter at shelters for single adults. They attribute this increase to loss of benefits and women either having their children taken away or being forced to place them with family or friends. Limited systematic analyses have been conducted, however, to test these hypotheses.

Purpose and Responsibilities

Purpose

The purpose of this announcement is to support the efforts of state or local

research organizations to examine the question of whether declining welfare caseloads and TANF implementation have led to a shift in the demand and/or utilization of emergency assistance programs, and to explore some of the reasons this may be occurring. ASPE anticipates that applicants will use an analysis of provider data (# e.g., of service requests, # of people served, demographics of people served) in conjunction with socio-economic (e.g., employment rates, housing data) and caseload (e.g., # of TANF recipients, # of food stamp recipients) data over time to describe and analyze trends in demand for and use of emergency assistance providers. ASPE also expects to support state or local efforts to explore reasons for these trends.

Each Grantee will be expected to use data from multiple emergency assistance programs over time. A proposed study should include data from as many emergency assistance providers in the community as possible. Preference will be given to those applicants who propose to include service request and/or utilization data from a comprehensive number of emergency assistance providers, relative to their local community. However, applications which propose to analyze data from a single type of provider will also be considered. Applications which propose analyzes of a single provider will not be considered. Applicants may propose analyses of data from a single community or multiple communities. Applications which include multiple communities will receive a single rating.

In addition to changes in the TANF program, shifts in the utilization of emergency assistance providers may be explained by numerous factors, such as changes in the local economy or job market, the local housing market, or availability of emergency assistance or other services. Applicants will be expected to analyze socio-economic and caseload data in conjunction with provider data to enrich interpretation of data trends and relationships. Socio-economic data might include: employment rates, wage rates, housing costs, and housing availability. The comprehensiveness of the proposed community-level socio-economic data and its relevance to the proposed analysis will be an important criterion under which proposals are evaluated. Applicants also will be expected to provide other descriptive information such as local demographics, local industry and occupational make-up and characteristics of the TANF system to provide a context for and to enhance the analysis.

Applicants are expected to utilize historical provider, socio-economic and caseload data to establish a baseline for the analysis and to propose meaningful and sufficiently frequent intervals (e.g., quarterly) to analyze trends. In addition, applicants are expected to analyze data at these same intervals for one year from the date of grant award.

Applicants for the ASPE grants may propose to supplement their administrative provider, socio-economic and caseload data with client survey data or other data sources to explore reasons for identified trends, or impact on clients. For example, surveys of clients requesting services can provide insights into the reasons they are requesting emergency assistance.

To enable applicants to include up to a year of new data, applicants may submit proposals for studies lasting up to fifteen months from the date the grant is awarded.

ASPE understands that there is substantial variation in the distribution of emergency assistance providers within States and localities, and in the amount and type of data available. Topical areas that applicants may wish to address, with examples of potential policy questions, are listed below. Again, comprehensiveness of data is strongly encouraged and will be an important criterion under which proposals are evaluated. It is not expected that all applicants will propose supplementary studies on the impacts on clients.

1. Trends in Demand for Emergency Assistance Services

Has there been a shift in demand for emergency assistance services during the recent period of welfare caseload decline and TANF implementation? Has there been a shift toward a particular type of emergency assistance? How does the shift relate to changes in the TANF program or state waivers? Has there been an increase in the number of people requesting services who can not be served? Are services provided by emergency assistance providers more or less costly than public benefits? Is there a shift in the demographics of clients requesting or receiving services?

2. Community Socioeconomic Considerations

What local factors are related to shifts in demand for emergency assistance (e.g., changes in the local economy, wage rates, housing availability)? Are TANF caseloads changing in a pattern consistent with changes in demand for or utilization of emergency assistance? Is there a relationship between utilization of emergency assistance and the availability of these or other services?

3. Impacts on Clients (Supplementary Analyses)

What factors explain shifts in clients demographics? What reasons do first-time users of emergency assistance give for needing this service?

Grantee Responsibilities

1. No later than thirty (30) days after the award, the Grantee shall submit a final work plan, including a proposed analysis strategy and dissemination plan. The final work plan will update the work plan submitted in the original application to incorporate suggestions from the ASPE project officers.

2. No later than ninety (90) days after the date of award, the Grantee shall submit an initial progress report. Subsequent progress reports shall be submitted on a quarterly basis.

3. After completing the analysis, the Grantee shall prepare a final report describing the results of the study, including the procedures and methodology used to conduct the analysis, the research questions answered, the knowledge and information gained from the project, and any barriers encountered in completing the project. A draft of this report shall be delivered to the Federal Project Officer no later than thirty (30) days before the completion of the project. After receiving comments on the draft report from the Federal Project Officer, the Grantee shall deliver at least three (3) copies of a final report to the Grants Officer before the completion of the project. One of these copies must be unbound, suitable for photocopying; if only one is the original (has the original signature, is attached to a cover letter, etc.), it should not be this copy. The report also must be submitted on a 3½"disk.

4. The Grantee should budget for one meeting in Washington, DC during the grant period to meet with ASPE project officers.

ASPE Responsibilities

1. ASPE shall provide consultation and professional advice in the planning and operation of grant activities, including providing comments on the data analysis plan and other components of the work plan, progress reports, and draft report.

2. ASPE shall assist in information exchange and the dissemination of reports to appropriate Federal, State, and local entities.

3. ASPE shall plan and organize a grantee meeting.

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Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, the forms necessary for submission, and the evaluation criteria under which the applications will be reviewed. Potential grant applications should read this section carefully in conjunction with the information provided above. The application must contain the required Federal forms, title page, table of contents, and sections listed below. All pages of the narrative should be numbered.

The application should include the following elements:

1. *Abstract:* A one page summary of the proposed project.

2. *Goals and Objectives of the Project:* An overview that describes (1) the project; (2) the specific research questions to be investigated and data sources to be used; and (3) knowledge and information to be gained from the project by the applicant, Federal, State and/or local government, and the research community. The proposed project should demonstrate an understanding of the range of variables that may affect trends in the utilization of emergency assistance services. If the proposal builds on any current project, the application should describe how funding under this announcement will enhance, not substitute for, current efforts.

3. *Methodology and Design:* Provide a description and justification of how the proposed research project will be implemented, including methodologies, chosen approach, specification of emergency assistance providers included, description of provider and socio-economic data, data sources, and a research plan that is consistent with the available data. The proposed research plan should:

(a) Describe the components of the emergency assistance system to be included in the study, the criteria for selection, and provide data to be utilized. Applicants should include one or more of the following: Homeless shelters (emergency and/or transitional) soup kitchens, food pantries, utility and/or rent assistance programs, and clothing banks. Applications should describe the emergency assistance system within the state or locality to be studied, the proportion of that system covered by available data, and any changes in the size or configuration of this system during the period of the study. This will provide reviewers an understanding of the emergency system generally and the comprehensiveness of the study. Applicants should also describe the format and method by which the data is to be obtained and specify whether permission has already been obtained from providers to utilize the data.

(b) Describe in detail the socio-economic and caseload data to be used as part of the analysis, the criteria for selection, and how the data will be obtained. In this description, identify important issues for which data currently are not available, and strategies for dealing with this lack of data when it pertains to the research questions in the proposal.

(c) Describe the time period to be used as a baseline and the reason this time period was chosen. Specify the data intervals to be used for the analysis.

(d) Describe the descriptive data to be used to frame the analysis and why it is relevant to the proposed analysis.

(e) If survey data collection is planned, identify and describe the methodology used to gather survey data. In particular, identify the sampling plan and the survey mode (e.g., telephone, in-person, mail), provide a description of the questions to be asked (as an alternative, applicants may provide a draft of their proposed survey instrument as a supplement to the application) and the steps that will be taken to address any biases inherent in each. These should include steps planned to ensure a high response rate, such as a mixed mode design, multiple attempts to contact sample members, or incentive payments to respondents, and steps taken to analyze differences between respondents and non-respondents. Because of the importance of a high response rate in ensuring reliability, these procedures will be an important part of the evaluation of proposals. Grant applicants must assure that the collected data will only be used for research purposes, and that all identifying information will be kept completely confidential, and should present the methods that will be used to ensure confidentiality of client-level information.

(f) If qualitative research such as focus groups or a qualitative description of emergency assistance clients' experiences are planned, the application should include a complete plan for data collection procedures and analysis. This plan should include an approach for reviewing written documents, identification of key informants, the composition of any proposed focus groups, planned discussion topics, a plan for summarizing and organizing the results, and the value that this part of the project will add to the final report. The application should demonstrate a familiarity with the difficulties and potential biases of qualitative research, and include plans to avoid or resolve them.

(g) Identify methodology the Grantee will use to analyze the data and organize the final report. Complex data analysis is not expected. Simple tabular analysis and descriptive statistics are appropriate. The description should include frequency of data periods, report organization and proposed tabulations, including table shells illustrating how the results will be presented. The application should explain how proposed supplementary analyses will be combined with and enhance analyses of provider data.

4. *Experience, capacity, qualifications, and use of staff:* Briefly describe the grant applicant's organization and research capabilities, and experience in conducting pertinent research projects. The description should document the applicant's ability to conduct unbiased, methodologically sound research and detail the applicant's experience utilizing the proposed or similar data sources. If the proposal involves survey work, the proposal should describe the applicant's experience in conducting relevant surveys. Similarly, if the proposal involves qualitative data collection or analysis, the applicant's experience with this type of research and with these populations must be described in detail. If the applicant proposes to utilize subcontractors, the experience of the subcontractor in relation to the work to be performed by the subcontractor much be fully described. If the grant applicant plans to contract for any of the work (e.g., survey design or administration, qualitative analysis), and the contractors have not been retained, the applicant should describe the process by which they will be selected. Identify the key staff who are expected to carry out the project and provide a resume or curriculum vitae for each person. Provide a discussion of how key staff will contribute to the success of the project, including the percentage of each staff member's time that will be devoted to the project. Finally, applicants should demonstrate access to computer hardware and software for storing and analyzing the data necessary to complete this project.

5. *Work plan:* A work plan should be included which lists the start and end dates of the project, a time line which indicates the sequence of tasks necessary for the completion of the project, and the responsibilities of each of the key staff. The plan should identify the time commitments of key staff members in both absolute and

percentage terms, including other projects and teaching or managerial responsibilities. Due to the desirability of including a full year of prospective data, work plans with time lines of up to fifteen months will be accepted. The work plan also should include plans for dissemination of the results of the study (e.g., articles in journals, presentations to state or local officials and at conferences).

6. *Budget:* Grant applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all Federal line items. A narrative explanation of the budget should be included that states clearly how the funds associated with this announcement will be used and describes the extent to which funds will be used for purposes that would not otherwise be incorporated within the project. Cost sharing-matching is a mandatory requirement under this award. Applicants must demonstrate the amount and details of the cost sharing-matching arrangements. The applicant should also document the level of funding from other sources and describe how these funds will be expended.

Review Process and Funding Information

A Federal review panel will review and score all applications submitted by the deadline date that meet the screening criteria (all information and documents as required by this announcement.)

The panel will use the evaluation criteria listed below to score each application. The panel results will be the primary element used by the ASPE when making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

As a result of this competition, between two and four grants are expected to be made from funds appropriated for fiscal year 1999. Additional awards may be made depending on the policy relevance of proposals received and the available funding, including funds that may become available in fiscal years 1999 or 2000.

Reports

As noted in the Grantee Responsibilities, two substantive reports are required under the grant: a final work plan (due no later than thirty (30) days after the date of award), and a final report containing all results and analysis (draft version due no later than thirty (30) days before the end of the project and final version due at the conclusion of the project). A digital copy of the final report may be submitted on a 3½" disk formatted in the DOS (FAT 16) format to allow APSE to make the report available via the Internet, in addition to the conventional written format.

In addition, Grantees shall provide concise quarterly progress reports. The specific format and content of these reports will be provided in the notification of grant award.

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submission of applications under this announcement is July 30, 1999. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays, during the working hours of 9 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building, located at 200 Independence Avenue, SW in Washington, DC. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as having met the deadline if it is either received at, or hand-delivered to, the mailing address on or before July 30, 1999 or postmarked before midnight three days prior to July 30, 1999 and received in time to be considered during the competitive review process (within one week of the deadline).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from the U.S. Postal Service or from a commercial carrier (such as UPS, Federal Express, etc.) as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. If proof cannot be provided, the application will not be considered for funding. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to: (1) Natural disasters, such as floods, hurricanes, or earthquakes; (2) a widespread disruption of the mail; or, (3) if DHHS determines a deadline extension to be in the best interest of the Federal government. The Department will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Forms

Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to ten (10) working days prior to closing date of receipt of applications.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.hhs.gov* (see section on available grants and contracts.) You may fax your request to the attention of the Grants Officer at (202) 690–6518. Application submissions may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete. This notice was printed in the **Federal Register** on July 30, 1999.

Also see section entitled "Components of a Complete Application." All of this documents must accompany the application package.

Length of Application

In no case shall an application for the ASPE grant (excluding the resumes, appendices and other appropriate attachments) be longer than thirty (30) double-spaced pages. Applications should not be unduly elaborate, but should fully communicate the applicant's proposal to the reviewers.

Only relevant attachments should be included, for example, resumes of key personnel. Videotapes, brochures, and other promotional material, will be discarded and not reviewed. Project narratives should be formatted with 1-inch margins, double-spaced lines, and 12 point type, with consecutively numbered pages.

Selection Process and Evaluation Criteria

Selection of successful applicants will be based on the technical and financial criteria described in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The review pane will prepare a summary of all applicant scores, strengths and weaknesses, and recommendations and submit it to the ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weigh that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, grant applicants should take care to ensure that all criteria are fully addressed in the applications. Grant applications will be reviewed as follows:

1. *Goals, Objectives, and Potential Usefulness of the Analysis* (20 points). The potential usefulness of the objectives and how the anticipated results of the proposed project will advance policy knowledge and development. If the proposed project builds on previous work, the application should explain how. Applications will be judged on the quality and policy relevance of the proposed projects.

2. *Quality and Soundness of Methodology and Design* (25 points). The appropriateness, soundness, and cost-effectiveness of the methodology, including the research design, selection of existing data sets, data gathering procedures, statistical techniques, and analytical strategies,

Other design considerations include the level of access the applicant currently has to the data to be included (e.g. already authorized to use the data, already collected the data), plans to obtain data not already collected, and how confidentiality of the records and information will be ensured. If applicants are unable to ensure the privacy and confidentiality of information included in the project, then it is highly unlikely that they will receive funding.

If surveys are planned, reviewers will also evaluate the methodology proposed to gather survey data. In particular, reviewers will evaluate the sampling plan, the survey mode (e.g., telephone, in-person, mail), and the steps that will be taken to address any biases inherent in each. This will include evaluating steps planned to ensure a high response rate, such as a mixed mode design, multiple attempts to contact sample members, or respondent payments, and steps planned to analyze differences between respondents and non-respondents, such as comparison of linked administrative data. Because of the important of a high response rate in ensuring reliability, these procedures will be an important part of the evaluation of proposals containing surveys. If qualitative research such as focus groups or a qualitative description of the TANF application, enrollment and closure policies and procedures are planned, reviewers will evaluate the plan for data collection procedures and analysis, including the planned approach for reviewing written documents, identification of key informants, the composition of any proposed focus groups, planned discussion topics, a plan for summarizing and organizing the results, and the value that this part of the project is expected to add to the final report. The extent to which the application demonstrates a familiarity with the difficulties and potential biases of this approach, and plans to avoid or resolve them, will also be a scoring factor.

Reviewers also will evaluate the proposed data analysis, including the proposed tabulations and table shells, the planned organization of the final report, and the proposal's discussion of how different data sources (e.g., data from administrative source, survey data collection, other research) will be synthesized to enhance the proposed analyses.

3. *Comprehensiveness of Data* (15 points). The comprehensiveness of the proposed emergency assistance provider data in relation to the local emergency assistance system. The comprehensiveness of socio-economic and caseload data in relation to the proposed project. Reviewers will also consider the ability of the applicant to provide historical data to establish a reasonable baseline and the rationale for the proposed time period to be used as a baseline.

4. *Qualifications of Personnel and Organizational Capability.* (20 points). The qualifications of the project personnel for conducting the proposed research as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary to support the project and conduct an unbiased analysis. Reviewers will evaluate the principal investigator and staff on research experience and demonstrated research skills, relative to the work proposed. If the applicant plans to contract for any of the work (e.g., survey design or administration, qualitative analysis), and the contractors have not been retained, reviewers will consider the process by which they will be selected.

Reviewers may consider references for work completed on prior research projects. Principal investigator and staff time commitments also will be a factor in the evaluation. Reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars or organizations in search of similar goals

5. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives.* (20 points). Reviewers will examine if the work plan and budget are reasonable and sufficient to ensure timely implementation and completion of the study and whether the application demonstrates an adequate level of understanding by the applicant of the practical problems of conducting such a project. Adherence to the work plan is necessary in order to produce results in the time frame desired; demonstration of an applicant's ability to meet the schedule will therefore be an important part of this criterion. Reviewers will also examine the use of any additional funding and the role that funds provided under this announcement will play in the overall project. The proposal should also discuss in detail how results will disseminate to state and local officials, researchers, and other interested parties.

Disposition of Application

1. Approval, disapproval, or deferral. On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. Notification of disposition. The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. The Assistant Secretary's Discretion. Nothing in this announcement should be construed as to obligate the Assistant Secretary for

Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

The Catalog of Federal Domestic Assistance Number is 93–239

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard Form 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement, organized in five sections, addressing the following topics (limited to thirty (30) double-spaced pages):
   1. Abstract,
   2. Goals, Objectives and Usefulness of the Project,
   3. Methodology and design,
   4. Background of the Personnel and Organizational Capabilities and
   5. Work plan (timetable);
9. Any appendices of attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Dated: June 8, 1999.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–15128 Filed 6–14–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be held on Friday, July 9, 1999, from 9:30 a.m. to 3:00 p.m..

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Jackie Eder, Coordinator of the Advisory Council, at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–6662. For press-related information, please contact Karen Migdail at 301/594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6662 no later than July 6, 1999.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Health Care Policy, Research, and Evaluation. In accordance with its statutory mandate, the Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Harold S. Luft, Ph.D., the Council chairman, will preside.

II. Agenda

On Friday, July 9, 1999, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Administrator, AHCPR, will present the status of the Agency's current research, programs and initiatives. Tentative agenda items include issues relating to inclusion of children in research, aging health services research, and building a community of researchers. Agenda items are subject to change as priorities dictate. The official agenda will be available on AHCPR's website at *www.ahcpr.gov* no later than June 15, 1999. The meeting will adjourn at 3:00 p.m.

Dated: June 7, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–15038 Filed 6–14–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2) announcement is made by the Agency for Health Care Policy and Research (AHCPR) of meetings of scientific peer review groups. The below-listed subcommittees are part of the Agency's Health Services Research Initial Review Group.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at the meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Systems Research.
   Date: June 23–24, 1999 (Open from 7:30 a.m. to 7:45 a.m. and closed for remainder of meeting).
   Place: Ramada Inn, 1775 Rockville Pike, Conference Room TBD Rockville, Maryland 20852.
2. *Name of Subcommittee:* Health Care Research Training.
   Date: July 29–30, 1999 (open from 8:00 a.m. to 8:15 a.m. and closed for remainder of meeting).
   Place: AHCPR Executive Office Center, 6010 Executive Boulevard, 4th Floor, Conference Room TBD, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meetings should contact Ms. Jenny Griffin, Committee Management Officer, Office of Research Review, Education and Policy, AHCPR, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the June 23–24 and June 29–30 meetings due to the time constraints of review and funding cycle.

Dated: June 8, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–15040 Filed 6–14–99; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of Special Emphasis Panel (SEP) meetings of the Agency for Health Care Policy and Research (AHCPR).

SEPs are committees used for scientific review activities. These committees have members drawn from a list of experts who are designated to serve for particular individual meetings rather than for extended fixed terms of service.

Substantial segments of the upcoming SEP meetings listed below will be closed to the public in accordance with the Federal advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of SEP:* "HIV/AIDS."

Date: June 15, 1999 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR Executive Office Center, 6010 Executive Boulevard, 4th Floor, Conference Room TBD, Rockville, Maryland 20852.

2. *Name of SEP:* "Centers for Education and Research on Therapeutics."

Date: June 30, 1999 (Open from 8:30 a.m. to 8:45 a.m. and closed for remainder of the meeting).

Place: AHCPR Executive Office Center, 6010 Executive Boulevard, 4th Floor, Conference Room TBD, Rockville, Maryland 20852.

3. *Name of SEP:* "Health Care Access, Quality and Insurance for Low-Income Children."

Date: July 1, 1999 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR Executive Office Center, 6010 Executive Boulevard, 4th Floor, Conference Room TBD, Rockville, Maryland 20852.

4. *Name of SEP:* "Translating Research Into Practice."

Date: July 7–8, 1999 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Ramada Inn, 1775 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

5. *Name of SEP:* "Assessment of Quality Improvement Strategies in Health Care."

Date: July 8–9, 1999 (Open from 8 a.m. to 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Bethesda Hyatt Regency, One Metro Center, Conference Room TBD, Bethesda, Maryland 20850.

6. *Name of SEP:* "Health Research Dissemination and Implementation."

Date: July 9, 1999 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Ramada Inn, 1775 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meeting should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHCPR. 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the June 15 and June 30 meetings due to the *time constraints of* review and funding cycles.

Dated: June 8, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–15039 Filed 6–14–99; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Health Care Policy and Research (AHCPR) Technical Review Committee (TRC) meeting. This TRC's charge is to provide, on behalf of AHCPR, review of contract proposals and recommendations to the Administrator, AHCPR, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Assisting Chronic Care Management", issued on April 23, 1999. The contracts will constitute AHCPR's participation in the Small Business Innovation Research program.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: Technical Review Committee on the Agency for Health Care Policy and Research SBIR Topic 2000—"Assisting Chronic Care Management".

Date: June 22, 1999 (Closed to the public).

Place: Agency for Health Care Policy and Research, Conference Center, Conference Room C, 6010 Executive Boulevard, 4th Floor, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Sandra Robinson, Center for Quality Measurement and Improvement, Agency for Health Care Policy and Research, 2101 Executive Boulevard, Suite 502, Rockville, Maryland 20852, 301–594–1703.

This notice is being published less than 15 days prior to the June 22 meeting due to the timing limitations imposed by the review and funding cycle.

Dated: June 7, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–15036 Filed 6–14–99; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research; Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Health Care Policy and Research (AHCPR) Technical Review Committee (TRC) meeting. This TRC's charge is to provide, on behalf of AHCPR, review of contract proposals and recommendations to the Administrator, AHCPR, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Assisting Purchasers to Use Information on Health Plan Performance", issued on April 23, 1999. The contracts will constitute AHCPR's participation in the Small Business Innovation Research program.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to be the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: Technical Review Committee on the Agency for Health Care Policy and Research SBIR Topic 1000—"Assisting Purchasers to Use Information on Health Plan Performance".

Date: June 22, 1999 (Closed to the public).

Place: Agency for Health Care Policy and Research, Conference Center, Conference Room C, 6010 Executive Boulevard, 4th Floor, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Sandra Robinson, Center for Quality Measurement and Improvement, Agency for Health Care Policy and Research, 2101 Executive Boulevard, Suite 502, Rockville, Maryland 20852, 301–594–1703.

This notice is being published less than 15 days prior to the June 22 meeting due to the timing limitations imposed by the review and funding cycle.

Dated: June 7, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–15037 Filed 6–14–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99104]

Innovative Demonstration Projects To Screen and Treat Asymptomatic Males for Chlamydia Trachomatis Infection Using Urine-Based Diagnostic Tests: Translational Research Availability of Funds; Amendment

A notice announcing the availability of fiscal year 1999 funds for Innovative Demonstration Projects to Screen and Treat Asymptomatic Males for Chlamydia Trachomatis Infection Using Urine-Based Diagnostic Tests: Translational Research was published in the **Federal Register** on May 17, 1999, (Vol.64 No. 94, pp. 26761—26766). The notice is amended as follows:

On page 26761, third column, paragraph B., subparagraph titled "Eligible Applicants" replace entire paragraph with the following:

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. All applications must include the participation of a State or local health department.

In addition, on page 26762, third column, paragraph F., subparagraph titled "Letter of Intent (LOI)" replace entire paragraph with the following:

F. Letter of Intent (LOI)

A letter of intent to submit an application is optional, but highly desired. The letter of intent will be used to determine the level of interest in the announcement so that CDC can adequately staff an independent review group. Submit the letter of intent on or before June 21, 1999, to:

Curtis Meusel, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4246.

Dated: June 9, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–15083 Filed 6–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1220]

Draft Civil Money Penalty Reduction Policy for Small Entities; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Tuesday, May 18, 1999 (64 FR 26984). The document announced that FDA was issuing a draft civil money penalty reduction policy for small entities as required by the Small Business Regulatory Enforcement Fairness Act of 1996. The document was published with minor errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Governale, Division of Compliance Policy (HFC–230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411, FAX 301–827–0482.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–12390, appearing on page 26984 in the **Federal Register** of Tuesday, May 18, 1999, the following corrections are made:

1. On page 26985, in the first column, in paragraph (b), in line three, "in" is corrected to read "under".

2. On page 26986, in the 1st column, in the 2d paragraph, in line 14, "scientist" is corrected to read "scienter".

Dated: June 8, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–15057 Filed 6–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Subcommittee of the Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Subcommittee of the Antiviral Drugs Advisory Committee on Immunosuppressive Drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 27, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Goshen/Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Rhonda W. Stover, or John Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss the new drug application (NDA) 21–083, Rapamune® (sirolimus, Wyeth-Ayerst Laboratories) for the prophylaxis of organ rejection in patients receiving renal transplants.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by July 20, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 20, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 7, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–15058 Filed 6–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Collection: Indian Health Service Medical Staff Credentials and Privileges Files

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) provided an opportunity for public comment on the proposed agency information collection project. A notice was previously published in the **Federal Register** on May 1, 1998, (63 FR 24185) and allowed 60 days for public comment. No public comment was received in response to the notice. As required by section 3507(a)(1)(D) of the Act, the proposed information collection has been submitted to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to OMB.

Proposed Collection

Title: 0917–0009, "Indian Health Service Medical Staff Credentials and Privileges Files". *Type of Information Collection Request:* Reinstatement, with minor change, of a previously approved information collection for which approval expired October 31, 1998. *Form Number:* Instruction and information collection formats are contained in an IHS Circular, "Credentials and Privileges Review Process for the Medical Staff." *Need and Use of Information Collection:* The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers, including physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, and audiologists; and in some States, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. The IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with the IHS, (2) contract health care providers who do not seek to become IHS employees, and (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Health Care Financing Administration and by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) require health care facilities to review, evaluate, and verify the credentials, training, and experience of medical staff applicants prior to granting medical staff privileges. To meet these standards, IHS health care facilities require each medical staff applicant to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them or medical malpractice payments made on their behalf based on clinical services they performed. This information is then verified with references supplied by the applicant and may include former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, JCAHO standards require that a review of the medical staff be conducted no less than every two years. This review evaluates the current competence of the medical staff and verifies whether they are maintaining their licensure and the certification requirements of their speciality.

The medical staff credentials and privileges records are maintained at the heatlh care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is not optional; such records must be established and maintained at all health care facilities in the United States that are accredited by JCAHO. This information collection activity is used to evaluate individual health care providers applying for medical staff privileges at IHS health care facilities. *Affected Pubic:* Individuals, businesses or other for-profit, not-for-profit institutions, and State, local or tribal governments. *Type of Respondents:* Health care providers requesting Medical staff privileges at IHS health facilities.

The table below provides the following: types of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

TABLE 1

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response *	Total annual burden hours
Application to Medical Staff	600	1	600	0.75 (45 mins)	450.0
Reference letter	1800	1	1800	0.33 (20 mins)	600.0
Reappointment request	644	1	644	1.00 (60 mins)	644.0
Medical Privileges	387	1	387	1.00 (60 mins)	387.0
Ob-Gyn Privileges	25	1	25	1.00 (60 mins)	25.0
Surgical Privileges	23	1	23	1.00 (60 mins)	23.0
Psychiatric Privileges	18	1	18	1.00 (60 mins)	18.0
Anesthesia Privileges	16	1	16	1.00 (60 mins)	16.0
Dental Privileges	128	1	128	0.33 (20 mins)	42.2
Optometic Privileges	21	1	21	0.33 (20 mins)	6.9
Psychology Privileges	23	1	23	0.17 (10 mins)	3.9
Audiologic Privileges	6	1	6	0.08 (5 mins)	0.5
Podiatric Privileges	6	1	6	0.08 (5 mins)	0.5
Radiology Privileges	9	1	9	0.33 (20 mins)	3.0
Pathology Privileges	3	1	3	0.33 (20 mins)	1.01
Total	3,709		3,709		2,221.0

*For ease of understanding, burden hours are also provided in actual minutes.

There are no capital costs, operating costs or maintenance costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (1) Whether the information collection activity is necessary to carry out an agency function; (2) whether the IHS processes the information collected in a useful and timely fashion; (3) the accuracy of the public burden estimate (this is the amount of time needed for individual respondents to provide the requested information); (4) whether the methodology and assumptions used to determine the estimate are logical; (5) ways to enhance the quality, utility, and clarity of the information being collected; and (6) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601; call non-toll free (301) 443–5938 or send via fax to (301) 443–1522; or send your e-mail requests, comments, and return address to: 1hodahkw@hqe.ihs.gov.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before August 16, 1999.

Dated: June 7, 1999.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 99–15086 Filed 6–14–99; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4458–N–01]

Loan Guarantee Recovery Fund; Solicitation for Participation in the National Rebuilding Initiative Financial Consortium

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development is seeking financial institutions interested in making HUD-guaranteed rebuilding loans to certain nonprofit organizations, including places of worship, that have been damaged or destroyed by an act or acts of arson or terrorism. Such financial institutions would become candidates to participate in HUD's National Rebuilding Initiative Financial Consortium.

FOR FURTHER INFORMATION CONTACT: Financial institutions interested in participating in the National Rebuilding Initiative Financial Consortium, should contact Tony Johnston, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, Room 7178, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0614, ex . 4560; FAX (202) 708–1798 (these r .mbers are not toll-free). Hearing or speech-impaired individuals may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary of HUD has authority under the Church Arson Prevention Act of 1996 (18 U.S.C. 241 note; Pub.L. 104–155, approved July 3, 1996, 110 Stat. 1392) (the "Act") to guarantee rebuilding loans through the use of a "Loan Guarantee Recovery Fund." Specifically, HUD may guarantee loans made by financial institutions to certain nonprofit organizations, including places of worship, that have been damaged or destroyed by an act or acts of arson or terrorism. Proceeds of rebuilding loans are used to construct and rehabilitate structures, replace and restore personal property, and to carry out other eligible activities. HUD's regulations implementing the Act are located in 24 CFR part 573 (entitled "Loan Guarantee Recovery Fund").

President Clinton established the National Church Arson Task Force (NCATF) in June, 1996 due to the sharp rise in the number of arsons and other acts against places of worship in early 1996. According to the NCATF Second Year Report to the President, approximately 670 investigations have been opened in connection with fires at places of worship. While the Report indicates that the number of these incidents has decreased since 1995, arsons continue to occur at places of worship.

In addition to administering the Loan Guarantee Recovery Fund authorized by the Act, HUD has established the National Rebuilding Initiative (the "NRI") to bring together as many resources as possible to aid affected places of worship. The NRI is a partnership of the National Council of Churches, the Congress of National Black Churches, and HUD. While its two partners make grants available for rebuilding, HUD guarantees private sector loans made by banks and other financial institutions for rebuilding purposes.

Although there have been reports of arson cases in the southern United States (where African-American places of worship have been disproportionately affected), the fires have not been limited to one particular geographic area. There have been arson reports in 39 states and the District of Columbia. Accordingly, HUD seeks to address the problem of rebuilding through a system of assistance that is nationwide in scope.

HUD is especially interested in identifying financial institutions that:

1. Value the HUD guarantee of rebuilding loans so as to effect a reduction in the standard interest rate charged for similar loans without the HUD guarantee; and

2. Are knowledgeable of an entity or entities willing to assist nonprofit organizations seeking rebuilding loans in preparing the financial aspect of their applications for such loans.

For purposes of this notice, the term "financial institution" means a lender which may be a bank, trust company, savings and loan association, credit union, mortgage company, or other issuer regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller of the Currency. A Financial Institution may also be a Pension Fund. (See 24 CFR 573.2.)

To date, places of worship assisted in rebuilding their damaged properties have ranged in size from less than fifty congregants to as high as 1000 congregants.

Financial institutions interested in participating in the National Rebuilding Initiative Financial Consortium, should contact Tony Johnston of HUD's Office of Community Planning and Development, at the address or telephone/fax numbers listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: June 9, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–15105 Filed 6–14–99; 8:45 am]

BILLING CODE 4458–N–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 012889

Applicant: Cheryl A. Schmidt, Central Missouri State University, Warrensburg, Missouri.

The applicant requests a permit to take (capture and release) Indiana bat (Myotis sodalis), gray bat (Myotis grisescens), and Ozark big-eared bat (Corynorhinus towsendii ingens) at various locations in Missouri. Activities are proposed for the purpose of enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application is available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: June 8, 1999.

Stanley L. Smith,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–15072 Filed 6–14–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–57453]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public lands in Nye County, Nevada, have been examined and found suitable for conveyance (patent) to Nye County under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C 869 *et seq.*). Nye County is proposing to use the identified lands for the expansion of the solid waste disposal site now serving the town of Round Mountain, Nevada, and the surrounding area.

Mount Diablo Meridian, Nevada

T. 10 N., R. 43 E.,
Sec. 12, N½SW¼NW¼; S½NW¼NW¼;
containing 40 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe; will contain the following provisions:

1. Nye County, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability

(hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 10 N., R. 43 E., Sec. 12, N½SW¼NW¼; S½NW¼NW¼;, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States;

2. Provided, that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the land in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstances revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance;

3. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon;

4. The above described land is to be used as a solid waste disposal site by Nye County, Nevada. Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the site unless excavation is conducted subject to applicable State and Federal requirements; and will be subject to valid existing rights.

An environmental assessment and other detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Acting Assistant Field Manager, Tonopah Field Station, P.O. Box 911, Tonopah, Nevada 89049.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a municipal solid waste transfer station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a municipal solid waste transfer station.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: June 1, 1999.

Alan Buehler,

Acting Assistant Field Manager, Tonopah.

[FR Doc. 99–15068 Filed 6–14–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Extension of Public Comment Period for a Study Recommending a Timbisha Shoshone Tribal Homeland in and Around Death Valley National Park Inyo County, California and Esmeralda and Nye Counties, Nevada

SUMMARY: Pursuant to Section 705(b) of the 1994 California Desert Protection Act (P.L. 103–433), the National Park Service, Department of the Interior convened a joint Federal-Tribal negotiating team to prepare a draft suitability report to Congress regarding establishment of a permanent Timbisha Shoshone Tribal land base in and around Death Valley National Park. In deference to public interest expressed to date from local government agencies, organizations, and other interested parties, the original public comment period expiring June 15, 1999 has been extended an additional 30 (thirty) calendar days to July 15, 1999.

SUPPLEMENTARY INFORMATION: Written comments on the draft document must now be received or post-marked *not later than July 15, 1999*, and should be directed to the Superintendent, Death Valley National Park, P.O. Box 579, Death Valley, CA 92328; phone (760) 786–3243. The study document and other background information are available as noted above, or may be obtained via the park website (*www.nps.gov/deva*).

Dated: June 8, 1999.

Sondra S. Humphries,

Acting Regional Director, Pacific West.

[FR Doc. 99–15214 Filed 6–14–99; 8:45 am]

BILLING CODE 7510–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–380–382 and 731–TA–797–804 (Final)]

Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, Mexico, the Republic of Korea, Taiwan, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 3, 1999, the Department of Commerce notified the Commission of its final determinations. The Commission must make its final determinations in antidumping and countervailing duty investigations within 45 days after notification of Commerce's final determinations, or in this case by July 19, 1999. The Commission is revising its schedule to conform with this statutory deadline.

The Commission's new schedule for the investigations is as follows: the Commission will make its final release of information on June 25, 1999; and final party comments are due on June 29, 1999.

For further information concerning these investigations see the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority

These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15117 Filed 6–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–253 (Review)]

Welded Carbon Steel Line Pipe From Turkey

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in May 1999 to determine whether revocation of the existing countervailing duty order would be likely to lead to continuation or recurrence of subsidization and of material injury to a domestic industry. On June 7, 1999, the Department of Commerce published notice that it was revoking the order because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 30305, June 7, 1999). Accordingly, pursuant to § 207.69 of the Commission's rules of practice and procedure (19 CFR 207.69), the subject review is terminated.

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: June 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15118 Filed 6–14–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (new collection); generic clearance of customer satisfaction surveys.

The following agencies have submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995: The Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office for Victims of Crime (OVC), and the Office of National Drug Control Policy (ONDCP). This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 16, 1999.

If you have additional comments or suggestions please contact Bill Ballweber, (202) 305–2975, National Institute of Justice, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) Type of information collection: New collection.

(2) The title of the form/collection: Generic clearance for Customer Satisfaction Surveys.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Respondents will be current and potential users of agency products and services. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students.

The Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), Office of Justice Program (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office for Victims of Crime (OVC), and the Office of National Drug Control Policy (ONDCP), in accordance with the requirements of E.O. 12862 and the GPRA, wish to conduct customer satisfaction surveys. The purpose of such surveys is to assess needs, identify problems, and plan for programmatic improvements in the delivery of agency products and services.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to

respond/reply: It is estimated that there will be a maximum of 2,500 respondents per mail survey; 1,500 respondents per email survey; and 3,000 respondents per World Wide Web survey. It is estimated that each survey will take between 3 to 18 minutes to complete.

(6) An estimate of the total public burden (in hours) associated with the collection: An estimate of the total hour burden to complete a mail survey is 750 hours; the email survey is 300 hours; and the World Wide Web survey is 600 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: June 9, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–15074 Filed 6–14–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Trust '99.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 8, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until July 15, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

The proposed collection is listed below:

(1) Type of information collection. Extension of a currently approved collection.

(2) The title of the form/collection. Trust '99.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Community Oriented Policing Services, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Tribal Governments. Other: None. The information collected is used to determine applicant eligibility for the TRUST '99 Grant Program. The program could provide funding for federally recognized tribes that currently have law enforcement agencies interested in participation in the COPS Funds to Tribal Communities '99 grant program. Funds to Tribal Communities is a grant which would fund salaries and benefits of new police officer, academy/basic training, departmental/field training, supplemental community policing training, computer training, uniforms, and equipment for eligible federally recognized tribal communities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 500 respondents at 1.5 hours response.

(6) An estimate of the total public burden (in hours) associated with the collection. 750 annual burden hours. Public comment on this proposed information collection is strongly encouraged.

Dated: June 8, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–15073 Filed 6–14–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Antitrust Division

Agency Information Collection Activities; Proposed collection; Comment Request

AGENCY: Antitrust Division, Department of Justice (DOJ).

ACTION: Notice of information collection under review; Department of Justice Federal Coal Lease Review Information.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. Extension of a currently approved collection.

(2) The title of the form/collection. Department of Justice Federal Coal Lease Review Information.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Forms: ATR–139, ATR–140. Antitrust Division, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Business or other for-profit. Other: None.

The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of Federal coal leases. These forms seek information regarding a prospective coal lessee's coal reserves and the reserves subject to the federal lease. The Department uses this information to determine whether the lease transfer is consistent with the Antitrust laws.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 20 responses per year at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 40 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: June 10, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–15084 Filed 6–14–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; New collection (Reinstatement, with change, of a previously approved collection for which approval has expired); Equal employment opportunity plan certification and short form.

The Department of Justice, Office of Justice Programs, Office for Civil Rights, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 16, 1999.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael Alston 202–307–0692, Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, N.W., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) Type of information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) The title of the form/collection: Equal Employment Opportunity Plan Certification and Short Form.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: N/A.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State and Local governmental instrumentalities.

Other: For Profit Institutions.

28 CFR 301 *et seq.* authorizes the Department of Justice to collect information from State or local units of government, agencies of State and local governments, and private entities, institutions or organizations to which financial assistance is extended regarding their employment practices.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 1,500 respondents receiving a grant of $500,000 or more will complete a 1-hour Equal Employment Opportunity Plan Short Form and submit it to the Office of Justice Programs. In addition, an estimated 10,000 of respondents seeking grants ranging from $25,000 up to $500,000 will be required to complete the ¼ hour certification stating that they are maintaining a current Equal Employment Opportunity Plan on file and submit the certification to the Office of Justice Programs.

(6) An estimate of the total public burden (in hours) associated with the collection: The total hour burden to complete the Equal Employment Opportunity Plan Short Form is 24,000 hours. The total hour burden to complete the EEOP certification is 40,000. The annual burden hours is 64,000.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: June 9, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–15075 Filed 6–14–99; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–062)]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Flight Research Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Flight Research Subcommittee meeting.

DATES: Monday, July 19, 1999, 2:00 p.m. to 5:00 p.m. and Tuesday, July 20, 1999, 8:00 a.m. to 5:00 p.m., and Wednesday, July 21, 1999, 8:00 a.m. to 12:00 noon.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Center, Building 4800, Executive Conference Room 2102, Edwards, CA 93535.

FOR FURTHER INFORMATION CONTACT: Ms. Dennie Gonia, National Aeronautics and Space Administration, Dryden Flight Research Center, Edwards, CA 93523, 661/258–2380.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda topics for the meeting are as follows:

—Review of Flight Research Base R&T Program
—Review of the Costs Associated with Varying Types of Flight Research
—High Altitude, Long Endurance Aircraft
—Advanced Systems Concepts
—REVCON
—Atmospheric-Space Systems

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: June 9, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–15143 Filed 6–14–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before August 16, 1999.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 9, 1999 (64 FR 17423). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request Pertaining to Military Records.

OMB number: 3095–0029.

Agency form number: SF 180.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 850,100.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel record).

Estimated total annual burden hours: 172,300 hours.

Abstract: In accordance with rules issued by the Department of Defense (DOD) and Department of Transportation (DOT, US Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Forms (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. The authority for this information collection is contained in 36 CFR 1228.162.

Dated: June 9, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–15137 Filed 6–14–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings; Notice of Change in Time and Subject of Meetings

The National Credit Union Administration Board determined that its business requires the previously announced open meeting scheduled for 1:00 p.m. to be rescheduled for 2:00 p.m. and the closed meeting scheduled for 2:30 p.m. to be rescheduled for 3:30 p.m. on Monday, June 14, 1999.

The National Credit Union Administration Board determined that its business requires the deletion of the following item from the previously announced closed meeting (**Federal Register**, Vol. 64, No. 111, Page 31320,

Thursday, June 10, 1999) scheduled for Monday, June 14, 1999.

3. Request from a Corporate Credit Union for a National Field of Membership. Closed pursuant to exemption (8).

The National Credit Union Administration Board also determined that its business requires the addition of that item to the previously announced open meeting.

4. Request from a Corporate Credit Union for a National Field of Membership.

The Board voted unanimously that agency business requires that this item be deleted from the closed agenda and added to the open agenda, and that no earlier announcement of these changes were possible.

The previously announced agenda was:

TIME AND DATE: 1:00 p.m., Monday, June 14, 1999.

PLACE: Board Room 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Two (2) Requests from Federal Credit Unions to Convert to Community Charters.

2. Final Rule: Amendment to Part 707, NCUA's Rules and Regulations, Truth In Savings—Disclosure of the Annual Percentage Yield.

3. Final Rule: Amendments to Part 712, NCUA's Rules and Regulations, Credit Union Service Organizations (CUSOs).

RECESS: 2:15 p.m.

TIME AND DATE: 2:30 p.m., Monday, June 14, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 or Section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).

2. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Request from a Corporate Credit Union for a National Field of Membership. Closed pursuant to exemption (8).

4. Five (5) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304,

Becky Baker,

Secretary of the Board.

[FR Doc. 99–15280 Filed 6–11–99; 2:21 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Museums Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on August 17–20, 1999 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The panel will meet from 9 a.m. to 6 p.m. on August 17th and 19th, from 9 a.m. to 5:30 p.m. on August 18th, and from 9 a.m. to 3:30 p.m. on August 20th. A portion of this meeting, from 11 a.m. to 12:30 p.m. on August 20th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9 a.m. to 5 p.m. on August 17th and 19th, from 9 a.m. to 5:30 p.m. on August 18th, and from 9 a.m. to 11 a.m. and 12:30 p.m. to 3:30 p.m. on August 20th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 7, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–15154 Filed 6–14–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Visual Arts Section (Creation & Presentation category) to the National Council on the Arts will be held on August 3–6, 1999 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The panel will meet from 9 a.m. to 6 p.m. on August 3rd and 5th, from 9 a.m. to 5:30 p.m. on August 4th, and from 9 a.m. to 3:30 p.m. on August 6th. A portion of this meeting, from 11 a.m. to 12:30 p.m. on August 6th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9 a.m. to 6 p.m. on August 3rd and 5th, from 9 a.m. to 5:30 p.m. on August 4th, and from 9 a.m. to 11 a.m. and 12:30 p.m. to 3:30 p.m. on August 6th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100

Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506 or call 202/682–5691.

Dated: June 7, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–15155 Filed 6–14–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9681–MLA–7; ASLBP No. 99–767–07–MLA]

International Uranium (USA) Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.1201 and 2.1207 of Part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

International Uranium (USA) Corporation (IUSA) (Request for Materials License Amendment)

The hearing, if granted, will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by Ken Sleight in response to a notice of consideration of a license amendment for International Uranium (USA) Corporation's White Mesa Uranium Mill. International Uranium (USA) Corporation has applied for an amendment to its license to receive and process uranium bearing material removed from Formerly Utilized Sites Remedial Action Program sites located in the St. Louis, Missouri area. The notice of the proposed amendment request was published in the **Federal Register** at 64 FR 23,876, May 4, 1999.

The Presiding Officer in this proceeding is Administrative Judge Peter B. Bloch. Pursuant to the provisions of 10 CFR §§ 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Bloch and Judge Cole in accordance with 10 CFR § 2.1203. Their addresses are:

Administrative Judge Peter B. Bloch, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Issued at Rockville, Maryland, this 9th day of June 1999.

G. Paul Bollwerk, III,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–15100 Filed 6–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–09 & License No. SNM–2504]

(Fort St. Vrain Independent Spent Fuel Storage Installation); Order Approving Transfer and Notice of Issuance of License Amendment

In the Matter of Public Service Company of Colorado, United States Department of Energy

I

On November 4, 1991, pursuant to 10 CFR Part 72, License No. SNM–2504 was issued, under which Public Service Company of Colorado (PSCo) was authorized to receive, possess, and store spent fuel at the Fort St. Vrain (FSV) Independent Spent Fuel Storage Installation (ISFSI), which is located near Platteville, Colorado.

II

In October 1995, the State of Idaho, the U.S. Department of Energy (DOE), and the U.S. Department of the Navy entered into a settlement agreement that, among other things, prohibited spent fuel currently stored in Colorado at the FSV ISFSI from being shipped to Idaho for storage. In December 1995, the DOE notified the Nuclear Regulatory Commission (NRC or Commission) of its intent to procure the FSV ISFSI from PSCo, take possession of the spent nuclear fuel stored there, and obtain approval from the NRC to transfer NRC license SNM–2504 to DOE. In February 1996, PSCo and DOE's Idaho Operations Office (DOE–ID) formalized a contract modification by which DOE took immediate title to all of the spent fuel at FSV. Under the contract, PSCo continued to manage the spent fuel at the FSV ISFSI under NRC License SNM–2504 until such time as the NRC license was transferred to DOE.

On December 17, 1996, DOE submitted an application seeking transfer of the FSV ISFSI license from PSCo to DOE. Notice of the application for transfer and license amendment was published in the **Federal Register** on March 7, 1997 (62 FR 10596). An environmental assessment and finding of no significant impact regarding the proposed transfer was published in the **Federal Register** on April 2, 1997 (62 FR 15737).

III

The transfer of rights under Materials License SNM–2504 is subject to the NRC's approval under 10 CFR 72.50. Based on information provided by DOE, the Commission has determined that DOE is qualified to be the holder of SNM–2504 and that the transfer of the FSV ISFSI license, subject to the conditions set forth herein, is consistent with applicable provisions of the law and the regulations and orders issued by the Commission. The proposed transfer was evaluated by the NRC staff as documented in a Safety Evaluation dated May 1999. The conditions of the transfer, to which DOE has not objected, are:

A. For the duration of the license, the licensee shall inform the Director, Office of Nuclear Material Safety and Safeguards, at least 90 days in advance, of the replacement of the entity contracted by the licensee to perform the management and operation (the M&O contractor) of the FSV ISFSI.

B. Within 180 days after the replacement of the M&O contractor, the licensee shall assess the performance of the M&O contractor and provide a statement to the NRC verifying that the replacement of the M&O contractor has had no effect on the execution of licensed responsibilities for the FSV ISFSI.

IV

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(I), and 2234 and 10 CFR 72.50, IT IS HEREBY ORDERED that the Commission consents to the proposed transfer of control of SNM–

2504 from PSCo to DOE, and NOTICE IS GIVEN that a license amendment providing for the transfer of control, operation, and ownership of the FSV ISFSI is issued. The amendment is subject to the condition that should this transfer not be completed by October 1, 1999, this ORDER will be null and void, except that upon application and for good cause, the date upon which the transfer is to be completed may be extended for a short time beyond October 1, 1999.

The documents related to this proposed action are available for public inspection and for copying at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland this 4th day of June, 1999.

This ORDER is effective upon issuance.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–15104 Filed 6–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600, Rev. 1]

Revision of NRC Enforcement Policy; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Amendment; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on May 19, 1999 (64 FR 27310), that addresses examples of violations involving operators' licenses. This action is necessary to correct a typographical error in the numbering of the Severity Level IV violation example in Supplement B of the Enforcement Policy.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2741.

SUPPLEMENTARY INFORMATION: On page 27312, in the first column, under "D. Severity Level IV—Violations involving for example:," replace the number "5" at the start of the next paragraph with the number "2."

Dated at Rockville, Maryland, this 10th day of June 1999.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 99–15099 Filed 6–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on July 13, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, July 13, 1999—1:00 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Date: June 8, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–15101 Filed 6–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant License Renewal; Revised

The ACRS Subcommittee meeting on Plant License Renewal scheduled for June 30 and July 1, 1999, 8:30 a.m. each day, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been revised to include a discussion regarding credit given in the license renewal review process to existing programs. Notice of this meeting was published in the **Federal Register** on Tuesday, June 1, 1999 (64 FR 29366). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Mr. Noel F. Dudley, cognizant ACRS staff engineer (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: June 9, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–15102 Filed 6–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of June 14, 21, 28, and July 5, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 14

Monday, June 14

2:00 p.m.
Briefing on 10 CFR part 70—Proposed Rule For Revised Requirements for Domestic Licensing of Special Nuclear Material (Public Meeting) (Contact: Ted Sherr, 301–415–7218)

Tuesday, June 15

10:30 a.m.
All Employees Meeting (Public Meeting) ("The Green" Plaza Area)
1:30 p.m.
All Employees Meeting (Public Meeting) ("The Green" Plaza Area)

Wednesday, June 16

9:00 a.m.
Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting) (Contact: Ron Hauber, 301–415–2344)

Thursday, June 17

9:00 a.m.
Briefing on Status of Uranium Recovery (Public Meeting) (Contact: King Stablein, 301–415–7238)
11:00 a.m.
Affirmation Session (Public Meeting) (If needed)
1:30 p.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Friday, June 18

9:30 a.m.
Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301–415–1771)

Week of June 21—Tentative

There are no meetings scheduled for the Week of June 21.

Week of June 28—Tentative

There are no meeting scheduled for the Week of June 28.

Week of July 5—Tentative

There are no meetings scheduled for the Week of July 5.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http/www.nrc.gov/SECY/smj/schedule.htm.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 11, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–15279 Filed 6–11–99; 2:21 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410 and License Nos. DPR–63 and NPF–69]

Niagara Mohawk Power Corporation; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated April 5, 1999, Mr. Robert Norway (the Petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Nine Mile Point Nuclear Station, Units 1 and 2. The Petitioner requests that the NRC (1) take enforcement action against Niagara Mohawk Power Corporation (NMPC) and its senior nuclear and corporate management and, as a minimum, against three named individuals for submitting an altered 1994 employee record to the NRC at an enforcement conference on May 10, 1996; (2) take enforcement action against these same parties for presenting at this enforcement conference a false written record of the Administrative Law Judge's (ALJ's) determination in the Department of Labor proceeding in Case No. 95–ERA–005; (3) take enforcement action against these same parties for the placement of confidential employee information into the public record in violation of 10 CFR 2.790; and (4) take enforcement action against these same parties for an additional act of discrimination, pursuant to 10 CFR 50.7, for destroying the Petitioner's credibility and reputation in the nuclear industry. In addition, the Petitioner requested that the NRC forward these issues to the Department of Justice for consideration of criminal prosecution.

Finally, in addition to these requests for enforcement actions, the Petitioner also requested that various other actions be implemented. These actions include the following: (1) that the agency perform an independent review of all NMPC's docketed files associated with the individuals who committed the alleged fraud; (2) that the NRC forward a complaint to the Office of the Inspector General for investigation of possible deliberate misconduct on the part of the NRC staff; (3) that an Independent Oversight Group be established to provide oversight of the NMPC Human Resources Department and Employee Concerns Program; (4) that a public meeting be held to obtain public comments pertaining to a number of issues, including discrimination and the placement of fraudulent documentation into public records; and (5) that the NRC publicly post NMPC's Nine Mile Point Unit 2 Residual Heat Removal (RHR) Alternate Shutdown Cooling Safety Evaluation 96–091 to make it available for public comment or require NMPC to re-perform this safety evaluation.

As a basis for all of the Petitioner's requests, he alleged that NMPC deliberately created a false employee record and fraudulently submitted this record, as well as a false written record of an ALJ decision, into the public record, under false pretenses and perjury, during a 1996 enforcement conference with the NRC. Regarding the alleged false written record of an ALJ decision, correspondence from Mr. James Lieberman, Director of the Office of Enforcement, to the Petitioner, dated May 3, 1999, stated that the NRC staff had reviewed the transcript of the enforcement conference and had determined that the NRC staff understood that the document represented the position of NMPC management and not that of the ALJ. Therefore, the submittal of such a document cannot be the basis for taking enforcement action against NMPC. In addition, the Petitioner also submitted a technical concern about his continued efforts to address RHR alternate shutdown cooling safety.

The remaining issues in the Petition are being treated pursuant to 10 CFR 2.206 of the Commission's regulations and have been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time.

By letter dated June 9, 1999, the Director acknowledged receipt of the Petition. A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, D.C. 20555–0001.

Dated at Rockville, Maryland, this 9th day of June 1999.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15103 Filed 6–14–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Amendments to Accounting for Property, Plant, and Equipment—Definitional Changes

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of the eleventh Statement of Federal Financial Accounting Standards (SFFAS), "Amendments to Accounting for Property, Plant, and Equipment—Definitional Changes." The statement was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB).

ADDRESSES: Copies of SFFAS No. 11, "Amendments to Accounting for Property, Plant, and Equipment—Definitional Changes," may be obtained for $2.25 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–512–1800), Stock No. 041–001–00519–6.

FOR FURTHER INFORMATION CONTACT: James Short (telephone: 202-395–3124), Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the eleventh Statement of Federal Financial Accounting Standards (SFFAS), "Amendments to Accounting for Property, Plant, and Equipment—Definitional Changes." The standard was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB) on December 15, 1998.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon accounting principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, a notice of document availability is published in the **Federal Register** and distributed throughout the Federal Government.

This Notice is available on the OMB home page on the Internet which is currently located at http://www.whitehouse.gov/WH/EOP/omb, under the caption "**Federal Register** Submissions."

Norwood Jackson, Jr.,

Acting Controller.

[FR Doc. 99–15076 Filed 6–14–99; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in June 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in July 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in June 1999 is 4.94 percent (*i.e.*, 85 percent of the 5.81 percent yield figure for May 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between July 1998 and June 1999.

For premium payment years beginning in:	The assumed interest rate is:
July 1998	4.85
August 1998	4.83
September 1998	4.71
October 1998	4.42
November 1998	4.26
December 1998	4.46
January 1999	4.30
February 1999	4.39
March 1999	4.56
April 1999	4.74
May 1999	4.72
June 1999	4.94

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in July 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of June 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–14996 Filed 6–14–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23867; 812–11528]

Mercury Asset Management International Ltd. and Mercury Asset Management V.I. Funds, Inc.; Notice of Application

June 9, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under (a) sections 6(c), 17(b) and 10(f) of the Investment Company Act of 1940 (the "Act") granting relief from sections 17(a), 17(e) and 10(f) of the Act, and rules 17e–1 and 10f–3 under the Act; and (b) under section 6(c) of the Act granting relief from sections 9(a), 13(a), 15(a) and 15(b) of the Act, and rules 6e–2(b)(15) and 6e-3(T)(b)(15) under the Act.

Summary of the Application: Applicants seek to amend two existing orders to permit additional entities to rely on the orders.[1]

Applicants: Mercury Asset Management International Ltd. ("MAM") and Mercury Asset Management V.I. Funds, Inc. ("Mercury V.I. Fund").

Filing Dates: The application was filed on March 3, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 30, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942–0674, Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation), or Kevin Kirchoff, Branch Chief, at (202) 942–0670 (Division of Investment Management, Office of Insurance Products).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. MAM is registered as an investment adviser under the Investment Advisers Act of 1940 and is a wholly owned subsidiary of Mercury Asset Management Group plc ("Mercury"), which was acquired by Merrill Lynch & Co. Inc. ("Merrill Lynch") in January, 1998. MAM serves as subadviser to a portfolio of TIFF International Equity Fund, a series of TIFF Investment Program, an open-end investment company registered under the Act.[2] MAM also will serve as investment adviser to Mercury V.I. Fund, an open-end investment company registered under the Act and currently consisting of two series. Mercury V.I. Fund would offer shares representing interests in its current and future series to separate accounts of affiliated and unaffiliated insurance companies to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts, as well as directly to qualified pension and retirement plans ("Qualified Plans") outside of the separate account context. Mercury V.I. Fund has not yet commenced operations.

2. Merrill Lynch Asset Management, L.P. ("MLAM"), on behalf of its separate operating division Hotchkis and Wiley ("H&W"), and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") previously obtained an order to permit certain principal and brokerage transactions with "multi-manager" investment companies advised by H&W and at least one other investment adviser that has no affiliation with Merrill Lynch ("Brokerage Order"). The transactions are between MLPF&S and those portions of the Multi-Managed Portfolios that are not subadvised by H&W.

3. The requested order would amend the Brokerage Order so that it would apply to both the Unaffiliated Portion of the portfolio of TIFF International Equity Fund for which MAM currently serves as subadviser, as well as to any other Multi-Managed Portfolios to which MAM or other entities that are controlled by, in control of, or under common control with MLPF&S (each an "Affiliate") may in the future provide investment advisory services (MAM and the Affiliates each an "Affiliated Subadviser") and which is operated in a manner consistent with the terms and conditions of the application relating to the Brokerage Order (the "Brokerage Application"). Specifically, the order sought would exempt MAM, MLPF&S and Affiliates from certain provisions of the Act in order to permit, subject to the conditions set forth below, (i) MLPF&S and Affiliates to engage in principal transactions with the Unaffiliated Portion of each of the Multi-Managed Portfolios; (ii) MLPF&S and Affiliates to provide brokerage services to the Unaffiliated Portion of each of the Multi-Managed Portfolios, and the Unaffiliated Portion of each of the Multi-Managed Portfolios to utilize such brokerage services; and (iii) the Unaffiliated Portion of each of the Multi-Managed Portfolios to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is MLPF&S or an Affiliate. In addition, the amended Brokerage Order would permit a portion of a Multi-Managed Portfolio advised by an Affiliated Subadviser to make purchases from certain underwritings in reliance on rule 10f–3 without aggregating the purchases with purchases made by an Unaffiliated Portion for purposes of determining compliance with rule 10f-3(b)(7) under the Act. MAM states that , under the amended Brokerage Order, an Affiliated Subadviser will be subject to all of the terms and conditions of the Brokerage Application applicable to H&W.

4. MLAM and MLPF&S previously obtained an order to allow shares of Hotchkis and Wiley Variable Trust and any investment company or portfolio designed to fund insurance products and for which H&W may serve as investment adviser, administrator, manager, principal underwriter, or sponsor to be sold to and held by variable annuity and variable life insurance separate accounts ("Separate Accounts") of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") and by Qualified Plans outside of the

[1] Merrill Lynch Asset Management, L.P., et al., Investment Company Act Release Nos. 22618 (April 14, 1997) (notice) and 22659 (May 12, 1997) (order); Hotchkis and Wiley Variable Trust, et al., Investment Company Act Release Nos. 22749 (July 14, 1997) (notice) and 22786 (August 13, 1997) (order).

[2] Such portfolio together with any other portfolio advised by MAM and at least one other investment adviser that has no affiliation with Merrill Lynch is referred to as a "Multi-Managed Portfolio." The potion of a Multi-Managed Portfolio advised by an investment adviser that has no affiliation with Merrill Lynch is an "Unaffiliated Portion."

separate account context ("Mixed and Shared Funding Order"). The requested order would amend the Mixed and Shared Funding Order to apply to MAM and any Affiliate; any investment company or separate series of the investment company that is designed to fund insurance products for which MAM or any Affiliate serves or may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (each, including Mercury V.I. Fund, a "Trust"); any insurance company and insurance company separate account supporting variable annuity or variable life insurance contracts which currently invest or may invest in a Trust; and any Qualified Plan to which a Trust may offer and sell shares representing interests in its portfolios. Specifically, applicants seek an amended order to the extent necessary to permit shares of a Trust to be offered and sold to, and held by: (i) both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company; (ii) separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts); and (iii) trustees of Qualified Plans.

Applicants' Legal Analysis

A. Brokerage Order

1. MAM seeks an exemption, pursuant to Sections 6(c), 17(b) and 10(f) of the Act, from the provisions of sections 17(a), 17(e) and 10(f) of the Act and rules 17e–1 and 10f–3 under the Act. MAM states that all of the terms and representations of the Brokerage Application are equally applicable with respect to this application and are incorporated by reference, with the exception of the discussion relating to rule 10f–3(d). Rule 10f–3(d) has been deleted since the filing of the Brokerage Application and replaced by rule 10f–3(b)(7).

2. Rule 10f–3(b)(7) generally limits the securities purchased by an investment company in reliance on rule 10f–3 to 25% of the principal amount of the offering of the class of securities. Applicants seek relief from this provision so that investments by an Affiliated Subadviser will not be aggregated with investments by Unaffiliated Portions. Applicants submit that the legal discussion and analysis in the Brokerage Application relating to relief from rule 10f–3(d) are equally relevant to rule 10f–3(b)(7).

B. Mixed and Shared Funding Order

As in the application relating to the Mixed and Shared Funding Order (the "Mixed and Shared Funding Application"), applicants seek an exemption, pursuant to section 6(c) of the Act, from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and rules 6e–2(b)(15) and 63–3(T)(15) under the Act. Applicants state that all of the terms and representations of the Mixed and Shared Funding Application are equally applicable with respect to this application and are incorporated by reference.

Applicants' Conditions

1. MAM agrees that MAM and any Affiliate relying on the amended Brokerage Order will be subject to the terms and conditions contained in the Brokerage Application and Brokerage Order.

2. Applicants agree that: (1) MAM and any Affiliate; (2) any Trust; (3) any insurance company and insurance company separate account supporting variable annuity or variable life insurance contracts which currently invest or may invest in a Trust; and (4) any Qualified Plan to which a Trust may offer and sell shares representing interests in its portfolios will be subject to the terms and conditions provided in the Mixed and Shared Funding Application applicable to H&W, Trusts, Participating Insurance Companies and their Separate Accounts, and Qualified Plans, respectively.[3]

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15094 Filed 6–14–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 5000–1]

Net Command Tech, Inc.; Order of Suspension of Trading

June 11, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Net Command Tech, Inc. f/k/a Corsaire, Inc. ("NCT") an Internet technology company whose common stock is being quoted in the over-the-counter market, because of questions regarding the accuracy and adequacy of publicly available information disseminated by NCT and others to market makers of the stock of NCT, other broker dealers, and to investors concerning, among other things: (1) The purported acquisition by NCT of certain companies' assets and stock and the value of those assets and stock; (2) a $1.5 million line of credit purportedly secured by NCT from a European bank; (3) the revenue generated by an American company purportedly acquired by NCT; and (4) the business success and reputation of NCT's CEO and presient.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, on June 11, 1999, through 11:59 p.m. EDT, on June 24, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15246 Filed 6–11–99; 2:07 pm]

BILLING CODE 8010–01–M

[3] The Applicants agree that in the event the Mercury V.I. Fund, or any other Trust, operates as a "feeder" fund in a "master/feeder" fund structure, such Trust shall ensure that, to the extent necessary, the "master," as well as such Trust, will comply with the conditions to the application.

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice No. 3062]

Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. § 2776).

EFFECTIVE DATE: As shown on each of the seven letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the

Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: June 8, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710-25-P

United States Department of State

Washington, D.C. 20520

MAY 25 1999

Dear Mr. Speaker:

Pursuant to section 36 (c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the manufacture and production of the VHF Radio Sub-system (ADR+) and High Capacity Data Radio (HCDR), defined as the BOWMAN Radio, in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 5-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

VOL 64 ISS 114 JE 15 1999 UMI

United States Department of State

Washington, D.C. 20520

MAY 14 1999

Dear Mr. Speaker:

Pursuant to section 36 (c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Norway.

The transaction described in the attached certification involves the manufacture of components and subassemblies for the Follow-on Low Initial Production (LRIP) and Full Rate Production (FRP) Phases for the NATO Evolved SeaSparrow Surface Missile Program for use by Australia, Belgium, Canada, Denmark, Germany, Greece, Italy, Netherlands, Norway, Portugal, Spain, Turkey, and the U.S.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 10-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

VOL 64 ISS 114 JE 15 1999 UMI

United States Department of State

Washington, D.C. 20520

MAY 25 1999

Dear Mr. Speaker:

Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing and Technical Assistance Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the manufacture and production of F100-PW-220 and F100-PW-229 Engine components and parts, in the Netherlands and Germany.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 11-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAY 14 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in the United Kingdom of C-130 air-to-air refueling wing pod tanker kits for use by U.S. and Canadian armed forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 13-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAY 14 1999

Dear Mr. Speaker:

Pursuant to section 36 (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Poland.

The transaction described in the attached certification involves the transfer of engineering and design services supporting the design and construction of a new class of Corvettes for the Polish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 28-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

VOL 64 ISS 114 JE 15 1999 UMI

United States Department of State

Washington, D.C. 20520

MAY 13 1999

Dear Mr. Speaker:

Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of the PATRIOT Air Defense System and Manufacturing License Agreements with Greece for the manufacture of parts, components, and subsystems for the PATRIOT Air Defense System for end use by the Hellenic Republic.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 111-98

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAY 14 1999

Dear Mr. Speaker:

Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Turkey.

The transaction described in the attached certification involves the manufacture of 665 armored combat vehicles for use by the Turkish Land Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 136-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

[FR Doc. 99-15142 Filed 6-14-99; 8:45 am]
BILLING CODE 4710-25-C

DEPARTMENT OF STATE

[Public Notice No. 3061]

Office of Mexican Affairs; Issuance of a Finding of No Significant Impact for Farm to Market Road 3464 From Interstate Highway 35 to the Laredo Northwest International Bridge (Bridge IV), Laredo, TX

AGENCY: Department of State.

SUMMARY: Notice is hereby given that the Department of State has issued a finding of no significant impact on the environment for Farm to Market Road 3464 from Interstate Highway 35 to the Laredo Northwest International Bridge (Bridge IV), Laredo, Texas. On October 7, 1994, the Department of State issued a Presidential Permit ("Permit") to the sponsor, the City of Laredo, Texas ("City"), for construction of the Laredo Northwest International Bridge ("Bridge") between Laredo, Texas, and Nuevo Laredo, Tamaulipas, Mexico. Issuance of the Permit was predicated, in part, upon the Department's Finding of No Significant Impact ("FONSI"), which it made on October 3, 1994, concluding that the issuance of the Permit would not have a significant impact on the quality of the human environment within the United States.

The Permit specifies that it relates to construction, operation, and maintenance of the Bridge "facilities," which include "the bridge, its approaches, and any land, structure or installations appurtenant thereto." For purposes of the Permit, the approach road ("Approach Road") consists of an extension of Farm to Market Road ("FM") 3464, connecting the Bridge to the nearest crossroad, FM 1472 ("Mines Road"), as specified in the City's February 1994 permit application and in the environmental assessment upon which it was predicated.

Following issuance of the Permit, the City became interested in realigning FM 3464, including the portion to be constructed as the Approach Road, approximately 1,000 feet to the south of the location described in the February 1994 permit application and environmental assessment. (The realignment would cover not only the Approach Road, but also the portion of FM 3464 beyond Mines Road, extending to Interstate Highway ("IH") 35.)

In 1997, the City initiated an environmental assessment ("Assessment") of the FM 3464 realignment project proposal's potential environmental effects. Four alignment options were considered (the original alignment, the proposed realignment and two alternative routes) from IH 35 to the Bridge. The Assessment was prepared by Parsons, Brinkerhoff, Quade & Douglas, Inc., of Austin, Texas, and is dated December 1997. It was amended on February 16, 1998. The Federal Highway Administration ("FHWA") acted as the lead federal agency supervising preparation of the Assessment. In March 1998, after review of the Assessment by a large number of federal, state and local agencies, the FHWA made a "finding of no significant impact" on the quality of the human environment within the United States with respect to each of the four alternatives. The Laredo City Council then passed a resolution accepting the alternative realigning FM 3464, from IH 35 to the Bridge, 1,000 feet to the south of the initial alignment.

In late 1998, the Department, acting in a manner consistent with its regulations for implementation of the National Environmental Policy Act in the context of its responsibilities with respect to Presidential Permits, conducted its own independent review of the Assessment. Thereupon, the Department proposed to adopt the Assessment and make its own "finding of no significant impact" with respect to each of the four alternative routes between IH 35 and the Bridge. For purposes of the Permit, the Approach Road consists only of the extension of FM 3464 to be constructed between Mines Road and the Bridge. Nevertheless, since each alternative alignment of the Approach Road has been presented as a component of an alignment that would extend all the way to IH 35, the Department's analysis has included review of each roadway alignment alternative in full.

The Assessment that the Department proposed to adopt was reviewed by numerous federal and sub-federal agencies (many of which had already reviewed it in the context of the FHWA process). Each Agency, with the exception of the Texas Parks and Wildlife Department, has expressed no objection to the Department's proposed action and has approved or accepted the Assessment, provided, in certain cases, that mitigation recommendations are followed (as described below). These cooperating agencies are: U.S. Department of the Interior, U.S. Department of Treasury, U.S. Customs Service, U.S. Environmental Protection Agency, U.S. Department of Defense, U.S. Department of Health and Human Services, U.S. Food and Drug Administration, International Boundary and Water Commission—U.S. Section, U.S. Department of Commerce, U.S. Department of Agriculture, U.S. Federal Highway Administration, U.S. General Services Administration, U.S Coast Guard, U.S. Immigration and Naturalization Service, Texas Water Development Board, Texas Department of Transportation, Texas Historical Commission, and Texas Natural Resource Conservation Commission. The Texas Parks and Wildlife Department, citing its preference for Alternative 1, which in its view "impacts the least amount of critical habitat and reduces the potential for wildlife and vehicle collisions," indicated that it unable to support a FONSI with respect to Alternative 2. The U.S. Department of the Interior has advised the Department that there is no "critical habitat in the area under examination as that term is defined in the Endangered Species Act."

For the reasons set forth in the summary, above, and based on the foregoing analysis, a finding of no significant impact is adopted and an environmental impact statement will not be prepared.

The environmental assessment and finding of no significant impact are available for inspection in the Office of Mexican Affairs during normal business hours, from 8:15 AM to 5:00 PM. Please contact David E. Randolph, Coordinator for U.S.-Mexico Border Affairs, U.S. Department of State, 2201 C. Street NW Room 4258, Washington, DC 20520, telephone (202) 647–8529.

SUPPLEMENTARY INFORMATION:

Factors Considered

The Department considered thoroughly four alternative alignment options in this case, described in detail in the Assessment and in summary fashion as follows.

Alternative 1

Utilize the alignment of existing FM 3464 between IH 35 and Mines Road and extend that alignment to the Bridge as approved in the October 1994 Permit.

Alternative 2

Build a new roadway approximately 1,000 feet south of that described in Alternative 1.

Alternative 3

Initially re-stripe existing FM 3464 as a one-way roadway with traffic traveling southwest toward the Bridge; in addition, construct a two-lane, one-way roadway 290 feet south of existing FM 3464 from Mines Road to Auburn Road and expand the separation to a maximum of 1,500 feet beyond Auburn Road, with traffic traveling Northeast toward IH 35. Ultimately, the roadway would consist of a reconstruction of the one-way facility from Mines Road northeast to IH 35 as a four-lane

controlled access facility with frontage roads.

Alternative 4

Build a new roadway approximately 500 feet south of that described in Alternative 1.

Three other options are addressed in the Assessment: (a) a no build/do nothing option; (b) a transportation system management option; and (c) a mass transit option. The Department has determined that these options, each of which is an alternative to construction of the Bridge itself, are not feasible.

In considering option (a), the no build/do nothing option, and option (c), the option of the City providing expanded public transportation services between Laredo, Texas and Nuevo Laredo, Tamaulipas, the Department notes the continuing increase in commercial truck traffic on the existing Laredo bridges. (Trucks use IH 35 as a staging area and line up on IH 35 for several miles during peak travel periods, waiting to cross the existing downtown bridges.)

The Department also notes the significant need for effective transportation of people, goods, and services between the United States and Mexico. (The value of imports and exports between the U.S. and Mexico increased 71% to $129.7 billion between 1992 and 1996.) Trade with Mexico is likely to continue to increase as a result of the increase in twin plants or maquiladoras located in Laredo and Nuevo Laredo. The most significant travel demand relates to commercial freight. The provision of mass transit services for the existing international bridges would not meet projected commercial, non-passenger demands. Moreover, fiscal constraints face the City's passenger transit system. In sum, increasing population, urbanization, and commerce in the Laredo area mean that existing problems of air pollution and traffic congestion caused by heavy truck traffic will continue to cause the quality of the environment of the Laredo/Nuevo Laredo downtown areas to deteriorate if no acceptable alternative route for such traffic is provided. These options were considered thoroughly in connection with the Department's review of the City's 1994 permit application (see October 3, 1994, FONSI, 59 FR 59268 *et seq.*). They were not chosen at that time and a decision was made then to issue the Permit. For the reasons described above, the Department's 1994 analysis applies with at least equal force in 1999.

Option (b), the transportation system management option, would involve re-routing heavy, commercial vehicle traffic from two existing international bridges in Laredo (both of which connect to the Mexican State of Tamaulipas) to the Laredo Colombia Solidarity Bridge, which provides access to the Mexican State of Nuevo Leon. Such an alternative approach would effectively deny heavy commercial vehicles direct access to Tamaulipas. In so doing, it would also damage or destroy the livelihood of long-standing and vibrant business interests in Tamaulipas. Such economic dislocation could, in turn, have negative effects on relations between the United States and Mexico. Accordingly, the Department finds option (b) not to be viable.

Analysis of the Environmental Assessment Submitted by the City

The Assessment submitted by the City provides information on the environmental effects of the four alternatives outlined above regarding the alignment of FM 3464. On the basis of the Assessment and information developed by the Department and the other federal and state agencies in the process of reviewing the Assessment, the Department makes the following determinations regarding the impact of these alignment alternatives.

Air Quality

This project is in an area that is in attainment of the National Ambient Air Quality Standards (NAAQS). Concentrations of carbon monoxide under the worst case meteorological conditions are not expected to exceed the NAAQS at any time. While there is potential during the construction phase for any of the alternatives involving new construction to adversely affect air quality in the short term, even these effects may be mitigated by requiring contractors to minimize exhaust emissions through emissions control devices and to limit unnecessary idling of construction vehicles.

River Channel and Floodplains

Each of the four roadway alternatives would cross three stream channels: Las Manadas Creek and two unnamed drainage areas. Channel realignments are currently not anticipated. Roadway construction may involve some channelization and excavation within the right-of-way for the placement of culverts. The U.S. Department of the Interior has stated that Alternative 2 would be acceptable to it provided certain mitigation recommendations made by its Fish and Wildlife Service are followed. The Fish and Wildlife Service has requested and the City has agreed to work with the Texas Department of Transportation to accomplish appropriate culvert designs for incorporation into the roadway planning to provide safe and viable travel corridors for endangered cats. The proposed project will not alter the existing hydrological characteristics and will not increase backwater elevation in the Rio Grande River, Las Manadas Creek, or the two other large drainage areas by more than one foot. Encroachment on floodplains was analyzed to determine any effects caused by the roadway in the event of the 100-year flood. The Bridge and roadway will permit the conveyance of the hundred-year flood, inundation of the roadway being acceptable without causing it or the Bridge significant damage.

Historical and Archeological Resources

In October 1996, an intensive cultural resource survey was conducted for the corridor containing the roadway alternatives. In addition, a single corridor from 0.5 miles north of the current alignment of FM 3464 to 0.5 miles south of the proposed FM 3464 realignment's southern-most right of way, which includes each of the four alternatives, was investigated for historic standing structures through a "windshield survey" and archival map review. Each alternative was found to affect a number of prehistoric sites that had been disturbed previously. No historic properties were listed in the National Register of Historic Places (NRHP) and no pre-1950 standing structures were observed 0.5 miles north of the existing alignment of FM 3464 nor 0.5 miles south of the southern-most realignment proposal's southern right-of-way. One archeological site would be impacted by each of the four alternative routes: state trinomial number 41WB429. The Texas Department of Transportation (TXDOT) completed a program of archeological testing at this site and based upon the results of that study the Texas Historical Commission concurred with TXDOT's recommendation that the site lacks significant research potential and therefore is ineligible for inclusion in the NRHP. In reviewing the project according to the procedures set forth in 36 C.F.R. 800, the Advisory Council on Historic Preservation's guidelines for the implementation of Section 106 of the National Historic Preservation Act of 1966, as amended, and in light of the absence of properties eligible for inclusion in the NRHP, the Texas Historical Commission concluded that the proposed project including each of the four access road alternatives will have no effect on historic properties.

Land Use and Local Development Impacts

The current area land use along the existing FM 3464 corridor is predominately warehousing, light industrial and commercial. Short-term development impacts are considered insignificant because of the site's rural nature and consist of increased traffic resulting from roadway construction. Alternative 1 (expanding FM 3464 while maintaining its existing alignment and extending this roadway from Mines Road to the Bridge) may result in minimal traffic delays as a result of construction activities. Alternatives 2, 3, and 4 each involve building a new roadway within 1000 feet of existing FM 3464 and traffic would use the existing facility during construction activities. Long-term impacts will be determined by the rate and intensity of development associated with the Bridge and roadway construction between it and IH 35. Under Alternative 1, development would likely continue to be centered around the improved roadway and traffic patterns would not likely change significantly. If Alternative 2, 3, or 4 were chosen, development would probably be centered around the relocated roadway facility. Though traffic patterns would change, the existing roadway would remain open to traffic and would be maintained as a city street.

Threatened and Endangered Species

None of the four roadway alternatives would result in a significant reduction in range and brush land available for habitat. In October 1996 a biological survey was completed regarding the Bridge facilities and alternative road alignments (an area of almost 441 acres). The survey area has two riparian woodlands/wetlands areas comprising 55.4 acres. No endangered plant species were found and impacts to threatened or endangered plants are not anticipated under the four alternatives. Impacts to endangered ocelots and other wildlife may be direct in the form of death through vehicular collision. Such direct impacts appear to be lowest for Alternative 1 and similar as between Alternatives 2 and 4 as each of these alternatives would involve construction of a new roadway across linear habitat features (wetlands and riparian corridors) used by wildlife. Alternative 3 includes an additional two-lane, one-way roadway, which would increase the potential occurrence of mortality from road kill. In addition to the mitigation measures referred to above (see discussion of floodplains), the U.S. Department of the Interior has indicated that Alternative 2 would be acceptable to it provided that recommendations of the Fish and Wildlife Service were followed. In accordance with the recommendations of the Fish and Wildlife Service, the City has agreed to work with the Texas Department of Transportation so that permanent street lighting is directed only on the roadway and not on surrounding vegetation near crossings and activities resulting in vegetation disturbance are avoided during the general migratory bird nesting period of March through August.

Traffic Noise

Construction noise is difficult to predict. Provisions should be included in the plans and specifications that require the contractor to make every reasonable effort to minimize construction noise through abatement measures such as work-hour controls and proper maintenance of equipment muffler systems. Post-construction traffic noise analysis of the four roadway alternatives indicates no impact will result.

Wetlands

Two potential Palustrine wetland areas were identified occupying 15.23 acres of the survey area. These lie at the Las Manadas Creek headwaters. Alternative 1 would widen the existing FM 3464 crossing at the headwaters of Las Manadas Creek wetland and would impact 1.85 acres of potential wetlands. Similar direct impacts would be anticipated with respect to Alternatives 2 and 3, which would involve constructing a new road across the wetland area and could involve 3.72 acres of wetlands. Alternative 4 would involve constructing a new roadway across the narrowest portion of the wetland along Las Manadas Creek. This alternative could produce direct impacts to 1.98 acres of wetlands. Cumulative impacts are similar for each of the four roadway alternatives. These may include for each, additional non-point source pollutant discharge into Las Manadas Creek, increased surface runoff, and erosion and degradation of wetland function. Additional consultations with the U.S. Army Corps of Engineers are required in order to obtain a permit under Section 404 of the Clean Water Act and 40 CFR 230, which authorizes the discharge of dredge and fill materials into waters of the United States. The City and the Texas Department of Transportation have assured the Department that they will comply with Section 404.

Environmental Justice

The Bridge, ancillary facilities and the roadway connection to IH 35 are located in census tract 001075, which the 1990 census indicated had a population of 3,320. The 1996 population is estimated to be 7,167 and over 96 percent are estimated to be Hispanic. No residential population is located within 4,000 feet of the proposed project. Median household income was $30,149. Therefore, minority and low-income populations will not be impacted disproportionately in an adverse manner by any of the proposed roadway alignment alternatives, nor will there be any negative impacts to community cohesion or neighborhood stability.

Dated: June 9, 1999.

David E. Randolph,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 99–15141 Filed 6–14–99; 8:45 am]

BILLING CODE 4710–29–U

DEPARTMENT OF STATE

[Public Notice No. 3080]

Office of Mexican Affairs; Notice of Issuance of an Amended Presidential Permit for the Laredo Northwest International Bridge (Bridge IV), Laredo, TX

AGENCY: Department of State.

ACTION: Notice of Issuance of an Amended Presidential Permit for the Laredo Northwest International Bridge (Bridge IV), Laredo, Texas.

SUMMARY: Notice is hereby given that the Department of State has issued an Amended Presidential Permit for the Laredo Northwest International Bridge (Bridge IV) project sponsored by the City of Laredo, Texas. The amended permit was issued April 12, 1999 pursuant to the International Bridge Act of 1972 (33 U.S.C. 535 *et seq.*) and Executive Order 11423 of 1968, as amended by Executive Order 12847 of 1993.

ADDRESSES: Copies of the Presidential Permit may be obtained from Mr. David E. Randolph, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, Room 4258, Department of State, Washington, DC 20520, telephone (202) 647–8529.

SUPPLEMENTARY INFORMATION: Notice of the application by the City of Laredo, Texas for a permit to build a new bridge, with access road, to be constructed across the Rio Grande River between Laredo, Texas and Nuevo Laredo, Tamaulipas, Mexico was published in the **Federal Register** on October 3, 1991

at 56 FR 50148. Notice of issuance of the Presidential Permit and Finding of No Significant Impact was published in the **Federal Register** on November 16, 1994 at 59 FR 59267. The bridge will carry pedestrian and commercial traffic, and is intended to relieve the traffic burden on existing bridges in the downtown area. As a condition for the Presidential Permit, the City of Laredo has agreed to route all commercial traffic to this new bridge or to the Colombia Bridge, which connects the City of Laredo to the State of Nuevo Leon. Further, the City has agreed that all hazardous materials will be directed to the Colombia Bridge, where the U.S. Customs Service operates a hazardous materials containment facility. The new bridge is needed because the two existing international bridges between downtown Laredo and Nuevo Laredo cannot accommodate additional traffic without further safety and environmental degradation. The permit was amended to specify that the permit holder (City of Laredo) is authorized to align the approach road to the bridge in accordance with any of four alternatives that have been found to have no significant environmental impact.

The application for the Amended Presidential Permit was reviewed and approved by numerous federal, state and local agencies. The final application and environmental assessment were reviewed and approved or accepted by the Immigration and Naturalization Service, General Services Administration, Department of Interior, Department of Agriculture, Department of Commerce, U.S. Customs Service, U.S. Coast Guard, Federal Highway Administration, Food and Drug Administration, International Boundary and Water Commission—U.S. Section, Department of Defense, the Environmental Protection Agency, the Department of State and the appropriate Texas State Agencies—the Parks and Wildlife Department, the Department of Transportation, the Historical Commission and the Natural Resource Conservation Commission.

Dated: June 9, 1999.

David E. Randolph,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 99–15140 Filed 6–14–99; 8:45 am]

BILLING CODE 4710–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

Agency Holding the Meeting: Tennessee Valley Authority (Executive Meeting No. 1).

Time and Date: 9 a.m. (CDT), June 16, 1999.

Place: TVA Environmental Research Center Auditorium, Muscle Shoals, Alabama.

Status: Open.

Agenda

New Business

Energy

C1. Supplement to Contract No. 96NNX–161365–003 with Stone & Webster Construction Company, Inc., for modification and supplemental maintenance services at TVA nuclear plants.

C2. Contracts with Adecco, Westaff, and Midpoint International, Inc., for staff augmentation engineering and technical support services for TVA.

C3. Supplement to Blanket Purchase Order No. 97X1E–197652 with ABB Power T&D for transmission and distribution equipment.

C4. Contract with Indus International, Incorporated, for PassPort Supply Chain Management Software, implementation services, EMPAC work management software, and maintenance support.

C5. Contract with Anixter, Inc., for miscellaneous telecommunications equipment.

C6. Contracts with Siemens Information and Communication Networks, Inc., and Ameritech Data Networking Solutions, Inc., for local area network equipment.

C7. Contract with Government Technology Services, Inc., and Federal Data Corporation for network management tools.

C8. Contract with AEI Resources, Inc., to replace renegotiated contracts with Crockett Collieries, Inc.; Mountain Coals Corporation; and Leslie Resources, Inc., all of which are subsidiaries of AEI Resources, Inc.

C9. Delegation of authority to the Vice President, Fuel Supply and Engineering Services, or a designee, to award a 10-year coal contract under Requisition 36, Request for Proposals of Bituminous Term Coal to Oxbow Mining, Inc.

C10. Fixed-price contracts with ABB CE Services, Inc., and Babcock & Wilcox Company for long-term alliances to furnish pulverizer parts and technical support.

Information Items

1. Filing of condemnation cases to acquire a temporary right to enter to survey and appraise for an electric power transmission line: Madison West-South Jackson Transmission Line, Madison County, Tennessee.

2. Filing of condemnation cases to acquire a temporary right to enter to survey and appraise for an electric power transmission line: Murfreesboro-Smyrna No. 2 Transmission Line, Rutherford County, Tennessee.

3. Filing of condemnation cases to acquire easements and rights-of-way for pipeline and access road affecting the following transmission line: Johnsonville Fossil Plant Pipeline, Humphreys County, Tennessee.

4. Contribution to Tennessee Aquarium, a nonprofit organization, located in Chattanooga, Tennessee.

5. Agreement with The University of Tennessee at Knoxville to cover all future activities being conducted by the respective TVA business units, with a monetary limit of $6 million.

6. Approval of recommendations resulting from negotiations with the Office and Professional Employees' International Union over compensation for annual and hourly employees.

7. New investment manager and proposed new Investment Management Agreement between the TVA Retirement System and Smith Breeden Associated, Inc.

8. Amendments to the Rules and Regulations of the TVA Retirement System and the provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan).

9. Approval to sell TVA Power Bonds.

10. Delegation of authority to the Chief Financial Officer to authorize loan write-offs of up to $250,000 on loans managed by Economic Development and authority to execute any appropriate documents to effectuate the write-off.

11. Approval to establish a Public Power Institute within the Chief Operating Officer's organization to be located in Muscle Shoals.

12. Approval of member of and designation of chair of the Land Between The Lakes Advisory Committee and delegation of authority to the Chief Operating Officer, subject to the concurrence of the Board during such periods as there are at least two Board members in office and in the absence of at least two Board members in office with the concurrence of the Chairman, to fill future vacancies.

13. Award of contract to Carl E. Smith, Incorporated, for the construction, testing, and commissioning of a 28-mile natural gas pipeline, meter station, pressure regulation, and plant piping for Johnsonville Combustion Turbines and

pressure regulation, and plant piping for Gallatin Combustion Turbines.

14. Approval of a distributor bill credit program, to be implemented in conjunction with the reinstatement of wholesale reactive demand charges, under which distributors could receive credits (up to the amount of such reactive charges) as a rebate to the cost of purchasing and installing capacitors on their systems.

15. Sale of noncommercial, nonexclusive permanent easements affecting less than 1 acre of land on Tellico Lake in Loudon and Monroe Counties, Tennessee, for the construction, operation, and maintenance of private water-use facilities (Tract Nos. XTELR–280RE and XTELR–209RE).

16. Grant of a permanent easement to the State of Alabama for a highway improvement project, affecting approximately 1.83 acres of land on Wheeler Lake in Morgan County, Alabama (Tract No. XTWR–109H).

17. Grant of a permanent easement to Morgan County, Alabama, for highway improvement purposes affecting approximately 2.64 acres of land on Wheeler Lake, Morgan County, Alabama (Tract No. XTWR–110H).

18. Public auction sale, under Section 31 of the TVA Act, of the Tupelo Line Crew Headquarters property, affecting approximately 3.07 acres of TVA land in Tupelo, Mississippi (Tract No. XTLCH–1).

19. Approval of various actions affecting TVA land, including the sale of real property and interests in real property, the grant of easements, the modification of deeds, and certain delegations with respect to the disposition of real property and the approval and modification of reservoir land use plans: (1) Delegation of authority to approve disposition of real property and to approve and modify reservoir land use plans; (2) sale of nonexclusive permanent easement to resolve encroachments for a driveway affecting 0.16 acres of land and a second nonexclusive permanent easement for an access road affecting 0.12 acre of land on Nickajack Lake in Marion County, Tennessee (Tract No. XNJR–24H); (3) Deed modification relative to flood elevations affecting 0.03 acre of land on Chickamauga Lake in Hamilton County, Tennessee (Tract No. XCR–30); (4) Deed modifications relative to flood elevations affecting approximately 4.2 acres of land on Watts Bar Lake in Roane County, Tennessee (Tract Nos. XWBR–446 and XWBR–447); (5) Grant of permanent easement to Charles H. Smith for residential and commercial purposes affecting approximately 1.2 acres of land on Chickmauga Lake in Rhea County, Tennessee (Tract No. XCR–669E); (6) Noncommercial, nonexclusive permanent easement for a private water-use facility 0.48 acre of land on Tellico Lake in Loudon County, Tennessee (Tract No. XTELR–207RE); and (7) Public auction sale of approximately 13.5 acres of TVA land located on Norris Lake in Campbell County, Tennessee (Tract No. XNR–907).

20. Nonexclusive, permanent easement for access road purposes to Charles Wilkens, affecting approximately 0.03 acre of the Mayfield-Paducah Customer Service Center Site, Graves County, Kentucky (Tract No. XTMPCSC–1AR).

21. Delegation of Authority to the Chief Administrative Officer during such time as a Board quorum does not exist, with the concurrence of the Chairman, to execute agreements with the Tennessee Valley Trades and Labor Annual Council.

22. Delegation of authority to the Chief Administrative Officer, or a designated representative, to negotiate and enter into Amendment No. 3 to TVA Contract No. TV–96619V between TVA and the University of Kentucky Research Foundation.

23. Approval of the Charter for the Regional Resource Stewardship Committee and designation of the Chief Operating Officer to complete the chartering process and appoint committee members.

24. Delegation of authority to the Chief Nuclear Officer, or a designee, subject to the concurrence of the individual Board member or members prior to execution of any agreement, to enter into an interagency agreement with the Department of Energy for TVA to provide irradiation services for the production of tritium at the Sequoyah and Watts Bar Nuclear Plants and acquire uranium, uranium hexaflouride, and enriched uranium from DOE for use in the units that may provide irradiation services.

25. Approval to award one or more contracts for the supply and turnkey installation of new combustion turbine units to provide additional peaking generation capacity beginning in Fiscal Year 2002.

26. Amendments to the Trust Agreement between the Board of Directors of the TVA Retirement System and Fidelity Management Trust Company.

27. Filing of condemnation cases to acquire easements and rights-of-way for pipeline affecting the following transmission line: Johnsonville Fossil Plant Pipeline, Humphreys County, Tennessee.

28. Revisions to the Economy Surplus Power Program to limit its availability and to otherwise better match the needs of the TVA power system.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: June 9, 1999.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 99–15181 Filed 6–10–99; 4:24 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on June 28, 1999, from 9:15 a.m. to 2:15 p.m. The meeting will be open to the public from 9:15 a.m. to 12:30 p.m. and closed to the public from 12:30 p.m. to 2:15 p.m.

DATES: The meeting is scheduled for June 28, 1999, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Susan Toohey, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–4792 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a meeting on June 28, 1999 from 9:15 a.m. to 2:15 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the

United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 12:30 p.m. to 2:15 p.m. The meeting will be open to the public and press from 9:15 a.m. to 12:30 p.m., when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 99–15110 Filed 6–14–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 4, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5801.
Date Filed: June 4, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0340 dated 8 June 1999, Mail Vote 008—Resolution 001b/090ww r1–r2, TC3 Intermediate Class Companion Fares from Japan to Guam, Saipan.

Intended effective date: 1 July 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–15121 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 28, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5740.
Date Filed: May 27, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 24, 1999.
Description: Application of Emery Worldwide Airlines, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q, applies to amend its Route 743 certificate authority to permit it to engage in scheduled foreign air transportation between El Paso, Texas, and Chihuahua, Mexico. Emery Air request authority to integrate its amended Route 743 authority with its existing certificate and exemption authority.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–15119 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 4, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5757.
Date Filed: June 1, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 29, 1999.
Description: Application of Pakistan International Airlines Corporation pursuant to 49 U.S.C. 41301 and Part 211 and Subpart Q, applies for an amendment to its foreign air carrier permit to engage in: (a) foreign air transportation of persons, property and mail from points behind Pakistan via points in Pakistan and intermediate points to points in the United States and points beyond; and (b) all-cargo service or services, between the United States and any point or points; and (c) foreign charter air transportation of persons, property, and mail between any point or points in Pakistan and any point or points in the United States and any point or points not in Pakistan or the United States, and any other charter flights authorized pursuant to Part 212 of the Department's Regulations.

Docket Number: OST–99–5768.
Date Filed: June 2, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 30, 1999.
Description: Application of Tie Aviation, Inc. d/b/a Trans International Express pursuant to 49 U.S.C. 41102, Parts 201 and 204 and Subpart Q, applies for a certificate of public convenience and necessity authorizing Trans International Express to conduct foreign scheduled air transportation of persons, property, and mail between points in the United States and points in Israel, with service beginning on or about September 1, 1999 between New York, New York and Tel Aviv, Israel.

Docket Number: OST–99–5798.
Date Filed: June 4, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 2, 1999.
Description: Application of Cardinal Airlines, Inc. pursuant to 49 U.S.C. Section 41102, Parts 201 and 204 and Subpart Q, applies for authority to engage in schedule interstate air transportation of persons, property, and mail between points in the United States and its possessions.

Docket Number: OST–99–5799.
Date Filed: June 4, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 2, 1999.
Description: Application of Cardinal Airlines, Inc. pursuant to 49 U.S.C. Section 41102, Parts 201 and 204 and Subpart Q, applies for authority to engage in world wide foreign charter air transportation of persons, property, and mail.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–15120 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG—1999–5717]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, the Coast Guard intends to request the Office of Management and Budget's (OMB) approval for the renewal of nine Information Collection Requests (ICRs). These ICRs comprise: 1. (A) Report of MARPOL 73/78 Oil, Noxious Liquid Substance (NLS) and Garbage Discharge, (B) Application for Equivalents, Exemptions and Alternatives, (C) Voluntary Reports of Pollution Sightings; 2. Private Aids to Navigation Application and Application for Class 1 Private Aids to Navigation on Artificial Islands and Fixed Structures; 3. Bridge Permit Application Guide; 4. Electrical Equipment and Fire Protection Materials/Systems; 5. Defect/ Noncompliance Report and Campaign Update Report; 6. Application for Vessel Inspection and Waiver; 7. Course Approvals for Merchant Marine Training Schools; 8. Ships' Stores Certification for Hazardous Materials Aboard Ships; and 9. Licensing and Manning Requirements for Towing Vessels. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before August 16, 1999.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–1999–5717), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW, Washington DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this document. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete Information Collection Request are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106, (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. Should there be questions on the docket, contact Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document (USCG–1999–5717) and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. Title: (A) Report of MARPOL 73/78 Oil, Noxious Liquid Substance (NLS) and Garbage Discharge, (B) Application for Equivalent, Exemptions and Alternatives, (C) Voluntary Reports of Pollution Sightings

OMB Control Number: 2115–0556.

Summary: The information in this report is needed by the Coast Guard to ensure compliance with pollution prevention standards and to respond and investigate pollution incidents.

Need: Title 33 U.S.C. 1321 and 1903 authorize the Coast Guard to establish regulations that promote the protection of the environment. Title 33 CFR, Subchapter O (parts 151 to 159) prescribe the Coast Guard pollution prevention regulations.

Respondents: Vessel owners and operators for (A) and (B) and the public for (C).

Frequency: On occasion.

Burden: The estimated burden is 15 hours annually.

2. Title: Private Aids to Navigation Application and Application for Class 1 Private Aids to Navigation on Artificial Islands and Fixed Structures (CG–4143)

OMB Control Number: 2115–0038.

Summary: The collection of infqrmation requires respondents to provide to the Coast Guard , on two applications (CG–2554 and CG–4143), vital information about private aids to navigation.

Need: 33 CFR Parts 66 and 67 authorize the Coast Guard to collect and process the information furnished from the private aids applications to ensure that private aids to navigation appropriately mark the associated hazard or waterway.

Respondents: Owners of Private Aids to Navigation.

Frequency: On occasion.

Burden: The estimated burden is 3,073 hours annually.

3. Title: Bridge Permit Application Guide

OMB Control Number: 2115–0050.

Summary: The collection of information is a bridge permit request submitted as an application for Coast Guard approval of proposed bridge projects. Applicants will submit to the Coast Guard a letter of application along with letter size drawings (plans) and maps showing the proposed bridge project and its location.

Need: Title 33 U.S.C. 401, 491, 525, and 535, authorize the Coast Guard to approve plans and locations for all bridges or causeways that are to be constructed over navigable waters of the United States.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden: The estimated burden is 2,800 hours annually.

4. Title: Electrical Equipment and Fire Protection Materials/Systems—46 CFR Subchapter Q

OMB Control Number: 2115–0121.

Summary: The information in this report is needed to ensure compliance with U.S. regulations for the design and construction of certain electrical equipment and fire protection materials/ systems.

Need: Title 46 U.S.C. 3306, 3703, and 4302 authorized the Coast Guard to establish regulations to protect life, property, and the environment. Title 46 CFR subchapter Q prescribes the Coast Guard regulations for the design and construction of certain electrical equipment and fire protection materials/ systems.

Respondents: Electrical equipment and fire protection material/system manufacturers.

Frequency: On occasion.

Burden: The estimated burden is 268 hours annually.

5. Title: Defect/Noncompliance Report and Campaign Update Report

OMB Control Number: 2115–0035.

Summary: The information in this report is needed to ensure compliance with requirements for defect notification applicable to manufacturers of recreational boats, inboard engines, outboard motors, and sterndrive units.

Need: Title 46 U.S.C. 4310 requires boat and engine manufacturers to conduct defect notification for failures to comply with applicable U.S. Coast Guard safety standards or regulations, and for defects which create a substantial risk of personal injury to the public. 46 U.S.C. 4310 and 33 CFR Part 179 prescribe requirements for certain reports to the Coast Guard concerning potential impacts on recreational boating safety, how problems will be corrected, and progress in notifying owners and repairing affected units.

Respondents: Manufacturers of recreational boats, inboard engines, outboard motors, and sterndrive units.

Frequency: Quarterly.

Burden: The estimated burden is 312 hours annually.

6. Title: Application for Vessel Inspection and Waiver

OMB Control Number: 2115–0007.

Summary: The collection of information requires the owner, operator, agent, or master of a vessel to apply in writing to the Coast Guard before commencing the inspection for certification, or when, in the interest of national defense, a waiver is desired from the requirements of navigation and vessels inspection.

Need: Title 46 U.S.C. 3306 and 3309 authorize the Coast Guard to establish regulations to protect life, property, and the environment. The reporting requirements of the Application for Inspection of U.S. Vessels and the Application for Waiver and Waiver Order are part of the Coast Guard's Marine Safety Program.

Respondents: Vessel owner, operator, agent, master or interested U.S. Government agency.

Frequency: On occasion, biennially, and triennially.

Burden: The estimated burden is 1,504 hours annually.

7. Title: Course Approvals for Merchant Marine Training Schools

OMB Control Number: 2115–0111.

Summary: The information for this report is necessary to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curriculum, facility and faculty for these schools.

Need: Title 46 U.S.C. 7315 authorizes a license or document applicant to substitute the completion of an approved course for a portion of the required sea service. Title 46 CFR 10.302 prescribe the Coast Guard regulations for course approval.

Respondents: Merchant marine training schools.

Frequency: Once every five years for reporting; annually for recordkeeping.

Burden: The estimated burden is 19,026 hours annually.

8. Title: Ships' Stores Certification for Hazardous Materials Aboard Ships

OMB Control Number: 2115–0139.

Summary: The information is this report is needed to ensure that personnel abroad ships are made aware of the proper usage and stowage instructions for certain hazardous materials.

Need: Title 46 United States Code 3306 authorizes the Coast Guard to prescribe regulations for the transportation, stowage, and use of ships' stores and supplies of a dangerous nature. Title 46 Code of Federal Regulations part 146 prescribe the regulations for hazardous ships' stores.

Respondents: Suppliers and manufacturers of hazardous products used on ships.

Frequency: On occasion.

9. Title: Licensing and Manning Requirements for Towing Vessels

OMB Control Number: 2115–0623.

Summary: The Coast Guard has requirements for licensing individuals that operate towing vessels. The requirements ensure that towing vessels operating in the navigable waters of the U.S. are under the control of licensed officers who meet certain qualification and training standards.

Need: Title 46 Code of Federal Regulations Part 10 prescribes regulations for the licensing of maritime personnel. This information collection is necessary to ensure that a mariner's training information is available to assist in determining his or her overall qualifications to hold certain licenses.

Respondents: Mariners licensed to operate towing vessels, prospective towing-vessel officers, and companies employing these mariners.

Frequency: On occasion.

Burden: The estimated burden is 1,590 hours annually.

Dated: June 2, 1999.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 99–15122 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5666]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Request for comments on PREP triennial exercise schedule for 1999, 2000, and 2001 and new equipment deployment exercise.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Program Administration (RSPA) and the Minerals Management Service (MMS), in concert with the states, the oil industry and concerned citizens, developed the Preparedness for Response Exercise Program (PREP). This notice announces the PREP triennial cycle, 1999–2001; requests comments from the public; and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments are due by August 16, 1999.

ADDRESSES: Please submit your comments and related material by only one of the following methods to avoid multiple listings in the public docket:

(1) By mail to the Docket Management Facility (USCG–1999–5666), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at htt://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice and general information regarding the PREP program and the schedule, contact Ms. Karen Adams, Marine Safety and Environmental Protection, Office of Response, (G–MOR–2), (202) 267–2850. For questions on viewing, or submitting material to, the docket, contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation, telephone (202) 366–9329.

SUPPLEMENTARY INFORMATION: The PREP Area exercise schedule and exercise design manual are available on the internet at htt://www.uscg.mil/hq/g-m/gmhome.htm (see index, then oil

response). To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at (202) 366–4560. The 1994 PREP Guidelines book is available at no cost by writing or faxing the TASC Dept Warehouse, 3341 Q 75th Avenue, Landover, MD 20785, fax: 301–386–5394. The stock number of the manual is USCG–X0191. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Background and Purpose

A. Vessel-Owned Equipment Deployment Exercise

The Preparedness for Response Exercise Program (PREP) has guidelines for equipment deployment exercises for the owners or operators of tank vessels. These guidelines provide recommendations for the deployment and operation of response equipment identified in the response plans. Specifically, objectives include demonstrating the ability of the personnel to deploy and operate equipment, and ensuring that equipment is being maintained in proper working order.

The equipment deployment guidelines for vessels focus on exercising a plan holder's oil spill removal organizations (OSROs) and do not address exercising "vessel-owned response equipment" operated by vessel crews. For plan holders who employ a mixture of both vessel-owned response equipment and OSROs, the current guidelines do not provide for vessel-owned equipment to be exercised and deployed in addition to the OSROs. As the vessel-owned equipment is likely to be critical to the response in such plans, it is important to exercise these resources.

This notice establishes guidelines for equipment deployment exercises for response plans that employ vessel-owned equipment as part of their response arrangements. The most common occurrences of such arrangements are for owners or operators that provide their own coverage for an average most probable discharge (AMPD) or those involved in alternate compliance programs. Both arrangements typically involve company-owned equipment, either onboard the vessel, or strategically located at shore-based facilities, as the primary means for meeting some or all of their spill response requirements. At a minimum, the new guidelines will apply to the owners or operators of tank vessels that employ the following arrangements:

(1) Average Most Probable Discharge (AMPD) With "Vessel-Owned" Response Equipment

The vessel response plan regulations [33 CFR 155.1050(d)] require that the owner or operator of a vessel that carries groups I through IV petroleum oil as a primary cargo identify in the response plan and ensure the availability of, through contract or other approved means, the response resources that will respond to a discharge up to the vessel's average most probable discharge [defined as a discharge of the lesser of 50 barrels of oil or 1 percent of the cargo from the vessel during cargo oil transfer operations to or from the vessel]. Since the requirements for AMPD coverage involve quick response times and typically small amounts of equipment, many tank vessel owners have chosen to provide their own response for such spills. This coverage usually involves the use of company-owned equipment, either stored in land-based locations near a transfer site, or stowed onboard the tank vessel itself (or in the case of many unmanned vessels, on the accompanying towing vessel).

(2) Alternate Compliance Arrangements With "Vessel-Owned" Response Equipment

The vessel response plan regulations provide for the development of such alternative compliance arrangements. 33 CFR 155.1065(f) provides that an owner or operator of a vessel who believes that the national planning criteria is inappropriate to the vessel for the areas in which it is intended to operate, then the owner/operator may request acceptance of alternative planning criteria. Since the initial submission of vessel response plans more than five years ago, both primary and secondary carriers carrying non-persistent cargoes in remote locations such as Alaska have developed alternate compliance arrangements. Many of these arrangements rely heavily on the use of onboard spill response equipment to meet some or all of the response planning requirements.

Secondary Carriers

The vessel response plan regulations, 33 CFR 155.1045, require secondary carriers of petroleum cargoes to prepare and submit vessel response plans. The term "secondary carrier" refers to any vessel that carries oil in bulk as cargo other than a vessel carrying oil in bulk as a primary cargo. "Cargo" is defined as oil that is transported to and offloaded at a destination by a vessel. Large fishing tenders (greater than 750 gross tons) and processors are considered secondary carriers when they transfer fuel from their vessel to other smaller fishing vessels in their fleet. These vessels, as secondary carriers, are required by regulation to consider approximately 25% of their total fuel capacity as "secondary cargo" for planning purposes.

The regulations mandates secondary carriers plan for a worst case discharge, and identify resources, which can commence containment and recovery within twenty-four hours. This has been a difficult standard to attain in many remote locations (such as western Alaska) because of the lack of response resources available in these areas.

Due to the distances between their fishing grounds and any existing response organizations, many secondary carriers believe that the services of any OSRO would arrive too late to have any appreciable benefit in most spill scenarios as a result of the non-persistent nature of their cargo. As a result, many secondary carriers have indicated that they would prefer to develop their own response capabilities.

Primary Carriers

Like the fishing tenders, many tank barge operators in Alaska face similar response planning challenges for transporting their non-persistent cargoes to remote locations throughout the state. These primary cargo carriers have also preferred to develop alternate compliance arrangements that involve the use of onboard spill response equipment to address some of their response planning requirements.
Proposed addition to PREP Guidelines:

Equipment Deployment Exercises (Vessel-owned equipment)

Applicability: Vessels using "owned" equipment [equipment owned by the vessel owner or operator] to meet their planning standards for response equipment.

Frequency: Annual.

Initiating Authority: Company policy.

Participating Elements: Owner or operator personnel supporting or operating the "owned" response equipment.

Scope: Deploy and operate vessel-owned response equipment identified in the response plan. The equipment to be deployed would be either (1) the minimum amount of equipment for deployment as described in "Guiding Principles"; or (2) the equipment necessary to respond to an average most probable discharge [for plans using owned equipment to provide AMPD coverage].

Equipment deployment exercises should be conducted annually for each

vessel within a plan using owned onboard response equipment. For owners or operators using owned shore-based equipment and personnel to meet their response standard, one annual deployment should be conducted for each location where owned equipment is located. For operators or owners that use owned onboard response equipment, but also use a limited number of vessel crews to operate a larger fleet of vessels, the number of vessels exercised in one annual cycle may be limited to the number of vessel crews employed to operate the owned equipment. For example, a large tank barge fleet using three crews would conduct three exercises annually. In another example, where the response equipment is located on two towing vessels instead of the tank vessels, then they would conduct two exercises annually. However, all vessels using owned onboard equipment by an owner or operator under the plan should be exercised within a rotation that does not exceed a three-year cycle.

Objectives: Demonstrate ability of vessel personnel to deploy and operate equipment. Ensure equipment is in proper working order.

Certification: Self certification.

Verification: U.S. Coast Guard.

Records:

Retention: 3 years.

Location: In accordance with 33 CFR 155.1060(e)(1).

Evaluation: Self-evaluation.

B. Exercise Schedule

The Coast Guard, EPA, RSPA and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). OPA 90 requires periodic unannounced drills. See 33 U.S.C. 1321(j)(7). However, the working group (comprised of Coast Guard, EPA, RSPA, MMS, state representatives, and industry representatives) determined that the PREP Guidelines should also include announced drills. See 33 CFR 154.1055(a)(5) and 155.1060(c), and 40 CFR 112. The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, EPA, MMS, and Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail. This notice announces the next triennial schedule of Area Exercises. Some exercises are scheduled with industry participants, but where participants have not been listed, the USCG and EPA request volunteers.

If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled. Alternatively, if a company is interested in participating in an exercise where Coast Guard is the OSC, a representative may call Ms. Karen Adams at 202–267–2850, and she can facilitate scheduling the volunteer. Although either method will provide the same result, contact at the local level, with the OSC, is preferred.

The following is the revised PREP schedule for calendar years 1999, 2000, and 2001.

PREP SCHEDULE—GOVERNMENT-LED AREA EXERCISES

Area	Agency	Date/Qtr [1]	Participant
1999			
LA/LB South Area (MSO LA/LB OSC)	CG	2/8–12	Blue Star Shipping.
Hampton Roads (MSO Hampton Rds OSC)	CG	3/15–19	Maris Transportation.
Maine & New Hampshire Area (MSO Portland OSC)	CG	6/3–4	Kent Lines.
EPA Region VI (EPA OSC)	EPA	8/2–6	
Providence Area (MSO Providence OSC)	CG	9/20–24	
Portland, OR (MSO Portland OSC)	CG	12/6–10	
2000			
North Coast Area (MSO San Francisco OSC)	CG	2/7–11	
Florida Panhandle Area (MSO Mobile OSC)	CG	4/10–14	
Houston/Galveston Area (MSO Houston OSC)	CG	6/12–16	
EPA Region IX (EPA OSC)	EPA	8/14–18	
Western Lake Erie Area (MSO Toledo OSC)	CG	9/18–22	
Detroit Area (MSO Detroit OSC)	CG	12/8–11	
2001			
SW Louisiana/SE Texas Area (MSO Port Arthur OSC)	CG	2/14–15	
New York, NY Area (COTP NY OSC)	CG	4/18–19	
Saulte Ste. Marie, MI Area (COTP Saulte Ste.)	CG	6/20–21	
EPA Region I Area (EPA OSC)	EPA	8/21–22	
Chicago Area (MSO Chicago OSC)	CG	9/26–27	
Maryland Coastal Area (COTP Baltimore OSC)	CG	12/5–6	

PREP SCHEDULE—INDUSTRY-LED EXERCISES

Area	Ind[2]	Date/Qtr	Lead
1999			
Alabama/Mississippi Area (MSO Mobile OSC)	p		
South Florida Area (MSO Miami OSC)	p		
Boston Area (MSO Boston OSC)	f		
EPA Region VIII (EPA OSC)	f (nonmtr)		
Hawaii/Samoa Area (MSO Honolulu OSC)	v		
Central Coast Area (MSO San Francisco OSC)	v		
Eastern Wisconsin Area (MSO Milwaukee Area)	f (mtr)		
EPA Region Oceania Area (EPA OSC)	f (nonmtr)		
Buffalo, NY Area (MSO Buffalo Area)	f		
EPA Region II Area (EPA Caribbean OSC)	f (nonmtr)		
Tampa, FL Area (MSO Tampa OSC)	v		
Puget Sound (MSO Puget Sound OSC)	v		
2000			
Caribbean Area (MSO San Juan OSC)	v		
EPA Region III Area (EPA OSC)	f (nonmtr)		
Duluth-Superior Area (MSO Duluth OSC)	f		
Jacksonville Area (MSO Jacksonville OSC)	v		
EPA Region IX Oceania (EPA OSC)	f (nonmtr)		
New Orleans Area (MSO New Orleans OSC)	p		
Commonwealth of N. Mariannas Islands Area (MSO Guam OSC)	v		
EPA Alaska Area (EPA OSC)	f (nonmtr)		
EPA Region IV Area (EPA OSC)	f (nonmtr)		
EPA Region IX Area (EPA OSC)	p		
Southeast Alaska Area (MSO Juneau OSC)	v		
Philadelphia Area (MSO Philadelphia OSC)	f (mtr)		
Charleston Area (MSO Charleston OSC)	f (mtr)		
EPA Region II (EPA OSC)	f (nonmtr)		
2001			
Guam Area (MSO Guam OSC)	v		
San Diego, CA Area (MSO San Diego OSC)	f		
Morgan City Area (MSO Morgan City OSC)	v		
EPA Region VII Area (EPA OSC)	f (nonmtr)		
Long Island Sound Area (COTP Long Island Sound)	f		
Savannah Area (MSO Savannah)	p		
Southern Coastal NC Area (MSO Wilmington OSC)	v		
San Francisco Bay & Delta Region Area (MSO San Francisco OSC)	f (mtr)		
Cleveland, OH Area (MSO Cleveland OSC)	f (mtr)		
EPA Region V Area (EPA OSC)	f		
South Texas Coastal Zone Area (MSO Corpus Christi OSC)	v w/OPS		
LA/LB North Area (MSO LA/LB OSC)	v		
Prince William Sound (MSO Valdez OSC)	p		

[1] Quarters: 1 (Jan–March); 2 (April–June); 3 (July–Sept); 4 (Oct–Dec).
[2] Industry: v-vessel; f (mtr)—marine transportation-related facility; f (nonmtr)—nonmarine transportation-related facility; p—pipeline.

Dated: June 4, 1999.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–15041 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–13–U–00–CHO) To Use the Revenue From a Passenger Facility Charge (PFC) at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Charlottesville-Albemarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 15, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, Washington, Airports District

Office, P.O. Box 16780, Washington, DC 20041–6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bryan O. Elliott, Director of Aviation, of the Charlottesville-Albermarle Airport Authority at the following address: Charlottesville-Albermarle Airport, 201 Bowen Loop, Charlottesville, Virginia 22901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albemarle Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Program Manager, Washington Airports District Office, P.O. Box 16780, Washington, DC 20041–6780, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Charlottesville-Albemarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 28, 1999, the FAA determined that the application to use the revenue from a PFC submitted by Charlottesville-Albemarle Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 2, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–13–U–00–CHO.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1995.

Proposed charge expiration date: April 1, 2005.

Total estimated PFC revenue: $1,005,500.

Brief description of proposed project(s): Air Carrier Terminal Access Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA form 1800–31 and foreign air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports Office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albemarle Airport.

Issued in Washington, DC 20041–6780, June 4, 1999.

Terry J. Page,

Manager, Washington Airports District Office.

[FR Doc. 99–15123 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–03–C–00–RIC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Richmond International Airport, Richmond, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a passenger facility charge (PFC) at Richmond International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158.

DATES: Comments must be received on or before July 15, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, Washington Airports District Office, P.O. Box 16780, Washington, DC 20041–6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert Brammer, Acting Executive Director, Capital Region Airport Commission, at the following address: Capital Region Airport Commission, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, Virginia 23250–2400.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Capital Region Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Program Manager, Washington Airports District Office, P.O. Box 16780, Washington, DC 20041–6780, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Richmond International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 28, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Capital Region Airport Commission was substantially complete with the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 3, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–03–C–00–RIC.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2001.

Proposed charge expiration date: November 1, 2016.

Total estimated PFC revenue: $75,846,839.

Brief description of proposed project(s):

Terminal Roadways and Elevated Platform (Impose & Use)
Terminal Building Addition and Modification (Impose only)
Early Retirement of PFC Funded Debt (Alternate Project)

Class of classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 On-demand air taxi/commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the FAA Regional Airports Office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other document germane to the application in person at the Richmond International Airport.

Issued in Washington, DC 20041–6780, June 4, 1999.

Terry J. Page,

Manager, Washington Airports District Office.

[FR Doc. 99–15124 Filed 6–14–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33748 (Sub-No. 1)]

Union Pacific Railroad Co.—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Co.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33748 [1] to permit the trackage rights to expire on June 28, 1999, in accordance with the agreement of the parties.

DATES: This exemption will be effective on June 28, 1999. Petitions to reopen must be filed by June 21, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33748 (Sub-No. 1) must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Joseph D. Anthofer, 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. (TDD for the hearing impaired (202) 565–1695.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 9, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–15156 Filed 6–14–99; 8:45 am]

BILLING CODE 4915–00–P

[1] On May 21,1999, Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over 146.4 miles of BNSF's rail line between Shawnee, Jct., WY, at milepost 117.4 (Orin Subdivision), and Northport, NE, at milepost 33.8 (Angora Subdivision). *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33748 (STB served June 1, 1999). The trackage rights operations under the exemption are scheduled to become effective on June 13, 1999, and are subject to standard labor protective conditions. The trackage rights agreement is scheduled to expire on June 28, 1999.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Internal Revenue Service (IRS), Treasury, gives notice of a newly proposed Internal Revenue Servicewide system of records (Third-party Contact Records—Treasury/IRS 00.333) that is being established in accordance with Section 3417 of the IRS Restructuring and Reform Act of 1998.

DATES: Comments must be received no later than July 15, 1999. The proposed system of records will be effective July 26, 1999 unless the IRS receives comments which would result in a contrary determination.

ADDRESSES: Comments should be sent to Internal Revenue Service, Office of Governmental Liaison and Disclosure, Room 1603, 1111 Constitution Ave., NW, Washington, DC 20224. Comments will be made available for inspection and copying in the IRS Freedom of Information Act (FOIA) Reading Room. An appointment for inspecting the comments can be made by contacting the FOIA reading room.

FOR FURTHER INFORMATION CONTACT: Harry Manaka, National Director, Collection Field Operations, Room 7238, 1111 Constitution Avenue, NW, Washington, DC 20224. Telephone number (202) 622–5110.

SUPPLEMENTARY INFORMATION: This report is to give notice of a proposed Internal Revenue Servicewide system of records entitled "Third-party Contact Records—Treasury/IRS 00.333," which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

The IRS is establishing the third-party contact records to comply with Section 3417 of the IRS Restructuring and Reform Act of 1998. The third-party contact records will enable the IRS to periodically provide the taxpayer a record of persons (such as financial institutions, employers, individuals, local and state governments) contacted by the IRS with respect to determination or collection of the tax liability of the taxpayer. These records shall be provided to the taxpayer upon request when applicable under law and/or regulation.

The new system of records report, as required by 5 U.S.C. 552a (r) of the Privacy Act, has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated July 15, 1994.

The proposed Internal Revenue Servicewide system of records, Third-party Contact Records—Treasury/IRS 00.333 is published in its entirety below.

Dated: June 7, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary, Administration.

Treasury/IRS 00.333

SYSTEM NAME:

Third-party Contact Records

SYSTEM LOCATION:

District Offices, Regional Offices, Service Centers, Office of Assistant Commissioner (International), and IRS Computing Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals on whom Federal tax assessments have been made; individuals believed to be delinquent in filing Federal tax returns or in paying Federal taxes, penalties or interest; individuals who are or have been considered for examination for tax determination purposes; i.e., income, estate and gift, excise or employment tax liability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of third-party contacts as required by 26 U.S.C. 7602 (c), including the taxpayer name control, taxpayer identification number, the third-party contact's name, date of contact, fact of reprisal determination,

and IRS personnel's identification number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, and 7801.

PURPOSE OF THE SYSTEM:

The IRS is establishing the third-party contact records to comply with Section 7602(c) of the Internal Revenue Code as enacted by Section 3417 of the IRS Restructuring and Reform Act of 1998. The third-party contact records will be used to report to the taxpayers regarding third-party contacts that the IRS would normally make with respect to the determination or collection of the tax liability of the taxpayer. Third-party contact data will be provided periodically to taxpayers and upon the taxpayer's request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may only be made as authorized by 26 U.S.C. 6103 and 7602.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By taxpayer identification number (social security number or employer identifier number).

SAFEGUARDS:

Access controls will be no less than those provided by the Automated Information Systems Security Handbook IRM 2(10)00, IRM 1(16)12, Manager's Security Handbook, and IRM 1(16)42, Physical Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESSES:

Official prescribing policies and practices: Assistant Commissioner (Collection). Officials maintaining the system: Assistant Commissioner (International), Regional Chief Compliance Officers, District Directors, IRS Service Center Directors, IRS Computing Center Directors, Associate Chief Counsel, Regional Counsel, and District Counsel.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Records Access Procedure" below.

RECORDS ACCESS PROCEDURE:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix B. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURE:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax records of the individual; public information sources; third parties including individuals, city and state governments, other Federal agencies, taxpayer's employer, employees and/or clients, licensing and professional organizations, and foreign governments via Tax Treaty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–15070 Filed 6–14–99; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; As Amended

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of alteration to Privacy Act system of records notices.

SUMMARY: The Internal Revenue Service is altering Treasury/IRS 60.008 and Treasury/IRS 60.011 to reflect changes in the management and location of the systems of records from the Office of the Chief Inspector to the Assistant Commissioner (Support Services). These changes are pursuant to the IRS Restructuring and Reform Act of 1998.

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on July 15, 1999, unless modified by a subsequent notice to incorporate comments received from the public.

FOR FURTHER INFORMATION CONTACT: Mary Anderson, Program Analyst, Support Services, Internal Revenue Service, 1401 Wilson Boulevard, Suite 800, Arlington, VA 22209, telephone: (703) 235–0652.

SUPPLEMENTARY INFORMATION: The IRS Restructuring and Reform Act of 1998 included specific provisions impacting the Office of the Chief Inspector, Internal Revenue Service. The law provided for the appointment of a Treasury Inspector General for Tax Administration (TIGTA), effective January 19, 1999, who will report directly to the Secretary of the Treasury.

The systems of records Treasury/IRS 60.008—Security, Background and Character Investigation Files (NBIC), and Treasury/IRS 60.011—Internal Security Management Information System (ISMIS), will continue to exist with the IRS since the National Background Investigations Center, which generates such investigations and utilizes the ISMIS database, will remain with the IRS. The NBIC, formerly under the control of the Chief Inspector, will now continue to conduct personnel security investigations under the auspices of the Assistant Commissioner (Support Services). The alteration of the two systems of records will reflect changes to the system numbers, system names, system locations, safeguards, record access procedures, system managers, and will more accurately describe the categories of records in the systems of records.

The first system of records, IRS 60.008—Security, Background, and Character Investigation Files, Inspection, will be renumbered and renamed as "IRS 34.021—Personnel Security Investigations, National Background Investigations Center—Treasury/IRS." Language has also been inserted under "Exemption claimed for the system" to identify the section under which the exemption is claimed (5 U.S.C. 552a(k)(5)).

The second system of records, IRS 60.011—Internal Security Management Information System (ISMIS) will be renumbered and renamed as "IRS 34.022—National Background Investigations Center Management Information System (NBICMIS)—Treasury/IRS."

The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, which requires the submission of new or altered systems report. For the reasons set forth in this preamble, the IRS proposes to alter the above systems of records. The alterations described above are as follows:

Treasury/IRS 34.021

SYSTEM NAME:

Description of change: Replace the current title with the following: "Personnel Security Investigations, National Background Investigations Center—Treasury/IRS."

SYSTEM LOCATION:

Description of change: Replace the current language with the following: "National Background Investigations Center, P.O. Box 248, Florence, KY 41022–0248."

* * * * *

SAFEGUARDS:

Description of change: Replace the current statement with the following: "Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Records will be accessible to National Background Investigations Center personnel on a need-to-know basis, all of whom have been the subject of background investigations. Computerized records are password protected."

RETENTION AND DISPOSAL:

Description of change: Replace the current statement with the following: "Records are maintained in accordance with IRM Part X, National Background Investigations Center, Exhibit (10)110–2."

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: Replace the current language with the following: "Official prescribing policies and practices: Assistant Commissioner, (Support Services). Official maintaining the system: Director, National Background Investigations Center, P.O. Box 248, Florence, KY 41022–0248."

* * * * *

RECORD ACCESS PROCEDURES:

Description of change: Replace the current language with the following: "Individuals seeking access to this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the IRS National Background Investigations Center, P.O. Box 248, Florence, KY 41022–0248, Attn: Disclosure Specialist."

* * * * *

EXEMPTION CLAIMED FOR SYSTEM:

Description of change: Insert the following at the end of the sentence: "pursuant to 5 U.S.C. 552a(k)(5)."

Treasury/IRS 34.022

SYSTEM NAME:

Description of change: Replace the current title with the following: "National Background Investigations Center Management Information System (NBICMIS)—Treasury/IRS."

SYSTEM LOCATION:

Description of change: Replace the current language with the following: "National Background Investigations Center, P.O. Box 248, Florence, KY 41022–0248."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of change: Replace the current language with the following: "Current and former employees of the Internal Revenue Service within the Department of the Treasury, and private contractors at IRS facilities."

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of change: Replace the current statement with the following: "(1) NBICMIS personnel system records contain National Background Investigations Center (NBIC) employee name, office, start of employment, series/grade, title, separation date; (2) NBICMIS tracking records contain status information on investigations from point of initiation through conclusion; (3) NBICMIS timekeeping records contain assigned cases and distribution of time; (4) NBICMIS case tracking records contain background investigations."

* * * * *

PURPOSE(S):

Description of change: Remove current statement and add: "The purpose of NBICMIS is to: (1) Effectively manage NBIC resources and assess the effectiveness of current NBIC programs as well as assist in determining budget and staff requirements. (2) Provide the technical ability for other components of the Service to analyze trends in integrity matters on an organizational, geographic and violation basis."

* * * * *

RETRIEVABILITY:

Description of change: Replace the current language with the following: "By name of individual to whom it applies, social security number, or case number."

SAFEGUARDS:

Description of change: Replace the current language with the following: "Access is limited to authorized Support Services personnel who have a direct need to know. Hard copy of data is stored in rooms of limited accessibility except to employees. These rooms are locked after business hours. Access to magnetic media is controlled by computer passwords. Access to specific NBICMIS records is further limited by computer security programs limiting access to select personnel."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: Replace the current language with the following: "Official prescribing policies and practices: Assistant Commissioner, (Support Services). Official maintaining the system: Director, National Background Investigations Center, P.O. Box 248, Florence, KY 41022–0248."

RECORD ACCESS PROCEDURES:

Description of change: Replace the current language with the following: "Individuals seeking access to this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the IRS National Background Investigations Center, P.O. Box 248, Florence, KY 41022–0248, Attn: Disclosure Specialist."

* * * * *

RECORD SOURCE CATEGORIES:

Description of change: Replace the current statement with the following: "Current and former employees of the Internal Revenue Service."

* * * * *

Date: June 7, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary, Administration.

[FR Doc. 99–15071 Filed 6–14–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974: Amendment of Notice of Systems of Records

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This document updates the United States Information Agency's Systems of Records maintained under the Privacy Act of 1974 (5 U.S.C. 552a), as amended. It will update the United States Information Agency section in the **Federal Register's** Privacy Act Issuances, 1997 Compilation.

The review and update of USIA's Systems of Records was made in compliance with the President's Memorandum of May 14, 1998 on Privacy and Personal Information in Federal Records. The President directed Federal agencies to review their current information practices and ensure that they are conducted in accordance with privacy law and policy, because ensuring that the Federal government protects the privacy of personal information is a priority of the

Administration, OMB clearance is pending.

DATES: Effective date: Unless otherwise noted in the **Federal Register**, this notice shall become final on July 26, 1999. Persons wishing to comment on the amended systems may do so by July 6, 1999.

ADDRESSES: Freedom of Information/ Privacy Act Unit, United States Information Agency, Room M–29, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, Chief, FOIA/PA Unit, Office of the General Counsel, USIA, 301 4th Street, SW, Rm. M–29, Washington DC 20547, telephone (202) 619–5499.

SUPPLEMENTARY INFORMATION: USIA last published, in full, its Systems of Records maintained under the Privacy Act of 1974 (5 U.S.C. 552a), as amended on March 7, 1997, FR Vol. 62, No. 45. One routine use was added in 1998.

The United States created the statutory framework governing how the Federal government collects, maintains, uses and disseminates information about certain individuals which is embodied in the Privacy Act.

Increased computerization of Federal records permits information to be used and analyzed in ways that could diminish individual privacy in the absence of additional safeguards. Therefore, we are assuring that the use of new information technologies sustain, and do not erode the protections provided in the use, collection and disclosure of personal. The personal information will be handled in full compliance with fair information practices.

1. Under USIA—1, SECURITY CLASSIFICATION; CATEGORIES OF RECORDS IN THE SYSTEM, and RECORD SOURCE CATEGORIES are revised to read as follows:

SECURITY CLASSIFICATION:

Some documents may be classified confidential or secret.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence addressed to the Director of IBB, as well as the Director of USIA, and copies of responses to requests for reports, information and/or assistance of various kinds prepared by the IBB Director or designated representative.

RECORD SOURCE CATEGORIES:

Unsolicited correspondence from U.S. Government officials and members of the general public addressed to the IBB Director or the Director or the Director of USIA concerning VOA, Worldnet, and/or Cuba Broadcasting.

2. Under USIA–2, SYSTEM LOCATION and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM LOCATION:

International Broadcasting Bureau (IBB), United States Information Agency (USIA), Cohen Building, 330 Independence Avenue, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director of Administration, International Broadcasting Bureau (IBB), USIA, 330 Independence Avenue, SW, Washington, DC 20547.

3. Under USIA—SYSTEM LOCATION is revised to read:

SYSTEM LOCATION:

International Broadcasting Bureau (IBB), United States Information Agency (USIA), Cohen Building, 330 Independence Avenue, SW, Washington, DC 20547.

4. Under USIA–5, SYSTEM LOCATION, SYSTEM MANAGER(S) and ADDRESS, and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM LOCATION:

Secretariat Staff, United States Information Agency (USIA) 301 4th Street, SW, Washington, DC 20547.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff, USIA, 301 4th Street, SW, Washington DC 20547.

NOTIFICATION PROCEDURE:

Deputy Chief of Staff, USIA, 301 4th Street, SW, Washington DC 20547.

5. Under USIA–6, SECURITY CLASSIFICATION, CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM, and ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES are revised to read as follows:

SECURITY CLASSIFICATION:

Unclassified.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants, recipients, and prospective recipients of Educational and Cultural Exchange grants and Cultural Exchange grants and program participants; members of the J. William Fulbright Foreign Scholarship Board; American Executive Secretaries of Fulbright Foundations and Commissions; individuals who may be asked to participate in educational advising workshops.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary function of the Educational and Cultural Exchange Program records is the aiding in the selection of individuals for educational and cultural exchange grants and programs and for the administration of such grants, and programs.

6. Under USIA—7, SYSTEM NAME, SYSTEM LOCATION, CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM, CATEGORIES OF RECORDS IN THE SYSTEM, ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, SAFEGUARDS, SYSTEM MANAGER(S) AND ADDRESS, and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM NAME:

Office of Citizen Exchanges Cultural Program Staff—E/P.

SYSTEM LOCATION:

Office of Citizen Exchanges Cultural Program Staff, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have traveled at U.S. Government expense under USIA Private Sector grants in the performance of grant requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, position, organizational affiliation, grantee organization, grant number, date, destination, purpose of travel; biographic data, address, telephone number, education, date and place of birth and citizenship.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information relating to American Travelers in this system will be used to compile an annual report for the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee as required by Pub. L. 98–164. This file has no other use. Users of this file will be employees of the USIA Office of Arts America having a need to access the information.

Also see Prefatory Statement of General Routine Uses.

SAFEGUARDS:

Records of American travelers are maintained on a word processor located in the USIA Office of Citizen Exchanges Cultural Program Staff (E/P) and are password protected so that the file can

only be accessed by employees having a need to obtain information which is available only in the file.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Citizen Exchanges Cultural Program Staff (E/P), USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, Office of Citizen Exchange Cultural Program Staff E/P, USIA, 301 4th Street, SW, Washington, DC 20547.

7. Under USIA—8, SYSTEM MANAGER(S) AND ADDRESS is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Cultural Property Advisory Committee (E/ZC), USIA, 301 4th Street, SW, Washington, DC 20547.

8. Under USIA—10, ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES and RECORD ACCESS PROCEDURE are revised to read as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To represent the Agency in claims and other actions; to issue legal opinions or determinations on further Agency action. Also see Prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

The principal users of this information outside the Agency are the U.S. Attorney's Office and other Administrative Tribunals, the Department of Justice, Department of State, Office of Personnel Management, Foreign Service Grievance Board, and the Employee Management Relations Committee.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Chief, FOIA/Privacy Act Unit, Office of the General Counsel, USIA, 301 4th Street SW, Washington, DC 20547.

9. Under USIA—17, SYSTEM MANAGER(S) AND ADDRESS and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM MANAGERS(S) AND ADDRESS:

Chief, Mail Branch, USIA, 301 4th Street, SW, Room 146, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Mail Branch, USIA, 301 4th Street, SW, Room 146, Washington, DC 20547.

10. Under USIA—23, SYSTEM LOCATION, SYSTEMS MANAGER(S) AND ADDRESS, and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM LOCATION:

Office of Human Resources, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SYSTEMS MANAGER(S) AND ADDRESS:

Chief, Employment Branch, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Employment Branch, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

11. Under USIA—24, SYSTEM LOCATION, SYSTEM MANAGER(S) AND ADDRESS, and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM LOCATION:

Office of Human Resources, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Services Branch (M/DS), Domestic Personnel Division, Office of Human Resources, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Special Services Branch (M/DS), Domestic Personnel Division, Office of Human Resources, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

12. Under USIA—25, SYSTEM LOCATION, SYSTEM MANAGER(S) AND ADDRESS, and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM LOCATION:

Office of Human Resources, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547. Computer tape and disc records are located in M/HRCS at the same address.

SYSTEM MANAGER(S) AND ADDRESS:

For paper or automated records—Chief, System Support Team (M/HRCS), Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, System Support Team, M/HRCS, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

13. Under USIA—26, CATEGORIES OF RECORDS IN THE SYSTEM, ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, STORAGE, and RETENTION AND DISPOSAL are revised to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM

Foreign service employees' nature of assignment overseas; position held, home address, address of next-of-kin, last home address of retirees, if retired within last three years.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by USIA officials to locate a Foreign Service employee; inform next-of-kin in emergency situations.

Also see prefatory Statement of General Routine Uses.

Information is made available on a need-to-know basis to personnel of the USIA as may be required in the performance of their official duties.

Information in these records is not normally available to individuals or agencies outside the USIA but records may be released to other government agencies who have statutory or other lawful authority to maintain such information.

STORAGE:

Information maintained on 5x8 index cards in metal cabinets, and in the limited access personnel computer database.

RETENTION AND DISPOSAL:

Locator information is deleted when employee separates, except by retirement, in which case computer files maintained for three years.

14. Under USIA—27, SYSTEM LOCATION, CATEGORIES OF INDIVIDUALS IN THE SYSTEM, SYSTEM MANAGER(S) AND ADDRESS, NOTIFICATION PROCEDURE, and RECORD SOURCES CATEGORIES are revised to read as follows:

SYSTEM LOCATION:

Foreign Service Division, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

5x8 cards containing data such as name, class, specialty code, position; date OER received by M/HRF; as appropriate, letters of commendation or low-ranking and comments of the selection boards on foreign service promotions contained in letter files.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Secretary for the Selection and Commissioning Boards, Foreign Service Division, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Executive Secretary for the Selection and Commissioning Boards, Foreign Service Division, USIA, 301 4th Street, SW, Washington, DC 20547.

RECORD SOURCES CATEGORIES:

Reports of Selection Boards on the review of pertinent promotion documentation such as officer evaluations; notification of personnel action; foreign service professional experience profiles; notification to officers of low ranking; materials submitted by officers on their own behalf. All current records sources are included and are correctly stated.

15. Under USIA—30, SYSTEM MANAGER(S) AND ADDRESS and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Director, M/HR, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Director, M/HR, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

16. Under USIA—31, revise SECURITY CLASSIFICATION to read as follows:

SECURITY CLASSIFICATION:

Sensitive—Unclassified.

17. Under USIA—32, SYSTEM LOCATION, SYSTEM MANAGER(S) AND ADDRESS, and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM LOCATION:

Office of Human Resources, Civil Service Division, Operations Team, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources, Civil Service Division, Operations Team, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Office of Human Resources, Civil Service Division, Operations Team, United States Information Agency (USIA), 301 4th Street, SW, Washington, DC 20547.

18. Under USIA—33, SYSTEM MANAGER(S) AND ADDRESS and NOTIFICATION PROCEDURE are revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Senior Benefits Officer, Labor Policy and Benefits Division (M/HRL), Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

NOTIFICATION PROCEDURE:

Chief, Labor Policy and Benefits Division, Office of Human Resources, USIA, 301 4th Street, SW, Washington, DC 20547.

19. Under USIA—35, STORAGE, and SAFEGUARDS number 2. Physical safeguards are revised to read as follows:

STORAGE:

Information included on Standard Form 129 is entered in an automated procurement information software system. The SF–129 hard copies are destroyed.

SAFEGUARDS:

2. Physical safeguards: Records are now automated in the procurement information software system.

20. Under USIA–36, SAFEGUARDS, paragraph 2. Physical safeguards is revised to read as follows:

SAFEGUARDS:

2. Physical safeguards: Files are maintained in a locked file cabinet. During non-duty hours the room is locked.

21. Under USIA–38, SYSTEM LOCATION (delete second SYSTEM LOCATION entirely), SECURITY CLASSIFICATION, CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM, ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, SAFEGUARDS number 2. Physical safeguards and number 3. Procedures (or technical) safeguards are all revised to read as follows:

SYSTEM LOCATION:

Office of Security, United States Information Agency (USIA), 301 4th street, SW, Washington, DC 20574. Retired records stored at Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

SECURITY CLASSIFICATION:

Most records are unclassified, but include records classified confidential and secret.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons currently or formerly employed by USIA, within the last five years, in the United States; all Americans currently or formerly employed by USIA in other countries; some but not all foreign nationals currently or formerly used under contract, both in the United States and in other countries; some but not all persons currently or formerly used under contract, both in the United States and in other countries; some persons whose services are or were otherwise utilized by USIA, whether compensated or not; some former applicants who were not employed; some prospective spouses of USIA employees; some other persons who were significantly identified with persons whose services were at one time utilized or considered in one or more of the capacities described herein; some persons who were significantly involved in non-security related administrative inquiries conducted by M/S; some persons of counterintelligence interest whose names appeared in the press, or are contained in documents furnished by other agencies of the U.S. government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

ADD TO THE END OF THIS SECTION:

Data may be disclosed to the appropriate Office of Human Resources/Personnel employees for making employment suitability determinations.

SAFEGUARDS:

2. Physical safeguards: Files are maintained in a secure room which during duty hours is staffed by Records Unit personnel. Room is locked and alarmed during non-duty hours. Files in possession of other authorized users are kept in approved safe or locked cabinets when not in use and during non-duty hours. Entire building is secured during non-duty hours, and security guards patrol.

3. Procedural (or technical) safeguards: Records Management Unit personnel furnish files to other authorized users in exchange for properly executed "Chargeout Record" form. Records Management Unit is provided properly executed "Recharge" form if file is passed from one authorized user to another. All personnel having routine access to records have appropriate security clearances, and "need-to-know."

22. Under USIA—39, CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM, PURPOSE(S), STORAGE, SAFEGUARDS 2. Physical safeguards, RETENTION AND DISPOSAL are revised to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of USIA, some contractors, members of advisory committees, student interns, and persons on detail from other Government agencies.

PURPOSES:

Provide positive identification of employees, contractors and others for entry into and movement within USIA premises.

Provide photographs for use by the Office of Public Liaison and other USIA elements having official need for visual identification records.

Provide photographs to employees for other official uses. Provide automated records of access to select areas/facilities within USIA building.

STORAGE:

All records are stored in electronic form on magnetic tape.

SAFEGUARDS:

2. Physical safeguards: Records database and photographs are stored in a locked room with limited access during duty hours. During non-duty hours, the room is locked and alarmed.

RETENTION AND DISPOSAL:

Records remain in system as long as person to whom they pertain is employed by or affiliated with USIA. Records of all former employees and persons with past affiliations are retained in their electronic format for five years. All destruction is accomplished under appropriate security controls.

23. Under USIA—40, SYSTEM NAME, CATEGORIES OF RECORDS IN THE SYSTEM, STORAGE, SAFEGUARDS, RETENTION AND DISPOSAL, and SYSTEM MANAGER(S) AND ADDRESS are revised to read as follows:

SYSTEM NAME:

Locator Online System—M/TN.

CATEGORIES OF RECORDS IN THE SYSTEM:

Locator file prepared for each domestic employee, containing the name, social security number, office location, telephone number, home address and telephone number of person to contact in case of emergency.

STORAGE:

Material maintained in computer file.

SAFEGUARDS:

Files maintained by Telephone Office with safeguards.

RETENTION AND DISPOSAL:

Files retained for one year after departure of employee and disposed by deleting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Communications Branch, USIA, 301 4th Street, SW, Washington, DC 20547.

Dated: June 7, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–15000 Filed 6–14–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information necessary to determine entitlement to compensation and pension benefits for a child between the ages of 18 and 23 attending school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0049" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Request for Approval of School Attendance, VA Form 21–674 and 21–674c.

OMB Control Number: 2900–0049.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected is used to determine entitlement to compensation and pension benefits for a child between the ages of 18 and 23 attending school.

Affected Public: Individuals or households.

Estimated Annual Burden: 34,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 138,000.

Dated: December 2, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–15095 Filed 6–14–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0458]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine continued entitlement to benefits for a veteran's child between the ages of 18 and 23 who is attending school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0458" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of School Attendance or Termination, VA Form 21–8960.

OMB Control Number: 2900–0458.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather the necessary information to determine continued entitlement to benefits for a veteran's child between the ages of 18 and 23 who is attending school. If the information were not collected, VA would be unable to verify continued entitlement to benefits in a timely manner.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,667 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 70,000.

Dated: January 15, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–15096 Filed 6–14–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 114
Tuesday, June 15, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

Correction

In notice document 99–13767 beginning on page 29512, in the issue of Tuesday, June 1, 1999, make the following corrections:

1. On page 29512, in the second column, in the **SUPPLEMENTARY INFORMATION:** section, in the third paragraph, in the 11th line, "the percentage" should read "a percentage".

2. On the same page, in the second table, in the first column heading, "business of farm" should read "business or farm".

3. On page 29513, in the first column, in the table, in the third column of the table, in the 14th line from the bottom, in the entry corresponding to the line beginning "52", "32,000" should read "32,200".

4. On the same page, in the second column, in the second table of that column, in the first column heading of the table, "If the age of the students is" should read "If the age of the student is". This heading correction is necessary a second time, as this table and its headings continue into the third column of this page.

5. On page 29514, in the second table, in the second column of the table, in the third line from the bottom, "40$" should read "40%".

6. On the same page, in the first column, in paragraph 5, in the fourth line, "or" should read "of", and in the ninth line, "difference" should read "differences".

[FR Doc. C9–13767 Filed 6–14–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-1184-001]

Minnesota Agri-Power, L.L.C.; Filing

Correction

In notice document 99–14567 beginning on page 30970 in the issue of Wednesday, June 9, 1999, the docket number is corrected to read as set forth above.

[FR Doc. C9–14567 Filed 6–14–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf: Operations, Rescission of Certain Letters and Notices to Lessees and Operators (LTLs and NTLs)

Correction

In notice document 99–11843, beginning on page 25364, in the issue of Tuesday, May 11, 1999, make the following correction:

On page 25365, in the second column, in the fourth line from the bottom, "99-604)" should read "99-G04)".

[FR Doc. C9–11843 Filed 6-14-99; 8:45 am]
BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

Correction

In rule document 98–30448 beginning on page 63408 in the issue of Friday, November 13, 1998, make the following correction(s):

Appendix B to Part 4044 [Corrected]

On page 63409, in appendix B to part 4044, in "Table 1.–Annuity Valuations", value "≤25" should read ">25".

[FR Doc. C8–30448 Filed 6–14–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD17-99-002]

RIN 2115-AF81

Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK

Correction

In rule document 99–13935, beginning on page 29554, in the issue of Wednesday, June 2, 1999, make the following correction(s):

1. On page 29554, in the second column, under the heading **SUMMARY:**, in the third line, "know" should read "knot".

2. On page 29555, in the third column, the second full paragraph, in the sixth line from the bottom, "of" should read "to".

§ 162.240 [Corrected]

3. On page 29558, in the first column, in § 162.240(b), in the third line, after the word "Narrows" add the phrase "bounded to the north by Tongass Narrows Buoy 9 and to the south by Tongass Narrows".

[FR Doc. C9–13935 Filed 6–14–99; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[AD–FRL–6149–7]

RIN 2060–AE55

National Volatile Organic Compound Emission Standards for Architectural Coatings

Correction

In the issue of Wednesday, October 14, 1998, on page 55175, in the third column, in the correction of rule document 98–22659, make the following correction(s):

PART 59–[CORRECTED]

The following entries in Table 1 to Subpart D are corrected to read as set forth below:

TABLE 1 TO SUBPART D.—VOLATILE ORGANIC COMPOUND (VOC), CONTENT LIMITS FOR ARCHITECTURAL COATINGS

[Unless otherwise specified, limits are expressed in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases.]

Coating category	Grams VOC per liter	Pounds VOC per gallon [a]
* * * * * * *		
Stains:		
Clear and semitransparent	550	4.6
Opaque	350	2.9
Low solids	[b] 120	[b] 1.0
* * * * * * *		
Wood preservatives:		
* * * * * * *		
Low solids	[b] 120	[b] 1.0
* * * * * * *		

[a] English units are provided for information only. Compliance will be determined based on the VOC content limit, as expressed in metric units.
[b] Units are grams of VOC per liter (pounds of VOC per gallon) of coating, including water and exempt compounds, thinned to the maximum thinning recommended by the manufacturer.

[FR Doc. C8–22659 Filed 6–14–99; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday
June 15, 1999

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800 and 2880

Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800 and 2880

[WO-350-2800-24 1A]

RIN 1004-AC74

Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) of the United States Department of the Interior proposes to: amend its right-of-way regulations to revise rent and cost recovery procedures and policies; adjust cost recovery fees to reflect cost increases since the current regulations became effective in July 1987; eliminate automatic exemptions from cost recovery for federal agencies, except for those agencies and projects exempted by law; use a short-term right-of-way instead of a temporary use permit for rights-of-way issued under the Federal Land Policy and Management Act of 1976; clarify how BLM will apply rent schedules for communication site rights-of-way; broaden the conditions for which BLM will require advance payment of rent; rephrase the language of the regulations into plain language; and reorganize the regulations to reflect the sequence in which BLM takes action on applications.

DATES: Send your comments to reach BLM on or before October 13, 1999. BLM will not necessarily consider any comments received after the above date during its decision process on the proposed rule. Because of the length of the comment period, BLM does not intend to extend it.

ADDRESSES: You may mail comments to: Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C St., N.W., Washington, D.C. 20240. You may also hand-deliver comments to: BLM, 1620 L St., N.W., Room 401, Washington, D.C. Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing."

FOR FURTHER INFORMATION CONTACT: Ron Montagna, (202) 452–7782, ron_montagna@blm.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures and Information
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at BLM's Internet home page at www.blm.gov. You may also comment via the Internet to: WOComment@blm.gov. If you submit your comments electronically, please submit them as an ASCII file to minimize computer problems and include "Attention: AC74" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Written Comments

Confine written comments on the proposed rule to issues pertinent to the proposed rule and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph of the proposal which you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which it receives after the comment period closes (see **DATES**), or comments delivered to an address other than those listed above (see **ADDRESSES**).

Written comments, including the names, street addresses, and other contact information about respondents, will be available for public review at the above address during regular business hours (7:45 am to 4:15 pm), Monday through Friday, except holidays. Comments made by Internet will be available for inspection at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will consider each request on a case-by-case basis. Such requests will be granted to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

BLM is interested in all comments that you may have on the issues. We are especially interested, however, in comments and rationale in the following areas:

- Whether or not BLM should continue to issue temporary use permits for rights-of-way issued under the Federal Land Policy and Management Act;
- Whether or not there should be a separate cost recovery decision for monitoring costs or whether each application category decision should continue to determine both the processing and the monitoring category fees. If you believe that there should be separate application and monitoring categories, please provide definitions for the monitoring categories and identify methods that BLM can use to relate a fee to a specific category;
- Whether BLM should charge for processing right-of-way grant renewals, and, if so, on what should the costs be based;
- Whether or not federal agencies should continue to be exempt from cost recovery and rent payments;
- When and under what conditions BLM should require the advance payment of rent;
- Whether BLM should establish a new "Minimal Impact" cost recovery category for non-Mineral Leasing Act actions that require less than 8 hours to process; and
- Whether BLM should impose fees for late payment of rent.

Interagency Coordination

The United States Department of Agriculture, Forest Service, is currently preparing regulations to recover its costs for processing and administering special use authorizations on National Forest System lands. In doing so, the Forest Service intends to adopt, to the extent possible, the processes, procedures, and schedules identified in this proposed rule. The Forest Service will evaluate the comments received in response to this proposed rule and will consider those comments in developing proposed regulations applicable to special use applications and authorizations on National Forest System lands. The Forest Service intends to publish its proposed cost recovery regulations for review and comment as soon after the close of the comment period on these proposed rules as possible.

II. Background

General Authorities and Policies

Section 501 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761, authorizes the BLM to issue and renew rights-of-way under, over, and through lands under its jurisdiction. These rights-of-way may contain facilities for impounding, storing and transporting water; for transporting and distributing liquids and gases other than oil and gas; for distributing and transporting solid materials, other than oil and gas and products refined from them; for generating, transmitting, and distributing electricity; for transmitting and receiving electronic signals, such as radio, television and telegraph; and for transportation corridors, such as railroads, roads, tramways, and livestock driveways.

Section 28 of the Mineral Leasing Act, as amended (MLA), 30 U.S.C. 185, authorizes the Secretary of the Interior to grant to qualified applicants rights-of-way through Federal lands for transporting oil, gas, synthetic liquid or gaseous fuels, or other refined products. The MLA also allows for temporary use permits to supplement each pipeline right-of-way for the purposes of constructing, operating, maintaining and terminating the pipeline and to protect the natural environment and public safety.

BLM has designed its right-of-way program to coordinate the actions of individuals, governments, and businesses in using public lands for right-of-way purposes; promote the sharing of rights-of-way; protect the quality of natural resources; prevent unnecessary environmental damage to lands and resources; and protect the right-of-way holder's investments in improvements on the right-of-way.

Statistics About Rights-of-Way

As of September 30, 1998, there were 87,511 active right-of-way grants under BLM administration. Most of the grants are located in the western states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Wyoming, North and South Dakota and Oklahoma. New Mexico had the largest number of grants, and Wyoming had the next largest. There were 63 grants located east of the Mississippi River. Of the right-of-way grants, approximately 28 percent are for roads and highways, 28 percent represent oil and gas related systems, 4 percent represent grants for communication sites, 13 percent represent grants for electrical generation and transmission lines, and 27 percent are for other uses, such as telephone, telegraph, and other miscellaneous systems.

III. Discussion of the Proposed Rule

Unless specifically stated in the discussion below, BLM does not intend to make policy changes by rewording and streamlining the regulatory text. If you believe that rewording the regulatory text has resulted in BLM's eliminating or changing important concepts or policies, please describe in your comments these modifications or omissions and the reasons that you believe the regulations should retain the concept from the existing regulations.

General Discussion

The discussions below affect more than one section of the proposed regulations and contain proposed policy changes and the rationale for them.

Cost Recovery Provisions

(Proposed sections 2803.14, 2804.16, 2883.11, and 2884.13, and subparts 2807 and 2887)

It may be helpful to read the preamble to the July 25, 1986, proposed rules, published at 51 FR 26836, and to the July 8, 1987, final rules at 52 FR 25802, to get more background information on current cost recovery policies.

BLM proposes the following specific changes to the cost recovery provisions:

- Reduce the number of fee categories used for recovering the cost of processing applications from five to four (for rights-of-way issued under FLPMA) and from six to four (for rights-of-way issued under the MLA);
- Clarify the definition of the term "category I, II, etc.," to include processing steps and work hours;
- Provide a "master agreement" category for multiple applications submitted by a single applicant in a specific geographical area;
- Adjust the fees for both processing an application and for monitoring any ensuing grant to reflect the reasonable (FLPMA) or actual (MLA) costs and the effects of inflation;
- Use proposed fees to determine the cost reimbursement fees for assignments and renewals; and
- Broaden the conditions under which BLM will require advance payment of rents.

We expect that these proposed changes will shorten application processing time, reduce costs, and result in a more equitable distribution of business costs between the benefitting entity and the general public.

Background for changes. Section 504(g) of FLPMA authorizes BLM to recover the "reasonable" costs of processing and monitoring rights-of-way issued under Title V, 43 U.S.C. 1761. Section 28(f) of the MLA, 30 U.S.C. 185(l), requires applicants for pipeline rights-of-way issued under the MLA to reimburse the United States for the administrative and other costs involved in processing applications and for the United States' costs of monitoring activities under those grants. The administrative and other costs associated with MLA grants are collectively referred to as "actual costs."

Section 304(b) of FLPMA allows the Secretary of the Interior to establish "reasonable costs" for processing applications and other documents relating to public lands. Several factors that the Secretary may consider in establishing reasonable costs include the costs of special studies; preparing and distributing environmental documents, such as environmental assessments and environmental impact statements; monitoring the construction, operation, maintenance, and termination of facilities; and other special activities.

BLM first issued cost recovery regulations for linear and areal rights-of-way in 1979. The regulations for FLPMA rights-of-way were successfully challenged in federal court in *Nevada Power Co.* v. *Watt*, 711 F.2d 913 (10th Cir. 1983), on the basis that the regulations did not sufficiently consider each of the "reasonability criteria" in section 304(b) of FLPMA, 43 U.S.C. 1734(b). BLM then developed definitions for these criteria, which were published in July 1987.

Based on field studies conducted in 1982 and 1983, which measured the costs of processing right-of-way applications and monitoring grants, BLM developed a number of "cost categories" and the corresponding average costs of processing applications that fall into one or another of these categories. BLM broke the cost information into various elements, e.g., filing, status review, field examination, environmental considerations, and document preparation. For FLPMA rights-of-way, BLM related these costs to the statutory reasonability criteria and made decisions to: (1) retain the cost if it was reasonable, (2) eliminate the cost if it did not meet the reasonability requirements, or (3) adjust the cost downward, if it contained both public and private benefits under the reasonability requirements. From this analysis, BLM proposed four cost categories with fixed cost recovery fee amounts and a fifth category, as described in the next paragraph, requiring the full reasonable costs as determined by BLM.

In cases where a fixed fee amount would not be appropriate, such as complex projects, BLM established a final category for the reasonable costs of processing individual cases and of monitoring activities under the grant. In these cases, each applicant had the options of: (1) completely analyzing the estimated actual costs relative to the reasonability criteria, (2) waiving the full analysis and completing a less demanding analysis that could limit the costs recovered to 1 percent of construction costs, or (3) waiving these analyses and agreeing to pay the full reasonable costs involved, as jointly determined by BLM and the applicant.

For MLA rights-of-way, BLM also used the 1982 through 1983 field studies to establish five fixed fee amount categories, each based on its relevant average actual cost. A final sixth category requiring periodic payment of actual costs was also included for these rights-of-way.

At the time of the study BLM did not have sufficient cost data on monitoring grants to determine the exact monitoring costs. To provide some recovery of costs, BLM estimated the necessary monitoring cost for each fixed fee category for both FLPMA and MLA rights-of-way.

FLPMA applicants could request that BLM review their specific circumstances and consider a waiver or reduction in the amount of the processing or monitoring fees or both. Current regulations exclude from the cost recovery provisions certain applicants, such as federal agencies, "non-utility type" state and local governments, and applicants for "cost-share" roads and reciprocal right-of-way agreements.

BLM conducted an extensive field study of processing and monitoring costs in 1986. The study generally verified the processing costs developed from the earlier study. The study also demonstrated that the costs related to monitoring could be further refined. Current regulations do not specify any method for increasing costs for inflation or similar factors except for proposing a change in regulations. As the cost of living has increased steadily for the last 40 years (the last yearly drop in the Consumer Price Index occurred in 1955), a mechanism for adjusting processing and monitoring fees is desirable. BLM has looked at various indices, e.g., the Consumer Price Index (CPI), the CPI–U (urban), and the Implicit Price Deflator-Gross Domestic Product (IPD–GDP), that could be used to update fee schedules periodically.

In 1995 the Inspector General (IG) for the Department of the Interior audited BLM's cost recovery efforts on rights-of-way. The IG found BLM's financial system was not adequate to give a good estimate of the costs of the right-of-way program. The IG found that BLM's processing fees were too low. The IG estimated costs from two approaches: (1) examining randomly selected case files and estimating the time required to perform the work involved and (2) polling BLM personnel as to the amount of time spent on right-of-way casework. In both cases the IG compared these estimates to the actual amount of cost recovery money collected for the specific cases in (1) and (2). Based on 75 sample cases and an estimated 3,000 cases per year, the IG estimated that BLM was losing $640,000 per year in processing costs. (The 3,000-case figure includes cases which, under current regulations, are excluded from cost recovery.) The IG recommended that BLM revise the regulations to recover all applicable costs.

BLM has adopted the IG's recommendations by proposing to: (1) increase the processing and monitoring costs for right-of-way applications, (2) provide for cost adjustments to accommodate increases in the economic indicator reflecting the general cost of labor, and (3) eliminate fixed dollar amounts from the regulations to allow for periodic cost adjustments.

The following paragraphs describe the proposed changes to the cost recovery provisions of the existing right-of-way regulations. Changes would decrease the number of cost recovery categories for both FLPMA and MLA applications and for monitoring categories, revise the definitions of the categories, eliminate the automatic exemption from paying processing costs for Federal agencies, and increase category fees.

Cost recovery categories. Experience suggests a need for one less fixed fee amount category for FLPMA applications processed under proposed section 2804.20 and two less categories for MLA applications processed under proposed section 2884.18. BLM rarely uses existing Category IV for FLPMA applications or existing Categories IV and V for MLA applications. These categories involved applications which historically require multiple field examinations that are normally associated with collecting original data to complete environmental analysis or to verify the existence or absence of a threatened or endangered plant or animal species. In these cases, the work involved in processing the applications generally meets the criteria for Category V for FLPMA applications and Category VI for MLA applications, both of which address complex projects.

The proposed regulations at sections 2804.14 and 2884.12 would remove the existing Category IV for FLPMA applications and Categories IV and V for MLA applications. BLM would establish a new Category IV for use with both types of applications. The new Category IV would require the applicant to pay the full reasonable or actual cost to BLM of processing right-of-way applications that require multiple field examinations and collecting or verifying original data.

The proposed regulations at sections 2804.17 and 2884.13 establish a "master agreement" category for both FLPMA and MLA right-of-way applications. A master agreement is an agreement between BLM and you that, among other things, specifies you will reimburse BLM for the full reasonable costs of processing your application(s), if you are seeking a FLPMA grant, or the full actual costs of processing your application(s), if you are seeking an MLA grant. Paragraph (b) of proposed section 2804.17 lists the areas of negotiation. The master agreement application category is especially useful for MLA right-of-way applications. Most MLA right-of-way applications filed with BLM involve activities within a limited area, an oil and gas field of relatively compact size. For example in New Mexico, an oil and gas field about 50 miles by 50 miles was developed on or crossing BLM-administered lands. In a 20-month period, developers filed some 205 right-of-way applications, each requiring individual category decisions and the collection of separate fees. One developer filed about half of the applications; another filed about 15 percent. A coordinated agreement for processing multiple applications for rights-of-way located in a limited area would have resulted in a more timely and complete response for both BLM and the companies involved.

The proposed regulations specify what master agreements should include, what BLM expects of applicants, and what applicants may expect of BLM.

The Forest Service proposes a fee category called "Minimal Impact." The Forest Service considers this fee category to include minor recreation activities in an area already approved or designated in a forest plan for that use. Examples of "minor recreation activities" would be a one-time permit for a wedding, a marathon, a bike race, and a company picnic for more than 75 people. The Forest Service proposes a flat fee of $75 for processing an application in the Minimal Impact Category and no monitoring fee, since the authorization covers a one-time event.

These activities do not qualify for grants issued under Title V of FLPMA, and BLM does not propose to add a Minimal Impact Category to our revised category list. If we did adopt a Minimal Impact Category, we would charge the same fee as the Forest Service proposes. We invite your comments on whether to include this category for short-term activities authorized by temporary use permits issued under the MLA or short-term grants issued under FLPMA.

Revised category definitions. Applicants for grants have requested that BLM revise the existing category definitions. Applicants have stated that the definitions of the categories do not clearly state which costs to exclude or include. The proposed category definitions attempt to better define the categories by stating what factors BLM must consider in determining the application category. These factors include (1) whether or not original data are needed, (2) whether or not BLM must amend an existing land-use plan, (3) how many, if any, field examinations are needed, and (4) the estimated number of work hours needed to complete processing the application.

The current fee category for processing an application also establishes the fee category for monitoring the subsequent grant. Once BLM issues the grant, however, the situation may change from that existing when the application was processed and require reevaluation of monitoring costs. For example, the presence of an endangered species or of an archaeological site may require numerous field observations by BLM or the grant holder, especially during construction. Thus, monitoring costs may increase.

Current fee schedules of processing and monitoring costs are estimated average costs across BLM. The studies performed in 1986 tracked monitoring costs according to the category decisions for processing. While normal statistical analysis would eliminate unusually high or low values, the remainder, as an average, should account for most of the variables between easy-to-hard processing and easy-to-hard monitoring.

If BLM establishes monitoring fees separate from application processing fees, we propose to establish the monitoring categories based on the number of work hours involved, including the number of field examinations needed to monitor the grant. These hour estimates would be determined separately from the hour estimates for the processing fee categories. For instance, Monitoring Category I would consist of those grants that require less than 24 hours of work, including field examinations; Monitoring Category II would consist of those grants requiring between 24 and 36 hours of work, including field examinations; and Monitoring Category III would consist of those grants requiring between 37 and 50 hours of work, including field examinations. If you believe that this is an inappropriate criterion upon which to base monitoring categories, please suggest alternative criteria.

Background for category fee amounts. Current regulations at subpart 2808 of this title set fees for processing and monitoring costs as follows:

Category	Processing fee	Monitoring fee
I	$125	$50
II	300	75
III	550	100
IV	925	200
V	Full reasonable costs as required.	

Based on the field study of some 1600 cases, BLM should have adjusted these fees in 1987, because of inflation and underestimating costs, to:

Category	Processing fee	Monitoring fee
I	$175	$65
II	300	100
III	575	175
IV	820	200

Current MLA regulations at subpart 2883 set application processing and monitoring fees as follows:

Category	Processing fee	Monitoring fee
I	$125	$25
II	275	50
III	350	75
IV	600	150
V	1,000	250

Based on the field study of more than 600 cases, BLM should have adjusted the MLA fees in 1987 to:

Category	Processing fee	Monitoring fee
I	$150	$ 50
II	225	75
III	575	250
IV	750	350
V	Full actual costs.	

Proposed fee amounts. Since the 1986 study, the cost of doing business has continued to rise. The Consumer Price Index, used to adjust the communication site rent schedule, and the Implicit Price Deflator Index, used to adjust other schedules, have risen about 35 and 30 percent respectively. BLM calculated the proposed fee schedule for FLPMA applications and grants by adjusting the detailed study figures upward by 30 percent and rounded up to the nearest $10. This is the proposed fee schedule for processing and monitoring FLPMA right-of-way applications and grants:

Category	Processing fee	Monitoring fee
I	$230	$ 80
II	390	130
III	750	230
IV	Full reasonable costs as required.	
Master agreement	As negotiated.	

BLM calculated the proposed fee schedule for MLA applications and grants in the same manner. The proposed fee schedule for these applications and grants is as follows:

Category	Processing fee	Monitoring fee
I	$200	$70
II	290	100
III	750	330
IV	Full actual costs.	
Master agreement	As negotiated.	

BLM sampled a number of cases in 1995. The sampling tended to agree with the adjusted 1986 study figures. Five Category I cases ranged from $125 to $510 to process, an average of about $200. Fifteen cases in Category II ranged from $82 to $700 to process, with an average of about $390. Only one Category III case was sampled, and its processing cost was $600. Performing another extensive field cost study, such as was done in 1986, would not produce sufficient new data to justify its costs. Adding a "master agreement" category may remove about half the cases which currently fall into Categories I through III.

Annual fee adjustments. The regulations also propose adjusting the fee schedule for the following calendar year based on the previous year's change in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP). BLM will round up changes to the nearest dollar. Review of other economic indices, such as the Consumer Price Index, discloses that these do not reflect a sufficiently high labor intensiveness to be used to adjust the cost recovery fee structure. We believe, however, that the IPD–GDP more closely reflects the relationship of labor to other costs and can be used as an adjustment factor. BLM proposes to use this index,

measured second quarter to second quarter, to adjust the fixed cost recovery fees annually. Under the proposed regulations, each year BLM would revise the fees, make copies of the revised fee schedule available in BLM offices before the beginning of the next calendar year, and post the fee schedule on the BLM Home Page on the Internet, http://www.blm.gov.

Rents for communication site rights-of-way would continue to use the Consumer Price Index because the rents are based on the population served. The CPI reflects changes in the urban economy more accurately than the IPD–GPD does.

If BLM adopts the increased cost recovery fee schedule as proposed, adjusted for the inflation rate, the fee schedule will be published in the **Federal Register** as part of the preamble to the final rule. The preamble would make clear that the fees would rise each year based on changes in the IPD–GDP.

If you believe that the proposed cost recovery fee increases are unreasonable, or not in the public interest, please provide your rationale and any suggestions you may have for alternative methods of charging reasonable processing and monitoring fees for FLPMA and MLA right-of-way applications.

Assignments and renewals. (Proposed subpart 2807). BLM proposes to use the category fee schedules as the basis for establishing and recovering the costs of processing assignments and renewals. Currently, the fee for assignments is $50, and there is no fee for renewals. BLM proposes to determine the appropriate category based on the estimated time to process each request. For example, if the estimated time to process an assignment for a FLPMA right-of-way is no more than 24 work hours, the cost recovery fee would be the fee for a Category I application. BLM specifically requests your comments on whether to use the proposed cost recovery categories for assignments and renewals. If you oppose the change, please suggest an alternative method of recovering costs for processing assignments and renewals.

Cost Exemptions and Reductions

Background. Two final rulemakings, one on January 10, 1985, and the other on September 5, 1986, established BLM's current policies with respect to cost recovery for MLA grants. These policies are based on the 1973 amendments to the MLA, which require applicants for MLA rights-of-way or temporary use permits to reimburse the United States for all administrative and other costs involved in processing applications and in monitoring, operating, maintaining, and terminating the MLA grants. Therefore, cost exemptions and reductions are not available for MLA rights-of-way, except for those state and local governments that are exempt from cost recovery under the current regulations at 43 CFR 2883.1–1(a)(2).

The final rule of July 8, 1987, described BLM's policies associated with determining the processing and monitoring costs for FLPMA right-of-way grants. The rule defined the terms "actual costs," which are the resources expended in processing a right-of-way application and monitoring the construction, operation, maintenance, and termination of the project and its facilities. Actual costs, less management overhead, form the amount to which BLM applies the "reasonability factors" listed in section 304(b) of FLPMA. For all but complex projects (Category V), the reasonability factors have little or no effect on actual costs. The rulemaking also defined the reasonability factors: "monetary value of the rights or privileges sought," "public benefits," "efficiency to government processing," and "other factors." The "other factors" definition provides the means for BLM State Directors to reduce actual processing costs based on a wide range of special circumstances, including unique instances of public benefits or services. These reductions generally fall under the broad category of "hardship," that is, paying full reasonable costs would create an undue hardship on the applicant.

The rule also established, as a method of computing reasonable costs, an alternative which represented one percent of construction costs. This alternative was based on the practice of the state of New York, which charged corporations a maximum fee of one-half of one percent of their actual construction costs to process their right-of-way applications for non-residential projects and a maximum of 2 percent of actual construction costs for residential projects. This fee included the costs of preparing environmental impact statements and other processing activities. Finally, the rule exempted federal agencies and state and local governments and their agencies and instrumentalities from paying processing and monitoring costs.

Automatic exemptions. BLM considered eliminating the exemptions for federal, state, and local governments to pay processing and monitoring costs established by the July 8, 1987, final rule. This exemption, under the current regulations, does not apply to municipalities that derive the majority of their revenues from user fees. We decided against proposing to eliminate the exemption for state and local governments for several reasons, including the fact that these entities comprise less than 10 percent of all applicants and grant holders. Because of their small numbers, eliminating the automatic exemption for them would not significantly decrease BLM's revenues from cost recovery. Municipalities that derive the majority of their revenues from user fees would continue to pay processing and monitoring costs.

Currently, many federal agencies fund the processing of FLPMA right-of-way applications affecting their lands. The amount they pay is determined through negotiations. This process does not always produce consistency across BLM organizational units. BLM proposes to achieve consistency by assigning each federal project to a category. The category designation will enable other federal agencies to determine their costs in advance and will also reduce the administrative paperwork involved in federal transactions.

Eliminating the one percent alternative. As mentioned previously, the July 1987 final rule established the payment of up to one percent of actual construction costs as an alternative method of paying the reasonable costs of processing right-of-way applications and monitoring the issued grants. The approach was viewed to have several benefits: (1) efficiency to both the applicant and BLM by avoiding complex data collection and by eliminating complex cost calculations, (2) providing an incentive to BLM to stay under the one percent cost level in processing and monitoring activities, and (3) giving a readily available dollar value for establishing a reasonable level of actual cost reimbursement. The current regulations contain this alternative at 43 CFR 2808.3–1(f).

Although this alternative seemed to have merit at the time, in practice it has been used only once, in resolving a situation in *Public Service Commission v. Watt.* BLM has not done an analyses of why applicants have not used this approach and will not speculate on the reasons. We are proposing to eliminate the one percent alternative. If you believe that we should retain this alternative, please provide the rationale for doing so in your comments.

"Other factors." Current regulations at 43 CFR 2808.5 list a number of factors which BLM State Directors may use to reduce or waive processing and monitoring costs. Although the preamble to the July 1987 rule did not specifically state so, the factors are a list

of what could be termed "hardship" situations. BLM considers that "hardship" is one of the "other factors" which section 304(b) of FLPMA allows BLM to consider in determining reasonable costs. Examples of hardship situations include: (1) the project requiring the right-of-way grant could not be built because the processing and monitoring costs would be excessive, (2) public health and safety could be compromised if the right-of-way project were not built, and (3) the public benefits of the project greatly outweigh the costs. The language at proposed section 2804.18, paragraph (b), called "Other considerations," lists possible hardship situations.

The proposed regulations at section 2804.18 attempt to clarify that the exemptions and reductions listed apply to all FLPMA processing and monitoring cost categories, not just those having the highest costs (Category IV applications). In preparing the financial plans required as part of the information for Category IV applications (see proposed sections 2804.16(a)(3) for FLPMA applications and 2884.12 for MLA applications) and in negotiating cost recovery master agreements (see proposed section 2804.17 for FLPMA applications and section 2884.13 for MLA applications), you should identify what you expect BLM to pay for and what you expect to pay for. FLPMA applicants should also identify any hardship factors that they believe apply to their project. BLM will consider these factors during negotiations over the final processing and monitoring costs.

Federal agencies may not qualify for cost reductions under the hardship factors. They may, however, qualify for reductions under the reasonability criteria as proposed at section 2804.16.

The following sections describe other proposed changes to the existing regulations that do not involve fees. The proposed changes involve a new customer service standard for processing applications, organizational matters, clarifications of policies relating to rents for both linear and communication-site rights-of-way, a description of how the proposed regulations are organized, and when you may appeal BLM decisions.

Customer Service Standards

Executive Order 12862, "Setting Customer Service Standards," requires federal agencies to provide a standard of customer service equal to the best in the business. To accomplish this, Executive agencies should identify the customers that they serve, post customer service standards and measure results against them, provide customers with choices in both sources of service and means of delivery and make information, services and complaint systems easily accessible.

The right-of-way program is committed to providing its customers with excellent, efficient service. Through a series of internal policy directives, starting in December 1995, program staff and managers have streamlined right-of-way application processing by: (1) encouraging applicants to file applications by fax and to pay by credit cards, (2) reiterating the processing times stated in Manual sections, (3) allowing applicants for MLA rights-of-way to file as part of their applications for a permit to drill, (4) reaching an understanding with State Historic Preservation Officers as to how BLM will conduct cultural surveys and the State Historic Preservation Officers will review applications and recommend provisions to preserve the cultural values of lands affected by potential rights-of-way, (5) sending customer service cards to right-of-way customers and requesting that the customers rate BLM's service in specific areas, and (6) modifying the financial system to assure that processing and monitoring fees go directly to the field office that generates the fee.

The proposed regulations at section 2804.20(c) would further assist the customer service effort by providing applicants with written notices of when they can expect BLM to process their applications if processing the application will take longer than the estimated time periods. This information should assist applicants and grant holders in planning for constructing or changing their projects.

Hazardous Materials

The proposed regulations would contain language addressing the storing, transporting, and using of hazardous materials on right-of-way grants as they relate to the following statutes: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* (CERCLA); the Resource Conservation and Recovery Act, 42 U.S.C. 6991 *et seq.* (RCRA); the Clean Water Act, 33 U.S.C. 1251 *et seq.*; the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*; and the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.* CERCLA holds responsible parties liable for the costs of cleaning up hazardous waste sites. RCRA sets minimum guidelines and standards for manufacturing and disposal of hazardous and solid wastes.

The current regulations do not address hazardous materials. Because of the importance of the safe use of rights-of-way and resource protection, BLM decided to incorporate hazardous material provisions into the proposed regulations. While most other BLM regulations do not yet specifically address hazardous materials, BLM concluded that addressing hazardous materials in the right-of-way regulations was a suitable beginning. The proposed revisions include the following:

(1) Adding to the definitions section of the regulations at section 2801.5 several terms used in the acts: "discharge," "hazardous material," and "release;" and

(2) Clarifying that there is no maximum limit for strict liability for damages or injuries resulting from the actual or threatened discharge or release of hazardous substances, as defined by CERCLA, at section 2807.12.

These definitions and conditions would apply to part 2880 by cross reference.

All the proposed changes follow the "polluter pays" principle. If the grant holder is an innocent holder, he will still be held responsible for all costs and clean up from an accident or the release of hazardous substances. BLM believes that any other policy would shift the liability from the holder onto the United States and would result in less holder accountability.

We intend to add similar program-specific language to other regulations as they are revised.

Organizational Matters

Regional offices. Utility and industry applicants have suggested that BLM could shorten processing time for right-of-way applications if we established one or more "regional right-of-way offices" solely for processing applications involving cost recovery. BLM has not adopted this approach in the proposed rule because establishing regional right-of-way offices would fracture the existing interdisciplinary approach to decisionmaking that BLM uses. Such offices would be understaffed, as from time to time a variety of specialists are needed for advice on proposed impacts or mitigation methods. Currently, BLM gets this expertise from existing BLM offices where the specialists are performing duties other than processing applications or monitoring grants.

BLM is exploring the way that we process various applications. We periodically look at ways to consolidate, simplify, and cut costs when we process all types of applications. One possible way to cut costs and maximize resources would be to have a single specialist do all field examinations of a single site for which multiple

applications exist. For instance, when an oil and gas lessee needs approval of an application for permit to drill and a right-of-way for a road to the drill pad, a single specialist could visit the site and gather the necessary data to serve the processing of both applications. BLM welcomes any comments you may have on increasing our efficiency and cutting the time for processing your applications.

Water power situations. Water power projects require a license from the Federal Energy Regulatory Commission (FERC) under the Water Power Act of 1920, as amended. If the project involves public lands, BLM must also issue a right-of-way grant. There are some exceptions for relicensing existing projects. FERC can collect costs incurred by it and other Federal agencies, including BLM, from the water power applicant or holder. This creates a potential double collection, where both FERC and BLM could collect from the applicant/holder the costs of a single project. To prevent this, BLM will only report to FERC those processing and monitoring costs that are not associated with BLM actions on the right-of-way application or grant. When a right-of-way application or grant is not involved, BLM will report all of its costs associated with a water power application or relicensing to FERC. The language at proposed section 2804.24 reflects this policy.

Rents

Non-communication site rent payments. Section 504(g) of FLPMA requires right-of-way grant holders to pay annually, and in advance, the fair market value of their grant. This amount constitutes the "rent" for the grant. Originally, FLPMA allowed BLM to bill grant holders for more than 1 year if the annual rent was less than $100. Amendments in 1986 changed the provision to give private individuals the option of paying annually or at some interval greater than 1 year if their rent payments exceed $100 per year.

A March 1995 study by the Inspector General of the Department of the Interior (IG) found that BLM had not established a cost-effective system for billing annual rents. There was no minimum collection amount, and BLM billed for all annual rents that exceeded $1 per year. About 7,700 courtesy notices for bills of $34 or less were sent to grant holders. The IG further noted that BLM annually sent over 14,000 bills to 21 grant holders. The IG recommended that BLM establish a minimum rent collection amount and revise the right-of-way regulations to provide for advance lump-sum payments covering more than 5 years when the annual rent is less than $100 per year. Even so, a substantial percentage of the bills for $34 or less represented 5 years' worth of rent.

Based on the 1986 amendment to FLPMA and the IG's recommendations, BLM proposes to modify the way that we bill right-of-way grant holders. BLM must take steps to reduce the administrative workload that field offices bear in billing grant holders annually for rents, collections of rents, and proper depositing of the rents. Proposed section 2806.10 states that BLM may bill for rents annually or for periods of more than 1 year. Private individuals whose rent payments exceed $100 per year may elect to make annual payments rather than lump sum payments. Current policy requires advance rent payments in 5-year intervals if the rent amount is less than $100. The proposed rule would change this policy to allow BLM greater flexibility to address specific situations. We invite suggestions and comments on how long the advance payment period should be and what amount the annual rent payment should be to trigger the advance or lump sum payment.

This proposed rule does not address either minimum rent amounts or another IG recommendation, that of increasing the rent amounts on the current linear rent schedule. A joint BLM-Forest Service team is analyzing these recommendations and other concerns related to linear rights-of-way.

We request your comments, however, on whether BLM should charge fees for the late payment of rents. We are considering adding language to the regulations which would allow us to collect fees for the late payment of rents because (1) charging a fee for the late payment of money owed is a normal business practice in the private sector, with other federal agencies, and with other programs within BLM; (2) BLM is incurring significant administrative charges for attempting to collect late rent payments, without being able to recoup any of the administrative costs; and (3) imposing a late charge may encourage grant holders to make rent payments when they are due and avoid possible termination of their grants. When BLM terminates a grant, we may be able to recover rent payments owed under the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, but cannot recover the administrative costs associated with our prior collection efforts.

You can find regulatory provisions which allow for BLM's collecting late payment charges at 43 CFR 2920.8(a)(3) and 43 CFR 4130.8–1(f). You may review these provisions to assist you in making comments or suggestions on whether BLM should charge a fee for late payment of right-of-way rents.

If BLM decides to impose a late payment charge for delinquent rents, we propose to base the charge on the method described at 43 CFR 4130.8–1(f). If we decide to use a different methodology, we will describe the proposed method in a separate proposed rule.

Communication site rents. BLM proposes to amend the provisions for communication site rents as follows:

- Adding or revising various definitions related to rents applicable to rights-of-way for communication sites;
- Clarifying procedures promulgated in a final rule published in November 1995 as to how BLM will apply the communication site rent schedule in various circumstances; and
- Adding a provision that explains how BLM determines the "population served." We specifically invite your comments on whether or not all rules concerning communication site management should be segregated into a separate section of the right-of-way regulations. If our analysis of the comments received on this proposed rule indicates that a separate section for communication site management is appropriate, BLM will adopt it in the final rule without any change in the policies reflected in this proposed rule.

Background for changes to communication site right-of-way rents. On November 13, 1995, BLM published regulations establishing a rental schedule for communication uses in the **Federal Register**. The schedule was the result of recommendations from the Radio and Television Use Fee Advisory Committee and the General Accounting Office. BLM intended the schedule to: (1) establish a fair and consistent approach for determining rental payments, based upon using facilities at various communication sites, (2) encourage tenants in a communication facility to consolidate their separate authorizations into a single authorization, and (3) reduce the number of disputes concerning rental values. These changes reduced the costs of obtaining appraisals and billing costs and minimized BLM involvement in managing the use and occupancy of facilities.

The rent schedule bases rent on nine categories of communication uses on BLM-managed lands and groups these uses into three major categories: broadcast, non-broadcast and other. The "broadcast" category includes television, FM radio, rebroadcast devices, and cable television. The "non-

broadcast" category includes commercial mobile radio service, cellular telephone, private mobile communications, common carrier, and microwave communications. The "other" category includes small, unobtrusive, low-power uses serving small numbers of customers. Rents correlate with the population of the community where the facility is located or that it serves, or both. BLM uses the *Rand McNally Commercial Atlas and Marketing Guide* to determine the population size of communities of 50,000 or more. For communities of less than 50,000 people, BLM uses the category of use and the most recent Census Bureau census.

Before BLM established a schedule for communication site right-of-way rentals, all such rents were determined through appraisal. All uses within a facility generally required a separate right-of-way authorization, and BLM appraised each use separately. Appraisals were expensive and needed frequent updating to reflect changes in fair market value. BLM administers approximately 3,200 rights-of-way for communication sites, half of which pay no rent because they are exempt under statutory and regulatory provisions. By implementing the rent schedule, BLM no longer bills rent on an individual user basis. BLM now requires only the facility owner to have an authorization for multiple use occupancy and bases the rent on the highest value use in the facility, plus 25 percent of the scheduled rent for each of the other uses in, or associated with, the facility for which rent is to be paid. The rent schedule identifies nine categories of use and nine population strata. Uses serving larger populations generally have higher associated rent values; as compared with those same uses serving smaller populations.

BLM's rent schedule for rights-of-way devoted to communication uses became effective on December 13, 1995. BLM decided not to implement the new schedule until January 1, 1997, so that we could properly train field personnel to apply it and could resolve any outstanding policy issues. The Forest Service adopted a similar schedule through a policy published in the **Federal Register** on October 27, 1995. Nineteen ninety-seven was the first year of BLM's 5-year phase-in period for the new schedule. During this year BLM received several questions from affected grant holders about the schedule, but there were no protests filed that resulted in appeals to IBLA. BLM and the Forest Service have jointly developed policies and procedures to ensure that both agencies consistently apply the schedule under similar circumstances, regardless of which agency authorizes the communication use.

The changes contained in this proposed rule modify the regulatory text to reflect what has been implemented through internal BLM and Forest Service policy in the last 2 years. Unless otherwise specified, these proposed regulatory revisions only clarify how BLM will apply the schedule in various circumstances and will ensure that the schedule is applied fairly and consistently for all uses and holders of communication facilities located on BLM-managed lands. The proposed revisions do not change the rental values assigned to the uses or population strata of the original schedule.

The proposed regulations and policies are consistent with the Telecommunications Act of 1996, 47 U.S.C. 332 note, and the various General Services Administration government-wide policy bulletins on determining the locations of telecommunications facilities, including commercial antennas, on public lands.

New or revised definitions. (Section 2806.5). These definitions would affect subpart 2806 only. BLM would:

- Add new definitions for "commercial purpose," "communication use rent schedule," "facility manager," "facility owner," "reselling," and "site'; and
- Revise the definitions for "customer," "tenant," and "other communication uses" category.

Adding a definition for "commercial purpose" would establish the condition that must exist before BLM will charge rent. Adding a definition for "communication use rent schedule" would identify all the uses and population strata that are included in the rent schedule.

The proposed regulations use two new terms, "facility manager" and "facility owner." A facility manager owns a communication facility on public land, leases space to other tenants in the facility, and has a communications authorization, usually a lease, but does not have his or her own communications equipment in the facility. A "facility owner" owns a communication facility on public land, may or may not lease space to other tenants in the facility, and has a communications authorization, usually a lease, but has his or her own communications equipment within the facility. The difference is that the facility manager does not operate communication equipment for his or her own use; the facility owner does. BLM is introducing these terms because we charge rent only to those entities who hold authorizations. Tenants and customers do not ordinarily pay rent to BLM.

Adding a definition for "reselling" is necessary, as reselling is a critical component for determining whether an occupant is considered a tenant, subject to rent, or a customer; not subject to rent.

Amending the definition of "other communication uses, within the overall definition of "communication use rent schedule," to delete the reference to passive reflectors as an example of an "other communication use" is consistent with the intent of the November 13, 1995, preamble to the communication site regulations (60 FR 57068) and with the Forest Service definition for this category. Amending the definition of "tenant" to include the words "or broadcast" would identify television or radio broadcast uses as a commercial activity subject to rent when located in another's facility and would make it consistent with the Forest Service definition of this term. Revising the definition of "customer" to incorporate the changes for the definition of "tenant" and to clarify the term would make it consistent with the Forest Service definition of the term. Under the proposed definition, BLM would exclude private and internal communication uses located in another holder's facility, and not just located in a commercial mobile radio service facility, for the purposes of calculating rent.

Other changes proposed for applying the communication site use rent schedule. (Proposed sections 2806.17 through 2806.27) BLM would remove the statement at section 2803.1–2(d) that the rent schedule does not apply to public telecommunication service operators providing public television or radio broadcast services and who are granted a waiver or reduction of rent. A similar statement appears, however, in proposed section 2806.11. BLM may still grant reductions of rent for these uses if the provisions of proposed section 2806.12 apply.

Section 2803.1–2(d)(2)(ii) now provides for a review of right-of-way rents on a case-by-case basis 10 years after BLM issues the grants, and no more than every 5 years after that, to determine whether rents are appropriate. Such a request amounts to asking BLM to conduct an appraisal, estimated to cost $2,000 each in 1995. If all holders were to make such a request, right-of-way rental determinations for communication uses would revert to the methods used before November 1995. This would greatly

increase costs (an estimated $3 million for the 1,500-plus authorizations now subject to rent) and would negate the administrative savings envisioned by using the new rent schedule. Proposed section 2806.17(a) directs BLM to review the rent schedule every 10 years to ensure that the schedule reflects a rational fair market value estimate and eliminates the provision that allows each holder to request one or more reviews after 5 years.

Proposed sections 2806.17 through 2806.27 clarify how BLM would apply the schedule in the various combinations of facility owners, tenants, customers, and the types of uses and populations served by these uses. These proposed sections would enable users and agency personnel to fully understand how to apply the schedule, given the varied circumstances that can exist. These provisions would not alter any of the basic provisions of the current rental schedule. This addition provides a basis for applying the communication use rent schedule fairly and consistently by both BLM and the Forest Service.

One proposed change is to add the term "site" to the definitions section at 2806.5 to clarify "site" and "facility." These terms are used throughout the proposed sections, particularly at proposed section 2806.19, *How will BLM determine the rent for a single-use communication facility?* The term "site" is used to refer to the area, such as a mountain top, which contains one or more communication facilities. The term "facility" is used to refer to the authorized improvements associated with a site, e.g., TV, radio, or cell phone antennae. A single site may accommodate several facilities for a variety of communication uses, some facilities serving metropolitan areas, such as TV broadcast towers and antennae, and some serving local areas, such as cellular phone antennae. The facilities located at a particular site are there because the site allows the facilities to serve a particular market or geographical area effectively.

Appeals section. The proposed regulations eliminate the existing subpart on Appeals, subpart 2804, and propose to replace it with references to the right of appeal at each point where you may appeal a decision. If an appeal is authorized, the proposed rule references "part 4." This proposed modification is meant only to improve the organization of the rule. It is not intended to add or remove appeal opportunities. Current regulations also contain references to the right of appeal at each appealable decision point. BLM has issued proposed regulations to revise and consolidate its appeals regulations at part 1840 and 1850 into a revised part 1840. (See 61 FR 54120 through 54141, October 17, 1996.) If or when BLM promulgates revised appeal regulations, this final revised rule will reflect them.

Reorganizing the Regulations

The proposed rule would reorganize the material and present it in the order in which prospective applicants for rights-of-way across public lands would need it. The proposed regulations also give information about what is expected of right-of-way grant holders and how BLM monitors the grants. This restructuring is meant to make the regulations simpler to understand and is not meant to have any substantive effect.

BLM proposes to adopt the preferred numbering system of the Office of the **Federal Register**. The existing regulations indicate one section as subordinate to another by using hyphens in the number. For example, sections 2808.3–1 and 2808.3–2 are subordinate to section 2808.3. In the proposed rule, sections are arranged sequentially, beginning with the number "0." For example, section 2804.10 is followed by subordinate sections 2804.11, 2804.12, 2804.13, and so forth. In some cases, these leading sections may serve only as main headings.

The following cross-reference table describes the major organizational changes. Use the table as a guide to help you find where provisions found in the current regulations appear, in either an unchanged (except for style) or substantively revised form, in the proposed regulations. Proposed new provisions and policy appear in the text under both the GENERAL and SECTION-SPECIFIC DISCUSSIONS in the preamble, not in the table that follows.

Where is it now?	Where would it go?
Section 2800.0–1, Purpose	Eliminated as redundant to material in section 2801.7, What is the scope of these regulations?
Section 2800.0–3, Authority	Section eliminated. Authority appears in introductory material at the beginning of part 2800 under "Authority" heading.
Section 2800.0–5, Definitions	Section changed and renumbered as section 2801.5, What definitions do I need to know to understand these regulations? Minor changes in definitions to reflect plain language writing style.
Section 2800.0–7, Scope	Text streamlined, reworded and renumbered to appear in two sections: 2801.7, What is the scope of these regulations? And 2801.8, Are there any rights-of-way outside the scope of these regulations?
Section 2800.0–9, Information collection	Text streamlined and moved to new section 2801.9, Does BLM have the authority to ask me for the information required in these regulations?
Section 2801.1–1, Nature of right-of-way interest.	Text streamlined, reworded, and moved to proposed section 2805.12, What rights does the grant convey?, and 2805.13, What rights does the United States retain? References to temporary use permits removed, as BLM proposes to eliminate these instruments.
Section 2801.1–2, Reciprocal grants	Text streamlined, reworded, and moved to proposed section 2805.13, What rights does the United States retain?, paragraph (d), as a potential condition of issuing a grant.
Section 2801.2, Terms and conditions of grants	Text streamlined, reworded, and moved to proposed section 2805.12, What rights does the grant convey?, as follows: (a)(1) to paragraph (c)(1); paragraph (a)(2) to paragraph (c)(8); paragraph (a)(3) to paragraph (c)(2); paragraph (a)(4) to paragraph (c)(3); paragraph (b)(1) to paragraph (c)(7)(i); paragraph (b)(2) to paragraph (c)(7)(ii); paragraph (b)(3) to paragraph (c)(7)(iii); paragraph (b)(4) to paragraph (c)(7)(iv); paragraph (b)(5) to paragraph (c)(7)(v); and paragraph (b)(6) to paragraph (c)(7)(vi).
Section 2801.3, Unauthorized use, occupancy, or development.	Text streamlined and moved to proposed subpart 2808, What do I need to know about trespass?
Section 2801.4, Rights-of-way issued on or before October 1, 1976.	Text streamlined and moved to proposed section 2801.7, What is the scope of these regulations?

Where is it now?	Where would it go?
Section 2802.1, Preapplication activity	Text streamlined and moved to proposed sections as follows: paragraph (a) to 2802.10, What lands are available for FLPMA rights-of-way?; paragraph (b) to proposed section 2804.13, Will BLM keep my information confidential?; paragraph (c) to proposed section 2804.14, Is there a filing fee for my application?; paragraph (d) to proposed section 2804.25, What can I do on the proposed right-of-way while BLM is processing my application?; and paragraph (e) to proposed section 2804.10, What should I do before I file my application?
Section 2802.2–1, Application filing	Text streamlined and moved to proposed section 2804.11, Where do I file my application?
Section 2802.2–2, Coordination of applications	Text streamlined, reworded, and moved to proposed section 2804.12, What information do I need to submit in my application?, paragraph (b).
Section 2802.3, Application content	Text streamlined, reworded, and moved to proposed section 2804.12, What information do I need to submit in my application?
Section 2802.4, Application processing	Text streamlined, reworded and moved to proposed sections as follows: paragraph (a) to proposed section 2804.21, Can BLM reject my application?, for paragraphs (1) through (5), and to proposed section 2804.20, How will BLM process my application?, for the acknowledgment; paragraph (b) eliminated because BLM proposes to eliminate temporary use permits and to replace them with short-term right-of-way grants; paragraph (c) to proposed section 2804.12, What information do I need to submit in my application?; paragraphs (d), (e) and (h) to proposed section 2804.20, How will BLM process my application?; paragraph (f) to proposed section 2805.13, What rights does the United States retain?, paragraph (e); and paragraph (g) to proposed section 2805.11, When is the grant effective?
Section 2802.5, Special applications procedures	Paragraph (a) eliminated because the grace period has expired; paragraph (b) eliminated as redundant of text in other parts of the regulations.
Section 2803.1–2, Rental	Text streamlined and moved to proposed subpart 2806, What information do I need to know about rents for right-of-way grants?, where there are separate discussions of linear (sections 2806.14 through 2806.16, communication site (2806.17 through 2806.27) and other (2806.28) rents. Text also clarifies treatment of different types of communication sites, based on the November 1995 regulations.
Section 2803.1–3, Competitive bidding	Text significantly streamlined and moved to proposed section 2804.23, Do I always have to submit an application for a right-of-way to receive a grant? Procedural detail removed as more appropriate for internal agency guidance and to allow greater flexibility in using competitive bidding.
Section 2803.1–4, Bonding	Text reworded and moved to proposed section 2805.10, What rights does the grant convey?, paragraph (c)(6).
Section 2803.1–5, Liability	Text streamlined, reworded and moved as follows: paragraph (a) to proposed paragraph (a) of section 2807.12, For what am I liable?; paragraph (b) to proposed paragraph (b) of section 2807.12; paragraph (c) to proposed paragraph (d) of section 2807.12; paragraph (d) to proposed paragraph (c)(6) of section 2807.12; paragraph (e) to proposed paragraph (f) of section 2807.12; paragraph (f) to proposed section 2807.13, What liabilities do State and local governments have?; paragraph (g) to proposed paragraph (c) of section 2807.12; paragraph (h) to proposed paragraph (f) of section 2807.12; and paragraph (i) to proposed paragraph (e) of section 2807.12.
Section 2803.2, Holder activity	Text streamlined, reworded and moved to proposed sections as follows: paragraph (a) to proposed section 2807.10, When can I start activities under my grant?; and paragraph (b), (c) and (d) to proposed section 2807.11, When must I contact BLM?
Section 2803.3, Immediate temporary suspension of activities.	Text streamlined, reworded and moved to proposed section 2805.17, Can BLM temporarily suspend my activities to protect public health and safety and the environment without providing an administrative hearing?
Section 2803.4, Suspension and termination of right-of-way grants.	Text streamlined, reworded, and moved as follows: paragraphs (a), (b), (c) and (d) to proposed section 2807.16, Can BLM terminate or suspend my grant?; paragraph (d) to proposed section 2807.17, How will I know that BLM intends to suspend or terminate my grant?, paragraph (a); and paragraph (e) to proposed paragraph (c) of section 2807.16, Can BLM terminate or suspend my grant?
Section 2803.1–4, Disposition of improvements upon termination.	Text streamlined, reworded and moved to proposed section 2807.18, What happens to any improvements on my grant when it terminates?
Section 2803.5, Change in Federal jurisdiction or disposal of lands.	Text streamlined, reworded, and moved to proposed section 2807.14, What happens if BLM transfers management of the land on which my grant is located to another Federal agency or outside of public ownership?
Section 2803.6–1, Amendments	Text streamlined, reworded, and moved to proposed section 2807.19, When must I amend my application or grant?
Section 2803.6–2, Amendments to existing railroad grants.	Text streamlined, reworded, and moved to proposed paragraph (c) of section 2807.19, When must I amend my grant?
Section 2803.6–3, Assignments	Text streamlined, reworded, and moved to proposed section 2807.20, May I assign my grant?
Section 2803.6–4, Reimbursement of costs for assignments.	Text streamlined, reworded, and moved to proposed section 2807.21, What will BLM charge for reviewing a request for assignment?
Section 2803.6–5, Renewals of right-of-way grants and temporary use permits.	Text streamlined, reworded, and moved to proposed section 2807.22, Can I renew my grant?
Section 2804.1, Appeals	Subpart eliminated. Information about actions which you may appeal appears in the sections to which it applies.
Section 2806.1, Corridor designation	Text streamlined and more simply worded. Material appears in renumbered section 2802.10, What lands are available for right-of-way grants?
Section 2806.2, Designation criteria	Text streamlined and reworded. Material appears in renumbered section 2802.11, How does BLM designate corridors?
Section 2806.2–1, Procedures for designation	Text streamlined, reworded, and moved to section 2802.10, What lands are available for right-of-way grants?

Where is it now?	Where would it go?
Section 2807.1, Application filing	Text streamlined, reworded, and moved to proposed section 2809.10, Can Federal agencies get a right-of-way grant?
Section 2807.1–1, Document preparation	Text streamlined, reworded, and moved to proposed section 2805.10, What does a grant contain?
Section 2807.1–2, Reservation termination and suspension.	Text streamlined, reworded, and moved to proposed section 2807.16, Can BLM terminate or suspend my grant?
Section 2808.1, General	Text streamlined, reworded, and moved to proposed section 2804.14, Is there a filing fee for my application?, paragraph (a).
Section 2808.2–1, Application categories	Text streamlined, reworded, and moved to proposed section 2804.14, Is there a filing fee for my application?, paragraph (c).
Section 2808.2–2, Category determination	Text streamlined, reworded, and moved to proposed section 2804.14, Is there a filing fee for my application?, paragraph (e) and (g).
Section 2808.3–1, Application fees	Text streamlined, reworded, and moved to proposed sections as follows: paragraph (a) to proposed section 2804.14, Is there a filing fee for my application?, paragraph (b); paragraph (b) to proposed section 2804.14, paragraph (f). Paragraphs (c), (d) and (e) to proposed section 2804.16, How will BLM process my Category IV application?; paragraph (f) to proposed section 2804.18, Can BLM reduce my reimbursement costs?, paragraph (a)(2); paragraph (g) to proposed section 2804.18, paragraph (e); and paragraph (i) to proposed section 2804.18, paragraph (d).
Section 2803.3–2, Periodic advance payments	Text streamlined, reworded, and moved to proposed sections as follows: paragraphs (a) and (b) to proposed section 2804.16, How will BLM process my Category IV application?, paragraph (b); paragraph (c) to proposed section 2804.14, Is a filing fee for my application?, paragraph (g); and paragraph (d) eliminated, as this is redundant of other sections, such as 2804.14.
Section 2803.3–3, Costs incurred for a withdrawn or denied application.	Text streamlined, reworded, and moved to proposed section 2804.22, Do I owe any money if BLM rejects my application or I withdraw my application?
Section 2803.3–4, Joint liability for payments	Text streamlined, reworded, and moved to proposed section 2804.19, What happens if there are two or more competing applications for the same facility or system?
Section 2808.4, Reimbursement of costs for monitoring.	Text streamlined, reworded, and moved to proposed section 2805.14, What are monitoring fees?
Section 2808.5, Other cost considerations	Text streamlined, reworded, and moved to proposed section 2804.18, Can BLM reduce my reimbursement costs?
Section 2808.6, Action pending decision and appeal.	Text consolidated with that in current section 2808.5, reworded and moved to proposed section 2804.18, Can BLM reduce my reimbursement costs?
Section 2880.0–3, Authority	Section eliminated. Material appears as "Authority" in the introductory material at the beginning of part 2880.
Section 2880.0–5, Definitions	Minor changes in definitions to reflect plain language writing style. Definition of "public lands" in proposed section 2801.5 replaced by definition of "Federal lands" in proposed section. Section renumbered as 2881.5, What definitions do I need to know to understand these regulations?
Section 2880.0–7, Scope	Text reworded into plain language and appears in two proposed sections: 2881.7, What is the scope of these regulations? And 2881.8, What grants are not covered by these regulations?
Section 2881.1–1, Nature of right-of-way interest.	Text streamlined, reworded, and moved to proposed section 2885.11, What are the terms and conditions of the grant or permit? Cross references proposed section 2805.10, for terms and conditions in common with non-MLA rights-of-way.
Section 2881.1–2, Nature of temporary use permit.	Same as entry above at section 2881.1–1.
Section 2881.1–3, Reservation of rights to the United States.	Text streamlined and moved to proposed section 2885.12, What are the terms and conditions of the grant or permit?, which cross references proposed section 2805.13, since many terms and conditions are common to both types of rights-of-way. Proposed section 2885.12 emphasizes only those terms and conditions which are MLA-specific.
Section 2881.2, Terms and conditions, interest granted.	Text streamlined and moved to proposed section 2885.12, What are the terms and conditions of the grant or permit?
Section 2881.3, Unauthorized use, occupancy or development.	Text streamlined and moved to proposed subpart 2888, What general information do I need to know about trespass? Contains a cross reference to proposed subpart 2808.
Section 2882.1, Preapplication activity	Text streamlined, reworded, and moved to proposed sections as follows: paragraph (a) to proposed section 2884.10, What should I do before I file my application?; paragraph (b) eliminated as redundant of regulatory text elsewhere, including subpart 2883, What qualifications do I need to have to hold an MLA grant or permit?; paragraph (c) to proposed section 2884.12, Is there a filing fee for my application?; and paragraph (d) to proposed section 2884.22, What may I do on the proposed right-of-way while BLM is processing my application?
Section 2882.2–1, Application qualifications	Text streamlined, reworded, and moved to proposed sections as follows: paragraphs (a) and (b) to subpart 2803, What qualifications do I need to have to hold an MLA grant or permit?; and paragraph (c) to proposed section 2884.16, What do I file my application for an MLA grant or permit?
Section 2882.2–2, Application filing	Text streamlined, reworded, and moved to proposed section 2884.16, Where do I file my application for an MLA grant or permit?
Section 2882.2–3, Application content	Text streamlined, reworded, and moved to proposed section 2884.11, What information do I need to provide in my application?

Where is it now?	Where would it go?
Section 2882.3, Application processing	Text streamlined, reworded, and moved to proposed sections as follows: paragraphs (a), (b), (f) and (g) to proposed section 2884.18, How will BLM process my application?; paragraph (c) to proposed section 2884.11, Can BLM reject my application?; paragraphs (d) and (h) to proposed section 2884.19, Can BLM ask me for additional information?; paragraph (e) eliminated as redundant of other text; paragraphs (i) and (j) to proposed section 2884.23, When will BLM issue the grant or permit?; paragraphs (k) and (l) to proposed section 2885.10, When is the MLA grant or permit effective?; and paragraph (m) to proposed section 2885.11, What are the terms and conditions of the grant or permit?
Section 2882.4, Interagency agreements	Text eliminated as redundant of other text in other sections, such as proposed sections 2884.10 and 2884.18.
Section 2883.1–1, Cost reimbursement	Text streamlined, reworded, and moved to proposed section 2884.12, Is there a filing fee for my application?
Section 2883.1–2, Rental payments	Text streamlined, reworded, and moved to proposed section 2885.12, How much does it cost to hold a grant or permit? Cross references to proposed subpart 2806—What information do I need to know about rents for MLA right-of-way grants?
Section 2883.1–3, Bonding	Text streamlined, reworded, and moved to proposed section 2885.11, What are the terms and conditions of the grant?, as a condition of issuing the grant.
Section 2883.1–4, Liability	Text streamlined, reworded, and moved to proposed section 2886.15, For what am I liable?, and proposed section 2885.13, Who is liable for payments?
Section 2883.1–5, Common carriers	Text streamlined and incorporated as a provision of the grant at proposed section 2885.11, What are the terms and conditions of the grant or permit?, paragraph (c).
Section 2883.1–6, Export	Text streamlined and incorporated as a provision of the grant at proposed section 2885.11, What are the terms and conditions of the grant or permit?, paragraph (b) on the terms and conditions of use.
Section 2883.2, Holder activity	Text streamlined, reworded, and moved to proposed sections as follows: paragraph (a) to proposed section 2886.11, Who regulates my activities?; paragraphs (b) and (c) to proposed section 2886.13, When must I contact BLM?; paragraphs (d), (e) and (f) to proposed section 2887.10, What conditions require amending a grant?
Section 2883.3, Construction procedures	Text streamlined, reworded, and moved to proposed section 2886.10, When can I start activities under my grant or permit?
Section 2883.4, Operation and maintenance	Text streamlined and consolidated with existing section 2883.3, Construction procedures, into proposed section 2886.10, When can I start activities under my grant or permit?
Section 2883.5, Immediate temporary suspension of activities.	Text streamlined, reworded, and moved to proposed section 2886.16, When can BLM terminate or suspend my grant or permit?
Section 2883.6–1, Suspension and termination of permits.	Text streamlined, reworded, and moved to proposed section 2886.17, When can BLM terminate or suspend temporary use permits?, which cross references proposed sections 2807.15 and 2807.16.
Section 2883.6–2, Suspension and termination of temporary use permits.	Section eliminated, as temporary use permits are covered in proposed section 2886.17, When can BLM terminate or suspend temporary use permits?
Section 2883.7, Change in jurisdiction or disposal of lands.	Text streamlined, reworded, and moved to proposed section 2886.16, What happens if BLM transfers management of the land on which my grant is located to another agency or outside public ownership?
Section 2883.8, Restoration of Federal lands	Text streamlined, reworded, and consolidated within proposed section 2885.11, What are the terms and conditions of my grant or permit?, as a provision of the grant or permit, cross-referenced to proposed subpart 2805—What terms and conditions do grants contain?
Section 2884.1, Appeals	Section eliminated. Right of appeal noted in text where appealable action is discussed.
Section 2887.0–3, Authority	Section eliminated. Act cited in "Authority" section as heading in the introductory material before part 2880 listings begin.

Additional reorganization may occur as a result of the public comments received. The preamble to the final regulations will address any additional reorganization of the regulatory text made as a result of public comments.

Section-Specific Discussions

The material in this section describes proposed changes affecting a single section and policies relating to the proposed changes. It also describes new sections. Sections which consist entirely of language rephrased from material in the current regulations without any other changes are not discussed.

Part 2800

Section 2801.5, What definitions do I need to know to understand these regulations? The discussions below pertain only to those definitions proposed for change or proposed to be added.

The existing terms "public service provided, "cost incurred for the benefit of general public interest," "monetary value of the rights and privileges sought," "actual costs," "management overhead," and "efficiency to Government processing," found at section 2800.0–5, would be incorporated into section 2804.18, Can BLM reduce my reimbursement costs?, as factors which BLM may consider in determining whether or not to reduce the processing fee for all categories of applications, including Category IV applications. The terms "road use, amortization and maintenance charges" and "written demand" would be removed because they are no longer used.

Three new terms, "discharge," "hazardous material," and "release" would be added to be consistent with the provisions of the Clean Water Act and BLM's hazardous materials policies with respect to the right-of-way program. BLM complies with these laws, but the current regulations do not explicitly address their requirements. The terms "discharge" and "release" would have the meanings given at section 1321(a)(2) of the Clean Water Act and section 9601(22) of CERCLA, respectively.

The new term "hazardous material" would cover the following substances or materials:

(1) Any substance or material defined as a "hazardous substance" under CERCLA at 42 U.S.C. 9601(14),

(2) Any regulated substance in underground storage tanks, as defined by the Resources Conservation and Recovery Act (RCRA) at 42 U.S.C. 6991 *et seq.*,

(3) "Oil," as defined in the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701 *et seq.*, and

(4) Other substances defined and regulated as "hazardous" by applicable federal, state and local law.

BLM intends to use the term "hazardous material," rather than "hazardous substance," because the term is broader. Right-of-way holders, including oil and gas pipeline companies, use, store or transport various hazardous materials across public lands. BLM seeks to protect the public lands from oil discharges and releases. The broad definition also aligns with BLM's responsibility to minimize damage to scenic and scientific values and fish and wildlife habitat, to protect the environment from impacts resulting from issuing and using right-of-way grants, and to protect the public lands from undue degradation.

The new term "field examination" defines one of the factors that BLM will use to determine the category upon which to base processing and monitoring costs. BLM proposes to base the definition on the number of vehicles, rather than the number of people occupying the vehicles, because we believe that measuring costs on the basis of trips will encourage BLM to combine trips and use our expertise most efficiently.

You should compare the term "public land" at proposed section 2801.5 to the term "federal land" at proposed section 2881.5, *What definitions do I need to know to understand these regulations?* The lands available for right-of-way grants under FLPMA are different from the lands available for grants and temporary use permits under the MLA. Lands under BLM jurisdiction are called "public lands" for the purposes of FLPMA. For the purposes of the MLA, the term "federal lands" includes both lands under BLM jurisdiction and under the jurisdiction of other federal agencies, state governments, and private individuals (if the minerals were reserved to the United States.) Under the MLA, BLM only issues grants on federal lands which are under the jurisdiction of BLM or when a proposed use involves two or more other federal agencies. Lands in the National Park Service System are statutorily excluded from both MLA and FLPMA because they are administered by the National Park Service and are generally not subject to non-Park Service uses. Other lands excluded from right-of-way use under both FLPMA and MLA are lands located on the Outer Continental Shelf and those held in trust for Aleuts, Eskimos, and Indians.

The proposed regulations continue to define the terms "right-of-way" and "grant" separately. The term "right-of-way" describes the physical feature, the land, upon which the holder is exercising the right to use or traverse the right-of-way. The term "grant" describes the instrument (easement, lease, license, or permit) which gives the holder authority to use or traverse the land for right-of-way purposes. Although FLPMA uses the term "right-of-way" to describe both the land and the instrument, in practice using the term in both ways has proven confusing. The phrase "authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project" would be dropped from the definition of "right-of-way grant" because it is redundant of material found in the definition of the term "right-of-way." The term "grant" does not imply the conveyance of the title.

The term "temporary use permit" would be removed and replaced by a definition for "temporary use." The term "temporary use" signifies BLM's intent to issue short-term grants issued under part 2800, when the use is of a temporary nature. We make this proposal because, in practice, the same provisions apply to both use permits and grants and because processing times for the two documents are similar. The only difference between temporary use permits issued under part 2800 and grants is duration. The proposed change would also eliminate confusion caused by using the term permit for both short-term grants and permits for other uses authorized under part 2920. We are unable to propose this change for rights-of-way issued under part 2880 because the MLA specifically allows for temporary use permits. Therefore, section 2881.5 retains a definition for "temporary use permit."

Section 2801.10, Severability. This new section would describe the legal principle of "severability" and apply it to the regulations in part 2800. Under severability, if any portion of these regulations were found invalid as to a particular set of circumstances or particular people, the remaining portions of the regulations would remain valid and BLM could enforce them separately and legitimately. This principle has always applied to the regulations but is stated here for information and clarity.

Section 2802.10, What lands are available for right-of-way grants? This section combines and retains the information found in the current regulations at sections 2806.1, Corridor designation, and 2806.2–1, Procedures for designation. It explains that the availability of land for right-of-way use is tied to BLM's land-use planning process, which may designate corridors and avoidance, exclusion and open areas. Although BLM designates right-of-way corridors and issues grants within these corridors to the maximum extent practical, it is not always possible to restrict uses to designated corridors, in cases such as rights-of-way connecting wells, residences, and buildings to existing facilities.

New paragraph (c) suggests that you visit the BLM office nearest you before you file an application for a right-of-way grant. During the visit you can learn whether the land that you want to use is available, what the qualifications are for holding a grant, what the application requirements are and how long it may take BLM to process your request. You can also learn if other federal and state agencies need to be involved. (See also the discussion at proposed section 2804.10, What should I do before I file my application?)

Section 2802.11, How does BLM designate corridors? This section contains material currently found in the regulations at section 2806.2, *Designation criteria.* The proposed rule would add two new criteria: transportation and utility corridor studies developed by user groups (paragraph (h)) and existing transportation and utility corridors that are capable of accommodating additional compatible uses without further review (paragraph (j)). Experience has shown that BLM managers use these two factors, in addition to the others, in making decisions about siting right-of-way corridors.

Subpart 2803, What qualifications must I meet to get a right-of-way grant? The proposed regulations contain four new sections— 2803.10, *Who can hold a grant?*; 2803.11, *Must I submit proof of my qualifications with my application?*; 2803.12, *Can other people act on my behalf?*; and 2803.13, *What happens to my grant if I die?*—with information about who may hold a grant. This information has not appeared in the regulations at part 2800 since 1982, when BLM decided to eliminate it and place it on the application form, SF–299. We believe

that placing the qualifications information back in the regulations will make it easier for individuals and groups to find information about BLM's right-of-way program.

Section 2804.10, What should I do before I file my application? This proposed section begins the completely revised subpart about applying for grants. It contains a streamlined version of the material currently found in section 2802.1, Preapplication activity, paragraphs (a) and (e). BLM encourages anyone interested in obtaining a right-of-way grant across public lands to visit the nearest BLM office to get information about the right-of-way program, lands available for right-of-way grants, and other factors affecting their applications. Visiting BLM before filing your application may shorten the time that it takes BLM to process your application and determine whether or not to issue a grant. At this meeting, BLM may be able to provide you with an estimate or informal determination of what it may cost to process your application.

Section 2804.12, What information do I need to submit in my application? Currently, this information is contained in several subparts, including 2802 and 2808. BLM intends that this subpart provide all the information that you may need to apply for a grant issued under the provisions of FLPMA. The subpart presents the necessary information in a sequence in which you might ask questions about the application procedures.

The new language in this section would specify the form number of the application, SF–299, and give a brief description of the information that the form requires. This description is a condensed version of the list of information in the current regulations at section 2802.3, paragraph (a).

Section 2804.14, Is there a filing fee for my application? This proposed section contains information from several sections of subpart 2808, including section 2808.1, General; 2808.2–1, Application categories; 2808.2–2, Category determination; and 2808.3–1, Application fees. The major changes contained in this section are discussed in the "Cost Recovery Provisions" section in the GENERAL DISCUSSION portion of this preamble. These include: (1) Increasing application processing and grant monitoring fees to reflect the reasonable costs of processing and monitoring activities, (2) providing a mechanism to adjust these fees based on changes in the "Implicit Price Deflator-Gross Domestic Product," (3) eliminating the automatic exemption from paying the reasonable costs of processing applications and monitoring grants for federal agencies, (4) eliminating the 1 per cent of construction costs alternative to paying full reasonable processing costs; (5) reducing the number of cost recovery categories for both FLPMA and MLA applications; and (6) adding a new category, "master agreement," to cover multiple applications in a limited geographic area. Otherwise, BLM proposes no policy changes except to reword the regulatory provisions for clarity.

Section 2804.16, How will BLM process a Category IV application? This new section provides information in one place about Category IV, in which BLM recovers the "full reasonable costs" of processing right-of-way grant applications under FLPMA. Currently, this information is scattered throughout several sections of the regulations, including 2808.2–1, Application categories; 2808.3–2, Periodic advance payments; and 2808.4, Reimbursement of costs for monitoring.

Section 2804.17, What is a master agreement and what does it contain? This new section would give information about the proposed new category called "master agreements." As described in the "Cost Recovery Provisions" section in the GENERAL DISCUSSION section of this preamble, master agreements are optional but may be of use to applicants or grant holders seeking multiple grants in a limited geographical area. They are especially useful to developers of oil and gas fields. These developers may need many grants to build access roads, feeder lines, and pipelines to transport the product(s) from the field. This section specifies what information master agreements must contain.

Section 2804.18, Can BLM reduce my reimbursement costs? This proposed section contains information about applying for a reduction of processing and monitoring costs. The only policy changes from the existing regulations are as follows: (1) The proposed section lists the "reasonability" criteria on which you may seek to reduce your processing costs, and (2) the proposed section does not use the term "waive." The term "reduction" as used in the proposed rule includes a provision for a reduction to zero dollars. All other changes are to increase clarity and your ease of finding and using the information that you may need in order to seek a reduction of processing and monitoring costs.

BLM believes that this provision needs to be clear, since we are eliminating exemptions from processing costs for federal agencies except for those exempted by statute. We welcome any comments that you may have on ways to streamline the process for determining whether or not we should grant your requests for reductions and on the types of information needed to adjudicate such applications.

Section 2804.19, What happens if there are two or more competing applications for the same facility or system? This new section clarifies how BLM will assess processing costs in situations where there is more than one applicant for a facility or system. This discussion is separated by category because BLM expects that the first three cost categories will not involve costs attributable to more than one application.

Applicants for FLPMA Category IV applications are responsible for all reasonable costs identifiable with their applications. For costs that cannot be easily identified with a specific application, such as the costs of preparing environmental impact statements, all applicants will pay an equal share or a proportion agreed to in writing.

Section 2804.20, How will BLM process my application?, contains a customer service standard at proposed paragraph (c). The standard states that BLM will process your application for a right-of-way within 30 working days of receiving it if the application falls within the criteria for Categories I through III and if BLM may categorically exclude the action from environmental analysis or prepare an environmental assessment for it. If BLM cannot process your application within 60 working days, a BLM field official will notify you in writing and give you an explanation for the delay and an estimated completion date. If your application falls within the criteria for Category IV application, a BLM field official will notify you in writing and give you an estimated completion date. This standard is found in BLM Manual Section 2801.35B1g2b(1) and is intended to make us more responsive to right-of-way customers.

Section 2804.23, Do I always have to submit an application to receive a right-of-way grant?, is an updated version of current section 2803.1–3, which describes in detail procedures for competitive leasing. BLM proposes to update and streamline that section because it is seldom used and contains guidance more appropriate for a Manual section or handbook. The current regulation also restricts the use of competitive bidding to site-type rights-of-way, and BLM wants to broaden the use of competitive bidding to include other situations, such as rights-of-way

used for emerging technologies. The proposed regulation would broaden competitive bidding to increase BLM's flexibility in using it for site-specific situations.

Section 2805.10, What does a grant contain? This proposed section contains material from the current section 2801.2, Terms and conditions of interest granted, and new language concerning hazardous materials and adjusting bond amounst. The new language about hazardous materials, which appears as terms and conditions of use in paragraph (c), would require grant holders to notify the appropriate authorities of actual and threatened discharges or releases of hazardous materials, to handle hazardous materials in a proper manner and to comply with all liability and indemnification requirements and provisions. (See the discussion at section 2807.10 of this preamble.) Because BLM believes that preventing discharges and releases of hazardous materials into the environment is a part of doing business, we propose to expand the language in this section.

The new language concerning BLM's adjustment of bond amounts also occurs in paragraph (c) of section 2805.10. Currently all grant holders furnish a bond or other security to cover losses, damages, or injury to human health, the environment, and property resulting from activities on the right-of-way. The proposed provision allows BLM to decrease or increase the amount of the bond to reflect changes in the risk associated with changed conditions and the grant holder's record of complying with the provisions of the grant.

Section 2805.12, What rights does the grant convey? This proposed section contains material from current section 2801.1–1, Nature of right-of-way interest, paragraphs (b) through (f) and (k), with no proposed regulatory changes. This section describes the rights that the grant gives you. They are only the rights expressly contained in the grant and do not include any rights that the United States retains. Your use of resources within the right-of-way is limited to project and facility purposes but includes minor trimming, pruning, and clearing as necessary. Your grant is limited to the activities necessary to build, operate, maintain, and terminate the authorized project and facilities.

Section 2805.14, What are monitoring fees? and 2805.15, When do I pay monitoring fees? The information about monitoring fees is included in these two proposed sections in this subpart. Monitoring fees are assessed when BLM issues the grant. Although not a term or condition of the grant, payment of monitoring fees is a condition of obtaining the grant. The language of proposed section 2805.14, paragraph (b), would change if BLM decides to develop and administer monitoring fees and categories separately from application processing fees. (See discussion under "Cost Recovery Provisions" in the GENERAL DISCUSSION section of this preamble.) If BLM decides to develop and administer monitoring fees and categories separate from the processing fee categories, we will repropose the regulations in this section and provide you with an opportunity to comment on the proposed categories and fees only if we do not adopt the proposal described in the "Revised Category Definitions" section of the GENERAL DISCUSSION in this preamble.

Subpart 2806, What information do I need to know about rents for right-of-way grants? For a discussion of the major policy changes to the sections in this subpart, see the discussion of *Rents* in the GENERAL DISCUSSION section of this preamble. All other changes proposed are intended to improve the clarity and readability of the requirements for paying rents under FLPMA grants, except for one proposed change. This proposed change occurs at section 2806.11, *Are there exceptions to paying rents?* This section describes the circumstances under which there are exemptions from paying rents on grants. The Omnibus Parks and Public Lands Management Act of 1996, which amended section 504(g) of FLPMA, struck out the phrase "financed pursuant to the Rural Electrification Act of 1936, as amended, " and replaced it with the phrase "eligible for financing pursuant to the Rural Electrification Act of 1936, as amended, determined without regard to any application requirement under that Act." This statutory change has caused some large, for-profit utility grant holders to apply for rent reductions under FLPMA.

In mid-1997 the Forest Service sought guidance from the Committee on Natural Resources of the U.S. House of Representatives. The Committee Chairman, Representative Don Young, responded by letter dated October 1, 1997. In his letter, Mr. Young stated that the intent of the statutory revision was to exempt all not-for-profit rural electric and telephone cooperatives from paying rent on their grants, whether these cooperatives had built their facilities with financing from the Rural Utility Service or not. Mr. Young further stated that the Committee believed that rural and electric cooperatives filled an essential need by providing electric and telephone service in areas of difficult terrain and low customer density. Based on this information, BLM believes that the exemption from paying rents does not apply to all utility holders, just those who can document their non-profit status as defined in the Internal Revenue Code at section 501(c)(3).

BLM therefore proposes to amend the existing provision at section 2803.1–2(b)(1)(iii) to include non-profit electric and telephone cooperatives that built facilities financed by or eligible for financing from the Rural Utility Service. The revised text, at paragraph (b) of proposed section 2806.11, would read: "The facilities constructed on the right-of-way were constructed with funds from the Rural Electrification Act of 1936, as amended (REA), or are non-profit rural electric or telephone cooperative facilities eligible for REA financing; or are extensions of such facilities."

Section 2806.14, What are the rent costs for linear rights-of-way? would make one change to existing policy. Current policy states that BLM will use the rent schedule for linear grants unless the grant meets two criteria: the land value exceeds the area's value by at least a factor of 10 and the expected rent is sufficient to warrant a separate appraisal. Some linear uses of rights-of-way have a significant value that is not related to land value. In these cases, the value comes from the type of use. Because the criteria require both factors to be met before BLM considers rent separately from the rent schedule, we must currently use the rent schedule for these uses. Having to use the rent schedule for these grants prevents us from collecting their fair market value. If we could use other methods to determine rent for these grants, we could collect fair market value, as required by FLPMA. We therefore propose to separate the factors that we will use to determine when not to use the linear rent schedule. See the language in the current regulations at section 2803.1–2(c)(v)(A), and compare with the proposed regulations at section 2806.14(a)(1).

Section 2807.12, For what am I liable?, contains the material in the current regulations at section 2803.1–5, Liability. It contains new language in two areas: (1) the maximum limit on the amount of damages would rise from $1 million to $5 million, and (2) there would be no maximum limitation on strict liability resulting from damages or injuries caused by hazardous substances or as allowed by law. See the discussion under "Hazardous materials" in the GENERAL DISCUSSION section of this preamble.

Section 504(h) of FLPMA gives the Secretary of the Interior the authority to promulgate regulations specifying the extent to which right-of-way holders are liable to the United States for damages or injuries resulting from occupying or using a right-of-way grant. The provision further states that the regulation must include a maximum limitation on damages comparable to the foreseeable risks and hazards presented. Current regulations, promulgated in July 1980, set the limit at $1 million. The proposed regulations would raise the limit to $5 million, owing to inflation and other factors.

The liability limit does not apply to damages or injuries resulting from the discharge or release of hazardous substances as defined by CERCLA of otherwise allowed by law. The Federal Court of Appeals in *United States* v. *Chromalloy American Corporation*, 158 F.3d 345, 350 (5th Cir. 1998), recently cited CERCLA for the proposition that "notwithstanding any other provision of law, a private party will reimburse the United States for all costs incurred." The court held that CERCLA establishes a federal action in strict liability that allows administrators to recover damages quickly and does not place limits on liability. CERCLA preempts the liability cap established by FLPMA for hazardous substances only.

Eliminating the liability cap for hazardous substances also aligns with BLM's policy of having the polluter pay. A grant holder is fully liable for all clean-up and restoration costs, damages, fees, and penalties assessed against the holder's storing or using hazardous substances in developing, relinquishing, or using the right-of-way, regardless of fault.

Section 2807.13, What liabilities do state and local governments have? requires state and local governments or their agencies to furnish a bond to protect the liability exposure of the United States from claims by third parties.

Section 2807.20, May I assign my grant? contains the same customer service standard for processing time as that of applications for grants. This standard is adopted from BLM Manual Section 2801.35B1g2b(1) and estimates the processing time as 30 working days for applications which do not require extensive administrative work. If processing an application for assignment takes more than 60 days, BLM will notify you in writing, explain the reason for the delay, and give an estimated processing time.

Section 2807.21, What will BLM charge me to review a request for assignment? BLM proposes to charge processing fees for assignments, based on the category of the application, rather than the flat fee currently charged. For this reason, the section contains a brief statement of the way in which we will charge fees. The fee would be charged based on the number of work hours involved in processing the assignment. Generally, the work involves adjudicating the prospective assignee's qualifications to hold the grant; visiting the project site to determine the status of the project and whether or not operations are in compliance with applicable statutes, regulations, and the terms and conditions of the grant; and preparing the necessary legal paperwork. BLM would estimate the work hours involved in these activities, consult the schedule for the appropriate number of hours, and charge accordingly. (See the discussion at the "Assignments and Renewals" section under the GENERAL DISCUSSION in this preamble.)

Section 2807.22, Can I renew my grant? The proposed section contains material from existing section 2803.6–5. Note that the reference to "temporary use permits" has been eliminated because BLM proposes to eliminate temporary use permits for rights-of-way issued under FLPMA and replace them with short-term grants. The same customer service standard for processing times would apply to applications for renewal as to new applications.

Subpart 2808, What do I need to know about trespass? This proposed subpart contains material currently found at Section 2801.3. The first section, 2808.10, *What is trespass?*, briefly describes the term. The next section, 2808.11, *What will BLM do if it determines that I am in trespass?*, describes your liability if BLM determines that you are in trespass. Liability includes monetary damages and rehabilitating, restoring, and stabilizing any damaged areas. It also describes the penalties that BLM may assess. Section 2808.12, *May I receive a grant if I am in trespass?*, states that you should apply to BLM to determine whether BLM will authorize your unauthorized use.

Part 2880

This proposed part describes provisions relating to grants issued under the Mineral Leasing Act. Holders of these grants operate and maintain oil and natural gas pipelines and related facilities which have rights-of-way through public lands. This part summarizes or cross references information found at part 2800 and highlights those provisions which are peculiar to oil and natural gas pipeline systems and facilities. BLM intends that the summary will provide readers with enough information to determine whether they need to consult part 2800 for additional detail.

Section 2881.5, What definitions do I need to know to understand these regulations? This proposed section starts a new part and contains material relating to terms used in connection with grant holders whose grants BLM issued under the terms of the MLA. These grant holders operate and maintain oil and natural gas pipelines and related facilities which use right-of-way corridors through public lands.

The proposed regulations in this section generally retain the definitions found in the current regulations at section 2880.0–5. Major differences between the definitions in proposed section 2800.5 and this proposed section are the lands covered by the grant, "federal lands," and terms related to the oil and gas resources and the pipeline facilities for transporting them, that is, "production facilities" and "related facilities." Other definitions should be identical, however; and introductory language refers you to the definitions in part 2800.

Section 2881.7, What is the scope of these regulations? The definitions section defines the term "production facilities." Paragraph (b) clarifies that the only facilities which require a grant on an oil and gas lease are those that are both owned by a third party and are downstream of storage tanks or a metering device.

Proposed *Section 2881.9, Does BLM have the authority to ask me for the information required in these regulations?*, describes the information collection requirements related to grants and temporary use permits connected with oil and natural gas pipelines and their related facilities. This would be a new section and would comply with the Office of Management and Budget's guidelines concerning the reporting requirements for regulations to comply with the provisions of the Paperwork Reduction Act of 1995.

Section 2881.10, Severability. This new section is a counterpart to proposed section 2801.1. It applies the legal principle of "severability" to the regulations in this part. The principle has always been true of these regulations but would be stated here for clarity and understanding.

Subpart 2882, What lands are available for MLA grants and permits?. This proposed subpart is a summary of the information presented at subpart 2802. It has no counterpart in the current regulations at part 2880. BLM

uses its planning process to make decisions about land uses and restrictions on their use, including decisions on whether to allow pipeline corridors through federal lands in particular locations.

Subpart 2883, What qualifications do I need to hold an MLA grant or permit?, describes the qualifications that entities need in order to be issued and to hold a grant or permit under the Mineral Leasing Act (MLA). These qualifications are given in the MLA and repeated in the current regulations at 43 CFR 2882.2–1. The proposed regulations make no changes except for rewording the material into plainer language.

Section 2884.19, How will BLM process my application?, applies the same customer service standard to processing applications for MLA grants as for FLPMA grants. This standard states that, for Category I through III applications, BLM will process your application within 30 working days of receiving it. If BLM cannot process the application within 60 working days, a BLM field official will provide you with a written explanation of the delay and an estimated completion time for processing the application. If you have a Category IV application, BLM will provide you with a written estimate of the estimated processing time.

Subpart 2885, What are the terms and conditions of MLA right-of-way grants and permits?. This subpart describes those terms and conditions which are specific to MLA grants and permits. BLM is retaining the term "temporary use permit" for MLA rights-of-way because the statute specifically refers to these instruments. Proposed section 2885.12, *What are the terms and conditions of the grant or permit?* cross references section 2805.12 for terms and conditions common to both types of grants. Proposed paragraph (b) describes those conditions specific to these types of grants and permits: restrictions on exporting domestically produced crude oil and on pipeline diameters and requirements to use the pipeline as a common carrier.

IV. Procedural Matters

The principal authors of this proposed rule are Ted Bingham, Arizona State Office; Priscilla McLain, Oregon State Office; Ron Montagna, Washington Office; and Bil Weigand, Idaho State Office, with the assistance of staff from the Regulatory Affairs Group. The authors considered the following requirements in preparing the proposed rule:

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address previously specified. BLM invites the public to review these documents by contacting us at the address listed above (see **ADDRESSES**) and suggests that anyone wishing to comment in response to the EA and FONSI do so in accordance with the *Written Comments* section above or contact us directly.

Paperwork Reduction Act

BLM has submitted an information collection package to the Office of Management and Budget for its approval of the information requirements contained in subparts 2802, 2803, 2805, 2806, 2882, 2883, and 2884 of the proposed rule under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Proposed changes in the regulations may increase processing and monitoring fees for all applicants subject to cost recovery fees for grants and could increase the number of applicants seeking a reduction of processing and monitoring fees. BLM expects the public reporting burden of these proposed regulations to be as follows: preparing Plans of Development, 40 hours per response; negotiating master agreements, 30 hours per response; providing maps of projects, one-half hour per response; providing detailed "as built" maps, 8–16 hours per response for Category I through III applications and 120 hours per response for Category IV applications; providing BLM with copies of certificates, permits, and approvals from other agencies, one-half hour per response; getting copies of location maps from state and local governments, one-half hour per response; applying for processing cost reductions, 2.5 hours per response; and providing information about multiple tenants at communication site grants, 1 hour per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We specifically request your comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of BLM's estimate of burden of the proposed collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them in preparing the final rule.

Send comments regarding this information collection, including suggestions for reducing the burden, to: Office of Management and Budget, Interior Desk Officer (1004–NEW) or (1004–0060), Office of Information and Regulatory Affairs, Washington, D.C. 20503, and Information Collection Clearance Officer (WO–630), Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either beneficial or detrimental, on a substantial number of small entities.

BLM has determined under the RFA that this proposed rule would not have a significant impact on a substantial number of small entities. Current data collection categories do not allow us to determine who among the grant holders is a small business; therefore, we have no accurate data on the number of small entities affected by these regulations. The proposed processing and monitoring fees would increase for all applicants and grant holders, including small businesses. This fee increase may increase the number of applicants seeking reductions of recoverable costs, including small businesses.

In the past, small entities may have qualified for reductions under the criteria. Small businesses which would be adversely affected by the increased processing and monitoring fees could apply for reductions on a case-by-case basis; and, in those cases where they qualified, could get them. Increases in the categories most likely to affect small

businesses—Categories I and II—are 83 percent and 30 percent respectively (processing costs) and 60 percent and 73 percent (monitoring costs) for FLPMA applications and 60 percent and 5 percent (processing costs) and 280 percent and 200 percent (monitoring costs) for MLA applications respectively. Even if, under the proposed rules, small entities do not qualify for exemptions, the fee increases for the categories for which they would most likely apply are the lowest processing fees assessed: $230 and $390 (processing costs) and $80 and $130 (monitoring costs) for FLPMA applications and $200 and $290 (processing costs) and $70 and $100 (monitoring costs) for MLA applications.

BLM considered eliminating the current automatic exemptions from paying FLPMA processing and monitoring costs for all governmental entities—federal, state, and local—as a means of recovering more of the costs or processing applications and monitoring issued grants. Analyses of applicants and right-of-way holders indicate, however, that state and local governments constitute in total less than 10 percent of all current applicants. Based on economic return alone, eliminating the automatic exemption for these entities is not warranted. Further, many local governments that are affected by BLM regulations qualify as small entities under the RFA. Eliminating the automatic exemption for local governments could increase their operating costs by requiring them to apply for a reduction of processing and monitoring costs without any corresponding overall public benefit.

BLM therefore proposes to retain the automatic exemption for state and local governments but to charge federal agencies for cost recovery if those federal agencies are not exempted by law from paying processing and monitoring fees. We propose to eliminate the automatic exemption for federal agencies because many already pay these costs through interagency agreements with BLM and because there would be greater uniformity of charges to the federal agencies.

Unfunded Mandates Reform Act

The proposed rule will not result in any unfunded mandate to any state, local or tribal government in the aggregate, or to the private sector, of $100 million or more in any one year. The proposed regulations would pose no additional burdens on these governmental entities, as the exemptions from paying processing and monitoring fees for state and local governments would remain, and so would the procedures for processing applications and monitoring grants.

Executive Order 12612

The proposed rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The elements which this rule proposes to change—principally, increased processing and monitoring costs—do not have sufficient federalism implications to warrant preparing a federalism assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of EO 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property uses from the definition of "policies that have takings implications." The proposed rule was written with the intent not to increase the regulatory burden on the regulated public. The regulations only apply to public and federal lands over which BLM has jurisdiction and do not change the terms and conditions of existing grants and temporary use permits. Therefore, the proposed rule will impair no private property rights. The Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this EO.

Executive Order 12866

The proposed rule would not cause economic impacts of $100 million or more per year, does not propose any novel policy changes, cause significant sectoral impacts, or conflict with any other regulations. Although the proposed rule is not "significant," as defined under EO 12866, the rule is important because it provides the public with information about a needed and wanted service: the use of public lands for right-of-way purposes, when there is no choice as to the provider, BLM. At a maximum, the proposed changes have an economic impact of approximately $12 million annually, as described in this section.

Section 304 of the Federal Land Policy and Management Act allows the Secretary of the Interior to charge "reasonable filing and service fees and reasonable charges and commissions with respect to applications and other documents relating to the public lands." Section 28(f) of the Mineral Leasing Act requires applicants for oil and gas pipeline rights-of-way to reimburse the United States for the administrative and other costs, i.e., "actual costs," of monitoring activities under their grants.

The estimated maximum increase in fees generated by the proposed regulations is $2.7 million annually. Entities adversely affected by these increases may qualify for fee reductions, in some cases to no fees. Those entities already granted fee reductions will retain their reductions for future applications. Those entities exempted by law from paying processing and monitoring fees will continue to be exempted. For those having to pay, the proposed processing fee increases range from 6 to 114 percent ($15 to $400), with an overall average of $148. The proposed monitoring fee increases range from 60 to 313 percent ($30 to $265), with an overall average of $81.

On a percentage basis, the monitoring fee increases proposed are higher than the proposed processing fee increases. The higher percentage increase results from several factors: (1) when BLM established the current monitoring fees, it did not have accurate data about the costs of constructing, operating, and terminating facilities within right-of-way grants; and (2) the policy that BLM uses to charge for monitoring fees does not reflect changes in resources present in the right-of-way over time. For example, BLM's policy is that the processing category of the application determines the category of the monitoring fee. An application that required minimal processing time might require considerably more time to monitor if an endangered species moved into the grant area. Using the same processing and monitoring fee categories would result in a revenue loss. We are therefore requesting comments on whether to continue the practice of having the processing category determine the monitoring fee category.

Statutory language in the Omnibus Parks and Land Management Act of 1996 could adversely affect the rent revenue by increasing the number of facilities exempt from paying rent. Section 504(g) of the Federal Land Policy and Management Act (FLPMA) specifies that rents for rights-of-way are equivalent to the fair market value of the grant and that the Secretary of the Interior may charge less rent to federal agencies, state and local governments, and non-profit associations and coporations not owned by profit-making associations, especially those non-profit associations financed with funds from

the Rural Electrification Act of 1936, as amended (REA). The Omnibus Act changed FLPMA's statutory language from "financed pursuant to the Rural Electrification Act of 1936, as amended," to "eligible for financing pursuant to the Rural Electrification Act of 1936, as amended, determined without regard to any application requirement under the Act."

The impact of this change could range economically from minimal to the loss of BLM's entire annual rental revenue, $9.5 million in fiscal year 1998, depending on what "eligible for financing pursuant to the Rural Electrification Act" means. Unlike processing and monitoring fees, which return to the BLM offices administering the right-of-way program, rent payments are deposited into the general revenues of the U.S. Treasury. Their loss would deprive the federal government and the general public of money which could be used for public purposes. BLM has adopted the position of Chairman Don Young of the Committee on Natural Resources on the meaning of the phrase "eligible for REA financing." Chairman Young stated in a letter to the U.S. Forest Service that the intent of the language was to exempt all not-for-profit rural electric and telephone cooperatives from paying rent on their right-of-way grants, whether or not these cooperatives had built their facilities with financing from the Rural Utility Service. (The Rural Utility Service is the federal agency that implements the REA.) Chairman Young did not intend that large, for-profit corporations, which build facilities eligible for REA financing, be able to get rent reductions. (See the preamble discussion at section 2806.11, Are there exceptions to paying rents?, for a discussion of this point.)

Other proposed regulatory revisions clarify existing right-of-way regulations pertaining to determining rents for communication site rights-of-way but have no direct economic effects. The clarifications do not propose new or novel policies relating to communication site rights-of-way or increase the rent amounts.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated?; (2) Does the proposed rule contain technical language or jargon that interferes with its clarity?; (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?; (4) Would the rule be easier to understand if it were divided into more but shorter sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for instance, § 2803.10, Who can hold a grant?); and (5) Is the description of the proposed rule in the "supplementary information" section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C St., NW, Washington, D.C. 20240. You may also e-mail the comments to: Execsec@ios.doi.gov.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of the order.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Penalties, Public lands and rights-of-way, and Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedures, Common carriers, Pipelines, Public lands rights-of-way, and Reporting and recordkeeping requirements.

Dated: May 4, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management

For the reasons set out in the preamble and under the authority of the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*; the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*; and the Secretary's enforcement powers, BLM proposes to revise parts 2800 and 2880 of Title 43 of the Code of Federal Regulations as follows:

1. Revise part 2800 to read as follows:

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2801—What General Information Do I Need To Know About the Right-of-Way Program?

Sec.

2801.5 What definitions do I need to know to understand these regulations?
2801.7 What is the scope of these regulations?
2801.8 Are any rights-of-way outside the scope of these regulations?
2801.9 Does BLM have the authority to ask me for the information required in these regulations?
2801.10 Severability

Subpart 2802—What Lands Are Available for Right-of-Way Grants?

2802.10 What lands are available for right-of-way grants?
2802.11 How does BLM designate corridors?

Subpart 2803—What Qualifications Must I Meet To Get a Right-of-Way Grant?

2803.10 Who can hold a grant?
2803.11 Must I submit proof of qualifications with my application?
2803.12 Can other people act in my behalf?
2803.13 What happens to my grant if I die?

Subpart 2804—How Do I Apply for a Right-of-Way Grant?

2804.10 What should I do before I file my application?
2804.11 Where do I file my application?
2804.12 What information do I need to submit in my application?
2804.13 Will BLM keep my information confidential?
2804.14 Is there a filing fee for my application?
2804.15 Am I exempt from paying cost recovery charges?
2804.16 How will BLM process my Category IV application?
2804.17 What is a master agreement and what does it contain?
2804.18 Can BLM reduce my reimbursement costs?
2804.19 What happens if there are two or more competing applications for the same facility or system?
2804.20 How will BLM process my application?
2804.21 Can BLM reject my application?
2804.22 Do I owe any money if BLM rejects my application or if I withdraw my application?
2804.23 Do I always have to submit an application for a right-of-way to receive a grant?
2804.24 Do I have to pay the costs of processing BLM rights-of-way associated with Federal Energy Regulatory Commission (FERC) licenses?
2804.25 What can I do on the proposed right-of-way while BLM is processing my application?

Subpart 2805—What Terms and Conditions Do Grants Contain?

2805.10 What does a grant contain?
2805.11 When is the grant effective?
2805.12 What rights does the grant convey?
2805.13 What rights does the United States retain?
2805.14 What are monitoring fees?
2805.15 When do I pay monitoring costs?

Subpart 2806—What Information Do I Need To Know About Rents for Right-of-Way Grants?

2806.5 What definitions do I need to know to understand these regulations?
2806.10 Must I pay rent for using my right-of-way?
2806.11 Are there exceptions to paying rents?
2806.12 Can my rent be reduced?
2806.13 What happens if I default on my rent payment?
2806.14 What are the rent costs for linear rights-of-way?
2806.15 Does the linear rent schedule ever change?
2806.16 How will BLM calculate my rent for linear rights-of-way covered by the schedule?
2806.17 What are the rent costs for communication facilities or uses?
2806.18 How does BLM calculate rent for communication uses?
2806.19 How will BLM determine the rent for a single-use communication facility?
2806.20 How will BLM calculate the rent for a multiple use communication facility?
2806.21 How will BLM calculate rent for private mobile radio service (PMRS), internal microwave and "other" category uses?
2806.22 How will BLM authorize and calculate rent for customers and tenants who choose to have their own right-of-way facility to be used in common with an existing right-of-way of the owner of a communication facility that they use or occupy?
2806.23 How will BLM calculate rents as to "shared facilities" or for multiple facilities that are under one authorization?
2806.24 How does BLM calculate rent for a facility manager use?
2806.25 How does BLM calculate rent for ancillary uses?
2806.26 How does BLM calculate rent for uses within federally owned facilities?
2806.27 What happens if converting to the rent schedule causes a $1,000 or more increase in my rent?
2806.28 What are the rent costs for other rights-of-way and uses?

Subpart 2807—What Can I do on the Right-of-Way Once BLM Issues the Grant?

2807.10 When can I start activities under my grant?
2807.11 When must I contact BLM?
2807.12 For what am I liable?
2807.13 What liabilities do state and local governments have?
2807.14 What happens if BLM transfers management of the land on which my grant is located to another federal agency or outside of public ownership?
2807.15 Can BLM temporarily suspend my activities to protect public health and safety or the environment without providing an administrative hearing?
2807.16 Can BLM terminate or suspend my grant?
2807.17 How will I know that BLM intends to suspend or terminate my grant?
2807.18 What happens to any improvements on my grant when it terminates?
2807.19 When must I amend my application or grant?
2807.20 May I assign my grant?
2807.21 What will BLM charge to review a request for assignment?
2807.22 Can I renew my grant?

Subpart 2808— What Do I Need To Know About Trespass?

2808.10 What is trespass?
2808.11 What will BLM do if it determines that I am in trespass?
2808.12 May my trespass use be authorized?

Subpart 2809—Are There any Special Requirements Relating to Grants Issued to Federal Agencies?

2809.10 Can federal agencies get a right-of-way grant?
2809.11 What will the grant contain?
2809.12 Can BLM suspend or terminate the grant?

Authority: 43 U.S.C. 1733, 1734(b), 1740 and 1761—1762.

Subpart 2801—What General Information Do I Need To Know About the Right-of-Way Program?

§ 2801.5 What definitions do I need to know to understand these regulations?

As used in this part, the term:

(a) *Act* means the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*

(b) *Casual use* means activities and practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources, or improvements, and which do not require a right-of-way grant under this title. *Example:* activities which do not involve the use of explosives or heavy equipment or vehicle movement, except over already established roads and trails.

(c) *Designated right-of-way corridor* means a linear or areal parcel of land identified by law, Secretarial order, the land-use planning process or other management decision, as being a preferred location for existing and future rights-of-way and suitable to accommodate more than one right-of-way.

(d) *Discharge* has the meaning found at 33 U.S.C. 1321(a)(2) of the Clean Water Act.

(e) *Facility* means an improvement constructed or to be constructed or used or to be used within a right-of-way grant. For purposes of communication site rights-of-way or uses, facility means the building, tower and/or other related incidental improvements authorized under terms of the right-of-way grant or lease.

(f) *Field examination* generally means a one-day trip, in one vehicle, from the office to the site of the right-of-way proposal, regardless of the number of specialists traveling in the vehicle. When operational efficiency dictates separate trips, BLM will include the efficient use of hourly time required to verify or collect the data needed to process the application, or monitor the grant.

(g) *Grant* means any authorization or instrument (easement, lease, license, or permit) issued by BLM pursuant to Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.*, or the Mineral Leasing Act, 30 U.S.C. 185.

(h) *Hazardous material* means:

(1) Any substance or material defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C. 9601(14);

(2) Any regulated substance contained in or released from underground storage tanks, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. 6991 *et seq.*;

(3) Oil, as defined by the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701 *et seq.*; or

(4) other substances defined and regulated as "hazardous" by applicable federal, state, or local law.

(i) *Holder* means any entity with a right-of-way authorization from BLM.

(j) *Project* means the transportation or other system which the right-of-way authorizes.

(k) *Public* lands means any land or interest in land owned by the United States within the several states and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership, except:

(1) Those lands located on the Outer Continental Shelf, and

(2) Lands held in trust for the benefit of Indians, Aleuts and Eskimos.

(l) *Release* has the meaning found at 42 U.S.C. 9601(22) of the Comprehensive Environmental Response, Compensation, and Liability Act.

(m) *Right-of-way* means the public lands authorized to be used or occupied by a right-of-way grant.

(n) *Temporary use* means a short-term right-of-way grant that authorizes a revocable, nonpossessory privilege to use specified public lands in connection with constructing, operating, maintaining or terminating an associated right-of-way project.

(o) *Transportation and utility corridor* means a parcel of land, without fixed

limits or boundaries, that is used as the location for one or more transportation or utility rights-of-way.

(p) *Unnecessary and undue degradation* means surface disturbance that is greater than that which would occur when the same or a similar activity is being done by a prudent person in a usual, customary, and proficient manner that considers the effects of the activity on other resources and land uses outside the area of the activity. This disturbance may be either willful or nonwillful.

§ 2801.7 What is the scope of these regulations?

The regulations in this part apply to:

(a) Issuing, administering, amending, assigning, renewing, and terminating right-of-way grants for necessary transportation or other systems and facilities which require the use of public lands identified in 43 U.S.C. 1761, and which are in the public interest;

(b) Federal agency applications for transporting oil, natural gas, synthetic liquids, or gaseous fuels, and any refined products produced from them; and

(c) Rights-of-way issued on or before October 21, 1976, under then existing statutory authority, to the extent that these regulations do not diminish or reduce any rights conferred by the grant or the statute under which they were issued. Where there is a reduction, the grant or enabling statute will apply instead of these regulations.

§ 2801.8 Are any rights-of-way outside the scope of these regulations?

Yes. The regulations in this part do not apply to right-of-way grants for:

(a) Federal Aid highways, for which Federal Highway Administration procedures apply;

(b) Reciprocal and cost share road use agreements, for which subpart 2812 of this chapter applies;

(c) Lands within wilderness areas, although some uses may be authorized under parts 2920 and 8560 of this chapter; and

(d) Oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these materials, unless applied for by Federal agencies, for which part 2880 of this chapter applies.

§ 2801.9 Does BLM have the authority to ask me for the information required in these regulations?

(a) Yes. The Office of Management and Budget has approved the information collection requirements contained in Part 2800 under 44 U.S.C. 3507 and has assigned them clearance numbers of 1004–0060 (for Form SF–299) and 1004–_____ for the remainder of the requirements. BLM uses this information to determine if using the public lands for right-of-way grants is appropriate. You must respond to obtain a benefit.

(b) BLM estimates that the public reporting burden for this information is as follows: 2 hours per response to fill out Form SF–299; 16 hours per response to prepare Plans of Development; 30 hours per response to negotiate master agreements; one-half hour per response to prepare a project map; one-half hour per response to supply BLM with copies of approved certificates and permits from other agencies and location maps from state and local governments; 2.5 hours per response to apply for cost reductions; and one hour per response to supply information about tenants at multiple use communication sites. These estimates include the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

(c) Send comments regarding this burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D. C. 20240.

§ 2801.10 Severability.

If any provisions of the rules in this part or their applicability to any person or circumstances are held invalid, the remainder of these rules and their applicability to other people or circumstances shall not be affected.

Subpart 2802—What Lands Are Available for FLPMA Rights-of-Way?

§ 2802.10 What lands are available for FLPMA rights-of-way?

(a) BLM may grant new rights-of-way on lands under its jurisdiction, except where they are specifically excluded or restricted by statute, regulation, planning, environmental, or other resource concerns.

(b) BLM may require common use of a right-of-way and may require, to the extent practical, location of new rights-of-way within existing or designated corridors. BLM designates corridors, as well as exclusion or avoidance areas, through the land-use planning process described at part 1610 of this chapter, and informs the public of designated corridors by appropriate means.

(c) You should contact the BLM office nearest to you to determine whether or not the land you want to use is available and to begin discussions about any application you may need to file.

§ 2802.11 How does BLM designate corridors?

BLM determines the locations and boundaries of right-of-way corridors after reviewing:

(a) Federal, state and local land-use plans, and applicable federal and state laws;

(b) Environmental impacts on natural and cultural resources;

(c) Physical effects and constraints on placing corridors due to geology, hydrology, meteorology, soil, or land forms;

(d) Costs of construction, operation and maintenance and costs of modifying or relocating existing facilities in a proposed corridor, i.e., the economic efficiency of placing a right-of-way corridor;

(e) Risks to national security;

(f) Potential health and safety hazards imposed on the public by facilities or activities located within the right-of-way corridor;

(g) Social and economic impacts of the corridor on public land users, adjacent landowners, and other groups or individuals;

(h) Transportation and utility corridor studies developed by user groups;

(i) Engineering and technological compatibility of proposed and existing facilities; and

(j) Existing transportation and utility corridors that are capable of accommodating additional compatible uses without further review.

Subpart 2803—What Qualifications Must I Meet To Get a Right-of-Way Grant?

§ 2803.10 Who can hold a grant?

You may hold a grant if you are an individual, group, association, corporation, partnership, or similar entity and if you:

(a) Are legally capable of holding an interest in real estate, and

(b) Can show that you are economically and technically capable of constructing, operating, and maintaining the proposed facilities.

§ 2803.11 Must I submit proof of my qualifications with my application?

Yes. If you are a partnership, corporation, association, or other legal entity, you must submit:

(a) Copies of the formal documents creating the relationship, such as papers of incorporation, and

(b) Evidence that the party signing the application has the authority to bind the applicant.

§ 2803.12 Can other people act on my behalf?

Only to the extent that you have formally, in writing, and legally given the person authority to do so.

§ 2803.13 What happens to my grant if I die?

It depends on the situation. If your grant contains a provision for this situation, the grant provision applies. Otherwise, the new owner (heir) must apply to BLM for an assignment of the grant, and BLM must approve the assignment. (See § 2807.19)

Subpart 2804—How Do I Apply for a Right-of-Way Grant?

§ 2804.10 What should I do before I file my application?

Before filing an application with BLM, you are strongly encouraged to visit or telephone the BLM field office having jurisdiction over the lands affected by your application to identify potential constraints, determine whether or not the lands are located within a designated or existing right-of-way corridor and tentatively schedule the processing of your application. BLM may share this information with federal, state, and local government agencies to ensure that these agencies are aware of any authorizations you may need from them and that effective coordinated planning is initiated as soon as possible.

§ 2804.11 Where do I file my application?

(a) File the application for a right-of-way grant in the BLM field office having jurisdiction over the lands affected by your application.

(b) If your application affects more than one BLM administrative unit, you may file at any BLM office having jurisdiction over any part of the project. BLM will notify you where to direct subsequent communications.

§ 2804.12 What information do I need to submit in my application?

(a) File your application on Form SF–299, available from any BLM office, and fill in the required information. On the form, give your name and address and the name and address of any authorized agent and completely describe the project, including:

(1) The scope of the facilities;

(2) The estimated schedule for constructing and maintaining the project;

(3) The estimated life of the project and the construction and reclamation techniques proposed;

(4) A map of the project, showing its approximate location and existing improvements adjacent to the proposal;

(5) A statement of your financial and technical capability to construct, operate, maintain, and terminate the project;

(6) Any plans, contracts, or agreements concerning your use of the right-of-way that might affect competition; and

(7) Your certification that you are of legal age and authorized to do business in the State and that you have submitted correct information to the best of your knowledge.

(b) If you are a business entity, you must disclose the following information:

(1) The name and address of each participant in the business,

(2) The name and address of each shareholder owning 3 percent or more of the voting shares of the business,

(3) The name and address of each affiliate of the business,

(4) The number of shares and the percentage of any class of voting stock of any affiliate controlled by the entity, and

(5) The number of shares and the percentage of any class of voting stock of any affiliate that controls the entity.

(c) BLM may require you to submit additional information at any time while processing your application.

(d) If you are a federal oil and gas lessee or operator, you may include your right-of-way needs with your application for permit to drill or other sundry notice required under part 3100 of this title.

(e) If you are filing with another federal agency for a license, certificate of public convenience and necessity, or other authorization for a project involving a right-of-way on public lands, simultaneously file an application with BLM for a grant. Include a copy or reference all of the information you have filed with the other federal agency.

§ 2804.13 Will BLM keep my information confidential?

BLM will keep any information that you mark as "confidential" or "proprietary" confidential to the extent allowed under the Freedom of Information Act (5 U.S.C. 552).

§ 2804.14 Is there a filing fee for my application?

(a) Yes. Unless you apply for and receive a reduction (see § 2804.18 of this subpart) or are exempt under § 2804.15 of this subpart, you must reimburse BLM for the reasonable costs of processing your application before BLM incurs them. These costs are not refundable and are based on an estimate of the amount of work that BLM must do to process your application.

(b) Processing costs are based on categories, defined as follows:

(1) *Category I.* Either BLM has on hand or you supply the data necessary to process your application; neither a land-use plan amendment nor a field examination is required; and estimated processing time is no more than 24 work hours for all BLM personnel involved in the application review. *Cost:* Refer to the FLPMA fee schedule, available from any BLM field office.

(2) *Category II.* Same as I, plus one field examination is needed to verify existing data; and the estimated processing time, including the time required to conduct the field exam, falls between 25 and 36 work hours for all BLM personnel involved in the application review. *Cost:* Refer to the FLPMA fee schedule, available from any BLM field office.

(3) *Category III.* Same as I, plus two field examinations are needed to verify existing data; and the estimated processing time, including the time required to conduct the field exams, falls between 37 and 50 work hours for all BLM personnel involved in the application review. *Cost:* Refer to the FLPMA fee schedule, available from any BLM field office.

(4) *Category IV.* Original data must be collected; a plan amendment may be needed; two or more field examinations are needed; and estimated processing time, including the time required for the field exams, is more than 50 work hours for all BLM personnel involved in the application review. *Cost:* Full reasonable costs.

(5) *Master agreement.* Instead of one of categories I through IV, you may enter into an agreement with BLM to fully reimburse BLM for all reasonable processing costs. The agreement should be written to include any applications you may subsequently file within the same area.

(c) The cost for the first three categories is contained in a schedule maintained by BLM. BLM updates these schedules each calendar year, based on the previous year's change in the Implicit Price Deflator-Gross Domestic Product, as measured second quarter to second quarter. BLM will round these changes up to the nearest dollar. You may obtain a copy of the revised schedule from any BLM State or field office or by writing: Director, BLM, 1849 C St., N.W., Mail Stop 1000LS, Washington, D.C. 20240. BLM will post the schedule on the BLM Homepage on the Internet, http://www.blm.gov.

(d) After an initial review of your application, BLM will notify you of the category into which your application fits; you must submit the payment

before BLM begins processing your application. For Category IV and master agreement applications, see § 2804.16(b) of this subpart. Your signature on a cost recovery master agreement constitutes your agreement with the category decision. If you disagree with the category that BLM has determined for your application, you may appeal the decision to the Interior Board of Land Appeals under part 4 of this title.

(1) If you appeal a Category I through III determination, BLM will process your application while the appeal is pending, if you have submitted the processing fee. You will get a refund or adjustment of your application fee upon resolution of the appeal, if IBLA finds in your favor.

(2) If you appeal a Category IV determination, BLM will not process your application further until the appeal is resolved.

(e) In processing your application, BLM may determine at any time that the application requires preparing an environmental impact statement. BLM will then send you a decision changing your cost recovery category to Category IV. You may appeal the decision under part 4 of this title. BLM will make no other changes in category determination.

§ 2804.15 Am I exempt from paying cost recovery charges?

You are exempt from paying processing and monitoring fees only if:

(a) You are a state or local government or an agency of such a government, when BLM issues the grant for governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt; or

(b) You participate in a cost-share road or reciprocal right-of-way agreement.

§ 2804.16 How will BLM process my Category IV application?

(a) BLM will:

(1) Determine the issues to be analyzed under NEPA;

(2) Prepare a preliminary work plan;

(3) Develop a preliminary financial plan, which estimates the reasonable cost of processing your application;

(4) Discuss with you the preliminary plans and data, the availability of funds, your options for the timing of paying reimbursable costs and what financial information you need to submit. You may conduct the studies that BLM needs to process your application, but you must do the work to BLM standards. BLM will make the final determinations and conclusions arising from the studies; and

(5) Develop the final scoping, work and financial plan which reflects any work you have agreed to do. BLM will also complete the final estimates of the amount of the costs you will need to reimburse, including any reduction granted to you.

(b) BLM will periodically estimate processing costs for a specific work period and notify you of the amount due. If your payment exceeds the costs that BLM incurred for the period, BLM will either adjust the next billing to reflect the excess or refund you the excess under the provisions of 43 U.S.C. 1734.

§ 2804.17 What is a cost recovery master agreement and what does it contain?

(a) If your proposal involves a project that would require multiple approvals from BLM, you may want to enter into a cost recovery master agreement.

(b) For BLM to approve the agreement, its contents must:

(1) Describe the geographical area covered by the agreement and the scope of the activity planned;

(2) Include a work plan, updated periodically as appropriate, and approved by you and BLM;

(3) Contain a preliminary cost estimate for processing the application and completing the project;

(4) Specify that you will be bound by all regulations otherwise applicable to a Category IV determination;

(5) Describe the method of periodic billing, payment and auditing;

(6) State whether the agreement will bind future applications in the same geographic area that are not part of the same project;

(7) Explain how monitoring will be performed and how monitoring costs will be recovered;

(8) Contain specific conditions for terminating the agreement; and

(9) Contain any other information that BLM needs to process the application.

(c) If you sign a master agreement, you waive your right to request a reduction of cost reimbursement charges. (See § 2804.18.)

§ 2804.18 Can BLM reduce my reimbursement costs?

Yes, in limited circumstances. (See paragraphs (a) and (b) of this section.) You may submit a written request for reduction of the processing costs to the BLM field office having jurisdiction over the lands covered by your application. Submitting your reduction request with the application will expedite its handling. BLM may require you to submit additional information needed to support your request. While we consider your written request, BLM will not process your application.

(a) *Category IV Applications, Reasonability.* The State Director will apply the reasonability criteria of FLPMA, 43 U.S.C. 1734(b), in determining the amount you owe. You may submit your analysis of the following information, if you believe one or more of the criteria apply:

(1) Reasonable costs to BLM of processing a right-of-way application and of monitoring construction, operation and termination of a facility authorized by the right-of-way grant;

(2) Monetary value of the rights and privileges you seek, that is, the cost of providing the end result through the next least costly method;

(3) Costs incurred for the benefit of the general public interest, that is, the costs for studies and data collection that have value to the United States or the general public apart from processing the application;

(4) BLM's ability to process an application with maximum efficiency and minimum waste and effort; and

(5) Any tangible improvements, such as roads, trails and recreation facilities, with significant public value that are expected in connection with constructing and operating the project.

(b) *Other considerations.* The State Director may, at his or her discretion, reduce your payment of reimbursable costs in any category for any of the reasons listed in this paragraph. You may submit information showing how your situation meets one or more of these factors:

(1) Hardship conditions, that is, payment of all reasonable costs would:

(i) Result in financial hardship to your small business, and you would receive little value from your grant as compared to the costs of processing your application, or

(ii) Create such financial hardship so as to prevent your use and enjoyment of your private right-of-way for a non-commercial purpose.

(2) The costs of processing the application grossly exceed the costs of constructing the project;

(3) A major portion of the processing costs results from issues not related to the actual right-of-way grant;

(4) You are a non-profit organization, corporation, or association which is not controlled by or a subsidiary of a profit-making enterprise, and

(i) The studies undertaken in connection with the processing of the application have a public benefit, or

(ii) The facility or project will provide a benefit or special service to the general public or to a program of the Secretary;

(5) You need a right-of-way to construct a facility to prevent or mitigate damages to any lands or property or to mitigate hazards or danger to public health and safety resulting from an act of God, an act of war or negligence of the United States;

(6) You have a grant and need to relocate a facility on it to an area outside the existing grant to comply with public health and safety and environmental protection laws and regulations which were not in effect at the time your original grant was issued;

(7) You have a grant and need to secure a new grant to relocate facilities which have to be moved because a federal agency or federally funded project needs the lands, if the United States does not refund costs associated with your relocation; or

(8) For whatever other reason, collecting processing fees would be inconsistent with prudent and appropriate management of public lands and with your equitable interests.

(c) *Action on request.* BLM will notify you in writing of what you owe after considering your analysis.

(1) If you disagree with BLM's determination, you may appeal it under part 4 of this title. BLM will take no action on your application while the appeal is pending.

(2) If BLM reduces the cost reimbursement, we will determine the actual amount of the reduction and adjust your bills accordingly.

(d) *Restriction on reduction.* If no funds are available to process your application, BLM may not process your application until funds are available.

§ 2804.19 What happens if there are two or more competing applications for the same facility or system?

If this happens,

(a) *Category I through III:* You must reimburse BLM for processing costs as if the other application or applications had not been filed.

(b) *Category IV:* You are responsible for the costs identified with your application. If BLM cannot readily separate costs, such as costs associated with preparing environmental analyses, you and competing applicants must pay an equal share or a proportion agreed to in writing among all applicants and BLM. If you agree to share the cost of processing your application and that of a competing applicant, and the competitor fails to pay the agreed upon amount, you will be liable for the entire amount due. BLM will not do any work without the advance payment.

§ 2804.20 How will BLM process my application?

(a) BLM will notify you in writing when it receives your application and your cost reimbursement payment described at § 2804.14 of this subpart.

(b) BLM may require you to submit additional information necessary to review the application. This information may include a detailed construction, operation, rehabilitation, and environmental protection plan, *i.e.*, a "Plan of Development," and any needed cultural resource surveys or inventories for threatened or endangered species. If BLM needs more information, we will request this information in writing. BLM will give you written notification of any deficiencies in the information you provided and give you the opportunity to file the additional information. BLM will also notify you of any applications for grants which involve all or part of the lands you applied for.

(c) BLM will process your application within 30 working days of receiving it if it is a Category I through III application that qualifies for a categorical exclusion or requires an environmental assessment. If it is a Category IV application or one requiring an environmental impact statement, BLM will notify you in writing of the estimated processing time for your application. If processing any category of application will take longer than 60 working days, BLM will notify you and provide you with an explanation of the delay and an estimate of the processing time.

(d) Before issuing a grant, BLM will:

(1) Complete an environmental analysis, as required by 40 CFR part 1501;

(2) Determine whether or not your proposed use complies with applicable Federal and State laws and local ordinances;

(3) Determine whether it is in the public interest to require you to grant the United States an equivalent right-of-way across lands that you own;

(4) Consult as necessary with other governmental entities;

(5) Hold public meetings if sufficient public interest exists to warrant their time and expense. BLM will publish a notice in the **Federal Register** or a local newspaper if we hold any public meetings;

(6) Take any other action necessary to fully evaluate and decide whether to approve or deny your application.

(e) If approved, the decision may:

(1) Include any terms, conditions that BLM determines to be in the public interest. This may include modifying your proposed use, changing the route or location of the facilities, and other stipulations.

(2) Prevent your use of the right-of-way until you have an approved Plan of Development and BLM has issued a Notice to Proceed.

(3) Impose a specific term for the grant. Each grant that BLM issues for 20 years or more will contain a provision requiring periodic review at the end of the twentieth year and at 10-year intervals thereafter. BLM may change the terms and conditions of the grant as a result of these reviews.

§ 2804.21 Can BLM reject my application?

Yes. BLM may reject your application if:

(a) The proposed grant is inconsistent with the purpose for which the public lands are being managed;

(b) The proposed grant would not be in the public interest;

(c) You are not qualified to hold a grant;

(d) Issuing the grant would be inconsistent with the Act or other applicable laws;

(e) You do not have or cannot demonstrate the technical or financial capability to operate facilities located with the grant; or

(f) You do not adequately comply with a deficiency notice (see § 2804.19(b) of this subpart).

§ 2804.22 Do I owe any money if BLM rejects my application or if I withdraw my application?

Yes. You owe only the initial processing fee, unless you have a Category IV application or have entered into a master agreement. Then, the following conditions apply:

(a) If BLM rejects your application, you are liable for all reasonable costs that BLM incurred in processing it. The money you have not paid is due within 30 days of your receiving a bill for the amount due.

(b) If you withdraw your application before BLM issues a grant, you are liable for all the reasonable processing costs and for the reasonable costs of terminating your application. Any money you have not paid is due within 30 days of your receiving a bill for the amount due.

§ 2804.23 Do I always have to submit an application for a right-of-way to receive a grant?

(a) No. Where competitive interest exists, BLM may offer grants and set rent through a competitive bid process. BLM will describe the procedures for a competitive bid through a bid announcement published in a newspaper of general circulation in the

area affected by the potential right-of-way.

(b) Oil and gas lessees or operators may include right-of-way needs with their Applications for Permits to Drill or similar surface use requirements under the regulations at part 3100 of this chapter.

§ 2804.24 Do I have to pay the costs of processing BLM rights-of-way associated with Federal Energy Regulatory Commission (FERC) licenses?

Yes. You must reimburse BLM for the costs which it incurs in processing your application. BLM will bill you for this service. FERC will bill you for costs incurred in processing the FERC license or relicense. BLM will determine the amount that you have to pay by using the cost recovery categories described at § 2804.14 of this subpart.

§ 2804.25 What can I do on the proposed right-of-way while BLM is processing my application?

You may conduct casual use activities on the lands covered by the application, as may any other member of the public. For any activities that are not casual use, you must get prior approval from BLM.

Subpart 2805—What Terms and Conditions Do Grants Contain?

§ 2805.10 What does a grant contain?

The grant states what your rights are on the lands subject to the grant and contains information about:

(a) *What lands you can use or occupy.* The lands may or may not correspond to those you applied for. BLM will limit the grant to those lands which the BLM determines:

(1) Will be occupied by the authorized facilities;

(2) Are necessary for constructing, operating, maintaining, and terminating the authorized facilities;

(3) Are necessary to protect the public health and safety; and

(4) Will not unnecessarily damage the environment.

(b) *How long you can use the right-of-way.* Each grant will state the length of time that you are authorized to use the right-of-way. BLM will consider the following factors in establishing a reasonable time limit:

(1) The public purpose served,

(2) Cost and useful life of the facility, and

(3) Time limitations imposed by licenses or permits required by other federal agencies and state or local governments.

(c) *Terms and conditions of use.* If you accept a grant, you must agree to comply with and be bound by certain terms and conditions. You must:

(1) Comply with all local, state, and federal laws and regulations applicable to the authorized use, construction, maintenance, and termination of the project and existing at the time the BLM issues the grant and those state, local, and federal laws and regulations subsequently enacted, issued, or amended during the term of the grant;

(2) Rebuild and repair roads, fences, and established trails destroyed or damaged by constructing, operating, maintaining, or terminating the project and build and maintain suitable crossings for existing roads and significant trails that intersect the project;

(3) Do everything reasonable, on your own or at BLM's request, to prevent and suppress fires on or in the immediate vicinity of the right-of-way area;

(4) Not discriminate against any employee or applicant for employment associated with the authorized use because of race, creed, color, sex, or national origin and require subcontractors to refrain from discrimination also;

(5) Pay rentals and reimbursable costs as described at §§ 2806.10 and 2805.14;

(6) Certify that you have a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property resulting from or related to your activities on the right-of-way. Coverage includes liabilities for damages or injuries resulting from actual or threatened releases or discharges of hazardous materials. Based on changes in conditions or risk and your record of compliance, BLM may require a bond or an increase or decrease in an existing bond at any time during the term of the grant;

(7) Assume full liability if third parties are injured or damages occur to property on or around the grant area (see § 2807.12);

(8) Comply with project-specific terms and conditions, including requirements to:

(i) Restore, revegetate, and curtail erosion or any other rehabilitation measure determined necessary;

(ii) Ensure that activities in connection with the grant comply with applicable air and water quality standards or related facility siting standards contained in applicable federal or state law or regulations;

(iii) Control or prevent damage to environmental values, federal property, and public health and safety;

(iv) Protect the interests of individuals living in the general area who rely on the area for subsistence purposes; and

(v) Ensure that the facilities are constructed, used, operated, and terminated in a manner consistent with the grant and on the lands included in the grant;

(9) Immediately notify all federal, state, and local agencies with jurisdiction over the land, including BLM, of any actual or threatened release or discharge of hazardous material and send a copy of the notification to BLM;

(10) Not dispose of hazardous materials on your grant, except as provided by the terms and conditions of your grant, and not store hazardous materials on your grant for more than 90 days, less if required by law;

(11) Annually and on assigning, renewing, and terminating your grant, certify that you have complied with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*;

(12) Control and remove any release or discharge of hazardous materials that occurs on or near the right-of-way, whether the release or discharge is authorized under the grant. You must also remediate or restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other federal, state or local agency having jurisdiction over the land, resource or hazardous material;

(13) Comply with all liability and indemnification provisions and stipulations; and

(14) Comply with all other stipulations that BLM may require.

§ 2805.11 When is the grant effective?

The grant is effective after both you and BLM sign it. Your signature indicates that you accept its terms and conditions. You must also pay any necessary rent and monitoring. Your signed acceptance constitutes an agreement between you and the United States that your right to use the public lands, as specified in the grant, is subject to the terms and conditions of the grant and the provisions of applicable laws and regulations.

§ 2805.12 What rights does the grant convey?

The grant conveys to you only those rights which it expressly contains. It is issued subject to the valid existing rights of others, including the United States. Rights which the grant conveys to you include the right to:

(a) Use the affected lands to construct, operate, maintain, and terminate facilities within the right-of-way for authorized purposes under the terms and conditions described in the grant;

(b) If your grant specifically authorizes it, allow other parties to use your facility for the purposes specified

in your grant and charge for its use. Otherwise, you may not let anyone else use your facility unless BLM authorizes or requires it in writing;

(c) Allow others to use the land as your agent in the exercise of the rights that the grant specifies;

(d) Do minor trimming, pruning, and removing of vegetation to maintain the right-of-way or facility;

(e) Make use of common varieties of stone and soil which are removed when constructing part of the project, in constructing other parts of the project within the authorized right-of-way, without additional BLM authorization or payment; and

(f) Assign the grant to another, provided that you obtain BLM's prior written approval.

§ 2805.13 What rights does the United States retain?

The United States retains and may exercise any rights the grant does not expressly convey to you. These include the right of BLM to:

(a) Access the lands covered by the grant and enter any facility you construct on the grant after BLM gives you reasonable notice;

(b) Require common use of the land included in your right-of-way and authorize use of the right-of-way for compatible uses. You may not charge for the use of the lands made subject to such additional rights-of-way;

(c) Retain ownership of the products of the land, including living and non-living resources. You have no right to use these resources, except as noted in § 2805.12 of this subpart;

(d) Require you to grant it an equivalent right-of-way for an access road across your land if BLM determines the reciprocal grant is needed in the public interest;

(e) Determine whether or not your grant is renewable; and

(f) Change the terms and conditions of your grant through changes in legislation, regulation, or otherwise necessary to protect public health and safety and the environment.

§ 2805.14 What are monitoring fees?

(a) Monitoring fees are similar to the processing costs fees described at §§ 2804.14 and 2804.16. BLM incurs costs in monitoring your construction, operation, maintenance and termination of the facilities we authorized under the grant and in protecting and rehabilitating the affected public lands. BLM uses the same category for monitoring as it does for determining the category of the application. (See § 2804.14.)

(b) *Costs for Categories I through III.* For Categories I through III, there is a one-time monitoring fee based on a fee schedule available from any BLM office. BLM annually updates these costs, using the same method it uses for application processing costs. (See paragraph (c) of § 2804.14.)

(c) *Costs for Category IV.* See § 2805.15(b) of this subpart.

§ 2805.15 When do I pay monitoring costs?

(a) *All categories.* For Categories I through III, you must submit the payments for monitoring with your written acceptance of the terms and conditions of the grant. For Category IV, you must submit the first periodic advance payment with your written acceptance. If you have a master agreement with BLM, pay the monitoring costs per the agreement. BLM will not issue your grant until it receives the required payment.

(b) *Periodic advance payments.* If you have a Category IV application, BLM may periodically estimate the costs of monitoring your use of the grant. BLM will include this fee in the costs associated with processing costs described at § 2804.14. If your payments exceed reasonable costs, BLM will reimburse you the difference or adjust the next billing to reflect the overpayment. Unless you have written authorization from BLM, you may not offset or deduct the amount due from your payments. The periodic advance payments are subject to re-estimation if conditions warrant.

Subpart 2806—What Information Do I Need to Know About Rents for Right-of-Way Grants?

§ 2806.5 What definitions do I need to know to understand these regulations?

As used in this subpart, the term:

(a) *Base rent* means the dollar amount required from the holder of a right-of-way on BLM-managed lands based on the communication use with the highest rent in the associated facility, as calculated according to the terms of the right-of-way grant or lease. If a facility manager or owner's scheduled rent is equal to another assigned scheduled rent in the facility, then the facility manager or owner's use determines the dollar amount of the base rent.

(b) *Commercial purpose* refers to the circumstance where a facility owner charges rent for the use of a facility that generates more than the operating expenses of the facility attributable to that use, thus producing a profit for the facility owner. The facility owner's use may not otherwise be subject to rent charges under BLM's rental provisions. *Example:* A two-way radio service, used only by paying subscribers, is housed in an REA-financed facility located on a rent-free right-of-way. The facility owner charges the radio service an annual rent for using all or part of the facility that exceeds the portion of the annual operating expenses, such as Federal, State and local taxes, if any, and financing charges (but not depreciation), maintenance, labor, remodeling, replacement, and utility costs, that are attributable to the radio service's using the facility. Under the circumstances, the otherwise rent-free facility is being used for a commercial purpose, and, therefore, BLM will charge the facility owner an appropriate rent;

(c) *Communication use rent schedule* is a schedule of rents for the following types of communication uses, including related technologies, located in a facility associated with a particular right-of-way grant. For rent calculation purposes, all use categories include ancillary communications equipment, such as microwave or internal one- or two-way radio:

(1) *Television broadcast* means a use, licensed by the Federal Communications Commission (FCC), that broadcasts UHF and VHF audio and video signals for general public reception and ancillary communication equipment directly related to the operations, maintenance and monitoring of the use. This category does not include Low Power Television (LPT) or rebroadcast devices, such as translators, or transmitting devices, such as microwave relays serving broadcast translators. BLM does not consider ancillary equipment used in direct support of the primary communication use as a separate use for rent calculation purposes;

(2) *AM and FM radio broadcast* means a use, licensed by the FCC, that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception and ancillary communication equipment, directly related to operating, maintaining and monitoring the use. This category does not include FCC-licensed low-power FM radio; rebroadcast devices, such as translators; boosters or microwave relays serving broadcast translators;

(3) *Broadcast radio and low power television* means a use, licensed by the FCC, that operates translators and low power television, low-power FM radio (LPFM), and ancillary communication equipment, including microwave facilities, directly related to operating, maintaining, or monitoring the use. Translators receive a television or FM radio broadcast signal and rebroadcast it

on a different channel or frequency for local reception. In some cases the translator relays the true signal to another amplifier or translator. LPTV and LPFM are broadcast translators that originate programming. This category of use includes translators associated with public telecommunication services.

(4) *Cable television* means a use, licensed by the FCC, that transmits video programming to multiple subscribers in a community over a wired or wireless network and communication equipment directly related to operating, maintaining, or monitoring the use. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems, such as private systems serving hotels or residences;

(5) *Cellular telephone* means systems and related technologies, licensed by the FCC, used for mobile communications, using a combination of radio and telephone switching technology and providing public switched network services to fixed and mobile users within a defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and microwave communications link equipment and the ancillary communication equipment directly related to maintaining and monitoring the use. *Examples:* Personal Communication Service (PCS), Enhanced Specialized Mobile Radio (ESMR), Improved Mobile Telephone Service (IMTS), Air-to-Ground, Offshore Radio Telephone Service, and Cell Site Extenders;

(6) *Commercial mobile radio service/facility manager* means commercial mobile radio uses or their holders, licensed by the FCC, that provide communication service to individual customers and ancillary communication equipment directly related to operating, maintaining, or monitoring the use. *Examples:* Two-way voice and paging services, such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, and microwave communications link equipment or those holders that lease building, tower, and related facility space to a variety of tenants as part of their business enterprise and act as facility managers;

(7) *Microwave* means FCC-licensed uses that operate long-line intrastate and interstate public telephone, television, information, and data transmissions; uses in support of pipeline and power companies, railroads, and land resource management companies that support their primary business, and communication equipment directly related to operating, maintaining or monitoring the use;

(8) *Private mobile radio* means FCC-licensed uses supporting private mobile radio systems primarily for a single entity and communication equipment directly related to operating, maintaining, or monitoring the use. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. *Examples:* Private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities; and

(9) *Other communication uses* means FCC-licensed private communication uses, such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

(d) *Customer* means an occupant who is paying a facility manager or owner, or a tenant, for using all or any part of the space in the facility, or for communication services, and is not reselling or broadcasting communication services to others. *Examples:* Two-way radio, internal microwave communications, and all uses under the "other" category when located within someone else's facility. Persons or entities benefiting from private or internal communication uses located in another holder's facility are considered customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent that is charged by BLM, except as noted in § 2806.20(b)(4) of this subpart.

(e) *Facility manager* means a person or entity that:

(1) Owns a communication facility on federal land;

(2) Leases space to other communication users;

(3) Does not own or operate communications equipment in the facility for personal use; and

(4) Holds a communication use authorization.

(f) *Facility owner* means a person or entity that:

(1) Owns a communication facility on a right-of-way grant;

(2) Owns and operates his or her own communications equipment in the facility;

(3) Holds a communication use authorization; and

(4) May or may not lease space to other communication users in that facility.

(g) *Reselling* means providing communication services to others for profit, such as Commercial Mobile Radio Service providers, providers of cellular telephone services, or communication businesses, such as television and radio broadcasters.

(h) *Site* means an area, such as a mountain top, where one or more communication facilities are located.

(i) *Tenant* means an occupant who pays rent for occupying and using all or any part of a facility and operates communication equipment in the facility to resell or broadcast the communication services to others for a profit. For purposes of calculating the amount of rent that BLM charges, the term "tenant" does not include private mobile radio or internal microwave use that is not being re-sold, or uses included in the category of "Other Communication Uses."

(j) *Zone* means one of eight groupings of land value into which all areas of the contiguous United States were placed for linear rent assessment purposes.

(k) *Zone value* means the per acre, fair market value of land that is used to calculate rents for linear right-of-way grants. For example, lands within a zone with a value of $50 per acre are in Zone 1, lands within a zone with a value of $100 are in Zone 2, land within a zone with a value of $200 are in Zone 3, and so forth.

§ 2806.10 Must I pay rent for using my right-of-way?

Yes. You must pay rent in advance, unless your rent is based in whole or in part on a percentage of production or similar terms. The rent is equivalent to the fair market rental value, which BLM establishes based on sound business management principles.

(a) BLM will charge the rent beginning on the first day of the month following the effective date of the grant through the last day of the month when the grant terminates. Example: If a right-of-way became effective on January 10 and terminated on September 16, the rental period would be February 1 through September 30, or 8 months.

(b) BLM will set or adjust the annual billing periods to coincide with the calendar year by prorating the rent on the basis of 12 months.

(c) BLM may require that you make either annual payments or payments for more than 1 year at a time. However, if you are a private individual and the annual rent is more than $100, you may elect to make either annual payments or payments for more than 1 year.

(d) If BLM issued your right-of-way on or before October 21, 1976, under then existing statutes, you may request a hearing with BLM before a proposed rent increase becomes effective. This applies to rent increases due to a fair market value appraisal or from initially being put on a rent schedule. You may not request a hearing on annual adjustments once you are on a schedule.

(e) If you disagree with the rent that BLM charges, you may appeal the decision under part 4 of this title.

§ 2806.11 Are there exceptions to paying rents?

Yes, you do not have to pay rent for your use if:

(a) BLM issues the grant under a statute which does not allow it to charge rent, or

(b) You are a federal, state, or local government or their agency or instrumentality, unless you are using the system or space for commercial purposes or you are a municipal utility or cooperative whose principal source of revenue is customer charges; or

(c) You have been granted a waiver of rent under a statute permitting waiver; or

(d) The facilities constructed on the right-of-way were constructed with funds from the Rural Electrification Act of 1936, as amended (REA), or are owned and operated by a non-profit rural electric or telephone cooperative eligible for REA financing, or are extensions of such facilities. You must be able to document your eligibility for REA financing. However, BLM will charge you rent based on your tenants and customers if:

(1) You are a commercial communications company using power poles under an agreement with the Rural Utility Service, or

(2) You hold a communication site right-of-way grant used and occupied by tenants, or

(3) You provide communication services to customers for commercial purposes in connection with your right-of-way.

§ 2806.12 Can my rent be reduced?

Yes. BLM may reduce your rent payment where:

(a) You are a non-profit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise; and

(b) You provide without charge, or at reduced rates, a valuable benefit to the public at large or to the programs of the Secretary of the Interior; or

(c) You hold an outstanding permit, lease, license, or contract for which the United States is already receiving compensation. This does not apply to oil and gas leases under part 3100 of this title, where you are required to secure a grant under part 2800 for access to reach the lease area, or a right-of-way under part 2880 to transport products to or from the lease area; or

(d) The grant involves a reciprocal right-of-way agreement not subject to part 2812 of this title. BLM will determine the fair market value rent for cost share roads or reciprocal rights-of-way based on the proportion of use; or

(e) The BLM State Director determines that paying the full rent will cause you hardship, as defined at § 2804.18(b)(1), and that reducing or waiving the rental payment is in the public interest. BLM may require you to submit data and information to support a proposed finding that your grant qualifies for a reduction or waiver of rental. (See § 2804.18 for information about how to apply for a rent reduction.)

§ 2806.13 What happens if I default on my rent payment?

If you do not pay the rent when it is due under the terms and conditions of the grant or applicable law, and delinquency continues for 30 days after BLM sends you a payment notice, BLM may terminate your grant or take appropriate action to collect the rent owed. After you have defaulted, you may not remove any structures, buildings, or equipment without BLM's written permission. The rent due remains a debt that you owe to the United States. If you pay the rent after the lease or grant has terminated, the grant is not automatically reinstated. You must file a new application with BLM. BLM will consider the history of your failure to pay rent in deciding whether to offer you a new grant.

§ 2806.14 What are the rent costs for linear rights-of-way?

(a)(1) BLM will normally use a schedule, which is updated annually, to determine the rent for your linear grant. BLM may use an alternate means to compute your rent if:

(i) The land value of a substantial segment or area within the right-of-way exceeds the zone's value by a factor of 10, or

(ii) The expected rent is sufficient to warrant a separate appraisal.

(2) Once you are on a rent schedule, BLM will not use the conditions in paragraphs (a)(1)(i) and (ii) of this section to remove you from the schedule, unless you file an application to amend your right-of-way grant.

(b) You may obtain the current linear right-of-way rent schedule from any BLM State or field office or by writing: Director, BLM, 1849 C St., N.W., Mail Stop 1000 LS, Washington, D.C. 20240. BLM will also post the current rent schedule on the BLM Homepage on the Internet, http://www.blm.gov.

§ 2806.15 Does the linear rent schedule ever change?

Yes. BLM annually adjusts the rental schedule by multiplying the current year's rent-per-acre by the annual change, second quarter to second quarter (June 30 to June 30), in the Implicit Price Deflator-Gross Domestic Product Index, as published in the Survey of Current Business of the Department of Commerce, Bureau of Economic Analysis.

§ 2806.16 How will BLM calculate my rent for linear rights-of-way covered by the schedule?

BLM calculates your rent by multiplying the rent-per-acre from the current schedule by the number of acres in the grant and the number of years in the rental period. If BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

§ 2806.17 What are the rent costs for communication facilities or uses?

(a) *Schedule of rents.* BLM uses a communication use rent schedule to determine the rent for communication site rights-of-way. The schedule is based on the population served, as depicted by the Ranally Metro Area population rankings, and the type of communication use or uses for which communication site rights-of-way are ordinarily granted. These uses are listed as part of the definition of "communication use rent schedule," set out at § 2806.5 of this subpart. You may obtain a copy of the schedule from any BLM State or field office or by writing: Director, BLM, 1849 C St., N.W., Mail Stop 1000 LS, Washington, D. C. 20240. BLM posts the communication site rent schedule to the BLM National HomePage on the internet, at http://www.blm.gov. BLM annually updates the schedule based on two sources: the U. S. Department of Labor Consumer Price Index for All Urban Consumers, U. S. City Average, published in July of each year, and the Ranally Metro Area population rankings. BLM will limit adjustments based on the Consumer Price Index to no more than 5 percent. At least every 10 years BLM will review the rent schedule to ensure that the schedule reflects a rational fair market value estimate.

(b) *Uses not covered by the schedule.* The communication use rent schedule does not apply to:

(1) Communication site uses, facilities and devices located entirely within the exterior boundaries of an oil and gas lease, but which are directly associated with the operations of the oil and gas lease, for which see part 3100 of this chapter. Any other communication use, not directly associated with the lease operation, is not excluded; or

(2) Communication facilities and uses ancillary to and authorized under a linear right-of-way grant, such as a railroad right-of-way grant;

(3) Communication uses, including new, unrelated technologies, not listed on the schedule;

(4) Right-of-way grants for which the rent is determined through appraisals, competitive bidding, or other reasonable methods; and

(5) Situations where the expected rent exceeds the schedule by five times or the communication site serves a population of one million or more and the expected rent for the communication use or uses is more than $10,000 above the schedule rent. The State Director must concur in this determination.

§ 2806.18 How does BLM calculate rent for communication uses covered by the schedule?

(a) *Basic rule.* BLM determines rentals for:

(1) *Single use facilities* by applying the rental rate for the type of use and the community served, and

(2) *Multiple-use facilities* by determining the highest value use in the facility or facilities as the base rent (when under one authorization), plus 25 percent of the schedule rent for all tenant uses in the facility, if these are not used as the base rent.

(b) *Exemption.* BLM will exclude customer uses, unless expressly provided for, and any other waived or exempted uses, when calculating rents.

(c) *Basic action.* By October 15 of each year, you must submit a certified statement listing the tenants in the facility and the category of use for each tenant as of September 30 of the year. BLM may require you to submit any additional information needed to calculate your rent.

§ 2806.19 How will BLM determine the rent for a single-use communication facility?

(a) BLM determines the rent for a single-use communication facility from the communication use rent schedule, based on the authorized single use and the population area served.

(b) BLM determines the population area served as follows:

(1) If the site or facility is within a designated Ranally Metro Area (RMA), BLM will use the RMA to calculate the rent;

(2) If the site or facility is outside an RMA but serves one or more RMAs, BLM will use the largest RMA served to calculate the rent;

(3) If the site or facility is outside an RMA and the site does not serve the RMA, BLM will use the schedule rent for the population of the largest community served by the site.

(4) If the site or facility is outside an RMA and the site serves a community of less than 25,000, BLM will use the lowest rent shown on the schedule for the type of use.

(c) BLM may make case-by-case exceptions to calculate the rents described in paragraph (b) of this section only for just cause.

§ 2806.20 How will BLM calculate the rent for a multiple use communication facility?

(a) *Calculation rules.* BLM will first determine the population area served according to paragraphs (b) and (c) of § 2806.19 of this subpart and then calculate the rent for a communication facility with tenants or customers or both as follows:

(1) BLM will calculate the rent based on the highest value use in the facility, plus 25 percent of the scheduled rent for each of the other tenant uses in the facility;

(2) If the highest value use is not the use of the facility owner or manager, BLM will consider such owner's or manager's use like any other tenant use for calculating the rent;

(3) If the tenant use becomes the highest value use, BLM will exclude that use from the 25 percent of the schedule rent calculation relative to tenant uses;

(4) If a single authorization or entity has multiple uses, such as an FM and an AM radio station, BLM will base the rent on the sum of each use. The FM rent would be the highest value use and the AM portion would be charged according to the rent schedule for tenant use.

(b) *Exemptions to calculating rents.* The following rules apply to calculating rents for exempted or waived communication uses:

(1) BLM will exclude exempted or waived uses for either facility owners or tenants in calculating rents;

(2) BLM will treat facility owners whose own use is either exempted or waived from rent but who have tenants using or occupying space in their facility as any other facility owner and assess rent based on the highest value use plus 25 percent of the schedule rent for each of the other remaining uses, less exempted or waived uses; and

(3) You owe no rent if:

(i) The facility owner's use is exempted or waived from rent,

(ii) All other uses in the facility are exempt or are considered customer uses, and

(iii) The facility owner is not profiting from the other uses in the building facility.

(4) If the facility owner, whose own use is exempted from rent, is conducting a commercial activity with customers or tenants that are not exempt from rent, BLM will assess rent based on the highest value use within the facility;

§ 2806.21 How will BLM calculate rent for private mobile radio service (PMRS), internal microwave and "other" category uses?

If the PMRS, internal microwave or "other" use:

(a) Is located in someone else's facility, BLM will consider them customers and not include them in the rent calculation for the facility; or

(b) Is the facility owner, BLM will treat them as any other facility owner. If a tenant has a higher value use than the facility owner's use, that use becomes the base rent. The PRMS, internal microwave, or "other" use is then exempt as a customer.

§ 2806.22 How will BLM authorize and calculate rents for customers and tenants who choose to have their own right-of-way facility to be used in common with an existing right-of-way of the owner of a communication facility that they use or occupy?

(a) BLM does not require separate right-of-way grants for tenants and customers using or occupying an authorized facility. BLM assesses the facility owner rent based on the highest value use within the facility and 25 percent of scheduled rent for each of the other remaining tenant uses subject to rent.

(b) Tenants and customers who choose to retain or be granted their own right-of-way grants in common will be charged, as right-of-way holders, a full annual rent for their use based on the BLM communication use rent schedule and the population served. BLM will include their type of communication use as a use to be included in calculating the rent to be paid by the facility owner or manager.

§ 2806.23 How will BLM calculate rents as to "shared facilities" or for multiple facilities that are under one authorization?

(a) BLM considers each use within the shared facilities separately in determining rent. An example of shared facilities would be a holder or tenant with a microwave dish associated with

a building or tower on Facility A, which has an authorization from BLM, and other equipment or leased space associated with Facility B, which also has an authorization from BLM.

(b) If you hold multiple authorizations for two or more facilities on the same site, you can combine all those uses under one authorization. The highest value use in the facility becomes the base rent, and BLM assesses each of the other uses at 25 percent of the scheduled rent, unless it is waived or exempted.

§ 2806.24 How does BLM calculate rent for a facility manager use?

BLM employs the schedule value for a facility manager use only if the value is equal to or greater than the other uses in the facility. BLM does not include the use in the 25 percent calculation for other uses in the facility when it is not the highest value use.

§ 2806.25 How does BLM calculate rent for ancillary uses?

(a) If internal mobile radio and microwave systems are ancillary, that is, give support or connect one another on the same communications facility or give support for another use, then BLM will base rent only on the primary use, if the microwave ends at the facility and is used for control of the mobile or microwave system.

(b) If microwave and PMRS uses are located in the same facility but are independent of one another, BLM will consider each use as separate when calculating the rent.

(c) If a communication facility is ancillary to and authorized under a linear right-of-way grant for a linear use or facility, or for some other type of authorization, e.g., a mineral lease or sundry notice, BLM will determine the rent based on the linear schedule and not the communication site schedule. The rent for any communication facility use located on the right-of-way will have its rent calculated separately based on an appraisal or other reasonable valuation methods.

§ 2806.26 How does BLM calculate rent for uses within federally owned facilities?

If you are a tenant or customer in a federally owned facility, you must have your own authorization and pay the full schedule rent, based on the use and the population served. This does not apply to federal departments and agencies that have commercial ventures and operate as a facility manager or owner in accordance with this subpart.

§ 2806.27 What happens if converting to the rent schedule causes a $1,000 or more increase in my rent?

BLM will phase in the new rent amount over a 5-year period. In the first year under the schedule, your rent payment will be the current year's rental plus $1,000. BLM will divide the amount exceeding $1,000 into four equal installments. Beginning the second year after the increase, BLM will add the installment, plus any changes in tenant use and the CPI–U index, to the previous year's rent.

§ 2806.28 What are the rent costs for other rights-of-way and uses?

(a) BLM will use the same rent schedules for passive reflectors and local network exchanges as the Forest Service uses for the region in which the facilities are located. You may obtain the pertinent schedules from the Forest Service or from any BLM State or field office in the region in question.

(b) When neither the linear nor the communication site schedule is appropriate, BLM determines rent through an appraisal process based on comparative market surveys, appraisals, competitive bid, or other reasonable methods. BLM will advise you of the rent determination. If you disagree with the determination, you will be afforded an opportunity for a hearing, and you may appeal BLM's final determination under part 4 of this title.

(c) To expedite processing of any grant, BLM may estimate rent and collect a deposit in advance. Once BLM completes its rent value determination, it will adjust the advance deposit to reflect the final fair market rent value determination and either issue you a refund or require you to pay the difference, as appropriate.

(d) For passive reflectors or local network exchanges not covered by a Forest Service rental schedule, see paragraph (b) of this section.

Subpart 2807—What Can I Do on the Right-of-Way Once BLM Issues the Grant?

§ 2807.10 When can I start activities under my grant?

When you can start depends on the terms of your grant. You can start activities when you receive the signed authorization from BLM, unless the grant includes a requirement for a written notice to proceed. If your grant contains a notice to proceed requirement, you may not initiate construction, operation, maintenance, or termination until BLM issues you a notice to proceed.

§ 2807.11 When must I contact BLM?

Contact BLM:

(a) At the times specified in your grant;

(b) When your use requires a substantial deviation from the grant. "Substantial deviation" means a deviation in location or authorized use which requires:

(1) Construction or use outside the boundaries of the authorized right-of-way, or

(2) Any change from or modification of the authorized use. Examples: adding equipment, overhead or underground lines, pipelines, structures or other facilities;

(c) When there is a change of status in your application or grant, such as a changed legal mailing address, principal partners, financial conditions, or business or corporate status; and

(d) When you submit a certification of construction, if required by the terms of your grant.

§ 2807.12 For what am I liable?

(a) You are fully liable to the United States and to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way.

(b) You will be held to a standard of strict liability for any activity or facility associated with your right-of-way area which BLM determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant the activities and facilities to which such standards apply.

(1) BLM will not impose strict liability for damage or injury resulting primarily from an act of war, an act of God or the negligence of the United States, except as otherwise provided by law.

(2) As used in this section, "strict liability" extends to costs incurred by the federal government to control or abate conditions, such as fire or oil spills, which threaten life, property or the environment, even if the threat occurs on areas that are not under federal jurisdiction. Your grant will contain stipulations that describe the strict liabilities and the maximum amounts imposed. This liability is separate and apart from liability under other provisions of law.

(c) If you cannot satisfy claims for injury or damage, any owners and all affiliates or subsidiaries of any holder of a grant, except for corporate stockholders, are jointly and severally liable to the United States.

(d) The rules of subrogation apply in cases where a third party caused the damage or injury.

(e) If BLM issues a grant to more than one holder, each is jointly and severally liable.

(f) By accepting the grant, you agree to fully indemnify and hold the United States harmless for liability, damage or claims arising in connection with your use and occupancy of right-of-way areas. You are liable to the United States for up to $5 million for all damages, injuries, fees, and costs associated with your using, developing, and maintaining the grant and affected resources, regardless of fault. This financial limitation does not apply to the release or discharge of hazardous materials on or near the grant, or as otherwise allowed by law.

(g) You are strictly liable for all costs above the $5 million limit which accrue because of negligence regarding hazardous substances.

(h) State and local governments may be excepted from the requirements of this section as discussed in § 2807.13(a) of this subpart. .

§ 2807.13 What liabilities do state and local governments have?

(a) If you are a state or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that BLM issues your grant. If you do not have the legal power to assume liability, you must repair damages or make restitution to the fullest extent of your powers.

(b) BLM may require you to furnish a bond or other acceptable security to:

(1) Cover any losses, damages, or injury to human health, the environment, and property related to your activities on the right-of-way,

(2) Cover damages or injuries resulting from the actual or threatened release or discharge of hazardous materials, and

(3) Protect the liability exposure of the United States to claims by third parties arising out of your use of the right-of-way.

(c) Based on your record of compliance and changes in risk or conditions, BLM may require you to increase or decrease the amount of your security.

(d) The provisions of this section do not limit or exclude other remedies that the United States may seek.

§ 2807.14 What happens if BLM transfers management of the land on which my grant is located to another federal agency or outside of public ownership?

(a) BLM may transfer administration of the grant to another federal agency, unless doing so would diminish your rights.

(b) Where there is a proposal to transfer the land out of federal ownership, BLM may:

(1) Transfer the land subject to your grant,

(2) Transfer the land but retain management of your grant with the United States, or

(3) Reserve to the United States the land encumbered by the grant.

§ 2807.15 Can BLM temporarily suspend my activities to protect public health and safety or the environment without providing an administrative hearing?

(a) If BLM determines that you have violated one or more terms of your grant, we can order an immediate temporary suspension of activities within a grant area to protect the public health or safety or the environment. BLM can stop your activities before holding an administrative proceeding on the matter.

(b) BLM may make the temporary suspension order orally or in writing to you, your contractor or subcontractor or to any representative, agent, employee, or contractor representing you or conducting the activity. When BLM makes the order, the activity must stop immediately. BLM will promptly confirm an order by sending to you or your agent at your address a written notice explaining the reasons for the suspension order.

(c) The temporary order is effective until BLM issues another order permitting resumption of activities.

(d) You may file a written request for permission to resume at any time after BLM issues the order. In the request, give the facts supporting your request and the reasons you believe that BLM should lift the order.

(e) BLM must grant or deny your request within 5 working days after receiving it. If BLM does not respond within 5 working days, BLM has denied your request. You may then appeal under part 4 of this title.

§ 2807.16 Can BLM terminate or suspend my grant?

(a) BLM may elect to suspend your grant if you fail to comply with applicable laws and regulations or any terms and conditions of the grant.

(b) If your grant is an easement, BLM will refer the suspension or termination of the grant to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge to determine whether or not the termination or suspension is justified.

(c) A grant terminates when:

(1) As described in the grant, a fixed or agreed-upon condition, event, or time occurs;

(2) BLM accepts your written request or consents to terminate the grant; or

(3) BLM determines that you have failed to comply with applicable laws and regulations or any terms and conditions of the grant;

(d) Your failure to use your right-of-way for its authorized purpose for any continuous 5-year period (or for 2 years, if your grant is issued under part 2880 of this chapter), constitutes a presumption of abandonment. You may rebut the presumption by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control, such as acts of God, war, or casualties not attributable to you.

§ 2807.17 How will I know that BLM intends to suspend or terminate my grant?

(a) Before BLM suspends or terminates your grant, you will receive a written notice stating that BLM intends to suspend or terminate your grant and giving the grounds for such action. You will have a reasonable opportunity to cure any non-compliance.

(b) For grants issued before October 21, 1976, any subsequent grants issued as an easement, and grants issued under part 2880 of this chapter, BLM must give you written notice and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge (ALJ). If the ALJ determines that grounds for suspension or termination exist and such action is justified, BLM will suspend or terminate the grant.

§ 2807.18 What happens to any improvements on my grant when it terminates?

You must remove any structures and improvements within the right-of-way before it terminates, unless BLM instructs you otherwise in writing. After removing the structures or improvements, you must remediate and restore the site to a condition satisfactory to BLM, including the removal and clean up of any hazardous materials. If you fail to remove all structures or improvements within a reasonable period, BLM may declare them to be the property of the United States. However, you still will remain liable for the costs of removing them and for restoring the site.

§ 2807.19 When must I amend my application or grant?

Amend your application or grant when:

(a) There is a substantial deviation in location or use. (See paragraph (b) of § 2808.11.) The requirements for an amended application are the same as

those for a new application, including cost reimbursement according to § 2804.14.

(b) Your grant was issued before October 21, 1976, and you want to change your use or the terms and conditions of the grant. If BLM approves your application, you will receive a new right-of-way under 43 U.S.C. 1761 *et seq.* and this part.

(c) Your grant must be amended to allow realignment of a railroad and appurtenant communication facilities. BLM must issue a decision within 6 months after you file the application. BLM may include in any new grant the same terms and conditions as the original grant pertaining to payment of annual rents, duration of the grant, and the nature of interest held, if:

(1) These terms are in the public interest,

(2) The lands are of approximately equal value, and

(3) The lands involved are not within an incorporated community.

§ 2807.20 May I assign my grant?

(a) If BLM approves your request, you may assign a grant in whole or in part.

(b) If you want to assign your grant, the proposed assignee must file an application under the same procedures as for a new grant. (See subpart 2804 of this part.)

(c) Additionally, the request for assignment must include the following:

(1) Documentation that you, the assignor, agree to the assignment; and

(2) A stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned and all applicable laws and regulations.

(d) BLM will not recognize an assignment until it approves the assignment in writing. BLM may modify or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment. BLM may decrease or increase rents if the new holder qualifies for an exemption or reduction and the old holder did not or vice versa.

(e) The processing times and conditions described at § 2804.20(c) apply to applications for assignment.

§ 2807.21 What will BLM charge for reviewing a request for assignment?

You must reimburse BLM in advance for the administrative costs of processing the proposed assignment in accordance with the work hours specified in the category descriptions at § 2804.14.

§ 2807.22 Can I renew my grant?

(a) If your grant provides for renewal, BLM will renew the grant if you are using, maintaining, and operating the project or facility for the purposes authorized in the original grant and if you are operating and maintaining the grant according to its provisions and to the applicable laws and regulations.

(b) If your grant does not provide for renewal, you may ask BLM to renew the grant. Send BLM your request, in writing, at least 120 days before your grant expires. You will need to show that you are maintaining and operating the project or facility for the purposes authorized in the expiring grant and that you are operating and maintaining the grant according to its provisions and to the applicable laws and regulations. BLM has the discretion to renew the grant if doing so is in the public interest.

(c) In either case, paragraph (a) or (b) of this section, you should submit an application containing the same information necessary for a new application. (See subpart 2804 of this part.) You must reimburse BLM in advance for the administrative costs of processing the renewal in accordance with § 2804.14.

(d) BLM will review your application and determine the applicable terms and conditions.

Subpart 2808—What Do I Need To Know About Trespass?

§ 2808.10 What is trespass?

(a) Trespass is using, occupying, or developing the public lands without authorization or using, occupying, and developing them in a way that is beyond the scope and specific limitations of your authorization. Trespass includes acts or omissions causing undue or unnecessary degradation to the occupied public lands.

(b) There are two kinds of trespass, willful and non-willful.

(1) "Willful trespass" means voluntary or conscious trespass and actions taken with criminal or malicious intent. It includes a consistent pattern of actions taken with knowledge, even if those actions are taken in the belief that the conduct is reasonable or legal.

(2) "Non-willful trespass" means a trespass committed by mistake or inadvertence.

§ 2808.11 What will BLM do if it determines that I am in trespass?

(a) BLM will notify you in writing of the trespass and indicate your liability. Your liability includes:

(1) Reimbursing the United States for all costs incurred in investigating and terminating the trespass;

(2) Paying the rental value of the lands, as provided for in subpart 2806 of this part, for the current and past years of trespass, or, where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee for unauthorized use of any BLM-administered road; and

(3) Rehabilitating, restoring, and stabilizing any damaged lands or resources. If you do not rehabilitate, restore, and stabilize the lands and resources within the time set by BLM in the notice, you will be liable for the United States's costs in rehabilitating, restoring, and stabilizing the lands and resources.

(b) BLM may assess penalties as follows:

(1) For all non-willful trespass which is not resolved within 30 days by meeting one of the conditions identified in § 9239.7–1 of this chapter, the penalty is an amount equal to the rental value; and, for roads, an amount equal to the charges for road use, amortization, and maintenance which have accrued since the trespass began;

(2) For repeated non-willful or willful trespass, the penalty is an amount that is two times the rental value; and, for roads, an amount two times the charges for road use, amortization and maintenance which have accrued since the trespass began.

(c) The penalty will not be less than the processing fee for a Category I application (see § 2804.14) for non-willful trespass or less than three times this value for repeated non-willful or willful trespass. You must pay whichever is the higher of the computed penalty or the minimum penalty amount.

(d) In addition to civil penalties, you may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both, for a knowing and willful trespass. (43 U.S.C. 1733(a))

(e) Until you satisfy your liability, BLM may refuse to process any applications for any activities on BLM land that you have pending.

(f) You may appeal a trespass decision under part 4 of this title.

(g) Nothing in this section limits your liability under any other state or federal law.

§ 2808.12 May I receive a grant if I am in trespass?

The only way to find out is to apply under the procedures described at subpart 2804 of this part. BLM will process your application as if it were a new use.

Subpart 2809—Are There Any Special Requirements Related To Issuing Grants to Federal Agencies?

§ 2809.10 Can federal agencies get a right-of-way grant?

Yes. Any federal agency can apply for a grant under the procedures contained in subpart 2804 of this part.

§ 2809.11 What will the grant contain?

The grant will contain the same terms and conditions as other grants governed by this part to the extent possible. It will include any terms and conditions appropriate for federal agencies. The grant does not have to conform to the agency's proposal and may contain such terms, conditions, and stipulations as BLM deems appropriate.

§ 2809.12 Can BLM suspend or terminate the grant?

BLM may suspend or terminate the grant only if its terms and conditions allow it or if the agency head holding the grant consents to it.

2. Revise part 2880 to read as follows:

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Subpart 2881—What General Information Do I Need To Know About the Regulations Concerning MLA Grants and Permits?

Sec.

2881.5 What definitions do I need to know to understand these regulations?
2881.7 What is the scope of these regulations?
2881.8 What grants are covered by these regulations?
2881.9 Does BLM have the authority to ask me for the information required in these regulations?
2881.10 Severability

Subpart 2882—What Lands Are Available for Oil and Natural Gas Pipelines and Their Related Facilities?

Subpart 2883—What Qualifications Do I Need To Have To Hold an MLA Grant or Temporary Use Permit?

2883.10 Who may hold a right-of-way grant under the Mineral Leasing Act?
2883.11 Who is ineligible to hold an MLA grant or permit?
2883.12 How do I prove I meet the qualifications?
2883.13 What happens if BLM issues me an MLA grant or permit and later determines that I am not qualified to hold it?

Subpart 2884—How Do I Apply for an MLA Grant or Permit?

2884.10 What should I do before I file my application?
2884.11 What information do I need to provide in my application?
2884.12 Is there a filing fee for my application?
2884.13 What is a master agreement and what must it contain?
2884.14 Are there any special payment requirements related to Category IV applications?
2884.15 What happens if there are two or more competing applications for the same pipeline facility or system?
2884.16 Where do I file my application for an MLA grant or permit?
2884.17 What are the public notification requirements for my application?
2884.18 How will BLM process my application?
2884.19 Can BLM ask me for additional information?
2884.20 Can BLM reject my application?
2884.21 Do I owe any money if BLM rejects my application or if I withdraw my application?
2884.22 What may I do on the proposed right-of-way while BLM is processing my application?
2884.23 When will BLM issue the grant or permit?

Subpart 2885—What Are the Terms and Conditions of MLA Grants and Permits?

2885.10 When is the MLA grant or permit effective?
2885.11 What are the terms and conditions of the grant or permit?
2885.12 How much does it cost to hold a grant or permit?
2885.13 Who is liable for payments?
2885.14 What happens if I default on my rental and other payments?

Subpart 2886—What Can I Do on My Grant or Permit Once I Obtain It?

2886.10 When can I start activities under my grant or permit?
2886.11 Who regulates my activities?
2886.12 What happens if I need a wider right-of-way in limited areas?
2886.13 When must I contact BLM?
2886.14 When can BLM suspend my activities?
2886.15 For what am I liable?
2886.16 What happens if BLM transfers management of the land on which my grant is located to another agency or outside public ownership?
2886.17 When can BLM terminate or suspend temporary use permits?
2886.18 When can BLM suspend or terminate my grant or permit?
2886.19 What happens to any improvements on my grant when it terminates?

Subpart 2887—What Information Do I Need To Know About Amending, Assigning or Renewing My MLA Grant or Permit?

2887.10 What conditions require amending a grant?
2887.11 May I assign my grant?
2887.12 May I renew my grant?

Subpart 2888—What Do I Need To Know About Trespass?

Authority: 30 U.S.C. 185, unless otherwise noted.

Subpart 2881—What General Information Do I Need To Know About MLA Grants and Permits?

§ 2881.5 What definitions do I need to know to understand these regulations?

Unless a term is otherwise defined in this section, the definitions appearing in part 2800 apply to this part. In addition, as used in this part, the term:

(a) *Act* means section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

(b) *Agency head* means the head of any federal department or independent federal office or agency, other than the Secretary of the Interior, who has jurisdiction over federal lands.

(c) *Casual use* means activities and practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources or improvements and which do not require a right-of-way grant or temporary use permit under this title. *Example:* activities which do not involve the use of explosives or heavy equipment and which do not involve vehicle movement, except over already established roads and trails.

(d) *Federal lands* means all lands owned by the United States, whether surface or mineral estate or both, without reference to how the lands were acquired or what federal agency manages the lands, except lands in the National Park System, lands held in trust for an Indian or Indian tribe, lands managed by the Tennessee Valley Authority, and lands on the Outer Continental Shelf.

(e) *Field examination* generally means a one-day trip, in one vehicle, from the office to the site of the right-of-way proposal, regardless of the number of specialists traveling in the vehicle. When operational efficiency dictates separate trips, BLM will include the efficient use of hourly time required to verify or collect the data needed to process the application, or monitor the grant.

(f) *Oil and gas* means oil, natural gas, synthetic liquid, or gaseous fuels, or any refined product produced from them.

(g) *Pipeline* means a line traversing federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease.

(h) *Pipeline system* means all facilities, whether or not located on federal lands, used by a holder in connection with the construction, operation, maintenance, or termination of a pipeline.

(i) *Production facilities* means a lessee's or lease operator's pipes and equipment used on the leasehold to aid in extracting, processing, and storing oil and gas. The term includes:

(1) Storage tanks and processing equipment;

(2) Gathering lines upstream from such tanks and equipment, in the case of gas, upstream from the point of delivery; and

(3) Pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

(j) *Related facilities* means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, which are located on federal lands, and which are authorized under the Act, including but not limited to: supporting structures; airstrips; roads; campsites; pump stations, including associated heliports, structures, yards, and fences; valves and other control devices; surge and storage tanks; bridges, monitoring, and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or not connected or contiguous or not contiguous to the pipe.

(k) *Temporary use permit* means a revocable nonpossessory privilege to use specified federal lands near a right-of-way to construct, operate, maintain, or terminate a pipeline or to protect the natural environment and public safety.

§ 2881.7 What is the scope of these regulations?

The regulations in this part apply to:

(a) Issuing, administering, amending, assigning, renewing, and terminating new or existing grants and temporary use permits for pipelines to transport oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these materials. They apply when the federal land involved is either under the jurisdiction of BLM or under the jurisdiction of more than one federal agency;

(b) Facilities on a federal oil and gas lease owned by a third party, who is not the lessee or lease operator, and oil and gas pipeline systems owned by the lessee or lease operator that are downstream from storage tanks or a metering device; and

(c) All grants and permits BLM previously issued under section 28 of the Act and to those issued by the Secretary of the Interior or his delegate in connection with the Trans-Alaska Oil Pipeline System.

§ 2881.8 What grants are not covered by these regulations?

The regulations in this part do not apply to:

(a) Federal land which is under the jurisdiction of a single federal department or agency, including bureaus, and agencies within the Department of the Interior, other than BLM;

(b) Right-of-way grants for federal departments or agencies. Such grants are subject to the regulations at part 2800 of this chapter;

(c) Production facilities owned by an oil and gas lessee or lease operator, if within the federal oil and gas lease, because the lease authorizes these facilities; and

(d) Grants issued under the authority of the Federal Land Policy and Management Act of 1976, which are addressed under part 2800 of this chapter.

§ 2881.9 Does BLM have the authority to ask me for the information required in these regulations?

(a) Yes. The Office of Management and Budget has approved the information collection requirements contained in Part 2880 under clearance 44 U.S.C. 3507 and assigned clearance number 1004–0060 (for Form SF–299) and 1004–_____ to them. BLM collects the information to determine if using particular parcels of the public lands for right-of-way corridors is appropriate. You must respond to get a benefit.

(b) Send comments regarding any aspect of the information collection, including suggestions for reducing the collection burden, to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D. C. 20240.

§ 2881.10 Severability.

If any provisions of the rules in this part or their applicability to any person or circumstances are held invalid, the remainder of these rules and their applicability to other people or circumstances shall not be affected.

Subpart 2882—What Lands Are Available for MLA Grants and Permits?

BLM uses the same criteria to determine whether lands are available for oil and gas rights-of-way as it does to determine whether lands are available for other rights-of-way. (See subpart 2802, part 2800, of this chapter.) Where the proposed right-of-way involves additional federal lands or lands managed by two or more agencies other than BLM, such lands may also be available for such grants.

Subpart 2883—What Qualifications Do I Need To Hold an MLA Grant or Permit?

§ 2883.10 Who may hold a right-of-way grant under the MLA?

(a) To hold such a grant, you must be:

(1) Able to show that you are economically and technically capable of constructing, operating, and maintaining the proposed facilities; and

(2) A United States citizen; or

(3) An association of such citizens; or

(4) A corporation organized under the laws of the United States, or of any state therein; or

(5) A state or local government.

§ 2883.11 Who is not eligible to hold an MLA right-of-way grant or temporary use permit?

Aliens may not acquire or hold any direct or indirect interest in MLA grants or temporary use permits, except as otherwise provided by treaty or similar agreement.

§ 2883.12 How do I prove I meet the qualifications?

(a) If you are a private individual, BLM requires no proof of citizenship with your application.

(b) If you are a partnership, corporation, association, or other business entity, submit the following information in your application:

(1) The identity of the participants in the business entity;

(2) The name, address, and citizenship of each participant (partner, associate, or other);

(3) If a corporation, the name, address, and citizenship of each shareholder owning 3 percent or more of each class of shares, together with the number and percentage of any class of voting share of the entity which each shareholder is authorized to vote; and

(4) If a corporation, the name and address of each affiliate controlling or controlled by the entity, either directly or indirectly. Where the corporation controls an affiliate, disclose the number of shares and the percentage of each class of voting stock of the corporation owned, directly or indirectly, by the affiliate.

(c) If you already have supplied this information to BLM and the information remains accurate, you need only reference the serial number under which it is filed.

§ 2883.13 What happens if BLM issues me an MLA grant or permit and later determines that I am not qualified to hold it?

BLM will terminate your grant or permit, subject to your right of appeal to the Interior Board of Land Appeals under part 4 of this title.

Subpart 2884—How Do I Apply for an MLA Grant or Permit?

§ 2884.10 What should I do before I file my application?

(a) When you determine that an oil and gas pipeline project would cross lands under BLM jurisdiction or under the jurisdiction of two or more federal agencies, you should notify BLM or the Secretary of the Interior.

(b) Before filing an application with BLM, you are strongly encouraged to visit or telephone the BLM field office having jurisdiction over the lands affected by your application to identify potential routing and other constraints, determine whether or not the lands are located within a designated or existing right-of-way corridor, tentatively schedule the processing of your application, get information about qualifications for MLA grants and permits, and identify any work which will require obtaining one or more temporary use permits. BLM may share this information with federal, state, and local government agencies to ensure that these agencies are aware of any authorizations you may need from them.

§ 2884.11 What information do I need to provide in my application?

(a) File your application on Form SF–299 or as part of an Application to Drill or Sundry Notice. Include a complete description of the project, including the exact diameters and locations of the pipelines, proposed construction techniques, and the estimated life of the facility. Simultaneously file any applications with other federal agencies, such as the Federal Energy Regulatory Commission, for licenses, certificates, or other authorities involving a right-of-way with your application to BLM.

(b) BLM may request you to submit additional information beyond that required in the form to assist in processing your application. This information may include the following:

(1) Any federal and state approvals required for the proposal,

(2) A description of the alternative route(s) and mode(s) considered when developing the proposal,

(3) Copies of or reference to similar applications or grants you have submitted or hold,

(4) A statement of need and economic feasibility,

(5) A statement of the environmental, social and economic effects of the proposal, and

(6) Your technical and financial capabilities to implement the project.

(c) Before BLM reviews your request for a grant or grant renewal, you must submit the following information and material:

(1) Conditions for, and agreements among, owners or operators to add pumping facilities, looping, or otherwise to increase the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities;

(3) Minimum shipment or purchase tenders;

(4) Evidence of your technical and financial capabilities to implement the project; and

(5) Other information necessary to process your application.

(d) Should conditions or information change, promptly notify BLM and make the necessary changes to your application. Failing to do so may result in BLM's rejecting or revoking your application.

§ 2884.12 Is there a filing fee for my application?

(a) Yes. You must file a non-refundable processing fee with the application. The fee reimburses BLM for the costs of processing your application, including the costs of preparing any report or documents required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

(b) BLM categorizes applications according to the following criteria:

(1) *Category I.* Either BLM has on hand or you supply the data necessary to process your application; neither a field examination nor land use plan amendment is needed; and the estimated processing time does not exceed 24 work hours for all BLM personnel involved in reviewing the application. *Cost:* Refer to the MLA fee schedule, available from any BLM field office.

(2) *Category II.* Same as Category I, plus one field examination is needed to verify existing information; and the estimated processing time, including the time required to conduct the field exam, falls between 25 and 36 work hours for all BLM personnel involved in reviewing the application. *Cost:* Refer to the MLA fee schedule, available from any BLM field office.

(3) *Category III.* Category I, plus two field examinations are needed to verify existing information; and the estimated processing time, including the time required to conduct the field exams, falls between 37 and 50 work hours for all BLM personnel involved in reviewing the application. *Cost:* Refer to the MLA fee schedule, available from any BLM field office.

(4) *Category IV.* Original data must be collected; a plan amendment may be needed; two or more field examinations are needed; and the estimated processing time, including the time required for the field exams, is more than 50 work hours for all BLM personnel involved in reviewing the application. *Cost:* Full actual costs.

(5) *Master agreement.* Instead of one of categories I through IV, you may enter into an agreement with BLM to fully reimburse BLM for actual processing costs. The agreement should be written to include any applications you may subsequently file within the same area.

(c) The costs for Categories I, II, and III are contained in a fee schedule that BLM maintains. BLM updates these fees each calendar year, based on the previous year's change in the Implicit Price Deflator-Gross Domestic Product, measured second quarter to second quarter. BLM will round changes to the nearest dollar. You may obtain a copy of the revised schedule from any BLM State or Field Office or by writing: Director, BLM, 1849 C St., N.W., Mail Stop 1000 LS, Washington, D. C. 20240. BLM will post the schedule to the BLM National HomePage on the internet, at http://www.blm.gov.

(d) After initially reviewing your application, BLM will determine the category based on estimated costs of processing the application. BLM will give you a written decision as to the processing category, and you must submit the payment before BLM begins processing your application. You may appeal the decision determining the category under part 4 of this title.

(e) If you overpay processing costs, BLM will refund you the amount that you overpaid and adjust your next bill or, if you request it in writing, apply the overpayment to rentals or monitoring costs.

(f) BLM may change the processing cost category to Category IV while processing your application if preparing an environmental impact statement becomes necessary. BLM will send you a written decision of the change and you may appeal this decision under part 4 of this title. While your appeal is pending, BLM will not process your application unless you have paid the processing fee.

(g) If you have a grant or permit relating to the Trans-Alaska Pipeline System, BLM will send you a written

statement of reimbursable costs by the sixtieth day after the close of each quarter. Quarters end on the last day of March, June, September, and December.

§ 2804.13 What is a master agreement and what must it contain?

(a) See paragraphs (a) and (b) of § 2804.17 of this chapter for information about specifications and requirements for master agreements.

(b) Your signature on a master agreement constitutes your agreement with the category determination.

§ 2804.14 Are there any special payment requirements related to Category IV applications?

Yes. If you have a Category IV application, you must also:

(a) Reimburse the United States for the full actual administrative and other costs of processing the application and monitoring the grant. BLM will credit your application processing fee toward your total cost reimbursement obligation; and

(b) For additional information, see § 2804.16 of this chapter.

§ 2804.15 What happens if there are two or more competing applications for the same pipeline facility or system?

If this happens,

(a) *Categories I through III:* You must reimburse BLM for processing costs as if the other application had not been filed.

(b) *Category IV:* You are responsible for the costs identifiable with your application. If BLM cannot readily separate costs, such as costs associated with preparing environmental documents, you must pay an equal share or a proportion agreed to in writing among all applicants and BLM. BLM will not do any work without an advance payment.

(c) *Who determines whether competition exists.* BLM will determine whether or not the applications for right-of-way grants are part of one right-of-way system or are competing applications for the same system.

(d) *Liability.* Each applicant is jointly and severally liable for costs of processing the application for the entire system.

§ 2804.16 Where do I file my application for an MLA grant or permit?

(a) If BLM has exclusive jurisdiction over the lands involved, file your application with the appropriate BLM State Office.

(b) If another federal agency has exclusive jurisdiction over the land involved, file your application with that agency and refer to their regulations for information about their requirements.

(c) If there are no BLM lands involved but the lands are under multiple federal jurisdiction, you may file your application with any BLM office in the vicinity of the project. BLM will notify you where to direct future communications about the project. See also § 2804.11 of this chapter.

(d) If several federal agencies, including BLM, have jurisdiction, file your application at the most convenient BLM office having jurisdiction over a portion of the federal lands. BLM will notify you where to direct all future communications concerning the project. See also § 2804.11(a) of this chapter.

§ 2804.17 What are the public notification requirements for my application?

(a) When BLM receives your application, it will publish a notice in a general circulation newspaper in the vicinity of the lands involved and in the **Federal Register**. BLM may not publish this notice for pipeline projects which it believes will have only minor impacts. The notice will contain:

(1) A description of the pipeline systems and such other information as BLM considers pertinent, and

(2) A statement of where the application and related documents are available for interested persons to review.

(b) BLM will send copies of the notice for review and comment to the:

(1) Governor of each state within which the pipeline system may be located, and

(2) Head of each local government or jurisdiction within which the pipeline system may be located.

(c) BLM will also refer the application to the:

(1) Heads of other federal agencies whose jurisdiction includes areas through which the right-of-way would cross, for consultation and other purposes; and

(2) House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources, if your application involves a pipeline that is 24 inches or more in diameter.

(d) BLM may hold public meetings on your application if there is sufficient interest to warrant the time and expense of such meetings. BLM will publish a notice of any such meetings in the **Federal Register** or in local newspapers.

§ 2804.18 How will BLM process my application?

BLM processes all applications for right-of-way grants and temporary use permits in the manner described at § 2804.20 of this chapter. The customer service standard, described in § 2804.20(c) of this chapter, applies to processing MLA applications.

§ 2804.19 Can BLM ask me for additional information?

(a) Yes. BLM may ask you for additional information in order to process your application. This may include, among other information, a detailed construction, operation, rehabilitation, and environmental protection plan, a Plan of Development, and a cultural resources inventory.

(b) If BLM needs more information, we will provide you with a written request and give you a written notice of any deficiencies in the information that you provided and any additional information that BLM needs. You will have a reasonable opportunity to file corrections.

(c) BLM may also ask other federal agencies for additional information, for conditions or stipulations which the grant should contain, and for advice as to whether or not to issue the grant.

§ 2804.20 Can BLM reject my application?

Yes. See § 2804.22 of this chapter.

§ 2804.21 Do I owe any money if BLM rejects my application or if I withdraw my application?

Yes. See § 2804.23 of this chapter. You owe the actual amount, as opposed to a reasonable amount, that BLM expends in processing your application.

§ 2804.22 What may I do on the land while BLM is processing my application?

You may not conduct any activities other than casual use on the lands under application. You must get prior approval from BLM before conducting any activities that are not casual use.

§ 2804.23 When will BLM issue the grant or permit?

If the grant involves:

(a) A pipeline 24 inches or more in diameter, BLM will not issue or renew the grant until after we notify the Congress;

(b) Lands not under BLM jurisdiction, BLM will not issue or renew the grant or permit until the heads of the other agency or agencies involved have concurred;

(c) Lands managed by several federal agencies, including BLM, BLM will not issue or renew the grant or permit until the Secretary of the Interior has consulted with these agencies. BLM may issue or renew the grant or permit without their concurrence, but not through lands within a federal reservation, if doing so would be inconsistent with the purposes of the reservation; and

(d) Lands managed by BLM, we will issue or renew the grant or permit when we approve your application.

Subpart 2885—What Are the Terms and Conditions of MLA Grants and Permits?

§ 2885.10 When is the MLA grant or permit effective?

See § 2805.11 of this chapter.

§ 2885.11 What are the terms and conditions of the grant or permit?

The general provisions at §§ 2805.10, 2805.12, and 2805.13 of this chapter apply. In addition, an MLA grant or permit contains the following requirements:

(a) *How long you may use the grant or permit.* Each grant will have a specific time limit, not to exceed 30 years. BLM will consider the following factors in establishing the time limit:

(1) Cost of the facility,

(2) Its useful life,

(3) The public purpose served, and

(4) Any potentially conflicting land uses.

(b) *Terms and conditions of use.* By accepting the grant or permit, you agree to comply with and be bound by its terms and conditions and by the regulations in subpart 2805, part 2800, of this chapter, the regulations in this part, and applicable laws. You must comply with the terms and conditions found at § 2805.10(c) of this chapter. In addition, you must:

(1) Construct, operate, and maintain the pipeline system, or a logical part of the system of which this pipeline right-of-way is a part, as BLM determines, as a common carrier. This means that you and your operators and joint owners must accept, convey, transport, or purchase all oil and gas delivered to the pipeline system without regard to where the oil and gas was produced, i.e., whether on federal or non-federal lands. See paragraph (c) of this section for the exception;

(2) Within 30 days after BLM requests it, file rate schedules and tariffs for oil and gas, or derivative products, transported by the pipeline system as a common carrier with the agency prescribed by the authorized officer, and provide proof to BLM that you have made the required filing;

(3) With certain exceptions, not export domestically produced crude oil without Presidential approval (30 U.S.C. 185 and 50 U.S.C. 2401);

(4) Not exceed a right-of-way width of 50 feet plus the ground occupied by the pipeline and related facilities without BLM's written authorization;

(5) Not use the grant area for any use other than that authorized by the grant. If other pipelines or looping lines are required, first secure BLM's written authorization for the activity; and

(6) If appropriate, not construct or use the land until you submit to BLM a detailed construction, operation, rehabilitation, and environmental protection plan and receive a notice to proceed.

(c) The common carrier provisions of paragraph (b)(1) of this section do not apply to natural gas pipelines subject to regulation under the Natural Gas Act or by state or municipal agencies with the authority to set rates and charges for the sale of natural gas to consumers within the state or municipality.

(d) BLM may require you to certify that you have a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, or property resulting from or related to your activities on the right-of-way. Liability coverage includes potential damages or injuries resulting from actual or threatened discharges or releases of hazardous materials. Based on changes in conditions or risk and your record of compliance, BLM may require a decrease or increase in the amount of your security.

§ 2885.13 How much does it cost to hold a grant or permit?

In addition to the cost reimbursement requirements described at § 2883.13(a) you must pay rent and monitoring costs.

(a) *Rents.* The provisions for paying rents for MLA grants are the same as those for other grants, as given at §§ 2806.14, 2806.16, and 2806.28 of this chapter, except that you must always pay full rent. There are no reductions or waivers to paying rents for MLA grants.

(b) *Monitoring costs.* You must reimburse BLM for any costs we incur in monitoring your construction, operation, maintenance, and termination within grant areas and in protecting and rehabilitating the affected area. There are no exceptions to paying monitoring costs. BLM uses the same category for monitoring as it does for determining processing costs for each application. (See paragraphs (c) and (d) of this section.) As with the application processing costs (see § 2884.12), BLM updates this schedule annually, based on the previous year's change in the Implicit Price Deflator-Gross Domestic Product, second quarter to second quarter. BLM rounds these changes up to the nearest dollar. The monitoring cost schedule is available from any BLM State or field office or by writing: Director, Bureau of Land Management, 1849 C St., N.W., Mail Stop 1000LS, Washington, D.C. 20240. BLM will post this schedule to the BLM Homepage on the Internet, http://www.blm.gov.

(c) *Categories I through III.* For Categories I through III, you must submit monitoring fees with your written acceptance of the terms and conditions of the grant. BLM will not accept your written acceptance of the grant until you pay the fees.

(d) *Category IV.* For Category IV monitoring costs and project agreements, you must submit your written acceptance of the terms and conditions of the grant and the estimated costs of BLM's administering and monitoring your grant. You must periodically pay the estimated costs in advance. If your payments exceed the actual cost, BLM will reimburse you the difference or adjust the next billing to reflect the overpayment.

§ 2885.14 Who is liable for payments?

See subpart 2804, part 2800, of this chapter.

§ 2885.15 What happens if I default on my rental and other payments?

See § 2806.12 of this chapter.

Subpart 2886—What Can I Do Once I Get My MLA Grant or Permit?

§ 2886.10 When can I start activities under my grant or permit?

See § 2807.10 of this chapter. Before you begin operations, you must send BLM a certification of construction, verifying that the pipeline system has been constructed and tested according to the terms of the grant or permit and is in compliance with all required plans, specifications and provisions of federal and state laws and regulations.

§ 2886.11 Who regulates my activities?

The head of the agency having administrative jurisdiction over the federal lands involved has the authority to regulate your activities, unless BLM and the agency head reach another agreement.

§ 2886.12 What happens if I need a wider right-of-way in limited areas?

You may apply to BLM for a wider right-of-way in limited areas to operate and maintain the pipeline after you construct it, protect the environment, or provide for public safety. BLM will send you a written report of its findings, either authorizing or disapproving your request for a wider right-of-way.

§ 2886.13 When must I contact BLM?

See § 2807.11 of this chapter.

§ 2886.14 When can BLM suspend my activities?

See § 2807.15 of this chapter. The same provisions apply to temporary use permits issued under this part.

§ 2886.15 For what am I liable?

See § 2807.12 of this chapter.

§ 2886.16 What happens if BLM transfers management of the land on which my grant or permit is located to another agency or outside public ownership?

See § 2807.14 of this chapter. The same provisions apply to temporary use permits issued under this part.

§ 2886.17 When can BLM suspend or terminate temporary use permits?

(a) BLM can suspend or terminate your temporary use permit when it determines that you have:

(1) Not complied with any term, condition, or stipulation in the grant or with applicable laws or regulations; or

(2) Deliberately failed to use the grant for the purpose for which BLM issued it; or

(3) Abandoned the grant.

(b) BLM will send you a written notice of non-compliance. You may file a written request to the next higher level of authority asking for a review of the notice. BLM will notify you within 10 working days of receipt of the request. BLM will review the situation that prompted the notice and provide you with a written determination of our findings within a reasonable period of time.

(c) If the decision is adverse to you, you may appeal it under part 4 of this title.

§ 2886.18 When can BLM suspend or terminate my grant or permit?

(a) If BLM determines your activities are endangering public health, safety or the environment, we may order you to suspend those activities immediately and to take immediate remedial action. BLM may give this order orally or in writing to you, your representative, or a contractor or subcontractor doing work for you, whether or not any action is being taken by other federal or state agencies. The activity must cease immediately. If BLM gives you the order orally, we will follow up as soon as practicable with a written notice.

(b) In cases where public health, safety, or the environment are not being endangered, BLM will give you written notice when we intend to suspend or terminate your grant. BLM will refer the matter to the Office of Hearings and Appeals. An Administrative Law Judge in the Office of Hearings and Appeals will determine when grounds for suspension or termination exist, according to the regulations set out in part 4 of this title. The Administrative Law Judge's decision determines BLM's action on whether or not to suspend or terminate the grant or permit.

§ 2886.19 What happens to any improvements on my grant when it terminates?

See § 2807.18 of this chapter.

Subpart 2887—What Information Do I Need To Know If I Want to Amend, Assign, or Renew My MLA Grant?

§ 2887.10 What conditions require amending a grant?

(a) You must apply for an amendment when you want to change the route of your pipeline or your use of the federal lands. You must apply for an amendment under the provisions of § 2807.19 of this chapter. Any unauthorized activity may be subject to prosecution under the applicable laws or to trespass charges under the provisions of subpart 2888 of this chapter.

(b) If you hold a pipeline grant issued before November 16, 1973, and there is a change in the pipeline route or your use of the federal lands, you must apply for a new right-of-way grant under the Act, as amended.

(c) BLM may ratify or confirm a grant that was issued under any provision of law if we can modify the grant to comply with the provisions of the Act and regulations. BLM and you must jointly approve any modifications.

§ 2887.11 May I assign my grant?

(a) Yes. You may assign a grant in whole or in part, if BLM approves your request.

(b) If you want to assign your grant, the proposed assignee must file an application under the same procedures as for a new grant. (See subpart 2884 of this part.)

(c) Additionally, the request for assignment must include the following:

(1) Documentation that you, the assignor, agree to the assignment; and

(2) A stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned.

(d) BLM will not recognize an assignment until it approves the assignment in writing. BLM may modify or add bonding and other requirements, including additional terms and conditions, to the grant when approving the assignment.

(e) The processing time and conditions for original applications, as described at § 2804.19(c) of this chapter, apply to processing applications for assignments.

§ 2887.12 May I renew my grant?

(a) Yes, except for those cases where a grant has terminated by its own terms. BLM will renew the grant if the pipeline is being operated and maintained in accordance with all provisions of the right-of-way grant, the regulations in this part and the Act. If your grant has terminated, you must apply for a new grant under the procedures described at subpart 2884 of this part.

(b) BLM may modify the terms and conditions of the grant at the time of renewal, and you must pay in advance for the administrative costs of processing the request.

(c) The time and conditions for processing applications for rights-of-way, as described at § 2804.19(c) of this chapter, apply for applications for renewals.

Subpart 2888—What Do I Need To Know About Trespass?

See subpart 2808, part 2800, of this chapter.

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Part III

Department of Justice

Immigration and Naturalization Service

8 CFR Part 214
Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens; Interim Rule

Treatment of Certain H Petitions Filed After the Numerical Cap Is Reached; Proposed Rule

Information Regarding the H–1B Numerical Limitation for Fiscal Year 1999; Notice

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1992–99]

RIN 1115–AF47

Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations to provide that the Commissioner may publish a notice to extend the duration of status, under specified conditions, of certain F–1 and J–1 nonimmigrant aliens who may be affected adversely because the numerical limit (cap) on H–1B nonimmigrant aliens has been reached prior to the end of a given fiscal year. This rule is a necessary stop-gap measure because a large number of F–1 and J–1 nonimmigrant aliens seek a change of nonimmigrant status to that of H–1B after completion of their studies or their program. However, many of these aliens will be unable to change their nonimmigrant status for the remainder of a given fiscal year because of the cap on H–1B petitions. This rule will allow such aliens to avoid a lapse in their status because of a circumstance that is not under their control.

DATES: *Effective date:* This interim rule is effective June 15, 1999.

Comment date: Written comments must be submitted on or before August 16, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1992–99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Who Is an F–1, J–1, and H–1B Nonimmigrant Alien?

An F–1 nonimmigrant alien is an alien having a residence in a foreign country which he or she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who enters the United States solely for the purpose of such a course of study.

A J–1 nonimmigrant alien is an alien having a residence in a foreign country which he or she has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.

An H–1B nonimmigrant is an alien employed in a specialty occupation or a fashion model of distinguished merit and ability. A specialty occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for entry into the United States.

What Is the Purpose of This Interim Rule?

This interim rule grants authority to the Commissioner to extend the duration of status, for a limited period of time, for any F–1 and J–1 nonimmigrant alien who is the beneficiary of an H–1B petition when it is determined that the H–1B cap will likely be reached before the end of a fiscal year. (See notice published elsewhere in this issue of the **Federal Register**.)

Many F–1 and J–1 nonimmigrant aliens who complete their course of study or program seek a change of nonimmigrant status to that of an H–1B nonimmigrant. During the last 3 fiscal years, the H–1B cap has been reached before the end of the fiscal year, and aliens were statutorily ineligible to change their nonimmigrant status because H–1B numbers were not available. As a result, aliens whose F and J status expired before the end of the fiscal year have been required to depart the United States and wait for H–1B numbers to again become available at the start of the new fiscal year beginning October 1. This rule will allow these F–1 and J–1 aliens to remain in the United States in lawful status until the start of the new fiscal year. However, these aliens are not permitted to engage in employment or other activities inconsistent with the terms and conditions of their F–1 and J–1 status without Service authorization until the date the Service adjudicates and approves their change of status application. In no event, can this date be earlier than October 1 of the new fiscal year.

Are There Any Conditions That an F–1 or J–1 Alien Must Meet To Extend the Period of Duration of Status?

In order for an F–1 or J–1 nonimmigrant to obtain an extension of the period of duration of status, the following conditions must be met:

(1) The alien's employer must have filed a timely request to change the alien's nonimmigrant status to that of an H–1B nonimmigrant on Form I–129, Petition for Nonimmigrant Worker, as the term timely filed is defined in 8 CFR 248.1(b);

(2) The cap on H–1B petitions prevents the Service from changing the alien's status to H–1B during the current fiscal year;

(3) The alien must have maintained the terms of his or her current admission to the United States in accordance with 8 CFR part 248; and

(4) In the case of a J–1 nonimmigrant, the alien is not subject to the 2-year foreign residence requirement.

How Does This Regulation Affect Duration of Status for Certain F–1 and J–1 Nonimmigrant Aliens?

Under existing regulations, an F–1 student is permitted to remain in the United States for a period of 60 days after completion of his or her course of studies or period of practical training. A J–1 nonimmigrant, on the other hand, is permitted to remain in the United States for a period of 30 days after completion of his or her program.

An F–1 or J–1 nonimmigrant alien whose duration of status is extended as provided in this rule is permitted to stay in the United States after completion of his or her course of study or program in a valid F–1 or J–1 status until the Service changes the alien's nonimmigrant status.

If it appears that the cap on H–1B nonimmigrant aliens will be reached in a given fiscal year, the Commissioner may extend the period of duration of status of certain F–1 and J–1 nonimmigrant aliens for such time as is necessary for the Service to act on the petition for a change of status.

When the Commissioner has extended the duration of status of F–1 and J–1 nonimmigrant aliens, the Service will publish a notice in the **Federal Register** (see notice published elsewhere in this issue of the **Federal Register**). The notice will provide the public with the date to which duration of status has been extended.

Does This Provision Apply to the Dependents of F–1 or J–1 Nonimmigrant Aliens?

Yes, this extension of duration of status will also apply to the dependents who are F–2 or J–2 nonimmigrant aliens.

What Is the Effect of Extending Duration of Status for F–1 or J–1 Nonimmigrant Aliens?

An alien whose duration of status has been extended under this rule may remain lawfully in the United States until H–1B visa numbers become available and the Service adjudicates the change of status application. These aliens are considered to be in a valid nonimmigrant status for all purposes under the Immigration and Nationality Act as long as they continue to comply with all other terms of their status.

May an F–1 or J–1 Nonimmigrant Alien Work Before the Validity Date of the H–1B Petition?

An F or J alien whose duration of status is extended under this provision may not work during this period of time.

Good Cause Exception

This interim rule is effective on the date of publication in the **Federal Register**. The Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. The purpose of this rule is to grant the Commissioner the authority to extend the duration of status for certain F and J nonimmigrant aliens if it appears that the H–1B cap will be reached in a fiscal year. This will allow these aliens to remain in the United States in a valid nonimmigrant status until H–1B numbers become available and such time as the Service adjudicates the change of status application. Since the H–1B cap will be reached before the end of the current fiscal year, and the normal duration of status of a great many F and J nonimmigrants who have applied for a change of nonimmigrant status will expire prior to the beginning of the next fiscal year, sufficient time does not exist for publication of a proposed rule with notice and comment.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The aliens affected by this regulation are not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and Recordkeeping requirements.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:
a. Revising paragraph (f)(5)(i);
b. Adding paragraph (f)(5)(vi);
c. Revising paragraph (j)(1)(ii); and
d. Adding paragraph (j)(1)(vi) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * * *

(f) * * *

(5) * * *

(i) *General.* Duration of status is defined as the time during which an F–1 student is pursuing a full course of studies at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, plus 60 days to prepare for departure from the United States. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of studies. Duration of status also includes the period designated by the Commissioner as provided in paragraph (f)(5)(vi) of this section.

* * * * *

(vi) *Extension of duration of status.* The Commissioner may, by notice in the **Federal Register**, at any time she determines that the H–1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as the Commissioner deems necessary to complete the adjudication of the H–1B application, the duration of status of any F–1 student on behalf of whom an employer has timely filed an application for change of status to H–1B. The alien, according to 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay in order to

obtain this extension of stay. An F–1 student whose duration of status has been so extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her F nonimmigrant stay. An extension made under this paragraph applies to the F–2 dependent aliens.

* * * * *

(j) * * *

(1) * * *

(ii) *Admission.* The initial admission of an exchange alien, spouse, and children may not exceed the period specified on Form IAP–66, plus a period of 30 days for the purpose of travel or for the period designated by the Commissioner as provided in paragraph (j)(1)(vi) of this section. Regulations of the United States Information Agency published at 22 CFR 514.23 give general limitations on the length of stay of the various classes of exchange visitors. A spouse or child (J–2) may not be admitted for longer than the principal exchange alien (J–1).

* * * * *

(vi) *Extension of duration of status.* The Commissioner may, by notice in the **Federal Register**, at any time she determines that the H–1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as the Commissioner deems necessary to complete the adjudication of the H–1B application, the duration of status of any J–1 alien on behalf of whom an employer has timely filed an application for change of status to H–1B. The alien, in accordance with 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay and is not subject to the 2-year foreign residence requirement at 212(e) of the Act. any J–1 student whose duration of status has been extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her J nonimmigrant stay. An extension made under this paragraph also applies to the J–2 dependent aliens.

* * * * *

Dated: June 4, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–15032 Filed 6–11–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 2003–99]

RIN 1115–AF47

Treatment of Certain H Petitions Filed After the Numerical Cap Is Reached

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rules.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations by allowing the Service to accept and adjudicate certain petitions submitted after any of the annual numerical caps for H nonimmigrants have been reached. Under this proposed rule, petitions that are approved would be assigned a work start date to begin no earlier than the beginning of the following fiscal year. This rule is intended to benefit the great majority of petitioners by relieving them from the burden of refiling a new or amended petition once the H numerical cap is reached.

DATES: Written comments must be submitted on or August 16, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling please reference INS No. 2003–99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Sandra Schatz, Acting Branch Chief, Management and Records Liaison, Immigration Services Division, Immigration and Naturalization Service, 801 I Street, NW., Room 980, Washington, DC 20536, telephone (202) 616–7991.

SUPPLEMENTARY INFORMATION:

Background

Section 214(g)(1)(A) of the Act sets a cap on the total number of aliens who may be provided H–1B nonimmigrant classification during any fiscal year. This section of the Act applies to "new" H–1B petitions, as explained in a Service Notice which is being published elsewhere in this issue of the **Federal Register**. In addition, section 214(g)(1)(A) of the Act sets annual numerical limitations for certain other H nonimmigrants. Under the Service's current regulations at 8 CFR 214.2(h)(8)(ii)(E), once the total numbers available to a particular H nonimmigrant classification have been used in a fiscal year, the Service must reject any new petition for that classification which contains a request for a work start date prior to October 1 of the following fiscal year, and refund to the petitioner the accompanying fee. Under current regulations, such a petitioner may not employ the alien as a new H nonimmigrant in the remaining portion of the fiscal year. To employ the alien as a new H nonimmigrant, the petitioner is required to file a new petition to request a work start date on or after October 1 of the following fiscal year, when numbers once again become available.

On December 30, 1997, the Service proposed to amend 8 CFR 214.2(h)(8)(ii)(E) to enable the Service, in its discretion, to adopt mechanisms other than rejection of petitions filed after the cap had been reached. *See* 62 FR 67764 (December 30, 1997). The purpose of the proposed change was to prevent unnecessary hardship to petitions and to avoid unnecessary work by the Service in situations where rejecting petitions was deemed not to be prudent. *Id.* The December 30 proposal did not discuss whether any petitioner may be adversely affected by the proposal. The December 30 proposal was not published as a final rule.

The Service received three comments regarding this specific proposal in the December 30 rule. All three commenters applauded the Service's proposal to change the method used to process H petitions filed after the numerical cap is reached in a fiscal year.

Why Is the Service Proposing This Change to Its Regulations?

In the case of H–1B petitioners, it has been the experience of the Service that the great majority of petitioners whose petitions were in the "pipeline," (*i.e.*, on file with the Service) at the time the numerical cap had been reached, in fact, have opted for a start date on or after October 1 of the following fiscal year rather than to withdraw their petitions. For Fiscal year 2000 and beyond, therefore, the Service is proposing to assign a work start date of no earlier than October 1 of the following fiscal year for certain petitions which are filed after the numerical cap is reached. Specifically, petitions which contain a request for a work start date prior to the beginning of the following fiscal year will be assigned an October 1 or later start date, regardless of the work start date requested in the petition. The Service believes that this proposal will benefit the great majority of petitioners by relieving them from the burden of refiling or submitting a new petition once the cap is reached. This proposal would also ensure that petitions filed after the cap is reached are treated similarly to those petitions that were not adjudicated when the numerical cap was reached.

In light of the above, the Service believes that only a relatively small number of petitioners might not wish to have an October 1 or later work start date. Accordingly, the Service believes that the current proposed rule is preferable to its earlier proposed regulation which failed to take into account that the great majority of petitioners actually have preferred that the Service assign an October 1 work start date in order to avoid additional handling.

Could Any Petitioners Be Adversely Affected by This Proposed Regulation?

The Service recognizes that certain H–1B petitioners might not wish to be assigned an October 1 or later work start date, and may therefore be adversely affected by this proposed regulation. Under the current regulation, the Service would reject such employers' petitions and accompanying fees. The proposed regulation, however, would require the Service to accept all petitions, together with filing fee, for adjudication and processing, regardless of the petitioner's requested work start date. Although certain petitioners may not wish to avail themselves of a work start date later than they requested, they would, under this proposal, forfeit their filing fee. the Service believes, nevertheless, that this proposal will benefit the great majority of petitioners by relieving them from the burden of refiling the petition once the numerical cap is reached.

The Service notes that this proposed regulation would also apply to certain other H petitioners, should the respective numerical caps ever be reached. To date, however, none of the other visa classification caps have ever even been approached. for this reason, the Service does not anticipate that this proposal would have any immediate impact on the other H programs. The Service welcomes comments concerning this proposed regulation.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in Accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed regulation and, by approving it, certifies that this rule will not have a significant economic

impact on a substantial number of small entities because of the following factors: The proposed procedures are intended to minimize burdens to the great majority of employers who use the H nonimmigrant visa program by removing the requirement to refile a new or amend petition once the numerical cap is reached. In addition, this proposed rule would ensure consistent treatment of all petitioners whose petitions have not been adjudicated by the time the numerical cap has been reached in a fiscal year by assigning all of them an October 1 or later work start date. This proposal may cause inconvenience, however, to certain petitioners who might not wish to accept an October 1 or later work start date.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This proposed rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and (b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, part 214 of chapter I of title 8 of the Code Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR Part 2.

2. Section 214.2 is amended by revising paragraph (h)(8)(ii)(E) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(8) * * *

(ii) * * *

(E) The Service shall continue to accept for adjudication any new petition containing a request for a work start date prior to the beginning for the following fiscal year, together with the accompanying fee, even if the total numbers made available in a fiscal year have been used. If the petition is approved, the Service will grant the petition with a starting date no earlier than October 1 of the following fiscal year, regardless of the work start date requested in the petition.

* * * * *

Dated: June 4, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–15033 Filed 6–11–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS 1993–99]

Information Regarding the H–1B Numerical Limitation for Fiscal Year 1999

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice explains how the Immigration and Naturalization Service (Service) will process H–1B petitions for new employment for the remainder of this fiscal year now that it is clear that the demand for H–1B workers exceeds the statutory numerical limit (the cap) of 115,000 H–1B petitions. This notice is published so that the public will understand the Service's procedure for processing H–1B petitions as the procedure may affect the business decisions of some prospective H–1B petitioners. These procedures are intended to minimize the confusion and burden to employers who use the H–1B program, reduce the administrative burden at the service centers, and eliminate the need for employers to inquire about the status of pending H–1B petitions.

This notice also serves to inform the public that the Commissioner is exercising her authority under 8 CFR 214.2(f)(5)(vi) and (j)(1)(vi) for this fiscal year to extend the duration of stay for certain F and J nonimmigrants (students and exchange visitors) if their employer has filed a timely request for change of nonimmigrant status to that of an H–1B nonimmigrant alien and the petition was filed on or before October 1, 1999. This is a stop-gap measure for such aliens in order to prevent a lapse of status until the Service is able to act on petitions to change their status.

The Service is also publishing a proposed rule in this issue of the **Federal Register** which would require the Service to accept and adjudicate petitions submitted after the cap is reached in future fiscal years and to assign to approved petitions a work start date beginning no earlier than the beginning of the next fiscal year.

DATES: This notice is effective June 15, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Schatz, Acting Branch Chief, Management and Records Liaison, Immigration Services Division, Immigration and Naturalization Service, 801 I Street, NW., Room 980, Washington, DC 20536, telephone (202) 616–7991.

SUPPLEMENTARY INFORMATION:

Background

Section 214(g) of the Immigration and Nationality Act provides, among other things, that the total number of aliens who may be issued H–1B visas or otherwise granted H–1B status during Fiscal Year 1999 may not exceed 115,000. As of April 30, 1999, the Service has recorded 103,753 petitions against the cap for Fiscal Year 1999. As of April 30, 1999, there are 42,376 H–1B cap petitions pending at the four service centers. Since on average the Service approves 92 percent of the H–1B petitions it receives, there now appears to be a sufficient number of H–1B petitions pending at the four service centers to reach the cap for this fiscal year.

Who Is an H–1B Nonimmigrant?

An H–1B nonimmigrant is an alien employed in a speciality occupation or a fashion model of distinguished merit and ability. A specialty occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific speciality as a minimum for entry into the United States.

What Does This Notice Do?

This notice explains the Service's procedure for processing H–1B petitions for new employment that are filed by employers seeking to employ H–1B aliens during the remainder of this fiscal year, *i.e.*, through September 30, 1999. The process described in this notice is different from the process the Service used last year for handling H–1B petitions and applies only to Fiscal Year 1999. The Service intends to amend its regulations to prescribe the method to be used in handling H–1B petitions in subsequent fiscal years. In this regard, the Service is publishing a proposed rule in this issue of the **Federal Register**, concerning treatment of petitions filed after the cap has been reached. In addition, in the near future the Service intends to publish in the **Federal Register** a proposed rule to cover other aspects of handling of H–1B petitions.

Does This Procedure Apply to All H–1B Petitions Filed for This Fiscal Year?

No. The procedure described in this notice relates only to H–1B petitions filed for new employment to commence on or before September 30, 1999. A petition for new employment includes a petition where the alien beneficiary is outside the United States when the H–1B petition is approved or where the alien is already in the United States and is seeking a change of nonimmigrant status to an H–1B nonimmigrant alien.

Amended petitions and petitions for extension of stay are not affected by this procedure because these H–1B petitions do not count against the cap. Likewise, petitions for aliens in the United States who already hold H–1B status, *i.e.*, petitions filed on behalf of an H–1B alien by a new or additional employer, are not affected by this procedure. This procedure does not relate to petitions filed before October 1, 1999, for employment to commence on or after October 1, 1999. However, as described below, the Service is extending the duration of status for certain F and J nonimmigrant aliens who are the beneficiaries of a pending H–1B petition.

What Is the Service's Procedure for Processing H–1B Petitions for New Employment During the Remainder of This Fiscal Year?

The Service will adjudicate all H–1B petitions for new employment to commence on or before September 30, 1999, if the petition was filed before publication of this notice. The Service will not reject a petition solely because the Fiscal Year 1999 allotment of 115,000 H–1B numbers has been exhausted. If the cap is reached before the Service adjudicates a petition, and the petition is otherwise approvable, the Service will grant the petition with a starting validity date of October 1, 1999. An alien beneficiary may not begin his or her employment with the petitioner under the H–1B petition until that date.

Unlike previous years when the cap was reached before the close of the fiscal year, the Service will not attempt to contact petitioners individually to advise that the cap has been reached. Rather, the Service will proceed to adjudicate the petition based on a presumption that the employer will accept October 1, 1999, as the date from which the approved petition is valid and the first date on which the alien beneficiary may begin employment as an H–1B worker.

How Will the Service Treat Petitions Received After Publication of This Notice?

This notice informs the public that there is a sufficient number of H–1B petitions pending at the four service centers to reach the cap of 115,000 for this fiscal year. The Service, in keeping with current practice, will not accept any further H–1B petitions for new employment to commence before October 1, 1999. These petitions will be rejected and returned (along with the

fee) to the petitioner according to 8 CFR 214.2(h)(8)(ii)(E). However, such petitioners are free to refile those petitions with a new starting date of October 1, 1999, or later. The Service does not anticipate that it will be required to return a significant number of petitions under the existing rule.

For Fiscal Year 2000 and beyond, the Service is publishing a proposed rule in this issue of the **Federal Register** to amend its regulations to assign a work start date of no earlier than the beginning of the following fiscal year for approval petitions which are filed after the cap is reached. The Service believes that this proposed rule will benefit the great majority of petitioners by relieving them from the burden of refiling or resubmitting a new petition once the cap is reached. The rule would also ensure consistency by providing an October 1 or later work start date to beneficiaries of petitions filed and pending before the date of the cap is reached and beneficiaries of those petitioners filed thereafter.

How Will the Service Adjudicate H–1B Petitioners Pending on the Date of This Notice?

The fiscal year allotment of 115,000 H–1B numbers is available on a national basis to qualifying United States employers. As a matter of fairness to participating employers, the Service has developed procedures to ensure that petitions will be processed in all four service centers based on the time of filing and in the same order of receipt by the Service. Each of the service centers will coordinate their adjudication of pending H–1B petitions to ensure that petitions will be processed in order of receipt by the Service irrespective of the place of filing. The Service is currently adjudicating H–1B petitions which were filed as late as April 7, 1999. All service centers will continue to adjudicate petitions having the same priority date until the cap is reached. Thereafter "pipeline" cases (petitions filed prior to the date the cap was reached) will be adjudicated in the order of receipt but will be assigned a work start date of October 1 of the new fiscal year or later.

Why Isn't the Service Using the Procedure Adopted Last Fiscal Year To Process H–1B Cases This Fiscal Year?

The procedure used last year by the Service to process H–1B cases was overly labor intensive. Service personnel were required to contact each petitioner and obtain authorization to approve the petition with a start date of October 1. Further, the vast majority of petitioners contacted by the Service last year chose the October 1 start date. If the petitioner declined to postpone the starting date for employment until October 1, then the Service was required to deny the petition outright.

What Should a Petitioner Do if the October 1 Start Date for Employment Is Not Acceptable?

If the petitioner is unwilling to wait until the October 1 start date for employment of the H–1B alien and the Service has not yet adjudicated the petition, the petitioner should notify the Service in writing that he/she wishes to withdraw the petition. AS noted below, the Service cannot refund the filing fee in such cases.

If the Service has approved a petition for work to begin as of October 1, 1999, and the petitioner determines that the date is not acceptable, the petitioner should notify the Service in writing immediately so that the Service can revoke the petition and recapture the number and return it to the pool of unused numbers for Fiscal Year 2000.

How Should a Petitioner Notify the Service That It Wishes To Withdraw a Petition?

If a petitioner wishes to withdraw a pending H–1B petition or an approved H–1B petition for new employment, the petitioner should fax a withdrawal request to the Immigration and Naturalization Service, Immigration Services Division, H–1B Withdrawal Section, Washington, DC, fax number: 202–305–0108. The request should be signed by the petitioner or authorized representative and include the filing receipt number and the names of both the petitioner and beneficiary. Employers seeking to request withdrawal of an H–1B petition through September 30, 1999, should use this fax number and special procedure.

Does This Process Apply to H–1B Petitions Filed for Employment To Commence On or After October 1, 1999?

No. Those petitions are not affected by the procedures described in this notice and will be adjudicated in the normal fashion, whether or not they are currently in the pipeline or filed after this year's cap is reached.

How Will the Service Process Petitions That Are Revoked?

The Service will subtract revocations of any H–1B petitions for new employment from the total H–1B count in the fiscal year for which the new employment was approved. After the petition is revoked, the case number will be sent to the Immigration Services Division (ISD) where the number will be recaptured for use. The number will then be forwarded by ISD to a service center to be assigned to a pending petition. Priority will be given to approved petitions in the order they were filed (*e.g.*, petitions that were originally denied but subsequently ordered approved by the Administrative Appeals Office).

Will the Service Refund a Filing Fee if a Petition Is Withdrawn or Revoked?

No, the Service will not refund either the $110 filing fee or the additional $500 filing fee imposed by the American Competitiveness and Workforce Improvement Act of 1998. The regulation at 8 CFR 103.2(a)(1) precludes the refunding of filing fees for petitions filed in behalf of H nonimmigrant aliens.

Will the Service Allow Certain F and J Nonimmigrant Aliens Who Are the Beneficiaries of H–1B Petitions To Remain in the United States Until They Can Change Their Status to H–1B On or After October 1, 1999?

Yes. The Service is amending its regulations by interim rule (published elsewhere in this issue of the **Federal Register**) to expand the definition of duration of status for certain F and J nonimmigrant aliens whose employers have filed a timely H–1B petition and application for change of nonimmigrant classification before the cap has been reached. Data indicates that 60 percent of the H–1B cases recorded against the cap are for aliens who are changing nonimmigrant classification to H–1B. The Service estimates that of these, the most common changes are from F or J to H–1B.

In order to avoid confusion for employers and adverse legal consequences to certain F and J nonimmigrant aliens, the interim rule (published elsewhere in this issue of the **Federal Register**) provides that the Commissioner may, at any time she determines that the H–1B cap will be reached prior to the end of the fiscal year, extend the duration of status, by notice in the **Federal Register**, of any F or J nonimmigrant alien whose employer has filed a timely petition for change of nonimmigrant status to that of an H–1B nonimmigrant. As provided in 8 CFR part 248, the alien must not have violated the terms of his or her admission to the United States in order to qualify for the change of nonimmigrant status. This extension shall continue for such time as is necessary for the Service to approve a petition changing the alien's status to H–1B in the following fiscal year. An alien whose duration of status has been

extended by the Commissioner under these regulations (and who continues to adhere to the other terms of the alien's F and J status) is considered to be maintaining lawful nonimmigrant status for all purposes under the Immigration and Nationality Act.

When Will the Commissioner Exercise Her Authority To Extend Duration of Status for This Fiscal Year?

This notice serves to inform the public that the Commissioner, in her discretion, has exercised her authority under 8 CFR 214.2(f)(5)(vi) and (j)(1)(vi) for this fiscal year. Accordingly, any F or J nonimmigrant whose employer has filed a timely request for change of nonimmigrant status to that of an H–1B nonimmigrant alien whose petition was filed on or before October 1, 1999, is considered to be in a valid nonimmigrant status until October 1, 1999, or until the date the Service adjudicates the change of status application. Pursuant to 8 CFR 248.1(b) and 214.1(c)(4), the term "timely filed" refers to an application for a change of nonimmigrant status filed prior to the expiration of the alien's period of authorized stay in the United States. This provision also applies to the dependents of the affected F and J nonimmigrant aliens. An alien affected by this provision may not work for the petitioning employer or otherwise engage in activities inconsistent with the terms and conditions of the alien's nonimmigrant classification prior to the date for which the Service approved the request for a change of status.

Dated: June 4, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–15034 Filed 6–11–99; 8:45 am]

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Part IV

Department of Agriculture

Foreign Agricultural Service

7 CFR Part 1550

Programs to Help Develop Foreign Markets for Agricultural Commodities (Foreign Market Development Cooperator Program); Proposed Rule

VOL 64 ISS 114 JE 15 1999 UMI

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1550

RIN 0551–AA26

Programs to Help Develop Foreign Markets for Agricultural Commodities (Foreign Market Development Cooperator Program)

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise regulations applicable to the Foreign Market Development Cooperator (Cooperator) Program. The revisions would provide more detailed regulations concerning program administration, including participant eligibility, the application review process, allocation criteria, strategic planning and goal setting requirements, reimbursement rules and procedures, financial reporting and program evaluation requirements, appeal procedures, and program controls. The intent of this proposal is to improve the effective administration of the Cooperator Program by formalizing the existing Cooperator Program guidelines.

DATES: Written comments must be received by July 14, 1999, to be assured of consideration.

ADDRESSES: Comments should be submitted to: Kent Sisson, Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue SW, Ag Box 1042, Room 4932S, Washington, DC 20250–1042. Fax: (202) 720–9361, e-mail: mosadmin@fas.usda.gov.

FOR FURTHER INFORMATION CONTACT: Kent Sisson or Denise Huttenlocker by phone at (202) 720–4327, by fax at (202) 720–9361, or by e-mail at mosadmin@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined that this proposed rule would not have an annual economic effect in excess of $100 million; would not cause a major increase in costs to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with such provisions or which otherwise impede their full implementation; would not have retroactive effect; and would require administrative proceedings before suit may be filed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (see the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because the Foreign Agricultural Service (FAS) is not required by any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this proposed rule have been submitted for emergency reinstatement to the Office of Management and Budget (OMB). OMB has previously assigned control number 0551–0026 to the information collection and recordkeeping requirements. There are no new information collection requirements associated with this proposed rule. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for Agriculture, Washington, DC 20503. Please also send a copy of your comments to Kent Sisson, director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue SW, Ag Box 1042, Room 4932S, Washington, DC 20250–1042. Fax: (202) 720–9361, e-mail: mosadmin@fas.usda.gov.

The reporting and recordkeeping requirements associated with the Foreign Market Development Cooperator Program include information necessary to apply for the program and determine eligibility as well as program performance information such as financial reporting and program evaluation reports. FAS uses this information to manage, plan, evaluate and account for the proper and judicious use of public funds disbursed to private trade organizations. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. We need this outside input to help us accomplish the following:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 20.5 minutes per response.

Respondents: not for profit institutions and state, local, or tribal governments.

Estimated number of respondents: 30.

Estimated number of responses per respondent: 2134.

Estimated total annual burden on respondents: 43,748 hours.

Copies of this information collection can be obtained from: Information Clearance Officer, OCIO, USDA, Room 404–W, 1400 Independence Avenue, Washington, DC 20250.

Background

General Background

The Foreign Market Development Cooperator Program's first participants (known as Cooperators) entered into agreements with FAS in 1954. The Cooperator program is currently authorized by Title VII of the Agricultural Trade Act of 1978, which directs the Secretary of Agriculture to "establish and, in cooperation with

eligible trade organizations, carry out a foreign market development cooperator program to maintain and develop foreign markets for United States agricultural commodities and products." FAS implements this provision by entering into agreements with non-profit U.S. agricultural trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. A program participant may not, during the term of an agreement with FAS, make export sales of the agricultural commodity being promoted or charge fees for facilitating an export sale if promotional activities designed to result in that specific sale are supported by Cooperator program funds.

Project Agreements involve the promotion of agricultural commodities on a generic basis and, therefore, do not involve activities targeted directly toward individual consumers. Approved activities contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints by focusing on matters such as:

- Reducing infra-structural or historical market impediments;
- Improving processing capabilities;
- Modifying codes and standards; and
- Identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

Significant Provisions

The proposed rule describes the current program and incorporates the majority of the guidelines and procedures currently in effect under the Cooperator program. The proposed regulation would, among other things:

1. Describe procedures for establishing project agreements;
2. List eligible and ineligible Cooperator contributions and the consequences of a Cooperator failing to meet its required contribution level;
3. List reimbursable and non-reimbursable Cooperator expenditures;
4. Explain the procedures followed in the submission and payment of reimbursement claims;
5. Detail required Cooperator employment practices;
6. Provide financial management guidelines for Cooperators;
7. Identify the reports FAS requires of Cooperators;
8. Explain FAS" position on program evaluation and the associated requirements of Cooperators;
9. Detail the steps a Cooperator should follow to appeal compliance findings;
10. List the standards of ethical conduct required of Cooperators;
11. Describe contracting procedures to be used by Cooperators; and
12. Outline the travel restrictions placed on Cooperators by FAS, including the Federal Travel Regulation and the Fly America Act.

List of Subjects in 7 CFR Part 1550

Agricultural commodities, Exports, Grant programs—agriculture, Reporting and recordkeeping requirements.

Accordingly, FAS proposes to revise part 1550 of chapter XV of title 7 of the Code of Federal Regulations to read as follows:

PART 1550—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.

Subpart A—General Information

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Subpart B—Application and Fund Allocation

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Subpart D—Contributions and Reimbursements

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Authority: 7 U.S.C. 5721–5723.

Subpart A—General Information

§ 1550.10 What is the effective date of this part?

This part applies to activities that are conducted in accordance with the Cooperators' FY 2000 and subsequent marketing plan years.

§ 1550.11 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?

The paperwork and record keeping requirements imposed by this part have been submitted to the Office of Management and Budget (OMB) for emergency review and reinstatement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously assigned control number 0551–0026 for this information collection.

§ 1550.12 What is the Cooperator program?

(a) Under the Foreign Market Development Cooperator (Cooperator) Program, FAS enters into project agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, expand, or maintain foreign markets for U.S. agricultural commodities and products. FAS does not provide brand promotion assistance to Cooperators under this program.

(b) FAS enters into project agreements with those eligible nonprofit U.S. trade organizations that have the broadest

possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Project agreements involve the promotion of agricultural commodities on a generic basis and, therefore, do not involve activities targeted directly toward individual consumers. Activities must contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints by focusing on matters such as reducing infra-structural or historical market impediments; improving processing capabilities; modifying codes and standards; and identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

(c) The Cooperator program generally operates on a reimbursement basis.

(d) FAS policy is to ensure that benefits generated by Cooperator agreements are broadly available throughout the relevant agricultural sector and no one entity gains an undue advantage or sole benefit from program activities.

§ 1550.13 What special definitions apply to the Cooperator program?

For purposes of this part the following definitions apply:

Activity—a specific market development effort undertaken by a Cooperator to address a constraint.

Administrator—the Administrator, FAS, USDA, or designee.

Agricultural Commodity—an agricultural commodity, food, feed, fiber, wood, livestock or insect, and any product thereof; and fish harvested from a U.S. aquaculture farm, or harvested by a vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

Attache/Counselor—the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Commodity Division—the office within the Foreign Agricultural Service responsible for the commodity covered by the project agreement.

Compliance Review Staff—the office within the Foreign Agricultural Service responsible for performing periodic reviews of Cooperators to ensure compliance with this part.

Constraint—a condition in a particular country or region which needs to be addressed in order to develop, expand, or maintain exports of a specific U.S. agricultural commodity.

Contribution—the cost-share expenditure made by a Cooperator or the U.S. industry in support of an activity; e.g., money, personnel, materials, services, facilities, or supplies.

Cooperator or *U.S. Cooperator*—a nonprofit U.S. agricultural trade organization which has entered into a foreign market development agreement with FAS.

Cooperator program—the Foreign Market Development Cooperator Program.

Deputy Administrator—the Deputy Administrator, Commodity and Marketing Programs, FAS, USDA, or designee.

Division Director—the director of a commodity division, Commodity and Marketing Programs, FAS, USDA.

Eligible Commodity—an agricultural commodity that is comprised of at least 50 percent U.S. origin content by weight, exclusive of added water.

Eligible Trade Organization—a United States trade organization that promotes the exports of one or more United States agricultural commodities or products and does not have a business interest in or receive remuneration from specific sales of agricultural commodities or products.

FAS—Foreign Agricultural Service, USDA.

Foreign Third Party—a foreign entity that assists, in accordance with this part, in promoting the export of a U.S. agricultural commodity.

Generic Promotion—a promotion that does not involve the exclusive or predominant use of a single company name or logo(s) or brand name(s) of a single company.

Market—a country or region in which an activity is conducted.

Marketing Plan Year—the program year beginning on October 1 and ending on September 30, during which Cooperators can undertake activities, consistent with this part and their agreements with FAS, and seek reimbursement. For example, marketing plan year 2000 begins on October 1, 1999, and ends on September 30, 2000.

Project Agreement—a contract between FAS and a Cooperator in which the basic working relationship is described including the program and financial obligations of each.

Project Funds—the funds made available to a Cooperator by FAS under a project agreement, and authorized for expenditure in accordance with this part.

STRE—sales and trade relations expenditures.

Trade Team—a group of individuals engaged in an activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

USDA—the United States Department of Agriculture.

§ 1550.14 Is my organization eligible to participate in the Cooperator program?

(a) To participate in the Cooperator program, an entity must be a nonprofit U.S. agricultural trade organization and contribute at least 50 percent of the value of resources provided by FAS for activities conducted under the project agreement.

(b) FAS may require that a project agreement include a contribution level greater than that specified in paragraph (a) of this section. In requiring a higher contribution level, FAS will take into account such factors as past Cooperator contributions, previous Cooperator program funding levels, the length of time an entity participates in the program, and the entity's ability to increase its contribution.

(c) FAS will enter into Cooperator agreements only for the promotion of eligible commodities.

Subpart B—Application and Fund Allocation

§ 1550.20 How can my organization apply to the Cooperator program?

FAS will publish a Notice in the **Federal Register** that it is accepting applications for participation in the Cooperator program for a specified marketing plan year. Applications shall be submitted in accordance with the terms and requirements specified in the Notice. An application shall contain basic information about the applicant and the proposed program, a strategic plan, and performance measures. FAS may request any additional information which it deems necessary to evaluate a Cooperator program application.

(a) *Basic applicant and program information.* All Cooperator program applications shall contain:

(1) The name and address of the applicant;

(2) The name of the Chief Executive Officer (or designee);

(3) The name and telephone number of the applicant's primary contact person;

(4) A description of management and administrative capability;

(5) The name(s) of the person(s) responsible for managing the program;

(6) A description of prior export promotion experience;

(7) A description of the organization, its membership, and membership criteria;

(8) A list of affiliated organizations;

(9) The applicant's Federal Tax Identification Number;

(10) The dollar amount of FAS resources requested under the Cooperator program;

(11) The value of the applicant's contribution, stated in dollars or as a percentage of paragraph (a)(10) of this section;

(12) The value of contributions from other sources, stated in dollars or as a percentage of paragraph (a)(10) of this section;

(13) A description of the eligible commodity(s); the associated commodity aggregate code(s), obtained from FAS; and the percentage of U.S. origin content by weight, exclusive of added water; and

(14) A certification statement, and, if requested by the Deputy Administrator, a written explanation supporting the certification, that any funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities. The written explanation, if necessary, shall indicate why the Cooperator is unlikely to carry out the activities without Federal financial assistance. The certification shall also state that information contained in the application is true and accurate and that all records supporting the claim that project funds do not supplant other funds will be made available to authorized officials of the U.S. Government.

(b) *Strategic plan and performance measures.* All Cooperator program applications shall also contain:

(1) A description of the U.S. and world market situation for the eligible commodity;

(2) Data summarizing historical and projected U.S. production, U.S. exports to the world, world trade, and U.S. market share;

(3) A summary of proposed activity budgets by country or region;

(4) A summary of proposed administrative budgets by country or region;

(5) A list of all countries that define any designated region;

(6) For each country or region for which activities are proposed:

(i) A market assessment, including the constraint(s) impeding U.S. exports, the performance of competing suppliers, expected changes in demand, etc.;

(ii) The long-term strategy that will be used to counteract the constraints and achieve additional U.S. exports;

(iii) Previous activities, performance, and evaluation results;

(iv) Projected export goals and U.S. market share; and

(v) Performance indicators against which future success in addressing the constraint(s) may be measured;

(7) A description of all proposed activities, including the requested FAS resources and the specific goals and benchmarks to be used to measure the effectiveness of each activity;

(8) A justification for any new overseas office, including a list of job titles, corresponding position descriptions, salary ranges, and any request for approval of salaries above the Foreign Service National (FSN) salary plan. To request approval of a salary above the FSN salary plan, the Cooperator shall include a detailed description of both the duties and responsibilities of the position, and of the qualifications and background of the individual concerned. The Cooperator shall also justify, based on a verifiable local salary survey or other documented local salary information, why the highest FSN salary level is inappropriate.

§ 1550.21 How does FAS determine which Cooperator program applications are approved?

(a) *General.* FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify those projects that would demonstrate a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country or region goals. These performance indicators are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan and address the performance measurement objectives of the GPRA.

(b) *Approval criteria.* FAS will consider a number of factors when reviewing proposed projects, including:

(1) The ability of the organization to provide an experienced U.S.-based staff with technical and international trade expertise to ensure adequate development, supervision, and execution of the proposed project;

(2) The organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties;

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;

(4) The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of foreign markets;

(5) The degree to which the strategic plan is coordinated with other private or U.S. government-funded market development projects;

(6) Past program results and evaluations, if applicable; and

(7) Previous Cooperator program funding.

§ 1550.22 How are Cooperator program funds allocated?

After determining which applications to recommend for approval, the Commodity Divisions recommend funding levels for the approved applicants within their respective divisions. Applications then compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor). Data used in the calculations for contribution levels, past export performance and past demand expansion performance will cover not more than a 6-year period, to the extent such data is available. The method for applying the following criteria will be described in the Cooperator program announcement in the **Federal Register**:

(a) Contribution Level (40%).

(b) Past Export Performance (20%).

(c) Past Demand Expansion Performance (20%).

(d) Future Demand Expansion Goals (10%).

(e) Accuracy of Past Demand Expansion Projections (10%).

Subpart C—Program Operations

§ 1550.30 How does FAS formalize its working relationship with approved Cooperators?

FAS will notify each applicant in writing of the final disposition of its application. FAS will send a program agreement, allocation approval letter, and a signature card to each approved applicant. The allocation approval letter will specify any special terms and conditions applicable to a Cooperator's program, including the required level of Cooperator contribution. An applicant that accepts the terms and conditions contained in the program agreement and allocation approval letter should so indicate by having its Chief Executive Officer sign the program agreement and submit the signed agreement to the Director, Marketing Operations Staff, FAS, USDA. Final agreement shall occur when the Administrator signs the agreement on behalf of FAS. The application, the program agreement, the allocation approval letter, and this part shall establish the terms and conditions

of a Cooperator agreement between FAS and the approved applicant.

§ 1550.31 Who acts on behalf of each Cooperator?

The Cooperator shall designate at least two individuals in its organization to sign program agreements, reimbursement claims, and requests. The Cooperator shall submit the signature card signed by those designated individuals and by the Cooperator's Chief Executive Officer to the Director, Marketing Operations Staff, FAS, USDA, prior to the start of the marketing plan year. The Cooperator shall immediately notify the Director of any changes in signatories (e.g., removal or addition of individuals, name changes, etc.), and shall submit a revised signature card accordingly.

§ 1550.32 Must Cooperators follow specific employment practices?

(a) A Cooperator shall enter into written contracts with all overseas employees and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A Cooperator shall, in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A Cooperator may pay salaries or fees in any currency (U.S. or foreign) in conformance with contract specifications. Cooperators are cautioned to consult local laws regarding currency restrictions.

§ 1550.33 Must Cooperators follow any financial management guidelines?

(a) A Cooperator shall implement and maintain a financial management system that conforms to generally accepted accounting principles.

(b) A Cooperator shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these provisions. Each Cooperator shall maintain all original records and documents relating to program activities for 5 calendar years following the end of the applicable marketing plan year and shall make such records and documents available upon request to authorized officials of the U.S. Government. A Cooperator shall also maintain all documents related to employment, such as employment applications, contracts, position descriptions, leave records, and salary changes; and all records pertaining to contractors. A Cooperator shall also maintain adequate documentation related to the proper disposition of all capital goods purchased by the Cooperator and for which the Cooperator is reimbursed with program funds.

(c) A Cooperator shall maintain its records of expenditures and contributions in a manner that allows it to provide information by marketing plan year, country or region, activity number, and cost category. Such records shall include:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Original receipts for any other program related expenditure in excess of $25.00;

(3) The exchange rate used to calculate the dollar equivalent of each expenditure made in a foreign currency and the basis for such calculation;

(4) Copies of reimbursement claims;

(5) An itemized list of claims charged to the Cooperator's FMD account;

(6) Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions, such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, and travel vouchers; and

(7) Documentation supporting contributions including: the date(s), purpose, and location(s) of each activity for which cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and the method of computing the claimed contributions. Cooperators must retain, and make available for audit, documentation related to claimed contributions.

(d) Upon request, a Cooperator shall provide to FAS the original documents which support the Cooperator's reimbursement claims. FAS may deny a claim for reimbursement if the claim is not supported by adequate documentation.

§ 1550.34 Must Cooperators adhere to specific standards of ethical conduct?

(a) A Cooperator shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out.

(b) Neither a Cooperator nor its affiliates shall make export sales of agricultural commodities covered under the terms of a project agreement. Neither a Cooperator nor its affiliates shall charge a fee for facilitating an export sale. For the purposes of this paragraph, "affiliate" means any partnership, association, company, corporation, trust, or any other such party in which the Cooperator has an investment, other than a mutual fund. A Cooperator may collect check-off funds and membership fees that are required for membership in the Cooperator's organization.

(c) The Cooperator shall not use program activities or program funds to promote private self interests or conduct private business, except as members of sales teams.

(d) A Cooperator shall select U.S. agricultural industry representatives to participate in activities such as trade teams or trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested, a Cooperator shall submit such selection criteria to FAS for approval.

(e) All Cooperators should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a project agreement.

(f) The Cooperator must report any actions or circumstances that have a bearing on the propriety of program activities to the Attache/Counselor and the Cooperator's U.S. office shall report such actions in writing to the appropriate Division Director.

§ 1550.35 Must Cooperators follow specific contracting procedures?

(a) Cooperators have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the Cooperator. Neither FAS nor any other agency of the United States Government or any official or employee of FAS or the United States Government has any obligation or responsibility with respect to Cooperator contracts with third parties.

(b) Cooperators are responsible for ensuring to the extent possible that the terms, conditions, and costs of contracts constitute the most economical and effective use of project funds.

(c) All fees for personnel and professional services paid in any part with project funds must be covered by contracts.

(d) A Cooperator shall:

(1) Ensure that all expenditures for goods and services reimbursed, in excess of $25.00, by FAS are documented by a purchase order, invoice, or contract;

(2) Ensure that no employee or officer participates in the selection or award of a contract in which such employee or officer, or the employee's or officer's family or partners has a financial interest;

(3) Conduct all contracting in an open manner. Individuals who develop or draft specifications, requirements,

statements of work, invitations for bids, or requests for proposals for procurement of any goods or services shall be excluded from competition for such procurement;

(4) Base each solicitation for professional or technical services on a clear and accurate description of the requirements for the services to be procured;

(5) Perform some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices; and

(6) Document the decision-making process.

§ 1550.36 How do Cooperators dispose of disposable capital goods?

(a) Capital goods purchased by the Cooperator and for which the Cooperator is reimbursed by FAS that are unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways. The Cooperator may:

(1) Exchange or sell the goods, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With FAS approval, transfer the goods to other Cooperators for their activities, or to a foreign third party; or

(3) Upon Attache/Counselor approval, donate the goods to a local charity, or convey the goods to the Attache/Counselor, along with an itemized inventory list and any documents of title.

(b) A Cooperator shall maintain an inventory of all capital goods valued at $100 or more which were acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements.

(c) The Cooperator shall insure all capital goods which were acquired with program funds and safeguard such goods against theft, damage, and unauthorized use. The Cooperator shall promptly report any loss, theft, or damage of such property to the insurance company.

(d) The Cooperator is responsible for reimbursing FAS for the value of any uninsured property at the time of the loss or theft of the property.

§ 1550.37 Must Cooperators adhere to Federal Travel Regulations?

All travel shall conform to the U.S. Federal Travel Regulation (41 CFR chapters 300 through 304) and air travel shall conform to the requirements of the "Fly America Act" (49 U.S.C. 1517). The Cooperator shall notify the Attache/Counselor in the destination countries in writing in advance of any proposed travel. The timing of such notice should be far enough in advance to enable the Attache/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel may result in disallowance of the expenses related to the travel.

§ 1550.38 Can a Cooperator keep proceeds generated from an activity?

Any income or refunds generated from an activity, i.e., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed, shall be repaid by submitting a check payable to FAS or by offsetting the Cooperator's next reimbursement claim.

Subpart D—Contributions and Reimbursements

§ 1550.50 What cost share contributions are eligible?

(a) The Cooperator shall pay all costs necessary for the operation of the Cooperator's U.S. office.

(b) In calculating the amount of contributions that it will make, and the contributions it will receive from a U.S. industry or a State agency, a Cooperator program applicant may include the costs (or such prorated costs) listed under paragraph (c) of this section if:

(1) Expenditures will be made in furtherance of the Cooperator's overall foreign market development program;

(2) The contributor has not been or will not be reimbursed by any other source for such costs; and

(3) The contribution is made during the period covered by the project agreement.

(c) Subject to paragraph (b) of this section, eligible contributions are:

(1) Cash;

(2) Compensation paid to personnel;

(3) The cost of acquiring materials, supplies, or services;

(4) The cost of office space;

(5) A reasonable and justifiable proportion of general administrative costs and overhead;

(6) Payments for indemnity and fidelity bond expenses;

(7) The cost of business cards;

(8) The cost of seasonal greeting cards;

(9) Fees for office parking;

(10) The cost of subscriptions to publications;

(11) The cost of activities conducted overseas;

(12) Credit card fees;

(13) The cost of any independent evaluation or audit that is not required by FAS to ensure compliance with program requirements;

(14) The cost of giveaways, awards, prizes and gifts;

(15) The cost of product samples;

(16) Fees for participating in U.S. government activities;

(17) The cost of air and local travel in the United States;

(18) Transportation and shipping costs;

(19) The cost of displays and promotional materials;

(20) Advertising costs;

(21) Reasonable travel costs and expenses related to undertaking a foreign market development activity;

(22) Payment of employee's or contractor's share of personal taxes; and

(23) The cost associated with trade shows, seminars, entertainment and STRE conducted in the United States.

§ 1550.51 What are ineligible contributions?

(a) The following are not eligible contributions:

(1) Any portion of salary or compensation of an individual who is the target of a promotional activity;

(2) Any land costs other than allowable costs for office space;

(3) Depreciation;

(4) The cost of refreshments and related equipment provided to office staff;

(5) The cost of insuring articles owned by private individuals;

(6) The cost of any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(7) The cost of product development or product modifications;

(8) Slotting fees or similar sales expenditures;

(9) Funds, services, or personnel provided by any U.S. government agency;

(10) Capital investments made by a third party, such as permanent structures, real estate, and the purchase of office equipment and furniture;

(11) The value of any services generated by a Cooperator or third party which involve no expenditure by the Cooperator or third party, e.g., free publicity; and

(12) Membership fees in clubs and social organizations.

(b) The Deputy Administrator shall determine, at the Deputy Administrator's discretion, whether any cost not expressly listed in this section may be included by the Cooperator as an eligible contribution.

§ 1550.52 What are the guidelines for computing the value of non-cash contributions?

(a) *Computing the value of an individual's time.* If an individual's salary is known, allocate the individual's salary on the basis of time spent on foreign market development activities. If the individual's salary is unknown, claim up to the equivalent of a step 10, GS–15 for professional personnel and up to the current estimated industry rate at the person's level of employment for nonprofessional personnel.

(b) *Computing the value of indirect expenditures.* Allocate value on the basis of sound management and accounting procedures when considering indirect expenditures, such as overhead and facilities, which are furnished by the industry.

§ 1550.53 What are the requirements for documenting and reporting contributions?

(a) Each claimed contribution must be documented by the Cooperator, showing the method of computing non-cash contributions, salaries, and travel expenses.

(b) Each Cooperator must keep records of the methods used to compute the value of non-cash contributions, and:

(1) Copies of invoices or receipts for expenses paid by the third party and not reimbursed by the Cooperator for the joint activity; or

(2) If invoices are not available, an itemized statement from the third party as to what costs it incurred pursuant to the joint activity; or

(3) If neither of the foregoing is available, a statement from the third party as to what goods and services it provided; or

(4) If none of the foregoing are available, a memo to the files of the U.S. Cooperator's estimate of what contributions were made by the third party, item by item, and the method used to assign a value to each.

(c) Each Cooperator must report its contributions as described in § 1550.70(a).

§ 1550.54 What expenditures may FAS reimburse under the Cooperator program?

(a) A Cooperator may seek reimbursement for an expenditure if:

(1) An expenditure has been made in furtherance of a market development activity;

(2) The Cooperator or third party has transferred funds to pay for the expenditure; and

(3) The Cooperator has not been or will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraph (a) of this section, FAS will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising in print or electronic media or on billboards or posters;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and similar point of sale materials;

(3) Direct mail advertising;

(4) Food service promotions, product demonstrations to the trade, and distribution of promotional samples;

(5) Temporary displays and rental of space for temporary displays;

(6) Fees for participation in retail and trade exhibits and shows, and booth construction and transportation of related materials to such exhibits and shows;

(7) Trade seminars, including space rental, equipment rental, and duplication of seminar materials;

(8) Production and distribution of publications;

(9) Part-time contractors, such as interpreters, translators, and receptionists, to help with the implementation of promotional activities, such as trade shows, food service promotions, and trade seminars;

(10) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to the limitation that FAS will not reimburse more than $1.00 per item;

(11) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to U.S. citizen employees or U.S. citizen contractors stationed overseas, subject to the limitation that FAS shall not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15, Step 10 salary for U.S. Government employees; and

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(12) Approved salaries or compensation for non-U.S. citizens and non-U.S. contractors. Generally, FAS will not reimburse any portion of a non-U.S. citizen employee's compensation that exceeds the compensation prescribed for the most comparable position in the Foreign Service National (FSN) salary plan applicable to the country in which the employee works. However, if the local FSN salary plan is inappropriate, a Cooperator may request a higher level of reimbursement for a non-U.S. citizen in accordance with § 1550.20(b)(8);

(13) A retroactive salary adjustment that conforms to a change in FSN salary plans, effective as of the date of such change;

(14) Accrued annual leave at such time when employment is terminated or when required by local law;

(15) Overtime paid to clerical staff;

(16) Fees for personnel and professional services, subject to the limitation that project funds may only be used to pay consultant fees for actual work days and may not be used to pay consultant fees for travel and rest days;

(17) Air travel, plus passports, visas, and inoculations, subject to the limitation that FAS will not reimburse any portion of air travel in excess of the full fare economy rate or when the Cooperator fails to notify the Attache/Counselor in the destination country in advance of the travel, unless the Deputy Administrator determines it was impractical to provide such notification;

(18) Per diem, subject to the limitation that FAS will not reimburse per diem in excess of the rates allowed under the U.S. Federal Travel Regulation (41 CFR chapters 300 through 304);

(19) Automobile mileage at the local U.S. Embassy rate, or rental cars while in travel status;

(20) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulation (41 CFR chapters 300 through 304);

(21) An overseas office, including rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums, and legal and accounting services;

(22) The purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least one year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, and computer hardware and software;

(23) Premiums for health or accident insurance or other benefits for foreign national employees that the employer is required by law to pay;

(24) Accident liability insurance premiums for facilities used jointly with third party participants for Cooperator program activities, or such insurance premiums for travel of non-Cooperator personnel;

(25) Market research;

(26) Evaluations, if not required by FAS to ensure compliance with program requirements;

(27) Legal fees to obtain advice on the host country's labor laws;

(28) Employment agency fees;

(29) STRE, including breakfast, lunch, dinner, receptions, and refreshments at activities; miscellaneous courtesies such as checkroom fees, taxi fares, and tips; and decorations for a special promotional occasion;

(30) Educational travel of dependent children, visitation travel, rest and

recuperation travel, home leave travel, and emergency visitation travel for U.S. overseas employees as allowed under the Foreign Affairs Manual;

(31) Evacuation payments (safe haven), and shipment and storage of household goods and motor vehicles;

(32) Demonstration projects;

(33) Purchase of trade and business periodicals containing material related to market development activities for use by overseas staffs;

(34) Training expenses in the U.S. for FSNs;

(35) Language training for U.S. citizen employees at the foreign post of assignment;

(36) Shipment of samples or other program materials from the U.S. to foreign countries; and

(37) That portion of airtime for wireless phones that is devoted to program activities and monthly service fees.

§ 1550.55 What expenditures may not be reimbursed under the Cooperator program?

(a) FAS will not reimburse any cost of:

(1) Expenses, fines, settlements, or claims resulting from suits, challenges, or disputes emanating from employment terms, conditions, contract provisions, or related formalities;

(2) Product development, product modification, or product research;

(3) Product samples;

(4) Slotting fees or similar sales expenditures;

(5) The purchase, construction, or lease of space for permanent displays, i.e., displays lasting beyond one marketing plan year;

(6) Office parking fees;

(7) Coupon redemption or price discounts;

(8) Refundable deposits or advances;

(9) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of $1.00 per item;

(10) Alcoholic beverages that are not an integral part of a promotional activity;

(11) The purchase, lease (except for use in authorized travel status), or repair of motor vehicles;

(12) Travel of applicants for employment interviews;

(13) Unused non-refundable airline tickets or associated penalty fees, except where travel is restricted by U.S. government action or advisory;

(14) Any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(15) Goods and services and salaries of third party personnel;

(16) Membership fees in clubs and social organizations;

(17) Indemnity and fidelity bonds;

(18) Fees for participating in U.S. Government sponsored activities, other than trade fairs, shows, and exhibits;

(19) Business cards;

(20) Seasonal greeting cards;

(21) Subscriptions to non-trade related publications;

(22) Credit card fees;

(23) Refreshments, or related equipment, for office staff;

(24) Insurance on household goods and personal effects, including privately-owned automobiles, whether overseas or stored in the U.S., belonging to U.S. citizen employees;

(25) Home office domestic administrative expenses, including communication costs;

(26) Payment of U.S. or foreign employee's or contractor's share of personal taxes, except as legally required in a foreign country;

(27) Wireless phone equipment, equipment repair, insurance, and other related charges;

(28) STRE expenses incurred in the U.S;

(29) Night club entertainment, cover charges, personal gifts, or tickets to theatrical or sporting events; or

(30) Functions (including receptions and meals at Cooperator staff conferences) at which target groups, such as members of the overseas trade, opinion leaders, foreign government officials, and other similar groups, are not present.

(b) The Deputy Administrator may determine, at the Deputy Administrator's discretion, whether any cost not expressly listed in this section will be reimbursed.

(c) FAS will reimburse for expenses incurred up to 30 calendar days beyond the conclusion of the marketing plan year.

§ 1550.56 How are Cooperators reimbursed?

(a) A format for reimbursement claims is available from the Director, Marketing Operations Staff, FAS, USDA. Claims for reimbursement shall contain at least the following information:

(1) Activity code;

(2) Country code;

(3) Cost category;

(4) Amount to be reimbursed or credited;

(5) If applicable, any reduction in the amount of reimbursement claimed to offset FAS demand for refund of amounts previously reimbursed, and reference to the relevant Compliance Report; and

(6) If applicable, any amount previously claimed that has not been reimbursed.

(b) All claims for reimbursement shall be submitted by the Cooperator's U.S. office to the Director, Marketing Operations Staff, FAS, USDA.

(c) FAS will not reimburse claims submitted later than 6 months after the end of a marketing plan year.

(d) If FAS overpays a reimbursement claim, the Cooperator shall repay FAS within 30 days the amount of the overpayment either by submitting a check payable to FAS or by offsetting its next reimbursement claim.

(e) If a Cooperator receives a reimbursement or offsets an advanced payment which is later disallowed, the Cooperator shall within 30 days of such disallowance repay FAS the amount owed either by submitting a check payable to FAS or by offsetting its next reimbursement claim.

(f) The Cooperator shall report any actions having a bearing on the propriety of any claims for reimbursement to the Attache/Counselor and its U.S. office shall report such actions in writing to the Division Director(s).

§ 1550.57 Will FAS make advance payments to a Cooperator?

(a) *Policy.* In general, FAS operates the Cooperator program on a reimbursable basis.

(b) *Exception.* Upon request, FAS may make two types of advance payments to a Cooperator. The first is a revolving fund operating advance provided by FAS only to Cooperators with foreign offices supported with project funds. The second is a special advance payment used to pay an impending large cost item. FAS will provide this type of advance expense payment in lieu of direct payments by FAS to vendors or other third parties. All Cooperators, with or without project fund-supported foreign offices, are eligible to request special advance payments. Normally, special advance payments received from FAS must be liquidated by the Cooperator within 90 days from the date of receipt. Prior to making an advance, FAS may require the participant to submit security in a form and amount acceptable to FAS to protect FAS' financial interests. FAS will not make any special advance payment to a Cooperator where a special advance is outstanding from a prior marketing plan year.

(c) *Refunds due FAS.* A participant shall return any unexpended portion of the advance, plus any interest earned, either by submitting a check payable to FAS or by offsetting its next reimbursement claim. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

Subpart E—Reporting, Evaluation, and Compliance

§ 1550.70 Must Cooperators report to FAS?

(a) *End-of-year contribution report.* Not later than January 31 of the year following the completion of the marketing plan year, a Cooperator shall submit two copies of a report which identifies contributions made by the Cooperator and the U.S. industry during that marketing plan year. A suggested format of a contribution report is available on the FAS home page (http://www.fas.usda.gov/mos/programs/fnotice.html) on the Internet or from the Director, Marketing Operations Staff, FAS, USDA.

(b) *Trip reports.* Not later than 45 days after completion of travel (other than local travel), a Cooperator shall submit a trip report. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, or specific accomplishments.

(c) *Research reports.* Not later than 6 months after the end of its marketing plan year, a Cooperator shall submit a report on any research conducted in accordance with its application.

(d) *Submission of reports.* A Cooperator shall submit the reports required by this section to the appropriate Division Director. Trip reports and research reports shall also be submitted to the appropriate Attache/Counselor(s). All reports shall be in English and include the Cooperator's agreement number, the countries and period covered, and the date of the report.

(e) *Additional reports.* FAS may require the submission of additional reports.

(f) *Independent audit reports.* A Cooperator shall provide to the FAS Compliance Review Staff, upon request, any audit reports by independent public accountants.

§ 1550.71 Are Cooperator documents subject to the provisions of the Freedom of Information Act?

(a) Documents submitted to FAS by Cooperators are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, Subpart A—Official Records, and, specifically, 7 CFR 1.11—Handling Information from a Private Business.

(b) If requested by a person located in the United States, a Cooperator shall provide to such person a copy of any document in its possession or control containing market information developed and produced under the terms of its agreement. The Cooperator may charge a fee not to exceed the costs for assembling, duplicating, and distributing the materials.

(c) The results of any research conducted by a Cooperator under an agreement shall be the property of the U.S. Government.

§ 1550.72 How is program effectiveness measured?

(a) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the Cooperator program. Evaluation of the Cooperator program's effectiveness will depend on a clear statement by each Cooperator of the constraints impeding U.S. exports, goals to be met within a specified time, a schedule of measurable milestones for gauging success, a plan for achievement, and reports of activity results.

(b) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a Cooperator's program, contribute to program accountability, and provide evidence of program effectiveness.

(c) A Cooperator shall conduct periodic evaluations of its program and activities and may contract with an independent evaluator to satisfy this requirement. FAS reserves the right to have direct input and control over design, scope, and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator.

(d) A Cooperator shall complete at least one program evaluation each year. Actual scope and timing of the program evaluation shall be determined by the Cooperator and the Division Director and specified in the Cooperator's application approval letter. A program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The activities covered by the evaluation;

(3) A concise statement of the constraint(s) and the goals specified in the application;

(4) A description of the evaluation methodology;

(5) A description of additional export sales achieved, including the ratio of additional export sales in relation to Cooperator program funding received;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(e) A Cooperator shall submit, via a cover letter to the Division Director, an executive summary which assesses the program evaluation's findings and recommendations and proposes changes in program strategy or design as a result of the evaluation.

§ 1550.73 Are Cooperators penalized for failing to make required contributions?

A Cooperator's contribution requirement is specified in the Cooperator program allocation letter. If a Cooperator fails to contribute the amount specified in its allocation approval letter, the Cooperator shall pay to FAS in U.S. dollars the difference between the amount it has contributed and the amount specified in the allocation approval letter. A Cooperator shall remit such payment by December 31 following the end of the marketing plan year.

§ 1550.74 How is Cooperator program compliance monitored?

(a) The Compliance Review Staff (CRS), FAS, performs periodic on-site reviews of Cooperators to ensure compliance with this part.

(b) In order to verify that federal funds received by a Cooperator do not supplant private or third party funds or contributions pursuant to § 1550.20 (a)(14), CRS will consider the Cooperator's overall marketing budget from year to year, variations in promotional strategies within a country or region, and new markets.

(c) The Director, CRS, will notify a Cooperator through a compliance report when it appears that FAS may be entitled to recover funds from that Cooperator. The compliance report will state the basis for this action.

§ 1550.75 How does a Cooperator respond to a compliance report?

(a) A Cooperator shall, within 60 days of the date of the compliance report, submit a written response to the Director, CRS. This response shall include any money owed to FAS if the Cooperator does not wish to contest the compliance report. The Director, CRS, at the Director's discretion, may extend the period for response up to an additional 30 days. If the Cooperator does not respond to the compliance report within the required time period or, if after review of the Cooperator's response, the Director, CRS, determines that FAS may be entitled to recover funds from the Cooperator, the Director, CRS, will refer the compliance report to the Deputy Administrator.

(b) If, after review of the compliance report and response, the Deputy Administrator determines that the Cooperator owes money to FAS, the

Deputy Administrator will so inform the Cooperator. The Deputy Administrator may initiate action to collect such amount pursuant to 7 CFR Part 1403, Debt Settlement Policies and Procedures. Determinations of the Deputy Administrator will be in writing and in sufficient detail to inform the Cooperator of the basis for the determination. The Cooperator has 30 days from the date of the Deputy Administrator's initial determination to submit any money owed to FAS or to request reconsideration.

§ 1550.76 Can a Cooperator appeal the determinations of the Deputy Administrator?

(a) The Cooperator may appeal the determinations of the Deputy Administrator to the Administrator. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days following the date of the initial determination by the Deputy Administrator or the determination on reconsideration. The Cooperator may request a hearing.

(b) If the Cooperator submits its appeal and requests a hearing, the Administrator, or the Administrator's designee, will set a date and time, generally within 60 days. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Cooperator bears the cost of a transcript; however, the Administrator may have a transcript prepared at FAS's expense.

(c) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after submission of the appeal, hearing, or receipt of any transcript, whichever is later. The determination of the Administrator will be the final determination of FAS. The Cooperator must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

Signed at Washington, DC, on June 10, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 99–15111 Filed 6–14–99; 8:45 am]

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Part V

Department of Justice

Federal Prison Industries, Inc.
Bureau of Prisons

28 CFR Parts 345, 540 and 543
Federal Prison Industries (FPI) Inmate Work Programs: Eligibility; Correspondence: Return Address; Federal Tort Claims Act; Final Rules and Proposed Rule

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DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

28 CFR Part 345

[BOP–1062–F]

RIN 1120–AA57

Federal Prison Industries (FPI) Inmate Work Programs: Eligibility

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations to limit from consideration for Federal Prison Industries (FPI) work assignments pretrial inmates or, with certain exceptions, any inmate currently under an order for deportation, exclusion, or removal. In addition, any pretrial inmate or, with certain exceptions, any inmate in an FPI work assignment currently under an order for deportation, exclusion, or removal shall be removed immediately and shall be reassigned to a non-FPI work assignment for which the inmate is eligible. This amendment is intended to conform with revised regulations of the Immigration and Naturalization Service and to help ensure that FPI work assignments ordinarily will be allocated to sentenced inmates who will be returning to the community within, rather than outside, the United States upon release.

DATES: Effective July 15, 1999; all Bureau institutions are to be in compliance by October 13, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Federal Prison Industries (FPI) inmate work assignments (28 CFR part 345). A proposed rule on this subject was published in the **Federal Register** on April 30, 1997 (62 FR 23536).

Pursuant to statutory authority, it is the policy of the Federal Government that convicted inmates confined in Federal prisons, jails, and other detention facilities shall work (104 Stat. 4914). FPI is further authorized by statute to provide work assignments for inmates (18 U.S.C. 4122). These work assignments are designed, in part, to allow inmates the opportunity to acquire the knowledge, skills, and work habits which will be useful when released from the institution (see 28 CFR 345.10).

In order to ensure that sentenced inmates to be released to the community in the United States will be afforded maximum opportunity to work in FPI assignments, FPI had proposed to restrict from consideration for FPI assignment pretrial inmates and inmates currently under an order for deportation or removal, and to remove from an FPI assignment any pretrial inmate or inmate currently under a deportation or removal order. In keeping with the policy that convicted inmates shall work, any inmate so removed would be reassigned to a non-FPI work assignment for which the inmate is eligible. While a pretrial inmate is not required to work in any assignment other than housekeeping tasks in the inmate's own cell and in the community living area, the pretrial inmate may be eligible for an institutional assignment if the inmate signs a waiver of his or her right not to work (see 28 CFR 551.106).

Section 345.11 accordingly was proposed to be amended by adding a new paragraph (g) to reference the definition of "pretrial inmate." Sections 345.35 and 345.42 were proposed to be amended to incorporate the above mentioned assignment and dismissal procedures.

The Bureau received twenty-one comments on the proposed rulemaking. All of the comments were opposed in total or in part to adopting the proposed amendment as final. None of the comments explicitly addressed applicability of the restriction to pretrial inmates. A summary of the comments and the agency response follows.

Several of the commenters claimed that the proposed amendments were discriminatory. Two commenters stated that the Bureau was contradicting its statement in § 345.35(a) that Federal Prison Industries does not discriminate on the basis of race, color, religion, ethnic origin, age, or disability (one of the two more specifically cited ethnic origin). Another commenter stated that the proposed regulations would make foreign inmates feel like second-class inmates. Similarly, another commenter stated that the proposed regulations would result in unequal treatment and another commenter stated that the same rules should apply to all inmates.

The Bureau, in response, notes that the proposed restriction was to be applicable to pretrial inmates and to inmates under an order for deportation or removal. The restriction is therefore not based directly upon ethnic origin, for example, but upon an administrative status pertaining to deportation or removal and upon the correctional management needs of sentenced inmates. The purpose of the restriction, as stated in the published proposed rule, is to ensure that sentenced inmates to be released to the community in the United States will be afforded opportunities to work in FPI assignments. As stated in § 345.10, FPI work assignments are designed, in part, to allow inmates the opportunity to acquire the knowledge, skills, and work habits which will be useful when released from the institution. FPI work assignments provide inmates with higher remuneration than do institution work assignments. There are more inmates in the Federal system than there are available FPI assignments. Consequently, FPI assignments are coveted positions which are filled from waiting lists of eligible inmates. Because FPI assignments enhance the ability of inmates to work successfully in the domestic marketplace and thereby lowers the risk of recidivism, allocating the assignments to those inmates who will likely be accessible to the domestic marketplace after their release is a proper exercise of the Bureau's discretion in correctional management.

Subsequent to consultation with the Immigration and Naturalization Service (INS), the restriction has been adjusted in conformance with revised INS regulations (see 8 CFR 241.5(c)) and practices to include orders for exclusion, to provide for exceptions when the inmate cannot be removed because no country will accept the inmate, and to include the phrase "or detainee" where technically appropriate. In those instances where the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept the inmate or detainee's return, the inmate or detainee may be considered or may remain eligible for an FPI assignment. Under INS procedures, an inmate or detainee in these circumstances may at some point qualify for release in this country and may realize the intended benefit of an FPI assignment. Under internal agency procedures, INS is responsible for informing the Bureau when an inmate/detainee's designated country of removal will not accept his/her return.

Many of the commenters stated that the wages received from FPI work assignments were useful as a source of income to the inmate or to the inmate's family. Several commenters noted the rehabilitative nature of FPI work assignments. FPI work assignments are

necessarily limited in number, and the purpose of the proposed rulemaking is to allocate this resource prudently on the basis of correctional management needs rather than upon the varied financial needs of inmates.

Several commenters stated that it would be unjust to remove inmates already in an FPI assignment without cause. This rulemaking is intended to establish a generic cause for removal based upon the correctional management needs noted above. One commenter claimed that the amendment was an ex post facto law and therefore was unconstitutional. The Bureau notes that inmates have no entitlement to FPI assignments. The amendment is not intended to be punitive but, as noted above, is being made for correctional management reasons.

Three commenters recommended expedited processing of a deportation or removal hearing if remunerations from an FPI assignment were not available to inmates under a deportation or removal order. Expedited processing of a deportation or removal hearing is subject to regulation by the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR).

One commenter, while recognizing and agreeing with the need to remove deportable inmates from participating in a program designed to train and rehabilitate incarcerated felons in order to prepare them for release back into American society, recommended that an inmate already in an FPI assignment who is also under an order of deportation be removed no earlier than 90 days after the effective date of the rule change and that non-U.S. citizens would not be considered for FPI work assignments until after their INS hearings had taken place. These recommendations are intended to minimize disruption at institutions where a significant percentage of the inmate population is either under deportation orders or is awaiting INS hearings. In response, the Bureau agrees to delay compliance by the institution by up to 90 days after the effective date of the regulation. The Bureau believes that the commenter's second recommendation that non-U.S. citizens not be considered for FPI work assignments until after their INS hearings had taken place is unnecessarily presumptive. The existence of an order for deportation, exclusion, or removal is readily identifiable. Any anticipated benefit in work assignment efficiency which may result from the recommended change is outweighed by the correctional management needs addressed by reliance upon the proposed criterion.

After due consideration of comments received, the Bureau is adopting the proposed rule as final with the change noted above as to orders of exclusion and exceptions. Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons:

This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 345

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons, and Commissioner of Federal Prison Industries.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons and the Board of Directors, Federal Prison Industries in 28 CFR 0.96(o) and 0.99, part 345 in chapter III of 28 CFR is amended as set forth below.

PART 345—FEDERAL PRISON INDUSTRIES (FPI) INMATE WORK PROGRAMS

1. The authority citation for 28 CFR part 345 continues to read as follows:

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

2. In § 345.11, paragraph (g) is added to read as follows:

§ 354.11 Definitions.

* * * * *

(g) *Pretrial inmate*—The definition of pretrial inmate in 28 CFR 551.101(a) is applicable to this part.

3. In § 345.35, paragraph (a) is revised to read as follows:

§ 345.35 Assignments to FPI.

(a) An inmate or detainee may be considered for assignment with FPI unless the inmate is a pretrial inmate or is currently under an order of deportation, exclusion, or removal. However, an inmate or detainee who is currently under an order of deportation, exclusion, or removal may be

considered for assignment with FPI if the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return. Any request by an inmate for consideration must be made through the unit team. FPI does not discriminate on the bases of race, color, religion, ethnic origin, age, or disability.

* * * * *

4. In § 345.42, paragraph (d) is added to read as follows:

§ 345.42 Inmate worker dismissal.

* * * * *

(d) Any inmate or detainee who is a pretrial inmate or who is currently under an order of deportation, exclusion, or removal shall be removed from any FPI work assignment and reassigned to a non-FPI work assignment for which the inmate is eligible. However, an inmate or detainee who is currently under an order of deportation, exclusion, or removal may be retained in the FPI assignment if the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return.

[FR Doc. 99–15129 Filed 6–14–99; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

RIN 1120–AA69

[BOP–1073–F]

Correspondence: Return Address

AGENCY: Bureau of Prisons, Justice.

ACTION: Final Rule.

SUMMARY: This rule modifies the Bureau of Prisons rule on Correspondence in order to ensure that return address information on an envelope used for outgoing inmate correspondence will be completely and consistently filled out by the inmate. This amendment is intended to provide for the continued secure and efficient operation of the institution.

EFFECTIVE DATE: July 15, 1999.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on correspondence (28 CFR part 540, subpart B). A final rule on this subject was published October 1, 1985 (50 FR 40109) and was amended February 1, 1991 (56 FR 4159), December 18, 1995 (61 FR 65204).

Current provisions in § 540.12(d) state that an inmate shall ensure that each of the inmate's outgoing envelopes contains that inmate's name and register number, P.O. Box, city, state, and zip code. Section 540.11 repeats this information. Envelopes provided for inmate use may contain the name of the institution. In order to ensure consistency, the Bureau is revising § 540.12(d) to specify that return address information on envelopes provided by the institution is completely filled out by the inmate, and that the same return address information is included on any envelope used by the inmate which was not provided by the institution. Sections 540.11 and 540.21(b) are amended to include a reference to this requirement rather than a restatement of the requirement.

Because this amendment is administrative in nature, the Bureau finds good cause for making this amendment effective without notice of proposed rulemaking. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received will be considered, but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Public Law 104–208, Section 614 (110 Stat. 3009); 28 CFR 0.95–0.99.

2. Section 540.11 is amended by revising the third sentence to read as follows:

§ 540.11 Mail depositories.

* * * Each item placed in a mail depository must contain a return address (see § 540.12(d)).

3. In § 540.12, paragraph (d) is revised to read as follows:

§ 540.12 Controls and procedures.

* * * * *

(d) The inmate is responsible for filling out the return address completely on envelopes provided for the inmate's use by the institution. If the inmate uses an envelope not provided by the institution, the inmate is responsible for ensuring that the envelope used contains all return address information listed on the envelope provided by the institution.

4. In § 540.21, paragraph (b) is amended by revising the second sentence to read as follows:

§ 540.21 Payment of postage.

* * * * *

(b) * * * Inmates who use their own envelopes must place a return address on the envelope (see § 540.12(d)).

[FR Doc. 99–15130 Filed 6–14–99; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 543

[BOP–1096–P]

RIN 1120–AA94

Federal Tort Claims Act

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to revise its regulations on the Federal Tort Claims Act in accordance with the mandate to use plain language. This revision is intended to provide clearer instructions for filing and processing a claim with the Bureau for money damages for personal injury or death and/or damage to or loss of property.

DATES: Comments due by August 16, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on the Federal Tort Claim Act (28 CFR 543, subpart C). Current regulations on this subject were published in the **Federal Register** on December 30, 1992 (57 FR 62460). In accordance with the President's mandate to use plain language in government writing, we have reorganized this document in a question and answer format. The Bureau believes the question and answer format provides simple, easy to follow instructions for those persons wishing to file a claim with the Bureau for money damages for personal injury or death and/or damage to or loss of property.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 543

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), part 543 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 543—LEGAL MATTERS

1. The authority citation for 28 CFR part 543 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

2. Subpart C is revised to read as follows:

Subpart C—Federal Tort Claims Act

Sec.

543.30 Purpose and scope.
543.31 Filing a claim.
543.32 Processing the claim.

Subpart C—Federal Tort Claim Act

§ 543.30 Purpose and scope.

Pursuant to the Federal Tort Claims Act, a claim for money damages for personal injury or death and/or damage to or loss of property must be filed against the United States by the injured party with the appropriate Federal agency for administrative action. General provisions for processing administrative claims under the Federal Tort Claims Act are contained in 28 CFR part 14. The provisions in this subpart describe the procedures to follow when filing an administrative tort claim with the Bureau of Prisons.

§ 543.31 Filing a claim.

(a) *Who may file a claim?* You may file a claim if you are the injured person or the owner of the damaged or lost property. A person acting on your behalf as an agent, executor, administrator, parent, guardian, or other representative

may file a claim for you if the person provides a written statement signed by you giving that person permission to act for you. A representative may also file a claim for wrongful death. If you hire a lawyer or authorize a representative to act on your behalf, the agency will correspond only with that representative, and will not continue to correspond with you.

(b) *Where do I obtain a form for filing a claim?* You may obtain a form from staff in the Central Office, Regional Offices, Bureau institutions, or staff training centers.

(c) *Where do I file the claim?* You may either mail or deliver the claim to the regional office in the region where the claim occurred. If the loss or injury occurred in a specific regional office or within the geographical boundaries of the region, you may either mail or deliver the claim to that regional office. If the loss or injury occurred in the Central Office, you may either mail or deliver the claim to the Office of General Counsel, Central Office. If the loss or injury occurred in one of the training centers, you may either mail or deliver the claim to the Associate General Counsel, Federal Law Enforcement Training Center. 28 CFR part 503 lists Bureau institutions by region and also contains the addresses of the Central Office, regional offices and training centers.

§ 543.32 Processing the claim.

(a) *Will I receive an acknowledgment letter?* Yes. If you have provided all necessary information to process your claim (such as time, date, and place where the incident occurred, and a specific sum of money you are requesting as damages), you will receive an acknowledgment letter indicating the filing date and a claim number. The filing date is the date your claim was first received by either the Department of Justice or an office of the Bureau of Prisons. You should refer to your claim number in all further correspondences with the agency. Additionally, you must inform the agency of any changes in your address. If you fail to provide all necessary information, your claim will be rejected and returned to you requesting supplemental information.

(b) *Will I be notified if my claim is transferred?* Yes. If your claim is improperly filed, you will be notified by the responsible office that your claim was transferred to another regional office, the Central Office, a training center, or another agency.

(c) *Will an investigation be conducted?* Yes. The regional office ordinarily refers the claim to the appropriate institution or office for investigation. You may also be required to provide additional information during the investigation. Your failure to respond within a reasonable time may result in the rejection or denial of the claim.

(d) *Who will decide my administrative claim?* The Regional Counsel reviews the investigation and the supporting evidence and renders a decision of all claims properly filed in the regional office and within regional settlement authority. The Regional Counsel has limited settlement authority (up to an amount established by the Director, Bureau of Prisons). After considering the merits of the claim, the Regional Counsel may deny or propose a settlement of the claim. The General Counsel will investigate and decide all claims properly filed in the Central Office.

(e) *Will my claim be reviewed by or referred to the Central Office?* If the Regional Counsel recommends a proposed settlement in excess of the settlement authority, the claim will be forwarded, with a recommendation, to the Office of General, Central Office for their review.

(f) *Will appreciation or depreciation be considered?* Yes. Staff will consider appreciation or depreciation of lost or damaged property in settling a claim.

(g) *If my claim is denied or I am dissatisfied with a settlement offer, what are my options?* If your claim is denied or you are dissatisfied with a settlement offer, you may request, in writing, that the Bureau of Prisons reconsider your claim in the administrative stage. You should include additional evidence of injury or loss to support your request for reconsideration. If you are dissatisfied with the final agency action, you may file suit in an appropriate U.S. District Court as no further administrative action is available.

(h) *What if I accept a settlement of my claim?* If you accept a settlement, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(i) *How long will it take to get a response?* Generally, you will receive a decision regarding your claim within six months of when you properly file the claim. If you have not received a letter either proposing a settlement or denying your claim within six months after the date your claim was filed, you may assume your claim is denied. You may proceed to file a lawsuit in the appropriate United States District Court.

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Tuesday
June 15, 1999

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135
Flight Crewmember Flight Time Limitations and Rest Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

Flight Crewmember Flight Time Limitations and Rest Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of enforcement policy.

SUMMARY: This notice of enforcement policy announces to the public the Federal Aviation Administration's intent to rigorously enforce the regulations concerning flight time limitations and rest requirements. These regulations have been under review for some time, and the FAA has stated with respect to reserve time assignments that if new rules were not adopted, the FAA intended to ensure that the current rules, as interpreted, are being correctly implemented. No new rules with regard to reserve time have been adopted. Therefore, the FAA is reiterating its longstanding interpretation of its regulations on this issue and is giving affected certificate holders and flight crewmembers notice of its intent to enforce its rules in accordance with this interpretation. This notice is being given so that those affected will have an opportunity to review their practices and, if necessary, come into full regulatory compliance.

DATES: This notice of enforcement policy is effective on June 15, 1999.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8321.

SUPPLEMENTARY INFORMATION:

The Regulation

The Civil Aeronautics Act of 1938 (52 Stat. 1007; as amended by 62 Stat. 1216, 49 U.S.C. 551) and subsequently, the Federal Aviation Act of 1958 (now codified at 49 U.S.C. § 40101 *et seq.*) addressed the issue of regulating flight crewmember hours of service. The Federal Aviation Act, as amended, empowers and directs the Secretary of Transportation to establish "regulations in the interest of safety for the maximum hours or period of service of airmen and other employees of air carriers." 49 U.S.C. § 44701(a)(4). Moreover, the Act also provides the FAA with the authority to prescribe "regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security." 49 U.S.C. § 44701(a)(5).

The current rules specify flight time limitations and rest requirements for air carriers certificated to operate under part 121 (domestic: subpart Q; flag: subpart R; and supplemental: subpart S) and part 135 (subpart F). The FAA has consistently interpreted the term rest to mean that a flight crewmember is free from actual work for the air carrier or from the present responsibility for work should the occasion arise. Thus, the FAA previously has determined that a flight crewmember on reserve was not at rest if the flight crewmember had a present responsibility for work in that the flight crewmember had to be available for the carrier to notify of a flight assignment.

The FAA's current rules at 14 CFR § 121.471 set forth flight time limitations and rest requirements for domestic operations. Subsections (b) and (c) of this section have generated numerous interpretation requests from industry. These sections provide that:

Section 121.471 Flight time limitations and rest requirements: All flight crewmembers.

(b) Except as provided in paragraph (c) of this section, no certificate holder conducting domestic operations may schedule a flight crewmember and no flight crewmember may accept an assignment for flight time during the 24 consecutive hours preceding the scheduled completion of any flight segment without a scheduled rest period during that 24 hours of at least the following:

(1) 9 consecutive hours of rest for less than 8 hours of scheduled flight time.

(2) 10 consecutive hours of rest for 8 or more but less than 9 hours of scheduled flight time.

(3) 11 consecutive hours of rest for 9 or more hours of scheduled flight time.

(c) A certificate holder may schedule a flight crewmember for less than the rest required in paragraph (b) of this section or may reduce a scheduled rest under the following conditions:

(1) A rest required under paragraph (b)(1) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given a rest period of at least 10 hours that must begin no later than 24 hours after the commencement of the reduced rest period.

(2) A rest required under paragraph (b)(2) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given a rest period of at least 11 hours that must begin no later than 24 hours after the commencement of the reduced rest period.

(3) A rest required under paragraph (b)(3) of this section may be scheduled for or reduced to a minimum of 9 hours if the flight crewmember is given a rest period of at least 12 hours that must begin no later than 24 hours after the commencement of the reduced rest period.

Similar language is contained in Sections 135.265 (b) and (c). Also note the "look back" requirement in 135.267(d).

The FAA has consistently interpreted § 121.471(b) and the corresponding § 135.265(b) to mean that the certificate holder and the flight crewmembers must be able to look back over the 24 consecutive hours preceding the scheduled completion of the flight segment and find the required scheduled rest period. This interpretation of rest also has been applied to pilots on "reserve time." Reserve time while not defined in 14 CFR is generally understood to be a period of time when a flight crewmember is not on duty but must be available to report upon notice for a duty period. Thus, a flight crewmembers on reserve could not take a flight assignment, and the certificate holder could not schedule that crewmember for a flight assignment, unless the flight crewmember had a scheduled rest period such that at the end of the flight segment one could look back 24 hours and find the requirement amount of rest.

Compliance and Enforcement Plan

Flight crewmembers and their unions have raised concerns that scheduling processes used by some certificate holders may not ensure compliance with flight time restrictions and rest requirements when a flight crewmember is on reserve duty. Any noncompliance should be corrected without delay.

The FAA recognizes, however, that current processes for scheduling flight crewmembers have been in place for some time and that full compliance might not be able to be achieved immediately. The FAA therefore intends to take into consideration this fact and the certificate holder's good faith efforts to come into compliance in determining what, if any, enforcement action is appropriate if noncompliance is discovered. With regard to violations by individual flight crewmembers, the FAA will consider the circumstances of each case, including such factors as the employing certificate holder's effort to come into compliance and the culpability of the individual.

If any certificate holder needs to make changes to its scheduling system, the FAA believes that full compliance can be achieved by all certificate holders within 180 calendar days. Until that time the FAA does not intend to target its inspection resources on this compliance issue. However, on December 12, 1999, the FAA intends to begin a comprehensive review of certificate holders' flight scheduling

practices and expects to deal stringently with any violations discovered.

Issued in Washington, DC on June 10, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–15258 Filed 6–11–99; 2:31 pm]

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H.R. 1121/P.L. 106–33

To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the "Lewis R. Morgan Federal Building and United States Courthouse". (June 7, 1999; 113 Stat. 117)

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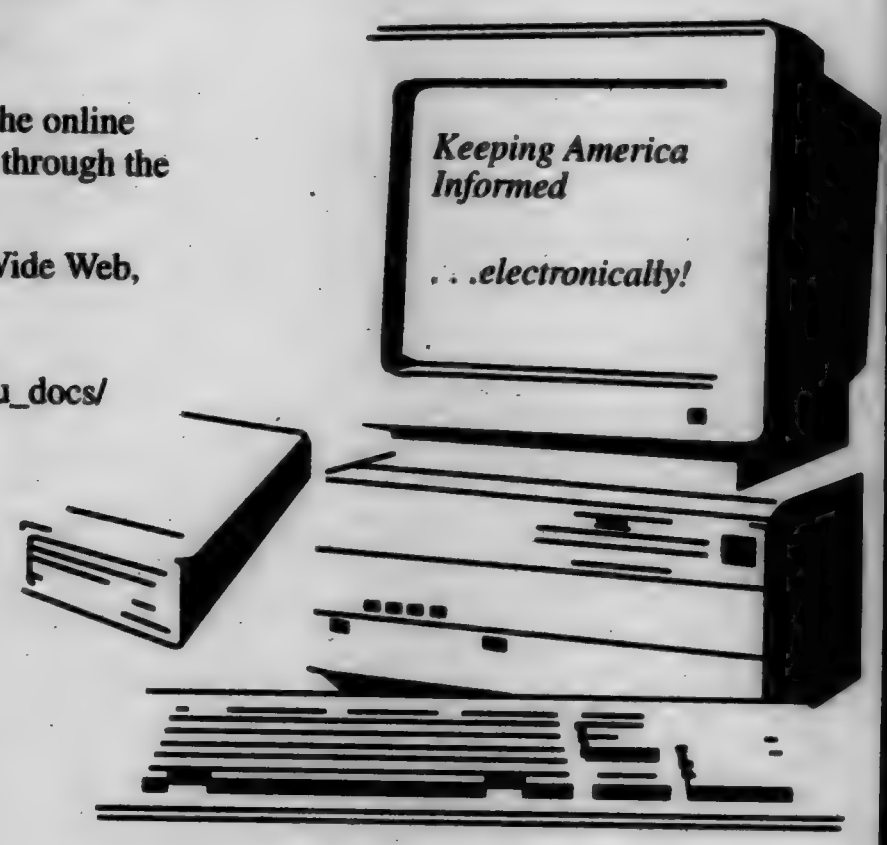

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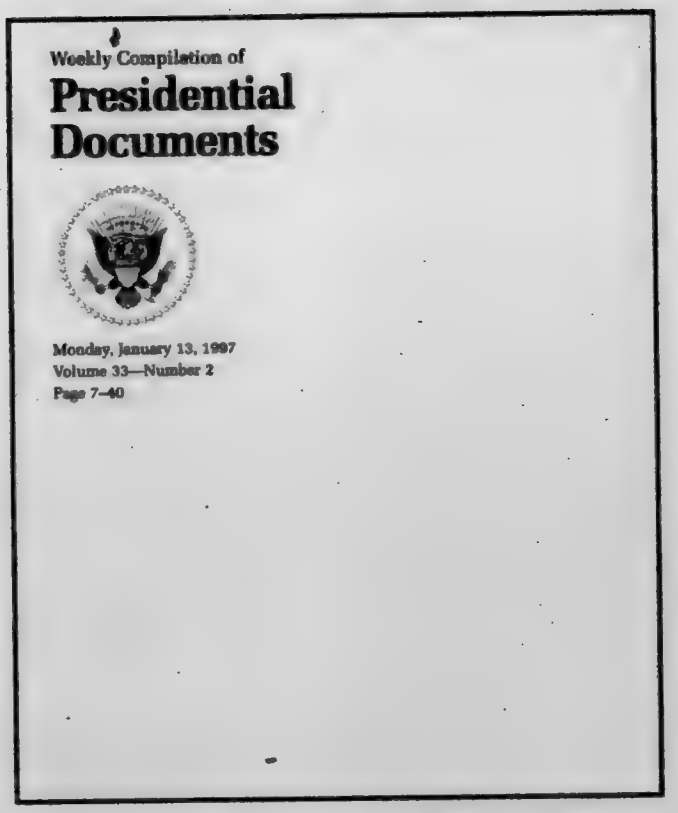

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Rules and Regulations

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–4]

Amendment to Class E Airspace; Anaktuvuk Pass, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects the error in the title of a correction to final rule that was published in the **Federal Register** on February 1, 1999 (64 FR 4784). The final rule establishing Class E airspace area at Anaktuvuk Pass, AK, was published in the **Federal Register** on November 5, 1998 (63 FR 59705), Airspace Docket 98–AAL–16.

EFFECTIVE DATE: 0901 UTC, July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.ctr.van-Haastert@faa. gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–29627, Airspace Docket 98–AAL–16, published on November 5, 1998, (63 FR 59705) established the Class E airspace area at Anaktuvuk Pass, AK, **Federal Register** Document 99–2335, Airspace Docket 98–AAL–24, published February 1, 1999 (64 FR 4784) corrected an error in the geographic coordinates for the Anaktuvuk Pass Airport and Anaktuvuk Pass Non-Directional Radio Beacon. In the correction to final rule, Airspace Docket 98–AAL–24, the title for the Anaktuvuk Pass Class E airspace description is in error. The title "AAL AK E2 Anaktuvuk Pass, AK" should read "AAL AK E5 Anaktuvuk Pass, AK". This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the title listed for the Anaktuvuk Pass airspace as published in the **Federal Register** on February 1, 1999 (64 FR 4784), (**Federal Register** Document 99–2335, page 4785), is corrected as follows:

§71.1 [Corrected]

* * * * *

AAL AK E5 Anaktuvuk Pass, AK [Corrected]

By removing "AAL AK E2 Anaktuvuk Pass, AK" and replacing with "AAL AK E5 Anaktuvuk Pass, AK".

* * * * *

Issued in Anchorage, AK, on June 3, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–15295 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Miscellaneous Rules: Disclosure Requests

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending a rule of practice and procedure that governs disclosure requests. These amendments add requests for voluntary testimony to the scope of the rule's coverage. The amendments also clarify the existing scope of various paragraphs of the rule.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Gary M. Greenfield, (202) 326–2753, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission is amending 16 CFR 4.11(e), which governs compulsory process requiring disclosure by Commission employees of material and information relating to their official duties. This provision also governs compulsory process to former Commission employees and to current and former special government employees that requires the disclosure of nonpublic information acquired during their Commission employment.

The amendments expand the scope of § 4.11(e) to include requests for voluntary testimony. As with requests by compulsory process for documents or testimony, the amended Rule requires anyone seeking voluntary testimony from Commission employees (and, where applicable, special government employees or former employees) to furnish a statement to the General Counsel setting forth information that will enable the General Counsel to make an informed decision regarding the request.

Amendments to paragraphs (c) and (d) of § 4.11 clarify that paragraph (e) of that section governs compulsory process from government agencies for Commission documents or testimony. Paragraph (e)(3), as amended, provides that the General Counsel may discretionarily waive the statement required by the Rule with respect to any individual request by a government agency.

The requirements of § 4.11(e) do not apply to invitations to testify before Congress or to testify before other government bodies on the possible effects of proposed legislation or regulations.

The Commission does not seek public comment on these amendments because they relate solely to agency practice and procedure. Thus, the amendments are exempt from the notice-and-comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A). In addition, the Commission certifies that these amendments will not have a significant impact on small business entities. Accordingly, no final regulatory flexibility analysis is required by the Regulatory Flexibility Act. *See* 5 U.S.C. 605(b).

List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

For the reasons set forth in the preamble, the Commission amends part 4 of 16 CFR as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.11 is amended by adding a sentence at the end of paragraphs (c) and (d) and revising paragraph (e) to read as follows:

§ 4.11 Disclosure requests.

* * * * *

(c) * * * Requests for material pursuant to compulsory process, or for voluntary testimony, in cases or matters in which the Commission is not a party will be treated in accordance with paragraph (e) of this section.

(d) * * * Request for material pursuant to compulsory process, or for voluntary testimony, in cases or matters in which the Commission is not a party will be treated in accordance with paragraph (e) of this section.

(e) *Requests for testimony, pursuant to compulsory process or otherwise, and requests for material pursuant to compulsory process, in cases or matters to which the Commission is not a party.* (1) The procedures specified in this section will apply to compulsory process and requests for voluntary testimony directed to Commission employees, except special government employees, that relate in any way to the employees' official duties. These procedures will also apply to compulsory process and requests for voluntary testimony directed to former Commission employees or to current or former special government employees of the Commission that seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (e)(3) of this section will also apply when requests described above are directed to the Commission. For purposes of this section, the term *testimony* includes any written or oral statement by a witness, such as depositions, affidavits, declarations, and statements at a hearing or trial; the term *nonpublic* includes any material or information which, under § 4.10, is not required to be more public; the term *employees,* except where otherwise specified, includes *special government employees* and other Commission employees; and the term *special government employees* includes consultants and other employees as defined by section 202 of title 18 of the United States Code.

(2) Any employee or former employee who is served with compulsory process shall promptly advise the General Counsel of its service, the nature of the material or information sought, and all relevant facts and circumstances. This notification requirement also applies to any employee or former employee whose testimony is sought on a voluntary basis under the conditions set forth in paragraph (e)(1) of this section.

(3) A party who causes compulsory process to be issued to, or who requests testimony by, the Commission or any employee or former employee of the Commission shall furnish a statement to the General Counsel, unless, with respect to a request by a Federal or State agency, the General Counsel determines, as a matter of discretion, to waive this requirement. The statement shall set forth the party's interest in the case or matter, the relevance of the desired testimony or material, and a discussion of whether it is reasonably available from other sources. If testimony is desired, the statement shall also contain a general summary of the testimony and a discussion of whether Commission records could be produced and used in its place. Any authorization for testimony will be limited to the scope of the demand as summarized in such statement.

(4) Absent authorization from the General Counsel, the employee or former employee shall respectfully decline to produce requested material or to disclose requested information. The refusal should be based on this paragraph and on *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

(5) The General Counsel will consider and act upon compulsory process and requests for voluntary testimony under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account such factors as the need to conserve the time of employees for conducting official business; the need to avoid spending the time and money of the United States for private purposes; the need to maintain impartiality between private litigants in cases where a substantial government interest is not involved; and the established legal standards for determining whether justification exists for the disclosure of confidential information and material.

(6) Invitations to testify before Congressional committees or subcommittees or to testify before other government bodies on the possible effects of legislative and regulatory proposals are not subject to paragraphs (e)(1) through (5) of this section.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15187 Filed 6–15–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Carprofen

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for veterinary prescription use of carprofen chewable tablets for the relief of pain and inflammation associated with osteoarthritis in dogs.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed NADA 141–111 that provides for oral veterinary prescription use of Rimadyl® (carprofen) chewable tablets for the relief of pain and inflammation associated with osteoarthritis in dogs. The NADA is approved as of May 14, 1999. The regulations are amended in 21 CFR 520.309 by revising the section heading, by revising paragraph (a), by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and by revising newly redesignated paragraphs (d)(1) and (d)(2) to reflect the approval.

The regulations currently provide for use of carprofen caplets in NADA 141–053. A revision of the indications for use has been approved by letter of April 21, 1999. At this time, the regulation is amended to reflect that approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for nonfood-producing animals qualifies for 3 years of marketing

exclusivity beginning May 14, 1999, because the application contains substantial evidence of the effectiveness of the drug involved, or any studies of animal safety required for approval of the application and conducted or sponsored by the applicant. Three years of marketing exclusivity applies only to use of carprofen chewable tablets for relief of pain and inflammation associated with osteoarthritis in dogs.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.309 is amended by revising the section heading, by revising paragraph (a), by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and by revising newly redesignated paragraphs (d)(1) and (d)(2) to read as follows:

§ 520.309 Carprofen.

(a) *Specifications.* Each caplet or chewable tablet contains 25, 75, or 100 milligrams of carprofen.

* * * * *

(c) [Reserved]

(d) * * *

(1) *Amount.* 1 milligram per pound of body weight twice daily. Caplets and chewable tablets are scored and dosage should be calculated and given in half-caplet or half-chewable tablet increments.

(2) *Indications for use.* For the relief of pain and inflammation associated with osteoarthritis in dogs.

* * * * *

Dated: June 4, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–15291 Filed 6–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8805]

RIN 1545–AQ43

Application of Section 904 to Income Subject to Separate Limitations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Monday, January 11, 1999 (64 FR 1505) relating to the application of section 904 with respect to certain categories of income.

DATES: This correction is effective March 12, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Rosenberg (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 904 of the Internal Revenue Code.

Need for correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.904–4 [Corrected]

Par. 2. Section 1.904–4 is amended as follows:

1. Paragraph (c)(1) is amended by adding the sentence "This paragraph (c)(1) is applicable for taxable years beginning after March 12, 1999." at the end of the paragraph.

2. Paragraph (c)(2)(i)(A) is amended by removing the last sentence of the paragraph and adding a new sentence "Paragraph (c)(2)(ii) of this section is applicable for taxable years beginning after March 12, 1999." in its place.

Cynthia E. Grigsby,

Chief, Regulation Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–15113 Filed 6–15–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–056]

RIN 2115–AA97

Safety Zone: Heritage of Price Fireworks, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Heritage of Pride Fireworks Display located on the Hudson River, New York. This zone is necessary to provide for the safety of life on navigable waters during the event. It is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: This temporary final rule is effective from 9:30 p.m. until 11 p.m., on Sunday, June 27, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this temporary final rule. Because of the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the rule

30 days before its effective date. Good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after **Federal Register** publication. This event is being added to the First Coast Guard District's list of annual regulated fireworks displays in 33 CFR 100.114. The final rule for this list of events will not be effective before the date of this year's Heritage of Pride Fireworks display. Any delay encountered in this rule's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

The fireworks program is being sponsored by Heritage of Pride, Inc. This temporary final rule establishes a safety zone in all waters of the Hudson River within a 360-yard radius of the fireworks barge located in approximate position 40°44′31″ N 074°01′00″ W (NAD 1983), about 400 yards west of Pier 54, Manhattan, New York. The safety zone is in effect from 9:30 p.m. until 11 p.m. on Sunday, June 27, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of the Hudson River, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 175 yards of the 925-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on marine traffic due to this event. Further, vessels are not precluded from mooring at or getting underway from Piers 53–57 or from the Piers at Castle Point, New Jersey. Public notifications will be made before the event by the Local Notice to Mariners and marine-information broadcasts.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone; on vessels' not being precluded from getting under way from, or mooring at, Piers 53–57 the piers at Castle Point, New Jersey; on marine traffic's being able safely to transit to the west of the zone; and on the making of advance notifications.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This temporary final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–056 to read as follows:

§ 165.T01–058 Safety Zone: Heritage of Pride Fireworks, Hudson River, New York.

(a) *Location:* The following area is a safety zone: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′31″ N 074°01′00″ W (NAD 1983), about 400 yards west of Pier 54, Manhattan, New York.

(b) *Effective period.* This section is effective from 9:30 p.m. until 11 p.m. on Sunday, June 27, 1999. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–15300 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–071]

RIN 2115–AA97

Safety Zone: Clamfest Fireworks, Sandy Hook Bay, Atlantic Highlands, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Clamfest Fireworks Display located at Seastreak America's docks in Sandy Hook Bay, Atlantic Highlands, NJ. This zone is necessary to provide for the safety of life on navigable waters during the event. It is intended to restrict vessel traffic in a portion of Sandy Hook Bay.

DATES: This temporary final rule is effective from 8:30 p.m. until 10 p.m., on Saturday, June 19, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, Room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this temporary final rule. Good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after **Federal Register** publication. Because of the date the Application for Approval for Marine Event was received, there was insufficient time to draft and publish an NPRM and publish this rule 30 days before its effective date. Any delay encountered in this rule's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On May 14, 1999, Serpico International Fireworks, Co., Inc., applied to hold a fireworks program on the waters of Sandy Hook Bay from a barge moored at the end of Seastreak America's docks, Atlantic Highlands, NJ. The fireworks program is being sponsored by the Highlands Chamber of Commerce. This temporary final rule establishes a safety zone in all waters of Sandy Hook Bay within a 150-yard radius of the fireworks barge in approximate position 40°25′12″N 074°02′04″W (NAD 1983), which is moored at the end of the Seastreak America's Dock, Atlantic Highlands, NJ. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, June 19, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Sandy Hook Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through northern Sandy Hook Bay during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Additionally, vessels are not precluded from mooring at or getting under way from piers in Atlantic Highlands, New Jersey. Public notifications will be made before the event by Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the area; on vessels' not being precluded from getting under way from, or mooring at piers in Atlantic Highlands, New Jersey; on vessels' still being able to transit through Sandy Hook Bay during the event; and on advance notifications' being made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain

regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This temporary final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–071 to read as follows:

§ 165.T01–071 Safety Zone: Clamfest Fireworks, Sandy Hook Bay, Atlantic Highlands, New jersey.

(a) *Location.* The following area is a safety zone: All waters of Sandy Hook Bay within a 150-yard radius of the fireworks barge in approximate position 40°25′12″ N 074°02′04″ W (NAD 1983), which is moored at the end of Seastreak America's dock, Sandy Hook Bay, Atlantic Highlands, New Jersey.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on Saturday, June 19, 1999. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–15299 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP GUAM 99–011]

RIN 2115–AA97

Safety Zone: Cocos Lagoon, Guam

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Cocos Lagoon because of a planned International Cocos swimming event occurring on June 20, 1999. The safety zone will encompass all waters within a triangle formed by connecting the following points: the mount of the Bile River (13 degrees 16 minutes 37 seconds North Latitude, 144 degrees 39 minutes 51 seconds East Longitude), the west tip of Cocos Island (13 degrees 14 minutes 02 seconds North Latitude, 144 degrees 38 minutes 39 seconds East Longitude), and Balang Point (13 degrees 15 minutes 03 seconds North Latitude, 144 degrees 41 minutes 26 seconds East Longitude). This zone is needed to protect personnel swimming in the water within this zone during the event. Law enforcement, Fire Department, and sponsor safety boats will be allowed in this zone during the event. Entry of all other vessels into this temporary zone is prohibited unless authorized by the Captain of the Port (COTP).

EFFECTIVE DATE: This safety zone will be in effect from 06:30 A.M. (+ Kilo, Local Time) to 10:00 A.M. (+ Kilo, Local Time) on June 20, 1999. Following the conclusion of the event the Captain of the Port will cease enforcement of the safety zone and will announce that fact by Broadcast Notice to Mariners.

ADDRESSES: Documents pertaining to this regulation are available for inspection and copying at U.S. Coast Guard Marine Safety Office Guam, PSC 455, Box 176, FPO AP 96540–1056.

FOR FURTHER INFORMATION CONTACT: Lieutenant David McClellan, Chief, Port Operations Department, Marine Safety Office Guam; (671) 339–2001, extension 163.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this regulation, and good cause exists for making it effective before, or less than 30 days after, **Federal Register** publication. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date fewer than 30 days before the event date. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete, jeopardizing the safety of lives of event participants.

Discussion of Regulation

The Manukai Athletic Club will be holding their international Cocos Crossing swim competition on the Navigable waters of Cocos Lagoon. In order to promote public safety, the

Captain of the Port established a triangular safety zone. The safety zone will encompass all waters within a triangle formed by connecting the following points: the mouth of the Bile River (13 degrees 16 minutes 37 seconds North Latitude, 144 degrees 39 minutes 51 seconds East Longitude), the west tip of Cocos Island (13 degrees 14 minutes 02 seconds North Latitude, 144 degrees 38 minutes 39 seconds East Longitude), and Balang Point (13 degrees 15 minutes 03 seconds North Latitude, 144 degrees 41 minutes 26 seconds East Longitude).

This zone is established to protect the swimming event's participants from possible safety hazards associated with vessel traffic. Law enforcement, Fire Department, and sponsor's safety boats will be allowed in this zone during the event. Entry of all other vessels into this temporary zone is prohibited unless authorized by the Captain of the Port (COTP). Vessels may request authorization to transit the regulated area by calling the U.S. Coast Guard on Channel 16 VHF or by phone at (671) 339–2001, extension 112.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under sections 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Because of the short duration and limited geographic scope of the safety zone, the Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This temporary final rule contains no information-collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary final rule and concluded that under Chapter 2.B.2 of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. An environmental analysis checklist has been completed.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this temporary final rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation). If so, the Act requires that reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government will be affected by this rule, so this rule will not result in annual or aggregate cost of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, part 165 of title,33, Code of Federal Regulations, is amended as follows;

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.c. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.T14–011 is added to read as follows:

§ 165.T14–011 Safety Zone: Cocos Lagoon, Guam.

(a) *Location:* The following area constitutes a safety zone in the navigable waters of the United States within Cocos Lagoon, Guam: a triangle formed by connecting the mouth of the Bile River (13 degrees 16 minutes 37 seconds North Latitude, 144 degrees 39 minutes 51 seconds East Longitude), the west tip of Cocos Island (13 degrees 14 minutes 02 seconds North Latitude, 144 degrees 38 minutes 39 seconds East Longitude), and Balang Point (13 degrees 15 minutes 03 seconds North Latitude, 144 degrees 41 minutes 26 seconds East Longitude). All coordinates refer to Datum: NAD 83.

(b) *Effective Dates:* This safety zone will be effective form 06:30 a.m. (+Kilo, Local Time) to 10:00 a.m. (+Kilo, Local Time) on June 20, 1999. Following the conclusion of the event the Captain of the Port will cease enforcement of the safety zone and will announce that fact by Broadcast Notice to Mariners.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, or his or her designated representative. Vessels may request authorization to transit the safety zone by calling the U.S. Coast Guard Marianas Section Guam on Channel 16 VHF or call at (671) 339–2001, extension 112.

Dated: May 26, 1999.

S.J. Glover,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 99–15298 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01 99–078]

RIN 2115–AA97

Safety Zone: Salvage of Sunken Fishing Vessel CAPE FEAR, Buzzards Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five-hundred (500)-yard radius of the site of the sunken fishing vessel CAPE FEAR in the entrance to Buzzards Bay, Massachusetts, during oil removal and salvage. Once the vessel is salvaged and brought to the surface, a temporary moving safety zone extending 1,000 yards ahead and astern, and 500 yards on either side, is established around the fishing vessel CAPE FEAR while it is towed into and safely moored in the port of Fairhaven, MA. This safety zone is needed to protect personnel and their resources on-scene during oil pollution abatement and salvage, the maritime community from hazards associated with ongoing oil-pollution abatement

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and salvage, and any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, MA. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP), Providence RI.

EFFECTIVE DATE: This rule is effective from 6:00 a.m., Tuesday, June 8, 1999, until 11:59 p.m. on Wednesday, June 30, 1999.

FOR FURTHER INFORMATION CONTACT: LT David C. Barata, Waterways Management, Coast Guard Marine Safety Office, Providence, RI, at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this regulation, and good cause exists for making it effective less than 30 days after **Federal Register** publication. Because of the date that conclusive information for this event was received, there was insufficient time to draft and publish and NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of Buzzards Bay to protect personnel and their resources on-scene during oil pollution abatement and the salvage, the maritime community from hazards associated with ongoing oil-pollution abatement and salvage, and any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, MA.

Background and Purpose

This regulation establishes a safety zone in all waters within a five-hundred (500)-yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734) in the entrance to Buzzards Bay at approximate position 41°23′ N, 071°01′ W during oil pollution abatement and salvage. After the vessel is salvaged and brought to the surface, a temporary moving safety zone will immediately be established on all waters extending 1,000 yards ahead and astern, and 500 yards on either side, of the fishing vessel CAPE FEAR until it is towed into and safely moored in the port of Fairhaven, MA. This safety zone is needed to protect personnel and their resources on-scene during oil-pollution abatement and salvage, the maritime community from hazards associated with ongoing oil-pollution abatement and salvage, and any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, MA. The public will be made aware of the change from a stationary to a moving safety zone through a Broadcast Notice to Mariners made from U.S. Coast Guard Group Woods Hole. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP), Providence, RI.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves a small area of Buzzards Bay. Although this rule prevents traffic from transiting in the immediate area of the salvage site and prevents vessels from transiting near the fishing vessel CAPE FEAR as it is towed, the effect of this rule will not be significant as all vessel traffic may safely pass around this safety zone and as extensive maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT D.C. Barata, telephone (401) 435–2300.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary final rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, the Coast Guard must consider whether this temporary final rule will result in an annual expenditure by state, local, and tribal governments, in aggregate, of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this temporary final rule and concluded that under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this final rule is categorically excluded

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from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addressee.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under the authority of Sec. 311, Pub. L. 105–383.

2. Add temporary section 165.T01–078 to read as follows:

§ 165.T01–079 Safety Zone: Salvage of Sunken Fishing Vessel CAPE FEAR, Buzzards Bay, MA.

(a) *Location.* The following area constitutes a safety zone: All waters within a five-hundred (500)-yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734) in the entrance to Buzzards Bay at approximate position 41°-23′ N, 071°-01′ W during oil-pollution abatement and salvage. After the vessel is salvaged and brought to the surface, a temporary moving safety zone will immediately be established on all waters extending 1,000 yards ahead and astern, and 500 yards on either side, of the fishing vessel CAPE FEAR until it is towed into and safety moored in the port of Fairhaven, MA.

(b) *Effective date:* This rule is effective from 6:00 a.m. on Tuesday, June 08, 1999, until 11:59 p.m. on Wednesday, June 30, 1999.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP Providence.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. Among these personnel are commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: June 3, 1999.

Peter A. Popko,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 99–15297 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE011–1020; FRL–6357–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology Requirements for Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional limited approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires all major sources of nitrogen oxides (NO_X) to implement reasonably available control technology (RACT). This revision was submitted to comply with the NO_X requirements of the Clean Air Act. The intended effect of this action is to grant conditional limited approval of Delaware's NO_X RACT Regulation.

EFFECTIVE DATE: This final rule is effective on July 16, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources and Environmental Control, Richardson & Robins, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 22, 1999 (64 FR 13753), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed conditional limited approval of Delaware's Regulation No. 12, CONTROL OF NITROGEN OXIDE EMISSIONS (NO_X RACT Regulation). The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on January 11, 1993 and amended on January 20, 1994.

A description of Delaware's SIP revision and EPA's rationale for granting it conditional limited approval were provided in the NPR and shall not be restated here. No public comments were received on the NPR.

Terms of Conditional Approval

EPA is conditionally approving Delaware's NO_X RACT regulation based upon DNREC's commitment to submit all the source-specific RACT determinations made under Section 5 of Regulation No. 12. To fulfill the condition of this approval, DNREC must, by no later than July 17, 2000 of Regulation No. 12, certify that it has submitted all required case-by-case NO_X RACT determinations for all currently known subject sources. Once EPA has determined that DNREC has met this condition, EPA shall remove the conditional nature of its approval and Regulation No. 12 will, at that time, retain limited approval status. Should DNREC fail to meet the condition as specified above, the final conditional limited approval of the Delaware NO_X RACT regulation SIP revision shall convert to a disapproval.

Terms of Limited Approval

Conversion of the Delaware NO_X RACT Regulation to full approval will occur when EPA has approved all of the case-by-case RACT determinations submitted by DNREC in fulfillment of the conditional approval described above.

As indicated previously, other specific requirements of and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. Further details are contained in the TSD, which is available upon request, from the EPA Regional office listed in the **ADDRESSES** section of this document.

II. Final Action

EPA is granting conditional limited approval to Delaware Regulation No. 12 imposing RACT on major sources of NO_X, submitted on January 11, 1993 and January 20, 1994, as a revision to the Delaware SIP.

III. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional and limited approvals of SIP submittals under sections 110 and 301, and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to Delaware's NO_X RACT regulation, must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420, the table in paragraph (c) is amended by adding in numerical order a new entry for "Regulation 12" to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Regulation 12—Control of Nitrogen Oxide Emissions				
Section 1	Applicability	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 2	Definitions	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 3	Standards	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 4	Exemptions	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 5	Alternative and Equivalent RACT Determinations.	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 6	RACT Proposals	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 7	Compliance Certification, Record Keeping, and Reporting Requirements.	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
*	*	*	*	*

* * * * *

3. Section 52.424 is amended by adding paragraph (d) to read as follows:

§ 52.424 Conditional approval.

* * * * *

(d) Revisions to the Delaware State Implementation Plan, Regulation No. 12, pertaining to NO_X RACT requirements on major sources submitted on January 11, 1993 and amended on January 20, 1994 by the Delaware Department of Natural Resources and Environmental Control, is conditionally approved. Delaware must meet the following condition by no later than July 17, 2000, in accordance with criteria defined in the EPA Memorandum dated November 7, 1996 from the Director of the Air Quality Strategies and Standards Division of the Office of Air Planning and Standards, entitled "Approval Options for Generic RACT Rules Submitted to Meet the Non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements." This memorandum is available, upon request, at the office of the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

This condition is:

(1) The DNREC must certify, in writing, that it has submitted, as SIP revisions, RACT determinations for all sources subject to source-specific NO_X RACT requirements.

[FR Doc. 99–15015 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300859; FRL–6080–9]

RIN 2070–AB78

Sethoxydim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus, carrot, cranberry, horseradish, peppermint tops and spearmint tops. The Interregional

Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 16, 1999. Objections and requests for hearings must be received by EPA on or before August 16, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300859], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300859], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300859]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9368, jamerson.hoyt@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 30, 1998 (63 FR 71920) (FRL–6050–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of pesticide petitions (PP 3E4162, 2E4092, 0E3909, and 2E4052) for tolerances by Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Rutgers University, New Brunswick, New Jersey 08903. The notice included a summary of the petitions prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.412 be amended by removing the time limitations (expiration dates) on established tolerances for combined residues of the herbicide sethoxydim (2-[1-(ethoxyimino)butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on asparagus (PP 3E4162) at 4.0 parts per million (ppm), carrot (PP 2E4092) at 1.0 ppm, cranberry (PP 0E3909) at 2.0 ppm, and peppermint and spearmint tops (PP 2E4052) at 30 ppm. Since the tolerances for asparagus, carrot, cranberry, peppermint and spearmint tops expired December 31, 1998, after the notice of filing was published in the **Federal Register**, this rule establishes the tolerances without time limitations. In addition, in the **Federal Register** of January 29, 1999 (64 FR 4650) (FRL–6055–8), PP 9E5049 proposed to amend 40 CFR 180.412 by establishing a tolerance for residues of sethoxydim and its metabolites in or on horseradish at 4 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sethoxydim and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus, carrot, cranberry, horseradish, and peppermint and spearmint tops. EPA's assessments of the dietary exposures and risks associated with establishing the tolerances are as follows:

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sethoxydim are discussed in this unit.

1. *Acute toxicity.* Based on the available acute toxicity data, sethoxydim does not pose any acute dietary risks. A summary of the acute toxicity studies follows:

i. *Acute oral toxicity, rat*: Toxicity Category III; LD_{50}=3,125 milligrams/kilograms (mg/kg) (male), 2,676 mg/kg (female).

ii. Acute dermal toxicity, rat: Toxicity Category III; LD_{50} >5,000 mg/kg (male and female).

iii. *Acute inhalation toxicity, rat*: Toxicity Category III; LC_{50} (4-hour)=6.03 mg/liter (L) (male), 6.28 mg/L (female).

iv. *Primary eye irritation, rabbit*: Toxicity Category IV; no irritation.

v. *Primary dermal irritation, rabbit*: Toxicity Category IV; no irritation.

vi. *Dermal sensitization, guinea pig*: Waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18% active ingredient).

2. *Genotoxicity.* Ames assays were negative for gene mutation in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA 1537, with and without metabolic activity. A Chinese hamster bone marrow cytogenetic assay was negative for structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells *in vivo*. Recombinant assays and forward mutations tests in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative for genotoxic effects at concentrations of greater than or equal to 100%.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study with rats fed diets containing 0, 150, 600, or 3,000 ppm (approximately 0, 7.5, 30, or 150 mg/kg/day) with no reproductive effects observed under the conditions of the study.

A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, or 1,000 mg/kg/day with a maternal no-observed-adverse-effect level (NOAEL) of 180 mg/kg/day and a maternal lowest-adverse-effect level (LAEL) of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOAEL of 180 mg/kg/day, and a developmental LAEL of 650 mg/kg/day, based on a 21 to 22% decrease in fetal weights, filamentous tail, and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsal, and pubes). A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, or 400 mg/kg/day with a maternal NOAEL of 320 mg/kg/day and a maternal lowest-observed-adverse-effect level (LOAEL) of 400 mg/kg/day (37% reduction in body weight gain without significant differences in group mean body weights and decreased food consumption during dosing); and a developmental NOAEL greater than 400 mg/kg/day highest dose tested (HDT).

4. *Subchronic toxicity.* A 21-day dermal study in rabbits with a NOAEL of >1,000 mg/kg/day (limit dose). The only dose-related finding was slight epidermal hyperplasia at the dosing site in nearly all males and females dosed at 1,000 mg/kg/day. This was probably an adaptive response.

5. *Chronic toxicity.* A 1-year feeding study with dogs fed diets containing 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOAEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in male dogs at the 17.5-mg/kg/day dose level.

A 2-year chronic feeding/carcinogenicity study with mice fed diets containing 0, 40, 120, 360, and 1,080 ppm (equivalent to 0, 6, 18, 54, and 162 mg/kg/day) with a systemic NOAEL of 120 ppm (18 mg/kg/day) based on non-neoplastic liver lesions in male mice at the 360-ppm (54 mg/kg/day) dose level. There were no carcinogenic effects observed under the conditions of the study. The maximum tolerated dose (MTD) was not achieved in female mice. The need for a new study will be based on the adequacy of the rat study currently under review.

A 2-year chronic feeding/carcinogenic study with rats fed diets containing 0, 2, 6, and 18 mg/kg/day with a systemic NOAEL greater than or equal to 18 mg/kg/day HDT. There were no carcinogenic effects observed under the conditions of the study. This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and the MTD was not achieved.

A second chronic feeding/carcinogenic study with rats fed diets containing 0, 360, or 1,080 ppm (equivalent to 18.2/23.0, or 55.9/71.8 mg/kg/day (males/females). The dose levels were too low to elicit a toxic response in the test animals and failed to achieve the MTD or to define a LAEL. Slight decreases in body weight in rats at the 1,080-ppm dose level, although not biologically significant, support a free-standing NOAEL of 1,080 ppm (55.9/71.8 mg/kg/day (males/females)). There were no carcinogenic effects observed under the conditions of the study.

A third chronic feeding/carcinogenicity study in rats has been submitted. Male and female rats were dosed at nominal concentrations of 0, 300, 1,000, or 3,000 ppm. Clinical findings at the high-dose included changes in food consumption, food efficiency, body weight, and liver pathology. Upon initial review, it appears that the dose selection was adequate, and that there was no evidence of carcinogenicity.

6. *Animal metabolism.* In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

B. Toxicological Endpoints

1. *Acute toxicity.* In a rat developmental study rats received doses of 0, 50, 180, 650, and 1,000 mg/kg/day. The maternal toxicity NOAEL was 180 mg/kg/day and the LOAEL was 650 mg/kg/day based on irregular gait, decreased activity, excessive salivation, and ano-genital staining. For developmental toxicity the NOAEL was 180 mg/kg/day and the LOAEL was 650 mg/kg/day based on 21-22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of accral and /or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsal, and pubes. The end point for use in the risk assessment is the maternal NOAEL of 180 mg/kg/day. The end point is set on maternal effects because the NOAEL for developmental effects is also 180 mg/kg/day.

2. *Short- and intermediate-term toxicity.* No short or intermediate dermal or inhalation endpoints were identified. In a 21-day dermal study with rabbits dosed at 0, 40, 200, or 1,000 mg/kg/day, there was no evidence of compound related toxicity on clinical signs, body weights, food consumption, food efficiency, eye health, clinical pathology, organ weights, or gross pathology. The NOAEL was greater than 1,000 mg/kg/day (limit dose). In the acute inhalation study with rats the LC_{50} was 6.03 mg/L (males) and 6.28 mg/L (females placing sethoxydim in category IV.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for sethoxydim at 0.9 mg/kg/day. This RfD is based on a finding of equivocal anemia in the 1-year dog study. The NOAEL was 8.86 mg/kg in males and 9.41 mg/kg in females.

4. *Carcinogenicity.* Sethoxydim is not classified. Available studies show no evidence of carcinogenicity in rats or mice.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.412) for the combined residues of (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on a variety of raw agricultural commodities. Risk assessments conducted by EPA to assess dietary exposures from sethoxydim are as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed

for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary endpoint is 180 mg/kg/day based on NOAEL's of 180 mg/kg/day for maternal and developmental effects in the rabbit developmental study. The FQPA safety factor of 3x was applied to females 13+ only because the endpoint (based on decrease in fetal weights, filamentous tail and lack of tail due to absence of sacral and/or caudal vertebrae, delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsal) occurs only during in urtero exposure and is not a postnatal effect. Since the effects occur during in urtero exposure, it is not an appropriate endpoint for acute dietary risk assessment of infants and children.

In conducting this acute dietary risk assessment, the Agency made very conservative assumptions--100% of all commodities having sethoxydim tolerances will contain sethoxydim regulable residues and those residues will be at the level of the tolerance which result in an over estimation of human dietary exposure.

From the acute dietary (food only) risk assessment, a high-end exposure estimate of 0.2 mg/kg/day was calculated. This exposure yielded dietary (food only) margins of exposure (MOEs) ranging from 420 for children (1-6 years old) to 622 for female 13+ and greater than 500 for all other subgroups.

ii. *Chronic exposure and risk.* The FQPA Safety Factor will not be applied for chronic dietary risk assessment because the endpoint is based on anemia in male dogs. The endpoint for which the FQPA safety factor is based is an in utero effect and cannot result from postnatal exposure. There was no indication of increased susceptibility in the prenatal developmental study in rabbits following in utero exposure. In the 2-generation reproduction study in rats, effects in offspring were observed only at above treatment levels which resulted in evidence of appreciable parental toxicity. No increased susceptibility was demonstrated in the developmental toxicity study with rats when the maternal and developmental NOAELs/LOAELs were compared. In conducting this chronic dietary risk assessment, the Agency has made very conservative assumptions no percent crop-treated data were used and all commodities having sethoxydim tolerances will contain sethoxydim residues and those residues will be at the level of the tolerance which will result in an overestimate of human dietary exposure.

The sethoxydim tolerances (published and pending) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Subgroup	TMRC	%RFD
U.S. Population	0.039187	44
Nursing Infants	00.018957	21
Non-Nursing Infants (<1 year old)	00.072949	81
Children (1-6 years old)	00.085308	95
Children (7-12 years old)	00.058101	65
Female (13+, nursing)	00.040144	45
Males (13-19 years old)	00.040429	45
U.S Population (Summer Season)	00.039408	44
Hispanics	00.039428	44
Non-Hispanic Others	00.040452	45
Non-Hispanic Whites	00.039238	44

The subgroups listed above are: (1) the U.S. population (48 states); and (2) those for infants, children, females, 13+ nursing; and other subgroups for which the percentage of RfD occupied is greater than occupied by the subgroup U.S. population.

2. *Carcinogenic risk.* Sethoxydim has not been classified. At the present time, studies do not show evidence of carcinogenicity in rats or mice.

3. *From drinking water.* Limited monitoring data of ground water and surface water are available for sethoxydim. The modeling data estimates maximum concentrations in ground water of 0.84 microgram (µg)/liter (L) and in surface water 59.4 µg/L and 56-day EECs of 37.3 µg/L. The modeling data were compared to the results of the following equations used to calculate acute and chronic drinking water level of concern (DWLOC) for sethoxydim in ground and surface water (Standard Operating Procedures for Drinking Water Exposure and Risk Assessments, November 20, 1997). Models used were SCI-GROW and GENEC to provide estimates of ground and surface water contamination respectively from sethoxydim, but did not consider the behavior of degradates. Agency default weights and water consumption used in the calculations were 70 kg(2L) for adult males, 60 kg(2L) for adult females, and 10 kg (1L) for child.

i. *Acute exposure and risk.* Based on acute dietary exposure and using default body weights and water consumption values stated above, acute DWLOC were calculated using the following equation.

DWLOC (acute) = (NOAEL divided by uncertainty factor) - (acute food + residential exposure (mg/kg/day) x (body weight) divided by consumption(L) x 10^{-3} mg/µg.

Acute dietary water levels of concern were calculated to be 525,000 µg/L for the U.S. population, 56,000 µg/L for adult males 13+, 12,000 µg/L for adult females 13+ (including 3x safety factor) and 14,000 µg/L for child (infant < 1 year old).

ii. *Chronic exposure and risk.* Based on acute dietary exposure and using default body weights and water consumption values stated above, acute DWLOC were calculated using the following equation.

DWLOC (chronic) = (NOEL divided by uncertainty factor) - (chronic food + residential exposure (mg/kg/day) x (body weight) divided by consumption(L) x 10^{-3} mg/µg.

Chronic DWLOCs were calculated to be 1,760 µg/L for the U.S. population, 1,780 µg/L for adult males 13+, 1,700 µg/L for adult females 13+ (including 3x safety factor) and 14,000 µg/L for child (infant < 1 year old).

4. *From non-dietary exposure.* Sethoxydim is currently registered for use on the following residential non-food sites: ornamentals and flowering plants, recreational areas, and buildings/structures (outdoor non-agricultural). These residential uses comprise a short- and intermediate-term exposure scenario, but do not comprise a chronic exposure scenario.

i. *Acute exposure and risk.* There is a potential for exposure to sethoxydim by homeowner mixers/applicators. However, since no endpoints for dermal or inhalation were selected, the use on residential non-food sites is not

expected to pose an unacceptable acute risk.

ii. *Chronic exposure and risk.* The registered uses for sethoxydim do not comprise a chronic exposure scenario. A chronic non-dietary endpoint was not selected; therefore, the use on residential non-food sites is not expected to pose an unacceptable chronic risk.

iii. *Short- and intermediate-term exposure and risk.* Short-term or intermediate term endpoints were not identified. However, the following scenarios may result if herbicides containing sethoxydim are applied to residential turf, and/or ornamental plants: incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer, ingestion of pesticide-treated turfgrass, and incidental ingestion of soil from treated lawns. A residential exposure estimate and risk assessment was conducted for postapplication exposure following the application of sethoxydim on turf and ornamental gardens. The acute dietary endpoint was used for this risk assessment because the acute dietary endpoint provides the worst case estimate of risk and exposure for these use patterns. The assessment was performed using Draft SOPs for Residential Exposure Assessments (December 18, 1998). The proposed postapplication aggregate exposure assessment takes into account chronic dietary exposure plus outdoor residential exposures. These exposure assessments assume that 20% of the application rate is available from the turf grass as dislodgeable residue and 2 hours as the duration of exposure. These assumptions are considered conservative and protective.

Exposures and MOEs were calculated to be 0.053 mg/kg/day (MOE of 3,400) for hand to mouth transfer for treated lawns (toddlers), 0.0012 mg/kg/day (MOE of 15,000) for ingestion of treated turf grass (toddler), and 0.000025 (MOE of 7,000,000) for incidental ingestion of soil (toddlers). MOEs exceeded 100 for all three scenarios. MOEs greater or equal to 100 do not exceed the Agency's level of concern.

5. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether sethoxydim has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, sethoxydim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action; therefore, EPA has not assumed that sethoxydim has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Using the published and pending tolerances, the dietary (food only) acute MOEs range from 420 for children (1-6 year) to 622 for females 13+ years. The level of concern for females 13+ years is 300 (includes 3x safety factor) for acute sethoxydim exposure and 100 for all other population subgroups. This risk estimate should be viewed as highly conservative; refinement using anticipated residue values and percent crop treated data in conjunction with Monte Carlo analysis will result in a lower acute dietary exposure estimate. The dietary exposure does not exceed the Agency's level of concern.

Sethoxydim is a nonpersistent, but highly mobile compound in soil and water environments. The modeling data for sethoxydim in drinking water indicate levels less than OPP's DWLOC for acute exposure. Since a refined acute risk for food only would not exceed EPA's levels of concern for acute dietary exposures and the monitoring and modeling levels in water are less than the acute DWLOC, EPA does not expect aggregate acute exposure to sethoxydim will pose an unacceptable risk to human health.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sethoxydim from food will utilize 44% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 95% for children 1 to 6 years; discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sethoxydim in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sethoxydim residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Endpoints for short or intermediate term were not selected. An aggregate exposure estimate and risk assessment was conducted for postapplication exposure to sethoxydim on turf and ornamental plants taking into account chronic exposure from food and the acute dietary NOAEL. The resulting MOEs (1,390–2,350) are not of concern to the Agency.

4. *Aggregate cancer risk for U.S. population.* Sethoxydim has not been classified. Available studies do not show evidence of carcinogenicity in rats or mice.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sethoxydim residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of sethoxydim, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no

appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and postnatal sensitivity.* There was no indication of increased susceptibility in the prenatal developmental toxicity study in rabbits following in utero exposure. In the 2-generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of appreciable parental toxicity. No increased susceptibility was demonstrated in the developmental toxicity studies; however developmental toxic effects, were observed at the HDT.

Acceptable developmental toxicity studies have been performed in rats and rabbits; an acceptable 2-generation reproduction study has also been performed in rats. A chronic feeding/carcinogenicity guideline study in rats has been submitted and is currently undergoing review. An initial examination of the study supports the current findings of no evidence of carcinogenicity. There is a complete toxicity data base for sethoxydim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

The FQPA Safety Factor is to be retained in case of developmental toxicity in the absence of maternal toxicity. Since malformations were seen in the rat study at levels that produced minimal maternal toxicity. The Agency concluded that an FQPA factor is needed. However, it was determined that the 10x factor need not be retained, instead should be reduced to 3x based on the following weight of evidence considerations: (1) developmental toxicity was seen in only one species, in the presence of maternal toxicity, and at a very high dose (650 mg/kg/day) that approached the Limit-Dose of 1,000 mg/kg/day; (2) no developmental toxicity was observed in the rabbit study at the HDT (400 mg/kg/day); (3) there was no increased susceptibility seen in the 2-generation reproduction study in rats at doses up to 150 mg/kg/day HDT; and (4) lack of concern for structure activity relationship (i.e., no significant developmental or reproductive toxicity was seen with the structural analog, clethodim.)

Exposure assessments do not indicate a concern for potential risk to infants and children based on: (1) the dietary exposure assessments use field study data and assume 100% crop treated which results in an overestimate of dietary exposure; (2) limited monitoring data are used for ground and surface source drinking water exposure assessments, resulting in estimates considered to be reasonable upper-bound concentrations; (3) there is a potential for postapplication hand-to-mouth exposure to toddlers associated with lawn use; however, the use of conservative models and/or assumptions in the residential exposure assessment provide adequate protection of infants and children.

The FQPA safety factor is applicable for acute dietary risk assessment for females 13+ because the endpoint occurs only during in urtero exposure and is not a postnatal effect. Since the effects occur during in urtero exposure, it is not an appropriate endpoint for acute dietary risk assessment of infants and children. The FQPA safety factor is not applied for chronic risk assessment because the endpoint is an in urtero effect and cannot result from postnatal exposure. The FQPA safety factor is not applicable to the postapplication hand-to-mouth exposure associated with the lawn use since this exposure scenario would only be expected for toddlers and not for females 13+.

iii. *Conclusion.* Acceptable developmental toxicity studies have been performed in rats and rabbits; an acceptable 2-generation reproduction study has also been performed in rats. A chronic feeding/carcinogenicity guideline study in rats has been submitted and is currently undergoing review. An initial examination of the study supports the current findings of no evidence of carcinogenicity. There is a complete toxicity data base for sethoxydim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Using the conservative exposure assumptions that 100% of the commodities having sethoxydim tolerances will contain sethoxydim regulable residues and that those residues will be at the level of the tolerance, EPA calculated acute dietary (food only) MOEs ranging from 420 for children (1-6 years old) to 622 for females 13+ years. The level of concern is 300 (3x safety factor x 100) for females 13+ years and 100 for all other subgroups.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sethoxydim from food will utilize less than 100% of the RfD for nursing infants, non-nursing infants (<1 years old), children (1-6 years old), and children (7-12 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sethoxydim in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* An aggregate exposure estimate and risk assessment was conducted for postapplication exposure to sethoxydim on turf and ornamental plants taking into account chronic exposure from food and the acute dietary NOAEL. The resulting MOEs (1,390–2,350) are not of concern to EPA.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to sethoxydim residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of sethoxydim in plants and animals is understood, the tolerances for plant and animal commodities are expressed as the combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide).

B. Analytical Enforcement Methodology

BASF Method 30 as published in PAM Vol. II is adequate for tolerance enforcement in all raw agricultural commodities. Quantitation is accomplished by gas chromatography with flame photometric detection in the sulfur mode. Sethoxydim and its metabolites are not recovered or not likely to be recovered by FDA multiresidue methods.

C. Magnitude of Residues

The available crop field data support the established tolerances for asparagus at 4.0 ppm, carrot at 1.0 ppm, cranberry at 2.0 ppm, and peppermint and spearmint tops at 30 ppm. Residue data submitted in support of existing tolerances for carrot at 1.0 ppm, potato at 4.0 ppm, sugar beet at 1.0 ppm, and sweet potato at 4.0 ppm support the establishment of a tolerance for horseradish at 4.0 ppm.

D. International Residue Limits

Maximum Residue Levels (MRLs) have not been established for residues of sethoxydim on asparagus, carrot, cranberry, horseradish, peppermint, or spearmint tops.

IV. Conclusion

Therefore, the tolerances are established for combined residues of (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus at 4.0 ppm, carrot at 1.0 ppm, cranberry at 2.0 ppm, horseradish at 4.0 ppm, and peppermint and spearmint tops at 30 ppm. at ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 16, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300859] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a

generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. In § 180.412(a), by removing the expiration date for the entries asparagus, carrot, cranberry, peppermint, tops and spearmint tops and inserting ≥None≥ in each place and adding a new entry for horseradish at 4.0 ppm to read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Horseradish	4.0	None
* *	* *	*

* * * * *

[FR Doc. 99–14865 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–35

[FPMR Amendment F–1]

RIN 3090–AG79

User Fees; Network Registration Services

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule establishes fees for network registration services offered by the General Services Administration (GSA) to Government agencies and commercial organizations. These services include establishing and maintaining unique global names and network addresses for X.400 Private Management Domains (PRMD), X.500 Organizational Units (OU), Administrative Authority Identifiers (AAI), and Internet Domain names. This rule will allow State and local governments to be registered within the DOT–GOV.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jack L. Finley, Director, Electronic Messaging, Directories and Registrations Branch (TOI), 202–501–3932, *jack.finley@fed.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The following outlines GSA's responsibilities with regard to assigning and managing network registrations.

X.400 PRMD

X.400 is a series of international standards that define components and protocols for electronic Messaging Handling Systems (MHS). Within X.400, top-level Management Domains (MD) are assigned and delegated to

Administrative Management Domains (ADMD) and subordinately to Private Management Domains (PRMD). GSA assigns the PRMDs for the U.S. Government using a prefix of "GOV+" followed by an assigned name. For example, a PRMD for the Department of Transportation (DOT) might be P=GOV+DOT. This GSA service allows the Government to use unique PRMD names, regardless of the ADMD service provider.

X.500/LDAP

The International Telecommunication Union Telecommunication Standardization Sector (ITU–T) issued the X.500 Series of Recommendations, which define the components and protocols for distributed directory services. Many of the components and conventions defined by X.500 were subsequently adopted by the Internet community in the Lightweight Directory Access Protocol (LDAP) series of specifications. GSA registers and interconnects organizations operating X.500 or LDAP directory servers.

GSA has been delegated authority by the National Institute for Standards and Technology (NIST) for the name space "U.S. Government" as an organization (O) domain subordinate to the country (C) level "US" for the purposes of Governmentwide directories. Based on X.500 and LDAP specifications, GSA has developed a schema for a Governmentwide Directory Information Tree (DIT). Through GSA, agencies can establish a directory container as an Organizational Unit (OU) under C=US, O=U.S. Government in the Governmentwide DIT.

In conjunction with its X.500/LDAP registration service, GSA also provides operational directory support services. GSA operates a root-level directory server, which permits Government organizations to interconnect and communicate. Working in cooperation with ANSI, GSA also operates the C=US root directory, which interconnects non-government organizations, and connects the United States to other international directories.

Object Identifier (OID)

The Open Systems Interconnection (OSI) Reference Model uses naming hierarchies to provide global unambiguous identities for objects in a networked environment. The International Organization for Standardization (ISO) defines naming hierarchies or "trees." One naming tree is ISO 3166, Codes for the Representation of Names of Countries, which assigns the United States the two-letter code "US" and the numeric code "840". Subsequently, the American National Standards Institute (ANSI) has assigned the Federal Government the alpha code "GOV" and the numeric code "101".

Object Identifiers (OID) are used to identify technical objects, *e.g.*, attributes, and object classes that are not currently described in OSI standards. OIDs are assigned as "arcs." In the context of this document, an arc is a point where branches of the hierarchical tree are connected together and to the superior reference. GSA is responsible for registration of OIDs under the arc "joint-iso-ccitt(2) country(16) us(840) organization(1) us-government(101)" or "2.16.840.1.101" for short. GSA has established an OID numbering scheme beneath the US Government arc. (Note that there are other US branches of the OID tree; however, new registrations are only established under the 2.16.840.1.101 arc.)

Network Service Access Point (NSAP) Administrative Authority Identifier (AAI)

A second ISO naming hierarchy is ISO 6523, Structure for the Identification of Organizations. Under ISO authority, the British Standards Institute issued the International Code Designator (ICD) "0005" to NIST. NIST, in turn, has delegated responsibility for managing and administering the 0005 ICD to GSA.

The US Government OSI Profile (GOSIP) V2 established a method of assigning Network Service Access Point (NSAP) addresses using the ICD "47 0005" under the authority of NIST. An octet "80" following the initial ICD (*i.e.*, "47 0005 80") indicates that the next three octets are in "GOSIP V2" format. These three terminating octets are called Administrative Authority Identifiers (AAIs), which are delegated to an organization to further define its network addresses based on specific organizational requirements. GSA assigns AAIs for Government organizations. A registration for a GOSIP NSAP AAI would be: "47 0005 80 NNNNNN" (where N is assigned by GSA).

INTERNET .GOV and FED.US Domain Names

The National Science Foundation (NSF) has delegated to GSA the authority to manage and administer the .GOV Internet domain. GSA provides second-level domain registrations in the "GOV" domain (*e.g.*, <Agency>.gov). Similarly, GSA provides third-level domain registrations in the "fed.us" domain under authority of the Internet Assigned Numbers Authority (IANA) (*e.g.*, <organization>.fed.gov). Internet registrations are limited to Federal, State, and local Government organizations. GSA is not responsible for and will not charge fees for any further delegation of a domain name assigned to an agency. For example, Treasury has registered "ustreas.gov," but registrations such as "irs.ustreas.gov" would be the responsibility of the domain manager for Treasury.

A proposed rule was published in the **Federal Register** at 63 FR 66102, December 1, 1998. No comments were received in response to the proposed rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

The final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the regulation does not impose record keeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 because it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–35

Archives and records, Computer technology, Government procurement, Government property management, Information technology, Intergovernmental relations, Telecommunications.

For the reasons set forth in the preamble, 41 CFR part 101–35 is amended to read as follows:

PART 101–35—TELECOMMUNICATIONS MANAGEMENT POLICY

1. The authority citation for part 101–35 is revised to read as follows:

Authority: 40 U.S.C. 486(c) and 1424(b). Subpart 101–35.7 also issued under authority of 31 U.S.C. 9701.

2. Subpart 101–35.7 is added to read as follows:

Subpart 101–35.7—Network Address Registration

Sec.
101–35.705 What does this subpart contain?
101–35.710 What registration services are available through GSA?
101–35.715 Who should I contact for more information or to register?
101.35–720 Is there a fee for these services?
101.35.725 How and where do I pay these fees?

Subpart 101–35.7—Network Address Registration

§ 101–35.705 What does this subpart contain?

This subpart addresses registration services provided by GSA to Government agencies and the public.

§ 101–35.710 What registration services are available through GSA?

(a) The National Institute of Standards and Technology (NIST), Department of Commerce, has designated GSA as the Government Open Systems Interconnection Profile (GOSIP) Address Registration Authority for unique naming assignments of X.400 Private Management Domains (PRMD), X.500 Organizational Units (OU), and Network Service Access Point (NSAP) Administrative Authority Identifiers (AAI). GOSIP registration is limited to Government agencies, with the exception of NSAP AAIs, which may be used by commercial organizations to identify private asynchronous transfer mode (ATM) networks.

(b) For purposes of global interoperability, GSA will operate an X.500/LDAP Directory Service at the "C=US" level and at the "O=U.S. Government" level. Federal agencies may link operational directories to the "O=U.S. Government" level and commercial organizations may link to the "C=US" level in accordance with the fees set forth in § 101–35.704.

(c) The National Science Foundation (NSF) has delegated to GSA the authority to manage and administer the .GOV Internet domain. GSA provides second-level domain registrations in the GOV domain (*e.g.*, <Agency>.gov). Similarly, GSA provides third-level domain registrations in the "fed.us" domain under authority of the Internet Assigned Numbers Authority (IANA). Internet registration services are limited to Federal, State, and local Government organizations. GSA is not responsible for and will not charge fees for any further delegation of a domain name assigned to an agency. For example, the U.S. Department of the Treasury has registered "ustreas.gov," but registrations such as "irs.ustreas.gov" would be the responsibility of the domain manager for Treasury.

§ 101–35.715 Who should I contact for more information or to register?

Individuals or organizations that want to register or would like more information should contact the registration officials at GSA by sending an e-mail message to *registration@fed.gov* or by using the Web site at *http://www.nic.gov.*

§ 101–35.720 Is there a fee for these services?

GSA will assess Government agencies and commercial organizations nominal fees to cover the cost of registration and other services as listed in the table in this section. The fees are based on anticipated costs for providing the services and are consistent with industry charges. The table follows:

Service	Setup	Recurring (annual)
(a) Network Naming and Address Registration (GOSIP)	$1,000.00	$500.00
(b) Governmentwide Directory Operation (X.500/LDAP)	1,000.00	500.00
(c) Internet Domain Name Registration	250.00	50.00

Note to § 101–35.720: Setup fees may be waived at the discretion of GSA. When levied, setup fees include the annual fee for 1 year.

§ 101–35.725 How and where do I pay these fees?

GSA will invoice registrants according to the fee schedule in § 101–35.720. Government registrations must be paid by Government credit card. Commercial organizations are encouraged to pay by credit card. All other payments should be made to: GSA Registration Services, 1800 F Street NW, Suite G–222, Washington, DC 20405.

Dated: May 11, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–15023 Filed 6–15–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 416

[HCFA–3831–F]

RIN 0938–AH15

Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a process under which interested parties may request a review of whether the current Medicare payment amount for intraocular lenses furnished by participating ambulatory surgical centers is appropriate for a class of new technology intraocular lenses. This rule implements section 141(b) of the Social Security Act Amendments of 1994, which requires us to develop and implement this process.

This rule also serves as the initial notice to those wishing to submit requests for review of the appropriateness of the payment amount with respect to a particular intraocular lens, in accordance with § 416.195 of this rule.

DATES: *Effective date:* These regulations are effective on July 16, 1999.

Applicability date: We will accept requests for review under this part 416, subpart F, until September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Claude Mone, (410) 786–5666.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the

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I. Background

A. Payment for Ambulatory Surgical Center Facility Services

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that the scope of benefits under the Medicare supplementary medical insurance (Part B) program includes certain services furnished in connection with surgical procedures that are performed in an ambulatory surgical center (ASC). To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and in our regulations at 42 CFR part 416. In addition, our regulations at 42 CFR part 416 contain the coverage and payment rules for services furnished by participating ASCs.

Section 1833(i)(2)(A) of the Act authorizes us to pay ASCs a prospectively-determined rate for facility services. "Facility services" includes services that are furnished in conjunction with covered surgical procedures performed in an ASC. Section 416.61 of our regulations sets forth included and excluded facility services. ASC payment rates represent our estimate of a fair fee that takes into account the costs incurred by ASCs generally in furnishing facility services in connection with performing a surgical procedure. ASC payment rates do not include physicians' fees and other medical items and services, such as laboratory services or prosthetic devices, for which separate payment may be authorized under other provisions of the Medicare program. However, an intraocular lens (IOL) is included as an ASC facility service under section 1833(i)(2)(A)(iii) of the Act.

Payment for ASC facility services is subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively-determined rate adjusted for regional wage variations. The beneficiary pays a coinsurance amount equal to 20 percent of the wage-adjusted ASC facility fee.

Currently, the Medicare program pays an ASC facility fee for approximately 2,300 surgical procedures performed in an ASC. These surgical procedures are identified by codes established by the American Medical Association's Current Procedural Terminology (CPT). We assign to each procedure one of eight standard payment rates. Collectively, the procedures assigned a particular payment rate constitute an ASC payment group. The current payment group rates follow:

Group 1—$312	Group 5—$674
Group 2—$419	Group 6—$785
Group 3—$479	Group 7—$935
Group 4—$591	Group 8—$923

This is further discussed in our September 4, 1997 proposed rule, "Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses" (62 FR 46699).

B. Payment for Intraocular Lenses Furnished in an Ambulatory Surgical Center

In the proposed rule, we explained that at the inception of the ASC benefit on September 7, 1982, Medicare paid 80 percent of the reasonable charge for IOLs supplied for insertion concurrent with or following cataract surgery performed in an ASC. Subsequently, the statute was amended to mandate that we include payment for an IOL furnished by an ASC for insertion during or following cataract surgery as part of the ASC facility fee rather than paying for the IOL separately. Payment included in the facility fee for an IOL must be reasonable and related to the cost of acquiring the class of IOL involved.

Thus, for services furnished beginning March 12, 1990, which was the effective date of the final notice published in the **Federal Register** on February 8, 1990, entitled "Revision of Ambulatory Surgery Center Payment Rate Methodology" (55 FR 4526), Medicare included payment for an IOL in payment group 6 and payment group 8, the two payment groups that include IOL insertion procedures. The Physicians' Current Procedural Terminology (CPT) codes for groups 6 and 8 and their descriptors follow:

Payment group 6:	
CPT code 66985	Insertion of intraocular lens prosthesis (secondary implant), not associated with concurrent cataract removal.
CPT code 66986	Exchange of intraocular lens. (This CPT code was first listed in CPT 1992; we added it to the ASC list effective January 30, 1992.)
Payment group 8:	
CPT code 66983	Intracapsular cataract extraction with insertion of intraocular lens prosthesis (one stage procedure).
CPT code 66984	Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or mechanical technique (for example, irrigation and aspiration or phacoemulsification).

Section 4151(c)(3) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Public Law 101–508), enacted on November 5, 1990, froze the IOL payment amount at $200 for IOLs furnished by ASCs in conjunction with surgery performed during the period beginning November 5, 1990 and ending December 31, 1992. We continued paying an IOL allowance of $200 from January 1, 1993 through December 31, 1993.

Section 13533 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Public Law 103–66), enacted on August 10, 1993, mandated that payment for an IOL furnished by an ASC be equal to $150 beginning January 1, 1994 through December 31, 1998.

In a proposed rule in the June 12, 1998 **Federal Register** (63 FR 32290) entitled "Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Surgical Procedures for Ambulatory Surgical Centers Effective October 1, 1998," we proposed new payment rates and an ambulatory payment classification (APC) system based on facility costs and procedure charges collected in a 1994 survey of ASCs. In that proposed rule, we stated that the 1994 survey data revealed that the current IOL allowance of $150 is higher than the cost of acquiring the lens. The survey data indicated that the weighted mean lens cost was $100, and the weighted median cost was $97. We

stated that before December 31, 1998, we would propose a revised payment rate for lens insertion procedures to include an IOL allowance that is reasonable and related to the cost of the lens. However, we subsequently issued notices in the **Federal Register** on October 1, 1998 (63 FR 52663) and November 13, 1998 (63 FR 63430) that extended the comment period on the proposed rule and announced that a final rule would be issued as soon as possible after January 1, 2000.

II. Provisions of the Proposed Regulations

A. Requirement for Review of Payment for New Technology Intraocular Lenses

On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Public Law 103–432) were enacted. Section 141(b) of SSAA 1994 requires us, not later than 1 year after the date of enactment (that is, by October 31, 1995), to develop and implement a process under which interested parties may request, with respect to a class of new technology IOLs, a review of the appropriateness of the payment amount provided for IOLs furnished by ASCs under section 1833(i)(2)(A)(iii) of the Act. Since January 1, 1994, the payment amount for IOLs furnished by ASCs under section 1833(i)(2)(A)(iii) of the Act has been $150.

Section 141(b)(1) of SSAA 1994 stipulates that an IOL may not be treated as a new technology IOL unless it has been approved by the Food and Drug Administration (FDA). Section 141(b)(2) of SSAA 1994 requires that, in determining whether to provide a payment adjustment, we take into account whether use of the IOL is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or any other comparable clinical advantages.

Section 141(b)(3) of SSAA 1994 requires that we publish at least annually a list of the requests received for review of the appropriateness of the IOL payment amount with respect to a new technology IOL. We must provide a 30-day comment period on the IOLs that are the subject of the requests for review. Within 90 days of the close of the comment period, we must publish a notice of the determinations made with respect to the appropriateness of the IOL payment amount for the IOLs for which a review was requested. Any adjustment of the IOL payment amount (or payment limit) for a particular IOL or class of IOLs that we determine is warranted would be effective not later than 30 days following publication of the final notice of our determination.

Implementation of section 141(b) of SSAA 1994 requires three principal policy decisions:

- Identification of a class or classes of new technology IOLs.
- Determination of whether the current IOL payment amount is appropriate for an IOL identified as belonging to a class of new technology IOLs.
- Identification of the payment adjustment to be applied if the current payment amount is found to be inappropriate.

B. Identification of a Class of New Technology Intraocular Lenses

1. Distinguishing Among Classes of Intraocular Lenses

In order to prepare the final notice entitled "Revision of Ambulatory Surgery Center Payment Rate Methodology" (55 FR 4526) that was published in the **Federal Register** on February 8, 1990, we sought supporting documentation that would justify pricing IOLs according to IOL type or "class," and that would establish the basis for distinguishing among different types of IOLs, such as placement of the IOL within the eye, either as anterior chamber or posterior chamber IOLs; or the style of the IOL, either single-piece or multi-piece; or characterization of the IOL as "advanced technology."

On February 22, 1989, the FDA advised us in a letter that its premarket approval review process determined whether IOLs were "safe and effective" not by comparing IOLs with one another, but by comparing them with a set of historical IOL data known collectively as the "grid." The FDA noted that no additional labeling or advertising claims of the superiority of one IOL (or type of IOL) over another had been approved at that time; that is, medical benefits of one IOL or type of IOL over another had not been proven in the studies that were submitted to the FDA. There were no across-the-board differences in the indications and contraindications or in the warnings sections of the package insert that would imply across-the-board medical benefits for one IOL or type of IOL over another.

The studies that were submitted to HCFA at that time failed to yield conclusive evidence of specific clinical conditions or indications that required or influenced the use of one IOL over another, nor did HCFA find justification for a differentiated price structure based on IOL type. We therefore determined that a $200 payment amount was both reasonable and related to the costs incurred by ASCs to acquire IOLs available at that time.

2. Criterion To Define a Class of New Technology Intraocular Lenses

There still is no universally accepted definition of what constitutes a "class of new technology intraocular lenses." Section 141(b) of SSAA 1994 does not define new technology IOLs other than to specify that an IOL may not be treated as a new technology IOL unless it has been approved by the FDA. We must therefore first define the characteristics that distinguish a "new technology" IOL from other IOLs in order to comply with section 141(b) of SSAA 1994.

Section 141(b) of SSAA 1994 requires that we take clinical outcomes such as "reduced risk of intraoperative or postoperative complication or trauma" and "reduced induced astigmatism" into account in determining whether to provide a payment adjustment with respect to a particular IOL. Because they are identified with such specificity, we infer that the clinical outcomes listed in the law are intended to characterize IOLs that belong to a "class of new technology intraocular lenses," the use of which not only produces the specified clinical outcomes, but does so to a greater degree than other IOLs. We submit that the latter consideration is crucial because of the abundant evidence that demonstrates that IOLs have attained a level of technical sophistication, clinical success, and patient satisfaction that exceeds that of the more than 1 million IOLs implanted during clinical trials conducted between 1978 and 1982. (An analysis of the 1978 through 1982 clinical trial data forms the FDA's "grid," the historical control group against which newer IOLs are measured.) To illustrate, 93 percent and 96.8 percent of patients in trials of two IOLs that were approved in 1994 achieved visual acuity of 20/40 or better, compared to 88 percent of patients in the historical control group. The "best cases," those without any preoperative ocular pathology or macular degeneration at any time, achieved visual acuity of 20/40 or better in 97 percent and 99.5 percent of the patients in the two newer trials, compared to 94 percent of the control group grid patients. The high level of improved vision and the low rate of adverse effects already attainable using currently available IOLs seem to leave little room for substantive improvements in the areas listed as desirable outcomes in SSAA 1994. At issue, then, is how to

recognize IOLs that exceed the already superior levels of performance of IOLs readily accessible in the current market to such an extent that they warrant being recognized as belonging to a separate and distinct class of IOLs. We proposed that the criterion for identifying an IOL to be treated as a new technology IOL be that all claims of the IOL's clinical advantages and superiority over existing IOLs must have been approved by the FDA for labeling and advertising purposes. An explanation of the reasons for relying on the FDA's determination is explained in the proposed rule (62 FR 46700 through 46701). We received favorable public comments on the proposal and adopted them in this final rule.

3. Five-Year Limit on Subsets of "New Technology"

We proposed to impose certain constraints on payment adjustments that result from the process that is the subject of this rule. For instance, we did not believe that all IOLs that could satisfy the overall criteria of "new technology" in the proposed rule would necessarily be of the same type or category. Rather, based on our assessment of the kinds of IOLs that are currently in clinical trials, we believe "new technology" IOLs could logically be grouped into smaller subsets of "new technology," each of which is defined or identified by a common salient feature or characteristic, such as fabrication from the same material, or being multifocal in design, or designed to correct astigmatism.

For payment purposes, after we accept an IOL as satisfying the criterion for belonging to a "class of new technology lenses," we proposed to assign that IOL to a subset of IOLs with which it shares a common feature that distinguishes it from other "new technology" IOLs. We further proposed to set the lifespan of each subset of "new technology" IOLs at 5 years. That is, beginning the sixth year following our initial recognition of a "new technology" subset, the new technology attribute that the IOLs in the subset have in common would cease to be considered a characteristic of "new technology," and the Medicare payment adjustment for IOLs in that subset would be discontinued. We would not have considered for payment adjustment any other IOLs whose primary distinguishing feature was that attribute. For IOLs approved at the beginning of the fifth year of the subset term, Medicare would have paid any "new technology" adjustment for 1 year only.

We proposed a 5-year limit because defining a "new technology" characteristic as "new" for fewer than 5 years did not seem fair to manufacturers whose model(s) of the new technology IOL may receive FDA approval sometime after the original IOL that opened the subset within the class of "new technology" IOLs receives its premarket approval. But to define a "new technology" characteristic as "new" for more than 5 years seemed to impose an unnecessary and unwarranted drain on the Medicare trust fund, given the natural course of market forces that have repeatedly succeeded in reducing IOL costs in a few years following introduction of a modification or innovation in design or material.

C. Appropriateness of Payment Amount

SSAA 1994 requires us to review the appropriateness of the current IOL payment amount with respect to a class of new technology IOLs. Because SSAA 1994 itself does not provide explicit guidance on the standard for judging the appropriateness of the current IOL payment amount, we looked to section 1833(i)(2)(A)(iii) of the Act, which requires that the IOL payment amount included in the ASC facility fee be reasonable and related to the cost of acquiring the class of IOL involved. Therefore, after we determine that an IOL meets the criterion that qualifies it to be treated as a new technology IOL under the process in this rule, we reasoned that we must next determine if the current IOL payment amount is reasonable and related to the cost of acquiring that IOL. We have reconsidered this issue in light of the public comments, which are addressed later in this final rule.

We also proposed that in order to determine IOL acquisition costs, we would be required to survey purchasers and audit invoices. The OIG conducted such a survey in preparing its 1994 report entitled *Acquisition Costs of Prosthetic Intraocular Lenses,* OEI–05–92–01030. (Copies can be obtained from the Office of Inspector General, Department of Health and Human Services, (312) 353–4124.) The OIG found that when IOL payments were fixed at $200, ASCs could acquire and were acquiring IOLs for an average of $126 in 1991 and $112 in 1992. This does not take into account discounts available to the majority of purchasers because the financial arrangements took many forms, only a few of which were straightforward rebates or price reductions. The OIG also discovered that the newest type of IOL available at the time of its review (a foldable, ultraviolet-absorbing, silicone IOL) was obtainable within relatively the same price range as other IOLs in the study (from $75 to $475 for the foldable IOLs, compared to a range of $30 to $450 for rigid IOLs). The OIG determined that ASCs were buying foldable IOLs for $125 or less, at a time when the Medicare IOL payment amount was $200.

We received several public comments concerning this proposal. We have reconsidered the process for adjusting payments for new technology IOLs in light of these comments, and we are no longer requiring the submission of data concerning the costs of acquiring the new technology IOL in order to determine the appropriateness of the IOL payment amount. Rather, as we discuss in the *Analysis and Responses to Public Comments* section of this rule, once an IOL is determined to be a new technology IOL, we will pay a flat premium in the amount of $50, over and above the payment allowance already included in the ASC facility fee for a standard IOL.

D. Payment Adjustment When Current Payment Amount Is Inappropriate

The final step in the process that was the subject of the proposed rule involved determining the amount of a payment adjustment if we find that the current IOL payment amount is inappropriate. Among the factors that we proposed in order to determine the amount of the adjustment to be made if the current IOL allowance was found to be inappropriate with respect to the acquisition cost of the particular IOL were the following:

- Market projections based on anticipated clinical indications of need for the IOL and the percent of the Medicare population expected to present that need on an annual basis.
- Additional incremental costs incurred to manufacture a new technology IOL relative to the cost of manufacturing other IOLs, such as the cost attributable to using a more sophisticated piece of machinery or the cost of fabricating a new IOL material.
- Additional costs incurred to conduct clinical trials that document for FDA approval the clinical superiority of the IOL relative to the costs incurred to conduct clinical trials for other IOLs.
- Research and development costs incurred that exceed those associated with other IOLs approved by the FDA.
- Current and historical pricing, sales volume, and revenues.
- A reasonable rate of return and profit based on the manufacturer's investment in the IOL.

We considered other options for determining the amount of an adjustment to be made if the current payment amount was found to be inappropriate for an IOL being reviewed under the provisions in this rule including—

- Application of a single flat, across-the-board percentage increase to the IOL payment amount for every IOL that we determined satisfied the criteria defining a "new technology" IOL.
- The percent of the IOL industry's investment in research and development that ultimately leads to innovations in IOLs.
- The percentage of sales attributable to an IOL for which a review was requested.

We rejected these options at that time, primarily because we believed they were inconsistent with the overall statutory mandate that payment be reasonable and related to the cost of acquiring an IOL. We received public comments concerning this position, and one commenter expressly disagreed with our interpretation of the statute. We have reconsidered our position in light of this comment. Further discussion can be found in the *Analysis of and Responses to Public Comments* section.

E. Implementation of the Payment Adjustment

1. Two-Year Limit on Payment Adjustment

A related issue pertains to the appropriate length of time the adjusted payment amount would be allowed by Medicare for a particular "new technology" IOL. We proposed to allow a single IOL the benefit of any payment adjustment determined to be appropriate for a period of 2 years following the review process in this rule. At the conclusion of the 2-year payment adjustment period, Medicare payment for the IOL would then revert to the standard payment rate for IOLs furnished by an ASC that is in effect at that time.

Supporting a 2-year payment limit is the OIG's 1994 report (*Acquisition Costs of Prosthetic Intraocular Lenses*, OEI–05–92–01030), which found a decrease in IOL prices generally over a 2-year period ranging from 11 to 14 percent in various settings. We assume this decrease is attributable to technology diffusion and the associated development of similar lenses by competing firms. We believe a desirable new technology IOL with demonstrated clinical superiority would be subject to equivalent conditions, and thus experience a similar drop in acquisition cost over a 2-year period. However, after considering the public comments on this issue, we have developed an alternative to this 2-year payment adjustment. See the *Analysis of and Responses to Public Comments* section for further discussion.

2. Operational Payment Principles

The payment adjustments we publish in the **Federal Register** would be implemented prospectively, effective 30 days from the date of their publication. This implementation date of a payment adjustment is required under section 141(b) of SSAA 1994.

We proposed to apply the same payment adjustment amount established for the first IOL or IOLs approved within a new technology subset to all IOLs that we subsequently accept as satisfying the criteria for "new technology" that are assigned to the same subset. If a new technology IOL were to qualify under more than one subset of technology, and the subsets had different payment rates, the IOL would be paid for at the higher (or highest) applicable rate.

We expect that more than one manufacturer would be working to develop IOLs that rely on the same or similar technology that defines "new technology" under the provisions of this rule. If we were to make a payment adjustment under the provisions in this rule, the payment adjustment amount would have been based on information regarding IOL production, acquisition costs, and IOL benefits that is submitted by the manufacturer or manufacturers that first request review for a particular type of new technology IOLs. Manufacturers would have had 3 years during which to submit requests for review of equivalent IOLs approved by the FDA that were in a "new technology" subset already approved by us and still benefit from the full 2-year payment adjustment term. Requests for review of an IOL submitted during the third year of a technology's designation as "new" would only have had the benefit of a payment adjustment for 1 year. Again, we have modified this proposal. Further discussion can be found in the *Analysis of and Responses to Public Comments* section.

If an interested party wants an IOL to be considered for a payment adjustment under section 141(b) of SSAA 1994, that interested party must request a review in accordance with the process in this final rule.

We will assign codes to be used to bill for IOLs that qualify for the payment adjustment. The list of these IOLs, with the appropriate billing code, will be published periodically in the **Federal Register**. Billing for any other IOLs using "new technology" billing codes may constitute fraud.

F. Review and Adjustment Process

In this section of the proposed rule, we described the process that we intended to implement in order to determine the appropriateness of IOL pricing as required under section 141(b) of SSAA 1994. The process, which was designed to be repeated annually on a 365-day cycle, would have involved publishing a series of **Federal Register** notices with built-in comment periods and allowance of time to review the appropriateness of payment amounts for new technology IOLs. However, since we are revising this review process, we believe we can shorten the timeframe to accomplish this to 180 days. For a further discussion of this issue see the *Analysis of and Responses to Public Comments* section.

G. Requirements for Content of a Request To Review

In the proposed rule, interested parties requesting a review of the IOL payment amount with respect to a particular IOL would have been required to submit the following: identification of the individual IOL under consideration as a "new technology" IOL for which a payment review is requested, including the name of the manufacturer, model number, trade name, and the date the FDA granted premarket approval for the IOL; a copy of the FDA's summary of safety and effectiveness; a copy of the labeling claims of specific clinical advantages approved by the FDA; reports of modifications made after FDA approval; development and manufacturing costs of the "new technology" IOL relative to the costs of manufacturing other approved IOLs; the costs of conducting clinical trials for the IOL in question relative to the costs of conducting clinical trials for other approved IOLs; indications and contraindications for use; epidemiological data indicating demand for the IOL; sales price, sales history, and revenues, and prices and projected revenues during the period of the payment adjustment; names of purchasers; and other information we consider appropriate for making a determination. Because of the revisions made to this process in the final rule, interested parties will not be required to submit information that is related to costs or sales as stated above. For a further discussion of this issue, see the *Analysis of and Responses to Public Comments* section.

Interested parties should be aware that 45 CFR 5.65(c) provides that a

submitter of information may designate all or part of the information as being exempt from mandatory disclosure under Exemption 4 of the Freedom of Information Act.

III. Analysis of and Responses to Public Comments

We received 16 timely items of correspondence. The comments were from ophthalmologists, professional organizations, IOL manufacturers, and ASCs. A summary of the major issues and our responses follow:

Comment: Several commenters suggested that, in addition to using FDA product labeling to identify what qualifies as a new technology lens, we should also consider data from well-designed and controlled health outcomes and economic studies through consultation with medical and industry experts.

Response: As we stated in the proposed rule, we considered convening an expert panel to evaluate claims of the clinical superiority of an IOL. Because the expertise and review process already exist within another Health and Human Services agency, namely the FDA, it would be duplicative for us to convene such a panel of experts. We, therefore, are not accepting this suggestion, and will rely on the FDA approval process for labeling and advertising purposes to determine that an IOL will be treated as a new technology lens.

Comment: Several commenters disagreed with the 2-year payment limit on single model new technology IOLs and the 5-year limit on the adjustment for subsets of new technology IOLs. The commenters thought that the payment adjustment should be extended to 7 years.

Response: After carefully considering the arguments made by these commenters, we believe we can resolve this issue with a compromise. We will extend the payment limit for single model new technology IOLs to 5 years beginning with the date that we recognize this particular IOL as a new technology IOL. Any subsequent IOL with the same characteristics will receive the payment adjustment for the remainder of the 5-year period established by the initial new technology IOL. For example, if new technology IOL "A" is recognized to receive a payment adjustment effective July 1, 1999, the payment adjustment would expire on June 30, 2004. The payment adjustment would then terminate, and revert back to the standard IOL payment rate in effect at that time. If new technology IOL "B" is recognized to receive a payment adjustment effective July 1, 2000, and has the same characteristics as "A," the payment adjustment for "B" would expire on June 30, 2004, and then revert back to the IOL payment rate in effect at that time.

We realize that we cited the 1994 OIG report (Acquisition Costs of Prosthetic Intraocular Lenses, OEI–05–92–01030), which found a decrease in IOL prices generally over a 2-year period ranging from 11 to 14 percent in various settings. However, we believe that the initial developer of a particular new technology lens should have some advantage over subsequent developers of a similar lens, and consequently we are extending the payment adjustment limit to 5 years for those initial developers. We do not believe, however, that extending the limit to 7 years is justified, given the data presented in the above-mentioned OIG report.

Comment: One commenter disagreed with our view that the overall statutory mandate would have precluded the adoption of a single flat rate across-the-board percentage increase. That commenter indicated that "the new technology IOL enabling legislation provides no specific guidance on the standard for judging the appropriateness of the current IOL payment vis-a-vis the rate adjustment for the new technology IOL. Given the fact that the purpose of the new technology IOL provision is to facilitate beneficiary access to new IOL technology, we do not believe the Congress would have intended HCFA to rely on historical pricing data. With a new lens, there will be no history. Awaiting the submission of acquisition data would delay the ability of providers to purchase the products under current facility reimbursement constraints."

Response: In developing the process for adjusting payment rates for new technology IOLs that we proposed in the September 4, 1997 **Federal Register**, we rejected applying a single flat, across-the-board percentage increase to the IOL payment amount for every IOL that we had determined satisfied the definition of new technology IOLs (62 FR 46702). Initially, we rejected that approach, believing that it might be viewed as inconsistent with a statutory requirement in section 1833(i)(2)(c) of the Act that the ASC allowance for IOLs be reasonable and related to IOL acquisition costs. We have reconsidered our interpretation in light of the public comment.

While it is true that section 141(b) of SSAA 1994 refers to section 1833(i)(2)(A)(iii) of the Act, the reference does not require the conclusion that the amount of an adjustment for new technology IOLs must also be reasonable and related to the cost of acquiring the IOL. Indeed, the commenter's point is well taken that by focussing on the clinical advantages of new technology IOLs, the Congress was attempting to encourage beneficiary access to new technologies. The statutory reference to section 1833(i)(2)(A)(iii) of the Act thus requires a comparison of the clinical advantages of new technology to the standard technology, and an adjustment to the payment rate to reflect the added benefits of the new technology. It does not require a comparison of the costs of acquiring standard IOLs to the costs of acquiring new technology IOLs in determining the amount of any adjustment. We agree that the statute can be reasonably interpreted to permit an adjustment that is not related to the cost of acquiring the particular new technology IOL. Since the flat rate adjustment for new technology IOLs was one of the more frequently suggested comments, we have decided to adopt this recommended approach.

Comment: Several commenters recommended that we develop a standard payment rate that would apply to any lens that we find is in compliance with the definition of a new technology IOL under the provisions of this regulation. Commenters suggested as a new technology IOL premium either a flat dollar amount between $50 and $75 or an amount equal to between 30 percent and 50 percent of the allowance for a standard IOL.

One consequence of this approach would be to reduce the data collection burden associated with our proposed requirement that interested parties submit information related to manufacturing, selling, overhead, and research and development costs, reducing the burden for manufacturers. In other words, our determination that a lens meets the criteria for being considered a new technology IOL would alone be sufficient to trigger a payment adjustment. Several commenters argued that the clinical outcomes resulting from use of the new technology IOL so substantially exceed the outcomes expected from a standard IOL as to justify payment of a premium. By definition, the payment allowance for a standard IOL could not be appropriate for a new technology IOL because the new technology IOL affords so many more clinical advantages and outcomes than a standard IOL, and the new technology IOL's additional features would not have been realized without additional costs having been incurred.

Response: Having considered these comments, we have decided to modify our original proposal and to adopt

instead payment of a flat, across-the-board $50 premium for any lens for which a payment review is requested in accordance with the provisions of the final regulations and that we find to comply with the definition of a new technology IOL. We will adopt this $50 payment at least until July 16, 2002.

During this 3-year period, we will monitor whether the flat payment of $50 has provided beneficiaries access to new technology. We will also monitor market parameters for IOLs. After this 3-year period, we may adjust our payment rate for NTIOLs through proposed and final rulemaking for ambulatory surgical centers.

The effect of adopting this approach will be to permit an expedited consideration of a request for payment review, and a standard $50 payment adjustment for any lens that we determine is a new technology IOL. We believe that a flat $50 premium per new technology IOL is a reasonable amount and is enough to encourage manufacturers to continue their IOL research and development programs. In fact, an industry-sponsored study found that the use of a certain type of new technology IOL, such as a multi-focal lens, enables a certain percentage of cataract patients to forego Medicare-reimbursed post-cataract eyeglasses. A payment adjustment of $50 for this type of lens seems to be justified since it offers certain benefits to both the beneficiary and the Medicare program. A flat rate adjustment also will expedite our review process and gives Medicare beneficiaries quicker access to new technology. By adopting a flat dollar amount, rather than a percentage of the standard IOL allowance, we hold the premium constant against potential increases or reductions in the IOL allowance for standard lenses.

Comment: Several commenters stated that the application process is cumbersome, time-consuming, and not possible due to the proprietary nature of the information that will have to be supplied by IOL manufacturers. Along the same line, several commenters thought that we should make the adjusted payment amount available within 90 to 180 days.

Response: As discussed above, by adopting a flat rate payment amount of $50, the time required for the application process would be dramatically reduced. The payment adjustment amount could be implemented within 180 days after receipt of the request to review a new technology IOL.

The commenters were also concerned that due to the proprietary nature of the information that would have to have been supplied, businesses could be reluctant to submit the requested information. By reducing the types of data necessary to make the determination, the final rule should alleviate some of the public's concern. In addition, as we stated in the proposed rule, 45 CFR 5.65(c) provides that a submitter of information may designate all or part of the information that he or she is submitting as being exempt from mandatory disclosure under Exemption 4 of the Freedom of Information Act. We reiterate that we will abide by the submitter's request if the submitter wishes any information to be withheld from disclosure.

Comment: Two commenters requested that we provide for appeals of our new technology IOL decisions.

Response: The SSAA 1994 does not require any appeal of this determination. Moreover, section 1869 of the Act already provides beneficiaries and certain other individuals the ability to challenge the amount of benefits paid if a claim is denied. We do not believe additional appeal rights are warranted and, therefore, are not accepting this comment.

Comment: Two commenters thought that interested parties who request a payment adjustment for new technology IOLS should be able to demonstrate that the payment adjustment be continued past the time limit.

Response: As discussed earlier in this section, we are increasing the time limit for an adjusted payment from 2 years to 5 years for the initial new technology IOL approved for the adjusted payment. Any subsequent new technology IOL with the same characteristics as the initial IOL will get the adjusted payment for the remainder of the 5-year period. Given the data presented in the 1994 OIG report, we believe this extension is sufficient to alleviate the need for a demonstration to extend payment beyond this time period.

IV. Provisions of the Final Regulations

In response to the comments we received, we are making several revisions to the proposed rule that we believe will streamline the process for determining an appropriate payment amount for new technology IOLS.

We are revising § 416.185, "Payment review process." In the proposed rule, interested parties seeking an adjustment in the current IOL payment rate for a new technology lens would have been required to submit information related to manufacturing, selling, overhead, research and development costs in addition to any other information that would be considered appropriate in determining a payment adjustment. In the final rule, we are eliminating the need for this information to establish a payment adjustment. Instead, we are establishing a flat rate adjustment of $50 over the current rate for standard IOLs for 3 years beginning on July 16, 1999. After this 3-year period, we may adjust our payment rate for IOLs through proposed and final rulemaking for ambulatory surgical centers.

This change also has an impact on § 416.195, "A request to review." In this section of the proposed rule, we were requiring documented evidence of the cost of the IOL and the manufacturer's investment in the IOL. This will no longer be necessary, since the final rule establishes a flat rate payment adjustment.

Another revision to the proposed rule is § 416.200, "Application of the payment adjustment." In the proposed rule, a single model IOL was recognized for a payment adjustment for a period of 2 years. We have revised that provision to extend the payment adjustment period to 5 years for the first IOL in a subset that we approve for the payment adjustment. Any subsequent IOL with the same characteristics as the first IOL recognized for a payment adjustment would receive the adjustment for the remainder of the 5-year period established by the first recognized IOL.

With these revisions to the proposed rule in place, we will then be able to shorten the time it takes to complete the review process in order to establish a payment adjustment. The proposed rule set up a 365-day cycle for the completion of this process. Although we are still required to publish two **Federal Register** notices in this review process, one with a 30-day comment period showing the list of requests received, and another within 90 days after the close of the comment period indicating the determinations that were made, we should be able to decrease the time to 180 days.

Finally, this rule will serve as the initial notice to those wishing to submit requests for review of the appropriateness of the payment amount with respect to a particular IOL, in accordance with § 416.195 of this rule. We will accept requests for 60 days following the effective date of this regulation. Subsequent requests for review of payment amounts will be made in accordance with the regulations as stated in this final rule. Please submit requests to: Grant Bagley, M.D., Director, Coverage and Analysis Group, Office of Clinical Standards and Quality, S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244.

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on the information collection requirement discussed below.

Section 416.195 A Request To Review

Section 416.195(a) states that the request must include all of the following information:

(1) The name of the manufacturer, the model number, and the trade name of the IOL.

(2) A copy of the FDA's summary of the IOL's safety and effectiveness.

(3) A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.

(4) A copy of the IOL's original FDA approval notification.

(5) Reports of modifications made subsequent to original FDA approval.

(6) Other information that HCFA finds necessary for identification of the IOL.

We believe the above requirement is not subject to the Act in accordance with 5 CFR 1320.3(c)(4) since this requirement does not collect information from 10 or more entities on an annual basis.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration,
Office of Information Services,
Security and Standards Group,
Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, ATTN: Louis Blank, HCFA–3831–F

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, HCFA Desk Officer

VI. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a rule not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all manufacturers of IOLs, ASCs, hospital outpatient departments, and physicians who perform IOL insertion surgery to be small entities. Individuals and States are not included in the definitions of a small entity. We are not preparing a regulatory flexibility analysis because we have determined, and the Secretary certifies, that this regulation will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies, that this regulation will not have a significant impact on the operations of a substantial number of small rural hospitals.

Although this rule is not an "economically significant" rule under Executive Order 12866, we present below a voluntary analysis of the effects of this rule because many beneficiaries who undergo IOL insertion surgery following a cataract extraction could be affected.

We believe that the fiscal impact of this rule will be negligible. We do not expect that making this payment adjustment will have an impact on the availability or prices of other IOLs. We do not expect that is will affect competition, employment, or investment. The ocular implant industry is mature, with a successful product readily available to purchasers. Our data suggest that we pay, under the Medicare program, more than the acquisition cost for most of the IOLs used today. In our June 12, 1998 proposed rule, "Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Surgical Procedures for Ambulatory Surgical Centers Effective October 1, 1998" (63 FR 32303), we stated that we would be proposing a new payment amount for the standard IOL that reflects the cost of acquiring the lens. New technology IOLs will achieve improvements in only small segments of the industry, since the majority of IOLs function superbly. The IOLs under development that we are aware of will substitute for spectacles in some cases, and in others will allow the patient to wear a single vision prescription rather than bifocals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR part 416 is amended as follows:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. A new subpart F, consisting of §§ 416.180, 416.185, 416.190, 416.195, and 416.200, is added to read as follows:

Subpart F—Adjustment In Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

Sec.
416.180 Definitions.
416.185 Payment review process.
416.190 Who may request a review.
416.195 A request to review.
416.200 Application of the payment adjustment.

Subpart F—Adjustment In Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

§ 416.180 Definitions.

As used in this subpart, the following definitions apply:

Class of new technology intraocular lenses (IOLs) means all of the IOLs, collectively, that HCFA determines meet the definition of "new technology IOL" under the provisions of this subpart.

Interested party means any individual, partnership, corporation, association, society, scientific or academic establishment, professional or trade organization, or any other legal entity.

New technology IOL means an IOL that HCFA determines has been approved by the FDA for use in labeling and advertising the IOL's claims of specific clinical advantages and superiority over existing IOLs with regard to reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

New technology subset means a group of IOLs that HCFA determines meet the criterion for being treated as new technology IOLs and that share a common feature or features that distinguish them from other IOLs. For example, all new technology IOLs that are made of a particular bioengineered material could comprise one subset, while all that rely on a particular optical innovation could comprise another.

§ 416.185 Payment review process.

(a) HCFA publishes a **Federal Register** notice announcing the deadline and requirements for submitting a request for HCFA to review payment for an IOL.

(b) HCFA receives a request to review the appropriateness of the payment amount for an IOL.

(c) HCFA compiles a list of the requests it receives and identifies the IOL manufacturer's name, the model number of the IOL to be reviewed, the interested party or parties that submit requests, and a summary of the interested party's grounds for requesting review of the appropriateness of the IOL payment amount.

(d) HCFA publishes the list of requests in a **Federal Register** notice with comment period, giving the public 30 days to comment on the IOLs for which review was requested.

(e) HCFA reviews the information submitted with the request to review, any timely public comments that are submitted regarding the list of IOLs published in the **Federal Register**, and any other timely information that HCFA deems relevant to decide whether to provide a payment adjustment as specified in § 416.200. HCFA makes a determination of whether the IOL meets the definition of a new technology IOL in § 416.180.

(f) If HCFA determines that a lens is a new technology IOL, HCFA establishes a payment adjustment as follows:

(1) Before July 16, 2002—$50.

(2) After July 16, 2002—$50 or the amount announced through proposed and final rulemaking in connection with ambulatory surgical center services.

(g) HCFA designates a predominant characteristic of a new technology IOL that both sets it apart from other IOLs and links it with other similar IOLs with the same characteristic to establish a specific subset of new technology within the "class of new technology IOLs."

(h) Within 90 days of the end of the comment period following the **Federal Register** notice identified in paragraph (d) of this section, HCFA publishes in the **Federal Register** its determinations with regard to IOLs that it has determined are "new technology" lenses that qualify for a payment adjustment.

(i) Payment adjustments are effective beginning 30 days after the publication of HCFA's determinations in the **Federal Register**.

§ 416.190 Who may request a review.

Any party who is able to furnish the information required in § 416.195 may request that HCFA review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act with respect to an IOL that meets the definition of a new technology IOL in § 416.180.

§ 416.195 A request to review.

(a) *Content of a request.* The request must include all of the following information:

(1) The name of the manufacturer, the model number, and the trade name of the IOL.

(2) A copy of the FDA's summary of the IOL's safety and effectiveness.

(3) A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.

(4) A copy of the IOL's original FDA approval notification.

(5) Reports of modifications made after the original FDA approval.

(6) Other information that HCFA finds necessary for identification of the IOL.

(b) *Confidential information.* To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, HCFA maintains the confidentiality of the information and protects it from disclosure not otherwise authorized or required by Federal law as allowed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, with respect to trade secrets, the Trade Secrets Act (18 U.S.C. 1905).

§ 416.200 Application of the payment adjustment.

(a) HCFA recognizes the IOL(s) that define a new technology subset for purposes of this subpart as belonging to the class of new technology IOLs for a period of 5 years effective from the date that HCFA recognizes the first new technology IOL for a payment adjustment.

(b) Any IOL that HCFA subsequently recognizes as belonging to a new technology subset receives the new technology payment adjustment for the remainder of the 5-year period established with HCFA's recognition of the first IOL in the subset.

(c) Beginning 5 years after the effective date of HCFA's initial recognition of a new technology subset, payment adjustments cease for all IOLs that HCFA designates as belonging to that subset and payment reverts to the standard payment rate set under section 1833(i)(2)(A)(iii) of the Act for IOL insertion procedures performed in ASCs.

(d) ASCs that furnish an IOL designated by HCFA as belonging to the class of new technology IOLs must submit claims using specific billing codes to receive the new technology IOL payment adjustment.

(Sections 1832(a)(2)(F)(i) and 1833(i)(2)(a) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(a)))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 15, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 8, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–15067 Filed 6–14–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96–98; FCC 99–66]

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deaveraged Rate Zones for Unbundled Network Elements

AGENCY: Federal Communications Commission.

ACTION: Final rule; temporary stay.

SUMMARY: In this Order, the Commission temporarily stays the effectiveness of its

rule requiring each state to establish at least three geographic rate zones for unbundled network elements and interconnection. The Commission issues the stay to afford the states an opportunity to bring their own rules into compliance with the Commission's rule, in light of the U.S. Supreme Court's recent decision in *AT&T* v. *Iowa Utils. Bd.*

DATES: Effective May 7, 1999, 47 CFR 51.507(f), published at 61 FR 45476 (August 29, 1996), is stayed indefinitely. The Commission will publish in the **Federal Register** at a later date the date that the stay expires.

ADDRESSES: The entire file is available for inspection and copying weekdays from 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 Twelfth Street SW, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 Twentieth St., NW, Washington, DC 20036, (202) 857–3800.

FOR FURTHER INFORMATION CONTACT: Neil Fried, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: In the *Local Competition Order*, the Commission promulgated certain rules to implement section 251 of the Communications Act of 1934, as amended. 61 FR 45476; 11 FCC Rcd 15499 (1996). One such rule, section 51.507(f), requires each state commission to "establish different rates for [interconnection and unbundled network elements] in at least three defined geographic areas within the state to reflect geographic cost differences." 47 CFR 51.507(f). The Commission released the *Local Competition Order* on August 8, 1996. A number of parties, including incumbent LECs and state commissions, appealed the order shortly thereafter. The U.S. Court of Appeals for the Eighth Circuit stayed the effectiveness of the section 251 pricing rules on September 27, 1996. *Iowa Utils. Bd.* v. *FCC*, 96 F.3d 1116 (8th Cir. 1996) (per curium) (temporarily staying the *Local Competition Order* until the filing of the court's order resolving the petitioners' motion for stay). *See also Iowa Utils. Bd.* v. *FCC*, 109 F.3d 418 (8th Cir.) (dissolving temporary stay and granting petitioners' motion for stay, pending a final decision on the merits of the appeal), *motion to vacate stay denied*, 117 S. Ct. 429 (1996). On July 18, 1997, the Court of Appeals vacated these rules, including Section 51.507(f) on deaveraging, on the grounds that the Commission lacked jurisdiction. *Iowa Utils.* v. *FCC*, 120 F.3d 753, 800 n.21, 819 n.39, 820 (8th Cir. 1997). On January 25, 1999, however, the U.S. Supreme Court reversed the Eighth Circuit's decision with regard to the Commission's section 251 pricing authority, and remanded the case to the Eighth Circuit for proceedings consistent with the Supreme Court's opinion. *AT&T* v. *Iowa Utils. Bd.*, 119 S. Ct. 721, 733, 738 (1999).

In this Order, the Commission stays the effectiveness of section 51.507(f) until six months after the Commission issues its order in CC Docket No. 96–45 finalizing and ordering implementation of high-cost universal service support for non-rural LECs under section 254 of the Act. The six-month period shall run from the Commission's release of that order. Neither petitions for reconsideration nor appeals of that order shall have any bearing on the length of the stay.

The Commission found good cause to issue such a stay. *See* 47 CFR 1.3 (allowing the Commission to suspend its rules for good cause). Because of the Eighth Circuit's decisions, the section 251 pricing rules were not in effect for approximately two-and-a-half years. During that time, not all states established at least three deaveraged rate zones for unbundled network elements and interconnection. Some have taken no action yet regarding deaveraging; others have affirmatively decided to adopt less than three zones. A temporary stay will ameliorate the disruption that would otherwise occur, and will afford the states an opportunity to bring their rules into compliance with section 51.507(f).

A number of parties argued that the Commission made the appropriate policy decisions regarding deaveraging when it issued the *Local Competition Order*, and that implementation should not be further postponed. Some contended that it may be appropriate for the Commission to give states a reasonable amount of time to implement conforming rules, but argue that any "significant" delay is unwarranted. The Commission concluded that six months following the Commission's order in CC Docket No. 96–45 represents an appropriate length for the stay. State and federal regulators now have the benefit of not only a variety of court decisions, but also nearly three more years of experience and data. The stay will allow the states and the Commission a sufficient, but not excessive, amount of time to bring their rules into compliance in a manner coordinated with reform of universal service.

The Commission recognized the possibility that the three-zone rule may not be appropriate in all states. In some states, for instance, local circumstances may dictate the establishment of only two deaveraged rate zones. The Commission stated that it intends to address such situations on a case-by-case basis. States may file waiver requests with the Commission seeking relief from the general rule in light of their particular facts and circumstances. *See* 47 CFR 1.3 (allowing the Commission to waive any provision of its rules based on a petition if good cause is shown).

List of Subjects in 47 CFR Part 51

Communications common carriers, Deaveraged rate zones, Interconnection, Local competition, Pricing of elements, Telecommunications, Unbundled network elements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14792 Filed 6–15–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 061099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock In Statistical Area 620

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal apportionment of pollock total allowable catch (TAC) in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 11, 1999, until 1200 hours, A.l.t., September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North

Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of pollock TAC is equal to 20 percent of the annual TAC (§ 679.20(a)(5)(ii)(C)). The pollock TAC in Statistical Area 620 was established by the Final 1999 Harvest Specifications for Groundfish (64 FR 12094, March 11, 1999) as 38,840 metric tons (mt) for the entire 1999 fishing year. In accordance with § 679.20(a)(5)(ii)(C) the second seasonal apportionment of pollock TAC in the Statistical Area 620 is 7,768 mt.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of pollock TAC in Statistical Area 620 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,568 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the second seasonal TAC limitations and other restrictions on the fisheries established in the final 1999 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the second seasonal apportionment of pollock TAC in Statistical Area 620 of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15277 Filed 6–11–99; 2:57 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208156–91]

RIN 1545–AQ30

Accounting for Long-Term Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking which was published in the **Federal Register** on Wednesday, May 5, 1999 (64 FR 24096). The notice of proposed rulemaking relates to accounting for long-term contracts.

FURTHER INFORMATION CONTACT: John M. Aramburu or Leo F. Nolan II (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is subject to this correction is under section 460 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–208156–91), which is the subject of FR Doc. 99–10948 is corrected as follows:

§ 1.460–4 [Corrected]

On page 24109, column 2, § 1.460–4(b)(3), line 9, the language "the treatment of post-completion costs," is corrected to read "the treatment of post-completion-year costs,".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–15115 Filed 6–15–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–051]

RIN 2115–AA97

Safety Zone: Macy's Fourth of July Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects the NPRM (CGD01–99–051) published May 25, 1999. That intended to restrict vessel traffic in a portion of the East River.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Waterways Oversight Branch of Coast Guard Activities New York, (CG–99–051), 212 Coast Guard Drive, Staten Island, New York 10305, room 205, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Macy's Fourth of July Fireworks, East River, New York, in the **Federal Register** (64 FR 28128).

Need for Correction

As published, the NPRM contains an inaccurate Latitude and Longitude that may prove to be misleading and therefore needs to be corrected.

Correction of Publication

Accordingly, the publication on May 25, 1999, of the NPRM (CGD01–99–051), is corrected as follows:

§ 165.T01–051 [Corrected]

1. On page 28128, in the third column, lines 6 and 47, and on page 28130 in the first column, line 55 the Latitude and Longitude "40°41′35″N 074°01′11″W" should read "40°41′33.5″N 074°00′42″W".

R.F. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–15301 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[FRL–6360–6]

Extension of Comment Period for Control of Diesel Fuel Quality Advance Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; notice of extension of comment period.

SUMMARY: EPA is extending the comment period for the Advance Notice of Proposed Rulemaking (ANPRM) for the control of diesel fuel quality. The ANPRM was published in the **Federal Register** on May 13, 1999 (64 FR 26142). The close of the comment period for the proposed rule was originally June 28, 1999. EPA is extending the closure of the comment period to July 13, 1999.

DATES: Comments will be accepted until July 13, 1999.

ADDRESSES: Comments on this ANPRM should be sent to Public Docket A–99–06 at the US Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC 20460. EPA requests that a copy of comments also be sent to Margaret Borushko, U.S. EPA, Engine Programs and Compliance Division, 2000 Traverwood Dr., Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, US EPA, Engine Programs and Compliance Division, (734) 214–4334; Borushko.Margaret@epa.gov.

SUPPLEMENTARY INFORMATION: On May 13, 1999 EPA published an ANPRM regarding control of diesel fuel quality (64 FR 26142). The comment period was scheduled to end June 28, 1999.

EPA received written requests to extend the comment period to give affected parties more time to address the issues raised in the ANPRM. One of the requests was for an extension to July 28, 1999; the other asked for the comment period to be extended to September 2, 1999.

Although we agree that additional time for the submittal of comments would be beneficial, we have a desire to make decisions regarding a proposal as soon as possible. Furthermore, the affected parties will have additional opportunities to comment during the rulemaking process. Therefore, EPA is extending the comment period 15 days to July 13, 1999.

Dated: June 9, 1999.

Robert Brenner,

Acting Assistant Administrator for OAR.

[FR Doc. 99–15273 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 061099A]

Environmental Impact Statement (EIS) for the Proposed Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an EIS; request for comments.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region (FMP).

DATES: Written comments on the intent to prepare an EIS will be accepted on or before July 15, 1999. Initial scoping meetings are scheduled as follows:

1. 100th Western Pacific Fishery Management Council (Council) meeting/public hearing, June 16, 1999, Ala Moana Hotel, Honolulu, HI.

2. Coral Reef Ecosystem Plan Team Meeting, July 13–15, 1999, Council Office Conference Room, Honolulu, HI.

3. Additional field hearings for public scoping are tentatively planned for July and August in American Samoa, Commonwealth of the Northern Mariana Islands, Guam and Hawaii (details regarding times and locations will follow in a separate **Federal Register** announcement).

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Charles Karnella, Administrator, NMFS, Pacific Islands Area Office, 2570 Dole St. Honolulu, HI 96822.

The following locations have been set for scoping meetings:

1. 100th Council Meeting/public hearing, June 16, 1999, 2 - 5:00 p.m. (estimated time), Ala Moana Hotel, 410 Atkinson Road, Honolulu, HI.

2. Coral Reef Ecosystem Plan Team Meeting, July 13–15, 1999, 8:30 a.m. - 5:00 p.m., Council Office Conference Room, 1164 Bishop St., Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, (808) 522–8220.

SUPPLEMENTARY INFORMATION: The proposed action would include permit and reporting requirements for non-subsistence harvest of coral reef resources, establishment of several Marine Protected Areas and a list of allowable gear types to harvest coral reef resources in the exclusive economic zone (EEZ). It would also include Essential Fish Habitat, Habitat Areas of Particular Concern, fishing and non-fishing threats, as well as other required provisions under the Sustainable Fisheries Act (SFA). A framework amendment process will be included to allow for the addition of new measures rapidly. The proposed Coral Reef Ecosystem EIS/FMP, being developed by the Council will be its fifth FMP for Federal waters, which is the EEZ for all U.S. Pacific Islands. This area includes nearly 11,000 km^2 (4,000 square miles) of coral reefs. Development of the FMP is timely considering new mandates and initiatives such as Ecosystem Principles in Fisheries Management, the President's 1998 Executive Order on Coral Reefs, and priorities of the U.S. Coral Reef Task Force and the U.S. Coral Reef Initiative, as well as the SFA and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act. The draft FMP describes the importance of coral reef resources to the region and current and potential threats that warrant a fishery management plan at this time. Information regarding the harvest of these resources in the EEZ is largely unknown. Potential for unregulated harvest and bio-prospecting for reef fish, live grouper, live rock and coral exists throughout the region. Marine debris, largely from fishing gear, is impacting reefs in the Northwestern Hawaiian Islands. To identify the scope of issues that will be addressed in the EIS and to identify potential impacts on the quality of the human environment, public participation is invited by providing written comments to the Council and attending the scoping meetings/hearings.

Public Information Meetings:

Additional public information meetings and public hearings on the proposed EIS/FMP will be held in various locations around the region later in the year. These meetings will be advertised in the **Federal Register** and the local newspapers.

Special Accommodations:

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty Simonds (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 11, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15327 Filed 6–15–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

INTERAGENCY COMMISSION ON CRIME AND SECURITY IN U.S. SEAPORTS

Establishment of Commission To Study Nature and Extent of Crime and Overall State of Security in U.S. Seaports

AGENCY: Interagency Commission on Crime and Security in U.S. Seaports.

ACTION: Notice.

SUMMARY: This document announces the establishment of the Interagency Commission on Crime and Security in U.S. Seaports (the Commission). The Commission will conduct a comprehensive study of the nature and extent of crime and the overall state of security in U.S. seaports, and the ways in which Federal, State and local governments are responding to this problem. The study will address all serious crime occurring in the maritime context, including but not limited to drug trafficking, cargo theft, and the smuggling of contraband and aliens. This document requests, and the Commission will take full account of, the views and expertise of interested members of the private sector in identifying and addressing issues of serious crime and in improving overall security in relation to U.S. seaports.

DATES: Comments must be received on or before August 16, 1999.

ADDRESSES: Written comments from interested members of the private sector may be addressed and submitted to: The Interagency Commission on Crime and Security in U.S. Seaports, 1331 Pennsylvania Avenue, NW, Suite 1331 North, Washington, DC 20004. Comments may also be submitted to the Commission by facsimile transmission (fax) (202–927–3743), or by electronic mail at the Commission's website address (http://www.seaportcommission.gov).

FOR FURTHER INFORMATION CONTACT: James F. Kelly, Working Group, (202–927–3741).

SUPPLEMENTARY INFORMATION:

Establishment of Commission

By Memorandum, dated April 27, 1999, the President authorized the Secretary of the Treasury, the Attorney General and the Secretary of Transportation, in cooperation with numerous other executive departments and Federal agencies, to establish the Interagency Commission on Crime and Security in U.S. Seaports (the Commission). The President's Memorandum is printed in the Weekly Compilation of Presidential Documents, Vol. 35 (1999), page 755.

Composition of Commission

The Commission is co-chaired by the Commissioner, U.S. Customs Service (Department of the Treasury), the Assistant Attorney General, Criminal Division (Department of Justice), and the Administrator, Maritime Administration (Department of Transportation).

In addition, Commission members include senior officials from: The Departments of State, the Treasury, Defense, Justice, Agriculture, Commerce, Labor, Health and Human Services, and Transportation; the Environmental Protection Agency, the Office of Management and Budget, the Office of National Drug Control Policy, the Central Intelligence Agency, the National Security Council, and the Joint Chiefs of Staff. All members of the Commission are full-time Federal employees.

The Executive Director of the Commission, chosen by the Secretary of the Treasury, oversees the support staff and a working group established to further the work of the Commission. The Executive Director reports directly to the three co-chairs. The working group is composed of Federal employees from the previously enumerated executive departments and agencies involved in the Commission.

Purpose of Commission

The Commission will undertake a comprehensive study of the nature and extent of crime and the overall state of security related to U.S. seaports, as well as the ways in which Federal, State and local governments are responding to this problem. The study will address all serious crime occurring in the maritime context, including but not limited to drug trafficking, cargo theft, and the smuggling of contraband and aliens. Moreover, the study will carefully examine the role of internal conspiracies associated with such crime, including the potential threat posed by terrorists and others to the people and critical infrastructures of seaport cities.

On or before completing its work within one year of the date of its establishment, the Commission will submit a report to the Secretary of the Treasury, the Secretary of Transportation, and the Attorney General. Within 3 months of the submission of the report, these officials will forward it, with their joint recommendations, to the Chief of Staff to the President for final review and appropriate action.

The Commission's report will include: An analysis of the type and level of serious crime, as well as a determination as to the overall state of security, in U.S. seaports; an overview of the specific missions and authorities of Federal agencies in this area, along with a general description of the usual roles played in this regard by State and local agencies, as well as by the private sector; an evaluation of the nature and effectiveness of coordination among Federal, State and local government agencies responsible for dealing with issues of crime and security in the maritime context; and recommendations for improving the response of Federal, State and local governments to seaport crime and enhancing seaport security.

Some Areas of Focus

The following is a general overview of some of the subject areas on which the Commission will focus in conducting its study:

1. Overall Assessment of Crime in the Maritime Context

As noted, the Commission will undertake an analysis of the overall nature and extent of criminal activity occurring in relation to U.S. seaports, including drug trafficking, cargo theft, and the smuggling of contraband and aliens; assess the role of internal conspiracies in connection with such crime; provide an overview of the specific missions and authorities of the Federal agencies with relevant responsibilities for dealing with

criminal activity in the maritime context, along with a general description of the typical roles played in this connection by State and local agencies and the private sector; conduct an assessment of the nature and effectiveness of coordination among Federal, State and local government agencies, including intelligence efforts; and provide recommendations for improving the response of Federal, State and local governments to the problem of serious crime, including resource requirements and mandatory crime reporting.

2. Terrorism, Threats, and Environmental Crime

The Commission will: Assess the threat of terrorism in the maritime context, both from domestic and foreign sources; identify major vulnerabilities to terrorist activity at U.S. seaports, in the transportation of cargo to and from ports, and at foreign ports where cargo is laded aboard ships bound for the U.S.; and recommend improvements in overall seaport security intended to make ports less susceptible to terrorist acts.

Also, the Commission will focus on potential threats of environmental terrorism and negligence in and around the nation's seaports, including the risk of marine accidents and pollution occasioned by, among other things, hazardous commodities such as petroleum; assess environmental consequences and vulnerabilities in this area; and make recommendations for improvements in environmental protection and safety at seaports and on coastal and inland waterways.

3. Security and Prevention

The Commission will evaluate the overall state of security existing at U.S. seaports, including measures for controlling access to ports, safeguarding passengers and cargo, and ensuring the security of possible military mobilization operations (at selected seaports); the Commission will develop recommendations, including identifying new techniques, on enhancing seaport security standards, and on whether such standards should be mandatory or voluntary.

4. Cargo Control

The Commission will analyze the effectiveness and integrity of cargo control mechanisms at U.S. seaports that deal, for example, with false manifesting and the diversion of cargo (inbound, outbound, and in-bond); and make recommendations on how cargo control procedures may be improved.

5. Technology

The Commission will seek to identify and recommend state-of-the-art technology for use in combating crime and bolstering security at seaports.

6. Legislation/Regulation/Funding

The Commission will identify, and develop recommendations for appropriate changes in, Federal laws and regulations pertaining to seaport crime, terrorism and security. Furthermore, the Commission will seek to identify potential sources of funding, as necessary to implement its recommendations in all areas.

Input From Private Sector Requested

The issues involving U.S. seaport security affect many different private sector interests in a variety of ways. Accordingly, the Commission hereby invites, and will take full account of, the views and expertise of interested members of the private sector in addressing the issues of serious crime and overall security in U.S. seaports. All comments in this matter are welcome. In concert with the subject areas generally outlined above, the Commission believes input as to the following would be most helpful:

(1) Describing particular problems that need to be solved concerning crime, terrorism and security in seaports;

(2) Proposals for new laws or regulations, programs or other courses of action to combat crime and terrorism and increase security in seaports;

(3) Suggested methods for ensuring better reporting and more accurate collection of data on crime in relation to the maritime context; and

(4) Possible ways to improve coordination and cooperation among Federal, State and local government agencies, in combating criminal activity and fostering greater security in seaports.

The Commission believes that the experience and knowledge that members of the private sector can bring to this undertaking will enable the Commission to conduct its evaluation of seaport crime and security in a more effective and reliable manner, and help ensure that the Commission's report contains recommendations that are realistic and that can be effectively implemented.

Dated: June 9, 1999.

D. Lynn Gordon,

Executive Director.

[FR Doc. 99–15245 Filed 6–15–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on July 13 and 14, 1999 at the Confederated Tribes of Warm Springs Forestry and Fire Management Conference Room at 4430 Upper Dry Creek Road. The first day will be an overnight field trip to the Lower Deschutes river to discuss topics which affect the river as well as the province. These include noxious weeds, grazing, and dispersed camping. The second day will be a business meeting which will begin at 11 p.m. and finish at 4 p.m. Agenda items include Hosmer Lake Working Group Recommendations, the PAC/IAC Summit, FERC update, ICBEMP update, the September meeting agenda, the Regional Problem Solving Effort, and a public forum starting 3:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 NE 3rd, Bend, OR 97701, phone (541) 383–4769.

Dated: June 8, 1999.

Sally Collins,

Forest Supervisor.

[FR Doc. 99–15199 Filed 6–15–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Amended Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 18, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of May 14, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—The New York Report

VI. State Advisory Committee Report
" "Alaskan Natives and Other Minorities in the Special Education Program of Four Alaskan Districts" (Alaska)
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–15367 Filed 6–11–99; 4:52 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration (EDA).

Title: Guidelines for Revolving Loan Fund Grants.

Agency Form Number: Not Applicable.

OMB Approval Number: 0610–0095.

Type of Request: Extension of a currently approved collection.

Burden: 14,080 hours.

Average Hours Per Response: Revolving Loan Fund Plan—Approximately 40 hours. Post-Approval Guidelines—Approximately 24 hours.

Number of Respondents: Approximately 560 respondents (40 respondents for Revolving Loan Plan annually and 520 respondents for Post-Approval Guidelines quarterly and semiannually).

Needs and Uses: This information collection is needed to establish eligibility to evaluate proposals based on merit, and to ensure proper monitoring and compliance with program and administrative requirements as set forth in EDA's authorizing legislation Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendments by the Economic Development Administration Reform Act of 1998, Public Law 105–393, (PWEDA) and EDA's implementing regulations. The information is used by EDA to review and approve federal grants for public and non-profit entities in order to assist economically distressed communities. Information is also used to monitor grantee progress in establishing the loan funds, making initial loans, collecting and relending the proceeds from loans, and compliance with time schedules and federal requirements for administering grants, civil rights, environmental and other requirements prior to grant disbursement. The guidelines are based on OMB administrative requirements for Federal Grants as implemented by DOC at 15 CFR parts 14, 24, and 29, and are intended to supplement and explain such requirements and are not intended to replace or negate such requirements.

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: One time and On occasion for monitoring, and reports.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–15259 Filed 6–15–99; 8:45 am].

BILLING CODE: 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Turkey: Notice of Extension of Time Limits for Second Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–5288.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Results

On August 27, 1998, the Department of Commerce ("the Department") initiated the second administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 1997 through June 30, 1998 (63 FR 45796). Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the reviews within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this time period to up to 365 days. Accordingly, on March 12, 1999, the Department extended the time limit for completion of the preliminary results of the administrative review by 90 days (64 FR 12287). We have now concluded, however, that the full 120-day extension is necessary. Accordingly, the Department is extending the time limit for completion of the preliminary results of these administrative reviews by the full 120 days, or until August 2, 1999. We plan to issue the final results of these administrative reviews within 120 days after publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: June 4, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–15302 Filed 6–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050699A]

Marine Mammals; File No. 715–1457

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Andrew W. Trites, North Pacific Universities Marine Mammal Research Consortium, University of British Columbia, 6248 Biological Sciences Rd., Hut B3, Rm. 18, Vancouver, B.C., Canada V6T 1Z4, has been issued a permit to take Steller sea lions

(*Eumetopias jubatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907–586–7221).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: On July 29, 1998, notice was published in the **Federal Register** (63 FR 40513) that a request for a scientific research permit to take Steller sea lions had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 10, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–15320 Filed 6–15–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service's (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 ((PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources), is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its request for approval of a new information collection from organizations conducting literacy and tutoring activities under the sponsorship of Corporation grants in order to assess the impact of these literacy and tutoring activities on children's reading proficiencies and other related outcomes. This request is a follow-up to the evaluation currently being conducted that describes the Corporation's literacy and tutoring programs. Approval to conduct the descriptive study was granted by the Office of Management and Budget (OMB) in February, 1999 under the condition that the current outcome study to assess program impact would subsequently be conducted. This form will be used by the Corporation to solicit information regarding the programs' impacts on children's reading skills.

Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Comments on this notice must be received by August 16, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Susan Labin, Office of Evaluation, 1201 New York Avenue, NW, 9th floor, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Susan Labin, (202) 606–5000, ext. 160.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

One of the missions of the Corporation is to "provide opportunities to engage in service that addresses the nation's unmet educational * * * needs" (42 U.S.C. 12501(b)). President Clinton's *America Reads* initiative calls on all Americans to help ensure that every child can read well and independently by the end of the third grade. The Corporation is playing an important role in this initiative by supporting efforts to recruit and train tutors in local communities to work with children to improve their reading skills. The Corporation is dedicating a significant portion of its resources to literacy and tutoring efforts. In addition, the Corporation places a high priority on evaluating the effects of these efforts and thus, is now seeking approval to conduct this new outcome evaluation.

Current Action

The Corporation seeks approval to conduct an outcome evaluation of the Corporation's literacy and tutoring programs that it supports through grants. The study will provide estimates of the impact on students' (in grades K–3) reading proficiencies and other outcomes as a result of their participation in the literacy and tutoring programs. The study will have two parts: (1) *A national study* using a representative sample of program students in grades K–3; and (2) three *local evaluations* of purposively selected programs.

The national study will provide important information to the Corporation in the form of generalizations about overall program effects on students' reading skills and about relationships between program characteristics and student effects. The evaluation will be strengthened further by conducting three local evaluations in which appropriate comparison groups will be constructed against which the performance of program students can be compared. Taken together, the *national study* and the *local evaluations*, will provide the Corporation with important

information about the effects of their literacy and tutoring efforts on children's reading proficiencies.

The data to be collected includes: (1) Measures of student reading performance as measured by the standardized reading skills sub-tests; (2) teacher ratings of student classroom behavior (academic motivation and competence, problem behaviors, social skills); (3) tutor perceptions of student academic and social competence; and (4) measures of the school climate within which the literacy and tutoring activities are being conducted.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Outcome Evaluation of Literacy and Tutoring Programs.

OMB Number: None.

Agency Number: None.

Affected Public: Public school students in grades K–3. Public school teachers in grades K–3. Corporation members (the tutors).

Total Respondents: Approximately 3,000 students. Approximately 200 teachers. Approximately 500 Corporation members (tutors).

Frequency: Two waves of data collection.

Average Time Per Response: Students—40 minutes. Teachers—10 minutes per student. Corporation members (tutors) 10 minutes per student.

Estimated Total Burden Hours: 4,200 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; these will also become a matter of public record.

Dated: June 10, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–15284 Filed 6–15–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission to OMB for Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National Service Office of Evaluation, Chuck Helfer, (202) 606–5000, Extension 248. Individuals who use a telecommunications device for the Deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, ATTN: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20305, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The Corporation seeks approval of five survey forms for the evaluation of the Corporation's Senior Companion Programs (SCP) that it supports through grants. It will allow for the assessment of the impact of the SCP on clients, family members/caregivers and agencies served. It will also help the Corporation to determine effective practices in the use of Senior Companions by agencies that are affiliated with the program.

I. SCP Client and Comparison Group Baseline Survey

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Client Baseline Survey.

OMB Number: None.

Agency Number: None.

Affected Public: SCP clients and comparison group members (at baseline).

Total Respondents: Approximately 1,800.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 900 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: This survey is designed to assess baseline characteristics of SCP clients, and comparison group members in order to determine the health and functional status of older adults at entry into the program, their extent of social support, psychological well-being, need for medical and health care services, and their expectations for future care.

II. SCP Client and Comparison Group Follow-up Survey

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Client Follow-up Survey.

OMB Number: None.

Agency Number: None.

Affected Public: SCP clients and comparison group members (at 3- and 6-month follow-up)

Total Respondents: Approximately 1,350 at 3-month follow-up and approximately 1,013 at 6-month follow-up.

Frequency: Two times.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 675 hours at 3-month follow-up, and 507 hours at 6-month follow-up.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None,

Description: This survey is designed to assess changes in physical and functional status, extent of social support, psychological well-being, need for health and medical care services, and satisfaction with SCP and SCP-like services among SCP clients and comparison group subjects at 3-month and 6-month follow-up.

III. SCP Family Member/Caregiver and Comparison Group Baseline Survey

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Family Member/Caregiver Baseline Survey.

OMB Number: None.

Agency Number: None.
Affected Public: Family members/caregivers and comparison group members affiliated with the SCP (at baseline).
Total Respondents: Approximately 640.
Frequency: One time.
Average Time Per Response: 30 minutes.
Estimated Total Burden Hours: 320 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: This survey is designed to assess the baseline characteristics of family members/caregivers associated with SCP clients, and comparison group members, and to determine their attitudes toward caregiving, perceptions of the unmet needs of their older relatives/family members, and their expectations of future care for SCP clients/comparison group subjects. Family members/caregivers also will be asked to answer health and functional status questions on behalf of SCP clients and comparison group members when clients/comparison group subjects are unable to speak on their own behalf. We have recalculated the respondent burden to more accurately reflect the burden we expect family members/caregivers to incur at the time of the family member/caregiver baseline survey. Our previous estimate did not take into account the reduction in the number of potential respondents as a result of obtaining an 80% response rate. By incorporating an 80% response rate into our revised estimate, we have reduced the number of respondents from 800 (as previously reported) to 640 (as reported here), and we have reduced family member/caregiver respondent burden from 400 to 320 hours.

IV. SCP Family Member/Caregiver and Comparison Group Follow-Up Survey

Type of Review: New approval.
Agency: Corporation for National and Community Service.
Title: SCP Family Member/Caregiver Follow-up Survey.
OMB Number: None.
Agency Number: None.
Affected Public: Family members/caregivers and comparison group members affiliated with the SCP (at 3- and 6-month follow-up).
Total Respondents: Approximately 544 at 3-month follow-up and approximately 462 at 6-month follow-up.
Frequency: Two times.
Average Time Per Response: 30 minutes.
Estimated Total Burden Hours: 272 hours at 3-month follow-up, and 231 hours at 6-month follow-up.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: This survey is designed to assess the changes in the characteristics of family members/caregivers associated with SCP clients, and comparison group members at 3-month and 6-month follow-up, and to document changes in attitudes toward caregiving, perceived unmet needs of relatives/family members, changes in family member/caregiver well-being, and satisfaction with SCP and SCP-like services received. Changes in health and functional status of SCP clients and comparison group members also will be assessed from family members/caregivers on behalf of SCP clients and comparison group members who respond on behalf of SCP clients/comparison group subjects.

V. Agency Cross-Sectional Survey

Type of Review: New approval.
Agency: Corporation for National and Community Service.
Title: SCP Agency Survey.
OMB Number: None.
Agency Number: None.
Affected Public: Agency supervisors who oversee Senior Companions at their agencies.
Total Respondents: Approximately 160.
Frequency: One time.
Average Time Per Response: 30 minutes.
Estimated Total Burden Hours: 80 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: This survey is designed to document the types of agencies that are affiliated with the SCP, examine the types of roles and activities performed by senior companions and received by agency clients, assess the costs and benefits of having senior companions associated with participating agencies, and to determine agency satisfaction with SCP services. Agency representatives also will be asked to assess the impact of the SCP on the communities that they serve, and to suggest ways in which the SCP could be improved over time.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 11, 1999.
Thomas L. Bryant,
Associate General Counsel.
[FR Doc. 99–15285 Filed 6–15–99; 8:45 am]
BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Application for MSC Afloat Employment; MSC 12310/1; OMB Number; 0703–0014.
Type of Request: Extension.
Number of Respondents: 11,700.
Responses Per Respondent: 1.
Annual Responses: 11,700.
Average Burden Per Response: 2 hours.
Annual Burden Hours: 23,400.
Needs and Uses: This collection of information is used to identify specific knowledge, skills, and abilities, as well as to determine qualifications of merchant marine applicants for positions on Military Sealift Command ships. The associated form is used by the applicant to provide information beyond that inherent in the licenses and documents held by the individual.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 10, 1999.
Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 99–15186 Filed 5–15–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition and Technology).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on July 29, 1999, at the Pentagon.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition and Technology) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. Appendix II, (1994)), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly the meeting will be closed to the public.

DATES: Thursday, July 29, 1999, (8:00 a.m. to 5:30 p.m.).

ADDRESSES: Room 3E869, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Diane Evans, Defense Threat Reduction Agency/AS, 45045 Aviation Drive, Dulles, VA 20166–7517. Phone: (703) 810–4504.

Dated: June 10, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15184 Filed 6–15–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Deadline for Submission of Donation Applications for the ex-FORRESTAL (CV 59)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the deadline of November 26, 1999, for submission of a donation application for the ex-FORRESTAL, located at the Naval Inactive Ship Maintenance Facility, Newport, RI. A donation is anticipated pursuant to 10 U.S.C. Section 7306. Eligible recipients include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) The District of Columbia; or (3) Any not-for-profit or nonprofit entity. Transfer of a vessel under this law shall be made at no cost to the United States Government.

The transferee will be required to maintain the vessel in a condition satisfactory to the Secretary of the Navy as a static museum/memorial. Prospective transferees must submit a comprehensive application addressing their plans for managing the significant financial, technical, environmental and curatorial responsibilities that accompany ships donated under this program.

DATES: Application deadline is November 26, 1999.

ADDRESSES: Applications should be sent to Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Carvalho, Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Ship Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, telephone number (703) 602–5450 or 7098.

(Authority: 10 U.S.C. 7306)

Dated: June 2, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–15202 Filed 6–15–99; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference and public hearing on Wednesday, June 23, 1999. The hearing will be part of the Commission's regular business meeting. Both the conference and business meeting are open to the public and will be held at the Shawnee Inn, One River Road, Shawnee-on-Delaware, Pennsylvania.

The conference among the Commissioners and staff will begin at 9:00 a.m. in the Payett Room and will include a status report on the Flowing Toward the Future workshops and discussions of the Flow Management Technical Advisory Committee's flow needs Basinwide reconnaissance proposal and coordinated drought response.

In addition to the subjects summarized below which are scheduled for public hearing at the 10:30 a.m. business meeting in the Pearsall-Patterson Room, the Commission will also address the following: Minutes of the April 28, 1999 business meeting; announcements; report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; and public dialogue. The Commission will also consider resolutions to: amend the Ground Water Protected Area Regulations for Southeastern Pennsylvania; advertise a Basinwide flow needs reconnaissance request for proposal; amend the Commission's Administrative Manual: By-laws, Management and Personnel to establish flex time schedules for Commission staff; contract for design and construction of a barrier-free restroom; authorize an agreement with USEPA concerning its Energy Star building partnership; and elect Commission offices of Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 1999.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Riverton Country Club D–85–10 RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 6 million gallons (mg)/30 days of water to the applicant's golf course irrigation system from Well Nos. 1A and 2. Commission approval on April 26, 1989 was extended to 10 years. The applicant requests that the total withdrawal from all wells remain limited to 6 mg/30 days. The project is located in Cinnaminson Township, Burlington County, New Jersey.

2. *Green Waltz Water Company D–98–55 CP.* An application for approval of a ground water withdrawal project to supply up to 11.7 mg/30 days of water for bulk water hauling to bottling plants from the redevelopment of existing Well No. 1. The project is located in Washington Township, Northampton County, Pennsylvania.

3. *Dan Schantz Farm & Greenhouses D–99–14.* An application for approval of a ground water withdrawal project to supply up to 3.45 mg/30 days of water to the applicant's nursery from Well Nos. PW–1, PW–3, PW–4, PW–5, PW–

6, PW–7 and PW–8, and to limit the withdrawal from all wells to 3.45 mg/30 days. The project is located in Lower Milford Township, Lehigh County in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Harmony Sand & Gravel, Inc. D–99–16.* An application for approval of a ground water withdrawal project to supply up to 6.5 mg/30 days of water to the applicant's sand and gravel washing operation from Well No. 1, and to limit the withdrawal from all wells to 6.5 mg/30 days. The project is located in White Township, Warren County, New Jersey.

5. *Borough of Bernville D–99–18 CP.* An application to upgrade and expand the applicant's 0.14 million gallons per day (mgd) contact stabilization sewage treatment plant (STP) to a 0.285 mgd high quality secondary treatment plant via the sequencing batch reactor process. The STP will continue to serve only the Borough of Bernville located in Berks County, Pennsylvania. Treated effluent will continue to discharge to Northkill Creek approximately 0.2 miles above its confluence with Tulpehocken Creek.

6. *Penn Estates Utilities, Inc. D–99–20.* An application to upgrade and expand the applicant's 0.15 mgd extended aeration STP to 0.56 mgd to provide advanced secondary treatment for service of growth of the applicant's residential development in Stroud Township, Monroe County, Pennsylvania. Treated effluent will continue to discharge to an unnamed tributary (known locally as Cranberry Creek) of Brodhead Creek.

7. *Maiden Creek Associates (James Saunders) D–99–25.* An application to construct a new 0.06 mgd tertiary level STP to serve West Penn Pines Mobile Home Park. The STP will be located just south of State Route 895, approximately 2.5 miles west of its intersection with State Route 309, in West Penn Township, Schuylkill County, Pennsylvania. The proposed STP effluent will discharge to Lizard Creek, a tributary of the Lehigh River.

8. *Pasteur Merieux Connaught Laboratories, Inc. D–99–27.* A project to expand by rerating the applicant's existing 0.15 mgd industrial wastewater treatment plant (IWTP) to 0.2 mgd to continue to serve its vaccine production facility located in Pocono Township, Monroe County, Pennsylvania. The treated effluent will continue to discharge to Swiftwater Creek via the existing outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who would like to attend the hearing should contact the Secretary at (609) 883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the DRBC may accommodate your needs.

Dated: June 8, 1999.

Susan M. Weisman,

Secretary.

[FR Doc. 99–15261 Filed 6–15–99; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 10, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Assessment of Educational Progress (NAEP) Year 2000 Field Test and Year 2001 Main Assessment of World Geography and U.S. History.

Frequency: Field test 2000, main study 2001.

Reporting and Recordkeeping Hour Burden:

Responses: 9,600.

Burden Hours: 9,870.

Abstract: The Congressionally-mandated 2001 National Assessment of Educational Progress will assess world geography knowledge and knowledge of U.S. history among 4th, 8th and 12th graders, and will provide contextual information to interpret the assessment information relevant background characteristics of the students and their schools and teachers. The clearance package provides all the background questions and supporting information for the field test and the main study. The results of the main study will be used to provide descriptive information about programs and practices in the teaching of history and geography; suggest relationships between characteristics and assessment results; and serve as a basis for monitoring change over time.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian—Reese@ed.gov,* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements,

contact Kathy Axt at 202–708–9902. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Annual Performance Reporting Form for Office of Indian Education (OIE) Local Grantees.
Frequency: Annually.
Reporting and Recordkeeping Hour Burden:
Responses: 1,272.
Burden Hours: 5,088.
Abstract: This data collection will be conducted annually to obtain program and performance information from local education agencies on their project activities. The information collected will assist federal program staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an internet form. Grantees without internet access will complete a paper version of this form.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 202–708–9902. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–15191 Filed 6–15–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 11, 1999.
William E. Burrow,
Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Evaluation of the Eisenhower Regional Consortia Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,562.
Burden Hours: 781.
Abstract: The Evaluation of the Eisenhower Regional Consortia Program is designed to determine the quality and effectiveness of technical assistance and professional development activities that each of the 10 Consortia provide to educators in their respective regions. The evaluation is mandated by Congress and is needed to provide information on the program in time for the reauthorization of the program. In addition, the evaluation is designed to provide information to measure the program's Government Performance and Results Act (GPRA) performance indicators. Respondents to the surveys being submitted for clearance include State Education Agency staff and other state-level educators, as well as local educators who have received Consortia services.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–15247 Filed 6–15–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on July 31, 1998, an arbitration panel rendered a decision in the matter of *Donald R. Williams* v. *North Carolina Department of Human Resources, Division of Services for the Blind (Docket No. R–S/97–9)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Donald R. Williams.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf

(TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper denial by the North Carolina Department of Human Resources, Division of Services for the Blind (the State licensing agency (SLA)), of Mr. Donald R. Williams' request to acquire satellite vending machines at the Kinston Post Office. A summary of the facts is as follows: In September 1994, complainant Donald R. Williams, a blind vendor under the State's Randolph-Sheppard program, spoke with the SLA regarding his desire to have supplemental income in addition to managing a facility at the Caswell Center Canteen. Mr. Williams also informed the SLA that he would be looking for other sites within the city that would support a Randolph-Sheppard vending facility.

In October 1994, complainant contacted the postmaster at the Kinston Post Office concerning the possibility of establishing a Randolph-Sheppard vending facility at that location. The site was then under contract with a private concessionaire.

In April 1996, the concession contract at the Kinston Post Office expired, and the SLA became the new contract holder on July 15, 1996. Subsequently, the SLA determined that the location would be advertised as a separate facility and would not be added as an outside vending location to the Caswell Center Canteen.

Mr. Williams requested and received a State evidentiary fair hearing on this matter on March 3, 1997. On March 26, 1997, the hearing officer affirmed the SLA's decision to advertise and award the Kinston Post Office location to another vendor. The SLA adopted the hearing officer's decision as final agency action, and it is this decision that Mr Williams sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing on this matter was held on April 23, 1998.

Arbitration Panel Decision

The issue before the arbitration panel was whether the North Carolina Department of Human Resources, Division of Services for the Blind, was correct in awarding the Kinston Post Office location to another vendor instead of adding it to Mr. Williams' facility.

The majority of the panel concluded that the SLA is charged with providing vending facility preference to blind persons in need of employment. Specifically, by awarding the Kinston Post Office facility to the current vendor, who was unemployed, the SLA acted in fulfillment of a specific requirement of the Act in 20 U.S.C. 107(a) and implementing regulations in 34 CFR 395.7(a), which states in relevant part that "the State licensing agency shall establish in writing and maintain objective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. * * *"

The majority of the panel further concluded that the SLA and not the complainant has the authority to locate and negotiate facilities at new sites. The SLA also has the inherent authority to determine if the site will be offered as a separate facility and not as a satellite location.

Therefore, the majority of the panel ruled that, upon a thorough review of the documents, testimony, and arguments presented at the hearing, the SLA acted properly in awarding the Kinston Post Office facility to the current vendor.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 10, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–15323 Filed 6–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act

SUMMARY: Notice is hereby given that on July 31, 1998, an arbitration panel rendered a decision in the matter of *Brent Davidson* v. *Texas Commission for the Blind (Docket No. R-S/97–15)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Brent Davidson.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

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http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes in the Federal Register a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper suspension by the Texas Commission for the Blind, the State licensing agency (SLA), of Brent Davidson's vendor's license for 90 days. A summary of the facts is as follows: Complainant Brent Davidson signed an agreement to operate a vending facility located at the Texas Department of Transportation (TDOT) on October 17, 1996. The facility opened for business on October 21, 1996. Problems arose from almost the moment the facility opened. Those problems were: (1) Sales at this facility were only half the anticipated level on the first day and never improved. (2) The TDOT never enforced a coffee agreement and, therefore, complainant's facility never benefitted from the anticipated coffee revenue. (3) The complainant and the SLA disagreed about pricing, equipment, the type of food offered, the number of employees, complainant's attendance, and the hours of operation.

The SLA alleged that Mr. Davidson did not comply with the operator's agreement he signed on October 17, 1996, and the Business Enterprise Program Manual. The SLA alleged further that complainant continued to operate the vending facility in non-compliance with the operator's agreement, the manual, and the State rules and regulations governing the Texas vending facility program. In January 1997, the SLA placed Mr. Davidson on probation for a period of 90 days for violation of the operator's agreement and the manual.

Mr. Davidson requested and received a State evidentiary fair hearing on May 20, 1997. The Administrative Law Judge (ALJ) in her decision dated May 27, 1997, affirmed the SLA's decision to place Mr. Davidson's license on probationary status for 90 days. The SLA adopted the ALJ's decision as final agency action, and it is this decision that Mr. Davidson sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing of this matter was held on April 3, 1998.

Arbitration Panel Decision

The issue before the arbitration panel was whether the Texas Commission for the Blind acted properly and within the scope of its authority under the Randolph-Sheppard Act and implementing regulations in placing Brent Davidson on probation for a period of 90 days.

Because of the illness and non-attendance at the hearing of the panel member appointed by Mr. Davidson, the parties stipulated that the decision and award would be made solely by the neutral Panel Chair.

The Panel Chair concluded that the evidence presented fully supported the decision of the SLA to place Mr. Davidson on probation for 90 days. Specifically, the Panel Chair noted a letter dated January 29, 1997, sent to complainant by the director of the Texas Business Enterprise Program placing Mr. Davidson on probation for 90 days and outlining the areas of non-compliance with the operator's agreement, the manual, and the State rules and regulations. The Panel Chair further noted from the record complainant's acknowledgment of his actions as well as his receipt of the January 29th letter from the SLA and the fact that Mr. Davidson made no attempt to take corrective action.

The Panel Chair ruled that the SLA's decision to place complainant's license on a 90-day probationary status was the most lenient of any alternative available to the SLA. If Mr. Davidson had chosen to comply, the decision provided ample opportunity for complainant to correct by agreement the matters concerning non-compliance of which the SLA complained.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 10, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–15326 Filed 6–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the Federal Register.

DATE: Thursday, July 1, 1999 6:00 p.m.–9:30 p.m.

ADDRESSES: College Hill Library (Front Range Community College), 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will approve the selection of the contractor to provide technical support services for the Community Radiation (ComRad) Program.
2. RFCAB will begin its initial discussion to refine definitions for cleanup phases end-states.
3. The Board will review and approve recommendations on the TRU Waste Environmental Assessment.
4. RFCAB will discuss and approve the process for developing its 2000 Work Plan.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the

Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on June 11, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–15286 Filed 6–15–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos.

DATES: Wednesday, June 30, 1999, 6:00–9:00 p.m. Board Meeting.

ADDRESSES: Jemez Pueblo Elderly Center, 5121 Highway 4, Jemez Pueblo, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 528 35th Street, Los Alamos, NM 87544, Phone: 505–665–5048; FAX 505–665–4872.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public Comment 6:30–7:00 p.m.
2. Committee Reports
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on June 11, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–15287 Filed 6–15–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–74–000]

Alcoa Inc., et al.; Notice of Amendment

June 10, 1999.

Take notice that on June 7, 1999, Alcoa Inc., tendered for filing with the Federal Energy Regulatory Commission, copies of applications with respect to Alcoa Inc.'s proposed reorganization recently filed with the New York Public Service Commission and with the North Carolina Utilities Commission. In addition, is a filing Alcoa Inc. recently filed with the Securities and Exchange Commission (SEC) requesting that the SEC revisit Alcoa Inc.'s status under the Public Utility Holding Company Act. This supplements Alcoa Inc.'s application filed with the Commission on May 14, 1999:

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 204246 in accordance with Rules 211 and 214 of the Commission's Rules of Practice amd Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–15195 Filed 6–15–99; 8:45 am]

BILLING CODE 5717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2021–000]

California Power Exchange Corporation; Notice of Filing

June 10, 1999.

Take notice that on June 8, 1999, the California Power Exchange Corporation (PX) amended its filing in this proceeding.

The PX requests an effective date of July 1, 1999 for the amended filing.

The PX states that it has served a copy of the amended filing on all PX Participants and the parties in this docket. The PX has also posted the filing on its website.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 18, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/

online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15249 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4410–001]

Entergy Services, Inc.; Notice of Filing

June 10, 1999.

Take notice that on June 1, 1999, Entergy Services, Inc., as agent and on behalf of the Entergy Operating Companies (together, Entergy) tendered for filing its compliance filing as required by the letter order issued on May 7, 1999, in Docket No. ER98–4410–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 21, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15248 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–53–000]

FirstEnergy Operating Companies; Notice of Amendment

June 10, 1999.

Take notice that on June 8, 1999, FirstEnergy Operating Companies (First Energy) tendered for filing with the Federal Energy Regulatory Commission, an amendment to their joint application for authorization to transfer jurisdictional facilities under section 203 of the Federal Power Act which was filed on March 19, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15193 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–17–002]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

June 10, 1999.

Take notice that on June 7, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective April 7, 1999:

Substitute Original Sheet No. 22
Substitute Original Sheet No. 60
Substitute Original Sheet No. 71
Substitute Original Sheet No. 72
Substitute Original Sheet No. 73
Substitute Original Sheet No. 75
Substitute Original Sheet No. 176
Substitute Original Sheet No. 177
Substitute Original Sheet No. 179
Substitute Original Sheet No. 192
Substitute Original Sheet No. 195

HIOS asserts that the purpose of the filing is to comply with the Commission's May 3, 1999 letter order in the captioned proceeding in regard that a Delaware LLC has members, not partners.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15196 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–546–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

June 10, 1999.

Take notice that on June 7, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP99–546–000 a request pursuant to sections 157.205, 157.208, and 157.212, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, 157.212) for authorization to construct and operate facilities in Grundy County, Illinois under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

The proposed facilities are to be located between Natural's Gulf Coast Mainline and the nonjurisdictional processing plant owned by Aux Sable Liquid Products, Inc. (Aux Sable) and will be utilized to receive natural gas transported by the Alliance Pipeline L.P. (Alliance) system and nominated for delivery to Natural's Gulf Coast Mainline (Natural's system). As such, these facilities will serve to replace interconnection facilities authorized by the Commission's September 17, 1998 order in Docket Nos. CP97–168, et al.

Certificating the Alliance project. Following processing, Aux Sable will directly deliver the Alliance volumes nominated to Natural's system.

The proposed interconnection facilities will also be capable of delivering gas from Natural's system to the Aux Sable facility (for use as "plant augmentation" volumes) and back to Natural. On a completely interruptible basis, such volumes will be available to Aux Sable to blend with the Alliance volumes it is processing. Such additional volumes will serve the purpose of enhancing, while not changing, the operation of the processing plant. The benefit to Natural will be enhanced pressure for such volumes upon their return along with the Alliance volumes nominated to Natural's system.

The estimated cost of the proposed facilities is $12.4 million. Such cost will be fully reimbursed by Alliance as a contribution-in-aid to Natural.

Natural proposes an approximately 3,000 foot, 30/36-inch line (36-inch line), meter and tap facilities designed to receive up to 1.6 Bcf/day from Alliance, either directly or via the Aux Sable plant; and (2) an approximately 3,000 foot, 24/30-inch line (30-inch line), meter and tap facilities designed to receive or deliver up to 800 Mmcf/day from or to the Aux Sable plant. These facilities will serve the primary function of enabling the delivery of volumes transported by Alliance and, following processing by Aux Sable, nominated for delivery to Natural's system.

The 36-inch line will perform this function most days, but the 30-inch line will also be available. Both lines will be available, on a firm basis and to the exclusion of all other uses, if necessary to effect delivery of the Alliance shippers' volumes to Natural's system. The secondary function of these facilities will be to move, on a completely interruptible basis, plant augmentation volumes from Natural's system into (via the 30-inch line) and out of (via the 36-inch line) the Aux Sable plant.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–15192 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–332–000]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 10, 1999.

Take notice that on June 8, 1999, OkTex Pipeline Company (OkTex), filed that tariff sheets in compliance with the Commission's directives in Order No. 587–K.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that resulted from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its April 2, 1999 Order No. 587–K in Docket No. RM96–1–011. OkTex further states that Order No. 587–K contemplates that OkTex will implement the GISB consensus standards for July 1999 business, and that the tariff sheets therefore reflect an effective date of July 1, 1999.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15197 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC991–71–000]

PanEnergy Lake Charles Generation, Inc., et al.; Notice of Amendment.

June 10, 1999.

Take notice that on June 7, 1999, CMS Generation Co. tendered for filing with the Federal Energy Regulatory Commission. an amendment in the above-referenced proceeding. It is an Assignment of Rights To A Stock Purchase Agreement dated as of May 28, 1999 whereby CMS Generation Co. assigns its rights to purchase stock of PanEnergy Lake Charles Generation, Inc. to its affiliate, Trunkline Field Services Company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15194 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–30–000]

Washington 10 Storage Corporation, Notice of Petition for Adjustment

June 10, 1999.

Take notice that on June 1, 1999, Washington 10 Storage Corporation (Washington 10) filed a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), and Rule 1104 of the Commission's regulations. Washington 10 requests to implement rates for storage service and storage-related transportation service under NGPA section 311 that are comparable to its currently effective cost-based rates for such services on file with the Michigan Public Service Commission (MPSC). Washington 10 submits that the adjustment relief will prevent the inequitable result that otherwise would occur if Washington 10 were required to make a cost-of-service presentation to the Commission under section 284.123(b)(2) to support a petition for rate approval.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in this proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with the provisions of such Subpart K. All such motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register**. Copies of this petition are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15198 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00602; FRL–6082–5]

Data Generation for Pesticide Reregistration; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Data Generation for Pesticide Reregistration," [EPA ICR No.1504, OMB No. 2070–0107]. This ICR involves a collection activity that is currently approved and scheduled to expire on July 31, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00602, must be received on or before August 16, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code 7506C, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 703–305–5454, fax: 703–305–5884, e-mail:. smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you are a pesticide registrant and are required to submit data to support continued registration of your product. EPA must assess health and safety data for all pesticide active ingredients originally registered before November 1, 1984, to determine whether the pesticide use poses unreasonable risks to human health or the environment. Section 4 of the of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), amended, also establishes a process and a schedule for the development of the information EPA needs before these pesticides can be reregistered. The EPA may require registrants to generate and submit data to the Agency when data is needed to determine whether the pesticide is eligible for reregistration (see section 3(c)(2) (B) of FIFRA).

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. You or your business are affected by this action if you have registered a pesticide with the Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr/. You can then easily follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6072 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number OPP–00602, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond to this Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00602, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00602. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the estimates provided, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the EPA and OMB ICR numbers.

IV. What Information Collection Activity or ICR Does This Notice Apply to?

EPA is seeking comments on the following ICR:

Title: Data Generation for Pesticide Reregistration.

ICR numbers: EPA ICR No. 1507.04, OMB No. 2070–0107.

ICR status: This ICR is currently scheduled to expire on July 31, 1999. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the Paperwork Reduction Act, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Under the FIFRA section 4 reregistration program, EPA examines health and safety data for active ingredients in pesticides initially registered before November 1, 1984, and determines whether they are eligible for reregistration. To be eligible, a pesticide must have a substantially complete data base and the Agency must assess all the information/data necessary to determine whether use of a pesticide presents unreasonable risks to man or the environment when used in accordance with its approved label directions. Registrants may be required to generate additional information on human health and environmental effects beyond the information submitted to the Agency when a pesticide was first registered. Prior to 1984, only acute testing or short-term environmental testing was required for many pesticides before registration. However, by 1984, EPA had determined that data on chronic health

effects and long-term environmental effects (e.g., tests for carcinogenicity or mutagenicity, or life cycle tests of organisms exposed to a pesticide) are necessary in many cases and issued updated data requirements for registration.

In addition, all pesticides must meet the safety standards of the Food Quality Protection Act of 1996 (FQPA). FQPA directs the Agency to consider aggregate exposures from dietary and other non-occupational sources when assessing the risks of a chemical. In addition to dietary exposure, such sources as drinking water and residential use need to be considered. EPA must make the statutory determination that the resulting pesticide residues in food or feed will result in a reasonable certainty of no harm to human health from aggregate exposure through dietary, non-occupational, and drinking water routes of exposure as part of the consideration for reregistration. FQPA also directs EPA to consider the cumulative effects of pesticides that share a "common mechanism of toxicity," consider special sensitivities of infants and children, and consider possible endocrine disruptor effects. The Agency is to reassess all existing tolerances (maximum limits for pesticides residues in food or feed) by 2006. EPA is implementing these new FQPA provisions primarily through the reregistration program.

When the need for additional information/data occurs in developing pesticide reregistration decisions, the Office of Pesticide Programs (OPP) will issue a data call-in (DCI) pursuant to FIFRA section 3(c)(2)(B) to obtain data and when necessary, the registrant may be required to certify compliance with data compensation requirements under the authority of FIFRA section 3(c)(2)(D). Agency scientists and analysts integrate the new data received from registrants with the existing data in EPA's files. EPA reviews all relevant information to assess the potential risks associated with the use of the pesticide to make a determination whether the pesticide should be reregistered. If a determination is made that a pesticide is eligible to be reregistered, and the registrant submits acceptable product-specific data and revised labeling, products containing the pesticide shall be reregistered within a specified time period. However, if after a review of the data, it is determined that a pesticide should not be reregistered, the Agency will take appropriate regulatory action.

A record of each study submitted is maintained in the Agency's Pesticide Document Management System (PDMS), and the public may access the PDMS bibliography through the National Pesticides Information Retrieval System (NPIRS). NPIRS supports searches of the PDMS database by chemical, subject, submission date, laboratory, guideline number, and document type. The public may request copies of studies that are non-confidential, through the mechanism of a Freedom of Information Act (FOIA) request.

This information collection program is separate from the information collection program described in the ICR entitled "Data Call in for Special Review Chemicals and Registration Review Program" (OMB No. 2070–0057) implemented pursuant to section 3(g) of FIFRA. The Registration Review Program is a recent amendment to the OMB No. 2070–0057 ICR authorized by the 1996 amendments to FIFRA and requires EPA to establish a procedure for periodic review of all pesticide registrations every 15 years. Similar to the FIFRA section 4 reregistration program, the Registration Review Program directs EPA to use the authority in FIFRA section 3(c)(2)((B) to require pesticide registrants to generate and submit data to the Agency where such data is needed to assess whether registration of an existing pesticide poses unreasonable risk to man or the environment. By the time the reregistration program is completed, the new section 3(g) Registration Review Program should be fully implemented.

Process and Program Status

Section 4 of FIFRA mandates reregistration of all pesticides registered before November 1, 1984, with the goal that these pesticides were to be reregistered by 1997. The reregistration process is divided into in five phases with mandated deadlines.

Phase 1-List active ingredients: FIFRA directs EPA to create a list of the active ingredients used in pesticides registered before November 1, 1984, and requested pesticide registrants to notify EPA of the intent to seek reregistration. EPA created a list that is divided into four categories, Lists A through D.

Phase 2-Declare intent and identify studies: This phase requires pesticide registrants to notify EPA, whether or not they intended to reregister their products; to identify and commit to providing the necessary studies including either making a generic data exemption claim or commitment to generate or share data; and to pay the first installment of the reregistration fee. During this phase, EPA issued guidance for registrants to assist in Phase 2 and Phase 3 responses. Phase 2 was completed in 1990.

Phase 3-Summarize studies: This phase required registrants to submit summaries and reformat acceptable studies, "flag" studies indicating adverse effects, re-commit to satisfying all applicable data requirements, and pay the final installment of the reregistration fee. Phase 3 was completed in October 1990.

Phase 4-EPA review and data call-in: During Phase 4, EPA reviewed all data submitted in Phase 2 and Phase 3 and required registrants to meet any unsatisfactory data requirements within 4 years. This phase was completed in 1993.

Phase 5-Reregistration decisions: Currently, EPA is implementing Phase 5. The Agency is actively reviewing the studies submitted on each active ingredient and determining whether or not the pesticide is eligible for reregistration.

It was OPP's intent to complete all DCI's for necessary information under the ICR approved through June 30, 1999. However, this goal was not met because of workload demands. The chemicals on List A moved directly to Phase 5 because the Agency had substantially reviewed these under the Registration Standard program. Therefore, the data call-in for List A chemicals has been completed and no additional data call-ins are expected unless the submitted data are inadequate or tiered requirements need to be satisfied. For chemicals on lists B, C, and D, data call-ins will not be completed during the current ICR authorization. Once an eligibility decision is made, the Agency will issue a Reregistration Eligibility Document (RED) to the registrant who then must provide product-specific data to EPA within 8 months of receipt of the RED.

Therefore, the Agency seeks a renewal of this ICR because there may be a need to request additional or supplemental data before final reregistration decisions can be made. This re-approval will also allow EPA to continue to use all forms associated with this ICR; e.g., EPA Data Call-In Response Form; EPA Requirements Status and Registrant's Response Form; Certification of Offer to Cost Share in the Development of Data Form (EPA No. 8570–32); and Certification with Respect to Citation of Data (EPA No. 8570–34).

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time

needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Data Generation for Pesticide Reregistration information collection is estimated to average 359.5 hours per an average 111 respondents. The average burden estimates assume that that respondents recieving product specific DCIs have an average of 8.9 products. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 111.

Frequency of response: As needed only when specific data is required.

Estimated total/average number of responses for each respondent: 8.9.

Estimated total annual burden hours: 2,715 to 33,120.

Estimated total annual burden costs: $183,870 to $2,701,872.

VI. Are There Changes in the Estimates from the Last Approval?

Yes. Three factors distinguish this ICR from the previous one. Both the unit test costs and labor rates were updated to reflect more current values. The unit test costs for list "C" and "D" chemicals almost doubled from the prior ICR. Secondly, the data requirements for list "B", "C", and "D" chemicals were revised. Lastly, the anticipated number of cases per year, the number per chemical list and the respondents affected changed from the previous ICR. The previous ICR anticipated an average number of 668 respondents and this ICR estimated a total of 269 respondents over 3 years or 90 per year which is about 60 percent lower.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests.

Dated: June 3, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–14863 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6361–2]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Drinking Water Intake Subcommittee of the Science Advisory Board's (SAB) Executive Committee will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

The Subcommittee will hold two public meetings to review the Agency's report entitled Estimated Per Capita Water Consumption in the United States. The first meeting will be conducted as a public teleconference on Thursday, July 8, 1999, between the hours of 12:00 noon and 2:00 p.m., Eastern Time. The purpose of the first meeting will be to introduce the topic to the Subcommittee, to conduct some preliminary discussions on the report, and to plan for the second meeting which will be held on July 19–20, 1999. The July 8 meeting will be coordinated through a conference call connection in Room 3709 of the Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. For those intending to participate telephonically, the briefing slides used by EPA in its introductory remarks to the Subcommittee can be viewed at the SAB Website (*http://www.epa.gov/sab/*) by July 6, 1999. The Website link to the slides will be contained within the "What's New" sidebar and will be titled "Drinking Water Intake." Additional instructions about how to participate in the conference call can be obtained by calling Ms. Dorothy Clark at (202) 260–6555, and via e-mail at: <clark.dorothy@epa.gov> by July 2, 1999.

The second meeting, a two-day face-to-face meeting to discuss the report in detail and to formulate SAB advice, will be held in the Capital Hill Room of the Embassy Suites Hotel Crystal City, 1300 Jefferson Davis Highway, Arlington, VA 22202, telephone (703) 979–9799, beginning at 8:30 am Monday, July 19, 1999 and ending not later than 5:00 pm Tuesday, July 20, 1999.

Background—Water Consumption Estimates for the United States

EPA has prepared a report providing estimates of per capita water intake in the U.S. based on the USDA 1994–96 Continuing Survey of Food Intake for Individuals (CSFII). Estimates include amounts of direct and indirect water consumption. Direct water consumption is plain water consumed directly as a beverage. Indirect water is water added to foods and beverages during final preparation at home, in schools, or restaurants. In addition, empirical distributions of estimated water consumption were generated by water source and by the respondent demographic and physical characteristics. Water sources include: (1) The community water supply, (2) bottled water, (3) other sources including a household well or rain cistern, or a household or public spring. Physical and demographic characteristics include: age, gender, race, socioeconomic status, geographic region. Estimates were also generated separately for pregnant and lactating women. The distributions of estimated water intake include point estimates of the mean and the following percentiles: 1st, 5th, 10th, 25th, 50th, 75th, 90th, 95th, and 99th. In addition, confidence intervals for the mean and bootstrap intervals for the upper percentiles are provided for the larger subpopulations.

Charge to the Science Advisory Board

The Agency charge to the SAB includes the following questions:

1. The distributions of estimated water intake were generated using standard statistical methodology for surveys with complex designs such as the 1994–96 CSFII. Is the statistical methodology used to generate the estimates appropriate?

2. EPA limited the calculation of confidence intervals about the mean and boot strap intervals for percentiles to the distributions for the larger subpopulations. The complex sample design makes the calculation and interpretation of results for smaller subpopulations difficult if not impossible to calculate and interpret. Is this an appropriate decision?

3. The CSFII survey is based on short-term survey data. Upper percentile estimates may differ for short-term and long-term data because short-term survey data tends to be inherently more variable. Is it appropriate to report upper percentile estimates such as the 99th percentile?

4. Are the data conventions used to identify indirect water appropriate?

5. Do the data support estimates of subpopulation distributions?

6. EPA has provided distributions of estimated water intake for numerous subpopulations. Should any additional subpopulations be added? Should any be excluded? Specify such subpopulations.

7. USDA has identified two types of indirect water in foods. They are:

a. The amount of water in food as consumed.

b. The amount of water used to prepare food.

The EPA water intake report provides estimates of the amount of indirect water in food as consumed. If resources permit, we could expand our report as a future addendum to include estimates of the amount of indirect water used to prepare food. Would this be desirable?

8. Additional water intake estimates associated with types of food may be useful for specific risk-exposure analyses, e.g., cold beverage intake. Such analyses are feasible using the CSFII data. EPA could expand the report as a future addendum if resources permit. Are any such targeted analyses of significant interest at this time?

9. Intrinsic water is the water contained in foods and beverages at the time of market purchase. Intrinsic water includes commercial water (added to food products by food manufacturers) and biological water (found naturally in foods). Intrinsic water is not included in EPA's current analysis. If resources permit, EPA could expand the report as a future addendum to include estimates of intrinsic water. Would this be desirable?

10. What are the scientific limitations to the use of the water consumption estimates provided in this report?

FOR FURTHER INFORMATION: Single copies of the background report for the review can be obtained by contacting either Dr. Julie Du, US EPA, Office of Science and Technolgy, Mail Stop 4304, 401 M Street, SW, Washington, DC, 20460; [telephone: (202) 260–7583] or Ms. Helen Jacobs, US EPA, Office of Science and Technolgy, Mail Stop 4303, 401 M Street, SW, Washington, DC, 20460; [telephone: (202) 260–5412]. Additional information for these meetings, or the agendas for the meetings, can be obtained by contacting Mr. Thomas O. Miller, Designated Federal Officer (DFO) for the Drinking Water Intake Subcommittee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202) 260–5886; by fax at (202) 260–7118 or via e-Mail at: <miller.tom@epa.gov>, or by contacting Ms. Dorothy Clark at (202) 260–6555, by fax at (202) 260–7118, and by e-Mail at: <clark.dorothy@epa.gov>. Anyone wishing to make an oral presentation to the Subcommittee must contact Mr. Miller, in writing (by letter, fax, or E-mail) no later than 12 noon, Thursday, July 1, 1999, in order to be included on the Agenda for the July 8 teleconference meeting and no later than 12 noon, Monday, July 12, 1999 for the July 19–20 meeting. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Subcommittee and the interested public.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 7, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–15272 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34190; FRL–6087–9]

Organophosphate Pesticides: Bensulide and Profenofos; Availability of Revised Risk Assessments and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for two organophosphate pesticides, bensulide and profenofos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos, must be received by EPA on or before August 16, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in

person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply To Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on bensulide and profenofos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established official records for these actions under docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

C. By Telephone

If you need additional information about this action, you may also contact the person identified in the "FOR FURTHER INFORMATION" section.

III. How Can I Respond To This Action?

A. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action is EPA Taking in This Notice?

EPA is making available for public viewing the revised risk assessments and related documents for two organophosphate pesticides, bensulide and profenofos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology.

A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the bensulide and profenofos preliminary risk assessments, which where released to the public August 10, 1998 (63 FR 43175) (FRL–6024–3) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for bensulide and profenofos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemicals specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific bensulide and profenofos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commentors may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commentors may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before August 16, 1999 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 10, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–15282 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30480; FRL–6084–5]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 16, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30480] and the file symbols to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2; 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Robyn Rose	Rm. 910W44, CM #2, 703–308–9581, e-mail: rose.robyn@epa.gov	1921 Jefferson Davis Hwy, Arlington, VA
Susanne Cerrelli	Rm. 910W45, CM #2, 703–308–8077, e-mail: cerrelli.susanne@epa.gov	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 72098–A. Applicant: Taensa, Inc., 26 Sherman Court, P.O. Box 764, Fairfield, CT 06430. Product Name: TAE-022 Technical. Plant Strengthening Agent and Biofungicide. Active ingredient: *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 at 73.3%. Proposed classification/Use: None. For manufacturing purposes only. (R. Rose)

2. File Symbol: 69592–L. Applicant: Agraquest Inc., 1105 Kennedy Place, Davis, CA 95616. Product Name: QST 713 Technical. Microbial Fungicide. Active ingredient: QST 713 strain of dried *Bacillus subtilis* at 5%. Proposed classification/Use: None. For use in

manufacturing or formulating end-use products to control various fungal plant pathogens and terrestrial use. (S. Cerrelli)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30480] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30480]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: June 7, 1999.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–15283 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400142; FRL–6077–9]

Emergency Planning and Community Right-to-Know; Notice of Availability of Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has prepared and is making available several guidance documents to assist industries in understanding their compliance responsibilities in association with section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). One of the documents is an expanded and updated version of the 1997 EPCRA Section 313 Questions and Answers document which provides guidance on commonly asked questions. EPA is also making available a crosswalks document which lists the source of the question and answer and a description of and revisions to the original. Another document EPA is making available is the "Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1998 Version Crosswalks Document" which outlines clarifications made to the current instructions package. In addition to these documents, EPA has updated several industry-specific guidance documents developed for facilities in the industry groups recently added to the list of industries covered under EPCRA section 313. These documents are intended to assist these recently added industries in understanding the requirements under EPCRA section 313 and to help them more easily determine if their facility is likely to have reporting responsibilities under EPCRA section 313.

FOR FURTHER INFORMATION CONTACT: Sara Hisel McCoy, 202–260–7937, e-mail: hisel-mccoy.sara@epa.gov for questions related to the Questions and Answers document, its Crosswalks document or the Forms and Instructions Crosswalks document. For specific information regarding the industry-specific guidance documents, contact Velu Senthil, 202–260–3943, e-mail: senthil.velu@epa.gov. For more information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be interested in this notice if you manufacture, process, or otherwise use any of the chemicals covered by EPCRA section 313. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	Manufacturing, metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products-wholesale, petroleum bulk terminals and plants wholesale, and solvent recovery services.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in these documents. Other types of entities not listed in the table could also be interested. To determine whether your facility would be interested in these documents, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of these documents to a particular entity, consult the appropriate person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of These Documents?

1. *Electronically.* You may obtain electronic copies of these documents from the EPA internet Home Page at http://www.epa.gov. On the Home Page select in the following order: "Offices, Labs and Regions," "Offices," "Office of Prevention, Pesticides and Toxic Substances," "Right-to-Know," and then look up the entry for these documents under "TRI Forms, Reporting Requirements and Guidance." You can also go directly to the "TRI Forms, Reporting Requirements and Guidance" listing at http://www.epa.gov/opptintr/tri.

2. *By mail.* Copies of these documents are also available from the National Center for Environmental Publications and Information (NCEPI), P.O. Box 42419, Cincinnati, OH 45242–2419.

3. *In person or by phone.* If you have any questions or need additional information about these documents, please contact the appropriate technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

II. Additional Documentation and Clarification

A. What Documents are Being Made Available?

EPA is making available the 1998 "Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 Questions and Answers Document," the 1998 "EPCRA Section 313 Questions and Answers Crosswalks Document," and the "Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1998 Version Crosswalks Document." In addition, EPA is making available several updated guidance documents specific to the seven industries recently added to the list of industrial sectors covered by EPCRA section 313 and section 6607 of the Pollution Prevention Act. The titles and document numbers for these six documents are as follows:

- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Metal Mining Facilities" (EPA 745–B–99–001)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Coal Mining Facilities" (EPA 745–B–99–002)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Electricity Generating Facilities" (EPA 745–B–99–003)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for RCRA Subtitle C TSD Facilities and Solvent Recovery Facilities" (EPA 745–B–99–004)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Chemical Distribution Facilities" (EPA 745–B–99–005)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Petroleum Bulk Facilities" (EPA 745–B–99–006)

The revised 1998 "EPCRA Section 313 Questions and Answers Document" and the six new industry guidance documents are effective beginning with the 1999 reporting year. However, to ensure consistency in reporting and the integrity of the data, the Agency would prefer that covered facilities use these documents as guidance for the 1998 reporting year as well.

B. How Has EPA Updated the "EPCRA Section 313 Questions and Answers Document" and What is the "EPCRA Section 313 Questions and Answers Crosswalks Document"?

The revised 1998 "EPCRA Section 313 Questions and Answers Document" assists regulated facilities in complying with the reporting requirements of EPCRA section 313. This updated document presents guidance in the form of answers to many commonly asked questions on compliance with EPCRA section 313 and is intended to help covered facilities understand various issues associated with completing the Form R and the Alternate Threshold Certification Statement (Form A).

In an effort to make the "1998 EPCRA Section 313 Questions and Answers Document" as complete as possible, EPA has added over 150 questions and answers (Q&As) to the updated document. These additional Q&As were derived from: (1) The "EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries"; (2) recent interpretive guidance letters produced by EPA's Toxics Release Inventory Branch on EPCRA section 313; and (3) inquiries by the regulated community from the 1997 spring EPCRA section 313 training sessions. Facilities covered by EPCRA section 313 should review the entire updated document to understand compliance with the regulations.

In addition to adding new Q&As, in some instances EPA edited some of the 1997 Q&As for clarity. To highlight any edits EPA has made between the 1998 Q&As and the original version, EPA has also prepared the 1998 "Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 Questions and Answers Crosswalks Document." This crosswalks document includes the 1998 Q&A number, the source of the Q&A, if there have been any edits other than punctuation, whether the edit was minor or more significant, and if the edits are significant, a rationale for the edit.

In most of the Q&As where EPA made edits, the Agency simply added language to provide a more complete picture of the reporting requirements associated with issues presented in the question. However, there are a few cases in which the answer has been modified from the original. These modifications include:

1. EPA has made revisions to many of the laboratory activities exemption Q&As (see section 2D of the documents or the 1998 Q&A numbers 292 through 314). As made clear in the EPCRA section 313 regulations, for toxic chemicals to be exempted from reporting under the laboratory activities exemption, the activities must take place inside the laboratory (40 CFR 372.38(d)(3)). Some Q&As on this exemption may have been unclear on this point. These Q&As have been modified to clarify that activities must be conducted inside a laboratory to be eligible for this exemption.

2. The answer to Q&A number 189 in the 1997 "EPCRA Section 313 Questions and Answers Document" on the motor vehicle exemption has also been modified in the 1998 "EPCRA Section 313 Questions and Answers Document." In the 1997 Q&A number 189, a covered facility allows motor vehicles from other facilities to come on-site to refuel. In this 1997 Q&A, the facility was instructed to exempt the quantity of the toxic chemicals in the fuel used to refuel the motor vehicles from off-site. However, the activity in the 1997 Q&A number 189 was misidentified as an otherwise use of the toxic chemical. To be consistent with other reporting guidance on this topic, the answer has been changed in the 1998 Q&A number 287 to reflect the fact that the facility is actually processing the toxic chemicals in the gasoline and therefore is not eligible for the motor vehicle exemption.

3. The answer to Q&A number 161 in the 1997 "EPCRA Section 313 Questions and Answers Document" has been modified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 246). In the 1997 Q&A number 161, a facility which has exceeded the threshold for ammonia is instructed to discount the releases and other waste management of ammonia in the quantities of sewage derived from the employees working at the facility under the personal use exemption. However the quantities of ammonia derived from the employee waste have been coincidentally manufactured as a result of the degradation of the waste. Therefore, because only quantities of the toxic chemical that are otherwise used are eligible for the personal use exemption, the quantities of ammonia coincidentally manufactured cannot be exempt under the personal use exemption. The updated 1998 Q&A number 246 (1997 Q&A 161) reflects this more accurate interpretation.

4. The answer to Q&A number 88 in the 1997 "EPCRA Section 313 Questions and Answers Document" has been clarified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 133) to reflect that ammonia produced from the decomposition of animal products used to produce feed is to be counted towards

the manufacturing as well as processing thresholds.

5. In the "EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries" Q&A number 67 (1998 Q&A 171) a facility which receives reusable containers with residual amounts of a toxic chemical adds more toxic chemical to the containers on-site and sends the containers to customers. The answer in the Addendum Q&A directed the facility to consider the residual amounts in these containers towards the facility's processing threshold. Because these residual amounts remain in the original container in which they were first placed, they are not being repackaged. EPA therefore modified the answer in the 1998 Q&A number 171 to indicate that these residual amounts need not be counted towards the facility's processing threshold because they do not meet the definition of processing.

6. The "EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries" Q&A number 92 has been modified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 251) to reflect that while storm water drawn from the environment may qualify for the intake water exemption in 40 CFR 372.38(c)(5), toxic chemicals acquired by storm water after the storm water has run onto and off of facility equipment and buildings are to be considered toward threshold determinations and release and other waste management calculations.

7. The "EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries" Q&A number 48 has been modified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 530) to clarify that although the use of a temporary storage pile may not be considered a reportable release to the land provided certain conditions are met, the volatilizing or leaching of toxic chemicals from the pile is considered reportable releases and is to be reported if the EPCRA section 313 thresholds have been met by the facility for the toxic chemical in the storage pile.

8. The answer to Q&A number 394 in the 1997 "EPCRA Section 313 Questions and Answers Document" has been updated in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 540) to reflect EPA's modified interpretation of the term otherwise use. In the EPCRA section 313 facility expansion rulemaking (62 FR 23834, May 1, 1997) (FRL–5578–3), EPA reinterpreted the term otherwise use to include on-site treatment for destruction, disposal and stabilization of toxic chemicals in materials received from off-site for the purposes of further waste management. This change to the regulations became effective in the 1998 reporting year. The answer to the 1998 Q&A number 540 reflects this change in the regulations.

9. The answer to Q&A number 435 in the 1997 "EPCRA Section 313 Questions and Answers Document" has been edited in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 588) to clarify that although a toxic chemical may not undergo any releases or other waste management activities, a Form R or Form A may still be required if thresholds have been met for the chemical.

10. The Hotline Monthly Report Question from November 1997 was modified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 664) to clarify that a Form R submitted after the submission of a Form A for the same chemical and reporting year is considered a late submission of the Form R and a request to withdraw the previously filed Form A.

C. Why is EPA Updating the New Industry Sector Guidance Documents?

As a result of the final rule to add seven new industrial sectors to EPCRA section 313 reporting (62 FR 32834), EPA has received numerous inquiries from representatives of these newly added industries. In response to these questions, EPA has made several determinations clarifying how activities conducted by these new industries should be considered under EPCRA section 313. EPA would like to provide all facilities with this additional information and is making it available in these documents for use in preparing the first years reports for those industries.

D. What is the "Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1998 Version Crosswalks Document"?

To clarify various reporting issues and to provide additional guidance for the industrial sectors newly regulated under EPCRA section 313 (62 FR 32834), EPA has made some changes to the EPCRA Section 313 Forms and Instructions for the 1998 reporting year. The Agency has received requests from the regulated community to identify what exactly has changed in the instructions. EPA is making available the "Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1998 Version Crosswalks Document" which outlines the areas in the instructions that have been amended to reflect these clarifications.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 8, 1999.

Joseph A. Carra,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–15281 Filed 6–15–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6360–9]

John P. Saad Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to enter into a cost recovery settlement pursuant to section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(g). This administrative settlement would resolve the settling party's liability for past response costs incurred by EPA at the John P. Saad Superfund Site located in Nashville, Tennessee. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor on or before July 16, 1999.

Dated: May 28, 1999.

Anita Davis,

Acting Chief, Program Services Branch; Waste Management Division.

[FR Doc. 99–15275 Filed 6–15–99; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6361–1]

John P. Saad Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to enter into two (2) cost recovery settlements pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9622(h). These administrative settlements would resolve the settling party's liability for past response costs incurred by EPA at the John P. Saad Superfund Site located in Nashville, Tennessee. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate that the proposed settlements are inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor on or before July 16, 1999.

Dated: May 28, 1999.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–15276 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, June 15, 1999, 10:00 a.m., meeting closed to the public. This meeting was cancelled.

DATE & TIME: Tuesday, June 22, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, June 24, 1999 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–13: National Republican Congressional Committee by Allison R. Hayward, Legal Counsel.

Proposed Final Rules and Explanation and Justification on Treatment of Limited Liability Companies Under the Federal Election Campaign Act.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–15474 Filed 6–14–99; 3:34 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–6]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled "Advances to Nonmember Mortgagees."

DATES: Interested persons may submit comments on or before August 16, 1999.

ADDRESSES: Address comments and requests for copies of the information collection to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Senior Financial Analyst, Policy Development and Analysis Division, Office of Policy, Research and Analysis, by telephone at 202/408–2866, by electronic mail at curtisj@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) authorizes the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to certified nonmember mortgagees. *See* 12 U.S.C. 1430b. In order to be certified as a nonmember mortgagee, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. Subpart B of part 935 of the Finance Board's regulations implements the statutory eligibility requirements an applicant must meet in order to be certified as a nonmember mortgagee and establishes uniform review criteria the FHLBanks must use in evaluating applications. *See* 12 CFR 935.20–935.24. More specifically, § 935.22 of the rule implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy the requirements. 12 CFR 935.22. Under § 935.23, the FHLBanks have authority to approve or deny all applications for certification as a nonmember mortgagee, subject to the statutory and regulatory requirements. 12 CFR 935.23. Section 935.23 also permits an applicant to appeal a FHLBank's decision to deny certification to the Finance Board. Section 935.24 of the rule establishes the terms and conditions under which a FHLBank may make advances to a nonmember mortgagee. 12 CFR 935.24. Section 935.24 also imposes on a certified nonmember mortgagee a continuing obligation to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements.

The information collection contained in §§ 935.22 through 935.24 of the rule is necessary to enable, and is used by the FHLBanks to determine whether a respondent satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a nonmember mortgagee eligible to receive FHLBank advances. The Finance Board requires and uses the information collection to determine whether to uphold or overrule a FHLBank's decision to deny nonmember mortgagee certification to an applicant.

The OMB number for the information collection is 3069–005. The OMB clearance for the information collection expires on November 30, 1999.

The likely respondents include applicants for nonmember mortgagee certification and certified nonmember mortgagees.

B. Burden Estimate

The Finance Board estimates the total annual average number of applicants at five, with one response per applicant. The estimate for the average hours per application is ten hours. The estimate for the annual hour burden for applicants is 50 hours (5 applicants × 1 response per applicant × approximately 10 hours).

The Finance Board estimates the total annual average number of certified nonmember mortgagees at 43, with 1 response per mortgagee. The estimate for the average hours per certified nonmember mortgagee response is 0.5 hours. The estimate for the annual hour burden for certified nonmember mortgagees is 21.5 hours (43 certified nonmember mortgagees × 1 response per mortgagee × approximately 0.5 hours).

The Finance Board estimates that the total annual hour burden for all respondents is 71.5 hours (5 applicants × 1 response per applicant × approximately 10 hours + 43 certified nonmember mortgagees × 1 response per mortgagee × approximately 0.5 hours).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

By the Federal Housing Finance Board.

Dated: June 9, 1999.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–15211 Filed 6–15–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-14485) published on page 30521 of the issue for Tuesday, June 8, 1999.

Under the Federal Reserve Bank of Richmond heading, the entry for BB&T Corporation, Winston-Salem, North Carolina, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with Matewan Bancshares, Inc., Williamson, West Virginia, and thereby indirectly acquire Matewan National Bank, Williamson, West Virginia.

In connection with this application, Applicant also has applied to acquire Matewan Bank, FSB, Paintsville, Kentucky, and thereby engage in thrift activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and Matewan Venture Fund, Inc., Williamson, West Virginia, and Hampden Venture Limited, Hampden, West Virginia, and thereby engage in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Comments on this application must be received by July 2, 1999.

Board of Governors of the Federal Reserve System, June 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15212 Filed 6–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. BCB Holding Company, Inc., Theodore, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bay Bank, Theodore, Alabama (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Quincy Bancshares, Inc., Quincy, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Quincy, Quincy, Illinois (in organization).

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Belvedere Capital Partners LLC, San Francisco, California; California Community Financial Institutions Fund Limited Partnership, San Francisco, California; and Placer Capital Co., San Francisco, California; to acquire 100 percent of the voting shares of Placer Savings Bank, Auburn, California.

Board of Governors of the Federal Reserve System, June 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15213 Filed 6–15–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99153]

Cooperative Agreements To Develop National Strategies To Promote Disease Prevention and Health Promotion; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to develop national health promotion and disease prevention

strategies to assist health care organizations, state and local health departments, businesses, and other nonprofit organizations whose mission is to promote prevention, improve health care quality and improve the public's health. This program addresses all priority areas of the "Healthy People 2000".

B. Eligible Applicants

Applications will be accepted from national, nonprofit organizations who provide documented proof of meeting the following criteria in the "Eligibility" section of the application:

1. Be an established tax-exempt organization (i.e., a non-governmental, tax exempt corporation or association whose net earnings in no way accrue to the benefit of private shareholders or individuals). Tax-exempt status may be confirmed by providing a copy of the relevant pages from the Internal Revenue Service's (IRS) most recent list of 501(c)(3) tax exempt organizations or a copy of the current IRS Determination Letter. Proof of tax exempt status must be provided with the application.

2. Have a specific charge from its Articles of Incorporation or Bylaws or a resolution from its governing body or board to operate nationally within the United States and its territories.

3. Have at least three years documented experience in operating and centrally administering a coordinated program for its membership focusing on health and health related issues in the business community.

Note: Pub. L. 04–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 to $500,000 is available in FY 1999 for approximately 1–3 awards. It is expected that the average award will range from approximately $100,000 to $300,000 per award. It is expected that awards will begin on or about September 30, 1999, for a 12 month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by the successful completion of required activities and reports, and by the availability of funds.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement national health disease prevention programs and preventive health models for use by the recipient in providing assistance to a broad range of organizations, including private sector health care organizations, State and local health departments, universities, managed care organizations, and businesses.

b. Collaborate nation-wide with public, private, nonprofit, and academic institutions to promote the goals of prevention.

c. Conduct process and outcome evaluation on all activities.

d. Disseminate information concerning effective prevention activities for health care organizations.

2. CDC Activities

a. Provide technical assistance.

b. Provide up-to-date scientific information concerning prevention activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001)(adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before August 16, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for objective review. (Applicants must request a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of time and date of mailing.)

Late applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria:

1. Organizational Profile, Background and Need (20 points)

a. The extent to which the applicant's existing organizational structure, mission, goals, objectives, activities, and functions are consistent with the purpose of this Program Announcement.

b. The extent to which the applicant clearly describes the need for national preventive health models, demonstrates an understanding of, access to, and the exchange of information, technical assistance and professional consultation to assist health care organizations, State and local health departments, and other organizations whose mission is to promote prevention and improve the public's health.

c. The ability of the applicant's previous history in working with State and local health departments, national private health care organizations, academia and public health to promote prevention programs and its experience in the management and delivery of resources through various mediums.

2. Goals and Objectives (15 points)

a. The extent to which the applicant's goals are clearly documented and objectives are time-phased, specific, measurable, and achievable.

b. The quality and specificity of the applicant's proposed plan to establish and maintain existing partnerships.

3. Project Management and Staffing (10 points)

a. The extent to which the project staff are clearly described, appropriately assigned, and have appropriate skills and experiences in prevention programs.

b. The extent to which the applicant has internal infrastructure and program experience in prevention to carry out objectives.

c. The extent to which the applicant provides details regarding the level of effort and allocation of time for each staff position.

4. Plan of Operation (20 points)

The quality and specificity of the applicant's proposed plan to develop health education models, and the extent to which the proposed activities are realistic and meet the intended purposes of the funding.

5. Evaluation Plan (20 points)

The extent to which the applicant provides a detailed description of the methods to be used to evaluate program

effectiveness, including what will be evaluated and analyzed, who will perform the evaluation and the time-frame.

6. Collaboration (15 points)

The extent to which the applicant documents evidence of collaboration and experience with partners.

7. Budget (Not scored)

The extent to which the budget is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An annual progress report.
2. A financial status report, no more than 90 days after the end of the budget period; and
3. A final financial status and performance report, no more than 90 days after the end of the project period.

The following additional requirements are applicable to the program. For a complete description of each see Addendum 1 in the application package.

AR–5 HIV Program Review Panel Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)2) of the Public Health Service Act (42 U.S.C. 241(a) and 247b(k)2)), as amended.

J. Where To Obtain Additional Information

This and all other CDC Announcements may be found and downloaded from the CDC homepage. Internet address: http://www.cdc.gov (click on funding). To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest, 99153.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99153, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Mailstop E–13, Atlanta, GA 30341–4146; Telephone: (770) 488–2717; E-mail address: jcw6@cdc.gov.

For program technical assistance contact: Nancy Chalmers, M.P.A., Centers for Disease Control and Prevention, Office of Program Planning and Evaluation, 1600 Clifton Road, Mailstop D–24, Atlanta, GA 30333; Telephone: (404) 639–7085; E-mail address: npc1@cdc.gov.

Dated: June 10, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–15218 Filed 6–15–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 22 and 23, 1999, 8 a.m. to 5:30 p.m.

Location: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 22, 1999, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for the correction of myopia with and without astigmatism using laser in-situ keratomileusis (LASIK). The committee will also discuss, make recommendations, and vote on a holmium laser for the correction of hyperopia using laser thermal keratomileusis. On July 23, 1999, the committee will discuss, make recommendations, and vote on a soft acrylic intraocular lens for the visual correction of aphakia after cataract extraction. The committee will also discuss, make recommendations, and vote on a PMA for the correction of myopia with and without astigmatism using LASIK.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 12, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m. on July 22 and 23, 1999. Near the end of the committee deliberations on each PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 12, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 9, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–15183 Filed 6–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–13]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Conditions of Coverage for Organ Procurement Organizations (OPOs) and Supporting Regulations in 42 CFR 486.301–486.325.

Form No.: HCFA–R–13.

Use: An Organ Procurement Organization (OPO) is an entity that performs or coordinates the performance of retrieving, preserving and transporting organs and maintains a system of locating prospective recipients for available organs. OPOs are required to submit accurate data to HCFA concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs. This information collection lays out the conditions for coverage for OPOs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Number of Respondents: 62.

Total Annual Responses: 62.

Total Annual Hours Requested: 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 7, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15207 Filed 6–15–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–131]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Information Collection Requirements in 42 CFR 411.408.

Form No.: HCFA–R–131 (OMB# 0938–0566).

Use: This information will be used by physician's providing written notice to a beneficiary that Medicare is likely to deny payment for a specified service. This information will also be used by Medicare Part B carriers to determine beneficiaries' liability. Section 9332 of the Omnibus Budget Reconciliation Act of 1986, requires physicians "who do not accept payment on an assignment-related basis" to refund to patients any amounts they collect for services denied under section 1862(a)(1) of the Social Security Act, as "not reasonable and necessary for the treatment of illness or injury or to improve the functioning of a malformed body member." Refunds are not required in either of two circumstances. First, a refund is not required if the physician informs the beneficiary, prior to furnishing the service, that Medicare is unlikely to pay for the service and the beneficiary, after being so informed, agrees to pay out of his or her pocket. Second, a refund is not required if the physician did not know, and could not reasonably have been expected to know, that Medicare would not pay for the service. In those cases, the beneficiary is liable for the service.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 237,322.

Total Annual Responses: 925,904.

Total Annual Hours: 115,738.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Date: May 20, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15206 Filed 6–15–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–43]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Conditions of Participation for Portable X-ray suppliers and Supporting Regulations in 42 CFR 486.104, 486.106, and 486.110;

Form No.: HCFA–R–43 (OMB# 0938–0338);

Use: This information is needed to determine if portable X-ray suppliers are in compliance with published health and safety requirements. These requirements are among other requirements classified as conditions of participation or conditions for coverage. These conditions are based on a provision specified in law relating to diagnostic X-ray tests "furnished in a place of residence used as the patient's home," and are designed to ensure that each supplier has a properly trained staff to provide the appropriate type and level of care, as well as, a safe physical environment for patients. HCFA uses these conditions to certify suppliers of portable X-ray services wishing to participate in the Medicare program.

Frequency: Annually;

Affected Public: Business or other for-profit;

Number of Respondents: 670;

Total Annual Responses: 670;

Total Annual Hours: 1,675.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 6, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15208 Filed 6–15–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Young Drivers Intervention Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 30, 1998, pages 71933–71934 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995. unless it displays a currently valid OMB control number.

Proposed Collection

Title: Young Drivers Intervention Study.

Type of Information Collection Request: New.

Need and Use of Information Collection: The purposes of this study are (1) determine the impact of parental actions in monitoring and controlling their adolescents' driving behavior, and (2) test the effectiveness of education in promoting parental restriction of adolescent risky driving behavior. The specific questions addressed in this study include: (1) Are parents' perceptions about driving risks associated with parental restrictions on teen driving? (2) Is a parent-teen driving agreement an effective way of reducing teen-aged risky driving? (3) Is information tailored to the interests and background of the participants more effective than non-tailored information? (4) Do parental restrictions on teen driving reduce traffic citations and crashes among teens?

In each of two states, 4000 parent-teen dyads will be recruited, asked to provide informed consent, and interviewed by telephone. Interviews will occur upon recruitment, at the time of licensure, 6-months post-licensure, and 12-months post-licensure. Parents will be asked about their attitudes and management practices regarding their teens' driving. Teens will be asked about their driving attitudes, practices, and privileges. With the consent of the participants, the driving records for each teen-aged participant will be obtained from the state motor vehicle administration and citations and crashes will be examined 24-months post-licensure.

Parent-teen dyads will be assigned randomly to an information-only group or tailored-education group. Parents and teens in the information-only group will receive standard information on safe driving. Parents and teens in the tailored-education group will receive personalize educational materials in the mail, including a parent-teen driving agreement and an educational videotape.

Frequency of Response: On occasion.

Affected Public: Individuals or households.

Type of Respondents: Teen-aged children and parents. The annual reporting burden is as follows: Estimated number of Respondents: 14134; Estimated Number of Responses per Respondent: 1.33; Average Burden Hours Per Response: .50, and Estimated Total Annual Burden Hours Requested: 9399. The annualized cost to respondents is estimated at: $47,333. There are no capital costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions form the public and affected agencies are invited on one or more or the following points: (1) Whether the

proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques for other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Bruce Simons-Morton Chief, Prevention Research Branch, Division of Epidemiology, Statistics and Prevention Research, National Institutes of Child Health and Human Development, 6100 Executive Blvd, Room 7B05, Bethesda, MD 20852–7510 or call non-toll free number (301) 496–1126 or E-mail your request, including your return address, to Bruce__SimonsMorton@nih.gov.

COMMENT DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before July 16, 1999.

Dated: June 9, 1999.

Michael H. Rosenthal,

Acting Executive Officer, NICHD.

[FR Doc. 99–15224 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Survey of Colorectal Cancer Screening Practices in Health Care Organizations.

SUMMARY: In compliance with the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 30, 1998, Volume 63, No. 229 page 65796 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Survey of Colorectal Cancer Screening Practices in Health Care Organizations. Type of Information Collection Request: New. Need and Use of Information Collection: This study will measure primary care and specialty physician's knowledge, attitudes, and practice patterns related to colorectal cancer screening and diagnostic follow-up. This study also will assess guidelines, policies, and programs to provide or promote colorectal cancer screening within health plans. The purpose of this study is to obtain current, nationally representative data on the physician and health system factors that may influence the use of colorectal cancer screening and diagnostic follow-up for suspected colorectal cancer in community practice. Three questionnaires will be administered by mail, telephone, facsimile, or Internet using national samples of physicians and health plans. Study participants will select their preferred response mode. Study participants will be primary care and specialty physicians with active licenses to practice medicine in the U.S., and the medical directors of health plans listed by the American Association of Health Plans. Burden estimates are as follows:

Questionnaire	Estimated number of respondents	Number of responses per respondent	Average burden hours per response	Estimated total annual burden hours
Primary Care Physicians	1,389	1	0.333	463
Speciality Physicians	1,042	1	0.333	347
Health Plans	323	1	0.333	108
Total				918

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited in one or more of the following points: (a) whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Request for Comments: Written comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs,New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Carrie N. Klabunde, Ph.D., Epidemiologist, National Cancer Institute, EPN 313, 6130 Executive Boulevard, MSC 7344, Bethesda, Maryland 20892–7344, telephone 301–402–3362.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before July 16, 1999.

Dated: June 8, 1999.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 99–15225 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Development of Anti-CD30 Monoclonal Antibody; for the Development of HeFi–1, Cooperative Research and Development Agreement

National Cancer Institute: Development of Anti-CD30 monoclonal antibody: Opportunity for Cooperative Research and Development Agreement (CRADA) for the development of HeFi–1, a murine antibody that targets the CD30 transmembrane receptor expressed on activated B and T lymphocytes and some tumor cells. Development activities will include the humanization and/or chimerization of HeFi–1, followed by the pre-clinical and clinical development of the antibody. In addition, clinical studies of the murine HeFi–1 are also anticipated under this CRADA.

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice for CRADA Opportunity.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to develop a new treatment for CD30 positive tumors including Hodgkin's Disease non-Hodgkin's lymphomas. The CRADA would have an expected duration of four (4) years. The goals of the CRADA include the rapid humanization and/or chimerization of the antibody for clinical trials and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborator will have an option to an exclusive commercialization license in a pre-determined field of use to subject inventions arising under the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to: Dr. Suzanne Frisbie, Technology Development & Commercialization Branch, National Cancer Institute, 6120 Executive Boulevard Suite 450, Rockville, MD 20852 (phone: 301–435–3113, fax: 301–402–2117).

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwrded at any time. Confidential CRADA proposals, preferably two pages or less, must be submitted to the NCI within 30 days from date of this publication. Guidelines for preparing a full CRADA proposal will be communicated shortly thereafter to the respondent who has been selected.

SUPPLEMENTARY INFORMATION:

Technology Available

DHHS scientists at the NCI have developmed a murine monoclonal antibody, HeFi–1, that targets CD30, a 120 kD transmembrane protein from the tumor necrosis receptor family that is expressed on activated B and T cells. In addition, CD30 expression has been detected on Band T cell lymphomas, Epstein-Barr virus-infected lymphoblastoid cells, HIV-associated lymphomas, Reed-Sternberg cells from Hodgkin's Lymphomas, embryonal carcinoma cells and carcinoma cells of the rhino-pharynx (Schmincke's tumor). Expression of either the CD30 receptor of fragments of CD30 has been identified as a negative prognostic sing in Hodgkin's Lymphoma. In vitro experiments have demonstrated that binding of the CD30 ligand can induce cells to proliferate, differentiate or undergo apoptosis, depending on the cell line. The potential usefulness of CD30 as an anti-tumor agent has been established in murine xenograft models. In mice treated with HeFi–1 following injection of Anaplastic Large Cell Lymphoma cells, no evidence of tumor was detected at day 60 in contrast to a median survival of 39 days for control animals. The NCI is interested in developing HeFi–1 as an anti-tumor agent for the treatment of human disease and is soliciting proposals for humanization and/or chimerization of the antibody using standard molecular techniques.

The successful Collaborator must have extensive, documented experience in the humanization and/or chimerization of murine-derived antibodies suitable for use in clinical trials. The product must retain the same or better affinity for binding to CD30 as the original HeFi–1 antibody and the producer cell line must secrete the antibody at a high enough rate to make it cost effective for use in large-scale production. The Collaborator will be responsible for verifying that the humanized and/or chimerized antibody binds the appropriate target protein and the final product must be stable and not aggregate. The NCI will provide the original cell line producing the murine antibody to the Collaborator.

For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid humanization and/or chimerization of the antibody for clinical trails as well as full and timely exploitation of any commercial opportunities.

The role of the National Cancer Institute in this CRADA will include, but not limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with the original cell line producing the murine HeFi–1 antibody.
3. Planning research studies and interpreting research results.
4. Support and sponsorship of clinical trails to evaluate efficacy and safety of product.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise in the development and production of humanized antibodies and in the pre-clinical and clinical development of the antibody.
2. Ability to collaborate with the NCI in the development of and conduct of assays to assure that the final product conforms to the technical requirements for use of the antibody in clinical trials and make all data available to the NCI.
3. Providing technical expertise and/or financial support (e.g. facilities, personnel and expertise) for CRADA-related activities.
4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
7. The willingness to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
8. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions.

9. The ability to obtain licensing or background rights if required for commercialization of the humanized and/or chimerized HeFi–1 antibody. NCI is currently not aware of any relevant patents that would need to be licensed for this CRADA opportunity, however NCI does not warrant that no such patents exist.

Dated: June 3, 1999.

Kathleen Sybert,

Chief, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–15226 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Oncogenes in Cancer Etiology and Progression.

Date: June 25, 1999.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David Irwin, PHD., Research Programs Review Section Chief, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6130 Executive Boulevard, EPN-Room 635E, Rockville, MD 20892–7405, (301) 402–0371.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15227 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Phase III: Trial of Lycopene and Selenium in Prostrate Cancer and Selenium and Vitamin E Chemprevention Trial.

Date: June 30, 1999.

Time: 9 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room 635, Rockville, MD 20852.

Contact Person: Mary C Fletcher, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN—Room 643G, Bethesda, MD 20814, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.939, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15228 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Transdisciplinary Tobacco Use Research Centers.

Date: July 7–9, 1999.

Time: 7 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Gerald G. Lovinger, PHD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–78987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15230 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Population Based Cancer Epidemiology Research Program.

Date: June 29, 1999.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, 6130 Executive Boulevard, Room 640, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PHD., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15234 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

Date: June 28, 1999.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John L. Meyer, PHD., Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15229 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Complementary and Alternative Medicine (NCCAM) Special Emphasis Panel (SEP) meeting.

Name of SEP: NCCAM Special Review Committee.

Date: June 18, 1999.

Time: 8:30 a.m. to 1:00 p.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: John C. Chah, Ph.D., Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, Bethesda, Maryland 20892, Telephone: 301–402–4334.

Purpose/Agenda: To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.213, Research and Training in Alternative Medicine], National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

Note: this notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

[FR Doc. 99–15232 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c0(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: June 30–July 1, 1999.

Time: June 30, 1999, 8 PM to adjournment.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn—Silver Spring, 877 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Valerie L. Prenger, PHD., Scientific Review Administrator, Review Branch, DEA, NHLBI, NIH, Two Rockledge Centre, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15231 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 1999.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jack D. Maser, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–444–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 9, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Jack D. Maser, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–444–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 13, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Laurence R. Stanford, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 14–16, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Laurence R. Stanford, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 19, 1999.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Russell E. Martenson, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 27–28, 1999.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert H. Stretch, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 28, 1999.

Time: 2 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell E. Martenson, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15233 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Communications Support".

Date: July 15–16, 1999.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 9, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 99–15235 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Prevention Services Research Replicating a School-Based Program.

Date: July 28, 1999.

Time: 1 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: William C. Grace, PHD., Deputy Director, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93. 278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 9, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institute of Health.

[FR Doc. 99–15236 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 9, 1999.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Carole L. Jelsema, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group Alcohol and Toxicology Subcommittee 4.

Date: June 14–15, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopal C. Sharma, DVM, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Lung Biology and Pathology Study Section.

Date: June 15–16, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 20007.

Contact Person: George M. Barnas, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7818, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The History Medicine Study Section.

Date: June 15, 1999.

Time: 8:30 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Luigi Giacometti, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 3.

Date: June 15–16, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15, 1999.

Time: 12 PM to 12:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Nursing Research Study Section.

Date: June 16–18, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Metabolism Study Section.

Date: June 16–17, 1999.

Time: 8 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Harborview, 1646 Front Street, San Diego, CA 92101.

Contact Person: Krish Krishnan, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 2.

Date: June 16–17, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada Inn, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rona L. Hirschberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: June 16–17, 1999.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Martin L. Slater, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Epidemiology and Disease Control Subcommittee 1.

Date: June 16–18, 1999.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional, and Cognitive Neuroscience Initial Review Group, Visual Sciences B Study Section.

Date: June 16–17, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Leonard Jakubczak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Nutrition Study Section.

Date: June 16–17, 1999.

Time: 8:30 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Harborview, 1646 Front Street, San Diego, CA 92101.

Contact Person: Sooja K. Kim, PHD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Endocrinology Study Section.

Date: June 16–17, 1999.

Time: 8:30 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Harborview, 1646 Front Street, San Diego, CA 92101.

Contact Person: Syed M. Amir, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Chemical Pathology Study Section.

Date: June 16—18, 1999.

Time: 8:30 AM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Syed Quadri, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 1999.

Time: 1 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Robert Weller, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7848, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17–18, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: Robert Weller, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7848, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Physiological Chemistry Study Section.

Date: June 17–18, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Biophysical Chemistry Study Section.

Date: June 17–18, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 1FCN–7 (01).

Date: June 17–18, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158. MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Human Embryology and Development Subcommittee 1.

Date: June 17–18, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael Knecht, PHD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Initial Review Group, Visual Sciences A Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Respiratory and Applied Physiology Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington Hotel, 1400 M Street NW., Washington, DC 20005–2750.

Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016. sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Molecular and Cellular Biophysics Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel, 1914 Connecticut Ave, NW, Washington, DC 20009.

Contact Person: Nancy Lamontagne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Initial Review Group, Experimental Immunology Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Calbert A. Laing, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Initial Review Group, Allergy and Immunology Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Eugene M. Zimmerman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17–18, 1999.

Time: 8:30 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Initial Review Group, Immunological Sciences Study Section.

Date: June 17–18, 1999.

Time: 8:30AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–1.

Date: June 17–18, 1999.

Time: 8:30AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Carl D. Banner, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Biochemistry Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

Contact Person: Chhanda L. Ganguly, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17, 1999.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 1999.

Time: 8:30AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–9 (22).

Date: June 20–23, 1999.

Time: 6 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Bill Bunnag, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.996, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated; June 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15237 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5. U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, General Medicine B Study Section.

Date: June 15–16, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Shirley Hilden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN 4.

Date: June 16–18, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: St James Preferred Residence, 950 24th Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PHD, Scientific Review Administrator, Integrative, Functional & Cognitive Neuroscience, & Cognitive Neuroscience Study Section 4, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21–22, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Michael Micklin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 1.

Date: June 21–22, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Phillip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Experimental Cardiovascular Sciences Study Section.

Date: June 21–22, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, Bethesda, MD.

Contact Person: Anshumali Chaudhari, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–6.

Date: June 21–22, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Carole L. Jelsema, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Pathology B Study Section.

Date: June 21–23, 1999.

Time: 8 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: City Plaza Downtown Hotel, 210 South Dubuque Street, Iowa City, IA 52240.

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Experimental Virology Study Section.

Date: June 21–22, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Garrett V. Keefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Physical Biochemistry Study Section.

Date: June 21–22, 1999.

Time: 8:30 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, rakhitg@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Radiation Study Section.

Date: June 21–23, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–BDCN–1 (01)s.

Date: June 21–22, 1999.

Time: 8:30 AM to 5 PM

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Joe Marwah, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–BDCN–2 (01).

Date: June 21–22, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Herman Teitelbaum, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21–22, 1999.

Time: 9 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21, 1999.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: A. Hameed Khan, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Orthopedics and Musculoskeletal Study Section.

Date: June 22–23, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Daniel F. McDonald, PHD, Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Pharmacology Study Section.

Date: June 22–23, 1999.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Jeanne N. Ketley, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–5.

Date: June 22–23, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Syed Husain, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 1.

Date: June 22–23, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–8 (56).

Date: June 22–24, 1999.

Time: 7 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Nadarajen A. Vydelingum, PHD, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15238 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1610–00]

Notice of Availability of the Proposed Caliente Management Framework Plan Amendment and Final Environmental Impact Statement for the Management of Desert Tortoise Habitat

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The Proposed Plan Amendment and Final Environmental Impact Statement for the Caliente Management Framework Plan would implement management goals and actions for Bureau of Land Management (BLM)-administered desert tortoise habitat in Lincoln County, Nevada. The Mojave desert tortoise (*Gopherus agassizii*) was listed as a threatened species in 1990, based on declining numbers in some areas of its range. These goals and actions, some of which are recommended in the U.S. Fish and Wildlife Service's approved Desert Tortoise (Mojave Population) Recovery Plan, would assist the recovery and delisting of the desert tortoise in the Northeastern Mojave Recovery Unit. This amendment is required to comply with the Endangered Species Act of 1973 which mandates that all federal agencies conserve and recover listed species within their administrative units. The accompanying Final EIS satisfies the National Environmental Policy Act, which mandates that federal agencies analyze the environmental consequences of major federal actions.

The planning area for this amendment consists of approximately 754,600 acres of public land In southern Lincoln County, administered by the Caliente Field Station, within BLM's Ely Field Office. No private lands would be directly affected by management direction described under the Proposed Action or alternatives. The planning area is located within the Northeastern Mojave Recovery Unit, as defined by the Recovery Plan. The document discusses several alternatives for the protection of desert tortoise habitat and recovery of the species.

The Proposed Plan Amendment may be protested by any person who participated in the planning process, and who has an interest which is or may be adversely affected by the approval of the Proposed Plan Amendment. A protest may raise only those issues which were submitted for the record during the planning process (see 43 CFR 1610.5–2).

All protests must be written and must be postmarked on or before *July 23, 1999* and shall contain the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts of the document being protested.
- A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.
- A concise statement explaining precisely why the Bureau of Land Management, Nevada State Director's decision is wrong.

Upon resolution of any protests, an Approved Plan Amendment and Record of Decision will be issued. The Approved Plan Amendment/Record of Decision will be mailed to all individuals who participated in this planning process and all other interested publics upon their request.

DATES: All written protests must be postmarked no later than July 23, 1999.

ADDRESSES: Protests must be filed with: Director, Bureau of Land Management, Attn. Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240.

Copies of the Proposed Plan Amendment/FEIS may be obtained from the Ely Field Office, HC33 Box 33500, Ely, NV 89301 and the Caliente Field Station, U.S. Highway 93, P.O. Box 237, Caliente, NV 89008.

Public reading copies are available for review at the public libraries of Clark, White Pine and Lincoln Counties, all government document repository libraries and at the following BLM locations:

Office of External Affairs, Main Interior Building, Room 5000, 1849 C Street, NW., Washington, DC.;

Public Room, Nevada State Office, 1340 Financial Blvd., Reno, NV;

The Caliente Field Station and the Ely Field Office at the above addresses.

FOR FURTHER INFORMATION CONTACT: Gene L. Drais, Project Manager at (775) 289–1880 at the Ely Field Office.

Dated: June 4, 1999.

Gene A. Kolkman,

Field Manager.

[FR Doc. 99–15209 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–99–1990–00; CACA–20139 and CACA–22901]

Extending the Public Comment on the Proposed Sand and Gravel Mining Operation, Los Angeles County, CA Until September 13, 1999

AGENCY: Bureau of Land Management, Department of the Interior, Palm Springs—South Coast Field Office, Desert District, CA.

ACTION: Extension of the public comment period until September 13, 1999 for the draft environmental impact statement.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.1(a), notice is hereby given that the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Transit Mixed Concrete (TMC) Company Sand and Gravel Mining Project proposed for construction and operation off of Soledad Canyon Road and State Highway 14, Los Angeles County, California. The project site is within an unincorporated area of the County, north of Soledad Canyon Road, south of Antelope Valley Freeway, and west of Agua Dulce Canyon.

Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing to the contact person listed below. Public reading copies of the Draft EIS are available at the following County of Los Angeles public libraries: Canyon Country Library, 18536 Soledad Canyon Road, Santa Clarita, CA 91351; Newhall Library, 22704 W. Ninth Street, Santa Clarita, CA 91321; Valencia Library, 23743 W. Valencia Boulevard, Santa Clarita, CA 91355.

DATES: Comments must be received in writing to the BLM no later than September 13, 1999.

ADDRESSES: Written comments shall be mailed to the following address: Mr. James G. Kenna, Field Manager, Bureau of Land Management, Palm Springs—South Coast Field Office, 690 W. Garnet Avenue, PO Box 1260, North Palm Springs, California, 92258. Comments may also be submitted by electronic mail (e-mail) to the following address: http://www.ca.blm.gov/palmsprings. The response to comments will be provided in the Final EIS.

SUPPLEMENTARY INFORMATION: TMC plans to mine a total of 83 million tons of materials and produce and sell approximately 56 million tons of Portland cement concrete sand and gravel over a 20-year period. The project plan includes the transport of processed material off-site in trucks as either aggregate product or ready-mixed concrete. All proposed mining and processing operations are located north of Soledad Canyon Road and outside the floodplain of the Santa Clara River and its tributaries. Mining will begin on the south side of a northeast-southwest trending ridge on-site, and progress through four successive excavation cuts. Fill areas for excess natural fines will be established on the south and north sides of the ridge. Reclamation and revegetation will be concurrent with mining operations and measures have been incorporated into project design to minimize erosion, provide watershed control, and protect water quality in the Santa Clara River. A full range of alternatives to the proposed action are considered in the Draft EIS.

The project site is on "split-estate" lands where the surface is privately owned and the minerals are federally owned and administered by the BLM. Thus, the project is also subject to approval of a Surface Mining Permit through preparation of an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act (CEQA). The County of Los Angeles is the lead agency responsible for preparation of the EIR which has been prepared concurrently with the EIS.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Elena Misquez, BLM, Palm Springs—South Coast Field Office, PO Box 1260, North Palm Springs, CA 92258, telephone (760) 251–4804.

Dated: June 8, 1999.

Tim Salt,

District Manager.

[FR Doc. 99–15200 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–1610–00]

Notice of Intent To Conduct a Planning Review and Request for Public Participation Concerning Land Use Planning Decisions for Certain Bureau of Reclamation Withdrawn Lands in Wyoming To Be Restored to Bureau of Land Management Jurisdiction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Seven Bureau of Land Management (BLM) Field Offices in Wyoming are reviewing their land use plans to determine which of the resource and land use planning and management decisions in those plans will apply to the Bureau of Reclamation (BOR) withdrawn lands being restored to BLM jurisdiction. The BOR lands involved total about 310,000 acres and collectively lie within the BLM Cody, Worland, Rawlins, Casper, Rock Springs, Kemmerer, and Pinedale Field Office administrative areas. The public is invited to identify concerns to be addressed in the planning review.

EFFECTIVE DATES: Meeting dates and other public participation activities in the seven BLM Field Office areas will be announced in public notices, the local media, or in letters sent to interested and potentially affected parties. Persons wishing to participate in this planning review and wishing to be placed on mailing lists must notify the appropriate BLM Field Office(s) at the addresses and phone numbers below.

FREEDOM OF INFORMATION ACT CONSIDERATIONS: Public comments submitted for this planning review, including names and street addresses of respondents, will be available for public review and disclosure at the addresses below during regular business hours (7:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT:

Worland and Cody Field Offices:
Bob Ross, Planning Coordinator, BLM, 101 South 23rd Street, P.O. Box 119, Worland, Wyoming 82401–0119, 307–347–5100;

Casper Field Office:
Glen Nebeker, Resource Advisor, BLM, 1701 East E Street, Casper, Wyoming 82601–2167, 307–261–7600;

Rawlins Field Office:
John Spehar, Planning Coordinator, BLM, 1300 North 3rd Street, P.O. Box 2407, Rawlins, Wyoming 82301–2407, 307–328–4200

Rock Springs, Kemmerer, and Pinedale Field Offices:
Renee Dana, Resource Advisor, BLM, 280 Highway 191 North, Rock Springs, Wyoming 82901–3448, 307–352–0256.

SUPPLEMENTARY INFORMATION: The BLM in Wyoming is reviewing the land use planning decisions in the Cody, Grass Creek, Washakie, Great Divide, Platte River, Green River, Kemmerer, and Pinedale Resource Management Plans (RMPs) to determine which of those decisions apply to the BOR withdrawn lands being restored to BLM jurisdiction. The withdrawn lands to be restored, involving parts of the Shoshone, Missouri River Basin, Platte River, and Seedskadee Reclamation Projects, are no longer needed for those reclamation projects.

The Federal Land Policy and Management Act (FLPMA) requires the development of land use plans for the BLM-administered public lands. Accordingly, the BOR withdrawn lands that will be restored to BLM jurisdiction must be incorporated into the BLM RMPs and have planning decisions made for them.

The initial focus of the planning review will be on determining which of the BOR withdrawn lands have undergone sufficient NEPA analysis to adopt the existing RMP decisions that will apply to them and for incorporating those lands into and amending the RMPs. The NEPA analyses documented in the Environmental Impact Statements (EISs) for the RMPs will be reviewed for this determination. When these EISs were prepared, there was no differentiation made between the Federal lands under BOR jurisdiction and the Federal lands under BLM jurisdiction. Therefore, the BOR withdrawn lands were included in the impact analyses. However, the BLM did not include planning decisions for these lands in the BLM RMPs because of lacking jurisdiction to do so.

The withdrawn lands involved in this review are closed to the operation of the

public land laws, including the mining laws. Opening orders, to allow operation of the public land laws and the staking and development of mining claims, will not be published until the BLM RMP decisions are in place for the lands and, if possible, will take place simultaneously with BLM implementing any new withdrawals that may be necessary on any of the lands. There is also a moratorium on leasing Federal minerals on these lands until the review is completed, the amendments to the RMPs are completed and any new withdrawals that may be needed on any of the lands are in place.

The planning and management decisions in the above mentioned RMPs will be reviewed to identify such things as (1) which of the RMP planning and management decisions will apply to the BOR-withdrawn lands that will be restored to BLM jurisdiction; (2) cases where decisions must be deferred, because further analysis is needed before RMP decisions can be applied or made for any of the lands to be restored; (3) whether it may be necessary to pursue new withdrawals on any of the lands to be restored; and (4) what other procedures will be required to amend the RMPs and to incorporate the restored lands and the associated planning and management decisions.

Some of the BOR withdrawals to be terminated are within national forests or on private and State lands and do not involve Federal lands that would be restored to BLM jurisdiction. These lands will not be addressed in the planning review.

Some situations may involve BLM jurisdiction over the Federal mineral estate beneath private or State surface ownership. The planning review will address management of that Federal mineral estate.

Dated: June 10, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–15219 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–09–1420–00]

Notice of Filing of Plat Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on July 8, 1999.

New Mexico Principal Meridian, New Mexico

T. 13 N., R. 34 E., accepted June 7, 1999, Supplemental Plat.

Indian Meridian, Oklahoma

T. 15 N., R. 14 W., accepted June 7, 1999, for Group 75 OK.

T. 4 N., R. 19 W., accepted June 7, 1999, for Group 60 OK.

Sixth Principal Meridian, Kansas

T. 34 S., R. 42 W., accepted June 7, 1999, for Group 25 Kansas.

T. 34 S., R. 43 W., accepted June 7, 1999, for Group 25 Kansas.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: June 8, 1999.

John P. Bennett,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 99–15260 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Connecticut in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Connecticut in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Mashantucket Pequot Tribe and the Mohegan Indian Tribe.

In 1870, human remains representing one individual were donated to the Peabody Museum by Alfred Hersey of Westerly, RI. No known individual was identified. No associated funerary objects are present.

Correspondence from the donor indicates these human remains were "exhumed from a grave in an old burying ground of the Pequot Indians." Although Peabody Museum documentation lists the geographic location of the human remains as "Westerly, Rhode Island" due to the postmark on the collector's correspondence, there is no information that the remains actually came from that location. Based on the copper staining on the human remains, these human remains have been determined to date to the contact/early historic period (post-1614). Consultation evidence presented by representatives of the Mashantucket Pequot Tribe indicates that in about 1870, the Fanning Road cemetery in Ledyard CT, a known historic burial area of the Mashantucket Pequot was looted. The cultural attribution of the burial area given by the donor, combined with the historic date of the human remains, the donation date of the human remains, and the date of looting of the historic Fanning Road burial area of the Mashantucket Pequot indicates that these human remains most likely came from the Fanning Road cemetery.

In 1923, human remains representing two individuals from Stonington, CT were donated to the Peabody Museum from Brown University, RI. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates these human remains were collected on an unknown date by Reverend Frederick Denison. In 1871, Denison donated his collection of Native American cultural material to the Jenks Museum at Brown University. Museum records and copper staining on the human remains indicate the remains were interred sometime during the early historic period or later (post-1614 A.D.). Oral tradition and historic documentation support that the geographic area of Stonington is within

the aboriginal and historic homeland of the Mashantucket Pequot Tribe.

In 1937, human remains representing one individual from Ecclestone Site, Mystic, CT were donated to the Peabody Museum from the Department of Archaeology at Philips Andover Academy in Andover, MA. No known individuals were identified. No associated funerary objects are present.

These human remains were collected in 1922 as part of an expedition by Warren King Moorehead. Museum documentation indicates that Moorehead was specifically investigating Native American burial grounds on this expedition. Museum records indicate the individual was interred sometime during the contact/early historic period (post-1614 A.D.). Oral tradition and historic documentation supports the Ecclestone site as being within the aboriginal and historic homelands of the Mashantucket Pequot Indians.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Mashantucket Pequot Tribe.

In 1937, human remains representing one individual from Norwich, CT were donated to the Peabody Museum from the Department of Archaeology at Philips Andover Academy, Andover, MA. No known individual was identified. No associated funerary objects are present.

These human remains were collected in 1922 as part of an expedition by Warren King Moorehead. Museum documentation indicates Moorehead was specifically investigating Native American burial grounds on this expedition. Museum records indicate this individual was interred sometime during the contact/early historic period (post-1614 A.D.). Oral tradition and historic documentation support the conclusion that the geographic area of Norwich falls within the aboriginal and historic homelands of the Mohegan Indian Tribe.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Mohegan Indian Tribe.

This notice has been sent to officials of the Mashantucket Pequot Tribe and the Mohegan Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138; telephone: (617) 495-2254, before July 16, 1999. Repatriation of the human remains to the Mashantucket Pequot Tribe and the Mohegan Indian Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: June 10, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 99–15254 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR part 872, Abandoned mine reclamation funds, and form OSM–74, Certification of Blasters in Federal program States and on Indian lands, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection packages were previously approved and assigned clearance numbers 1029–0054 for 30 CFR Part 872, and 1029–0083 for the OSM–74 form. This notice describes the nature of the information collection activities and the expected burdens and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 16, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted requests to OMB to renew its approval for the collections of information for 30 CFR part 872, Abandoned mine reclamation funds, and form OSM–74, Certification of Blasters in Federal program States and on Indian lands. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are listed in 30 CFR 872.10, which is 1029–0054; and on the form OSM–74 and in 30 CFR 955.10, which is 1029–0083.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on February 22, 1999 (64 FR 8628). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Abandoned mine reclamation funds, 30 CFR Part 872.

OMB Control Number: 1029–0054.

Summary: 30 CFR 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Title: Certification of blasters in Federal program States and on Indian lands—30 CFR 955.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement to conduct blasting on Indian lands or in Federal primacy States.

Bureau Form Number: OSM–74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent on being certified as blasters in Federal program States and on Indian lands.

Total Annual Responses: 33.

Total Annual Burden Hours: 57.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence, 1029–0054 for 30 CFR Part 872, and 1029–0083 for the OSM–74 form.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240.

Dated: June 11, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–15222 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–278–280 (Review) and 731–TA–347–348 (Review)]

Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand[1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

[1] The investigation numbers are as follows: Brazil is 731–TA–278 (Review), Japan is 731–TA–347 (Review), Korea is 731–TA–279 (Review), Taiwan is 731–TA–280 (Review), and Thailand is 731–TA–348 (Review).

Background

On April 8, 1999, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (64 FR 19196, April 19, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on November 2, 1999, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning

at 9:30 a.m. on December 2, 1999, at the U.S. Internation Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 18, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 23, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 203.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is November 12, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is December 13, 1999. Witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit statement of information pertinent to the subject of the review on or before December 13, 1999. On January 11, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 13, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 10, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15215 Filed 6–15–99; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–841 (Preliminary)]

Certain Non-Frozen Concentrated Apple Juice From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–841 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of concentrated apple juice, other than frozen,[1] provided for in subheading 2009.70.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 22, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 29, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on June 7, 1999, by counsel on behalf of Coloma Frozen Foods, Inc., Coloma, MI; Green Valley Packers, Arvin, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers, Ludington, MI; and Tree Top, Inc., Selah, WA.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

[1] For purposes of this investigation, defined as with a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter, not fortified with vitamins or minerals, unfermented and not containing added spirits.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 28, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than June 23, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 1, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 10, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15216 Filed 6–15–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on May 21, 1999, a proposed Consent Decree in *United States* v. *City of Grand Rapids, Michigan, et. al.*, Civil Action No. 1:99 CV 388, was lodged with the United States District Court for the Western District of Michigan, Southern Division. This consent decree represents a settlement of claims brought by the United States, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, against 53 Settling Defendants for reimbursement of response costs and injunctive relief in connection with the Butterworth No. 2 Landfill Superfund Site ("Site") located in Grand Rapids, Kent County, Michigan.

Under this settlement with the United States, the Settling Defendants will implement most of the remedy for the Site as set forth in the Record of Decision issued by the United States Environmental Protection Agency in March 1992 and as modified by an Explanation of Significant Differences dated October 1998. The decree reserves a portion of the remedial work, which the United States will seek to have non-settlors perform.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Grand Rapids, Michigan, et al.*, D.J. Ref. 90–11–2–145A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Grand Rapids, Michigan, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and the Consent Decree Library, 1120 G Street, NW, 3rd Flood, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $33.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–15204 Filed 6–15–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on June 1, 1999, a proposed Consent Decree in *United States* v. *NationsBank, N.A.* Civil Action No. 1:99–0264–06 was lodged with the United States District Court for the District of South Carolina.

In this action the United States sought the recovery of past costs incurred in response to releases and threatened releases of hazardous substances at the Clearwater Finishing Superfund Site in Clearwater, Aiken County, South Carolina. The Consent Decree represents a settlement with one of the potential responsible parties listed in the Amended Complaint for violations of Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607. Under the Consent Decree, NationsBank, N.A. has agreed to pay the United States $300,000. The United States has incurred approximately $1,182,000.00. The Amended Complaint names three additional parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *NationsBank, N.A.* D.J. Ref. Number 90–11–3–06135.

The proposed Consent Decree may be examined at the Office of the United

States Attorney, for the District of South Carolina, First Union Building, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, at U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–15205 Filed 6–15–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Florida Rock Industries, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in the Middle District of Florida, Jacksonville Division, Civil No. 99–516–CIV–J–20A.

On May 26, 1999, the United States filed a Complaint alleging that the proposed acquisition by Florida Rock of the stock of Harper Bros. and Commercial Testing, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Florida Rock to divest the Alico Road Quarry, Fort Myers, Florida, the Palmdale Sand Mine, Palmdale, Florida, and related assets that it will obtain in connection with the acquisition of Harper Bros. and Testing.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, (202) 514–2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

United States District Court, Middle District of Florida, Jacksonville Division

United States of America, Plaintiff, v. Florida Rock Industries, Inc.; Harper Bros., Inc.; Commercial Testing, Inc.; and Daniel R. Harper, Defendants [Civil No.: 99–516–CIV–J–20A].

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Middle District of Florida.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court, on or before September 15, 1999.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed the Hold Separate Stipulation and Order.

5. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

6. In the event (a) the United States has withdrawn its consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

7. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: May 25, 1999.

For Plaintiff United States

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20530, Telephone: (202) 307–0620, Facsimile: (202) 307–6283.

For Defendant Florida Rock Industries, Inc.

Eugene J. Meigher,

Arent Fox,

1050 Connecticut Avenue, N.W., Washington, D.C. 20036–5339, Telephone: (202) 857–6048, Facsimile: (202) 857–6395.

Lewis S. Lee,

LeBoeuf, Lamb, Greene & MacRae, 50 N. Laura Street, Jacksonville, Florida 32202–3650, Telephone: (904) 630–5322, Facsimile: (904) 353–1673.

For Defendants Harper Bros., Inc., Commercial Testing, Inc. and Daniel R. Harper

Neil Imus,

Vinson & Elkins L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004–1008, Telephone: (202) 639–6675, Facsimile: (202) 639–6604.

Order

Approved for entry and ordered [1] this 27th day of May, 1999, at Jacksonville, Florida.

Harvey E. Schlessinger,

United States District Judge.

United States of America, Plaintiff v. Florida Rock Industries, Inc.; Harper Bros., Inc.; Commercial Testing, Inc.; and Daniel R. Harper, Defendants. [Civil No.: 99–516–Civ–J–20A.]

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties,

[1] Final Judgment and Proposed Final Judgment mean the same thing.

subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Florida Rock" means defendant Florida Rock Industries, Inc., a Florida corporation headquartered in Jacksonville, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Harper Bros." means defendant Harper Bros., Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Testing" means defendant Commercial Testing, Inc., a Florida corporation headquartered in Fort Myers, Florida, and including its successors and assigns, and it subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Daniel R. Harper" means defendant Daniel R. Harper, an individual who resides in Fort Myers, Florida and is the Chairman of the Board and majority stockholder of Harper Bros. and the majority stockholder of Testing.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at an aggregate quarry.

F. "Silica sand" means sand that is naturally occurring and not produced at an aggregate quarry (known as "manufactured sand"). Silica sand is used to produce specific types of ready mix concrete used in Florida Department of Transportation highway projects and commercial construction projects.

G. "Asphalt concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or asphalt oil") with aggregate.

H. "Ready mix concrete" means a building material used in the construction of building, highways, bridges, tunnels, and other projects that is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind. Silica sand is combined with aggregate to produce specific types of ready mix concrete required for certain construction projects.

I. "Southwest Florida" means Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida. The city of Sarasota, Florida is located in Sarasota County, and the city of Fort Myers, Florida is located in Lee County.

J. "Alico Road Quarry" means Florida Rock's Alico Road, Lee County, Florida quarry located at 11840 Alico Road, Fort Myers, Florida that produces aggregate and stone products, encompassing the north and south operations, inclusive of:

1. All rights, titles, and interest, including all leasehold and renewal rights, in the Alico Road Quarry, and related maintenance facilities and administration buildings including, but not limited to, all real property and aggregate and stone products reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of aggregate and stone products at the Alico Road Quarry; and

(2) All intangible assets, including aggregate and stone products reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit records, contracts to supply third parties aggregate and stone products, associated with the Alico Road Quarry.

K. "Palmdale Sand Mine" means Harper Bros.' Palmdale, Glades County, Florida sand mine located at 5200 U.S. 27, Northwest, Palmdale, Florida that produces silica sand, inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Palmdale Sand Mine, and related maintenance facilities and administration buildings including, but not limited to, all real property and silica sand reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, sand washing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of silica sand at the Alico Road Quarry; and

(2) All intangible assets, including silica and sand reserve testing information, technical information, know-how, leases, safety procedures, quality assurance and control procedures, customer lists and credit records, and contracts to supply third parties silica sand associated with the Palmdale Sand Mine.

II. Objectives

The Proposed Judgment filed in this case is meant to ensure Florida Rock's prompt divestitures of the Alico Road Quarry and the Palmadale Sand Mine for the purpose of maintaining viable competitors in the sale of aggregate and silica sand in Southwest Florida to remedy the effects that the United States alleges would otherwise result from Florida Rock's proposed acquisition of Harper Bros. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Alico Road Quarry and the Palmdale Sand Mine that are being divested be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the diverstitute.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Middle District of Florida.

IV. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Florida Rock shall preserve, maintain, and operate the Alico Road Quarry and the Palmdale Sand Mine assets as an independent competitor with management, sales and operations held entirely separate, distinct and apart from those of Florida Rock. Florida Rock shall not coordinate its production, marketing or sale of silica sand and aggregate or stone products with that produced by the Alico Road Quarry and the Palmdale Sand Mine assets. Within thirty (30) days of the entering of this Order, Florida Rock will inform the United States of the steps taken to comply with this provision.

B. Florida Rock shall take all steps necessary to ensure that: (1) The Alico Road Quarry and Palmdale Sand Mine assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the production and sale of silica sand and aggregate and stone products in Southwest Florida; (2) management of the Alico Road Quarry and the Palmdale Sand Mine assets will not be influenced by Florida Rock; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Alico Road Quarry and the Palmdale Sand Mine assets will be kept separate and apart from the aggregate and stone products business of Florida Rock. Florida Rock's influence over the Alico Road Quarry and the Palmdale Sand Mine assets shall be limited to that necessary to carry out Florida Rock's obligations under this

Hold Separate Stipulation and Order and the Final Judgment.

C. Florida Rock shall use all reasonable efforts to maintain and increase sales of silica sand and aggregate and stone products by the Alico Road Quarry and the Palmdale Sand Mine assets, and shall maintain at 1998 or previously approved levels, whichever are higher, promotional, advertising, sales, technical assistance, marketing and merchandising support for silica sand and aggregate and stone products produced or sold by the Alico Road Quarry and the Palmdale Sand Mine assets.

D. Florida Rock shall provide sufficient working capital to maintain the Alico Road Quarry and the Palmdale Sand Mine assets as economically viable, competitive, and ongoing businesses.

E. Florida Rock shall take all steps necessary to ensure that the Alico Road Quarry and the Palmdale Sand Mine assets are fully maintained in operable condition at no lower than their current rated capacity configurations, and shall maintain and adhere to normal repair and maintenance schedules for the Alico Road Quarry and the Palmdale Sand Mine assets.

F. Florida Rock shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Alico Road Quarry and Palmdale Sand Mine assets.

G. Florida Rock shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as every four weeks or every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Alico Road Quarry and Palmdale Sand Mine assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer or terminate, or alter any current employment or salary agreements for any Florida Rock or Harper Bros. employees who (i) on the date of the signing of this Agreement, work at the Alico Road Quarry and Palmdale Sand Mine or (ii) are members of the management committee referenced in Section IV(I) of this Order.

I. Until such time as the Alico Road Quarry and the Palmdale Sand Mine assets are divested, the assets shall be managed by Fred Buckner. Mr. Buckner shall have complete managerial responsibility for the Alico Road Quarry and the Palmdale Sand Mine, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Buckner is unable to perform his duties, Florida Rock shall appoint, subject to the United States' approval, a replacement within ten (10) working days. Should Florida Rock fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Florida Rock shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture contemplated by the Final Judgment or until further Order of the Court.

Dated: May 25, 1999.

For Plaintiff United States:

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20530, Telephone: (202) 307–0620, Facsimile: (202) 307–6283.

For Defendant Florida Rock Industries, Inc.

Eugene J. Meigher, Arent Fox,

1050 Connecticut Avenue, N.W., Washington, D.C. 20036–5339, Telephone: (202) 857–6048, Facsimile: (202) 857–6395.

Lewis S. Lee,

LeBoeuf, Lamb, Greene & MacRae, 50 N. Laura Street, Jacksonville, Florida 32202–3650, Telephone: (904) 630–5322, Facsimile: (904) 353–1673.

For Defendants Harper Bros., Inc., Commercial Testing, Inc. and Daniel R. Harper

Neil Imus,

Vinson & Elkins L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004–1008, Telephone: (202) 639–6675, Facsimile: (202) 639–6604.

Order

Approved for entry and ordered [1] this 27th day of May, 1999, at Jacksonville, Florda.

Harvey E. Schlessinger,

United States District Judge.

United States of America, Plaintiff, v. Florida Rock Industries, Inc., Harper Bros., Inc., Commercial Testing, Inc., and Daniel R. Harper, Defendants. Civil No.: 99–516–CIV–J–2CA.

Proposed Final Judgment

Whereas, plaintiff, the United States of America, and defendants. Florida Rock Industries, Inc. ("Florida Rock"), Harper Bros., Inc. ("Harper Bros."), Commercial Testing, Inc. ("Testing"), and Daniel R. Harper, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein and that this Final Judgment shall settle all claims made by the United States in its Complaint filed on May 26, 1999;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the production and sale of aggregate and silica sand in Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 480 in Florida;

And whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States currently believes that entry of this Final Judgment is in the public interest;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows.

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Florida Rock" means defendant Florida Rock Industries, Inc., a Florida corporation headquartered in Jacksonville, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

[1] Proposed final Judgment and Final Judgment referred to herein are exchangeable.

B. "Harper Bros." means defendant Harper Bros., Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Testing" means defendant Commercial Testing, Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Daniel R. Harper" means defendant Daniel R. Harper, an individual who resides in Fort Myers, Florida, and is the Chairman of the Board and majority stockholder of Harper Bros. and the majority stockholder of Testing.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at an aggregate quarry.

F. "Silica sand" means sand that is naturally occurring and not produced at an aggregate quarry (Known as "manufactured sand"). Silica sand is used to produce specific types of ready mix concrete used in Florida Department of Transportation highway projects and commercial construction projects.

G. "Asphalt concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

H. "Ready mix concrete" means a building material used in the construction of buildings, highways, bridges, tunnels, and other projects that is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind. Silica sand is combined with aggregate to produce specific types of ready mix concrete required for certain construction projects.

I. "Southwest Florida" means Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida. The City of Sarasota, Florida is located in Sarasota County, and the City of Fort Myers, Florida is located in Lee County.

J. "Alico Road Quarry" means Florida Rock's Alico Road, Lee County, Florida quarry located at 11840 Alico Road, Fort Myers, Florida that produces aggregate and stone products, encompassing the north and south operations, inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Alico Road Quarry, and related maintenance facilities and administration buildings including, but not limited to, all real property and aggregate and stone products reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of aggregate and stone products at the Alico Road Quarry; and

(2) All intangible assets, including aggregate and stone products reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties aggregate and stone products, associated with the Alico Road Quarry.

K. "Palmdale Sand Mine" means Harper Bros.' Palmdale, Glades County, Florida sand mine located at 5200 U.S. 27, Northwest, Palmdale, Florida that produces silica sand inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Palmdale Sand Mine, and related maintenance facilities and administration buildings including, but not limited to, all real property and silica sand reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, sand washing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of silica sand at the Palmdale Sand Mine; and

(2) All intangible assets, including silica sand reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties silica sand associated with the Palmdale Sand Mine.

L. "Reserve Assets" means the aggregate reserves leased by Florida Rock located in Lee County Florida, identified as Florida Rock Properties, Inc's properties in the following locations in Lee County, Florida:

(1) West Mining Parcel: The east ½ of Section 33 and the south 1500 feet of the southeast ¼ of Section 28, Township 45 South, Range 26 East, Lee County, Florida (see Area 1 of attached map);

(2) North Mining Parcel: The south 1500 feet of Section 27, Township 45 South, Range 26 East and the northwest ¼ of Section 34, Township 45 South, Range 26 East, Lee County, Florida (see Area 2 of attached map); and

(3) an easement through the north 956,405 feet of Section 4, Township 46 South, Range 26 East, Lee County, Florida.

III. Applicability

A. The provisions of this Final Judgment apply to the defendnats, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of the Alcio Road Quarry and the Palmdale Sand Mine, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Florida Rock is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Alico Road Quarry and the Palmdale Sand Mine to a purchaser or purchasers acceptable to the United States, in its sole discretion.

B. Florida Rock shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible.

C. In accomplishing the divestitures ordered by this Final Judgment, Florida Rock promptly shall make known, by usual and customary means, the availability of the Alico Road Quarry and the Palmdale Sand Mine. Florida Rock shall inform any person an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Florida Rock shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Florida Rock shall make available such information to the United States at the same time that such information is made available to any other person.

D. Florida Rock shall not interfere with any negotiations by any purchaser to employ any Florida Rock or Harper Bros. employee who works at, or whose principal responsibility concerns any

silica sand or aggregate and stone products business that is part of the Palmdale Sand Mine or the Alico Road Quarry assets.

E. As customarily provided as part of a due diligence process, Florida Rock shall permit prospective purchasers of the Alico Road Quarry and the Palmdale Sand Mine to have access to personnel and to make such inspection of these assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that each asset will be operational on the date of sale.

G. Florida Rock shall not take any action, direct or indirect, that will impede in any way the operation of the Alico Road Quarry or the Palmdale Sand Mine.

H. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that there are no known material defects in the environmental, zoning, or other permits pertaining to the operation of these assets, and that Florida Rock with respect to the Alico Road Quarry and the Palmdale Sand Mine will not undertake, directly or indirectly, following the divestiture of these assets, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, whether by Florida Rock or by trustee appointed pursuant to Section V of this Final Judgment, shall include the Alico Road Quarry and the Palmdale Sand Mine and be accomplished by selling or otherwise conveying each asset, or such other assets included by the Trustee under Section V, to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the manufacture and sale of aggregate and stone products and silica sand. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States' sole satisfaction that the purchaser: (1) Has the capability and intent of competing effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; and (3) is not hindered by the terms of any agreement between the purchaser and Florida Rock which gives Florida Rock the ability unreasonably to raise the purchaser's cost, lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to effectively compete in Southwest Florida.

V. Appointment of Trustee

A. In the event that Florida Rock has not divested the Alico Road Quarry or the Palmdale Sand Mine within the time specified in Section IV.A of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States and approved by the Court to effect the divestiture of each such asset not sold. If the Alico Road Quarry has not been sold, the trustee shall have the right, in its sole discretion, to include the Reserve Assets in the sale of the Alico Road Quarry.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Sections V(C) and VIII of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Florida Rock any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Florida Rock shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Florida Rock must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Florida Rock, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Florida Rock and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the assets to be divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of price and terms of the divestiture and the speed with which it is accomplished.

D. Florida Rock shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best effort to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Florida Rock shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidential assurances. Florida Rock shall permit prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expresses an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistant with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

G. The conduct or actions shall be subject to review by the Court upon the application of any party here to.

Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment. Florida Rock or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify Florida Rock. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from Florida Rock, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Florida Rock and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (2) calendar days after the United States has been provided the additional information requested from Florida Rock, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to Florida Rock and the trustee, if there is one, stating whether or not it objects to the proposed divestiture if the United States provides written notice to Florida Rock and the trustee that it does not object, then the divestiture may be consummated, subject only to Florida Rock's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Florida Rock under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Florida Rock shall deliver to the United States an affidavit as to the fact and manner of compliance with sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested; and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Florida Rock has taken to solicit a buyer for any of the assets to be divested and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Florida Rock, including limitations on information, shall be made within (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Florida Rock shall deliver to the United States an affidavit which describes in detail all actions Florida Rock has taken and all steps Florida Rock has implemented on an on-going basis to preserve the Alico Road Quarry and the Palmdale Sand Mine pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Florida Rock's efforts to maintain and operate the Alico Road Quarry and the Palmdale Sand Mine as active competitors, maintain the management, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Florida Rock shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Florida Rock's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Florida Rock shall preserve all records of all efforts made to preserve the Alico Road Quarry and the Palmdale Sand Mine and to effect the ordered divestitures.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Alico Road Quarry and the Palmdale Sand Mine.

IX. Financing

Florida Rock is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

X. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Florida Rock made to its principal offices, shall be permitted:

(1) Access during office hours of Florida Rock to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Florida Rock, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of Florida Rock and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Florida Rock's principal offices, Florida Rock shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Section VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Florida Rock to the United States, Florida Rock represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Florida Rock marks each pertinent page of such material. "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to Florida Rock prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Florida Rock is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Done and ordered this _____ day of _____, 1999, Jacksonville, Florida.

_____

United States District Judge.

United States of America, Plaintiff, v. Florida Rock Industries, Inc.; Harper Bros., Inc.; Commercial Testing, Inc.; and Daniel R. Harper, Defendants. [Civil No. 99–516–CIV–J–20A].

Proposed Final Judgment

Whereas, plaintiff, the United States of America, and defendants, Florida Rock Industries, Inc. ("Florida Rock"), Harper Bros., Inc. ("Harper Bros."), Commercial Testing, Inc. ("Testing"), and Daniel R. Harper, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein and that this Final Judgment shall settle all claims made by the United States in its Complaint filed on May 26, 1999;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the production and sale of aggregate and silica sand in Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 480 in Florida;

And whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States currently believes that entry of this Final Judgment is in the public interest;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Florida Rock" means defendant Florida Rock Industries, Inc., a Florida corporation headquartered in Jacksonville, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Harper Bros." means defendant Harper Bros., Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Testing" means defendant Commercial Testing, Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Daniel R. Harper" means defendant Daniel R. Harper, an individual who resides in Fort Myers, Florida, and is the Chairman of the Board and majority stockholder of Harper Bros. and the majority stockholder of Testing.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at an aggregate quarry.

F. "Silica sand" means sand that is naturally occurring and not produced at an aggregate quarry (known as "manufactured sand"). Silica sand is used to produce specific types of ready mix concrete used in Florida Department of Transportation highway projects and commercial construction projects.

G. "Asphalt concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

H. "Ready mix concrete" means a building material used in the construction of buildings, highways, bridges, tunnels, and other projects that is produced by mixing a cementing

material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind. Silica sand is combine with aggregate to produced specific types of ready mix concrete required for certain construction projects.

I. "Southwest Florida" means Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida. The City of Sarasota, Florida is located in Sarasota County, and the City of Fort Myers, Florida is located in Lee County.

J. "Alico Road Quarry" means Florida Rock's Alico Road, Lee County, Florida quarry located at 11840 Alico Road, Fort Myers, Florida that produces aggregate and stone products, encompassing the north and south operations, inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Alico Road Quarry, and related maintenance facilities and administration buildings including, but not limited to, all real property and aggregate and stone products reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of aggregate and stone products at the Alico Road Quarry; and

(2) All intangible assets, including aggregate and stone products reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties aggregate and stone products, associated with the Alico Road Quarry.

K. "Palmdale Sand Mine" means Harper Bros. Palmdale, Glades County, Florida sand mine located at 5200 U.S. 27, Northwest, Palmdale, Florida that produces silica sand inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Palmdale San Mine, and related maintenance facilities and administration buildings, including, but not limited to, all real property and silica sand reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, and sand washing equipment, power supply equipment, scales, interests, permits assets or improvements related to the production, distribution, and sale of silica sand at the Palmdale Sand Mine; and

(2) All intangible assets, including silica sand reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties silica sand associated with the Palmdale Sand Mine.

L. "Reserve Assets" means the aggregate reserves leased by Florida Rock located in Lee County, Florida, identified as Florida Rock Properties, Inc.'s properties in the following locations in Lee County, Florida:

(1) West Mining Parcel: The east ½ of Section 33 and the south 1500 feet of the southeast ¼ of Section 28, Township 45 South, Range 26 East, Lee County, Florida (see Area 1 of attached map);

(2) North Mining Parcel: The south 1500 feet of Section 27, Township 45 South, Range 26 East and the northwest ¼ of Section 34, Township 45 South, Range 26 East, Lee County, Florida (see Area 2 of attached map); and

(3) An easement through the north 959.405 feet of Section 4, Township 46 South, Range 26 East, Lee County, Florida.

III. Applicability

A. The provision of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of the Alico Road Quarry and the Palmdale Sand Mine, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Florida Rock is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Alico Road Quarry and the Palmdale Sand Mine to a purchaser or purchasers acceptable to the United States, in its sole discretion.

B. Florida Rock shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible.

C. In accomplishing the divestitures ordered by this Final Judgment, Florida Rock promptly shall make known, by usual and customary means, the availability of the Alico Road Quarry and the Palmdale Sand Mine. Florida Rock shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Florida Rock shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Florida Rock shall make available such information to the United States at the same time that such information is made available to any other person.

D. Florida Rock shall not interfere with any negotiations by any purchaser to employ any Florida Rock or Harper Bros. employee who works at, or whose principal responsibility concerns any silica sand or aggregate and stone products business that is part of the Palmdale Sand Mine or the Alico Road Quarry assets.

E. As customarily provided as part of a due diligence process, Florida Rock shall permit prospective purchasers of the Alico Road Quarry and the Palmdale Sand Mine to have access to personnel and to make such inspection of these assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that each asset will be operational on the date of sale.

G. Florida Rock shall not take any action, direct or indirect, that will impede in any way the operation of the Alico Road Quarry or the Palmdale Sand Mine.

H. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that there are no known material defects in the environmental, zoning, or other permits pertaining to the operation of these assets, and that Florida Rock with respect to the Alico Road Quarry and the Palmdale Sand Mine will not undertake, directly or indirectly, following the divestiture of these assets, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

1. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, whether by Florida Rock or by trustees appointed pursuant to Section V of this Final Judgment, shall include the Alico Road Quarry and the Palmdale Sand Mine and be accomplished by selling or otherwise conveying each assets, or such other assets included by the

Trustee under Section V, to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the manufacturer and sale of aggregate and stone products and silica sand. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States' sole satisfaction that the purchasers: (1) Has the capability and intent of competing effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; and (3) is not hindered by the terms of any agreement between the purchaser and Florida Rock which gives Florida Rock the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to effectively compete in Southwest Florida.

V. Appointment of Trustee

A. In the event that Florida Rock has not divested the Alico Road Quarry or the Palmdale Sand Mine within the time specified in Section IV. A of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States and approved by the Court to effect the divestiture of each such asset not sold. If the Alico Road Quarry has not been sold, the trustee shall have the right, in its sole discretion, to include the Reserve Assets in the sale of the Alico Road Quarry.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Sections V(C) and VIII of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Florida Rock any investment bankers, attorneys, or other grants reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountably solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Florida Rock shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Florida Rock must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Florida Rock, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Florida Rock and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the assets to be divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Florida Rock shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best effort to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Florida Rock shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidential assurances. Florida Rock shall permit prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent shall reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expresses an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, or

G. The conduct on actions of the trustee shall be subject to review by the Court upon the application of any party here to.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Florida Rock or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify Florida Rock. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to,

acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from Florida Rock, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Florida Rock and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Florida Rock, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to Florida Rock and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Florida Rock and the trustee that it does not object, then the divestiture may be consummated, subject only to Florida Rock's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Florida Rock under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Florida Rock shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Florida Rock has taken to solicit a buyer for any of the assets to be divested and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Florida Rock, including limitations on information, shall be made within (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Florida Rock shall deliver to the United States an affidavit which describes in detail all actions Florida Rock has taken and all steps Florida Rock has implemented on an on-going basis to preserve the Alico Road Quarry and the Palmdale Sand Mine pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Florida Rock's effort to maintain and operate the Alico Road Quarry and the Palmdale Sand Mine as active competitors, maintain the management, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Florida Rock shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Florida Rock's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Florida Rock shall preserve all records of all efforts made to preserve the Alico Road Quarry and the Palmdale Sand Mine and to effect the ordered divestitures.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Alico Road Quarry and the Palmdale Sand Mine.

IX. Financing

Florida Rock is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

X. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Florida Rock made to its principal offices, shall be permitted:

(1) Access during office hours of Florida Rock to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Florida Rock, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of Florida Rock and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Florida Rock's principal offices, Florida Rock shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Section VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Florida Rock to the United States, Florida Rock represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Florida Rock marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to Florida Rock prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Florida Rock is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

DONE and ORDERED this _____ day of _____ 1999, Jacksonville, Florida.

_____

United States District Judge.

A copy of the tract map can be obtained from the U.S. Department of Justice, Antitrust Division, 202–514–2481.

United States of America, Plaintiff, v. Florida Rock Industries, Inc.; Harper Bros., Inc.; Commercial Testing, Inc.; and Daniel R. Harper, Defendants. [Civil No.: 99–516–CIV–J–20A; Filed: 5/26/99.]

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of The Proceeding

The United States filed a civil antitrust Compliant under section 15 of the Clayton Act, 15 U.S.C. 25, on May 26, 1999, alleging that the proposed acquisition by Florida Rock Industries, Inc. ("Florida Rock") of Harper Bros., Inc. ("Harper Bros.") and Commercial Testing, Inc. ("Testing") pursuant to a letter of intent entered into on May 5, 1999, would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that a combination of two of only three significant competitors in the aggregate and silica sand markets in Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida ("Southwest Florida") would lessen competition in the production and sale of aggregate and silica sand in Southwest Florida. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing Florida Rock from acquiring control of Harper Bros., Testing, and 320 acres of land, or otherwise combining with the businesses of Harper Bros. and Testing; (3) the United States be awarded costs; and (4) other relief as the Court deems just and proper.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Florida Rock to complete its acquisition of Harper Bros., Testing, and 320 acres of land, but require a certain divestiture that will preserve in the Southwest Florida aggregate and silica sand markets. This settlement consists of a Stipulation and Order, a proposed Final Judgment and a Hold Separate Stipulation and Order.

The proposed Final Judgment orders Florida Rock to divest the Florida Rock Alico Road Quarry located in Lee County, Florida, the Harper Bros. Palmdale Sand Mine located in Glades County, Florida, and certain related tangible and intangible assets associated with the facilities. Florida Rock must complete the divestiture of this quarry and related assets within one hundred and eighty (180) calendar days after the date on which the proposed Final Judgment was filed (i.e., May 26, 1999) or within 5 days after notice of the entry of the Final Judgment by the Court, whichever is later, in accordance with the procedure specified therein. If Florida Rock does not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell the assets. If a trustee must undertake to divest the Alico Road Quarry, the trustee has the option of adding certain Florida Rock aggregate reserve parcels that are contiguous to the Alico Road Quarry to the divestiture package.

The Stipulation and Order, proposed Final Judgment and Hold Separate Stipulation and Order require Florida Rock to ensure that the Alico Road Quarry, the Palmdale Sand Mine, and related assets to be divested will be maintained and operated as an independent, ongoing, economically viable and active competitor until the divestitures mandated by the proposed Final Judgment have been accomplished. Final Rock must preserve and maintain the quarry and sand mine to be divested as saleable and economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of Florida Rock's other aggregate and silica sand businesses. Florida Rock will appoint a person to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to The Alleged Violation

A. Florida Rock, Harper Bros., Testing, and the Proposed Transaction

Florida Rock is a Florida corporation with headquarters in Jacksonville, Florida. Florida Rock operates in Florida, Georgia, Virginia, Maryland, Washington, DC, and North Carolina. One of its principal businesses is extracting and selling aggregate and silica sand. Florida Rock is engaged in the business of selling aggregate and silica sand in Southwest Florida. In Lee County, Florida Rock operates the Alico Road Quarry that produces aggregate, and in Glades County, it operates the Witherspoon Sand Mine which produces silica sand. In 1997, Florida Rock had sales of approximately $456 million.

Harper Bros. is a Florida corporation with headquarters in Fort Myers, Florida. One of Harper Bros.' principal business is extracting and processing aggregates and silica sand. Harper Bros. is engaged in the business of selling aggregate and silica sand in Southwest Florida. In Lee County, Harper Bros. operates the Alico Road Mine that produces aggregate, and in Glades County, it operates the Palmdale Sand Mine which produces silica sand. In 1997, Harper Bros. had sales of approximately $44 million.

On July 21, 1998, through a letter of intent that was supplemented on August 26, 1998, Florida Rock agreed to acquire all of the outstanding capital stock of Harper Bros., Testing and 320 acres of land. The letter of intent lapsed on January 2, 1999, and a subsequent letter of intent was entered into by the defendants on May 5, 1999. The purchase price is approximately $87.5 million. This transaction, which would take place in the highly concentrated Southwest Florida aggregate and silica sand industries, precipitated the government's suit.

B. The Transaction's Effects in Southwest Florida

The Complaint alleges that, the production and sale of aggregate and silica sand constitute two distinct lines of commerce, or relevant product markets, for antitrust purposes, and that Southwest Florida constitutes a section of the country, or relevant geographic market. The complaint alleges that the effect of Florida Rock's acquisition may be to lessen competition substantially in the production and sale of aggregate and silica sand in Southwest Florida.

Aggregate is a stone product used to manufacture asphalt concrete and ready mix concrete. Aggregate differs from all other types of stone products in its physical composition, functional characteristics, customary uses, and pricing. It must meet Florida Department of Transportation or American Society of Testing Material's specifications for the specific type of asphalt concrete or ready mix concrete being produced. Manufacturers of asphalt concrete and ready mix concrete in Southwest Florida do not view other types of stone products as good substitutes. The production and sale of aggregate used to manufacture asphalt concrete and ready mix concrete constitutes a line of commerce and a relevant market for antitrust purposes.

Silica sand differs from sand that is manufactured from stone products (manufactured sand is the alternative to silica sand) in its physical composition, functional characteristics, and customary uses. The Florida Department of Transportation requires silica sand to be used in ready mix concrete whenever the ready mix concrete is used as a surface for vehicular traffic. Commercial contractors use silica sand in place of, or in combination with, manufactured sand to manufacture ready mix concrete when superior pumping or finishing qualities are required. Manufacturers of ready mix concrete recognizes silica sand as a distinct product. The production and sale of silica sand used to manufacture specific types of ready mix concrete constitutes a line of commerce and a relevant market for antitrust purposes.

Producers of aggregate and/or silica sand located in or near Southwest Florida sell and compete with each other for sales of aggregate and silica sand in Southwest Florida. Due to high transportation costs and long delivery time, producers of aggregate and/or silica sand not located in or near Southwest Florida do not sell a significant amount of aggregate and/or silica sand for use within Southwest Florida.

The Complaint alleges that Florida Rock's acquisition of Harper Bros. would substantially lessen competition for the production and sale of aggregate and silica sand in Southwest Florida. Actual and potential competition between Florida Rock and Harper Bros. for the production and sale of aggregate and silica sand in Southwest Florida will be eliminated. Florida Rock and Harper Bros. are the largest producers of aggregate in Southwest Florida and have the largest reserves of aggregate in Southwest Florida. Florida Rock accounts for about 44 percent of the aggregate produced in Southwest Florida and Harper Bros. accounts for approximately 24 percent. After the acquisition, the combined entity will control about 68 percent of the Southwest Florida aggregate market. They are two of only three significant producers in Southwest Florida possessing sufficient aggregate reserves that would permit consumers to switch aggregate suppliers if prices increased.

For silica sand, Florida Rock and Harper Bros. are two of only three producers capable of selling silica sand in Southwest Florida. After the acquisition, the combined entity will control approximately 60 percent of the Southwest Florida silica sand market.

The acquisition of Harper Bros. by Florida Rock would create a dominant aggregate and silica sand company in Southwest Florida. In the aggregate market, it would reduce from three to two the number of significant competitors which possess sufficient aggregate reserves that would permit consumers to switch aggregate suppliers if prices were increased. In the silica sand market, the number of competitors would decline from three to two. Florida Rock would have the market power to increase prices for aggregate and silica sand. In addition, the proposed acquisition will facilitate coordinated pricing activity among aggregate and silica sand producers and increase the likelihood of anticompetitive price increases for consumers. Aggregate and silica sand products are only slightly differentiated (if at all), and price is an important dimension of competition. The combination of Florida Rock's and Harper Bros.' Southwest Florida aggregate and silica sand businesses would result in a substantial reduction in competition, increase the risk of coordinated action, and likely result in higher aggregate and silica sand prices.

New entry in Southwest Florida is unlikely to restore the competition lost through Florida Rock's removal of Harper Bros. from the aggregate and silica sand markets. Establishing a new, successful aggregate or silica sand production facility in or near Southwest Florida is difficult, time-consuming and costly. To be cost competitive in Southwest Florida, an aggregate or silica sand production facility must be able to produce large amounts of consistent quality aggregate or silica sand in close proximity to asphalt concrete and/or ready mix concrete plants. Environmental and zoning permits must be obtained to operate an aggregate or silica sand production facility. Federal, state and local environmental provisions and state and local zoning provisions make it very difficult to open an aggregate or silica sand production facility in or near Southwest Florida. Timely and sufficient entry is unlikely to occur in the aggregate or silica sand markets in Southwest Florida to defeat any post-acquisition price increases.

C. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: Competition for the production and sale of aggregate and silica sand in Southwest Florida will be substantially lessened; actual and potential competition between Florida Rock and Harper Bros. in the production and sale of aggregate and silica sand in Southwest Florida will be eliminated; and prices for aggregate and silica sand in Southwest Florida are likely to increase above competitive levels.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the production and sale of aggregate and silica sand in Southwest Florida by placing in independent hands Florida Rock's Alico Rod Quarry which serves the Southwest Florida aggregate market and Harper Bros.' Palmdale Sand Mine which serves the Southwest Florida silica sand market. This would maintain the existing number of suppliers in the two markets. In response to a price increase from Florida Rock, purchasers would be able to turn to other producers of aggregate and silica sand with significant capacity to serve Southwest Florida.

Within one hundred and eighty (180) calendar days after filing the proposed Final Judgment of five (5) days after the entry of the Final Judgment, whichever is later, Florida Rock must divest its Alico Road aggregate quarry, Harper Bros.' Palmdale Sand Mine, and related assets. The Alico Road Quarry and the Palmdale Sand Mine will be sold to a purchaser or purchasers that demonstrates to the sole satisfaction of

the United States that they will be an economically viable and effective competitors, capable of competing effectively in the production and sale of aggregate and/or silica sand in Southwest Florida.

Until the ordered divestiture take place, Florida Rock must take all reasonable steps necessary to accomplish the divestiture and cooperate with any prospective puchaser. If Florida Rock does not accomplish the ordered divestiture within the specified one hundred and eighty (180) calendar days, which may be extended by up to sixty (60) calendar days by the United States in its sole discretion, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustees to complete the divestiture. If a trustee must undertake to divest the Alico Road Quarry, the trustee has the option of adding certain Florida Rock aggregate reserve parcels that are contiguous to the Alico Road Quarry to the divestiture package. Florida Rock must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Florida Rock will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price then available for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the mandated divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth the trustee's efforts to accomplish the divestiture, explain why the divestiture has not been accomplished, and make any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment neither will impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Florida Rock, Harber Bros., Testing, or Daniel Harper.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its contest to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the production and sale of aggregate and silica sand in Southwest Florida that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the prposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). The courts have recognized that the term "'public interest' take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert, denied*, 465 U.S. 1101

(1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trail or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1997–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a Court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United State* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). See also, *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted."[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Executed on: May 25, 1999.

Respectfully submitted,

Frederick H. Parmenter,

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[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975) A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See*, H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cynamid Co.* 719 F.2d at 565.

[3] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, *460* U.S. 1001 (1983) *quoting United States* v. *Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States* v. *Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–13]

Jimmy H. Conway, Jr., M.D.; Grant of Restricted Registration

On January 28, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jimmy Harold Conway, Jr., M.D. (Respondent) of Oklahoma City, Oklahoma, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(2) and (a)(4), for reason that he was convicted of a felony relating to controlled substances and that his registration would be inconsistent with the public interest.

By letter dated February 23, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Oklahoma City, Oklahoma on July 14 and 15, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On December 21, 1998, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted without restrictions. Neither party filed exceptions to Judge Randall's opinion, and on January 26, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the recommended rulings, findings of fact and conclusions of law of the Administrative Law Judge, and adopts in part Judge Randall's recommended decision in this matter. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent graduated from medical school in 1983, and has been in private practice since 1989. He is an orthopedic surgeon specializing primarily in the treatment of shoulder and knee juries, general orthopedics, and sports medicine.

On February 27, 1996, an agent with the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBN) received a complaint from a pharmacist concerning Respondent. The pharmacist had become suspicious of several prescriptions filled at the pharmacy for patient "Jim Conway" for Lorcet, a Schedule III control substance, and Soma, a non-controlled substance

Federally but a Schedule IV controlled substance in Oklahoma. The pharmacist was having trouble verifying the prescriptions with the alleged prescribing physician, and indicated that she had learned that "Jim Conway" was a physician in the Oklahoma City area. A printout from the pharmacy revealed that between June 1, 1995 and February 26, 1996, "Jim Conway" had 13 prescriptions filled at the pharmacy. It was later discovered that the address listed on these prescriptions was the same as Respondent's residence.

Subsequently, the OBN agent visited a number of pharmacies in the Oklahoma City area and seized prescriptions allegedly issued to Respondent by various physicians for approximately 5,973 dosage units of controlled substances.

On March 4, 1996, the OBN agent met with a physician whose name appeared as the prescribing physician on a number of the prescriptions. This physician had been a medical partner with Respondent at Respondent's then-current practice, and had known Respondent socially and professionally since 1979. After reviewing the prescriptions he alleged wrote for Respondent, the physician indicated that he did not write or authorize any of the prescriptions.

That same day, the OBN agent met with another physician whose name appeared as the prescribing physician on a number of the prescriptions. This physician was a then-current partner at Respondent's practice. After reviewing the prescriptions he allegedly wrote for Respondent, the physician also indicated that he did not write or authorize any of the prescriptions. This physician further indicated to the agent that in approximately March 1995, he was told by a pharmacist that Respondent was using his prescription pad to acquire controlled substances. The physician confronted Respondent who admitted forging prescriptions, but told the physician that it was poor judgment on his part; that it was a "one-time" occurrence; and that he would never forge prescriptions again. The physician never reported this incident to any law enforcement authorities.

Also on March 4, 1996, the OBN agent met with Respondent at which time Respondent candidly admitted to the agent that he had forged the prescriptions by using the names and DEA registration numbers of his partners without their knowledge. Respondent attributed his addiction to "frustration over his practice and workload." At that time Respondent was dissatisfied with his medical practice which according to him was mainly a group of doctors that associated with each other professionally, but practiced as individuals. This dissatisfaction caused his stress level to increase.

In the past, Respondent relieved stress by drinking alcohol. In late 1992 or 1993, Respondent began using controlled substances first on the weekends and then also at night. Initially he consumed samples of Lortab and Soma taken from his medical practice. Respondent then began forging prescriptions for drugs such as Lorcet, Ambien, Soma, Xanax and Restoril, by signing the names of his medical partners on the prescriptions. Ultimately, Respondent became addicted to these substances.

While he was addicted to these drugs, Respondent was physically and emotionally withdrawn from the people around him. Although Respondent admitted his addiction to the OBN agent, he stated that "he did not feel the addiction had impaired him in any way during surgery." A colleague testified at the hearing that he did not feel that Respondent was impaired when they would perform surgery together.

At the conclusion of the meeting with the OBN agent on March 4, 1996, Respondent surrendered his state and DEA controlled substance registrations. On March 8, 1996, the Oklahoma Board of State Medical Licensure and Supervision (Board) held an emergency hearing, and on March 29, 1996, issued an Emergency Order immediately suspending Respondent's medical license.

According to Respondent, he felt relieved when confronted by the OBN agent because he knew that at that point he would be able to receive help for his addiction. Within two hours of meeting the OBN agent on March 4, 1996, Respondent admitted himself to a local hospital for detoxification. Respondent readily admitted his addiction to his doctor at the hospital. After five days at the local hospital, Respondent entered a treatment center in a suburb of Chicago. Most patients spend about 12 weeks at the treatment center, however Respondent was released from in-patient treatment after only 8½ weeks. Respondent's success at the treatment center is attributable to the fact that he had already admitted his drug addiction and had accepted that he had a problem before he entered the center.

While at the treatment center, Respondent learned about what constitutes an addiction; how to control and treat his dependence; what causes relapse; and how to prevent it from happening to him. Respondent credibly testified at the hearing that "I have absolutely no desire to return to that lifestyle."

Respondent left the treatment center in May 1996. The treatment center requires program participants to undergo further drug treatment monitoring for at least two years following release from in-patient treatment, since the likelihood of relapse is extremely low after two years. Therefore, Respondent committed to a two-year "contract" with the treatment center which required Respondent to attend Alcoholics Anonymous (AA) meetings and to participate in the Oklahoma Physicians Recovery Program (PRP). This contract expired in May 1998.

After returning to Oklahoma from the treatment center, Respondent entered into a five-year contract with the PRP, which is aimed at supporting the recovery of physicians with addictions. This contract required drug screening two times a week for the first six months, and then weekly random testing for up to two years. After two years, drug screening is completely at random, but once a person is called for a test, he must give a urine sample within four hours. In addition, participants must attend at least three weekly twelve-step meetings, such as AA, and must have a physician to monitor their physical well-being, and a different physician sponsor to help them overcome their addiction. Respondent has compiled with the program requirements and is committed to continuing his participation in the PRP and AA.

In late September 1996, the Board issued an order granting Respondent a medical license subject a five-year probationary term beginning on March 8, 1996. Respondent is required to maintain duplicate, serially numbered controlled substance prescriptions and to make them available to the Board upon request. He is prohibited from authorizing any personnel under his supervisor to issue a prescription, and he may not handle any amphetamines, amphetamine-like substances, aneroxic drugs and/or anabolic steroids. During his probation with the Board, Respondent is required to submit biological fluid specimens upon request, and he is prohibited from prescribing, administering or dispensing any medications for personal use. Respondent is further prohibited from taking any medication unless it is authorized by a physician treating him for a legitimate medical need. Finally, he is required to continue his contract with the treatment center in Chicago.

Subsequently, on October 31, 1996, Respondent pled guilty to two counts of

an eleven-count criminal information charging him with obtaining controlled substances by forged or altered prescriptions, with the remaining counts dismissed pursuant to a plea agreement. Respondent received a four-year deferred sentence and as part of the sentence, Respondent agreed to participate in "drug testing [and] treatment as required by [the] Medical Board," and to participate in 120 hours of community service programs with Alcoholics Anonymous and/or the Fellowship of Christian Athletes.

In November 1996, the OBN granted Respondent a state controlled substance license which was also placed on probation for five years, effective March 8, 1996. The OBN license is subject to the same terms as those imposed by the Board on Respondent's medical license.

Respondent cooperated with authorities throughout the investigation and the subsequent criminal and regulatory proceedings. As of the date of the hearing, Respondent has willingly compiled with all of the terms of his probation and his contracts with the PRP and the treatment center. Respondent's urine screens have all been negative, and he has been "clean" since March 4, 1996.

Respondent is currently a member of a different group medical practice than he was during his addiction. In this practice, Respondent has supportive relationships with the other partners in the practice. The physicians in this practice attend regular "accountability meetings" and the partners are vigilant in monitoring Respondent's behavior. According to Respondent, his stress level is reduced and his job satisfaction is higher, due in part, to his professional support system.

The physician who treated Respondent at the local hospital and is now the medical director of the PRP, testified that a person's active involvement in the recovery process is the best predicator of future performance. Specifically he testified that, "[a]s long as that person is actively involved in an ongoing recovery process, relapse is seldom." According to this physician, the recovery rate for physicians participating in the PRP is approximately 90–95%.

Respondent's wife, the Chief Executive Operating officer of his current practice, and several of his colleagues and friends all testified that if Respondent were to begin abusing controlled substances again, they would recognize the abuse.

At some point during his addiction recovery period, Respondent legitimately ingested narcotics following knee surgery. According to Respondent he had no desire to use additional medication, and he did not relapse as a result of the lawfully prescribed use of this medication.

Respondent's current and potential patients are inconvenienced because Respondent does not have a DEA registration. Patients must wait until another physician is available to prescribe them narcotics to control their pain. Respondent is unable to obtain privileges at a number of hospitals and he cannot participate in many insurance plans without a DEA registration. According to one of the physicians whose name was used by Respondent to forge prescriptions, without a DEA Certificate of Registration, Respondent's "talents * * * cannot be adequately utilized."

As Respondent pointed out, the lack of a DEA registration does not affect his ability to abuse controlled substances, if he chooses to do so. Respondent candidly acknowledged that "[m]y ability to prescribe medicine in no way affects my recovery from addiction in terms of me actually writing a prescription. The way I obtained the medication prior to my treatment was by forgery and I could do that regardless of whether or not I had a DEA number."

Judge Randall found that Respondent exhibited genuine remorse for his actions and has accepted responsibility for his prior conduct.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

Both parties argue that all five factors are relevant in this case in determining the public interest. The Government contends that Respondent's application should be denied in light of the actions by the Board and OBN; Respondent's forging of controlled substance prescriptions for several years; his conviction of two felonies relating to controlled substances; and his untruthful behavior. Respondent, on the other hand, argues that despite his unlawful conduct, he should be granted a DEA Certificate of Registration. In support of his contention, Respondent points out that he is currently authorized to practice medicine and handle controlled substances in Oklahoma; he did not illegally dispense controlled substances to anyone but himself; his deferred sentence is not considered a conviction under state law; he has complied with applicable laws except regarding his own addition; and those in regular contact with him have indicated that he is not a threat to the public health and safety.

As to factor one, it is undisputed that in March 1996, Respondent voluntarily surrendered his state controlled substance license and his medical license was suspended. However it is also undisputed that in September 1996, the Board reinstated Respondent's medical license and in November 1996, the OBN granted Respondent a license to handle controlled substances. Both of these licenses were granted subject to a five-year probationary period and Respondent is therefore still on probation with the Board and OBN. Although state licensure is a prerequisite for a DEA registration, it is not the only factor to be considered.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with laws related to controlled substances, are clearly relevant in determining the public interest in this matter. While it is true that Respondent did not illegally dispense controlled substances to anyone but himself, his conduct was nonetheless egregious. He abused his position as a physician beginning in 1992 or 1993 by taking samples of controlled substances from his medical office for his own personal use. When that was no longer effective, he began forging his medical partners' signatures, and thereby using their DEA registrations, to issue unauthorized prescriptions for his own personal use. There is no question that Respondent violated 21 U.S.C. 843(a)(2) and (a)(3). However, it is also undisputed that Respondent's illegal actions were caused by his addiction to controlled

substances for which he has received extensive treatment.

As to factor three, there is some dispute as to whether Respondent has been convicted of controlled substance related offenses. Respondent pled guilty to two felony charges related to the illegal obtaining of controlled substances, and as a result received a four-year deferred sentence. Respondent argues that this deferred sentence may not be considered a conviction under Oklahoma state law, citing *White* v. *State*, 702 P.2d 1058, 1062 (Okla. Crim. App. 1985). However, DEA has consistently held that a deferred adjudication, following the entry of a guilty plea, is considered a "conviction" for purposes of the Controlled Substances Act. *See Yu–To Hsu, M.D.*, 62 FR 12840 (1997), *Harlan J. Borcherding, D.O.*, 60 FR 28796 (1995); *Mukand Lal Arora, M.D.*, 60 FR 4447 (1995); *Clinton D. Nutt, D.O.*, 55 FR 30992 (1990). Thus for purposes of this factor, Respondent has been convicted of two felony counts relating to controlled substances. However, the Deputy Administrator also recognizes that these convictions were a result of Respondent's addiction to controlled substances, and that he is in the midst of successful recovery efforts from this addition. As Judge Randall noted, "[at]t the present time, the Respondent is halfway through the term of his deferred adjudication and has shown no signs of relapse."

As to factor five, during his addiction, Respondent lied to his colleagues and family about his drug abuse. The Deputy Administrator agrees with Judge Randall that "[a]bsent rehabilitation, such behavior supports the Government's position that the Respondent could pose a threat to the public health and safety of the citizens of Oklahoma."

Judge Randall concluded that the Government made a prima facie case for the denial of Respondent's application for registration. However, she further concluded that it would not be in the public interest to deny the application. The Deputy Administrator agrees. Respondent has accepted responsibility for his prior actions and has shown remorse. He cooperated with law enforcement authorities from the moment he was questioned about the forged prescriptions. He is no longer affiliated with the medical practice that caused the stress which led to his addiction. He has taken affirmative steps toward rehabilitation and is being closely monitored by the Board, the OBN, the PRP, the treatment center, his family and his colleagues. As Judge Randall noted. "the Respondent lives and works in a community dedicated to his recovery and personal growth. This external support system ensures to a high probability that the Respondent will remain free of narcotic and alcoholic substances." Of even greater significance to the Deputy Administrator than this external support system is Respondent's apparent commitment to continuing with his rehabilitative efforts and to living a drug-free life.

Judge Randall recommended that Respondent be granted a DEA registration without restrictions since "[t]he State of Oklahoma and the OBN have implemented substantial and aggressive monitoring procedures to ensure that the Respondent continues to comply with his licensing conditions and to ensure that any possible relapse is immediately detected." Judge Randall further recommended that should the deputy Administrator find that additional monitoring by DEA is necessary, Respondent should be required to file with DEA duplicate copies of the documents being filed with the State of Oklahoma.

The Deputy Administrator agrees with Judge Randall that denial of Respondent's application is not warranted. However, the Deputy Administrator believes that some restrictions on Respondent's registration are necessary to protect the public health and safety in light of Respondent's fairly recent abuse of controlled substances, his forging of prescriptions and his felony convictions.

Therefore, the Deputy Administrator concludes that Respondent's application for registration should granted subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

1. Respondent must maintain his contractual relationship with the Oklahoma Physicians Recovery Program and abide by its recommendations.

2. Respondent shall continue to undergo random urinalysis at his own expense on at least a monthly basis regardless of whether he is released from his probation with the Oklahoma Board and the OBN. He shall forward copies of the results of these tests to the DEA Oklahoma City office.

3. Respondent shall make copies of his prescriptions available to DEA personnel upon request for inspection and copying.

4. Respondent shall notify the DEA Oklahoma City office within 30 days of any change in his employment.

5. Respondent shall consent to periodic inspections by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the November 20, 1996 application for registration submitted by Jimmy Harold Conway, Jr., M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than July 16, 1999.

Dated: June 7, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15189 Filed 6–15–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,985 and TA–W–34,985A]

Bernstein & Sons Shirt Corp., UTICA, MS, and Crystal Springs, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade At of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 9, 1998, applicable to all workers of Bernstein & Sons Shirt Corporation, Utica, Mississippi. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 16140).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at Bernstein & Sons' Crystal Springs, Mississippi facility. The workers are engaged in employment related to the production of men's and women's sport shirts.

Accordingly, the Department is amending the certification to cover workers of Bernstein & Sons Shirt Corporation, Crystal Springs, Mississippi.

The intent of the Department's certification is to include all workers of Bernstein & Sons Shirt Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–34,985 is hereby issued as follows:

All workers of Bernstein & Sons Shirt Corporation, Utica, Mississippi (TA–W–34,985) and Crystal Springs, Mississippi (TA–W–34,985A) who became totally or partially separated from employment on or after September 1, 1997 through November 9, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington DC, this 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15309 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,695]

Fellowes Manufacturing Co., Boone, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 22, 1999, in response to a petition filed by the company on behalf of workers at Fellowes Manufacturing Company, Boone, North Carolina. The workers produce wood CD, video, and cassette racks.

A company official has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15306 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,132]

Guilford Fibers, Inc. Gainesville, GA; Notice of Revised Determination on Reconsideration

On April 23, 1999, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 6, 1999 (64 FR 24419).

The Department initially denied TAA to workers of Guilford Fibers, Inc., Gainesville, Georgia, producing nylon and polyester filament textile yarn because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department obtained more information about imports of like or directly competitive filament textile yarns. According to company officials, inexpensive filament yarns are flooding the U.S. market which has caused the subject firm's parent company to require price reductions from its internal supplier (the subject firm). the subject firm, as an internal supplier to its parent company, could not compete with the price of imported yarns. A review of imports of life or directly competitive articles revealed a significant increase in imports of polyester filament yarns accompanied by a decrease in U.S. production.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with nylon and polyester filament textile yarn, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Gilford Fibers, Inc., Gainesville, Georgia. In accordance with the provisions of the Act, I make the following certification:

All workers of Guilford Fibers, Inc., Gainesville, Georgia who became totally or partially separated from employment on or after October 5, 1997 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 29th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15308 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,159]

International Wire Group, Rolling Prairie, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 3, 1999, in response to a worker petition which was filed on behalf of workers at International Wire Group, Rolling Prairie, Indiana.

All workers of the subject firm are included under an existing certification (TA–W–33,467). Consequently, further investigation in this case would serve no purpose.

Signed in Washington, DC, this 26th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15303 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,438]

Motorola Ceramic Products, Albuquerque, NM; Notice of Negative Determination on Reconsideration

On March 9, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioners presented new evidence that indicated the Department had not fully investigated the subject firm's decision to shift production to an offshore location and the impact of the subsequent imports of RF filters. The notice was published in the **Federal Register** on April 6, 1998 (64 FR 16757).

The Department initially denied TAA to workers of Motorola Ceramics because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of RF filters.

On reconsideration, the Department requested additional information from the subject firm as to its shift in production and subsequent imports of RF filters. Upon further examination, it was revealed that in 1996 the subject firm transferred approximately 85% of the final production stage of RF filters to an offshore facility and the workers affected by that action were certified eligible to apply for Trade Adjustment Assistance (TA–W–32,889). In mid-1997 the subject firm made a strategic business decision to transfer middle production stages offshore. The subject firm now manufactures the middle and final stages at its offshore location and imports final stage production into the U.S. The worker group under this investigation were affected by the latest transfer of production and were primarily engaged in middle production stages of RF filters and not engaged in

the production of articles like or directly competitive with those being imported by the subject firm.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligibility to apply for worker adjustment assistance for workers and former workers of Motorola Ceramics Products, Albuquerque, New Mexico.

Signed at Washington, DC, this 24th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15312 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,881]

Perry & Perry, Inc., Midland, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 22, 1999 in response to a worker petition which was filed on behalf of all workers at Perry & Perry, Incorporated, located in Midland, Texas (TA–W–35,881).

The petitioner has requested that the petition be withdrawn.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15305 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,472]

Tony Lama Boot Co. Justin Boot Company; El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 1999 applicable to all workers of Tony Lama Boot Company located in El Paso, Texas. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16753).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of boots. New information shows that Justin Boot Company is one of four sister firms of Tony Lama Boot Company located in El Passo, Texas. The company also reports that some workers separated from employment at Tony Lama Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Boot Company, also located in El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Tony Lama Boot Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–35,472 is hereby issued as follows:

All workers of Tony Lama Boot Company, Justin Boot Company, El Paso, Texas who became totally or partially separated from employment on or after December 21, 1997 through March 11, 2001 are eligibile to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington DC. This 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15311 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,539]

Wendt Corp., Tonawanda, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 23, 1999, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Wendt Corporation located in Tonawanda, New York, was signed on March 15, 1999, and published in the **Federal Register** on May 11, 1999 (64 FR 25371).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition, filed on behalf of workers of the subject firm in Tonawanda, New York, producing scrap processing equipment was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that Wendt Corporation did not import scrap metal processing equipment. Additionally, the articles produced by workers at the subject plant in Tonawanda, New York, are a customized product not imported into the U.S. in sufficient quantities to contribute importantly to worker separations.

The petitioner also asserts that the company is importing scrap processing equipment. As learned during the investigation, the subject firm acts as an agent/distributor for some foreign producers of scrap processing equipment. That equipment, however, is not like or directly competitive with the articles produced at the workers firm.

The petitioner attributes worker separations at Wendt to an increase in imports of steel scrap into the U.S. This allegation was made by petitioners in their January 11, 1999 petition, and was addressed in the April 19, 1999, TAA eligibility decision. Imports of scrap steel or steel cannot be considered as a basis for worker group certification under the Trade Act of 1974, as amended. The Department limits its investigation to the impact of imports of articles like or directly competitive with the products produced and sold by the workers' firm, which in this case is scrap processing equipment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15310 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,583]

Branch Cheese, Suputo Cheese USA, Branch, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Branch Cheese, Suputo Cheese USA, Branch, Wisconsin. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,583; Branch Cheese, Suputo Cheese USA
Branch, Wisconsin (June 2, 1999)

Signed in Washington, DC, this 3rd day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15318 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02987]

Fashion Enterprises, Jones Apparel Group USA, Inc., El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 26, 1999, applicable to all workers of Fashion Enterprises located in El Paso, Texas. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25373).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of ladies' jackets, skirts and pants. New information received from the company shows that Jones Apparel Group USA, Inc. is the parent firm of Fashion Enterprises located in El Paso, Texas. The company also reports that some workers separated from employment at Fashion Enterprises had their wages reported under a separate unemployment insurance (UI) tax account for Jones Apparel Group USA, Inc. El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Fashion Enterprises who were adversely affected by the shift of production to Mexico.

The amended notice applicable to NAFTA—02987 is hereby issued as follows:

All workers of Fashion Enterprises, Jones Apparel Group USA, Inc., El Paso, Texas who became totally or partially separated from employment on or after February 22, 1998 through April 26, 2001 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance, Office of Trade Adjustment Assistance.

[FR Doc. 99–15307 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03005]

Pegasus Gold Corporation d.b.a. Florida Canyon Mining, Incorporated, Nevada Operations, Spokane, WA; Notice of Termination of Investigation

Pursuant to section 250 of the Trade Act of 1974, an investigation was initiated on March 18, 1999, in response to a petition filed on the same date on behalf of workers at Pegasus Gold Corporation, Spokane, Washington. The workers produce gold dore.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 24th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15316 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02730]

Frenesius Medical Care Renal Product Technologies A/K/A Erika of Texas, McAllen, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on February 22, 1999, applicable to workers of Frenesius Medical Care, Renal Product Technologies located in McAllen, Texas. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22649).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of components for kidney dialysis devices. New information provided to the Department shows that all of the workers at the subject firm have had their wages reported to the unemployment insurance (UI) tax account for Erika of Texas. Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA–02730 is hereby issued as follows:

All workers of the Frenesius Medical Care, Renal Product Technologies, also known as Erika of Texas, McAllen, Texas who became totally or partially separated from employment on or after November 6, 1997 through July 27, 2000, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 20th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15314 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02438A]

Gould Electronics, Inc., Now Known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 as amended (19 U.S.C. 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for NAFTA Adjustment Assistance on September 17, 1998, applicable to workers at Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51607).

At the request of the State agency, the Department reviewed the amended certification for workers of the subject firm. The workers are engaged in the production of electrical fuses. New information shows that Ga-Tek, Inc. is the parent firm of Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas and is "now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group", El Paso, Texas. The company reports that some workers separated from employment at Gould Electronics, Inc., Circuit Protection Group had their wages reported under a separate unemployment insurance (UI) tax account for Ga-Tek, Inc., now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas.

The intent of the Department's certification is to include all workers of Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group adversely affected by increased imports from Mexico.

The amended notice applicable to NAFTA—02438A is hereby issued as follows:

All workers of Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas who became totally or partially separated from employment on or after May 20, 1997 through July 7, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15313 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03120]

International Wire Group, Rolling Prairie, IN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 23, 1999, on behalf of workers at International Wire Group, Rolling Prairie, Indiana.

Workers at the International Wire Group, Rolling Prairie, Indiana are covered under an existing certification, NAFTA–1700.

Consequently, further investigation in this case would serve no purpose.

Signed in Washington, DC, this 26th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15315 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03158]

Jahmpasa, USA, Vass, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 28, 1999, in response to a petition filed on behalf of workers at Jahmpasa, USA, located in Vass, North Carolina (NAFTA–03158).

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (NAFTA–03140).

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15317 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02821]

Tony Lama Boot Co., Justin Boot Co., El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 11, 1999, applicable to all workers of Tony Lama Boot Company located in El Paso, Texas. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22649).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of boots. New information shows that Justin Boot Company is one of four sister firms of Tony Lama Boot Company located in El Paso, Texas. The company also reports that some workers separated from employment at Tony Lama Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Boot Company, also located in El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Tony Lama Boot Company who were adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–02821 is hereby issued as follows:

All workers of Tony Lama Boot Company, Justin Boot Company, El Paso, Texas, who

became totally or partially separated from employment on or after December 28, 1997 through March 11, 2001 are eligible to apply for NAFTA–TA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15304 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of meeting.

SUMMARY: The Metalworking Fluids Standards Advisory Committee (MWFSAC), established under section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Washington, DC on Wednesday, July 7, Thursday, July 8 and Friday, July 9, 1999.

DATES: The meeting will be held July 7, 1999 from 10 a.m. to 6 p.m.; on July 8 from 8 a.m. to 5 p.m.; and on July 9 from 8 a.m. to 3 p.m.

ADDRESSES: The Committee will meet at the Capital Hilton Hotel, 16th & K Streets, NW, Washington, DC 20036, Telephone: 202–393–1000.

Mail comments, views, or statements in response to this notice to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Affairs, OSHA, (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of the MWFSAC at the times and location indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 693–1999 (Fax: 202–693–1634) no later than June 28, 1999, to obtain appropriate accommodations.

Meeting Agenda

The MWFSAC will discuss its draft final report to OSHA. The report is expected to include the Committee's recommendations for OSHA action and best practices for working in the metalworking fluid environment, including medical surveillance, training, and exposure monitoring. The Committee intends to complete and ratify its final report to OSHA at the meeting. OSHA will present a risk assessment update and report on data collected by the Michigan Occupational Safety and Health Administration (MIOSHA).

Public Participation

Written data, views, or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 25 copies, to Dr. Peter Infante. Submissions received by June 28, 1999, will be provided to the members of the Committee. Anyone wishing to make an oral presentation to the Committee on any of the agenda items listed above should notify Dr. Peter Infante at the address listed above. The request to speak should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, D.C. this 10th day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–15239 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. The title of the information collection:

NRC Form 313, "Application for Material License."
NRC Form 313A, "Training and Experience"
NRC Form 313B, "Preceptor Statement"

3. The form number if applicable:

NRC Form 313
NRC Form 313A
NRC Form 313B

4. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license. Amendments are submitted as needed by the licensee.

5. Who will be required or asked to report: All applicants requesting a license, and licensees requesting renewal or amendment of a byproduct or source material license to possess, use, or distribute radioactive material.

6. An estimate of the number of responses: 9007 (2522 NRC licensees and 6485 Agreement State licensees)

7. The estimated number of annual respondents: 17,958 (5,556 NRC licensees and 12,402 Agreement State licensees) This is the total number of licensees which could potentially submit licensing actions.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 66,652 (18,663 hours for NRC licensees and 47,989 hours for Agreement State licensees, an average of about 7.4 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: All applicants must submit NRC Form 313 to obtain, renew, or amend a specific license to possess, use, or distribute byproduct or source material. NRC Form 313A, "Training and Experience," and NRC Form 313B, "Preceptor Statement," are used for 10 CFR Part 35, "Medical Use of Byproduct Material," applicants and licensees along with NRC Form 313 to obtain the above information. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures

which are adequate to protect the health and safety of the public, and minimize danger to life or property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 16, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0120), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 10th day of June 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–15242 Filed 6–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Arizona Public Service Company (the licensee) to withdraw its November 6, 1996, application for proposed amendments to Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74, for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, located in Maricopa County, Arizona.

The proposed amendments would have revised the facility technical specifications to provide a method to respond to a sustained, degraded switchyard voltage condition.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on January 2, 1997 (62 FR 123). However, by letter dated December 16, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated November 6, 1996, and the licensee's letter dated December 16, 1998, which withdrew the application for license amendments. The above documents are available for public inspection—2 -at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 7th day of June 1999.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Section 2, Project Directorate IV & Decommissioning Division of Licensing Project Management Office of Nuclear Reactor Regulation

[FR Doc. 99–15243 Filed 6–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–37 and NPF–66 issued to the Commonwealth Edison Company (ComEd, the licensee) for operation of Byron Station, Unit Nos. 1 and 2, respectively, located in Ogle County, Illinois, and Facility Operating License Nos. NPF–72 and NPF–77 issued to ComEd for the operation of Braidwood Station, Unit Nos. 1 and 2, respectively, located in Will County, Illinois.

The proposed amendments would change the Technical Specifications to support a plant modification to install new storage racks for fuel in the spent fuel pools (SFP). As part of the modification, the total capacity of the SFP at each station is being increased from 2,870 assemblies to 2,984 assemblies.

Before issuance of the proposed license amendments, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

During the installation of the new Holtec spent fuel pool storage racks, both Holtec and the existing Joseph Oat spent fuel pool storage racks will be in the spent fuel pool at the same time. This interim arrangement will not increase the probability or consequences of an accident previously evaluated. The criticality analysis for the Joseph Oat spent fuel pool storage racks states that should a spent fuel pool water temperature change accident or a fuel assembly misload accident occur in the Region 1, Region 2, or failed fuel storage cells, k_{eff} will be maintained less than or equal to 0.95 due to the presence of at least 550 ppm (no fuel handling) or 1650 ppm (during fuel handling) of soluble boron in the spent fuel pool water. These assumptions are more conservative than the requirements stated in the criticality analysis for the Holtec spent fuel pool storage racks which only requires 220 ppm boron to maintain k_{eff} less than or equal to 0.95 during the worst case fuel assembly misload accident. The new Holtec racks have a superior neutron attenuation capability due to their improved design. The requirement of 2000 ppm boron will be maintained during the entire change out process, therefore, ensuring that k_{eff} will remain less than or equal to 0.95. At the completion of installation, only Holtec spent fuel pool storage racks will be in the spent fuel pool.

The previously evaluated Byron and Braidwood Stations accidents relative to spent fuel storage are discussed in the Updated Final Safety Analysis Report (UFSAR) Section 15.7.4, "Fuel Handling Accidents," and UFSAR Section 15.7.5, "Spent Fuel Cask Drop Accident." These accidents were considered for the new Holtec spent fuel pool racks and are listed below.

a. Spent fuel assembly dropped onto the spent fuel pool floor.

b. Spent fuel assembly dropped between racks.

c. Spent fuel assembly dropped between a rack and the spent fuel pool wall.

d. Spent fuel assembly loaded contrary to placement restrictions.

e. Spent fuel assembly dropped onto to [sic] a rack.

f. Spent fuel cask drop.

g. Change in spent fuel pool water temperature.

Spent Fuel Assembly Dropped Onto the Spent Fuel Pool Floor

The probability and consequences of dropping a spent fuel assembly onto the spent fuel pool liner have been evaluated and shown to be bounded by the existing design basis as described in the Byron and Braidwood Stations UFSAR. The maximum drop distance for a fuel assembly will not change as a result of this design change and, therefore, the consequences of this fuel handling accident remain unchanged. The probability of this fuel handling accident is not changed by the installation of new Holtec spent fuel pool storage racks or by the small increase (approximately 4.0%) in spent fuel storage capacity as the spent fuel handling procedures and equipment are unaffected by the change. Also, the number of spent fuel assemblies is not an input to the initial conditions of this accident evaluation.

Spent Fuel Assembly Dropped Between Racks

The probability and consequences of dropping a fuel assembly between rack modules was previously evaluated under UFSAR Section 9.1.2.3.9, "Accident/Abnormal Storage Conditions in Spent Fuel Pool Racks," which supports TS Limiting Condition for Operation (LCO) 3.7.15 and was shown to have no effect on reactivity. This is considered a bounding analysis and is applicable to this design change since the new Holtec rack layout still precludes a reactivity increase due to this fuel handling accident. The probability of this event is unaffected due to the similarity between the new Holtec spent fuel pool rack layout and the existing Joseph Oat spent fuel pool rack layout.

Spent Fuel Assembly Dropped Between a Rack and the Spent Fuel Pool Wall

The probability and consequences of dropping a spent fuel assembly between a rack module and the spent fuel wall has been evaluated for the new Holtec spent fuel pool racks. The worst case scenario consists of a fresh fuel assembly, of the highest allowed enrichment, accidentally placed in a cut out area between a rack and the new fuel elevator or tool bracket. The consequences of this event remain within the design basis criticality limit of less than or equal to 0.95 k_{eff}, assuming a minimum soluble boron concentration of 220 ppm in the spent fuel pool water. The probability of this event is unaffected due to the similarity between the new Holtec spent fuel pool rack layout and the existing Joseph Oat spent fuel pool rack layout. This event is bounded by the analysis of misloading an assembly into a Region 2 rack, discussed below.

Spent Fuel Assembly Loaded Contrary to Placement Restrictions

The probability and consequences of loading a fuel assembly contrary to placement restrictions has been evaluated for the Holtec racks. A worst case scenario of placing a fuel assembly of the highest enrichment (i.e., 5.0 weight percent U–235) into a Region 2 rack cell was shown to remain within the design basis criticality limit of 0.95 k_{eff}, assuming a minimum soluble boron concentration of 220 ppm in the spent fuel pool water. The current required soluble boron concentration in the spent fuel pool is 2000 ppm. The minimum soluble boron concentration, proposed in conjunction with this design change, is 300 ppm for conservatism. The probability of this event is unaffected by this design change since the existing pool already includes a two region layout, similar to the new Holtec racks. Further, the possibility of a misloaded fuel assembly is minimized by an independent verification of the Nuclear Component Transfer List that prescribes the exact location of each fuel assembly. After an assembly is placed in a spent fuel pool storage cell, station personnel once again independently verify it.

Spent Fuel Assembly Dropped onto to [sic] a Rack

The probability and consequences of dropping a spent fuel assembly onto a spent fuel storage rack have been evaluated for the Holtec racks. The consequences are shown to meet all existing design basis requirements as described in the Byron and Braidwood Station UFSAR. Analyses of the spent fuel drop accidents onto the top of a spent fuel pool storage rack (shallow drop), and a deep drop into the bottom of a cell, resulting in impact at the bottom of the rack cell, were performed to demonstrate that the spent fuel rack retains its structural integrity and capability to safely store spent fuel in adjacent cells. The damage due to a perfectly vertical drop, on the top of a rack, bounds an inclined fuel assembly drop because the impact energy is focused on a single cell wall, which results in maximum cell blockage. The radiological consequences of the drop onto the spent fuel pool liner, shallow drop onto to [sic] the top of the rack, and deep drop into the bottom of a rack cell, are bounded by the existing UFSAR assumptions that 314 fuel rods rupture. The UFSAR design basis dose is shown to be much less than the 10 CFR 100 off-site dose limits of 300 rem to the thyroid and 25 rem to the whole body. The probability of these fuel handling accidents occurring is unaffected by the installation of new spent fuel storage racks. The spent fuel handling procedures and equipment are unaffected by this change and therefore there is no increase in the probability of these fuel handling accidents.

Spent Fuel Cask Drop

The probability and consequences of a cask drop were evaluated and shown to be unaffected by the replacement of the existing Joseph Oat spent fuel pool storage racks with Holtec racks. There are no changes to any of the systems, structures, components or equipment associated with the movement of a spent fuel cask. The cask is shown by the Byron and Braidwood Stations UFSAR to be isolated from the spent fuel pool by the combination of guard walls, which are designed to withstand the impact of a cask drop, and both administrative and physical controls. These controls are designed to preclude the fuel handling building crane from traveling over the spent fuel pool. There are also trolley stops on the crane bridge which physically prevent the main hook of the crane from traveling into the spent fuel pool storage area when handling a spent fuel cask. Spent fuel pool rack installation activities and cask handling will not be performed simultaneously, thus minimizing the possibility of improper movement of the cask. This practice is consistent with the Byron and Braidwood Stations UFSAR assumptions relative to new fuel operations. Since there will be no changes to any of the equipment, procedures or operations relative to spent fuel cask handling that are associated with this design change, there is no increase in the probability or consequences of this fuel handling accident.

Change in Spent Fuel Pool Water Temperature

The probability and consequences of a change in the temperature of the spent fuel pool water was evaluated for the potential for an increase in reactivity. The new Holtec rack analysis was performed assuming a spent fuel pool water temperature of 4 °C (39 °F), which is well below the lowest normal operating temperature of 50 °F. Because the reactivity temperature coefficient in the spent fuel pool is negative, temperatures greater than 4 °C will result in a decrease in reactivity. The probability of this event is unaffected by the spent fuel pool rack replacement because there are no features of this design change affecting the spent fuel pool cooling system or that would prompt a spent fuel pool water temperature decrease.

Rack Installation

Holtec International personnel will execute the construction phases of the Byron and Braidwood Stations rack installations. All construction work will be performed in compliance with Byron and Braidwood Stations' commitments to NUREG–0612 and site-specific procedures. Holtec International and Commonwealth Edison are developing a complete set of operating procedures which cover the entire gamut of operations pertaining to the rack installation effort. Similar procedures have been utilized and successfully implemented by Holtec International on previous rack installation projects. These procedures assure that ALARA practices are followed and provide detailed requirements to assure equipment, personnel, and plant safety.

Crane and fuel bridge operators will be adequately trained in the operation of load handling machines per the station specific training program. The lifting device designed for handling and installation of the new racks at Byron and Braidwood Stations is in compliance with the provisions of NUREG–0612, including compliance with the primary stress criteria, load testing with a multiplier

for maximum working load, and nondestructive examination of critical welds.

An intensive surveillance and inspection program shall be maintained throughout the rack installation phase of the project. A set of inspection points has been established based on experience in numerous previous rack installation campaigns. These inspections have proven to eliminate incidence of rework or erroneous installation.

Based on the review of the accidents previously analyzed in the UFSAR, and considering the rigorous controls in place for installation of the new spent fuel pool storage racks, it is concluded that there will not be a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The replacement of the existing Byron and Braidwood spent fuel pool storage racks, having a capacity of 2870 cells, with new racks having a capacity of 2984 cells, was evaluated for the possibility of creating a new or different accident. The following cases were reviewed:

a. An accidental drop of a rack into the spent fuel pool, and

b. Additional heat load resulting from the additional storage capacity.

A construction accident resulting in a rack drop is an extremely unlikely event. Operability of the cranes will be checked prior to use. Lift equipment and rigging will also be inspected prior to use. Operators of lift equipment and cranes will be trained prior to use. Safe load paths will be followed and Byron and Braidwood Stations' commitments to the provisions of NUREG–0612 will be implemented by use of written procedures that have been utilized for numerous other similar rack installation projects. The Technical Requirements Manual requires that Fuel Handling Building Crane loads be limited to 2000 pounds when traveling over fuel assemblies. This limitation will be adhered to during the entire course of rack installation. In the unlikely event of a rack drop, a leak chase system located beneath the spent fuel pool liner is capable of collecting and isolating the leakage. A rack drop would present limited structural damage to the spent fuel pool slab on grade, due to the slab being founded on rock and soil. Local concrete crushing and possible liner puncture could occur. Failure of the liner would not result in a significant loss of water and no safety related equipment would be affected by the leakage. Make up water is available from 3 separate sources. There are two 500,000 gallon Refueling Water Storage Tanks, non-category 1 back up water sources, and the unborated Safety Category 1 fire protection system, available for spent fuel pool water make up. A rack drop, therefore, does not create the possibility of creating a new or different kind of accident.

The additional heat load resulting from the additional storage capacity of 114 cells (i.e., approximately 4%) has been evaluated for the possibility of creating a new or different kind of accident. The existing spent fuel pool cooling system has been shown to be capable of removing the decay heat generated by the additional spent fuel assemblies utilizing the standard Byron and Braidwood Stations operating procedures. Since it is shown that the spent fuel pool cooling system will maintain the spent fuel pool water temperature within the existing design basis, as detailed in the Byron and Braidwood UFSAR, it is concluded that the proposed changes do not create a new or different kind of accident.

Replacing the existing 23 Joseph Oat Boraflex racks with 24 new Holtec racks containing Boral, and increasing the spent fuel storage capacity in each of the spent fuel pools at Byron and Braidwood Stations to 2984 assemblies, will not create the possibility of an accident of a different type. The fuel pool rack and fuel configurations have been analyzed considering criticality, thermal hydraulic, and structural effects. The increase in storage capacity is achieved by the installation of additional racks of similar, but improved design, which are passive components. No new operating schemes or active equipment types will be required to store additional fuel assemblies in the fuel pools. The possibility of a different type of accident occurring is not created since the new racks meet or exceed the requirements applicable to the existing racks.

Therefore, implementation of the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes do not involve a significant reduction in a margin of safety.

The function of the spent fuel pool is to store fuel assemblies in a subcritical and coolable configuration throughout all environmental and abnormal loadings, such as earthquakes, dropped fuel assemblies, or loss of spent fuel pool cooling. The new spent fuel storage racks are designed to meet all applicable requirements for safe storage of spent fuel and are functionally compatible with the spent fuel pool.

The Holtec Licensing Report has analyzed the consequences of this reracking project by area. In each area, (i.e., criticality, seismic, structural, thermal hydraulics, and radiological exposure), design basis margins of safety will be maintained. Installation controls specified in Byron and Braidwood Stations' commitments to NUREG–0612 preserve the margins of safety with regard to heavy load restrictions. Compliance with the Byron and Braidwood Station design basis limits and procedure adherence will preclude reducing margins of safety.

The margin of safety is not reduced as demonstrated by analysis of the seismic, structural, thermal hydraulic, criticality, and radiological aspects of this design change. The Byron and Braidwood Station design basis spent fuel pool maximum bulk temperature acceptance limit of 140° F has been demonstrated to be preserved by analysis. Criticality calculations show that k_{eff} will be maintained at less than or equal to 0.95. The new Holtec spent fuel pool storage racks have been designed in accordance with the Byron and Braidwood Station design bases requirements and the NRC OT position paper.

Since all aspects of the design change have been demonstrated to be within the existing design bases for Byron and Braidwood Stations and the NRC requirements applicable to spent fuel storage, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 16, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who

wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010 for Byron Station, and the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481 for Braidwood Station. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for license amendments falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be

conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, Subpart G apply.

For further details with respect to this action, see the application for amendments dated March 23, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010 for Byron Station, and the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481 for Braidwood Station.

Dated at Rockville, Maryland, this 10th day of June 1999.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate 3, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15244 Filed 6–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 21, 1999, through June 4, 1999. The last biweekly notice was published on June 2, 1999 (64 FR 29707).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 19, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the

proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: May 23, 1997, as revised by letters dated September 27, 1998, and May 26, 1999.

Description of amendments request: The proposed amendments would revise Technical Specification (TS) Limiting Condition of Operation (LCO) 3.4.14 and TS Sections 5.5.9 and 5.6.8 to allow the use of steam generator (SG) tube sleeves as an alternative to plugging defective SG tubes. The May 26, 1999, letter completely revised the May 23, 1997, request for amendments, and this notice supersedes the original **Federal Register** notice dated July 30, 1997 (62 FR 40845).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to TS LCO 3.4.14.d and e will replace the leakage limits of 1 gallon per minute (gpm) primary to secondary leakage through all SGs and 720 gallon per day (gpd) through any one SG with a new limit of 150 gpd through any one SG. This is a more restrictive change. A TS limit of 150 gpd primary to secondary Leakage through any one steam generator is significantly less than the initial conditions assumed in the safety analyses. The 150 gpd limit is based on operating experience as an indication of one or more propagating tube leak mechanisms. The Steam Generator Tube Surveillance Program described in TS Section 5.5.9 ensures that the structural integrity of the SG tubes is maintained. The leakage rate limit of 150 gpd for any one SG provides additional assurance against tube rupture at normal and faulted conditions and provides additional assurance that cracks will not propagate to burst prior to detection by leakage monitoring methods and commencement of plant shutdown. Therefore, this change to TS LCO 3.4.14.e will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 5.5.9 will add inservice inspection requirements for SG tube sleeves. These requirements will ensure that all installed SG tube sleeves will be inspected prior to initial operation and routinely thereafter, to assure the capability of each sleeve to perform its design function during each operating cycle. The tube sleeves will be the Combustion Engineering, Inc. (CE or ABB–CE) Leak Tight sleeves, as described in CE report CEN–630–P, "Repair of ¾" O.D. Steam Generator Tubes Using Leak Tight Sleeves," Revision 02, dated June 1997. (This proprietary report is provided as Enclosure 4 with this submittal.) The tube sleeve dimensions, materials and joints are designed to the applicable ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel code requirements. An extensive test program was performed that demonstrated that the sleeves will fulfill their intended function as leak tight structural members. Evaluation of sleeved tubes indicates no detrimental effects on the sleeve-tube assembly resulting from reactor coolant system flow, coolant chemistries, or thermal and pressure conditions. Structural analyses of the sleeve-tube assembly have established its integrity under normal and accident conditions. Mechanical testing using ASME code stress allowables was performed to support the analyses. Also, corrosion tests were performed and revealed no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions. A sleeved tube will exhibit greater hydraulic resistance and reduced heat transfer capability than an un-sleeved tube. However, these effects are much less than would be imposed by taking the tube out of service by plugging. Section 10.0 of CE report CEN–630–P describes the analyses to determine the hydraulic and heat transfer effects. Calculations using plant-specific information will identify sleeve-to-plug equivalency ratios. The proposed changes to the SG inservice inspection program will assure that sleeved SG tubes will meet the structural requirements of tubes that are not defective. The proposed sleeve plugging limit of 35% of nominal wall will ensure that the sleeves remaining in service will perform their design function. Also, installation of

sleeves will not significantly [a]ffect the primary system flow rate or the heat transfer capability of the SGs. Therefore, this change to TS section 5.5.9 will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to the SG reporting requirements in TS section 5.6.8 will ensure that the number of sleeved SG tubes will be reported to the NRC along with the number of plugged tubes. This is an administrative change that has no effect on the operation or maintenance of the plant and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to TS LCO 3.4.14.d and e will replace the leakage limits of 1 gpm primary to secondary leakage through all SGs and 720 gpd through any one SG with a new limit of 150 gpd through any one SG. This is a more restrictive change that will provide added assurance against steam generator tube ruptures. Since the current allowable primary to secondary leakage is being reduced, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to TS section 5.5.9 for the SG inservice inspection program will assure that sleeved SG tubes will meet the structural requirements of tubes that are not defective. Also, installation of sleeves will not significantly [a]ffect the primary system flow rate or the heat transfer capability of the SGs. Therefore, this change to TS section 5.5.9 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to the SG reporting requirements in TS section 5.6.8 will ensure that the number of sleeved SG tubes will be reported to the NRC along with the number of plugged tubes. This is an administrative change that has no effect on the operation or maintenance of the plant and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change to TS LCO 3.4.14.d and e will replace the leakage limits of 1 gpm primary to secondary leakage through all SGs and 720 gpd through any one SG with a new limit of 150 gpd through any one SG. This is a more restrictive change that will provide added assurance against steam generator tube ruptures. Since the current allowable primary to secondary leakage is being reduced, this change will not involve a significant reduction in a margin of safety.

The proposed changes to TS section 5.5.9 for the SG inservice inspection program will assure that sleeved SG tubes will meet the structural requirements of tubes that are not defective. Also, installation of sleeves will not significantly [a]ffect the primary system flow rate or the heat transfer capability of the SGs. Therefore, this change to TS section 5.5.9 will not involve a significant reduction in a margin of safety.

The change to the SG reporting requirements in TS section 5.6.8 will ensure that the number of sleeved SG tubes will be reported to the NRC along with the number of plugged tubes. This is an administrative change that has no effect on the operation or maintenance of the plant and will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed amendments would revise the basis for evaluation of the reactor building ventilation (VR) system exhaust plenum masonry walls. Specifically, the amendment would approve the use of different methodology and acceptance criteria for the reassessment of certain masonry walls subjected to transient pressurization loads resulting from a high energy line break.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change involves reassessment of the VR exhaust plenum due to a transient pressurization during a Main Steam Line Break (MSLB). Since the transient pressurization is a result of the MSLB, and the block walls and the dampers are not initiators of any accident, the probability of an accident previously evaluated is not affected.

This analysis does not affect the total amount of radioactive release due to the MSLB Outside of the Primary Containment, so the total offsite dose consequences does not change. A small portion of the release, which passes the dampers prior to closure, will now be an elevated release via the plant ventilation stack instead of a ground level release. The original analysis assumed the entire release was a ground level release, and thus remains bounding for the MSLB accident.

The Control Room and Auxiliary Electric Equipment Room (AEER) dose consequences are impacted only slightly due to the small amount of steam/air mixture released from the new pressure relief damper. The steam/air mixture becomes mixed with the air volume in that area of the Auxiliary Building but was all assumed to be available for inleakage to the Control Room and AEER. The dose increase for the Control Room and AEER is less than or equal to 0.05 Rem thyroid and negligible change to the whole body dose, such that the dose due to the MSLB accident remains much less than the DBA LOCA dose and General Design Criteria 19. The MSLB accident dose consequences remain bounded by the Design Basis Loss of Coolant Accident.

The effects of the steam released by the pressure relief damper into the Auxiliary Building has been evaluated for environmental qualification impact on systems, structures and components (SSCs) in the area of the Auxiliary Building affected for both radiation and steam/temperature affects. The effect on area temperature is about 4 °F and is above initial temperature for not more than 24 hours. The change in humidity is negligible, and radiation dose impact is small and bounded by previous calculations.

These consequences assume that the VR exhaust plenum masonry walls do not rupture based on the design changes being made in conjunction with the masonry wall reevaluation for each LaSalle Unit that will prevent the failure of the VR exhaust plenum masonry walls.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The MSLB accident is previously analyzed but considered only instantaneous closure of installed dampers. The reevaluation and design changes extend the previous accident analysis to assure that structures previously considered unaffected by the MSLB will maintain their structural integrity. The block walls are static and the dampers function in response to an accident, thus the analysis method and design changes are not accident initiators. Therefore the change does not create the possibility of a new [or] different kind of accident from any accident previously evaluated.

The design changes being made in conjunction with the masonry wall reevaluation for each LaSalle Unit that will prevent the failure of the VR exhaust plenum masonry walls are as follows:

(1) Installation of a pressure relief damper,

(2) An excess-flow check damper, and

(3) Required masonry wall support improvements in the reactor building ventilation exhaust plenum for each Unit.

The reevaluation of the masonry walls uses different load factors and load combinations

as well as reduced acceptance criteria than previously used for these walls. The change in the evaluation does not cause the rupture or failure of the effected masonry walls, since the evaluation shows the walls remain intact.

The installation of the above design changes, in conjunction with masonry wall analysis assure that the subject masonry walls will not rupture or fail. Therefore, SSCs that would be affected by wall rupture can fulfill their intended function, maintaining the consequences of previously evaluated accident the same.

The new pressure relief damper and excess-flow check damper are safety-related and are analyzed to function under the conditions created by the MSLB. In addition, the dampers and the duct they are installed in have been analyzed to assure no failure will occur during an Operating Basis Earthquake (OBE) or Safe Shutdown Earthquake (SSE).

Based on an analysis of potential failure modes in accordance with ANSI/ANS–58.9–1981, "Single Failure Criteria for Light Water Reactor Safety-Related Fluid Systems," Paragraph 4.1, the active function of the pressure relief damper and excess flow check damper are considered exempted from consideration of single failure. The principles governing operation of the dampers are simple and direct and not subject to change or deterioration with time, similar to the function of a code safety relief valve and a swing check valve. With periodic testing of the dampers, continued reliable performance is assured.

The dampers are designed and set so that the pressures created by normal ventilation flow changes do not cycle the dampers, and thus the new dampers do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Administrative controls will be in place prior to implementation of this change to assure the testing and maintenance is periodically performed in accordance with vendor recommendations. These dampers will be included as equipment required to be monitored/maintained, because the function performed by the dampers is within the scope of the Maintenance Rule, 10 CFR 50.65.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

Originally, no masonry walls were evaluated for HELB pressurization effects, because the walls were considered protected by the isolation dampers. However, the original design methodology for masonry did include load combinations including P_a:

Abnormal
$1.0D + 1.0L + 1.5P_a$

Abnormal/Severe Environment
$1.0D + 1.0L + 1.25P_a + 1.25E_o$

Abnormal/Extreme Environment
$1.0D + 1.0L + 1.0P_a + 1.0E_{ss}$,

Where D is Dead Load; L is Live Load; P_a is pressurization due to HELB; E_o is Loads generated by the Operating Basis Earthquake (OBE); and E_{ss} is Loads generated by the Safe Shutdown Earthquake (SSE).

The current reevaluation was required due to determination that some block walls in the LaSalle Auxiliary Building are affected by a transient pressurization due to a MSLB. The specific changes from the original analyses involve the following for loads and load combinations.

1. Abnormal:

$1.0D + 1.0L + 1.0P_{HELB}$

2. Abnormal/severe environmental:

$1.0D + 1.0L + [(1.1E_o)^2 + 1.0P_{HELB2}]^{1/2}$

3. Abnormal/extreme environmental:

$1.0D + 1.0L + [1.0E_{ss}^2 + 1.0P_{HELB}^2]^{1/2}$

Where:

(1) P_{HELB} is the short-term differential pressurization load on the VR plenum masonry walls resulting from non-instantaneous opening/closure of the protection dampers.

(2) The Load Factor on pressure due to HELB is 1.0 for all cases.

(3) The Loading Combination of pressure and seismic is the Square Root of the Sum of Squares (SRSS).

LaSalle has selected the proposed load combinations in consideration of the following:

Isolation, check, and relief dampers protect the walls; therefore the pressurization effects are not sustained, but are transient in nature.

The transient pressurization effect (P_{HELB}) is derived from a conservative detailed analysis of an instantaneous HELB combined with non-instantaneous damper opening/closure. Due to the precise nature and conservatism of this HELB analysis, there is little uncertainty in P_{HELB}.

Therefore a load factor of 1.0 is used for all abnormal load combinations.

P_{HELB} is a short duration, dynamic load. Accordingly, the seismic and transient HELB pressurization loads are combined using the Square Root of Sum of the Squares (SRSS) method because the peak effects of these dynamic loads are unlikely to occur simultaneously. This combination method is used in the analysis of other components such as component supports.

The proposed load combinations accordingly provide a conservative basis for reassessment of the VR exhaust plenum masonry wall systems.

In regards to the masonry acceptance criteria, the original acceptance criteria used for this condition are the National Concrete Masonry Associations (NCMA) "Specification for the Design and Construction of Load Bearing Masonry—1979" allowable stresses times a 1.67 factor. These allowable stresses correspond to stress equal to the modulus of rupture (f_r) of the masonry divided by a factor of safety of 3.35. During reviews to address masonry wall issues per NRC IE Bulletin 80–11, six walls did not meet this acceptance criteria. The acceptance criteria used for these walls was for f_r values determined from testing at Clinton Power Station divided by a factor of safety of 2.5. This acceptance criteria was accepted by the NRC for LaSalle in Supplement 5 of NUREG 0519, Safety Evaluation Report related to the Operation of LaSalle County Station, Units 1 and 2. The VR exhaust plenum walls will use the same acceptance criteria for the transient HELB pressurization cases.

The minimum masonry safety factor for the LaSalle Unit 2 walls affected by the HELB loads range from 2.6 to 3.1 with one wall having a safety factor of 4.9.

Masonry wall steel support members were originally designed for this condition elastically to the American Institute of Steel Construction's (AISC) "Steel Construction Manual—Seventh Edition" allowable stresses times a 1.6 factor. In the reassessment of these members due to the transient HELB pressurization, elasto-plastic behavior is allowed (with a ductility ratio limit of 10). It is appropriate to consider them similar to high-energy line break systems that will maintain their integrity as they absorb the energy of the incidental pressure excursion.

High-energy line breaks are discussed in Section 3.6 of the UFSAR. The discussion in this section focuses on the design of pipe whip restraints, and in Table 3.6–6 acceptance criteria are provided. This table shows that the energy absorbing portions of the pipe whip restraint are allowed to go plastic, thereby absorbing energy. While Table 3.6–6 of the UFSAR deals with energy absorbing portions of the pipe whip restraints, wide-flange shapes are not addressed. Wide-flange shapes absorb energy through flexural deformations.

Guidance on appropriate acceptance criteria for flexural members is provided in Appendix A to SRP 3.5.3, "Barrier Design Procedures." This appendix indicates that for tension due to flexure in structural steel members, a ductility ratio value not to exceed 10.0 is acceptable. SRP 3.8.4, paragraph III.5 also notes that some localized points on the structure, the allowable stresses specified for "structural steel" may be exceeded, provided that integrity of the structure is not affected.

Note that only one of the Unit 2 walls affected by these HELB loads required the use of the elasto-plastic acceptance criteria for two structural steel members.

In summary, these alternate criteria for reassessment of the integrity of the LaSalle Reactor Building Ventilation Exhaust Plenum masonry walls in conjunction with the design changes adding a pressure relief damper, an excess flow check damper and masonry wall support steel changes, assures that the walls will maintain their integrity during a MSLB. The safety factor is reduced; however, the walls have sufficient strength and safety margin to maintain structural integrity and thus perform their intended safety function during the pressurization transient due to a MSLB accident.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois

Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix, County, Michigan

Date of amendment request: May 11, 1999 (Accession No. 9905170189).

Description of amendment request: The proposed amendment would delete from the Defueled Technical Specifications (DTS) the definition for site boundary and Figure 5.1–1, Big Rock Point Site Map, and revise the description of the Big Rock Point site under subsection 5.1. The amendment also proposes editorial changes associated with the above proposed revisions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.91, Consumers Energy Company has made a determination that the proposed amendment does not involve significant hazards considerations. Consumers Energy Company has concluded that the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and has no [e]ffect on the health and safety of the public. There is no reduction or elimination of federal regulatory requirements associated with the proposed amendment. The information being removed from the Defueled Technical Specifications is unnecessary since Site Boundary is already defined in 10 CFR Part 20, and the site map [Defueled Technical Specification Figure 5.1–1] is already provided in the Updated Final Hazards [Summary] Report. Furthermore, the proposed changes are consistent with the guidance provide in NUREG–1625 ['Proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants"].

The proposed change does not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed amendment does not change the site boundary as it currently exists. Deleting the Site Boundary definition and changing the upper case characters to lower case throughout the DTS and the Bases where it appears, and deleting the site figure from the DTS and related references will not increase the probability or consequences of a new or different kind of accident previously evaluated. This proposed change is administrative in nature and does not involve fuel handling or affect or modify any system, structure or component.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not change the site boundary as it currently exists. Deleting the Site Boundary definition and changing the upper case characters to lower case throughout the DTS and the Bases where it appears, and deleting the site figure from the DTS and related references will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change is administrative in nature and does not involve fuel handling or affect or modify any system, structure or component.

(3) Involve a significant reduction in the margin of safety.

The proposed changes do not involve any physical changes to the plant or plant procedures. There will be no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petosky, MI 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Dr. Michael T. Masnik.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 2, 1998, supplemented May 13, 1999.

Description of amendment request: The proposed amendments would resolve an unreviewed safety question involving use of credit for reactor building overpressure in the licensing basis for the available net positive suction head for the reactor building spray pumps and the low pressure injection pumps. If approved, the appropriate changes would be incorporated in the Oconee Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

The reactor building spray (RBS) and low pressure injection (LPI) systems are not considered as initiators of any analyzed event, therefore, this change has no impact on the probability of an event previously analyzed.

The consequences of a previously analyzed event are dependent on the initial conditions assumed for the analysis, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the set points at which these actions are initiated. The proposed change permits limited reactor building overpressure to be credited in the calculation of available net positive suction head (NPSH) for the RBS and LPI pumps for a limited period of time during the sump recirculation phase. It is supported by calculations which demonstrate that adequate reactor building overpressure will be available to ensure the RBS and LPI systems will be capable of performing their safety functions. Thus, the proposed change does not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change permits limited reactor building overpressure to be credited in the calculation of available NPSH for the RBS and LPI pumps for a limited period of time during the sump recirculation phase. It does not involve a physical alteration of the plant. The proposed change is supported by calculations which demonstrate that adequate reactor building overpressure will be available to ensure the RBS and LPI systems will be capable of performing their safety functions. This change will not alter the manner in which the RBS or LPI system is initiated, nor will the function demands on the RBS or LPI system be changed. Thus, the proposed change does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety?

The proposed change permits limited reactor building overpressure to be credited in the calculation of available NPSH for the RBS and LPI pumps for a limited period of time during the sump recirculation phase. Crediting a slight amount of overpressure does not result in a significant reduction in the margin of safety, because conservative analyses demonstrate that adequate reactor building overpressure will be available to ensure the RBS and LPI systems will be capable of performing their safety functions. Thus, the proposed change does not involve a significant reduction in a margin of safety.

Duke has concluded based on the above information that there are no significant hazards involved in this LAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: May 11, 1999.

Description of amendment request: The proposed amendments would: (a) revise the pressure-temperature (P–T) limits of Technical Specification (TS) 3.4.3 for heatup, cooldown, and inservice test limitations for the Reactor Coolant System to a maximum of 33 Effective Full Power Years; (b) revise TS 3.4.12, Low Pressure Overpressure Protection System (LTOP), to reflect the revised P–T limits of the Unit 1, 2, and 3 reactor vessels; (c) permit operation during LTOP conditions with two reactor coolant pumps in operation in a single loop; and (d) relax the LTOP operating envelope, thereby reducing potential challenges to the reactor coolant system power operated relief valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration.

A. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

These proposed Technical Specification (TS) changes were developed utilizing the procedures of ASME XI, Appendix G, in conjunction with Code Cases N–514, N–588 and N–626, as described in the Technical Justification. Usage of these procedures provides compliance with the underlying intent of 10 CFR 50 Appendix G and provide safety limits and margins of safety that ensure failure of a reactor vessel will not occur.

The proposed changes do not impact the capability of the reactor coolant pressure boundary (i.e., no change in operating pressure, materials, seismic loading, etc.) and therefore do not increase the potential for the occurrence of a loss of coolant accident (LOCA). The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, or construction standards. The probability of any design basis accident (DBA) is not affected by this change, nor are the consequences of any DBA affected by this change. The proposed Pressure-Temperature (P–T) limits, Low Temperature Overpressure (LTOP) limits and setpoints, and allowable operating reactor coolant pump combinations are not considered to be an initiator or contributor to any accident analysis addressed in the Oconee UFSAR.

The proposed changes do not adversely affect the integrity of the RCS such that its function in the control of radiological consequences is affected. Radiological off-site exposures from normal operation and operational transients, and faults of moderate frequency do not exceed the guidelines of 10 CFR 100. In addition, the proposed changes do not affect any fission product barrier. The revised PORV LTOP setpoint is established to protect reactor coolant pressure boundary. The changes do not degrade or prevent the response of the PORV or safety-related systems to previously evaluated accidents. In addition, the changes do not alter any assumption previously made in the mitigation of the radiological consequences of an accident previously evaluated.

Therefore, the probability or consequences of an accident previously evaluated will not be increased by approval of the requested changes.

B. Create the possibility of a new or different kind of accident from the accident previously evaluated?

No.

The proposed license amendment revises the Oconee reactor vessel P–T limits, LTOP limits and setpoints, and allowable operating reactor coolant pumps combinations. Compliance with 10 CFR 50 Appendix G, includes utilization of ASME XI, Appendix G, as modified by Code Cases N–514, N–588 and N–626 to meet the underlying intent of the regulations.

Operation of Oconee in accordance with these proposed Technical Specifications changes will not create any failure modes not bounded by previously evaluated accidents. Consequently, approval of these changes will not create the possibility of a new or different accident from any accident previously evaluated.

C. Involve a significant reduction in a margin of safety?

No.

The proposed Technical Specification (TS) changes were developed utilizing the procedures of ASME XI, Appendix G, in conjunction with Code Cases N–514, N–588 and N–626, as described in the Technical Justification. Usage of these procedures provides compliance with the underlying intent of 10 CFR 50 Appendix G and provides safety limits and margins of safety which ensure failure of a reactor vessel will not occur.

No plant safety limits, set points, or design parameters are adversely affected. The fuel, fuel cladding, and Reactor Coolant System are not impacted. Therefore, there will be no significant reduction in any margin of safety as a result of approval of the requested changes.

Duke has concluded based on this information there are no significant hazards considerations involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 17, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications associated with the enabling of the Oscillation Power Range Monitor (OPRM) instrumentation reactor protection system (RPS) trip function. The OPRM is designed to detect the onset of reactor core power oscillations resulting from thermal-hydraulic instability and suppresses them by initiating a reactor scram via the RPS trip logic.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of Interim Corrective Actions (ICAs) and certain limiting conditions of operation of Technical Specifications (TS) 3.4.1. The OPRM system can automatically detect and suppress conditions necessary for thermal-hydraulic (T–H) instability. A T–H instability event has the potential to challenge the Minimum Critical Power (MCPR) safety limit. The restrictions of the ICAs and TS 3.4.1 were imposed to ensure adequate capability to detect and suppress conditions consistent with the onset of T–H oscillations that may develop into a T–H instability event. With the installation of the OPRM System, these restrictions are no longer required.

The probability of a T–H instability event is most significantly impacted by power to flow conditions such that only during operation inside specific regions of the power to flow map, in combination with power shape and inlet enthalpy conditions, can the occurrence of an instability event be postulated to occur. Operation in these regions may increase the probability that operation with conditions necessary for a T–H instability can occur.

However, when the OPRM is operable with operating limits as specified in the COLR [Core Operating Limits Report], the OPRM can automatically detect the imminent onset of local power oscillations and generate a trip signal. Actuation of an RPS trip will suppress conditions necessary for T–H instability and decrease the probability of a T–H instability event. In the event the trip capability of the OPRM is not maintained, the proposed change includes actions which limit the period of time before the effected OPRM channel (or RPS system) must be placed in the trip condition. If these actions would result in a trip function, an alternate method to detect and suppress thermal hydraulic oscillations is required. In either case the duration of this period of time is limited such that the increase in the probability of a T–H instability event is not significant. Therefore the proposed change does not result in a significant increase in the probability of an accident previously evaluated.

An unmitigated T–H instability event is postulated to cause a violation of the MCPR safety limit. The proposed change ensures mitigation of T–H instability events prior to challenging the MCPR safety limit if initiated from anticipated conditions by detection of the onset of oscillations and actuation of an RPS trip signal. The OPRM also provides the capability of an RPS trip being generated for T–H instability events initiated from unanticipated but postulated conditions. These mitigating capabilities of the OPRM system would become available as a result of the proposed change and have the potential to reduce the consequences of anticipated and postulated T–H instability events. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of ICAs and TS 3.4.1. The OPRM system uses input signals shared with APRM [Average Power Range Monitor] and rod block functions to monitor core conditions and generate an RPS trip when required. Quality requirements for software design, testing, implementation and module self-testing of the OPRM system provide assurance that no new equipment malfunctions due to software errors are created. The design of the OPRM system also ensures that neither operation nor malfunction of the OPRM system will adversely impact the operation of other systems and no accident or equipment malfunction of these other systems could cause the OPRM system to malfunction or cause a different kind of accident. Therefore, operation with the OPRM system does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation in regions currently restricted by the requirements of ICAs and TS 3.4.1 is within the nominal operating domain and ranges of plant systems and components for which postulated equipment and accidents have been evaluated. Therefore operation within these regions does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change which specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in certain regions of the power to flow [map] does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of ICAs and TS 3.4.1.

The OPRM system monitors small groups of LPRM signals for indication of local variations of core power consistent with T-H oscillations and generates an RPS trip when conditions consistent with the onset of oscillations are detected. An unmitigated T-H instability event has the potential to result in a challenge to the MCPR safety limit. The OPRM system provides the capability to automatically detect and suppress conditions which might result in a T-H instability event and thereby maintains the margin of safety by providing automatic protection for the MCPR safety limit while significantly reducing the burden on the control room operators. In the event the trip capability of the OPRM is not maintained, the proposed change includes actions which limit the period of time before the effected OPRM channel (or RPS system) must be placed in the trip condition. If these actions would result in a trip function, an alternate method to detect and suppress thermal hydraulic oscillations is required. Since, in either case, the duration of this period of time is limited so that the increase in the probability of a T-H instability event is not significant. Operation with the OPRM system does not involve a significant reduction in a margin of safety.

Operation in regions currently restricted by the requirements of ICAs and TS 3.4.1 is within the nominal operating domain assumed for identifying the range of initial conditions considered in the analysis of anticipated operational occurrences and postulated accidents. Therefore, operation in these regions does not involve a significant reduction in the margin of safety.

The proposed change, which specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in certain regions of the power to flow map, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: May 17, 1999.

Description of amendment request: The proposed amendment would change VCSNS Technical Specification 3.7.1.3 "Condensate Storage Tank—Limiting Conditions for Operation" to revise the tank minimum contained water volume from 172,000 gallons to 179,850 gallons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

FSAR [Final Safety Analysis Report] 10.4.9.1 states that minimum required usable volume for the Condensate Storage Tank (CST) is 158,570 gallons based on maintaining the plant at HOT STANDBY conditions for eleven hours. This volume has already been adjusted for both plant uprate conditions and replacement steam generator requirements. This change to LCO [Limiting Condition for Operation] 3.7.1.3 will ensure that 160,054 gallons is maintained in the CST, being available and dedicated to the Emergency Feedwater (EFW) System. Thus, this change will ensure that the EFW System has an adequate water supply to perform its design basis function in regard to maintaining the plant in HOT STANDBY condition.

2. This request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change increases the minimum required volume of water in the CST, thus

ensuring that the EFW System can perform its required safety function. The maximum and normal water levels in the CST are not being changed. Therefore, no new failure modes of the CST, or flooding concerns are created.

3. This request does not involve a significant reduction in a margin to safety[.]

This change does not reduce any margin associated with the CST inventory available to the EFW. In fact, a small gain in margin (less than 1%) is realized by specifying the minimum required volume based on the maximum volume available due to nozzle locations and other physical characteristics of the tank instead of the minimum required to maintain HOT STANDBY for 11 hours. Additionally, the requirement for sufficient CST volume to maintain HOT STANDBY for 11 hours is still met and the Service Water System still provides the long term supply of safety grade cooling water to the EFW System. The Service Water supply is not affected by this change, and thus the margin for safety grade cooling water to the EFW System (or safety grade cooling of the RCS) is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc, Docket No. 50–348 Joseph M. Farley Nuclear Plant Unit 1, Houston County, Alabama

Date of amendment request: April 30, 1999.

Description of amendment request: The proposed amendment would add an additional condition to the Farley Nuclear Plant (FNP), Unit 1 license. This condition would allow cycle 16 operation based on a risk-informed approach to evaluate steam generator tube structural integrity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The probability of tube burst is slightly increased as a result of this proposed amendment but is within current industry guidance. Therefore, the probability of a previously evaluated accident are not significantly increased. There is no change in the FNP design basis as a result of this change and, as a result, this change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed changes to the TSs [technical specifications] do not increase the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new limiting single failure or accident scenario has been created or identified due to the proposed changes. Safety-related systems will continue to perform as designed. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a significant reduction in the margin of safety. There is no impact in the accident analyses. These proposed changes are technically consistent with the requirements of NEI [Nuclear Energy Institute] 97–06, "Steam Generator Program Guidelines," Draft Regulatory Guide DG 1074, "Steam Generator Tube Integrity," and Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment In Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis." Thus the proposed changes do not involve a significant reduction in the margin of safety.

Accordingly, SNC [Southern Nuclear Operating Company] has determined that the proposed amendment to the Facility Operating License NPF–2 does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Section Chief: Richard L. Emch, Jr.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 3, 1999.

Description of amendment request: The proposed changes will modify the Technical Specifications to ensure the emergency ventilation system is maintained operable consistent with the assumptions in the radiological dose consequence reanalysis from a Large Break Loss-of-Coolant Accident and to clearly identify that the ventilation system is a shared system between the two units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. There is no significant change in the probability or consequences of an accident previously evaluated. There are no system changes which would increase the probability of occurrence of an accident. The dose consequences of the accidents have been reviewed, and in some cases the doses at the EAB [exclusion area boundary] * * * and the doses to the control room personnel were found to increase. However, this increase is not significant because the revised doses remain below the limits of 10 CFR 100 and below the limits of GDC [General Design Criterion]—19 of Appendix A of 10 CFR 50.

2. No new accident types or equipment malfunction scenarios have been introduced. Therefore, the possibility of an accident of a different type than any evaluated previously in the UFSAR [Updated Final Safety Analysis Report] is not created.

3. There is no significant reduction in the margin of safety, as the revised dose calculations for all accidents continue to meet the appropriate GDC–19 limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 6, 1999.

Description of amendment request: The proposed changes will modify the Technical Specifications, revising the surveillance frequency for the Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) analog instrumentation

channels and also revising the allowed outage time and action times for the RTS and ESFAS analog instrumentation channels and the actuation logic.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) Technical Specification changes for the North Anna Units 1 and 2 and determined that a significant hazards consideration is not involved. In support of this conclusion, the following evaluation is provided.

Criterion 1—Operation of North Anna Units 1 and 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The determination that the results of the proposed changes remain within acceptable criteria was established in the SER(s) [Safety Evaluation Reports] prepared for WCAP–10271, WCAP–10271 Supplement 1, WCAP–10271 Supplement 2, WCAP–10271 Supplement 2, Revision 1 and WCAP–14333 issued by letters dated February 21, 1985, February 22, 1989, April 30, 1998, and July 15, 1998.

Implementation of the proposed changes is expected to result in an increase in total RTS and ESFAS yearly unavailability. The proposed changes have been shown to result in a small increase in the core damage frequency (CDF) due to the combined effects of increased RTS and ESFAS unavailability and reduced inadvertent reactor trips.

The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC [Nuclear Regulatory Commission] Staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable. The analysis performed by the WOG and presented in the WCAP included changes to the surveillance frequencies for the automatic actuation logic and actuation relays and the reactor trip and bypass breakers. The overall increase in the CDF, including the changes to the surveillance frequencies for the automatic actuation logic and actuation relays and the reactor trip and bypass breakers, was approximately 6 percent. However, even with this increase, the overall CDF remains lower than the NRC safety goal of 10^{-4}/reactor year.

Changes to surveillance test frequencies for the RTS and ESFAS interlocks do not represent a significant reduction in testing. The currently specified test interval for interlock channels allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the annunciator status light. The surveillance as currently required only verifies the status of the permissive logic and does not address verification of channel setpoint or operability. The setpoint verification and channel operability is verified after a refueling shutdown. The definition of the channel check includes comparison of the channel status with other channels for the same parameter. The requirement to routinely verify permissive status is a different consideration than the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. Therefore, the change in the interlock surveillance requirement to at least once every 18 months does not represent a significant change in channel surveillance and does not involve a significant increase in unavailability of the RTS and ESFAS.

For the additional relaxations in WCAP–14333, the WOG evaluated the impact of the additional relaxation of allowed outage times and completion times, and action statements on core damage frequency. The change in core damage frequency is 3.1 percent for those plants with two out of three logic schemes that have not implemented the proposed surveillance test interval, allowed outage times, and completion times evaluated in WCAP–10271 and its supplements. This analysis calculates a significantly lower increase in core damage frequency than the WCAP–10271 analysis calculated. This can be attributed to more realistic maintenance intervals used in the current analysis and crediting the AMSAC [ATWS (anticipated transient without scram) mitigating system actuation circuitry] system as an alternative method of initiating the auxiliary feedwater pumps. Therefore, the overall increase in CDF is estimated to be 3.1% for the proposed changes per the generic Westinghouse analysis.

The NRC performed an independent evaluation of the impact on core damage frequency (CDF) and large early release fraction (LERF). The results of the staff's review indicate that the increase in core damage frequency is small (approximately 3.2%) and the large early release fraction would increase by only 4 percent for 2 out of 3 logic schemes that have not implemented the proposed surveillance test interval, allowed outage times, and completion times evaluated in WCAP–10271 and its supplements. Further, the absolute values for CDF still remain within NRC safety goals.

Therefore, the proposed changes do not result in a significant increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RTS and ESFAS but does not alter the manner in which protection is afforded or the manner in which limiting criteria are established.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RTS or ESFAS provide plant protection. No change is being made which alters the functioning of the RTS or ESFAS (other than in a test mode). Rather the likelihood or probability of the RTS or ESFAS functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident as defined in the Safety Analysis Report.

The proposed changes do not involve hardware changes. Some existing instrumentation is designed to be tested in bypass and current Technical Specifications allow testing in bypass. Testing in bypass is also recognized by IEEE [Institute of Electrical and Electronics Engineers] Standards. Therefore, testing in bypass has been previously approved and implementation of the proposed changes for testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. Furthermore since the other proposed changes do not alter the physical operation or functioning of the RTS or ESFAS the possibility of a new or different kind of accident from any previously evaluated has not been created.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the safety limits, limiting safety system setpoints or limiting conditions for operation. The RTS and ESFAS analog instrumentation remain operable to mitigate as assumed in the accident analysis. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act.

Implementation of the proposed changes is expected to result in an overall improvement in safety by less frequent testing of the RTS and ESFAS analog instruments will result in less inadvertent reactor trips and actuation of Engineered Safety Features components.

This analysis demonstrates that the proposed amendment to The North Anna Unit 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch Jr.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois and Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: March 22, 1999.

Brief description of amendments: The amendments modify the technical specifications to permit the use of the Gamma-Metrics Post Accident Neutron Monitors source range neutron flux detectors in addition to the Westinghouse source range neutron flux monitors to satisfy the requirement that two source range neutron flux monitors be operable during Mode 6 operations (refueling).

Date of issuance: June 2, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 109 & 109, 102 & 102.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 29, 1999 (64 FR 14944). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 2, 1996, as supplemented on May 27, 1999.

Brief description of amendments: The amendments revised Technical Specification 3/4.4.2 to reduce the number of required Safety/Relief valves (SRVs). This change supports a modification to remove five of the currently installed SRVs due to excess capacity and to reduce the amount of valve maintenance and associated worker radiation dose. The revised TS requires that 12 of the remaining installed 13 SRVs be operable.

Date of issuance: June 3, 1999.

Effective date: Immediately, to be implemented prior to startup of L1C10 for Unit 1 and prior to startup of L2C9 for Unit 2.

Amendment Nos.: 133 & 118.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 29, 1997 (62 FR 4343). The May 27, 1999, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: March 23, 1999 (NRC–99–0025).

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement (SR) 4.4.1.1.1 to require each recirculation pump discharge valve be demonstrated operable at least once every 18 months, deletes the "*" footnote from the SR, and revises the footnote itself to read "Not used."

Date of issuance: May 25, 1999.

Effective date: May 25, 1999, with full implementation within 90 days.

Amendment No.: 133.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19555)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: July 9, 1998, as supplemented March 31, 1999.

Brief description of amendments: These amendments revised Technical Specification (TS) 3/4.7.1.1 and associated Bases for both units. This amendment specifies maximum allowable reactor power level based on the number of operable main steam safety valves (MSSVs) rather than requiring reduction in reactor trip setpoint. This change is consistent with the Nuclear Regulatory Commission's improved Standard Technical Specifications for Westinghouse plants (NUREG–1431, Revision 1). The maximum allowable reactor power level with inoperable MSSVs will be calculated based on the recommendations of Westinghouse Nuclear Safety Advisory Letter 94–01. The change to the Unit 1 TS 3.7.1.1 also deletes reference to 2 loop operation since 2 loop operation is not a licensed

condition for either unit. Unit 1 TS Table 3.7–3 is then renumbered to be Table 3.7–2.

The March, 31, 1999 letter withdrew a portion of the amendment which would have removed the values of the orifice diameter of each MSSV from the TSs. This information will be maintained in the TSs.

Date of issuance: June 3, 1999.

Effective date: Units 1 and 2 as of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 223 and 99.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43203). The March 31, 1999 letter did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: August 31, 1998.

Brief description of amendment: Changes the Crystal River Unit 3 Technical Specifications to add additional instrumentation variables to Improved Technical Specification Table 3.3.17–1, Post-Accident Monitoring Instrumentation.

Date of issuance: June 3, 1999.

Effective date: As of date of issuance, to be implemented prior to commencing cycle 12 operation.

Amendment No.: 177.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56250).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: November 23, 1998, as supplemented January 29 and May 7, 1999.

Brief description of amendment: The amendment changes the Improved Technical Specifications for several reactor protection system and engineered safeguards actuation system setpoint values, and changes the surveillance requirement to verify valve position for valves in the high pressure injection system flowpath.

Date of issuance: May 21, 1999.

Effective date: As of date of issuance, to be implemented prior to commencing Cycle 12 operation.

Amendment No.: 178.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71966). The supplemental letters dated January 29 and May 7, 1999, did not change the original proposed no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: December 16, 1998.

Description of amendment request: These amendments consist of changes to the Technical Specifications (TS) in response to Florida Power & Light's (FPL) application dated December 16, 1998, regarding facility staff qualifications for multi-discipline supervisor (MDS) positions at Lucie Units 1 and 2. The amendments revise the administrative controls in TS Section 6.3, "Unit Staff Qualifications," by modifying FPL's commitment to ANSI/ANS 3.1–1978, "Selection and Training of Nuclear Power Plant Personnel," to incorporate specific staff qualifications for the position of MDS.

Date of Issuance: May 25, 1999.

Effective Date: May 25, 1999.

Amendment Nos.: 161 and 102.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TS.

Date of Initial Notice in **Federal Register**: February 10, 1999 (64 FR 6698).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 5, 1998, as supplemented February 18, 1999.

Brief description of amendment: The amendment modifies the safety limits and surveillances of the LPRM and APRM systems and related Bases pages to ensure the APRM channels respond within the necessary range and accuracy and to verify channel operability. In addition, an unrelated change to the Bases of Specification 2.3 is included to clarify some ambiguous language.

Date of Issuance: June 2, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 208.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1998 (63 FR 69342). The February 18, 1999, supplemental letter provided clarifying information, was within the scope of the original application, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of application for amendment: December 22, 1998, as supplemented March 19, 1999.

Brief description of amendment: The amendment replaces specific titles in Section 6.0 of the Technical

Specifications of all three Millstone units with generic titles.

Date of issuance: June 3, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 105, 235, and 171.

Facility Operating License Nos. DPR–21, DPR–65, and NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4158). The March 19, 1999 letter provided clarifying information that did not change the scope of the December 22, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: April 20, 1999.

Brief description of amendments: The amendments revised the implementation date for the relocation of the requirements specified in Technical Specification Sections 3.1.E and 5.1 to the Updated Final Safety Analyis Report. On December 7, 1998, the NRC had previously issued license amendments 141 and 132 for Units 1 and 2, respectively, approving the relocation of aforementioned requirements by June 1, 1999. The proposed amendments would postpone the implementation date to September 1, 1999.

Date of issuance: June 2, 1999.

Effective date: June 2, 1999, with full implementation within 30 days .

Amendment Nos.: 145 and 136.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 29, 1999 (64 FR 23131) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: January 4, 1999.

Brief description of amendments: These amendments revise the administrative section of the Technical Specification pertaining to controlled access to high radiation areas, and the reporting dates for the annual occupational radiation exposure report and the annual radioactive effluent release report.

Date of issuance: May 24, 1999.

Effective date: Units 1 and 2, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 135 and 100.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6706) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 24, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County , New York

Date of application for amendment: January 25, 1999.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by relocating certain requirements from the TSs to the Final Safety Analysis Report.

Date of issuance: May 24, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 189.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19562).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

PP&L, Inc., Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: March 12, 1999.

Brief description of amendment: This amendment would change the allowable values for both the core spray system and the low pressure coolant injection system reactor steam dome pressure-low functions.

Date of issuance: May 25, 1999.

Effective date: As of date of issuance, and shall be implemented within 30 days after startup from the Unit 1 eleventh refueling and inspection outage currently scheduled for spring 2000.

Amendment No.: 181.

Facility Operating License No. NPF–14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 7, 1999 (64 FR 17028).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 27, 1998, as supplemented by letters in 1999 dated January 11, January 29, February 25, and April 7 (two letters), and May 17.

Brief description of amendment: The amendment revised Technical Specification 4.4.5.4, Table 4.4–3 and the associated Bases to allow the repair of the steam generator tubes with the Electrosleeve tube repair method.

Date of issuance: May 21, 1999.

Effective date: May 21, 1999, to be implemented within 30 days from the date of issuance. The amendment includes a two cycle operating limit that requires all steam generator tubes repaired with Electrosleeves to be removed from service at the end of two operating cycles following installation of the first Electrosleeve in the steam generators.

Amendment No.: 132.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1998 (63 FR 66604). The supplemental letters in 1999 dated January 11, January 29, February 25, and April 7 (two letters)

provided additional clarifying information that did not expand the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Elmer Ellis Library, University of Missouri, Columbia Missouri 65201.

Dated at Rockville, Maryland, this 9th day of June 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15098 Filed 6–15–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Notice of Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:30 p.m., June 16, 1999.

PLACE: OPM Conference Center, Room 1350, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The conference center is located on the first floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council will receive its first Interim Report and hear from Dr. Marick Masters, Research Director for the NPC Research Project, on the status and progress of the Project. The Council will also hear a review of its May skills-building conference and a status report on the John N. Sturdivant National Partnership Awards process.

CONTACT PERSON FOR MORE INFORMATION: Jeff Sumberg, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–2000, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–15250 Filed 6–15–99; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes To Close June 20–22, 1999, Meeting

At its meeting on June 7, 1999, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for June 20-22, 1999, in Potomac, Maryland.

MATTER TO BE CONSIDERED: 1. Strategic Planning.

PERSONS EXPECTED TO ATTEND: Governors, Ballard, Daniels, del Junco, Dyhrkopp, Fineman, McWherter, Rider and Winters; Postmaster General Henderson, Deputy Postmaster General Coughlin, Secretary to the Board Koerber, and General Counsel Elcano.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–15434 Filed 6–14–99; 2:40 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23865; 812–11268]

Global TeleSystems Group, Inc.; Notice of Application

June 9, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Global TeleSystems Group, Inc. ("GTS") requests an order under section 3(b)(2) of the Act declaring that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

Filing Dates: The application was filed on August 24, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Global TeleSystems Group, Inc., 1751 Pinnacle Drive, North Tower 12th Floor McLean, Virginia 22102.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Nadya B. Roytblat, Assistant Director, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. GTS, a Delaware corporation, provides telecommunications services to businesses, other telecommunications service providers, and consumers. Through its wholly- and majority-owned subsidiaries (together with GTS, the "GTS Group"), GTS operates voice and data networks, international gateways, local access and cellular networks, and various value-added services in Western Europe, Central Europe, and the Commonwealth of Independent States, primarily Russia.

2. GTS's management has extensive experience in the development and operation of telecommunications businesses outside the United States. GTS actively participates in the operations and management of its subsidiaries by providing most of the funding for the subsidiaries' operations, selecting key members of the local management team, developing business

plans and marketing strategies together with local management, monitoring operating functions, and integrating its networks and businesses in a manner which is consistent with GTSs overall strategic objectives.

3. GTS intends to continue to expand its business. GTS maintains that the telecommunications business is capital intensive and, in order to compete, that it requires substantial capital to continue to develop its networks and meet the funding requirements of its operations, including losses, as well as to provide capital for acquisition and business development initiatives. In the past three years, GTS states that it raised over $600 million through a combination of public and private offerings of equity and debt securities. In addition, GTS states that it raised approximately $1.6 billion over the past two years through the issuance of debt.

4. GTS currently holds its cash in short-term investments pending deployment of the cash in building out its telecommunications projects. In addition, GTS states that it may need to raise additional capital to execute its current business plan, fund expected operating losses, consummate future acquisitions and exploit opportunities to expand and develop its businesses. GTS states that its need to raise and maintain large amounts of capital to meet its anticipated capital expenditures may create uncertainty as to its status as an investment company under section 3(a) of the Act.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7) of the Act.

2. GTS states that it meets the definition of an investment company under section 3(a)(1)(C) of the Act because it owns investment securities with a value in excess of 62% of its total assets (excluding cash items) on an unconsolidated basis. In addition, GTS states that because it anticipates raising additional capital to finance its capital expenditures and operations, it is unable to estimate when its holdings of investment securities, within the meaning of section 3(a)(2) of the Act, will represent less than 40% of GTS's total assets.

3. Section 3(b)(2) provides that, notwithstanding section 3(a)(1)(C) of the Act, the SEC may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. GTS requests an order under section 3(b)(2) declaring that GTS is primarily engaged through its wholly- and majority-owned subsidiaries in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

4. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the SEC considers: (a) the applicant's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[1]

(a) *Historical Development:* GTS states that it was formed in 1983 to provide telecommunications services in foreign markets and to establish a high speed transmission network across Western Europe. Since its inception, GTS states that it also has developed into a leading independent provider of telecommunications services to businesses, other high usage customers, and telecommunications carriers in Europe.

(b) *Public Representations of Policy:* GTS states that it does not now, and has never, held itself out as an investment company. GTS asserts that, in its annual reports, shareholder letters, prospectuses, SEC filings, and on its Internet web site, it consistently represents itself to shareholders and the public as a company providing telecommunications services.

(c) *Activities of Officers and Directors:* GTS states that its officers and directors are actively engaged in the management and development of its telecommunications businesses. GTS further states that of its ten principal officers, only one spends any time (approximately 5%) monitoring the Group's cash reserves and short-term securities.

(d) *Nature of Assets:* GTS states that, as of December 31, 1998, its total assets, on a consolidated basis, were $2,614 million. Of these, $986 million, or approximately 37%, represented investment securities as that term is defined in section 3(a)(2) of the Act. GTS states that these investment securities consist of short-term, liquid instruments that are held by GTS not for investment purposes but to preserve its assets pending using these monies for business operations or for purchase of operating assets.

(e) *Source of Income:* GTS states that in 1998, it had total net losses of $255.8 million. Of these, 91% were attributable to GTS's operations and 9% to GTS's investment activities. GTS's investment expenses exceeded its investment income because GTS paid $83 million of interest on its short- and long-term debt and earned $60 million of interest income from its investment securities.

5. GTS thus states that it meets the factors that the SEC considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15190 Filed 6–15–99; 8:45 am]

BILLING CODE 8010–01–M

[1] *See Tonopah Mining Company of Nevada, 26 S.E.C. 426, 427 (1947).*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Meeting; Satellite-Based Navigation User Forum

AGENCY: Federal Aviation Administration, Office of System Architecture and Investment Analysis.

SUMMARY: The Federal Aviation Administration (FAA) Office of System Architecture and Investment Analysis (ASD) will hold a forum to present findings and obtain information from the aviation user community as part of the investment analysis process as we transition to a satellite-based navigation (Sat/Nav) infrastructure.

DATES: The (Sat/Nav) user forum public meeting will be held on July 7, 1999, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the third-floor auditorium from 9:00 a.m. to 12 Noon, followed by a question and answer session. In addition, time will be made

available for specific follow-on meetings as needed. Contact the Sat/Nav Investment Analysis Team Lead for this purpose.

FOR FURTHER INFORMATION CONTACT: Ms. Millie Butler-Harris, CNS Facility Investment Analysis, ASD–410, at (202) 358–5399 and via e:mail at *millie.butler-harris@faa.gov* or Dr. Robert Rovinsky, the SatNav Investment Analysis Team Lead, ASD–410, at (202) 358–5212 and via e:mail at robert.rovinsky@faa.gov.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration is reviewing its plan to transition to a totally satellite-based navigation (Sat/Nav) infrastructure. A Sat/Nav public meeting is planned to obtain input from the aviation community as the FAA considers the analysis and develops the alternatives for a particular approach to navigation within the Nation's airspace.

At this meeting, the FAA will review the economic information that the team has already received along with the cost, benefits the risk findings. The team will also discuss its overall findings including the alternatives analysis. This is the last in a series of three public meetings prior to the investment analysis team's presentation before the FAA's Joint Resources Council with its recommended baseline for Sat/Nav.

The public is invited to attend the meeting as observers and/or to provide comment. Requests to attend this meeting and to obtain information should be directed to the contact persons listed above. Additional information will be posted on the Internet at *www.faa.gov/asd*.

Issued in Washington, DC., on June 9, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–15294 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–01–C–00–CEZ) To Impose and To Use a Passenger Facility Charge (PFC) at Cortez Municipal Airport, Submitted by the City of Cortez, CO.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and to use a PFC at Cortez Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 16, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Russ Machen, Acting Airport Manager, at the following address: Cortez Municipal Airport, 210 East Main Street, Cortez, Colorado 81321.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Cortez Municipal Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–01–C–00–CEZ) to impose and to use a PFC at Cortez Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 9, 1999, the FAA determined that the application to impose and to use a PFC submitted by the City of Cortez, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 7, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1999.

Proposed charge expiration date: August 1, 2007.

Total requested for approval: $200,078.00.

Brief description of proposed projects: Install distance remaining signs, construct electrical vault; Reconstruct commercial ramp; Purchase snowplow; Construct Taxiway "B"; Construct south half parallel Taxiway "A"; Land acquisition (Parcels 21 and 22); Acquire Index "A" fire truck.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Withdrawn per letter dated June 3, 1999.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cortez Municipal Airport.

Issued in Renton, Washington on June 9, 1999.

Carolyn T. Read,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–15296 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Butte and Yuba Counties, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Butte and Yuba Counties, California.

FOR FURTHER INFORMATION CONTACT: Robert F. Tally, Chief, Program Delivery Team—North, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, California 95814, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) on a proposal to construct approximately 30 miles of expressway/freeway to provide facility continuity from the existing freeway at the junction of State Routes 65 and 70 south of Oroville, located in Butte County, and bypassing the City of Marysville, in order to better serve inter-regional transportation needs.

Alternatives under consideration include (1) taking no action; (2) an alternative which utilizes portions of existing State Route 70; and (3) several alternatives involving construction or

new alignments to the east or west of Marysville.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, an interest in this proposal. In addition, scoping meetings will be held during the latter part of 1999. Public notice for these scoping meetings will be given. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 7, 1999.

Robert F. Tally,

Chief, Program Delivery Team—North Sacramento, California.

[FR Doc. 99–15201 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dallas County, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Dallas County, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Waidelich Jr., District Engineer, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701, Telephone (512) 916–5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and the North Texas Tollway Authority (NTTA), will prepare an environmental impact statement (EIS) for the Trinity Parkway reliever route from the SH–183/IH–35E interchange to SH–310/US–175 interchange to relieve traffic congestion on IH–35E and IH–30 within the City of Dallas. In 1998, A Major Transportation Investment Study (MTIS) was completed by TxDOT in order to develop a locally-preferred plan to solve transportation problems along the Trinity River corridor in Dallas and to integrate with community plans and goals for the Trinity River resource. The study was focused on transportation needs in the IH–35E/IH–30 interchange on the west side of downtown Dallas, locally known as the "Mixmaster," and the depressed segment of IH–30 south of downtown, locally known as the "Canyon." The MTIS Recommended Plan of Action is comprised of seven elements, which include improvements to existing facilities, improving alternative transportation modes, and constructing a reliever route along the Trinity River. The MTIS considered in detail four corridors for the proposed reliever route. These included Stemmons Freeway (IH–35E), Industrial Boulevard, the east Trinity River levee and the west Trinity River levee.

During the MTIS process, numerous alternatives were evaluated for the reliever roadway. The analysis of effects for each of the reliever roadway alternatives included the estimation of construction and right-of-way costs, traffic capacity considerations, effect on natural and cultural assets, effect on social and economic conditions, impacts on Trinity River projects, number of displacements, effect on access to adjacent properties, and difficulty/disruption in construction. From the preliminary alternatives considered, four build alternatives, one along existing Industrial Boulevard and three along the Trinity River levees, were identified as potential alternative alignments that warrant further study. The principal variations of the three alternatives along the Trinity River levees consist of a combined roadway with eight general purpose lanes along the river side of the east levee; a split parkway with four general purpose lanes along the river side of both levees; and a split parkway with four general purpose lanes along the land side of both levees. The Industrial Boulevard alternative consists of an elevated roadway (double-deck) with eight general purpose lanes and two high-occupancy vehicle (HOV) lanes. These alternatives and the no-build alternative along with any other reasonable alternatives identified during the scoping and public involvement processes will be analyzed in further detail during the EIS review process.

The EIS will include a discussion of the effects of other known and reasonably foreseeable agency actions proposed within the Trinity Parkway corridor study area, which include proposed projects by the US Army Corps of Engineers (USACE) and the City of Dallas. The USACE has proposed flood control improvements consisting of the proposed Dallas Floodway Extension, which encompasses the Dallas Floodway from the AT&SF Railroad near Corinth Street to IH–20; and proposed flood control improvements from the AT&SF Railroad to Royal Lane in Dallas. The USACE has submitted a final EIS for the proposed Dallas Floodway Extension project. The proposed flood control improvements between the AT&SF Railroad and Royal Lane will be evaluated as part of a Programmatic EIS to be completed by the USACE for the Trinity River complex from the southern boundary of Dallas County to the upper reaches of the Trinity River Elm Fork, West Fork, and Clear Fork. The City of Dallas has proposed various Trinity River floodway improvements, which include the construction of lakes, wetlands, hike and bike trails, parks, and other recreational amenities. This project is identified as the City of Dallas Trinity River Master Implementation Plan and is currently in the planning stage.

A public scoping meeting is planned to be held in the summer of 1999. The date will be announced locally at a later time. This will be the first in a series of meetings to solicit public comments on the proposed action. In addition, public hearings will be held. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Walter C. Waidelich, Jr.,

District Engineer, Austin, Texas.

[FR Doc. 99–15262 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: FRA is issuing Safety Advisory 99–1 addressing safety practices related to the lifting or jacking of railroad equipment in order to remove trucks or repair other components on a piece of railroad equipment which require individuals to work beneath railroad equipment while it is raised.

FOR FURTHER INFORMATION CONTACT: Ronald Newman, Motive Power & Equipment Staff Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, SW, RRS–14, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6241), or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW, RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6036).

SUPPLEMENTARY INFORMATION: Two recent instances involving a car under repair falling off its jacks have resulted in a total of three fatalities. Although investigation of both incidents is still being conducted, preliminary findings have indicated that the stability of the ground supporting the jacking device contributed to the cars falling. These events have highlighted the dangers of working under and around cars which are supported off of their trucks.

On February 26, 1999, a Union Pacific Railroad employee was fatally injured while performing a wheel set replacement on a loaded grain hopper. The incident occurred on a siding serving a grain elevator at Greensburg, Kansas, where the car had been set out after tripping a hot box detector. Two individuals were dispatched in a car repair truck with tools, equipment, and a spare wheel set to repair the car. Hydraulic jacks supported on wood blocks were used to lift the car. Preliminary investigation indicates that safety supports were not used and that during reassembly the individuals involved were attempting to get good alignment of the parts by using small jacks and pry bars and that the car became unstable and fell, pinning one of the individuals under one of the ladder grab irons and fatally injuring him. Preliminary investigation also suggests that one of the wood support pads may not have been sufficient to support the weight of the car due to soil conditions under it.

On March 18, 1999, a double fatal accident occurred on Grand Trunk Western Railroad on a repair track at East Yard, Hamtramck, Michigan, when a car supported on electro-hydraulic car jacks and safety supports fell and fatally injured two of the three individuals working under it. Although wooden jacking pads were used under the jacks, preliminary findings indicates that the earth under the jack at the A-end, L-position, may have collapsed and that the safety supports may have been ineffective.

Recommended Action

Railroads and car repair shops need to ensure that personnel responsible for jacking railroad cars are provided proper equipment, training, and adequate safety supervision, as well as stable ground on which to work. FRA recommends that the following safety precautions be taken in addition to use of mandated personal safety equipment and blue signal protection:

- *Site selection and weather awareness:* A car which is to be lifted should be on level track in an area where the ground under the jacks is solid. If the ground is not solid or if soil conditions are significantly different from one side of the track to the other jacking should not be attempted and the car should be moved before lifting. Frozen ground may be temporarily solid but care should be taken in case one side should be defrosted by the sun, which could cause the car to tip to that side. If high winds or other dangerous weather conditions exist or are expected before the car can be set back on its truck, lifting should not be attempted.
- *Equipment selection:* Capacity of car jacks and safety supports should be clearly marked and personnel should be trained in selection of the proper equipment for the job.
- *Equipment inspection:* Prior to each use, car jacks and safety supports should be visually inspected for cracks, bends, hydraulic leaks, or other abnormal conditions that could indicate impending failure. Employees should be trained in how to properly inspect the equipment.
- *Preparation for lifting:* Before attempting to lift a car, the ground under the planned location of the jacks should be checked for stability and covered with blocking to spread the load of the jacks, as needed. Wooden blocking or jacking pads large enough to spread the load over the ground should be used. Wheels that are not to be lifted should be chocked to prevent rolling, and wood or other heavy duty cushioning material should be placed between the jack and the car to prevent slipping.
- *Angularity:* Jacks and safety supports should be set as close to vertical as possible. Deviation from vertical which is visible to the unaided eye should be corrected.
- *Safety supports:* While the car is being worked on or if it is to be left standing without a truck in place underneath it, safety supports which have been selected, inspected, and prepared as detailed above should be placed under the car, supporting weight.
- *Periodic inspection:* A periodic inspection program should supplement the visual inspection of the jacks and safety supports. Appropriate non-destructive testing should be a part of this periodic inspection.
- *Safety supervision:* Supervisory personnel at each facility should be tasked to ensure that the training and inspections recommended above are carried out in accordance with the intent of this safety advisory.

FRA may modify Safety Advisory 99–1, issue additional safety advisories, or take other appropriate necessary action to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC on June 11, 1999.

George Gavalla,

Associate Administrator for Safety.

[FR Doc. 99–15252 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Proposed Wilmington Transit Connector, Wilmington, DE

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), as Federal lead agency, and the Delaware Transit Corporation (DTC), a division of the Delaware Department of Transportation (DelDOT), as local lead agency, in cooperation with the City of Wilmington (City) and the Wilmington Area Planning Council (WILMAPCO), intend to prepare an Environmental Impact Statement (EIS) on a proposed investment strategy to improve mobility among major destinations within the City. The EIS will be prepared in conformance with the National Environmental Policy Act (NEPA). The corridor under study is approximately

1.8 miles in length and 0.5 miles in width, and encompasses the major activity centers making up Wilmington's downtown. The planning horizon for the work will be 20 years with the year 2020 to be employed as the 'design year.'

1. The alternatives include: (1) A No Build Alternative: this alternative involves no change to transportation services or facilities in the Corridor beyond already committed projects; (2) Transportation Systems Management (TSM) Alternatives: these alternatives would optimize existing transportation facilities and operations with low-cost investments to meet the travel demand. Components of this alternative include selected pedestrian, roadway and bus service enhancements; (3) two types of build alternatives—dedicated bus or busway and fixed rail. Each build alternative will consider a range of technologies, routes/alignments, and service levels. Preliminary routes/alignments have been identified for consideration in each of four areas of the corridor beginning at the north end of the corridor, as follows:

Segment 1—4 alignments serving Rodney Square Transit hub in the north section;
Segment 2—2 north-south alignments in the central section of the corridor;
Segment 3—3 alignments serving the Amtrak station transit hub; and
Segment 4—3 alignments serving the cultural/entertainment district in the south Riverfront area.

Other alternatives or revisions to the above alternatives that arise through the scoping process will also be considered.

Scoping will be accomplished through correspondence and meetings with interested persons, organizations, and Federal, State, and local agencies. A public meeting will be held regarding this project on Tuesday, June 29, 1999 from 4 to 7 p.m. in Wilmington, Delaware. See **ADDRESSES** below. The project also will be included in the future meetings, workshops, and focus groups of the 'Wilmington Initiatives,' an element of the Metropolitan Transportation Plan (MTP) for the region, through which the public will have full and regular access to project information and opportunity to comment on the findings as they emerge. As part of the systems planning of the Wilmington Initiatives, two public meetings have been held on April 14 and May 19 to discuss a transit connector concept.

DATES:

Comment Due Date: Written comments on the alternatives to be considered and comparative environmental impacts to be evaluated should be postmarked by August 2, 1999 and sent to the Delaware Transit Corporation or the Delaware Department of Transportation. See **ADDRESSES** below.

Scoping Meeting: A public scoping meeting will be held on Tuesday, June 29, 1999, from 4 to 7 p.m. at the Grand Opera House. See **ADDRESSES** below. The meeting will be held in an "open-house" format, and representatives of DTC/DelDOT, the City of Wilmington and WILMAPCO will be available to discuss the proposed project. Informational displays and written material will also be available. Provision to make written and verbal comments on the materials will be provided. The building in which the scoping meeting will be conducted is accessible to people with disabilities, and provisions will be made for the hearing impaired.

ADDRESSES: Written comments should be sent to:

Mr. Raymond C. Miller, Director, Delaware Transit Corporation (DTC), 655 Bay Road, Suite 4G, Dover, DE 19901

or

Terry Fulmer, Manager of Environmental Services, Delaware Department of Transportation (DelDOT), P.O. Box 778, Dover, DE 19903

The scoping meeting will be held as follows: Tuesday, June 29, 1999, From 4:00 p.m. to 7:00 p.m., Grand Opera House, Lower Level Function Room, 818 Market Street, Wilmington, Delaware 19801.

As mentioned above, there will also be provisions for written and verbal comments at the public meeting. People with special needs should contact: Doug Andrews, Delaware Transit Corporation (DTC), 400 S. Madison Street, Wilmington, DE 19801, (302) 577–3278 x3451.

FOR FURTHER INFORMATION CONTACT: John T. Garrity, Federal Transit Administration (FTA), Region III, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and the DTC/DelDOT, along with the City and WILMAPCO, invite interested individuals, organizations, and Federal, State, and local agencies to participate in defining transportation alternatives to be evaluated in the EIS and in identifying social, economic, or environmental issues related to the alternatives. An information packet describing the Wilmington Transit Connector, the study area, the proposed alternatives, and the impact areas to be evaluated are being mailed to affected Federal, State, and local agencies. Other interested parties may request the scoping materials by contacting Mr. Raymond C. Miller, Director of the Delaware Transit Corporation. See **ADDRESSES** above.

During scoping, comments should focus on identifying social, economic, or environmental impacts to be evaluated and suggesting alternatives that meet identified mobility needs in a cost-effective manner. However, scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the scoping, during and immediately after the development of Alternatives Analysis Draft EIS. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. Raymond C. Miller, Director of the Delaware Transit Corporation. See **ADDRESSES** above.

II. Description of Study Area and Project Need

The study area extends from 14th Street in the north to Walnut Street on the east, along the Christina River in the southwest, to the Conrail rail tracks to the south, I–95 on the west, to 2nd Street east to Washington Street, joining 14th Street. The corridor is approximately 1.8 miles long and 0.5 miles wide. The corridor encompasses the major activity centers making up Wilmington's downtown and the developing riverfront entertainment district:

1. Substantial Office Core: Currently there are 8 million square feet of single-tenant and 4.2 million of square feet of multi-unit tenant office space in downtown Wilmington.

2. Downtown Retail Areas: Downtown Wilmington contains approximately 200,000 square feet of retail space.

3. Cultural Facilities: Cultural facilities include the Grand Opera House, the Dupont Playhouse, the Delaware Theatre Company, the Delaware Historical Society, Opera Delaware, the Christina Cultural Arts Center and the First USA Riverfront Arts Center. Wilmington's cultural attractions generate at least half a million visitors per year today.

4. Higher Education Facilities: Seven educational institutions with a current enrollment of 4,000 students are located in the corridor.

5. Hotels: Five hotels, with close to 850 rooms, generate approximately 230,000 guests per year today.

This area is the transportation hub of the region and is traversed by intercity rail, bus and highway networks extending up and down the northeast corridor of the United States. The corridor accounts for approximately 20% of the State of Delaware employment and 64% of the City's workforce.

The need for the project arises from three considerations: distances between major activity centers, constrained access to several of these activity centers, and planned economic development that is constrained by transportation access. First, Wilmington's corporate offices, retail, educational, cultural and entertainment centers are dispersed along most of the corridor. A major travel market for a transit service is the office employment in this corridor. However, employment sites are spread out over a length of about one mile (Christina Gateway Complex between 2nd and 4th Streets at Walnut and the Rodney Square/ Delaware Avenue area (north of 9th Street). Supportive land uses of retail and entertainment are generally separated from these concentrations by more than the typical one to three block distance that workers will walk at lunch time or after work. Considering current and projected (year 2006) employment approximately 1,700 trips per day would be generated for reliable transit service in this corridor. Other identified markets for transit in this corridor include: riverfront attractions and jobs (1,850 potential trips), commuting to and from train station (300 trips) and trips to and from educational facilities (100 trips).

Second, access to the rapidly developing entertainment, cultural, and retail centers on the riverfront is constrained by the northeast corridor viaduct, I–95, and the river. Patrons arriving at the train station in the middle of the corridor have limited options for getting to the new Exhibition center or retail due to these barriers and their effect on street configuration and connection. While the Downtown Circuit bus connects these two locations, the route is circuitous and subject to traffic delays. Use of an abandoned rail corridor, now owned by the state presents one of the few options for increased capacity and reliability of transit service.

Finally, the study corridor contains the City's major office, retail, hotel, transportation, cultural and educational facilities, and more is coming. Office facilities include several corporate headquarters and Federal and State office complexes. Entertainment/retail facilities have expanded along the riverfront and more is on the drawing boards. Hotels include the Hotel DuPont, a national historic landmark and national chains such as Wyndham, Marriott and Sheraton. A new hotel and residential apartments were announced in early 1999. A "Shipyard Shops" retail complex opened on the riverfront in May 1999. A rejuvenated retail area on southern Market Street called "Ship's Tavern District" breaks ground in May 1999. The study corridor also includes a judicial complex currently under construction at Fourth and King Streets. The Wilmington train station, with AMTRAK and regional rail facilities, serves as a major transit hub in the middle of the corridor; with Rodney Square, the transit hub in the northern segment. A major challenge of this study is how to efficiently serve these facilities and limit traffic and parking impacts. A high quality transit service in this corridor would allow implementation of a park-once policy, so that internally generated traffic and land devoted to parking would be minimized.

Also at issue is the need to link workers to the new jobs. To accomplish this will require better transit service between the train station and riverfront developments and between in-town neighborhoods and the new employment centers in the corridor.

III. Alternatives

Among the alternatives that the Alternatives Analysis and DEIS will evaluate are:

1. No Build Alternative: this alternative involves no change to transportation services or facilities in the Corridor beyond projects already committed for construction in the regional transportation improvement program and state capital improvement program.

2. Transportation Systems Management (TSM) Alternatives: these alternatives would optimize existing transportation facilities and operations with low-cost investments to meet the travel demand and improve safety. Components of this alternative will include selected pedestrian, roadway and bus service enhancements.

3. Fixed Guideway Alternatives: fixed guideway alternatives will include dedicated busway and rail alternatives, employing a combination of existing streets and former rail right-of-way. A range of specific alignments will be considered.

It is expected that the public scoping process and written comments will be a major source of additional candidate alternatives for consideration in the study. The types of transportation alternatives suggested in prior studies for consideration in this corridor includes Transportation Systems Management (TSM) options such as changes in transit routes, fares, and equipment, parking enforcement, and traffic operational changes. Major capital improvements considered have included both rubber-tire trolley and rail transit alternatives.

The alternatives to be evaluated in the EIS will be based on an element of the Metropolitan Transportation Plan (MTP) for the region, known as the Wilmington Initiatives. The transit element of the Initiatives is defined by six analyses:

- Rummel, Klepper & Kahl Consulting Engineers, Parsons Brinkerhoff, and Richard H. Pratt, Consultant, Inc. Regional Rail Study Phase III: Transit Opportunities Along Rail Corridors Within Northern New Castle County "Initial Feasibility Assessment: 6 Corridors". Delaware Department of Transportation, 1996.
- Johnson, Mirmiran & Thompson. Downtown Wilmington Transportation Study: Draft Technical Report, Downtown Circulation Study. 1997.
- *TransManagement, Inc.* Downtown Wilmington Land Use and Development Capacity Assessment. 1997.
- SG Associates, Inc. Wilmington Transportation Studies Transit Shuttle Feasibility Analysis. 1998.
- SG Associates, Inc. Wilmington Transportation Studies Transit Downtown Free Fare Zone Feasibility Analysis. 1998
- Kimley-Horne and Associates, Inc. Wilmington 2000 Streetcar Conceptual Study. 1998.

These analyzes may be reviewed at the Delaware Transit Corporation, 400 Madison Street, Wilmington; WILMAPCO, 850 Library Avenue, Suite 100, Newark, the Wilmington Institute Public Library at 10th & Market Streets, Wilmington [or obtained from Doug Andrews, Delaware Transit Corporation]. See **ADDRESSES** above.

IV. Factors To Be Evaluated

FTA and the DTC/DelDOT, along with the City and WILMAPCO, will evaluate the social, economic, and environmental impacts of the alternatives under consideration. Among the primary transportation issues to be evaluated are the expected increase in transit ridership, including recreational and work trips and the expected increased need for mobility for the transit dependent population. The support of the region's air quality goals, economic benefits, satisfying overall transportation needs of the corridor, capital outlays needed to construct the project, cost of operating and

maintaining the facilities created by the project, and the financial impacts on the funding agencies will all be considered. Potentially affected environmental and social resources to be evaluated include, land use and neighborhood impacts, residential and business displacements and relocations, impacts on historic properties and districts, traffic and parking impacts near stations and along the alignments, economic development potential, visual impacts, impacts on cultural resources, and impacts on parklands. Impacts on archaeological resources, air quality, water quality, wetlands and noise will also be considered. New information will be gathered and detailed studies on these subjects will be conducted as necessary. Existing findings about the presence of sites containing hazardous materials will be summarized and utilized; additional studies will be done as necessary. The environmental impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate adverse impacts will be considered.

V. FTA Procedures

In accordance with the regulations and guidance established by the Council on Environmental Quality, as well as with 23 CFR 450 and 23 CFR 771 of the FTA/Federal Highway Administration planning and environmental regulations and policies, an Alternatives Analysis/Draft EIS (DEIS) will include an evaluation of the social, economic, and environmental impacts of the alternatives and will review alternatives on the basis of conceptual design. The EIS will also comply with the requirements of the Clean Air Act Amendments of 1990 (CAAA) and with the Executive Order 12898 on Environmental Justice. After its preparation, the Alternatives Analysis/DEIS will be available for public and agency review and comment and a public hearing will be held. On the basis of the Alternatives Analysis/DEIS, and the comments received, the City will select a locally preferred alternative for a major investment strategy.

The locally preferred alternative will then be reaffirmed by the MPO for inclusion into the Metropolitan Transportation Plan and the Transportation Improvement Program (TIP). Following this action, the DTC / DelDOT will request FTA authorization to initiate preliminary engineering and to proceed with needed additional environmental studies prior to issuance of a Final EIS.

Issued on: June 11, 1999.

Sheldon A. Kinber,

Regional Administrator, Federal Transit Administration, Region III.

[FR Doc. 99–15321 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5800; Notice 1]

Cosco, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Cosco, Incorporated, of Columbus, Indiana, has determined that a number of child restraint systems fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports." Cosco has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 213, S5.5.2.(k), requires that each add-on child restraint system designed to be used rear facing must have a label that warns the consumer not to place the rear-facing child restraint system in the front seat of a vehicle that has a passenger side air bag, and a statement that describes the consequences of not following the warning. These statements must be on a red, orange, or yellow contrasting background, and placed on the restraint so that it is on the side of the restraint designed to be adjacent to the front passenger door of a vehicle and is visible to a person installing the rear-facing child restraint system in the front passenger seat.

Cosco has notified the National Highway Traffic Safety Administration that between March 31, 1999 and April 7, 1999, it manufactured 815 Arrive Infant Child Restraints, Model 02–729–TED, that do not have the air bag warning label required in S5.5.2(k) of FMVSS 213. During this time period, one of the production lines used by Cosco to produce the Arriva model used pads for the Canadian version of this child restraint which do not incorporate the air bag warning label required by FMVSS 213.

Cosco supports its application for inconsequential noncompliance with the following:

Cosco contends this noncompliance is inconsequential as it relates to motor vehicle safety. A notice and remedy campaign ("recall") would not serve any safety related purpose and would in fact, cast doubt in the minds of the consumer as to the effectiveness of child restraints. We believe the low number of units involved (815) combined with the enormous publicity given to the warning label issue, rear-facing seats in air bag locations, and given the fact the instructions and unit labels do warn to the consumer about this misuse do not warrant a recall.

To reiterate, Cosco does not believe this noncompliance warrants a recall. The Agency, child restraint manufacturers and child passenger safety advocates are all aware of the negative impacts of recalls resulting from technical noncompliance. The two primary negative effects are, the public, because of the number and frequency of such recalls, pays no attention to recalls that in fact do in a practical way affect child passenger safety. In addition, the public upon seeing the number of recalls, concludes child restraints currently available are unsafe and therefore declines to use them. The Agency is aware and , in fact, has publicly advised consumers to use child restraints which have defects or noncompliances that have resulted in recalls until such child restraints can be corrected. This is in recognition of the fact that technical noncompliance does not compromise the overall effectiveness of child restraints. In the event a recall is ordered for the noncompliance which has been identified, both of the effects described will impact consumers negatively.

In conclusion, Cosco submits reasonable evaluation of the facts surrounding this technical noncompliance will result in the decision that no practical safety issue exists.

Interested persons are invited to submit written data, views, and arguments on the application of Cosco described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 16, 1999.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 10, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–15251 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 3:00 p.m. on Sunday, June 27, 1999, in the Associate Administrator's Conference Room of the Corporation's Administration Building, 180 Andrews Street, Massena, New York. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 25, 1999, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on June 11, 1999.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 99–15370 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–50]

Revocation of Unimar, Inc. International as a Customs Approved Gauger and Accredited Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of Unimar, Inc. International as a Customs approved gauger and accredited laboratory.

SUMMARY: Unimar, Inc. International of Houston Texas, a Customs approved gauger and accredited laboratory, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found in violation of 19 CFR 151.13 of the Customs Regulations. Specifically, Unimar, Inc. International sites located in Brownsville, Texas; Keansburg, New Jersey; and Houston, Texas were not following proper regulations and procedures regarding equipment and instrument calibration and record keeping. Further, as required under section 151.13(b)(8) of the Customs Regulations, Unimar, Inc. International did not notify the Executive Director, Laboratories and Scientific Services, of the closing of their Gonzalez, Louisiana site. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval and laboratory accreditations given to Unimar, Inc. International have been revoked.

EFFECTIVE DATE: June 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ira Reese, Chief Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: June 8, 1999.

George D. Heavey,

Executive Director, Laboratories and Scientific Service.

[FR Doc. 99–15322 Filed 6–15–99; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Part 203

[DFARS Case 97-D020]

Defense Federal Acquisition Regulation Supplement; Employment Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies

Correction

In rule document 99–7135, beginning on page 14397, in the issue of Thursday, March 25, 1999, make the following correction:

203.570-2 [Corrected]

On page 14398, in the first column, above section heading "**203.570-Policy.**" add amendatory instruction 3. to read as follows: "3. Section 203.570-2 is revised to read as follows:".

[FR Doc. C9–7135 Filed 6–15–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1430-11; WYW 83359]

Public Land Order No. 7342; Modification and Partial Revocation of 12 Secretarial Orders; Wyoming; Correction

Correction

In notice document 99–14703 appearing on page 31287 in the issue of Thursday, June 10, 1999, make the following correction(s):

On page 31287, in the second column, in the **EFFECTIVE DATE:** section, "[Insert Date of Publication in **Federal Register**]" should read "June 10, 1999".

[FR Doc. C9–14703 Filed 6–15–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-208156-91]

RIN 1545-AQ30

Accounting of Long-Term Contracts

Correction

In proposed rule document 99–10948, beginning on page 24096, in the issue of Wednesday, May 5, 1999, make the following correction:

§ 1.460-4 [Corrected]

On page 24110, in the second column, in § 1.460-(4)(b)(5)(v), in the sixth line, "§ 1.460-6(c)(1)(ii)2)" should read "§ 1.460-6(c)(1)(ii)".

[FR Doc. C9–10948 Filed 6–15–99; 8:45 am]

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Federal Register

Wednesday
June 16, 1999

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR PART 246

RIN 0584–AA80

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems

AGENCY: Food and Nutrition Service, USDA

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children. It would strengthen the requirements for operation of vendor management systems by establishing mandatory selection criteria; limitation of vendors; training requirements; criteria to be used to identify high-risk vendors; and monitoring requirements, including compliance buys. In addition, the rule would strengthen food instrument accountability and sanctions for participants who violate program regulations. It would also streamline the vendor appeals process. The rule is intended to ensure greater program accountability and efficiency in food delivery and related areas, and to promote a decrease in vendor violation of program requirements and loss of program funds.

DATES: To be assured of consideration, written comments must be postmarked on or before September 14, 1999. Since comments are being accepted simultaneously on several separate rulemakings, commenters on this proposed rule are asked to label their comments "Food Delivery Systems." In addition, due to the inherent problems associated with the large volume of comments this rule is expected to generate, electronic transmissions, including data faxes, will not be accepted.

ADDRESSES: Comments may be mailed to Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, at (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be "significant" and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule would not have a significant impact on a substantial number of small entities. This rule would modify vendor selection, training, monitoring, sanction and appeal procedures and/or systems. The effect of these changes would fall primarily on State agencies. Local agencies and vendors would also be affected, some of which are small entities. However, the impact on small entities is not expected to be significant.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V, and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of the preamble of the final rule. Prior to any judicial challenge to the application of the provisions of the final rule, all applicable administrative procedures must be exhausted.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–38) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The following constitutes a 60-day notice issued by FNS.

Send comments and requests for copies of this information collection to Lori Schack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. A copy may be sent to Barbara Hallman, Branch Chief, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746.

Comments and recommendations on the proposed information collection must be received by August 16, 1999. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

OMB Number: 0584–0043.

Expiration Date: 05/31/99.

Type of Request: Revision of a currently approved reporting and recordkeeping requirements.

Abstract: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20) (Paperwork Reduction Act), the reporting and recordkeeping burden associated with this proposed rule will be used by FNS as a principal source of information about how each State agency's food delivery system operates. This proposed rule would primarily strengthen and improve vendor management, food instrument accountability, and participant sanctions in the WIC Program. It addresses vendor selection, training, monitoring and high-risk identification and food instrument reconciliation and security. The collection and recordkeeping of this information is necessary to determine compliance with Federal regulations.

Section 246.4(a) currently requires State agencies to submit changes to State Plans annually as a prerequisite to

receipt of funds from FNS. State Plans address specific State agency program operations such as: a description of the food delivery system, including the system for the monitoring; the system for the control and reconciliation of food instruments; State agency efforts to identify the disposition of food instruments; and efforts to identify dual participation. FNS estimates that addressing the additional State plan requirements that would be required by this proposal will take each State agency 3 hours annually, for a total of 264 personhours (88 State agencies × 3 personhours per State agency) for this provision annually.

Proposed section 246.12(i)(1) and (4) would require State agencies to conduct annual vendor training and to document the contents and receipt of vendor training, in part to assure that vendors have knowledge of program rules and procedures. FNS estimates that developing the content of vendor training materials will take each State agency an average of 8 personhours per State agency or 704 total personhours annually (8 hours × 88 State agencies). FNS further estimates that participation in the annual training will take each State agency and vendor an average of 2 hours for a total of 90,176 personhours annually (2 hours × 88 State agencies plus 2 hours × 45,000 vendors). Finally, FNS estimates that it will take each State agency and each vendor approximately 15 minutes to document receipt of the training for a total estimated annual burden of 11,272 (.25 hours × 88 State agencies plus .25 hours × 45,000 vendors).

Proposed section 246.12(j)(3) would require State agencies to monitor 10 percent of its vendor population each year. The monitoring would be required to be targeted to high-risk vendors. Proposed section 246.12(j)(3)(i) would require the State agency to document the reason why it has granted a waiver from compliance buys or inventory audits for vendors identified as high risk. This will allow FNS to identify whether a State agency has taken appropriate monitoring action against high-risk vendors, thus enabling FNS to better evaluate State agency compliance with high-risk monitoring requirements. FNS estimates that 10 percent of the total vendor population, or 4,500 vendors, will be identified as high-risk and that of those, 5 percent or 225 vendors will require a waiver from compliance buys or audits. FNS estimates it will take 2 personhours for the State agency to document each waiver, resulting in a national total of 450 personhours (225 waivers × 2 hours per waiver) required for this provision annually.

Proposed section 246.12(j)(4) would require that State agencies provide documentation for all monitoring visits, including compliance buys, inventory audits, and routine monitoring visits. FNS estimates that 10 percent or 4,500 vendors will receive compliance buys. FNS estimates that the average State agency will perform three compliance buys per vendor for a total of 13,500 compliance buys annually (4,500 vendors × 3 compliance buys per vendor). FNS further estimates that each buy will require 2 hours to document, for a national total of 27,000 personhours (13,500 compliance buys × 2 hours of documentation for each buy) spent on this provision annually.

Section 246.12(q) would require State agencies to identify the disposition of all food instruments as issued or voided, and as redeemed or unredeemed. Section 246.23(a)(4) would be amended to make State agencies liable for all redeemed food instruments that are unaccounted for, unless the State agency could demonstrate the reasons for the failure to fully account for them. For example, a State agency may not be able to account for food instruments damaged in computerized processing, or by water damage. FNS estimates that each State agency will spend 40 hours a year completing this task and that a total of 3,520 personhours will be required for this provision annually (88 reports × 40 hours per report).

The proposed reporting requirement in section 246.19(b)(5) would mandate that State agencies target areas specified by FNS during local agency reviews. This would allow FNS to effectively focus State agency attention on problem areas of program management needing intensive review and correction. State agencies review all of their local agencies once every 2 years. This means that half (1000) of all (2000) local agencies will be reviewed annually. FNS estimates that State agencies will be required to address targeted areas during local agency reviews once every 4 years. This means that an average of 250 (1000 × ¼) targeted reviews will be performed annually. FNS further estimates that it will take 2 hours for the State agency to address targeted areas during management evaluations and report the results of the targeted reviews to FNS. Therefore, 500 total personhours (250 targeted reviews per year × 2 hours per review) is estimated for this provision.

The proposed amendments to section 246.23(c)(1) would require State agencies to maintain on file documentation of the disposition of cases involving improperly obtained benefits. FNS estimates that this effort will take each of the 88 State agencies an average of 5 personhours per year, for a national total of 440 personhours (5 hours of recordkeeping a year × 88 State agencies) estimated for this provision annually.

Respondents: State agencies and vendors.

Estimated Number Respondents: State Agencies: 88 and Vendors: 45,000.

Estimate of Burden: The proposed estimates of the reporting burden by this rule are detailed below.

Proposed section and title	Estimated number of respondents	Reports filed annually	Total annual responses	Estimated avg. number of person-hours	Estimated total person-hours
246.4(a) State Plan	88	1	88	3	264
246.12(i)(1) Development of Vendor Training.	88	1	88	8	704
246.12(i)(1) Actual Vendor Training	88—State		88	2	176
	45,000—Vendors		45,000	2	90,000
246.12(i)(4) Documenting Training Receipt.	88	1	88	.25	22
	45,000		45,000	.25	11,250
246.12(j)(3) Waiver from Compliance Buys/Audits.	88	1	225	2	450
246.12(j)(4) Documenting Monitoring Visits.	88	1	13,500	2	27,000
246.12(q) Disposition of Food Instruments.	88	1	88	40	3,520

Proposed section and title	Estimated number of respondents	Reports filed annually	Total annual responses	Estimated avg. number of person-hours	Estimated total person-hours
246.19(b)(5) Targeted Reviews of Local Agencies.	88	1	250	2	500
246.23(c)(1) Disposition of Participant Claims.	88	1	88	5	440
Total	90,792		104,503		134,326

In accordance with the Paperwork Reduction Act, this proposed regulation invites the general public and other public agencies to comment on the information collection burdens that would result from the adoption of the proposals in the rule.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c)ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

This proposed rule contains information collection requirements which are subject to review by OMB under the Paperwork Reduction Act. The reporting and recordkeeping requirements established by this rulemaking in sections 246.4(a), 246.12(i)(1), 246.12(i)(4), 246.12(j)(3), 246.12(j)(4), 246.12(q), 246.19(b)(5), 246.23(c)(1), and 246.25(c) are pending review by OMB.

References

(1) WIC State Agency Guide to Vendor Monitoring and Fraud and Abuse Control: Grant No. FNS–59–3198–0–96 (April 1982). Prepared by Arthur W. Burger and Steven Stollmack, ANALOGS, Incorporated. This study identifies methods for reducing vendor fraud and abuse in the WIC Program.

(2) Applied Research on Vendor Abuse: Grant No. FNS–59–3198–1–117 (June 1985). Produced by David Kornetsky, Nancy Wogman, and the Massachusetts WIC Program. This study worked with a consortium of ten State agencies to design a high-risk vendor identification system.

(3) WIC Compliance Buy Handbook: produced by USDA (June 1985). This handbook provides guidance for State agencies in conducting WIC compliance investigations.

(4) National Vendor Audit: Audit Report 27661–2–Ch, Special Supplemental Food Program for Women, Infants and Children—Vendor Monitoring and Food Instrument Delivery Systems (June 15, 1988). Conducted by the Office of Inspector General (OIG), USDA.

(5) Vendor Management Study (1990): Contract No. 53–3198–5–33 (December 1990). Conducted for FNS by Professional Management Associates. This study surveyed the 50 geographic WIC State agencies and the District of Columbia, excluding Vermont and Mississippi, which provide benefits exclusively through home food delivery and direct distribution, respectively.

(6) WIC Vendor Issues Study: Contract No. 53–3198–9–53 (May 1991). Conducted for FNS by Aspen Systems Corporation. This study investigated the extent of program losses due to fraud and program noncompliance from vendor overcharging in the WIC Program.

(7) The WIC Files: Case Studies of Vendor Audits and Investigations in the WIC Program (June 1991). Produced by the vendor managers of Southeast Region in cooperation with the Florida WIC Program.

(8) National Association of WIC Directors (NAWD) National Vendor Management Roundup Survey (1995). This survey, designed by FNS and the NAWD Vendor Committee representatives, provided profile date on State agency vendor management information systems.

(9) Vendor Activity Monitoring Profile (VAMP, 1996): Produced annually by the USDA. This report analyzes WIC State agency vendor monitoring activities. The report discusses the safeguards that exist to prevent vendor fraud and program noncompliance from occurring.

1. Background

Major final amendments to the WIC Program regulations regarding food delivery systems were last published on May 28, 1982 at 47 FR 23626 in response to audits and management evaluations disclosing problems in the food delivery area which could result in loss of WIC Program funds. The May 1982 regulations have not brought about an acceptable level of improvement in vendor management. Since 1982, the Program has grown in size and complexity. The Fiscal Year 1983 appropriation for the WIC Program was approximately $1.16 billion dollars. The appropriation has grown to $3.9 billion dollars in Fiscal Year 1999. As the Program has expanded, so has the potential for loss through misuse of program funds and violation of program regulations. State agencies have responded to this need with varying levels of effort and success. Both the OIG's National Vendor Audit in 1988 and the WIC Vendor Issues Study in 1993 indicated that significant levels of vendor violations continue to persist.

In response to the National Vendor Audit, the Department published a proposed rule on December 28, 1990 at 55 FR 53446 to strengthen State agency operations in vendor management and related food delivery areas. The Department provided a 120-day comment period that closed on April 29, 1991. During the comment period, 1,066 comments were received from State and local agencies, vendors and associated groups, public interest groups, members of Congress, members of the public, and WIC participants. They indicated that significant modifications to the December 1990 proposed rulemaking were still required, and that the extent of such modifications would warrant another opportunity for public input. In addition, several members of Congress requested that the rule be proposed again in light of its potential impact on certain State agency food delivery systems.

In response to the commenters' requests, the Department's intent is to propose new food delivery regulations once more. The Department has made changes to the 1990 proposal based on suggestions of commenters and subsequent State agency vendor experiences and the 1990 Vendor Management Study, "The WIC Files" and the WIC Vendor Issues Study.

a. Characteristics of This Proposal

This proposal would provide State agencies with detailed design standards for effective vendor management systems, as opposed to the more generally worded requirements and emphasis on broad goals which characterize current WIC food delivery

regulations. The emphasis in current regulations on general objectives has not yielded the necessary improvements in vendor management. In March 1988, the House Surveys and Investigations Staff released a report on the WIC Program. In that report, they stated that "knowledgeable fraud investigators believe, at a minimum, the program needs more stringent regulations and penalties to deter fraud by vendors. * * *" In addition, in May 1988 the General Accounting Office initiated a review of efforts to minimize fraud and abuse in the WIC Program. The scope of that review includes identification of efforts that the Department of Agriculture and State and local WIC agencies are taking to detect and prevent fraud and abuse in the WIC Program. Therefore, this proposal would mandate procedures and criteria by which State agencies must manage vendors to effectively control fraud and program noncompliance. It would define critical vendor management terms; establish staffing requirements for vendor management; and strengthen vendor authorization, agreements, training, monitoring, and high-risk identification. Related food delivery areas such as food instrument disposition and security, and State agency corrective action plans are also addressed. This proposal stresses the interaction and continuity between various food delivery areas. It not only would strengthen the individual steps in the process of vendor management—selection, training, monitoring, and high-risk identification, but also would increase overall system effectiveness by meaningfully tying these steps together. It would allow State agencies as much flexibility as possible within the framework of the mandated standards to take into account the distinct individual characteristics of each State agency's management system and to facilitate further experimentation and innovation.

In addition, the proposal recognizes the emergence of technology in the retail food delivery area relative to electronic benefits transfer (EBT). An EBT system for WIC, as demonstrated in the Wyoming Pay West System, can contribute to improved accountability. Some of the vulnerabilities for fraud and program noncompliance inherent with printed food instruments can be reduced by the food-item-based type EBT system used in WIC. With an EBT system, food package benefits are issued and redeemed through a computer chip on the EBT card or a computerized account accessed with the card. The participant is issued an EBT card at the local level instead of paper checks or vouchers. The EBT card or computerized account contains the participant's Personal Identification Number (PIN) and lists the authorized supplemental foods. The PIN ensures that only the participant or proxy uses the card to obtain the authorized supplemental foods.

At the vendor, the participant selects the authorized supplemental foods just as she would if paper checks or vouchers were used. At the check-out counter, the participant enters the PIN into the Point of Sale terminal located at the counter. A proper PIN alerts the computer and the store that the participant is authorized to access the food benefits. The cashier then scans each of the selected food items. The Universal Product Code (UPC) listed on the food item is checked against the authorized supplemental foods listed in the participant's account to determine if that food item is allowable. If the computer indicates that the food item is allowable, the item is automatically subtracted from the participant's list of food items. At the same time, the vendor's bank account is automatically credited for the amount of the purchase.

Through the use of the UPC, the opportunity for overcharging, substitution, and charging for food items not received is substantially reduced in an EBT environment. If, when the food item's UPC is scanned, the computer does not accept it as an authorized supplemental food for the participant, the food item will not be accepted as part of the WIC transaction.

Another benefit of using an EBT system is greater assurance that only participants receive WIC foods. Since the proper PIN must be entered in order to initiate the transaction at the check-out counter, there is added assurance, through the computer's verification of the PIN, that the individual is a participant or her proxy.

Because EBT and scanning substantially reduce program violations both for vendors and participants, proposed section 246.12(a) would provide FNS discretion on a case-by-case basis to modify regulatory provisions which FNS determines unnecessarily duplicate the accountability capabilities inherent in the particular EBT system. In addition, this proposal would amend certain regulatory requirements to recognize the different operations of EBT. For example, proposed section 246.12(q) would be amended to clarify that a PIN rather than a redeemed food instrument may be matched to a valid issuance and enrollment record (see section 19 of this preamble); and proposed section 246.12(h)(3)(iv) would clarify that a PIN may be used in lieu of a signature on the food instrument at the time it is exchanged for authorized foods (section 12 of this preamble).

Readers should note that as part of the March 18, 1999 final rule regarding vendor sanctions (64 FR 13311), the definition of food instrument was amended to include EBT cards.

b. Comments on the December 28, 1990 Proposal

Many commenters expressed general agreement or disagreement with the Department's decision to strengthen food delivery and related areas through the rule. General supporters of the December 1990 proposal commented that it would make positive improvements in vendor management and related areas. They stated that existing State agency food delivery systems need standardization, and that much of the proposal would serve to formalize systems that exist in many State agencies. Those in general opposition to the proposal believed that it: (1) failed to take into account the diversity of State agency vendor management systems, and (2) inappropriately promoted a "one size fits all" approach to vendor management.

Many opponents thought that WIC food delivery regulations should continue to outline broad vendor management goals, rather than detailed standards. Commenters were concerned about the resource implications of the proposal. In particular, some State agencies felt that the proposal's requirements would overburden their administrative resources. Vendors expressed concern about the resource burden associated with the training requirement. They also commented that the proposal unfairly punished all vendors for the program noncompliance of a few, and that the current system works well for the most part, and should not be changed.

The Department acknowledges the commenters' general concerns regarding the December 1990 proposal and agrees that any standardization of State vendor management practices must take into account the current diversity and needs of existing State agency systems. In designing this current proposal, the Department has attempted to acknowledge these differences, while at the same time addressing the fundamental need for a more effective approach to State agency vendor management.

The Department still firmly believes in the need for a system of more standardized vendor management practices than currently exists.

Differences in State agency vendor management systems have resulted in inconsistent treatment of vendors across State agencies and within State agencies, as well as unacceptable levels of vendor fraud and program noncompliance. The variations in vendor management practices are significant. Some State agencies have established very specific criteria for vendor selection which allow them to authorize only the best qualified vendors by excluding those which have indicators of high risk for fraud or program error. Vendor selection criteria in other State agencies are weak and ineffective, resulting in the authorization of more vendors than are needed to adequately ensure participant access, reasonable food costs, and effective management. Some State agencies have established strong training programs for authorized vendors that require annual face-to-face contact with each vendor. Other State agencies provide no periodic training for their vendors. For these State agencies, face-to-face training is often limited to an initial authorization visit, and vendors may operate for years before they receive additional training. Some State agencies have aggressively pursued covert compliance investigations as a method of identifying abusive vendor practices. Other State agencies do not perform compliance investigations at all, or perform them only nominally.

The Department recognizes the concerns expressed by commenters that any effort toward standardization must provide State agencies with the flexibility to pursue innovation. The Department is convinced, however, that because the Program has increased in size and in complexity, standardization and strengthening of basic vendor management practices must occur in order to address current food delivery problems and ensure that the WIC Program operates effectively in the future.

Many commenters objected to the December 1990 rulemaking's emphasis on detailed design standards for vendor management versus the goal oriented standards that exist in current regulations. They stated that currently mandated regulatory standards adequately address State agency vendor management needs. It should be noted that more specific design standards for vendor management were proposed in the past. On January 23, 1981 (46 FR 7846), the Department published a proposed food delivery regulation in response to OIG audits of WIC food delivery systems conducted in 1979 and 1980. These audits identified problems with State agency food delivery systems, including deficiencies in the areas of vendor monitoring, overcharge detection, and vendor sanctions. The January 23, 1981 rule proposed a number of design standards for State agency food delivery systems including: specific selection criteria for vendor authorization; limited timeframes for vendor agreements; periodic mandatory training of all authorized vendors; and mandatory compliance investigations of a specific percentage of each State agency's authorized vendor population. Comments received on the January 23, 1981 rule expressed concerns much like those expressed almost a decade later in the December 1990 proposal: that the proposal was overly detailed, not cost-effective, and could adversely affect participants. Commenters urged the Department to outline food delivery requirements in terms of broad goals rather than specific design standards. In response, the Department dropped its detailed design proposals, and in May 1982, published a final food delivery rule which instead focused on a few carefully selected cost-effective procedures, and outlined the remaining vendor management requirements as broad State agency goals.

In the intervening sixteen years since the publication of the May 1982 final food delivery rule, State agencies have had ample opportunity to develop and implement effective systems for vendor management within the framework of the current food delivery regulations. However, the 1988 National Vendor audit and, to a lesser extent, the 1991 Vendor Issues Study, indicate that many State agencies have continued to experience the same problems identified earlier. As such, the Department must conclude that the current approach leaves much room for improvement. In light of this experience, this proposal, like the December 1990 proposal, would mandate more detailed design standards for State agency food delivery systems.

Many commenters stated that the provisions outlined in the December 1990 proposal were too resource-intensive for State agencies. The Department acknowledges that the December 1990 proposal, as well as this one, would require some State agencies to devote additional resources to vendor management, although it is possible that some State agencies could actually experience a decreased burden. Nevertheless, the need for State agencies to address problems in this area of greatest program vulnerability continues to be imperative. As with the December 1990 proposal, this rule would not propose simply to add new requirements. Rather, it would replace many current requirements with more effective procedures. For example, State agencies would no longer be required to do representative monitoring, that is, on-site monitoring visits to at least 10 percent of all authorized vendors. Instead, the Department proposes that State agencies perform either covert compliance buys or inventory audits focused on their high-risk vendors (up to 10 percent of all authorized vendors), a potentially more focused way of detecting vendor noncompliance than the current representative monitoring requirement. Compliance buys have been shown to be the most effective means of detecting and minimizing vendor noncompliance. The 1988 National Vendor audit of WIC vendor management referenced the need to require compliance buys in WIC regulations. In this report, the Inspector General stated that "We believe that compliance purchases are the most effective method to identify that a vendor is abusing the WIC Program". While a shift in resources may be necessary to address the proposed compliance buy and inventory audit requirements, such a shift may be accomplished by reducing their routine monitoring efforts, which frequently include annual representative monitoring visits to *all* authorized vendors. The 1996 VAMP Report indicated that out of a universe of 45,397 vendors, 51 percent received on-site monitoring visits annually.

The Department has addressed the resource concerns expressed by commenters by lessening some of the requirements proposed in the December 1990 rule. The requirement for annual face-to-face vendor training in the December 1990 proposal would be reduced to one face-to-face training session each agreement period, which could run for a time period up to 3 years. Requirements for food instrument disposition and security and many reporting requirements would also be clarified and/or reduced.

Like the December 1990 proposal, this proposal would not only establish additional specific vendor management requirements, but would also strengthen the State agencies' ability to take successful action against violative vendors, possibly reducing the long-term administrative burdens. For example, the proposed selection criteria would help to prevent the authorization of vendors with a past history of noncompliance. The proposed mandatory training would help lower the frequency of cashier errors and reduce the level of improperly redeemed food instruments. The

Department also proposes to place limits on appeal rights and procedures.

Although vendor sanctions were addressed in the December 1990 proposed rule, they are not included in this proposal. On March 18, 1999, the Department published a final rule at 64 FR 13311 establishing mandatory uniform sanctions across WIC State agencies for the most serious WIC violations, including specific WIC violations that result in disqualification from the Food Stamp Program (FSP) in addition to the WIC Program. That rule also allows State agencies to establish State agency sanctions in addition to the mandated WIC sanctions. Finally, that rule mandates the disqualification of any WIC vendor who has been disqualified from the FSP. This proposal would make a number of other changes to conform the sanction requirements to other changes proposed in this rule.

c. Comments Solicited

The Department encourages comments on this proposal and would like to know which provisions have support, as well as which cause concern. This proposal has been modified from the December 1990 proposal. Only those timely comments in response to this second proposal will be considered in the development of a final rule. Commenters are asked to indicate at the outset that they are commenting on the Food Delivery Systems rule and to cite the section number (e.g., 246.12(g)(2)(iv)) of each provision addressed. Comments prove most helpful when they are specific, stating the reasons for support or opposition, suggesting modifications which would resolve a commenter's concerns, and providing relevant background information and State agency-specific data as appropriate. Due to the inherent problems associated with the large volume of comments this rule is expected to generate, electronic transmissions, including data faxes, will not be accepted. All comments postmarked during the comment period will be carefully considered.

Specific changes are discussed in the following sections of this preamble. While provisions are generally addressed in their order of appearance in the regulatory text, considerable cross-referencing and occasional repetition have proven necessary due to the close interrelationship between areas of the vendor management and food delivery processes.

Most of the regulatory provisions relative to food delivery systems appear in section 246.12 of the regulations. The rulemaking proposes numerous significant changes to this section. The standard procedure would be to print only the proposed amendments to this section. However, each of the steps in the management process addressed in section 246.12 are thoroughly integrated. Proposed changes cannot be fully understood and meaningfully assessed except in the context of the management function to which they apply. In addition, section 246.12 has been completely reorganized. The preamble will indicate both the current cites and the new cites for changed provisions. Therefore, the Department is printing section 246.12 in its entirety. However, comments are solicited only on the substantive changes and deletions to the text; these are discussed in the preamble.

d. Impact of this proposal on affected entities

The following chart summarizes the effect of this proposal on vendors, participants and State agencies. The chart also provides an estimate of the costs and benefits associated with this proposal. It is estimated that the proposal would reduce waste, fraud and program noncompliance by 50 percent, resulting in savings of approximately $25 to $50 million. The savings would allow more participants to be served.

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		Impact of WIC Food Delivery Proposal				
Current Rule:	Proposed Rule:	Effects On:				
		Vendors	Clients	SA's	Costs	Benefits
Summary WIC food delivery rules were last updated in 1982, and emphasize general objectives, affording States maximum discretion in selecting and managing vendors, FNS studies, management evaluations, and OIG audit findings indicate that current regulations are ineffective at preventing program abuse by vendors and clients. Therefore, more design oriented rules are proposed.	This proposal mandates procedures and criteria to strengthen State Agency management of vendors to effectively control fraud and abuse. It defines terms; establishes staffing requirements for vendor management; strengthens vendor authorizations and agreements, requires vendor training, identification of high risk vendors, monitoring, overcharge collection and detection. Also, appeals are streamlined. Participant sanctions, food instrument reviews, security of food instruments, and corrective action plans are also addressed, as is EBT.	Approximately 45,000 retail vendors are authorized to accept and redeem WIC food instruments and receive reimbursement amounting to $4 billion annually from States. The intended impact of these proposed regulations is to curtail program abuse estimated at 2% to 3% of sales annually, by increasing State oversight and eliminating abusive stores from the Program. It is anticipated that this rule will impose an additional 3 hours of burden on each vendor at an estimated average cost of $50 per year. The impacts of each provision on stores are discussed below.	Over 7.6 million women, infants and children participate in WIC and receive supplemental food, nutrition education, and health care referral. Although this data is not collected, it is estimated that less than 1/2 of 1% of participants abuse WIC by engaging in trafficking and other unauthorized practices. This regulation will define mechanisms for reducing this abuse, including more severe sanctions against WIC participants who abuse the Program. The rule permits States to disqualify abusive participants up to one year with fines and sanctions levied based on the cost of foods received by the participant. However, program savings will allow several thousand additional participants to be served as a result.	The rule requires States to take more specific actions re store management, but still gives States considerable latitude. The rule will impose new requirements and offset other requirements for a net burden on 88 State Agencies. We estimate an increase reporting and recordkeeping burden on State and Local agencies to be 57,203 manhours. Using an average rate for State and local agency staff of $65, we estimate the cost of this rule for State and Local agencies would be less than $4 million per annum. States currently receive administrative grants valued at over $1.0 billion annually without a matching requirement.	Increased vendor oversight will require increased State effort. Some abusive vendors and some abusive clients will be forced off the Program, thus losing income for the vendor. Fraud in the Program also feeds political opposition to the Program. This action will not increase WIC Program costs at the Federal level.	FNS studies, audit findings, etc., show that current rules are ineffective at preventing fraud and abuse. A 1991 report found that 22 percent of authorized WIC vendors overcharge, costing the Program $39.4 million in 1991, or 1.9% of the retail redemption's in 1991. The same study also found substantial undercharges. The rule will reduce waste, fraud, and abuse by 50%, or $25 to $50 million. More recipients will be served with the money saved" through fraud reduction. The Program will operated more efficiently due to increased training at all levels. Fewer abuses will help assure continued public support for WIC.

2. Definitions (Section 246.2)

Food delivery systems vary significantly in structure from State agency to State agency. However, the discussion of issues must be based on a common understanding of key terms. In order to clarify some frequently used terms, the Department is proposing definitions for 14 terms related to vendor management.

"Authorized supplemental foods" would be defined as those supplemental foods authorized by the State or local agency for a particular participant.

"Compliance buy" is proposed to be defined as a covert, on-site investigation in which a representative of the Program poses as a participant, transacts one or more food instruments, and does not reveal his or her identity during the visit. This definition would exclude on-site buys used by some State agencies in which WIC staff or their agents pose as participants, purchase foods, and then introduce themselves to the vendor at the end of the transaction to discuss the results as a training mechanism.

A "high-risk vendor" would be defined as a vendor identified as having a high probability of violating program requirements through application of criteria mandated by the Department and any additional criteria the State agency may choose to establish. This definition would allow State agencies the flexibility to continue identifying high-risk vendors using their own criteria, in addition to the criteria that would be mandated by the Department by this rule. Criteria developed by the State agency are subject to approval by FNS through the State Plan process.

A "home food delivery contractor" would be defined to mean a sole proprietorship, a partnership, a cooperative association, or a corporation that contracts with a State agency to deliver authorized supplemental foods to the residences of participants under a home food delivery system. Adding this definition is necessary to accommodate the proposal to limit the term "vendor" to retail food delivery systems (see further discussion under the definition of "vendor").

This proposal would define "inventory audit" as an examination of food invoices or other proofs of vendor purchases to determine if the vendor purchased sufficient quantities of authorized supplemental foods to have sold the amounts of such foods to WIC participants for which the vendor has requested payment from the State agency during a given period of time. These audits are useful for identifying vendors who: buy food instruments from unauthorized vendors or from participants and submit them to the State agency for payment, without having provided to participants the quantities of authorized supplemental foods prescribed on the food instruments; and/or exchange food instruments for non-food items, or unauthorized foods.

This proposed rule would also define "proxy" to mean any person designated by a participant to act on her behalf and, in the case of an infant or child, the parent or caretaker who applies on behalf of the infant or child. Traditionally, proxy has been used in program regulations only to refer to a person designated by a participant to transact food instruments. This definition would make clear that when proxies are referred to in program regulations that parents and caretakers applying on behalf of infants and children are also included.

"Routine monitoring" would mean overt, on-site monitoring during which program representatives identify themselves to vendor personnel. Such monitoring is used for technical assistance purposes.

Routine monitoring contrasts with compliance buys, which are defined as covert investigations, and with inventory audits, which entail a review of specific records. The proposed requirements for a specific number of compliance buys or inventory audits (see section 14 of this preamble) necessitates a clear distinction between these activities and all other forms of monitoring, which would be encompassed by the term "routine monitoring." This term would replace the term "representative monitoring," which is used in current regulations and has proven to be confusing because it implies a method for selecting vendors to be reviewed (i.e., random selection) that yields a representative sample.

The term "vendor" would be defined as a sole proprietorship, a partnership, a cooperative association, or a corporation operating an individual retail site authorized to provide supplemental foods to participants under a retail food delivery system. Under this definition, each individual retail site would still be considered a separate vendor. The Department proposes to use the term "vendor" only in retail food delivery systems. Currently, the term also applies in home food delivery and direct distribution food delivery systems. However, experience has shown that most of the vendor requirements are inappropriate in those systems. Rather than create numerous exceptions to the vendor requirements, this proposed rule would limit the use of "vendor" to retail food delivery systems.

Although mobile vendors can be problematic, they may be the only means to ensure services to WIC participants in outlying areas, or to homeless persons. The proposed definition would permit State agencies to authorize mobile stores when necessary to meet the special needs established in their State Plan. The definition is meant to preclude the general use of temporary food stands and trucks, or other mobile food sales operations without fixed locations, from consideration for routine authorization because their mobility makes it impracticable to monitor them adequately; because their sanitation and refrigeration capabilities are generally limited and problematic; and, because it is difficult to limit their areas of operation. State agencies must present clear rationales for the specific areas or locales proposed for mobile store service coverage in their State Plans.

The term "vendor authorization" would be defined as the process by which vendors who initially apply for authorization or subsequently apply for reauthorization are assessed, selected, and enter into an agreement with the State agency. This definition is proposed to clarify that the regulatory requirements for authorization apply equally to both new and reapplying vendors.

"Vendor limiting criteria" would be defined as those criteria established by the State agency and approved by FNS as part of the State Plan process to determine the maximum number and distribution of vendors to be authorized in its jurisdiction. These criteria must be designed to result in a number and geographical distribution of authorized vendors that ensures adequate participant access, and allows for effective State agency management. Limiting criteria establish the number and distribution of vendors to be authorized and are not intended to have any bearing on which specific vendors will be authorized.

This proposal would define "vendor overcharge" as a pattern of intentionally or unintentionally charging participants more for authorized supplemental foods than non-WIC customers or charging more than the current shelf price or contract price. The definition would clarify that inadvertent mistakes that result in excess charges to the Program are considered overcharges; that is, the State agency would not have to establish that the vendor intended to overcharge in order to determine that this form of program noncompliance has taken place. It would also take into account

State agencies which contract for a set price for supplemental foods with vendors during the life of the agreement.

The term "vendor selection criteria" would be defined as the criteria mandated by the Department in section 246.12(g)(3), and any additional criteria established by the State agency and approved by FNS as part of the State Plan process, to select individual vendors for WIC authorization. Application of these criteria is meant to ensure systematic selection of only vendors who are best qualified to provide food benefits to participants in a manner consistent with the WIC Program's mission and effective program operations. While selection criteria may have the incidental effect of limiting the number of vendors who are authorized, their primary purpose is to determine the best qualified vendors, not the number, of such vendors.

"Vendor violation" is proposed to be defined as any intentional or unintentional action of a vendor (with or without management knowledge) which violates the Program statute or regulations or State agency policies or procedures. This definition would clarify that vendors should be held accountable for violations, whether they are deliberate attempts to violate program regulations, or inadvertent errors, since both ultimately result in increased food costs and fewer participants being served. This definition clarifies that it would not be necessary for the State agency to ascertain the intent behind an action which, whether inadvertent or deliberate, has the same negative effect on the Program. The Department acknowledges that the inherent complexity of the WIC transaction is such that, even with training and supervision, cashiers may occasionally make unintentional errors. While this definition would include both intentional and unintentional actions (with or without management knowledge), this does not mean that a minor unintentional action by a cashier without management knowledge would result in disqualification. State agencies have a wide range of actions that they may take as a result of a vendor violation, including assessing a claim, requiring increased training, identifying the vendor as a high-risk vendor subject to monitoring, assessing administrative fines, and imposing a sanction.

The Department believes that a vendor is not relieved of the responsibility for an employee's continuing noncompliant actions just because the vendor's management was unaware of the violations. Allowing vendors with continuing violations to sustain their authorization by simply permitting them to remove an employee who violates program regulations would result in few disqualifications, since the claim that the violation was caused by a dishonest employee, who has since been fired, is one of the most common defenses used during vendor appeals (see "The WIC Files"). Removing such an employee does not mitigate the effects of chronic vendor error and mismanagement on program costs, nor does it lessen the vendor's responsibility to provide effective oversight and appropriate employee training.

"WIC" would be defined as the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966.

3. Vendor Management Staffing (Section 246.3(e)(5))

Proposed section 246.3(e)(5) would require that State agencies which anticipate 50 or more authorized vendors as of October 1 of each fiscal year devote a full-time staff year to vendor management. State agencies would have the option of designating a single full-time vendor management specialist or to assign vendor management duties to more than one staff person, provided the total time spent on vendor management is equivalent to one staff year. The State agency would identify these positions as part of the staffing pattern already required by section 246.4(a)(4). State agencies which anticipate fewer than 50 vendors as of October 1 of each fiscal year would be required by this proposal to designate a staff person responsible for vendor management. No standards for the amount of time this person would devote to these duties are proposed in this rulemaking.

The requirements for staffing of vendor management are being proposed because, although, according to the 1990 WIC Vendor Management Study, at least 37 percent of geographical State agencies had a designated full-time vendor management position, a wide range exists in State agency staff devoted to vendor management. In some State agencies, vendor management responsibilities are not clearly assigned to specific staff, resulting in the increased possibility of vendor noncompliance due to insufficient resource allocation, imprecisely fixed management responsibility, and the lack of an expert in this highly technical area of program management. The results of the 1988 National Vendor Audit and the requirements proposed elsewhere in this rulemaking make it necessary for State agencies to focus increased attention on vendor management. The Department is, therefore, proposing this minimum vendor management staffing requirement to promote assignment of adequate resources to, as well as to assign specific responsibility for, vendor management functions, particularly among State agencies with 50 or more vendors.

4. State Plan Requirements (Section 246.4)

Section 246.4(a)(14)(ii) is proposed to be amended to require the State agency to describe its vendor limiting criteria. Limiting criteria are discussed in more detail in section 8 of this preamble. Section 246.4(a)(14)(iv) would be amended to require State agencies which choose to delegate any aspect of vendor monitoring to describe their system of quality control to ensure uniformity and quality of local agency or contractor efforts. In addition, section 246.4(a)(14)(iv) requires State agencies to include in their State Plan the criteria used to determine which vendors will receive routine monitoring visits. Section 246.4(a)(14)(vi) would be amended to require a description of the system the State agency will use to account for the disposition of food instruments, in accordance with section 246.12(q), rather than the current requirement of a description of the State agency's system for reconciliation of food instruments in section 246.14(a)(14)(vi). This change is discussed further in section 19 of the preamble.

Two paragraphs are proposed to be added to the section of the State Plan that addresses food delivery systems in recognition of the emphasis this rule would place on vendor training and food instrument security. These provisions would require descriptions of the State agency's vendor training procedures (section 246.4(a)(14)(xii) and section 12 of this preamble) and the system for ensuring the security of food instruments (section 246.4(a)(14)(xiii) and section 18 of this preamble). The provision on food instrument security would replace the current requirement concerning food instrument control in section 246.4(a)(14)(vi).

State agencies would be required by proposed section 246.4(a)(14)(xiv) to include in their State Plans a description of their criteria for making participant access findings. In addition, proposed section 246.4(a)(14)(xv) would require State agencies wishing to authorize mobile stores to include in their State Plans the special needs necessitating this action.

Finally, proposed section 246.4(a)(15) would be amended to require a description of the State agency's system to prevent and identify dual participation as required by section 246.7(l)(1)(i) and (ii), including the amendments proposed to be made to that section and discussed in section 5 of this preamble.

5. Prevention and Identification of Dual Participation (Section 246.7(l))

This rulemaking proposes to amend section 246.7(l)(1) to strengthen intra-State agency and inter-State agency dual participation detection efforts within the WIC Program, and between WIC and the Commodity Supplemental Food Program (CSFP) (7 U.S.C. 612c note), by requiring the identification of all suspected dual participants at least quarterly. In addition, in cases of dual participation resulting from intentional misrepresentations, State agencies would be required to pursue the collection of improperly obtained benefits in accordance with proposed section 246.23(c)(1). If the participant failed to make full restitution, the State agency would be required to disqualify the participant from both programs for one year in accordance with proposed section 246.12(u)(2). If full restitution is made prior to the end of the disqualification period, the State agency may permit the participant to reapply for the Program. Proposed changes to the participant claims and disqualification procedures are discussed in section 22 of this preamble.

Dual participants are persons simultaneously participating in the Program in one or more WIC clinics or persons participating in the Program and CSFP during the same period of time. The Department's Office of Inspector General recommended at least quarterly reporting after finding in the 1988 National Vendor Audit that some State agencies have inadequate systems for preventing and detecting dual participation and sometimes fail to take action against possible dual participants whom they have identified. This proposal would further strengthen integrity by requiring State agencies to work together to attempt to identify dual participation between contiguous local service areas located across State agency borders if geographical and other factors make it likely that participants travel regularly between such locations.

The Department also wishes to clarify that dual enrollment does not necessarily constitute dual participation. However, as a sound management practice, State agencies should create accountability systems to identify and correct situations in which a participant is enrolled and receiving benefits from one WIC or CSFP agency, but continues to be enrolled (but not receiving benefits) in another. Although such a participant may not technically be receiving dual benefits, the potential for dual participation exists and should be eliminated by removing the participant from one of the enrollment rosters. The Department is not addressing controls on enrollment in this proposal.

Nor does this proposal mandate that specific minimum data matching criteria be used to identify dual participants. Because the Department has limited evidence of the effectiveness of the various criteria currently used by State agencies, the Department is not mandating specific matching criteria. It seems likely, however, that social security numbers are the most effective and readily available personal identifiers. State agencies have long had authority to require social security numbers as a condition of participation, pursuant to the Tax Reform Act of 1976 (codified at section 205(c)(2)(C)(i) of the Social Security Act, 42 U.S.C. 405(c)(2)(C)(i)). The Department recommends but does not require that social security numbers be used whenever possible to identify dual participation. However, section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note) requires that notice be given of the planned use of social security numbers by State agencies. Therefore, State agencies should consult with their State's attorneys before using social security numbers to identify dual participation.

Section 246.23(c)(2) of this proposal includes a new provision that would authorize FNS to establish a claim against State agencies when they have not complied with the requirements to identify dual participants, if the State agency has not taken steps to recover funds from or disqualify certain dual participants.

6. General Food Delivery System Requirements (Sections 246.12(a) Through 246.12(d))

The Department proposes to reorganize the food delivery system requirements in section 246.12 in recognition of the new definition of vendor that applies only in the retail food delivery system context. Under the proposal, the general requirements for food delivery systems would be grouped in section 246.12(a)–(d). The special requirements for retail food delivery systems would be in section 246.12(e)–(l), the home food delivery system requirements in section 246.12(m), the direct distribution food delivery system requirements in section 246.12(n), and the remaining general requirements in section 246.12(o)–(v). The Department is only seeking comments within Section 246.12 on those areas where substantive changes have been made. These areas include: paragraph (f) (food instrument requirements); paragraph (g) (vendor authorization); paragraph (h) (vendor agreements); paragraph (i) (vendor training); paragraph (j) (monitoring vendors and identifying high-risk vendors); paragraph (k) (vendor claims); paragraph (q) (food instrument disposition); paragraph (t) (conflict of interest); and paragraph (u) (participant violations and sanctions). The specific proposed changes within this reorganized structure follow.

As discussed in section 1.a of this preamble, proposed section 246.12(a) would be amended to give FNS the authority to modify program regulations for EBT systems. In addition, the current requirement in section 246.12(e) that only food vendors authorized by the State agency may redeem food instruments would be moved to section 246.12(b) and revised to make clear that it applies whenever food instruments are redeemed under any of the food delivery systems. Finally, proposed section 246.12(b) would make clear that each system must ensure adequate participant access to supplemental foods.

7. Retail Food Delivery Systems: Food Instrument Requirements (Section 246.12(f))

The current food instrument requirements in sections 246.12(r) that have relevance only in retail food delivery systems would be moved to section 246.12(f). Proposed section 246.12(f)(1) would make clear that food instruments must be used in retail food delivery systems. As proposed, section 246.12(f)(2) would make clear which food instrument requirements are applicable only to printed food instruments. This change is necessary in recognition of the March 18, 1999 final rule concerning vendor sanctions that amended the definition of food instruments in section 246.2 to include EBT cards.

In addition, new provisions would be added in section 246.12(f)(2)(i) and (vii) to require printed food instruments to provide: (1) a list of the supplemental foods authorized to be obtained with the food instrument, and (2) a signature space in which the participant or proxy must sign at the time the supplemental foods are obtained.

8. Vendor Limiting Criteria (Section 246.12(e)(2))

Under this proposed rule, the vendor authorization requirements currently found in section 246.12(e) would be moved to proposed section 246.12(g). In addition, the Department proposes to mandate limiting criteria as described in section 246.12(g)(2). Limiting criteria permit State agencies to authorize only a sufficient number of vendors in an area to ensure adequate participant access and effective program oversight.

There are also other benefits to implementing limiting criteria. The State agency must apply a significant amount of resources to the management of each authorized vendor. A case file must be established and data collected and entered. Each vendor must be visited on-site at initial authorization. Training would have to be provided annually, as proposed in section 246.12(i) of this rulemaking. Other costs also increase with the number of authorized vendors. Compliance buys and other forms of monitoring would have to be performed as outlined in proposed section 246.12(j). Reports must be produced and analyzed, mailings initiated, sanctions applied and tracked, and appeals held as appropriate. If the State agency authorizes more vendors than necessary to ensure adequate participant access, the administrative resources available to manage vendors may not be sufficient to ensure effective oversight, thus increasing the possibility that program noncompliance will be undetected and/or forcing curtailment of other critical State and local agency activities.

Proposed section 246.12(g)(2) mandates that the State agency establish and implement criteria to limit the number and specify the distribution of vendors to be authorized. The State agency would not be required to use specific criteria when limiting vendor numbers. It would however, be required when developing the criteria to at least consider the establishment of participant-to-vendor ratios for sub-areas of its jurisdiction based on factors such as population density, distribution of participants, location of local agencies and clinics, and availability of public transportation and road systems to the WIC population.

The vendor limiting process must balance the need to provide adequate participant access to authorized vendors and the need for a vendor population that State agencies can effectively manage given the administrative resources available to them. Weighing these concerns, State agencies might, for example, develop one or more participant-to-vendor ratios. Typically, the State agency would first establish sub-areas within its jurisdiction based on such factors as the distribution of caseload, the location of local agencies and clinics, availability of public transportation and road systems to the WIC population, and the supply of prospective WIC vendors. Each type of sub-area, in turn, would be assigned an appropriate participant to vendor ratio. Theoretically, a State agency with a highly refined methodology might assign a different ratio to each individual sub-area, but State agencies will more likely limit themselves to a small set of ratios capable of addressing the differing needs of particular areas.

Limiting criteria would be required to be implemented consistently throughout the State agency's jurisdiction, with due consideration for the varying geographic and other characteristics within the jurisdiction. The important point in establishing limiting criteria is that State agencies apply them fairly and with clear rationales throughout their jurisdictions. The State agency would be required to establish system to revise and/or reapplying its limitation criteria whenever it determines that relevant demographic shifts or significant changes in local caseload allocation, growth, or decline make such action necessary.

Most State agencies agree that limiting the number and distribution of vendors is of benefit to the Program. However, some have pointed out that the resources required to establish limiting criteria and manage the resultant appeals if a vendor is denied authorization would be overly burdensome. Moreover, many State agencies do not distinguish between limiting criteria and selection criteria. Through limiting criteria, the State agency first decides how many vendors should be authorized and where, in general terms, they should be located. Limiting criteria are applied before selection criteria. Only after these decisions have been made can the State agency apply selection criteria to determine which specific vendors will be authorized. Many State agencies believe that vendor numbers can be effectively controlled through the application of strong selection criteria. This is true. While selection criteria may have the incidental effect of limiting vendor numbers and determining vendor distribution, such criteria establish the number and distribution of vendors which is based on vendor ability to meet basic authorization qualifications rather than the need for a vendor in the area.

Many vendors believe that limiting the number and distribution of authorized vendors is anti-competitive. They feel that any vendor who meets basic authorization qualifications should be authorized. Vendors have also expressed concern that implementation of limiting criteria would not allow smaller stores to effectively compete with the larger chains for WIC authorization.

The Department does not believe that every vendor who meets basic authorization qualifications should necessarily be authorized to accept WIC food instruments. Authorization to accept WIC food instruments must be governed by the access needs of participants and the qualifications of the vendor. It must be remembered that, in a few State agencies, retail stores play little or no role in their WIC food delivery systems. Those State agencies either purchase all WIC foods through large-scale competitive procurement and distribute them directly to participants or contract with home food delivery contractors. On the other hand, the majority of State agencies deliver WIC benefits through retail stores, and their cooperation and service contribute significantly to program operations. The Department gratefully acknowledges their contributions, in exchange for which vendors benefit from the considerable volume of food purchases made through WIC in the retail marketplace, and the additional non-WIC purchases that participants often make while in the store. The Department also acknowledges the critical importance of small non-chain stores in assuring adequate participant access.

Congress established the WIC Program as a preventive nutrition and health program for pregnant women, infants and young children. The Program receives annual appropriations from Congress. WIC is not an entitlement program, with unlimited resources to accommodate changes in the economy or to serve all eligible persons. Rather, WIC's funding is discretionary, meaning it is provided a set amount of funding and can serve only as many participants as this funding allows. Hence, the Department pursues policies which enhance serving the maximum number of eligible women, infants, and children with this limited funding. Vendors are a critically important service component of the Program. They provide the foods needed by the participants and in turn receive payment for the foods.

The Department's view is that, in order to use both nutrition services and administration funds and food dollars effectively and efficiently for the benefit

of participants, the State agency must first have the right and authority to limit the number and determine the geographical distribution of vendors to be authorized in accordance with its analysis of how to ensure adequate participant access to the Program. Second, the State agency must be able to select individual vendors in a way that will promote efficient use of its food grant through both reasonable food prices and the reduced possibility of vendor noncompliance.

State agencies are reminded that they must develop and implement vendor selection and limitation criteria consistent with the anti-discrimination provisions of civil rights legislation. However, Congress has enacted legislation, Public Law 105–336, which requires that the price a vendor charges for WIC foods be a key factor in selecting a vendors for authorization. In implementing this requirement, State agencies may evaluate the food costs of small vendors on the basis of food cost among peers—other small vendors—when small vendors are vital to participant access. The use of peer group cost comparisons mitigate any negative impact on small vendors of the legislative requirement to select vendors on the basis of cost.

In summary, while any vendor may apply to be authorized as a WIC vendor, State agencies have the right and the authority to establish vendor selection and limitation criteria which ensure:

- Adequate participant access to the Program;
- Maximum usage of funds;
- Minimum possibility of vendor misuse or mismanagement of funds, or fraud;
- Consistency with civil rights legislation.

While this approach to vendor authorization may restrict the ability of a particular retail store to secure or retain WIC authorization, the Department believes that it is ultimately in the best interests of the Program.

The smaller vendors who are concerned that their authorization could be adversely affected by limiting or selection criteria should be aware that the Department does not foresee dramatic future decreases in the number of authorized smaller WIC vendors. Smaller vendors will always be needed to ensure adequate participant access, particularly in areas where there is a lack of larger chain stores and areas where the number of vendors is small and transportation is difficult. In these cases, it should be reiterated that small vendors will compete for WIC authorization on the basis of their costs relative to other small vendors serving the same area.

A number of vendors have also expressed concern that limiting criteria would adversely affect participant access. Section 246.12(b) would continue to require that all food delivery systems ensure adequate participant access and proposed section 246.12(g)(1) would require State agencies to authorize an appropriate number and distribution of vendors to ensure adequate participant access (as is currently required in section 246.12(e)(2)). Again, it is important to stress that smaller vendors are critical to the Program, and where instrumental in ensuring adequate participant access, will have equal opportunity to compete for WIC business.

As proposed in section 246.4(a)(14)(ii), the State agency's limiting criteria would be a mandatory component of the food delivery system description in its State Plan. The State agency's limitation system would be subject to public scrutiny and comment as part of the State Plan development process as is currently required by section 246.4(b). The Department believes that it is at this stage where there is an opportunity for dialogue between State agencies and their vendor communities about proposed changes to the State Plan that might affect them. While the limiting criteria themselves would not be subject to administrative review, vendors would be able to appeal a denial of authorization resulting from application of the limiting criteria. For example, where the limiting criteria provided for four vendors within a zip code area, a vendor within that zip code area could file an appeal alleging the State agency incorrectly determined it to be outside that zip code area. However, the State agency's decision to use zip code areas as the basis for the limiting criterion or the number of vendors the State agency determined to be necessary for that area would not be subject to administrative review. In most cases, though, vendor appeals will be based on the application of the selection criteria. In general, the limiting process will be irrelevant to denial of authorization of a particular vendor because it is a systematic process that establishes only the desired number of vendors and does not consider the qualifications of a specific vendor. These qualifications are considered during the selection process. Denial of an application for authorization may be appealed by a vendor.

The Department is particularly interested in receiving comments on the proposed limitation provision. Comments are most helpful when they are specific, stating the reasons for support or opposition, suggesting modifications that would resolve commenter's concerns, and providing relevant background information and State agency-specific data as appropriate.

9. Retail Food Delivery Systems: Vendor Selection Criteria (Section 246.12(g)(3))

State agency experience (see "The WIC Files") has shown that development and application of good vendor selection criteria during the authorization process can provide a very cost-effective method of cost containment and prevention of program noncompliance. Current regulations do not specifically address the establishment of vendor selection criteria. They only require vendors to be evaluated in connection with the biennial assessment of vendor qualifications mandated by Section 246.12(g). Selection criteria have sometimes been confused with limiting criteria, because selection criteria may have the incidental effect of limiting the number of vendors authorized. The Department wishes to reiterate that, while limiting criteria determine a specific number and distribution of vendors for an area, selection criteria determine which vendors meet basic yes/no eligibility criteria, such as adequate stock and inventory, and prices below a specified maximum amount.

The Department is proposing in section 246.12(g)(3) to require State agencies to implement six specific selection criteria. State agencies would be permitted to supplement the mandatory criteria with criteria of their own choice. Such State agency-established criteria must be approved by FNS as part of the State Plan process. The six proposed mandatory selection criteria are: (1) Competitive price; (2) minimum variety and quantity of authorized supplemental foods; (3) lack of a record of a criminal conviction or civil judgment for specified activities; (4) lack of a history of serious vendor violations; (5) lack of a history of serious FSP violations; and (6) not currently disqualified from the FSP or, if subject to a FSP civil money penalty for hardship, the period of the disqualification that otherwise would have been imposed has expired.

Competitive pricing (section 246.12(g)(3)(i)) is widely accepted as a successful cost containment mechanism, facilitating service to greater numbers of eligible participants. Section 203(l) of Public Law 105–336 now requires all State agencies to

consider, in selecting retail stores for authorization, the prices the store charges for WIC foods as compared to other stores' prices for such foods. The law further provides that State agencies must establish procedures to ensure that selected stores do not subsequently raise prices to a level that would make them ineligible for authorization.

The price criterion may consist of assessing applicants based on either their shelf prices for supplemental foods or their price bids for supplemental foods, which may be lower than their shelf prices. Dollar limits could be developed based on historical data such as average redeemed prices for food instruments or on shelf prices. The limit calculated for each food package could be a statewide average, or could vary by area and/or vendor type. For example, a State agency may decide to establish a higher competitive price in an area in which the only reasonably located stores have higher prices than the surrounding areas in order to ensure adequate participant access for that area. The stores in that area would thus not be penalized for their higher prices that may be the result of the higher costs of doing business in that area. As with all limiting and selection criteria, State agencies may not adopt criteria that will result in inadequate participant access, such as a competitive price limitation that results in an insufficient number of vendors located where participants can reasonably be expected to shop.

Proposed section 246.12(h)(3)(viii) would require that vendor agreements contain a provision limiting vendors to charging no more than the competitive price limitation. This change is necessary to comply with section 203(l) of Public Law 105–336 and to make the use of competitive price as a selection criterion effective.

State agencies would then need to have a procedure to ensure authorized vendors comply with the competitive price limitation. Such procedures could include setting a not-to-exceed limit for the food instrument (either by printing it directly on the food instrument or through a bank or system edit), collection of periodic price survey data from vendors, or surveying price data during monitoring visits.

Some vendors have commented that the "free market" approach in which the "market" dictates prices works best and that basing authorization on competitive price is exclusionary, unfair, and "against the free enterprise system." Some also feel that predatory pricing of supplemental foods to gain authorization by larger stores would result in a smaller market share for smaller independent grocers. Vendors should be aware that this proposal would not result in State agencies dictating the prices for authorized supplemental foods. Competitive pricing is already used by most State agencies as a selection criterion in retail food delivery systems. Prices of authorized foods are based on the current shelf or "market" price that is charged to non-WIC customers. This price is established by the vendor. In home food delivery systems and some retail food delivery systems, prices are based on the lowest "contract" or "bid" price. Again, these prices are established by the vendor and based on market conditions, not WIC Program dictates. Although competitive price has been used as a selection criterion by most State agencies since the Program's inception, this has not generally resulted in a lessening of the market share for smaller independent vendors. It is important, then, to note that any vendor can improve its position in the vendor selection process by decreasing prices of its WIC-eligible foods. In addition, as mentioned earlier in the discussion of limiting criteria, smaller vendors will always continue to be authorized because they are needed to ensure adequate participant access, particularly in urban areas where large chain stores are less likely to be located, and in rural areas where transportation is difficult.

Finally, the Department has recently noticed a significant increase in the number of "WIC-only" stores authorized under the Program. WIC-only stores are stores which may only serve WIC participants and are sustained through their WIC business. While the free market environment allows establishment of such entities, the Department is concerned that such stores may profit through use of unreasonably high prices of the foods charged to the WIC Program. Congress has expressed its concern regarding the costs of foods under the Program by requiring all State agencies to consider price when selecting vendors. As such, the Department will pay particularly close attention to implementation of the competitive price requirement in States where "WIC-only" stores exist.

The second selection criterion (section 246.12(g)(3)(ii)), minimum variety and quantity of authorized supplemental foods, would require the vendor to have supplies of such foods that are adequate, as quantitatively defined by the State agency, to ensure that participants can receive the prescribed amounts and types of foods. Minimum variety requirements refer to the minimum types and brands of authorized supplemental foods, e.g., two types of milk (whole and low fat) or two types of cheese (American and Swiss), that a vendor would be required by the State agency to keep on the shelf at all times. Minimum quantity refers to keeping a minimum number of each type or brand of food, e.g., three containers for each type of milk or three packages of each type of cheese, on the shelves at all times. In addition, if the State agency mandates specific package sizes, the State agency could require that the vendor stock the required package sizes. The Department encourages State agencies to take into account the availability of various package sizes and the shelf space of the whole range of their vendors in establishing the minimum variety and quantity requirements.

The third selection criterion (section 246.12(g)(3)(iii)) is lack of a record of certain business-related criminal convictions or civil judgments, on the part of the vendor itself, or any of its current owners, officers, directors, or partners. Covered criminal convictions and civil judgments would include offenses such as fraud, violations of Federal anti-trust statutes, embezzlement, theft, forgery, and bribery.

The fourth selection criterion (section 246.12(g)(3)(iv)) would require the lack of a history of serious vendor violations during a period set by the State agency, but not less than one year and not more than six years prior to the date of application, resulting from the acts or omissions of any persons currently associated with the vendor as an owner, officer, director, or partner. If the vendor violation also resulted in one of the convictions or civil judgments specified in section 246.12(g)(3)(iii), the vendor would not be eligible for authorization as required in section 246.12(g)(3)(iii), and the six-year cap on considering past WIC history would not apply. In determining what constitutes "serious vendor violations," the State agency would be required to include whether the vendor has been subject to any of the mandatory vendor sanctions established under proposed section 246.12(l)(1) (current section 246.12(k)(1)) and whether the vendor has failed to participate in the annual training required by proposed section 246.12(h)(3)(xi). These are minimum criteria. State agencies may include other violations under the heading of serious vendor violations such as failure to provide restitution to the State agency for overcharge claims, repeated failure to take requested corrective actions, failure to provide requested data or records to the State agency, failure to allow monitoring by program personnel,

and other similar violations. The State agency would also have the discretion to define how many instances of a violation constitute a "history of" serious vendor violations both for the mandatory and State agency-developed criteria. Some types of violations could be so serious or so blatant that one instance would warrant nonselection. For others, the State agency could require a series of repeated instances or combinations of violations before it decides nonselection is warranted. The Department would like comments on whether to make mandatory vendor sanctions imposed by another WIC State agency a mandatory criterion for nonselection.

The fifth selection criterion would mandate the lack of a history of serious FSP violations (section 246.12(g)(3)(v)). The State agency would be required to establish a period of consideration for this criterion of not less than one year and not more than six years prior to the date of application unless the FSP offense also resulted in a conviction or civil judgment outlined in section 246.12(g)(3)(iii), in which case the provisions in section 246.12(g)(3)(iii) would apply and the six-year maximum period for consideration of past FSP history would not apply. The State agency would be required to deny the application of any vendor when the vendor, or any individual who at the time of application is associated with the vendor as an owner, officer, director, or partner, has a history of serious FSP violations during the period of consideration. The State agency would be permitted to define serious FSP violations, except that such definition would be required to include withdrawal of FSP authorization for program noncompliance, a FSP disqualification which is in effect at any time during this period, or receipt of a FSP civil money penalty for hardship during this period. The Department wishes to point out that the State agency would also have the option to consider FSP violations which did not result in any of these actions. As with the fourth criterion, State agencies would also have the discretion to determine what constitutes a "history" of serious FSP violations.

The fourth and fifth criteria would not require that the vendor or someone associated with the vendor be the subject of a criminal conviction or civil judgment. Serious vendor violations and serious FSP violations may include actions that are documented in a monitoring visit or other review or investigation even if a conviction or judgment did not result from the investigation. The violation would have to fall within those defined by the State agency as constituting a history of serious vendor or FSP violations and the State agency would need to document the basis and defend its determination in the event the vendor decides to appeal its nonselection. The sixth criterion (section 246.12(g)(3)(vi)) would require that the vendor currently not be disqualified from the FSP or, if subject to a FSP civil money penalty for participant hardship, the period of the disqualification that would otherwise have been imposed has expired.

The third, fourth, fifth, and sixth selection criteria are intended to ensure that only vendors with business integrity are authorized to participate in the Program. Proposed section 246.12(g)(3) would make clear that State agencies do not have to create an elaborate system of background checks to identify criminal convictions, civil judgments, or WIC or FSP violations. They may rely on facts known to them and representations made by applicant vendors on the vendor application. State agencies are encouraged to make an effort to check with appropriate State and Federal authorities to ensure that a record of the specified criminal convictions, civil judgments, or WIC or FSP violations does not exist. However, they are not expected to do so on a routine basis. State agencies would be routinely expected to rely upon the applicant vendors' responses to questions regarding their records, and if a State agency had reason to doubt the veracity of such responses, the State agency would be expected to follow up on the information.

These selection criteria address the Department's growing awareness of unauthorized vendors involved in defrauding or abusing the WIC Program. During investigations, State agencies have sometimes found unauthorized vendors colluding with authorized vendors to defraud the WIC Program. For example, one or several unauthorized vendors may accept WIC food instruments at their store(s) and "launder" or pass them through an authorized WIC vendor in exchange for a portion of their value. These actions are unlawful and the Department believes that the responsible vendors should not only be prosecuted under Federal, State and local law, but that the violations preclude the vendor from consideration in the vendor authorization process.

Local agencies would not be excluded from providing input into the selection process. The Department recognizes that local agencies can provide the State agency with valuable input regarding areas of participant concentration, vendor reputation in the community, and the quality of service which vendors provide WIC participants. While encouraging the State agency to receive input from its local agencies during the selection process in areas the State agency considers appropriate, the Department wishes to stress that the State agency must itself have the documentation necessary to make the final decision regarding fulfillment of all selection criteria.

"The WIC Files" indicate that high-risk vendors who are sanctioned often attempt to circumvent the sanctions by selling their stores for a nominal fee to a relative or associate who then reapplies for authorization while the persons responsible at the time of the sanctions actually maintain control of the stores and their profits. The Department believes that such vendors should not be authorized. As such, proposed section 246.12(g)(4) would prohibit authorization of a vendor if the State agency determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. In determining whether an owner has attempted to circumvent a sanction, the State agency may consider whether the applicant store was sold to a relative by blood or marriage, or was sold for less than its fair market value. This does not mean the State agency must develop a comprehensive system for routinely tracking the fair market value and the family relationships for all vendors. The purpose of the provision is only to provide State agencies with guidelines to define "circumvention" of a sanction and respond accordingly.

10. Retail Food Delivery Systems: Timeframes for Accepting and Processing Vendor Applications and Collection of FSP Authorization Numbers (Sections 246.12(g)(6) and 246.12(g)(7))

The Department is proposing in section 246.12(g)(6) to allow State agencies to limit the time frames for accepting and processing vendor applications. The Department considers limiting the periods of time during which applications for authorization will be accepted and processed preferable to accepting and processing applications on a continuous basis during the entire year. Limiting periods for acceptance and processing of vendor applications allows the State agency to use staff resources during the authorization process most efficiently since training, collection of price data, and evaluation of selection criteria can be clustered for more efficient execution. These advantages far outweigh the disadvantages associated

with the delay before a vendor may apply. The Department considers that State agencies have always had the authority to limit application periods as part of their general responsibility for, and control over, vendor selection. However, data from the 1995 NAWD National Vendor Management Roundup Survey indicate that of the 75 WIC State agencies who responded, only 22 State agencies reported they accepted applications during a set time of the year.

To emphasize this authority, this proposed rule would expressly give State agencies the option of limiting their vendor authorization periods, with the condition that vendor applications must be accepted and processed at least once every three years. A State agency that chooses to exercise this option would be required in section 246.12(g)(6) to develop procedures for accepting and processing individual vendor applications outside of its established periods when it determines there would be inadequate participant access unless additional vendors are authorized.

Section 246.12(g)(7), as amended by this proposal, would also require that the State agency collect the FSP authorization number of all applicant vendors that participate in the FSP and, except when the State agency uses a competitive bidding procedure in which vendors bid on prices for authorized supplemental foods, the current shelf prices for such foods. The FSP authorization number facilitates the receipt of information on vendor history from the FSP. Although State agencies are not required to contact the FSP before authorizing vendors, the Department strongly encourages State agencies to do so and make use of this valuable information. Shelf price data provide the State agency with information it needs to establish whether the prices of authorized supplemental foods are competitive. Shelf price data can also be used by the State agency to develop and/or update its competitive price selection criteria, and to update price data used to identify overcharging.

11. Retail Food Delivery Systems: Time Limit on Vendor Agreements (Section 246.12(h)(1))

Current food delivery regulations at section 246.12(g) require that the State agency perform a review of each vendor's qualifications once every two years, but do not limit the period of the agreement. Proposed section 246.12(h)(1) would limit vendor agreements to not more than three years, and would delete the regulatory requirement for periodic reviews of vendor qualifications since fixed-period agreements would render this requirement superfluous. The Department believes that fixed period agreements enable the State agency to manage its vendor population on a periodic basis more easily and allows it to be more responsive to changing program conditions and needs than is the case with open-ended agreements. According to the 1990 Vendor Management Study, 78 percent of the geographic State agencies already authorize vendors for three years or less, making fixed-period agreements the norm. A vendor would need to reapply at the expiration of each agreement and would have to meet the selection criteria and the limiting criteria in effect at the time of reapplication.

In addition, current section 246.12(f) allows local agencies to establish agreements with vendors. Proposed section 246.12(h)(1) would require that all vendor agreements be established by the State agency. The Department believes that all vendor agreements should be executed by the State agency, rather than local agencies, to ensure consistent application of vendor authorization standards statewide. Conforming amendments would also be made to sections 246.4(a)(14)(iii) and 246.12(f) (which would be redesignated as section 246.12(h)).

12. Retail Food Delivery Systems: Vendor Agreement Specifications (Sections 246.12(h)(2) Through 246.12(h)(4))

This proposed rule would revise current section 246.12(f)(1) to make clear that State agencies may make exceptions to their standard vendor agreements only when necessary to meet unique circumstances and must document the reasons for any exception. One such legitimate reason would be adjustments to accommodate a State agency's EBT system. The proposed rule would move this requirement to section 246.12(h)(2).

The Department proposes to reorganize and modify a number of the requirements for vendor agreements. A few new provisions are proposed. The provisions that would be changed or added are discussed below in the order in which they appear in the proposed rule.

Proposed section 246.12(h)(3)(i) would make clear that vendors may accept food instruments only from participants or their proxies. This does not represent a change from current program operations.

The Department also proposes to change the provision currently at section 246.12(f)(2)(i) to address concerns raised by State agencies about problems with substitutions for supplemental foods designated on the food instrument. A sentence would be added to prohibit vendors from substituting other foods, non-food items or cash in lieu of supplemental food listed on the food instrument. The vendor would also be prohibited from giving credit, refunds, or exchanges (except for identical supplemental foods). Credit or rainchecks offered to participants are usually given because vendors have inadequate WIC food stocks on hand. Participants should not be inconvenienced by vendors who do not honor their contractual obligation to maintain adequate WIC food stocks in their stores. Ultimately, it is the participants who suffer nutritionally from an incomplete food package. In addition, many commenters expressed concern about the increased opportunity for program noncompliance when vendors allow refunds for foods purchased with WIC food instruments. The rule would permit vendors to exchange a supplemental food with an identical item. This should address instances of defective supplemental foods without compromising the nutritional benefit of the participant's food package. These revisions appear in proposed section 246.12(h)(3)(ii) and are included in this rulemaking so as to reflect longstanding WIC policy in program regulations.

This proposed rule would add a new section 246.12(h)(3)(iv) requiring that the vendor ensure the actual purchase price be entered on the food instrument prior to the signature by the participant or proxy. Many State agencies require the vendor to enter the purchase price prior to participant signature. However, a few State agencies require the participant to enter the purchase price, citing the educational value for participants. The proposed language would accommodate either situation. In addition, this provision would make clear that the provision applies to printed food instruments only. Thus, where an EBT system is used and the purchase price is scanned and entered electronically, rather than entered directly on the food instrument, the provision would not apply. Proposed section 246.12(h)(3)(iv) would also make clear a PIN may be used in EBT systems in lieu of the signature requirement.

Current section 246.12(f)(2)(ii) would be moved to section 246.12(h)(3)(viii) and would require vendors to charge State agencies no more than the price charged other customers (i.e. no surcharge may be imposed for WIC

purchases) or the current shelf price, whichever is less. Vendors subject to contract prices would be able to charge no more than the contract prices. This proposal would modify the current language to account for competitively bid vendor selection systems being used by some State agencies in which vendors are selected on the basis of specific prices they submit in response to a competitive procurement. This proposal would also make clear that in no case may the vendor charge the State agency more than the competitive price limitation.

Proposed section 246.12(h)(3)(ix) would clarify current section 246.12(f)(2)(v) concerning claims collection. Under this new section, the vendor would be required to reimburse the State agency upon demand, or have its payment from the State agency reduced, for the value of each vendor overcharge or other error. It would also allow the State agency to withhold or collect the entire redemption value of a food instrument containing an overcharge or other error, rather than just the amount of the error. Finally, it would permit the State agency to offset any amount owed by the vendor against subsequent amounts to be paid to the vendor.

Current regulations at section 246.12(f)(2)(vi) prohibit the vendor from seeking restitution from participants for food instruments not paid by the State or local agency. The Department proposes to clarify in proposed section 246.12(h)(3)(x) that the prohibition would also apply to any food instrument partially paid by the State agency and to remove the reference to the local agency in order to conform to the requirement at proposed section 246.12(h)(1) that only State agencies may enter into vendor agreements.

Current section 246.12(f)(2)(vii) requires the manager or an authorized representative of the store (such as a head cashier) to accept training on program procedures. This proposal would move this provision to section 246.12(h)(3)(xi) and modify it by requiring participation in training prior to, or at the time of, the vendor's initial authorization and at least once annually thereafter. The initial training of a new vendor would be required to take place at the site of the vendor (see proposed section 246.12(i)(1)). The proposal would also make clear that the training after the initial authorization training is to take place at a time and location designated by the State agency. However, State agencies would be required to provide vendors at least one opportunity to attend training on an alternative date and may offer additional alternative training dates. The Department encourages State agencies to be understanding of the particular scheduling limitations of vendors with small staffs when scheduling training.

The reference to "head cashier" would be removed and replaced by language requiring that a member of management participate in the training, because a head cashier may not be a store management official and thus may not possess the necessary authority to accept training responsibilities for the vendor. Further details on the proposed training requirements may be found in section 13 of this preamble and proposed section 246.12(i). Section 246.12(h)(3)(xi) would further require a vendor agreement provision putting the vendor on notice of the mandatory selection criterion in section 246.12(g)(3)(iv) making a history of failing to participate in the annual training a condition of authorization in the next authorization cycle.

This proposal has made one change to current section 246.12(f)(2)(ix). In proposed section 246.12(h)(3)(xiii), the term "utilization" of food instruments would be replaced with the term "handling" of food instruments as a clarification for the vendor.

The Department proposes to modify section 246.12(f)(2)(xiii) to require vendors to retain inventory records that are used for State or Federal tax reporting purposes, and other records as the State agency may require. State agencies would have the flexibility to determine both the length of time for retention of the inventory records and additional records that must be retained. Vendors would be required to allow access to these records by representatives of the State agency, the Department, and the Comptroller General of the United States for inspection and audit. Vendors must make these records available at any reasonable time and place. The requirement in current section 246.12(f)(2)(xii), concerning access to food instruments during monitoring visits, would be included in this access requirement. These changes would appear in section 246.12(h)(3)(xv).

Currently, section 246.12(f)(2)(xxiii) requires the vendor to notify the State agency when the vendor ceases operations or ownership changes and the agreement to be voided in cases of change of ownership. Strict interpretation of the current section 246.12(f)(2)(xxiii) has resulted in some State agencies treating corporate reorganizations as changes in ownership. Such an interpretation has resulted in terminating agreements with vendors that have undergone corporate reorganizations even though they did not affect the ownership of the corporation. This rule would make clear in section 246.12(h)(3)(xvii) that a change in business structure that does not result in a change in ownership would not trigger this provision. State agencies should focus on the substance of the transaction rather than the form of the transaction. The State agency should ensure that the vendor agreement is amended to reflect the change in business structure.

This rule would also require vendors to give notice of any change in a vendor's location. This notice is necessary in light of the role that location plays in vendor selection and limiting criteria.

In order to give State agencies sufficient time to analyze any change in ownership, location, or cessation of operations, this rule would require that vendors give 45 days notice in writing prior to the effective date of the change. In cases in which the change will trigger termination of the agreement, the lead time also would give State agencies time to seek a new vendor when necessary to ensure adequate participant access.

Proposed section 246.12(h)(3)(xviii) would specify that a vendor may be sanctioned for vendor violations in addition to claims collection. Such sanctions would be required to be in accordance with the State agency's sanction schedule.

The Department also proposes to add in section 246.12(h)(3)(xix) a provision notifying the vendor that the State agency will terminate the vendor's agreement if the State agency determines that a conflict of interest exists between the vendor and the WIC Program, at either the State or the local level. This change reflects the requirement at section 246.12(q) of the current regulations (redesignated as section 246.12(t) in the proposed rule) with the addition of a reference to conflicts with the State agency given their role in vendor authorization.

The current requirement in section 246.12(f)(2)(xiv) would be redesignated as section 246.12(h)(3)(xx) and amended to revise the reference to current section 246.23(d) regarding criminal penalties for program noncompliance.

Proposed section 246.12(h)(3)(xxi) would specify that WIC authorization is not a license, and that it does not convey property rights. Vendors would also be put on notice that in order to continue to be authorized beyond their current agreement periods they must reapply for authorization. Further, vendors would be notified that if a vendor has been disqualified for a

period of time less than the remaining term of its vendor agreement, participation in the WIC Program may be resumed upon completion of its disqualification period for the duration of the agreement without reapplying. If the vendor agreement expires before the vendor has served out the full disqualification period, and the vendor wishes to again participate in the Program after serving the disqualification, the vendor must apply to be authorized. In all cases, the vendor's new application would be subject to the State agency's selection and limiting criteria in effect at the time of the reapplication.

Proposed section 246.12(h)(4) would require that the State agency include the sanction schedule in the vendor agreement. The sanction schedule must be consistent with the current vendor sanction requirements, which would be redesignated as Section 246.12(l), and include both the mandatory vendor sanctions and any State agency vendor sanctions. This addition was made to consolidate several paragraphs that required that specific vendor sanction provisions be included in the vendor agreement. The Department recommends that State agencies include the sanction schedule as an addendum to the vendor agreement, so that it may be amended during the agreement period without having to amend the entire agreement.

The Department proposes a new section 246.12(h)(5) that would require State agencies to provide vendors a list of the actions subject to administrative review and a copy of the State agency's administrative review procedures. Proposed revisions to vendor appeals are discussed in section 22 of this preamble.

13. Retail Food Delivery Systems: Vendor Training (Section 246.12(i))

The December 1990 WIC Vendor Management Study indicated that training is the most frequently used non-investigative method for ensuring the integrity of the Program. "The WIC Files," a summary of case studies of vendor investigations produced by the vendor managers of State agencies in the Southeast Region, found that vendor training is one of the most effective controls on vendor noncompliance that a State agency can implement.

The Department proposes in section 246.12(i) to strengthen the training requirements by requiring annual training for all vendors. Such training would be required to be face-to-face at least once during the vendor's agreement period, that is, once every three years or more frequently in State agencies using shorter agreements. The face-to-face training could be conducted at any time during the agreement period except that, in instances where a vendor is new to the WIC Program, the training would be required to be provided prior to, or at the time of, initial authorization, and at the site of the new vendor.

The face-to-face training could count towards fulfillment of the annual training requirement for all vendors. In other years of the agreement period, the annual training could, for example, consist of a training video, written material such as a handbook update, or verbal instructions relayed by audiotape.

The vendor's requirements for both annual and face-to-face training would be required to be outlined in the vendor agreement (section 246.12(h)(3)(xi)), including the stipulation that a history of noncompliance with these requirements would bar reauthorization (see proposed section 246.12(g)(3)(iv)). The vendor agreement would be required to make clear that the State agency has the sole discretion to determine the date, time, and place of all training, except that the vendor would have to be given at least one opportunity to reschedule. Vendors would be required to sign a receipt that they have received training. Training could take the form of individual or group sessions and could be conducted on the vendor's premises or at a State agency-selected location, except for the initial training, which would be required to be given at the vendor's site.

The Department believes that it is important that certain basic topics be covered in the annual training sessions, whether the training is provided face-to-face or is included in some other form of presentation, such as a film or printed material. As such, the Department is proposing in section 246.12(i)(2) that the following topics must be covered annually: the purpose of the WIC Program; the varieties of supplemental food authorized by the State agency; the minimum varieties and quantities of authorized supplemental foods that must be stocked; the procedures for transacting and submitting food instruments; the vendor sanction system; the vendor complaint process; the terms of the vendor agreement; and the State agency's claims collection procedures. The primary difference between the face-to-face training that would occur once during the agreement period and the training that would occur during each of the other years of the agreement period is how the training is delivered. The content would remain the same.

At the discretion of the State agency, section 246.12(i)(3) would permit training to be conducted by a local agency, a contractor, or a vendor representative. The State agency would be required to provide supervision and instruction to ensure the uniformity and quality of the training. Proposed section 246.4(a)(xii) would require that the oversight system be described in the State Plan.

Proposed section 246.12(i)(4) would require State agencies to document the content of the annual training, including the vendor receipts required by section 246.12(h)(3)(xi). By requiring an acknowledgment of the receipt and understanding of training, the State agency retains evidence of awareness of program rules and procedures by vendors. Thus, violative vendors cannot successfully argue during administrative reviews that they were not appropriately trained on their responsibilities.

14. Retail Food Delivery Systems: Monitoring Vendors and Identifying High-Risk Vendors (Section 246.12(j))

The 1988 National Vendor Audit, while not nationally representative, is consistent with the conclusion that current regulatory requirements for representative monitoring have not been effective in controlling program noncompliance. In addition, VAMP data and findings of the WIC Vendor Issues Study indicate the need to focus more attention on high-risk vendors. Therefore, this proposed rulemaking would shift emphasis away from the less effective representative monitoring and toward high-risk monitoring. This would concentrate resources on a subset of vendors which have been identified as having a high probability of abusing the Program and is likely to be more effective in combating program noncompliance.

As discussed in section 2 of this preamble, the term "representative monitoring" has proven to be misleading. It describes the method by which vendors are selected to be monitored rather than the type of monitoring actually conducted (see section 246.12(i)(2) of the current regulations). Representative, or random, selection for monitoring is intended to yield a sample of vendors that is generally representative of vendors authorized by the State agency. Because vendors are selected at random rather than targeted as potential high-risk vendors, the monitoring technique generally considered to be most appropriate is routine monitoring, i.e., overt monitoring in which WIC staff identify themselves to vendor personnel. Routine monitoring provides

the State agency with an overview of vendors statewide. It also has program noncompliance-deterrent and educational functions, and can adequately address inventory, sanitation, and processing of food instruments available on the premises for inspection. For these reasons, the Department proposes to replace the term "representative monitoring" with the term "routine monitoring" in the regulations.

Section 246.12(i)(2) of the current regulations requires that the State agency implement a system to conduct representative monitoring on at least 10 percent of its authorized vendors each year. The current section 246.12(i)(1) requires that the State agency also establish a system for identifying high-risk vendors and take effective action to follow up on vendors so identified, including monitoring, further investigation, and sanctioning, as appropriate. Current regulations do not mandate high-risk identification criteria, a specific technique for monitoring high-risk vendors, or a specific number of high-risk vendor that must be monitored. The result of these deficiencies has been uneven implementation of high-risk identification and monitoring systems with often limited effectiveness in terms of investigating high-risk vendors and taking appropriate actions based on the findings.

Given that resources available for monitoring are finite, it is more logical to concentrate on vendors with a high probability of program noncompliance than on randomly selected vendors. This is also consistent with the requirement in section 203(f) of Public Law 105–336, which requires State agencies to identify vendors that have a high probability of program noncompliance and to conduct compliance investigations of these vendors. In order to ensure effective deployment of monitoring resources for high-risk monitoring, effective high-risk criteria must be used. This proposal would help ensure that such criteria are used by State agencies by requiring them to use new high-risk criteria. Under proposed section 246.12(j)(1), State agencies would continue to be required to monitor vendors. State agencies would be permitted to delegate the monitoring to a local agency or contractor, but would be required to provide supervision and training to ensure the quality and uniformity of the monitoring.

Under this proposal, State agencies would also be required to implement high-risk vendor identification criteria specified by FNS (proposed section 246.12(j)(2)). State agencies could employ indicators of their own choice in addition to those required by FNS, and this is highly recommended. Such State-established criteria would be subject to FNS approval through the State Plan process, and such approval would involve a review of the civil rights implications of the criteria.

Much has been learned over the years about high-risk vendor identification through innovation and experimentation by State agencies; two studies, (the WIC State Agency Guide to Vendor Monitoring and the Applied Research on Vendor Abuse); the investigative activities of the Office of Inspector General in connection with the National Vendor Audit; and the data reported by State agencies through the VAMP system. While much remains to be learned about high-risk vendor identification, it is now possible to specify some basic criteria that are strongly associated with documented vendor noncompliance. For example, a vendor may routinely submit food instruments at or around their maximum possible dollar value, or at the same set value for every food instrument. Given the variation in the types and brands of authorized supplemental foods that a participant may choose, a small or no cost variation among a vendor's food instrument claims signals a possible problem meriting further review. Indicators used in the WIC Program to detect potentially high-risk vendors may not violate civil rights laws by classifying vendors as potentially high-risk solely on the basis of their minority status.

Section 246.12(j)(2) of this proposal establishes FNS's authority to mandate minimum criteria. However, the criteria themselves would not be included in the regulations. Public disclosure of the high-risk criteria would undermine their usefulness in identifying high-risk vendors and would interfere with timely changes to the criteria as knowledge about the effectiveness of various criteria increases. This flexibility also ensures that State agencies are not required to use criteria that subsequent analysis reveals to be ineffective or obsolete. The Department will inform the State agencies of changes in the minimum mandated high-risk criteria through its announcement of requirements for the annual summary of the results of vendor monitoring, which has been mandated by the WIC Program regulations since 1982 and would continue to be required by section 246.12(j)(4).

While there is a need for flexibility in establishing criteria to be used as part of high-risk identification systems, the Department also recognizes the State agencies' operational need for a certain level of stability in required high-risk identification criteria. Changes in criteria inevitably require modification of data collection procedures and management information systems. Therefore, the required criteria would not be changed more frequently than once every two years, and State agencies would be informed one year in advance of all such changes. The Department does not envision a proliferation of mandatory criteria over time or the frequent replacement of criteria. The more likely event is greater specificity in established criteria as experience indicates how they can be most effectively employed.

The Department wishes to stress that the mandated criteria would represent the minimum number of criteria a State agency must utilize in its high-risk identification system. State agencies would continue to have flexibility to use criteria which they have found to be effective in addition to those criteria established by the Department.

In this proposal, State agencies would be required by section 246.12(j)(3)(i) to annually conduct compliance buys or inventory audits on at least 10 percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The number would not need to be adjusted based on fluctuations in the vendor population during the fiscal year. State agencies would be required to conduct buys or audits for all high-risk vendors up to the 10 percent minimum. Under proposed section 246.12(j)(3)(i), a State agency would be allowed to waive the investigation of a high-risk vendor if it documents that the vendor is under investigation by a Federal, State, or local enforcement agency or that another compelling reason based on good program management exists for not conducting a compliance buy or inventory audit. This would include investigations by the Department's Office of Inspector General and FSP investigations by FNS, but not a routine action like a health inspection.

If fewer than 10 percent of the State agency's total vendor population is identified as high-risk and are not exempted from monitoring, section 246.12(j)(3)(ii) would require the difference to be made up with vendors not so identified. These vendors would have to be selected at random as a means of testing the effectiveness of the State agency's high-risk identification system. Random selection also should result in a cross-section of all vendors being reviewed, thereby precluding a disparate over-selection of small and

with the delay before a vendor may apply. The Department considers that State agencies have always had the authority to limit application periods as part of their general responsibility for, and control over, vendor selection. However, data from the 1995 NAWD National Vendor Management Roundup Survey indicate that of the 75 WIC State agencies who responded, only 22 State agencies reported they accepted applications during a set time of the year.

To emphasize this authority, this proposed rule would expressly give State agencies the option of limiting their vendor authorization periods, with the condition that vendor applications must be accepted and processed at least once every three years. A State agency that chooses to exercise this option would be required in section 246.12(g)(6) to develop procedures for accepting and processing individual vendor applications outside of its established periods when it determines there would be inadequate participant access unless additional vendors are authorized.

Section 246.12(g)(7), as amended by this proposal, would also require that the State agency collect the FSP authorization number of all applicant vendors that participate in the FSP and, except when the State agency uses a competitive bidding procedure in which vendors bid on prices for authorized supplemental foods, the current shelf prices for such foods. The FSP authorization number facilitates the receipt of information on vendor history from the FSP. Although State agencies are not required to contact the FSP before authorizing vendors, the Department strongly encourages State agencies to do so and make use of this valuable information. Shelf price data provide the State agency with information it needs to establish whether the prices of authorized supplemental foods are competitive. Shelf price data can also be used by the State agency to develop and/or update its competitive price selection criteria, and to update price data used to identify overcharging.

11. Retail Food Delivery Systems: Time Limit on Vendor Agreements (Section 246.12(h)(1))

Current food delivery regulations at section 246.12(g) require that the State agency perform a review of each vendor's qualifications once every two years, but do not limit the period of the agreement. Proposed section 246.12(h)(1) would limit vendor agreements to not more than three years, and would delete the regulatory requirement for periodic reviews of vendor qualifications since fixed-period agreements would render this requirement superfluous. The Department believes that fixed period agreements enable the State agency to manage its vendor population on a periodic basis more easily and allows it to be more responsive to changing program conditions and needs than is the case with open-ended agreements. According to the 1990 Vendor Management Study, 78 percent of the geographic State agencies already authorize vendors for three years or less, making fixed-period agreements the norm. A vendor would need to reapply at the expiration of each agreement and would have to meet the selection criteria and the limiting criteria in effect at the time of reapplication.

In addition, current section 246.12(f) allows local agencies to establish agreements with vendors. Proposed section 246.12(h)(1) would require that all vendor agreements be established by the State agency. The Department believes that all vendor agreements should be executed by the State agency, rather than local agencies, to ensure consistent application of vendor authorization standards statewide. Conforming amendments would also be made to sections 246.4(a)(14)(iii) and 246.12(f) (which would be redesignated as section 246.12(h)).

12. Retail Food Delivery Systems: Vendor Agreement Specifications (Sections 246.12(h)(2) Through 246.12(h)(4))

This proposed rule would revise current section 246.12(f)(1) to make clear that State agencies may make exceptions to their standard vendor agreements only when necessary to meet unique circumstances and must document the reasons for any exception. One such legitimate reason would be adjustments to accommodate a State agency's EBT system. The proposed rule would move this requirement to section 246.12(h)(2).

The Department proposes to reorganize and modify a number of the requirements for vendor agreements. A few new provisions are proposed. The provisions that would be changed or added are discussed below in the order in which they appear in the proposed rule.

Proposed section 246.12(h)(3)(i) would make clear that vendors may accept food instruments only from participants or their proxies. This does not represent a change from current program operations.

The Department also proposes to change the provision currently at section 246.12(f)(2)(i) to address concerns raised by State agencies about problems with substitutions for supplemental foods designated on the food instrument. A sentence would be added to prohibit vendors from substituting other foods, non-food items or cash in lieu of supplemental food listed on the food instrument. The vendor would also be prohibited from giving credit, refunds, or exchanges (except for identical supplemental foods). Credit or rainchecks offered to participants are usually given because vendors have inadequate WIC food stocks on hand. Participants should not be inconvenienced by vendors who do not honor their contractual obligation to maintain adequate WIC food stocks in their stores. Ultimately, it is the participants who suffer nutritionally from an incomplete food package. In addition, many commenters expressed concern about the increased opportunity for program noncompliance when vendors allow refunds for foods purchased with WIC food instruments. The rule would permit vendors to exchange a supplemental food with an identical item. This should address instances of defective supplemental foods without compromising the nutritional benefit of the participant's food package. These revisions appear in proposed section 246.12(h)(3)(ii) and are included in this rulemaking so as to reflect longstanding WIC policy in program regulations.

This proposed rule would add a new section 246.12(h)(3)(iv) requiring that the vendor ensure the actual purchase price be entered on the food instrument prior to the signature by the participant or proxy. Many State agencies require the vendor to enter the purchase price prior to participant signature. However, a few State agencies require the participant to enter the purchase price, citing the educational value for participants. The proposed language would accommodate either situation. In addition, this provision would make clear that the provision applies to printed food instruments only. Thus, where an EBT system is used and the purchase price is scanned and entered electronically, rather than entered directly on the food instrument, the provision would not apply. Proposed section 246.12(h)(3)(iv) would also make clear a PIN may be used in EBT systems in lieu of the signature requirement.

Current section 246.12(f)(2)(ii) would be moved to section 246.12(h)(3)(viii) and would require vendors to charge State agencies no more than the price charged other customers (i.e. no surcharge may be imposed for WIC

purchases) or the current shelf price, whichever is less. Vendors subject to contract prices would be able to charge no more than the contract prices. This proposal would modify the current language to account for competitively bid vendor selection systems being used by some State agencies in which vendors are selected on the basis of specific prices they submit in response to a competitive procurement. This proposal would also make clear that in no case may the vendor charge the State agency more than the competitive price limitation.

Proposed section 246.12(h)(3)(ix) would clarify current section 246.12(f)(2)(v) concerning claims collection. Under this new section, the vendor would be required to reimburse the State agency upon demand, or have its payment from the State agency reduced, for the value of each vendor overcharge or other error. It would also allow the State agency to withhold or collect the entire redemption value of a food instrument containing an overcharge or other error, rather than just the amount of the error. Finally, it would permit the State agency to offset any amount owed by the vendor against subsequent amounts to be paid to the vendor.

Current regulations at section 246.12(f)(2)(vi) prohibit the vendor from seeking restitution from participants for food instruments not paid by the State or local agency. The Department proposes to clarify in proposed section 246.12(h)(3)(x) that the prohibition would also apply to any food instrument partially paid by the State agency and to remove the reference to the local agency in order to conform to the requirement at proposed section 246.12(h)(1) that only State agencies may enter into vendor agreements.

Current section 246.12(f)(2)(vii) requires the manager or an authorized representative of the store (such as a head cashier) to accept training on program procedures. This proposal would move this provision to section 246.12(h)(3)(xi) and modify it by requiring participation in training prior to, or at the time of, the vendor's initial authorization and at least once annually thereafter. The initial training of a new vendor would be required to take place at the site of the vendor (see proposed section 246.12(i)(1)). The proposal would also make clear that the training after the initial authorization training is to take place at a time and location designated by the State agency. However, State agencies would be required to provide vendors at least one opportunity to attend training on an alternative date and may offer additional alternative training dates. The Department encourages State agencies to be understanding of the particular scheduling limitations of vendors with small staffs when scheduling training.

The reference to "head cashier" would be removed and replaced by language requiring that a member of management participate in the training, because a head cashier may not be a store management official and thus may not possess the necessary authority to accept training responsibilities for the vendor. Further details on the proposed training requirements may be found in section 13 of this preamble and proposed section 246.12(i). Section 246.12(h)(3)(xi) would further require a vendor agreement provision putting the vendor on notice of the mandatory selection criterion in section 246.12(g)(3)(iv) making a history of failing to participate in the annual training a condition of authorization in the next authorization cycle.

This proposal has made one change to current section 246.12(f)(2)(ix). In proposed section 246.12(h)(3)(xiii), the term "utilization" of food instruments would be replaced with the term "handling" of food instruments as a clarification for the vendor.

The Department proposes to modify section 246.12(f)(2)(xiii) to require vendors to retain inventory records that are used for State or Federal tax reporting purposes, and other records as the State agency may require. State agencies would have the flexibility to determine both the length of time for retention of the inventory records and additional records that must be retained. Vendors would be required to allow access to these records by representatives of the State agency, the Department, and the Comptroller General of the United States for inspection and audit. Vendors must make these records available at any reasonable time and place. The requirement in current section 246.12(f)(2)(xii), concerning access to food instruments during monitoring visits, would be included in this access requirement. These changes would appear in section 246.12(h)(3)(xv).

Currently, section 246.12(f)(2)(xxiii) requires the vendor to notify the State agency when the vendor ceases operations or ownership changes and the agreement to be voided in cases of change of ownership. Strict interpretation of the current section 246.12(f)(2)(xxiii) has resulted in some State agencies treating corporate reorganizations as changes in ownership. Such an interpretation has resulted in terminating agreements with vendors that have undergone corporate reorganizations even though they did not affect the ownership of the corporation. This rule would make clear in section 246.12(h)(3)(xvii) that a change in business structure that does not result in a change in ownership would not trigger this provision. State agencies should focus on the substance of the transaction rather than the form of the transaction. The State agency should ensure that the vendor agreement is amended to reflect the change in business structure.

This rule would also require vendors to give notice of any change in a vendor's location. This notice is necessary in light of the role that location plays in vendor selection and limiting criteria.

In order to give State agencies sufficient time to analyze any change in ownership, location, or cessation of operations, this rule would require that vendors give 45 days notice in writing prior to the effective date of the change. In cases in which the change will trigger termination of the agreement, the lead time also would give State agencies time to seek a new vendor when necessary to ensure adequate participant access.

Proposed section 246.12(h)(3)(xviii) would specify that a vendor may be sanctioned for vendor violations in addition to claims collection. Such sanctions would be required to be in accordance with the State agency's sanction schedule.

The Department also proposes to add in section 246.12(h)(3)(xix) a provision notifying the vendor that the State agency will terminate the vendor's agreement if the State agency determines that a conflict of interest exists between the vendor and the WIC Program, at either the State or the local level. This change reflects the requirement at section 246.12(q) of the current regulations (redesignated as section 246.12(t) in the proposed rule) with the addition of a reference to conflicts with the State agency given their role in vendor authorization.

The current requirement in section 246.12(f)(2)(xiv) would be redesignated as section 246.12(h)(3)(xx) and amended to revise the reference to current section 246.23(d) regarding criminal penalties for program noncompliance.

Proposed section 246.12(h)(3)(xxi) would specify that WIC authorization is not a license, and that it does not convey property rights. Vendors would also be put on notice that in order to continue to be authorized beyond their current agreement periods they must reapply for authorization. Further, vendors would be notified that if a vendor has been disqualified for a

period of time less than the remaining term of its vendor agreement, participation in the WIC Program may be resumed upon completion of its disqualification period for the duration of the agreement without reapplying. If the vendor agreement expires before the vendor has served out the full disqualification period, and the vendor wishes to again participate in the Program after serving the disqualification, the vendor must apply to be authorized. In all cases, the vendor's new application would be subject to the State agency's selection and limiting criteria in effect at the time of the reapplication.

Proposed section 246.12(h)(4) would require that the State agency include the sanction schedule in the vendor agreement. The sanction schedule must be consistent with the current vendor sanction requirements, which would be redesignated as Section 246.12(l), and include both the mandatory vendor sanctions and any State agency vendor sanctions. This addition was made to consolidate several paragraphs that required that specific vendor sanction provisions be included in the vendor agreement. The Department recommends that State agencies include the sanction schedule as an addendum to the vendor agreement, so that it may be amended during the agreement period without having to amend the entire agreement.

The Department proposes a new section 246.12(h)(5) that would require State agencies to provide vendors a list of the actions subject to administrative review and a copy of the State agency's administrative review procedures. Proposed revisions to vendor appeals are discussed in section 22 of this preamble.

13. Retail Food Delivery Systems: Vendor Training (Section 246.12(i))

The December 1990 WIC Vendor Management Study indicated that training is the most frequently used non-investigative method for ensuring the integrity of the Program. "The WIC Files," a summary of case studies of vendor investigations produced by the vendor managers of State agencies in the Southeast Region, found that vendor training is one of the most effective controls on vendor noncompliance that a State agency can implement.

The Department proposes in section 246.12(i) to strengthen the training requirements by requiring annual training for all vendors. Such training would be required to be face-to-face at least once during the vendor's agreement period, that is, once every three years or more frequently in State agencies using shorter agreements. The face-to-face training could be conducted at any time during the agreement period except that, in instances where a vendor is new to the WIC Program, the training would be required to be provided prior to, or at the time of, initial authorization, and at the site of the new vendor.

The face-to-face training could count towards fulfillment of the annual training requirement for all vendors. In other years of the agreement period, the annual training could, for example, consist of a training video, written material such as a handbook update, or verbal instructions relayed by audiotape.

The vendor's requirements for both annual and face-to-face training would be required to be outlined in the vendor agreement (section 246.12(h)(3)(xi)), including the stipulation that a history of noncompliance with these requirements would bar reauthorization (see proposed section 246.12(g)(3)(iv)). The vendor agreement would be required to make clear that the State agency has the sole discretion to determine the date, time, and place of all training, except that the vendor would have to be given at least one opportunity to reschedule. Vendors would be required to sign a receipt that they have received training. Training could take the form of individual or group sessions and could be conducted on the vendor's premises or at a State agency-selected location, except for the initial training, which would be required to be given at the vendor's site.

The Department believes that it is important that certain basic topics be covered in the annual training sessions, whether the training is provided face-to-face or is included in some other form of presentation, such as a film or printed material. As such, the Department is proposing in section 246.12(i)(2) that the following topics must be covered annually: the purpose of the WIC Program; the varieties of supplemental food authorized by the State agency; the minimum varieties and quantities of authorized supplemental foods that must be stocked; the procedures for transacting and submitting food instruments; the vendor sanction system; the vendor complaint process; the terms of the vendor agreement; and the State agency's claims collection procedures. The primary difference between the face-to-face training that would occur once during the agreement period and the training that would occur during each of the other years of the agreement period is how the training is delivered. The content would remain the same.

At the discretion of the State agency, section 246.12(i)(3) would permit training to be conducted by a local agency, a contractor, or a vendor representative. The State agency would be required to provide supervision and instruction to ensure the uniformity and quality of the training. Proposed section 246.4(a)(xii) would require that the oversight system be described in the State Plan.

Proposed section 246.12(i)(4) would require State agencies to document the content of the annual training, including the vendor receipts required by section 246.12(h)(3)(xi). By requiring an acknowledgment of the receipt and understanding of training, the State agency retains evidence of awareness of program rules and procedures by vendors. Thus, violative vendors cannot successfully argue during administrative reviews that they were not appropriately trained on their responsibilities.

14. Retail Food Delivery Systems: Monitoring Vendors and Identifying High-Risk Vendors (Section 246.12(j))

The 1988 National Vendor Audit, while not nationally representative, is consistent with the conclusion that current regulatory requirements for representative monitoring have not been effective in controlling program noncompliance. In addition, VAMP data and findings of the WIC Vendor Issues Study indicate the need to focus more attention on high-risk vendors. Therefore, this proposed rulemaking would shift emphasis away from the less effective representative monitoring and toward high-risk monitoring. This would concentrate resources on a subset of vendors which have been identified as having a high probability of abusing the Program and is likely to be more effective in combating program noncompliance.

As discussed in section 2 of this preamble, the term "representative monitoring" has proven to be misleading. It describes the method by which vendors are selected to be monitored rather than the type of monitoring actually conducted (see section 246.12(i)(2) of the current regulations). Representative, or random, selection for monitoring is intended to yield a sample of vendors that is generally representative of vendors authorized by the State agency. Because vendors are selected at random rather than targeted as potential high-risk vendors, the monitoring technique generally considered to be most appropriate is routine monitoring, i.e., overt monitoring in which WIC staff identify themselves to vendor personnel. Routine monitoring provides

the State agency with an overview of vendors statewide. It also has program noncompliance-deterrent and educational functions, and can adequately address inventory, sanitation, and processing of food instruments available on the premises for inspection. For these reasons, the Department proposes to replace the term "representative monitoring" with the term "routine monitoring" in the regulations.

Section 246.12(i)(2) of the current regulations requires that the State agency implement a system to conduct representative monitoring on at least 10 percent of its authorized vendors each year. The current section 246.12(i)(1) requires that the State agency also establish a system for identifying high-risk vendors and take effective action to follow up on vendors so identified, including monitoring, further investigation, and sanctioning, as appropriate. Current regulations do not mandate high-risk identification criteria, a specific technique for monitoring high-risk vendors, or a specific number of high-risk vendor that must be monitored. The result of these deficiencies has been uneven implementation of high-risk identification and monitoring systems with often limited effectiveness in terms of investigating high-risk vendors and taking appropriate actions based on the findings.

Given that resources available for monitoring are finite, it is more logical to concentrate on vendors with a high probability of program noncompliance than on randomly selected vendors. This is also consistent with the requirement in section 203(f) of Public Law 105–336, which requires State agencies to identify vendors that have a high probability of program noncompliance and to conduct compliance investigations of these vendors. In order to ensure effective deployment of monitoring resources for high-risk monitoring, effective high-risk criteria must be used. This proposal would help ensure that such criteria are used by State agencies by requiring them to use new high-risk criteria. Under proposed section 246.12(j)(1), State agencies would continue to be required to monitor vendors. State agencies would be permitted to delegate the monitoring to a local agency or contractor, but would be required to provide supervision and training to ensure the quality and uniformity of the monitoring.

Under this proposal, State agencies would also be required to implement high-risk vendor identification criteria specified by FNS (proposed section 246.12(j)(2)). State agencies could employ indicators of their own choice in addition to those required by FNS, and this is highly recommended. Such State-established criteria would be subject to FNS approval through the State Plan process, and such approval would involve a review of the civil rights implications of the criteria.

Much has been learned over the years about high-risk vendor identification through innovation and experimentation by State agencies; two studies, (the WIC State Agency Guide to Vendor Monitoring and the Applied Research on Vendor Abuse); the investigative activities of the Office of Inspector General in connection with the National Vendor Audit; and the data reported by State agencies through the VAMP system. While much remains to be learned about high-risk vendor identification, it is now possible to specify some basic criteria that are strongly associated with documented vendor noncompliance. For example, a vendor may routinely submit food instruments at or around their maximum possible dollar value, or at the same set value for every food instrument. Given the variation in the types and brands of authorized supplemental foods that a participant may choose, a small or no cost variation among a vendor's food instrument claims signals a possible problem meriting further review. Indicators used in the WIC Program to detect potentially high-risk vendors may not violate civil rights laws by classifying vendors as potentially high-risk solely on the basis of their minority status.

Section 246.12(j)(2) of this proposal establishes FNS's authority to mandate minimum criteria. However, the criteria themselves would not be included in the regulations. Public disclosure of the high-risk criteria would undermine their usefulness in identifying high-risk vendors and would interfere with timely changes to the criteria as knowledge about the effectiveness of various criteria increases. This flexibility also ensures that State agencies are not required to use criteria that subsequent analysis reveals to be ineffective or obsolete. The Department will inform the State agencies of changes in the minimum mandated high-risk criteria through its announcement of requirements for the annual summary of the results of vendor monitoring, which has been mandated by the WIC Program regulations since 1982 and would continue to be required by section 246.12(j)(4).

While there is a need for flexibility in establishing criteria to be used as part of high-risk identification systems, the Department also recognizes the State agencies' operational need for a certain level of stability in required high-risk identification criteria. Changes in criteria inevitably require modification of data collection procedures and management information systems. Therefore, the required criteria would not be changed more frequently than once every two years, and State agencies would be informed one year in advance of all such changes. The Department does not envision a proliferation of mandatory criteria over time or the frequent replacement of criteria. The more likely event is greater specificity in established criteria as experience indicates how they can be most effectively employed.

The Department wishes to stress that the mandated criteria would represent the minimum number of criteria a State agency must utilize in its high-risk identification system. State agencies would continue to have flexibility to use criteria which they have found to be effective in addition to those criteria established by the Department.

In this proposal, State agencies would be required by section 246.12(j)(3)(i) to annually conduct compliance buys or inventory audits on at least 10 percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The number would not need to be adjusted based on fluctuations in the vendor population during the fiscal year. State agencies would be required to conduct buys or audits for all high-risk vendors up to the 10 percent minimum. Under proposed section 246.12(j)(3)(i), a State agency would be allowed to waive the investigation of a high-risk vendor if it documents that the vendor is under investigation by a Federal, State, or local enforcement agency or that another compelling reason based on good program management exists for not conducting a compliance buy or inventory audit. This would include investigations by the Department's Office of Inspector General and FSP investigations by FNS, but not a routine action like a health inspection.

If fewer than 10 percent of the State agency's total vendor population is identified as high-risk and are not exempted from monitoring, section 246.12(j)(3)(ii) would require the difference to be made up with vendors not so identified. These vendors would have to be selected at random as a means of testing the effectiveness of the State agency's high-risk identification system. Random selection also should result in a cross-section of all vendors being reviewed, thereby precluding a disparate over-selection of small and

minority-owned vendors. Conducting compliance buys or inventory audits on the population the State agency has identified as high-risk should result in detection of a higher percentage of violative vendors than those performed on a random sample of the entire vendor population. If the random sample and the high-risk population yield similar percentages of violative vendors and the State agency has used a large enough random sample to be statistically valid, the State agency should reassess its high-risk detection system.

When more than 10 percent of the total vendor population has been identified as high-risk, section 246.12(j)(3)(iii) would require the State agency that elects not to exceed the 10 percent minimum to prioritize vendors in order to review those with the greatest potential for program noncompliance and loss. Factors such as degree of risk of program noncompliance (e.g., point systems), location of the vendor relative to other high-risk vendors and likelihood of successful buys or audits based on past experience could be considered in establishing priorities.

The Department chose not to propose that compliance buys or inventory audits be performed on all high-risk vendors. Since high-risk identifiers can be manipulated, the high-risk identification process could be driven by the objective of minimizing compliance buy and audit activity rather than the need to identify vendors with a high probability of program noncompliance. Conversely, the identification of too many vendors as high-risk could impose an unreasonable monitoring burden on the State agency. Finally, as the WIC Program continues to grow, so will the need for compliance monitoring and accountability. Given these facts, the Department chose to propose that State agencies conduct compliance buys on at least 10 percent of their vendors. The 10 percent requirement ensures a minimum presence each year of monitoring staff as a means of deterrence, as well as detection, of program violations. When the use of percentages in setting minimum requirements for compliance buys and inventory audits results in fractional numbers, State agencies should round upward to the nearest whole number.

This proposal would no longer require State agencies to conduct any routine monitoring (currently set at a minimum of 10 percent of authorized vendors annually). The Department strongly recommends that State agencies continue to conduct routine monitoring to the extent that resources permit, but recognizes that the routine monitoring requirement must be relaxed so that State agencies can shift resources as necessary to meet the proposed high-risk monitoring requirements.

VAMP data show that one-buy investigations are not generally successful in revealing program violations such as overcharging, and that State agencies that conduct, on average, three or more compliance buys per vendor are much more likely to find occurrences of overcharging. Therefore, the Department also proposes a new requirement in section 246.12(j)(3)(i) of this rule. For investigations of high-risk vendors which result in negative compliance buys (i.e. buys in which no violations occur), the State agency would be allowed to close the investigation only after three negative compliance buys have occurred within a 12-month period. These negative compliance buys would not have to be consecutive in order for the State agency to close the investigation. For instance, the first buy could be negative, the second positive, and the third and fourth negative, which would lead to closing the investigation. Investigations containing a mix of positive and negative buys could be closed by the State agency after the third negative buy if the State agency determines that the number of positive buys was not sufficient to provide evidence of program noncompliance. An investigation of a high-risk vendor would also be considered to be complete when the State agency determines that: a sufficient number of buys has been conducted to provide evidence of program noncompliance or when an inventory audit has been completed. Investigations on randomly selected vendors would be considered complete when the State agency determines there is sufficient evidence to conclude whether the vendor is in compliance with program requirements.

Proposed section 246.12(j)(5) would establish documentation requirements for monitoring visits, including compliance buys, inventory audits, and routine monitoring visits. These are: the vendor's name and address; the date of the visit; the name(s) and signature(s) of the reviewer(s); the nature of the problem(s) detected or the observation that the vendor appears to be in compliance with program requirements. For compliance buys, State agencies would also be required to document: the date of the buy; a description of the cashier involved in each transaction; the types and quantities of items purchased; and, if available, the shelf price or contract price, and the price charged for each item purchased; and the final disposition of all items as either destroyed, donated, provided to other authorities, or kept as evidence. Recognizing that shelf prices or contract prices are sometimes difficult to obtain during a compliance buy, proposed section 246.12(j)(5) would permit the collection of shelf price or contract price data before or after the compliance buy visit. State agencies are encouraged, however, to collect shelf prices the same day as the compliance buy whenever possible to ensure that the State agency cannot be challenged during an administrative review that the prices are not truly reflective of shelf prices on the day of the compliance buy. This defense has been used by vendors during previous administrative reviews (see "The WIC Files").

The current requirement in section 246.12(i)(4) of documenting how the vendor plans to correct any detected deficiencies would be dropped. The Department believes that the requirements that State agencies assess claims and sanction vendors when appropriate adequately address the need to follow up on deficiencies noted in monitoring visits and that to require documentation of the follow-up in the monitoring report is duplicative and unnecessary. However, since the report will form the basis for any sanction, it is important that the report clearly document any deficiencies found. Thus, this proposed rule would retain that requirement.

a. Compliance Buy Techniques

Compliance buys are usually the best method of high-risk monitoring because they can identify and document a broad range of major program noncompliance. The fact that the program noncompliance is identified on-site and witnessed by the compliance monitor provides a strong case which can withstand the challenges of vendor appeal. As discussed in section 2 of this preamble, a compliance buy is an undercover visit to a vendor in which a person acting on behalf of the Program poses as a WIC participant and transacts food instruments in order to determine whether program noncompliance is taking place. The rationale and methodology for different types of compliance buys are outlined in the WIC Compliance Handbook issued in June, 1985. The most common type of buy is a "safe buy," in which only allowed foods, either in the authorized quantities or in lesser quantities, are purchased. Once the food instrument is redeemed by the vendor, it is reviewed to see if the vendor has made the appropriate charge, based on the foods actually purchased and their prices.

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In other types of buys, the buyer might, for example, attempt to purchase an ineligible food, purchase a non-food item, purchase less than the full food package, exchange food instruments for credit, or sell food instruments at a discount, i.e. trafficking.

The State agency must decide what type(s) of compliance buys to employ. As stated above, in order for the State agency to conclude that a high-risk vendor is in compliance with program requirements, proposed regulations at section 246.12(j)(3)(i) would require three negative buys. However, it would be up to the State agency to decide how many positive buys must be conducted before instituting administrative action against the vendor, except in situations where one incidence of the violation (i.e. trafficking or the sale of alcohol or tobacco products) triggers a mandatory sanction.

b. Inventory Audit Techniques

The inventory audit is a method for identifying program noncompliance in which a vendor's records of foods purchased for a set period of time, such as food invoices or receipts, are examined and compared to the amount of the same foods for which the WIC Program paid the vendor for that same period of time. Proposed section 246.12(k)(3) would require claims to be assessed when vendor violations are identified as a result of an inventory audit or other review. In addition, the March 18 vendor sanction rule requires State agencies to disqualify vendors for a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time.

Inventory audits are usually more expensive to perform than compliance buys because they require staff with a higher level of training, and because the volume of information which must be reviewed in order to establish a claim may require considerably more time. Data from the 1996 VAMP report reveal that 15 State agencies conducted inventory audits during Fiscal Year 1996. These audits are useful for obtaining evidence against suspected vendors who traffic in food instruments, or otherwise request reimbursement for more food than inventory records can support, and who are not susceptible to compliance buys because they have a small clientele and will only commit violations with known customers. As a result, the Department expects inventory audits to be used in limited circumstances.

c. Workload Implications

The proposed requirement for compliance buys and inventory audits exceeds the level of compliance buys currently conducted by a number of State agencies. The Department further acknowledges that replacement of the current requirement for 10 percent representative monitoring plus an unspecified level of high-risk monitoring with the proposed 10 percent targeted monitoring requirement may not be an even exchange since both compliance buys (given the probable need for more than one at each vendor) and inventory audits are almost always more expensive than routine monitoring visits. Data from the 1996 VAMP report indicate that 33 percent of State agencies annually conducted routine monitoring at 100 percent of their authorized vendors. For some State agencies, such visits would appear to be of questionable value when compared to high-risk monitoring. The considerable resources which extensive routine monitoring consume could be focused much more effectively on the conduct of compliance buys and inventory audits. It should also be noted that some State agencies currently exceed the proposed 10 percent requirement, thus indicating that it can be met within current and anticipated levels of State administrative funding.

15. Retail Food Delivery Systems: Vendor Claims (Section 246.12(k))

Current regulations at section 246.12(r)(5) require that the State agency establish procedures to ensure the propriety of redeemed food instruments. They require the State agency to design and implement a system of food instrument review to detect suspected overcharges and to identify vendors with high levels of suspected overcharges. The 1988 National Vendor Audit demonstrated that these general regulatory requirements have been ineffective in detecting overcharges in some State agencies. Furthermore, current regulations do not explicitly require, and some State agencies do not always take, effective follow-up action on suspected and documented overcharges. The 1991 Vendor Issues Study both accounted for over $39 million in vendor overcharges and found a close correlation between overcharging and other program violations. Consequently, the Department proposes to strengthen State agencies' general approach to overcharges.

Two basic types of overcharge detection systems are currently in operation. Price-based systems use vendors' shelf or contract prices to develop edit levels that are applied to redeemed food instruments. Redemption-based systems use edit limits derived from the value of redeemed food instruments. Both systems can be designed in a number of different ways. Given the potential for significant variation in each type of system, it is not possible to make meaningful, practical comparisons between the two types, or to argue that one type will always and unconditionally be better than all varieties of the other.

Redemption-based systems are used by more State agencies than price-based systems. The quality of redemption-based systems varies significantly according to such factors as whether and how the State agency establishes vendor peer groups in order to develop a statistical methodology sensitive to differences in redemption levels between peer groups; the tolerance levels that the State agency includes in its analysis in order to minimize the incidence of flagged food instruments that do not, in fact, include overcharges; and, the frequency with which its statistical tolerances are updated. Price-based systems also differ qualitatively according to how they address a number of variables. Because of the complexity and variability inherent in such systems, the Department believes that it would not be appropriate to attempt to govern them at this time through the regulatory process. Rather, State agencies can expect the effectiveness of whatever system they choose to be subjected to greater scrutiny by FNS Regional Offices in the future as part of their review of State Plans and management evaluations. Improvement in these systems can best be pursued through careful assessment of each individual system.

The Department does, however, propose through regulation to strengthen State agencies' general approach to overcharges. First, the Department proposes at section 246.12(k)(1) to require that State agencies develop and implement a system to identify overcharges and other errors on redeemed food instruments at least quarterly. That section would also list the other types of errors the State agency's system must detect.

Proposed section 246.12(k)(2) would confirm the State agency's authority to withhold or collect from vendors the entire redemption value of food instruments that include an overcharge, as opposed to the current practice in some State agencies of denying payment for, or collecting, only the amount of the overcharge itself. A parallel provision

would be required to be contained in the vendor agreement by proposed section 246.12(h)(3)(ix).

Proposed section 246.12(k)(4) would require State agencies to initiate collection actions within 90 days of the date of detection of an overcharge or other error. The Department believes that timely claims assessment and collection will provide an incentive for vendors to correct problems within their organization in a more timely manner. While State agencies have a number of options in pursuing vendor claims, the Department encourages State agencies to exercise their authority to demand repayment of the entire redeemed value of each food instrument containing an overcharge or other error, to offset claims when possible, and to sanction vendors for chronic violations or for failure to pay claims without sufficient justification. These actions can act as powerful deterrents to overcharging.

16. Retail Food Delivery Systems: Vendor Sanctions (Section 246.12(l))

As discussed earlier in this preamble, on March 18, 1999, the Department published a final rule amending the vendor sanction provisions. Among other things, that rule establishes mandatory disqualification periods for certain vendor violations and requires any vendor disqualified from the FSP to be disqualified from WIC, unless such disqualification would result in inadequate participant access. That rule also establishes a formula for calculating civil money penalties in lieu of disqualification. These changes are reflected in the text of this rule for reference only.

Vendor and participant sanctions are currently addressed in section 246.12(k). This proposed rule would split these requirements into different paragraphs for clarity: Section 246.12(l) for vendor sanctions and section 246.12(u) for participant sanctions. Except for the deletion of the participant sanctions section, proposed section 246.12(l) is only a redesignation, with no substantive changes, from section 246.12(k) as it appeared in the March 18 final rule. Prior to the publication of the final rule, the Department published a proposed rule on April 20, 1998, which provided the public with a 90-day comment period on the provisions in current 246.12(k). Consequently, the Department will not consider any comments at this time on proposed section 246.12(l).

17. Home Food Delivery Systems and Direct Distribution Food Delivery Systems (Sections 246.2, 246.12(m), 246.12(n), 246.12(o), and 246.12(s))

The requirements for home food delivery and direct distribution food delivery systems currently found at section 246.12(s) and (t) would be moved to section 246.12(m) and (n). Both sections would be amended to delete the requirements concerning food instruments. The food instrument requirements that would apply to all food delivery systems have been grouped together in sections 246.12(p), (q), and (r); the current requirement for uniform food instruments continues to be found at section 246.12(b). The Department recognizes that food instruments are not used in all home food delivery and direct distribution food delivery systems. The food instrument provisions only apply to those food delivery systems using food instruments.

Finally, the current requirement for participant and vendor complaints (section 246.12(j)) and prompt payment of vendors (section 246.12(m)) would be moved to sections 246.12(o) and (s), respectively, and references would be added to home food delivery contractors.

18. Food Instrument Security (Section 246.12(p))

The 1988 National Vendor Audit and management evaluations indicate that some local agencies fail to maintain adequate security for food instruments received from the State agency and fail to track the food instruments they distribute to clinics. Both of these problems increase the chance of theft and misuse. Examples of the kind of misuse that can occur are provided in "The WIC Files." These include employee fraud and collusion. The Department believes that local agencies and clinics must take appropriate measures to keep food instruments (whether manual or computer-generated, and including on-line check stock or EBT cards) secure. In response to this concern, the Department is proposing to strengthen the current requirement at section 246.12(l) that State agencies control and provide accountability for the receipt and issuance of food instruments. Proposed section 246.12(p) would require the State agency to develop minimum standards for ensuring the security of food instruments, including: maintenance by the local agency of a perpetual inventory recording receipt of food instruments from the State agency and, if applicable, distribution to clinics; monthly physical inventory of food instruments on hand by the local agency and, if applicable, by clinics; reconciliation of perpetual and physical inventories of food instruments; and maintenance of all such food instruments under lock and key by the local agency and clinic, except for supplies needed for immediate use. State agencies should also be mindful of the various security risks associated with data files, such as fabrication of records and food instruments. The reference to the control of supplemental foods would be dropped as this is already covered in current section 246.12(t) (proposed section 246.12(n)).

19. Food Instrument Disposition (Sections 246.12(q), 246.13(h), and 246.23(a)(4))

Current regulations at section 246.12(n) require State agencies to identify disposition of all food instruments as validly redeemed, lost or stolen, expired, duplicate, voided, or not matching issuance records. State agencies are also required to be able to demonstrate the capability to match redeemed food instruments with valid certification records. As the 1988 National Vendor Audit observed, State agencies do not always attempt to account for all redeemed food instruments, and they sometimes fail to take effective follow-up action on instruments found not to have been validly redeemed. The reconciliation process as established in section 246.12(n) is itself deficient because it does not require that the accountability loop be completed by determining that all redeemed food instruments are supported by a valid certification record. This section also refers to "reconciliation of each food instrument issued with food instruments redeemed and adjustment of previously reported financial obligations to account for actual redemptions and other changes in the status of food instruments." Finally, the term "reconciliation" itself has been the source of confusion among State agencies.

First, these provisions would be moved to section 246.12(q) and the term "reconciliation" would be replaced by the more general phrase "accounting for the disposition of," which is generally applicable to all of the activities addressed in this paragraph of the regulations. State agencies would continue to be required to account for the disposition of all food instruments as either issued or voided, and as redeemed or unredeemed. The first two categories would allow the State agency to identify which food instruments are paid or deobligated. Instead of the

current requirement in section 246.12(n) that obligations be adjusted to account for actual redemptions, subsection (h) of the financial management system requirements in proposed section 246.13 would be amended to require the State agency to adjust projected expenditures to account for redeemed food instruments and other changes. The current food instrument reconciliation requirement in section 246.13(h) would be removed as duplicative. Second, proposed section 246.12(q) would require State agencies to match redeemed food instruments not only against issuance information, but also against a current masterfile of enrolled persons. Typically, the food instrument would contain a unique serial number, as currently required, and a participant identification number. A successful identification of the disposition of all food instruments would entail matching these numbers on the redeemed food instrument with their counterparts in the issuance report or file, and matching the participant identification number on the food instrument against the enrollment master file. Achieving a complete accounting for all food instruments is not expected to require State agencies to radically alter their current structure of reports. For most State agencies, it is the enrollee's certification record which triggers the production of each enrollee's food instruments and an issuance record. Other State agencies may find it necessary to reprogram their systems in order to link certification or enrollment records with food instrument issuance and redemption. In an EBT system, the PIN encoded on the card would be required to be linked to the issuance and enrollment record to indicate that a redemption was valid. Merely having the "capability to reconcile" redeemed food instruments against valid certifications, as current rules at section 246.12(n)(2) require, does not provide an adequate level of accountability. The Department believes that this final step must actually be carried out.

In the past, some State agencies that do not attempt to account for the disposition of all redeemed food instruments have misinterpreted section 246.23(a)(4) in the current regulations, which allows the reconciliation process to be considered complete when "all reasonable efforts have been devoted to reconciliation and 99 percent or more of the food instruments have been accounted for." This language has incorrectly been interpreted to mean that State agencies may stop their reconciliation efforts when they have reached the 99-percent level. The current regulatory language was meant only to acknowledge that accounting for 100 percent of redeemed food instruments may not be possible due to such factors as mutilation of food instruments and coding errors. The Department wishes to stress that State agencies' efforts to account for the disposition of food instruments have never been considered complete when 99 percent of food instruments had been accounted for through reconciliation. State agencies are expected to account for the disposition of 100 percent of their food instruments utilizing all reasonable management efforts. Therefore, proposed section 246.23(a)(4) would both continue to assert FNS's intention to establish claims against a State agency for *all* food instruments which have not been accounted for.

In order to account for all food instruments, the State agency would be required in proposed section 246.12(q) to identify food instruments as either issued or voided, and as either redeemed or unredeemed. Redeemed food instruments would be required to be identified as validly issued, lost, stolen, expired, duplicate, or not matching valid issuance and enrollment records. FNS would consider the process of accounting for the disposition of food instruments complete *only if* the State agency can demonstrate that *all reasonable management efforts have been made to account for the disposition of 100 percent of its food instruments.*

State agencies should be aware that FNS will carefully scrutinize their efforts to identify the disposition of food instruments and will establish a claim against any State agency, pursuant to section 246.23(a)(4), which has not accounted for the disposition of all redeemed food instruments, including appropriate follow-up action on food instruments that cannot be matched against valid issuance or certification records, unless the State agency can demonstrate that it has: made every reasonable effort to meet this requirement; has identified the reasons for its inability to account for the disposition of each redeemed food instrument; and, to the extent considered necessary by FNS, has undertaken appropriate actions to improve its procedures.

20. Issuance of Food Instruments and Supplemental Foods (Section 246.12(r))

Proposed section 246.12(r) would consolidate the existing provisions in Sections 246.12 (o), (p), (r)(7), and (r)(8) concerning the issuance of food instruments and supplemental foods. The only change would be to add a reference to supplemental foods in the requirement that no more than a three-month supply of food instruments may be issued to any participant at one time.

21. Conflict of Interest (Section 246.12(t))

Current regulations at section 246.12(q) require only that the State agency ensure the absence of conflict of interest between any local agency and the vendor(s) under the local agency's jurisdiction. Section 246.12(t) of this proposal would also require the absence of conflict of interest between the State agency and any vendor. Reference to the State agency would be added in recognition of the pivotal role the State agency plays in authorizing and monitoring vendors. While the State procurement rules governing home food delivery contracts likely include conflict of interest provisions, this provision would make explicit the conflict of interest prohibition for home food delivery contractors.

In this context, a conflict of interest is generally where an individual employed by the State agency or local agency has an interest in a vendor. The interest may be financial, may relate to past, current, or future employment with the vendor, or may arise from a family relationship. Such circumstances create, at minimum, the appearance or potential that the employee's official actions on behalf of the WIC Program will be improperly influenced by the interest in the vendor. This discussion is provided for guidance purposes, and is in no way exclusive. The Department believes that this is an area which is based more appropriately on State laws or regulations governing conflict of interest.

22. Participant Violations and Sanctions (Section 246.12(u)) and Claims Against Participants (Section 246.23(c))

Participant sanctions are currently found in section 246.12(k)(9) and would be moved to section 246.12(u)(2). The Department proposes to increase the maximum disqualification period for participant violations from 3 months to 1 year and to consider actions by proxies as participant violations. Current regulations require that State agencies establish a maximum disqualification period of 3 months for participants. Many State agencies believe this maximum is ineffective in deterring participant program noncompliance. In addition, the current regulations do not address program noncompliance by proxies. Some forms of participant violations require

collusion on the part of the proxy (which may include a parent, a caretaker, or another person designated to accept and redeem food instruments—see the discussion of the proposed definition of proxy in section 2 of this preamble). Examples of this kind of collusion are given in "The WIC Files."

The Department acknowledges that some may view the proposed 1-year maximum as contrary to program goals because it could adversely affect the health of participants. However, the Department wishes to point out violative participants and proxies subvert the purpose of the Program so that it cannot achieve its objectives. Since WIC benefits diverted to other purposes do not benefit participants in the intended way, a longer disqualification cannot be expected to have additional serious negative consequences on a participant's nutritional status than continued program noncompliance would have. This is regrettably true whether the program noncompliance is by the participant (e.g., a pregnant woman trafficking food instruments), the participant's parent or caretaker in the case of an infant or child, or another type of proxy. WIC funds are better spent on participants whose health and well-being can be improved through the Program.

The Department is also proposing to expand the list of participant violations in current section 246.12(k)(9) to include dual participation (now section 246.12(u)(1)). Dual participation, as defined in section 246.2 entails "simultaneous participation in the Program in one or more than one WIC clinic, or participation in the Program and in the Commodity Supplemental Food Program (CSFP) during the same period of time." Dual participation is discussed in more detail in section 5 of this preamble.

Section 17(f)(14) of the Child Nutrition Act (42 U.S.C. 1786(f)(14)) requires the State agency to recover the value of benefits provided to participants who have defrauded the Program to the extent that recovery is cost-effective. This mandate is implemented in section 246.23(c) of current regulations. However, the limit on participant disqualifications, be it the current three months or the proposed year, may hinder the State agencies' collection efforts because a person who subsequently becomes eligible may reenter the Program after having been disqualified for improper receipt of benefits without first making restitution. Proposed section 246.12(u)(2) would require State agencies to disqualify participants for one year in cases where a participant violation gives rise to a claim. In recognition of the hardship that such a disqualification could place on an infant or child participant, who could not have committed the violation, the proposed rule would require the State agency to permit another proxy to be designated before disqualifying an infant or child participant. In addition, under the proposal, the State agency could permit a disqualified participant to reapply if full restitution is made prior to the end of the disqualification period.

The Department wishes to clarify the difference between a participant sanction and a participant claim. A participant sanction is an administrative action taken in response to program violations in order to protect the integrity of the Program. A participant claim is an assessment of financial liability for the value of improperly obtained program benefits. This proposal would also revise section 246.23(c)(1) to require State agencies in all cases to send a letter to the participant requesting payment for improperly obtained program benefits and indicating that, if the request for repayment is not appealed or is unsuccessfully appealed, the participant must be disqualified for one year, unless the participant is an infant or child for whom an alternate proxy acceptable to the State agency is found. If full restitution is made prior to the end of the disqualification period, the State agency would be allowed to permit the participant to reapply for the Program. If the participant fails to make payment in response to this letter, the State agency would be required to assess the cost-effectiveness of each additional step in the collection process against the value of the benefits involved and to take such actions until the recovery process ceases to be cost-effective. To help facilitate resolution of such claims, the Department proposes to permit State agencies to allow participants for whom financial restitution would cause undue hardship to perform in-kind service, determined by the State agency, in lieu of monetary repayment. While the Department acknowledges that collection efforts could in many instances prove prohibitively expensive, it believes that at least an initial, low-cost effort would always be cost-effective. This paragraph would continue to permit the State agency to delegate the responsibility for the collection of participant claims to the local agency, though it would be moved to proposed section 246.23(c)(3).

23. Vendor Appeals (Section 246.18)

Current regulations at section 246.18 establish minimum requirements for vendor and local agency appeal rights and State agency administrative review procedures. The procedural requirements are intended to establish a simple and fair appeal process at a reasonable cost to State agencies. Some State agencies have significantly exceeded the regulatory procedural requirements, for example, by requiring that the decision makers be administrative law judges and providing for a verbatim transcription of their administrative review proceedings. In response to this situation, the Department's Office of Inspector General recommended in the 1988 National Vendor Audit that the Department mandate standard administrative review procedures in order to limit costs. This would prevent State agencies from exceeding the minimum procedures required by the current regulations. The Department continues to believe that the procedures mandated by program regulations are adequate. While the Department is not proposing to prohibit the use of more elaborate procedures, the Department does not consider such procedures to be an effective use of the limited nutrition services and administrative funds and encourages State agencies to develop administrative review procedures that stick to the minimum requirements in this section.

To support State agency efforts to control appeal costs, make the process more manageable, and ensure fairness to vendors, the Department is proposing to: (1) Limit the types of State agency actions subject to administrative review; (2) establish abbreviated administrative review procedures for certain adverse actions; and (3) relax review procedure timeframes.

Current regulations at section 246.18(a)(1) allow vendors and local agencies to appeal a denial of an application for authorization, a disqualification from the Program, and "any other adverse action which affects participation." The Department considers the phrase "any other adverse action which affects participation" to be inappropriate for vendor appeals. A vendor could, for example, seek to appeal a State agency decision to authorize another vendor in the area on the grounds that the action would reduce the first vendor's volume of WIC business. In situations such as this, the State agency's responsibility is to ensure adequate participant access to the Program, not to protect the individual interests of a vendor. Thus, the

Department proposes to limit the State agency actions that are subject to administrative review. Except in certain circumstances discussed herein, these actions include: (1) A denial of authorization based on selection criteria or the State agency's determination in accordance with proposed section 246.12(g)(4) that the vendor is attempting to circumvent a sanction, (2) a termination of an agreement for cause, (3) a disqualification, and (4) the imposition of a fine or a civil money penalty in lieu of disqualification. Vendors that believe their civil rights have been violated in the authorization process may file complaints under the authority of civil rights legislation.

Questions have also arisen about whether fines imposed by courts may be appealed to the State agency. Only those actions taken by the State agency are subject to administrative review by the State agency. Thus, any sentence or civil judgment imposed by a court may only be pursued in the courts. Conversely, fines or civil money penalties in lieu of disqualification imposed by a State agency are subject to review by the State agency.

Readers should note, however, that to the extent that the amount of a fine or civil money penalty is precisely set in the State agency's sanction schedule, the decision maker would not have the authority to alter the amount of the fine or civil money penalty on appeal unless the decision maker found that either it had been incorrectly calculated or the vendor did not commit the cited violation.

Proposed section 246.18(a)(1)(ii) would list the adverse actions that would receive an abbreviated administrative review: (1) A denial of authorization based on the selection criteria set out in proposed section 246.12(g)(3)(iii) or (vi), (2) a denial of authorization based on the State agency's limiting criteria or because the vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under section 246.12(g)(6), (3) a termination of an agreement because of a change in ownership or location or cessation of operations, and (4) a disqualification based on the imposition of an FSP civil money penalty for hardship.

These actions each present circumstances in which the issue on appeal is a very narrow one. For example, the selection criterion at section 246.12(g)(3)(iii) would prohibit authorization of a vendor if the vendor or certain persons associated with the vendor had been convicted of the listed crimes. The only issue in such an appeal would be whether the vendor or a person currently associated with the vendor actually was convicted of the crime. Recognizing that errors can be made, this rule would require State agencies to provide such vendors an opportunity to point out, for example, that the conviction had been overturned or that the convicted person was no longer associated with the vendor. To reduce the costs of administrative reviews required by the regulations, this proposed rule would require State agencies to establish abbreviated administrative review procedures for such actions.

Proposed section 246.18(c) would specify the procedures for abbreviated administrative reviews. As with the current procedures, the State agency would be required to provide the vendor written notification of the adverse action, the procedures to follow to appeal the action, and the cause(s) and effective date of the action. The State agency would also be required to provide the vendor an opportunity to provide a written response. The State agency would not be required to conduct a full administrative review where the vendor is provided with an opportunity to confront and cross-examine adverse witnesses. All that would be required is a review of the information given to the vendor forming the basis for the adverse action, the vendor's response, and relevant statutes, regulations, policies, and procedures. The decision maker would not have to be independent from the State agency. The decision maker would only have to be someone different from the person who made the initial decision. These abbreviated administrative review procedures would provide the vendor an opportunity to appeal actions in which the decision is largely systematic. At the same time, it would eliminate the need for the State agency to provide a more lengthy and costly full administrative review.

Proposed section 246.18(a)(1)(iii) lists those actions that would not be subject to administrative review. As discussed in section 8 of this preamble and above in this section, while the validity or appropriateness of the limiting and selection criteria would not be subject to review, a decision to deny authorization would be subject to review. Similarly, the March 16 vendor sanction rule included a provision that participant access determinations are not subject to review. These provisions ensure that State agencies have the necessary discretion to establish program operating parameters. Limiting and selection criteria and the criteria for making participant access determinations would all be included in the State Plan. Concerns about these criteria are properly raised during the public comment phase of the State Plan process.

Some State agencies are beginning to implement vendor selection procedures in which applicant vendors submit competitive bids for a specified number of authorizations in a particular geographical area. Under this proposed rule, any time a State agency's authorization determinations are subject to the State agency's procurement procedures, nonselection would not be subject to review. In this situation, a separate administrative review would be redundant and could disrupt the procurement procedures.

Similarly, the Department proposes to eliminate administrative review of vendor claims given the requirement in current section 246.12(r)(5)(iii) (redesignated as section 246.12(k)(5) in this proposal) that State agencies provide vendors an opportunity to correct or justify the error giving rise to a claim. An administrative review in this instance would be redundant.

Under current sections 246.18(b)(1) and (9), timeframes are established for the advance notice of adverse action (15 days) and the notification of the appeal decision (within 60 days of the date of receipt of the vendor's request for administrative review). While the advance notice requirement is easily met, the 60-day timeframe for decisions has proven difficult for some State agencies, particularly those which must rely on a State board of appeals or other external organizational unit that is beyond the State agency's control. Therefore, the Department is proposing in section 246.18(b)(9) to extend the time limit for providing decisions on vendor—but not local agency—appeals to 90 days.

While there is some doubt that 90 days still may not be sufficient in some State agencies to render decisions on vendor appeals, other State agencies have been clearly able to meet the timeframe. The Department does not believe that there is sufficient justification for extending the time period beyond 90 days, nor would lengthening the time period promote the goal of improving and streamlining the appeals process. Rather, State agencies that have problems in this area should work to improve the efficiency of their appeals system. The Department hopes that the proposed limitations on actions subject to administrative review and the new abbreviated administrative review procedures will help State agencies reduce their costs for administrative

reviews and better target their efforts and thus assist in timely decisions on vendor appeals.

At proposed section 246.18(b)(5), the Department would provide State agencies the opportunity to conduct examinations *in camera*, i.e., behind a protective screen or other device, to protect the identity of WIC Program investigators. Protecting the identity of the investigator is paramount in conducting covert investigations and revealing the investigators identity during an administrative review would compromise future investigations.

Proposed section 246.18(b)(7) would strengthen current language regarding the disclosure of information to appellants. Current regulations at section 246.18(b)(7) afford the appellant vendor or local agency "the opportunity to review the case record prior to the hearing." The vendor's "case record," or file, may contain investigative information, i.e. information regarding how the State agency established the vendor's high-risk status, which, if released, would jeopardize efforts to combat program noncompliance. Thus, proposed section 246.18(b)(7) would clarify that the appellant vendor or local agency is allowed to examine only "the evidence upon which the State agency's action is based." This restriction is consistent with due process rights. Appellant vendors would, under the confidentiality provisions proposed in section 246.26(e)(2), have access to information otherwise protected by current section 246.26(d), to the extent that such information is part of the evidence upon which the action being appealed is based.

The local agency adverse actions subject to administrative review are unchanged in this proposal, except they would be consolidated under 246.18(a)(2) with the current provision regarding the effective date of local agency adverse actions. In addition, sections 246.18 would be revised throughout to differentiate between a vendor or local agency which "appeals" an action and the State agency which "reviews" an action.

Finally, the current requirements in sections 246.18(c) and (d) would be redesignated as sections 246.18(d) and (f) and a new section 246.18(e) would be added. Current section 246.18(d) requires State agencies to notify appellants of the availability of any further administrative review within the State agency. The Department believes that this requirement duplicates the current requirement in section 246.18(b)(2) and proposed requirement in section 246.18(c) that the State agency inform vendors and local agencies of their opportunity to appeal the adverse action and could be viewed as encouraging State agencies to provide an additional level of administrative review. This section would be revised to make clear that the decisions rendered under both the full and abbreviated administrative review procedures are the final State agency action. If the action being appealed has not already taken effect, the appeal decision would be required to indicate the effective date of the action. The Department is also proposing to clarify the State agency requirements regarding judicial review. Instead of the current regulatory language that requires the State agency "to explain" the right to pursue judicial review, the Department proposes to require the State agency "to inform" appellants that they may be able to pursue judicial review. Review of State agency actions is a matter of State law and may vary depending on the action taken. The Department believes that the State agency should not be put in the position of determining the appropriate avenue of judicial review for an appellant vendor or local agency.

24. State Agency Corrective Action Plans and Delegation of Monitoring to Local Agencies (Sections 246.19(a)(2) and 246.19(b)(2)).

Under current regulations at section 246.19(a)(3)(ii), the State agency is required to submit a corrective action plan with implementation timeframes in response to management evaluations only when FNS has notified the State agency of its intention to impose a sanction. However, management evaluation findings may be significant and require timely corrective action even when they do not justify imposition of a sanction. As reported in the 1988 National Vendor Audit, some State agencies do not take timely action to correct deficiencies identified by FNS. Therefore, the Department is proposing in section 246.19(a)(2) that the State agency be required to submit a corrective action plan, including implementation timeframes, within 60 days of receipt of a management evaluation report containing negative findings even where the findings do not justify a sanction. The Department believes 60 days should be sufficient time to develop a corrective action plan. Extending the timeframe would unnecessarily prolong the time before corrective action could be achieved.

In addition, proposed section 246.19(b)(2) would require monitoring of local agencies to include, if the State agency delegates any vendor training or monitoring to local agencies, the local agency's effectiveness in carrying out these responsibilities.

25. Areas of Special Focus during Local Agency Reviews (Sections 246.19(b)(5) and (6))

Current regulatory requirements for coverage in local agency reviews at section 246.19(b)(2) are broad and very general in nature. State agencies are required, for example, to include "certification" and "accountability" in their local agency reviews. The Department believes that effective monitoring depends on comprehensive coverage. However, FNS may, from time to time, identify a problem in a more precisely defined aspect of local agency operations and may want State agencies to review this aspect intensively. For example, within the broad category of "certification," there may be a need to focus attention on income eligibility determination procedures. Security of food instruments may be identified within the broader area of "accountability" as requiring in-depth monitoring. These targeted areas would be areas identified through management evaluations, audits, or other means which document the need for intensified monitoring and corrective action, as appropriate. Therefore, the Department is proposing in section 246.19(b)(5) to require State agencies to conduct in-depth review of areas specified by FNS through FNS policy memoranda or other guidance. Under this proposal, FNS could also require State agencies to implement a standard form or protocol for such focus-area reviews and to report the results to FNS. No more than two such areas would be stipulated for any fiscal year, and they would be announced at least six months before the beginning of the fiscal year. This provision would reflect the current requirement that State agencies provide FNS special reports on program activities.

The Department wishes to stress that this requirement does not mean that State agency reviews of local agencies should be less comprehensive than in the past. Full, comprehensive reviews of local agencies are necessary to identify deficiencies. This proposal simply enables FNS to gather information on areas of special emphasis in greater depth than might otherwise be possible. Areas of focus would change periodically, and there also could be fiscal years for which FNS does not identify any such areas.

In addition, section 246.19(b)(6) would be amended to require that local agencies submit to State agencies, within 45 days of written notification of deficiencies, a written corrective action

plan which explains how all of the identified problems will be addressed and stipulates a timeframe for completion of each corrective action. It is important that when problems are identified that they be corrected in a timely manner. State agencies are expected to pursue timely follow-up action to assure that planned corrective actions are actually taken.

26. Confidentiality of Vendor Information (Section 246.26(e))

The Department is proposing to add a new provision to section 246.26 of the WIC regulations addressing the confidentiality of vendor information. Heretofore, the WIC Program regulations have been silent on the issue of the confidentiality of vendor information, and provisions protecting vendor information from disclosure are still needed. The purpose of protecting vendor information is two-fold: to gain vender cooperation and to aid in the control and monitoring of vendors.

Under this proposal, State agencies would be required to restrict the disclosure of information obtained from vendors or generated by the State agency on vendors (other than the vendor's name, address, and authorization status) to persons directly connected with the administration and enforcement of any Federal or State law, including the WIC Program and the FSP, and to the Comptroller General of the United States. While this would authorize local agencies under the State agency's jurisdiction, other WIC state and local agencies, and their contractors to receive vendor information, the proposed rule would require State agencies to enter into a written agreement with any non-Federal agency before disclosing any vendor information. The agreement would be required to specify that they will use or disclose such information only for authorized purposes directly connected with the administration or enforcement of a Federal or State law.

In accordance with the requirements in current sections 246.18(b)(1) and (7) that the State agency disclose to vendors the cause of the adverse action and provide them an opportunity to review the case record, proposed section 246.26(e)(2) would permit the disclosure to appellant vendors of information that forms the basis of an adverse action subject to administrative review. This would not include information concerning other vendors or information that would compromise the State agency's vendor monitoring system. While information about other vendors, such as average redemption data, might have been used to assist the State agency in targeting vendors for investigation, the Department does not consider such information as the basis for the State agency's action. Similarly, information that would compromise the State agency's monitoring system, such as the names of investigators, would not be considered to be information on which an action is based.

Efforts to control program noncompliance in the WIC Program are significantly enhanced by the State agency's access to information on vendors who also participate in the FSP. Section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) permits the FSP to disclose information provided by retail food stores and wholesale food concerns in order to gain or maintain authorization in the FSP to WIC State agencies for purposes of administering the provisions of the Child Nutrition Act and its implementing regulations. Proposed Section 246.26(f) would reflect this limitation and make clear that "administering the provisions of the Child Nutrition Act" includes both administering and enforcing the WIC Program. Accordingly, this information could not be disclosed to other vendors or the general public.

The FSP may share with WIC State agencies other information about authorized retailers that is not obtained from FSP retailer applications and is therefore not protected under section 9(c) of the Food Stamp Act. This information, e.g., results of investigations, along with information the WIC State agency collects directly from WIC vendors and its analysis of such material, contribute to the WIC State agency's vendor selection and high-risk detection systems. These systems can be effectively operated only if such data is protected from release to WIC vendors or other members of the public. State agency experience has shown that many vendors will commonly attempt to gain access to this information during the administrative review process. Such information must be kept confidential, so that vendors cannot secure unfair competitive advantages.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definitions of *Authorized Supplemental foods, Compliance buy, High-risk vendor, Home food delivery contractor, Inventory audit, Proxy, Routine monitoring, Vendor, Vendor authorization, Vendor limiting criteria, Vendor overcharge, Vendor selection criteria, Vendor violations,* and *WIC* are added in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Authorized supplemental foods means those supplemental foods authorized by the State or local agency for a particular participant.

* * * * *

Compliance buy means a covert, on-site investigation in which a representative of the Program poses as a participant, transacts one or more food instruments, and does not reveal his or her identity during the visit.

* * * * *

High-risk vendor means a vendor identified as having a high probability of violating program requirements through application of the criteria established in § 246.12(j)(2) and any additional criteria established by the State agency.

Home food delivery contractor means a sole proprietorship, a partnership, a cooperative association, or a corporation that contracts with a State agency to deliver authorized supplemental foods to the residences of participants under a home food delivery system.

* * * * *

Inventory audit means the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of authorized supplemental foods to provide participants the quantities specified on food instruments redeemed by the vendor during a given period of time.

* * * * *

Proxy means any person designated by a participant to act on her behalf and, in the case of an infant or child, the parent or caretaker who applies on behalf of the infant or child.

* * * * *

Routine monitoring means overt, on-site monitoring during which

representatives of the Program identify themselves to vendor personnel.

* * * * *

Vendor means a sole proprietorship, a partnership, a cooperative association, or a corporation operating an individual retail site authorized to provide authorized supplemental foods to participants under a retail food delivery system. Each individual retail outlet under a business entity which operates more than one site constitutes a separate vendor. Each vendor must have a fixed location, except when the authorization of mobile stores is necessary to meet the special needs described in the State agency's State Plan in accordance with § 246.4(a)(14)(xiv).

Vendor authorization means the process by which vendors who apply or subsequently reapply for authorization are assessed, selected, and enter into an agreement with the State agency.

Vendor limiting criteria means criteria established by the State agency to determine the maximum number and distribution of vendors to be authorized in its jurisdiction pursuant to § 246.12(g)(2).

Vendor overcharge means a pattern of intentionally or unintentionally charging participants more for authorized supplemental foods than non-WIC customers or charging participants more than the current shelf or contract price.

Vendor selection criteria means the criteria in § 246.12(g)(3) and any additional criteria established by the State agency to select individual vendors for program authorization.

Vendor violation means any intentional or unintentional actions of a vendor (with or without the knowledge of management) which violate the Program statute or regulations or State agency policies or procedures.

WIC means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786.

3. In § 246.3:

a. Paragraph (e)(5) is redesignated as paragraph (e)(6); and

b. A new paragraph (e)(5) is added to read as follows:

§ 246.3 Administration.

* * * * *

(e) * * *

(5) For State agencies which anticipate 50 or more authorized vendors as of October 1 of each fiscal year, one full-time or equivalent vendor management specialist. State agencies which anticipate fewer than 50 authorized vendors as of that date shall designate a staff person responsible for vendor management.

* * * * *

4. In § 246.4:

a. Paragraphs (a)(14)(ii), (a)(14)(iii), (a)(14)(iv), and (a)(14)(vi) are revised;

b. In paragraphs (a)(14)(vii), (a)(14)(viii), and (a)(17) are amended by removing the words "food vendors" and adding in their place the word "vendors";

c. In paragraph (a)(14)(ix) the word "and" at the end is removed;

d. In paragraphs (a)(14)(x) and (xi) the periods at the end are removed and semicolons added in their place;

e. New paragraphs (a)(14)(xii) through (a)(14)(xv) are added; and

f. The first sentence of paragraph (a)(15) is revised.

The revisions and additions read as follows:

§ 246.4 State plan.

(a) * * *

(14) * * *

(ii) Vendor limiting criteria and any vendor selection criteria established by the State agency in addition to the selection criteria required by § 246.12(g)(3);

(iii) A sample vendor agreement, including the sanction schedule;

(iv) The system for monitoring vendors to ensure compliance and prevent fraud, waste, and program noncompliance, and the State agency's plans for improvement in the coming year. The State agency shall also include the criteria it will use to determine which vendors will receive routine monitoring visits. State agencies which intend to delegate any aspect of vendor monitoring responsibilities to a local agency or contractor shall describe the State agency supervision and training which will be provided to ensure the uniformity and quality of vendor monitoring efforts;

* * * * *

(vi) Where food instruments are used, a facsimile of the food instrument and a description of the system the State agency will use to account for the disposition of food instruments in accordance with § 246.12(q);

* * * * *

(xii) The procedures the State agency will use to train vendors in accordance with § 246.12(i). State agencies which intend to delegate any aspect of training to a local agency, contractor, or vendor representative shall describe the State agency supervision and instruction which will be provided to ensure the uniformity and quality of vendor training;

(xiii) A description of the State agency's system for ensuring food instrument security in accordance with § 246.12(p);

(xiv) A description of the State agency's participant access determination criteria consistent with § 246.12(l)(8); and

(xv) The special needs necessitating the authorization of mobile stores, if the State agency chooses to authorize such stores.

(15) Plans to prevent and identify dual participation in accordance with § 246.7(l)(1)(i) and (l)(1)(ii) * * *

* * * * *

5. In § 246.7:

a. In paragraph (h)(1)(i), the reference to "§ 246.12(k)(2)" is removed, and a reference to "§ 246.12(u)" is added in its place; and

b. Paragraph (l)(1)(i) through (l)(1)(iv) is revised.

The revision reads as follows:

§ 246.7 Certification of participants.

* * * * *

(l) * * *

(1) * * *

(i) In conjunction with WIC local agencies, the prevention and identification of dual participation within each local agency and between local agencies under the State agency's jurisdiction, including the quarterly identification of dual participation;

(ii) In areas where a local agency serves the same population as an Indian State agency or a CSFP agency, and where geographical or other factors make it likely that participants travel regularly between contiguous local service areas located across State agency borders, entering into an agreement with the other agency for the detection and prevention of dual participation. The agreement must be made in writing and included in the State Plan;

(iii) Immediate disqualification from one of the programs or clinics for participants found in violation due to dual participation;

(iv) In cases of dual participation resulting from intentional misrepresentation, the collection of improperly issued benefits in accordance with § 246.23(c)(1) and disqualification from both programs in accordance with § 246.12(u)(2).

* * * * *

6. Section 246.12 is revised to read as follows:

§ 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements for food delivery systems. In recognition of emergent electronic benefits transfer (EBT) technology, FNS may, on a case-by-case basis, modify regulatory provisions which FNS determines

unnecessarily duplicate the accountability capabilities inherent in the particular EBT system.

(1) The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction.

(2) The State agency shall design all food delivery systems to be used by local agencies under its jurisdiction.

(3) FNS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and will allow a reasonable time for the State agency to effect such a revision.

(4) All contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems shall be in conformance with the requirements of Part 3016 of this title.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems within its jurisdiction—retail, home delivery, or direct distribution. Each system shall be procedurally uniform within the jurisdiction of the State agency and shall ensure adequate participant access to supplemental foods. When used, food instruments shall be uniform within each type of system. The State agency shall permit only authorized vendors, home food delivery contractors, and direct distribution sites to redeem food instruments.

(c) *Free of charge.* State and local agencies shall provide participants the Program's supplemental foods free of charge.

(d) *Compatibility of food delivery system.* The State agency shall ensure that the food delivery system(s) selected is compatible with delivery of health and nutrition education services to participants.

(e) *Retail food delivery systems: General.* Retail food delivery systems are systems in which participants obtain supplemental foods by submitting a food instrument to an authorized vendor.

(f) *Retail food delivery systems: Food instrument requirements.* (1) State agencies using retail food delivery systems shall use food instruments and the food instruments shall comply with the requirements of this paragraph (f).

(2) Each printed food instrument shall clearly bear on its face the following information:

(i) The supplemental foods authorized to be obtained with the food instrument;

(ii) The first date on which the food instrument may be used by the participant to obtain supplemental foods.

(iii) The last date by which the participant may use the food instrument to obtain supplemental foods. This date shall be a minimum of 30 days from the first date on which it may be used, or, for the participant's first month of issuance, it may be the end of the month or cycle for which the food instrument is valid. Rather than entering a specific expiration date on each instrument, all instruments may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the food instrument may be used.

(iv) The date by which the vendor must redeem the food instrument. This date shall be no more than 90 days from the first date on which the food instrument may be used. If the date is fewer than 90 days, then the State agency shall ensure that the time allotted provides the vendor sufficient time to redeem the food instruments without undue burden.

(v) A unique and sequential serial number.

(vi) At the discretion of the State agency, a maximum purchase price which is higher than the price of the supplemental food for which it will be used, but low enough to be a reasonable protection against potential loss of funds. When the maximum value is shown, the space for the actual value of the supplemental foods obtained shall be clearly distinguishable. For example, the words "actual amount of sale" could be printed larger and in a different area of the food instrument than the maximum value.

(vii) A signature space in which the participant or proxy must sign at the time the supplemental foods are obtained.

(3) The State agency shall implement procedures to ensure every redeemed food instrument can be identified by the vendor which redeemed the food instrument. Each individual vendor in a chain participating in the Program shall be separately identified. The State agency may identify vendors by requiring that all authorized vendors stamp their names and/or enter a vendor identification number on all redeemed food instruments prior to submission.

(g) *Retail food delivery systems: Vendor authorization.* (1) The State agency shall authorize an appropriate number and distribution of vendors in order to ensure adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of authorized vendors in its jurisdiction.

(2) The State agency shall develop and implement criteria to limit the number of vendors to be authorized and establish their distribution. This system shall ensure adequate participant access and effective management, oversight, and review of authorized vendors in their jurisdiction. When developing limiting criteria, the State agency shall consider, at a minimum, participant access in terms of participant-to-vendor ratios based on population density, distribution of participants, location of local agencies and clinics, and availability of public transportation and road systems to the WIC population. The State agency shall apply its limiting criteria consistently throughout its jurisdiction taking into account varying geographic and other characteristics within the jurisdiction. The State agency shall establish a system for revising and/or reapplying its limiting criteria whenever it determines that relevant demographic shifts or significant changes in caseload allocation make such action necessary.

(3) The State agency shall develop and implement criteria to select vendors. The State agency shall apply its selection criteria consistently throughout its jurisdiction. The State agency may reassess any authorized vendor using these criteria at any time during the vendor's agreement period and shall terminate the agreements with those vendors that fail to meet them. In applying the criteria set forth in paragraphs (g)(3)(iii) through (g)(3)(vi) of this section, the State agency may rely on facts already known to it and representations made by applicant vendors; the State agency is not required to establish a formal system of background checks for applicant vendors. The selection criteria shall include:

(i) Competitive price;

(ii) Minimum variety and quantity of authorized supplemental foods;

(iii) Lack of a record of a criminal conviction or civil judgment of the applicant vendor or any person currently associated with the vendor as an owner, officer, director, or partner for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or, commission of any other offense indicating a lack of business integrity or business honesty of the

vendor or its owner, officer, director, or partner;

(iv) Lack of a history, during a period preceding the date of application specified by the State agency (but not less than one year and not more than six years), of serious vendor violations resulting from the acts of omissions by the applicant vendor or any person currently associated with the vendor as an owner, officer, director, or partner, except that the time limit established by the State agency shall not apply to a vendor violation which results in a criminal conviction or civil judgment described in paragraph (e)(3)(iii) of this section. Serious vendor violations include: being subject to any of the vendor sanctions established in paragraph (l)(1) of this section and failure to participate in the annual training required by paragraph (i) of this section;

(v) Lack of a history, during a period preceding the date of application specified by the State agency (but not less than one year and not more than six years), of serious Food Stamp Program violations by the applicant vendor or any person currently associated with the vendor as an owner, officer, director, or partner, except that the time limit established by the State agency shall not apply to a Food Stamp Program violation which results in a criminal conviction or civil judgment described in paragraph (g)(3)(iii) of this section. Serious Food Stamp Program violations include: withdrawal of Food Stamp Program authorization for reasons of program noncompliance; a Food Stamp Program disqualification which is in effect at any time during this period; and assessment of a Food Stamp Program civil money penalty for hardship during this period; and

(vi) Not being currently disqualified from participation in the Food Stamp Program or, if a Food Stamp Program civil money penalty for hardship has been assessed, the period of the disqualification that would otherwise have been imposed has expired.

(4) The State agency shall not authorize an applicant vendor if the State agency determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. The State agency may consider such factors as whether the applicant store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value.

(5) The State agency is encouraged to consider the impact of authorization decisions on small businesses.

(6) The State agency may limit the periods during which applications for authorization from vendors will be accepted and processed, except that applications shall be accepted and processed at least once every three years. The State agency shall develop procedures for processing individual vendor applications outside of its timeframes for use when it determines there will be inadequate participant access unless additional vendors are authorized.

(7) At the time a vendor applies for authorization, the State agency shall collect the vendor's Food Stamp Program authorization number if the applicant vendor participates in that program. In addition, the State agency also shall collect the vendor's current shelf prices of authorized supplemental foods, unless the State agency uses competitive bidding to set vendor prices for such foods.

(h) *Retail food delivery systems: Vendor agreements.* (1) The State agency shall enter into written agreements with all authorized vendors. The agreements shall be for a period not to exceed three years. The agreement shall be signed by a representative who has legal authority to obligate the vendor and a representative of the State agency. When the vendor representative is obligating more than one vendor, all vendors shall be specified in the agreement. When more than one vendor is specified in the agreement, an individual vendor may be added or deleted without affecting the remaining vendors. The State agency shall require vendors to reapply at the expiration of their agreements and shall provide vendors with not less than 15 days advance written notice of the expiration of their agreements.

(2) The State agency shall use a standard vendor agreement throughout its jurisdiction, though the State agency may make exceptions to meet unique circumstances and must document the reasons.

(3) The vendor agreement shall contain the following specifications, although the State agency may determine the exact wording to be used:

(i) The vendor shall accept food instruments only from participants or their proxies.

(ii) The vendor shall provide participants only the supplemental foods listed on the food instrument. The vendor shall not substitute other foods or non-food items not listed on the food instrument, or provide cash in lieu of the listed supplemental foods. The vendor shall not give credit, including rainchecks, for supplemental foods listed on the food instruments, give refunds for supplemental foods obtained by participants with food instruments, or permit exchanges for supplemental foods obtained by participants except for identical supplemental foods.

(iii) The vendor shall accept food instruments from a participant only within the allowed time period, and submit them for payment within the allowed time period.

(iv) For printed food instruments, the vendor shall ensure the participant or proxy signs the food instrument and that the purchase price is entered on the food instrument before the participant or proxy signs it. In EBT systems, a Personal Identification Number (PIN) may be used in lieu of a signature.

(v) The vendor shall offer program participants the same courtesies as offered to other customers.

(vi) The vendor shall comply with the nondiscrimination provisions of Departmental regulations (Parts 15, 15a and 15b of this title).

(vii) The vendor shall not collect sales tax on WIC food purchases.

(viii) The vendor shall not charge the State agency more than the price charged other customers or the current shelf price, whichever is less, or, when the State agency uses competitive bidding to set vendor prices, the contract price. In no case may the vendor charge the State agency more than the competitive price limitation applicable to the area in which the vendor is located.

(ix) The vendor shall reimburse the State agency upon demand, or will have its payment from the State agency reduced, for the value of each vendor overcharge or other error. The State agency may collect the full redeemed value for each food instrument that contained a vendor overcharge or other error. The State agency may offset any amount owed by the vendor to the State agency against subsequent amounts to be paid to the vendor.

(x) The vendor shall not seek restitution from participants for food instruments not paid or partially paid by the State agency.

(xi) The manager of the vendor or other member of management shall participate in training prior to, or at the time of, the vendor's first authorization and annually thereafter, and sign and date a receipt acknowledging understanding of the training given. At least once during the agreement period such training will be face-to-face. Failure to participate in the annual training is a serious vendor violation that precludes subsequent authorization of the vendor. The State agency shall have sole discretion to determine the date, time, and place of all training, except that the vendor shall have at least one opportunity to attend annual

training on an alternative date established by the State agency. The State agency may, at its discretion, offer additional alternative training dates.

(xii) The vendor shall inform and train cashiers and other staff on program requirements.

(xiii) The vendor shall be accountable for actions of employees in the handling of food instruments.

(xiv) The vendor may be monitored for compliance with program rules.

(xv) The vendor shall maintain inventory records used for Federal tax reporting purposes and other records the State agency may require, for a period of time specified by the State agency. Upon request, the vendor shall make available to representatives of the State agency, the Department, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit, all food instruments in the vendor's possession and all program-related records.

(xvi) Either the State agency or the vendor may terminate the agreement for cause after providing advance written notice within a timeframe established by the State agency, which may not be less than 15 days.

(xvii) The vendor shall give the State agency at least 45 days advance notification, in writing, of a change in vendor ownership, store location, or cessation of operations. In such instances, the vendor agreement shall be terminated, except that the State agency may permit vendors to move short distances without voiding the agreement. Changes in business structure (such as a corporate reorganization) without any change in ownership do not constitute a change of ownership.

(xviii) In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule.

(xix) The vendor's agreement will be terminated if a conflict of interest is identified between the vendor and the State or local agencies.

(xx) A vendor who commits fraud or abuse in the Program is liable to prosecution under applicable Federal, State or local laws. Under § 246.23(d) of the regulations, those who have willfully misapplied, stolen or fraudulently obtained program funds shall be subject to a fine of not more than $10,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(xxi) The vendor agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization. A vendor that has been disqualified for a period of time less than the remaining term of its vendor agreement may resume participation in the WIC Program upon completion of its disqualification period for the duration of the agreement without reapplying. If the vendor agreement expires before the vendor has served out the full disqualification period, and the vendor wishes to again participate in the Program, the vendor must apply to be authorized. In all cases, the vendor's new application will be subject to the State agency's selection and limiting criteria in effect at the time of the reapplication.

(xxii) The vendor shall be bound by any changes in the Program statute and regulations and State policies and procedures, including changes in selection criteria if the State agency chooses to reassess the vendor during the agreement period.

(xxiii) Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

(4) The State agency shall include in the vendor agreement the sanction schedule, which must be consistent with paragraph (l) of this section.

(5) The State agency shall include in the vendor agreement a list of the actions a vendor may appeal and a copy of the State agency's administrative review procedures, which are consistent with § 246.18.

(i) *Retail food delivery systems: Vendor training.* (1) The State agency shall provide training to all vendors prior to, or at the time of, initial authorization of a vendor, and annually thereafter. The training shall be designed to prevent program noncompliance and errors to improve program service. At the initial authorization of a new vendor, the training provided shall be face-to-face and on the site of the vendor. At least once during each subsequent agreement period, the State agency shall require that vendors attend face-to-face training at the site of the vendor or at another location. Both the initial training of a new vendor and the subsequent face-to-face training may fulfill the annual training requirement for the year in which it is given.

(2) The annual training shall include instruction in the purpose of the WIC Program; the varieties of supplemental foods authorized by the State agency; the minimum varieties and quantities of authorized supplemental foods that must be stocked by vendors; the procedures for transacting food instruments at the time of purchase and submitting food instruments for payment; the vendor sanction system; the vendor complaint process; the terms of the vendor agreement; and the claims collection procedures.

(3) The State agency may delegate the training to a local agency, a contractor, or a vendor representative if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(xii). In such cases, the State agency shall provide supervision and instruction to ensure the uniformity and quality of vendor training.

(4) The State agency shall ensure that the content of annual training is documented, including the signed vendor receipts required in paragraph (h)(3)(xi) of this section, and that each vendor signs and dates a receipt for annual training.

(j) *Retail food delivery systems:* Monitoring vendors and identifying high-risk vendors. (1) The State agency shall design and implement a system for monitoring vendors within its jurisdiction. The State agency may delegate the monitoring to a local agency or a contractor if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(iv). In such cases, the State agency shall provide supervision and training to ensure the uniformity and quality of the monitoring.

(2) The State agency shall identify high-risk vendors using criteria developed by FNS. FNS will not change these criteria more frequently than once every 2 years and will provide advance notification of changes 1 year prior to implementation. The State agency may develop and implement additional criteria.

(3)(i) The State agency shall conduct compliance buys or inventory audits on a minimum of 10 percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The State agency shall conduct compliance buys or inventory audits on all high-risk vendors up to the 10 percent minimum, except that the State agency may waive a compliance buy or inventory audit on a high-risk vendor if it documents that the vendor is under investigation by a Federal, State or local law enforcement agency or that some other compelling reason exists for not conducting a compliance buy or inventory audit. An investigation of a high-risk vendor shall be considered

complete when the State agency determines that a sufficient number of compliance buys have been conducted to provide evidence of program noncompliance; when three compliance buys are conducted in which no program violations are found within a 12-month period; or when an inventory audit has been completed.

(ii) If fewer that 10 percent of the State agency's authorized vendors are identified as high-risk and not exempted from monitoring under paragraph (j)(2) of this section, the State agency shall randomly select additional vendors upon which to conduct compliance buys or inventory audits sufficient to meet the 10-percent minimum. An investigation of a randomly selected vendor shall be considered complete when, in the judgment of the State agency, sufficient evidence exists to determine whether or not the vendor is complying with program requirements.

(iii) If more than 10 percent of the State agency's authorized vendors are identified as high-risk and not exempted from monitoring under paragraph (j)(2) of this section, the State agency shall prioritize such vendors so as to perform compliance buys or inventory audits on those determined to have the greatest potential for program noncompliance and loss.

(4) For each fiscal year, the State agency shall send to FNS a summary of the results of vendor monitoring containing information stipulated by FNS. The report shall be sent by February 1 of the following fiscal year. Plans for improvement in the coming year shall be included in the State Plan, in accordance with the requirements of § 246.4(a)(14)(iv).

(5) The State agency shall document the following information for all monitoring visits, including compliance buys, inventory audits, and routine monitoring visits: the vendor's name and address; the date of the visit or inventory audit; the name(s) and signature(s) of the reviewer(s); and the nature of the problem(s) detected or the observation that the vendor appears to be in compliance with program requirements. For compliance buys, the State agency shall also document: the date of the buy; a description of the cashier involved in each transaction; the types and quantities of items purchased, shelf prices or contract prices, and price charged for each item purchased, if available; and the final disposition of all items as either destroyed, donated, provided to other authorities, or kept as evidence. Shelf or contract price information may be obtained prior to, during, or subsequent to the compliance buy.

(k) *Retail food delivery systems: Vendor claims.* (1) The State agency shall design and implement a system to identify vendor overcharges and other errors on redeemed food instruments not less frequently than quarterly. For printed food instruments, this system shall detect the following errors: purchase price missing, participant or proxy signature missing, vendor identification missing, redemption of expired food instruments, and, as appropriate, altered prices. The State agency shall implement procedures to reduce the number of errors where possible.

(2) The State agency may withhold or collect from the vendor the entire redeemed value of food instruments identified as containing a vendor overcharge or other error.

(3) The State agency shall also assess claims resulting from vendor violations identified in inventory audits or other reviews.

(4) The State agency shall initiate collection action within 90 days of the date of detection. Collection action may include offset.

(5) When payment for a food instrument is denied or delayed, or a claim for reimbursement is assessed, the State agency shall provide the vendor an opportunity to provide justification or correction. For example, if the actual price is missing, the vendor may demonstrate what price should have been included. If the State agency is satisfied with the correction or justification, it shall provide payment or adjust the claim accordingly.

(6) With justification and documentation, the State agency may pay vendors for food instruments redeemed after the expiration date. If the total value of the food instruments submitted at one time exceeds $200.00, payment may not be made without the approval of the FNS Regional Office.

(l) *Retail food delivery systems: Vendor sanctions*—(1) *Mandatory vendor sanctions.*

(i) *Permanent disqualification.* The State agency shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. A vendor shall not be entitled to receive any compensation for revenues lost as a result of such violation. If reflected in its State Plan, the State agency shall impose a civil money penalty in lieu of a disqualification for this violation when it determines, in its sole discretion, and documents that—

(A) Disqualification of the vendor would result in inadequate participant access; or

(B) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(ii) *Six-year disqualification.* The State agency shall disqualify a vendor for six years for: one incidence of buying or selling food instruments for cash (trafficking); or one incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iii) *Three-year disqualification.* The State agency shall disqualify a vendor for three years for:

(A) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments; or

(B) A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time; or

(C) A pattern of charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price; or

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person; or

(E) A pattern of charging for supplemental food not received by the participant; or

(F) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iv) *One-year disqualification.* The State agency shall disqualify a vendor for one year for a pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument.

(v) *Second mandatory sanction.* When a vendor, who previously has been assessed a sanction for any of the violations in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, receives another sanction for any of these violations, the State agency shall double the second sanction. Civil money penalties may only be doubled up to the

limits allowed under paragraph (l)(1)(x)(C) of this section.

(vi) *Third or subsequent mandatory sanction.* When a vendor, who previously has been assessed two or more sanctions for any of the violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, receives another sanction for any of these violations, the State agency shall double the third sanction and all subsequent sanctions. The State agency shall not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section.

(vii) *Disqualification based on a Food Stamp Program disqualification.* The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification, may begin at a later date than the Food Stamp Program disqualification, and shall not be subject to administrative or judicial review under the WIC Program.

(viii) *Voluntary withdrawal or nonrenewal of agreement.* The State agency shall not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification for the violations listed in paragraphs (l)(1)(i) through (l)(1)(iv) of this section, but shall enter the disqualification on the record. In addition, the State agency shall not use nonrenewal of the vendor agreement as an alternative to disqualification.

(ix) *Participant access determinations.* Prior to disqualifying a vendor for a Food Stamp Program disqualification pursuant to paragraph (l)(1)(vii) of this section or for any of the violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, the State agency shall determine if disqualification of the vendor would result in inadequate participant access. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency shall impose a civil money penalty in lieu of disqualification. However, as provided in paragraph (l)(1)(vi) of this section, the State agency shall not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section. The State agency shall include documentation of its participant access determination and any supporting documentation in the file of each vendor who is disqualified or receives a civil money penalty in lieu of disqualification.

(x) *Civil money penalty formula.* For each violation subject to a mandatory sanction, the State agency shall use the following formula to calculate a civil money penalty imposed in lieu of disqualification:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from paragraph (l)(1)(x)(B) of this section by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed $10,000 for each violation. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be $10,000. When during the course of a single investigation the State agency determines a vendor has committed multiple violations, the State agency shall impose a CMP for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed $40,000.

(xi) *Notification to FNS.* The State agency shall provide the appropriate FNS office with a copy of the notice of administrative action and information on vendors it has either disqualified or imposed a civil money penalty in lieu of disqualification for any of the violations listed in paragraphs (l)(1)(i) through (l)(1)(iv) of this section. This information shall include the name of the vendor, address, identification number, the type of violation(s), and the length of disqualification or the length of the disqualification corresponding to the violation for which the civil money penalty was assessed, and shall be provided within 15 days after the vendor's opportunity to file for a WIC administrative review has expired or all of the vendor's WIC administrative reviews have been completed.

(xii) *Multiple violations during a single investigation.* When during the course of a single investigation the State agency determines a vendor has committed multiple violations (which may include violations subject to State agency sanctions), the State agency shall disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the State agency shall include all violations in the notice of administration action. If a mandatory sanction is not upheld on appeal, then the State agency may impose a State agency-established sanction.

(2) *State agency vendor sanctions.* (i) The State agency may impose sanctions for violations that are not specified in paragraphs (l)(1)(i) through (l)(1)(iv) of this section as long as such violations and sanctions are included in the vendor agreement. State agency sanctions may include disqualifications, civil money penalties assessed in lieu of disqualification, and fines. The total period of disqualification imposed for State agency violations investigated as part of a single investigation may not exceed one year. A civil money penalty or fine shall not exceed $10,000 for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed $40,000.

(ii) The State agency may disqualify a vendor who has been assessed a civil money penalty for hardship in the Food Stamp Program, as provided under § 278.6 of this chapter. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. If a State agency decides to exercise this option, the State agency shall:

(A) Include notification that it will take such disqualification action in its vendor agreement, in accordance with paragraph (f)(4) of this section; and

(B) Determine if disqualification of the vendor would result in inadequate participant access in accordance with paragraph (l)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency shall not disqualify the vendor or impose a civil money penalty in lieu of disqualification. The State agency shall include documentation of its participant access determination and any supporting documentation in each vendor's file.

(3) *Prior warning.* The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing any of the sanctions in this paragraph (l).

(4) *Appeal procedures.* The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18.

(5) *Installment plans.* The State agency may use installment plans for the collection of civil money penalties and fines.

(6) *Failure to pay a civil money penalty.* If a vendor does not pay, only partially pays, or fails to timely pay a

civil money penalty assessed in lieu of disqualification, the State agency shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

(7) *Actions in addition to sanctions.* Vendors may be subject to actions in addition to the sanctions in this section, such as claims for improper or overcharged food instruments and penalties outlined in § 246.23, in the case of deliberate fraud.

(8) *Participant access determination criteria.* When making participant access determinations, the State agency shall consider, at a minimum, the availability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such vendors.

(m) *Home food delivery systems.* Home food delivery systems are systems in which food is delivered to the participant's home. Systems for home delivery of food shall provide for:

(1) Procurement of supplemental foods in accordance with § 246.24, which may entail measures such as the purchase of food in bulk lots by the State agency and the use of discounts that are available to States.

(2) The accountable delivery of supplemental foods to participants. The State agency shall ensure that:

(i) Home food delivery contractors are paid only after the delivery of supplemental foods to participants;

(ii) There exists a routine procedure to verify the correct delivery of prescribed supplemental foods to participants, and, at a minimum, such verification occurs at least once a month after delivery; and

(iii) There is retention of records of delivery of supplemental foods and bills sent or payments received for such supplemental foods for at least three years and access of State, local and/or Federal authorities to such records.

(n) *Direct distribution food delivery systems.* Direct distribution food delivery systems are systems in which participants or their proxies pick up food from storage facilities operated by the State or local agency. Systems for direct distribution of food shall provide for:

(1) Adequate storage and insurance coverage that minimizes the danger of loss to theft, infestation, fire, spoilage, or other causes;

(2) Adequate inventory control of food received, in stock, and issued;

(3) Procurement of supplemental foods, in accordance with § 246.24, which may entail measures such as purchase of food in bulk lots by the State agency and the use of discounts that are available to States;

(4) The availability of program benefits to participants and potential participants who live at great distance from storage facilities; and

(5) The accountable delivery of supplemental foods to participants.

(o) *Participant, vendor, and home food delivery contractor complaints.* The State agency shall have procedures that document the handling of complaints by participants, vendors, and home food delivery contractors. Complaints of civil rights discrimination shall be handled in accordance with § 246.8(b).

(p) *Food instrument security.* The State agency shall develop minimum standards for ensuring the security of food instruments from the time the food instruments are created or received by the State agency to the time of issuance to participants at local agencies and clinics. These standards shall include maintenance by the local agency of perpetual inventory records of receipt of food instruments from the State agency and, if applicable, distribution to clinics; monthly physical inventory of food instruments on hand by the local agency and, if applicable, clinics; reconciliation of perpetual and physical inventories of food instruments; and, maintenance of all food instruments under lock and key by the State agency, local agencies and clinics, except for supplies needed for immediate use.

(q) *Food instrument disposition.* The State agency shall account for the disposition of all food instruments as issued or voided, and as redeemed or unredeemed. Redeemed food instruments shall be identified as validly issued, lost, stolen, expired, duplicate, or not matching valid issuance and enrollment records. In an EBT system, evidence of matching redeemed food instruments to a valid issuance and enrollment record may be satisfied through the linking of the PIN associated with the electronic transaction to a valid issuance and enrollment record. This process shall be performed within 150 days of the first valid date for participant use of the food instruments and shall be conducted in accordance with the financial management requirements of § 246.13. The State agency shall be subject to claims as outlined in § 246.23(a)(4) for redeemed food instruments that do not meet the conditions established in this paragraph (q).

(r) *Issuance of food instruments and supplemental foods.* The State agency shall:

(1) Establish uniform procedures which allow proxies designated by participants to act on their behalf. In determining whether a particular participant should be allowed to designate a proxy or proxies, the State agency shall require the local agency or clinic to consider whether adequate measures can be implemented to provide nutrition education and health care referrals to that participant;

(2) Ensure that the participant or proxy signs for receipt of food instruments or supplemental foods, except as established in paragraph (r)(4) of this section;

(3) Ensure that participants and their proxies receive instructions on the proper use of food instruments, or on the procedures for receiving supplemental foods when food instruments are not used. Participants and their proxies shall also be notified that they have the right to complain about improper vendor and home food delivery contractor practices with regard to program responsibilities;

(4) Require participants or their proxies to pick up food instruments in person when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. However, in all other circumstances the State agency may provide for issuance through an alternative means such as EBT or mailing, unless FNS determines that such actions would jeopardize the integrity of program services or program accountability. If a State agency opts to mail food instruments, it must provide justification, as part of its alternative issuance system in its State Plan, as required in § 246.4(a)(21), for mailing food instruments to areas where food stamps are not mailed. State agencies which opt to mail food instruments must establish and implement a system which ensures the return of food instruments to the State or local agency if the participants no longer resides or receives mail at the address to which the food instruments were mailed; and

(5) Ensure that no more than a three-month supply of food instruments or supplemental foods is issued to any participant at one time.

(s) *Payment to vendors and home food delivery contractors.* The State agency shall ensure that vendors and home food delivery contractors are promptly paid for food costs. Payment for valid food instruments redeemed shall be made within 60 days after receipt of the food instruments. Actual

payment to vendors and home food delivery contractors may be made by local agencies.

(t) *Conflict of interest.* The State agency shall ensure that no conflict of interest exists between the State agency and any vendor or home food delivery contractor, or between any local agency and any vendor or home food delivery contractor under its jurisdiction.

(u) *Participant violations and sanctions.*—(1) *Participant violations.* The State agency shall establish procedures designed to control participant violations of program requirements. Participant violations include the following actions by a participant or a proxy: intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; sale of supplemental foods or food instruments to, or exchange with, other individuals or entities; receipt from food vendors of cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized supplemental foods; physical abuse, or threat of physical abuse, of clinic or vendor staff; and dual participation.

(2) *Participant sanctions.* The State agency shall establish sanctions for participant violations. Such sanctions may include disqualification from the Program for a period up to one year. In cases in which the participant violation gives rise to a claim (including dual participation), the participant shall be disqualified for one year, except if the participant is an infant or child. In those cases, the State agency may permit another proxy to be designated. If an alternate proxy acceptable to the State agency cannot be found, the infant or child shall be disqualified for one year. However, if full restitution is made prior to the end of the disqualification period, the State agency may permit the participant to reapply for the Program. Warnings may be given prior to the imposition of sanctions. Before a participant is disqualified from the Program for an alleged violation, that participant shall be given full opportunity to appeal the disqualification as set forth in § 246.9.

(v) *Referral to law enforcement authorities.* The State agency shall refer vendors, home food delivery contractors, and participants who violate the Program to Federal, State or local authorities for prosecution under applicable statutes, where appropriate.

7. In § 246.13, paragraph (h) is revised to read as follows:

§ 246.13 Financial management system.

* * * * *

(h) *Adjustment of expenditures.* The State agency shall adjust projected expenditures to account for redeemed food instruments and for other changes as appropriate.

* * * * *

8. In § 246.18:

a. The section heading is revised;

b. Paragraphs (a) and (b) are revised; and

c. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (f), respectively, and are revised, and new paragraphs (c) and (e) are added.

The revisions and additions read as follows:

§ 246.18 Administrative review of State agency actions.

(a)(1) *Vendor appeals.*—(i) *Actions receiving full administrative reviews.* Except as provided elsewhere in this paragraph (a)(1), the State agency shall provide a full administrative review to vendors that appeal the following actions: a denial of authorization based on the selection criteria or on a determination that the vendor is attempting to circumvent a sanction, a termination of an agreement for cause, a disqualification, and the imposition of a fine or a civil money penalty in lieu of disqualification.

(ii) *Actions receiving abbreviated administrative reviews.* Except as provided elsewhere in this paragraph (a)(1), the State agency shall provide an abbreviated administrative review to vendors that appeal the following actions: a denial of authorization based on the selection criteria in § 246.12(g)(3)(iii) or (g)(3)(vi), the State agency's limiting criteria, or because the vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under § 246.12(g)(6); termination of an agreement because of a change in ownership or location or cessation of operations; and a disqualification based on the imposition of a Food Stamp Program civil money penalty for hardship.

(iii) *Actions not subject to administrative review.* The State agency shall not review a vendor's appeal of the following: the validity or appropriateness of the State agency's limiting or selection criteria as defined in § 246.2, the State agency's participant access determinations, authorization determinations subject to the State agency's procurement procedures, the expiration of the vendor's agreement, disputes regarding food instrument payments, vendor claims, and disqualification of a vendor as a result of disqualification from the Food Stamp Program.

(2) *Local agency appeals.* The State agency shall grant a full administrative review to local agencies that appeal the following actions: a denial of a local agency's application to participate, a local agency's disqualification, or any other adverse action that affects a local agency's participation. Expiration of an agreement with a local agency shall not be subject to review. The State agency shall postpone the effective date of adverse actions that are subject to review (except denials of applications to participate) until a decision is made on the local agency's appeal.

(3) *Effective dates of actions against vendors.* Denials of vendor authorization and disqualifications imposed under § 246.12(l)(1)(i) shall be made effective on the date of receipt of the notice of administrative action. All other adverse actions subject to administrative review shall be effective no earlier than 15 days after the date of the notice of the action. A State agency may postpone the effective date of an adverse action subject to administrative review (except for denials of authorization and disqualifications imposed under § 246.12(l)(1)(i)) until a decision is made on the vendor's appeal, only if the State agency determines that the delay is necessary to ensure either adequate participant access or the effective and efficient operation of the Program.

(b) *Full administrative review procedure.* The State agency shall develop procedures for a full administrative review of the actions listed in § 246.18(a)(1)(i) and (a)(2). The procedures shall provide the local agency or vendor with the following:

(1) Written notification of the administrative action, the procedures to file for an administrative review, if any, and the cause(s) for and the effective date of the action. Such notification shall be provided to participating vendors not less than 15 days in advance of the effective date of the action. When a vendor is disqualified due in whole or in part to violations in § 246.12(l)(1), such notification shall include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program." In the disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.

(2) The opportunity to appeal the adverse action within a time period

specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review.

(4) The opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request. The State agency may set standards on how many review dates can be scheduled, provided that a minimum of two review dates is allowed.

(5) The opportunity to cross-examine adverse witnesses. Where necessary to protect the identity of WIC Program investigators, such examination may be conducted *in camera*.

(6) The opportunity to be represented by counsel, if desired.

(7) The opportunity to examine the evidence upon which the State agency's action is based prior to the review.

(8) An impartial decision-maker, whose determination is based solely on whether the State agency has correctly applied its policies and procedures, according to the evidence presented at the review and the statutory and regulatory provisions governing the Program. State agencies may appoint a reviewing official, such as a chief hearing officer or judicial officer, to review appeal decisions to ensure that they conform to approved policies and procedures.

(9) Written notification of the decision on the appeal, including the basis for the decision, within 90 days from the date of receipt of a vendor's request for an administrative review, and within 60 days from the date of receipt of a local agency's request for an administrative review.

(c) *Abbreviated administrative review procedures.* The State agency shall develop procedures for an abbreviated administrative review of the actions listed in § 246.18(a)(1)(ii). These procedures shall provide the vendor written notification of the adverse action, the procedures to follow for an abbreviated administrative review, the cause(s) and the effective date of the action, and an opportunity to provide a written response. The State agency shall render a decision based on the information provided to the vendor, the vendor's response, and relevant statutes, regulations, policies and procedures. The decision maker shall be someone other than the person who rendered the initial decision on the action. The decision maker shall provide the vendor a written decision on the appeal, including the basis for the decision.

(d) *Continuing responsibilities.* Appealing an action does not relieve a local agency, or a vendor permitted to continue in the Program while its appeal is in process, from the responsibility of continued compliance with the terms of any written agreement with the State or local agency.

(e) *Finality and effective date of decisions.* The State agency procedures shall provide that the decisions rendered under both the full and abbreviated review procedures are the final State agency action. If the action under appeal has not already taken effect, the action shall take effect on the date of receipt of the decision.

(f) *Judicial review.* If the decision on the appeal is rendered against the local agency or vendor, the State agency shall inform the appellant that it may be able to pursue judicial review of the decision.

12. In § 246.19, paragraphs (a)(2), (b)(2), (b)(5) and (b)(6) are revised to read as follows:

§ 246.19 Management evaluation and reviews.

(a) * * *

(2) The State agency shall submit a corrective action plan, including implementation timeframes, within 60 days of receipt of an FNS management evaluation report containing negative findings. If FNS determines through a management evaluation or other means that during a fiscal year the State agency has failed, without good cause, to demonstrate efficient and effective administration of its program, or has failed to comply with its corrective action plan, or any other requirements contained in this part or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's nutrition services and administration funds, for that year.

* * * * *

(b) * * *

(2) Monitoring of local agencies shall encompass, but need not be limited to, evaluation of management, certification, nutrition education, participant services, civil rights compliance, accountability, financial management systems, and food delivery systems. If the State agency delegates vendor training or monitoring to the local agency, it shall evaluate the local agency's effectiveness in carrying out these responsibilities.

* * * * *

(5) FNS may require the State agency to conduct in-depth reviews of specified areas of local agency operations, to implement a standard form or protocol for such reviews, and to report the results to FNS. No more than two such areas will be stipulated by FNS for any fiscal year. These areas will be announced by FNS at least six months before the beginning of the fiscal year.

(6) The State agency shall require local agencies to establish management evaluation systems to review their operations and those of associated clinics or contractors and shall require, within 45 days of written notification of deficiencies, a written corrective action plan which explains how all of the identified problems will be addressed and stipulates timeframes for completion of each corrective action.

13. In § 246.23, paragraphs (a)(4) and (c) are revised to read as follows:

§ 246.23 Claims and penalties.

(a) * * *

(4) FNS will establish a claim against any State agency which has not accounted for the disposition of all redeemed food instruments and taken appropriate follow-up action on all redeemed food instruments which cannot be matched against valid issuance and certification records, including cases which may involve fraud, unless the State agency has demonstrated to the satisfaction of FNS that it has:

(i) Made every reasonable effort to comply with this requirement;

(ii) Identified the reasons for its inability to account for the disposition of each redeemed food instrument; and

(iii) Provided assurances that, to the extent considered necessary by FNS, it will take appropriate actions to improve its procedures.

* * * * *

(c) *Claims against participants.* (1) If the State agency determines that program benefits have been improperly obtained as the result of a participant or proxy intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall issue a letter requesting repayment and indicating that, if the request for repayment is not appealed or is unsuccessfully appealed, the participant must be disqualified in accordance with § 246.12(u)(2). If the participant does not make full restitution in response to this letter, the State agency shall weigh the cost of each subsequent action in the collection process against the amount to be recovered and take such action until recovery is achieved or until the recovery process ceases to be cost-effective. The State agency may allow participants for whom financial restitution would cause undue hardship to perform in-kind service determined by the State agency in lieu of restitution. If full restitution is made prior to the end of the disqualification period, the State agency may permit the participant

to reapply for the Program. The State agency shall maintain on file documentation of the disposition of all cases of improperly obtained program benefits covered by this paragraph (c).

(2) FNS will assert a claim against the State agency for losses resulting from program funds improperly spent as a result of dual participation, if FNS determines that the State agency has not complied with the requirements in § 246.12(u)(2) concerning participant sanctions or the requirements in paragraph (c)(2) of this section concerning participant claims.

(3) The State agency may delegate to its local agencies the responsibility for the collection of participant claims.

* * * * *

14. In § 246.26, the heading of paragraph (d) is revised, and paragraphs (e) and (f) are added to read as follows.

§ 246.26 Other provisions.

* * * * *

(d) *Confidentiality of applicant and participant information.* * * *

* * * * *

(e) *Confidentiality of vendor information.* Except for vendor name, address and authorization status, the State agency shall restrict the use or disclosure of information obtained from vendors, or generated by the State agency concerning vendors, to:

(1) Persons directly connected with the administration or enforcement of any Federal or State law, including the WIC Program or the Food Stamp Program, and the Comptroller General of the United States. Prior to releasing the information to a party other than a Federal agency, the State agency shall enter into a written agreement with the requesting party specifying that such information may not be used or redisclosed except for purposes directly connected to the administration or enforcement of a Federal or State law; and

(2) Appellant vendors, to the extent that the information to be disclosed is a basis of the action under review as set forth in § 246.18(b)(1), (b)(7), and (c).

(f) *Confidentiality of Food Stamp Program retailer information.* The State agency shall restrict the use or disclosure of Food Stamp Program retailer information furnished to it, pursuant to Section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) and § 278.1(r) of this chapter to persons directly connected with the administration or enforcement of the WIC Program.

Dated: June 7, 1999.

Shirley R. Watkins,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 99–14953 Filed 6–15–99; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans for Florida; Revised Format for Materials Being Incorporated by Reference and Approval of Recodification of the Florida Administrative Code; Final Rule and Proposed Rule

Approval and Promulgation of Implementation Plans for Florida: Approval of Revisions to the Florida State Implementation Plan; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–62–1–9610a; FL–66–1–9729a; FRL–6352–9]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Florida; Approval of Recodification of the Florida Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on December 21, 1994, and April 15, 1996, by the State of Florida through the Florida Department of Environmental Protection (FDEP). These submittals include miscellaneous revisions and the recodification of the Florida Administrative Code (F.A.C.). This recodification renumbers and reorganizes the Florida SIP to match the F.A.C. numbering system, reduces the number of rule sections to make the SIP less complex, and corrects typographical errors. EPA is also revising the format of 40 CFR part 52 for materials submitted by Florida that are incorporated by reference (IBR) into their SIP. The regulations affected by this format change have all been previously submitted by the State agency and approved by EPA. This format revision will primarily affect the "Identification of plan" section of CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC, and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials that are not subject to IBR review remain unchanged.

DATES: This direct final rule is effective on August 16, 1999 without further notice, unless EPA receives adverse comments by July 16, 1999. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this recodification action to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents related to this action are available for the public to review during normal business hours at the locations below. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL62–1–9610 and FL66–1–9729. The Region 4 office may have additional documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Office of the **Federal Register**, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION:

I. Revised IBR Format

A. Background

Each State is required to have a SIP which contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each state after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and insures that the State is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a State not enforce its SIP-approved regulations.

The SIP is a living document which can be revised by the State as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions which may contain new and/or revised regulations. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and OFR. EPA began the process of developing (1)A revised SIP document for each State that would be IBR under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

B. Content of revised IBR document

The new SIP compilations contain the Federally-approved portion of regulations and source specific SIP revisions submitted by each State agency. These regulations and source specific SIP revisions have all been approved by EPA through previous rule making actions in the **Federal Register**. The compilations are stored in 3-ring binders and will be updated, primarily on an annual basis.

Each compilation consists of two parts. Part 1 contains the regulations and Part 2 contains the source specific SIP revisions that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific SIP revision. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these States. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 4 EPA Office developed and will maintain the compilation for Florida. A copy of the full text of the State's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center. EPA is continuing, with this document, the phasing in of SIP compilations for individual States that began with Mississippi and South Carolina on July 1, 1997 (See 62 FR 35441). EPA expects to complete the conversion of the

revised "Identification of plan" format and IBR documentation for all States by May 1999. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Clean Air Act.

C. Revised Format of the "Identification of plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section and including additional information which will make it clearer as to what provisions constitute the enforceable elements of the SIP.

The revised Identification of plan section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific SIP revisions, and (e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

D. Enforceability and Legal Effect

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d) or (e) of the applicable "Identification of plan" found in each subpart of 40 CFR part 52. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of plan" section, previously appearing in the CFR as the first or second section of part 52 for each State subpart. After an initial two year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures, and will decide whether or not to retain the "Identification of plan" appendices for some further period.

II. Recodification Submittals

A. December 21, 1994, Submittal

On December 21, 1994, the State of Florida through the FDEP submitted a recodification of the F.A.C. with miscellaneous revisions to the Florida SIP. As a result of the 1993 merger of the Department of Environmental Regulation (DER) and Department of Natural Resources (DNR) into the Department of Environmental Protection, all "title 17" rule chapters of the DER were transferred to "title 62" of the Florida Administrative Code, effective August 10, 1994. All rule numbers comprising Florida's SIP are unchanged except for the first two digits. The EPA is now merely approving the recodification to make the SIP consistent with the numbering system currently used by the F.A.C., and approving the miscellaneous revisions.

B. April 15, 1996, Submittal

On April 15, 1996, FDEP submitted another recodification to reduce the number and complexity of the FDEP regulations, along with minor revisions and corrections. Most definitions were moved to Chapter 62–204 and Chapter 62–210, while other rules were repealed which are obsolete or redundant.

The miscellaneous rule revisions, repeals, and corrections from both submittals that are being approved in this action are fully discussed in the submittals and the technical support document (TSD) at the Region 4 Office listed in the addresses section of this notice.

EPA has reviewed the submitted revisions, but has not fully reviewed the substance of the recodified regulations that were approved into the SIP in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the State and the revisions outlined in the submittals and the TSD. To the extent EPA has issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this recodification, EPA will continue to require the State to correct any such rule deficiencies despite EPA's approval of this recodification.

Final Action

EPA is approving the aforementioned changes to the SIP without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective August 16, 1999 without further notice unless the agency receives relevant adverse comments by July 16, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 16, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

B. Executive Order 13045

The final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA

to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 1, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Note: This document was received at the Office of the Federal Register on June 9, 1999.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart K—Florida

2. Section 52.520 is redesignated as § 52.536 and the section heading and paragraph (a) are revised to read as follows:

§ 52.536 Original identification of plan section.

(a) This section identifies the original "State of Florida Air Implementation Plan" and all revisions submitted by Florida that were federally approved prior to July 1, 1998.

* * * * *

3. A new § 52.520 is added to read as follows:

§ 52.520 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for Florida under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

(c) EPA approved regulations.

EPA APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
62–204	Air Pollution Control—General Provisions			
62–204.100	Purpose and Scope	03/13/96	06/16/99	
62–204.200	Definitions	03/13/96	06/16/99	
62–204.220	Ambient Air Quality Protection	03/13/96	06/16/99	
62–204.240	Ambient Air Quality Standards	03/13/96	06/16/99	
62–204.260	Prevention of Significant Deterioration Increments.	03/13/96	06/16/99	
62–204.320	Procedures for Designation and Redesignation of Areas.	03/13/96	06/16/99	
62–204.340	Designation of Attainment, Nonattainment, and Maintenance Areas.	03/13/96	06/16/99	
62–204.360	Designation of Prevention of Significant Deterioration Areas.	03/13/96	06/16/99	
62–204.400	Public Notice and Hearing Requirements for State Implementation Plan Revisions.	11/30/94	06/16/99	

EPA APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
62–210	Stationary Sources—General Requirements			
62–210.100	Purpose and Scope	11/23/94	06/16/99	
62–210.200	Definitions	10/15/96	05/27/98, 63 FR 28905	
62–210.220	Small Business Assistance Program	10/15/96	05/27/98, 63 FR 28905	
62–210.300	Permits Required	08/15/96	01/17/97, 62 FR 2587	
62–210.350	Public Notice and Comment	11/23/94	06/16/99	
62–210.360	Administrative Permit Corrections	11/23/94	06/16/99	
62–210.370	Reports	11/23/94	06/16/99	
62–210.550	Stack Height Policy	11/23/94	06/16/99	
62–210.650	Circumvention	10/15/92	10/20/94, 59 FR 52916	
62–210.700	Excess Emissions	11/23/94	06/16/99	
62–212	Stationary Sources—Preconstruction Review			
62–212.100	Purpose and Scope	03/13/96	06/16/99	
62–212.300	Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements.	11/23/94	06/16/99	
62–212.400	Prevention of Significant Deterioration	03/13/96	06/16/99	
62–212.500	New Source Review for Nonattainment Areas.	03/13/96	06/16/99	
62–212.600	Source Specific New Source Review Requirements.	03/13/96	06/16/99	
62–242	Motor Vehicle Emissions Standards and Test Procedures			
62–242.100	Purpose and Scope	03/21/91	03/22/93, 58 FR 15277	
62–242.200	Definitions	03/13/96	06/16/99,	
62–242.400	Standards and Procedures For Inspection of Gasoline-Fueled Vehicles; Pass/Fail Criteria.	02/02/93	10/11/94, 59 FR 51382	
62–242.500	Standards and Procedures For Inspection of Diesel Fueled Vehicles; Pass/Fail Criteria.	02/02/93	10/11/94, 59 FR 51382	
62–242.600	Equipment Performance Specifications	02/02/93	10/11/94, 59 FR 51382	
62–242.700	Tampering Inspection	02/02/93	10/11/94, 59 FR 51382	
62–242.800	Low Emissions Adjustment	02/02/93	10/11/94, 59 FR 51382	
62–242.900	Training Criteria For Motor Vehicle Emissions Inspection Personnel.	02/02/93	10/11/94, 59 FR 51382	
62–243	Tampering With Motor Vehicle Air Pollution Control Equipment			
62–243.100	Purpose and Scope	05/29/90	06/09/92, 57 FR 24370	
62–243.200	Definitions	01/02/91	06/09/92, 57 FR 24378	
62–243.300	Exemptions	01/02/91	06/09/92, 57 FR 24378	
62–243.400	Prohibitions	01/02/91	06/09/92, 57 FR 24378	
62–243.500	Certification	01/02/91	06/09/92, 57 FR 24378	
62–243.600	Enforcement	01/02/91	06/09/92, 57 FR 24378	
62–243.700	Penalties	05/29/90	06/09/92, 57 FR 24370	
62–244	Visible Emissions From Motor Vehicles			
62–244.100	Purpose and Scope	02/21/90	06/09/92, 57 FR 24370	
62–244.200	Definitions	02/21/90	06/09/92, 57 FR 24370	
62–244.300	Exemptions	02/21/90	06/09/92, 57 FR 24370	
62–244.400	Prohibitions	02/21/90	06/09/92, 57 FR 24370	
62–244.500	Enforcement	02/21/90	06/09/92, 57 FR 24370	
62–244.600	Penalties	02/21/90	06/09/92, 57 FR 24370	
62–252	Gasoline Vapor Control			
62–252.100	Purpose and Scope	02/02/93	03/24/94, 59 FR 13883	
62–252.200	Definitions	02/02/93	03/24/94, 59 FR 13883	
62–252.300	Gasoline Dispensing Facilities—Stage I Vapor Recovery.	02/02/93	03/21/94, 59 FR 13883	
62–252.400	Gasoline Dispensing Facilities—Stage II Vapor Recovery.	11/23/94	06/16/99	
62–252.500	Gasoline Tanker Trucks	09/10/96	07/21/97 62 FR 38918	
62–252.800	Penalties	02/02/93	03/24/94, 59 FR 13883	
62–252.900	Forms	09/10/96	07/21/97, 62 FR 38918	

EPA APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
62–256	Open Burning and Frost Protection Fires			
62–256.100	Declaration and Intent	12/09/75	11/01/77, 42 FR 57124	
62–256.200	Definitions	11/30/94	06/16/99	
62–256.300	Prohibitions	11/30/94	06/16/99	
62–256.400	Agricultural and Silvicultural Fires	07/01/71	05/31/72, 37 FR 10842	
62–256.450	Burning for Cold or Frost Protection	06/27/91	09/09/94, 59 FR 46552	
62–256.500	Land Clearing	11/30/94	06/16/99	
62–256.600	Industrial, Commercial, Municipal, and Research Open Burning.	07/01/71	05/31/72, 37 FR 10842	
62–256.700	Open Burning Allowed	11/30/94	06/16/99	
62–256.800	Effective Date	07/01/71	05/31/72, 37 FR 10842	
62–296	Stationary Sources—Emission Standards			
62–296.100	Purpose and Scope	03/13/96	06/16/99	
62–296.320	General Pollutant Emission Limiting Standards.	03/13/96	06/16/99	
62–296.401	Incinerators	03/13/96	06/16/99	
62–296.402	Sulfuric Acid Plants	03/13/96	06/16/99	
62–296.403	Phosphate Processing	03/13/96	06/16/99	
62–296.404	Kraft (Sulfate) Pulp Mills and Tall Oil Plants.	03/13/96	06/16/99	
62–296.405	Fossil Fuel Steam Generators with more than 250 million Btu per Hour Heat Input.	03/13/96	06/16/99	
62–296.406	Fossil Fuel Steam Generators with less than 250 million Btu per Hour Heat Input, New and Existing Emissions Units.	03/13/96	06/16/99	
62–296.407	Portland Cement Plants	11/23/94	06/16/99	
62–296.408	Nitric Acid Plants	11/23/94	06/16/99	
62–296.409	Sulfur Recovery Plants	11/23/94	06/16/99	
62–296.410	Carbonaceous Fuel Burning Equipment	11/23/94	06/16/99	
62–296.411	Sulfur Storage and Handling Facilities	11/23/94	06/16/99	
62–296.412	Dry Cleaning Facilities	03/13/96	06/16/99	
62–296.413	Synthetic Organic Fiber Production	03/13/96	06/16/99	
62–296.414	Concrete Batching Plants	03/13/96	06/16/99	
62–296.415	Soil Thermal Treatment Facilities	03/13/96	06/16/99	
62–296.500	Reasonably Available Control Technology (RACT)—Volatile Organic Compounds.	11/23/94	06/16/99	
62–296.501	Can Coating	11/23/94	06/16/99	
62–296.502	Coil Coating	11/23/94	06/16/99	
62–296.503	Paper Coating	11/23/94	06/16/99	
62–296.504	Fabric and Vinyl Coating	11/23/94	06/16/99	
62–296.505	Metal Furniture Coating	11/23/94	06/16/99	
62–296.506	Surface Coating of Large Appliances	11/23/94	06/16/99	
62–296.507	Magnet Wire Coating	11/23/94	06/16/99	
62–296.508	Petroleum Liquid Storage	11/23/94	06/16/99	
62–296.509	Bulk Gasoline Plants	10/15/92	10/20/94, 59 FR 52916	
62–296.510	Bulk Gasoline Terminals	11/23/94	06/16/99	
62–296.511	Solvent Metal Cleaning	11/23/94	06/16/99	
62–296.512	Cutback Asphalt	11/23/94	06/16/99	
62–296.513	Surface Coating of Miscellaneous Metal Parts and Products.	11/23/94	06/16/99	
62–296.514	Surface Coating of Flat Wood Paneling	11/23/94	06/16/99	
62–296.515	Graphic Arts Systems	11/23/94	06/16/99	
62–296.516	Petroleum Liquid Storage Tanks With External Floating Roofs.	11/23/94	06/16/99	
62–296.570	Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities.	11/23/94	06/16/99	
62–296.600	Reasonably Available Control Technology (RACT)—Lead.	03/13/96	06/16/99	
62–296.601	Lead Processing Operations in General	08/08/94	09/18/96, 61 FR 49064	
62–296.602	Primary Lead-Acid Battery Manufacturing Operations.	03/13/96	06/16/99	
62–296.603	Secondary Lead Smelting Operations	08/08/94	09/18/96, 61 FR 49064	
62–296.604	Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations.	08/08/94	09/18/96, 61 FR 49064	
62–296.605	Lead Oxide Handling Operations	08/08/94	09/18/96, 61 FR 49064	

EPA APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
62–296.700	Reasonably Available Control Technology (RACT)—Particulate Matter.	11/23/94	06/16/99	
62–296.701	Portland Cement Plants	11/23/94	06/16/99	
62–296.702	Fossil Fuel Steam Generators	11/23/94	06/16/99	
62–296.703	Carbonaceous Fuel Burners	11/23/94	06/16/99	
62–296.704	Asphalt Concrete Plants	11/23/94	06/16/99	
62–296.705	Phosphate Processing operations	11/23/94	06/16/99	
62–296.706	Glass Manufacturing Process	11/23/94	06/16/99	
62–296.707	Electric Arc Furnaces	11/23/94	06/16/99	
62–296.708	Sweat or Pot Furnaces	11/23/94	06/16/99	
62–296.709	Lime Kilns	11/23/94	06/16/99	
62–296.710	Smelt Dissolving Tanks	11/23/94	06/16/99	
62–296.711	Materials Handling, Sizing, Screening, Crushing and Grinding operations.	11/23/94	06/16/99	
62–296.712	Miscellaneous Manufacturing Process Operations.	11/23/94	06/16/99	
62–297	Stationary Sources—Emissions Monitoring			
62–297.100	Purpose and Scope	03/13/96	06/16/99	
62–297.310	General Test Requirements	03/13/96	06/16/99	
62–297.400	EPA Methods Adopted by Reference	11/23/94	06/16/99	
62–297.401	Compliance Test Methods	03/13/96	06/16/99	
62–297.411	DEP Method 1	11/23/94	06/16/99	
62–297.412	DEP Method 2	10/15/92	10/20/94, 59 FR 52916	
62–297.413	DEP Method 3	10/15/92	10/20/94, 59 FR 52916	
62–297.415	DEP Method 5	11/23/94	06/16/99	
62–297.416	DEP Method 5A	10/15/92	10/20/94, 59 FR 52916	
62–297.417	DEP Method 6	11/23/94	06/16/99	
62–297.423	EPA Method 12—Determination of Inorganic Lead Emissions from Stationary Sources.	11/23/94	06/16/99	
62–297.440	Supplementary Test Procedures	11/23/94	06/16/99	
62–297.450	EPA VOC Capture Efficiency Test Procedures.	11/23/94	06/16/99	
62–297.620	Exceptions and Approval of Alternate Procedures and Requirements.	11/23/94	06/16/99	

(d) EPA-approved State Source-specific requirements.

EPA-APPROVED FLORIDA SOURCE—SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Explanation
None.				

(e) Reserved.

[FR Doc. 99–15010 Filed 6–15–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–62–1–9610b; FL–66–1–9729b; FRL–6352–8]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Florida; Approval of Recodification of the Florida Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of recodification and miscellaneous revisions. EPA is also proposing to revise the format of 40 CFR part 52 for materials submitted by Florida that are incorporated by reference into their SIP.

In this issue of the **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 16, 1999.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL62–1–9610 and FL66–1–9729. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in this issue of the **Federal Register**.

Dated: September 1, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Note: This document was received at the Office of the Federal Register on June 9, 1999.

[FR Doc. 99–15011 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–61–2–9823a; FRL –6352–3]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Florida State Implementation Plan (SIP) submitted on November 22, 1994, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This revision adds Chapter 62–204, Air Pollution Control—General Provisions, to the Florida SIP.

DATES: This direct final rule is effective on August 16, 1999 without further notice, unless EPA receives adverse comments by July 16, 1999. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Joey LeVasseur at the EPA, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Copies of documents related to this action are available for the public to review during normal business hours at the locations below. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL61–2–9823. The Region 4 office may have additional documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: The State of Florida through the FDEP submitted revisions to the Florida SIP on November 22, 1994. These revisions consist of a new Chapter 62–204, Air Pollution Control—General Provisions, that includes six new sections: "Purpose and Scope," "Definitions," "Approved State Implementation Plan," "Public Notice and Hearing Requirements," "General Conformity," and "Transportation Conformity."

Three of these sections, however, are not being approved into the SIP at this time. Section 62–204.300, "Approved State Implementation Plan," simply identifies the SIP for users of state rules and was not intended as a SIP revision. Section 62–204.500, "General Conformity," and Section 62–204.600, "Transportation Conformity," are not being approved here and will be addressed in a separate action.

The revisions being approved in this action are discussed below.

Section 62–204.100, Purpose and Scope—This section is simply an introductory paragraph that identifies the purpose of Chapter 62–204 and does not have any regulatory significance.

Section 62–204.200, Definitions—This section defines various terms that will be used in this Chapter whose definition might otherwise be unclear.

Section 62–204.400, Public Notice and Hearing Requirements for State Implementation Plan Revisions—This section sets forth the public notice and hearing requirements for the State to make an official SIP submittal. This section was previously approved as Section 17–210.350(3), but has been moved to Chapter 62–204 and revised for clarity.

Final Action

EPA is approving the aforementioned changes to the SIP without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective August 16, 1999 without further notice unless the agency receives relevant adverse comments by July 15, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the rule. Only parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 16, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

B. Executive Order 13045

The final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State,

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local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include å Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 9, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Note: This document was received at the Office of the Federal Register on June 9, 1999.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart K—Florida

2. Section 52.536 (redesignated from § 52.520, effective June 16, 1999) is amended by adding paragraph (c)(100) to read as follows:

§ 52.536 Original identification of plan section.

* * * * *

(c) * * *

(100) Revisions to Chapter 62–204, Stationary Sources—General Requirements, of the Florida SIP submitted by the Department of Environmental Protection on November 22, 1994.

(i) *Incorporation by reference.* Sections 62–204.100, 62–204.200, and 62–204.400 of the Florida SIP, effective November 30, 1994.

(ii) *Other material.* None.

* * * * *

[FR Doc. 99–15012 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–61–2–9823b; FRL–6352–2]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida through the Florida Department of Environmental Protection (FDEP) on November 22, 1994. This revision adds a new Chapter 62–204, Air Pollution Control—General Provisions, to the Florida SIP.

In this issue of the **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 16, 1999.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL–61–2–9823. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in this issue of the **Federal Register**.

Dated: September 9, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Note: This document was received at the Office of the Federal Register on June 9, 1999.

[FR Doc. 99–15013 Filed 6–15–99; 8:45 am]

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June 16, 1999

Part IV

Department of Education

34 CFR Part 685
William D. Ford Federal Direct Loan Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC68

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program. These amendments are a result of recently enacted changes to the Higher Education Act of 1965 (HEA) made by the Higher Education Amendments of 1998 (1998 Amendments). The proposed regulations would amend the current regulations to: remove references to the phase-in of the Direct Loan Program, update the loan interest rate formulas, and reflect the Secretary's authority to charge reduced loan fees on Direct Subsidized and Direct Unsubsidized Loans and to charge reduced interest rates to encourage on-time loan repayment.

DATES: We must receive your comments on or before July 30, 1999.

ADDRESSES: Address all comments about these proposed regulations to Ms. Nicki Meoli, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: dlnprm@ed.gov

FOR FURTHER INFORMATION CONTACT: Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 3045, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the FIRS at 1–800–877–8339.

General

Background

On October 7, 1998, President Clinton signed into law the 1998 Amendments (Pub. L. 105–244) that amended the HEA. Among the many important provisions of the new law was the reauthorization of the Title IV Student Financial Assistance Programs. The 1998 Amendments also contained a number of changes to the Title IV programs. This notice of proposed rulemaking (NPRM) addresses changes that affect the Direct Loan Program.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://www.ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, each negotiating committee met to develop proposed regulations, for several days each month, from January through May.

The proposed regulations contained in this NPRM reflect the final consensus of the negotiating committee, which was made up of the following members:

American Association of Community Colleges.

American Association of Cosmetology Schools.

American Association of State Colleges and Universities.
American Council on Education.
Career College Association.
Coalition of Associations of Schools of the Health Professions.
Coalition of Higher Education Assistance Organizations.
Consumer Bankers Association.
Education Finance Council.
Education Loan Management Resources.
Legal Services Counsel (a coalition).
National Association of College and University Business Officers.
National Association of Equal Opportunity in Higher Education.
National Association of Graduate/Professional Students.
National Association of Independent Colleges and Universities.
National Association of State Student Grant and Aid Programs.
National Association of State Universities and Land-Grant Colleges.
National Association of Student Financial Aid Administrators.
National Association of Student Loan Administrators.
National Council of Higher Education Loan Programs.
National Direct Student Loan Coalition.
Sallie Mae, Inc.
Student Loan Servicing Alliance.
The College Board.
The College Fund/United Negro College Fund.
United States Department of Education.
United States Student Association.
U.S. Public Interest Research Group.

Under committee protocols, consensus meant that there was no dissent by any member of the committee. Thus, the proposed regulations in this document have been agreed to by each of the organizations and groups listed as members of the committee.

Proposed Regulatory Changes

Section 685.202

Interest Rates and Loan Fees

Interest Rates

The proposed regulations would implement changes to section 455(b) of the HEA that affect the interest rates charged on Direct Loan Program loans.

The interest rate formulas that apply to Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans that are first disbursed on or after October 1, 1998 and before July 1, 2003 are as follows:

For	During	The interest rate is	But will not exceed (percent)
Direct Subsidized, Direct Unsubsidized	Repayment	91-day Treasury bill rate + 2.3	8.25
	In-School Grace Deferment	91-day Treasury bill rate + 1.7	8.25
Direct PLUS	All Periods	91-day Treasury bill rate + 3.1	9

The interest rate formulas that apply to Direct Consolidation Loans that are first disbursed on or after July 1, 1998 are as follows:

For a direct consolidation loan	During	The interest rate on the student loan portions is	The interest rate on the PLUS loan portion is
Application received before 10/1/98 and first disbursement on or after 7/1/98.	Repayment	91-day Treasury bill rate + 2.3 (Will not exceed 8.25%).	91-day Treasury bill rate + 3.1 (Will not exceed 9%).
	In-School Grace Deferment	91-day Treasury bill rate + 1.7 (Will not exceed 8.25%).	91-day Treasury bill rate + 3.1 (Will not exceed 9%).
Application received between 10/1/98 and 1/31/99.	All Periods	91-day Treasury bill rate + 2.3 (Will not exceed 8.25%).	91-day Treasury bill rate + 2.3 (Will not exceed 8.25%).
Application received on or after 2/1/99 and before 7/1/2003.	All Periods	Weighted average of interest rates on loans being consolidated, rounded to nearest higher one-eighth of one percent (Will not exceed 8.25%).	Weighted average of interest rates on loans being consolidated, rounded to nearest higher one-eighth of one percent (Will not exceed 8.25%).

Loan Fees

The Secretary proposes to amend § 685.202(c) to clarify that the Secretary charges a loan fee on a Direct Subsidized or Direct Unsubsidized Loan not to exceed four percent of the principal amount of the loan. The Secretary interprets the 1998 Amendments as authorizing him to charge a reduced loan fee to all Direct Subsidized and Direct Unsubsidized Loan borrowers and to provide a reduction for borrowers demonstrating greater financial need. This authority is consistent with the authority provided to lenders in the FFEL Program under section 438(c)(2) of the HEA. The Secretary notes that the authority to charge a reduced fee in both the FFEL Program and the Direct Loan Program does not apply to PLUS loans in either program.

While the negotiators reached consensus on all of the proposed regulations included in this NPRM, some negotiators expressed a belief that the HEA requires the Secretary to charge a loan fee equal to four percent of the principal amount of the loan on a Direct Subsidized or Direct Unsubsidized Loan. As discussed below, however, the Secretary and some other negotiators believe that the Secretary does have the authority to charge reduced loan fees.

FFEL Program lenders are required to pay the Secretary a loan origination fee equal to three percent on all Stafford loans. Prior to enactment of the 1998 Amendments, on Unsubsidized Stafford Loans lenders were required to pass on the fee to the borrower, but lenders were not required to pass on the fee to Subsidized Stafford Loan borrowers. In addition, prior to enactment of the 1998 Amendments, there were no statutory or regulatory provisions controlling a lender's decision to offer a reduced loan origination fee. The 1998 Amendments now establish conditions under which a lender may charge reduced loan origination fees to some or all Stafford loan borrowers, thus making the lower fee a term or condition of the loan. In addition to the lender origination fee, guaranty agencies are authorized to charge a one-percent guarantee fee to borrowers. Similarly, prior to enactment of the 1998 Amendments, the Direct Loan Program charged a loan fee equivalent to the amount of the loan origination fee and the guarantee fee charged to FFEL Stafford Loan

borrowers. Generally, these practices resulted in consistent treatment of borrowers. However, depending on which loans they received and whether their particular lender or guaranty agency chose to offer them a reduced fee on their loan, some FFEL Stafford Loan borrowers paid lower fees.

To promote consistent benefits to borrowers, the 1998 Amendments, for the first time, established certain standards that must be met in order for lenders to reduce loan origination fees in the FFEL Program. The HEA now requires lenders to provide reduced loan origination fees to all borrowers or to borrowers who demonstrate a greater financial need. Proposed regulations implementing these standards were agreed to during the negotiations and will be published shortly. With these standards, all similarly situated borrowers with loans from a specific lender will be treated equally.

Nothing in the 1998 Amendments or its legislative history indicate that Congress intended to deny the benefits of reduced loan fees to borrowers in the Direct Loan Program. In fact, Congress retained the provision that borrowers in the Direct Loan Program should receive the same terms, conditions, and benefits on their loans as borrowers of similar loans in the FFEL Program unless specifically provided for otherwise. The Secretary believes that the 1998 Amendments created a new statutory basis for borrowers to insist on equal treatment from their lender on loan fees, including a lower fee if the lender chooses to offer a lower loan fee to at least some borrowers. The Secretary does not believe that Congress affirmatively intended to deny this benefit to Direct Loan borrowers. Accordingly, the Secretary believes that the HEA permits him to charge reduced loan fees to borrowers in the Direct Loan Program.

In accordance with 5 U.S.C. 553(b)(A), this preamble announces the Secretary's interpretative rule that he can charge reduced loan fees in the Direct Loan Program consistent with the lenders' authority to do so in the FFEL Program. The provision contained in this NPRM is consistent with the Secretary's interpretative rule. The Secretary will consider the public comments received on this proposed provision and determine whether any changes should be reflected in the final rule.

Section 685.211

Repayment Incentives

The proposed regulations would implement a change to section 455(b) of the HEA, which authorizes the Secretary to charge borrowers reduced interest rates to encourage on-time loan repayment. The repayment incentives that the Secretary offers to Direct Loan borrowers must be cost-neutral and in the best financial interests of the federal government.

The proposed regulations provide the Secretary with the flexibility needed to offer additional or different repayment incentives in response to changes in economic conditions or to the Direct Loan Program statute. As written, the language mirrors the authority of lenders and guaranty agencies in the FFEL Program to offer benefits to borrowers.

Shortly, the Secretary will charge a reduced interest rate to those borrowers repaying by means of automated account debiting. Borrowers repaying via automated debiting of their personal checking, savings, or other type of account at a financial institution will receive a reduction in the interest being charged on their Direct Loans. The Secretary has determined that the reduced interest charge will be cost-neutral and has so advised the Office of Management and Budget, which is now conducting its own review consistent with section 455(b) of the HEA.

Sections 685.400 and 685.401

School Participation Requirements

The proposed regulations would implement changes to section 453(b) of the HEA by deleting all references to the phase-in of the Direct Loan Program and the transition from the FFEL Program to the Direct Loan Program. The proposed regulations move the school selection provisions to § 685.400 and remove § 685.401 from the Direct Loan Program regulations.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

Proposals implementing the statutory change in borrower interest rates have been estimated to increase costs to the Federal Government by $147 million over five years. Costs increase under this change because interest rates charged to Direct Loan borrowers—and corresponding repayments to the Federal Government—are reduced. The change represents a significant economic benefit to Direct Loan borrowers.

There are no Federal costs associated with the proposed regulations allowing the Secretary to offer reduced borrower interest rates as incentives to encourage on-time repayment. The HEA requires that any such incentives be cost-neutral. The Secretary intends to use this authority to charge a reduced interest rate to borrowers repaying by means of automated account debiting; this reduction will be structured to ensure its cost-neutrality.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 685.211 Miscellaneous repayment provisions.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. None of the parties affected by these proposed regulations—individual Direct Loan borrowers—would be considered small entities for the purposes of the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

Dated: June 10, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising Part 685 to read as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

2. Section 685.202 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest*—(1) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans.* (i) *Loans first disbursed before July 1, 1995.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(ii) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.*

(A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(iii) *Loans first disbursed on or after July 1, 1998.*

(A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 1.7 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(2) *Interest rate for Direct PLUS Loans.* (i) *Loans first disbursed before July 1, 1998.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(ii) *Loans first disbursed on or after July 1, 1998.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(3) *Interest rate for Direct Consolidation Loans.*

(i) *Interest rate for Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans.*

(A) *Loans first disbursed before July 1, 1995.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(i) of this section.

(B) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(ii) of this section.

(C) *Loans for which the consolidation application is received by the Secretary before October 1, 1998 and for which the first disbursement is made on or after July 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(iii) of this section.

(D) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(E) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(ii) *Interest rate for Direct PLUS Consolidation Loans.*

(A) *Loans first disbursed before July 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(i) of this section.

(B) *Loans for which the consolidation application is received by the Secretary before October 1, 1998 and for which the first disbursement is made on or after July 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(ii) of this section.

(C) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(D) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(4) *Interest rate reductions.* The Secretary may reduce the interest rate on a Direct Loan as provided in § 685.211(b).

* * * * *

(c) * * *

(1)(i) Charges a borrower a loan fee not to exceed four percent of the principal amount of the loan on a Direct Subsidized or Direct Unsubsidized Loan; or

(ii) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct PLUS Loan.

* * * * *

3. Section 685.211 is amended by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively; by adding a new paragraph (b); by revising the first sentence of newly redesignated paragraph (e)(2); and by revising newly redesignated paragraph (e)(3) to read as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(b) *Repayment incentives.* To encourage on-time repayment, the Secretary may reduce the interest rate for a borrower who repays a loan under a system or on a schedule that meets requirements specified by the Secretary.

* * * * *

(e) * * *

(2) If the Secretary makes the determination described in paragraph (e)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. * * *

(3) If a borrower fails to comply with the demand letter described in paragraph (e)(2) of this section, the borrower is in default on the entire loan.

* * * * *

4. Section 685.400 is amended by adding a new paragraph (d) to read as follows:

§ 685.400 School participation requirements.

* * * * *

(d) The Secretary selects schools to participate in the Direct Loan Program from among those that apply to participate and meet the requirements in paragraphs (a)(1), (b), and (c) of this section.

§ 685.401 [Removed and Reserved]

5. Section 685.401 is removed and reserved.

[FR Doc. 99–15278 Filed 6–15–99; 8:45 am]
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Wednesday
June 16, 1999

Part V

Department of Education

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs, Federal Activities, State and Regional Coalition Grant Competition To Prevent High-Risk Drinking Among College Students; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—State and Regional Coalition Grant Competition To Prevent High-Risk Drinking Among College Students

AGENCY: Department of Education.

ACTION: Notice of final priority, eligible applicants, and selection criteria for fiscal year 1999 and subsequent years.

SUMMARY: The Secretary announces a final priority, eligible applicants, and selection criteria for fiscal year (FY) 1999 and, at the discretion of the Secretary, for subsequent years under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities—State and Regional Coalition Grant Competition to Prevent High-Risk Drinking Among College Students. The Secretary takes this action to focus Federal financial assistance on an identified national need. This competition seeks to reduce and prevent high-risk drinking among college students by funding State or regional coalitions for a two-year period to bring together institutions of higher education (IHEs) to share ideas and develop, implement, and evaluate collaborative strategies.

EFFECTIVE DATE: These priorities take effect July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kimberly Light, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. FAX (202) 260–7767. Internet: http://www.ed.gov/OESE/SDFS.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: High-risk drinking, including "binge" drinking, continues to affect the health, learning, and safety of college students. Excessive use of alcohol has resulted in deaths, serious injuries, vandalism, and sexual assault on college campuses. There is strong evidence that environmental factors, including alcohol availability, high-risk alcohol use norms, and the restrictiveness of State drunk driving laws, play a major role in student alcohol use. Different IHEs may have high-risk drinking problems that are affected by similar environmental concerns; therefore, developing partnerships with other IHEs can provide a forum to develop common solutions as well as a mechanism to create the "critical mass" of concerned stakeholders needed to influence broader environmental changes. The recent development of a number of IHE coalitions across the country suggests that such partnerships may be an effective method for IHEs with common environmental concerns to build local capacity to address high-risk drinking within their campus-communities. In addition, these efforts can have an impact within a larger community context, such as geographic regions within States (*e.g.*, a large metropolitan area), similar institutions within States (*e.g.*, all public universities), or institutions in States that share common borders. This competition seeks to encourage these collaborative efforts and evaluate their effectiveness so that other IHEs may adopt effective strategies.

This notice contains a final priority, eligible applicants, and related selection criteria for fiscal year 1999 and subsequent years. Under this absolute priority, the Secretary may make awards for up to 24 months.

On April 20, 1999, the Secretary published the proposed priorities for this competition in a Notice of Proposed Priority in the **Federal Register** (64 FR 19347–19349). In response to the comments received, the Secretary made no modifications, as noted in the following section—Analysis of Comments and Changes—of this notice of final priorities.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the proposed priorities, the Department received two responses from institutions of higher education. Most of the comments were related to the proposed selection criteria, which were selected from the established selection criteria published in the Education Department General Administrative Regulations (EDGAR). An analysis of the comments, organized by topic, follows:

Focus of Priority

Comment: One commenter suggested that the priority include not only binge drinking, but also other patterns of abusive drinking that have negative consequences for student life. The commenter indicated that other patterns of abusive drinking are seen at historically Black IHEs.

Discussion: The existing language in the priority is specifically designed to include a range of high-risk drinking problems. Although "binge" drinking is a significant type of high-risk drinking, the priority would not preclude a focus on other types of abusive drinking.

Changes: None.

Selection Criteria—Need for Project

Comment: One commenter proposed points be reassigned under this criterion to place more emphasis on identifying and addressing gaps and weaknesses in services, rather than on the magnitude and severity of the problem to be addressed, in order to reflect the amount of additional work required by applicants to identify gaps and weaknesses.

Discussion: The points assigned for this selection criterion are intended to place greater emphasis on the magnitude and severity of the high-risk drinking problem to be addressed by the coalition. Because of the limited funds available for this initiative, emphasis is placed on directing funds to areas with the greatest need.

Changes: None.

Selection Criteria—Significance and Quality of the Project Design

Comment: One commenter proposed that the subcriterion under Quality of the Project Design addressing capacity building be combined with the subcriterion under Significance addressing system change and improvement. The commenter suggested that system change, by definition, will build capacity and yield results beyond the period of Federal financial assistance.

Discussion: These subcriteria were selected to address two different, but related, aspects of project impact. Capacity building may not necessarily lead to system change and improvement, and system change and improvement may not necessarily include capacity building. Therefore, both of these selection criteria help select projects that have the greatest potential to continue the work of the project after the Federal project period ends.

Changes: None.

Selection Criteria—Quality of Project Design

Comment: One commenter suggested that the number of points be increased under the subcriterion addressing clearly specified and measurable goals, objectives and outcomes, because the

organization's goals, objectives and outcomes have a major impact on the functioning of the project. In addition, this commenter proposed that this subcriterion be expanded to include proposed activities for achieving the stated goals, objectives and outcomes.

Discussion: Clearly specified and measurable goals, objectives and outcomes are an important part of the design of a project; however, the quality of the content of the goals, objectives and outcomes is most important to the design of projects under this program, and is therefore more heavily weighted. The subcriterion on the extent to which the design of the project reflects up-to-date knowledge from research and effective practice will allow reviewers to assess the quality of the project goals, objectives and outcomes, including the proposed project activities.

Changes: None.

Selection Criteria—Quality of the Project Personnel and Quality of the Management Plan

Comment: One commenter suggested that the Quality of the Project Personnel criterion and the Quality of the Management Plan criterion be combined and renamed "management and organizational capability."

Discussion: The selection criteria Quality of Project Personnel and Quality of the Management Plan need to be handled separately because they address different aspects of an application. For example, an applicant could have well qualified personnel but the management plan may be poorly designed or written. Both the plan and personnel are critical to the success of the grant.

Changes: None.

Selection Criteria—Quality of the Management Plan

Comment: One commenter proposed that the subcriterion on bringing a diversity of perspectives to bear on the operation of the proposed project be expanded to specify which faculty/student leaders should be included. This commenter also suggested that this subcriterion include both receiving input from and providing information to key stakeholders.

Discussion: Applicants are encouraged to bring a wide variety of perspectives to the operation of their proposed projects. The specific individuals who are included may vary depending on the project goals and design. This subcriterion does not preclude applicants from both receiving input from and providing information to key stakeholders.

Changes: None.

Comment: One commenter suggested a subcriterion be included to require a one-page organization chart to graphically portray the management structure of the project.

Discussion: Illustrating the management structure with an organization chart is deemed to be the prerogative of the applicant.

Changes: None.

Selection Criteria—Adequacy of Resources

Comment: One commenter proposed that a criterion be added that addresses the level of networking between the applicant and members of national, statewide and regional college consortiums and related collaborations.

Discussion: The level of networking by applicants will vary depending on the design and scope of their projects.

Changes: None.

Comment: One commenter suggested the expansion of the subcriterion on reasonable costs by adding that the proposed budget be complete, detailed, and allowable. This commenter also suggested that this criterion require a description of how non-Federal resources will be utilized.

Discussion: Administration of Federal grants is governed by Federal cost principles that will be referenced in the application package information. These cost principles provide information on allowable costs. In addition, applicants will be required to submit a budget form and narrative detailing their plans for the use of funds.

Changes: None.

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition *only* applications that meet the following absolute priority:

Implement and Evaluate the Impact of a State or Regional Coalition to Develop Strategies for Reducing and Preventing High-Risk Drinking Among College Students

Applicants proposing a project under this priority must:

(1) Propose to expand an existing or establish a new State or regional coalition of IHEs and other relevant organizations that includes key stakeholders who will have an impact on the development and implementation of State, local, and campus policies and programs to reduce and prevent high-risk drinking;

(2) Explain how coalition members will work together on a regular basis, including meeting to discuss common problems and share effective strategies;

(3) Use community collaboration prevention approaches, including involvement of students, that research or evaluation has shown to be effective in preventing or reducing high-risk drinking;

(4) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators in addition to process (formative) measures that documents strategies used and measures the effectiveness of the coalition;

(5) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period; and

(6) Share information about their projects with the Department of Education or its agents.

Eligible Applicants

Eligible applicants under this competition are IHEs, consortia of IHEs, and other public and private nonprofit organizations.

Selection Criteria

The following selection criteria will be used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Need for project* (15 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude or severity of the problem to be addressed by the proposed project. (10 points)

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) *Significance* (14 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement. (10 points)

(b) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings. (4 points)

(3) *Quality of the project design* (15 Points)

In determining the quality of the design of the proposed project, the following factors are considered.

(a) The extent to which the goals, objectives, and outcomes to be achieved

by the proposed project are clearly specified and measurable. (4 points)

(b) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (6 points)

(c) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (5 points)

(4) *Quality of the project personnel* (15 points)

In determining the quality of project personnel, the following factors are considered:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(b) The qualifications, including relevant training and experience, of key project personnel. (12 points)

(5) *Adequacy of resources* (16 points)

In determining the adequacy of resources for the proposed project, the following factors are considered:

(a) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (8 points)

(b) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits. (4 points)

(c) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (4 points)

(6) *Quality of the management plan* (14 points)

In determining the quality of the management plan for the proposed project, the following factors are considered:

(a) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of students, faculty, parents, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (10 points)

(b) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (4 points)

(7) *Quality of the project evaluation* (11 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed project. (4 points)

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (3 points)

(c) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (4 points)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations of 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

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Note: The official version of this document is the document published in the **Federal Register**.

(Catalog of Federal Domestic assistance Number 84.184H, Safe and Drug-Free Schools and Communities National Programs—Federal Activities—State and Regional Coalition Grant Competition to Prevent High-Risk Drinking Among College Students)

Program Authority: 20 U.S.C. 7131.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–15324 Filed 6–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.184H]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs-Federal Activities—State and Regional Coalition Grant Competition To Prevent High-Risk Drinking Among College Students

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1999.

Purpose of the Program: The National Programs portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) supports the development of programs to prevent the illegal use of drugs and violence among, and to promote safety and discipline for, students at all educational levels from preschool through the postsecondary level. This competition seeks to reduce and prevent high-risk drinking among college students by funding State or regional coalitions to bring together institutions of higher education (IHEs) to share ideas and develop, implement, and evaluate collaborative strategies.

Eligible Applicants: IHEs, consortia of IHEs, and other public and private nonprofit organizations.

Applications Available: June 14, 1999.

Deadline for Receipt of Applications: July 14, 1999.

Note: All applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. Applications by mail should be sent to the U.S. Department of Education, Application Control Center, Attention: CFDA #84.184H, Washington, DC 20202–4725.

Deadline for Intergovernmental Review: September 14, 1999.

Available Funds: $1,450,000.

Estimated Range of Awards: $170,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86;

(b) 34 CFR parts 98 and 99; and

(c) The notice of final priority and selection criteria for FY 1999 published elsewhere in this issue of the **Federal Register**.

For Applications or Information Contact: Kimberly Light, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. By FAX: (202) 260–7767. Internet: *http://www.ed.gov/OESE/SDSF*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

Judith Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 99–15325 Filed 6–15–99; 8:45 am]

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federal register

Wednesday
June 16, 1999

Part VI

Department of Agriculture

Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service
Farm Service Agency

7 CFR Parts 1940 and 3565
Guaranteed Rural Rental Housing Program; Final Rule

Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program; Notice

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 3565

RIN 0575–AC14

Guaranteed Rural Rental Housing Program

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule; adoption of interim rule with changes.

SUMMARY: The Rural Housing Service (RHS) is issuing final regulations for the Guaranteed Rural Rental Housing Program (GRRHP). This action is taken to implement the "Housing Opportunity Program Extension Act of 1996." The program is intended to increase the supply of affordable rural multifamily housing through partnerships between the Agency and major lending sources, including banks, state and local housing finance agencies, and bond issuers.

EFFECTIVE DATE: July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Carl W. Wagner, Deputy Division Director, Guaranteed Loans, Multi-Family Housing Processing Division, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue, SW, Washington, DC 20250–0781, telephone: (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been redesignated from significant to not-significant since the publication of the interim final rule. This rule has now been determined to be not-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Discussion of Use of Final Rule

Program funding levels are made public in a "Notice of Funds Availability" (NOFA) published concurrently with this final rule. Approximately $74 million in guaranteed loans is available in this fiscal year. Potential applicants are encouraged to apply as soon as possible.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this order: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Intergovernmental Consultation

The program is subject to Executive Order 12372 which requires intergovernmental consultation with state and local officials. Intergovernmental consultation has been conducted in accordance with 7 CFR part 3015, subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities."

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objections of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0174, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rules does not impose any new information or recordkeeping requirements from those approved by OMB.

Purpose and Program Summary

The program has been designed to increase the availability of affordable multifamily housing through partnerships between the Agency and lending sources, as well as state and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects to be guaranteed under this program. Projects may be for new construction or acquisition with substantial rehabilitation. The Agency will guarantee such loans upon review of the lender's underwriting package, appraisal report, appropriate certifications, project information, and satisfactory completion of the appropriate level of environmental review by the Agency. Lenders will be responsible for loan underwriting, management and servicing associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be shared on a pro-rate basis between the lender and the Agency from the first dollar lost.

Program applicability and funding will be announced by NOFA published in the **Federal Register**. When program funding levels exceed $100 million, funds are allocated to states based on the following criteria: (1) State's percentage of national rural population, (2) State's percentage of the national number of rural households between 50 and 115 percent of the area median income, and (3) State's percentage of National average cost per unit. These criteria for allocation of funds to the states are consistent with other Agency housing programs. The criteria will enable the Agency to allocate funds based on a state's population and available households with income sufficient to meet the proposed rents, and to adjust the allocation for per unit new construction cost. The purpose of having a cost factor is to assure units produced reflect criteria for need, especially for high cost states. Eighty percent of the weight will be divided equally between population and income and 20 percent based on cost. When the funding levels are under $100 million, funds will all be held in a National Office reserve and made available administratively in accordance with the NOFA and program regulations.

Public Comments

The Agency received the following comments as the result of the publication of the regulation as an Interim Final Rule in the **Federal Register** on July 22, 1998 (62 FR 39452).

The Agency received seven comments on the regulation. The commentators represented the following:

- Mortgage Banker and User of Program.
- Developer.
- Interest Group.
- Public Body.
- Private consultant.
- Two Tenants' Rights Group.

Many of the comments related to the how things will be done (e.g. "How will interest credit be calculated and paid?"). Such questions are addressed in the Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (HB–1–3565) which was not available during the comment period. The Handbook was made available to the public on December 18, 1998. It provides the reader with instruction on matters such as the Agency's internal processing procedures. The Handbook will not be published in the **Federal Register**, but is available to the public at no cost. The Handbook can also be found on the Internet at http://rdinit.usda.gov/regs/.

The comments that we adopted in the regulation are as follows:

1. Two commentors recommended extending the construction/permanent loan period from 12 to 24 months.

2. Two respondents commented that a Regulatory Agreement is typically not recorded of record. The requirement to have the Regulatory Agreement recorded was removed because the requirement to maintain the property in affordable housing will be recorded in the deed.

3. Two commentors responded on the exclusion of tax exempt bonds in the program. Since tax exempt bond financing is now authorized by legislation passed in August 1998, the Final Rule has been changed accordingly.

4. Three respondents suggested that three of the priority items used to rank and score NOFA responses be included in the regulation (Namely priority for projects in smaller communities, low income communities, and Empowerment Zones/Enterprise Communities). These priorities will be included in the Final Rule.

5. Four respondents commented on the requirement for the lender to certify that the project is in compliance with local, state, federal laws and program requirements. This requirement will be changed to require the lender to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

The issues that we were not able to adopt are as follows:

1. Two commentors responded that rental assistance be provided to 538 projects. We could not consider this because rental assistance is not authorized by the Housing Act of 1949 (the Act).

2. One commentor believed that the amount of the loan guarantee should be increased to 100%. This is not permitted by the Act.

3. One commentor responded that the non-assumability or release of borrower provision be removed. This is not permitted by the Act.

4. One commentor suggested that the rural area definition be changed to allow places up to 50,000 population. This change is not permitted by the Act.

5. Several commentors asked for a more complete discussion of interest credit. This was not added to the Final Rule but was added to the Handbook.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 3565

Bankruptcy, Banks, Banking civil rights, Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages, Real property acquisition, Surety bonding.

Accordingly, chapters XVIII and XXXV, title 7, Code of Federal Regulations are amended by adopting the interim rule published on July 22, 1998 (63 FR 39452) as a final rule with amendments as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

2. Revise section 3565.5 (b) to read as follows:

§ 3565.5 Ranking and selection criteria.

* * * * *

(b) *Priority projects.* Priority will be given to projects: in smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3–5 bedroom units to total units, or located in Empowerment Zones/Enterprise Communities or on tribal lands. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce any assistance set aside and selection criteria in the NOFA.

3. Revise section 3565.6 to read as follows:

§ 3565.6 Inclusion of tax-exempt debt.

Tax-exempt financing can be used a source of capital for the guaranteed loan.

4. Revise section 3565.8 to read as follows:

§ 3565.8 Civil Rights Compliance.

(a) All actions taken by the Agency, or on behalf of the Agency, by a lender will be conducted without regard to race, color, religion, national origin, sex, marital status, age, income from public assistance or having exercised their right under the Consumer Credit Protection Act, and in accordance with

the Equal Credit Opportunity Act (ECOA).

(b) Any action related to the sale, rental or advertising of dwellings; in the provision of brokerage services; or in making available residential real estate transactions involving Agency assistance, must be in accordance with the Fair Housing Act, which prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status or handicap. It is unlawful for a lender or borrower participating in the program to:

(1) Refuse to make accommodations in rules, policies, practices, or services if such accommodations are necessary to provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; and

(2) Refuse to allow an individual with a disability to make reasonable modifications to a unit at his or her expense, if such modifications may be necessary to afford the individual full enjoyment of the unit.

(c) Any resident or prospective resident seeking occupancy or use of a unit, property or related facility for which a loan guarantee has been provided, and who believes that he or she is being discriminated against may file a complaint with the lender, the Agency or the Department of Housing and Urban Development. A written complaint should be sent to the Secretary of Agriculture or of the Department of Housing and Urban Development in Washington, DC.

(d) Lenders and borrowers that fail to comply with the requirements of title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), are liable for those sanctions authorized by law.

(e) For guaranteed loans with "interest credit," the following additional civil rights laws will apply and be enforced by the agency delivering this guarantee program: title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Age Discrimination Act of 1975, and title IX of the Education Amendments of 1972.

(f) In accordance with title VI, borrowers will be subjected to compliance reviews for projects that receive interest credit.

§ 3565.9 [Amended]

5. Amend section 3565.9 to remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

6. Revise section 3565.13 to read as follows:

§ 3565.13 Exception Authority.

An Agency official may request and the Administrator or designee may make an exception to any requirement or provision, or address any omission of this part, if the Administrator determines that application of the requirement or provision, or failure to take action, would adversely affect the government's interest or the program objectives, and provided that such an exception is not inconsistent with any applicable law or statutory requirement.

Subpart B—Guarantee Requirements

§ 3565.52 [Amended]

7. Amend the introductory text of section 3565.52 by revising the words "12 months" to read "24 months."

8. Amend section 3565.53 by revising paragraph (a) and the last sentence in paragraph (b) to read as follows:

§ 3565.53 Guarantee fees.

* * * * *

(a) *Initial guarantee fee.* The Agency will charge an initial guarantee fee equal to one percent of the guarantee amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) * * * This fee will be collected on January 1, of each calendar year.

* * * * *

Subpart C—Lender Requirements

9. Add section 3565.103(d)(9) to read as follows:

§ 3565.103 Approval requirements.

* * * * *

(d) * * *

(9) The lender must certify that they have computer systems that comply with year 2000 technology.

Subpart G—Processing Requirements

§ 3565.303 [Amended]

10. Amend section 3565.303(d)(8) by revising the word "a" to read "an" and by removing the word "recordable,".

Subpart H—Project Management

11. Amend section 3565.351 by amending paragraph (a) to remove the words "which will be filed in the real estate records of the appropriate jurisdiction" and by revising the introductory text of the section to read as follows:

§ 3565.351 Project Management.

As a condition of the guarantee, the lender is to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

* * * * *

Dated: June 9, 1999.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

[FR Doc. 99–15288 Filed 6–15–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice of Fund Availability (NOFA or Notice) announces the timeframe to submit proposals in the form of "NOFA responses" for the section 538 Guaranteed Rural Rental Housing Program (GRRHP). Eligible lenders are invited to submit NOFA proposals for the development of affordable rental housing to serve rural America. Lenders may submit their application concurrently with their NOFA response. This document also describes the overall application process, including the selection of NOFA responses and the allocation of interest credits.

DATES: The deadline for receipt of NOFA responses is to be 4:00 PM, Eastern Daylight Savings Time, 90 days from the date of publication in the Federal Register or 4:00 PM, Eastern Daylight Savings Time on August 31, 1999, whichever time comes first. Lenders intending to mail a NOFA response must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), Cash on Delivery (COD), and postage due NOFA responses or applications will not be accepted. No NOFA responses will be accepted after the deadlines previously mentioned, unless that date and time is extended by another Notice published in the Federal Register.

ADDRESSES: Responses for participation in the program must be identified as "Section 538 Guaranteed Rural Rental Housing Program" on the envelope and be submitted to: Director, Multi-Family Housing Processing Division, Rural Housing Service, US Department of Agriculture, Room 1263 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781.

FOR FURTHER INFORMATION CONTACT: Carl W. Wagner, Deputy Director, Guaranteed Loans, Multi-Family Housing Processing Division, U. S. Department of Agriculture, South Agriculture Building, Room 1223 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781, Telephone: (202) 720–1604. This number is not toll-free. Hearing or speech impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996," Public Law 104–120, authorizing the section 538 Guaranteed Rural Rental Housing Program (GRRHP). The program is intended to provide rural America with affordable housing through the use of loan guarantees and partnering with other housing programs, including state and local housing finance agencies and bond issuers.

The Rural Housing Service (RHS) is concurrently publishing regulations governing the program as a final rule in the Federal Register. Those regulations set forth RHS policies and requirements for the program including: lender and borrower requirements, loan and property requirements and restrictions, purposes for and uses of guaranteed funds, processing requirements, project management and servicing requirements, and policies and mandated procedures on assignments, conveyances and claims. Interested applicants should carefully review the regulation and the Guaranteed Rural Rental Housing Program Origination and Servicing Handbook for program origination and servicing procedures and the application package. The Handbook (HB–1–3565) can be found on the internet at http://rdinit.usda.gov/regs. As a service to our customers, copies of the interim and final rule may also be obtained from the RHS Multi-Family Housing Processing Division at 202–720–1604. This is not a toll-free number. Hearing-or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Discussion of Notice

I. Purpose and Program Summary

The program has been designed to increase the supply of affordable multifamily housing through partnerships between RHS and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction or acquisition with rehabilitation of at least $15,000 per unit. RHS may guarantee such loans upon presentation and review of appropriate certifications, project information and satisfactory completion of the appropriate level of environmental review by RHS. Lenders will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be split on a pro-rata basis between the lender and the Agency from the first dollar lost.

II. Allocation

In Fiscal Year (FY) 1999, budget authority will provide approximately $74 million in program dollars. All FY 1999 funds will be held in the National Office. There are no set-asides or demonstration purposes for the GRRHP for FY 1999.

III. Application Process

For FY 1999, there is limited time between the publication of the NOFA and the deadline for receipt of applications in time for making conditional commitments for guaranteed loans. Eligible lenders are encouraged to submit NOFA responses prior to deadline, as applications will be reviewed as they are received. Lenders are required to submit their NOFA response by 4:00 PM, Eastern Daylight Savings Time, 90 days from the date of publication in the Federal Register or 4:00 PM, Eastern Daylight Savings Time on August 31, 1999, whichever time comes first. In the interest of time, lenders have the option of submitting a combined NOFA response and application. However, the Agency will not give preference to a submission with both the NOFA response and application. Upon notice of selection, lenders with the top ranked NOFA responses will be requested to submit the required application fee of $2,500.00 and full application if not already submitted. When the conditions of the conditional commitment are met, the lender will submit the required information with a separate guarantee fee of 1% of the total guarantee amount.

IV. Submission Requirements

All NOFA responses for the GRRHP must meet the requirements of 7

CFR part 3565 and this NOFA. Incomplete submissions will not be reviewed and will be returned to the lender. Lenders are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. RHS will base its determination of completeness of the application and the eligibility of each lender on the information provided in the application.

V. Selection Criteria

A. NOFA proposals will be reviewed as received. In the event that demand exceeds available funds, priorities will be assigned to eligible proposals on the basis of the following criteria as described in 7 CFR 3565.5(b), and points will be assigned as follows:

(1) Projects located in rural communities with the smallest population will receive priority. All proposals will be ranked in order of their population. The proposals will be given a point score starting with the project located in the area with the lowest population receiving 20 points, the next 19 points and so forth, until up to 20 projects have received points.

(2) The most needy communities as determined by the median income from the most recently available census data. The proposals will be given a point score starting with the community having the lowest median income receiving 20 points, the next 19 points and so forth until up to 20 proposals have received points.

(3) Partnering and leveraging in order to develop the maximum number of housing units and promote partnerships with state and local communities, including other partners with similar housing goals. Leveraging points will be awarded as follows:

Loan to value ratio (percentage %)	Points
75–84	10
70–74	15
69 or less	20

(4) Loans with interest rates less than the maximum allowable 250 basis points over the 30 Year Treasury Rate will be awarded points as follows:

Interest rate	Points
250 to 199 basis points, inclusive	0
200 to 151 basis points, inclusive	5
150 to 100 basis points, inclusive	10
99 to 50 basis points, inclusive	15
Less than 50 basis points	20

(5) Preference will be given to proposals having a higher percent of 3–5 bedroom units to total units. The proposals will be ranked in order of this percent with the proposal with the highest percent receiving 20 points, the next 19 points and so forth until up to 20 projects have received points.

(6) Proposals to be developed in a colonia, on tribal land, in an Empowerment Zone or Enterprise Community, or in a place identified in the State consolidated plan or State needs assessment as a high need community for multifamily housing (20 points).

(7) The Agency will award points or rank projects that meet the FY 1999 Guaranteed Rural Rental Housing goals of creating affordable housing and assuring that the most cost effective financing packages are selected for further processing. The statute requires that the property remain in affordable housing for the period of the original term of the guaranteed loan and each loan may be accordingly amortized for a period of up to 40 years without a balloon payment. Therefore, a longer amortization period affords a longer commitment to affordable housing and the creation of more affordable rents.

Projects will be ranked by the length of the amortization period, with the longest receiving priority as follows:

Amortization (yrs.)	Points
40	20
at least 35	15
at least 30	10
at least 20	5
less than 20	0

B. Assistance can include both loan guarantees and interest credits. For at least 20 percent of the loans made under the program, RHS shall provide the borrower with interest credits to reduce the interest rate of the loan by a maximum of 250 basis points. However, in no instance will the lender's interest rate be reduced to lower than the applicable Federal Rate as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986.

RHS will provide interest credit on loans up to $1.5 million. Lenders with proposals that could be viable with or without interest credits are encouraged to submit a NOFA response reflecting financial and market feasibility under both funding options. A request in the NOFA response to be considered under both options will not affect the rating of the response for Interest Credit selection. However, once the interest credit funds are exhausted, only those NOFA responses requesting consideration under both funding options or the Non-Interest Credit option will be further considered.

NOFA responses requesting to receive interest credit will be ranked and scored separately using the same selection criteria for non-interest credit proposals. In the event of ties, selection between proposals will be by lot.

VI. Additional Information

A. Regulations

NOFA responses are subject to the regulatory provisions of the Final Rule entitled "Guaranteed Rural Rental Housing Program," which is being published simultaneously in the **Federal Register**.

B. Surcharges for Guarantee of Construction Advances

There is no surcharge for guarantee of construction advances for FY 1999.

C. Maximum Interest Rate

The maximum allowable interest rate on a loan submitted for a guarantee is 250 basis points over the 30-year Treasury Bond Rate as published in the Wall Street Journal as of the business day previous to the business day the rate is set.

D. Lender Application Fee

There is no lender application fee for lender approval in FY 1999.

E. Program Fees for FY 1999

(1) There is an initial guarantee fee of 1% of the total guarantee amount which will be due at closing of the permanent loan. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(2) There is an annual renewal fee of 0.5% of the guaranteed outstanding principal balance charged each year or portion of the year that the guarantee is in effect. This fee will be collected prospectively on January 1, of the calendar year.

(3) There is no site assessment and market analysis or preliminary feasibility fee in FY 1999.

(4) There is a non-refundable application fee of $2,500 when the application is submitted following proposal selection under the NOFA.

(5) There is a flat fee of $500 when a lender requests RHS to extend the term of a guarantee commitment.

(6) There is a flat fee of $500 when a lender requests RHS to reopen a guarantee commitment after the period of the commitment lapses.

(7) There is a flat fee of $1,250 when a lender requests RHS to approve the transfer of property and assumption of the loan to an eligible applicant.

Dated: June 3, 1999.

Inga Smulkstys,

Acting Under Secretary, Rural Development

[FR Doc. 99–15289 Filed 6–15–99; 8:45 am]

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federal register

Wednesday
June 16, 1999

Part VII

The President

Proclamation 7203—Gay and Lesbian Pride Month, 1999

Proclamation 7204—Flag Day and National Flag Week, 1999

Executive Order 13126—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

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Wednesday, June 16, 1999

Presidential Documents

Title 3—

The President

Proclamation 7203 of June 11, 1999

Gay and Lesbian Pride Month, 1999

By the President of the United States of America

A Proclamation

Thirty years ago this month, at the Stonewall Inn in New York City, a courageous group of citizens resisted harassment and mistreatment, setting in motion a chain of events that would become known as the Stonewall Uprising and the birth of the modern gay and lesbian civil rights movement. Gays and lesbians, their families and friends, celebrate the anniversary of Stonewall every June in America as Gay and Lesbian Pride Month; and, earlier this month, the National Park Service added the Stonewall Inn, as well as the nearby park and neighborhood streets surrounding it, to the National Register of Historic Places.

I am proud of the measures my Administration has taken to end discrimination against gays and lesbians and ensure that they have the same rights guaranteed to their fellow Americans. Last year, I signed an Executive order that amends Federal equal employment opportunity policy to prohibit discrimination in the Federal civilian work force based on sexual orientation. We have also banned discrimination based on sexual orientation in the granting of security clearances. As a result of these and other policies, gay and lesbian Americans serve openly and proudly throughout the Federal Government. My Administration is also working with congressional leaders to pass the Employment Non-Discrimination Act, which would prohibit most private employers from firing workers solely because of their sexual orientation.

America's diversity is our greatest strength. But, while we have come a long way on our journey toward tolerance, understanding, and mutual respect, we still have a long way to go in our efforts to end discrimination. During the past year, people across our country have been shaken by violent acts that struck at the heart of what it means to be an American and at the values that have always defined us as a Nation. In 1997, the most recent year for which we have statistics, there were more than 8,000 reported hate crimes in our country—almost one an hour. Now is the time for us to take strong and decisive action to end all hate crimes, and I reaffirm my pledge to work with the Congress to pass the Hate Crimes Prevention Act.

But we cannot achieve true tolerance merely through legislation; we must change hearts and minds as well. Our greatest hope for a just society is to teach our children to respect one another, to appreciate our differences, and to recognize the fundamental values that we hold in common. As part of our efforts to achieve this goal, earlier this spring, I announced that the Departments of Justice and Education will work in partnership with educational and other private sector organizations to reach out to students and teach them that our diversity is a gift. In addition, the Department of Education has issued landmark guidance that explains Federal standards against sexual harassment and prohibits sexual harassment of all students regardless of their sexual orientation; and I have ordered the Education Department's civil rights office to step up its enforcement of anti-discrimination and harassment rules. That effort has resulted in a groundbreaking guide that provides practical guidance to school administrators and teachers

for developing a comprehensive approach to protecting all students, including gays and lesbians, from harassment and violence.

Since our earliest days as a Nation, Americans have strived to make real the ideals of equality and freedom so eloquently expressed in our Declaration of Independence and Constitution. We now have a rare opportunity to enter a new century and a new millennium as one country, living those principles, recognizing our common values, and building on our shared strengths.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 1999 as Gay and Lesbian Pride Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities that celebrate our diversity, and to remember throughout the year the gay and lesbian Americans whose many and varied contributions have enriched our national life.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99-15469
Filed 6-15-99; 8:45 am]
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VOL 64 ISS 115 JE 16 1999 UMI

Presidential Documents

Proclamation 7204 of June 11, 1999

Flag Day and National Flag Week, 1999

By the President of the United States of America

A Proclamation

Since its adoption in 1777 by the Continental Congress, the Stars and Stripes has symbolized the promise of America. This promise—of equality, justice under the law, freedom from tyranny, and inclusion in a government of the people—beckons immigrants to our shores today just as it has for more than two centuries. Each time the Stars and Stripes is raised over our homes, public buildings, schools, or community gathering places, it proclaims that our Nation's great experiment in democracy is alive and well.

The stately design of the Stars and Stripes celebrates America's diversity while proclaiming the unity of our Nation. Its white stars, whose shifting constellation has chronicled the growth of our Nation, are the ancient symbols of a sovereign domain; they lie on a field of blue that represents loyalty, justice, and truth. Thus our flag describes the unique Republic designed by our founders, in which States that vary widely in geography, history, and culture are joined in sustaining the common goals and ideals our Nation holds dear. The Stars and Stripes reminds us that, wherever we come from across our country, we are all first and foremost Americans.

Today, as we stand at the threshold of the 21st century, we have a special opportunity to renew our flag's heritage and to honor the spirit of resilience in our national character that it signifies. As part of this effort, the White House Millennium Council's "Save America's Treasures Project," created by the First Lady, is helping to restore and preserve the original Star-Spangled Banner at the Smithsonian's National Museum of American History. This banner, "so gallantly streaming" as the British navy retreated from Baltimore Harbor after a failed assault on Fort McHenry in 1814, is immortalized in the bold and patriotic words of Francis Scott Key that now serve as our National Anthem. From the fledgling Nation of Key's time, defiantly opposing domination by European powers, the United States has evolved into a Nation of unrivaled influence in the world with an unparalleled commitment to democracy and human rights. During Flag Day and National Flag Week, we honor this incredible journey and the bright future it has made possible.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as "Flag Day" and requested the President to issue an annual proclamation calling for its observance and for the display of the Flag of the United States on all Federal Government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 falls as "National Flag Week" and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim June 14, 1999, as Flag Day and the week beginning June 13, 1999, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National

Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor our Nation, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J Clinton

[FR Doc. 99–15490
Filed 6–15–99; 8:45 am]
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Presidential Documents

Executive Order 13126 of June 12, 1999

Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to continue the executive branch's commitment to fighting abusive child labor practices, it is hereby ordered as follows:

Section. 1. *Policy.* It shall be the policy of the United States Government, consistent with the Tariff Act of 1930, 19 U.S.C. 1307, the Fair Labor Standards Act, 29 U.S.C. 201 *et. seq.*, and the Walsh-Healey Public Contracts Act, 41 U.S.C. 35 *et seq.*, that executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.

Sec. 2. *Publication of List.* Within 120 days after the date of this order, the Department of Labor, in consultation and cooperation with the Department of the Treasury and the Department of State, shall publish in the **Federal Register** a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor. The Department of Labor may conduct hearings to assist in the identification of those products.

Sec. 3. *Procurement Regulations.* Within 120 days after the date of this order, the Federal Acquisition Regulatory Council shall issue proposed rules to implement the following:

(a) *Required Solicitation Provisions.* Each solicitation of offers for a contract for the procurement of a product included on the list published under section 2 of this order shall include the following provisions:

(1) A provision that requires the contractor to certify to the contracting officer that the contractor or, in the case of an incorporated contractor, a responsible official of the contractor has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor; and

(2) A provision that obligates the contractor to cooperate fully in providing reasonable access to the contractor's records, documents, persons, or premises if reasonably requested by authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice, for the purpose of determining whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract.

(b) *Investigations.* Whenever a contracting officer of an executive agency has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture a product furnished pursuant to a contract subject to the requirements of subsection 3(a) of this order, the head of the executive agency shall refer the matter for investigation to the Inspector General of the executive agency and, as the head of the executive agency or the Inspector General determines appropriate, to the Attorney General and the Secretary of the Treasury.

(c) *Remedies.*

(1) The head of an executive agency may impose remedies as provided in this subsection in the case of a contractor under a contract of the executive agency if the head of the executive agency finds that the contractor:

(i) Has furnished under the contract products that have been mined, produced, or manufactured by forced or indentured child labor or uses forced or indentured child labor in the mining, production, or manufacturing operations of the contractor;

(ii) Has submitted a false certification under subsection 3(a)(1) of this order; or

(iii) Has failed to cooperate in accordance with the obligation imposed pursuant to subsection 3(a)(2) of this order.

(2) The head of an executive agency, in his or her sole discretion, may terminate a contract on the basis of any finding described in subsection 3(c)(1) of this order for any contract entered into after the date the regulation called for in section 3 of this order is published in final.

(3) The head of an executive agency may debar or suspend a contractor from eligibility for Federal contracts on the basis of a finding that the contractor has engaged in an act described in subsection 3(c)(1) of this order. The provision for debarment may not exceed 3 years.

(4) The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (maintained by the Administrator as described in the Federal Acquisition Regulation) each party that is debarred, suspended, proposed for debarment or suspension, or declared ineligible by the head of an agency on the basis that the person has engaged in an act described in subsection 3(c)(1) of this order.

(5) This section shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a finding described in subsection 3(c)(1) of this order.

Sec. 4. *Report.* Within 2 years after implementation of any final rule under this order, the Administrator of General Services, with the assistance of other executive agencies, shall submit to the Office of Management and Budget a report on the actions taken pursuant to this order.

Sec. 5. *Scope.* (a) Any proposed rules issued pursuant to section 3 of this order shall apply only to acquisitions for a total amount in excess of the micro-purchase threshold as defined in section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f)).

(b) This order does not apply to a contract that is for the procurement of any product, or any article, material, or supply contained in a product that is mined, produced, or manufactured in any foreign country if:

(1) the foreign country is a party to the Agreement on Government Procurement annexed to the WTO Agreement or a party to the North American Free Trade Agreement ("NAFTA"); and

(2) the contract is of a value that is equal to or greater than the United States threshold specified in the Agreement on Government Procurement annexed to the WTO Agreement or NAFTA, whichever is applicable.

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Sec. 6. *Definitions.* (a) "Executive agency" and "agency" have the meaning given to "executive agency" in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(b) "WTO Agreement" means the Agreement Establishing the World Trade Organization, entered into on April 15, 1994.

(c) "Forced or indentured child labor" means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Sec. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and does not create any rights or benefits, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

William J. Clinton

THE WHITE HOUSE,
June 12, 1999.

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Railroad rehabilitation and improvement financing program; regulations governing loans and loan guarantees; comments due by 6-21-99; published 5-20-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Anthropomorphic test devices:

Occupant crash protection—

12-month-old infant crash test dummy; comments due by 6-22-99; published 4-22-99

Vehicles built in two stages:

Certification Negotiated Rulemaking Committee; intent to form; comments due by 6-21-99; published 5-20-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Incident reporting requirements and Detailed Hazardous Materials Incident Report form; revision; comments due by 6-21-99; published 3-23-99

Pipeline safety:

Natural gas transportation, etc.—

Gas pipelines; corrosion extent determination; comments due by 6-24-99; published 5-25-99

TREASURY DEPARTMENT

Customs Service

Vessels in foreign and domestic trades:

Foreign repairs to U.S. vessels; comments due by 6-21-99; published 4-21-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1121/P.L. 106–33

To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the "Lewis R. Morgan Federal Building and United States Courthouse". (June 7, 1999; 113 Stat. 117)

H.R. 1163/P.L. 106–34

Fastener Quality Act Amendments Act of 1999 (June 8, 1999; 113 Stat. 118)

Last List June 3, 1999

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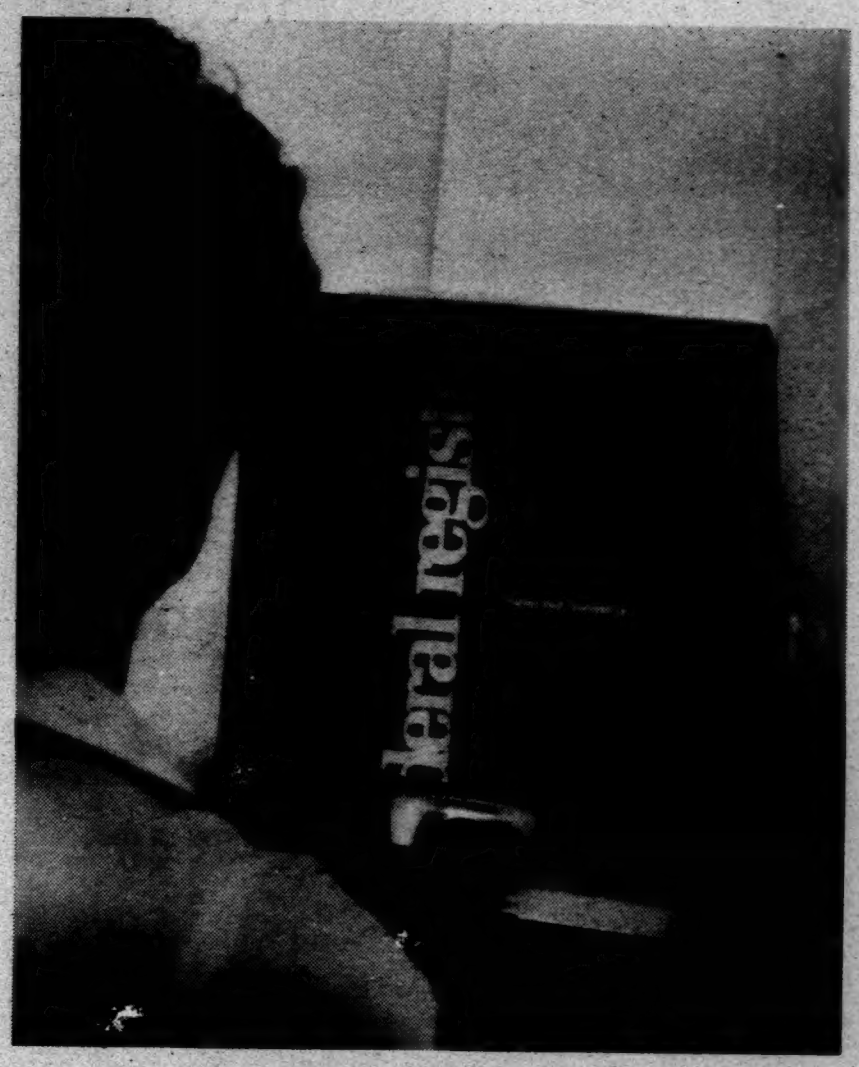

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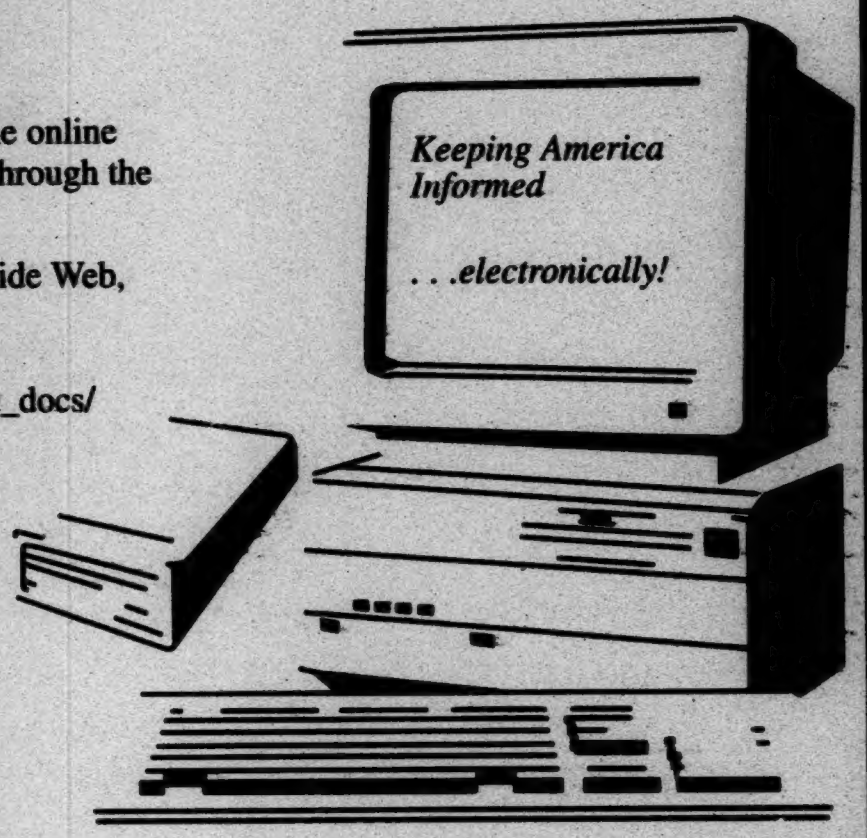

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